



Marriage, Divorce and Remarriage

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“How I dread preaching on the estate of marriage! I am reluctant to do it because I am afraid if I once get really involved in the subject it will make a lot of work for me and for others.”¹ Luther’s opening sentence of his treatise “The Estate of Marriage” doubtless rings true in the ears of many pastors; while they don’t contend with the rules of canon lawyers, troubled marriages in the congregation can add greatly to the pastor’s workload—often with disappointing results after extended, seemingly futile effort.

Marriage matters are further complicated by abundant misunderstandings regarding the nature of marriage, the tragedy of divorce, considerations regarding remarriage, and the role of the pastor in each of these situations. These misunderstandings often only add to the difficulty of labor and the pastor’s sense of frustration. This paper attempts to identify and correct some of the most common misunderstandings and offer help for pastors in providing care in marriage matters to individuals, couples and congregations.

The Pastor’s Role

Those who consult a pastor regarding marriage often misunderstand the role that he is to play, and often seek to pin him in one of two roles: marriage counselor or judge. As a marriage counselor, the pastor is expected to identify the causes of problems within a marriage and propose solutions and steps that the couple might follow in order to resolve the conflict. Those who arrive with this expectation appear to see the pastor as one who is primarily called to apply the Law, especially in its first and third uses. There is no doubt that stable marriages are those in which husband and wife are both hard at work to love, honor and cherish; but to view the pastor as a marriage counselor is to misunderstand his calling and purpose.

¹ AE 45:17

Many will see the pastor as a judge when a marriage has deteriorated to the point where husband and wife are seeking to separate: each wishes to convince the pastor that the other is to blame so that he will render a favorable judgment. In doing so, they are not seeking forgiveness, but self-justification. If the pastor, in the stead of Christ, declares one to be at fault for the troubled marriage, it follows that the other may consider himself innocent in the matter. Clearly, a truly “innocent” party in a divorce is a rarity, but that is another matter. To see the pastor as a judge of marriages is again to misunderstand his calling and purpose.

We might add a third misguided expectation: some may see the pastor as a magician or miracle worker, able to work a transformation of attitudes and trajectory through a powerful prayer or some authoritative instructions. This also is not the pastor’s calling or purpose...though some pastors may chide themselves for inadequacy if their words fail to work the desired results and heal the marriage.

The pastor’s role in marital matters is no different than anywhere else: he is called to exercise the Office of the Keys. There is no other mandate given him in Scripture. He is to hear the protestations, rationalizations and confessions of sinners and apply Law and Gospel appropriately. He is to comfort wounds with the balm of the Gospel. He is to pray the Word, calling upon God to act and heal according to His promises. This is a different task than that of marriage counselor or judge. However, in many cases, genuine repentance for sins that are harming the marriage will go a long way to resolve conflicts between husband and wife. Confession and forgiveness are essential ingredients to a healthy marriage. Thus, soon after bemoaning the task of preaching on marriage, Luther continues, “But timidity is no help in an emergency; I must proceed. I must try to instruct poor bewildered consciences, and take up the matter boldly.”²

Repentance is difficult within a troubled marriage, however, and the situation is only exacerbated when couples wait to approach the pastor until their marriage is in its death throes, wounds are deep and hearts are hardened. The pastor must keep in mind that the Office of the Keys is given to save souls, not marriages, and that the Lord might use the crushing law of a failed marriage to bring sinners to repentance and faith. Rather than see his task as that of saving marriages, he is properly to apply the Word to individuals in situations of marriage, divorce, remarriage and all aspects of life.

² AE 45:17

Marriage Defined

Marriage is “the union of this man and this woman in holy matrimony,” and “an honorable estate instituted and blessed by God in Paradise, before humanity’s fall into sin.”³ As established by God, the estate carries with it several distinctive marks.

First, it is the union of a man and a woman. As part of his treatise, “The Estate of Marriage,” Luther notes that God was pleased to divide mankind into man and woman (Genesis 1:27-28), calling this division a good creation in Genesis 1:31.⁴ When the Lord institutes marriage in Genesis 2:24, He specifies that it is between a man and a woman—a criterion that Jesus repeats and affirms in Matthew 19:5.

Not only is it the Lord’s institution, but it is a necessary precondition for the second distinctive mark: marriage is the union of a man and a woman in mind and body. The marriage is initiated by mutual consent (betrothal and wedding vows) and consummated by sexual intercourse.

Sexual intercourse is necessary for marriage, as marriage is necessary because of sexual intercourse. When God created man and woman, He also blessed them with the words, “Be fruitful and multiply,” instilling in them the desire and ability for procreation. Luther does not regard sexual urges lightly, but writes: “Now this [ordinance] is just as inflexible as the first.... For it is not a matter of free choice or decision but a natural and necessary thing, that whatever is a man must have a woman and whatever is a woman must have a man.”⁵ He then adds that “Be fruitful and multiply” is “more than a command, namely, a divine ordinance [*werck*] which it is not our prerogative to hinder or ignore.”⁶ Marriage is the arena provided for this conjugal union, as affirmed by Christ (Matthew 19:5) and St. Paul (Ephesians 5:31).

Girgis and his co-authors⁷ argue for the sensibility of the partnership between marriage and sexual intercourse. Sexual intercourse is a necessary part of this

³ *Lutheran Service Book*, Rite of Holy Matrimony, 275.

⁴ AE 45:17

⁵ AE 45:18. In keeping with Matthew 19:12, he recognizes that there are exceptions.

⁶ AE 45:18

⁷ I highly recommend *What Is Marriage? Man and Woman: A Defense* by Sherif Girgis, Ryan Anderson and Robert George. Though a philosophical defense that avoids appeals to Scripture, it is nevertheless consistent with Scripture and teases out the practical details of the extraordinary estate that God has instituted.

union because it is within the act that the two become one flesh. It is a unique activity in that it requires two bodies for the purpose of procreation: individuals can digest, breathe and work on their own, but procreation requires the sexual organs of one man and one woman working together.⁸ With God's blessing, while sexual union has other benefits, it has a unique consequence: children, for sexual union is the only natural means of human reproduction.⁹

The third distinctive mark follows upon the other two: marriage is to be a union between a man and a woman in mind and body *for life*, a permanent and exclusive commitment to each other (in matters both of sexual union and domestic order). Jesus declares this permanence to be true in Matthew 19:6: "What therefore God has joined together, let not man separate."¹⁰ Once again, Girgis et al demonstrate the sensibility and necessity of God's design. For one, a comprehensive commitment by definition cannot be temporary.¹¹ Two roommates or siblings can coexist within the same household while sharing some duties but maintaining independence; this less-than-fully integrated existence indicates that the relationship is neither comprehensive nor lifelong. For another, the unique result of procreation—children—requires spouses to coordinate all aspects of life for the good of the family.¹² Because a child is the unique product of one man and woman, it follows that their marriage is the best environment for that child's growth and maturation; unsurprisingly, "the best available sociological evidence" indicates that "children fare best overall when reared by their wedded biological parents."¹³

In opposition to this lifelong, comprehensive view of marriage is what Girgis et al call the "revisionist view." Defined as "a loving emotional bond, one

⁸ By definition, then, the conjugal view of marriage is restricted to the union of *one* man and *one* woman.

⁹ Anticipating the objection that the conjugal view would deny marriage to infertile couples, Girgis et al note that an act of sexual intercourse is still the union of two bodies, whether or not conception takes place; and "Every male-female couple capable of consummating their commitment can have all three features. With or without children, on the wedding night or ten years later, these relationships are all comprehensive in the three senses specific to marriage, with its distinctive sort of value." (74)

¹⁰ The lifelong nature of marriage is also affirmed negatively by scriptural prohibitions against divorce, such as those found in Matthew 5:31-32; 19:3-9 and 1 Corinthians 7:10-16. These passages are discussed below.

¹¹ "In short, a union comprehensive in these senses—a union of mind and body, ordered to procreation and family life—must by the same token be comprehensive in commitment: through time (hence the vow of permanence) and at each time (hence the vow of exclusivity)." Girgis, 34. The *Catechism of the Catholic Church* helpfully notes that this lifelong commitment is evident because husband and wife *give* themselves to one another in marriage (§1646).

¹² Girgis, 28.

¹³ Girgis, 32.

distinguished by its intensity,"¹⁴ a revisionist view of marriage lacks specific traits. Because it intentionally omits the procreation of children as a central feature, a marriage may be between two men or two women—or two men *and* two women, since it is procreation that determines the sex and number in the conjugal marriage relationship.¹⁵ There is no intrinsic need for sexual fidelity and exclusivity (or even sex itself), because sex is reduced merely to one avenue of emotional fulfillment.¹⁶ Furthermore, because emotional intensity ebbs and flows, the revisionist view is antithetical to a comprehensive, lifelong commitment.¹⁷ Marriage is diminished, in the words of one federal judge, to “the name that society gives to the relationship that matters most between two adults.”¹⁸

Though the revisionist view is deficient in shape and structure, it is not lacking in harm. To classify marriage merely as intense friendship confuses the nature of both, cheapening marriage and making meaningful friendships more difficult to find and maintain.¹⁹ Separated from comprehensive union, sexual intercourse is degraded and reduced to temporary, emotional thrill.²⁰ There is harm to children, of course, because the revisionist view undermines the truth that they fare best when raised by their biological parents in all aspects of child development.²¹

The revisionist definition is most apparent today for its role in the current agenda to legalize same-sex marriages, not to mention its common use as a tedious excuse for extra-marital cohabitation. It is not, however, new; and it receives mention here²² because it often serves to justify divorce when one is emotionally dissatisfied in marriage.

¹⁴ Girgis, 1.

¹⁵ Girgis, 18.

¹⁶ Girgis, 34.

¹⁷ Girgis, 56.

¹⁸ Girgis, 65.

¹⁹ Girgis, 65. It is evident that marriage is not simply one’s most intense friendship because the state sees the need to regulate marriage, but not friendship. (15)

²⁰ “The monstrosity of sexual intercourse outside marriage is that those who indulge in it are trying to isolate one kind of union (the sexual) from all the other kinds of union that were intended to go along with it and make up the total union” (Lewis, 105).

²¹ Girgis, 62. Though not central to this paper, the authors go on to note that the revisionist definition encourages greater government regulation and less individual freedom: intact, permanent marriages provide an environment for stable children and family assistance. When marriages are redefined as temporary, the state must step in and provide stability and assistance by regulation and program. The state will also likely prosecute those who are found to be discriminating against the revisionist view.

²² One should not assume that there are only two definitions. See *Family Politics: The Idea of Marriage in Modern Political Thought*, in which Scott Yenor recounts many different philosophical

Divorce and Remarriage

Simply defined, divorce is the dissolution of a marriage by a party other than the Lord, who dissolves marriage only by death.²³ Pastoral care, however, will be full of situations in which people seek to justify a divorce by insisting that the Lord provides two additional grounds for divorce—adultery and abandonment. This misapprehension appears to be a widespread misunderstanding of key Scripture passages, principally Matthew 19:3-9, Matthew 5:31-32 and 1 Corinthians 7:10-16. The confusion is hardly helped by the 1991 Explanation of the *Small Catechism*, which sums up divorce in one sentence: “God forbids divorce except for marital unfaithfulness (adultery or desertion).”²⁴ While this is not incorrect, antonyms of “forbid” include “welcome” and “approve,” and agitated sinful flesh will be quick to assign the most self-serving meaning. Misunderstandings about divorce lead in turn to a wide variety of unhelpful ideas about the possibility of remarriage.

Detailed exegetical studies of the principal texts are widely available; given the scope of this paper, we confine our remarks to a few observations as to where popular interpretations are problematic.

Matthew 19:3-9

Matthew 19:3-9 is often cited as the undeniable proof-text that adultery justifies divorce—especially verse 9 where Jesus declares, “whoever divorces his wife, except for sexual immorality, and marries another, commits adultery.” Context is important for a proper understanding. Within 1st-century Jewish thought, there is an ongoing debate about proper grounds for divorce, centered around Deuteronomy 24:1-4. There, Moses writes of a husband who divorces his wife because he has found “some indecency” (עֲרֻת דְּבָר) in her. The rabbinical school of Shammai has interpreted “some indecency” to mean adultery, while the school

approaches to marriage (by Locke, Rousseau, Beauvoir and others), and how they have slowly moved political thought about marriage to its current state.

²³ “God has reserved for himself the right to dissolve it. Jesus, referring to the institution of marriage in Genesis 2:24, concludes with the words, ‘Therefore what God has joined together, let man not separate’ (Mt 19:6). God dissolves the marriage bond when he intervenes through death.” (Schuetze, 286)

²⁴ SC Explanation, ¶56.

of Hillel has interpreted it to mean *any* fault that a husband might find.²⁵ The school of Hillel is prevalent in 1st-century Judea, where divorce—and remarriage—are common. With the question “Is it lawful to divorce one’s wife for any cause?” the Pharisees want to entrap Jesus in a conversation about proper grounds for divorce. Jesus instead declares that divorce is never God’s will, concluding: “What therefore God has joined together, let not man separate” (Matthew 19:6).

The Pharisees counter, “Why then did Moses command one to give a certificate of divorce and to send her away?” Their assertion is incorrect: Moses makes no such command in Deuteronomy 24:1-4; rather, he recognizes the reality that sinful husbands will at times divorce their wives, and that this includes a certificate of divorce in ancient Israel. The only command that Moses gives is that the husband may not remarry the wife he has sent away if she has subsequently married another man.

In His response to the Pharisees, Jesus acknowledges the same “hardness of heart” that Moses recognized, and He repeats that divorce is never God’s will with different words: “And I say to you: whoever divorces his wife, except for sexual immorality, and marries another, commits adultery” (Matthew 19:9). Jesus thus rebukes the Pharisees both for their twisting of Moses’ words and their loose practice of divorce, labeling it tantamount to adultery.

Within that admonition is the phrase “except for sexual immorality.” This is hardly a divine command requiring divorce,²⁶ but a recognition that adultery uniquely violates the oneness that defines marriage. The one who divorces because of a spouse’s adultery may not commit adultery by remarrying, but that does not mean that the Lord desires the first marriage to be dissolved.²⁷

One further exegetical note regarding verse 9 is important for upcoming discussion regarding remarriage. The conjunction “and” (καὶ) has many uses,

²⁵ Gibbs, 293. In “Divorce and Remarriage,” the CTCR quotes the Mishnah that, according to Hillel, this extends to a wife spoiling a dish, or the husband finding another woman more attractive (19, note 26).

²⁶ Far from being the point of the passage, it is notable that the phrase doesn’t even appear in the Marcan parallel, Mark 10:11-12.

²⁷ Luther writes: “We neither commend nor forbid such divorces.... To those who really want to be Christians, we would give this advice. The two partners should be admonished and urged 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” (AE 21:96). Where the guilty party persists in sexual immorality, however, Luther prescribes no such mercy.

one of which is to express result or purpose. Given the context (both scriptural and cultural), it is entirely plausible that the force of Jesus' statement is, "whoever divorces his wife *for the purpose of* marrying another, commits adultery."²⁸ If this is the case, the popular idea that remarriage is confined only to victims of an adulterous or deserting spouse is in need of some emendation.

Matthew 5:31-32

Jesus briefly addresses divorce in Matthew 5:31-32, with an exception for sexual immorality—but not an exception that makes divorce a good thing. Rather, He says, "I say to you that everyone who divorces his wife, except on the ground of sexual immorality, *makes her commit adultery*, and whoever marries a divorced woman commits adultery" (Matthew 5:32).

Remarkable in this text is Jesus' statement that the *innocent* party is somehow adulterated in any divorce.²⁹ Even though the sin lies with the husband who has divorced her and sent her away, she is no longer within the original one-flesh union that God intended for her. Likewise, the man who marries the innocent divorcee also commits adultery with her, because she has previously been joined by God to another man.

Again in Matthew 5:32, adultery is not a justification for divorce, but a sin that uniquely violates the one-flesh union of marriage.

Within this text, adultery takes on a broader definition than a sexual relationship outside of marriage—just as it does a few verses earlier when lustful thoughts are equated to adultery (Matthew 5:28). In its broader sense, adultery is a failure to honor the estate of marriage (and its defining oneness of sexual activity) as God ordained it to be. It seems evident that this is also true of Jesus' reference to adultery (μοιχᾶται) at the end of Matthew 19:9.

1 Corinthians 7:10-16

²⁸ See Gibbs, pp. 945-946. He comments elsewhere, "Grammatically, it is very unlikely that the force of Jesus' words in 19:9 is the equivalent of 'whoever divorces/sends away his spouse (not on the basis of immorality) and then (eventually) marries another *much later, at any time ever during the course of his or her life*, commits adultery.'" (Gibbs, 958; emphasis his).

²⁹ See Gibbs, 290-291. Popular English translations are not especially helpful here, reading either a version of "makes her commit adultery" (ESV, KJV, NKJV, NAS) or "causes her to be an adulteress" (NIV, RSV). The Greek phrase ποιεῖ αὐτὴν μοιχευθῆναι features an aorist passive infinitive, which Gibbs translates as, "makes her to have adultery committed [against her]."

Abandonment as grounds for divorce is derived from 1 Corinthians 7:10-16, most specifically verse 15: “But if the unbelieving partner separates, let it be so.” The word “unbelieving” is crucial to a proper understanding: Paul is speaking of a marriage between a believer and an unbeliever in which the unbeliever deserts; in that case, the marriage is over and the believer is “not enslaved” (1 Corinthians 7:15). It is notable that Paul specifically instructs the believer to remain in such a marriage; furthermore, in verses 10-11, he declares that believers should never separate. Should such a separation take place, the one who does so is to remain unmarried unless husband and wife are reconciled.³⁰

Legalistic vs. Scriptural Interpretations

Popular opinion in the parish will often assert that the Lord approves of divorce in the case of adultery or desertion, and that the innocent party is free to remarry. One can see how such an opinion arises from a legalistic reading; but for those who subscribe to such an interpretation, all sorts of problematic questions abound. Among them:

- How may a dismissed, innocent wife remarry (as Moses assumes she will in Deuteronomy 24:1-4) if she is made to commit adultery by being divorced (Matthew 5:32)?³¹ How may a man marry her if he becomes guilty of adultery in doing so?
- If lust is adultery (Matthew 5:28), is it grounds for divorce according to Matthew 5:31-32?
- If Jesus permits divorce only on the grounds of adultery in Matthew 19, who is St. Paul to introduce desertion as a second exception in 1 Corinthians 7?
- If two Christians divorce and one later falls from the faith, may the other remarry according to 1 Corinthians 7:15?

In the end, such a legalistic interpretation is untenable. Nevertheless, problematic interpretations of these texts persist and remain attractive. Pastors will find

³⁰ See Lockwood, 237-244. As a side note, it is interesting that forms of “reconciliation” (καταλλαγή) in the NT are found exclusively in reference to reconciliation between God and man, except here in 1 Corinthians 7:11, where a wife is to be reconciled (καταλλαγήτω) to her husband. This would seem only to further the role of marriage as an illustration of Christ’s love for His bride.

³¹ The *Treatise* specifically declares, “Also unjust is the tradition forbidding an innocent person to marry after divorce” (*Treatise*, 78).

cuckolded spouses invoking them to justify sinful anger and claim a divinely-punched ticket for divorce; a disengaged spouse insisting that divorce is unacceptable because, even though he's been a complete scoundrel, literal adultery or abandonment hasn't occurred; an "innocent" divorcee who wishes to remarry to inflict pain on a former spouse; or even those who seek subtly to influence a spouse into adultery so as to have reason to divorce. For others, perhaps including pastors who have accepted the role of judge, such an interpretation is attractive because it is *measurable*: either literal adultery has taken place or it has not. One of the irksome frustrations accompanying pastoral care to troubled couples is that the trouble and sin involved is so multi-faceted that uncertainty abounds, and such a clear benchmark is tempting. In other words, one can wrap things up quickly if it is as simple as that the adulterer is guilty and the other is not (case closed!).

Where parties are not engaged in such a legalistic reading, they are often at work to expand definitions through the lens of their suffering. Some will classify a spouse's attraction to pornography as adultery worthy of divorce, while others will categorize harsh words as abandonment.

A third problematic area remains: are adultery and desertion the only permissible reasons for divorce? What about, for instance, physical abuse? Does the Lord command a battered wife to remain in marriage until she dies or her husband proves guilty also of adultery or desertion? A legalistic reading would say yes.

While popular opinion claims to scrutinize Scripture about divorce, it tends to ignore Scripture completely when it comes to remarriage. Too often, the first question directed to a pastor is not, "What does God say about remarriage?", but the presumptuous, "Will you preside at our wedding next month?"

(Legalistic, nit-picking interpretations may seem a far cry from the laissez-faire approach of the revisionist view. However, pastors will often encounter a weird combination of the two, where angry spouses contort Scripture to justify divorce merely because they are unhappy. Both the revisionist and the legalist want to make marriage a temporary, disposable estate.)

A more careful, faithful reading of Scripture may be less satisfying for those interested in legalistic specifics, but it reveals truth to serve as the basis for pastoral care. What Scripture clearly teaches is this: the Lord has instituted marriage to be a lifelong union, and He neither commands nor approves of

divorce, *ever*—though He permits it when adultery or desertion violate marital oneness. Christians are neither to commit adultery nor abandon their spouses; and where Christians are victimized by adulterous or deserting spouses, they are to work for reconciliation and restoration of the marriage. Therefore, there should be little need for Christians to divorce or remarry while a previous spouse is still alive.

That is all well and good.

The problem is that Christians do divorce (often when adultery and desertion are *not* an issue), and Christians do remarry while a former spouse remains alive. Like Moses and our Lord, pastors recognize that this happens, and it is left to them to apply Law and Gospel to all sorts of messy situations that ensue.

Questions, Tensions and the Lesser of Two Evils

Luther's discussions of marriage are helpful in pastoral care: the reformer shuns the idea of being a judge in marital disputes, and instead applies Law and Gospel to individuals. He hardly soft-pedals the Law for those who are guilty of adultery or desertion. He opines that adulterers should be executed by the state, citing Deuteronomy 22:22-24;³² likewise, one who abandons his wife and children is a thief who steals from his family and the community left to care for them, and "there is no villain whom I would rather have hanged or beheaded than this scoundrel."³³ Quite tidily under this counsel, the execution of the malefactor means that the marriage thus ends not in divorce, but in death.

Furthermore, Luther speaks of other reasons for which divorce might be permitted. For instance, a woman who persistently deprives her husband of the conjugal duty is to be dismissed because "she is robbing the other of the body she had bestowed upon him. This is really contrary to marriage, and dissolves the marriage."³⁴ If she refuses when admonished first privately and then before the congregation, she is to be dismissed. One may also obtain a divorce if he was deceived into marrying the wrong woman (e.g., when Jacob was married to Leah

³² AE 45:32. Luther is not suggesting that rulers must submit to levitical law, but that the Lord shows the magnitude of the sin of adultery by prescribing the death penalty in the Old Testament.

³³ AE 46:313. The deserter also deprives his spouse of sexual relations.

³⁴ AE 45:34. He continues that, like the adulterer and the deserter, "For this reason the civil government must compel the wife, or put her to death."

in Genesis 29:23-25),³⁵ someone who hid a defect (e.g., blindness or an incurable disease),³⁶ or someone bound in servitude.³⁷

One can see a theme in these examples. The intransigent wife who refuses her husband intercourse violates the oneness of body,³⁸ one of the unique characteristics that make marriage to be marriage. Likewise, the last three examples assume deception *prior* to marriage and thus violate the union of mind established by mutual consent—another distinctive feature of marriage.

Once husband and wife are joined by mutual consent and conjugal activity, they are bound for life. Therefore, a husband may not seek a divorce if his wife is unable to provide the conjugal duty because she becomes an invalid: he is to serve her and commend himself to the Lord for self-control.³⁹ Likewise, the development of blindness or an incurable disease during marriage is an opportunity to bear burdens in times of sickness, not a reason for divorce.

Though he recognizes that Scripture permits divorce in the case of adultery and desertion, Luther still counsels that it is best if couples in such situations are reconciled and the marriage continues.⁴⁰ He also declares that sins that do not violate marital unity (such as imprisonment or banishment) are not grounds for divorce, but an example of remaining married for better or for worse.⁴¹ He counsels that a spouse who behaves badly can be a blessed cross and a proclamation of Law: “For an evil spouse, in a manner of speaking, fulfils the devil’s function and sweeps clean him who is able to recognize and bear it.”⁴² If husband and wife simply do not like each other, “they must both refrain from

³⁵ AE 45:27. This seems far-fetched in our present day, but not in a time of arranged marriages from distant locales.

³⁶ AE 46:302-303.

³⁷ AE 45:27.

³⁸ One ought not read more into the example than Luther provides—a wife who refuses her husband for no good reason. It is entirely possible in many situations that the husband is largely to blame for his wife’s refusal: Luther does not deny this as a possibility or entertain a bias against women in marital matters, but it simply isn’t the case in this specific example. As to what period of time constitutes sinful deprivation of marital favors, he writes elsewhere, “What refusing one another consists of between married people and what the reasons for it are, this I leave to married people themselves; I can well believe that there are many reasons, as is to be expected in a state created and instituted for evil and not for happy days, and anger and dissension will occasionally also play a role” (AE 28:15).

³⁹ AE 45:35

⁴⁰ See footnote 28.

⁴¹ AE 46:314

⁴² AE 45:34-35

remarrying or else become reconciled.”⁴³ To do less is to scoff at God’s ordinance of marriage.

No one can accuse Luther of being soft or permissive on the topic of divorce and remarriage. However, sometimes his counsel is surprising, if not seemingly contradictory. For instance, Luther speaks of one who is divorced for adultery and writes that, if he is spared execution and unable to remain celibate, he may move far away and remarry. Anticipating criticism, he explains:

Between two evils one is always the lesser, in this case allowing the adulterer to remarry in a distant land in order to avoid fornication. And I think he would be safer also in the sight of God, because he has been allowed to live and yet is unable to remain continent. If others also, however, following this example desert their spouses, let them go. They have no excuse such as the adulterer has, for they are neither driven nor compelled. God and their own conscience will catch up to them in due time. Who can prevent all wickedness?⁴⁴

Luther makes his “lesser of two evils” argument elsewhere regarding remarriage, usually on the grounds that it is “better to marry than to burn” (1 Corinthians 7:9). While this may seem inconsistent and permissive on Luther’s part, it is not: he is concerned more for the conscience of the sinner than in defending the estate of marriage. The principle is helpful for pastoral care, even if some of his illustrations are not.⁴⁵

He is not alone in making a “lesser of two evils” argument. In addressing the topic of other reasons for divorce besides adultery and desertion, Gibbs writes:

Jesus, however, does not mention [in Matthew 19] the situations with which Paul must deal in Corinth a little more than two decades later (1 Corinthians 7). Nor does Jesus address the situation in which a husband

⁴³ AE45:34. cf. AE

⁴⁴ AE 45:33. The husband married to an invalid does not receive the same counsel. Luther writes: “But you may say: I am unable to remain continent. That is a lie. If you will earnestly serve your invalid wife, recognize that God has placed this burden upon you, and give thanks to him, then you may leave matters in his care. He will surely grant you grace, that you will not have to bear more than you are able. He is far too faithful to deprive you of your wife through illness without at the same time subduing your carnal desire, if you will but faithfully serve your invalid wife” (AE 45:35).

⁴⁵ For instance, Luther advises that a woman who unknowingly enters marriage to an impotent man might secretly conceive children with his brother, but count them as her husband’s own. If her impotent husband will not consent to such an arrangement, Luther advises that she marry another and flee to a faraway place (AE 36:103-105). He makes this argument because where the husband is impotent, “in the sight of God there is no real marriage” (AE 45:20). One assumes that circumstances of that time make this the least evil of options, and the counsel is not transferable to the present day.

has shattered the left eye socket of his wife with a baseball bat and threatened to kill her if she crosses him again. The Christ does not speak directly to the situation of a drug-addicted wife whose behavior is endangering her young children's lives while her husband struggles to keep things together. These scenarios could be multiplied. Jesus simply does not speak to these situations. He is not giving case law.⁴⁶

A "lesser of two evils" argument is certainly ripe for mischief and abuse by those looking for an excuse to escape an unhappy marriage—but no more subject to misuse than the popular notions of adultery and desertion as indisputable grounds, and with far better care of Scripture. Within these examples, a theme emerges again. In Luther's example of the remarried adulterer, the lesser evil is remarriage and the greater evil is ongoing, unrepentant fornication. Luther employs the "lesser of two evils" argument to preserve the man's good conscience as a penitent sinner—quite remarkable, since he has already called for the man's death! In Gibb's hypothetical of the drug-addicted wife, he employs the argument to preserve life: it is better to sacrifice the marriage than the lives of children.⁴⁷

The "lesser of two evils" argument is appropriately made out of concern for a good conscience or love for others—love in the sense of sacrificial service, not attraction to other potential mates. The estate of marriage is holy and to be honored, but God's gifts of life and a good conscience are of greater and eternal worth: thus the lesser evil is tolerated for the sake of the higher good.

Pastoral Care

This returns us to the task of the pastor. He is not to adjudicate a troubled marriage and decide who is more at fault,⁴⁸ nor is he there to assign therapeutic

⁴⁶ Gibbs, 958. He continues: "He is speaking to the hard heart that assumes that divorce is okay and just wants to know under what circumstances it is 'lawful.' He is also speaking to the indifferent heart of a spouse seeking a divorce, the heart that says, 'Ah, well, these things happen, and it's okay as long as we remain friends and no one gets hurt.' What God has joined, no one should separate."

⁴⁷ While leaving a violent marriage preserves one's life, Gibbs' illustration of spousal abuse might follow a different track. Physical abuse of the spouse would certainly seem at odds with the oneness of body achieved by sexual unity in marriage. The man who loves his wife loves himself (Ephesians 5:28); it is reasonable to argue that violence violates the marital covenant. Cf. footnote 57.

⁴⁸ One should also note the near impossibility of trying to quantify blame on the basis of God's Law, even if that were the pastor's task. One example would be the situation where a husband has committed adultery because the wife has withheld sexual activity. It is hardly constructive to spend time assigning quantities of blame for various sins. It is far more within the pastor's office to rebuke the sins and call both husband and wife to repentance.

exercises. He is called upon publicly to exercise the Office of the Keys. His task is to deliver a good conscience on the basis of God's Word. While he is to proclaim the estate of marriage as part of the whole counsel of God, he is to do so in order to care for souls.

In general, this would seem to be a twofold task. First, the pastor must teach what marriage is. It is dangerous to assume that parishioners have a proper understanding of the estate of marriage: the revisionist view has become so prevalent that many Christians might see marriage merely as the task of maintaining a strong emotional bond, while many others are persuaded that adultery and abandonment are the Lord's approved grounds for divorce. Second, having reestablished what marriage is, the pastor then needs to distinguish Law and Gospel properly to all regarding the estate—including the congregation, couples, the divorced and the pastor himself.

Always, his goal is that his hearers have a good conscience before God. This means that he seeks to guide individuals toward genuine repentance; any consideration of the "lesser of two evils" must lead toward that goal.

Pastoral Care of the Congregation

Pastoral care in marriage matters necessarily includes educating the entire congregation. This is partly true because cultural redefinitions of marriage are constantly pressing, and it is good to refresh minds as to what God intends marriage to be. It is important because one will almost certainly find married couples and divorced individuals within a congregation: they are part of the family of God in that place. If Christians are to have God-pleasing marriages, encourage those who are married and bear the burdens of those who suffer failure, they must have a proper understanding of what Scripture says.⁴⁹

This task of educating about marriage dovetails nicely with teaching about the Gospel, as the Lord Himself makes use of marriage as an illustration of

⁴⁹ "The pastor as educator must continually keep before his people the beauty of the divine purpose of creating the male/female duality. Marriage in the Biblical presentation has to do with God, with growth, with change, with development; and for post-Fall people, with being two people alive together in Christ, with sanctified life in the Spirit. Scripture pictures marriage as two people discovering in the forgiveness of sins a spiritual oneness in Christ as well as sexual union. Within this context, the reconciling presence of God in Christ is conjointly acknowledged and joyfully celebrated." (Mueller and Krause, 194) A further benefit is that a well-educated congregation is more likely to trust the pastor's ongoing ministrations to a troubled couple beyond public knowledge, because they understand the many facets and tensions involved.

redemption, notably in Ephesians 5 and elsewhere.⁵⁰ Marriage itself is a practical exercise of Law and Gospel, for it is within marriage and the family that Christians daily encounter their sinfulness, as well as opportunities to forgive and be forgiven. Furthermore, whenever one proclaims Christ's sacrificial love for the Church, he is setting the foundation to discuss the sort of love and fidelity that God intends for marriage; so it does not seem unreasonable that a discussion of marriage can likewise be an opportunity to rejoice in the love and fidelity of God. And far more than the practical advice of a typical (though helpful!) marriage book, a thorough understanding of God's love and fidelity prepares individuals for the love and fidelity required in marriage.

The content of educating the congregation can take various forms. A pastor could devote an extended amount of time in a Bible class tracing marriage through Scripture (including, for instance, Genesis 1-3, Ruth, selections from the Song of Songs, Hosea, and Ephesians 5) both to demonstrate the nature of marriage and God's commitment to His people in Christ. Discussion of marriage must include a scriptural approach to divorce and remarriage; if it doesn't take place here, it will likely take place too late (see below).

This instruction will hopefully carry over into the home, so that parents might model a proper marriage to their children in love, service, and fidelity, as well as confessing sins and forgiving one another. Beyond his own household, the results are beyond the pastor's control: it is simply given to him to speak the Word to those who will hear.

Pastoral Care of Couples

Pastoral care of particular couples will usually take place in one of three settings: couples engaged in cohabitation/fornication, couples engaged to be married and couples experiencing marital trouble. While this paper is primarily directed at the third situation, it should be noted that couples in all three situations would benefit from a proper understanding of marriage, as well as a proper distinction of Law and Gospel applied to sins that assault marriage, whether potential or already realized. Proper instruction should also include the truth that, rather than a guarantee of a blissful life, marriage may be an exercise in which the Law accuses through a difficult relationship, leading one to trust in Christ.

⁵⁰ Cf. Hosea, Revelation 21 and Isaiah 62:5.

Pastoral care of troubled married couples is difficult enough, but it is usually beset by two additional problems: couples normally wait to approach the pastor until the marriage is in dire straits, expecting either a miracle or a pronouncement of death, and one or both expect the pastor to operate as counselor or judge.

From the start, the pastor should make clear that he is about identifying sins and calling sinners to repentance. Though perhaps unexpected and even unwelcome by the couple, this task is essential if they are to have a good conscience before God, and highly beneficial to saving the marriage (if that is still possible). Likewise, the greatest danger of divorce is the damage it does to faith—not just of husband and wife, but of children, parents, friends and others.

True repentance is difficult in failing marriages because the stakes are high and the defenses strong. Spouses do not want to give ground, confess sins and provide “I told you so” ammunition for the other; and if the marriage is in its death throes, no one wants to accept the blame for putting asunder what God has joined together. Sins of anger, bitterness, pride and denial are deeply rooted in attempts at self-justification. Pastoral care will require patience and time, often more than the husband and wife are willing to devote and endure; if this attempt fails, let it be because the couple refused, not because the pastor failed or ceased to speak the Word.

Pastoral Care of Divorced Individuals

The task and goal of pastoral care do not change if the marriage fails and the couple divorces: it merely becomes more difficult because the sins become greater and the wounds deeper. While it might be considered in society to be little more than the breaking of a contract, C. S. Lewis memorably opines that it is far more like having both legs amputated than dissolving a business arrangement.⁵¹

Among the many challenges, it is likely that parties to a divorce have terribly weak faith at best, or else the divorce would not have taken place; therefore, the pastor is sowing seeds into hard-packed, thorny ground. The wounds and grief are that much more severe, and those who are so hurt will have a difficult time hearing the Word of God correctly no matter how winsomely it is applied—

⁵¹ Lewis, 105. One wonders if it is not in some ways worse than the death of a spouse, for the dead do not continue to haunt one’s life, nor share custody of one’s children.

especially when “supportive” friends or family speak to comfort them emotionally, not counsel them to repent of sin. Divorced individuals are highly susceptible to falling away from active church participation, perhaps because of depression, guilt, despair or shunning—real or perceived. As they are separated from a spouse, they are at the same time prone to separate from the bride of Christ.⁵² Furthermore, of sins in the civil realm, the dissolution of a marriage is unique in that the Lord has ordained it to be a lifelong union.⁵³ No matter how popular culture might trivialize divorce, it stigmatizes the conscience deeply. Finally, there is the terrible sin of “planned repentance,” where individuals have reasoned that they will sin by divorcing now, but repent later.⁵⁴ This is an abuse of conscience, which makes true repentance that much more difficult.

Pastoral care here may be reduced to prayer and ongoing brief contact to remind them of Christ’s grace for repentant sinners. At times, the best one can do is cry out to the Lord and let sinners know that the door remains open.

The proper distinction between Law and Gospel grows more challenging yet when a divorced individual seeks to remarry. Normally, the acceptability of remarriage for an individual is analyzed through two questions: is the individual truly repentant of any sins that ended the first marriage (including the divorce itself), and is reconciliation with the original spouse impossible? The second question is predicated on the first, because it is a given that a genuinely repentant Christian will seek to be reconciled.⁵⁵

Documents used in research for this paper agree that reconciliation is considered possible unless the original partner is remarried or unwilling to reconcile.

⁵² I have encountered many former believers, and some returning to the church after a long absence, who fell away after a divorce; and who maintain they fell away either because the pastor (or congregation) didn’t say enough to make them feel wanted, or said too much to make them feel unwanted. While it is entirely possible to find clergy who either have a poor theology of marriage and divorce, or have spoken proper theology poorly, one should also charitably assume that those who have just undergone divorce are failing to put the best construction on the words of others.

⁵³ For instance, if one separates from his employer, there is no mandate to return to the same job or remain unemployed for the rest of his life. In all other civil estates that come to the author’s mind, second chances are a foregone conclusion; but it is not so in marriage, the most intimate of estates.

⁵⁴ The CTCR document *Human Sexuality: A Theological Perspective* quotes Martin Scharlemann: “To proceed in securing a divorce with the full knowledge that such a divorce is contrary to God’s will **with the intention of becoming repentant** at some point in the future is, therefore, to enter into great spiritual peril.” (28, boldness his; cf. SA III, iii, 43-45) In “Divorce and Remarriage,” the CTCR repeats this quote, adding, “to proceed premeditatively in doing that which one knows to be contrary to God’s will, with the intention of becoming contrite later, is really no repentance at all” (40).

⁵⁵ Legalism haunts here too. One may encounter divorced individuals who are waiting to marry a new spouse until the former spouse remarries first, in order to claim that the other made reconciliation impossible.

However, there is a dearth of counsel about what comprises reconciliation. Reconciliation is more than just the availability of both parties to remarry, but it is to involve repentance, forgiveness and a desire to correct previous sins by both parties.⁵⁶ For instance, one might envision an abusive ex-husband, or an ex-wife who sees a husband only as a meal ticket, who is willing to remarry a former spouse (perhaps even initiating the discussion) without personal repentance and reform. It is inappropriate to insist on remarriage at this point; if St. Paul instructs that a believer may let an unbelieving spouse depart (1 Corinthians 7:15), it hardly seems mandatory that a believer must take an impenitent spouse back.⁵⁷

There is a high probability that individuals seeking remarriage have dismissed seeking reconciliation with previous spouses, and the pastor faces a difficult conversation. This conversation will go better if the focus remains on a good conscience, if the pastor makes clear that he is not trying to legislate remarriage or ruin happiness, but rather is making sure that the individuals are in good standing before God. Each must be sure that this new marriage will not be a threat to faith, though it may anyway many years later. Likewise, in order to preside over such a ceremony with a good conscience, the pastor must be sure that reconciliation of the previous marriage is impossible.

Pastor Care of Self

A good conscience is a great blessing. An orthodox pastor thrives on the certainty of Scripture and the ability to say with confidence, “Thus says the Lord.”

Sin introduces all sorts of uncertainties, and this becomes especially obvious and torturous in certain aspects of pastoral ministry more than others. End-of-life issues are one, and end-of-marriage issues are another. Pastors want to distinguish right and wrong; settling for the lesser of two evils is unwelcome.

⁵⁶ This repentance and forgiveness is between husband and wife, not necessarily before God. Where, for example, the husband is an unbeliever, he is not reconciled to God no matter how sorrowful he might be; however, he may still be reconciled to his wife.

⁵⁷ In his discussion of the certificate of divorce and the Pharisees’ hardness of heart (Matthew 19:8), Luther maintains that Moses permitted divorce not for the satisfaction of the hard-hearted husband, but for the safety of the wife, lest she be subjected to injury or death by remaining in the household. Applying the practice to his time, he writes, “This law, therefore, does not apply to Christians, who are supposed to live in the spiritual government. In the case of some who live with their wives in an un-Christian fashion, however, it would still be a good thing to permit them to use this law, *just so they are no longer regarded as Christians, which after all they really are not.*” (AE 45:31, italics mine)

We noted before that, despite the difficulties in such a literalistic interpretation, it may be tempting for pastors to view adultery and abandonment as the two exceptions that allow for divorce because they are measurable, and measurements carry a degree of certainty. Luther makes his argument about the lesser of two evils in service to a good conscience, but when is the lesser of two evils appropriate? (For instance, when might one be certain that an adulterous divorcee can't remain abstinent and thus should remarry?) Likewise, Gibbs' assertion that the Lord does not address every situation is helpful in many ways, but not in establishing certainty: how significant must an abusive situation be before divorce is the lesser evil? One can sympathize with his example of a baseball bat shattering an eye socket; but what of the frequent, vague accusation of "emotional abuse"? The counsel of Luther and Gibbs ring true, but by introducing more possibilities they hardly make pastoral care more certain.

Even when the pastor stays true to his task of exercising the Office of the Keys and calling sinners to repentance, certainty is hard to find. When is one who has divorced truly repentant? (The divorced individuals may not know themselves!) Few sins urge one to point fingers and shift blame like the dissolution of a marriage that was supposed to last a lifetime, and confessions of sin often come with asterisks like, "I know I sinned, but he drove me to it." Those wounded by grief may well equate their sorrow to repentance, even as they entertain bitterness and hope that their former spouse will remarry first and thus can be blamed for ruining the prospect of reconciliation; or they may declare true repentance because they see it as a necessary box to check before they can remarry. Of course, a pastor is to honor oral confession of the penitent, unless there is clear reason to do otherwise;⁵⁸ but in such a terrible situation, it is quite possible that the penitent is lying—not just to the pastor, but to himself.

Furthermore, wherever the pastor might provide counsel along the lines of Gibbs' or Luther's "lesser of two evils," he can be sure that sinful flesh is working hard to abuse such guidance and transform it into an excuse to escape painful circumstances.⁵⁹ The pastor may even then wrestle with his conscience about

⁵⁸ This is certainly a topic that illustrates the rubric in the order for Individual Confession and Absolution, "The pastor may gently question or instruct you—not to pry or judge—but to assist in self-examination." (*Lutheran Service Book*, 292) However, the pastor does not pry to try to uncover more dirt.

⁵⁹ Gibbs is sensitive to this and honest about it: "Although what I am about to say will be subject to abuse and misuse, we must not make Christ's teaching into casuistic case law. In every situation, divorce involves sin and is against the will of God. There will be times, however, when divorce will be

how much truth to reveal within conversation, lest he lead one astray by tempting sinful flesh.

Reflecting that the disciples responded immediately to Jesus' words about divorce with "It is better not to marry!" (Matthew 19:10), one can understand a pastor's reluctance and dissatisfaction about applying God's Word to such situations. I offer four suggestions for the sake of the pastor's conscience.

First, the pastor should remain within the exercise of the Office of the Keys. He should leave legalities to those in legal professions and have the phone numbers of trained marriage counselors handy.⁶⁰ He is to apply the Word of God no matter the result. As Mueller and Kraus write: "At times [the pastor] will see the healing and renewing power of the Spirit in the lives of his flock. At other times, he will be reminded that 'marriage counseling' is often a euphemism for the death rattle of marriage."⁶¹ Where the pastor properly applies Law and Gospel, he is not at fault for the sins of others. Pastors live by faith, not by sight; though the outcome may not what they had hoped, they may be at peace if they have spoken the Word in its truth and purity. The Lord may bless that proclamation with a salvaged marriage; or He may continue to work on the souls of those involved under the cross of divorce and failure.

Second, the pastor should be careful to remember that the exercise of the Office of the Keys is to apply Law and Gospel, which should then lead to fruits in keeping with repentance. When applying God's Word to a difficult marriage, it may become easy to see one's task as bludgeoning people to stay and suffer where they are in order to uphold God's institution of marriage; but if this is the extent of pastoral care, people will be tempted either to abandon the marriage or believe they earn God's favor by their suffering. The desired outcome of pastoral care is quite different: penitent hearts that confess and forgive, and then desire to serve one another and rejoice in the estate of marriage. Some guiding questions for the pastor to consider as he goes about this difficult art are:

1. Do the sins at play directly strike at the foundation of marriage (union of mind and body)?⁶²

the lesser of two evils" (Gibbs, 957). The sinful flesh will work to misuse *any* guidance—true or false—for personal gain.

⁶⁰ This assumes that the pastor is not also a trained marriage counselor. Even in that case, I am somewhat unsure about the wisdom of a pastor trying to fulfill both roles.

⁶¹ Mueller, 224.

⁶² The purpose of this question is certainly not to determine how quickly he can declare a marriage to be alive or dead, but to assess the severity of the situation and to know how best to apply Law and Gospel. For instance, a husband who is a slob may be an irritation, but his messiness does not strike

2. Do those involved have a proper understanding of what the Bible says about marriage and divorce?
3. What sins do they confess? What evident sins do they not identify?
4. Is there a lesser evil that needs to be tolerated to protect conscience?

Third, Luther advises that pastors seek out the opinion of other pious men, defined as one who does not render an opinion based upon “his own pleasure or fancy and contrary to public law and truth,” certainly including the truth of God’s Word. Because of all of the uncertainties, their counsel may still be less than perfect, but “even if these pious men should err a little in such confused cases, God will be satisfied with their error, because their intentions are sincere and true, and they are not seeking advantage for themselves or knowingly speaking against the established laws, and he will bury it all in the Lord’s Prayer when we say, ‘Forgive us our trespasses.’”⁶³

This leads nicely to a fourth, final point. The pastor is in need of the pious counsel of others who will not only provide advice in murky matters of casuistry, but remind him that he stands before God for the sake of Christ alone, not his flawless pastoral counsel. His conscience is made good before God because Christ has made him part of His bride, sanctified and cleansed by His death and resurrection.

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at the union of mind and body; thus part of pastoral counsel will be for the wife to bear with his untidiness. A husband who is addicted to pornography, however, is committing a sin that—though not rising to the level of physical adultery—still strikes at the bodily union that defines marriage.

⁶³ AE 46:288

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