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Divorce and Remarriage in the Light of Holy Scriptures

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DIVORCE AND REMARRIAGE

**IN THE
IN HOLY SCRIPTURE**

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
Otto E. Dehn

June 1919

Approved by:

Richard P. ...
1919

Richard P. Deuff
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Approved by:

Richard P. Cummings
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CHAPTER I

THE DIVORCE PROBLEM AS IT AFFECTS OUR LUTHERAN CHURCH

When our Creator on the sixth day of creation joined Adam and Eve in holy wedlock, it was His intention that the bond of matrimony should remain unbroken. This is evident from the words of our Lord Jesus Christ who reaffirmed the divine ordinance and validity of this sacred institution, and His subsequent statements that divorce is the work of the flesh.

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that they are joined together. Among the laws of the Old Testament and during the time of Jesus without formality of law there had become so common that Moses received instructions to place into the Mosaic code the requirement that a man should give his wife a writ of divorcement; when

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CHAPTER I

THE DIVORCE PROBLEM AS IT AFFECTS OUR LUTHERAN CHURCH

When our Creator on the sixth day of creation joined Adam and Eve in holy wedlock, it was His intention that the bond of matrimony should remain unbroken. This is apparent from the words of Jesus in which He not only reaffirmed the divine origin and validity of this ancient institution, but added the significant statement: "What therefore God hath joined together, let not man out asunder."¹ God reserved for Himself the sole right to sever the marital tie, which He does when He says to husband or wife: "Return, ye children of men."² On man's side marriage cannot be broken without sin on the part of either or both spouses.

Yet this divine ordinance, like other ordinances of God, has suffered violent abuse at the hands of sinful man. People have undertaken, and still undertake, to put asunder what God has joined together. Among the Jews of the Old Covenant the putting away of wives without formality or just cause had become so common that Moses received instructions to place into the theocratic code the requirement that a man at least give his wife a writ of divorcement; also

¹ Matt. 19:3-6.

² Rom. 7:2,3; 1 Cor. 7:39.

that after her defilement by a second husband, whether the latter also divorced her or died, she should not return to the former.³

Divorce in the United States

In our country there is no dearth of divorces, though in recent years there has been a decline in the national rate. In our early history, indeed, divorce was relatively rare, in fact, almost nonexistent. Law, religion and public opinion were strongly aligned against it. A stigma, which even the innocent or injured party could not altogether escape, was attached to the disrupter of the marriage tie. As a consequence, the early settlers, who were more vitally dependent upon one another in the grim battle for existence and material progress than we are, for the most part settled their fireside conflicts by frank discussion and/or compromise, or practised accommodation, or indulged in hostile argument to clear the air and restore calm. But the union remained intact. In 1867, nearly 250 years after the arrival of the Pilgrim Fathers, the total number of divorces reported in the United States was a mere 9,937, which constitutes a rate of 0.3 divorce per 1,000 population. In 1946 the number of divorces reached an all-time high, namely 610,000, which raised the rate to 4.3 per thousand population or

³Deut. 24:4.

fourteen times as great as in 1867. During the last decade there has been a noticeable downward trend in the rate, the latest available figures showing a total of about 400,000 divorces and a rate of 2.4 per thousand population for the year 1954. Yet even this constitutes more than 1,000 broken homes per day, the most frequent cause for divorce, which account for 80% of the total, being adultery, cruelty, non-support, desertion, and drunkenness.

It is interesting to know that in the year 1953 the state of Nevada led the nation with a rate of 49.2 divorces per thousand population, after a record of 14.6 per thousand in 1946; Florida was second with a rate of 6.0.⁴ It is pointed out, however, that a large portion of these were migratory divorces, obtained by non-residents. The actual leader was the state of Oklahoma with a rate of 5.8 out of 42 states reporting. The state of Kansas was in nineteenth place with a rate of 2.6; New Jersey and North Dakota were low with a rate of 0.9.

This, however, is not the whole story. Many unhappy marriages never reach the divorce courts, but are ended by informal separations or desertions, sometimes called the poor man's divorce.⁵ Paul C. Glick reports that in April

⁴P. Popenoe, "The Statistics of Divorce," Family Life Bulletin, XVII (May, 1956), 1-3.

⁵P. Popenoe, "Research Notes," ibid., XVIII (December, 1957), 5.

1953 there were 1,758,000 separated couples in the United States who were neither divorced nor widowed.⁶ It is estimated that 200,000 separations of this type occur annually.⁷

Divorce in the Lutheran Church -- Missouri Synod

In the Lutheran Church -- Missouri Synod divorce was almost unknown a half century ago. To be sure, our synodical ancestors had their problems and conflicts too and our pastors were frequently called upon to help quiet agitated matrimonial waters. But the total break-ups of marriage by divorce rarely if ever occurred.

Seven years ago, at the request of the Family Life Committee of the Lutheran Church -- Missouri Synod, the official statistician published some interesting figures on the incidence of divorce occurring in the more than 5,000 congregations comprising its membership.⁸ The first report covered the year 1951 and revealed a total of 1052 divorces. But since only 80% of the pastors reported, the actual figure was estimated at 1280, a rate of .68 per thousand of the baptized membership. Fifty per cent of these divorces occurred in homes

⁶P. C. Glick, American Families (New York:Wiley, United States Department of Commerce, Bureau of Census, 1957), p. 108.

⁷M. Fishboin, Modern Marriage and Family Living (New York: Oxford University Press, 1957), p. 109.

⁸A. C. Schroeder, editor, Statistical Yearbook (St. Louis: The Lutheran Church -- Missouri Synod, 1951), p.244; ibid., 1952, p. 243; ibid., 1953, p. 247; ibid., 1954, p.250.

where both spouses belonged to our church and fifty per cent in homes in which one spouse belonged to another, or to no, church. The following year the rate was .67 per thousand. The report for 1953 reflected the general downward trend and showed a rate of .60. In 1954 the rate dropped still more, namely to .57 per thousand. Stated in another way, the divorce rate of the Lutheran Church -- Missouri Synod for 1954 was one for every 10.3 marriages performed, while according to Koos⁹ the national ratio is one divorce for every five marriages, which of course includes chronic divorces and divorcees. The Missouri Synod's divorce rate, however, would be considerably higher if it were established that in reporting on marriages performed, our pastors had included non-member marriages in the figures. For it is certain that they did not know of, and therefore did not include, divorces on the part of non-members whom they had united in wedlock. In that case the number of divorces would remain unchanged, but the total number of marriages would be reduced, thus raising the ratio between marriages and divorces. But regardless of the exact rate, the sobering fact remains that we annually have in our Synod about 1,300 marriages which end in disaster, and that is 1,300 too many.

⁹ E. L. Koos, Marriage (New York: Henry Holt & Co., c.1957), p. 293.

Is there a Cure for the Divorce Evil?

Various suggestions have been made and in part carried out to improve this disgraceful situation in American society. One is to raise the minimum age of marriage in order to prevent the physically immature from marrying. Others would prevent hasty marriages by establishing a waiting period between the application for, and the issuance of, the marriage license. More and more states are adopting this plan. Still others suggest the abolition of common law marriages which are entered upon without license or ceremony. More and more states require health certificates and prohibit the marriage of mentally and physically defective persons whose union is regarded a detriment to society. The demand is made that all marriages be solemnized by responsible persons. Some would prescribe promarital instruction, and there are even those who advocate the legalizing of trial marriages.

We shall not enter upon a discussion of the merit or demerit of these suggestions. Some of them have proved themselves useful. Yet they do not attack the problem at the right point. It must not be forgotten that the real cause of marital disharmony and eventual divorce is the sinful human heart with its innate selfishness, pride, spite, stubbornness, lovelessness, and resistance to the Word of God, - evils all against which even Christian people must constantly contend. Nor must it be overlooked that our greatest

hope for success lies in pre-divorce, better still, premarital, counseling. It is far easier to prevent than to undo a divorce. Once a complete break has occurred, efforts to mend it are extremely difficult and largely unsuccessful. Thus the purpose of this thesis is to point out what can and needs to be said and done to conquer this vexing problem and to promote harmonious and Christian family living. To that end we would now examine the Scriptural principles by which we are to be guided in this matter so that our efforts may be truly God-pleasing.

CHAPTER II

VARIOUS GROUNDS FOR DIVORCE IN LAW AND HOLY SCRIPTURE

From the legal point of view there is a great diversity of grounds for divorce as there is also a marked difference in the attitude which our several States take toward divorce. Judge M. Floscove of New York sets the total at 43.¹ The most common grounds as listed by M. Ninkoff are adultery, cruelty, desertion, alcoholism, impotency, felony conviction, neglect to provide, insanity, pregnancy at marriage, bigamy, separation, imprisonment, indignities, drug addiction, fraudulent contract, felony before marriage, violence, absence, infamous crime, loathsome disease, relationship within prohibited degrees. Under the caption 'other grounds' he mentions nonage, joining a sect disbelieving in marriage, unchaste behavior of a wife after marriage, no reconciliation after one year of marriage, the Enoch Arden Law [five years' absence], gross misbehavior or wickedness, and prostitution on the part of a wife.² Doubtless there is some overlapping here and the remaining grounds are very likely variations of these.

¹M. Floscove, Sex and the Law (New York: Prentice-Hall, 1951), p. 66.

²M. Ninkoff, Marriage and the Family (Boston: Houghton-Mifflin Co., c. 1947), pp. 623ff.

It must be remembered that not all States recognize all of these grounds. As of January 1, 1945, South Carolina and the District of Columbia permitted no divorce at all, while the State of New York recognized only adultery as a valid ground. Yet in the latter state it is as easy to get an annulment as it is to get a divorce anywhere else in the United States.³ Since 1949 South Carolina recognizes four legal grounds, yet its divorce rate did not change, remaining stable at 1.1 per thousand.⁴ The State of Tennessee appears to rank highest in number of legal divorce grounds with thirteen.⁵

The Biblical Grounds for Divorce

From the Scriptural point of view there is only one valid ground for the permanent dissolution of a still existing marriage, namely fornication, that is, sexual relations with a person other than one's spouse.⁶ "Except it be for fornication," said Jesus. True, there are Bible scholars who do not regard this exception clause as authentic, but as a later interpolation or insertion. Thus we read in Kittel's

³ H. Floscowe, Sex and the Law (New York: Prentice-Hall c. 1951), p. 36.

⁴ E. L. Koos, Marriage (New York: Henry Holt & Co., c. 1957), p. 29.

⁵ M. Ninkoff, Marriage and the Family (Boston: Houghton-Mifflin Co., c.1947), p. 652

⁶ Matt. 5:32; 19:9.

Woerterbuch: "The clause found only in Matthew cannot on the basis of the parellel texts (Mark 10:11.12; Luke 16:18) be considered genuine, but were doubtless inserted on the basis of later canon law."⁷ Easton puts it this way: "This very Rabbinic preciseness (Matt.5:32) tells strongly against it as an authentic statement of Christ."⁸ And F. A. Pottle: "It is based upon a text which many scholars consider interpolated."⁹

A fine answer to these claims is made by C. Caverno, when he states:

One of the grounds adduced for the denial of divorce in case a partner is guilty of adultery is that Luke and Mark do not record the exception. It is difficult to invade the psychology of writers who lived nearly 2,000 years ago and tell why they did not include something in their text which someone else did in his. Neither Mark nor Luke were personal disciples of Jesus. They wrote at second hand. Matthew was a personal disciple of Christ and twice recorded the exception. It will be a new position in regard to judgment on human evidence when we put the silence of absentees in rank above the twice expressed report of one in all probability present. . . . This may be said: Matthew's record stands in ancient manuscript authority, the Greek as also the Versions, and on this point let it be noted that the testimony of the manuscripts was up before the English and American revisers, and they have deliberately reaffirmed the text of 1611 and given us

⁷G. Kittel, Theologisches Woerterbuch zum Neuen Testament (Stuttgart: W. Kohlhammer-Verlag) IV, 741.

⁸F. A. Pottle and others, Five Essays on Marriage (Cloister Press, n.d.), p. 9.

⁹Ibid., p. 30.

the exception in Christ's rule in each place (Matt. 5:32; 19:9). This makes the matter as nearly a *res adjudicata* as can be done by human wisdom."¹⁰

To this fine statement we add the observation that the authors of the Revised Standard Version also let the exception clause stand unchallenged in both places.

As to the meaning of this exception clause there can be no doubt. In answer to the Pharisees' question whether it was lawful to put away one's wife for every cause, Jesus replies that such putting away constitutes adultery except when the wife is guilty of fornication. Christ here grants to the innocent or injured party, whether husband or wife, the right to put away his spouse, that is, to dissolve the union by procuring a legal divorce and subsequently, if so minded, to marry another person without damage to his status in God's kingdom, provided he or she is not likewise guilty of that sin. This privilege belongs to the injured party whether the offender agrees to the dissolution of the marriage or not. The words of Jesus are clear. Counseling procedure in such cases will be discussed a little later.

Malicious desertion is likewise a valid ground upon which a Christian spouse may seek a permanent divorce from the offending spouse. The Scriptural warrant for this

¹⁰ C. Caverno, Divorce, in International Standard Bible Encyclopedia (Chicago: Howard-Severance Co., 1915), II, 865.

statement is as follows: 1 Cor. 7:12-15:

But to the rest speak I, not the Lord: 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. For the unbelieving husband is sanctified by the wife, and the unbelieving wife is sanctified by the husband; else were your children unclean; but now are they holy. But if the unbelieving depart, let him depart. A brother or sister is not under bondage in such cases; but God has called us to peace.

At first glance this statement of the Apostle may seem to be in conflict with the words of Jesus who mentions only fornication as an exception. However, there can be no contradiction between them since both statements have come to us from God, the one from the lips of Jesus, the Godman, the latter from the pen of the Apostle, the man of God, who wrote by inspiration of the Holy Spirit (1 Cor. 2:12). Says John Gerhard:

Jesus and Paul do not deal with the same question, nor with the same case. Christ shows the cause for a divorce that is to be made, the Apostle the cause for a divorce to be suffered, or liberation on account of an unjust desertion to be obtained; Christ speaks of the one who makes the divorce, Paul of the one who suffers the divorce. Jesus speaks of him who turns from his spouse, St. Paul of him from whom his spouse turns. Christ speaks of voluntary separation, Paul of involuntary separation.¹¹

Fornication is actually the only ground upon which a Christian may dissolve a still existing union. But in a case of malicious desertion the guilty party is not really

¹¹J. Gerhard, Loca Theologica (Tuebingen: Geo. Cotta, 1762), XVI, 184.

put away, but has already gone, the divorce being the legal certification that the marriage has already been dissolved by the departure of the guilty one. As Dr. John Fritz puts it, the innocent party may not enact, but suffers the dissolution of his or her marriage.¹²

All other grounds for divorce, except as properly includable in the above-mentioned, must be regarded as invalid in the eyes of God, even though the civil authorities recognize them. They nullify the offender's good standing in the church and subject him to church discipline. Even though civil government is God's ordinance, it cannot dispense its citizens from observing the principles which God has laid down. It does not declare such divorces to be right before God. Like Moses in the Old Testament theocracy, it permits such divorces because of the hardness of men's heart. It does not attempt to legislate in spiritual matters, but leaves the burden upon the individual to decide whether his contemplated divorce accords with the will of God. Even if it did so legislate, a Christian must still obey God rather than men,¹³ just as he is not free to engage in idolatrous worship because our laws grant him complete freedom in this respect. Divorce, except for fornication or desertion is adultery before God.¹⁴

¹²J. H. C. Fritz, Pastoral Theology (Second edition; St. Louis: Concordia Publishing House, 1945), p.167.

¹³Acts 5:29.

¹⁴Matt. 5:32; 19:9.

CHAPTER III

GENERAL PROCEDURES IN DEALING WITH DIVORCES

Pastoral counseling with respect to the divorce menace has two aspects, one before and one after divorce, both of a constructive nature. Before divorce it is primarily a matter of judicious marriage counseling, both on an individual and on a collective basis, of the married as well as of the unmarried. Then there is also a specific aspect of pre-divorce counseling, namely when pastor and church in Christian love and solicitude in a given situation seek to prevent the divorce for which suit has already been filed, or which has already been granted.

In a more general way, a wide-awake pastor will not only discuss the Scriptural principles and ideals concerning marriage in his confirmation and Bible classes, but will find proportional time for it in his pulpit program, especially when the Epistle or Gospel lessons for the day suggest a message in the field of marriage and family living (II Sunday after Epiphany, Family Week, Mothers' Day, Fathers' Day, etc). He will from time to time speak on such topics in his various church organizations and arrange a special lecture or discussion series primarily for his young people. Here is the opportunity to help the youth to piece together the divine family ideal as pictured in Eph. 5:22-23, Col.3:12-21, and related passages. Here he may discuss with them in greater

detail the principles of engagement, marriage, divorce, what to look for and of what to be careful in choosing a mate, the importance of family worship for success in marriage, and the like. [Many a fruitful seed may thus be sown which, though it may lie dormant for a season, will later sprout and bear helpful fruit when the occasion demands solid thinking on the subject. And by no means will a conscientious pastor fail to let it be known that he is ever willing to discuss these matters, be it with those who are looking forward to marriage and feel the need of good counsel before they commit themselves, or be it with those whose matrimonial ship has run into stormy weather and appears to be headed for disaster on the divorce reef. Come over, he will tell them, and let us talk your problem through before you consult an attorney to assist you in putting asunder what God has joined together. If ever an ounce of prevention is worth a pound of cure, it is true with respect to the breaking of a marriage, the lifelong union of one man and one woman unto one flesh which God alone has the right to dissolve. It is so much easier and simpler to counsel against marriages which are almost certain to result in serious disagreement and conflict, yea to ward off an impending divorce, than to find an effective solution for problems after the marital harmony has already been disrupted and the union dissolved.

The Chief Requirements for Successful Marriage

Judson and Mary Landis in their "Building a Successful Marriage" are doubtless correct when they say:

One of the important elements in building a good marriage is a consciousness of the fact that marriage commits both partners to a permanent relationship. When they say the words, "I take thee . . . for better, for worse, for richer, for poorer, in sickness and in health, until death . . . they are contracting for a lifetime of cooperation in all areas of living. Successful cooperation is not possible when any limitations are set upon it. Today, when divorce is relatively easy, it might seem questionable to imply the logic of taking the marriage vows seriously - "for better, for worse, until death." But commitment to marriage as a lifetime undertaking is the only logical starting point from which a successful marriage can be built.¹

No less important to the marriage success is that it be as homogamous as possible; that is to say, both parties to a given marriage should endeavor to be as nearly alike as possible in the more important traits and characteristics, especially the spiritual and mental, but by no means excluding the physical, even social. Young people should be cautioned against marriages in which there are wide differences between them, especially in such important aspects as age, size, race, intelligence, social background, economic status, health, and particularly religion.² For it is clear that the wider the

¹J. T. and M. G. Landis, Building a Successful Marriage (New York: Prentice-Hall Co., c.1958), p. 5.

²H. A. Bowman, Marriage for Moderns (New York: McGraw-Hill Co., c.1948), p. 171.

difference, the greater and more constant the occasion for conflict and the need for adjustment which in some of these areas is extremely difficult, if not impossible, to achieve, as for instance marrying someone of another race or color, or one who is hostile toward religion, or who is a devout member of a militant sect. It should be stressed that religious differences have the tendency of becoming more detrimental in the measure that both spouses are devoted to their particular religion or church. J. Pike points out that the divorce rate in mixed marriages is two and one quarter times as great as in families where both spouses have the same religion.³ Equally hazardous and wellnigh hopeless is marriage to an addict of a vicious habit or criminal tendency in the hope of reforming him. Such well-meant ventures usually lead to disillusionment, frustration, heartache, and a broken home.

J. Furbay in his Workbook Manual has given us a representative list of the more important points to be investigated thoroughly by those who are giving serious thought to becoming married. These points, to which we have added some explanatory notes and questions from the Christian and Lutheran point of view and which form a useful outline for group discussions, are:

³J. Pike, When you Marry Outside Your Faith (New York: Harper and Bros., c.1954), p. 28.

1. Family background: Health, ideals, conflicts, general attitude, and relationship to one's parents.
2. Philosophy of life: Goals, social standards, attitude on drinking and other social questions, value placed on education.
3. Religion: Is it compatible with one's own? If not, how much does it mean to him or her? Will he or she be willing to receive instruction and embrace the Lutheran faith before engagement? Is the agreement demanded that the children will be reared in his or her faith?
4. Attitude toward money: All-absorbing goal in life? Thrifty or wasteful? Given to gambling or foolish investments?
5. Attitude toward marriage and family life: Is the other agreed on the permanence of the marriage tie? Does he give promise of being faithful? Attitude toward children, sex, birth control, home life.
6. Reaction under emotional strain: Can he or she control self under disappointments, slights, or reverses? Is there flexibility and capacity for compromise? Are there serious temperamental outbursts?
7. Reaction under work pressure: Does hard or steady work change his or her disposition, tolerance or emotions? Are there good work habits and industry? Steady or continuously changing occupations?
8. Mental interests: Which are the strongest interests? Are they varied or all-absorbing? Are there mutual interests or are they ego-centric?
9. Affection responses: Is there vital, mutual, and physical attraction, and is there proof of it? Is his affectional attitude one of warmth or of indifference?
10. Selection of friends: Are these friends of a desirable type? How does he or she get along with friends? Are they agreeable to both or will they cause difficulty?⁴

⁴J. Purbay, Workbook Manual for Marriage and the Family (New York: D. Appleton-Century Co., Inc., 1942), p. 14.

To all of this two things must be added. In the first place, no man or woman has all desirable qualities. He who expects perfection is doomed to disappointment. We all have our faults and we do not usually reveal them clearly before marriage. The important thing is that there be not from the outset a wanton disregard of that which is true, honest, just, pure, lovely, and of good report; likewise, that there is evident a willingness to respect the ideals and wishes of the other already during courtship and to make necessary adjustments. Glaring self-centeredness from the outset makes the outlook dark and forbidding, so that dating should be discontinued and the whole affair dropped. A marriage under such circumstances is doomed to failure.

The other point of emphasis is that one cannot adequately make these observations within the span of a few weeks. Both parties will initially display their very best manners, but as they become better acquainted and associate more frequently, they begin to reveal more and more of their true selves. Familiarity will have the opportunity to breed contempt or at least disregard of the ideals and wishes of the other. Normally, therefore, a longer courtship - depending to a certain extent upon the frequency of association as well as the background and reputation of the individual - is needed in order to achieve a sufficiently thorough understanding of one another and with it the ability to take the vital step into engagement and marriage with joyful conviction of its success.

Prenuptial Marriage Counseling

Then there is premarital counseling of a special type which takes place when a couple comes to the church office to make arrangements for the wedding. In some respects it is then too late for effective counseling. If the engagement was voluntary and valid and the marriage date set, some matters, such as the age, race, or other weighty differential, need and can no longer be profitably discussed except to urge prayerful effort upon both to compensate as much as possible for these differences. Other matters, however, require clear-cut emphasis. Both parties should again have the God-willed permanence of the marriage bond impressed upon them so that they will not let the first major crisis upend their marriage and send them scurrying headlong for the divorce court, but that they make a valiant Christian effort to make their marriage succeed. At this time it is also much in order to stress the conserving and healing influence of joint family and church worship, which is true happiness insurance indeed because it supplies the only true and effective motivation for prompt reconciliation. Faithful use of the Word of God is the most dynamic force on earth to impel married people to adjust and compose their differences and to restore harmony. The alert pastor will also stress the great importance of practicing mutual love, tolerance and

forbearance⁵ as well as the willingness and firm resolve to talk their differences over at once and never to let the sun go down upon their wrath.⁶ No less should they be exhorted to accept and honor each other's parents, since suspicion and dislike of one's parents-in-law is one of the surest roads to marital discord and conflict as it is also a shameful violation of the Fourth Commandment. Finally, before the pastor dismisses the couple with his blessing, he will assure them that any problems which they themselves are unable to work out will find a sympathetic ear and heart in the privacy of the church office.

In spite of our best efforts, however, divorces will occur also among our people, as indeed their incidence has greatly increased, as already shown. Hence a pastor, being a watchman over Christ's flock, will constantly be on the lookout to learn, and seek if possible to prevent, such marital shipwrecks in his church. An alert pastor will watch the vital statistics column in the daily newspapers and, noting an impending divorce among his members or learning of it through other channels, will grasp the first opportunity to visit the estranged spouses and do his utmost

⁵Eph. 5:22-23; Col. 3:18.19; 1 Pet. 3:1.

⁶Eph. 4:26.

to save and to restore their marriage.

From the church's point of view, as noted earlier, divorces fall into three distinct categories, namely those which are sought on the grounds of 1) fornication or adultery, 2) of malicious desertion, or 3) of any of the remaining legal grounds specified in the laws of our several states. For the sake of clarity, and in order to avoid overlapping and confusion, we shall now consider each category separately and outline a mode of procedure for each one individually in harmony with the Scriptural principles which govern them.

CHAPTER IV

DIVORCES ON THE GROUNDS OF FORNICATION

When our Lord solemnly affirmed to the inquiring Pharisees the continuing validity of God's original institution of marriage¹ and the permanence of the marriage bond,² He at the same time recognized one valid exception to the latter provision, namely putting away one's wife for fornication, that is, for sex relations with another man.³ This exception had been previously stated by Jesus in the Sermon on the Mount.⁴ It is not necessary to repeat the claim, nor the refutation of the claim that this exception clause is a later addition to the original text of St. Matthew's gospel. Suffice it to say that the Lawgiver Himself, according to whose will the sacred bond of matrimony must never be broken, in the two texts just quoted grants to the innocent or injured Spouse the right to put away [by divorce] the adulterous offender and, if so minded, to enter upon a new marriage with another man or woman. For if He

¹Gen. 2:18-24.

²Matt. 19:4-6.

³Matt. 19:9.

⁴Matt. 5:32.

says: "Whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery,"⁵ then the converse must also be true: Whosoever shall put away his wife for fornication, and shall marry another, does not commit adultery. That conclusion is legitimate and valid beyond all doubt.

The Meaning of the Term Fornication

The new Greek-English Lexicon of the New Testament by W. F. Arndt and F. W. Gingrich defines the original word used by St. Matthew as meaning prostitution, unchastity, fornication, every kind of unlawful sexual intercourse. It has been held that the word denotes only illicit sex relationship on the part of unmarried people and that Christ consequently gave a husband the right to put away his wife only if he had evidence that she had had sex relations with another man before her marriage. Yet that is an arbitrary assumption which is refuted by 1 Cor. 5:1 where the Apostle uses that very word to describe the sin of a man who had such illicit relations with his father's wife; also by Amos 7:17, where the authors of the Greek translation of the Old Testament (Septuagint) used the verb form of the same word to render the prophet's words: "Thy wife shall be a harlot (same word) in the city." It may rightfully be asked:

⁵ Matt. 19:9.

Would it not be strange that immorality on the part of a man or woman before marriage should be a Scriptural ground for divorce, while unchastity after marriage, which is really the more grievous sin because of the vow of faithfulness that was given, should be disregarded or condoned? Our church has always taken these words of Jesus at their face value and regarded proven or confessed fornication as permission, though not as a command, to put away the offending spouse and to marry another.

Dealing with Spouses Guilty of Fornication

What shall be the procedure of a Christian pastor and congregation when confronted with a divorce of this type? Needless to say, the charge must be investigated and the guilt clearly established, either by direct evidence or by the confession of the accused spouse. Mere suspicion cannot be accepted as proof, nor can imprudent acts of familiarity with a member of the opposite sex be regarded the equivalent of fornication. Looking after a woman to lust after her is termed adultery by Jesus,⁶ but it is not fornication except in thought. The term fornication implies actual sex relations, for which evidence is not easy to obtain. These are the shameful works of darkness which are done by people in secret.⁷ Yet, when a married man and a

⁶ Matt. 5:28.

⁷ Eph. 5:12.

woman who is not his wife, or vice versa, are sharing a hotel or motel room, or a tourist cabin, the very situation so strongly suggests actual immorality that it should not be difficult to obtain a confession. It would be naive indeed to suppose that the couple discovered in this embarrassing situation was motivated by nothing more than Platonic love. But if no confession can be obtained, pastor and congregation may well ask themselves whether such intimate association should not be considered as equivalent to the shameful deed to which Jesus here refers.

If and when the guilt has been satisfactorily established, the right of the injured party to secure a divorce and, if so inclined, to enter upon a new marriage in due time, cannot be denied. The guilty party has no voice in the matter. He cannot sue for divorce nor has he the right to say whether or not the injured spouse shall terminate the marriage. He can only repent and sue for forgiveness and reconciliation. The injured party, on the other hand, must indeed be forgiving and harbor no ill will against the offender, yet he is in no wise obligated to continue the marriage. The statement of Jesus clearly confers on him the right to divorce and to a new marriage.

Contributory Guilt

Before declaring the injured party free to put away his wayward spouse, a careful pastor will first seek to ascertain whether the injured party in any culpable way contributed to the delinquency of his fallen mate. To be sure, no wicked deed, not even fornication, on the part of a spouse would ever justify illicit sex relations on the part of the other spouse. Yet the cases may not be too rare in which failure or refusal to show proper affection or to render 'due benevolence'⁸ gives the impetus to the moral delinquency of the other spouse. When this last-named situation exists, the injured party or plaintiff, if he or she remains adamant, will have to be dealt with as a potential malicious deserter. This matter will be discussed further in the following section. Unless both spouses are proven guilty of fornication, in which case the right to divorce is cancelled out, the Lord Himself grants to the injured party the right to put away the guilty spouse and to enter upon a new marriage.

If there is contributory guilt other than wilful withholding of due benevolence, the pastor will self-evidently urge also the injured spouse to repent and confess and seek

⁸1 Cor. 7: 3-5.

the forgiveness of his wayward spouse. More than that, he will urge the injured spouse to forgive and forget and condone and continue the marriage, especially when young children, which so sorely need the guidance and influence of a father, are involved. Divorce is never compulsory. Nor must it be forgotten that even justified divorce does not solve all problems. Also for the injured spouse there will be loneliness, frustration, a feeling of failure, remorse, financial concerns, and a certain stigma that still attaches to being divorced.⁹ The children too will feel frustrated, rejected, confused, torn between conflicting emotions, socially inferior, and bitter. They will be retarded in their schoolwork and plagued with insecurity. Hence every effort should be made to salvage the marriage and restore a pleasant home life. Perhaps this harrowing experience and the forgiving spirit of the offended spouse will prove to be the starting point for a new and better married life. But unless there is equal guilt of fornication, the decision to put away the unfaithful spouse must be left to the injured partner.

Restoring the Guilty One

Needless to say, a Christian pastor and congregation will be concerned about the soul's welfare of the guilty

⁹M. Ernst and D. Loth, For Better or Worse (New York: Harper and Bros. c.1952), pp. 23ff.

party. If he is a member of the church, the third phase of the restoration process outlined in Matt.18 will be initiated as soon as he reveals himself as a manifestly impenitent sinner to those who have dealt with him. Refusal to repent of his fornication will result in excommunication, even though a divorce has not been applied for or granted. But as soon as sincere repentance becomes manifest, the discipline procedure is halted and good standing restored after proper apology. If repentance does not become manifest until after the excommunication, he will be restored when he does repent and apologize. For that is the purpose of church discipline; it is a service of love to save a soul from death and to hide a multitude of sins.¹⁰ And then, since the former marriage is a thing of the past, having been dissolved in a manner that is consonant with the express statement of Jesus, also the guilty party has the privilege of a new marriage. It is advisable however to wait until the injured spouse has remarried or has definitely declared himself unwilling to take his fallen spouse back. As Theodore Laetsch put it:

If the innocent party has made use of his right to divorce the adulterer, then the first marriage is dissolved before God. The relation of the two parties toward each other is no longer that of husband and wife. The wife is free from the law of the husband, and vice versa (Rom.7:2,3). Not by death, to be sure, but by another cause, permitted by the Lord during the lifetime

¹⁰James 5:20.

of both parties, a divorce because of adultery. Hence, in analogy of Rom. 7:3. which gives to the surviving party the right to marry again, both are permitted to marry whomever they will. Nor does the rule apply that whomever marries him or her that is divorced commits adultery. For here is a person whose former marriage was dissolved not by a prohibited divorce, but by a divorce permitted and sanctioned by God Himself. He is without spouse just as surely as though his spouse had died, and hence his case is an exception to the rule which makes all divorce and subsequent marriages adulterous. . . . After the innocent party has divorced him, the marriage is severed in accordance with the word of God.¹¹

John Fritz states it this way:

The innocent party in a divorce case is of course permitted to marry again. If the guilty party has been legally divorced [put away by the innocent party], there is no divine law that prevents the guilty party from marrying again.¹²

A final note on this type of divorce. If divorces of this type are sought and obtained on other grounds than adultery in order to shield the family, particularly the children, from the embarrassment and humiliation that is sure to result from the public airing of such a sordid details in public courts hearings, the church need not object so long as by careful investigation it has established that the true ground for the divorce was fornication.¹³ / Too, a

¹¹Theo. Leutsch, "Divorce and Malicious Desertion," Concordia Theological Monthly (St. Louis: Concordia Publishing House, 1933), IV, 130.

¹²J. H. C. Fritz, Pastoral Theology (Second Edition; St. Louis: Concordia Publishing House, 1945), p. 158.

¹³Ibid. p. 170.

conscientious pastor will refuse to hallow with the Word and blessing of God a new marriage of the guilty party unless he has given clear evidence of repentance. To do otherwise would be to confirm him in impenitence.

But though the head of the Church has established but one general law against the putting away one's spouse, Holy Scripture presents us with a special situation which may properly lead to legal divorce and subsequent remarriage. This situation is described by the Apostle Paul when he gives the following specially inspired advice:

If any brother hath a wife which is unchaste, and she be pleased to leave him, let him put her away. And the new wife which he taketh shall be lawful unto him, and if he be pleased to dwell with her, let her not leave him. For the unchaste woman is sanctified by the wife, and the unchaste man is sanctified by the husband; and they are called saints, but not they are holy. But if the unbelieving depart, let him depart. The brother or sister is not under bondage in such cases.

The second situation, then, is which a Christian may legally terminate his marriage when his spouse is "unbelieving", which is a term for which we are reminded to use the word "infidel".

That constitutes adultery let us first see what it is not. Adultery is not involuntary seduction for a short or longer period, or when a person is drafted into military service, or is imprisoned or blinded, or is otherwise

¹ 1 Cor. 7: 12-15.

CHAPTER V

DIVORCES ON THE GROUNDS OF DESERTION

Even though the Head of the Church has established but one permissible ground for putting away one's spouse, Holy Scripture itself presents to us a second situation which may properly lead to legal divorce and subsequent remarriage. This situation is described by the Apostle Paul when he gives the following divinely inspired advice:

But to the rest speak I, not the Lord; 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 that hath an husband that believeth not, and if he be pleased to dwell with her, let her not leave him. For the unbelieving husband is sanctified by the wife, and the unbelieving wife is sanctified by the husband; else were your children unclean; but now they are holy. But if the unbelieving depart, let him depart. The¹ brother or sister is not under bondage in such cases.

The second situation, then, in which a Christian may legally terminate his marriage arises when his spouse 'departs', which is a term for which we are accustomed to use the word 'deserts.'

What constitutes desertion? Let us first note what it is not. Desertion is not involuntary separation for a shorter or longer period, as when a husband is drafted into military service, or is imprisoned or kidnapped, or is otherwise

¹1 Cor.7: 12-15.

involuntarily prevented from living with his spouse. Nor is it separation by consent, as when with his wife's approval he enlists in the military, or is a traveling salesman, or is otherwise kept away from home for longer periods with his wife's full knowledge and consent. Nor is desertion the separation caused by insanity or other infirmity which requires prolonged hospitalization or institutionalization. Nor can he be branded a deserter who after the marriage becomes impotent for the sex act and can no longer render the 'due benevolence' owed to his spouse.² Nor is it desertion if after a quarrel the one or the other spouse leaves the house in a rage and vows never to return. That is reprehensible conduct, to be sure, but it does not constitute desertion.

It is interesting to note the five types of deserters listed by E. E. Eubanks in his discussion of this subject.³ They are: (1) The spurious deserter who merely pretends to desert his family in order that it might receive aid; (2) the gradual deserter whose act is largely unpremeditated, but which grows out of several spatial separations, such as the immigrant who leaves his family in the homeland and then, in

²1 Cor.7: 3-5.

³E. E. Eubanks, in General Sociology, by V. Wright and M. C. Elmer (New York: Farrar and Rinehart, c.1939), p. 212.

the loneliness of his adopted country, falls in love with and marries another; 3) the intermittent deserter who deserts for causes such as pregnancy or temperament, but not with the idea of permanency; 4) the ill-advised deserter whose action develops out of maladjustment in marriage on the basis of a hasty or forced marriage; and 5) the last resort deserter who after a number of unsuccessful attempts at reconciliation finally gives up and disappears.

Desertion in the Scriptural sense of the term is the departure and persistent refusal of a spouse to continue in the marriage union and to fulfill his marital obligations. Malicious desertion, which is the full term usually employed, implies the departure and continued absence of a spouse without or beyond the consent of his marriage partner and his adamant refusal to return and to make another effort toward a successful marriage. It is essential for the establishment of malicious desertion, however, that the deserted party have made repeated and serious efforts to persuade the deserter - if his whereabouts can be learned - to return and to continue the marriage. The failure or refusal of the deserted one to take his runaway spouse back is on a par with collusion, that is, obtaining a divorce by mutual agreement and, if stubbornly adhered to, makes him likewise guilty of desertion. A sincere child of God cannot allow himself to break the marriage bond in this manner. Though living in an unhappy marriage, he will not

rejoice that he is rid of his incompatible mate and, inwardly jubilant, make straight for the courts to petition for the judicial decree. As a member of Christ he will not be a party to putting asunder what God has joined together. He will patiently and prayerfully strive to keep his hands and conscience clean, and his marriage inviolate.

Malicious Desertion Itself a Rupture of Marriage

Malicious desertion is not so much a legal and Scriptural ground for obtaining a divorce as it is the breaking of the marriage bond itself. As John Fritz puts it, the innocent party may not enact, but will suffer the dissolution of his or her marriage,⁴ The deserted party does not cause the break but, when at length applying for a legal divorce, initiates the legal proceedings which certify that a rupture already occurred when the offending spouse left the home. The crucial concern of the church therefore is to ascertain from all available sources whether true desertion has taken place and to join in seeking to induce the deserter to return. If the latter is a church member, Matt. 18 will be followed as in the case of an adulterous spouse. If he is unchurched, the church can only show him his wrong and persuade him to return. If he is a member of another denomination, it will enlist the aid of his pastor

⁴Fritz, op. cit., p. 167.

and urge him to do his utmost in the matter. All hands must be joined to save the marriage, if that is at all possible.

Contributory Guilt

Also in cases of desertion inquiry needs to be made whether the injured party in a guilty manner gave occasion to his partner to depart. A husband or wife does not usually jump the marital traces and vanish unless there is considerable provocation, real or imaginary. The only way to establish this is to confer frankly with both sides. Initially it is best to do this on an individual basis, since each will speak more frankly and freely and there will not be constant interruptions and contradictions. Thereafter, joint meetings will be arranged. If the pastor alone seems to make no progress, he may ask several elders or other competent church members to participate. Such men, full of the Holy Ghost, of honest report, and full of wisdom, can be of invaluable help to the pastor, as experience has shown. Their testimony and exhortations, simple and straightforward, often help to accomplish what the pastor alone could not achieve.

Should it develop that the deserted party was guilty of repeated indiscretions and wrongdoing so as to make life miserable for his spouse and thus arouse in him the impulse to leave, or even asked him to leave, the pastor has a duty to perform. He will impress upon such individual the need

of asking his spouse's forgiveness, of promising sincerely to refrain from such indiscretions and wrongdoing and of making it plain to his departed spouse that with God's help old things will be put away and a new era of harmony and good will, please God, will be ushered in. Eventually, however, the guilt of malicious desertion will rest upon the spouse who left the home and refuses to return. If his spouse told him to go, he had no right to obey. John Gerhard expresses it this way: "Even though the deserted party may have given some kind of occasion to the guilty party for deserting, he should not be regarded as the effecting and inescapable cause of the Desertion."⁵ Difference of opinion and temperament, unchristian acts, criticalness, abuse, and the like are not valid grounds for casting off the shackles of an unhappy marriage. Such situations are to be deeply deplored and sincerely repented of, but desertion is not the remedy nor is it justified. On the contrary, it constitutes adultery which is unworthy of a child of God and puts him outside the kingdom of grace.

Desertion by Refusal to Become Reconciled

Not infrequently pastor and church will succeed in persuading the deserter to return, but to their utter dismay find that the deserted one is unwilling to welcome him back

⁵Gerhard, op. cit. p. 212.

and continue the marriage. What to do? Theodore Laetsch gives an apt answer when he says:

If the wife [who has deserted] endeavors to reestablish marital relations with her husband, either of two possibilities will arise: either she is again accepted and all is well, or, though she is making every effort to effect a reconciliation, she finds that her husband is unwilling to accept her. That fact alone gives her no right to cease her efforts at reconciliation or to marry some other man. She must remain unmarried and continue her efforts. However, such a husband, if he refuses to take back his legal wife, sins by actually putting her away, must be excommunicated, and then 1 Cor. 7:15 applies to both parties. And if the wife refuses to become reconciled, she must be dealt with in a similar manner.⁶

A word of explanation must be added to this quotation. As it reads, the sentence "However . . . both parties" appears too sweeping and drastic. The effort to induce the deserter to return need not be continued indefinitely, otherwise malicious desertion could never be established and the deserted spouse would continue to be under bondage in such cases. Patience is required. It takes time to swallow pride and anger, even as it took time for the decision to desert to be made and carried out. Sufficient time must be allowed to elapse in order to make it clear that the decision was not made impetuously or hastily. Ordinarily this time period will coincide with the laws and statutes of the individual states which in some cases may require one year, in

⁶Theo. Laetsch, "Divorce and Malicious Desertion," Concordia Theological Monthly (St. Louis: Concordia Publishing House, 1933), IV, 133.

others even two or three years. Fritz sums it up this way:

Nor can any definite time be given, the expiration of which establishes a malicious desertion. While in one case a malicious desertion might be established after a period of six months, in another case it might take a few years to do so.⁷

Some Bible commentators hold that 1 Cor. 7:12-15 applies only when the offending spouse is actually an unbeliever or pagan, but does not apply when he is a church member. It is open to serious question, however, whether such an inference is valid. True, the apostle Paul is speaking of a situation in which the one spouse is Christian and the other an unbeliever and it may well be that the Corinthian Christians had inquired of him (1 Cor. 7:1) specifically concerning a case of that kind. It may be questioned, however, whether that fact rules out divorce when a church member commits the sin of desertion. It is readily granted that a Christian should know better and that the congregation will deal with him and try to persuade him to return, but desertion is desertion whether perpetrated by an unbeliever or by a professed believer. In reality he is a heathen man and a publican even before his exclusion from the church (1 Tim. 5:8). Martin Luther in his realistic and positive way put it this way:

But what St. Paul here says about a pagan spouse is also to be understood concerning a false Christian; so that if he tried to force his spouse into unchristian ways and will not permit him to live a Christian

⁷Fritz, op. cit. p. 169.

life, or separates himself from him, that Christian should be loose and free to betroth himself to another. He is not in bondage nor obligated to cling to him. But if he is not in bondage, he is free and loose; if he is free and loose, he may change his status [marry another] just as though his spouse had died.⁸

Theodore Laetsch uses this approach to the problem:

Now a very pertinent question arises. Does this word of the apostle apply when both the deserting and deserted parties are members of a Christian congregation? 1 Cor. 7:15 does not apply. Since he is a member of a Christian congregation, his case is not identical with that of 1 Cor. 7:15 until the course of events will compel the Christian congregation to regard him as an unbeliever, in other words, until all the requirements of Matt. 18:15-17 have been complied with and have proved ineffectual in gaining him. . . . If during these disciplinary meetings the deserted spouse would sue the deserter for divorce, he would become equally guilty of malicious desertion and would become subject to church discipline. But if the deserter is, after the application of Matt. 18, declared a heathen man and a publican, he is then before God and man an unbeliever and consequently 1 Cor. 7:15 applies.⁹

Gerhard briefly but aptly sums up the situation in this manner:

In the case of malicious desertion the Apostle grants to the innocent and deserted party the power to enter a new marriage, because the guilty and deserting party has wantonly and actually, on his own authority, without sufficient and just cause, brought about the divorce.¹⁰

⁸R. C. H. Lenski, Interpretation of St. Matthew's Gospel (Columbus: Lutheran Book Concern, 1932), p. 1062.

⁹Laetsch, op. cit., p. 198.

¹⁰Gerhard, op. cit., p. 176.

Desertion by Refusal of Cohabitation

It must be observed that departure from the home with the declared intention of not returning is not the only form of malicious desertion. Our Lutheran Fathers have not hesitated to assert - without direct Bible proof - that a spouse's refusal to cohabit sexually is equivalent to malicious desertion, also when both are church members. The gratification of sexual desire, though not the only, nor the chief, purpose of wedlock, is nevertheless vital to married life. Since the Fall it is the divinely ordained prophylactic against unchastity and immorality (1 Cor.7:2-5). For one spouse to deny 'due benevolence' to the other is to defraud or deprive him of his God-given right. To do this persistently and despite proper admonition is a disruption of the marriage bond of which Martin Luther has this to say:

The third matter is if one spouse defrauds the other and withdraws himself, so that he will not render due benevolence nor be with his spouse. As one may find such a stubborn wife which steadfastly refuses; even though her husband should fall into unchastity ten times, she is not worried about it. . . . Here you should go according to 1 Cor. 7:4,5. . . . Such action is contrary to marriage and means disrupting the marriage. Therefore civil government ought to compel the wife or put her to death. If it does not do that, the man must imagine that his wife has been taken from him by robbers and killed and then seek another spouse.¹¹

¹¹C. F. W. Walther, Pastoraltheologie (St. Louis: Concordia Publishing House, 1906), p. 250.

Fritz enlarges somewhat on this statement of the Great Reformer when he says:

While 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 equivalent to malicious desertion (1 Cor. 7:4.5). This of course does not hold good when other causes, such as illness or accident and not mere stubborn resistance prevent conjugal cohabitation.¹²

Does Non-Support Constitute Desertion?

A further question in this area is whether non-support constitutes malicious desertion which entitles the injured wife to legal divorce. That in turn brings up the question: What is non-support? Non-support is not the failure to provide for one's wife and children as a result of sickness or accident. Nor does the inability to find profitable employment render a man guilty of this sin; nor for that matter the inability to find work to provide wife and children with luxurious living. Non-support consists rather in the wilful and persistent refusal of a husband to seek employment in order to provide for his own, or, if he is a diligent worker, that he selfishly spends his income on himself, whether for needs or for pleasure, and lets his wife and children unnecessarily suffer want. It is the lazy, shiftless, heartless, selfish man that is meant here.

The sainted pastor Carl Manthey Zorn makes this comment on 1 Tim. 5:8:

¹²Fritz, op. cit., p. 170.

Such a person continually commits adultery. He belongs in the same class with him that maliciously deserts his wife. The wife of such a person is perfectly justified in refusing, after duly admonishing him, to let him share her bed and board with her. She is justified in separating and departing from him; yea in being divorced from him in due time.¹³

Fritz, on the other hand states:

A mere refusal on the part of a husband to support his wife and his children cannot be considered equivalent to desertion. The courts can be called upon to force such a man to support his family.¹⁴

What shall we say to all this? On the one hand, our leading theologians have not supported Zorn's view. On the other hand, the persistent refusal of an able-bodied husband 'to nourish and cherish' his wife¹⁵ is as serious a sin as withholding the due benevolence discussed above and brands such an individual as being worse than an infidel.¹⁶ Certainly every effort should be made by the wife, as well as by the pastor and other church members, to persuade the offending husband to do his duty. Legal aid to compel him to support his family may also be sought, if the efforts of the wife and the church are unavailing. Eventually, just as with respect to the refusal of cohabitation, the exercise of church discipline will clarify the issue in that the offender is either led to repentance and the performance of his duty as husband and father, or that he stands before the

¹³C. M. Zorn, Questions on Christian Topics (Milwaukee: Northwestern Publishing House, 1951), p. 175.

¹⁴Fritz, op. cit., p. 170.

¹⁵Eph. 5:29.

¹⁶ 1 Tim. 5:8.

church and society as one who has shamefully deserted and forsaken his household. In any case a wife, upon furnishing adequate proof, cannot be rightfully accused of desertion if she refuses to live, sexually and otherwise, with a husband who in his callous selfishness lets her and the children starve while he fulfills the lusts of the flesh. For conscience' sake the safest course for such a wife will be to bide her time. If there is no change of heart, the refusal of support will generally develop into actual desertion.

Desertion by Tyrannical Conduct

One more point needs to be noted. The question arises: What is to be done when a spouse becomes guilty of tyrannical behavior and makes it impossible for his spouse to live with him? That brings up a second question: What constitutes tyrannical behavior? The answer is: Repeated physical abuse, not mere threats. It is also tyrannical behavior if a husband, in order to compel his wife to change or give up her religion, or to engage in practices which would outrage her conscience, resorts to constant threats and violence, crows her into submission, flies into drunken rages, undermining her physical and mental health, and making it impossible to live under the same roof with him without endangering her life.

What shall a woman do under such circumstances? Let it be said first of all, that no spouse must be permitted to interfere with or hinder his partner in the free exercise

of his religion. Jesus plainly says: "If any man come to me and hate not his father, and mother, and wife yea, and his own life also, he cannot be my disciple."¹⁷ A Christian spouse who permits himself to be driven from his religion or persuaded to adopt a false religion for the sake of family peace, denies his faith and becomes guilty of idolatry. Such a case is not different from other forms of persecution for religion's sake.

Our dogmaticians have been very outspoken on this point.

Gerhard states:

If a person living with an unbelieving spouse can appeal to the government for help and get it, that should be done; but if the government favors the false religion and refuses to help her, and her husband constantly and zealously endeavors to mislead her to idolatry and wickedness by endangering her life, and she has no other recourse, she may to save her conscience and life temporarily go to a safe place, but openly declare that this was not her doing, but that she was compelled by the intolerance of her spouse and is ready for reconciliation and return if her spouse will only spare her life and conscience and will gladly submit to marriage laws. But if the man continues in his stubbornness and expressly declares that he will not take her back, be reconciled and desist from his previous conduct, then there can be no doubt that he is to be regarded a malicious deserter and other counsel should be given to her.¹⁷

C. F. W. Walther writes in his Pastoraltheologie:

Whether a spouse himself maliciously forsakes the other, or whether he compels the other to leave through tyranny of conscience, that is one and the same thing.

John Quenstedt in his Theologica Didactica Polemica puts it this way:

¹⁷Gerhard, op. cit., p. 260.

¹⁸Walther, op. cit., p. 245.

Not only he becomes guilty of malicious desertion who flees from his spouse, but also he who through his raging tyranny compels his spouse to flee.¹⁹

Fritz appears more cautious on this point when he says:

Leaving the spouse in a state of anger does not constitute malicious desertion, nor does a threat or an attempt upon the life of the other. In the latter case a temporary separation may be granted.²⁰

Doubtless the safest course to follow also in the case of continued tyrannical behavior is to withdraw temporarily from the spouse with proper explanation to him and to the church, or even procuring a legal separation from bed and board, also called limited divorce. Separation from bed and board is legal permission given to a husband or wife to live apart from his or her spouse without becoming liable to the charge of malicious desertion. Koos writes:

Legal separations are duly entered in a court record and the stipulations and agreements arrived at must be adhered to unless the permission of the court is given for a change. . . . The couple are no longer permitted to live together, neither are they free to remarry.²¹

The Scriptural warrant for such separations, we believe, is found in this statement of the Apostle Paul:

And unto the married I command, yet not I, but the Lord, let not the wife depart from her husband; but and if she depart, let her remain unmarried, or be reconciled to her husband; and let not the husband put away his wife.²²

19J. Quenstedt, Theologica Didactica Polemica (Leipzig: n. p., 1685), Part IV, Ch. XIV, fol. 1503.

20Fritz, op. cit., p. 170.

21E. L. Koos, Marriage (New York: Henry Holt & Co., 1957), p. 28.

221 Cor. 7:10,11.

Legal separation is an expedient which, it is hoped, might be instrumental in leading the abusive spouse to change his ways and to continue the marriage in peace and harmony. And though among Christian people it ought not to be necessary, it at times does become necessary and may properly be used by Christian spouses when living with an abusive and tyrannical spouse becomes unbearable. Certainly no woman can rightfully be expected to live in constant danger of abuse and maltreatment. She should not lightly divorce such a husband, but should seek, by making use of this legal expedient, to bring about a correction and improvement in his attitude toward her and then take him back. It is also possible, however, that the offending husband will then lose all interest in the marriage and become a deserter, or consort with other women and thus in both cases give the abused wife justification for full divorce.

Self-evidently Christian spouses who are confronted with the problem of separation should keep in constant touch with the pastor, who in turn should be conversant with the laws of the state, so that his counsel will always be in conformity with the laws. More important for Christian spouses, however, is the counsel which the Apostle Peter gives to Christian women having unbelieving husbands when he urges them to practice a chaste conversation coupled with fear in order to win their husbands even without the Word (1 Pet. 3:1.2); also the general advice recorded

1 Pet. 4:15,16, where he admonishes all children of God to abstain from wrongdoing, to suffer patiently as Christians and to commit the keeping of their souls to God in well-doing. Also for such problems they have the divine assurance that the effectual fervent prayer of a righteous man avails much.²³ A few additional comments on the implications of legal separation will be made in the final section of this paper.

²³James 5:16.

CHAPTER VI

DIVORCES ON OTHER THAN SCRIPTURAL GROUNDS

We now come to the last and most difficult phase of divorce counseling, namely the cases in which neither fornication nor malicious desertion is charged. As previously stated, the several states of our Union list a total of 43 legal divorce grounds, of which we have considered five. What about the rest? This is where a pastor's troubles really begin if he is determined to prove himself a faithful steward and watchman over the flock of Christ. Here above all he should remain aware that there are two distinct phases of divorce counseling, the one while the contemplated divorce is still in the making, and the other after the legal decree has been granted.

In the light of Matt. 5:32; 19:9; 1 Cor. 7: 12-15, it is very clear that divorces procured on grounds other than fornication or desertion are sinful and in the eyes of God constitute adultery, the breaking of marriage, even though the several states readily grant them. Nor is the Church in a position to make concessions. It must teach its members to obey God rather than men.¹ As spiritual counselors and representatives of the Most High God it behooves Christian pastors to uphold the honor and dignity of His Word, also the

¹Acts 5:29.

word that governs the estate of holy matrimony.²

PRE-DIVORCE COUNSELING

When a divorce on unscriptural grounds is contemplated or if suit has already been filed, it is a Christian pastor's obligation to try to prevent it.³ That implies first of all that he get in touch with the plaintiff, inquire diligently into the cause for his action, and, if neither fornication nor desertion is charged, try to persuade him to withdraw the suit. If the trial date is already at hand, the individual should be urged to instruct his attorney to obtain a postponement.

Then begins an intensive period of pastoral counseling and care, alone at first, but subsequently in the company of several church elders or other capable and exemplary members. Eventually, but not until after the final decree has been granted, the individual will be summoned before the congregation and, if he refuses to heed the pleas of his brethren to become reconciled with, and return to, his spouse, be relieved of his church membership in due form.⁴

²Matt. 19:6; Heb. 13:4.

³Matt. 18: 15-17; Gal. 6:1; James 5: 19,20.

⁴Matt. 18:17; 1 Cor. 5: 5,13.

Since Christ in the afore-mentioned texts brands such disruptions of the marriage bond adultery and the apostle Paul plainly states that neither fornicators nor adulterers shall inherit the kingdom of God,⁵ a Christian congregation has no choice in the matter. The soul's welfare of such an individual demands that he be put away from the midst of the Christian congregation in order that his spirit might be saved in the day of Jesus Christ.⁶ Nor should he, from the time he filed suit for divorce, be permitted to commune at the Lord's Table, lest he receive the Sacrament to his soul's hurt.⁷ Self-evidently he does not have the right to enter into a new marriage,⁸ for which reason no devout Christian man or woman will even consider marriage with such an individual and no conscientious pastor will agree to officiate at the wedding. Such a pastor would be thereby giving his approval to the unscriptural divorce and constituting himself a partaker of his sin.⁹

As far as the defendant in such an unscriptural divorce suit is concerned, he should, if a church member, be made

⁵1 Cor.6:9.

⁶1 Cor.5:5.

⁷1 Cor.11:28,29.

⁸Matt.5:32; 19:9.

⁹1 Tim.5:22.

aware of the charges preferred against him and urged to be impeccably truthful in his reply to them. If he admits his guilt, he should be exhorted to make free and full confession to his aggrieved spouse, seek his or her pardon, and give unqualified assurance of his sincere determination to begin a new and better life. He should be encouraged to avoid that which offends and to strive for the things that please and make for marital harmony and peace. Thereupon the plaintiff should be prevailed upon to accept the proffered apology, to forgive from the heart, to withdraw the divorce suit, and to continue the marriage in the fear of God. Much patience will need to be exercised, both by the pastor, before he can expect his counseling to prove effective, and by the couple, before harmonious relations are restored. But there is no other way. Divorces on grounds other than fornication or desertion are unscriptural and sinful. "What God hath joined together, let not man put asunder."¹⁰

It may happen, however, that from his discussions with the defendant the pastor learns that the charges preferred against the defendant are spurious and untrue. What to do? First of all, the pastor will encourage the defendant to make proper apology for whatever wrongs he has committed and thus helped to bring about the unhappy situation in

¹⁰Matt.19:6.

the home. He will also impress upon him the necessity of contesting the suit and refuting the groundless charges, thus letting it be known to all that he does not desire or agree to the disruption of the marriage. Failure to do this is the equivalent of letting the divorce go through by default and is closely akin to a divorce by collusion, that is, mutual agreement. In such cases both spouses are guilty. For whether one initiates an unscriptural divorce himself or allows it to occur uncontested, the guilt differs only in degree. Fishbein's statement that fully 95% of all divorces in this country are obtained by mutual agreement is truly revealing and reflects a nation-wide and flagrant disregard for God's holy ordinance of matrimony.¹¹

Remarriage of the Injured Party

If the defendant in an unscriptural divorce suit contests the suit but loses, he is properly regarded as the victim of malicious desertion and as free to enter upon a new marriage in due time. "A brother or sister is not under bondage in such cases."¹² "Unjust also is the tradition which

¹¹M. Fishbein, Modern Marriage and Family Living (New York: Oxford University Press, c.1957), p.105.

¹²1 Cor.7: 15.

forbids an innocent person to marry after divorce."¹³ "The innocent party in a divorce case is, of course, free to marry again."¹⁴ Yet a faithful pastor will even then counsel the defendant to make haste slowly. Perhaps the weeks and months following upon the divorce will be filled with longing for reconciliation. He still loves the fickle spouse who unjustly put him away. Certainly there should be no hasty or reckless marriage to spite the former lover or merely to fill the aching void. Unless the guilty party has already remarried, the door to reconciliation is still open. Perhaps a change of heart will still occur. But when a second marriage has taken place, the door to reconciliation is closed.

But someone may ask: Does not this view contradict the words of Jesus who stated that "whosoever marrieth her that is divorced committeth adultery?"¹⁵ and: "whosoever marrieth her which is put away doth commit adultery?"¹⁶ Apparently the remarriage of even a wrongfully dismissed wife is ruled out by these words of Jesus.

Yet the matter is not as simple as all that, inasmuch

¹³Martin Luther, "Smalcald Articles," Triglot Concordia: The Symbolical Books of the Ev. Lutheran Church. (St. Louis: Concordia Publishing House, 1921), p.527.

¹⁴Fritz, op. cit., p.158.

¹⁵Matt.5: 32.

¹⁶Matt.19: 9.

as St. Paul clearly states that a brother or sister is not under bondage in such cases and, as already pointed out, there can be no contradiction between the statements of Jesus and St. Paul because both statements are God's.

There are other weighty considerations to be noted at this point. In a parallel passage, Jesus is quoted as saying: "And if a woman shall put away her husband and be married to another, she committeth adultery."¹⁷ So Jesus may not, in the second half of Matt. 5:32 and 19:9 be referring to the same woman, but to another, one who herself takes the initiative and divorces her husband. In the one case it is the man, then, and in the other a woman who disrupts the marriage wrongfully and becomes the guilty party. This view is strengthened by the fact that in the original text no definite article is used before the words divorced and put away. Not that particular woman which was wrongfully put away, but any divorced woman, that is, one who divorced herself from her husband, as the active participle used by St. Mark clearly shows.

The Savior speaks briefly here and draws both cases together which are more plainly expressed in Mark 10:11,12. For if a man without cause, carelessly divorces his wife without her deserving it because of unfaithfulness such as fornication, he brings it about that she can fall into this sin [wrongfully disrupting marriage], even as he actually himself is committing it against her (Matt. 10:11); but if someone marries such an one who is herself the cause of the divorce (Mark 10:12) he lives in adultery with her. But the marriage of an

¹⁷Mark 10:12.

unjustly dismissed wife, or that of a man wantonly deserted by his wife, cannot be meant here by the Savior, since such marriage is permitted in 1 Cor.7:15.¹⁸

R. H. C. Lenski arrives at the same conclusion in the following manner:

Here is a wife 'without cause of fornication,' and yet for some reason or other her husband proceeds to destroy her marriage with him. The guilt against the Commandment rests on him. The innocent wife is forced by this man's action into a position similar to that of the innocent husband whose wife broke his marriage for him by her fornication. Jesus says that by his act the husband forces his wife into a position contrary to the Sixth Commandment: 'He brings about that she is stigmatized as adulterous'. . . . She who according to the Commandment 'Thou shalt not commit adultery' ought to be in her marriage, is now, contrary to the Commandment, outside of it, by the wicked action of her husband. . . . Nothing in the words of Jesus forbids such a woman to marry again. Such prohibition is always presumed, but without the least warrant in Jesus' own words. . . . She is a poor woman whose marriage has been disrupted without guilt on her part. Her wicked husband has fastened this stigma upon her. It ought to be apparent that here we have essentially the same case that St. Paul treats in 1 Cor.7:15. . . . The man who marries this woman, he too is stigmatized as adulterous. This man no more commits adultery than the woman commits adultery. Neither commits anything, both have had something committed upon them. The man marrying this woman thereby shares her position.¹⁹

G. Stoeckhardt in his Biblische Geschichten des Neuen Testaments puts it in this way:

The case is assumed here [Matt.5:32b] that a woman indifferently agrees to the divorce and marries another man. In the same manner he who marries one who was

¹⁸Hirschberger Bibel (Constance: Carl Hirsch, A. G.), in a footnote to Matt.5:32b.

¹⁹R. H. C. Lenski, Interpretation of St. Matthew's Gospel (Columbus: Lutheran Book Concern, 1932), pp. 225f.

divorced from her husband contrary to God's law is an adulterer before God.²⁰

One type of remarriage was specifically prohibited in the Mosaic Law. We find there the following provision:

When a man hath taken a wife and married her, and it comes to pass that she find no favor in his eyes, because he hath found some uncleanness in her; then let him write her a bill of divorcement and give it in her hand and send her out of his house. And when she is departed out of his house, she may go and be another man's wife. And if the latter husband hate her and write her a bill of divorcement and giveth it in her hand, and sendeth her out of his house; or if the latter husband die, which took her to be his wife; her former husband, which sent her away, may not take her again to be his wife, after that she is defiled; for that is abomination before the Lord.²¹

From this statute it is evident that a wrongly dismissed wife was in ancient days permitted to enter into marriage with another man, yet she was not permitted to remarry her first husband if the second husband likewise put her away.

Our synodical practice has always been to recognize the innocent or injured wife's right to another marriage, but to relieve the guilty husband, who wrongfully divorced her, of his good standing in the church and to refuse him the right to enter upon another marriage until the injured spouse has died, remarried, or definitely and with finality refused to return and resume the marriage.

²⁰ Stoeckhardt, Biblische Geschichten des Neuen Testaments (St. Louis: Concordia Publishing House, 1906), p. 93.

²¹ Deut. 24:1-4.

Reinstatement of the Guilty Party

When a church member disregards all counsel, divorces his spouse wrongfully, marries his paramour, professes repentance, and seeks reinstatement, should the church receive him without further ado? Does the profession of guilt accompanied by a proper apology suffice? May he continue in the second marriage or must the church insist that it be dissolved before it will reinstate him?

This question belongs to the post-divorce counseling to which reference was made earlier and differs from pre-divorce counsel in one important respect. Before a prohibited divorce has been obtained and a new marriage entered into, the pastor and church officers dealing in the case do all in their power, on the basis of the Word of God, to dissuade the individual from disrupting his marriage contrary to the will of God as well as from entering upon a new union. Jesus has branded new marriages after divorces other than for fornication or desertion as adulterous, for which reason the church is in solemn duty bound to try to prevent both such sinful divorces and the new marriages contemplated after them. But after the evil deeds have been committed, the church must face the new problem: Must the second marriage be dissolved before reinstatement can be granted?

In seeking the solution to this problem the following considerations must be noted. Our courts neither grant

divorces nor do they annul marriages on the ground of conscience scruples or upon an individual's plea that his church demands the dissolution of the marriage. There is no legal way of dissolving a marriage except on new legal grounds. Obviously the church cannot suggest to an individual that he bring an untrue charge or that he commit a wrong which would make it legally possible for his spouse to secure the desired divorce. Faced with this problem several years ago, the faculty of Concordia Seminary in St. Louis rendered the following opinion to an inquirer:

You also ask whether the marriage between A and D must be broken up before they can be reinstated into the church and be permitted to partake of Holy Communion. That would be a most difficult thing to do, for neither of them would have legal, valid grounds for breaking up this marriage. No legal marriage can be dissolved except on legal grounds. Most certainly the church cannot tell its members to commit fornication or desertion or another sin in order to break up this marriage. So the final answer to your question would be that the church could not insist upon the breaking up of the second marriage. On the other hand, there would have to be a very clear and positive evidence of repentance before the church could reinstate such people.²²

Thus it would appear that the church can require no more than sincere repentance in such cases, as it would in the case of any other grievous sin for which restitution can no longer be made. The only alternative would be to withhold from such people their membership in the church

²² Faculty Journal, Concordia Seminary, St. Louis, Mo. Feb. 17, 1955.

until their second marriage has ended and set them free to return to their first spouses. But what then about older converts who were divorced and remarried and raised a family in the second union before they were converted? Is it mandatory for such to disrupt the second marriage and to return to their first spouses? And what if their first mates had likewise remarried? This problem is by no means simple.

Perhaps the church's obligation in such situation might be described thus: Let Christian pastors, the church officials or members who assist them in such salutary services of love, yes the entire church membership do all in their power to discourage and prevent sinful divorces and second marriages, not hesitating to resort to excommunication, if need be, in order to let it be known that such practices are inconsistent with the Word of God and the Christian profession, and in order that others may fear.²³ But when such sinful divorces and remarriages are accomplished facts and the guilty parties penitently return and seek reinstatement and promise to live new lives in the fear for God, the church cannot refuse them. The same problem confronts the church in other forms. Christian pastors continually warn their hearers against sin and wickedness of every kind, also against grosser sins for which no adequate restoration can be made, such as the sin

²³₁ Tim. 5:20.

giving offense, character assassination, robbery, murder, and the like. Yet the church must accept and restore them if they profess true repentance. How could it bar them from the Lord's Table and from membership if they solemnly declare their repentance? Should the fact that they cannot undo the wrong nor make restoration bar them for the rest of their lives? Was not the dying malefactor accepted by Christ without restoration? Surely every penitent offender should be urged to undo the evil effects of his sin to the best of his ability, yet where that is impossible, the final decision will have to be left with the Lord.

Lest someone charge that such practice will open the door to increasing disregard of the sanctity of marriage, let us recall the words of Holy Scripture; "Be not deceived, God is not mocked."²⁴ Let us suppose that two married people, madly in love with each other, conceive the plan of divorcing their respective spouses and then marrying each other. Included in the plan is the thought that after their marriage they will give expression of their repentance to the congregation, seek its forgiveness, and then ask for reinstatement. From the eyes of men and of the church such a dastardly scheme might well remain hidden, but not from the all-seeing eyes of the holy and righteous

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²⁴Gal. 6:7.

God who is a discerner of the innermost thoughts and intents of the human heart, unto whom all things are naked and opened.²⁵ Such people should be reminded in all seriousness that repentance and faith are not man's, but God's, work. They cannot be turned off and on at will like water or electric current. It is one thing to believe that God for Jesus' sake forgives all sins to the penitent believer; it is quite another thing to believe that God will forgive those who knowingly and wantonly flouted and disregarded His Word, trampled His holy commandments under foot, and tried to outsmart Him. God searches and knows the hearts of men, even their innermost thoughts and desires and plans. How foolish for men to imagine that God could be kept in ignorance of such wicked schemes! And there is conscience to be reckoned with as well as the inevitable guilt complex which often mercilessly terrorizes those who defy God and conscience and sin against better knowledge and judgment. It is never safe nor advisable to do anything against conscience. This too should be emphasized by Christian pastors in their pulpit and counseling programs, but particularly when they are able to talk things over with a couple before their contemplated divorce materializes.

²⁵ Heb. 4: 12, 13.

Christian congregations will doubtless never achieve perfection in dealing with the divorce problem in all of its ramifications, yet by faithfulness to the Word of God they may be permitted by divine grace to save at least some disintegrating marriages and the souls of those who are responsible for them. They need to be reminded, however, that their efforts will only then be truly effective and God-pleasing, if they do not merely succeed in holding the marriages together, but at the same time keep husband and wife in the right spiritual relation to their divine Maker, Redeemer, and Sanctifier. All phases of church work are a blessing only if they serve the eternal welfare of men's souls. The road from disunity and conflict in marriage must ever lead to and from the Cross of Calvary, at the foot of which God's gracious absolution for the sake of His only-begotten Son, our all-sufficient Savior Jesus Christ, must call forth ever new determination to serve Him and to love and honor one's spouse.

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