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The Theologians of Lutheran Orthodoxy on Polygamy, Celibacy, and Divorce ¹

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POLYGAMY

“SUCCESSIVE” polygamy—remarriage after the death of one’s spouse—is licit for all Christians,² but simultaneous polygamy is not.³

Both polyandry and polygyny are wrong,⁴ but the former is even less defensible.⁵

In the Old Testament, God bore with the polygamy of the patriarchs.⁶ While their polygamous unions contradicted the monogamous ideal of the divine institution, the patriarchs were not adulterers, and their wives were not whores. They must have had a revelation, or at least a consciousness, that God had dispensed them from the requirement of monogamy.⁷ The prophets do not condemn polygamy. Not fleshly lust, but the ardent desire for the birth of the promised Seed of the Woman motivated the polygamous patriarchs and kings.⁸

Polygamous unions contracted by Christians in the New Testament are nullities; they admit of no dispensation.⁹ Whether infidel polygamists who embrace Christianity must give up all their wives except the first is a moot question.¹⁰

Blessed Martin Luther’s alleged “concession of polygamy” to Christians—a standard part of the Roman Catholic polemicists’ stock-in-trade—comes up for frequent discussion.¹¹

Concubinage is not a divinely approved status, and no one can live in it with a good conscience.¹² Similarly, *mariages de conscience* are wrong, because they are not intended to be indissoluble.¹³

CELIBACY

Celibacy is extensively discussed.¹⁴ The theologians quote the pronouncements of our blessed Lord and of St. Paul, point out the historical circumstances of the primitive Church that made celibacy peculiarly desirable then, emphasize that it does not belong to the article of justification, and concede that celibacy is a greater work and a more eminent gift than matrimony. They call attention to the cautious, almost meticulous care with which St. Paul speaks and reject the

customary Roman Catholic distortions and exaggerations. Neither divine nor natural law forbid marriage to the clergy, but only positive law. "Celibacy freely and chastely preserved is not to be defrauded of its praise";¹⁵ it is laudable in persons who are fit for it, but immoderate praise is out of order. Vows of celibacy or perpetual widowhood are not binding.¹⁶

DIVORCE

Marriage is a lifelong union (Gen. 2:24; Matt. 19:5, 6; Mark 10:7; Rom. 7:2, 3; 1 Cor. 7:39).¹⁷ It cannot be dissolved without sin except by the death of one of the partners.¹⁸ It cannot be dissolved by mutual consent (Mal. 2:14; Matt. 19:6; 1 Cor. 7:10).¹⁹ Moses' authority to grant divorces ceased with Christ's advent.²⁰

Divorce, with the privilege of remarriage, is morally objectionable, except in the single case of adultery.²¹ The innocent party in a case of malicious desertion is regarded as *suffering* a divorce.

A *substantial*, as distinguished from an *accidental*, error is ground for annulment.²²

Annulments are possible²³ in the case of error of person,²⁴ a divinely forbidden degree of relationship,²⁵ exercise of compulsion not condoned by subsequent voluntary intercourse, an existing previous valid marriage, and true and incurable impotence (Gen. 2:24; Matt. 19:6) existing prior to marriage.²⁶

To this list some would expressly add substantial defect in consent.²⁷

The innocent party, regardless of sex, may (but need not) obtain a divorce in the case of uncondoned voluntary adultery and may remarry.²⁸ If the plaintiff has also committed adultery,²⁹ or has contributed to the defendant's adultery *per lenocinium*, or has expressly or tacitly (through voluntary intercourse) condoned the guilty party's offense, no divorce can be granted.³⁰

Remarriage is permitted in the case of malicious desertion on the basis of 1 Cor. 7:15 (the Pauline privilege).³¹

The malicious desertion must be voluntary, uncondoned, and irreconcilable.³²

The length of time that the deserter must be gone to establish malicious desertion is determined by the court that hears the case; the period may be as short as six months.³³

The plaintiff must not have given the deserting party cause for such action and must produce evidence to this effect.³⁴

If the deserter returns and is willing to be reconciled, the other party must accept the reconciliation. Theologians are not agreed that this is absolutely necessary if his wife has already contracted a new marriage.³⁵

Malicious desertion includes persistent, constant, and final (1 Cor. 7:3-5) refusal, not based on physical infirmity, to engage in intercourse,³⁶ as well as deliberately making oneself impotent by drugs or by knife.³⁷

Contrary to Philip Melancthon's view, cruelty is not a ground for divorce.³⁸

SEPARATION FROM BED AND BOARD

Some hold that God's Word knows nothing of a separation from bed and board³⁹ and that it has warrant only in imperial law and consistorial practice.⁴⁰ Others cite 1 Cor. 7:10, 11.⁴¹

It is not a divorce,⁴² although the Roman Catholic Church so describes it, but a domestic separation for a certain time, not deliberately for life.

The husband must support or endow the wife while it is in effect, and neither party can marry elsewhere.⁴³

It can be undertaken only with proper legal authority, except that the innocent party in the case of adultery may without such authority refrain from intercourse with the offending spouse lest she condone his offense. Otherwise separation without prior legal process and authority is to be dealt with by the pastor as a scandal given to the whole Church. It is justifiable only to avert a greater evil, such as murder.⁴⁴

Legitimate grounds for separation⁴⁵ are cruelty, mortal enmity, violence, plots against the other party's life, sorcery, attempted poisoning, leprosy, or another offensive, contagious, and incurable disease.⁴⁶

MATRIMONIAL COURTS

Matrimonial courts are essential,⁴⁷ especially for determining cases involving the dissolution of betrothals and marriages. Betrothals and marriages cannot be dissolved by mutual consent merely because they have been entered into by mutual consent (Matt. 19:6). Far less can they be dissolved by unilateral action, even for cause. The consent and verdict of God cannot be known and heard except through the judge who sits in His place.⁴⁸

Dissolution of public betrothals requires a legal process. The privilege of remarriage accrues to the innocent party in an adultery case only after a legal process, even if the offending party confesses the lapse. Malicious desertion must likewise be established by legal process, and separation from bed and board must be so authorized.⁴⁹

Matrimonial issues pertaining wholly to the religious aspects of marriage, such as the ecclesiastical solemnization,⁵⁰ belong to the

Church. Those having to do with purely secular matters, such as dowries and inheritance, belong wholly to the secular government. Mixed issues, such as forbidden degrees of relationship, impediments, divorce and dissolution of betrothal, belong to the Church, but in such a way that the secular government, whose office it is to make laws in matters of this kind, is not excluded, especially if it be a Christian government.⁵¹ The practical expression of this theory was the mixed consistory,⁵² in which a panel consisting of both theologians and jurists sat on marriage cases and handed down verdicts which the police power of the state enforced.⁵³

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FOOTNOTES

1. See Arthur Carl Piepkorn, "The Doctrine of Marriage in the Theologians of Lutheran Orthodoxy," *CONCORDIA THEOLOGICAL MONTHLY*, Vol. XXIV, No. 7 (July, 1953), pp. 465—89.
2. John Gerhard, "*De coniugio*," *Locus XXV, Loci Theologici*, ed. Edward Preuss (Berlin: Gustav Schlawitz, 1869), VII, pars., 178—201, pp. 104 to 120; Carl Ferdinand William Walther, *Johannis Gulielmi Baieri Compendium Theologiae Positivae, adiectis notis amplioribus, quibus doctrina orthodoxa . . . explicatur atque ex Scriptura Sacra eique innixis rationibus theologicis confirmatur* (St. Louis: Concordia-Verlag, 1879), III, p. 776; John Francis Buddeus, *Institutiones Theologiae Moralis* (Leipzig, 1715), p. 553.
3. George Dedekennus, *Thesaurus consiliorum et decisionum*, ed. John Ernest Gerhard (Jena, 1671), III, 41—45; Gerhard, VII, pars. 202—26, pp. 120 to 136; John Conrad Dannhauer, *Theologia Casualis* (Greifswald, 1706), p. 266; Caspar Erasmus (Jesper Rasmussen) Brochmand, *Universae Theologiae Systema* (Ulm, 1638), pp. 1472, 1473; Buddeus, pp. 553—55.
4. Solomon Deyling, *Institutiones Prudentiae Pastoralis* (Leipzig, 1734), pp. 546, 547; Baier-Walther, III, 754, 755.
5. John Andrew Quenstedt, *Theologia Didactico-Polemica* (Wittenberg, 1691), IV, 459.
6. Gerhard, VII, pars. 221—24, pp. 130—35; Brochmand, pp. 1473, 1486; Quenstedt, IV, 458—62; Buddeus, p. 555. Of Esther, Dannhauer holds that she was materially, though not formally, an adulteress (p. 290).
7. "Jacob, as a pious man, doubtless had a dispensation revealed to him" (*ibid.*, p. 279).
8. Opinion (1609) of the theological faculty of the University of Wittenberg (Dedekennus-Gerhard, III, 41, 42).
9. Dannhauer, p. 269; Baier-Walther, III, 754, 755; Brochmand, pp. 1473, 1489, 1490; Quenstedt, IV, 462—69.
10. Brochmand holds that they are to be urged to do so, but that if they will not, polygamy may be tolerated in view both of God's toleration of polygamy in the Old Testament and of the policy of the primitive Church (1 Tim. 3:2; Titus 1:6) (p. 1490; see also Louis Dunte, *Decisiones mille et sex casuum conscientiae* [3d ed.; Ratzeburg, 1664], p. 830). Gerhard follows Innocent III and holds that it is safer for consciences to demand that infidels who become Christian retain only their first wife. He argues that both divine and natural law condemn polygamy; what the law of nature forbids is not permitted to pagans out of the Church. A human being cannot dispense from God's Law. (VII, par. 226, p. 136). The

- famous case of the Count à Gleichen comes up for frequent discussion. Theologians approved his marriage to the Saracen woman who made such a marriage a condition of helping him escape from Mohammedan captivity, even though he already had a wife. Dannhauer says flatly that he lived with her in perpetual sin (p. 269).
11. Gerhard, VII, pars. 202—4, pp. 120, 121; Brochmand, pp. 1490, 1491; Quenstedt, IV, 469.
 12. Dedekennus-Gerhard, III, 34—41; Gerhard, VII, pars. 555—59, pp. 366 to 369; Deyling, pp. 555—57; Brochmand, p. 1486.
 13. Deyling, p. 557.
 14. Dedekennus-Gerhard, III, 10—34, Appendix, p. 801.
 15. Baier-Walther, III, 777.
 16. Martin Chemnitz, *Loci Theologici* (rev. ed. Polycarp Leyser; Wittenberg, 1615), II, 191—216; Gerhard, VII, pars. 489—554, pp. 299—366; Brochmand, pp. 1483, 1484. In answering the question, "Whether every and any Christian can with good conscience enter wedlock," Koenig quotes with approval the *Glossa ordinaria* of Walafrid Strabo: "Virginity is a high mountain, to which an angel is to be exhorted. But if anyone, be he cleric or layman, see that he cannot ascend it, let him remain in Segor, i. e., in lawful marriage. For it is better to use a mediocre good than to be cast down through the sudden attacks of desire." (George Koenig, *Casus conscientiae* [Nuremberg, 1654], pp. 752—57.) Dannhauer declares that heroic celibacy (Matt. 19:12) and enforced celibacy (resulting from illness, a surplus of women, and so forth) are good; but to choose celibacy when a person is suited for marriage and has a vocation to the latter state is not good (pp. 261, 262).
 17. Baier-Walther, III, 772, 773, 776.
 18. Dedekennus-Gerhard, III, 315—27.
 19. Gerhard, VII, par. 639, pp. 427, 428.
 20. Deyling, p. 570.
 21. Dedekennus-Gerhard, III, 327—30, Appendix, pp. 859—63; Gerhard, VII, pars. 560—610, pp. 369—408; Dannhauer, p. 286; Buddeus, pp. 556—58. Nicholas Hemming takes the position that "adultery" is not to be taken strictly, but that it includes all crimes of comparable gravity as legitimate grounds for divorce (Gerhard, VII, par. 691, p. 457); thus Hemming makes impiety toward God either by falling from the Christian religion, or by embracing a pernicious heresy, a ground for divorce (Dunte, p. 854).
 22. Dannhauer, p. 278. The apparently contradictory statements of orthodox theologians on the number of legitimate grounds for divorce are actually to a large extent a matter of terminology. The distinction between a divorce and an annulment is noted in Deyling, pp. 567, 568. Brochmand approves the following causes for divorce (*dissolutio coniugii consummati*): adultery, malicious desertion, physical inability to engage in intercourse existing prior to the marriage, error of person or quality (pp. 1481, 1482). The Constitutions of Frederick II of Denmark list three causes for divorce: adultery, malicious desertion, and inability to engage in intercourse existing prior to marriage (*ibid.*, pp. 1521, 1522, 1525). Brochmand regards the last case as a true divorce, not as an annulment, arguing that consent and the sacerdotal blessing make the couple man and wife.
 23. Gerhard, VII, pars. 640—64, 689, pp. 428—43, 455, 456; Baier-Walther, III, 776.
 24. Some would add, of quality (virginity). Dedekennus-Gerhard, III, 357 to 360, Appendix, pp. 872, 873; Hemming (in Dunte, p. 854). Brochmand regards it as an error of quality "when a woman is believed to be a virgin and is discovered to have been violated," Matt. 5:32; 19:9 (p. 1482).

25. See Piepkorn, p. 468.
26. Dedekennus-Gerhard, III, 346—53, Appendix, pp. 798—800. Hemming in Dunte, p. 854. When a marriage is annulled because of impotence existing prior to marriage, the *forma sententiae* prescribes that the healthy party is diligently to be urged and admonished not to remarry (Dedekennus-Gerhard, III, 458). The Jena theological faculty ruled (1668) that a woman could not with a good conscience remain married to a man known to be a eunuch at the time of marriage (Dunte, pp. 798—801). Dannhauer would add other factors making a person unfit for marriage, such as leprosy, epilepsy, and so forth (pp. 286, 287); see Dedekennus-Gerhard, III, 364—66. Brochmand would acknowledge incurable diseases existing undetected prior to betrothal and marriage as efficacious grounds for annulment, but not those contracted after marriage (pp. 1526, 1527).
27. Such as marriage vows made while drunk in such a degree as to deprive the individual of his reason, unless the drunkenness were induced by the party subsequently seeking the annulment (Dannhauer, p. 281). Presumably on the analogy of parental consent, the right of the prince to legislate the terms under which a soldier may marry is recognized; a royal rescript of July 31, 1726, declaring that the marriages of soldiers contracted without the regimental commander's consent, even if confirmed by a religious ceremony and priestly blessing, are to be dissolved and pronounced invalid is duly noted by Deyling (p. 561). Failure to pay the promised dowry does not invalidate a marriage (Brochmand, pp. 1499, 1500).
28. Gerhard, VII, pars. 611—21, pp. 409—18; Baier-Walther, III, 773—75. Material adultery committed in ignorance (as when a girl marries an already married soldier who pretended to be a bachelor, or when a woman remarries with the permission of the authorities believing her long-absent husband to be dead) is not morally wrong (Dannhauer, pp. 413, 414). A wife who has been raped against her will is not an adulteress (*ibid.*, pp. 414, 415).
29. In such a case, the Wittenberg theological faculty held that *adulterium adulterio compensatur* and both should be exiled (Dunte, p. 858).
30. Deyling, p. 573. The Wittenberg theological faculty held that both the impotent husband who permits and the wife who commits adultery are to be executed (Dunte, p. 856). Dannhauer holds that a captive or prisoner sins against God's Law if as a condition of his release he consents to his wife's cohabitation with another person (p. 415).
31. Dedekennus-Gerhard, III, 330—46, Appendix, pp. 863—71; Gerhard, VII, pars. 623—35, pp. 419—25 (the offense in 1 Cor. 7:15 is not the infidelity but the departure; cp. 1 Tim. 5:8); Brochmand, pp. 1481—83, 1523; Dannhauer, pp. 269, 270.
32. Absence due to military service is not malicious desertion, unless it is as a mercenary and without the wife's consent (Gerhard, VII, par. 628, p. 422). Captivity, exile (Dedekennus-Gerhard, III, 363, 364), or even lifelong imprisonment do not dissolve the bond of wedlock (Deyling, *op. cit.*, pp. 571, 573). The Dresden consistory held that a woman must accompany her husband into involuntary exile, even if they be merely betrothed (Dunte, p. 854). Brochmand (*contra* Gerhard and others) follows the Danish-Norwegian Matrimonial Constitutions, which forbid a separation in the case of criminals who have been subsequently pardoned but allow a divorce in the case of a criminal exiled for more than three years; this he regards as the equivalent of malicious desertion (p. 1526). Every reasonable effort must be made to locate the absent spouse and to effect a reconciliation (Deyling, pp. 574, 575).

33. Statutes variously fix the period at one, two, three, four, five, six, seven, nine, and ten years (Gerhard, VII, pars. 632, 706, pp. 423, 424, 465; Deyling, 575). Brochmand speaks of a three-year term (p. 1482). The Wittenberg theological faculty held that if a mentally ill runaway could not be located within a five-year period and after three peremptory citations, the deserted wife can be allowed to remarry (Dunte, p. 855). The Meissen consistory (1582) granted the relic of a soldier presumed to have been killed in action authority to remarry three years later (Dedekennus-Gerhard, III, 339).
34. Brochmand, p. 1482. If the plaintiff's refractory personality occasioned the desertion, the court must carefully study all the facts; it need not inevitably find in favor of the plaintiff's right to remarry (Gerhard, VII, par. 633, p. 424). If a spouse practices sorcery against, or attempts to poison, the other party, or demands co-operation in perverted sex practices, the offender has given the other party a pretext for leaving (Dannhauer, p. 289).
35. Dannhauer holds she is bound to return to first husband even if she has remarried (pp. 288, 289). If she is only betrothed, Gerhard holds that a reconciliation with her first husband must be effected; if she has remarried, he is inclined to believe that she should remain with her second husband (par. 634, pp. 424, 425). Brochmand, following the Constitutions of Frederick II of Denmark and Norway, holds that she should return to her first husband only if he can show that he had just cause for his absence and that during it he neither associated with another woman nor did anything unworthy of his husbandly status (p. 1524). The Jena law faculty considered the case of a man who was absent twelve years and whose wife had remarried with proper authority. The first husband returned, and the second bribed him to disappear again. The faculty ruled that the second marriage was unlawful. (Dedekennus-Gerhard, III, 346.)
36. Gerhard, VII, par. 630, pp. 422, 423; Brochmand, pp. 1524, 1525; Deyling, pp. 570, 571. *Superintendentens* Vincent Schmuck of Leipzig asserts (1621) that a father may not take a married daughter back into his home and deny her indigent husband the right to conjugal intercourse with her (Dunte, pp. 845, 846; Dedekennus-Gerhard, III, 312).
37. Gerhard, VII, par. 686, p. 454. Hemming would have the government punish such persons as murderers (in Dunte, p. 854).
38. Neither is malicious behavior or disobedience (Dannhauer, p. 290). If the failure of all means shows the cruelty to be incorrigible, Gerhard would compare cruelty to malicious desertion (VII, par. 631, p. 423). The publication of the jurist J. H. Boehmer's *De iure principis circa divortia* (Halle, 1715) precipitated considerable theological controversy. He held that the prince can grant divorces in cases where the wife plots against her husband's life or virility or where great psychological differences, sterility, incurable disease, irreconcilable enmity, scandalous life on the part of either, or banishment exist. He denied that the primeval institution of marriage had the force of law and declared that marriage was only a civil contract, dissoluble by mutual consent. He was opposed by John Michael Lang of Altdorf and Geoffrey Louis Mencken. (Deyling, pp. 568, 569.)
39. For this reason the Lower Saxony Church Order did not allow it (Dunte, p. 852).
40. Dedekennus-Gerhard, III, 308—15, Appendix, pp. 858, 859.
41. Brochmand, pp. 1482, 1525.
42. Baier-Walther, III, 776.
43. Dunte, pp. 871, 852.
44. Deyling, p. 576; Gerhard, VII, par. 637, p. 426.

45. Gerhard (*ibid.*) holds that the only ground which holds in the forum of the inner conscience and before God is adultery.
46. Dedekennus-Gerhard, III, 360—62, Appendix, pp. 873, 874; Gerhard, VII, par. 688, p. 45; Brochmand, pp. 1482, 1525; Hemming (*in Dunte*, p. 854).
47. Dedekennus-Gerhard, III, 1—10.
48. Paul Tarnov (1562—1633) in Dedekennus-Gerhard, III, 2; Gerhard, VII, par. 692, pp. 457, 458; Dannhauer, pp. 287—89; Deyling, pp. 513, 540, 541.
49. Tilemann Hesshusius, *Von Eheverloebnissen und verbotenen Gradibus* (Erfurt, 1584), folios F-iv to G-j; Deyling, pp. 572—76.
50. So also an opinion (1541) of the Hamburg ministerium (Dedekennus-Gerhard, III, 795, 796).
51. Paul Tarnov (Dedekennus-Gerhard, III, 2); Jerome Cypræus (*ibid.*, pp. 3—5; *Dunte*, pp. 806—8); Gerhard, VII, pars. 7, 693—706, pp. 4, 458—65; Brochmand, pp. 1484, 1485. The sacred ministry cannot be wholly excluded from matrimonial cases, John Mueller of Hamburg argued learnedly in an opinion (1666) (Dedekennus-Gerhard, III, Appendix, pp. 796, 797).
52. The consistory of Lower Saxony consisted of the chancellor as president and another minister of state, two or three theologians, a member of the princely secretariat, two knights, two members of the council of the place where the consistory sat, and the prince himself (Dedekennus-Gerhard, III, 8—10).
53. Polycarp Leyser is generous in his praise of this arrangement (Dedekennus-Gerhard, III, 5—7; *Dunte*, pp. 807, 808). Deyling points out that the consistory must take cognizance of a transaction against matrimony, even though the matter may already have been decided in a wholly secular court (pp. 576, 577).