

What God Has Joined Together

BY DAVID INSTONE-BREWER

Thanks to recent research in ancient Judaism, we have a better understanding of the Pharisees' question of Jesus, "Is it lawful for a man to divorce his wife for any cause?" We find Jesus and Paul were in perfect agreement. They both forbid divorce unless it is based on biblical grounds.

The treasures found by Indiana Jones are boring compared to the fabulous discoveries made by two elderly widowed sisters in the 1890s, Agnes Lewis and Margaret Gibson. After unexciting marriages to Scottish lawyers, during which they passed the time by learning ancient languages, they decided to set out on adventures in the Middle East. Their knowledge of Syriac, Aramaic, and other languages helped them gain entrance to St. Catherine's Monastery at Mount Sinai where they found more valuable manuscripts than the monks knew what to do with. The butter dish at one meal turned out to be fashioned from a fifth-century Syriac Gospel!

Such discoveries spurred them to seek out other neglected manuscripts, and after following several leads they went to an old synagogue in Cairo where they found a Geniza (a rubbish room for sacred manuscripts) that had not been cleared out for a thousand years. They gained permission to take the oldest manuscripts to Cambridge University, where they arrived in several tea chests – so many, that scholars have only recently finished the work of identifying and cataloging them all. Their hoard included a copy of the Damascus Document, later also found at Qumran, where we find the sect's views on marriage, as well as a wealth of early Jewish marriage contracts which list the biblical grounds for divorce. These and other such discoveries have now enabled us to understand the question that the Pharisees asked Jesus about divorce, "Is it lawful for a man to divorce his wife for any cause?" (Matthew 19:3).

Another example of heroic scholarship is Jacob Neusner, who set himself the monumental work of analyzing ancient rabbinic literature, as found in the Talmuds and Midrashim, in the light of modern textual criticism. Several decades and over a thousand books later (yes, he has personally written and edited over a thousand books), his painstaking and laboriously detailed work has given scholars the tools and confidence to identify the earliest traditions

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within this literature. Many traditions date back to New Testament times and these have now enabled us to understand the answer that Jesus gave to the Pharisees' question about divorce.¹

Before these discoveries, there were two main ways to understand Jesus' teaching on divorce. The traditional church teaching, still fol-

lowed by the Catholic Church, is that Jesus allowed divorce for only one cause, adultery, and that he only allowed remarriage after the death of a partner. This creates a contradiction with the Apostle Paul, who specifically allowed divorce only if it was carried out by a nonbeliever. Most Protestants have “solved” this by maintaining the traditional understanding of Jesus but adding Paul's teaching as a second route to divorce. The second main interpretation, which was favored by many scholars, was that Jesus totally disallowed divorce and that the New Testament church added these two exceptions for practical reasons.² The great regret, by almost all theologians, was that the church had not also added divorce for abuse and abandonment. Many modern interpreters have attempted, with varying success, to argue that biblical teaching implied that divorce was allowed for these additional grounds, while others, notably Luther, allowed divorce in such circumstances for reasons of common sense.³

Thanks to recent research in ancient Judaism, we now have a better understanding of Pharisaic thinking than did the second-century church whose interpretation of Jesus' teaching on divorce became the traditional doctrine. When the Pharisees asked Jesus “Is it lawful for a man to divorce his wife for any cause?” the early church thought that the question meant “Is divorce ever lawful?” We now know that Jewish rabbis at the time of Jesus were debating a new and very popular form of divorce called the “Any Cause” divorce, which implies that their question to Jesus should be understood as “Is it lawful to use the Any Cause divorce?”⁴

JESUS AND THE DIVORCE DEBATE

Hillelite Pharisees invented this new form of divorce by dividing up the scriptural phrase “a cause of indecency” (translated as “something objection-

able" in the NRSV), which is the ground for divorce in Deuteronomy 24:1. They said that this phrase included two grounds for divorce: "indecency" (i.e., adultery) and "a cause" (i.e., any cause). They emphasized their conclusion that "a cause" meant "*any cause*" by saying that you could divorce a wife even if she burned a single meal. This was, unsurprisingly, considered controversial, and early rabbinic traditions record the debate that they had with their rivals, the Shammaite Pharisees. The Shammaites agreed that "indecency" meant "adultery" but argued that "a cause of indecency" should be regarded as a single phrase and should not be divided up to produce an extra ground for divorce. They said that the whole phrase meant "nothing except adultery."⁵

In this rabbinic debate we find the origins of two phrases used by Matthew when he recorded the Pharisees' debate with Jesus. They asked him about the new Hillelite "Any Cause" divorce, and he replied with the Shammaite slogan, "nothing except adultery."⁶ This does not mean that Jesus was a Shammaite, but he agreed with them (as most modern exegetes would) that you should not artificially divide up a phrase in order to create a new ground for divorce. These terms and the whole debate were very familiar to Jesus and the listening crowd, for whom this was an important and practical area of theology.

Mark does not bother to include these two terms in his account because his readers would have mentally inserted them in any case. Mark records the question in an abbreviated way, which was probably the way it was originally expressed: "Is it lawful to divorce your wife?" (Mark 10:2). This abbreviated version is like the question "Is it lawful for a sixteen-year-old to drink?" to which any modern reader would mentally append the words "alcoholic beverages." These additional words are unnecessary because without them the question is absurd—one would die without anything to drink. In the same way, Mark's readers would mentally append "for Any Cause," because it was absurd to ask if divorce itself was legal—divorce was legislated in the Law of Moses as in all other ancient law codes.

If Jesus was being asked about the new Any Cause divorce and if he answered with the well-known phrase "nothing except adultery," what did he mean? Unless Jesus was trying to deliberately mislead his listeners, he presumably meant the same thing that others in the crowd would have meant when they used this phrase in this context. When the Pharisees used this phrase in the divorce debate, they meant that the words "a cause of indecency" in Deuteronomy 24:1 mean "nothing but adultery." They did not mean that there are "no grounds for divorce except adultery," which is how we have traditionally understood these words when spoken by Jesus. They believed that Scripture also allowed divorce for neglect and infertility. Infertility was a ground for divorce because the command to "be fruitful and multiply" (Genesis 1:22, 28) made it the duty of every Jewish male to marry and have children. Jesus specifically ruled out this ground for divorce by stating (contrary to Hillelite and Shammaite teaching) that marriage and procreation were optional (Matthew 19:12). But Jesus was silent about the grounds for divorce based on neglect.

Neglect was the normal ground for divorce before the Any Cause divorce was invented and before the increase of adultery in “this generation” (Mark 8:38; Matthew 12:38; 16:4; cf. m. Sot. 9:9), which was probably due to the presence of Roman soldiers in the first century. Neglect was defined on the basis of Exodus 21:7-11, where a slave wife is guaranteed “food, clothing, and love” and allowed her freedom from the marriage if these are neglected. It was assumed

that if the lowest of society had these rights, the rest of society certainly shared them. Therefore anyone (man or woman) who suffered neglect could demand a divorce. In contrast to divorces for adultery or for Any Cause that could only be brought by a man (since they were based on Deuteronomy 24:1 that refers only to men), divorces for neglect could be brought by a woman.⁷ Men had to provide the food and wool, or money to buy these, while women had to prepare them by cooking, sewing, and weaving. The rabbis defined the minimum owed by each spouse and even the minimum amount of lovemaking that could be cited as neglect. They debated about these details, but no rabbi ever questioned the validity of divorce for neglect.⁸ Evidence for the general application of this law is found in surviving marriage certificates (which often list the possible grounds for divorce) and divorce certificates.⁹

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onomy 24:1 that refers only to men), divorces for neglect could be brought by a woman.⁷ Men had to provide the food and wool, or money to buy these, while women had to prepare them by cooking, sewing, and weaving. The rabbis defined the minimum owed by each spouse and even the minimum amount of lovemaking that could be cited as neglect. They debated about these details, but no rabbi ever questioned the validity of divorce for neglect.⁸ Evidence for the general application of this law is found in surviving marriage certificates (which often list the possible grounds for divorce) and divorce certificates.⁹

Why was Jesus silent about the most important ground for divorce? Did his silence imply that he disagreed with it, or that he agreed with it? Arguments from silence are notoriously difficult: Jesus was silent about the law that rebellious teenagers should be stoned (Deuteronomy 21:18-21), but he was equally silent about the laws against rape. However, his silence in this case is difficult to ignore, because Jesus chose to be vocal about so many aspects concerning divorce. He was asked a simple question about his views on the Any Cause divorce, and yet his reply (Matthew 19:4-12) concerned many other matters: he criticized polygamy (which all Jews except the Qumran sect affirmed);¹⁰ he denied that divorce was compulsory for adultery (which all Jews affirmed);¹¹ he denied that procreation was a commandment (which all Jews except perhaps the Qumran sect affirmed); and he emphasized forgiveness for broken marriage vows rather than divorce.¹² Jesus was clearly keen to highlight all the aspects where he disagreed with current Jewish theology on divorce and marriage, even if they were tangential to the question he had been asked. His silence on divorce for neglect is therefore deafening. As far as we know, there was no branch of Judaism that denied the provisions of neglect in Exodus 21:10-11, and yet Jesus did not mention any disagreement with it. The natural conclusion is that Jesus agreed with the provisions of this law and its application.

PAUL AND THE DIVORCE DEBATE

Paul, unlike Jesus, did affirm the regulations based on Exodus 21:7-11 when he reminded the Corinthians that they were obligated to provide their spouses with material provisions (1 Corinthians 7:32-34) and conjugal rights (7:3-5). Paul normally based his ethical commands on Scripture¹³ and when he didn't, he said so (e.g., 7:10, 25), and Exodus 21:10-11 is the only place where these regulations could originate. Presumably this law is also the foundation of his teaching that a believer who is abandoned may be regarded as divorced (7:15), because abandonment implied neglect. Paul had a different response when a believer abandoned his or her spouse—he ordered that the believer should attempt reconciliation and should avoid remarriage which would prevent reconciliation (7:11). In the Roman world, any separation with the view to breaking up a marriage was automatically considered to be a legal divorce. This divorce-by-separation was, according to Paul, not permitted for a believer, presumably because it is not based on biblical grounds for divorce. However, when a believer suffered divorce-by-separation against his or her will, Paul allowed the believer to consider this as a valid divorce. The reason for these different approaches appears to be pragmatic—Paul could command a believer to return to his or her spouse, but he could not command an unbeliever. Therefore, if the unbeliever departed (i.e., they carried out a legal divorce-by-separation), the believer could be considered to be a victim of neglect, which was a biblical ground for divorce. In the modern world where believers can also be unresponsive to the demands of church discipline, Paul presumably would extend this provision to all victims of divorce against their will.

When we understand this Jewish background, we find that Jesus and Paul are in full agreement on divorce. Both Paul and Jesus were against no-fault divorce—i.e., divorce without proper biblical grounds (in the Roman world the no-fault divorce was the divorce-by-separation and in the Jewish world it was the Any Cause divorce).¹⁴ Both affirm the biblical grounds for divorce when they are asked specific questions about it. Jesus is asked about Deuteronomy 24 and affirmed that it refers to divorce for adultery (but not anything else like “any cause”). Paul is asked if believers can abandon their nonbelieving spouses¹⁵ and replies with the scriptural regulations against neglect as in Exodus 21:10-11. We cannot infer from Jesus’ silence that he was against divorce for neglect any more than we can infer from Paul’s silence that he was against divorce for adultery.

CONCERN S ABOUT REMARRIAGE

Were Jesus and Paul equally in agreement on remarriage? On first reading, Jesus appears to regard all remarriage as adultery, as though divorce does not end a marriage, while Paul appears to allow remarriage in 1 Corinthians 7:15. Some regard the freedom referred to in 1 Corinthians 7:15 as the freedom to separate or the freedom to be divorced without remarriage. However, if Paul was affirming this he would be saying nothing, because in the Roman world an

abandoned spouse is already fully and legally divorced. It is much more likely that this freedom is a reference to the words that are found in all Jewish divorce certificates and many Graeco-Roman ones: "You are now free to marry any man you wish." This wording is found in rabbinic traditions (m. Git. 9:3) and on the Masada divorce certificate of A.D. 72, as well as being quoted in 1 Corinthians 7:39 where Paul extends these same rights to widows.¹⁶

Jesus was stating, in effect, that anyone with an Any Cause divorce was still married, so if they remarried they were committing adultery. He was rejecting the Any Cause divorce in the most shocking way possible.

Jesus' refusal of remarriage and Paul's allowance of it are normally reconciled by saying that remarriage is allowed only after the death of a spouse (which is specifically allowed in 1 Corinthians 7:39 and Romans 7:2), even though Paul nowhere tells believers to remain unmarried until their former

spouse's death. This is a problematic solution, because it demands that believers should break the Roman law that divorcees should remarry within eighteen months.¹⁷ This effectively would put believers at the mercy of their neighbors who could bring charges and be awarded a proportion of their property upon conviction. No doubt believers would be willing to suffer this if it was regarded as important for the faith, but it would be strange for such a demanding command to be hidden in implications and silence without a specific instruction from Paul that they should disobey the Roman law. Paul's silence should therefore be regarded as agreement with the status quo of both Old Testament and Roman law—i.e., allowing remarriage.

We have to reassess Jesus' teaching on remarriage in the light of his rejection of the Any Cause divorce. If his debate with the Pharisees concerned this new ground for divorce, his conclusion that remarriage was adultery was presumably also a reply to this question. He was stating, in effect, that anyone with an Any Cause divorce was still married, so if they remarried they were committing adultery. We can now see that Jesus was rejecting the Any Cause divorce in the most shocking way possible—by stating that remarriage after an Any Cause divorce was equivalent to adultery! This is similar to his teaching that anger is equivalent to murder and lust is equivalent to promiscuity.

The Any Cause divorce was probably the most common form of divorce by the time of Jesus, and by the second century it completely replaced all other types of divorce. The Any Cause divorce already was so widely accepted during the first century that when Joseph considered using it in order to avoid the publicity of a trial of Mary, this was considered a "righteous" act (cf. Matthew 1:19).¹⁸ This means that when Jesus criticized those who had remarried after divorce, he implicated virtually all remarried Jews. Therefore, when Luke and Matthew wanted to abbreviate Jesus' teaching into a couple of sentences, they

were able to present the conclusion that 'any man who remarries commits adultery' and, because most divorced people remarry, 'he causes his wife to commit adultery' (Matthew 5:32; Luke 16:18). Jesus was not saying remarriage *per se* was adulterous, but that remarriage after an invalid divorce (such as an Any Cause divorce) was adulterous, because the person was still married.

Paul said the same thing. He commanded the believer who had used the Roman divorce-by-separation to remain unmarried, because their divorce was not based on any scriptural grounds and was therefore invalid. But when a divorce was based on valid grounds (such as neglect by being abandoned), Paul allowed remarriage. He continued to regard death as the normal way to end a marriage, and twice when he speaks about the end of marriage, he mentions only death (1 Corinthians 7:39; Romans 7:2), though without ruling out that marriage can also end by divorce. In both passages, moreover, it would be inappropriate to mention divorce because in 1 Corinthians 7 he was addressing widows and in Romans 7 he used marriage as an illustration of the relationship of a Jew with the Law – and the Law would not, of course, break his marriage vows and cause a divorce. Paul, therefore, does not rule out remarriage after divorce, except for believers who are using a no-fault divorce.

A practical matter which remains unclear in the New Testament is whether someone who divorces without biblical grounds can remarry. Did Jesus literally mean that this was adulterous, or was this rhetorical hyperbole like 'he may as well wear a millstone and jump in the sea' (Matthew 18:6) or 'gouge out your eye' (Matthew 5:29)? Also, when Paul forbids remarriage to someone who has used divorce-by-separation to abandon their partner and tells them to attempt reconciliation, did he forbid remarriage in order to punish them or in order to make reconciliation possible? If it is the latter, are they allowed to remarry if their former partner accepts the divorce, so that reconciliation becomes impossible? There is uncertainty in both Jesus' and Paul's teaching about whether to allow remarriage to those who have divorced their partners without biblical grounds, if their partners subsequently refuse reconciliation or remarry.

During the history of this debate, a lot of emphasis has been laid on the life-long nature of marriage, even going so far as teaching the impossibility of ending a marriage by divorce. It is good and right that a marriage should be life-long because, as Jesus emphasized, this was what God wanted. But it is also unfortunately true that not all marriages last a lifetime, and sometimes continuing the pretence after a marriage has died is as ugly as the walking dead. Phrases like "one flesh" (Genesis 2:24; cited in Matthew 19:6 and Mark 10:8) and "let no one separate" (Matthew 19:6; Mark 10:9) emphasize that marriage *should* last a lifetime, but they do not mean that marriages are guaranteed to last. When Jesus spoke about "those whom God has joined," he used the imperative to order them "do not separate," or possibly "you should not separate," but it is impossible to translate this imperative as "you cannot separate." In other words, it is not impossible to break marriage vows and thereby provide grounds for a divorce, but it is always wrong to do so. And the phrase "one

flesh" does not indicate an indissoluble bond that makes people married in God's eyes for their lifetime, because it is also used in 1 Corinthians 6:16 to describe a union with a prostitute. The phrase is used there in order to emphasize the seriousness of sexual sin, but there is no implication that someone becomes married to a prostitute in God's eyes, so that they may not subsequently marry anyone else. Both of these phrases point to the ideal that marriage should last a lifetime, while recognizing the unfortunate fact that marriages can end.

C O N C L U S I O N

If we understand the New Testament through the eyes of a first-century Jewish reader, we find Jesus and Paul in perfect agreement, while addressing different audiences. Both forbid divorce unless it is based on biblical grounds. Both affirm the biblical grounds which they were asked about—Jesus, the ground of adultery, and Paul, the grounds of neglect. Jesus took the opportunity to criticize many aspects of the Jewish theology of marriage that he disagreed with—including infertility as a ground for divorce, allowing polygamy, and compulsory divorce for adultery. Jesus taught forgiveness rather than hasty divorce, though he agreed that a hard-hearted partner who repeatedly broke marriage vows unrepentantly could be divorced. Paul's emphasis was that marriages to unbelievers were sacred in God's eyes and that no believer should cause a divorce by neglecting their obligations or by abandoning their spouse.

N O T E S

1 These earliest traditions will be easily accessible in the volumes of *Traditions of the Rabbis in the Era of the New Testament (TRENT)*. See www.T-R-E-N-T.com for details of the series.

2 See Gordon J. Wenham and William E. Heth, *Jesus and Divorce*, updated edition (Carlisle, Cumbria: Paternoster Press, 2002), though it is significant that Heth now supports the position presented in this article.

3 See the survey of historical approaches to the problem in David L. Smith, "Divorce and Remarriage from the Early Church to John Wesley," *Trinity Journal* 11 NS (1990), 131-142.

4 So called in Philo *Spec. Leg.* 3:30 (II 304), "Another commandment is that if a woman after parting from her husband for any cause whatever..." (*kath én an tuché prophasin*); and Josephus *Ant.* 4.253, "He who desires to be divorced from the wife who is living with him, for whatsoever ground..." (*kath hasdépotoun aitias*). The variation in Greek phrases suggests that there was no standard translation of the vague Hebrew word *davah* which was used in the rabbinic debates.

5 Their debate is recorded in three similar versions at Mishnah Git. 9:10, Sifré Deut. 269, and Jerusalem Talmud Sot. 1:2, 16b.

6 The Shammaite slogan occurs in two slightly different versions, which mirror the two versions in Matthew 5:32 and 19:9. The unusual Greek for "not but" (*mé epi*) is an exact translation of the Hebrew (*ela im*) and the word for "unchastity" (*porneia*) has the same broad meaning as the vague term *ervah* in Deuteronomy 24:1.

7 She could ask a rabbinic court to extract a divorce certificate from her husband. Theoretically the man had to do so voluntarily, so the rabbis kept pushing him till he volunteered (m. Arak. 5:6).

8 Mishnah Ket. 5:5-9 contains debates about how much food, clothing, and love had to be supplied in order to avoid the charge of neglect.

9 Only two Jewish divorce certificates have survived from the first two centuries. The

Masada divorce certificate (*papyrus Murabba'at* 20) was written by a man and the Selim divorce certificate (*papyrus Se'elim* 13) was written by a male scribe on behalf of a female client—though when it was first translated, the text was emended to look as though a man had initiated it. See David Instone-Brewer, “Jewish Women Divorcing Their Husbands in Early Judaism: The Background to Papyrus Se'elim 13,” *Harvard Theological Review*, 92 (1999), 349–57.

10 Jesus added the word “two” to Genesis 2:24 and used the same proof texts for monogamy as found at Qumran. For details, see my “Jesus’ Old Testament Basis for Monogamy,” *The Old Testament in the New Testament: Essays in Honour of J. L. North*, edited by Steve Moyise, JNTS Supplement 189 (Sheffield, UK: Sheffield Academic Press, 2000), 75–105.

11 The Pharisees asked “why did Moses command...” and Jesus replied “Moses permitted...” (Matthew 19:7f.), though this contrast is lost in Mark 10:3f.

12 His use of “hard-heartedness” would be recognized by his listeners as a reference to Scripture because this word was invented by the Septuagint translators and was not used in normal Greek. The only place where this word is used in the context of divorce is Jeremiah 4:4 where God explains why he divorced Israel (see Jeremiah 3:8) because of her hard-hearted refusal to repent after breaking her marriage vows so many times with the idols. Therefore, when Jesus said that Moses allowed divorce for hard-heartedness, his hearers would understand this as a criticism of the rabbinic demand for divorce after adultery, and an emphasis on forgiveness for a repentant partner, though recognizing that divorce is sometimes eventually necessary, as it was in the case of God and Israel.

13 Brian S. Rosner, *Paul, Scripture and Ethics: A Study of 1 Corinthians 5–7*, Arbeiten zur Geschichte des antiken Judentums und des Urchristentums, 22 (Leiden, Netherlands: E. J. Brill, 1994).

14 Strictly speaking, the Any Cause divorce did need to cite a fault, but this could be as minor as “she is not as pretty as when I married her” (m. Git. 9:10), so this is equivalent to a “no fault” divorce.

15 This is the main topic of 1 Corinthians 7. Paul starts by criticizing a saying of theirs that promotes celibacy (7:1–9), then tells the woman who has left her husband to return (7:10–11) and warns others that God recognizes their marriages to nonbelievers (7:12–16).

16 This is probably an argument against levirate marriage, where a childless woman has to marry her brother-in-law in order to have an heir. Paul’s argument appears to be: If a divorcee has the right to choose their new husband, then surely a widow should have this right. His stand against levirate marriage was in line with a general unease with this law among Jews of the time.

17 The *lex Julia de maritandis ordinibus* of Augustus was introduced because divorce was regarded as a way to avoid the responsibilities of marriage and rearing citizens for the empire. The law also said that all widows and widowers of childbearing age should remarry within twenty-four months.

18 All other forms of divorce required proof of the fault—the adultery, the neglect, or childlessness—which had to be assessed by three judges. The fault for an Any Cause divorce could be so minor that no proof was required.



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