

Marriage and Creation in Mark 10 and CD 4–5

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1. Introduction

The Markan divorce pericope in chapter 10 and the passage in CD 4–5 on marriage are prime examples of ‘parallels’ extensively referred to in both New Testament and Dead Sea Scrolls scholarship. The relationship between the two passages has been perceived to be especially close, and the invocation of Gen 1 in both texts to be very similar.¹ However, both the individual texts and their cross-comparison are fraught with problems. For Mark, the relation between the quotations from Gen 1 and Gen 2 is debated, but a further problem is the apparently composite nature of the pericope: Mark 10:6–8, due to their conformance with the Genesis Septuagint, are widely considered a product of early Christian reflection, whilst v. 9 is often attributed to Jesus; in addition, vv. 11–12 appear to stand in tension with vv. 6–8 in forbidding only remarriage after divorce. On the side of the Damascus Document, determining the precise topic is still a problem: Does taking ‘two wives in their lifetime’ demand a single marriage? Does it prohibit divorce or only polygamy? Debated is also how the three quotations in CD function and how CD relates to a passage in the Temple Scroll dealing with the king’s marriage. Accordingly, different constellations for the comparison of the two texts emerge, with individual exegetical decisions and general interpretative presuppositions decisively pushing the overall argument into one or the other direction. The following is an attempt to contribute to the clarification of some of these problems, to appreciate both similarity and difference in the two texts, and to suggest some ramifications for the conceptualisation of their respective teaching on marriage and creation.

2. Mark 10:2–12

The Markan divorce pericope can be sub-divided into two parts of different genre: vv. 2–9 are a conflict story between Jesus and ‘the Pharisees’, whereas vv. 11–12 are a double saying joined by the hinge of v. 10 which makes them an internal teaching for the disciples after retiring to the house.² V. 2 has ‘the Pharisees’ ask Jesus

¹ Cf., e.g., J. de Waard, *A Comparative Study of the Old Testament Text in the Dead Sea Scrolls and in the New Testament* (STDJ 4; Leiden: Brill, 1965) 30–34.

² Cf. only R. Bultmann, *Die Geschichte der synoptischen Tradition* (FRLANT 29; 9th ed.; Göttingen: Vandenhoeck & Ruprecht, 1979) 25f, 140.

whether it ‘is permissible for a man to divorce [his] wife’; the reference to the Pharisees lacks in Codex Bezae and other witnesses, and the shorter form is considered by some ‘the earliest recoverable reading’.³ It is debated whether the question itself would make sense in Second Temple Judaism. Some have asserted this, pointing to the *de facto* exclusion of divorce in the Temple Scroll (see further below) or to the strict approach of the House of Shammai, according to which ‘the divorce is only a result of adultery, which at any rate forbids the wife to her husband’.⁴ However, even if this points to a very negative view of divorce and the divorced woman—an issue to which we shall come back later—it does not deny that the Shammaites accepted the institution of divorce as such. There may have been some further criticism of divorce (e.g., Mal 2:16 MT [?]),⁵ but, as we shall see, no other Second Temple Jewish text generally prohibits divorce to ordinary Jews; thus, the question in Mark 10:2 might indeed seem odd. David Instone-Brewer has therefore suggested to mentally supply ‘[sc. divorce] for any reason’,⁶ bringing the pericope in line with the Matthean parallel (Matt 19:3) and the famous debate between the Houses of Hillel and Shammai on the interpretation of עֲרֻת דִּבְרַר (Deut 24:1; *m. Git.* 9:10), but I do not think that there is sufficient warrant for this: ‘for any reason’ (κατὰ πᾶσαν αἰτίαν) in Matt 19:3 correlates with the famous exception clause in v. 9 ‘except for sexual indecency’ (μὴ ἐπὶ πορνείᾳ) and is most probably a Matthean clarification (see also αἰτία in v. 10). In my view, it seems more likely that the indeterminate wording in Mark serves to prepare Jesus’ own position as

³ A. Yarbro Collins, *Mark: A Commentary* (Hermeneia; Philadelphia: Fortress, 2007) 457; cf. the minority opinion of Metzger and Wikgren in B. M. Metzger, *A Textual Commentary on the Greek New Testament* (2nd ed.; Stuttgart: Dt. Bibelgesellschaft, 1994) 88.

⁴ I. Rosen-Zvi, ‘“Even if he found another one more beautiful than her”: A Fresh Look at the Reasons for Divorce in Tannaitic Literature’, *JSIJ* 3 (2004) 1–11: 2 (in Hebrew [ET: LD]). According to Rosen-Zvi, the connection of Shammaite and Hillelite views with a different interpretation of Deut 24:1 (see below) is a secondary development: *ibid.* 1–5.

⁵ The interpretation of this verse is extremely difficult. The Minor Prophets scroll from Qumran, part of the LXX manuscripts, the Vulgate, and Targum Ps.-Jonathan render the beginning of the verse as ‘if you hate (her), send (her) away’, thus condoning and even recommending divorce under certain circumstances; 4QXII^a: כִּי־אִם שְׂנֵאתָּהּ שְׁלַח (DJD 15, 224); LXX^{WL}: ἀλλ’ ἐὰν μισήσῃς ἐξαποστείλον; V: *cum odio habueris, dimitte*; Tg. Ps.-J.: אִם סָנִיתָּ לָהּ פְּטָרָהּ. In contrast, MT *might* be read as a *critique* of divorce. However, Gordon Paul Hugenberger has convincingly argued that, compared with an interpretation (and possibly emendation) of MT כִּי־שָׂנֵאתָּ שְׁלַח in terms of God’s rejection of divorce (‘for I hate divorce’), a sense of the text is to be preferred that is directed against divorce on account of mere aversion against the woman (‘for if he hates [her] and [therefore] sends [her] away’): G. P. Hugenberger, *Marriage as Covenant: A Study of Biblical Law and Ethics Governing Marriage, Developed from the Perspective of Malachi* (VTSup 52; Leiden: Brill, 1994) 48–83, esp. 76.

⁶ Cf. D. Instone-Brewer, *Divorce and Remarriage in the Bible: The Social and Literary Context* (Grand Rapids [Mich.]: Eerdmans, 2002) esp. 159, 175–77.

developed subsequently;⁷ the possible absence of ‘the Pharisees’ from the earliest text form perhaps underlines the lack of historical context. The interlocutors’ answer in v. 4 shifts to the vocabulary of concession: ‘Moses conceded (ἐπέτρεψεν)⁸ to write a certificate of annulment and to divorce [one’s wife]’ (cf. Deut 24:1). The juxtaposition of ‘command’ and ‘concede’ language has the effect that the interlocutors classify divorce not as a commandment but as a concession,⁹ a notion Jesus takes up in v. 5: ‘Because of your hardness of heart’ Moses wrote the provision for the *get*. As Morna Hooker comments, ‘Jesus does not dispute the validity of the Deuteronomic rule, but sees it as concessionary: it was introduced because of man’s weakness’.¹⁰

In Mark 10, the concession is contrasted (vv. 6–8) with the original institution of marriage, whilst v. 9 concludes for human praxis, in the third person imperative.

(Mark 10:6) ἀπὸ δὲ ἀρχῆς κτίσεως ἄρσεν καὶ θῆλυ ἐποίησεν αὐτούς· (7) ἕνεκεν τούτου καταλείπει ἄνθρωπος τὸν πατέρα αὐτοῦ καὶ τὴν μητέρα [καὶ προσκολληθήσεται πρὸς τὴν γυναῖκα αὐτοῦ],¹¹ (8) καὶ ἔσονται οἱ δύο εἰς σάρκα μίαν· ὥστε οὐκέτι εἰσὶν δύο ἀλλὰ μία σὰρξ. (9) ὁ οὖν ὁ θεὸς συνέζευξεν ἄνθρωπος μὴ χωριζέτω.

⁷ Cf. R. Pesch, *Das Markusevangelium* (2 vols.; HTK 2/1–2; Freiburg: Herder, ⁵1989, ⁴1991) 2:122.

⁸ Cf. for the language of personal concession esp. Mt 8:21 par.; also Mk 5:13 par.

⁹ But note that in the parallel in Mt 19:7–8 there is a different distribution of the verbs ἐντέλλειν and ἐπιτρέπειν, with the interlocutors asking, ‘Why then did Moses *command* one to give a certificate of annulment and to divorce [one’s wife]?’ and Jesus answering, ‘For your hardness of heart Moses *conceded* you to divorce your wives...’.

¹⁰ M. Hooker, *The Gospel According to St Mark* (BNTC; London: Continuum, 2001 [1991]) 236. Some scholars point out that the reference to Moses implies that this concession is ‘merely’ Mosaic and does not reflect God’s will; e.g., S. D. Fraade, ‘Moses and the Commandments: Can Hermeneutics, History, and Rhetoric Be Disentangled?’, *The Idea of Biblical Interpretation: Essays in Honor of James Kugel* (ed. H. Najman & J. H. Newman, JSJSup 83; Leiden: Brill, 2004) 399–422: 417; Yarbrow Collins, *Mark*, 468. However, although the text does contrast the Mosaic rule with God’s order here, I would like to caution that ‘Moses’ is not consistently used in such a contrasting way in Mark; see Mark 7:10, where ‘Moses’ is referred to for Decalogue commandments and clearly belongs to the side of ‘God’s commandments’ mentioned in the preceding verse.—On ‘hardness of hearts’ see further below, (at) n. 101.

¹¹ The words in brackets are missing in \aleph B Ψ 892*. 2427 sy^s, but here it is possible that the best witnesses have fallen victim to *homoioteleuton* (at καὶ); thus also W. Loader, *Sexuality and the Jesus Tradition* (Grand Rapids [Mich.]: Eerdmans, 2005) 100 (henceforth: Loader, *Sexuality*). The only way to get around the possibility that—without these words—‘οἱ δύο’ in ver. 8 could be taken to refer to the father and the mother’ (Metzger, *Textual Commentary*, 89) would be to assume that v. 7 ἄνθρωπος refers to *both man and woman* (thus R. Pesch, *Markusevangelium*, 2:123f). But note that such an inclusive notion is *absent* from Gen 2:24 LXX, since it mentions the ‘wife’ separately. Together with the transcriptional argument this suggests that one should not overemphasise the use of ἄνθρωπος here, since it most probably simply refers to the ‘man’; cf. T. Holtz, “‘Ich aber sage euch’”, *Jesus und das jüdische Gesetz* (ed. I. Broer; Stuttgart et al.: Kohlhammer, 1992) 135–145: 140: “‘Ανθρωπος gibt in LXX überaus häufig $\omega\tau\iota\alpha$ wieder”. Cf. also M. Rösel, *Übersetzung als Vollendung*

(Mark 10:6) But from the beginning of creation, ‘Male and female he made them.’ (7) ‘For this reason a man will leave his father and mother [and be joined to his wife], (8) and the two will become one flesh.’ Thus, they are no longer two, but one flesh. (9) So then, what God has joined together, let man not separate.

The core of vv. 6–8 is a combination of two passages from the creation account, Gen 1:27c (= 5:2α)¹² and 2:24. They are linked ‘so that a single conclusion can be drawn from it’.¹³ The text of the Genesis quotations conforms to the Septuagint.¹⁴ However, it is another question whether—as some have claimed—the argumentation would work *only* in this textual form, a question on which the following will suggest a negative answer.

Apparently, the argument is synthetical,¹⁵ with each of the proof-texts offering one ‘hook’, on both of which it rests. It culminates, however, in the final statement of Gen 2:24 on becoming ‘one flesh’. This is underscored by the conclusion, introduced by ὥστε, in v. 8b, ‘Thus, they are no longer two, but one flesh’. The two hooks of the argument then are as follows, and we shall discuss them one after the other: (1) God created the first human beings ἄρσεν καὶ θήλυ, ‘male and female’. What this means is debated. It would be attractive to see here a reference to the androgyne myth, because that could allow for an overarching framework accommodating both marriage and celibacy. Proposed by David Daube, Paul Winter, Kurt Niederwimmer,

der Auslegung: Studien zur Genesis-Septuaginta (BZAW 223; Berlin: De Gruyter, 1994) 72. Equally, v. 9 ἄνθρωπος most likely refers only or predominantly to the man in the early stages of tradition history; see below.

¹² It is unclear whether the repetition in Gen 5:2 plays a role in the argumentation or was even originally targeted. Here, in God’s subsequent naming the man and the woman, the name ‘Adam’ (thus here also in LXX, diff. Gen 1:27a LXX!) is referred to *both* man and woman (אָדָם שָׁמָּה, τὸ ὄνομα αὐτῶν). In rabbinic tradition this has been related to marriage, which is said to make for a complete human being; cf. *Ber. R.* 17:2 [152 Theodor & Albeck; cf. *Qoh. R.* 9:9]: ‘Whoever has no wife ... is no complete human being (אָדָם שָׁלֵם)’ (R. Chijja b. Gamda or Gomdi); *b. Yev.* 63a: ‘Everyone (אָדָם) without a wife is no human being (אָדָם)’ (R. Eleazar). It is therefore not impossible that this connection of Gen 5:2 with marriage in one strand of Jewish tradition would also be of relevance for the connection with the quotation of Gen 2:24 in Mark; cf. also A. Schremer, *Male and Female He Created Them: Jewish Marriage in the Late Second Temple, Mishnah and Talmud Periods* (Jerusalem: Merkaz Shazar, 2003) 71–72 (in Hebrew). We note, however, that in the Hebrew of MT Gen 5:2α deviates slightly from Gen 1:27c, see below, n. 80.

¹³ Instone-Brewer, *Divorce and Remarriage*, 137.

¹⁴ Cf. W. Loader, *The Septuagint, Sexuality, and the New Testament: Case Studies on the Impact of the LXX in Philo and the New Testament* (Grand Rapids [Mich.]: Eerdmans, 2004) 80 (henceforth Loader, *Septuagint*).

¹⁵ Cf. K. Berger, *Die Gesetzesauslegung Jesu. Ihr historischer Hintergrund im Judentum und im Alten Testament I* (WMANT 40; Neukirchen: Neukirchener Verlag, 1972) 548–50, but different in detail.

and recently Bernard Jackson,¹⁶ this theory argues that humankind was created in androgynous fashion, to be recovered in the eschaton, either by proper marriage or by celibacy—the latter being available only to the elect who embody the androgyne already.

However, there are a few problems with this interesting theory: First, it is unclear whether or to which extent the eschaton in other early Christian texts indeed involves recovery of the androgyne. Several nuances seem to have co-existed. There is, on the one hand, the expectation of a post-resurrection state ‘like the angels’ (ὡς ἄγγελοι, Mark 12:25); this does not suggest an androgyne status but to the contrary one of *unambiguous gendering*, in which the good angels—as opposed to the bad ones—*restrain their sexuality*¹⁷ because it is inappropriate for holy space.¹⁸ Angels are normally male gendered in early Jewish literature;¹⁹ whether the saying reckons also with female gendered ones, views post-resurrection women as male gendered as well,

¹⁶ Cf. D. Daube, *Rabbinic Judaism and the New Testament* (Jordan Lectures 1952; London: Athlone Press, 1956) 71–86; P. Winter, ‘Sadoqite Fragments IV 20, 21 and the Exegesis of Genesis 1 27 in Late Judaism’, *ZAW* 68 (1956) 71–84: 78–84; idem, ‘Genesis 1 27 and Jesus’ Saying on Divorce’, *ZAW* 70 (1958) 260–61; K. Niederwimmer, *Askese und Mysterium: Über Ehe, Ehescheidung und Eheverzicht in den Anfängen des christlichen Glaubens* (FRLANT 113; Göttingen: Vandenhoeck & Ruprecht, 1975) 45–49; B. S. Jackson, “‘Holier than Thou’? Marriage and Divorce in the Scrolls, the New Testament and Early Rabbinic Sources”, idem, *Essays on Halakhah in the New Testament* (JCP 16; Leiden: Brill, 2008) 167–225: 184–87, 197, 224–25.—Cf. for this myth in Jewish sources: Philo, *Opif.* 76; cf. *All.* 2:13; *Ber. R.* 8:1 [55 Theodor & Albeck]; *b. Ber.* 61a; *b. Er.* 18a; *M. Teh.* on Ps 139:5 [528 Buber]. *Ber. R.* 8:11 [64 Theodor & Albeck], *Mekh. Y.*, *Pisha Bo* 14 on Exod 1:40 [50 Horowitz & Rabin], and *y. Meg.* 1:11(8) [71d] claim that one of the passages ‘written for Talmai’ (i.e. alleged alterations in the Greek translation) was זכר ונקביו ברא אותם ‘as a male and his female parts he created them’; but it is debated whether נקביו really means ‘his female parts’, thus M. Jastrow, *A Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature* (2 vols., New York: Pardes, 1950) [2:]930, but see J. B. Schaller, ‘Gen.1.2 im antiken Judentum: Untersuchungen über Verwendung und Deutung der Schöpfungsaussagen von Gen.1.2 im antiken Judentum’ (ThD diss.; University of Göttingen, 1961) 153; F. G. Hüttenmeister (transl.), *Megilla: Schriftrolle* (Übersetzung des Talmud Yerushalmi 2/2; Tübingen: Mohr Siebeck, 1987) 56: ‘seine Öffnungen’; *b. Meg.* 9a has the variant זכר ונקבה בראו ‘male and female he created him’. These texts are normally deemed to depend on Aristophanes’ speech in Plato, *Sym.* 189d–192c; according to Schaller, *ibid.*, 94–95, 153–55, Philo and the Rabbis represent two (independent) Jewish adaptations.

¹⁷ Cf. 2 *Bar.* 56:14 ‘But the rest of the multitude of angels, to whom there is (no?) number, restrained themselves’ (oilctá).

¹⁸ Cf. Loader, *Sexuality*, 223–26 with further references.

¹⁹ Cf. 1 *En.* 6:2–7:1 (the Watcher angels are male and sleep with terrestrial women); 15:7 (no women were made for the Watchers); *Jub.* 15:27 (the upper classes of angels are circumcised); cf. further the activities of guarding, delivering messages from God (both widespread), fighting (cf. 2 *Macc* 10:29–30 and the presence of the ‘holy angels’ in the war camp, 1QM 7:6) or acting as travel companion (Tobit) etc., which all conform to ‘male’ construed activity in antiquity. However, note the figure of heavenly Metanoia in *Jos. As.* 15:7–8, who is presented as *sister* of the heavenly visitor, *daughter* of the Most High, and *virgin*; but the statement ‘all the angels respect her’ (v. 8) implies a slight distinction between her and ‘the angels’.

or simply disregards women is difficult to tell. On the other hand, there are expectations that gender differences will become *irrelevant*:

Gal 3:28: οὐκ ἐνὶ Ἰουδαίῳ οὐδὲ Ἑλλήνι, οὐκ ἐνὶ δοῦλῳ οὐδὲ ἐλεύθερῳ, οὐκ ἐνὶ ἄρσεν καὶ θήλει· πάντες γὰρ ὑμεῖς εἰς ἓστε ἐν Χριστῷ Ἰησοῦ

There is no longer Jew or Greek, there is no longer slave or free, there is no longer male and female, for you are all one in Christ Jesus.

2 Clem. 12:2 (par. G. Th. 22 par. G. Eg. [apud Clem. Strom. 3:92]): ἐπερωθεὶς γὰρ αὐτὸς ὁ κύριος ὑπὸ τινος, πότε ἤξει αὐτοῦ ἡ βασιλεία, εἶπεν· Ὅταν ἔσται τὰ δύο ἓν, καὶ τὸ ἔξω ὡς τὸ ἔσω καὶ τὸ ἄρσεν μετὰ τῆς θηλείας, οὔτε ἄρσεν οὔτε θήλυ.

For the Lord Himself, being asked by a certain person when his kingdom would come, said, ‘When the two shall be one, and the outside as the inside, and the male with the female, neither male or female’.²⁰

Even here, the irrelevance of gender differences does not necessarily mean that the future state was either androgyne or unsexed, as Judith Gundry-Volf has argued in a critique of Daniel Boyarin’s reading of Gal 3:28: While Boyarin claims that through incorporation into Christ, i.e. in baptism, ‘all the differences that mark off one body from another as Jew or Greek ..., male or female, slave or free, are effaced, for in the Spirit such marks do not exist’,²¹ Gundry-Volf takes Gal 3:28, within Paul’s line of theological argumentation, to refer to a new *differentiated* equality and unity *in Christ* as opposed to the previous sameness of all in their imprisonment *to sin* which pretended that differences were salvifically relevant.²²

Second, the proponents of the theory that Mark 10:6–8 is about the androgyne cannot make much of the subsequent use of Gen 2:24 in this text²³ which, as we shall see, presupposes that the first couple were distinct beings. And third, we note that the first quotation is limited to *that* very part of the verse that is formulated in the *plural*

²⁰ On this agraphon see Loader, *Sexuality*, 199–207 (referring to other recent discussions, particularly of G. Th. 22); T. Baarda, ‘2 Clement 12 and the Sayings of Jesus’, idem, *Early Transmission of Words of Jesus: Thomas, Tatian and the Text of the New Testament* (ed. J. Helderman & S. J. Noorda; Amsterdam: VU Boekhandel/Uitgeverij, 1983) 261–88.

²¹ D. Boyarin, *A Radical Jew: Paul and the Politics of Identity* (Berkeley et al.: University of California Press, 1994) 23. Cf. also ibid. 180–91.

²² Cf. J. M. Gundry-Volf, ‘Christ and Gender: A Study of Difference and Equality in Gal 3,28’, *Jesus Christus als Mitte der Schrift: Studien zu Hermeneutik des Evangeliums* (ed. C. Landmesser, H.-J. Eckstein & H. Lichtenberger; BZNW 86; Berlin: De Gruyter, 1997) 439–79; esp. 457–9, 474–6. She lists op. cit., 458 n. 40 other critics of an interpretation of Gal 3:28 in terms of the androgyne.

²³ According to Daube, *Judaism*, 78 it was attached secondarily. This has justly been questioned by Schaller, ‘Gen.1.2’, 69–70. Niederwimmer, *Askese*, 44 simply assumes that the androgyne myth was the original (!) background of both Gen 1:27 and 2:24.

(see αὐτούς), i.e. Gen 1:27c, focusing on humankind in its differentiated duality, ἄρσεν καὶ θῆλυ, which must mean *either* ‘male’ *or* ‘female’ here.²⁴ Moreover, both terms show a tendency towards nominalisation in our sources, both Greek and Hebrew,²⁵ so that the text can be understood to speak about one ‘male’ and one ‘female’. We conclude that what is meant in Mark is that God created one man and one woman.

(2) The second passage, Gen 2:24, is adduced here in a form that represents a certain tradition of interpretation, emphasising that the man and his wife are exactly *two*. Accordingly, these words are added in Gen 2:24: ‘and *the two* shall become one flesh’. This interpretation is not only found in the Septuagint (and the Vulgate) but also in the Samaritan Pentateuch,²⁶ the Peshitto, Targum Ps.-Jonathan and Neofiti (as well as in the quotations in 1 Cor 6:16; Eph 5:31),²⁷ but it is absent from the

²⁴ Note that nothing in this brief citation suggests that it operates on the basis of Philo’s interpretation of Gen 1:27 in terms of a purely *spiritual* androgyne, as discussed by Boyarin, *Radical Jew*, 187–91.

²⁵ Cf. for the NT Gal 3:28 (see above); Luke 2:23 πᾶν ἄρσεν διανοῖγον μήτρων ἄγιον; generally Plato, *Rep.* 454d–e τὸ μὲν θῆλυ τίκτειν, τὸ δὲ ἄρσεν ὀχεύειν (= covers). For CD cf. C. Rabin, *The Zadokite Documents* (2nd rev. ed.; Oxford: Clarendon Press, 1958) 17 n. 21⁴.

²⁶ With the peculiar wording וְהָיָה מִשְׁנֵיהֶם לְבָשָׂר אֶחָד (one MS has וְהָיוּ): A. von Gall, *Der hebräische Pentateuch der Samaritaner* (Gießen: Töpelmann, 1918) *ad loc.* (the Samaritan Targum is here only attested in ms. A showing a later textual development, with the Hebraising phrase מִשְׁנֵיהֶם לְבָשָׂר אֶחָד וְהָיוּ: A. Tal, *The Samaritan Targum of the Pentateuch: A Critical Edition I* [Tel Aviv: Tel Aviv University, 1980] 9). The only attestation of the passage in the Qumran texts, a very fragmentary quotation in two manuscripts of 4QInstruction [*Musar le-Mevin*], 4Q416 2 iv 1 par. 4Q418 10 4–5, does not seem to leave enough room for reconstruction of ‘the two’; cf. J. Strugnell & D. J. Harrington, *Qumran Cave 4. XXIV: Sapiential Texts, Part 2: 4QInstruction (Mûsâr l’Mēvîn): 4Q415 ff.* (DJD 34; Oxford: Clarendon Press, 1999) 123, 236 (Text) and 127 on reconstruction of the lacuna in 4Q416 2 iv 1: ‘to add, with G, שְׁנֵיהֶם after וְהָיוּ would almost certainly be too long to fit in the lacuna’. Nevertheless the passage 4Q416 2 iii 20–iv 7 presupposes monogamous marriage; cf. H. Lichtenberger, ‘Schöpfung und Ehe in Texten aus Qumran sowie Essenerberichten und die Bedeutung für das Neue Testament’, *Judaistik und neutestamentliche Wissenschaft: Standorte—Grenzen—Beziehungen* (ed. L. Doering, H.-G. Waubke & F. Wilk; FRLANT 226; Göttingen: Vandenhoeck & Ruprecht, 2008) 279–88; 283–85. See further below, at nn. 33–34.

²⁷ Cf. also *Jub.* 3:7, where a number of mss. preface the paraphrase of Gen 2:24 with: ‘For this reason a man and a woman are to become one’. This is absent from the best mss., though perhaps due to *homoioteleuton*, see twice *ba’enta-ze* ‘for this reason’ in the verse; J. C. VanderKam wonders whether *za*, which most mss. lacking the above-quoted text have instead, ‘is a remnant of the second instance’ of *ba’enta-ze*: idem (transl.), *The Book of Jubilees* (CSCO.Ae 88; Leuven: Peeters, 1989) 17 *ad loc.* Nevertheless, the longer reading is considered secondary by some, cf. K. Berger, *Das Buch der Jubiläen* (JSRHZ 2/3; Gütersloh: Mohn, 1981) 333 n. a *ad loc.*; M. Kister, ‘Divorce, Reproof and Other Sayings in the Synoptic Gospels: Jesus Traditions in the Context of “Qumranic” and Other Texts’, *Text, Thought, and Practice in Qumran and Early Christianity: Proceedings of a Joint Symposium by the Orion Center for the Study of the Dead Sea Scrolls and Associated Literature and the Hebrew University Center for the Study of Christianity, 11–13 January, 2004* (ed. D. R. Schwartz & R. A. Clements; STDJ; Leiden: Brill, forthcoming) n. 42 (I wish to thank Professor Kister for making his valuable article available to me in advance of its publication).—The reading ‘the two’ in Gen 2:24 might also be reflected in *Tob.* 8:6 Codex Sinaiticus (ἐξ ἀμφοτέρων; Schaller, ‘Gen.1.2’, 59, 192 n. 12, 205 n. 2) = so-called 2nd text form of *Tobit*, here attested by the Old Latin Bobiensis

Masoretic Text and Targum Onqelos. This broad tradition apparently reflects a tendency in Second Temple Judaism to prefer monogamy to polygamy.²⁸ Certainly, also Mark 10 presupposes that the marriage in view is monogamous.

What constitutes the joining between man and woman is not explicitly stated. However, both προσκολληθήσεται and σάρξ make one think of sexual union; thus, Paul can relate Gen 2:24 to the union with a prostitute (1 Cor 6:16). But in view of the use of Gen 2:24 in Eph 5:31 it seems to be wise to avoid too narrow a usage and to allow for other levels of marital union as well.²⁹ The contrast with father and mother, then, points to the new ‘kin’ established by husband and wife in marriage. Whether the Hebrew text stresses more the latter, whereas the Greek text highlights more the sexual side, as recently claimed by William Loader (following Klaus Berger), seems however questionable.³⁰ That it is *God* who joins the couple is clear from the following v. 9 and the link with God’s creational act, v. 6. It is sometimes claimed that this emerges also from the use of προσκολληθήσεται, which proponents of this view take as a divine passive;³¹ however, it should be noted that this verb, frequent in Koine Greek, is normally used with an intransitive meaning; thus, it is likely that καὶ προσκολληθήσεται in fact says more or less the same as MT וַיִּבְרַךְ.³² Even so, it remains true that the *whole process* outlined in vv. 6–8, particularly in light of v. 9, must be seen as divinely caused. In this, these verses are

and supported by the witnesses of the 3rd text form (Greek recension *d* and the majority of Syriac mss.); cf. the apparatus in R. Hanhart, *Tobit* (Septuaginta [...]; Göttingen: Vandenhoeck & Ruprecht, 1983) *ad loc.*

²⁸ Cf. Instone-Brewer, *Divorce and Remarriage*, 61.

²⁹ Cf. Loader, *Septuagint*, 40: ‘The focus includes sexual union and living together which would be assumed to entail marriage’, although one should beware of importing modern notions of romantic marriage into the text.—In contrast, the interpretation of ‘one flesh’ referring to common offspring (thus e.g. G. von Rad, *Das erste Buch Mose: Genesis* [ATD 2/4; 5th ed.; Göttingen: Vandenhoeck & Ruprecht, 1958] 68) does not do justice either to the semantics of Gen 2:24, focusing on the couple, or the application of the quotation in Mark 10:7–8. In my view, even the peculiar formulation of the Samaritan Pentateuch (above, n. 26) is not necessarily to be taken as referring to the offspring, *pace* Kister, ‘Divorce’, *before n. 42*; adopted by Yarbrow Collins, *Mark*, 467.

³⁰ Cf. Berger, *Gesetzesauslegung*, 551, claiming: ‘wo man unter בִּשְׂר “Verwandtschaft” versteht, übersetzt man [in LXX—LD] anders’. But the references listed by Loader, at which עֶצֶם and בִּשְׂר (MT) are used ‘of a permanent relationship’ (*Septuagint*, 41–42 with n. 43; *Sexuality*, 100–01 with n. 121), clearly attest for LXX rendition with (sometimes plural) forms of ὁστοῦν and σάρξ (Gen 29:14; Judg 9:2; 2 Sam 5:1; 19:13, 14; one could also add 1 Chr 11:1).

³¹ E.g., Loader, *Septuagint*, 81–2; *Sexuality*, 100.

³² Cf. for intransitive use of the passive only Galen, *Meth. med.* 10:297; Athenaeus, *Deipn.* 6:258b; *Test. Ben.* 8:1; Philo, *All.* 2:49; *Q. Exod.* 2:3; Josephus, *Ant.* 7:309; 9:18; also LXX, e.g., Deut 11:22; 13:18; ψ 72:28 and esp. Lev 19:31 LXX καὶ τοῖς ἐπασιδοῖς οὐ προσκολληθήσεσθε ‘and do not adhere to the wizards’. Therefore, *the form as such* can hardly be claimed for God’s action (as divine passive).

particularly close to a Qumran text that features a strong reference to Gen 2:24 as well—4QInstruction, where it is stated that God (‘he’) ‘will separate your daughter for another one, and your sons for the daughters of your neighbours’.³³ Though emphasis and details of this passage differ from Mark 10, God’s activity in joining the couple is highlighted in both.³⁴

Mark 10:8b then *draws the conclusion* for the *status* of the joined couple: ‘Thus, they are no longer two, but one flesh’. Note the temporal references in this argument: Here we have reached the present tense; v. 6, referring to creation, is in the imperfect; and vv. 7–8a, in the perspective of the first couple, are formulated in the future tense. The whole argument thus creates a link between *then* and *now*. In this respect, it is remarkable that creation as ‘male and female’ is said to have happened ἀπὸ δὲ ἀρχῆς κτίσεως ‘from the beginning of creation’. The force of the preposition ἀπό seems to be that creation as ‘male and female’ is not restricted to the one couple in Eden but has become an inherent order of creation relevant for current praxis. We shall return to this later. Similarly, v. 9, an aphoristic, antithetical statement linked by the particle οὖν,³⁵ presents *another conclusion*, this time for *human praxis*: ‘Therefore what God (θεός) has joined together (sc. in Eden and since), let man (ἄνθρωπος) not separate’. The statement has imperatival force (therefore does not exclude that ‘man’ *might* separate), but the double antithesis ‘God, join’ vs. ‘man, separate’ implies so stark a contrast that it points to the utter inappropriateness of separation. In fact, the ἄνθρωπος under the command recalls the ἄνθρωπος of Gen 2:24, that is, ‘man’ in its original, creational state, and in the present context in Mark is contrasted with man represented by the second person plural (v. 3, 5) plagued by ‘hardness of heart’. Morna Hooker is probably right when she views the ἄνθρωπος as male gendered in both instances; ‘man’ in v. 9 thus refers ‘to the husband’,³⁶ who in most instances in ancient Judaism—some female forms of initiative notwithstanding—enacted any divorce. In addition, however, one might hear here overtones that point to the contrast between God and *Moses* as conceding the divorce certificate with respect to human

³³ לִךְ לְבִשֶׁר אַחֵר בְּתַכְהָ לְאַחֵר יִפְרִיד וּבְנִיכָהּ ל: 4Q416 2 iv 4, with parallels from 4Q418 10b (underline) and 4Q418a 18 (bold). Reconstruction according to E. J. C. Tigchelaar, *To Increase Learning for the Understanding Ones: Reading and Reconstructing the Fragmentary Early Jewish Sapiential Text 4QInstruction* (STDJ 44; Leiden: Brill, 2001) 48.

³⁴ Cf. particularly Kister, ‘Divorce’, at n. 43.

³⁵ Cf. BDR § 451.1. Cf. also J. D. Denniston, *The Greek Particles* (2nd ed.; Oxford: Clarendon, 1954) 425: ‘The particle expresses *post hoc* and (more frequently) *propter hoc*, or anything between the two.’

³⁶ Hooker, *Mark*, 236.

‘hardness of heart’.³⁷ Moreover, it is possible that the contrast between the verbs in v. 9 echoes the contrast between man’s ‘cleaving’ (προσκολληθήσεται, רבך) in Gen 2:24 and the Hebrew name for the bill of divorce, ‘bill of cutting’ (סֵפֶר כְּרִיתָה), in Deut 24:1.³⁸

However, the typical view of vv. 6–9 as ‘scriptural’ argument³⁹ does leave this passage underdetermined in my view. For, as the use of ἀπ’ ἀρχῆς κτίσεως in Mark 13:19 (and 2 Pet 3:4) shows,⁴⁰ the expression in Mark 10:6 should be taken as referring to a cosmic reality presented in temporal perspective and not *merely* to the creation narrative. Similar usage (‘from the beginning of creation’ or ‘from the creation’) is also attested by a number of ancient Jewish texts,⁴¹ and one can also compare the expression ‘from the beginning’, as far as it implies the beginning of creation.⁴² We could therefore perhaps say that in Mark 10:6 *scripture records a cosmic reality*.⁴³

³⁷ Cf. Yarbro Collins, *Mark*, 468; also Fraade, ‘Moses’, 417, but see on Fraade’s too far-reaching claim regarding this contrast above, n. 10.

³⁸ Cf. Kister, ‘Divorce’, at n. 54; adopted by Yarbro Collins, *Mark*, 468. We note that this antonymic relation is somewhat lost in the LXX’s label of the divorce certificate as βιβλίον ἀποστασίου.

³⁹ Many authors consider the verses a scriptural argument, cf., *inter multos alios*, B. Schaller, ‘Die Sprüche über Ehescheidung und Wiederheirat in der synoptischen Überlieferung’ [1970], idem, *Fundamenta Judaica: Studien zum antiken Judentum und zum Neuen Testament* (ed. L. Doering & A. Steudel; SUNT 25; Göttingen: Vandenhoeck & Ruprecht, 2001) 104–24: 116 n. 45: ‘Verweis auf die Schrift’; M. C. Moeser, *The Anecdote in Mark, the Classical World and the Rabbis* (JSNTSup 277; London: Sheffield Academic Press, 2002) 223: Mark 10:2–9 is a ‘brief debate’ that ‘embodies a legal principle of Jesus arrived at by his interpretation of scriptural verses, that is, his use of an argument from authority, the authority being Scripture’.

⁴⁰ Cf. in the NT also ἀπ’ ἀρχῆς κόσμου ἕως τοῦ νῦν Matt 24:21; ὁ ἦν ἀπ’ ἀρχῆς 1 Jn 1:1.

⁴¹ Cf. *Jub.* 1:27 (‘*em-qadāmi fe rat*, restored in 4Q216 [=4QJub^a] iv 7 by the editors as [... מְבִרְאִיָּה הַבְּרִיאָה ...]: DJD 13, 11); 4Q217 (=4QJub^b?) 2 2 (מִן הַבְּרִיאָה); *Ps. Sal.* 8:7 (ἀπὸ κτίσεως οὐρανοῦ καὶ γῆς); Josephus *War* 4:533 (ἀπὸ τῆς κτίσεως μέχρι νῦν); *1 En.* 69:17; 71:15 (‘*em-fe rat* ‘*ālam*’); *2 Bar.* 56:2 (מִבְּרִיאָה); the sg. מִבְּרִיאָה is conjectural: the Milan ms. has the pl. מִבְּרִיאָה); probably also *Wis* 6:22 (ἀπ’ ἀρχῆς γενέσεως; cf. D. Georgi, *Weisheit Salomos* [JSHRZ 3/4; Gütersloh: Mohn, 1980] 423 [n. c *ad loc.*]). For Latin references see the following note.

⁴² Cf. (ἀπ’ ἀρχῆς in the Greek sources unless otherwise noted) the Matthean parallel to Mark 10:6, Matt 19:4 (no Lukan parallel here); further Qoh 3:11 LXX (MT: מִבְּרִיאָה); *Wis* 9:8; 12:11; 14:13; Sir 15:14 (LXX: ἐξ ἀρχῆς; Hebrew ms. A: מִבְּרִיאָה [!]; ms. B: מִבְּרִיאָה, marginal reading מִבְּרִיאָה); 16:26 [24] (Hebrew ms. A: מִבְּרִיאָה); 24:9 (no Hebrew text); 39:25 (Hebrew ms. B: מִבְּרִיאָה); *1 En.* 2:2 (‘*em-qadāmi*; reference unclear, Milik restores מִן קַדְמִיָּה for 4QEn^a 1 ii 2, מִן קַדְמִיָּה for 4QEn^c 1 i 20, which might be ‘the first’ of the *works of creation*; see J. T. Milik, *The Books of Enoch: Aramaic Fragments of Qumrân Cave 4* [Oxford: Clarendon Press, 1976] 146–47, 184–85). Whether *1 En.* 83:11 (*diba qadāmi* ‘at the beginning’, textual variants) belongs here is unclear; cf. S. Uhlig, *Das äthiopische Henochbuch* (JSHRZ 5/6; Gütersloh: Mohn, 1984) 676 (n. c *ad loc.*). Cf. also the Latin references *Vit. Ad.* 44:4; *L.A.B.* 7:4; 32:7; 4 Ezra 4:30; 6:38; 10:10 (but textual-critically unsure); 10:14; 14:22; *Ass. Mos.* 1:13, 14, 17; 12:4 (cf. J. Tromp, *The Assumption of Moses: A Critical Edition with Commentary* [SVTP 10; Leiden: Brill, 1993] 143), although Latin *ab initio* might in some of these passages mean ‘in the beginning’; cf. for this possibility P. G. W. Glare (ed.), *Oxford Latin Dictionary* (Oxford: Clarendon Press, 1982) 2 (no. 12); K. E. Georges, *Ausführliches lateinisch-deutsches Handwörterbuch*

The well-established *temporal* sense of ἀρχή in the Greek references given in nn. 40–42, often construed with the preposition ἀπό, with some of them clearly translating forms derived from Hebrew עֲרֵא or Aramaic עֲרֵא, does not support the view that ἀρχή κτίσεως in Mark 10:6 originally signified the ‘*principle* of creation’ and translated a phrase like יְסוֹד הַבְּרִיאָה (cf. CD 4:21, see discussion below, section 4), either in the full form ἀπὸ δὲ ἀρχῆς κτίσεως, understood as ‘according to the principle of creation’ (thus J. de Waard),⁴⁴ or in a form without ἀπό that was only ‘changed in Mark to ἀπὸ ἀρχῆς κτίσεως’ (thus M. Kister).⁴⁵ The term ἀρχή never denotes ‘principle’ in the abstract sense elsewhere in the New Testament, and even in Rev 3:14 (and Col 1:18), where some have seen it come close to such a meaning, retains a personal and temporal connotation.⁴⁶ De Waard refers to *1 En.* 15:9 (Ge‘ez *qadāmitomu wa-qadāmi mašarrat*), where the Greek version attested in Codex Panopolitanus and in Syncellus has ἡ ἀρχὴ τῆς κτίσεως αὐτῶν καὶ ἀρχὴ θεμελίου. Nickelsburg in his commentary reckons now with the possibility of double rendering in Greek (and translates a hypothetical ‘the origin of their creation’),⁴⁷ but whatever the original wording of this passage was, I fail to see how it would yield de Waard’s ‘principle’ (other than by inferring the meaning of ἀρχή from that of θεμέλιος ‘foundation’, which I would deem erroneous).⁴⁸ The most straightforward interpretation of the phrase in Mark 10:6 is therefore a temporal one.

In sum, the argument of vv. 6–9 views matrimony as a lifelong joint between one man and one woman. It claims that this is God’s intent in creation and was so ‘from the beginning of the world’. It concludes that marriage must not be terminated. Exceptions are not considered. There is no abrogation of ‘Mosaic’ Law, but the provision of Deut 24:1 is seen as an emergency ruling that was not intended and is now no longer expected to be needed. On the other hand, Jesus does not merely

[...] (14th ed.; 2 vols.; Hannover: Hahn, 1976) 1:3 (no. II. A. 1: ‘sogleich nach, unmittelbar nach’); cf. only 4 Ezra 6:38: *ab initio creaturae in [!] primo die dicens*.

⁴³ Cf. J. Gnilka, *Das Evangelium nach Markus* (EKK 2; 2 vols., Zürich & Neukirchen: Benziger & Neukirchener Verlag, ⁵1998–99 [1978–79]) 2:72: The expression ‘kennzeichnet die beiden folgenden Schriftargumente aus Gen 1,27 und 2,24 über Schriftzitate hinaus als Äußerungen des in die Schöpfung hineinverfügten Gotteswillens’; W. R. G. Loader, *Jesus’ Attitude toward the Law: A Study of the Gospels* (WUNT 2/97; Tübingen: Mohr Siebeck, 1997) 89: ‘more than citing one scripture against another’; cf. Harvey, ‘Genesis versus Deuteronomy?’, *passim*.

⁴⁴ De Waard, *A Comparative Study*, 33 (cf. 32–33). But where would ἀπό denote ‘according to’?

⁴⁵ Kister, ‘Divorce’, at n. 23. Such a change remains speculative.

⁴⁶ Cf. D. E. Aune, *Revelation 1–5* (WBC 52; Dallas: Word, 1997) 256; [G.] Dellling, ‘ἄρχω κτλ.’, *TWNT* 1 (1933) 476–88: 482–83; *BDAG* 137–38.

⁴⁷ G. W. E. Nickelsburg, *1 Enoch 1: A Commentary on the Book of 1 Enoch, vol. 1: Chapter 1–36, 81–108* (Hermeneia; Minneapolis, Minn.: Fortress, 2001) 267 (translation), 268 (textual note).

⁴⁸ Kister, in a footnote, seems to suggest that both Mark 10:6 and CD 4:21 should also be taken as speaking of ‘the origin of creation’ (‘Divorce’, n. 23). Apart from the question how this relates to the proposed notion of ‘principle’, I find it semantically difficult for CD 4:21, as well as for a hypothetical ‘Markan’ text without ἀπό: ‘Male and female he created them’ is hardly the *origin* of creation.

negotiate between two scriptural passages but refers to a normative order in force since creation and calls for restoration of a practice that conforms to this order.

It is debated whether vv. 6–9, at least in their general thrust, can lay claim to going back to Jesus. Some scholars claim that Jesus would not have argued with Scripture; thus only v. 9, due to its virtually unique stance in Second Temple Judaism, could possibly be authentic, while vv. 6–8 derive from the early community.⁴⁹ This is sometimes connected with the observation we have also made that vv. 6–8 are directly dependent on the Septuagint.⁵⁰ However, that Jesus would not have argued with Scripture is a *petitio principii*. Why should Jesus be denied what other Jews in the Second Temple period clearly practised—i.e. argue points of marital law with reference to Gen 1 and / or 2?⁵¹ Further, we have seen that Mark 10:6–8 is not only a reference to Scripture but also to a creational reality. Moreover, the conclusion in v. 9 needs something to be based upon, and since it takes up ‘two’ and ‘one flesh’ from Gen 2:24, it is likely that this is close to the original flow of the argument. Finally, the wording of the scriptural passage could have been brought in line with the Septuagint by Mark or the tradition Mark picks up, since in their Greek speaking context this version could be expected; I was unable to register a single feature *only* in the Septuagint that is crucial for the argument. Thus I would cautiously argue that Mark 10:6–9, also in its reference to Gen 1 and 2, captures the thrust of Jesus’ stance on lifelong marriage. Our further discussion (below, § 4) will suggest that the context of the debate on marriage and divorce in Mark references what was probably crucial already for Jesus’ own view on marriage: the kingdom of God.

How does the continuation in vv. 10–12 relate to the preceding passage? Asked by his disciples in the house again about this matter (v. 10), Jesus answers:

⁴⁹ Cf., e.g., Schaller, ‘Ehescheidung und Wiederheirat’, 116 n. 45; H. Hübner, *Das Gesetz in der synoptischen Tradition* [...] (2nd ed.; Göttingen: Vandenhoeck & Ruprecht, 1986) 61–62 (Mark 10:9 and Matt 5:32 authentic); A. J. Hultgren, *Jesus and His Adversaries* [...] (Minneapolis: Augsburg, 1979) 121; Loader, *Jesus’ Attitude*, 39–55, 518–19; *Sexuality*, 95. Different particularly Berger, *Gesetzesauslegung*, 577 (claims ‘frühnachösterlich-hellenistischen Ursprung’ for the whole passage). Niederwimmer, *Askese*, 15–20, claims a reconstructed form of the synoptic sayings (see below), not Mark 10:6–9, as authentic.

⁵⁰ Berger, *Gesetzesauslegung*, 539, claims: ‘Der Schriftbeweis in Mk 10,3–8 ist nur auf Grund des LXX-Textes möglich’ (cf. 575). So also Gnllka, *Markus*, 2:73; Pesch, *Markusevangelium*, 2:124. Somewhat more cautious Loader, *Septuagint*, 124; *Sexuality*, 95 with n.101.

⁵¹ Cf. Tob 8:6 (and details above, n. 27); Sir 25:26 LXX (cf. Schaller, ‘Gen.1.2’, 56–57; Kister, ‘Divorce’, *after* n. 47); as well as the passages from the Damascus Document and 4QInstruction discussed in the present article. Cf. for the wider context the (in part, later) texts referred to above, nn. 12, 16, as well as *b. Ket.* 8a (cf. Schaller, ‘Gen.1.2’, 171–72).

(Mark 10:11) ... ὃς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ καὶ γαμήσῃ ἄλλην μοιχᾶται ἐπ’ αὐτήν·
 (12) καὶ ἐὰν αὐτὴ ἀπολύσασα τὸν ἄνδρα αὐτῆς γαμήσῃ ἄλλον μοιχᾶται.
 (Mark 10:11) ... Whoever divorces his wife and marries another one commits adultery against her;
 (12) and if she divorces her husband and marries another one, she commits adultery.

This saying takes a somewhat different stance from the previous argumentation, since it seems to acknowledge factual divorce (although without directly qualifying it as either acceptable or problematic) and apparently limits its objection to the subsequent remarriage of either husband or wife, whose actions are expressed in almost symmetrical terms. In my view, this is clearly a secondary development. This is corroborated by the situation of the synoptic parallels here. The synoptic interrelations are too complex⁵² to be analysed in detail in the confines of this paper; it must here suffice to say that traditio-historically speaking the older form is represented by the saying in Q (Matt 5:32 par. Luke 16:18), and here—in this I agree with scholars like Heinrich Greeven, Ulrich Luz, and recently Bill Loader⁵³—particularly the form in Matt 5:32, albeit without the later *porneia* clause:

(Matt 5:32) ... πᾶς ὁ ἀπολύων τὴν γυναῖκα αὐτοῦ παρεκτὸς λόγου πορνείας ποιεῖ αὐτήν μοιχευθῆναι, καὶ ὃς ἐὰν ἀπολελυμένην γαμήσῃ, μοιχᾶται.
 (Matt 5:32) ... Everyone divorcing his wife, except for a matter of sexual indecency, makes that she commits adultery, and whoever marries a divorced woman commits adultery.

In contrast to both Mark 10:11–12 and Luke 16:18, this version of the saying takes a Jewish perspective of potential polygyny, since a marriage can only be broken with reference to another man. The causation of adultery is implied in divorce insofar as

⁵² Cf. Schaller, ‘Ehescheidung und Wiederheirat’, 104–24 (literature until 1970 at 104 n. 2); D. Catchpole, ‘The Synoptic Divorce Material as a Traditio-Historical Problem’, *BRJL* 57 (1974/75) 92–127; Niederwimmer, *Askese*, 13–24; Hübner, *Gesetz*, 42–65; J. Nolland, ‘The Gospel Prohibition of Divorce: Tradition History and Meaning’, *JSNT* 58 (1995) 19–35; Instone-Brewer, *Divorce and Remarriage*, 147–77; Loader, *Sexuality*, 61–93 (with recent literature); and see the commentaries.

⁵³ Cf., e.g., H. Greeven, ‘Ehe nach dem Neuen Testament’, *NTS* 15 (1968/69) 365–88: 382–84; Niederwimmer, *Askese*, 17–20; Hübner, *Gesetz*, 46–47; U. Luz, *Das Evangelium nach Matthäus* (EKK 1; 4 vols.; Zürich & Neukirchen-Vluyn: Benziger & Neukirchener Verlag, ⁵2002 [³1992], ⁴2007 [²1996], 1997, 2002) 1⁵:358 (1³:269–70); and the careful discussion in Loader, *Sexuality*, 83–88. Contra, e.g., J. Gnlika, *Das Matthäusevangelium* (HTK 1; Freiburg: Herder, 1986, 1988) 1:165–66; Nolland, ‘Gospel Prohibition of Divorce’, 27; and the reconstruction in *The Critical Edition of Q* (ed. J. M. Robinson, P. Hoffmann & J. S. Kloppenborg; Minneapolis: Fortress, 2000) 470–71. Davies & Allison see Matt 5:32 closer to the Q form than Luke 16:18, which they see influence by Mark 10:11–12, but withhold judgment on whether Q or Mark represents the older tradition: W. D. Davies & D. C. Allison, *Matthew* (ICC; 3 vols.; Edinburgh: T&T Clark, 1988, 1991, 1997 [reprint London, 2004]) 1:528.

the natural assumption is that the divorced woman will remarry. The second half of the verse has precisely such a case in view. At any rate, the divorce here is *invalid*, and the marriage bond factually continues to exist. It is possible that the stance in Matt 5:32, similar to Mark 10:6–9, comes close to Jesus’ position on the matter.⁵⁴ In my view, Paul’s advice in 1 Cor 7:11 that if the woman ‘does separate, let her remain unmarried or else be reconciled to her husband’ (ἐὰν δὲ καὶ χωρισθῇ, μενέτω ἄγαμος ἢ τῷ ἀνδρὶ καταλλαγήτω) reflects, like Mark 10:11–12, an early development beyond the original prohibition of divorce that had arisen within the first two decades after the ministry of Jesus.

3. Establishing the Topic of CD 4:20–5:2

Let us now examine afresh the much-discussed passage CD 4:20–5:2:⁵⁵

- ... (CD 4:20)
 הם ניתפשים בשתים בזנות לקחת
 (21) שתי נשים בחייהם ויסוד הבריאה זכר ונקבה ברא אותם
 (5:1) ובאי התבה שנים שנים באו אל התבה ועל הנשיא כתוב
 (2) לא ירבה לו נשים ...

- (CD 4:20) ... They are caught by two (snares). By unchastity, (namely,) taking
 (21) two wives in their lives, while the foundation of creation is ‘male and female he created them’.
 (5:1) And those who entered (Noah’s) ark ‘went two by two into the ark’. And of the prince it is written,
 (2) ‘Let him not multiply wives for himself’.

The text deals with the entrapment of the ‘builders of the wall’ (cf. CD 4:19), most likely ‘a rival group, but a group which is considered as representative of the whole Israel outside the community’.⁵⁶ Here is not the place for detailed comments on the difficult phrase *הם ניתפשים בשתים בזנות*, which some have taken as ‘they have been caught twice in unchastity’; for the purpose of the present article I shall simply follow Schwartz’s translation and interpretation, according to which ‘they have been caught

⁵⁴ Similarly Hübner, *Gesetz*, 61–62 (see above, n. 49).

⁵⁵ Text and translation (the latter with slight adjustment) follow *The Dead Sea Scrolls: Hebrew, Aramaic, and Greek Texts with English Translations, Vol. 2: Damascus Document, War Scroll, and Related Documents* (ed. J. H. Charlesworth et al; Tübingen: Mohr Siebeck; Louisville: Westminster John Knox, 1995) 18–21. Responsible for this section is D. R. Schwartz.

⁵⁶ Thus F. García Martínez, ‘Man and Woman: Halakhah Based upon Eden in the Dead Sea Scrolls’, *Paradise Interpreted: Representations of Biblical Paradise in Judaism and Christianity* (ed. G. P. Luttikhuisen; Themes in Biblical Narrative 2; Leiden: Brill, 1999) 95–115: 103.

in two (sc. of the three nets of Belial, 4:15–18): (first,) by unchastity'.⁵⁷ Let us instead concentrate on the 'unchastity' that is dealt with here: 'taking two wives in their lifetime (בְּחַיֵּיהֶם)'. The precise meaning of this phrase is famously debated. Basically three interpretations are offered.⁵⁸

(1) The first one, argued above all by Jerome Murphy-O'Connor, Philip Davies, Florentino García Martínez and the late Hartmut Stegemann,⁵⁹ relates the masculine suffix in בְּחַיֵּיהֶם to the men and thus views any second marriage of a man under the verdict of 'fornication' ('once-in-a-lifetime' marriage, *Einzigehē*). Recently, Bernard Jackson has advocated a similar interpretation in light of eschatology: 'marriage, where permitted, is itself a concession, required for pragmatic reasons in order to support the eschatological project. That concession is itself to be strictly confined; the ideal remains celibacy'.⁶⁰ However, it emerges now from a cave 4 fragment of the Damascus Document, 4Q271 (=4QD^f) 3 10–12, with further parallels from cave 4,⁶¹ that a *widow* is unacceptable as a prospective bride *only* if she 'has been slept with since she was widowed' (אֲשֶׁר נִשְׁכְּבָה מֵאִשֶּׁר הִתְאַרְמְלָה, line 12), which implies that widows who have led a *blameless* life in their widowhood would be *suitable* candidates for marriage. Judging from the reciprocity of sexual relations assumed in the Scrolls elsewhere (see CD 5:9–10 and *Jub.* 41:25–26), we can with some confidence assume that remarriage would generally be possible for the *widower* as well. To be sure, remarriage after the death of the spouse is affirmed in the passage on the marriage of the king in 11QT^a 57:17–19.⁶²

⁵⁷ García Martínez, 'Man and Woman', 104 notes an important point that might support this second view: The pairing בְּחַיֵּיהֶם—בְּחַיֵּיהֶם '[escapes] from this—[trapped] in that' (CD 4:18–19) relates to individual 'nets', and thus one should also understand בְּשֵׁנִים—hence, 'in two' (sc. nets) and not 'twice'.

⁵⁸ Geza Vermes, in a foundational article ('Sectarian Matrimonial Halakhah in the Damascus Rule', *JJS* 25 [1974] 197–202), mentions four, although the additional one, a ban on divorce only, seems unsubstantiated: He attributes it to R. H. Charles, but see against this attribution J. A. Fitzmyer, 'Divorce Among First-Century Palestinian Jews', *ErIsr* 14 (1978) 103*–104*: 108* n. 24.

⁵⁹ J. Murphy-O'Connor, 'An Essene Missionary Document? CD II, 14–VI, 1', *RB* 77 (1970) 201–29; 220; P. Davies, *Behind the Essenes: History and Ideology in the Dead Sea Scrolls* (BJS 94; Atlanta: Scholars Press, 1987) 73–85; H. Stegemann, *Die Essener, Qumran, Johannes der Täufer und Jesus: Ein Sachbuch* (4th ed.; Freiburg: Herder, 1994) 269–70; García Martínez, 'Man and Woman'. Earlier proponents of this view were K. G. Kuhn, 'Qumran. 4', *RGG*³ 5 (1963) 749; J. Hempel, *ZAW* 68 (1956) 84 (in an appendix to Winter's article); Isaksson, *Marriage and Ministry*, 57–63.

⁶⁰ Jackson, "'Holier than Thou'?", 181.

⁶¹ Text in J. M. Baumgarten, *Qumran Cave 4. XIII: The Damascus Document (4Q266–273)* (DJD 18; Oxford: Oxford University Press, 1996) 175. Parallels: 4Q270 5 17–19; 4Q267 7 14; 4Q269 9 4–6.

⁶² Text and translation follow Y. Yadin, *The Temple Scroll* (3 vols.; Jerusalem: Israel Exploration Society et al., 1983, 1977) 2:258.

... (11QT^a 57:17) ולוא יקח עליה אשה אחרת כי

(18) היאה לבדה תהיה עמו כול ימי חייה ואם מתה ונשא

(19) לו אחרת מבית אביו ממשפחתו ...

(11QT^a 57:17) ... And he shall not take upon her another wife, for
(18) she alone shall be with him all days of her life. But should she die, he may take
(19) unto himself another (wife) from the house of his father, from his family.

Jackson has cautioned that this passage may deal with a prerogative of the king, who must not ‘die without issue’, since then ‘the eschatological leadership would disappear with him’.⁶³ Whilst the difference between the law of the king and the rules for common Israelites should methodologically be observed, it may not be substantial in the case of remarriage, as suggested by the evidence for remarrying widows in the 4QD fragment. I deem it therefore difficult to interpret CD 4:20–21 in terms of ‘once-in-a-lifetime’ marriage.⁶⁴

(2) Another view, argued for example by Larry Schiffman,⁶⁵ takes the suffix inclusively: As long as both husband and wife are alive, the husband may not take another wife. Therefore, *both* polygyny *and* remarriage after divorce, as long as the ex-spouse is still alive, are forbidden. Indeed, the Damascus Document knows of divorce, as has been finally clarified by 4Q266 (=4QD^a) 9 iii 4–7, but apparently closely monitors its application since it rules that a community official, the *mevaqqer*, must advise a man planning to divorce his wife (compare למגרש וכן in the parallel CD 13:17, also 11QT^a 54:4–5; 66:8–11).⁶⁶ Now, is there any evidence suggesting that

⁶³ Jackson, “‘Holier than Thou’?”, 181.

⁶⁴ Neither Jackson nor García Martínez—both writing after the publication of DJD 18 and Shemesh’s pertinent article mentioned below, n. 68—addresses the evidence of 4Q271 frg. 3 with respect to our issue.

⁶⁵ L. H. Schiffman, ‘Laws Pertaining to Women in the *Temple Scroll*’, *The Dead Sea Scrolls: Forty Years of Research* (ed. D. Dimant & U. Rappaport; STDJ 10; Leiden: Brill; Jerusalem: Magnes & Yad Ben-Zvi, 1992) 210–28; 217 [repr. in idem, *The Courtyards of the House of the Lord: Studies on the Temple Scroll* (ed. F. García Martínez; STDJ 75; Leiden: Brill, 2008) 519–40; 527]; for earlier proponents of this view see Winter, *ZAW* 68, 76–78, who sides with it as well and vigorously claims that the solution to the problem does not lie in the scriptural references adduced in the text but only in the use of בְּחַיֵּיהֶם (as if the meaning of the latter were patent!); J. A. Fitzmyer, ‘The Matthean Divorce Texts and Some New Palestinian Evidence’, idem, *To Advance the Gospel: New Testament Studies* (New York: Crossroad, 1981) 79–111; 96; similarly J. M. Baumgarten, ‘The Qumran-Essene Restraints on Marriage’, *Archaeology and History in the Dead Sea Scrolls [...]* (ed. L. H. Schiffman; JSJSup 8; Sheffield: JSOT Press, 1990) 13–24; 15, who however assumes that the ban on remarriage after divorce was not in force for ‘common’, not particularly scrupulous members. See also the article by Shemesh, below, n. 68.

⁶⁶ Cf. C. Wassen, *Women in the Damascus Document* (Academia Biblica 21; Leiden: Brill, 2005) 116–17, 159–64; previously G. Brin, ‘Divorce at Qumran’, *Legal Texts and Legal Issues [...]* (ed. M.

one must await the death of the spouse before remarriage? The Temple Scroll's interest in the duration of the king's marriage until the death of his wife might be a point in reference, but then it is a special case and is not about divorce (which does not seem possible here).⁶⁷ More to the point, Aharon Shemesh has drawn attention to a peculiarity of the fragment 4Q271 3 mentioned earlier: There, two classes of generally marriageable women are mentioned, who are however disqualified in case of extramarital sexual activity: the *unmarried* still living with her parents and, as we saw, the *widow*; but another class of women is conspicuously missing—the *divorcee*. Shemesh concludes, 'the halakhah's omission of the divorcee attests that sectarian halakhah outlawed remarriage subsequent to divorce as long as a former spouse was still living'.⁶⁸ In a forthcoming book, Shemesh argues more broadly that according to the sectarians, on the one hand, every couple has been made for one another in the blueprint of creation but, on the other hand, all are free to remarry after the death of a partner, which would apply equally to a divorced couple.⁶⁹

It needs to be admitted that much of this relies on *argumentum e silentio*. Vered Noam has alternatively suggested to explain the divorcee's absence in this fragment by pointing to relics of an old view of the divorcee in rabbinic texts, close to Shammaite interpretation of Deut 24:1, according to which every divorcee has the image of an adulteress—since according to this view she would have been divorced only for adultery—and is thus an inappropriate candidate.⁷⁰ So far there is no clear evidence to suggest that a divorcee, according to the Scrolls, had to wait for the ex-spouse's death in order to remarry. It may also be noted that the assumption of

J. Bernstein, F. García Martínez & J. Kampen; STDJ 23; Leiden: Brill, 1997) 231–44. Also an amended interpretation of 4Q159 2–4 9–10 points to affirmation of divorce, although it is excluded in the case of an unjustly slandered woman discussed there. For the reading of Mal 2:16 in 4QXII^a, allowing divorce, see above, n. 5.

⁶⁷ Pace T. Holmén, 'Divorce in CD 4:20–5:2 and 11QT 57:17–18: Some Remarks on the Pertinence of the Question' *RevQ* 18/71 (1998) 397–408: 404–07, who does not pay sufficient attention to the specifics of the current passage when he infers from 11QT^a 54:4–5; 66:8–11 the option of divorce for the king as well.

⁶⁸ A. Shemesh, '4Q271.3: A Key to Sectarian Matrimonial Law', *JJS* 49 (1998) 244–63: 246.

⁶⁹ A. Shemesh, *Halakhah in the Making: From Qumran to the Rabbis* (Berkeley: University of California Press, forthcoming) **chapter 4**.

⁷⁰ V. Noam, 'Divorce in Qumran in Light of Early Halakhah', *JJS* 56 (2005) 206–223. She refers to texts demanding *witnesses* of the adultery of the wife to be divorced or discussing their role (*Sif. Bem.* §§ 7, 19; *m. Sota* 6:3; *b. Git.* 89a, 90a), which is in line with Shammaite interpretation of דבר ערוה (cf. *m. Git.* 9:10); even in a (lengthy) baraita attributed to R. Meir the view of the divorcee as *transgressor* can be detected (*t. Sota* 5:9).—That the fragment of 4Q271 represents a list of *unsuitable* candidates does not sufficiently become clear in Noam, 'Divorce', 220, 223 ('list of candidates for marriage'). Also, her assertion that 'the sect denounced marriage to a divorcee, just as Jesus denounced it' (222–23) somewhat simplifies the New Testament evidence.

⁷¹ Cf. Josephus, *Ant.* 4:253 (λάβροι [sc. the woman] γὰρ ἂν οὕτως ἐξουσίαν συνοικεῖν ἐτέρῳ); Mur 19 recto 5–7 (cf. 17–19; this is a *Doppelurkunde*): P. Benoît, J.T. Milik & R. de Vaux: *Les grottes de Murabba'ât (Texte)* (DJD 2; Oxford: Oxford University Press, 1961) 105–06 (גבר יהודי די תצבין גבר יהודי די תצבין), translated by the ed. ‘que tu es libre pour ta part de t’en aller et de devenir femme de tout homme juif que tu voudras’); *m. Git.* 9:3 (של נט הרי את מותרת לכל אדם) גופו ‘The essence of the ge : lo, you are allowed to any man’, and thereafter in Aramaic גבר דהצבין לכל למחך להתנסבא לכל ‘to go and be married to any man you wish’).

⁷³ Cf. E. Qimron, *The Hebrew of the Dead Sea Scrolls* (HSS 29; Atlanta: Scholars Press, 1986) 62: 'the forms $\text{זֶה}(\text{ה})$, $\text{זֶה}(\text{ה})$ are also used as feminine suffixes. ... $\text{זֶה}(\text{ה})$ occurs 8 times (5 doubtful, e.g. אֶהְרִי־הָ [1Q] M 2: 13' (see also op. cit. 63 n. 79); cf. idem, 'A Grammar of the Hebrew Language of the Dead Sea Scrolls' (PhD diss.; Hebrew University of Jerusalem, 1976) 248 (in Hebrew), with further references. Based on Qimron, Annette Steudel claims 'viele grammatische Parallelen' to replacement of feminine with masculine suffix: 'Ehelosigkeit bei den Essenern', *Qumran kontrovers: Beiträge zu den Textfunden vom Toten Meer* (ed. J. Frey & H. Stegemann; Paderborn: Bonifatius, 2003) 115–24: 124.

⁷⁴ Polygyny only has already been argued by L. Ginzberg, *Eine unbekannte jüdische Sekte, Erster Teil* (New York, 1922 [reprint 1972]) 24–26; further by Rabin, *Zadokite Documents*, 17; E. Lohse, *Die Texte von Qumran: Hebräisch und Deutsch* (4th ed.; Darmstadt: Wissenschaftliche Buchgesellschaft, 1986) 288; G. Vermes, ‘Sectarian Matrimonial Halakhah’, 197–202; D. Instone-Brewer, ‘Nomological Exegesis in Qumran “Divorce” Texts’, *RevQ* 18/72 (1998) 561–579; idem, *Divorce*, 65–72; Holmén, ‘Divorce’, 399–404; Schremer, ‘Qumran Polemic’, 147–160; Steudel, ‘Ehelosigkeit’, 123–24; Wassen, *Women*, 114–118; and chiefly because of the proof texts use, I. C. Werrett, *Ritual Purity and the Dead Sea Scrolls* (STDJ 72; Leiden: Brill, 2007) 82–85.

⁷⁵ לִצְדָּק 'producing rivalry'; thus J. Milgrom, *Leviticus 17–22: A New Translation with Introduction and Commentary* (AncB 3A; New York et al.: Doubleday, 2000) 1549.

taken as ‘fellow Israelite’. This catchword allusion to Lev 18:18 may align CD 4:20–21 with *concomitant* polygyny rather than successive and may be similarly at work in the expression ‘all days of her life’ (כול ימי חייה) in 11QT^a 57:18.⁷⁶ In addition, that CD 4:20–5:2 is about concomitant polygyny might also be suggested by the reference to the marriage of the king, ‘Let him not multiply wives for himself’ (Deut 17:17), as well as from the following example of David, whose problem with regards to this law was that he had several wives *simultaneously*, not that he did not wait until the death of one of his spouses to enter a new marriage (cf. only 2 Sam 3:2–5; 5:13).⁷⁷

García Martínez has criticised this solution, urging that ‘two basic methodological points’ be heeded in the interpretation of the passage: first, ‘the text of CD as it stands yields perfect sense’, and second, ‘every text should be interpreted on its own’.⁷⁸ As to the second point, I have avoided to let the passage about the king in the Temple Scroll set the agenda for the passage in the Damascus Document and have noted both similarity (on remarriage after the death of the spouse, see above on 4Q271 frg. 3) and difference (on divorce, see above on 4Q266 frg. 9). As to the first point, it should be noted that considering בַּחֲיִיהֶם an *orthographic variant* of בַּחֲיִיהֶן *does* take the text as it stands, since assuming an attested variant is not the same as emending the text.⁷⁹ Taking all aspects of the discussion together, I conclude that while interpretation no. 2 cannot be ruled out, I see a slight advantage for no. 3, particularly on account of the third proof text and perhaps also the possible intertextual relation to Lev 18:18, with the spelling of בַּחֲיִיהֶם not being an obstacle for this interpretation.

4. Comparison and Tentative Conceptualisation

The difference in topic established for CD 4:20–5:2 and Mark 10:6–9 has important consequences for the comparison of these two texts, which suggests a more nuanced

⁷⁶ One should distinguish for CD 4:20–5:2 between this *catchword allusion* and the following *quotations*. At times, the impact of Lev 18:18 is overestimated (this tendency in Instone-Brewer, *Divorce and Remarriage*, 68–72, who also incorrectly claims that according to Ginzberg בַּחֲיִיהֶם does not need to be emended). For 11QT^a 57:18, D. D. Swanson, *The Temple Scroll and the Bible: The Methodology of 11QT* (STDJ 14; Leiden: Brill 1995) 138 considers the possibility that כּוֹל יְמֵי חַיֶּיהָ can also be seen in light of Deut 17:19 (with reference to Torah) or Prov 31:12 (to the ‘capable wife’, here with respect to her watchfulness). In terms of semantics, however, none of these texts fully matches the passage in 11QT^a; thus, it cannot be shown that this passage emphasises *only* the watchfulness of the king’s consort (contra Holmén, ‘Divorce’, 404–407).

⁷⁷ Cf. Lichtenberger, ‘Schöpfung’, 280–81.

⁷⁸ García Martínez, ‘Man and Woman’, 107.

⁷⁹ Thus also Kister, ‘Divorce’, n. 26.

discussion than sometimes found in scholarship. First, let us compare the *repertoire of quotations*. The first one is apparently the same in CD and in Mark, namely Gen 1:27c.⁸⁰ Thus, ‘male and female he created them’ could be invoked for rejection of either polygyny (CD) or divorce (Mark). However, the next two quotations in CD move into a different direction. The first half of CD 5:1 quotes an abbreviated form of Gen 7:9a:

(CD 5:1a) ובאוי התבה שנים שנים באו אל התבה

(CD 5:1a) And those who entered (Noah’s) ark ‘went two by two into the ark’.

(Gen 7:9a, b) שנים שנים באו אל-נח אל-התבה זכר ונקבה כאשר צוה אלהים את-נח

(Gen 7:9a, b) Two by two they went to Noah, (in)to the ark—male and female, as God had commanded Noah.

This is probably a case of (later so-called) *gezera šawa*, since beyond the quoted words Gen 7:9(b) continues, like Gen 1:27c, with ‘male and female’ (זכר ונקבה).⁸¹ Whilst in Mark Gen 2:24 is referred to for an argumentation favouring *lifelong marriage* of the (two) spouses, the quotation in CD highlights the match of ‘*two each*’ or ‘*in pairs*’, i.e., no more than two; this would seem to apply irrespective of whether one opts for concomitant or successive polygyny as denounced in CD. The third quotation in CD, Deut 17:17, prohibiting the king from multiplying wives, is, as we saw, best seen as directed against concomitant polygyny. In contrast to the Temple Scroll (11QT^a 56:18–19; 57:17–19), where monogamy is required of the *king*, CD draws on this verse in favour of general monogamy. These differences speak strongly against Instone-Brewer’s thesis that Gen 1:27 in ‘popular exegesis’ was ‘normally linked with Genesis 7:9’ and that the later quotation has merely ‘been lost in the abbreviated argument’ in Mark 10.⁸² Instead, we see here *related but sufficiently different* forms of how in Second Temple Judaism marriage laws could be aligned with antediluvian incidents. We need this term, ‘antediluvian’, here to accommodate the second quotation in CD, from Gen 7:9, while in Mark 10:6–8 *both* quotations are from Gen 1 and 2, thus relate to the ‘supralapsarian’ first couple. In

⁸⁰ In CD this conforms to MT, except for *plene* spelling of אלהים. For the possibility that Mark 10:6 refers to Gen 5:2aα (alongside or instead of Gen 1:27c?), see above n. 12. In Gen 5:2aα, MT has the suffixed form בראם.

⁸¹ As far as I am aware, this has first been spotted by Schaller, ‘Gen.1.2’, 70–71.

⁸² Instone-Brewer, *Divorce*, 139. To be sure, he admits, ‘the text of Genesis 7:9 is not, strictly speaking, necessary for understanding the force of Jesus’ argument.’ Indeed not.

contrast, CD supplements the references to Genesis by the Deuteronomic law of the king, the only quotation explicitly introduced as such (כהוב, CD 5:1).⁸³

The differences in the range of quotations in CD and Mark match another, albeit subtler difference in the reference to creation that is often overlooked.⁸⁴ To be sure, that both texts explicitly refer to ‘creation’ (בריאה, בריאה)⁸⁵ reflects a similarity in topic. However, syntactically and semantically these references are realised differently. Whilst in Mark ἀπὸ δὲ ἀρχῆς κτίσεως is construed as a temporal adverbial phrase qualifying God’s action, ויסוד הבריאה is most probably a nominal sentence, whose ‘predicative noun’ is the quotation of Gen 1:27c. The syntactic evidence ties in with a semantic difference: Whereas the phrase ‘from the beginning of creation’ in Mark carries a clear temporal notion and refers *to the beginning and the time elapsed since then*, as we have argued above,⁸⁶ CD 4:21 ‘the foundation of creation’ (יסוד הבריאה) suggests rather a *pattern*, something like a blueprint for creation or a principle of creation, without temporal notion and certainly without the aspect of elapsing time.⁸⁷ This pattern can then be retrieved also outside the context of the Creation and Eden stories: in the entry into the ark in pairs and in the Torah’s requirement of the king’s monogamous marriage. The term יסוד denotes something like ‘foundational law’ also in other passages in the Scrolls.⁸⁸

⁸³ See also, in the following apology for David’s polygyny, the statement that David was unable to read the regulation of the matter in ‘the sealed book of the Torah which was in the Ark (of the Covenant), for it was not opened in Israel since the day of the death of Eleazar and Joshua and the elders’ (CD 5:2–4).

⁸⁴ See Instone-Brewer, *Divorce and Remarriage*, 138: ‘semantically identical’; cf. H. Muszynski, *Fundament—Bild und Metapher in den Handschriften aus Qumran* (AnBib 61; Rome: Biblical Institute Press, 1975) 141–2. More cautious is Berger, *Gesetzesauslegung*, 546–47.

⁸⁵ On the nominal form בריאה in the Qumran texts, which in the Hebrew Bible is scarcely attested and hardly reaches the level of abstraction, e.g., of rabbinic usage (only Num 16:30 ‘Neugeschaffenes, Wunderbares’, thus Gesenius¹⁸; cf. Sir 16:16 בריית ‘creatures’), cf. F. García Martínez, ‘Creation in the Dead Sea Scrolls’, *The Creation of Heaven and Earth [...]* (ed. G. H. van Kooten; Themes in Biblical Narrative 8; Leiden; Brill, 2005) 49–70: denotes ‘both the creative act by God (the singular noun בריאה, the creation) and the results of this creative act (its plural בריאות, the creatures’ (53). On κτίσις as theological achievement of Greek-speaking Judaism cf. the brief but excellent remarks in R. Feldmeier, ‘Die Wirklichkeit als Schöpfung: Die Rezeption eines frühjüdischen Theologoumenons bei Paulus’, *Judaistik und neutestamentliche Wissenschaft* (ed. Doering, Waubke & Wilk) 289–96: 289–93; as well as E. Adams, *Constructing the World: A Study in Paul’s Cosmological Language* (Studies of the New Testament and its World; Edinburgh: T&T Clark, 2000) 77–81.

⁸⁶ See above, at nn. 40–48.

⁸⁷ Thus also Schremer, *Male and Female*, 48 n. 58, and in particular García Martínez, ‘Creation in the Dead Sea Scrolls’, 62–63: ‘Creation is not seen here as a temporal marker of the beginning of mankind, but as an expression of its nature.’

⁸⁸ E.g. in 1QH^a 20:10–11 (12:8–9 Sukenik) עת יסודי קצ or CD 10:6 וביסודי הברית 12:7 (here sometimes ששה מבוננים בספר ההגה). Cf. Muszynski, *Fundament*, 136–168; cf. also 1Q34bis 2:7 (here sometimes יסודי is read); CD 19:4; 1QS 6:26; 7:18; 8:8,10.

One might object that we need to assume a temporal notion for another, albeit fragmentary and restored, reference to **יְסֹד הַבְּרִיאָה**: In 4Q320 1 i 2–3, the editor of this text, Shemaryahu Talmon, has reconstructed **בִּיְסֹד [הַבְּרִיאָה]**; according to his translation, some heavenly body—whether moon or sun is debated—is said ‘[to] sh]ine[in]the middle of the heavens at the foundation of [Creatio]n) from evening until morning ...’.⁸⁹ Crucial for this reconstruction is Talmon’s reading of the last letter, the only one surviving from the second word, as *he*. However, García Martínez has justly pointed out that, regarding the remains of the letter in question, ‘in the oldest photograph of the fragment (PAM 40.611), the first stroke joins the second at a clear angle, making the reading of the remains as an *ayin* the most logical solution’. García Martínez suggests restoring **בִּיְסֹד [הַרְקִי]ע** ‘at the base of the [vaul]t’, a reading already proposed in the *Dead Sea Scrolls Study Edition*.⁹⁰ It is thus very likely that the alleged attestation of **יְסֹד הַבְּרִיאָה** with temporal connotation should be discarded.

In contrast, the notion of a pattern of creation ties in rather well with other evidence in the Scrolls, according to which halakhah follows the natural state of affairs. Daniel Schwartz has labelled this Qumran’s ‘realism’ as opposed to what he sees as Pharisaic-rabbinic ‘nominalism’. Although aspects of Schwartz’s theory have met criticism and call for some refinement, I deem it helpful for understanding the Qumran approach to halakhah.⁹¹ The first passage to mention in this respect is at the same time another reference to a non-temporal use of **בְּרִיאָה** in the Damascus

⁸⁹ Cf. Talmon et al., *Qumran Cave 4. XVI: Calendrical Texts* (DJD 21; Oxford: Clarendon Press, 2001), 42–43, 44–45. Talmon comments that **יְסֹד** and **הַבְּרִיאָה** virtually form a *hendiadyoin*: ‘Conjoined in an A + B structure the two nouns connote “Creation” (not “foundation of the creation” or “of the firmament”’, and he renders the expression in CD 4:21 with ‘(the essence of) Creation’, while for 4Q320 he assumes ‘a temporal not a spatial signification’ and ‘refers to the luminaries’ function of giving light on earth throughout the entire (fourth) day (of Creation)’ (op. cit., 44–45).

⁹⁰ García Martínez, ‘Creation in the Dead Sea Scrolls’, 61; cf. *DSSSE* 2:678–79.

⁹¹ See D. R. Schwartz, ‘Law and Truth: On Qumran-Sadducean and Rabbinic Views of Law’, *The Dead Sea Scrolls: Forty Years of Research* (ed. D. Dimant & U. Rappaport; STDJ 19; Leiden: Brill; Jerusalem: Magnes & Yad Ben-Zvi, 1992) 229–40. For criticism cf., e.g., J. L. Rubenstein, ‘Nominalism and Realism in Qumran and Rabbinic Law: A Reassessment’, *DSD* 6 (1999) 157–83; E. Regev, ‘Were the Priests all the Same? Qumran Halakhah in Comparison with Sadducean Halakhah’, *DSD* 12 (2005) 158–88. Cf. also L. Doering, ‘Überlegungen zum halachischen Ansatz der Qumrantexte’, *Qumran kontrovers* (ed. Frey & Stegemann) 89–113 (based on a paper given in 1998), where I proposed the term ‘voluntarism’ instead of the problematic label ‘nominalism’ (108). Schwartz has in the meantime defended and refined his view; see his ‘“Qal va-Homer” Arguments as Sadducean Realism’, *Massekhet* 5 (2006) 145–56 (in Hebrew). Cf. also his ‘On Pharisees and Sadducees in the Mishnah: From Composition Criticism to History’, *Judaistik und neutestamentliche Wissenschaft* (ed. Doering, Waubke & Wilk) 133–45, where Schwartz argues for the historical probability of attributing a ‘realist’ approach to the Sadducees and a ‘nominalist’ one to the Pharisees.

Document:⁹² According to CD 12:14–15, locusts are to be thrown alive into water or fire, ‘since this is the rule of their creation’ (כי הוא משפט בריאתם). The creational ‘nature’ of these insects allowed for consumption determines the mode of their preparation, different from other edible animals. Linguistically speaking, the term משפט in this passage stands in paradigmatic relation⁹³ with יסוד of CD 4:21. While this does not suffice for assuming synonymous expressions,⁹⁴ it certainly suggests semantic similarity: both terms denote some kind of norm or standard with respect to creational reality. Another example of such ‘realism’ might be seen in *Jub.* 12:25–7, 21:10, according to which Enoch and Noah read the halakhah off from creation, into which the creator’s Hebrew word has been engraved.⁹⁵ Perhaps we can add also the reference in Jubilees to laws who seem to be written on Heavenly Tablets, not as a response to events in the times of the Patriarchs, but conversely rather as a blueprint for these events, as has been argued by Cana Werman.⁹⁶

The denial of polygyny in the Damascus Document is thus a law that was instituted in creation and can be read off from reality and Scripture. There is no indication that the instituted order had *generally* been disturbed or has only recently been recovered; the impression is that the group responsible for CD has preserved the law, and it is the opponents who have been caught in the ‘nets’ of Belial. Essential is the correct interpretation of the Torah, which captures creational reality: since David did allegedly not have access to the book of the Torah, his polygamy can be excused.

With a different slant, the Markan text refers to the elapsing of time, ἀπὸ δὲ ἀρχῆς κτίσεως. Within the passage in Mark, the reference points to a discrepancy between the instituted order and the ‘Mosaic’ concession, given ‘because of your hardness of heart’. The late Hartmut Stegemann suggested that what we encounter here is a model of restoration of paradisiacal conditions in the kingdom of God, an

⁹² Cf. García Martínez, ‘Creation in the Dead Sea Scrolls’, 63–64.

⁹³ Cf. W. Egger, *Methodenlehre zum Neuen Testament: Einführung in linguistische und historisch-kritische Methoden* (Freiburg: Herder, 1987) 111–12; ET: *How to Read the New Testament: An Introduction to Linguistic and Historical-Critical Methodology* (Peabody [Mass.]: Hendrickson, 1996) 102–03.

⁹⁴ Note that בריאתם is construed with a suffix and therefore directly related to the ‘locusts’, whereas CD 4:21 speaks more open-endedly of ‘the creation’, which allows for inclusion of more than those reproached, such as those entering the ark or the king.

⁹⁵ K. Müller, ‘Die Hebräische Sprache der Halacha als Textur der Schöpfung: Beobachtungen zum Verhältnis von Tora und Halacha im Buch der Jubiläen’, *Bibel in jüdischer und christlicher Tradition: FS J. Maier* (ed. H. Merklein, K. Müller & G. Stemberger; BBB 88; Frankfurt: Hain, 1993) 157–76.

⁹⁶ Cf. C. Werman, ‘The תורה and the תעודה Engraved on the Tablets’, *DSD* 9 (2002) 75–103: 85–89.

Urzeit-Endzeit correlation.⁹⁷ For Stegemann, Satan's removal from power, as reflected in sayings such as Luke 10:18 or Mark 3:23–27, enables not only the casting out of demons but more broadly the restoration of primordial conditions. Thus, in the kingdom of God, whose inauguration is announced by Jesus, the couple would indeed regain lifelong partnership instituted 'from the beginning of creation' but eclipsed for long by 'hardness of hearts', on account of which Moses gave the concession of Deut 24:1, which is now no longer needed.

I think Stegemann's theory has something to commend. The general demand of lifelong marriage without the loophole of divorce amounts to what A. E. Harvey has called 'strenuous commands',⁹⁸ difficult demands running counter common experience and requiring efforts widely deemed *unattainable* elsewhere in ancient Judaism, even according to the Qumran texts. This begs the question of the *conditions* of such an ethics, and Stegemann is probably right in pointing to the importance of the notion of the *kingdom of God* for Jesus' stance. The nexus with the kingdom is retained in the context of the divorce pericope in Mark, which is dominated by the conditions of discipleship (Mark 8:27–10:52) and virtually framed by numerous references to the βασιλεία τοῦ θεοῦ⁹⁹—'a larger concentration than in any other part of the gospel'.¹⁰⁰ Moreover, while the motif of 'hardness of hearts' is generally related to rebellion against God's commandments,¹⁰¹ the opening chapters of *First Enoch* with their announcement of divine intervention and judgment more specifically contrast those accused of being 'hard of heart' (*I En.* 5:4)¹⁰² with the divinely appointed *creational order* visible in nature (1:9–5:4): the 'hard of heart'

⁹⁷ H. Stegemann, 'Der lehrende Jesus: Der sogenannte biblische Christus und die geschichtliche Botschaft Jesu von der Gottesherrschaft', *NZStH* 24 (1982) 3–20.

⁹⁸ A. E. Harvey, *Strenuous Commands: The Ethic of Jesus* (London & Philadelphia: SCM & Trinity Press, 1990).

⁹⁹ Mark 9:47 (cf. 35–37, 43); 10:14, 15, 23, 24, 25 (cf. 29–31).

¹⁰⁰ R. T. France, *The Gospel of Mark [...]* (NIGTC; Grand Rapids: Eerdmans, 2002) 386; F. J. Matera, *New Testament Ethics: The Legacies of Jesus and Paul* (Louisville [Ky.]: Westminster John Knox, 1996) 29.

¹⁰¹ MT and the books of LXX show varying terminological equivalence here: σκληροκαρδία translates עֲרִלְתָּ לֵב at Deut 10:16; Jer 4:4; σκληροκαρδῖος renders (in the plural) קִשְׁי־לֵב at Ezek 3:7 and (in the singular) עֲקֻשׁ־לֵב at Prov 17:20. Cf. further *I En.* 5:4 (see presently); 16:3 (directed at the Watchers); 98:11 (reconstruction debated); 100:8. Cf. also the related (see Deut 10:16; *I En.* 98:1) term σκληροτραχὴλος: Exod 33:3, 5; 34:9; Deut 9:6, 13; Prov 29:1 (translating מִן־קִשְׁי־עֵרָה [מ]); Sir 16:11; Bar 2:30. In the NT cf. Acts 7:51 σκληροτραχὴλοι καὶ ἀπερίτμητοι καρδίαις καὶ τοῖς ὤσιν. K. Berger, 'Hartherzigkeit und Gottes Gesetz: Die Vorgeschichte des antijüdischen Vorwurfs in Mk 10,5', *ZNW* 61 (1970) 1–47, has gathered the material but tends to synthesise vastly disparate sources.

¹⁰² Ge'ez: *yebūsāna lebb*; Cod. Panopolitanus: σκληροκαρδιοι; Milik, *Books of Enoch*, 146, reconstructs קִשְׁי לֵב in 4QEn^a 1 ii 14.

have not ‘acted according to his commandments’ and have ‘turned aside’ (5:4), whereas God’s works ‘do not alter their paths’ (2:1). The statement about ‘hardness of hearts’ in Mark is similar in that it also references a deviation from the creational status.¹⁰³ That the Mosaic concession is now dispensed with points to a restoration of that status.

However, two major criticisms seem in order: First, Stegemann overshoots the mark in the extent to which this theory is applicable. For him, virtually all items of the Mosaic Torah are replaced by a so-called ‘Creation Torah’ (*Schöpfungstora*).¹⁰⁴ However, the Gospels mention only divorce and Sabbath as legal issues in which primordial conditions are invoked. Thus, apart from divorce, Jesus states in Mark 2:27 that ‘the Sabbath has become (ἐγένετο) for humankind, not humankind for the Sabbath’. As I read this text, it implies that provisions for people in need are allowed for on the Sabbath—people who are hungry, as perhaps implied in the scene of the plucking of corn, or chronically sick, as in the other Gospel Sabbath pericopae. The basis for this is the relationship between Sabbath and human beings established in creation but—this is the implicit claim—eclipsed in the halakhah of Jesus’ disputants.¹⁰⁵ But I do not see further signs of such reasoning in the Gospels. For example, the attitude towards purity laws in Mark 7 par. Matt 15 is not coupled with a reference to creation.¹⁰⁶ In other words, the Jesus tradition claims restoration of

¹⁰³ Here with Berger, ‘Hartherzigkeit’, 25, who points out (37) that transgression of creational boundaries is also referred to in *1 En.* 16:3, where the Watchers’ revelation of the mystery to the terrestrial women is credited to ‘hardness of hearts’.—There is some debate whether the law in *1 En.* 1–5 is the Mosaic Torah or the law of nature; see A. Bedenbender, *Der Gott der Welt tritt auf den Sinai: Entstehung, Entwicklung und Funktionsweise der frühjüdischen Apokalyptik* (ANTZ 8; Berlin: Institut Kirche und Judentum, 2000) 228–29, but Bedenbender, who—against J. J. Collins—favours the former, admits that the text is ambiguous and suggest a rapprochement of Enochic and Mosaic notions of Torah. While the text might allude to the Mosaic Torah (mainly through the reference to Sinai in 1:4), it maintains the agreement of law and created nature, from which the ‘hard of heart’ deviate.

¹⁰⁴ This has subsequently been developed by Stegemann’s pupil J. Sauer, *Rückkehr und Vollendung des Heils: Eine Untersuchung zu den ethischen Radikalismen Jesu* (Regensburg: Roderer, 1991).

¹⁰⁵ Cf. at greater length L. Doering, *Sabbat: Sabbathalacha und –praxis im antiken Judentum und Urchristentum* (TSAJ 78; Tübingen: Mohr Siebeck, 1999) 408–32, 441–56, and idem, ‘Much Ado about Nothing? Jesus’ Sabbath Healings and their Halakhic Implications Revisited’, *Judaistik und neutestamentliche Wissenschaft* (ed. Doering, Waubke & Wilk) 217–41: 236–41.

¹⁰⁶ Contra U. Schnelle, ‘Jesus, ein Jude aus Galiläa’, *BZ NS* 32 (1988) 107–113, who argues that Mark 7:15 aims at restitution of primordial conditions, since ‘von Anfang der Schöpfung an bestand die Unterscheidung Rein – Unrein nicht. Erst in Gen 7,2 erfolgt unvermittelt die Trennung von reinen und unreinen Tieren’ (113). But the Markan text does not reference this; apart from this, the relevance of the distinction between clean and unclean animals for other aspects of the system of purity and impurity (e.g., hand washing, Mark 7:2–5) is problematic. Neither does Luke 11:40–41 (cf. *G. Th.* 89), with clear reference to the act of creation, suggest primordial indifference between pure and impure; it rather urges interior *purity*, whilst taking its argumentative cue from exterior purity. Note also that

paradisiacal conditions with legal ramifications only where there is *explicit warrant* for such conditions and ramifications in the creation and Eden narrative.¹⁰⁷

The second criticism that I would level at Stegemann's theory is that restoration of primordial conditions is not an entirely fair description of the eschaton in the Jesus tradition. What about the element of perfection? I can only hint at the problem here: Apparently, lifelong marriage is not the only option in the Jesus tradition. There are 'eunuchs who have made themselves eunuchs for the sake of the kingdom of heaven' (Matt 19:12).¹⁰⁸ Jesus himself seems to have remained unmarried, which is most likely somehow related to the eschatological urgency of his ministry.¹⁰⁹ Marriage is a provisional, or to speak with Dietrich Bonhoeffer, a 'penultimate' order, since in the resurrection from the dead 'they neither marry or are given in marriage but are like the angels in heaven' (Mark 12:25 parr.).¹¹⁰ It is plausible, as Luke 20:35 suggests, that some wished to anticipate this βίος ἀγγελικός under the impression of the inaugurated kingdom. How do these two options, lifelong marriage and celibacy, then relate to one another? Dale B. Martin, in his recent book *Sex and the Single Saviour*, has suggested that Jesus raised the standard of marriage so high as to discourage it: 'Jesus forbade divorce in order to destroy marriage'.¹¹¹ However, this probably takes the doubtless family-critical tones in Jesus' ministry too far.¹¹² According to the context of the pericope in Mark, Jesus valued children too much (Mark 9:36–37;

according to Rev 21:27 'nothing impure' (πᾶν κοινόν) will enter the New Jerusalem, so that at least here a notional distinction between pure and impure is upheld in eschatological expectation. Similarly, I deem it difficult to see references in the gospels to paradisiacal conditions for criticism of family ties, fasting, and the temple, as claimed by Sauer, *Rückkehr*, 149–212, 344–62, 426–59.

¹⁰⁷ The approach by Stegemann, Sauer, Schnelle et al. has been strongly criticised by M. Ebner, *Jesus – ein Weisheitslehrer? Synoptische Weisheitslogien im Traditionsprozeß* (Herders Biblische Studien 15; Freiburg: Herder, 1998) esp. 15–16, but Ebner is mistaken in disregarding the references to the creation and Eden narrative relative to Sabbath and marriage.

¹⁰⁸ Cf. Davies & Allison, *Matthew*, 3:21–25; Luz, *Matthäus*, 3:108–111; A. E. Harvey, 'Eunuchs for the Sake of the Kingdom', *HeyJ* 48 (2007), 1–17.

¹⁰⁹ P. van der Horst, 'Celibacy in Early Judaism', *RB* 109 (2002) 390–402, explains (398): "Das Gebot der Stunde" carries more weight than "das Gebot der ersten Stunde" in Gen. 1'.

¹¹⁰ However, one must not confuse the resurrection with the kingdom of God, as does Greeven, 'Ehe', 374.

¹¹¹ D. B. Martin, *Sex and the Single Savior: Gender and Sexuality in Biblical Interpretation* (Louisville [Ky.]: Westminster John Knox, 2006) 147.

¹¹² For these tones cf. Mark 3:20–21; 3:31–35 parr.; 6:1–6a parr.; 10:28–31 parr. It needs to be conceded, however, that Martin, *Sex*, 137–38, might be right for *Luke*: Taking together the lack of a parallel to Mark 10:2–9, the possibility that Luke 16:18 allows divorce and prohibits only remarriage (like Mark 10:12–12, see above), and the inclusion of the 'wife' among those to be hated (as a condition of discipleship: Luke 14:26, different Matt 10:37; *G. Thom.* 55, 101) and to be left for the sake of the kingdom of God (Luke 18:29, different Mark 10:29; Matt 19:29, where uncials B and D preserve the better [shorter] text; contra Greeven, *Ehe*, 374 with n. 2) might suggest that marriages could be dissolved for the sake of the kingdom.

10:13–16) to be likely to put their existence or at least their well-being at risk by the destruction of marriage, and we know from 1 Cor 9:5 that even the apostles’ ‘leaving everything’ (cf. Mark 10:28)—if historical—did not end in general termination of marriages. In my view, the key to a solution lies in a *two-tiered eschatology* and corresponding lifestyles in the Jesus tradition: The kingdom of God has been inaugurated, but the resurrection is yet to come. The kingdom enables the restoration of primordial conditions, thus the renewal of marriage modelled by the first marriage, but resurrection will lead to perfection, thus to an angelic life of sexual restraint, which is already anticipated by some.

I am aware that for a fully rounded comparative picture we would also have to carry out an assessment of the complex issue of celibacy in the Scrolls. However, this would require a paper in its own right. For the time being, it should merely be noted that even if texts such as CD 7:4–5 or 1QS 8–9 indeed implied celibacy, it would not affect our argument regarding the reference to creation in CD 4–5, since the focus of the latter is to show what is wrong with ‘taking two wives in their lives’.

Conclusion

Mark 10 and CD 4–5 invoke Gen 1:27c ‘male and female he created them’ for different problems, Mark to denounce divorce, the Damascus Document to ban polygyny, perhaps concomitant, although consecutive polygyny cannot be excluded. Both texts combine this proof-text with other ones, but these differ according to the respective focus in the texts quoting them: in CD 4–5, Gen 7:9a and Deut 17:17 are referred to alongside Gen 1:27c; in Mark 10, it is Gen 2:24. In both texts these proof-texts do not only function as passages from Scripture but also capture creational reality. The way this is achieved, however, is somewhat different: In the Damascus Document, we have a foundational principle that can be retrieved in reality as interpreted by Scripture, whereas in Mark, it appears, the high standard of lifelong marriage as recovery of the initial marriage is attainable in light of the inaugurated kingdom, in the horizon of which the ‘Mosaic’ concession becomes superfluous. While the wider context of references to marriage and creation in Second Temple texts needs to be kept in view,¹¹³ the comparison between Mark 10 and CD 4–5 remains extremely important, since it shows most clearly a common interpretative

¹¹³ See above, n. 51.

horizon, in which issues pertaining to marriage law are addressed by reference to texts from Gen 1–2 (and, in CD, other Pentateuchal passages) and by appeal to creation. Pointing out differences as well as communalities, as we have done, only reinforces the importance of comparison, allowing us to see nuances in the compared texts and to relate them to conceptual emphases in each of them.