Talking points

The divorce debate – where are we now?

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Writing or reading an article on the ethics of divorce is rather like compiling or consulting a medical textbook at the scene of a serious road accident. To do any good at all, you need to have a clear mind and adequate technical knowledge. But to approach a person’s suffering in a coldly academic way is an affront to his or her humanity.

As all ministers know, ethical and pastoral concerns interpenetrate whenever a marriage breaks down. ‘What is right?’ and ‘What will help?’ are questions that have to be asked in the same breath. Probably the best way into the contemporary debate about divorce is to explore the interface between principles and compassion.

For many years now, the churches have been under increasing social pressure to revise or clarify their stance on divorce and remarriage. According to the statisticians, one in four British marriages now ends in divorce, and one new marriage in every three involves a divorcee. The pattern in the USA is similar; 25% of American couples who married in 1970 had divorced by 1977, and an estimated 48% will eventually do so. When the proportion of divorcees who remarry is brought into the reckoning (about 80% in both the USA and the UK), the pastoral pressures on the churches to involve themselves more fully with divorcees and their remarriages is obviously enormous.

The churches have responded in various ways. Most Protestant denominations, looking back to the Reformers’ rejection of Rome’s claim that sacramental marriage is indissoluble, have always allowed for divorce and remarriage. Some, especially in the United States, are now going further and providing special services for the dissolution of marriage which include ‘vows of release’.


The Church of England is the major Protestant exception. The seventeenth-century Anglican divines were divided almost equally between dissolusblist and indissolusblist views of marriage. In the eighteenth century the former became dominant, but this trend was later reversed. Today, the Church of England makes no official exceptions to its veto on all remarriage in church after divorce, on the grounds that marriage is indissoluble save by death. It must be added that this rigorist stance is by no means universal in episcopal churches outside England.

Even the Church of England, however, has shown signs of bending before the wind of social change. Two major Anglican Reports in the last eleven years have advocated changes in the church’s practice, based on a comprehensive doctrinal review. In both of them, pastoral considerations predominate. Marriage, Divorce and the Church2 suggests that divorce need no longer be regarded as an offence to the Christian conscience if a majority of church members approve it. ‘At times,’ it pleads (lamentably?), ‘the church may have moral insight prior to and at least as fundamental as the theological insight necessary to explain it.’ Marriage and the Church’s Task3 is even plainer in its appeal to the church to trim its ethical sails to the pastoral wind. ‘The gospel of forgiveness cannot effectively be declared . . . so long as those conscientiously seeking the blessing of the Church on subsequent marriage must be turned away.’

Roman Catholic practice, too, has proved adaptable in the face of rising divorce trends. Doctrinally, the Roman Church remains adamant in opposing all divorce and in ruling out all remarriage. But the grounds on which an ecclesiastical court can declare a marriage null (thus releasing both partners to marry ‘again’ for the first time) are much wider than those recognized by the civil authorities. Among recent additions to the grounds of nullity that the church recognizes are ‘lack of due discretion’ (covering psychological immaturity at the time of the wedding); ‘inability to fulfil the obligations of marriage’ (the obligation of fidelity, for example); and ‘error’ (which includes serious character-changes in either husband or wife since marriage). A Roman Catholic bride, then, may be a divorcee in the eyes of the state on her wedding day, but a single woman in the eyes of the church. In a typical year (1975), 698 marriages which involved divorcees were solemnized in British Roman Catholic churches.

2 P. 72.
3 P. 87.
The nature of marriage
From this brief survey of the social and ecclesiastical scene, it will already be apparent that one's attitude to divorce will be dictated by one's convictions about marriage. The next step, therefore, in analysing the divorce debate is to identify and relate conflicting theories about the nature of marriage and its permanence.

For present purposes we can discount those who view marriage as no more than a private contract or romantic alliance, terminable at will by the couple concerned. Such views are neither rare nor unimportant, but the vast majority of Christian participants in the debate would agree that marriage means much more than that. Although the couple's consent is crucial to starting a marriage, their agreement is not enough to end it. They have the choice whether to get married, but they cannot stipulate the terms on which the institution itself operates.

From the Christian point of view, there are two main starting-points in defining the nature of marriage. The first is to regard it as primarily a covenant. Each partner makes an undertaking which is accepted by the other and is publicly witnessed. The undertaking itself is one of committed faithfulness for life; permanence is a premise, not an ideal.

This covenantal description of marriage is clearly biblical. In both Old and New Testaments marriage is used to describe God's covenant relationship with his people, and God's relationship with his people provides the pattern for marriage. G. R. Dunstan finds five marks of comparison between the two: first, there is an initiative of love which invites a response and creates a relationship; secondly, there is a moral affirmation (an oath or a vow) which secures the relationship; thirdly, there are obligations (commandments) which undergird it; fourthly, there are blessings promised to the faithful; and fifthly, there is an element of sacrifice (in the case of marriage, an end to dependence on parents and to the freedom of singleness).

The second major starting-point in defining the nature of marriage is to regard it primarily as a sacrament. It was Augustine who gave this view its main impetus in the western church. Biblically, it hinges on the Latin Vulgate's translation of Ephesians 5:32, where 'mystery' (Gk. mysterion) is rendered 'sacramentum'. To Augustine, this sacramental bond was 'the imprint upon natural marriage of Christ's indissoluble bonding of himself to his people'.

Augustine treated the marriage bond, in this sacramental sense, as a binding moral obligation. Later, however, the sacramental view was developed much further. Schillebeeckx puts it well: 'In the scholastic view of marriage which was elaborated in the twelfth and thirteenth centuries the sacramentum was not seen purely as a symbol, but as an effective symbol which brought something about—an objective bond that could not be broken. According to the church Fathers the dissolubility of marriage was not permissible; but according to the schoolmen its dissolution was not possible.'

As far as divorce is concerned, this developed sacramental view can lead to only one conclusion. Marriage is as permanent as baptism. In the words of an Anglican, J. L. Lucas, 'A Christian will no more talk of an ex-wife than of an ex-mother, or of remarriage than re-baptism... The indissolubility of marriage, like the indelibility of baptism, flows from the unlimited commitment undertaken and the everlasting relationship entered into.' There are only two circumstances in which the sacramentalist can approve the remarriage of a divorcée: first, if the original union can be proved void (hence the Roman Catholic preoccupation with grounds of nullity); and secondly if, as a marriage, it can be shown to be non-sacramental. The latter point reflects a 'two level' distinction between Christian (sacramental) and pagan (non-sacramental) marriages, sometimes linked exegetically with 1 Corinthians 7:15.

The sacramental view of marriage was strongly attacked by the continental Reformers, notably by Luther in The Babylonian Captivity. The covenantal view, which they preferred, was held to allow for the possibility of divorce, while still upholding the moral obligation on a married couple never to separate. Hence the historical Catholic/Protestant Divide on the issue of divorce. If marriage is a covenant, the bond can be broken. If it is elevated to the status of a sacrament, it cannot.

This distinction is a little too sharp, as we shall see in a moment, but it is worth preserving if only to expose the use of 'weasel words' which so often confuse the modern debate. A recent report of the Anglican-Roman Catholic International Commission on the Theology of Marriage, for example, declared that the covenantal and sacramental understanding of marriage are really one—but it did so only at the expense of defining the sacramental nature of marriage as 'the moral sense of enduring obligation.' To most sacramentalists, the word 'sacrament' means far more than that.

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4 Theology, 659, pp. 246ff.
5 To Have and To Hold, p. 41.
6 Marriage: Secular Reality and Saving Mystery (1965), ii, p. 70.
7 The Vinculum Conjugale, in Theology, 78, pp. 228ff.
‘Ontological’ is another word that is used in slightly different ways when predicated of the marriage bond. In a valiant attempt to paper over some wide ethical cracks, *Marriage and the Church’s Task* affirms that the marriage bond has an ontological character because it unites two people at the centre of their beings. Again, one has to say that most people who use the term ‘ontological’ in the context of marriage mean far more by it than that.

‘Indissoluble’ is itself a slippery word. Words ending in -ble have either of two meanings: they may carry the sense of ‘can’ (like ‘audible’), or of ‘ought’ (like ‘destutable’). The same is true of their negative forms. ‘Indissoluble,’ alas, can be used in both senses, which makes it a favourite with ecclesiastical crack-paperers and a menace to ethical analysts. ‘Marriage is indissoluble’ may mean either ‘the marriage bond ought not to be broken’ or ‘the marriage bond cannot be broken’, depending on the writer’s viewpoint.

To return to the sacrament/covenant distinction, there are some scholars who arrive at indissolublist conclusions (of the stricter kind) from a covenantal starting-point. They stress two aspects of the marriage covenant in particular: the nature of the ‘one flesh’ relationship into which the covenant partners enter, and the indelible character of the vows which they make. The one-flesh relationship, they argue, is analogous to kinship in the Bible. Divorce cannot terminate the kinship relationship of marriage any more than disruptive factors like loss of love or rejection can destroy other familial relationships. A disowned son remains a son nevertheless; likewise a divorced wife. And the covenant model for the marriage vows is the promise of God – which remains constantly valid in the face of the most extreme provocation. In any case (the argument goes), the marriage vow of permanence loses all its credibility if it can be made twice or more by the same person with different partners.

Others counter these points by stressing the discontinuity of marriage and familial relationships on the one hand; and of God’s promises and man’s vows on the other. The one-flesh relationship of man and wife is not at all the same as the kinship relationship between child and parent, because a man can choose his wife but not his mother. And although God’s promises can never be broken, man’s vows can. As Oliver O’Donovan puts it, ‘God is not a man that he should change his mind; but neither is a man God that his word should abide for ever. In human beings, as in God, consistency is a virtue; but in human beings virtues are *potentia*, not *actus*.9

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9 *Marriage and Permanence*, p. 17.

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**The Bible and divorce**

Direct biblical comments on divorce are few. In the Old Testament we have the Mosaic law of Deuteronomy 24:1-4, which does not so much set out grounds for divorce as limit its effects; and Malachi’s trenchant comment ‘I hate divorce’, says the Lord God of Israel’ (Mal. 2:16). The New Testament preserves Jesus’ teaching on divorce, with the slightly different emphases the Synoptists record (Mt. 5:31f.; 19:3-12; Mk. 10:2-12; Lk. 16:18); and Paul’s rulings on broken marriages involving Christians at Corinth (1 Cor. 7:10-16).

Commentators agree on three things: first, that the facts of divorce (and remarriage) were accepted in Bible times, even though its grounds were hotly disputed; secondly, that Jesus’ teaching on divorce was regarded as extremely strict by all who heard it; and thirdly, that Jesus’ insistence on the husband’s culpability, if he committed adultery against his wife, was innovative in the Jewish world.

Beyond this, however, there are serious areas of disagreement over the exegesis of the biblical material — within conservative scholarship as well as outside it. We can clarify the differences by asking a series of questions.

1. **Did Jesus permit divorce in any circumstances?**

Mark and Luke appear to reply in the negative. Matthew’s answer seems more positive, in that he records an exception to the general rule (‘except for marital unfaithfulness’).

Inevitably, this exceptive clause (Mt. 5:32; 19:19) has become the focal point of discussion. There is little doubt about its authenticity, but plenty of debate about its meaning and status.

Three problems confront those who believe that Jesus himself intended to make an exception to his veto on divorce. First, there is the silence of the other New Testament witnesses — Mark, Luke and Paul. Secondly, there is the disciples’ dismay (Mt. 19:10), which is not easy to explain if Jesus simply meant, ‘Sexual unfaithfulness is the only proper ground for divorce’; because this was already a well-known rabbinic interpretation of Deuteronomy 24. And thirdly, the exceptive clause apparently makes Jesus contradict his creation-based argument for marital permanence, set out by Matthew only a verse or two earlier.

Faced with these difficulties, many scholars conclude that Matthew has softened Jesus’ strict teaching to meet the needs of his readership. Others, who find this solution unacceptable, look for alternative ways of cutting the exegetical knot. In recent years the hot favourite has been the so-called ‘preteritive’ interpretation, which explains the
exceptional clause as an aside. Thus a paraphrase of Matthew’s words might read, ‘Whoever divorces his wife (quite apart from the matter of unfaithfulness— which is irrelevant), commits adultery.’ This is attractive, in that it brings Matthew into line with Mark and Luke and makes excellent sense in context. Unfortunately, it strains Greek grammar to breaking point, especially in chapter 19.

Another widely-canvassed solution to the problem is to narrow the meaning of the word *pomeia*, which lies at the heart of the exceptional clause, so that it becomes a ground for annulment rather than divorce. The most popular suggestions are ‘incest’ (which *pomeia* certainly means in 1 Cor. 5:1) and ‘unchastity during betrothal’. The difficulty here is that the argument in Matthew is about grounds for divorce, not about invalid unions—a matter covered by a different set of non-controversial Old Testament laws. And anyway *pomeia* normally has a much wider meaning, embracing all kinds of sexual unfaithfulness.

We may conclude that these attempts to avoid the most obvious sense of Matthew’s exceptional clause cause more difficulties than they solve. But if Jesus did make this exception himself, did he mean it to cover remarriage, as well as separation?

2. *Did Jesus permit remarriage in some circumstances?*

Since the Reformation, Protestant writers have generally assumed that the Matthean Exception opens the door to remarriage when a first union has been broken by *pomeia*. Recently this assumption has been strongly challenged. W. Heth and G. Wenham, for example, argue at length that Jesus’ words in Matthew were never understood in this way in the patristic period. The meaning of the exceptional clause in Matthew 19, they suggest, can be adduced from Matthew 5, where Jesus is at pains to exempt from the charge of adultery husbands who divorce their wives for unfaithfulness. A man in this position cannot make his wife an adulteress by divorcing her, because she has made herself one already. That does not mean, however, that he is free to remarry. Matthew makes this more clear in chapter 19, by adding Jesus’ saying about eunuchs to the divorce pericope. Those who ‘have made themselves eunuchs because of the kingdom of heaven’ include divorcees who forgo marriage in obedience to Jesus’ command.

Other scholars counter this argument by referring the patristic interpretation of Matthew 19 to the prevalence of sexual asceticism in the early church, rather than to a nearer and clearer insight into the mind of Christ. Moreover, they point out, the context of Matthew 19 is the rabbinic dispute about the meaning of Deuteronomy 24. In that debate the divorcee’s right to remarry was assumed. As the Mishnah makes plain, an essential part of a bill of divorce was the clause, ‘You are free to marry again’. The modern distinction between divorce proper (*a vinculo*) and legal separation (*a mensa et thoro*) was not something a Jew would have easily grasped. So if Jesus had used the word ‘divorce’ in a sense that barred remarriage—without making it crystal clear that he was doing so—he would certainly have been misunderstood.

3. *Did Jesus reject the Mosaic divorce law?*

This, of course, is part of a much larger question. Jesus’ treatment of the Old Testament law raises issues far too complex for discussion in a brief article of this kind. But as far as divorce is concerned, the answers fall into three general categories.

Some believe Jesus was deliberately rejecting the law of Deuteronomy in favour of the creation ideal set out in Genesis. He was, in R. Schnackenburg’s words, ‘annulling the right to divorce granted by Moses…now the order established at the creation is to prevail’. D. Catchpole is even more emphatic: ‘What Moses commanded, the historical Jesus rejects.’

Others, while coming to the conclusion that Jesus abolished the right to remarriage which Deuteronomy allowed, are reluctant to drive so deep a wedge between his teaching and the Old Testament law. G. Wenham, for example, argues that Jesus’ complete veto on remarriage only takes the law’s emphasis to its logical conclusion. Deuteronomy limited remarriage; Jesus simply tightened the limitation.

Others, again, regard Jesus’ teaching and the law’s stance as complementary. Mark makes it clear that the Lord was facing a test question—would he, or would he not declare his opposition to the Mosaic law? ‘Once it is seen that Jesus’ opponents are hoping to trap Jesus into denying a prescription of the law,’ comments *Marriage and the Church’s Task*, ‘it can scarcely be maintained that he actually did so.’ He was not setting his own teaching against the law itself, but against the permissive Hillelite interpretation of it; hence the reference to what has been said (rather than to what has been written).

4. *Did Paul sanction divorce for desertion?*

In both Romans 7:1-3 and 1 Corinthians 7:10-16 Paul

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11 The Synoptic Divorce Material as a Traditio-Historical Problem, in Bulletin of the John Rylands Library, 57, p. 120.
13 P. 145.
omits any mention of the Matthaean Exception. But in 1 Corinthians 7:15 he apparently introduces a fresh ground for divorce in the case of spiritually mixed marriages. Although he is careful to distinguish his ruling from Jesus’ command, it carries the full weight of his apostolic authority. If a non-Christian spouse deserts, he writes, the Christian husband or wife is not bound (ou dedoulotai).

The italicized words continue to be much debated. Schnackenburg and other Roman Catholic exegetes deny that Paul here opens up the possibility of remarriage after desertion. A few Protestant commentators take a similar line. C. K. Barrett, for instance, thinks Paul was writing about enslavement ‘to a mechanical retention of a relationship the other partner wishes to abandon’ (italics mine).

A strong case can be mounted, however, to show that Paul did indeed have divorce (with the right to remarry) in mind at this point. He certainly uses the verb deo of the marriage bond (rather than simply of the husband/wife relationship) later in the same chapter (v. 39), as well as in Romans 7:2. Also, as Atkinson points out, ‘free to be deserted’ would make nonsense of the paragraph.

A few would go further and maintain that Paul’s explicit permission for the agamoi (unmarried) to marry (vv. 27f) embraces divorcees as well as single people, because he has already used the adjective agamos to describe a separated wife in verse 11. This does seem a little perverse, though, as the thrust of verse 11 is to deter a divorced Christian woman from marrying again.

5. How should biblical teaching be applied today? There is as much debate about the application of biblical teaching on divorce as there is about its exegesis. The conclusion that Jesus banned divorce altogether does not lead automatically to an ecclesiastical veto on divorcees remarrying today. Nor does the belief that he permitted divorce under some circumstances lead automatically to provision for remarriage in church.

A key question is whether Jesus’ divorce teaching represents halakah (rules governing conduct) or haggadah (vivid teaching which stops short of legislation). In other words, did Jesus intend to lay down an absolute law, or was his purpose rather different? ‘It is at this point,’ comments Montefiore caustically, ‘that scholars so often part company. It cannot be coincidence that their academic conclusions are here often in agreement with the discipline of the Church to which they belong.’ There is general consensus that Jesus’ words in the gospels are cast in the form of law. Some would account for this by discerning a move in both the synoptists and Paul away from doctrine to discipline, under pressure from their early congregations for clear case-law decisions. Jesus phrased his teaching as principle, insight and challenge; his biographers re-phrased it as precept and code. This process of contextualization, Houlden reckons, has resulted in four quite distinct New Testament policies on divorce, all arising from a challenging, non-legislative aphorism of Jesus.

Others are more prepared to accept the shape of Jesus’ teaching in the gospels as original, but point to his general approach to law as the correct context in which to read and apply his commands. His practice was not to legislate, but to set out kingdom ideals. Therefore his ‘law’ on divorce and remarriage must not be read as new legislation to replace Moses’ code, but as a ‘call to repentance’ (Thielicke), a set of ‘superb insights into the true nature of marriage’ (Montefiore), or as ‘a formula for avoiding the breakdown of marriage, not an iron law putting into equal bondage the callous, the innocent and the penitent’ (Brown).

At the conservative end of the spectrum stand yet others who feel that even this represents an unwarranted dilution of Jesus’ teaching. Whatever his usual practice, his words on divorce have a legislative force which must not be dodged in contemporary application. Both the phrasing of the exception clause in Matthew 5 (which almost certainly represents the Hebrew of the Deuteronomic law), and the juxtaposition of a strong affirmation of law in Luke 16, reflect Jesus’ original intention. The earliest commentators treated this aspect of Jesus’ teaching as binding halakah; and so should we.

My brief has been to describe the debate, not to participate in it. Nevertheless, it would be wrong to conclude without a reminder of our starting-point. As the New Testament itself testifies, it is inadequate simply to discuss divorce in a detached, academic way. However complex the arguments, urgent pastoral decisions have to be made — even as the debate continues.

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14 He does, however, admit that the ‘Pauline Privilege’ finds a place in Canon Law (op. cit. p. 249).
16 See, e.g., the commentaries of Bruce, Hering, Morris and Copnellmann.
18 Marriage, Divorce and the Church, p. 91.
20 The Ethics of Sex, p. 110.
21 Marriage, Divorce and the Church, p. 94.
22 DNIT, 3, p. 542.
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