

Divorce and Remarriage in the Old Testament: A Fresh Look at Deuteronomy 24:1–4

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The wide range of OT passages related to the issues of divorce and remarriage includes at least six different Hebrew expressions referring to divorce occurring altogether some 27 times,¹ plus several references to remarriage.² Within the space constraints of this article I limit myself to the most seminal passage dealing with divorce and remarriage, Deut 24:1–4. I have found this passage to contain far-reaching implications for understanding NT passages on the subject and for properly recognizing the hermeneutical relationship between OT and NT divorce/remarriage legislation. In this fresh look at Deut 24:1–4 I will argue that crucial grammatical-syntactical and intertextual features of the legislation have been largely overlooked in previous studies of the passage, and that these features provides keys for understanding the continuity between the Testaments with regard to the subject of marriage and divorce.

I. Historical Background and Literary Context

The book of Deuteronomy encompasses Moses' farewell sermon to Israel, given about 1410 B.C. on the borders of Canaan just before Moses' death and Israel's entrance into the promised land. The address is framed in the overall

¹The Hebrew terms and their occurrences are as follows:(1) *šlh* "to send away, divorce," all in *Piel*: Gen 21:14; Deut 21:14; 22:19, 29; 24:1, 3, 4; Isa 50:1; Jer 3:1, 8; Mal 2:16. (2) *grš* "to drive out, cast/thrust out, banish, divorce," *Piel*: Gen 21:10; *Qal* passive: Lev 21:7, 14; 22:13; Num 30:10 [Eng. 9]; Ezek 44:22. (3) [*sēper*] *k'ritūt*, "[document] of cutting off or divorce": Deut 24:1, 3; Isa 50:1; Jer 3:8. (4) *yš* "to cause to go out = divorce" (*Hifil*): Ezra 10:3, 19. (5) *bdl* "to separate oneself = divorce," *Nifal*, Ezra 10:11. (6) *bgd* "to deal treacherously with, break faith with = divorce," *Qal*, Mal 2:14, 15, 16.

²See, e.g., Gen 25:1; Deut 24:1–4; 1 Sam 25:44; and perhaps Isa 7:14; 8:3.

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structure of a covenant renewal, following the essential outline of the international suzerainty-vassal treaties of the day:³

Preamble	Deut 1:1–5
Historical Prologue	Deut 1:6 – 4:49
General Stipulations	Deut 5–11
Specific Stipulations	Deut 12–26
Blessings and Curses	Deut 27–28
Witnesses	Deut 30:15–20
Deposition of text	Deut 31:9, 24–26
Public reading	Deut 31:10–13
Covenant Lawsuit	Deut 32
(against rebellious vassals)	

Within this overall structure, Deuteronomy 24 is situated as part of the specific stipulations of the covenant, Deuteronomy 12–26. A penetrating study of this section of Deuteronomy by Stephen Kaufman has shown that the whole body of material is arranged “with consummate literary artistry” as an expansion and application of the Decalogue of Deuteronomy 5, with the various laws grouped within topical units that follow the content and sequence of the corresponding commandments of the Decalogue.⁴ Kaufman proposes the following arrangement and sequence:

Commandment	Deuteronomy Passage	Description
1–2	12:1–31	Worship
3	13:1 – 14:27	Name of God
4	14:28 – 16:17	Sabbath
5	16:18 – 18:22	Authority
6	19:1– 22:8	Homicide
7	22:9 – 23:19	Adultery
8	23:20 – 24:7	Theft
9	24:8 – 25:4	False Charges
10	25:5–16	Coveting

What is particularly noteworthy for our study at this point is that Deut 24:1–4 is not placed in the section of the Deuteronomic law dealing with adultery, but in

³See especially P. C. Craigie, *Deuteronomy*, New International Commentary on the Old Testament (Grand Rapids, MI: Eerdmans, 1976), 20–24 and *passim*, for bibliography and discussion.

⁴Steven A. Kaufman, “The Structure of the Deuteronomic Law,” *MAARAV* 1–2 (1978– 1979): 105–158 (quotation from p. 125).

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the section dealing with theft. This fact must be kept in mind as we seek to understand the underlying purpose of the legislation.

II. Translation

Deut 24:1–4 reads as follows (RSV, with verse divisions marked):

- 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 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,
- 4) then her former husband, who sent her away, may not take her again to be his wife, after she has been defiled; 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.”

III. Literary Form and Structure

Some earlier English translations of this passage (e.g., KJV, ERV, and ASV) are misleading, because they have the actual legislative portion beginning already with verse 1b, “then let him write her a bill of divorcement . . .” If such were the correct translation, then God indeed would be sanctioning divorce in this passage. But it is now universally recognized that the form or genre of this law and the details of Hebrew grammatical structure lead to a different understanding.

In the legal portions of the Pentateuch we find two major literary types of laws: apodictic and casuistic (case laws). In the former, there is an absolute command or prohibition, “Thou shalt . . .” or “Thou shalt not.” In the latter, the case laws, there is first the protasis, or description of condition(s), usually starting with Hebrew words best translated by “If . . .” or “When . . .” This is followed by the apodosis, or actual legislation, best signaled in English translation by the word “then . . .” Following the protasis and apodosis, a case law (as well as apodictic law) sometimes has one or more motive clauses giving the rationale for the law.

Deut 24:1–4 is a case law which has all three elements just described. In vv. 1–3 we find the protasis with several conditions: the grounds and procedure for divorce (v. 1), the remarriage of the woman (v. 2), and the divorce or the death of the second husband (v. 3). Only after describing all of these conditions in vv. 1–3, do we find at the beginning of v. 4 the Hebrew word *l’o* (“not”), signaling the start of the apodosis or actual legislation. The only legislation in this passage is in verse 4a, forbidding the woman’s former husband to take her back to be his wife under the circumstances described in vv. 1–3.

The implication is clear: God is in no wise legislating or even sanctioning divorce in this passage. In fact, the whole passage may be expressing tacit dis-

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approval although the divorce is tolerated and not punished. This will become more evident as we proceed.

Following the protasis and apodosis of Deut 24:1–4a, we find the third major part of the case law, the motive clauses of v. 4b, containing the multiple rationale for the prohibition: The woman has been “defiled,” it would be an “abomination” before the Lord, and “sin” should not be brought upon the land. These all call for attention in order to understand the purpose of the legislation.

We will take up each of the three main sections of Deut 24:1–4 in turn.

IV. Circumstances of Divorce/Remarriage: The Protasis (vss. 1–3)

A. Grounds for Divorce (vs. 1a). Deut 24:1 describes two conditions that lead the husband to “send away” (Heb. *šlh*) or divorce his wife. First, “it happens that she finds no favor [Heb. *hēn*, approval or affection⁵] in his eyes.” The phrase “to find/not find favor in one’s eyes” is the ordinary Hebrew expression for “like/dislike” or “please/displease.” It describes the subjective situation—the husband’s dislike, displeasure, or lack of approval/affection for his wife.

But the grounds for divorce are not limited to the subjective element. There are also concrete grounds for the disapproval: “because he has found some indecency [*erwat dābār*] in her, . . .” The Hebrew expression *erwat dābār* may be translated literally as “nakedness of a thing.” But to what does it refer? This question has been widely debated among scholars, both ancient and modern. The correct interpretation of this Hebrew phrase was at the heart of the Pharisees’ test question to Jesus in Matt 19:3: “Is it lawful for a man to divorce his wife for just any reason?” In Jesus’ day two interpretations of Deut 24:1 vied for attention. The School of Shammai emphasized the word *erwah* “nakedness,” and interpreted the phrase to refer to marital unchastity,⁶ while the School of Hillel emphasized the word *dābār* “thing,” and interpreted the phrase to refer to any indecency or anything displeasing to the husband, “even if she spoiled his dish [of food].”⁷

The word *erwat* “nakedness” elsewhere in the OT most often refers to the nakedness of a person’s private parts or genitals, which should not be uncovered

⁵Holladay, 110.

⁶Roy Gane, “Old Testament Principles Relevant to Divorce and Remarriage” (paper presented to Pacific Union Conference of SDA’s Divorce-Adultery-Remarriage Committee, 1993, revised 1995 for Syllabus for Andrews University Class in Law-Covenant-Sabbath), 162, I believe correctly argues that for Shammai *erwah* not only included illicit sexual intercourse, but also indecent [sexual] exposure.

⁷See Herbert Danby, translator, *The Mishnah* (Oxford: Clarendon Press, 1933), *Gittin*, 9.10: “The School of Shammai say: A man may not divorce his wife unless he has found unchastity in her, for it is written, ‘Because he hath found in her *indecency* in anything.’ And the School of Hillel say: [He may divorce her] even if she spoiled a dish for him, for it is written, ‘Because he hath found in her indecency in *anything*.’” The Babylonian Talmud expands the discussion of the two schools; see Jacob Neusner, translator, *The Talmud of Babylonia: An American Translation*, vol 18c, *Gittin Chapters 6–9* (Atlanta, GA: Scholars Press, 1992), 117–119.

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or exposed [*glh*] to be seen by those who should not see them; and the uncovering of one's nakedness usually has sexual connotations.⁸ The word *dābār* can mean "word [speech, saying]" or "thing [matter, affair]" in Hebrew,⁹ and in the context of Deut 24:1 surely means "thing" or "matter."

The phrase *erwat dābār* occurs only once in the OT besides Deut 24:1, and that is in the previous chapter, Deut 23:15 (Eng. v. 14). Here it clearly refers to the excrement mentioned in the previous verse which should be covered [Heb. *glh*] so that the Lord "may see no *erwat dābār* among you, and turn away from you." The "nakedness of a thing" is something that is uncovered that should have been covered, something that is repulsive, disgusting or shameful when left exposed.

It appears that the phrase *erwat dābār* in Deut 24:1 has a similar meaning as in the preceding chapter, but refers to the "nakedness of a thing" with regard to a wife. It seems probable, given the preceding context, and the usual sexual overtones of the term *erwah* when referring to a woman, that the phrase in Deut 24:1 describes a situation of indecent exposure [of private parts] on the part of the woman.¹⁰ Theoretically, the phrase could probably include illicit sexual intercourse (i.e., adultery), in parallel with the phrase "uncover nakedness" [Heb. *gillah erwah*] describing such behavior in Leviticus 18 and 20.¹¹ However, since adultery (and other illicit sexual intercourse) received the death penalty (or being "cut off" from the congregation) according to the law (Deut 22:22; Lev 20:10–18), the indecent exposure referred to here in Deut 24:1 must be something short of these sexual activities,¹² but a serious sexual indiscretion none-

⁸See, e.g., Gen 9:22, 23; Exod 20:23; 28:42; figuratively, uncovering of one's nakedness in punishment: Isa 20:4; 47:3; Ezek 16:37; 23:10, 29. The term "uncovering the nakedness of" is often used euphemistically for sexual intercourse: Lev 18:6, 8, 10, 16; 20:17; Ezek 16:36. See BDB, 788–789, for full list of passages, and see Roy Gane, "Old Testament Principles," 153–162, for careful analysis of the meaning and usage of this word and the whole phrase *erwat dābār* in the OT.

⁹For all the nuances, see BDB, 182–184.

¹⁰Abel Isaksson, *Marriage and Ministry in the New Temple: A Study with Special Reference to Matt. 19.13[sic]–12 and 1 Cor. 11.3–16*, trans. by N. Tomkinson with J. Gray, Acta Seminarii Neotestamentici Upsaliensis, 24 (Lund: Geerup; Copenhagen: Munsgaard, 1965), 26, concurs that the phrase is a euphemism for indecent exposure of the wife's private parts: "All other exposure of his wife's pudendum than that which the husband himself is responsible for arouses his loathing." See also Eugene H. Merrill, *Deuteronomy*, The New American Commentary (Nashville, TN: Broadman and Holman, 1994), 317: "The noun *erwah* bears the meaning of both 'nakedness' and 'pudenda' [i.e., the sexual organs], meanings no doubt to be combined here to suggest the improper uncovering of the private parts."

¹¹I agree with Merrill, 317: "Surely this circumlocution is to be understood as a euphemism that may or may not include adultery. . . . It is likely that *erwat dābār* is a phrase broad enough to include adultery but not synonymous with it." See also Gane, "Old Testament Principles," 160: ". . . *erwat dābār*, which can encompass not only illicit sexual intercourse, but lesser exposures as well."

¹²John Murray, *Divorce* (Grand Rapids, MI: Baker, 1961), 10–11, gives six cogent reasons why Deut 24:1 cannot refer to adultery. The OT legislation is here in contrast with elsewhere in the ancient Near East where adultery under certain circumstances could provide legitimate grounds for divorce. See J. J. Rabbinowitz, "The 'Great Sin' in Ancient Egyptian Marriage Contracts," *Journal*

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theless.¹³ I conclude that the phrase *erwat dāḥār* in Deut 24:1 describes some type of serious, shameful, and disgraceful conduct of indecent exposure probably associated with sexual activity, but less than actual illicit sexual intercourse.

What is the implication of this conclusion about the meaning of *erwat dāḥār* in Deut 24 for the answer that Jesus gives to the Pharisees in Matt 19 regarding the grounds for divorce? Jesus states only one legitimate ground for divorce: *porneia* (Matt 19:9; cf. 5:32). To what does *porneia* refer when used without any qualifiers in the context? I believe that its parallel usage (again without qualifiers) in Acts 15, and the intertextual allusions to Lev 17–18 in this latter passage, provide helpful guidance here. Acts 15 lists four prohibitions for Gentile Christians given by the Jerusalem Council: “that you abstain from things offered to idols, from blood, from things strangled [i.e. not drained of their blood],¹⁴ and from sexual immorality [*porneia*]” (vs. 29). Particularly striking is that this is the same list, *in the same order*, as the four major legal prohibitions explicitly stated to be applicable to the stranger/alien as well as to native Israelites in Lev 17–18. In these OT chapters we find (1) sacrificing to demons/idols (Lev 17:7–9); (2) eating blood (Lev 17:10–12); (3) eating anything that has not been immediately drained of its blood (Lev 17:13–16); and (4) various illicit sexual practices (Lev 18). In this clear case of intertextuality, the Jerusalem Council undoubtedly concluded that the practices forbidden to the alien in Leviticus 17–18 were what should be prohibited to Gentile Christians in the church. The parallel of the fourth prohibition in each passage is unambiguous: what Acts 15 labels *porneia* are those illicit sexual activities included in Leviticus 18. These activities may be summarized in general as illicit sexual inter-

of Near Eastern Studies 18 (1959):73; W. L. Moran, “The Scandal of the ‘Great Sin’ at Ugarit,” *Journal of Near Eastern Studies* 18 (1959): 208–209; cf. Roy Gane, “Biblical and Ancient Near Eastern Penalties for Sexual Misconduct,” Ph.D. preliminary examination in Biblical Law, University of Berkeley, November 1988, included in Gane’s syllabus for Andrews University course in Covenant-Law-Sabbath, 139–145.

¹³So S. R. Driver, *Deuteronomy*, The International Critical Commentary (New York: Scribner, 1902), 271, concludes regarding this phrase: “It is most natural to understand it of *immodest* or *indecent* behavior. Gane, “Old Testament Principles,” 157, concludes that the “‘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.” Following a suggestion pointed out to him by Raymond Westbrook, Gane, “Old Testament Principles,” 158, further suggests that it could be taken figuratively to mean “improper conduct with a man other than her husband.” See Gane, “Old Testament Principles,” 155–162, for extended discussion.

¹⁴The Greek adjective *pniktos*, usually translated “strangled” or “choked,” actually refers precisely to the situation described in Lev 17:13–16. H. Bietenhard, “πνικτος,” *The New International Dictionary of New Testament Theology*, 1975, 1:226, explains: “The command [of Acts 15:20, 29] goes back to Lev. 17:13 f. and Deut. 12:16, 23. An animal should be so slaughtered that its blood, in which is its life, should be allowed to pour out. If the animal is killed in any other way, it has been ‘strangled.’” Even more clearly in his article on πνιγω in *TDNT*, 6:457: “The regulations in Lv. 17:13 f. and Dt. 12:16, 23 lay down that an animal should be slaughtered in such a way that all the blood drains from the carcass. If it is put to death in any other way, it ‘chokes,’ since the life seated in the blood remains in the body.”

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course—including incest, adultery, homosexual practices, and bestiality. Various scholars have recognized this intertextual connection.¹⁵ The correlation between Acts 15 and Leviticus 17–18 seems to provide a solid foundation for determining what the early church understood by the term *porneia*.

This inner-biblical definition of *porneia* seems to me to be decisive in understanding Jesus' "exception clause" regarding divorce on grounds of *porneia* in Matt 5:32; 19:9. Jesus' "exception clause" is stricter than the grounds for divorce presented in Deut 24:1 (according to the interpretation of both the House of Shammai and the House of Hillel). Jesus' "exception" for divorce is *porneia*, which is not the exact equivalent of the *'erwat dābār* of Deut 24:1. *Porneia* is a much narrower term, referring exclusively to illicit sexual intercourse, which in the Mosaic law called for the offender being "cut off" from God's people (Lev 18:29).¹⁶ As Roy Gane summarizes: "Jesus says that whereas Moses allowed for divorce for indecent exposure without illicit sexual relations, He permits divorce only if illicit sexual relations take place."¹⁷

Furthermore, in this light Jesus' "exception clause" in Matthew 5 and 19 is not to be seen in contradiction to the Synoptic parallel accounts in Mark and Luke which contain no exception clause. Mark and Luke do not mention any exception clause, presumably because they do not consider the case of *porneia*, the penalty for which was being "cut off" or death. It was assumed that the death penalty or being "cut off" from the congregation meant a *de facto* dissolution of the marriage. Matthew apparently preserves the original intent of Jesus for read-

¹⁵For further support for this position on the parallel of Acts 15 and Leviticus 17–18 and the meaning of *porneia*, see especially H. Reisser, "porneuō" in *The New International Dictionary of New Testament Theology* (1975), 1:497–501; F. Hauck and S. Schulz, "πόρνη, πόρνς, πόρνεῖα, πόρνεύω, ἐκπορνεύω," *TDNT*, 6:579–595; and James B. Hurley, *Man and Woman in Biblical Perspective* (Grand Rapids, MI: Zondervan, 1981), 95–106, 129–137. This is in opposition to those who equate the *porneia* of Acts 15 only with the incestuous relationships of Lev 18:6–18. This view fails to recognize that the entire chapter of Leviticus 18 is a unit describing the various illicit sexual activities carried out by the Canaanites (see the inclusio in vv. 3 and 30). Defenders of this latter view include Joseph A. Fitzmeyer, "The Matthean Divorce Texts and Some New Palestinian Evidence," *Theological Studies* 37 (1976): 197–226; Samuele Bacchiocchi, *The Marriage Covenant: A Biblical Study on Marriage, Divorce, and Remarriage* (Berrien Springs, MI: Biblical Perspectives, 1991), 182–189; and others.

¹⁶This involved the death penalty at least in the case of adultery (Lev 20:10), some instances of incest (vs. 12), homosexual relationships (vs. 13), and bestiality (vss. 15–16). By the time of Jesus, the death penalty for illicit sexual intercourse had all but died out (both the Babylonian Talmud [*Sanh.* 41a] and the Jerusalem Talmud [*Sanh.* 18a, 24b] indicate that the death penalty was abolished forty years before the destruction of the Temple, i.e., about 30 A.D.), and therefore the School of Shammai could rightly include such sexual activity in the meaning of *'erwat dābār*, while also including indecent exposure in general.

¹⁷Gane, "Old Testament Principles," 160. Gane, "Old Testament Principles," 161–162, further points out that "in Matt 5:32, Jesus' Greek phraseology follows the syntax of the House of Shammai formulation: *logou porneias*, 'a matter of fornication.' The difference between the two formulations is the difference between the range of meaning of *porneia*, illicit sexual intercourse, and that of the broader term *'erwah*, exposure in general."

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ers after 30 A.D. when the death penalty for adultery was abolished (Babylonian Talmud *Sanh.* 41a).¹⁸

B. Procedure of Divorce (vs. 1b). According to Deut 24:1b, there were three major elements in the divorce proceedings. First, the husband wrote a “certificate of divorce,” literally “document of cutting off [*sēper k’rîtût*].” Other legal documents are mentioned in the OT,¹⁹ and the certificate of divorce is also alluded to in other passages that we will be examining shortly. Although there is no OT example of the actual wording of such a document, it has been suggested that the central divorce formula is contained in Yahweh’s statement of divorce proceedings against Israel in Hos 2:2 [Heb. v. 4]: “she is not my wife and I am not her husband!”²⁰ Such a statement would mean the legal breaking of the marriage covenant as much as the death of the marriage partner. The document no doubt had to be properly issued and officially authenticated, thus ensuring that the divorce proceedings were not done precipitously.

The bill of divorce may have also contained what in Rabbinic times was considered “the essential formula in the bill of divorce,” i.e., “Lo, thou art free

¹⁸For more complete discussion of this point, see R. H. Charles, *The Teaching of the New Testament on Divorce* (London: Williams and Norgate, 1921). Charles summarizes (21–23): “When we recognise that Mark’s narrative takes no cognisance of the case of adultery, but only of the other and inadequate grounds advanced for divorce, the chief apparent contradictions between Matthew and Mark cease to exist. What is implicit in Mark is made explicit in Matthew. Both gospels therefore teach that marriage is indissoluble for all offences short of adultery. . . . Now, it was impossible to misinterpret the plain words of Christ, as stated in Mark, at the time they were uttered, and so long as the law relating to the infliction of death on the adulteress and her paramour was not abrogated. But, as we know, this law was abrogated a few years later. The natural result was that to our Lord’s words, which had one meaning before the abrogation of this law, a different meaning was in many quarters attached after its abrogation, and they came to be regarded as forbidding divorce under all circumstances, though really and originally they referred only to divorces procured on inadequate grounds—that is, grounds not involving adultery. Now, it was just to correct such a grave misconception, or the possibility of such a misconception, of our Lord’s words, whether in Mark or other early documents, that Matthew (v. 32, xix.9) edited the narrative afresh and inserted the clause, ‘saving for the cause of unchastity.’ . . . By the insertion of these clauses Matthew preserves the meaning of our Lord’s statements on this subject for all subsequent generations that had lost touch with the circumstances and limitations under which they were originally made. Matthew’s additions are therefore justifiable. Without them the reader is apt to misunderstand the passages on divorce.” It is also possible that Matthew preserves the original complete wording of Jesus (in translation, of course), and that Mark and Luke simply left out the reference to *porneia* in the Greek translation because Jesus’ original intent is clear without it (since *porneia* called for death or being “cut off” which implies a *de facto dissolution* of the marriage in those cases). In other words, one does not have to decide on the question of the Synoptic problem (which Gospel is prior, if any) to reconcile this apparent contradiction.

¹⁹See 2 Sam 11:14–15, the legal correspondence [*seper*] of David to Joab delivered via Uriah the Hittite; Jer 32:11, the purchase deed [*seper*] of Jeremiah.

²⁰In the discussion on this passage, we will argue, however, that most probably Yahweh did not divorce his “wife” Israel in Hosea 2.

to marry any man.”²¹ This would provide for the freedom and right of the woman to be married again. The document would be indicating that although the woman had been guilty of some kind of indecent exposure, she was not guilty of adultery or other illicit sexual intercourse, and therefore not liable to punishment for such sexual activity. Thus she was protected from abuse or false charges by her former husband or others at a subsequent time.

Parallels from the Code of Hammurabi and the Jewish Mishnah indicate that the certificate of divorce would also contain mention of the financial settlement, unless the woman was guilty of misconduct, in which case no financial compensation was awarded her.²² Probably the latter (no financial compensation) was the case in Deut 24:1.

The second step of the divorce proceedings was to “put it [the bill of divorce] in her [the wife’s] hand” (Deut 24:1). She must actually receive notice of the divorce directly in order for it to be effective. The Mishnah tractate *Gittin* deals with various kinds of possible situations which might not qualify as actually putting the divorce certificate in the hand of the woman.²³ The effect, again, is the protection of the wife by ensuring that she has access to, and concrete notification of, the divorce document.

The third step is that the husband “sends her out of his house” (Deut 24:1). The word “send” [Heb. *šlh* in the *Piel*] is elsewhere in the OT the closest one comes to a technical term for “divorce.”²⁴ By sending the wife away is intended the effectuation of the divorce process. The break is final and complete.

C. Remarriage and the second divorce or death of second husband (vss. 2–3). The third condition specified in the protasis of Deut 24:1–3 is that the divorced woman remarries, and then her second husband either divorces her or dies.

Raymond Westbrook seeks to establish that the grounds for the second divorce are not the same as those for the first divorce. The second husband is said to “detest” or “dislike” [Heb. *šn*, literally, “hate”] her, which term is not employed in the grounds for the first divorce.²⁵ However, the evidence Westbrook cites actually militates against his conclusion, for he shows that in ancient Near

²¹Mishnah, *Gittin*, 9.3. From the scattered references to the divorce document in the Mishnah, it is possible to reconstruct its hypothetical form, which closely resembles the form recorded in the 12th century by Maimonides (Treatise Gerushin, iv, 12). See D. W. Amram, *The Jewish Law of Divorce* (reprint, New York: Hermon Press, 1975), 156–158, for reconstructed document.

²²See discussion of this, with citations of examples from ancient Near Eastern Literature and the Jewish Mishnah, in Raymond Westbrook, “The Prohibition on Restoration of Marriage in Deuteronomy 24:1–4,” in *Scripta Hierosolymitana*, vol 31: *Studies in Bible* (Jerusalem: Magnes Press, 1986), 393–398.

²³For example, *Gittin* 4.1 states that if the bill of divorcement is intercepted by the husband before it reaches his wife, then it is void, but if he tries to intercept it after she receives it, it is not void.

²⁴This is already apparent in Deut 24:4, where the Hebrew term simply means “divorce.” We will examine the other usages of *šlh* with reference to divorce below.

²⁵Westbrook, 399–405.

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Eastern sources and later Jewish material (e.g., the Elephantine marriage contracts) the formula “I hate [*šn*] my husband/wife” is a summary of the longer standard divorce formula “I hate and divorce my husband/wife.” Westbrook’s argument that “hate/dislike” in Deut 24:3 refers to divorce without objective grounds in contrast to divorce with objective grounds in v. 1, while plausible, is not persuasive.²⁶ In light of the fact that *šn*’ is used elsewhere as the technical term to summarize the grounds for divorce, whatever they might be, it seems preferable to take this term “hate/dislike” [*šn*] as summarizing the same situation as the first divorce mentioned in v. 1.

The divorce procedure is the same as described in vs 1: The husband writes his wife a certificate of divorce, puts it in her hand, and sends her away out of his house. Or, as an alternative situation, the second husband dies.

V. Legislation: The Apodosis (vs. 4a)

After the lengthy statement of conditions, the legislation itself is short and simple: “then her former husband who divorced her [Heb. *šilḥah*] must not [Heb. *lo’yûkal*] take her back to be his wife after she is defiled” (Deut 24:4a). While the legislation is clear, the rationale for this legislation is far less certain. Already in the legislation, however, one part of the rationale is given: “after she has been defiled.” Two additional aspects of the rationale for the prohibition appear in the motive clauses. We will examine all of these aspects in the next section.

VI. Rationale for the Legislation: The Motive Clauses (vss. 4b–d)

A. The explanation: “After she has been defiled” (vs. 4b). The first indicator of the reason for this legislation comes in the explanation why the first husband is not permitted to remarry: “she has been defiled.” The Hebrew for this clause is a single word *huṭṭammā’āh*, from the root *m^E* “to be or become unclean or defiled.” But the grammatical form employed in this verse is very unusual in the Hebrew Bible, used nowhere else with *tm*’ and only a very few times with a very few verbs.²⁷ This form is the passive of the *Hithpael*. Since the *Hithpael* normally conveys the reflexive idea (“she defiled herself”) and is used reflex-

²⁶Besides the elements of conjecture that he must introduce (the first divorce provided no financial compensation but the second divorce did), Westbrook’s thesis that the law is merely to prevent the first husband from profiting financially twice from the woman, while possible, does not seem to match the severe language used in the motive clauses to describe the “abomination” and “sin” of this action. See discussion below.

²⁷The standard Hebrew grammars list only four occurrences of the *Hothpael* with only three verbs: Lev 13:55–56; Deut 24:4; and Isa 34:6. All of these are in verse or technical priestly writing. See Bruce Waltke and M. O’Connor, *An Introduction to Biblical Hebrew Syntax* (Winona Lake, IN: Eisenbrauns, 1990), 432; E. Kautzsch and A. E. Cowley, eds., *Gesenius’ Hebrew Grammar*, rev. ed. (Oxford: Clarendon, 1910), 150 (par. 54 h).

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ively in its occurrences with *ṭm'*,²⁸ the passive or *Hothpael* in Deut 24:4 would probably best be translated as “she has been made/caused to defile herself.” The implications of this will become apparent after examining the nature of the woman’s defilement.

The word *ṭm'* in the reflexive occurring in the context of sexual activities leads us clearly to Leviticus 18, where we have not only the reflexive form of this word (vv. 24, 30), but the other two terms/concepts used in the motive clauses of Deut 24:4: the term “abomination” [*to'ēbah*] (vv. 22, 26, 29) and the idea of bringing defilement/sin upon the land (vv. 25, 27, 28). Leviticus 18 is the only other chapter of the Hebrew Bible that combines these three terms/ideas in one context, and seems undoubtedly to be alluded to by Deut 24:4. It is crucial to note that in Leviticus 18 one “defiles oneself” by having illicit sexual relations with another (v. 20, 24, including at least adultery, bestiality, homosexual practice). Deut 24:4 also probably alludes to Num 5:13, 14, 20, where the wife is specifically referred to as having “defiled herself” by having illicit sexual relationships with another man than her husband.

The implication of this connection between Deut 24:4, Leviticus 18, and Numbers 5 is that the sexual activity of the divorced woman with the second husband is tantamount to adultery or some other illicit sexual intercourse, even though she does not incur the death penalty or other punishment as in the cases of Leviticus 18.

Various commentators have recognized this implication. Keil and Delitzsch write on Deut 24:4: “Thus the second marriage of a divorced woman was placed *implicitae* upon a par with adultery . . .”²⁹ S. R. Driver concurs that “the union of a divorced woman with another man, from the point of view of her first husband, [is] falling into the same category as adultery . . .”³⁰ Similarly, P. C. Craige comments: “The sense is that the woman’s remarriage after the first divorce is similar to adultery in that the woman cohabits with another man.”³¹ Again, Earl Kalland remarks: “So here [Deut 24:4] it refers to whatever defilement is associated with adultery.”³²

If the sexual intercourse of the woman with her second husband defiles her and is tantamount to adultery, why is she free from punishment? The answer seems to be found in the meaning of the *Hothpael* form of *ṭm'*: she “*has been caused to defile herself.*” This apparently does not refer to the one she has had sexual intercourse with (i.e., her second husband) as the “cause” of defilement,

²⁸Lev 11:24, 43; 18:24, 30; 21:1, 3, 4, 11; Num 6:7; Ezek 14:11; 20:7, 18; 37:23; 44:25. See BDB, 379.

²⁹C. F. Keil and F. Delitzsch, *Commentary on the Old Testament in Ten Volumes. Volume 1: The Pentateuch, Three Volumes in One* (Reprint, Grand Rapids, MI: Eerdmans, 1976), 3:418.

³⁰Driver, 272.

³¹Craige, 305.

³²Earl S. Kalland, “Deuteronomy,” in *The Expositor’s Bible Commentary*, ed. Frank E. Gaebel (Grand Rapids, MI: Zondervan, 1992), 3:146.

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as is the case when a *Nifal* or even *Hithpael* form is used.³³ By utilizing the rare *Hothpael* (passive reflexive) form, another cause than the immediate defilement with her second husband seems to be implied. This is highlighted by comparing this occurrence of the *Hothpael* with its other occurrences in the Hebrew Bible, where the same dynamic is functioning³⁴: The ultimate cause, seemingly implicit in this rare grammatical form, is the first husband. The legislation subtly implicates the first husband for divorcing his wife. Even though his action is not punished, and therefore is tolerated, the law makes clear that his action does not have divine approval. His putting away his wife has in effect caused her to defile herself in a second marriage in a similar way as if she were committing adultery.³⁵

Thus, while Deut 24:1–4 does not legislate divorce or remarriage, and even tolerates it to take place within certain grounds less than illicit sexual intercourse, at the same time within the legislation is an internal indicator that such divorce brings about a state tantamount to adultery, and therefore is not in harmony with the divine will.

Recognizing the correct translation of Deut 24:4 (“she has been caused to defile herself”) throws light on Jesus’ words in Matt 5:32: “But I say unto you, whoever divorces his wife for any reason except sexual immorality [*porneia*] causes her to commit adultery [presumably when she remarries]; and whoever marries a woman who is divorced commits adultery.” Just as in the other “But I say unto you” sayings of Matthew 5, Jesus is not changing or adding something new to the Law, but showing the true and deeper meaning that is already contained in the Law, which had been distorted by later misinterpretation. Already in Deut 24:4 it is indicated that breaking the marriage bond on grounds less than illicit sexual intercourse causes the woman to defile herself, i.e., commit what is tantamount to adultery.³⁶

³³See, e.g., (*Nifal*) Lev 18:24; Num 5:13, 14, 14, 20, 27; (*Hithpael*) Lev 18:24, 30. Regardless whether one translates these passages reflexively (as I prefer) or passively (or a mixture of both), the person “defiles himself/herself” with or “is defiled” by the sexual partner.

³⁴So in Lev 13:55–56. In the case of “leprous garments,” the priest “commands that they wash the thing in which is the plague” (v. 54), and then the priest examines the plague after “it had been caused to be washed” [*Hothpael*] (v. 55–56). It was “they” who actually washed the garment, but the priest was the “cause.” Likewise in Isa 34:6, “The sword of the Lord is filled with blood, it is caused to be made fat [*Hothpael*] with fat [the fat of the kidneys of rams] . . .” The object that makes it fat is the fat of the rams’ kidneys, but the Lord [who wields the sword] is the one who causes it to happen. In each case another prior cause than what does the actual action (washing, making fat) is in view.

³⁵Cf. note 85 (and Luck, 62) for further arguments.

³⁶Keil and Delitzsch, 418, recognize this when they indicate that “the second marriage of a divorced woman was placed *implicitae* upon a par with adultery, and some approach made toward the teaching of Christ concerning marriage: [Matt 5:32 quoted].” My conclusion is in opposition to recent analyses of the relationship between Deuteronomy 24 and Matt 5:32 which conclude that the conditions/grounds for divorce presumed in Deuteronomy 24 are still the norm for today and that Matthew 5 and 19 are simply hyperbole and exaggeration and not intended to be exhaustive in providing the only guide for divorce. See especially Joe Sprinkle, “Old Testament Perspectives on Di-

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A further implication of this interpretation of Deut 24:4 is that Jesus, in pointing the Pharisees away from the divine “concession” in Deut 24:1–4 to God’s ideal “from the beginning” (Matt 19:8), was not arbitrarily shifting from the Deuteronomic law to the Edenic ideal. He was rather pointing to a conclusion that was already implicit in Deut 24:4: vv. 1–3 were a temporary concession to “hardness” of Israel’s heart, but they did not represent God’s divine ideal for marriage.

B. The reason: “It is an abomination” (vs. 4c). As we have already noted above, the term *to^cēbah* “abomination,” occurring in context with the other two rationales found in Deut 24:4, links unmistakably with Leviticus 18. As the various types of illicit sexual intercourse mentioned in Leviticus 18 are “abominations” [*to^cēbōth*], so is a woman’s returning to the first husband after having been married again. Craige rightly points out that if the woman’s remarriage after her first divorce is similar to adultery, remarriage to her former husband is even more so: “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.”³⁷

What is more, it appears that the prohibition does in effect bring indirect “punishment” upon the first husband for divorcing his wife. Even though his divorcing her is not directly censured, yet since she “has been caused [by him] to defile herself” through his action, he is indirectly punished by not being allowed to take her as a wife again. To do such would be an “abomination.” Though the punishment for failing to follow this prohibition is not given in the text, it probably may be assumed that such an abomination would not just be similar to adultery, but treated as adultery and punished accordingly.

C. The command: “You shall not bring sin on the land” (vs. 4d). This last motive clause once again brings us to Leviticus 18. The idea that illicit sexual intercourse defiles the land is mentioned three times in this chapter (Lev 18:25, 27, 28). Because the land is defiled, God says that “therefore I visit the punishment of its iniquity [*āwōn*] upon it, and the land vomits out its inhabitant” (Lev 18:25). This same concept is what is found in Deut 24:4b, even though the noun “iniquity” [Heb. *āwōn*] is replaced with the verbal idea of “sin” being brought on the land [Heb. *h̄t’* in the *Hifil*, “to bring sin”]. The verb “sin” [*h̄t’*, to “miss a mark, go astray”]³⁸ may have been substituted to imply a somewhat less serious infraction than the “iniquity” [*āwōn*, “crooked behavior, per-

divorce and Remarriage, *Journal of the Evangelical Theological Society* 40/4 (Dec 1997): 529–550, who argues that the grounds for divorce in Deut 24:1–4 (the *erwat dābār*) is “behavior fundamentally in violation of the essence of the marriage covenant” (p. 531) and such behavior is still valid grounds for divorce today. For Sprinkle, this includes “wife abuse, flat refusal of conjugal rights, lack of support of the wife financially, and so forth” (p. 549).

³⁷Craige, 305.

³⁸BDB, 306. Cf. TWOT, 2:638.

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version”]³⁹ of Leviticus 18, but it also may here have been considered virtually synonymous.

A man is not to remarry his wife when she has been married again to some one else for the same reason that Israel is not to engage in other illicit sexual intercourse. As we have already seen, to commit this abomination defiles the land and will eventually lead to divine punishment as He causes the land to vomit out its inhabitants.

An important implication of this motive clause for the contemporary relevance of this legislation arises from the direct linkage of Deut 24:4 with Leviticus 18 in the defiling of the land by the iniquity/sin of the sexual abominations. The “abominations” mentioned in Leviticus 18 (and re-iterated in Leviticus 20) are forbidden not only for the native Israelite but also explicitly for the non-Israelite “stranger” or “alien” (Heb. *gēr*) who sojourns among the children of Israel. Furthermore, these abominations caused the non-Israelite heathen who inhabited Canaan before Israel to be vomited out when they committed these acts. Therefore the “abomination” and “defiling” quality of these acts clearly are not simply ritual in nature, applying only to Israel, but timeless and universal, applying to whoever practices them. Since Deut 24:4 is placed in the same category as the practices of Leviticus 18, it may be assumed that the prohibition against marrying a former wife who has been married again is universal and of contemporary relevance in its application. Disregarding such prohibition will not only bring defilement and sin upon the land of Israel which God was giving to them as an inheritance, but will also defile any land where such practice is carried out.

VII. The Overall Purpose of the Legislation

A. Various Suggestions. There have been many suggestions as to the overall purpose of the legislation in Deut 24:1–4. Some eight major views may be categorized and summarized:⁴⁰

1) *To ensure the proper legal procedure of divorce.* This assumes the translation of the KJV and other versions that place the apodosis already in v. 1a.

2) *To discourage easy divorce.* This is the argument of John Murray⁴¹ and S. R. Driver⁴² among others. As Jay Adams puts it: “The whole point of the four

³⁹BDB, 730. Cf. TWOT, 1:278.

⁴⁰For a listing and critique of many of these views, see J. Carl Laney, “Deuteronomy 24:1–4 and the Issue of Divorce,” *Bibliotheca Sacra* 149 (1992): 9–13; Westbrook, 388–391, 404–405; and Luck, 63–65.

⁴¹Murray, 3–16.

⁴²Driver, 272.

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verses in question is to forestall hasty action by making it impossible to rectify the situation when divorce and remarriage to another takes place . . .”⁴³

3) *To inhibit remarriage.* Craige argues that the text treats subsequent remarriages as defilements similar to adultery. He regards the grounds for the divorce as possibly just some type of “physical deficiency in the woman.” The legislation restricts current divorce practices so that it does not become simply a “‘legal’ form of committing adultery.”⁴⁴

4) *To protect the second marriage.* R. Yaron suggests that the legislation inhibits the social tensions that might arise from a “lover’s triangle.”⁴⁵

5) *To prevent a “type of incest.”* Gordon Wenham argues that marriage creates a kind of indissoluble “kinship bond” between husband and wife, and thus after a divorce and remarriage to return to the first husband is a kind of incest which is forbidden in Lev 18:6–18.⁴⁶

6) *To “protect a stigmatized woman from further abuse by her offending first husband.”*⁴⁷ According to William Luck, “Deuteronomy deals not with a sinning wife but a sinning husband.”⁴⁸ In his view the wife’s action of *‘erwat dāḥār* was not a sexual offense at all but some “embarrassing condition,” and the husband was “so hard-hearted that he cast the woman from himself” and “so unrepentant that he allowed her to be sexually coupled to another man.”⁴⁹

7) *To recognize the “natural repulsion” or taboo against having sexual intercourse with a woman who has cohabited with another man.* This view has found support in Calum Carmichael, who seeks to show evidence that such an attitude did exist in ancient Israel.⁵⁰

8) *To deter greedy profit by the first husband.* Raymond Westbrook contends that this legislation is about property. In the first divorce (v. 1) since there were moral grounds the wife received no financial settlement, whereas in the second divorce (v. 3) there were no moral grounds so the wife received financial remuneration. The legislation is to keep the first husband from profiting twice, once to divorce her (and give her nothing) and once to remarry her (and get her financial settlement from her second husband). Westbrook notes how this interpretation fits nicely with the structural placement of this law in the section of Deuteronomic legislation dealing with theft.⁵¹

⁴³Jay Adams, *Marriage, Divorce and Remarriage in the Bible* (Phillipsburg, NJ: Presbyterian and Reformed, 1980), 62, cited in Laney, 10–11.

⁴⁴Craige, 305.

⁴⁵Reuven Yaron, “The Restoration of Marriage,” *Journal of Jewish Studies* 17 (1966): 1–11.

⁴⁶Gordon Wenham, “The Restoration of Marriage Reconsidered,” *Journal of Jewish Studies* 30 (1979): 36–40; Heth and Wenham, 105–111 and *passim*.

⁴⁷Luck, 57–67, and *passim*.

⁴⁸*Ibid.*, 65.

⁴⁹*Ibid.*, 60–63.

⁵⁰Calum M. Carmichael, *The Laws of Deuteronomy* (Ithaca and London: Cornell University Press, 1974), 203–207.

⁵¹Westbrook, 392–405.

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B. Evaluation and synthesis. In light of our exegesis of this passage, we may evaluate the above proposals, underscoring what is consistent with the text and critiquing those points that stand in tension with exegetical data we have gathered.

The first view (that the law ensures a proper legal divorce procedure) is based upon a misunderstanding of the structure of the passage. As we have seen, Deut 24:1–4 does not legislate divorce nor even sanction it. The actual legislation only deals with the prohibition of remarriage to the first husband after an intervening marriage. In fairness to this view, however, it must be said that the very mention of the certain conditions in the divorce proceedings does at least indicate that these conditions would have to be met in order for the legislation to apply. In the very tolerating of divorce under these conditions, some tacit recognition of a set procedure for divorce is made in the passage.

The second view (to discourage hasty divorce) has more to commend it. The mention of specific divorce proceedings in the protasis of the legislation would have some tacit influence to this effect (as mentioned under view 1), but the apodosis or actual legislation would have further underscored this point. When a divorce was contemplated by the first husband, he must reckon with the fact that such action would be final once she had remarried. He could never change his mind and try to woo her back. But Westbrook points out a weakness in this being the only purpose for the legislation: “the divorcing husband is hardly likely to have in mind the possible circumstances following the dissolution of a subsequent marriage by his wife.”⁵²

The third view (to inhibit remarriage), contains elements that find support in the text. We have found that Craige is correct to argue that the remarriage of the woman (after a divorce on lesser grounds than extra-marital sexual intercourse) is presented as tantamount to adultery in that she “defiles herself” (although she is not punished). He is also on the right track in seeing the legislation as curbing the excesses of divorce so that it becomes “legalized adultery.” But Craige broadens the meaning of *‘erwat dābār* far too much when he sees it probably referring to a “physical deficiency” in the woman and not “indecent exposure.” Craige also misses the implication that it is the first husband who is ultimately culpable for having caused his wife to defile herself by the second marriage relationship.

The fourth view (to protect the second marriage, not the first) also has merit. If the divorced wife who has married again knows that she cannot get back together with her first husband, she would certainly be discouraged from planning any intrigue against her second husband so he would divorce her. The first husband would likewise be prevented from trying to get his first wife back. Although these aspects seem to be part of what the law accomplished, Laney has correctly pointed out that this view “fails to explain why the rule would apply

⁵²Westbrook, 389.

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after the death of the second husband when the second marriage would no longer be in jeopardy.”⁵³

The fifth view (to prevent a type of incest), as we have already seen above, does not have the weight of evidence of the text and context to support it. As Laney remarks, “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.”⁵⁴ Westbrook moves closer to the main objection to Wenham’s “type of incest” view: “his [Wenham’s] analysis cannot possibly apply to the Deuteronomic law because it completely ignores the intervening marriage. The law does not, as Wenham assumes, prohibit remarriage as such, and there is no way that we can see of the second marriage being a factor in the creation of an incestuous affinity.”⁵⁵ The major problem of Wenham’s position, as hinted already by Westbrook, is that it is founded on an erroneous view of the marriage covenant. Wenham assumes that the “one-flesh” relationship in the marriage covenant is absolutely indissoluble, even by divorce and remarriage. Such position, as we have seen, is not supported in Genesis 1–3 or elsewhere in Scripture.

The sixth view (to protect a stigmatized wife from further abuse from her offending first husband) has many points that square with our exegesis. Luck is correct that the law implicates the first husband as the offending party (even though he arrives at this conclusion by a different route than we have suggested).⁵⁶ He states: “the stigma [of ‘defilement’] of the woman in Deuteronomy 24:4 does not so stigmatize her that the moral guilt hangs about her marriages to men other than her former husband. The stigma instead reflects back upon the man who caused the problem, that is, her first husband.”⁵⁷ In emphasizing the first husband’s culpability, however, Luck has tended to trivialize the grounds

⁵³Laney, 10; cf. Westbrook 390 for a similar critique. A possible rejoinder to this objection is that by including the death of the second husband as a possibility in which the law is still in force, there would be no attempt on the life of the second husband by his wife or her former husband. But this does not seem to cover clear cases of natural death on the part of the second husband.

⁵⁴Laney, 11.

⁵⁵Westbrook, 390–391.

⁵⁶Luck, 62, instinctively recognizes the importance of the word “defiled” in the *Hothpael*, correctly labels it (via Walter Kaiser) as a “reflexive passive,” and even states: “Moses went out of his way to make this form unusual!” But he does not draw out the implications of his observations.

⁵⁷Ibid. Luck’s argument rests on making an analogy with the rapist who causes his victim to be “defiled” even though she is an innocent party. “The ‘defilement’ of the woman reflects upon the rapist.” In a similar manner the “defilement” of the woman in Deut 24:4 reflects upon the one who caused her to get into this situation of being defiled, i.e., her first husband by divorcing her and refusing to remarry her. He also rightly and significantly notes (ibid., based on Murray’s observation) that “the defilement only seems to be taken into account with regard to the first husband—when the issue of a remarriage to that one, after a marriage to another has occurred.” This would be an additional support to the conclusions we reached earlier based on the *Hothpael* form of the word *tm*’ in Deut 24:4.

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for divorce by indicating that *erwat dābār* in Deut 24:1 simply refers to “embarrassing circumstances,” instead of “indecent exposure” as we have concluded.

The seventh view (that the prohibition reflects a “natural repulsion” or taboo against having sexual relations with one who has cohabited with another) does not stand up to a rigorous scrutiny. Westbrook reexamines Carmichael’s evidence for such a taboo in the OT and finds it wanting.⁵⁸ Westbrook concludes: “We would suggest that, far from there being a natural repulsion, both biblical and ancient Near Eastern sources find nothing untoward in a man resuming relations with his wife after she has had relations with another, even amounting to marriage, providing no other factor makes resumption of the marriage improper.”⁵⁹

The eighth view (to deter greedy profit by the first husband) points in a promising direction, although it appears to go beyond the evidence in its specifics. Westbrook’s distinction between two kinds of divorce functioning in Deut 24:1–3 finds its basis in a similar distinction in the Code of Hammurabi and the Mishnah,⁶⁰ but really has no basis in the biblical text. As we have already seen, the divorce formula of Deut 24:3 is probably an abbreviated version of the same type of divorce in v. 1. Westbrook’s view, in addition to being speculative, does not appear to take seriously enough the terms “abomination” and “sin on the land” (of v. 4). Furthermore, this view assumes that the first divorce is perfectly legitimate, contrary to what we have seen implied in the clause “she has been caused to defile herself.”

Aside from the weakness of Westbrook’s proposal in its details, he does seek to make sense out of the placement of this law within the section of Deuteronomy 12–26 dealing with “theft,” a point we made at the beginning of our investigation of Deut 24:1–4. If it does not deal with theft in the way that Westbrook suggests, Westbrook must be credited with attempting to wrestle with the larger issue of the theological context for this legislation.

Our exegesis has led us, I believe, to see the relationship between this legislation and theft in a much larger perspective than Westbrook proposes. The law of Deut 24:1–4 has prevented men from treating a woman as mere chattel, property, to be swapped back and forth at will.⁶¹ Her dignity and value as an

⁵⁸Westbrook, 392–393. Westbrook presents evidence from Scripture (Genesis 12 and the case of Pharaoh marrying Sarah, and the marriage of Michal to David and then Paltiel and then back to David) and several examples from the Code of Hammurabi and Middle Assyrian Laws.

⁵⁹*Ibid.*, 392.

⁶⁰The Code of Hammurabi, 141–142 (see James B. Pritchard, ed., *Ancient Near Eastern Texts Relating to the Old Testament*, 3rd ed. with suppl. [Princeton, NJ: Princeton University Press, 1969], 172), and Mishnah *Ketubot* 7.6 (cf. other regulations regarding giving the *Keubah* [financial settlement] in this tractate).

⁶¹As Christopher J. H. Wright, *Deuteronomy*, New International Biblical Commentary (Peabody, MA: Hendrickson Publishers, 1996), 255, puts it, she is to be protected from being “a kind of marital football, passed back and forth between irresponsible men.”

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individual person is upheld in this law, and the first husband who caused her to defile herself is implicitly shown to be at fault. The law is aimed, in its final placement within the larger context, to protect the woman from being robbed of her personhood.

This conclusion is reinforced by noticing the very next law in this section of Deuteronomy (24:5): “When a man has taken a new wife, he shall not go out to war or be charged with any business; he shall be free at home one year, and bring happiness to his wife whom he has taken.” This law clearly indicates that its ultimate purpose is to enable the newly-wedded man stay at home “and bring happiness to his wife.” The law protects against robbing the newly-married couple of its intimacy and happiness, and especially protects the happiness of the wife.

We are now prepared to see how Deut 24:1–4 fits into the progression of thought in the section of laws dealing with the eighth commandment or “theft.” As Kaufman pointed out with regard to the organization of the various laws within the thought units of a given commandment, they “are arranged according to observable principles of priority.”⁶² Kaufman’s analysis of the Deuteronomic laws arranged under the eighth commandment is insightful. He notes how there are six paragraphs in this section (which he labels A through E). The structure of the section starts with the theft of property (paragraphs A [Deut 23:20–21], B [vv. 22–24], and C [vv. 25–26]). Then it moves to the theft of “life” [*nepeš* in a metaphorical sense (paragraphs D [Deut 24:1–4 and v. 5] and E [v.6]). Finally it deals with the theft of physical *nepeš* (kidnapping, paragraph F [v. 7]).

Kaufman, in my estimation, has rightly pointed out how Deut 24:1–4 and v. 5 belong together as one paragraph with a common theme. In a note he writes: “Perhaps the current position of paragraph D within Word VII [the eighth commandment] offers an insight into the compiler’s (or author’s) understanding of the very essence of the two laws which comprise it. Both, like paragraph E and F that follow, were apparently seen as preventing the theft of *nepeš*—of the services and devotion of a groom to his bride, and of the self-respect of a divorced woman.”⁶³

Therefore Deut 24:1–4, in its larger canonical context, serves to protect the rights of women, to protect their dignity and self-respect, especially in circumstances in which they may appear powerless. The law, in its self-expressed disapproval, although temporary toleration, of inequalities afforded women due to the hardness of men’s hearts—points toward the day when such inequalities will be resolved by a return to the Edenic ideal for marriage.

⁶²Kaufman, 115.

⁶³Kaufman, 156–157, note 109.

Conclusions and Implications for Today

1. Although Deut 24:1–4 tolerated divorce on the grounds of indecent exposure on the part of the wife, at the same time within the legislation the rare *Hothpael* (of *ht'*, vs. 4) is an internal indicator that such a divorce does not meet with divine approval. The husband's putting away his wife has in effect caused her to defile herself in a second marriage in a similar way as if she were committing adultery (although it is not punished as such because the blame is placed upon the first husband and not the wife). Thus already in Deut 24:4 it is indicated that the breakage of the marriage bond on grounds less than illicit sexual intercourse causes the woman to defile herself, i.e., commit what is tantamount to adultery [when she marries again.]

2. The correct translation of Deut 24:4 (“she has been caused to defile herself”) seems to illuminate Jesus' words in Matt 5:32: “whoever divorces his wife for any reason except *porneia* (illicit sexual intercourse) causes her to commit adultery [presumably when she remarries]. . . .” Thus Matt 5:32 is not an exception to the rule of Jesus' “But I say unto you” statements in Matthew 5. Here, as elsewhere in the chapter, He is not changing the OT meaning but recovering its full force from later misinterpretation.

3. The grounds for divorce in Deut 24:1 lie behind Jesus' discussion with the Pharisees in Matthew 19. The School of Shammai interpreted “the nakedness of a thing” to mean “indecent exposure [including adultery and other illicit sexual intercourse since these did not often meet the death penalty by the time of his day]” and the School of Hillel interpreted the grounds to be any indecency even as trivial as a wife's spoiling the husband's dish. Jesus' “exception clause” is stricter than both Shammai and Hillel, including only *porneia* as legitimate grounds for divorce.

4. In light of the precise structural and content parallels between the prohibitions of Acts 15:29 and Leviticus 17–18, we may define the *porneia* in Acts 15 (and presumably also Matt 5:32 and 19:9) as referring to illicit sexual intercourse (as detailed in Leviticus 18, including at least incest, adultery, homosexual practices, and bestiality).

5. Jesus' grounds for divorce (*porneia*) are the equivalent of those practices which in the OT met with the death penalty or being “cut off.” Therefore it may be stated that Jesus' exception clause in Matthew is not in contradiction to the lack of the exception clause in the other Synoptic gospels. Mark and Luke do not have the exception clause, presumably because such exception was assumed (via the death penalty or being “cut off” and thus *de facto* dissolving of the marriage) in OT law. Matthew has the exception clause to preserve the meaning of Jesus' words in a setting where the death penalty for *porneia* was no longer in effect.

6. The legislative part of Deut 24:1–4, which prohibited a wife to return to her first husband after she had subsequently married (and then the second husband had either died or divorced her), is linked by crucial terminology and con-

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cepts to the permanent and universal legislation of Leviticus 18, and therefore should be considered of contemporary relevance in its application today.

7. Deut 24:1–4, seen in its larger context in the book of Deuteronomy, constitutes legislation to promote and protect the rights of women and their dignity and self-respect. In its tolerance of, but self-expressed disapproval of, inequalities afforded women due to the hardness of men's hearts, this law points toward the day when such inequalities will be resolved by a return to the Edenic pattern for marriage.

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