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Divorce and Remarriage

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Toward Pastoral Practice

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THE written discussion which has centered around Matthew 5:31,32; 19:9; Mark 10:11,12; Luke 16:18; and 1 Corinthians 7:12-16 is certainly voluminous, sometimes biased, mostly tentative. It is our conviction that much of the labor expended through the years in an effort to develop a *modus operandi* for dealing with divorce and remarriage has resulted in more ambiguous conclusions than certain ones. It is also our conviction that these passages need to be studied anew by our Lutheran Church. In no area of pastoral care is there more need for clear doctrine and practice.

It is not our intention to belabor these passages exegetically. The temptation to do so is strong because such an effort would emphasize the point made above, furnish a multitude of footnotes, and reveal the amount of study that has been done on the problem. We shall likewise refrain from a discussion of the doctrine and practice of the Roman Catholic Church, the Anglican Church, and the Protestant Church in general. Moreover, we do not intend to restate the doctrine and practice of The Lutheran Church—Missouri Synod which, for the most part, is a "special theology" of divorce and remarriage stemming mainly from C. F. W. Walther, who quotes John Gerhard's *Loci*, "De conjugio" and from Luther's writings mainly, and J. H. C. Fritz, who, in turn, quotes Walther mainly, acknowledging the fact in the preface to his *Pastoral Theology*. This is a pastoral theology which accepts two Scriptural grounds for divorce (fornication and malicious desertion) and which, when remarriage is desired, operates on the principle of the "innocent" or "guilty" party. This theology is too well-known to discuss here.

However, one ought to note in passing that a certain *tertium quid* interjects itself upon such a "legal" method of dealing with any human problem, especially when one desires to determine who is innocent and who is guilty. A Biblical understanding of human sinfulness would seem to preclude such a simple evaluation of any human situation, and especially in dealing with the complexities of marriage relationships one should be cautious, notwithstanding the fact that fornication and desertion are definitive acts which seriously damage or break a marriage in the most obvious way. Whether or not these acts immediately furnish convenient and certain categories of innocent and guilty parties and justify a marriage break finalized by a legal divorce action is a debatable question.[1] Among Christians, when love and forgiveness are withheld, can one claim to be an innocent party? Surely the pastor who

[1] Both Walther and Fritz quote Luther as a word of caution, and rightly so. Luther's writings on this matter must be read in context and with an understanding that he appeals both to the government for legal action and to the church for evangelical practice. What the government does in the case of unbelievers is one thing; what Christians do is another. Cf. WA 32, 376, 377. In addition, certain papal and monastic views somewhat color Luther's early writings on marriage. The interested student may consult Werner Elert, *Morphologie*, II, 81 ff. and Julius Koestlin, *Theologie*, II, 311 ff.

counsels with persons involved in a marriage problem will seek to determine whether there is sin which violates the law of love and to establish who it is that actually desires to "depart" (1 Cor. 7:15) by words or actions and so has no concern for the other person, for marriage vows, or for the will of God. The story of a marriage going sour may build up to a crescendo of ill will and end with two people obsessed with the idea of hurting one another as much as possible.

God's Will for Marriage

God intended marriage as a lifelong union. This ideal is stated, among other places, in Mark 10:2-12. In essence, what Jesus said was: "One man for one woman till death do you part." Illicit relationships among people are forbidden in the Sixth Commandment. When one spouse or both no longer intend to fulfill the obligations of marriage and remain faithful to the marriage bond, the marriage relationship is broken and what started out to be a divine arrangement is adulterated.

It is sometimes naively supposed by Christians that God wills divorce in the case of unchastity. If so, then at best such is only the permissive or secondary will of God. The law of Moses had dealt with this secondary will of God in Deut. 24:1-4. Here Moses made provisions for those who repudiated their wives. Jesus was asked by the Jews whether one could put away his wife according to this provision. Jesus responded by reaffirming the indissoluble nature of marriage and added, notably in Mark 10:5, "For the hardness of your hearts he wrote you this precept." And in Matt. 19:8 He said, "But from the beginning it was not so." He goes back to the original will of God at creation and to Exodus 20:14. Nowhere does Jesus say that failure in marriage, even because of infidelity (unchastity), *must* be followed by divorce. This mistaken judgment has predetermined quite generally that infidelity will be followed by divorce action rather than redemptive efforts to salvage the marriage. Moreover, there is a general tendency to view marital infidelity as a sort of unpardonable sin.

Luther's comment on Matthew 5: 31,32 is:

> So He [Christ] not only rebukes them for their frivolity in the question of divorce, but He teaches them not to get a divorce at all, or if they do get one, to remain unmarried on both sides. And He comes to the conclusion that divorce is always an occasion for adultery. . . . Those who want to be Christians should not be divorced but every man should keep his own spouse, sustaining and bearing good and ill with her, even though she may have her oddities, peculiarities, and faults. If he does get a divorce, he should remain unmarried. We have no right to make marriage a free thing, as though it were in our power to do with it as we pleased, changing and exchanging. But the rule is the one Christ pronounces: "What God hath joined together, let no man put asunder" (Matt. 19:6). The only trouble here is the fact that marriage is not thought of on the basis of the Word of God, as His work and ordinance, and that His will is ignored. . . . To those who really want to be Christians we would give this advice. The two partners should be admonished to stay together. If the guilty party is humbled and reformed, the innocent party should let himself be reconciled to him and forgive him in Christian love.[2]

[2] WA 32, 377, 378, 379.

In recent publications in The Lutheran Church — Missouri Synod the oft-used maxim is repeated, "Christ permits, but does not command, married people to procure a divorce if a spouse has become guilty of fornication and to enter a new marriage." This usual qualification is added: "The innocent party is not compelled by Holy Writ to put away the spouse that has become guilty of fornication, but may condone the offense and continue the marriage if the offender is penitent."[3] As these statements stand, one's application of them as a principle of decision may assume either a legal orientation or an evangelical one. No clear distinction is made between a Christian and an unchristian situation and the demands which would obtain in each case. When one spouse commits fornication or otherwise manifests infidelity, the offended (not necessarily "innocent") Christian spouse is bound, is he not, by the law of Christian love to show forgiveness just as much as the offending spouse is bound by God's Word to remain faithful? In other words, do not both parties have definite responsibilities under God as redeemed Christians under the forgiving power of the Word? The passages which bind a sincere Christian to practice forgiveness in any and all circumstances are many (e. g., Matt. 18:21, 22; Luke 6:35-37; 17:3; Rom. 12:17, 19, 21; Eph. 4:32; 1 Cor. 13: 4-7; Col. 3:13). Shall the offended Christian party say, "I can take you or leave you" and break a marriage relationship and put the other party away with all that such a break implies? If we may assume that the offended party has an option, on what basis does he decide whether or not he will remain married to the party who has caused the offense? It would seem to be on the basis of the Office of the Keys. When the one party flouts forgiveness and continues in unchastity, the other has no choice finally but to suffer a marriage break. Luther quotes a portion of Prov. 18:22 in the Vulgate to say: "He that keepeth an adulteress is a fool."[4] He also argues for love and forgiveness and reconciliation, as we have noted above, but then adds,

> Sometimes there is no hope for improvement, or the reconciliation of the guilty one and his restoration to good graces is followed only by his abuse of this kindness. He persists in his flagrant and loose behavior and takes it for granted that he is entitled to be spared and forgiven, but a sin that takes mercy and forgiveness for granted is intolerable . . . we know that no one should be compelled to take back a public prostitute or an adulterer if he does not want to do so or is so disgusted that he cannot do so.[5]

St. Paul holds out a principle which ap-

[3] E. g.: "If a man takes his love away from his wife and gives it to another woman, by act of unfaithfulness he divorces himself from his wife. She is no longer married. She, the innocent party, may go to court and ask that it be publicly known that her husband divorced himself privately. Often the innocent party does not do this, but according to the Bible (Matt. 19:9) he or she has the right." *Adult Membership Manual* (St. Louis: Concordia Publishing House, 1958), p. 17.

Also: "Marriage may be dissolved by the innocent party if the mate is guilty of fornication (adultery) or is unfaithful to the marriage vow (Matt. 19:9), or if he deserts maliciously (1 Cor. 7:15). In such cases the innocent party has God's permission to secure a legal divorce and is free to marry another person. God, however, does not demand that such action be taken." Alfred W. Koehler, *Light From Above* (St. Louis: Concordia Publishing House, 1960), p. 66.

[4] WA ii, 10, 288.

[5] WA 32, 379, 380.

plies to Christian action, a principle which is often difficult of application, however. He says:

> If a Christian has a heathen wife, and she is willing to live with him, he must not divorce her; and a woman who has a heathen husband willing to live with her must not divorce her husband. For the heathen husband now belongs to God through his Christian wife, and the heathen wife through her Christian husband. If on the other hand the heathen partner wishes for a separation, let him have it. In such cases the Christian husband or wife is not under compulsion; but God's call is a call to live in peace. Think of it: as a wife you may be your husband's salvation; as a husband you may be your wife's salvation (1 Cor. 7:12-16 NEB).

May the Christian ever be responsible for a divorce action according to the will of God? Or may he only suffer it in the sense that he submits to it or permits it to be declared legally dissolved when the marriage break is already accomplished in fact? St. Paul states the principle that marriage is a lifelong union in 1 Cor. 7:10, 11, but in v. 15 he states that Christians may sometimes be the victims of a marriage break, particularly at the hands of unbelievers. One possible interpretation of Matt. 5: 31, 32 and 19:9 states the same principle, viz., that Jesus in His so-called "except clauses" uses the word πορνεία to suggest an immoral way of life and complete disregard of family obligations rather than a mere single act of unfaithfulness.[6] In this sense the Christian suffers the marriage break because the one partner has become an unbeliever and a whore.

God's ideal will for marriage is monogamy. Because of human sinfulness men disrupt God's divinely intended order and cause the dissolution of a bond that is not meant to be broken. To the question, "Does God will the breaking of a marriage?", one must answer with an unqualified no. But neither does He will lying, cheating, theft, brutality, or any of the multitude of sins of which the human family may be guilty. Men and women break marriages in the most wilful and obvious ways. The Christian will suffer a marriage break, that is, he will submit to it only as a last resort when such circumstances prevail that he has only the choice between the lesser of two evils. Whether this break is finalized by a legal decree is again a matter of judgment in reference to the possibility of reconciliation. Christians may protest a divorce petition in the hope of reconciliation, but when the one party is determined to finalize the break, the Christian may have no choice but to submit to such action.

Therefore, according to the words of Jesus, no church has the right to deny the possibility that a marriage can be destroyed, for example by adultery, with the possibility of a new marriage. No one can deny *a priori* the possibility that there may be other cases (as grave as adultery) in which a marriage through the fault of one (or both) of the parties can be destroyed.

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[6] The RSV generally avoids translating πορνεία with 'fornication' on the ground that it is a word not in common use today. Exceptions are Matt. 15:19; Mark 7:21; John 8:41; and seven occurrences in Revelation. These translators, using the words 'immorality' and 'unchastity' make clear that they want to indicate not an individual act (as some think 'fornication' means), but a way of life or an attitude of the person comparable to the life of prostitution. Cf. C. T. Craig, *Interpreter's Bible* (New York: Abingdon Press, 1953), X, 60.

A marriage can die at its heart when there is no intention on the part of one (or both) of the parties to keep it sacred in the bonds of faithfulness.

The "Except Clauses" in Matthew[7]

For the sake of clarity, we note that only Matthew's account (5:31,32; 19:9) contains an exceptive clause. The Mark and Luke passages do not contain an exception. A number of scholars hold the opinion that the "except clauses" in Matthew are additions. The evidence does not prove this contention. What do the Matthew passages mean?

One must note that there are thousands of pages of discussion and opinions offered by scholars who, if they were objective, usually came to various indefinite conclusions, or who, if they were forcing their own prejudices, usually worked out their own interpretations. The safest course is to search for the simplest possible meaning while observing the basic principles of interpretation.

It is now generally recognized that Jesus made His statements in the Gospels about marriage to a hostile male audience who defended the practice of disposing of wives for frivolous causes.[8] The Jews were operating within a legal framework and the whole concept of their action was based on legal expediency according to the interpretation of the law. Luther makes reference to this practice in his *Large Catechism*[9] and his *Commentary on the Sermon on the Mount.*[10] In Jesus' day complaints against wives in divorce cases often constituted what the courts today would call 'incompatibility.' Moreover, women in that society did not have the right to secure a divorce, only the men. So the woman was always the loser in a divorce action, so to speak. First-century Judaism was a male-dominated society.[11]

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[7] *The Expositor's Greek Testament* (I, 110) notes: "A most important exception which has given rise to much controversy that will probably last till the world's end."

[8] In Jesus' controversy with the Pharisees and scribes concerning the Sixth Commandment (Matt. 19:1-9 and Mark 10:1-12) it is evident that it was the question of when, according to Deut. 24:1, divorce is permissible within the law; and here, depending on the school of thought, there were stricter and more lax interpretations of the law. Luther comments: "In Deuteronomy 24:1 we read: 'When a man takes a wife and marries her, if then she finds no favor in his eyes because he has found some indecency in her, he should write her a bill of divorce and send her out.' But immediately (Deut. 24:4) it adds the prohibition that if later on the same man would like to have her back, he may not take her again to be his wife. They were quick to learn this law and eager to abuse it. As soon as a man got tired of his wife and developed a desire for another, he immediately discarded and dismissed her, though Moses had permitted this only on the grounds that 'he found some indecency in her' which prevented them from staying together. They had taken many liberties on this question, till they themselves saw that what they were doing was no credit to them and that frequently it was quite frivolous." (WA 32, 377)

[9] "These two commandments [Ninth and Tenth] are given quite exclusively to the Jews . . . every man had power over his wife to put her away publicly by giving her a bill of divorce, and to take another. Therefore they were in constant danger among each other that if one took a fancy to another's wife, he might allege any reason both to dismiss his own wife and to estrange the other's wife from him, that he might obtain her under pretext of right. That was not considered a sin nor disgrace with them; as little as now with hired help, when a proprietor dismisses his manservant or maidservant, or takes another man's servants from him in any way." *Triglot Concordia* (St. Louis: Concordia Publishing House, 1921), pp. 663, 665.

[10] WA 32, 376—378.

[11] David R. Mace, *Hebrew Marriage* (London: The Epworth Press, 1953) pp. 184—200. See also Johs. Pedersen, *Israel: Its Life and Culture* (London: Oxford University Press, reprint 1959), I and II, 60 ff.

Jesus lifts the whole question from the level of legal rights to the level of what a husband does when he dismisses his wife for any reason except unchastity. A husband is not to use some trivial ground as an excuse for irresponsibly terminating a marriage.

A literal translation of Matt. 5:32 reads, "Whosoever divorces [ἀπολύσῃ, literally, 'puts her out of the house'] his wife, saving for the cause of fornication, stigmatizes her with adultery (μοιχευθῆναι, 'makes her to commit adultery; causes her to be adulterated; adulterates her'); and whosoever shall marry her that is divorced is stigmatized with adultery" (μοιχᾶται if middle in active sense would mean "adulterates her;" if passive, "is adulterated." Either use of the verb will serve).

Note that Jesus is not branding all "putting away" as adultery in this passage. An obvious exception obtains: "saving for the cause of πορνεία." The husband does not stigmatize his wife when he puts her away when she is already stigmatized by πορνεία. In other words, whoever puts away his wife makes her to be adulterated unless she has already been adulterated by fornication. Moreover, in the event of her remarriage (which she may be forced to undertake) she would be forced into an adulterous relationship. This passage, therefore, in its simplest meaning, condemns the putting away of wives and states an exception to the label of adultery.[12]

Does this passage, however, automatically permit a divorce? The principle of the "analogy of faith" would seem to indicate otherwise. The passages in Mark and Luke force themselves upon us by virtue of their clarity and are to be held as the central passages by which the darker or more ob-

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[12] Kittel's *Theologisches Wörterbuch zum Neuen Testament*, IV, 591, 592, gives this explanation of Matt. 5:32 and Matt. 19:9 in a word study of πορνεία (The German is given followed by a translation):

> Matthäus will durch die Ausnahmeklausel von 5, 32 seinen judenchristlichen Lesern sagen: wenn ein Mann seine Frau verstösst — es sei denn auf Grund ehelicher Untreue derselben, in welchem Fall er nach den geltenden Bestimmungen dazu gezwungen ist —, treibt er sie im Fall ihrer Wiederverheiratung in ein ehebrecherisches Verhältnis hinein. Derselbe Sinn liegt in etwas anderer Fassung in Matt. 19, 9 vor. πορνεία wird an beiden Stellen als ausserehelicher Geschlechtsumgang der Frau zu verstehen sein, der hier praktisch Ehebruch ist. Der Sinn der Klauseln ist dann nicht, dem christlichen Ehemann bei ehelicher Untreue der Frau die Erlaubnis zur Scheidung zu geben, sondern bei der rechtlich unvermeidlichen Scheidung soll der Mann von jedem Vorwurf befreit sein, wenn die Frau durch ihre Handlungsweise die Fortführung der Ehe unmöglich gemacht hat.
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> With the parenthetical exception in Matthew 5:32 the writer wants to tell his Jewish Christian readers this: When a man dismisses his wife — except for the reason of conjugal infidelity, in which case he would be compelled to do so by prevailing regulations — he forces her in the event of her remarriage into an adulterous relationship. The same thought is found in a different form in Matthew 19:19. πορνεία is to be understood in both passages as meaning extra-marital sexual relations performed by a woman, which is actually adultery. The sense of the parenthetical exception, then, is not to give the Christian husband the right to a divorce in the case of unfaithfulness on the part of his wife, but that the husband shall be free of all blame when a legally unavoidable separation takes place because the wife has made the continuation of the marriage impossible through her conduct.

W. Robertson Nicoll in *The Expositor*, XI, 439, states: "*Porneia* is, of course, as applied to a woman, properly the conduct of a *pornee*, and implies promiscuity and prostitution. It is only by an extension of meaning that it embraces the cases when a single but illicit connexion is formed by an unmarried woman."

scure passages are to be interpreted. Is not Jesus here in Matt. 5:32; 19:9 rebuking the Jews for their laxity in matters of marriage and establishing the pattern of His kingdom? Is He not rebuking them for living by what the law allows or does not allow? Is He not teaching them that true motivation for action is in the heart and that God holds one responsible on that level? In Matt. 5:20 He tells His disciples that their righteousness must meet a higher standard than that of the scribes and Pharisees. There is to be no legal action which dismisses a wife, and if a man does dismiss his wife at will, adultery is involved unless the wife is already adulterated by unchastity; and that remarriage also compounds the adultery. To interpret these passages as establishing a mechanical principle of action which can be applied automatically like a law in a legal code does violence to the intent of the words of Jesus. Churches that use Matthew 5:31,32 and 19:9 in such a legalistic way never seem to be done arguing about the problems of casuistry involved in individual cases.

In Matthew 19 Jesus lifts the whole complex of marriage problems out of the legalistic point of view and goes back to the original will of God as expressed in the account of the creation (19:4,5). In answer to the question, "Is it lawful to divorce one's wife for any cause?" He answered that God made male and female and willed the togetherness of the two in one flesh until death. The Jews then refer to the certificate of divorce which Moses allowed. They ask, "Is this not permissible?" "It is not," says Jesus. "For your hardness of heart Moses allowed you to divorce your wives, but from the beginning it was not so. And I say to you: Whoever divorces his wife, except for unchastity, and marries another, commits adultery."[13]

Apparently the reference in this instance, as in Matt. 5:32, is to the stigma which in that day (with all its ramifications in that society) was almost inevitably attached to the repudiated woman. She was adulterated by being "put away." The man who puts her away adulterates her and is responsible for the act — unless the wife has already stigmatized herself by unchastity. Note that the object of adulteration when a man dismisses his wife and marries another is the wife who is dismissed, not the second wife. The remarriage is not necessary to the adultery except that it finalizes the break. Again we note that we have, in the simplest meaning of the text, an exception to the label of adultery, not an automatic or mechanical reason for divorce and subsequent remarriage.[14]

St. Paul's Statement in 1 Cor. 7:10-17

In this passage St. Paul furnishes a second possible situation whereby sin will flout God's ordinance and break a marriage union. St. Paul is careful to point out that the believer remains with one's spouse even when he or she is unbelieving or sinful. If the one desires to separate, no new mar-

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[13] *The Expositor's Greek Testament*, I, 109, notes: "The scribes busied themselves solely about getting the bill of separation into due legal form. . . . Jesus raised the previous question and asserted a more radical right to woman — *not to be put away*, except when she put herself away by unfaithfulness."

[14] It should be noted that Codex Vaticanus and Codex Beza read παρεκτὸς λόγου πορνείας in this passage as in Matt. 5:32. Codex Vaticanus also omits the words καὶ γαμήσῃ ἄλλην, and in the place of μοιχᾶται reads ποιεῖ αὐτὴν μοιχευθῆναι as in Matt. 5:32.

riage is to take place, rather one should remain single or be reconciled. Here the believer suffers the break, doing all in his power to avoid it, whether he has been wronged or not. Whether the "not bound" brother or sister has the right of remarriage according to this passage is a debatable question. Though many interpreters, including Calvin and Luther, have been cited as believing that the separation implies the right of remarriage, this right is not explicitly stated by St. Paul. The weight of argument falls on the phrase οὐ δεδούλωται, "not bound like a slave." A slave's status remained unchanged, however his outward circumstances changed. His master might die, but he remained a slave. Just as death frees the surviving party and opens the way for another marriage (Rom. 7:2), so it is argued that desertion frees the deserted one and opens the way for another marriage, for "the one is not under bondage (like a slave) in such matters."

The teachings of Jesus and Paul make a strong case against a marriage break for any cause. The ideal emphasized in the New Testament is that marriage should terminate only with death (Rom. 7:2,3). Not only is it precarious practice to impose a legalistic ethic on the passages of the New Testament and employ them as a code, it is also dangerous to develop a doctrine and practice on the basis of unclear passages.

Some Unsolved Textual Problems

When one begins to search for definite rules of practice in the passages considered, the list of unsolved textual problems should not be ignored. For example:

1. Mark 10:11 and Luke 16:18 state the case absolutely — no divorce for any cause. What weight can be given the Matthew passages when one wishes to support the practice of allowing the "innocent" party to obtain a divorce and remarry? Are the Matthew passages to be taken as a legal code within which one is free, beyond all other considerations, to put away a "guilty" spouse?

2. Granted that the Matthew passages deal only with the right of the husband to dismiss his wife for the cause specified — what about the wife?

3. The Matthew passages do not expressly permit the remarriage of the innocent party. Is this a natural extension of the literal meaning of the passages?

4. What is the meaning of πορνεία? The clause "except for a cause of πορνεία" is difficult of interpretation and it is hazardous to derive a doctrine from a clause of uncertain meaning.

5. Does valid exegesis of 1 Cor. 7:15 give us a basis for a legitimate ground for divorce? The passage does not explicitly indicate sanction of finalizing the separation by means of legal divorce but only toleration of the separation effected by the unbelieving partner. In v. 11 St. Paul specifically states that the separated spouse should not contract another marriage.

Luther's Pastoral Concern

Luther manifested quite much dismay over against the seeming impossibility of solving many sexual and marital dilemmas without resorting either to Roman legalism or carnal license, a dismay rooted in his deep pastoral concern for people. He said, "This matter troubles and distresses me; I meet cases of it every day, whether it happen by special malice of Satan or because of our neglect of the Word of God. . . . In these matters I decide nothing, as

I have said, although there is nothing I would rather see decided, since nothing at present more grievously perplexes me and many more with me."[15]

Nor would Luther say that he had the final answer to the vexing problems which continue to plague many marriages down to our own day. "Herewith I hang up my harp, until another and better man shall take up this matter with me."[16] When Scripture is not clear and theology is uncertain, evangelical strategy demands fluidity and flexibility in dealing with all the extenuating circumstances in each different case.

Luther was convinced that, in exceptional circumstances, Christians may have to be unethical in men's eyes in order to be faithful and loving in God's eyes. There are times in a fallen world of fallen men when sinful entanglements become so inextricably involved that men must courageously counter Satan on his own grounds with his own weapons. "Sin bravely, but believe even more bravely" is the realistic Christian counsel which Luther offers to all who would act responsibly in a world in which sin is inevitable and service inescapable.[17] The last word in the Christian faith is not human perfection but divine forgiveness. Luther therefore exhorts Christians to remain with their unbelieving spouses and endeavor to convert them as long as they do not hinder Christian conduct.[18]

Luther's normative rule in marital problems as well as in all other social problems was: The Christian man is free to discover God's will for him in a given situation under the guidance of the Holy Spirit. The Biblical ethic is to remain relevant and flexible enough to confront men with the will of God under all conditions, in all societies, throughout all ages. At the same time, however, Luther also helped pastors and public officials to develop some regulative standards by which to govern and regulate contested marital disputes in their own 16th-century German situation.[19] They may be summarized briefly as follows: (1) monogamy (1 Cor. 10:23);[20] (2) divorce permitted on grounds of adultery (Matt. 19:8-10) and desertion (1 Cor. 7:15);[21] and (3) remarriage permitted to the innocent party (1 Cor. 7:9).[22]

Yet even in connection with the two grounds for divorce officially recognized in Evangelical lands, Luther was not willing that his reluctant pastoral counsel should assume proportions of a new canon law. He writes: "Inform other pastors that they should desist from asking my opinion in all of these matters . . . or else we will soon

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15 WA 6, 559, 560.

16 Ibid., 6, 560.

17 WA Br, 2, 424.

18 WA 12, 125 f.

19 Lahteenmaki points out that Luther, in spite of his hatred of divorce, believed that good laws and justice were not God's only weapons against the devil, but that in the struggle He also uses divorce and dispensations in order to succor those who otherwise would be forced to suffer the evil and hardheartedness of others. He taught that no general principle or particular verses of the Bible could be applied in all situations indiscriminately. Rather it is necesary to examine each individual case in terms of what is demanded by peace and good order and of how the law of love can be fulfilled. Olavi Lahteenmaki, *Sexus und Ehe bei Luther* (Turku, Finland, 1955), p. 83.

20 WA 43, 310; WA Br, 4, 140 f.

21 WA 32, 379 f.

22 WA Br, 10, 658—660.

have another papacy on our hands!" [23] Luther continued to remind public officials that marriage legislation is a civil matter under their jurisdiction as a trust from God. He also admonished all true believers that a "generous exercise of forgiveness and Christian love" may well provide miracles of reconciliation completely unknown to those who are merely obeying the civil laws and demanding their civil rights.

On this prayerful note Luther rests his case:

> For we neither encourage nor prohibit divorce but recommend that the civil authorities act in such cases in accordance with the civil laws of the community. But for those who profess to be true Christians, it would be far better to advise both parties to remain together and have the innocent partner reconciled to the other (when there is genuine repentance and desire for improvement) in the generous exercise of forgiveness and Christian love; unless no improvement could be hoped for, or the guilty person who had been pardoned and restored to favor persisted in abusing this kindness, and still continued in leading a public loose life, and took it for granted that one must continue to spare and forgive him.[24]

[23] WA Br, 8, 3183. Lutheran theologians have included as valid reasons for divorce continued cruelty, personal ill-usage *(saevitia)*, and the plotting against one another's lives *(insidiae)*. Melanchthon and N. Hemmingsen are cases in point. To these reasons others were subsequently added, e. g., refusal of the *debitum conjugale*. Cf. Aemilius Ludwig Richter, *Lehrbuch des katholischen und evangelischen Kirchenrechts*, 5th ed., (Leipzig: Bernhard Teuchnitz, 1858), p. 635 ff. Richter's *Kirchenordnungen des 16 Jahrhunderts* states in an order of service that there are unusual cases which can hardly be met by definite rules. *The Smalcald Articles* say simply: "Unjust also is the tradition which forbids an innocent person to marry after divorce" (Of the Power and Jurisdiction of Bishops, *Trigl.*, p. 527).

[24] WA 32, 379.

The Principle of Pastoral Practice in Cases of Remarriage

For the Christian there is no question but that marriage by its very nature is to be a permanent relationship; that according to the will of God it is meant to be indissoluble and in its effects on the beings of those married it is indissoluble. Marriages are dissolved, however, because God's will and order do not prevail everywhere among men. Human sin and the circumstances of life can cause a severance in that which was designed to be inseparable. The commitment that caused the one-flesh union to be established, constituted of consent, coitus, love, and fidelity, can be rejected and two people can deliberately and consciously put asunder what God has joined together. It is only a fiction to say that when this happens a marriage exists in reality. The phrase which is often used is: "In the eyes of God these people who were divorced for wrong reasons are still married." In every case what continues is the will of God for marriage and the effect on the beings of those who have been married. But does the marriage in itself really exist?

Where a marriage failure (marked by separation or divorce) occurs among Christian people, the church should recognize its involvement in the failure and seek to lead all concerned to repentance and reconciliation with God (1 Cor. 7:10, 11; John 8:3-11) and the possible reestablishment of the union. Divorce often seems to be the best solution in the minds of people in marital difficulties, especially when the problems are complex and not easily identifiable, as they often are. People often look upon divorce as the lesser of two evils. It can well become the greater evil when all considerations are counted and weighed.

Moreover, once a divorce has been granted, the parties are inclined to consider the marriage break as final. This is not necessarily the case. Reconciliation is not obviated by a legal decree. However, every family situation should be treated in its own peculiar context, but always on the basis of the principle that only where the essential bond of marriage is broken and where matrimonial fidelity is destroyed in its roots, there divorce may be suffered. Only where a real moral necessity exists should a marriage break come into view as a possibility.[25]

When reconstruction of the marriage is not possible (1) because one of the parties has remarried; (2) because the causes which led to the break cannot be removed; (3) because one of the parties refuses all overtures at reconciliation, then the possibility of remarriage may be considered. There is no absolute law against remarriage when the former marriage cannot be reestablished. (1 Cor. 7:15; Matt. 19: 11, 12)

Second marriages after an irreparable divorce cannot be shown to violate the law of Christian love. The imperative demand is that the Christian will face the total reality of the situation according to faith and mindful of the witness he bears to the Word and will of God for marriage. Other than this, one will always be deceived because the full dimensions of reality will not stand revealed. If one is not guided by the Word of God to repentance and faith, then one is most probably governed by emotions and self-interest and led to quibble about causes for "lawful" divorce. When one is not ruled by the Word of God, even repentance becomes an exterior necessity thrust into the situation. As faith reveals the tragedy of the violation of God's will in a marriage break, repentance can become a genuine experience. From this point, it is also faith active in love that must determine ethical decision and the course of action "in the Lord."

Although second marriages are risky and subject to the giving of a "less than good" witness to marriage in the Christian community and in society at large, the principle cannot be established that a second marriage will not be a good marriage. Second marriages often work in the interest of faith and do not destroy it, particularly where Christian couples are involved. To deny remarriage to one who is divorced might subject that person to a greater life of sin (1 Cor. 7:9). This is the Scriptural basis on which the Reformers based their argument for second marriages. The spirit of reclaiming love dictates that the pastor will exercise caution and be sure of his ground before concurring in a remarriage of divorced people.

The pastor's concerns when he is faced with a request for marriage by a couple where there has been a divorce on the part of one or both will direct him to find answers to questions such as these:

a. What attitudes of the heart and mind does the divorced person have toward his or her part in the marriage failure?

b. What attitude does he have toward his former partner and the possibility

[25] If this principle is applied to πορνεία, then it would become no mere external act, but be extended to the corresponding degeneration of the heart and disposition, that is, absolute unfaithfulness and the aversion of the entire personality from the partner and devotion to another person or another way of life.

of reconciliation and the re-establishment of his first marriage?

c. What is his attitude toward God's will for marriage?

d. Has he asked for forgiveness for his possible failure to preserve the former mariage?

e. What has he done to fulfill his Christian responsibility to the children of his former marriage?

f. Has he considered the possibility of remaining unmarried?

g. Does he show willingness with the help of God to build a new marriage on a Christian foundation and thereby to give a good witness to the church and society at large?

h. Has he endeavored to remove and correct those factors that possibly caused his divorce or contributed to it?

i. To what extent are these concerns understood and shared by his prospective marriage partner?

If the answers to such questions are consistently and determinately negative it is quite possible that the pastor may be dealing with people who want to commit adultery. If the answers are consistently and determinatively positive, the pastor can trust that he is dealing with repentant people seeking the grace and power of God. These alternatives may be revealed almost immediately or the pastor may have to work with the case for quite some time.

The Pastor at Work summarizes the pastor's responsibility towards those who seek remarriage in this fashion:

> Wherever it is impossible to reconstruct the former marriage for the reasons named above (cf. p. 17), the pastor should weigh as of paramount importance the quality of the applicant's present faith, contrition, and purpose, being mindful always that God's grace covers every sin. The pastor in counseling with the applicant for remarriage will be concerned that the person has fulfilled his obligations as a Christian to those involved in his broken family; that he recognizes his involvement and part in the breakup of his first marriage; that he has endeavored to remove and correct those factors that contributed to his divorce; that he is repentant for his share in that breakup; that his Christian faith demonstrates itself in love; and that he has a true understanding of the responsibilities of Christian marriage and is prepared to undertake them in dependence upon God. (Matt. 21:3, 23; Luke 7: 36-50; Rom. 3:23; Heb. 7:25; 1 John 1:9; 2:1, 2)[26]

Conclusion

It is our conviction that the words of Jesus on this subject of marriage do not give us a legal code by which the fornication of a spouse becomes automatically a cause for a legal divorce. In reality, these passages refer to something far more fundamental, namely, the true exposition of the Sixth Commandment. In no sense are the words of Jesus and Paul a code of law which can be applied mechanically.

It is also our conviction that since the New Testament does not enter into the question of the legal form of marriage, it likewise does not provide a legal code for adjudicating divorce cases. The whole emphasis is rather on the ethical nature of the married couple's life together "in the Lord."

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[26] Erdmann W. Frenk, "Marriage and Related Matters," *The Pastor at Work* (St. Louis: Concordia Publishing House, 1960), pp. 190, 191.

The New Testament states universal principles, directed to all men who believe beyond the limits of the Israelite people. The lordship of Christ brings order to the relationships of people to one another and to the relationship of people in marriage on the level of their common relationship to Christ Himself, to the Church, His Body. Marriage becomes in a unique way a realization of complete fellowship and, as such, it points to and images the fellowship between Christ and His Church. (Eph. 5)

The institutional side of marriage is important and upholding it is a part of the *usus politicus* of the law. It is true that the legal framework set around marriage by the government does not in itself create the highest good, but the upholding of the institution under the application of the Sixth Commandment does have its effect upon the inner conduct of marriage. God's will for marriage does not permit a person to indulge at will his shifting passions; it rather provides the constant in view of which people can work out their crises and tensions. On the other hand, the mere legalities are often the smokescreen behind which people can practice deception and hypocrisy while doing nothing constructive to keep the marriage relationship from going to pieces. Every pastor has had experience with a person who speaks of the necessity of divorcing his spouse because of unfaithfulness. Yet after one hour of consultation with this person, part of the concern for "getting rid" of the mate becomes apparent; he has his eye on another prospective mate.

When the pastor employs "rules" to guide him in pastoral practice, the simple searching out of facts which will support his decision of who is "guilty" and who is "innocent" often comprises the extent of his pastoral concern. Once he is convinced that one is "guilty" and the other is "innocent," he feels that his task is completed. In most cases both parties need to repent; both need counseling and aid in order to establish proper relationship to God and each other. This usually is not an easy matter. Marriage problems are complex. People who have them usually require a great deal of patience, time, and counsel — especially when the approach to the pastor has taken this form: "Pastor, will you tell me what the Lutheran grounds for divorce are?"

Where husband and wife are united in a living Christian faith, the ideal of indissolubility of marriage will be realized. The resources of the Gospel are sufficient to secure a high degree of fidelity, understanding, and forgiving love. However, even at best, the marriage of men and women is always a union of two imperfect, sinful creatures. In Christian marriage the context exists in which human love is sanctified and made strong through the experience of the love of God made known and given to man and wife in the life, death, and resurrection of Jesus Christ. Then the outward legal institution of marriage is charged with holy, divinely willed, graciously given living substance of faith and love.

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