

DIVORCE AND REMARRIAGE IN DEUTERONOMY 24:1–4

TODD SCACEWATER

Westminster Theological Seminary
scacewater@gmail.com

Deuteronomy 24:1–4 records the only law in Deuteronomy on remarriage and has generated much discussion on the enigmatic phrase “nakedness of a thing” (24:1) as well as the purpose for the creation of the law. Yet, the long discussion on the purpose for the creation of the law seems to have been misguided. Scholars have confused the rationale behind the law with the purpose for the creation of the law. In seeking the purpose of the law, interpreters have sought the meaning of “nakedness of a thing” and the rationale behind labeling the woman’s actions an “abomination” (24:4). They have ignored the explicitly stated purpose of the law in verse 4. The primary concern of this law on divorce and remarriage is to protect the covenant relationship between Israel and Yahweh, thereby protecting Israel’s position in their inherited land of Canaan. While the rationale behind the law is important for biblical ethics, the purpose for the law contributes to the Deuteronomic theme of blessing and curse as it relates to Israel’s covenantal obedience.

KEY WORDS: *Divorce, Remarriage, Adultery, Law, Covenant, Deuteronomy*

INTRODUCTION

Deuteronomy 24:1–4 is one of several laws in Deuteronomy that speak of divorce, but it is the only law that specifically deals with remarriage. Historically, the passage has been interpreted anthropocentrically in order to derive ethical teaching for divorce and remarriage. Yet various exegetical issues have created conflicting conclusions. What is the meaning of the “nakedness of a thing” (ערוֹת דָּבָר) in verse 1? Why is a woman’s third marriage an abomination if the bridegroom is the first husband who divorced her (Deut 24:4)? These issues are indeed important for understanding the passage, but they have dominated the discussion and created an anthropocentric understanding of the law. One

aspect that seems to have been overlooked in the discussion on this passage is the biblical-theological aspect of the relationship between law-keeping and covenant; between Israel's obedience to Yahweh's law and covenant safety in Canaan. The Deuteronomic perspective of blessing and curse is a bigger factor in 24:1–4 than has been acknowledged in former discussions. This perspective is particularly evident in the phrase “and you shall not defile the land which the LORD your God is about to give to you as an inheritance” (24:4),¹ which is generally neglected and treated as an aside. We suggest that the anthropocentric focus on 24:1–4 is unbalanced and a Deuteronomic covenantal framework provides a better perspective on the theological significance of this law.

One reason for the overly anthropocentric focus of 24:1–4 and the neglect of the defilement of the land is that scholars have failed to make a distinction between the “rationale behind the law” and the “purpose of the law.” The rationale behind the law answers the question, “what makes the described action illegal?” Thus, the rationale behind this law explains why the woman's action is an abomination. The purpose of the law answers the question, “what is this law trying to prevent?” Thus, the purpose of the law in 24:1–4 is the overarching concern for preventing something detrimental. Almost all those involved in the discussion on this law have confused the two by asserting that the purpose of the law is to prevent the abomination described. This elevates the anthropocentric element (the abomination of the woman) to the status of “overarching concern,” and asserts that the purpose of the law is to prevent the abomination. With this distinction between “rationale” and “purpose” in mind, part two will discuss the law and its interpretation. Part three will determine the rationale behind the law while part four will determine the purpose of the law. Part four will include a survey of the discussion on the purpose of the law from the time of C. F. Keil to the present, although according to the definitions here each scholar was actually attempting to find the rationale. Part four will then attempt to refocus the discussion by focusing on the explicitly stated purpose in 24:4, which has so often been relegated to a Deuteronomic footnote.

CONDITIONS OF APPLICABILITY (24:1–3)

Grammatically, verses 1–4 form one long conditional sentence with verses 1–3 acting as the protasis and verse 4 as the apodosis.² *If* the

1. All translations are the author's unless otherwise specified.

2. Verses 1–3 contain twelve consecutive *waw* conjunctions, while verse 4 begins with the negative command, לא יִיַּחַל (“he shall not take”). KJV translates an apodosis into

woman commits the specific acts explicated in 24:1–3, *then* her actions are an abomination (24:4). This is important for understanding the law correctly because of the multiple inferences that may be drawn. First, this means that the law is addressing only a very specific situation, i.e., it is not a broad law on divorce and remarriage. The law only addresses the specific situation in which all conditions described in verses 1–3 are met. For this law to apply, a woman must have been married, divorced, remarried to a second man different from her first husband, and then either divorced from or widowed by her second husband. Second, it follows that this law does not condone a man divorcing his wife, but presupposes that Israelites are already doing so.³ Third, that this law addresses such a specific situation shows that it was probably already occurring among Israel in the wilderness.

Since the law presupposes the practice of divorce among the Israelites, this passage exhibits the standard method of divorce in the nation. First, the wife would fail to find favor in the husband's eyes.⁴ The cause would be that he has found in her ערוות דבר, literally “nakedness of

verse 1, “let him write her a bill of divorcement.” But modern interpreters unanimously understand verses 1–3 to be the protasis and verse 4 to be the apodosis, which is the most natural way to take the string of *waw* conjunctions. So also Joe M. Sprinkle, who states “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)” (“Old Testament Perspectives on Divorce and Remarriage,” *JETS* 40 [1997], 529).

3. So also Peter C. Craigie, *Deuteronomy* (NICOT; Grand Rapids, MI: Eerdmans, 1976), 305; Duane L. Christensen, *Deuteronomy 21:10–34:12* (WBC 6a; Nashville, TN: Thomas Nelson, 2002), 567; Ian Cairns, *Word and Presence: A Commentary on the Book of Deuteronomy* (ITC; Grand Rapids, MI: Eerdmans, 1992), 210; Pierre Buis, *Le Deutéronome* (Paris: Librairie LeCoffre, 1963), 159; S. R. Driver, *A Critical and Exegetical Commentary on Deuteronomy* (3rd ed.; ICC; Edinburgh: T & T Clark, 1902), 269. J. Carl Laney, “Deuteronomy 24:1–4 and the Issue of Divorce,” *BibSac* 149 (1992), 4; Allen R. Guenther, “Interpreting the Silences: Deuteronomy 24:1–4,” *Direction* 24 (1995), 43. Contra J. G. Millar, who believes that such circumstances as described here are too “difficult to imagine” and thus was probably a rare occurrence (*Now Choose Life: Theology and Ethics in Deuteronomy* [NSBT; Downers Grove, IL: IVP Academic, 2000], 139).

The כִּי at the beginning of verse 1 is translated variously as temporal (“when”; ESV, KJV, NAU), conditional (“if”; CSB, NET, NIV), and hypothetically (“suppose”; NLT; NRS). The temporal translation “when” probably renders a better sense than “if” or “suppose,” since the latter two connote a situation which may not have actually been occurring among the people (so also Guenther, “Interpreting the Silences,” 43). This situation probably was occurring, and thus the need to address it.

4. The phrase מֵצָא הוּן בְּעֵינָיו (“find favor in the eyes of”) is quite common in the OT. Brown et al. list 26 occurrences where the phrase refers to the eyes of men (*A Hebrew and English Lexicon of the Old Testament, with an Appendix Containing the Biblical Aramaic* [Oxford: Clarendon Press, 1907], s.v. “מֵצָא”).

a thing,” which shall be explained below. Second, if this “indecent” was found in her and the husband decided to divorce her, he had to write her a certificate of divorce (ספר כריתת⁵). The same construction is used in Jer 3:8 and Isa 50:1 to refer to a certificate of divorce that the LORD handed to Israel because of her idolatry. This role of the man as the sole initiator of divorce is rare, if not unique, in the ancient Near East (ANE).⁷ Also of note is that, under these conditions, the divorce could be carried out without the consent of the wife. In Judaism, this remained the case until the twelfth century, when Jewish law declared that divorce would be predicated upon the consent of the couple.⁸ Third, the man must give the certificate of divorce “into her hand” (Deut 24:1). This bill of divorce would act as protection for the woman if she decided to remarry in that it would be proof she was not committing adultery on her first husband.⁹ This is incredibly important since the legal punishment for adultery was the death penalty (Deut 22:22). The certificate of divorce therefore acted as a humanitarian form of protection for a divorced woman in case her former husband wanted to exact some sort of revenge by accusing her of adultery with her second husband. Fourth, after receiving the certificate of divorce, the woman would be sent out from the husband’s home. For a woman to be sent from her husband’s home would be a societal and economic disaster for her, in addition to bringing upon her a great amount of shame.¹⁰ The woman would again become dependent upon her parents and would seek a new husband to reestablish her societal and financial security.

5. Jeffrey Tigay suggests that, since כריתת means literally “severance,” this could refer to the ceremonial act of divorce in the ancient Near East in which a man would cut the wife’s hem or garment to pictorially signify their divorce (*Deuteronomy* = [*Devarim*]: *The Traditional Hebrew Text with the New JPS Translation* [The JPS Torah Commentary Philadelphia: Jewish Publication Society, 1996], 221ff.); followed by Christensen, *Deuteronomy*, 567). Tigay only considers this “plausible,” however, but it remains a tantalizing suggestion which does not affect the meaning either way.

6. ספר here means specifically here “legal document.” Cf. Jer 32:11, “deed (ספר) of purchase” (BDB s.v. “סָפֵר”).

7. E.g., Law 142 of the Code of Hammurabi allows for women to initiate divorces (Victor P. Hamilton, *Handbook on the Pentateuch: Genesis, Exodus, Leviticus, Numbers, Deuteronomy*, 2nd ed. [Grand Rapids, MI: Baker Academic, 2005], 430).

8. This remains Jewish law to this day (Reuven Yaron, “The Restoration of Marriage,” *JJS* 17 [1966], 1).

9. Tigay, *Deuteronomy*, 222; Cairns, *Word and Presence*, 210.

10. Eugene Merrill, *Deuteronomy* (NAC 4; Nashville, TN: B & H, 1994), 317.

If a husband could divorce his wife because he found in her ערוה דבר (“nakedness of a thing”; 24:1), what does this mean? This phrase has historically been understood as adultery, physical bodily defects or ailments, public sexual shame, or even any arbitrary reason the husband wishes. The Septuagint¹¹ translates the phrase ἄσχημον πράγμα (“shameful thing”¹²), suggesting a more active understanding of the phrase (i.e., the woman has *done* something shameful or indecent). The same phrase is used in Sus 1:63 (Theodotian revision): “therefore Chelcias and his wife praised God for their daughter Susanna, with Joacim her husband, and all the kindred, because there was no ἄσχημον πράγμα found in her.” The allusion to Deut 24:1 is unmistakable.¹³ In the context of Susanna, the ἄσχημον πράγμα (“shameful thing”) refers to adultery, which is therefore the probable meaning that the author of Susanna attaches to the phrase in Deut 24:1.

The rabbinical schools of Hillel and Shammai took opposite positions on their interpretation of the phrase. Shammai’s school interpreted the phrase narrowly. Based on Leviticus’ description of incest as uncovering a relative’s ערוה (“nakedness”), they believed this phrase should be understood as denoting sexually promiscuous or indecent behavior.¹⁴ Hillel’s school, along with Josephus and Rabbi Akiba, interpreted the phrase widely, allowing for a man to divorce his wife for any reason, even burning his food.¹⁵

Modern commentators are just as divided on the meaning of the phrase. S. R. Driver believes this cannot mean adultery since that would require the death penalty (Deut 22:22). Since the use of the phrase in

11. All Septuagint texts are taken from Lancelot Charles Lee Brenton, *The Septuagint with Apocrypha: Greek and English* (Peabody, MA: Hendrickson, 2009 [1851]).

12. The word ἄσχημων denotes something that is “not openly done, displayed, or discussed in reserved society because it is considered ‘shameful, unpresentable, indecent,’ or ‘unmentionable’” and is used in such a way in 1 Cor 12:23 (Walter Bauer, *A Greek-English Lexicon of the New Testament and Other Early Christian Literature*, ed. Frederick W. Danker, William Arndt, and F.W. Gingrich, 3rd ed. [Chicago: University of Chicago Press, 2000], s.v. “ἄσχημων”). The word ἄσχημων means “deed, thing, event, occurrence, matter” (ibid., s.v. “πράγμα”).

13. ὅτι εὗρεν ἐν αὐτῇ ἄσχημον πράγμα (Deut 24:1)
ὅτι οὐχ εὗρέθη ἐν αὐτῇ ἄσχημον πράγμα (Sus 1:63)

14. Tigay, *Deuteronomy*, 221.

15. Driver, *Deuteronomy*, 270; Tigay, *Deuteronomy*, 221.; cf. Yaron, “The Restoration of Marriage,” 3. It was not until Rabbenu Gershom (ca. 960–1028) that a *takkanah* (rabbinic enactment) was issued to limit divorce to reasonably acceptable reasons, e.g. adultery or apostasy (Tigay, *Deuteronomy*, 221).

Deut 23:14 denotes something unbecoming rather than immoral, this usage should carry the same connotations. He offers “immodest/indecent behavior” as the proper translation.¹⁶ Peter Craigie says this obscure phrase may have been a legal expression, but we cannot be sure. The parallel use in 23:14 suggests that here it also denotes something impure, but cannot mean adultery since that was punishable by death.¹⁷ It could possibly be a physical deficiency in the woman, such as an unpleasing bodily appearance or barrenness. Jeffrey Tigay states that, since the phrase *מצא בה* (“finds in her”) in 24:1 refers to finding some sort of conduct (1 Sam 29:3, 6, 8; 2 Kgs 17:4; cf. 1 Sam 12:5),¹⁸ then the phrase “nakedness of a thing” probably refers to some sort of obnoxious conduct, “not to an unpleasant quality or physical feature.”¹⁹ Duane Christensen believes the expression is here equivalent to the English “caught with one’s pants down.”²⁰ He interpretively translates the phrase “caught with her pudenda exposed,” because he believes the phrase indicates a public shame to which the woman is exposed. Eugene Merrill believes this phrase refers to adultery.²¹ This wide diversity of opinions shows that no consensus has yet been reached.²²

16. Driver, *Deuteronomy*, 271.

17. Craigie, *Deuteronomy*, 305; so also Cairns, *Word and Presence*, 210; Tigay, *Deuteronomy*, 221.

18. Tigay, *Deuteronomy*, 221, 386 n. 6.

19. *Ibid.*, 221.

20. Christensen, *Deuteronomy*, 566.

21. Merrill, *Deuteronomy*, 315f.

22. John Murray suggests “some kind of shameful conduct connected with sex life” (“Divorce. 1,” WTJ 9 [1946], 42). Anthony Phillips suggests any unbecoming thing in a woman except adultery (“Another Look at Adultery,” *JSOT* 20 [1981], 14). Duane Warden suggests sexual misconduct (“The Words of Jesus on Divorce,” *ResQ* 39 [1997], 146). Anthony Garrett creatively suggests the phrase should be translated “an unclean word” and posits a scenario in which the woman proposes indecent sexual acts to the first husband, for which he is then permitted to divorce her (“A New Understanding of the Divorce and Remarriage Legislation in Deuteronomy 24:1–4,” *JBQ* 39 [2011], 248). The second husband, who would have investigated her sexual past, is unconcerned with her sexual perversion and consents to marry her and perform such acts, which defiles the woman. If the first husband remarried her, he would be consenting to the very proposition for which she was originally sent away and then defiled with the second husband. This remarriage would thus be an abomination. Garrett’s reconstruction does fit well the details of the law, but it is most likely that *ערוֹת דָּבָר* (“nakedness of a thing”) should be translated the same in Deut 23:14 and 24:1. Garrett acknowledges this objection but notes that the verbs are different: the “nakedness of a thing” is “seen” (*ראָה*) in Deut 23:14 and

The most likely understanding of this phrase seems to be some sort of abnormal or displeasing physical or physiological abnormality in the woman.²³ It seems clear that this phrase cannot mean adultery since the death penalty would be required (Deut 22:22).²⁴ Reuven Yaron rightly criticizes those who would understand this phrase to mean adultery in order to harmonize this law with Jesus' exception clauses in Matt 5:32 and 19:9.²⁵ Also, since the phrase in Deut 23:14 denotes

“found” (אָמַץ) in 24:1 (ibid., 249). But the verb “to hear” in 24:1 would fit Garrett’s proposal better; the verb “found” suggests the discovery of some behavior or physical abnormality. Moreover, Guenther argues that since legal terminology is precise, the term must have the same meaning in 23:14 and 24:1 (“Interpreting the Silences,” 46). Guenther argues the phrase refers to incest (ibid.).

23. So also Daniel I. Block, who believes this refers to some kind of physical issue, such as menstrual irregularity (cf. Mark 5:25–34) (“‘You Shall Not Covet Your Neighbor’s Wife’: A Study in Deuteronomistic Domestic Ideology,” *JETS* 53 [2010], 469). Laney also mentions the possibility, but remains undecided (“Deuteronomy 24:1–4 and the Issue of Divorce,” 5).

24. Most commentators believe this does not refer to adultery for various reasons. Although not exhaustive, see Driver, *Deuteronomy*, 271; Phillips, “Another Look at Adultery,” 14; Block, “You Shall Not Covet Your Neighbor’s Wife,” 469; Christensen, *Deuteronomy*, 566; Gordon J. Wenham, “The Restoration of Marriage Reconsidered,” *JJS* 30 (1979): 36–40; Murray, “Divorce. 1,” 41; Laney, “Deuteronomy 24:1–4 and the Issue of Divorce,” 6; Guenther, “Interpreting the Silences,” 45; Yaron, “The Restoration of Marriage.”

25. Merrill argues that because Jesus refers to this passage and uses the Greek word πορνεία (“sexual immorality”) in the exception clauses in Matt 5:32 and 19:9, the phrase ערוה דבר should be taken to mean “adultery,” even if not completely synonymous with the term (Merrill, *Deuteronomy*, 315). This view is mistaken for two reasons. First, the term πορνεία should not be understood in Matt 5:32 and 19:9 to mean “adultery.” Πορνεία (“sexual immorality”) and μοικεία (“adultery”) occur side by side in Matt 15:19, while πορνεία (“sexual immorality”) occurs side by side with μοικεύω (“commit adultery”) in 5:32. Jesus clearly distinguishes the two word groups, with μοικεία referring to adultery in a marital context and πορνεία referring to a more general sexual immorality, probably in a betrothal context. Since Merrill himself notes that a betrothal period in Jewish thought was tantamount to marriage itself, Matthew could validly use the word ἀπολύω (“to release,” “to divorce”) to refer to a man disposing of his betrothed (see BDAG s.v. “ἀπολύω,” which says that the construction ἀπολύω with τὴν γυναῖκα [“woman,” “wife”] as the object means “to divorce one’s wife, or betrothed” [emphasis added]).

Second, the use of the terms πορνεία (“sexual immorality”) and ערוה דבר (“nakedness of a thing”) are different in their respective contexts and Jesus did not intend to equate them. The “nakedness of a thing” is something for which Moses says a man might divorce his wife, but πορνεία (“sexual immorality”) is something for which Jesus gives *permission* to divorce one’s betrothed. In other words, Moses is not giving the men permission to divorce their wives because of the “nakedness of a thing,” but Jesus is giving men permission to divorce their betrothed in the case of πορνεία (“sexual immorality”).

something indecent and lacks any sort of sexual connotation, the phrase here should not be understood as any sort of sexual misbehavior. If this understanding is correct, then males in ancient Israel had a great deal of freedom in initiating a divorce. A man had only to find some sort of physical or physiological displeasure or abnormality in his wife in order to divorce her. This may have had humanly noble motivations, such as allowing for a man to find a new wife if he marries a barren woman who could not produce an heir for him. Surely, however, it was used with evil and selfish motivations.

It is because of the evils of divorce that it must be recognized that this law does not give a man the legal right to divorce when he finds some indecency in her. Rather, the law only recognizes what is already an allowed practice in Israel due to the hardness of their hearts (cf. Matt 19:8). From the beginning, God's plan was for one man and one woman to be married by an unbreakable covenant, whereby they become one flesh (Gen 2:24). Jesus correctly expressed God's will concerning marriage: "what therefore God has joined together, let not man separate" (Matt 19:6).

RATIONALE BEHIND THE LAW

Verse 4 contains the apodosis of the lengthy conditional sentence that makes up verses 1–4. The apodosis contains the actual injunction that is mandated under the conditions of the protasis: the woman who has been divorced, then married to another man, and then divorced from or widowed by the second husband *must not* be remarried to her first husband. The reason that the woman must not remarry her first husband is that the woman has become defiled and for her to remarry her first husband would be an abomination before the LORD.²⁶ This would defile the land which the LORD promised to the forefathers and was about to give²⁷ to the people of Israel. But why is the woman's action considered an abomination before the LORD? The answer to this question is what

26. Contra Merrill, who believes the abomination refers to the woman because she has become an adulteress (ibid., 318). The woman's action should be understood as the abomination since הַזֵּה ("that") is used rather than a relative pronoun (אֲשֶׁר) or the word "she" (הִיא). Virtually all translations render the phrase "*that* is an abomination," not "she is an abomination."

27. At the time of Moses' speeches to the people of Israel, he was standing on the region opposite the Jordan (Deut 1:1). The wilderness wanderings had ended and it was time for Israel to conquer the land. Thus, the participial forms of נָתַן ("to give") that occur in the frequent expression "which the LORD is *about to give* to you" can be translated as an imminent action (e.g., Deut 1:20; 1:25; 2:29; etc.).

shall be considered the rationale behind the law.

The first issue to discuss is the nature of the defilement of the woman. After the woman's second divorce, the first husband may not marry her again "after she has been defiled, because (כי) that is an abomination (תועבה) before the LORD" (Deut 24:4). It must be recognized that the abominable act should not be equated with the defilement of the woman. While the abominable act is the remarriage to the first husband, it should be recognized for two reasons that the defilement of the woman occurs through the second marriage. First, the defilement cannot occur by divorce (the first or second divorce), or else the law would have to acknowledge the first divorce to be defilement and thereby restrict all second marriages.²⁸ Second, the defilement also cannot be the remarriage to the first husband since the preposition אחר in 24:4 shows that the remarriage to the first husband occurs "after" the defilement.²⁹ The only option left is that the defilement occurs through the second marriage.³⁰

The defilement, which occurs through the second marriage, is based on the Hebrew concept of marriage. As stated earlier, marriage makes a man and a woman one flesh and for a woman to unite with a man other than her one-flesh-husband, even after divorce, is defilement.³¹ Precluding the situation of πορνεία ("sexual immorality") of which Jesus speaks in Matt 5:32; 19:9, if a man divorces his wife and marries another woman he commits adultery. If it is considered that divorce was only allowed in Israel because of the hardness of their hearts (Matt 19:8) and it was never God's intention (Matt 19:4–6), Jesus's

28. Contra Cairns, who incorrectly believes the defilement is caused by one of the divorces rather than one of the marriages, which causes him to interpret "defiled" as meaning "taboo"—"by virtue of the divorce she is now 'forbidden' to her first husband" (*Word and Presence*, 211). Christensen believes this refers to the woman in relation to the former husband rather than to the latter husband, but gives no argument (*Deuteronomy 21:10–34:12*, 567).

29. Contra Craigie, *Deuteronomy*, 305. Laney makes the same point ("Deuteronomy 24:1–4 and the Issue of Divorce," 8).

30. C. F. Keil (*The Pentateuch* [trans. James Martin; Biblical Commentary on the Old Testament; Peabody, MA: Hendrickson, 2006], on Deut 24:1–5) and Driver (*Deuteronomy*, 272) both understand the second marriage to be the defilement, although Keil supplies no arguments and Driver simply quotes Keil. Murray concludes more tentatively that, although it is uncertain whether the second marriage defiles the woman, what is certain is that "the moment return [to the first husband] is envisaged, then, with reference to the first husband, the woman has been defiled ("Divorce. 1," 45). But the text only says "she has been defiled" and does not seem to suggest that her decision to return to the first husband is what defiles her.

31. Jesus pronounces it adultery in his day (Luke 16:18//Matt 19:9//Mark 10:11–12).

teaching is in perfect harmony with the teaching of Deuteronomy.³² It seems that, according to Moses and Jesus, a law court may dissolve an earthly marital contract with a “certificate of divorce,” but this does not dissolve the metaphysical entity that the husband and wife have become as “one flesh” (Gen 2:24). Otherwise, how could the second marriage be considered “defilement” (Deut 24:4) or “adultery” (Matt 19:9)?³³ It then makes sense why Deut 24:4 uses *אמט* (“to be unclean, defiled”) to speak of the second marriage, the same verb used in Lev 18:20 and Num 5:13, 20, 28ff to speak of adultery.³⁴

The biggest problem for understanding the second marriage as the defilement is why the remarriage to the first husband is prohibited rather than the second marriage (or both). First, as already stated, the law does not condone the second marriage, but simply describes it as a condition already occurring.³⁵ Second, the law presupposes that the second marriage defiles the woman and therefore has implicitly criticized the practice. Third, since the law is concerned with protecting Israel’s covenant and their position in the land (see “Purpose of the Law” below), this law seeks to prohibit the abomination that defiles the land. This abomination is the remarriage to the first husband, not the second marriage. But why is the third marriage considered morally worse than the second marriage?

While the second marriage is considered tantamount to adultery, the effect of the remarriage to the first husband is twofold. First, it increases the defilement of the woman, who has now been divorced and remarried twice.³⁶ Second, the remarriage makes the analogy of adultery

32. Our point here is not to use Matthew 19 to interpret Deuteronomy 24, as Merrill has done (see note 26), but to show that Jesus holds to the same underlying principle of the permanence of the “one flesh” union that Deuteronomy 24 presupposes. We do, however, agree with and defend Jesus’ authoritative interpretation of Gen 2:24, from which he derives both this belief on the permanence of the one-flesh union as well as the conclusion that divorce was not originally intended in God’s plan for marriage but was allowed because of the hardness of man’s heart (Matt 19:8f.).

33. If it is objected that this would be at odds with Jesus “excusing” divorce in the case of *πορνεία* (“sexual immorality”), see n. 30 above for the view that *πορνεία* refers to sexual immorality or promiscuity by a betrothed man or woman. During the betrothal period, the couple would not yet have become one flesh and could therefore “divorce” and marry a different partner without committing adultery.

34. Similarly, Laney, “Deuteronomy 24:1–4 and the Issue of Divorce,” 8.

35. Similarly, *ibid.*, 6f.

36. Keil, *The Pentateuch*, on Deuteronomy 24:1–5.

complete and is therefore morally worse than the second marriage.³⁷ The woman, by analogy, would be like a wife who slept with another man and then returned to her husband to sleep with him again. The act of returning to the first husband is what makes the analogy of adultery complete and is therefore the reason the offense of the third marriage is greater than the offense of the second marriage, meriting the status of “abomination before the LORD.” *The rationale behind the law is therefore the double defilement of the woman as well as a complete analogy between, on the one hand, the woman’s action in Deut 24:1–4, and on the other hand, a woman who commits adultery and subsequently returns to and sleeps with her husband.*

PURPOSE OF THE LAW

As already stated, most scholars in discussing the purpose of this law have looked for a utilitarian, anthropocentric motivation outside of the text for the creation of the law. Driver³⁸ follows C. F. Keil,³⁹ who believes that the woman’s marriage to a second man after a divorce from the first is tantamount to adultery. No argumentation is given to prove this claim, but they do mention that this paves the way for Jesus’s teaching on second marriages as adultery (Luke 16:18//Matt 19:9//Mark 10:11–12). Based upon this claim, Driver, again following Keil almost exactly, believes that the purpose of the law was (1) to prevent hasty divorces, (2) to cause a husband to consider taking his divorced wife back before she is married to another, and (3) to keep the woman from desiring her first husband over her second if she is indeed married to a second husband.⁴⁰ Thus, according to Keil and Driver, this law functions with humanitarian concerns in order to improve the condition of Israelite society.

Yaron critiques this common view by claiming that the law would not have such an effect since a man would not weigh the legal consequences before dissolving a marriage. Rather, because of his emotional negativity toward his wife, he would weigh the practical reasons for divorce and would even be clouded in judgment by his anger

37. Craigie, *Deuteronomy*, 305, although he mistakenly believes the third marriage is what defiles the woman.

38. Driver, *Deuteronomy*, 272.

39. Keil, *Pentateuch*, on Deut 24:1–5.

40. Driver, *Deuteronomy*, 272.

or frustration with his wife.⁴¹ He critiques the view that connects the “nakedness of a thing” with adultery because it is typically done by “retroject[ing] the New testament doctrine of indissolubility into biblical law,”⁴² mistakenly citing Keil and Driver as examples.⁴³ He then makes his suggestion that the passage has not to do with adultery, but with the realm of incest. He describes the purpose of laws against incest as protecting the family from sexual tension that may disrupt it. He believes this law likewise seeks to protect the family from sexual tension that may disrupt it by prohibiting remarriage to the first husband. This prohibition protects the second marriage from sexual tension that may arise from the wife’s desire to return to the first husband or from the second husband’s jealousy and/or fear over the first husband.⁴⁴

Yaron is correctly criticized by C. M. Carmichael⁴⁵ (followed by Gordon Wenham⁴⁶) for neglecting the case in which the second husband dies. There is no need for the law to protect the second marriage if it has been dissolved through death.

Wenham,⁴⁷ following Yaron in connecting this passage to the incest laws in Lev 18 and 20, demonstrates that the incest laws prohibited marriages both to first and second-degree consanguines⁴⁸ and to affines.⁴⁹ Marriage to affines is prohibited in Lev 18 and 20 only in the case that the consanguine has died, otherwise adultery would be the issue. A man could not marry an affine whose spouse had died because the affine had become one flesh with their spouse, thus becoming a

41. Yaron, “The Restoration of Marriage,” 5.

42. *Ibid.*, 7f.

43. Yaron is actually confused on this point. Keil and Driver believe that the woman has become defiled (24:4) through her divorce and subsequent marriage to another man, which is tantamount to adultery. Neither Keil nor Driver believes the “nakedness of a thing” refers to adultery because the penalty for adultery was death.

44. Yaron, “The Restoration of Marriage,” 8.

45. Calum M. Carmichael, *The Laws of Deuteronomy* (Ithaca, NY: Cornell University Press, 1974), 205.

46. Wenham, “The Restoration of Marriage Reconsidered,” 37.

47. *Ibid.*, 38f.

48. First degree consanguines would be mother, father, sister, etc., while second degree consanguines would be aunt, grand-daughter, uncle, etc.

49. Affines are in-laws and step relatives, e.g., the wife of a man’s brother.

consanguine with the man still alive. This logic is, in Wenham's judgment, applied in the Deuteronomic law. When divorce occurs, it does not dissolve the very close relationship that has been created by the marriage. She is in effect still the "sister" of the first husband.⁵⁰ For the two to remarry would then be tantamount to incest, which would certainly be an abomination before the LORD and would defile the land. The weakness of Wenham's argument is that it does not take into account the second husband at all. Why even mention the second husband in the law if the true intent is to prevent *any* remarriage whatsoever?

Daniel Block finds the purpose of the law to be the protection of women from the abuse of men.⁵¹ This, however, fails to account for the description of the remarriage to the first husband as an "abomination" and why the woman obtains the status of "defiled" through her second marriage.

Bruce Wells suggests that the purpose of the law was to protect the woman from abuse by the first husband in his attempt to finagle monetary gain.⁵² According to Wells, due to the "nakedness of a thing," the first husband would get to keep the wedding dowry. The divorced woman would then be married to a second man, her parents likely paying the dowry again. Since the end of the second marriage occurs through divorce *or* death of the husband, Wells supposes that this divorce must be arbitrary in either case and the woman would therefore receive back her wedding dowry as well as an additional amount from the husband. With this newly amassed wealth, if the woman remarried her first husband, he would now own two wedding dowries and divorce money from the second husband. The problem with Wells's suggestion is that his explanation of circumstances under which the woman would receive back her wedding dowry and an additional divorce payment originates in ANE law.⁵³ He supposes that Israel followed the other ANE societies in this practice, which cannot be proven. He also supposes that the second divorce had to be arbitrary, but it is grammatically possible that the law also encompasses a situation in which the second husband also found the

50. Wenham suggests that the Patriarchs' description of their wives as their sisters was a more commonplace practice in the ANE; cf. Prov 7:4; Song 4:9f., 12; 5:1f.

51. Block, "You Shall Not Covet Your Neighbor's Wife," 469.

52. Bruce Wells, "The Hated Wife in Deuteronomic Law," *VT* 60 (2010), 142.

53. *Ibid.*, 140f.

“nakedness of a thing” in her.⁵⁴ This theory also fails to explain why the woman has become defiled, why the remarriage is an abomination, and why the land becomes defiled as a result.⁵⁵ Thus Wells’ explanation of the rationale of the law solely in terms of protecting the woman from man’s financial ambition makes too many assumptions and fails to explain (or even mention) the important parts of the text.

As is evident, the search for the purpose of the law has generated great interest among interpreters. This entire conversation, however, seems misguided. The purpose of Israel’s covenantal law in Deuteronomy was to protect Israel’s covenant and, ultimately, their position and safety in the land of Israel. In Deuteronomy, declaring “You shall not murder” was not *primarily* for the purpose of stating what is moral or even for the purpose of preventing murder. True, these are inevitable effects of such a declaration. However, within the framework of Deuteronomy, the *primary purpose* is to inform Israel how to protect their covenantal status and their safety in the land of Canaan.⁵⁶ This understanding of the law in Deuteronomy accords with the *explicitly stated* purpose of the law in 24:4: “and you shall not defile (אטף) the land which the LORD your God is about to give to you as an inheritance.”⁵⁷ The law sought to protect the covenantal status of Israel and their position in the land by placing a restriction on an abominable practice that threatened that position. It is probably correct, therefore, for Walter Brueggemann to state that the contamination of the land is the central issue in this passage (cf. Lev 18:25, 27, 28; Num 35:34; Jer 2:7; Ezek

54. Driver in fact believes that the second divorce could not be arbitrary, but rather the procedures laid out in 24:1 are presupposed for the second divorce as well (*Deuteronomy*, 271).

55. Guenther’s article espouses the same view, but he is more careful to explain these three issues (“Interpreting the Silences”). However, his theory is still open to the other criticisms that apply to Wells. Also, his hypothetical reconstruction of the situation is highly speculative and improvable.

56. In Exod 20, the Ten Commandments are given in a context which implies that Israel is to follow God’s covenant commandments from an overflowing abundance of gratitude for God’s gracious redemption of Israel from Egypt. In Deuteronomy, however, 4:23ff. threatens exile and destruction for breaking the covenant and the curses of 27:15–26; 28:15–68 provide detailed consequences for abandoning God’s law and covenant. Therefore, because of the blessing-curse framework of Deuteronomy, the commands should be seen as primarily seeking to inform the people how to protect their covenantal status and their position in the land.

57. The verse is clear that the abominable act defiles the land. Thus, the כִּי (“for”) in verse 4 extends to the defilement clause: “for that is an abomination before the LORD *and* you shall not defile the land . . .”

36:18).⁵⁸ Within Deuteronomy, the blessings and curses are intricately connected to the land. For disobedience to the covenant, God promises to exile Israel from their land and utterly destroy them (Deut 4:23ff.; 28:15–68). For obedience to the covenant, God promises blessing and fruitfulness in the land (Deut 4:40; 28:1–14). In the same vein, to defile the land was to defile the covenant, a consequence the law sought to avoid at all costs. That the curses enumerated in 28:15–68 are more than three times longer than the blessings in 28:1–14 shows the great concern for Israel’s obedience, so that the curses may not fall upon them. Also note that most of the curses in 28:15–68 are centered on the land, with the final curse being exile (28:68).

Exile from the land, which would be the eventual result of defiling the land, was devastating for the Israelites. Canaan was their “rest” (Ps 95:11), the end of forty years of wandering in the wilderness due to their rebellion (Num 14:21–23). God swore to Abraham that he would give the land to the patriarch’s descendants (Gen 17:8; Deut 1:8; 6:10; etc.). More importantly, however, Canaan was a restored Garden of Eden, the new location in which God would dwell with his people.⁵⁹ This restored Edenic paradise was in fact one of the reasons God states that he brought them out of Egypt, “in order that [God] might dwell (לשכני) among them” (Exod 29:46). Expulsion from the land of Canaan, where God’s presence dwelt (in the tabernacle/temple),⁶⁰ would be simultaneously a recapitulation of Adam’s expulsion from the Garden of

58. Walter Brueggemann, *Deuteronomy* (AOTC; Nashville, TN: Abingdon, 2001), 236. Laney also seems to be an exception in that he notes briefly, “[T]he prohibition was designed to prevent the defilement of the land that God was giving His people as an inheritance” (“Deuteronomy 24:1–4 and the Issue of Divorce,” 9). But after noting that this is the purpose of the law, he begins a new section which seeks the purpose of the law, and concludes that the law had a two-fold anthropocentric concern (ibid., 13).

59. According to G. K. Beale, Genesis presents the garden as a sanctuary of God which was to house his presence, where he would dwell with man (*The Temple and the Church's Mission: A Biblical Theology of the Dwelling Place of God* [NSBT; Downers Grove, IL: IVP, 2004], 66–80); so also Gordon J. Wenham, *The Pentateuch* (Exploring the Old Testament; Vol. 1; Downers Grove, IL: IVP, 2003), 23; Dumbrell, *The Faith of Israel*, 21. Gen 2:15 presents Adam as both a king (cf. Psalm 8) and a priest, the latter function being derived from the verbs עָבַד (“to serve”) and שָׁמַר (“to keep”). These two verbs, when occurring “together in the Old Testament (within an approximately 15-word range) . . . refer either to Israelites “serving” God and “guarding [keeping]” God’s word (approximately 10 times) or to priests who “keep” the “service” (or ‘charge’) of the tabernacle (see Num 3:7–8; 8:25–26; 18:5–6; 1 Chr 23:32; Ezek 44:13)” (Beale, *Temple*, 66f.).

60. Deuteronomy 12 speaks of the future place that God will choose to have his dwelling, a central location of worship (Jerusalem).

Eden and a reversal of Israel's redemption out of the house of slavery (Egypt). Although Israel eventually is expelled from the land and destroyed by various enemies sent by the LORD,⁶¹ God causes the church to find its final resting place in his presence in the New Jerusalem described in Rev 21–22. In other words, the purpose of the law of Deut 24:1–4 will be fulfilled in the eschaton, when the faithful will find their covenant stipulations fulfilled by the righteousness of Christ and dwell with God forever, never to be exiled from their inheritance (cf. 1 Pet 1:4).

Interestingly, Deuteronomy does not provide any punishment for the violation of this law. Later Jewish law, however, does establish a legal retribution. According to *m. Yebam.* 4.12 and *t. Yebam.* 6.5, if the prohibited reunion occurs, they must separate. R. 'Aquiva regarded the marriage as illegitimate and therefore did not require a bill of divorce, while the majority held the marriage to be legitimate and therefore required a bill of divorce.⁶² Philo, taking a more extreme position, ruled that both offenders should be killed.⁶³ That punishment for violation of this law was only created later in Jewish law and was not given in Deuteronomy further suggests that the concern of this law was not so much horizontal (inter-human relations), but vertical (Israel-YHWH relation).

CONCLUSION

Deut 24:1–4 describes a situation that was occurring in Israel in which women were compounding their defilement of a second marriage with the abominable act of a third marriage to their first husband. The law prohibits this remarriage because the effect of the abominable act is to defile the land of Canaan, Israel's inheritance (24:4). Scholars have neglected this explicitly stated purpose in verse 4 because they have searched for a utilitarian, anthropocentric motivation outside of the text for the creation of this law. The main concern of this law is not with human relations, but with Israel's covenant relationship with YHWH. While scholars inevitably deal with the rationale behind the law when seeking the purpose of the law, they have not clearly distinguished between the two. Driver and Keil, in this author's judgment, have discerned the correct rationale behind the law, but have then sought the

61. E.g., Isa 10:5ff.

62. Yaron, "The Restoration of Marriage," 10f.

63. Philo, *De spec. leg.* 3:31.

purpose of the law solely in terms of horizontal relations rather than vertical relations. While the former should not be ruled out completely (there are obviously humanitarian concerns in Deuteronomy), the latter is the predominant concern of this law.

According to Deuteronomy, the defilement of the woman was an attack on the covenant between Israel and God and must be avoided at all costs, lest God bring upon them the curses of the covenant, exile them from the land, and utterly destroy them (Deut 4:23ff.; 27:15–26; 28:15–68; 28:68). The law presupposes that the second marriage of a divorced woman defiles her and by implication discourages it as well. However, as Keil wrote, Moses could not entirely stamp out all divorces by law because of the hardness of their hearts (Matt 19:8).⁶⁴ Jesus later abolished all rights to divorce, except in the case of *πορνεία* (“sexual immorality”), the meaning of which is debated and which this paper was only allowed to discuss briefly. The end goal of the purpose of this law is finally realized in the permanent dwelling of God with his people in the New Jerusalem, from which he will never exile those who have entered the New Covenant through faith in Jesus Christ.

64. Keil, *The Pentateuch*, on Deut 24:1–5.

