Five Essays on Marriage

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this came from Gray Blandy.

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Written at the request of

THE JOINT COMMISSION ON HOLY MATRIMONY

Published by The Cloister Press

at the request of

THE EPISCOPAL EVANGELICAL FELLOWSHIP

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Divorce and the New Testament

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I

In both the Jewish and the Graeco-Roman worlds marriage was regarded not as a civic but as a purely private and individual rite. There were no marriage licenses and no public marriage registers; and no civil or religious functionary officiated at marriages, which were exclusively the affair of the parties concerned. To be sure, certain unions, like those within prohibited degrees, were forbidden; if such were contracted they could be ordered dissolved. If questions arose about property rights, appeal could be made to the courts as in all questions about disputed property; it was on such appeals that problems of legitimacy were settled. If a minor contracted a marriage without his father's consent, the latter could invoke the civil power to annul the union. But apart from such incidental problems the authorities did not and could not interfere.

Under Jewish law the woman was still regarded primarily as property. She did not "marry" her husband but was "given in marriage" to him by her father or guardian; a terminology respected by Christ (Matt. 24.38, etc.). No priest, elder or Rabbi took any part in the wedding ceremony, which consisted simply of the groom's public appropriation of his bride; to this day in Orthodox Judaism the essential "form" of marriage is "I take thee to wife after the manner of the sons and daughters of the children of Israel," the bride saying nothing. In the Graeco-Roman world, however, woman's status was more advanced and the consent of both parties was required—that, but nothing else.

This conception of the marriage ceremony as a purely private matter was maintained in Christianity to a much later date than is commonly realized. In Ignatius the consent of the bishop is required before a marriage is contracted, but this rule never became universal. In the third century (and probably earlier) newly married couples

usually came to church to be blessed and to share in a nuptial eucharist; but the wedding itself remained wholly secular for another thousand years. Exceptionally at the wedding in 856 of the Saxon king Ethelwulf to Bertha, daughter of Charles the Bald, a priest blessed the ring but took no other part in the ceremony; the first recorded canon requiring a priest to officiate is found at Treves in 1227, but the requirement did not become general throughout Europe until after 1400.

II

What was true of marriage was correspondingly true of divorce; it was universally regarded as a private matter concerning only the parties involved, and nowhere was there anything corresponding to our divorce courts. Under Roman law either party could divorce the other at any time, with or without assigning reasons.[1] Under Greek law the husband had this privilege but the wife was obliged first to obtain the consent of a magistrate. Under Jewish law the right of the husband was unqualified but the wife could not exercise it under any circumstances; an owner can dispose at will of his property but property cannot dispose of its owner. The sole restriction laid on the husband was that he must give the divorced woman a "bill of divorcement," a certificate testifying that she was now released from his control.

This unrestricted right of the husband needs emphasis, for in modern discussions too much weight has been laid on the relevancy of Jewish Rabbinic disputes. It is true that R. Shammai taught that a man sinned if he divorced his wife unless she had been guilty of licentious behavior,[2] while R. Hillel told husbands that their consciences were clear if they merely preferred another woman. But such rulings were purely academic; as long as a husband gave his wife the required certificate and restored her dowry, no one could interfere with his divorcing her.

In one regard the Jewish conception of women as property was shared by the contemporary lawcourts throughout the Roman

[1] There was one special form of marriage, however, that admitted of no divorce; a form which for that reason was all but obsolete.
[2] Probably not to be limited to strict adultery.

Empire, in the definition of "adultery." In legal language this word described an offence against a man, never one against a woman; a husband could sue for damages if his wife was guilty of misconduct but she had no similar right if he misbehaved. But in the Graeco-Roman world the women were winning an increasing share in male privileges, so that in popular parlance "adultery" could be extended to cover a husband's misconduct as well as a wife's. Not, however, in Judaism where the term was defined by the Law (Leviticus 20.10): to the Jews the meaning of the word was thus divinely fixed forever. An unfaithful wife was an "adulteress," but a man became an "adulterer" only if his offence was committed with a married woman; the term could not be applied to him if his partner was unmarried.

Permanent legal "separation," as distinct from divorce, was unkown to both Romans and Jews. "Annulment," however, seems to have been understood. If a Jew should take a wife within the degrees specified in the Old Testament, according to the later Rabbinic ruling —and there is no reason to think this varied from the practice in New Testament times—it was null and void from the beginning and no bill of divorcement was issued when such a union was dissolved.

Two other rules in later Judaism may or may not have been in effect in New Testament times. If a marriage remained childless for a considerable period (eventually fixed at ten years) divorce was compulsory, since such a marriage was held obviously to lack God's blessing. And a procedure was invented to give women some relief from intolerable marriages, the authorities issuing what nowadays would be called a "mandamus" to the husband, ordering him to divorce his wife. But the act remained his, not the wife's.

III

The primary passage containing Christ's teaching on divorce is Mark 10.2-9, which records a discussion in strict rabbinic style. A question is propounded to the Rabbi, who by a counter-question asks the interrogators first to define their own position. This they do by citing Deuteronomy 24.1-4: Moses permits men to divorce their wives, provided the proper certificate is duly given. Christ replies that this concession by Moses is due to men's hard-heartedness; the

same Moses stated the divine ideal in Genesis 2.24. Therefore, since it is the ideal, not the concession, that men ought to follow, the conclusion is clear: "What God hath joined together, let not man put asunder."

To this public discussion Mark appends a "private" explanation given the disciples. Such explanations Gospel students have learned to view with some suspicion; in at least three cases in the Second Gospel (4.10 ff; 7.17 ff; 13.3 ff) they contain not the actual words of Christ but very early interpretations of the Church. And in the case of Mark 10.10-12 the interpretative character is unmistakable. The second clause, "If a woman shall put away her husband and marry another, she committeth adultery," states something impossible in Palestine; attempts to meet the difficulty by pointing to the case of Herodias are beside the mark, for she was universally regarded as an apostate whose actions were outside the Law. And in the first clause, "Whosoever shall put away his wife and marry another, committeth adultery against her," "adultery"appears in a sense that no Jew would use or understand. In Luke 16.18, "Every one that putteth away his wife and marrieth another, committeth adultery; and he that marrieth a woman that is put away from her husband committeth adultery," the first of these two difficulties is removed but the second remains. Both the Markan and the Lukan forms of this rule were framed under Gentile conditions, not under Jewish.

Abstractly, of course, it would be conceivable that it was Christ Himself who first used "adultery" in this new sense and so raised woman to man's plane; it was He whose tenderness to women seemed revolutionary. But against this supposition the evidence of the First Gospel is decisive, for in Matthew 5.31-32 great pains are taken to avoid this foreign sense of the word. The passage reads: "It was said, Whosoever shall put away his wife, let him give her a bill of divorcement: but I say unto you, that every one who shall put away his wife . . . maketh her an adulteress: and whosoever shall marry her when she is put away committeth adultery." Here everything is strictly Jewish. There is no question of the first husband's adultery if he remarry, for no Jew would so describe his conduct. He is, however, responsible for his wife's sin; the passage taking for granted that she will either remarry or fall into a life of shame. And in either case the

first husband is also responsible for the sin of her subsequent partner or partners.

But in one case the first husband cannot be said to make her an adulteress if he put her away, and that is if by her own act she has already made herself one while still married to him. Consequently the famous "exceptional clause" (omitted in the above quotation at the point indicated) is not a gloss but essential to completeness of statement; its presence in Matthew 5.32 gives the verse Rabbinic preciseness. This very preciseness, however, tells strongly against it as an authentic statement of Christ; He did not concern Himself with such meticulous detail. But telling still more strongly against it is its incompleteness, for—as must frequently have occurred—if the divorced wife neither remarried nor led an unchaste life, the first husband is free from all blame. He sins, only if his wife sins—and this Christ could never have meant to say. In other words, Matthew was familiar with the saying in its Markan form (certainly) and its Lukan form (possibly); they so impressed him that he endeavored to translate the thought into Jewish terms but succeeded very indifferently. If, however, Christ Himself had given "adultery" its Markan-Lukan definition, Matthew would not have had recourse to so roundabout a device but would have cited the Lord's words directly.

Matthew 19.9 remains for consideration. In the Authorized Version this verse is almost identical with Luke 16.18 plus the "exceptional clause." But a glance at the Revised Version shows that this text is doubtful and that in "some ancient authorities" Matthew 19.9 reads exactly like Matthew 5.32. A further glance at a textual apparatus will reveal that these "ancient authorities" are very ancient and authoritative indeed; they include the most celebrated codex of all, the Vatican manuscript ("B"), whose text is rarely contaminated by the influence of parallel passages. Moreover, the transcribing of the Gospels was carried on almost wholly by non-Jews, who were far more likely to change a Jewish wording to a Greek than vice versa. It is most improbable that Matthew, who is painstakingly Jewish in 5.32, would let 19.9 slip by him in a non-Jewish form. And—most important of all—while in 5.32 the "exceptional clause" is demanded by the context, in the "received" text of 19.9 it has no organic connection with the passage; it is added like a gloss and has perplexed

interpreters in all ages. In other words: The present form of Matthew 19.9—the verse most frequently cited in discussions of the divorce problem—is a textually corrupt Jewish-Christian revision of a Gentile-Christian interpretation of Christ's teaching.

IV

What Christ actually taught, then, was: A man and his wife "are no longer two, but one flesh; what, therefore, God has joined together, let not man put asunder." This and no more; the other verses cited above are very early Christian rules deduced from this primary saying. These rules take the primary saying as binding: Mark's and Luke's forms as binding without exception; Matthew's as admitting at least one exception. But there is one more New Testament passage to be considered.

As Christianity spread, a vexing problem made its appearance. Frequently one married partner was converted to the faith, while the other remained obdurate: what should then be done? To be sure the marriage was only a "natural" marriage—but it was of "natural," not of Christian marriages that Christ spoke. Even in "natural" marriages couples had been joined together by God; dared man put them asunder? Saint Paul did not hesitate in the least: "If the unbeliever depart, let him depart: the brother or the sister is not under bondage in such cases (I Corinthians 7.15). Why does Saint Paul presume so to contravene Christ's saying? Because he does not construe the saying in legal fashion but goes behind it to a higher principle: "God has called you in peace"; this peace of God, His precious gift to the soul would be utterly destroyed in any attempt to preserve an impossible union. And that Saint Paul means that in such cases the believer has the right to remarry should never have been questioned; this is accepted not only by all modern commentators but even by the usually ultra-strict matrimonial discipline of the Roman Catholic Church (the "Pauline Prerogative").

Saint Paul here goes to the heart of the matter: Christ's sayings are not "laws" in the sense that they bind exactly as they are worded; that they possess authority because they have been enunciated by authority. It was Christ's manner simply to state a principle in its

most extreme form, without indicating in any way how His statement is to be applied in special, concrete circumstances: "Swear not at all"; "If a man smite thee on thy right cheek, turn to him the other also"; "If thine eye offend thee, pluck it out and cast it from thee"; "When thou makest a dinner or a supper, call not thy friends, nor thy brethren, nor thy kinsmen"; "When thou prayest, enter into thy closet and shut thy door." All of these—and there are many others—are as unqualified as the saying on marriage, but everyone understands that in special circumstances all are to be interpreted by the higher rule of that love on which hang all the Law and the Prophets. If it be wrong to use this same principle in interpreting the saying on marriage, then Saint Paul went hopelessly wrong in granting his "prerogative."

Christ's meaning is plain. Marriage is God's creation and men and women are joined together in marriage to fulfil God's plan in creation; but it does not follow at all that every couple who have gone through the form of some marriage ceremony are so joined together. To assert this would be to assert a manifest absurdity, out of all relation to reality as we see it. It was the Montanists who developed this theory and carried it through with logical rigidity, reaching the conclusion that since a man and his wife are one flesh, remarriage even after the death of a partner is impossible.

Who then is to decide in such cases? When Christ uttered the saying, He uttered it for the consciences of individuals; when He spoke, it was only to individuals that He *could* speak, for there was and could be no social legislation on the subject. Each man must decide in his own case; just as he must decide when to take an oath, not to turn the other cheek, to invite only his friends to a dinner, and in all the other complexities of life. To erect any of Christ's principles into a law that will take into account all the possible exceptions and yet do full justice to the moral rigor demanded is impossible.

V

It was only "natural" marriage that Christ considered, the marriage that was part of God's creation, and on Christian marriage He did not utter a single word; He spoke to the Jews, not to His disciples.

Christian marriage is simply marriage between Christians and has a higher and more supernatural character because Christians have a higher and more supernatural character; its responsibilities are more intense because the responsibilities of Christians are more intense. Consequently the Church has always—and rightly—laid down rules to ensure that in this important regard the conduct of Christians is such as befits their calling. But the Church has never treated Christ's saying as so absolute that it admits of no exceptions.

In the Western Church the relaxation has come chiefly through a growingly intricate series of rules as to what constitutes a marriage; when these rules are not strictly observed at the beginning of the union, it may be dissolved no matter how long it may have endured, no matter how happy it may have been, no matter how many children may have been born of it. And these rules change constantly; marriages that were perfectly valid ten years ago may be pronounced null and void if contracted under similar circumstances today. That many of these rules are wise and sensible is not the point; the point is that in enforcing them the Latin Church appeals beyond Christ's actual words to a higher principle. When, for instance, among Roman Catholics of the Eastern Rites (the so-called "Uniats") at the present time marriages are blessed as sacramental which would be utterly rejected among those of the Latin Rite, it is admitted frankly that a sage expediency and not inexorable law is the guide. In the Eastern Churches, including the great Orthodox Church, a theory of "moral death" has been evolved, which in practice leads to liberality in permitting remarriage after divorce—and for many reasons outside of adultery. The result is today that members of the Anglican Communion are finding that they can retain their full standing as Catholics and obtain release from evil marriages by transferring their allegiance to the Orthodox Communion.

To say, then, that the voice of Catholic tradition teaches that all remarriage after divorce is sinful is to say something that is glaringly untrue.

VI

The above discussion has tried to move solely in the realm of history. But a word or two on the practical problem as it now confronts us

may not be amiss. To meet all proposals to relax strict rules with a sheer *non possumus* is out of the question; unless we can defend strictness by arguing from the higher law of love, our argument is sub-Christian. Yet perhaps the argument is possible. Undoubtedly we have no right to say that the problem can always be solved by the presence or absence of love in any given married couple. In the first place, "love," as taught by Christ, is not an emotion but an attitude of the will; emotions come and go past our control but a steady resolution of the will can carry married couples through countless difficulties. And in the second place, we must ask: "Love for *whom?*" Not simply that of a husband and wife for each other; a love that has vanished, perhaps. It is easy enough to say that they can love better if otherwise married; perhaps they can. But this is not the question. They are not the only married people in the world who are in trouble; countless couples learn how to transcend obstacles and win a higher and permanent affection for each other. If these were permitted to separate at the first quarrel, infinite harm would have been done them and our boasted "love" would have become a hellish thing. Even though Our Lord may have permitted exceptions from the principle as He gave it—and it is the contention of this essay that He actually permitted such exceptions—it may be best if His followers refuse to avail themselves of them. "All things are lawful, but not all are expedient"; probably in establishing a social "ethos" the force of example is more potent in marriage than in anything else; "if divorce causes my brother to stumble, I will forbear divorce forevermore."

Such rigidity may be undesirable—but it is arguable. But, as has been said, it is on the highest Christian principle, not on legalistic considerations, that the argument must be based.

Notes on the History of Marriage Legislation

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Primitive Marriage. It used to be held by distinguished scholars that monogamy developed gradually from earlier conditions of polygamy in its various forms of group-marriage, polygyny, and polyandry. It is now generally believed by anthropologists that monogamy was the "natural" or original form of human marriage, and that the different forms of polygamy arose with factors which began to operate as social groups increased in size. Some comparatively primitive tribes appear to have held a principle of strict indissolubility, but in general human societies have permitted divorce and remarriage, though they have usually surrounded the privilege with difficulties.

Jewish Views on Marriage and Divorce. Monogamy, though not prescribed, was the usual state among the Jews at the time of Our Lord's birth. The Mosaic legislation permitted divorce and remarriage, but attached certain restrictions. Divorce was the sole prerogative of the husband. He must deliver a bill of divorcement to the woman and return her dowry unless her offence was heinous, and could under no circumstances take her again as his wife if she had contracted marriage with another after he had dismissed her. At the beginning of the Christian era there were two schools of Jewish thought as to divorce. One maintained that only a very serious cause justified it; the other asserted the right of the husband to divorce his wife without assigning any reason at all. The laxer view prevailed. Though the woman could not dismiss her husband, she obtained the right, if not by the beginning of the Christian era at least soon after, to appeal to the court, which could impose such penalties on the husband as would induce him to divorce her These qualifications, and the general deprecation of divorce by Jewish moralists, led in the eleventh century to the abrogation of the absolute right of the husband

and the requirement that good cause be shown or that both paries consent to the divorce. But though the Jews made divorce progressively more difficult, they never doubted its lawfulness.

Marriage and Divorce in the Roman State. Roman custom assigned an honorable and dignified position to the wife, and the marriage was initiated by ceremonies which have bequeathed certain details to the Christian forms. Monogamy was the rule. In the early period of the state there had existed a special variety of patrician marriage which was of a sacramental character and dissoluble only with great difficulty, but by the beginning of our era this type of marriage seems to have been of rare occurrence. For the ordinary form of marriage divorce presented few if any difficulties. It was a purely private matter, and either party could dismiss the other without assigning any reason. Divorce and remarriage under the Empire were, as might be expected, extremely frequent.

The Christian Community before A.D. 300. In strong contrast to the theory of the Roman and Jewish systems, the prevailing teaching of the early Church was that the marriage of Christians was absolutely indissoluble. The authority appealed to was the pronouncements of Our Lord himself, which have been discussed in another paper of this series. St. Paul (I Cor. 7.10-11) recognized the possibility of separation but denied the possibility of remarriage; he makes no mention of the exceptive clause of Matthew, and indeed writes as though he had never heard of it. The testimony of the early Fathers is rendered at times ambiguous by the fact that their terminology does not distinguish between separation without power to remarry (*divortium a mensa et thoro*) and dissolution of marriage with power to remarry (*divortium a vinculo*). Two of the early Fathers (Tertullian and Lactantius) provide texts which, if taken in isolation, would appear to cite the exceptive clause as sanctioning remarriage after a divorce for adultery, but if the passage in Tertullian is given that meaning, it commits him to a position inconsistent with the general line of the argument in which it occurs and directly contrary to the position he takes elsewhere. The passage in Lactantius is not without ambiguity. One early Father only, the so-called Ambrosiaster, clearly advances the exceptive clause as Scriptural authority for remarriage after divorce. It is quite certain that in the third century

concessions to the strict principle of indissolubility were being made by individual Bishops, though there appears to be no evidence as to how extensive these were. But the evidence seems conclusive that the *prevailing* teaching of the early Church was that a genuine marriage of baptized persons was indissoluble.

The Early Middle Ages. So long as the Church was a small and obscure sect in a heathen world, its members could maintain without great difficulty the principle that the laws of Caesar were one thing and the laws of Christ another. When, with Constantine, Christianity became the state religion, the difficulties attendant on this position became enormous. The Church found itself in a situation much like that which obtains in the United States today. The state assumed jurisdiction over marriage and divorce, and defined both in a sense at variance with Christian doctrine. Christians contracted civil marriages and were divorced and remarried according to the civil law. Furthermore, the conquest of the Roman Empire by the Germanic tribes introduced not only hordes of converts fresh from barbarism but also new marriage codes equally opposed to the Church's teaching. The official attitude of the Church over the many centuries that followed can properly be gathered only by the patient and detailed study of historical evidence which takes different directions in the West and in the East. In a paper of this scope it is proper to say simply that not all parts of the Western Church supported the principle of strict indissolubility with equal firmness; that in its discipline the Church sometimes temporized and made concessions to practical situations; but that in general the history of the Western Church was one of firm opposition to the secular control of marriage and the legalization of remarriage after divorce. The Eastern Church maintained its opposition to the secular definition until the sixth century, when a compromise was effected. The Church accepted the fact of divorce with remarriage, and the state restricted the grounds of divorce severely to make them more acceptable to the Christian conscience. The Eastern Church's acceptance of the compromise at first took the form of relaxing discipline against those who followed the civil law; later it became formal.

The Theory of Marriage in the Western and the Eastern Churches. Though the Western Church from the first held marriage

to be indissoluble and finally defined it as a sacrament, the evolution of a clear statement that marriage is a sacrament was a long and complicated process which was not complete until at least the thirteenth century. According to the developed theory of the West, the essence of the sacrament is not sexual union but the consent of the parties to have each other as husband and wife. The parties themselves confer the sacrament in giving their consent. Though the Church from early times enjoined the public blessing of the union by one of its ministers, it did not maintain that the priestly blessing was essential to a valid marriage. (Even the Roman canon of the present day which declares any marriage of Roman Catholics invalid if not solemnized by a Roman priest considers the priest to be merely the official witness.) There was no special liturgical form for contracting a marriage, and Christians were very often married according to the civil custom of the state in which they lived, dispensing with the ecclesiastical benediction. It was never doubted that such marriages, though irregular and entailing ecclesiastical reproof and penance, were valid. In fact, up to the Council of Trent (and much longer in England) a valid marriage between Christians could be contracted simply by the statement before witnesses in words of the present tense that the parties took each other to be husband and wife, or by a similar statement in words of the future tense, followed by intercourse. Such a marriage even if contracted *without* witnesses was valid if both parties maintained it, but was voided if either party denied that consent had been given. In the Eastern Church a different theory developed because from early times it was maintained that the priest was the minister of the sacrament, and that the priestly benediction was the principal form by which the sacrament was conferred. This view, though often controverted by Orthodox divines, became general in the nineteenth century. Under this theory clandestinity renders any marriage null, the same conclusion that the Roman Church arrived at at the Council of Trent, though by a different route.

The Later Middle Ages. About the eleventh centry (only the roughest chronology can be given, for the rate of progress was different in different countries), the Western Church won its struggle against the state, and acquired sole jurisdiction over marriage and divorce. A ritual for solemnizing marriage was evolved, and every

Christian enjoined to make use of it. The persistent and finally successful claim of the Church to exercise jurisdiction over marriage was undoubtedly due to the belief that marriage was a sacrament, and therefore, like the other sacraments, the peculiar charge of the ecclesiastical authority. The proposal to separate the *contract* of marriage from the *sacrament* and to make the first the care of the state and the second the care of the Church (i.e. to permit Christians to contract a valid marriage and then confer supernatural grace on the relationship) has been defended—even by Roman apologists—down to the present day, but has failed to make headway in face of the prevailing Western theory that the contract *is* the sacrament, the priestly benediction dispensable. In the period now under discussion there was no such thing as a formal civil service of marriage, but the Church continued to recognize the validity of clandestine marriages between the baptized, that is, of marriages resting merely on the consent of baptized persons to have each other as husband and wife, though it rated such marriages as irregular and sinful. It is important at this period not to confuse the concepts of validity and legality. A clandestine marriage, though sacramentally and ecclesiastically valid, was illegal, and would subject widow and children to disabilities of inheritance unless it were proved before the ecclesiastical court. Divorce, in the sense of the separation of genuinely married people, was granted only *a mensa et thoro*: i.e. as separation without power to remarry. The possibility of divorce *a vinculo* was completely denied except in one case: an unconsummated union could be dissolved by the entry of one of its members into the life of religion, or by Papal dispensation. It was held that a consummated sacramental marriage could be dissolved by no earthly power.

This, of course, did not mean that every union was regarded as a genuine marriage. The Church defined a considerable number of impediments, the existence of which would make it impossible to contract valid marriage: for example, error as to identity of the partner, insanity, lack of free consent because of intimidation, impotency, consanguinity, spiritual affinity, previous marriage, pre-contract. For some of these dispensation could be secured, for others it could not. If the existence of one of these impediments was proved, and a dispensation had not been obtained, the marriage was declared null

ab initio, and the partners were free to marry again. This was not what is meant in modern terminology by a "divorce," i.e. was not a dissolution of marriage. It was a declaration that no marriage had in fact existed. It is generally agreed, even by Roman Catholic writers, that in the period before the Council of Trent the number of impediments was extended to the lengths of abuse. In particular, the impediments of consanguinity and affinity were carried so far as to provide a fair chance that any unhappily married couple could find themselves within the forbidden degrees. And the practice of annulling marriage because of pre-contract opened up large opportunities for fraud.

The Eastern Church, though it developed its own procedure with regard to nullity, finally accepted, as has already been stated, the principle of divorce; that is, claimed the power to dissolve valid marriages. The divergence in the theory of the two churches seems to go back ultimately to different interpretations of the exceptive clause in Matthew (19.9) and St. Paul's statement (Rom. 7.2) that marriage is dissolved by death. Matthew's exception "except it be for fornication" does not appear in the parallel accounts of Mark and Luke, nor in the important text in I Corinthians. The Fathers of the Church accepted all four pronouncements as Dominical. The difficulty was to reconcile them. The Western Church harmonized Matthew in the direction of Mark and Luke and interpreted the text of Matthew as meaning that a man might *put away* a guilty spouse, but that he could not *marry again* in her lifetime without committing adultery. The early fathers of the Eastern Church appear to have been in agreement on this point with the theologians of the West. But from the ninth century they harmonized Mark, Luke, and Paul in the direction of Matthew. Marriage, it was contended, was dissolved by death or the infidelity of the spouse. But the texts should not be restricted to their literal statements: "death" and "adultery" are general headings under which it is permissible to group analogous causes. Besides natural death we may understand "civil death" (sentence for infamous crime) or "religious death" (apostasy). Prolonged absence (voluntary or involuntary desertion) may be thought of as equivalent to physical death. Adultery or fornication (the actual word in Matthew, *porneia*, is a more general term than either of the English equivalents) is also a term capable of extension: it may be spiritual as well as physical. In

the Scriptures idolatry is figuratively equated with fornication and covetousness with idolatry; therefore covetousness is *porneia*. By this method of exegesis it is obvious that the term may be made to cover a great many of the causes that disrupt marriages. It appears to be somewhat difficult (at least for one who has no Russian and whose Greek is not fluent) to trace the historical development of this theory, or to say just how official it really is. In the final analysis, the Eastern Church appears really to rest its claim to dissolve marriages on the power of the keys, maintaining that Christ has explicitly sanctioned dispensation. Marriage, it maintains, is by divine pronouncement indissoluble: it cannot be dissolved by the parties or by the civil state. But (this seems to be the argument) it *can* be dissolved by the Church, to which Christ gave power to loose on earth. Remarriage after divorce is defined in the Eastern Church as a concession to human weakness. It is perhaps important to mention in this connection that the East developed and maintained a more rigorous attitude toward *all* second marriages than prevailed in the West. Through the first millennium men and women who remarried after the deaths of their spouses were denied an ecclesiastical ceremony of marriage, and were excluded from communion and put under penance for considerable periods. A church which regarded second marriages where there was no question of divorce as concessions to the flesh might with less repugnance extend the privilege of remarriage to the divorced. In fine, the situation in the Eastern Church may be briefly stated: since the time of Justinian it has granted divorce with power of remarriage for a variety of causes.

The Reformation. The Continental leaders of the Reformation generally denied that marriage was a sacrament, on the ground that the early Fathers knew of no such sacrament and that God had instituted no sign or ceremony for it. They gave greater weight to the teachings of the Old Testament than had been customary, and were in strong reaction from the ascetic tendencies of the historical church. It may also be suspected that their abhorrence of abuses led them sometimes to seek by harsh constructions Scriptural justification of reforms they wished to effect rather than to take Scripture and patristic literature in its natural sense. Luther's teaching on the subject was not entirely consistent, but its practical effect was to make

marriage the concern of the state. His own theory of marriage was pessimistic in the extreme: marriage he held to be a natural necessity, continence to be impossible. Since it is contrary to nature to hold together spouses who cannot receive from each other the satisfaction of the sexual appetite, marriage should be dissoluble. He was willing, indeed, in certain cases to sanction concubinage or polygamy, though (it must be added) as a lesser evil than divorce. Calvin held marriage to be the most sacred tie that God had placed between human beings, but he denied that it was a sacrament. All the Reformers seem to have considered adultery and desertion just grounds for divorce, and some were in favor of extending the grounds. Some of the leading Anglican Reformers expressed personal views similar to those held on the Continent, and the 25th of the 39 Articles differentiates Baptism and the Lord's Supper from "those five commonly called sacraments" on the ground that the five (marriage being one of them) "have not any visible sign or ceremony ordained of God"—i.e. that Christ in the Gospel explicitly instituted Baptism and the Eucharist *in specie* but cannot be shown to have done the same for the other five. The article, which at first sight appears to repeat the language of Calvin, turns out on strict examination to be very ambiguously worded. A completely candid appraisal of it would probably conclude that it was meant to look as though it denied that marriage is a sacrament but by no means does so. It is best explained as an article for preserving the peace. In return for an agreement by the Protestant party not to stigmatize the five "lesser" sacraments as no sacraments at all (that is, as being in no sense rites of divine institution conferring grace), the Catholic group consented to admit that the Gospels do not record the institution of the outward signs of those sacraments by Christ himself, and to tolerate a depreciation of them as compared with Baptism and the Eucharist. At any rate, in the matter of divorce the English Church stood by the principle of indissolubility. A sweeping reform of the code of ecclesiastical law which would have allowed divorce on various grounds was prepared in 1552, but was never approved by Parliament or Convocation. In 1597 the reform was expressly repudiated when the Convocation reaffirmed the principles of the older statutes, and these canons of 1597 were reenacted by royal authority in 1603. Even during the period of the Common-

wealth, when it might have been expected that the views of the Presbyterians and the Independents in the matter of divorce would have prevailed, no change occurred. Down to 1857 a divorce *a vinculo* in England could be obtained only by special act of Parliament; a procedure which, though undoubtedly legal in the civil sphere, was in violation of the official teaching and canons of the Church. No great number of cases was involved because of the expense of the process. The total number of divorces granted in England from the Reformation to 1857 is given as 317.

In the other countries which broke off from the Roman obedience a different course was followed. The Lutheran princes abolished the old episcopal courts and set up Consistories which had power to deal with ecclesiastical cases. In the Calvinist countries, especially Holland, jurisdiction was handed over to the secular courts. In Scotland the power in matrimonial causes was first assumed by the Court of Session, and was then transferred to a court of Commissaries. During the period of the restored episcopate the superintendence of the Commissaries was transferred to the Bishops, but at the Revolution of 1688 reverted to the Crown. All these courts granted divorces, generally for the two causes of adultery and desertion.

The Roman Church after the Council of Trent. The theory that marriage is a sacrament conferred by the parties on each other is a very attractive one but it creates great difficulties in administration. All branches of the Church have been plagued with the problem of clandestinity. By the canons adopted at Trent, no marriage of a Roman Catholic was henceforth to be held valid by the Church unless it was contracted in the presence of the parish priest of one of the parties, or his delegate, and two other witnesses. But the decree was not published in countries and districts where a non-Roman population was in the majority. In 1908, by the decree *Ne Temere*, Pius X extended the requirement to Roman Catholics everywhere. It is binding on all who have been baptized as Roman Catholics or have been received into that communion, and affects mixed marriages also. It does not affect those who have never been in communion with Rome. Thus a marriage between two Roman Catholics or a Roman Catholic and an Anglican solemnized by an Anglican priest anywhere is held utterly void by Rome, but a marriage of two Anglicans solemnized by an Anglican priest (or, for that matter, by any legally constituted authority) is valid. It is probable that the annulment of marriages of Roman Catholics (particularly of those who have entered into mixed marriages) contracted since 1908 in defiance of the decree *Ne Temere* accounts for the greater number of those cases of Roman Catholic "divorce" which shock those who are not members of that communion. The theory of these annulments has never been officially stated, and it would appear to be difficult to frame a theory that would not contravert the official teaching that the essential condition of a sacramental marriage is the consent of the parties and not the priestly benediction. The most plausible is perhaps that thought the Church has no power to alter the *matter* of a sacrament, it may prescribe the effective rite of all of them except Baptism and the Eucharist.

The Pauline Privilege. An historical survey of marriage legislation would not be complete without some discussion of the doctrine of the Roman Church with regard to marriages which are held to be not sacramental because one of the parties is unbaptized. Such marriages, if valid, are held by Rome to be not absolutely indissoluble: that is they cannot be dissolved by any ordinary power of church or state, but can be dissolved by the Pope, asserting his full claim as Vicar of Christ. The historical tradition for the theory or practice of this principle in the Western Church before the Middle Ages is weak. The Pauline Privilege in its strict form applies the advice given by St. Paul to the Corinthians (I Cor. 7.12-15) to the case where one party to a marriage is unbaptized. If the unbaptized partner is willing to live at peace with the baptized (i.e. does not interfere with his religion or lead him into sin), the marriage must stand. But if the unbaptized partner does not so conduct himself, the Church will dissolve the marriage and allow remarriage. The requirements which the Roman Church now imposes for a valid marriage would appear to restrict the Privilege to the case where an unbaptized person, already married, accepts conversion. A Roman Catholic who has obtained a dispensation to marry an unbaptized person cannot avail himself of the Privilege, but the best opinion seems to be that this is in the interest of discipline and not because the marriage is absolutely indissoluble. Rome certainly dissolves marriages contracted between an unbaptized

person and a "heretic" where the unbaptized person later becomes a convert—a very considerable extension of the privilege. In the case of polygamous marriages—a not infrequent condition in the mission field—the practice of the Roman Church is not to insist that a convert retain his first wife but to allow him to select the one he prefers, provided that she too become a Christian and his first wife refuses to accept the faith.

Forms of Marriage after the Reformation. Regular marriage in England, except for a brief period during the Commonwealth when civil marriage was obligatory, was solemnized by a priest of the Church, after publication of banns. But down to Lord Hardwicke's Marriage Act (1753) clandestine marriages (marriages which violated the requirement of publicity) were held valid, though irregular. From 1753 to 1836 all marriages save those of Quakers and Jews in order to be valid had to be celebrated after publication of banns, or by license, in an Anglican church, and before an Anglican clergyman. This was an act of Parliament, not of Convocation. Scotch marriage, however, continued to be valid in England, and as Scots law required no more than the consent of the parties without extended residence or consent of parents for minors, runaway marriage to Scotland ("Gretna Green marriages") continued to make trouble. It should be added that though couples could still marry in haste they had to repent at leisure, for England did not recognize divorce of English subjects obtained in foreign jurisdictions, and to obtain a divorce in Scotland (as contrasted with getting married) a couple had to have genuine domicile there. Since 1836 civil marriage has been legal in England, and the validity of such marriage appears not be denied by the Established Church.

The existence of a state church in England and in some other countries that had broken from Rome obscures the fact that the overwhelming tendency of the civil state since the Reformation has been to assume complete control of marriage in all its civil aspects and to define it merely as a civil contract. The free option of civil marriage in any state (and there are very few now in which that option does not exist) means that in the eyes of the law a clergyman who solemnizes a marriage is acting as a licensed officer of the state: he performs the same function as a magistrate, and if his form of marriage demands

or implies more than a civil contract, the law takes no cognizance of the difference. It is an odd fact of history that in the countries which threw off the Roman obedience ecclesiastical marriage generally enjoys legal status, whereas in those that held to Rome it generally has no legal standing whatever. This development in Roman Catholic countries is comparatively recent. As a result of the doctrines of the French Revolution, civil marriage was established in France as the only legal mode, and this provision was retained by Napoleon. The Napoleonic code was copied in other European and Latin-American countries, so that in most of them the only legal marriage is a civil marriage. There are some exceptions. Spain, down to the Revolution of 1921, left the Roman Church in full control of matrimonial matters, allowing civil marriage only to those who were not members of that communion, and under Franco has presumably returned to its former position. In Peru (if there has been no change in the last ten years) Roman Catholics can be legally married only in accordance with the canon law of their church. Presumably a few other Latin-American states have the same provision. It was long maintained in the Province of Quebec, but was reversed in 1921 by a judgment of the Privy Council. By the Concordat of 1929 between the Italian government and the Holy See, ecclesiastical marriage was recognized as carrying with it full civil effects, though the privilege of ecclesiastical marriage was not restricted to the Roman Church, and the option of civil marriage was retained.

The history of marriage legislation in the United States is too complicated to be adequately summarized in a paper of this scope. It is disputed whether the founders of New England were influenced by the legislation of Holland, with which they were certainly acquainted, or whether, in a new country, they simply carried certain radical Protestant convictions to their logical conclusions. At any rate, in the New England colonies civil marriage was originally compulsory and ecclesiastical marriage was forbidden. Some of the southern colonies, on the other hand, attempted to vest the power of solemnizing marriages in the clergy of the Church of England. But from early times both civil and ecclesiastical marriages came to be accepted as equally valid by the states, and the same condition obtains today. Our church in its canons seems by implication to deprecate civil marriage for

Christians, but does not question its validity.

Divorce in England. Beginning with the Act of 1857, which abolished the old ecclesiastical courts and transferred matrimonial causes to a lay tribunal, judicial divorce with power of remarriage became possible in England. The grounds, as compared with American practice, were very restricted. A husband could obtain a divorce from his wife on the ground of adultery alone, but a wife could obtain divorce from her husband only if the adultery was aggravated by incest, bigamy, cruelty, or desertion, or if he were proved guilty of rape or unnatural crimes. In 1923 the inequalities were removed and the wife gained the right to sue for divorce on the single ground of her husband's adultery. By A. P. Herbert's Bill of 1937, desertion, cruelty, and insanity were added to adultery as single grounds for divorce. Meanwhile the canons of the Church of England have not been changed, and are in formal conflict with the law of the land. The pronouncements of the Lambeth Conferences apparently do not have power to change the official position of the Church as expressed in the Book of Common Prayer and the Canons, but merely declare the prevailing theology of the Bishops. The Conference of 1888 resolved "that, inasmuch as our Lord's words expressly forbid divorce except in the case of fornication or adultery, the Christian Church cannot recognize divorce in any other than the excepted case, or give any sanction to the marriage of any person who has been divorced contrary to this law, during the life-time of the other party"; that the guilty party in a divorce for adultery should under no circumstances be regarded during the life-time of the innocent party as a fit recipient of the blessing of the Church on marriage, but that the clergy should not be instructed to refuse the sacraments to the innocent party who, under civil sanction, has remarried. The resolutions of the Conference of 1930 are less outspoken, but still recommend that the marriage of one whose former partner is living shall not be celebrated according to the rites of the Church. Where an innocent person has remarried under civil sanction and wishes to receive Holy Communion, it is recommended that the case be referred to the Bishop.

Divorce in America. Because of the numerically small representation of the Anglican communion in the United States, the history of

divorce legislation has been little affected by our canons except perhaps in some of the southern states. The New England colonies, where Puritan sentiment prevailed and marriage was originally a purely civil institution, granted divorces from the beginning, and statistics appear to show that wherever New England families have settled, divorce is more frequent than elsewhere. Every state of the Union except South Carolina now permits absolute divorce. The District of Columbia and New York grant divorce only for adultery. The majority of the others recognize some eight major causes (adultery, cruelty, desertion, impotence, imprisonment, intoxication, non-support, insanity), while over thirty other causes are recognized by one or more jurisdictions. As far back as 1906 the number of divorces granted in the United States was about double the number reported that year for the rest of the Christian world. Since then the increase in the divorce rate has been about four times as rapid as the increase in population.

The Canons of the Episcopal Church. The exception of the present canon in favor of the innocent party in a civil divorce obtained on the ground of adultery appears to have been a distinct break from previous Anglican tradition. It was first enunciated as a Joint Resolution of the General Convention of 1808, and appears from its wording (which was clumsy) to have been intended as restrictive: i.e. to be aimed at those, who in the absence of any canon of the American Church on the subject of marriage, were remarrying divorced persons, or were proposing to do so. The Resolution read as follows: "Resolved, That it is the sense of this Church, that it is inconsistent with the law of God, and the ministers of this Church, therefore, shall not unite in matrimony any person who is divorced, unless it be on account of the other party having been guilty of adultery." Later reports of committees indicate that this resolution never had the force of law. The first canon on matrimony was passed by General Convention in 1868: it did little more than restate the Resolution of 1808 in better style. It was not until 1877 that a canon was passed making it unlawful for persons to "be joined together otherwise than as God's word doth allow." This canon, which was in five sections, retained the exception in favor of the innocent party, and directed that if any minister had doubt as to the canonical lawfulness of the marriage of

any person presenting himself for the sacraments, he should refer the case to the Bishop for his judgment. The canon of 1877 remained unchanged until 1904, when provisions for observance on the part of ministers of the laws of the states governing the civil contract were added, as well as provisions as to witnesses and the keeping of a register. The famous section on the marriage of divorced persons was adopted, with one important difference, in exactly the form in which it stands in the present canon. The canon of 1877, as has been pointed out, did not rest content with forbidding clergymen to remarry divorced persons (except for the proviso), but forbade members of the Church to contract marriages "otherwise than as God's word doth allow." In 1904 this was oddly omitted, and the clergy were again the only persons who were forbidden to do anything. In 1922 the injunction was restored in the form of a specific statement in the section on the remarriage of divorced persons that (subject to the proviso) it should not be lawful for any member of the Church to marry a divorced person whose former partner was still living.

Repeated attempts, extending over many years, were made in General Convention to remove the exception and absolutely forbid the remarriage of divorced persons whose spouses were still living. The House of Bishops and the Clerical Order uniformly supported such proposals, but the Lay Order always opposed. The present section, adopted in 1904, was a compromise. The exception in favor of the innocent party was made more stringent by the requirement that a year must have elapsed before application to remarry was made; that evidence of the facts, including "if practicable" a copy of the Court's decree or record with proof that the defendant "was personally served or appeared in the action" must be laid before the Ecclesiastical Authority; and the Ecclesiastical Authority must take legal advice thereon and declare in writing that the case conforms to the requirements of the canon. The object of this, though the canon naturally does not say so in so many words, was to restrict cases under the exception to divorces explicitly granted for the cause of adultery, or at least to protect the Bishop from suits for damages by requiring him to act only when the adultery was legally established. And, finally, the conscience of the minister asked to perform such a marriage was saved by leaving it to his personal discretion as to whether he should

officiate or not.

After the stabilization of 1904 no change was made in the canon for over a quarter of a century except to add in 1922 the obvious and necessary clause making the legislation binding on the laity. In 1931 the whole canon was thoroughly revised and enlarged. Ministers of the Church were enjoined to give instruction on marriage and specifically to instruct the contracting parties "as to the nature of Holy Matrimony, its responsibilities, and the means of grace which God has provided through His Church." If any partner to a marriage gives offence so serious as to imperil the security of the relationship, the other partner is enjoined to lay the matter before a minister of the Church, and the minister must labor to effect a reconciliation. For the first time in our legislation the principle of annulment was formally recognized. A list of impediments was drawn up, and any person whose marriage had been annulled or dissolved by a civil court was given the right to apply to the Ecclesiastical Authority to have his marriage declared null and void if any of these impediments had existed at the time the marriage took place. If the Bishop pronounced such a decree, the person in question could be married by a minister of the Church as if he had never previously been married. Finally, any persons who have been married by civil authority, or otherwise than as this Church provides, may apply to the Ecclesiastical Authority for recognition of communicant status or for admission to baptism or confirmation. In case of a favorable decision, a minister of the Church may, "at his discretion, bless the parties to the union."

The propriety of this last provision has been much doubted. In accordance with the theory of marriage which has prevailed in the Western Church and which is implied in the acceptance by this Church of the validity of civil marriage, a clergyman in no case does more, by virtue of his clerical office, than "bless the parties to the union." It is therefore sometimes said that such a blessing is actually a marriage *in facie ecclesiae*, only solemnized under a subterfuge. This is, of course, not true. The parties when they appear before the clergyman are already married or they are not. If they have formed a union in violation of the Church's canon concerning the remarriage of divorced persons, there is a strong presumption that, in the *official* judgment of the Church, they are *not* married, and the priest, by the

same canon, is forbidden to marry them. The provision perhaps arises out of an extreme tenderness for what theologians call the inner forum, or forum of conscience. The Church in its judicial decrees must be governed by external acts, and cannot appeal to individual consciences. But marriage, resisting as it does on the true consent of the parties, may sometimes be void in the sight of God when it is impossible to bring satisfactory proofs of its nullity before the outer forum. The rigorous course would be to excommunicate all persons who have contracted marriage which the Church defines as unlawful. The provision for blessing seems to indicate that our Church is so scrupulous as to admit that its external forum may be mistaken. It may well be a dangerous weakness in discipline, but it can hardly be called a reversal of theory.

Conclusions. The compiler of this long but extremely superficial review of marriage legislation has his own views on the subject, but has attempted in everything which precedes to handle the historical evidence candidly and impartially. The conclusions that follow are his own, and he cannot guarantee that they are free from *parti pris*.

1. The "exceptive clause" of the present canon is felt to be pretty much of an embarrassment on all counts. It is contrary to Western tradition, and it is based upon a text which many scholars consider interpolated. It does not go far enough, either in theory or practice, to satisfy those who wish the canon revised so as to afford relief for a certain number of hard cases. In practice it can seldom be applied because there is a growing repugnance on the part of civil courts to make adultery the overt ground of divorce even when adultery can be proved. A theory which states that there may be offence against the marriage tie so serious as to dissolve it or to justify its dissolution, and then adds that adultery is the *only* offence sufficiently serious to effect dissolution is felt to be in conflict not only with Christian morality but with common sense. The exception can be defended as literal acceptance of a text of the Gospel (rather, of one of the gospels), but it is hard to see how it can be made satisfactory as theory.

2. For many years now some Anglicans have looked to the Eastern Church for a solution to this problem. It is the conviction of the writer of this paper that the more the theory of Orthodoxy in this

respect is studied the less attractive it will appear. The acceptance of divorce in the East was originally a compromise; it was fostered by an attitude toward second marriages in general that no one now holds; it justifies itself by a text that many regard as spurious; and its theory is developed by a kind of exegesis which is now properly held in disfavor. It would appear to the present writer that if those who believe that genuine Christian marriages can be dissolved wish to follow the Orthodox lead they would do better to eschew doctrines of moral death and spiritual adultery and frankly take the position that the Church, by virtue of the power of the keys, can dispense even from Divine legislation.

3. So long as the Church maintains a code of marriage legislation distinct from that of the state, there will continue to be hard cases. A law cannot be a mere counsel of perfection, nor can every case in which it causes hardship be considered an exception. But it by no means follows that because the Church considers Christian marriage indissoluble it must accept every legalized sexual union as a Christian marriage. The theory of relief that best fits the Anglican position logically is that of annulment. That does not carry us very far, for in the definition of a policy governing human relations logic is often the least persuasive of factors. It is the conviction of the author of this paper that though there is a vast difference between the theory of divorce and the theory of annulment, a canon based on an extended theory of annulment would be found in practice to afford relief to the majority of the hard cases which the advocates of a "divorce" canon consider unjustly treated by our present legislation. The impatience of the advocates of divorce with close definition of the crucial word "marriage" renders the quarrel between the two groups largely verbal, but that does not make the differences less troublesome. Perhaps no quarrels are more bitter or irreconcilable than those that *are* merely verbal. "Annulment" to many Anglicans means simply the practice of the Roman Church, which they believe (generally on slight and untrustworthy grounds) to be hypocritical, corrupt, and venal. It is the present writer's suspicion that the charges of corruption are not well founded, but that the application of the canonical means of relief is sometimes excessively ingenious and literal, especially where mixed marriages are concerned. The feature of Roman practice that

really gives offence, in this as in other matters, is its jealously exclusive position. Abolish the indiscriminate annulment of marriages under the decree *Ne Temere* and divorces under the more far-fetched applications of the Pauline Privilege, and it is doubtful whether Roman practice would be much critized by anybody.

4. There remains finally the modern and essentially Protestant view that Our Lord's words were not legislative, and that in interpreting and enforcing them the Church should regard them as an ideal which human beings not infrequently fail to attain, as they do other ideals of the Gospel: that marriages *ought* not be dissolved but sometimes are, and that when this has happened the Church will apply a policy of mercy even to sanctioning a new union. Those who find themselves unable to accept this view will not be unaware of its nobility and its attractive simplicity. They will reject it either because they think that, whatever its theoretical basis, it means in practice the withdrawal of the Church from any active control over marriage and the turning over of the whole problem to the civil state. Or they will sincerely feel themselves estopped from accepting a theory which condemns as mistaken the coherent tradition of twenty centuries of a Church which lays claim, in some way or other, to divine guidance.

The Mind of Christ on Marriage

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There is more to this subject than simply the citation or exegesis of a few texts. For the texts themselves have to be set in the frame of our Lord's teaching as a whole, so far as that is recorded or reflected in the gospel tradition. And then there is the still larger subject of the whole attitude of our Lord, "the mind of Christ," on the subject of marriage and family-life, and on the question of divorce. But let us begin with the texts.

I.

The earliest Gospel gives the clearest and most emphatic statement. According to St. Mark, ch. 10, Jesus was asked by the Pharisees, "Is it lawful for a man to put away his wife?" This may be an undue simplification of the question, and a rather unlikely simplification on the lips of the Pharisees—since the Mosaic law certainly permitted divorce. (The simplification may be due, in the Christian tradition of Jesus' words, to the categorical denial that followed.) The form of the question as given in Matt. 19:3 seems more probable: "Is it lawful for a man to put away his wife *for every cause*?"—that is, not for 'any' cause, but for 'every' cause, viz. every one of the alleged causes, whether in scribal teaching or in actual practice. So stated, it looks like a school-question, designed to draw our Lord into the current debate between the strict interpretation of the followers of Shammai and the wider views of the followers of Hillel. In his reply, our Lord goes back from the concession allowed in Deuteronomy 24:1 to the principle enunciated in the story of the Creation (Genesis 2:24), according to which man and wife become 'one flesh', i. e. legally and morally one person, and there can be no such thing as either polygamy or divorce and remarriage. That was ever our Lord's method of interpretation: on ethical questions he went down to the root motives of human conduct (as in the Sermon on the Mount, or

on the question of Corban in Mark 7); and on matters of divine commandment (as on the subject of the Sabbath) he went back to the intention of God who gave the command. Now of course, in its time, the Deuteronomic requirement of a *writ* of divorcement was a merciful provision, and permitted the wife to remarry; but divorce itself, Jesus held, was only a concession to the barbarity of human behaviour—something permitted because of "the hardness of men's hearts". And in view of the declared purpose of God in the creation of man, divorce itself could not be allowed. "What God hath joined together, let not man put asunder." (It does not say, as in the Prayer Book, "those whom" God hath joined, but "that which", viz. the "one flesh", in the preceding sentence.) In characteristic fashion Mark then has the disciples ask privately about the matter, and so introduces the saying of Jesus that states summarily and categorically His whole teaching on the subject: "Whosoever shall put away his wife, and marry another, commits adultery against her." The ambiguous phrase, "against her," may be a Christian addition to the Lord's saying; its equivalent is missing from the following verse and also from the parallel in Matthew. Commentators now generally recognize that verse 12, at least in the form which Mark gave it, is a later corollary, irrelevant to Jewish conditions but nevertheless a quite legitimate corollary—and one that was appropriate in Roman circles, where the Gospel of Mark was written. Jewish women could not divorce their husbands; Roman wives could, and did. In its simplest and probably original form, the saying read: "Whoever puts away his wife, and marries another, commits adultery."

When we turn to St. Matthew, we find two forms of the saying, one in Matt. 5:31-32, another in 19:9. The latter is quite obviously based upon Mark—location and context as well as wording imply this. On the other hand it is often thought that the former was derived from "Q", the early sayings source used by both Matthew and Luke in addition to Mark (which both of them certainly used). But I cannot resist the suspicion that 5:32 is also based on Mark, or on a form of the saying that likewise underlies Mark; the introduction to the saying, in verse 31, is strongly reminiscent of the dialogue with the Pharisees in Mark 10:2-9. The parallel in Luke 16:18, which

is often supposed to prove that the saying comes from "Q", looks like an intrustion into the text of Luke; it does not fit the context, and it may be one more example of the influence of the manuscript *text* of Matthew upon the text of the other Gospels, during the earliest period of textual transmission or copying—there are many instances where this has taken place. Matthew's influence upon the text of the other Gospels was very strong—St. Matthew was the planet Jupiter among the early Gospels, both canonical and uncanonical. In this case, I believe that Luke 16:18 may reflect the influence of Matt. 5:32. If so, the first saying in Matthew does not come from "Q", but from some other source, perhaps from the later source "M", which is being followed in the whole series of paragraphs beginning, "Ye have heard that it hath been said..." The form here is not precisely the same as in these other paragraphs; but it has been fitted into the scheme: not "Ye have heard...", but simply, "It has been said that..." If this analysis is correct, then the saying is *not* one of those found in both Mark and "Q", but is primarily Marcan; but—and this is even more important, and is an inescapable inference from a study of the *form* of the saying—it is so old a saying, so deeply embedded in the tradition of Jesus' words, was so constant an element in that tradition and so important a part of "the words and commandments of the Lord", was so vital a principle in early Christian practice (since appeal was constantly made to the saying, with the resulting variations in form, occasioned by various practical applications), that it can only be viewed as one of the most incontestable and unquestionable sayings attributed to our Lord in all the evangelic literature. It is found in Mark, our earliest Gospel; and it is found, in only slightly altered form, in the latest of the gospel sources (M) and finally in one of the latest of the Gospels, viz. in Matthew.

There are three peculiarities in the Matthean form of the saying in 5:32, (1) the "exception clause" is added; (2) the consequence of divorce is that the divorcing husband causes the wife to commit adultery—presumably, but not necessarily, by remarriage; (3) the second husband of the divorced wife also commits adultery. In 19:9, the "exception clause" reappears, in slightly different words, and the second husband is said to commit adultery; only (2) is missing.

(1) Much has been written about the exception clause, and it is the one cause for divorce that is, supposedly, recognized in our Episcopal Church Canons. But to begin with, the Canon affords as bad an example of translation, at this point, as the Prayer Book does with its "Those whom", referred to above. We do not sufficiently feel the force of this criticism, perhaps because Greek is no longer a "required" subject in another of the Canons. At any rate, the mistranslation, with all that hinges on it, is no credit to us! *Porneia* is simply not adultery but fornication, i. e. either "harlotry" or premarital sexual indulgence. True, the word was sometimes used, in Hellenistic Greek, e. g. in the Septuagint, for loose sex behavior generally; but not in a legal or quasi-legal document like the one before us, in which the Christian "fulfilment" of the Law of Moses is the very subject in hand, and where the sayings of Jesus that bore upon human conduct are formulated as a guide to Christian practice. It is the basic thesis of the Sermon on the Mount that Christ had not come to "destroy" the Law of Moses, but to "fulfill", i. e. to complete it. The "exception clause" (both here and in ch. 19) *may* accordingly be only the recognition that a wife guilty of promiscuity cannot be "made an adulteress" by being divorced; or it may reflect an intolerable situation where the wife—like Hosea's, in the Old Testament—has abandoned her marriage for a life of shame; it may even mean idolatry, as often in the Septuagint and in the Jewish literature, though this is fairly improbable; finally, it *may* even be simply the recognition of the provision in the Mosaic code (Deut. 22:13-21) that if a man married and then discovered that his wife was not a virgin, he could "put her away." Here is no case for a "bill of divorce," as in Deuteronomy 24—the penalty was far more serious! The new legal situation arises only when Jesus' saying is taken for a law and as part of a code, which code is thought to be continuous with the old Mosaic Law which it superseded but did not suppress. Of course such a situation could arise only in a conservative Jewish Christian milieu, where the Mosaic code was still in force; and such a milieu is presupposed by much of the material in the Gospel of Matthew, whether derived from "M", or from the author's own revision, or from the tradition of the particular church and its teachers

whom Matthew represents. Even so the Matthean form of the saying does *not* state that it is "lawful" for a man to put away his wife for the one cause, viz. that she was not a virgin when he married her, but only that in such a case (so it is implied) he does not "make" her an adulteress. Such a statement of the lawfulness of divorce in some cases, would have been answering the Pharisees of Mark 10 in the way they hoped to be answered! Instead, it is still clearly affirmed that to put away one's wife and marry another is to commit adultery; the only apparent exception is when the charge of harlotry or fornication—i. e. "pre-marital sex experience," as we call it — has been proved. At least a part of this situation is certainly due to the purely legal or logical consideration that, in the formulation of the saying which Matthew gives in 5:32, the wife can hardly be "made an adulteress" if she is already guilty of fornication! The phrase naturally gets carried over, for a similar reason, in Matt. 19:9.

Once more, then, the phrase, "saving for the cause of fornication," is necessary only when Jesus' saying is taken as a law—and taken more rigorously, as law, than anyone would think of taking 5:22, or 25, or 39, or 44, or any of the sayings worked into the new code of the Sermon on the Mount. It is something like the phrase in 5:22, "Whoever is angry with his brother *without a cause*. . .", which the irascible King James is said, when he first examined the Authorized Version, to have pronounced "a merciful provision." But the phrase (it is only one word in Greek, eikê) is not found in the best manuscripts, and the Revised Version omits it. In this case, manuscript evidence settles the question, in addition to internal probability. But in the case of 5:32 and 19:9, the exception clause is older than the oldest manuscripts, and is probably a part of the Gospel as it came from its author. But this does not make it a part of Jesus' saying. It was added, as many modern commentators and exegetes believe, during the course of the handing down of Christ's teaching by oral tradition—if it was not added by the author of the Gospel of Matthew himself.

(2) On the peculiar turn given by Matt. 5:32, according to which the husband who puts away his wife "causes her to commit adultery", there are eminent scholars who maintain that this is the original form

of the saying, and that the simple "commits adultery", as in Matt. 19:9, Mark 10:11, and Luke 16:18, is a secondary form. With the greatest respect for their views I must beg to dissent. It may quite well be a shade of meaning, indeed another argument against divorce, that was derived from Jesus' teaching; it is one that stresses the principle of mercy and considerateness, and is quite in keeping with his whole attitude. But it seems to me a bit abstruse and *recherché*, and not likely to weigh so heavily with a husband bent on divorcing his wife and remarrying as would the prospect of his own breach of the seventh Commandment. I should be somewhat more inclined to view it as a formulation derived from the school of Christian traditionists and teachers who produced "M" or the legal element in Matthew. It may even be argued that "makes her an adulteress" means only "implies that she is an adulteress". It is more a legal turn than a fact based on experience.

(3) The final sentence, "Whoever marries a divorced woman commits adultery", is (like the similar corollary in Mark 10:12) a perfectly logical inference from the principle already set forth. There is no need to question its authenticity. In fact the central saying, which is the core of all gospel tradition of Jesus' words on remarriage, can hardly be taken to be his *sole* utterance on the subject. He must have stressed the principle more than once in his teaching. We know that it was a subject of current discussion in scribal circles; moreover, the evil of "putting away" was a flagrant one in the Galilee of Herod Antipas—the Baptist had lost his life for rebuking that sinful ruler. It would not be surprising if there were still current, even in Matthew's time, other related sayings which had been remembered and handed down from Jesus' oral discourses. The surprising thing is that there is not more on this subject in the Gospels.

II.

If, then, the "exception clause" was only a logical—or legal—conditional phrase added to the Lord's saying when it was taken as law in the early Palestinian or Syrian church which produced the Gospel of Matthew, we may assume that the earliest tradition of Jesus' words was simply:

"What God has joined together, let no man put asunder." (Mark 10:9).

"Whoever puts away his wife and marries another, commits adultery." (Mark 10:11).

"Everyone who puts away his wife makes her an adulteress; and whoever marries her, when she is put away, commits adultery." (Matt. 5:32, perhaps secondary).

There is no use trying to soften Jesus' prophetic pronouncements on this subject. They were not enunciated as principles of law, but as proclamations of "the pure will of God", to use Martin Dibelius's phrase (see his *The Sermon on the Mount*, 1940). That is, they were not intended to form a section in a legal code, governing ordinary society in a continuing world—as some critics seem to suppose when they argue that Jesus has no guidance to offer the judge on the bench or the lawyer preparing his brief. Instead, his words are like the strong protest of the prophet against "divorcing the wife of one's youth" (Malachi 2:13-16)—the very altar of the Lord in the temple in Jerusalem is covered with tears through the treachery of men against their wives. As later rabbis expounded the passage, it was the altar itself that wept—symbol of the divine grief when a man divorced his wife. Jesus' words are a "prophetic" protest; that does not mean they are something *less* than law, as we moderns would assume such a protest to be, but *more*. For he speaks with divine, final authority in proclaiming the will of God, regardless of the conditions, the quibbles, and the caveats that men may set up. If one is to live in accordance with the pure will of God, this is what he must do. If his "righteousness", i. e. his religion, is to be superior to the legalistic piety of the scribes, then he must live by the highest requirement of the Law, not the lowest; by the maximum, not the minimum; by what the Law implied, not by what it conceded; by the divine revelation, not by human tradition and casuistry. For all his criticism of the scribal interpretations of the Law, for all his criticism of certain limitations in the Law itself, Jesus never substituted his own pronouncements for the Law. He was simply interpreting the Law in accordance with the mind of God the Creator and Law-giver; only, he was surer of the mind of God than the

scribes were—"he taught as one having authority, and not as the scribes" (Mark 1:22). That is, he was *absolutely* sure. But he found indications of the truth of what he said in the Law itself—here, and also in such an exposition as that on the Resurrection (Mark 12:26-27).

It is no use pointing out that under Jewish conditions, in the first century, the rule of life which Jesus set forth was not impossible for the reason that polygamy was still permitted; i. e. that instead of putting away one's wife he could simply marry a second one. True, polygamy was allowed within Judaism until the early middle ages; but (1) there is evidence that it was not a widespread practice—for one thing, most men could not support more than one family; (2) there were strong reform movements within Judaism which held firmly to monogamy, e. g. the Seceders at Damascus (see "The Zadokite Fragments" in R. H. Charles, *Apocrypha and Pseudepigrapha of the Old Testament*, vol. II, pp. 785ff); finally (3) there is nothing to suggest, and everything to oppose the suggestion, that Jesus—or the early Christians—looked upon polygamy as permissible.

If a man will keep the Law of God perfectly, and fulfill His Commandments, there can be no such thing as divorce and remarriage. But the proclamation is not meant as a law: it is something *more*, viz. the personal demand of God upon men, if they are to please Him. Jesus does not lay it down as a regulation for society in general; it is the rule of life to be observed by those who are called and chosen by God to be His servants and agents in the realization of His perfect Reign, which is about to be set up finally and forever upon earth. In the renewed Israel of the future, the true Israel, the sacred community, all must be holy, and "perfect with the Lord their God" (Matt. 5:48; Deut. 18:13; see my *Earliest Gospel*, pp. 218-223). The spirit of the legislator is wholly lacking here; it is the spirit of the prophet, the Messenger of the Most High, the one who is gathering together a community chosen out of the world to be the nucleus of the new and final Kingdom of God—that is the spirit in which our Lord declares "the whole will of God."

In view of all this, it is certainly not acting in the spirit of Christ to "lay down the law" to people who perhaps have never more than

heard of the gospel, who certainly have never understood it, and for whom the life in grace is something unknown, perhaps incomprehensible. And for those whose whole outlook on life is simply pagan, a whole process of conversion and education must precede their acceptance of the Christian Way of Life.

Stated in theological terms, Jesus' proclamation is a "counsel of perfection", like that addressed to the rich man: "If thou wouldest be perfect, go, sell that which thou hast and give to the poor, and thou shalt have treasure in heaven; and come, follow me" (Mark 10:21, Matt. 19:21). Still stated in theological terms, it implies a reliance upon divine grace or help, if one if to achieve an end which is essentially supernatural, and outstrips the achievements of ordinary human nature. No one can be expected to achieve what is "impossible with men" except through the grace and help of God which is "sufficient for every need." That is perhaps the point of what Matthew adds in ch. 19:10-12. "Not all men can receive this saying, but those to whom it is given. . . . He that is able to receive it, let him receive it." As a matter of plain human experience, there are plenty of people who have had to rely upon divine grace to an extraordinary extent, in order to live by Jesus' rule of life. But out of the strain and tension has come a refinement of spirit, a discipline of soul and body, a tenderness and sympathy, a divine patience that could have been produced no other way. Instead of running away from life, they have faced it. Instead of blaming their misfortunes on others or upon God, they have blamed no one, and have endured their lot—as one endures his lot when a child is born lame or deformed, or when wife or husband becomes blind or falls ill with some lingering disease. They have no more thought of divorce "for any cause" than they would have contemplated "putting away" wife or child on account of deformity or blindness or disease. Even adultery *can* be forgiven—though not condoned: there are plenty of cases to prove this statement, and the Council of Trent was certainly right in affirming (Sess. 24, Can. 7) that adultery does not ipso facto dissolve a marriage. Of course this does not apply to impediments which exist before marriage, and are the grounds upon which in some cases a marriage may—or even must—be annulled. But annulment means

simply the formal, legal recognition that, in such and such a case, true marriage has never existed. This is something quite different from divorce, and those states where the law confuses the two are sadly in need of legal reform.

If I may express my personal conviction, here at the end, it is that (a) the Church should revise its canon and do away completely with the misconceived and mistranslated exception-clause, which permits remarriage of the so-called innocent party after a divorce for adultery; that (b) the Church should give up attempting to frame or enforce civil laws, applicable to society in general, and, if it must legislate at all on this matter, concentrate exclusively upon legislation designed to govern only the lives of its own members; and that (c) the Church should recognize that Jesus' teaching sets forth a rule of life for those who are committed to a complete obedience to the will of God, and who rely upon divine grace for the realization of what, upon a merely naturalistic level, might easily prove impossible and beyond their reach. In achieving this purpose, teaching is far more effective than legislation.

The Theological Aspect of Christian Marriage

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"Marriage is an honourable estate, instituted of God in the time of man's innocency, signifying unto us the mystical union that is betwixt Christ and his Church; which holy estate Christ adorned and beautified with his presence, and first miracle that he wrought, in Cana of Galilee . . ."

These familiar words from the Prayer Book make a convenient, and also a very satisfactory, opening for a consideration of marriage as the Christian Church sees it. And it is well that we consider the meaning of marriage in such a "theological" setting, rather than in a merely sociological or pragmatic one; especially so, because much of the current writing and discussion overlooks highly important points which are, indeed, of the nature of theology, but which are not thereby condemned as academic or theoretical.

In the first place, the words which we have quoted from the Marriage Office are significant in that they state frankly that marriage is an "estate" into which men enter, and not an ideal after which they strive. The latter conception, unhappily, seems far too prevalent, even among Christian writers. Only too often — and even in the suggested mutual pledge to be found in the recently proposed marriage canon — it is at least implied that marriage in the fullest sense is not something given by God, in the natural order of things, as a way of living for men; but rather is something to be attained, striven for . . . in ideal, not a real "estate" of men. But this view is contrary to the Prayer Book language, as well as to the whole tenor of Christian, Catholic theology on the subject. For both of these, as well as for Biblical theology in general, marriage is instituted by God as one of the ways in which men may live. To perfect it, to make a full realization of all that is involved in the "estate", is naturally required, and so there is striving; but in itself, marriage is divinely instituted, how-

ever biologists, anthropologists, or sociologists may picture (and picture correctly) its development. None *must* marry, all *may* marry, other things being equal; and when persons do marry, they enter into an order or "estate" or classification, which is part of God's whole scheme for the created world.

Marriage in this sense, then, is a life-long and intimate friendship, monogamously conceived and undertaken, between a man and a woman, freely entered into and carrying with it special obligations as well as special privileges. It has its root in fundamental biological drives; it answers the needs of men and women along various lines, including not only the sexual impulse but also the craving for companionship and mutual help; it crowns the whole process of development, in the mating of the sexes, by positing a life-long arrangement towards which the mating of lower species is pointing; and it implies the procreation of children as its normal end, although not as its essential *meaning and significance*. It provides for expression of personality and character, for development of individual qualities and capacities, and for that mutual interpenetration of life which in another way is the nature of all friendship.

Now all of this is on the plane of *normal human living*. It is part of the working out of what the theologians call "natural law." That is, God has made man what man is, and marriage is one of those conditions under which and in which man does as a matter of fact find himself most really and fully. It is *natural* for man to live monogamously in the married state; it is *natural* for such marriages to be means for the mutual help and growth of man and wife; it is *natural* for marriage to result in the procreation of children, who will carry on the race and further its growth into the stature of Christ.

When human beings depart from this normal functioning — when, for example, they enter into merely temporary sexual alliances, or when they selfishly prevent marriage from being a loving state of friendly growth and understanding, or when they *selfishly* and *irresponsibly* refuse to participate under God in the creation of other human beings who will be able to share in his plan for creation — they are living "in sin." Sin means, at this level, the wilful interference with the natural or normal state of things as God plans it. That does

not imply that God's will is the *status quo*, just what is or just what happens as it happens. It means the very best, most human, most nobly conceived and divinely compelling things for man as man to be and to do. God's will for man, which is man's true and essential nature, is that man should *be* man, true and full man. He should "be himself", not an animal nor an angel, but fully human. When he is fully himself, he is adjusted to Reality which is God; he is able to live in decent relationships with his fellow-men; he is part of the human community which is God's family.

Marriage, seen in this light and quite apart from Church ordinances, is sacramental in nature. It is a relationship in which body and soul each plays a part — but the *body* is the way in which the soul must express itself. Man is by nature a soul living in and through a body; he is not a purely spiritual being, any more than he is only a material being. He is "amphibious", so to say — he is "body-soul" or "soul-body." Hence in marriage, the life-long friendship of man and woman is expressed in the physical relationship of sexual intercourse, which is a good and noble thing. Without that expression, marriage is not really normal or natural to man, since man (as we have said) is not merely a spiritual being, and a marriage which omitted the material and bodily would hardly be true to his nature as man. There may, of course, be special cases which must be taken into account at this point; but the principle certainly holds good.

Any marriage which fulfils these conditions is a real marriage, and any such marriage is also sacramental in nature. In theological language, the man and woman are ministers of the sacrament; the act of sexual union is the matter of marriage; the intention to live together for life is the form of the marriage. It is incorrect, therefore, to dismiss (as the Roman Church and some Anglicans at this point following Rome dismiss) non-ecclesiastical marriages as totally non-sacramental. What it is correct to say is that *for those who are Christians*, the Church blesses marriage — its task is to make the demands upon men and women which God makes through the Incarnate Lord, and in return to offer the special helps which God gives through that Lord and his mystical Body the Church. Hence, for the Christian, the natural "estate" is "adorned" and "beautified" by Christ's blessing,

bestowed through the Christian Church upon those who as Christians are sharers in the divine life of God which the God-Man has brought into the midst of our world.

We must conclude, in other words, that the standard set, the demands made, and the grace given to Christians in marriage are more intensive and direct than those which may be found in "natural" marriage. And by being placed in a new context — life with God and men in the community of the faithful, with all that is meant in that stupendous phrase — Christian marriage becomes different, more exacting, more gracious.

Here it may be pointed out that our Lord's teaching on this subject has been grievously misunderstood. On the one hand, it is thought that he was a legalist, laying down rigid rules to be followed precisely. On the other, he is regarded as an idealist, hinting at the motivation which ought to guide man but which alas too often does not. In actual fact, he was neither the one nor the other. On this matter, as on all others, he was stating, in terms familiar to him and to his immediate hearers, the *true* nature of man, the *true* will of God for man, the *true* possibility for man when aided by grace from God. And by implication, he said that men who do not do these things are sinners.

The question, how the Church as the Lord's Body should deal with men who are sinners — and which of us is not? — is another question. It belongs in the field of "casuistry", or moral theology applied to cases. It may be doubted, however, whether the Church is true to her Lord and the quality of his life and teaching, when it *refuses* to deal with them at all, beyond condemning them. It might be thought that it would be more in accord with that Lord's will, if the Church sought to help men "make the best of a bad job" — and this principle applies to marriage and divorce as well as to other problems.

One thing is quite certain. The Church states the law of nature, but it cannot legislate for the whole of a "neutral society" — a society not admittedly and plainly and willingly Christian. It must seek to use its influence to maintain a true understanding of marriage, and it must never lower its own conception of that "estate." *For its members,* it may lay down regulations which they will knowingly and

gladly accept. For those of its number who fail, for the sinners, it must make provision of some sort — and it is a moot question whether provision is really being made when the Church refuses to have anything to do with them. Education in the nature of marriage, and more particularly in the peculiar obligations attaching to the marriage of Christians, is imperative. And the Christian Church, through its ministers, should certainly refuse to perform marriages for those who plainly do not understand the Christian teaching and do not intend to live together *christianly,* even while it recognizes that all marriage — truly and loyally entered upon — is a divinely ordained "estate", which for Christians must be taken up into the Christian order and thereby "adorned" and "beautified."

Jesus' Teaching on Divorce

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What did Jesus teach about marriage and divorce, and how should a branch of His Church apply that teaching in America in the twentieth century?

I

The answer takes us far back into history. Among the Hebrews, as among other Semites, the institution of marriage had taken various forms. Temporary marriages and concubinage had once been recognized. Nothing in Hebrew law forbade polygamy, which is occasionally to be observed even after the Christian era. Divorce was always easy. Marriage was a matter of private rather than civil concern and did not require a religious ceremony such as is now common among Christians and Jews. Economic considerations played a large part in the formation of marital laws and customs. Though the wife might be greatly loved and cherished and wield great influence in the family, she was in many respects the property of the husband or of the family group into which she came. A cast-off wife might be, like Hagar, in great misery; and yet, in the absence of a fixed law, her husband could maintain his claim over her and prevent her from making a second marriage which might insure economic security and a recognized status in society. It therefore marked a definite advance when the Deuteronomic code, promulgated in 621 B. C., provided that when a husband wished to divorce his wife because he had found in her "a shameful thing" (Deut. 24:1, Heb. *erwath dabar*, literally a "nakedness of a thing," probably meaning "some indecent behavior"), he must give her a writ of divorce and thus relinquish any claim over her.

Along with this went an increasing appreciation of the sanctity of marriage. Post-exilic Judaism regarded marriage as a divine institution and a divine command, and an unmarried person was practically regarded as an incomplete personality; to remain single and

childless was a tragedy. Young marriages were favored, though the rabbis taught that a man ought not to marry until he was able to provide for his family. We have no statistics regarding divorce in Jewish antiquity, but marriages were practically always monogamous and normally were lifelong partnerships. Jewish family life probably compared favorably with the family life of Christians in any century.

The great Pharisaic teachers of the first century surrounded the divorce law with manifold safeguards so that the wife might actually have the protection which Deuteronomy contemplated, and anyone who cares to consult Canon Danby's English translation of the Mishnah[1] can read for himself, in the tractates Gittin and Ketuboth, most of the provisions. Several of the rules governing writs of emancipation for slaves applied also to bills of divorce, and the emphasis was laid on the rights of the more helpless party. Every precaution was taken to make sure that the wife was handed a divorce writ, valid in every respect and not written on perishable material or with perishable ink, so that she might be free from the "law of the husband." Indeed, she might draw up the writ herself and have her husband sign it, and she was entitled to go before the court and compel her husband to divorce her, if he had certain diseases, or was engaged in certain obnoxious occupations such as tanning, or made vows or forced her to make vows to her detriment. But unfaithfulness on the part of the husband was not a ground for obtaining a divorce. (She of course could not directly divorce him; the rabbis, however, recognized that among Gentiles a wife might divorce a husband, since Deut. 24:1 applied only to Israelites.) Once the husband had complied with all legal provisions and handed the writ over to her, he had no power to retract his action.

For what cause might a husband give a divorce writ? We have evidence of several opinions among the Pharisees. The school of Shammai interpreted the Deuteronomy passage strictly; according to most rabbinical scholars, they permitted divorce only for unchastity, though some[2] argue that they took the *erwath dabar* of Deut. 24:1

[1] H. Danby, *The Mishnah* (Oxford, 1933).
[2] Including S. Belkin, *Philo and the Oral Law* (Cambridge, Mass., 1940), p. 230.

literally ("some uncovered thing") and, like Philo, also permitted divorcee for any immodesty. The school of Hillel interpreted the "unseemly thing" as broadly as possible, holding that a man might divorce his wife even if she spoiled his food, and Rabbi Akiba, in the early second century A. D., said, "Even if he found another fairer than she, for it is written, And it shall be if she find no favor in his eyes." The pertinent passage is Gittin 9:10 in the Mishnah. The Hillelites won out, and rabbinic law permits divorce for various causes, e.g. if the wife were to transgress the Law, or bring an evil reputation upon her husband, were childless, etc. Billerbeck concludes, "One might say that in the Mishnaic period there was among the Jewish people no marriage which the husband could not dissolve on the spot with complete legality by means of handing over a writ of divorce."[3]

But, while the rabbis theoretically permitted divorce for any reason, they thoroughly disapproved of frivolous and selfish divorces, basing their teaching on Mal. 2:14, which pictures the temple altar as covered with (God's) tears when a man divorces the wife of his youth.

II

Whatever our Lord said about marriage and divorce would have been against this background and in interpretation of the Old Testament Law, perhaps even in answer to the contentions of other biblical teachers.

An extremely old form of his teaching is to be found in *Luke 16:18*, which probably represents the Q source: "Everyone who divorces his wife and marries another woman commits adultery, and he who marries a woman divorced from a husband commits adultery." This is entirely intelligible in the Jewish background and is spoken from the viewpoint of the man, who is the active party in both marriage and divorce. The saying presumes that no valid divorce can be given; the man's second marriage is adulterous, and the man who marries the divorced woman commits adultery, which is an offense against the first husband.

[3]H. L. Strack and P. Billerbeck, *Kommentar zum Neuen Testament aus Talmud und Midrasch* (Munich, 1922), I, 319.

Very similar teaching is to be found in *Mark 10:2-12*, which records a controversy over the Law. *In its present form* the passage presupposes a fairly long tradition of Christian teaching and is told in such a way as to sharpen the contrast between Jesus and the Synagogue. There are artificialities in the story as it stands. It was not necessary for Jesus to ask the question of verse 3," What did Moses command you?" the answer to which was well known. The teaching of verse 12, which contemplates a woman divorcing her husband, has in mind a Gentile environment, not a Jewish one.[4] There is some question whether Jesus would have spoken the words of verse 5, "With a view to the hardness of your hearts he [Moses] wrote this commandment for you," if the purpose is to contrast the Law of Moses and the Law of God, for like all other Jews of His time and place He accepted Scripture as divine revelation.

Nevertheless the tradition in 10:2-12 may be substantially authentic. Even verse 5 can be genuine if it does not imply a contrast between Moses and God, for it is good Jewish teaching that God often adjusts a high principle of Law to human weakness. On this view, our Lord taught that the purpose and desire of God was expressed in Genesis, but that the temporary and practical concession of Deuteronomy must give way when the Law is "fulfilled" or enforced in full. And of course it is perverse reasoning (though some modern scholars indulge in it) to say that Jesus made no radical criticism of the Law as it was currently taught or that He would not have pitted one passage of Scripture against another. Jewish teachers sometimes did the latter (though in order to interpret one passage in the light of the other), and Jesus' words in verses 6-8 are exactly parallel to the Fragments of a Zadokite Work 7:1-3, "The builders of the wall [—the Pharisees?] . . . are caught by fornication in taking two wives during their lifetime. But the fundamental principle of the creation is 'Male and Female created He them.' And they who went into the Ark, 'Two and two went into the Ark.' "[5]

[4]The variant reading of D, some old Latin MSS., and Theta, "And if a woman depart from her husband and marry another," etc., does not change matters greatly.

[5]R. H. Charles, *Apocrypha and Pseudepigrapha of the Old Testament* (Oxford, 1913), II, 810.

From Mark 10:5-9, we might perhaps conclude that our Lord stood with the best teachers of His time in upholding marriage as a divine institution, and went beyond them in emphasizing its permanence. Divorce was not part of God's purpose, He only accommodated His Law to "the rude nature which belongs to a primitive civilization," to use the words of the late Professor Gould of Philadelphia.[6] Jesus may have had in mind the injustices which can come from easy divorce, and He may have desired a higher status for women, but He was primarily thinking of God's will for humanity: a permanent family life with all its values.

Mark 10:11 has some similarity to Luke 16:18. "Whoever divorces his wife and marries another woman commits adultery with respect to her," i.e. the first wife. It would appear that Mark derives verses 2-9 and verses 10-12 from separate traditions, for the latter (which may be cognate to Q) is introduced quite artificially as a private interpretation later given to the disciples.

III

St. Paul's evidence confirms our belief that Luke 16:18 and Mark 10:11 belong to an early stage of Christian tradition. In I Cor. 7, the Apostle is speaking of marriage and continence. *With his decided ascetic bent,* he personally prefers continence but does not forbid marriage and would not have marriages broken up (verses 8f, 12-14). And he gives it as a command *from the Lord,* not from himself, in verses 10f, "that a wife should not leave her husband—but if she leaves him, let her remain unmarried or be reconciled to her husband —and that a husband should not send his wife away." The words are probably spoken with Gentile society in mind and mean that neither the wife nor the husband should get a divorce.

When one partner to a marriage was converted to Christianity and the other was not, trouble must frequently have arisen. St. Paul much preferred that people should not change their positions in the social structure. Slaves should remain slaves, married people married,

[6] E. P. Gould, *A Critical and Exegetical Commentary on the Gospel According to St. Mark,* International Critical Commentary (New York, 1905), p. 184.

and single people single. A mixed marriage should be maintained if the heathen partner is willing. In verse 15, however, the Apostle allows a highly significant exception: "But if the unbelieving one gets a divorce [literally, *departs* or *separates himself*], let him get a divorce; the [Christian] brother or sister is not held in bondage in such cases; but God called you in peace."

We thus have evidence from two or three sources that in the years 50 to 80 or 90 A. D. large areas of the Christian Church believed that Jesus had forbidden divorce. Luke's source (Q?) which is roughly contemporaneous with First Corinthians, and Mark, which is later, go further than Paul and add that the marriage of a divorced person is adulterous.

IV

The Gospel of Matthew puts a different complexion on the matter. The Sermon on the Mount contains a saying (5:32), which is parallel to Luke 16:18 and has some of the same wording. If Luke's teaching is older, Matthew apparently modifies the tradition in three ways:

(1) The biblical divorce law is quoted in such a way as to draw a contrast between Jesus' teaching and that of the Law. We may disregard this typically Matthaean trick, especially since the evangelist uses his favorite formulae ("You have heard . . . but I say unto you").

(2) The guilt of the divorcing husband is that he practically forces his wife to be adulterous, even if he himself does not marry a second time. This at least shows knowledge of the Jewish community; a woman, for her own protection, would be likely to make a second marriage.

(3) The phrase *parektos logou porneias* is introduced. It is wrong for a man to divorce his wife "except for a word [or *a case* or *cause*] of unchastity."

This third change is the most important, and it immediately raises questions.

(a) What does the phrase mean? In the first place, *logou porneias* is a literal translation of *erwath dabar,* except that the two words

are transposed. The Hebrew *dabar* frequently means "word" but in its context in Deuteronomy must have its other meaning "thing," yet Matthew mechanically renders it by *logos,* which has a somewhat different set of meanings. The verse therefore means that a man must not divorce his wife unless she has been unchaste. Matthew's tradition thus stands with the school of Shammai or perhaps is a little more strict. But the ancient Jewish synagogue never had the idea that "whoever marries a divorced woman commits adultery," though it did warn against marrying a divorcée since the marriage might be a failure, and it forbade an adulterous wife, once divorced, to marry her paramour.

Some interpreters have insisted that since *porneia,* fornication, is a different word from *moicheia,* adultery, the saying must refer only to pre-marital unchastity on the part of the woman. But the two words are occasionally used in parallelism in the Old Testament, and Matthew must at least include adultery in his exception clause.

(b) Where did Matthew get his tradition? It is possible that he introduced the exception himself; he loved to quarry texts out of the Old Testament scriptures, and this may be his independent translation of the Hebrew. On the other hand, he may have it from an oral or written source. It is notorious that he weaves his sources together, and here he may be conflating Q with some other tradition.

(c) Does the exception clause represent Jesus' genuine teaching? My answer, and that of most modern critics, is negative. Matthew is at least as late as Luke and later than Mark or St. Paul, and this appears to be an accretion to the tradition. Furthermore, we see in Matthew more clearly than anywhere in the New Testament the beginnings of a canon law (see 17:24-27; 18:15-18; 19:21a, all of which are attempts to adjust sayings of Jesus to church life or to give guidance in difficult situations).

Matthew proceeds along similar lines when, in 19:3-9, he reproduces the substance of Mark 10:2-12. Writing for Christians living in a Jewish environment, many of whom may be Jews, he makes the legal issue perfectly clear: "Is it lawful for a man to divorce his wife *for any cause?*" (verse 3), and omits the verse in Mark which forbids a woman to divorce her husband. Into verse 9 he introduces the

phrase *mē epi porneias* to conform to what he has written in 5:32. Furthermore, he is conscious of the objection which Jews—even Christian Jews—might raise. Marriage is so risky that it may become intolerable if the relief of divorce is to be had only on this single ground, so perhaps a man ought not to marry at all (cf. I Cor. 7:28)! Matthew's only answer is to introduce a saying on celibacy (verse 12) which fits clumsily into this context. What its ultimate origin is, we do not know.

V

What Jesus taught on this subject is fairly clear and can be expressed in one sentence. He was opposed to divorce and considered that God had ordained marriage as a lifelong relationship. The question is whether this constitutes an ecclesiastical law which the Church is bound to follow without exceptions or adjustments.[7] In fact, it really comes down to this: when a marriage goes to pieces and a divorce is obtained according to civil law, is the Church bound to refuse its blessing to a second marriage even though the party making the second marriage labored to maintain the first, and its dissolution was not really his or her fault? Or, to raise a different kind of question, is every marriage which has been legally contracted according to the law of the state, which has been consummated sexually, and is not open to annulment on the ground of fraud, duress or some other impediment, a true marriage which God has ordained to be indissoluble? An answer to these questions involves the whole structure of Christian theology and ethics, and I shall mention only some points which appear to a New Testament historian and theologian to be important.

There is nothing inherently improbable in supposing that Jesus gave definite legal teaching, just as the great Pharisaic scribes did. We have no clear and certain evidence that He founded a Church or a new religion in the usual sense of those words, and gave it a

[7] For example, Bishop Gore argues, in *The Question of Divorce* (New York, 1911), p. 24, that "our Lord formally and decisively declared marriage indissoluble," and was making a law, not stating an ideal. This be believes to be proved by the way in which the evangelists and St. Paul formulate this teaching.

new Law. Certainly we cannot say that he envisaged what ultimately came about: a Church separated from the nation of Israel, with quite different laws, ministries and rituals, and a predominantly Gentile membership. The evidence of the synoptic gospels and St. Paul converges toward the conclusion that a separate Church is the gradual development from several factors: Jesus' joyful recognition of the presence of the Kingdom in Himself and His followers, the Resurrection and the coming of the Spirit, the admission of converts without the requirement of circumcision and observance of other Old Testament ceremonial provisions, the development of distinctive Christian rituals and mores, and that gradual breach with the Jewish authorities which at last led to excommunication of Christians from the synagogue. Whatever Jesus taught, even though it was the pure will of God as He saw it, must thus have been formulated with the Jewish nation and its Law primarily in mind. It is therefore conceivable that He should teach His followers the correct interpretation of many provisions in this already existing Law, and expect them to follow and apply this teaching in their own group, even though the most influential leaders of Israel might teach differently and there was no immediate hope that the local courts and the Great Sanhedrin would adopt Jesus' rulings.[8]

But did He in fact legislate? The answer involves a glance at rabbinic teaching, which can be classified into two types: halakhah and haggadah. The term halakhah is applied to prescriptions for conduct drawn from the traditional Law; everything else, all that side of Jewish teaching which attracts and inspires the Jewish and Christian reader, is haggadah: "religious truths, moral lessons, discourse on just reward and punishment, inculcation of the laws in which the nationality of Israel is manifested, pictures of the past and future greatness of Israel, scenes and stories from Jewish history, parallels between the divine institutions and those of Israel, encomiums on the Holy Land, inspiring narratives, and manifold consolation."[9] One who undertakes to classify Jesus' teaching in this way finds that it is predominantly haggadic. Such are all the parables; the exhortations to prayer, almsgiving and generosity; the Beatitudes; the rebukes against hypocrisy and cruelty; the eschatological teaching, etc. Jesus is much more the synagogue preacher and Sabbath school teacher than the rabbi.

[8] This holds true, even though one should hold the extreme apocalyptic view that Jesus expected the world speedily to come to an end. (1) The divorce law applies on this earth; in the age to come there is neither marrying nor giving in marriage (Mark 12:25). (2) Jesus did not teach an "interim ethic" but the will of God irrespective of when the end should come. (3) St. Paul gives divorce rules even though he expects the end to come soon.

There are, however, teachings of Jesus that might be classified as halakhah. Most of these take the form of a criticism of current interpretations. Thus He liberalized the Sabbath Law to permit healings, even when a life was not in danger, and apparently took the position that human need of any kind overrode the Sabbath obligation. His ruling on the Corban vow was the same as that of the Pharisees a generation or so later: a man cannot be bound by a vow which violates his duty to honor father and mother. Our Lord also opposed the Pharisaic program of extending the rules of priestly purity to laymen, and, if Mark 7 can be trusted, He declared against the whole legal structure based on the concept of clean and unclean. In all the above cases, the trend seems to have been toward relaxation of rules in the interest of human freedom, welfare and happiness, which were for Him a primary consideration: "The Sabbath was more for man, and not man for the sabbath: therefore man is lord of the Sabbath" (Mark 2:27f).

Two other principal teachings of Jesus which we might consider legal, are on the subject of oaths and divorce. He not only criticized evasions of oaths but said "Swear not at all;" i.e. you should be so truthful that an oath is not needed. But in the same chapter of Matthew, and in quasi-legal form, are the commands against anger and lust (5:22, 28), and those which demand reconciliation with one's brother (5:23f), non-resistance and love of enemies (5:39-41, 44). No civil or ecclesiastical court could enforce the prohibition of anger and lust or the demand of a loving disposition

[9] G. F. Moore, *Judaism in the First Centuries of the Christian Era, The Age of the Tannaim* (Cambridge, Mass., 1927), I, 161f. The Mishnah, being a law book, is practically all halakhah except for the tractate Aboth. One who would appreciate the distinction may read Aboth and then browse about in any other tractate.

to enemies, but most of the other provisions could be applied to some degree in church life. Are these teachings of Jesus only ideals, guiding stars toward which we move but which we can never reach? Pacifists do not think so.

Of course it must be allowed that sometimes our Lord is hyperbolical, as when He bids us pluck out the right eye if it leads us into sin, and we are not in much danger of misunderstanding such passages, which are pure haggadah. But it remains a difficult question how much, if any, of His teaching is halakhic, and how precisely He meant it to be taken. Even if the pacifist should be right in making non-resistance to enemies an absolute command, it remains true that much of Jesus' teaching is directed toward getting at the springs of human action; He would prevent murder by developing human beings who do not give way to anger, He would stamp out adultery by preventing lust, and perjury by making people truthful. If our extant sources furnish a reliable guide, it would appear that Jesus only very seldom gave rulings on specific legal points and was more interested in giving general principles for interpretation of the Old Testament. He actually seems to have used the principle of love for God and neighbor as the chief guide in moral problems and because of it He modified the traditional Law. His approach was similar to that of the Old Testament prophets. He appears to have been impatient of technicalities and subtleties, and to have preferred immediate, intuitive, individual judgment rather than dependence on the case law of the Pharisees.

Some of Jesus' teachings do not pose immediate and obvious issues. The Christian Church has long since ceased to be concerned with the problems of ceremonial uncleanness and the keeping of Saturday as a holy day.[10] The divorce saying is one of the few which stir controversy. But it would seem inconsistent to take this as an absolute law and not to include with it the commands against oaths and resistance to enemies. If we are to be rigorous

[10] Of course a time came when Christians applied to the Lord's Day much of what the Old Testament had taught about the Sabbath. The undivided Church, however, never became completely sabbatarian, though numerous minority groups have.

in the matter of divorce, let us also repeal the permission of oaths in the Articles of Religion, and let us forbid communion to everyone who commits an act of retaliation—in personal quarrels at least. And if someone should insist that Matthew's exception to the divorce law is permissible since it is part of canonical scripture, but that no other relaxation is, then let us also take seriously the words in Matt. 23:8-10, which are equally canonical and equally words of law: no Christian may henceforth address any man as "Rabbi," "Father," or "Professor"—perhaps not even as "Mister," which is, after all, a form of the word "master."

Jesus may have forbidden oaths and divorce unconditionally. An *individual* loyal to Him may be able to obey Him unconditionally. But the Christian Church has never been able to apply the divorce law without some interpretations and adjustments. St. Paul, our earliest authority, begins by declaring the Christian husband or wife free if the heathen partner makes the marriage impossible: "God's purpose for you is peace." The Apostle must believe that it is not God's will that a marriage should be maintained if it cannot possibly lead to harmony and peace. Matthew introduces a different kind of exception. And Christian history records many other interpretations and modifications, some honest and forthright, others evasive and hypocritical.

It is in St. Paul that we first see the Christian Church, as represented by one of its great and authoritative leaders, wrestling with practical moral issues. His general principle is so radical that the Church has usually hesitated to apply it: if a man is impelled by the Spirit of Christ, he may make moral decisions on his own responsibility, though he must always restrain himself and exercise his freedom with consideration for the rights and needs of the brotherhood. Yet in such matters as sexual relations he does not hesitate to give more definite guidance. By the time the Gospel of Matthew is written, the Church believes, and explicitly says, that the power to bind and loose, i.e. to declare what is forbidden and what is permitted, is committed to her. Several of the teachings of Matthew, including the famous exception clause, are actually examples of the Church's decisions, not those of the historical Jesus. We should

not shrink from this fact nor from its clear implications. The contemporary Church has the right and the duty to apply a principle like the divorce law in such a way that its real purpose may be upheld. If once we ask the question whether every marriage valid in civil law which baptized Christians contract is actually a marriage made and ordained by God and therefore indissoluble, if once we ask what is the bearing on our current problems of St. Paul's principle that "God has called you for peace," we realize that the Church must not evade its responsibility. For to take a rigoristic attitude and to refuse to consider cases on their merits, is to do precisely what our Lord condemned: it is to deify a legal provision rather than to serve God by helping human beings in their need. The Sabbath was made for man, not man for the Sabbath. The divorce law was made for the protection of human beings—and therefore of course it is not to be treated too rigorously nor too laxly—men and women were not made for the sake of the divorce law.