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Marriage and Remarriage of Divorced People

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MARRIAGE AND REMARRIAGE OF DIVORCED PEOPLE

**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
Bachelor of Divinity**

by

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June 1952

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CHAPTER I

INTRODUCTION

"Dearly Beloved: Forasmuch as you purpose to enter upon the holy estate of matrimony, which is to be held in honor by all, it becometh you to hear what the Word of God teacheth concerning it."¹ Thus begins the marriage ceremony in the Lutheran Church - Missouri Synod. "It becometh you to hear what the Word of God teacheth concerning it" might be a fit beginning for this thesis. Marriage, divorce, and remarriage shall constitute the three main chapters of this thesis.

No one will debate the fact that these topics touch the lives of all people who reach maturity; neither will anyone argue the point that many misunderstandings exist and much misinformation is disseminated on these subjects through the press, radio, movies, television, and even some churches. A study of these topics on the basis of God's Word is, therefore, very much in order. "It becometh you to hear what the Word of God teacheth concerning it."

¹The Pastor's Companion (St. Louis, Mo.: Concordia Publishing House), p. 17.

CHAPTER II

THE MARRIAGE ESTATE

The Estate of Matrimony is Essentially a Holy Estate

It was God who instituted marriage. Whatever God does is holy. After God had created the heavens and the earth and the many creatures therein and Adam was found without a spouse God said: "It is not good that man should be alone; I will make him a help meet for him." God forthwith caused a deep sleep to fall upon Adam, took one of his ribs and made a woman thereof, and brought her to Adam. And God blessed them and said: "Be fruitful and multiply, and replenish the earth and subdue it."¹ Thus it was God Himself who instituted marriage, and God never institutes anything which isn't sacred and holy.

That the Lord wanted this institution of marriage to continue and future men and women to become husbands and wives is evident from the words: "Therefore shall a man leave his father and his mother, and shall cleave unto his wife: and they shall be one flesh."² Jesus ascribed these words to God when He said to the Pharisees of His day:

¹Gen. 1 and 2.

²Gen. 2:24.

Have ye not read, that he which made them at the beginning made them male and female, and said, For this cause shall a man leave father and mother, and shall cleave to his wife; and they twain shall be one flesh? Wherefore they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder.³

Thus God said men and women shall continue to be united. And Jesus says it is God Himself who joins them together.

It is common knowledge that many acts are committed in marriage which are not holy. When the sexual relationship between husband and wife has degenerated to nothing more than a gratification of the lusts of the flesh at the expense of one or the other, this act cannot be called an holy act. Quoting Dr. Luther, Dr. Fritz writes:

Although even after the Fall the begetting of children is still a natural process, yet the devil's poison has been added thereunto, to wit, the evil lust of the flesh and shameful unchastity, from which arises much that is not good, but utterly sinful.⁴

Marriage is also being desecrated by wilfully frustrating one of the purposes of marriage when by means of anticonceptuals parents reject the blessing of children which they could otherwise have. "I will therefore that the younger women marry, bear children, guide the house, give none occasion to the adversary to speak reproachfully."⁵

When a husband neglects his wife or refuses to support her properly; when a wife neglects her household or usurps authority over her husband, these acts cannot be called holy.

³Matt. 19:4-6.

⁴John H. C. Fritz, Pastoral Theology (St. Louis, Mo.: Concordia Publishing House, 1932), p. 175.

⁵1 Timothy 5:14.

Wives submit yourselves unto your own husbands, as unto the Lord. For the husband is the head of the wife even as Christ is the head of the church..... Husbands love your wives even as Christ loved the church, and gave Himself for it.⁶

So there are other acts committed in the marriage estate which are not holy. Yet this does not change the fact that marriage is essentially a holy estate.

Although the Catholic Church elevates celibacy to a holier estate than matrimony,⁷ Scripture teaches: "Marriage is honourable in all, and the bed undefiled."⁸

The patriarchs and other men of God encouraged marriage. Abraham sent his servant some five hundred miles to find a wife for his son Isaac.⁹ Peter was a married man¹⁰ and he didn't put his wife away after he became a follower of the Lord. "Have we not power to lead about a sister, a wife, as well as other apostles, and as the brethren of the Lord, and Cephas."¹¹ St. Paul, who felt that it might be well to refrain from marriage during the severe trials of persecutions,¹² writes Timothy, "I will therefore that the younger women marry, bear children, guide the

⁶Eph. 5:22-25.

⁷F. Bente, Concordia Triglotta (St. Louis, Mo.: Concordia Publishing House, 1921), pp. 63, 83.

⁸Heb. 13:4.

⁹Gen. 24.

¹⁰Matt. 8:14.

¹¹1 Cor. 8:5.

¹²1 Cor. 7:26.

house."¹³ He also instructs Titus to appoint elders who are "husbands of one wife."¹⁴

It is significant that Jesus and His apostles attended a wedding in Cana of Galilee and that Jesus performed a miracle to aid this young couple.¹⁵ He must have been in sympathy with what they were doing. Jesus always spoke of the marriage estate as something holy and lofty,¹⁶ speaking of Himself as the bridegroom of the church,¹⁷ and of the church as his bride.¹⁸

Thus Scripture consistently speaks of marriage as a holy and lofty institution.

For that reason the Lutheran Church - Missouri Synod has always spoken highly of marriage. Dr. Fritz writes:

God instituted marriage, by which a home is established, not only for the being, but also for the well-being of society. The propagation of the human race is not the only purpose of marriage, but also man's comfort and happiness and well-being. Because marriage is a divine institution of such great importance, a Christian pastor should ... encourage all of marriageable age to marry.¹⁹

¹³₁ Tim. 5:14.

¹⁴ Titus 1:6.

¹⁵ John 2:9.

¹⁶ Matt. 19:5,6

¹⁷ Matt. 25:9.

¹⁸ Rev. 19:7.

¹⁹ Fritz, op. cit., p. 174.

Luther wrote: "The work of begetting children is a divine work, good and holy, for it came from God who has blessed it."²⁰ In the Apology of the Augsburg Confession, we read:

For Christ calls marriage a divine union, when He says, Matthew 19:6: What God hath joined together let not man put asunder. Here Christ says that married people are joined together by God.²¹ Accordingly, it is a pure, holy, noble, praiseworthy work of God.

The Large Catechism of Luther asserts:

He also wishes us to honor it, and to maintain and conduct it as a divine and blessed estate Married life is therefore no jest or presumption, but it is an excellent thing and a matter of divine seriousness.²²

Now I speak of this in order that the young may be so guided that they conceive a liking for the married estate, and know that it is a blessed estate and pleasing to God.²³

In the Concordia Cyclopedia we read:

The holiness of marriage, the sacredness of the marriage relationship, the fact that marriage is the normal state for the average adult, both from the social and from the hygienic standpoint, the fact that children are a gift from the Lord, the fact that the family is the fundamental unit of the nation: all of these truths must be kept before the Christian people of our country, lest the virus of antisocial and anti-Biblical poison enter their hearts and minds.²⁴

²⁰Ibid., p. 175.

²¹Bente, op. cit., p. 371.

²²Ibid., pp. 208, 639.

²³Ibid., pp. 217, 641.

²⁴L. Fuerbringer, Th. Engelder, and P. E. Kretzmann, Concordia Cyclopedia (St. Louis, Mo.: Concordia Publishing House, 1927), p. 440.

One Husband and One Wife

Scripture is unanimously in favor of one husband and one wife for the marriage estate. In the beginning God made Adam one wife because He knew that to be the ideal arrangement.²⁵ That God intended this arrangement to continue is clear from Adam's remark: "Therefore shall a man leave his father and his mother, and shall cleave unto his wife."²⁶ "A man", singular. "His wife," singular. That this was not just the opinion of Adam is clear from the words of Jesus: "He which made them at the beginning made them male and female, and said, For this cause shall a man leave father and mother, and shall cleave to his wife: and they twain shall be one flesh."²⁷ In this connection it might be observed that Scripture nowhere ever speaks of three being one flesh. The third party disrupts God's order, "They twain shall be one flesh." "He shall cleave to his wife." Titus is instructed to ordain elders who are "husbands of one wife."²⁸ St. Paul also instructs Timothy: "A bishop must be blameless, the husband of one wife."²⁹ That these two passages

²⁵Gen. 2:22.

²⁶Gen. 2:24.

²⁷Matt. 19:4 f.

²⁸Titus 1:6.

²⁹1 Tim. 3:2.

do not mean that all pastors had to be married is evident from the fact that St. Paul himself was unmarried. The evident meaning is that they were not to have more than one wife.

God speaks of the marriage estate as a type of the relationship that exists between Him and the Church.³⁰ When His people tried to worship Him and some other god He called that fornication and adultery - a whoring after other gods.³¹ This indicates that when a man divides his attention between two wives he has become an adulterer and whore-monger.

That a God-pleasing marriage consists of one husband and one wife has also been held by the Lutheran Church - Missouri Synod. Dr. A. L. Graebner writes: "The state of marriage, or wedlock, is the joint status of one man and one woman" and the Concordia Cyclopedia quotes Dr. Graebner with approval.³² Under the Sixth Commandment the Small Catechism states: "Marriage is a lifelong union of one man and one woman unto one flesh."³³ In this connection Dr. Fritz writes: "When polygamists are converted to Christianity, all but the first wife must be dismissed."³⁴

In regard to polygamy in the Old Testament we might make these observations. If what was done in the Old Testament should be used as a

³⁰Mal. 2:14.

³¹Ex. 34:15; 2 Chron. 21:13.

³²Fuerbringer, Engelder, and Kretzmann, op. cit., p. 440.

³³A Short Explanation of Dr. Martin Luther's Small Catechism A Handbook of Christian Doctrine (St. Louis, Mo.: Concordia Publishing House, 1943), p. 70.

³⁴Fritz, op. cit., p. 172.

guide for right and wrong, then we might also defend concubinage. Abraham had a concubine.³⁵ So did Nahor,³⁶ Jacob,³⁷ and others.³⁸

It is significant that there is no passage which speaks approvingly of polygamy, and that Scripture repeatedly points out that having many wives caused men to sin and to suffer.³⁹ It might also be remembered that the patriarchs lived before God gave the Law to His people in written form through Moses and that they didn't have the utterances of Jesus⁴⁰ and of the apostles⁴¹ which speak clearly on this matter.

³⁵Gen. 16:3.

³⁶Gen. 22:24.

³⁷Gen. 30:4.

³⁸Gen. 36:12; Judges 8:31.

³⁹1 Kings 11:3; 1 Sam. 1:6.

⁴⁰Matt. 19:4-6.

⁴¹Titus 1:6; 1 Tim. 3:2.

In the United States, polygamy is banned by State law,⁴² which makes the taking of more than one wife a sin also against the Fourth Commandment.⁴³ Polygamy in the States is, therefore, a sin against God's Law as well as a sin against the law of the land.

A Life-long Union

For the mutual happiness of husbands and wives God has ordained that marriage should be a life-long union. When God instituted marriage He said: "A man shall ... cleave unto his wife: and they shall be one flesh."⁴⁴ When the Pharisees tempted Jesus with the question: "Is it lawful for a man to put away his wife for every cause?" the Lord Jesus states that God originally made them male and female and asks whether they haven't read Genesis 2, 24 and concludes:

What therefore God hath joined together let not man put asunder..
.... Whosoever shall put away his wife, except it be for fornication,
and shall marry another, committeth adultery.⁴⁵

St. Paul wrote by the inspiration of God: "For the woman which hath a husband is bound by the law to her husband so long as he liveth; but if the husband be dead, she is loosed from the law of her husband."⁴⁶ To the Corinthians the same apostle wrote: "Let not the wife depart from her

⁴² Alfred Edersheim, Sketches of Jewish Social Life in the Days of Christ (New York: Hodder and Stoughton, n.d.), p. 165.

⁴³ Ex. 20:12; Rom. 13:1.

⁴⁴ Gen. 2:24.

⁴⁵ Matt. 19:3 f.

⁴⁶ Rom. 7:2.

husband.... and let not the husband put away his wife."⁴⁷ Even though the spouse is an unbeliever the marriage bond is binding:

If any brother hath a wife that believeth not, and she be pleased to dwell with him, let him not put her away. And the woman which hath an husband that believeth not, and if he be pleased to dwell with her, let her not leave him.⁴⁸

That marriage is a life-long union is affirmed in the Apology of the Augsburg Confession in these words: "The testimonies of Scripture forbid to dissolve marriages that have been contracted,"⁴⁹ and warns that God will call those to account who have dissolved marriages.⁵⁰ Luther's Small Catechism under the Sixth Commandment states simply: "Marriage is a life-long union of one man and one woman."⁵¹ Dr. Fritz quotes Dr. Luther as saying that sickness or insanity should never prompt a Christian to break the marriage bond.⁵² The Concordia Cyclopedia gives approval to Dr. A. L. Graebner's statement: "The state of marriage..... is the joint status of one man and one woman to be and remain to each other husband and wife in a life-long union."⁵³ Again the life-long binding force of marriage is stated in these words:

⁴⁷1 Cor. 7:10 f.

⁴⁸1 Cor. 7:12 f.

⁴⁹Bente, op. cit., pp. 381, 63.

⁵⁰Ibid., pp. 383, 71.

⁵¹A Short Explanation of Dr. Martin Luther's Small Catechism, op. cit., p. 70.

⁵²Fritz, op. cit., p. 181.

⁵³Fuerbringer, Engelder, and Kretzmann, op. cit., p. 440.

Marriage, when once contracted in accordance with the law of God and the ordinances of the state, is properly dissolved only by the death of one of the contracting parties or by a divorce following adultery or malicious desertion.⁵⁵

Although marriage is a life-long union the Concordia Cyclopaedia states that there may be instances when a marriage is null and void, as for example when a marriage is entered into in violation of some state law pertaining to relationship, etc., of which the contracting parties were ignorant.⁵⁶

Fraud, coercion, insanity, or drunkenness which deprived the individual of his reasoning powers are listed by Dr. Fritz⁵⁷ as items which invalidate the marriage since the contracting parties in a marriage must give their consent by their own free will.

The Roman Catholic Church here goes far beyond Scripture and grants annulments to persons desiring to enter the monastery as well as for other reasons, when such annulment serves the interest of the Roman curia.⁵⁸

The Beginning of Marriage

One of the important questions in connection with marriage is the question: When does marriage begin or when do a man and a woman become husband and wife? What establishes the marriage bond?

⁵⁵Ibid., p. 442.

⁵⁶Ibid.

⁵⁷Fritz, op. cit., p. 170 f.

⁵⁸Fuerbringer, Engelder, and Kretzmann, op. cit., p. 442.

That it is not the buying of a license for marriage that marks the beginning of marriage is quite evident from the fact that the Lord considered people husband and wife even though they never bought a license as, for example, Adam and Eve;⁵⁹ Cain and his wife;⁶⁰ Lamech and Adah.⁶¹

Neither can the public ceremony or the public promise to be husband and wife be considered the sina qua non for establishing the marriage bond, since Scripture calls men and women husband and wife who had not gone through any public ceremony nor had given any public promise to be husband and wife. Of the marriage of Isaac and Rebekah the Bible says simply: "Isaac brought her into his mother Sarah's tent, and took Rebekah, and she became his wife."⁶² When Jacob was betrothed to Rachel, he spoke of her as his wife before the marriage had taken place.⁶³ Adam and Eve had no public marriage ceremony.⁶⁴ There were husbands and wives, and there was holy matrimony a long time before there were any marriage ceremonies. The marriage ceremony is nowhere ordained or commanded by God, but is purely a man-made institution. It can, therefore, not be held that the marriage ceremony is the beginning of the marital bond or that it is essential to matrimony in the sight of

⁵⁹Gen. 4:25.

⁶⁰Gen. 4:17.

⁶¹Gen. 4:19.

⁶²Gen. 24: 67.

⁶³Gen. 29:21.

⁶⁴Gen. 2:25.

our Lord.

Therefore, Prof. F. W. C. Jesse writes in his Catechetical Preparations on the Decalog: "The betrothal, the engagement to be married, establishes the marriage bond, not the marriage ceremony."⁶⁵

Dr. Fritz agrees: "Not the marriage ceremony ... establishes the vinculum coniugale The marriage ceremony is but the public declaration that two persons have consented to be husband and wife."⁶⁶
It might surprise some to know that:

Marriage ... may, in some states, validly take place by means of either of two methods; first, marriage based solely on the consent of parties capable of entering into matrimony or, second, upon the consent of such parties plus a ceremony duly solemnizing and recording such consent.... Twenty-two of the forty-eight states and also the District of Columbia recognize marriages based solely on the consent of the parties.⁶⁷

Neither is cohabitation the act that establishes the marriage bond. As soon as the Lord had brought Eve to Adam, before any cohabitation, the Bible says, "And they were both naked, the man and his wife."⁶⁸ Jacob calls Rachel his wife before they had cohabitated.⁶⁹ The Bible calls Joseph "husband" and the angel calls Mary "his wife" "before they had come together."⁷⁰

⁶⁵F. W. C. Jesse, Catechetical Preparations (St. Louis, Mo.: Concordia Publishing House, 1919), Part I, p. 69.

⁶⁶Fritz, op. cit., p. 169.

⁶⁷Richard V. Mackey, The Law of Marriage and Divorce in all Forty-eight States (New York: Oceana Publications, 1947), p. 1 f.

⁶⁸Gen. 2:25.

⁶⁹Gen. 29:21.

⁷⁰Matt. 1:19 f.

Dr. A. L. Graebner writes: "The fundamental doctrine that consensus, not concubitus, is the essence of marriage must remain unimpaired.⁷¹ "This is also apparent when we remember that the same act (concubitus) in the absence of marriage consent is not marriage, but rape or fornication."⁷²

Even the State holds that consent, not cohabitation, establishes the marriage bond, since it regards two individuals as husband and wife as soon as the marriage license is signed by an officiant. In the states where common law marriages are recognized, cohabitation without consent is not regarded as a marriage, but as rape. "Consent not cohabitation makes the marriage," is therefore a maxim of both the state and the Scriptures.⁷³

Since it is neither the buying of a license, nor the public marriage ceremony, nor cohabitation that establishes the marriage bond, what is it then that makes a man and a woman husband and wife?

Dr. Theo. Graebner writes: "Essentially, then, marriage is initiated by the mutual promise which we call an engagement."⁷⁴

What Bible basis is there for such a statement?

⁷¹A. L. Graebner, "Breach of Betrothal and Its Consequences," Theological Quarterly, IV (1900), p. 471.

⁷²A. L. Graebner, Theological Quarterly, VII (1903), 161.

⁷³Ibid., p. 156.

⁷⁴Theo. Graebner, The Bible Student, XVI No. 4 (April, 1938), 169.

It is evident that what made Adam and Eve husband and wife was their mutual consent to be husband and wife, their mutual consent to live with one another. Not their living together but their consent to do so made them husband and wife, for as soon as they had consented to live together as husband and wife, the Bible says: "They were both naked, the man and his wife." Luther translates: "Der Mensch und sein Weib."⁷⁵ It was, therefore, the consent to become husband and wife that made them husband and wife, and marked the beginning of holy matrimony.

That betrothal was considered the beginning of marriage by the people of God and by God Himself in Bible times is quite evident from the Scriptures. Jacob calls Rachael his wife before they had been married or he had gone in unto her.⁷⁶ Of Mary and Joseph the Bible states expressly that they were espoused and had not yet come together. Nevertheless, the Holy Spirit calls Joseph her husband and when the angel appeared to Joseph He calls Mary his wife. The Bible concludes by stating: "and he took unto him his wife."⁷⁷ Thus, not only the people, but God Himself who inspired the writer and sent the angel with the message considered this betrothed couple husband and wife.

Moses also writes by the inspiration of God that when a man lay with a damsel that was betrothed, this man had "humbled his neighbor's

⁷⁵Gen. 2:25.

⁷⁶Gen. 29:21.

⁷⁷Matt. 1:18-24.

wife."⁷⁸

The fact that fornication with a betrothed woman was punished even as fornication with a married woman also indicates that the Lord considered engagement equivalent to marriage.

If a man be found lying with a woman married to an husband, then they shall both of them die If a damsel that is a virgin be betrothed unto an husband and a man find her in the city and lie with her, then ye shall bring them both out unto the gate of that city and ye shall stone them with stones that they die; the damsel because she cried not, being in the city; and the man because he hath humbled his neighbor's wife.⁷⁹

It ought to be noted that fornication with an unbetrothed damsel was dealt with in an altogether different manner.

If a man find a damsel that is a virgin, which is not betrothed, and lay hold on her, and lie with her, and they be found; then the man that lay with her shall give unto the damsel's father fifty shekels of silver, and she shall be his wife; because he hath humbled her, he may not put her away all his days.⁸⁰

That betrothal marked the beginning of marriage in the sight of God and the people is, therefore, evident from the Scriptures.

But what constituted a betrothal? Much light will be shed on this point when we remember that originally there was no marriage ceremony. When a man and a woman consented to live together they were considered husband and wife and immediately went to live together. See the story of Adam and Eve.⁸¹ When Rebekah was brought home for Isaac and Isaac and

⁷⁸Deut. 22:23-24.

⁷⁹Deut. 22:22-24.

⁸⁰Deut. 22:28-29.

⁸¹Gen. 2.

Rebekah had consented to live together the Bible says simply: "And Isaac brought her into his mother's tent, and took Rebekah, and she became his wife."⁸² There was no marriage ceremony; consent to live together and marriage were the same thing.

In the course of years, however, custom frequently demanded a waiting period between the consent and the marriage, or the coming together. In the case of Jacob the waiting period was seven years.⁸³ Deuteronomy 22 indicates that custom in the time of Moses usually demanded a waiting period before they came together. So does the story of Mary and Joseph, who were espoused, but had not yet come together.⁸⁴ Today also, custom as well as State requirements, like the buying of a license, prevent the immediate coming together of those who have consented to live together, or consented to be husband and wife. This waiting period is called the period of betrothal or the engagement period. Betrothal or engagement, therefore, begins with the mutual consent to be or to become husband and wife.

In harmony with these Scriptural principles the Lutheran Church - Missouri Synod holds that betrothal or engagement is the beginning of marriage. Luther's Catechism states: "Marriage ... is entered into by rightful betrothal, or engagement."⁸⁵ The Theological Quarterly quotes from Keuschheit und Zucht:

⁸²Gen. 24:67.

⁸³Gen. 29:20-21.

⁸⁴Matt. 1:18 f.

⁸⁵A Short Explanation of Dr. Martin Luther's Small Catechism, op. cit., p. 70.

Sofort nach dem Verloebnis sind die Verlobten vor Gott Ehemann und Eheweib. Ihre Ehe ist nach der Schrift eine geschlossene, aber noch nicht vollzogene Ehe.⁸⁶

Luther writes:

Da siehest du, dasz eine vertraute Braut eine Ehefrau heisst in der Schrift Es ist ebensowohl eine Ehe nach dem oeffentlichen Verloebnis als nach der Hochzeit.⁸⁷

Dr. A. L. Graebner writes: "The fundamental maxim governing all cases of breach of betrothal is that valid betrothal is, in foro ecclesiae, essentially marriage."⁸⁸

A valid betrothal, the lawful and unconditional mutual consent of a marriageable man and a marriageable woman to be husband and wife, makes the parties to such compact essentially husband and wife before God.⁸⁹

Dr. E. W. A. Koehler writes: "Before men matrimony begins with the wedding ceremony, before God it begins with the rightful betrothal or engagement, which consists in the mutual promise and public proclamation to be husband and wife."⁹⁰ Again he writes:

When John asked Jane to be his wife and Jane consented to be his wife and to take John as her husband, they by this consent and agreement entered into the state of matrimony. We have an analogous case in the relation between pastor and congregation. It is not the installation service that makes a man the pastor of a congregation and the congregation his flock, but it is the

⁸⁶p. E. Kretzmann, "Betrothal and Marriage," Theological Quarterly, XX (1916), 136.

⁸⁷Martin Luther, Auslegung des Neuen Testaments (St. Louis, Mo.: Concordia Publishing House, 1891) X, 922 f.

⁸⁸A. L. Graebner, Theological Quarterly, IV, 458.

⁸⁹Ibid., II, (1898), 350.

⁹⁰A Short Explanation of Dr. Martin Luther's Small Catechism, edited by the Ev. Lutheran Synod of Missouri, Ohio, and other States, annotated by Edward W. A. Koehler (River Forest, Ill.: Koehler Publishing House Co., (1946), p. 81.

the call extended by the congregation and the acceptance of the call by the pastor. So it is here. The marital relation and union is not effected at and by the wedding ceremony, but by the proposal of marriage made by the man, and the acceptance of this proposal by the woman. In other words: people get married the moment they mutually consent and agree to marry.⁹¹

Dr. Louis J. Sieck quotes Dr. Fuerbringer as stating at a faculty discussion on this problem: "Verlobung ist nur seiner Verbindlichkeit nach der Ehe gleich."⁹² (Free translation: Engagement is equal to marriage only as far as the bond is concerned.) Dr. Theo. Graebner writes:

Engagement customs have changed but essentially an engagement is what it was in Bible times What is to the point is that Mary at the time she was engaged to Joseph was regarded as bound to him with the same obligation as though she were his wife; she is even called that. Essentially, then, marriage is initiated by the mutual promise which we call engagement.... That is the way in which the Bible speaks of the engagement where the betrothed are spoken of as being husband and wife. Let none say that was a Jewish custom. It would be just as wise or foolish to say that marriage is a Jewish custom.⁹³

The following quotations are given to emphasize the point that the Lutheran Church considers the promise to marry each other or to become husband and wife, providing no conditions are attached, as constituting a valid engagement. Dr. J. H. C. Fritz, under the heading 'Engagement Equivalent to Marriage', writes:

When two persons competent to marry have, with the consent of their parents, of their own free will and unconditionally, promised to marry each other, they are rightfully betrothed, or engaged,

⁹¹E. W. Koehler in a Mimeographed paper on marriage.

⁹²Louis J. Sieck in a letter to Arthur E. Graf dated September 20, 1950.

⁹³Graebner, op. cit., p. 168 f.

and before God and the Church are therefore husband and wife, Gen. 2:24; In case of a conditional engagement, the engagement becomes valid as soon as the condition is fulfilled.⁹⁴

E. W. Koehler writes:

You cannot marry people who have not before agreed to marry. And this agreement on the part of a man and a woman is their betrothal or agreement, by which God joins them together.⁹⁵

The Theological Quarterly quoting Schmidt, Katechismuspredigten, states:

Wenn ein Mann und ein Weib, die zur Ehe tuechtig sind und nicht in zu naher Verwandtschaft stehen, sich mit Einwilligung ihrer Eltern verlobt, sich die Ehe versprochen haben, so sind sie vor Gott zur Ehe verbunden.⁹⁶

In Catechetical Preparations by F. W. C. Jesse we read:

The betrothal, the engagement to be married, establishes the marriage-bond, not the marriage ceremony Betrothal (engagement) is the promise which a man and a woman who are not otherwise bound in marriage make to each other to become, and to live together as, husband and wife.⁹⁷

The Concordia Cyclopedia states:

→ The formal promise given, or contract made, by a man and a woman with a view to their marriage. The state of having entered into this contract is also called engagement.⁹⁸

The Projected New Synodical Intermediate Catechism and Work Book contains the following under the summary of the Sixth Commandment:

⁹⁴Fritz, op. cit., p. 168 f.

⁹⁵E. W. Koehler in a letter to Arthur E. Graf dated January 8, 1951.

⁹⁶Kretzmann, op. cit., p. 138.

⁹⁷Jesse, op. cit., Part I, p. 69.

⁹⁸Fuerbringer, Engelder, and Kretzmann, op. cit., p. 72.

From the Sixth Commandment we learn that husband and wife may not break the union which God Himself makes when they promise to marry each other When do a man and a woman begin marriage? A man and a woman begin marriage when they first promise each other to live together as husband and wife.⁹⁹

Our fathers are, therefore, very clear on two points: one, that engagement makes a man and woman husband and wife before God; two, that the unconditional promise to marry each other constitutes engagement.

Since engagement is the beginning of marriage, engagement is just as binding as marriage itself. All the passages which declare that marriage is life-long and indissoluble apply to engagement. Therefore Dr. J. H. C. Fritz writes:

A pastor is not permitted to marry such as are already engaged to another party Since engagement, or betrothal, is equivalent to marriage, a betrothed person is not free to marry any other person, unless such freedom has been acquired by the same reasons which entitle married persons to a divorce.¹⁰⁰

"Since betrothal is the act establishing the state of marriage," concludes the Springfield Seminary faculty opinion on Engagement, "the Scripture texts Rom. 7:2-3; Matt. 19:5-6; 1 Cor. 7:10-15 apply to betrothal, too."¹⁰¹ Dr. E. W. Koehler, referring to a girl who had broken a valid engagement, writes:

If she refuses to live with him, it is a case of malicious desertion, and she may not marry another man, unless her first husband marries another woman, which he has a right to do, 1 Cor. 7:15. If she marries before him, she commits adultery, Lc. 16:18.¹⁰²

⁹⁹Intermediate Catechism and Workbook, submitted by Synod's Committee to the Pastors and Teachers of the Missouri Synod (St. Louis, Mo.: Concordia Publishing House, 1948), p. 68.

¹⁰⁰Fritz, op. cit., pp. 168-169.

¹⁰¹Faculty Opinion on Betrothal (Springfield, Ill., December 19, 1949).

¹⁰²E. W. Koehler in a letter to Arthur E. Graf dated January 8, 1951.

It is generally held that for a valid engagement there must be parental consent. "Children are not sui iuris," writes Dr. J. H. C. Fritz, "and therefore are not permitted to marry without the parental consent Clandestine engagements are not valid."¹⁰³

The Biblical basis we find in such passages as: "So then he (the father) that giveth her in marriage doeth well; but he that giveth her not in marriage doeth better."¹⁰⁴

If a woman vow a vow unto the Lord, and bind herself by a bond, being in her father's house in her youth; and her father hear her vow, and her bond wherewith she hath bound her soul, and her father shall hold his peace at her; then all her vows shall stand and every bond wherewith she hath bound her soul shall stand. But if her father disallow her in the day that he heareth; not any of her vows, or of her bonds wherewith she hath bound her soul shall stand: and the Lord shall forgive her, because her father disallowed her.¹⁰⁵

Neither shalt thou make marriages with them; thy daughter thou shalt not give unto his son, nor his daughter shalt thou take unto thy son.¹⁰⁶

Dr. Fritz summarizes this whole matter very ably in these words:

When two persons competent to marry have, with the consent of their parents, of their own free will and unconditionally, promised to marry each other, they are rightfully betrothed, or engaged, and before God and the Church are therefore husband and wife.¹⁰⁷

While it is true that the State is little concerned about the

¹⁰³Fritz, op. cit., p. 169.

¹⁰⁴1 Cor. 7:38.

¹⁰⁵Numbers 30: 3-5.

¹⁰⁶Deut. 7:3.

¹⁰⁷Fritz, op. cit., p. 168 f.

question whether the breaking of an engagement constitutes desertion or adultery, it does hold that engagement constitutes a contract which cannot be lightly set aside. Quoting various cases Brand and Ingram state:

Mutual promises to marry ("engagements") constitute a contract for breach of which the injured party may in many states recover damages in a suit for breach of promise. Such contracts need not be in writing nor in any particular form of words. It is sufficient that the acts and language of the parties clearly indicate that they intend a mutual agreement and understand it to exist.¹⁰⁸

After making the statement: "Essentially, then, marriage is initiated by the mutual promise which we call an engagement," Dr. Theo. Graebner continues:

This view of engagement is also grounded in human law, as those find out who did not consider their engagement to be binding and for little or no reason broke it and were promptly sued for breach of promise, all the way from five thousand to half a million dollars. Then they begin to realize that there was something binding about their engagement after all.¹⁰⁹

Some Regulations Pertaining to Marriage

While marriage was instituted by God and is honourable, Christians are not permitted to marry anyone whom they please. God Himself has set up certain restrictions.

In the Old Testament the children of Israel were forbidden to marry the heathen in the land.

¹⁰⁸Norton F. Brand and Verner M. Ingram, The Pastor's Legal Advisor (New York: Abingdon-Cokesbury Press, 1942), p. 162 f.

¹⁰⁹Graebner, op. cit., p. 169.

Neither shalt thou make marriages with them (the heathen in Canaan); thy daughter thou shalt not give unto his son, nor his daughter shalt thou take unto thy son.¹¹⁰

But Solomon loved many strange women of the nations concerning which the Lord said unto the children of Israel, ye shall not go in to them, neither shall they come in unto you: for surely they will turn away your heart after their gods.¹¹¹

Neither is it according to God's will that those of the true faith should marry men and women of other faiths or denominations. Dr. Fritz writes:

Such mixed marriages are not in accordance with the intimate and close relation that ought to exist between husband and wife; they also very much interfere with such things as family devotions and the Christian training of children. If an orthodox person enters upon such a mixed marriage, it might seem that he is not taking his orthodox religion seriously. If a heterodox person promises to turn to the true religion, that promise should be fulfilled before an engagement takes place and not delayed until after marriage.¹¹²

The Bible passages that would apply here are all those which warn against entering into temptation,¹¹³ as well as those passages which warn against false doctrine,¹¹⁴ and those which speak of teaching one's children all things which God has commanded.¹¹⁵

That mixed marriages are a definite threat to a man's religion is evident from the results of such marriages. We submit the following

¹¹⁰Deut. 7:3.

¹¹¹1 Kings 11:1-2.

¹¹²Fritz, op. cit., p. 172.

¹¹³Matt. 26:41.

¹¹⁴Jn. 8:31-32; Acts 2:42.

¹¹⁵Matt. 28:20; Deut. 6:7.

as reported in the American Lutheran:

The Board of American Missions of the United Lutheran Church has made a study of how marriage of Lutherans to non-Lutherans is related to continued active membership in the Church. The survey by a member of the staff was made of 3,101 families, and while it is admitted "that 3,101 cases may not be adequate proof," it is contended that this evidence will at least "show the trend."

Ecclesia Plantanda reports: "The question involved, of course, not primarily the marriage of Protestants with Catholics, but rather the effect of marriage as affecting the religious status of Lutherans when the other party is non-Lutheran.

"This should be of interest to every pastor since it reveals the probability of the retention of membership within the Lutheran Church when such mixed marriages occur."

Of the 3,101 marriages reported, the greatest number, 806, were found to be Lutheran - Catholic, followed by the marriage of Lutherans to Unbelievers, 568, and Lutherans to Methodists, 519. In most cases less than one third of the once Lutheran parties retained their connection with the church, "not only to the Lutheran Church but with any other communion as well."

The summary of mixed marriages follows:

| | In active Membership with Lutheran Church Per cent | Not now Affiliated with any Church Per cent | Total Marriages |
|------------------------------|--|---|--------------------|
| Lutheran-Catholic..... | .31.9 | 68.1 | 806 |
| Lutheran-Methodist..... | .24.7 | 75.3 | 519 |
| Lutheran-Baptist..... | .29.9 | 71.1 | 304 |
| Lutheran-Presbyterian..... | .30.7 | 69.3 | 300 |
| Lutheran-Episcopalian..... | .27.1 | 72.9 | 207 |
| Lutheran-Congregational..... | .16.9 | 83.1 | 59 |
| Lutheran-Evangelical..... | .34.7 | 65.3 | 46 |
| Lutheran-Sects..... | .37.3 | 62.7 | 292 |
| Lutheran-Unbelievers..... | .37.5 | 62.5 | 568 |
| | | | <u>3,101</u> |

The total study covered 31,969 marriages, of which 12,488 were Lutheran marriages. The report on these larger groups follows: 6,763 Lutherans in active membership - 14.3 per cent, one party of another religious affiliation; 85.7 per cent, both parties Lutheran.¹¹⁶

¹¹⁶Editorial, "A Report on Mixed Marriages," The American Lutheran, (December, 1939), p. 21.

Dr. Walter A. Maier, reporting on a survey of some two hundred congregations in the Lutheran Church - Missouri Synod writes as follows:

Of the thirty-seven divorces issued by these two hundred congregations in 1933, twenty-three were mixed marriages, unions in which either husband or wife was not a member of our Church.....

The notorious contribution which mixed marriage makes to the rising divorce rate was amply illustrated in many of the two hundred reports received. We submit the following as direct evidence, showing the validity of the Church's warning against the union of Lutherans with non-Lutherans:

During the fourteen years of my pastorate here not one of the divorces of which I have any recollection was in families in which both husband and wife were members of our Church.

I have been in office now since 1898 and of the 275 marriages performed only four have been dissolved by divorce and in each case, either the husband or wife was not a member of our Church.

On an average in the past seven years we have had one divorce per year, and in all but two cases either the husband or the wife was not a member of the Church:.....

I have performed fifty-seven marriages in eight years. Of these two are divorced. In both cases one partner was not a member of our Church.

During the seven years of my pastorate there has been but one divorce - the husband was not a member.

In the last twenty years we had two divorces in our Church. In both cases one of the parties was not connected with us.....

In the twenty-four years that I have been pastor here I performed 202 marriages. In all these years there has been but one couple divorced and one separation. Of these two couples, in one instance the wife and in the other the husband, was not a member of the congregation.

There was only one divorce in my five years here and then it was a Lutheran boy who married a Roman Catholic girl.

During my eight years I have had but one divorce case among my members. The wife who got the divorce was my member, while the husband was not.¹¹⁷

It is, therefore, not at all surprising to read:

Neither the Catholic nor the Protestant Church encourages mixed marriage The Church has found through centuries of experience that mixed marriage contains elements dangerous to the happiness of both parties.¹¹⁸

Scripture also forbids marrying those who are related to us by blood or marriage in the first or second degree,¹¹⁹ who are unlawfully divorced;¹²⁰ who are married or engaged to some other person.¹²¹

Finally, we may not marry such as the government forbids us to marry, since Christians should obey the government;¹²² for example, in some states the government forbids the marriage of cousins or under certain circumstances marrying such as have been divorced:

In some states, in the divorce decree the judge may allow or disallow the parties to marry again. In a great many states, there is a period varying from two months to two years after the divorce decree during which neither party may remarry. In a few states, the innocent party to the divorce is the only one who may marry again, and in other states the guilty party to a divorce obtained for adultery is prohibited from marrying the correspondent. In some others the guilty party may not remarry until the complainant's death and it does not matter for what cause the divorce was decreed. Such a restriction, of course, is usually effective within the state only. Usually the divorced parties may remarry.

¹¹⁷Walter A. Maier, "Divorce and Mixed Marriages," The Walther League Messenger, October, 1934), .75.

¹¹⁸Henry A. Bowman, Marriage for Moderns (New York: Whittlesey House McGraw-Hill Book Co. Inc., 1942), p. 193 f.

¹¹⁹Lev. 18; Matt. 14:3-4.

¹²⁰Matt. 19:9.

¹²¹Matt. 19:6.

¹²²Peter 2:13.

In a few states a person violating the remarriage provision of the law or of the decree becomes guilty of bigamy and is punishable therefor.¹²³

Five states prohibit marriage of whites with Indians (American); sixteen prohibit marriage of whites with Oriental or Mongolian; and thirty states prohibit marriages of whites with negroes.¹²⁴ wow!

It is evident, therefore, that one cannot marry whomsoever he pleases, since there are restrictions by God and the State.

¹²³Mackey, op. cit., p. 54.

¹²⁴Ibid., pp. 12, 13.

CHAPTER III

DIVORCE

What Constitutes Divorce

When speaking of divorce, civil dissolution of marriage comes to the mind of most people. "A divorce is a dissolution of a legally recognized union."¹ While this is one form of divorce, before God there are other forms. In many instances people are actually divorced before a legal dissolution takes place.

Take the matter of annulment, which is a decree that no marriage ever existed.² The Catholic Church will grant an annulment, when it's to the good of the Roman curia, even though the couple was validly married.³ With the exception of Florida, all states have made some statutory provision for annulment. While some of these provisions, such as force or duress, idiocy or insanity, ... and incest, are valid according to Scripture⁴ the list includes also such items as imprisonment for life, a conviction of felony, etc.⁵ Thus many

¹Richard V. Mackey, The Law of Marriage and Divorce in all Forty-eight States (New York: Oceana Publications, 1947), p. 18.

²Ibid.

³L. Fuerbringer, Th. Engelder, and P. E. Kretzmann, Concordia Cyclopedia (St. Louis, Mo.: Concordia Publishing House, 1927), p. 442.

⁴John H. C. Fritz, Pastoral Theology (St. Louis, Mo.: Concordia Publishing House, 1932), p. 170.

⁵Mackey, op. cit., p. 21.

annulments are actually divorce called by a different name.

Then there is also the matter of permanent separation. R. V. Mackey defines separation as follows:

A separation or, as it is sometimes called, a limited divorce, differs from both annulment and divorce in important respects. A separation suit is generally brought for permanent separate maintenance and support of the wife or of the wife and children based in most cases on either desertion or cruel and inhuman treatment..... Suit for a separation does not bar the complaining party from later bringing an action for absolute divorce on the same or upon additional grounds.⁶

The Scriptures recognize the possibility of a temporary separation: "Let not the wife depart from her husband: but and if she depart, let her remain unmarried, or be reconciled to her husband."⁷

The Church also recognizes the need of a temporary separation under certain conditions:

Where the state or conduct of the one party is such as to needlessly or wrongfully endanger the life and limb of the other party, the party thus threatened is entitled to protection, if necessary, also by temporary separation, either by the removal of the menacing party, or by the withdrawal of the party menaced during the cohabitation with the other.⁸

However Scripture forbids every permanent separation when it says: "Let not the wife depart from her husband - let not the husband put away his wife."⁹ "What therefore God hath joined together let not man

⁶Ibid., p. 26.

⁷1 Cor. 7:10-11.

⁸A. L. Graebner, Theological Quarterly, II (1898), 353.

⁹1 Cor. 7:10-11.

put asunder.¹⁰ These passages condemn not only a legal divorce but every permanent separation, or the breaking of the marriage which was the mutual consent to live together as husband and wife.

Speaking of a temporary separation the Theological Quarterly continues:

.....such separation must not be tantamount to the cessation of marriage, but that the parties thus separated remain husband and wife, again to cohabit when the cause of the temporary separation shall have been removed.¹¹

Thus permanent separation equals divorce in the eyes of God and the Church. This is true even though there has been no legal action in the case.

There are cases when a man and a woman might live in the same house and yet be divorced. It must be remembered that mutual consent to live together as husband and wife constitutes marriage, or as Scripture puts it: "For this cause shall a man leave father and mother, and shall cleave to his wife: and they twain shall be one flesh."¹² Whenever one or the other party persistently refuses cohabitation, marriage no longer exists.

Let the husband render unto the wife due benevolence; and likewise also the wife unto the husband. The wife hath not power over her own body, but the husband: and likewise also the husband hath not power of his own body, but the wife. Defraud ye not one the other, except it be with consent for a time, that ye may give

¹⁰Matt. 19:6.

¹¹Graebner, op. cit., II, 353.

¹²Matt. 19:5.

yourselves to fasting and prayer; and come together again, that Satan tempt you not for your incontinency.¹³

For this reason Dr. Fritz writes:

While the rendering of "due benevolence" does not constitute the essence of marriage, yet it is included in the marriage vow and constitutes one of the purposes of marriage. Therefore its persistent refusal despite instruction and admonition must be considered to be equivalent to malicious desertion.¹⁴

Finally, since a valid engagement is the beginning of marriage breaking an engagement is in the sight of God and the Church also divorce. "Since betrothal is the act establishing the state of marriage," says the Springfield Faculty Opinion on Engagement, "the Scripture texts Romans 7:3; Matthew 19:5-6; 1 Corinthians 7:10-15 apply to betrothal, too."¹⁵ Speaking of a girl who broke her engagement Dr. E. W. Koehler¹⁶ states that since she refused to live with her betrothed she was guilty of malicious desertion. The Theological Quarterly summarizes the matter as follows:

A valid betrothal, the lawful and unconditional mutual consent of a marriageable man and a marriageable woman to be husband and wife, makes the parties to such compact essentially husband and wife before God, (Gen. 29:21; Matt. 1:18-20) though the state, prescribing certain forms and evidences of marriage, does not recognize them as such. The dissolution of such espousals is, therefore, admissible only for the cause which justifies the dissolution of marriage, (Matt. 19:9) not for any other cause nor by mutual consent, (Gen. 2:24; Matt. 19:5-6) and the abandonment of one party by the other is desertion from the bond

¹³1 Cor. 7:3-5.

¹⁴Fritz, op. cit., p. 183.

¹⁵Faculty Opinion on Betrothal (Springfield, Ill., December 19, 1949).

¹⁶E. W. Koehler in a letter to Arthur E. Graf dated January 9, 1951.

of matrimony. (1 Cor. 7:10,15) That such is the nature and obligation of valid espousals has largely been forgotten even among Christians, although even secular law recognizes the maxim that 'consensus, non concubitus, facit matrimonium'. To break off an engagement, especially when the parties have agreed to separate and rings and presents have been returned, is looked upon as quite legitimate and in many cases as wise and expedient. The argument that those who cannot agree had better separate, is, of course, no argument to the point at all, since it would serve as well to justify separation after the consummation of marriage, and it is, in fact, already quite frequently employed in supposed justification of divorce under the 'omnibus' clause. That those who cannot agree had better not unite, is very true. But when they have once united in what is essentially wedlock, i.e., by valid betrothal, considerations of expediency can no longer prevail over the divine injunction, What God hath joined together, let no man put asunder, Matt. 19, 6. The frequency of these separations is largely the outcome of the irreverent and frivolous frame of mind which often tumbles young people into a relation which should be entered into only after mature and prayerful deliberation and with the full understanding that the step which is thus taken can never be retraced.¹⁷

In the eyes of God and the Church divorce, therefore, may be by civil dissolution, annulment, permanent separation, refusal to cohabit, or by the breaking of a valid engagement. In every instance God's will has been violated unless this action was based on a Scriptural ground for divorce.

Frequency of Divorce

Divorce, of course, is nothing new, just as sin is nothing new. Just how frequent divorces were in Bible times is difficult to establish. That there were divorces is evident. The book of Deuteronomy speaks of writing out a bill of divorcement¹⁸ to which the Pharisees made reference

¹⁷Graebner, op. cit., II, 350.

¹⁸Deut. 24:1 f.

when questioning Jesus on divorce.¹⁹ In this same incident Jesus admits that they existed.²⁰ Jeremiah makes reference to divorce²¹ and St. Paul recognizes that it existed.²²

The great number of divorces today is one of the sins that cries to high heaven. The following newspaper headlines show our shocking degeneracy, "Marriage champ says she's wife number fifteen; Seventy-eight and married six times; Blonde reveals ten marriages; These six women have had forty husbands; Wives are his hobby - has had fourteen."²³

While the population increased only 215.7 per cent from 1870 to 1930, the number of divorces increased 1,647.8 per cent. The divorce rate grew from 28 per 100,000 population in 1870 to an estimated 193 per 100,000 population in 1937.²⁴

¹⁹Matt. 19:7.

²⁰Matt. 19:8.

²¹Jer. 3:1.

²²1 Cor. 7.

²³Henry A. Bowman, Marriage for Moderns (New York: Whittlesey House McGraw - Hill Book Co. Inc., 1942), p. 473.

²⁴Ernest Burgess, Predicting Success or Failure in Marriage (New York: Prentice Hall Inc., 1939), p. 2.

Since the Civil War the divorce rate has increased on the average of three per cent per year.²⁵ In 1870 there was one divorce for approximately every thirty-four weddings. In 1900 the ratio was one to approximately twelve. Just prior to the United States entrance into the Second World War it was about one to five or six. In 1945 it was estimated to be almost one to three.²⁶

Since there is power in God's Word towards sanctification, we would expect the divorce rate to be considerably lower among church members. It is. In a survey of Lutheran parishes conducted by Dr. Maier²⁷ in 1933, 173 parishes out of 200 had no divorces among their members. The following sample letters seem to indicate that 1933 was not an unusual year:

I have had no divorce whatsoever as long as I have been in the ministry and this has been thirty-seven years..... In my ministry I have performed 105 marriages. None of these, as far as I know, has been divorced..... In my twenty-one years I have had no divorces.²⁸

Another knows of no divorces among two hundred marriages; another none in ten years of the congregation's existence; another had none in the twenty-one years of his ministry.²⁹

²⁵Commission on Ministerial Training - The Methodist Church, Making the Gospel effective, edited by Wm. K. Anderson (Nashville, Tenn.: Lamar and Barton, n.d.), p. 76.

²⁶Bowman, op. cit., p. 469.

²⁷Walter A. Maier, "Divorce and Mixed Marriages," The Walther League Messenger, October, 1934), p. 75.

²⁸Ibid.

²⁹Ibid.

However there were divorces in our congregations, involving mixed marriages in most instances. In 1933 two hundred congregations performed 1,900 marriages while they had thirty-seven divorces. This makes the Lutheran divorce rate about one for every forty-six marriages when the nation's ratio was approximately one to six. In other words, the Lutheran divorce rate was one-eighth as large as that of the entire nation.³⁰

Causes of Divorce

The underlying cause of divorce is the same as the cause of all other sins: man's corrupt heart and the lusts of the flesh. "Out of the heart proceed..... adulteries."³¹ "Every man is tempted, when he is drawn away of his own lust and enticed. Then when lust hath conceived, it bringeth forth sin."³²

In addition to man's perverse nature and his unwillingness to follow the Lord's will, there are contributing causes to our many divorces. Among these we might mention mixed marriages.³³ A study of 13,528 young people between the ages of sixteen and twenty-four in Maryland revealed that 4.6 per cent of the Jews came from broken homes; 6.4 per cent of the Catholics; 6.8 per cent of the Protestants; but the figure rose to 15.2 per cent among those who came from mixed

³⁰Ibid.

³¹Matt. 15:19.

³²James 1:14-15.

³³Maier, op. cit., p. 75.

marriages. This was only 1.5 per cent below the figure for those who came from parents with no religious affiliation.³⁴

War is cited as a contributing cause since it frequently shortens the period of courtship and brings about hasty marriages and makes especially the older women who are afraid of becoming old-maids less discriminating in their choices.³⁵ Then there is too short a period of acquaintance before engagement.³⁶ Other contributing factors mentioned are: American mores sanction the right of young people to control their own destiny in the selection of marriage partners without consent of their parents; the lack of a desire for children; irregular employment; either a high or a low income; and failure to attend church and Sunday School.³⁷ A survey has shown that those who have been going together between one and three years before engagement had an average chance for matrimonial success. A shorter period of time revealed chances of adjustment poor. A still longer period of time had the highest association with success in marriage.³⁸

Still other factors mentioned are: a higher standard of living; the freer status of women; a decline of religious authority; more widespread liberalism in thought; ease of obtaining a divorce;

³⁴Bowman, op. cit., p. 191.

³⁵Commission on Ministerial Training - The Methodist Church, op. cit., p. 77 f.

³⁶Bowman, op. cit., p. 248.

³⁷Burgess, op. cit., p. 151.

³⁸Ibid., p. 166.

exploitation of divorce by the press; and a tendency to cast a false glamour around divorce.³⁹

Divorce is Not the Answer

No matter how much divorce is glamorized, it is not the answer. "For many individuals divorce is jumping from the frying pan into the fire. It does not solve their problem."⁴⁰ The American Bar Association's report stresses that "the cure of marriage ills does not lie in easy divorce, but in hard marriages."⁴¹ "A broken marriage is a human and social tragedy," writes Dorothy Thompson.⁴²

The Readers Digest reprints the story of Divorcees Anonymous Inc., an organization of divorcees who make it their concern to dissuade others who are thinking about divorce. "They speak from bitter experience when they say that nine out of ten persons who divorce will regret it afterward," states the article.⁴³

In addition to their own unhappiness there is the unhappiness of their children which in many instances leads to maladjustment in life, or even delinquency and ruin.

Divorce cannot be the answer since it is essentially a sin against

³⁹Bowman, op. cit., p. 476 f.

⁴⁰Ibid., p. 483.

⁴¹Dorothy Thompson, "Divorces Are Not Crimes: They Are Tragedies," Ladies' Home Journal, (August, 1951).

⁴²Ibid.

⁴³Joseph Millard, "Divorcees Anonymous," Redbook, (February, 1950).

God. Scripture is very emphatic in condemning divorce. "Let not the wife depart from her husband ... let not the husband put away his wife the woman which hath an husband that believeth not, and if he be pleased to dwell with her, let her not leave him."⁴⁴ Again "The woman which hath an husband is bound by the law to her husband as long as he liveth ... So then if, while her husband liveth, she be married to another man, she shall be called an adulteress."⁴⁵ "What therefore God hath joined together let not man put asunder I say unto you, whosoever shall put away his wife, except it be for fornication and shall marry another, committeth adultery."⁴⁶

Our Church has been just as emphatic as Scripture in discouraging divorce and in condemning it.

F. W. C. Jesse in the Catechetical Preparations on the Decalog writes:

It is a violation of the sanctity of marriage to disrupt the marriage bond To dissolve this union is to put asunder what God has joined together, is to fly in the face of the will of God. And this is true not only in the case of such as have lived together as husband and wife for some time, or upon whom the marriage ceremony has been performed; it is equally true of such as are merely betrothed, or engaged to be married.⁴⁷

Dr. Theodore Graebner states: "The great bulk of divorces of this country are obtained collusively Such divorces cannot

⁴⁴1 Cor. 7:10 f.

⁴⁵Rom. 7:2-3.

⁴⁶Matt. 19.

⁴⁷F. W. C. Jesse, Catechetical Preparations (St. Louis, Mo.: Concordia Publishing House, 1919), Part I, p. 72 f.

stand in the court of the Church."⁴⁸ Dr. Munding in The Abiding Word writes:

The Christian ideal of marriage is emphasized by Christ in His reply to the Pharisees concerning divorce. It is the union for life of one man and one woman in mutual love and faithfulness. They are one flesh, and God wants this union to last until death separates it. In its true nature, marriage is monogamous and indissoluble.⁴⁹

Dr. A. L. Graebner speaks of a case in which an engaged girl persistently refuses to fix the day of marriage. Finally the young man submits her refusal and her statement of cause to two brethren of the congregation in keeping with Matthew 18, and then, after fruitless efforts on their part, he submits the case to the congregation. Dr. Graebner then states:

And if the woman refuses to hear the church and fails to state good and sufficient cause for her refusal to be a wife to her husband, the church should pronounce her a heathen woman and a desertrix from the bond of marriage who has been making a mockery of God's holy institution.⁵⁰

Thus Scripture and our theologians have warned against and have condemned divorce. This wasn't done in order to put people into a straight-jacket, but in order that they might have the more happiness. "Godliness is profitable unto all things, having promise of the life that now is and of that which is to come."⁵¹

⁴⁸Theo. Graebner, The Bible Student (Chicago, Ill.: The Walther League, April, 1938) XVI No. 4, 177.

⁴⁹Carl S. Munding, "Dangers Confronting the Church Today," The Abiding Word, edited by Theodore Laetsch (St. Louis, Mo.: Concordia Publishing House, 1946), I, 497.

⁵⁰A. L. Graebner, "Breach of Betrothal and Its Consequences," Theological Quarterly, IV (1900), 477.

⁵¹1 Tim. 4: 8.

Scriptural Ground for Divorce

While Scripture forbids divorce in every form and it is God's will that no union ever be broken, it does recognize the innocent party's right to a divorce under certain circumstances.

The one cause for separation or the breaking of the marriage bond is stated by Jesus in these words: "Whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery."⁵² Here Jesus lists fornication as a ground for putting away one's spouse ... and as the only ground. He states it is sin except for fornication. The same rule is laid down by Jesus in His sermon on the Mount: "But, I say unto you, that whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery."⁵³

On the basis of the above the Lutheran Church - Missouri Synod recognizes fornication as the only ground for divorce.

The Lutheran Synodical Conference Catechism states: "God permits the innocent party to procure a divorce when the other party is guilty of fornication."⁵⁴

Dr. Fritz writes in his Pastoral Theology: "There is only one Scriptural reason or cause for divorce: fornication."⁵⁵

⁵²Matt. 19:9.

⁵³Matt. 5:32.

⁵⁴A Short Explanation of Dr. Martin Luther's Small Catechism, A Handbook of Christian Doctrine (St. Louis, Mo.: Concordia Publishing House, 1943), p. 70.

⁵⁵Fritz, op. cit., p. 180.

The Concordia Cyclopedia speaks of the one ground for divorce as follows:

If the one or the other spouse disregards the loyalty and faithfulness due the other in the union whose essential feature is the "being one flesh" and cohabits with another person, either married or unmarried, this spouse has broken the marriage-tie..... In such a case the innocent party has God's permission to make a public declaration of the transgression committed by the other and to receive from the state courts a decree declaring that the divorce from the former spouse actually exists.⁵⁶

This does not mean that the innocent party must obtain a divorce in case of fornication. On the contrary Dr. Fritz advises:

The innocent party should be urged to forgive the penitent guilty party especially if the sin of fornication is not known to others and there is good reason to believe that the sin will not be repeated; however, the right to procure a divorce cannot be denied.⁵⁷

Malicious desertion is at times mentioned as a ground for separation or divorce. This is a contradiction in itself since you cannot separate what is already separated or divorce what is already divorced. Scripture, however, allows the individual the right to petition for a legal dissolution of the marriage bond when a spouse deserts maliciously.

Scripture states specifically: "If the unbelieving depart, let him depart; a brother or a sister is not under bondage in such cases."⁵⁸

Commenting on this passage the Concordia Cyclopedia states:

These words describe what is generally known as 'malicious desertion.' Strictly speaking, it can take place only in the case of an unbeliever; for as long as a person is a Christian and is

⁵⁶Fuerbringer, Engelder, and Kretzmann, op. cit., p. 211.

⁵⁷Fritz, op. cit., p. 180.

⁵⁸1 Cor. 7:15.

governed by the precepts of the Lord regarding marriage, such a desertion will not take place. If one spouse has left the other either by removing his or her presence and declaring from the outset that he or she will under no circumstances return then the fact of a malicious desertion, by which the remaining spouse suffers the disruption of the marriage bond, may be established. The same thing is true, as Luther notes, if the one or the other spouse consistently and unreasonably refuses the marital duty, remaining stubborn in spite of all attempts to change this attitude, or if cohabitation is rendered impossible by such acts of either spouse as disrupt the marriage bond and there is no reasonable indication that circumstances can be changed.⁵⁹

Dr. Fritz admonishes:

The party which apparently has been deserted shall do whatever can be done under the circumstances to make sure that the other party cannot be persuaded to return, but absolutely refuses to do so before a desertio malitiosa can be said to have been established. Differences of religious faith and resulting difficulties cannot be used as an excuse for desertion, 1 Cor. 7:12. Neither are such things as imprisonment, deportation, or fleeing from a country to escape sentence to be looked upon as malicious desertion.⁶⁰

Scripture as well as the Church, therefore, recognizes fornication as the only ground for separation and malicious desertion as an act which will cause the innocent party to suffer the dissolution of the marriage bond. In both cases the necessary legal papers must be procured to establish the fact legally.⁶¹

⁵⁹Fuerbringer, Engelder, and Kretzmann, op. cit., p. 211 f.

⁶⁰Fritz, op. cit., p. 182 f.

⁶¹Ibid., p. 181.

CHAPTER IV

REMARRIAGE OF DIVORCED PEOPLE

Even though it is true that there ought be no divorces, except where God Himself divorces husband and wife by death,¹ the fact remains that we now have one divorce for approximately every five marriages.²

It, therefore, becomes imperative that we deal with the problem of the remarriage of those who are divorced and study the matter in the light of God's Word.

Remarriage of Those Separated by Death

Scripture is very clear on the matter of remarriage for those who have been divorced by God Himself, for St. Paul writes:

For the woman which hath an husband is bound by the law to her husband so long as he liveth; but if the husband be dead, she is loosed from the law of her husband. So then if, while her husband liveth, she be married to another man, she shall be called an adulteress: but if her husband be dead, she is free from that law;³ so that she is no adulteress, though she be married to another man.

To the congregation of Corinth the same apostle writes: "The wife is bound by the law as long as her husband liveth; but if her husband

¹Matt. 19:6.

²Henry A. Bowman, Marriage for Moderns (New York: Whittlesey House McGraw - Hill Book Co. Inc., 1942), p. 469.

³Rom. 7:2-3.

be dead, she is at liberty to be married to whom she will; only in the Lord."⁴

In spite of these clear statements of God's Word that in case of death the widow or widower is loosed from the law of marriage and at liberty to be married, the sentiment of the Roman Catholic Church has ever been unfavorable to the second marriage and according to Bellarmin⁵ they were to be denied the blessing of the church at the wedding.

The Lutheran Church - Missouri Synod firmly upholds the right of remarriage to the widow and widower. Discussing Romans 7:1-3 in The Bible Student, Dr. Theo. Graebner writes:

When a husband dies, the wife is set free from the bond which once united her to her husband she is free to marry someone else., in the case of the death of one spouse, the other may remarry.⁶

In his Pastoral Theology Dr. J. H. C. Fritz simply takes the right of remarriage for granted when he writes: "Due respect for the deceased husband or wife demands that a new marriage be not unduly hurried."⁷

The Jewish law went beyond Scripture and decreed that no woman should be married or betrothed till three months after the death of her

⁴1 Cor. 7:39.

⁵Theo. Laetsch, Concordia Theological Monthly, III (November, 1932), 854.

⁶Theo. Graebner, The Bible Student (Chicago, Ill.: The Walther League, April, 1938) XVI No. 4, 166.

⁷John H. C. Fritz, Pastoral Theology (St. Louis, Mo.: Concordia Publishing House, 1932), p. 172.

husband. This applied also to the betrothed.⁸ If visibly pregnant, the woman was not to marry till after child-birth. This time was extended to twenty-four months provided the child lived.⁹ A woman could not marry for the third time.¹⁰

Dr. Walther,¹¹ holding to the principle of Christian liberty where God's Word has not laid down a definite decree, writes that the time which ought to elapse between the two marriages depends on custom and circumstances. Writing on the same subject Dr. Fritz says:

Due respect for the deceased husband or wife demands that a new marriage be not unduly hurried There is, however, no definite law in reference to the time that widowers and widows must remain unmarried.¹²

Remarriage of Those Maliciously Deserted

Those deserted by their spouses may remarry just as well as those who have been divorced by death. Scriptural basis for this is 1 Cor. 7:15: "If the unbelieving depart, let him depart. A brother or a sister is not under bondage in such cases: but God hath called us to peace."

⁸Samuel Belkin, Philo and the Oral Law (Cambridge: Harvard University Press, 1940), p. 245.

⁹Julius H. Greenstone, The Jewish Encyclopedia (New York: Funk and Wagnalls Co., 1907), VIII, 348.

¹⁰Alfred Edersheim, Sketches of Jewish Social Life in the Days of the Christ (New York: Hodder and Stoughton, n.d.), p. 156.

¹¹C. F. W. Walther, Pastorale (St. Louis, Mo.: Concordia Publishing House), p. 230 f.

¹²Fritz, op. cit., p. 172.

Summarizing 1 Cor. 7:15-17 the Altenburger Bibelwerk says:

Hie gibt St. Paulus einen Rath: wo ein glaeubiges ein unglaeubiges Gemahl haette, dasz sie sich darum nicht scheiden sollen.....
Wo aber der Unchrist sich scheidet, da soll es dem Christen nicht verboten sein, sich wieder zu verheirathen.¹³

Writing on this subject Dr. Fritz states:

Although the word of God knows of but one rightful cause for the dissolution of marriage: fornication, Matt. 19:9, there is, according to the plain apostolic statement, 1 Cor. 7:15: "If the unbelieving depart, let him depart, a brother or a sister is not under bondage in such cases", another case in which the innocent party may not enact, but will suffer, the dissolution of his or her marriage to wit, when a spouse deserts the other maliciously, i.e., with the manifest intention of not returning to the abandoned spouse, and will not by any means be persuaded to return. In this case the innocent party, of course after having secured a legal divorce, is, according to the declaration of the apostle, 1 Cor. 7: 15, no longer 'under bondage', no longer bound to the former spouse (cf. Rom. 7:1-3) and must not be denied remarriage at a proper time.¹⁴

The same opinion is held by such a man as Donald Grey Barnhouse.¹⁵

He cites a case where the wife of a Christian man left him and the family. Upon his pleading she returned to him, and stayed until the children were grown. She then stated that she saw no further need of staying and abandoned the husband again. This man came to the pastor and the official board of his church and asked if he had the right to remarry. When it was ascertained that this was a clear case

¹³Martin Luther, M. Viti Dieterichs, and Francisci Vierlings, Altenburger Bibelwerk (St. Louis, Mo.: Deutsche Evang. Lutherische Bibelgesellschaft, 1867), III, 390.

¹⁴Fritz, op. cit., p. 180 f.

¹⁵D. G. Barnhouse, Revelation, (January, 1946), p. 33.

of 1 Cor. 7:15, it was ruled that "the man had a right to remarry in the Lord and to establish the companionship of a Christian home."

Dr. Barnhouse seems to withhold the right of remarriage to the deserted until the deserter is married again, when he writes:

A trivial cause for departure would not be taken as final and most certainly in such an instance the believer would not rush into another marriage before the unbelieving mate had definitely departed into another marriage. The exception here would be the definite statement on the part of the unbelieving one that there was a hatred of Christ. But the departure of the unbelieving mate into another marriage would free the believing mate and carry the right of remarriage....¹⁶

We can see no Biblical basis by which we can insist that the deserted party has to wait with remarriage until the deserter is married or dead. The Christian mate is free to remarry when malicious desertion is definitely established. "A brother or a sister is not under bondage in such cases."¹⁷

Dr. A. L. Graebner speaks of a case in which the engaged girl persistently refuses to fix the day of marriage. Finally the young man submits her refusal and her statement of course to two brethren of the congregation in keeping with Matt. 18, and then, after fruitless efforts on their part, he submits the case to the congregation. Dr. Graebner then states:

..... and if the woman refuses to hear the church and fails to state good and sufficient cause for her refusal to be a wife to her husband, the church should pronounce her a heathen woman and a desertrix from the bond of marriage who has been making a

¹⁶Ibid., p. 34.

¹⁷1 Cor. 7:15.

mockery of God's holy institution, and the congregation should pronounce the innocent and injured party free to wed another.¹⁸

But what about Matt. 19:9b which reads: "Whoso marrieth her which is put away commits adultery"? (cf. also Matt. 5, 32) This sentence has created a great amount of discussion. There are primarily three schools of thought. I shall present them briefly:

1. Some hold that this passage forbids the marriage of anyone who has been divorced be he innocent or guilty. Thus W. J. E. Dawson of the Anglican Church writes:

Our Lord sanctions a separation only in the case of adultery. This sanction does not carry with it permission for either innocent or guilty party to remarry, and either doing so is guilty of adultery.¹⁹

The same Volume states:

The Church of Rome at the Council of Trent decreed that the marriage bond could not be dissolved even by adultery, and that neither party could marry during the life of the other. The Anglican Church has never authoritatively sanctioned any other separation than from 'bed and board' and this with an express prohibition of remarrying.²⁰

This view cannot be held since that would bring you in conflict with such passages of Scripture as: "But, if the unbelieving depart, let him depart. A brother or a sister is not under bondage in such cases: but God has called us to peace."²¹

¹⁸A. L. Graebner, "Breach of Betrothal and Its Consequences," Theological Quarterly, IV (1900), p. 477.

¹⁹W. J. E. Dawson, The Church Quarterly Review, Vol. 127, No. 253, 36.

²⁰Ibid., p. 32.

²¹1 Cor. 7:15.

Commenting on Matt. 5:32 and speaking of the innocent party Dr. Lenski states: "Nothing in the words of Jesus forbids such a woman (or if the case is reversed, such a man) to marry again. Such a prohibition is often assumed but is without warrant in Jesus own words."²² Dr. Fritz likewise does not agree with the view that the innocent party cannot remarry when he states: "The innocent party in a divorce case is free to marry again."²³

2. A second school of thought, led by Lenski, holds that the translation of moichatai is misleading that it should be translated in the passive, thus: "Whoso marrieth her which is put away is stigmatized as adulterous."²⁴ In other words, he is not guilty of any sin. But he has to bear the shame of being married to a divorced woman. He takes the sin out of moichatai.

This sounds plausible until you notice that exactly the same word, moichatai, is used in the first part of verse nine with which word Jesus condemns the action of a man who puts away his wife. It makes no difference whether you translate the word active or passive, the whole context shows that whoever is guilty of moichatai has sinned. Jesus says: "He who puts away his wife ... moichatai; whoso marrieth her

²²R. C. H. Lenski, The Interpretation of St. Matthew's Gospel (Columbus, Ohio: The Wartburg Press, 1943), p. 173.

²³Fritz, op. cit., p. 173.

²⁴Lenski, op. cit., p. 238.

which is put away, moichatai." According to Jesus both are guilty of the same sin. To make the claim that the same word denotes a sin in one sentence and does not denote a sin in the next sentence is certainly doing violence to the word of Christ.²⁵

3. The third school of thought is that the Lord here forbids the remarriage of a woman, who is put away because she committed fornication. To marry such a woman makes the man who marries her an adulterer also. The full sentence would read: "Whoso marries her who was put away (because of her fornication) commits adultery." This passage, therefore, says nothing about the remarriage of the innocent party.

It is not adultery for the innocent party to remarry. Nor is the individual who marries the innocent party guilty of adultery. To hold the contrary would contradict such passages as 1 Cor. 7:15 which declare the innocent party free.

We agree with the Altenburger Bibelwerk which states: "Wo aber der Unchrist sich scheidet, da soll es dem Christen nicht verboten sein, sich wieder zu verheiraten."²⁶

✓ We conclude this section, then, with the statement with which we started: Those deserted by their spouses may remarry as well as those who have been divorced by death.

²⁵Matt. 5:32.

²⁶Luther, Diesterichs, and Vierlings, op. cit., III, 390.

Remarriage of the (Innocent Party) in Case of Fornication

Scripture grants the innocent party the right to obtain a divorce and to remarry in case of fornication. God's Word which forms the basis for this rule is Matt. 19, 9: "... and I say unto you, whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery," and parallel passages.²⁷

That this passage grants permission to remarry to the innocent party when the mate is guilty of fornication becomes quite clear when the entire section is studied.²⁸ It begins with the question of the Pharisees: "Is it lawful for a man to put away his wife for every cause?" It is well to remember also that the reason for putting away one's wife was that he might marry another.

After a discourse on the life-long binding force of marriage, Jesus makes this concluding statement: "Whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery." Surely, this means that in case of fornication, the innocent party may put away his or her spouse and may marry another.

Lenski writes:

The claim that nothing can be determined from these words regarding the man who releases his fornicatious wife and then marries another, is unwarranted. The implication is too plain that if he marries again he is not rendered adulterous.²⁹

²⁷Mc. 10:11-12; Matt. 5:31-32; Lc. 16:18.

²⁸Matt. 19:3-9.

²⁹Lenski, op. cit., p. 733.

Dr. Fritz writes: "The innocent person in a divorce case is free to marry again," and cites the above passage as proof.³⁰

Dr. Theo. Laetsch, taking for granted that fornication in the case has been established, writes:

The innocent party applying for a divorce does not transgress the rule laid down by the Lord Matt. 19:6. (What God has joined together let not man put asunder.) In this case it is not man severing what God has joined together, but the Lord Himself, having granted the permission, actually sanctions severing of the bond if the innocent party makes use of the permission granted.³¹

Dr. D. G. Barnhouse errs on this matter. He cites a case from his own experience:

Mrs. B. who is a believer is married to Mr. B., an unbeliever. Mr. B. is very eager that Mrs. B. maintain his home, mother his children, and provide the cover of his reputation, but Mr. B. takes another woman on week-end trips. Does this give Mrs. B. the privilege of divorcing her husband and remarrying? This case is answered in the negative, since God says she was to remain with her husband. There would be no point in 1 Cor. 7:13 if such were not the case: "and the woman which hath an husband that believeth not, and if he be pleased to dwell with her, let her not leave him." It is not to be generally expected that an unsaved man will act in any other than an adulterous fashion. Mrs. B., therefore, is bound to her husband as long as he is content to dwell with her.³²

Dr. Barnhouse's error lies in this that he forgets that God Himself set up fornication as one exception to the law of marriage. Surely that exception applies also to 1 Cor. 7:13.

It might be stated in this connection that the innocent party in a case of fornication, is not compelled by Christ to obtain a divorce.

³⁰Fritz, op. cit., p. 173.

³¹Laetsch, op. cit., IV, 36.

³²Barnhouse, op. cit., p. 33.

He grants her that permission. Whether she should in every case avail herself of that privilege will depend on circumstances.

Dr. Theo. Laetsch writes:

Christ distinctly gives to the innocent party the privilege of severing the marriage bond. Quite a different question is whether one will or should always avail himself of his right. The principle laid down by Paul in another matter applies here also: 'All things are lawful unto me, but all things are not expedient', 1 Cor. 6:12. Before advising in these cases, the pastor should carefully weigh all circumstances, the family conditions, the nature of the offense, the character and temperament of both spouses, etc. If the innocent party is inclined to waive his right, he should, as a rule, be encouraged to do so.³³

Dr. Martin Luther writing on this matter agrees:

Denen, die Christen sein wollen, zu rathen, waere es viel besser, dasz man beide Theile vermahnete und reizte, dasz sie bei einander blieben, und das unschuldige Gemahl sich gegen dem schuldigen (so sich's demuethigt und bessern wollte) versoehnen liesze, und ihm aus christlicher Liebe vergaebe.³⁴

We conclude, then, that the innocent party in a case of fornication has the God-given right to obtain a divorce and to marry again.

So far we have dealt with the innocent party and have reached the following conclusions: a) When ^{also} God severs the marriage bond by death, the living spouse has the right of remarriage; b) When a believing spouse is deserted by an unbelieving spouse thus breaking the marriage bond, the believing spouse has the right of remarriage; and c) In a case of fornication, the innocent party may terminate the marriage and may marry another.

³³Laetsch, op. cit., IV, 37.

³⁴Martin Luther, Saemtliche Schriften, edited by Joh. Georg Walch (St. Louis, Mo.: Concordia Publishing House) 1891), VII, 454.

(Remarriage of the Guilty Party)

The general rule established by Scripture is that the guilty party sins not only when he commits fornication or deserts his spouse, but also when he marries again. Here Matt. 19:9b applies: "Whoso marrieth her which is put away (because of fornication) commits adultery." 1 Cor. 7:11 also applies: "But and if she depart (that is, without a Biblical cause) let her remain unmarried." Remarriage is here forbidden the guilty party.

Dr. Theo. Laetsch writing in the Theological Monthly states that being bound by God's Holy Word the Church will plead with every member contemplating divorce for any other cause than fornication to desist from this course, and that if the individual persists in obtaining the divorce, the congregation will discipline and eventually excommunicate him. In case he marries again, Dr. Laetsch states the second marriage is adultery in its every act and manifestation.³⁵

In discussing the remarriage of the guilty party, Bibliotheca Sacra writes the following:

But could the offending party, who divorced the other wrongfully, marry again? Our Savior teaches that in so doing he would be morally guilty; would 'commit adultery against' his former wife, and must answer for it at the bar of God..... the party who unrighteously caused the divorce cannot marry again without sin.³⁶

³⁵Laetsch, op. cit., IV, 36.

³⁶Bibliotheca Sacra (Oberlin, Ohio: Bibliotheca Sacra Co., 1866), XIII, 396 f.

The International Critical Commentary agrees:

If any man divorces his wife and marries another, the second marriage goes for nought and the connection is an adulterous one, simply because the divorce is nil; it does nothing towards dissolving the marriage.³⁷

Is then a woman guilty of fornication or a deserter doomed to remain unmarried for life? The general rule is: "Yes". However Scripture itself makes exceptions to this rule. The fornicator is bound to his wife until she exercises her privilege of ending the marriage between them as granted her according to Matt. 19:9. Any marriage by him before such a time is adultery. The deserter is bound to his wife until she gives up all hope of reconciliation and ends the marriage bond according to the right granted her in 1 Cor. 7: 13. Until the innocent party terminates the marriage bond the guilty party is bound and marriage to another would be adultery.

When the marriage bond is definitely ended by the innocent party and the guilty party is truly penitent a remarriage cannot be denied. Thus writes Lenski: "As regards the guilty one who causes the disruption, the way of repentance is surely open also for such a sinner as it is for any other who has caused irreparable wrong to another."³⁸

To this Dr. Fritz agrees when he writes:

³⁷The International Critical Commentary (New York: Scribners), p. 186.

³⁸Lenski, op. cit., p. 735.

The guilty person may not marry as long as the innocent party remains unmarried and there is reason to believe that a reconciliation can be effected.... However, after the innocent party has procured a divorce, not being willing again to live with the guilty party, a pastor may perform the marriage ceremony for the guilty party in a divorce case, provided, of course, that such a person is truly penitent.³⁹

Discussing this matter in the Concordia Theological Monthly

Dr. Laetsch writes:

In the decision whether the state (of marriage) should continue (after one party is guilty of fornication), the guilty party is entirely at the mercy of the innocent party until the decision has been rendered, and this decision is final. If the injured party decide to condone and uphold the existing relation, both parties are and remain bound as they were before the offense. If the innocent party decide not to condone, but to rescind and thus to terminate the existing relation, both parties are free as they were before the relation was entered into and established.⁴⁰

He adds that it is self-evident that the fornicator must be repentant and penitent before a remarriage can be condoned.

We conclude then that when a marriage is definitely dissolved and it is impossible for the guilty one to return to his former spouse, and the guilty party is truly penitent, the guilty party cannot be denied the right of remarriage.

³⁹Fritz, op. cit., p. 173.

⁴⁰Laetsch, op. cit., IV, 38.

CHAPTER V

CONCLUSION

When speaking of marriage it is important that we remember that we have thousands of marriages which have brought untold happiness to husbands, wives, and their children - especially in the Lutheran Church. Every effort should be made to cultivate a healthy attitude toward marriage among the young, so that they look forward to a happy married life, as God intended it to be. Neither will it be amiss to tell our people who have established happy homes that they are the bulwark of the nation and the salt of the earth.

In connection with divorces the old proverb surely applies: "An ounce of prevention is worth a pound of cure." "The best attack upon divorce is the constructive treatment of the premarriage period."¹ Marriage counseling is of greater importance today among our people than ever before, since we are no longer isolated among ourselves as we were a generation or two ago. Our young people of today make contacts with young people of all kinds. Radio, television, and cheap magazines create the wrong impression about marriage and the married life.

The importance of marrying Christians of the same faith needs special emphasis. Young people ought to be encouraged to join the Church's youth organizations where they can meet and become acquainted with fellow Lutherans. Parents ought to be concerned about helping their young people

¹Regina Westcott Wieman, The Modern Family and the Church (New York: Harper and Brothers), p. 186.

find mates of their own faith and to that end cultivate a friendship with parents who have children the age of their children, send their sons and daughters to our Walther League Camps, conventions, and to such other places where they might meet a mate for a God-pleasing and happy marriage.

Like St. Paul we ought to encourage the young women to marry and have children. Luxuries and gadgets will never bring the happiness nor will they cement the marriage tie like one or more children will do.

Since we are living in a fast age, we have to warn against short courtships and hurried marriages. The following paragraph taken from a pamphlet on marriage is much to the point:

Men and women carefully plan how they can make their careers successful. Men and women trust to a kind of blind, unplanned luck to make their marriage a success. Men and women give a deal of thought to the making of money. They stumble into marriage and then hope blindly and blissfully for the best.

It's just not smart. It's not remotely sensible. No wonder that modern marriage, about which everyone feels and almost nobody thinks, is so often a failure. It will continue to be a failure until people remember that it is not an adventure, but a job, not a pleasure trip for a week-end, but a career meant to last for life.²

The real cure for broken homes and broken hearts is the Word of God. "Faithfulness in the use of God's Word is the most necessary element in the preservation of the family and the Christian home."³ Any measures

²Daniel A. Lord, Your Partner in Marriage (St. Louis, Mo.: The Queen's Work, 1936), p. 29.

³Carl S. Mundinger, "Dangers Confronting the Church Today," The Abiding Word, edited by Theo. Laetsch (St. Louis, Mo.: Concordia Publishing House, 1946), p. 498 f.

to stop the flood of divorces applied aside from God's Word are only stop-gaps. The Word of God must be used in our homes, in our Sunday Schools, Parochial Schools, and our Churches first of all to regenerate the hearts and then also for reproof, for correction, and for instruction in righteousness. In our efforts to establish happy homes it is vitally important to remember that our emphasis should here, too, be on regeneration and not just reformation; and that regeneration is accomplished only by the Law and Gospel.

It ought to be needless to say that the Church ought to speak very plainly on matters of engagement, marriage, and divorce and give forth no uncertain sound as to what is right and wrong in these matters. Rationalism ought never take the place of God's Word. Laxity in these matters is not being evangelical nor is it love. Taking "the easy way out" and letting the sinner have his way is unfaithfulness to God and the Church as well as an injustice to the sinner. "Those who are born again", writes Dr. Barnhouse, "must cleave to the Word and follow it in spite of personal desires and wishful thinking."⁴ God gave us His laws for our happiness, and the closer we abide by them the happier we will be. Jesus said: "Take my yoke upon you, and learn of me ... and ye shall find rest unto your souls. For my yoke is easy and my burden is light."⁵

Finally, the Church ought to be deeply concerned about all those who are divorced ... also about the guilty party. Jesus died for the

⁴D. G. Barnhouse, Revelation (January 1946), p. 35.

⁵Matt. 11:29-30.

BIBLIOGRAPHY

American Lutheran, The. December, 1939.

Barnhouse, D. G. Revelation. January, 1946.

Belkin, Samuel. Philo and the Oral Law, The Philonic Interpretation of Biblical Law in Relation to the Palestinian Halakah. Cambridge: Harvard University Press, 1940.

Bente, F. Concordia Triglotta. The Symbolical Books of the Evangelical Lutheran Church. St. Louis: Concordia Publishing House, 1921.

Bible, Holy. Authorized Version.

Bibliotheca Sacra. XIII. 1866.

Bowman, Henry A. Marriage for Moderns. New York: Whittlesey House
McCraw - Hill Book Co. Inc., 1942.

Burgess, Ernest. Predicting Success or Failure in Marriage. New York:
Prentice Hall Inc., 1939.

Brand, Norton F. and Verner M. Ingram. The Pastor's Legal Advisor.
New York: Abingdon - Cokesbury Press, 1942.

Commission on Ministerial Training - The Methodist Church. Making the Gospel Effective. Edited by Wm. K. Anderson. Nashville, Tenn.:
Lamar and Barton.

Dawson, W. J. E. The Church Quarterly Review. Vol. 127, No. 253.

Edersheim, Alfred. Sketches of Jewish Social Life in the Days of Christ.
New York: Hodder and Stoughton, n.d.

Faculty Opinion on Betrothal. Springfield, Ill., 1949.

Fritz, John H. C. Pastoral Theology. St. Louis: Concordia Publishing
House, 1932.

Fuerbringer, F., Th. Engelder, and P. E. Kretzmann. Concordia Cyclopedia.
St. Louis: Concordia Publishing House, 1927.

Graebner, A. L. Theological Quarterly. Volumes II, IV, VII. 1898,
1900, 1903.

Graebner, Theo. The Bible Student. XVI. April, 1938.

Greenstone, Julius H. The Jewish Encyclopedia. VIII. New York: Funk and Wagnalls Co., 1907.

Intermediate Catechism and Workbook. Submitted by Synod's Committee to the Pastors and Teachers of the Missouri Synod. St. Louis: Concordia Publishing House, 1948.

International Critical Commentary, The. New York: Scribners.

Jesse, F. W. C. Catechetical Preparations. I. St. Louis: Concordia Publishing House, 1919.

Koehler, E. W. "Letter to Arthur E. Graf," dated January 9, 1951.

----- . Mimeographed Paper on Marriage.

Kretzmann, P. E. "Betrothal and Marriage," Theological Quarterly, XX. 1916.

Laetsch, Theo. Concordia Theological Monthly. III. November, 1932.

Lenski, R. C. H. The Interpretation of St. Matthew's Gospel. Columbus, Ohio: The Wartburg Press, 1943.

Lord, Daniel A. Your Partner in Marriage. St. Louis: The Queen's Work, 1936.

Luther, Martin. Auslegung des Neuen Testaments. X. St. Louis: Concordia Publishing House, 1891.

----- . Saemmtliche Schriften. VII. Edited by Joh. Georg Walch. St. Louis: Concordia Publishing House, 1891.

Luther, Martin, M. Viti Dieterichs, and Francisci Vierlings: Altenburger Bibelwerk. III. St. Louis: Deutsche Evang. Lutherische Bibelgesellschaft, 1867.

Mackey, Richard V. The Law of Marriage and Divorce in all Forty-eight States. New York: Oceana Publications, 1947.

Maier, Walter A. "Divorce and Mixed Marriages," The Walther League Messenger, (October, 1934).

Millard, Joseph: "Divorcees Anonymous," Redbook, (February, 1950).

Mundinger, Carl S. "Dangers Confronting the Church Today," The Abiding Word. I. Edited by Theodore Laetsch. St. Louis: Concordia Publishing House, 1946. Pp. 482 - 507.

Short Explanation of Dr. Martin Luther's Small Catechism. A Handbook of Christian Doctrine. St. Louis: Concordia Publishing House, 1943.

Short Explanation of Dr. Martin Luther's Small Catechism. Edited by the Ev. Lutheran Synod of Missouri, Ohio, and other States. Annotated by Edward W. A. Koehler. River Forest, Ill.: Koehler Publishing House Co., 1946.

Sieck, L. J. "Letter to Arthur E. Graf," dated September 20, 1950.

Thompson, Dorothy. "Divorces are Not Crimes: They are Tragedies," Ladies Home Journal. (August, 1951).

Walther, C. F. W. Pastorale. St. Louis: Concordia Publishing House.

Wieman, Regina Westcott. The Modern Family and the Church. New York: Harper and Brothers.