

DIVORCE AND REMARRIAGE - A BRIEF HISTORICAL REVIEW

By Allon Maxwell

In my lifetime, (now 61 years), social and church attitudes to divorce and remarriage have changed dramatically. When I was a child, divorce carried a stigma with it which caused adults to talk about it in hushed tones, especially if children might be listening. It was simply not acceptable to church people.

In 1936 this prevailing majority attitude amongst the common people forced the abdication of Edward VIII, King of England, when he insisted on marrying a divorced woman. It was unthinkable, in those days, that the kingdom should be ruled by a king involved in such a scandal. It was even more unthinkable that the Church of England should accept as its head, a king who was married to a divorcee. Edward and his twice divorced wife were forced to live outside England, in exile, for the rest of their lives.

In the business world men who were involved in divorce, (especially if they were the "guilty party"), were often regarded as potentially unreliable, either for employment or state office. It was common for these people to be dismissed, or forced to resign, to remove the taint of scandal from their place of employment.

These attitudes extended to the world of entertainment. Amongst the famous, divorce and remarriage were considered scandalous and reprehensible. It was not even acceptable for the heroes of novels or movies. At first when such topics began to be introduced it usually caused an outcry.

It was rare to find a minister of the church who would remarry divorced people. Some could be found who would perform the service for the "innocent party", but if the congregation objected, a minister could lose his job.

It was common for ministers to refer the divorced to a civil Marriage Registry, where these marriages were almost invariably conducted. Sometimes after the civil ceremony, (and sometimes with a compulsory verbal "repentance"), "innocent parties" might be accepted back into a more liberal church. However it was also not uncommon for this to lead to a church split. In the stricter churches, remarriage could lead to excommunication.

In those churches which did accept the remarried into membership, there was often a barrier to their appointment to office. Laymen could be barred from acceptance as elders, deacons or missionaries. Ministers who divorced were regarded as no longer "above reproach" and were expected to resign.

THE WINDS OF CHANGE

Three main factors have contributed to an almost total reversal in attitudes now experienced in the 1990s.

1. During World War 2 there was a significant breakdown in moral standards. Soldiers away from home were notoriously promiscuous. Many lonely wives, with husbands posted overseas, sought affection from men who were more readily available. The divorce rate doubled. It was scandalous at the time, but in the next generation it subtly influenced attitudes towards easier tolerance, due to the increasing role in the community of the children of those second marriages.
2. After World War 2 there was popular media publicity of the flagrant immorality and multiple marriages of the Hollywood film stars, who became the heroes and role

models for a whole generation. Their example was readily accepted and copied by others who wanted to justify similar behaviour for themselves.

3. The third factor is the same old hardness of human hearts, failure to listen to God, unforgiveness, and cruelty, found by Jesus in the Pharisees of His day. Then, men sought licence from Moses for what they did. Today, they use the same methods to take licence from Jesus, to undo what God has joined.

In our time, the hard hearted have prevailed almost completely. With few exceptions, the Church now joins hands with the World whose values it has adopted, to condone what Jesus calls adultery.

Australia now has not only "no fault" divorce laws, but also wide ranging legislation which forbids discrimination on the grounds of marital status.

For instance, it is now illegal to consider a divorced party as potentially unreliable for employment or promotion.

There are many other ways in which these laws could be interpreted to make it illegal for Christians to refuse privileges which they might feel condone sinful behaviour.

The application of these laws has already touched the lives of some Christians in uncomfortable ways. The Media has reported at least one case in Sydney, where the court awarded substantial damages to a de-facto couple, against a Christian landlord who refused to rent them his house for the sake of conscience. The court ruled that his refusal to condone their relationship in this way, was illegal discrimination.

There are also problems with defamation laws. It has not yet happened in Australia, but one recent case was reported from U.S.A. where Church elders paid substantial damages for defamation when they publicly announced the disfellowship of a confessed adulteress engaged in an ongoing relationship. It has been claimed that the same sort of thing is probably now possible under Australian defamation laws.

I am old enough, and so are some of you, to remember and treasure the values of a time when the Church had not forgotten so many important things about this vital subject. It saddens me to see so many younger Christians growing up in a Church and in a World, where they are conditioned and deceived by the lesser values of this environment in which we now live.

We need to remind ourselves that neither the Church nor the World has always been so tolerant of the ease with which so many now change their marriage partners.

This paper presents a brief survey of Church and secular history, which will show that things have certainly not always been as they are now.

THE EARLY CHURCH VIEW

In this brief survey we will refer to non-canonical writings of the early Church.

This does not indicate approval for all that those writings contain. They are not the final authority on which we base our understanding of what Jesus taught about divorce and remarriage. Only Scripture has that authority. However they are certainly useful in understanding how the early Christians thought about what Jesus said, how they put it into practice, and how all that compares with what happens today.

On some Biblical topics there is great diversity in the writings of the early church fathers.

However on this subject, for the first five centuries of the Church, there is almost total agreement. The Church upheld a view of divorce and remarriage which was distinctly

different to the common practices of the Jewish, Roman and Greek societies with which it co-existed so uncomfortably.

Henri Crouzel is the French author of what has been claimed to be the most comprehensive study ever written on the subject of divorce and remarriage in the early church. (*"L'Eglise Primitive Face au Divorce du Premier au Cinquieme Siecle"* - Paris, Beauchesnes, 1971). Crouzel claims that for the first five centuries all Greek and Latin writers, except one, agree that marriage following divorce, for any reason at all, (including adultery) is adulterous.

The marriage bond was held to be irrevocable until one party died. Even though for most, it was acceptable, (and for some writers, compulsory), to put away an adulterous partner, this DID NOT, in the view of the Church, dissolve God's bonding of the two into one.

In those cases where a divorce had taken place for adultery, the "innocent party" did not have the right to remarry during the lifetime of their erring partner.

The same was true in the case of the so called "Pauline Privilege", ([1 Corinthians 7:15](#)). While their first partner was still alive the deserted Christian was expected to remain unmarried, or else be reconciled.

These writers include Hermas, (c. AD 140-150), Justin Martyr, (c. AD 150), Athenagorus, (c. AD 185), Clement of Alexandria, Origen and Tertullian, (all three early third century). Later Christian writers up to the end of the 5th century continue to confirm the tradition.

In those five centuries Crouzel identifies only one writer, Ambrosiaster (c. AD 366-383), who did advocate permission for marriage for deserted Christians and innocent husbands (but not wives!), in cases of adultery. In these attitudes he is in direct opposition to the dominant position of the early Church.

However, it does seem that there were at least some who disagreed in practice if not in preserved writings. Origen did take note of some Egyptian bishops in the third century, who he says *"contrary to Scripture have permitted remarriage of a woman while her husband was alive. They did it despite what was written (in [1 Corinthians 7:39](#))"*.

At the other extreme the council of Elvira (AD 306) ruled in Canon 8, that women who deserted their husbands without any valid reason and remarried, should never again receive communion, not even on their deathbed.

Canon 9 of the same council declares that women who remarried because of their first husband's adultery, should be barred from communion until after his death.

Canon 77 of Basil, Bishop of Caesarea (AD 370-79) insisted that those who remarried should not be received back into the Church until after seven years penitence. During that time they were required to weep for one year outside the church door, listen for two years in the vestibule, be prostrated amongst the catechumens for three years, and then stand upright amongst the congregation for one year. Finally, they then received communion!

Canon 10 of the council of Arles (AD 314) also ruled that Christians divorcing their wives for adultery, were forbidden to remarry.

In the case of adulterous remarriage the Church's demand for repentance included forsaking the second marriage. This made early Church discipline very difficult in a society where outside the Church, divorce was commonplace. It was as difficult then, as it is today, to persuade people to accept the church's position on divorce, in a society governed by public opinion. Many failed to accept Christianity on this count.

Many who had become believers lapsed when the test became too hard for them and were excommunicated as a result. However the canons quoted above indicate that there were some cases where genuine repentance occurred, which made it necessary for the church to develop a procedure to restore the penitent to the Church. While the procedure goes far beyond the teaching of Christ and Paul on forgiveness in such cases, it does at least indicate how far the Church of the time felt it necessary to go, in a bid to make the consequences of a second marriage totally unattractive.

Outside the Church, In AD 293 the Emperor Diocletian passed a law which permitted women to dissolve their marriages, simply by writing a bill of divorce, without any need to give it to their husbands or even tell them about it!

DIVORCE UNDER OTHER NAMES

It was not to be expected however, that the hard hearted would fail to find a way through the Church's verbal and written prohibitions. Although the teaching of the Catholic Church insisted on the absolute indissolubility of marriage, divorce was in fact practised under other names. There were two ways in which this could be done:-

- * A church approved separation without the right to remarry.
- * A decree of nullity which declared that the marriage had never really existed.
(This decree also conferred the right to remarry.)

To this present time the Papal "Decree of Nullity" remains the method by which the Roman Catholic Church pretends to itself that it maintains obedience to Jesus in this matter. By this outward form it caters for divorce, without using the word.

The philosophy behind the machinery for the nullity decree is found in the wording of the ancient marriage ceremonies. It is preserved in some marriage ceremonies of our own time. The old version of the Anglican prayer book contains the familiar words, "be assured that those who are joined other than in accordance with the will of God are not joined at all". The words in themselves, are of course clearly, in some special cases, a valid interpretation of Scripture. The problem lies with men who quickly found invalid ways to manipulate the words to suit the purposes of their hard hearts.

Initially, impediments to a valid marriage included:-

- * marriage outside the faith (i.e. one party not a Catholic).
- * nonconsummation of the marriage.
- * mental incapacity.
- * marriage under duress.
- * Prohibited blood relationships (which eventually included remote cousins and the like, far beyond anything envisaged in Scripture).

Under the influence of the fertile imaginations of the men who administered these laws, the range of impediments eventually became so vast that it was far more likely than not, that some ground for nullity could be found especially if it meant obliging the rich, who could fill the Papal coffers or confer some favour seen as useful to the church.

Because nullity decrees were seen as a source of revenue to the Church they were, in general, seldom available to the poor. These had to avail themselves of the simpler remedy of desertion and new de-facto relationships outside the approval of the Church. However the Church used the threat of eternal torment as a powerful deterrent to adultery and bigamy. In addition there was also the other more immediate penalty, which the Church could impose by handing the perpetrators over to the civil authorities.

Adulterers could be severely punished by flogging, imprisonment, or even death.

THE INFLUENCE OF ERASMUS ON THE PROTESTANT REFORMERS

For 1500 years the traditional view prevailed. It was not until the time of Erasmus, in the sixteenth century, that it began to be accepted in Protestant Reformation circles that, in some circumstances, remarriage after divorce could be justified for Christians. Erasmus introduced two concepts to the subject.

The first was that of freedom of remarriage for the "innocent party" to a divorce.

The second was that it should be permissible - not easily, but for very serious reasons - for ecclesiastical authorities, or recognised civil judges, to dissolve some marriages on other grounds not mentioned by Jesus.

On the continent, Erasmus' teaching was quickly taken up and supported, in one degree or another, by all of the major reformers. By 1563 the teaching had become so well established that the Catholic Church was compelled to take note of it at the Council of Trent, rejecting it and reaffirming the Church's traditional position.

Luther refined the teaching of Erasmus to allow for remarriage of the innocent party in virtually any case.

He reasoned, first of all, that since under the Law of Moses adulterers should have been put to death, the act of adultery actually made the offender legally dead, in his relationship to God and also to his partner.!

Luther then said that since the adulterer was considered as dead in the eyes of God, remarriage of the other spouse during the lifetime of the offender was as permissible as if they were actually dead!

Luther applied this same sophistry to the other cases. First, he permitted remarriage for the Christian deserted by an unbeliever. Then he then went on to say that if a Christian husband was so callous as to desert his Christian wife and children, he should be considered as no better, in the sight of God and men, than an unbeliever! He deserved the same punishment as an adulterer and could be regarded as dead!

This then entitled the believing partner to marry again.

Calvin was equally devious.

He did recognise adultery as the only valid cause for divorce and he granted freedom to remarry in such cases. However he also went on to say that the man who divorced his wife on other grounds made himself an adulterer.

For Calvin, it was inconceivable that such a desertion could take place without the deserter being involved in adultery at some stage.

It made no difference whether the deserting spouse was a believer or unbeliever. Adultery was presumed and the innocent believer who was deserted was entitled to remarry!

However, Calvin's approval for divorce and remarriage did not extend to divorce by mutual consent.

DIVORCE IN ENGLAND

From the time of William the Conqueror in 1066AD, until 1857, the regulation of marriage and divorce remained in the hands of the ecclesiastical authorities. Until 1534 this was of course, the Roman Catholic Church. After that time it was the Church of England. A formal marriage ceremony was not a legal requirement until Lord Hardwicke's "Act for the Better Preventing of Clandestine Marriages" was approved by Parliament in 1753.

The English Church

In 1527 Henry VIII asked Pope Clement VII for a special dispensation to annul his 18 year old marriage to Catherine of Aragon, to allow him to marry Anne Boleyn. However for political reasons, Clement refused. The situation in Spain at that time was such that he could ill afford to offend Charles V, who was King of Spain and also Catherine's nephew .

To achieve his goal Henry was forced to take matters into his own hands. In January 1533, with the aid and approval of the English Bishop Cranmer, he secretly married Anne. In May an English court declared Henry's marriage to Catherine null and void. The Pope countered by excommunicating Henry, forcing him to move quickly to reject Papal authority in England, in order to maintain the validity of his marriage to Anne. In 1534 the Act of Supremacy established Henry as "*supreme head on earth of the Church in England*". The break with Rome was complete.

In 1527, the same year that Henry first sought Papal approval for his new marriage, the English reformer, William Tyndale introduced the reformed teaching about divorce to England. Tyndale appears to have borrowed from both Luther and Calvin. He adopted Luther's rationalisation for remarriage after divorce for adultery and, like Calvin, he presumed adultery in the case of desertion.

However Henry's goal was not reformation of the church or of its teaching on divorce and remarriage. He merely wanted an English Catholic Church in place of a Roman one, so that he could be granted a "legitimate" annulment. It was not a desire for general divorce reform that led to the break with Rome, but his political need for his own personal annulment, and a new wife who might produce a male heir to succeed him on the English throne.

Consequently the views of the reformers were not adopted by the English Church. The Church's attitude to divorce remained unchanged from the 1500 year old tradition. The English Church's AD1603 revision of Canon Law provided for only separation or annulment. Divorce with permission to remarry was not available, even in the case of adultery.

Canon 107 required that separated partners "*shall live.....chastely and continentlyneither shall they, during each other's life, contract matrimony with any other person*".

The Scottish Church

The reformation was accepted in Scotland in 1560, and the Presbyterian Church was a political force to be reckoned with when the English Civil war began in 1641.

The Scots extracted a high political price for assistance given to the English Parliament in that war, which led to the temporary suspension of the English monarchy.

One of the political favours extracted at that time led to the Westminster Assembly of Divines, which met in London from 1643. This Assembly produced the Westminster Confession which was aimed at the reformation of the Church in England after the example of the reformed churches. Indeed for twelve years during the time of Cromwell, the established English Church was officially Presbyterian, although Cromwell hindered its full development.

The Assembly adopted the reformed views of Luther and Calvin with respect to divorce. Chapter XXIV, Section V gives permission for divorce in the case of adultery, and permission for remarriage to another party, as if the offending party were dead.

This piece of hypocrisy required lip service to Luther's fiction that a person could be regarded as "legally dead", even though they were still very much alive.

Section VI of the same document expressly forbids the dissolving of a marriage for any cause other than adultery and wilful desertion. However, divorce and remarriage required the approval of both church and a legal magistrate.

The Westminster Confession was adopted by the Scottish Church but was rejected by the English Church when the monarchy was restored in 1660, and episcopacy was reinstated.

Parliamentary Divorce

When Papal nullity decrees (which granted freedom to remarry) were no longer recognised by the Church of England, it was not to be expected that the hard hearted would long remain content with this new constraint.

The demand for some remedy outside the restrictive administration of the Church led to the institution of civil divorce through an Act of Parliament. The first such divorce was granted in 1668, in the House of Lords, in the face of vigorous opposition from those Lords who were also Church authorities.

Such divorces were extremely rare and costly. The difficulty with which they were obtained is indicated by the fact that only about 320 Bills of Divorce were passed by the Parliament in the next 200 years !

Of those 320 cases, only four were granted to women, all in the 19th century.

Even for men, the prior requirements for success were:

- a) proof of the wife's adultery,
- b) successful court action against the seducer for damages,
- c) ecclesiastical approval for the separation.

After that, the Bill had to pass through both Houses of Parliament.

The cost of a Parliamentary divorce was prohibitive for all except the very wealthy. It cost about 15-20 times the annual earnings of a tradesman. This cost left the poorer classes with no real recourse to Parliamentary divorce.

Many resorted to the simpler remedy of separation and/or desertion, with new de-facto relationships outside the approval of either church or state. These were viewed as adulterous, and the children of such unions were classed as illegitimate. Bigamists could be imprisoned.

Eventually this discrimination between the rich and the poor was recognised by Parliament, leading to the passing of "The Divorce and Matrimonial Causes Act" of 1857. This Act removed the regulation of marriage and divorce from both Church and Parliament to the secular courts.

Under the Act, the sole ground for divorce for male petitioners, was proven adultery on the part of the wife.

For female petitioners, the ground was "aggravated adultery". This was defined as adultery by the husband, accompanied by persistent physical cruelty towards the wife.

DIVORCE IN AUSTRALIA

In Australia there were no legal divorces from either Church or State from the time of settlement in 1788 until 1860. The colonists had to resort to de-facto separation when their marriages broke down.

After the English act of 1857, the several separate State colonies were invited by the Crown to establish similar laws for their own territories. This they did, each in their own right, following the English pattern for grounds. New South Wales was the last to act, in 1873.

By the end of the 19th century, most States had added additional grounds for divorce. For example, in 1892, New South Wales added desertion for three years, habitual drunkenness over a period of three years, or conviction for assault and cruel beatings of the petitioner.

The Federal Matrimonial Causes Act of 1959

After Federation in 1901, divorce remained in State hands until the enactment of a Federal uniform divorce law in 1959. This Matrimonial Causes Act came into effect in 1961, in the face of vigorous opposition.

This new law included some fourteen grounds of fault, on which divorce could be immediately available. It also introduced the controversial "No Fault" provision, which allowed for divorce after five years separation, irrespective of fault.

The Act was hedged about with strict limitations on the availability of divorce. These included a restraint that no divorce proceedings could be initiated until three years after the marriage was entered, (except by special leave of the court). This "special leave" was not easily obtained but would usually be given in cases where an early new marriage would legitimise the impending birth of a baby conceived in adultery.

Under the five year No Fault provision, no divorce could be granted where it could be shown that the decree would be harsh or oppressive, or against the public interest. However, in practice, this provision was seldom invoked.

This was the heyday of the private detective, many of whom made a great deal of money gaining evidence of "fault", (and often arranging, quite illegally, for the conditions of connivance under which evidence of adultery could be obtained - complete with photographic "proof"!)

The Family Law Act of 1975

The Australian divorce law was changed again in 1975 when the Family Law Act made divorce readily available to all, on the sole ground of "irretrievable breakdown of the marriage".

This ground is established to the satisfaction of the Family Law Court by 12 months separation of the parties. The separation may even be valid if both parties continue to live under the same roof, as long as they testify that they did not sleep together, eat together, or go out together. The Act imposes only four limitations on the availability of divorce:

- a) No divorce can be granted if reconciliation seems at all likely. In practice, this takes only one party to declare that the marriage is irretrievable, even if the other party declares that they are willing to reconcile.
- b) The Family court must canvas the possibility of reconciliation. In practise this consideration is merely nominal and the law in this respect is satisfied by the giving of small brochures to the parties, listing available counselling facilities.
- c) The Act provides for the establishment of an information and counselling service, attached to the Family Court. It also provides for financial assistance for approved marriage counselling organisations. In practice, the role of counsellors is often not so much to try to prevent divorce, but to encourage the parties to settle financial and child custody issues, without too much conflict.

They are more often engaged primarily in conciliation rather than encouraging reconciliation.

- d) No final divorce decree will be made until the court is satisfied that proper arrangements have been made for the wellbeing of any children. In practice, while misconduct in the broad sense is still relevant to the issue of custody, this can often result in moral considerations, important to Christians, being ignored in favour of other matters which the court also considers important.

For instance, it is no longer unusual for these "proper arrangements" to consign the children to live with parents involved in adulterous or even lesbian relationships.

DIVORCE TRENDS IN AUSTRALIA

The table below shows the trend in Australian divorce statistics for the 20th Century.

It shows clearly the alarming general increase in the rate of divorce. It indicates the effect of changes in legislation. The sudden increase at the end of World War 2 is also shown.

Since the introduction of the "No Fault" Family Law Act legal divorces in Australia have increased from about 24,000 in 1975, to 46,000 in 1992. (Compare that with the figure of about 360 at the turn of the century!

Or more interesting still, compare it with the older English figure quoted elsewhere, of only 320 for the two hundred years from 1668!)

CONCLUSION

We look back on nearly 2000 years of history, during most of which marriage vows have been held sacred by the majority of the church and divorce has been severely restricted.

Even after the changes introduced by the Protestant Reformation, which began to make divorce and remarriage more easily available, the numbers availing themselves of the opportunity were insignificant in comparison with our own generation.

Statistics indicate that we are now faced with a virtual landslide. It is currently estimated that up to 40% of all marriages contracted in 1993, will end in divorce within the first 10 years. There is every indication that this rate can be expected to increase in the future.

The great tragedy is that the Protestant Church seems to have lost its way, forgetting all that was once known to its antecedents. The hard hearted men in the Church of our time have triumphed.

Instead of holding up the light of Truth they have joined the unbelieving World in a mad rush to accommodate wilfully blind disobedience to the teaching of Jesus.

That teaching is now almost totally ignored, forgotten, or explained away.

APPENDIX I - DIVORCE STATISTICS FOR AUSTRALIA 1900-1991

| Year | Number of Marriages | Total Number of Divorces | Population | Divorce Ratio per 100,000 Population | |
|------|---------------------|--------------------------|------------|--------------------------------------|---|
| 1900 | 23,300* | 357* | 4,500,000 | 8 | |
| 1938 | 56,000* | 3,087 | 6,936,000 | 45 | Last year before WWII |
| 1946 | 74,000* | 7,235 | 7,639,000 | 95 | First year after WWII |
| 1959 | 74,000* | 7,370 | 10,801,000 | 68 | Last year before Matrimonial Causes Act |
| 1962 | 74,000* | 7,290 | 10,800,000 | 68 | |
| 1975 | 112,800# | 24,307 | 13,771,000 | 176 | Last Year before "No Fault" Family Law Act. |
| 1976 | 106,300# | 63,267 | 14,033,000 | 439 | First year after "No Fault" Family Law Act |
| 1978 | 106,300# | 40,633 | 14,359,000 | 283 | Back to "normal" |
| 1991 | 114,000 | 45,630 | 17,293,000 | 264 | |

* Annual averages for decade # Annual averages for 5 years
(Source - Australian Bureau of Statistics Year Books - Extracted by Fred Blank.)

FURTHER READING ON THE BIBLICAL VIEW OF DIVORCE AND REMARRIAGE

For any interested in further study of what the Bible really says about this important subject, we have several other papers and a booklet available. These present the largely forgotten and ignored New testament teaching of Jesus, which calls for a return to faithfulness to marriage vows "until death do us part". The following Bible Digest Papers and booklet are available here:

<https://www.allonmaxwell.com/bdigest/Bible Digest Index.htm>

- * No 34. The Question About Divorce.
- * No 35. What Did Paul Really Say about Divorce?
- * No 36. Divorce and Remarriage - The Pastoral Implications.
- * No 39. What is "Porneia"? - A Hebrew and Greek Word Study - In English.
- * No 40. When God Divorced His "Wife". (Extract from No. 39)
- * No 41 Except For Fornication.
- * No 42 Divorce and Remarriage - Sorting out the Confusion of the Many Conflicting Theories.

FREE BOOKLET

"What the Church Has Forgotten About Divorce".