

APPENDIX I

THE WESTMINSTER DIVINES ON DIVORCE FOR PHYSICAL ABUSE

by the Ad Hoc Committee of Philadelphia Presbytery
RE: Westminster Assembly's View of Divorce for Physical Abuse
Dr. William S. Barker, Chairman

Introduction.

The mandate of Philadelphia Presbytery's committee was very narrow: to seek to know whether physical abuse of a spouse might have been in the thinking of the Westminster Assembly as it formulated its position: "...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...." (*Westminster Confession of Faith*, XXIV, 6).

Of particular help in this study have been the article by David C. Jones, "The Westminster Confession on Divorce and Remarriage," *Presbyterion* XVI, 1 (Spring 1990), 17-40 (see also Minutes of the 18th General Assembly of the PCA, 1990, pp. 139-162) and the book by Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society* (Cambridge U. Press, 1988), although the reader of this 640-page book should be forewarned that the index is not complete (William Ames, Robert Cleaver, John Dod, William Gouge, Herbert Palmer, and William Perkins are not included in the index but are referred to in the text at least on pages 111-112, 118, 126, 309, and 326-328).

The Problem. The problem confronting a study of what may have been in the thinking of the Westminster Assembly is that the whole question of divorce was in flux in the Reformation era, particularly and prolongedly so in England, and the most highly regarded guides on such ethical questions could be understood as ambivalent.

For example, William Ames (1576-1633) probably the most respected Protestant casuist of the time (see Richard Baxter, "Advertisement" and Part II, Chapter IX, Question VII of *A Christian Directory*, pp. 3-4 and 444 in Volume I of *The Practical Works of Richard Baxter*, London, 1838) wrote as follows in his *Conscience and the Cases Thereof* (1639 and 1643) concerning "Whether or no, and how Marriage may be dissolved?":

A.4. There is not any just cause of making, a divorce approved in Scripture, besides adultery and the like horrid impurities, whereby it comes to passe, that two remaine no longer one flesh but divided; and so the faith of Wedlock, is directly violated; Matthew 5.32. and 19.9.

A.6. An obstinate desertion, although in the party deserting, it containeth no just cause of making a divorce, yet it makes a faire cause for the party deserted, after the triall of all other meanes in vaine, to suffer a divorce, 1 Cor. 7:15....

A.8. The great danger, which one party may bee in by the cruelty of the other, or by any other manifest meanes of cohabitation, may bee just cause of retiring for a time, so to provide for his owne safety and security, but not for an absolute desertion, unlesse first hee bee deserted. For if one party drive away the other with great fiercenesse and cruelty, there is cause of desertion, and hee is to be

reputed the deserter. But if hee obstinately neglect, that necessary departure of the other avoyding the eminent danger, hee himselfe in that playeth the deserter.

Thus adultery is seen as the primary Scriptural grounds for divorce; however, prolonged willful desertion is also seen as a Scriptural occasion for dissolution of a marriage, and in the case of necessary separation because of physical danger the spouse guilty of cruelty is regarded as the deserter.

Ames's teacher, William Perkins (1558-1602), can likewise be understood as ambivalent on this question. On the one hand, in *An Exposition of Christ's Sermon on the Mount*, Perkins comments on 1 Corinthians 7:15:

The malicious or wilful departing of the unbeliever, doth dissolve the marriage; but that is no cause of having a bill of divorce: only adultery causeth that. Here the believer is a mere patient, and the divorce is made by the unbeliever, who unjustly forsaketh, and so puts away the other. (*Works*, 1612-13, III, 69)

He here disallows divorce for physical abuse:

5. Object. But married persons may seek to spill the blood one of another, and therefore it is good to give a bil of divorce, to prevent that evill. Answer. Such enmitie may cause a separation for a time, till reconciliation be made, but the bond of mariage must not therefore be broken. (*Ibid.*)

Commenting on 1 Corinthians 7:10, 11, he adds:

Here (say they) is a plaine place against manage after divorcement. Answ. The Apostle speaketh of departure, and putting away, for other causes than adulterie; as for hatred, dislike, &c. which indeede are no sufficient causes of divorce, and therefore they that separate thereupon, ought not to marrie. (*Ibid.*, III, 70-71)

On the other hand, in his *Christian Oeconomie* Perkins appears to validate a dissolution of a marriage on the basis of desertion caused by physical cruelty. In the case of a mixed marriage:

Suppose that an husband which is an unbeliever or a heretic in the foundation, of his own accord, upon detestation of true religion, quite forsakes the believing wife, and denies any more to dwell with her: what is to be done?

All good means must be used to bring the infected party to repentance; and when none will succeed, but the case remaineth desperate, then marriage is dissolved on his part, and the believing wife is free to marry another. (*Works*, III, 687)

In the case of two believers:

The faulty person, who is the cause of this desertion, is to be forced by course of civil, and ecclesiastical censure to perform his, or her duty. Upon which proceeding if he remain obstinate and perverse in will; the other must in patience, and earnest prayer unto God, wait the time, until his mind may be changed, and he be made to relent by the order of the Magistrate. But if one of them, by just occasion of fear, be compelled to depart from the other: and cannot return again without apparent danger of life; in this case they are not bound to return; but the delinquent party is to remain solitary, till they be instructed and made willing to do their duties: and in the mean while, the party innocent must be resolved that God hath call him or her to a single life.

Again, be it that the one is resolutely unwilling to dwell with the other, and thereupon flies away without any fault of the other: if the thing after a long space be sufficiently known beforehand, and all probable means have been used, to reclaim the guilty person; yea, being called he doth not personally appear before the judge, to yield a reason of the fact; after public and solemn declarations made, the Minister upon such desertion may pronounce the marriage to be dissolved. For he that upon malice flieth away from his mate, is to be holden in the same terms as with an unbeliever, who departs upon detestation of religion, and the service of God, I Tim. 5.8. (*Ibid.*, III, 687-688).

Perkins goes on to discuss “malicious and spiteful dealing of married folks one with the other”:

Malicious dealing is, when dwelling together, they require each of other intollerable conditions; and when the one doth not regard nor relieve the other, being in danger or extremity as it is meet. For this is as much as to betray one another's estate and life to their utter enemies. Here it may be demanded, what a believer should do, who is in certain and imminent danger, either of loss of life, or breach of conscience, if they both abide together.

... If [this danger is] from a stranger, then the husband either takes upon him the defence of his believing wife, or not; if he doth, then she ought to abide with him. If not, she may depart and provide for her own safety. Again, if the husband threateneth hurt, the believing wife may flie in this case; and it is all one, as if the unbelieving man should depart. For to depart from one, and drive one away by threats, are equipollent. (*Ibid.*, III, 688)

Historical Context.

Resolution of the seeming ambiguities in the resources most likely relied upon by the Westminster divines is helped by an understanding of the historical context. In the medieval Roman Catholic church “ ‘divorce’ was understood to be the separation of the adulterous spouse from the bed and table of the innocent spouse, not a definitive dissolution of their marriage bond and the right of each to remarry” (Steven Ozment; *When Fathers Ruled: Family Life in Reformation Europe*, Harvard U. Press, 1983, p. 80). Although annulments could be obtained, sometimes after years of marriage producing several children, the difficulties surrounding divorce and the prevention of marriages between parties deemed of too close a relationship (even descendants of godparents) caused a host of problems in the area of sexual immorality. The Protestant reformers, in addition to doing away with the exaltation of celibacy, and with the concept of marriage as a sacrament, contributed to a healthier state of marriage and family life by seeking to restore a biblical understanding of marriage and divorce. In Zwingli's Switzerland the pendulum swung far in an opposite direction from the Roman Catholic practices: “The Zurich court recognized six basic grounds for divorce – adultery, impotence, willful desertion, grave incompatibility, sexually incapacitating illness, and deception. The court in Basel recognized adultery, impotence, willful desertion, capital crimes, leprosy, and a serious threat to life” (Ozment, p. 93).

The Zurich court refused to grant divorce for what it interpreted to be bearable transient incompatibility. ... However, the court did recognize three instances of

grave, life-threatening incompatibility that justified separation and divorce. These were if a husband beat a wife to the point of endangering her life; if proven *impotentia superveniens* resulted from physical injuries inflicted by marital fighting; and if an older spouse became ill and his or her mate refused to provide the necessary care because of enmity between them.

The Basel court was even more reluctant to grant a full divorce for alleged threats to life ..., although it recognized such threats as a legitimate ground. It preferred to dismiss hateful spouses and wife-beaters with warnings. Men who persisted in beating their wives eventually received short prison sentences to encourage them to reform, and recurrent hostility between spouses did bring about separation from bed and table and a division of property, but these solutions still fell short of divorce. Even in cases of "furious and insane" threats to life, the Basel court would tell the couple to separate for a time before granting an actual divorce, clinging as long as possible to the slimmest hope of reconciliation. (Ozment, p. 96)

The church in Geneva was more cautious. Calvin held strictly to the divorce text in Matthew and would not allow divorce on account of leprosy or impotence. He did allow for divorce for desertion in certain circumstances, sometimes with the implication that adultery would be involved:

With respect to Calvin's divorce doctrine, then, we may choose between thinking of it as allowing a single ground for the dissolution of marriage (that is, adultery, with desertion constituting an offense giving rise to a presumption of adultery) or the same two principal grounds as Luther: adultery and desertion. Calvin excluded other grounds not only as justifying divorce but even as justifying *de facto* separation. In his letters to noblewomen, Calvin insisted that even if a Protestant wife were cruelly beaten by her Catholic husband, she should not leave him unless she were convinced that her life was actually in danger. (Roderick Phillips, *Putting Asunder*, p. 55. An example of such correspondence is to be found in *The Register of the Company of Pastors of Geneva in the Time of Calvin*, ed. and trans. Philip E. Hughes, 1966, pp. 193-198.)

Theodore Beza, whose *Tractatio De Repudiis et Divortiis* (1573, 1591) would have an influence upon English Puritan thinking, continued Calvin's position. The Consistory of Geneva resorted to excommunication far more often than to divorce in cases of marital quarrels and disputes. In the period from 1564 to 1569 there were 302 Genevans excommunicated for domestic quarrels (15.8% of the total excommunicated; sixty-one husbands and two wives excommunicated for *mauvais menage* were accused of beating their spouses), whereas divorces probably averaged no more than one per year. (Phillips, *Putting Asunder*, p. 58; E. William Monter, "The Consistory of Geneva, 1559-1569" in Peter DeKlerk, ed., *Renaissance, Reformation, Resurgence*, 1976, pp. 72-73).

The Situation in England.

In England the foundation of the state-established Reformation lay in a divorce, or more technically an annulment, -- that of King Henry VIII from Catherine of Aragon. Yet, somewhat ironically, the English Reformed church remained the most conservative of all the Protestant churches on the issue of divorce, no legislation on divorce being passed in England until the mid-19th century (Phillips, *Putting Asunder*, p. 77). Martin

Bucer, who came from Strassburg to England in 1549, dedicated to King Edward VI his *De Regno Christi*, substantial portions of which dealt with the subject of marriage. John Milton in the period of the Puritan Rebellion translated these portions as part of his argument for divorce for incompatibility. Bucer was probably the most liberal of the Protestant Reformers in this regard although his views did not go quite so far as Milton's (Phillips, *Putting Asunder*, pp. 123-125; cf. pp. 69-71).

Beginning in 1543 there was an effort to revise English canon law. In the 1550s a commission, apparently influenced mainly by Archbishop Thomas Cranmer and Peter Martyr, produced the desired *Reformatio Legum Ecclesiasticarum*. The death of Edward VI and the subsequent reaction of Mary Tudor, along with the later disapproval of Elizabeth I and her Parliaments, prevented this revision of church law from ever being adopted, but it reflects the thought of leading English reformers of the time:

It specified that when one spouse was guilty of adultery the innocent party should be allowed to divorce and remarry, but only after a six-month period had elapsed so as to give the couple an opportunity for reconciliation. The adulterous spouse would not be permitted to remarry. Divorce would also be justified for reason of desertion or absence without news, with the qualification that the deserted partner could not remarry for two or three years. If a remarriage did take place but the absent spouse subsequently returned, then the first (dissolved) marriage was to take precedence and the second would be declared null. It is not clear whether this provision would operate in all cases, for the *Reformatio Legum* also prescribed life imprisonment for desertion and for prolonged absences that could not be satisfactorily explained.

These grounds for divorce – adultery and desertion – were a Protestant orthodoxy, as we have seen, so it is interesting to note that the *Reformatio Legum* went even further and permitted divorce where one spouse was the victim of deadly hostility or violent treatment on the part of the other. “Deadly hostility” referred to attempted murder: “If deadly hostility should arise between husband and wife, and become inflamed to such an intensity that one attack the other, either by treacherous means or by poison, and should wish to take his life in some way, either by open violence or by hidden malice, we ordain that, as soon as so horrible a crime can be proved, such persons should be by law separated by divorce in the courts.” As for ill-treatment, the *Reformatio Legum* specified that “should a man be violent to his wife and display excessive harshness of word and deed in dealing towards her,” he should be admonished and cautioned to “treat her as the intimate union of marriage requires.” If the husband failed to improve his behavior, the wife should be able to obtain a divorce. This revision did not abrogate the legal authority vested in husbands to administer “moderate correction” to their wives who were “rebellious, obstinate, petulant, scolds and of evil behaviour” (Phillips, *Putting Asunder*, pp. 83-84).

These proposals, though supported by such as John Foxe, did not meet with official approval in Elizabeth's reign (1558-1603). The views of Zurich, however, were entertained when Heinrich Bullinger's *Decades* were given official endorsement for ministerial training in 1587. Concerning divorce Bullinger wrote:

Divorcements and separations were permitted by the law in the twenty-fourth of Deuteronomy, for nothing else but for the hardness of the Jewish people's hearts,

and for the avoiding of some greater inconvenience; to wit, lest peradventure any man should poison, strangle, or otherwise kill the woman, his wife, which he hated, when he could by none other means rid his hands of her. And they that were in that manner divorced might at their pleasures be married to others (3rd Decade, Sermon VII, Parker Society edition, II, 228).

But if for adultery, or some other matter more heinous than that, necessity forceth to break wedlock, yet in this case the church will do nothing unadvisedly. For she hath her judges who will judge in matters and causes of matrimony according to right and equity, or rather according to God's laws and the rule of honesty (5th Decade, Sermon X, Parker Society, IV, 511).

For the laws of God and men admit a divorcement betwixt a man and his adulterous wife. And yet let not any less or lighter cause dissolve this knot betwixt man and wife, than fornication is. Otherwise God, which in the gospel hath permitted the less, doth not forbid the greater, to be causes of divorcement (2nd Decade, Sermon X, Parker Society, I, 403).

Bullinger's *The Christian State of Matrimonye* had been translated into English by Miles Coverdale earlier, in 1541, and said:

Fifthly: What the right occasion of divorce is hath Christ mentioned in the gospel and named whoredom or adultery. With the which no doubt, he hath not excepted like and greater occasions, but understood and comprehended them therein. For the holy Apostle also did leave infidelity as an occasion of divorce. 1 Cor. vii. Manifest it is also, that wedlock was partly instituted for the eschewing of adultery. Wherefore when the guilty party is divorced, the unguilty is at liberty to marry again, if he or she cannot live sole, according to Paul, if thou canst not be chaste, marry, for better it is to marry than to burn in concupiscence (leaf lxxvii).

Moreover the faithful and virtuous Emperors, holy Constantine, Theodosius, Valentinus, Anastasius and Justinian decreed other things also to be lawful occasions of divorce as murder, poisoning, and such like as it is evident in Cod. Lib. v. Tit. xvii *De repudiis*. Every reasonable man then consider, that God did ordain wedlock for the honesty and wealth of man, and not for his shame and destruction. They therefore that in no case will help the oppressed person, nor in any wise permit divorce to be made, do even as the Pharisees, which by reason of the commandment of the Sabbath after the letter, suffered men to be destroyed and perish (facing leaf lxxviii).

Bullinger thus saw adultery as inclusive of other violations of the marriage bond which were either equal or greater and hence sufficient basis for divorce. The revised English church law of 1604, however, while allowing separation from bed and board, prohibited divorce entirely (Phillips, *Putting Asunder*, p. 107).

In the early 17th century there are a few other clues to Puritan thought on divorce leading up to the time of the Westminster Assembly. In addition to Perkins and Ames, already discussed, William Whately (1583-1639) published two works on marriage. In *A Bride-Bush, or a Wedding Sermon: Compendiously describing the duties of Married Persons: By performing whereof, Marriage shall be to them a great*

Helpe, which now finde it a little Hell (London, 1617), he commented on 1 Corinthians 7:15:

In which words, he permits not to the unbeleever such separations as lawfull, but casts the fault upon him alone, and after frees the other party from the band by which he or shee was formerly tied: as if hee had saide; If he will needes be gone, let him; and trouble not your selves about it, the sin lyes wholly upon his owne soule. A Christian man or woman, when cases of this nature fall out, is no longer tied to the former covenant, nor to the former partie, which hath himselfe first broken it. Neither is this any whit contrary to that of our Saviour, who forbids a man to put away his wife & marry another, unlesse it be for adultery. For we allow not to him or her, any such liberty of putting away, but upon that only cause. Yet if he or she be wrongfully put away (the yoke-fellow withdrawing him or herselfe out of the way, so that there be no hope to recall them, or else not returning upon good persuasion or meanes used) we yeelde with the Apostle, a freedome to the party so wronged. And these things you see may well stand together. No man may lawfully forsake his wife, nor the wife the husband (but in case of adultery) to marry another; and yet any man or woman, being wrongfully forsaken by his or her yoke-fellow, may lawfully then marry another, as being disburdened of the former yoke, without any sinne, on their parts, in that thing, procuring it. Onely we professe, that in cases of this nature, a just and orderly course must bee taken (pp. 4-5).

Whately's *Bride-Bush* was reprinted in 1619, and he was subsequently summoned to appear before the Court of High Commission to explain himself. He retracted his position on divorce in 1621, and when a second edition of *A Bride-Bush* was published in 1623, he admitted the error of his divorce doctrine, but primarily acknowledged that an adulterous partner could be received back and hence adultery did not automatically dissolve a marriage. In his other work on marriage, *A Care-Cloth: or a Treatise of the Cumbers and troubles of marriage: Intended to advise them that may, to shun them; that may not, well and patiently to bear them* (London, 1624), is mainly a warning against the difficulties of marriage, perhaps because the strictness of English divorce law constrained Whately to counsel in this direction (cf. Phillips, *Putting Asunder*, pp. 112-115).

Among the Westminster divines themselves at least two had published works on marriage, Thomas Gataker (1574-1654) and William Gouge (1575-1653). Gataker's works, being wedding sermons, do not shed direct light on the question of divorce (*Marriage Duties Briefly Couched Together; out of Colossians 3.18,19* [London, 1620] and *A Wife in Deed. A Sermon concerning the Matter of Marriage* [London, 1624]). Gouge, however, does take an explicit position on divorce in his *Of Domesticall Duties*, published in 1622 with second and third editions in 1626 and 1634:

Concerning adultery, we deny not, but that it giveth just cause of divorce: but withall we say (as we have good warrant from Christ's words) that it is the only cause of just divorce (3rd ed., 1634, II, ii, 16).

Gouge does also discuss desertion:

The vice contrary to matrimonial unity is desertion, when one of the married couple through indignation of the true religion, and utter detestation thereof, or some other like cause, shall apparently renounce all matrimonial unity, and

withdraw him or her self from all society with the other, and live among infidels, idolaters, heretics, or other such persecutors, as a faithful Christian with safety of life, or a good conscience, cannot abide among, and though all good means that can be thought of be used to reclaim the party so departed, yet nothing will prevail, but obstinately persisteth in renouncing all matrimonial fellowship (II, ii 3).

Referring to 1 Corinthians 7:15, Gouge says:

That desertion therefore on the delinquent's part is such a dissolution of marriage, as freeth the innocent party from the bondage thereof. By bondage he meaneth matrimonial subjection (by reason whereof neither of the married persons have power of their own body, but one of the others) (II, ii, 3).

Gouge does not see desertion as a total dissolution of the marriage such that the innocent party is free to remarry. He distances himself from Reformed churches like those of Zurich in this regard:

In many reformed Churches beyond the seas desertion is accounted so far to dissolve the very bond of marriage, as liberty is given to the party forsaken to marry another; and it is also applied to other cases than that which is above mentioned: as when an infidel, idolater, or heretic shall depart from one of the true religion for other causes than hatred of religion: or when both man and wife having lived as idolaters among idolaters, one of them being converted to the true faith, leaveth his abode among idolaters, and goeth to the professors of the true faith, but can by no means get the other party to remove: or where one of the true religion shall depart from another of the same profession, and will by no means be brought to live with the party so left, but openly manifesteth peremptory obstancy; the matter being heard and adjudged by the magistrate, the marriage bond may be broken; and liberty given to the party forsaken to marry another. But because our church hath no such customs, nor our law determined such cases, I leave them to the custom of other churches (II, ii 3).

Gouge was a highly respected and very active member of the Westminster Assembly, sometimes filling the moderator's chair in his absence. "For many years he was esteemed the father of the London ministers" (Daniel Neal, *The History of the Puritans*, London, 1837, II, 611). Since he served as chairman of the subcommittee on divorce (Alexander F. Mitchell and John Struthers, *Minutes of the Sessions of the Westminster Assembly of Divines While Engaged in Preparing Their Directory for Church Government, Confession of Faith, and Catechisms* [November 1644 to March 1649], Edinburgh and London, 1874, p. 266; cf. pp. lxxxvii, 91 and 190), it appears remarkable that the Assembly came to adopt its position concerning desertion as a grounds for divorce. Dr. David Jones comments, "One could wish that Gouge had published a post-Assembly volume on *How My Mind Has Changed*" ("The Westminster Confession on Divorce and Remarriage," *Presbyterion XVI*, 26). As Dr. Jones surmises, this was very likely because of the influence of the delegates from Scotland, where since 1573 divorce had been allowed by law for willful desertion for four years or more as well as for adultery:

The deserted spouse had to raise an action of adherence (a demand that the deserter return) as early as a year after the actual desertion, and the guilty spouse was warned by the court and the church to return. If he or she refused to return, the

deserting spouse was denounced and excommunicated and if he or she had not returned at the end of four years' absence, the abandoned spouse was permitted to apply to the Commissary court for a divorce (Phillips, *Putting Asunder*, p. 61).

Even with the Scottish influence, therefore, the English Puritan position on divorce would be relatively cautious and conservative, more like that of Geneva than that of Zurich.

The comparatively conservative stance of the Westminster divines in the context of debate over divorce in their time is reflected also in another key member of the Assembly, Herbert Palmer. When the English Civil War was beginning, royalists argued for loyalty to the King on the basis of analogy between the people's relation to their monarch and a marriage which could not be dissolved. Palmer, as a good Puritan, sought to defend Parliament's action short of making it like a divorce:

A wife is tyed to her Husband by the Covenant of God (so called, Prov. 2.) and by the Ordinance of God more ancient, and no lesse strong than that of Politick Government. She cannot recall wholly her Husbands Authority over her Yet for her necessity, she may by the Law of God and conscience ... secure her Person from his violence by absence (though that ordinarily be against the Law of Marriage, and the end of it) or any other means of necessary defence (*Scripture and Reason Pleaded for Defensive Armes*, London, 1643, pp. 35-36, quoted in Phillips, *Putting Asunder*, p. 118).

On the other hand, when Milton was republishing Martin Bucer to support his broader approach to divorce, Palmer responded with a sermon before Parliament and the Assembly which Scottish commissioner Robert Baillie called one "of the most Scottish and free sermons that ever I heard any where" (Baillie, *Letters and Journals*, Edinburgh, 1841, II, 220). Arguing against toleration, Palmer cites Milton's writing on divorce as one example of pernicious opinions that are abroad:

If any plead Conscience ... for divorce for other causes then Christ and His Apostles mention; Of which a wicked booke is abroad and uncensured, though deserving to be burnt, whose Author, hath been so impudent as to set his Name to it, and dedicate it to your selves ... will you grant a Toleration for all this? (*The Glasse of God's Providence Towards His Faithfull Ones*, 1644, p. 54; quoted in Ernest Sirluck, "Introduction," *Complete Prose Works of John Milton*, New Haven: Yale U. Press, 1959, II, 103).

A further bit of evidence for the Westminster divines' understanding of ground for divorce is to be found in the *Westminster Assembly Annotations upon all the books of the Old and New Testament* (1st ed. 1645, 2nd ed. 1651, 3rd ed. 1657), a work done under the auspices of the Assembly but without its official approval (cf. Mitchell and Struthers, *Minutes of the Westminster Assembly*, p. 132 for an instance of apparent disapproval of a portion). In the *Westminster Annotations*, produced in large part by members of the Assembly, including Gataker and Gouge, comments on such passages as Mark 10:5 (in the 3rd edition), Malachi 2:16 (3rd ed.), and Deuteronomy 24:1 (1st ed.) reveal a tendency to uphold the ideal of no divorce while recognizing the necessity of the civil magistrate's dealing with the reality of human hardness of heart:

For Moses commanded not dismissal of the wife; but (as a civil Magistrate) permitted it, to avoid murder and cruelty ... (on Mark 10:5).

And thus divorce was, if not permitted, yet not punished under the Law: As the Magistrate sometimes suffers what he allows and approves not (on Mal. 2:16). Hereby God approveth not the ficklenesse of men's affections, in a light, or causelesse leaving of their wives, Mal. 2.16. but permitteth a parting, for preventing of danger through dislike, Matthew 19.6, 7, 8, 9 (on Deut. 24:1).

One further reflection of the thinking of the Westminster divines can be seen in *A Christian Directory*, by Richard Baxter (1615-91), which was written in 1664 and 1665, almost twenty years after the Westminster Confession was produced. In Part II, Chapter IX of his *Christian Economics*, (or *Family Duties*) Baxter answers several questions relating to desertion:

Quest. XV. Doth not the desertion of one party disoblige the other?

Answ. ... It is sometimes easy, and sometimes hard to discern which is the deserting party. If the wife go away from the husband unwarrantably, though she require him to follow her, and say that she doth not desert him, yet it may be taken for a desertion, because it is the man who is to rule and choose the habitation. But if the man go away, and the woman refuse to follow him, it is not he that is therefore the deserter (*Practical Works*, London, 1838,1,445).

Quest. XVI. What if a man or wife know that the other in hatred doth really intend by poison, or other murder to take away their life? May they not depart?

Answ. They may not do it upon a groundless or rash surmise; nor upon a danger which by other lawful means may be avoided (as by vigilancy, or the magistrate, or especially by love or duty). But in plain danger, which is not otherwise like to be avoided, I doubt not, but it may be done, and ought. For it is a duty to preserve our own lives as well as our neighbours). And when marriage is contracted for mutual help, it is naturally implied, that they shall have no power to deprive one another of life (however some barbarous nations have given men power of the lives of their wives). And killing is the grossest kind of desertion, and a greater injury and violation of the marriage covenant than adultery; and may be prevented by avoiding the murderer's presence, if that way be necessary. None of the ends of marriage can be attained, where the hatred is so great.

Quest. XVII. If there be but a fixed hatred of each other, is it inconsistent with the ends of marriage? And is parting lawful in such a case?

Answ. The injuring party is bound to love, and not to separate; and can have no liberty by his or her sin. ... But the innocent party's case is harder (though commonly both parties are faulty, and therefore both are obliged to return to love, and not to separate). But if hatred proceed not to adultery, or murder, or intolerable injuries, you must remember that marriage is not a contract for years, but for life, and that it is possible that hatred may be cured (how unlikely soever it may be). And therefore you must do your duty, and wait, and pray, and strive by love and goodness to recover love, and then stay to see what God will do; for mistakes in your choice will not warrant a separation.

Quest. XVIII. What if a woman have a husband that will not suffer her to read the Scriptures, nor go to God's worship public or private, or that so beateth or abuseth her, as that it cannot be expected that human nature should be in such a case kept fit for

any holy action, or if a man have a wife that will scold at him when he is praying or instructing his family, and make it impossible to him to serve God with freedom, or peace and comfort.

Answ. The woman must (at necessary seasons, though not when she would) both read the Scriptures, and worship God, and suffer patiently what is inflicted on her. Martyrdom may be as comfortably suffered from a husband, as from a prince. But yet if neither her own love, and duty, and patience, nor friends' persuasion, nor the magistrate's justice, can free her from such inhuman cruelty, as quite disableth her for her duty to God and man, I see not but she may depart from such a tyrant. But the man hath more means to restrain his wife from beating him, or doing such intolerable things; either by the magistrate, or by denying her what else she might have, or by his own violent restraining her, as belongeth to a conjugal ruler, and as circumstances shall direct a prudent man. But yet in case that unsuitableness or sin be so great, that after long trial there is no likelihood of any other cohabitation, but what will tend to their spiritual hurt and calamity, it is their lesser sin to live asunder by mutual consent (I, 446).

Baxter also has remarks concerning wife-beating:

Divines used to say, that it is unlawful for a man to beat his wife: but the reason is not, that he wanteth authority to do it; but, 1. Because he is by his relation obliged to a life of love with her; and therefore must so rule, as tendeth not to destroy love: and, 2. Because it may often do otherwise more hurt to herself and the family, than good. It may make her furious and desperate, and make her contemptible in the family, and diminish the reverence of inferiors, both to wife and husband, for living so uncomely a life (I, 447).

Baxter's counsel in this regard is similar to that of William Ames prior to the Westminster Assembly:

Quest. 5. Whether or no, and how farre it is lawfull for a Man to reprove his Wife being faulty.

14. A. Hee may and ought to restraine her by such meanes as are not repugnant to conjugall society, as by admonitions, reprehensions, and the deniall of some priviledges which are due to a godly and obedient Wife. But it is by no meanes the part of any Husband, to correct his Wife with blowes:

Because first, It proceedeth from an unwarranted bitterness and cruelty.

Secondly, It is repugnant to the ingenuous, quiet and peaceable society of Wedlock.

Thirdly, It destroyeth conjugall affection, as well in the Husband, while hee useth his Wife as his Servant, as in the Wife while shee seeth herselfe contemned and tyrannically dealt with.

Fourthly, Experience teacheth, that this is not the way, either to the amending of the Wife, or the peace of the Family.

Fifthly, It is not allowed by any law, nor practised by any, but furious or drunken men (Ames, *Conscience and the Cases Thereof*, Book V, Chapter XXXVII, pp. 207, 208).

William Perkins had earlier taken a similar position:

Here question is mooved, whether the husband may correct the wife?

Answ. Though the husband be the wives head, yet it seemeth he hath no power nor libertie granted him in this regard. For we read not in the Scriptures, any precept or example to warrant such practise of his authoritie. He may reprove and admonish her in a word onely, if he seeth her in a fault. For, thus we read, that Jacob censured his wife, beeing impatient, even in anger. Gen 30.2 ... And Iob reprooved his wife, Iob 2:10 ... But he may not chastise her either with stripes, or stroakes. The reason is plaine. Wives are their husbands mates; and they two be one flesh. And no man will hate, much lesse beat his owne flesh, but nourisheth and cherisheth it, Eph. 5.29 .. Againe, it is the commandement of God, that man should not trespasse against the wife of his youth, Malac. 2.15

Nevertheless; if she growe to extremities, and be desperately perverse, so as there be no hope of amendement: then the Magistrate may be informed; who to prevent scandals, and to provide for publicke peace, both ought and may assigne unto her necessarie correction, and punishment according to her desert. Now the husband that hath a wife so stubborne and peevisch, must beare it, if it may be borne, as the portion of his crosse laid upon him by God. And in this case if he bee impatient, he may in some sort be pardoned and pitied, but he is not wholly to be excused (Perkins, *Christian Oeconomie*, in *Works*, III, 691, 692).

The Puritan attitude of Perkins, Ames, and Baxter must be understood in the context of their times:

Wife beating, which was doubtless the most widespread form of marital ill-treatment, was rarely condemned, either explicitly or implicitly. Even the *Reformatio Legum Ecclesiasticarum* was careful to specify that the ability of women to divorce would not imply a reduction of men's power of "moderate correction" over their wives. Such neglect of cruelty as a matrimonial offense was quite consistent with the prevailing social attitudes toward the relationship of husband and wife, which specified the latter's inferiority and her duty of obedience (Phillips, *Putting Asunder*, p. 89).

As another scholar has commented: "Much more than the Anglicans, the Puritans developed marriage as a partnership and simultaneously made the strongest objections to wife-beating" (Richard L. Greaves, *Society and Religion in Elizabethan England*, Minneapolis: U. of Minnesota Press, 1981, p. 739).

Conclusions.

The Puritan movement, with the Westminster Assembly coming at its culmination, manifested both a masterful knowledge of Scriptural teaching and also a pastoral sensitivity to the needs and tendencies of the human soul. This combination is apparent in the materials that would have been available to the Westminster divines as they dealt with the subject of divorce and whether physical abuse could be regarded as a grounds for dissolution of a marriage.

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

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

What do such findings indicate for our contemporary setting? First of all, in the Reformation era settings of Geneva, Scotland, and England the civil magistrate could be expected, to a greater degree than in late-20th-century America, to be mindful of and respectful toward Scriptural principles. With regard to a matter like divorce, while we must be respectful toward the secular courts, we cannot rely on contemporary judicial principles to determine what is right.

Secondly, this means that we must rely even more than did the Reformation era, on the constructive discipline of the church. When physical abuse is occurring in a marriage, the church must deal with a situation which, as the Puritans saw, is contrary to God's purpose for marriage. A temporary separation may be necessary for safety, which the church may need to facilitate, and the abusing partner should be disciplined, with helpful counsel but eventually to the point of excommunication if there is no repentance in deed as well as in word. The situation is complicated in our cultural setting when the marriage partner is not a member of a church, or is a member of some other church; nevertheless, discipline must be attempted. Only after a suitable length of time and a sufficient process of church discipline should a divorce be granted for such a desertion of one's marriage partner and the marriage covenant. (This is essentially the conclusion reached by David D. Prescott in *The Problem of Wife Abuse: Wife Abuse and Pastoral Counseling*, Westminster Theological Seminary D.Min. project, 1991; cf. pp. 212-221 on "Divorce: Is It a Possibility?")

In its understanding of the Bible's teaching on divorce as "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," the Westminster Assembly was seeking to steer the Scriptural path between two demonstrable extremes and in the process uphold God's high ideal for marriage. On the one hand, this ruled out the Roman Catholic concept of no divorce, allowing divorce for adultery and under certain circumstances desertion. On the other hand, it ruled out divorce for incompatibility as some such as Milton were advocating. Physical abuse of a spouse was seen as contrary to the biblical purpose for marriage and would thus be grounds for church discipline and could, if it led to prolonged separation without remedy, become a cause for dissolution of a marriage. Such circumstantial details can be handled only by a body of elders cognizant of and close to the situation. Whereas proven adultery would be readily acknowledged as grounds for a divorce, desertion on the basis of physical abuse as a cause for dissolution of a marriage should be determined from the circumstances by the local session or in the case of a minister by the presbytery.

TE David Brewer
TE William S. Barker, Chairman