

OLD TESTAMENT PERSPECTIVES ON DIVORCE AND REMARRIAGE

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The OT contains a great deal of material relating to divorce ethics. Unfortunately, many of the relevant passages have generally been ignored by theologians reconstructing a Biblical ethic of divorce. This paper tries to fill the gap by emphasizing these neglected texts in the OT where divorce is either allowed—or, sometimes, even commanded—and where God's estranged relationship with Israel is described by using divorce imagery. From these data I seek to formulate a systematized OT rationale for the cases that permit or command divorce within the concept of marriage as covenant.

It will be observed that the OT permits divorce for a variety of fundamental violations of the marriage covenant. In addition I will attempt to show that the OT teaching on this topic is compatible with the NT teachings about divorce and that both together are required for a complete Biblical divorce ethic. Only such an approach, it will be claimed, avoids the Marcionite heresy by fully acknowledging the divine authority of the OT teaching on this subject. And only this view is practical in our current, fallen world.

There is no question that OT law allows for divorce. What is less well recognized is that under some circumstances divorce is commanded by God. I will start with evidence that shows that OT law allowed divorce, and then I will go on to look at places where God commanded people to divorce.

I. DIVORCE AND REMARRIAGE ALLOWED UNDER SOME CIRCUMSTANCES

A number of passages support the notion that, though divorce was not encouraged, it was assumed that Israelites under the old covenant could in fact under some circumstances divorce their wives. In addition, where divorce occurred the right to remarry was assumed.

1. *Deut 24:1–4*. Because of its prominence in the discussion between Jesus and his opponents in the NT, Deut 24:1–4 is the best-known passage in the OT concerning divorce. Unfortunately it is a text riddled with exegetical difficulties.

One problem is that of syntax. The KJV of Deut 24:1 reads: “When a man hath taken a wife, and married her, and it come to pass that she find no favor in his eyes, because he hath found some uncleanness in her; then let

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him write her a bill of divorce, and give it in her hand, and send her out of his house." This interpretation sees v. 1 as having both a protasis and an apodosis in which the apodosis actually adjures that the man divorce his wife if some "uncleanness" is found in her. It is, to be sure, not impossible grammatically to take the Hebrew this way. The consensus of modern exegetes, however, is that the second half of v. 1 should be taken as the continuation of the protasis that continues through v. 3, followed by the apodosis in v. 4. Hence the NASB reads: "When a man takes a wife and marries her, and it happens that she finds no favor in his eyes because he has found some indecency in her, and he writes her a certificate of divorce and puts it in her hand and sends her out from his house, and she leaves his house and goes and becomes another man's wife, and if the latter husband turns against her and writes her a certificate of divorce and puts it in her hand and sends her out from his house, or if the latter husband dies who took her to be his wife, then her former husband who sent her away is not allowed to take her again to be his wife, since she has been defiled." Taken this way, the text does not command divorce at all. Assuming a divorce has taken place, it prohibits the remarriage of the wife to her original husband if she subsequently married another man. This is the universal interpretation among modern commentators and translations (e.g. Keil, Craigie, Thompson, Mayes, Kalland, Merrill, RSV, NIV). I have not run across any modern interpreter who defends the KJV. Deuteronomy 24:1–4 appears to be a single complex law rather than two laws (as the KJV makes it).

Read this way the law does not command divorce but does, under certain circumstances, acknowledge divorce as a cultural institution. The giving of a certificate of divorce implies not only a legal permission for divorce but also the legal permission for the woman to remarry. After all, what use is a certificate of divorce if not primarily for the allowing of remarriage without the woman being accused of the capital offense of adultery?¹ That in fact is what the woman in this case does: She remarries another man—who, as it turns out, also divorces her.

The reason for the divorce is that "something indecent" (NIV) was found in her. The key expression, literally "a nakedness of a thing" (*erwat dābār*), is never defined. Is it literal nakedness, or is it metaphorical for shameful behavior of whatever sort? The word *erwā* is used elsewhere metaphorically of the "nakedness" of Egypt, meaning the "private parts" of Egypt that spies would seek out for weaknesses in her defenses (Gen 42:9, 12). It is used literally in reference to the shameful or immoral exposure of the genitals. For example, steps were prohibited for altars that Israelites would build since their use could lead to the indecent and inappropriate exposure of the worshiper's private parts (Exod 20:26). "Nakedness" is used figuratively of Jerusalem's nakedness being exposed in the sense of Jerusalem's being disgraced and humiliated by exposure (Lam 1:8; Ezek 16:37).

¹ It could of course also be a legal document to affirm, with witnesses, that her dowry had been returned. Permission to remarry is not required for the man since in a polygamous society the man could take a second wife whether or not he divorced his first one.

The “nakedness of a thing” certainly cannot mean adultery since adultery was a capital offense, not grounds for divorce. Nor can it be interpreted loosely for anything a husband dislikes. A reasonable interpretation, adopted by the lexicons, is that the term should be taken broadly and figuratively of “improper behavior” or “what is unseemly, unbecoming” (cf. Deut 23:15).² I accept this view so far as it goes, but I will suggest below that the term must refer not to trivial matters but to behavior fundamentally in violation of the essence of the marriage covenant.³

The reason why “something indecent” is not specified is that the law is not attempting to define conditions under which a person may divorce—though it assumes that such conditions exist. Instead the law is primarily concerned about prohibiting remarriage after a divorce if the woman subsequently remarries.

Why God prohibits remarriage in such a circumstance has puzzled commentators, and a number of suggestions—none fully convincing—have been proposed as to the rationale.⁴ I cannot deal with them here. There are, how-

² A. Phillips, *Ancient Israel's Criminal Law* (Oxford: Blackwell, 1970) 112.

³ Even the Laws of Lipit-Ishtar (section 28) condemn divorcing a wife because “she loses her attractiveness” or “becomes a paralytic.” One would not expect a lower standard from Scripture. For references to cuneiform law see M. T. Roth, *Law Collections from Mesopotamia and Asia Minor* (SBLWAW 6; Atlanta: Scholars, 1995).

⁴ These views and others are summarized in W. Heth, “Divorce But No Remarriage,” *Divorce and Remarriage* (ed. H. W. House; Downers Grove: InterVarsity) 84–87; W. Heth and G. Wenham, *Jesus and Divorce* (Nashville: Nelson, 1984) 106–110. According to J. C. Laney (“No Divorce and No Remarriage,” *Divorce and Remarriage* 21–25) the law is meant to discourage both divorce and remarriage. It discourages divorce since there was a good chance that one would not be able later to remarry a wife one divorced, and it discourages remarriage since a woman who so remarries is “defiled” (v. 4), a term used elsewhere of adultery (Lev 18:20). Hence it is claimed that the text teaches the same thing that the NT teaches: that marriage after divorce is equivalent to adultery. Against this view it is hard to see how this law would hinder an angry husband from divorcing his wife. A possible future remarriage would not be on his mind. Moreover it is only after marriage to another man that she is “defiled,” and that defilement reflects to her remarrying her first husband, not necessarily in relationship to other men (cf. T. R. Edgar’s response to Laney, *Divorce and Remarriage* 64). If remarriage is adultery, why is it not a capital offense or, at least, why is there no condemnatory aside? This view appears to try to read the NT into the text. According to R. Yaron (“The Restoration of Marriage,” *JJS* 17 [1966] 1–11) the purpose of this regulation is to support and stabilize the second marriage from a destabilizing love triangle involving the woman and the two husbands. Such a love triangle is “defiling” since it is a kind of incest. To protect against such a contingency all possibility of remarriage is prohibited. But the continued prohibition of remarriage even if the husband dies (v. 3b) and thus eliminates the triangle appears to be fatal to this view. G. J. Wenham (“The Restoration of Marriage Reconsidered,” *JJS* 30 [1979] 36–40) argues that the prohibition of remarriage draws on the logic of the laws of incest in Leviticus 18 and 20. According to this logic a woman’s marriage, divorce and remarriage make the two men into brothers via the one-flesh principle of Gen 2:24, the wife in the OT sometimes being described as in some sense a “sister” of her husband. This interpretation, however, is highly speculative and contrary to common sense, which suggests that a wife could be considered a “sister” in only the most figurative of ways. R. Westbrook (“The Prohibition on Restoration of Marriage in Deuteronomy 24:1–4,” *Studies in Bible 1986* [ScrHier 31; ed. S. Japhet; Jerusalem: Magnes, 1986] 387–405) holds that the primary purpose of this passage is economic. Comparative analysis of ancient Near Eastern and later Jewish marriage contracts suggests that if a man divorces his wife on the basis of a well-recognized violation of the marriage covenant he could send her away without relinquishing her

ever, several deductions that can be made from the law of Moses at this point: (1) We may deduce that divorce was tolerated by the law of God under certain circumstances. (2) The expression “some indecency” implies that one could not divorce a wife for any reason whatever but that some “unseemly” breach of wifely duty must be involved. This limitation increased the wife’s status and dignity in Israelite society.⁵ (3) Divorce required an official declaration of divorce, in this case in the form of a written document.⁶ (4) Remarriage after divorce was legally permitted for women with a certificate of divorce. (5) A marriage can be dissolved, shown in the fact that return to a first husband after an intervening marriage was not allowed since the old marriage was dead.

The last point is particularly interesting since it explicitly goes against the counsel of some Christians who argue that marriage cannot be dissolved and that therefore divorce is never valid. They suppose that divorced persons should under every circumstance return to their original spouses since their initial marital unions were indissoluble. God, on the other hand, commanded the Israelites never to return to a first marriage if a second one occurred in between. Marriages can become irreconcilably dissolved. And from this passage it is tempting to say: What God has put asunder, let no man join together.

2. *Deut 22:13–19, 28–29.* Deuteronomy 22 gives two other cases that assume the right to divorce. Verses 13–19 discuss the case of a man who falsely accuses a girl of not being a virgin at the time of her marriage to him.

dowry. On the other hand, in the case of a purely subjective divorce—divorce because the husband just does not like his wife anymore—the husband would be obliged to return the woman’s dowry to her. Westbrook argues that in the first case in v. 1 the woman was sent away without dowry because of the “something indecent” found in her. With the second marriage, however, she was sent away just because the second husband “disliked” (*sn⁷*) her, and so she would have taken her dowry with her. Westbrook thinks the law is preventing the man from taking advantage of the woman, remarrying her for her dowry. The point is not that the woman is unclean but that the first husband has asserted that she is unclean and has profited from that claim by confiscating her dowry. Hence, having profited from declaring her unclean he now wants to claim her to be “clean” for marriage so as to again claim her assets, the dowry of the second marriage. But Westbrook reads so much between the lines that it is hard to accept his view either. If the dowry money were so important, why is there no explicit mention of it? Thus all the views are problematic, and I personally consider the matter unresolved.

⁵ E. Neufeld, *Ancient Hebrew Marriage Laws* (London: Longmans, Green, 1944) 176. Neufeld describes the requirement to find “something indecent” before divorcing a woman to be “a great advance in the attitude of the law to women” as compared with the notion that one could divorce a woman for any reason whatever. The requirement to find something indecent would “increase the assurance of the wife’s position,” limit “the husband’s power over her,” and add “to her domestic and social dignity.”

⁶ Deuteronomy 24:1 states that a written document was in this case given, but as Laney observes (“No Divorce” 23) this verse does not demand that a written certificate of divorce must be given. Nevertheless in order for the divorced woman who remarries not to be subject to execution as an adulteress she would have to have some official proof of divorce. An oral declaration before witnesses or judges could serve as an alternative public declaration, but our text suggests that a divorce certificate was a common if not usual or even universal method of doing this.

If the accusation turns out to be true, the law goes on to stipulate that the

girl would be executed. But if “proof of the girl’s virginity”⁷ can be presented showing that she was a virgin at marriage, then not only does the man pay a hundred shekels to the father as a penalty but also the girl continues to be the man’s wife. In addition he forfeits all right of divorce.

The formulation of this law clearly assumes that were the penalty not imposed an Israelite could divorce his wife.

Similarly Deut 22:28–29 describes a case of what appears to be rape⁸ in which the woman is subsequently given to the offender as wife (after a fifty-shekkel marriage gift/fine to the father). In such a case the man “cannot divorce her as long as she lives.” Again, were it not for the original offense it would be assumed that he could divorce her.

II. CASES WHERE DIVORCE IS COMMANDED BY GOD

There are even places in the OT where God requires divorce.

⁷ G. Wenham, “*Betulah—A Girl of Marriageable Age*,” *VT* 22 (1972) 331–332, rejects the traditional view that the proof of the girl’s virginity is the bloody bedcloth resulting from the virgin’s hymen being ruptured by her first intercourse with her husband. Instead Wenham believes that the woman has missed her period and shows no evidence of virginity (*bētūlim*, which Wenham would rather translate “evidence of menstruation”). The newlywed husband charges that his wife is pregnant through adultery with another man during the betrothal period before marriage. One of Wenham’s objections to the traditional view includes the unreliable character of evidence from a bloody marriage bedcloth since not all virgins bleed at their first intercourse. Either view fits into our application to the divorce question.

⁸ The usual interpretation of “seize” (*tāpas̄*) is that the text implies that the man seizes the woman by force and rapes her. G. P. Hugenberger (*Marriage as Covenant: A Study of Biblical Law and Ethics Governing Marriage Developed from the Perspective of Malachi* [VTSup 52; Leiden: Brill, 1994] 255–260), on the other hand, argues that Deut 22:28–29 is a case of seduction rather than rape. One argument in favor of the seduction view is the expression “they are found,” which suggests that both the man and the woman are involved, whereas in the case of rape one would expect it to say “he is found.” Another argument is that it seems unfair to force the woman to marry her rapist, whom she may well hate. Against Hugenberger, however, it seems hard to reconcile this being only a case of seduction with the extremely high bride price of fifty shekels, in contrast with Exod 22:16–17 where no such high price is set and no forfeiture of the right of divorce is mentioned.

1. *Exod 21:10–11.* This passage describes the case of a slave-wife. If her husband takes a second wife, he must not reduce his support of the slave-wife.⁹ He must give her choice food and fine clothes. Also involved is a term that perhaps refers either to cosmetics or conjugal rights.¹⁰ If he is unwilling to do these things, then “she is to go free, without payment of money.”

The expression “she is to go free” can mean no less than formal divorce. The point being made is that if this woman, sold as a slave-wife, is no longer to be a wife she cannot be kept as a slave on the pretext that she is the man’s wife. Instead she is to be given her freedom. The purpose of this law, then, was humanitarian: to assure that a woman sold for the purpose of marriage would not be taken advantage of by being reduced instead to ordinary slavery.¹¹ Thus under these conditions, and for the sake of the woman involved, God commanded the Israelite unwilling to give the woman full wifely privileges to divorce her without return of the original bride price.

Ideally of course it would have been better for the man to fulfill his marital obligations and not divorce his wife. This law by no means condones the man’s abandoning of his marital duties. But Biblical laws are not utopian. In the real world, people often refuse to do the right thing. What this law does is to indicate that where due to human sinfulness and stubbornness a man refuses to maintain his marriage, divorce can be prescribed as the lesser of evils.

2. *Deut 21:10–14.* Another law, Deut 21:10–14, also commands divorce. It describes a case where, after an Israelite victory over an enemy city, an Israelite man sees a beautiful foreign captive and is attracted to her. Rather than following the common practice among the nations in war—namely, killing the men and raping the women—this law states that the Israelite man can take this woman as a wife, but only after removing her beauty (she shaves her head and cuts her nails, making herself ugly) and providing a cooling-off period of one month during which the woman can mourn the loss

⁹ W. Kaiser (*Toward Old Testament Ethics* [Grand Rapids: Zondervan, 1983] 185) and Hugenberger (*Marriage* 113, 320–322) argue that Exod 21:10–11 does not refer to polygamy (“If he marries two wives at the same time”) but rather to broken betrothal (“If he marries another woman instead of her”). This view, however, seems more of an apologetic against polygamy in the law than dispassionate exegesis. The essence of the case of breach of contract has already been covered in Exod 21:8: “If she is displeasing in the eyes of her master who has not designated her” (Ketiv) or

~~and drag him before the judge, despite her double fault, before the man, a pure-faced wife (though, to be released before “she’ve) affirmation of her marriage and marriage to the master who is given the fine image, as though the foreigner is betrothal is able to be said if she is not married to another man, as the case, if the foreigner is not married to another man, in the case of a admitted if purchased this woman, she is not married to another man, and two different views. Moreover, though that obligation to provide for her, if she is not designated as an unfaithful, colorless, she has not the right to demand a compensation for the damage of betrothal. Only complete release and freedom seems appropriate, as in v. 8.~~

¹⁰ The meaning of this last term, *‘onātāh*, is uncertain; cf. J. Sprinkle, *Book of the Covenant* (JSOTSup 174; Sheffield: Sheffield Academic, 1994) 53–54, for a discussion of the exegetical issues.

¹¹ Ibid. 72.

of her family and the man can think over whether he really wants to marry a foreign woman with stubbly hair. If he still wants her, he cannot simply violate her. He must marry her.

But if after marriage he is not pleased with her, the text says he cannot treat her as a slave and sell her to someone else. Instead she has all the rights of a freeborn wife. If he no longer wants her as a wife, he must “let her go wherever she wishes” (*wěšillahtāh lēnapšāh*). The expression “let her go wherever she wishes” must imply “divorce her.” The piel of *šlh* is com-

monly used for divorce (Deut 22:19, 29; 24:1, 3; Jer 3:1). So if he is unwilling to treat her as a wife, God commands that he divorce her.

This command to divorce has a humanitarian purpose of preventing the sexual abuse of captive women. One who desires a beautiful captive woman cannot rape her and leave her. That man must marry her to have her. And if he no longer wants her as a wife he cannot sell her as a slave, which morally would be tantamount to rape and abandonment. She must be treated with dignity as a full-fledged wife and returned to freedom if not treated as a wife.

The text does not condone the man’s choice of no longer accepting this woman as his wife. His reasons may well be morally unjustified. But if for whatever reasons he rejects her as wife, the text prescribes divorce and release as preferable to her continued subjugation.

3. *Gen 21:8–14*. In Gen 21:8–14 God directs Abraham to divorce his slave-wife Hagar. The situation arises when after the birth of Isaac at the celebration of his weaning Sarah sees Ishmael “mocking.”¹² Sarah then demands that Abraham drive away (*grš*) the slave-wife and her son (v. 10) lest her son inherit with Isaac. Abraham is grieved by the request. But then God intervenes, telling Abraham: “Listen to [Sarah’s] voice, for through Isaac your seed will be named” (v. 12). God goes on to promise divine blessing for Ishmael (v. 13). Abraham obeys: He “sent her away” (piel of *šlh*; v. 14).

The terms “drive away” (piel of *grš*) and “send away” can be used in a general sense, but the qal of *grš* is used of divorcees (Lev 21:7, 14; 22:13) and the piel of *šlh* often means “divorce” in the HB (as was noted above). Permanent divorce rather than temporary separation is clearly implied in this case.¹³

¹² The LXX and some commentators (cf. RSV) take the piel of *shq* to mean innocent “playing,” but something stronger seems to be implied (cf. Gal 4:29 where Paul says Ishmael persecuted Isaac). There is also a wordplay since “mocking” (*mshq*) could be interpreted as a denominative, “performing the role of Isaac (*yshq*),” the very thing Sarah feared.

¹³ G. Wenham, *Genesis 16–50* (WBC 2; Dallas: Word, 1994) 82, 84.

Sarah's motives were hardly entirely innocent. She was petty and selfishly jealous for her child's interests, a factor that partly explains why Abraham was so displeased with her request. But why then does God encourage Abraham to do what Sarah suggested? One reason is that the request corresponds with the broader purposes of God in the Abrahamic promises: "A family squabble becomes the occasion by which the sovereign purposes and programs of God are forwarded."¹⁴

But how could God ask Abraham to do evil if divorce is always a sin? The answer must be that divorce in this case is either not a sin or else is the lesser of two evils. When Hagar conceived, "her mistress was despised in her eyes" (16:4), which led to Sarah's treating her harshly so that Hagar fled into the desert (16:5–6). Read in the light of Exod 21:7–11 (treated above), and given both Sarah's and Hagar's attitudes, it would have been very difficult for Abraham to perform his husbandly responsibilities for both Sarah and Hagar at the same time. Since he could no longer treat Hagar as a wife he would have been obligated by Exod 21:7–11 (had it been in effect) to let her go free. God's command in Genesis 21 is thus consistent with the later Mosaic law.

4. *Ezra 9–10.* Ezra 9–10 records how Ezra, the priest and scribe of God and an expert in the law, convinced many of the Jews of his day to divorce their foreign wives.

In Ezra 9:1–2 the leaders complain to Ezra that the people were violating the law against mixed marriages. These leaders had in mind such passages as Deut 23:3 where no Moabite or Ammonite was to enter the assembly of the Lord (this being, possibly, a leadership body) to the tenth generation and 7:1–5 where Israel was commanded to have nothing to do with Canaanites. In 7:1–5 Hittites, Amorites, Canaanites, Perizzites and Jebusites are not excluded from marriage but rather devoted to destruction due to their abominations and the fact that they would lead Israel astray. Strictly speaking, the text in Ezra is careful not to identify the "peoples of the land" (with whom Jewish men were marrying) with "Canaanites, Hittites, Perizzites, and Jebusites." In fact it is probable that these Canaanite groups condemned in the law no longer existed as separate entities by the time of Ezra.¹⁵ In the view of these leaders, however, the abominations of the peoples of the land were like that of the Canaanites and would lead the Jewish people astray should intermarriage be allowed. Yet the Jews were marrying them in significant numbers.

Some interpreters question whether Ezra correctly understood and applied the law in this situation. After all, marriage with non-Canaanite foreigners was not prohibited. Ruth, a Moabitess, was accepted into Israel as a full wife and indeed became an ancestress of David. Even the Canaanite Rahab was allowed to be assimilated into Israel. Deuteronomy 21:10–14, as

¹⁴ V. Hamilton, *The Book of Genesis: Chapters 18–50* (NICOT; Grand Rapids: Eerdmans, 1995) 81.

¹⁵ D. J. A. Clines, *Ezra, Nehemiah, Esther* (NCB; Grand Rapids: Eerdmans, 1984) 119; H. G. M. Williamson, *Ezra, Nehemiah* (WBC 16; Waco: Word, 1985) 130.

seen above, permits marriage to foreign, non-Canaanite wives taken in war. Although Moses married a Cushite wife (Num 12:1) God justified him, not his sister and brother who opposed this. Deuteronomy 23:7–8 explicitly states that one is not to despise an Egyptian and that in the third generation an Egyptian and an Edomite could become full citizens of Israel, which seems in contradiction to the Ezra 9:1 reference to Egyptians.

Only marriage with Canaanites was prohibited (Exod 34:11–16; Deut 7:1–4; 20:10–18). Even the patriarchs were aware of the danger of marriage with Canaanites (Genesis 24; 28:1–9). But if the “peoples of the land” are not, strictly speaking, Canaanites, then the prohibition, blurred by a thousand years of deportations and assimilations that mingled various ethnic groups, had ceased to apply.

Were Ezra’s actions racist in motive? The expression “holy seed” (9:2) sounds racist to some.

It could be argued that Ezra’s policy is (in the light of the NT) un-Biblical, contrary to both NT and OT morality. Compare 1 Cor 7:12–14 (where Christians are exhorted to remain with unbelieving partners) and 1 Pet 3:1–7 (which says the same). Jesus teaches that those who divorce wives to marry another “commit adultery” (Matt 19:3–9). Moreover Ezra’s policy even seems to be contrary to the morality of the OT expressed in Mal 2:16, where the Lord shows disapproval of divorce.

In addition, it can be argued that forced divorces must have produced a terrible hardship on the women and children being in this way abandoned. It is also a violation of free will. They were unfairly bearing the punishment their husbands or fathers had deserved through a wrongful marriage in the first place.

For these sorts of reasons, an interpreter might conclude that Ezra’s actions are only partially justified. Our text describes what happens, one could say, but it does not prescribe what should have happened. In fact Ezra’s actions were not altogether justified, even if Ezra and Shecaniah rightly saw that proliferation of mixed marriages would ultimately undermine the religious foundations of the Jewish community and eventually result in assimilation and the complete loss of Jewish identity. Ezra’s measures, while well-intended, were excessive. The racist attitudes that influenced his choice of action are regrettable. The application of the law of the Canaanite to Egyptians is an unjustified abuse of Scripture.¹⁶

In contrast, my view is that Ezra’s actions were altogether justified.¹⁷ Ezra was faced with a crisis situation. Though the actual number of mixed marriages was not extraordinarily large, the community was at a cross-roads. If the trend toward mixed marriages continued to proliferate it would have threatened the continued existence of the whole Jewish community. The only thing separating them from the world was the Jewish faith. Inter-marriage would eventually destroy that distinction and hence the Jewish

¹⁶ This is the view of Williamson, *Ezra* 159–162.

¹⁷ Cf. W. Kaiser, *Hard Sayings of the Old Testament* (Downers Grove: InterVarsity, 1988) 140–143, for a similar approach.

people as a distinct people of God. Under such pivotal conditions, severe measures were justified that would not have been required had Israelite religion dominated society, nor does it apply in the later NT setting. It may have been an evil, but given the circumstances it was the lesser of evils.

Under these circumstances the spirit of the law demanded an application broader than its original application. Hence Ezra was justified in applying a law limited to Canaanites to all pagan foreigners, even the Egyptians who were originally explicitly excluded.

Moreover the divorce law of Deut 24:1–4 is applicable. In Ezra 10:3 Shecaniah appeals to acting “according to the law.” He may have had Deut 24:1–4 in mind. If so, the open pagan practices of the foreign wives seem to be that which constitutes the “unseemly thing” of 24:1.

Many of these marriages may not have been innocent. If Mal 2:16, where the divorces God opposed were ones in which men divorced their Jewish wives to marry pagan ones, forms the backdrop of Ezra, then what at first seem to be innocent marriages to foreigners might not be so innocent after all since many of them may have previously divorced Jewish wives.¹⁸

As far as the hardships of divorce on the women and children are concerned, these should not be exaggerated. Divorced wives and children would be able to sustain themselves by returning to their extended families. They would presumably take with them their dowries as an economic base. Many could remarry. Indeed, Ezra does not command the assembly. He persuades them to adopt the covenant to put away wives. Their participation was not altogether involuntary. Only a handful opposed the community’s decision.

It is reasonable to suppose that the investigations by Ezra’s commission gave due process to those involved, which may have limited the number of divorces (only 113 are recorded). The commission to investigate matters could take into consideration whether the foreign wives were converts to Judaism. Where a wife was no threat to Judah’s religious life, there would be no need of divorce. The matter may have been essentially religious, not racist.

What is the implication of this passage for the divorce question? It certainly underscores the spiritual harm of marriage to unbelievers—being “unequally yoked together,” as Paul puts it (2 Cor 6:14). For very practical reasons such marriage is harmful. It sets a poor example for children. It limits what believers can do and may undermine their spiritual life. It puts strain on the marriage. Ezra’s contemporary Nehemiah, though he does not explicitly demand divorce, asserted in the strongest terms—rebuking the men, calling curses down upon them, beating some and pulling out their hair, making them swear that they would do this no more—that entering into marriages with foreign women was wrong, as illustrated by the fact that such marriages had led Solomon to the sin of idolatry (Neh 13:23–27; cf. 1 Kings 11). Under the new covenant, although Paul encourages converts to remain with unbelieving spouses if they are already married in an attempt to con-

¹⁸ J. G. McConville, *Ezra, Nehemiah, and Esther* (Philadelphia: Westminster, 1985) 70.

vert them, for a believer deliberately to marry an unbeliever is at the very least a foolish thing to do.

But this part of Ezra implies something stronger. Ezra, commended by Scripture as an expert in the law of Moses (Ezra 7:6), expressing his understanding of the will of God from that law, adjures these Jews to divorce their wives. Now if Ezra was right, as I believe he was, then as tragic and painful as these divorces were it was nonetheless God's will that they occurred. Might there not be similarly tragic circumstances where divorce is God's will today?

III. CASES WHERE DIVORCE IS CONDEMNED BY GOD

We have already treated the case of Deuteronomy 23, where a man who falsely accused his wife of adultery and a man who raped a virgin he subsequently married were prohibited from divorce. There is, however, one other important passage that condemns divorce: Mal 2:10–16. There are other passages that are wrongly thought to condemn divorce: Lev 21:7, 14; 22:13.

1. *Mal 2:10–16*. A text roughly contemporary with the fifth-century activities of Ezra and Nehemiah, Mal 2:10–16 condemns any Jew who divorces his Jewish wife and marries “the daughter of a foreign god” (v. 11)—that is, a foreign woman.¹⁹ The fundamental offense is the violation of the marriage covenant: “You have broken faith with her . . . the wife of your marriage covenant” (v. 14).²⁰ There follows in the rendering of most translations the most comprehensive condemnation of divorce per se in the OT: “I hate divorce,” says the LORD God of Israel” (v. 16 NIV; cf. RSV, NASB).

But this rendering is an impossible translation of the MT, one that can only be retained on the basis of conjectural emendation without any manuscript support.²¹ In the MT the verse reads literally “*ki* [a particle with a wide variety of senses] he [third person, not first person] hated/hates (*sānē*²²) sending away (*šallah*), says the LORD.” It is not grammatically impossible to render the verse as a command in favor of divorce. Hence some manuscripts of the LXX render “If you hate your wife, put her away,” which takes *šallah* as an imperative rather than an infinitive. However, the LXX rendering hardly fits the context, where the divorcing of Jewish wives has already been condemned and where the second half of the verse again expresses a note of disapproval of these divorces.

If we keep the MT I would render it something like “When he hates so as to divorce, says the LORD God of Israel, then he covers himself with lawless-

¹⁹ Not a “goddess”; cf. Hugemerger, *Marriage* 34–36.

²⁰ For a detailed defense that Malachi refers here to marriage as a covenant cf. ibid. 27–47.

²¹ C. J. Collins, “The (Intelligible) Masoretic Text of Malachi 2:16 or, How Does God Feel About Divorce,” *Presbyterion* 20/1 (1994) 36–40. The Qumran copy of this verse, though it varies from the MT, does not support the common emendation; cf. R. Fuller, “Text Critical Problems in Malachi 2:10–16,” *JBL* 110/1 (1991) 47–57. Fuller accepts the MT as closest to the original.

ness as with a garment.”²² The expression “he hates” may relate to the divorce formula. In a fifth-century Jewish divorce certificate from Elephantine in Egypt the divorce formula is “I hate my wife” or “I hate my husband” (see below). There is no need to emend Mal 2:16.

However one renders v. 16, what is condemned in context is not necessarily every divorce under every condition—as if the text is opposed to the actions of Ezra and Nehemiah²³—but specifically the divorce of innocent Jewish wives simply because their husbands prefer foreign wives to their Jewish ones. There are thus two points of condemnation: (1) They are marrying pagan wives who will undermine Israel’s religion and their covenant with God, and (2) they are too cavalier in repudiating without cause the marriage covenant with their original Jewish wives.

We cannot conclude from this verse, however, that God opposes divorce in any and every circumstance. The context is a limited one. God is opposed to these particular divorces, not any and every divorce regardless of circumstance. Otherwise one makes this text contradict the passages already considered above where divorce is prescribed.

2. *Lev 21:7, 14; 22:13.* The Leviticus texts require that priests marry only virgins. They are prohibited from marrying prostitutes, divorced women, or even widows.

Does the prohibition of a priest marrying a divorcee constitute a stigmatizing of divorced women as such?²⁴ Not unless by the same reasoning one is willing to stigmatize a widow.²⁵ The logic here probably pertains to matters of ceremonial uncleanness. In order to be qualified to perform their duties priests had to be careful not to contract ceremonial uncleanness. Sexual intercourse produces such uncleanness (Leviticus 15). A woman previously married or sexually active would bring into the marriage with the priest an elevated degree of ceremonial uncleanness that could be transmitted to the priest by sexual contact, rendering him less fit for his duties. The fact that the divorcee is listed with the widow, who is in no way culpable for the death of her husband, proves that this prohibition does not necessarily stigmatize the divorcee as evil.

Nor is Scripture here condemning all second marriages. The widow Ruth marries Boaz as part of God’s plan for her life (Ruth 4). A widow without child followed levirate marriage custom according to the law and remarried within the clan of her husband (Deut 25:5–10). In the NT Paul encourages younger widows to remarry and have children (1 Tim 4:14).

²² Hugenberger (*Marriage* 72–76) independently comes to a very similar rendering: “If one hates and divorces.” He takes *sallah* to be the equivalent of a finite verb, perhaps as a biform of the infinitive absolute, whereas I take the infinitive to be a result clause.

²³ Mentioned as an “unlikely” possibility by E. Good’s annotations to Mal 2:13–16, *New English Bible with the Apocrypha: Oxford Study Edition* (ed. S. Sandmel; New York: Oxford University, 1976) 1031. Hugenberger (*Marriage* 95–98) argues in detail against this view.

²⁴ Laney, “No Divorce” 25.

²⁵ Edgar, “Response” 64.

So even though OT priests were forbidden to marry widows this prohibition related to their special calling, which excluded them from many activities that were in no way immoral but that did convey ceremonial uncleanness. So, for example, in the same chapter where priests are prohibited from marrying prostitutes, divorced women and widows they were also forbidden from personally burying anyone other than members of their own immediate family because corpses convey ceremonial uncleanness (Lev 21:1–4). The high priest, moreover, could not even be in the same room as a corpse (21:11). Those prohibitions have nothing to do with morality—it is not morally wrong to bury the dead—but with avoiding ceremonial impurity that would make a priest unable to perform his priestly duties. Likewise the prohibition against priests marrying nonvirgins has to do with contracting ceremonial impurity, not morality.

Interestingly this prohibition against priests marrying nonvirgins does not apply to prophets. Hosea was commanded by God to marry an immoral woman (Hos 1:1–9).²⁶ Would God command his prophet to sin? If not, then it must not have been inherently immoral to marry a woman who had previously been sexually active (whether divorced, widowed or promiscuous) even if such a marriage was not allowed to priests.

IV. CASES WHERE GOD IS INVOLVED IN DIVORCE

In some places the language of divorce is used to describe the breach in God's covenant relationship with Israel.

1. *Isa 50:1*. “Thus says the LORD, ‘Where is the certificate of divorce, by which I have sent your mother away? Or to whom of my creditors did I sell you? Behold, you were sold for your iniquities, and for your transgressions your mother was sent away’” (Isa 50:1 NASB). The question here seems to be whether God gave Judah (whom he calls his audience's mother, the wife of Yahweh by covenant) a certificate of divorce so as to finally forsake her. As J. A. Motyer notes from Deut 24:1–4, divorce could set in train a series of events that would make reconciliation and reconstitution of a marriage (seemingly) impossible.²⁷ The implied answer to the question appears to be “No.” It was true that Judah was to be punished, sold into slavery for her sins when she did not answer God's calling out to her through the prophets,

²⁶ I accept the view, based on the syntax of Hos 1:2, that Gomer had been immoral before her relationship with Hosea and indeed had children by the immorality whom Hosea adopted when he married her; cf. T. E. McComiskey, “Hosea,” *The Minor Prophets* (ed. McComiskey; Grand Rapids: Baker, 1992) 1.15–16. The view that Hosea's marriage is mere vision or allegory seems farfetched. That it refers to ordinary Baal-worshiping Israelite women seems too subtle. And the proleptic view, that he married a woman who proved later to be immoral, does not seem the most obvious meaning of the wording. He is told to take not merely a “women of harlotry” but also “children of harlotry” (the NASB's addition of “beget” before “children” is entirely gratuitous). My preferred interpretation affects the relevance of Hosea's marriage to our discussion.

²⁷ J. A. Motyer, *The Prophecy of Isaiah* (Downers Grove: InterVarsity, 1993) 397.

and sent away into Babylonian exile. But she was given no certificate of divorce. God had not completely and finally dissolved the covenant relationship. And therefore there remains the possibility of redemption.

Here the language of the possibility of divorce is used, but no divorce between God and Judah actually takes place. The analogy does assume divorce as an established Israelite institution.

2. *Hos 2:2.* “Plead with your mother, plead; for she is not my wife, and I am not her husband.” It has been conjectured that “she is not my wife, and I am not her husband” is part of Israel’s divorce formula (compare the formula in Sumerian divorce documents: “You are not my wife”²⁸). On the other hand, this is not the divorce formula of the Elephantine papyri (see below). The consensus of exegesis is that Gomer (symbolizing Israel) is not in fact divorced at this point. But if the conjecture is correct, then by alluding to the divorce formula God is threatening to make official what was *de facto* the case.²⁹

3. *Jer 3:1–8.* This text is the most interesting of those describing God using the language of divorce because it clearly portrays God as divorced. Verses 1–4 refer to the divorce law of Deuteronomy 24. Verses 6b–7 describe Israel’s adultery. They assert that although God thought she might return to God, she had not done so. She had gone up on every high hill and under every spreading tree and committed adultery there (with idols), and her “sister” Judah had seen her and was adversely influenced. Then comes v. 8: “I gave faithless Israel her certificate of divorce and sent her away because of her adulteries” (NIV). The text goes on to say that Judah had learned nothing from this experience and had not returned to God wholeheartedly.

In the first verse God’s statement raises an issue of interpretation: Is it permissible for him to remarry Israel whom he has divorced, given the law in Deut 24:1–4? Israel is actually worse than the wife of Deuteronomy 24 who has merely married another man. Israel has lusted after many other gods. For this reason she has been “sent away” (the language of divorce)—that is, she has gone into exile and become joined to other gods. The analogy from divorce law suggests that Israel cannot come back to her husband (God). Yet despite the law, God calls upon Israel to return to him as her true husband (v. 14).

It is implied here that God is both divorced and polygamous—with sisters as wives, contrary to the incest laws. One can hardly blame God for polygamy and incest: He originally only marries one woman (Israel), who subsequently split into two sisters (Israel and Judah).

But should we not blame God for the divorce? If we follow the policy in some circles, I suppose we would have to say that God is now disqualified for a leadership position in the Church by reason of his previous divorce with Israel. It makes no difference that God was entirely the innocent party

²⁸ Cf. “Divorce,” *EncJud* 123.

²⁹ Cf. Hugenberger, *Marriage* 233.

in the divorce and that his justice demanded it. There is still an appearance of evil simply by virtue of being divorced.

But, you might say, it is absurd to suppose that God's divorce with Israel disqualifies him as leader in the Church. After all, he is God. And I agree. But does not this example show it to be equally absurd to adopt a rigid rule that permanently and unconditionally, regardless of all mitigating circumstances, excludes from church leadership everyone who has undergone a divorce?

I draw two conclusions from this analogy. (1) Divorce can be morally justified, since it is not likely that God would portray himself as performing a sinful act. Hence we may assume that initiating a divorce is not under all circumstances sinful. (2) Though I am admittedly pressing the analogy to its limits, this passage suggests that divorce does not always disqualify someone from leadership among God's people, since to say that is to exclude God as leader of the Church.

V. COVENANT AS RATIONALE FOR OT DIVORCE TEACHING

Some confusion on the indissolubility of marriages has come from a misunderstanding of the “one-flesh” principle of Gen 2:24; 1 Cor 6:16. It is sometimes said that having sexual relations in and of itself constitutes marriage. But this is not true to the totality of Biblical teaching on this topic. For example, Exod 22:16–17 is a case where a man seduces a virgin but marriage takes place if and only if the father consents to it. Otherwise he pays a bride price as a fine to the girl’s family, but no marriage is considered to have occurred. In Gen 2:24 it is not “one flesh” alone that defines the marriage relationship. Marriage also involves a man’s leaving his father and mother and cleaving to his wife.³⁰ The leaving is not physical—culturally in Israel it was usually the wife who left her parents behind, not the husband—but psychological, consisting of transferring to his wife his first loyalty. And the cleaving refers to Israel’s covenant with God, implying that a covenant relationship, not just sex, is involved.³¹

Marriage is explicitly called a covenant in the OT.³² As we have seen above, Mal 2:14–15 refers to the “wife of your youth” as “your companion and your wife by covenant.” This connection of marriage and covenant allows the prophets to push the analogy of God’s relationship with Israel as

³⁰ Laney, “No Divorce” 16–20.

³¹ Heth (“Divorce But No Remarriage” 75) comments that *dābaq* (“cleave”) is explicitly a covenant term when Israel is told to cleave to the Lord in affection and loyalty (Deut 10:20; 11:22; 13:4; 30:20; etc.; cf. Hugenberger, *Marriage* 160).

³² Hugenberger (*Marriage* 4–8) notes that J. Milgrom (*Cult and Conscience: The Asham and the Priestly Doctrine of Repentance* [SJLA 18; Leiden: Brill, 1976] 134) denies that marriage in the OT was conceived of as a covenant, in part because marriage lacked the oath used in covenants. Hugenberger’s monograph is a refutation of this thesis, but see esp. pp. 280–338 for a discussion of various texts where marriage seems to be portrayed as a covenant. He also provides extra-Biblical evidence that covenant treaties do not always include an oath and that some extra-Biblical marriage contracts do include oaths (pp. 186–189).

resembling marriage (cf. Hosea 1–3; Ezek 16:8). Likewise an adulteress is said to be someone who has “left the partner of her youth and ignored the covenant she made before God” (Prov 2:17). Given the parallelism, this latter covenant violation probably refers to the marriage covenant.³³

The idea of marriage as a covenant is not unrelated to the marriage contract of that cultural setting. How early marriage contracts became the norm is not clear, but we have Jewish-Aramaic marriage contracts and certificates of divorce from Elephantine (fifth century BC).³⁴ Since nothing like them occurs in Egyptian documents, it is likely that these texts represent a uniquely Israelite practice.³⁵ There are also many extant marriage contracts known from Mesopotamia much earlier. Indeed, in the Code of Hammurapi it is declared that marriage concluded without a formal contract is invalid (section 128), though the Middle Assyrian laws consider a woman without a marriage contract to be married to a man if the two have lived together for two years (section 36). Deuteronomy 24:1 speaks of a certificate of divorce, so marriage documents were not unknown in OT times. It therefore seems probable that written marriage contracts were the norm among upper-class Israelites, though doubtless not as common among the poor.

One Elephantine marriage contract specifies the names of the wife-to-be, her father and the groom, the bride price (five shekels) and the groom’s gifts to the bride (in this case, material goods worth more than 65 shekels). In addition the contract specifies the inheritance rights of both partners in the event of death without children (all goes to the surviving spouse) as well as the legal consequences of divorce. In this case if she divorces him (literally, “If she says, ‘I hate my husband’”) he gets his bride price back plus fifty percent interest and keeps his presents, but if he divorces her (literally, “If he says, ‘I hate my wife’”) he forfeits the five-shekел bride price. According to the contract, however, he gets his presents back and she takes her personal belongings with her. The man also agrees to pay the first wife two hundred shekels as a penalty as well as continued support should he take a second wife.

Elements of the marriage contract are mentioned in passing in the OT: the “bride price” and the “dowry.”³⁶ The ordinary custom was that the man acquiring a wife would pay a *mōhar* (“bride price,” or—if this sounds too much like the woman is being bought—“marriage gift”) that would go to the father (Exod 22:15–16). The exact amount was subject to negotiation related to a family’s standing in society.

This custom is assumed in OT laws. For instance, in the case of an unbetrothed woman who is given in marriage to a man who had first raped her,

³³ The main alternative view is that “covenant of her God” refers to the covenant at Sinai; cf. Hugenberger, *Marriage* 296–302, for a defense of the view that the covenant is the marriage covenant.

³⁴ *Aramaic Papyri of the Fifth Century B.C.* (ed. A. Cowley; Osnabrück: Zeller, 1967) 44–50, 54–56.

³⁵ Hugenberger, *Marriage* 226 (citing R. Yaron).

³⁶ For a brief discussion of bride price and dowry see Sprinkle, *Book* 156–159; for more detail see R. Westbrook, “The Dowry,” *Property and the Family in Biblical Law* (JSOTSup 113; Sheffield: JSOT, 1991) 142–164.

the bride price is fifty shekels (Deut 22:28–29), the price of redeeming an adult male in his prime devoted to the sanctuary, which is probably the fair market price of prime male slaves (Lev 27:3).³⁷ Since wages for a day laborer were only between a half and one shekel per month in Old Babylonian times (and between three and twelve shekels per year by the fourth century BC),³⁸ the fifty-shekel bride price appears extremely high—no doubt because it was also punishment for rape, as is the associated prohibition of divorcing the girl.

Other examples: Abraham's servant gave costly gifts to Laban and his mother for the betrothal of Rebekah to Isaac (Gen 24:53b). Jacob, who lacked any money for a bride price, worked for his uncle Laban for fourteen years in lieu of a bride price for Leah and Rachel (Gen 29:18–20). David presented Saul with two hundred foreskins of Philistines as his marriage gift for Michal (1 Sam 18:24–27).

Once the bride price was received the woman was considered married, so that a virgin who was engaged and who willingly had intercourse with another man could be executed as an adulteress (Deut 22:23–24) whereas the penalty for the unbetrothed woman doing the same thing is possible marriage to her seducer, not death (Exod 22:16–17). Violation of the marriage covenant was considered a very serious matter.

In this cultural setting, if a man of modest social standing wanted to get married he would have to save for quite a while before being able to afford a wife. The very poor would not be able to acquire a wife at all.

Having received the marriage gift, the father in turn would give some or all of that gift back to the woman as a “dowry” (*šillûhim*), literally “sending away [gifts],” a term mentioned only in 1 Kgs 9:16; Mic 1:14. In 1 Kgs 9:16 the pharaoh at the time of Solomon conquered Gezer and presented it to Solomon as a dowry for his daughter who married Solomon. In Mic 1:14 the dowry is metaphorical, given to the town of Moresheth Gath that is about to go into exile, just as a bride receives a dowry before leaving her family for marriage, sometimes never to be seen again. Though the word for “dowry” is not used, the concept is seen not only in Gen 24:59, 61 where Rebekah's nurse and other female slaves who went with her were part of her dowry but also in 29:24, 29 where Laban gave to Leah the slave girl Zilpah, and Rachel the slave girl Bilhah, as dowries.

The dowry may be discussed indirectly in 31:14–16. There Rachel and Leah complain that Laban their father “has sold us, but he has used up what he paid for us” (NIV). This perhaps implies that Laban, in their view, gave them insufficient dowry but instead simply sold them off. The essence of their complaint was that Laban had merely used the bride-price “money” (Jacob's fourteen years of service) without performing his paternal duty of returning most if not all of that value to the daughters as a dowry.³⁹ Laban of course would point to the gift of maidservants as their dowry. But the

³⁷ G. J. Wenham, “Leviticus 27:2–8 and the Prince of Slaves,” ZAW 90 (1978) 264–265.

³⁸ For Old Babylonian wages cf. Wenham, *Genesis 16–50* 235 (citing G. R. Driver and J. C. Miles, *The Babylonian Laws* [Oxford: Clarendon, 1952] 1.470–471); for neo-Babylonian wages cf. M. Dandamaev, *Slavery in Babylonia* (DeKalb: Northern Illinois University, 1984) 115.

daughters perhaps felt that, in view of the benefit Laban had received from Jacob, they deserved more.⁴⁰

The exact nature of the parting gift is clarified by reference to laws concerning bride price and dowry in the Code of Hammurapi and the Laws of Eshnunna (eighteenth century)⁴¹ and marriage contracts at such places as Nuzi (thirteenth century).⁴² From these sources it is clear that the purpose of the dowry was to serve as security for the woman in case of divorce. In other words, if the marriage were terminated the woman would under ordinary circumstances take her dowry with her.⁴³ This would also serve to discourage divorce, since a considerable part of the family assets would be lost if one divorced his wife. Eventually the dowry would become part of the family assets. At Nuzi this appears to be after the birth of the first child, though in the Code of Hammurapi (section 162) a husband cannot claim the wife's dowry after she dies since "it belongs to her children."

As a covenant or binding contract, marriage involved certain responsibilities on the side of both parties. John Stott,⁴⁴ quoting Roger Beckwith, suggests that implicit in the marriage covenant would be the following: (1) marital love (including sexual privileges), (2) living together as a single household (Gen 2:24), (3) faithfulness to the marriage bed (Exod 20:14), (4) provision for the wife by the husband (Gen 30:30) and (5) obedience to the husband by the wife (3:16). The fact that the last of these seems strange to modern ears shows how profound the feminist revolution has been in western culture. To Beckwith's list of five responsibilities I would add a sixth: Both partners, but more especially the wife, must rear properly any children born to the union.

What happens if the analogy of marriage as a binding covenant is pressed? It is the nature of contracts or covenants that if one or the other party persistently fails to keep his or her end of the bargain, then the covenant can be declared null and void.

What about a marriage covenant? If any of the essential elements of a marriage covenant is persistently withheld or grossly violated, the party denied would have the moral and legal right to divorce. So, for instance,

³⁹ D. Garrett, *Rethinking Genesis* (Grand Rapids: Baker, 1991) 78; M. A. Morrison, "The Jacob and Laban Narrative in Light of Near Eastern Sources," *BA* (Summer 1983) 160–161.

⁴⁰ Wenham, (*Genesis* 16–50 273) thinks Rachel and Leah do not refer to dowries (since they both received handsome ones) but to the subsequent cheating of their husband by their father. I think they do refer to dowries, but their accusation has a fair degree of hyperbole.

⁴¹ R. Yaron, *The Laws of Eshnunna* (Jerusalem: Magnes, 1969) 110–115.

⁴² K. Grosz, "Dowry and Brideprice at Nuzi," *Studies in the Civilization and Culture of Nuzi and the Hurrians* (ed. M. A. Morrison and D. I. Owen; Winona Lake: Eisenbrauns, 1981) 161–182.

⁴³ The Code of Hammurapi (sections 138–140) states that the dowry must be returned to a woman before divorce. If she had no dowry, one mina (60 shekels) of silver was to be given as a divorce settlement (20 shekels for commoners). The Laws of Urnammu (section 11) indicate that if a woman committed adultery before the divorce she forfeited the divorce settlement. Cf. also the Middle Assyrian Laws (sections 37–38) where the father keeps the bride price of the divorced woman—though Assyrian law seems to leave up to the husband whether any of the dowry is to be returned.

⁴⁴ J. Stott, *Divorce* (Downers Grove: InterVarsity, 1973) 9; *Involvement: Social and Sexual Relationships in the Modern World* (Old Tappan: Revell, 1985) 178.

malicious cruelty (against the love obligation), flat refusal to grant sexual privileges (against the love and one-flesh principle), abandonment (against the one-household principle), adultery or even spiteful flirtation (against the faithfulness principle), lack of support for the woman (against the obligation of the husband to support her), and open and sustained defiance against the husband's leadership (against the male-leadership principle) would all be legitimate grounds for divorce in OT times.

This concept of covenant and annulling of a covenant helps to explain the OT teaching on divorce. The "something indecent" of Deut 24:1–4 arguably fits into this matrix. The term then could be figurative for any wifely offense against the essence of the marriage covenant as defined above.⁴⁵ The cases of divorce marshaled above fit into this pattern: Yahweh divorces Israel for adultery (Jer 3:8); the slave-wife must be divorced because the husband is no longer willing to provide food and clothes and (possibly) conjugal rights (Exod 21:10–11); Hagar's divorce is permissible by Abraham for the same reason, to which might be added Hagar's (and Ishmael's) own unruliness (Gen 21:8–14); the woman captured in war must be divorced because the husband is no longer willing to live together with her in sexual union (Deut 21:10–14); wives were often divorced because of the improper rearing of children in the faith (Ezra 9–10).

Only two of these things (sexual immorality and abandonment) are (arguably) explicit grounds for divorce in the NT. If the covenant principle is behind these applications, however, we might be justified in concluding that the two examples in the NT are not intended to be exhaustive but that other grounds are likewise applicable under the new covenant.

If this analogy is valid, it would imply that women too would have the right to divorce on the basis of marriage-covenant violation. Divorce initiated by women was allowed, as stated above, for Jewish women at Elephantine. Family laws are, after all, very incomplete in the OT. No systematic treatment of the topic of divorce is given in the OT, and references to the matter are only incidental. Hence the lack of mention of a woman's right to divorce her husband may be accidental.

VI. THE NT PASSAGES

Can OT teaching about divorce be reconciled with the teaching of the NT?

I cannot improve on the conclusions of Robert Stein,⁴⁶ who makes the following points: An analysis of Mark 10:2–12; Matt 5:31–32; 19:3–12; 1 Cor 11:10–11 indicates that Jesus in his statement about divorce had no exception clause but said something like this: "Whoever divorces his wife and

⁴⁵ Similarly Neufeld (*Marriage Laws* 179) takes *‘erwat dābār* in Deut 24:1 to refer to "some gross indecency, some singular impropriety" that has nothing to do with the woman's physical appearance but refers to whatever the public or a popular law would consider a shameful act for a wife.

⁴⁶ R. H. Stein, "Is it Lawful for a Man to Divorce his Wife?", *JETS* 22/2 (June 1979) 115–121; Stein, "Divorce," *Dictionary of Jesus and the Gospels* (ed. J. B. Green *et al.*; Downers Grove: InterVarsity, 1992).

marries another commits adultery against her; and if she divorces her husband and marries another man, she commits adultery.” His words, if taken literally, would disallow any and all divorce and remarriage. But Matthew provided inspired commentary on Jesus’ words by adding the gloss “except for immorality (*porneia*).” Likewise Paul, in his application of Jesus’ words, provides another exception in the case of desertion: “If the unbelieving partner leaves, let him leave; the brother or sister is not under bondage in such cases” (1 Cor 7:15). These modifications of Jesus’ statement indicate that both Matthew and Paul understood Jesus’ statement to be an instance of hyperbole, akin to his assertion in Matt 5:29–30 (just before 5:31–32 about divorce) that one should gouge out his eye or cut off his hand if it causes him to sin—an obvious exaggeration. Hence Jesus’ statement is not to be read as a legal maxim to cover every situation but as a highly colorful condemnation of the extremely loose attitude to divorce among Jesus’ opponents. This easygoing practice of divorce for any and every reason was in heart attitude the moral equivalent of adultery. One cannot simply trade in and barter spouses the way one can trade in an old automobile for a new or preowned car.⁴⁷ Even marrying an innocent divorced woman is like adultery (Luke 16:18b) in that it involves a man taking as wife a woman who ideally (had hardness of heart not produced violation of the original marriage covenant) should have remained with another man.

Note that Jesus does not deny the validity of OT teaching on marriage and divorce. Indeed, he denied that he came to “abolish the law” (5:17).⁴⁸ Instead he reinforces the OT’s authority on this topic by pointing to Gen 2:24 as a corrective to his opponents’ unbalanced understanding of Deut 24:1.

What about the contradiction between 1 Cor 7:12–15, where Paul directs believers not to divorce unbelievers, and Ezra 9–10, where Ezra encourages Jews to divorce pagans? Here the differences in circumstances are important, for Ezra was at a crisis point of salvation history so that more extreme measures were justified. Even so, the contradiction with 1 Corinthians 7 is not as blatant as it appears. Paul goes on to say, in v. 15, that if the unbelieving partner wishes to separate, then the believing partner is not “bound” in that case. In other words Paul, while discouraging divorce of one’s unbelieving spouse, does not prohibit it if the unbeliever wishes to leave. Is his judgment, at least in part, an attempt to balance Jesus’ teaching with that of Ezra?

Does not the NT injunction that the “elder” is to be the “husband of one wife” (1 Tim 3:2; Titus 1:6) not only condemn the practice of divorce and remarriage but also exclude all possibility of ministry by a divorced man? Taken literally, this verse would also exclude single people from ministry, which would exclude both Jesus and Paul—a dubious conclusion. But this

⁴⁷ D. E. Garland, “A Biblical View of Divorce,” *RevExp* 84 (1987) 427.

⁴⁸ D. Moo (“Law,” *Dictionary of Jesus and the Gospels* 456) finds in the six antitheses between Jesus and the law in Matthew 5 (“You have heard it said . . . but I say unto you”) only one “possible abrogation of the Law—that having to do with divorce and remarriage.” The others give the true meaning of the commandments or deepen the commandments without contradicting them. But if our understanding is correct, Jesus does not contradict this commandment either.

expression, which reads literally “of one woman a man,” is listed among general character qualities such as “temperate, sensible, respectable, hospitable.” In that context, “of one woman a man” could be understood as the character quality of being a “one-woman man”—that is, that he is a person who is faithful to his wife if married and, whether or not married, is not given to sexual impropriety toward women.⁴⁹ Taken this way, a divorced man and a single man alike could be a “one-woman man.”

Although the above remarks are but a skeleton treatment of the NT texts on divorce they are enough to show the plausibility of a line of interpretation that makes NT teaching on divorce consistent with OT teaching. Since “all Scripture,” including the OT, is not only “inspired” but also “profitable for teaching, for reproof, for correction, for training in righteousness; that the man of God may be adequate, equipped for every good work” (2 Tim 3:16–17 NASB), it is in principle preferable to accept a line of interpretation that affirms the continuing value of OT morality for teaching, reproof, correction and training as opposed to any view that sees the OT teaching as being completely supplanted by a higher NT standard.⁵⁰

VII. CONCLUSION

The OT view on divorce provides realism for the discussion of divorce that is much needed in the Church, whose neo-Marcionite view of the OT has led Christians to disregard its data. The OT shows that divorce, although always lamentable and ordinarily generating additional collateral sin and suffering, is tragically prudent under certain circumstances.

Without giving full weight to OT teaching, readers of the NT treatment of divorce are too quick to absolutize the words of Jesus, which in my view are no more to be taken literally than his command to gouge out your eye if it causes you to sin. Those for example who say that divorce is absolutely forbidden and that marriage is absolutely indissoluble in God’s eyes must explain away the OT data where God’s law clearly permits divorce (and the implied possibility of remarriage) under some circumstances and even commands it in others.

Likewise the OT data are a corrective to those who say that divorce is permissible in cases of adultery and abandonment only. I have heard of women who were hoping and praying that their husbands would commit adultery so that they would have Biblical grounds for divorce. But in the OT divorce is allowed for “indecencies” (Deut 24:1), which appears to be a broad term for a whole variety of offenses against the marriage covenant. When the notion of marriage as covenant is applied it becomes clear that any behavior that

⁴⁹ Cf. R. L. Saucy, *The Church in God’s Program* (Chicago: Moody, 1972) 146.

⁵⁰ Contra Heth, “Divorce But No Remarriage” 73–74. Heth finds three dispensations on this issue: creation/paradise in Genesis before the fall (no divorce), Mosaic (divorce and remarriage allowed as concession to sin and in contradiction with God’s original intention for marriage), and NT (return to creation/paradise standard). But this interpretative grid, which permeates all of Heth’s analysis (cf. L. Richards’ response in *Divorce and Remarriage* 145–146), seems to me inconsistent with Paul’s high view of the applicability of OT moral teaching in 2 Tim 3:16–17.

violates the essence of the marriage covenant could serve as grounds for divorce: wife abuse, flat refusal of conjugal rights, lack of support of the wife financially, and so forth.

This approach derived from the OT is thus broader than idealized and absolutized interpretations of the NT passages divorced from their OT backdrop. It is an approach that is practical in the real, sin-cursed, fallen world in which we live, where hardness of heart is often the rule rather than the exception. Indeed, placing more weight on this OT perspective would more often prevent the real moral evil of death and mayhem caused to some Christian women and their children who have continued to live with violent and abusive husbands because the Bible gave them no permission to divorce.

But despite the fact that the OT allowed divorce under certain conditions it gives no license to irresponsible divorce. The OT assumes monogamous, lifelong marriage as the ideal in which marriage is a binding covenant relationship, just as Rom 7:3 says that a married woman is bound to her husband as long as he lives. As in any case of breach of promise, violation of the marriage covenant involves sin. Thus the OT gives no grounds for supposing that a man could divorce his wife arbitrarily without any good reason and not incur guilt. There must be some “indecency” as a basis for justifying divorce. Hence Malachi condemns as immoral the unprovoked divorce of innocent Jewish wives. As a general rule God opposes divorce, since all divorce involves violation of covenant promises. The thrust of Biblical teaching is that divorce should be sought only as a last resort, to be discouraged in all but the most aggravated of cases. Modern American culture, with its predilection for no-fault, easy divorce, has made a mistake akin to that of Jesus’ opponents.

When scandalous and serious “indecencies” have occurred that destroy the essence of the marriage covenant, however, divorce (and the possibility of remarriage) is permitted. As in other covenants, if a marriage covenant is consistently violated by one partner the covenant can be invalidated so that the other partner is no longer obligated morally or legally to keep his or her end of the bargain.

In fact the OT indicates that in some circumstances divorce may be prescribed as the lesser of evils. It appears to have been God’s will that Israelites at the time of Ezra divorce their foreign wives for their unlawful paganism. It was in accord with God’s will for Abraham to divorce his slave-wife Hagar. In Exod 21:10–11; Deut 21:10–14 husbands who in their hardness of heart are unwilling to give their slave-wives full wifely privileges in accord with marriage-covenantal obligations are told to divorce them and let them go free, for that would be the lesser evil. And who are we to deny that God did the morally right thing in divorcing his adulterous and wayward wife Israel?

Finally, as far as leadership in the Church is concerned, Jeremiah 3 implies that undergoing divorce should not be considered an absolute and unconditional deterrent to leadership among God’s people. To argue otherwise would lead us to the absurd conclusion that God, who “divorced” Israel, must be disqualified from being Lord of the Church.