

Mishnah and Mark 10:1-12: Marriage and Divorce

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Jesus’ interactions with the Pharisees become increasingly acrimonious throughout Mark’s Gospel. The Pharisees had previously asked him three questions, all concerning food: whom he ate with (2:16); why his disciples were plucking grain on the Sabbath (2:23-24); and why they did not hand wash before eating (7:5). The Pharisees’ next three questions are characterized by Mark as a “test”: they demanded a sign to test his status (8:11); finally, they tested him with trick questions (12:13-15). The intervening question about divorce (“Is it lawful for a man to divorce his wife?”) is also called a “test” (10:2), presumably because the Pharisees knew that they were trapping him into stating an unpopular viewpoint. We will see that in his reply Jesus rejected the most popular type of divorce which most people relied on to make sure their marriage contract had an escape clause, without which even his disciples were wary of getting married (according to Matt 19:10).

Jesus’ dispute with the Pharisees about divorce is recorded in a form that is familiar in ancient records of rabbinic disputes. The typically brief account contains only highly abbreviated main points. Readers are expected to mentally expand these, provide the links between them, and recognize the source of any allusions. In this essay, we will compare Mark 10:1-12 with select tractates from the Mishnah in order to throw light on these allusions.

Mishnah—“A man should not divorce his wife except . . .”

Rabbinic debates were transmitted first orally, then written in the Mishnah, Tosephta, and two Talmuds. The oral version was perhaps the most fixed form, because a community of scholars recited the traditions and corrected each other. The later, written discussions include comments on any differences in these recited traditions (see, e.g., *m.Hul.* 8.1; *m.Ohol.* 8.1). All four written sources follow the same structure, and the latter two are commentaries on the Mishnah, so the earliest traditions tend to occur in more than one source.

Mishnah	Tosephta	Jerusalem Talmud	Babylonian Talmud
Earliest traditions	Mishnah	(Mishnah assumed)	(Mishnah included)
Written c.200 AD	+ extra traditions	+ discussions of it	+ discussions of it
	c.300 AD	at Jerusalem	at Babylon
		c.350 AD	till c.450 AD

A debate about divorce occurs among the largest oral source—a series of over 600 disputes between the schools founded by Hillel and Shammai.¹ This debate is recorded in the Mishnah tractate Gittin:

The School of Shammai say, A man should not divorce his wife except he found in her a thing of indecency, as it is said: *For he finds in her an indecent thing* [Deut 24:1]. And the School of Hillel say, Even if she spoiled his dish, since it says: *For he finds in her an indecent thing* [Deut 24:1]. (m.Git. 9.10)

Recognized Grounds for Divorce. The background to this debate was a new ground for divorce that was invented by the Hillelites which was commonly called a divorce for “any cause.” This is roughly equivalent to a modern “no-fault” divorce because there was no need to prove any specific grounds for divorce. The recognized grounds for divorce were adultery (based on Deut 24:1) as well as the breaking of one’s other marriage vows to provide food, clothing, and marital love (based on Exod 21:10-11). These obligations were written into typical marriage contracts of the time, as illustrated in the following papyrus:

. . . according to the law of Moses and the Judeans and I will feed you and clothe you and I will bring you (into my house) by means of your *ketuvah* and I owe you the sum of 400 denarii . . . together with the due amount of your food and your clothes and your bed. (P.Yadin 10, 126 AD).

The *ketuvah* represented the money paid by a husband who failed to keep these stipulations and was consequently divorced by his wife. After the first century, only men could initiate divorces, though a court could have him beaten with rods until he “wanted” to divorce her (*m.Arak.* 5.6). Men could similarly divorce a wife who failed to keep her equivalent marriage vows, and in this case the husband did not pay her the *ketuvah*. However, the Hillelites found a way for men to divorce wives who had not broken any vows.

Divorce for “Any Cause.” The phrase in Deut 24:1 that provided the ground of divorce for adultery is a little strange in Hebrew. In verbatim English, it reads: “If . . . he finds in her indecency of a thing.” The Shammaites interpreted this verse in the same way that most English translations do, as if it said “a thing of indecency”—which they understood as a reference to adultery. The Hillelites agreed that it referred to adultery but argued that the word “thing” was superfluous, and if one takes the order of the words seriously, one could conclude that “thing” referred to a separate unspecified ground for divorce. The word “thing” (Hebrew *davar*) has a wide range of meanings, including “word,” and in legal contexts it could mean “a cause.” Therefore, the Hillelites said that this phrase in Deut 24:1 implied two reasons for divorce: “adultery” and “any cause.”

The new “any cause” divorce introduced by the Hillelites quickly gained popularity. First century Jewish writers Philo and Josephus both referred to it—and Josephus employed it twice. Even women liked this new type of divorce, because under such conditions there was no need to expose their domestic lives in a court case, allowing them to preserve their dignity, as well as

¹ The rabbis Hillel and Shammai lived in the first century BC and their disciples were among those called “Pharisees” by the Gospel writers.

because in such divorces women were awarded their *ketuvah*. This is presumably why Joseph was praised for wanting to divorce Mary “quietly” (Matt 1:19).

Josephus (<i>Ant.</i> 4.253)	Philo (<i>Spec. Leg.</i> 3.30)	Pharisees (Matt 19:3)
He who wishes to be divorced from a wife who lives with him, for whatsoever cause . . .	Another commandment is that if a woman after parting from her husband for any cause whatever...	Is it lawful to divorce one’s wife for any cause? (ESV)

Mark 10:1-12—“Is it lawful for a man to divorce his wife?”

Grounds for Divorce. Mark’s Gospel assumes the reader knows all about the rabbinic debates on divorce discussed above and that they understand the meaning of the opening question from the Pharisees: “Is it lawful for a man to divorce his wife?” (10:12). As it stands, this question is as misleading as “Is it lawful for a 16-year old to drink?”—because all humans need to drink. It would be pedantic to add the words “alcoholic beverages” to this modern expression, because everyone knows that this is the subject of the question. Equally, in the early first century it would have been pedantic to specify that the question “Is it lawful for a man to divorce his wife?” concerned divorce “for any cause,” because this was the big divorce debate of the day. Therefore, everyone knew that this much was implied.

However, by the time Matthew’s Gospel was written, this addition was necessary to include because the “any cause” divorce had won the day and the debate was quickly forgotten. Matthew added another phrase to aid his readers: “I tell you that anyone who divorces his wife, *except for sexual immorality* [i.e., indecency], and marries another woman commits adultery” (Matt 19:9). This exception clause is a fairly verbatim Greek translation of what we might call the Shammaite slogan: “*except he found in her a thing of indecency*” (m.Git. 9.10—this is especially close to the Greek of Matt 5:32). The Shammaites argued that there was no extra ground for divorce in Deut 24:1—that is, this verse referred to divorce for nothing “except for indecency,” which is to say adultery. In Matthew, it is clear that Jesus sided with the Shammaites on this issue. Mark’s conclusion reflects the same: “And he said to them, ‘Whoever divorces his wife and marries another commits adultery against her, and if she divorces her husband and marries another, she commits adultery’” (10:11-12).

The consequence of Jesus’ stance was dramatic because this new Hillelite law was already used by almost everyone. When Jesus rejected it, he was saying in effect that Hillelite divorces were invalid. Therefore, as Jesus points out, if they subsequently “married” someone else, they were actually committing “adultery,” because their previous marriage was still valid. This could be succinctly stated as: “Divorcees who remarry are committing adultery”—a summary that occurs with slight variations in all the Synoptic Gospels (Matt 5:32; 19:9; Mark 10:11-12; Luke 16:18). In Mark, this conclusion is revealed only to the disciples, in private (10:10-12).

No Shammaites survived the destruction of Jerusalem at 70 AD, so even rabbinic lawyers soon forgot this debate. This is illustrated by a discussion between a pair of third-century rabbis where they clearly misunderstand the Shammaite slogan “nothing except indecency,” supposing

the Shammaites had only allowed divorce for adultery (Jerusalem Talmud Sotah 1.1, 1a). However, we know that Shammaites also recognized the neglect of food, clothing, and love as grounds for divorce (based on Exod 21:10-11), because they discussed in earlier traditions the minimum quantities that might lead to divorce (m.Ket. 5.5-8). The Church Fathers misunderstood the phrase in a similar way, though this was not surprising because they did not realize that Jesus was citing the Shammaite slogan “nothing except indecency.” This meant they did not know that the original context of this debate concerned how many grounds for divorce could be found in Deut 24:1, a contextual insight most interpreters continue to miss today.

Instructions on Marriage. It is clear from Mark’s summary that most of Jesus’ answer to the Pharisees was unrelated to the original question. He was asked about divorce, but Jesus responded by talking about marriage. He was concerned about two topics where he disagreed with almost all Jews, and not just Hillelites: heart-heartedness and polygamy.

Most Jews felt that divorce was a right and even pious act, if adultery had occurred. Jesus contrasted this with the way that God forgave the repeated infidelities of his bride Israel, as described in Jeremiah 3–4, till her eventual divorce (Jer 3:8). Jesus’ allusion to God’s dealing with Israel was made in Mark 10:5 by his use of the single word “hard-hearted” (“your hearts were hard,” NIV). This word is found nowhere in previous Greek literature but was invented by the Septuagint translators and used only twice (Deut 10:16 LXX; Jer 4:4 LXX). Only the use in Jeremiah concerns divorce, so ancient Jewish readers could not have missed the link. This was like using the English word “scapegoat” (which was similarly invented by Bible translators)—it is difficult to use this word without referring in some way to Leviticus 16. Jesus said, in effect, Jeremiah showed that divorce was allowed for “hard-hearted” breaking of marriage vows, like Israel’s repeated and unrepented sinning—though not for occasional minor offenses accompanied by contrition.

Jesus also argued against polygamy, which was generally accepted and practiced by Jews in Palestine. This is substantiated by the most complete family archive that has survived from antiquity, belonging to Babatha, who buried her basket of documents in a cave near Qumran. These documents reveal that she was widowed and subsequently married a man who already had one wife.² Polygamy was opposed by only two groups of Jews: those at Qumran and those living outside Palestine where Roman law made polygamy illegal. Each group argued from Scripture in different ways, and Jesus referred to both.

At Qumran, in the Damascus Document, they reasoned for monogamy by combining two Old Testament texts:

^{4:21} The foundation of creation is “male and female he created them.” [Gen 1:27].

^{5:1} And those who entered (Noah’s) ark went in two by two into the ark [Gen 7:9].
(CD 4.21–5.1)

Their argument was that the phrase “male and female” has the same meaning in both scriptural texts (Gen 1:27; 7:9), so the Flood story tells us that marriages should always consist of only a

² For Babatha’s marriage contract, see Yigael Yadin, Jonas C. Greenfield, and Ada Yardeni, “Babatha’s Ketubba,” *IEJ* 44 (1994): 75-101. For the Greek Babatha documents, see <http://papyri.info/ddbdp/p.babatha>.

pair of people. Mark helped his readers recognize this trope by using a similar opening: “from the beginning of creation” (10:6).

Jews in the diaspora used a less complex method. When they translated Gen 2:24, they added the word “two,” as found in Mark 10:8: “and the two will become one flesh.” This was added in the Septuagint, then in the Syriac and Latin, and later even in the Aramaic Targums, but never in Hebrew texts.

When this highly abbreviated debate is expanded, using the same methodology used for expanding similar debates recorded by ancient rabbis, we find a wide ranging discussion taking place in Mark 10:1-12. Some rabbis ask Jesus where he stood in the debate about the new Hillelite “any cause” divorce, but Jesus is interested in affirming marriage. He alludes, in Mark 10:5, to the marriage of God to Israel that did not end in divorce until the nation had broken her vows repeatedly and unrepentantly—that is, “hard-heartedly” (Jer 4:4 LXX). He then argues for monogamy in Mark 10:6-8 by citing texts used by other Jews for the same purpose (Gen 1:27; 2:24).

Jesus also points out that God is a witness at all marriages, so “let no one separate” them (Mark 10:9). The use of this imperative does not mean that it is impossible for divorce to occur, but it indicates that no human *should* cause a marriage breakup. This coheres with Jesus’ rejection of the Hillelite no-fault divorce, which makes broken marriage vows the only grounds for divorce. In Jesus’ teaching, a wronged partner may decide to divorce, but only after he or she suffers hard-hearted breaking of vows, which *should* never happen.

This passage stands out in Mark as the only place where Jesus addresses a matter of morality, whereas Matthew and Luke included other ethical concerns, mostly from Q.³ It is also the only specific ethical teaching of Jesus directly referred to in the Epistles (cf. 1 Cor 7:10). It is therefore likely that this teaching had profound practical consequences for the readers of Mark. Yet, as we have seen, familiarity with ancient rabbinic debates is essential for fully understanding Jesus’ instructions on marriage and divorce.

³ Q is short for the German “Quelle,” i.e., a hypothetical “source” used.

For Further Reading

Additional Ancient Texts

Parallel sources for Mishnah Gittin 9.10 are found at Sifré Deut. 269; Jerusalem Talmud Sotah 1.1, 1a.

Other early Jewish marriage contracts can be found in: Naphtali Lewis, Yigael Yadin, Jonas C. Greenfield, eds., *The Documents from the Bar Kokhba Period in the Cave of Letters: Greek Papyri* (Judean Desert Studies 2; Jerusalem: Israel Exploration Society, 1989). The divorce certificate by a Jewess is translated in David Instone-Brewer, "Jewish Women Divorcing Their Husbands in Early Judaism: The Background to Papyrus Se'elim 13," *HTR* 92 (1999): 349-57.

A Qumran discussion of polygamy similar to Jesus' is in the Damascus Document (CD 4:20-5:6).

English Translations and Critical Editions

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