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Old Testament Principles Relating to Divorce and Remarriage

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Deviation From God's Creation Ideal

In the beginning, God created man and woman for each other. When God presented Eve to Adam, Adam said:

> "This at last is bone of my bones and flesh of my flesh; she shall be called Woman, because she was taken out of Man." Therefore a man leaves his father and his mother and cleaves to his wife, and they become one flesh. (Gen 2:23-24; RSV)

Thus, in a perfect world, a perfect and immortal couple were joined by God in an indissoluble social and spiritual union represented by the metaphor "one flesh." God's plan was eternal heterosexual monogamy between human beings. Note the aspects of this plan: (1) permanent, (2) heterosexual, (3) monogamous, and (4) between human beings. No law is stated to outline God's plan. He simply created it so, knowing it was good.

That the expression "one flesh" is a metaphor for a social ideal rather than a literal description of a physical reality became painfully obvious once sin and death entered into the world. Once this happened, the "permanent" aspect of God's plan was affected by mortality and sin. Due to mortality, one individual, comprising 50% of the "one flesh" unit, can die before the other, leaving the bereaved partner with the desire or need to marry again. Thus, "permanent" could no longer mean "eternal," but had to be redefined as "until death." Furthermore, due to sin and its negative effect on human relationships, one or both marriage partners may desire to escape from their permanent bond through divorce and may seek remarriage to other partners. Sinful desires also threaten the other aspects of God's plan, i.e., "heterosexual," "monogamous," and "between

human beings." Thus, we have aberrations such as homosexuality, polygamy, adultery, rape, pre-marital sex, prostitution, and sex with animals.

In light of Old Testament evidence, the above-mentioned deviations from God's ideal established at Creation are not equally offensive in God's sight. We can distribute them among the four aspects of God's plan which are violated:

1. "Permanent." Since remarriage after the death of one's spouse does not violate permanent heterosexual monogamy between human beings, given that permanent is defined as "until death," such remarriage does not receive a negative assessment at all. Divorce and remarriage, however, do violate permanence until death. Therefore, these practices are viewed negatively by God, but are tolerated under certain circumstances and regulated, primarily for the benefit of women involved, in order to mitigate their most evil effects (Deut 24:1-4, etc.; see below).

Heterosexual practices which not only violate permanence but also occur outside the marriage relation—e.g., adultery, pre-marital sex, rape, prostitution—receive negative assessments and penalties to varying degrees, depending upon factors such as whether or not existing marriage relations (including betrothal) are violated, whether or not consent is violated, etc.[1]

2. "Heterosexual." Homosexuality is categorically condemned as an abomination and carries the death penalty (Lev 18:22; 20:13).

3. "Monogamous." Polygamy violates monogamy by multiplying marriage partners of one sex or the other. In ancient Near Eastern culture, it was the female side which was multiplied. While polygamy violates monogamy, it does not violate the principle of permanence. Polygamy is tolerated in the Old Testament, but regulated, mainly for the benefit of women involved, in order to mitigate its worst effects (see, e.g., Exod 21:10-11; Lev 18:18; Deut 21:15-17).

4. "Between Human Beings." Sexual acts between human beings and animals are categorically condemned as abominations and carry the death penalty (Lev 18:23; 20:15-16).

The pattern which emerges from the Old Testament data can be summarized as follows:

1. Where heterosexual relations between human beings are concerned, violation of permanence or monogamy is tolerated without penalty, although restricted, but practices which not only violate permanence but also occur outside the marriage relation incur penalties.

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[1]Adultery violates an existing marriage and carries the death penalty (Lev 20:10; Deut 22:22). If pre-marital sex involves a betrothed woman, it is regarded as adultery, punishable by death (Deut 22:23-24), but if the woman is unbetrothed and seduced, the penalty is forced marriage (including payment of the bride price) at the discretion of the woman's father (Exod 22:15-16). Penalties for rape depend upon the status of the victim: death if she is betrothed (Deut 22:25-27); fifty shekels and forced marriage with no right of divorce if she is unbetrothed (Deut 22:28-29). Concealed immorality by a woman living in her father's house, evidence of which is her lack of virginity discovered at the time of her marriage, is punishable by death (Deut 22:20-21).

2. Sexual relations with partners other than human beings of the opposite sex are categorically condemned and incur the death penalty.

The above discussion does not cover all possibilities. For example, an incestuous marriage does not violate the four aspects of God's ideal mentioned above, but it does violate a fifth aspect necessarily introduced in the course of human degeneration: marriage partners cannot be close relatives (Lev 18:6-18; 20:17-21), except in the case of levirate marriage (Deut 25:5-6; cp. Gen 38:8-10).

To conclude this introduction to Old Testament principles governing sexual unions, it is clear that in the Old Testament, God's attitude to divorce is fairly close to His attitude to polygamy: both are tolerated but restricted, the restrictions primarily benefiting the women involved. Neither is approved or recommended. That divorce and polygamy are treated similarly is no accident. Both can involve "taking two wives in their lifetime" (Fitzmyer 1976: 220, quoting the Damascus Document from Qumran, 4:20-21).

As Jesus pointed out (see Mk 10:2-12, esp. vss. 5-9), the most important Old Testament passage from which principles governing marriage are to be derived is Gen 2 (see above). Thus, even though we live in a world of sin and death, we should seek to fulfill God's ideal established at Creation rather than attempting to get away with as much as possible. Nevertheless, biblical law granted some concessions to human weakness and inadequacy. The concession with which this paper is concerned is the right of divorce and remarriage. Biblical law did not institute divorce and remarriage, but tolerated and restricted it (Driver 1902: 272). Although God allowed divorce under some circumstances, He hated unjustifiable divorce:

> And this again you do. You cover the Lord's altar with tears, with weeping and groaning because he no longer regards the offering or accepts it with favor at you hand. You ask, "Why does he not?" Because the Lord was witness to the covenant between you and the wife of your youth, to whom you have been faithless, though she is your companion and your wife by covenant. Has not the one God made and sustained for us the spirit of life? And what does he desire? Godly offspring. So take heed to yourselves, and let none be faithless to the wife of his youth. "For I hate[2] divorce, says the Lord the God of Israel, and covering one's garment with violence, says the Lord of hosts. So take heed to yourselves and do not be faithless." (Mal 2:13-16; RSV)

Here, the two major problems with divorce are:

1. Divorce is the breaking of a covenant to which God is witness.

2. Divorce robs God of godly offspring. How? The text does not say, but perhaps it implies that broken homes are not conducive to spiritual life.

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[2]Ironically, the Hebrew verb is *śānē',* the same verb as in Deut 24:3—"and if the latter husband *hate* her, and write her a bill of divorce . . ."

Isa 54:6 mentions another problem with divorce: it causes grief and suffering to a forsaken wife.

The Right of Men to Divorce Their Wives, But Not to Take Them Back After They Remarry

Two Old Testament legal prescriptions indicate circumstances under which a husband may divorce his wife if he chooses. The first is Deuteronomy 21:10-14, which allows an Israelite man to divorce a foreign captive woman whom he has married if she does not please him. She is then free to go where she wishes, with the obvious implication that she may remarry. The law protects such women by prohibiting their sale or treatment as slaves. The second law is Deut 24:1-4, which is far more important to us because it is the only Old Testament legal prescription specifying grounds on which an Israelite man can divorce a woman of his own nationality and status: an Israelite free woman. This is why the Pharisees were interested in this passage and asked Jesus concerning it (see Matt 19:3ff; Mk 10:2ff).

I quote Deut 24:1-4 (RSV) here in analyzed form, showing the three main parts of the law (A., B., C.) and key words which establish the structure of the law (bold type), in addition to verse divisions (1, 2, 3, 4).

A. Protasis (describing conditions under which the law applies)
  (1) **When** a man takes a wife and marries her, **if** then she finds no favor in his eyes because he has found some indecency[3] in her, and he writes her a bill of divorce and puts it in her hand and sends her out of his house, and she departs out of his house,
  (2) **and if** she goes and becomes another man's wife,
  (3) and the latter husband dislikes her and writes her a bill of divorce and puts it in her hand and sends her out of his house, **or if** the latter husband dies, who took her to be his wife,
B. Apodosis (stating the legislation)
  (4) **then** her former husband, who sent her away, may not take her again to be his wife, after she has been defiled;
C. Motive (reason for the legislation)
  for that is an abomination before the Lord, and you shall not bring guilt upon the land which the Lord your God gives you for an inheritance.

Note the following points:

1. The scope of the law is limited to cases in which husbands choose to dissolve marriages. It does not cover cases in which women are free to leave their husbands for willful neglect or abuse (see on Exod 21, etc., below).

[3]For reasons to be explained below, I find this translation to be more accurate than, for example, NRSV—"something objectionable about her," and NJPS—"something obnoxious about her."

2. Deut 24:1-3 is descriptive, not prescriptive. Since the apodosis, containing the legislation itself, deals only with remarriage, the law directly regulates remarriage; it does not directly regulate divorce (Laney 1992: 9). It is implied that divorce according to an already existing procedure is the given condition under which the remarriage legislation applies (Craigie 1976: 304-305).[4]

3. Deut 24:1-3 outlines the divorce procedure in some detail. The text does not simply say: "When a man divorces (Heb. *šillaḥ*, lit. "sends away") his wife . . ."[5] Furthermore, the need to mention "indecency" suggests that ancient men could find other reasons for wanting to divorce their wives.

4. Although in a narrow sense the ground for divorce is "indecency," the full ground for divorce is that a husband is no longer able to love/like his wife because she has committed indecency. The words "she finds no favor in his eyes" are not superfluous. If a woman commits indecency, her husband can forgive her and continue to love her and retain her as his wife. He does not have to submit to pressure to get rid of her, whether such pressure should come from his relatives or anyone else. If, on the other hand, he can no longer love her on the basis of a certain kind of sufficiently significant negative reality, he has the option of divorcing her.

5. The words "she finds no favor in his eyes *because* he has found some indecency in her" mean that the "indecency" must be the real reason for the breakdown of the relationship, not simply an excuse for divorce on other grounds.

6. The primary purpose of the law is clear in Deut 24:4: to avoid bringing guilt upon the land through the abomination of remarrying a former wife after an intervening marriage (see Isaksson 1965: 25). A secondary purpose may have been to discourage excessively hasty divorce.[6] According to Driver, the follow-

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[4]The expulsion of Hagar (Gen 21:9-14) is a different kind of case. Hagar was only a slave functioning as a surrogate mother, and her expulsion was endorsed by God.

[5]This Hebrew verb "is the usual Heb. word for divorce; cf. v. ^{4} $22^{19.29}$ Is. 50^{1} Mal. $2^{16.}$ A divorced woman is gᵉrûšāh, lit. *one driven out, expelled* (Lev. 21^{14} 22^{13} Nu. 30^{10} Ez. 44^{22}); but the verb *grš* is not found in this sense (Gn. 21^{10} being scarcely an instance)." (Driver 1902: 271).

[6]There have been a number of other proposals concerning the purpose of the law. For example:

(a) To protect the second marriage. This idea, suggested by Yaron (Yaron 1966: 8-9), is attractive, but it "fails to explain why the rule would apply after the death of the second husband when the second marriage would no longer be in jeopardy" (Laney 1992: 10).

(b) To prevent a type of incest. Wenham argues that the marriage relation establishes a permanent family bond (Gen 2:24) not ending with divorce. Therefore, just as a man is forbidden to marry his sister-in-law because she has, in effect, become his sister (Lev 18:16; 20:21), he is forbidden to remarry his former wife after an intervening marriage (Wenham 1979: 36-40). Laney responds, "The major difficulty with this view is that it seems to reach beyond what is clear to the reader. One wonders how many Israelites would have seen the connection between the "one flesh" of the marriage union and the incest laws of Leviticus 18:6-18. Wenham uses the phrase, "type of incest." Is remarriage to one's spouse after an intervening marriage actually incest or not?" (Laney 1992: 11). In my view, the answer to Laney's question is: "no." If it were incest, why is it not mentioned in Lev 18? Furthermore, if incest were the issue, we would expect that remarriage to an ex-spouse would be prohibited even if there were no intervening marriage.

ing elements in the law protect women against rash or arbitrary divorces (Driver 1902: 272): (a) A definite ground for divorce must be stated; (b) A proper legal instrument must be prepared and delivered into the hand of the wife in question; (c) A divorced wife is free to remarry, but if she does, she cannot be taken back later by her former husband. While these factors are significant, it must be pointed out that such measures would have had only limited effectiveness where a determined husband was concerned (Yaron 1966: 5).

The discussion below will consider the following questions arising from Deut 24:1-4: (1) What, according to this law, constitutes the legitimate ground for divorce? (2) What are the implications of the divorce procedure? (3) What are the implications of the prohibition of remarriage to an earlier wife after she has been married to another man?

The Legitimate Ground for Divorce

The cause for divorce is stated in vs. 1—"she finds no favor in his eyes because he has found some indecency in her." The reason for a second husband

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(c) To protect a stigmatized woman from further abuse by her offending first husband (Luck 1987: 64). Luck suggests that Deut 24:1-4 "does not intend to present us with a 'right' of the husband to divorce his wife but, rather, with a discussion of how God intends to care for the wife in the face of a man who wills to wrongly divorce her" (*ibid.:* 61) for something about her which he finds embarrassing (see *ibid.:* 60). Against Luck's view is the fact that the language of Deut 24:1 refers to the wife as having committed an offense; she has not simply embarrassed him by something which has happened to her through no fault of her own. Furthermore, Luck's assessment of the husband's character has no basis in the text (Laney 1992: 12).

(d) To deter greedy profit by the first husband. Westbrook suggests that Deut 24:1-4 seeks to prevent unjust enrichment of a woman's first husband by his remarrying her after an intervening marriage, thereby gaining access to wealth which the woman had acquired by inheritance upon the death of her second husband, or by a divorce settlement when her second husband divorced her without sufficient cause, i.e., without her committing a socially recognized misdemeanor (Westbrook 1986: 393ff). Westbrook's suggestion that two kinds of divorce function in Deut 24:1-4—(a) innocent wife and so indemnified, and (b) guilty wife and so not indemnified—is based upon comparison with Hammurapi Laws 141-142 and Mishnah Ketuvot 7:6 (cp. 7:4-5, etc.), where these distinctions operate (see Westbrook 1986: 396-398).

Laney points out several problems with Westbrook's view: ". . . the view is based on considerable speculation, it does not deal adequately with the key terms 'abomination' and 'sin on the land.' And the view implies that the first divorce and remarriage is presented with approval. This is contrary to a proper understanding of the clause, 'since she has been defiled' (24:4)" (Laney 1992: 13).

Westbrook's interpretation is based on the assumptions that in Deut 24:3 the divorce by the second husband is (a) without the cause of "indecency" mentioned in vs. 1, and (b) a husband divorcing his wife but lacking an allegation of "indecency" was obligated to provide her with a financial settlement, i.e., at least restoration of her dowry. To be more precise, it should be pointed out that the first of these two assumptions is really denial of an assumption that Deut 24:3 should be interpreted in the light of vs. 1, which includes the fact that a valid divorce of a woman by a man is based on "indecency" committed by the woman. Since vs. 3 does not explicitly mention a cause, Westbrook could be right in his assertion that the woman's second divorce is without cause. However, there is no indication of indemnification in the text of Deut 24:1-4 (see further below).

divorcing the same woman is given in vs. 3—"and the latter husband dislikes her" (literally "hates her," i.e., no longer loves her). Both husbands divorce the woman because they cease to like her and come to dislike her. While vs. 3 does not explicitly mention "indecency" as the cause of the second husband's dislike, this should probably be assumed on the basis of the fact that verse 3 is most naturally interpreted in the light of vs. 1 (Driver 1902: 271). In other words, it appears that all marriages, not only first marriages, are protected from dissolution by husbands without cause.

The Hebrew expression in Deut 24:1 which is translated "indecency" is the combination *ʿervat dābār,* meaning literally: "the nakedness of a thing" (Driver 1902: 270). A detailed discussion of this expression is warranted by its importance here and by the fact that its meaning has been debated for millennia (see below). We will first consider the range of meaning of each component of the expression, *ʿervāh* and *dābār*, and then compare the use of the combination in Deut 23:14 (Heb. vs. 15) with its use in Deut 24:1.

The Hebrew word *ʿervāh* means "nakedness"/"bareness," most commonly with reference to parts of persons, especially genitals, which, according to the dictates of modesty, should be covered to conceal them from the view of other persons. It is shameful for these parts to be uncovered/exposed (*glh*) and therefore seen by persons who should not see them.[7] For example, priests are forbidden to ascend the Lord's altar by means of steps, "that your nakedness (*ʿervāh*) be not exposed on it" (Exod 20:26 [Heb. vs. 23]; cp. 28:42; see also Gen 9:22-23). To "uncover the nakedness" of another person can refer to sexual relations (Lev 20:18, 19). Thus, Lev 18 and 20 prohibit incest by forbidding a person to "uncover the nakedness/genitals" of various kinds of close relatives.

In figurative usage with reference to a person, *ʿervāh* can denote (1) the physical nakedness of a figurative person who personifies a nation, or (2) the physical nakedness of a literal person as a metaphor for the moral shamefulness of that person.

1. Punishment of a nation can be represented by referring to the forceful, shameful exposure to public view of the nakedness of a woman personifying that nation: Isa 20:4; 47:3; Ezek 16:37; 23:10, 29; cp. Hos 2:3).

2. 1 Sam 20:30, Saul insults his son Jonathan by referring to "the shame of your mother's nakedness." The woman is not literally naked, but the idea of her physical nakedness is a metaphor for her moral shamefulness. Saul regards Jonathan as committing treachery against him by befriending David, thereby bringing shame upon himself and his mother. It appears that Saul regards Jonathan's disloyal behavior as stemming from the character of his mother, and Saul regards them as shameful in the same way that they would be shameful if they were physically naked. Perhaps the shameful nakedness of Jonathan's mother is

[7]Cp. the cognate Akkadian noun *ūru*, which means "nakedness" or "shame" (von Soden 1981: 1435).

meant to imply that Jonathan is the son of an adulteress,[8] and therefore that he is not regarded as Saul's legitimate son and heir.

In Gen 24:9, 12, *ʿervāh* refers to the "bareness" of something other than a person's body:[9] here the bareness of Egypt in time of famine has to do with its vulnerability to attack by a foreign power and/or its lack of food.[10] BDB 789 indicates that *ʿervāh* here is a figurative usage, which is true if the basic meaning of *ʿervāh* is "nakedness of a person." We will see that *ʿervāh* in Deut 23:14 (Heb. 15) may also figuratively refer to the "bareness" of something other than a person's body.

The second component of the expression *ʿervat dābār* is the common word *dābār*, which can refer to (1) human speech or a unit thereof, e.g., "command," "message," "word," or (2) a "matter," "affair," or "thing" about which one may speak, e.g., "act"/"deed," "event," "case" for judicial investigation, "something"/"anything." (Brown, Driver & Briggs 1953: 182-4).

Now we are ready to consider the combination *ʿervat dābār*. Aside from Deut 24:1, the passage under investigation, it is used only once, in the preceding chapter of Deuteronomy:

> You shall have a place outside the camp and you shall go out to it; and you shall have a stick with your weapons; and when you sit down outside, you shall dig a hole with it, and turn back and cover up your excrement. Because the Lord your God walks in the midst of your camp, to save you and to give up your enemies before you, therefore your camp must be holy, that He may not see anything indecent (*ʿervat dābār*) in/among you, and turn away from you." (Deut 23:12-14; RSV; Heb.—13-15)

Here, the "thing" (*dābār*) which is naked/bare, i.e., uncovered, is something other than a human body or part thereof; it is excrement which comes from a human body. The issue is one of indecent exposure of something coming from a person which causes offense when it is seen in the one responsible, i.e., when the offense of that person is detected (see below). Note the following points:

1. The offense is not simply that one causes something disgusting, but rather that one leaves something exposed which should not be exposed. Thus, *ʿervāh* here has the meaning which it carries elsewhere when it is used without *dābār*: "nakedness"/"bareness" (see above).

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[8]The impact is equivalent to that of analogous modern insults.

[9]Compare the verb *ʿārāh*, of the same root as *ʿervāh*, which can refer not only to laying bare human bodies (see, e.g., Isa 3:17; 22:6; Zp 2:14), but also to laying bare other objects, e.g., foundations by tearing down walls built on them (Heb 3:13; Ps 137:7; both Piel).

[10]Lack of food could be understood not only as "bareness," but also as "emptiness." Cp. Gen 24:20, where the verb *ʿārāh* refers to emptying a water jar. The Akkadian adj. *erû*, of the same Semitic root as Heb. *ʿārāh* and *ʿervāh*, can mean not only "naked," but also "empty" and "empty-handed/destitute" (Oppenheim, A. L. et al., eds. 1958: 320-321).

2. There is no question of ritual impurity here. Normal elimination (urination or evacuation of bowels) never causes ritual impurity under the levitical system.

Returning to Deut 24:1, where a husband can divorce his wife for *ʿervat dābār*, "nakedness of a thing," the question is: nakedness of what thing? What is exposed, and to whom? Comparison with Deut 23:14 (Heb. 15) suggests that the offense involves indecent exposure of something belonging to or coming from the woman, which causes offense to the husband when that indecent exposure is found by him to have taken place. Thus, the ground for divorce is not anything in general which may cause offense, nor is it some kind of ritual impurity contracted by the woman.[11] Furthermore, it is wrongdoing performed by her rather than a condition she has acquired through no fault of her own, such as a physical characteristic[12] which could lead to unfavorable comparisons with other women. That wrongdoing is involved is clear from the language of Deut 24:1: the husband finds (Heb. *māṣāʾ*) the offense in (b) his wife. This combination is the usual biblical Hebrew way to express the idea of detecting a sin or crime (cp. 2 Kgs 17:4; 1 Sam 29:3, 6, 8; Hos 12:9; 1 Sam 12:5; see Brown, Driver & Briggs 1953: 593).[13] Finding wrongdoing means discovering evidence that it occurred. Thus, in order to divorce his wife, a man need not personally witness her indiscretion, but he needs evidence that it has taken place.

Based upon the above discussion of *ʿervat dābār* and its components, several kinds of indecent exposure come to mind as possible grounds for divorce:

1. We have seen that in Deut 23, unburied excrement is *ʿervat dābār*, the same expression used in 24:1. So could a wife be divorced for the ancient equivalent of failing to flush the toilet? The context in Deut 23 is a war camp where there would be no women. However, the fact that sanitation is required even for the unsettled conditions of military life implies *a fortiori* (all the more so) that it is required for settlements where there would be women. Here, legislation of the extreme case economically covers all other cases (see further be-

[11] If a man could divorce his wife every time she became ritually impure, he would have grounds at least once a month until her menopause (see Lev 15:19ff)!

[12] Against Craigie (1976: 305), who comments on *ʿervat dābār*: "In this context, the words may indicate some physical deficiency in the woman, though this meaning is uncertain. A physical deficiency such as the inability to bear children may be implied." Laney also suggests that *ʿervat dābār* may refer to a physical deficiency such as the inability to bear children. As support for this idea, he cites a possible parallel between Deut 24:1-4 and an old Assyrian marriage contract (Laney 1992: 5), but the contract only stipulates that if within two years the wife does not provide the husband with offspring, the wife will purchase a slave woman for this purpose and the slave woman can be sold later after a child is produced. The contract mentions divorce, stating that if either the wife or the husband initiates divorce, the initiating party must pay the other five minas of silver. However, there is no mention that inability to bear a child constitutes ground for divorce (for the text, see Pritchard, ed. 1969: 543). Neither is there any mention of inability to bear a child in Deut 24:1-4.

[13] Thus, the ancient Aramaic translation ("targum") of Onkelos translates the Hebrew *ʿervat dābār* in Deut 24:1 by the Aramaic words *ʿabêrat pitgam*, "transgression of a decree."

low). Nevertheless, while the appearance of *ʿervat dābār* in Deut 24:1, in close proximity to the use of the same term in 23:14 (Heb. 15), allows for the possibility that a woman could be divorced for failing to cover her excrement, there are factors which diminish the likelihood that this scenario is the main concern in 24:1:

a. It is unthinkable that a woman would reach marriageable age without training in this aspect of her culture and without awareness of the consequences of failure if those consequences included the possibility of divorce. Furthermore, there would be no motivation to get away with leaving one's excrement uncovered.

b. In Deut 23, it is God who is potentially offended to the point of altering His relationship with the offender, but in ch. 24, it is a man who is offended. It cannot necessarily be assumed that God and man would be offended to the same degree by a given offense.

c. In Deut 23:12-14 (Heb. 13-15), excrement is explicitly mentioned as the "thing" which is exposed, but 24:1 mentions only a woman. Thus, in keeping with the semantic range of *ʿervāh*, it is most natural to think of that which is indecently exposed as the woman herself, i.e., her body.

2. As just stated, the most natural interpretation of *ʿervat dābār* in Deut 24:1 is the indecent exposure of the wife. Since indecent exposure can occur in the context of sexual relations (see above), it is logical to assume that the range of offenses involving *ʿervat dābār* could include adultery. However, adultery was not simply a ground for divorce: "If a man is found lying with the wife of another man, both of them shall die . . ." (Deut 22:22). So in Deut 24:1, something less than adultery must be indicated. Nevertheless, the fact that *ʿervat dābār* could cover adultery was important for the later history of the application of the law.[14] Under Roman rule, for example, the death penalty for adultery fell into disuse.[15] Under these conditions, adultery could become a ground for divorce. This was recognized in Matt 5:32 and 19:9 by the wording of the exception clauses to Jesus' statements on divorce, which allow divorce for *porneia*." The Greek word *porneia*, which can be rendered "unchastity," "fornication," or "prostitution," covers unlawful sexual intercourse in general, including adultery (Arndt & Gingrich 1952: 699-700; cp. Hauck & Schulz: 1968 592).

3. Since premarital sex involves indecent exposure, it too could be called *ʿervat dābār*. However, Deut 22:13-21 covers the case of a bride who is found by her husband to have previously lost her virginity: she is executed if proven

[14]The same is true of homosexuality on the part of one's spouse, which would come under the semantic range of *ʿervat dābār*, but which was punished by death under Mosaic law (Lev 20:13).

[15]See John 8:3-11, telling how the scribes and Pharisees brought to Jesus a woman caught in adultery, referred to the law of Moses, and asked Jesus' opinion. Under the theocracy, there would have been no question in such a case. The trap laid for Jesus in this instance is based upon the discrepancy between the Mosaic penalty and the penalty allowed under Roman rule.

guilty.[16] Furthermore, the language of Deut 24:1—"When a man takes a wife and marries (lit. "is lord/husband over") her . . ."— indicates that the man has already accepted his bride, consummated the marriage, and commenced to live with her as her husband. So lack of virginity in a bride is ruled out in this context.

4. Although the term *ʿervat dābār* itself could refer to indecent exposure in general, whether or not sexual relations are involved, Deut 24:1 has in mind indecent exposure without sexual relations.[17] The idea that something less than sexual relations is in view here is reinforced by the fact that the verse uses the unusual expression *ʿervat dābār* rather than a term which would denote sexual intercourse, such as *šākab ʿim*, "lie with," *gillāh ʿervāh*, "uncover nakedness," or *nāʾap*, "commit adultery." "Indecent exposure" could be understood literally to mean that a wife improperly uncovers herself without physical contact of her sexual body parts with those of another person. Such "immodesty" could include a whole range of actions (or neglect of proper actions), e.g., not covering her arms or head in public[18] or bathing in the presence of one or more adult males other than her husband.[19] Additionally, "indecent exposure" could be understood figuratively (as pointed out to me by Prof. Raymond Westbrook of Johns Hopkins University) to mean "improper conduct with a man other than her husband," e.g., kissing him, allowing him to fondle her, acting in a lewd or sexually suggestive manner, or otherwise flirting, thereby tempting him to covet her (in violation of the tenth of the Ten Commandments—Exod 20:17; Deut 5:21; cp. Matt 5:28). The assumption of this kind of dynamic was the thrust of Michal's accusation of David: "How the king of Israel honored himself today,

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[16]Note that it is the bridegroom who presses charges. Cp. Matt 1:18-19, where Joseph chooses a quiet annulment of his betrothal to Mary, whose pregnancy he had not caused, over a public trial. It is doubtful that Mary would have been in serious danger of execution at this late date, but her humiliation would have been great.

[17]Driver concludes: "It is most natural to understand it of *immodest* or *indecent behaviour."* (Driver 1902: 271).

[18]Middle Assyrian Laws ¶40 reads as follows:

> Neither wives of seigniors nor [widows] nor [Assyrian women], who go out on the street [may have] their heads [uncovered]. The daughters of a seignior . . . whether it is a shawl or a robe or [a *mantle*], must veil themselves; [they must not have] their heads [uncovered]. Whether . . . or . . . or . . . they must [not veil themselves, but] when they go out on the street alone, they must veil themselves. A concubine who goes out on the street with her mistress must veil herself. A sacred prostitute whom a man married must veil herself on the street, but one whom a man did not marry must have her head uncovered on the street; she must not veil herself. A harlot must not veil herself . . . (Pritchard, ed. 1969: 183)

[19]See Babylonian Talmud Gittin 90a-b, referring to a wife who would "go out with her hair unfastened and spin cloth in the street with her armpits uncovered and bathe with the men" (Epstein, ed. 1977: 90a-b).

uncovering himself today before the eyes of his servants' maids . . ." (2 Sam 6:20).[20]

Note three points:

a. Lack of sufficient covering can be affected by factors apart from the percentage of body surface which is covered when a person is standing still, e.g., direction from which a person is viewed,[21] activity which causes clothing to move,[22] thickness or sheerness of clothing, etc.

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[20]2 Sam 6 is instructive regarding the nature and significance of an allegation of indecent exposure and its impact on a marriage. Here, a woman accuses a man of indecent exposure: "As the ark of the Lord came into the city of David, Michal the daughter of Saul looked out of the window, and saw King David leaping and dancing before the Lord; and she despised him in her heart" (2 Sam 6:16). Later, "David returned to bless his household. But Michal the daughter of Saul came out to meet David, and said, "How the king of Israel honored himself today, uncovering himself today before the eyes of his servants' maids, as one of the vulgar fellows shamelessly uncovers himself!" David did not take kindly to this accusation:

> And David said to Michal, "It was before the Lord, who chose me above your father, and above all his house, to appoint me as prince over Israel, the people of the Lord—and I will make merry before the Lord. I will make myself yet more contemptible than this, and I will be abased in your eyes; but by the maids of whom you have spoken, by them I shall be held in honor." And Michal the daughter of Saul had no child to the day of her death. (2 Sam 6:20-23; RSV)

David was not naked in the sense that his genitals were exposed. Verse 14 says explicitly that he was wearing a linen ephod. Furthermore, given the importance of modesty in connection with the Lord's rituals (see Exod 20:26 [Heb. vs. 23]; cp. 28:42) and given the concern of David to avoid another outbreak of the Lord's wrath after the punishment of Uzzah for touching the ark (2 Sam 6:7), it is unthinkable that David actually exposed himself in a lewd manner. "David's intention was not to expose himself in an unseemly manner before all and sundry but to humiliate himself before Yahweh" (Anderson: 1989: 107). But having been raised as a princess, Michal had certain ideas about public royal behavior. What Michal objected to, apparently, was David's temporary abandonment of royal dignity (". . . it is equally possible that she was not more strict in her views but rather more proud"; *ibid.:* 107). She regarded his behavior as immodest for a king and phrased her rebuke in the language of indecent exposure: "uncovering himself today before the eyes of his servants' maids, as one of the vulgar fellows shamelessly uncovers himself!" (2 Sam 6:20). David disagreed with Michal, and she was childless. Why did she remain childless? Perhaps her barrenness is to be taken as a sign of divine displeasure (Ackroyd 1977: 71). It is also possible that her marital relationship with David ended at this point, but there is no clear indication of this (Anderson: 1989: 107). Of course, it should be asked why Michal had had no child before this. She had previously been married to David, and then to Paltiel. Perhaps she was simply infertile. But placement of the notice of Michal's barrenness where it is in the text seems to imply that her barrenness had something to do with her accusation of David. In any case, Saul's line did not continue through David and Michal is not heard from again. The bottom line is that an issue of indecent exposure, whether rightly or wrongly perceived, had a devastating impact upon an ancient Israelite marriage in spite of the fact that Michal could not divorce David.

[21]See Exod 20:26 [Heb. vs. 23], referring to priests on altar steps, viewed from below.

[22]See 2 Sam 6:16—Michal saw David "leaping and dancing before the Lord."

b. It is likely that some cases of indecent exposure would be regarded as basis for the assumption that illicit intercourse had been committed or was about to be committed.[23]

c. It almost goes without saying that "indecent exposure," both literal and figurative, is culturally defined. For example, what we would regard as a modest one-piece bathing suit would in many cultures, past and present, be regarded as woefully inadequate. On the other hand, many people who would, in accordance with their cultural norms, punish a woman for baring her arms and/or legs in public would not think twice about a woman exposing a breast to suckle a child. In any case, in keeping with the use of *ʿervat dābār* in Deut 23 and 24, the offense in question is repugnant to the husband to the extent that it can cause a break in the marriage relationship (cp. 2 Sam 6).

If *ʿervat dābār* in Deut 24:1 refers to something less than illicit sexual intercourse, and if Greek *porneia* refers to illicit sexual intercourse, we can understand how in Matt 5:31-32 Jesus raised the standard for marriage above that of Deut 24:1 by allowing divorce only for the most serious sexual offenses:

> It was also said, "Whoever divorces his wife, let him give her a certificate of divorce." But I say to you that every one who divorces his wife, except on the ground of unchastity (*logou porneias*), makes her an adulteress; and whoever marries a divorced woman commits adultery. (RSV)

The Mosaic law referred to is Deut 24:1. As the ground for divorce, Greek *logou porneias*, "a matter of fornication," functions here in Matt 5:32 as the non-synonymous functional equivalent of *ʿervat dābār*.[24] I say "non-synonymous" because the meanings are different: while Greek *porneia*, "unchastity/fornication," i.e., illicit sexual intercourse, is broader than Greek *moicheia*, "adultery" (Hauck & Schulz 1968: 581), it is narrower than Hebrew *ʿervat dābār*, which can encompass not only illicit sexual intercourse, but lesser exposures as well.[25] Thus, Jesus says that whereas Moses allowed divorce for inde-

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[23]Cp. Num 5, where a woman's guilt or innocence in a case involving suspicion of adultery without sufficient evidence (which I term "*porneia* paranoia") is determined through a cultic ordeal. The ordeal works on the principle that something impure (e.g., a morally impure woman) cannot contact something holy (e.g., holy water, etc.; see vs. 17) with impunity (cp. Lev 7:21). The ordeal procedure was "to protect a suspected but unproved adulteress from the vengeance of an irate husband or community by mandating that God will decide her case" (Milgrom: 1990: 354).

[24]The Septuagint translation of *ʿervat dābār* is *aschēmon pragma*, which could be understood as "shameful deed" or "ugly thing" (see Liddell & Scott 1940: I, 267; II, 1457).

[25]A Hebrew equivalent of *porneia* is *zᵉnût* (Fitzmyer 1976: 220-221). Fitzmyer points out that in Jer 3:2, 9, the Septuagint uses *porneia* to translate *zᵉnût* (*ibid.:* 221), which Brown, Driver & Briggs (1953: 276) interpret as "fornication." The verb from the same root is *zānāh*, which in literal usage refers to being or acting like a harlot, i.e., committing sexual immorality (idid.: 275). The equivalence of *porneia* and *zᵉnût* is strengthened by the fact that *porneia* is also connected with prostitution. Not only can *porneia* refer to sexual relations with a prostitute; the Greek root of *porneia* originated in reference to prostitution (1 Cor 6:13ff; see Hauck & Schulz 1968: 580-581).

cent exposure without illicit sexual relations, He permits divorce only if illicit sexual relations take place.

It appears that Jesus was reacting to the position of the rabbinic school of thought referred to in the Mishnah as the "House of Shammai," but He was not simply endorsing that position. The House of Shammai interpreted *ʿervat dābār* in Deut 24:1 literally as *dᵉbar ʿervāh*, "a matter of nakedness," i.e., according to my view, "a matter of indecent exposure" (Mishnah Giṭṭin 9:10).[26] Strikingly, in Matt 5:32, Jesus' Greek phraseology follows the syntax of the House of Shammai formulation: *logou*[27] *porneias*,[28] "a matter of fornication." The differ-

[26]Bacchiocchi, Laney, and others interpret Shammai as referring to marital unchastity (Bacchiocchi 1991: 173; Laney 1992: 6), but the Hebrew of Mishnah Giṭṭin 9:10 simply uses the two words which appear in Deut 24:1, although in reverse order (see above). If Bacchiocchi and Laney were correct, and if *porneia* in Matt 5:32; 19:9 meant "unchastity," the exception clause in these verses ("except for unchastity") would give Jesus' teaching on divorce no higher standard than the House of Shammai, a problem which Bacchiocchi recognizes (Bacchiocchi 1991: 180). For a number of reasons, including the fact that the respective contexts of Matt 5:32 and 19:9 indicate that Jesus' standard was, in fact, higher than that of Shammai and also Deuteronomy, Bacchiocchi looks for a narrower meaning of *porneia* and concludes that the Matthean exception clauses refer only to marriages to near relatives, which are prohibited in Lev 18:6-18 (ibid.: 183-189). This interpretation, which is not a new idea (see refs. in Fitzmyer 1976: 210 n. 52), is preferred by Fitzmyer, who finds support in a passage from a Qumran text: the Damascus Document 4:12b-5:14a:

> . . . there is clear first-century Palestinian support for an interpretation of *porneia* in Mt 5:32 and 19:9 in the specific sense of zenût as an illicit marital union between persons of close kindship. Matthew, therefore, would be making an exception for such marital situations for Gentile Christians who were living in a mixed community with Jewish Christians still observing Mosaic regulations. (Fitzmyer 1976: 221; cp. 210, 218)

Because I understand Deuteronomy and Shammai to be referring to indecent exposure, a lesser offense than unchastity, I have no problem with interpreting *porneia* in Matt 5:32 and 19:9 as fornication in general (i.e., not limited to incestuous relations) and at the same time identifying Jesus' higher standard: Jesus allows divorce only when illicit sexual relations take place. However, a further problem must be faced: If *porneia* in Matt 5:32 and 19:9 means simply "adultery," why is not *moicheia*, the usual word for "adultery," not used (Fitzmyer 1976: 209)? Are there sexual acts out of the range of *moicheia* which would fall under *porneia* as grounds for divorce? Two examples which comes readily to mind are: (1) Sexual relations within the context of incestuous marriages (see discussion above), and (2) homosexual acts (see Jude 7). Therefore, rather than limiting the meaning of *porneia* in Matt 5:32 and 19:9 to incestuous marriages, I would suggest that in these verses, *porneia* is chosen because it covers not only adultery, but also such aberrations as incestuous marriages and homosexual acts. Another perversion appears in Lev 18:23—sexual relations with an animal—but I am not sure that this would be covered by *porneia*. In Lev 18:23, this kind of act is labeled *tevel* (cp. 20:12), which carries the idea of "confusion, violation of nature, or the divine order" (Brown, Driver & Briggs 1953: 117). The Septuagint translates this word in Lev 18:23 by *museron*, "loathsome, abominable, detestable" (Arndt & Gingrich 1957: 531).

[27]Genitive because it follows *parektos*, "apart from"/"except for." That *logou* here is the equivalent of Hebrew *dābār* was pointed out to me by Prof. Ivan Blazen of Pacific Union College.

[28] Genitive of *porneia*. Hauck and Schulz suggest that "*λόγοσ πορνείασ* in Mt. 5:32 is perhaps modelled linguistically on the Heb. formula" (Hauck and Schulz 1968: 591). They do not perceive that the order of the two Greek words in Matt 5:32 reverses the order of the equivalent

ence between the two formulations is the difference between the range of meaning of *porneia*, illicit sexual intercourse, and that of the broader term *ʿervāh*, exposure in general. Remember that because capital punishment for adultery had basically died out by Jesus' day, *ʿervat dābār* in Deut 24:1, as interpreted by the House of Shammai, would now refer to all indecent exposure, including that which involved sexual relations, as a ground for divorce. Thus, Jesus was stricter than the House of Shammai, and much stricter than the rabbinic House of Hillel, which interpreted *ʿervat dābār* in Deut 24:1 with unwarranted looseness to mean: "Even if she spoiled a dish for him" (Mishnah Giṭṭin 9:10; trans. Blackman 1963: 444).[29]

The Divorce Procedure in Deuteronomy 24:1 and its Implications

According to Deut 24:1, the divorce procedure consists of a man writing for his wife a divorce document (*sēper kᵉrîtot*, lit. "document of cutting off/separation"; see Driver 1902: 271), putting it in her hand so that she possesses it, and dismissing her from his house. Undoubtedly the divorce document would contain something like the formula, "She is not my wife, and I am not her husband" (Hos 2:2) and also a statement to the effect that "you are permitted to (i.e., free to be married by) any man" (Mishnah Giṭṭin 9:3).[30] The close connection between the ideas of separation from a marriage partner and freedom to remarry is stated by Yaron:

Hebrew words in Deut 24:1, but is the same as the order of the formula as interpreted by the House of Shammai.

[29]The House of Hillel apparently stressed that in Deut 23, the term does not refer to sexual misconduct, but to something else which is disgusting, i.e., uncovered excrement. So they regarded anything offensive to the husband as providing ground for divorce. They erred in missing (1) the differences between the two passages (see above), and (2) the fact that while the term *ʿervat dābār* in Deut 23 does not refer to sexual misconduct, it does not simply refer to something disgusting, but to literal exposure of something which should not be exposed. Cp. Mishnah Ketubot 7:6, stating conditions under which a woman could, under mishnaic law, be divorced without a marriage settlement, i.e., indemnification: transgressing the Law of Moses or Jewish custom. Examples of transgressing the Law of Moses are: if she should give her husband food that had not been tithed or have sexual intercourse with him when she is menstruating, etc. Examples of transgressing Jewish custom are: "If she go forth with her hair loose, or if she spin in the street, or if she hold converse with all men" (trans. Blackman 1963: 161).

[30]On the basis of comparison with Hammurapi laws ¶137-141 and Middle Assyrian Laws ¶37 (see Pritchard, ed. 1969: 172, 183; cp. an Old Assyrian marriage contract, *ibid.:* 543), Brown, Fitzmyer & Murphy suggest the possibility that the Israelite divorce document indemnified the wife (Brown, Fitzmyer & Murphy 1990: 105). Thompson makes a similar assumption: ". . . probably the strongest deterrent to divorce in Israel and all over the ancient Near East was financial, since the husband had to forfeit the dowry and may even have been involved also in other payments to his former wife" (Thompson 1974: 244). However, Middle Assyrian Laws ¶37 (see above) leaves such payment up to the discretion of the husband: "If a seignior wishes to divorce his wife, if it is his will, he may give her something; if it is not his will, he need not give her anything; she shall go out empty." Indemnification is not mentioned in Deut 24:1 and there is no evidence that *sēfer kᵉrîtūt* was a technical term which referred to indemnification as well as cutting/separation.

> The immediate legal consequence of divorce, and indeed its primary purpose, is to allow the woman to enter upon a marriage with another man, of her choice (Yaron 1966: 5).

It has been suggested that the divorce document protected women in the following ways:

1. The procedure, although brief, would slow down a divorce and thereby help to prevent extremely rash expulsions by making the husband take the trouble to procure a document and formally dismiss the woman himself. Although the text reads literally that the husband himself would write the divorce document, very few Israelite men were literate. Thus, most men would have to pay scribes to write their document. Perhaps acquiring the services of a scribe would require a man to prove that he had sufficient justification for divorce (Driver 1902: 272). Of course, the text does not require a third party to write the divorce document. A man could do it himself in a short time if he had the ability to write.

2. The divorce document would protect the woman by proving that she was divorced and therefore had the right of remarriage. Thus, she would not be accused of adultery if she married again (Phillips 1973: 160). Furthermore, in the divorce document, the husband would have relinquished all rights to the woman and could not interfere with her second marriage in an attempt to get her back.

While it appears that the divorce document benefits the woman, the last point stated above is weakened by the fact that women could leave their husbands under some circumstances of neglect or abuse, in which cases their husbands would not be required to provide them with divorce documents (see on Exod 21, below). If a woman whose marriage had been dissolved must have a divorce document in order to remarry without a charge of adultery being brought against her, why would a neglected or abused women, innocent of any wrongdoing, be less protected by law than a woman who had committed indecent exposure? The fact is, a previously married woman, whether she had been widowed, divorced, or had left her husband for some reason, would have returned to the home of her father[31] or other close relatives, who would have taken care of her and possibly arranged for her to remarry. Not being a virgin, she would not need a divorce document to protect her from a charge of adultery or promiscuity because her relatives could testify to the history of her status and behavior.

If a divorce document was not needed to protect from a charge of adultery when remarriage occurred, could it have protected from a charge of adultery at all? Perhaps. When a husband gave a woman a divorce document, he thereby indicated that he regarded her offense as the misdemeanor of indecent exposure, not the crime of adultery. It appears that he thereby relinquished the right to subsequently press a charge of adultery based upon the evidence of that indecent exposure. Thus, although a divorce document would carry some stigma, it

[31] See, for example, Lev 22:13; Judg 15:1-2; 19:2ff; 1 Sam 25:44.

would protect her from harassment by her former husband if, for example, he became jealous when she remarried and attempted to bring up the past in an effort to destroy her.

Responding to my last paragraph, Prof. Raymond Westbrook of Johns Hopkins University has written to me: "The idea that a divorce document indicated that the wife's crime was indecent exposure, not adultery, is contradicted by Jer. 3:8." Jer 3:8 reads: "She saw that for all the adulteries of that faithless one, Israel, I had sent her away with a decree of divorce; yet her false sister Judah did not fear, but she too went and played the harlot" (RSV). Westbrook is indeed correct in interpreting this verse to mean that YHWH figuratively sent the northern kingdom of Israel away with a decree of divorce on the grounds of (spiritual) adultery, i.e., idolatry. Thus, he could be correct in regarding my hypothesis of the last paragraph to be invalidated. However, there are some factors in Jer 3:8 which neutralize Westbrook's argument:

a. Under Pentateuchal law, a woman who committed adultery would not live long enough to carry a divorce document around in her purse (see Deut 22:22).

b. The ground for divorce in Deut 24:1, where the divorce document is specified, is "indecency," not adultery.

c. Jer 3:8 is a prophetic passage, not a legal passage. It reflects legal practice, but in an extended sense and for a theological purpose. We are dealing here with historical relationships between YHWH and nations, which are analogous to, but not identical with, relationships between human husbands and wives as governed by law. It is true that YHWH could have rejected northern Israel for the spiritual equivalent of "indecency," but in his mercy, he did not. He also could have destroyed Israel for her first spiritual adultery, i.e., idolatry. In fact, it was not until Israel had committed numerous idolatries that YHWH cast Israel off, i.e., divorced her, as mentioned in Jer 3:8. When God divorced Israel, it was not so that she could remarry, as in Deut 24:2; she was destroyed by the Assyrians (in 722 B.C.), as Jeremiah well knew. Thus, it is clear that Pentateuchal legal practice cannot be safely extrapolated from a theological prophetic oracle.

Prohibition of Remarriage to an Earlier Wife After Her Marriage to Another Man

Remarriage to an earlier wife after her marriage to another man is prohibited on the basis of her having been "defiled" by the second marriage.[32] Thus, the

[32] According to Deut 24:4, violating this prohibition is an abomination bringing guilt upon the land of Israel. For the idea that sexual offenses violate the land, cp. Lev 18:25, 28; 19:29; Jer 3:2, 9; Hos 4:3. Note that in the Damascus Document from Qumran, the Hebrew word *zᵉnût*, "fornication/unchastity," refers to "taking two wives in their lifetime," thus covering not only polygamy, but also remarriage following divorce (Fitzmyer 1976: 220, commenting on the Damascus Document 4:20-21).

second marriage is viewed from the point of view of the first husband, "falling into the same category as adultery, to which this term is applied (Lev 18[20] Nu. 5[13.14.20])" (Driver 1902: 272). This does not mean, of course, that the second marriage is illegitimate; the law of Deut 24:1-4 does not prohibit remarriage after divorce. Craigie comments on the defilement of the woman:

> The sense is that the woman's remarriage after the first divorce is similar to adultery in that the woman cohabits with another man. However, if the woman were then to remarry her first husband, after divorcing the second, the analogy with adultery would become even more complete; the woman lives first with one man, then another, and finally returns to the first. (Craigie 1976: 305)

Of course, Deut 24:3 refers not only to the possibility that the second marriage may end in divorce; it may also end with the death of the second husband. In either case, if the woman returned to her original husband after having sexual relations with another man, there would be a strong similarity to adultery. While the law of Deut 24 does not condemn a remarried woman to death as an adulteress is condemned to death, a remarried woman is made inaccessible to her first husband, just as an adulteress is made inaccessible to her husband.[33]

The prohibition of remarriage after an intervening marriage would have the following effects:

1. Divorce with remarriage would be taken seriously because it could not be undone. The fact that remarriage prevented reunion with a former husband would tend to make a man think twice before he set his wife free to remarry, and it would tend to make a woman think carefully before she remarried.

2. "Wife-swapping" and similar temporary arrangements could not be legalized by divorce. In other words, divorce could not be used as a mechanism to legitimate what should be regarded as adultery (Craigie 1976: 305). Ramban, a medieval Jewish exegete, makes the following comment on Deut 24:4:

> And the reason for this prohibition is so that people should not exchange their wives with one another: he would be able to write

[33] Watts suggests that "Hosea 3 seems to set this law aside for the Lord's relation to Israel. But the prophet's aim is probably to stretch this tension to the limit to illustrate God's covenant grace. This law was also a problem for Jeremiah in attempting to follow the same though to its conclusion (cf. 3:1ff)" (Watts 1970: 265). More accurately, the law which is mercifully laid aside for Israel in these passages is the death penalty for adultery. "Judah had not married a particular lover, but, like Gomer, had been unfaithful. Clearly God had not issued a divorce document (cf. Isa. 50:1). Therefore the renewal of His covenant (i.e., "marriage") relationship with Judah would not actually constitute a violation of Deuteronomy 24:1-4" (Laney 1992: 12). In Jer 3:1, the prophet refers to Deut 24:4, but the argument is by implication an *a fortiori* one (see Miller 1990: 164): If it is forbidden for a remarried divorcee to return to her first husband, how much more unusual is it for an adulteress to return to her husband? In Matt 5:32 and 19:9, Jesus allowed for the possibility of such mercy on the individual level; He did not forbid the reunion of a husband and wife after adultery by one of the partners.

> her a bill of divorce at night, and in the morning she will return to him. (Chavel 1976: 297)

3. A former husband with regrets would have no incentive to interfere in the marriage of his ex-wife in an attempt to get her back. He could not get her back even if her new husband died. So the former husband would not be tempted to arrange for an "accident" to happen to the new husband. The new husband would also be protected from intrigue "on the part of a woman desirous of returning to her former home" (Driver 1902: 272).

Other Restrictions on Men with Regard to Their Right of Divorce or Marriage to Divorced Women

As discussed above, Deut 24:1-4 restricts a man's right to divorce and remarriage by limiting the ground of divorce, recognizing a certain divorce procedure as legitimate, and prohibiting remarriage to the same woman after she has been married to another man. Other passages which restrict men's rights of divorce are as follows:

1. Deut 22:13-19. A man who wrongfully accuses his bride of not being a virgin at the time of their marriage can never divorce her. That is, even if she commits indecent exposure he cannot divorce her. Forfeiture of a man's right to divorce is a penalty imposed upon him for his wrongdoing. This does not mean that the marriage could never be dissolved, but only that it could not be dissolved on his initiative.

2. Deut 22:28-29. A man who rapes an unbetrothed virgin is forced to marry her and can never divorce her, i.e., even if she commits indecent exposure. The above comments on vss. 13-19 apply here as well.

3. Lev 21:7 (cp. vs. 14). Unlike a layperson, a priest is forbidden to marry "a harlot or a woman who has been defiled;[34] neither shall they marry a woman divorced from her husband; for the priest is holy to his God." The words "a woman divorced (*gᵉrûšāh*; passive participle) from her husband" indicate that a divorcee in this context is a woman whose husband has divorced her. Since Deut 24:1 restricts the ground on which a husband can divorce his wife to indecent exposure, a priest is forbidden to marry a woman who has committed indecent exposure. Given the holy status of the priesthood, this is a logical prohibition. What about a woman who did not commit indecent exposure, but who left her husband because of his neglect or abuse (see below)? Lev 21:7 does not prevent an ordinary priest from marrying such a woman, but the fact that the high priest cannot even marry a widow,[35] but only a virgin, prohibits him from marrying a woman who had left her husband. Note the three stage gradation in holiness, from laypersons to ordinary priests to the high priest, with increasing re-

[34]That is, apparently, a woman sexually defiled by promiscuity.

[35]Cp. Ezek 44:22, allowing ordinary priests to marry widows only if they are widows of priests.

strictions corresponding to increasing holiness. The holier a person is, the closer his life must conform to the Genesis 2 ideal for marriage.

Dissolution of Illegal Marriages

Ezra 10 records a reform in which Israelites who had unlawfully taken foreign wives (see Deut 7:3) were ordered by Ezra to divorce them and agreed to do so (see esp. Ezra 10:11-12, 19; cp. Neh 13:23-27). The divorces were accomplished by the offending men, but at the initiation of the religious leader on the basis of the fact that the marriages should not have been contracted in the first place and their continuation would have been destructive to the Israelite community.

Circumstances Under Which a Woman Could Be Freed From Her Marriage

Under biblical law, while an ancient Israelite man could, under certain circumstances, expel his wife from his home by the use of a divorce document (Deut 24:1), an Israelite woman had no such right to expel her husband from her home. If divorce is defined as the legal expulsion of one's spouse from one's home against his/her will, it could be said that biblical law recognized no right of divorce for women.[36] But this does not mean that marriages could not, under certain circumstances, be dissolved for the benefit of women without the initiation of their husbands.[37] Consider the following points of evidence and argumentation:

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[36]"By the later Jews, the wife was permitted in certain cases to claim a divorce, viz. if her husband were a leper, or afflicted with a polypus, or engaged in a repulsive trade" (Driver 1902: 271, referring to Mishnah Ketuvot 7:10).

[37]Luck points out that in Exod 21, passive or active abuse of a wife of lower status constituted breach of covenant, and the offended partner had the right to be released so that she could remarry. Luck comments:

> The question may now arise as to why this passage was not more explicitly discussed as a divorce passage by the rabbis in the days of Jesus. Two suggestions present themselves. First, the text may well have been thought not to apply to marriage per se, insofar as it deals, prima facie, only with concubinage. Second, the chief concern in the day of Jesus was to find a passage giving the husband a right to divorce the wife; in this text, the right of the wife to force a divorce from her husband is the prime concern . . . I am convinced that the failure of the Church to integrate this passage from Exodus into the theology of divorce is the single most significant reason for our failure to present a harmonious and reasonable doctrine of marriage/divorce. As we shall see, the principles that arise from this text establish a basis for Paul's teaching that "departure" is grounds for considering the marriage completely ended and for allowing the deserted partner the freedom to remarry (1 Cor 7:15). In fact, understanding the Exodus passage enables us to understand the meaning of "free" in the Pauline teaching. A similar comment could be made with regard to the teachings of our Lord himself (cf. Matt. 5:32 f., et passim). (Luck 1987: 51)

1. Exod 21:7-11. This law protected a Hebrew girl who was sold by her father as a maidservant to a purchaser who guaranteed that he or his son would marry her.[38] If before marrying her himself the purchaser decided not to go ahead with the marriage because he found that he did not like her, he had to allow her to be redeemed, i.e., by payment of money. If after marrying her "he takes another wife to himself, he shall not diminish her food, her clothing, or her conjugal rights/oil(?).[39] And if he does not do these three things for her, she shall go out for nothing, without payment of money" (vss. 10-11). Thus, the husband was obligated to support his rejected wife with an adequate amount of the basic necessities of life. If he did not, he violated the contract by which he had acquired her and she was freed both from the marriage and from servitude.[40] It must be assumed that she was free to remarry.[41]

A qualification must be inserted here. A "slave wife" is more like a "concubine" than a "wife," "because a wife by definition has a status from which legitimate offspring can issue" (Prof. Raymond Westbrook, Johns Hopkins University, private communication). Thus, the "marriage" of which the dissolution is discussed in the preceding paragraph is not the same as a full status "marriage," as we normally use the term.

2. Exod 21:26-27. A slave or maidservant was released if the master assaulted him/her, thereby causing permanent physical damage, namely, loss of an eye or a tooth. Covered under this law would be the case of a maidservant who

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Since the exception clauses in Matthew are stated in the context of a discussion of Deut 24:1-4, where divorce in the sense of expulsion of one marriage partner by the other is in view, it appears that abandonment as a ground for dissolution of a marriage stands outside the scope of the discussions in Matthew rather than constituting an exception in addition to fornication.

[38]This is not simply payment of a bride-price, which was the standard procedure for marriage between free persons.

[39]On the basis of Mesopotamian and biblical evidence for a triad of commodities representing the basic necessities of life, S. Paul tentatively interprets the *hapax legomenon ʿōnātāh* as "oil" or "ointments." (S. Paul 1970: 56-61). The word has commonly been interpreted as "conjugal rights," but these "are nowhere mentioned in the documents from the ancient Near East as an integral requirement for marital support. It is hardly likely, moreover, that a husband would be obligated to fulfill such a demand on behalf of a rejected wife." (S. Paul 1970: 60).

[40]See S. Paul's discussion of Mesopotamian laws (Lipit Ishtar 28 and Laws of Hammurapi 148) which obligate a husband to provide for his first wife who because of illness is bypassed in favor of another wife (S. Paul 1970: 56).

[41]On the seriousness of willful neglect as viewed by Paul in New Testament times, see 1 Tim 5:8—"If any one does not provide for his relatives, and especially for his own family, he has disowned the faith and is worse than an unbeliever." This has an important implication for the interpretation of 1 Cor 7:15—"But if the unbelieving partner desires to separate, let it be so; in such a case the brother or sister is not bound . . ." Thus, it could be argued that if a husband is a member of the church, but abandons his family and does not provide for them, he is to be regarded as an unbeliever and his wife is free.

suffered such abuse and who happened to be married to her master. Her release would end not only her servitude, but also her marriage.[42]

3. If a servant woman, who had been purchased and then married to her master, had the legal right to support and protection from severe physical abuse, and the legal right to freedom from her marriage if these rights were violated, does it not stand to reason that a free woman would have possessed at least equivalent legal protection? The question arises: Why is there legislation protecting a servant woman but not a free woman? Two answers can be suggested: (1) A slave woman would be of a more subjugated social status than a free woman, and thus more vulnerable to abuse. (2) Biblical law at times legislates extreme cases, which cover more usual cases by implication (see above on Deut 23:12-14).[43] Thus, it could be argued that if certain rights are stated for a slave woman, then the more so should a free woman possess those rights.

The point just made must be qualified. In the area of assault, it appears that free women were, indeed, more protected than slave women, but not necessarily by the right to leave their husbands. Lev 24:19-20 calls for retaliatory punishment in cases of assault resulting in permanent injury: "When a man causes a disfigurement in his neighbor, as he has done it shall be done to him, fracture for fracture, eye for eye, tooth for tooth; as he has disfigured a man, he shall be disfigured" (RSV). The masculine language of the law can be interpreted narrowly to refer to assault by one Israelite free man upon another. However, it appears that the law is intended to apply in every case of assault in which permanent damage is caused to one free person by another, whether the persons involved are male or female. I see no reason why this would not apply to assault on a marriage partner.[44] If I am correct, a free woman would be more protected

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[42]This is not the only law protecting slaves from physical assaults by their masters. Exod 21:20-21 allowed masters to beat their slaves, male or female, but not to kill them by doing so. So masters could discipline their slaves, but could not treat them as mere chattel to be disposed of at will. Could a master discipline a slave wife by beating her? Perhaps, to a certain extent, but the fact that a master had to provide adequate support for such a wife, i.e., not passively abuse her by neglect, even if he rejected her in favor of another woman, suggests *a fortiori* (the more so) that he should not actively abuse her. Of course, where discipline would end and abuse begin in this social context would to some extent be culturally defined.

[43]For example:

> A literal reading of Exod 21:22-25 yields a strange law of remarkably limited application. It describes a situation in which more than one man knock a woman, causing her the premature live birth of more than one child. While the knockers were more than one, only one must pay. In the sub-case, somebody else, presumably, addressed as "you" must give "life in place of life . . ." (Gane 1988: 11)

It appears that "the legislator attempted to economically cover a range of contingencies in a situation fraught with variables" (*ibid.:* 12).

[44]The fact that there are laws which provide penalties for assaults on slaves by their masters suggests that wives would also have been protected from assault. Note also the severe penalty for striking one's parents: death (Exod 21:15).

from assault than would a slave woman because talionic punishment involving permanent physical damage would be worse for a man than simply having his wife depart.

4. In the area of abandonment, Old Testament narrative evidence indicates that a free woman (in the sense of "non-slave woman") who was abandoned by her husband returned to the home of her father, who could arrange for her to remarry.

a. 1 Sam 25:44 informs us that after David fled from King Saul, Saul gave Michal, his daughter and David's wife, to another man in marriage. David had abandoned Michal through no choice of his own because Saul sought his life. Therefore, she returned to her father's jurisdiction and he arranged for her to remarry. It is true that Saul was king and that he hated David, but if David had not left Michal, effecting *de facto* dissolution of the marriage, Saul would have had no excuse to give his daughter away to another man. The implication is that abandonment under certain circumstances was regarded by the Israelites as the end of a marriage, and this circumstance left a woman free to remarry. There is no Pentateuchal legislation to this effect, apparently because it was not needed; free women were already protected by customary practice. David, however, did not regard his marriage to Michal as legitimately dissolved because he had been forced by Saul to leave his wife. Most likely in keeping with the prevailing custom, David recognized only willful abandonment as ground for dissolution of a marriage.[45] While Saul regarded David as a criminal, and therefore to be blamed for having to leave Michal, David regarded himself as innocent. Therefore, he later used his political clout to dissolve Michal's second marriage and take her back (2 Sam 3:13-16). Taking back his wife after an intervening mar-

[45]Cp. Hammurapi laws ¶135-136, which distinguish between involuntary capture and willful desertion:

> 135: If, when a seignior was taken captive and there was not sufficient to live on in his house, his wife has then entered the house of another before his (return) and has borne children, (and) later her husband has returned and has reached his city, that woman shall return to her first husband, while the children shall go with their father.
>
> 136: If, when a seignior deserted his city and then ran away, his wife has entered the house of another after his (departure), if that seignior has returned and wishes to take back his wife, the wife of the fugitive shall not return to her husband because he scorned his city and ran away. (Pritchard, ed. 1969: 171)

See also Middle Assyrian Laws ¶45, which stipulates that a woman whose husband is captured must be faithful to him for two years, and provision is made for her support during that time. After two years, she is free to remarry, and "they shall write a tablet for her as a widow. If in later days her missing husband has returned home, he may take back his wife who was married to an outsider; he may not claim the sons whom she bore to her later husband, but her later husband shall take (them)." (Pritchard, ed. 1969: 184).

riage did not violate the law of Deut 24:4 because David had not divorced Michal or even willfully abandoned her.[46]

b. Judg 14:20-15:2 reports that when Samson returned to his father's house in anger after his bride had revealed his riddle to his companions, Samson's father-in-law took this to be abandonment and gave his daughter to Samson's best man. Since Samson's bride and father-in-law were Philistines, this story reflects Philistine practice but, given the evidence of 1 Sam 25:44 (see above), it does not appear that Philistine practice differed in this regard from Israelite practice.

Summary of Biblical Principles and Modern Application

Some principles which operate in Old Testament legal and narrative passages dealing with divorce and remarriage can be stated in general terms as follows:

1. A wife is obligated to provide her husband with sexual fidelity. If she commits the sexual crime of adultery, she is put to death. If she commits a less serious offense of indecent exposure without sexual relations, her husband can divorce her if he can no longer love her as a result of her indecent exposure.

2. A husband is obligated to provide his wife with an adequate amount of certain basic commodities and to refrain from causing her serious physical harm. If he neglects or abandons her, the marriage can be dissolved by her returning to her father (or next of kin), who can arrange for her to remarry. If a husband abuses his wife physically, he may suffer talionic punishment, or in some cases (slave wives), the wife may be freed from the marriage.

3. A husband cannot take his wife back after divorcing her if she has subsequently remarried.

Application of these principles to modern divorce and remarriage must take the following factors into account:

1. As recorded in the New Testament, Jesus and Paul raised the standard for marriage by pointing to the Genesis ideal and by restricting the grounds for dissolution of marriages (Matt 5:32; 19:3-9; Mark 10:2-9; Luke 16:18; 1 Cor 7:10-16). Nevertheless, the basic obligations of sexual fidelity, support for one's family, and refraining from abusive behavior are in harmony with the Genesis and New Testament ideals for marriage.

2. Some factors affecting divorce and remarriage in the Old Testament do not exist in western societies:

[46]However, 2 Sam 20:3 states that David did not have sexual relations with his concubines after Absalom had had sexual relations with them (16:21-22). David had been unjustly deprived of his concubines, so why didn't he take them back? Whatever political factors may have affected David's decision, the concubines had been defiled by Absalom to a greater degree than Michal had been by Paltiel because Absalom was David's son. Therefore, they had been defiled by incest (see Lev 18:8).

a. Death penalty for adultery and other sexual crimes. By New Testament times, adultery had ceased to be a capital offense and had become a ground for divorce.

b. Slavery. Hebrew women purchased as maidservants and then married to their masters were more vulnerable than free women and required specialized legal protection. Modern western society lacks such legal distinctions because the social distinctions do not exist.

c. Polygamy. As reflected in the law of Exod 21:10, taking a second wife could lead a husband to neglect his first wife.

d. Talionic punishment. The threat of talionic punishment could have been a more serious deterrent to wife abuse than the release of a wife from marriage. Since modern society lacks talionic punishment or anything of equivalent effectiveness, it could be argued that a woman's resort in the face of serious physical abuse should be that of a slave wife whose master husband destroyed her eye or tooth: freedom from the marriage. Of course, such an application of Old Testament law cannot be made without taking into account the New Testament teachings on this subject.

3. Some factors affecting divorce and remarriage in modern western societies did not exist in ancient Israelite society:

a. Regulation of marriages by state law. Whereas in ancient Israel a woman could have her marriage dissolved by returning to her father, who could arrange for her to remarry, modern society requires state appointed procedures for these transactions.

b. Relative legal equality between men and women. For example, whereas ancient Israelite men could expel their wives from their homes under certain circumstances through legal divorce procedures, but wives had no equivalent right, in modern society women as well as men can have this kind of right. Another example is the fact that today there is much greater similarity between the obligations of husbands and wives toward each other:

(1) In ancient Israel, the sexual fidelity standards for men and women were different. In keeping with the fact that men could legally have multiple sexual unions (polygamy and variations of it), a man, married or unmarried, found having sexual relations with a woman was put to death only if she was married (Deut 22:22). On the other hand, a married woman was put to death for adultery whether her paramour was married or unmarried. Furthermore, a husband could divorce his wife for indecent exposure (Deut 24:1), but there is no corresponding law to the effect that a wife could divorce her husband for the same offense. Today, we do not tolerate polygamy and, at least in theory, we do not condone a double sexual standard for men and women.

(2) Today, wives often bring outside income into their homes. In circumstances like these, it cannot be said that the husbands support their wives to the degree that Old Testament husbands supported their wives. Rather, the modern marriage partners support each other to varying degrees.

(3) In theory, at least, state laws are supposed to provide equal protection against assault for all citizens, including husbands and wives in cases of domestic violence committed by either party.

c. State welfare systems. In ancient Israel, support by a man was generally crucial to a woman's survival. If her husband did not support her, she could not collect a welfare check and remain with him. She would be forced to return to her father and/or remarry. Thus, maintenance of a wife was a condition for keeping her. Today, the existence of state welfare systems has reduced the level of responsibility incumbent upon husbands.

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