

DIVORCE &
REMARriage

DIVORCE & REMARriage

ECCLESIASTICAL DISCERNMENT
AND PASTORAL CARE



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BENJAMIN T. G. MAYES

For Christian pastors and church leaders everywhere.

Do you not know that we are to judge angels? How much more, then, matters pertaining to this life! So if you have such cases, why do you lay them before those who have no standing in the church? I say this to your shame. Can it be that there is no one among you wise enough to settle a dispute between the brothers? (1 Corinthians 6:3–5)

As it is, I rejoice, not because you were grieved, but because you were grieved into repenting. For you felt a godly grief, so that you suffered no loss through us. For godly grief produces a repentance that leads to salvation without regret. (2 Corinthians 7:9–10a)



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Abbreviations

- AC Augsburg Confession
- AE *Luther's Works: American Edition*. Vols. 1–30: Edited by Jaroslav Pelikan. St. Louis: Concordia Publishing House, 1955–76. Vols. 31–55: Edited by Helmut Lehmann. Philadelphia/Minneapolis: Muhlenberg/Fortress, 1957–86. Vols. 56–82: Edited by Christopher Brown and Benjamin T. G. Mayes. St. Louis: Concordia Publishing House: 2009–.
- Ap Apology of the Augsburg Confession
- CTCR Commission on Theology and Church Relations, The Lutheran Church—Missouri Synod
- LC Large Catechism
- LSB *Lutheran Service Book*. St. Louis: Concordia Publishing House, 2006.
- SA Smalcald Articles
- Tr Treatise on the Power and Primacy of the Pope
- Triglot* W. H. T. Dau and F. Bente, eds., *Triglot Concordia: The Symbolical Books of the Ev. Lutheran Church, German-Latin-English* (Concordia Publishing House, 1921).
- WA *D. Martin Luthers Werke: Kritische Gesamtausgabe*. 73 vols. in 85. Weimar: H. Böhlau, 1883–.
- WA Br *D. Martin Luthers Werke: Briefwechsel*. 18 vols. Weimar: H. Böhlau, 1930–.

INTRODUCTION

When I began writing on the estate of marriage, I was afraid that things would turn out as they now have, that I would be kept busier with this one topic than with my entire cause apart from it. If there were nothing else to suggest that the estate of marriage is a godly estate this fact alone should be enough to convince you, namely, that the prince of this world—the devil—sets himself against it in so many ways to resist it with hand and foot and all his strength; indeed, that fornication is not diminishing but on the increase.¹

CHASTITY AND SEXUAL ETHICS ARE perhaps the most difficult topics for a pastor to address with his people. If the pastor says too much, chaste ears are offended. If he says too little, people will not know what sin is and how sexual temptation can be resisted; they may securely presume the Gospel and continue impenitently in sins. That is, the people will be destroyed for lack of knowledge (Hos 4:6). The world is crumbling around us and the world's mores have entered the church from the grass roots. Without faithful, consistent, even strict teaching on chastity and sexual ethics, people's attitudes will be formed by friends, television, movies, music, social media, and the images they see online. A pastor must speak! And this book will help him to do it. It will also help congregation leaders, with God's blessing, to support and assist their pastor in his difficult duties.

I write as a Christian. Jesus is *the Lord* Jesus, the Christ, the Son of God. Paul is *St. Paul*, the Lord's apostle. The words of the Lord and of His apostles are the words of God, given to the church and the human race for making us wise unto salvation (2 Tm 3:15).

It is hard to be dispassionate when researching and writing on this topic. One's own involvement in a divorce or remarriage, or that of a loved one, or difficulties in the pastoral ministry dealing with divorce and remarriage can lead a researcher to look for loopholes, to try to find arguments that allow his preferred level of rigor or leniency to be right. For example, if the thought of subjecting wrongfully married congregation members to fraternal admonition and ecclesiastical discipline (Mt 18:15–20) fills a pastor with dismay, he will try

1 Martin Luther, *That Parents Should Neither Compel nor Hinder the Marriage of Their Children* (1524), AE 45:385; WA 15:163.7–16.

to find a way for those marriages to be considered valid, even if he knows they were entered wrongfully. As another example, if one is divorced or married to a divorcée, he might try to find a way to justify his own situation. Or if one has been blessed with a happy marriage, he might be tempted to ignore the real human struggles that people have and to require a perfection that is impossible for many people. Bias is a danger. Self-disclosure: Rebecca and I have been married, happily, since 1997. For both of us it is our first marriage. We both were blessed to be raised by parents who were married and stayed married through thick and thin—now at over fifty years of marriage. Yet I have had friends and family members who have divorced, suffered divorce, or married divorced people. I am aware of the forces that could tug my analysis of God's Word and situations one way or the other. But I have attempted as best I can to subject my mind and heart to the Word of God, *especially* when it challenges me or conflicts with what seems normal.

This book grew out of my doctoral dissertation, in which I explored the seventeenth-century Lutheran casuistry literature with a special emphasis on its cases dealing with divorce and remarriage. That topic came to me from three sources:

1. Reading Walther's and Loehe's pastoral theologies, in which they recommended the seventeenth-century Lutheran casuistry literature as helpful for pastoral practice.²
2. The consternation of pastors in my area, early in my ministry, any time they had to deal with a divorce situation. They often did not know what to say or do.
3. Conversations with Rebecca, my wife, who encouraged me to research and write about a topic that would truly serve the church, such as this one.

The dissertation was finished in 2009 and was published in 2011.³ Since then, I have continued to perceive that the church needs a book like this one. Bewildered pastors have contacted me with confusing cases. Friends and family members have suffered divorce or caused it. Students at Concordia Theological Seminary (Fort Wayne, Ind.) and from around the world have told me of their need for more instruction in this area. Situations of divorce and remarriage in congregations present an unparalleled level of apprehension to new pastors.

2 Their books are now available in English. Carl Ferdinand Wilhelm Walther, *American-Lutheran Pastoral Theology*, ed. David W. Loy, trans. Christian C. Tiews (Concordia Publishing House, 2017), 28–30; Wilhelm Loehe, *The Pastor*, ed. Charles P. Schaum, trans. Wolf Dietrich Knappe (Concordia Publishing House, 2015), 302–8.

3 Benjamin T. G. Mayes, *Counsel and Conscience: Lutheran Casuistry and Moral Reasoning after the Reformation*, Refo500 Academic Studies 1 (Vandenhoeck & Ruprecht, 2011).

While some Christian fellowships and churches suffer from an overemphasis on the Law of God, other fellowships and churches suffer from an underemphasis on it. There are pastors and people, even in my own church (The Lutheran Church—Missouri Synod [LCMS]), who agree theoretically with what the Bible and the Lutheran Confessions say about the applicability of God’s Law for Christian life, but in practice they treat the Law as nonbinding. They ignore the fruits of repentance and the new movements of the Holy Spirit in believers.⁴

Part of the reason for this attitude is a mistrust of “casuistry.” Harry G. Coiner in 1963 revealed a common attitude toward divorce and remarriage. He opposed legalistic approaches to marriage cases which, he asserted, are usually a façade for impenitence. He did not want the words of Christ (Mt 5:32; 19:9) and St. Paul (1 Cor 7:15) to be applied “mechanically” to cases,⁵ by which he seems to have meant “consistently.” Instead, he wanted pastors to focus on repentance as “a genuine experience.”⁶ For genuinely repentant divorced people, remarriage is permitted if the former marriage cannot be put back together, according to Coiner. But it can be prevented from being put back together by a wide range of causes: remarriage, a continuance of the *status quo* which led to the divorce, or refusal to reconcile.⁷ By these rules, no remarriage would ever be inadmissible. For Coiner, even wrongful divorces were for real, since divorce is the ending of a marriage, and he defined marriage not as a covenant but as a loving relationship.⁸ Therefore, while Coiner rightly opposed unrepentant attitudes which would use Mt 5:32; 19:9; and 1 Cor 7:15 as loopholes to allow one to change spouses, the end effect of his substitute rules (and that is in fact what he proposed, despite his refusal to use the words of the Lord and of St. Paul as rules) is anarchy and arbitrary, unprincipled divorce and remarriage.

But this is a book on a specific area of Christian ethics: divorce and remarriage. Besides the fact that it has been requested by friends, colleagues, and students, why is it needed? Here I would like to explain why Christians should care about ethics and how they live their lives. Christian faith lives in repentance. Saving faith cannot exist in the heart at the same time as the willful intention to persist in sin.

Do not let sin reign in your mortal body, that you should obey it in its lusts. . . . Do you not know that to whom you present yourselves slaves to

4 On this topic, see Gifford A. Grobien, “Spirituales Motus: Sanctification and Spiritual Movements in Believers,” *Concordia Theological Quarterly* 87, no. 3–4 (October 2023): 315–31.

5 Harry G. Coiner, “Divorce and Remarriage: Toward Pastoral Practice,” *Concordia Theological Monthly* 34, no. 9 (September 1963): 552.

6 Coiner, “Divorce and Remarriage,” 551.

7 Coiner, “Divorce and Remarriage,” 551.

8 Coiner, “Divorce and Remarriage,” 550.

obey, you are that one's slaves whom you obey, whether of sin leading to death, or of obedience leading to righteousness? (Rom 6:12, 16 NKJV).

There is therefore now no condemnation to those who are in Christ Jesus, who do not walk according to the flesh, but according to the Spirit. For the law of the Spirit of life in Christ Jesus has made me free from the law of sin and death. . . . For if you live according to the flesh you will die; but if by the Spirit you put to death the deeds of the body, you will live. For as many as are led by the Spirit of God, these are sons of God (Rom 8:1-2, 13-14 NKJV).

He who covers his sins will not prosper, But whoever confesses and forsakes them will have mercy. Happy is the man who is always reverent, But he who hardens his heart will fall into calamity (Prv 28:13-14 NKJV).

And in that day the Lord GOD of hosts Called for weeping and for mourning, For baldness and for girding with sackcloth. But instead, joy and gladness, Slaughtering oxen and killing sheep, Eating meat and drinking wine: "Let us eat and drink, for tomorrow we die!" Then it was revealed in my hearing by the LORD of hosts, "Surely for this iniquity there will be no atonement for you, Even to your death," says the Lord GOD of hosts (Is 22:12-14 NKJV).

Let the wicked forsake his way, And the unrighteous man his thoughts; Let him return to the LORD, And He will have mercy on him; And to our God, For He will abundantly pardon (Is 55:7 NKJV).

"Therefore I will judge you, O house of Israel, every one according to his ways," says the Lord GOD. "Repent, and turn from all your transgressions, so that iniquity will not be your ruin. Cast away from you all the transgressions which you have committed, and get yourselves a new heart and a new spirit. For why should you die, O house of Israel? For I have no pleasure in the death of one who dies," says the Lord GOD. "Therefore turn and live!" (Ez 18:30-32 NKJV)

For godly sorrow produces repentance leading to salvation, not to be regretted; but the sorrow of the world produces death. For observe this very thing, that you sorrowed in a godly manner: What diligence it produced in you, what clearing of yourselves, what indignation, what fear, what vehement desire, what zeal, what vindication! In all things you proved yourselves to be clear in this matter. Therefore, although I wrote to you, I did not do it for the sake of him who had done the wrong, nor for the sake of him who suffered wrong, but that our care for you in the sight of God might appear to you (2 Cor 7:10-12 NKJV).

The common message of the prophets and apostles of the Lord is that saving faith cannot coexist with the intention to persist in sins, that is, with unrepentance. This is particularly clear with regard to sexual sins, as St. Paul explains:

Do you not know that the unrighteous will not inherit the kingdom of God? Do not be deceived. Neither fornicators, nor idolaters, nor adulterers, nor homosexuals, nor sodomites, nor thieves, nor covetous, nor drunkards, nor revilers, nor extortioners will inherit the kingdom of God. And such were some of you. But you were washed, but you were sanctified, but you were justified in the name of the Lord Jesus and by the Spirit of our God (1 Cor 6:9–11 NKJV).

Many readers of this book will be pastors who have subscribed unconditionally to the teaching of the Book of Concord, which contains the ancient creeds and the Lutheran Confessions of the Christian faith from the sixteenth century. These Lutheran readers may be interested to know that the necessity of genuine repentance, with works that demonstrate the sincerity of this repentance, is also taught by the reformers in the Book of Concord. I give some examples.

Augsburg Confession XII 1–6. *Of Repentance* they teach that for those who have fallen after Baptism there is remission of sins whenever they are converted and that the Church ought to impart absolution to those thus returning to repentance. Now, repentance consists properly of these two parts: One is contrition, that is, terrors smiting the conscience through the knowledge of sin; the other is faith, which is born of the Gospel, or of absolution, and believes that, for Christ's sake, sins are forgiven, comforts the conscience, and delivers it from terrors. Then good works are bound to follow, which are the fruits of repentance.⁹

Apology of the Augsburg Confession IV (III)¹⁰ 229–232. This faith of which we speak arises in repentance, and ought to be established and grow in the midst of good works, temptations, and dangers, so that we may continually be the more firmly persuaded that God for Christ's sake cares for us, forgives us, hears us. This is not learned without many and great struggles. How often is conscience aroused, how often does it incite even to despair when it brings to view sins, either old or new, or the impurity of our nature! This handwriting is not blotted out without a great struggle, in which experience testifies what a difficult matter faith is. And while we are cheered in the midst of the terrors and receive consolation, other spiritual movements at the same time grow, the knowledge of God, fear of God, hope, love of God; and we are *regenerated*, as Paul says, Col. 3, 10 and 2 Cor. 3, 18, *in the knowledge of God*, and, *beholding the glory of the Lord, are changed into the same image, i.e., we receive the true knowledge of God*, so that we truly fear Him, truly trust that we are cared for, and that we are heard by Him. This regeneration is, as it were, the beginning of eternal

9 W. H. T. Dau and F. Bente, eds., *Triglot Concordia: The Symbolical Books of the Ev. Lutheran Church, German-Latin-English* (Concordia Publishing House, 1921), 49.

10 On the enumeration of the articles of the Apology, see Benjamin T. G. Mayes, "Apology of the Augsburg Confession Comparison Chart," *Concordia Theological Quarterly* 80, no. 3–4 (October 2016): 337–39.

life, as Paul says, Rom 8, 10: *If Christ be in you, the body is dead because of sin; but the Spirit is life because of righteousness.* And 2 Cor. 5, 2, 3: *We are clothed upon, if so be that, being clothed, we shall not be found naked.* From these statements the candid reader can judge that we certainly require good works, since we teach that this faith arises in repentance, and in repentance ought continually to increase; and in these matters we place Christian and spiritual perfection, if repentance and faith grow together in repentance.¹¹

Apology IV (III) 253. In this way Scripture, at the same time with the fruits, embraces the righteousness of the heart. And it often names the fruits, in order that it may be better understood by the inexperienced, and to signify that a new life and regeneration, and not hypocrisy, are required. But regeneration occurs, by faith, in repentance.¹²

Apology XII (V) 58. From all these it is apparent to godly readers that we assign to repentance those parts which properly belong to it in conversion, or regeneration, and the remission of sin. Worthy fruits and punishments [likewise, patience that we be willing to bear the cross, and punishments, which God lays upon the old Adam] follow regeneration and the remission of sin.¹³

Apology XII (VI) 34–35. We say that good fruits, good works in every kind of life, ought to follow repentance, *i.e.*, conversion or regeneration [the renewal of the Holy Ghost in the heart]. Neither can there be true conversion or true contrition where mortifications of the flesh and good fruits do not follow [if we do not externally render good works and Christian patience]. True terrors, true griefs of mind, do not allow the body to indulge in sensual pleasures, and true faith is not ungrateful to God, neither does it despise God's commandments. In a word, there is no inner repentance unless it also produces outwardly mortifications of the flesh. We say also that this is the meaning of John when he says, Mt 3, 8: *Bring forth, therefore, fruits meet for repentance.* Likewise of Paul when he says, Rom 6, 19: *Yield your members servants to righteousness;* just as he likewise says elsewhere, Rom 12, 1: *Present your bodies a living sacrifice,* etc. And when Christ says, Mt 4, 17: *Repent,* He certainly speaks of the entire repentance, of the entire newness of life and its fruits; He does not speak of those hypocritical satisfactions which, the scholastics imagine, avail for compensating the punishment of purgatory or other punishments when they are made by those who are in mortal sin.¹⁴

Apology XII (VI) 72–73. Thus concerning restitution, Gregory says that repentance is false *if it does not satisfy those whose property we have taken.*

11 Dau and Bente, *Triglot Concordia*, 217.

12 Dau and Bente, *Triglot Concordia*, 221–23.

13 Dau and Bente, *Triglot Concordia*, 267.

14 Dau and Bente, *Triglot Concordia*, 291.

For he who still steals does not truly grieve that he has stolen or robbed. For he is a thief or robber, so long as he is the unjust possessor of the property of another. This civil satisfaction is necessary, because it is written Eph. 4, 28: *Let him that stole, steal no more*. Likewise Chrysostom says: *In the heart, contrition; in the mouth, confession; in the work, entire humility*. This amounts to nothing against us. Good works ought to follow repentance; it ought to be repentance, not simulation, but a change of the entire life for the better.¹⁵

Apology XXIV (XII) 46. For who of the people ever understood the doctrine of repentance of which the adversaries treat? And yet this is the chief topic of Christian doctrine.¹⁶

Formula of Concord: Epitome III 11. We believe, teach, and confess that, although the contrition that precedes, and the good works that follow, do not belong to the article of justification before God, yet one is not to imagine a faith of such a kind as can exist and abide with, and alongside of, a wicked intention to sin and to act against the conscience. But after man has been justified by faith, then a true living faith worketh by love, Gal 5, 6, so that thus good works always follow justifying faith, and are surely found with it, if it be true and living; for it never is alone, but always has with it love and hope.¹⁷

Formula of Concord: Solid Declaration II 70. For this is certainly true that in genuine conversion a change, new emotion [renewal], and movement in the intellect, will, and heart must take place, namely, that the heart perceive sin, dread God's wrath, turn from sin, perceive and accept the promise of grace in Christ, have good spiritual thoughts, a Christian purpose and diligence, and strive against the flesh. For where none of these occurs or is present, there is also no true conversion.¹⁸

Formula of Concord: Solid Declaration IV 15. Therefore the expressions or propositions mentioned [that good works are necessary, and that it is necessary to do good] are unjustly censured and rejected in this Christian and proper sense, as has been done by some; for they are employed and used with propriety to rebuke and reject the secure, Epicurean delusion, by which many fabricate for themselves a dead faith or delusion which is without repentance and without good works, as though there could be in a heart true faith and at the same time the wicked intention to persevere and continue in sins, which is impossible; or, as though one could, indeed, have and retain true faith, righteousness, and salvation even though he be and remain a corrupt and unfruitful tree, whence no good fruits whatever

15 Dau and Bente, *Triglot Concordia*, 305.

16 Dau and Bente, *Triglot Concordia*, 401.

17 Dau and Bente, *Triglot Concordia*, 795.

18 Dau and Bente, *Triglot Concordia*, 909.

come, yea, even though he persist in sins against conscience, or purposely engages again in these sins, all of which is incorrect and false.¹⁹

Since Scripture teaches the necessity of genuine repentance as the context in which there can be saving faith, matters of sin and repentance are vital for Christians to learn and know. And this is why we should and must deal with marriage, divorce, and remarriage. One simply cannot reply that this topic is legalistic, or diminishes the Gospel, or confuses Law and Gospel, or prevents the Gospel from predominating. Matters of divorce and remarriage have been revealed by God. That should be a sufficient warrant for dealing with these topics.

Lutherans who value C. F. W. Walther's teaching on the distinction between Law and Gospel may also be interested to learn that he took matters of divorce and remarriage very seriously and taught about these topics in detail.²⁰ He also taught the necessity of repentance and regeneration.

While now a mere faith of the head and mouth indeed leads to hell, a poor sinner who seizes God's grace in true faith is, through such faith, changed and renewed in his heart. He now goes about with an entirely new spirit, heart, and mind, laughs at the whole world, and is richer in the blood of Christ than if he owned heaven and earth. Such a one does not permit his sins to deprive him of this treasure, but earnestly calls upon God for strength for sanctification. They are greatly in error who think that we are against a serious piety, that we reject struggling, praying, wrestling, sighing, and weeping. Oh, no! Many of us may lie on our knees more than those who want to earn grace. We are only opposed to this, that we must gain grace by praying, groaning, and struggling.²¹

So why should we care about divorce and remarriage? Without clear guidance, people will, on the one hand, do whatever is right in their own eyes (Prv 12:15) or, on the other hand, live with a doubting conscience, constantly unsure of whether they are living in manifest, serious sin. Only by learning what God says about these matters can one learn to submit his own will to God's will, and to have clarity about God's will for his life.

This book cannot answer all the questions that people may have. It cannot address every situation. Those are infinite. But it can explain most of the principles clearly, based on Holy Scripture, and can model a responsible practice of discernment by which pastors and congregational leaders can lead their members toward Christian living, sincere faith, and the fruits of repentance according to God's Word. When I began my doctoral research, I hoped to find

19 Dau and Bente, *Triglot Concordia*, 943.

20 Walther, *Pastoral Theology*, 235–300.

21 C. F. W. Walther, *All Glory to God*, Walther's Works (Concordia Publishing House, 2016) 88.

all the answers to all the questions and cases on divorce and remarriage that had perplexed me and my fellow pastors. I thought that the theologians of Lutheran Orthodoxy (ca. 1580–1700), with their voluminous casuistry writings, biblical fidelity, and clear thinking, would provide all the answers. But I was wrong. There were many situations that befuddled them too. Sometimes they did not even agree! Yet the depth of their biblical knowledge, their awareness of the whole history of theology, and their clear thinking did indeed answer and clarify many of my questions. That is my hope for this book as well. Even if it is incomplete, I hope that what it provides will be of help. To the extent that I have been able to recover the wisdom of the past and to transmit it to the future, I am sure it will be of help.

Since the 1960s, divorce in North American society and also in the LCMS has been a runaway train. It will be hard to stop. From my experience it is clear to me that the discipline of the LCMS in its congregations is inconsistent. In some congregations, the pastors and elders try to know the life and confession of their members, and admonish them if they begin to live an openly sinful lifestyle. They care about these members enough to apply ecclesiastical discipline (e.g., Mt 18:15–20), even if this leads to conflict. But in other congregations, the pastors and elders do not make this effort. Sometimes it is due to ignorance; sometimes, laziness; sometimes, a misunderstanding of Law and Gospel, as though the Gospel on its own will bring about repentance, or as though “the Gospel must predominate” means that large sections of Scripture can be treated as irrelevant for people’s lives. Thus our doctrinal and moral discipline is inconsistent.

This book cannot fix that. But for those who read it, it can at least remove ignorance of one’s duty as a husband, wife, pastor, or lay congregational leader. It can, from God’s Word, encourage and give courage to people to do their duty, to do the hard thing, to have the hard conversation, to act, to not just do nothing. This book cannot fix everything. But I hope it can be a guide for pastors and congregational leaders to improve their care of marriages, their concern for the lives of their people, and the sincerity of their faith.

Since our church’s discipline concerning divorce and remarriage has been inconsistent for so many decades, and since often pastors, not knowing what to do, have done nothing, it will be difficult to make changes and to enact all the suggestions in this book. Yet this is where it has to start: with knowledge, teaching, and gradual improvement of pastoral and congregational practice. If all these suggestions are implemented, in most settings they will have an enormous impact on churches and families—so countercultural are the proposals.

In this book I will make an exegetical argument and bring in the insights of the reformers and the early modern Lutheran theologians (also known as the “Lutheran Orthodox theologians,” “old Lutherans,” “classic Lutherans,” and the

like).²² Since many of them used formal logic and syllogisms in their arguments, I will give a brief review of how syllogisms work. A syllogism is an argument that has three parts: a major premise (a general principle), a minor premise (usually a more specific fact), and a conclusion (showing what follows from the premises). For example: “All boys who live in Chicago have a ball (major premise). But John is a boy who lives in Chicago (minor premise). Therefore John has a ball (conclusion).” If the conclusion is rather obvious, theologians often give simply one word: “Therefore.”

I do *not* assume that the reformers and the Lutheran Orthodox theologians are authorities in and of themselves. Rather, I want to show that their way of handling the text of Scripture is correct and still today gives us much from which we can learn. Luther comes up as a source, but this is not a book about Luther. The Lutheran Church’s teaching is not always that of Luther, even though he is the foremost teacher of the churches that subscribe to the Augsburg Confession (FC SD VII 41). Particularly on marriage, Luther wrote at the very start of the Reformation, when things were still being figured out, and he wrote not always in an orderly way.

Besides the wisdom of classic Lutheran theologians, I have also learned from the wisdom of contemporary Evangelical scholars, mainly exegetes writing in English. Yet I have drawn comparatively little from Roman Catholic authors writing on divorce and remarriage. This is because on the topics of this book, conservative Lutherans and conservative Evangelicals are remarkably homogeneous. With the same formal authority (Scripture alone), they wrestle with the same scriptural texts and, while not always agreeing, their arguments are mutually comprehensible. The same cannot be said for the Roman Catholic teaching on marriage and divorce. The doctrine and authorities vary so vastly from Lutheranism on these topics that they usually have very little to say to each other.²³

THE LUTHERAN DOCTRINE OF DIVORCE AND REMARRIAGE

The main biblical texts dealing with marriage and divorce are Gn 2:24; Ex 21:7–11; Dt 24:1–4; Mal 2:16; Mt 5:31–32; 19:3–9; Mk 10:2–12; Lk 16:18; Rom 7:2–3; 1 Cor 6:16; 1 Cor 7:10–11, 15, 39; 1 Tm 3:2; Ti 1:6.

22 I use these expressions not only for the reformers and confessional Lutherans before the Enlightenment in Europe, but also for nineteenth- and twentieth-century theologians who share the same theology, such as C. F. W. Walther.

23 Cf. Martin Chemnitz, *Examination of the Council of Trent*, trans. Fred Kramer, vol. 2 (Concordia Publishing House, 1978), 717–66; Martin Chemnitz, *Examination of the Council of Trent*, trans. Fred Kramer, vol. 3 (Concordia Publishing House, 1986), 15–118.

Divorce and remarriage are discussed briefly in the Book of Concord, Treatise 78: “Unjust also is the tradition which forbids an innocent person to marry after divorce.”²⁴ In this short sentence a number of claims are made: (1) There can be an innocent party to a divorce. (2) At least for the innocent party, remarriage is permitted. (3) It would be *unjust* to claim otherwise, as the Roman Catholic Church did and still does.²⁵ Thus our Confessions approve of and confess the approach to divorce and remarriage taken by the reformers, and specifically allow the remarriage of innocent parties of a divorce.

Turning to the history of the Lutheran Church—Missouri Synod, divorce and remarriage have never been the subject of an LCMS synodical resolution, neither concerning pastors nor laity.²⁶

C. F. W. Walther’s *Pastoral Theology*, published serially from 1865 to 1871, gave the Missouri Synod a consistent practice based on early Lutheran teaching on divorce and remarriage. According to Walther, marriage is a lifelong covenant of one man and one woman for the purposes of mutual aid, procreation, and avoiding unchastity. The general rule given by God in Gn 2:24 and reiterated by the Lord Jesus in Mt 19:3–9 and Mk 10:2–12 is that marriages must not be ended by mankind. God ends the marriage by means of the death of one spouse. Adultery presents an exception. Divorce is permitted after adultery, but reconciliation should be encouraged even in this case. Another exceptional situation is malicious (i.e., intentional) desertion according to 1 Cor 7:15. The innocent, maliciously deserted party may remarry. 1 Cor 7:15 does not give a *reason* for divorcing, it allows remarriage after *suffering* an unwanted divorce. A few other situations are seen as equivalent to malicious desertion, but the principle holds true: desertion is not grounds for divorcing, it is the suffering of an unwanted divorce. No illness dissolves a marriage.²⁷

From 1888 to 1890, August Gräbner published a series of articles examining the pastoral practice of marriage and divorce in the United States. His work continues the foregoing Lutheran tradition, but adds interesting considerations

24 Dau and Bente, *Triglot Concordia*, 527.

25 The Council of Trent (sess. 24, Nov. 11, 1563, can. 7) stated that the remarriage even of the innocent party after an adultery is adultery so long as the first spouse still lives. Heinrich Denzinger et al., eds., *Compendium of Creeds, Definitions, and Declarations on Matters of Faith and Morals*, 43rd ed. (Ignatius Press, 2012), no. 1807.

26 Martin Noland and Mark Loest, eds., *The Doctrinal Resolutions of the National Conventions of The Lutheran Church—Missouri Synod, 1847–2004*, trans. William Wangelin, Jeanette Dart, and Christian Tiews, Concordia Historical Institute Digital Archives 1 (Concordia Historical Institute, 2006).

27 Walther, *Pastoral Theology*, 280–83.

of cases in which US states' laws conflicted with divine law, and how Christians should act in these circumstances.²⁸

In 1901, Friedrich Bente reported that the Lutheran General Council in the USA had decided that after a divorce, only the innocent party may remarry. Bente rejected this position. Then in 1905, he reported that the Lutheran General Synod in the USA had forbidden remarriage after divorce for people who had committed malicious desertion. By so doing, according to Bente, that denomination had moved closer to the Episcopalians. Bente stated clearly that the Lutheran Church's position is that the innocent party of a divorce may remarry, and after this happens, then the guilty party may remarry. This remarriage could even be performed by a pastor within the church.²⁹

The classic Lutheran teaching on divorce and remarriage with some added detail for pastoral practice was set forth in English from 1932 to 1933 by Theodore Laetsch in a series of articles in *Concordia Theological Monthly*. These articles gave the English-speaking part of the Missouri Synod a similar basis as Walther and Gräbner had given in German. Laetsch added more forcefully and clearly than did Walther that wrongful marriages must cease if the people are to be admitted to the church's fellowship as repentant believers.³⁰

CONFUSION IN THE LCMS

Unfortunately from the mid-twentieth century onward, there was confusion in The Lutheran Church—Missouri Synod on divorce and remarriage. In 1939 Walter A. Maier took mostly the same position as Walther and Laetsch, with one significant difference. For Walther and Laetsch, adultery presents *grounds* for divorce, but for Maier, adultery in and of itself constitutes a breakup of the marriage. That is, for him, after an adultery, the married couple are actually divorced, whether or not they have this divorce ratified legally.³¹

28 A. Gräbner, "Ueber Eheschließung und Ehescheidung: Grundsätze des amerikanischen Ehrechts in ihrer Berührung mit der pastoralen Praxis," *Lehre und Wehre* 34–36 (1888–90): 6–11, 42–46, 79–83, 110–14, 141–46, 173–77, 224–30; 13–18, 46–51, 86–92, 117–22, 179–85, 235–40, 299–302; 15–17.

29 F. Bente, "Kirchlich-Zeitgeschichtliches: Verhandlungen über Ehescheidung," *Lehre und Wehre* 47 (1901): 336–37; F. Bente, "Kirchlich-Zeitgeschichtliches: In der Ehescheidungsfrage," *Lehre und Wehre* 51 (1905): 225.

30 Theodore Laetsch, "Divorce and Malicious Desertion [Part 1]," *Concordia Theological Monthly* 3, no. 11 (1932): 850–55; Theodore Laetsch, "Divorce and Malicious Desertion [Part 2]," *Concordia Theological Monthly* 3, no. 12 (1932): 923–32; Theodore Laetsch, "Divorce and Malicious Desertion [Part 3]," *Concordia Theological Monthly* 4, no. 1 (1933): 35–38; Theodore Laetsch, "Divorce and Malicious Desertion [Part 4]," *Concordia Theological Monthly* 4, no. 2 (1933): 127–33.

31 Walter A. Maier, *For Better Not for Worse: A Manual of Christian Matrimony*, 3rd ed. (Concordia Publishing House, 1939), 436. On this idea, see below, p. 59.

In the mid-twentieth century, some LCMS exegetes diverged greatly from the historic Lutheran view of divorce and remarriage. While these exegetes in some ways were more progressive and modern as exegetes, the remarriage doctrine they espoused was far more strict. Harry Coiner in 1968 opposed all casuistry which would take the biblical data and apply them consistently to the various pastoral situations that arise.³² He also saw no support in the biblical text for remarriage. Unless one's former spouse has died, one may not remarry, no matter what, according to Coiner.³³ Martin Scharlemann took the same position in 1980, characterizing the classic Lutheran exegesis of the divorce and remarriage texts as uninformed and lax. Moreover, according to him, innocently divorced pastors may remain in office, but may never remarry, due to the injunction that the pastor must be the "husband of one wife" (1Tm 3:2; Ti 1:6).³⁴

In 1987, the Commission on Theology and Church Relations (CTCR) of the LCMS reaffirmed the classic Lutheran doctrine of divorce and remarriage: Marriage is supposed to be lifelong and it is sin to divorce, but there are exceptions: the innocent party may divorce her adulterous spouse, and a spouse who suffers divorce by malicious desertion may remarry. The CTCR opened the door, however, to further cases being equivalent to malicious desertion (such as persistent, incorrigible violation of the obligations of the marriage covenant), but specific cases were left unexplained. Ambiguity or silence also attended the questions of whether wrongful marriages can be accepted by the church, and whether a pastor who innocently suffers a divorce may remarry.³⁵ The silence and ambiguities of this document may be reflected today in the doubts and liberties that LCMS pastors and people suffer or perpetrate regarding divorce and remarriage. The CTCR hesitated to make clear statements that remarriage is permitted to the innocent party. It warned readers to be cautious, but without specific limits, the open-ended definition of desertion would be exploited by some, or be a case of a bad conscience for others. A step toward more precision was provided by the CTCR in 2003, when it gave an opinion about divorce and remarriage in a case of long-term sexual deprivation within marriage.³⁶

32 Harry G. Coiner, "Those Divorce and Remarriage Passages," *Concordia Theological Monthly* 39, no. 6 (June 1968): 377.

33 Coiner, "Those Divorce and Remarriage Passages," 367–84. This presents a stricter approach than he had set forth in 1963. Coiner, "Divorce and Remarriage."

34 Martin H. Scharlemann, "The Pastoral Office and Divorce, Remarriage, Moral Deviation," *Concordia Journal* 6, no. 4 (July 1980): 141–50.

35 Commission on Theology and Church Relations of The Lutheran Church—Missouri Synod, *Divorce and Remarriage: An Exegetical Study* (The Lutheran Church—Missouri Synod, 1987).

36 Commission on Theology and Church Relations of The Lutheran Church—Missouri Synod, *Response to Request for an Opinion on Malicious Desertion from Michigan District President* (The Lutheran Church—Missouri Synod, 2003),

In 1989, the LCMS Council of Presidents (COP) set forth a policy to guide the pastoral care and adjudication of divorce cases among clergy. The COP was trying to find a consistent, biblical basis for dealing with clergy divorce that was neither “cut and dried legalistic” nor a permissive approach that would allow all divorced men to remain clergy no matter the reasons for the divorce. Nevertheless, the COP guidelines give insufficient exposition of how the biblical passages apply to concrete situations; they rely heavily on “professional counseling”; and they place all adjudicatory power in the hands of one man alone, the district president.³⁷

Perhaps some LCMS pastors do not read CTCR documents. Yet they probably read Concordia Commentaries. Sadly, there are conflicting viewpoints on divorce and remarriage in the Concordia Commentary series of Concordia Publishing House. According to Jeffrey Gibbs, there are exceptions to the Lord’s categorical prohibitions of divorce,³⁸ while former Concordia Theological Seminary, Fort Wayne, professor Gregory Lockwood gives a mixed message. He says marriage is “indissoluble: the two have become one flesh and will always remain so. Only death can dissolve a marriage (Rom 7:2; 1 Cor 7:39).”³⁹ Yet he also says that adultery in and of itself breaks a marriage, similar to what Walter A. Maier had taught, and he acknowledges the permissibility of remarriage for the guilty party to a divorce in some situations.⁴⁰

Finally, Thomas Winger (a theologian in Lutheran Church—Canada, a sister synod of the LCMS) in a 2017 article questioned whether any remarriage is permissible after divorce, whether or not the divorced person was innocent. Basing his position in part on a survey of ancient Christian writings, he says the early church considered all divorce and remarriage to be sinful.⁴¹

Thus, within the LCMS (and her sister churches) differing positions on divorce and remarriage have been taught. And perhaps here it should be added that one also finds plenty of examples in which wrongful divorces and wrongful

<https://files.lcms.org/f/76EFBABA-9698-4FF8-AEE4-EB20C411A582>.

37 Council of Presidents, The Lutheran Church—Missouri Synod, “Guidelines For Dealing With Marital Crisis Involving Separation and Divorce of The Lutheran Church—Missouri Synod Clergy” (1989), <https://www.projectwittenberg.org/etext/lcms/COP/divorce.asc>.

38 Jeffrey A. Gibbs, *Matthew 1:1–11:1*, Concordia Commentary (Concordia Publishing House, 2006), 290–96; Jeffrey A. Gibbs, *Matthew 11:2–20:34*, Concordia Commentary (Concordia Publishing House, 2010), 942–59.

39 Gregory J. Lockwood, *1 Corinthians*, Concordia Commentary (Concordia Publishing House, 2000), 238.

40 Lockwood, *Concordia Commentary*, 238n.

41 Thomas M. Winger, “Husband of One Wife: Exegetical and Historical Notes on Clergy Divorce and Remarriage,” *The Canadian Lutheran*, September 2017, 16–17, <https://www.canadianlutheran.ca/wp-content/uploads/2017/09/Husband-of-One-Wife-Exegetical-Notes-on-Clergy-Divorce-and-Remarriage.pdf>.

remarriages are accepted in our congregations without warrant or any kind of biblical justification. No wonder pastors are confused!

EVANGELICAL DEBATE

Evangelicals and conservative Protestants line up behind the Lutheran teaching on divorce and remarriage, for the most part.⁴² This might be called the “Reformation view,” in which remarriage is permitted after divorce for adultery or divorce by malicious desertion.⁴³ But some push the exceptions further. These Evangelicals and conservative Protestants see more legitimate causes for divorce than just adultery and malicious desertion. They still seek to base their position on Scripture, so they are different from progressive authors who simply cave in to the societal pressure to allow any divorce or remarriage. This view might be called “the new Evangelical majority view,” in which divorce and remarriage are permitted for incorrigible neglect of marriage duties.⁴⁴ Finally, there remains a small but firm group of scholars advocating a stricter approach to remarriage, who claim that the ante-Nicene fathers (Christian authors before the Council of Nicaea in AD 325) had the right understanding of the biblical texts. This view might be called “the pre-Reformation view” on divorce and remarriage, in which divorce is sometimes allowed but remarriage is never permitted as long as the former spouse lives. Most of these scholars are committed to the theology

42 A significant difference is that the Lutheran tradition says that wrongful marriages must cease, while Evangelicals warn against wrongful marriages but do not require that they cease.

43 Guy Duty, *Divorce & Remarriage* (Bethany Fellowship, 1967); Thomas R. Edgar, “Divorce & Remarriage for Adultery or Desertion,” in *Divorce and Remarriage: Four Christian Views*, ed. H. Wayne House (InterVarsity Press, 1990), 151–96; William A. Heth, “Jesus on Divorce: How My Mind Has Changed,” *The Southern Baptist Journal of Theology* 6, no. 1 (2002): 4–29; William A. Heth, “Remarriage for Adultery or Desertion,” in *Remarriage after Divorce in Today’s Church: 3 Views*, by Gordon J. Wenham, William A. Heth, and Craig S. Keener, ed. Mark L. Strauss, Counterpoints Series (Zondervan, 2006), 57–83.

44 David Instone-Brewer, *Divorce and Remarriage in the Church: Biblical Solutions for Pastoral Realities* (InterVarsity Press, 2003); David Instone-Brewer, *Divorce and Remarriage in the Bible: The Social and Literary Context* (W. B. Eerdmans, 2002); David Instone-Brewer, “1 Corinthians 7 in the Light of the Jewish Greek and Aramaic Marriage and Divorce Papyri,” *Tyndale Bulletin* 52, no. 2 (2001): 225–43; David Instone-Brewer, “1 Corinthians 7 in the Light of the Graeco-Roman Marriage and Divorce Papyri,” *Tyndale Bulletin* 52, no. 1 (2001): 101–15; Craig S. Keener, *And Marries Another: Divorce and Remarriage in the Teaching of the New Testament* (Hendrickson, 1991); Craig S. Keener, “Remarriage for Circumstances Beyond Adultery or Desertion,” in *Remarriage after Divorce in Today’s Church: 3 Views*, by Gordon J. Wenham, William A. Heth, and Craig S. Keener, ed. Mark L. Strauss, Counterpoints Series (Zondervan, 2006), 103–19; Andrew David Naselli, “What the New Testament Teaches About Divorce and Remarriage,” *Detroit Baptist Seminary Journal* 24 (2019): 3–44.

of the sixteenth-century Lutheran or Reformed Reformations in most respects, but not on divorce and remarriage.⁴⁵

DEFENSE OF THE REFORMATION VIEW ON DIVORCE AND REMARRIAGE

The classic Lutheran exegetes from Luther through Johann Gerhard make important contributions to the debate on divorce and remarriage, and they should be heard. They are similar and different with the various Evangelical/conservative Protestant positions in various ways. They articulate the principles of marriage, divorce, and the exceptions to the prohibition of divorce. They connect everything to the institution of marriage in Gn 2:24. They are governed and guided by Scripture alone, which is understood as internally consistent, the product of a single, divine Author. Therefore they reconcile apparent contradiction. They have the courage to apply biblical principles to practical cases; and they do not leave consciences in doubt. Yet since their civil laws differed from ours, not all of their advice and guidelines can be implemented. It is their exegesis and doctrine from which we can learn. The early Lutheran position should not be called “lax” or “permissive.” While they permitted divorce and remarriage in certain, specific situations, they were strict on whether the church can accept wrongful marriages, far more strict than most current Evangelical scholars, including those in favor of the no-remarriage pre-Reformation position.⁴⁶

OVERVIEW OF THE BOOK

This book is analytical and argumentative, though I hope it is also fair and kind. In it I analyze the meaning of Scripture, learn from old theological writings, consider arguments opposed to my position, and refute them. People looking for a light manual on how to deal with divorce and remarriage might not expect all of the analysis and argument. They will be tempted to skip straight to chapters 5 and 6. I hope they do not. The book builds from one chapter to the next. Chapters 1 and 2 are the foundation on which the rest is built. Chapter 3 applies chapters 1 and 2 to pastors. Chapter 4 takes the theological foundation of the first three chapters and develops an argument for ecclesiastical discernment and pastoral care in cases of divorce and remarriage. Only then can chapter 5 discuss

45 Andrew Cornes, *Divorce and Remarriage: Biblical Principles and Pastoral Practice*, 1st ed. (Hodder & Stoughton, 1993); William A. Heth, “Divorce, but No Remarriage,” in *Divorce and Remarriage: Four Christian Views*, ed. H. Wayne House (InterVarsity Press, 1990), 73–129; William A. Heth and Gordon J. Wenham, *Jesus and Divorce: The Problem with the Evangelical Consensus* (Thomas Nelson, 1985); Gordon J. Wenham, “No Remarriage After Divorce,” in *Remarriage after Divorce in Today’s Church: 3 Views*, by Gordon J. Wenham, William A. Heth, and Craig S. Keener, ed. Mark L. Strauss, Counterpoints Series (Zondervan, 2006), 17–42; and its most able advocate, A. Andrew Das, *Remarriage in Early Christianity* (Eerdmans, 2024).

46 See below, p. 64.

implementation and procedures. And only then, at long last, do the case studies in chapter 6 make any sense.

It is important to consider the theology and moral principles for marriage and divorce before proceeding to the practical chapters. In the same way, a builder needs a blueprint before building a house. A policeman needs laws before making an arrest. An entrepreneur needs a business plan before opening up for business. So also here, one must first have the principles straight before seeing how they apply to cases.

Throughout the book I use fictional names for example cases. I have decided to use ancient Roman names, such as Caius and Seia. I do this to acknowledge the history of case studies that use such names.⁴⁷ There is another benefit: the names are obviously fictional. I do not have to say every time that a given name is fictional. When I speak of Caius, Seia, Gracchus, Lucilla, and the like, these are immediately recognized as fictitious people.⁴⁸ Also, by using ancient Roman names, it is less likely that I would ascribe bad deeds to the name of a reader or a reader's friend or family member. I do not want bad deeds to come to mind when the reader thinks of "John" or "Jane" or "Bob" or "Grandma Schmidt."

Those bad deeds have wreaked havoc on families, on lives, and (as I have argued) on faith. Divorce in congregations has been divisive and confusing. Ignorance has led to inaction and self-centered, subjective judgment. In the USA, 2 percent of all marriages end in divorce *every year*. In 2015, 22 percent of women and 21 percent of men in the USA were divorced.⁴⁹ While divorce among regular church attenders is about half as likely as for the general US population,⁵⁰ the church should also be concerned about overall declining marriage rates.⁵¹ Where do we begin to put the brakes on this runaway train? Or how do we clean up after the train crashes?

The place to start is with the words of the Lord Jesus on marriage and divorce.

47 For example, Johann Gerhard, "De Conjugio," in *Loci Theologici Cum Pro Adstruenda Veritate Tum Pro Destruenda Quorumvis Contradictentium Falsitate Per Theses Nervose Solide Et Copiose Explicati*, ed. Ed. Preuss, vol. 7 (Berolini: Gust. Schlawitz, 1869), 207–9, §§ 353-356; Christian Friedrich Wolff, *Jus naturæ methodo scientifica pertractatum* (Halle: officina libraria Rengeriana, 1747), 421; Nicolaus Christoph von Lyncker, *Consilia seu responsa* (Jena: Baillar & Bielckius, 1704), 618.

48 Names ending in *-us* are male; names ending in *-a* are female.

49 Glenn T. Stanton, "What Is the Actual Divorce Rate?," Focus on the Family, Nov. 4, 2015, <https://www.focusonthefamily.com/marriage/what-is-the-actual-divorce-rate/>.

50 Daily Citizen Staff, "MythBuster: No, the Divorce Rate Is Not as High in the Church as the World," Daily Citizen, May 2, 2024, <https://dailycitizen.focusonthefamily.com/mythbuster-no-the-divorce-rate-is-not-as-high-in-the-church-as-the-world/>.

51 Zachary Mettler, "Marriage Rates Are Declining, But Christian Men and Women Still Very Likely to Get Married," Daily Citizen, Dec. 15, 2023, <https://dailycitizen.focusonthefamily.com/marriage-rates-are-declining-but-christian-men-and-women-still-very-likely-to-get-married/>.

CHAPTER 1

MARRIAGE, DIVORCE, AND REMARRIAGE IN THE SYNOPTIC GOSPELS

MARRIAGE IS ROOTED IN THE creation of Adam and Eve. God Himself brought our first parents together in marriage and commanded them to fill the earth and subdue it (Gn 1:27–28; 2:23–25). While this pattern of lifelong man-woman singular marriage was corrupted by sin, the Lord Jesus, the Son of God and Son of Mary, clarified the Creator’s will. Here we shall examine the words of the Lord on marriage, divorce, and remarriage in Matthew, Mark, and Luke. We shall argue that the classic Lutheran understanding of these passages is correct. Namely, while the original will of God in creation is for the lifelong marriage of one man and one woman, in the New Testament era He permits a spouse to divorce an adulterer and to remarry. But other kinds of divorces followed by marriage to a different spouse are not accepted by God and therefore should cease.

THE DEFINITION AND DUTIES OF MARRIAGE

What Marriage Is

According to Philip Melancthon, “Lawful marriage is the indissoluble union of one man and one woman, as established by God, in order that we may understand that God has a chaste mind and that we are to serve Him in chastity. In this way the human race is to be propagated and the eternal church gathered to God.”¹ It is not a sacrament,² but is instead a joining together and a way of life.

1 Philip Melancthon, *The Chief Theological Topics: Loci Praecipui Theologici 1559*, 2nd English ed., trans. Jacob A. O. Preus (Concordia Publishing House, 2011), 476.

2 See Ap XIII 14–15, in W. H. T. Dau and F. Bente, eds., *Triglot Concordia: The Symbolical Books of the Ev. Lutheran Church, German-Latin-English* (Concordia Publishing House, 1921), 311; Thomas M. Winger, *Ephesians*, Concordia Commentary (Concordia Publishing House, 2015), 620–22.

Christ's words in Mt 19:5–6 give a definition of marriage: "Have you not read . . . 'For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh'? So then, they are no longer two but one flesh. Therefore what God has joined together, let not man separate." According to Martin Chemnitz, these words mean: "Marriage is the legitimate, divinely instituted joining of one man and one woman, done with the consent of both, that they may help each other, produce offspring by God's blessing, and in this way find an honorable remedy against lusts."³ Here Chemnitz both defines marriage and gives its divinely instituted duties.

The Nature of Marriage

"For this reason a man shall leave his father and mother and be joined to his wife." But what is a "joining"? Johann Gerhard explains this by saying: "Nor is the question in this place about the divine institution of marriage, namely, whether it is a holy, divinely instituted order of life, in which pious spouses can live in a holy way, please God, and become partakers of eternal life, for we not only affirm this but also defend it with all our powers."⁴ That is, even though marriage is not a sacrament, it is a divinely established way of living that pleases God. Martin Luther calls it an "estate," that is, a rank, order, or way of living.⁵ The joining is the bringing together of husband and wife into this shared life.

The New Testament uses these terms for "marry": συζεύγνυμι (yoke together), γαμέω/γαμίζω (to marry, enter into marriage, said of either the man or woman), γαμίσκω/γαμίζω (to give in marriage, with the woman as the direct object), and γίνομαι ἀνδρί (to become [married or belonging] to a man).⁶ According to Mal 2:14–15, marriage is a covenant divinely established and

3 "Est enim conjugium legitima, & a Deo instituta unius viri, & unius foeminae conjunctio, facta cum utriusque consensu, ut se mutuo juvent, sobolem ex Dei benedictione progenerent, sicque honestum contra libidines remedium inveniant." Martin Chemnitz and Polycarp Leyser, *Harmonia Qvatuor Evangelistarvm* (Zacharias Hertel, 1652), 1:1353. See also Johann Gerhard, "De Conjugio," in *Loci Theologici Cum Pro Adstruenda Veritate Tum Pro Destruenda Quorumvis Contradicientium Falsitate Per Theses Nervose Solide Et Copiose Explicati*, ed. Ed. Preuss (Gust. Schlawitz, 1869), 7:466, § 708.

4 "Nec quaeritur hoc loco de divina conjugii institutione, an scilicet sit ordo vitae sanctus divinitus institutus, in quo pii conjuges sancte vivere, Deo placere et vitae aeternae participes fieri possint, id enim non solum affirmamus, sed etiam viribus omnibus defendimus" Gerhard, "De Conjugio," 8, § 14.

5 Kolb and Wengert render the word *Stand* ("estate") as "walk of life." Robert Kolb and Timothy J. Wengert, eds., *The Book of Concord: The Confessions of the Evangelical Lutheran Church* (Fortress Press, 2000), 414, LC I 211.

6 J. P. Louw and Eugene A. Nida, *Greek-English Lexicon of the New Testament: Based on Semantic Domains* (United Bible Societies, 1988), nos. 34.66–78.

ratified for the purposes of companionship, offspring, and raising children to be godly.⁷ According to Dt 7:3, it is often arranged by parents.

Marriage is a covenant or way of living. As a covenant or bond, it is in effect, or in force, or valid. One is in a marriage relationship or bound by the covenant of marriage. People are married or not married. Therefore it is probably best to avoid saying that a marriage “exists” or is “created,” since this kind of language could reify it and lead people to imagine that the marriage itself is a substance that is created, subsisting, or existing somewhere. The old Lutheran theologians (before the Enlightenment) speak of it as being divinely “instituted,” that is, established, taught, and commanded by God, but not “created.”

Annulment of Wrongful Marriages (Declaration of No Marriage)

In order for it to be a marriage that God has joined together, it must not conflict with God’s Word on the institution and conditions of marriage. If it was a “marriage” that conflicted with God’s word, that marriage should be annulled, that is, a public declaration should be made, stating clearly that in God’s eyes it never was a marriage. Annulment is not a case in which man separates what God has joined. Rather, with annulment the church shows that such a marriage, conflicting with the norm for marriage given by God, is not legitimate. Annulment is used when a wrongful marriage has been contracted in prohibited degrees of relationship (incest),⁸ if someone by nature is not capable of sexual intercourse (which is an essential end purpose of marriage), or if there is an error of person (e.g., like Jacob with Leah). These impediments do not separate a marriage that God has joined, but instead declare that God did not join it.⁹

7 Instone-Brewer points out that in the Old Testament, a covenant was essentially a contract. Thus “marriage contract” conveys the correct understanding of biblical marriage. David Instone-Brewer, *Divorce and Remarriage in the Bible: The Social and Literary Context* (Eerdmans, 2002), 17–18. While this is doubtlessly correct, one must add that there were various kinds of covenants/contracts, and the definition, duties, and termination of the marriage contract cannot be inferred from a general concept of covenant/contract. The specific divine words concerning marriage must be heard and followed, especially in those points where this marriage contract differs from other kinds of contracts.

8 Martin Chemnitz, *Examination of the Council of Trent*, trans. Fred Kramer (Concordia, 1978), 2:738. Most of the old Lutheran theologians argue that the prohibitions of Leviticus 18 pertain to natural law. Carl Ferdinand Wilhelm Walther, *American-Lutheran Pastoral Theology*, ed. David W. Loy, trans. Christian C. Tiewes (Concordia Publishing House, 2017), 240–50; Melanchthon, *The Chief Theological Topics*, 476–85; Martin Chemnitz, *Locorum Theologicorum . . . Pars Tertia* (Frankfurt: sumptibus haeredum D. Tobiae Mevii, & Elerdi Schumacheri, 1653), 199–215; Gerhard, “De Conjugio,” 143–91, §§ 239–324. Luther made an exception and accepted the marriage of a man to his brother’s widow. Luther, *Estate of Marriage* (1522), AE 45:22–24; WA 10/2:280–281; letter to Robert Barnes, Sept. 3, 1531, AE 50:34–36; WA Br 6:179–80.

9 Chemnitz and Leyser, *Harmonia Qvatuor Evangelistarvm*, 1:1352, on Mt 19:3–9.

By the command of the Lord Jesus, who rightly explains Gn 2:24, “the two shall become one flesh,” marriage should be between one man and one woman. Plural marriage (polygamy) is forbidden, even though it was tolerated in the Old Testament.¹⁰ Likewise, “marriages” of woman to woman or of man to man are not in accord with God’s will in Gn 2:24; thus such marriages are not really marriages at all. If people who have been in such marriages repent and want to join the church, the fruits of repentance (Mt 3:8; Lk 3:8) would include having these wrongful marriages annulled. That is, it needs to be declared publicly that the supposed “marriage” was no marriage at all.¹¹

Marriage Ends at Death

According to the reformers’ understanding of Scripture, three things can end a marriage: (1) death, (2) fornication as grounds for divorce, and (3) malicious desertion as the suffering of a divorce.¹² Death is the least problematic for English-speaking Christians. It is commonly recognized on the basis of Rom 7:2–3; 1 Cor 7:8–9, 39; and 1 Tm 5:14 that widows and widowers may remarry. Also in Mt 22:29, Christ was asked about a woman who had seven brothers successively as husband. Here he did not condemn the idea of repeated marriage.

Despite such clear testimony, the right of widows and widowers to remarry has not always been affirmed in church history. Some of the early church fathers before the Council of Nicaea (AD 325, the “ante-Nicene fathers”) denied this right, or treated remarried widows and widowers badly, such as by refusing to perform ecclesiastical weddings in these cases.¹³

10 Chemnitz and Leyser, *Harmonia Qvatuor Evangelistarvm*, 1:1352, on Mt 19:3–9; David A. Kind, “Polygamy and Its Contemporary Variations in Biblical Perspective,” in *Ethics of Sex: From Taboo to Delight*, ed. Gifford A. Grobien (Concordia Publishing House, 2017); Daniel R. Heimbach, *True Sexual Morality: Recovering Biblical Standards for a Culture in Crisis* (Crossway Books, 2004), 216–19; Walther, *Pastoral Theology*, 265; Franz Pieper, “Ein Gutachten des seligen D. F. Pieper ueber Polygamie,” *Concordia Theological Monthly* 7, no. 11 (1936): 816–24. Willard Burce discusses several issues related to polygamy in his experience as a missionary in New Guinea. Willard Burce, “Polygamy and the Church,” *Concordia Theological Monthly* 34, no. 4 (1963): 223–32. Martin Luther thought polygamy was impermissible for Christians, but he did not consider the polygamy of Old Testament believers to be sin. Nathan R. Jastram, “Luther’s Authentic Voice on Polygamy,” *Concordia Theological Journal* 3 (2015–16): 11–36. On Luther’s disastrous advice to Philip of Hesse regarding polygamy, see Martin Brecht, *Martin Luther* (Fortress, 1993), 3:205–9.

11 If such marriages have been sanctioned by the state, then they would also need to be dissolved through a civil divorce.

12 For (2) see below, p. 39. For (3), see chapter 2.

13 See Gerhard, “De Conjugio,” 104–13, §§ 178–193.

Duties of Marriage

As for the divinely established duties of marriage, some have already been mentioned. Gerhard shows that the duties are based in Gn 2:24: “Therefore a man shall leave his father and mother and be joined to his wife, and they shall become one flesh.” For Gerhard, this is the “promulgation of the matrimonial law.”¹⁴ This law requires: (1) Leaving father and mother. This does not mean breaking of filial-parental relationship and love, which is unbreakable. It refers to the greatness of conjugal love, and to cohabitation and undivided “sharing of life.”¹⁵ (2) Gn 2:24 requires the “mutual joining of spouses.”¹⁶ This explains by way of apposition what is meant by the leaving of father and mother. “Therefore this phrase expresses the closest and indissoluble bond between spouses, which includes the undivided society of life.”¹⁷ Gerhard later gives a complete listing of the purposes of marriage. The end purpose of marriage is either general, remote, and supreme; or it is specific, proximate, and intermediate.

1. The general, remote, and supreme end purpose is the glory of God.
2. The specific, proximate, and intermediate end purpose of marriage is the good of the spouses themselves, which overflows to the well-being of the church and the commonwealth. This end purpose is either proper or accessory.
 - a. The proper end purpose is that which existed at the creation of marriage. This is either principal or non-principal.
 - i. The principal proper end purpose is first the procreation of offspring, and then “providing for the family society and mutual aid in things both divine and human.”¹⁸
 - ii. The non-principal proper end purpose is “prefiguring the love and joining between Christ and the Church.”¹⁹

14 “Legis matrimonialis promulgatio.” Gerhard, “De Conjugio,” 34, § 45.

15 “vitae consortio.” Gerhard, “De Conjugio,” 35, § 45.

16 “Mutua conjugum adhaesio.” Gerhard, “De Conjugio,” 35, § 45.

17 “Exprimitur igitur hac voce arctissimum et indissolubile vinculum inter conjuges, quod individuum vitae societatem complectitur.” Gerhard, “De Conjugio,” 35, § 45.

18 “familiaris societatis ac mutui auxilii in rebus tum divinis, tum humanis comparatio.” Gerhard, “De Conjugio,” 243, 246, 247, §§ 418, 419, 421.

19 “amoris et conjunctionis inter Christum et ecclesiam praefiguratio.” Gerhard, “De Conjugio,” 243, 249, §§ 418, 423.

- b. The accessory end purpose is that which was added after the fall into sin, namely, “avoiding fornication and preserving chastity.”²⁰ Gerhard finds this not just in 1 Corinthians 7 but also in Genesis.

It should be noted that most of these end purposes also denote duties of the spouses themselves. They themselves are supposed to procreate, give mutual aid in divine and human matters, prefigure the love and unity of Christ and the church, and avoid unchastity.

The wedding rite of *Lutheran Service Book* gives a good summary of the nature and purposes of marriage. It is a covenant between a man and a woman, established by God, which is not supposed to be broken (Mal 2:14–15; Mt 19:6; Mk 10:9). Its purposes include union in heart, body, and mind (Gn 2:24–25); mutual companionship, help, and support (Gn 2:18; Mal 2:14–15; cf. Ex 21:10; 1 Cor 7:32–34); delight in one another (Gn 2:24; cf. Ex 21:10); a remedy against unchastity (1 Cor 7:2–5; cf. Ex 21:10)²¹; procreation of children, and bringing them up in the fear and admonition of the Lord (Gn 1:28; Mal 2:14–15; Eph 6:4); and being a picture of the relationship of Christ and the church (Eph 5:32).²²

One of the end purposes is the duty of sexual intercourse between a husband and wife. Luther in the Large Catechism I 211–212 speaks of this as a remedy for unchastity. Friedrich Balduin gives more detail on the basis of 1 Corinthians 7. “The end purpose of marriage is double: one is primary, namely, the procreation of offspring, from which come the preservation and propagation of the family, commonwealth, and church. The other is secondary, namely, the avoidance of fornication, which purpose is mentioned by the apostle Paul in [1 Cor 7:]2.”²³ That is, Paul commands marriage as the permissible outlet for sexual intercourse. This duty and right of sexual intercourse belongs equally to the husband and the wife. Despite the wife’s role as submitting to the husband in the marriage relationship (clear from Eph 5:24 and elsewhere), in the duty and right of sexual intercourse, husband and wife are equal. “The right of the spouses is equal with

20 “scortationis evitatio et castitatis conservatio.” Gerhard, “De Conjugio,” 243, 250, §§ 418, 425. All these duties, except the glory of God, are also listed in the rite of marriage in The Commission on Worship of The Lutheran Church—Missouri Synod, ed., *Lutheran Service Book* (Concordia Publishing House, 2006), 275.

21 See also LC I 211–212.

22 The Commission on Worship of The Lutheran Church—Missouri Synod, *Lutheran Service Book*, 275.

23 “4. Finis conjugij duplex est, unus primarius, procreatio nimirum sobolis, unde conservatio ac propagatio familiae, Reipublicae & Ecclesiae. Alter secundarius, nimirum vitatio scortationis: quem finem hic tangit Apostolus Paulus, v. 2.” Friedrich Balduin, *Commentarius In Omnes Epistolas Beati Apostoli Pauli* (Frankfurt: Mevius, 1654), 371; see also 359–60.

regard to the bed, but unequal with regard to the house.”²⁴ This obligation is based on the institution of spouses, because the man and wife are one flesh; therefore the man has power toward the body of the wife, and the wife likewise has power toward the body of the man, because the spouses have promised the mutual use of their body to each other.²⁵ Christian husbands and wives, of course, will be considerate of the will and well-being of their spouses; this right is not one to be demanded selfishly, but in accord with the purposes for which God gave it (1 Cor 7:1–5; Gn 1:28; 1 Pt 3:1–7).

One Flesh

Gerhard speaks of sexual intercourse chastely as the “joining into one flesh.”²⁶ The old Lutheran theologians identify several meanings of “one flesh,” and most of them deal with the divinely established duties of marriage.²⁷ For Gerhard, husband and wife are called “one flesh” because between them there is: “1. a joining of minds . . . 2. a joining of bodies . . . 3. a joining of families . . . 4. a joining of patrimonies and property . . . 5. a joining of blood relations and in-law relations . . . 6. a joining of children.”²⁸

Now while “one flesh” describes what marriage includes, the classic Lutheran theologians do not view it as a description of how marriage is entered or begun. To be more precise, premarital sexual intercourse (fornication) does not, on its own, bring about a marriage.²⁹ What brings about marriage is the public consent of bride and groom.³⁰ Becoming “one flesh” sexually (1 Cor 6:16) does not by itself constitute marriage, since marriage is a divinely established covenant in which husband and wife promise to be faithful to each other for life (Mal 2:14–15). Sexually being “one flesh” is reserved by God for married people. It is not the act of entering the covenant of marriage, but is the end purpose of marriage.³¹

24 “Jus aequale conjugum est, quo ad torum, licet inaequale, quo ad domum.” Balduin, *In Omnes Epistolas Pauli*, 371.

25 Balduin, *In Omnes Epistolas Pauli*, 360.

26 Gerhard, “De Conjugio,” 35, § 45.

27 Chemnitz and Leyser, *Harmonia Qvatuor Evangelistarvm*, 1:1353, on Mt 19:3–9.

28 “1. conjunctio animorum . . . 2. conjunctio corporum . . . 3. conjunctio familiarum . . . 4. conjunctio patrimoniorum ac bonorum . . . 5. conjunctio consanguinitatum et affinitatum . . . 6. conjunctio liberorum.” Gerhard, “De Conjugio,” 35, § 46.

29 Chemnitz and Leyser, *Harmonia Qvatuor Evangelistarvm*, 1:1353, on Mt 19:3–9.

30 Balduin, *In Omnes Epistolas Pauli*, 373; Gerhard, “De Conjugio,” 252, § 426; Jeffrey A. Gibbs, *Matthew 11:2–20:34*, Concordia Commentary (Concordia Publishing House, 2010), 944; Commission on Theology and Church Relations [CTCR] of The Lutheran Church—Missouri Synod, *Human Sexuality: A Theological Perspective* (The Lutheran Church—Missouri Synod, 1981), 10.

31 See the definitions of marriage above, p. 25.