

OF  
MARRYING AFTER DIVORCE,  
IN CASE OF  
**ADULTERY.**

BY  
JOHN OWEN

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**I**T is confessed by all, that adultery is a just and sufficient cause of a divorce betwixt married persons.

This divorce, say some, consists in a dissolution ‘vinculi matrimonialis,’ and so removes the marriage relation, as that the innocent person divorcing, or procuring the divorce, is at liberty to marry again.

Others say, that it is only a separation ‘a mensa et thoro,’ and that on this occasion, it doth not, nor ought to, dissolve the marriage relation.

I am of the judgment of the former. For,

First, This divorce ‘a mensa et thoro’ only is no true divorce, but a mere fiction of a divorce, of no use in this case, nor lawful to be made use of, neither by the law of nature, nor the law of God. For,

1. It is, as stated, but a late invention of no use in the world, nor known in more ancient times. For those of the Roman church, who assert it, do grant that divorces by the law of nature were ‘a vinculo;’ and that so they were also under the Old Testament: and this fiction they would impose on the grace and state of the gospel; which yet makes indeed no alteration in moral relations or duties, but only directs their performance.

2. It is deduced from a fiction; namely, that marriage among Christians is a sacrament of that signification, as renders it indissolvable, and therefore they would have it to take place only amongst believers, the rest of mankind being left to their natural right and privilege. But this is a fiction, and as such in sundry cases they make use of it.

Secondly, A divorce perpetual ‘a mensa et thoro’ only, is no way useful to mankind, but hurtful and noxious. For,

1. It would constitute a new condition, or state of life,

wherein it is not possible that a man should either have a wife, or not have a wife, lawfully. In one of which estates yet really every man, capable of the state of wedlock, is and must be, whether he will or no. For a man may, as things may be circumstantiated, be absolutely bound in conscience not to receive her again, who was justly repudiated for adultery. Nor can he take another on this divorce. But into this estate God calls no man.

2. It may, and probably will, cast a man under a necessity of sinning. For suppose he hath not the gift of continency, it is the express will of God that he should marry for his relief. Yet on this supposition he sins, if he does so; and in that he sins, if he doth not so.

Thirdly, It is unlawful. For if the bond of marriage abideth, the relation still continues. This relation is the foundation of all mutual duties. And whilst all that continues, none can dispense with, or prohibit from, the performance of those duties. If a woman do continue in the relation of a wife to a man, she may claim the duties of marriage from him. Separation there may be by consent for a season, or upon other occasions, that may hinder the actual discharge of conjugal duties; but to make an obligation unto such duties void, whilst the relation doth continue, is against the law of nature, and the law of God. This divorce, therefore, supposing the relation of man and wife between any, and no mutual duty thence to arise, is unlawful.

Fourthly, The light of nature never directed to this kind of divorce. Marriage is an ordinance of the law of nature; but in the light and reason thereof, there is no intimation of any such practice. It still directed, that they who might justly put away their wives, might marry others. Hence some, as the ancient Grecians, and the Romans afterward, allowed the husband to kill the adulteress. This among the Romans was changed 'Lege Julia,' but the offence still made capital. In the room hereof afterward divorce took place, purposely to give the innocent person liberty of marriage. So that this kind of divorce is but a fiction.

The first opinion, therefore, is according to truth. For,

First, That which dissolves the form of marriage, and destroys all the forms [ends] of marriage, doth dissolve the bond of marriage. For take away the form and end of any moral

relation, and the relation itself ceaseth. But this is done by adultery, and a divorce ensuing thereon. For the form of marriage consisteth in this, that ‘two become one flesh;’ Gen. ii. 24. Matt. xix. 6. but this is dissolved by adultery: ‘for the adulteress becometh one flesh with the adulterer,’ 1 Cor. vi. 16. and so no longer one flesh in individual society with her husband. And it absolutely breaks the bond or covenant of marriage. And how can men contend that is a bond which is absolutely broken? or fancy a ‘vinculum’ that doth not bind? and, that it absolutely destroys all the forms of marriage, will be granted. It therefore dissolves the bond of marriage itself.

Secondly, If the innocent party upon a divorce be not set at liberty, then,

1. He is deprived of his right by the sins of another, which is against the law of nature; and so every wicked woman hath it in her power to deprive her husband of his natural right.

2. The divorce in case of adultery, pointed by our Saviour to the innocent person to make use of, is, as all confess, for his liberty, advantage, and relief. But on supposition that he may not marry, it would prove a snare and a yoke unto him. For if hereon he hath not the gift of continency, he is exposed to sin and judgment.

Thirdly, Our blessed Saviour gives express direction in the case, Matt. xix. 9. ‘Whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery.’ Hence it is evident, and is the plain sense of the words, that he who putteth away his wife for fornication, and marrieth another, doth not commit adultery. Therefore the bond of marriage in that case is dissolved, and the person that put away his wife, is at liberty to marry. While he denies putting away and marrying again for every cause, the exception of fornication allows both putting away, and marrying again in that case. For an exception always affirms the contrary unto what is denied in the rule, whereunto it is an exception; or, denies what is affirmed in it, in the case comprised in the exception. For every exception is a particular proposition contradictory to the general rule; so that when the one is affirmative, the other is negative, and on the contrary. The rule here in general is affirmative:

He that putteth away his wife, and marries another, committeth adultery. The exception is negative: But he that putteth away his wife for fornication, and marrieth another, doth not commit adultery. Or, they may be otherwise conceived, so that the general rule shall be negative, and the exception affirmative: It is not lawful to put away a wife, and marry another, it is adultery. Then the exception is: It is lawful for a man to put away his wife for fornication, and marry another. And this is the nature of all such exceptions, as I could manifest in instances of all sorts.

It is to no purpose to except, that the other evangelists, Mark x. Luke xvi. do not express the exception insisted on. For,

1. It is since used by Matthew, v. 32. and xix. 9. and therefore was assuredly used by our Saviour.

2. It is a rule owned by all, that where the same thing is reported by several evangelists, the briefer, short, more imperfect expressions, are to be measured and interpreted by the fuller and larger. And every general rule in any place is to be limited by an exception annexed unto it in any one place whatever. And there is scarce any general rule, but admitteth of an exception.

It is more vain to answer, that our Saviour speaketh with respect unto the Jews only, and what was or was not allowed among them. For,

1. In this answer he reduces things to the law of creation, and their primitive institution. He declares what was the law of marriage, and the nature of that relation antecedent to the law and institution of Moses; and so reducing things to the law of nature, gives a rule directive to all mankind in this matter.

2. The Pharisees inquired of our Saviour about such a divorce as was absolute, and gave liberty of marriage after it; for they never heard of any other. The pretended separation 'a mensa et thoro' only, was never heard of in the Old Testament. Now if our Saviour doth not answer concerning the same divorce about which they inquired, but another which they knew nothing of; he doth not answer them, but delude them. They ask after one thing, and he answers another in nothing to their purpose. But this is not to be admitted: it were blasphemy to imagine it.

Wherefore denying the causes of divorce which they allowed, and asserting fornication to be a just cause thereof, he allows in that case of that divorce which they inquired about, which was absolute, and from the bond of marriage.

Again, the apostle Paul expressly sets the party at liberty to marry, who is maliciously and obstinately deserted, affirming that the Christian religion doth not prejudice the natural right and privilege of men in such cases, 1 Cor. vii. 15. 'If the unbelieving depart, let him depart; a brother or a sister is not under bondage in such cases.' If a person obstinately depart, on pretence of religion or otherwise, and will no more cohabit with a husband or wife, it is known that by the law of nature, and the usage of all nations, the deserted party, because without his or her default all the ends of marriage are frustrated, is at liberty to marry. But it may be, it is not so among Christians. What shall a brother, or a sister, that is a Christian, do in this case, who is so departed from? saith the apostle: they are not in bondage, they are free, at liberty to marry again.

This is the constant doctrine of all Protestant churches in the world. And it hath had place in the government of these nations: for queen Elizabeth was born during the life of queen Katharine, from whom her father was divorced.