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CHAPTER 1

HISTORICAL PERSPECTIVE ON DIVORCE AND REMARRIAGE

I. The Westminster Confession on Divorce and Remarriage

The 16th General Assembly (1988) of the Presbyterian Church in America appointed a study committee to reexamine the biblical teaching on divorce and remarriage and to ask whether the Westminster Confession of Faith is more lax or more strict than Scripture on this issue and to propose any revisions deemed appropriate.¹

The assertions of the Confession to be queried are the following:

In the case of adultery after marriage, it is lawful for the innocent party to sue out a divorce: and after the divorce to marry another, as if the offending party were dead. (24.5)

Although the corruption of man be such as is apt to study arguments unduly to put asunder those whom God hath joined together in marriage, yet, nothing but adultery, or such wilful desertion as can no way be remedied by the church, or civil magistrate, is cause sufficient of dissolving the bond of marriage. (24.6)

It is not the first time in this century that the teaching of the Confession on divorce has been reviewed by an American Presbyterian church body. The Presbyterian Church in the U.S. A. in 1953 adopted a revised chapter on marriage and divorce, and the Presbyterian Church in the U.S. followed with a revision of its own in 1959. The latter was subsequently adopted by the Evangelical Presbyterian Church in 1984; it is currently being reviewed by that church's standing committee on theology at the request of the 9th General Assembly (1989).

Is the Confession too strict or too lax? Or is it just right? The mid-century studies cited above apparently found it too strict, but more recently it has come under attack by some evangelicals for being too lax. William Heth and Gordon Wenham in particular are critical of the Westminster position, which they call "the Erasmian view" inasmuch as "the exegetical tradition started by Erasmus and amplified by Luther and the other Reformers was confirmed by the above sections [24.5-6] in this Confession of Faith."²

¹ *Minutes of the Sixteenth General Assembly of the Presbyterian Church in America*, 1988, p. 41.

² William A. Heth and Gordon J. Wenham, *Jesus and Divorce: The Problem with the Evangelical Consensus*, Nashville, 1984, p. 83. The Westminster position is also implicitly criticized by J. Carl Laney in *The Divorce Myth: A Biblical Examination of Divorce and Remarriage*, Minneapolis, 1981.

II. The Witness of the Early Church

The Heth-Wenham thesis is that Erasmus departed from the uniform teaching of the early church that remarriage following divorce for any reason was adulterous, a view which they defend as exegetically sound. It may be noted here that what they call "the early church view" is more accurately "the final Augustinian view". As late as 413 Augustine wrote: "Nor is it clear from Scripture whether a man who has left his wife because of adultery, which he is certainly permitted to do, is himself an adulterer if he marries again. And if he should, I do not think that he would commit a grave sin." ³ Augustine's definitive position according to which such a man would be an adulterer appears six years later in *DE Conjugliis adulterinis*. ⁴

It is by no means certain that Heth and Wenham adequately represent the teaching of the early church. According to Jesuit scholar Theodore Mackin in his massive *Divorce and Remarriage*, "Christian writers on the subject of adultery, divorce and remarriage, beginning in the middle of the second century and continuing at least until Augustine...never call the following persons adulterers: (1) A husband who remarries after dismissing an adulterous wife. (2) A husband who remarries after being abandoned by his wife. (3) A woman who marries a man in either of these two cases." ⁵

Moreover, the Augustinian view was never adopted by the Eastern churches, all of which permitted divorce and remarriage. Mackin summarizes the discipline of the Byzantine Church in the thirteenth century as follows:

When a marriage is indissoluble this comes of its being a sacramental marriage of two Christians. But even this indissolubility yields to divine dispensation as this was expressed by Christ in the exceptive clause recorded in Matthew 5:32 and 19:9...In the circumstances envisioned by the Matthean passages the Church was thought to be authorized to separate the spouses, to dissolve their marriage in the name of and by the authority of God . . . *Porneia* in the exceptive clause was taken to designate adultery; dismissal was taken to designate the dissolution of the marriage.

But the adultery warranting dismissal and dissolution was understood to be not the only cause, but to be only a sample and a point of departure for other and equivalent causes. It was taken as self-evident that other crimes are possible to spouses that injure their marriages with equal or greater severity. Abortion and attempted murder of the spouse were only two of these. ⁶

³ Augustine, *On Faith and Works*, trans. Gregory J. Lombardo, New York, 1988, ch. 19 (35) p. 43.

⁴ *Ibid*, note 198, p. 98.

⁵ Theodore Mackin, *Divorce and Remarriage*, New York, 1984, p. 172

⁶ *Ibid*, p. 373.

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The historic difference between the Roman Catholic and the Eastern Orthodox churches on the doctrine of divorce persists down to the present day.⁷ Thus, while Erasmus should be given his due for his exegetical contribution to the discussion, to label the view which permits remarriage following divorce for just cause "Erasmian" is misleading.

In any case, of more immediate concern than the question of historical antecedents is the question of what the Confession actually teaches, especially with respect to "desertion" as a second ground for divorce alongside adultery. To judge whether the Westminster position is too strict or too lax, we must first determine what it is. This may not be entirely simple.

III. The Original Intent of the Confession

It is a sound principle that constitutional documents should be interpreted according to their original intent. For creeds and confessions to function as subordinate norms, they must be read according to the grammatico-historical method of interpretation. Confessional subscription is not to anything the words can be taken to mean, but rather to the *discourse meaning* of the text.⁸

The Westminster divines took up the question of marriage and divorce in 1646, the year the Confession was completed (apart from the proof texts requested by Parliament). The minutes record the following actions. The committee assignment was made February 23. The report on marriage was presented June 17 and debated August 3-4. The report on divorce was presented August 10 and debated September 10-11. The proposed chapter "Of Marriage and Divorce" as a whole was debated November 9, and the section on wilful desertion was recommitted. The committee reported back the next day, and, following further debate on wilful desertion, the Assembly on November 11 adopted the chapter "Of Marriage and Divorce" as we now know it.⁹

It is of interest that none of the antecedent Reformed confessions in the British Isles -- neither the Scots Confession (1560) nor the Thirty-Nine Articles of the Church of England (1563) nor the Irish Articles of Religion (1615) - include a statement on

⁷ Cf. Gregor Larentzakis, "Marriage, Divorce and Remarriage in the Orthodox Church," *Theology Digest* 26 (1978) pp. 232-234. The *discipline* of the Roman Catholic church is another matter. See Joseph P. Zwack, *Annulment Your Chance to Remarry within the Catholic Church*, New York, 1983.

⁸ The term *discourse meaning* points us back to the event of the utterance or act of writing which is contextually informed and determinative for meaning". Peter Cotterell and Max Turner, *Linguistics and Biblical Interpretation*, Downers Grove, Illinois, 1989, p. 69.

⁹ *Minutes of the Session of the Westminster Assembly of Divines*, ed. Alexander F. Mitchell and John Struthers, Edinburgh, 1976, pp. 190, 244, 262-264, 266, 279-280, 299, 300. Unfortunately, George Gillespie's fuller *Notes of Debates and Proceedings of the Assembly of Divines and Other Commissioners at Westminster*, Edinburgh, 1846, records only from February 1644 to January 1645. Similarly, John Lightfoot's *Journal of the Proceedings of the Assembly of Divines* is limited to the calendar years 1643-1644.

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divorce, and the articles on marriage in the latter two documents focus narrowly on the question of a celibate clergy. According to the Thirty-Nine Articles:

Bishops, priests, and deacons are not commanded by God's law either to vow the estate of single life or to abstain from marriage. Therefore it is lawful also for them, as for all other Christian men, to marry at their own discretion as they shall judge the same to serve better to godliness. (32)

The parallel affirmation in the Irish Articles of Religion is only slightly broader.

For the preservation of the chastity of men's persons, wedlock is commanded unto all men that stand in need thereof. Neither is there any prohibition by the Word of God but that the ministers of the Church may enter into the state of matrimony: they being nowhere commanded by God's law ...[remainder repeats the Thirty-Nine Articles verbatim]. (64)

Taking into account also the Reformed confessions on the continent, the only Reformed creed to contain any reference to divorce prior to the Westminster Confession is the First Helvetic Confession (1536), which in its teaching on marriage includes a word for the civil government:

We contend that marriage has been instituted and prescribed by God for all men who are qualified and fit for it and who have not otherwise been called by God to live a chaste life outside marriage. No order or state is so holy and honorable that marriage would be opposed to it and should be forbidden. Since such marriages should be confirmed in the presence of the Church by a public exhortation and vow in keeping with its dignity, the *government* should also respect it and see to it that a marriage is legally and decently entered into and given legal and honorable recognition, *and is not lightly dissolved without serious and legitimate grounds* (27); emphasis added.¹⁰

Although the Westminster articles on divorce are without confessional precedent in the Reformed churches, they are understandable given the historical circumstances of the Westminster Assembly. By the Solemn League and Covenant (1643) both Assembly and Parliament were sworn to preserve and extend "the reformed religion" and to "endeavor to bring the Churches of God in the three kingdoms [Scotland, England, and Ireland] to the nearest conjunction and uniformity in [that] religion" (1st vow). As its dual title indicates, the Solemn League and Covenant was a political instrument as well as a religious commitment. At its heart lay "the conviction that the unity of a society inheres in its religion and church."¹¹

¹⁰ The Second Helvetic Confession (1566), although silent on divorce, is unique in making this proposal: "Let lawful courts be established in the Church, and holy judges who may care for marriages, and may repress all unchastity and shamefulness, and before whom matrimonial disputes may be settled." (29)

¹¹ John H. Leith, *Assembly at Westminster: Reformed Theology in the Making*, Richmond, 1973, p. 59.

Given the conception of a religiously unified society and the intimate connection between church and state that obtains under such circumstances, it is not surprising to find the social institution of marriage among the articles of religion addressed by the Westminster Confession. The Assembly no doubt judged that the unity of both church and society would be well-served by a confessional exposition of the doctrine of marriage, including the biblical grounds for its dissolution, a controversial issue in 17th century Britain.¹² The Scottish Parliament, already in 1573, had enacted legislation which allowed divorce for desertion.¹³ With Anglo-catholics, on the one hand, still arguing that marriage was indissoluble, and Milton, on the other, lobbying for divorce on grounds of incompatibility, the question could hardly be ignored as it was bound to have an effect on the civil law.¹⁴

As it turned out, Parliament did not take the "humble advice" of its assembled divines on this issue but omitted the paragraphs on divorce in its authorized edition of the Confession published in 1648. The Savoy Declaration (1658) also chose to do without them, so it has fallen to the Presbyterian churches to wrestle with their confessional status.

Between the rigorous Anglican view and the relaxed view of Milton the Westminster position on divorce might seem to be a golden mean, but it was not adopted for any reason other than that it was believed to be biblical.

IV. The Views of Three Prominent Puritan Divines

A. William Perkins (1558-1602)

Remarriage following divorce for adultery had long been permitted by English Puritan divines. The exegesis of the exceptive clause in Matthew given by William Perkins (1558-1602) is typical:

By *fornication*, Christ meaneth not every sin of that kind, but only the sin of *adultery*; or that which is greater in that kind, namely *incest*... The exception belongs to the whole answer of our savior Christ, denying

¹² Cf. James Turner Johnson, *A Society Ordained by God: English Puritan Marriage Doctrine in the First Half of the Seventeenth Century*, Nashville, 1970. A useful discussion, but unaccountably it does not include the Westminster Confession.

¹³ *Marriage and Divorce: A Report of the Study Panel of the Free Church of Scotland*, Edinburgh, 1988, p. 28. "These two causes for the termination of marriage [adultery and desertion] ... remained the only two grounds for divorce in Scotland until 1938 when cruelty, incurable insanity, sodomy and bestiality were added by Act of Parliament" (p. 28). More radical legislation was enacted in 1976 and 1977 (p. 5).

¹⁴ John Milton, *The Doctrine and Discipline of Divorce: Restor'd to the Good of Both Sexes from the Bondage of Canon Law and Other Mistakes ... to the Parliament of England with the [Westminster] Assembly*, 2nd ed., London, 1644. The 1st edition was published in 1643; both editions, along with Milton's other divorce tracts, are included in *Complete Prose Works of John Milton*, vol. 2, 1643-1648, ed. Ernest Sirluck, New Haven, 1959.

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divorce, save only for adultery; and permitting no marriage after divorcement, save only where divorce is for adultery. ¹⁵

Although he is expounding the Sermon on the Mount, Perkins brings in I Corinthians 7:15. Desertion of a believer by an unbeliever is not viewed as a second *ground* for divorce, but it is nevertheless another circumstance which results in the dissolution of the marriage.

The malicious or wilfull departing of the unbeliever, doth dissolve the marriage; but that is no cause of giving a bill of divorce: only adultery causeth that. Here the believer is a mere patient, and the divorce is made by the unbeliever, who unjustly forsaketh, and so puts away the other. ¹⁶

With respect to I Corinthians 7:10-11, where both marriage partners are believers, Perkins says: "The Apostle speaketh of departure, and putting away, for other causes than adultery; as for hatred, dislike, etc., which indeed are not sufficient causes of divorce, and therefore they that separate thereupon, ought not to marry."¹⁷

Perkins' *definitive* treatment of desertion is found in his *Christian Oeconomie*. He begins with a definition: "Desertion is when one of the married folks upon a wilful and obstinate mind of their own head departeth from the other without a just and necessary cause." ¹⁸ He then discusses "sundry cases".

Case 1: "Suppose that an husband which is an unbeliever or a heretic in the foundation, of his own accord, upon detestation of true religion, quite forsakes the believing wife, and denies any more to dwell with her: what is to be done?" The answer is relatively straightforward: "All good means must be used to bring the infected [sic] party to repentance; and when none will succeed, but the case remaineth desperate, then marriage is dissolved on his part, and the believing wife is free to marry another." ¹⁹

Case 2: "What if there fall out a desertion between two married folks, which are both believers?" The answer here is more complicated:

The faulty person, who is the cause of his desertion, is to be forced by course of civil, and ecclesiastical censure to perform his, or her duty. Upon which

¹⁵ William Perkins, *A Godly and Learned Exposition of Christ's Sermon on the Mount: Preached in Cambridge by that Reverend and Judicious Divine M. William Perkins. Workes*, Cambridge, 1618, vol. 3, p. 69. Perkins specifically rejects contagious and incurable disease and attempted murder as grounds for divorce.

¹⁶ *Ibid.*

¹⁷ *Ibid.*, pp. 70-71.

¹⁸ William Perkins, *Christian Oeconomie: Or, A Short Survey of the Right Manner of Erecting and Ordering a Family According to the Scriptures*, trans. Thomas Pickering. *Workes*, Cambridge, 1618, vol. 3, p. 687.

¹⁹ *Ibid.*

proceeding if he remain obstinate and perverse in will; the other must in patience, and earnest prayer unto God, wait the time, until his mind may be changed, and he be made to relent by the order of the Magistrate. But if one of them, by just occasion of fear, be compelled to depart from the other: and cannot return again without apparent danger of life; in this case they are not bound to return; but the delinquent party is to remain solitary, till they be instructed and made willing to do their duties: and in the meanwhile, the party innocent must be resolved that God hath called him or her to a single life.

Again, be it that the one is resolutely unwilling to dwell with the other, and thereupon flies away without any fault of the other: if the thing after a long space be sufficiently known before-hand, and all probable means have been used, to reclaim the guilty person; yea, being called he doth not personally appear before the judge, to yield a reason of the fact; after public and solemn declarations made, *the Minister upon such desertion may pronounce the marriage to be dissolved.* For he that upon malice flieth away from his mate, is to be holden in the same terms as with an unbeliever, who departs upon detestation of religion, and the service of God, I Timothy 5:8.²⁰

Although the deserting partner in this instance is a professed believer, his or her malicious abandonment of a Christian marriage puts the deserter in the category of an unbeliever so far as the question of dissolution is concerned. Perkins does not say that a sentence of excommunication must precede the pronouncement of dissolution, though such apparently was required by an Act of the Scottish Parliament in 1573 allowing divorce on grounds of desertion.²¹

Perkins next takes up "malicious dealing" as a sub-category of desertion. Although it follows Case 2 (Christian marriages), it is actually a refinement of Case 1 (mixed marriages). Once again he begins with a definition:

Like unto *desertion* is malicious and spiteful dealing of married folks one with the other. *Malicious dealing* is, when dwelling together, they require of each other intolerable conditions ... Here it may be demanded, what a believer should do, who is in certain and imminent danger, either of loss of life, or breach of conscience, if they both abide together.

If [this danger is] from a stranger, then the husband either takes upon him the defence of his believing wife, or not; if he doth, then she ought to abide with him. If not, she may depart and provide for her own safety. Again, if the husband

²⁰ *Ibid*, pp. 687-688; emphasis added.

²¹ According to the study panel of the Free Church of Scotland cited earlier: "The procedure required by the Act was surprisingly elaborate: the civil authorities were to make every effort to apprehend the deserter and oblige him to return to his wife and home; if they failed, they were to declare him an outlaw. They were then to notify the ecclesiastical authorities who, if also unsuccessful, were to excommunicate him. The marriage could be ended by divorce provided the deserted spouse had always shown willingness 'to adhere' ... i.e. to have the deserter back and to continue the marriage." *Marriage and Divorce*, p. 39.

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threateneth hurt, the believing wife may flie in this case; and it is all one, as if the unbelieving man should depart. For to depart from one, and drive one away by threat, are equipollent.²²

Perkins is aware that this goes beyond the strict terms of I Corinthians 7:15 and anticipates an objection: "It is alleged, that if this be so, then the believing wife forsakes the unbelieving husband, which she may not do." He answers: "She forsakes him not finally, but leaves him for a time. Again, the desertion is not made by the person, which giveth place for the time, but by him in whom is the cause of the desertion."²³

By introducing the category of "malicious dealing" Perkins shows his willingness to draw inferences from the biblical text in order to make application to additional circumstances not directly addressed in Scripture. In this instance, however, he appears to have fallen short of drawing out the full implications of this position. Although "malicious dealing" is like wilful desertion to the point of being "equipollent", it nevertheless justifies only temporary separation of a believer from an unbeliever, not full divorce. The remaining question is whether Perkins would countenance divorce by the innocent party should the malicious dealing continue and the temporary separation, of necessity, continue indefinitely.²⁴

²² *Christian Oeconomie*, p. 688. The *Oxford English Dictionary* defines 'equipollent' as follows: "A. adj. 3. c. propositions which express the same thing, notwithstanding formal diversity . . . B. an equivalent."

²³ *Ibid.*

²⁴ J. I. Packer judges Perkins to have permitted divorce *and* remarriage to the innocent spouse in the case of desertion and that desertion was understood by him 'to cover all behavior that nullified the matrimonial relationship in practice', such as the imposition of intolerable conditions. He further links Perkins' view with that already developed by some of the continental reformers and suggests that 'most' Puritans followed Perkins in these opinions. *A Quest for Godliness: The Puritan Vision of the Christian Life*, Wheaton, 1990, p. 269.

This interpretation of Perkins has been sharply criticized by D. Lachman in "Divorce Reconsidered," *The Presbyterian Advocate*, vol. 1., No. 5 (May-June 1991) pp. 1, 17-20). Dr. Lachman understands Perkins to mean that only actual physical abandonment of house and home constitutes such desertion as may justify the eventual dissolution of a marriage. Separations necessary to ensure the safety of a victimized spouse, contrarily, are of a different kind and never justify such a dissolution, even if the spouses never again cohabit. This reading of Perkins is possible, but the committee is not persuaded that this is certainly his meaning. In speaking of such desertions Perkins does indeed say that 'in the meanwhile, the party innocent must be resolved that God hath called him or her to a single life.' But he then immediately proceeds to say that if the deserter proves 'resolutely unwilling' after all means have been exhausted, the marriage may be dissolved. The question is whether, in the last instance, Perkins is speaking only of a departing spouse or also of an abusive one. The committee wonders whether Dr. Lachman has given sufficient weight to Perkins' acknowledgment that 'to depart from one, and drive away by threats, are equipollent.' If an abusive spouse is thus a deserter, has not the way been opened to consider unremedied physical cruelty as a form of desertion with 'equipollent' consequences. Dr. Lachman also cites Andrew Willet. While Willet does not deal specifically with the question here at issue, he does, in a section not cited in Dr. Lachman's article, claim general agreement with Beza who, as we note below, takes the position Dr. Lachman is here rejecting.

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Case 3: "When the husband is perpetually absent from the wife, what is to be done?" Wilful absenteeism, which is often the modern meaning of "desertion" in marriage contexts, is placed under the principles already discussed by Perkins. This is another example of this esteemed Puritan theologian's ability to apply the Word of God as circumstances require.

B. William Gouge (1575-1653)

Of the Westminster divines who published works on marriage, the most important is William Gouge who chaired the Assembly's committee on divorce. Gouge's *Domesticall Duties* first appeared in 1622; a second and third edition followed in 1626 and 1634. His position on grounds for divorce is succinctly stated in opposition to "the error of the papists": "Concerning *adultery*, we deny not, but that it giveth just cause of divorce: but withall we say (as we have good warrant from Christ's words) that it is the only cause of just divorce".²⁵

Although adultery provides just cause for divorce, it does not in itself dissolve the marriage. On the question of pardoning adultery upon repentance of the guilty party Gouge counsels, "Though it be not meet in this case to impose it as an inviolable law upon the innocent party to retain the delinquent because of repentance (for we have no direct and strict warrant for it) yet I doubt not but they may so do, if they will, and that without just exception to the contrary they ought so to do."²⁶

The second treatise devotes a section to desertion, which begins with a rather wordy definition:

The vice contrary to matrimonial unity is *desertion*, when one of the married couple through indignation of the true religion, and utter detestation thereof, or some other cause, shall apparently renounce all matrimonial unity, and withdraw him or herself from all society with the other, and live among infidels, idolaters, heretics, or other such persecutors, as a faithful Christian with safety of life, or a good conscience, cannot abide among, and though all good means that can be thought to be used to reclaim the party so departed, yet nothing will prevail, but obstinately persisteth in renouncing all matrimonial fellowship.²⁷

This does not mean, as Perkins taught, that the innocent party is free to remarry. Citing I Corinthians 7:15 ("A brother or a sister is not under bondage in such cases") Gouge comments, "By bondage he meaneth matrimonial subjection (by reason whereof neither of the married persons have power of their own body, but one of the others)." In other words, the innocent party is free from the obligation of conjugal relations and need not seek after the delinquent party; yet the marriage is not wholly dissolved.

²⁵ William Gouge, *Of Domesticall Duties Eight Treatises*, 3rd ed., London, 1634, vol II, ii, P. 16.

²⁶ *Ibid*, p. 6.

²⁷ *Ibid*, p. 3.

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Gouge is aware of other Reformed interpretations of the Pauline release, but he does not feel it is incumbent upon him to deal with the exegesis because the problem is remote.

In many reformed Churches beyond the seas desertion is accounted so far to dissolve the very bond of marriage, as liberty is given to the party forsaken to marry another; and it is also applied to other cases than that which is above mentioned: as when an infidel, idolater, or heretic shall depart from one of the true religion for other causes than hatred of religion: or when both man and wife having lived [sic] as idolaters among idolaters, one of them being converted to the true faith, leaveth his abode among idolaters, and goeth to the professors of the true faith, but can by no means get the other party to remove: or where one of the true religion shall depart from another of the same profession, and will by no means be brought to live with the party so left, but openly manifesteth peremptory obstancy [sic]; the matter being heard and adjudged by the magistrate, the marriage bond may be broken; and liberty given to the party forsaken to marry another. *But because our church hath no such customs, nor our law determined such cases, I leave them to the custom of other churches.*²⁸

One could wish that Gouge had published a post-Assembly volume on *How My Mind Has Changed*. Perhaps the Scottish commissioners pointed out that divorce for desertion not only had the approval of Reformed churches beyond the seas but also parliamentary authorization (since 1573) in one of the three island kingdoms now in solemn league and covenant.

C. William Ames (1576-1633)

Further it is of considerable importance to note that among other English Puritans not only could support be found for the opinion that divorce for desertion conferred the right of remarriage upon the innocent party, but apparently also for the opinion that this desertion could occur as well by the imposition of intolerable conditions as by actual departure. William Ames, certainly a representative Puritan Divine (one English edition of his celebrated *Marrow of Divinity* was printed 'by order from the honorable House of Commons'), speaks to the question in his *Conscience with the Power and Cases Thereof*.²⁹ After first affirming the indissolubility of marriage, he begins his discussion of divorce.

A.3. Neverthelesse, it is not so indissoluble, but that upon such cause, as God approveth to bee just it may be dissolved. For that indissolubility was not instituted for the punishment, but the comfort of the innocent and doth admit some exception, in which God ceaseth to joyne them. Matthew 19:6, 9.

A.4. "There is not any just cause of making, a divorce approved in Scriptures, besides adultery and the like horrid impurities, whereby it comes to passe, that two

²⁸ *Ibid*; emphasis added.

²⁹ ET: 1639, pp. 208-209.

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remaine no longer one flesh but divided; and so the faith of Wedlock, is directly violated; Matthew 5:31 and 19:9.

After ruling out contagious disease as a ground of divorce in the following paragraph, he takes up desertion.

A.6. 'An obstinate desertion, although in the party deserting, it containeth no just cause of making a divorce, yet it makes a faire cause for the party deserted, after the triall of all other meanes in vaine, to suffer a divorce, I Corinthians 7:15.

A.7. 'A voluntary and spontaneous absence, if it bee beyond the time appointed and continued by deceit, is of the same nature, with a professed desertion.

A.8. 'The great danger, which one party may bee in by the cruelty of the other, or by any other manifest meanes of cohabitation [sive aliunde manifesto emineat ex cohabitatione], may bee just cause of retiring for a time, so to provide for his owne safety and security, but not for an absolute desertion, unlesse first hee bee deserted. For if one party drive away the other with great fierceness and cruelty, there is cause of desertion, and hee is to bee reputed the deserter. But if hee obstinately neglect, that necessary departure of the other avoyding the eminent danger, hee himselfe in that playeth the deserter.'³⁰

The passage is not a model of clarity in either its original Latin or English translation, but, taking the words in their simple sense, Ames seems to be acknowledging that such a desertion as can absolve the innocent partner of any remaining obligation to the marriage can consist of the imposition of intolerable conditions threatening physical safety and security as well as of physical departure *per se*. This interpretation gathers strength from the fact, to be elaborated below, that such a point of view was well established among reformed authorities on the continent where Ames' professional career was largely spent.

V. The Conclusion of the Westminster Divines

It may be fairly assumed that the works of Perkins, Ames, and Gouge were widely known by the Westminster divines. It is by no means an easy thing to determine whose opinion would have carried a greater weight with the 'typical' delegate to the Assembly.

³⁰ It is interesting that in his Marrow, dating from nearly the same period as his Conscience, Ames says only this on divorce [ET: 1968, p. 320]: 'Adultery is most truly and essentially opposed to marriage, for by its very nature it breaks the bond and covenant of marriage. It is the proper and just cause of divorce, which cannot be said of any other sins although they be more grievous. A just divorce dissolves the very bond of marriage.' Ames is not excluding desertion here. Rather, in all likelihood, with many other reformed authorities, he is distinguishing between adultery as the sole legitimate 'ground' of divorce and desertion in which the innocent party is the passive victim, the one who is divorced. A comparison of the two passages may suggest that the precise construction of desertion was considered a detail of the doctrine and ethics of divorce and, therefore, would be omitted in briefer accounts. The larger consensus, primarily negative on divorce and adamant as to the general indissolubility of the marriage vows, could be simply stated with an appeal to the dominical statement.

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It is therefore not at all clear how the divines as a whole may have understood desertion or, for example, whether they would have regarded unremedied physical abuse as tantamount to desertion, as justification for divorce, and, if so, for remarriage.

As it is, no record of the substance of the Assembly's debate on desertion is extant. The official minutes record the original resolutions and their disposition by the Assembly. With respect to adultery, the Assembly debated the divorce and remarriage clauses separately and adopted both. The resolutions on desertion proved to be more controversial.

If either of the married persons forsake their yokefellow, and by no means that can be used by the party forsaken, or friends, or magistrate, will be reduced[i.e., brought back or restored], after sufficient time set down by the magistrate, and made known to the party that so desireth, it is lawful for the innocent party to marry another.

Wilful and obstinate desertion of one married party giveth just cause to the other, after all means used to reduce [i.e., to bring back or restore] the offending person, to sue out a divorce and for liberty to marry another.³¹

When the report was debated on September 10-11, the first of these paragraphs was waived and the second adopted, along with the statement, "Other causes of divorce between two parties lawfully married besides these the Scriptures do nowhere allow." But when the chapter as a whole came before the Assembly on November 9, the second paragraph was recommitted. According to a familiar pattern, the committee was "the brethren that did except against that clause".³² The brethren are not named, but the final recension (24.6) is thought to reflect Scottish influence in particular.³³

The Confession, as finally adopted, does not explicitly restrict desertion as just cause for divorce to mixed marriages, a point observed at some length by John Murray in his widely-circulated *Divorce*.³⁴ This may or may not have been intentional.

VI. The Views of Two Prominent Continental Divines

The larger Reformed Church shared the Westminster Assembly's general conclusions touching marriage and divorce, though, no doubt, many would have stated

³¹ *Minutes of the Sessions of the Westminster Assembly*, p. 280.

³² *Ibid.*, p. 299.

³³ *Marriage and Divorce*, pp. 39-40.

³⁴ John Murray, *Divorce*, Philadelphia, 1953, pp. 76-77. Originally published in the *Westminster Theological Journal*, 1946-49; reprinted by Presbyterian and Reformed, 1961. Murray concluded that "the proposition respecting wilful desertion in the Confession is not sufficiently guarded and delimited so as to confine itself to the teaching of the apostle in this passage."

the general consensus to suit a broader or more strict construction of it. W. Geesink³⁵ offers this summary from his Dutch Reformed perspective:

'The Reformed recognize only two grounds of divorce, namely adultery and desertio malitiosa religionis causa (I Corinthians 7:15), which then is expanded to desertion in a broader sense. Concerning the ground of adultery they were all in agreement. Regarding desertio malitiosa one finds only here and there a wavering.'

A. Theodore Beza (1519-1605)

Geesink refers to Beza as a representative of this consensus. Beza himself, whom Milton characterized as 'one of the strictest against divorce'³⁶ devoted a separate treatise to the subject.³⁷ Concerning desertion, once having established that the innocent party may remarry (Beza also solves the difficulty of reconciling I Corinthians 7 with Matthew 19 by maintaining that only adultery is a 'ground' of divorce, Paul's remarks regarding desertion dealing instead with the case of the innocent party who is the passive victim of another's unjustified divorce), he considers 'desertion in the broader sense'.

'... we know him also to be a deserter who does not refuse cohabitation, but obstinately demands impious conditions.' [p. 94]

It is asked whether the faithful in turn may desert the unfaithful? ... in no way is that to be permitted ... (he refers again to Paul's argument in I Corinthians 7 and to the fact that the faithful spouse sanctifies the unfaithful). But, I repeat what I said shortly before, namely that he appears the deserter not only who positively refuses a mutual living together, but also who demands intolerable conditions from the faithful [spouse], such as if the unfaithful spouse absolutely compels the faithful to attend the abominable Mass, in a word any doing or enduring of something altogether against the obligation of piety. From this, therefore, another question occurs: what should the faithful [spouse] do when indeed cohabitation is not denied, but either hazard of life is incurred or something is either to be done or endured against the true religion. I respond that these two distinctions are to be observed. First, either the unfaithful [spouse], whether intentionally or unwittingly, persecutes the faithful spouse, or the persecution arises from some other direction. If the former, the faithful spouse really has a suitable excuse for shunning her domestic enemy for no other reason than that she should consider her life and conscience, and I would decide in this case nothing other than if the unfaithful spouse himself had departed for another. To depart from someone and

³⁵ *Gereformeerde Ethiek*, vol. 2, Kampen, 1931, p. 284.

³⁶ *Tetrachordon: Expositions upon the four chief places in Scripture, which treat of Mariage, or nilities in Mariage*, (1645) *Complete Prose Works*, vol. 2, p. 227.

³⁷ *De Repudiis et Divortiis, Tractationes Theologiae*, vol. 2, Geneve, 1582. The section of the essay devoted to divorce is pp. 83-109. For John Calvin's viewpoint see footnote 41 *infra* and pp. 2394 ff of the paper by W. S. Barker in the appendix to this report.

to drive the other away by threats or force are the same thing. But if such persecution should assail [the faithful spouse] from some other direction, the faithful spouse should act at length more moderately than if she should cherish an enemy in her home and bosom. Nor is it to be doubted that if the unfaithful spouse should attend the faithful with conjugal love, should provide for her life in every way, in this case the faithful spouse rather should bear whatever you will than that is should be her duty to abandon the unfaithful spouse. But if the unfaithful spouse does not care as is right that the faithful spouse is in peril, no one does not see, I think, not only that he is a deserter, but also that he may be shunned with a good conscience as a traitor.' [pp. 96-97]³⁸

B. Samuel Maresius (1599-1673)

Samuel Maresius,³⁹ certainly a representative reformed divine from the general period of the Westminster Assembly, provides a summation which includes the broader construction of desertion and that without any indication that this was particularly controversial.

'The legitimacy of divorce is established, such that the offended party acquires the right to make new [marriage] vows, for only two causes in the new covenant, even if civil laws and some erudite today think it right to allow more, namely Adultery, as Christ says ... Matthew 5:32; 19:9 and Malitiosa Desertio ... (the brother or sister is not bound in such a case, viz. that he should remain unmarried) I Corinthians 7:15. But such desertion is taken to be not only a determined and permanent withdrawal from the marital home and companionship, but an obstinate denial of the obligations of marriage, by intolerable cruelty putting life at hazard for the present, or from either treacherous or naked force, by the acceptance of a mistress, and whatever, by analogy, is equivalent to or greater than this desertion. If, however, a spouse ... should only go over to the enemies (i.e. religious?) or desert the true religion, he is not by this to be considered guilty of this malicious desertion which severs the bond of marriage, if only the other spouse is able to cohabit with him with a clear conscience.'

³⁸ Bullinger speaks similarly in the final chapter of his *The Christian State of Matrimonye*, trans. Miles Coverdale, 1541. After speaking to the Lord's permission of divorce, of the duty of married persons to 'diligently eschew all occasions of divorce' and to 'know that they must prove a painful medicine if they will have divorce to be their comfort,' of the many cases which are no justification for divorce, of the importance of not leaving the issue to the private judgment of the individuals involved, of the importance of not acting quickly but of attempting 'all manner of reconciliation' and deferring the divorce' while there is hope of amendment and unity, and of the right of lawfully divorced people to remarry, he directs his attention to what constitutes a 'right occasion of divorce.' Regarding Christ's naming adultery he writes: 'With the which no doubt he hath not excepted like and greater occasions but understood and comprehended them therein. For the holy Apostle also did leave infidelity as an occasion of divorce.' Referring to the Roman emperors Constantine and Justinian, who allowed divorce for such things as murder and poisoning, he continues: 'Every reasonable man then confides that God did ordain wedlock for the honesty and wealth of man and not for his main and destruction.'

³⁹ *Systema Breve Universae Theologiae*, 1659, pp. 631-632.

VII. Conclusion

It is by no means an easy task to determine the extent to which these continental opinions would have been regarded as similar to or distinct from that of English Puritanism in general. Beza was widely read and appreciated in the period before the Westminster Assembly. Plainly, Beza and Maresius go beyond Gouge and perhaps somewhat beyond Perkins (cf. footnote 24). The extent to which, if any, their viewpoint differed from that of Ames is more difficult to determine.⁴⁰ There is certainly reason to believe that the divines at Westminster would not have been unappreciative of the reputation which the Genevan Consistory had gained in defense of betrothed and married women.⁴¹

In summary, it is difficult to state with absolute confidence the extent of the latitude which may have existed within the Puritan consensus on divorce and remarriage, the importance which may or may not have been attached to differences of interpretation such as in the application of the Pauline privilege to other cases, or the extent to which the Puritan position, in general, was different from that of continental divines such as Beza and Maresius. It is to be admitted that none of the Puritan works surveyed states the case for 'desertion in the broader sense' as bringing with it the right of divorce and remarriage in as summary a way as did the continental divines. Nevertheless, available evidence warrants caution in proposing a single interpretation or application of the Confession's phrase "such wilful desertion as can no way be remedied."

⁴⁰ Geesink judges Ames' discussion to be in practical agreement with the Reformed consensus. *Gereformeerde Ethiek*, vol. 2, p. 285.

⁴¹ G. Lewis, 'Calvinism in Geneva in the time of Calvin and of Beza (1541 - 1605),' ed. M. Prestwich, *International Calvinism 1541 - 1715*, Oxford, 1986, p. 49. 'The Consistory dealt with . . . notorious drunkards, adulterers, and bullies, with guardians who had misappropriated the inheritance of their wards, with forced betrothals between grown men and girls under age, and with ill-treated and deserted wives. Not for nothing was it known (with approval or derision?) as "le paradis des femmes."'; The interesting case of Galeazzo Caraccioli provides some indication of the flexible way in which cases would be handled in Calvin's Geneva. Caraccioli, marquis of Vico, nephew of the head of the Roman inquisition and later Pope Paul IV, married to Victoria Caraffa, the daughter of a duke, and himself appointed chamberlain by Charles V, became interested in protestantism through the preaching of Peter Martyr Vermigli and his witnessing of the persecution of Italians under the inquisition. Eventually, after an inward struggle, he converted. In peril of the inquisition he abandoned his estates and family and came to Geneva in June, 1551. There he won the respect of Calvin, who later dedicated his commentary on I Corinthians to him, and became a citizen. His wife remained behind in Italy and at a later meeting at Vico in 1558 he failed to persuade her to follow him, with their nine children, though there was deep affection on both sides. Calvin then attempted to arrange for their reunion in a place where both he and his wife could exercise their religion, but she declined. After this the Council pronounced the marriage dissolved and in 1560 Caraccioli remarried. J. T. McNeil, *The History and Character of Calvinism*, Oxford, 1954, p. 184. On the other hand, excommunications for domestic sins far outnumber divorces. See the appendix, pp. 2394 ff. An excellent example of the caution employed by the Genevan consistory in judging marital conditions to be intolerable and of their willingness to require victimized spouses to suffer greatly for the sake of the general inviolability of marriage is found in the correspondence between the consistory and a protestant woman married to an abusive catholic husband. P. E. Hughes (ed.), *The Register of the Company of Pastors of Geneva in The Time of Calvin*, ET: Grand Rapids, 1966, pp. 193-198.

MINUTES OF THE GENERAL ASSEMBLY

In a paper presented to the Philadelphia Presbytery and included as an appendix to this report, W. S. Barker draws the following conclusions.

"To a direct question of whether physical abuse could be a grounds for divorce, the Puritan tradition informing the Westminster Assembly would have answered, No, not *per se* or by itself. William Perkins and William Ames before the Westminster Assembly, William Gouge as a member of the Assembly, and Richard Baxter soon after the Assembly are all consistent with Calvin and Beza and the Genevan tradition in emphasizing adultery as the essential cause for divorce.

"This same Puritan tradition also saw that under certain circumstances desertion could be a grounds for divorce, and physical abuse could be the basis of a desertion, the spouse guilty of the abuse being reputed as the deserter even though the other may have departed. Before such a situation could be the grounds for a divorce, however, a sufficient time would have to expire for the efforts of both church and civil magistrate to seek to achieve a reconciliation."

In any case, it is important to note both the broad agreement and the narrow scope both of identifiable disagreement and of remaining questions. The entire Reformed church held that marriage vows were generally indissoluble, that only a few vicious crimes against the marital covenant constituted grounds for divorce, that many alleged grounds lacked Biblical justification, that incompatibility was by no means a ground of divorce, that every effort was to be made to preserve a marriage and that divorce was always an unwelcome extremity, that adultery conferred upon the innocent party the right of divorce and remarriage, and, that, in certain extreme cases, the innocent victims of marital abandonment are released from their obligations to the marriage. Possible, though still strictly circumscribed, constructions of marital abandonment and whether in such cases a right of remarriage is conferred on the innocent spouse seem genuinely details of interpretation, differences which were insufficient to undermine the Reformed consensus on marriage and divorce.

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