

Prof. David Instone-Brewer's Response to My "Divorce and Remarriage-After-Divorce in Jesus and Paul" and My Rejoinder

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To the reader: This is a letter that I received from Prof. David Instone-Brewer in response to my online assessment of his views on divorce and remarriage. He has requested a few times over a year-and-a-half that I post this response (which I regard as a respectful and friendly response). I procrastinated. I suspect that part of the reason for my procrastination was that I knew that I would need to correct some of David's statements and provide further clarification; and that doing so might embroil us in an extended public debate, which I was reluctant to do given other things on my plate and my high regard for David. He has been very patient with me. Having received a reminder today, I herewith post his response with my comments. After each paragraph from David's communication I have added a short rejoinder in brackets and dark blue color.—Robert A. J. Gagnon (5/8/14)

29 Sept 2012
Cambridge, UK

Dear Robert.

Thank you so much for interacting with my views in this detailed and biblical way. You identify three problems:

[I]

First you contrast Jesus with Paul. Jesus says that any woman who remarries after an invalid divorce is committing adultery - whether or not she was the guilty party. This contrasts with my interpretation that Paul allows someone who has been deserted (ie divorced against their will) to remarry.

In my [Divorce and Remarriage in the Bible](#) I point out that Jesus is speaking in a rhetorical way about adultery. Matthew recognizes this when he says that remarriage and unlawful lust are both adulterous, just as anger is murderous. Matthew doesn't say that these murderers should be executed, nor that these adulterers should be punished. Matthew's context clearly shows that this adultery is not the same as judicial adultery – it is a rhetorical device to show how serious it is to divorce someone without biblical grounds, or to lust after someone you are not married to.

[**RG**: David, thanks for these comments. My response to you in note 7 of my online article, "[Divorce and Remarriage-After-Divorce in Jesus and Paul: A Response to David Instone-Brewer](#)" still holds. Let me begin by clarifying a point: I don't claim that Jesus regarded adultery of the heart (Matt 5:27-28) as serious as an adultery executed bodily. Yet it is still to be regarded as a lesser form of adultery and so something not permitted and not blessed by the church (note that you believe that the church should allow and bless remarriages after divorce). Adultery of the heart is not as serious an offense as adultery not only of heart but also of body. For example, adultery of the heart is not serious enough to justify divorce of a spouse who has committed it; otherwise all wives would be justified in divorcing their husbands. But it is serious enough to be warned not to do, even to the point that Matthew appends to this Jesus saying another Jesus saying about it being better to go into heaven maimed than to be thrown into hell full-bodied (Matt 5:29-30). Because remarriage after divorce is an offense not only of the mind but also of the body (and therefore a more overt and drastic crossing of boundaries) Jesus undoubtedly viewed it as more severe than adultery of the heart but, in the case of a woman divorced not on grounds of adultery, less severe than adultery committed while still having sexual relations with one's wife. (In circumstances where a person remarries after initiating a divorce without "cause," remarriage after divorce is probably every bit as serious as regular adultery.) But remarriage after divorce in the lesser-adultery sense is still prohibited and not "allowed" by God. If Jesus asserts that it is sinful (i.e., tantamount to adultery, though of a lesser degree) for a man to marry even an unjustly divorced woman and for even an invalidly divorced woman to remarry, what else could his point be but that a man should not marry a divorced woman of any kind and a divorced woman of any kind should not remarry?

[I agree that Matthew is not saying that those who remarry after divorce should be "punished," if by "punished" one understands "punished by the state." Yet at the same time I don't think that Matthew is arguing that even adultery before divorce should be punished by the state (just as Jesus in John 8 rejects the imposition of capital sentencing on the adulterous woman). I do believe that Matthew regards remarriage after divorce, like 'regular' adultery, as impermissible within the church. There are a number of reasons for this. (1) Matthew's inclusion of an exception clause in both 5:32 and 19:9 suggests a halakhic (not haggadic) mode. The idea of an exception clause works only on the supposition that, sans the exception, the act in question is not permissible. (2) The Q parallel to Matt 5:31-32 in Luke 16:16 confirms this. The context

indicates that Luke did not treat the Q saying as a piece of exaggerated sermonizing but rather as a ruling by Jesus that safeguards the sanctity of God's law against human efforts at self-serving manipulation. (3) A comparison of Matt 5:31-32 with Jesus' remarks about divorce in Mark 10:2-12 par. Matt 19:3-12 also adds confirmation. The context there too is more a halakhic (legal) debate than a haggadic or sermonic message. Jesus was responding to a question of the Pharisees as to whether "it was permissible for a man to divorce his wife." Jesus' response to this halakhic dispute was, in a word, a halakhic "No": "A person must not separate what God joined." (4) That this is how Matthew understood it is further confirmed by the response of the disciples in Matt 19:10: "The disciples say to him, 'If the case of a man with his wife is like this [i.e., if a man cannot divorce his wife], it is not expedient to marry.'" The protasis (if-clause) of their conditional sentence indicates clearly that they understood Jesus as forbidding his disciples from divorcing a spouse and remarrying. In Jesus' ensuing remarks, he does not correct the protasis of their conditional sentence but only the apodosis (the then-clause). In effect, they are right in concluding that even in a difficult marriage Jesus' followers do not have the option of divorce and remarriage. For that reason they conclude that it is "not expedient to marry" because a husband would be stuck lifelong with a very difficult wife.

[Even your Eerdmans book appears to give quasi-legal status in the church to Jesus' pronouncements about divorce and remarriage. For example, on p. 183: "Presumably those who became followers of Jesus after an invalid divorce had to recognize that their previous marriage was technically still legal. They could either return to their partner or remain single. If they had remarried they would presumably have to free the woman and return her dowry, as a Jew did after committing technical adultery. . . . Similarly, if followers of Jesus became invalidly divorced against their will by partners who were not followers, they too had to try to return to their previous partner or remain single."]

[II]

[**DIB:**] The second 'problem' you identify isn't a really a problem - it is just a disagreement. You say that Jesus overturned a 'loophole' created by Moses - that men can divorce women who commit adultery. I regard the whole of the Law of Moses as being equally inspired. I don't see any reason to identify some laws as inferior ideas inserted by Moses. The question is whether this law of God was only for ancient Jews and not for Christians.

[**RG:** David, I just don't see how you can sustain the comment above since you yourself contend in your book *Divorce and Remarriage in the Bible* (Eerdmans, 2002) that Jesus effectively abrogates polygamy, which as you know OT law allows for men. Obviously, then, Jesus did not "regard the whole of the Law of Moses as being equally inspired" and nor do you. I quote from your book: "Jesus ... stated his belief in monogamy, which

meant that a man had to be validly divorced before he could remarry.... Jesus was making the point very strongly. He was saying not only that polygamy was immoral but that it was illegal" (p. 151). Similarly, on pp. 178-79 you list "six specific things" that Jesus taught with his remarks on divorce and remarriage, one of which is: "an individual can be married to only one person at a time.... polygamy was no longer permitted." If that is not overturning a loophole given in the law of Moses to men but not to women, I don't know what a loophole is. I also contend that Jesus' "hardness of heart" remark makes this very point, namely that the Mosaic permission for men to divorce was a concession to male passions that God was now revoking. You see that text differently but I explain why I think your view of it is not sustainable exegetically (see below). But regardless of your interpretation of that phrase, your own writing about Jesus' stance on polygamy indicates that you view (or once viewed) polygamy law in the OT as a loophole in God's creation will that Moses gave to men but that Jesus closed with his statements on divorce and remarriage. I suppose that you could now deny that Jesus was forbidding implicitly polygamy, taking back your earlier remarks. Yet even if you did that (and I doubt that you would ever do so), I could still cite command after command in OT law that clearly does not carry the same eternal and universal significance as some other commands in the OT.]

[DIB:] When Jesus said divorce was permitted "for your hardness of heart" I understand this as meaning: "for MY hardness of heart". Jesus is speaking to me, and not just to the Pharisees. I don't think ancient Jews suffered from stubborn sinfulness any more than I do. I am just as capable of persistent adultery as any ancient Jew, and I do not see any evidence that Jesus wanted less protection for my wife than for theirs.

[RG: David, I don't contend that "ancient Jews suffered from stubborn sinfulness ... more than I do" so your objection here is not relevant. See note 9 in my online article. Where we differ on the meaning of Jesus' statement, "with a view to your hardness of heart [Moses] wrote to you this command [permitting you to divorce your wife]," is over whether it refers to (1) the one doing the divorcing (so me and virtually all other scholars, excepting you) or (2) the one whose unrepentant infidelities necessitate the divorce (so you). The immediate context for the statement strongly supports the view that the "your" refers to husbands who divorce their wife, given the following two second-person plurals ("Moses permitted you to divorce your wives"), not to the wives who are impenitently adulterous. As I state in note 9: "Jesus is clearly addressing men throughout [Matt] 19:3-9. A better Old Testament parallel than Jer 4:4 [which you, David, latch onto], then, is Mal 2:14, which refers, just before a possible allusion to Gen 2:24, to 'the wife of your youth, to whom you have been faithless [in divorcing her], though she is your companion and your wife by covenant.' 'Your hardheartedness' in Matt 19:8 par. Mark 10:5 refers to husbands who stubbornly persist in the evil of divorcing their wives..., thereby rebelling against God's will for marital permanence

established at creation." I don't recognize in my own comments the contrast that you allege between my position and your own.]

[III]

[**DIB:**] The third problem is based on a misunderstanding. You point out that Paul tells the woman in 1Cor. 7:10-11 to remain unmarried and attempt reconciliation with her husband, and you complain that I make a general case out of this. I certainly do not - I regard this as a specific case.

I point out in my book that this case stands out in 1Cor.7 because all of Paul's examples in that chapter give equal weight to men and women. This is even to the point of repetition, e.g. v.2-3 "each man should have sexual relations with his own wife, and each woman with her own husband; the husband should fulfil his marital duty to his wife, and likewise the wife to her husband." (see other examples in v.4, 12-13; 14, 15, 16, 27-28, 32-34). This is contrasted in v.10-11, where he refers to this woman without referring to an equivalent man. This woman separated from her husband (i.e. in Roman law she divorced him) and Paul points out that Jesus taught against such divorces. This has all the hallmarks of a specific case, so the Corinthians knew the individual circumstances, just like the man who was sleeping with his mother (1Cor.5.1).

[**RG:** David, this too misunderstands my remarks, here to a point where it is the exact opposite of what you claim. You allege that I complain that you "make a general case out of" the provision in 1 Cor 7:10-11, implying that I make a specific case out of it, and insist: "I certainly do not—I regard this as a specific case." As it is, I specifically state that I, not you, regard it as a general case and that you regard it as a specific case. I quote from my remarks on p. 6 of my online article: "This parenthetical remark [in 1 Cor 7:10-11] suggests [to me, Robert Gagnon!] a general principle: a divorced woman should not remarry anyone other than her original husband. However, Instone-Brewer argues that Paul is referring to the specific case [!] of Greco-Roman divorce-by-separation where neither grounds for divorce (as in Hillelite "any matter" divorce) nor even a divorce certificate was needed." I don't know how I can be any clearer.

[I also, in note 11, tell readers about your contention regarding the absence of a complementary prohibition to men in 1 Cor 7:10-11. I wrote: "The fact that Paul speaks only about the woman not remarrying may indicate a specific situation at Corinth where a Christian woman has already separated from her husband (due to her husband's adultery?). But, if so, it does not follow that the principle of 'no remarriage' is restricted to a woman who has separated from her husband for invalid grounds, particularly since Paul is in context referring to Jesus' own charge and Jesus (as we have seen) appears to reject remarriage even for women divorced on invalid grounds." Moreover, as I state

in the main text on p. 6: "Paul nowhere indicates such a limitation to the principle of 'no remarriage.' Indeed, there is every indication in 1 Cor 7 that Paul was responding to a community predisposed to abstain from sexual relations in marriage (7:1-7), break engagements (7:25-28, 36-38), and even dissolve existing marriages (7:12-16). Paul had to have known that an unqualified statement about divorced spouses 'remaining unmarried' would have been construed by the Corinthians as just that: unqualified."]

[**DIB:**] You have further problems with my interpretation of Paul's statement that the one who has been deserted "is no longer enslaved" (1Cor.7.15). You think this means that they can give up trying to be reconciled to the spouse who has already divorced them against their will, but it doesn't imply any freedom to remarry. You reject my point that Jewish and Greek divorce certificates use the language of emancipation from slavery: "You are now free to marry any man you wish". As you point out, Paul approves of this phrase when he applies it to widows (v.39) but you think that Paul would not apply this until the former spouse had died. This assumption is, of course, a common and ancient one. I am merely pointing out that Paul could equally mean that they are free to remarry. And I argue that for a first century reader this is the more likely interpretation.

[**RG:** David, I treat your argument about 1 Cor 7:15 on pp. 6-9 of my online article. I raise two main problems with your argument, only one of which you mention above. You rightly state that I find odd that Paul does not use the expression "free to be married to the one whom she wants" (which Paul applies to widows in 1 Cor 7:39) when treating the issue in 7:15 of a Christian married to an unbeliever who insists on dissolving the marriage. The reason that I find it "odd" (not noted by you above) is that the Corinthians were operating on the premise that Paul did not think that they should marry or even stay in marriages, let alone remarry. They wouldn't likely presuppose that remarriage after such a dissolution was an option unless Paul spelled it out, which he didn't do in the letter. For this reason I say that your view that the phrase "has not been enslaved" in 7:15 allows for remarriage is "by no means certain." I do, however, say that your view has an "even chance" of being correct. Your characterization of my view erroneously suggests that I reject any possibility that it implies remarriage.

[Then I add a second problem with your view, which you do not mention above: namely, that "even if Paul meant by 'has not been enslaved' the possibility of remarriage..., it is not likely that Paul extended this permission beyond marriage to an unbeliever," given OT "precedents for the dissolution of marriages to pagans." Paul's entire argument in 7:12-16 is riddled with references limiting application to the situation of marriage to an "unbelieving" spouse (5 times in 7:12-15). As I note in my article, "the content of 7:12-16 gives indication that the subtext is the question: *Does marriage to an unbeliever count as a real marriage?* Do the rules that apply to a marriage between believers also apply to such a union? ...Paul's answer to the question is a

mixed one.... Paul's remark in 7:15 about the believing spouse not being 'enslaved *in such circumstances*' is probably conditioned in part by *the particular circumstance* of marriage to an unbeliever.... Paul probably knew Jesus' statement that even an invalidly divorced woman commits adultery when she remarries. Indeed, he probably alludes to it in 7:11." I conclude with these words: "Even if the phrase 'has not been enslaved' in 7:15 allowed for remarriage (by no means certain), and even if it were applicable equally to marriage to a believer (very unlikely), the phrase still would provide no support for a believer *initiating* divorce. Paul is explicit here that a believer is not to leave a mixed marriage if the unbelieving spouse is amenable to living in the same house (7:12-13)."]

[IV]

[**DIB:**] You conclude that Jesus did not allow divorce for anything, and you doubt that "Jesus would have adopted an exception for adultery as Matthew thought". However, you guess that Jesus would have regarded dangerous abuse as a criminal offence because other rabbis did so, and that he would have allowed separation in these circumstances (though other rabbis would have allowed divorce from the abuser).

[**RG:** David, the rabbis allowed divorce in numerous instances that Jesus would not have allowed, as you yourself admit. Therefore, it doesn't follow that because "other rabbis would have allowed divorce from the abuser" that Jesus too would have done so. Indeed, since Jesus does not permit remarriage of a woman invalidly divorced, it seems unlikely that he would have permitted anything more than separation in the case of abuse.]

[**DIB:**] Both you and I agree with the general emphasis of Jesus' teaching on marriage: it should be lifelong, and that when problems arise the first response should be forgiveness and attempted reconciliation. The role of the pastor is always to try and repair the marriage. We disagree only about Jesus' response to persistent breaking of marriage vows. I conclude from the biblical data that divorce is God's solution for this kind of hardhearted sinfulness in both the Old and New Testaments, and that these victims can remarry.

[**RG:** The chasm between our positions may be a bit larger. Your discussion of how you deal with requests for remarriage in a church setting for all practical purposes does away with any restrictions on remarriage after divorce since you assert that pastors should not inquire into the circumstances of the previous divorce (p. 312). So long as the person claims to be repentant you think pastors should be willing to officiate at a remarriage ceremony, which is likely to include persons who have divorced invalidly or

who have been divorced on valid grounds. So in effect, in adopting your recommendations, the church would end up having to remarry everyone, irrespective of the validity of the divorce. Moreover, your "limited grounds" for divorce and remarriage include "emotional neglect," which is a category big enough to drive a truck through, since anyone who wants a divorce can (and usually does) claim that their emotional needs are not being met. The practical effect of all this is that *all* remarriages (and any number of them) are allowed in the church.

[**DIB:**] However, I concede that this interpretation is difficult to accept because it is based on ancient Jewish legal vocabulary which had been forgotten even by the second century, so that it undermines centuries of church teaching.

[**RG:** David, your view is difficult for me to accept not because I fail to understand "ancient Jewish legal vocabulary" but because I feel that your application of such to the words of Jesus and Paul does not take adequate account of the differences between the OT and rabbinic perspectives on the one hand and the new more rigorous approach adopted by Jesus and those who followed his teaching on the other. I think the Church Fathers basically got this right. I do thank you for your response and express the hope here that iron sharpens iron. I very much appreciate your scholarship and your contribution to the church.]

David Instone-Brewer