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THE MEANING OF *PORNEIA* IN MATTHEW 5.32 AND 19.9:
AN APPROACH FROM THE STUDY OF ANCIENT NEAR EASTERN
CULTURE

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1. Thesis and Previous Scholarship on the Passages

It is likely that not a truer word has been written in the field of biblical studies than Ben Witherington's observation that nearly everything about the two Matthean divorce exception clauses is disputed.¹ A myriad of explanations has been offered in order to identify the original saying of Jesus, what version Matthew may have drawn on, and how the evangelist may have altered the saying in order to fit a particular situation within the church. All suggestions have been challenged for one or more reasons, and I shall briefly review a number of these forays and rebuttals below. As a scholar of the Old Testament, however, my own approach differs in the manner one might expect from someone conditioned to looking for explanations and interpretations of biblical texts by searching out their ancient Israelite and Near Eastern cultural milieu: I want to argue that we can find a plausible explanation for the divorce exception clauses that Matthew uses by investigating common practices of divorce in Israel and its cultural neighbours. Specifically, I believe that when we come to an understanding of divorce with just cause in the ancient Near East—what has been called divorce with grounds—then Matthew's exception clauses make perfect sense. In this cultural setting, it was understood that a man could divorce his wife for

1. Ben Witherington, 'Matthew 5.32 and 19.9—Exception or Exceptional Situation?', *NTS* 31 (1985), pp. 571-76 (571).

any reason, but if he did so without just cause then he was obliged to repay her dowry and bride gift, and sometimes an additional penalty as well. It is Matthew's use of *porneia*, a term that scholars and translators translate variously as 'unchastity', 'fornication' (an unfortunate choice, if only for the reason that hardly any native English speakers employ it in their normal vocabulary), or 'adultery', that gives us the key to seeing these clauses as centering around the question of divorce with just cause. 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*.

There has been no dearth of explanations for the exception clauses, and perhaps the best summary of them may be found in Raymond Collins's *Divorce in the New Testament*.² They are familiar to everyone who has broached the subject, but I feel compelled to provide the reader with at least a brief summary of some of them, both in order to illustrate the problems that beset the interpreter of these passages and to justify yet another article on the matter. In the past, a few scholars argued that Mt. 5.32 and 19.9 were not exception clauses at all, that Matthew in no wise meant to present Jesus as intimating that there could be any reason that would permit divorce. At one point, for example, Bruce Vawter, following Augustine's interpretation of the passages, claimed that the terms *mē epi* and *parektos*, normally translated as 'except', should be read in a preteritive fashion which excepted the entire proposition. So in the relevant part of 5.32 he translates *mē epi porneia* not as 'except for *porneia*' but as 'setting aside the matter of *porneia* [that I am not discussing right now]'.³ Such a position has been almost universally dismissed by scholars simply because the Greek syntax does not support it, a point that Vawter himself later admitted.⁴

If we may be assured that Matthew in fact saw Jesus as permitting divorce under the condition of *porneia*, then we must determine pre-

2. Raymond F. Collins, *Divorce in the New Testament* (GNS, 38; Collegeville, MN: Liturgical Press, 1992), pp. 199-206.

3. Bruce Vawter, 'The Divorce Clause of Mt 5,32 and 19,9', *CBQ* 16 (1954), pp. 155-67 (163-65).

4. Bruce Vawter, 'Divorce and the New Testament', *CBQ* 39 (1977), pp. 528-42.

cisely what the evangelist meant to convey with that word. Some have argued that we can simply translate it as 'adultery', a somewhat unsatisfactory conclusion since, as M.D. Goulder (who defines it this way) notes, the radical Jesus who sharpens the law in the Sermon on the Mount 'disappears in qualifying phrases, and emerges as a rabbi of the School of Shammai'.⁵ The difficulty that Goulder and many others point to is that the rabbinic School of Shammai apparently saw adultery on the part of the woman as the only cause that could permit a husband to divorce, and so it seems strange to see the Matthean Jesus agreeing with a group of Pharisees, especially in the antitheses. Throughout the Sermon, Jesus urges his followers to maintain a higher standard of righteousness than even the Pharisees (5.20), and a number of scholars have noted that it appears quite odd for Matthew to suddenly imply that they must maintain a standard of living that is *only equal* to that of the Pharisees.⁶ Another apparent difficulty with such a translation, and one that applies also to the exception clause of 19.9, is that Matthew uses the word *moicheia* in order to identify adultery. In fact, both *porneia* and *moicheia* appear in 15.19, suggesting both that the evangelist has a perfectly good word to use for the concept of adultery, and that he or she distinguishes between the two ideas. As has been pointed out by many scholars, the term *porneia* has a much wider semantic range than simply 'adultery', and may be used to refer to a wide range of licentious activities.⁷

Having raised these common objections to a translation of *porneia* as 'adultery' in these passages, however, I should point out that they are problematic in and of themselves. To begin with the first objection, I will argue below that the mishnaic passage describing the Shammaites' position on divorce is not at all clear, and this ambiguity means that we cannot conclude with any certainty that Matthew sees Jesus in agreement with them, no matter how *porneia* is translated. As for the objec-

5. M.D. Goulder, *Midrash and Lection in Matthew* (London: SPCK, 1974), p. 18. T.V. Fleming, 'Christ and Divorce', *TS* 24 (1963), pp. 106-120 (109) also translates *porneia* as 'adultery'.

6. See Witherington, 'Matthew 5.32 and 19.9', p. 572; Collins, *Divorce*, p. 209; Gordon J. Wenham, 'The Syntax of Matthew 19.9', *JSNT* 28 (1986), pp. 17-23 (17); and John P. Meier, *Law and History in Matthew's Gospel* (AnBib, 71; Rome: Biblical Institute Press, 1976), p. 146.

7. See Friedrich Hauck and Siegfried Schulz, 'πόρνη, πόρνος, πορνεία', in *TDNT*, VI, pp. 579-95.

tion that Matthew would have used the word *moicheia* in order to refer to adultery, the point of this article is to show that the cultural context of the evangelist leads one to expect a meaning for *porneia* of something like 'adultery'. If Matthew uses *porneia* instead of *moicheia*, it is likely because he or she wishes to indicate that it is not simply sex during marriage that constitutes a permissible reason for a man to divorce, but also sex during betrothal.

A number of scholars have defined *porneia* in these passages as 'incestuous marriage'. Arguing that incestuous marriages would have been a live issue for Gentiles entering the Matthean church, Joseph Fitzmyer and others have seen Matthew as allowing divorce for those within the church who were involved in marriages proscribed by the Levitical codes.⁸ Noting that the Septuagint employs *porneia* to translate Hebrew *z'nût*, Fitzmyer further notes that the Damascus Document uses *znwt* to refer to illicit kinship unions (5.7-8), suggesting that Matthew could also have used *z'nût*, which he translated in the expected manner as *porneia*, to refer to precisely the same matter.⁹ As further evidence for this position, Luke appears to use *porneia* in Acts 15 to refer to illicit kinship unions among the Gentiles.¹⁰ In this account of the Apostolic Council, the Jerusalem church agrees to admit Gentiles into the church, so long as they abstain from a list of behaviors enumerated in 15.20, all of which appear to be proscribed in Leviticus 17 and 18. One of the things that the Council demands that the Gentile Christians avoid is *porneia*,¹¹ and given the parallels between the list and Leviticus 17-18, it is possible that Luke uses *porneia* here to refer to the illicit kinship unions of Lev. 18.6-18. As Craig Blomberg has pointed out, however, since we expect *porneia* to translate Hebrew

8. Joseph A. Fitzmyer, 'The Matthean Divorce Texts and Some New Palestinian Evidence', in *To Advance the Gospel: New Testament Studies* (New York: Crossroad, 1981), pp. 79-111 (88-89). See also Witherington, 'Matthew 5.32 and 19.9', p. 574; Meier, *Law and History*, pp. 147-50; Robert A. Guelich, *The Sermon on the Mount: A Foundation for Understanding* (Waco, TX: Word Books, 1982), pp. 209-10.

9. Fitzmyer, 'The Matthean Divorce Texts', pp. 94-97.

10. This, at least, is the opinion of Ernst Haenchen (*The Acts of the Apostles: A Commentary* [trans. R.M. Wilson; Philadelphia: Westminster Press, 1971], p. 449) and F.F. Bruce (*The Acts of the Apostles* [Grand Rapids: Eerdmans, 2nd edn, 1952], p. 300), among others.

11. Although, since the Chester Beatty papyrus omits the word *porneia* in 15.20, Haenchen speculates that the original text may not have contained that term.

ז'נût, this argument runs into difficulties once we discover that ז'נût nowhere appears in the verses in Leviticus 18 that deal with incestuous marriages.¹² We should not draw on Acts 15 in support of the argument that *porneia* means 'incestuous marriage' in the Matthean exception clauses. This point aside, however, we should be wary about this view in general. True, the Septuagint does use roots from *porn-* to translate words from the Hebrew root זnh, but the Hebrew verb and its related nouns refer to acting as a prostitute, and never (in the Bible, at any rate) to incestuous marriages. The only real evidence for such a usage in Hebrew is at Qumran, and there only once. This one bit of evidence has to bear too great a probative load when we lump Matthew's usages of *porneia* in the exception clauses on it.

In a related argument on the meaning of *porneia* that also draws on evidence from Qumran, John Kampen has claimed that if Matthew uses *porneia* to translate an original זnwt it is because the word can mean more than illicit sex, but also disloyalty to a sectarian group, which is how the term is often employed by the Essenes.¹³ That words from the root זnh can refer to disloyalty is a fact copiously attested in the Old Testament; such words appear to be used in the allegorical sense of Israel's abandonment of monolatry more often than they do to refer to someone acting as a prostitute. It is no surprise that the Essenes would use the same word in the same manner. Yet Kampen's argument, that Matthew, by way of his or her use of *porneia* (from an original ז'נût), wanted to say that divorce was prohibited except in the cases of marriages that violated purity issues that could result in expulsion from the sect, places a lot of weight on a very hypothetical double entendre. While ז'נût can refer to disloyalty to the sect, at least at Qumran, we once again encounter the difficulty that only once, and only at Qumran, does it refer to incestuous marriages.

Finally, to move away from the question of the meaning of *porneia*, a number of scholars, primarily Jacques Dupont and, more recently, Gordon Wenham, have argued that Matthew presents Jesus in these passages as prohibiting remarriage. Dupont states that Matthew's text makes the claim that while one can divorce, this does not really break

12. Craig L. Blomberg, 'Marriage, Divorce, Remarriage, and Celibacy: An Exegesis of Matthew 19:3-12', *Trinity Journal* 11 (1990), pp. 161-96 (177).

13. John Kampen, 'The Matthean Divorce Texts Reexamined', in G.J. Brooke (ed.), *New Qumran Texts and Studies* (STDJ, 15; Leiden: E.J. Brill, 1994), pp. 149-67.

the marriage bond, and so remarriage results in adultery.¹⁴ This has the advantage of rendering a picture of the Matthean Jesus' opinion that is in radical opposition to that of his Pharisaical contemporaries,¹⁵ and is a point that Wenham has further refined. In the context of the saying and dialogue of 19.3-12, he notes, the disciples appear appalled by Jesus' conclusion concerning divorce, and Wenham believes that this indicates that Jesus has forbidden remarriage in 19.9.¹⁶ He bolsters this assertion with an appeal to the syntax of 19.9, where he claims that in Matthean composition when we find two conditions, both are considered to be necessary.¹⁷ And, Wenham argues, if Jesus does not forbid remarriage, then he simply ends up agreeing with the Shammaites, whom he has just condemned¹⁸ (a point, as I have already mentioned, that is not as clear as many scholars believe it to be). However, to begin with the argument from syntax, Wenham admits that he can find no other occasions in Matthew where there are two relative conditionals in a single protasis. What this all boils down to is that Dupont and Wenham understand Matthew's exception clauses as saying that if a man divorces (and divorce is permissible only in the case of *porneia*) and remarries, he commits adultery. Since Wenham can find no exact parallel to this particular syntax in Matthew, such a position falls under the rather obvious objection that if Matthew had meant that remarriage under *any* circumstance results in adultery, he or she would simply have said so. The more obvious way to take the exception clauses is to say that a remarriage that is preceded by a divorce not caused by *porneia* is illegitimate, since the divorce was not permissible in the first place. The exception clauses are precisely exception clauses; they provide an exception to what is otherwise an absolute prohibition on divorce, but they are concerned only with this matter. There is no compelling reason to take Matthew as prohibiting remarriage absolutely, especially as in both of the texts, notably 19.3-12, the question centers around divorce, not remarriage.

If we may agree that the exception clauses truly are exceptions, and

14. Jacques Dupont, *Mariage et divorce dans l'Evangile: Matthieu 19, 3-12 et parallels* (Brussels: Abbaye de Saint-Andre, 1959), pp. 143-57.

15. Dupont, *Mariage et divorce*, p. 74.

16. Gordon Wenham, 'Matthew and Divorce: An Old Crux Revisited', *JSNT* 22 (1984), pp. 95-107 (99-100).

17. Wenham, 'The Syntax', pp. 17-23.

18. Wenham, 'The Syntax', p. 17.

that they are concerned primarily with divorce and only secondarily with remarriage—points that are almost universally granted—then the main difficulty we face is how to interpret Matthew's use of *porneia*. The thesis I am proposing, that by *porneia* Matthew means sex on the part of the woman during betrothal or marriage, is not terribly different than suggestions raised by other scholars. While Dale Allison, for example, has translated *porneia* as 'adultery' in these passages, he raises the point that Mt. 1.18-25 tells a story of how Joseph resolved to put Mary away when he was under the impression that she had had intercourse during the period of betrothal.¹⁹ Collins understands Matthew's usage of *porneia* as a narrow interpretation of Hebrew 'erwat dābār, the phrase that Deut. 24.1 employs as a reason why a husband may divorce his wife.²⁰ These scholars have, really, made the core of my point for me: Matthew is aiming at a narrow interpretation of 'erwat dābār, one that encompasses solely intercourse on the part of the woman with a man other than her fiancé or husband. The notion is a somewhat broader one than that encompassed by moicheia, since that usually refers only to extra-marital sex, not to sex during betrothal. While moicheia usually means 'adultery', it can refer to illicit intercourse in general.²¹ If Matthew employs the term *porneia*, it is in order to make it clear that sex outside of betrothal and outside of marriage allows the husband to divorce. This is a matter that may be best understood, however, through an examination of the wider cultural traditions surrounding divorce in the ancient Near East.

2. Divorce and Dowry in First-Century Judaism

Before I go on to articulate this point it is wise to pick up the debate about divorce within the context of first-century Judaism. Many scholars have noted that the introduction to the pericope of 19.3-12—the Pharisees' question, 'Is it lawful for a man to divorce his wife for any cause?'—sounds remarkably like the debate between the Shammaite and Hillelite schools recorded in *m. Git.* 9.10 regarding acceptable

19. Dale C. Allison, Jr, 'Divorce, Celibacy and Joseph (Matthew 1.18-25 and 19.1-12)', *JSNT* 49 (1993), pp. 3-10. See also Markus Bockmuehl, 'Matthew 5.32; 19.9 in the Light of pre-Rabbinic Halakah', *NTS* 35 (1989), pp. 291-95.

20. Collins, *Divorce*, pp. 211-12.

21. Friederich Hauck, 'μοιχεύω, μοιχάω, μοιχεία', in *TDNT*, IV, pp. 729-35 (730).

causes for divorce. This debate is clearly an attempt to find an appropriate gloss for *'erwat dābār*. In the deuteronomic passage, these words (which literally mean 'nakedness of a thing') occur in the protasis of a law that states that a man cannot remarry a wife he has divorced if she has remarried in the interim. The protasis merely asserts that he may divorce her in the first place because of *'erwat dābār*. The mishnaic debate, however, shows that this phrase was as poorly understood in the first century as it is in ours. The Shammaites claimed that *'erwat dābār* properly meant that a man could not divorce *'p 'm kn mš' bh dbr 'rwh* ('unless he finds in her a thing of nakedness'), whereas the Hillelites claimed *'pylw hqdyḥh tbšylw* ('even if she burns his dish') he may divorce. Many people seem to believe that the Shammaites hold the opinion that only adultery suffices for divorce, but it is hardly clear that this should be the interpretation of *db'r 'rwh*. In Mishnaic Hebrew, *'rwh* sometimes simply means 'nakedness', as it does in *b. Ber.* 24b, for example. This passage is, in part, a discussion of the question of whether a man may say the Shema in the presence of his wife. Some of the rabbis believed that if a wife was in a state of *'rwh*, the man could not perform this religious duty, and the discussion turns to what qualifies as nakedness. Some said a bare leg sufficed, others hair, and others simply a voice. The statement *qwl b'šh 'rwh* ('the voice of a woman is nakedness') already suggests that *'rwh* is being taken in this passage in both a literal and a figurative sense, where in a general sense it can mean 'indecentcy that prevents someone from performing a religious task'. Perhaps in a related sense, *'rwh* can also refer to a woman forbidden to a man because of the biblical laws of consanguinity (as in *m. Yeb.* 1.2, for example).²²

The Shammaites may well have been referring to adultery, although it is difficult to say which particular definition of *'rwh* they meant; and this is why the claim that the Matthean Jesus' use of *porneia* puts him in agreement with a group of Pharisees is suspect. At the very least,

22. In the sense that Deuteronomy uses the phrase *'erwat dābār*, it seems to have had the meaning of 'something polluting' or 'something shameful'. The phrase also appears in Deut. 23.15 [EV 23.14] to refer to human excrement. From the testimony of *m. Giṭ.* 9.10, though, the Shammaites find the interpretive key to the phrase *'erwat dābār* in the meaning of *'erwā* in abstraction from this phrase. That is, while contemporary scholars realize that the phrase *'rw' dbr* has a different meaning than simply 'a matter or incidence of *'rwh*', this is precisely how the Shammaites interpret the phrase when they translate it as *db'r 'rwh*.

however, it is clear that the Hillel camp saw a much broader range of reasons that could justify divorce than the school of Shammai. The rabbinic debate surrounding divorce, however, extends much further than simply the pilpul we find in *m. Git.* 9.10. Some actions on the part of the woman mandated divorce, as we find in *b. Git.* 90a-b, where one rabbi opines that a husband has a religious duty to divorce a wife who bathes with men. *M. Ket.* 7.6 makes it clear that a wife who transgresses the law of Moses or Jewish custom—if she does not fulfill a vow, say, or goes out with her hair unbound—must be divorced. *M. Ket.* 5.5 gives a list of duties that the wife must perform, and while no penalty is specified for failure to fulfill them, we may assume that this would be a just cause for divorce. One matter that is particularly important for the interpretation of *porneia* in Matthew's exception clauses is that of just cause for divorce. In first-century Judaism, as well as the ancient Near East, it is clear that some actions on the part of the woman or the man gave the other partner just cause to demand divorce.²³ In the case of a man divorcing a woman, generally the only type of divorce we would expect to find in first-century Judea,²⁴ if the man could prove that he had just cause to divorce his wife then he was not obliged to repay her dowry at divorce. If the man could not prove just cause, then the dowry had to be repaid. This is a firm rule throughout the ancient Near East, as we shall see, and it is unlikely that matters were different in first-century Judaism.

In many cases where the Mishnah mentions divorce, the dowry (*k'tûbâ* in Hebrew) must be returned by the husband when he divorces. In passages such as *m. Mak.* 1.1 and *m. 'Arak.* 6.1-2 it seems clear that this was the normal practice. *M. Yeb.* 15.7 further clarifies this point by stating that a man who divorces a betrothed woman must return the dowry. However, it is equally clear that the *k'tûbâ* was not paid in every

23. See *m. Ket.* 7.1-5, as well as *m. Yeb.* 6.6 and *m. Ned.* 11.12.

24. I am convinced by the arguments of Bernadette Brooten that there was a tradition in Judaism, albeit not widely followed, that gave women the power to divorce. See her 'Konnten Frauen in alten Judentum die Scheidung betreiben?', *EvT* 42 (1982), pp. 65-80, and 'Zur Debatte über das Scheidungsrecht der jüdischen Frau', *EvT* 43 (1983), pp. 466-78. It is unlikely that many Jewish communities of the first century recognized the woman's right to divorce, but it is clear from the study of ancient Near Eastern cultures that each society contained different traditions surrounding matters of marriage and divorce; and there is no reason, given Brooten's evidence, why first-century Judaism should be an exception to this general rule.

instance of divorce, and these instances appear to be when the husband had just cause for his actions. In *m. Ket.* 7.6, the statement that women who disobey Jewish law and custom are to be divorced, the claim is specifically made that such women are to be divorced without their dowry. Divorce without dowry was a serious matter, however, and a husband could not take such an action arbitrarily. He had to prove misconduct on the part of his wife, his just cause for divorce, if he did not wish to return the dowry. **So while a man could divorce merely because of a rumor that his wife had committed adultery, this was not enough proof for him to withhold the *k'tûbâ* (*m. Sof.* 6.1).** Such an act demanded witnesses, and the rabbis realized that not just any witnesses would do. Some, such as her husband's mother or her co-wife, may have obvious motive for perjuring themselves, and so were excluded from the list of possible witnesses who could vouch for a claim of just cause (*m. Sof.* 6.2).

This is not to say that men did not try to elude the system in order to divorce and prevent a payout of the dowry. In *b. Git.* 57a we find a story of a man who wished to divorce his wife without repaying the dowry, and so attempted, by means of a creative use of egg whites, to fool his friends (potential witnesses) into believing that his wife had slept with another man in his bedroom. His clever ruse was soon discovered, however, and he was flogged and forced to repay the dowry. The story, along with the evidence from the Mishnah, makes it clear that there was a conception of just cause for divorce in Judaism, a matter reflected by the fate of the dowry at divorce. If a man could not prove just cause for divorcing his wife, he was forced to repay the dowry. **I believe that the notion of just cause can give us better insight into the point Matthew was trying to make with the exception clauses than the debate between the schools of Shammai and Hillel in *m. Git.* 9.10,** especially given the ambiguity of the Shammaites' position, and to make this point I turn now to the evidence from the ancient Near East.

3. Divorce with Just Cause: The Ancient Near Eastern Evidence

Raymond Westbrook has conducted the most thorough examination of Old Babylonian marriage law and marriage contracts, and it is he who points out that Babylonian culture made a distinction between divorce with just cause (divorce with grounds, as he puts it) and without just

cause.²⁵ If a man wished to divorce his wife and not repay the dowry, then he had to prove at least one of a certain number of offenses on her part—he needed just cause for divorce, in other words. **The dowry was an important collection of property in the ancient Near East, for the woman's father presented it to her husband with the express intent that the couple's children would inherit it.** The dowry was the vehicle by which the maternal grandfather could cause his grandchildren to inherit. As Westbrook's summary of the relevant laws from the Code of Hammurapi (CH) succinctly points out, the dowry technically belongs to the woman, even though her husband enjoys the usufruct of it during marriage. When he dies, the dowry must be separated from his property (CH 176), for it is to be inherited by the heirs of the couple and not by any other heirs of the husband (CH 162, 173, 174). CH 171b makes it clear that the widow or divorcee may not sell the dowry property because it belongs to her children once she is no longer married.²⁶ **When a man had just cause to divorce he did not repay the dowry, not simply to punish his wife, but also because the children, the inheritors of the dowry, remained with him. Should a man divorce without just cause, he had only to repay the dowry if the couple had no children** (CH 138), but if his wife had borne him children he was obliged to forfeit his house and property as well (Code of Eshnunna 59), since his ex-wife was now responsible for raising the children (CH 137) who needed a decent inheritance.²⁷

To return to the issue of divorce, what sorts of misconduct on the part of the woman provided a man with just cause for divorce? Adultery is obviously the worst offense, and in Babylonian and Assyrian marriage contracts and laws that span well over a millennium it is clear that adultery could legally result in the death of the woman and her lover, as it did in ancient Israel (Lev. 20.10; Deut. 22.22). So much is made clear in CH 129, as it is in this phrase, commonly found in neo-Babylonian

25. Raymond Westbrook, *Old Babylonian Marriage Law* (AfO Beiheft, 23; Horn: Ferdinand Berger & Söhne, 1988), pp. 71-79.

26. Westbrook, *Old Babylonian Marriage Law*, pp. 93-94.

27. For more information on these matters see Westbrook, *Old Babylonian Marriage Law*, pp. 78-79 and 85-86. It is clear that these laws reflected actual practice in the Old Babylonian period, since the marriage contracts from that period indicate similar positions on these issues. YOS 14.344 states that the husband must forfeit both house and children at divorce, and VAS 18.114 and PBS 8/2.107 both claim that the children remain in the custody of the divorced partner.

marriage contracts: 'If PN is found with another man, she will die by the razor'.²⁸ Not all marriage contracts carried this stipulation, although assumedly this is because the culture simply took this for granted. Old Babylonian law was actually somewhat more flexible on this issue than its ancient Israelite counterpart: while Leviticus and Deuteronomy demand the death of the two lovers, CH 129 states that the husband may spare his wife's life if he so desires, allowing the king the opportunity to pardon her paramour. CH 141 also states that if a woman has brought her husband into contempt and has fraudulently appropriated his possessions (*sikiltam isakkil*), her husband may divorce and not repay the dowry, even though she has not committed adultery, indicating that offenses lesser than that of adultery obviously provided just cause for divorce.

Of course, a husband had to prove in court that his wife had actually committed some offense that amounted to just cause. The proceedings of just such a case are recorded on an Old Babylonian tablet,²⁹ and in this particular incident we find a court rejecting a man's claim that he has just cause to send away his fiancée without repaying the dowry.³⁰ When the husband states *ul ahhaz* ('I will not marry'), the court replies that the woman 'dwelt in your father's house, and your ward knew her married status'. Finding no cause to remove his financial obligations in the case of divorce, the court concludes, 'Will she go out like this? Make her equal [*muššilši*] as she moved in'. The man is to 'make her equal', which is to say that he is to give her precisely the same dowry as she brought to him when she entered his father's house. Some Old Babylonian marriage contracts listed every detail of the dowry that a woman brought into the union, while others merely listed their total worth. By the neo-Babylonian period the exhaustive dowry list of the contracts was commonplace, and of the 44 such extant agreements from

28. For these contracts, which date between 635 and 203 BCE (up to fifteen hundred years after the Code of Hammurapi), see Martha T. Roth, *Babylonian Marriage Agreements 7th–3rd Centuries BC* (AOAT, 222; Neukirchen–Vluyn: Neukirchener Verlag, 1989).

29. For the text, translation and commentary, see K.R. Veenhof, 'The Dissolution of an Old Babylonian Marriage according to CT 45, 86', *RA* 70 (1976), pp. 153–64.

30. Westbrook rightly challenges Veenhof's conclusion that the couple was already married. It is clear that while a marriage contract had been drawn up and that the dowry had already changed hands, no official ceremony had taken place. See *Old Babylonian Marriage Law*, pp. 78–79.

this period, only nine do not list the dowry. One of these contracts actually refers to itself as 'this sealed dowry agreement',³¹ suggesting that the purpose of its existence is simply to record the dowry in the event of divorce or the need to decide the children's inheritance.

The point of this digression into Babylonian marriage and divorce customs is to point out that the situation within Judaism at the time of the composition of Matthew's Gospel appears to reflect this basic understanding of divorce with just cause and its concomitant right to avoid remuneration of the dowry. The types of discussion surrounding marriage and divorce in the Mishnah reflect the basic tradition of divorce with just cause throughout the ancient Near East. If a man could prove in court that his wife had committed adultery or some other offense that the culture adjudged to be just cause for divorce, he could divorce her without repayment of the dowry. As we have seen, in Babylonia the worst possible offense in such a case was adultery, although other actions on the part of a woman also provided just cause for divorce. And, as we have seen, the rabbis also saw a number of offenses that could provide just cause for a man to divorce his wife, and these extended far beyond sexual offenses. That they considered such matters to be just cause is clear, for they did not require the dowry to be repaid in such situations. And in both the ancient Near East and Judaism of the first century, divorce with just cause implied the existence of divorce without just cause, a case where the dowry had to be repaid.

4. Conclusion

It is precisely in this context, I believe, that we can set the Matthean divorce clauses. Matthew begins the debate of 19.3-9 with the Pharisees' question concerning the lawfulness of divorce *kata pasan aitian* ('for any reason'). This usual English translation of *pasan* as 'any' is ambiguous, because it can imply that the Pharisees are asking if there is any reason at all that could warrant divorce. But as *pas* in the singular means 'every kind of', the Pharisees' question actually suggests that Matthew understands this discussion as driving at the question of whether a man can simply pick a reason for divorce out of the air and act on it. **In short, is divorce without just cause permissible? Can a husband divorce 'for every kind of reason'? The Matthean Jesus replies that this is quite impossible, that divorce with just cause alone is**

31. Roth, *Babylonian Marriage Agreements*, no. 42.26.

permissible, and defines just cause very narrowly as *porneia*. This is a very different understanding of just cause than that found in the Mishnah, for there many actions on the part of the woman were considered to warrant just cause for divorce. Regardless of what the school of Shammai may have been arguing, the Matthean Jesus permits only divorce with just cause, and limits just cause to the sexual offense of *porneia*, rather than extending it to such matters as the wife's failure to follow Jewish custom or to perform specific duties in the home, matters that amount to just cause for divorce in the Mishnah. Given such a situation, the Matthean Jesus has a much more stringent view of divorce than his Pharisaical contemporaries (at least those whose arguments we can understand). Not only does he not permit divorce without just cause, but he limits just cause to sexual offenses, a much narrower interpretation than that found in the Mishnah.

What, then, did Matthew mean by *porneia*? Given the cultural context of divorce with just cause, and given that *porneia* refers, at least in its most general sense, to licentiousness, we can assume with some confidence that he or she meant sex on the part of the woman during betrothal or marriage with a man other than her husband. Matthew has interpreted Deuteronomy's 'erwat dābār and come up with this as the only possible just cause for divorce, and the only way in which divorce is permissible. As the Akkadian material indicates, such actions on the part of the woman were considered the most compelling warrant for just cause, an opinion echoed by Leviticus and Deuteronomy. Why would Matthew use the term *porneia* rather than *moicheia*? Perhaps because the evangelist wanted to make it clear that one should not take *moicheia* as adultery in its most narrow sense, that of extra-marital sex, but that sex during betrothal was also included. The latter issue was precisely the case that was encountered in the Old Babylonian court document. There the husband appeared to be claiming just cause, but the court did not accept his evidence, or believed it to be insufficient. And, as Allison noted, in the story of Joseph's intent to put away Mary when he believed that she had engaged in intercourse during betrothal, we see an example of how Matthew interprets *porneia* beyond the scope of the narrow sense of *moicheia*.³² Matthew's use of the term is

32. Allison, 'Divorce, Celibacy and Joseph', pp. 3-10. Allison does translate *porneia* in the exception clauses as 'adultery', but he sees the situation of Joseph and Mary as one of full marriage. Mt. 1.18 is quite clear, however, that at this point the couple is only engaged.

perfectly comprehensible once it is examined within the context of the debate surrounding divorce among his contemporaries, and once that debate is examined within the traditions that had governed the matter in the ancient Near East for millennia.

ABSTRACT

The author argues that the Matthean use of the term *porneia* in the divorce exception clauses of 5.32 and 19.9 is best understood by reference to the notion of divorce with just cause, an idea present throughout the ancient Near East and in first-century Judaism. Just cause includes actions on the part of the woman that constitutes the man's right to divorce without repayment of the dowry. Matthew excludes the possibility of divorce without just cause, and limits just cause to *porneia*, sexual intercourse during betrothal or marriage with someone other than the wife's husband.