

Marriage to a Deceased Wife's Sister and the Origins of *Lord Lyndhurst's Act*

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*Abstract*

The subject of this paper is the parliamentary origins of *Lord Lyndhurst's Act*, an act passed in England in 1835 to ban marriages within the prohibited degrees of consanguinity and affinity, including marriage to a deceased wife's sister. Keeping in mind the almost century long parliamentary debate which occurred from the 1840s, over reversing the prohibition on marriage to a deceased wife's sister, this paper explains how and why the legislation came to exist.

The agitation regarding the legality of marriage to a deceased wife's sister came to a head in 1835 with the passing of *An Act to render certain Marriages valid and, to alter the Law with respect to certain voidable Marriages* 1835 5 & 6 Will VI c. 54 (hereafter referred to by its common name '*Lord Lyndhurst's Act*'). The Act retrospectively validated marriages to a deceased wife's sister which had occurred prior to 1835, whilst preventing such marriages from taking place legally in the future. Prior to the Act marriages to deceased wife's sisters were voidable but not void as of themselves, their legal legitimacy rested on whether or not a person had any opposition to a marriage that had taken place. This paper explores the origins of *Lord Lyndhurst's Act* and investigates the motivation for its enactment. Why was an Act regarding affinity marriages introduced in parliament in 1835? Why did the Act legalise marriages which had already occurred whilst prohibiting them in the future? The answer to the first question is found in the historical relevance of affinity marriages and the uncertain and unsettled nature of marriage law. The answer to the latter question is found in the government's anxiety over the security of inheritance lines and the moderate-reform agenda of the Tory party in 1835.

### *I. Defining Incest, Consanguinity and Affinity*

Much of the vernacular used to describe relationships in the nineteenth century is still used today. However, the meaning of language has evolved and 'incest' is one such term which did not acquire its contemporary denotation until 1908 when sexual relations between closely related family members became a criminal offence in England. Prior to this, incest was recognized in the Church courts as marriage within the prohibited degrees, and more rarely in consensual unions that resembled marriages. Illicit sexual relations were punished as adultery or fornication, rather than incest. The great majority of incestuous unions subjected to ecclesiastical authority were between affines not blood relatives (Morris, 1991: 235, 6). The perceived threat was to familial structures rather than to victims of indecent sexual acts. Though there was little discussion of specific types of affine and consanguineous marriages during the 1835 parliamentary debate, marriage to a deceased wife's sister specifically did arise. It was seen to be not within the prohibited degrees by some speakers. However, specific discussion of this type of partnership was more a reflection of the practical implications of such marriages for children, and the property implications for parents, rather than a recognition of the difference between our modern understanding of 'incest' and affine relations.

The English nation had worried about affinity marriages since the days of Henry VIII. Such concern is evident in publications written as early as 1695 such as Charles Blount's *To His Friend Torismond, to Justifie [sic] the Marrying of Two Sisters One After the Other* and John Quick's *A Serious Inquiry into the Weighty Case of Conscience Whether a Man May Lawfully Marry His Deceased Wife's Sister*, written in 1703. By 1887 when Alfred Huth decided to compile his *Bibliography of Books and Papers upon the Impediments to Marriage*, he was able to list 300 publications on the deceased wife's sister controversy and dozens of others on the personal problems of Henry VIII (Turner, 1950: 100). King Henry's request that the Pope declare his marriage to Catherine unlawful, and the consequences of the Pope's refusal, drew sharp attention to the issue of the legality of affinity marriages. Catherine's supporters invoked the text of Deuteronomy 25:5-6 which expressly enjoined a man to marry his brother's widow in cases where the brother had died without issue. The king's supporters invoked Leviticus 18:18 but the correct translation was controversial. Greek, Hebrew, Jewish and Christian theologians, university scholars and canonists in England and on the Continent were called upon to provide evidence for the king. However, the Henrician divorce

exacerbated, rather than settled, the uncertainty surrounding those rules. By the end of his reign, King Henry had issued four statutes regarding prohibited marriages, not all of which seemed entirely consistent with one another. The first two issued in 1533 and 1536 designed which kin were off limits as conjugal and sexual partners, including all the relatives mentioned in Leviticus, with the addition of the wife's sister (not mentioned there). The second two statutes declared that all marriages not expressly forbidden by divine law or not outside the Levitical degrees were legal. Whether the second two statutes contradicted the earlier rulings prohibiting marriage with a deceased wife's sister was left unanswered (Pollack, 2002: 30). It was partly this uncertainty which resulted in *Lord Lyndhurst's Act*.

The king's divorce produced an intellectual controversy of international significance. The apparent scriptural contradiction between Leviticus and Deuteronomy had been previously and extensively commented upon by religious scholars and the rules of affinity and consanguinity had been invoked in earlier centuries to dissolve the marriages of European nobility. But never before, had the nuances of scriptural interpretation generated public debate on such a grand scale. This political state of affairs gave rise to discussion, not only amongst religious elites and royalty but within popular culture. For example in the dialogue of Shakespeare's *Henry VIII*:

Chamberlain – It seems this marriage with his brother's wife has crept too near his conscience. Suffolk – No, his conscience has crept too near another lady.

This dialogue reflected Shakespeare's doubt about the genuine nature of the king's sudden guilty conscience regarding his marriage to Catherine (Turner, 1950: 100). This demonstrates the role of literature in the increasing popularisation of the issue. Hamlet's denunciation of his mother for marrying her deceased husband's brother is another famous example (Kuper, 2002: 162).

## *II. The Uncertain Nature of Marriage Legislation*

So why was there continued agitation about such marriages throughout the nineteenth century? In this period due to the influence of liberal thought, Parliament began to assert more authority over subjects such as marriage which had been chiefly in the hands of the Church. *Lord Lyndhurst's Act* was part of the attempt to disentangle a hideous knot of civil regulations, Church custom, biblical proscriptions, common law, and conflicting jurisdictions, as well as certain inequities imposed on Jews, Catholics, Quakers, and non-conformists (Behrman, 1968: 484). The on-going dialogue in literature, media, political and religious commentary focused attention upon the uncertain state of marriage law and secured a place for the issue in societal consciousness. John Quick explains in the opening of his treatise that it was his discovery that such marriages were common and that the question of their legality was a subject of public discussion which led to his decision to contribute to that discussion (Quick, 1985). In addition, there was an increasing awareness of the number of affinity marriages taking place and the uncertainty of their status. Interestingly, these marriages continued after the prohibiting Act was passed. In five districts in England, there were 1,364 unions within the prohibited degrees between 1835 and 1848, and of these ninety percent were between a man and his deceased wife's sister (Report of Commissioners, 1847-8: xxviii, x-xi). The agitation simmered as positions were taken up on either side. It was clear that a number of people disagreed with the state of the law and this was manifested by the number of couples who married despite the chance of a challenge being brought in the courts. Thousands of middle and upper class couples took advantage of their wealth and the more lenient laws of other countries to contract affinal marriages abroad (Ottenheimer, 1996: 75-

6). It was very common for unmarried sisters to live with their married sisters and common therefore for them to replace their sisters in the case of death.

The uncertainty of English marriage law and the practice of the middle/upper classes travelling abroad to evade the law resulted in several other debates to reform marriage legislation in the same period. For example, in the month following the passing of *Lord Lyndhurst's Act*, a bill was introduced in parliament in response to the number of young men and women evading the English *Marriage Act* by travelling to Scotland to marry, where parental consent was not required (*Marriage Act 1753* 26 Geo. II. c. 33). In addition, parliament discussed the number of English persons taking advantage of Scottish law which allowed for the dissolution of marriage for which English law did not provide. Similarly to the affinity marriage debate, attention was drawn to the importance of clear laws regarding the legitimacy of marriages. Just as the uncertain status of affinity marriages caused anxiety, so too did the uncertain status of marriages and divorces conducted abroad or without official registration. The laws regarding the legitimacy of marriages, divorces and remarriages conducted in Scotland were uncertain and both parliament and society were intolerant of that uncertainty. As Lord Brougham stated in parliament:

The conflict between the two laws on this point, affecting questions of legitimacy, was productive of serious evil. On such a momentous subject as the validity of marriages, and the legitimacy of children, no doubt should be suffered. The different laws which made a person legitimate in one country, and bastard, or of doubtful legitimacy in the other, was [sic] pregnant with evil (HL Deb 03 September 1835).

In 1836 further reform took place for the purpose of clarifying legitimacy of familial relationships when the *Registration of Births, Deaths and Marriages* and the introduction of civil marriages were debated (*Marriage Act 1836* 6 & 7 Will. IV c. 85). These Acts, in addition to *Lord Lyndhurst's Act*, appear to have been introduced within a series motivated by the necessity for clarifying legitimacy. It was argued that a general system of civil registration, rather than the operating system of Church of England registration, was important to ascertain the state and condition of individuals under various circumstances (HC Deb 12 February 1836). The *Marriage Act 1836* relaxed strict religious marriage ceremony and allowed civil marriages and ceremony according to different religious custom. Since *Lord Hardwicke's Act* in 1753 the members of dissenting religions had been forced to conform to Anglican ceremony in order for their marriages to be legally valid as this Act required all marriages be solemnized in a parish Church. The law was so stringent that some avoided it by marrying in Scotland (Behrman, 1968: 482). The repeated discussion of the importance of clarifying the legal legitimacy of marriage relationships, whether it be marriages conducted abroad or affinity marriages at home, was a response to concern for the protection of property and the entrenchment of legitimate lines of inheritance. Issues of inheritance, wardship and property hung on the validity of marriage. *Lord Lyndhurst's Act* would end the risks associated with such marriages by defining lines of inheritance.

Though the successive marriage Acts were introduced with the shared motive of clarifying legitimacy and protecting proprietary interests, the effect of the *Marriage Act 1836* was to broaden the range of legitimate marriage partners, regardless of religion and ceremony, whilst *Lord Lyndhurst's Act* restricted eligible marriage partners. The 1836 Act was part of the liberalisation of marriage and, whilst *Lord Lyndhurst's Act* was not reflective of this trend, both represent the push for clarification. The 1830s after the passage of the *Reform Bill* were not especially conservative years in terms of legislation and the 1836 *Marriage Act* sat neatly

within the reform agenda, whilst *Lord Lyndhurst Act* does not. Religious minorities such as Jews, Catholics and non-conformists clamoured for more rights and many had little faith the established Church would remain. Many controversial reforms were enacted in these years and those that followed, including the expansion of the franchise, religious minority rights, divorce legislation and women's custody legislation (Gullette, 1990, 146; See legislation including: *Reform Law* 1832, 2 & 3 Will IV; *Marriage Act* 1836, 6 & 7 Will. IV; *Custody of Infants Act* 1839, 2 & 3 Vic c.54; and *Matrimonial Causes Act* 1857, 20 & 21 Vict., c. 85).

However many argued that the imposition of stricter standards on the marriage contract was very desirable and that marriage was not a matter that could be left to judicial discretion. It was a matter about which there had to be hard and fast rules (Gullette, 1990: 487). Such views were supported by Jeremy Bentham's ideas regarding the codification of the law and the abolition of the common law (Bentham, 1802). He argued that the common law was essentially unknowable, since it was all *ex post facto*, and that it needed replacement by a new legislated code (Lobban, 2003:118). Though Bentham's codification ideas were seen as somewhat radical (Dinwiddy, 1975: 683-700) in the early nineteenth century, there was some criticism of the common law and an acknowledgment of the need for authoritative rules to be articulated. It was argued that in an era of rapid legal development it was impossible for individuals to know the law (Lobban, 2003: 120).

Public discussion about marriage to a deceased wife's sister did not escalate until the mid nineteenth century but there was awareness of the desirability for certainty and the unsatisfactory state of the law in terms of the voidability of particular marriages (Turner, 1950: 102). This state of affairs was unsatisfactory for those who had entered into such marriages because though not many malicious challenges occurred; there was always the risk of a challenge. It was unsatisfactory to religious conservatives because as the *Edinburgh Review* pointed out: 'The supremacy of the law of God was made dependant on the accident as to whether there was anyone spiteful enough or interested enough to procure the intervention of the law of man to give force to the Law of God'.<sup>1</sup>

Finally, the state of the law allowed for its manipulation and was both impractical and inefficient. To prevent voiding, a collusive suit could be brought by a friendly party and either dropped or allowed to continue for long periods. On-going suits or suits that had been dropped were held to bar other actions and this strategy was used by those couples who could afford it, to prevent their marriages from being voided in the future.

### *III. Progress in Parliament: Passing Lord Lyndhurst's Bill*

So, if the uncertainty of marriage status and inheritance lines led to the creation of legislation to clarify such questions, what influenced the content of that legislation? Why did *Lord Lyndhurst's Bill* pass in the form that it did? The inconsistency between *Lord Lyndhurst's Act* and other marriage legislation indicates that the Act was not primarily a result of religious belief or entrenched conservatism. In addition, the prohibition was not enacted in response to excessive litigation as this was fairly limited. The contents of the Act reflected the practical pathway to clarification and protected those who had married already. In addition, it reflected the moderate reform agenda of Sir Robert Peel's Tory government which will be discussed in section V.

The original prohibitive Bill was proposed by Lord Lyndhurst in Parliament on 1 June 1835. Lord Lyndhurst argued that the confused state of the law was capable of causing great injustice and it was an advantage to society to make the status of such marriages certain, rather than dependent upon the possibility of action by a third party. The main stated goal of the act was to eliminate the uncertain status of children. Lord Lyndhurst argued that the legislation would prevent parties marrying, having a child born to them who as an adult inherits property and has his own children, before a suit is suddenly brought which reduces him to the status of bastard and strips him and his children of hope and fortune (Parliamentary Papers, 1 June 1835 ). In terms of the motive of settling the uncertainty of the law, Lord Lyndhurst argued a complete bar on future marriage within the prohibited degrees made practical sense. From the first reading the legislation was presented as a bill not to question or alter the degrees of affinity and consanguinity, but to confirm the stance of the law which for all intents and purposes, already existed. Lord Lyndhurst was reported as stating ‘There were many important considerations connected with the subject, to which he should now not advert, since he did not propose to effect any change in the law’ (Parliamentary Papers, 1 June 1835).

Affinity marriages had been almost uniformly nullified when a challenge was brought before the courts and the Bill only sought to enforce the law with regard to all marriages and not just those that happened to be challenged (Martin, 1883:331). In *A Life of Lord Lyndhurst*, Sir Theodore Martin states that as the Bill only affirmed the current law and adequately settled the uncertainty, it met with limited opposition. However, a reading of the parliamentary discussion reveals that the second clause of the bill almost prevented it from passing and opposition was expressed, particularly against the contradictory nature of the retrospective clause and with regards to marriage to a deceased wife’s sister.

The initial second reading of the Bill in the House of Commons on 18 August was brief. Mr Plumptre moved an amendment which specifically regarded the degree of affinity of the deceased wife’s sister. The amendment was to the effect that exception to the future prohibition should be made in favour of the sister of a former wife, when there were children by that wife less than twelve years of age. Mr Divett commented ‘There can be no doubt that cases might occur where it might be of essential importance both to the father and the children that such a marriage should be permitted’ (*The Examiner*, 1835: 4).

However, Mr Twiss, a Tory supporter of the Bill, suggested Mr Plumptre withdraw the amendment so as not to ‘endanger the Bill in another place.’ There was very limited discussion and when the House was counted and there was not a minimum of members to make quorum, the House divided on the amendment and adjourned. When discussion resumed two days later Mr Plumptre’s amendment appeared all but forgotten (Parliamentary Papers, 18 August 1835). Despite this, what was best for children with deceased mothers was a major strand of the continuing debate in the following decades.

On 20 August 1835 Mr Poulter (John Sayer Poulter was the Whig member for Shaftesbury) presented his objection to the second clause of the *Marriage Act Amendment*. The core of his objection was the inconsistency between the first clause which made prior marriages valid, and the second clause which made future marriages void. Mr Poulter moved to have the second clause struck out of the Bill and the speaker suggested the House go into Committee to discuss the subject. That discussion revealed an overwhelming consistency in the view that the law regarding such marriages must be made certain in one way or another. Mr Twiss’

statement ‘it was impossible to leave the law in its present state; for no error could be greater than that of leaving the law on so important a subject in a doubtful situation’ (Parliamentary Papers, 20 August 1835 ) was reiterated by various members throughout. However, despite consensus on the need for a clear legal statement about the status of such marriages, there were various views on what ought to be the content of the legislation. Mr Twiss went on to argue that as the uncertainty of the law was forcing the House to take a firm position either way, it should avoid offending the moral and religious prejudices of a public majority and leave the Bill as drafted (Parliamentary Papers, 20 August 1835). However, other members expressed sympathy for Mr Poulter’s concerns, for example, Mr Ewart, a liberal with radical leanings, said that it was not right to purchase present advantage at the expense of future consistency (Parliamentary Papers, 20 August 1835, per Mr Ewart) and that the clause prohibiting future marriages contradicted principles of the law and humanity by punishing children for the offences of their parents (Parliamentary Papers, 20 August 1835, per Mr Pease). The Committee divided on Mr Poulter’s amendment 33 Ayes to 21 Noes illustrating that there was initial opposition to the future prohibition of all affinity and consanguinity marriages within the prohibited degrees.

The dialogue which ensued when the House resumed discussion of the Bill a few days later on 24 August, focused on whether a bill which legalised certain marriages retrospectively and made them illegal in the future, fulfilled the purpose of clarifying the marriage law and affirming the status of the parties involved. Again the specific prohibition of marriage to a deceased wife’s sister arose when Sir William Follett (Tory member for Exeter) acknowledged that some Honourable members had expressed the view that there were particular degrees of affinity within which marriage should be permitted, and that marriage to a deceased wife’s sister was one such degree (Parliamentary Papers, 24 August 1835). However, once again Follett argued that the purpose of the Bill before the House was to create certainty in the law and if any degree of affinity ought to be exempt, this should be done through an additional clause or a separate Bill to be passed thereafter. He advocated the Bill be passed and the law be clarified as soon as possible. Mr Poulter responded by stating that passing an Act which made marriage to a deceased wife’s sister, amongst other marriages, absolutely null and void, only to reverse that direction in the following session, seemed confusing rather than clarifying. There was little discussion of the moral, religious or social justification or lack thereof for the future prohibition. For the remainder of the debate, specific degrees of affinity and religious or moral concerns regarding the legitimate degrees to prohibit were treated as secondary issues to be discussed at a later date when the urgent matter of clarifying marriage status had been settled.

The final Commons vote was largely in favour of both clauses remaining in the Bill with 75 Ayes and 17 Noes. However the results of the vote alone tell us little about the views of the House on the legitimacy of marriage to a deceased wife’s sister. It is questionable whether the Act would have passed in the form described had it been concerned with marriage to a deceased wife’s sister alone. However, as it included all the degrees of affinity and consanguinity, some of which the whole of the House would have undoubtedly agreed should be illegal, marriage to a deceased wife’s sister may well have been sacrificed for the greater good. Such prohibited relationships of consanguinity included, among others, a man with his mother, sister, daughter, granddaughter and blood aunt, and of affinity, his step-mother, aunt by marriage, step-sister, sister-in-law, daughter-in-law or step-daughter. As previously discussed, incest was traditionally defined by the Church as marriage within the prohibited degrees and therefore such relationships were considered incestuous as a group with no delineation between affinity and consanguinity (Morris, 1991: 235). There are no division lists available in the Hansard records which could have provided further information about

the attitudes of individual parliamentarians, but what the debate does reveal is that those who voted for the Bill were more concerned with its overall purpose than its detailed substance. Some were prepared to forgo a belief that marriage to a deceased wife's sister and perhaps other affinity marriages should be permitted, in order to keep the Bill clear and simple, and with a view to possibly exempting some specific forms of marriage in the future. Others may not have considered the merits of prohibiting each of the degrees of affinity separately as they were generally not discussed in this manner in parliament.

Perhaps the act of overlooking specifics in favour of passing a clear law quickly is illustrative of parliament's tendency to be influenced by expediency. The debate demonstrates that the subject was introduced almost entirely as a matter of 'legal codification' with no attempt to tie it to discussion of moral values until it hits the Commons and even there such discussion is minimal and muted. In the short-lived debate itself, there is more discussion of why legislation is needed than explanation for its content. It can only enlighten us with regards to the powerful motivation of clarifying legitimacy and inheritance lines.

#### *IV. Moderate Tory Reform and the Agenda of the Government*

So far this paper has established that the primary motivation for the Act was the clarification and codification of the marriage law. However, the political context within which the Act was drafted and passed is also highly relevant. The remainder of the paper will position the Act within the Tories' moderate reform agenda of 1834-5. In order to place *Lord Lyndhurst's Act* within this framework it is necessary to examine the role of Sir Robert Peel and the movement of the Whig and Tory parties in and out of government in the 1830s. In 1832, when the Tories had last been in power, the party had refused to support the parliamentary *Reform Bill* and were henceforth voted out of government by a large majority with 150 seats compared to 320 for the Whigs and 190 for the Radicals and Irish. With these figures there was even a query as to whether the Tories should occupy the main opposition front bench (Hurd, 2007: 1). At this time Sir Robert Peel recognized that the Duke of Wellington (former Tory prime minister) was taking the wrong approach by rejecting the *Reform Bill* entirely and that the unreformed parliamentary system could not continue. At this point he could have mobilized a group of like-minded Tories from the party's progressive wing and worked out a set of moderate proposals for enlarging the franchise. When he was finally given the opportunity to work with the duke and carry a Tory reform bill, as a result of the desperate plea of the king, he refused the opportunity, probably because of the personal back lash he had experienced when he supported Catholic Emancipation against the will of the ultra Tories in 1829 (Hurd, 2007: 3).

By 1834 the Whig government had weakened and the king had sent for Sir Robert Peel to offer him the prime ministership. Peel accepted the offer and advised the king sack the prime minister, dissolve the parliament and hold a general election. But after the defeat of 1832 over the *Reform Bill*, Peel knew that he could not win an election without presenting the Tory party in new light. With the experience of the Tory party in mind, it is hardly surprising that as prime minister in 1834, Peel on the one hand needed to show the public that his party was capable of initiating necessary reform, and on the other hand needed to distance his government from the tag of 'party of reaction'. Even Lord Lyndhurst recognized the need for change although the relationship between Peel and the ultra Tories, with whom Lyndhurst became very involved, would continue to disrupt his agenda throughout his career. On the day of Lord Lyndhurst's appointment as Lord chancellor with Sir Robert Peel as prime minister, Lyndhurst confessed that the new administration would be confronted with a coalition of Whigs and Radicals, and that Lord Brougham would be a troublesome opponent:



*'He would come down, night after night, and produce plans of reform on any subject'* (Beresford Atlay: 110). Lyndhurst and the popular diarist Greville concurred that if the Government was to be tolerated at all it must have an active forward thinking policy of its own. They agreed that the *Reform Bill* and all the evils of the last four years were attributable to the approach of the ultra Tories who broke up the previous Tory administration. Despite this, as mentioned, Lord Lyndhurst's became a leading protagonist amongst the ultra Tory facet of the party in the years that followed.

During Peel's 100 day (1834-5) Conservative government, law reform and Church reform became central to his agenda as his establishment of the Ecclesiastical Commission, among other things, indicates. He made it very clear throughout the sessions of 1833 and 1834 that he was ready to reform what really needed to be reformed (Best, 1964: 296). Peel saw not just a new electorate but a wider middle class, rapidly growing in prosperity, questioning and impatient with old ways, yet firmly against revolution. They were all men of property and revolution was a threat (Hurd, 2007: 3). Therefore Peel's reform agenda had to illustrate the party's capacity to meet the needs of an industrializing society, whilst respecting conservative Tory values and the property of dukes, bishops, country squires, merchants, manufacturers and all professionals. In order to walk this tightrope Peel used his brief time in office to set agendas of 'moderate administrative reform'. However, Peel had only limited success in controlling his party and influencing its principles and was not always able to convince his followers of the need for moderation (Newbould, 1983: 531). Taking a moderate line meant rejecting the agendas of many ultra Tories; as an ultra Tory government in Golbourn's words amounted to 'a Government deaf to all improvement that comprises change.' (Kitson, 1964: 532).

As described in Peel's Tamworth Manifesto, his government would not take the country backwards to 1832 when the party rejected the *Reform Bill*. The party would adopt the spirit of the *Reform Act*, as far as this amounted to 'careful review of institutions, civil and ecclesiastical, undertaken in a friendly temper, combining, with the firm maintenance of established rights, the correction of proved abuses and the redress of real grievances.' But his party would not 'abandon the respect for ancient rights and the deference for prescriptive authority' (Hurd, 2007: 3; Roberts, 1958: 328).

The *Marriage Act* of 1836 (one of the reforms Lyndhurst did support) addressed the 'real grievance' of a growing religious dissenting majority, by allowing them to marry outside of the strict rules of matrimonial ceremony. A review of public sentiment with regards to marriage to a deceased wife's sister illustrates that there was no 'real grievance' expressed by those involved in such unions as early as 1835. Instead, *Lord Lyndhurst's Act* reflects the other side of the political tactics of the Tories, or perhaps the ultra Tory facet of the party. It demonstrated respect for the ancient pillars of a conservative conscience; religion, the institution of marriage and property. It represented deference for the prescriptive authority of Church and parliament.

In light of the belief that the public saw a conservative government rather than an ultra Tory government as desirable, Peel had established the semi-independent Ecclesiastical Commission in January 1835 to tackle the internal reform of the Church and brought in Lord Lyndhurst as an Ecclesiastical Commissioner. Lyndhurst was supportive of the Commission, as he was of the 1836 *Marriage Act* but he became an obstacle for Peel in other matters. The relationship between Lyndhurst and Peel on these 'other matters' is reflective of the relationship Peel was attempting to forge between the two factions of the Tory party. For example, in July of 1835, a month prior to the passing of *Lord Lyndhurst's Act*, the ultra

Tories led by Lyndhurst mounted an attack against the Whigs *English municipal Corporation Bill*. A Bill which had been supported by Peel earlier that Summer. Despite Lord Lyndhurst's role in the Ecclesiastical Commission, he was one of a number of ultra Tories who attacked the Municipal Corporations Commission. When Lyndhurst was reminded in committee that he was opposing clauses that Peel had supported, he retorted 'Peel! What is Peel to me? D-n Peel.' The ultra-Tories were clearly intent on throwing out the government (Newbould, 1983: 540). During debate over the Bill, at two hastily arranged meetings, Peel did his utmost to dispel the Tory peers' notion that he would lead a Conservative ministry formed by the machinations of Lyndhurst, Ellenborough, Wetherell and the High Tories at Court. However, after the *Corporations Bill* debacle, for the remainder of the life of this parliament, Peel had to be on constant guard that similar displays of disunity did not occur. It was in this climate that *Lord Lyndhurst's Act* – consistent with ultra Tory conservatism – was passed. Lord Lyndhurst's conflicted relationship with Peel continued after 1835 and in June 1837 Lyndhurst unleashed a violent attack on the government's Irish policy and, by implication, on Peel and Wellington's concurrence with it (Lyndhurst's speech about the *Corporations Bill* in June 1837, described by Melbourne who followed as 'invective', was a great blow to Peel's hopes for party unity. See *Hansard*, 9 June 1837, xxxviii. 13222).

Although Peel was forced to resign in March 1835 after several defeats in the House of Commons, Lord Lyndhurst remained as Tory leader in the House of Lords and given Lyndhurst's leadership role in the ultra Tory's rejection of the *Corporations Bill*, and the Whig, Brougham's clear support of the affinity and consanguinity Bill, he had no reason to give up his Bill already launched. *Lord Lyndhurst's Act* was a conservative measure passed within the context of a turbulent Tory party consisting of factional disunity between the high Tories and Peel's moderate Tory supporters. The *Marriage Act* 1836 alongside *Lord Lyndhurst's Act* reflect this disunity but the legislation also reflects the complex agenda of Sir Robert Peel in his attempt to keep his party in power.

### *Conclusion*

An understanding of the origins of *Lord Lyndhurst's Act* is important, given that shortly after it passed into law, a seven decade debate began over the legalisation of marriage to a deceased wife's sister. This paper endeavours to answer two questions with regard to this piece of legislation. Firstly why was the Act regarding affinity marriages introduced in parliament in 1835? The answer is found in the uncertain status of marriages and a need to clarify and codify marriage legislation. Secondly why did the act legalise marriages which had already occurred whilst prohibiting them in the future? The content of the legislation is explained by both expediency/practicality and the moderate reform agenda of Sir Robert Peel's Tory government. The legislation is illustrative of the political and practical motivations for the creation of legislation.

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