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DIVORCE AND THE LAW OF CHRIST.

UNFORTUNATELY, a good deal of Christian thinking has to be done in regard to certain matters that are not pure, or lovely, or of good report. One of the most persistent of these unpleasant topics is Divorce, which, so far from having been disposed of by centuries of controversy, has re-emerged as one of the most urgent of our social and moral problems. Protestantism has a special responsibility for the guidance of modern opinion on the subject, inasmuch as the overthrow of the mediaeval conception of the indissolubility of marriage was due to its influence, and it is under a consequent obligation to make clear the line which divides justifiable relaxations from a license at once inconsistent with Christian principles and prejudicial to the best interests of society. An additional reason for reverting to the question is that recent criticism seems to have weakened the Biblical position from which Protestantism was wont to combat the rigour of the Roman Catholic law of divorce as a tyrannical perversion of the mind of Christ. The purpose of this paper is to discuss whether marriage can be held to be dissoluble on Christian principles at all, and if so what are the grounds of divorce which may be safely allowed by public authority. But it may serve to elucidate the issues to touch first on the salient features of the earlier periods of conflict.

I. THE EPOCHS OF CONTROVERSY.

It is a significant fact—significant as showing how vitally ethical interests are bound up with the marriage-law, that

even the periods which had a preponderant interest in doctrinal controversy had their passionate contentings as to the nature and limitations of divorce.

The first phase of conflict was due to the collision between the ideals of the Church and the law of the Roman Empire. In the period before Constantine, liberty of divorce was practically unlimited, and even after Christianity became the religion of the Empire, the tension was little diminished. Constantine, it is true, so limited the grounds of divorce as to approximate to the law of the Church ; but his successors felt themselves compelled to yield to the pressure of an unsubdued pagan spirit, and from the sixth to the ninth century the civil law again tolerated divorce by consent. But however its relations with the Empire might vary, and whatever might be offered by way of compromise, the Church held tenaciously to its doctrine that adultery alone justifies the termination of a marriage-union. "The other causes of divorce which were recognised in civil law were never admitted by the Church. Those accordingly who carried out a divorce according to the license of the civil law, and contracted a second marriage were regarded as bigamous persons by the Church, and subjected to penalties under canon law" (Suicer, *Thesaurus*, i. p. 885). The only writer of the period who pleads for the recognition of additional grounds is one whose credit, which would otherwise be respectable, has seriously suffered from the attachment to him of a barbarous name which suggests that he appears among the fathers under false pretences.

"It is not a valid marriage," says the so-called Ambrosias-ter on 1 Corinthians vii., "which is without the fear of God, and therefore it is not sin for the spouse who is put away on account of God to contract marriage with another. . . . For if Ezra made all believing wives and husbands to be put away, so that God was not angry but well-pleased if they took

others from their own race, how much more will one be at liberty, in the case of an unbeliever departing, to marry at will a person of one's own persuasion."

As to re-marriage after divorce, even in the case of the innocent party, there was difference of opinion. The rigorist view was first voiced by Hermas. "What then," he inquires of the angel, "shall the husband do if the wife continue in adultery?" "Let him divorce her," saith he, "and let the husband abide alone; but if, after divorcing his wife, he shall marry another, he likewise committeth adultery" (Pastor, *Mandate* iv. 1). An early canon may be quoted to the same effect: "As for those who overtake their wives in adultery, the same being young men, and believers and forbidden to marry, it was resolved that as far as possible they be advised not to marry again during the lifetime of their first spouses (Synod of Arles, A.D. 314). St. Augustine argued at length in support of the view in *De Conjugiis adulterinis*, and indeed seldom lost an opportunity of advocating it. On the other hand, there is a catena of patristic passages which sanctioned re-marriage in the specific case, and a series of synodical decisions which at least imply permission; while it is certain that the liberal construction was largely operative in Christian practice (Cosin, *Argument on the Dissolution of Marriage*, Works, iv. p. 489 ff.). This view, natural as it was, and the obvious suggestion of the passages in St. Matthew, would doubtless have prevailed had not the rigorist attitude been re-inforced from other quarters. One factor making in the opposite direction was the disparaging estimate of marriage which made it appear to be in the interests of sanctity to discourage it on every colourable pretext (Athenagoras, *Plea*, c. 34). Another factor was the valuation of marriage as a sacrament, which was held to imply that a married person, though divorced, could no more be allowed to form a second marriage

than a baptized person, though apostate, could again receive baptism. (*Augustine, De Nuptiis et Concupiscentia*).

In the end the Western Church succeeded in establishing the principle of absolute indissolubility. It even carried the point—for which the Eastern Church made no stand—that adultery merely justified a separation from bed and board, and not a dissolution of the bond. And in this matter a tribute must be paid at least to the courage of the Roman Catholic Church. It may sometimes be unduly compliant with human infirmity, but it is not easy to mention instances in which the Protestant Church has made so bold a stand against the tendencies of the natural man which lie on the debatable ground between morality and immorality. On the other hand, in pressing to an extreme the principle of indissolubility, it had been guilty of an error of judgment which forced it into crooked courses, and even tended to undermine the institution which it had set itself to safeguard. The necessity of divorce in some shape had to be conceded, and the Church had recourse to the expedient of dissolving marriage on the ground of nullity *ab initio*. A system of impediments to marriage was elaborated of so far-reaching a kind that while it was certain a person could not be nominally divorced, it was also difficult to be sure that he had ever been validly married. "None could be surely knit and bounden, but it should be in either of the parties' power and arbiter, casting away the fear of God by means and compasses to prove a pre-contract, a kindred and alliance, or a carnal knowledge, to defeat the same" (32 Henry VIII., c. 38).

2. In the Protestant controversy with Rome it was maintained, as against the doctrine of absolute indissolubility, that the bond of marriage is dissolved in the case of adultery. "I marvel," wrote Luther, "that they should compel a man to be celibate who has been separated by divorce from

his spouse, and not allow him to take another wife. For if Christ allows divorce in the case of fornication, and compels no one to be celibate, while Paul would have a man to marry rather than to burn, He seems to allow the taking of another wife in room of the divorced" (*De Captivitate Babylonica*). It was also generally held by the Reformers that 1 Corinthians vii. 15 justified divorce with re-marriage in the case of malicious and prolonged desertion. On this point Calvin and Beza agreed with Luther and Melancthon, though the Lutherans went further in their definition of desertion, which came to include conspiracy against the life or the chastity of a spouse. Cranmer expounds the law on Lutheran lines in the abortive *Reformatio Legum Ecclesiasticarum*. Possibly John Knox opposed the recognition of desertion, for in the First Book of Discipline mention is made of adultery only as a ground of divorce; and it may have been due to the weight of his opinion that the General Assembly hesitated to follow the continental reformers, and dissociated itself from the Act of the Scots Parliament which in 1573 legalised divorce for desertion. By the middle of the seventeenth century, opposition to the extension had died down in Scotland. The Westminster Confession, which allows desertion, was approved as in nothing contrary to the doctrine of the Church. Curiously enough John Forbes, of Corse, the most distinguished theologian of the Episcopal school, in his *Theologia Moralis* not only recognised desertion, but included in it, in the extreme Lutheran fashion, attempts to corrupt or pervert a spouse.

On a first impression one may have an uneasy suspicion that the Reformers unconsciously acted as the tools of human lawlessness in its reaction against the salutary restraints of an uncompromising divine law. And no doubt there were those who knew and cared nothing about justification by faith, who welcomed the Reformation simply

because it brought with it facilities of divorce and re-marriage. But it is unquestionable that the amendment was on the whole ethical in result as it was in intention. To force men to acquiesce in a legal provision as divine which they felt to be unjust could not be in the interests of religion. Still less could it make for morality.

3. The present position of matters in Christendom is chaotic. The civil law of the different countries reflects every position intermediate between absolute inviolability and divorce at will. Within the British Empire the extremes are represented by the law of England, which allows divorce for the capital cause only, and recent colonial legislation, notably in New Zealand, which has emulated the larger license of the later Lutheranism; while the Scottish law occupies the comparatively conservative standpoint of allowing malicious desertion, but that only, as an additional ground. Christian opinion is practically unanimous in opposition to the neo-paganism which rejects the conception of marriage as essentially a permanent institution, but its force is weakened by the inability to agree on a base of offensive and defensive operations. To some it seems that the middle ground of Protestantism is so difficult to maintain that the ultimate issue will lie between the mediaeval ideal and the re-nascent paganism. But it does not follow that a position is unsound because of its polemical difficulties. Strategical advantage is not one of the criteria of truth or right. And in spite of the difficulties, there is no task which Protestantism can discharge with a stronger certainty of being in the right than to maintain a policy which strikes the mean between Rome's tyrannical administration of the Christian law and the subversion of marriage as contemplated in some phases of emancipated modern thought.

II. THE NEW TESTAMENT GUIDANCE.

Jesus spoke of divorce because it served to illustrate His attitude to the Mosaic law, because He was questioned about it, and because as a preacher of righteousness He was offended by the injustice and inhumanity of the existing system. The distinctive feature of the Jewish system was that the husband could divorce his wife at his discretion. He did not require to prove a case before a tribunal, but could put her away with the same right with which he alienated a piece of property—the only condition being that the transaction was registered in a “bill” granted to the woman. As for the grounds on which he might proceed, this was an ethical question on which different advice was tendered him by different schools.

“The school of Shammai says, ‘No one shall divorce his wife unless he shall have found in her something scandalous (*quid inhonesti*),’ the school of Hillel says, ‘Even if she have burnt his food,’ Rabbi Akiba says, ‘Even if he find another more handsome.’ The decision is according to the opinion of Hillel” (*Tractate Gittin of the Mishna*, Ed. Surenhusius, iv. p. 538).

In the parallel passages Mark x. 1–12, Matt. xix. 1–12 Jesus declares that marriage is essentially a permanent union, and not dissoluble at will. To the objection that the Jewish practice had Mosaic sanction, He replies that this was a concession which was an innovation, and was not in accord with the original purpose as declared in creation. According to the divine purpose it is a union in which a strength and constancy of affection are required surpassing even filial affection, and in which also the most intimate union takes place—and these carry with them the obligation of permanence. According to three of our witnesses Jesus affirmed the permanence of marriage in absolute terms:—

“And he said unto them, Whosoever shall put away his

wife and marry another, committeth adultery against her; and if she herself shall put away her husband and marry another, she committeth adultery" (Mark x. 11-12).

"Every one that putteth away his wife and marrieth another committeth adultery, and he that marrieth one that is put away from a husband committeth adultery" (Luke xvi. 18).

"But unto the married I give charge, yea, not I, but the Lord, That the wife depart not from her husband (but and if she depart, let her remain unmarried or else be reconciled to her husband), and that the husband leave not his wife" (1 Cor. vii. 11).

According to two passages in Matthew Jesus qualified the prohibition of divorce in the case of adultery, "But I say unto you, that every one that putteth away his wife, saving for the cause of fornication, maketh her an adulteress, and whosoever shall marry her when she is put away committeth adultery" (v. 31-2).

"I say unto you, Whosoever shall put away his wife except for fornication, and shall marry another, committeth adultery, and he that marrieth her when she is put away committeth adultery" (xix. 9).

If these passages be taken as they stand, and if we proceed on the assumption that any inconsistency in the Biblical record is ruled out by inspiration or divine superintendence, the natural construction is that they lay down a general rule accompanied by a particular exception. There is some uncertainty as to the readings, especially in Matthew xix. 9, (the last clause of which is discredited), but the work of purely Textual criticism leaves the significant addition of Matthew untouched. It was maintained by the Protestants that we have here an illustration of the familiar fact that a saying may be recorded by one Evangelist more briefly and generally, by another more fully and particularly. The briefer state-

ment by itself may be misleading—e.g., the “Blessed are ye poor” of Luke vi. 20 (Forbes, *Theologia Moralis*, vii. 14). The Roman Catholic contention is that Mark x. 12 and Luke xvi. 18 are decisive, and that any interpretation of the Matthew passages which would weaken their force is inadmissible. “It is true that the evangelists sometimes omit or add what other evangelists have not omitted or not added, but they never omit so as to falsify the sense ; otherwise the evangelists would have deceived those to whom they transmitted their gospels” (Bellarmine, *De Sacramento Matrimonii*, i. 16). What intelligible meaning, then, is to be attached to the language in Matthew ? St. Augustine suggests that Christ drew a distinction because the case of a man who marries again after divorcing for adultery is less heinous than the case of another who has proceeded on a lesser ground, but that the former is an adulterer all the same. (*De Conjugiis adulterinis*). Logically this may be tenable, but it does as much violence to the plain intention of the words as to argue from “Except ye repent ye shall all likewise perish” that there was no ground for holding that though they repented they should not perish (Cosin, *Argument*, p. 490). The Roman Catholic solution is that Christ absolutely prohibited divorce as involving dissolution of the bond and permission to re-marry, but that he allowed a separation from bed and board in the case of adultery. To this it seems a fatal objection that the distinction was unknown to those whom Jesus addressed, and that He used the term ἀπολύειν which suggested divorce as they knew it.

But if on the older basis of controversy the Roman Catholic view of absolute indissolubility was untenable, it appears to have been strongly re-inforced by modern criticism of the Synoptic records. There is an increasing disposition to doubt that the words in Matthew which allow the exception are authentic words of our Lord. The misgivings are not con-

fined to one school, but have been shared with Holtzmann and Wellhausen by men of so conservative instincts as B. Weiss (*Matthaeus-evangelium*) and Salmon (*The Human Element in the Gospels*). There is, to begin with, a certain antecedent probability against the exception, in view of Christ's inculcation of the spirit of unflinching constancy in love, and of forgiveness unto seventy times seven. If Hosea did not divorce the faithless Gomer, but laboured to seek and to save that which was lost, it seems unlikely that Jesus prescribed a lower standard. Further, it is not in the manner of the Sermon on the Mount to mention exceptions to the ethical rules of the Kingdom. He who said, "Swear not at all," "be not angry with your brother," "resist not evil," "judge not," may be readily supposed to have said in the same uncompromising fashion, "thou shalt not divorce." Further, it is much more likely that a hard saying of Jesus was toned down in the oral tradition or by the Evangelist, than that, if the exception was originally mentioned, it was allowed to drop out of an authoritative history. There is an interesting parallel in the addition "without a cause" in the condemnation of anger in Matthew v. 22, though with the difference that the latter emendation was made by certain copyists of Matthew's Gospel, while the former may be supposed to have taken shape in the original text. These considerations are supported by recognised results of Synoptic criticism. Matthew uses Mark as one of his sources, and when, as in this case, he handles his source with considerable freedom the preference must be given to the earlier witness. He is also dependent on the primitive document now cited as Q; and as Luke also utilised Q, but does not give the exception in xvi. 18, there is reason for thinking that it was wanting in his second capital source as well. It may also be urged as a proof of the inferiority of Matthew's report that it gives the question of the Pharisees in a form

(xix. 3) which deprives it of its point as a means of "tempting" him, although it suitably leads up to the introduction of the exception on which the Evangelist laid stress.

It is an objection to the conclusion thus suggested that it goes counter to the theory that what is of cardinal importance in Scripture has its trustworthiness guaranteed, if not by verbal inspiration, at least by a conjunction of inspiration and providence. In any case, it would be a very decided innovation if the Church were to administer Scripture on such a conjectural basis. But waiving this objection, we ask, what follows if the conjecture be sound? Simply that we have before us one very important factor that has to be taken account of in dealing with a very complicated problem. There are other maxims of our Lord's ethical teaching, as has been observed, which are stated in equally unqualified form, and which admittedly are limited by other considerations when they come to be translated into practice. In certain cases the limitation arises from the competing claims of some other form of duty—as when the obligation to forgive injuries is qualified by the duty which we owe to society of aiding in the punishment of crime. Sometimes there is an unexpressed condition which governs the maxim—as in the condemnation of anger, where the A.V. addition "without a cause" is, if spurious, at least intelligent and ethically sound. Or again, a precept of Christ may claim absolute authority over His professed disciples, while yet it may be no duty of the civil power to attempt to impose it compulsorily on society at large. In the matter of oaths the civil power has even thought it necessary to make compulsory a practice which the Christian ideal seems to condemn. And in the case of divorce all of the limiting considerations which have been mentioned fall to be taken into account in judging of the lawfulness of the addition to Christ's assumed principle of the absolute indissolubility of marriage. There are

numerous occasions where the question involves a conflict of duties—when, for instance, there is on the one side an inoperative sentiment of loyalty to a violated union, and on the other the claim made, if not by a man's own interests, at least by those of his children, for the advantages of a full home-life. This also has a tenable view, though it is inconsistent with considerations that have been touched on, that the exception was so obvious Jesus could take it for granted, and that Matthew's Gospel only made explicit what the primitive Church had understood all along. With more confidence it may be affirmed that this is an instance in which a principle which has a place in the Christian ideal neither can nor should be embodied in legislation. It may be true, it probably is true, that all divorce is inconsistent with the Christian ideal, but it is another question how far the state ought to make that ideal compulsory on a community containing many non-Christian elements. "Political and outward order," as Calvin says, "are widely different from spiritual government" (on Matt. v. 31). The laws of the Kingdom make no mention of rights, but it is an elementary duty of the state to uphold the rights of its citizens; and it cannot reasonably refuse, while dispensing justice in regard to other wrongs, to accord redress to those who have suffered the extremity of injustice in marriage. The Church, as legislating for professed Christians, may make stricter laws, but it too ought to leave it to the arbitrament of the individual conscience as to whether a member should seek legal redress for this particular wrong which amounts to a subversion of the union. The exception in Matthew was, therefore, properly made if the law of Christ was not to be administered in an unintelligent and tyrannical spirit.

St. Paul has already been cited as a witness to the ethical maxim of his master, but it appears that he also recognised that it could not be made fully operative as law even in the

Christian society. After appealing to the authority of Christ in support of the general principle, he gives his own opinion in regard to a special case of hardship.

“ Yet if the unbelieving depart, let him depart, the brother or the sister is not under bondage in such cases, but God hath called us to peace ” (1 Cor. vii. 15).

The passage is not too explicit ; but what is certain is that the apostle is conscious of making an important deliverance, and one which has the appearance of conflicting with the teaching of Christ. This observation rules out a group of interpretations which reduce the counsel to something commonplace or even trivial—as that the deserted spouse is to accept the situation, or to refrain from worrying about it. The true meaning appears on a comparison of the language with that of Romans vii. 2 and 1 Corinthians vii. 39. In these passages it is said that a woman is bound to her husband while he is alive, but that if he be dead she is loosed, and free to marry another ; and when in 1 Corinthians vii. 15 a deserted spouse is declared not to be under bondage it would seem (the same idea being conveyed by *δέδεται* and *δεδούλωται*) that the deserted is placed on the same footing as a widow. That the apostle here contemplates a dissolution of the bond of marriage was common ground in the Protestant controversy with Rome—though it is disputed by a large body of Anglican opinion, and by some modern Lutherans. But on the Roman Catholic view “ the Pauline privilege ” was strictly limited to the case of a marriage contracted outside the Christian pale, and followed by the conversion of one of the spouses to the faith, and the desertion of the unbeliever. The justification given is that infidel marriages, “ though valid, are not sacraments, and, therefore, are wanting in the most potent ground of indissolubility ” (Bellarmine, *op. cit.*). The attempt to support this distinction by an appeal to the sacramental character of Christian marriage

is difficult to meet—less because of the strength of the argument than because of its intangibility ; but apart from this it is not easy to see how desertion by a heathen spouse in Corinth is differentiated from desertion by a modern heathen who is a Christian only in name. “ The apostle,” as Luther says, “ allows an unbelieving spouse to be put away, and leaves the believer free to take another ; why should not the same hold good if a nominal believer who is actually an unbeliever, deserts his spouse—especially if the desertion be final ? ” (*De Capt. Babylon.*). That St. Paul only mentioned the deserting unbeliever may well have been due to the fact that desertion did not occur at the time in Christian marriage.

The common feature of adultery and malicious desertion is that they frustrate one or more of the chief ends of marriage, and thus constitute a wrong for which the injured spouse is entitled (if so desirous) to redress ; and the justification of allowing divorce in these cases is that it can be granted, as experience shows, with a balance of advantage to society. There are, however, other forms of grave injustice which are experienced in marriage ; and the question arises whether these also can be safely allowed as grounds of divorce. Many of the older Protestant writers pointed out that the category of desertion may reasonably be held to include the complete alienation of affection which issues in attempts to take away the life, to corrupt the morals, or to destroy the faith of a spouse (*Forbes, op. cit.*) In the modern literature of Christian ethics it is commoner to lay down some such principle as that “ where the essential bond of marriage is broken, where matrimonial fidelity is destroyed in its roots, but also there only, divorce is lawful ” (*Martensen, Christian Ethics*, iii. p. 42). From both points of view the extension seems to follow naturally and even necessarily. The difference is only superficial between desertion and such offences as habitual drunkenness and

aggravated cruelty. The latter may even constitute the more heinous wrong, by so much as sins of omission are worse than sins of commission ; and the mere departure of a spouse may be a lesser injustice than a course of life which involves a wife in moral contamination, and tends to the corruption of the children. On the other hand, no one who values the stability of marriage will lightly throw over the doctrine of the Westminster Confession that nothing but adultery or wilful desertion is cause sufficient of dissolving the bond of marriage (xxiv. 6). In these cases Scriptural warrant can be pleaded. It is also of some importance that Scotland, which has adhered to the strict Scriptural basis, is almost the only country in which there is no agitation for change—the exceptions giving sufficient relief to prevent a sense of injustice, while there is no evidence that they have affected the popular estimate of the sanctity and the normal permanence of the marriage union. It is also an important consideration that the capital offences of adultery and desertion are easily judged, while the kindred violations of conjugal duty emerge in degrees of heinousness which must in many cases leave the verdict to the discretion of a tribunal.

III. THE LIMIT OF RELIEF.

It is a vital ethical interest of society that marriage should be recognised as essentially a life-long union. This is one of the gains of civilised man which is safe-guarded by the experience and the public opinion of the modern world, as well as by its religious forces. Hume gives reasons in support of it from the standpoint of common-sense—that the interests of the children demand permanence, that the knowledge that it is for better or worse lays a solid basis for friendship, and that “nothing is more dangerous than to unite two persons so closely in all their interests and concerns without rendering the union entire and total” (*Essay*

on Polygamy and Divorce). It is the usual doctrine of the ethical schools that an important end of marriage is to serve as a school of character, and that its moralising influence is largely dependent on the provision that its obligations are recognised as permanently binding. The argument is further strengthened by the Christian doctrine of the spiritual equality of the sexes, which gives the woman a title to be treated as a full personality. In view of the importance of upholding the stability of marriage it is, therefore, the duty of the legislator to see, not only that relaxations are jealously considered, but also to maintain a popular sentiment favourable to general indissolubility. It is highly desirable that the view should be upheld and fostered that divorce proceedings carry with them, at least for one party, a semi-criminal stigma ; and that the occasion of the divorce is one which is condemned by the representatives of the general conscience. This consideration requires us to draw a clear line of division between those grounds which are of the nature of vice or crime, and those which are of the nature of calamity, including enforced desertion, insanity, prolonged sickness, childlessness, incompatibility of temper. The strongest case can be made out for allowing insanity, as the incurably insane may be regarded as dead ; and to concede the right of re-marriage to the other spouse might have no more adverse effect on popular opinion than the re-marriage of a widower. Childlessness has been allowed as a ground of divorce—it was sanctioned for a time in Prussia ; but it frustrates only one of the ends that are embodied in the worthy conception of marriage ; and what is lacking to the completeness of such a union may be supplied by the discovery of a higher bond of union, either in the too rare expedient of adoption, or in some form of philanthropic service. It is true that many cases of individual hardship arise under this general head, but the sum of these constitute

a lesser evil than the disintegration of the idea of marriage that is involved in conceding mere calamity as a ground of divorce. From the Christian point of view calamity has the character of a providential discipline, which in many cases has to be submitted to as the will of God, working for good to those who endure in faith and patience. The calamities of married life, in particular, as distinguished from its grave injustices, instead of provoking to revolt against the bond, are a summons to sympathy, forbearance and helpfulness. To allow them as a justification of the termination of marriage is disloyal to the Christian view of life and of God's hand in its trials and duties.

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