

“But from the beginning it was not so”:  
The Jewish Apocalyptic Context of Jesus’s  
Teaching on Marriage, Divorce,  
and Remarriage

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THE QUESTIONS UNDERLYING THE CONTROVERSY surrounding *Amoris Laetitia* are ancient in origin since they are based on Jesus’s teachings on marriage and divorce. While it is true that Jesus never considered questions regarding the reception of the Eucharist by divorced and remarried people (always important to remember),<sup>1</sup> he did teach on marriage, divorce, and remarriage among his earliest disciples. In examining the development of Catholic teaching regarding marriage, divorce, and remarriage, it is important to start at the beginning: situating Jesus’s thinking on these issues in the context of the various expressions of Judaism in his own day, particularly apocalyptic thought, which suffused Jesus’s own thought and which was found throughout many concurrent strands of Judaism. This historical context is essential for understanding Jesus’s teaching itself in terms of change and continuity in Judaism and the manner in which his teaching was integrated in the emerging Church. I take Bruce Vawter’s bracing words to heart as I begin this paper:

To rehearse the history of marriage and divorce in the Christian churches is to describe an experience that has been very little tributary to the NT and has listened very little to its expositors. Christian tradition, earlier and later, has honored the ideal of indissoluble monogamous marriage as a decree of its Lord, and Christian tradition, earlier and later, has never hesitated to compromise this ideal by adapting it to human realities. What particular purpose is to be served by reviewing yet again the NT doctrine on the subject, is often hard to see.<sup>2</sup>

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<sup>1</sup> On the issue in canon law, see Ladislav Orsy, *Marriage in Canon Law: Texts and Comments, Reflections and Questions* (Wilmington, Del.: Michael Glazier, 1986), 288–294.

<sup>2</sup> Bruce Vawter, “Divorce and the New Testament,” *Catholic Biblical Quarterly* 39 (1977): 541–42.

And yet, I forge ahead. The purpose of this paper remains limited in scope in order to provide proper historical and scriptural context for discussions concerning *Amoris laetitia*.<sup>3</sup>

One often reads general comments suggesting that in the context of Jewish thought on marriage and divorce, Jesus's teaching was innovative, but as with bold teaching, which Jesus's teaching certainly was, he was also participating in an interpretive tradition in Judaism that preceded him and continued after him.<sup>4</sup> To situate Jesus's teaching, it is important first to outline his own teaching, contextualize his teaching in the milieu of streams of Jewish thought current at the time, especially the eschatological context of apocalyptic thought, consider what was new, and then examine how it was integrated into the emerging Church.<sup>5</sup> Guiding this study will be Pope Francis's statement that

it is true that general rules set forth a good which can never be disregarded or neglected, but in their formulation they cannot provide absolutely for all particular situations. At the same time, it must be said that, precisely for that reason, what is part of a practical discernment in particular circumstances cannot be elevated to the level of a rule. That would not only lead to an intolerable casuistry, but would endanger the very values which must be preserved with special care (*Amoris Laetitia*, no. 304).

This sort of sensitivity to the application of "general rules," I argue, is present in the early Church's reception of Jesus's teaching but then often ignored.

### JESUS'S TEACHING ON DIVORCE IN MARK

Jesus's teaching on marriage and divorce, which I propose is found in its earliest stage in Mark 10, comes in the context of intra-Jewish debate with the Pharisees:<sup>6</sup>

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<sup>3</sup> For the broader scope, see Kenneth R. Himes, OFM, and James A. Coriden, "The Indissolubility of Marriage: Reasons to Reconsider," *Theological Studies* 65 (2004): 453–499 for a history of the questions regarding divorce and remarriage in the Roman Catholic tradition. On a response to them, see Peter F. Ryan, SJ, and Germain Grisez, "The Indissoluble Marriage: A Response to Kenneth Himes and James Coriden," *Theological Studies* 72 (2011): 369–415.

<sup>4</sup> Markus Bockmuehl, *Jewish Law in Gentile Churches: Halakhah and the Beginning of Christian Public Ethics* (Grand Rapids, MI: Baker Academic, 2003), 17–21.

<sup>5</sup> Joseph Fitzmyer, "The Matthean Divorce Texts and Some New Palestinian Evidence," *Theological Studies* 37 (1976): 213–214 in 1976 warned against this prevailing and common view that Jesus was teaching something completely new.

<sup>6</sup> Jesus's divorce decree is found in a number of forms, including in Matthew 5:32 and Luke 16:18, which some scholars argue is the earliest strata of the teaching, as will be discussed later in the paper. It is also found in 1 Corinthians 7:10–11, which is our earliest written source. The longest traditions are Mark 10:2–12 and Matthew 19:3–9. There is no real doubt that Jesus prohibited divorce, although Mary Rose D'Angelo,

He left that place and went to the region of Judea and beyond the Jordan. And crowds again gathered around him; and, as was his custom, he again taught them. Some Pharisees came, and to test him they asked, "Is it lawful for a man to divorce his wife?" He answered them, "What did Moses command you?" They said, "Moses allowed a man to write a certificate of dismissal and to divorce her." But Jesus said to them, "Because of your hardness of heart he wrote this commandment for you. But from the beginning of creation, 'God made them male and female.' For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh. So they are no longer two, but one flesh. Therefore what God has joined together, let no one separate." Then in the house the disciples asked him again about this matter. 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."<sup>7</sup>

The Markan passage is quite clear about Jesus's response to divorce: no divorce and, perhaps even more significantly, if the husband or wife remarry following divorce, which was common in ancient Judaism and the ancient world more generally throughout the Mediterranean basin, you commit adultery (*moicheia*).<sup>8</sup> But as always with Scripture, it is fair to ask for the context of the teaching, which means at a minimum we should look at all of Jesus's teachings on marriage, divorce and celibacy, but also include the historical and theological contexts. The first task, then, is to set Jesus's initial teaching from Mark, and all of the New Testament divorce texts, among the general

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"Remarriage and the Divorce Sayings Attributed to Jesus," in *Divorce and Remarriage: Religious and Psychological Perspectives*, ed. William Roberts (Kansas City: Sheed and Ward, 1990), 78–106, argues that the divorce sayings do not go back to Jesus. She has found few if any followers. E. P. Sanders, *Jesus and Judaism* (Minneapolis: Fortress Press, 1985), 256, says that "the historicity of Jesus's prohibiting divorce is confirmed by Paul's giving it as a commandment, not from himself but from the Lord, that neither the wife should divorce her husband nor the husband the wife." He also states that "the long form of the tradition about divorce, which includes the appeal to Genesis 1:27 and 2:24 (Matthew 19:3–9, Mark 10:2–12), or something very like it, represents Jesus's original saying" (257). Sanders, like George MacRae, "New Testament Perspectives on Marriage and Divorce," in *Divorce and Remarriage in the Catholic Church*, ed. Lawrence Wrenn (New York: Paulist, 1973), 3, understands Mark to have the earliest tradition.

<sup>7</sup> All translated biblical passages, unless otherwise noted, are from the NRSV.

<sup>8</sup> Jewish law, on the basis of Deuteronomy 24:1–4, assumed remarriage after divorce except in specific cases, which will be discussed below. Roman law always allowed divorce and remarriage. See James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987), 36–39. The influence of Roman law was felt deep into the Christian era. See Kyle Harper, "Marriage and Family," in *The Oxford Handbook of Late Antiquity*, ed. Scott Fitzgerald Johnson (Oxford: Oxford University Press, 2012), 667–68, 676–80.

Jewish teachings on marriage, divorce, and remarriage, including current Jewish discussions of celibacy, which will become relevant in light of Jesus's teachings on eunuchs in Matthew 19.

### MARRIAGE IN JUDAISM

Marriage in ancient Judaism basically permitted a woman to have sex with her husband and a husband to have sex with his wife.<sup>9</sup> There was more to marriage than sex, such as binding families together, creating new families through the birth of children, and building an economic entity to protect and sustain a family, but at the heart of ancient marriage was sex for procreation and pleasure, as encapsulated in Wisdom 7:2 and central to Deuteronomy 24:5. This is also seen in the creation narratives, especially Genesis 2:24 with the language of becoming "one flesh" and the blessing of 1:28 to "be fruitful and multiply." Proverbs 5:18–19 describes a man who rejoices in the sexual intoxication of his wife. Sex is seen throughout the Hebrew Bible as an inherent part of the marital union.

The Hebrew Bible does discuss situations in which men have more than one wife or a wife and enslaved women as concubines. Polygyny is attested especially with the patriarchs throughout Genesis.<sup>10</sup> The practical reality of such multiple unions, tension between wives or in the family more generally, is apparent in Deuteronomy 21:15–17, in which a man with two wives, who prefers his second wife to his first, is not allowed to give preference in possessions to a second born son and so negate the rights of the first born son. Sirach notes in a number of places that rivalry among wives can create difficulties for husbands (26:5–6, 28:15; 37:11a).<sup>11</sup>

The prohibition against polygyny might seem obvious on the basis of Genesis 2:24. As William Loader says,

One might read Gen 2:24 as assuming that marriage consists of one man and one woman becoming one flesh, but there is no clear evidence that it was read in this exclusive way that would exclude polygyny. The *Damascus Document (CD)* cites Genesis 1:27, not 2:24, when prohibiting polygyny. Even where Jesus is portrayed as citing both Genesis 1:27 and 2:24 together, this need not embody an assertion of monogamy as many have claimed.<sup>12</sup>

<sup>9</sup> William Loader, *The New Testament on Sexuality* (Grand Rapids, MI: Eerdmans, 2012), 37.

<sup>10</sup> For a few examples, see the narratives regarding Abraham (Genesis 16:1–6) and Jacob (Genesis 35:23–26), and the mother of Samuel, Hannah, who was one of two wives (1 Samuel 1:1–2).

<sup>11</sup> In Sirach 28:15, the Greek translated into English as "slander" is literally "a third tongue," interpreted as another wife.

<sup>12</sup> Loader, *New Testament on Sexuality*, 53; David Instone-Brewer, *Divorce and Remarriage in the Bible: The Social and Literary Context* (Grand Rapids, MI: Eerdmans, 2002), 138–140, cites the animals going into the ark two by two as an argument

Prohibitions against polygyny only begin to emerge during the time of the Qumran Community—perhaps interpreting Leviticus 18:18: “While your wife is still living you shall not marry her sister as her rival and have intercourse with her” (NABRE)—associating the practice with “greed for wealth.”<sup>13</sup> But one wife was probably the general practice already at the time of Jesus, and perhaps for quite a period of time, as it was the only reasonable economic option for most men, apart from (potential) religious prohibitions and practical problems.<sup>14</sup>

David Wheeler-Reed stresses that marriage in Judaism was grounded in the blessing of Genesis 1:28. He writes, “Central to Second Temple Judaism (515 B.C.E.–70 C.E.) was the reinterpretation of the blessing ‘be fruitful and multiply’ as a commandment (Genesis 1:28). Though anyone reading this text can see that it’s a positive evaluation of human sexuality, not all Jews agreed on how to interpret it and apply it in everyday life.”<sup>15</sup> Some Jews, that is, were taking a position that sex ought to be reserved exclusively for procreation.<sup>16</sup> Nevertheless, sex was seen as a good proper to marriage, especially for women. And if a spouse was lost through death or divorce, remarriage for both men and women was accepted and expected.

### DIVORCE IN JUDAISM

Deuteronomy 24:1 expresses the basic understanding of divorce in Judaism: “Suppose a man enters into marriage with a woman, but she does not please him because he finds something objectionable about her, and so he writes her a certificate of divorce, puts it in her hand, and sends her out of his house.” The law as fully outlined in Deuteronomy 24:1–4 is actually concerned with a man not marrying a second time the wife whom he has divorced and has herself been remarried and divorced again. In fact, the possibility of divorce is assumed by this passage, but no text in the Hebrew Bible “explicitly declares divorce licit or regulates it juridically.”<sup>17</sup> On the other hand, as Richard

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against polygyny, which was taken up by the sectarians at Qumran; Michael Satlow, *Jewish Marriage in Antiquity* (Princeton, NJ: Princeton University Press, 2001), 60, 190–191, references the Dead Sea Scrolls, which offer as a rejection of polygyny Deuteronomy 17:17 and Genesis 1, basing contemporary marriage on primal marriage. He argues that the more the creation story grounded marriage the more it weakened polygyny. See Loader, *New Testament on Sexuality*, 54, n.154, for the reasons why there was an increasing sexual rigorism among the Jews.

<sup>13</sup> Loader, *New Testament on Sexuality*, 52.

<sup>14</sup> Brundage, *Law, Sex, and Christian Society*, 53–54 notes, though, that the practice of Jewish men having concubines was still current at the time of Jesus.

<sup>15</sup> David Wheeler-Reed, *Regulating Sex in the Roman Empire: Ideology, the Bible, and the Early Christians* (New Haven: Yale University Press, 2017), 39.

<sup>16</sup> Wheeler-Reed, *Regulating Sex in the Roman Empire*, 44.

<sup>17</sup> Benedict Viviano, “Matthew,” *New Jerome Biblical Commentary* (Englewood Cliffs, N.J.: Prentice-Hall, 1999), 642. Sirach 25:24–26, which presents a misogynistic view of women in general, does counsel separation from a “wicked woman.”

Davidson argues, the three elements of a bill of divorce are present in the Deuteronomy passage: 1) the husband writes a bill of divorce; 2) he puts the bill of divorce in her hand; and 3) he send her out of the house.<sup>18</sup> The bill of divorce does not just free the woman from her husband but allows her the freedom to marry another man licitly, just as it allows the husband to marry another woman licitly. Divorce, though lacking a clear statement of the laws governing it in the Hebrew Bible, was assumed as a normal part of life by biblical writers, with numerous biblical passages pointing to its prevalence (Deuteronomy 22:19, 28–29; Sirach 7:26, 25:26).

Jewish thinkers did not usually question the propriety of divorce but did debate acceptable reasons for it. Only in unusual cases in the Hebrew Bible, such as the case of a man who falsely accuses his new wife of not being a virgin (Deuteronomy 22:19) or the case of a man who has forced sexual intercourse on an unbetrothed virgin (Deuteronomy 22:28–29), is divorce not allowed. Among rabbinic thinkers, their focus was on the Hebrew phrase of Deuteronomy 24:1 translated as “something objectionable” in the NRSV and “something indecent” in the NABRE. The Hebrew, *’erwat dabar*, literally “nakedness of a thing,” has the sense of indecency, which carries a sexual connotation but also a more general sense of anything objectionable, which became the heart of exegetical differences.<sup>19</sup>

In *Mishnah Gittin* 9:10, interpreting the Hebrew phrase *’erwat dabar*, Shammai takes a rigorous position on divorce which focuses only on sexual misbehavior. In his exegesis of *’erwat dabar*, he concentrates on *’erwat*, which has a sense of sexual indecency. This points us to sexual transgressions, perhaps those described in Leviticus 18:6–18 and 20:10–21. Hillel suggests that a husband could divorce his wife for “anything,” concentrating on the Hebrew word *dabar*, “thing.” Rabbi Akiba, who lived long after Jesus, suggests the husband need not have any particular complaint, other than that he has tired of her. Most other Jewish writers around this line up with Hillel and Rabbi Akiba. Josephus suggests divorce is possible for any reason (*Antiquities*, 3.276–77, 4.253), and that he himself “divorced my wife becoming displeased at her behaviour” (*Life*, 426), but then the divorced woman gains the right to marry another. Philo, following Deuteronomy 24:1–4 states that a man cannot marry his first wife again, but divorce was otherwise available “for any cause whatsoever” (*On the Special Laws*, 3.30–31).

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<sup>18</sup> Richard M. Davidson, “Divorce and Remarriage in the Old Testament: A Fresh Look at Deuteronomy 24:1–4,” *Journal of the Adventist Theological Society* 10, no. 1-2 (1999): 9–10.

<sup>19</sup> The same Hebrew phrase, *’erwat dabar*, is found elsewhere only in Deuteronomy 23:14, where it refers to excrement. See Davidson, “Divorce and Remarriage in the Old Testament,” 6.

Divorce could be invoked by a man for almost any reason, but there were also changes afoot at the time of Jesus. “Biblical law allowed only men to initiate divorce (Deuteronomy 24.1–4), but in this period Jewish women, in accordance with Roman law, also initiated divorces, as Mark and Paul indicate.”<sup>20</sup> In addition, not only Shammai staked out a more rigorous position on divorce. The Jewish apocalyptic group(s) at Qumran, whom I consider to be the Essenes or associated with them, and who produced numerous sectarian, apocalyptic texts, also took a strong stance on marriage and divorce. The *Damascus Document (CD)* 4:12–21, 5:1–11 instructs its readers that a man may not have two wives, drawing on Genesis 1:27, as does Jesus, but also Genesis 7:9, in which the animals go into the ark two by two, and Deuteronomy 17:17, in which we are told that a man should not multiply wives. Having two wives is described as *zenut*, something similar to sexual impropriety or *porneia* in Greek.<sup>21</sup> Also forbidden by this passage, however, are forms of incest, or forbidden degrees of kinship in marriage, which are outlined in *CD* 5:6–11 and also bear the term *zenut*. Does the *CD* passage in banning two wives also ban divorce?<sup>22</sup> A number of commentators argue that it does,<sup>23</sup> but a ban on second marriages might only indicate a ban on remarriage not divorce. A passage in *11QTemple* 57:17–19, however, limits the future king to one wife—“and he shall take no other wife apart from her because only she will be with him all the days of her life.”<sup>24</sup> Only if the first wife

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<sup>20</sup> Lawrence M. Wills, “Mark,” in *Jewish Annotated New Testament*, eds. Amy-Jill Levine and Marc Zvi Brettler (Oxford: Oxford University Press, 2017), 91. Sanders, *Jesus and Judaism*, 256, properly notes that Luke too, along with Mark and Paul, accepts that a woman could divorce a man; it is only Matthew who does not. Todd Scacewater, “Divorce and Remarriage in Deuteronomy 24:1–4,” *Journal for the Evangelical Study of the Old Testament* 1, no. 1 (2012): 66, notes that “this role of the man as the sole initiator of divorce is rare, if not unique, in the ancient Near East (ANE).” Fitzmyer, “Matthean Divorce Texts,” 205 states that “we know that divorce was envisaged as a possibility at least for Jewish women living in the military colony at Elephantine in Egypt in the fifth century BC.”

<sup>21</sup> Laurentino Jose Afonso, Moshe David Herr, Max Wurmbrand, and Eliyana R. Adler, “Prostitution,” in *Encyclopaedia Judaica*. Vol. 16, ed. Michael Berenbaum and Fred Skolnik (Detroit: Macmillan Reference, 2007), 625–629, focus on the original but limited sense of *zenut* as prostitution. Sanders, *Jesus and Judaism*, 258 sees it as including polygyny, incest, and other forms of sexual immorality which is correct.

<sup>22</sup> D’Angelo, “Remarriage and the Divorce Sayings Attributed to Jesus,” 91 argues that only polygyny is banned.

<sup>23</sup> Wills, “Mark,” 91; Fitzmyer, “Matthean Divorce Texts,” 217–221; PHEME Perkins, “Marriage in the New Testament and Its World,” in *Commitment to Partnership: Explorations of the Theology of Marriage*, ed. William Roberts (New York: Paulist, 1987), 16. Fitzmyer says that in *CD* 4:19–21 “the first form of *zēnūt* should be understood here as an ensnarement in either polygamy or divorce—‘by taking two wives in their lifetime,’ i.e., while both the man and the women are alive, or by simultaneous or successive polygamy” (220). He also sees divorce banned here.

<sup>24</sup> Florentino García Martínez, *The Dead Sea Scrolls Translated: The Qumran Texts in English* (Leiden: Brill, 1996), 174.

dies is the king able to marry another. The community is also told in *11QTemple* 56:18–19 that the king should not have many wives. While this law is not applied to all men in the community, it should be clear that if the king cannot have many wives, neither can other men.<sup>25</sup> The limiting of marriage to one wife, then, brings us without question into the orbit of Jesus’s teaching, since divorce was often simply the precursor for a second marriage and the Temple Scroll passage on the king does not seem to foresee the possibility of divorce.<sup>26</sup> The two passages considered together indicate that divorce and remarriage were not acceptable practices at Qumran.

### CELIBACY IN JUDAISM

It is necessary to tie these developments in Jewish thought regarding marriage and divorce, however, to more general developments in apocalyptic thought, especially regarding the future of marriage. This, I would argue, is where previous commentators on Jesus’s teaching on divorce have missed the connection to a revolution in Jewish teaching on sexuality generally, which encompassed marriage and divorce. While marriage was the norm for most Jews, both men and women, celibacy was not unknown either prior to Jesus or at the time of Jesus in Judaism. Some people see celibacy as an insignificant aspect of Judaism, grounded in temporary celibacy for particular groups of people and so inconsequential for the majority of people. While the rise of Christianity would valorize life-long celibacy in a profound way, celibacy in Christianity has its roots in Judaism and for Jesus (and Paul) in apocalyptic reconsiderations of marriage and sexuality.

There is a longer history of celibacy among the Israelites and in Judaism than is often acknowledged. According to Exodus 19:14–15, Moses and the men of Israel abstain from sex after Moses comes down from the mountain. William Loader interprets this temporary abstinence from sex specifically as an issue of purity, related to similar regulations regarding sexuality in the Temple or other holy places.<sup>27</sup> These temporary practices establish a link between holiness and the impurity of sex.<sup>28</sup> This has no initial apocalyptic context, but the relationship between sex, holiness, impurity and the Temple will become

<sup>25</sup> Perkins, “Marriage in the New Testament and Its World,” 10–11.

<sup>26</sup> Fitzmyer, “Matthean Divorce Texts,” 215–16: “Here, then, we find a clear prohibition of divorce in a first-century Palestinian Jewish text” (216).

<sup>27</sup> William Loader, *Making Sense of Sex: Attitudes towards Sexuality in Early Jewish and Christian Literature* (Grand Rapids, MI: Eerdmans, 2013), 91–93; Pieter W. Van der Horst, “Celibacy in Early Judaism,” *Revue Biblique* 109, no. 3 (2002): 396.

<sup>28</sup> Naomi Koltun-Fromm, *Hermeneutics of Holiness: Ancient Jewish and Christian Notions of Sexuality and Religious Community* (Oxford: Oxford University Press, 2010), 31–73, 212–214. Temporary celibacy does not exclude marriage, but in *Sifre on Numbers* 12.1(99), Moses’ wife Zipporah bemoans the lack of sex in her marriage.

significant for understanding marriage at the end of time in some branches of Judaism as the renewed cosmos itself becomes the Temple.

Temporary celibacy is also assumed for participation in war and at the Temple. Both 1 Samuel 21:4–5 and 2 Samuel 11:11 assume abstinence from sex in order to be in a state of holiness. David's men are allowed to eat consecrated food "provided that the young men have kept themselves from women" (1 Samuel 21:4–5). David states that the men have been pure, that is, avoided sex, for three days.<sup>29</sup> Sexual abstinence was also demanded of priests at the Temple. Leviticus 22:4, says that "Whoever touches anything made unclean by a corpse or a man who has had an emission of semen..." is in a state of impurity.<sup>30</sup> This impurity is temporary and only applies to priests serving at the Temple, but it connects holiness and purity with abstinence from sex in certain locales and situations. Finally, while some prophets, such as Isaiah and Hosea, were married, Jeremiah 16:2 states God's command to Jeremiah, "You shall not take a wife, nor shall you have sons or daughters in this place." The prophets Elijah and Elisha also seem not to be married as Elisha turns his back on his own family and, it seems, any future wife (1 Kings 19:19–21).

More significant are contemporaries of Jesus who live a life of ongoing celibacy. Included among these Jews are the Essenes, according to Josephus (*Jewish War* 2.8.2–13; *Antiquities* 18.1.5), Philo (*Every Good Man is Free*, 75–88; *Hypothetica* 11.1–18) and Pliny the Elder (*Natural History*. 5.18, 73). We know now that not all of the apocalyptic Qumran sectarians were celibate, but that some were is an accepted fact.<sup>31</sup> Why did some Qumran texts promote a celibate life? Apart from the limitations on marriage and divorce outlined in *CD* 4:12–21, 5:6–11 and *11QTemple* 57:17–19, other texts speak of preparation for eschatological battle as a reason to remain celibate, in which only purified men are allowed in the camp (*IQM*. 7:1–14).<sup>32</sup> Other texts report that God's holiness is present in the community as if it were the Temple and so a person "shall not enter my Temple with

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See also Daniel Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture* (Berkeley: University of California Press, 1993), 159–165.

<sup>29</sup> Koltun-Fromm, *Hermeneutics of Holiness*, 38–39.

<sup>30</sup> Jonathan Klawans, *Impurity and Sin in Ancient Judaism* (New York: Oxford University Press, 2000),

<sup>31</sup> James C. Vanderkam, *The Dead Sea Scrolls Today* (Grand Rapids, MI: Eerdmans, 1994), 90–91; Van der Horst, "Celibacy in Early Judaism," 394–396. J. Baumgarten, "Celibacy," in *Encyclopedia of the Dead Sea Scrolls*. 2 Volumes, ed. Lawrence H. Schiffman, James C. VanderKam (Oxford: Oxford University Press, 2000), 1:122–125.

<sup>32</sup> Garcia, *Dead Sea Scrolls Translated*, 100; Van der Horst, "Celibacy in Early Judaism," 396; Matthew J. Dykas, "The Origins and Development of Early Christian Celibacy," *Journal of Theta Alpha Kappa* 24, no. 1 (2000): 43.

their soiled impurity to defile it" (*11QTemple* 45:10–12).<sup>33</sup> Since God dwells among the members of the community, sex is forbidden since they must "keep apart from every uncleanness...in perfect holiness" (*CD* 7:1–8; 12:1–2).<sup>34</sup> *4Q265/4QSD* 7 ii 11–14 says, "and every father who is in it will be holy."<sup>35</sup>

*Jubilees* also gives us another model of celibacy, one which looks to the *Urzeit*, the time of primal innocence in the Garden of Eden, but with a focus on the *Endzeit*, the coming eschaton.<sup>36</sup> William Loader states that *Jubilees* 3:12 "describes the garden as the holiest place on earth."<sup>37</sup> Indeed, the Garden of Eden in *Jubilees* 8:19 is the "holy of holies and the residence of the Lord." Adam and Eve are chaste in the holy, Temple-like garden and remain in a state of purity. They did have sex, but "in *Jubilees*' innovative account, the man knew the woman, that is, had sexual intercourse with the woman, already at her formation on the sixth day in the creation (3:6), but outside the garden."<sup>38</sup> In the Garden of Eden, sex is not allowed. Only after they leave the garden do they resume sexual intercourse and only then did Eve give birth to Cain and Abel. In *Jubilees* we are dealing with an instance of celibacy in "the right place and the right time. In holy place and, for the author, holy time, sex was out of place. In ordinary time and place sex belongs and is affirmed as a normal part of life."<sup>39</sup> In *Jubilees*, however, the time of the end returns humanity to the Garden of Eden when there would no longer be a right place and a right time for sex or marriage, or divorce for that matter, since in the *Endzeit* one could not leave the garden.

*Jubilees* also speaks of people in the future returning to childhood when the Garden of Eden is restored, "and there (will be) no old men and none who is full of days, because all of them will be infants and children" (*Jubilees* 23:28).<sup>40</sup> As Loader says, "The notion of all being infants and children...may suggest the possibility of a sex free society"

<sup>33</sup> Garcia, *Dead Sea Scrolls Translated*, 167. Van der Horst, "Celibacy in Early Judaism," 396.

<sup>34</sup> Garcia, *Dead Sea Scrolls Translated*, 37.

<sup>35</sup> Garcia, *Dead Sea Scrolls Translated*, 72.

<sup>36</sup> PHEME PERKINS, *Introduction to the Synoptic Gospels* (Grand Rapids, MI: Eerdmans, 2007), 33, makes an important point that *Jubilees* enjoyed near canonical status among the Essenes, with fourteen manuscripts of the text being found among them. This makes its teachings on celibacy even more relevant for understanding Essene views on divorce and marriage.

<sup>37</sup> Loader, *Making Sense of Sex*, 95.

<sup>38</sup> William Loader, *Enoch, Levi and Jubilees on Sexuality* (Grand Rapids, MI: Eerdmans, 2007), 277.

<sup>39</sup> Loader, *Making Sense of Sex*, 96.

<sup>40</sup> O. S. Wintermute, "Jubilees," in *The Old Testament Pseudepigrapha*, Volume 2: *Expansions of the "Old Testament" and Legends, Wisdom and Philosophical Literature, Prayers, Psalms and Odes, Fragments of Lost Judeo-Hellenistic Works*, ed. James H. Charlesworth (New York: Doubleday, 1985), 101–102.

and may give us theological context and a clue to understanding Jesus's own teaching about becoming "like children."<sup>41</sup> All of these passages in *Jubilees*, including the many which see the present era as a time rife with sexual immorality and adultery, are pointing us to a time in the future when sex itself will come to an end. In addition, the Garden of Eden as Temple was also envisioned by the Qumran documents as a place of holiness (4Q265/4QSD 7 ii 11–14) in which sex would not be present.<sup>42</sup>

David Wheeler-Reed offers a general survey of other apocalyptic Jewish texts of the Second Temple period that

proclaim that there will be no such thing as marriage in the future. Book 2 of the *Sibylline Oracles*, for example, declares that in the age to come there will be 'no marriage, no death, no sales, no purchases' (2:238). In the *Testaments of the Twelve Patriarchs*, there exists not one single reference to a future with marriage, sexual relations, or procreation. The *Testament of Levi* says that God will open the gates of paradise; he will remove the sword that has threatened since Adam and will allow the saints to eat of the tree of life. The spirit of holiness shall be upon them (18:10–11). But there's no mention of marriage or sexual relations. Similarly, the *Testament of Dan* proclaims: "And the saints shall refresh themselves in Eden; the righteous shall rejoice in the New Jerusalem, which shall be eternally for the glorification of God. And Jerusalem shall no longer undergo desolation, nor shall Israel be led into captivity, because the Lord will be in her midst [living among human beings]. The Holy One of Israel will rule over them in humility and poverty, and he who trusts in him shall reign in truth in the heavens" (5:12–13). Once again, there's no mention of marriage or sex in the eschaton.<sup>43</sup>

All of these texts which Wheeler-Reed cites are apocalyptic in character.

Other texts, some apocalyptic in character, others not, like the Wisdom of Solomon, foresee a time when a "barren woman who is undefiled" and "the eunuch whose hands have done no lawless deed" will find "special favor" and "a place of great delight in the temple of the

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<sup>41</sup> Loader, *Enoch, Levi and Jubilees on Sexuality*, 124, Loader, *Making Sense of Sex*, 96.

<sup>42</sup> J. Baumgarten, "Purification after Childbirth and the Sacred Garden in 4Q265 and Jubilees," in *New Qumran Texts and Studies: Proceedings of the First Meeting of the International Organization for Qumran Studies*, ed. G. J. Brooke (Leiden: Brill, 1994), 3–10. Lutz Doering, "Urzeit-Endzeit in the Dead Sea Scrolls and Pseudepigrapha," in *Eschatologie – Eschatology: The Sixth Durham-Tübingen Research Symposium: Eschatology in Old Testament, Ancient Judaism and Early Christianity (Tübingen, September, 2009)*, eds. Hans-Joachim Eckstein, Christof Landmesser, and Hermann Lichtenberger (Tübingen, Mohr-Siebeck, 2011), 31–36.

<sup>43</sup> Wheeler-Reed, *Regulating Sex in the Roman Empire*, 59–60.

Lord” (Wisdom 3:13–14).<sup>44</sup> The key to understanding what is happening in all of these texts is to see celibacy as the norm in the world to come, at the eschaton, or as preparation for the eschaton. Philo of Alexandria also reports on another celibate group in *De Vita Contemplativa*, the Therapeutae, and this community, who seem to have existed between first century BCE and first century CE, appears to be entirely celibate, as the women are described as aged virgins and the men those who have renounced their families. The Therapeutae are made up of men and women who live separately in male and female communities and within these groups they live alone. They come together to worship and, according to Philo, one of the main reasons they remain celibate is to focus on study of the Torah, God’s creation, and worship.<sup>45</sup> There does not seem to be a particular focus on eschatology or the coming of God’s kingdom, certainly not in Philo’s description, but it is one more group that points to the increasing value of celibacy in Judaism at this time.<sup>46</sup> Understanding celibacy in the Judaisms of Jesus’s day is essential for placing Jesus’s critique of divorce and his understanding of marriage in its proper context.

### JESUS’S TEACHING AS JEWISH TEACHING

We can now return to Jesus’s teaching in Mark 10 with a sense of how Jesus fits as a Jewish teacher. All of Jesus’s teachings on marriage, divorce and celibacy will be surveyed, but the Markan passage as the earliest ought to be considered first. Jesus’s teaching on marriage in Mark 10 is embedded in his divorce sayings, in which Pharisees “test” Jesus on whether it is “lawful for a man to divorce his wife” (Mark 10:2; cf. Matthew 19:3). It seems probable that the Pharisees are seeking to see which side of current debates on divorce Jesus falls, as formulated in *Mishnah Gittin* 9:10, although Matthew’s formulation in 19:3, “Is it lawful for a man to divorce his wife *for any cause?*” fits better with the rabbinic context. As we noted above, Shammai takes a strict position on divorce, while Hillel takes a lax position, allowing divorce for trivial reasons, and Akiba seems to suggest that basically any reason is sufficient for a man to divorce his wife. It would be presumptuous to think that the tradition as preserved and developed in *Gittin* 9:10 gives us the historical context for the Pharisees questioning of Jesus, but there are only a few options one may

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<sup>44</sup> See Joan Taylor, *Jewish Women Philosophers of First-Century Alexandria: Philo's 'Therapeutae' Reconsidered* (New York: Oxford University Press, 2006), 254. Taylor also discusses celibacy in the context of the story of Job’s three virgin daughters (*Testament of Job* 46–53), Philo’s story of Moses (Philo, *Moses* 2.68–69), and two apocalyptic texts, 4 Ezra 5:13, 20, 31; 6:29–35; 9:23–4; 12:50–13:20 and 2 Baruch 9–10:3; 12:5–13:3; 20:5–21:3; 47:2–48:1 (256–257).

<sup>45</sup> Baumgarten, “Celibacy,” 22–23.

<sup>46</sup> Raymond Collins, *Accompanied by a Believing Wife* (Collegeville, MN.: Liturgical Press, 2013), 64. Van der Horst, “Celibacy in Early Judaism,” 400–02.

stake out in a disputation regarding divorce: many reasons exist for divorce, one or a few reasons exist, or no reasons exist for seeking a divorce. Where does Jesus fall on this continuum?<sup>47</sup> And this brings up the possibility that the Pharisees have heard that Jesus is teaching that no reason exists for divorce even before they question him. This would be a rigorous position regarding divorce in Judaism at any time, though as we have seen the Qumran community taught something similar to this.

In Mark 10:4–5, Jesus asks what Moses commanded and the Pharisees answer that “Moses allowed a man to write a certificate of dismissal and to divorce her,” which is correct on the basis of Deuteronomy 24:1. But instead of engaging in an exegetical debate, Jesus challenges Moses’s permission to divorce, stating, “Because of the hardness of your hearts he wrote you this commandment” (Mark 10:5). E.P. Sanders reminds us that in forbidding divorce, “Jesus did not directly defy the Mosaic law” but is engaging in argumentation proper to the law, even if it is more stringent than most other Jewish teachers offered since “it is a general principle that greater stringency than the law requires is not illegal.... We can put this another way. It is not the case in Jewish law that everything not forbidden is required. Moses did not *command* divorce, he permitted it; and to prohibit what he permitted is by no means the same as to permit what he prohibited.”<sup>48</sup> Then, in Mark 10:6–9, Jesus grounds his assessment of Moses’s allowance by taking us back to the creation of humanity: “from the beginning of creation, ‘God made them male and female.’ ‘For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh.’ So they are no longer two, but one flesh. Therefore what God has joined together, let no one separate.”<sup>49</sup> Divorce, on the basis of God’s original intention for humanity at creation, is excluded by Jesus. Jesus continues this discussion alone with his disciples, who seem to be seeking further clarification, and he adds that “Whoever divorces his wife and marries another commits

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<sup>47</sup> William R. G. Loader, “Did Adultery Mandate Divorce? A Reassessment of Jesus’s Divorce Logia,” *New Testament Studies* 61, no. 1 (2015): 72; Davidson, “Divorce and Remarriage in the Old Testament,” 21.

<sup>48</sup> E. P. Sanders, *Jesus and Judaism*, 256–257.

<sup>49</sup> Aaron M. Gale, “Matthew” in *Jewish Annotated New Testament*, Second Edition, ed. Amy-Jill Levine and Marc Zvi Brettler (Oxford: Oxford University Press, 2017), 46 writes that Jesus’s argumentation in Matthew 19:4–6 (also found in Mark 10:4–5) entails “a rabbinic formula, ‘binyan ’av mishne ketuvim’ (‘construction of a father from two writings’)” in which two passages (Gen 1:27 and Gen 2:24) are used to issue a ruling on a third passage (Deuteronomy 24:1–4).

adultery against her; and if she divorces her husband and marries another, she commits adultery” (Mark 10:11–12).<sup>50</sup> The common assumption in ancient Judaism was that a second (or third) marriage would take place after a divorce for both the man and the woman and that it did not constitute adultery.

Matthew 19:3–9, while directed only at men, offers a similar response from Jesus to that found in Mark, although Jesus does not initially answer the question but first states, “Have you not read that the one who made them at the beginning ‘made them male and female’” (19:4). In 19:8, Jesus states that divorce was only allowed due to hardness of heart, but “from the beginning it was not so.” There is, though, an even more pronounced change in Matthew 19:9 from Mark’s passage and that is the exception clause, which appears in slightly different form in Matthew 5:31–32 also. With the exception clause, disallowing divorce “except for *porneia*,” Matthew has already added to Jesus’s clear teaching on marriage and divorce found in Mark.<sup>51</sup> I will return to discuss this exception clause fully below, but I need first to examine what it means for Jesus to invoke the “beginning” of creation in both Mark (“but from the beginning of creation”) and Matthew (“the one who made them at the beginning,” “but from the beginning it was not so”).

As numerous commentators note, a key to Jesus’s answer on divorce is that it takes us “back to the beginning,” that is, to Genesis 1:27 and 2:24 and the creation of male and female prior to their disobedience in the garden.<sup>52</sup> Marriage for Jesus is seen as a fulfillment of the unity of the male and the female prior to the primal disobedience. Moses’s law of divorce was instituted precisely due to the Fall according to Jesus—“because you were so hard-hearted” (Matthew) or “because of the hardness of your hearts” (Mark)—but what has changed to soften the “hardness of heart” that necessitated divorce and led Moses to allow it in the law?

Ben F. Meyer has characterized Matthew as containing “high, eschatological idealism,” in which lustful thoughts are equivalent to acts

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<sup>50</sup> These verses comprise a separate tradition and are also found in slightly different form in Matthew 5:32 and Luke 16:18. Matthew’s passage is addressed only to men and adds an exception clause.

<sup>51</sup> Fitzmyer, “Matthean Divorce Texts,” 208, excludes the possibility that Matthew’s exception clauses might be original due to the fact that one must then explain all of the other traditions which have an absolute prohibition and Matthew’s tendency to add to the traditions he receives. McRae, “New Testament Perspectives on Marriage and Divorce,” 8, says that “one cannot argue that the exceptive clauses of Matthew or the Pauline exception have to do with separation without the right to remarry.”

<sup>52</sup> Loader, *New Testament on Sexuality*, 274–285; Dale Martin, *Sex and the Single Savior: Gender and Sexuality in Biblical Interpretation* (Louisville: John Knox Press, 2006), 132–134.

of adultery (Matthew 5:27–28).<sup>53</sup> “High, eschatological idealism” has to do with the coming of the apocalyptic age, the establishment of God’s kingdom, when we are returned to a time of primeval innocence, and a rejection of what Meyer calls “prestige piety.” For Jesus, the situation of humanity itself is changing, and this includes the end of allowances such as divorce which were to account for the “hardness” of human hearts. Jesus understands the Torah “at this moment being made new...appointed and reserved for the end-time,” radicalizing even a foundational institution like marriage and obliterating the necessity of divorce.<sup>54</sup> Underlying Jesus’s radicalizing of marriage and abolishment of divorce is that, as Messiah, he creates the human perfection necessary to follow this new and fulfilled Torah and that he has the authority to inaugurate this renewed Torah in the messianic age. The eschatological context is the proper context for understanding Jesus’s teaching on divorce. Perkins says that “The Christian now lives between that old age and the full realization of salvation. In that situation, it is possible to recreate marriage according to its original intention.”<sup>55</sup> Jesus’s teaching on divorce is grounded not in the legal compromises of this age, in which reasons for divorce were debated in the context of legal exegesis, offering more or less stringent interpretations of *’erwat dabar*. Jesus counters his Pharisaic questioners with a radical proposal, intended to end divorce and promote sexual asceticism, a type of “self-control in imminent expectation of the kingdom of God,” in which marriage itself is seen as an institution passing away with the coming of the new age.<sup>56</sup>

Unless we ground Jesus’s teaching on marriage and divorce in the context of the eschaton, we miss the context for understanding why he places his discussion of marriage at “the beginning.” In the two versions of the marriage saying, in Mark 10 and Matthew 19, Jesus brings us back to the beginning three times: “from the beginning of creation”; “the one who made them at the beginning”; and “from the beginning it was not so.”<sup>57</sup> Primal origin, however, is also about the apocalyptic end: *Urzeit ist Endzeit*, as we saw in *Jubilees* and other Jewish writings of this period.<sup>58</sup> Jesus proclaims the end of divorce because God’s kingdom is on the verge of breaking through and will soon be here.

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<sup>53</sup> Ben F. Meyer, *Five Speeches that Changed the World* (Collegeville, MN: Liturgical Press, 1994), 43.

<sup>54</sup> Meyer, *Five Speeches that Changed the World*, 45.

<sup>55</sup> Perkins, “Marriage in the New Testament and Its World,” 17.

<sup>56</sup> Martin, *Sex and the Single Savior*, 131–132.

<sup>57</sup> The teaching about divorce in Matthew 5:31–32 contains the exception clause, but nothing regarding “the beginning.” Nevertheless, Jesus claims authority over the Torah in the Sermon on the Mount, itself based on the coming of the Messianic Age.

<sup>58</sup> Lutz Doering, “Marriage and Creation in Mark 10 and CD 4–5,” in *Echoes from the Caves: Qumran and the New Testament*, ed. Florentino García Martínez (Leiden: Brill, 2009), 133–163.

The eschatological orientation makes sense of the teaching on marriage, for now people will be able to fulfill their vows perfectly, in large part because marriage itself will soon come to an end. This, too, is essential to situating Jesus's teaching: just as divorce will come to an end, so, too, will marriage.

For Jesus also says that there is no marriage in the *Endzeit* (Mark 12:18–25; Matthew 22: 23–30; Luke 20:27–36), as we saw with so many other Jewish writings of this period. In reply to a question from the Sadducees regarding Levirate marriage in the world to come, Jesus redirects his questioners, just as he does the Pharisees on divorce, “For when they rise from the dead, they neither marry nor are given in marriage, but are like angels in heaven” (Mark. 12:25; cf. Matthew.22:30). In God’s kingdom, marriage will not continue since human beings will then be asexual, “like angels in heaven,” and will not reproduce.<sup>59</sup> Since people live eternally, the need for procreation, the prime purpose of marriage, has come to an end.<sup>60</sup> Because the question concerns those who have been married to each other, it also indicates that marriages which were contracted here on earth have also come to an end. Why should disciples of Jesus bring a marriage to an end through divorce, especially with remarriage, when the eschaton will soon bring the institution of marriage itself to an end?

Luke’s pericope of the Sadducees questioning Jesus is even more intriguing on the nature of marriage for it challenges its relevance even in the present age. Luke’s version indicates that marriage is for people tied to this world and not the world to come, for “those who belong to this age marry and are given in marriage, but those who are considered worthy of a place in that age and in the resurrection from the dead neither marry nor are given in marriage” (Luke 20:34–35). Luke’s Gospel claims this age belongs to those who marry while the age to come is for those who belong to God’s kingdom.<sup>61</sup> Luke 20:36 also stresses the reason for the end of marriage, since “they are like angels and are children of God, being children of the resurrection.” The two-fold use of children in this verse might also indicate the goal for which humanity is intended, namely, permanent childhood. Childlikeness is put forward as a criterion of a follower of Jesus to enter the kingdom (Matthew 18:3), and it is possible that the eschewal of marriage fits with the childlike and eternal nature of Jesus’s heavenly disciples.

One of the passages under discussion, Matthew 19:3–12, also has an important reference to celibacy and its placement with teachings on marriage and divorce should not be overlooked. In response to Jesus’s claim that divorce is not possible in marriage, Jesus’s disciples say, “If

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<sup>59</sup> Loader, *Making Sense of Sex*, 97–101; Martin, *Sex and the Single Savior*, 110–111.

<sup>60</sup> Wheeler-Reed, *Regulating Sex in the Roman Empire*, 39–40.

<sup>61</sup> Brundage, *Law, Sex, and Christian Society in Medieval Europe*, 59, states that Luke seems to have seen sex as a barrier to salvation.

such is the case of a man with his wife, it is better not to marry” (Matthew 19:10). Jesus’s response to the disciples offers an enigmatic saying on eunuchs: “Not everyone can accept this teaching, but only those to whom it is given. For there are eunuchs who have been so from birth, and there are eunuchs who have been made eunuchs by others, and there are eunuchs who have made themselves eunuchs for the sake of the kingdom of heaven. Let anyone accept this who can” (Matthew 19:11–12).<sup>62</sup>

What does it mean that “not everyone can accept this teaching”? Does it mean there is a choice among Jesus’s followers to accept or reject the teaching? Does it mean that only those who can accept it can be Jesus’s followers?<sup>63</sup> The second clause, “but only those to whom it is given,” might indicate that only some followers of Jesus can accept the teaching regarding marriage and divorce or that only those who have had this insight given to them are worthy of being Jesus’s followers.

Jesus’s third grouping of eunuchs must indicate a category of those who have willingly rejected sexual intercourse since they are categorized as “eunuchs,” although some people throughout the centuries have interpreted this passage literally.<sup>64</sup> Is this passage directed at all of his disciples? Who are “those to whom it is given”? Could this be the criterion for being a disciple of Jesus? The linking of the eunuchs to the kingdom of heaven indicates the eschatological ideal of the single and celibate state enacted now since that is the state of all disciples in the kingdom of God.<sup>65</sup>

The Gospels also preserve a series of Jesus’s sayings which hold up children as models for the kingdom (Mark 9:35–37, 42, 10:13–16; Matthew 10: 42, 18:2–5, 19:13–15; Luke 9:47–48, 17:2, 18:15–17), for children modeled the proper acceptance of the *Endzeit* at the heart

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<sup>62</sup> Loader, *Making Sense of Sex*, 434–436; Collins, *Accompanied by a Believing Wife*, 100–106.

<sup>63</sup> This was the position of the early Syriac Christian Church who only baptized celibates for the first few centuries. Brundage, *Law, Sex, and Christian Society in Medieval Europe*, 63.

<sup>64</sup> R. Jarrett Van Tine, “Castration for the Kingdom and Avoiding the αἰτία of Adultery (Matthew 19:10–12),” *Journal of Biblical Literature* 137, no. 2 (2018): 401, n. 9.

<sup>65</sup> Van Tine, “Castration for the Kingdom,” 399–418, reviews the possibilities and suggests that the passage has been misconstrued for centuries. The eunuchs, in fact, are “illegitimately divorced disciples who choose to remain spouseless so as not to incur the charge of adultery—function literarily as exemplars of those who make extraordinary sacrifices in this age (i.e., a spouse and children) so that they might obtain immeasurably more in the kingdom of heaven” (402). While I am not convinced of his reading of eunuchs in this passage, it does also fit with the rejection of marriage and sex for the kingdom of God.

of Jesus's teachings.<sup>66</sup> What makes children proper models for Jesus's teaching on discipleship? One of the key aspects of childhood is asexuality. A child neither marries nor is an active sexual being. While both of these claims may be disputed depending upon one's view of when childhood ends and when marriage would take place in antiquity, an ideal aspect of childhood is that it is prior to sex and so prior to marriage. And the Gospel authors often align teachings on children with teaching on marriage, divorce, and celibacy.<sup>67</sup>

Jesus's pericope on marriage and divorce brings us back to "the beginning of creation" (Mark 10:6) before ending with the passage on receiving the kingdom as a child (Mark 10:16). Matthew 19:3–12 adds the saying on eunuchs and then appends the teaching on receiving the kingdom as a child (19:13–15). Luke's equivalent passage on children in 18:15–17 does not come after the teaching on marriage and divorce but following it is the account of a "certain ruler" who is asked to give up all that he has in order to "inherit eternal life," a task he is not able to perform (18:18–25). It is at that point that Peter says, "Look, we have left our homes and followed you." Here Jesus reminds Peter that those who have left their families behind will receive much more in this world, including the family of disciples, and "in the age to come eternal life" (18:28–30). Children are the model disciples because they model what disciples will be in the world to come, where there is no marriage, but even in this world, they model a life in which the new family is the family of God and it is best to leave marriage and families behind. Childhood points to an eschatological transformation beyond marriage.

If the eschatological context is pervasive for Jesus's teaching on marriage, this, too, is the proper context for Jesus's understanding of divorce. Jesus does not offer conservative or liberal Jewish teaching, determining how best to interpret *'erwat dabar*, but radical teaching as in Qumran. Jesus's teaching in Mark is that marriage ought not to be contracted more than once and divorce is not allowed, certainly not with remarriage, and it is a form of the intensification of the Torah due to its messianic fulfillment and eschatological asceticism. The same is the case in Matthew, with an exception that makes all of the difference.

### MATTHEW'S EXCEPTION CLAUSE

Matthew's pericopes, here including 5:32<sup>68</sup> along with 19:9, offer an exception clause, in which divorce is allowed if the wife commits

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<sup>66</sup> Cornelia Horn and John Martens, "*Let the Little Children Come to Me*": *Childhood ad Children in Early Christianity* (Washington, DC: Catholic University of America Press, 2009), 217–223, 252–253.

<sup>67</sup> Horn and Martens, "*Let the Little Children Come to Me*," 217–221, 225–232.

<sup>68</sup> Vawter, "Divorce and the New Testament," 529: "The isolated Q *logion* (Matthew 5:32 = Luke 16:18) is precisely that, isolated, and we are afforded no opportunity of judging where, if ever, it played any part in the teaching of the historical Jesus of

*porneia*.<sup>69</sup> Did Jesus say it? If he did, it is intriguing as to why Mark would have omitted it, especially since in Rome divorce was necessary by law if a woman committed adultery.<sup>70</sup> If Jesus did not say it, then Matthew or the Matthean church has added it to Jesus's sayings.<sup>71</sup> To my mind, there is no question that Mark, along with Luke 16:18 and 1 Corinthians 7:10–11, contains the original intent of Jesus, a teaching which focuses our attention on the world to come and which offers us compelling theological reasons for the end of divorce (and ultimately

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Nazareth. In the Q collection of *logia* it presumably was given no historical context at all, provided that Q was indeed the kind of sayings-source that scholars generally consider it to have been."

<sup>69</sup> Allen R. Guenther, "The Exception Phrases: Except *πορνεία*, Including *πορνεία* or Excluding *πορνεία*? (Matthew 5:32; 19:9)," *Tyndale Bulletin* 53, no. 1 (2002): 96, argues that we ought to interpret the two exception clauses in Matthew differently: "First, our conclusion confirms the accuracy of the translation of the Jerusalem Bible of these texts in reading 5:32 exceptively: 'everyone who divorces his wife, except for the case of fornication' and 19:9 as exclusively: 'the man who divorces his wife—I am not speaking about fornication—and marries another.' Second, these findings support the argument that the Gospels contain records of two original *logia* on divorce and remarriage, one in response to the challenge by Jesus's opponents to interpret Deuteronomy 24:1–4 (Matthew 19:3–12; cf. Mark 10:2–12); the other as a part of his explicit body of teaching directed at his disciples (Matthew 5:31–32; cf. Luke 16:18)." I am not following him in either respect. Fitzmyer, "Matthean Divorce Texts," 207, writes that "though the phrases differ in their formulation, they both have to be understood as expressing an exception."

<sup>70</sup> William R. G. Loader, "Did Adultery Mandate Divorce? A Reassessment of Jesus's Divorce Logia," 69, states that "in both Greek and Roman law adultery mandated divorce. In Athens a husband could be disenfranchised for continuing to live with an adulterous wife. The adulterer was to be executed. In Rome adultery mandated divorce and the husband could retain some money from the dowry."

<sup>71</sup> Benedict Viviano, "Matthew," *New Jerome Biblical Commentary*; E. P. Sanders, *Jesus and Judaism*, 257; I cannot follow Loader, "Did Adultery Mandate Divorce? A Reassessment of Jesus's Divorce Logia," 74, who argues that the exception clauses were added by Matthew but assumed by Mark: "The original prohibition was probably never meant to exclude the common assumption of the time in both law and culture that, of course, adultery mandated divorce. At one level this is an argument from silence, for it suggests that the exception now found in Matthew 5.32 and 19.9 was already presupposed in Mark 10.11–12, Luke 16.18 and 1 Corinthians 7.10–11. Matthew, rather than uncharacteristically softening Jesus's demand, simply spelled out what had always been assumed." Loader argues that *porneia* means adultery in the exception clauses.

marriage).<sup>72</sup> Matthew adds the exception clauses to ameliorate the absolute prohibition on divorce offered by Jesus.<sup>73</sup> Why would Matthew offer an “exception” to Jesus’s clear, if difficult, teaching already at this early stage of the Church’s development? It must be that the realities of this world impinged on Jesus’s innovative teaching regarding divorce and marriage for the world to come, something we might even categorize as pastoral concerns. This exception clause refocuses Jesus’s teaching not on the world to come but on the here and now and aligns it more fully with rabbinic Jewish teaching. It is surprising, though, how often the origin of the Matthean exception clauses is not considered in current Roman Catholic debates on marriage and divorce as an early attempt to reorient Jesus’s teachings for as MacRae says, “The nature of marriage as derived from the early Church’s understanding of the order of creation is apparently not so absolute as to exclude all exceptions.”<sup>74</sup>

As to what was intended by the use of the word *porneia* itself, the meaning of it has been much contested in this context, with some seeing it as an attempt to interpret *’erwat dabar* and so place Jesus in the midst of a Jewish exegetical debate on grounds for divorce that he had

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<sup>72</sup> Michael W. Holmes, “The Text of the Matthean Divorce Passages: A Comment on the Appeal to Harmonization in Textual Decisions,” *Journal of Biblical Literature* 109, no. 4 (1990): 659 states that “the ‘Matthean exception,’ for example, is not known to occur in any Marcan manuscript.... We may conclude, therefore, that the question of the original text of Mark 10:11–12 is an intra-Markan affair whose resolution is independent of the resolution of the variants in the two Matthean passages.” Fitzmyer, “The Matthean Divorce Texts,” 200–201, believes that “the most primitive form of the sayings about divorce in the NT” is best preserved by Luke 16:8. He says, “This form of the dominical saying is a declaratory legal statement which is reminiscent of OT casuistic law. It is related to the saying preserved in Matthew 5:32 (minus the exceptive phrase) and is derived from the common source ‘Q’” (201). Fitzmyer also understands, though, that “the Matthean prohibition of divorce (minus the exceptive phrase) has to be regarded as derived from Mk 10 and adapted by Matthew for the sake of Christians living in the mixed community for which he was principally writing” (207).

<sup>73</sup> John Donahue, “Divorce - New Testament Perspectives,” in *Marriage Studies: Reflection in Canon Law and Theology*, vol. 2, ed. Thomas Doyle (Washington: Canon Law Society of America, 1982), 8–14, states that there are two adaptations to Jesus’s teachings: the Matthean exception clauses (8–10); and Paul’s teaching in 1 Corinthians 7:10–16: “In 1 Cor. 7:13–16 Paul presents a clear exception to an explicit command of the Lord. He does this on his own authority but with theological grounding inherent in his understanding of the ‘total Christ event’” (14). MacRae, “New Testament Perspectives on Marriage and Divorce,” 5, says of the exception clause: “No matter how the exceptive clause is to be interpreted, it seems to reflect a modification within the Matthean community of the absoluteness of Jesus’s prohibition” and “like Matthew, Paul too both reiterates an absolute doctrine and introduces a qualification” (6).

<sup>74</sup> MacRae, “New Testament Perspectives on Marriage and Divorce,” 8.

rejected.<sup>75</sup> Does it mean adultery?<sup>76</sup> Some other sexual misbehavior, since a properly good word for adultery (*moicheia*) could have been used if that is what Matthew intended?<sup>77</sup> Did it have to do with forms of incestuous marriage which should not have been contracted either due to degrees of consanguinity or relationship, such as the Apostle Paul outlines in 1 Corinthians 5:1–5 and which he describes there as *porneia*?<sup>78</sup> Is there a Hebrew interpretation underlying *porneia* which would help us unlock this puzzle?<sup>79</sup> Some see many possible grounds for divorce underlying *porneia*.<sup>80</sup> Even today, there is no widespread agreement on the answer.<sup>81</sup>

Following Fitzmyer, and others, I believe this exception clause was first concerned with marriages which ought not to have been contracted due to degrees of consanguinity outlawed by Leviticus 18:6–

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<sup>75</sup> Dennis C. Duling, “Matthew” in *The Harper Collins Study Bible*, ed. Harold A. Attridge (New York: Harper One, 2006): “This ‘exception clause’ (not in Mark 10.11) is an interpretation of an ambiguous expression in Deut 24.1, ‘something objectionable’ (Hebrew *’erwat dabar*, lit. ‘nakedness of a thing’; cf. ‘anything indecent,’ Deut 23.14).”

<sup>76</sup> As Loader, “Did Adultery Mandate Divorce? A Reassessment of Jesus’s Divorce Logia,” 71–72. MacRae, “New Testament Perspectives on Marriage and Divorce,” 10. Vawter, “Divorce and the New Testament,” 531, makes the compelling point that “if the *porneia* of Matt 5:32 and 19:9 really meant ‘adultery,’ as both traditional Protestant and now some Catholic commentators want to insist, the Matthean ‘exceptions’ would take on rather different acceptations in their separate contexts. In 5:32 we would be left simply with a banality: He who divorces his wife, unless she is already an adulteress, now makes her liable to become an adulteress. In 19:9, however, where the husband makes himself an adulterer through divorce and remarriage, *porneia* really says something about the liceity of divorce. Is it likely that the Matthean redactor would have intended that these two *porneia* additions should have served such disparate ends, or, if such ends had in fact been served inadvertently, that such a fact would indeed have escaped his attention?”

<sup>77</sup> As David Janzen, “The Meaning Of *Porneia* In Matthew 5.32 and 19.9: An Approach From The Study of Ancient Near Eastern Culture,” *Journal for the Study of the New Testament* 80 (2000): 66–67: “What Matthew wishes to convey to readers, I believe, is that Jesus did indeed authorize divorce, but only divorce with just cause; and that just cause amounts to intercourse with someone other than her husband on the part of the woman during betrothal or marriage. Intercourse in such situations is what Matthew means to identify with *porneia*.”

<sup>78</sup> As Perkins, “Marriage in the New Testament and Its World,” 16, who connects it to the understanding of *porneia* in Acts 15:28–29, 21:25; Davidson, “Divorce and Remarriage in the Old Testament: A Fresh Look at Deuteronomy 24:1–4,” 21; Scacewater, “Divorce and Remarriage in Deuteronomy 24:1–4,” 71.

<sup>79</sup> Anthony J. M. Garrett, “A New Understanding of The Divorce And Remarriage Legislation In Deuteronomy 24:1–4,” *Jewish Bible Quarterly* 39, no. 4 (2011): 248, who interprets *’erwat dabar* as latent sexual perversion.

<sup>80</sup> Donahue, “Divorce - New Testament Perspectives,” 10, sees *porneia* as “giving a number of grounds by which divorce may take place even after the marriage is in existence.”

<sup>81</sup> Loader, *Making Sense of Sex*, 244–253.

18 and thus not truly marriages to begin.<sup>82</sup> These regulations from Leviticus were discussed and maintained by the rabbis.<sup>83</sup> I am not convinced, however, that it is important that we get to the bottom of the precise meaning of *porneia*. This wrestling with the meaning of *porneia* is most instructive because even a clause intended to account for the realities and vagaries of human marriage and divorce itself by Matthew's community became a source of dispute and disagreement in trying to determine to what marriages this exception clause ought to apply.<sup>84</sup> These difficulties are at the heart of the interpretation of law as well as the application of law, and these difficulties were noted in Jesus's teaching by his first disciples, though admittedly we do get a lot of the content of their complaints or questions. In response to Jesus's claim that divorce is not possible in marriage, except for *porneia*, Jesus's disciples say, "If such is the case of a man with his wife, it is better not to marry" (Matthew 19:10). That is, Jesus's disciples assume the standard Jewish position that divorce is (or ought to be) an easy possibility in marriage. A large part of the reason for the exception clauses, I suspect, had to do with remarriage, which was an expectation for ancient Jews after divorce.<sup>85</sup> Even in light of Jesus's clear teaching, Matthew sought a way to open up a pathway to remarriage.

### WHERE DOES JESUS FIT IN JUDAISM?

Jesus is not exactly an outlier in Judaism but someone who takes seriously the apocalyptic expectations of the coming kingdom of God in Judaism, which has important implications for how we live on earth now, even with respect to the foundational institution of marriage. In

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<sup>82</sup> Fitzmyer, "Matthean Divorce Texts," 210: "Illicit marital unions within the degrees of kinship proscribed by Lv 18:6–18." Later in the article he writes, "Whatever one might want to say about the nuances of the word *zenut* in the OT, it is clear that among the Jews who produced the Damascus Document the word had taken on further specific nuances, so that polygamy, divorce, and marriage within forbidden degrees of kinship could be referred to as *zenut*" (221).

<sup>83</sup> Gale, "Matthew," 46, believes that Matthew's use of *porneia* is similar to the House of Shammai's understanding of *'erwat dabar* in *Mishnah Gittin* 9:10.

<sup>84</sup> Vawter, "Divorce and the New Testament," 535: "Let us assume, as most do, that the introduction of the *porneia* clauses are redactional insertions on Matthew's part modifying the original logion ascribed to Jesus which simply ruled out divorce without qualification. This would not be the only indication of development that has taken place in the Matthean version of the pronouncement. These clauses must, in such an acceptance, certainly be regarded as exceptive, but it would be totally erroneous to ascribe to Matthew the intention of constituting adultery the grounds to permit a divorce on the part of an 'injured' partner in the marriage, as though such a contractual concept of marriage had been stipulated by the Teacher of Nazareth and amended by the First Evangelist. Rather, it is far more in keeping with Matthew's general purposes and the context in which he has set the logion to conclude that he has simply adapted the dominical saying to the mores of a society in which *porneia* had long been regarded as making divorce mandatory, not optional."

<sup>85</sup> Doering, "Marriage and Creation in Mark 10 and CD 4–5," 133–163.

terms of marriage, most Jewish males married, and it would be unusual for a Jewish male not to marry. This is uncontroversial. It is also true that divorce was assumed on the basis of Deuteronomy 24:1 and practiced by many people. Yet, there were a range of Jewish positions on divorce, with some religious scholars arguing for divorce for almost any reason and some rejecting divorce unless for a specific reason. It is also the case that most people who divorced in Judaism remarried, both men and women, but not all Jews, apart from Jesus, approved of this. The Qumran community preferred one marriage only, and it is likely they prohibited divorce. While marriage was the choice for the majority of people in Judaism, we also have examples of Jewish males, and some females, who saw celibacy as the preferred path due to the coming of the new, eschatological age.

The Qumran community and Jesus ground their teaching on marriage in the beginning of creation, a time which will be replicated in the new age.<sup>86</sup> Paul himself placed Jesus's teachings and his own regarding marriage in the context of "the impending crisis," the shortness of "the appointed time," and the reality that "the present form of this world is passing away" (1 Corinthians 7:26, 29, 31). David Dungan claims that both Jesus and the *Damascus Document* share in

The expectation of the imminent return of the Time of Creation, the primordial age of perfection soon to manifest itself through God's direct intervention. Indeed, the time is felt to be so close at hand as to provide a basis for opposition to the polluted legal traditions of men.... This particular point of similarity between the Damascus Document and Jesus's appeal to the age of Creation establishes the thoroughly apocalyptic horizon of Jesus's answer.<sup>87</sup>

Marriage and divorce must be reconsidered in light of the coming *Endzeit*.

What was new in Jesus's teaching on marriage and divorce? Let me ignore my own question and begin with another: did Jesus ever cite the commandment "be fruitful and multiply" (Genesis 1:28)? When we examine sexuality itself in Jesus's teaching, we find two categories: those concerned with adultery by virtue of divorce (Mark 10:11; Matthew 5:32; 19:9; Luke 16:18) and those which warn against lust, adultery, and *porneia* in general (Mark 7:21; Matthew 5:27–28, 15:19, 19:18; Luke 18:20). There is no clear statement of the goodness

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<sup>86</sup> Sanders, *Jesus and Judaism*, 258–59, states that "the eschatological key does not open every door," but then backs away by saying "it is reasonable to interpret the saying on divorce as springing immediately from his eschatological expectation."

<sup>87</sup> Cited in Sanders, *Jesus and Judaism*, 258–59. Original text found in David Dungan, *The Sayings of Jesus in the Churches of Paul: The Use of the Synoptic Tradition in the Regulation of Early Church Life* (Philadelphia: Fortress Press, 1971), 116.

of sexuality, such as you find in the Hebrew Bible or the rabbinic documents, but warnings about its downfalls. Nowhere do you find a discussion of “be fruitful and multiply” on the lips of Jesus or for that matter within the whole New Testament. The Rabbis stated that nobody could abstain from the keeping the law to “be fruitful and multiply” (*Mishnah. Yebamoth* 6:6), but Jesus never mentions it.

Jesus does indicate a desire to return marriage to its pristine state in the *Urzeit*, which he saw partly fulfilled through marriage without divorce, but this is because he saw the coming apocalyptic *Endzeit* as the time that marriage would be banished (cf. Mark 12: 25). Jesus was not surveying “the way things are” and accommodating laws for the many necessary legal compromises, including divorce, that are essential to ongoing life, but he surveys “the way things will be,” which means marriage, sexuality and family life play a distant second to the world to come. “Be fruitful and multiply” has no role in the *Endzeit* scenario. Jesus’s teachings and behavior with respect to marriage and sexuality should be seen within the context of the imminence of the end. As Donahue says, “Jesus was influenced by the eschatological expectation of his time and part of this expectation was that the end of history would be the restoration of the pristine state of the world as intended by the creator.”<sup>88</sup>

Jesus was not alone in his teaching, as we find elements of it among some of the Qumran writings, in *Jubilees*, and in other apocalyptic writings. Without understanding the eschatological perspective in Judaism, it is impossible to understand Jesus’s teaching on marriage and divorce. This is why the Matthean exception does not “fit” Jesus’s own teaching on marriage and divorce but suggests an early attempt by the Church to situate Jesus’s teaching among the messy realities of married people and the necessity of accounting for some marriages that come to an end and for their life in the community following that end. As George MacRae says, “The eschatological message of the pressing kingdom of heaven has now to be related to the on-going life of a Jewish-Christian Church, a Church which is confronted with solving the daily problems of its existence by exercising the problems of binding and loosing.”<sup>89</sup>

How was one to make sense of Jesus’s teaching when the world continued on its messy way? How to account for the pastoral need that some marriages will end and some people will desire second marriages as the decades and centuries went by? The Matthean exception clause was the earliest attempt to deal with the pastoral realities of the early Church, embedded in the Gospel of Matthew itself. The Matthean church faces a problem for which Jesus’s teaching provides no solution, but whether *porneia* meant adultery, marriages within forbidden

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<sup>88</sup> Donahue, “Divorce - New Testament Perspectives,” 5–6.

<sup>89</sup> MacRae, “New Testament Perspectives on Marriage and Divorce,” 9–10.

degrees of consanguinity, or some other broader category, the early Christians adapted Jesus's teachings for the ongoing life of the Church.

### HOW DID THE CHURCH ASSIMILATE MATTHEW'S EXCEPTION CLAUSE?

If adaptation and assimilation was already taking place in the New Testament with the Matthean exception, it is surprising how little the Matthean exception clause influences Catholic discussions of marriage and divorce today. Peter Ryan and Germain Grisez, for instance, miss the point of Fitzmyer's article, which they cite at length, when they say "recent, well-regarded exegesis of Matthew 19:3–9 confirms the judgment that Jesus absolutely or unqualifiedly excluded divorce."<sup>90</sup> Jesus did absolutely prohibit divorce, but not on the basis of Matthew 19:9. Fitzmyer says that "now if there is any validity to the interpretation of these divorce texts in the light of the Qumran material, *we see that it does not support the position that the pronouncement-story and the dominical saying, as they are found in Mt 19, represent a more primitive form than that in Mk 10*" (my italics).<sup>91</sup> In fact, Fitzmyer sees the Matthean exception clauses as allowing for the dissolution of certain sorts of marriages.<sup>92</sup> When Ryan and Grisez say that "Matthew's *porneia* phrases cannot reasonably be regarded as introducing an exception to it,"<sup>93</sup> they miss the very point of Fitzmyer's article upon which they rely not to mention the exception clauses themselves.

Though Jesus's teachings emerge in a charged apocalyptic context and the Matthean exception clause was intended to mitigate the prohibition on divorce, Catholic teaching on marriage for centuries has paid it no attention. MacRae rightly states of the Matthean exception clauses that "it is remarkable that no single interpretation of these passages has ever won what could be called the general consent of interpreters, at least Catholic ones, and the Church has reflected this hesitancy by never attempting to define their sense," although Orthodox Christians read *porneia* as adultery and allow second and even third marriages on the basis of marriages ended by adultery.<sup>94</sup>

<sup>90</sup> Ryan and Grisez, "Indissoluble Marriage," 381, n.71.

<sup>91</sup> Fitzmyer, "Matthean Divorce Texts," 223.

<sup>92</sup> Fitzmyer, "Matthean Divorce Texts," 207–208.

<sup>93</sup> Ryan and Grisez, "Indissoluble Marriage," 396.

<sup>94</sup> MacRae, "New Testament Perspectives on Marriage and Divorce," 3. Vawter, "Divorce and the New Testament," 540, speaks of the Council of Trent's unwillingness to interpret the Matthean exception clause: "the Eastern church's permission of divorce and remarriage in the face of an adulterous spouse (an unscientific but pastoral interpretation of the Matthean "exceptive" clauses)—a discipline deliberately overlooked by a Western ecumenical council eager to condemn Luther but not the East" (540).

Instead of attempting to define the sense of this scriptural exception, Catholic theology and canon law have ignored it and created other ways to manage Jesus's prohibition on divorce. What sets these developments apart, however, is that they did not grow in the Jewish setting of Jesus's own teaching, as did the Matthean exception clause, but in the context of later Christian teaching. Marriage is indissoluble in Catholic teaching, except for the Pauline privilege and the privilege of the faith (the so-called "Petrine" privilege<sup>95</sup>) which do allow the dissolution of marriages.<sup>96</sup> Matthew's exception clause plays no role here for Roman Catholics, though 1 Corinthians 7:12–16 does and though the authority of the Pope does.<sup>97</sup>

In 1 Corinthians 7:12–16, Paul himself does not argue that the believing spouse whose unbelieving spouse has left him or her is now free to remarry, but that is how the later tradition would interpret the "Pauline privilege."<sup>98</sup> It is important to note that this understanding of the "Pauline privilege" only goes back to the fourth century.<sup>99</sup> As to the privilege of the faith, marriage is indissoluble, except for a valid, unconsummated union, which can be dissolved, though not on the basis of the Matthean exception.<sup>100</sup> As John Noonan outlines this authority of the Roman pontiff, he stresses that theological opinion when this

<sup>95</sup> Orsy, *Marriage in Canon Law*, 216–217, n. 4, advises against the use of the phrase "Petrine privilege" since the practice does not go back to Peter.

<sup>96</sup> On the Pauline privilege and the privilege of faith in canon law, see Ignatius Gramunt, Javier Hervada, and LeRoy A. Wauack, *Canons and Commentaries on Marriage* (Collegeville, Minn.: Liturgical Press, 1987), 83–93. With respect to marital dissolution Orsy, *Marriage in Canon Law*, 222, notes that with respect to canon 1146 and the Pauline privilege, "The baptized person has a right to contract a new marriage when the earlier one is still good and valid." In the same way, Noonan, Jr., *A Church that Can and Cannot Change: The Development of Catholic Moral Teaching* (Notre Dame: University of Notre Dame Press, 2005), 177, reveals that for the privilege of faith, two steps are required to allow a second marriage: papal dispensation permitting a second marriage; second step, the second marriage and "only the second marriage actually dissolved the bond of the first."

<sup>97</sup> Noonan, Jr., *Church that Can and Cannot Change*, 185. "The theorists of the privilege of the faith say that the Church has jurisdiction over the marriages of the five-sixths of the world who acknowledge no allegiance to the Catholic Church."

<sup>98</sup> John T. Noonan, Jr., *Church that Can and Cannot Change*, 162–167. Brundage, *Law, Sex, and Christian Society in Medieval Europe*, 61, believes that Paul allowed remarriage in this passage. It is possible, indeed, that he does as the verb translated by the NRSV in 1 Corinthians 7:15, "is not bound," *dedoulôtai*, is better translated as "is not enslaved." While this could simply imply that the man or woman is free to leave the marriage, the point is that the Church has interpreted it and made a decision that the person can remarry, unlike with the Matthean exception clauses.

<sup>99</sup> Orsy, *Marriage in Canon Law*, 215–216. Orsy says that this cannot be a "Pauline doctrine since it supposes the contractual theory, a relative latecomer in the field of canon law" (217).

<sup>100</sup> Noonan, Jr., *Church that Can and Cannot Change*, 189, says that "as the development of doctrine now stands for Catholics, all the marriages of the world, save those

authority was first utilized in the seventeenth century suggested that it was not possible, except that “Popes had in fact used the power.”<sup>101</sup> So, “How was marriage indissoluble if lawful, valid sacramental marriage could be dissolved by the Pope?”<sup>102</sup>

Apart from these practices, a marriage can be ruled as invalid such that a consummated marriage is annulled today for numerous reasons.<sup>103</sup> As Noonan argues, “No difference between dissolution and divorce in fact existed, except as to the authority ending an existing marriage.”<sup>104</sup> The Matthean exception clause could be the grounds for the practice of marital nullification, though its scriptural basis is rarely stated explicitly (or implicitly for that matter), and in fact I can find no evidence that Matthew 5:32 or 19:9 lie behind this practice. This, it would seem, is either a major innovation or the Church is reading *porneia* broadly as a marriage that should not have been consummated, in line with understanding *porneia* as referring to degrees of kinship that do not allow for a valid marriage but not citing Matthew as the authority behind this practice. What we can say is that in current Church teaching on annulments, the declaration of invalid marriages has moved far beyond any biblical scholar’s interpretation of what *porneia* meant originally in the first century to include numerous emotional and psychological conditions and situations. That is, the annulment process properly ends marriages even if *porneia* in any of its possible ancient permutations was not present and allows for remarriage.<sup>105</sup>

Matthew 5:32 and 19:9 say that marriages can end due to *porneia* and that remarriage is possible if the divorce was due to *porneia*. The context for Jesus’s original teaching on marriage in light of the estab-

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between two baptized persons, are in theory dissolvable by the Church in a process culminating in action reserved to the pope.”

<sup>101</sup> John Noonan, *The Power to Dissolve* (Cambridge, Mass.: The Belknap Press, 1972), 133. Noonan, Jr., *Church that Can and Cannot Change*, 181, notes that “the Pope was no man when he was God’s substitute.”

<sup>102</sup> Noonan, *The Power to Dissolve*, 133–134. Canons 1148, 1149, and 1150 seem to contain the power of the “Petrine” privilege. Noonan, Jr., *Church that Can and Cannot Change*, 178: “The *Catechism of the Catholic Church*, approved by John Paul II in 1992, denounced divorce as a ‘grave offense against the natural law.’ In four paragraphs devoted to the offense, the catechism did not mention divorce by exercise of the Pauline privilege or by exercise of the privilege of faith; nor were these two privileges mentioned in the index or in any other part of the book.” This remains true today; see CCC, 2382–2386.

<sup>103</sup> Noonan, Jr., *Church that Can and Cannot Change*, 187–188. Erasmus suggested that “the decree of nullity...can be seen as disjoining by God of what God did not join. Reference to God in these contexts is not to visible divine action but to what is viewed with religious reverence as done in accordance with the will of God.”

<sup>104</sup> Noonan, *Church that Can and Cannot Change*, 177.

<sup>105</sup> On the canons related to marital nullity see Gramunt, *Canons and Commentaries on Marriage*, 121–139.

ishment of the imminent Kingdom of God—no divorce and no remarriage—was softened already by Matthew’s exception clause. Bruce Vawter writes, “The logion of Jesus, whatever its historical context, was construed by the earliest Christianity to be gospel and not law. We have seen what Matthew and Luke did with it in its Q version, what Mark and Matthew did with it in narrative context, and what Paul did when it was a question of adjusting it to an entirely new scene in the Gentile churches. At the very least, we should be able to say that on the New Testament precedent other situations can be envisaged in a twentieth-century Western world that are every bit as demanding of accommodation as those that occurred so long ago in the Matthean, the Lucan, the Marcan, and the Pauline churches. What these situations might be, it is not our present task to specify.”<sup>106</sup> Perhaps unwisely, I would like to try.

### CONCLUSION

Nowhere did Jesus himself tie divorce or remarriage to the reception of the Eucharist, and the closest we can come to New Testament discipline regarding the Eucharist is 1 Corinthians 11:27–34, in which questions of marital regularity are simply not raised.<sup>107</sup> There is no reason to think that there could not be authentic development in the pastoral care of divorced and remarried persons which includes the reception of the Eucharist and which in addition seeks to normalize these marriages either by dissolving a previous marriage or declaring a previous marriage invalid, practices which Orsy suggests are close to those found in the Eastern practice of *oikonomia* based on the Matthean exception clauses.<sup>108</sup> Vawter writes that

The route that one might more realistically expect the Roman mind to prefer, would be to broaden the juridical casuistry surrounding the concept of a null marriage. Other more conservative and perhaps more pragmatic voices within the church have urged that at least if the church cannot be brought to contravene the theory of its adherence to a law of total indissolubility of Christian marriage, it may be encouraged to follow the gentler disposition of the East which has pastorally favored the sacramental rights of the sinful and fallible Christian over against the ‘rights’ of a matrimonial *sacramentum* defined as law.<sup>109</sup>

Orsy states that on the question of reception of the Eucharist by those who are divorced and remarried, without a marital nullity, without the “Pauline privilege,” without the privilege of the faith, “we are in the midst of a development that has not reached its final goal yet” and

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<sup>106</sup> Vawter, “Divorce and the New Testament,” 539–540.

<sup>107</sup> Vawter, “Divorce and the New Testament,” 541.

<sup>108</sup> Orsy, *Marriage in Canon Law*, 292.

<sup>109</sup> Vawter, “Divorce and the New Testament,” 541.

points to a number of German theologians, including Joseph Ratzinger in 1972, who argue for the reception of the Eucharist on a case by case basis by those divorced and remarried.<sup>110</sup> Pastoral consideration is essential because “while Paul and the early Church stand in opposition to divorce there is virtually no evidence that the divorced were excommunicated or that sexual sins constituted a special category of unforgivable sin.”<sup>111</sup> Pope Francis’s gentle urging to reconsider eucharistic practice on a case by case basis in *Amoris Laetitia* would be a development, but development regarding Jesus’s teachings on divorce and remarriage already started with the words of Jesus in Matthew, which need finally seriously to be considered.<sup>112</sup> **M**

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<sup>110</sup> Orsy, *Marriage in Canon Law*, 290–292.

<sup>111</sup> Donahue, “Divorce - New Testament Perspectives,” 18.

<sup>112</sup> Noonan, Jr., *Church that Can and Cannot Change*, 189.