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## Malcious Desertion

Theo. Laetsch

*Concordia Seminary, St. Louis*

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## Malicious Desertion.

The seventh chapter of Paul's First Letter to the Corinthians contains various instructions regarding marriage, all of which apparently were given in answer to questions proposed to the apostle by the congregation. After having discussed the question whether it were better to marry or to remain unmarried, the apostle turns his attention to such as have either before or after their conversion been married. He distinguishes two classes: such marriages in which both spouses are believers and such in which one spouse is a believer, the other an unbeliever. His instructions to believing couples, V. 12, we have already considered, *C. T. M.*, Vol. IV, p. 131 ff.

But in the congregation at Corinth there were numerous instances of mixed marriages, one spouse being a believer, the other an unbeliever. When Christ laid down His rule of the indissolubility of marriage, Matt. 5, 32; 19, 4 ff., there was no occasion to mention mixed marriages, for marriages between Jews and Gentiles occurred rarely, if ever, among the Jews, since Ezra and Nehemiah had taken such drastic measures in annulling marriages of this kind, Ezra 9 and 10; Neh. 13, 23—29. Naturally, the question arose among the Christians whether mixed marriages must be dissolved also in the New Testament Church. Perhaps many Christians also argued that such marriages conflicted with the clearly revealed will of God that believers should not be unequally yoked together with unbelievers. Be that as it may, the question as to the status of mixed marriages had been proposed to the apostle, and he proceeds to answer it, vv. 12—16. He takes into account two possibilities. One is that the unbelieving spouse "be pleased to dwell with" the believer. In this case the advice of the apostle is, Let not the believing husband put away his unbelieving wife, V. 12, and let the believing wife not leave her husband, V. 13; for this mixed marriage is not an unclean, sinful union, displeasing to God and on that account to be severed, but the unbelieving husband is sanctified by the wife, and the unbelieving wife is sanctified by the husband, V. 14. The apostle regards the continuance of such a marriage on the part of the Christian spouse as so self-evident that he uses a word implying the willingness of the Christian to keep the marriage bond intact, not merely *εὐδοκεῖν*, but the compound *συνεὐδοκεῖν*, to be pleased together with some one, to agree. The Christian spouse, without ever denying his Christian convictions, must at all times be willing to keep the marriage tie inviolate. The Christian wife must to the limit of her ability by willing obedience and loving service seek to keep her husband, though an unbeliever, attached to herself; and the believing husband will by courteous treatment, loving respect, and kind consideration knit ever closer that bond of love and affection whereby his wife, though an



unbeliever, is joined to him in a union that only death ought to sever. The unbelieving spouse ought to have no reason whatever to leave the Christian spouse. As far, therefore, as the Christian spouse in a mixed marriage is concerned, the apostle takes for granted willing compliance with the will of God that marriage is to be kept inviolate by man. If, then, the unbeliever be satisfied, if he consent to the good will of the Christian spouse, the marriage naturally continues. Unbelief on the part of one spouse is no reason for divorce.

There is, however, another possibility, and one which undoubtedly quite frequently occurred in those days, when public feeling so often ran high against the Christian religion. There may be no *συνευδοκίαν*, no agreeing, to continue with the marriage on the part of the unbeliever. He may be altogether averse to dwelling with his spouse. In fact, he may have shown his aversion by departing, by deserting the spouse, or by expelling her from the home, making cohabitation no longer possible, severing the marital relations. Since the apostle does not specify any motive for his departure, we have no right to assume any specific cause and limit the permission granted by the apostle in v. 15 to a departure for that one cause, be the underlying cause of the unbeliever's departure whatever it may (excepting of course fornication and malicious desertion, of which a believer is assumed not to be guilty). The unbeliever has departed. What, then, is the believing husband or wife to do in this case? Must he still regard himself bound to his spouse who has left him? Must he continue to make every effort to keep up the marital relations or force his presence upon the unwilling unbeliever? Must he at least remain unmarried, or is he free to marry another? The apostle removes all doubt on this question. Writing by inspiration of the Holy Ghost, he says, If the unbelieving depart, let him depart, *χωρίζεσθω*. By using the imperative, the apostle does not place the stamp of approval on the unbeliever's departure, he does not sanction his act of severing the marriage relation, just as little as the *ἀγνοεῖτω*, let him be ignorant, 1 Cor. 14, 38 approves of ignorance or the *ἀδικησάτω*, Rev. 22, 11, permits or sanctions injustice. The apostle simply means to say, Let him depart. His guilt be upon him. That is a matter to be settled between him and his Maker. As far as the believing brother or sister is concerned from whom the unbeliever departed, he or she is not under bondage in such cases. The word *δεδούλωται* means to be in a state of bondage, held by constraint of law or necessity. Hence the believer is not held by constraint of law "in these matters." The law for married people as laid down in the beginning, Gen. 2, 24, restated by Christ, Matt. 19, 6, and acknowledged by the apostle, 1 Cor. 7, 11, this law that the marriage bond remain unsevered during the lifetime of the spouses, no longer obligates the deserted spouse. The relation of a person to a law is that of a *δούλος*, a slave, to his



master, so long as that law is in force. If, therefore, a person is declared to be no longer under bondage in a matter pertaining to the maintenance of the marriage relations, there can be no more law tying him to his spouse. Though the marriage has been broken in a manner utterly displeasing to God, though the departing unbeliever will be called to account by the Lord, yet the Supreme Legislator in these matters declares the deserted spouse to be no longer under bondage.

We have no right to limit the scope of these words. It is a violation of sound hermeneutics that Rome restricts this permission to a separation *a mensa et thoro* and that Bengel adds the remark: "*Sed cum exceptione illa: Maneat extra coniugium, v. 11*";<sup>1)</sup> for v. 11 applies to marriages in which both spouses are believers, while v. 15 speaks of mixed marriages. Therefore it is just as impermissible to entertain, with the *Expos. Gr. N. T.*, a doubt "whether the freedom of the innocent divorced extends to remarriage," and to conclude, with Heinrici (quoted in *Expos. Gr. N. T.*), that "in view of v. 11 the inference that the divorced should remain unmarried is the safer." The words mean exactly what they say: the brother or sister is not under bondage. Luther in his brilliant exposition of 1 Cor. 7 says: "If he is no longer under bondage, he is free and at liberty," and Chemnitz expresses the same truth in his *Examen* (Loc. XIV, *De Matr.*, canon 5, § 6): "*Pronunciat Paulus: fidelem non esse serviliter alligatam desertori, sed esse liberam. Servitus enim et libertas opposita sunt.*"<sup>2)</sup> Luther continues: "If he is at liberty and free, then he may marry just as if his spouse had died." (St. L. VIII, 1062.) Luther then answers in the affirmative the question whether he may remarry repeatedly though three or more spouses desert him. "And he does not say that it may be done only once, rather does he permit it (*laesst es stehen und gehen*) as often as the need arises; for he will have none detained in the danger of unchastity for the sake of the trespass and wickedness of another."<sup>3)</sup> And again: "Ought not the Christian spouse to wait until his unchristian spouse return or die, as has hitherto been the custom and ecclesiastical law? Answer: Whether he will wait for her depends on his good will; for since the apostle here declares him to be free and at liberty, he is not under obligation to wait for the spouse, but may marry in God's name." (L. c., 1063.) And again: "But if the deserter return and is willing to reform (*sich recht stellen*), ought he to be again admitted and accepted? Answer: If the deserted spouse has not yet remarried, she may again accept him, and it is advisable that they again come

1) "But with the exception: Let her remain unmarried, v. 11."

2) Paul states that the believer is not slavishly tied to the deserter, but is free. For servitude and liberty are opposites."

3) Italics our own.



together." (1063.) Luther therefore places the resumption of marital relations into the option of the spouse maliciously deserted. Though a reunion may be advisable and may be urged on the part of the pastor, yet it is not obligatory, and as we shall see, it may be inadvisable under circumstances. The deserted spouse cannot be compelled to accept the deserter after malicious desertion has been established. Naturally, it must be evident that the unbeliever departed not merely in a fit of anger, only to return after being calmed down. If the unbeliever has departed, the believing spouse will bear in mind that marriage according to God's intention is to be inseparable, and will therefore make every effort to effect a change of mind on the part of the unbeliever. Only if all his efforts in this direction are fruitless or if the deserter has made such efforts practically impossible, *e. g.*, by disappearing without leaving any clew as to his whereabouts, and sufficient time (varying of course in the individual case) has elapsed, may the believer regard the former spouse as a malicious deserter and his marriage to him as broken by the desertion. Nor will the believer rely solely on his own judgment. Knowing his own heart, which is a deceitful thing and desperately wicked, Jer. 17, 9; endeavoring not to be wise in his own counsels, Rom. 12, 16; Prov. 12, 15, he will consult with his pastor and other experienced Christian friends, so that finally with a good conscience he may say that he has done all in his power to prevent the breach from becoming a permanent one and that his is a manifest, proved case of being maliciously deserted. Then with a good conscience before God and man the believer may obtain a divorce from the deserter, which divorce is not the severing of an existing marriage, but merely the public declaration that the marriage has been severed by the departure of the unbeliever. A divorce naturally must be obtained before the deserted spouse may enter upon a second marriage; else this second marriage would be regarded as bigamy by the State.

Now a very pertinent question arises. Does this word of the apostle apply also to those cases of desertion in which both deserting and deserted spouses are members of a Christian congregation? It is true that, as fornication ought not to occur among Christians, so members of a Christian congregation ought never to be guilty of desertion. So it ought to be; yet so it is not. As the Lord in Matt. 19 takes into consideration the possibility of fornication among the members of Christian congregations and grants in this case to the innocent spouse permission to divorce even his repentant and hence believing spouse, so the Christian may become guilty of the sin of departing from his Christian spouse, of committing not fornication, but adultery, the sin of breaking the marriage bond and severing it in a manner forbidden by God, Matt. 19, 9. May in this instance the innocent spouse at once obtain a divorce? There are



such as answer in the affirmative. Referring to Matt. 19, they conclude that, since the spouse has committed adultery, the innocent spouse has the right to divorce him; or they apply 1 Cor. 7, 15 to this case. The fact is that neither of these passages applies immediately. Matt. 19 speaks not of adultery, but of fornication. Departing from one's spouse is not fornication, the only reason for severing a marriage permitted in Matt. 19. Hence Matt. 19 does not apply. Nor does 1 Cor. 7, 15 at once apply, so that the innocent spouse were at liberty at once to obtain a divorce from the deserter. For 1 Cor. 7, 15 speaks of unbelievers, while the case in question is one in which a member of the congregation has departed. Of course, that fact only increases his guilt, Luke 12, 47. Yet since he is a member of a Christian congregation, his case is not identical with the case described in 1 Cor. 7, 15 until the course of events will compel the congregation to regard him as an unbeliever, in other words, until all the requirements of Matt. 18, 15—18 have been complied with and have proved ineffectual in gaining him. This disciplinary proceeding, which of course should be begun at once, may require a long time. In its efforts to bring about a reconciliation of the deserter with the deserted spouse the congregation will exercise due patience and not at once proceed to excommunication. During all this time the deserted spouse must make every effort to win back the deserter and must accept him if he returns since, and so long as, he has not committed the only sin which justifies repudiation on her part, fornication. If during these disciplinary proceedings the deserted spouse, A, would sue for divorce on the ground of malicious desertion or would refuse to take B back, then A would become equally guilty of malicious desertion and would become subject to church discipline. If, however, A has made every effort to effect a reconciliation, if in spite of the combined efforts of A and the congregation B persists in his refusal to return, then B is to be declared, according to Matt. 18, a heathen man and a publican. He is then before God and man an unbeliever, Matt. 18, 18, and consequently 1 Cor. 7, 15 applies. A is no longer under bondage. A has the perfect right to declare that she no longer regards the deserter as her spouse. She is justified to have the State declare her marriage severed because of the desertion of the guilty spouse. She is at liberty to marry any other person not denied to her by some divine or civil law.

On the other hand, we must not construe the words of the apostle as obligating the deserted spouse to relinquish his claims on the deserter. The apostle tells us that the believer is not under obligation, that he is a free agent in these matters. If he so chooses, he certainly has the right to regard and claim the deserter as his God-given spouse, with whom he is willing to resume marriage relations as soon as he returns.



This liberty granted to the deserted spouse does not extend to the deserter. Says Dr. A. L. Graebner: "When the breach has become complete by the malicious and persistent withdrawal of the marriage consent of one party against the will of the other party, the parties are no longer husband and wife in the state of betrothal,<sup>4)</sup> but single and separate. The discarded woman, having been permanently robbed of her betrothed husband, is no longer a wife. She is free and innocent. And as there can be no husband without a wife, the former husband, having broken and thrown away the marriage bond, is no longer a husband. He is free, but guilty, guilty of the breach of marriage, *until he restore what he has robbed, if restoration is possible.*"<sup>5)</sup> (*Theol. Quart.*, Vol. 4, p. 475.) The deserter is guilty of adultery. As long as he remains without the Christian Church, the congregation cannot deal with him, 1 Cor. 5, 12. As soon, however, as he seeks admission or readmission into the congregation, his breach of marriage is one of the sins for which he must repent and make amends. Such amends are made by means of a confession, public to the extent that his sin is known, thus seeking to remove, as far as that is possible, the offense given by his desertion. Such amends must furthermore be made by a sincere effort on his part to reestablish his marriage with the deserted spouse, if that is at all possible. If that is made impossible because the deserted spouse has remarried or refuses to resume marital relations with the deserted (and she has the right to do so, 1 Cor. 7, 15), then of course the congregation cannot insist on the return of the deserter to his former spouse, but must be satisfied with the confession of, and apology for, his desertion. But if the deserted spouse has never relinquished his rights, if he is still willing to continue marriage relations with the deserter, then the deserter is obliged to return to the deserted party, and the congregation must insist on his return before admitting him into membership. Unwillingness to return to his spouse would clearly prove his determination to continue in the sin of adultery, a sin which excludes from the kingdom of God, Gal. 5, 19. 21; 2 Cor. 6, 9. 10. Even though the deserter had married and become one flesh with his second spouse, he would be under obligation to return to his first wife if she still insisted upon her right of claiming him as her husband, — though she should be earnestly dissuaded from this course, — for in this case the second marriage of the deserter is in fact an adulterous one, according to Matt. 19, 9. Only by the declaration of the deserted spouse that she no longer regards the deserter as her husband or by her tacit acquiescence in the second marriage of the deserter, is the deserter set free to cohabit with a second wife; and should the

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4) Dr. Graebner very properly regards valid betrothal and marriage as synonymous terms as far as the marital obligation is concerned.

5) Italics our own.



deserter and his wife thereafter repent, they may remain in wedlock with a free conscience, whether the deserted spouse contract a new marriage or not. See *Theol. Quart.*, Vol. 4, p. 476; *L. u. W.*, XVI, 321—334.

Malicious desertion therefore, according to the word of the apostle, frees the deserted spouse from marital obligations to the deserter. Not every separation nor every cessation of carnal intercourse is *eo ipso* malicious desertion. The apostle 1 Cor. 7, 5 speaks of temporarily abstaining from carnal intercourse by mutual agreement "that ye may give yourselves to fasting and prayer." This is certainly not that departing which he had in mind in v. 15.—Dr. Fritz correctly observes: "While the 'rendering of due benevolence' does not constitute the essence of marriage, yet it is included in the marriage vow and constitutes one of the purposes of marriage. Therefore its *persistent* refusal despite instruction and admonition must be considered to be equal to malicious desertion, 1 Cor. 7, 1—5. This, of course, does not hold good when other causes, such as illness or an accident and not mere stubborn resistance, prevent conjugal cohabitation." (Fritz, *Pastoral Theology*, p. 183.)—Imprisonment, deportation, confinement to an asylum or sanitarium for some physical or mental ailment, even though such confinement be lifelong, does not constitute *malicious* desertion.—Non-support, so often erroneously regarded as a species of malicious desertion, is not desertion, nor does it justify divorce. If the non-supporting husband is a member of a congregation, let the congregation admonish him and, if necessary, excommunicate him on the basis of Eph. 5, 28, 29 and 1 Tim. 5, 8, and then let the wife appeal to the civil courts. Only if the non-supporting husband persistently refuses to return to the wife or expels the wife from the home, does he become a malicious deserter.—If persistent quarrels, petty jealousies, etc., threaten to disrupt the marriage, the pastor must make every effort to effect a reconciliation and admonish the spouses to keep peace and harmony. Such admonition is best given to each spouse privately, showing to each one his particular failings and special duties. Then ask them to come to your home and there pray with them; show them the duties and privileges of married people, the blessings of a truly Christian union, the harm wrought by their quarreling to themselves, their home, their environment, the offense to the world, etc. In some instances of long-continued quarrels a separation from bed and board may be advisable, although this advise ought to be the last resort, and the separation must always be only a temporary one, implying the willingness to resume cohabitation after the lapse of the time agreed upon, if not before. Such a separation from bed and board may become necessary if the one party is guilty of coarse brutality, of threats against, and attacks upon, the life of the spouse; but even in these cases the separation should be



temporary, contingent on the promise of better behavior. Continued threats and attacks in spite of all admonition, making cohabitation impossible, will eventually constitute malicious desertion; for Quenstedt correctly notes that, while certainly a person departing from his spouse is guilty of malicious desertion, yet one who causes his spouse to leave him by his brutality and tyranny is just as much guilty of desertion. (Quoted in *Lehre u. Wehre*, Vol. 17, p. 206.) — In a divorce by collusion, both parties agreeing to separate because of incompatibility, etc., neither party can claim to be maliciously deserted, since both agreed to the separation. However, either party, or both, will become guilty of malicious desertion by persistently refusing to resume marital relations despite all admonitions on the part of pastor and congregation, who are in duty bound to deal with such spouses at once according to Matt. 18.

We have seen that, while according to God's institution marriage is inseparable so long as both spouses live, Matt. 19, 5 ff., that same God has permitted the party whose spouse has committed fornication to sever the marriage bond, and the spouse who has been maliciously deserted to consider himself as under no obligation to the deserter. There are such as assert that practising according to this policy will open wide the door to divorce and eventually undermine the sanctity of wedlock. Let us in conclusion briefly show that this charge is an unfounded one.

1. It is God Himself who grants the right of divorce in the two instances named. Surely, God would not establish a policy that would undermine holy wedlock, His own institution. If divorce becomes prevalent in our Lutheran Church, if the divine institution of marriage is undermined by our practise, then this is due, not to an observance of the principles outlined above, but to a perversion, a deliberate setting aside, of these principles.

2. A proper application of these principles will reduce divorces to the minimum, as the history of the Lutheran Church shows, whenever these principles have not been neglected.

- A. Divorces because of provable fornication will by the very nature of the case be exceedingly rare.

- B. Even where fornication is proved, the marriage *must* not, but *may* be dissolved; and in many instances pastor and congregation will advise a continuation of the marriage and be successful in averting a divorce.

- C. Malicious desertion must not only be positively proved to the satisfaction of the Christian congregation, but, if the deserting spouse is a member of the congregation, disciplinary proceedings will at once be instituted against him, and many a deserter will, if dealt with in a spirit of brotherly love, repent and return to his spouse.



D. All cases of divorce except for fornication and malicious desertion are subject to church discipline and will eventually lead to the excommunication of the guilty party.

3. Faithful pastors will properly indoctrinate their congregations on all questions pertaining to marriage and divorce. This may be done in the public sermon, in the congregational meetings, in the societies, in the homes of the members by private conversation. Above all, faithful pastors by preaching the pure Gospel, the doctrine of justification by grace, for Christ's sake, will make the members of their congregations willing and able to submit in all these questions to the Word of God, to regard marriage as a divine institution to be held sacred by all, to look upon divorce as an infraction of God's will, to enter into this estate and live therein in the fear of God and according to His Word, to bear with their spouse's infirmities, to share not only the joys, but also the burdens of this estate, to make it, by the help of their Savior, an antitype of that blessed and happy union of Christ and His bride, the Church.

THEO. LAETSCH.

## Die Hauptschriften Luthers in chronologischer Reihenfolge.

Mit Anmerkungen.

(Fortsetzung.)

1526. „Der 112. Psalm Davids . . . gepredigt.“ — Über diesen Psalm, „von Reichtum, Ehre und Lust, wie die Gerechten der wohl gebrauchen und die Gottlosen mißbrauchen“, predigte Luther im Jahre 1526. Wer die Predigten nachgeschrieben hat und sie dann im Druck hat ausgeben lassen, ist nicht bekannt. Als Drucker wird Hans Weß von Wittenberg genannt. Die Übersetzung und die Exegese halten sich ziemlich streng an den hebräischen Text, wie Luther zu B. 5 bemerkt: „Es ist eine hebräische Rede. Wir sind der hebräischen Sprache noch nicht mächtig, man hat sie seit Christi Zeiten her nicht rein gehabt; darum muß man immerdar daran fliden.“ Es folgt dann ein Exkursus über das hebräische Wort dabar. (St. Louiser Ausgabe V, 1098—1131.)

1526. „Der Prophet Habakuk ausgelegt.“ — Die kürzere Auslegung dieses prophetischen Buches, die die Vorlesungen Luthers vom 18. Juli bis zum 2. August enthält, erschien in demselben Jahre. Hier liegt seine längere Auslegung vor, die er selber etwa Mitte Juni 1526 in deutscher Sprache herausgegeben hat. Das Buch erschien zu Wittenberg bei Michel Lotter. Die Schrift ist oft abgedruckt worden. Auch hier klagt Luther über gewisse Schwierigkeiten der hebräischen Sprache: „Das macht zum Teil, daß die hebräische Sprache unbekannt gewesen ist, die Schrift, sonderlich die Propheten, an etlichen Orten klärllich zu verstehen.“ Die schnelle Verbreitung der Schrift erklärt sich aus ihrer Volkstümlichkeit trotz der hebräischen Studien. (St. Louiser Ausgabe XIV, 1416—1507.)

1526. „Vorrede zu der ersten deutschen Ausgabe des Syngamma.“ — Das sogenannte *Syngamma Suevicum* erschien am 21. Oktober 1525 in lateinischer Sprache. Seine Verfasser waren angesehene schwäbische Theologen, unter ihnen Johann Brenz. Es handelte sich um eine gründliche, sachliche Kritik der Stellung Scolampads, der sich jetzt definitiv zu Zwingli geschlagen hatte. Zu dieser Schrift lieferte Luther im Sommer des Jahres 1526 eine deutsche Vorrede. Sie umfaßt nur vierzehn Paragraphen, aber sie gibt genau an, worum es sich in dem Abendmahlsstreit handelte. Charakteristisch ist Luthers kurze Angabe der Schwierigkeit: „Aufs erste ist diese Setze so fruchtbar, daß sie inwendig einem Jahr fünf oder