

Matthew's Birth Story, an Early Milepost in the History of Jewish Marriage Law

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Two sets of literature are more-or-less obsessed with Jewish marriage law: The rabbinic corpus, taken as a whole, and the Gospel of Matthew. While the former obsession is well established, scholarship has been slow to recognize just how interested the anonymous author of the first Gospel is in the particularities of Jewish law generally, and the laws regarding marriage and divorce in particular. Were Matthew's Gospel the only one of the canonical Gospels to survive, contemporary readers would be likely to view it as much a legal casebook as a narrative about the beginning and end of the life the Messiah.

What else, after all, would a naïve contemporary reader make of Matthew's description of Jesus, than that his main teaching is to provide a correct interpretation of the Jewish Law? Rather than abolishing the Jewish Law, Jesus sets out to fulfill it (5:17ff); his audience is forbidden to break even the least of the *mitzvot*. The author portrays his protagonist offering discourses on the laws of *Shabbat*, (12:1-7 and 9-14), on *netilat yada'im*, (15:1-20), and, especially, on the laws of divorce (5:31ff and 19:3ff).

It is easy to demonstrate that Matthew has a greater interest in divorce law than any other NT author: ἀπολύω + γυναίκα (acc.), "to divorce a wife," or ἀπολύω + αὐτήν "to divorce her," appears seven times in the first Gospel, compared to three times in Mark and once in Luke (and nowhere else in the NT).¹ Likewise, Matthew uses forms of ῥαμί nearly twice as often as Luke², twice as frequently as Mark³, and more than seven times more often than John⁴. In Matthew's Gospel—uniquely among the canonical Gospels—Jesus explicitly permits divorce, and permits it twice⁵. I have dealt with the conundrum of Matthew's treatment of divorce elsewhere,⁶ what is important for the present essay is the fact of Matthew's substantial interest in divorce law.

¹Word counts in this paper were made from Nestle-Aland²⁷ using the Gramcord morphologically-tagged edition via Accordance (OakTree Software).

²The frequency is .89/1000 words in Matt., .49/1000 words in Luke.

³.38/1000 words.

⁴.11/1000 words. Only 1 Cor., (1.35/1000) and 1 Tim. (1.61) use ῥαμί more frequently than Matthew's Gospel.

⁵Matt. 5:31-2 and Matt. 19:3-12.

⁶"*Spiritus ex Machina*. Jewish Legal Aspects of the Matthean Birth Narrative," forthcoming in *Jewish Law Association Annual: The Boston, 2004 Conference*.

Distinctively among the canonical Gospels therefore, the Gospel of Matthew shows a surpassing interest in both Jewish law generally, and Jewish marriage law in particular. And, while Matthew's interest in the Jewish law is nearly universally recognized, his positive interest in Pharisaic law specifically is not. While the Evangelist takes pains to denounce the Pharisees themselves as hypocrites, he firmly recommends their unique interpretation of the Torah to his readers. Even a brief examination of the Gospel against its Synoptic sources shows him to be shaping his material so that he can side with them against their opponents.

The Torah-observance of the Pharisees.

Matthew's builds his infamous diatribe against the Pharisees (23:1-32) from a brief saying in Mark 12:38ff:

38. *In his teaching, he said, "Look out for the scribes, who like walking around in robes and greetings in the marketplaces,"*

39. *"And the best seats in the assemblies, and the places of honor at feasts.*

40. *They destroy widows' houses and as a pretense they pray long prayers. They will receive the more severe penalty.*

Matthew transforms Jesus' criticism of the hypocrisy of "scribes"⁷ into a percussive denunciation of the hypocrisy of the Pharisees. Like Mark's scribes, Matthew's Pharisees love the public greetings to which their status entitles them,

7. *"And the greetings in the marketplaces, and for people to call them 'Rabbi.' (23:7)*

But where Jesus denounces the scribes' love of public acclamation in Mark, his attack on the Pharisees in Matthew goes much deeper. The Pharisees' love of attention for their piety leads them to don broad *t'fillin* and long *tzitzit*. (23:5), but Matthew's main complaint is the Pharisees' hypocritical insistence on others' rigorous observance of the Pharisaic interpretation of the Torah, while they ignore their own religious obligations: Pharisees "close up the heavenly kingdom before people" and neither enter themselves nor permit others to do so. (23:13). They demand the observance of the Torah's minutiae, but ignore its more serious requirements:

You tithe mint, dill, and cumin, and you leave aside the more serious things of the Torah, judgment, mercy, and faith (23:23a).

But Matthew makes it clear that while Jesus wants his audience to pay attention to "the more serious things of the Torah," he is not urging his audience to ignore the minutiae:

It is important to do these, and not to neglect the others. (23:23b)

⁷ Whoever they were! For a stimulating discussion see E. Rivkin, *A Hidden Revolution* (Nashville, Abingdon Press, 1978.)

In fact, a sober evaluation of Jesus' teaching about Pharisaism in Matt. 23 shows him to be entirely positive toward the Pharisees' teaching about the Torah, even if he is harshly negative toward the Pharisees themselves:

2. *"The scribes and the Pharisees sit on Moses' seat.*
3. *"Everything, whatever they say to you, do it and keep it, but do not do according to their works. They speak and do not do. (23:2f)*

Jesus' discourse on the Pharisees is the final word about Torah observance in Matthew's Gospel.

Although there are several loci in the Gospel in which Matthew expresses his interest in the interpretation of Jewish law, his concerns about marriage and divorce law in particular underlie Matthew's treatment of the story of Jesus' birth in 1:18-25.⁸ The outlines of the story are familiar, and the details fall into a familiar pattern of cases in Jewish law: A man is betrothed to a woman; he discovers that she is pregnant, and not by him, strong evidence of adultery. The Law permits him to divorce her either quietly or publically; it does not offer him a third alternative. He resolves to divorce her quietly, but before he has the opportunity to do so, he learns (from an angel, in a dream) that the child she is carrying is "of a holy spirit," and he is therefore not obliged to divorce her.

The case rings many of the possible changes of Jewish marriage and divorce law: I have written elsewhere about how Jewish law handles the (rare, but not unheard-of) case of a woman having a child with a non-human father⁹. But scholars in Jewish law have only lately taken note of just how anomalous the question of divorce is in this narrative. It is a commonplace feature of rabbinic marriage law that a divorce is required to nullify an engagement, but it is not a feature of biblical marriage law at all. Biblical law may or may not require a payment of compensation to the groom in the case of a broken engagement, but it does not require a *get*, whereas rabbinic law clearly requires a *get* to nullify an engagement. Neither did the Qumran sectarians seem to require divorce in case of a broken or violated betrothal. The handful of surviving passages dealing with betrothal make it clear that these Jews followed the biblical requirement that the man whose betrothed has intercourse with another is entitled to compensation, but divorce is never mentioned in this context.¹⁰

⁸I dealt with some particulars of this question in *Spiritus ex Machina*, and am working on the larger issue in a book-length study.

⁹*Spiritus ex Machina*.

¹⁰i.e. 4Q524 f15 22:1=11 qt 66:9 (the man who violates someone else's betrothed is obliged to compensate her father and marry her.)

Recently Michael Satlow, in his 2001 volume *Jewish Marriage in Antiquity*¹¹, notes that Matthew reflects a rabbinic, rather than a biblical view of Jewish law in this matter, Specifying examples from the Hebrew Bible¹² and from the Elephantine papyri¹³, Satlow concludes that, while financial damages may be assessed when a betrothed woman is acquired by someone else, the law does not obligate a divorce:

*...during the entire Second Temple period, (most?) Jews neither customarily “betrothed” (in the biblical sense) nor did they even have a firm understanding of what such a betrothal would mean.*¹⁴

The law does not mandate a divorce to terminate a betrothal, nor is a divorce possible, if we extend Satlow’s conclusion to its logical conclusion, when there is no marriage.

While biblical law makes no provision for divorce in the case of a broken betrothal, rabbinic law famously does. The Mishna, for example, so unselfconsciously assumes that a betrothal constitutes a marriage¹⁵, so far as divorce is concerned, that contemporary scholars who get the point at all¹⁶ generally read the rabbinic legal situation back into the biblical one, and conclude that biblical law requires a *get* to dissolve a betrothal as well.¹⁷

I suggest, therefore, that the Gospel of Matthew provides the transitional element between this aspect of biblical marriage law and rabbinic. Although biblical law

¹¹Princeton, NJ: Princeton University Press, 2001) 72f.

¹²Satlow cites four passages from the Hebrew Bible in support of his conclusion that biblical law regards betrothal as a form of “inchoate marriage,” Ex. 22:15 (=22:16 Eng.), Deut. 20:7, Deut. 22:23, and Deut. 28:30, but only one of these passages, Deut. 22:23, actually deals with the legal status of a betrothed woman. Satlow, 294, n. 1. To Satlow’s evidence we might or might not want to add P. Heid. Inv. G 4931, a petition from a Jewish petitioner in Herakleopolis who wants financial damages to be paid because his betrothed has married another man, and there has been no divorce.¹²

¹³TAD B2.5 (=Cowley, 48). Satlow, 294, n. 5.

¹⁴Satlow, p. 69.

¹⁵The assumption underlies Yeb. 2:6, 2:7, 4:9, 10:3, 15:7; Ket. 3:3, 3:6, 4:2, 4:4, 5:1; Ned. 10:3; Git. 6:2, 8:9; Qid. 3:7, 3:8, 3:9, 4:9.

¹⁶Neither Keener, Brown, nor Davies and Allison bother asking why Joseph needs to divorce Mary at all.

¹⁷So, for example, Herb Basser, the dean of contemporary scholars of the connections between the New Testament and rabbinic law writes in his yet-to-be published *Talmudic Reflections in the Gospel of Matthew*: “The act of betrothal (*kidushin* or *erusin*) and indeed ‘promised’ (bound to him in promise) is a fitting term if it is understood that there exists a legal state of matrimony and she is not free to marry anyone else without a divorce from her husband.”

struggles with the case of the betrothed woman who does not marry her intended, it does not consider betrothal to be a kind of marriage. Both the First Gospel and the Mishna, however, assume the opposite, that a betrothal is a marriage, at least as far as the law of *gittin* is concerned.

This makes the Gospel of Matthew, despite its reputation for caustic anti-Pharisaism, a key milepost in the history of Jewish law. There is no literary text, biblical or otherwise, that specifies a divorce for a broken engagement, whether this is an innovation in rabbinic law or not.

As I noted above, divorce law figures more heavily in Matthew's gospel than in any of the other canonical gospels, and it is tempting to connect the evangelist's conformity with rabbinic—as opposed to biblical—law in this matter with his overall interest in the Pharisees and their interpretation of the Torah. Matthew explicitly urges his readers, or has Jesus explicitly urge his readers, to follow the Pharisees' legal interpretation to the letter, even while he vilifies these same Pharisees. He commends divorce, or has Jesus commend divorce, in the case of where the woman has committed *porneia*.

Indeed, if Matthew's Gospel had proven to be authoritative as a legal text, we might have observed an alternative history of the Christian understanding of the Jewish *halacha*, and not merely the *halacha* of *gittin*. By choosing, in the course of promoting a pharisaic legal agenda, to vilify the Pharisees themselves, proved to be an unfortunate, even tragic strategy. Nonetheless, the Gospel of Matthew remains an early milepost in the history of Jewish marriage law, even if it is a milepost on a road leading nowhere.