

Divorce in Qumran in Light of Early Halakhah *

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Introduction

The approach to divorce in the writings of the Qumran sect has been a source of controversy in the scholarly research ever since the publication of the Damascus Document some one hundred years ago. The wealth of Qumranic literature published over the last few decades has provided new information on the subject while at the same time fuelling the dispute. The present article is an attempt to shed new light on this matter, by exploring remnants of early tannaitic rulings relating to divorce. The approach to divorce found in ancient Pharisaic *halakhah* might help explain the seeming contradictions appearing in the different sectarian sources that deal with divorce. Furthermore, the comparison with ancient Pharisaic *halakhah* offers new explanations for sectarian matrimonial law. Whereas until now the research has tended to seek the roots of these laws in the sect's theological-ideological philosophy of the fundamental nature of marriage, this article will attempt to offer a new perspective, suggesting instead that the Qumranic approach to divorce is grounded in basic *halakhic* principles.

A. *Qumranic Sources which Appear to Prohibit Divorce*

1. The much debated passage in Damascus Document 4:20b–5:6a sharply reprimands those who ‘are caught . . . by fornication, (namely) taking two wives in their lives’: **הם ניתפשים . . . בזנות, לקחת שתי נשים בחייהם**.¹ As many writers have noted, the scholarly research offers three main interpretations

* A shorter version of this article was delivered at the SBL Annual Meeting in Toronto, November 2002. Unless otherwise indicated, the following English translations have been used for biblical and rabbinic citations. The translations for the Qumran literature are cited in the notes. Biblical citations: *The Holy Scriptures*, JPS (1917); Babylonian Talmud: I. Epstein (ed.), *The Babylonian Talmud*, Soncino Press (1936); Palestinian Talmud: J. Neusner, trans., *The Talmud of the Land of Israel* (1984); Mishnah: P. Blackman, *Mishnayot (in Six Volumes)* (1953); Sifre to Numbers: J. Neusner, trans., *Sifre to Numbers: An American Translation and Explanation* (1986), with revisions; Sifre on Deuteronomy: R. Hammer, trans., *Sifre: A Tannaitic Commentary on the Book of Deuteronomy* (1986); Tosefta: J. Neusner (ed.) *The Tosefta* (1979). The article by Ishay Rosen-Zvi, ‘“Even if One Found a More Beautiful Woman”: An Analysis of Grounds for Divorce in Rabbinic Literature’, *JSIJ* 3 (2005) (in Hebrew), was published after the present paper had been completed, so I was unable to relate to it in the body of the article.

¹ CD 4: 20–21, M. Broshi (ed.), *The Damascus Document Reconsidered* (1992), p. 17. Translation cited, with slight variations, from J. M. Baumgarten and D. R. Schwartz, ‘Damascus Document’, in J. H. Charlesworth (ed.), *The Dead Sea Scrolls: Hebrew, Aramaic, and Greek Texts with English Translations* (1995) vol. 2, p. 19.

for the problematic word **בחייהם**, ‘in their lives’,² which have a bearing on the sect’s attitude towards divorce.³ (a) The word **בחייהם** refers to the husbands (but presumably applies to the wives as well), who are the subject of the sentence, allowing them only one spouse throughout their lives; in other words, it imposes a ban on any second marriage, even following the death of the first wife. (b) The word **בחייהם** refers to the wives, prohibiting the husband from consecutive as well as simultaneous polygamy, as long as the first wife is still alive. According to this interpretation, the passage either totally prohibited divorce, or prohibited a second marriage subsequent to divorce. (c) The word **בחייהם** should not be taken at face value, as Louis Ginzberg already suggested in 1922,⁴ since it is merely an allusion to the biblical verse **ואשה אל אחותה לא תקח לצרר לגלות ערותה עליה בחייה**—‘And thou shalt not take a woman to her sister, to be a rival to her, to uncover her nakedness, beside the other in her lifetime’ (Lev. 18:18), understood by the sect as a general ban on polygamy. This scholarly exegesis of the CD passage confines the prohibition in the passage to polygamy alone.

2. The scholarly interpretations of the above passage changed with the publication of the Temple Scroll. In 11Q temple 57:17–19, the king is enjoined not to take another upon his wife, ‘for she alone shall be with him all the days of her life. But should she die, he may take unto himself another (wife) from the house of his father, from his family’,⁵ **ולוא יקח עליה אשה אחרת כי היאה**,⁶ **לבדה תהיה עמו כול ימי חייה ואם מתה ונשא לו אחרת מבית אביהו ממשפחתו**.⁶

This text proscribes both polygamy and divorce (according to the words: ‘all the days of her life. But should she die . . .’), but permits the king a second marriage should he be widowed. Moreover, it uses the words **כול ימי חייה** in a context similar to that of the word **בחייהם** in the CD passage, clearly referring to the *wife’s* lifetime.⁷ These facts led many scholars to conclude that divorce, or at least remarriage following divorce, was indeed forbidden by the sect, while the interpretation of the CD passage as a ban on any second marriage

² For similar divisions of the scholarly interpretations see, for example, G. Vermes, ‘Sectarian Matrimonial Halakhah in the Damascus Rule’, *JJS* 25 (1974), pp. 197–199; J. A. Fitzmyer, ‘Divorce among First-Century Palestinian Jews’, in M. Haran (ed.), *Eretz-Israel 14, H. L. Ginsberg Volume*, (1978), p. 108*; A. Schremer, ‘Qumran Polemic on Marital Law: CD 4:20–5:11 and its social background’, in J. M. Baumgarten et al (eds.), *The Damascus Document: A Centennial of Discovery*, *STDJ* 34, (2000) pp. 148–149.

³ Several researchers have reviewed the different scholarly approaches of the last century. For the proponents of each opinion and their different arguments see P. Winter, ‘Sadokite Fragment IV 20, 21 and the Exegesis of Genesis 1 27 in late Judaism’, *ZAW* 68 (1956), pp. 76–77; G. Vermes, (n. 2 above), pp. 197–199; Fitzmyer (n. 2 above), pp. 108*–110*. Schremer (n. 2 above), pp. 148–149, nn. 3–6, lists a further detailed bibliography.

⁴ L. Ginzberg, *An Unknown Jewish Sect* (1976), revised and updated translation of the author’s *Eine Unbekannte Sekte*, (1922), pp. 19–20. Later followers of this opinion include Chaim Rabin (C. Rabin, *The Zadokite Document*, 1954, p. 17) and Geza Vermes, (n. 3 above), see the references there, p. 198. Other proponents of this view are listed in Schremer (n. 2 above), p. 148, n. 3.

⁵ Translation cited from Y. Yadin, *The Temple Scroll 2, Text and Commentary* (1983), p. 258.

⁶ See previous note. See also E. Qimron, *The Temple Scroll: A Critical edition with Extensive Reconstructions*, (1996), p. 82.

⁷ See Y. Yadin, *The Temple Scroll*, vol. 1: *Introduction*, (1983), p. 356.

was gradually rejected.⁸ The primary justification suggested by the research for this supposed prohibition of divorce, or of a second marriage after the dissolution of the first, was based on the verse cited in the aforementioned CD passage: 'male and female created He them' (Gen. 1:27).⁹ Most scholars inferred from this that marriage was perceived by the sect as an unbreakable covenant between one particular man and one particular woman.

3. Aharon Shemesh¹⁰ has recently added another piece of evidence to the sect's reservations regarding divorce or remarriage subsequent to divorce. Fragment 4Q271.3¹¹ of the Qumranic sections of the Damascus Covenant reads as follows:

... אל יבא איש [אשה בברית(?) הקו]דש אשר ידעה לעשות מעשה
 בדבר אשר ידעה [מעשה בבית] אביה או אלמנה אשר נשכבה מאשר
 התארמלה וכול [אשר עליה ש]ם רע בבתוליה בבית אביה אל יקחה
 איש כי אם [בראות נשים] נאמנות וידעות ברורות ממאמר המבקר
 אשר על [הרבים ואח]ר יקחנה. . .

... Let no man bring [a woman into the holy] [covenant?] who has had sexual experience, (whether) she had such [experience in the home] of her father or as a widow who had intercourse after she was widowed. And any [woman upon whom there is a] bad [na]me in her maidenhood in her father's home, let no man take her, except [upon examination] by trustworthy [women] of repute selected by command of the supervisor over [the many. After]ward he may take her ...

⁸ For interpretations which ascribe a total prohibition of divorce to the sect, see Yadin, *ibid.*, p. 358 (see also his debate with J. Murphy-O'Connor, p. 356 n. 16); J. R. Mueller, 'The Temple Scroll and the Gospel Divorce Texts', *RQ* 10/38 (1980), pp. 253–254; B. Z. Wacholder, *The Dawn of Qumran, The Sectarian Torah and the Teacher of Righteousness* (1983), p. 125, where he even argues that CD refers explicitly to this very passage of the Temple Scroll, both of which proscribe divorce, (but his hesitations are expressed elsewhere, cf. pp. 16–17, 237, n. 100); J. Kampen, 'A fresh Look at the Masculine Plural Suffix in CD 4:21', *RQ* 16 (1993), pp. 91–97 (who suggests that halakhic developments took place between the earlier 11QT and the later CD). Among those who argued that divorce was legitimate but remarriage following divorce was prohibited for both spouses see L. H. Schiffman, 'Laws Pertaining to Women in the Temple Scroll', in D. Dimant and U. Rappaport (eds.), *The Dead Sea Scrolls: forty years of research*, (1992), pp. 217–218; A. Shemesh, '4Q271.3: A Key to Sectarian Matrimonial Law', *JJS* 49 (1998), pp. 245–246. Baumgarten (J. M. Baumgarten, 'The Qumran Essene Restraints on Marriage', in L. H. Schiffman, ed., *Archaeology and History in the Dead Sea Scrolls: The New York University Conference in Memory of Yigael Yadin*, JSOT/ASOR 2 = JSPSup 8, 1990, p. 15) believes that remarriage after divorce was forbidden for the king 'as well as any morally scrupulous adherent of the sect', but the commoner was allowed to divorce and remarry. For other views see J. Murphy-O'Connor, 'Remarques sur l'expose du Professeur Yadin', *RB* 79 (1972), pp. 99–100; Vermes, (n. 3 above), pp. 197–202; G. Brin, 'Divorce at Qumran', in M. Bernstein et al. (eds.), *Legal Texts and Legal Issues, Proceedings of the Second Meeting of the International Organization for Qumran Studies, Cambridge 1995*, published in honour of Joseph M. Baumgarten, *STDJ* 23 (1997).

⁹ It has long been noted that the same verse is cited by Jesus as an argument against divorce (Matt. 19:4; Mark. 10:6). This will be discussed later on.

¹⁰ Shemesh, n. 8 above.

¹¹ Text and translation cited from J. Baumgarten, (ed.), *Qumran Cave 4: The Damascus Document (4Q266–273)*, *DJD* 18 (1996), p. 175. For parallel fragments see there. Certain aspects of this passage will be discussed later on in this article.

Shemesh notes¹² that two women appear as potential mates in this passage: a never-married woman and a widow. The divorcee receives no mention. He concludes: 'sectarian *halakhah* outlawed remarriage subsequent to divorce as long as the former spouse was still living.' This ban applied, in his opinion, to husband and wife alike, since the sect believed that any sexual congress between a man and a woman created an unbreakable bond, which remained in effect even after divorce, preventing them from marrying anew.

B. *Qumranic Sources which Appear to Sanction Divorce*

However, it is becoming increasingly evident that the sect did indeed recognise the possibility of divorce. Testimony leading to this conclusion has been widely discussed in the scholarly literature.¹³ Below is a brief review of the evidence in this regard:

1. Damascus Document 13:15–17 requires one who divorces his wife to consult with the *מבקר*—'Examiner/Supervisor': 'Let no man do anything ... without informing the Examiner in the camp ... and so for one divorcing', *ואל יעש איש דבר. . . כי אם הודיע למבקר אשר, במחנה. . . וכן למגרש*.
2. Joseph Baumgarten notes the fact that Temple Scroll 54:4–5 cites the biblical laws regarding the vow of the divorcee.¹⁴
3. The Temple Scroll (66:11), based on Scripture, prohibits one who seduces a maiden from ever divorcing her after he marries her. Gershon Brin inferred from this that the specific prohibition with regard to the seducer proves that divorce was universally permissible for all others.¹⁵
4. Fragment 4Q159 2–4 points to a similar conclusion.¹⁶ Here too, the sect adheres to the pentateuchal law concerning the husband who falsely accuses his wife. Scripture instructs: *לא יוכל לשלחה כל ימיו*—'he may not put her away all his days' (Deut. 22:19), and the Qumranic passage cites it almost word for word: *ולוא [ישלה כל ימיו]*.¹⁷

¹² Shemesh, n. 8 above, pp. 246, 248.

¹³ See for example Vermes, Fitzmeyer (n. 2 above) and Baumgarten (n. 8 above). For a recent complete review of the evidence, see Gershon Brin (n. 8 above), who added new data for proving the possibility of divorce in Qumran.

¹⁴ Baumgarten, n. 8 above, pp. 14–15.

¹⁵ Brin (n. 8 above), p. 239.

¹⁶ J. M. Allegro with the collaboration of A. A. Anderson (eds.), *Qumran Cave 4/1 (4Q158–4Q186)*, DJD 5 (1968), 8. J. Strugnell, 'Notes en marge du volume V des DJD', *RevQ* 7 (1970), p. 178, corrected the reading and translation. See also Y. Yadin, 'A Note on 4Q159 (Ordinances)', *IEJ* 18 (1968), pp. 250–252. J. H. Tigay, 'Examination of the Accused Bride in 4Q159: Forensic Medicine at Qumran', *JANES* 22 (1993), pp. 129–134, discusses the *halakhah* of the husband defaming his wife (*מוציא שם רע*) and suggests new completions for the fragmented text. For additional bibliography, see *ibid.*, pp. 130–131 n. 6; L. H. Schiffman, 'Ordinances and Rules', in *The Dead Sea Scrolls* (n. 1 above), vol. II, p. 149.

¹⁷ Brin (n. 8 above), p. 240, reads like Allegro (see previous note): *ושלה כל ימיו*, and translates similarly to Allegro's suggestion: 'and he is sent away all his life'. He believes the text alludes to the expulsion of the husband from the sect, and argues that this punishment 'brought in its wake the compulsion to divorce his wife' (pp. 240–243). However, Strugnell, Yadin, Tigay and

5. Gershon Brin's principal argument is that in Qumran Cave 4 *Scroll of the Minor Prophets* the words of the prophet Malachi (2:16) **כִּי שָׂנֵא כִּי שָׁלַח**, 'For I hate putting away' (i.e. divorce), were interpreted: **כִּי אָם שְׁנֵאתָהּ שָׁלַח**, 'for if you hate her, send her away.'¹⁸ This interpretation is fully consistent with R. Judah's opinion brought in the Babylonian Talmud: **אָם שְׁנֵאתָהּ שָׁלַח**,¹⁹ and Targum Jonathan: **אָרִי אָם סָנִית לָהּ פְּטָרָה**. However, it is contrary to the plain meaning of the verses in Malachi, which imply that God hates divorce, viewing it as 'the betrayal of the wife of your youth'. Indeed, it was thus understood by other sages.²⁰ The Qumranic interpretation of the words of Malachi led Brin to the conclusion that the sect sanctioned divorce.

C. A Summary of the Problem

Let us now clearly define the questions arising from the data presented to this point. Based on a succession of Qumranic sources, it appears fairly certain that divorce was sanctioned and recognised in the Qumran sect, both in *halakhah* (the vow of the divorcee, the prohibition against divorce applying only to the seducer and slanderer) as well as in actual life (the obligation of the divorcer to consult the Examiner). Why, then, was the divorcee omitted from the list of candidates for marriage? Furthermore, why was the king commanded to live with his wife to the end of her days? And how should we interpret the obscure passage in the Damascus Document referred to at the beginning of this article in light of all the information at our disposal? Various attempts to provide answers to these questions have appeared in the research. There are those who disputed the very existence of a single overall sectarian halakhic system throughout all the different sectarian documents; it has been claimed that the different sources delineate a path of halakhic change and development;²¹ several scholars raised the possibility that certain *halakhot* applied to the king and the elite alone, as opposed to the ordinary people.²² A commonly held assumption in the research suggested that, with the exception of the king, divorce was universally permitted, but remarriage subsequent to divorce was not. This would explain the absence of the divorcee from the list of marriage candidates, as both she and her previous partner were forbidden to remarry, and the prohibition found in the Damascus Document would thus be interpreted as referring to remarriage *after divorce*, only as long as the first wife was still alive.²³ But this suggestion is problematic for two rea-

Schiffman (see prior note) rightly rejected this reading and translation. I am also not convinced that the existence of the expulsion punishment in Qumran in other instances attests to divorce taking place in those cases as well.

¹⁸ See R. Fuller, '4QXIIa', in E. Ulrich et al. (eds.), *Qumran Cave 4 X, The Prophets, DJD 15* (1997), pp. 221–232, esp. p. 224.

¹⁹ *bGittin* 90b.

²⁰ See R. Yohanan's opinion in *bGittin*, *ibid.*

²¹ See, for example, Murphy-O'Connor (1972); Kampen (n. 8 above).

²² See Wacholder's and Baumgarten's views (n. 8 above).

²³ For proponents of this view, see n. 8 above.

sons. (1) Why would there be any need for the institution of divorce if the connection between husband and wife could not be severed and if the writ of divorce did not permit the woman (or even the man!) to marry someone else?²⁴ ‘The essential formula of the *get*’—גופו של גט, as defined in m. *Gittin* 9.3, is: הרי את מותרת לכל אדם—‘Behold, thou art permitted to any man’, or according to a different version in Aramaic that is presented in that mishnah: למהך להתנסבא לכל גבר דתצבין—‘that thou mayest be wedded to whatever man thou desirest’. This wording is an ancient formula, as evidenced by its language, and by the wording of a remarkably similar *get* discovered at Masada: די את רשיא בנפשכי למהך ולמהי אנת לכול גבר יהודי די תצבין—‘that you are allowed to go by yourself and be the wife of any Jewish man whom you desire’.²⁵ Josephus Flavius as well gives this explanation for the need of a written *get*: ‘For thus will the woman obtain the right to consort with another.’²⁶ The assumption that divorce was customary in Qumran, but marrying again afterwards was forbidden, makes the *get*, as well as the entire act of divorce, devoid of meaning. (2) If marriage after divorce was indeed forbidden in Qumran, how does this prohibition comply with the explicit scriptural statement והלכה והיתה לאיש אחר—‘and [she] goeth and becometh another man’s wife’ (Deut. 24:2)?²⁷

D. *Divorce in Early Rabbinic Halakhah*

The key to understanding this complicated state of affairs may perhaps be found in early rabbinic law. While prohibition of, or restrictions on divorce appeared in the Gospels,²⁸ and also, as we have seen, in Qumranic writings, the rabbinic-Pharisaic approach is considered to be a lenient one. I will now attempt to provide some insight into a surprisingly stringent approach to divorce expressed in some of the rabbinic sources, which may shed light on the sectarian attitude. I will begin with a survey of these sources, and then use them as a tool to facilitate our understanding of the Qumranic literature.

Two passages from *Sifre Num.* offer a midrashic interpretation on the

²⁴ For the basic significance of the ‘writ of divorce’ as permission to remarry in the Bible and in ancient Near Eastern texts, as well as in Second Temple times, see D. I. Brewer, ‘Deuteronomy 24:1–4 and the Origin of the Jewish Divorce Certificate’, *JJS* 49 (1998), pp. 230–243.

²⁵ P. Benoit et al., *Les Grottes de Murabbaat, Texte, DJD* 2 (1961), pp. 104–109; A. Yardeni, *Textbook of Aramaic, Hebrew and Nabataean Texts from the Judean Desert and Related Material A, the Documents*, (2000), pp. 131–133. Translation: *ibid.*, B, *Translation. Paleography. Concordance*, p. 57.

²⁶ *Jewish Antiquities IV*: p. 253. On Josephus’s attitude towards divorce see A. M. Rabello, ‘Divorce in Josephus’, in U. Rappaport (ed.), *Josephus Flavius, Historian of Eretz-Israel in the Hellenistic-Roman Period* (in Hebrew) (1982), pp. 149–164.

²⁷ Compare to the puzzlement expressed by Baumgarten (Baumgarten, n. 8 above), p. 14.

²⁸ Matt 5:31–32; 19:3–9 (= Mark 10:2–12); Luke 16:18; 1 Cor. 7:10–11. The problems emerging from the comparison of these passages are beyond the scope of my discussion. Bibliography was brought by Fitzmyer (n. 2 above), p. 103*, n. 1; J. Kampen, ‘The Mathean Divorce Texts Re-examined’, *New Qumran Texts and Studies: Proceedings of the First Meeting of the International Organization for Qumran Studies, Paris 1992*, in G. J. Brooke (ed.), *STDJ* 15, (1994), p. 151, n. 8. See also M. Kister, ‘Sayings of Jesus and the Midrash’, *Jerusalem Studies in Jewish Thought* II (1982), p. 12 (in Hebrew). For some aspects of the text in Matthew, see below.

subject of the *sotah*—a woman suspected of infidelity (Num. 5:11–31). In a most matter-of-fact and nonchalant manner, they introduce a unique and exceptional ruling, which contradicts everything we have learned from other sources, eliciting great surprise among commentators and researchers alike.

‘דבר אל בני ישראל ואמרת אליהם איש איש כי תשטה אשתו, למה נאמרה פרשה זו? לפי שהוא אומר: ‘כי יקח איש אשה ובעלה’ וגו’. לא שמענו אלא בזמן שיש לו עדים והתרו בה שיוצאה ממנו בגט, אבל ספק נבעלה ספק לא נבעלה לא שמענו מה יעשה לה. ת”ל: ‘דבר אל בני ישראל ואמרת אליהם איש איש כי תשטה אשתו’. הרי הכתוב זוקקה שתהא שותה המים המרים לכך נאמרה הפרשה. (ספרי במדבר ז)

1. ‘Speak unto the children of Israel, and say unto them: If any man’s wife go aside...’ Why does Scripture present the present case [of the *Sotah*]? Since it is said, ‘When a man taketh a wife and marrieth her [then it commeth to pass, if she find no favour in his eyes because he hath found some unseemly thing in her, that he writeth her a bill of divorcement, and giveth in her hand and sendeth her our of his house]’ (Deut. 24:1), we derive the rule that a woman leaves her husband with a writ of divorce only in a case in which the husband has witnesses who have given prior warning (to the wife, [as to the ban and the punishment]). But if there is a matter of doubt whether or not the woman has actually had sexual relations, we do not know the rule of what the man has to do to her. Accordingly, Scripture states: ‘[And the Lord spoke unto Moses, saying] Speak unto the children of Israel, and say unto them: If any man’s wife go aside . . .’ (Num. 5: 11–12). Here, Scripture obliges her to drink the bitter water. For this purpose was the matter presented.

According to this *midrash*, in order for a husband to divorce his wife, the wife must be accused of adultery. There must be witnesses to the act who issued a prior warning, and there must also be an organised judicial procedure—as is customary in capital offences! The *midrash* explains that since a man could not divorce a wife suspected of adultery if these strict conditions were not met, it was necessary to enact the *sotah* procedure—a mystical, extra-judicial, transcendental procedure for determining a woman’s guilt. This explanation is surprising. It is a reflection of the strict ruling of *Bet Shammai*, which demands proof of a woman’s adultery in order to allow the divorce. The Mishnah in *Gittin* 9.10 states:

2. בית שמאי אומרים לא יגרש אדם את אשתו אלא אם כן מצא בה ערוה שנאמר (דברים כ”ד) כי מצא בה ערות דבר ובית הלל אומרים אפילו הקדיחה תבשילו שנאמר (דברים כ”ד) כי מצא בה ערות דבר רבי עקיבא אומר אפילו מצא אחרת נאה הימנה שנאמר (שם) והיה אם לא תמצא חן בעיניו (מ’ גטין ט י).

2. The School of Shammai say: A man may not divorce his wife unless he has found in her ‘ervah’ (the verse’s words: ערות דבר may be interpreted as: ‘an unseemly thing’, but literally ‘ervah’ means nakedness, i.e. shameful, adulterous)

as it is written, 'because he hath found some unseemly ('ervah') thing in her' (Deut. 24:1). But the School of Hillel say, Even if she spoiled a dish for him, as it is said, 'because he hath found some unseemly *thing* (דבר) in her.' R. Akiba says, Even if he found another more beautiful than she is, as it is said, 'and it shall be, if she find no favour in his eyes'.

Bet Shammai's opinion is generally regarded as an exceptional minority opinion, which, early on, was placed outside the bounds of legitimate halakhic debate. Later *halakhah* ruled according to *Bet Hillel* and presented broader options for divorce. However, in our *midrash*, this outcast opinion is presented as a distinct halakhic norm. Moreover, the *midrash* in *Sifre Num.* makes divorce conditional on a judicial procedure. But, according to the accepted halakhic ruling, the decision to terminate a marriage is taken within the personal domain and does not require any authorisation by a judicial or social institution. According to the Babylonian Talmud (see below), *Bet Shammai* also required witnesses to the act of adultery in order to permit divorce. However, no mention was ever made of the need for prior warning, even according to *Bet Shammai*. Witnesses and a prior warning were required only in cases of capital punishment. Adultery backed up by witnesses who issued a prior warning was punishable by death, and a woman who was sentenced to death, does not need a divorce! Nevertheless, there is another passage in *Sifre* (ibid.) which proves the authenticity of this extraordinary ruling:

3. רשב"י אומר. . . 'אם לא נטמאה האשה וטהורה היא' (במדבר ה:כח) למה נאמר? לפי שהוא אומר: 'ואיש אשר ינאף את אשת איש (ייקרא כ:י). לא שמענו אלא בזמן שיש לה עדים והתרו בה שהיא במיתה, יש לה עדים ולא התרו בה פטורה מן המיתה. הואיל ופטורה מן המיתה תהיה מותרת לבעלה? . . . אלא הרי היא בכלל שנאמר: 'כי יקח איש אשה ובעלה' (דברים כד: א) (ספרי במדבר יט).

3. R. Simeon b. Yohai says: . . . Why then is it stated, 'and if the woman be not defiled, but be clean' (Num. 5:28)? In other words, why does the verse stress that the *sotah* may resume sexual relations with her husband only if she be completely 'clean,' and it does not suffice to say 'if the woman be not defiled'? The verse teaches us that if the woman was not proven guilty, but she is not *completely* 'clean,' she may *not* resume sexual relations with her husband. Since Scripture states, 'And the man that committeth adultery with another man's wife [both the adulterer and the adulteress shall surely be put to death]' (Leviticus 20:10). We know that that is the rule only when there are witnesses who have issued a prior warning to her. But if there are witnesses who did not warn her, she is exempt from the death penalty. *Since she is exempt from the death penalty, is she permitted to resume sexual relations with her husband? But she is included in the rule that states: 'When a man taketh a wife, and marrieth her (i.e. in the rule regarding divorce)'* (Deut. 24:1).²⁹

This *midrash* does admit that a woman found guilty of adultery according

²⁹ There is a partial parallel to this homily in *bSotah* 6b; *ySotah* 3: 4, 19a.

to two witnesses who have issued a prior warning to her is subject to capital punishment. On the other hand, the *midrash* begins its discussion with the assumption that a woman is forbidden to her husband (and consequently, a candidate for divorce), first of all, precisely in such a case. The innovation of this *midrash* is that a wife is forbidden to her husband also in cases where the charge of adultery was not fully proven, when there are witnesses to adultery who have *not* warned her. In this case as well she is included in the rule regarding divorce. In other words, basically, *the same conditions must be met for capital punishment following adultery and for divorce*. The expansion of the options for divorce, as found in this *midrash*, required a special exegesis.³⁰

Various commentators have attempted to go beyond the plain meaning of these midrashic interpretations.³¹ But perhaps they should be accepted at face value, as halakhic *midrashim* tend to preserve ancient traditions.³² Moreover, the School of R. Yishmael, which produced *Sifre Num.*, often adheres to halakhic opinions that have been removed to the sidelines of the halakhic debate by *Bet Hillel* and its followers. It would appear that these two midrashic interpretations are vestiges of an early attitude towards divorce that was subsequently dismissed. However, evidence of this forgotten halakhic view may be traced elsewhere.

In the Mishnah in *Gittin* cited above (see Source D2), *Bet Hillel* and *Bet Shammai* both support their opinions with the words *ervah* ('adulterous/unseemly') and *davar* ('thing') which appear in the biblical text—'because he hath found some unseemly thing in her'—**כִּי מֵצָא בָהּ עֲרוֹת דָּבָר**. *Bet Shammai* uses the word *ervah* to narrow the possibilities of divorce solely to cases of adultery, while *Bet Hillel* uses the word 'thing' to give the husband almost limitless reasons for divorce. Research has shown that this ancient exegesis is reflected also in the Sermon on the Mount.³³ Jesus' famous 'exception clause': 'whosoever shall put away his wife, *excepting for the cause of fornication*, maketh her to commit adultery,' presents a similar position to that of *Bet Shammai*. This position is probably inferred from the same words *Bet Shammai* have used, *ervat davar*, which appear in the verse quoted by Jesus earlier: 'Whosoever shall put away his wife, let him give her a writ of divorce' (even though only the beginning of the verse is cited there and the words **עֲרוֹת דָּבָר**

³⁰ Another example of such an expansion in early *halakhah* is the obligation to divorce one's wife had she been raped, even though she was exempt from death penalty. See Targum Pseudo-Jonathan to Deut. 22:26. This instruction was later on limited solely to priests, cf. M. A. Friedman, 'Hamakhazir Gerushato Misheniset Vetum'at HaSotah Veha'Anusah', *Saul Lieberman Memorial Volume*, S. Friedman (ed.), New York and Jerusalem, 1993, pp. 189–232 (in Hebrew).

³¹ See editor's remarks in H. S. Horowitz (ed.), *Siphre D'be Rab* (1917), p. 10, line 16, p. 23, line 14; the interpretations of R. David Parado in *Sifre Rabbi David Parado, Perush Lesifre D'be Rab*, vol. 1 (1990), pp. 51–52, 126–127; R. Eliezer Nahum, *Peirush Sifre*, M. Kahana edition (1993), pp. 52–53; R. Meir Ish-Shalom, *Sifre im Tosefot Meir Ayin*, (1978), pp. 37–39; R. N. Z. Y. Berlin, *Sifre*, vol. 1 with the commentary Emek Hanetziv (1959), pp. 37–39; the correction offered by the Gaon of Vilna, *ibid.*, p. 37. See also H. Albeck, *Shisha Svdrei Mishnah, Seder Nashim* (1959), p. 407; J. Neusner, *Sifre to Numbers: An American Translation and Explanation*, I, p. 120. It should be noted that Rabenu Hillel appears to adhere to the plain meaning of the *midrash*, in *Sifre im Perush Rabenu Hillel bar Elyakim Me'erez Yavan*, S. Koliditzky edition (1983), p. 7a.

³² See J. N. Epstein, *Mevo'ot Lesafrut Hatannaim* (1957), p. 513.

³³ Matt. 5:31–32. See also 19:9, and n. 28 above.

are missing, as is often the case also in *Tannaitic midrashim*).

The Babylonian Talmud (b*Gittin* 90a) speculates upon how *Bet Shammai* would interpret the word ‘thing’:

4. וב"ש האי 'דבר' מאי עבדי ליה? נאמר כאן דבר ונאמר להלן דבר, על פי שני עדים או על פי שלשה עדים יקום דבר (דברים י"ט: טו), מה להלן בשני עדים, אף כאן בשני עדים. (ב' גטין צ ע"א).

4. What does *Bet Shammai* do with this word דבר = ‘thing’? ‘Thing’ is stated here [in the passage of divorce] and ‘thing’ is stated there: ‘According to the testimony of two witnesses or according to the testimony of three witnesses will a matter (דבר = thing) be established’ (Deut. 19:15). Just as there by two witnesses, here also by two witnesses.

The Talmud surmises that *Bet Shammai* would have dealt with the word דבר by extrapolating from the laws of witnesses to the laws of divorce, thus requiring witnesses to an adulterous act in order to permit divorce. Even though this appears in an anonymous text of the Talmud, this must have originally been a Tannaitic interpretation, whose authenticity may be proven from the Mishnah in *Sotah* 6.3:

5. . . . עדות הראשונה שאין אוסרתה איסור עולם אינו דין שתתקיים בעד אחד? תלמוד לומר (דברים כ"ד) כי מצא בה ערות דבר. ולהלן הוא אומר (שם י"ט) על פי שנים עדים יקום דבר מה להלן על פי שנים עדים אף כאן על פי שנים עדים. (מ' סוטה ו ג)

5. If the latter evidence (i.e. that the *sotah* slept with another man), which makes her forbidden for all time, can be sustained by one witness, should not the inference be that the former testimony (i.e. that the *sotah* was alone with another man), which does not render her forbidden for ever, can also be upheld by one witness! But [Scripture] intimates (Deut. 24:1): ‘because he hath found some unseemly thing in her,’ and in another verse it says (*ibid.* 19:15): ‘at the mouth of two witnesses . . . shall a matter [דבר = thing] be established’—just as there it must be at the mouth of two witnesses, so here, too, it must be at the mouth of two witnesses.

This Mishnah attempts to prove the need for two witnesses to testify that *the sotah* was alone with another man. Surprisingly, this law is based on the word *davar* = ‘thing/matter’ in the verses relating to *divorce*, and not those relating to the *sotah*. This indicates that this midrashic interpretation of the word ‘thing/matter’ first appeared in the context of divorce, and not in the context of the *sotah*. In other words, *Bet Shammai* did indeed require two witnesses to the adultery in order to permit divorce. Moreover, indirectly, we learn from this that matters relating to the *sotah* (a woman suspected of adultery), as well as those relating to the divorcee, were regarded as a single issue by the author of this Mishnah, just as they were connected in the *midrashim* of the *Sifre* cited earlier (see sources D1, D3). In any event, this midrashic interpretation teaches us that *Bet Shammai* did in fact demand a judicial procedure before allowing a divorce to take place. It is easy to understand the source of

the extreme stringency imposed by *Bet Shammai* for proving an adulterous act and thus enabling a divorce. As divorce proceedings were conditional on adultery, and the first stage in an accusation of adultery was the bad reputation which the woman acquired, i.e. gossip, ancient *halakhah* required strict verification of the rumours. It would appear that the earliest version of this requirement may be found in an exegetical interpretation by R. Yohanan ben Nuri:

6. אכלה בשוק, גירגרה בשוק, הניקה בשוק — בכולן ר' מאיר
אומר: תצא, ר' עקיבא אומר: משישאו ויתנו בה מוזרות בלבנה;
אמר לו רבי יוחנן בן נורי: אם כן, לא הנחת בת לאברהם אבינו
שיושבת תחת בעלה, והתורה אמרה: +דברים כ"ד+ כי מצא בה
ערות דבר, ולהלן הוא אומר: +דברים יט+ על פי שנים עדים או
על פי שלשה עדים יקום דבר, מה להלן דבר ברור, אף כאן
דבר ברור (גטין פט ע"א).³⁴

6. If she [a married woman] ate in the street, if she quaffed in the street, if she suckled in the street, in every case R. Meir says that she must leave her husband. R. Akiba says she must do so as soon as gossips who spin in the moon begin to talk about her. R. Johanan b. Nuri thereupon said to him: If you go so far, [that a woman who is merely rumored to have committed adultery must leave her husband], you will not leave our father Abraham a single daughter who can stay with her husband, whereas the Torah says: [a man should divorce his wife] *If he find in her some unseemly thing*, and it further says: *At the mouth of two witnesses or at the mouth of three witnesses shall a thing be established*; and just as there the thing must be clearly ascertained, so here it [the suspicion about the woman] must be clearly ascertained (bGittin 89a).

It would appear that the original intention of this ancient analogy with regard to the word *davar* = 'thing/matter' in the case of witnesses and in the case of divorce was not to specifically require witnesses to the adultery, but to require a thorough clarification in any manner necessary: The term **דבר ברור**, 'clear thing/matter', is a technical term referring, in the language of the *tannaim*, to a thing/matter that does not leave any doubt.³⁵ A synonymous term to 'clear thing/matter' is mentioned in the Tannaitic literature with regard to a non-virginity suit lodged against a bride.³⁶

Actually, we are confronted with the same phenomenon with regard to the divorcee, the accused bride and the *sotah* (see *mSotah* 6.3 mentioned earlier, source D5, and the ensuing discussion). Similar rulings (the need for a thor-

³⁴ An interesting parallel of this homily has recently come to light in a newly discovered tannaitic midrash. Cf. M. I. Kahana, *Sifre Zuta on Deuteronomy: Citations from a New Tannaitic Midrash* (2002), p. 346 (in Hebrew). See editor's remarks, pp. 351–359.

³⁵ Cf. *Sifre Deuteronomy*, 48, L. Finkelstein edition, p. 113; *yBikkurim* 1: 8, 64b; *Bereshit Rabba* 93, J. Theodor and C. Albeck edition, III, p. 1167; *Tanhuma*, Buber edition, Bamidbar, *siman* 21.

³⁶ The biblical decree 'And they shall spread the garment [before the elders of the city]' (Deut. 22:17) is interpreted by the sages as: 'תוורו דברים כשמלה', 'They must make their words [literally: matters, *devarim*] as clear as if the garment itself were exhibited' (Sifre Deut. 237).

ough clarification) and wordings (*davar*; *davar barur*) are applied in all three cases, revealing an underlying assumption that the divorcee is under suspicion exactly as the other two women.

The sources that have been reviewed indicate that, over the course of time, *tannaitic halakhah* interpreted the ‘clarification of the matter/thing’ as a judicial procedure. The above-mentioned *midrashim* in *Sifre* teach us that the judicial procedure for divorce involved any form of clarification necessary for imposing the death penalty for adultery, namely witnesses and prior warning. The question of the commentators as to why a woman sentenced to death needs a writ of divorce is not that difficult to answer. First, we should remember that the *get*, i.e. the dissolution of the marriage, was an event that took place also within the private domain; it involved the husband, and went into effect immediately. By contrast, the sentencing of a woman to death took place within the public, criminal domain. It was dealt with by society/the courts, and went into effect, if at all, at some point in the future. Secondly, it is doubtful whether the courts of law ever actually imposed the death penalty, and it would appear that in the rare cases—if they ever existed—of a woman found guilty of adultery, with two witnesses who gave prior warning, the sages would have been content with the dissolution of the marriage, and would not have executed the woman. In any case, the strictness of the divorce procedure in fact almost totally prevented cases of divorce. A situation whereby a woman was alone with another man, with two witnesses to the fact who gave prior warning to the man and the woman, is practically impossible. For this reason, the ancient halakhic *midrash* (source D3—*Sifre*) extended permission to divorce also to cases with witnesses but without prior warning.³⁷

The stringency of early halakha with regard to divorce has apparently had far-reaching consequences over the possibility of marriage with a divorcee. The *baraita* in *bGittin* 90a supplements the opinion of *Bet Hillel* also with regard to the word *ervah* in the passage:

7. תניא, אמרו בית הלל לבית שמאי: והלא כבר נאמר דבר! אמרו להם ב"ש: והלא כבר נאמר ערות! אמרו להם ב"ה: אם נאמר ערות ולא נאמר דבר, הייתי אומר משום ערוה תצא משום דבר לא תצא, לכך נאמר דבר; ואילו נאמר דבר ולא נאמר ערות, הייתי אומר משום דבר תנשא לאחר ומשום ערוה לא תנשא לאחר, לכך נאמר ערות.

7. It has been taught: *Beth Hillel* said to *Beth Shammai*: Does not the text distinctly say ‘thing’ [which implies that he may divorce her for any cause]? *Beth Shammai* rejoined: And does it not distinctly say ‘unseemliness’ (*ervah*) [indicating that the only act for which a woman may be divorced is adultery]? *Beth Hillel* replied: Had it said only ‘unseemliness’ (*ervah*) without ‘thing,’ I should have concluded that she should be sent away on account of unseemliness, but not of any [lesser] ‘thing.’ Therefore ‘thing’ is specified [to indicate that she may be divorced for any offensive act]. Again, had it said only ‘thing’ without ‘un-

³⁷ According to other (later?) traditions, *Beth Shammai* extended it even to situations of other indecent behaviour on the part of the wife. Cf. *ySotah*, 1:1, 16.2 = *yGittin* 9:11, 50.4.

seemliness ('*ervah*'), I should have concluded that [if divorced] on account of a 'thing' she should be permitted to marry again, but if [she is divorced] on account of 'unseemliness' ('*ervah*'), she should not be permitted to remarry. Therefore, 'unseemliness ('*ervah*') is also specified. (*bGittin* 90a)

Bet Hillel claims that the word *ervah* teaches us that even a woman who was divorced because of adulterous behaviour may marry someone else. The two midrashic interpretations of *Bet Hillel* are clearly deduced from one another. If a woman can be divorced on grounds other than adultery, then there is nothing wrong with marrying a divorcee, and *Bet Hillel* wishes to allow all divorcees, without exception, to remarry. This interpretation of *Bet Hillel* is clearly polemic in nature, attacking what must have been a widespread practice. The ramification of *Bet Shammai's* opinion, which restricts divorce to cases of adultery, is that all divorcees bear the stigma of immoral behaviour! Moreover, a prohibition against marrying a divorcee contradicts the verse, which states explicitly, and without any note of censure: 'and [she] goeth and becometh another man's wife.' Surprisingly, in spite of the explicit text, there was an opinion that attempted to prevent marriage to a divorcee, and provided a disapproving interpretation of the neutral biblical passage describing a divorcee's second marriage:

8. [והלכה והיתה לאיש אחר] היה ר' מאיר או' . . . וכתוב קראו 'אחר', שאינו בן זוגו. הראשון הוציא מפני עבירה, זה בא ונתקל בה. השני, אם זכה לשמים, מוציאה מתחת ידו. אם לאו, לסוף שקוברתו, שנ' או כי ימות האיש האחרון. כדי האיש הזה למיתה שאשה זו כנס לתוך ביתו. (תוספתא סוטה ה ט).

8. 'and [she] goeth and becometh another man's wife.' R. Meir would say . . . and Scripture calls him 'another man,' because he is not his match. The first man put her away *because of transgression*, and this other one comes along and stumbles through her. The second husband, if he has merit in Heaven, puts her away. And if not, in the end she will bury him. Since it is said, or if the latter husband die, who took her to be his wife (Deut., 24:3)—this man is deserving of death, for he received such a woman into his house. (*Tosefta Sotah*, 5.9)

This approach, which existed for many generations within the Pharisaic world, was an attempt to erase the validity which the Bible gives to marriage to a divorcee. This ancient *midrash* appears to have been studied alongside the biblical passages, and was still quoted long after the opinion of *Bet Hillel*, which allowed marriage to a divorcee, had been accepted. The midrashic interpretation which strongly condemns any man marrying a divorcee, is cited in *Sifre Deut.*,³⁸ a composition attributed to the school of R. Akiva, a follower of *Bet Hillel*, who permitted a woman to be divorced 'even if he found one more beautiful than her'. Even R. Meir, a disciple of R. Akiva, quoted

³⁸ *Sifre Deut.* 270. The idea that one who remarries his own divorcee after her second marriage deserves death is indicated in Philo, *On the Special Laws*, 3:31, but Philo does not seem to criticise marriage to a divorcee in general. For bibliography on Philo's attitude towards divorce see Rabello, note 26 above, p. 161, note 42.

this interpretation, which denounces marriage to a divorcee, in spite of the fact that he himself began by saying that there are also those who 'have the intention of divorcing their wives' for no reason. Jesus, in his previously noted Sermon on the Mount, also strongly denounced the divorcee: 'And he that shall marry her that is put away, committeth adultery.' As in the Pharisaic ruling, he denounced a person who married a divorcee, but did not totally rule out this possibility.

To summarise the review, it would appear that underlying the later tannaitic approach which, following *Bet Hillel*, granted lenient grounds for divorce, there existed an ancient, stringent approach that was eventually rejected in the rabbinic literature. Vestiges of this approach can still be found in ancient halakhic *midrashim*, and they formed a core around which later opposing exegeses were constructed. The early, discarded approach contained three elements: (a) it made divorce conditional upon an accusation of adultery against the wife; (b) it required a rigorous judicial inquiry into the accusation; and (c) it attempted to prevent marriage to a divorcee. It would appear that this approach prevailed during Second Temple times among the Pharisees as well as in other communities. Even after being totally dismissed in the rabbinic halakhic rulings that followed the destruction of the Temple, remnants of it still appeared in exegetical commentaries quoted by later sages of the Mishnaic era, including followers of *Bet Hillel* who were far less stringent in their approach to divorce. These forgotten remnants can now facilitate our understanding of parallel sectarian halakhic rulings, and shed new light on the problems presented earlier.

E. *The Qumranic Attitude towards Divorce: A New Perspective*

Elsewhere I have suggested that a certain similarity existed between the approach of *Bet Shammai* and that of sectarian *halakhah*.³⁹ There are strong grounds for assuming that in this case, too, the sect followed the same ancient *halakhah* that was partially preserved in the halakhic rulings of *Bet Shammai*, and which was stated in Jesus' sermon as well: divorce was permitted only in cases of adultery. The possibility that the sect's approach to divorce was similar to that of *Bet Shammai* has already been suggested in the research.⁴⁰ However, the full scope of this ancient Pharisaic approach and its broad halakhic bearing on matrimonial law in general (including the invalidation of marriage to a divorcee) have not yet been explored. As a result, the ramifications of this ancient set of laws on Qumranic legislation have not been investigated. If indeed, according to the sect, as according to *Bet Shammai*, the divorcee was necessarily an adulteress, then being married to a divorcee was certainly repugnant, exactly as evidenced in the tannaitic world. *This was not due to mythical views of the everlasting nature of marriage, but instead was*

³⁹ V. Noam, 'Bet Shammai and Sectarian Halakhah', *Jewish Studies* 41 (2002), *Journal of the World Union of Jewish Studies*, 45–67 (in Hebrew); V. Noam, 'Traces of Sectarian Halakha in the Rabbinic World', in S. Fraade and A. Shemesh (eds), *Studies in the Texts of the Desert of Judea* (8th Orion International Symposium, forthcoming).

⁴⁰ See Schiffman (n. 8 above), p. 217.

the inevitable outcome of the practical halakhic circumstances, causing all divorcees to be regarded as adulteresses.

In light of this, it is easier to explain the absence of the divorcee from the list of candidates for marriage in the aforementioned CD passage 271.3 (see source A2). Rather than offering theological explanations of the sect's philosophy with regard to the significance of marriage, it is simpler to explain this phenomenon in terms of the main topic of the CD passage—the prohibition against marrying a woman, whether single or widowed, which is suspected of sexual immorality. If indeed, under sectarian law as well as ancient Pharisaic law, the divorcee was suspected of such behaviour at the outset, she would inevitably be an unacceptable candidate for marriage.

This would also explain why divorce was not an option for the king. One does not expect to find adultery in the family that serves as a paragon of morality! On the other hand, one can understand why, in other contexts, divorce was recognised as a legitimate legal option, although exercised only in rare cases, as an extreme measure. A marriage, by its very nature, may be dissolved, and its dissolution theoretically permits both the man and the woman to remarry, precisely as in Pharisaic law and the plain meaning of the biblical text. Nevertheless, as mentioned, marriage to a divorcee was regarded as an abomination. The biblical verse permitting marriage to a divorcee was apparently given a sectarian interpretation which bore great similarity to the early rabbinic *midrash* that sharply denounced a person marrying a divorcee, predicting a hateful marriage and even impending death (see source D8: 'in the end she will bury him!').

The Qumranic approach to divorce suggested here is not stated explicitly in sectarian documents; however, echoes of an exegetic interpretation similar to that of *Bet Shammai* do appear in sectarian writings. Damascus Document 4Q271 3 (see source A2), cited above, states:

Let no man bring [a woman into the ho]ly [covenant?] who has had sexual experience [literally: *ידעה לעשות מעשה בדבר*—had known to perform an act of that matter (thing = *דבר*)].

The terms 'had known' and 'to perform an act of that matter/thing' are apparently euphemisms for sexual promiscuity, as noted by Joseph Baumgarten. He cites passages in the rabbinic literature that use the term *לעשות מעשה*—'to perform an act' in the sexual sense,⁴¹ but no source has been found for the word *davar*—'matter/thing' in a sexual context, as in the above passage. It may be possible to identify the source of this definition of the word by proposing a reconstruction of a sectarian exegesis: whereas *Bet Hillel* used the word 'thing' in the Scriptural passage to *broaden* the options for divorce, deliberately interpreting the word in a *non*-sexual manner, the sect (and perhaps also *Bet Shammai*) may have applied the stringency deriving from the word *ervah* ('unseemly/adulterous') to the word *davar* ('thing'), interpreting it too in sexual terms.⁴²

⁴¹ Baumgarten (n. 11 above), p. 177, L. 11–12.

⁴² An interesting parallel to the phrase *ידעה לעשות מעשה בדבר* is to be found in the Targum Onkelos and Pseudo-Jonathan to the biblical *עבירות דבר—עבירות פתגם*. This Targumic expression and its

Might it also be possible to find a parallel sectarian passage for the stringent judicial clarification procedure that was in force in ancient *halakhah* prior to the issuing of a divorce? Apparently, it was the practice of the sect, as well, to demand thorough clarification in sensitive matters. Passage 4Q271.3, which deals with establishing the innocence of a young woman who had acquired a bad reputation before her marriage, also mentions a clarification procedure: 'Except [upon examination] by trustworthy [women] of repute, selected by command of the Supervisor over [the Many].' The above-mentioned Fragment 4Q159 2–4 (B4), similar in language and subject to CD passage 4Q271.3 (see source A2),⁴³ discusses a husband's accusation of his bride's non-virginity. It too requires verification by means of a physical examination by women specially trained for this: 'and trustworthy women shall examine her,' precisely as required by Pharisaic law for *ברור דבר*—'a clear thing'. In both passages, the *מבקר*—'Examiner/Supervisor' is the one in charge of approving the admissibility of a candidate for marriage, or of determining a bride's guilt, by appointing women to perform a physical examination. This procedure may explain another sectarian ruling mentioned earlier (see source B1): the requirement that the Examiner be consulted prior to every marriage. Apparently, the *Mevaker's* role was to authorise marriage in all other cases as well. Only on rare occasions did he have to resort to the procedure described in 4Q271.3. As we have seen, the requirement of consulting the Examiner applied also to 'one who divorces'. The Examiner thus appears to have played a similar role in the matter of divorce. Before her husband could divorce her, the Examiner would determine whether 'the matter was clear' that the woman had, in fact, committed adultery.⁴⁴ If this reconstruction is correct, then the sect living in the Judean Desert was following a halakhic approach which did not differ significantly from that found in ancient Pharisaic law. It required strict clarification with regard to women suspected of improper sexual behaviour—a bride who was suspect prior to her marriage (4Q271 3, see source A2), a bride who was suspect after her marriage (4Q159, see source B4), and a candidate for divorce (CD 13:15–17, see source B1). However, the requisite clarification of a woman's guilt took on a judicial nature in rabbinic law, and was translated into a requirement of two witnesses who had given prior warning. The sect, by contrast, required clarification by the Examiner.

Once it is understood why divorce was prohibited for a king, and why the divorcee was not listed among the candidates for marriage, the broad interpretation of the words in the Damascus Scroll 'taking two wives in their lives' is no longer necessary. There is no reason to assume that this passage prohibited divorce, contrary to what is implied in other sectarian writings, as we have seen that the sect sanctioned divorce. Furthermore, the suggestion that even though divorce itself was permitted, the intention of the CD pas-

original version was discussed by M. A. Friedman, *Jewish marriage in Palestine; a Cairo Geniza Study*, I, Tel Aviv / New York, 1980, p. 344. I am indebted to Professor Friedman for this remark.

⁴³ Cf. C. Hempel, '4QOrd a (4Q159) and the Laws of the Damascus Document', *The Dead Sea Scrolls, Fifty Years After their Discovery, Proceedings of the Jerusalem Congress, July 20–25, 1997*, L. H. Schiffman et al. (eds.), Jerusalem 2000, pp. 372–376.

⁴⁴ Of course, no physical examination could be involved in this case.

sage was to prohibit remarriage subsequent to divorce is, as we have seen, an oxymoron, as a *get* that cannot sever the connection between a couple is not a *get*. The best explanation would thus appear to be the narrower interpretation suggested by earlier researchers, that ‘in their lives’ refers to a prohibition of polygamy. Vermes has already shown that the prohibition of polygamy is the only suitable interpretation for other biblical evidence brought in this passage of the Damascus Document.⁴⁵ Moreover, this interpretation best suits the biblical wording alluded to in the words ‘in their lives.’⁴⁶

Summary

Qumranic literature appears to contain conflicting testimony on the subject of divorce. The difficulty that the scholarly research encountered in resolving this problem stemmed from two imprecise basic assumptions:

- (a) Researchers assumed that the Pharisaic approach to divorce was the diametrical opposite of that of the sect. They therefore mistakenly thought that the quest should be for marital laws that were independent and unique to the sect, without reference to the rabbinic literature.
- (b) The sect’s approach to divorce was regarded solely in ideological-theological terms. Insufficient attention was paid to the possibility of investigating the *halakhic norms* of those days and the effect they may have had on the sect.

Deeper delving into tannaitic laws and interpretations of divorce reveals that even in the Pharisaic world, at the height of Second Temple times, a stringent, narrow approach to the dissolution of a marriage existed that made divorce conditional on a proven charge of adultery against the wife. The stringent approach to divorce inevitably led to sharp recoiling from marrying a divorcee—a woman accused of adultery—and the midrashic exegesis of the pentateuchal description of such a marriage (contrary to its plain meaning), harshly condemned whoever actually did so. A similar approach is also found in the New Testament. The reconstruction of this disposed-of layer of Pharisaic *halakhah* is an important tool in resolving the mystery of the sectarian attitude to divorce.

The current article suggests that the sect did indeed recognise the possibility of divorce. However, the sectarian law apparently allowed divorce only in cases of adultery, in line with the antique rabbinic approach. It would appear as well that the sect, too, similar to early rabbinic sources, demanded clarification of the charges against a woman prior to the issuing of a divorce, just as it demanded such clarification in the cases of a candidate for marriage who had acquired a bad reputation and a bride who had been accused of non-virginity. This would explain why the divorcer was required to consult with the Examiner prior to divorcing. Divorce was synonymous to adultery, and the divorcee was regarded as an adulteress. In all likelihood, the sect denounced marriage

⁴⁵ Vermes, see n. 3 above.

⁴⁶ See source A 1 above, and the discussion following.

to a divorcee, just as Jesus denounced it and just as the ancient Pharisaic *midrash* denounced it. This may elucidate both the prohibition against a king issuing a divorce and the absence of the divorcee from the list of candidates for marriage. Assuming the veracity of this reconstruction, we see yet again how the rabbinic literature may provide a key to the understanding of sectarian *halakhah*, even in those cases where, on the surface, they appear to involve contradictory approaches.