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T. E. N. KEMP

Divorce

Questions posed by the compiler of this issue:-

1. Is divorce ever permissible for the Christian?
2. What should a Christian do if his/her spouse is unfaithful and demands a divorce?
3. Can a Christian ever remarry? Is the innocent person condemned to remain single for the rest of their joint lives?

OUTLINE

1 Preamble

The fundamental law for Christians must be our Lord's own words on the subject, and Paul's commands from the Lord supplemented by his personal judgment on certain points. But the Divine tolerance and clemency shown in the OT towards both polygamy and divorce are still of the utmost relevance in tempering our often inconsistent censoriousness and even Pharisaically schizophrenic attitude to the NT ideal and apparent absolutes.

Our Lord's teaching on divorce (stage 1) and re-marriage (a quite independent stage 2) is contained in four passages:-

Matt. 5: 27-32
Matt. 19: 3-12
Mark 10: 2-12
Luke 16: 18

Paul's teaching is principally in 1 Corinthians 7, with an example in Romans 7: 2 f., and elsewhere other important straws in the wind.

2 Plea in Mitigation

I write primarily as a lawyer having no theological training and seek forbearance accordingly for my inadvertent exegetical sins.

For the quarter century since my novitiate as a law student, the divorce question has been part of my daily business. I never intended to embark on a career in Matrimonial Law—rather, to avoid it—but it happened nevertheless. I believe that this was not by Divine inadvertence, and I would not seek to resile from helping to pick up (or often sweep up) some of the debris of disintegrated marriages. On rather rare occasions, there is some opportunity of helping to reconcile the fragments; even more rarely does such reconciliation outlast a year or two, perhaps because matters are, humanly speaking, irretrievable by the time either party consults a solicitor, the molehills of disagreement having become unconquerable mountains of discord, try though they may to scale the south face of Everest.

I fully respect my professional colleagues who believe divorce is beyond the boundary of a Christian lawyer's high calling. Nevertheless, in many spheres of life Christians are called upon to deal with the distasteful consequences of matters they may instinctively recoil from.

3 Neither do I Condemn You

Before examining the *ideal* which our Lord taught, consider His own attitude to those who had fallen from sexual virtue.

Barbed questions put to Jesus had a disconcerting habit of recoiling upon the questioner. Remember the Australian aborigine who was given a new boomerang and thereafter lost his head trying to throw the old one away.

1. Caught in the act—John 8: 2-11

When the righteous Professor Keyhole and Dr. Snoop brought the wicked adulteress for the Carpenter's opinion upon the mandatory death sentence of Deut. 22: 22, the boomerang curved back, from the dust in which He wrote, as gently as a rhetorical warhead: "If any one of you is without sin, let him begin stoning her". After the processional heel-taking, she heard from the One who on earth had authority to forgive sins: "Neither do I condemn you, go now and leave your life of sin". Having had such words spoken to us (however modest our own little faults), is it appropriate for us to judge by a 'higher' standard?

2. The Sychar Sextet—John 4

Five ex-husbands and a current paramour! But the record does

not suggest that the Saviour of the World required the Bad Samaritan to revert to her earliest surviving husband.

3. The Prodigal Son—Luke 15: 11-32

This Casanova was not enjoined to take as wife any (or all) of the harlots who so outraged the righteous soul of his elder brother—even though Paul treats the union as equivalent to marriage (1Cor. 6: 15-17).

4. The Profligate Daughter—Luke 7: 36-50

The gate-crasher at Simon the Pharisee's dinner party is often indentified as Mary Magdalene. This anonymous practitioner in the long line of Rahab joined the heroines of faith and heard words of forgiveness which shame our hard-heartedness.

4 In The Beginning

God created one Adam and one Eve, to become one flesh. He did not supply a harem of Eves to accelerate the commission to be fruitful and multiply and fill the earth and subdue it. The original ideal, monogamy, was established.

5 It Is Written

A. MARRIAGE

1. Prohibited Relationships

See Lev. 18: 6-18; 20: 17-21; Deut. 22: 30[1]

2. Prohibited classes

See Lev. 21: 7, 13-15. A priest was permitted to marry, but only to a virgin of his own people. Marriage to a divorcee (or a *widow*) was prohibited.

3. Prohibited nationalities

See Deut. 7: 1-3; and Ex. 34: 11-16. Inter-marriage was debarred with seven specified nationalities, all denizens of the Promised Land. Ezra included in a wider prohibition the Ammonites, Moabites and Egyptians. Boaz and Ruth would have fared badly under Ezra's stern measures.

4. Polygamy—Voluntary

The Law recognised and made express allowance for polygamous circumstances. See, for example:-

Deut. 21: 15-17 — the son of a favourite extra wife could not displace primogeniture.
Lev. 18: 18 — no contemporaneous marriage to sisters.
Lev. 20: 14 — no contemporaneous marriage to mother and daughter.

Ex. 21: 7-11 — purchase of a Hebrew slave, taken as wife for master or son. If the husband took *another* wife, the slave-wife's marital rights were not to be eroded.

Esther — apparently she co-operated fully and competitively in the twelve months preparations for King Ahasuerus's Miss World contest to surpass the harem and become his Queen, after Queen Vashti's compulsory abdication for pioneering Women's Lib.

5. Polygamy—Involuntary

See Deut. 25: 5-10. This custom is termed levirate marriage (Lat. levir = husband's brother). Sex-with-sister-in-law was forbidden (Lev. 18: 16 and 20: 21) but in the event of her being widowed without a son, the brother of the deceased was to take her as wife.[2] In default, he was liable to a procedural spit in the face, de-sandalling, and the eponym "House of the Unshod" (JB). The widow apparently had no option; and was prohibited from re-marriage other than to a brother of the deceased. *Brother* seems to have been interpreted liberally as being also a near kinsman's prerogative (e.g. Boaz).

B. ADULTERY

The penalty for breach of the seventh Commandment was death for both parties (Lev. 20: 10; Deut. 22: 22), with apparently no exception even if e.g. the offended spouse was willing to forgive, or if the offender would be leaving quads. short of a parent.

In a monogamous society, adultery is voluntary sexual intercourse by a married person with any one of the other sex. In Israelite society, it would have been the same for a married *woman*; but for a husband it would be sexual intercourse with any woman *other than one of his wives* (and, in practice, concubines).

Numbers 5: 11-31 prescribes unpleasant trial by ordeal for a wife suspected of *post*-marital infidelity. There was no penalty on husband for an incorrect challenge.

Against the risks of a husband wrongfully charging his wife with being second-hand shop-soiled when he married her, Deut. 22: 13-21 carried the powerful triple deterrent of a whipping, plus a fine, plus no divorce.[3]

C. DIVORCE

Deut. 24: 1-4 contained the basic provision. A husband (H1) could divorce a wife if he found in her:-

some indecency RSV, NASB, Amp.
something shameful—NEB

some uncleanness—AV
some unseemly thing—RV
some impropriety—JB
(some immodesty)—Moff.

If she re-married and H2 merely:-

hates her—AV, RV
dislikes her—RSV, Amp.
turns against her—NASB, NEB, Moff.
takes a dislike to her—JB

and divorced her, or if H2 died, H1 was not allowed to re-marry her.[4]

Deut. 21: 10-14 allowed for marriage with a captive and "if you have no delight in her you shall let her go where she will."

Ezra presided over a mass session of about 108 divorces (only a week's work for a modern English divorce judge). All foreign wives (including some nationalities not black-listed in Deut. 7: 1) were put away *with their children.* Thus, when it came to a choice between two evils, the unequal yoke or divorce, Ezra unhesitatingly required divorce. (Paul adopts the opposite view—1 Cor. 7: 12-16). Some inter-marriage had recurred by New Testament times e.g., Timothy's parents.

The OT ends with the Divine *cri de coeur:* "I detest divorce and cruelty to a wife" (Moff; Amp. similar).

D. FINANCIAL PROVISION

There was apparently no express requirement of financial provision for the divorced and their families, apart from the very limited case in Exodus 21: 10 requiring that if a master or his son married a *Hebrew* slave and then took another wife, he must not diminish the slave-wife's food, clothing or marital rights; but if he did not do these three things for her, she was to go out emancipated *gratis.*

E. MISOGYNISTS' MONOPOLY?

There were no express corresponding provisions for a wife to divorce her husband; nor interpretation clause comparable to English Statute that the masculine includes the feminine save where the context otherwise requires. Our Lord treated divorce by wives as potential—Mark 10: 12: ". . . if she divorces her husband . . ."—although this is said to have been available only under certain gentile jurisdictions.

F. CONCLUSIONS FROM THE PENTATEUCH

The Law made allowance for polygamy and divorce, and they were viewed by the Creator as less nauseous than *sexual relationships without responsibility.* The supreme penalty for adultery appears not

to have been invariably (and perhaps only rarely) exacted. The standard, the ideal, had to be stated. But justice appears to have been tempered with mercy.

6 Foibles of the Fathers

The Patriarchs and their descendants, the World Champions of Faith of Hebrews 11, are shown warts and all in the OT.

Abraham, after the "indiscretion" with Hagar, and the death of Sarah, married Keturah by whom he had six sons, and had other sons by concubines (Gen. 25: 1-6).

Jacob accumulated two wives (the first by accident, so far as he was concerned) and two quasi-wives (Gen. 35: 23-26).

Joseph was made of sterner stuff.

Moses married a Cushite woman, which occasioned the outspoken resentment of Miriam and Aaron and led to Miriam's leprosy (Num. 12: 1 f.). Zipporah was a Midianite, a descendant of Abraham by Keturah (Gen. 25: 1-6). There is nothing to indicate whether Zipporah was still living when Moses married the Cushite, but there must have been somewhat extreme circumstances to have provoked such an over-reaction in Miriam and Aaron.

Gideon had many wives and a concubine (Judg. 8: 30 f.).

Elkanah, father of Samuel, had his work cut out to keep the peace between his two wives, Hannah and Peninnah.

David married Michal, Abigail, Ahinoam, Princess Maacah, Haggith, Abital, and Eglah. (1 Sam 25: 42-44; 2 Sam 3: 2-5).

From the heartbroken Palti(-el), he re-possessed Michal (2 Sam 3: 14-16)[4] but, like the church at Ephesus, evidently they had lost their first love (1 Sam 18: 20; 2 Sam 6: 16, 20-23).

In Jerusalem, he took more concubines and wives (2 Sam. 5: 13-16).

When fleeing from Absalom, he left ten concubines to keep the house (2 Sam. 15: 16).

The nadir of his days in taking "the poor man's lamb", Bathsheba, brought the quite extraordinary denunciation by Nathan the prophet: "Thus says the Lord . . . I gave you . . . your master's wives into your bosom" (2 Sam. 12: 8). The closing words show they were given to David as more than mere status symbols, and were actually additions to his harem—divinely given.

Solomon's harem of 700 princess-wives and 300 concubines (1 Kings 11: 3) needs no comment. But Dr. James Ball Naylor could perhaps be understood for recording that:-

King David and King Solomon lived merry, merry lives,
With many, many lady friends and many, many wives,
But when old age crept over them, with many, many qualms,
King Solomon wrote Proverbs and King David wrote the Psalms.

7 In the Course of Duty

Hosea's inaugural commission as a prophet was: "Go, marry a whore, and get children with a whore" (JB). We are sometimes told that this means someone who would *become* unfaithful. I wonder.

Was this followed by a divorce (not merely figuratively)? "She is not my wife, and I am not her husband" (2: 2). Later, "she will say, 'I will go back to my *first husband*' " (which was forbidden by Deut. 24: 4).

The prophet's next commission was: "Go again, love a woman who is beloved of a paramour and is an adulteress" (3: 1 RSV; NEB and Moff. to like effect).

8 But I Say Unto You

Construing Scripture by Scripture, the apparent absolutes of Luke and Mark are qualified by Matthew's records. Take the absolutes first.

1. The ideal—Luke 16: 18

Luke *isolates* the "new" ideal: "Anyone who divorces his wife *and marries another woman* commits adultery, and the man who marries a divorced woman commits adultery."

In Mark 10: 11 f., our Lord's answer to the disciples is recorded in substantially the same terms, adding that reciprocal consequences ensue if the wife takes the initiative in divorcing her husband and re-marrying.

It may be that there was no need for Mark and Luke to make (or record) an express exception to allow divorce for adultery, as everyone knew that under the various prevalent legal systems adultery was potentially the death of the marriage and perhaps of the offender.

2. The reason behind the Law—Mark 10: 1-12

Mark *explores* the ideal: it isn't a new one at all; it *has been there all the time,* obfuscated by the Law.

At the outset, Professor Poser quizzed the Carpenter: "Is it lawful for a man to divorce his wife?" The boomerang skimmed back at him: "What did Moses command you?"[5] Professor Poser

was undaunted; he knew his Deuteronomy 24: 1-4, and said so. But the Carpenter seemed to have inside information; there was a reason behind the permissive law; it was "because your hearts were hard" (or "because you know so little of the meaning of love"—Phillips). But from the beginning, things were different. The two become one. "Therefore what God has joined together, let man not separate". The last phrase seems more applicable to a petitioner or co-respondent than a judicial function, as Deuteronomy simply indicates a unilateral declaration of divorce by the husband without judicial process.

3. The exception to the ideal—Matthew 19: 1-11

This seems to be a parallel account of Mark's occasion. Perhaps Matthew had a spare Customs and Excise pad up his sleeve on which to note the tail-piece of the learned Professor's full poser: "... for any cause?" (RSV)

for any reason? (Moff)
for every cause? (AV, RV)
for any and every cause/reason/ground? (Amp., NIV, NEB, TEV)
on any pretext whatever? (JB)
for any cause at all? (NASB)
on any grounds whatever? (Phillips)
for any reason he likes? (Barclay)

We are told that this test was intended for the Carpenter to dissect Deut. 24: 1-4 as between the rabbinic schools of Shammai (limited interpretation) and Hillel (liberal interpretation). Deut. 24: 1 is translated variously (vide section 5C, *supra*). 24: 3 however supported the *broadest grounds* for divorce (all translations—section 5C, *supra*). Therefore, unless the Law intended to make it easier for H2 than H1 to divorce wife, or unless the Law implied into 24: 3 the "grounds", restrictively interpreted, of 24: 1, divorce seems to have been available to the husband at will (and possibly to the wife—Mark 10: 12 and section 5E, *supra*).

In verse 9 also, Matthew seems to have been making some extra notes on his shirt cuff: "I tell you that anyone who divorces his wife, except for marital unfaithfulness, and marries another woman, commits adultery" (NIV). The exceptive phrase is variously rendered:

fornication (AV, RV, JB)
unchastity (RSV, Moff., Amp)
immorality (NASB)
unfaithfulness/unfaithful/infidelity (Phillips, TEV, Barclay)

The disciples' apprehensive reaction clearly understood this teaching as being something fundamentally more prohibitive than

the Law. They chorused: "In that case, it is expedient/better not to marry."

TEV seems to have captured the spirit of the Lord's reply: "This teaching does not apply to everyone, but only to those to whom God has given it. For there are different reasons why men cannot marry: some, because they were born that way; others, because men made them that way; and others do not marry because of the Kingdom of heaven. Let him who can do it accept this teaching". Other versions read to the like effect.

Comparing the Creator's original ideal, and continuing hatred of divorce, with His extreme forbearance with the foibles of the Fathers and His actually making provision for polygamous circumstances and divorce, whilst absolutely condemning adultery in the Law yet forgiving it in grace, one concludes that HE *accepts* that not everyone can *accept* the counsel of perfection, the ideal re-emphasised in the Gospels.

4. The letter and the spirit of the Law—Matt. 5: 27-30

Do not look lustfully (and cf. Job 31: 1). Otherwise, gouge out your eye and throw it away (has this ever been taken literally?)

But the most ardent anathematizers of both adulterers and divorcees may give themselves liberal dispensation to breach the tenth Commandment. SPLINTERS AND PLANKS, how inconsistent we are! Truly,

"We compound for sins we are inclined to
By damning those we have no mind to."

Yet the tenth Commandment enlarges the seventh: You shall not covet your neighbour's superior residence in much sought after district; you shall not covet your neighbour's wife or his jack-of-all-trades or his *au pair* or his Jeep or his Jag., or anything you don't think your neighbour should have because you haven't got one.

5. The reason for the "new" ideal—Matt. 5: 31 f.

Verse 32 anticipates in substantially similar terms 19: 9.

Divorcing a wife "causes" her to commit adultery, indicating the then social impracticability of a woman being independent for home and livelihood.[6]

It seems perplexing if an absolute bar was intended by the Lord. If so, on the day preceding the Sermon on the Mount a divorce and remarriage did not constitute adultery (subject to Shammai's views) whereas on the day following the same facts would constitute adultery. Can this be a correct understanding? Or, rather, was our Lord employing a mode of apparently absolute expression similar to His hyperbole concerning a camel, a needle's

eye, a rich man, and the kingdom of God? The disciples' reaction there also is revealing: they understood him to mean not what was merely difficult but what was impossible. He *agreed;* yet He was not in fact excluding all rich men but dramatically demonstrating the problem.

6. The ephemeral septet and the perennial widow—Luke 20: 27-40

This was the boomerang's final fling. It was the Sadducees' turn: Tell us, Sir Carpenter, how does your resurrection theory square with a Levirate marriage—who wins the widow? [or has she a harem of husbands?]. You mistake the *quality* of the resurrection, He answers. Correspondingly, He had illuminated how people had lost sight of the true *quality* of lifelong monogamous marriage.

9 Not Expedient to Marry?

1. Corinthians

Before plunging straight into chapter 7, it is salutary not to skip chapters 5 and 6. These chapters may substantially modify our inconsistent censoriousness towards those whom we may regard as having strayed from the straight and narrow.

Chapter 5

Verses 1-5 contain the dire remedial prescription (handing over to Satan) for gross immorality of a sort carrying the death penalty under Lev. 20: 10.

Verses 9-11 prescribe dissociation from "anyone who calls himself a brother but is sexually immoral *or greedy*, an idolater or a *slanderer*, a drunkard or a swindler" (NIV). In a parenthesis, Paul clarifies that this dissociation does not mean ostracizing "the people of the world" of that sort—otherwise "you would have to leave this world."

There is an important guideline in verse 12: "What business is it of mine to judge those outside the church? . . . God will judge those outside". This may put a somewhat different complexion upon our attitude to the divorce of non-Christians, grievous though it is.

Chapter 6

Verses 9-11 highlight our inconsistent censoriousness. In the catalogue of vice, two matters again stand out to which Christians are often prone—greed and slander. Interpolate those offences alternately after each other offence throughout the unsavoury list, and it puts more into perspective some of the sins we compound for. The apostle warns: "Don't you know that the wicked will not inherit the kingdom of God? Do not be deceived: neither . . . slanderers . . . will inherit the kingdom of God."

Verse 16 warns that: "He who unites himself with a prostitute is one with her in body, for it is said, 'the two will become one flesh' ". In passing, taking this at face value to mean that the first act of sexual intercourse can constitute marriage, it seems curious that the R.C. Church purports to grant absolution from 'casual' sexual intercourse 'before marriage', but will under no circumstances countenance divorce after marriage.

But the apparent absolutes of verses 9 and 16 are ameliorated by the Master, for: "The . . . prostitutes *are* entering the kingdom of God ahead of" the religious persons (Matt. 21: 31).

Chapter 7

Celibacy—verse 1

It is good for a man not to marry.

The married—verses 2-7

Mutual consideration is enjoined.

The single, and widows—verses 8 f

Stay single, and self-controlled, if you can; but marry, rather than burn with passion.

Christian partners and divorce—verses 10 f

These verses apply only to Christian partners, as verse 12 goes on to deal with "the rest" (meaning the unequally yoked). Paul gives the prima facie absolute command from the Lord: "A wife must not separate from her husband". He then immediately qualifies it: "but if she does, she must remain unmarried [implying that he meant separation in a sense equivalent to divorce] or else be reconciled to her husband". Paul does not say what *she* should do if the husband leaves her in the lurch. He concludes these two verses expressly: "and a husband must not divorce his wife."

Unequally yoked marriages and divorce—verses 12-16

Paul expresses his personal judgment. Christian husband must not divorce non-Christian wife who is willing to live with him. And vice versa. But the unbelieving spouse should be allowed to leave, if so minded. The believing survivor "is not bound in such circumstances; *God has called us to live in peace*". This seems a strong indication that the marriage, where the partners are not living *in peace*, is not "bound" indissolubly (save for a Christian who is able to "accept" the teaching of Matthew 19).

If some are unable to accommodate the above implications, do they accept that verse 14 teaches vicarious sanctification of an unbelieving spouse and vicarious holiness of children through one believing spouse/parent?

The status quo—verses 17-24

The law of sowing and reaping often means that what has been done cannot be undone—including separation and divorce. Paul could scarcely put it more startlingly: a man circumcised when he was called should not become uncircumcised (a rare feat indeed). "Each one should remain in the situation which he was in when God called him."

The ultimate in our inconsistency—verses 27 f.

"Are you married? Do not seek a divorce". Christians endorse that one, then hastily don blinkers, for Paul continues: "Are you unmarried? Do not look for a wife". Few indeed seem able to "accept" the latter, yet many seek to impose the former.

Verse 29 recommends: "those who have wives should live as if they had none"; but this must be reconciled with the mutual consideration and duties enjoined in verses 3-7.

Generally on this chapter see Prof. F. F. Bruce's *Expanded Paraphrase of the Epistles of Paul.*

10 Putting Asunder—English Law[7]

1. Divorce

The Matrimonial Causes Act 1857 introduced divorce to England. This was only available on the ground of adultery. Its unrealities were highlighted by A. P. Herbert's best seller *Holy Deadlock* (now out of print but recommended reading) which contributed to the passing of the Matrimonial Causes Act 1937. That Act introduced further matrimonial offences as grounds for divorce, but remained circumscribed by such legal pitfalls as collusion, connivance, conduct conducing, and condonation. The Divorce Reform Act 1969 (since consolidated in the Matrimonial Causes Act 1973) was designed to sweep away the old basis of matrimonial fault and to substitute as the sole ground for divorce the concept of irretrievable breakdown of marriage. But some of the offences which were thrown out by the front door sneaked back through the side door to avoid the colossal increase in time and expense which would have been involved if an "inquest" had to be conducted into the cause of breakdown of each marriage.

It is now provided that the court shall not hold a marriage to have broken down irretrievably unless satisfied on one or more of the following facts namely:-

(a) that the respondent has committed adultery and the petitioner finds it intolerable to live with him.

(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him.

(c) two years' desertion.

(d) two years' separation, the respondent consenting to divorce.

(e) five years' separation.

If the court is satisfied on the evidence of any of the above five facts then, unless it is satisfied on all the evidence that the marriage has *not* broken down irretrievably, it shall (save as provided) grant a divorce. Parties are regarded as living apart unless they are living with each other in the same household.

There are safeguards, including:-

(i) No divorce proceedings can be commenced until the marriage is three years

old, unless the court grants special leave based on exceptional hardship or exceptional depravity.
(ii) Although the old barriers of collusion etc. have been abolished, there are provisions designed to encourage trial reconciliation for an aggregate of up to six months without the parties losing accrued or accruing "rights" to a divorce.
(iii) The respondent to a five year petition may oppose a divorce on the ground that this would result in grave financial or other hardship and that it would in all the circumstances be wrong to dissolve the marriage; but respondents who have tried to use this provision have almost invariably been unsuccessful, the courts generally taking the view that divorce itself would cause no graver hardship than the fact of the five years or more separation which will already have existed.
(iv) the respondent to either a two year or five year separation petition may apply to the court for consideration of his financial position after the divorce, pending which the court must not make the decree absolute (save as provided).

2. Nullity

The grounds for nullity of a marriage celebrated after 31st July 1971 are as follows:-

Void

(a) that it is not a valid marriage under the Marriages Acts 1949 to 1970 viz

(i) prohibited degrees of relationship, or

(ii) either party is under 16, or

(iii) disregard of certain formalities

(b) that either party was already lawfully married

(c) that the parties are not respectively male and female

(d) in the case of a polygamous marriage entered into outside England and Wales, that either party was at the time domiciled in England and Wales.

Voidable

(a) and (b) that the marriage has not been consummated owing to the incapacity of *either* party, or the wilful refusal of the respondent

(c) that either party to the marriage did not validly consent to it, whether in consequence of duress (Esther?), mistake (Jacob and Leah), unsoundness of mind or otherwise

(d) that at the time of the marriage either party, though capable of giving a valid consent, was suffering (whether continuously or intermittently) from mental disorder within the meaning of the Mental Health Act 1959 of such a kind or to such an extent as to be unfitted for marriage

(e) and (f) that at the time of the marriage the respondent was suffering from venereal disease in a communicable form or was pregnant by someone other than the petitioner and in either case, that the petitioner was ignorant thereof. (Under the Mosaic law, which treated betrothal as tantamount to marriage Joseph was minded to "divorce" Mary[3]).

All the *voidable* grounds are subject to the limitation that the court shall not grant a nullity decree if the respondent satisfies the court that the petitioner, with knowledge that it was open to him to have the marriage voided, so conducted himself in relation to the respondent as to lead the respondent reasonably to believe that he would not seek to do so; and that it would be unjust to the respondent to grant the decree. Further, there is an absolute three year time limit from the marriage for reliance on voidable grounds (c)—(f).

3. Presumption of death and dissolution of marriage

A spouse may petition the court to have it presumed that the other party is dead and to have the marriage dissolved, and the court may so decree if satisfied that reasonable grounds exist. Seven years or more continuous absence without reason to believe that the absentee has been living within that time is evidence

that the absentee is dead until the contrary is proved. The addition of dissolution to the presumption of death is as a safeguard against the reappearance af the absentee after the petitioner has remarried.

4. Judicial Separation/Separation Order

For anyone who for conscience or otherwise is not prepared for divorce, but wants legal recognition and redress for his plight, there is the alternative of petitioning for a decree of judicial separation. This can be on any one of the five bases for divorce, but the marriage need not be three years old and the court does not have to consider whether the marriage has broken down irretrievably. Judicial separation is dealt with by the divorce court. Alternatively, an aggrieved spouse can apply for a separation order to the local magistrates (domestic) court, where the jurisdiction is at present still based on matrimonial *fault*—but that is another story.

11 The First Stone

In Christian conscience, can a petition based on a single adulterous indiscretion and the petitioner's saying that he or she finds it intolerable to live with the respondent (however contrite) be any sadder than the following extracts from a petition (quoted by permission):

"The respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him.

Particulars

(a) by way of general allegation the petitioner's case is that throughout the marriage the respondent has neglected her spending all his spare time either attending church or carrying out the business of the church which he attended preventing the parties from having any social life together

(b) that other than occasions when the petitioner and the respondent attended church and visited their relatives, he has only taken her out on two occasions since the date of the marriage [several years earlier]

(c) since the birth of [the child/ren] the respondent has attended church approximately four nights per week as well as all day Sunday and has refused to take the petitioner out on many occasions when she has requested him to do so

(d) since [several years past] the respondent has neglected the sexual side of the marriage

(e) in [date] on a Sunday the petitioner requested the respondent to take her and the family to the seaside and he refused, despite the fact that he had attended church every Sunday since the birth of [named child] leaving the petitioner to look after the child who suffers from [serious disability]

(f) the respondent would attend church even when the petitioner was ill despite her request for him to remain at home and look after her

(g) throughout the marriage the respondent has objected to the petitioner dancing or singing in the house and to her listening to popular music. She was made to feel uncomfortable in her own home and when any members of the respondent's family came round to visit them both the television and the radio had to be switched off and any alcoholic drinks there were in the house had to be locked away and the petitioner had to keep up a pretence that she had not been watching the television or listening to the radio and that there were no alcoholic drinks in the house

(h) by reason of the respondent's conduct the petitioner left the matrimonial home on [date] but returned approximately [date] to try an attempt at a recon-

ciliation. However, his behaviour continued as before despite the fact that she tried hard to get him to share some interests with her

(i) that in [date] the petitioner was forced to leave the matrimonial home and ever since that time the parties have continued to live separate and apart."

There were a few other specific matters complained of but the foregoing represented the gravamen of the situation. The reader may conclude that they must have been members of a notoriously exclusive or even avowedly open undenominational sect, but would be unwise to jump to ecclesiastical conclusions. Let it suffice that the parties came from fundamentally different backgrounds, one from a staunch Christian home, the other not. Both were acknowledged by their church leader(s) to have been well-established genuine and active Christians prior to their marriage, and theirs had not been a whirlwind courtship or a shotgun marriage.

The respondent in answer to the petition said that an entirely different construction was to be put upon the matters complained of, and that such as he admitted were exaggerated or distorted by the petitioner; and he was still willing for a reconciliation. But so far as she was concerned, the marriage had irretrievably broken down, and eventually she petitioned instead on one of the periods of living apart and the husband did not oppose, accepting that the second petition was the inevitable alternative to the first petition being dragged through to the bitter end to the dishonour of the parties, the family, the church and their Lord's name.

This may be a salutary warning that, in attempting in all things to give Christ the pre-eminence, instead there is the ever-present danger of giving the church/appearances the pre-eminence.

12 Your Hardness of Heart

Whilst the original and continuing ideal must be maintained, the God of the NT is the same as the God of the OT who has continuing compassion and longsuffering towards the frailty and failures of even the World Champions of Faith.

So, if divorce was permitted by the Law "because you know so little of the meaning of love" (Matt. 19: 8—Phillips), we should beware a corresponding littleness of love on our part towards those who in our estimation have "fallen". We would probably welcome to fellowships a repentant and converted murderer released on parole ("what a boost to the testimony!"), or even a rapist, but leave the barriers still up for divorcees.

Exceptional circumstances call for exceptional measures, exceptional understanding and exceptional compassion. e.g.

1. David's eating the consecrated bread. Our Lord did not express disapprobation of what He termed 'unlawful' (Matt. 12: 4)

when citing this as an example of the Sabbath-bashers' inconsistent censoriousness.

2. The curse on any rebuilder of Jericho—yet Elisha readily purified the water supply of the newly rebuilt city. (Josh. 6: 26; 1 Kings 16: 34; and 2 Kings 2: 19-22).

3. The diluvian law against taking human life (Gen. 9: 6) was not exacted against Moses the murderer (Ex. 2: 12), David the dastardly (concerning Uriah), or the Tarsus Terror.

Some may be unable to accept/receive the ideal of indissoluble marriage. But some of their fellow-Christians are equally unable to accept/receive *in practice* the NT injunctions against other matters e.g., some refuse to be reconciled to their brother, yet still claim to worship. Others may look lustfully without gouging out their right eye. Some find that their language is not unblemished. Many, struck on the right cheek, literally or mentally clobber the offender in return instead of turning the other cheek. Some do not go the extra mile. Some are sluggish lenders. Some stop short of praying for their particular enemies though manage to pray for their enemies at large. Hospitality is offered in hopes of reciprocal hospitality. The right hand of some knows what their charitable left hand is up to. Some are not very cheerful givers, and even give sparingly. There are those who appear to love to pray standing in the "synagogues" (if not on the street corners) to be seen by men. Some allow fasting (whatever form it takes) to disfigure their physiognomy—often as a permanent feature—and neglect to put oil (if not hats) on their heads. Others manage to store up for themselves treasures on earth in spite of the moth and rust and thieves, and even contrive apparently to serve both God and mammon. Some *do* worry about their life, what they will eat or drink or wear. Some fail to seek first the kingdom of God and his righteousness. A few specialise in detecting dust or splinters in their brother's eye. But I must not multiply examples, or some may gently reprimand me that their 1 Corinthians 13 is in excellent trim, and that the Sermon on the Mount is inapplicable to us anyway.

Instead, we may feel like creeping away with the members of the inquisition of John 8, acutely conscious of James 2: 8-13. The law of liberty seems grievously shackled in some Christian communities.

The Psalmist, having faltered under the challenge of Nathan's accusing finger: "You are the man", composed a prototype prayer for forgiveness in Psalm 51; and a precedent of praise for forgiveness in Psalm 32.

13 Conclusions

1. Is divorce ever permissible for the Christian?

Yes,

(a) when the respondent has committed adultery.

(b) without adultery, where the petitioner (or both parties, in a two year separation and consent case) cannot accept/receive the ideal. In such cases the petitioner assumes a risk of "causing" the respondent to commit adultery.

2. What should a Christian do if his/her spouse is unfaithful and demands a divorce?

"Demands" is inappropriate—no spouse can demand that the other shall initiate divorce action.

But after five years separation the most evil spouse can petition on the sole ground of irretrievable breakdown of marriage, and the court in effect has no choice but to grant him a divorce; the "innocent" respondent has really negligible hope of establishing as a defence that religious objection to divorce amounts to "grave hardship."

Treating "unfaithful" first as a euphemism for adultery: if the "guilty" party bombards the "innocent" to divorce him, I personally see no Scriptural barrier.

If "unfaithful" is taken in its widest sense, see 1(b) supra. Again, the "innocent" spouse is not *obliged* to *do* anything.

3. Can a Christian ever remarry?

1. After ex-spouse's death

Yes (Romans 7: 3), but in Paul's judgment a widow is happier if she stays one (1 Cor. 7: 39 f.), save that he counsels younger widows to marry and in fact rules that they are ineligible to be listed as church pensioners unless aged sixty (1 Tim. 5: 14, 9).

2. During ex-spouse's lifetime

(a) if both parties are Christians

They are debarred from remarriage (1 Cor. 7: 11), except:

(i) one is free to remarry if the other has committed adultery (Matt. 19: 9)

(ii) if either remarries (the other not having committed adultery) this would seem to be homologous to adultery, so freeing the other to remarry

(iii) if either or both cannot accept/receive the ideal

(b) if only one spouse is a Christian

(i)—(iii)—as 2(a) supra.

(iv) if the unbeliever leaves, the believer is not bound in such circumstances (1 Cor. 7: 15).

(c) *nullity*

Some at least of the nullity grounds are relevant considerations.

3. *Is the innocent person condemned to remain single for the rest of their joint lives?*

"Innocent" is sometimes a justified term, although it not only takes two to make a quarrel but it can also take two to let a marriage become so drab and uninteresting that it irretrievably breaks down; and any ensuing adultery or "unreasonable behaviour" on the part of the respondent (or often both parties) is often only the symptom of the antecedent malaise (cf. the Ephesians' loss of their first love, and the Laodicean complacency—a lukewarm spouse may make the other "vomit" the marriage). It may be the more innocent who breaks first under the strain and "commits" symptoms, giving the guiltier one the appearance of being wronged and the legal right to divorce.

Treating innocent as applicable, however, in many cases: "condemned" suggests that singleness is the last state this poor victim would voluntarily accept, notwithstanding 1 Cor. 7.

14 Holy Wedlock

A brief switch to the positive joys and potential of marriage seems a necessary antidote to the decline and fall we have just examined. Eph. 5: 21-33 and Col. 3: 12-25 and 1 Peter 3: 1-7 show only the fringe of the happiness designed for His people by the great and faithful Creator.

The monogamous qualifications for elders and deacons are firmly established in 1 Tim. 3: 2, 12; and Titus 1: 6.

15 The Bride of Christ

"I promised you to one husband, to Christ" (2 Cor. 11: 2). The ideal from the *beginning* is clear. The picture for the *future* is clear. In doing all we can to uphold these in the *present*, may we experience the love of God so shed abroad in our hearts that, even as He shows compassion for the exceptional cases, so may we.

Footnotes

1 English Law generally prohibits marriage within the third degree of consanguinity (the half blood being a bar equally with relationship of the whole blood; and each spouse being of affinity to the other spouse's kindred). For detail see the Marriage Act 1949 as amended by the Marriage (Enabling) Act 1960.

2 The phrase "if brothers dwell together" might import that only surviving bachelors resident there qualified, and that brothers who lived apart with their own family unit were ineligible, or not expected to take an extra wife; but this is possibly negatived by Deut. 25: 10 referring to a disobliging brother's own household.

3 Cf. compulsory marriage and no divorce allowed for raping an *un*betrothed virgin (Deut. 22: 28 f.). Betrothal was tantamount to marriage, e.g., Joseph

was minded to *divorce* Mary (NIV, RSV, JB, Barclay, Moff, Amp: and see NBC and NTC): "have the marriage contract set aside" (NEB): "break off the engagement" (TEV, Phillips); "put her away" (AV, RV, NASB). Culpable sexual breach of betrothal was a capital offence (Deut. 22: 23-27): save that in the case of intercourse with a betrothed slave woman the penalty was "only" a guilt offering (Lev. 19: 20-22).

4 Michal's compulsory "transfer" from David to Palti (1 Sam. 25; 44) and back again (2 Sam. 3: 14-16) probably did not contravene this, either because there was no declaration of divorce by David or Michal, or as being void for duress if there had been a divorce. On the other hand, the weeping Paltiel is called her *husband.*

5 No distinction should be drawn between "command" and "permit" (Matt. 19: 7 f.)—they are transposed in Mark 10: 3f.

6 But Philip the evangelist had four unmarried daughters of age to exercise the gift of prophecy (Acts 21: 9); and Paul exhorted mass celibacy (1 Cor. 7).

7 References herein to English law apply to England and Wales.