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The Lessons of *Schwagerehe*

Edward E. Busch

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Traditional interpretations of Bible passages can have very long lives and can survive strong challenges if they are rooted deeply enough in the culture of a people. A case in point is the idea of *Schwagerehe* or marriage of in-laws.

The Christian Church and the Roman Empire established a detailed code of laws regarding prohibited degrees in marriage beginning in the 4th century. By Luther's day Canon and Imperial laws said that there were not only prohibitions to marriage because of blood relationships but also because of spiritual relationships, such as god-parents and god-children, and because of affinity. An example of a prohibition by affinity would be between a man and his deceased wife's sister. This was called *Schwagerehe* in German.

This was an accepted part of German law at the time of the Saxon immigration. It was part of the moral code held by The Lutheran Church—Missouri Synod from its beginnings. C. F. W. Walther's *Pastorale* had a section dealing with this issue, and he presented a conference essay on *Schwagerehe* at the 1878 convention of the Synodical Conference.¹

This prohibition of certain kinds of marriage was based on an interpretation of Lev. 18:16 dating from the Middle Ages, supported by the Lutheran systematicians of the period of orthodoxy and shared by theologians in the Roman, Anglican, and Reformed traditions. This interpre-

tation made several basic assumptions in regard to this text. First, it assumed that "to uncover the nakedness" of someone meant "to marry," and thus Lev. 18:6-18 was the basis of the whole idea of the prohibited degrees of marriage elaborately worked out in Canon Law. Second, it assumed that the prohibition in Lev. 18:16 regarding the brother's wife applied to the wife of a *deceased* brother and not to the wife whose husband was still living. This being the case, it was a logical step to include the sister of a dead wife under the same prohibition. Third, it was noted that this whole section was introduced by a general statement about blood relatives which could be translated literally from the Hebrew as "flesh of your flesh." This phrase was used to determine which relationships of consanguinity might be prohibited. Then it was connected with Gen. 2:23 f. and parallels in the New Testament and used to prohibit marriage with relatives of one's mate. After all, it was assumed the two people in marriage were "one flesh" according to the Bible. Therefore any "flesh of the flesh" of one of the partners was also "flesh of the flesh" of the other!

Now this type of prohibition had not become American law because British laws had softened over the years and the needs of the pioneer American families militated against such restrictions. Furthermore, the church laws that were so much a part of European laws did not have the same force or acceptance in America. So by the end of the 19th century the mores of the American culture did not include a prohibition of in-law marriage. Only among such ethnic groups as the Missouri Synod was this prohibi-

¹ C. F. W. Walther, *Pastoraltheologie*, 5th ed. (St. Louis: Concordia Publishing House, 1906), pp. 213 ff. "Schwager-Ehe," in *Verhandlungen der siebenten versammlung der evangelisch-lutherischen Synodal-Conferenz von Nord-Amerika*, Fort Wayne, Ind., 1878, pp. 5-55.

tion still enforced.

But times were changing even there. Around 1895 a man in Detroit married his deceased wife's sister. Subsequently, his pastor, J. A. Huegli, admonished him for disobeying the *Schwagerehe* law. Pastor Huegli insisted that he do public penance and ask Trinity Lutheran Church for forgiveness (nothing seems to have been said about dissolving the marriage). When the congregation met, all voted to forgive him except one man, Julius Becker. To the astonished assembly he explained that he had voted "no" to the resolution of forgiveness because there was nothing to forgive since nothing in Scripture forbade such a marriage!

This, of course, was contrary to the accepted Synodical interpretation of Lev. 18. Indeed, it was contrary to the interpretation of much of Western Christianity for centuries. Becker began to agitate for vindication of his position, namely, that there was no Scriptural basis for prohibiting in-law marriage and thus no Scriptural basis for church discipline for those who contracted such a marriage. He insisted on his right, even as a layman, to test the correctness of traditional exegesis. So he wrote pamphlets: *Protest gegen ungerechte Kirchenzucht in Betreff Schwagerehe, Erklarung in Sachen des Protestes gegen ungerechte Kirchenzucht in Betreff Schwagerehe, and Einige Worte an die geehrten Leser des Protestes in Betreff der Schwagerehe*. He appealed to the 1896 Missouri Synod convention, but was told to seek instruction from his pastor and from any other persons who might help. He took the matter to the district pastors' conference, but it refused to allow him to discuss the matter.

Somewhere during this time Mr. Becker's son, also named Julius, took the call as pastor of St. Peter's Lutheran Church in St. Clair, Mich. He soon joined his father in this fight.

He circulated those pamphlets in his congregation and accused the Missouri Synod of teaching incorrectly in its Biblical interpretation and its stand on *Schwagerehe*. Finally he was "called on the carpet" by the Michigan District. In early 1897 a special District pastors' conference was held with Pastor Becker to try to resolve the matter, but with no results. A committee was named to pursue the question, and this also failed. An ultimatum was given to Pastor Becker: 1. to confess that he had done wrong in publicly criticizing the Synod and to seek to undo this damage in his congregation; 2. to accept the possibility that he was the one in error, since he had not been able to convince his fellow pastors of the correctness of his position; 3. to promise never to teach his position again or to deal with such a marriage personally should it arise in his congregation, but to refer it to District officials. He was willing to accept the first stipulation but refused to accept the second and the third because he said this would violate his conscience.

So the issue was taken to the District convention in late April of 1897. Pastor G. A. Bernthal presented an essay outlining the traditional synodical position, to which the convention gave its approval. Pastor Becker, after a lengthy *Apologia*, stated that since he could not agree with the interpretation of the Missouri Synod and since he could not accept all of the demands made of him, he would have to leave the Synod. The convention accepted his "resignation."

An appeal to the Synodical Conference was rejected in 1900. He and his congregation eventually joined the Ohio Synod. His father was excommunicated from Trinity Church soon after the 1897 District convention on the grounds that he had sinned by accusing Synod of false doctrine and by refusing to retract this accusation. His last effort to defend his position

was in a lengthy tract entitled *Der gebannte Missouriier—Eine Appellation gerichtet an die Glieder der Missouri-Synode und insonderheit an alle Glieder der Synodal-Conferenz mit der herzlichen Bitte diese Schrift zu lesen, dann genau zu pruefen und hernach zu urteilen und zu handeln*. This tract gives his account of the history of the case, his and his son's explanation of their exegesis, and a critique of Pastor Bernthal's essay and Walther's 1878 essay, using Scripture, Luther, and the Confessions.

Now all of this would seem to be much ado about nothing. But as we review an old argument about a minor point of "doctrine," there is a haunting feeling that 1897 and 1973 are curiously blurred, with only the names changed. For what was the real issue?

It was whether a church body, even an orthodox church body, really has the right to make one interpretation of a Bible passage binding where it does not directly relate to the Gospel or violate a teaching of the Lutheran Confessions. The *Schwagerehe* controversy was an extraordinary example of this. The exegesis that the Missouri Synod followed (and has maintained as recently as 1945 in Fritz's *Pastoral Theology*, by the way) had the weight of centuries of acceptance. Yet, because this prohibition was part of their social culture, the Missouri Synod and others had been reading into various Bible passages what they wanted to in order to justify this part of their culture and to give it legitimation from the Bible. Because they were unable to see the social and cultural influences that shaped their convictions, they were unable to accept any interpretation that was in variance with their traditions.

Today, free from Germanic social laws and marriage customs, free from the dependence on the authority of men like Walther for our convictions, and having greater understanding of Old Testament mores and folkways

that lay behind the Levitical laws, few if any Lutheran exegetes of any theological stance would insist on the Biblical interpretations that forced the Beckers out of the Missouri Synod. Today we look at Lev. 18 and we can see that the passage is talking about respect for the rights of one's relatives living in close proximity. Since the women belonged to their men and had few rights by themselves, they had to be protected from sexual assault or voyeurism by insisting that one's parents, one's male relatives, and the women under their protection must be held in honor. Another passage, Lev. 20, deals with adultery where both parties are guilty, but Lev. 18:6-17 deals with the need of privacy in a situation where several families lived under the same roof or tent. This is substantiated when one reads Deut. 25 on levirate marriage, where the marriage with one's deceased brother's wife is actually commanded. Thus we see that Lev. 18:16 does not talk about marriage nor about the wife of a dead brother. Furthermore, Lev. 18:18 clearly states that one must not marry his wife's sister "while her sister is yet alive," and the newer translations limit the prohibition to a "rival wife."

Finally, the attempt to connect Gen. 2:23f. with this whole matter of *Schwagerehe* is obviously a case of sophistic eisegesis, indulged in for centuries by canon lawyers and repeated by Missouri Synod theologians. For even if it could be shown that the "one flesh" relationship between husband and wife is equivalent to the blood relationship "flesh of your flesh" of Lev. 18 and thus under the same supposed marriage prohibitions (all of which is untenable as exegesis), still one would have to admit under the same criteria that the "one flesh" relationship in marriage lasts only until the death of one partner. Otherwise any second marriage would have to be regarded as adulterous.

Now the Missouri Synod leaders had

also quoted from Luther to back up their position. Even if their citations had been pertinent, the Lutheran approach still has to be that the Word of God, not human interpreters, decides doctrinal issues. But in fact Luther specifically denied that the Bible stated that marriage with in-laws was sinful. In a sermon in 1522 on "The Estate of Marriage" he said, in reference to prohibited degrees of marriage: "I may marry the sister of my deceased wife or fiancée."² He criticized the Roman Church for insisting on more prohibitions than the Bible actually did. Again, in his letter to Robert Barnes about his opinion on the marriage situation between Henry VIII of England and Catherine of Aragon in 1531, he called Henry's attempt to dissolve the marriage on the basis of Lev. 18:16 a legalism and suggested that if he wanted to follow the Mosaic law, he would do better to follow Deut. 25. Then Luther said, "Now the true interpretation is that the Levitical law deals with the wife of a brother still alive, and the law in Deuteronomy with the wife of a deceased brother."³

Nevertheless, Luther admits that if the civil or imperial law states that an in-law marriage is unlawful, we should not burden our conscience by violating that law. This was also the rationale that he used with Jonas and Melancthon about such a case in 1535. These professors told the Consistory of Wittenberg that such a marriage should not be allowed, and their argument was that this would burden the conscience.⁴ Similarly, in 1543

in a letter to John of Hesse, Luther stated that there was nothing in the Bible that made such a marriage a sin in and of itself, but that a Christian must observe the civil laws.

All of these arguments from the Bible and from Luther were used by the two Beckers to substantiate their interpretation over against the traditional one in 1896 to 1900. Yet, because of the long cultural and ecclesiastical tradition behind the idea of *Schwager Ehe*, the Missouri Synod denounced them for teaching false doctrine. A cultural taboo had been given the status of a church doctrine, some Bible passages were interpreted to fit this social and legal convention, and then this interpretation was made binding on its members and a different interpretation of these passages from the traditional one was considered divisive of church fellowship, even grounds for excommunication!

To relate this to 1973, is there not always the danger of equating tradition with truth? The majority of the delegates at the recent Missouri Synod convention insisted that only one way of understanding certain passages was to be allowed. But dare we be so sure that our exegesis, or the exegesis of the church perhaps even for centuries, is the only permissible one, so that we refuse to listen to and learn from the insights of others? Is there a possibility that a traditional exegesis might be shaped by non-Biblical factors that change from place to place or from time to time, such as the meaning of words or the cultural patterns in different parts of a country? Must we be so afraid of change or of new methods of interpretation or conflict with great theologians of the past or the present that we invest certain traditional interpretations with the status of unchanging dogma? Is it really Biblical to insist on complete agreement on all doctrines and on all interpretations before there can be valid and God-pleasing church fellowship?⁴

² Martin Luther, "The Estate of Marriage," *Luther's Works*, vol. 45, "The Christian in Society II," ed. and trans. Walther I. Brandt (Philadelphia: Muhlenberg Press, 1962), p. 22.

³ Erwin Doernberg, *Henry VIII and Luther* (Stanford: Stanford University Press, 1961), p. 86.

⁴ *Ibid.*, p. 92, footnote.

And this is the crux of the controversies in the Missouri Synod practically since its beginning: "Must there be unanimity in how we understand every Bible passage before there can be Christian unity?" This is the issue over which we fought in the Open Questions controversy in the 1850s, the Predestinarian controversy in the 1880s, the *Schwagerehe* controversy in the 1890s, the Prayer Fellowship controversy involving Adolph Brux and the Synodical Conference in the 1930s and 1940s, and the question of church fellowship with The American Lutheran Church with which we have been wrestling from the 1880s on, especially in the periods around 1929, 1938, 1953, 1969, and the present time. I could mention the questions of life insurance, usury, Boy Scouts, engagement, women's suffrage in the church, and so on. The presupposition behind all of these controversies, including the ones on minor, fringe matters of Scripture, was our traditional position that the Bible forbade fellowship with those who disagreed with us on any "doctrine."

What were the Bible passages that were used to substantiate the claim that church unity depended on complete doctrinal agreement? The ones most commonly used were Matt. 7:15-16; Acts 19:8-10; Rom. 16:17-18; 1 Cor. 1:10; 2 Cor. 6:14-18; Gal. 1:6-9; Titus 3:10; and 2 John 9-11. However, when these passages are examined in their original context, it becomes highly questionable whether they really say what we have insisted they say about doctrinal agreement and church fellowship. For these passages either are talking about the need for Christians to be on guard against non-Christian influences, or about the factions that arise in the church for nondoctrinal reasons. Indeed, the CTCR in its "Theology of Fellowship" found that there is no clear-cut Scriptural basis for our traditional position that everyone must

believe exactly alike on Biblical matters before they could belong to the same church fellowship. The traditional interpretation of these passages had not been completely correct. Yet still in 1973 some of these same passages were the ones used as the basis of the condemnation of the position of the faculty majority at the New Orleans convention of the Missouri Synod. The Committee on Seminary Issues (No. 3) said: "God does not countenance a unionistic spirit which tolerates false doctrine or sanctions diversity of teaching, for God's truth can in no way be compromised with error (Rom. 16:17; 1 Tim. 6:3-5; Matt. 7:15; 12:30)" (3-09, "Today's Business," p. 107). In other words, because the faculty was suggesting different interpretations from what had been traditionally held, they must be wrong and guilty of teaching false doctrine. According to the traditional interpretation of the passages noted above, there had to be complete agreement in the church on all teachings. Therefore those who hold these different interpretations have to go. This is the same reasoning that led to the departure of the Beckers in the 1890s, Dr. Brux in the 1930s, Dr. Ehlen in 1973, and who knows who else in the years to come. It is this reasoning that must be challenged.

For in any question not involving the Gospel itself, who can say, "My way is the only right way"? Granted, where the Confessions speak, we Lutherans committed to them are willing to be bound. But we are not bound to all the exegetical conclusions of the Confessions, nor do the Confessions speak on every Bible idea. Therefore, who is to say this interpretation of a particular passage is truth and all others are error? Lest I be misunderstood, I am not contending for complete doctrinal permissiveness. I am saying that the one final criterion on the truth of any interpretation is how it fits with the doctrine of the Bible.

namely, that our sins separate us from God, but that God gives Himself in Christ as a gift for our reconciliation, forgiveness, salvation, and sonship. Only in the light of this fundamental truth can we presume to speak of true or false interpretations. Can't we learn from the history of our own church, not to mention the experience of the church catholic, that we are human and we grow? Scripture indeed does not err, but that does not mean that our understanding of it never changes, as the *Schwagerehe* controversy points out.

Our traditional synodical position has changed before. This need not frighten us, or make us ashamed to recognize our growth, or cause us to try to deny change, or tempt us to make traditions inviolate. That leads to loveless legalism and authoritarianism. Our inability to have all the right interpretations wrapped up in a neat package should remind us of how weak we are and yet how merciful God is, for He has condescended to communi-

cate with us through His incarnate and His written Word. He helps us to learn the truth about ourselves and our salvation, and He bears with us as we struggle in our humanness to understand Him better. In fact, He sends His Holy Spirit to work in His church to guide us into *all* truth. It's time to let Him speak to us through one another. For the unity of the church is like the unity of the body, and in that rich diversity we humbly affirm that we may sometimes be wrong and the other may be right, and by God's grace we will both grow.⁵

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⁵ The pamphlets by Julius Becker and the *Proceedings* of the Michigan District, the Missouri Synod, and the Synodical Conference pertinent to this discussion are available from the Concordia Historical Institute and from the author, who is proud to acknowledge that Julius Becker and Pastor Julius Becker were his great-grandfather and his grandfather, respectively.