

Divorce and Re-marriage

In debating whether or not to accept the Book of Common Prayer as issued by Charles II in 1662, Richard Baxter offered:

"In things necessary unity. In things unnecessary liberty. In all things charity."

Broad Outline

To consider this matter we have to address four questions:

1. Is divorce permissible?
2. IF divorce is permissible is re-marriage permissible?
3. IF divorce is permissible what grounds are permissible?
4. IF divorce is permissible what is to happen concerning the children and property derived as part of the union?

Divorce is not sin

Then Joseph her husband, being a just man, and not willing to make her a public example, was minded to put her away privily. ~ Matt 1:19

FIRST ~ We must consider whether divorce is permissible. All else flows from this point.

Consider that when Joseph had found Mary to be pregnant, he intended to divorce her. For this, scripture gave him the accolade of being a "just" or kindly man (Matt 1:19).

Thus it seems that scripture approves of his action.

God is a divorcee

And I saw, when for all the causes whereby backsliding Israel committed adultery I had put her away, and given her a bill of divorce; yet her treacherous sister Judah feared not, but went and played the harlot also. ~ Jer 3:8

Not only Joseph, but God Himself instituted divorce against His spouse. Jeremiah explains that Jehovah divorced Israel (Jer 3:8).

In this scripture we see not only the permissibility of divorce but the grounds for it. Israel was put away for her adultery, or more correctly, her breach of covenant. The image of God as one who institutes divorce against His unfaithful spouse is also to be seen in Hosea where Jehovah expels Israel from the marriage home, being the land (Hos 9:15, Jer 11:15).

The Law provides for divorce

Lastly, The Law provides for divorce. There are many Mosaic instructions which pertain to the basis and means of divorce.

So if divorce is sinful or forbidden then we find:

1. Joseph has been incorrectly credited.
2. The Scriptures advocate that which is evil.
3. God Himself is a sinner.

Now it might be that such things were acceptable in the Old Testament but are not now acceptable in the New Testament. Were it not for the unchangeability of God, this argument may have some credit. Notwithstanding we will address the New Testament position in due time.

Thus I am lead to believe that divorce is permissible.

Is divorce a good thing?

If The Law provides for divorce then it might be tempting to suggest that divorce is a good thing. Deuteronomy includes rules about the regulation of warfare (Deut 20:1-21). This is not to say that God approves of war, but that, knowing that we live in a fallen world where wars will occur, there is a need for rules.

He said to them, "Because of your hardness of heart Moses allowed you to divorce your wives, but from the beginning it was not so. ~ Matt 19:8

The fact of The Law's guidance about divorce is not an endorsement of divorce but a recognition of the fallenness of man. As Jesus said, it was because of our "hardness of heart" that Moses allowed for divorce (Matt 19:8).

Divorce and Re-marriage (continued)

But we know that the law is good, if a man use it lawfully; ~ 1 Tim 1:8

If The Law is good, then to what ends should it be put? The Reformers argued that The Law fulfilled three purposes:

1. to display the character of God, and in so doing
2. to drive men to Christ, and
3. to constrain evil.

It is in this latter sense that we need to view divorce. The Law does not advocate divorce. Rather as all good law does, it sets both boundaries and freedoms. The requirement that I drive on the left hand side of the road:

- * creates a boundary on me which restricts where I can drive, but it also
- * creates a liberty for you in that it lets you drive faster and more safely.

The Old Testament divorce laws define what are the permissible grounds for formalizing a broken covenant. In this way, The Law:

1. Sets limitations against the frivolous or unfair annulment of a marriage, and
2. Gives the innocent party to a broken covenant the means of liberty from their partner's unfaithfulness.

By setting boundaries and guides to the terms of divorce, The Law seeks to constrain the harm caused by the sin which lead to a broken marriage.

Divorce does not equal sin. Divorce is:

1. God's gracious constraint against the sin of faithlessness in the marriage, as well as
2. His gracious remedy to the sin of infidelity in marriage.

The Law moves us from Grace to Grace

For the law was given by Moses, but grace and truth came by Jesus Christ. ~ John 1:17

There is a tendency today to argue that we are no longer under The Law because we have moved from law to grace (John 1:17-16).

And of his fulness have all we received, and grace for grace. ~ John 1:16

The context of John's statement points to a continuum between the Old and New Testaments (John 1:16). For in as much as we have received grace due to Christ's advent it is "grace upon grace". Jesus has brought to us a 'fulness' or 'completion' of grace. The grace which Christ brings is "grace upon grace".

For had ye believed Moses, ye would have believed me: for he wrote of me. ~ John 5:46

Thus we ought not see The Law in opposition to Grace, for then we would see Christ in opposition to Moses (John 5:46). Rather we ought see Christ's grace as the fullness of the grace which came to us in The Law.

The centrality of covenant

God is a covenant keeping God. And being the prime cause of the universe (or the sovereign creator of all that is) He is also a covenant making God.

Covenant is God's unilateral gracious act to bind Himself to a bilateral agreement. Within the context of this bilateral covenant, we see that God defines rules as to how His grace will be exercised. He promises:

- * Do this and I will prosper you.
- * Fail to do this or do something other than this and you won't prosper.

Thus we see the infinite grace of God in the fact that He unilaterally extends a covenant to us at all. And we see the functional periphery of God's grace in terms of those boundaries set within the covenant.

Divorce and Re-marriage (continued)

So if the effective functioning of God's grace and justice meant that He had to terminate His marriage with Israel, how much more might we expect that fallen men and women will feel the need to terminate a marriage which has been sullied by a covenant breaking spouse.

Here now we see the starting point for our pastoral handling of broken marriages. We have to urge grace and repentance but to do this we also have to establish in which direction the grace must flow and the extent of repentance required.

We must first establish culpability and then urge grace from the innocent as might allow for the guilty to repent, remembering that the grounds for God's divorce of Israel lay in two facts:

1. They were grossly and unrepentantly guilty of breaking covenant,

and

2. God was sublimely and unimpeachably innocent.

God did not cleave from Israel at her first infidelity. He persisted with her through the times of the judges and then the northern kings until after many hundreds of years He finally banished her into the hands of the Assyrians. Israel was not divorced until she had proven herself an habitual and unrepentant covenant breaker.

Moreover for all of her whoring, Israel could not sue for divorce against God because their infidelity had disqualified them from such a privilege. The same as he who seduces a virgin before marriage cannot ever divorce her after marriage in that his guilt disqualifies him from this right (Deut 22:28-29).

But what remedy does The Law offer to the victim of a covenant breaking spouse?

Grace in The Law

It is commonly thought that there are two ways to terminate a marriage:

1. Death will terminate a marriage.
2. Divorce will terminate a marriage.

But under The Law there are two kinds of divorce:

1. Divorce by certificate of divorcement.
2. Divorce by death.

Thus Biblically, there are three ways for a marriage to be terminated.

1. By death
2. By divorce under certificate of divorcement
3. By divorce due to death

There are over 20 sins for which the death penalty applied in the Old Testament. Amongst these were;

- * Adultery (Deut 22:20-25, Lev 20:10)
- * Rape (Deut 22:25-26)
- * Incest (Lev 20:11-17)
- * Homosexuality or sodomy (Lev 20:13)
- * Bestiality (Ex 22:19, Lev 18:23, Num 35:16-21)
- * Premeditated murder (Ex 21:12-14, Num 35:16-21)
- * Smiting (Ex 21:15) or cursing (Ex 21:17) father or mother
- * Apostasy (Deut 13:6-16)
- * Being a false prophet (Deut 13:1-5) or wizard (Lev 20:27)
- * Refusing to follow the decision of judges (Deut 17:12)

And for a woman

- * Unchastity before marriage (Deut 22:21).

Divorce and Re-marriage (continued)

Thus any Old Testament saint whose spouse was engaged in such sins could expect to be free to re-marry because their union would have been terminated by The Law's application of the death penalty.

This is not advocacy for a return to the death penalty but rather an attempt to set the context in which Moses' divorce laws applied.

And David said unto Nathan, I have sinned against the LORD. And Nathan said unto David, The LORD also hath put away thy sin; thou shalt not die. ~ 2 Sam 12:13

The fact that the death penalty applied can be seen from David's fear before Nathan when his adultery had been discovered. The prophet assured David that God had both forgiven his sin and had waived the appropriate punishment "you will not die" (2Sam 12:13).

It would seem that The Law's first remedy is divorce by death.

Yet an aggrieved spouse might be sufficiently disaffected at their covenant breaking partner as to want to be released from the marriage, but not so much aggrieved as to want the death of that partner.

So The Law offers that a marriage can be terminated by a certificate of divorcement.

Might it be that we see here the grace of The Law? In His mercy God has provided for the termination of a broken covenant in a manner which does not necessitate the death of the errant party.

This may be unsatisfactory for some since they find the death penalty an abhorrent punishment. Then let me offer two other aspects of grace in God's law concerning divorce.

1. It was common in the Middle East for a man to be permitted to reclaim his wife even years after he had abandoned her. This provision still exists today amongst the Muslims. A certificate of divorce was an act of God's grace to protect women.

2. Additionally a divorced wife would leave the household with the return of her dowry, which meant a further protection for the woman.

Is re-marriage permissible?

And I John saw the holy city, new Jerusalem, coming down from God out of heaven, prepared as a bride adorned for her husband. ~ Rev 21:2

SECOND ~ We must ask whether re-marriage is permissible. I would suggest that re-marriage is permissible for two reasons:

1. When Moses institutes divorce, he is at pains to explain the terms and limits of re-marriage (Deut 24:1-4)

2. If re-marriage were not permissible then God, having divorced Israel, would not be in a position to marry The Church to Himself (Rev 19:7 & 9 and Rev 21:2).

Grounds for divorce

When a man hath taken a wife, and married her, and it come to pass that she find no favour in his eyes, because he hath found some uncleanness in her: then let him write her a bill of divorcement, and give it in her hand, and send her out of his house. ~ Deut 24:1

THIRD ~ We come now to the grounds for divorce.

We will consider Jesus' position shortly but for the moment let us consider The Law. It would seem that divorce was permitted where some manner of "uncleanness" or "indecent" had been ascertained (Deut 24:1).

Thou shalt not uncover the nakedness of thy daughter in law: she is thy son's wife; thou shalt not uncover her nakedness. ~ Lev 18:15

The meaning of this verse seems to be a mystery to many. What activity would constitute an "uncleanness"? We are helped somewhat by the Hebrew. The word used is 'ervaw' meaning 'nakedness'. Thus if the spouse (husband) were to find some 'nakedness' in their partner, then grounds for divorce seems to have been available.

The term nakedness is used repeatedly in The Law as pertaining to some aspects of sexual activity (Lev 18:15-18 & 20).

Divorce and Re-marriage (continued)

And they were both naked, the man and his wife, and were not ashamed. ~ Gen 2:25

And the eyes of them both were opened, and they knew that they were naked; and they sewed fig leaves together, and made themselves aprons. ~ Gen 3:7

Remembering that God is a covenant making and a covenant keeping God, we might ask ourselves where "nakedness" is first encountered in the Bible. We find it first in Eden. It is the consequence of Adam and Eve's sin. Or more precisely, it is the consequence of their failure to keep the covenant which God had extended to them (Gen 2:25 & Gen 3:7).

For as long as they were both obedient to the covenant their nakedness was not apparent (Gen 2:25) but once they had broken the covenant their nakedness became a matter for shame and remedial action (Gen 3:7).

For the LORD, the God of Israel, saith that he hateth putting away: for one covereth violence with his garment, saith the LORD of hosts: therefore take heed to your spirit, that ye deal not treacherously. ~ Mal 2:16

Thus again we find that the basis for divorce is covenant breaking. Here now we see the problem which Jesus faced. The Jews had for many years taken the word "uncleanness" as meaning anything which displeased the husband.

On this basis divorce was being allowed if the spouse (wife) had over-salted the food or had become fractious or worse still had become old! It is this manner of divorce which God hates (Mal 2:14-16).

Yet ye say, Wherefore? Because the LORD hath been witness between thee and the wife of thy youth, against whom thou hast dealt treacherously: yet is she thy companion, and the wife of thy covenant. ~ Mal 2:14

The scripture speaks emphatically of the injustice of Israel's husbands by divorcing and dealing treacherously with the wife of their youth, who is now being thrown over for a 'newer' model (Mal 2:14).

And did not he make one? Yet had he the residue of the spirit. And wherefore one? That he might seek a godly seed. Therefore take heed to your spirit, and let none deal

The scripture (Mal 2:15) shows us that:

- * the unjustly divorced wife remains the wife of covenant,
- * God Himself has entered into the union by His Spirit, and
- * God's desire is for a godly seed.

Jesus on divorce

This now brings us to Jesus' position on divorce.

All of the what I've said thus far is to demonstrate:

1. that the terms of divorce are a breach of covenant,
2. that by Jesus' time the fact of the legitimacy of divorce was never in doubt (either within Jewish society or pagan society), and
3. that by Jesus' time there had grown an abuse of process wherein men were being allowed to divorce their wives for trivial and unjust reasons.

And Pharisees came up to him and tested him by asking, "Is it lawful to divorce one's wife for just any cause?" ~ Matt 19:3

Read Matt 19:1-11.

The question being put to Jesus was not "is divorce permissible"? This was not in doubt. The Pharisee's concern was "can a man divorce his wife for 'any' and 'every' cause"? (Matt 19:3)

And I say unto you, Whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery: and whoso marrieth her which is put away doth commit adultery. ~ Matt 19:9

It would seem that Jesus' response was to set the grounds for divorce as being adultery. Anything other than this is unacceptable and is not a legitimate divorce. Since people who re-marry having been divorced without just cause, are considered by God to be in sinful relationships.

However I want to suggest that Jesus is providing a broader grounds for divorce than just adultery.

The word 'fornication' in the Geek is 'porneia'. Thayer offers the following as its definition:

- 1) illicit sexual intercourse
 - 1a) adultery, fornication, homosexuality, lesbianism, bestiality etc.
 - 1b) sexual intercourse with close relatives (Lev 18)
 - 1c) sexual intercourse with a divorced man or woman (Mar 10:11-12)
- 2) metaphorically the worship of idols
 - 2a) of the defilement of idolatry, as incurred by eating the sacrifices offered to idols.

Divorce and Re-marriage (continued)

Thus it seems that Jesus has found in one word most of the causes which The Law had hitherto dealt with via divorce by death. Thus it seems that Jesus is taking the Pharisees back to the intent or terms of Mosaic Law and ministering it with grace.

What of abandonment and violence?

Some would suggest that sexual uncleanness is too limited a scope or too narrow a basis for divorce. What of abandonment or maltreatment or violence in the marriage. Aren't these legitimate grounds for divorce?

IF Christ's response to the Pharisees was to use The Law as the prime referent then it would serve us well to consider The Law, for The Law speaks not only in terms of what it prohibits but also in terms of what it affirms. This will help us to use The Law lawfully (1Tim 1:8).

There is a principle in The Law wherein "when the sin is prohibited, the contrary obligation is inferred".

Let him who stole steal no more, but rather let him labor, working with his hands the thing which is good, so that he may have something to give to him who needs. ~ Eph 4:28

We see Paul's use of this principle within Ephesians.

The commandment says "Don't steal". Paul urges not only that the thief will refrain from theft but that he will become generous (Eph 4:28). In this way he takes the prohibition and turns it around so as to emphasize the obligation.

Thou shalt not see thy brother's ox or his sheep go astray, and hide thyself from them: thou shalt in any case bring them again unto thy brother. ~ Deut 22:1

Moses' stipulations concerning the retention and care of a lost animal flow from the seventh commandment.

And if thy brother be not nigh unto thee, or if thou know him not, then thou shalt bring it unto thine own house, and it shall be with thee until thy brother seek after it, and thou shalt restore it to him again. ~ Deut 22:2

The Law required that a lost animal should be cared for until its owner came to claim it (Deut 22:1-2). The commandment "Thou shall not steal" makes it wrong to selfishly take something which is not our own. Here the contrary obligation requires that we will selflessly care for something which is not our own.

To grasp this principle helps us to understand Christ's answer to the question "Which is the greatest commandment?" (Matt 22:36). To love God (Deut 6:5) and to love others (Lev 19:18) are the obverse obligation (sometimes implied sometimes clearly stated) to every commandment and law.

IF love is the under-girding and implied obligation of The Law it would be tempting to suggest that a "loveless marriage" would be grounds for divorce. This is far too broad. Remember that good law provides boundaries as well as liberties. We need to look more closely to The Law in order to see its position on abandonment, neglect and violence as potential grounds divorce.

If he takes another wife to himself, he shall not diminish her food, her clothing, or her marital rights. ~ Ex 21:10

And if he does not do these three things for her, she shall go out for nothing, without payment of money. ~ Ex 21:11

The Mosaic Law provided guidance as to the rights of a Hebrew girl should her family be so poor as to have to sell her as a slave to a fellow Hebrew (Ex 21:1-11). Once promised or taken as a wife in this circumstance, the Hebrew girl could expect:

- * to be clothed,
- * to be fed, and
- * to be assured her conjugal rights.

Failure to provide in these three areas was a breach of covenant. Were the Hebrew girl denied any of these rights she was permitted to walk away from the union (Ex 21:11).

Remember that much of Moses teaching is "case law" or precedent. It is designed to show the practical and equitable application of The Decalogue. Thus if these things are true for a slave girl, then they must at least be equally true for a wife.

Divorce and Re-marriage (continued)

So when they continued asking him, he lifted up himself, and said unto them, He that is without sin among you, let him first cast a stone at her. ~ John 8:7

And they which heard it, being convicted by their own conscience, went out one by one, beginning at the eldest, even unto the last: and Jesus was left alone, and the woman standing in the midst. ~ John 8:9

This is a pastoral challenge. How much neglect is grounds for divorce? Remember that divorce is a solution but it should be a last resort solution. Before divorce can proceed there must be:

1. a case put by the innocent party against
2. an habitual and unrepentant covenant breaker.

In this instance we might do well to remember Christ's treatment of the adulteress when brought before Him in the temple (John 8:1-11). Her accusers sought the death penalty against her adultery. Yet coming to realize that their own guilt meant a similar penalty for themselves, they all left until there was none to accuse her.

Why didn't Jesus say so?

It might be asked why Jesus didn't say anything of these grounds for divorce when He was approached by the Pharisees. At that time Jesus was responding to a particular proposition. He was being asked explicitly about the interpretation of Deut 24:1-3.

Even so there is New Testament justification for the application of this Mosaic Law. The Apostle Paul clearly saw these three elements of the marriage covenant as being central to wedded life. They are each included in his treatment of marriage in 1Cor 7. He makes clear that:

- * sexual relations are important (1Cor 7:3-5)
- * food and clothing are important (1Cor 7:33-34).

To the rest I say (I, not the Lord) that if any brother has a wife who is an unbeliever, and she consents to live with him, he should not divorce her. ~ 1 Cor 7:12

But if the unbelieving partner separates, let it be so. In such cases the brother or sister is not enslaved. God has called you to peace. ~ 1 Cor 7:15

Thus we see that Paul affirms the Old Testament teaching on marriage. Furthermore in this way he lays the basis for divorce by abandonment, for Paul clearly allows that a Christian woman or man who has been abandoned by their non-Christian spouse, is not bound to the marriage but is free to re-marry within the faith (1Cor 7:13-15).

To the married I give this charge (not I, but the Lord): the wife should not separate from her husband. ~ 1 Cor 7:10

But and if she depart, let her remain unmarried, or be reconciled to her husband: and let not the husband put away his wife. ~ 1 Cor 7:11

We cannot leave Paul without considering what seems to be a clear prohibition on his part against divorce.

When Paul forbids that "the wife should not separate from her husband" (1Cor 7:10-11) it would seem that he is forbidding divorce. This is true.

Paul is forbidding a certain kind of divorce. There had arisen in Roman society a practice of "divorce by separation". The Romans allowed divorce if one or other of the parties just walked away. Fault did not have to be demonstrated.

At a closer reading the verb 'separate' is reflexive. Thus the woman was not to "separate herself" from her husband and the husband was not to just "dismiss" the wife.

Thus in these verses Paul forbade the sort of "no fault" divorce which we now have in Australia.

Violence in the marriage

What are we to do then if a husband is faithful to his wife and were to provide his wife with all conjugal necessity, raiment and accommodation but at the same time beats her? Are we obliged to return a woman to a violent home because there are no formal grounds for divorce?

There is one other principle in the lawful use of The Law that will assist us:

"You cannot use The Law to break The Law".

Divorce and Re-marriage (continued)

Keeping one's vow may not always be a 'righteous' decision

A person trapped in a violent marriage is caught under the impact of two commandments.

- * There is their own obligation to the fact that they have used God's Name to seal their vow.
- * There is their partner's obligation to the commandment not to kill.

To hold a person in a violent marriage because they vowed "for better or for worse" is to exercise the second commandment in a way which facilitates a breach to the sixth commandment.

It is to use The Law so as to break The Law.

Furthermore it is not a 'righteous' decision by the abused party.

Is it fair and just that one partner should be made to endure the abuse of another? Doesn't justice require that the parties will be treated equitably in the relationship?

Righteousness exalts a nation, but sin is a reproach to any people. ~ Prov 14:34

It serves us to remember that the Hebrew word for 'righteousness' is 'tsidkenu'. This same word also translated in many places as 'just'. Thus a righteous society is a just society (Prov 14:34). And a righteous decision will also be a just one.

FOURTH ~ We must consider what happens to property and children.

I haven't the time to deal with this matter extensively. Let me lay before you a proverb as indication of God's overall intention. "The wealth of the sinner is laid up for the just" (Prov 13:22). We are accustomed to this part of the verse but we often fail to recall that this is the second half of the verse.

A good man leaveth an inheritance to his children's children: and the wealth of the sinner is laid up for the just. ~ Prov 13:22

The full verse indicates that wealth is to remain in the hands of the righteous and by way of contrast, the wicked are to be disinherited.

Thus scripture tells us that wealth is part of God's means for advancing His kingdom. Wealth belongs to those who will keep covenant with Him and serve The King and His interests.

Remember that we are not dealing with "no fault" divorce. Divorce is the prerogative of the aggrieved party. Only the innocent can institute divorce proceedings against their partner.

And did not he make one? Yet had he the residue of the spirit. And wherefore one? That he might seek a godly seed. Therefore take heed to your spirit, and let none deal treacherously against the wife of his youth. ~ Mal 2:15

Thus on this basis the bias of distribution should be to favour the one who is going to raise the children in the fear of God and who will use His wealth to advance His kingdom (Mal 2:15).

Summary

Thus we find that:

1. Divorce is permissible. It is God's boundary on and liberty to the marriage vow.
2. Re-marriage is permissible.
3. The permissible grounds for divorce are gross and/or unrepentant covenant breaking in areas of sexual infidelity and physical neglect.
4. Decisions about equity in the disposition of children and property should be shaped according to how The Kingdom can be advanced and a Godly seed for that end ensured.

May God grant that we see fewer and fewer occasions where the application of this knowledge is called for.