

## The History Of Christian Thought Upon Marriage, Divorce & Remarriage Daniel R. Jennings

Understanding how churches have viewed divorce and remarriage (hereafter referred to as D&R) historically can help us to decide how best to view the issue today.

### I. The Ante-Nicene Era (1<sup>st</sup>-4<sup>th</sup> Centuries)

- A. Around 96AD the last surviving apostle, John, died. With his death the apostolic age ended and it was now up to the successors of the apostles to obey the admonition to “hold the traditions which you have been taught, whether by word, or our epistle (2Th 2:15)”.
- B. Examining just how they “held the traditions” regarding D&R indicates that the tradition they received was to be *conservative*.
- C. For the next two hundred years after the death of John the church generally viewed people who remarried after a divorce as living a sinful lifestyle.
  1. Circa 135AD Justin Martyr, writing in Syria, indicated that everyone who had divorced and remarried were considered to be sinners.<sup>1</sup>
  2. Circa 160AD Hermas, writing in Rome, indicated that if a man’s wife committed adultery, and he divorced her and remarried, that he also was guilty of adultery by his remarriage.<sup>2</sup>
  3. Circa 175AD Athenagoras, writing in Greece, indicated that it was adultery for a man who married a virgin wife to ever divorce her and remarry.<sup>3</sup>
  4. Circa 200AD Clement of Alexandria, writing in Egypt, indicated that all marriages entered into while a previous spouse was alive were adulterous.<sup>4</sup>

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<sup>1</sup> “So that **all who, by human law, are twice married**, are in the eye of our Master **sinners**, and those who look upon a woman to lust after her.” (*The First Apology*, 15). Unless otherwise indicated early Christian writings are from Alexander Roberts, James Donaldson, & A. Cleveland Coxe, *The Ante-Nicene Fathers: The Writings Of The Fathers Down To A.D. 325, Vol. 2 in The Master Christian Library CD-ROM, 8.0* (Albany, OR: Ages, 1997). In some cases I have modernized the 19<sup>th</sup> century English of this and other works quoted.

<sup>2</sup> “And I said to him, ‘Sir, if any one has a wife who trusts in the Lord, and if he detect her in adultery, does the man sin if he continues to live with her?’ And he said to me, ‘As long as he remains ignorant of her sin, the husband commits no transgression in living with her. But if the husband knows that his wife has gone astray, and if the woman does not repent, but persists in her sin, and yet the husband continues to live with her, he also is guilty of her crime, and a sharer in her adultery.’ And I said to him, ‘What then, sir, is the husband to do, if his wife continues in her vicious practices?’ And he said, ‘The husband should put her away, **and remain by himself. But if he put his wife away and marry another, he also commits adultery.**’” (*The Shepherd, Second Book, Commandment 4:1*). This translation has been amended according to the Codex Athos.

<sup>3</sup> “For we bestow our attention; not on the study of words, but on the exhibition and teaching of actions, — that a person should either remain as he was born, or **be content with one marriage**; for a second marriage is only a specious adultery. “For whoever puts away his wife,” says He, “and marries another, commits adultery;” **not permitting a man to send her away whose virginity he has brought to an end, nor to marry again.**” (*A Plea For The Christians*, 33)

<sup>4</sup> “Now that the Scripture counsels marriage, and allows **no release from the union**, is expressly contained in the law, “You shall not put away your wife, except for the cause of fornication;” and **it regards as adultery the**

5. Circa 210AD Minucius Felix, recording a religious debate that took place in Italy, indicated that Christians were known for having only one marriage.<sup>5</sup>
  6. Circa 215AD Tertullian, writing in North Africa, indicated that a divorced woman could never remarry legitimately and that even if Christians did get a divorce, there was no such a thing as a lawful second marriage.<sup>6</sup>
  7. Circa 265AD Cyprian, also writing from North Africa, indicated that a wife who departed from her husband had only the option of remaining single for the rest of her life.<sup>7</sup>
  8. In 314AD the Council of Arles, convening in France and with bishops present from France, Italy, Sicily, Africa and Britain, resolved that men who had divorced their wives because they had committed adultery were to be counseled to not remarry.<sup>8</sup>
- D. Thus, the written testimony of Christians indicates that in the 220 years which followed John's death the churches in Syria, Rome, Greece, Egypt, North Africa, France, Italy, Sicily, and Britain all generally viewed remarriage after a divorce as *forbidden* and *sinful*.
- E. There is no mention of pastors performing a wedding in the New Testament. However, by the year 110AD the early Christian writer Ignatius indicated that Christians should seek the guidance of church leaders before they married so that their marriages would be "according to God".<sup>9</sup> Since two of the three stipulations in the New Testament regarding marriage have to do with either remarrying after a divorce<sup>10</sup> or marrying a divorcee<sup>11</sup>, it would seem that this practice was started to ensure that those marrying did not marry in violation of Christ's divorce principles.<sup>12</sup>

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**marriage of those separated while the other is alive.**" (*The Stromata*, 2:23). I have corrected a translation error here according to PG 9:1096.

<sup>5</sup> "But we maintain our modesty not in appearance, but in our heart we gladly abide by the bond of **a single marriage**; in the desire of procreating, we know either **one wife, or none at all**." (*Octavius*, 31)

<sup>6</sup> "**A divorced woman cannot even marry legitimately**; and if she commits any such act without the name of marriage, does it not fall under the category of adultery, in that adultery is crime in the way of marriage? Such is God's verdict, within narrower limits than men's, that universally, whether through marriage or promiscuously, the admission of a second man to intercourse is pronounced adultery by Him...So true, moreover, is it that divorce "was not from the beginning," that among the Romans it is not till after the six hundredth year from the building of the city that this kind of "hard-heartedness" is set down as having been committed. But they indulge in promiscuous adulteries, even without divorcing their partners: to us, **even if we do divorce them, even marriage will not be lawful**." (*On Monogamy*, 9)

<sup>7</sup> "That a wife must not depart from her husband; or if she should depart, she must remain unmarried." (*Three Books Of Testimonies Against The Jews*, Book 3:90)

<sup>8</sup> "Of those who discover their wives in adultery and are young Christians and are forbidden to marry, it was determined that they be most strongly advised **not to take other wives while their own live, though they be adulterous**." (*Canon 10*). Cited in "Divorce" in *The Church Quarterly Review*, Vol. XL, No. LXXIX, April 1895 (London: Spottiswoode & Co, 1895), p.21.

<sup>9</sup> "But it becomes both men and women who marry, to form their union with the approval of the bishop, that their marriage may be according to God, and not after their own lust." (*Epistle To Polycarp*, 5).

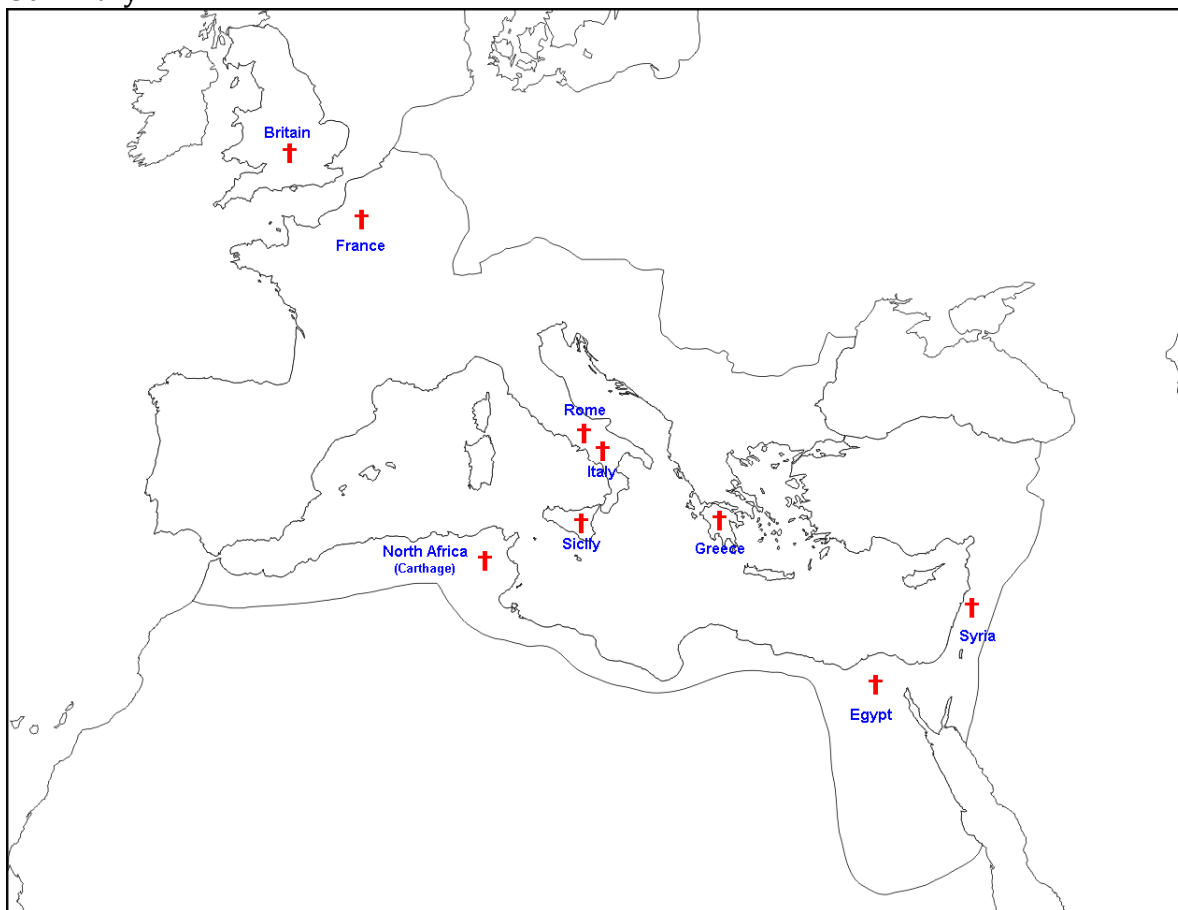
<sup>10</sup> "And he said unto them, Whoever shall put away his wife, and marry another, commits adultery against her. And if a woman shall put away her husband, and be married to another, she commits adultery." Mk 10:11-12

<sup>11</sup> "...and whoever marries her that is divorced from her husband commits adultery." Lk 16:18b

<sup>12</sup> The third stipulation would be regarding a believer only marrying another believer (1Co 7:39, 2Co 6:14).

F. It would be naïve to believe that no divorces and remarriages took place during this time amongst people who went to church. Regardless, there is no extant Christian writer until the fourth century who taught that remarriage after a divorce was allowed by the teachings of the Bible.<sup>13</sup>

### G. Summary



All Of The Existing Christian Writings That Discuss Marriage In Every Part Of The Roman Empire Until The Fourth Century Maintain That Jesus Prohibited Remarriage After A Divorce

## II. The Nicene Era To The Middle Ages (4<sup>th</sup>-15<sup>th</sup> Centuries)

A. In the early fourth century Christianity experienced a dramatic change. Prior to this time Christianity had been viewed by the Roman Emperors as a troublesome threat to Roman Society and ten attempts had been made by them to destroy Christianity.

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<sup>13</sup> Origen mentions some church leaders who allowed a divorced woman to remarry and raises the question as to whether it would be allowable to do this in order to prevent a more wicked sin than adultery (such as prostitution). However, he is quick to point out that to do so would be acting “contrary to what was written, where it is said, ‘A wife is bound for so long time as her husband liveth,’ and ‘So then if while her husband liveth, she shall be joined to another man she shall be called an adulteress...’” (*Commentary On Matthew, 14:23*). Regardless of his trying to understand why the church leaders allowed that to happen he acknowledges that the woman was still *committing adultery*, even if it was to prevent a worse sin: “a woman is an adulteress, even though she seems to be married to a man, while the former husband is still living. So also the man who seems to marry her who has been divorced, does not so much marry her as commit adultery with her according to the declaration of our Savior” (*Ibid, 14:24*).

- B. In 312AD Flavius Constantine was fighting a war to become the emperor of Rome. He claimed to have experienced a mystical encounter during this time in which Jesus told him to conquer in the name of Christianity.<sup>14</sup> He embraced this experience, began leaning towards Christianity, and successfully conquered the Roman Empire.
- C. After defeating his enemies he showed a deep interest in and favoritism towards the church.
  - 1. He allowed ministers to eat with him at his royal table, took them on trips with him, promoted Christians to influential positions in the government and donated *exceedingly large* amounts of money to the church.<sup>15</sup>
  - 2. He also wanted to be involved in church affairs. When the Christians could not agree on the nature of the Trinity he organized and paid for a conference to bring all of the bishops together to discuss the matter.<sup>16</sup>
  - 3. However, despite his great interest in Christianity, he mysteriously delayed being baptized for nearly 25 years until just a few days before his death in 337.<sup>17</sup>
- D. There is some evidence to suggest that Constantine had been divorced and remarried or at least would have been viewed by the Church as such.<sup>18</sup>
- E. In 331, nearly twenty years after first beginning to embrace Christianity, he passed legislation that went against what Jesus taught concerning divorce and remarriage.
  - 1. Constantine allowed a woman to D&R if her husband had committed murder, practiced sorcery or robbed a grave and he allowed a man to D&R if his wife had practiced sorcery, lured women into prostitution or committed adultery.<sup>19</sup> None of these reasons had been previously considered justification for D&R by Christians.

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<sup>14</sup> Eusebius of Caesarea, *Life Of Constantine*, 1:27-29.

<sup>15</sup> Eusebius of Caesarea, *Life Of Constantine*, 1:42, 2:44.

<sup>16</sup> Socrates Scholasticus, *Church History*, 1:8; Eusebius of Caesarea, *Life Of Constantine*, 3:6-13; Sozomen, *Church History*, 1:17; Theodoret, *Church History*, 1:6.

<sup>17</sup> Eusebius of Caesarea, *Life Of Constantine*, 4:62.

<sup>18</sup> We know that Constantine had children with two different women. His first relationship was with a woman named Minervina and produced a son, Crispus. However, after this, in 307 he married Fausta, the daughter of emperor Maximian. The marriage to Fausta is considered to have been entered into for political reasons. Whether he was actually married to Minervina is unclear. In 361AD (about twenty five years after Constantine's death) Aurelius Victor refers to her as a concubine (*Epitome*, 41:4) as does Zosimus some 150 years later (*New History*, 2). However, a panegyric delivered in 307 on the occasion of his wedding to Fausta has been interpreted to indicate that his relationship with Minervina was an actual marriage (*Panegyrici Latini: Panegyric of Maximian and Constantine*, 4:1). We know that Constantine's father put away Constantine's mother to marry another woman for political reasons which may have influenced him to do the same. I do not wish in any way to impugn his character but we are left with either three possibilities: Minervina was his concubine who was put away so that he could marry Fausta, Minervina was his wife whom he divorced so that he could marry Fausta, or Minervina died before he married Fausta. If she had been his concubine and he had taken her as a virgin, the writing of Athenagoras indicates that early Christians may have viewed them as husband and wife (*A Plea For The Christians*, 33) and viewed any subsequent relationship as unlawful. Compare Ex. 22:16-17 and Dt. 22:28-29 where men who take women's virginity are required to marry them and can never divorce.

<sup>19</sup> "Resolved, that a woman may not send her husband a writ of divorce in consequence of his depraved lust, for such a cause as she can make out—e.g. for drunkenness, or gambling, or consorting with women; nor may husbands put away their wives for whatever reason they please. But, in sending a writ of divorce, the wife may investigate these charges only, whether she can prove her husband guilty of murder or sorcery, or the robbing of graves, so that, if she make good her case, she should receive back the whole of her dowry. For, if she has sent a writ on any other than these three counts, she is bound to deposit all her property, even to a pin's head, in her

- F. Interestingly, the first Christians to soften their stand on D&R are ones who were intimately connected to Emperor Constantine.
1. Hosius (c.256-c.358), bishop of Cordoba, was a special advisor to Constantine who worked closely with him on several occasions between 313 and 324AD.
    - a. In 324AD he took part in a church conference in Elvira, Spain, the purpose of which appears to have been how to handle matters of morality in the church.
    - b. According to historian Philip Schaff, Hosius was the “leading genius of the Elvira Synod”.<sup>20</sup>
    - c. At this conference the issue of how to handle D&R was discussed and the conference decided that women who left their husband without acceptable cause and remarried could not receive communion, even at the point of death (Canon 8);<sup>21</sup> a Christian woman who left a Christian husband because he had committed adultery could not remarry and if she did she could not receive communion until her first husband died or she became seriously ill (Canon 9);<sup>22</sup> and if a Christian woman married a man knowing that he had deserted his former wife without cause she could not receive communion until she was at the point of death (Canon 10c).<sup>23</sup>
    - d. However, despite standing for some very conservative ideas regarding D&R the conference made a strange concession. Under certain circumstances a person who had not been baptized but was interested in learning about Christianity, if they got a divorce, could still remarry and be accepted into the church (Canon 10a-b).<sup>24</sup> The wording, though, is a bit confusing and appears to be geared only towards a husband and wife who are both interested in learning about Christianity.
    - e. The literary evidence from the 2<sup>nd</sup> and 3<sup>rd</sup> centuries suggests that, because Christians viewed D&R as a sinful lifestyle, that they would not baptize a person who had been D&R. We know that at the beginning of the 5<sup>th</sup> century

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husband's house, and, for her over-boldness, to be banished to an island. In the case of men, also, if they send a writ, it will be proper for these three charges to be investigated, whether he wished to put her away for adultery or sorcery, or as a procuress. For, if he put away a wife who is free from these charges, he must restore the whole of her dowry, and he may not marry another.” Cited in Herbert Mortimer Luckock's *The History Of Marriage, Jewish And Christian In Relationship To Divorce And Certain Forbidden Degrees* (Longmans, Green & Co., 1895), pp.139-140.

<sup>20</sup> Philip Schaff, *History Of The Christian Church, Vol. 2, Ch.4, § 55.*

<sup>21</sup> “Women who without acceptable cause leave their husbands and join another man may not receive communion even when death approaches.” Catholic University Of America edition. Available online at <http://faculty.cua.edu/pennington/Canon%20Law/ElviraCanons.htm>.

<sup>22</sup> “A baptized woman who leaves an adulterous husband who has been baptized, for another man, may not marry him. If she does, she may not receive communion until her former husband dies, unless she is seriously ill.” (*Ibid.*)

<sup>23</sup> “If a Christian woman marries a man in the knowledge that he deserted his former wife without cause, she may receive communion only at the time of her death.” (*Ibid.*)

<sup>24</sup> “If an unbaptized woman marries another man after being deserted by her husband who was a catechumen, she may still be baptized. This is also true for female catechumens.” (*Ibid.*)



Augustine of Hippo indicated that in North Africa persons who had been D&R could not be baptized unless they would end the second marriages.<sup>25</sup>

- f. It is possible that if Hosius was intimately acquainted with Constantine and Constantine had been divorced, that he feared being in the position of having to refuse the Emperor baptism (especially after he had done so much to help the church). And in order to prepare for this, he created a “loophole” that would keep him from having to refuse Constantine baptism.<sup>26</sup>
2. Lactantius (c.250-c.325) was a Latin tutor for Constantine’s oldest son, Crispus.
  - a. Lactantius is the first known Christian writer who taught that adultery justified a man in divorcing his wife and remarrying.<sup>27</sup>
- G. The embracing of Christianity by Constantine marks a shift in the history of Christianity.
  1. Church and Roman State were now merged into one.
  2. Whereas the Christian church had previously been independent, they now had to deal with various emperors who wanted to influence the church. For example, after Constantine’s death, one of his sons became emperor and tried to force the church to deny the Trinity.<sup>28</sup>
  3. In regards to divorce and remarriage, like Constantine, other emperors who claimed to be Christians passed D&R laws which went against what the Bible taught.
    - a. In 421AD Co-Emperors Honorius and Theodosius passed a law which allowed a woman to D&R if her husband had committed “great crimes”. Under this law a man was allowed to D&R if he found character faults in his wife. If the man initiated the divorce simply because the two parties could not get along, the wife was allowed to remarry even though Jesus said in Mt. 19:9 and Lk 16:18 that women divorced by their husbands under these circumstances are not allowed to remarry.<sup>29</sup>

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<sup>25</sup> Augustine wrote a whole book on this subject entitled *Of Faith And Works*.

<sup>26</sup> If Constantine was divorced this would help to explain the longstanding mystery as to why Constantine was not baptized until just a few days before he died.

<sup>27</sup> “He is an adulterer who has married one that is put away by her husband; so also is he who, except for the crime of adultery, has put away his wife to marry another.” (*Divine Institutes*, 6:23).

<sup>28</sup> Socrates Scholasticus, *Church History*, 2:7ff.

<sup>29</sup> “A woman who has separated (from her husband) by presenting a *repudium* given by her, if she has proved no causes for her own divorce, having lost the gifts which she had received as a fiancée, shall also be deprived of her dowry and given over to the penalty of deportation. We deny to her not only the bond of a second husband, but also the right of return from exile. But if a woman, struggling against marriage, has proved clearly vices and middling faults (on the part of her husband), she will lose her dowry and is to refund the (pre-nuptial) gift to her husband, certainly never to be joined in marriage with anyone again. And so that she not stain her widowhood with the shamelessness of illicit sex, we offer to the repudiated husband the right to accuse her by law. It remains that, if a woman who has left (her husband) has proven serious causes and knowledge implicated in great crimes (on her husband’s part), she shall gain possession of her dowry and shall also obtain the betrothal gift, and she shall receive the power of remarrying five years from the day of divorce. For then she will appear to have done this from abomination of her husband rather than desire for another man.

(1) Certainly, if the husband has brought about the divorce and has brought a serious criminal charge against the woman, he shall accuse her and pursue her by law and having obtained his vengeance he shall possess her dowry and shall receive back his generosity (i.e., the pre-nuptial gift) and shall obtain the free choice of marrying another woman soon. But if it is a fault of character, not of crimes, he shall receive back his gift,

- b. In 439AD Theodosius II and Valentinian III did away with previous restrictions that had penalized those who had divorced, in essence introducing a “no-fault” concept of divorce.<sup>30</sup>
- c. In 449AD Emperor Valentinian helped pass legislation greatly expanding upon Constantine’s unbiblical exceptions. His D&R law allowed a woman to divorce her husband and remarry if he committed treason, murder, poisoning, forgery, violated graves, stole from a church, committed robbery, assisted or harbored robbers, partook in cattle-stealing, or beating and whipping the wife. If she divorced for a reason not given by the government she could still remarry, but had to wait five years. A husband could divorce his wife for any of these reasons as well as if the wife went out to eat with men who were not related to her without the husband’s knowledge or against his wishes, left the house at night against his wishes without reasonable cause, or frequented the circus, theater or amphitheater after being forbidden by her husband.<sup>31</sup>

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relinquish the dowry, (and) marry another wife after two years. But if he has preferred to split up the marriage solely because of disagreement and the repudiated woman is weighted down by no vices or sins, the husband shall lose both the pre-nuptial gift and the dowry, and in perpetual celibacy he shall endure the penalty for insolent divorce from grievous solitude, and to the woman the power of marriage has been conceded after the end of a year. (2) However, we order that the provisions of the ancient law concerning withholdings from the dowry on account of children be preserved.” (*Codex Theodosius*, 3.16.2). Cited in Judith Evans Grubbs, *Women And The Law In The Roman Empire: A Sourcebook On Marriage, Divorce And Widowhood* (Routledge, 2002), p.204-205.

<sup>30</sup> “We order that legal marriages are able to be contracted by consent, (but) once contracted are not able to be dissolved except if a repudium has been sent. For indeed the favor that should be shown to children demands that the dissolution of marriage out to be rather difficult.

(1) But in sending a repudium and inquiring into the fault for the divorce, it is harsh to go beyond the guidance of the ancient laws. Therefore, having repealed the constitutions which order that now the husband, now the woman be repressed by the most severe penalties after a marriage has been dissolved, by this constitution we propose to revoke the blame for a repudium and the punishments for faults (and to return) to the ancient laws and the responses of jurists, Florentius, dearest and most beloved parent. And so your splendid and magnificent authority shall order that these things, which have been providently decided, be made known by means of posted edicts. (*Novel 12, 10 July 439*). Cited in Judith Evans Grubbs, *Women And The Law In The Roman Empire: A Sourcebook On Marriage, Divorce And Widowhood* (Routledge, 2002), p.205-206.

<sup>31</sup> “We decree that legal marriage may be contracted by consent, but this having once been done, that it cannot be dissolved unless by notice of repudiation, for the favor to which children are entitled demands that its dissolution should be rendered more difficult.

(1) We clearly enumerate the causes of repudiation by this most salutary law, for as We (with proper limitations) forbid marriage to be dissolved without good cause, so that where one of the parties is compelled by necessity, or the other is oppressed by some misfortune, We desire that he or she shall be liberated by Our aid, when this becomes necessary.

(2) Therefore, if a woman should ascertain that her husband is an adulterer, a homicide, a poisoner, or one who is plotting anything against Our government; or has been convicted of perjury or forgery, or is a violator of sepulchres, or has stolen anything from sacred buildings; or is a robber or a harbinger of robbers, a cattle thief or a kidnapper; or, in contempt of his house and of her, or in her presence, has consorted with dissolute women (which is especially exasperating to females who are chaste) ; or if he has attempted to deprive her of life by poison, or by the sword, or in any other way; or if she should prove that he had beaten her (which

- d. Leo I (reigned 457 to 474AD) passed a law in which a woman could divorce her husband if he developed insanity which lasted for five years. Leo indicated that any who would object to this because it went against what the church taught were mistaken and that he was justified in passing this law because marriage was about being happy.<sup>32</sup> To this he added that a woman who underwent an abortion could be divorced by her husband.<sup>33</sup>

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is not allowed in the case of freeborn women), We then grant her permission to avail herself of the necessary aid of repudiation, and to present legal reasons for divorce.

(3) The husband, also, is controlled by similar restrictions, for he shall not be permitted to repudiate his own wife, except for reasons which have been clearly designated; nor can she be driven away under any circumstances, unless he should find her to be an adulteress, a poisoner, a homicide, a kidnapper, a violator of sepulchres; or one who has stolen something from sacred buildings; or an accomplice of thieves; or one given to frequenting banquets where strange men are present, her husband either being ignorant of the fact or having withheld his consent; or where, without his permission, and without good and reasonable cause, she has passed the night in some public resort, or frequented the circus, theatre, or the exhibitions of the arena, in those places in which they are usually conducted, in spite of his opposition; or if she has attempted to kill him by poison, by the sword, or by any other means; or where she is cognizant of any plots against Our government; or has been implicated in the crime of forgery or perjury; or he can prove that she has laid violent hands upon him. For, under these circumstances, We necessarily grant him the right of separation, and the power to establish the causes of divorce in accordance with the laws.

(4) If neither the husband nor the wife should observe these regulations, he or she shall be punished with the avenging penalty of this most provident law. For if a woman, in contempt of the law, should attempt to send a notice of repudiation, she shall forfeit her dowry and her ante-nuptial donation, and shall not have the power to marry again within five years, for it is just that, in the meantime, she should be forbidden marriage, of which she has shown herself unworthy.

If, however, she should marry in spite of this provision, she herself shall become infamous, and We are unwilling that her union shall be designated marriage, and, in addition to this, We grant authority to anyone to attack it who desires to do so. But if she should prove the case which she has stated, she shall then recover her dowry, and profit by her ante-nuptial donation; and We decree that she shall have the right to claim them by law, and We grant her permission to marry after the expiration of a year, in order that no doubt may arise with reference to her offspring." (*Codex Justinian, 5:17:8*). S. P. Scott edition.

<sup>32</sup> "Certain authorities may, perhaps, hold that it is unreasonable for marriage to be annulled after consecration, because after the sacrament uniting the two parties into one body has been administered, it is impossible to separate them; and besides, the husband is the head, that is the principal member of this new body, and when the principal members are attacked by any disease it is not customary to amputate them. Those who advance this objection arising from the intimate union of husband and wife and attempt to maintain it, seem to Me to be ignorant of the object of the nuptial benediction, for it is presumed that marriage will be a source of happiness, that it joins the parties in a species of indissoluble bond, and sanctifies marital joys and the reproduction of the human race. But, I ask, how can the condition of insanity accord with these opinions? How can modesty be preserved when reason is absent, or stifled under the weight of wretched ignorance? How can any hope be entertained that children will be born of a union where an unfortunate woman only sees in the condition of her consort, who is more unfortunate still, a horrible spectacle, and can have no sexual relations with him? Finally, how can it be said that the parties are united by love, when the husband is distracted by madness, and does not even preserve the form of humanity? And, certainly, if there should be any issue of such a marriage, as Nature always causes the fruits of everything to resemble what produces it, this will be detrimental to humanity." (*New Constitutions Of The Emperor Leo, Constitution 112*). S. P. Scott edition.

<sup>33</sup> "Hence two laws have been enacted, one against a woman who, through dislike to her husband, takes pains to produce an abortion upon herself, and accomplishes the death of her unborn child, and another enacted against



- e. In 497AD the Emperor Anastasius passed a law indicating that when a couple decided by mutual consent to divorce, no matter what the reason, the woman only had to wait one year before remarrying.<sup>34</sup>
- f. In 528AD Emperor Justinian created legislation to try and persuade people from divorcing by limiting the reasons for divorce to *only* thirty exceptions. Yet, in spite of this, he still made a provision that ultimately would allow any who wished to divorce for any other reason to do so and to be able to eventually remarry. He also mandated that serfs who married free-women were to be divorced against their will.<sup>35</sup>

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the husband requiring him to repudiate a woman who has been guilty of such an outrage; but We think it advisable to adopt that which authorizes divorce, as being much more advantageous.

It is unreasonable and absolutely wicked for a woman who displays such decided hatred towards a husband as to destroy in her womb the germ of his posterity (without taking into consideration the violation of Nature's law), to still have the right to cohabit with him...Thus, as We have previously stated, the law which decrees their separation under such circumstances shall be the only one observed, and a husband can leave his wife if he learns that she has been guilty of a crime of this description. For if the law permits a marriage to be dissolved because the wife has passed a night away from home, or is proved to have attended a banquet in the company of men with whom it is not proper to associate, which circumstances do not show the same aversion for her husband, and do not always even establish her disgrace, why should he not be separated from her when she has committed a crime which is an outrage both against Nature and himself, but be obliged to live with a woman who may plot against his life?" (*New Constitutions Of The Emperor Leo, Constitution 31*). S. P. Scott edition.

<sup>34</sup> "Where a marriage has been dissolved by common consent, rather than by the repudiation of the wife, and not on account of any cause included in the most wise Constitution of the Emperors Theodosius and Valentinian of Divine Memory, the woman shall not be required to wait for the expiration of the term of five years, but can contract a second marriage after the lapse of one year." (*Codex Justinian, 5:17:9*). S. P. Scott edition.

<sup>35</sup> "(1) The following are the causes of divorce prescribed by the Constitution of Theodosius, of pious memory. If the wife can show that her husband has been guilty of adultery, homicide, or the administration of poison; or has taken part in sedition; or (which is the worst of all offences) has plotted against the government; or has been convicted of forgery, of violation of sepulchres; or has stolen anything belonging to a religious house; or has led a dishonest life; or has been guilty of theft; or is one of those cattle-thieves (who employ themselves in stealing animals or beasts of burden belonging to others, and transporting them elsewhere); or is proved to be a kidnapper, or to be living a debauched life, and, while his wife is living, cohabits with other women (conduct which especially exasperates married women who are of exemplary chastity, and careful to maintain the honor of the marriage bed), or if the wife can prove that her husband has attempted her life either by means of poison, by the use of arms, or in any other way (for there are numerous means by which human malice can be manifested) ; or where he has beaten her, these are valid causes for divorce. Therefore, when a wife can show anything of this kind, the law gives her permission to avail herself of repudiation to annul the marriage, and receive her dowry or ante-nuptial donation intact, not only where all these causes of divorce are susceptible of proof, but also where only one of them can be established.

(2) On the other hand, the law allows a husband to repudiate his wife if he ascertains that she has committed adultery; or has been guilty of the administration of poison; or of homicide, of kidnapping, of the violation of sepulchres, or the commission of sacrilege; or has aided thieves; or, without the knowledge, and against the wishes of her husband, she has enjoyed the pleasures of the table with guests unfit to associate with; or where, in violation of the orders of her husband and without good cause, she is in the habit of passing the night away from home; or, without his consent, she makes a practice of enjoying herself at the circus, and frequenting plays and theatres (We mean by this where comedies and similar exhibitions are presented, or where she attends combats between men and wild beasts); or where she treacherously attempts the life of her husband by means of poison, weapons, or any other means; or where she becomes the accomplice of persons

- g. In 566AD Justin II reverted back to Anastasius' "no-fault" position.<sup>36</sup>
- H. Though Constantine's decisions seem to have opened the door for the Church's acceptance of D&R, several factors actually acted to keep the early Christian teaching of D&R intact (at least in Western Europe).
  - 1. Over time the Roman Empire split into Eastern and Western divisions, based in part upon language.
    - a. In the East the Romans spoke Greek, while in the West they spoke Latin.

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plotting the establishment of tyranny; or where she has been proved guilty of forgery; or has laid violent hands upon her husband. Under such circumstances the law grants the husband the right to repudiate his wife, when he is able to prove only one of the causes hereinbefore enumerated, and authorizes him to take the dowry and ante-nuptial donation.

(3) But, in case either of these persons should give notice of repudiation without good cause for so doing, and, in consequence, the marriage should be dissolved, he or she shall be liable to the penalties which We have previously prescribed. Moreover, if the wife has been guilty of one of the above-mentioned offences, or has served notice of repudiation without sufficient reason, she will be prohibited from marrying again for five whole years; and any marriage which she may contract before the expiration of this time shall not be considered legal, and any person can appear in court and accuse her of having violated the law.

If, however, a woman has good ground for serving notice of repudiation, and, in case of a contest, should be successful; or if her husband, having repudiated her without sufficient cause, has been subjected to punishment; she will be entitled both to the dowry and the donation given in consideration of marriage; but she will have reason to blush if she marries a second time before an entire year has elapsed. This requirement, however, is not imposed upon a husband who has repudiated his wife without good cause; for although he will not obtain any pecuniary advantage by doing so, he can immediately marry again, as no reasonable suspicion can be raised with reference to his offspring, on which account women are very properly forbidden to remarry before a year has expired; and this prohibition is so important that even though the marriage may have been dissolved by common consent, still, according to a constitution of Anastasius, of pious memory, the interdiction of a second marriage is still imposed upon women for the term of a year.

(1) These are the causes for divorce which Theodosius has communicated to Us, to which We have added three others taken from former laws. For where a woman is so depraved as designedly to commit abortion thereby rendering her husband unhappy, depriving him of the hope of having children; or where she is so licentious that, for the sake of pleasure, she even bathes with men; or where, while she is still united to her husband, she refers to her marriage with others; permission is accorded by Us to her husband to repudiate her, and acquire the dowry and ante-nuptial donation; since these causes are sufficient for the dissolution of the marriage, and are included among those for which the Constitution of Theodosius, of Divine memory, prescribed penalties.

A serf, who is under the control of another, is not allowed to marry a woman who is free, whether the person entitled to his services does not know it, or, being aware of it, consents; and where anything of this kind takes place, the master of the serf shall, himself, be permitted to either punish him by a moderate castigation, or the Governor of the province can order this to be done, and separate him from the woman with whom he has been fruitlessly united; for a legal marriage does not take place under such circumstances, nor is the tender of the dowry or ante-nuptial donation valid; but there is merely the punishment of an illegal act." (*Novel 22:15-17; See also Codex Justinian, 5:17:11 & Novel 117:8-9*). S. P. Scott edition.

<sup>36</sup> "We have framed the present Imperial Law, by which We decree that, in conformity to the ancient rule, it shall be lawful to dissolve marriages by common consent, and that the penalties denounced, with the sanction of Our Father, against those who terminate their marriages in this way, shall be abolished. For if matrimony is brought about by mutual affection, it is certainly reasonable that a contrary desire should annul it, where both parties agree to do so, provided that this is sufficiently shown by the service of notice of repudiation." (*Novel 140:1*). S. P. Scott edition.

2. In 330AD Emperor Constantine moved the capital of the Roman Empire from Rome to Byzantium, renaming it Constantinople.
  - a. With the governmental seat of the Empire moved 850 miles away, the Western half of the Empire became weak, unstable and susceptible to frequent barbarian invasions.
  - b. The one source of stability in the Western half of the Empire proved to be the church. When the government proved itself unable to hold Western Rome together, the people began to look towards the Roman church as their authority.
    - i. One classic example of this occurred in 452AD when Attila the Hun was ready to invade Rome. It wasn't the government who was able to persuade him to call off his invasion, but the bishop of Rome who went out to meet with him personally and was able to convince him to spare Rome.<sup>37</sup>
3. Not surprisingly, in the Eastern half of the Empire (where the Roman Emperors were able to control the church and nation) the Christians became accepting of D&R.
4. In the Western half of the Empire (where the Church became the source of stability for the nation) the Christians generally held to a conservative policy of not allowing D&R under any circumstances.
  - a. This difference between east and west can be seen by comparing two contemporary bishops (Augustine of Hippo in Western Europe and Epiphanius of Salamis in Eastern Europe).
    1. In the East Epiphanius noted that the church allowed divorced men and women to remarry and *remain* members of the church.<sup>38</sup>
    2. In the West Augustine noted that people who had D&R prior to their conversion were required to end the new marriages *before* they could *join* the church.<sup>39</sup>

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<sup>37</sup> Prosper *Epitome Chronicon*, entry for year 450.

<sup>38</sup> "But if the man could not be content with the one wife, who had died, or if there has been a divorce for some reason--fornication, adultery or something else--and the man marries a second wife or the woman a second husband, God's word does not censure them or bar them from the church and life, but tolerates them because of their weakness. The holy word and God's holy church show mercy to such a person, particularly if he is devout otherwise and lives by God's law--not by letting him have two wives at once while the one is still alive, but by letting him marry a second wife lawfully if the opportunity arises, after being parted from the first." (*Panarion*, 39:4.8-10) Frank Williams, trans. (Netherlands: Brill, 2012), p.107-108.

<sup>39</sup> "It is the judgment of certain, that all men without distinction are to be admitted to the laver of regeneration (baptismal pool), which is in Christ Jesus our Lord, even although they shall be unwilling to change an evil and shameful life, rendered notable by sins and scandalous crimes, and shall even declare and make open profession, that they will continue therein...they seem to have been moved thus to dispute, as concerned at those not being admitted to Baptism, who have put away their wives and married others, or of females who have put away their husbands, and been married to others; because of these the Lord Christ without any doubt testifies, that they are, not marriages but adulteries...when we refuse to admit such persons to Baptism, it is not that we are endeavouring before the time to pluck out the tares, but that we are unwilling, like the devil, to sow tares upon the wheat: neither are we hindering them who are willing to come to Christ, but are by their own very profession convicting them of unwillingness to come to Christ: nor are we forbidding them to believe in Christ, but are shewing them that they are unwilling to believe in Christ, who either deny that to be adultery

- b. In the West those Christians who availed themselves of the secular law to D&R were excommunicated.
  1. Examples of this can be seen in the writings or records of Innocent I (d.417AD),<sup>40</sup> the Council of Angers (453AD),<sup>41</sup> Council of Agde (506AD),<sup>42</sup> the Judicium Clementis (693AD),<sup>43</sup> Archbishop Dunstan's Penitential Canons of Confession (963AD),<sup>44</sup> and the Council of Tours (1060).<sup>45</sup>

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which He declares to be adultery, or believe that adulterers can be His members, who He declares through the Apostle inherit not the kingdom of God...For it is enough, that if *all* sins are to be refused admission into the Sacrament of Baptism, among these *all* is adultery...Wherefore those which are manifest sins of unchastity, are in every way to be restrained from Baptism, unless they be amended by a change of will and by repentance...But these men, where the man enters to receive Baptism an adulterer, and goes forth, being baptized, an adulterer, it is a wonder to me in what sense they think it said unto him, *Behold, thou are made whole.*" (*Of Faith And Works*, 1, 2, 30, 34, 35, 36). Translated in *Seventeen Short Treatises Of S. Augustine* (Oxford: John Henry Parker & F. and J. Rivington, 1847).

<sup>40</sup> "It is manifest that when persons who have been divorced marry again both parties are adulterers. And moreover, although the former marriage is supposed to be broken, yet if they marry again they themselves are adulterers, but the parties whom they marry are equally with them guilty of adultery; as we read in the gospel: *He who putteth away his wife and marrieth another committeth adultery; and likewise, He who marrieth her that is put away from her husband committeth adultery.* **Therefore all such are to be repelled from communion.**" (*Letter To Exsuperius, Bishop of Toulouse, Ch.6*). Cited in John Fulton *The Laws Of Marriage* (New York, NY: E. & J. B. Young & Co., 1883), p.255.

<sup>41</sup> "They who abuse the name of marriage by taking women whose husbands are living **shall be excommunicated.**" (*Canon 6*). Cited in John Fulton *The Laws Of Marriage* (New York, NY: E. & J. B. Young & Co., 1883), p.255.

<sup>42</sup> "But those secular persons who are setting aside or even have set aside their conjugal fellowship for a somewhat grave fault, and alleging no reasons of divorce, nevertheless dissolve their marriages that they may take up either unlawful or foreign connexions, if before they have stated the causes of divorce before the comprovincial bishops and have rejected their wives, before they are condemned by lawful judgment, **let them be excluded from the Communion of the Church and from the holy assembly of the people** for the reason that they are defiling their faith and marriages." (*Canon 25*). Cited in Henry John Wilkins *The History Of Divorce And Re-marriage For English Churchmen* (London: Longmans, Green & Co., 1910), pp.103-104.

<sup>43</sup> "If any man send away his lawful wife and marry another, **he is to be excommunicated by Christians**, even if the first wife consent...It is not lawful for separation to take place in the case of a lawful marriage unless there is the consent of both, so that they may remain unmarried." (*Sec. 14-15*). Cited in "Divorce" in *The Church Quarterly Review, Vol. XL, No. LXXIX, April 1895* (London: Spottiswoode & Co, 1895), p.8.

<sup>44</sup> "He that relinquisheth his Wife, and taketh another Woman breaketh Wedlock. **Let none of those Rights which belong to Christians be allowed him, either during Life, or at his Death, nor let him be buried with Christian Men:** and let the same be done to a [delinquent] Wife: And let the Kindred that were present at the Contract suffer the same Doom, except they will first be converted, and earnestly make Satisfaction." (*Sec. 27*). Cited in Henry John Wilkins *The History Of Divorce And Re-marriage For English Churchmen* (London: Longmans, Green & Co., 1910), p.124.

<sup>45</sup> "... he who, dismissing his wife without the episcopal decision has married or may have married another, let him know until he has given himself thoroughly to penance that **he is excluded and shut off from the body and blood of our Lord Jesus Christ and from the precincts of the Church and in every way, is cut off**, as a diseased member from a sound body, by the sword of the spirit, which is the Word of God." (*Canon 9*). Cited in Henry John Wilkins *The History Of Divorce And Re-marriage For English Churchmen* (London: Longmans, Green & Co., 1910), p.109.

2. In 998AD King Robert of France was excommunicated for divorcing his wife Suzanne and marrying Bertha.
3. In 1141 Raoul of Vermandois, contrary to what Jesus had taught, put away his wife Eleanor to marry the sister of the Queen of France, Peronelle. One year later Pope Innocent III excommunicated him.
4. In 1193 King Philip II of France announced that he would be putting away his wife, Princess Ingeborg. Pope Celestine III warned that no future marriage would be recognized by the Church while Ingeborg lived.

H. In addition to the above references, there is no shortage of Medieval Christian writers from Western Europe who held to the early Christian interpretation.

1. Ambrose Of Milan (333-397AD)<sup>46</sup>
2. Council Of Mileve (416AD)<sup>47</sup>
3. Council Of Carthage (a.k.a. African Code, 419AD)<sup>48</sup>
4. Augustine Of Hippo (354-430AD)<sup>49</sup>
5. Finnian (a.k.a. Vinnian, Vinnianus, Finian, d.c.550AD)<sup>50</sup>
6. Adamnan (c.624-704AD)<sup>51</sup>

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<sup>46</sup> "Therefore, the right to marry is given to you, lest ye fall into a snare and sin with a strange woman. Ye are bound to your wife; do not seek release because **you are not permitted to marry another while your wife lives.**" (*On Abraham The Patriarch, 1:7:59*). Theodosia Tomkinson, Tr. (Etba, CA: Center For Traditionalist Orthodox Studies, 2000).

<sup>47</sup> "According to the evangelical and apostolic discipline it is decreed that neither a man who is put away by his wife, nor a woman put away by her husband, may marry another, but that they must either abide so, or be reconciled to each other." (*Canon 17*). Cited in John Fulton *The Laws Of Marriage* (New York, NY: E. & J. B. Young, 1883), p.255.

<sup>48</sup> "It was determined that, in accordance with Evangelical and Apostolic discipline, neither a man put away by his wife nor a woman put away by her husband may be united to another; but let them remain so, or be reconciled to each other." (*Canon 102*) Cited in "Divorce" in *The Church Quarterly Review, Vol. XL, No. LXXIX, April 1895* (London: Spottiswoode & Co, 1895), p.22.

<sup>49</sup> "It cannot be correctly affirmed either that the husband who puts away his wife because of immorality and marries another does not commit adultery. **For there is adultery, also, on the part of those who marry others after the repudiation of their former wives because of immorality...**If everyone who marries another woman after the dismissal of his wife commits adultery, this includes the one who puts away his wife without the cause of immorality **and the one who puts away his wife for this reason.**" (*Adulterous Marriage, 1:9*). Roy Joseph Deferrari & Charles T. Wilcox, *Fathers Of The Church, Vol. 27: Treatises On Marriage And Other Subjects* (Washington, DC: CUA Press, 1999).

<sup>50</sup> "42. We declare against separating a wife from her husband; but if she has left him, [we declare] that she remain unmarried or be reconciled to her husband according to the Apostle. 43. If a man's wife commits immorality and cohabits with another man, he ought not to take another wife while his wife is alive...45. So also a woman, if she has been sent away by her husband, must not mate with another man so long as her former husband is in the body; but she should wait for him, unmarried, in all patient chastity, in the hope that God may perchance put patience in the heart of her husband." (*Penitential of Vinnian, Sec. 42, 43, 45*). John Thomas McNeill & Helena Margaret Gamer, *Medieval Handbooks Of Penance: A Translation Of The Principal "Libri Poenitentiales" And Selections From Related Documents* (New York, NY: Columbia University Press, 1938, 1990), p.95. I have slightly modernized this quote.

<sup>51</sup> "Of a wife who is a harlot, thus the same man explained, 'That she will be a harlot, who has cast off the yoke of her own husband, and is joined to a second or a third husband; and her husband shall not take another [wife]



7. Council Of Nantes (658AD)<sup>52</sup>
8. Venerable Bede (c.672-735AD)<sup>53</sup>
9. Council Of Trullo (692AD)<sup>54</sup>
10. Zacharias (d. 752AD)<sup>55</sup>
11. Excerptions Of Egbert (d.766AD)<sup>56</sup>
12. Synod Of Aachen (789AD)<sup>57</sup>
13. Council Of Friuli (791AD)<sup>58</sup>
14. Sixth Council Of Paris (829AD)<sup>59</sup>

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while she lives..." (*Canons Of Adamnan, Canon 16*). John Thomas McNeill & Helena Margaret Gamer, *Medieval Handbooks Of Penance: A Translation Of The Principal "Libri Poenitentiales" And Selections From Related Documents* (New York, NY: Columbia University Press, 1965), p.133.

<sup>52</sup> "If a man's wife has committed adultery...let him send away his wife, if he will...But her husband may not on any account take another wife while she lives." (*Canon 12*). Cited in "Divorce" in *The Church Quarterly Review, Vol. XL, No. LXXIX, April 1895* (London: Spottiswoode & Co, 1895), p.18.

<sup>53</sup> "Therefore is there only one carnal cause, fornication: one spiritual cause, the fear of God for which a wife may be dismissed. But **there is no cause prescribed by the law of God that another wife may be taken, while she is alive who has been abandoned.**" (*On The Gospel Of Mark, Ch. 10*). Cited in Henry John Wilkins *The History Of Divorce And Re-marriage For English Churchmen* (London: Longmans, Green & Co., 1910), p.124.

<sup>54</sup> "She who has left her husband is an adulteress if she has come to another, according to the holy and divine Basil, who has gathered this most excellently from the prophet Jeremiah...he who leaves the wife lawfully given him, and shall take another is guilty of adultery by the sentence of the Lord." (*Canon 87*). NPNF, Series 2, Vol. 14.

<sup>55</sup> "Concerning a layman repelling his wife from the canon of the holy apostles, chapter 48: **If any layman repelling his own wife has taken another or one dismissed by another, let him be deprived of Communion.**...Concerning those who dismiss their wives or husbands, that they remain thus: from the African Council above mentioned in chapter 69 it is thus contained: it was resolved that according to evangelical and apostolical discipline, neither a man dismissed by his wife, nor a woman dismissed by her husband, may be joined to another; but that they so remain or be mutually reconciled." (*Letter 7 To Pippin, Ch.7, 12.*) Cited in Henry John Wilkins *The History Of Divorce And Re-marriage For English Churchmen* (London: Longmans, Green & Co., 1910), p.99-100.

<sup>56</sup> "Augustine says, 'If a woman commits immorality she is to be dismissed; **but another is not to be married while she is alive.**' Wherever, then, there is immorality, and a just suspicion of immorality, the wife may be freely dismissed...According to the Evangelical discipline, neither let a wife, dismissed from her husband, take another man, the former living; nor a husband another woman; but let them so remain, or be reconciled. Augustine says: 'If a woman commits immorality she is to be relinquished, **but another must not be taken so long as she lives.**'" (*Canons 119-121*). Cited in "Divorce" in *The Church Quarterly Review, Vol. XL, No. LXXIX, April 1895* (London: Spottiswoode & Co, 1895), p.11.

<sup>57</sup> "Also it was decreed in the same (African Council) that neither a wife, dismissed by a husband, may take another husband, while her own husband is alive, nor a husband take another wife, while his first wife still lives." (*Canon 13*). Cited in Henry John Wilkins *The History Of Divorce And Re-marriage For English Churchmen* (London: Longmans, Green & Co., 1910), p.108.

<sup>58</sup> "Though the bond of marriage be broken for the cause of immorality, a man may not marry another wife as long as the adulteress lives, though she be an adulteress; and the adulteress shall never marry another husband." (*Canon 10*). Cited in "Divorce" in *The Church Quarterly Review, Vol. XL, No. LXXIX, April 1895* (London: Spottiswoode & Co, 1895), p.17 & John Fulton *The Laws Of Marriage* (New York, NY: E. & J. B. Young, 1883), p.258-9.

15. Canon List Of Benedict the Levite (c.847AD)<sup>60</sup>
16. Laws of the Northumbrian Priests (950AD)<sup>61</sup>
17. Council of Eanham (1009AD)<sup>62</sup>
18. Ecclesiastical Laws of King Cnut (a.k.a. Canute, Knud, c.994-1035AD)<sup>63</sup>
19. Council Of Rheims (1049AD)<sup>64</sup>
20. The Noble Lesson (1100)<sup>65</sup>
21. John Gratian (d.1160)<sup>66</sup>
22. Peter Lombard (c.1100-c.1164)<sup>67</sup>

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<sup>59</sup> "And those who marry other wives when their own have been sent away for the cause of immorality are to be marked as adulterers by the judgment of the Lord." (*Canon 2*). Cited in "Divorce" in *The Church Quarterly Review*, Vol. XL, No. LXXIX, April 1895 (London: Spottiswoode & Co, 1895), p.18.

<sup>60</sup> "That during the lifetime of husband or wife neither of them be united in another marriage...And if she has committed immorality, and her husband desires it, she is to be dismissed, but another wife may not be taken in marriage during her lifetime, because adulterers will not possess the kingdom of God, and her penitence is to be accepted." Joseph Friesen, *Geschichte Des Canonischen Eherechts* (Zweigniederlassungen: Druck Und Verlag Von Ferdinand Schöningh, 1893), p.793. Cited in Oscar Daniel Watkins, *Holy Matrimony* (London: Rivington, Percival & Co., 1895), p.391.

<sup>61</sup> "If any man dismiss his lawful wife [while she is] living and marry another, let him want God's mercy unless he make satisfaction for it; but let every one retain his lawful wife so long as she lives, unless they both choose to be separated by the bishop's consent and are willing to preserve their chastity for the future." (*Section 54*). John Johnson, *A Collection Of the Laws And Canons Of The Church of England, Vol. 1* (Oxford: John Henry Parker, 1850), p.381.

<sup>62</sup> "And let it never be, that a Christian man marry within the relationship of 6<sup>th</sup> persons, in his own kin, that is within the fourth degree; nor with the relict of him who was so near in worldly relationship; nor with the wife's relation, whom he before had had. Nor with any hallowed nun, nor with his god-mother, **nor with one divorced, let any Christian man ever marry; nor have more wives than one, but be with that one, as long as she may live**; whoever will rightly observe God's law, and secure his soul from the burning of hell." (*The Laws Of King Ethelred* (c. 968-1016), 6:12). John Milton Stearns, *The Germs And Developments Of The Laws Of England* (New York, NY: Banks & Brothers, Law Publishers, 1889), p.175.

<sup>63</sup> "We enjoin, and charge, and command, in God's name, that no Christian man do ever take a wife of his own kin within the sixth degree of relation, nor the widow of a kinsman so nearly related to him, nor of the kindred of a wife whom he formerly had, nor of his sureties at baptism, nor a consecrated nun, **nor a divorced woman**, nor practice any unlawful copulation. **Let no man have more than one wife, and let her be a wedded wife, and let him remain with her only, so long as she lives**, if he will rightly observe God's will, and secure his soul against hell flames." (*Ecclesiastical Laws of King Cnut, Law No. 7*). John Johnson, *A Collection Of the Laws And Canons Of The Church of England, Vol. 1* (Oxford: John Henry Parker, 1850), p.506.

<sup>64</sup> "[We decree] That no one, having left his lawful wife, may take another." (*Canon 12*). Cited in Henry John Wilkins *The History Of Divorce And Re-marriage For English Churchmen* (London: Longmans, Green & Co., 1910), p.109.

<sup>65</sup> "The old law had power to make null marriage, and that bills of divorcement might be given, But the new saith, Thou shalt not marry her that is put away, And what God hath joined, let no man separate." Translated in Adam Blair's *History Of The Waldenses, Vol. 1*, (Edinburgh: Adam Black, 1832), p.478.

<sup>66</sup> "A marriage which, once entered into, is approved can in nowise be dissolved...If either the husband has departed from his wife, or the wife from the husband on the ground of immorality, it is unlawful to take another." (*Decretum, Case 32, Question 7, C. 2 & C.3*). Cited in Henry John Wilkins *The History Of Divorce And Re-marriage For English Churchmen* (London: Longmans, Green & Co., 1910), p.110.

23. Alexander III (d.1181AD)<sup>68</sup>

24. Thomas Aquinas (c.1225-1274)<sup>69</sup>

25. John Wycliffe (1328-1384)<sup>70</sup>

- I. At the beginning of the 11<sup>th</sup> century Alexius, a high ranking bishop of the Eastern Christians, drew up a series of official church rules on divorce. They cemented the idea that the innocent person had the right to remarry and have influenced Eastern Christianity up until the present.<sup>71</sup>
- J. It would be naïve to think that every Western Christian entirely understood or maintained the early Christian interpretation during the Middle Ages,<sup>72</sup> but, as Oscar Watkins points out, “On the whole, however, the tradition of primitive Christianity was faithfully guarded” during this time.<sup>73</sup>
- K. Before we go any further, it is important to note one more aspect of the Medieval Church’s understanding of marriage. We noted above how that Ignatius of Antioch indicated that Christians should seek the approval of church leaders before getting married, although there

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<sup>67</sup> “The marriage bond still exists between those who, even if departing from one another, having joined themselves to others.” Cited in Henry John Wilkins *The History Of Divorce And Re-marriage For English Churchmen* (London: Longmans, Green & Co., 1910), p.111.

<sup>68</sup> “A husband and wife are not to be separated from each other on account of any crime committed by either of them, with the exception of spiritual fornication (*i.e.* infidelity) only; and even then the bond of marriage remains, so that the innocent party cannot marry again...Marriage is dissolved by the adultery of the wife, but in such wise that neither party may marry again; and if the husband marry another woman, his second marriage is null, and the first marriage, with all its duties and obligations, is restored.” (*Decretals Of Gregory IX, 4.19.2 & 4.19.5*). Cited in John Fulton *The Laws Of Marriage* (New York, NY: E. & J. B. Young, 1883), p.260-261.

<sup>69</sup> “Nothing happening after a marriage can dissolve it: wherefore adultery does not make a marriage cease to be valid. For, according to Augustine (*De Nup. et Concup. i, 10*), “as long as they live they are bound by the marriage tie, which neither divorce nor union with another can destroy.” Therefore it is unlawful for one, while the other lives, to marry again.” (*Summa Theologica, Part 3, Supplement, 62:5*) (New York: Benziger Brothers, 1922), p.303.

<sup>70</sup> “And let each man be aware that he procures no false divorce, for money, neither for friendship, neither for enemy; for Christ commands that no man separate them that God has joined; but only for adultery that party that keeps himself clean may depart from the other’s bed and for no other cause, as Christ himself says. And in this case the clean party has [only] **the option to either live chastely for as long as the other [spouse] lives, or else be reconciled again to the other party.**” (*Of Weddid Men And Wifis And Of Here Children Also, Ch.2*), in Thomas Arnold, ed. *Select English Works Of John Wycliffe, Vol. 3: Miscellaneous Works* (Oxford: Clarendon Press, 1871), p.192.

<sup>71</sup> 1. “The Priest who gives the marriage blessing to a woman divorced from her husband is not to be condemned, if the man’s conduct was the cause of separation.

2. Women divorced from husbands whose conduct was the cause of separation are blameless, if they wish to marry (again), and so are the Priests who give them the blessing on the union. The same rule applies to men.

3. The man who marries a woman divorced for adultery, whether he has himself been married before or not, is an adulterer, and must submit to the penance of adulterers.

4. The Priest who gives his blessing on second marriages for those who have dissolved their marriage by mutual consent, which is not sanctioned by the laws, shall be deprived of his office.” Cited in Herbert Mortimer Luckock’s *The History Of Marriage* (London: Longmans, Green & Co, 1895), p.181.

<sup>72</sup> The *Judicium Clementis* (693AD), for example, forbids divorce and remarriage but allows a man whose wife is kidnapped to remarry (*Canon 19*).

<sup>73</sup> *Holy Matrimony* (London: Rivington, Percival & Co., 1895), p.394.

is no mention of this in the New Testament.<sup>74</sup> This practice of seeking the approval of church leaders naturally progressed into the idea that church leaders could somehow *ratify* a marriage. This idea that church leaders could ratify a marriage led to the belief that a marriage ratification ritual (ceremony) was on the level of other church rituals (i.e. a sacrament), such as baptism and communion. The logical conclusion of such thinking is that marriages which are performed outside of the Church are somehow not as valid, or worthy, as marriages which are performed inside and by the Church.<sup>75</sup>

1. Based upon the above way of thinking, Pope Innocent III (served as pope 1198-1216) decreed that in situations where a “non-Christian wedding” had taken place and one spouse converted while the other did not, that the believing spouse was free to remarry if their unbelieving spouse abandoned them. He based this decree upon 1Corinthians 7:15. This ruling, however, did not apply to marriages that had taken place in a church (which, in accordance with the early Christian interpretation, could be dissolved only by death).<sup>76</sup> This interpretation of 1Corinthians 7:15 came to be known as the “Pauline Privilege”. Because by this time practically all of Western Europe was Christian this decree had little practical usage but it is still considered an official teaching of the Roman Catholic Church.<sup>77</sup>

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<sup>74</sup> *Epistle To Polycarp*, 5.

<sup>75</sup> I will not include quotations for this as Oscar Daniel Watkins traces this out well in *Holy Matrimony*, p.96ff and 438ff. The reader looking for primary source quotes on this is encouraged to refer to this work.

<sup>76</sup> “If one of the two unbelieving consorts be converted to the Catholic faith, but the other be not willing to cohabit with him (1) in any case, or (2) without blasphemy of the Divine name, or (3) without drawing him on to mortal sin, he who is (thus) deserted may pass over to a second marriage if he will. And we understand that it is in this case that the apostle says, ‘If the unbeliever depart, let him depart. A brother or sister is not bound in such a case’; and also the canon, in which it is said that ‘the contumely of the Creator dissolves the *jus matrimonii* with regard to him who is deserted.’ But if one of two believing consorts either fall into heresy, or pass over to the error of Paganism, we do not believe that in this case the one who is left can betake himself to second wedlock during the lifetime of the other, notwithstanding the fact that in this case the contumely of the Creator seems to be greater. For although there is indeed true marriage among unbelievers, yet it is not *ratum*. But among the faithful it exists as both true and *ratum*, because a sacrament of the faith which is once received is never lost; but the ratification effects the sacrament of marriage, so that in married people the one remains with the other.” (*Decretals of Gregory, 9:4.19, On Divorce, c.7*). Cited in Oscar Daniel Watkins, *Holy Matrimony* (London: Rivington, Percival & Co., 1895), p.559

<sup>77</sup> “Can. 1143 §1. A marriage entered into by two non-baptized persons is dissolved by means of the pauline privilege in favor of the faith of the party who has received baptism by the very fact that a new marriage is contracted by the same party, provided that the non-baptized party departs.

§2. The non-baptized party is considered to depart if he or she does not wish to cohabit with the baptized party or to cohabit peacefully without affront to the Creator unless the baptized party, after baptism was received, has given the other a just cause for departing.

Can. 1144 §1. For the baptized party to contract a new marriage validly, the non-baptized party must always be interrogated whether:

1/ he or she also wishes to receive baptism;

2/ he or she at least wishes to cohabit peacefully with the baptized party without affront to the Creator.

§2. This interrogation must be done after baptism. For a grave cause, however, the local ordinary can permit the interrogation to be done before baptism or can even dispense from the interrogation either before or after baptism provided that it is evident at least by a summary and extrajudicial process that it cannot be done or would be useless.

L. After centuries of strained relationships, representatives from Eastern and Western Christianity met to try and reconcile in 1431 at what has come to be known as the Council of Florence. At one point the Pope asked the Eastern Roman (by that time referred to as Byzantine) Emperor why the Greek Christians allowed remarriage after a divorce but he got no satisfactory answer.<sup>78</sup>

**M. Summary**

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Can. 1145 §1. The interrogation is regularly to be done on the authority of the local ordinary of the converted party.

This ordinary must grant the other spouse a period of time to respond if the spouse seeks it, after having been advised, however, that his or her silence will be considered a negative response if the period passes without effect.

§2. Even an interrogation made privately by the converted party is valid and indeed licit if the form prescribed above cannot be observed.

§3. In either case, the fact that the interrogation was done and its outcome must be established legitimately in the external forum.

Can. 1146 The baptized party has the right to contract a new marriage with a Catholic party:

1/ if the other party responded negatively to the interrogation or if the interrogation had been omitted legitimately;

2/ if the non-baptized party, already interrogated or not, at first persevered in peaceful cohabitation without affront to the Creator but then departed without a just cause, without prejudice to the prescripts of cann. 1144 and 1145.

Can. 1147 For a grave cause, however, the local ordinary can allow a baptized party who uses the pauline privilege to contract marriage with a non-Catholic party, whether baptized or not baptized; the prescripts of the canons about mixed marriages are also to be observed." (*Code Of Canon Law Of The Catholic Church*, 1983)

<sup>78</sup> Joseph Gill *The Council Of Florence* (Cambridge, Cambridge University Press, 1959), p.297. Basil Popoff, *The History Of The Council Of Florence* (London: Joseph Masters, 1861), p.158-159.





Under the influence of worldly Roman Emperors, the churches in Eastern Europe slowly drifted away from the early Christian interpretation of Jesus' teachings on divorce and remarriage. In the West, where there was little Imperial interference with church matters, the Christians generally held to the early Christian interpretation of no remarriage after a divorce so long as one's first spouse was alive.

### III. The Reformation & Protestant Eras (16<sup>th</sup>-19<sup>th</sup> Centuries)

A. Western Christianity, for the most part, rejected the possibility of a D&R from a legitimate marriage until the 16<sup>th</sup> century. Several factors, combined, led to the change in attitude regarding D&R that would ensue in the 16<sup>th</sup> century.

1. In 1453 Islamic invaders conquered the Eastern half of the Roman Empire (then known as the Byzantine Empire).
  - a. The result was a flood of Eastern refugees (who believed in D&R) fleeing the Eastern half of the empire for the safe confines of the Western half.
  - b. As they settled in Western Europe they introduced to the Western Christians the idea that God allowed D&R, at least under certain circumstances.
  - c. In the 16<sup>th</sup> century Western Christians, partly fueled by the influx of Eastern Greek Christians, began to express discontentment with such issues as clergy corruption, the power of the Pope of Rome and some of the prevailing and

common interpretations of the Bible. This discontentment led to what we today refer to as the Protestant Reformation.

- d. One of the interpretations that came under scrutiny was Western Christianity's idea that the teachings of Jesus did not allow D&R from a validly entered into marriage.
2. The first major Western Christian to *subtly* criticize Western Christianity's prohibition of D&R during this time appears to be Thomas More (1478-1535).
    - a. More was not a priest or pastor, but instead a lawyer.
    - b. In 1516 he published a fictional novel entitled *Utopia* in which he described a traveler who visited a perfect, utopian society.
    - c. In More's perfect society men and women examine each other naked before they are married to make sure that they will be satisfied with each other.<sup>79</sup> After marriage persons in the perfect society are allowed to D&R if their spouse commits adultery, some other perverseness, or if the couple just cannot get along. In cases of adultery where both of the adulterous parties are married, the government automatically divorces the couple and sentences the offending spouse to a life of slavery. If the jilted spouse desires to forgive and reconcile, they must embark on a life of slavery as well. Otherwise, they are unable to continue in a marital relationship with their spouse.<sup>80</sup>

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<sup>79</sup> "In choosing their wives they use a method that would appear to us very absurd and ridiculous, but it is constantly observed among them, and is accounted perfectly consistent with wisdom. Before marriage some grave matron presents the bride, naked, whether she is a virgin or a widow, to the bridegroom, and after that some grave man presents the bridegroom, naked, to the bride. We, indeed, both laughed at this, and condemned it as very indecent. But they, on the other hand, wondered at the folly of the men of all other nations, who, if they are but to buy a horse of a small value, are so cautious that they will see every part of him, and take off both his saddle and all his other tackle, that there may be no secret ulcer hid under any of them, and that yet in the choice of a wife, on which depends the happiness or unhappiness of the rest of his life, a man should venture upon trust, and only see about a handsbreadth of the face, all the rest of the body being covered, under which may lie hid what may be contagious as well as loathsome." (*Utopia*, Bk. 2)

<sup>80</sup> "There was so much the more reason for them to make a regulation [of examining wives naked] in this matter, because they are the only people of those parts that neither allow of polygamy nor of divorces, except in the case of adultery or insufferable perverseness, for in these cases the Senate dissolves the marriage and grants the injured person leave to marry again; but the guilty are made infamous and are never allowed the privilege of a second marriage...But it frequently falls out that when a married couple do not well agree, they, by mutual consent, separate, and find out other persons with whom they hope they may live more happily; yet this is not done without obtaining leave of the Senate, which never admits of a divorce but upon a strict inquiry made, both by the senators and their wives, into the grounds upon which it is desired, and even when they are satisfied concerning the reasons of it they go on but slowly, for they imagine that too great easiness in granting leave for new marriages would very much shake the kindness of married people. They punish severely those that defile the marriage bed; if both parties are married they are divorced, and the injured persons may marry one another, or whom they please, but the adulterer and the adulteress are condemned to slavery, yet if either of the injured persons cannot shake off the love of the married person they may live with them still in that state, but they must follow them to that labour to which the slaves are condemned, and sometimes the repentance of the condemned, together with the unshaken kindness of the innocent and injured person, has prevailed so far with the Prince that he has taken off the sentence; but those that relapse after they are once pardoned are punished with death." (*Utopia*, Bk 2)

3. The first Western Christian to *publicly* question Western Christianity's prohibition of D&R during this time appears to have been Desiderius Erasmus (1466-1536).
  - a. Erasmus was a personal friend of More and helped him to edit his book *Utopia*.
  - b. Unlike More, he was an ordained priest.
  - c. As a student, Erasmus sat under several Eastern Christian teachers who had relocated to Western Europe to include Demetrios Chalkokondyles (1423-1511), George Hermonymus (b. & d. unk.), and Marcus Musurus (1470-1517).<sup>81</sup>
  - d. Like the Eastern Christians Erasmus began teaching that remarriage was possible after a divorce.
  - e. He went on record indicating that adultery ended a marriage (and therefore justified the innocent person in remarrying), even if the married couple did not want it to.<sup>82</sup>
  - f. Erasmus also reconfirmed Pope Innocent III's interpretation of 1Corinthians 7:15 to indicate that abandonment by an unbeliever justified a believer in remarrying.<sup>83</sup>

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<sup>81</sup> J. Gennadius. *Erasmus And The Pronunciation Of Greek in The Nineteenth Century, Vol. 39, Jan-Jun 1896* (London: Sampson Low, Marston & Company, 1896), p.91.

<sup>82</sup> "Although the Law desired that the friendship and concord between spouses would last forever, yet aware of the hardness of the Jews' hearts, it allowed divorce, so that nothing more heinous might be committed--poisoning, for instance, or murder. But among those who profess the New Law, I want marriage to be something holier and more inviolate. For whoever divorces his wife--unless she is an adulteress (for she has stopped being his wife if she has had sexual relations with another man)--forces her into adultery, since if she marries another man she will marry not a husband, but an adulterer; and he who marries a woman who has been thus repudiated does not marry a wife, but an adulteress." (*Paraphrase, Matthew 5*). *Collected Works Of Erasmus, Vol. 45* (University of Toronto Press, 2008).

"There are many things that are shameful in God's eyes that are not punished by human laws. Know, therefore, that whoever puts away his wife for any reason whatever and takes another wife, such a person commits adultery himself and likewise gives to his wife an occasion for adultery--unless, perchance, the woman he is divorcing deserves the divorce on the grounds of adultery. For a wife who has given herself to another man has already ceased to be a wife and has deprived herself of matrimonial rights, since the flesh has been divided that God wanted to be one and undivided." (*Paraphrase, Matthew 19*). *Collected Works Of Erasmus, Vol. 45* (University of Toronto Press, 2008).

"For a wife who gives her body to another man has ceased to be a wife, even is she is not divorced. And a husband who gives his body to another woman has ceased to be a husband, even before divorce. Just as a fire is not fire unless it is hot, so a marriage is no marriage unless two are made into one. One cannot make one flesh out of three or four partners." (*Paraphrase, Mark 10*). *Collected Works Of Erasmus: Paraphrase On Mark* (University of Toronto Press, 1988).

<sup>83</sup> "But if a divorce should be initiated by a man who has not yet believed, and he rejects his wife out of hatred for Christ, there is no reason for her to stay with the ungodly man any longer since in this case there is no hope of changing him. That man forfeits the right of matrimony who abhors God, the author of matrimony. For the marriage vow does not to such an extent obligate a woman devoted to Christ that she is forced to put up with an ungodly husband who is continually quarrelling and reviling Christ. Let her take, therefore, the freedom to divorce, which he has given, and let her serve Christ in peace. Indeed, God has not for this reason called us to the evangelical life, that we might live in quarrelling, but in harmony and peace. Consequently, if those in a mixed marriage have no accord, and the unbelieving partner asks for divorce, the Christian wife should not stay



4. Erasmus, in turn, influenced a fellow Roman Catholic priest named Martin Luther (1483-1546) to reconsider Western Christianity's traditional interpretation of Jesus' teachings on D&R.
  - a. Luther was a German monk who became disillusioned with the Roman Catholic Church.
  - b. Showing the influence that Erasmus had upon Luther, it has been said that "Erasmus laid the egg which Luther hatched"<sup>84</sup> and one of Luther's associates indicated that "In all things he agrees with Erasmus: only what Erasmus merely suggests, he teaches plainly."<sup>85</sup>
  - c. Because he, more than any other individual in the last 500 years, has influenced Protestant Christianity it is important to understand his influence upon the Protestant Church's understanding of D&R.
    - i. First, Luther believed that D&R were issues of the state and that the churches should leave it up to lawyers and the secular government to decide instead of the Scriptures.<sup>86</sup>
    - ii. Secondly, Luther *expanded* Erasmus' exception to Jesus' strict teachings on D&R and believed that there were three situations that allowed a spouse to remarry after a divorce: adultery,<sup>87</sup>

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with him against his will." (*Paraphrases, 1Corinthians 7*). *Collected Works Of Erasmus, Vol. 43* (University Of Toronto Press, 2009).

In his *Colloquies* he gives the fictional conversation between Eulalia and Xantippe which has been taken by some to be a veiled plea for leniency in divorce:

**Eulalia:** Let your Husband be as bad as bad can be, think upon this, That there is no changing. Heretofore, indeed, Divorce was a Remedy for irreconcilable Disagreements, but now this is entirely taken away: He must be your Husband and you his Wife to the very last Day of Life.

**Xantippe:** The Gods did very wrong that depriv'd us of this Privilege.

**Eulalia:** Have a Care what you say. It was the Will of Christ.

**Xantippe:** I can scarce believe it.

(*The Uneasy Wife*). Nathan Bailey & E. Johnson. *The Colloquies of Erasmus, Vol. 1* (London: Reeves and Turner, 1878).

<sup>84</sup> Robert Henry Murray *Erasmus and Luther: Their Attitude To Toleration* (London: Society For Promoting Christian Knowledge, 1920), p.213.

<sup>85</sup> *Ibid.*

<sup>86</sup> "What is the proper procedure for us nowadays in matters of marriage and divorce? I have said that this should be left to the lawyers and made subject to the secular government. For marriage is a rather secular and outward thing, having to do with wife and children, house and home, and with other matters that belong to the realm of the government, all of which have been completely subjected to reason (Gen. 1:28). Therefore we should not tamper with what the government and wise men decide and prescribe with regard to these questions on the basis of the laws and of reason." Luther, Martin: Pelikan, Jaroslav Jan (Hrsg.) ; Oswald, Hilton C. (Hrsg.) ; Lehmann, Helmut T. (Hrsg.): *Luther's Works, Vol. 21 : The Sermon on the Mount and the Magnificat*. Saint Louis : Concordia Publishing House, 1999, c1956 (Luther's Works 21), S. 21:93

<sup>87</sup> "But you ask: "Then is there no legitimate cause for the divorce and remarriage of a man and his wife?" Answer: Both here and in Matthew 19:9 Christ sets down only one, called adultery; and He cites it on the basis of the Law of Moses, which punishes adultery with death (Lev. 20:10)." Luther, Martin: Pelikan, Jaroslav Jan

abandonment<sup>88</sup> and a spouse who refused to have sex with their husband or wife.<sup>89</sup>

- iii. Thirdly, Luther modified Erasmus' restatement of Pope Innocent III's decree on 1Corinthians 7:15 regarding abandonment by an unbeliever to include abandonment under any circumstances (even if both were believers).<sup>90</sup> He maintained that this "privilege" could be exercised every time that a person was abandoned, even if it led to someone being married *ten times*.<sup>91</sup>

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(Hrsg.) ; Oswald, Hilton C. (Hrsg.) ; Lehmann, Helmut T. (Hrsg.): *Luther's Works, Vol. 21 : The Sermon on the Mount and the Magnificat*. Saint Louis : Concordia Publishing House, 1999, c1956 (Luther's Works 21), S. 21:96

"Here you see that in the case of adultery Christ permits the divorce of husband and wife, so that the innocent person may remarry. For in saying that he commits adultery who marries another after divorcing his wife, "except for unchastity," Christ is making it quite clear that he who divorces his wife on account of unchastity and then marries another does not commit adultery." Luther, Martin: Pelikan, Jaroslav Jan (Hrsg.) ; Oswald, Hilton C. (Hrsg.) ; Lehmann, Helmut T. (Hrsg.): *Luther's Works, Vol. 45 : The Christian in Society II*. Philadelphia : Fortress Press, 1999, c1962 (Luther's Works 45), S. 45:III-31

<sup>88</sup> "An additional cause for divorce is this: when one spouse deserts the other, that is, when he runs away out of sheer peevishness." Luther, Martin: Pelikan, Jaroslav Jan (Hrsg.) ; Oswald, Hilton C. (Hrsg.) ; Lehmann, Helmut T. (Hrsg.): *Luther's Works, Vol. 21 : The Sermon on the Mount and the Magnificat*. Saint Louis : Concordia Publishing House, 1999, c1956 (Luther's Works 21), S. 21:97

<sup>89</sup> "The third case for divorce is that in which one of the parties deprives and avoids the other, refusing to fulfil the conjugal duty or to live with the other person. For example, one finds many a stubborn wife like that who will not give in, and who cares not a whit whether her husband falls into the sin of unchastity ten times over. Here it is time for the husband to say, "If you will not, another will; the maid will come if the wife will not." Only first the husband should admonish and warn his wife two or three times, and let the situation be known to others so that her stubbornness becomes a matter of common knowledge and is rebuked before the congregation. If she still refuses, get rid of her; take an Esther and let Vashti go, as King Ahasuerus did [Esther 1:12–2:17]." Luther, Martin: Pelikan, Jaroslav Jan (Hrsg.) ; Oswald, Hilton C. (Hrsg.) ; Lehmann, Helmut T. (Hrsg.): *Luther's Works, Vol. 45 : The Christian in Society II*. Philadelphia : Fortress Press, 1999, c1962 (Luther's Works 45), S. 45:III-34

<sup>90</sup> "And this teaching of St. Paul should be stretched to cover all sorts of divorces; for example, if a man and wife run away from each other not because of his or her Christian faith but because of some other matter, be it anger or any other dissatisfaction, then we should teach that the guilty party reconcile himself or remain unmarried and that the innocent mate be free and have authority to remarry if the other will not be reconciled." Luther, Martin: Pelikan, Jaroslav Jan (Hrsg.) ; Oswald, Hilton C. (Hrsg.) ; Lehmann, Helmut T. (Hrsg.): *Luther's Works, Vol. 28 : 1 Corinthians 7, 1 Corinthians 15, Lectures on 1 Timothy*. Saint Louis : Concordia Publishing House, 1999, c1973 (Luther's Works 28), S. 28:38

<sup>91</sup> "In other cases where married people remain together, as in the marriage bond and similar things, one is bound to the other and not entirely his own, so that neither can change from the other; but in this matter, where one partner holds the other to an unchristian life or separates from him, the Christian is not bound or compelled to stay with such a mate. But if someone is not bound, he is free and released. If he is free and released, he may change his status, just as though his spouse were dead.

But what would happen if the next spouse also went astray and tried to force his mate into a heathen or unchristian way of life or separated from him, and so on until the third and fourth mate, as often as the case may occur—could a man then have ten or more wives who were still living, all of whom had run away from him? Or on the other hand, could a woman have ten or more husbands, all of whom had run away from her? Answer: We can't tell St. Paul to shut up; likewise we can't prevent those who are so inclined from using his teachings as often as they please. His words are clear: a brother or sister is not bound but free if the partner



- iv. Fourthly, he believed that the guilty party in cases of divorce for adultery should be executed. However, if the government would not execute the adulterous spouse he recommended that they either remain single or go to a distant land and there remarry if they could not contain their lust. He seems to have done this begrudgingly in order to avoid the rise of promiscuity on the part of divorced adulterers, not out of sympathy. Despite his concession, he still indicated that the remarriage would be “evil”.<sup>92</sup>
- v. Fifthly, Luther’s reevaluation of Western Christendom’s understanding of the teachings of Jesus on marriage did not stop with D&R. He also concluded that *polygamy* was acceptable.<sup>93</sup> His reevaluation of polygamy led him, along with seven other

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separates and will not consent to live with his mate. He does not say that this should happen only once but lets it work itself out as often as necessary, for he does not want to bind anyone to the danger of unchastity because of the frivolity and malice of another.” Luther, Martin: Pelikan, Jaroslav Jan (Hrsg.) ; Oswald, Hilton C. (Hrsg.) ; Lehmann, Helmut T. (Hrsg.): *Luther’s Works, Vol. 28 : 1 Corinthians 7, 1 Corinthians 15, Lectures on 1 Timothy*. Saint Louis : Concordia Publishing House, 1999, c1973 (Luther's Works 28), S. 28:36

<sup>92</sup> “You may ask: What is to become of the other [the guilty party] if he too is perhaps unable to lead a chaste life? Answer: It was for this reason that God commanded in the law [Deut. 22:22–24] that adulterers be stoned, that they might not have to face this question. The temporal sword and government should therefore still put adulterers to death, for whoever commits adultery has in fact himself already departed and is considered as one dead. Therefore, the other [the innocent party] may remarry just as though his spouse had died, if it is his intention to insist on his rights and not show mercy to the guilty party. Where the government is negligent and lax, however, and fails to inflict the death penalty, the adulterer may betake himself to a far country and there remarry if he is unable to remain continent. But it would be better to put him to death, lest a bad example be set.

Some may find fault with this solution and contend that thereby license and opportunity is afforded all wicked husbands and wives to desert their spouses and remarry in a foreign country. Answer: Can I help it? The blame rests with the government. Why do they not put adulterers to death? Then I would not need to give such advice. Between two evils one is always the lesser, in this case allowing the adulterer to remarry in a distant land in order to avoid fornication. And I think he would be safer also in the sight of God, because he has been allowed to live and yet is unable to remain continent. If others also, however, following this example desert their spouses, let them go. They have no excuse such as the adulterer has, for they are neither driven nor compelled. God and their own conscience will catch up to them in due time. Who can prevent all wickedness?” Luther, Martin: Pelikan, Jaroslav Jan (Hrsg.) ; Oswald, Hilton C. (Hrsg.) ; Lehmann, Helmut T. (Hrsg.): *Luther’s Works, Vol. 45 : The Christian in Society II*. Philadelphia : Fortress Press, 1999, c1962 (Luther's Works 45), S. 45:III-33

<sup>93</sup> “I confess that I cannot forbid a person to marry several wives, for it does not contradict the Scripture. If a man wishes to marry more than one wife he should be asked whether he is satisfied in his conscience that he may do so in accordance with the word of God. In such a case the civil authority has nothing to do in the matter.” Cites in Patrick F. O’Hare *The Facts About Luther* (New York: Frederick Pustet, 1916), p.334.

“For example, if a married man, detained captive in a distant country, should there take a second wife, in order to preserve or recover his health, or that his own became leprous, we see not how we could condemn, in these cases, such a man as, by the advice of his Pastor, should take another wife, provided it were not with a design of introducing a new law, but with an eye only to his own particular necessities.” (*The Consultation of Luther And The Other Protestant Doctors Concerning Polygamy, Sec. 9*). In Jacques Bénigne Bossuet *The History Of The Variations Of The Protestant Churches, Vol. 1* (New York: John Doyle, 1842), pp.205-215.

- Protestant leaders, to give their sanction to the polygamous marriage of a German prince in 1539.<sup>94</sup>
- vi. It should be noted, however, that it appears that Luther's opinions upon marriage, divorce and remarriage were intended to be his *personal opinions* and not to become the official positions of the Lutheran Church which grew out of his ministry.
    - a. This is evidenced by the fact that during Luther's life the *Large Catechism*, the *Small Catechism*, the *Smalcald Articles* and the *Augsburg Confession* were all created to explain the official positions of the Lutheran Church. There are no sections detailing the issues of D&R in any of these official Lutheran documents.
  5. Huldrych Zwingli (1484-1531) was a Swiss pastor who, like Luther, began to reevaluate the teachings of the Western Christian Church.
    - a. In his reevaluation of marriage he concluded that Christ was allowing D&R for the cause of adultery and that when He laid down this rule He was only giving the smallest reason that one could D&R. Other reasons included treachery, poisoning, patricide, impotence, and abandonment by an unbeliever.<sup>95</sup>
  6. John Calvin (1509-1564) was a French theologian who settled in Geneva, Switzerland.
    - a. He was deeply influenced by Luther and even referred to him personally as his "father".<sup>96</sup>
    - b. Like Luther and Zwingli he felt that under certain circumstances, such as adultery<sup>97</sup> and, perhaps abandonment,<sup>98</sup> the New Testament allowed people to D&R.

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<sup>94</sup> His letter of sanction is found in the above Bossuet reference. For a general overview of the events see *The Bigamy Of Philip Of Hesse* in Preserved Smith's *The Life And Letters Of Martin Luther* (Boston: Houghton Mifflin Co., 1914), pp.373-386.

<sup>95</sup> "What God hath joined together that shall not man put asunder." In my opinion, the proper sense of these words is this: No one shall lightly condemn the divine ordinance of marriage as Papists and others have done. And no one shall lightly part those that have been joined together in wedlock. The Lord condemns only divorce on frivolous pretences, as was common among the Jews; by no means every divorce. Neither does He only except one cause for divorce, although He only mentions one. It is, namely, customary for the Hebrews to understand under the lesser all the similar, and still more, all the greater cases. As the least cause He specifies adultery, and at the same time draws the limits beyond which no divorce can take place. For why should God exclude all those causes which are equally weighty and even weightier than adultery, as for example, treachery, poisoning, patricide, &c. Likewise he who is, by nature, incapable of begetting children, is divorced by laws human and divine, and the woman may marry again, although this is nowhere stated in Scripture. Yet Paul says: 'If they cannot contain let them marry, for it is better to marry than to burn,' 1 Cor. vii. 9. Finally, Paul permits divorce where the union is unequal, when one has left the other on account of the faith." Cited in Raet Christoffel *Zwingli: Or, The Rise Of The Reformation In Switzerland*. (Edinburgh: T&T Clark, 1858), p.155.

<sup>96</sup> *Letter 124: To Luther, Jan. 21, 1545*. Translated in Jules Bonnet *Letters Of John Calvin, Vol. 1* (Philadelphia: Presbyterian Board Of Publication, 1858), p.440-442.

<sup>97</sup> See his Commentary notes on Matthew 19:3-9.

<sup>98</sup> See his Commentary notes on 1Corinthians 7:15.

- c. Calvin, however, seems to have went one step further by teaching that both the innocent and the *guilty* spouse were allowed to remarry. Unlike Luther, he was motivated by sympathy for the guilty parties, rather than public morality.<sup>99</sup>
  7. Martin Bucer (1491-1551) was a German monk associated with Martin Luther and Huldrych Zwingli.
    - a. In addition to accepting some of his peers' ideas concerning extra reasons for D&R,<sup>100</sup> Bucer also broadened Pope Innocent III's interpretation of 1Corinthians 7:15.
      - i. Whereas Innocent III had decreed that the "Pauline Privilege" could be used in a case where one spouse was a professed believer but the other was not (such as a Christian-Muslim intermarriage), Bucer said that it could be applied in a case where both spouses professed faith in Christ but one did not *act* like a Christian.<sup>101</sup>
  8. John Knox (c.1514-1572), the founder of the Church of Scotland, was heavily influenced by John Calvin and maintained that adultery justified D&R for both the innocent and the *guilty* party.<sup>102</sup>

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<sup>99</sup> "Adultery has not been punished as severely as it should have been, and the lives of those who violate the marriage bond have been spared. It would be harsh, therefore, to prohibit a man from marrying during his whole lifetime if his wife has divorced him for adultery, or to prohibit a woman who has been repudiated by her husband, especially if they have difficulty with being sexually continent; one indulgence necessarily brings the other along with it. Nevertheless, it does not seem sensible, in judging the party who was at fault, to allow that person to fly off immediately to another marriage. The freedom to remarry should be put off for a time, whether for a definite period or until the innocent party has remarried." Translated in *Calvin's Ecclesiastical Advice* (Westminster John Knox Press, 1991), p122.

<sup>100</sup> For his views on D&R see *The Judgment Of Martin Bucer Touching Divorce* in *The Prose Works Of John Milton, Vol. 1* (Philadelphia: J. W. Moore, 1859).

<sup>101</sup> "Hither may be added, that the Holy Spirit grants desertion to be a cause of divorce, in those answers given to the Corinthians concerning a brother or sister deserted by a misbeliever. "If he depart, let him depart; a brother or a sister is not under bondage in such cases." In which words, who sees not the Holy Ghost openly pronounced, that the party without cause deserted, is not bound for another's wilful desertion, to abstain from marriage, if he have need thereof? But some will say, that this is spoken of a misbeliever departing. But I beseech ye, doth not he reject the faith of Christ in his deeds, who rashly breaks the holy covenant of wedlock instituted by God?...Since therefore it will be agreed among Christians, that they who depart from wedlock without just cause, do not only deny the faith of matrimony, but of Christ also, whatever they profess with their mouths; it is but reason to conclude, that the party deserted is not bound in case of causeless desertion, but that he may lawfully seek another consort, if it be needful to him, toward a pure and blameless conversation." (*The Judgment Of Martin Bucer Touching Divorce, Ch.41*) In *John Milton The Prose Works Of John Milton, Vol. 1* (Philadelphia: J. W. Moore, 1859), p.279.

<sup>102</sup> "Marriage once lawfully contracted, may not be dissolved at man's pleasure, as our master Christ Jesus does witness, unless adultery is committed; which, being sufficiently proven in presence of the civil magistrate, the innocent (if they so require) ought to be pronounced free, and the offender ought to suffer the death as God has commanded. If the civil sword foolishly spares the life of the offender, yet the church may not be negligent in their office, which is to excommunicate the wicked, and to repute them as dead members, and to pronounce the innocent party to be at freedom, be they never so honourable before the world...If any demand, whether that the offender after reconciliation with the church, may not marry again: we answer, that if they cannot live continent, and if the necessity is such as that they fear further offence of God, we cannot forbid them to use the

9. Despite the Continental European reformers' attitudes towards D&R, not all of the Protestant reformers changed their mind about D&R.
  - a. Though the reformation in England was started because King Henry VIII wanted to put away his wife Catherine in order to marry someone else the Anglican Church would become one of the strongest Protestant Churches against remarriage after a divorce.
  - b. Thomas Cranmer (1486-1556), the first archbishop of England after the Parliament and King Henry VIII decided to break away from Rome, held onto the ancient Christian interpretation of Jesus' teachings on D&R.<sup>103</sup>
  - c. In 1549 the Anglican Church published the Book of Common Prayer, a church manual which included a section on how to perform a wedding. In it was included a solemn vow in which those getting married vowed to forsake all others so long as their spouse lived and in doing so the two parties were agreeing before God to be bound together for life whether the marriage took a turn for the better or the worse.<sup>104</sup> Virtually all English speaking Protestant

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remedy ordained of God. If the party offended may be reconciled to the offender, then we judge that in nowise shall it be lawful to the offender to marry any other, except the party that before has been offended; and the solemnization of the latter marriage must be in the open face of the church like as the former, but without proclamation of banns. This we do offer as the best counsel that God gives unto us in so doubtful a case." (*The First Book Of Discipline, 9th Head: Of Marriage*)

<sup>103</sup> In 1540 Cranmer, writing to Andrew Osiander to question his role with Martin Luther in sanctioning the polygamous marriage of a German prince, wrote that: "For, not to say a word at the present time on usury, which it is clear is approved by you, or at all events some of you, or concerning the fact that you allow the sons of your nobles to have concubines (with a view, doubtless, to prevent the breaking up of inheritances through lawful marriages), and yet you are so strongly opposed to priests having concubines; leaving this out of the question, what can possibly be alleged in your excuse when you allow a man after a divorce, while both man and woman are living to contract a fresh marriage, and, what is still worse, even without a divorce you allow one man to have several wives?...it is clear that, according to the institutions of the apostles, and therefore of Christ himself, one person ought to be joined in matrimony with one person, and that persons so joined together cannot again contract marriage until the death of one of the parties shall have happened." (*Letter 272, Dec. 27, 1540*). Translated in *Miscellaneous Writings And Letters Of Thomas Cranmer* (Cambridge: University Press, 1846), pp.406-408.

<sup>104</sup> "N. WILTE thou have this woman to thy wedded wife, to live together after Goddes ordeinaunce in the holy estate of matrimonie? Wilt thou love her, coumforte her, honor, and kepe her in sickenesse and in health? And forsaking all other kepe thee only to her, so long as you both shall live?

*The man shall aunswere,*

I will.

*Then shall the priest saye to the woman.*

N. Wilt thou have this man to thy wedded houseband, to live together after Goddes ordeinaunce, in the holy estate of matrimonie? Wilt thou obey him, and serve him, love, honor, and kepe him in sickenes and in health? And forsaking al other kepe thee onely to him, so long as you bothe shall live?

I N. take thee N. to my wedded wife, to have and to holde from this day forwarde, for better, for wurse, for richer, for poorer, in sickenes, and in health, to love and to cherishe, til death us departe: according to Goddes holy ordeinaunce: And therto I plight thee my trowth.

*Then shall they looce theyr handes, and the woman taking again the man by the right hande shall say,*

I N. take thee N. to my wedded husbände, to have and to holde from this day forwarde, for better, for woorse, for richer, for poorer, in sickenes. and in health, to love, cherishe, and to obey, till death us departe: accordyng

- denominations adopted this vow as part of their ceremony and it is practiced even to the present.
- d. In the 17<sup>th</sup> century a movement gained speed in England to try and have John Calvin's teachings (including the allowance of D&R) become the official doctrine of English churches. The followers of this movement came to be known as Puritans.
    - i. They introduced at least three Scriptural reasons for D&R in their official doctrinal statement known as the Westminster Confession of Faith: fornication committed during the engagement period, adultery after the wedding and abandonment.<sup>105</sup>
    - ii. One of their most well known adherents was John Milton (1608-1674) who advocated that all that was needed for a divorce to be scriptural was that both spouses wanted it.<sup>106</sup>
    - iii. When they could not persuade the government to accept their interpretations, they fled to the New World.
10. In response to the Reformers' reevaluation of Jesus' teachings the established Western Church met for eighteen years in what is now referred to as the Council of Trent to analyze their new evaluations.
  - a. In their analysis of Martin Luther and the other Reformers' reevaluation of marriage, divorce and remarriage they reiterated their belief that a person who had entered into a validly contracted marriage could not, according to the Scriptures, remarry after a divorce.<sup>107</sup>

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to Goddes holy ordeinaunce: And thereto I geve thee my trouth." (*The Booke of the Common Prayer and Administracion of the Sacramentes, and Other Rites and Ceremonies of the Churche After the Use of the Churche of England, Sec. 8: Of Matrimony*).

<sup>105</sup> "V. Adultery or fornication, committed after a contract, being detected before marriage, giveth just occasion to the innocent party to dissolve that contract. 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.

VI. 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 willful desertion as can no way be remedied by the Church or civil magistrate, is cause sufficient of dissolving the bond of marriage; wherein a public and orderly course of proceeding is to be observed; and the persons concerned in it, not left to their own wills and discretion in their own case." (*Ch. 24:5-6*)

<sup>106</sup> "And if our Saviour answered directly according to what was asked in the term of putting away, it will be questionable, whether the rigour of his sentence did not forbid only such putting away as is without mutual consent, in a violent and harsh manner, or without any reason, but will, as the tetrach did. Which might be the cause that those Christian emperors feared not in their constitutions to dissolve marriage by mutual consent; in that our Savior seems here [in Mt. 19:9], as the case is most likely, not to condemn all divorce, but all injury and violence in divorce." (*Tetrachordon: Expositions Upon The Four Chief Places In Scripture Which Treat Of Marriage, Or Nullities In Marriage, Mt. 19:3, 4, &c*). In *The Prose Works Of John Milton, Vol 1* (Philadelphia: J.W. Moore, 1859), p.318-319.

<sup>107</sup> "If any one saith, that it is lawful for Christians to have several wives at the same time, and that this is not prohibited by any divine law; let him be anathema (Session 24, Can. 2)."

"If any one saith, that on account of heresy, or irksome cohabitation, or the affected absence of one of the parties, the bond of matrimony may be dissolved; let him be anathema (Session 24, Can. 5)."



- B. With the Continental Reformers' decision to reevaluate Jesus' teachings on D&R came the expected decision of the civil governments in those countries to allow their citizens to D&R.
- C. Historians have noted that the Reformers' decision to reject 1500 years of Church teaching on D&R resulted in an increase of immorality in the Reformed nations.
  - 1. Philip Schaff, known as the modern father of Church history and himself an admirer of Luther, noted that "The fact is undeniable, that the Reformation in Germany was accompanied and followed by antinomian tendencies and a degeneracy of public morals."<sup>108</sup>
  - 2. Julius Kostlin, a German Protestant scholar, likewise noted that "There was really a certain increase of corruption...at the time of the Reformation. We may also unhesitatingly admit that, in a certain sense, the Reformation had something to do with it."<sup>109</sup>
  - 3. Sabine Baring-Gould, a 19<sup>th</sup> century Protestant author, has pointed out that "The inevitable result of the laxity of dealing with marriage by the Protestant Church has been a corresponding laxity of morals."<sup>110</sup>
    - a. This can be seen by analyzing the morality of those Christians who were influenced by the Reformer's new attitude regarding D&R (i.e. the Lutheran/Calvin influenced Protestants) and those Western European Christians who retained the ancient Christian understanding of D&R.
      - i. The following statistics are from 19<sup>th</sup> century Germany (giving the Reformation plenty of time to produce fruit) and show the clear distinction between Catholics and Protestants when it comes to immoral behavior.

**Illegitimate Births For Every 100 Births<sup>111</sup>**

**Province/City (Religion)**

Altenburg (Prot.)	14.5%	of every 100 births were illegitimate		
Berlin (Prot.)	13.5%	"	"	"
Coburg (Prot.)	12.8%	"	"	"
Thuringia (Prot.)	12.0%	"	"	"
Brandenburg (Prot)	10.9%	"	"	"
Hildburghausen (Prot.)	10.8%	"	"	"

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"If any one saith, that the Church has erred, in that she hath taught, and doth teach, in accordance with the evangelical and apostolical doctrine, that the bond of matrimony cannot be dissolved on account of the adultery of one of the married parties; and that both, or even the innocent one who gave not occasion to the adultery, cannot contract another marriage, during the life-time of the other; and, that he is guilty of adultery, who, having put away the adulteress, shall take another wife, as also she, who, having put away the adulterer, shall take another husband; let him be anathema (Session 24, Can.7)." Translated in J. Waterworth *The Canons And Decrees Of The Sacred And Oecumenical Council Of Trent* (London: C. Dolman, 1848), p.194-195.

<sup>108</sup> *The History Of The Christian Church, Vol. 7:1:7* (Albany, OR: Ages, 1997).

<sup>109</sup> Cited in Henry O'Connor *Luther's Own Statements Concerning His Teaching And Its Results: Taken Exclusively From The Earliest And Best Editions Of Luther's German And Latin Works* (New York: Benziger Brothers, 1884), p.57.

<sup>110</sup> *Germany, Present And Past, Vol. 1* (London: C. Kegan Paul & Co., 1879), p.163.

<sup>111</sup> *Ibid*, p.163ff.

Pomerania (Prot.)	10.0%	“	“	“
Schleswig-Holstein (Prot.)	9.6%	“	“	“
Magdeburg (Prot.)	9.6%	“	“	“
Prussia (Prot.)	9.0%	“	“	“
Hanover (Prot.)	8.9%	“	“	“
Weimar (Prot.)	8.8%	“	“	“
Rhineland (Cath.)	3.0%	“	“	“
Westphalia (Cath.)	2.7%	“	“	“
Coblenz (Cath.)	2.7%	“	“	“
Treves (Cath.)	2.3%	“	“	“
Aix-la-Chapelle (Cath.)	2.2%	“	“	“

- b. When taught that one could D&R without repercussions to their salvation Protestants indulged in it.
  - i. In 1872 Germany published its *Statistical Report of the Government*. It was an official collection of records on German life and practices.
  - ii. When it came to D&R in Germany it noted that “The connection between the relative population of divorced and the religious confessions is unmistakable. In the specially Evangelical (i.e. Lutheran influenced) districts divorces are frequent, in the strictly Catholic districts they are rare.”<sup>112</sup>
- D. Despite the Reformer’s radical ideas regarding supposedly Scriptural reasons for D&R, most Protestant denominations (especially those not affiliated with Luther or Calvin) opted to only include adultery as a justifiable reason for D&R.
  1. Examples of this can be seen by examining 19<sup>th</sup> and 20<sup>th</sup> century doctrinal statements of the Protestant Episcopal Church in the United States<sup>113</sup>, the Methodist Episcopal Church<sup>114</sup>, the Reformed Church in America<sup>115</sup>, the Congregational Churches in the

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<sup>112</sup> *Ibid*, p.167.

<sup>113</sup> “No minister of this church shall solemnize matrimony in any case where there is a divorced wife or husband of either party still living; but this Canon shall not be held to apply to the innocent party to a divorce obtained for the cause of adultery, or to parties once divorced seeking to be united again.” (*Canon 13, Title II*) *Journal Of The General Conventions Of The Protestant Episcopal Church In The United States, Vo. 8* (Hartford, 1869), p.139, 253. Also cited and commented upon in James Lichtenberger *Divorce: A Study In Social Causation* (New York: Columbia University, 1909), p.459.

<sup>114</sup> “That no divorce shall be recognized as lawful by the Church except for adultery. And no minister shall solemnize a marriage in any case where there is a divorced wife or husband living; but this rule shall not apply to the innocent party in a divorce for the cause of adultery, nor to divorced parties seeking to be reunited in marriage.” Cited in James Lichtenberger *Divorce: A Study In Social Causation* (New York: Columbia University, 1909), p.466ff.

<sup>115</sup> “WHEREAS, The teaching of our Lord and Saviour, Jesus Christ, the Head of the Church, clearly affirms that the bond of marriage cannot be dissolved excepting by death or through unfaithfulness of one of the parties of the marriage vow; and, *Whereas*, The laxness of divorce and the remarriage of divorced persons is an evil of growing proportions, and of most serious menace to our Christian civilization; therefore, *Resolved*, That the General Synod hereby enjoins upon the Ministers of the Reformed Church not to remarry divorced persons, excepting the innocent party to a divorce obtained for the cause of adultery.” Cited in James Lichtenberger *Divorce: A Study In Social Causation* (New York: Columbia University, 1909), p.468-470.

United States<sup>116</sup>, the Christian Reformed Church,<sup>117</sup> the Southern Baptist Convention of 1904,<sup>118</sup> the 1908 General Assembly of the Church of the Nazarene,<sup>119</sup> and the 1857 Annual Meeting of the Associate Synod Of North America (a branch of Presbyterianism).<sup>120</sup>

2. Of note, in 1884, 1888, 1890, and 1902 efforts were made by those within the Presbyterian Church in the United States to persuade its General Assembly to get rid of abandonment as a justifiable reason for D&R, leaving only adultery.<sup>121</sup> Their efforts were unsuccessful.

## E. Summary

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<sup>116</sup> "This Council, having at its last session expressed its deep concern at the alarming increase of divorce throughout the land, deplored the dissolution of the bonds of marriage except for the one cause mentioned by our Saviour, and commended the then existing evils growing in the state from this source to the urgent and prayerful attention of the good, now earnestly reiterates its convictions then uttered, and warmly commends as doing an admirable work in this matter the New England Divorce Reform League and the labors of the Rev. Samuel W. Dike, its secretary." Cited in James Lichtenberger *Divorce: A Study In Social Causation* (New York: Columbia University, 1909), p.474.

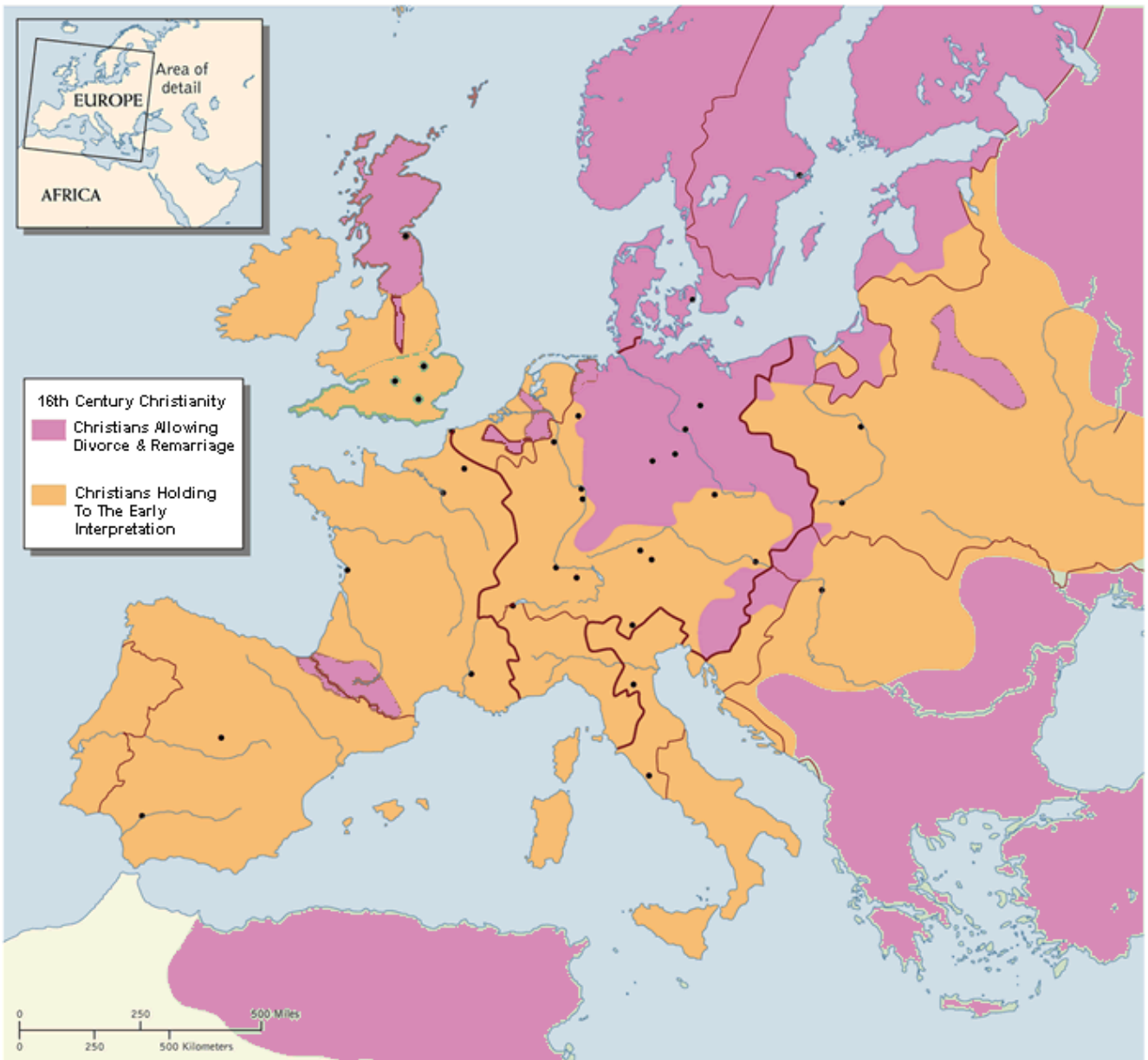
<sup>117</sup> "The question is raised whether or not a man who has married another woman on the grounds that his first wife has deserted him can be either a full member or a baptized member of the church. The answer of Synod is: 'No, for no other reason than adultery'". (*Acts of Synod 1957 of the Christian Reformed Church (Grand Rapids: Christian Reformed Publishing House, 1957)*, 336, referencing *Acts of Synod 1890, Art. 65, 24.*) Cited in *Divorce And Remarriage In The United Reformed Church*. Available online at <http://beggarsallreformation.blogspot.com/2011/05/divorce-in-united-reformed-church.html>. Accessed, April 3, 2013.

<sup>118</sup> In a "Resolution On Divorce" issued in May 1904 the Southern Baptist Convention indicated their belief that the "Pauline Privilege" did not exist by stating, "That it is the sense of this body that Baptist ministers should refuse to solemnize the rites of matrimony in cases where one or both parties concerned have been divorced on other than Scriptural grounds, as laid down in Matthew 19:9." For them, anything other than the exception clause given in Matthew 19:9 was *unscriptural*.

<sup>119</sup> "We hold that persons who have been divorced, where Scriptural grounds for divorce did not exist, and have subsequently remarried, are living in adultery; and though there may exist such other causes and conditions as may justify one party in seeking legal separation, yet only the Biblical cause for divorce, namely, adultery, will supply such moral grounds as may justify the innocent party in remarrying. The Ministers of this Church are positively forbidden to solemnize the marriage of persons not having the Scriptural right to marry." (*Manual Of The Pentecostal Church Of The Nazarene, 1908, Part 2: Divorce, p.37-38*)

<sup>120</sup> "But still we may be asked if 'not under bondage,' does not mean, not bound any longer by the marriage covenant; what does it mean? This is to be ascertained by a fair examination of the whole passage. It is supposed that the infidel stands in the way of the other party worshipping God. At length he threatens,—If you do not abandon it, I will abandon you. Very well, says the Apostle, let him go—'a brother or a sister is not under bondage in such case.'— The marriage vow does not bind the believing party to give up the worship of God to please the other. This would be the worst kind of bondage. True indeed, as he adds, 'God hath called us to peace,' but not to purchase peace at the sacrifice of conscience. This, we are persuaded is the fair interpretation of the passage, while it affords no countenance to the notion that there is any other cause for divorce than that mentioned by our Saviour." (*Appendix To Minutes Of Synod, 1857: Report Of Committee On Subject Of Divorce in Evangelical Repository, Vol. XVI, No. 3, Aug 1857*)

<sup>121</sup> James Lichtenberger *Divorce: A Study In Social Causation* (New York: Columbia University, 1909), p.463ff.



As with the Roman Emperors of the Middle Ages, the Protestant era saw a succession of individuals straying from the early Christian interpretation by continually widening what was a Scriptural justification for remarrying after a divorce.

#### IV. The Modern And Post-Modern Eras (19<sup>th</sup>-21<sup>st</sup> Centuries)

A. The end of the 19<sup>th</sup> and beginning of the 20<sup>th</sup> centuries saw a renewed interest within both Protestantism and Catholicism to either reaffirm or take steps towards the early Christian interpretation of Jesus' teachings on D&R.

1. In 1884 the American Catholic bishops decided to excommunicate any Roman Catholics who had remarried after obtaining a divorce.<sup>122</sup>

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<sup>122</sup> "It is manifestly clear that they are guilty of the gravest crime, who seek for a marriage to be dissolved by a civil magistrate, or, what is worse, after a civil divorce is obtained, try to enter into a new marriage, while the legitimate bond, which still remains before God and the Church, becomes of less account. To cure these ills, we

2. In 1895 the state of South Carolina amended its constitution to forbid divorce altogether.<sup>123</sup>
3. In 1898 nineteen bishops and 1,541 priests associated with the Protestant Episcopal Church signed a petition and sent it to their General Convention asking them to adopt a total prohibition on allowing divorced people to remarry in their churches.<sup>124</sup>
4. In 1901 Alma White formed what would eventually be referred to as the Pillar of Fire denomination. Under her leadership the Pillar of Fire adopted the early Christian interpretation of D&R.<sup>125</sup>
5. In 1903 the Metropolitan Church Association adopted the early Christian interpretation as their official stance.<sup>126</sup>
6. In 1906 a series of religious meetings began on Azusa Street in Los Angeles, California. This series of meetings is regarded as the movement that gave birth to Pentecostalism. The leaders of the Azusa Street meetings decided to adopt the early Christian position as their official teaching upon D&R.<sup>127</sup>

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establish the penalty of excommunication, reserved to the Ordinary, incurred ipso facto by those, who, after they have obtained a civil divorce, attempt marriage." (*Third Plenary Council Of Baltimore, Acts and Decrees, Canon 124*)

<sup>123</sup> "Divorces from the bonds of matrimony shall not be allowed in this state." (*Article 17, Sec. 3*). Cited in *The Pacific Reporter, Vol. 142: August 31-October 12, 1914* (St. Paul: West Publishing Co., 1914), p.236. This was in their constitution until 1949.

<sup>124</sup> "We, the undersigned, bishops and clergy of the Protestant Episcopal Church in the United States—being persuaded that any canon of our church on the question of marriage and divorce ought to be consistent with the words the priest must use when he solemnizes holy matrimony, according to the service contained in the Prayer-Book—do hereby declare it to be our conviction that any legislation on this subject in the way of an amendment to our present canon ought to be based on the following principles:1. That the marriage law of the church is clearly set forth in the marriage service, namely, that Christian marriage consists in the union of one man with one woman until the union is severed by death.2. That **this law does not permit the marriage of any person separated by divorce, so long as the former partner is living, whether such person be innocent or guilty.**" (*Petition To The General Convention Of The Protestant Episcopal Church, 1898*) The number of signatories is recorded in Henry Yates Satterlee, *The Peace Cross Book: Cathedral of SS. Peter and Paul, Washington* (New York, NY: R.H. Russell, 1899), p.42. The text of the petition is found in G.M.P Bownes, *The Late Convention Of The Protestant Episcopal Church in The Catholic World, Vol. 68: October, 1898 to March, 1899* (New York, NY: The Office Of The Catholic World, 1899), p.259.

<sup>125</sup> "The scripture gives no grounds for the innocent party to remarry. If the wife has been put away by the husband when she is not guilty of breaking the marriage vow, if she should marry again, her husband causes her to commit adultery. He is the primary cause of her action." Alma White *The New Testament Church, Vol. 1* (Zarephath, NJ: Pillar Of Fire, 1919), p.261.

<sup>126</sup> Henry Besse described their position as "They strongly oppose the prevailing system of divorce of the married relation, and claim that any person who is divorced for any cause whatever, and marries another while the former husband or wife is living commits adultery, and will go to hell." (Church History [San Jose, CA: 1908], p.191-192). See also Wiliam Kostlevy's *Holy Jumpers: Evangelicals and Radicals in Progressive Era America* (New York: Oxford, 2010), p.190.

<sup>127</sup> "I. To marry a second companion while a former lives is adultery--sin--and is forbidden (Mark 7:2,3; 10:11,12). II. To marry a person who has a living companion is adultery--sin--and is forbidden (Matt. 5:23; Luke 16:18; 1 John 3:4). 1. The above is the law of Christ, and sin is the transgression of the law (1 John 3:4)...III. Men who have a knowledge of the teachings of Christ's law regarding marriage, and then with that knowledge marry a second living companion, or a divorced wife or husband while their former companion lives, wilfully



7. In 1908, amidst a growing acceptance of the idea within England that adultery justified a man or woman in D&R, the Anglican Church reaffirmed its belief that remarriage after a divorce was not permissible.<sup>128</sup>
  8. In 1914 about 300 Christians from 20 states and several foreign countries met in Hot Springs, Arkansas for prayer and discussion. Out of this meeting the Assemblies of God denomination would be formed and in both 1920 and 1921 they adopted resolutions that directed their member churches back towards the early Christian interpretation of D&R.<sup>129</sup>
- B. Notwithstanding its early push for a return to how the early Christians viewed D&R the mid and latter parts of the 20<sup>th</sup> century saw factors both within and without the church that would affect its attitude towards this topic.
1. The Factors Outside Of The Church
    - a. The draft during WW2 created a shortage of male workers. Women, for the first time in American history, stepped up to fill this void. When their husbands returned several years later they found independent women who no longer needed a husband to take care of them in place of the dependent women and wives who had been left behind. This, coupled with the post-traumatic stress disorder that many returning servicemen suffered from, led to a surge in divorces in the United States in the years following WW2.
    - b. In the 1950's teenagers began seeking a spouse through "dating". Dating involved going through a romantic "trial period" with another partner to see

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transgress the law and are guilty before God of sin--adultery--and must forsake their sin (1 John 1:9; 3:4). If we confess our sins He will pardon us. All such unscriptural marriages must be dissolved to get clear from the sinful state of adultery (Prov. 28:13; Isa. 1:16, 17; Gal. 5:19-21; 1 Cor. 6:9, 10.) IV. If men entered the unscriptural marriages, even though ignorant of the written law, yet condemned by the law of their conscience, such are not clear before God (Rom. 2:12, 14-16)...Under the New Testament, no court on earth should dissolve the marriage relation (Mark 10:2-9; Matt. 19:5-6). 6. Under the New Testament, husband and wife are bound together for life. **Death alone severs the marriage tie.** 7. Under the New Testament, there is but one cause for which a man can put away his wife. 8. After a man has lawfully put away his wife, or a wife has lawfully put away her husband, **they are positively forbidden to marry again until the former companion is dead** (Mark 10:11, 12; Luke 16:18; Rom. 7:2, 3)" In William J. Seymour *The Doctrines And Discipline Of The Azusa Street Apostolic Faith Mission Of Los Angeles (The Complete Azusa Street Library), Marriage And Family: Unscriptural Marriage, Separation* Larry Edward Martin, ed. (Joplin, MO: Christian Life Books, 2000), p.119-122.

<sup>128</sup> "When an innocent person has, by means of a court of law, divorced a spouse for adultery, and desires to enter into another contract of marriage, **it is undesirable that such a contract should receive the blessing of the Church.**" Resolution 40, "The Lambeth Conference Official Website" at <http://www.lambethconference.org/resolutions/1908/1908-40.cfm>

<sup>129</sup> "Whereas, low standards on marriage and divorce are very hurtful to individuals, to the family, and to the cause of Christ, therefore be it recommended that in the future we discourage divorce by all lawful means and teaching, and that we shall positively disapprove in the future of Christians getting divorce for any cause except for fornication or adultery (Matt. 19: 9); and that **we recommend the remaining single of all divorced Christians,** and that they pray God so to keep them in purity and peace...And as a means of making the above more effective, **we further advise our Pentecostal ministry not to perform a marriage ceremony between any believer and a divorced person whose former companion is still living.**" *Combined Minutes Of The General Council Of The Assemblies Of God, Minutes 1921*, under the section entitled *Marriage And Divorce*, (no publication information in printed booklet), p.22.

if they would be a good spouse. This “trial period” can include everything from holding hands to kissing to full intercourse. If the “trial period” proves to be dissatisfactory, one of the couples can end the “trial” and find someone else to start a new “trial period”. It does not matter if one of the individuals wanted the relationship to continue, it only took one to end the “trial period”. A person may have several “trials” with several different partners until they find the one that they want to marry.

- c. Beginning in 1953 Oklahoma introduced what came to be referred to as “No-fault divorce”. No fault divorce allowed a person to end their marriage relationship just as if it had been a dating “trial relationship”. It did not matter if one of the individuals wanted the relationship to continue, it only took one to end the marriage under “No-fault divorce”. Prior to the enacting of “No-fault divorce” a person had to have a valid reason before they could get a divorce. In 1969 Ronald Reagan, then governor of California, helped to popularize “No-fault divorce” in the United States. Eventually all 50 states would enact “No-fault divorce” laws. No-fault divorce laws enabled the dating generation of the 50’s to become the divorce generation of the 60’s and the 70’s. The same teenagers who jumped from one “trial” relationship to another became the adults who jumped from one “trial” marriage to another.
  - i. According to his son, Michael, Ronald Reagan later greatly regretted what he had done, coming to the conclusion that it was “one of the worst mistakes he ever made in office”.<sup>130</sup>
- d. From 1960 to 1979 the United States experienced an almost continual surge in the number of divorces filed each year. In this 20 year period alone the U.S. experienced a 140% increase in the number of divorces occurring.<sup>131</sup>

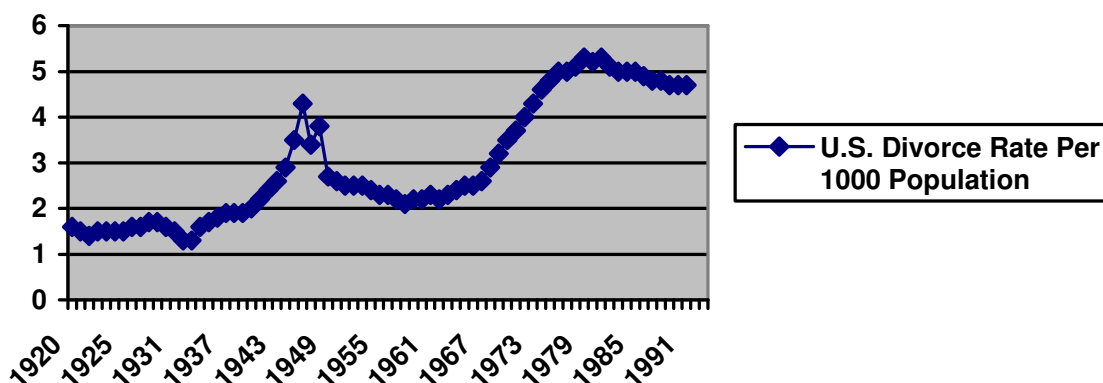
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<sup>130</sup> “Dad later said that he regretted signing the no-fault divorce bill and that he believed it was one of the worst mistakes he ever made in office.” Michael Reagan *Twice Adopted* (Nashville, TN: Broadman & Holman, 2004), p.44.

The same could be said for John Campbell (1779-1861), a leading figure in the push to change British laws regarding D&R. He got the change that he wanted yet one year after its passage he regretted his decision lamenting that, “*I have been sitting two days in the Divorce Court, and, like Frankenstein, I am afraid of the monster I have called into existence.*” He wrote this after seeing the divorce rate increase a hundred-fold the first year after his legislation had passed. See *Life Of John, Lord Campbell, Vol. 2*, American Edition (Jersey City, NJ: Frederick D. Linn & Co., 1881), p.432.

## 2. The Factors Inside Of The Church

- a. Several high profile or rising Pentecostal leaders either remarried after a divorce or married a divorcee.<sup>132</sup>
- b. In 1937 Edward VIII, the king of England and as such the official head of the Anglican Church, decided to marry a twice divorced American.<sup>133</sup>
- c. In 1959 the Presbyterian Church In The United States (PCUS), a precursor to the Presbyterian Church (USA), decided to broaden the Westminster Confession Of Faith's restrictions on divorce and remarriage.<sup>134</sup>
- d. In 1961 John Murray (1898-1975), a Presbyterian theologian, wrote a book entitled *Divorce* in which he defended the idea that abandonment by an unbeliever justified a person in D&R. Murray's work was influential in popularizing this idea amongst denominations that had previously taught that adultery was the only justifiable reason to D&R.<sup>135</sup>



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**Sources:** *Vital Statistics And Health And Medical Care, Vital Statistics: Series B 1-220* (U.S. Census Bureau), p.64. (Available online at <http://www2.census.gov/prod2/statcomp/documents/CT1970p1-03.pdf>, accessed July 16, 2012.)

*Statistical Abstract Of The United States, Vol. 122* (U.S. Dept. Of Commerce, 2002), p.59. (Available online at [http://books.google.com/books?id=vd862rmilmAC&lpg=PA55&ots=3L6LOWL\\_mQ&dq=%22Live%20Births%2C%20Deaths%2C%20Marriages%2C%20and%20Divorces%3A%201950%20to%202001%22&pg=PA55#v=onepage&q=%22Live%20Births,%20Deaths,%20Marriages,%20and%20Divorces:%201950%20to%202001%22&f=false](http://books.google.com/books?id=vd862rmilmAC&lpg=PA55&ots=3L6LOWL_mQ&dq=%22Live%20Births%2C%20Deaths%2C%20Marriages%2C%20and%20Divorces%3A%201950%20to%202001%22&pg=PA55#v=onepage&q=%22Live%20Births,%20Deaths,%20Marriages,%20and%20Divorces:%201950%20to%202001%22&f=false), accessed July 16, 2012.)

<sup>132</sup> These include Aimee Semple McPherson (1890-1944), founder of the Pentecostal Church of the Foursquare Gospel, who remarried ten years after divorcing; Kathryn Kuhlman (1907-1976), an evangelist who would go on to become one of the most well known Pentecostal preachers, who married a divorced man in 1938; and Richard Roberts (b.1948), son of well known Pentecostal evangelist Oral Roberts (1918-2009), who was divorced by his wife and later remarried only to continue ministering under his father.

<sup>133</sup> Because the Anglican Church viewed remarriage after a divorce as a sinful lifestyle he had no choice but to step down as King.

<sup>134</sup> Jack Rogers, *Reading the Bible: The Presbyterian Way*. Paper presented at the 1998 Covenant Conference, November 6, 1998. Available online at <http://www.covenantnetwork.org/sermon&papers/rogerstalk.html>, accessed July 20, 2010. Jack Rogers, *Jesus, the Bible, and Homosexuality: Explode the Myths, Heal the Church* (Louisville, KY: Westminster John Knox Press, 2009), p.43-44.

<sup>135</sup> John Murray *Divorce* (Philadelphia: Presbyterian And Reformed Publishing Co., 1961).

- e. In 1973 the Episcopal Church decided that it would allow anyone who had been given a divorce to remarry, no matter what the circumstances.<sup>136</sup>
- f. In 1973, after over 50 years of holding to the early Christian interpretation, the Assemblies of God changed its stance to allow divorce and remarriage for adultery and abandonment.<sup>137</sup> This was done, in part they said, because

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<sup>136</sup> It removed the section stating “No Minister, knowingly after due inquiry, shall solemnize the marriage of any person who has been or is the husband or the wife of any other person then living, from whom he or she has been divorced for any cause arising after marriage.” (*Canon 42, Sec. 3*). See Jerome E Politzer, *A Form Of Godliness: An Analysis Of The Changes In Doctrine And Discipline In The 1979 Book Of Common Prayer* (Philadelphia, PA: The Prayer Book Society, 1987). Available online at <http://www.episcopalnet.org/TRACTS/Politzer.html>, accessed September 29, 2011. See also Kenneth E. North, *Holy Matrimony, Divorce, And Remarriage According To The Canons Of The Episcopal Church*. Available online at [http://www.canonlaw.org/article\\_matrimony.htm](http://www.canonlaw.org/article_matrimony.htm), accessed September 29, 2011.

<sup>137</sup> “4. Matthew 19:9 Also Carried This Exceptive Clause.

In this verse the best manuscripts read: “Whosoever puts away (divorces) his wife except for fornication (habitual sexual immorality) and marries another, commits adultery.”

It should be emphasized that the exception has in view sexual immorality, not merely a single act. Wherever possible, sexually immoral practices should be dealt with through repentance, confession, forgiveness and reconciliation, thus saving the marriage.

Some, including those who follow the traditions of the Roman Catholics, say that the exceptive clause does not apply to “and marries another, commits adultery.” In this view, fornication or habitual sexual immorality, gives the right to separation from bed and board but does not sever the bond of marriage or give any right to dissolve it. But this is difficult to fit in with other passages which deal with the responsibilities of husband and wife (1 Corinthians 7:2-5). Therefore, most Protestants have always taken the position that the exceptive clause does apply to “and marries another.”

It should also be pointed out that in extreme cases where divorce seems necessary, Jesus does not command remarriage. However, it is clear that in Matthew 19:9 Jesus assumes the man will marry. The verse deals with divorce and remarriage, and the laws of grammar make the exceptive clause apply to both. The Greek word for “put away” (*apoloio*) is used with regard to the Deuteronomy passage referred to in Matthew 5:31 and Mark 10:2-12. There, the “putting away” clearly did dissolve the marriage bond. Jesus did not change the nature of divorce as dissolving marriage. He simply threw out all excuses, reasons, or causes except “fornication” (*porneia*, habitual sexual immorality). However, in no case does He command divorce and remarriage. They are merely permitted under this one condition.

Again the objection is made that Romans 7:1-3 and 1 Corinthians 7:39 make no exception to the statement that marriage is dissolved by death. Thus some take this to mean that marriage is broken by death alone.

But these passages are stating basic principles and do not deal with the exceptions. Romans 7 recognizes that the husband under the Law could get a divorce, but the wife could not. Therefore, the wife was bound by “the law of her husband” until his death. We must also keep in mind that under the Law the penalty for adultery was death. This penalty of death was given not to break the marriage relationship, but in recognition that it was already broken.

5. 1 Corinthians 7:15 Also Contains an Exception.

“But if the unbelieving depart, let him depart. A brother or sister is not under bondage (not enslaved) in such cases: but God hath called us to peace.”

“Not enslaved” is a strong expression...If a believer is “not enslaved” when an unbelieving spouse, unwilling to remain in the marriage, divorces him (or her), he (or she) must be considered set free. Since it is the unbelieving partner who determines to go and initiates a divorce, the believer’s freedom seems to be more than a freedom to let him (or her) go, since he (or she) is going anyway. The plain meaning seems to be that the

- ministers were experiencing AOG members leaving their churches for other denominations when they could not perform their remarriage ceremonies.<sup>138</sup>
- g. In 1976 the United Methodist Church decided that where a marriage could not be fixed there was *always* the right to a remarriage.<sup>139</sup>
  - h. In 1977 the U.S. bishops of the Roman Catholic Church appealed to Pope Paul VI to reverse their 1884 excommunication of Catholics who had remarried after divorcing. He complied. This lifting of the excommunication, however, did not allow them to remain in their new marriages or partake of communion. It did, however, allow them to begin attending services at a Catholic Church again.<sup>140</sup> Perhaps the most notable instance of this was when Vicente Fox, president of Mexico, was denied communion in 2001 after he divorced and then remarried a divorcee.

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believer is set free to remarry if he or she chooses." (*Minutes: Revised Constitution And Bylaws General Council Of The Assemblies Of God, Thirty-Fifth General Council, August 16-21, 1973*), p.53-55.

<sup>138</sup> "This fallacious assumption [that all remarriage is sin] is partially responsible for the awkward position in which our pastors find themselves when they, ethically forbidden to perform marriage ceremonies for believers whose lives, prior to conversion, were scarred by divorce or whose unbelieving partners have initiated divorce since the believers' conversions, must ask some other minister to perform the ceremony, while hoping that such offense does not discourage the parties so affected from future attendance at their local assembly." (*Minutes: Revised Constitution And Bylaws General Council Of The Assemblies Of God, Thirty-Fifth General Council, August 16-21, 1973*), p.49.

<sup>139</sup> "In marriages where the partners are, even after thoughtful reconsideration and counsel, estranged beyond reconciliation, we recognize divorce and the right of divorced persons to remarry, and express our concern for the needs of the children of such unions." (*United Methodist Church Book Of Discipline* (Nashville, TN: Cokesbury, 1976), 71).

<sup>140</sup> Joseph Cardinal Bernardin *Selected Works Of Joseph Cardinal Bernardin: Church And Society* (Archdiocese Of Chicago, 2000), p.576. See also *U.S. Bishops Act To Reinstate Remarried Divorced Catholics*, Toledo Blade, May 5, 1977. The current stand of the Roman Catholic Church is as follows:

"Today there are numerous Catholics in many countries who have recourse to civil *divorce* and contract new civil unions. In fidelity to the words of Jesus Christ - "Whoever divorces his wife and marries another, commits adultery against her; and if she divorces her husband and marries another, she commits adultery"<sup>160</sup> the Church maintains that a new union cannot be recognized as valid, if the first marriage was. If the divorced are remarried civilly, they find themselves in a situation that objectively contravenes God's law. Consequently, they cannot receive Eucharistic communion as long as this situation persists. For the same reason, they cannot exercise certain ecclesial responsibilities. Reconciliation through the sacrament of Penance can be granted only to those who have repented for having violated the sign of the covenant and of fidelity to Christ, and who are committed to living in complete continence.

Toward Christians who live in this situation, and who often keep the faith and desire to bring up their children in a Christian manner, priests and the whole community must manifest an attentive solicitude, so that they do not consider themselves separated from the Church, in whose life they can and must participate as baptized persons: They should be encouraged to listen to the Word of God, to attend the Sacrifice of the Mass, to persevere in prayer, to contribute to works of charity and to community efforts for justice, to bring up their children in the Christian faith, to cultivate the spirit and practice of penance and thus implore, day by day, God's grace." (*Catechism Of The Catholic Church, 1650-1651*). *English Translation of the Catechism of the Catholic Church for the United States of America* (United States Catholic Conference, Inc., 1997).



- i. In 1979 John MacArthur, a rising Evangelical preacher, publicly taught that the innocent party is released from their wedding vow.<sup>141</sup>
- j. In 1982 the American Lutheran Church decided upon a process by which persons who had been divorced could remarry with the church's blessing regardless of the grounds upon which it had occurred.<sup>142</sup>
- k. In 1987 the United Church of Christ authorized a "divorce ritual" that was to be performed in the church for divorcing couples. The ceremony was entitled "Order of Recognition of the End of a Marriage".<sup>143</sup>
- l. In 2002 the General Synod of the Anglican Church voted 269 to 83 to reverse its historic position and allow divorced persons to remarry under "exceptional circumstances". What these "exceptional circumstances" were was left up to the minister of the church to decide on a case by case basis.<sup>144</sup>

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<sup>141</sup> **Question:** I have a question on the marriage vow. I have a friend who - she has all the biblical reasons of remarriage but she feels that the marriage vow that she made not only to her husband but to God, that even though he has broken his vow, his part of it that she is still bound to her vow to God and that she cannot remarry while he is still living...

**John:** Well, I would say to her, I wouldn't make that much of a case out of the marriage vow. You realize that in the Bible there is no marriage vows? That's strictly a human element? Marriage is a covenant of two hearts but the Bible doesn't give a list of vows and whatever service we use in a wedding is something that men have developed. I think that we can say this, that any covenant that is made between two people is only as good as those two people make it. When one violates it it's all over. It's like having a chain with two links. Both links don't have to break, if one breaks it's gone. So I would say, in a technical sense, if he has violated the marriage vow, then the marriage is violated and she doesn't need to feel that she has some blind allegiance to just a human commitment." (*Dialogue On Divorce, Mt 5:31-31: June 24, 1979*). Available online at <http://www.gty.org/resources/sermons/2221>

<sup>142</sup> "Remarriage of divorced persons is neither forbidden nor automatically endorsed by The American Lutheran Church. The second marriage of divorced persons may result in a new union which faithfully witnesses to God's purpose for marriage. Such remarriage will more likely result, however, if persons carefully consider the dynamics which led to the dissolution of a previous marriage. There should be a willingness to acknowledge one's own failures in a spirit of forgiveness toward all involved, and to work at correcting whatever personal characteristics may be detrimental to a marital relationship. Legitimate obligations to any children and to the former spouse must be fulfilled. When such is the case, the church can add its blessing to the remarriage of divorced Christians." (*Teachings And Practice On Marriage, Divorce And Remarriage, A Statement of The American Lutheran Church, 1980, Sec. 3:16*). Adopted Sept. 10, 1982, by the Eleventh General Convention of The American Lutheran Church as a statement of policy and practice for this church (GC82.10.104). Available online at <http://www.elca.org/Who-We-Are/History/ELCA-Archives/Archival-Documents/Predecessor-Body-Statements/American-Lutheran-Church/Marriage-Divorce-and-Remarriage.aspx>, accessed April 4, 2013.

<sup>143</sup> The version presented on the UCC's website begins by saying, "This order is intended for those occasions when a man and a woman who have experienced a divorce wish to acknowledge responsibility for their separation, affirm the good that continues from the previous relationship, and promise in the presence of God, family, and supportive friends **to begin a new relationship.**" Available online at [http://www.ucc.org/worship/liturgies/289\\_295\\_End-of-Marriage.pdf](http://www.ucc.org/worship/liturgies/289_295_End-of-Marriage.pdf).

<sup>144</sup> "The Church accepts that, in exceptional circumstances, a divorced person may marry again in church during the lifetime of a former spouse...Your priest may also feel the need to consult with the bishop or his adviser, before making a decision, although the decision remains with the parish priest." (*Marriage In Church After*

- m. In 2004 the Church of God of Prophecy reversed its longstanding support of the early Christian interpretation and decided to allow D&R people to become members under certain circumstances.<sup>145</sup>
  - n. In 2010 the Southern Baptist Convention published a resolution in which they confessed that “Even the most expansive view of the biblical exceptions allowing for divorce and remarriage would rule out many, if not most, of the divorces in our churches.”<sup>146</sup>
- C. Towards the end of the 20<sup>th</sup> century some Christians began to reevaluate the teachings of the New Testament on D&R.
- 1. At this time some came to the conclusion that the early Christian interpretation was the correct one but they were divided in how to apply it.
    - a. Some felt that it was the sin of adultery to remarry as long as your first spouse was still alive but somehow came to the conclusion that God would allow persons who had remarried (and had seemingly committed adultery in doing so) to remain married. Though they often appealed to the early Christian writers to support their view, in reality, theirs was a rejection of the early

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*Divorce* [London: The Archbishops' Council, Church House Publishing, 2003]). Available online at <http://www.churchofengland.org/media/1162432/leafletforenquirers.pdf>.

<sup>145</sup> As it now stands, here is their official position:

“Concerning “divorce” in the above context, the Church means the breaking of a legitimate, lawful, biblical marriage and holds firmly to the principle that such divorces are not God’s will, especially between Christians. Forgiveness, reconciliation, and healing should be sought as a first priority in order to preserve marriages and prevent divorce. The Church also recognizes that despite biblical teaching and honest human effort, divorces do occur sometimes against the will of one or the other party. Therefore, the Church recognizes (in a pastoral sense) those causes, in addition to death, that would be recognized as ending a previously valid biblical marriage. In such cases, delineated on the following page, marriage partners would not be classed as adulterers even though remarried:

- 1. If persons were divorced and remarried for any reason prior to their personal salvation and have demonstrated a willingness to seek restitution (forgiveness from the offended spouse) and restoration where possible.
- 2. If a divorce occurred because of a spouse’s habitual adulterous behavior and efforts to bring reconciliation are no longer possible.
- 3. If divorce occurred because of spousal or child abuse, such as incestuous behavior that seriously endangers the life and health of the spouse or family and violates the sanctity of holy matrimony.

Under no circumstances should Christians or Church members initiate or seek divorce without completely exhausting all biblical and counseling avenues to restore, rebuild, and sustain their marriages. Marriages that clearly violate biblical standards (such as incestuous marriages) may be appealed to the presbytery for specific consideration. All divorce and remarriage cases not falling within the categories described above should be referred for counsel and resolution to the Pastor and local church leadership, the State/Regional/National Presbytery, or the General Ministerial Presbytery (which includes the General Overseer and General Presbyters) as may be appropriate.” (*Marriage, Family, Divorce & Remarriage*). Available online at <http://cogop.org/about/doctrine/marriage-divorce-and-remarriage.html>.

<sup>146</sup> *On The Scandal Of Southern Baptist Divorce*, June 2010. The resolution also mentioned, “Some studies also indicate that areas where Southern Baptist churches predominate in number often have higher divorce rates than areas we would define as “unchurched” and in need of evangelical witness”. Available online at <http://www.sbc.net/RESOLUTIONS/amResolution.asp?ID=1205>.

- Christian position because the early Christian writers did not support staying in the new, adulterous marriage.<sup>147</sup>
- b. Others, more in line with the early Christian interpretation felt that it was Biblical to require those who had entered into marriages which the Scriptures called adulterous to end the new unions.<sup>148</sup>
2. As the Modern Era moved into the Post-Modern Era the early Christian interpretation continued to be an influential interpretation within Christendom.
    - a. In 1983 the Southern Mennonite Conference adopted a resolution indicating that it would accept the early Christian interpretation.<sup>149</sup>
    - b. In 1983 the Roman Catholic Church placed a statement in its Code of Canon Law which indicated that there was no reason that would allow a Roman Catholic to remarry while their first spouse was alive.<sup>150</sup>
    - c. A 1992 survey by *Christianity Today* magazine showed that 44% of its readers seemed to hold to the early Christian view indicating that they believed that “Jesus taught that believers should not remarry after a divorce” and that “God designed marriage to be permanent, and that remarriage constitutes adultery”.<sup>151</sup>
  3. As the Post-Modern Era came into full swing the attention of Western European/American Christianity seemed to shift its focus from heterosexual marriage, divorce and remarriage to same-sex marriage.
    - a. To date representatives from Lutheran,<sup>152</sup> Presbyterian,<sup>153</sup> Christian Reformed,<sup>154</sup> Episcopalian,<sup>155</sup> and Methodist<sup>156</sup> backgrounds have all appealed

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<sup>147</sup> These include J. Carl Laney (*The Divorce Myth*, 1981), Gordon Wenham and William Heth (*Jesus And Divorce*, 1985), and John Piper (*Divorce & Remarriage: A Position Paper*, 1986).

<sup>148</sup> These include Joseph Webb (*Till Death Do Us Part*, 1996), Stephen Wilcox (*Restoration Of Christian Marriage*, 2008) and David Pawson (*Remarriage Is Adultery Unless*, 2011).

<sup>149</sup> “Scripturally, there is nothing which breaks the marriage bond except death. **The act of adultery does not dissolve the marriage bond**, although it decidedly affects the quality of a marriage relationship and leaves a permanent scar on the persons involved. A legal document called divorce, from God’s point of view, does not break the marriage bond, else remarriage would not be adultery. Even the conversion of one of two unbelieving married partners does not dissolve the marriage bond. **If the unbelieving partner should leave, the marriage bond continues.**” (*Statement of Position on Divorce and Remarriage*. Officially adopted as a statement of position and policy on June 24, 1983, by the Southeastern Mennonite Conference.)

<sup>150</sup> “A marriage that is ratified and consummated can be dissolved by no human power and by no cause, except death (*Canon 1141*).”

<sup>151</sup> Haddon Robinson *Sex Marriage And Divorce: Results From A 1992 Christianity Today Reader’s Survey*. Available online at <http://www.christianitytoday.com/ct/2000/augustweb-only/45.0c.html?start=2>, accessed April 5, 2013.

<sup>152</sup> “Even more compelling is that most Christians today accept divorce and remarriage in spite of Jesus’ explicit judgment that it is adultery (Mt 19: 3-9). Presumably, Christians forgive and accept it because allowing a second or third chance is the loving thing to do. **If heterosexual Christians can forgive and accept adultery among their remarried brothers and sisters, it smells like hypocrisy to deny sexual companionship and even marriage to their gay brothers and sisters.** If heterosexual Christians can manage to get around Jesus’ judgments, they certainly ought to be able to get around St Paul’s.” John Wickham, *The Church And Homosexuality* in *Journal Of Lutheran Ethics*, Vol. 4, No. 8 (August 2004). Available online at <http://www.elca.org/What-We-Believe/Social-Issues/Journal-of-Lutheran-Ethics/Issues/August-2004/The-Church-and-Homosexuality.aspx>, accessed September 30, 2011.

to the Protestant Church's discarding of Jesus' teachings on D&R to justify their discarding of the Bible's teaching on homosexual behavior.

#### D. Summary

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<sup>153</sup> "In the 1950's, both branches of American Presbyterianism took the remarkable step of revising the Westminster Confession of Faith on divorce and remarriage...The Presbyterian denominations had turned away from what they considered a legalistic approach to marriage and divorce based upon a literal interpretation of biblical and confessional texts. Now they cited the spirit and totality of Jesus' teaching as mandating a pastoral approach that allowed exceptions to previous rules...How is this relevant to granting equality to gay and lesbian members of our churches? **Jesus' words that divorce is equivalent to adultery are among the clearest statements on a moral issue in Scripture.**...If we were to take literally Jesus' teaching on divorce, we would still not be accepting divorced and remarried people as office bearers in the church. Yet church law now asks that we take literally less clear statements regarding homosexual behavior. It is a double standard: current church law permits a pastoral approach concerning marriage and divorce for people who are heterosexual and mandates a legalistic approach toward people who are homosexual.

We can learn from the way in which the Presbyterian churches, north and south, slowly shifted from the legalistic proof-texting to looking at Scripture through the lens of Jesus' life and ministry. Jesus did not set forth immutable laws to break people. Rather, he set forth an ideal toward which we all should strive—lifelong faithfulness in married relationships. **The ideal could apply to gay or lesbian couples as well as heterosexual couples.**" Jack Rogers, *Jesus, the Bible, and Homosexuality: Explode the Myths, Heal the Church* (Louisville, KY: Westminster John Knox Press, 2009), p.44.

<sup>154</sup> "I have gone on this long about my church's about face in its ministry to divorced and remarried people in order to set the stage for asking about its exclusion of another group of Christian people. I refer to homosexual people who trust in Christ as Savior and want to follow him as their Lord...**Does the church's dramatic move from the exclusion to the embrace of divorced and remarried Christians provide a precedent for an embrace of homosexual Christians** who live together in a committed partnership? My own answer to my own question is, Yes, it does seem to me that our embrace of divorced and remarried Christian people did indeed set a precedent for embracing Christian homosexuals who live together." Lewis B. Smedes, *Like the Wideness of the Sea?* in *Perspectives Journal*, 14 (May 1999).

<sup>155</sup> "When we Episcopalians changed our minds about divorce and remarriage, our vision of what it is to be a loving community today overrode a rule intended for different people in different circumstances. We decided to see Jesus' clear prohibition of divorce and remarriage not as applicable to all times and all circumstances, but as intended for a particular set of circumstances - for the protection of women in a world where they were treated as property, a world in which only men could seek divorce, a world in which divorce meant a woman's destitution or prostitution...The question we have to decide is this - is this prohibition universal, applying to all people at all times, or is it local, applying to particular people at a particular time? Thirty years ago the Episcopal Church decided that Jesus' prohibition of divorce and remarriage is local, that it applied just to his time and place. Are we to do the same thing now with respect to homosexuality? That's the question. And it's a question for us, not scholars. Only Christian experience can tell us whether this prohibition is universal or local. Only after we have had experience throughout the Church with committed homosexual couples will we be able to give this text an authoritative interpretation." Warner White *The Bible And Moral Change*, August 31, 2003. Available online at <http://www.rci.rutgers.edu/~lcrew/dojustice/j116.html>, accessed April 5, 2013.

<sup>156</sup> "Over 1/3 of the couples who we UM pastors conduct weddings for involve at least one person who was married before, divorced, and is remarrying. Heck, many UM clergy have been divorced and remarried ourselves. Here's the deal. We're hypocrites. We're hypocrites if we act on the side of grace and unconditional love on behalf of *straight* people and yet make a point *not* to do that for our gay and lesbian brothers and sisters." Roger Wolsey *A Pastoral Letter To The United Methodist Church*, April 27, 2012. Available online at <http://www.patheos.com/blogs/faithforward/2012/04/a-pastoral-letter-to-the-united-methodist-church/>, accessed, April 5, 2013.

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The beginning of the 20<sup>th</sup> century saw a renewed interest within Protestantism to accept the early Christian interpretation. This gave way to a post WWII surge in divorce that in turn led to a reevaluation by the church of how to handle the growing number of divorced persons. In most cases, this reevaluation led to *accommodation*, rather than *affirmation* of what Jesus taught. As the 21<sup>st</sup> century dawned upon the Church it found its post WWII accommodation for D&R being used to accommodate same-sex marriage in the both the society and church.

## **V. Conclusion**

- A. Our journey through 2000 years of Christian teaching regarding marriage, divorce and remarriage can be summarized as follows:
  1. The Christians who lived closest to the time of the New Testament understood Jesus teachings on D&R to mean that remarriage after a divorce was a sinful lifestyle.
  2. When Roman emperors started going to church they passed legislation that contradicted what Jesus taught regarding D&R.
  3. Those Christians/Churches in the eastern empire who were most under the sway of the emperors bowed to accept this legislation. Those Christians/Churches in the western empire and outside of the influence of the emperors, more or less, maintained the early Christian interpretation.
  4. The Reformation brought with it a new reevaluation of the early Christian interpretation in this western area of nations.
  5. The latter half of the 20<sup>th</sup> century in the United States brought about a renewed reevaluation that led to most churches seeking an *accommodating* position, rather than a *Scriptural* one when it came to dealing with D&R.
  6. This renewed reevaluation has opened the door for churches to reevaluate same-sex marriage.