David Instone-Brewer on Divorce and Remarriage

Douglas Jacoby, 2016, 2018

David Instone-Brewer is a British scholar who did his PhD on Rabbinic Judaism. He is thus well qualified to understand the issues surrounding marriage and divorce in the 1st century.

This document aims to present the most of the salient points in Instone-Brewer's *Divorce and Remarriage in the Church: The Social and Literary Context* (Grand Rapids: Eerdmans, 2002) and *Divorce and Remarriage in the Church: Biblical Solutions for Pastoral Realities* (Downers Grove: Intervarsity, 2003). The first volume is scholarly and draws directly on the ancient Hebrew and Greek. He does a brilliant job illuminating marriage and divorce contracts and their terms, payments and penalties involved in marriage, including bride prices and dowries, along with rabbinic discourse on divorce and remarriage. This is the book to read if you are familiar with the ancient languages and comfortable reading theology. Instone-Brewer's second volume is written for the general reader, including preachers, elders, and Bible teachers.

I have woven together elements of both works in the document. Every point and passage I have selected aims to faithfully represent the author. Further comments (my own) are written in blue. The arrangement of the material below is *not* the order in which it is presented in Instone-Brewer's books.

I. Relevant Old Testament Passages

Exod 21:10-11

If he takes to himself another woman, he may not reduce her food, her clothing, or her conjugal rights. If he will not do these three things for her, then she shall go out for nothing, without payment of money.

- This passage describes the rights of a slave wife: food, clothing, sexual love—that is, material support as well as emotional support.
- If her husband reneges, she may be released from the marriage. The rabbis correctly saw that if a slave had such rights, so did a free woman, who implicitly expected his faithfulness as a husband.
- If any of these four rights is neglected, there are grounds for legitimate divorce. The four grounds are withdrawal of physical support (food or clothing), withdrawal of emotional support (manifest in sexual engagement), and (implicitly) adultery. This does not mean there *should be* a divorce, only that if the innocent party initiates proceedings, she may be legally divorce.
- This passage is reflected in marriage vows ancient and modern. These vows have hardly changed for 1000 years. I, *N*, take you, *N*, to be my wife, to have and behold from this day on, for better or for worse, for richer, for poorer, in sickness and in health, to love and to cherish; until death do us part."
- The vows are reflected in several biblical passages, such as Eph 5 (Christ as groom, church as bride) and Ezekiel 16, where we read that God kept all four of his marriage vow commitments to Judah: love, food, clothing, faithfulness. *"In contrast, Judah broke all four of her vows: she did not return God's love; she committed adultery with idols; she presented idols with the food that God had given her; and she decorated idols with the clothing and jewels with which God had honored her" (Ezekiel 16, especially vs.8-13, 15, 19, 16-18).*
- Marriage has historically been understood as contractual. Failure to feed, clothe, and love constitute unfaithfulness to one's marriage vows. And neglected marriage vows justify divorce. Interestingly, the Middle Assyrian laws allowed divorce for neglect, though a woman had to wait 5 years before remarrying. In contrast, in the O.T. there is no time limit, making it far easier for the wife (or mother) to find security in another husband.
- Divorce for broken marriage vows (once the infidelity was proven in court) was still practiced up to 70 AD. However, by Jesus' day no-fault divorce ("any cause") was predominant.

Deut 24:1-4

When a man takes a wife and marries her, and it happens that she finds no favor in his eyes because he has found some indecency [literally, something like "the nakedness of the matter"] in her, and he writes her a certificate of divorce and puts it in her hand and sends her out from his house, and she leaves his house and goes and becomes another man's wife, and if the latter husband turns against her and writes her a certificate of divorce and puts it in her hand and sends her out of his house, or if the latter husband dies who took her to be his wife, then her former husband who sent her away is not allowed to take her again to be his wife, since she has been defiled; for that is an abomination before the Lord, and you shall not bring sin on the land which the Lord your God gives you as an inheritance.

- The purpose of the divorce certificate in Deut 24 was to protect the woman against future claims by her husband, thus enabling her to remarry. "It provided her a clean and proper ending to a broken marriage."
- A man unsure of whether the first husband was coming back to claim his woman, or the children, or her assets, would be far less likely to marry her.
- Deut 24 was not originally understood as referring to adultery. After all, the Law of Moses had a death penalty for adultery.
- Deut 22:13-18 implies that in O.T. times groundless divorce was not permitted, or else it resulted in severe financial penalty.

"When the Pentateuch is compared with the laws of the surrounding cultures, its distinctiveness does not lie in the monogamist ideal or restrictions on remarriage. The Pentateuch assumes that both polygamy and divorce occur, and neither is criticized. Its distinctiveness lies in the relatively greater rights of women within marriage and remarriage, and the greater rights to divorce and remarry. The only absolute distinctiveness was the right of a woman to a divorce certificate, which affirmed that she was free to remarry. This certificate, which was the right of a few privileged women in some ancient Near Eastern legal systems, was extended by the Pentateuch to all divorced women. This certificate freed women from the fear that their ex-husbands could reclaim them after abandoning them. The wording of the ancient Near Eastern certificates was similar to the traditional rabbinic *get*, which states 'you are free to remarry any man you wish.'"

In the Intertestamental Period there were changes in divorce law. Yet while women got more rights, marriage and family suffered instability.

II. What the rabbis taught (and disputed) in the time of Christ

There were two major interpretations of divorce law, both turning on the phrase "the nakedness of the matter" in Deut 24. The school of Shammai taught that the grounds indicated in Deut 24 were not frivolous, but serious breaches of the marriage covenant. The school of Hillel allowed divorce for "any reason," including her burning the dinner, or losing her beauty.

School of Hillel	More liberal	"Any cause"
School of Shammai	More strict	Grounds required (adultery+)

"Any cause" divorce is mentioned in Josephus, Philo, and early rabbinic sources. This was the position of Hillel, in contrast to the stricter view of Shammai, who insisted there must be legitimate grounds. We know from the ancient

documents (recording the dispute between Hillelites and Shammaites) that the Shammaites included other grounds besides adultery, like neglect—as in Exodus 21.

In Matt 1:19 Joseph would have been able to divorce Mary by means of the "any cause" clause. Mary had not committed adultery, although she was suspect (even by Joseph). Further, we read that he was a righteous man. Apparently we are not to criticize him for intending to resort to quiet, "any cause" divorce.

Hillelite judges would not require evidence of grounds for divorce. In contrast, the Shammaites required evidence of neglect, unfaithfulness, or infertility. (The discussion of infertility is omitted from my synopsis.) Interestingly, the majority of Jews in the time of Christ considered the Hillelite form of divorce as the most righteous, as it brought less publicity to and shame on the family.

Thus when Jesus is quizzed about where he stands in the debate – and although he agreed with the Shammaite position (divorce must have grounds) – he not only repudiates easy divorce but pleads with his listeners to return to the spirit of God's original plan for man and woman.

No 1st century Jewish group prohibited remarriage after divorce. In the Roman world, remarriage was mandatory after 18 months; not to remarry was to break the law. Thus it would be quite strange if Jesus and Paul taught against remarriage. (Of course they did—in the case of a divorce without biblical cause, but such a divorce is not a true divorce.)

After 70 AD, the Shammaites, Sadducees, Herodians, and Essenes of Qumran all disappeared. The more liberal "any cause" divorce of Hillel was now the only sort of divorce familiar among the Jews. The condensed language of the remarriage passages was no longer intelligible.

"Jesus used the same terminology as the Shammaites, in the same context, at the same period, and in a debate where Shammaites or their rivals the Hillelites were present. We may therefore confidently conclude that the same meaning by these words that the Shammaites said 'except… for a matter of indecency' in the context of this debate about 'any matter' divorces, they meant that Deuteronomy 24:1 allows no type of divorce except that for indecency. They did not mean that Scripture allows no divorce except that for indecency because they allowed other divorces on the grounds in Exodus 21."

III. Relevant New Testament passages

Mark 10:2
Some Pharisees came up to Jesus, testing Him, and began to question Him whether it was lawful for a man to divorce a wife.

- This passage is highly abbreviated. We should know this because it wouldn't make sense for experts in the Law to ask Jesus if all divorce was against the law.
- Matthew expands the passage slightly (including more of the original discussion). Yet still is not enough information for modern readers to grasp the underlying debate.

Matt 5:31-32
"It was said, 'Whoever sends his wife away, let him give her a certificate of divorce'; but I say to you that everyone who divorces his wife, except for the reason of unchastity, makes her commit adultery; and whoever marries a divorced woman commits adultery.

- The person who remarries is not necessarily a literal adulterer, any more than the one who hates is a murderer.
- Matt 5 has a number of hyperboles, and the placement of the remarriage section amidst patently figurative examples strongly suggests Jesus' language about remarriage too is hyperbolic.
- There is no record of Jesus ever asking anyone to separate from a second husband or wife if the divorce was invalid. "Just as someone who hates his brother is not to be prosecuted for murder, so one who has remarried is not to be accused in court of committing adultery."

Matt 19:3-9

Some Pharisees came to Jesus, testing Him and asking, "Is it lawful for a man to divorce his wife for any reason at all?" And He answered and said, "Have you not read that He who created them from the beginning made them male and female, and said, 'For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh'? So they are no longer two, but one flesh. What therefore God has joined together, let no man separate." They said to Him, "Why then did Moses command to give her a certificate of divorce and send her away?" He said to them, "Because of your hardness of heart Moses permitted you to divorce your wives; but from the beginning it has not been this way. And I say to you, whoever divorces his wife, except for immorality, and marries another woman commits adultery."

- Notice how Matthew has edited Mark 10:2. Matthew provides greater clarity to the reader, referring to the "any cause" divorces so common in the first century. (Note: most scholars assume Mark was written by 65 AD, while they place Matthew sometime in the 70s.) There is a perfect parallel in Mark 8:11-12 / Matt 12:39:
    - In Mark we read: *The Pharisees came out and began to argue with Him, seeking from Him a sign from heaven, to test Him. Sighing deeply in His spirit, He said, "Why does this generation seek for a sign? Truly I say to you, no sign will be given to this generation."*
    - Yet in Matthew we read, *But He answered and said to them, "An evil and adulterous generation craves for a sign; and yet no sign will be given to it but the sign of Jonah the prophet."*
    - Mark doesn't bother to mention the obvious exception. If we fail to read him on his terms (and with some literary sensitivity) we will likely draw incorrect conclusions.
- The hard-heartedness Jesus mentions in Matt 19, commenting on Deut 24, refers to the guilty partner. If by repeated adultery or neglect it is clear that the guilty partner has no intention of changing, then divorce is a permissible, if lamentable, option.

1 Cor 7:10-12, 15

But to the married I give instructions, not I, but the Lord, that the wife should not leave her husband (but if she does leave, she must remain unmarried, or else be reconciled to her husband), and that the husband should not divorce his wife. But to the rest I say, not the Lord, that if any brother has a wife who is an unbeliever, and she consents to live with him, he must not divorce her… Yet if the unbelieving one leaves, let him leave; the brother or the sister is not under bondage in such cases, but God has called us to peace.

- Paul and Jesus agree on divorce among God's covenant people. Assuming there are no grounds for divorce, anyone who deserts her Christian husband is still married to him. Ideally reconciliation will be reached. Otherwise, she must live as a single person. Of course, if he breaks his marriage vows, she has grounds for pursuing a divorce.
- Paul reveals the Lord's will on an issue common in the Greco-Roman world: mixed marriages. A Christian has a pagan spouse.
- Since separation *was* divorce in the Roman world, if the unbeliever left, the Christian spouse was free to remarry ("not under bondage"). If Christians could *not* remarry, they would still be in bondage to a spouse.
- Marriage is not a sacrament, creating an irreversible state of matrimony. The sacramental view (born in the 2nd century) is not supported by the N.T.—as though one were permanently married to one's spouse no matter what happened, or regardless of the level of abuse one suffered.

- Paul accepted neglect (abandonment) as grounds for divorce and remarriage. He refers also to withholding of conjugal love. Thus the promises of the marriage vows are in the background of everything he writes.

IV. What the Romans practiced in the time of Christ

In the Roman Empire, divorce was easy and frequent. In the modern West, our situation is similar.

In the Roman world, divorce was by separation. The English word divorce is derived from the Latin *divortium*, meaning separation.

It was illegal to remain single if you had become a widow or divorced for 18 months. (Augustus Caesar made this a law in 18 BC.) Christians whose unbelieving spouses had left would be under tremendous pressure to remarry—since not to do so was breaking the law.

V. About the Patristic writers

It is right for us to read the early Church Fathers, since they have much to teach us, and among them a spirit of zeal and faith burned bright. I encourage every serious Bible student to become familiar with the works of Clement, Ignatius, Justin Martyr, Irenaeus, Tertullian, and other strong Christians who lived out their faith in the century following the writing of the New Testament. Yet they were hardly infallible. As much as I revel in studying them (ever since stumbling on them in 1980), there are too many doctrinal errors and unbiblical emphases among them for us to assume they ruled correctly on every matter.

Some church fathers were unbalanced, even unnecessarily harsh, in a number of areas:

- No forgiveness for the one who caved in during torture.
- No forgiveness after baptism, or forgiveness for only *one* sin.
- Many of the martyrs, instead of fleeing—as Jesus told us to do in Matt 10—seem to have reveled in persecution, torture, and death. Polycarp and Ignatius are two prominent examples.
- The 2nd century saw the triumph of the Greek philosophical idea of the immortality of the soul, as well as its concomitant doctrine, the infinite torment of the lost.
- Remarriage was *discouraged* even where the N.T. allowed it, for example when one's spouse had died.

"Most people who use the Fathers to justify their interpretation of the divorce texts would, however, reject their teaching on 'no forgiveness after baptism.' This position is illogical, because the Fathers are far more likely to be aware of the original meaning of Hebrews [6:4-8; 10:26-31] than of the Gospels. Hebrews was written to Jews living outside Palestine in a largely Greco-Roman culture, while the Gospels are full of references to Jewish practices and vocabulary that would have been obscure to someone from outside Palestine. If one were to argue that the Fathers knew the social and linguistic background of the divorce texts better than do modern scholars, then one would certainly have to accept their interpretation of the passages in Hebrews for the same reasons. [They didn't.] However… the Gospel divorce texts would have been obscure even to Jews in this period."

As strange as this may sound, in some ways we are better positioned than the 2nd century church fathers to understand what Jesus and Paul meant, since we have access to multiple sources to which they were not privy:

- Dead Sea Scrolls fragments on divorce
- Newly discovered Jewish divorce certificates from the 1st and 2nd centuries
- Over 200 Aramaic, Greek, and Latin marriage and divorce papyri
- Rabbinic evidence datable to the 2nd century
- Divorce documents from the Geniza of the Cairo Synagogue
- Marriage & divorce papyri of the ancient Greek, Roman and Jewish world. This collection of papyri from the 4th C. BC to the 4th C. AD is available at http://www.tyndalearchive.com/Brewer/MarriagePapyri/Index.html

VI. Conclusions

1. Both Jesus and Paul reject "any cause" divorce.
2. Both the O.T. and the N.T. allow four grounds for divorce (desertion, adultery, failure to provide/protect, withholding conjugal love).
3. Without grounds, a second marriage is adultery. (Presumably if one's spouse remarried without due grounds, the adultery might justify divorce if initiated by his former spouse. That is, if your husband forced you out of the house, then married his girlfriend, his adultery implicitly constituted grounds for remarriage, even though there was no adultery at the point you separated. However, such grounds would not be needed for a valid divorce, since emotional and material neglect already gave sufficient grounds.)
4. The language of 1 Cor 7:39 (free to marry whoever she may please) is part of all standard ancient divorce documents.
    a. Thus it appears that widows and divorcees had equal rights – permission to remarry.
    b. Paul frees the woman from the structures of levirate marriage (Deut 25:5) – the brother of the widow is required to marry her so that her dead husband's lineage will not die out.
5. Yet the traditional church interpretation forbids remarriage except after death or adultery. This does not concur with the understanding of 1st century rabbis, Jesus, and Paul.
6. Divorce should be the last resort. "Paul and Jesus have the same message for two different cultures:
    a. Believers should never cause a divorce—that is, they should not break their marriage vows.
    b. Believers should not use a groundless divorce—Jewish believers should not use a Hillelite 'any cause' divorce, and no one should use the Roman 'divorce-by-separation.'"
7. "Presumably those who became followers of Jesus after an invalid divorce had to recognize that their previous marriage was technically still legal. They could either return to their partner or remain single. If they had remarried, they would presumably have to free the woman and return her dowry, as a Jew did after committing technical adultery… Similarly, if followers of Jesus become invalidly divorced against their will by partners who were not followers, they too had to try to return to their previous partners or remain single."

A word of wisdom

"It seems unlikely that we will be able to produce any systematic teaching on divorce simply from the scriptural passages. Even if we assume that the Holy Spirit preserved exactly those texts that would, through careful interpretation, yield every detail that we need, it is still unlikely that we will come to a simple consensus about how to reconstruct those clues. The two case laws about divorce in the OT do not add up to a systematic legal code. The two disputes about divorce in the NT, in the Jewish and Greco-Roman contexts, do not add up to a systematic theology. The best we can do is create a set of principles that are based on Scripture."