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THE CONSTITUTIVE NATURE OF A CHRISTIAN MARRIAGE
AND ITS APPLICATION TOWARD PASTORAL PRACTICE
IN A REMARRIAGE SITUATION

A Thesis Presented to the Faculty
of Concordia Seminary, St. Louis,
Department of Practical Theology
in partial fulfillment of the
requirements for the degree of
Master of Sacred Theology

by

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May 1966

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Short Title

REMARRIAGE AND PASTORAL PRACTICE

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LIST OF ABBREVIATIONS

- A.C. The Augsburg Confession
- Ap. Apology of the Augsburg Confession
- Ep. Epitome, Part I of Formula of Concord
- F.C. Formula of Concord
- L.C. The Large Catechism
- LW Martin Luther, Works, edited by Jaroslav Pelikan and Helmut Lehmann (American Edition; Philadelphia and St. Louis: Muhlenberg Press and Concordia Publishing House).
- PE Martin Luther, Works, (Philadelphia: A. J. Holman Company).
- S.A. Smalcald Articles
- S.D. Solid Declaration, Part II of Formula of Concord
- Tr. Treatise on the Power and Primacy of the Pope
- WA Martin Luther, Werke: Kritische Gesamtausgabe (Weimar: Hermann Böhlau).
- WATR Martin Luther, Werke: Kritische Gesamtausgabe. Tischreden (Weimar: Hermann Böhlau).

CHAPTER I

PURPOSE OF PAPER AND STATEMENT OF PROBLEMS AND ISSUES

The purpose of this paper is to establish the constitutive nature of a Christian marriage and from this basis derive a procedure for evangelical pastoral practice in terms of functional principles and guidelines in the area of divorce and remarriage. It is the assumption of this study that if the contributing elements which constitute the nature of a Christian marriage and give marriage its very being are established, then the lack or absence of the same constitutive elements in marriage should, conversely, determine an understanding of what may dissolve a marriage relationship. As a Christian focuses his attention on the various ramifications of the divorce and remarriage question, it becomes all important that the nature of marriage according to the will and purposes of God be ascertained. It is not the purpose of this study to present a systematic treatise on the doctrine or theology of marriage, divorce, and remarriage.

Theologically and pastorally speaking the Christian Church is facing the divorce and remarriage problem with a bewildering mixture of functional theology, especially in the "climate of church law."¹ It is the contention of this

¹John C. Wynn, editor, Sex, Family and Society (New York: Association Press, 1966), p. 144.

paper that on occasion the Lutheran Church--Missouri Synod has taken a literal and casuistic view of the Words of Jesus and St. Paul regarding marriage and constructed a somewhat arbitrary procedure in respect to pronouncements on the subject of divorce and remarriage. This procedure has led the Lutheran Church--Missouri Synod to hold a somewhat legalistic view of marriage, and to foster a rather casuistic practice over against divorce and remarriage which has resulted in inconsistency of opinion, teaching, and practice. To add to the confusion, pastors face the problem that civil practices often do not coincide with church practices in a given situation.

Sociologically speaking, a part of the problem lies in the changing concept of the marriage union. Marriage as necessarily being a permanent union is not widely maintained by society today in that it allows alternatives to a permanent marriage relationship. Although divorce or separation are not good alternatives, they are accepted as viable options by others when marriage deteriorates seriously. Remarriage is taken for granted as the logical continuum to a marriage break.

Despite the large number of divorces, the married state is popular. 75% of the divorced marry again within five years, and 87% eventually remarry. Of the women divorced by age thirty, 94% remarry; up through age forty-five, 87% of the divorced women

and 69% of the divorced men remarry. That is the United States has a high rate of turnover in marriage partners--the highest of any civilized society.²

Without exaggeration, the crisis in marriage presents the Christian ethic with one of its most serious and most difficult problems. Speaking about this point Emil Brunner remarks: "To entrench ourselves behind any kind of tradition, even though it be most venerable, is an escape from responsibility."³

Beyond the frame of enquiry of this study are the questions of monogamy, polygamy, and celibacy; the legal questions of when does marriage begin; the sociological and legal "grounds" or causes of a marriage break; the position of other church bodies, except where their position aids the understanding and expressing of the constitutive nature of a Christian marriage.

The format of this paper will have the following chapter divisions: chapter one gives the purposes and scope of this study and raises some of the pastoral concerns regarding teaching and practice in the area of divorce and remarriage within the Lutheran Church--Missouri Synod; chapter two seeks for a definition of and the constitutive nature of a Christian marriage by distinguishing the main contributing

²Ralph P. Bridgman, "Marital Discord, Divorce, and Reconciliation," Pastoral Psychology, IX (Sept. 1958), 18.

³Emil Brunner, The Divine Imperative, translated from the German by Olive Wyan (Philadelphia: The Westminster Press, 1947), p. 341.

or "constitutive" elements necessary within a marriage relationship that give meaning and form to the estate of marriage according to the will and order of God. Chapter two incorporates the teaching of Church History, Luther, the Lutheran Confessions, the Orthodox Theologians of the post-Reformation period, and the Old and New Testaments in the establishment of the thesis that love and faith are the constitutive elements which give the marriage relationship its nature; chapter three traces the teaching of divorce and remarriage through Church History, the Reformation period, the heritage and "working theology" of the Lutheran Church--Missouri Synod, and devotes close attention to the teaching of Scripture on divorce and remarriage. Chapter three on the basis of the teaching of Jesus and St. Paul arrives at some decisions regarding the dissolubility of marriage; chapter four applies the teaching of Scripture toward pastoral practice in remarriage by discussing the constitutive elements of a Christian marriage as a basis for reconciliation of the former marriage, and by outlining considerations for pastors in situations where divorce seems imminent or remarriage is in the offing. Chapter four discusses the "innocent" and "guilty" basis for considering divorced applicants for remarriage and outlines operative principles for pastoral practice that affirm the marriage ethic according to God's order; chapter five gives a summary

answer to the problems and issues discussed throughout the paper and proposes additional questions and areas for study.

Problems that come under the focus of this paper involve the following issues:

- a. Establishing the constitutive nature of a Christian marriage--What is God's will and order for marriage? What gives marriage form and meaning and signifies its existence?
- b. Discussing the indissolubility and dissolubility of the marriage relationship--What is meant by indissolubility and permanency? Are there Scripture grounds for a marriage break? Do marriages continue when the constitutive elements no longer exist?
- c. Considering the Christian teaching on divorce--Are there legitimate grounds in Scripture for divorce? Does the "innocent" party have the right to put away his spouse? What is the propriety of divorce in a Christian setting?
- d. Considering the practice of pastors in the area of remarriage--Does a pastor operate on a mechanistic-legalistic basis regarding eligibility for remarriage? Can a pastor affirm the permanency of marriage while allowing divorce and remarriage? What are the necessary considerations for remarriage?

The above problems while stated in question form should suffice to suggest the ramifications of the major over-riding problem of unevangelical practice on the part of many pastors in the area of divorce and remarriage.

The approach to an understanding of marriage can be many-sided, as the institution of marriage can be viewed from many perspectives. For example, the sociologist may regard marriage in terms of a social institution and is interested in it as the problems of marriage affect the

dynamics of society. The lawyer may consider the state of marriage as a contract involving the legal rights and responsibilities of individuals and government. The psychologist may be concerned about the effect of marriage on the mental development of persons. While all of these are important in their own right, the focus of this paper is with the nature of marriage itself.⁴

It can be argued that strictly speaking marriage cannot be limited or referred to as "Christian," on the basis that people of all ages and cultures contract valid marriages apart from any "Christian" overtones. Non-Christian people can enjoy a happy marriage.

While the New Testament uses such phrases as marrying "in the Lord" and taking a wife "in sanctification and honor," there is no indication that marriage was re-defined or that it was solely within the province of the church and no longer a concern for the state. Jesus, in going back to the orders of creation, accepts its universality and gives the simplest of definition: leaving one's father and mother and being joined to a wife in a one-flesh relationship. This is marriage the world over in pagan as well as Christian cultures. There is nothing distinctively "Christian" about marriage per se. Each society has seen fit to regulate marriage with laws and customs.⁵

However, it is the thesis of this paper that there is a further dimension of love and faith which is operative among Christian spouses within their marriage relationship

⁴Harold Haas, Marriage (Philadelphia: Muhlenberg Press, 1960), p. 26.

⁵P. G. Hansen, et al., Engagement and Marriage (St. Louis: Concordia Publishing House, 1959), p. 49.

by virtue of their relationship to God in Christ Jesus that warrants the appellation "Christian marriage" in the fullest sense of the term. The term "marriage" will be understood in this paper within the context and dimension of this distinctive feature.

Church History

... in history has at all times... of marriage. It is... the early Christian church did... of marriage ceremonies... early Christian marriages... as far as their customs... James in his volume

... Christianity accepted... laws of the Empire... of the State, in... with the ecclesiastical

... that much of what is treasured... and ceremonies (ring, wreath, ... itself which have no

A Treatise on the... 1895,

... especially re-... Hansen, et al.,... Concordia Publishing

CHAPTER II

THE QUEST FOR THE DEFINITION AND CONSTITUTIVE NATURE OF A CHRISTIAN MARRIAGE

The Institution of Marriage in Church History

The testimony of the church in history has at all times maintained the Divine Institution of marriage.¹ It is interesting to note that the early Christian church did not pattern its concept and "rite" of marriage ceremonies after the Jewish rite;² rather, early Christian marriages followed the local Roman forms, in as far as their customs were not offensive to Christianity. James in his volume Marriage and Society remarks:

Indeed, as has been pointed out, Christianity accepted without question, the matrimonial laws of the Empire as binding on Christians as citizens of the State, in so far as they were compatible with the ecclesiastical interpretation of the ordinance.³

On this basis it appears, then, that much of what is treasured in Christian marriage customs and ceremonies (ring, wreath, veil, and even the religious ceremony itself which have no

¹0. D. Watkins, Holy Matrimony: A Treatise on the Divine Laws of Marriage (New York: Macmillan and Co., 1895), p. 4.

²Luther reverted somewhat to Jewish form especially regarding the concept of betrothal. Cf. P. G. Hansen, et al., Engagement and Marriage (St. Louis: Concordia Publishing House, 1959), p. 66.

³E. O. James, Marriage and Society (London: Hutchinson's University Library, 1952), p. 130.

demonstrable precedent in ancient Jewish law and custom) has come from heathen Rome, after being adopted and adapted by the Christian Church.⁴

While the general structure of the early Christian marriage ceremonies was based on various Roman forms, the Roman ceremony of confarreatio⁵ was generally followed by the Christian marriage ceremonies.

This appears to have been the most ancient, the most honored, and the most religious form of marriage. The contract had to be made in the presence of ten witnesses. It was accompanied by a religious ceremony in which a sheep was sacrificed and its skin spread over two chairs upon which the bride and bridegroom sat down with heads covered. The marriage was then ratified by the pronouncement of a solemn formula of prayer. Another sacrifice followed and a further religious ceremony in which the panis farreus was employed. This was a cake made of far with the mola salsa prepared by the Vestal Virgins. The marriage by Confarreatio was apparently the only one of the Roman forms of marriage which necessarily involved any religious ceremony.⁶

The Christian benediction, with its beginning at the close of the first century A.D., was soon considered the

⁴Hansen, p. 45. Cf. also Herbert Thurston, "Marriage" under the subtitle of "Origin of Ecclesiastical Ceremonial," The Catholic Encyclopedia (New York: Robert Appleton Company, 1910), IX, 704.

⁵Confarreatio simply means the partaking of the far which seems to be the antetype of the wedding cake. Only the wedding couple ate this cake and offered some to the gods. Far is Latin for a wheat-like grain. Hansen, pp. 43, 45.

⁶Watkins, p. 80.

central feature of Christian marriage.⁷ However, the benediction given by a cleric was not a condition of validity.⁸ "However desirable may be solemnization in facie ecclesiae, the presence of a priest as a sine qua non cannot be justified either in ecclesiastical or civil law."⁹ Yet, St. Ignatius¹⁰ maintained that Christian marriage was contracted before a bishop:

For those of both sexes who contemplate marriage it is proper to enter the union with the sanction of the bishop; thus their marriage will be acceptable to the Lord and not just glorify lust.¹¹

Roman law, however, regarded marriage as being simply a contract between man and wife established purely on the basis of mutual consent.¹² Therefore, according to Roman Law, "mutual consent" established the constitutive factor

⁷Ibid., p. 90. In some instances the marriage rite was first held in a house, then the couple went to the church to receive the Christian benediction.

⁸Ibid., p. 99. Cf. The Constitution of Theodosius Valentinianus in 439 which stated "Consensu licita matrimonia passe contrahi." Ibid. Up to the Council of Trent (1545-1563) the priestly benediction was not required by canon law as a condition of validity of the marriage. After the Council of Trent the benediction signified a validly consummated marriage. Ibid., p. 101.

⁹James, p. 129.

¹⁰Bishop of Antioch and Apostolic Father (70-107 A.D.).

¹¹Johannes Quasten, Patrology (Westminster, Maryland: The Newman Press, 1951), I, 68.

¹²Watkins, p. 79.

of marriage.¹³ In the matter of divorce the Law of Rome was appallingly simple and consistent in that the essential part of marriage was held by the law to be mutual consent; conversely, when this consent ceased the marriage relationship terminated.¹⁴

Underlying the Early Church Fathers' concept of the marriage relationship is the Greek dualistic concept of the spiritual and material.¹⁵ Things associated with the material were considered evil which included those activities of the body which would tend to serve carnal pleasure. Consequently, many of the Ante-Nicea Fathers exalted chastity and virginity over the married state.¹⁶ Or they advocated sex in marriage only in so far as it made possible procreation and acted as a "remedy against lust."¹⁷ Bailey states that, "While they generally recognized sexual intercourse as an essential feature of marriage, none of the Fathers regarded

¹³Ibid., p. 78. Roman Law under the Dictum of Ulpian stated: "nuptias non concubitus sed consensus facit" (consent, not cohabitation makes a marriage). Ibid., p. 80.

¹⁴Ibid., p. 192.

¹⁵Cf. Hansen, p. 50.

¹⁶Athanasius in his Letter to Amun: cf. Quasten, III, 64; Gregory of Nyssa, Origin, Methodius, Quasten, III, 271. Athanasius regarded "matrimony as a means of escaping prostitution." Quasten, III, 50.

¹⁷Hansen, p. 50.

it as the means whereby alone the union of husband and wife is established"18

For the Church Fathers Christian marriages were to be patterned after the New Testament and symbolized by the bond between Christ and His Bride, the Church, as illustrated by St. Ignatius:

Tell my sisters to love the Lord and be content with their husband in body and soul. In like manner, exhort my brethren in the name of Jesus Christ to love their wives as the Lord loves the Church.¹⁹

Love within the context of the Christian faith became central to the concept of marriage as held by the Early Church Fathers.

With the decline of the influence of the Roman Empire the regulation of ordinances such as marriage was taken out of the hands of the secular realm by the authority of the Church.²⁰ Church control culminated in Roman canon law and the establishment of ecclesiastical courts. The claim of the church to its exclusive control over marriage, as exercised through ecclesiastical courts, withstood the challenge from secular authority until the church-state disruption in the sixteenth century.²¹

¹⁸D. S. Bailey, The Mystery of Love and Marriage (New York: Harper and Brothers Publishers, c.1952), p. 48.

¹⁹Quasten, I, 68.

²⁰Hansen, p. 61.

²¹James, p. 131.

The Consent Theory of Marriage

The word "consent" is derived from the Latin consentire, meaning "to feel together." In marriage a husband and wife live together in a mutual feeling and oneness. According to civil Roman law the free and mutual consent of the two parties constituted marriage.²² However, the source of the marriage "consent" doctrine within the Church stems from the time of Thomas Aquinas.

Accepting the concepts of Roman law as good and wise, Thomas Aquinas, Catholic scholar and theologian, embodied consent in the marriage doctrine of the church, teaching that the effecting cause (causa efficiens) of marriage lies in the mutual consent of the contracting parties.²³

The Schoolmen likewise insisted that consensus facit matrimonium. But, according to Peter Lombard, there were different opinions to what this meant; some held that after the exchange of vows at betrothal sponsus and sponsa were truly married (veri conjuges), others, that marriage proper followed upon intercourse and the betrothed were not conjuges until after the commixtio sexus.²⁴ This point

²²Supra, pp. 10-11.

²³Hansen, pp. 57-58. The Council of Florence in the fifteenth century could speak of mutual consent as the efficient cause of the sacrament of marriage. "Causa efficiens matrimonii regulariter est mutuus consensus per verba de praesenti expressus." Bulla, Exultate Deo, Nov. 22, 1439; cf. David Granfield, "A Note on the Nature of Marriage," American Ecclesiastical Review, CXLVI (April 1962), 218.

²⁴Bailey, p. 48.

also gave occasion to endless discussion and opinion.

While it is a teaching of the Roman Catholic Church and while there are similes of and allusions to consent in the Scriptures, the consent theory was not really established on any clearly articulated teaching of Scripture but is a product of scholastic theology based largely on Roman law.²⁵ On this basis the consent theory is contractual in concept, legal in origin, and rightly belongs in the field of jurisprudence. If theologians still emphasize consent in marriage, they do so on psychological grounds maintaining that consent in marriage rests in the nature of the will of man and not on any Scriptural basis.²⁶

It should be noted that in practice the consent was often not so much the agreement of the two people entering the marriage, but, rather, the consensus of opinion of the parents or larger family structure as indicated in the betrothing of infants and youths.²⁷

The understanding of what constituted marriage was further confused after the twelfth century by the distinction between the phrases verba de praesenti and verba de future in the drawing up of nuptial contracts ("I do" versus

²⁵Hansen, p. 58.

²⁶Ibid., p. 59.

²⁷R. H. Bainton, What Christianity Says About Sex, Love, and Marriage (New York: Association Press, 1957), pp. 48-49.

"I will").²⁸ This dispute was chiefly waged between the Italian legalists and the Gallican logicians, but continued within legal settings and within the church until the nineteenth century. Since the time of Alexander III the papacy was made the sole judge in case of doubt and dispute in the contracting of marriage.²⁹

Luther's Views on Marriage and Its Constitutive Nature

During his thirty years as an active reformer Luther wrote much on the subject of marriage. However, his thinking on this subject is best approached in terms of early development and later development. Luther's early views on marriage and his initial writings must be seen in the light of his Roman Catholic background; for instance, from 1513-1519 Luther defends the traditional attitude of the church in exalting the state of celibacy over the estate of marriage and by considering marriage as being a sacrament.³⁰ Perhaps, the most characteristic aspect of Luther's early view on marriage is that this estate is first and foremost

²⁸James, p. 115.

²⁹Ibid.

³⁰Oscar Feucht, et al., Sex and the Church (St. Louis: Concordia Publishing House, 1961), p. 76. In the well known first sermon on marriage, "Ein Sermon von den ehelichen Stand" (1519) Luther maintains that marriage is a sacrament; cf. Martin Luther, Werke: Kritische Gesamtausgabe (Weimar: Hermann Böhlau, 1884), II, 168. Hereafter this edition will be referred to as WA.

a divine ordinance and institution which provides fallen man with a "remedy against sin" (remedium peccati).³¹

A striking departure on the part of Luther from the traditional view of marriage occurs when he insists that marriage belongs essentially to the temporal realm of creation,³² and not to the realm of redemption.³³ Luther speaking in An Open Letter to the Christian Nobility of the German Nations says that "marriage belongs to the realm of creation and not redemption and is therefore a civil and not an ecclesiastical concern."³⁴ Thus, for Luther, while marriage is ordained of God, it is a civil institution and should be under the jurisdiction of the respective secular authorities.³⁵ In his Traubuchlein (1529) Luther wrote:

Marriage and the married state are civil matters, in the management of which we priests and ministers of the church must not intermeddle. But when we are required, either before the church, or in the church,

³¹W. H. Lazareth, Luther on the Christian Home (Philadelphia: Muhlenberg Press, 1960), p. 208. Cf. also "Resolutions or Explanations and Proof of the Thesis on the Power of Indulgences," (1518) in Martin Luther, Works, edited by Jaroslav Pelikan and Helmut Lehmann (American Edition; Philadelphia and St. Louis: Muhlenberg Press and Concordia Publishing House, 1958), I, 134. Hereafter this edition will be referred to as LW. Luther compared marriage to a hospital in which men are healed of their sinful lusts and to which every man who has strong sexual drives needs to be admitted, WA, II, 168.

³²Harold Haas, Marriage (Philadelphia: Muhlenberg Press, 1960), p. 51.

³³Feucht, p. 82.

³⁴Lazareth, p. 173.

³⁵Feucht, p. 82.

to bless the pair, to pray over them, or even to marry them, then it is our bounden duty to do so.³⁶

Luther's stance on this matter is closely connected to his teaching of the "two kingdoms."³⁷ Luther is of the absolute conviction that God is Lord of both kingdoms, but that He rules both kingdoms by different means and for different purposes.³⁸ While the two kingdoms are to be sharply distinguished, they are not to be separated or equated but must be permitted to "coexist in harmonious interaction and coordination as complimentary expressions of God's creative and redemptive activity among men."³⁹

Summarizing Luther's early view on marriage Lazareth states:

³⁶E. L. Lueker, editor, Lutheran Cyclopedia (St. Louis: Concordia Publishing House, 1954), p. 654.

³⁷The kingdom of the left hand is God's way of protecting and preserving society to the end that man may live in peace and harmony through the means of civil law which comes under God's ordinance. For Luther marriage and other similar ethical dimensions of man's living properly comes under the kingdom of the left hand which is ruled by God's law; the religious function of the law in damning sin (usus theologicus) is always coupled with its ethical function of preventing crime (usus politicus). Cf. Lazareth, p. 115. The kingdom of the right hand is ruled by God's gospel and grace to the end that men might come to Him through the redemptive activity of His Son. At the basis of Luther's teaching about the "two kingdoms" lies the New Testament eschatology of the two aeons in Adam and Christ. Lazareth, p. 108.

³⁸Lazareth, p. 108.

³⁹Ibid., p. 110.

For the first six years of his career as a Reformer, then, Luther's anticlericalism in this area forced him to take a quasinaturalistic stand which was not true to the total breadth of his theology of society. In terms of his own favorite theological standard, he removed marriage from the realm of redemption (gospel) and re-established it in the realm of creation (law), but without at the same time discounting for the breakthrough of the vocational gifts of the Holy Spirit within marriage. In short, Luther temporarily impoverished marriage by severing in theory what he insisted must be interpenetrating in practice; namely, both civil righteousness (law-abiding reason) and Christian righteousness (faith active in love). The Christian need not consider marriage a redemptive sacrament of grace in order to believe that it is far more significant in God's sight than merely as a "remedy against sin."⁴⁰

After Luther's return from the Wartburg in 1522 he gradually began to understand marriage as being, in addition to a remedy against sin, an "estate of faith"--a Christian vocation in which the Christian righteousness as the fruit of the Gospel could be practiced. This is known as his later or evangelical marriage ethic.⁴¹ In his treatise On Married Life (1522), Luther devotes the third section on "how to live in this order in a Christian and godly way."⁴²

Luther clearly saw that it was the element of faith which transformed marriage from a remedy against sin into a divine calling.⁴³ A definition of this faith for Luther is

⁴⁰Ibid., p. 217.

⁴¹Ibid., pp. 217-218.

⁴²Ibid., p. 218. Cf. WA, X, 292, 296.

⁴³WA, X, 296.

given in the Preface to the Books of the New Testament

(1522):

Faith is a living, daring confidence in God's grace so sure and certain that a man would stake his life on it a thousand times. This confidence in God's grace and knowledge of it makes man glad and bold and happy in dealing with God and with all His creatures; and this is the work of the Holy Spirit in Faith. Hence a man is ready and glad without compulsion; to serve everyone, to suffer everything, in love and praise of God, who has shown him this grace.⁴⁴

Thus Luther cleared the way for the "creative operation" of faith in a marriage relationship⁴⁵ and viewed the expression of faith in terms of Christian love and service within the vocation of marriage.⁴⁶

It can be concluded, therefore, that love and faith play a central role in Luther's view of the nature of marriage. For it is the faith-activated Christian righteousness that knows no other command but "you love one another as I have loved you"⁴⁷ which is the kind of love which Luther lauds as the very "basis of marriage"⁴⁸ and which is

⁴⁴Martin Luther, "Prefaces to the Books of the New Testament," Works (Philadelphia: A. J. Holman Company, 1932), VI, 452. Hereafter this edition will be referred to as PE.

⁴⁵Lazareth, p. 222. "A religious foundation is the decisive factor in Luther's concept of marriage." R. C. Caemmerer, et al., The Pastor At Work (St. Louis: Concordia Publishing House, 1960), p. 180.

⁴⁶WA, XII, 120.

⁴⁷John 15:12. All Scripture references in this paper are taken from the Holy Bible, Revised Standard Version.

⁴⁸Theodore Tappert, editor, Luther: Letters of Spiritual Counsel, in Library of Christian Classics (Philadelphia: Westminster Press, 1955), XVIII, 286.

characterized by its willingness to perform actual deeds of service. Luther stressed the necessity and nature of love in every situation including marriage:

For the love among Christians should be the same kind of love as that of every member of the body for every other one, as St. Paul often says (Rom. 12:4,5; 1 Cor. 12:12-26), each one accepting the faults of the other, sympathizing with them, bearing and removing them, and doing everything possible to help them. Hence the doctrine of the forgiveness of sins is the most important of all, both for us personally and for our relations with others. As Christ continually bears with us in His kingdom and forgives us all sorts of faults, so we should bear and forgive one another in every situation and in every way.⁴⁹

Luther was convinced that marriage is the God-ordained pattern of life for the majority of mankind and that obligatory vows of celibacy did violence to Christian faith, freedom, love, and community.⁵⁰ In fact,

Luther makes a strong case for the view that marriage is the better way. The very fact that the Word of God has so much to say about the blessings and rules that pertain to marriage serves to justify and grant approval to this institution. What makes marriage holy and lifts it out of the area of the purely carnal is the Christian's faith in Christ. If reason argues that marriage is not of God because of all its miseries, faith overcomes these imperfections and argues that marriage is a good divine ordinance. Faith transforms the trials of pregnancy, the ordeal of childbirth, and the vexing chores that need to be done in caring for babies. The fruit of such faith is in turn the love that moves a man to serve his neighbor. Husbands and wives learn to make concessions and to grant to each other pardon amidst the toil and tedium of daily marital life.⁵¹

⁴⁹LW, XXI, 98.

⁵⁰Lazareth, p. 197.

⁵¹Feucht, p. 81.

Therefore, this study concludes with Lazareth that Luther came to the position that faith and love, respectively, are at the heart of the first and second tables of God's Law.⁵² Faith and love determine the quality of Christian activity in any area of living and can be considered the constitutive elements which give essence to a Christian marriage, as it becomes a vocation within the total Christian's calling to live under the will of God.

Marriage in the Lutheran Confessions

The official Confessional writings of the Lutheran Church contain practically no systematic treatment of the problems outlined in this study. One explanation for the absence of writings regarding marriage, divorce, and remarriage is that the subject of marriage was not in controversy at the time of the adoption of the Formula of Concord.⁵³

Generally speaking, the Confessional writings reflect a very high regard for marriage by esteeming it as a divinely blessed estate instituted by God.⁵⁴ The Lutheran

⁵²Lazareth, p. 178.

⁵³Feucht, p. 86.

⁵⁴"Augsburg Confession," hereafter A.C., par. 4; "Large Catechism," hereafter L.C., par. 206; all references from the Lutheran Confessions are from The Book of Concord, edited by Theodore G. Tappert (Philadelphia: Muhlenberg Press, 1959). For key to abbreviations of Lutheran Confessional writings cf. supra, iv.

Confessions speak of marriage as being the "first of all institutions"⁵⁵ in that marriage precedes and surpasses all other temporal institutions.⁵⁶ Lutheran doctrine has always regarded marriage as an "order of creation" in the sense that the estate of marriage was established by God in the beginning as a part of the natural order of things.⁵⁷

The framers of the Confessions were careful to distinguish the fact that marriage could not be established as belonging under ecclesiastical order on the basis of the New Testament.⁵⁸ The Confessional writers maintained that jurisdiction in regard to marriage should not be in the hands of the church but in the hands of temporal magistrates (civil government).⁵⁹ However, this does not mean that human regulations can abolish marriage, for it is an ordinance of God.⁶⁰ It can be concluded, therefore, that the Lutheran Confessions view marriage as being both a divine and a human right.

In specific connection regarding the establishment of

⁵⁵L.C., par. 207.

⁵⁶Ibid., par. 209.

⁵⁷"Apology of the Augsburg Confession," hereafter Ap., Article XVI, par. 1; "Treatise on the Power and the Primacy of the Pope," hereafter Tr., par. 78; Ap., Article XXIII, par. 12.

⁵⁸Ap., Article XIII, par. 14.

⁵⁹Tr., par. 78.

⁶⁰Ap., Article XIII, par. 9.

the constitutive nature of marriage the Confessional writings say very little. They do say, however, that faith is necessary to keep the estate of marriage pure in the sight of God,⁶¹ and that marriage is pure only "for believers" because it has been sanctified by the Word of God.⁶² The Confessions also refute the erroneous teaching that difference of faith is to be regarded as a reason for divorce.⁶³

Other statements of the Confessions on marriage can be considered as an explanation of the meaning of the sixth commandment wherein love is an important part of chasteness.

Let it be said in conclusion that this commandment requires everyone not only to live chastely in thought, word, and deed in his particular situation (that is, especially in the estate of marriage), but also to love and cherish the wife or husband whom God has given. For marital chastity it is above all things essential that husband and wife live together in love and harmony, cherishing each other whole-heartedly and with perfect fidelity. This is one of the chief ways to make chastity attractive and desirable. Under such conditions chastity always follows spontaneously without any command. That is why St. Paul so urgently admonishes husbands and wives to love and honor each other. Cf. Eph. 5:22,25; Col. 3:18f.⁶⁴

In summary, then, the Lutheran Confessions witness to the fact that the estate of marriage is a gift from God to man as a part of the created temporal order. This union

⁶¹Ap., Article XXIII, par. 64.

⁶²Ibid., par. 28.

⁶³"Solid Declaration," hereafter S.D., Article XII, par. 24; "Epitome," hereafter Ep., Article XII, par. 19.

⁶⁴L.C., pars. 219-220.

receives the divinely bestowed blessings of God. Purity in marriage comes about only through faith, not faith according to Christian denominational creeds, but faith in the Lord Jesus Christ. Love provides the necessary catalyst for harmonious living between man and wife with perfect fidelity. Faith and love, therefore, reveal a true exposition of the sixth Commandment as it describes a God-intended marriage.

Lutheran Orthodox Theologians on Marriage

The Lutheran theologians and dogmaticians of the seventeenth and eighteenth centuries of the post-Reformation period reverted somewhat to the asceticism of the Middle Ages,⁶⁵ as they stressed only the procreation function of marriage. "Consent, not intercourse makes a marriage" was carefully defined as a jurist and not a theological maxim; however, even this axiom was used as circumstances required and not always consistently.⁶⁶ The Orthodox Theologians insisted that by divine law the consent of the parents was a necessity.⁶⁷ Notwithstanding Martin Luther's dictum that marriage is a civil and secular thing, the theologians

⁶⁵Bainton, p. 72.

⁶⁶A. C. Piepkorn, "The Doctrine of Marriage in the Theologians of Lutheran Orthodoxy," Concordia Theological Monthly, XXIV (July 1953), 466.

⁶⁷Ibid., p. 469. Cf. also WA, XXIV, 420.

viewed marriage as coming under the jurisdiction of the church.⁶⁸

Two basic principles characterized the Orthodox Theologians' approach to the problems of marriage: (a) marriage is always to be discussed as a divinely instituted order of the church; (b) theologians must always exert their influence on the side of matrimony, not against it.⁶⁹

The direct heritage influencing the Lutheran Church--Missouri Synod's⁷⁰ views toward marriage stems from two late orthodox Lutheran dogmaticians, Christian Loeber (1683-1747) and John William Baier (1647-1695).⁷¹

The Nature of Marriage in the Old Testament

The clearest summary of the purpose of marriage in the Old Testament revealing also the essence of marriage is given by God in Genesis 2 where God looking at His creative

⁶⁸Piepkorn, p. 467.

⁶⁹Ibid.

⁷⁰The purpose at this point is not to delineate the marriage ethics of the Lutheran Church--Missouri Synod which are based on Scripture (cf. Caemmerer, pp. 179-181), but to cite the heritage and source of its "working theology."

⁷¹Cf. Piepkorn, p. 466. Used as dogmatic textbooks at Concordia Theological Seminary in St. Louis for many years were writings of Christian Loeber in dogmatics which C. F. W. Walther had reprinted without change from the original and John William Baier's Compend of Positive Theology which Walther re-edited. A more recent source stems from J. H. C. Fritz's Pastoral Theology in which he acknowledges a heavy reliance on Walther's pastoral theology.

handiwork says: "It is not good that man should be alone, I will make him a helper fit for him."⁷² After the creation of the "fit helper," the man exclaims: "This at last is bone of my bones and flesh of my flesh; she shall be called woman, because she was taken out of man."⁷³ Then follows not a continuation of the words of Adam, but the utterance of God: "Therefore a man leaves his father and his mother and cleaves to his wife, and they both become one flesh."⁷⁴

By these Words and actions God reveals to man His will and order for the estate of marriage. According to God's formation of man, a "fit helper" is required, and in the fashioning of this complement God establishes the relationship between a man and a woman the essence of which constitutes marriage. It is important to note that not the individual man or woman is the focal point⁷⁵ of this creation drama; rather, by God's design the main aspect is the possible and desired unity between a man and a woman. For God created this union of man and woman to have priority over any other human relationships; it is the closest of human ties.⁷⁶

⁷²Gen. 2:18.

⁷³Gen. 2:23.

⁷⁴Gen. 2:24.

⁷⁵Haas, p. 11.

⁷⁶Cf. Gen. 2:24.

In the account of creation in chapter one of Genesis further purposes of God are revealed. "So God created man in his own image, in the image of God he created him, male and female he created them."⁷⁷ Here a unique relationship between God and man is established in that God first of all created man, and, secondly, that this design was after God Himself. Thus, in the creation of mankind begins a unique relationship of a man and woman to God and to each other. This relationship of husband and wife to each other becomes a deep channel for the grace of God to flow into their lives.⁷⁸ In this connection, the teaching of Genesis chapters one and two progresses beyond the stage of abstract thought and acquires an existential significance, as meaning is given to what is everyday experience.⁷⁹

In the marriage union God laid down the basis for the setting up of a unique community. Man and woman are empowered with a creative force whereby a community of two through the birth of children is extended into the family.⁸⁰ Within this community works the will and purposes of the Creator.

It is of great significance to note that the figure of the Bridegroom and Bride in marriage illustrates the

⁷⁷Gen. 1:27.

⁷⁸Haas, p. 11.

⁷⁹Pierre Grelot, Man and Wife in Scripture (New York: Herder and Herder, 1964), p. 71.

⁸⁰Haas, p. 11.

relationship of God to His people both in the Old and New Testaments. In the Old Testament it is the figure of Yahweh and His covenant relationship with Israel.⁸¹ In the New Testament it is the figure of Christ and the Church.⁸² Speaking about the biblical figure of marriage W. E. Hulme says:

The biblical figure serves as a two-way contact between the ordinary common life of human beings and the mysteries of God. On the one hand the familiar relationship of marriage provides a meaningful mental image by which the human being can group the intimacy as well as the binding tie in the relationship of God to His people. On the other hand the idea that Christ and His church form a marriage relationship presents an example of the marital ties after which human marriages should pattern themselves.⁸³

Another aspect of the marriage figure in the Old Testament is that whoredom is used in a spiritual sense to denote idolatry.⁸⁴ "It implies that the relationship of God to His people resembles the marriage bond because breaking His covenant in any form by idolatry is termed whoredom."⁸⁵

⁸¹Isaiah 54:5,6; Isaiah 62:4,5; Jeremiah 31:31,32; Hosea 2:19,20; Hosea 4:1; Hosea 6:6.

⁸²Ephesians 5. Cf. A. J. Crosmer, "Marriage, A Type of God's Relationship to His People," Concordia Theological Monthly, XXVII (May 1956), 372. Cf. F. W. Wiese, "Marital Imagery in Ephesians 5" (Unpublished Master's Thesis, Concordia Seminary Library, St. Louis, June 1965).

⁸³W. E. Hulme, Pastoral Care of Families (New York: Abingdon Press, 1962), p. 18.

⁸⁴Lev. 17:7, 20:5-6; Numbers 15:39; Numbers 14:33; Jeremiah 3:1; 3:6-11.

⁸⁵Crosmer, p. 372.

In viewing the marriage bond in the Old Testament as a covenant, it is necessary to regard the constitutive elements as far surpassing the legal elements of a contract.

Every marriage is a contract (berith) between a man and a woman (cf. Mal. 2:15; Prov. 2:17). The legal relationship which results is closely connected with affective elements: love, fidelity, troth (chesed). In the same way the covenant (berith) made on Sinai, while in essence a contract, goes farther beyond the merely legal requirements: on God's side it presupposes love, fidelity, chesed (Exod. 34:6-7; Deut. 7:7-8); on Israel's side it also demands love, fidelity, chesed (Deut. 6:4; Osee 4:1; 6:6). To gain a clear and accurate picture of the relationship between God and His people, as it is laid down by the covenant on Sinai, it is not sufficient to compare it to the treaties between lord and vassal, which provide the legal model for the contract. It is essential to bear in mind too the comparison with the relationship established between a man and a woman at the time of their marriage. The concept of the covenant is thus considerably enriched by the affective overtones it acquires: Israel and her God are bound by ties of the heart and not only those of law. There is yet another consequence of far-reaching importance: the relationship between God and Israel becomes the model and example for the man-woman relationship in marriage, in other words it becomes the sacred archetype of the human couple.⁸⁶

Similar to Luther's viewpoint of marriage as being a calling within a larger calling to God is the description of Gibson Winter relating the covenant of marriage to the broader covenant of God.

There is a twofold link between God's covenant with His people and the covenant of marriage. First, God has created marriage for man and bestows His blessing upon it. This means that God promises to support and empower the covenant between husband and wife. He has made them to be one flesh and does not merely leave them to their own resources in the fulfillment

⁸⁶Grelot, pp. 57-58.

of their covenant. Husband and wife continue in the covenant of intimacy with the assurance of God's empowering love. Second, the covenant of marriage is included in the broader covenant of God with His people. Marriage is not to be a substitute for faithfulness to God and membership in His people. Marriage is not to be man's Church or his salvation. It is not to become an idol. The covenant of intimacy is fulfilled in obedience to God and leads men more deeply into trust in God. If marriage becomes divorced from this broader covenant, it ceases to be a covenant relationship in the full meaning of the term.⁸⁷

Thus, the covenant nature of marriage necessarily includes love, fidelity and the complete trust relationship. This study concludes and maintains that the nature of marriage portrayed in the Old Testament demonstrates the relationship husband and wife have to each other in fidelity can only be intact as long as they respond to each other and God in love and trust (faith). Herein lies the constitutive nature of marriage incorporating the elements of love and faith within a covenant framework according to the design and purposes of God.

The Nature of Marriage in the New Testament

From the outset it should be noted that the basic position of the New Testament regarding marriage corroborates the teaching of the Old Testament, namely, that marriage is defined as "order of creation." The fact that the New

⁸⁷Gibson Winter, Love and Conflict (Garden City, New York: Doubleday and Co., Inc., 1958), p. 81.

Testament refers to Genesis⁸⁸ means more than that these references were a formal citation of a convenient proof-text; rather, it is an affirmation of the basic principle underlying the teaching of the divine institution of the estate of marriage.⁸⁹

In terms of a brief definition, it can be stated that the New Testament depicts the divine institution of marriage as a permanent and continuing relationship on the part of one man and one woman which is enhanced by their coming together in "one flesh" and by their relating to each other in terms of mutual love and faithfulness.⁹⁰

The divine purposes of the life-long union established in the process of marriage and illuminated by the New Testament are: (a) The fulfillment of the one flesh relationship;⁹¹ (b) Companionship and mutual helpfulness;⁹² (c) For the development of the moral and spiritual well-being of the spouses;⁹³ (d) For the procreation and rearing of children.⁹⁴

⁸⁸Matt. 19:4-6; Mark 10:6-9; 1 Cor. 11:8-12;
1 Tim. 2:11-15.

⁸⁹Bailey, p. 43.

⁹⁰Matt. 19:46; Mark 10:6-9; Rom. 7:2; 1 Cor. 7:3-5,
9, 11, 36, 39; Eph. 5:22-23; Col. 3:18-19.

⁹¹Matt. 19:5-6; 1 Cor. 7:5.

⁹²Col. 3:18-19.

⁹³1 Thess. 4:3-5; 1 Peter 3:7; Col. 3:16.

⁹⁴Eph. 6:4; Col. 3:21; Matt. 19:14.

The New Testament points the way to the noblest relationship between husband and wife. This relationship results from the common sharing of the Gospel (Phil. 1:5-7), in faith (Philemon 6), and in other spiritual and material gifts (Hebrews 13:16). Unity, oneness, equality in Christ transcends race, social status, and sex (Gal. 3:2). It activates a sharing of feelings (2 Cor. 5:1,2), burdens, responsibilities, (Phil. 2:1; Rom. 15:1; Gal. 6:2), authority, and status (Gal. 3:28; James 2:9; Philemon 16). Though individual differences have always existed, legalistic derivation and application of principles pertaining to inferiority, superiority, or equality are excluded to the extent that fellowship of the Spirit has been realized (1 Cor. 12:5-13; 1 Cor. 13; cf. esp. Phil. 2:1-3).⁹⁵

Other aspects on the teaching of marriage in the New Testament which contribute to an understanding of the nature of the marriage relationship include: (a) That there are no God-pleasing allowances by which the union of husband and wife may be dissolved;⁹⁶ (b) That the estate of marriage is only for this world;⁹⁷ (c) That sex relations are a very necessary part of marriage (Paul regards husband and wife equally in this matter);⁹⁸ (d) That marriage must arise above a mere gratification of lust.⁹⁹

In the New Testament, as well as in the Old Testament, the relationship of God to His people (Christ and the Church) is typified by love in marriage.¹⁰⁰ In this

⁹⁵H. G. Coiner, Pastoral Theology II Syllabus (St. Louis, Concordia Seminary: n.p., n.d.), Unit X, 7.

⁹⁶Matt. 19:6; Mark 10:9.

⁹⁷Matt. 22:30; Mark 12:23-35; Luke 20:35-44.

⁹⁸1 Cor. 7:3-5; 1 Peter 3:7.

⁹⁹1 Thess. 4:3-5.

¹⁰⁰Eph. 5:22-33; Rev. 21:2-9.

connection James observes that,

In making the matrimonial union symbolic of this mystical relationship with love in the foremost place, St. Paul went beyond the Jewish imagery based on the covenant that united Israel and Yahweh, since the Hebrew bond could be dissolved if one of the parties did not keep to its engagements, notwithstanding the long-suffering tolerance of the national God. The New Covenant established by Christ with His Church in the minds of the Apostle was a permanent relationship created by a redemptive act of love wherein he gave himself up for it that he might sanctify it, having cleansed it by the washing of water with the Word, that he might present the Church to Himself a glorious Church.¹⁰¹

The New Testament in speaking about the essence of marriage highlights certain contributing elements which constitute the nature or being of the marriage relationship. One of the "constitutive elements" of marriage is described in St. Paul's Letter to the Ephesians chapter five by the Greek term *ἀγάπη*.¹⁰²

The agape of Christ for the church is made the measure of the agape in marriage. This agape of Christ is attached to His surrender, "on behalf of"; it is a self-giving, sacrificing love.¹⁰³ Jesus posited agape as the foundation and center of all man's relationship that fulfills the Great Commandment.¹⁰⁴

¹⁰¹James, p. 27.

¹⁰²Divine or Christian love. Hereafter this term is designated as agape. For a more detailed definition of agape in this paper cf. *infra*, pp. 40-46.

¹⁰³Ernest White, Marriage and the Bible (Nashville, Tennessee: Broadman Press, 1965), p. 27.

¹⁰⁴Mark 12:30. Cf. also White, p. 27 for detailed description.

The union between the church and its Divine Head is the closest and most enduring bond that could be conceived and on it Christian marriage was modelled.¹⁰⁵ Nothing less than this was to be realized in the love of Christian spouses for each other "expressed in a sacramentally efficacious institution within a sacred community and grace-bearing society."¹⁰⁶ While some do not see the figure of marriage per se in these verses in Ephesians,¹⁰⁷ Hulme sees it clearly:

Even so husbands should love their wives as their own bodies. The wife is the husband's own body following the analogy that the Church is Christ's own body. Probably the original idea comes from the Genesis story of the institution of marriage when Adam, unable to find one helper fit for him among the beasts of the field, found it in the woman who was made from his own rib The Pauline analogy of the Church as the body of Christ takes on the old bridal imagery of God to His people, which could well be its origin. If it is so, then the Church is the body of Christ because she is the bride of Christ, and the wife as the husband's own body would have its basis in the very nature of marriage as it is constituted in its biblical institution.¹⁰⁸

Another element basic to the constituting of the marriage relationship posited in the New Testament is that

¹⁰⁵James, p. 199.

¹⁰⁶Ibid., p. 98. This paper does not consider marriage to be intrinsically a sacrament, although it comes close, cf. Col. 3:12-24.

¹⁰⁷Wiese, pp. 53, 73 views Ephesians 5 in terms of authority.

¹⁰⁸Hulme, pp. 22-23.

of faith.¹⁰⁹ The power of faith in marriage is shown in this relationship as the believing spouse sanctifies the unbelieving spouse.¹¹⁰ Referring to the human situation after the "Fall into sin," St. Paul observes husband and wife are to continue their living together in love and faith.¹¹¹

Therefore, marriage as seen in the light of the New Testament teaching must be interpreted by common faith as being the total commitment of one man and one woman to each other and to God's whole created order and realized fully in the terms of the union and love of Christ and His Church.¹¹² In this regard, marriage in the realm of the Christian faith participates not only in the "creative order" but also "redemptive order" of God.¹¹³ For in this God-given estate of marriage man is also called by God to live toward his spouse as unto Christ.

Marriage can properly be called a "great mystery"

¹⁰⁹II Cor. 6:14,15 describes how the Christian community may be hindered if both spouses are not of the same Christian faith. However, a marriage mixed in respect to faith is not in itself sinful and is not to be destroyed, but continue if the unbeliever is content to remain with the believing spouse. 1 Cor. 7:11,12.

¹¹⁰1 Cor. 7:14.

¹¹¹1 Tim. 2:11-15.

¹¹²D. S. Schuller, "Engagement and Marriage," Concordia Theological Monthly, XXX (Sept. 1959), 663. Cf. also Caemmerer, p. 180.

¹¹³Hulme, p. 34.

(Eph. 5:32). For in it (marriage) there is a profound and mysterious spiritual relationship that finds its highest realization in faith in Jesus Christ. "Mystery" in the New Testament refers to some new insight that comes from the Gospel or purpose of God.¹¹⁴ The "mystery" of marriage is a revelation known only to those who understand and have experienced the uniqueness of the Christ-Church relationship brought about through the action of faith and love.¹¹⁵

Speaking about this "mystery" Wiese concludes:

The answer must be in the unity which is common both to marriage and to the relationship of Christ to the Church. The one flesh idea, the proximity of the *ὁμοία* concept to which the husband-wife, Christ-Church relationships run parallel, the use of *μυστήριον* elsewhere in Ephesians to denote God's plan of unity all combine to make the *μυστήριον* the unity of which Paul has been speaking with reference to Christ and the church.¹¹⁶

This "great mystery" is not only illuminated by the light of Christ's love for His Church, but it is also a parable of this great action of love. For the New Covenant established by Christ with His church is a permanent relationship created by a redemptive act of love. It pleased God that this "great mystery" should find a reflection in human marriage. Husband and wife can in their marriage know, through faith, a unity which surpasses that of the flesh,

¹¹⁴Alan Richardson, A Theological Word Book of the Bible (New York: The Macmillan Co., 1951), p. 156.

¹¹⁵White, p. 31.

¹¹⁶Wiese, p. 69.

however wonderful that may be; they can know also the mysterious but glorious unity which while on earth participates in the kingdom of God.¹¹⁷

The New Testament nowhere speaks of marriage as being by the church.

The New Testament, in the spirit of Christ, who was not another lawgiver, sets down no specific regulations for entering marriage. The word of the Apostle, "take a wife in sanctification and honor" (1 Thess. 4:4), gives Christians a general frame of reference for engagement and marriage.¹¹⁸

In summary, the nature of marriage as depicted in Holy Scriptures takes form and meaning from the relationship of the couple to God and to each other. The elements which constitute this relationship are love and faith which demonstrate their existence in a permanent, covenantal union maintained by faithfulness. Christian marriages are consummated within the dynamics of redemption and, consequently, operate only within the context of faith.

Establishing the Elements which Constitute the Nature of a Christian Marriage

The purpose of this section is to establish elements which constitute the nature of a Christian marriage. While it is possible to describe marriage in essence as not being specifically Christian, in the sense that it is common to

¹¹⁷Coiner, Pastoral Theology II Syllabus, Unit X, 5.

¹¹⁸Hansen, p. 49.

all of humanity,¹¹⁹ there is an added dimension of faith and love which a Christian can make operative within the marriage relationship that makes the union "distinctively Christian." Many modern Christian writers propose the elements of love and faith as being basic to or constitutive of the nature or essence of a distinctly "Christian marriage."¹²⁰ Marriage

becomes distinctly Christian when people enter marriage seeking God's purposes, asking how God will use them in their life together. It becomes distinctly Christian as they view each other as individuals for whom Christ died, when they exhibit self-giving love for the other, and when there is common faith.¹²¹

The constitutive elements of love and faith transfer the interactions of marriage from the completely natural order toward a new center of gravity within the order of salvation.

Marriage from the Christian point of view is one of the units of fellowship within the great fellowship of the church. Therefore marriage between Christians has a different centre of gravity from marriages consummated outside of the dynamics of redemption. The Christian approach to marriage places the relationship of the church to Christ as the centre of the relationship of husband and wife.¹²²

The marriage relationship may be defined in many ways. One definition that, perhaps, comes closest to its very

¹¹⁹Hansen, p. 165.

¹²⁰White, *passim*; Hulme, *passim*; Otto Piper, The Biblical View of Sex and Marriage (New York: Charles Scribners' Sons, 1960), *passim*; James, pp. 199-201; Haas, p. 30.

¹²¹Schuller, p. 663.

¹²²Hulme, p. 34.

essence is that which considers marriage between a man and a woman as a continual process of growing in unity. Otto Piper maintains that

a genuine marriage is not immediately or automatically realized, but rather, it grows up . . . of even greater significance is the fact that they are conditioned by their being members of God's people, because as the historical organization of God's people the church is a powerful force that makes for righteousness.¹²³

A Christian marriage relationship follows that course of events whereby one man and one woman accept in faith and love the will of God for them in this holy estate and grow in relationship to God and to each other throughout their married life.¹²⁴

Marriage as an institution or as a process comes from outside of man and is "given" of God on two accounts: first, marriage is a "given" of God by virtue of the fact that God created man and woman with the full ramifications of masculinity and femininity as a prerequisite to the marriage relationship;¹²⁵ secondly, God bestows upon man and woman the free gift of His grace which enables them to accept through faith the full dimension of God's love and to make operative this love in their lives.¹²⁶ In this way

¹²³Piper, p. 154.

¹²⁴Cf. James, p. 199.

¹²⁵Gen. 2:21-24.

¹²⁶White, p. 31.

God prepares people, also in the calling of marriage to carry out the meaning of His redemptive plan in their lives. From both points of view man shares in the creative and redemptive plan of God through the marriage relationship.

Christian marriage is conceived as a sacred relationship because both husband and wife recognize the other as one for whom Christ died. Each recognizes the need of God's grace as a means for making the marriage a successful relationship, and therefore each sees the family as a redemptive cell, as part of the total redemptive community that is the church. Their relationship is more than consent and sexual union, because they ask God's blessings on that union. They have been married in church so that their consenting together in holy wedlock may be recognized as sacred. Marriage is not a sacrament in the technical sense, but it is sacramental in that the ring given and received is a token and pledge of that relationship.¹²⁷

It is the thesis of this study that Christian faith and love, although not exclusive to the estate of marriage, give marriage that added dimension, and cause it to gravitate from that center, which makes the process of marriage distinctly and exclusively Christian. These two elements, faith and love, therefore, become the existing power that can be designated as the constitutive nature of a Christian marriage.

This study now delineates more fully in what manner and on what principles love and faith do become the basic elements that constitute the nature of Christian marriage. Throughout this paper by the term "love" is meant agape,

¹²⁷Randolph Crump Miller, Education for Christian Living (New York: Prentice-Hall, Inc., 1956), pp. 95-96.

which is that totally unconditional and unmotivated love that comes from God through His self-giving demonstrated by His sending Jesus Christ to reconcile a sinful world unto Himself and to overcome the most radical split between what is holy and what is unholy.¹²⁸ This is God's love which is the power of life presented to us in Jesus Christ to remove us from the devastating nature of our sin and weakness and to restore us to unity with God.¹²⁹

This study fully acknowledges the various semantic problems posed by the term love. Holy Scripture does not give a formal definition of love but speaks of love in terms of its actions. What distinguishes agape from our love is that it is unmotivated--that is, it is pure grace. God loves not out of His need to be loved but because He is love.¹³⁰

Christian love (agape), properly speaking, is more than the various caricatures and intensities of human love.¹³¹

¹²⁸Andrew Weyerman, "Life is Love," Mimeographed Outline for Layman's Seminar (St. Louis, Concordia Seminary, Winter 1966).

¹²⁹1 John 4:8-10, 3:16. Stauffer, "ἀγαπᾶω," Theological Dictionary of the New Testament, edited by Gerhard Kittel, translated by G. W. Bromiley (Grand Rapids, Mich.: Wm. B. Eerdmans Publishing Company), I, 53.

¹³⁰1 John 4:7-21.

¹³¹It is not within enquiry of this study to cite the various meanings for the term love. For detailed study, cf. A. Nygren, Agape and Eros, translated by Philip Watson (London: S. P. C. K., 1953).

The Christian faith is testifying to something more enduring when it refers to "love" in marriage.¹³² Christian love has its point of origin in God's own love for man. As two people promise to love one another, each is saying, in effect, that the welfare of the other will be sought, even at personal sacrifice.¹³³ The possibility and endurance of this kind of love depend on the activity of God in a person's life. It is the mutuality of this kind of love that can put marriage vibrantly in accord with the purposes of God.¹³⁴

Man encounters God in His agape through the means of salvation shared in the church. The church is the arena of God's agape in which the Spirit acts upon us and creates and nurtures faith through the Gospel.¹³⁵ Thus basic to the action of God's love is the fellowship of the church as a participating community of redemption; Christian marriages do not take place in isolation.¹³⁶

Agape from God frees us from the fears, anxieties and self concern that mark the life of unfaith and motivates us to live a life shaped by agape itself for God's agape redeems

¹³²Haas, p. 30.

¹³³James, p. 200.

¹³⁴Haas, p. 30.

¹³⁵John 20:19-23; Rom. 1:16; John 8:32.

¹³⁶W. E. Hulme, Building a Christian Marriage (Englewood Cliffs, New Jersey: Prentice-Hall Inc., 1965), p. 16.

our human love for its intended purposes.¹³⁷

To Paul, next to the believer's "in Christ" position, the most basic concept of the believer's life was his experience of the agape of God. This agape is divinely demonstrated and imparted in the full and free sacrifice of God's Son on behalf of sinful men (cf. Rom. 5:8; Gal. 2:20). Further, the omnipresent agency of God's love to the believer is the Holy Spirit (cf. Rom. 5:5). When this love becomes a grace of the believer's life, it has certain sterling qualities which identify it as a distinctively Christian attribute (cf. 1 Cor. 13), and it thus becomes the basis for all Christian work. "For the love of Christ controls us" (2 Cor. 5:14).¹³⁸

The other main element of the constitutive nature of a Christian marriage is faith. Faith is fellowship with God.¹³⁹ Faith is never merely belief in some truth about God, but faith is essentially a trust relationship.¹⁴⁰ To have faith is to wager one's whole being upon God.¹⁴¹ Faith is the means given to man for the appropriation of this covenant grace and love from God through the regeneration of the Spirit of God.¹⁴² Through faith a couple receives what God gives and trusts that God will make His love effective in their marriage relationship.

Faith and love are inter-related and it is dangerous

¹³⁷1 John 4:13-19.

¹³⁸White, p. 27.

¹³⁹Richardson, p. 75.

¹⁴⁰Cf. supra, pp. 18-19 for Luther's definition of faith.

¹⁴¹Rom. 4; Matt. 16:24-25.

¹⁴²Eph. 2:8-9.

to place one in competition and opposition to the other. Agape is prior to faith and is the power which creates faith. Agape is greater than faith in that agape is of God and stands before and after faith.¹⁴³ Yet the life of agape is not possible without faith, because faith is fellowship with God who frees a person to love (agape) his neighbor. Life together for Christians moves from agape to agape through faith.¹⁴⁴

The main feature of agape is that through it men are called and are brought to the state of being children of God and receive the power to continue therein (access to God). The functional aspect of the agape relationship is redemptive in that by it God continually forgives the animosities of men through the atonement of Christ and reconciles men to Himself and to one another.¹⁴⁵

Some of the functional and dynamic aspects of the constitutive elements of the nature of marriage are:

1. By faith a Christian spouse holds that God has given each to the other for life.¹⁴⁶
2. By faith a Christian views his marriage relation in terms of the covenant union of Christ and the Church.¹⁴⁷

¹⁴³1 Cor. 13.

¹⁴⁴John 13:34-35.

¹⁴⁵Weyerman. (mimeographed outline).

¹⁴⁶Matt. 19:9.

¹⁴⁷Eph. 5:21-33.

3. Faith frees a person from the curse of past sin in response to God's agape and in so doing gives a person that freedom to love. Without the freedom of faith a person cannot offer the radical love of God to another person.¹⁴⁸ Thus, God's love in Christ frees one in faith to love his spouse.
4. Agape transcends, redeems, and perfects the dimension of human love and its distortion in life. Love transforms every other gift into true grace and virtue and without it every other gift is worthless.
5. By faith and love marriage is not merely a contract based on personal needs which can be severed when one person fails to fulfill the contract, but it is a covenant based on mutual fidelity preserved by love and faith which gave validity and meaning to marriage and guarantees its integrity.¹⁴⁹
6. Agape can relieve the tensions between the freedom and development of each partner as individuals in marriage and the responsibility of each other for the marriage union itself and their social responsibility. Agape seeks what is good for the partner for his/her own sake and rejoices in the full development of the others' potential. The characteristic of agape is that it has a higher concern for the other person than for self.¹⁵⁰
7. Agape's universal scope drives one to a responsible concern for family, community, nations, and world.
8. Agape is the key to maintaining family authority without tyranny; for the husband as the responsible head of the family exercises this authority in terms of self-giving love for the wife. The wife responds to this love with love and in this mutual interchange decisions regarding their life together are reached.¹⁵¹

¹⁴⁸Luke 7:36-50.

¹⁴⁹Bailey, p. 79. Cf. White, p. 31.

¹⁵⁰James, p. 200. Cf. White, p. 30; Haas, p. 30.

¹⁵¹Weyerman. (mimeographed outline).

9. Agape moves one toward the virtues in marriage and at the same time accepts the partner in his/her weakness. Agape as forgiving love alone enables a couple to survive the reality of the gulf between what is and what ought to be their relationship.
10. The greatest and most powerful action of God's love is that of unconditional forgiveness in His Son, Jesus Christ. Having experienced God's forgiveness through faith¹⁵² a Christian spouse is able to respond with forgiveness toward his partner despite the most radical type of separation that sin may create.¹⁵³ God's forgiveness is not merely the cessation of judgment but an act of grace by which reunion takes place.¹⁵⁴ The power of God's love is that which shapes our forgiveness: (a) To forgive means to suffer another's sin fully without self-pity; (b) To forgive means to seek genuine reconciliation and reunion; (c) To forgive unconditionally means to take the risk of having to forgive persistent failure.¹⁵⁵ The basis of one's being able to forgive is in the continually renewed experience of God's forgiveness.
11. When faith overcomes unfaith then the total person is made whole and the cleavage between himself and God and, by consequence, himself and others is overcome.
12. Faith in response to God's love opens the future with hope; frees a person from despair to live with courage in the present; enables a person to face the consequence of what may be ahead with a trusting confidence in God.

In establishing the constitutive nature of marriage it is of value to view the converse to test the principle involved. Marriage is unity and so is love. Disunity comes

¹⁵²Luke 15:11-24; 1 Cor. 12:3; Luke 7:36-50.

¹⁵³Hulme, Pastoral Care of Families, p. 31.

¹⁵⁴LW, XXI, 98. Cf. also Lazareth, p. 195.

¹⁵⁵Matt. 18:21-22.

from the lack of love. Specific demonstration of the lack of love and faith can be seen from Scripture as the only action that permits the disregarding of the marriage bond. In the Old Testament the concession of Moses due to "hardness of hearts" is directly traceable to the lack of this self-sacrificing love that comes from God.¹⁵⁶

Adultery in the New Testament also is a demonstration of the lack of fidelity which is based on love and faith. The adulterer declares by his action that he no longer loves the spouse nor has trust in God's will for him, but follows the impulses of the unregenerate. When an unbeliever (lack of faith) disregards the marriage¹⁵⁷ it is evident that he did not appropriate and make operative that love which is a "given" from God.

Love is union. St. Paul says that committing fornication (becoming one with a harlot) is a sin against the unity of the Body of Christ.¹⁵⁸ For a union with a harlot does not assume the responsibility and love inherent in such a union and rooted in agape. It mars the Bride of Christ and also shows the lack of fidelity. Because agape is not given in isolation marriage is not a mystical sacrament, but is socially responsible to the Body of Christ. Marriage without

¹⁵⁶White, p. 98.

¹⁵⁷1 Cor. 7:15.

¹⁵⁸1 Cor. 6:16.

love and faith is nothing more than forced confinement for it becomes a situation without the presence of the constitutive elements which give meaning and form to the nature of marriage relationship.

Discussion of Concomitant Factors Relating
to the Constitutive Nature of Marriage

First, Consent:¹⁵⁹ For centuries the Christian tradition has operated, although at times somewhat inconsistently, with the axiom that "consent makes the marriage." In this connection, consent has been considered as the constitutive nature of marriage. As fundamental as consent is to marriage, however, various problems are posed by this theory that would eliminate its being the factor which constitutes marriage. These problems range around the following questions: Who gives the consent? Must it be general agreement on the part of all the people involved? Can people be consented for? What is the nature of the consent? Legal complications arise--who recognizes this consent? Then, the important question, does dissent break or cancel the marriage, or, if the consent is given once, does marriage become irrevocable?

Thoughtful consideration of these questions makes it evident that "consent" becomes legally and socially helpful

¹⁵⁹For the background of this theory cf. supra, p. 13.

to determine when a marriage begins or provides the terminus a quo for the recognition of the marriage by the community.¹⁶⁰ While consent may be a legal condition for the validity of the marriage union,¹⁶¹ it cannot be established as that constitutive element which makes or does not make a Christian marriage. There is no need to oppose consent against love and faith as the constitutive elements in marriage; rather consent becomes a concomitant and supporting factor to the extent of being a necessary prerequisite. Furthermore, consent is usually an expression of love or a willingness to love.

Second, Coitus: Literature on this subject claims that coitus consummates the marriage and, consequently, becomes the constitutive element of marriage. According to Bailey this view regards consent or agreement as merely a prerequisite.¹⁶² However, if coitus is considered as that which constitutes a marriage, what happens in cases of rape, pre-marital and extra-marital intercourse? Do these instances of coitus constitute marriage? Conversely, then, would the lack of sexual intercourse cause marriage to cease existing, as in the cases of old people, physical disability, and geographic separation?

¹⁶⁰Bailey, p. 49.

¹⁶¹A. T. MacMillan, What Is Christian Marriage? (London: n.p., 1944), p. 69.

¹⁶²Bailey, p. 50.

Thus, while coitus can be viewed as the basic symbol of the unity of the marriage relationship, it cannot be considered that factor which in and of itself constitutes marriage (as if it ex opere operato effected a permanent union).¹⁶³ Piper affirms that for intercourse to be genuine it must be an expression of something more basic, namely, responsible love.¹⁶⁴ Upon love depends the validity of intercourse and the permanence and exclusiveness of marriage.¹⁶⁵

But sexual intercourse, although an act in which the whole man and the whole woman engage, is nevertheless without meaning unless it consummates a true love and expresses their acceptance and affirmation of the consequent ontological change in themselves and in their relation. That is to say, their intention and the context of their intercourse determine the character both of the act itself and of the resultant state of "one flesh." In their coming together they either affirm or deny all that sexual intercourse means. In the one case they have become knit together in a mysterious and significant henosis and fulfill their love as husband and wife; in the other they merely enact a hollow, ephemeral, diabolical parody of marriage which works disintegration in the personality and leaves behind a deeply-seated sense of frustration and dissatisfaction¹⁶⁶

¹⁶³Ibid.

¹⁶⁴"Sexual intercourse is completely shorn of its meaning when it is devoid of a sense of responsibility and obligation for the partner." Piper, p. 139.

¹⁶⁵Bailey, p. 78.

¹⁶⁶Ibid., p. 53.

The purpose of this discussion is not to disapprove the necessity of sex within the marriage relationship,¹⁶⁷ but to place the temporary function of sex (The Bible does not impose an unconditional duty to marry) in the proper sphere as a concomitant factor within the marriage relationship.¹⁶⁸

Third, One Flesh--relational: Some writers expand the union of intercourse on the basis of "to know" in the Old Testament and on the meaning of "flesh" in the Old and New Testament to make "one flesh" relational to every aspect of married living in which the total personalities of the spouses are blended.¹⁶⁹ The relational view presents a fallacy in reasoning in that it makes the value of marriage dependent on natural factors, and this error is enhanced when carried to the logical conclusion that marriage troubles can be remedied by a more suitable combination of factors in a second marriage. Conflicting tendencies are inherent in natural factors and a marriage so based inevitably jeopardizes its very meaning.¹⁷⁰ Granting the necessity for

¹⁶⁷1 Cor. 7:3-5; 1 Peter 3.

¹⁶⁸"Sexual union is not the supreme value in life." Piper, p. 107.

¹⁶⁹For a detailed study of flesh, cf. White, pp. 1-37. Piper, p. 28, says, "Flesh, in the Biblical sense, denotes not only the body but one's whole existence in this world; and the attainment of oneness in the flesh, therefore creates a mutual dependence and reciprocity in all areas of life."

¹⁷⁰G. H. Hoffman, "Reflections on Divorce and Remarriage," Lutheran Quarterly, IX (Feb. 1957), 128.

the relational blending of the overall "being" of the spouses within marriage, it is the conviction of this paper that such relational living would be shallow and meaningless, if not based on love supported by faithfulness. The dynamics of love and faith within the marriage relationship are propelled by God, and the significance of human relationships without these powerful elements in no way constitutes a Christian marriage.

Fourth, Masculinity--Femininity:¹⁷¹ Through an understanding of their masculinity and femininity man and woman have been led to discover an answer to the question of their personal existence: Why I am a man? Why I am a woman?¹⁷² "Accordingly masculinity means the individual's willingness to be a man for a woman, and womanhood consists in a woman's readiness to exist for a man."¹⁷³ Masculinity and femininity involve a combination relationship of sex and personality complementariness, which, while important to the meaning of marriage in terms of being prerequisite and allowing growth for discovery of self through relation, only becomes fulfilled on the basis of the expression of mutual love. Any domination of the other spouse destroys the stimulus to fulfill self;¹⁷⁴ consequently, agape is required to keep a

¹⁷¹Hulme, Building Christian Marriage, passim.

¹⁷²Bailey, p. 62.

¹⁷³Piper, p. 94.

¹⁷⁴Hulme, Pastoral Care of Families, p. 25.

proper concern for the other spouse over concern for self.

Fifth, Fidelity: Fidelity is the closest concomitant factor to love and faith that contributes to the constitutive nature of a Christian marriage. However, if fidelity expresses a sense of obligation based on legal or humanitarian duty, it may preserve marriage as an institution, but only fidelity produced by love attains a higher concern that can guarantee real, inner validity to the marriage relationship.¹⁷⁵ Fidelity expressed in Christian terms becomes a demonstration of the commitment of a man and a woman to each other and to God built on the bedrock of love and faith.

Sixth, Contract: The expression of marriage as a contract suggests that the rights and obligations toward one another may be cancelled when violated. For a contract to be binding the terms must be freely accepted or as freely rejected. From a legal point of view the contracting of marriage is what constitutes the marriage.¹⁷⁶ But the contract view of marriage nowhere approaches the ideal of permanency and self-sacrificing expressed by the teaching of Jesus regarding the marriage relationship.

Because the contract view of marriage allows termination of the relationship when both parties view the union as

¹⁷⁵Bailey, pp. 79-80.

¹⁷⁶Marriage occurs whether performed before a minister, a justice of the peace, or established by a common law union.

unprofitable, the Roman Catholic Church makes the following distinction:

Marriage is a relationship (God made) resulting from a contract (man made). These two terms relationship and contract, both of them essential to any understanding of marriage, are subjects of two bodies of law: the law of divorce concerns the relationship; the law of nullity concerns the contract.¹⁷⁷

Summary of Chapter II

This chapter prepares the basis necessary for the delineation of the main thesis of this paper in the establishment of love and faith as the constitutive nature of a Christian marriage.

Throughout Church history the divine institution of marriage has been consistently upheld by the Christian Church. However, history reveals how the church continually had to wage the Christian teaching regarding marriage against the particular secular "attitudes" of the day that threatened to disrupt and corrupt God's purposes for the estate of marriage. This conflict caused the Church to take a firm stand, and, consequently, it made a legal code out of the marriage ethic of Jesus. It was Luther and the period of the Reformation that saw a return to a more biblical and evangelical understanding of marriage. Luther had to wrench marriage out of the control of the ecclesiastical hierarchy

¹⁷⁷Frank J. Sheed, Nullity of Marriage (New York: Sheed and Ward, 1959), p. 4.

in order to get it in proper perspective according to God's temporal order of creation. Luther regarded faith as the power which transforms marriage into a divine calling, and he regarded love as an expression of Christian service. For Luther faith and love were the basic ingredients for Christian living within the calling of marriage and the larger vocation of being a Christian.

The Lutheran Orthodox theologians reverted somewhat to the asceticism of the Middle Ages and upheld particularly the "consent" theory of marriage which was valid to a degree but tended to obstruct a true understanding of what constitutes a Christian marriage. The direct heritage of the Lutheran Church--Missouri Synod stems from the Lutheran Orthodox theologians; however, recent Missouri Synod writers are returning to the wholesome teaching of Scripture in application to the current problems of marriage.

In the Old Testament marriage is portrayed as being created and designed by God as a relationship between a man and a woman which takes priority over all other human relationships. Through this relationship a community is formed that shares in the carrying out of the image and purposes of God in terms of creation and redemption. In the Old Testament God views the marriage relationship as an antetype of the covenant relationship which exists between Yahweh and Israel and is maintained on the basis of love and faithfulness.

In the New Testament, marriage is considered a permanent and continuing relationship between husband and wife that grows and is built on love and faith. These two elements are expressed by a total commitment to each other and to God's whole created order realized in the union and love of Christ for His Bride. This love of Christ for the Church is made the measure of the love expressed by husband and wife in marriage. The marriage relationship becomes the channel for the operation of God's grace in the lives of His people. In this sense marriage certainly becomes a "great mystery," for who can know the length, breadth, and depth of the love of God? Only those who have experienced through faith in Jesus Christ the redemptive love of God in terms of forgiveness are able in a small way to understand the dynamic activity within Christian marriage as this relationship fulfills the purpose of God's redemptive plans in the extension of His love to one another.

The thesis of this paper establishes the combined elements of love and faith as the constitutive nature of a Christian marriage and at the same time maintains that unbelief and the lack of love give rise to marriage failure. By failing to believe the purposes of God for the marriage relationship the couple become alienated from each other and from God in the pursuing of selfish concerns.

CHAPTER III

DECISIONS REGARDING THE DISSOLUBILITY OF MARRIAGE

Divorce and Remarriage in Church History

The first section of this chapter will discuss in summary form the teaching of Christian patristic writers¹ of the first three centuries on the area of divorce and remarriage. Important for an understanding of the concern of the Church Fathers is the cultural milieu of their time as can be illustrated in terms of the Roman civil law on divorce and remarriage.

The law of Rome regarding divorce was appallingly simple and direct.

As the essential part of the marriage was held by the Law to be mutual consent, it had to be held that when this consent was at an end, the marriage would naturally terminate. Accordingly either party might declare his or her intention to dissolve the marriage. Ordinarily no judicial decree, no interference of any public authority whatsoever, was required to dissolve a marriage.²

This freedom of divorce by mutual consent was not modified within Roman law until the time of Justinian.³ Against

¹It is not the purpose of this paper to cite the teaching of an individual patristic unless it illustrates in terms of clarity a certain important aspect of divorce and remarriage.

²O. D. Watkins, Holy Matrimony: A Treatise on the Divine Laws of Marriage (New York: MacMillan and Co., 1895), p. 192.

³Ibid., p. 194.

this laxity and frivolity in the making and abandoning of marriages in the Roman world the Church Fathers stood in terms of Christian teaching. Thus, it became necessary from time to time for the patristic writers to emphasize the fact that the "law of Christ" prohibited what was allowed by the "law of Rome."⁴

Another important aspect for the understanding of the position taken by the Church Fathers concerns the procedure in Roman law which regulated situations in which adultery was committed by the wife. This procedure followed the law known as lex Julia de adulteriis coercendis established in 17 B.C.⁵

By this law the husband who retained his wife after an act of adultery was known to him, and forgave the adulterer, was held to be himself guilty of the offence of lenocinium.⁶

However, as in the case of all Roman law regarding marriage

⁴Ibid., p. 192. By 139 A.D. St. Justin Martyr contrasts "some human law" with "the account of our Teacher." In 177 A.D., or thereabouts, Athenagoras speaks of the Christian rules of marriage as "the laws which have been laid down by us," such laws were the rules prohibiting the Roman laxity of divorce. Matt. 19:9; Matt. 5:32; Mark 10:11,12; Luke 16:18; the marriage of Christians with non-Christians, 1 Cor. 7:39; 2 Cor. 6:14.

⁵This law regulated procedures in the case of adultery on part of the wife known by the husband.

⁶Watkins, p. 194. In regard to this law the husband was bound to put his wife away if the adultery was known to him or he would be guilty of the offence of lenocinium. The repentance of the wife and her dismissal of the adulterer appear to have made no exception to this rule. Cf. Watkins, pp. 194-196.

and divorce, the thrust of the law proposed to guide rather than to rigorously control procedures; so that if the husband risked the possible penalties and the odium connected with his action and forgave his wife the state would not declare the marriage invalid.⁷

Therefore, it becomes apparent that there were areas of practice within civil law that the Christian teachers could not condone. On three general accounts the practice of Christians was in opposition to the current legal practices of the Roman State: (a) The Christian Church certainly did not tolerate the discontinuing of the estate of marriage on the basis of consent (dissent); (b) While the Roman law punished a woman who committed adultery, even if she became penitent, the Christian husband restored her for her penitence; (c) By Roman law every divorced person had the right (liberty) to remarry; however, the consensus of the church for the first three centuries was uniformly against remarriage.⁸

In the case of divorce within a Christian community the "innocent spouse" must have questioned the "justice" of a restriction against remarriage which was unknown outside of the pales of the church. Yet, if any passage of the New

⁷Ibid., p. 195.

⁸Ibid., p. 196. Cf. J. P. Arendzen, "Ante-Nicene Interpretation of the Sayings on Divorce," Journal of Theological Studies, XX (1918-1919), 241.

Testament would be understood to sanction remarriage after divorce, one might reasonably expect that passage to be quoted somewhere.⁹

The majority of the patristic writers¹⁰ limited divorce to the one cause, namely, fornication (*πορνεία*).¹¹ However, their acceptance of only this one condition "reflects the interpretive practice of the Fathers to treat Christ's words as law rather than ethical ideals."¹² Watkins makes this stronger by saying that no Christian writer of the first three centuries states or implies that a man may not put away his wife for porneia.

As far as can be ascertained the concept of porneia precludes pre-marital unchastity and refers to post-marital adultery in the patristic writers. It would be considered

⁹Watkins, p. 197. The passage that might be readily understood in this regard would be Matthew 19:9 which is never quoted by the Church Fathers to that end.

¹⁰Including the Shepherd of Hermas, Justin Martyr, Tertullian, Theophilus, Clement of Alexandria, and Origen. Cf. Watkins, p. 198.

¹¹*Πορνεία* will hereafter be designated as porneia. The Shepherd of Hermas, Tertullian, and the Council of Eliberis go farther and require the husband to put away the wife if she continues in adultery. Cf. Watkins, pp. 198, 200, 204-205, 220. This was especially true if she was not repentent. Cf. Shepherd of Hermas, "Of adultery he says that a husband must put away his wife should she be guilty of this sin and refuse to do penance." Johannes Quasten, Patrology (Westminister, Maryland: The Newman Press, 1951), I, 103.

¹²Ernest White, Marriage and the Bible (Nashville, Tennessee: Broadman Press, 1965), p. 110.

synonymous with *μοιχεία*.¹³

The greatest question between Roman practice and Christian practice would doubtlessly arise on the question of remarriage. When the husband and wife have been divorced, is a second marriage permitted to either or both parties?

It is most significant that the testimony of the first three centuries affords no single instance of a writer who approves remarriage after divorce in any case during the lifetime of the separated partner, while there are repeated and most decided assertions of the principle that such marriages are unlawful.¹⁴

If the voice of the early Church is to be heard, Christian marriage is altogether indissoluble.¹⁵ For some of the early Church Fathers the concept of the indissolubility of marriage was carried to the extreme that even death did not dissolve the marriage union and the remaining party could not marry.

A person should either remain as he was born or be content with one marriage; for a second marriage is only a decent adultery For he who deprives himself of his first wife, even though she is dead, is a cloaked adulterer, resisting the hand of God, because in the beginning God made one man and one woman.¹⁶

Due to the wide variance between civil law and Church law it is very difficult to determine where the actual

¹³Cf. Watkins, p. 221. *Μοιχεία* hereafter will be designated as moicheia.

¹⁴Ibid., p. 222.

¹⁵Ibid., p. 225.

¹⁶Athenagoras of Athens, "Apology 33," in Quasten, I, 235.

practice of the Church stood. This is particularly true because time after time the Church leaders deplore the practice on the part of Christians to being that of akin to the civil laws.

For the most part the church was strictly against divorce and also against remarriage. But in practice other cases were allowed. Both Origin and Tertullian also gave cases of Christians who afforded themselves a new marriage under the provisions of secular law.¹⁷

St. Augustine wrestled with the real problem in divorce and remarriage but comes no nearer the solution. He writes that Holy Scripture causes a hard knot in this matter.¹⁸ St. Augustine finally took the stand that all valid marriages are indissoluble by natural law.¹⁹

A second period of the attitude of the Christian Church toward the questions of remarriage after divorce begins about the time of Constantine accepting the Christian faith (314 A.D.). From that time on the Church had to suffer the

¹⁷Watkins, p. 222.

¹⁸Augustine, "On the Good of Marriage," The Nicene and Post-Nicene Fathers, in the History of the Christian Church, edited by Philip Schaff and Henry Ware (New York: Charles Scribner's Sons, 1923), III, 400-407.

¹⁹Valid in the sense of sacramentally consummated in the Church. This has been upheld generally speaking in the Western Church; however, the Eastern Church tended to interpret the so-called "Pauline Privilege" as a complete dissolution and carrying with it by inference freedom of remarriage. Cf. Watkins, pp. 290ff. for detailed discussion. Cf. also E. O. James, Marriage and Society (London: Hutchinson's University Library, 1952), p. 104.

ingress of many unworthy applicants who wanted what they could get out of the popularity of being a Christian and to be qualified for lucrative positions. In this period there is abundant evidence of the laxity of practice of "Christian" men and women who cared only to recognize the secular law of Rome and would not be bound by Christian teaching.²⁰

The stance of the Church splits with the divergence of the East and West Churches which led to a lasting breach. In the East the Emperors and the Imperial court overshadowed the Patriarchial throne and the Church of the East became subservient to the state. While in the Western Church the power of the church remained independent of the state and was in many instances more powerful. Consequently, in this situation the Eastern church came under the pressure of the civil law in terms and attitude toward divorce and remarriage.²¹

Approaching the question of the remarriage of the "innocent party" it appears that this teaching stems from the Eastern Church, as far as it can be traced. The first writer to express the view that the innocent husband may remarry is Lactantius, who was never recognized by the Church as a bona fide theologian, but rather as a rhetorician.²² The next writer of import in this regard is

²⁰Watkins, p. 289.

²¹James, p. 111.

²²Watkins, pp. 296-298.

St. Basil the Great, who was born in 329 in Caesarea, the capital of Cappadocia. St. Basil allows what might be called a concession to the state; although he does not approve of remarriage after divorce in the case of a man, he does admit it without penalty.

He has no approval of the remarriage of the husband after divorce, whether he have put away his wife for adultery, or having been put away for a like cause by his wife. In neither case, however, is he prepared, in the face of public feeling, to assign any term of penance and exclusion from communion.²³

The first theologian to admit remarriage after divorce was St. Epiphanius, bishop of Salamis in Cyprus (died in 404 A.D.). St. Epiphanius distinctly justifies remarriage after divorce and does so alike in the cases of men and women; nor can it be inferred that he would be more stringent with the guilty party than the innocent.²⁴ There is some question, however, of the depth to which St. Epiphanius probed in marriage theology.²⁵ There can be, nevertheless, no mistaking his words which fully allow remarriage after divorce.

After the middle of the fourth century, the teaching of the Eastern Church became lax to the extent that remarriage

²³Ibid., p. 305.

²⁴Ibid.

²⁵It is maintained that in the passages St. Epiphanius cites he is condemning the rigorism of a teaching that forbids second marriages to widows to the extent that he sanctions the allowance of second marriages even to the divorced; cf. Watkins, p. 306.

after divorce was allowed both to men and women in certain circumstances.²⁶ This laxity grew so that after the sixth century it appears that the Church of the East was content to suffer divorce "for every cause."²⁷

The problems of divorce and remarriage in the Western Church, however, are held in a much different light than that of the Eastern Church. Clear and definite in its conviction regarding the indissolubility of marriage the Western Church consistently disallowed the possibility of severing the marriage bond for any reason short of the death of one of the partners. The Council of Arles in 314 A.D. maintained that the innocent husband may not remarry, and this declaration became the canon followed by most of Western Christendom.²⁸ Only one writer, known as Ambrosiaster, up to the sixth century allowed remarriage after divorce.²⁹ Otherwise, the Western Church, while it allowed husbands and sometimes wives to put away their spouses in situations of adultery, consistently did not allow remarriage after divorce.

Although the Western Church, being free from state control, effected a rigorous discipline for the regulation of marriage, it had to adjust the principle of the

²⁶Cf. Watkins, pp. 309-316.

²⁷Ibid., p. 347.

²⁸Ibid., p. 294.

²⁹Ibid., p. 342.

indissolubility of marriage to the reality of the human situation. The simplest and best answer came through divortium a mensa et thoro (separation from table and bed) which, at least in theory, circumvented the theological issue of actual divorce (divortium a vinculo).³⁰ How deeply the principle of the indissolubility of marriage is embedded in the teaching of the Western Church can be seen from the refusal of theologians to grant the Pope right to dissolve any validly contracted and duly consummated marriages between baptized persons.³¹

Luther's Thought on Divorce and Remarriage

Recognizing the danger in trying to systematize Luther's thought on any teaching, this section will just give an overview of his principles and concerns regarding divorce and remarriage. The danger of taking statements out of context, in addition to Luther's changing thought, makes any summary risky. The last thing that Luther wanted to promulgate was another ethic of marriage casuistry. Therefore, Luther's statements must be considered in view of his overall

³⁰Cf. James, pp. 113-114. This position of separation (mensa et thoro) is clearly stated in Canon 107 which was promulgated in 1604 in the Anglican Church.

³¹This teaching can be traced to the time of St. Augustine, was strongly enforced by St. Thomas Aquinas, and is presently in vogue in the Roman Church. Cf. James, p. 114. Cf. also D. S. Bailey, The Mystery of Love and Marriage (New York: Harper and Brothers Publishers, 1952), p. 71.

teaching and the civil and ecclesiastical conditions of his day.

One principle that stands clear in Luther's thought is the freedom of the Christian man to discover God's will for him in any given situation. God's guidance through the Holy Spirit became Luther's normative rule in all social problems including marital. Such a principle allowed the teaching of the Bible to be flexible enough for the will of God to confront man in every condition, society, and age.³²

Regarding marital problems Luther frequently expressed his strong conviction that the estate of marriage was protected by the strong left hand of God's law within the temporal order, and he recommended that civil authorities act in such cases according to the civil laws of the community.³³ In this connection Luther advocated that Christian teachers neither encourage nor prohibit divorce.³⁴ Assured of God's will for those who professed to be true Christians, Luther advised that both parties remain together and be reconciled exercising forgiveness and Christian love and being desirous for the continuation and building of their

³²W. H. Lazareth, Luther on the Christian Home (Philadelphia: Muhlenberg Press, 1960), pp. 100, 196.

³³Ibid., p. 197.

³⁴Ibid.

marriage.³⁵ Luther was confident in God's ability to maintain the order for marriage and provide miracles of reconciliation unknown to those merely obeying the civil law and demanding "civil rights."³⁶

While citing his hatred of divorce, "I so greatly detest divorce that I should prefer bigamy to it,"³⁷ Luther is also conscious of the reality of the human situation. To this end he wonders whether divorce in some instances might not be the more loving solution possible "when the only alternative in a given situation is a faithless and loveless 'union' held together publicly by the compulsion of canon law while violated privately in infidelity."³⁸ The specific lack of the constitutive nature of Christian marriage in such cases appears to warrant in Luther's thinking a basis for removing the sham of a marriage that is not. In such cases divorce would be the lesser of two evils and Luther would rather settle for the imperfect best and let God's love go to work from there.

³⁵Ibid., p. 197. Cf. Martin Luther, Werke; Kritische Gesamtausgabe (Weimar: Hermann Böhlaus, 1906), XXXII, 379. Hereafter referred to as WA.

³⁶Lazareth, p. 197.

³⁷Martin Luther, Works, edited by Jaroslav Pelikan and Helmut Lehmann (American Edition; Philadelphia and St. Louis: Muhlenberg Press and Concordia Publishing House, 1959), XXXVI, 105. Hereafter designated as LW. As he actually did later in the case of Henry VIII and Philip of Hesse, considering it to be the lesser of two evils insofar as it was not without divinely sanctioned precedent in the Old Testament.

³⁸Lazareth, p. 192.

Luther realized fully that no absolute ruling could be made in cases of marital dispute where Scripture offers the guidance of the "law of love," and for this reason he maintained that each situation must be considered on its own merits.

When two wretched and sinful mortals enter marriage, such abuses may develop, according to Luther's view, that divorce is finally the only way out. Luther could condemn one divorce unequivocally and approve another just as unequivocally. Now a directive to release and liberate may be called for, then a directive to bind and hold may be just as necessary. Each case must be decided for itself; concession may need to be made in order to meet the demands of love, to help an oppressed spouse, and to avoid greater evil.³⁹

Although Luther allowed adultery, and physical and sexual desertion as grounds for separation,⁴⁰ as an evangelical theologian,⁴¹ he was concerned about attacking divorce at its roots; namely, in terms of the unbelief divorce demonstrates. For Luther, divorce manifested that the

³⁹Oscar Feucht, et al., Sex and the Church (St. Louis: Concordia Publishing House, 1961), p. 79.

⁴⁰Lazareth, p. 194. Cf. James, p. 121, who claims that Luther allows also other causes allowed by the Law of Theodosius, but he does not state whether laws of Emperors Honorius and Theodosius (421 A.D.) or of Theodosius and Valentinian (449 A.D.) are meant. For a detailed account of the above set of laws, cf. Watkins, pp. 290-292.

⁴¹"Hitherto I lacked only a proper distinction between the law and the gospel. I considered both to be the same, and Christ to differ from Moses only in time and perfection. It was when I discovered the difference between the law and the gospel, that they are two separate things, then I broke through." Martin Luther, Werke: Kritische Gesamtausgabe. Tischreden, V (Weimar: Hermann Böhlau, 1919), par. 5553.

greatest sin of all--unbelief had already inwardly taken place.⁴²

Luther also recognized that adultery demonstrated the absence of the constitutive nature of marriage and that this action of adultery actually constituted the dissolution of marriage.

For Luther adultery was not merely a ground for divorce; rather, adultery actually constituted the dissolution of marriage. If the marriage were to continue after one party committed adultery, that would call for love and forgiveness. But such gifts were held to be so rare that in most cases the marriage needed to be terminated. In 1522 Luther felt that a person who committed adultery deserved the death penalty. In 1530 he was more moderate in pointing out that the adulterer was spiritually dead. If, moreover, adultery fractured a marriage to such an extent that the guilty party was as good as dead, then the innocent partner certainly was free to marry again, even though the Gospel made no general provisions for this. Thus the privilege that Paul gave the Christians in mixed marriage with an unbeliever in 1 Cor. 7 was extended by Luther to anyone who was deserted by a marital partner.⁴³

Thus, as Luther's teaching on divorce and remarriage is reviewed it becomes apparent that he is in opposition to all unevangelical principles of ethics. Scriptural directives which emphasized a life of faith active in love became the basis of Luther's "marriage ethic."⁴⁴ To understand God's will in this respect, it became a necessity that a Christian could distinguish between what God demands (Law)

⁴²Lazareth, p. 194. Cf. also WA, X, 287.

⁴³Feucht, p. 79.

⁴⁴Lazareth, p. 100.

from what He promises (Gospel).⁴⁵ Luther knew that he did not have the final answers to the marital problems of his day: "Herewith I hang up my harp, until another and a better man shall take up this matter with me."⁴⁶

For Christian pastoral practice it is crucial that the evangelical spirit of Luther be captured, and that his yielding to God's guidance through the Holy Spirit become normative in any situation. What is important, above all, is that a man in faith searches out God's will in His Word.

The Lutheran Confessions on Divorce and Remarriage ✓

The Lutheran Confessions have little to say on the subject of divorce and remarriage. This is a little hard to understand for the Confessions do allude to a prevalence of marital troubles in those days.

The Confessions acknowledge the fact that in the Old Testament a man was permitted to put away his wife; however, the Confessions also allude to the dangers apparent in this situation when flimsy pretext was used.⁴⁷

The Confessions witness to the fact that in the New Testament divorce is forbidden.⁴⁸ The Confessions condemn

⁴⁵Ibid., p. 81.

⁴⁶LW, XXXVI, 106.

⁴⁷"Large Catechism," hereafter L.C., pars. 295, 305. All confessional documentation is from The Book of Concord, edited by Theodore G. Tappert (Philadelphia: Muhlenberg Press, 1959).

⁴⁸L.C., par. 306.

the Anabaptist teaching which permitted a person to secure a divorce in a mixed faith marriage situation so that he might be free to marry one of his own faith.⁴⁹ The Confessions do not speak of fornication as a basis for divorce but this is an argumentum ab silentio that cannot be set up as doctrine.

In the "Treatise on the Power and the Primacy of the Pope" the statement occurs that it is unjust to forbid an innocent person to remarry after divorce.⁵⁰

The Lutheran Orthodox Theologians on Divorce and Remarriage

While Luther strongly maintained that matters of divorce and remarriage be regulated under the jurisdiction of the civil authorities and that the role of the Church in these matters was to exercise an evangelical approach in keeping with the Scriptural revelation, the Lutheran Orthodox theologians of the post-Reformation period seemed to have lost some of Luther's "evangelical spirit" and returned to a semi-ecclesiastical (Kirchenordnung) position in matters of divorce and remarriage. To delight in the details

⁴⁹"Epitome," hereafter Ep., Article XII, par. 19; "Solid Declaration," hereafter S.D., Article XII, par. 24. An allusion to possible separation can be found in L.C., par. 305 and "Apology of Augsburg Confession," Article XXVIII, par. 41.

⁵⁰"Treatise on the Power and Primacy of the Pope," hereafter Tr., par. 78.

of casuistry was perhaps the tenor of the scholastic mind.

The Lutheran Orthodox theologians⁵¹ affirm marriage as a life long, permanent union and maintained that it could not be dissolved except by the death of one of the partners.⁵² The dissolution of marriage, outside of death, constituted a sin and remarriage was morally wrong, except in the sole case of adultery.⁵³ While affirming that consent constituted a marriage, the orthodox theologians agreed that mutual consent could not dissolve a marriage.⁵⁴

The Lutheran dogmaticians placed the law of Moses on the same level as the law of Christ, one existing for the time of the Old Testament and the latter for the time of the New Testament. On this basis they maintained that the authority of Moses ceases with the coming of Christ.⁵⁵

The Lutheran Orthodox theologians accepted malicious

⁵¹For a detailed study on this area cf. A. C. Piepkorn, "The Theologians of Lutheran Orthodoxy on Polygamy, Celibacy, and Divorce," Concordia Theological Monthly, XXV (April 1954), 276-283.

⁵²George Dedenkennus, Thesaurus consiliorum et decisionum, edited by John Ernest Gerhard (Jena: Zachariae Hertels, 1671), III, 315-327. Hereafter designated Dedenkennus-Gerhard.

⁵³Ibid., III, 327-330; John Gerhard, "De coniugio," Locus XXV, Loci Theologici, edited by Edward Preuss (Berlin: Gustav Schlawitz, 1869), VII, 369-408, pars. 560-610.

⁵⁴Based on Mal. 2:14; Matt. 19:6; 1 Cor. 7:10. Cf. Gerhard, VII, 427-428, par. 639.

⁵⁵Solomon Deyling, Institutiones Prudentiae Pastoralis (Leipzig: Lanekisch, 1734), p. 570.

desertion as an action by which marriage could be broken. Desertion was not considered a "grounds for divorce"; rather, the action in itself constituted divorce in that the deserting party de facto ruptured the marriage bond. Consequently, the deserted spouse was considered as suffering a divorce. Inconsistent views were held by the orthodox theologians as to what actually qualified malicious desertion according to the various "Kirchenordnung." Usually, the desertion included sexual as well as geographical desertion. The Pauline Privilege of remarriage based on St. Paul's First Letter to the Corinthians in all bona fide cases of malicious desertion was awarded to the "deserted spouse."⁵⁶

Steeped in the thinking of the Lutheran Orthodox Theologians was the conviction that the "innocent party" in situations of voluntary adultery could secure a divorce and remarry.⁵⁷ The exact origin of their thinking is not made explicitly clear but the probable connection can be substantiated. Two combined possibilities or reasons come to mind. It is clearly stated that some Orthodox Theologians

⁵⁶Dedenkennus-Gerhard, III, 330-346; Gerhard, VII, 419-425, pars. 623-635.

⁵⁷Gerhard, VII, 409-418, pars. 611-621; Carl F. W. Walther, Johannis G. Baieri Compendium Theologiae Positivae (St. Louis: Concordia-Verlag, 1879), III, 773-775. Hereafter designated as Baier-Walther.

regarded adultery as deserving the death penalty.⁵⁸ This echoes what Luther said in his earlier years (1522), although he modified somewhat later on (1530) to mean the spiritual death of the adulterer. Luther's thinking here was that an adulterer fractured a marriage to the extent that the guilty party was as good as dead, and the innocent party certainly was free to remarry although this was not a Gospel provision.⁵⁹ In other words, adultery ipso jure dissolved marriage the same as death. Remarriage was advocated also because of Luther's belief that marriage should be entered in by all as a remedy for sin. In addition, the teaching of the Eastern Church allowed remarriage as a concession to secular "justice," and, as Luther and many of the Orthodox Theologians follow the provisions of the Eastern Church in regards to reasons for divorce, the teaching of the right of the innocent party to remarry might well have been included. This principle of allowing the "innocent party" to secure a divorce and remarry has come down through the Orthodox Theologians with amazing consistency.

Regarding the marriage of the "guilty party" the position of the dogmatists was rather inconsistent. Many of them maintained that the guilty party should be forbidden or at least counselled against remarrying; others maintained

⁵⁸Gerhard, VII, 421, par. 622.

⁵⁹Feucht, p. 79.

that the guilty party could not remarry unless he gave evidence of sincere repentance and only on the condition that the "innocent party" had remarried first or died. In this connection other ecclesiastical requirements regulated procedure that the guilty party in adultery could not marry his quondam partner, and, if a "guilty party" did remarry, he must move to a new location where he is not known.⁶⁰

Separation was known to the Post-Reformation Lutheran theologians; however, it was disputed whether this was a biblical teaching or not, and whether this action should come under the civil or consistorial law when exercised.⁶¹ Certainly mere separation was not considered equal to divorce.⁶² Rather separation involved a suspension of domestic cohabitation and conjugal duty for a limited time during which the husband was fully responsible for the support of the wife. Justification of the action⁶³ of separation was that it was based on the hope of preventing greater evil, for example, murder.⁶⁴

⁶⁰Walther quotes Gerhard on this: C. F. W. Walther, Pastoraltheologie (St. Louis: Concordia Publishing House, 1906), p. 230. Gerhard, IV, 421, par. 622.

⁶¹Dedenkennus-Gerhard, III, 308-315; appendix 858-859.

⁶²Baier-Walther, III, 776.

⁶³Legitimate grounds for separation varied but included such things as cruelty, attempts against the other person's life, sorcery, leprosy, and other contagious diseases. Dedenkennus-Gerhard, III, 360-362, 873, 874; Gerhard, VII, p. 455, par. 688.

⁶⁴Gerhard, VII, p. 426, par. 637.

In summary, the two actions of adultery and malicious desertion constituted for the Lutheran theologians a dissolving of the marriage union and, although not an explicit provision of the New Testament, basis for the granting of the right of remarriage. The "innocent-guilty party" teaching resulted in a legislative type of definitive procedure in the area of divorce and remarriage to the extent that a form of an "ecclesiastical code" resulted which was often not consistent, evangelical, or biblical.

The Lutheran Church--Missouri Synod
on Divorce and Remarriage

The teaching or pastoral theology of the Lutheran Church--Missouri Synod on divorce and remarriage has, particularly during its early years, consistently followed the writings of the Lutheran dogmaticians of the Post-Reformation period. Tracing backwards, the "special theology" of the Lutheran Church--Missouri Synod, which accepts two Scriptural grounds for divorce (fornication and desertion) and prescribes remarriage according to the "innocent-guilty" party division, begins with J. H. C. Fritz's Pastoral Theology, which in many paragraphs merely rephrases the teaching of C. F. W. Walther in his Pastoraltheologie.⁶⁵ Walther, in turn,

⁶⁵Fritz acknowledges his dependence on Walther's Pastoraltheologie in the preface of Pastoral Theology.

quotes lengthy sections of Gerhard's Loci de conjugio.⁶⁶ Walther and Fritz are cited because of the influence the writings of these two men exerted on the Lutheran Church--Missouri Synod. Although writings of neither Walther nor Fritz necessarily represent the "official" position of the church, they provided the divorce and remarriage ethic which was taught at the seminaries and became the "working theology" of many of our pastors.

In writing and practice the Lutheran Church--Missouri Synod has been rather consistent in upholding adultery and desertion as the only two grounds for divorce;⁶⁷ although, there has been some dispute as to what might be included under the term "malicious desertion."⁶⁸ There has been some confusion in the teaching and practice, however, regarding remarriage. Second marriages in themselves carry no stigma,⁶⁹ and there has been little question about the remarriage of the so-called "innocent party" in a divorce situation. But no agreement has been arrived at regarding the remarriage of the "guilty" party. Opinion on this

⁶⁶Regarding divorce and remarriage Walther quotes Gerhard 23 times in less than twenty pages.

⁶⁷Sometimes spoken of as one ground--adultery; thereby considering desertion an act of dissolving and not basis.

⁶⁸Otto E. Sohn, Divorce and Remarriage in the Light of Holy Scripture (n.p., n.d.), pp. 15-23. (mimeographed).

⁶⁹Theodore Laetsch, "Divorce and Malicious Desertion," Concordia Theological Monthly, III (Nov. 1932), 855.

question has vacillated between no marriage at all, to re-marry only after the "innocent" party has remarried or died, to blanket allowance in every case. The uncertainty of this position is ante-typed in the post-Reformation theologians⁷⁰ and had continued in severity.⁷¹

⁷⁰Walther, Pastoraltheologie, pp. 233-234. Here is a free translation of Walther quoting Gerhard's opinion regarding the remarriage of the "guilty party": Some (theologians) answer absolutely in the negative; others state the opposite position. We agree with those who take a middle of the road position, in that the guilty party may neither immediately or without condition be given the right to contract a new marriage nor absolutely and positively be denied it. (1) As a result we say, that the authorities be seriously exhorted to pronounce the death penalty upon divorce; then this question will have come to an end. (2) The guilty party is also to be seriously exhorted to come to the realization that his crime is not only worthy of eternal death but also of the temporal death penalty. He should live in true pangs of conscience, in the mortifying of the flesh, in the doing of good works and fastings, and consider himself unworthy to be granted the right to a new marriage. (3) As long as the innocent party is still out of wedlock and a hope of reunion is possible, the guilty party absolutely may not be granted the right to contract a new marriage. (4) If it is a fact that his conscience is suffering and destruction appears to be threatening, and, if he was not advised against remarrying, then another marriage may be permitted under the following conditions: (a) that the guilty party does not enter a new marriage by his own authority, but that the approval of the authorities and the ecclesiastical Ministerium be first requested; (b) that he not be permitted to contract a new marriage with the person on account of whom the marriage was broken (quondam partner); (c) that the sincere repentance of the guilty party be sought during a set time; (d) that he be required to change his residence and move to a place where his shame is not known.

⁷¹J. H. C. Fritz, Pastoral Theology (St. Louis: Concordia Publishing House, 1932), p. 173 states: "The innocent person in a divorce case is free to marry again, Matt 19:9. The guilty person may not marry as long as the innocent party remains unmarried and there is reason to

A discussion of the merits and inference of the "innocent"--"guilty" division and other aspects on the Lutheran Church--Missouri Synod's general position on divorce and remarriage will follow in chapter IV.

The Old Testament Teaching on Divorce and Remarriage

While the Old Testament allows and does not seem to show a great criticism of the practice of divorce,⁷² it cannot be construed or implied that divorce in the Old Testament was lightly considered and that it had the sanction of God. For the Old Testament does not encourage divorce and this action is not a part of God's plan for the estate of marriage. The instances of divorce in the Old Testament are a concession on the part of God to revolting man for the purposes of peace. Divorce is the consequence action when love turns from the other person to self and the confident

believe that a reconciliation can be effected; for it is the very nature of the case that a guilty husband, for instance, if he is penitent, ought to prefer to return to his original wife rather than marry another. However, after the innocent party has procured a divorce, not being willing again to live with the guilty party, or after the marriage or the death of the innocent party, a pastor may perform the marriage ceremony for the guilty party in a divorce case, provided, of course, that such a person be truly penitent."

⁷²Cf. Lev. 21:7; 21:14; 22:13; Numbers 30:9,(10); Deut. 22:19; Isaiah 50:1; Jer. 3:1; Ezek. 44:22.

trust in God fails.

Contrary to public opinion, the main passage of the Old Testament cited as basis for divorce does not speak of the "grounds" or reasons for divorce; rather, it describes the current procedure to be followed in an instance of divorce proceedings and a ruling about remarriage.⁷³ It dare not be inferred from this passage that Jewish husbands are encouraged to put away their wives, or even that it is mandatory for them to do so.⁷⁴ What Deuteronomy chapter twenty-four does make mandatory is that the wife be given a "bill of divorcement" in case of dismissal.⁷⁵ In addition, the passage insists that a divorced woman subsequently remarried to another man cannot return to her first husband.

Grounds or reasons for divorce were based on the phrase

⁷³Deut. 24:1-4.

⁷⁴John Murray, Divorce (Philadelphia: The Presbyterian and Reformed Publishing Co., 1961), p. 6.

⁷⁵C. F. Keil and F. Delitzsch bring out this construction very clearly: "In these verses . . . divorce is not established as a right; all that is done is, that in case of a divorce a reunion with the divorced wife is forbidden, if in the meantime she had married another man, even though the second husband had also put her away, or had died. The four verses form a period, in which vers. 1-3 are the clauses of the protasis, which describe the matter treated about; and ver. 4 contains the apodosis, with the law concerning the point in question." Biblical Commentary on the Old Testament, English Translation (Edinburgh, 1880), III, 416. On this point cf. also The International Critical Commentary, A Critical and Exegetical Commentary on Deuteronomy (New York, 1916), p. 269.

"unseemly thing."⁷⁶ The meaning of this phrase was avidly disputed at the time of Jesus by the rabbinic schools of Hillel and Shammai.⁷⁷ There is very little doubt that in terms of general practice and usage Hillel's teaching was considered right and was followed by Jewish men.⁷⁸ Consequently, the inference that a Jewish man might put away his wife for a trivial reason is a close understanding of the Jewish practice. In this light it is important to note that the "bill of divorcement," as made mandatory by the law of Moses, became a ticket of protection and safeguard for the divorced woman. Prior to this regulation a Jewish man could just tell his wife "I divorce you" and she was forced to get out of his house and was left vulnerable and without recourse.⁷⁹ The bill of divorcement⁸⁰ gave the woman the right to be her own mistress and have protection as a citizen, and the right of remarriage. Thus, the provisions of Moses

⁷⁶ חֵרֶץ; for a complete discussion cf. Murray, pp. 9-15.

⁷⁷The dispute centered around the term "unseemly thing" (חֵרֶץ). The Hillel School argued that a man could divorce his wife for any cause, while the school of Shammai felt that the meaning of חֵרֶץ could only mean adultery.

⁷⁸Cf. David R. Mace, Hebrew Marriage (London: The Epworth Press, 1953), p. 257.

⁷⁹Cf. J. C. Evans, "Distinctiveness of Christian Marriage," Motive, XXI (May 1961), 31.

⁸⁰For the example of this form cf. W. P. Paterson, "Marriage," A Dictionary of the Bible, edited by James Hastings (Edinburgh: T. and T. Clark, n.d.), III, 276.

actually curbed the insensitive action of putting away wives without recourse.

The question of a woman putting away her husband never rose technically because the power of divorce from beginning to end, according to Jewish law, was the prerogative of the husband.⁸¹ This was in keeping with the traditional right of man, as anciently regarded, in comparison to the status of women at that time.

In no sense recognized by law or intelligible to those who lived under it could remarriage after divorce make the man an adulterer. After divorcing his wife a man was free to remarry. Nor could a man who married a divorced woman properly be said to have committed adultery since the "bill of divorcement" declared her free to remarry.⁸²

Again this practice should not result in the inference that the Old Testament condones remarriage. Examples of remarriage being forbidden under certain conditions are also found in the Old Testament.⁸³ Care must be exerted that an unwarranted conclusion is not reached which goes beyond the meaning of the text. It can be concluded that, although, the Old Testament allows the practice of divorce and subsequent

⁸¹Bailey, p. 88. Cf. Paterson, p. 274.

⁸²Bailey, p. 88.

⁸³Lev. 21:7; Ezek. 44:22--forbids priests to marry a divorced woman; however, it cannot be automatically inferred that it was permissible for a layman to marry a divorced woman.

remarriage, this practice was not the intention of God from the beginning. "For I hate divorce, says the Lord God of Israel."⁸⁴

The New Testament Teaching on
Divorce and Remarriage⁸⁵

An awareness of the nature of the cultural milieu to which Jesus addresses His words is necessary for an understanding of the proper context of His teaching on divorce and remarriage.⁸⁶ Jesus was speaking to a predominately male-dominated culture in which the woman had little or no rights.⁸⁷ Thus, it was taken for granted by the Jewish men that they had every right according to the Law of Moses to divorce their wives even for trivial causes. The assumption of the Pharisees presupposed that there were actually "grounds" for divorce based on the teaching of Moses.⁸⁸ Consequently their questions addressed to Jesus attempted

⁸⁴Malachi 2:16.

⁸⁵In approaching the teaching of Jesus on this subject this study will confine itself to four passages: Matt. 5:31, 32; Matt. 19:3-12; Mark 10:2-12; Luke 16:18. It is not the purpose of this thesis to determine which passage may or may not be the original words of Jesus or to deal with other related synoptic problems.

⁸⁶H. G. Coiner, "Divorce and Remarriage," Concordia Theological Monthly, XXXIV (Sept. 1963), 545.

⁸⁷Cf. supra, pp. 82-83.

⁸⁸Matt. 19:3; Mark 10:2.

to entangle Him in the current rabbinic debate between the schools of Hillel and Shammai.⁸⁹ Jesus skillfully countered their question in true rabbinic dialectical style by bringing the earlier teaching of Moses to bear upon the situation, namely the will of God from creation.⁹⁰

It is very important to note that at this point Jesus takes the discussion out of the realm of divorce and remarriage and focuses on the purposes of God for the estate of marriage.

He answered, "Have you not read that he who made them from the beginning made them male and female, and said, 'For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one'? So they are no longer two but one. What therefore God has joined together, let no man put asunder."⁹¹

The question Jesus really answered was regarding the institution of marriage, calling to their attention the ultimate significance of marriage, in terms of which divorce was really inconceivable. Marriage is to be a permanent, life-long relationship between one man and one woman. The flat statement and direct implication of Jesus' teaching allow no place for divorce, according to God's plan for the

⁸⁹This has not been proved conclusively to be the setting of the incident but is very likely, as the debate was in session at his time. Kirsopp Lake, "The Earliest Christian Teaching on Divorce," The Expositor, Series 8, X (1916), 421, suggests that this was the guess of a redactor.

⁹⁰T. V. Fleming, "Christ and Divorce," Theological Studies, XXIV (March 1963), 107, 108.

⁹¹Matt. 19:4-6.

marriage relationship.

They said to him, "Why then did Moses command one to give a certificate of divorce, and to put her away?" He said to them, "For your hardness of heart Moses allowed you to divorce your wives, but from the beginning it was not so."⁹²

In the above passage it is important to notice that the Pharisees regarded the teaching of Moses as a command; Jesus corrected this presumption by saying that the action of divorce was a concession on the part of God *πρὸς τὴν σκληροκαρδίαν ὑμῶν* (out of regard to the hardness of your hearts).⁹³ Divorce was allowed by God as an accommodation to man to curb the present insensitivity of the Jewish men to the call of God and the vulnerability of women. In most ancient societies the wife could be sent away at the whim of the husband without any kind of thought for her future or her as a person. It is this kind of lovelessness and "hardness of heart" that made the divorce concession necessary in the Jewish society. Therefore, it becomes obvious that the lack of divine love and faith are responsible for this concession which allowed and contributed to the dissolution of the marriage relationship. Consequently, the "bill of

⁹²Matt. 19:7-8.

⁹³The Pharisees alleged that Moses commanded (*ἐνετείλατο*) the divorce action. Jesus does not endorse this insinuation but says that Moses allowed or permitted (*ἐπέτρεψε*) divorce in the sense that he suffered or allowed it, but by no means does divorce have the approval and sanction of God.

divorcement"⁹⁴ did not abrogate the divine institution of marriage or even suspend it; rather, the allowing of the divorce action was a direct concession to a perverse condition created by the stubbornness of the Jewish people.

The Words of Jesus do not label all "putting away" as adultery;⁹⁵ the obvious exception is for the cause of πορνεία.⁹⁶ The object of adultery is the woman; according to Jewish thought she was the one considered adulterated.⁹⁷ The meaning of Jesus' teaching is then that the husband does not adulterate the wife by putting her away when she has already been adulterated by porneia. Therefore, whoever puts away his wife causes her to be adulterated, unless she has been previously adulterated.⁹⁸

One of the important concerns arising from this passage

⁹⁴Regarding the "bill of divorcement" cf. supra, p. 82.

⁹⁵A free translation of Matt. 5:32 reads: Whoever divorces (ἀπολύσῃ, literally, "puts her out of the house") his wife, saving for the cause of fornication, adulterates her (μοιχευθήναι, "makes her to commit adultery; causes her to be adulterated; adulterates her"); and whoever shall marry her that is divorced becomes adulterated (μοιχάται - if middle in active sense would mean "adulterates her"; if passive, "is adulterated." Either use of the verb gives the proper meaning).

⁹⁶Πορνεία hereafter will be designated porneia.

⁹⁷In Jewish law adultery was the intercourse of a married woman with any man other than her husband. For a detailed account of the Jewish understanding of adultery cf. I. Abrahams, "Adultery, Jewish," Encyclopaedia of Religion and Ethics, edited by James Hastings (Edinburgh: T. and T. Clark, n.d.), I, 130.

⁹⁸Coiner, p. 546.

is the meaning of the term porneia.

With the parenthetical exception in Matthew 5:32 the writer wants to tell his Jewish Christian readers this: When a man dismisses his wife--except for the reason of conjugal infidelity, in which case he would be compelled to do so by prevailing regulations--he forces her in the event of her remarriage into an adulterous relationship. The same thought is found in a different form in Matthew 19:19, πορνεία is to be understood in both passages as meaning extra-marital sexual relations performed by a woman, which is actually adultery. The sense of the parenthetical exception, then, is not to give the Christian husband the right to a divorce in the case of unfaithfulness on the part of his wife, but that the husband shall be free of all blame when a legally unavoidable separation takes place because the wife has made the continuation of the marriage impossible through her conduct.⁹⁹

The basic meaning or connotation of porneia suggests prostitution, not a one-time act, but a continuous unchastity or promiscuous sexual life.

Another concern is that the word porneia comes where one would expect the term moicheia.¹⁰⁰ The answer given by most scholars is that porneia is the more inclusive term and includes the meaning of moicheia. In the Septuagint moicheia is sometimes spoken of as porneia.¹⁰¹

Especially noteworthy is the fact that the "except clauses" occur only in the two Matthean passages and not in

⁹⁹Coiner cites this translation of a word study of porneia (in Kittel's Theologisches Worterbuch zum Neuen Testament, IV, 591, 592), p. 546.

¹⁰⁰For a further discussion of these terms and the "except clauses" see F. H. Colson, "The Divorce Exception in St. Matthew," The Expositor, XI (June 1916), 438-446.

¹⁰¹Amos 7:17; Hosea 2:5; Sirach 23:23.

the parallel passages in Mark and Luke. Many theories about this have arisen; however, it is an injustice to overlook consulting the "except clause" in the light of what the Jewish men were doing.¹⁰² Also, the issue cannot be side-stepped by a preoccupation with the study of the textual variants for the "except clauses" in Matthew. Whether we insist that these clauses were a part of Jesus Logia¹⁰³ or interpolations¹⁰⁴ is not the crucial issue. In fact, in the case of Caverno and Filson, they arrive at the same conclusion despite opposite views concerning the origin of the clauses--for both adultery is a valid reason for divorce. On the other hand, it is equally interesting that McNeile¹⁰⁵ who sees these clauses as early additions of

¹⁰²Four of the main theories regarding the "except clause" are: 1) The Matthean account gives the original words of Jesus and the clause was omitted by Mark and Luke because it was unintelligible to their readers; 2) Interpolation: The text of Mark gives the original words of Jesus and the early church found it necessary to make such a concession to the Jewish men who were used to the law of Moses; 3) Excluding: because adultery was already punishable by death according to the law (Deut. 22:22), Jesus was excluding this possibility; 4) Explanatory: The "except clause" explains to the Jewish husband that outside of cases where the woman because of adultery would be put away by the prevailing regulation, the husbands are adulterating wives by putting them away for trivial reasons. The exact meaning of the "except clause" will always be disputed.

¹⁰³C. Caverno, International Standard Bible Encyclopedia (Chicago: Howard-Severance Co., 1915), p. 865.

¹⁰⁴Floyd V. Filson, A Commentary on the Gospel According to St. Matthew (London: Adam & Charles Black, 1960), p. 87.

¹⁰⁵Alan Hugh McNeile, The Gospel According to St. Matthew (London: Macmillan & Co. Ltd., 1957), p. 66.

the church, and Schniewind¹⁰⁶ who does not, both arrive at the conclusion that there is no valid reason for divorce.

Another concern is whether the except clause extends to the remarriage as well as to the putting away. There is no question that the clause applies to the *ἡ ἀπολύσις* ; rather, the question is: does the exception by way of right or liberty extend to the remarriage of the divorcing husband, as well as to the putting away? On this point the Church is sharply divided.¹⁰⁷ The difficulty here is to restrict the except clause to the putting away and not extend it to the remarrying.

The teaching of Jesus clearly allows no exceptions in its rejection of divorce.¹⁰⁸ It conveys the same message as the Matthew passages with the added alternative that a wife may divorce her husband. The basic thrust of the Matthean passages is that of the Gospels of Mark and Luke as the "except clause" does not really vitiate the radicality

¹⁰⁶Julius Schniewind, Das Evangelium nach Matthaeus (Gottingen: Vandenhoeck & Ruprecht, 1964), p. 64.

¹⁰⁷1) There are those (Roman Catholic and Anglican) who claim that these passages give the "innocent" husband the right to put away the wife who has committed adultery, yet this does not warrant the dissolution of the marriage bond and allow the remarriage of the guiltless spouse. In other words, separation from bed and board. 2) The other view is the general Protestant one that accepts adultery as dissolving the marriage and provides basis for remarriage.

¹⁰⁸Mark 10:2-12.

of Jesus' teaching. In this passage Jesus cites the absolute ethic and uncompromising demand the Kingdom of God can make upon anyone who would respond to it.

Every one who divorces his wife and marries another commits adultery, and he who marries a woman divorced from her husband commits adultery.¹⁰⁹

In the context of this passage Jesus castigates the Pharisees because they endeavored to justify themselves before men.

While the opinio legis of the human heart searches for concessions from the law, the law concedes to no one. There are no loopholes. Anyone who contributes toward the confirmation of a broken marriage in such a way as to make reconciliation between the original partners impossible, commits adultery.

At first glance this passage in the Gospel According to St. Luke would suggest that whoever marries him or her that is divorced is guilty of adultery.¹¹⁰ However, on closer observation, it becomes apparent that the text allows two meanings.¹¹¹ In either case, the total action of divorce is

¹⁰⁹Luke 16:18. Some scholars have regarded this passage as being the oldest and most Jewish form of Jesus teaching on divorce. Cf. Sherman E. Johnson, The Gospel According to St. Mark (London: Adam and Charles Black, 1960), p. 171.

¹¹⁰John M. Creed, The Gospel According to St. Luke (London: Macmillan and Co., Ltd., 1960), p. 208.

¹¹¹The phrase "a woman divorced from her husband" allows two meanings. The perfect participle ἀπολελυμένην can be read either as middle or passive voice. The middle voice indicates the woman who initiated her status as divorcee

wrong. The man who divorces his wife and marries another, while he is, in fact, husband to his first wife, commits adultery. The man who marries a woman (middle participle verb describing the woman as one who has either left or divorced her husband) commits adultery, for she is really the wife of her first husband.

In so doing Jesus takes away the lordship rights of the husband to divorce his wife and utters a categorical rejection of divorce as the absolute ethic for marriage; thus, the whole question is taken out of a legal category and placed into the realm of conscience. Therefore, no man by divorcing his wife can claim that he is doing the will of God; rather, he must admit that in yielding to the impulse to divorce his wife one is falling short in living up to the expectations that God places on him.¹¹²

To be sure, Jesus acknowledged the concession of God to man in certain instances at the time of Moses because man lacked the love and trust necessary to continue a marriage union. But He made it quite clear that however legal a divorce might be, in every instance, it was a breaking of God's will for marriage. Consequently, Jesus' approach to

(Roman law allowed such), and the passive voice indicates she suffered a divorce (Jewish law allowed only the husband to procure a court decree, although this does not preclude the woman's initiative).

¹¹²G. H. Hoffman, "Reflections on Divorce and Remarriage," Lutheran Quarterly, IX (May 1957), 132.

the question of divorce and remarriage though based on the Old Testament was revolutionary to Jewish life. Through the coming of the Kingdom of God and the power of the Holy Spirit the standards are no longer to be found in the legal context of the Old Testament but are the absolute standards to which the transforming love of God is capable of perfecting human relations. What may be lawful is not necessarily good, for the standard of goodness must be made perfect by the love of God within us.¹¹³

Thus the teaching of the Gospels is not so much a detailed guidance for conduct as a disclosure of the absolute standards that are relevant when the Kingdom of God is upon man. Jesus is not saying, "This is what in every and any circumstance you must do." Rather, He is saying, "This is the kind of thing which at any moment, if you are open to the absolute and unconditional will of God, the measure of love can demand of you."

Jesus is not laying down another set of legal conditions within which a marriage may be terminated. He is confronting man with the ultimate significance of the marriage relationship as it exists according to God's creative and redemptive purposes, in terms of which divorce is really inconceivable. The question of divorce can only be raised where the union of man and wife has already been destroyed beyond all repair.

¹¹³Otto Piper, "Divorce and Protestant Theology," Pulpit Digest, XXXII (July 1952), 13.

The central passage of St. Paul that is construed as permitting divorce is:

To the rest I say, not the Lord, that if any brother has a wife who is an unbeliever, and she consents to live with him, he should not divorce her. If any woman has a husband who is an unbeliever, and he consents to live with her, she should not divorce him. For the unbelieving husband is consecrated through his wife, and the unbelieving wife is consecrated through her husband. Otherwise, your children would be unclean, but as it is they are holy. But if the unbelieving partner desires to separate, let it be so; in such a case the brother or sister is not bound. For God has called us to peace.¹¹⁴

In the light of the context of these verses which speak of St. Paul's concern for peace, mutual love and forgiveness among the members of the Body of Christ, it would be an injustice to maintain that the Apostle is outlining a legal formulation to follow during possible divorce action involving what is frequently termed "malicious desertion." St. Paul is speaking to an existential situation in Corinth involving the intermarriage of pagans and Christians.¹¹⁵ He is careful to maintain and preserve both the unity and sanctity of marriage and points out that a believing spouse is to remain with an unbelieving spouse under the most trying circumstances that can result from unbelief. However, if

¹¹⁴1 Cor. 7:12-15.

¹¹⁵G. Robertson and A. Plummer, editors, "First Epistle of St. Paul to the Corinthians," The International Critical Commentary (Second edition; Edinburgh: T. and T. Clark, 1911), p. 143. Cf. also Jean Héring, The First Epistle of Saint Paul to the Corinthians, trans. by A. W. Heathcote and P. J. Allcock (London: The Epwaith Press, 1962), p. 52.

the unbelieving spouse decides to separate, the Christian spouse can only in such an instance suffer or allow the marriage break. Here St. Paul was only being practical, for it would be difficult to convince a non-Christian with the current secular attitude of the day that divorce was a sin committed against the will of God. Thus, the teaching of St. Paul furnishes the second possible situation where sin can flout God's ordinance and break a marriage relationship.

Whether the deserted party (Christian spouse) has the right of marriage is highly questionable because St. Paul does not explicitly state this right. Promulgators of the right of remarriage on the basis of the "Pauline privilege" argue that desertion frees one from the bonds of marriage, as does death. The deserted spouse is "not bound like a slave" (*ὁὐ δεδούλωται*) in this matter and has the remarriage liberty of a widow.¹¹⁶

Speaking about the remarriage of widows it is necessary to point out that St. Paul advises young widows, lest they fall prey to the temptations of Satan, to remarry; thereby,

¹¹⁶This type of exegesis is shaky on two accounts:
 (1) It is difficult to assert that desertion frees like death does, for desertion does not necessarily terminate all possibility of reconciliation. Furthermore, the clear injunction of St. Paul in 1 Cor. 7:11 maintains that the separated spouse does not contract another marriage.
 (2) To link the phrase "not bound like a slave" with the "being free" of 1 Cor. 7:39 involves an exegetical leap of twenty-four verses. Cf. White, p. 116, and Coiner, p. 548.

he indicates that the early church did not regard remarriage as sinful in itself.¹¹⁷ However, St. Paul's eschatological understanding of an imminent Second Coming caused him also to suggest rather strongly that it would be better if widows did not remarry but remain single to be better prepared for the Lord's Coming.¹¹⁸ If any remarriage was to take place, it was to be to a Christian spouse.¹¹⁹

Thus the teaching of Jesus and St. Paul makes a strong case against a marriage break for any reason, except where the lack of love and faith make the marriage relationship impossible to maintain.¹²⁰ The ideal emphasized in the New Testament is that marriage should be terminated only by death.¹²¹ Consequently, remarriage should not take place where there exists any possibility of reconciliation with the former spouse.

Decisions to be Made on the Basis of New Testament Teaching on Divorce and Remarriage

Question one: Does Jesus grant to the innocent or injured party, whether husband or wife, the right to put

¹¹⁷1 Tim. 5:11-14.

¹¹⁸White, p. 120.

¹¹⁹1 Cor. 7:39.

¹²⁰Coiner, p. 548.

¹²¹Rom. 7:2,3.

away his spouse, that is, to dissolve the union by procuring a legal divorce and subsequently, if so minded, to marry another person, without damage to his status in God's kingdom, provided he or she is not guilty of that sin?

It is the finding of this study that the above two passages do not speak of a "right" to put away a spouse.¹²² Jesus is not functioning as a lawgiver prescribing and laying down principles for outward conduct or the terms by which marriage can be dissolved; rather, He is instructing the consciences of men who have defended the practice of disposing of wives and who are wickedly and capriciously using the Old Testament concession,¹²³ and have lost the vision of God's purposes for the marriage relationship. It is not a question of the guilt of one person or another, but a question of recognizing the ultimate significance of marriage which requires unbroken love and faithfulness and precludes any divorce action.¹²⁴

The question of divorce can only be raised where the union of man and wife has been destroyed by sin and is beyond repair. But to allow a "right" of a spouse to initiate an action of divorce and remarriage without affecting his

¹²²Notwithstanding Laetsch p. 130; Sohn, p. 7.

¹²³Filson, p. 87.

¹²⁴Bonhoeffer points out that it would be difficult to interpret the preceding verses (Matt. 5:27-31) if such were not the intended purposes of Jesus. Dietrich Bonhoeffer, The Cost of Discipleship (New York: The Macmillan Company Ltd., 1959), pp. 119-121.

position in the Kingdom of God not only refutes the need to measure up to the condition of divine love, but it also denies the clear testimony of Scripture.¹²⁵

Jesus rebuked the Pharisees for living by what the law allows and does not allow and this is what the "innocent" party would, in effect, be doing.¹²⁶ While the law may allow a situation for divorce the action of a Christian spouse is to exceed that of the scribes and Pharisees and be directed in obedience to the will of God for marriage by the measure of the transforming love of God within him.

✓ Question two: Do the "except clauses" allow for divorce on the basis of adultery?

Because the clause "except for porneia" presents a difficulty in the understanding of the meaning of Jesus' teaching, it thus becomes hazardous to derive a teaching on the basis of this clause alone.¹²⁷ When the overall teaching of the Bible is taken in consideration the conclusion reached can be no other than that Scripture is definitely against divorce.¹²⁸ Another point worthy of consideration is that the meaning of porneia is promiscuous activity (a time after

¹²⁵Mark 10:11; Luke 16:18.

¹²⁶Coiner, p. 547.

¹²⁷Supra, p. 88.

¹²⁸J. C. Wynn, editor, Sex, Family and Society (New York: Association Press, 1966), p. 147.

time occurrence);¹²⁹ on this basis, the single occurrence of adultery on the part of a spouse does not really fit the meaning of the term. When the adulterous activity becomes so frequent that there is no longer any love or basis of operation for that couple in the marriage relationship then this clause in Matthew could apply. A final point is that every action that is labeled adulterous does not receive the same retribution on the human level.¹³⁰

✓ Question three: Is the man who marries a divorced woman guilty of adultery?

If the woman was the cause of her divorce (one who left or divorced her husband) the man who marries her is guilty of adultery (because she is to be considered the wife of her former husband unless he has remarried).¹³¹ The man who marries a divorced woman assumes with her the sin implicit in the divorce action; however, such sharing does not necessarily repudiate the marriage.¹³²

Question four: Are there circumstances in which a person who has wilfully broken a marriage may remarry a third party?

Scripture asserts that those who are separated are to

¹²⁹Supra, p. 88.

¹³⁰Cf. Matt. 5:27.

¹³¹Creed, p. 208.

¹³²Supra, p. 91.

remain single or be reconciled.¹³³ If reconciliation is impossible because the former spouse is remarried or dead, and if this person cannot remain single because of the temptation to sin, it is better to marry.¹³⁴ Further details regarding this question will be discussed in Chapter IV.

✓ Question five: Does the deserted party have the right to secure a legal divorce?

The believing partner is never to make an attempt at securing a divorce. He has no right to initiate any divorce proceedings but is to make every attempt to continue the marriage relationship.¹³⁵ If the unbelieving spouse separates, then, the believing spouse is said to allow or suffer a divorce action, but the believing spouse has no right to secure a divorce.¹³⁶ When St. Paul describes the divorce action he is not at all speaking in terms of a "right," but he is describing a necessity that has arisen because of unbelief.

Question six: ✓ Does St. Paul allow for the remarriage of the deserted spouse?

St. Paul clearly states that the separated spouse is to remain single or be reconciled but not contract another

¹³³1 Cor. 7:11.

¹³⁴1 Cor. 7:9.

¹³⁵Hering, p. 53.

¹³⁶Ibid., p. 52.

marriage.¹³⁷ An allowance for remarriage is not specifically stated by St. Paul, and this freedom cannot be substantiated by valid exegesis. To conclude that remarriage is allowable is to go beyond the clearly stated words of the text.¹³⁸

Question seven: Does St. Paul's teaching apply in a desertion action between two Christian spouses?¹³⁹

St. Paul is speaking to a pastoral situation in Corinth in which there are marriages between pagans and Christians and his word is for that situation. It would be an injustice and an exegetical violation to apply this passage as "grounds for divorce" in a situation between two Christians.¹⁴⁰

St. Paul's concern is for the sanctity of marriage, not to delineate procedure for a divorce action. It becomes questionable usage to base a theological position or practice on a passage not speaking directly to the issue at hand.

Indissolubility of Marriage

On the basis of the Scriptural teaching on marriage the question regarding the indissolubility of marriage arises. The question here is not whether marriage ought to be broken; rather, can marriage be broken or dissolved?¹⁴¹ In

¹³⁷1 Cor. 7:11.

¹³⁸Supra, p. 95.

¹³⁹Sohn, p. 19, considers the application valid.

¹⁴⁰Héring, p. 58.

¹⁴¹Bailey, p. 77.

addressing this question the first thing that should be stated is that the marriage estate was instituted by God as a temporal relationship for this life only, for it is clearly taught in Scripture that death dissolves marriage.

God's will for marriage appears at creation ("What therefore God . . .") in that marriage was not to be dissolved by human contrivances. This is the absolute ethic and high ideal that Jesus sets before those who belong to the Kingdom of God. In approaching the question of indissolubility of marriage it becomes important to understand just what makes marriage indissoluble. The primary reason given is based on the fact that a Holy God designed this institution, and indissolubility has been affirmed as a corollary of its sanctity.¹⁴² This position could never allow the sanctity to be violated through dissolution of the marriage relationship.¹⁴³

Another way of looking at indissolubility as a corollary of sanctity is that the marriage estate has to be kept sacred. This involves the continual redeeming action of God's love within marriage, and by which He keeps the marriage relationship holy and permanent when this measure of perfecting love is called upon.¹⁴⁴ This raises the

¹⁴²H. H. Pauly, "Divorce and the Sanctity of Marriage," Christianity and Crisis, XVI (March 5, 1956), 19.

¹⁴³This is the Roman Catholic and the Anglican position.

¹⁴⁴Cf. Wynn, Pastoral Ministry to Families, p. 131.

interesting question of whether indissolubility is the same as permanence in marriage.

It is difficult to equate the permanence of the estate of marriage since the "Fall" with indissolubility, as understood in terms of an inherent and metaphysical sanctity given at the pronouncement of man and wife. However, marriage can be considered permanent in the sense of a lifelong relationship of a man and a woman supported by the activity of God within that marriage and His offering whatever permanence that marriage is to have.¹⁴⁵ This permanence of a continuing relationship may aspire to the ideal of the absolute ethic that does not allow for separation.

The above presents a basis for a subsequent question, is man actually able to dissolve the institution of marriage? A hypothetical way of stating this question would be, does God recognize the sinful action of divorce as actually terminating or dissolving a marriage relationship? Immediately, it becomes apparent that this question has overtones for remarriage.

The fact of the imperative suggests that man must pose a threat to the dissolution of marriage.¹⁴⁶ From another point of view it can be considered that God establishes and maintains the institution of marriage and it is man who fails

¹⁴⁵Ibid.

¹⁴⁶Matt. 19:6. Note the imperative.

to accept God's will for the institution. While the ideal for the marriage estate is that there be no breaking of the union, people in marriage may not possess the necessary will nor the constitutive elements which will keep the relationship intact. In cases where marriages are not maintained, God accepts the legal binding and loosing in marriage as being operative and valid on the level of man's existence in a sinful state.

✓What may be said about the fact that Christian marriages are broken? ✓The reality of the situation in this world is that marriages do break even among Christians. The underlying reason for marriage break is the fact of sin.¹⁴⁷ The Scriptures are most emphatic in asserting that every area of man's life is "altogether sinful" and in need of God's forgiving love. Just as there are sinful men, so also there are only sinful marriages. If man were always able without the limitation of sin to accept marriage as it exists in the purposes and will of God, utilizing in faith the daily resources that God provides in His agape in the exercising of love and forgiveness, there would be no marriage breaks.¹⁴⁸ However, where the constitutive elements of a Christian marriage are absent, in that there is neither the love of God that perfects and transforms human love nor

¹⁴⁷H. Haas, Marriage (Philadelphia: Muhlenberg Press, 1960), p. 37.

¹⁴⁸Ibid.

the faith which trusts in full confidence the activity of God, marriages die or end in separation. In upholding the ideal ethic of God for the marriage relationship, the Church must condemn divorce per se; yet at the same time it also behooves the Church to exercise love and have a genuine understanding of the real situation involving marital difficulties and to deal with these in a pastoral and evangelical way.

Entering the discussion at this point is the question whether divorce is considered the cause or result of the marriage break. While divorce could be a cause of the marriage break, most divorces are a result or manifestation of marriage relationships which have previously been broken or died out.¹⁴⁹ Certainly, the New Testament does not cite two sin-free bases for the termination of a marriage but rather emphasizes the necessity of preserving the union.

In any event, when a divorce situation arises the Christian spouse must face the decision and tension involved in choosing the ideal of preserving the marriage or the reality of a broken relationship. In a certain situation a believing spouse, after he has done everything in his power to prevent a marriage break but to no avail, will submit to a separation because of the impossibility of continuing the union. For instance, when the unbelief of the other party

¹⁴⁹Wynn, Sex, Family and Society, p. 158.

passively negates the building of the marriage or actively works to hinder the welfare of the family, the possibility of separation becomes a necessary option.

A final possibility not to be overlooked in the light of an impending marriage break is that of a limited separation. Although separation is not an explicit biblical teaching, it employs the benefit of Scriptural teaching in certain senses.¹⁵⁰ The period of separation could afford the partners an opportunity to view themselves and each other in a little different light and would afford a time of re-assessment and decision regarding whether the marriage relationship can be continued.

¹⁵⁰For example, 1 Cor. 7:5.

CHAPTER IV

TOWARD PASTORAL PRACTICE IN REMARRIAGE

The Constitutive Elements of a Christian Marriage as a Basis for Reconciliation

When faith and love are present and operative in one or both parties, even on a weak level, there is hope that the marriage relationship can be revived and made to flourish. The ideal may not be a reality, yet under God the elements are present which promise that the marriage will grow stronger. An application of the constitutive nature of a Christian marriage is suggested in the following four principles.

Law-Gospel principle: Pastors should exercise a Law-Gospel approach rather than a mechanistic-legalistic approach. In question form, the principle asks, does pastoral practice center on a code or mechanistic procedure or does the pastor operate with the Law-Gospel principle?

The church has for centuries operated on a somewhat legal principle in its approach to marital difficulties. The result was that this type of action (legalistic solution) clouded a deeper understanding of the meaning of marriage relationship revealed by Jesus.¹ Ironically enough,

¹Otto Piper, "Divorce and Protestant Theology," Pulpit Digest, XXXII (July 1952), 15.

a legalistic view has actually encouraged or forced people to commit adultery for the sake of getting "a legitimate grounds" for divorce; thus, sin and the law were made the measure of freedom rather than judgment and mercy. In such instances the legal action encouraged instead of restrained sin.² In matters of marriage it appears that God is more merciful than the church. If man can but discover the mercy of God he would have a defense against moral laxity better than what could be provided by any legalistic code.³ Luther maintained that the Christian can only begin to understand God's will when he distinguishes between what God demands (Law) and what He promises (Gospel).⁴ The discovery of the Law-Gospel principle became the breakthrough for Luther in understanding the tension of the ideal and the reality, as one lives under God.

Hitherto I lacked only a proper distinction between law and gospel. I considered both to be the same, and Christ to differ from Moses only in time and perfection. It was when I discovered the difference between the law and the gospel, that they are two separate things, that I broke through.⁵

²G. H. Hoffman, "Reflections on Divorce and Remarriage," Lutheran Quarterly, IX (Feb. 1957), 136.

³Emil Brunner, The Divine Imperative (Philadelphia: The Westminster Press, 1947), p. 354.

⁴W. H. Lazareth, Luther on the Christian Home (Philadelphia: Muhlenberg Press, 1960), p. 81.

⁵Martin Luther, Werke; Kritische Gesamtausgabe. Tischreden, V (Weimar: Hermann Böhlau, 1919), par. 5553. Quoted by Lazareth, p. 81.

The Law-Gospel principle brings the Word of God to bear upon the situation so that the couple can come to a real understanding where they are standing in life over against the judgment and mercy of God.

This principle is opposed to all unevangelical ethics or regulations; rather it portrays the Scriptural pattern of a life of faith active in love. Law and Gospel preserve the freedom for a believer to discover anew what the will of God requires of him in each concrete situation.⁶

Principle of forgiveness: Christian forgiveness stems from the agape of God and is received by faith, as one experiences the forgiveness of God in Christ Jesus. God's forgiveness is not merely a cessation of His judgment, but an act of God's grace by which reunion takes place.⁷ For Luther the doctrine of forgiveness of sins and weaknesses was the most important of all, for it affects us personally and our relationship to others. As Christ bears with us and continually forgives us all sorts of faults, we also are to bear and forgive one another in every situation and in every way.⁸ While failure in marriage is a sin, Christian love "bears all things, believes all things, hopes all things,

⁶Lazareth, p. 100.

⁷Supra, p. 46.

⁸Martin Luther, Works, edited by Jaroslav Pelikan and Helmut Lehman (American Edition; Philadelphia and St. Louis: Muhlenberg Press and Concordia Publishing House, 1959), XXI, 98. Hereafter this edition will be referred to as LW.

endures all things."⁹ The power of God's love shapes forgiveness and the principle of forgiving involves that action of the spouses to seek genuine reconciliation and reunion, to accept the negative side of the partner, to risk possible and persistent failure, and to forgive unconditionally.¹⁰ Forgiveness not only heals rifts, but it also exerts a wholesome influence on the one who forgives.¹¹ Love that once was destroyed between husband and wife can never be revived; rather, a new love born out of penitence and forgiveness is formed.¹²

Luther maintained that where there was genuine repentance and a desire for improvement that is exercised in forgiveness and Christian love a miracle would take place unknown to those who think in terms of law.¹³ For the last word in Christian faith is not human perfection but divine forgiveness.¹⁴

Principle of unjust suffering: Unjust suffering is closely related to forgiveness. This principle is tested

⁹1 Cor. 13:7-8.

¹⁰Ernest White, Marriage and the Bible (Nashville, Tennessee: Broadman Press, 1965), p. 85.

¹¹Otto Piper, The Biblical View of Sex and Marriage (New York: Charles Scribner's Sons, 1960), p. 221.

¹²D. S. Bailey, The Mystery of Love and Marriage (New York: Harper and Brothers Publishers, 1952), p. 82.

¹³Lazareth, p. 197.

¹⁴Ibid., p. 195.

out in an instance where according to "human logic" an injured spouse has a "right" to secure a divorce; however, the deciding factor is not the "right" but the measure of love for the spouse. Unjust suffering involves accepting the odium of the spouse's sin without self-pity or condition.¹⁵ However, the spouse must not feel that some type of meritorious work is being accomplished, rather that this is his Christian responsibility over against the other person. Such willingness to accept the consequences and share the pain of sin with the spouse manifests the inherent action of agape¹⁶ which holds the value and good of the other person in concern over and above any personal concern.

Principle of accepting the consequence and trusting God for the future: A corollary of the principles of forgiveness and unjust suffering is for a couple to accept and face the consequences of their marital difficulty and weaknesses, to decide to stand together, and to trust that God will lead them to rediscover His will under the guidance of His Spirit.¹⁷ This principle for Luther became the normative rule for marital difficulties and other social problems.¹⁸

¹⁵For a good exposition on this point cf. Gibson Winter, Love and Conflict (Garden City, New York: Doubleday and Co., Inc., 1958), p. 113.

¹⁶Ibid.

¹⁷Ibid., p. 110.

¹⁸Lazareth, p. 196.

Gibson Winter maintains that crisis situations are the turning points of the marriage relationship, for a crisis decision involves a risk which may have fatal consequences. If the risk is taken and a successful outcome occurs, the couple may move toward real union.¹⁹ If the risk cannot be faced, flight in various forms occurs which most often solves only the external problem. A pastor in judging the elements of love and faith, when even weakly operative in the marriage relationship, may counsel the couple to trust God for the future and accept the consequences of their marriage failure in an effort to discover and obey the will of God for marriage.

It becomes a necessity for every Christian pastor to capture the evangelical principle outlined above and to function in his office by the flexibility of the stance of Luther's ethics. For where the Law and Gospel are operative, where judgment and mercy are the fabric of life, where Christian forgiveness is exercised, there forbearance and acceptance are possible and the Christian marriage relationship can continue and grow.

Pastoral Considerations When Divorce Seems Imminent

To many people divorce seems to be the best solution to escape and relieve the complex problems that arise in

¹⁹Winter, p. 96.

marital difficulties. Consequently divorce is sometimes considered the lesser of two evils. When the continuation of a union between a man and a woman exposes a threat to their very existence, as they tear and destroy relationships that have mental and personality repercussions, there may come a time when a pastor may have to counsel for divorce.²⁰ A constant witnessing of parental dissent by the children works more serious damage than a divorce.²¹ It becomes a choice between maintaining the institution of marriage or considering the lives of the individuals.²² The question thus arises whether a pastor can affirm the permanency of marriage while allowing the possibility of a marriage break and possibly a subsequent remarriage.

It is the conclusion of this study that when faith and love are absent in both parties this reality must be faced and may determine the impossibility of building the marriage at all, "for the love from which alone it derived validity and meaning is dead; the marriage is an empty shell, wholly devoid of inner significance long before divorce reveals the true state of affairs."²³ For instance, when the unbelief of one party passively negates the building of the

²⁰Piper, The Biblical View of Sex and Marriage, p. 219.

²¹Ibid.

²²David R. Mace, "The Pastor and Divorce," Pastoral Psychology, IX (Sept. 1958), 10.

²³Bailey, p. 83. Cf. Winter, p. 88.

marriage or actively hinders the welfare of the family, the possibility of separation becomes a viable and maybe necessary option since "God has called us to peace."²⁴ The inability to "live in peace" may be expressed by open warfare or cold isolation of the two individuals in the same house. This can become no less a sin than separation or divorce.²⁵ It has to be recognized that all people cannot accept the necessary conditions which the married state imposes, or that they do not possess the necessary constitutive elements to build a marriage relationship; consequently it is better for all concerned that they do not stay married or remarry.²⁶

A pastor is always involved in a necessary tension of being a preacher of the ideals of Christ, on the one hand, and manifesting the pastoral tenderness of Jesus toward persons who have failed to measure up to His love.²⁷ As the pastor deals with a couple in a situation where one or both have decided that it is pointless to continue the marriage,

²⁴1 Cor. 7:15.

²⁵White, p. 113.

²⁶Matt. 19:12. "Divorced persons should give prayerful thought to discover if God's vocation for them is to remain unmarried, since one failure in this realm raises serious questions as to the rightness and wisdom of undertaking another union. Though bound by no law, the choice not to remarry may serve as the best witness of faith for the Christian involved in a marriage failure" R. R. Caemmerer, et al., The Pastor at Work (St. Louis: Concordia Publishing House, 1960), p. 191.

²⁷Wayne Oates, The Bible and Pastoral Care (Philadelphia: The Westminster Press, 1953), p. 137.

the pastor may have to evaluate whether the couple has the inability to work toward the God-intended purposes of marriage or has the unwillingness to comply. It can be that the focus of the couple may be on the solution to the extent that they omit the problem. However, divorce can well become the greater of two evils when all the considerations are assessed.²⁸

The permanence of marriage depends on the quality of the love that is shown between the spouses, and as this love is continually perfected by the power of God's agape.²⁹ By his teaching and example the pastor can affirm the necessity of the permanency of marriage, and in the allowing of divorce because of the negative conditions involved in a certain situation, he passes judgment on the consequence of staying together.

The question is posed, then, whether the purposes of God are served in keeping together outwardly that which inwardly has been severed. A situation can arise in which even Christians may find that divorce alone offers a release from the failure of marriage, for the living together for an outward façade for society only makes a caricature of the

²⁸H. G. Coiner, "Divorce and Remarriage," Concordia Theological Monthly, XXXIV (Sept. 1963), 550.

²⁹1 John 2. Cf. E. O. James, Marriage and Society (London: Hutchinsons' University Library, 1952), p. 201.

biblical concept of marriage.³⁰

Each situation must be judged on its own peculiar context, but always on the basis of the principle where the essential bond is broken and fidelity destroyed in its roots, there divorce may be allowed.³¹

When two wretched and sinful mortals enter marriage, such abuses may develop, according to Luther's view, that divorce is finally the only way out. Luther could condemn one divorce unequivocally and approve another just as unequivocally. Now a directive to release and liberate may be called for, then a directive to bind and hold may be just as necessary. Each case must be decided for itself; concessions may need to be made in order to meet the demands of love, to help an oppressed spouse, and to avoid greater evil.³²

However, only where a real moral necessity exists should a marriage break be viewed as a possibility,³³ and when all other possibilities of reconciliation and restoration prove ineffective.³⁴

The fact that a divorce has taken place does not exclude the possibility of a reconciliation taking place.

³⁰Otto Piper, The Christian Interpretation of Sex (New York: Charles Scribner's Sons, 1941), p. 205.

³¹Luther also considered whether or not divorce might be the most loving solution when the only other alternative in a given situation was a faithless and loveless marriage relationship that was just held together publicly by the compulsion of canon law but which was violated privately by unfaithfulness. Cf. Lazareth, p. 192.

³²O. Feucht, et al., Sex and the Church (St. Louis: Concordia Publishing House, 1960), p. 79.

³³Coiner, p. 551.

³⁴White, p. 112.

Many parties are inclined to consider divorce as finalizing the marriage break, but this is not necessarily the case.³⁵

Divorce must be seen as an action that involves community as well as individual concern and failure.³⁶ When marriage failure occurs among Christian people, the church should also recognize its involvement in the failure and seek to lead all concerned to repentance and reconciliation with God,³⁷ and the possible re-establishment of the union.³⁸ The severest critics are often fellow Christians some of whom condemn divorce whatever the circumstance and who fail to let their love extend sympathy and understanding. "The refusal to acknowledge the reality of human brokenness in marriage then excludes also the possibility of a redemptive ministry of Christ in marriage."³⁹ In this situation the Church must not become legalistic, but "lose itself" in the Gospel and learn from Jesus how He could forgive all sinners, draw them unto Himself, and point them to a higher ethic. The decisions of the church in matters of sin and human weakness depends on a course of action that will bring

³⁵Coiner, p. 551. Cf. Bailey, p. 82.

³⁶John C. Wynn, editor, Sex, Family and Society (New York: Association Press, 1966), p. 151.

³⁷1 Cor. 7:10,11; John 8:3-11.

³⁸Coiner, p. 550.

³⁹White, p. 113.

the sinner into a closer relationship to Christ and His reclaiming love.⁴⁰

Pastoral Considerations for Remarriage

The remarriage of divorced persons is to be approached with prayer and circumspection. If remarriage is ever contracted, it must be only when the first relationship excludes every possibility of restitution. When reconstruction of the former marriage(s) is an impossibility (1) because one of the parties has remarried; (2) because the causes which led to the break cannot be removed; (3) because one of the parties refuses all overtures at reconciliation, then the possibility of remarriage may be considered.⁴¹ Holy Scripture does not lay down an absolute law and binding against remarriage when the former marriage cannot be re-established.⁴² The whole approach of the pastor to the divorced who plan to remarry should be to look in the direction of the creative possibilities that such a remarriage may have for the future realization of a more wholesome and abundant life.⁴³

⁴⁰Hoffman, p. 138.

⁴¹Caemmerer, p. 190.

⁴²Ibid. Widows are permitted to remarry, 1 Cor. 7:39. Arguments for remarriage are based on 1 Cor. 7:9; otherwise a person may be subject to a greater life of sin.

⁴³Cf. 2 Cor. 3:5,6.

However, the spirit of the reclaiming love also dictates that caution be exercised by pastors concerned in remarriage situations. Recent studies indicate that remarriages are less stable than first marriages, and the possibility of divorce rises with each successive marriage.⁴⁴ However, the conclusion cannot be drawn that every second marriage will not be a good marriage.

We are not to assume that every case of remarriage will terminate as unfortunately as the first. The possibility of spiritual growth must be carefully weighed. The basic factor of Christian faith makes a new beginning possible in spite of the fact of a shattered past life. The Lord of the Church still speaks "Lo, I make all things new."⁴⁵

A major concern of this study is the legalistic approach made by many pastors as they consider the merits of divorced applicants for remarriage on the basis of "innocent" and "guilty" parties.⁴⁶ The pastor who follows this procedure loses sight of the Law-Gospel application of Scripture and acts on assumptions that are not verifiable.

Scripture does not support the "innocent" and "guilty" division. This division is an extension of the implication of the text;⁴⁷ furthermore, it was not the purpose of Jesus' teaching on divorce to set up a legal dichotomy--all divorce is sin. No person can really claim innocence in a divorce

⁴⁴Hoffman, p. 142.

⁴⁵Ibid., p. 141.

⁴⁶Supra, pp. 97-98.

⁴⁷Matt. 19:9; 1 Cor. 7:15.

action. The assumptions that innocence can be established or that there is a pure individualistic innocence within a marriage relationship is fallacious thinking.⁴⁸

The open sin may be complicated by the hidden sin. The woman who makes life unbearable by her crotchety, faultfinding attitude, or the man who leaves his wife starved for both attention and appreciation may help account for the infidelity of their partners, even if such circumstances do not excuse it.⁴⁹

Furthermore it can be established that neither Jesus nor Paul granted the right for second marriages whether to the "innocent" or to the "guilty."⁵⁰ No matter how "innocent" one party may appear in a divorce, the church must point out that being a party to a divorce is to participate in that which is essentially sinful and contrary to the will of God. The church must place emphasis upon the guilt of divorce and the sharing in it by all concerned rather than upon the legality and right of divorce, or the distinction between a so-called "guilty" and "innocent" party.

Thus, this study comes to the conclusion that remarriage for the divorced must be faced on the same plane as divorce itself. The ideal that Jesus extends for marriage would exclude any divorce or remarriage.⁵¹ However, divorce and

⁴⁸Wynn, p. 138.

⁴⁹W. E. Hulme, Pastoral Care of Families (New York: Abingdon Press, 1962), p. 81.

⁵⁰White, p. 118. Cf. supra, p. 101.

⁵¹White, p. 123.

remarriage must be considered both from the absolute will of God and the broken situation of humanity. Only God's grace bridges this gap.⁵²

The redemptive approach to life demands that the question of remarriage at least be left to those who find themselves in human brokenness. Jesus nowhere made divorce or remarriage the unpardonable sin, though admittedly either is less than his intention.⁵³

A rigid legalistic approach by pastors only demonstrates a lack of being able to convey the love of God to fallen man. While the church must condemn divorce per se, it must also have a sympathetic comprehension of the need of those people for whom divorce and remarriage is not a legal concept but a grim and practical necessity. The authority of the church is to be moral and not penal. Thus, in dealing with people who have become divorced, the question of the pastor or church should not be so much the legitimacy of the divorce, but the real question is the legitimacy of the remarriage in terms of God's purposes for this relationship.⁵⁴

Careful attention must be given to the question of whether those who have destroyed a marriage relationship are now capable of securing and utilizing those constitutive elements which were lacking in the first marriage. The pastor's concern should be based on the "marriage readiness"

⁵²Ibid., p. 94.

⁵³Ibid., p. 123.

⁵⁴Wynn, p. 148.

of the couple which involve the following considerations:⁵⁵

- a. That the divorced person accepts mutual guilt for the failure of the past marriage and portrays the need for repentance in order to gain pardon and forgiveness for his failure to preserve the former marriage;
- b. That the divorced person has made every possible overture at reconciling and restoring the former marriage and is turning to remarriage because there is no possibility of restituting the first marriage;⁵⁶
- c. That the divorced person review his responsibilities toward the children of the first marriage;
- d. That the divorced person has given careful thought to the possibilities of remaining single. All people cannot accept the necessary conditions which the marriage relationship requires or possess or be able to utilize the constitutive elements of love and faith essential to the building of a new marriage relationship.⁵⁷ Due to previous failure the serious question as to the rightness and wisdom of undertaking another union is raised;⁵⁸
- e. That the divorced person has an awareness of the Christian ideal for the marriage relationship and the gravity of sin when that ideal is carelessly ignored;⁵⁹
- f. That the divorced person shows a willing intention with the help of God to build a new marriage relationship by utilizing the constitutive elements of love and faith, as given by God for a permanent and mutually edifying relationship with his spouse, thereby affirming God's order for marriage and witnessing to the church and community;

⁵⁵Cf. Coiner, pp. 551-552.

⁵⁶Supra, p. 118.

⁵⁷Matt. 19:12.

⁵⁸Caemmerer, p. 191.

⁵⁹Hoffman, p. 142.

- g. That the divorced person has made a conscientious and personal effort to remove those factors or conditions which were more or less responsible for the marriage failure;
- h. That the divorced person mutually shares these goals and concerns with his prospective marriage partner.

If the Christian attitude toward marriage and the Christian way of life are not accepted, the Christian pastor should refuse to perform that marriage ceremony, in a last effort to highlight that, under present circumstances, a Christian marriage cannot be constituted by that couple. If the above considerations are in positive operation, then "the pastor can trust that he is dealing with repentant people seeking the grace and power of God."⁶⁰

In summary, the decision of the remarriage of divorced persons should not be based on a legal judgment on what a person has done, but rather on what this person now by the grace of God has become and by God's help honestly intends and hopes to affirm in the future. This intent should be the pastor's criteria for remarriage situations.

⁶⁰Coiner, p. 552. Cf. Caemmerer, p. 190.

CHAPTER V

SUMMARY AND CONCLUSIONS

The thesis of this paper established love and faith as the constitutive elements which accord a Christian marriage its nature. The presupposition of this paper is verified in that, if the elements of love and faith which most greatly contribute to the constitutive nature of a Christian marriage are lacking, insight into what causes marriage failure is gained. On the basis of this understanding the Christian pastor should endeavor to maintain evangelical practice in the area of divorce and remarriage. A definition of a Christian marriage is realized in the continuing and permanent relationship of one man and one woman which grows toward unity by their accepting in love and faith the purposes of God for their marriage and realizing the significance of their union in terms of their unity with God and with each other.

Throughout its history the Christian Church has attempted to uphold the absolute ethic of marriage over against the failure of man in this estate because of sin. What resulted, however, was that, on occasion, the authority of the church expressed itself in legalistic practice rather than in proffering an understanding of the brokenness of man and the creative possibilities made available through the redemptive act of Jesus Christ. It was Luther who returned to a more

biblical and evangelical approach to the problems of marriage, as he made the Word of God normative for Christians in every situation. The period of the post-Reformation and the direct heritage of the Lutheran Church--Missouri Synod did not fully capture Luther's evangelical spirit and practice.

The error in the past is that the church has tried to answer many of the problems of marriage logically and legally, rather than existentially and pastorally. While the ramifications of the problems in marriage admit no easy solution, a mechanical and legalistic application of Scripture obscures the overall teaching of Scripture regarding marriage and fosters a problematic and casuistic practice.

The teaching of Holy Scripture does not allow or speak of a right or sin-free basis for securing a legal divorce. Certainly, the Words of Jesus are not a legal code whereby certain sins of the marriage partner become a legal and rightful basis for initiating a marriage release. God nowhere sanctions the action of divorce. Rather, Jesus affirms in His teaching the ideal for the marriage relationship, according to His Father's creative design, that the estate of marriage be permanent. Attainment of this ideal is made possible by the agape of Christ for the church, appropriated through faith; this love is to characterize and be the measure of a husband's and wife's relationship to each other.

God's ideal for marriage is that this estate be indissoluble. However, indissolubility must not be considered in

terms of an inherent metaphysical sanctity within the marriage institution per se; otherwise, a distinction would have to be made between God-made and man-made marriages. Rather, sanctity is to be considered in terms of the continual redeeming activity of God's grace within the marriage relationship, the demonstration of which is permanence and the maintaining of God's order.

Because of the sinful condition and actions of men all human attempts of attaining the absolute ideal for marriage fall short. An obvious gap exists between the Christian ideal for marriage and the reality of the sinful and broken human condition, as revealed by marriage failure. This gap can only be bridged by God's grace. If a couple does not possess or utilize the constitutive elements of love and faith which give their relationship the nature and form of a Christian marriage, that marriage may break or die out because it is built on a mere human basis.

The divorce procedure cited in the Old Testament was a concession to the hardness of men's hearts (lack of love) and at the best a curbing of the insensitive manner by which men put away their wives. The two instances in the New Testament which are commonly referred to as "grounds for divorce" actually do not give a sin-free basis for the terminating of a marriage relationship, but they reveal that, when the lack of love and unbelief actively or passively negate the building of the marriage, the propriety of

divorce may become a grim necessity manifesting this failure.

While a marriage may continue in outward form after the constitutive elements are no longer present or operative, that relationship is no longer a Christian union in any sense of the term. What actually continues is nothing more than a façade or shell, and the legal dissolution of what has already been inwardly broken may be in the interest of greater temporal harmony and peace.

There is no absolute Scriptural directive against remarriage, if the former marriage cannot be re-established. However, the pastor will help the couple make every effort to restore the first marriage by bringing the full, evangelical thrust of God's Word to bear upon the situation. The couple should be encouraged to face the situation squarely, to trust God fully, and to accept the consequences that the future may bring. While divorce or separation may seem to be the lesser of two evils and the best solution, after the cost is counted divorce and its consequences may become the greater evil.

A Christian pastor can affirm the permanency of marriage in the face of a marriage break and subsequent remarriage. The fact that God's will is for the permanence of marriage does not exclude a marriage failure. For the sake of peace to which God has called us, the only recourse in certain instances may be that a marriage break is suffered or allowed because of unbelief which makes the relationship

irreconcilable or impossible of restoration. Where faith and love are not shared, the elements which maintain the marriage may not be present. Any subsequent remarriage of the parties to a marriage failure will be after repentance and faith are evident where unbelief once obtained. The pastor in dealing with persons who wish to remarry after being a party to a marriage failure, will affirm the ideal, order, and will of God for the married estate to that couple.

The pastor must keep in mind that, also in matters of divorce and remarriage, he is dealing with the ultimate purpose of the church. The sin of marriage failure is to be treated like all other sins by the reclaiming love of Christ. If by the use of legalistic and casuistic practice the pastor proceeds to disregard the condition of the weak and erring, this limitation of the activity of God's love as extended through him should be laid on his conscience. For instance, the eligibility for remarriage cannot be limited to an "innocent" party. First of all, instances of pure innocence are doubtful. Secondly, it is an unnatural extension of the New Testament texts to construe that they allow sin-free divorce action and remarriage. Thirdly, it may not be expedient for the "guilty" party to remain single. Obviously, any legalistic procedure does not capture the Law-Gospel approach of Christ's teaching. It remains for the pastor and the people involved to take seriously the marriage relationship and their commitment to God, and to discover

the creative and redemptive possibilities of God at work in a marriage relationship.

There are no easy answers to the problems of marriage in terms of pastoral care. The only solution lies in making the church and its pastors aware of procedures that affirm the will and purposes of God for the marriage relationship through His activity of grace which bridges the gap between the ideal and reality of marriage. Christian pastors need to become more effective teachers and heralds of the Gospel who deal with the lack of love and unbelief in an evangelical spirit of God's reclaiming love and stress the positive power of that love. The full dimension of the activity of God in His agape is unknown to man and so Christian marriage remains a "great mystery."

One of the prayers that concludes the marriage ceremony sums up much that is stated in this paper:

Almighty and most merciful God, who hast now united this Man and this Woman in the holy estate of Matrimony: Grant them grace to live therein according to thy holy Word; strengthen them in constant fidelity and true affection toward each other; sustain and defend them amidst all trials and temptations; and help them so to pass through this world in faith toward thee, in communion with thy holy Church, and in loving service one of the other, that they may enjoy forever thy heavenly benediction; through Jesus Christ, thy Son, our Lord, who liveth and reigneth with thee and the Holy Ghost, one God, world without end. Amen.¹

¹As quoted by Harold Haas, Marriage (Philadelphia: Muhlenberg Press, 1960), p. 56.

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