

TOWARD A THEOLOGY OF DIVORCE

By Judith H. Johnson, J.D.

“You have heard that it was said, ‘Love your neighbor, and hate your enemy. But I tell you, love your enemies and pray for those who persecute you...If you love those who love you, what reward will you get?...What are you doing more than others? Do not even pagans do that?” (Matt. 5:43-47)

Nearly every family of faith in America has been touched by the fact of divorce. Recent statistics from the last census figures seem to indicate that divorce may be on the rise again; at least half of all marriages currently end in divorce. Even families who have not experienced separation or divorce have friends, neighbors, or sisters and brothers in faith who have faced it.

The unfortunate truth is that divorce now seems to affect couples of sincere faith, as well as those who have no identity in any community of faith. As the divorce rate has risen, Christian churches have struggled to relate to the subject of divorce and how to minister to those members who are experiencing it.

In the ancient Jewish tradition, described in Deuteronomy 24: 1-4, it was possible for an Israelite husband to simply write out a “bill” or “certificate” of divorce and hand it to his wife. Differences of opinion existed in that tradition concerning whether legal grounds were necessary for the bill (such as the infidelity of the wife) or whether the husband could construct his own reason, or have little or no reason at all (“unseemly behavior”) for the divorce. This “bill” of divorce in any event ended the

responsibility of the husband for support of the wife's physical needs. Any children were assumed to be the property of the husband, in the Middle Eastern tradition of the day.

In nations founded on ancient Christian tradition, marriage and divorce were initially governed by the official church. Ecclesiastical, or church-based, courts were operated by the Roman Catholic Church to address these matters. There are still ecclesiastical courts in the Catholic tradition which consider annulment of marriage in specific circumstances. However, in the English tradition, which is the basis for family law in nearly all 50 of the United States, this role was taken over by the Church of England.** Eventually, these ecclesiastical courts were merged into the secular court system. This is part of the "common law" system which the United States inherited from Great Britain.

Thus, divorce proceedings today in this country are civil lawsuits which are frequently brought on a contested basis before the public courts of this nation. In light of all this, how should Christ's teachings be applied in the present day, to brothers and sisters of Christian faith who are facing separation or divorce?

In his Sermon on the Mount, Jesus made his position clear with respect to the conflict within Jewish tradition, described above. He said that at the very least the husband should have valid reason for the divorce (the wife's infidelity); Matthew 5: 31, 32. Some scholars of the ancient world consider the position Christ took in this respect to be very enlightened for that time and place, and highly supportive of women who were very

vulnerable in that culture. However, following the general theme of the Sermon on the Mount, Jesus goes much further. The law may state that it is a violation to commit murder, but even someone who is angry enough at a brother to disparage him with epithets is also guilty; it may be unlawful to commit infidelity, but anyone who even looks at another in lust is also guilty.

Then the Sermon takes on a more specific reference to disputes between brethren of faith: Christ teaches such disputes must first be submitted for private resolution between the parties, before the public authorities are involved. “Settle matters quickly with your adversary who is taking you to court. Do it while you are still with him, on the way, or he may hand you over to the judge, and the judge may hand you over to the officer, and you may be thrown into prison. I tell you the truth, you will not get out until you have paid the last penny” (Matt. 5:25, 26). What is Christ saying here, in plain American English? Something like: “Insist on having your day in court and you have no idea what the magistrate might do with your case – he could end up locking you up and throwing away the key!”

Of course, not every civil lawsuit such as divorce ends up with criminal penalties in the United States. In family law cases only those instances which involve criminal domestic abuse or in which a participant has shown contempt for the judgment of the court (such as non-payment of support, or abuse of parenting provisions) receive such sanctions. However, nearly everyone whose life has been touched by divorce can supply ample facts to support this point made by Jesus. Miscarriages of justice in the

divorce courts of this country are plentiful. When family law attorneys assemble in their professional gatherings, they typically tell “war stories” of time after time in which such injustice created financial and emotional devastation for families (including “child custody evaluations” gone wrong; actions for financial support that failed or overstepped their bounds, etc). Rarely do judges intend harm from their decisions, but their limited knowledge of the facts leads to inequitable results.

In his letter to the Corinthians, the Apostle Paul gave further emphasis to Christ’s teaching regarding lawsuits between believers. “Don’t you know that someday we will be expected to judge the angels?” Paul asks in I Corinthians 6:3. He points out that believers are not following Christ’s teachings concerning the settling of disputes. Paul says “Instead, one brother goes to law against another – and this in front of unbelievers!”

Separation and divorce are a fact of life today, as much as they were in the times of the ancient Israelites. Given this fact, what should be the attitude of the Christian community toward what has become the authority of the secular courts?

First, we must realize that whether or not there are scriptural grounds for divorce under ancient Jewish tradition (infidelity), the teachings of Jesus in the Sermon on the Mount make the powerful point that we all have failed to measure up to God’s standards. As Paul states in his Letter to the Romans, “For all have sinned and fall short of the glory of God, and are justified freely by his grace through the redemption that came by Christ Jesus” (Romans 3:23,24).

Second, if a couple both practice their faith in the Christian tradition, they should look to New Testament teachings about the wisdom of litigation – and do everything they can to resolve their disputes respectfully and with dignity – *outside of court*. If they agree that divorce must be considered, they should take care to provide a minimal amount of information to the public court file (not only for reasons of their faith, but also to protect their financial identity from criminal theft).

Third, if a separating or divorcing couple needs help to sort through their financial and parenting decisions, they should look for methods of private dispute resolution to facilitate settlement. Remember, as the Apostle Paul asked, do Christians really want to submit any dispute between them to the public authority?

There are several opportunities for methods of “Alternate Dispute Resolution” which are available to separating and divorcing couples, which support private resolution of all issues. Among these are mediation, and Collaborative Practice. Collaborative Practice is a team approach to decision making in cases of separation and divorce which is now available throughout the United States and in Canada, Great Britain and Australia. It involves a holistic approach to problem solving for the entire family. Attorneys, child psychologists, adult psychologists and financial analysts who engage in Collaborative Practice all receive special training in dispute resolution in order to assist all family members in meeting their needs. Collaborative Practice acknowledges the importance of spiritual concerns in

cases of separation or divorce, and involves practitioners from many faith backgrounds.

The options for private decision making in cases of separation and divorce include Collaborative Practice, mediation, and other methods. A recent publication of the American Bar Association summarizing the options for decision making in cases of separation or divorce can be obtained from the author by emailing Judy Johnson at judith_h_johnson@hotmail.com, (phone to 612-860-5939). Judy's website is:

www.collaborativedivorceminnesota.com . The International Association of Collaborative Professionals may be reached through its internet site of www.collaborativepractice.org. The Collaborative Practice Institute of Minnesota may be reached through its website at www.collaborativelaw.org.

**This event is well known in popular history. King Henry VIII of England was faced with a marriage to the Spanish princess, Katherine of Aragon, which did not produce a male heir to the throne. He could not obtain a divorce from the Roman Catholic Church, in order to enable him to marry commoner Anne Boleyn. As a result, he broke from the Church of Rome, and founded the Church of England. It was made the official state church of England and assumed the business of the ecclesiastical courts.