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Divorce and Malicious Desertion

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Since we have retained the essential features of the ancient baptism, the symbolism of the sacramental rite is best set forth if the division indicated above is observed. Part I, originally performed at the doors of the church to signify that the candidate desired admission into the congregation, ought to take place at the foot of the chancel steps. After the invitation the child is taken to the font, where Part II of the formula is used, whereby admission to the congregation (and to the Church) is accomplished. And the final prayer at the altar signifies that the child has now been accepted into membership in the Christian Church, on which account the special blessing of the Lord is invoked upon the new member of the body of Christ.

P. E. KRETZMANN.

Divorce and Malicious Desertion.

III. Does Divorce on the Ground of Adultery Grant Permission for Remarriage?

The Church of Rome vehemently denies that adultery or fornication severs the marriage bond and grants permission for remarriage. The Council of Trent, in Session XXIV, "On the Sacrament of Matrimony," Canons VII and VIII, has declared as follows: "If any one saith that the Church has erred in that she hath taught, and doth teach, in accordance with the evangelical and apostolical doctrine, that the bond of matrimony cannot be dissolved on account of the adultery of one of the married parties and that both or even the innocent one who gave not occasion to the adultery cannot contract another marriage during the lifetime of the other and that he is guilty of adultery who, having put away the adulteress, shall take another wife, as also she who, having put away the adulterer, shall take another husband, — let him be anathema.

"If any saith that the Church errs in that she declares that for many causes a separation may take place between husband and wife in regard of bed or in regard of cohabitation for a determinate or for an indeterminate period, let him be anathema." (Translation by Waterworth, p. 193.)

The Church of England has never authoritatively sanctioned any other separation than that from bed and board, and this with an express prohibition of remarriage, Canon 107. Keil, on Matt. 5, 32, says: "By *πορνεία* the bond of marriage, indissoluble according to divine ordinance, is severed, but the marriage is not dissolved before God, so that the divorced spouses might enter into other marriages without transgressing the divine ordinance. Chapter 19, 6 the Redeemer expressly declares: 'What God hath joined together let not man put asunder.' Only death can sever the marriage tie. During

the lifetime of the man who has dismissed his wife because of fornication not only the woman, but the man as well becomes guilty before God of adultery if they contract other marriages. For though Christ speaks here only of the man, yet according to the Christian conception of matrimony this word refers also to the woman, as Mark 10 teaches."

Let us take up some of the arguments of the opponents.

1. According to Keil only death severs marriage and grants permission for remarriage. We ask, Where does God say that death is the only cause? And where does God say that He Himself cannot make exceptions to His rules? He binds man, not Himself, to His Law, and Matt. 19, 9 Christ, the divine Lawgiver, Himself makes an exception to the rule that marriage is indissoluble.

2. Rome and the Church of England hold that adultery does not separate *a vinculo*, from the bond, or marriage tie, but merely *a thoro et mensa*, from bed and board. We maintain that the context proves that both the Pharisees and Christ had in mind a divorce which would permit another marriage. The Pharisees did not think of a mere separation *a thoro*; for, in the first place, it was the general custom for divorced people to enter upon a second and even a third marriage. And secondly, the passage from Deuteronomy which they quote clearly speaks of such a divorce as would give liberty to marry another. In fact, the divorce in the Biblical sense is a divorce which grants the liberty of remarriage. Cp. Lev. 21, 7, 14; Ezek. 44, 22; Jer. 3, 1. Christ has no other divorce in mind. He emphatically declares that every one who dismisses his wife and marries another commits adultery. It is evident that He has a divorce in mind for the purpose, at least with the liberty, of marrying another. He denies the legitimacy of such a divorce with one exception, and that is fornication. Hence fornication gives to the innocent party the right to divorce his spouse and marry another.

3. We are told "that the absence of the article from the word *apolelumenen*, 'her who is divorced,' in St. Matthew as well as in St. Mark and St. Luke takes away all ambiguity from the meaning. It can mean only one thing, not 'the' divorced woman, but 'a' divorced woman, i. e., 'any' divorced woman." (Gwynne, *Divorce in America under State and Church*, p. 85, note 8.) Surely, he that marries any divorced woman commits adultery, except it be for fornication.

4. "So serious an exception (assuming that it allows remarriage) must have been expressed, i. e., not merely left to inference." (Gwynne, l. c., p. 85, quoting Bishop Gore, *Question of Divorce*, p. 23.) We hold that this very exception and assumption is expressed as clearly as it can be.

5. "In both passages the exception is *only grammatically (sic)* applicable to 'putting away.' It cannot possibly be applied to re-

marriage, for which we find in St. Matthew as elsewhere no allowance whatever, but, on the contrary, condemnation for both innocent and guilty." (Gwynne, p. 85.) We maintain that the context forbids the application of the exception to the putting away only; for, as we have seen, the divorce concerning which the Pharisees inquire and of which Christ speaks includes the right to marry. Moreover, we must consider that Christ lays down a rule and states an exception. If any one divorces his wife except for fornication and marries another, he commits adultery. Evidently this rule implies that, if the exception occurs, no adultery occurs. The rule evidently therefore implies that whosoever puts away his wife for fornication and marries another does not commit adultery. Who gives any one the right to omit the clause "and marrieth another" and make the rule imply that whosoever divorces his wife for fornication does not commit adultery, but he will commit adultery if he marries another? Is that not reading into Christ's word a sense which they cannot bear? Quite evidently it is logically impossible to apply the exception to the putting away only. *Speaker's Commentary* very aptly states: "The logical sequence is lost if the second clause is made more extensive than the first. The only consistent ground on which it can be maintained that marriage with a divorced person is always unlawful is the assumption that the previous divorce is always unlawful." (On Matt. 19, 9.) The exception is merely a parenthesis. The rule reads in Matt. 5 and 19 just as it does in Luke 16 and Mark 10, only in Matthew an exception is made to the general rule.

6. Does not Rom. 7, 2 state that only death can separate a marriage, that consequently no divorce, even not a divorce for fornication, will permit remarriage? The points of comparison in this passage must not be overlooked. The apostle does not treat of divorce, but of death, as freeing from the law and illustrates that by the marriage law, which is no longer binding after death. Just so through the vicarious death of Christ, which is accounted to us as our death, we are free from the Law to which we were bound and may, and ought to be, married to Christ.

The hypocrisy and wickedness of the Roman Church is clearly shown in the prohibition of remarriage of a person divorced because of fornication. It prohibits marriage to a person to whom Christ has permitted it, even though he may not have the gift of continence and his conscience consequently may be burdened by his burning, 1 Cor. 7, 2, 9, yea, even though this prohibition may drive, and actually has driven, people into fornication and adultery. On the other hand, the Church of Rome pronounces the anathema on every one who dares to say that those degrees of consanguinity and affinity which are set down in Leviticus can hinder matrimony from being contracted and dissolve it when contracted and that the Church

cannot dispense in some of these degrees or establish that others may hinder and dissolve it (Session XXIV, Canon III); and again: "If any one saith that the Church could not establish impediments dissolving marriage or that she has erred in establishing them, let him be anathema" (Canon IV). Compare also Canons VI and IX, which establish the solemn profession of religion or chastity as dissolving matrimony. The Church of Rome does not tolerate divorce. Perish the thought! But the door is wide open for separation because of impediments which make the marriage, even though contracted according to civic law, null and void upon grounds that the Church may establish. In this connection, Chemnitz makes the scathing, but true remark: "What does the Synod of Trent care for the conscience of man?"

In 1930, according to the *Catholic Gazette*, 53 matrimonial cases were considered by the Rota. Either in the first or second instance, 29 of them "*in forma pauperis*," i. e., by poor persons for whom an advocate was assigned by the Rota. In 14 cases out of the 53 a declaration of nullity was either rendered or confirmed (CONCORDIA THEOLOGICAL MONTHLY, II, p. 622). Rome still arrogates to itself the right to annul marriages at will.

May the guilty party marry another? In the Old Testament this question was needless, since both adulterer and adulteress were put to death. Capital punishment would indeed not be too severe a penalty for this most shameful breach of married love and troth. Since the Church has not the right to inflict temporal penalties, and since the government rarely punishes adultery by death, the question arises, May the Church permit the penitent adulterer to enter into another marriage, and may it acknowledge the marriage contracted by the adulterer prior to his repentance as legitimate? Opinions again vary. The question is not directly answered in the Word of God, but sufficient light is shed on this problem also. If the innocent party has made use of his right to divorce the adulterer, then the first marriage is severed before God. The relation of the two parties to each other is no longer that of husband and wife. The wife is free from the law of the husband, and the husband is free from the law of the wife, Rom. 7, 2. Not by death, to be sure, but by another cause, permitted by the Lord during the lifetime of both parties, a divorce because of adultery. Hence in analogy of Rom. 7, 3, which gives to the surviving spouse the right to remarry, both are permitted to marry whomsoever they will. Nor does the rule apply that whosoever marrieth him or her that is divorced committeth adultery. For here is a person whose former marriage was severed, 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 divorces and subsequent marriages adulterous.

Ought not, however, the adulterer to be punished by prohibition of remarriage? The Church has no right to inflict temporal punishment upon him, least of all to forbid him to marry, 1 Cor. 7, 9; 1 Tim. 4, 1. 3. Gerhard advises that the guilty party be not permitted to hasten into a second marriage while the innocent party remains unmarried. Yet while the Church may advise that every effort be made toward reestablishing the severed union, it has not the right to insist that these steps be taken before the penitent adulterer is readmitted into membership or permitted to marry. After the innocent party has divorced him, the marriage has been severed in accordance with the Word of God, and there is no divine law prohibiting him from marrying whomsoever he will, even the person with whom he has committed adultery, always, of course, taking into consideration Lev. 18, 6. Naturally, if the State forbids the marriage of the adulterer to his partner in guilt, the Church will not permit such a marriage. To avoid offense, the advice is usually given that the adulterer do not marry and take up his residence in the place where his sin is known, especially if he marries the person with whom he has committed adultery. The Church, however, can hardly insist on this, since it has no right to inflict temporal penalties.

Hence there is no reason why we should not, on the strength of the word of Christ in Matt. 19, 9, permit remarriage to the innocent spouse. In the Old Testament the innocent party very evidently had the right to remarry. If the adulterer and adulteress had been put to death in accordance with Deut. 22, 22, then the union of the innocent spouse and his adulterous spouse was effectually severed, dissolved by the death penalty inflicted on the guilty spouse because of the adultery, and consequently the innocent spouse was free to marry whom he would.

The only ground therefore for obtaining a divorce, for severing an existing marriage, is that of fornication on the part of the other spouse. Whenever fornication cannot be proved, the man and the woman who by rightful betrothal have entered the state of matrimony must, according to the Word of God, remain indissolubly united until God Himself parts them by death.

Does not, however, Paul, after all, grant permission to separate even where fornication cannot be proved? Does he not grant a woman who for some reason or other no longer feels inclined to live with her husband, the right to choose between returning to him or remaining separated from him as long as she does not marry during the lifetime of her spouse? That is the view held by many; yet a closer study of the passage in question, 1 Cor. 7, 10, 11, will convince us that Paul is in full agreement with Christ in maintaining the indissolubility of the marriage tie. The passage reads, vv. 10, 11: "Unto the married I command [a], yet not I, but the Lord [b], Let not the

wife depart from her husband [c]. But and if she depart [a], let her remain unmarried [b] or be reconciled to her husband [c]; and let not the husband put away his wife [d]."

For the sake of convenience we have lettered the several clauses of vv. 10. 11.

10a. For the case coming under consideration, the separation of Christian spouses, the apostle does not merely advise, as he does vv. 6. 25, no, he commands, since in 10b this case is fully covered by clear words of the Lord (such as Gen. 2, 24; Matt. 5, 32; 19, 9; Mark 10, 11. 12; Luke 16, 18). This command of the Lord is brought out in 10c and 11d, the three clauses of v. 11, a, b, c, forming a parenthetical sentence, to be enclosed in brackets. The law for both spouses is identical, equally clear and unmistakable. The wife is not to depart from her husband, and the husband is not to put away his wife. This is the basic law laid down by Christ and accepted *in toto* by Paul: No divorce among Christians. The one exception granted by the Lord, Matt. 5, 32; 19, 9 (fornication), is not mentioned by the apostle, since fornication, and hence divorce because of fornication, ought not to occur among Christians.

However, the apostle realizes that Christians are not perfect. No sooner therefore had he written 10a than he added 11a, b, c: *Ἐάν δέ καὶ χωρισθῆ*. Conditional sentences introduced by *εάν* with the subjunctive are, according to Robertson, confined to the future (from the viewpoint of the speaker or writer). Cp. 1 Cor. 10, 28: *εάν δέ τις ὑμῖν ἐσπῆ*, Mark 9, 43: "If thine hand offend thee," etc.

The apostle does not legislate on a case that had actually occurred in the congregation at Corinth. He merely assumes the possibility that for some reason, either in ignorance of the sinfulness of such a step or in a sudden fit of anger or in yielding to her impatience, a wife has run away from her husband. If this has occurred, the command of the apostle to such a woman is either to remain unmarried or to become reconciled to her husband. These words of the apostle, however, cannot possibly be construed as permitting the woman (or the husband, for the same law applies to both) who has left her husband or intends to do so to choose between returning to him or remaining separated from him, but unmarried. He would flatly contradict the command of the Lord, to whom he appeals and who permits no divorce save for the cause of fornication, and he would grossly contradict himself. He would grant permission to bring about what just a moment before he had forbidden and what in the very next moment he again prohibits, a separation of husband and wife. Compare also v. 5, where the cessation of conjugal cohabitation is permitted only "for a time," and for a very special reason, and the command added: "Come together again that Satan tempt you not." Therefore the evident meaning of these words is that the wife must

do one of two things, either remain unmarried or—*rather*—be reconciled, since the Lord permits no separation. For this use of *ñ* compare Acts 24, 18—20: "Certain Jews of Asia ought to have been here before thee and object if they had aught against me, or else let these same here say if they have found any evil doing in me." Ask the Jews from Asia, *ñ*, or rather, since that cannot be done because of their absence, let these men speak. In a similar manner *ñ* is used in our passage. Let her remain unmarried, or rather, since that cannot be done because of the divine prohibition of separation, let her become reconciled. Cp. Meyer on 1 Cor. 7, 11.

Why, then, does the apostle at all mention the duty of remaining unmarried? Simply because, above all, it was his purpose to prevent a hasty remarriage to another. She has separated, he means to say, but that does not give her the right to marry another. She is still the wife of her husband, and hence it is her duty, above all, to remain unmarried, or rather, since she is still the wife of a spouse and dare not separate from him, it is her duty to go back and reestablish her former relation as quickly as possible. The word *reconcile* here evidently does not merely mean the asking for forgiveness, but includes the resumption of the marital relation, since reconciliation is distinguished from remaining unmarried.

If the wife 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 the 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 against 11d, must be subjected to church discipline and, if he remains impenitent, must be excommunicated, and then 1 Cor. 7, 15 applies to both parties. And if the wife persistently refuses to become reconciled, she must be dealt with in a similar manner.

There is therefore no disagreement between Paul and Christ.

TH. LAETSCH.

Die Hauptſchriften Luthers in chronologiſcher Reihenfolge.

Mit Anmerkungen.

(Fortſetzung.)

1525. „Deutſche Meſſe und Ordnung des Gottesdienſtes.“ — Dieſe Schrift trägt gewöhnlich das Datum 1526, weil ſie in dieſem Jahre tatſächlich auf dem Markt erſchien. Aber Buchwald bemerkt: „Noch vor Weihnachten erſcheint die ‚Deutſche Meſſe‘.“ Dieſe iſt eine der Schriften, die jeder lutheriſche Siturg genau ſtudieren ſollte, da ſie Luthers Ausführungen über die Grundſätze des chriſtlichen Gottesdienſtes enthält. Er gibt unter anderm eine kurze Definition einer chriſt-