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Disciplinary Brief

THE DEMANDS OF LOVE WHEN A MARRIAGE BREAKS DOWN

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Oliver O'Donovan's magisterial paper on the sovereignty of love discusses a variety of dimensions of love. A core argument is that love is more than a feeling. It requires action:

> Love gives affectionate direction to action; it fills us with something we feel and steers us to something we may do. We cannot be commanded simply to feel, but because the feeling of love is made concrete in action, we can be commanded to love.... love for God and neighbour is an affective and directive attention to the good of persons: God as divine person, the neighbour as "like ourselves", possessing personal agency and self-determination.

What happens then, when love dies? What obligations to love survive the feeling of love? Indeed, what obligations of love must prevail over feelings of anger, betrayal or loathing? Must one love, even when the person one used to love no longer reciprocates it? It is all very well being commanded to love God and your neighbour; but does Christ's command to love one another extend to your former husband or wife?

Clearly it does, for Christ's command to love our enemies inevitably includes a person who may, in some respect, be an enemy now (especially in the context of adversarial family law litigation). Nonetheless, when a marriage has broken down, to love the other still may require of us more than we can manage. To try better to follow Jesus' teaching, we must at least try to have a clear idea of what love demands in these difficult circumstances.

The Raw Emotions Of Divorce

As a family lawyer, I deal in situations where love does not last. The breakdown of a relationship with someone who was once our best friend, our lover, and a parent to our children, is particularly poignant. As a society, we have adopted many turns of phrase, many euphemisms, many convenient explanations for why love might die. A new trend, perhaps most evident in the United States, is to celebrate breakups as a new stage of life in pursuit of self-fulfilment. [1] Couples may announce their amicable separation,

speaking in such positive language about it that one is left to wonder why on earth they have separated in the first place. [2]

Such attempts at positivity may be admirable, but we should not be taken in. For the most part, a divorce, particularly when there are children, is accompanied by strong emotions of grief, anger and betrayal. Yes, there are couples who decide mutually that it is better for them to part ways, and they do so amicably - or at least present to others that their breakup is amicable. However, this is not typical. Usually there is a 'leaver' and a 'left'. There is a betrayer and a betrayed. There is an abused and an abuser. In these circumstances, it is not surprising that people feel strong emotions.

And even if the couple manage an amicable divorce, there are others who are affected, not least the children. One writer in the New York Times described in very positive terms the decision that she and her husband made to let each other go after a "long, productive, good marriage". [3] It was not a reason to be pitied by friends. Rather, it was liberating for them both. Only towards the end of the article did she acknowledge feelings of guilt about her children, who "hated" the separation. Even in the most amicable divorces involving children, the separation is not likely to provide a happy ending for every member of the family. There are losses - financially, emotionally, and relationally - that are not evenly distributed amongst all family members.

The End Of Both Agapē And Eros

Divorce is the recognition that there is no longer either agapē, (selfless concern for the other), or eros (sexual love) in the relationship. So what is left? Often, just the very strong emotions that arise from the ashes.

For some former couples, the level of conflict is so high that it is hard to see how they came together in the first place. One experienced family court judge in Australia would occasionally ask a witness to describe how he or she fell in love with the former partner. It was a way of gently reminding that person that there was once a strong basis for both agapē and eros.

Unfortunately, divorce occurs all too often when agapē is displaced by its opposite. A disappointed or betrayed lover may no longer be remotely concerned with self-giving, or forgiveness, or compromise. The question now, asked in the name of 'justice', is how much I can get in the property settlement, or in spousal maintenance, or child support; or how little time I need to allow the other person to see the children. In that pursuit of justice, there is often little evidence of love. Prof. O'Donovan does not accept that love and justice might be in opposition to one another. Rather:

> Justice marks the point at which the drama of love in command, virtue and practice reaches its end and is pronounced on. If love must be the first word on our moral tasks, "justice" must be the last, the horizon on which love is proven, a universal moral goal which is the "fruit" or "crown" of a life lived in love.

No doubt, in many other contexts that is so; and particularly when we are seeking to deliver justice, fairly, impartially and without corruption, to a whole society. However, in the Family Court, there is typically neither eros nor agapē between the warring parties.

The Ex-Spouse As A Neighbour

How then, does Christian teaching help us to navigate the experience of marital breakdown in a way which manages to keep the command to love in mind? The ex-partner is no longer a spouse, but he or she is undoubtedly a 'neighbour'. That is not necessarily so in a geographical sense, for sometimes former spouses move a very long way from one another; but it is so in the way that Lord Atkin, in the famous case of *Donoghue v Stevenson*, explained it. [4] He said that “you must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.” In this context, he defined a 'neighbour' as someone who is so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."

Very often, decisions that one person makes after separation may affect the other directly and impactfully. If I allow myself to denigrate my ex to the children, that may well affect their view of that parent, and their relationship with him or her. If I form a new relationship, and want to move to be with my new partner 1000 miles away, taking the children with me, that decision is likely to have a profound impact on my ex-partner and our children as well. If I fail to pay the mandated level of child support that I am required to pay, that directly affects my ex-partner's finances, and may be detrimental to the wellbeing of my children. A couple with children may be divorced, but they remain connected through the indissoluble bonds of parenthood. [5]

Neighbour-love, as Prof. O'Donovan observes, takes many different forms, often very practical ones, depending on what the nature of the relationship is with our neighbour in any given context. In many examples he provides from Leviticus 19, no feelings of love are engaged. The command to love involves treating the other fairly, or giving reasonable consideration to the needs of the poor or the foreigner. Loving our neighbour then, may impose modest obligations upon us, but they are obligations nonetheless.

Is There A Christian Way To Divorce?

Understanding that we are to love not only our neighbour but also our enemy, and that somewhere in those descriptions, our ex-spouse is to be found, reminds us that Christian love must survive the demise both of agapē and eros. Is there a more or less Christian way to divorce? Does the Christian obligation to love extend beyond the time when a marital relationship is over?

I suggest that in these circumstances, love survives as an obligation long after it has died as a feeling. Or perhaps more accurately, it survives as a series of obligations.

First and foremost, it is an obligation to be concerned with the wellbeing of the other for the sake of the children. That requires each to practice at least enough forgiveness and self-control to ensure that the children are protected from the parents' conflicts and to avoid denigrating the other parent to the children. Even in the most painful divorces, some remnant of concern for the wellbeing and interests of the other may need to be rediscovered in order to chart a way for the future in which both of them are able to cooperate in parenting their children.

Secondly, there is an obligation to address losses that result to one party from the role division within the relationship. Marriage has long-term consequences for people's lives financially. Often, an imbalance in the earning capacity of each of the parties at the end of the relationship reflects the consequences of the role division within that relationship, as one spouse, usually the woman, prioritises family responsibilities for a time over involvement in the workforce, while the other focuses on career. Fogarty J in the Australian case of *Waters and Jurek* [6] explained:

> In most marriages, there is a division of roles, duties and responsibilities between the parties. As part of their union, the parties choose to live in a way which will advance their interests - as individuals and as a partnership ... Post-separation, the party who had assumed the less financially rewarded responsibilities of the marriage is at an immediate disadvantage. Yet that party often cannot simply turn to more financially rewarding activities. Often, opportunities to do so are no longer open, or, if they are, time is required before they can be accessed and acted upon."

Love, then, towards someone for whom love has died, requires that the one who has built up greater income-earning capacity should not walk away, leaving the other with disproportionate financial detriments as a consequence of prioritising home and family.

Third, there is an obligation to love the other sufficiently to maintain the peace of the Christian community. Divorce is not only the end of the marital relationship, very often it divides church communities as well. It can be extraordinarily difficult for Christians who have been friends with both spouses to continue in relationship with both. Almost inevitably, there is pressure, overt or otherwise, to take sides, to sympathise with the position of one spouse against that of the other, or to be an empathetic listener to only one party. Love for a person for whom love, as a feeling, has been entirely lost, may require magnanimity in order not to promote division within the Christian family.

The Decision To Separate

However, in making the decision whether or not to separate, love demands that a more fundamental question be asked, especially by those who are contemplating leaving in pursuit of greater personal fulfillment. Does the pursuit of my own happiness justify me in imposing inordinate costs on my spouse or my children? When we marry, we take on a sacred commitment to the wellbeing of the other, and to any children born from that relationship. That moral obligation to the wellbeing of the other ought to constrain

the extent to which we seek to pursue our own happiness at the other's expense, or at the expense of the children. Just as it is sometimes necessary to separate in order to protect oneself or the children from serious harm, so conversely there is a case sometimes for staying together for the sake of the children. We might also need to stay together out of fairness to the one to whom we have, for so long, been committed. Long-term obligations, borne out of the marital relationship, call us to love even, and perhaps most of all, when it hurts.

In an age of no-fault divorce, a decision about whether it is justified to impose substantial costs on other family members in order to pursue our own happiness or autonomy, is one which may well depend on the circumstances. Even if the answer is in the affirmative, the law of love demands at least that we consider what constraints should apply to our lives arising out of our continuing obligations to the wellbeing of other family members, and what demands of 'justice' we pursue.

As I have said, the losses from divorce are not evenly distributed. In some cases, they may be most unfairly distributed. In pursuing my own happiness, I may in law demand that the other spouse suffers significant financial costs; but should I do so? If I am the primary caregiver, the law may support me to impose on the other parent the relational cost of seeing his children much less frequently - a relational cost that is borne also by the children; but should I do so?

Love, in the context of relationship difficulties, requires that we consider whether it is right to impose upon other family members the costs of separation, and, if we decide separation is necessary, to seek to minimise unfair losses on others to the extent possible. Love affects the question of whether we divorce, how we divorce and how we order our lives after divorce, to the extent that our decisions or omissions impact upon the lives of other family members. Marriage may be dissoluble, but parenthood is not, and this has profound consequences for our lives.

Endnotes

[1] Lara Bazelon, ‘Divorce Can Be an Act of Radical Self-Love’ *New York Times*, September 30th 2021.

[2] See e.g. Nikki DeBartolo & Benjamin Heldfond, *Our Happy Divorce: How Ending Our Marriage Brought Us Closer Together* (Mascot Books, 2019).

[3] Cathi Hanauer, 'The Case for Ending a Long, Mostly Good Marriage', *New York Times*, November 30th 2025.

[4] *Donoghue v Stevenson [1932] AC 562*

[5] P. Parkinson, *Family Law and the Indissolubility of Parenthood* (Cambridge UP, 2011).

[6] [1995] FLC 92-635.

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