

# 1 COR 7:10-15: A BASIS FOR FUTURE CATHOLIC DISCIPLINE ON MARRIAGE AND DIVORCE?

BRIAN BYRON

*St. Joseph's Presbytery, Camperdown, N.S.W., Australia*

**I**N TWO previous articles I tentatively suggested an interpretation of the NT doctrine on divorce which, if correct, could have very important implications for the Church's discipline regarding the marriageability of divorced persons.<sup>1</sup> My practical conclusion, that the so-called Pauline Privilege need not be so restricted as it is now, has been endorsed by the Irish scriptural scholar W. Harrington.<sup>2</sup> This vexed question of marriage breakdown is an interdisciplinary one, requiring the co-operation of exegetes, theologians, and pastorally-minded canonists. Ecclesiastical legislators who are at present engaged in the revision of the Church's laws will look to Catholic scholarship for information and suggestions before enacting laws which affect the lives of so many people. In the present article I wish to propose that 1 Cor 7:10-15 could serve as the basis for our future marriage discipline. In doing so, I do not wish to appropriate to myself the competence which belongs rightly to either exegete or canonist; rather, my position is that of a systematic theologian who studies the findings of scriptural scholars, tries to build a coherent synthesis, and delivers that synthesis to the canonist as a basis for formulation into practical pastoral legislation. In this spirit I offer what follows for the evaluation of all who are concerned in this important area.

## THE TEXT

It seems that Paul in this chapter is commenting upon a series of questions put to him by the Christians of Corinth. Paul's own preference for celibacy is expressed in v. 8, but he does not allow it to become more than a counsel. In v. 10 he speaks to "the married," i.e., spouses, both of whom are Christians, in contrast to "the rest" in v. 12, who are Christians married to nonbelievers, i.e., unconverted Jews or Gentiles. Vv. 10-11 are Paul's repetition of the doctrine of Jesus: "To the married I give charge, not I but the Lord, that the wife should not separate from her husband (but if she does, let her remain single or else be reconciled to her husband) and that the husband should not divorce his wife."

<sup>1</sup>Brian Byron, "The Brother or Sister Is Not Bound: Another Look at the New Testament Teaching on the Indissolubility of Marriage," *New Blackfriars* 52 (1971) 514-21; "General Theology of Marriage in the New Testament and 1 Cor. 7:15," *Aust. Cath. Rec.* 49 (1972) 1-10.

<sup>2</sup>W. Harrington, "The New Testament and Divorce," *Irish Theological Quarterly* 39 (1972) 178-87.

Paul's words no doubt reflect the questions put to him, which in turn reflect the marriage problems which were arising among the Christians of Corinth. It is probable that they were typical marriage difficulties: husband and wife quarreling, wife leaving home, or husband threatening divorce. Paul applies the moral doctrine of Jesus: the wife must not leave her husband; they must in Christian charity try to overcome their differences, forgive one another, and live harmoniously. But even if the wife is so provoked that she does leave her husband, who, we ought to remember, is also a Christian, her separation must not be regarded as final. Hence she must remain single. Moreover, she must be prepared to return to her husband if the cause of her perhaps legitimate complaint is removed. The Christian husband who is deserted in such a case must not divorce his wife but is under a similar obligation to remain single until such time as the difference is overcome and union restored.

In vv. 12-15 Paul turns "to the rest," but now he speaks on his own authority: "I say, not the Lord." The particular significance of this phrase will be examined later. Paul now can speak only to one partner, the Christian. The unbelieving spouse does not accept Paul's authority nor the Christian marriage teaching. Vv. 12-13 do actually reflect the Lord's teaching: the Christian husband or wife may not divorce the unbelieving partner. As far as the Christian is concerned, his or her commitment must always remain. The Christian cannot withdraw his consent and must not be responsible for the destruction of the union. However, v. 15 states: "But if the unbelieving partner desires to separate, let it be so; in such a case the brother or sister is not bound. For God has called us to peace." Although the Christian may not break up the marriage, it is possible that the unbeliever may want to separate, since, as we have said, he or she does not accept Christ's authority or His teaching on marriage. Paul seems to suggest that the Christian need not go to too much trouble to dissuade the unbeliever from going: "let it be so."

It is well known that Paul does not expressly state that the Christian may remarry. This much may, however, be said: he does not *forbid* remarriage, as he did explicitly for the separated wife in v. 11. Moreover, the Greek word which is used, *chōrizesthō*, "let him depart," is the same as that used in Mt 19:6, where Jesus says: "What therefore God has joined together, let no man put asunder" (*chōrizetō*). It could be argued that even though Jesus forbade anyone to break up a marriage union, Paul is prepared to recognize that when one party, who does not accept Christ's teaching, departs, the union is *in fact* ended. If there were any doubt on this point, it has been resolved for the Catholic by the Church's practice of allowing the Pauline Privilege on the basis of this text.

How was it possible for Paul, and consequently the Church, to make such a ruling? To find an answer to this question, we must now look more closely at the scriptural evidence. First, Paul bases his directions to those who have nonbelieving partners on his own authority, not on that of Christ: "I say, not the Lord." This does not imply a special revelation. His words mean that the Lord did not discuss the point which he is going to decide, i.e., the case where one party obeys his teaching on marriage and the other does not.

What is the precise element in the situation which enables Paul to make the decision contained in v. 15, and the Church to rule subsequently that the Christian may remarry? Let us first examine what Paul said, and then what he did not say. His reasoning is rather involved, to our way of thinking, but it seems to be as follows. Although he claimed to be speaking on his own authority, in vv. 12-13 he is actually repeating Christ's teaching: the Christian may not divorce the unbeliever. He adds a reason, viz., the consecration of the unbeliever and the children of the marriage because of their relationship to the Christian. V. 15 contains Paul's own ruling: "if the unbelieving partner desires to separate, let it be so." When he/she departs, "the brother or sister is not bound." Paul then gives a reason: "For God has called us to peace." This general remark seems to mean that the Christian's peace must not be upset by this separation. The Christian has not violated the law of Christ, because he is not responsible for the break-up of the marriage. The following verse should probably be interpreted with the RSV as indicating why the Christian should not be scrupulously concerned by the departure of the unbeliever: there is no guarantee in this case, as distinct from those in vv. 12-14, that the Christian can make any impression on the unbeliever which would lead to his salvation. Perhaps this remark reflects the question put to Paul by the Corinthians: a case could have arisen involving the desertion of a Christian by an unbeliever. The Christian was disturbed at this violation of Jesus' teaching and was wondering whether he had an obligation to pursue the unbeliever to try to restore the marriage union. Paul replies that he "is not bound." The verb used, *douloō*, refers to spiritual and moral bondage. The call to the Christian life is to freedom and peace, which is not to be disturbed by the subchristian conduct of unbelievers.

#### CANONICAL PAULINE PRIVILEGE AND ITS SCRIPTURAL BASIS

Before stating what I believe to be the crucial point which enabled Paul to make his decision, I would like to exclude some assumptions which have been made down through the centuries but which seem to me to have no basis in Paul's thought.

First, there are several elements in the canonical Pauline Privilege which are not found in the text. The Code of Canon Law (can. 1120) states that the Pauline Privilege dissolves a valid union between *unbaptized* partners when one is converted and baptized and the other refuses to live harmoniously with him. There is no definite proof in 1 Cor 7:15 that the marriages Paul is dealing with are limited to those which take place *before* the Christian's baptism. Paul's words are quite universal: "if *any* brother. . ." So the canonical Pauline Privilege is more restricted than Paul's original case. The call to peace (v. 15) does not apply only to recent converts but to all Christians. Admittedly, Paul discouraged the marriage of Christians to unbelievers (1 Cor 7:39), but such marriages certainly took place. Paul's words in vv. 12-15 apply to *all* marriages between believers and unbelievers, whether they took place before or after the former's conversion.

Another assumption of the canonical Pauline Privilege is that the word "unbeliever" can simply be equated with "unbaptized." Again, there is no indication in Paul's words that baptism as such is the critical issue. The Code reflects a school of thought which understands indissolubility as being based on a *sacramental* bond which is formed when two baptized Christians are validly married and consummate their union. If one or both parties are unbaptized, there is a merely *natural* bond which, according to this theory, the Church can dissolve. But Paul does not mention the lack of *baptism* as having anything to do with the case. It is true that he speaks of an unbeliever, who of course is also unbaptized. Generally speaking, believers are baptized and unbelievers are unbaptized. But it is possible to have a believer who is not baptized, viz., a catechumen, and it is also possible to have a baptized unbeliever, viz., an apostate.<sup>3</sup> The equation of "unbeliever" with "unbaptized" may be a good rule of thumb and it makes cases easier to deal with canonically, because baptism or the lack of it can generally be proved from records, whereas belief or unbelief cannot. But this does not justify the assertion that Paul was thinking in terms of baptism, or the lack of it, as the reason for his decision. I would agree that the lack of *faith* has something to do with the matter: it is the basic reason for the unbeliever's departure. He has not given to his marriage the commitment demanded by Christ, in whom he does not believe. His departure reveals a certain hostility to Christian ideals which is not displayed by the unbelievers mentioned in v. 14, who are sanctified by their very association with Christians.

This, then, is the circumstance that makes all the difference to Paul: the unbeliever breaks up the union. Paul does not describe the ruling as a

<sup>3</sup>J. M. Aubert, "Foi et sacrement dans le mariage, à propos du mariage de baptisés incroyants," *Maison-Dieu* 104 (1971) 116-43.

divinely permitted *dispensation* from divine positive law, nor as a dissolution of a *natural* bond in favor of the faith. It is his own ruling, not the Lord's, and the factor which determines it is that an unbeliever opts out of his union with a believer.

#### GENERAL PRINCIPLE BEHIND PAUL'S RULING

I wish now to go more deeply into this decision made by Paul. There are further assumptions which must be disposed of if we are to get to the more general principle underlying Paul's thought. One such assumption is that Paul understood Jesus to have spoken of the marriage relationship as a *bond* which is by divine ordinance indissoluble. This involves two questions. First, how did Paul understand Jesus' teaching? Secondly, did this concept actually correspond with the authentic teaching of Jesus? (We will study these questions in detail shortly.) A second assumption, which depends on the first, is that Paul considered himself as giving a dispensation from the divine law. We have already excluded that he could do this because of a special revelation. Various other suggestions have been made recently: this is a case where Paul realized that a higher value was at stake than is effected by the prohibition of divorce;<sup>4</sup> Paul appreciated better than we do the exact force of an evangelical absolute and, while Jesus' teaching was the ideal, in practice certain cases arise which make exceptions possible.<sup>5</sup>

Before examining the relationship of Paul's teaching to that of Jesus as contained in the Synoptics, let us first examine these suggestions, viz., that particular exceptional circumstances or higher values allow a concession to the radical demands of Christ on certain points. This line of enquiry is being developed by Catholic Scripture scholars and moralists, and it may be a fruitful one. Certainly the Church herself has not kept literally to Jesus' prohibition of oaths and of forceful self-defense, both of which are mentioned in the context of His teaching on divorce (Mt 5:33-45). Moreover, the Church has been given the power to bind and loose, which is the exact metaphor used by Paul regarding the marriage relationship in 1 Cor 7:27, 39 and Rom 7:1-3. If the Church has the general power to "loose" and her decisions are ratified in heaven, perhaps she can in certain circumstances use this power over the marriage tie.

This line of thought certainly has much validity. Yet some doubts remain. Though there is an element of hyperbole in certain parts of Jesus' teaching, surely the practical importance of marriage would require a

<sup>4</sup>T. Thompson, "A Catholic View of Divorce," *Journal of Ecumenical Studies* 6 (1969) 53-67; Denis Doherty, "Consummation and the Indissolubility of Marriage," in *Absolutes in Moral Theology*, ed. Charles Curran (Washington, D.C., 1968) pp. 211-31.

<sup>5</sup>Harrington, *art. cit.*, p. 184; W. O'Shea, "Marriage and Divorce: The Biblical Evidence," *Aust. Cath. Rec.* 47 (1970) 89-109.

more literal treatment by Him of this matter, as the contexts in Mt 19 and Mk 10 would indicate.<sup>6</sup> Secondly, the Church knows that there are limits to her power of binding and loosing. She is hardly going to use it in a way that is directly contrary to Jesus' teaching. She may indeed use it to resolve doubts, to apply His principles to new circumstances, etc., but she does not claim to loose what He has bound. So, if this kind of thinking is going to lead to any practical certainty, some other considerations must be made. We must find particular indications in Scripture which would allow the interplay of these more general principles. It is my opinion that such particular evidence is available in the Synoptic teaching on divorce. Again, we must be prepared to leave aside assumptions which have no basis in the texts.

What is the relationship between Paul's ruling and the teaching of Jesus itself as found in the Synoptics? There does not appear to be any textual similarity, so that we do not know the exact form of the tradition with which Paul was familiar. As a comparison of the Synoptic texts shows, there are some intriguing differences between them. And if, for example, Paul knew only the content of the Marcan account (Mk 10:11-12), it is easy to see how he could make his statement in 1 Cor 7:15; for this source forbids a man to divorce his wife and a wife to divorce her husband, but says nothing about a *divorced* spouse still being bound. That is, Paul in this hypothesis is not *contradicting* something said by Jesus, but ruling on the status of the party not discussed by Jesus, i.e., the abandoned party who is not responsible for the final breakdown of the marriage inherent in the new union of the other party. The objection must then be faced that, in thinking this, Paul was mistaken, because Jesus actually did forbid anyone to marry the divorced party, viz., in Mt 5:32b and Lk 16:18b. I shall now suggest that such an understanding of these texts is doubtful.

### CHRIST'S TEACHING ON DIVORCE IN THE SYNOPTICS

(The Texts [RSV] with Significant Variations in Italics)

Mt 5:31-32

31. "It was also said, 'Whoever divorces his wife, let him give her a certificate of divorce.'
32. But I say to you that everyone who divorces his wife, *except on the ground of unchastity, makes her an adulteress; and whoever marries a divorced woman commits adultery.*"

Mt 19:3 ff.

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

<sup>6</sup> Cf. my article in *New Blackfriars* 52 (1971) 515-16 (n. 1 above).

4. He answered, "Have you not read that he who made them from the beginning made them male and female,
5. and said, 'For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one'?
6. So they are no longer two but one. What therefore God has joined together, let no man put asunder."
7. They said to him, "Why then did Moses command one to give a certificate of divorce, and to put her away?"
8. He said to them, "For your hardness of heart Moses allowed you to divorce your wives, but from the beginning it was not so.
9. And I say to you: whoever divorces his wife, *except for unchastity*, and marries another, commits adultery."
10. *The disciples* said to him, "If such is the case of a man with his wife, it is not expedient to marry."
11. But he said to them, "Not all men can receive this precept, but only those to whom it is given.
12. For there are eunuchs who have been so from birth, and there are eunuchs who have been made eunuchs by men, and there are eunuchs who have made themselves eunuchs for the sake of the kingdom of heaven. He who is able to receive this, let him receive it."
13. Then children were brought to him. . . .

## Mk 10:2 ff.

2. And Pharisees came up and in order to test him asked, "Is it lawful for a man to divorce his wife?"
3. He answered them, "What did Moses command you?"
4. They said, "Moses allowed a man to write a certificate of divorce, and to put her away."
5. But Jesus said to them, "For your hardness of heart he wrote you this commandment.
6. But from the beginning of creation 'God made them male and female.'
7. 'For this reason a man shall leave his father and mother and be joined to his wife,
8. and the two shall become one.' So they are no longer two but one.
9. What therefore God has joined together, let no man put asunder."
10. And *in the house* the disciples asked him again about this matter.
11. And he said to them, "Whoever divorces his wife and marries another, commits adultery *against her*,
12. *and if she divorces her husband and marries another, she commits adultery.*"
13. And they were bringing children. . . .

## Lk 16:18

18. "Everyone who divorces his wife and marries another commits adultery, *and he who marries a woman divorced from her husband commits adultery.*"

## JESUS' DIVORCE DOCTRINE IN MATTHEW AND LUKE

It is often said that Jesus taught that there is an indissoluble bond between married people which is forged by God and which man cannot break. This statement is subject to some qualification. First, Jesus does not use the metaphor of a bond. The terms "to bind" and "to loose" are used elsewhere in the New Testament with regard to marriage (1 Cor 7:27, 39; Rom 7:1-3), but Jesus does not use them. Moreover, the idea of a bond, a *vinculum*, which is used in the Code, is not precisely that of the "binding" metaphor. A *vinculum* links two things or people together, but the verb "to bind" when used of marriage expresses the obligations of one party to the other. The image of a *vinculum* is quite legitimate, but we must realize that it is only a metaphor; we must not reify it, as has been the tendency. The bond of marriage is not an ontological but a moral one, formed by the divinely designed marital consent of human beings. But Jesus does not use this metaphor; rather, He speaks in terms of union: "What therefore God has *joined* together, let no man put asunder" (Mt 19:6).<sup>7</sup> Nor does He speak of indissolubility, which means literally "impossibility of being dissolved." Jesus does not say the union *cannot* be dissolved; He says "What God has joined, *let* no man separate." Indeed, the prohibition itself implies that it *can* be sundered. So Jesus does not speak of an indissoluble bond but of a union which man may not destroy. This part of Jesus' teaching then—and Paul quotes the same text from Genesis in 1 Cor 6:16—would not prevent Paul from declaring a union in fact sundered by the separation of the unbeliever, nor the Church from allowing the Christian to remarry without contravening Christ's teaching.

The main difficulty against this approach is found in Mt 5:32, where Jesus says: "whoever marries a divorced woman commits adultery," and Lk 16:18, which reads: "he who marries a woman divorced from her husband commits adultery." I wish now to argue: it is not *certain* that these words prevent the remarriage of a woman who has been divorced by her husband entirely on his initiative. I mean that they are in themselves ambiguous, that they could refer *only* to a woman who has obtained a divorce so that *she* can remarry. If it cannot be proved that they certainly apply to both cases (i.e., a woman divorced against her will and a woman who herself obtains a divorce), then there is a doubt which may be resolved by the Church, and the Church may find a precedent in Paul's ruling which she herself has taken as allowing a "divorced" person to remarry.

<sup>7</sup>Thompson, *art. cit.*, p. 64; J. P. Jossua, "Moral Theological Forum: The Fidelity of Love and the Indissolubility of Christian Marriage," *Clergy Review* 56 (1971) 176.



Now let us have a closer look at these verses which we have assumed prevent the remarriage of even a party who is quite innocent of destroying the union. Several important preliminaries must be kept in mind. Among the Jews the *legal* initiative for divorce was the exclusive prerogative of the husband. The wife could not divorce her husband. She could indeed ask for a divorce and could even go to court to make her husband give it to her.<sup>8</sup> Still, *he* had to give it. This was not the case in Roman law, which is reflected in Mk 10:12, in which a woman could divorce her husband. In both cases the divorce was rather unceremonious: it occurred between the parties alone and the intervention of a court or official was not needed. We must keep this point in mind. Divorce for us implies the decision of a civil authority by which a marriage bond is declared dissolved. This was not the case for the ancient world, where divorce meant a unilateral repudiation of one party by the other. It is in this sense that divorce was absolutely forbidden by Jesus. Of course, according to His teaching too, a bilateral dissolution would only compound the disregard for God's plan.

The Jewish custom which envisaged the active role of the husband in both marriage and divorce is taken for granted in the passages which constitute our difficulty. Given this custom and the way it was carried out in practice, two different cases could occur: one in which the husband wants to rid himself of his first wife so that he can marry another woman, and one in which the husband frees his wife at her request so that *she* can marry another man. The first of these cases appears in Mt 19:9, Mk 10:11, and Lk 16:18. The second case appears to be hinted at in Mt 5:31, which does not mention the husband remarrying but condemns him for giving his wife a bill of divorce, thereby making *her* commit adultery. Some have assumed that Jesus meant that by divorcing her the husband is virtually forcing her to accept remarriage, because in the prevailing social conditions she could not support herself. But this is by no means certainly what Jesus is referring to. Single women were able to exist in those days and many of those women who were divorced had surely lost their attractiveness and had little chance of being asked to marry again. Is it not more likely that Jesus is condemning a husband for co-operating in the sin of his wife who wants a divorce from him so that *she* can remarry? Is not this equivalent in Jewish idiom to the case expressed for the Roman world by Mk 10: 12: "if she divorces her husband and marries another, she commits adultery"? And if so, would not the following words in Mt 5:32b and Lk 16:18b, which condemn the new husband as an adulterer, imply that the divorced woman extracted the bill of divorce so

<sup>8</sup>J. Duncan M. Derrett, *Law in the New Testament* (London, 1970) pp. 386-88.

that she could marry the new husband? All this would lead to the conclusion that Mt 5:31-32 and Lk 16:18 are exactly identical in *content* with Mk 10:11-12 and that they do not add a new prescription against the remarriage of the woman divorced against her will by her husband.

#### THE MATTHEAN EXCEPTIVE CLAUSES

Before I reach a conclusion, a few further observations can be made. First, I should like to comment on the Matthean exceptive clauses in Mt 5:32 and 19:9. Many interpretations have been offered and several of these are still respectable opinions. Probably we shall never arrive at certainty. With these reservations I have added another contribution to the contenders on the basis of the argument which I have been advancing.<sup>9</sup> The word *porneia* in the exceptive clauses could refer to a new union entered into by a woman who has deserted her first husband. It could be an example of those unions illicit by Christian law and described by the generic term *porneia* (cf. Acts 15:20, 1 Cor 5:1). The exception is then *real* to the extent that the husband can consider himself free of her and therefore able to remarry without incurring the Lord's condemnation. It would be only *apparent* in the sense that it is not an effective repudiation of his wife but merely a recognition of an established situation. I say that this is possible. The word *porneia* would be used in such a situation rather than *moicheia*, which had a specific sense among the Jews: it referred literally to acts against the marital rights of a husband either by the woman or the woman's lover. It would not normally be applied to the status of a woman who left her first husband and married a second. Her action would be an infringement of Jewish law but would be allowed under Roman law in NT times. In neither case would the new union be termed *moicheia*. Jesus actually does say that a woman who does this is guilty of *moicheia*, but He is deliberately extending the term in prophetic vein. Despite this, *moicheia* could not of course be used in the exceptive clauses, because it would then convey that a husband could divorce his wife for *any* adultery, which is an opinion from which Jesus was dissociating Himself—that of Shammai.<sup>10</sup>

Hence, if my claim is true that Jesus did not make any ruling on a partner abandoned by the other (who remarries), it is most likely that this case is the one referred to by the exceptive clauses, because it is always the case most likely to occur—at the time of Jesus, in the early Church, and now. In other words, the principles behind Paul's decision in 1 Cor 7:15 are possibly the same as those used by the author of the exceptive clauses which found their way into Matthew's texts.

<sup>9</sup> *Art. cit.*, p. 519.

<sup>10</sup> J. McKenzie, *Dictionary of the Bible* (London, 1965) p. 201.

## THE EUNUCH LOGION IN MT 19:10-12

A further observation should also be made on a new interpretation of the eunuch-saying which follows Jesus' teaching on divorce in Mt 19. The traditional understanding of this saying has been that it is a recommendation to celibacy for the sake of the kingdom.<sup>11</sup> Q. Quesnell has now suggested that it refers rather to the enforced celibacy of those who accept Jesus' teaching on divorce and then are forbidden to have relations with their wives because of the wives' impurity.<sup>12</sup> It is not my desire to approve or disapprove of Quesnell's general theory, which I leave to the study of exegetes. But even this hypothesis does not go against the ideas I have put forward. The very case advanced by Q. Quesnell from the *Shepherd* of Hermas will serve to illustrate that what I am saying is in harmony with this opinion. In this instance a woman is found out in some adultery (*moicheia*). If her husband goes on living with her while she remains in her impurity (*porneia*), he partakes of her sin. Therefore he should put her away. But if he himself then remarries, he is guilty of adultery *because he must receive her back if she repents and wishes to return* (emphasis mine).<sup>13</sup> My interpretation is quite compatible with this course of action. According to Christ's teaching, no one may initiate an absolute sundering of the marriage union even for adultery. According to my interpretation, therefore, there will still be cases of enforced celibacy, as I have already intimated when referring to Paul's discipline for Christian partners as described in 1 Cor 7:10-11. In such cases where Christian spouses separate, the situation must be regarded as temporary—or rather, conditional on the removal of what is objectionable in the guilty party's conduct. So, in the case advanced by Hermas, the Christian must show his disapproval of his wife's repeated acts of adultery by his abstinence and, if necessary, even by separation. But this will be conditional on her repentance. Such, however, is not the case I envisage in my interpretation of 1 Cor 7:15 and the exceptive clauses, which is that of a final and unconditional break made by one partner who definitively separates (divorces or abandons) and shows the permanency of his decision by, e.g., entering another marriage. This new union would not be called adultery in ordinary speech, although, as I have said, Jesus in His role as prophet brands it as "adultery" (cf. Mt 5:28, which speaks of impure desires as adultery of the heart).

The conclusion to my scriptural argument may be formulated as follows. When Paul makes his decision in 1 Cor 7:15, he is making a

<sup>11</sup> L. Legrand, *The Biblical Doctrine of Virginity* (London, 1963) pp. 38 ff.

<sup>12</sup> Q. Quesnell, "Made Themselves Eunuchs for the Kingdom of Heaven (Mt. 19:12)," *Catholic Biblical Quarterly* 30 (1968) 335-58.

<sup>13</sup> *Ibid.*, p. 350.

particular application of a more general principle. An unbeliever who separates from a Christian can realistically be regarded as making an unconditional and final break. The union may be regarded as in fact finished. The more general principle behind this is that, while neither party *may* make such a definitive break, if one does and abandons the other in a way that prudently and practically can be considered final, the deserted party is unbound and free to marry again.

Before outlining any practical suggestions, let me first restate the general principles of marriage as contained in the NT. I have suggested that the fundamental reason behind Paul's decision in 1 Cor 7: 15 has nothing to do with baptism or the lack of it, nor is he giving a privilege for the exclusive assistance of converts to Christianity, nor is he granting a dispensation from the law of Christ. His ruling is not an *exception* but a statement concerning the party whose marital status was not discussed by Jesus, viz., the definitively abandoned partner. The reason why Paul made his judgment was that the departure of a nonbeliever can be regarded as final because he admits no duty of obeying Christ's teaching on marriage. Jesus was not discussing only the obligations of His followers but those inherent in the nature of marriage itself according to the design of the Creator. So it is a more general question than the case Paul discusses. In the very nature of marriage commitment one will find the grounds for Paul's decision.

According to the plan of the Creator and the teaching of Jesus, those who marry must commit themselves to each other absolutely—in fact, as absolutely as Christ committed Himself to His Church (Eph 5:21–33). No one—Jew, Christian, or anyone else—may withdraw his commitment for any reason. There is no cause, even a lapse such as adultery, which allows anyone to break up a marriage union. But what is the opposite side of the coin? If one party disobeys this command and does break up the union by departing in such a way that it is obviously final, e.g., by remarriage (although Paul does not mention a remarriage of the departing unbeliever), then it is unrealistic to say that the innocent party still has marital commitment to him. Paul obviously did not think so in the case discussed in 1 Cor 7:15.

#### SOME OBJECTIONS

I have no delusions that my interpretation of the NT evidence will gain immediate and universal acceptance. Two objections have already been made in private correspondence, and for the sake of completion I shall consider them here.

#### *The Union of Christ and His Church*

Some have argued that the indissolubility of the union between Christ and His Church shows that there is a special permanence in the

marriages of Christians. I am prepared to accept this as long as the term "Christian" is given its most real sense, that is, if we understand by it not just a nominal Christian, not just a baptized person, but someone who genuinely adheres to Christ, who is sincerely trying to live out Christ's teaching, which involves in this case the prohibition of divorce. Marital love for him will be modeled on that of Christ for His Church. It will be a particularization of the general commandment of love of God and neighbor. Marriage commitment will be as serious and absolute as the command of fraternal charity of which it is an example. When, therefore, there are two Christians like this, there can be no question of divorce. It may happen that love may diminish, but if it does it must be rekindled. Where there are two genuinely committed Christians, recourse cannot be had to divorce.

However, this is not the case I have been discussing. *Ex hypothesi*, if a person is prepared to reject Christ's teaching on this important point, he cannot be regarded as a real Christian; his act is anti-Christian. Whereas we have a divine guarantee that the Church cannot abandon Christ because of the presence in her of His divine Spirit, there is no such guarantee for those who are married and who retain their individual freedom to reject God's grace. Nor should we forget that the archetypal union between Christ and His Church transcends its type, and we must not overstretch the image when discussing human marriage. The image-in-action provided by Hosea in the OT can indeed be used as a model for an abandoned Christian. But when he realizes that the re-establishment of the union is no longer a realistic possibility (and in 1 Cor 7:15 this is assumed immediately), he is no longer bound by it; for God has called him to peace.

On the biblical level there is no reason to suppose that Paul was restricting his comparison between Christ-Church and husband-wife to just Christian marriages in Eph 5:21-33. Of course, his audience was limited to Christians, but the model of Christ's love and the Church's obedience is there for all husbands and wives.

#### *How Can the Church Change Her Tradition?*

It has been objected against my thesis that if it is correct, how did the Church go for so long without it? This is an important observation, but I doubt whether it is decisive. It is a fact that the Church's marriage discipline has undergone several significant changes because of the development of doctrine. For several centuries the Pauline Privilege, as we now have it in the Code of Canon Law, was not utilized. It was given this form only in the eleventh century. The decision regarding the link between consummation and indissolubility was not made until the twelfth century. Extensions of the privilege of faith were made by Paul

III, Pius V, and Gregory XIII. A new kind of dissolution *in favorem fidei* was granted for the first time in 1924, and this also has been extended, though there has been some vacillation.<sup>14</sup> Historical circumstances brought about each of these innovations, and the objection that if the Church had such powers, why had she not used them previously, was not allowed to impede these new developments. But what new circumstances warrant the changes which I call for in this article?

To answer this question, we need go back to the beginning. The early Christian commentators treated the Synoptic teaching on divorce in a straightforward manner. That is, just as the texts did not distinguish mixed marriages, neither did the commentators. So their remarks were mainly on the prohibition of divorce in general for Christian couples. However, it was not until the Middle Ages that the indissolubility of marriage in the terms in which it has come down to us was canonically formulated. We must remember that society in the Middle Ages was itself Christian; there were virtually no mixed marriages; and all were expected to live up to the marriage teaching of Christ. The equation of "unbeliever" with "unbaptized" was, generally speaking, quite justified. Today, however, the situation has completely changed. A great number of people are baptized but are in no realistic sense believers. They often do not make the kind of marriage commitment required by Christ and under pressure abandon their partners. Many priests feel that there is something insincere about cases of marriage dissolution which hinge on the material fact of infant baptism. I would urge, therefore, that the factor which should make us adapt our discipline now is that society has become secularized and that we have many cases of baptized unbelievers who abandon worthy spouses. There is always a time lag between doctrinal development and pastoral practice, but when the happiness of thousands is involved it should be kept as short as possible.

#### WHAT SHOULD BE THE CHURCH'S TEACHING?

We are now in a position to face the problems indicated at the beginning of this article. What should be the theological basis for our teaching and practice with regard to the permanency of marriage? As the title of this essay indicates, it is the writer's opinion that Paul's advice to the Corinthians could be a general guideline. The Church must proclaim to all who will listen that husbands must not divorce their wives, nor wives their husbands; that wives must not desert their husbands, nor husbands their wives. If they do separate for some reason, it can only be regarded as conditional, so that when the offense is removed, reconcilia-

<sup>14</sup> See my article in *Aust. Cath. Rec.* 49 (1972) 3-4; Ralph Brown, "Questions and Answers," *Clergy Review* 57 (1972) 143-45.

tion must take place. But if one partner, whether he be baptized or not, deserts his partner—again, whether baptized or not—in a way that is obviously unconditional and permanent, the innocent party should be considered free to remarry.

The advantages of this broader principle as the basis for the Church's marriage discipline are obvious. Besides having a scriptural precedent, it is more humane, more credible, and bears strong witness to the positive force of Christ's teaching on marriage commitment. This is in contrast to our present position, in which many decisions are made on what appear to the outsider to be mere technicalities (presence or absence of baptism, canonical form, physical consummation) with no recognition of the merit or lack of merit of the persons concerned.<sup>15</sup> It can happen now that a Catholic marry outside the Church, later desert his wife, perhaps leaving her with children and in poverty, get a divorce, and subsequently remarry in the Church. On the other hand, a good Catholic can marry in the Church, be deserted, and may never remarry as far as the Church is concerned. There are no privileges available for him.

Recent developments in the Roman Curia regarding dissolutions of the natural bond in favor of the faith have also led to disquiet.<sup>16</sup> Apparently such dissolutions were granted during a short period even when there was no gain to the Church in the form of a conversion. Then the decision was reversed, so that now a conversion is demanded before a dissolution will be granted. This is obviously a dangerous situation, since it has the appearance of offering the dissolution as a bait for conversion. The Church's motives are then wide open to misinterpretation. Her power over the marriage bond should not mean that "favours" or "privileges" can be granted to some and not to others. This situation seems to me a *reductio ad absurdum*, an argument indicating an insecure basis to the whole system. This basis would seem to center around the belief that Paul's decision in 1 Cor 7: 15 was a favor to converts. In this article I have argued that the element which made all the difference for Paul was definitive desertion. If this were taken as the formal cause which allows a declaration of freedom to marry, many present difficult cases, such as nonconsummation, relative impotency, and the new "lack of due discretion," could be dealt with in a dignified and Christian manner on the grounds of definitive desertion.

I do not pretend that the system described in this essay would bring to an end all the Church's problems in the field of marriage dissolution. Other aspects of these problems call for full discussion. I would like to see

<sup>15</sup> John A. O'Brien, "Are Marriage Courts Obsolete?" *Homiletic and Pastoral Review*, April 1971, pp. 43 ff.

<sup>16</sup> R. Brown, *art. cit.* and subsequent correspondence.

the end of the requirement of canonical form for validity where civil requirements now guard against the abuses which were the occasion of its introduction.<sup>17</sup> I would also like to see our marriage courts replaced by such commissions as described by Stephen J. Kelleher—commissions which would give moral guidance rather than legal decisions.<sup>18</sup> The only disciplinary decision the Church need make would be to determine if a given person were responsible for the break-up of a former marriage. By this I mean, did he take the step which finally sundered the marriage? If he did, he should not, I suggest, be allowed to marry in the Catholic Church, which must continue to bear witness as much as ever to Christ's teaching on the absoluteness of marriage commitment. How such a person would stand before God if he married outside the Church is perhaps something which must be left to God's judgment, so that permanent refusal of the sacraments need not necessarily be implied. Nor need we be overconcerned that such commissions be infallible in these disciplinary decisions; final assessment must always be left in the hands of God. Moreover, it would seem wiser for the Church of today to bear witness to Christ's marriage teaching by *moral* doctrine rather than by a form of legal control from which she tries to exclude all possible loopholes.

The main advantage of the principles I have advocated is their universality: the same ones could be applied consistently to all those who come under the pastoral care of the Church, directly as Catholics, or indirectly as non-Catholics who come as prospective partners to Catholics. If such persons were the victims of desertion by former spouses, they could be declared free to marry by the Church.

The doctrine I have put forward as a theological system would need the specialized expertise of the canonist before it could become the Church's discipline. The procedures needed to establish the truth would have to be detailed. A new casuistry would be created. Nevertheless, I think that the canon lawyers and pastors involved in this rearrangement would feel that they are closer to reality, to the real issues of married life, to matters worthy of their efforts as ministers of the gospel of Christ, the good news, which is a liberation from bondage and a call to peace.

#### SUMMARY

Paul's ruling in 1 Cor 7:15 is entirely compatible with the teaching of Christ on the necessity of permanent and absolute marriage commitment rightly understood and is therefore compatible with the nature of

<sup>17</sup>G. Gallen, "Proposal for a Modification of the Juridical Form of Marriage," *Aust. Cath. Rec.* 38 (1961) 314-28.

<sup>18</sup>In *America*, Sept. 14, 1968.



marriage as intended by the Creator. It was not, therefore, a privilege for converts to Christianity but ultimately reflects a universal principle which the Church may teach for the benefit of all men and which she herself may use when deciding the marital status of all those who have been abandoned by their first spouses and now seek her blessing on a new marriage. That principle is this: when a person who is himself prepared to remain faithful to his marriage commitment is abandoned by the other party in a way that can realistically be understood as definitive and absolute, such a person is free of commitment to the union, because in fact it no longer exists.



Copyright and Use:

**As an ATLAS user, you may print, download, or send articles for individual use according to fair use as defined by U.S. and international copyright law and as otherwise authorized under your respective ATLAS subscriber agreement.**

**No content may be copied or emailed to multiple sites or publicly posted without the copyright holder(s)' express written permission. Any use, decompiling, reproduction, or distribution of this journal in excess of fair use provisions may be a violation of copyright law.**

This journal is made available to you through the ATLAS collection with permission from the copyright holder(s). The copyright holder for an entire issue of a journal typically is the journal owner, who also may own the copyright in each article. However, for certain articles, the author of the article may maintain the copyright in the article. Please contact the copyright holder(s) to request permission to use an article or specific work for any use not covered by the fair use provisions of the copyright laws or covered by your respective ATLAS subscriber agreement. For information regarding the copyright holder(s), please refer to the copyright information in the journal, if available, or contact ATLA to request contact information for the copyright holder(s).

About ATLAS:

The ATLA Serials (ATLAS®) collection contains electronic versions of previously published religion and theology journals reproduced with permission. The ATLAS collection is owned and managed by the American Theological Library Association (ATLA) and received initial funding from Lilly Endowment Inc.

The design and final form of this electronic document is the property of the American Theological Library Association.