



Whitefield BRIEFING

December 2003 (Vol.8 No.5)

Divorce for “Any Cause”

Rev. Dr. David Instone – Brewer

In the early 1960's the government asked the Church of England for recommendations concerning divorce legislation.¹ The New Testament teaching was summarised by Hugh Montefiore but it was relegated to an appendix and virtually ignored in the main body of the report. He presented the traditional interpretation that Jesus allowed divorce on the sole ground of adultery and Paul allowed divorce on the sole ground of abandonment, but neither allowed divorce for neglect or abuse, and remarriage was impossible till the previous partner had died.

The committee apparently decided that this was so impractical for a secular society that they had to present something completely different. So they introduced the concept of 'irretrievable breakdown' which was not based on 'grounds' for divorce but merely on 'evidences' which indicated that the marriage was over.

This report was implemented in the 1969 Divorce Reform Act which effectively introduced a no-fault divorce. In the same year a no-fault divorce law was introduced in California, setting a pattern which has since spread to states throughout the USA.

No-fault divorce makes it possible for either partner to divorce the other against their will even when they have done nothing to harm the marriage. Although these various legislations attempted to avoid this, the overall result was, nevertheless, divorce on demand — after a short delay.

Christian Interpretations

Christians have attempted to retain the concept of grounds for divorce because this is central to biblical teaching and because it gives the wronged partner the power to decide whether to divorce or to forgive — so they cannot be divorced against their will. There are three main interpretations of grounds for divorce in Scripture:

- The 'traditional' interpretation as presented by Montefiore is (with a few variations) the view of the Catholic, Anglican and most other established churches, and can be said to represent the 'plain reading' of the text.
- A scholarly view is that Jesus did not wish to allow any divorce or remarriage and he (or perhaps Matthew) permitted the exception of adultery only because Jewish society enforced divorce after adultery.² This radical reversal of Old Testament teaching was part of Jesus' new ethics for an ideal kingdom which Christians should be living out.
- Others, by various means, have argued that the Bible allows divorce for neglect and abuse, and allows remarriage.³ Many of these are too forced or too loosely attached to Scripture to command wide acceptance. However, new studies of Qumran texts, Graeco-Roman literature and early Jewish traditions suggest that this interpretation coincides with the way in which the New Testament writings would have been understood by its first readers.⁴

¹ *Anglican Synod. Marriage, Divorce & the Church* - the report of a Commission appointed by the Archbishop of Canterbury to prepare a statement on the Christian Doctrine of Marriage. (SPCK, London, 1971).

Changes in Legal Language

When first-century Jewish or Graeco-Roman citizens read or heard the words of Jesus and Paul they had in their minds many concepts, legal terms and presuppositions which we do not share. We have to understand their mindset in order to understand the text as they would. This also gives us the best possible chance of understanding what the authors meant to convey by their words, on the assumption that their primary audience were their contemporaries and not 21st-century readers.

What makes divorce so susceptible to misunderstanding is changes in law and legal terminology. Most people understand the legal terms ‘maintenance payments’ and ‘decree absolute’, but they have forgotten what a ‘co-respondent’ is. This legal term for a third party in a case of adultery was part of everyday language a few decades ago when adultery was still tried in court and when newspapers reported the details of famous trials on their front pages. Perhaps in a few decades the law will change and ‘maintenance payments’ will sound to non-lawyers like something relating to house repairs. Jewish legal divorce terminology changed much more dramatically in the middle of the first century, and this resulted in a complete misunderstanding of Jesus’ teaching as early as the second century.

The new ‘Any Cause’ divorce

A few decades before Jesus’ ministry a new form of divorce called ‘Any Cause’ was introduced by lawyers of the Hillelite party of Pharisees. They derived it from the phrase in Deuteronomy 24.1 where divorce is allowed for “a cause of indecency”.⁵ The term ‘indecency’ (literally ‘nakedness’) was understood by all rabbis to refer to adultery, but the Hillelites said that this still left the term “a cause” (literally ‘a thing’). They said that this word indicated a separate type of divorce which was based on ‘a cause’ which could be any cause from a burnt meal to wrinkly skin. They called this the ‘Any Cause’ divorce and, because it could be based on anything, there was no need to present any proof in court—the man simply had to hand over a divorce certificate and the marriage was over.

Other rabbis (such as the rival party of Shammaite Pharisees) said that the phrase “a matter of indecency” did not refer to two types of divorce (adultery and ‘Any Cause’) because the phrase as a whole means “nothing else than indecency”. Most of the people, however, preferred the Hillelite interpretation because it provided easy divorces and no embarrassing court appearances. Philo lists ‘Any Cause’ as the only basis for Jewish divorce, and Josephus names it as the type of divorce which he used.⁶ By the middle of the first

century there is no mention of any other type of divorce in Judaism, and after the destruction of Jerusalem in AD 70, when Jewish law became centralised and much more uniform, it was the only type of divorce available.

Four Biblical Grounds for Divorce

Before the ‘Any Cause’ divorce became popular, Judaism had four grounds for divorce based on the Old Testament:⁷ adultery (based on Dt.24.1) and neglect of food, clothing or love (based on Ex.21.10f). These latter three grounds were recognised by all factions within Judaism and allowed divorce by women as well as men. They were based on the Mosaic law that a slave-wife could be free of her marriage if her husband neglected her, and the rabbis assumed that if an ex-slave had these rights then so did a neglected free wife or a neglected husband.

The rabbis carefully defined how much money the man had to provide the woman for buying food and clothing, and how much work the woman had to do in producing them. The rabbis even laid down how often couples had to take part in physical acts of love which varied according to the occupation of the man — they allowed longer periods of abstinence for traders (who went on business trips) and for scholars (i.e. themselves).

In practice they divided these three grounds into two, which we might call emotional support and material support, and Paul was presumably alluding to them (and to Ex.21.10f) when he reminded the Corinthians that they owed their spouses both physical love (1Cor.7.3-5) and material support (1Cor.7.33-34). The rabbis specified different courses of action when these two types of neglect occurred, both of which led eventually to divorce if the erring partner did not change their ways. They did not specify abuse as a ground for divorce because this would be regarded as the most severe form of neglect. These grounds were listed in early Jewish marriage certificates where they formed the basis of marriage vows.⁸

Asking Jesus about ‘Any Cause’

All these types of divorce fell into disuse a few decades before AD 70 because everyone chose to get divorced with the new and easy-to-use ‘Any Cause’ divorce. Although the concept of the three obligations of marriage continued to be expressed in the language of marriage certificates, the term ‘Any Cause divorce’ disappeared completely because even the lawyers referred to it simply as ‘divorce’.

During Jesus' ministry, the debate about the 'Any Cause' divorce was still raging, so they asked him his opinion: "Do you think it is lawful for a man to divorce his wife for 'Any Cause?'" (Mt.19.3). Jesus was more interested in talking about marriage than divorce, so he started by emphasising that marriage should be monogamous and lifelong (vv.4-6) and when they asked why Moses commanded divorce for adultery he said that Moses merely allowed it, and only in cases of stubborn unrepentance ("hardheartedness", vv.7-8).

Eventually Jesus answered their question about the 'Any Cause' divorce by quoting the Shammaite slogan that the phrase 'a cause of indecency' means "nothing except indecency".⁹ Jesus was not a Shammaite, because he disagreed with them in many other matters, but he said that their interpretation of the phrase "a cause of indecency" was correct, as would most modern interpreters of the text.

Jesus rejected the 'Any Cause' divorce as a non-biblical invention, so that anyone who had divorced using this interpretation (which included almost every divorced person in Israel) had an invalid divorce. He emphasised this in a most dramatic way by saying that anyone who had remarried after such a divorce was now committing adultery, because their previous marriage had not yet ended.

The abbreviation necessitated by writing this teaching in a Gospel makes it difficult for a 21st century reader to follow. Mark's version (Mk.10.2-12) does not even include the Hillelite and Shammaite slogans, "for 'Any Cause'" and "nothing except indecency". A first century reader would mentally supply these phrases just as a modern reader supplies the phrase "alcoholic beverages" into the question "Is it lawful for a 16 year-old to drink?".

Luke's version (Lk.16.18) is so dramatically abbreviated that it makes no sense unless we remember that virtually all divorces were for 'Any Cause', so that everyone who remarried could be said to be committing adultery.

Matthew provided a fuller account because by the time he was writing the debate was already waning and people needed reminding about the issues. But even Matthew's account is confusing for modern translators, almost all of whom thought that Jesus was asked about "divorce for any cause" instead of the specific 'Any Cause' divorce.

NT Grounds for Divorce

Which grounds for divorce did Jesus accept? He was never asked this question, and he does not tell us, though we know from his answer to the question about the 'Any Cause' divorce that he allowed divorce for adultery. In the absence of further evidence, we have to assume that he accepted all four Old Testament grounds for divorce, as did all other Jews.

There are many aspects of Jesus' teaching for which we have no record - e.g. he never affirmed monotheism or condemned rape - because there was no need to record everything which his audience already agreed with. When Jesus did disagree, he was not shy to say so. When he was asked about the 'Any Cause' divorce Jesus took the opportunity to point out several matters in which he disagreed with other Jews, including monogamy (all Jews except the Qumran sect allowed polygamy), optional divorce for adultery (which most Jews regarded as compulsory), and optional marriage (which all Jews regarded as compulsory).

Fortunately Paul is not as silent as Jesus, because he has to remind his partly-gentile audience about the obligations within marriage, as mentioned above.

2 The best presentation of this view is by Heth & Wenham. See Further Reading.

3 Good examples are by Atkinson and Adams. See Further Reading.

4 The work has been done by Luck, Keener and myself. See Further Reading.

5 This slogan is found in the summaries of this debate in rabbinic literature at *mGit.9.10*; cf. *Sifré Deut.269*; *ySot.1.2, 16b*.

6 Philo *Spec.Leg.3.30* (II 304) "Another commandment is that if a woman after parting from her husband for any cause whatever..." (*kath én an tuché prophasin*); *Jos.Ant. 4.253* "He who desires to be divorced from the wife who is living with him, for whatsoever ground ..." (*kath hasdépoutoun aítias*).

7 Technically there was also a fifth, infertility, which could be said to be based on the OT command to 'go forth and multiply', but some rabbis were unhappy with this as a basis for divorce. On the basis of this command, all Jews had to marry, but Jesus rejected this interpretation by saying that people could remain single (and childless) for the sake of the kingdom (Mt.19.12).

8 E.g. "your food and your clothes and your bed" in papyrus *P.Yadin.10* = AM126. Some later certificates cite Ex.21.10f, though none have survived from the first two centuries.

9 Jesus' reply "except for indecency" in Matthew 19.9 (*mé epi porneia*) is an exact translation of the Hebrew slogan of the Shammaites (*ela im ... erva*) at *Sifré Deut.269*; *ySot.1.2,16b*). The slightly different version in Mt.5.32 reflects an identical variation of the Shammaite slogan at *m.Git.9.10*.

Way ahead for the Church

The problem for the modern church, living in a climate of no-fault divorce, is how to re-introduce the teaching that divorce should only occur when there are specific biblical grounds for it.

One way forward may be to re-emphasise the marriage vows of traditional Christian wedding services which retain references to all four biblical grounds for divorce — faithfulness and the three types of neglect. The marriage vows “to love, honour and keep” are based on ancient Jewish vows as cited in Ephesians 5.28-29 where Christ “loves... nourishes and cherishes” or, more literally, “loves, feeds and keeps warm” his bride.

The Old Testament spoke about marriage as a ‘contract’¹⁰ and regarded the marriage vows as stipulations in that contract. If one partner broke their marriage vows the other was entitled, as with any business contract, to either declare the contract broken or to forgive a repentant partner. This gives the decision back to the wronged partner.

We do not want to regard marriage merely in terms of contractual obligations, but wedding vows could be taught both as the foundations of marriage and as the only valid grounds for divorce. The biblical grounds for divorce would thereby regain their status as a focus for building and maintaining a marriage rather than just the means to its end.

¹⁰ E.g. Mal.2.14 which is often misleadingly translated as a ‘covenant’.

Further Reading:

Jay E. Adams, *Marriage, Divorce & Remarriage in the Bible* (Phillipsburg, New Jersey: Presbyterian and Reformed Publishing Co, 1980)

David Atkinson, *To Have and To Hold: The Marriage Covenant and the Discipline of Divorce* (London: Collins, 1979)

William A. Heth, & Gordon J. Wenham, *Jesus and Divorce* (London: Hodder & Stoughton, 1984).

David Instone-Brewer, *Divorce and Remarriage in the Bible* (Grand Rapids: Eerdmans, 2002)

David Instone-Brewer, *Divorce and Remarriage in the Church* (Carlisle: Paternoster, 2003) Pastoral conclusions based on the latest academic finding.

Craig S. Keener, *Paul, women & wives: marriage and women's ministry in the letters of Paul* (Peabody, Mass.: Hendrickson Publishers, 1992) An academic work based on the latest Graeco-Roman material

William F. Luck, *Divorce and Remarriage: Recovering the Biblical View* (San Francisco, Harper and Row, 1987). A re-examination with many original ideas.

Rev Dr David Instone-Brewer B.D. Hons (Cardiff); Ph.D. (Cantab) is Research Fellow & Technical Officer at Tyndale House in Cambridge. His research interests include Rabbinic background to the New Testament, with special interest in marriage and divorce. He describes himself as “a Baptist Minister working in the academic world”. David is married to Enid and they have two children. Whilst working as a Baptist Minister at Llanishen Baptist Church in Cardiff, David found that divorcees often came to him because they could not get remarried in their Anglican or Catholic church. This forced him to look again at the scriptural foundations of the church teaching on this issue. In the light of his Jewish studies, the NT presented a very different picture to the one which most scholars had previously seen. During a five year period at Tyndale House he produced several academic papers and a large academic book on the subject. He has followed this up with a summary booklet for the Grove Biblical series and a book on divorce and pastoral issues for general readers