

### *Special Committee on Divorce Minority Report on Historical Background*

The minority is in full agreement with committee's report with the exception of several parts of its historical analysis. It disagrees (1) with the committee report's overall conclusion that that analysis shows there was vagueness in the use of the term, 'desertion' (and cognates) during the period leading up to and just after the Westminster Assembly, a vagueness that was left in the text of WCF 24.6 and which must be settled by appeal to Scripture,<sup>1</sup> (2) with the committee report's treatment of John Selden (lines 484-536), and (3) with the committee's treatment of the significance of the WCF's scripture proofs, particularly in footnote 38 and the assertion it supports (lines 511-513).

**(1) The Sense of the Term 'Desertion' is Clear** – the committee provides no evidence showing the definition varied from author to author. The WCF language, allowing divorce for only "adultery" and "desertion" (cf. WCF 1.6), appears in a number of important texts from Calvin, through Puritans such as Perkins and Ames (if the committee's option 4 for explaining the apparent contradiction in Ames' writings is adopted), Scottish Reformation divorce law, and on past the WA to the Westminster Annotations on Scripture. These all recognized permission for true divorce (allowing remarriage) only for the victims of adultery, or those truly and hopelessly deserted, usually if not always, by a non-Christian spouse; notwithstanding, some, if not all, allowed for separation (but no remarriage) for a wife whose life was truly in jeopardy from her husband's violence. With respect to divorce, the WA seems to have adopted this same language, suggesting the same sense for the term, 'desertion'. In the historical survey of British authors (including the *RLE*) that we studied, there is not a single clear instance of the word "[willful] desertion" being used with a (semantic) sense, i.e. an implicit lexical definition, other than that recognized by the committee based upon the *OED*, "forsaking or leaving the state of living in conjugal [= marital] association with one's spouse, by one's own free will, without external compulsion or reasonable cause" (lines 90-92). The *RLE* recognizes grave unstoppable violence as a ground for a wife to divorce, but lists it alongside desertion as a different ground – hence, the definition of desertion remains unchanged. It does not include such violence under the rubric of 'desertion'. Calvin and Perkins saw violence as a possible ground for temporary separation, but not (true) divorce, yet they permitted it for desertion by a non-Christian spouse; likewise the *Westminster Annotations on Scripture*. However, none labels such violence 'desertion'. Thus, the sense or definition of the term itself is consistent; the committee never showed an example of the definition of the word 'desertion' having expanded to include abuse of a wife by her husband.<sup>2</sup>

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<sup>1</sup> "The meaning of desertion had noteworthy nuances making it difficult to determine the precise force of the concept. . . . Because of our uncertainty of the precise meaning of wilful desertion from historical sources, we will have to seek clarity through study of the Scriptures" (lines 789-795).

<sup>2</sup> Former OP pastor and Westminster NT professor, Moises Silva, helpfully explains the important distinction in two different ways that the terms 'meaning' and 'means' may be used which, when not clearly distinguished, lead to confusion: 'sense' and 'reference' (A.K.A. 'denotation'). "We may use the terms symbol (the word in its phonetic or written form), sense (the mental content called up by the symbol), and referent (the extra linguistic thing denoted)"; *Biblical Words and Their Meaning: An Introduction to Lexical Semantics*, revised and expanded ed., (Grand Rapids: Zondervan, 1994) 102. Based upon careful study of extensive examples from extant literature, lexicons and dictionaries attempt to list all of the possible senses for each entry (word = symbol).

Ames alone might be read as allowing severe cruelty to justify divorce, ‘reputing’ the violent husband as a deserter, but even he need not be so read. Nevertheless, irrespective of which of the committee’s four suggestions for understanding Ames is adopted (lines 421-451), his having construed ‘deserter’ with the verb ‘repute’ shows that even for Ames, the sense of the word itself remains unchanged.<sup>3</sup>

Furthermore, if by drive away with great fierceness and cruelty, Ames means the husband intends his vicious conduct to force the wife from the home, the apparent contradiction disappears, since the husband is, thereby, as responsible for the physical separation between them as if he himself had walked out and refused to return. Any vagueness in the meaning of the term “desertion,” i.e. its sense, has been read into these writings by the committee. Ames has apparently interpreted 1 Corinthians 7:15 a bit differently (or, to put it more precisely, with a bit more nuance) than Perkins, but his implicit definition for the term ‘desertion’ remains the same. Further, the committee has cited no evidence of disagreement or of a debate – before or during the WA – over the definition or scope of the term “desertion.” The *RLE* and Perkins obviously disagreed as to whether or not true divorce (or only separation) may be justified in the case of a wife subject to persistent serious violence, but there is no evidence either ever labeled such violence, ‘desertion’. The assembly apparently wrestled for two days as to whether not to add “wilful desertion” to adultery as a ground (lines 169-173), but there is no evidence that the term itself was considered anything less than clear. While arguments from silence tend to be weak, they are not always so. The lack of any evidence of dispute over the term’s meaning strongly suggests that all understood it just as the *OED* analysis suggests.

Finally, a purpose of the confession was to establish a unified understanding of Scripture throughout the country, not to leave a question so vital (cf. Mat 19:9) as what precisely constitutes one of only two legitimate grounds for divorce to be debated from Scripture in the years to come, in every session and presbytery across the nation – the inevitable outcome of the committee’s concluding paragraph’s, “we will have to seek clarity [as to the ‘the precise meaning of wilful desertion’] through study of the Scriptures themselves”. On the contrary, the plausible explanation for the total lack of evidence of any contemporary controversy over the definition the term and for the relative ease with which it was adopted despite a divorce subcommittee chairman committed to the ‘adultery’ only position is that there was and had always been, clarity with respect to the import of the term, “desertion.” The grounds for divorce were widely debated, but the sense of the term for one of those grounds, desertion, was not. Fog on that issue seems to be a 20th century development.

## ***(2) Selden Treatment***

First, the committee asserts, “*Uxor* was the culmination of decades of study and research in the area of marriage, divorce and Jewish tradition” (lines 490-92; underline added), implying that by the time of Selden’s brief participation at the WA he had already attained many years of expertise,

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<sup>3</sup> This becomes clear when one replaces the word deserter with the definition derived from the *OED* for “desertion”: “if one party drive away the other with great fierceness and cruelty, there is cause of desertion, and hee is to be reputed the one ‘forsaking or leaving the state of living in conjugal association with one’s spouse, by one’s own free will, without external compulsion or reasonable cause.’”

not only regarding Judaism, generally, but Jewish ‘marriage’ and ‘divorce’ tradition in particular. The introduction by Ziskind (his book is the committee’s source for Selden) to *Uxor* indicates he believes otherwise. Ziskind outlines the history of Selden’s scholarly research and publishing:

Selden’s “first effort in Jewish studies ... was not published until 1617. A revised and enlarged edition appeared in 1629” (p 7). However, Ziskind clarifies, it was “not in a strict sense a Judaic work [but] played a crucial role in the direction Selden’s interest in Jewish studies would take” (p 8); i.e., it helped interest him in Judaic studies, proper. “Selden’s first [Judaic] effort was *De Successionibus* (About Succession) ... in 1631 in London following his release from prison. ... A revised and enlarged edition ... appeared in 1638,” adding “a discussion of the jurisdiction of Jewish courts” (p 9). In 1640, he published a work on natural law (p 509). For four years, beginning in 1640, “his now widely recognized talents as a Judaic scholar were employed in the political arena. He first served beginning that year in the Long Parliament, then briefly at the WA (from July, 1643), before returning to scholarly writing and publication in 1644 when he published, *De Anno*, a work on the Jewish calendar (p 17). During his political period: “The debates in Parliament and Westminster, in which Selden was an active participant, dealt,” not with marriage and divorce, but “with the need to redefine church-state relations as they pertained to church organization and jurisdiction in the light of the break with Rome” (p 10). Thus, the comments by this Selden scholar [and *Uxor*’s translator (Latin→English)] offer no support for the committee’s contention that the work “was the culmination of decades of study and research in the area of marriage [and] divorce.” Actually, they suggest otherwise.

Second, and more importantly, the committee treats Selden’s work as if it were prescriptive, seeking to declare the will of God on such matters, when in fact it is primarily, often exclusively, descriptive; in the key chapter (5) cited by the committee, where Selden treats Jewish divorce, the committee offers no evidence of intent to be prescriptive. Yet the committee asserts, “Selden has expanded the scope of willful desertion beyond mere geographical considerations.” The committee’s analysis assumes Selden’s chapter 5 *description* of the rabbinical use of the slave girl passage to justify a Jewish wife “proceed[ing] against her husband in court” is intended (*by Selden*) to be *prescriptive* for the Christian church:

In Book III, chapter 4 of *Uxor*, Selden presents historical arguments from a variety of sources though primarily from rabbinical sources. Here he references the threefold marital obligations of “her food or nourishment, clothing or her covering...and his conjugal obligation” from Exodus 21:9, 10. As he outlines the history of the interpretation of this passage he settles on the question of conjugal obligation in chapter four. Selden says the following, “the so-called conjugal obligation is regarded as the most important obligation in the bond of a husband to his wife. It was the “benevolent obligation” of the apostle Paul.” In the subsequent chapter of *Uxor*, Selden uses the same threefold list of Exodus 21:9-10 and argues explicitly saying “when marital affection, food, clothing and conjugal obligation are not furnished as they should be, a wife may proceed against her husband in court in her name.” At this point it appears that Selden has expanded the scope of willful desertion beyond mere geographical considerations. Selden provides historical sources and arguments that Exodus 21 was a necessary background for understanding willful desertion. (lines 496-507)

### ***The Character of Uxor: Prescriptive or Descriptive?***

In lines 495-96 the committee acknowledges, “Selden was a legal scholar and thus his work is more of a history of Jewish traditions rather than an exegetical study of specific biblical texts.” We respond:

- First, a minor point: it does not follow (“thus”) from Selden having been a legal scholar that his work would logically be, “more of a history of Jewish traditions rather than an exegetical study of specific biblical texts.” Neither biblical exegesis nor Jewish tradition is inherently the purview of a legal scholar.
- More importantly, the committee understates the matter with the comparative, “more of.” Judging from [1] the name Selden himself applied to the work, *The Hebrew Wife*, [2] the title that Ziskind applied to his translation of and commentary on that writing (John Selden on *Jewish Marriage Law*), and [3] the category into which *Uxor* is usually placed, “Jewish studies” (*Uxor*, p 18), one would not expect exegesis per se, and indeed *Uxor* contains little if any biblical exegesis by Selden, though one certainly does find *a description of rabbinic exegesis* of various passages of the OT, along with occasional comparison between Judaism and various other ancient traditions (including the NT). As the committee at least partially acknowledges, Selden’s intent is to present a historical *description* of marriage under Judaism, not to determine the Scriptures’ (*prescriptive*) will of God for the church.

Here is Ziskind’s own description of Selden’s “treatise” (*Uxor*):

In this treatise Selden discussed the Jewish law of marriage and divorce utilizing Scripture, the Talmud, Midrash, Philo, Josephus, Karaite sources and a host of medieval codifiers and commentators, especially Maimonides. For comparative and interpretative purposes, he also described the ideas, rules and usages of the Greeks, Romans, Moslems, Germanic tribes, early Christians and the Eastern Orthodox, Roman Catholic, Russian, Ethiopian, Anglican and Protestant Churches. (p 18; underline added)

In short, (focusing on the chapters in question, 4 and 5) Selden’s work seeks neither to be polemical nor prescriptive for the church of his own day, but rather descriptive of marriage and divorce in Judaism, including comparisons and contrasts with the ethics of marriage and divorce in other historic traditions, Christian and pagan. In the opinion of the *Uxor* translator (the committee’s source), any intent to contribute to the contemporary debate on marriage and divorce by means of *Uxor* would be indirect, not explicit (cf. p 24). For “Selden does not use his scholarly works on Jewish subjects to engage in polemic. He simply lets the ancient textual evidence speak for itself” (p 10). The committee has done what Selden did not do, extrapolating from Selden’s descriptions of Jewish divorce law with its rabbinic exegesis of Exodus 21 to infer that Selden agrees with and is advocating for his own generation that interpretation and application of the slave girl passage. That may or may not be the case, but since it is not in Selden’s own words, it has been read into Selden, not shown from him.

Returning to the quote from the committee report, above: in context, the committee’s “at this point,” refers to the citation from chapter 5: “*Selden uses* the same threefold list of Exodus 21:9-10 and *argues explicitly* saying ‘when marital affection, food, clothing and conjugal obligation are not furnished as they should be, a wife may proceed against her husband in court in her name’” (emphasis added). There are errors, here. First, as already noted, Selden is *arguing* nothing, most

certainly nothing explicit!; he is merely *describing* when and how a Jewish woman was permitted seek to force her husband to divorce her through the Jewish courts. Selden himself uses no such thing. Selden merely reports that *Judaism* so used Exodus 21 – an accurate historical statement, but one placed into a new context in such a way that it looks as if Selden is so arguing to his generation. Furthermore Selden himself never says the rabbis expanded the scope of anything, much less of “willful desertion” – a term that never appears in the chapter (nor do any synonyms for it). There is nothing whatsoever in chapter 5 to justify thinking that Selden is *arguing* from the Jewish divorce law (which he is discussing) to an interpretation of Paul’s instructions in 1 Cor 7:2-6, much less 7:15, the sole verse to which the WA actually does appeal in support of its willful desertion clause.

In Selden’s key chapter (5), there is no mention of, or even demonstrable allusion to, 1 Corinthians 7 anywhere (the committee cites none and the minority can find none). The only reference to 1 Corinthians 7 was to v 6, and that was in the previous chapter (4) where in describing a Jewish husband’s duties to his wife, he mentions the fact that the duty to have intimate relations mentioned in Exodus 21 was labelled “benevolent obligation” by Paul in 7:6. Selden, (rightly) asserting that both Paul and the rabbis recognize that sex is a marital duty, does not imply he believes failure to fulfill that duty constitutes desertion just because the rabbis reckoned it to be a ground for divorce.

Had Selden thought that Paul’s desertion exception (which the other Reformation authors we examined would attribute not to 1 Cor 7:2-6, but – in so far as they express it – to 7:15) was similar to the Jewish use of the slave girl passage, we would expect – based upon analogy with chapter 4 – that he would have mentioned that similarity in chapter 5, the chapter which actually deals with the grounds for divorce under Jewish law. He does not.

Additionally, the conclusion of the committee’s first major paragraph on Selden is misleading: “Selden provides historical sources and arguments that Exodus 21 was a necessary background for understanding willful desertion.” To be accurate, the committee would have to modify the statement and append to it so as to read, “Selden provides historical sources and arguments that Exodus 21 was a necessary background for understanding how the rabbis justified Jewish wives divorcing their husbands for various forms of neglect.” For in chapter 5, where he actually mentions grounds for a wife to divorce her husband, Selden makes no representations about grounds for divorce in 17th century Britain, only about what early rabbis allowed in Judaism. Again, as Ziskind recognizes to be Selden’s usual style, Selden is descriptive (of antiquity), not prescriptive for his own day. The committee is mistaken in representing him as asserting prescriptions about how the church ought to exegete 1 Corinthians 7 or define desertion.

Finally, the committee’s analysis of Selden’s work tends to be misleading at best, when it claims to have “demonstrate[d] that a member of the assembly used scriptural texts in arguments relating to the nature of willful desertion not listed among the proof texts for the subject of marriage and divorce in WCF 24.” This sentence tends to be misleading. At no point in either chapter, 4 or 5, is Selden discussing, much less arguing, about “willful desertion.” The committee has chosen to characterize his description of the rabbinical permission for a wife whose husband fails to provide certain things (food, clothing, sex) as an arguments about willful desertion, but made no attempt to show that Selden considered such neglect to be desertion.

### ***(3) The committee's treatment of the WCF's scripture proofs footnote 36***

The footnote supports the assertion, “when one considers the nature of willful desertion, he should not limit himself to the proof texts appended to the Confession several months after the Confession’s completion” (lines 511-12).

#### **Committee footnote text:**

It is significant to note that the confession was completed in December 1646 without proof texts. This means that the proof texts were added well after the assembly had already debated the subject of divorce, and after many members of the Assembly were either not in attendance (such as Seldon) or who had died (such as the Scottish delegate, Alexander Henderson).

**Minority Comments:** This paragraph is misleading in at least three ways: (1) While it is technically true that proof texts were not attached until after the WA approved the completed confessional document, Van Dixhoorn makes it clear that the assembly itself made preliminary selection of proof texts at each step along the way: “After each phrase and chapter of the confession was drafted, the assembly debated and then approved a series of scriptural passages in support of that doctrine. Later, the gathering was required by Parliament to provide references to Scripture alongside the confession. The assembly did so reluctantly as it had no opportunity to explain, by a mere citation of a text, the exegesis of that text. But once the assembly’s members accepted the task, they chose supporting passages of Scripture carefully, refining the list of scriptural passages approved in their earlier debates” (*Confessing the Faith: A Reader’s Guide to the Westminster Confession of Faith*, [Edinburgh: Banner of Truth, 2014] xxiv-xxv). (2) “Well after” is less than clear, if not misleading. On “29 April 1647, a Committee of the Assembly further presented to both Houses the Confession of Faith with the Scripture proofs inserted” (Mitchell, 367-68), less than 5 months after its submission without proof texts, less than six months after adopting its divorce doctrine. Warfield (p 122, cited by Letham, 175) notes that “the proof-texts for the [third] chapter were debated” beginning on January 13, only two months after adoption of the divorce doctrine (lines 174-75), one month after completion and submission of the WCF. It seems necessary to conclude that work finalizing the Scripture proofs began very soon after submission of the confession’s text (without them), and that work was completed, printed, and submitted in less than five months time. “Shortly after” might be more accurate than “well after.” (3) Seldon left the assembly almost two years before it took up the chapter on marriage and divorce (line 170-71). Thus, his absence is irrelevant to the matter at hand.

Likewise, these proof texts were added reluctantly at parliament's requirement and the remaining members of the assembly according to Robert Letham, never intended them to be used as "frigidly logical proof texts." See Robert Letham, *The Westminster Assembly: Reading Its Theology in Historical Context* (P&R, 2009), 107. Letham goes on to argue that those who see the proof texts as indicative the assembly's exclusive approach to using the scriptures to reason their way to a conclusion "misconstrue [sic] the nature of the Confession, misread its doctrine of Scripture, and treat its historical context with scant regard." See Letham, *The Westminster Assembly*, p. 137. Another inadequacy of limiting a study of willful desertion to the proof texts is noted in the following: "There was seldom any debate about the truth or falsehood of any article or clause, but rather the manner of expression or the fitness to have it put into the Confession. Whereupon, when there were any texts debated in the Assembly, they were never put to the vote. And therefore every text now to be annexed must be not only debated, but also voted in the Assembly ... which is likely to be a work of great length." Alexander F. Mitchell, *The Westminster Assembly: Its History and Standards* (London: James Nisbet, 1883), 367-68).

Similarly, Henderson died in August, the month before divorce was first debated. ***Thus, neither man offered as an example was present for either the divorce decision or the attachment of the proof texts.*** It could be that the composition of the WA had changed significantly between its start (7/1643) and work on the proof texts (1/1647), but the relevant period begins not in 1643, but autumn of 1646. The committee has taken Letham's treatment of the accusation against the assembly for "frigidly logical proof text[ing]" out of context. The context is a polemic against a 20th century theologian, Torrance, who "misconstrued the nature of the Confession, misread its doctrine of Scripture and treated its historical context with scant regard," and with his contrived description of the WA proofs as, "frigidly logical proof texts," attacks a straw man since he "ignores ... the way the proof texts were intended to function" (Letham, 107). Letham counters not that the proof texts were too few, but that Torrance misrepresents their intended use, which intention he goes on to explain: "The proof texts were put there – reluctantly at the behest of Parliament – as indications of where to look in the writings and sermons of the Assembly members for support for what the Confession taught" (Letham, 137). In other words, the reader of the confession (with proof texts) seeking to understand how the Bible establishes a particular doctrinal proposition in the confession should start with the passage(s) cited and seek to understand how to exegete those passages and learn how each supports the doctrinal proposition by studying WA members' sermons, commentaries, etc, on those passages. The WA's problem with attaching proof texts was not that the assembly listed too few passages, but that the passages cited often require exposition to understand either what they mean, or how they prove the point of doctrine to which they are attached. Despite the purported reluctance of the assembly to provide the requested proof texts, the fact remains that it did spend the next few months following submission of the WCF text debating and perfecting its previously adopted proof texts.

Furthermore, John R. Bower gives three reasons why the Assembly did not want to affix proof texts: 1) It was unprecedented given that the “former Articles of the Church of England have not any;” 2) The affixing of proofs was “at odds with their scriptural hermeneutic, for ‘if the Scriptures should have been alleged with an cleanness to shew where the strength of the proof lyeth, it would have required a Volume;” 3) It would require every text to be debated and voted on, John R. Bower, *The Larger Catechism: A Critical Text and Introduction* (Grand Rapids: Reformation Heritage Books, 2010), 42-43; citing A.F. Mitchell, ed., *Glasgow Assembly Commission Records*, (Edinburgh: T&A Constable, 1896), 2.81-82.

Let us consider the reasons alleged for hesitation. Do they imply the assembly did not consider the proof texts offered to be anything less than adequate grounds to support the propositions asserted to be the teaching of Scripture on each of the various loci? “Unprecedented, vis-à-vis *the 39 Articles*” and the inherent need to debate and vote on “every text” might well explain the hesitancy of the WA, but if it truly believed such work would be necessary, surely we can assume it did the work needed. As cited above, Van Dixhoorn seems to agree: “once the assembly’s members accepted the task, they chose supporting passages of Scripture carefully, refining the list of scriptural passages approved in their earlier debates.”

In summary, the committee’s concluding argument that the meaning of “[wilful] desertion” was less than definitive when adopted as a ground for divorce by the divines fails to be persuasive. Similarly the notion that Selden somehow contributed to the WA’s 1646 work *on divorce* even though he apparently left the assembly two years before that work is less than plausible. To be sure his book on *the Hebrew Wife* came out in 1646, and some divines might have read it by November, but the notion that it might have been discussed by the assembly when formulating its paragraphs on divorce is pure speculation. As a member of the assembly Selden assuredly did not advocate a broader definition for desertion based upon Exodus 21:10-11. In fact there is no clear *advocacy* of that position (nor even a single instance of the term ‘desertion’) in his key chapter treating the subject of divorce in Judaism. On its face, that chapter reads as purely historical description.

Finally, the committee’s arguments from the reluctance of the WA to add proof texts and Letham’s treatment of Torrance as a basis for considering passages not cited in the proof texts to be significant bases for the willful desertion clause are without merit. In seeking help from Scripture to determine the authorially intended meaning of the text of the confession, Van Dixhoorn expressly limits his study to the officially adopted proof texts (p xxv); the committee’s majority would do well to follow suit when seeking *the assembly’s meaning* of the term, “wilful desertion.”

Respectfully submitted,

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