

Reformed Theological Seminary

A JUST DIVORCE: Divorce That is Right and Just and Fair

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By

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Abstract: A Just Divorce

Although the world may view a marital breakup as “just another divorce,” Christians must seek to protect and preserve the sanctity, unity, and purity of the marriage covenant as originally intended by God, and to understand rightly any biblical justification for divorce (and remarriage) and the justness of a divorce. The biblical and ancient cultural background to the New Testament teaching of Jesus and Paul on divorce and remarriage are examined, as well as the writings of the early church, the Roman Catholic sacramental view of marriage, and a Protestant Reformation view represented by John Calvin and Calvin’s Geneva. There are valid biblical grounds for divorce and also for remarriage, but divorce may not always be just even though permissible. By analogy to generally understood principles of “just war,” i.e. just cause, just intention, last resort, formal declaration, limited objectives, proportionate means, and noncombatant immunity, the church is challenged to use wisdom in applying these considerations to determine not only whether a divorce may be biblically permissible, but also to assure that any divorce is not only justifiable, but also a just divorce in its inception, prosecution, and result. Because divorce is not purely a spiritual matter but is, as Calvin wrote, “mixed up with civil law,” a just divorce involves a concerted and cooperative effort by both the church and civil government. Christians must “develop a balanced, biblical attitude toward divorce – on the one hand, hating all those things that God hates about divorce, while recognizing that in this sinful world there are those situations in which (as God Himself demonstrated) it may be necessary to obtain a divorce.”¹ The church is called to compassion and love toward families that are struggling with applying biblical principles to a ruptured marriage and the consequences of divorce.

¹ Jay E. Adams, *Marriage, Divorce, and Remarriage in the Bible: A Fresh Look at What Scripture Teaches* (Grand Rapids: Zondervan, 1980), 24.

Abbreviations

BIBLE BOOKS Old Testament

Gen	Genesis	Song	Song of Songs/Solomon
Exod	Exodus	Isa	Isaiah
Lev	Leviticus	Jer	Jeremiah
Num	Numbers	Lam	Lamentations
Deut	Deuteronomy	Ezek	Ezekiel
Josh	Joshua	Dan	Daniel
Judg	Judges	Hos	Hosea
Ruth	Ruth	Joel	Joel
1-2 Sam	1-2 Samuel	Amos	Amos
1-2 Kgs	1-2 Kings	Obad	Obadiah
1-2 Chr	1-2 Chronicles	Jonah	Jonah
Ezra	Ezra	Mic	Micah
Neh	Nehemiah	Nah	Nahum
Esth	Esther	Hab	Habakkuk
Job	Job	Zeph	Zephaniah
Ps/Pss	Psalms	Hag	Haggai
Prov	Proverbs	Zech	Zechariah
Eccl	Ecclesiastes	Mal	Malachi

New Testament

Matt	Matthew	1-2 Thes	1-2 Thessalonians
Mark	Mark	1-2 Tim	1-2 Timothy
Luke	Luke	Titus	Titus
John	John	Phlm	Philemon
Acts	Acts	Heb	Hebrews
Rom	Romans	Jas	James
1-2 Cor	1-2 Corinthians	1-2 Pet	1-2 Peter
Gal	Galatians	1-2-3 John	1-2-3 John
Eph	Ephesians	Jude	Jude
Phil	Philippians	Rev	Revelation
Col	Colossians		

BIBLE TRANSLATIONS

ESV	English Standard Version
NASB	New American Standard Bible
NIV	New International Version
NLT	New Living Translation
NRSV	New Revised Standard Version
RSV	Revised Standard Version

SOURCES

<i>ANET</i>	<i>Ancient Near Eastern Texts Relating to the Old Testament</i> . Edited by J. B. Pritchard. 3d ed. Princeton, 1969
<i>ANF</i>	<i>Ante-Nicene Fathers</i>
<i>BECNT</i>	<i>Baker Exegetical Commentary on the New Testament</i>
<i>COS</i>	<i>The Context of Scripture</i> . Edited by W. W. Hallo. 3 vols. Leiden, 2003
<i>EBC</i>	<i>Expositor's Bible Commentary</i>
<i>Institutes</i>	John Calvin, <i>The Institutes of the Christian Religion</i> . Edited by John T. McNeill. Translated by Ford Lewis Battles. 2 vols. Library of Christian Classics. Philadelphia, 1960
<i>JETS</i>	<i>Journal of the Evangelical Theological Society</i>
<i>NAC</i>	<i>New American Commentary</i>
<i>NICNT</i>	<i>New International Commentary on the New Testament</i>
<i>NICOT</i>	<i>New International Commentary on the Old Testament</i>
<i>NIGTC</i>	<i>New International Greek Testament Commentary</i>
<i>NPNF¹</i>	<i>Nicene and Post-Nicene Fathers, Series 1</i>
<i>NPNF²</i>	<i>Nicene and Post-Nicene Fathers, Series 2</i>
<i>OTL</i>	<i>Old Testament Library</i>
<i>SBJT</i>	<i>The Southern Baptist Journal of Theology</i>
<i>TNTC</i>	<i>Tyndale New Testament Commentaries</i>
<i>TOTC</i>	<i>Tyndale Old Testament Commentaries</i>
<i>TrinJ</i>	<i>Trinity Journal</i>
<i>WCF</i>	Westminster Confession of Faith
<i>WTJ</i>	<i>Westminster Theological Journal</i>

Chapter One: INTRODUCTION: SANCTITY OF MARRIAGE

It's Just Another Divorce

Divorce is so prevalent in society generally, and reflected similarly among evangelical Christians,¹ that its occurrence seems rather commonplace. It is an accepted cultural and ecclesiastical norm, and couples reaching milestone anniversaries such as a “Golden” 50th, “Silver” 25th, or even a 10th are rather exceptional, if not extraordinary. A common sentiment is expressed in a casual remark such as “What’s the big deal, it’s just a divorce,” as if it is a mere rite of passage that we all go through at some point in our lives. Although popular attitude may be that it is “just another divorce” what, biblically speaking, is a “just” divorce? What is its justness or justification in terms of permissible biblical grounds, if any, and what biblical notions of justice should we consider in order to attempt to make the process and aftermath of any divorce just, right and fair?

The Covenantal Character of Marriage

From the beginning God instituted and sanctified marriage as a covenant relationship between a man and woman. Andreas Kostenberger refers to marriage as “a creation ordinance with covenantal features.”² It was not good that man should be alone, so God fashioned woman as man’s complementary companion and co-vice-regent to accomplish the cultural mandate to fill, subdue, and have dominion over the earth (Gen 1:26-28; Gen 2:18-24).³ Both man and woman were created in God’s image (Gen 1:27), and the marriage relationship between a husband and wife images the sacrificial, loving relationship between Christ and the church with an intimate “one flesh” union that both prefigures, imitates, and exemplifies Christ’s uniting the church to himself (Gen 2:24; Eph 5:22-33; Rev 19:6-9; cf. 1

Pet 3:1-7).⁴ The covenantal marriage relationship becomes that of utmost priority, obligation, loyalty, and commitment between spouses as they leave their parents and hold fast to each other in the united and monogamous establishment and ordering of their new primary family unit (Gen 2:24),⁵ including bearing and raising children in the fear and instruction of the Lord (Gen 1:28; Deut 6:1-9).

Significant biblical support for viewing marriage as a covenant is found in Mal 2:14, which refers to marriage as a “covenant,” and alludes to Adam and Eve’s “paradigmatic marriage” relationship (Gen 2:24).⁶ Malachi 2:14 says a reason God found Judah’s worship unacceptable is because God “was witness between you and the wife of your youth, to whom you have been faithless, though she is your companion and your wife by covenant.” Malachi 2:15 emphasizes that it was God who makes a husband and wife “one, with a portion of the Spirit in their union” seeking “Godly offspring,” and God’s people are called to guard their spirit, and not be faithless to their spouse (Mal 2:15, 16). Gordon Hugenberger suggests that although Genesis 2-3 does not use the word “covenant” regarding Adam and Eve’s marriage relationship, a covenant “identification is suggested by the original purpose of marriage, which parallels that of covenant, namely, to create a unity between unrelated persons”; that the husband’s obligation to “leave” and “cleave” are “frequently associated with covenant contexts”; and “Adam’s use of the relationship formula, ‘This at last is bone of my bones and flesh of my flesh’ (Gen 2:23) . . . finds a close parallel in texts such as 2 Sam 5:1 and 1 Chr 11:1, where it is employed as a covenant-ratifying formula.”⁷

Hugenberger notes that the “predominant sense” of *berith* “in Biblical Hebrew is an elected, as opposed to natural, relationship of obligation established under divine sanction,”

but cautions “it should not be expected that wherever a covenant is mentioned it will necessarily exhibit any or all of the features of some single “covenant form” derived from a detailed comparison of international treaty texts.”⁸ Hugenberger’s mention of covenant forms that are found in ancient Near Eastern treaty texts is a reference to the substantial work of biblical scholars including, notably, Meredith G. Kline.

According to Kline, the relationship between the Lord and his people is best described as a covenant that is an administration or declaration “of God’s lordship, consecrating a people to himself in a sovereignly dictated order of life,”⁹ or in general as a relationship under sanctions of divine law.¹⁰ It is a sovereign administration of the Kingdom of God, and “the treaties are the legal instruments by which God’s kingship is exercised over his creatures.”¹¹ In God’s covenant with Israel, he selected a people from all the earth’s nations to be his treasured possession – summarized in the words “I will be your God, and you will be my people,” he redeems them from their bondage in Egypt, and he requires their obedience to his law. The Ten Commandments or Decalogue (Exod 20:1-17) follow the pattern of second millennium BC ancient Near Eastern (particularly Hittite) “suzerain treaties” between a great king or suzerain and a lesser king or vassal, and may be seen as a suzerainty treaty between God and Israel where God sets the relationship’s terms.¹² These treaties imposed a duty of covenant loyalty upon the servant vassal, and set forth certain obligations of the servant. The vassal’s faithful obedience to the covenant requirements would bring blessings, while infidelity would bring curses upon the vassal. Israel’s copy of the covenant was to be a documentary witness to and against Israel, reminding of obligations sworn to and rebuking for obligations violated, declaring the hope of covenant blessing and pronouncing the doom of covenant curses, and

teaching the fear of the Lord to all Israel.¹³ To violate the legal document was to violate the covenant, and would give rise to the treaty sanctions.

The stipulations imposed by the suzerain were a central element in ancient treaties.¹⁴ When a vassal failed to satisfy the obligations of the sworn treaty, the suzerain instituted a covenant lawsuit against the covenant-breaker.¹⁵ This international law or covenantal treaty backdrop informs what has come to be known as the "covenant lawsuit" or "prophetic lawsuit." On many occasions in scripture, through a prophet God brings a covenant lawsuit against Israel for their violation of his covenant law. The covenant or prophetic lawsuit (*rib*, Hebrew) summons Israel to court to hear God's charges. *Rib* means a complaint or accusation, and denotes an oral complaint made by an aggrieved party against the party held responsible for the grievance.¹⁶ The covenant lawsuit format arises from the international treaty form and the role of royal covenant emissaries, from Israel's covenant with God, and the pattern of trials in the courtrooms of biblical times. Some examples of this *rib*-pattern prophetic lawsuit appear in Isa 1:2-3; 1:18-20; 3:13-15; Jer 2:4-13; 25:31; Mic 6:1-8; Hos 2:4-17; 4:1-6; 12:3-15; and Mal 3:5.¹⁷

The covenant lawsuit of Mal 3:5 is especially pertinent as it follows shortly after the passage in Malachi 2 that describes how the covenant with God is profaned by faithlessness to the marriage covenant. In Mal 3:1-4, God promises to send his messenger before the coming of "the messenger of the covenant" who will be "like a refiner's fire," and restore pure worship. Significantly, in the Mal 3:5 covenant lawsuit God says that he will draw near in judgment and be a "swift witness . . . against the adulterers, against those who swear falsely . . . and do not fear me." However, in Mal 3:6 God says that because of his

unchanging character that desires to bless his people, they are called to restoration and reconciliation and are not completely destroyed by God. God's plan is to spare those who fear him from the eschatological judgment. This passage highlights that unfaithfulness in marriage not only sinfully breaches the covenantal relationship of marriage to which God was a witness, but also is a sin against God and violates God's covenant with his people. Indeed, Prov 2:17 describes an adulteress who seeks to seduce others as one "who forsakes the companion of her youth and forgets the covenant of her God."

In the covenant lawsuit of Mic 6:1-8, God calls his people to return to him in covenant loyalty: to do justice, to love mercy and to walk humbly with their God (Mic 6:8). God's covenant love toward us should motivate us to even greater covenant loyalty: to love God with all of our heart, soul, and mind; to love our neighbor as ourselves; and to do justice, to love kindness and to walk humbly with our God (Mic 6:8). This loving obedience is the true worship and sacrifice God desires of us, and is the faithful response of a grateful covenant servant to his or her exalted King and Lord.¹⁸ One who demonstrates covenant loyalty to a spouse displays an understanding of the covenant love with which our faithful God loves us.

The book of Hosea, including the prophetic lawsuits contained in chapters two and four, addresses the covenant relationship between God and his people which is depicted in the marriage relationship, and stresses the consequences of adultery/idolatry. While there are various interpretations of Hosea, it is apparent that Gomer parallels Israel, and Hosea parallels Yahweh, and that marriage is to be exemplified by covenant faithfulness. We learn that a marriage relationship and the covenant relationship of God and his people are both

exclusive relationships. Israel has broken the covenant; Israel is an adulterous wife who has been unfaithful to the Lord. In the children's names we see a reflection of the judgment that is coming: what is indicated in *Lo-Ruhamah* (no mercy) (Hos 1:6) is that God will not show compassion any more to Israel; in *Lo-Ammi* (not my people) (Hos 1:9) we see the consequences of negation of the broken covenant, that those who should be "my people" are "not my people."

In the adultery trial depicted in Hos 2:2-17, Hosea and Gomer are at the forefront initially, but they fade into the background as the relationship between God and Israel comes into focus. An accusation is presented by the aggrieved husband and father, an admonition is given concerning the need for a change of the adulterous and idolatrous ways of life, and there is a threat of the removal of food, clothing, and shelter, which under Exod 21:10 is the husband's legal responsibility to his wife. While the wife was not satisfied by what her husband furnished, and believes she received these provisions of food, water, wool, linen, oil, and drink from her lovers, she was like Israel in that she was not satisfied with God's provision and was pursuing Baal or other lovers to get those things. Yet it was God who had provided these things. She will not find satisfaction from her lovers as God will block her path and she will consider returning to her husband, and she will be stripped naked of her provisions and be exposed before her lovers in a destitute state. Yet God will allure her back to him, and God declares in that day she will again call him "My Husband," and no longer call him "My Baal." And God goes on to say "I will betroth you to me forever. I will betroth you to me in righteousness and in justice, in steadfast love and in mercy. I will betroth you to me in faithfulness" (Hos 2: 16-19). There will be a reversal of the names of the children as "I

will have mercy on No Mercy, and I will say to Not My People, ‘You are my people’; and he shall say, ‘You are my God’” (Hos 2:23). In the prophetic lawsuit in Hos 4:1-6 we see that the covenant with God is broken as there is no faithfulness or steadfast love, no knowledge of God in the land, and that there is moral chaos involving violation of the terms of the covenant including commission of adultery and violence. Thus, Hosea clearly identifies the marriage relationship as covenantal in nature, mirroring the covenantal relationship of God and his people, which is intended as a sacred bond between a husband and wife that involves permanence, exclusivity, nurture, love, fidelity, faithfulness, and mercy.

Kline also notes that human marriage depicts the divine covenant, and he makes some interesting observations concerning Gen 3:15-21.¹⁹ He interprets Adam’s “naming the woman “Life” (Eve)” as a confession of faith, God’s clothing of Adam and Eve as both “symbolic of investiture with the divine image” and “as a renewed plighting of covenantal troth,” and as “a sealing of covenantal commitment.”²⁰ The renewal of God’s covenant with man and the resumption of Adam and Eve’s marriage commitment “are intended to be seen as sustaining a symbolic correspondence to each other, with the human marriage providing a picture of the divine covenanting.”²¹ Kline further says

This symbolic interrelationship is corroborated by the fact that to confirm the marital reunion of the man and the woman was to correct the condition of divorce responsible for the sense of shame over nakedness which serves in the Genesis 3 narrative as evidence that man had broken his covenant with the Lord and which was indeed the concrete problem directly addressed by God’s provision of clothing. Accordingly, in performing the ceremony of the remarriage of Adam and Eve the Lord was signifying through an eminently apt symbol his purpose to renew the divine-human marriage covenant.²²

Kline further writes that

This symbolic ritual of mutual divine-human avowal of covenantal relationship was a ratifying of the redemptive covenant. Because of her whoredom the Lord had sent forth the wife of his covenant naked, saying, “She is not my wife and I am not her husband” (cf. Hos 2:2, 3). But now in forgiving grace he promised that he would betroth her to himself anew and forever (cf. Hos 2:19, 20), acknowledging that she was his as she confessed, “You are my God” (cf. Hos 2:23; Deut 26:17, 18).²³

The covenant bond or union whereby Christ joined the church to himself is analogous to the one flesh union of a husband and wife in their marriage covenant (Eph 5:22-32). Just as God’s people are God’s treasured possession, so should spouses cherish each other. God’s Word establishes and imposes the standards for marriage; a couple’s consensual solemn commitment and sexual union are fundamental in establishing a marriage; covenant love and loyalty are demands of marriage; and marital infidelity is a serious (and sanctioned) breach of the marriage covenant – yet we should not expect to find all of the features of a treaty-type covenant in a marriage covenant relationship. A marriage covenant between a man and a woman is analogous to a covenant relationship between God and his people in that each covenant is a relationship under sanctions of divine law, and ratified by solemn vows and/or oath signs. Both covenants also involve grace, love and trust, and have a legal or contractual aspect.

Emphasizing this covenantal perspective Kostenberger defines marriage as “*a sacred bond between a man and a woman instituted by and publicly entered into before God (whether or not this is acknowledged by the married couple), normally consummated by sexual intercourse.*”²⁴ Similarly, John Stott defines marriage as “an exclusive heterosexual covenant between one man and one woman, ordained and sealed by God, preceded by a public leaving of parents, consummated in sexual union, issuing in a permanent mutually supportive partnership and normally crowned by the gift of children.”²⁵ Jay Adams cautions

that marriage must not be equated with sexual union alone because “sexual relations do not constitute marriage,” and “[s]exual relations *per se* do not *make* a marriage and do not *break* a marriage.”²⁶ While it is true that sexual intercourse, in and of itself, is not constitutive of marriage, sexual union is an essential aspect of the establishment of a marital relationship. In this regard Hugenberg aptly points out that while a solemn declaration or *verba solemnia* were ordinarily used “as the requisite covenant-ratifying oath for marriage,” “sexual union likewise functioned as a mandatory covenant-ratifying oath sign for marriage.”²⁷

Hugenberg posits that “sexual union (*copula carnalis*), when engaged in with consent (i.e., both parental, in the case of dependent daughters, and mutual), was understood as a marriage-constituting act and, correspondingly, was considered a requisite covenant-ratifying (and renewing) oath-sign for marriage, at least in the view of certain biblical authors.”²⁸ Hugenberg has persuasively demonstrated that, as a covenant, marriage is accompanied by a ratifying oath, i.e., the *verba solemnia* or solemn declaration of the commitment undertaken, and/or an oath-sign, i.e., the sexual union of the couple.²⁹

Hugenberg suggests that

because of the necessarily private, though no less binding, nature of sexual union as an oath-sign, the complementary *verba solemnia* were especially appropriate as they offer essential public evidence of the solemnization of a marriage.³⁰

Similarly, Craig Blomberg says that “covenant” is the best term to describe the two-fold aspect of marriage, i.e., “a commitment of one’s fundamental allegiance and an interpersonal relationship culminating in sexual intimacy,” and that the message of Matt 19:5 is that “both a commitment and a sexual consummation create a marriage,” and Blomberg refers to divorce as a covenant-breaking.³¹ Thus, marriage involves a certain public aspect as the

couple vows and covenants before God and each other to pursue a faithful, exclusive, and monogamous relationship for as long as they “both shall *live*” rather than only for so long as they “both shall *love*” one another (see Mal 2:13-15).³² The sexual union between marriage partners depicts (but does not exhaust fully) the “one-flesh” reality of the marriage bond, and “sexual union is the indispensable means for the consummation of marriage both in the Old Testament and elsewhere in the ancient Near East.”³³ God “blessed” the first marriage (Gen 1:28a) and he continues to bless covenant loyalty today.

Thus, God’s original intent of this creation ordinance “from the beginning” was that a husband and wife be united in a permanent (lifelong) and sexually exclusive marriage relationship (Matt 19:4-6, 8), and this understanding of the covenantal nature of marriage is the context within which the matter of divorce and remarriage must be examined. For if God desires fidelity and covenant loyalty in marriage, and in his mercy pursues reconciliation and restoration, then the church as a whole, and married individual members of the church, must endeavor to preserve and protect the sanctity, unity, and purity of marriage. Certainly we must be vigilant to preserve and uphold marriage, but we must also be willing to consider whether some overt sexual sin or its equivalent breach of the marriage covenant relationship in this sinful world so strike at the fundamental one-flesh bond of marriage that God’s Word permits the righteous renunciation of the marriage vow. In such cases where a divorce ground is biblically permissible, we must seek to make sure that the divorce itself is also just, right, and fair in every respect.

Chapter Two: ANCIENT PROLOGUE TO NEW TESTAMENT TEACHING: BIBLICAL AND CULTURAL BACKGROUND

Introduction

In the first chapter the covenantal character of marriage was discussed. The marriage covenant is an elected sacred bond or relationship between a man and a woman under sanctions of divine law publicly entered into through the couple's vows or *verba solemnia* of the commitment undertaken and ratified or consummated by their sexual union. Throughout the ancient Near East, sexual union was similarly an essential means for marriage consummation. Although the term "covenant" had broad application in the ancient Near East,

the primary meaning of "covenant" was an agreement between two parties that was mutually binding. . . . The legal basis of marriage was called "covenant" because . . . it was an agreement between two parties that contained stipulations and sanctions.³⁴

The Hebrew word *berith* is translated as both covenant and contract, and the "Old Testament word "covenant" shared the same meaning throughout the ancient Near East."³⁵ Instone-Brewer asserts that the "phrase "marriage contract" is therefore much better than "marriage covenant" for conveying the correct meaning in modern English," and the terms may be used "synonymously when referring to the legal framework for marriage in biblical, ancient Near Eastern, and rabbinic sources."³⁶ However, a unique aspect of the marriage covenant presented biblically is that God establishes the standards for marriage, and the human marriage covenant both depicts the divine covenant between God and man and represents the covenant bond whereby Christ has joined the church to himself. Taking into account these considerations, perhaps it is best to see biblical marriage as a covenant with contractual

features which would help us to avoid misunderstanding the marriage covenant as a mere contract. This chapter will examine contractual aspects incident to formation of marriage throughout the ancient Near East as well as Jewish marriages and Roman and Greek marriage customs during the New Testament period.

The Old Testament biblical concept of the marriage “covenant” is similar to that of surrounding ancient Near Eastern cultures in the sense of its involving contractual provisions that provide security to the marriage, and to the bride in the event of the husband’s death or a divorce in which she is not at fault, such as payments (“bride-price” paid by groom to the bride’s father, and “dowry” paid by the bride’s father to the bride or to the groom to be held in trust for the bride), stipulations concerning support and other obligations, and sanctions.³⁷ While many of these marriage covenants were formalized in writing, most ancient Near Eastern marriages involved a verbal ceremony before witnesses and did not have a written document.³⁸ Michael Satlow has concluded that the

surviving Jewish marriage documents are very similar to their non-Jewish counterparts. Little in them can be said to be distinctively “Jewish.” The only legal condition that is unique to the Jewish documents is a stipulation that should the wife predecease her husband, her male children (by her current husband) will inherit her marriage settlement and her female children (by her current husband) will be entitled to support from her husband’s estate.³⁹

The ancient Near Eastern marriage contracts were not constitutive of marriage, their main emphasis was on economic aspects of the relationship, and some addressed the manner in which each spouse should treat the other spouse.⁴⁰

Old Testament Background

The Decalogue (Seventh Commandment), Deuteronomic Law, and Holiness Code proscribe adultery demanding that “[y]ou shall not commit adultery” (Exod 20:14; Deut.

5:18; Lev. 18), and the stated penalty was death (Lev 20:10; Deut 22:22). Lev 20:10 provides that “If a man commits adultery with another man’s wife – with the wife of his neighbor – both the adulterer and the adulteress must be put to death.” Leviticus 20 proceeds to describe other prohibited sexual misconduct, i.e., sexual relations with certain relatives (Lev 20:11-12, 14, 19-21), homosexual relations (Lev 20:13), bestiality (Lev 20:15, 16), incestuous marriage (Lev 20:17), and the prescribed sanctions or consequences which vary depending on the particular offense. If a man engaged in sexual intercourse with a girl who was neither married nor betrothed, the girl’s father would decide whether to accept the man as a husband for his daughter (Exod 22:16, 17; Deut 22:28, 29). The mere act of sexual intercourse was not constitutive of the marriage relationship. If the offending man were deemed acceptable to the girl’s father, then the man was required to pay the bride-price of 50 shekels of silver and marry the girl (Exod 22:16; Deut 22:29). Because he had violated the girl, he relinquished any right to divorce her (Deut 22:29). If the girl’s father rejects the man as a husband and refuses to give his daughter to him, the rejected one still must pay the bride-price for virgins (Exod 22:17). This compensation would alleviate the economic effects of diminution of a future bride-price and would make the violated girl a more attractive prospective wife to another man. Concerning the “bride-price,”

Biblical law had a stock phrase “*mohar* of the virgins/maidens” (Exod 22:15-16). It was a gift (Gen 34:12) by the groom to the father of the bride, effecting betrothal (2 Sam 3:14). It might be paid in labor (Gen 29:18) or in kind (1 Sam 18:25) and it(s value) was normally returned to the young couple – witness the righteous indignation of Jacob’s wives that their father Laban “sold us and indeed consumed our money” (Gen 31:15). Similar payments and practice of return were found throughout the ancient Near East.”⁴¹

A man might also give gifts to his bride (Gen 24:22), and a dowry (*nedunyah*) would be paid by the bride's father for the benefit of the bride (Jud 1:14-15; 1 Kgs 9:16).

Some laws sought to protect a woman from her husband's abuse and slander. For example, a man's falsely slandering his wife's character by claiming that she was not a virgin when they married resulted in the husband being whipped and fined 100 shekels (twice the 50 shekels bride-price), payable to the woman's father, and the accusing husband forfeited his right of divorce (Deut 22:13-21). If a husband became jealous and accused his wife of marital unfaithfulness, a process including the wife swearing an oath and drinking the "water of bitterness" was established whereby the priest would determine whether she was guilty or innocent; if she was guilty, God would make her sick and unable to bear children (Num 5:27), and if she was innocent she would be able to bear children. A wife was also legally assured of her food, clothing, and "marital rights," i.e. sexual intercourse with her husband (Exod 21:10).⁴² Moreover, during the first year of marriage the husband was not to be pressed into military duty "or be liable for any other public duty"; he was to be free at home that year to spend it happily with his new wife (Deut 24:5).

Despite the permanent covenantal nature of marriage God had established from the beginning, Mosaic Law allowed divorce (Deut 24:1-4) because of man's "hardness of heart" (Matt 19:8). Deuteronomy 24:1-4 regulates remarriage upon divorce by prohibiting the divorced couple from remarrying each other after an intervening marriage by either one with a third person because this would be "an abomination before the LORD." Rather than requiring or encouraging divorce this passage actually cautions against a husband's casual divorce that may lead to the divorced spouse becoming unclean to him by a subsequent

relationship. A husband's lightly discarding his marriage vows to his wife displeases God as it evinces faithless covenant-breaking, jeopardizes raising Godly children thereby diluting the covenant community, influences one's spirit to faithlessness, and often evinces hatred rather than covenant love (Mal 2:13-16). Scripture sometimes symbolically depicts entering into a marriage covenant as a man covering a woman with his garment (Ezek 16:8; Ruth 3:9),⁴³ and God says that "the man who hates and divorces . . . covers his garment with violence" (Mal 2:16a, ESV).

In Malachi one of the reasons that God is said to have rejected the food offerings of his people is "Because the LORD was witness between you and the wife of your youth, to whom you have been faithless, though she is your companion and your wife by covenant" (Mal 2:14, ESV). The covenant mentioned in this verse "refers to a literal marital covenant between 'you,' i.e., the husband, and 'your wife.'"⁴⁴

Malachi 2:16 has presented interpretive difficulties. This verse has often been cited and quoted as indicating God's general condemnation of divorce, particularly because translators have typically rendered the verse as God declaring "I hate divorce" (NIV, RSV, NASB, NRSV, NLT). Accordingly, most interpreters have argued that because God hates divorce, then God unconditionally condemns divorce and does not condone any divorce.⁴⁵ While the Bible certainly reflects that God detests divorce, the English Standard Version captures the proper sense of this particular verse as follows: "For the man who hates and divorces, says the LORD, the God of Israel, covers his garment with violence, says the LORD of hosts. So guard yourselves in your spirit, and do not be faithless" (ESV). Rather than generally denouncing all divorce, the text condemns "what may be called 'unjustified

divorce,' that is, divorce based on aversion."⁴⁶ Malachi's concern is "to condemn such divorces as unethical and, as an instance of infidelity . . . or covenant breaking (cf. 2:14), liable to divine judgment: 'Therefore, take heed to yourselves!'"⁴⁷

Ancient Near East

The ancient Near Eastern legal texts of Ur-Nammu (Sumerian, twenty-first century BCE), Laws of Eshnunna (Old Babylonian, nineteenth or eighteenth century BCE), Hammurabi (Old Babylonian, eighteenth century BCE), Hittite laws (seventeenth to fifteenth centuries BCE) and Middle Assyrian (twelfth century BCE) also addressed the matter of adultery, and all of these ancient Near Eastern texts, as well as the Laws of Lipit-Ishtar (Sumerian, nineteenth century BCE) and seventh century BCE Neo-Babylonian laws, address marriage, divorce, and family.⁴⁸ Ancient Near Eastern laws evidenced a primarily economic interest in regulating marriage, "and these codes only attempt to define the limits of marriage in the context of economic ramifications."⁴⁹

Sumerian Law – Ur-Nammu Law Code and Laws of Lipit-Ishtar (Twenty-first and Nineteenth Century BCE)

Among the 37 preserved casuistic laws from the twenty-first century BCE Sumerian Ur-Nammu law code⁵⁰ are several that deal with adultery, divorce, and breach of a marriage contract. If a man's wife seduces and has sexual relations with another man, she is to be killed, but the other man is to be set free, and a man who "deflowers" the virgin wife of another man shall die.⁵¹ With respect to divorce it is provided that a man who divorces his "primary" wife must pay her one mina [60 shekels] of silver; however, if a man divorces a widow, the payment is only one-half mina [30 shekels] of silver, but the man does not have to pay the widow any silver if they slept together "without there having been any marriage

contract.” Thus, neither a marriage contract nor sexual intercourse alone was constitutive of marriage. The law code also addressed the situation where a father reneged on his pledge to give his daughter to a prospective son-in-law:

If a (prospective) son-in-law entered the house of his (prospective) father-in-law, but his father-in-law later gave [his daughter (i.e., the prospective bride) to] another man, he (the father-in-law) shall return to him (i.e., the rejected son-in-law) *two*-fold the amount of bridal presents he had brought.

The nineteenth century BCE Laws of Lipit-Ishtar, Sumerian king of the city of Isin (r. 1934-1924 BCE), also require this two-fold return of the “betrothal” or “bride-wealth” by the father-in-law who rejects the marriage contract, and states additionally that the rejected man’s companion to whom the father-in-law gives his betrothed daughter may not marry her (Lipit-Ishtar laws 29).⁵² The thirty-eight extant Laws of Lipit-Ishtar focus on civil law and contain several other laws that deal with inheritance, dowry rights, financial support and marriage (Lipit-Ishtar laws 20-33).⁵³ The laws protect the right of a “first wife” over that of a “favorite one” who would have only the rights of a second wife (Lipit-Ishtar laws 28).⁵⁴ Moreover, if a young married man has sexual relations with a street prostitute and the judges order him to stay away from the prostitute, even if he divorces his wife and gives her the divorce settlement silver, he still may not marry the prostitute (Lipit-Ishtar laws 30).⁵⁵

Old Babylonian: Laws of Eshnunna and Code of Hammurabi
(Nineteenth and Eighteenth Century BCE)

Old Babylonian law addresses marriage, the necessity of a marriage contract to establish the married status of a couple, marriage-price, betrothal-price, dowry, divorce, and related inheritance laws issues of bride-money (especially Code of Hammurabi 128-184).⁵⁶

Similar to Sumerian Law the Old Babylonian Laws of Eshnunna⁵⁷ require twofold

restoration of the bride-money when a father-in-law *accepts* a man *in servitude*, but then gives his daughter to someone else (Eshnunna 25). The Code of Hammurabi also requires twofold payment of the bride-wealth by the father who rejects the one entitled to marry his daughter (Hammurabi 160, 161); however, if the man gives the bride-wealth and then reneges on going through with the marriage, then the bride's father may keep the bride-wealth (Hammurabi 159). According to Laws of Eshnunna 27-28, a woman's status as a wife is contingent upon the man having formalized a marriage contract with the woman's parents. However, a significant aspect of this is simply to determine whether a couple is married in order to regulate what constitutes adultery. For example, a woman who cohabits with a man even for as long as a year is not considered his wife if he has not concluded a formal marriage contract with her parents (Eshnunna 27), but if he concludes a formal marriage contract with her parents and he cohabits with her, then "When she is caught with a(nother) man, she shall die" (Eshnunna 28). The Code of Hammurabi also provides that "If a seignior acquired a wife, but did not draw the contracts for her, that woman is no wife" (Hammurabi 128).

The Old Babylonian Laws also attempt to provide some economic protection for a scorned wife and the couple's children's financial welfare: A man who divorces his wife who is mother of his children and then marries another "shall be driven from his house and from whatever he owns and may go after him who will accept him" (Eshnunna 59). The Code of Hammurabi expands upon this economic protection and remarriage prospects for a woman who has borne children to her husband: if he decides to divorce her "they shall return her dowry to that woman and also give her half of the field, orchard and goods in order that

she may rear her children” and after the children have been raised she is to receive “a portion corresponding to (that of) an individual heir in order that the man of her choice may marry her” (Hammurabi 137). When the married couple has not had children together, upon divorce the woman is protected financially, but not to the same extent: her husband “shall give her money to the full amount of her marriage-price and he shall also make good to her the dowry which she brought from her father’s house and then he may divorce her” (Hammurabi 138). In the event there had been no marriage-price, then the man divorcing his wife is required to give her a divorce-settlement of one mina [60 shekels] of silver, and one-third mina [20 shekels] if he is a peasant (Hammurabi 139, 140). The Code of Hammurabi also provides for an innocent wife to recover her dowry under certain circumstances where she repudiates her husband, stating that if

a woman so hated her husband that she has declared ‘You may not have me,’ her record shall be investigated at her city council, and if she was careful and was not at fault, even though her husband has been going out and disparaging her greatly, that woman, without incurring any blame at all, may take her dowry and go off to her father’s house (Hammurabi 142).⁵⁸

Hittite Laws: Old Hittite Kingdom (Seventeenth to Sixteenth Century BCE)

The Hittite laws composed predominantly during the Old Hittite Kingdom (ca. 1650 – 1500 BCE) comprise approximately 200 laws many of which modernize or update earlier civil and criminal laws.⁵⁹ The laws address such matters as dowry, entitlement to bride-price upon abrogation of a marriage contract, consequences of adultery, the custody disposition of children upon divorce and other matters. If a man marries and takes his wife into his house, he takes her dowry with her, and if she dies, the husband keeps her dowry. However, the man will not keep her dowry if they have children and she dies in her father’s house (Hittite

laws 27). The Hittite laws are similar to the Sumerian and Old Babylonian laws with respect to the double compensation to be paid by the betrothed girl's parents upon abrogation of a marriage contract, and similar to the Old Babylonian laws that provide for forfeiture of the bride-price by a man who refuses to go through with marriage:

If a girl is betrothed to a man and he has given the bride-price for her, but the parents subsequently abrogate it (i.e. the contract) and withhold her from the man, they (i.e. the parents) shall make double compensation (Hittite laws 29);

If the man has not yet taken the girl and refuses her, he forfeits the bride-price which he has brought" (Hittite laws 30).

A Hittite law provides for disposition of the couple's children upon divorce:

If a free man and a slave-girl (are) *lovers* and they cohabit, he takes her for his wife, they found a family and have children, but subsequently, either (as) they quarrel or (as) they reach a friendly agreement, they break up the family, the man receives the children, but the woman receives one child (Hittite laws 31);

Several Hittite laws address the effect of marriage upon the wife's social status under various marriage scenarios and the impact of payment or non-payment of the bride-price (Hittite laws 32-36, 175). Additionally, there are laws respecting sexual relations with certain relatives or persons related to one another, rape, and bestiality (Hittite laws 189-200). And concerning the consequences of adultery, the Hittite laws provide that if a husband finds his wife with another man "he may kill them, there shall be no punishment for him" (Hittite laws 197), but

If he brings them to the gate of the palace and declares: 'My wife shall not be killed' and thereby spares his wife's life, he shall also spare the life of the adulterer and shall mark his head. If he says, 'Let them die both of them!'... The king may order them killed, the king may spare their lives (Hittite laws 198).⁶⁰

Middle Assyrian Laws: Tilgath-Pilser
(Eleventh Century BCE)

The Middle Assyrian laws comprise a series of laws collected by Tiglath-pilser (1114-1076 BCE) covering two hundred years of royal edicts dating from fourteenth century BCE.⁶¹ As with the Hittite laws, the Middle Assyrian laws provide that in the case of adultery, if the husband spares his offending wife from execution, the other man will also be spared: If a man discovers another man with his wife, upon prosecution and conviction of the man, both shall be put to death, except that if the woman's husband "let his wife go free" the other man shall also "go free" (Tablet A 15). A man is entitled to take back the betrothal gift if the prospective bride dies before the marriage was consummated or he may marry one of her sisters if the father-in-law desires (Tablet A 31). The ownership of property in the case of a widow is determined by whether the widow moved into the man's house or the man moved into her house:

If a widow has entered a [man's] house (as wife), anything at all that she brings becomes wholly her husband's; however, if the [man] has come in with the woman, anything at all that he brings becomes wholly the woman's (Tablet A 35);

A law that addresses a husband's neglect of his obligation to provide food, clothing and oil to a wife (cf. Exod 21:10) provides that

If a woman is still living in her father's house or her husband made her live apart and her husband has gone off to the fields, without leaving her either oil or wool or clothing or food or anything at all (and) without having even an ear of grain brought to her from the field, that woman shall remain true to her husband for five years (and) not go to live with a(nother) husband . . . If she has no sons, she shall wait for her husband for five years; on the advent of the sixth year she may go to live with the man of her choice; her husband upon coming back may not claim her; she is free for her later husband (Tablet A 36);

Some provisions address financial aspects of divorce:

If a [man] wishes to divorce his wife, if it is his will, he may give her something; if it is not his will, he need not give her anything; she shall go out empty (Tablet A 37);

If a woman is still living in her father's house and her husband has divorced her, he may take back the ornaments which he himself bestowed on her; he may not claim the marriage-price which he brought since it is vested in the woman (Tablet A 38);

Middle Assyrian law required a public ceremony involving a vow and veiling in order to establish whether a concubine has become a wife:

If a [man] wishes to veil his concubine, he shall have five (or) six of his neighbors present (and) veil her in their presence (and) say, "She is my wife," (and so) she becomes his wife. A concubine who was not veiled in the presence of the men, whose husband did not say, "She is my wife," is not a wife; she is still a concubine (Tablet A 41);

A law also addressed the effect of a man's death or desertion following the giving of betrothal presents but prior to consummation of the marriage:

If the (man) either poured oil on (her) head or brought betrothal-presents (and) the son to whom he assigned the wife either died or fled, he may give (her) to whichever he wishes of his remaining sons from the oldest son to the youngest son who is at least ten years old ... If there is no son, he shall return in full as much as he received, precious stones and whatever is not edible (Tablet A 45).

In addressing the financial settlement imposed on a man who ravishes an unmarried virgin, the Middle Assyrian laws do not distinguish between the place of occurrence, such as in the city or rural country, but the consequences vary depending upon whether the ravisher is married and whether the virgin's father wishes them to marry (Tablet A 55, A 56). Several of the laws cover bride-price, the wife's duty to wait for her husband and "remain true" to him in various circumstances where he is away or has been captured, family financial support responsibilities are described, and inheritance issues are addressed.

Neo-Babylonian Laws ***(Seventh Century BCE)***

The seventh century BCE Neo-Babylonian laws comprise a collection of fifteen laws, “of which only nine are well preserved.”⁶² Five of the laws relate to marriage, dowry or inheritance (#9-13, 15):

In the case of a [man] who gave his daughter (in marriage) to a(nother) man’s son and the father set down a certain amount on the document and gave (it) to his son and the man set the dowry for his daughter and they wrote a contract with one another – they may not contest their contract; the father may not make a deduction from anything that he wrote down for his son on the contract and indicated to his (son’s) father-in-law. If, when fate carried off the father’s wife, he has acquired another wife and she has borne him children, the children of the later (wife) shall take one-third of the remainder of his property (#9);⁶³

When a man who

promised a dowry to his daughter or wrote a deed for her, but whose property later dwindled, shall give his daughter a dowry commensurate with his property that is left; the father-in-law and son-in-law may not join together to contest (it) (#10);

Where a man has given his daughter a dowry and she dies without children, her dowry shall revert to her father’s house (#11); and

In the case of a wife, whose dowry her husband took, who had no son (or) daughter and whose husband fate carried off – a dowry shall be given her from her husband’s property as large as the dowry should be. If her husband has presented her with a marriage-gift, she shall take her husband’s marriage-gift along with her dowry and then she is quit.⁶⁴ If she has no dowry, the judges shall appraise her husband’s property (and) something commensurate with her husband’s property shall be given her (#12).

Elephantine (Upper Egypt) ***(Fifth Century BCE)***

Some of the primary evidence of marriage, divorce, and family life in second temple Judaism derives from archives of legal documents from the fifth century BCE Jewish military colony located in Upper Egypt at Elephantine.⁶⁵ The discovered surviving

documents include those of a woman Mibtahiah from a prominent family: deeds relating to her first marriage; a letter of settlement that refers to a marriage settlement; and the contract of a subsequent marriage.⁶⁶ With respect to Mibtahiah's marriage in 459 BCE to Jezaniah a deed from her father, Mahseiah son of Jediniah, a Jew of Elephantine, gave Mibtahiah a house,⁶⁷ and a separate document grants certain use and enjoyment (usufruct) rights to Mibtahiah's husband, indicating that her husband should

(5) . . . Build and equip that site . . . and dwell thereon with your wife. But you may not sell that house or give it as a present to others; only your children by my daughter Mibtahiah shall have power over it after you two. If tomorrow or some other day you build upon this land, and then my daughter divorces you and leaves you,⁶⁸ she shall have no power to take it or give it to others; only your children by (10) Mibtahiah shall have power over it, in return for the work which you shall have done. If, on the other hand, she recovers from you, she [may] take half of the house, and [the] othe[r] half shall be at your disposal in return for the building which you will have done on that house. And again as to that half, your children by Mibtahiah shall have power over it after you. If tomorrow or another day I should institute suit or process against you and say I did not give you this land to build on and did not draw up this deed for you, I (15) shall give you a sum of 10 *karshin* by royal weight, at the rate of 2 R to the ten, and no suit or process shall lie. This deed was written by 'Atharshuri b. Nabuzeribni in the fortress of Syene at the dictation of Mahseiah. Witnesses hereto (signatures).⁶⁹

Mibtahiah's father wanted to preserve this property in his family so that it would pass to his biological heirs, and to provide for its control in the event of a divorce between his daughter and son-in-law. He took into account any improvements to the property by his son-in-law's efforts, as well as the appropriate disposition depending on the circumstances of a divorce and whether Mibtahiah successfully prosecutes her case.

In approximately 449 BCE, after her first marriage had ended, Mibtahiah contracted a marriage to a builder named Ashor (or Eshor). The written contract records Ashor's words to Mibtahiah's father, Mahseiah:

I have [co]me to your house that you might give me your daughter Mipht<ah>iah in marriage. She is my wife and I am her husband from this day for ever. I have given you as the bride-price (5) of your daughter Miphtahiah (a sum of) 5 shekels, royal weight. It has been received by you and your heart is content therewith. (Lines 6-16, Miphtahiah's dowry.)⁷⁰ (17) Should Ashor die tomorrow or an[othe]r day having no child, male or female, by his wife Mi[phtah]iah], Miphtahiah shall be entitled to the house, chattels and all worldly goods of Ashor. (20) Should Miphtahiah die tomorrow or <another> day having no child, male or female, by her husband Ashor, Ashor shall inherit her property and chattels. Should [Miph]tahiah, tomorrow [or] another [d]ay stand up in a congregation and say, I divorce my husband Ashor, the price of divorce shall be upon her head: she shall sit by the balance and weigh out to [As]hor a sum of 7 shekels 2 R. But all that which she has brought in (25) with her she shall take out, shred and thread, and go whither she will, without suit or process. Should Ashor tomorrow or another day stand up in a congregation and say, I divorce my [wif]e Miphtahiah, [he shall] forfeit her bride-price, and all that she has brought in with her she shall take out, shred and thread, on one day at one stroke, and shall go whither she will, without suit or process. And [whoever] arises against Miphtahiah (30) to drive her away from the house, possessions, and chattels of Ashor shall give her the sum of 20 *karash*, and the law of this deed shall [. . .] for her. And I shall have no right to say I have another wife besides Mipht<ah>iah or other children besides any Miphtahiah may bear to me. If I say I have chi[ldren] and wife other than Miphtahiah and her children, I shall give to Miphtahiah a su[m] of 20 *karash*, royal weight. (35) Neither shall I have the right to [wre]st my property and chattels from Miph[tah]iah. If I take *them* away from her (erasure), I shall give to Miphtahiah [a sum of] 20 *karash*, royal weight. [This deed] was written by Nathan b. *Ananiah* [at the dictation of Ashor]. Witnesses: (signatures).⁷¹

That this agreement relates to Mibtahiah and Ashor's marriage is clear from the verbal formula "She is my wife and I am her husband," and it confirms that the bride-price (*mohar*) of five shekels had been paid to Mibtahiah's father. It acknowledges that Mibtahiah brought into the marriage a dowry worth 65.5 shekels and other goods that she would be entitled to retain upon divorce. If Ashor divorced Mibtahiah, he not only was required to return her dowry intact, but he also forfeited the bride-price. However, if Mibtahiah divorced him, she would retain her dowry but suffered a financial penalty of seven and one-half shekels to be

paid by her to her husband. Upon Mibtahiah's death around 416 BCE, her two children from her marriage to Ashor inherited the house left to her by first husband.⁷²

Satlow discusses a second mini-archive from Elephantine which includes the 449 BCE marriage contract of Tamet and Ananiah, and the 420 BCE marriage contract of their fourteen year old daughter Jehoishma.⁷³ The marriage contract between Tamet and Ananiah provides

Tomorrow or (the) next day, should Anani stand up in an assembly and say: "I hated Tamet my wife," silver of hate(d) is on his head. He shall give Tamet silver, 7 shekels, 2 q(uarters) and all that, she brought in in her hand she shall take out, from straw to string,

and similarly, if Tamet stands up in the assembly and says "I hated my husband Anani" she would have to pay him the specified silver and she would keep what she brought into the marriage.⁷⁴ Due to her handmaiden status Tamet's options were somewhat limited as she was not given the choice of going wherever she desired or returning to her father's home.

"She was apparently not forced to leave Anani's domicile but might remain in his household as a married woman, albeit demoted in status (akin to the "hated" Leah [Gen 29:31] and the hated wife of Deut 21:15-17."⁷⁵

Jehoishma's dowry was provided by her adoptive brother, and the marriage contract contains substantive similarities to Tamet and Anani's contract and Mibtahiah's marriage contract. The repudiation statement was expanded to include repudiation by conduct (such as taking an additional spouse or refusing conjugal rights) as well as by declaration, and the "law of hatred" was applied to both.⁷⁶ The stipulation concerning divorce provides that the spouse who commenced an action of "hatred" would lose the value of the *mohar* (bride-price). The contract also provided for the surviving spouse to inherit the other's property in

the event of death leaving no children, obligations were put on the husband and wife to engage in sexual relations, and the one who provided Jehoishma's dowry waived any right to subsequently recover the dowry.⁷⁷

These marriage documents provide information about the legal and financial features of marriage, divorce and family inheritance as practiced at Elephantine. The prominent features include: 1) The marriage contract was between the bridegroom and the father or person with authority over the bride; 2) The bridegroom proclaims that "she is my wife and I am her husband from this day for ever;" 3) The bridegroom pays the bride-price (*mohar*) to the bride's father or person with authority over the bride; 4) The contract is drafted, specifying the bride's dowry, and the stipulations concerning marriage dissolution; and 5) The names of witnesses are subscribed to the document.⁷⁸ The divorce formula is encompassed in solemnly proclaimed words such as "I divorce you" or "I renounce all claim on you," and provision is made for disposition of dowry and property rights.

Distinctions Between Mesopotamian and Israel Law

There is a significant distinction between Mesopotamian law, where an offense is ultimately viewed in relation to society, and Israel's law where the law represents the demands of God on his people and the offense is ultimately against God.⁷⁹ While Mesopotamian casuistic law sought to maintain order in society, Israel's laws were intended to do much more than insure the smooth functioning of society: revelation from God provided a foundation for Israel's casuistic and apodictic laws and established Yahweh as the source of the norms. Israel expresses this world order as the commands of God contained in both apodictic and casuistic formulations: "It also addresses adherence to a world order in

the genre we identify as wisdom literature. Thus law and wisdom could be considered two sides of the same coin.”⁸⁰ Egyptian law tends to focus on the concept of *ma’at*, i.e., harmony of the universe, order and justice rather than compiling collections of legal data and Egyptian wisdom literature such as Instruction of Amenemope shares some of the common life concerns expressed by the book of Proverbs.

Although Biblical and ancient Near Eastern law and wisdom literature may share some similarities, the Bible places a greater emphasis on religious or moral law, provides an apodictic basis for casuistic formulations, and a priority on adherence to covenant and maintenance of holiness in conformity to God’s revelation.⁸¹ Wisdom in Israel is relational, and the wise person is one who embraces an intimate relationship with wisdom, personified as a Woman (Prov 3:18). When we embrace wisdom we embrace a relationship with Yahweh and with Jesus Christ, and we pursue a life that conforms to his holy character. One does not refrain from adultery merely because adultery disrupts society; adultery is prohibited because it goes against the absolute standard of morality and righteousness by which Yahweh himself is characterized! Throughout the ancient Near East law codes were not exhaustive or comprehensive and generally were regularly disregarded in actual life and had little bearing upon legal and social practice.⁸² Mesopotamian judges consistently omitted any reference to law codes in their court decisions preferring instead to be guided by tradition, public feeling, and their own estimate of the situation confronting them.⁸³

Mishnah

The right to divorce under Jewish law was generally understood to be reserved to the husband.⁸⁴ As previously shown, in the ancient Near East women were allowed to divorce

their husbands although their rights to divorce were not uniformly as extensive as the rights of a husband, and provisions were made concerning economic rights and sanctions upon divorce. Instone-Brewer notes a significant difference between the Pentateuch and other ancient Near Eastern law regarding the practice of divorce: the divorce certificate, which was to be given to the wife, documented their divorce, and permitted her to remarry free of fear of a future claim from the former husband who gave her the certificate of divorce.⁸⁵ Among the sixty-three tractates of the second century CE Mishnah in the third division or order *Nashim* (“Women”) are *Ketuboth* (“Marriage Deeds”), *Gittin* (“Bills of Divorce”), and *Kiddushin* (“Betrothals”), that provide interpretive background concerning Judaism marriage and divorce customs.⁸⁶

The Mishnah interpreted the valid processes concerning the writ of divorce: delivery procedure and requirements; formalities affecting the validity such as it being written and signed in the presence of witnesses, and properly attested by appropriate witnesses; the invalidating effect of improper placement of signatures of witnesses; provisions concerning retraction and the manner in which the husband could declare the writ’s nullity prior to the writ reaching the wife’s possession or certain other circumstances (*m. Git.* 4:1, 6:1-3); consequences of a deficient letter of divorce (*m. Git.* 8:5-8:9). A woman was qualified to write her own writ of divorce and a man may write his quittance.⁸⁷ *Mishnah Git.* 4:3 provides that a widow may collect payment of her marriage settlement from the orphans’ property upon taking “an oath that she had not yet been repaid” or, if the orphans prefer, that she vow “to the genuineness of her claim.”⁸⁸ One who divorces his wife due to her evil reputation, i.e., adultery, may not take her back.⁸⁹ A writ of divorce is invalid without the

essential formula “*Behold, thou art permitted to any man*” and according to Rabbi Judah “*Let this be from me thy letter of expulsion [or dismissal, divorce] and writ [or deed] of release and deed of dismissal that thou mayest be wedded to whatever man thou desirest*” (*m. Git. 9:3*).⁹⁰

The Mishnah specifies three types of divorce writs that are invalid: 1) one written in the man’s own handwriting that lacks the signature of witnesses; 2) one that has the signatures of witnesses, but lacks a date; and 3) one that is dated, but has the signature of only one witness.⁹¹ The accepted rabbinic ruling is that even if the divorce writ lacks witnesses’ signatures it may be valid if it is delivered to the wife in the presence of witnesses.⁹² If a report circulates around town concerning a woman that “she is divorced,” then she is considered divorced unless there is some good reason to doubt the report, such as where the divorce was conditional or the husband threw her betrothal token to his wife and it is not certain whether the token landed closer to her or to him.⁹³ These are just some of the examples of how rabbinic teaching sought to regulate the divorce certificate, but the extent to which such teaching was generally followed is not clear.

Roman and Greek Marriage

There are “formal similarities” between Jewish marriages and the Roman and Greek customs.⁹⁴ Generally, during the New Testament period Jewish marriages were contracted in youth, with the bride ordinarily marrying between the ages of twelve and fourteen, and men marrying at the later ages of eighteen to twenty-four years old, with Greek men typically waiting until around thirty years old.⁹⁵ The marriage contract was contracted between the families in two stages: 1) the betrothal, and 2) the wedding culminating in the husband

taking the bride into his home.⁹⁶ The bridegroom would pay at least part of the bride-price (*mohar*) or deliver a deed.⁹⁷ The man and woman would become betrothed through a legal agreement, customarily a written document (*ketubah*), with the bride's father that contained the husband's obligations to his wife and a sum of money as the marriage obligation to which she was entitled in case of divorce or his death.⁹⁸ The betrothal was considered a valid marriage and could be dissolved only by divorce.⁹⁹ The divorce document contained the husband's and wife's names, the date, the husband's express acknowledgement that the wife was free and was permitted to contract a new marriage, and two other men witnessed and signed the document.¹⁰⁰

Roman marriages, arranged or consented to by the father, also usually occurred at an early age, and were generally solemnized in ceremonies before witnesses.¹⁰¹ Roman society recognized consent to live together with an attitude by which each regarded the other as a spouse (*affectio maritalis*) as constituting marriage, and marriages were registered so that children would be legitimate.¹⁰² Under Hellenistic influence, marriages were established "by consent" and could occur less formally, and they could be dissolved by divorce informally such as by simple verbal notice, orally or in writing, given by either or both spouses, and divorce was more readily available upon withdrawal of consent – by the wife as well as the husband.¹⁰³ Because Roman marriage was considered a "private act" grounded on the spouses' initial mutual consent, this consent was demonstrated by the public expression of an intention of maintaining it, and no civil or religious authority had the right to intervene as there was no official list of divorce grounds.¹⁰⁴ There were some financial consequences concerning the wife's dowry that varied with whose fault caused the divorce, including a

deduction from the wife's dowry if she was at fault or an expedited restoration of the wife's dowry might be required of a husband who was at fault.¹⁰⁵ The preservation of the wife's dowry and strict property division between spouses provided some protection for the wife and enabled the woman to be in a financial position to remarry.¹⁰⁶

Although there may not have been any Roman philosophic or religious barrier to divorce, moral criticism could arise from a communal sense of marital loyalty, or a negative reaction to one who casually discharges a dutiful wife who had borne children or was faultless, or toward a spouse who frivolously divorced.¹⁰⁷ Divorce, whether "formalizing either unilateral or consensual dissolution" of a marriage made remarriage permissible for either partner, though women who remarried following divorce or who had committed adultery were viewed more negatively than men who did so.¹⁰⁸ However, it appears that the "Roman jurists simply take it for granted that remarriage was normative."¹⁰⁹ Perhaps the most significant consequence of divorce was that the children would ordinarily reside in the household of their father resulting in some physical separation of the mother from the children.¹¹⁰ Treggiari points out that what most likely shocks scholars is "the Romans' freedom to divorce rather than known incidence" of divorce.¹¹¹

During the Hellenistic period, Greek cities

continued to rely on social criteria rather than objective legal definitions of marriage. Couples married through a series of social acts that probably did not often include a written legal instrument, although they might later draft a legal contract defining financial and other obligations.¹¹²

The establishment of marriage relationships throughout the ancient Near East, as well as in Roman and Hellenistic culture, exhibits contractual features that seek to secure, preserve, and define property rights and family inheritance rights. Marriage contracts

contained provisions for security of the marriage and the bride such as the bride-price and dowry for the bride's benefit, stipulations concerning support and other obligations, and sanctions in the event of divorce or breach of the contract. Divorce generally carried with it the right to remarriage, and the Jewish divorce certificate guaranteed this important right.

Chapter Three: DIVORCE: IS IT PERMISSIBLE?

Although “hardness of heart” may have resulted in Mosaic measures that recognized and regulated divorce, the presumption was that marriage vows should be kept. Accepting that divorce was neither a required nor preferred course of action, yet was permissible, questions arise about the biblically allowable grounds for divorce and whether a divorced person may remarry.

Jesus and the Rabbinical Debate: Rabbis Hillel and Shammai

Much of the debate about grounds for divorce involves interpretation of the situation in Deuteronomy 24:1 where a husband writes a certificate of divorce to his wife who “finds no favor in his eyes” (ESV, RSV, NASB), “becomes displeasing to him” (NIV), or “does not please him” (NRSV, NLT) because he has found “some indecency in her” (ESV, RSV, NASB), “something indecent about her” (NIV), “something objectionable about her” (NRSV), or “something wrong with her” (NLT). The Hebrew phrase (*erwat dabar*) which is variously translated as “some indecency,” “something indecent,” “something objectionable,” or “something wrong,” is the same word translated in Deuteronomy 23:14 as “anything indecent” (ESV, NIV, NRSV, RSV, NASB) or “any shameful thing” (NLT) with respect to keeping the Israeli war-camp clear of any impure or unclean things that would defile such holy place and cause Israel’s Divine Warrior to turn away and remove his presence. Thus, the phrase itself appears to be broad, and does not likely refer to adultery on the wife’s part as adultery was punishable by death rather than divorce (Deut 22:20-21; cf. Lev 20:10).¹¹³ Murray admits the difficulty in ascertaining the meaning of the “unseemly thing,” and states

While falling short of illicit sexual intercourse it may well be that the indecency consisted in some kind of shameful conduct connected with sex life. Or it may have

been some other kind of impropriety worthy of censure on the part of the husband.¹¹⁴

The breadth of the divorce ground for “some indecency” found in the wife was a point of contention between two first century rabbinic schools, that of the more conservative Rabbi Shammai and that of the more liberal Rabbi Hillel. The school of Shammai emphasized “indecency” and narrowly construed the phrase to refer to some unspecified lewd or unchaste sexual offense or misconduct; the school of Hillel stressed “anything” and broadly interpreted the phrase to include any matter such as a wife’s spoiling a meal or the husband finding someone more attractive.¹¹⁵ This common attribution to Hillel that one may divorce a wife on the ground of finding someone prettier than she appears to be an unfair interpretation – because even the more liberal Hillel would have required the “anything” to be “in her,” not in another woman. A more likely interpretation would be that even though it may be improper to divorce your wife solely on the basis of having found someone prettier, yet you must divorce your wife when you have found “anything” unseemly in your wife – even if it means you then pursue an otherwise improper relationship.¹¹⁶

The Pharisees attempted to thrust Jesus into this rabbinical debate when they tested him by asking, “Is it lawful to divorce one’s wife *for any cause*?” (Matt 19:3). Jesus’ response stresses that from the beginning God intended lifelong marriages (Matt 19:4-6). This answer prompted the Pharisees to further test Jesus by inquiring “why then did Moses command one to give a certificate of divorce and to send her away?” (Matt 19:7). Jesus replied that Moses *allowed* divorce due to man’s “hardness of heart” (Matt 19:8), but that “whoever divorces his wife, except for sexual immorality [*porneia*], and marries another, commits adultery” (Matt 19:9). In the Sermon on the Mount, Jesus taught that “everyone

who divorces his wife, except on the ground of sexual immorality [*porneias*], makes her commit adultery. And whoever marries a divorced woman commits adultery” (Matt 5:32). Jesus stressed that divorce was not commanded as the Pharisees had supposed, but instead was contrary to God’s original intention and was a temporary concession and accommodation to human hardhearted sinfulness shown by “stubborn unwillingness to be faithful to the marriage covenant.”¹¹⁷ Jesus’ teaching was closer to that of Shammai in limiting the ground of divorce to sexual immorality, but Jesus’ teaching that such divorce was *permitted* contrasted with the teaching of both schools that divorce was required for sexual immorality.¹¹⁸ Thus, Jesus highlighted the opportunity and possibility of forgiveness and reconciliation rather than mandatory marital dissolution. Additionally, Jesus applied this teaching to both men and women rather than to men only as was the rabbinic tradition (Matt 5:32; Mark 10:11-12; Luke 16:18).¹¹⁹ While it may be appropriate to translate *porneia* as "adultery," as that word may include adultery, the conduct encompassed by the word *porneia* should be construed broadly to refer not only to adultery but also to cover any kind of overt (= physical) sexual immorality including such marital unfaithfulness and sexual sins as homosexuality, incest, sexual abuse or molestation, indecent exposure, and prostitution.¹²⁰ Conduct of this gravity strikes at the “sexual exclusivity” one flesh nature of the marital relationship God intended from the beginning.¹²¹

The Synoptic Gospels

Some argue that divorce is never permissible relying on Mark and Luke’s omission of Jesus’ supposed Matthean exception for divorce on the ground of sexual immorality.¹²² In the Markan parallel to the Matthew 19 exchange between Jesus and the Pharisees, Mark

quotes Jesus saying “Whoever divorces his wife and marries another commits adultery against her, and if she divorces her husband and marries another, she commits adultery” (Mark 10:11), and in Luke 16:18 Jesus says “Everyone who divorces his wife and marries another commits adultery, and he who marries a woman divorced from her husband commits adultery.”¹²³ The Mark and Luke passages lack any exception clause, and thereby seem to declare any divorce followed by marriage to another to be adultery¹²⁴: a husband who divorces his wife and remarries commits adultery against her (Mark 10:11; Luke 16:18);¹²⁵ a woman who divorces her husband and remarries commits adultery (Mark 10:11); and a man who marries a divorced woman commits adultery (Luke 16:18; Matt 5:32b).

Markan priority is argued, and some have asserted that Matthew’s addition of the exception does not represent Jesus’ actual words. Robert Stein argues that Jesus’ words were in the nature of overstatement, that it is likely that Matthew added the exception clause to interpret for the readers, and that “Matthew’s interpretive comment is every bit as authoritative and binding on the believer as our Lord’s teaching, for Matthew could also in one sense say, ‘The Spirit of the Lord is upon me.’”¹²⁶ While Craig Blomberg accepts Markan priority concerning both “the overall relationship of Mark and Matthew and to this pericope,” he does not believe it necessary to view the exception clause in Matthew 19:9 as “a later, inspired addition. It is rather more likely a portion of Jesus’ original teaching which Mark omitted and Matthew restored.”¹²⁷ John Stott points out that the Matthean “exceptive clause should be accepted as an authentic utterance of Jesus,” that “many scholars have been too ready to dismiss it,” that “there is no manuscript evidence that it was a gloss,” and that Matthew may have included it for his Jewish readers, while Mark and Luke may not have

thought it necessary to include for their Gentile audience because such readers “took the clause for granted.”¹²⁸ While audience certainly may have played a role in what was included in the respective Synoptic Gospels, an examination of the context of Matthew 5 (the Sermon on the Mount), Matthew 19, Mark 10, and Luke 16 is more helpful to understanding Jesus’ teaching than simple appeal to audience to establish that the exception clause in Matthew is original.

Jesus’ teaching in Matt 5:31-32 is part of the Sermon on the Mount (Matt 5-7) “in a discourse that gives the norms of the kingdom and the sanctity of marriage.”¹²⁹ Jesus teaches the crowd the abiding nature God’s commands and emphasizes the higher standard of kingdom righteousness than that of the prevalent religious tradition of Judaism (Matt 5:17-20). The contrast “is between the meaning of the law according to Jesus and the meaning of the law according to religious tradition and the ancient teachers.”¹³⁰ In Matt 5:31-32, Jesus states

It was also said, “Whoever divorces his wife, let him give her a certificate of divorce” But I say to you that everyone who divorces his wife, except on the ground of sexual immorality, makes her commit adultery. And whoever marries a divorced woman commits adultery.

Religious tradition had distorted Deut 24:1:

The passage that was intended to regulate man’s rebellion against God’s purpose in marriage was distorted to provide an excuse for divorce. The hard hearts that this law was meant to restrain used it to their own ends.¹³¹

Tradition generally held that a man could divorce his wife for even seemingly insignificant reasons and he should give her a certificate of divorce. By virtue of the certificate of divorce, the woman was also free to marry again, and any man who married her was not guilty of any wrong. As was previously discussed in Chapter 2, Ancient Jews, Greeks and Romans

similarly held that lawful divorce granted a person the right to remarry, and the certificate of divorce given the woman following a Jewish divorce permitted her to remarry free of fear of a future claim from the former husband who gave her the certificate of divorce. Accordingly, Jesus' words in Matthew 5:32 would almost certainly have been taken as permission for remarriage when divorce was permitted, i.e., after marital unfaithfulness."¹³² Jesus' teaching in Matt 5:31-32 follows social conventions by framing his example from the husband's perspective as the one who gives the certificate of divorce, yet Jesus' teaching goes against the traditional norms by teaching that a man's unfaithfulness or complicity is equally offensive.¹³³ Keener aptly notes that in "Jesus' teaching, the man who betrays his spouse by divorce is no less unfaithful to his marriage than the adulterer or lustful person and presumably warrants the same punishment prescribed by the preceding passage – damnation (5:29-30)."¹³⁴ In contrast to tradition that tended toward allowing husbands easy divorce for any reason, the central point of Jesus' teaching in the Sermon on the Mount was to emphasize the sanctity of marriage, "seeking to prevent the betrayal of innocent spouses."¹³⁵ Jesus' exceptive clause recognized that a divorce due to a spouse's sexual immorality was legitimate, but in this passage Jesus did not get as deeply into the related issues as does Matt 19:3-12.

The short discourse on divorce in the Sermon on the Mount is not meant to be a comprehensive and definitive statement concerning the grounds for divorce. In 1 Cor 7:15 Paul introduces another legitimate divorce ground that Jesus had not mentioned.¹³⁶ The passage should be read in the greater context of the Sermon's emphasis on Kingdom righteousness and in relation to the Beatitudes that open the Sermon: those who are aware of

their own spiritual need, who grieve for their own sin, who humbly submit to God, who seek righteousness, and who are also merciful, pure in heart, peacemakers, and willing to endure persecution (Matt 5:2-10) will seek to preserve marriage rather than to seek an excuse to end an unpleasant marriage.

Luke 16:18 says “Everyone who divorces his wife and marries another commits adultery, and he who marries a woman divorced from her husband commits adultery,” and this represents an example of Jesus’ authoritative teaching.¹³⁷ Bock notes two implied points: that from an everyday life example Jesus “shows how the desire for righteousness produces a high standard of ethics, especially in the commitments that one makes before God”; and “such righteousness does not need law.”¹³⁸ Bock says that “Luke’s presentation on Jesus’ teaching on divorce is not as full as Matthew’s because he is using this teaching as an illustration of Jesus’ authority; it is a presentation of the basic principle, not the full teaching,”¹³⁹ and Jesus’ main point in Luke 16:18 is that “marriage is permanent, since it involves a vow. One should not try to figure out how to get out of marriage, for if one gets out of it, one suffers a moral fall.”¹⁴⁰ Luke presents Jesus as “the authoritative messenger of God’s kingdom,” and the kingdom values include honoring commitments to God and to others.¹⁴¹ Green notes that “Jesus places a man and a woman on the same level with regard to adultery, and censures the practice whereby a husband divorces his wife in order to marry another.”¹⁴² Blomberg questions whether Luke 16:18

has anything to do with the Matthean and Markan texts. It appears as an isolated logion in an entirely different context. I believe Luke uses it as an allegorical statement on Jesus’ non-abolition of the Law (v. 17) – the person who annuls part of the Law in favor of some other practice is like a man divorcing his wife in favor of another woman. In its current form, it provides no help whatever in determining the meaning of Jesus’ views on literal marriage and divorce.¹⁴³

In any event, Jesus' statement in Luke 16:18 should not be strictly construed as an absolute prohibition against divorce and remarriage as is shown by our discussion of the Matthean *porneia* exception and will be shown by our discussion of Paul's allowing divorce on the basis of an unbeliever's desertion in 1 Cor 7:12-16.¹⁴⁴

The Matthew 19 passage has been discussed earlier in this chapter when Jesus and the Rabbinical Debate were addressed, but there are some other significant contextual matters to be highlighted. Matthew 19:3-12 represents the first of three controversy stories during Jesus' journey to Judea in which Jesus is approached by individuals or groups about particular matters.¹⁴⁵ In this instance the Pharisees are trying to trap Jesus about the matter of divorce, and the context is polemical. Thus, "Jesus' teaching on marriage and divorce emerges in as occasional a setting as any in the epistles. This is no dispassionate discourse of canon law; it is pointed rhetoric in response to representatives of a religious party which wants to kill Christ ([Matt]12:14)."¹⁴⁶ Jesus was questioned particularly about a man who wanted to divorce his wife; he was not asked about a woman who desired to divorce or husband, nor questioned about physical abuse or desertion or other matters. Thus, Blomberg says it is a flawed argument that asserts that because Jesus did not address any other basis for divorce he therefore excluded all other grounds.¹⁴⁷

The Pharisees seem concerned to trap Jesus regarding valid divorce grounds and have thereby lost sight of God's intention from creation that marriage is a lifelong commitment that should not be dissolved. It was not God's intention from the beginning that one's hard-hearted unwillingness to honor the marriage covenant would be a valid basis for severing the marital bond. Those who desire to follow Christ must recognize that what amounts to a

temporary concession to hard-heartedness is not a present ground for Christian divorce. A hard-hearted believer who pursues an easy divorce sins in the process. Blomberg correctly concludes that there is a “very natural harmonization” of Mark 10:11 and Matt 19:9

which assumes that Mark simply implies the exception which Matthew makes explicit, presupposing the universal acknowledgement in Jewish and Greco-Roman circles that adultery provided grounds for divorce. If such a harmonization be labeled “eisegetical” in comparing Matt 19:9 with Mark 10:11, an identical kind of harmonization remains unavoidable in comparing Matt 19:9 with Mark 12.¹⁴⁸

It was noted earlier that Matt 19:3-12 is framed from the perspective of the husband, but in view of the reciprocal teaching of Matt 5:32 and Mark 10:11-12 the teaching of Matt 19 would also seem applicable to both women and men. Just as a man may divorce his wife for her sexual immorality, so a woman may divorce her husband for the same cause. Biblical teaching that would make it illegitimate for a husband to divorce and remarry would in a similar situation make it wrong for a wife to divorce and remarry. If hard-heartedness is not a valid ground for a man to divorce his wife, neither is it a valid ground for a woman to divorce her husband.

Despite arguments to the contrary, it is apparent that Jesus expressly taught that one permissibly may divorce a spouse who has been sexually immoral, and implicitly permitted remarriage following such valid divorce.¹⁴⁹ Jesus was setting out the “basic principle” and was not attempting to cover “every possible scenario.”¹⁵⁰

Paul’s Authoritative Teaching

A debated issue is whether Jesus' exception clause in Matthew 19 is the final, definitive, and absolute word comprising the sole acceptable divorce ground, i.e. sexual immorality. Blomberg notes the occasional nature of Jesus' words. He asserts that Matthew

19:9 "may be more a proverbial maxim than a legal absolute" given the "polemical context, the specific nature of the Pharisees' question, and the form of pronouncements in controversy stories in general," and that Paul did not consider Jesus' words to cover all circumstances because Paul, in First Corinthians 7, permits a believer to be divorced when an unbelieving spouse no longer wants to live with the believer.¹⁵¹ According to the Scriptures, divorce (and remarriage) is expressly permitted on two grounds: a spouse's sexual immorality and an unbelieving spouse's desertion. Sexual immorality breaks the exclusive one flesh intimacy of the marriage covenant, and desertion breaks the covenantal obligation to "leave and cleave."¹⁵² Desertion may also be a special instance of *porneia* (see Jud 19:1-3).

In 1 Cor 7:5 Paul writes that believers should "not deprive one another, except for a limited time, that you may devote yourselves to prayer; but then come together again, so that Satan may not tempt you because of your lack of self-control." While temporary abstention from sex is permissible, extended abstinence within marriage may be symptomatic of or lead to marital unfaithfulness. Another way of looking at this would be to remember that sexual union is not only an essential aspect of the formation of the covenant of marriage, but is an ongoing obligation of the husband and wife in their one flesh union (Exod 21:10). Thus, perhaps desertion could also be seen as involving gross neglect of marital obligations or a kind of negative or reverse violation of the sexual exclusivity of marriage through unjustified denial or deprivation of marital rights. In this manner the offending spouse could also be said to be dividing what God had united.

Paul's first letter to the church at Corinth responds to several pressing concerns that had been raised by that early church, including the responsibilities of both single and married

believers, some of whom were married to unbelievers. The situation Paul addressed differed from the question posed by the Pharisees to test Jesus, and the context of a letter to a believing church is different from the polemical nature of Jesus' limited exchange with the Pharisees about the nature of marriage and the divorce issue. Paul is generally exhorting believers to follow the overarching principle that each remain in the state or condition in which he or she was called to faith in Christ, that "each person lead the life that the Lord has assigned to him, and to which God has called him" (1 Cor 7:17). With respect to those who are already married Paul gives the Lord's authoritative charge: "the wife should not separate from her husband (but if she does, she should remain unmarried or else be reconciled to her husband), and the husband should not divorce his wife" (1 Cor 7:10).

The general principle is that believers who are married to each other should remain living together in an intact marriage relationship and should not divorce each other. If the married couple separates each spouse remains under the obligation to seek reconciliation, so neither should marry another person which would place them into an "irremediable situation (cf. Deut 24:1-4)" where the possibility of reconciliation is foreclosed.¹⁵³ Paul's apostolic teaching is consistent with what Jesus taught in apparent absolute terms recorded in Luke 16:18 and Mark 10:6-9 emphasizing God's intended purpose of lifetime marriage and the avoidance of commission of adultery through divorce or divorce and remarriage. (See Rom 7:2-3). Paul's omission of the exception clause of Matt 19:9 in 1 Corinthians is likely because such exception is taken for granted and there was no need to mention it in the context of the particular situation Paul was addressing.

To those who are married to unbelievers Paul says that "if any brother has a wife who is an unbeliever, and she consents to live with him, he should not divorce her (1 Cor 7:12), and if any woman has a husband who is an unbeliever, and he consents to live with her, she should not divorce him (1 Cor 7:13), but "if the unbelieving partner separates, let it be so. In such cases the brother or sister is not enslaved. God has called you to peace" (1 Cor 7:15). Within Jewish, Roman and Greek culture of Paul's time "divorce almost universally carried with it provisions for remarriage," and if Paul had intended to forbid remarriage he would have expressly stated so in verse 15.¹⁵⁴

Laney asserts that Paul affirms the "no divorce" principle that marriage is binding until death (Rom 7:2-3; 1 Cor 7:39):

Under no circumstances – adultery or abandonment – should a believer seek divorce. Paul says this four times in 1 Corinthians 7:10-13. If a divorce should take place in disregard of this instruction or prior to an understanding of it, Paul presents only two alternatives for the divorcee: reconciliation to one's spouse or a lifelong single life.¹⁵⁵

Laney asserts that Paul is not "adding to the counsel of God in 1 Corinthians 7:10-11 but merely following the teaching of Jesus," and Paul does not state any exceptions to the "no divorce" principle.¹⁵⁶

Paul is authoritatively addressing an issue with which Jesus had not specifically dealt. When a believer has earnestly sought to live at peace with an unbelieving partner (cf. Rom 12:18) and to honor the marriage covenant for the sake of both the unsaved partner and any children of theirs, divorce is permitted if the unbeliever insists on ending the marriage. The believer for peace sake should not obstruct the unbeliever who desires to separate by divorce, and the believer is released from the bonds of marriage, including any obligation to pursue reconciliation.¹⁵⁷ The Westminster Confession recognizes irremediable "willful

desertion” as a divorce ground.¹⁵⁸ Frame says this should be construed as shorthand for this: “acceptance of an action by an unbelieving spouse renouncing his marital obligations, that acceptance ratified as necessary by legal process.”¹⁵⁹ However, Stott argues that the believer's freedom concerning divorce is due "only to the specific unwillingness of an unconverted person on religious grounds to continue living with his or her now-converted partner," and that the "Pauline privilege" does not provide warrant to a Christian to divorce on desertion generally.¹⁶⁰ Stott's construction appears to be unduly narrow and restrictive. Adams correctly notes that “Paul gives no reasons for the unbeliever's desire to break up the marriage. The Christian is not restricted to certain grounds only,” and the Christian must let the unbeliever depart when the unbeliever demonstrates a strong desire to separate.¹⁶¹ This “desertion” or desire to depart the marriage relationship can be shown by the unbeliever's words or actions, including physically leaving the home; permanent refusal to engage in marital sexual relations; persistent verbal, emotional or physical abuse; cruelty of treatment; intentional withholding of financial support and living necessities; and such other grave behavior that constitute a deliberate renunciation of the deserter's marriage covenant vows and commitment.¹⁶² The desertion could exist even when marriage partners are physically living in the same residence. It is not the unbeliever's mere verbal protestation that he “consents” to living with his spouse that is determinative where the conduct clearly belies the words.

Chapter Four: IS REMARRIAGE ALLOWED?

In the previous chapters we have discussed the ancient Near East, Roman and Greek background and the general understanding that divorce carried with it the right to remarry. We have also examined the authentic exception clauses in Mat 5 and Matt 19 stating Jesus' teaching that permitted divorce on the ground of *porneia*, and Paul's teaching concerning the additional ground of desertion in 1 Cor 7. However, there are some who assert that remarriage is never allowed, regardless of the reason for a divorce.¹⁶³ William Heth and Gordon Wenham claim that Jesus' reply to the Pharisees should be interpreted as him saying that "It is always wrong to divorce what God has joined together: what is more, divorce, *except for unchastity*, is tantamount to committing adultery; and remarriage after divorce is always so."¹⁶⁴ Thus, Heth and Wenham are arguing that the exception clause "except for sexual immorality" modifies only "divorce," and that remarriage is always impermissible.¹⁶⁵ Others assert that this phrase modifies both divorce and remarriage, and that placing the exception clause in its middle position is the least ambiguous way for the writer to communicate that both verbs are modified.¹⁶⁶ As D. A. Carson aptly states in response to the Heth/Wenham "no remarriage" position:

Locating the except clause anywhere else would breed even more ambiguity. For instance, if it is placed before the verb *moichatai* ("commits adultery"), the verse might be paraphrased as follows: "Whoever divorces his wife and marries another, if it is not for fornication that he divorces one and marries another, commits adultery." But this wording suggests that fornication is being advanced as the actual *reason* for marrying another, and not only for the divorce – an interpretation that borders on the ridiculous. Moreover, if the remarriage clause is excluded, the thought becomes nonsensical: "anyone who divorces his wife, *except for porneia*, commits adultery" – surely untrue unless he remarries. The except clause must therefore be understood to govern the entire protasis. We may paraphrase as follows: "Anyone who divorces his wife and marries another woman commits adultery – though this principle does not hold in the case of *porneia*."¹⁶⁷

Heth argues that attempts to harmonize the Matthean exception phrases (Matt 5:32; 19:9) “contradicts the clear teaching of the rest of the New Testament that remarriage after divorce for any cause amounts to adultery and that only death of one of the spouses frees the other to remarry”¹⁶⁸ and that this view of remarriage was the “near-unanimous understanding of Jesus’ teaching by both Greek and Latin fathers for the first five centuries of the Church.”¹⁶⁹ Blomberg points out that it is not so clear that remarriage was forbidden by the early Patristic and Catholic fathers as uniformly as Heth and Wenham assert: second through fourth century Latin Fathers, except Jerome and Augustine, applied Matthew 19:9 to justify remarriage of one whose spouse committed adultery, and tendencies toward asceticism in sexual matters render the early opinions less persuasive in this area.¹⁷⁰

Writings from the Early Church

The Shepherd of Hermas

The Pastor (or Shepherd) of Hermas, likely written in the first half of the second century CE, in “Commandment Fourth. On Putting One’s Wife Away for Adultery”¹⁷¹ teaches about adultery, divorce and remarriage. The teaching permitted remarriage after a spouse’s death, affirmed the adulterous nature of marrying another after “putting away” a spouse, analogized idolatry to adultery as a basis to cease living with a spouse, emphasized a reason for not remarrying after putting away an adulterous spouse or to remain alone after separating from an adulterous spouse was to remain available to take back a repentant adulterer/idolator, and applied these injunctions equally to both the man and the woman. The pertinent teaching may be summarized as follows: 1) guard your chastity and avoid lustful thoughts, keeping in mind your own wife; 2) if you are ignorant of your believing wife’s

adultery, it is not sinful to continue living with her; 3) you share in the guilt of her adultery if you continue to live with her knowing she unrepentantly continues in her adultery; 4) the “husband should put her away, and remain by himself” if she continues in her adultery; 5) the husband who puts away his wife and marries another woman commits adultery; 6) the husband sins if he does not take back a repentant wife whom he put away; 7) because there “is but one repentance to the servants of God” he should not take her back “frequently” – the one repentance being at baptism, with no forgiveness for the one who sins frequently after this “opportunity to repent but once”; 8) a reason to not remarry after putting away a wife is so that the husband may be available to take her back if she repents; 9) that “In this matter man and woman are to be treated exactly in the same way”; 10) adultery is not only a sin of the flesh, but is also committed by one’s following heathen idolatrous practices; 11) one should “withdraw from him, and cease to live with him,” who persists in such idolatry to avoid sharing in his sin; 12) both man and woman should remain by themselves because repentance can take place even in sinners such as idolaters/adulterers; 13) sin no more, and with respect to past sins remember the One who has power over all; and 14) one does not sin by remarrying after one’s spouse has died, but there is greater honor and glory with the Lord for the widow or widower who remains unmarried.

Justin Martyr

In the *First Apology of Justin, the Martyr*, written around 155 CE, Justin’s defense of Christians against false accusations included arguments founded on the exemplary faith and life of Christians (*Apology*, 9-20).¹⁷² Justin applies Christ’s teaching concerning lust, celibacy, and commission of adultery by marrying a divorced woman as follows:

And so those who make second marriages according to human law are sinners in the sight of our Teacher, and those who look on a woman to lust after her. For he condemns not only the man who commits the act of adultery, but the man who desires to commit adultery, since not only our actions but our thoughts are manifest to God. Many men and women now in their sixties and seventies who have been disciples of Christ from childhood have preserved their purity; and I am proud that I could point to such people in every nation (First Apology, 15).¹⁷³

In *The Second Apology of Justin*, addressed to the Roman Senate, Justin recounts the story of a married woman who had converted to the Christian faith, become temperate in her behavior, and tried to persuade her intemperate husband to reform his ways according to Christ's teaching.¹⁷⁴ Her husband continued his behavior which further alienated her from him. She considered it wicked to continue married to her husband and wanted to divorce him, but her friends convinced her to remain living with him in the hope that he would come around. However, the husband went to Alexandria and reportedly conducted himself in an even worse manner, and she "that she might not, by continuing in matrimonial connection with him, and by sharing his table and his bed, become a partaker also in his wickednesses and impieties" gave him a "bill of divorce" (*repudium*, a bill of repudiation), and was separated from her husband. Rather than rejoicing in his wife's turning away from her wild ways, when she separated from him against his desire he "brought an accusation against her, affirming that she was a Christian." The emperor permitted her to get her affairs in order before having to defend against the allegation. The husband then instigated persecution and punishment against his wife's Christian teacher, and any professing Christian who protested the punishment. All these were persecuted solely for confessing they were Christians. While Justin included this story to point out the unfair manner in which Christians were treated, it sheds some light on the ambivalence of the early church concerning divorce from an

adulterous unbeliever. While she may have been taught that divorce was permissible, yet the competing concern of winning over her husband was encouraged by her friends. She was in the interesting position of being a believer living with an adulterous unbeliever who had not asked her to leave. Justin's story does not address remarriage, and we are not told what punishment the Christian wife ultimately suffered.

Athenagoras

Athenagoras, a Greek Christian apologist and philosopher, addressed his *A Plea Regarding Christians* to the Emperors Marcus Aurelius Anoninus and his son Lucius Aurelius Commodus around 176-177 CE in response to charges of atheism, cannibalism, and incest that were brought against Christians.¹⁷⁵ In response to the charge of incest Athenagoras' *Plea* stresses Christian chastity and condemnation of second marriages. Athenagoras argues that Christians are aware of their accountability to God and that because even a lustful glance or thought is adultery Christians exercise self-control and keep one another's body undefiled.¹⁷⁶ Athenagoras asserts that a Christian husband "thinks of the woman he has married as his wife only for the purpose of bearing children" and limits the pleasure of sexual intercourse to that end.¹⁷⁷ In defending Christian virtue Athenagoras continues by saying

We hold that a man should either remain as he is born or else marry only once. For a second marriage is a veiled adultery. The Scripture says, 'Whoever puts away his wife and marries another, commits adultery.'¹⁷⁸

Athenagoras likens the accusers to harlots reproving the chaste, as ones who revile Christians concerning those things the revilers themselves consciously and boastfully do: "Adulterers and corrupters of boys, they insult eunuchs and those once married."¹⁷⁹

Athenagoras forcefully contrasts the upright character of believers to the evil conduct of those who dishonor God.

Athenagoras' perspective on marriage reflects the growing influence of asceticism in the second century. The ascetic mindset that emerged in the early second century manifested in separation from worldliness wherein Christians began to voluntarily give up marriage and property ownership, and promoted a radical denial of this world and attachments to the world.

Tertullian

The North African moralist, apologist, and theologian, Tertullian (170-220), was attracted to the Montanist movement by both its ascetical aspect that tended toward moral rigor and strict practice of penance, and the prophetic aspect that provided a prophetic word against heretics and in theological debates. He left the catholic church around 206 CE after embracing the “new prophecy.” In his modified Montanism he maintained a rigorous position regarding sins of the church, and he was appalled by the church edict that it had power to remit even gravest sins after baptism, e.g. adultery or apostasy. Tertullian's *Penitence* (200 CE) permitted one post-baptismal penance, but his Montanist *Purity* (210 CE) arose from his outrage at the church's extending post-baptismal remission to adultery and apostasy. His ascetic perspective increasingly influenced his view of marriage. In *To His Wife* (200 – 206 CE) Tertullian advises his wife about how to conduct herself if he predeceases her, charging her to muster the full extent of her self-control to “renounce marriage” after his death.¹⁸⁰ He writes that “though you sin not in remarrying, yet, according to Scripture, ‘tribulation of the flesh will follow’ if you do.”¹⁸¹ By analogy to Adam and

Eve's marriage union, he argues "only once may it be contracted. For Adam was the only husband that Eve had and Eve was his only wife; one rib, one woman."¹⁸² He further urges her to seek the better thing "which recommends itself by its own transparent goodness" and that she "ought to choose things that are good for you rather than things which are merely not bad for you."¹⁸³ He asserts that God's servants ought to scorn the weaknesses of "concupiscence of the flesh" and "concupiscence of the world" which seem to compel widows or widowers to remarry.¹⁸⁴

Although Tertullian's pre-Montanist *To His Wife* condoned remarriage, he later condemned the "iteration" or "repetition" of marriage in *Monogamy* (210 CE), arguing that all second marriage is prohibited.¹⁸⁵ He concludes that

if those whom God has conjoined man shall not separate by divorce, it is equally congruous that those whom God has separated by death man is not to conjoin by marriage; the joining of the separation will be just as contrary to God's will as would have been the separation of the conjunction.¹⁸⁶

Tertullian asserts that a widow or widower is all the more bound to a spouse who has left her or him behind by death because "God will still less separate them whom He has conjoined, than in this lesser life He forbids them to be separated," and it would be adultery for her to have one husband "in spirit, one in flesh."¹⁸⁷ Tertullian explains that

if we renew nuptials which have been taken away, doubtless we strive against the will of God, willing to have over again a thing which He has not willed us to have. For had He willed (that we should), He would not have taken it away.¹⁸⁸

Moreover, he asserts that the character and discipline, including monogamy, that is enjoined in Scripture upon bishops (1 Tim 3:1-7; Tit 1:6-9) is also enjoined upon all Christians.¹⁸⁹

Tertullian argues that Paul "by way of indulgence" temporarily permitted remarriage due to "weakness of the flesh" just as Moses permitted divorce due to "hardness of heart;" and just

as Christ had abrogated what Moses enjoined because it was not so from the beginning, so the Paraclete abrogated the indulgence Paul had permitted, because second marriage also was not so from the beginning.¹⁹⁰ He claims that the New Prophecy upholds marriage and is not heretical in judging second marriage as being unlawful adultery, and it no more does “away with marriage if we abjure its repetition, than we reprobate meats if we fast oftener (than others).”¹⁹¹

Clement of Alexandria

In his *The Stromata, or Miscellanies*, Clement of Alexandria (ca. 192 CE) briefly treats the subject of marriage:

Now that the Scripture counsels marriage, and allows no release from the union, is expressly contained in the law, “Thou shalt not put away thy wife, except for the cause of fornication;” and it regards as fornication, the marriage of those separated while the other is alive. . . . “He that taketh a woman that has been put away,” it is said, “committeth adultery; and if one puts away his wife, he makes her an adulteress,” that is, compels her to commit adultery. And not only is he who puts her away guilty of this, but he who takes her, by giving to the woman the opportunity of sinning; for did he not take her, she would return to her husband. What, then, is the law? In order to check the impetuosity of the passions, it commands the adulteress to be put to death, on being convicted of this . . . And the adulterer also is stoned to death . . . And the law is not at variance with the Gospel, but agrees with it. How should it be otherwise, one Lord being the author of both? She who has committed fornication liveth in sin, and is dead to the commandments; but she who has repented, being as it were born again by the change in her life, has a regeneration of life; the old harlot being dead, and she who has been regenerated by repentance having come back again to life.¹⁹²

Origen

According to Origen (185-254 CE), divorce was permissible solely on the ground of adultery, and no remarriage was allowed while a spouse was still alive, but he acknowledged that others would have to study and opine on these “difficult questions” themselves.¹⁹³

Jerome

Jerome (c. 345- c.419) wrote a letter to a presbyter, Amandus, responding to his inquiry

whether a woman who has left her husband on the ground that he is an adulterer and sodomite and has found herself compelled to take another may in the lifetime of him whom she first left be in communion with the church without doing penance for her fault.¹⁹⁴

Jerome responded that the Apostle Paul had

cut away every plea and has clearly declared that, if a woman marries again while her husband is living, she is an adulteress. You must not speak to me of the violence of a ravisher, a mother's pleading, a father's bidding, the influence of relatives, the insolence and the intrigues of servants, household losses. A husband may be an adulterer or a sodomite, he may be stained with every crime and may have been left by his wife because of his sins; yet he is still her husband and, so long as he lives, she may not marry another.¹⁹⁵

Jerome says Paul is following Christ's words and that

Whether she has put away her husband or her husband her, the man who marries her is still an adulterer. . . . Therefore if your sister, who, as she says, has been forced into a second union, wishes to receive the body of Christ and not to be accounted an adulteress, let her do penance; so far at least as from the time she begins to repent to have no farther intercourse with that second husband who ought to be called not a husband but an adulterer.¹⁹⁶

He goes on to remind Amandus that in accordance with Deuteronomy 24:1-4 she may not be reconciled with her first husband even if she leaves her second husband.

Chrysostom

Chrysostom (c. 347-407), in a homily concerning Matthew 5:31-32, says that one who puts away his wife, even though he does not take another wife, is blameworthy for making her an adulteress, and one who marries a woman who has been put away becomes an

adulterer by taking the wife of another.¹⁹⁷ This situation compels the wife to be chaste and to give no reason for jealousy,

For she who hath been made aware that she positively must either keep the husband, who was originally allotted to her, or being cast out of that house, not have any other refuge; - she even against her will was compelled to make the best of her consort.

Chrysostom says Christ “presses the point without reserve, and builds up this fear as a bulwark, urging on the husband the great danger, if he do cast her out, in that he makes himself accountable for her adultery.” However, Chrysostom acknowledged that Christ left “one manner of dismissal” only, namely, “for the cause of fornication.”¹⁹⁸ In commenting on 1 Corinthians 7 Chrysostom acknowledges that Paul’s teaching

allows even a second marriage, saying, “only in the Lord” Now what means, “in the Lord?” With chastity, with honor . . . Therefore that we may be accounted worthy to see Him, whether we be in virginity or in the first marriage or the second, let us follow after

peace and sanctification.¹⁹⁹

Augustine

In *On Marriage and Concupiscence*, written in 419 CE, Augustine writes that while marriage for all people everywhere has the purposes of procreation and chaste loyalty, for believers there is

also a certain sacramental bond (*Quoddam sacramentum*) in marriage which is . . . enjoined by the apostle: “Husbands, love your wives, even as Christ also loved the Church.” Of this bond the substance undoubtedly is this, that the man and the woman who are joined together in matrimony should remain inseparable as long as they live; and that it should be unlawful for one consort to be parted from the other, except for the cause of fornication. For this is preserved in the case of Christ and the Church; so that, as a living one with a living one, there is no divorce, no separation for ever. . . . So enduring, indeed, are the rights of marriage between those who have contracted them, as long as they both live, that even they are looked on as man and wife still, who have separated from one another rather than they between whom a new connection has been formed. For by this new connection

they would not be guilty of adultery, if the previous matrimonial did not still continue. If the husband die, with whom a true marriage was made, a true marriage is now possible by a connection which would before have been adultery. Thus between the conjugal pair, as long as they live, the nuptial bond has a permanent obligation, and can be cancelled neither by separation nor by union with another.²⁰⁰

In his earlier *On Faith and Works*, written around 413 CE, Augustine discusses whether adultery is a sin for which a person should be refused baptism.²⁰¹ He writes that

It is true that some things are doubtful. . . . Likewise, in the case of a woman who promises to have relations only with her paramour, and with no one else even if he abandons her, one has reason to doubt whether she should not be admitted to baptism. Furthermore, the man who leaves his wife because of adultery and marries another is not, it seems, as blameworthy as the man who for no reason leaves his wife and marries another. Nor is it clear from Scripture whether a man who has left his wife because of adultery, which he is certainly permitted to do, is himself an adulterer if he marries again. And if he should, I do not think that he would commit a grave sin. However, there are some marriages which are certainly illicit, and whoever enters into them should not be admitted to baptism unless he amends and does penance. As for doubtful marriages, these we should try to prevent. For what advantage is there in marriages of this kind? But if some are already married in this way, then I am not so sure that we should admit such persons to baptism.”²⁰²

Alex R. G. Deasley notes Augustine’s uncertainty about the effect of divorce on what he considered to be the indissoluble nature of marriage in his *Retractions II*, in which Augustine referred to his writing *On Adulterous Marriages*, stating

I wrote two books on adulterous marriages with the desire of solving, according to the Scriptures, to the best of my ability, a very difficult question. I do not know whether I have done this very clearly. On the contrary, I think that I did not reach a perfect solution of this question, although I have clarified many of its obscurities.²⁰³

In his *On the Good of Widowhood* Augustine opined that second marriages by widows or widowers “are not condemned, but are set in lower honor” than remaining continent,²⁰⁴ but if one breaks a vow of continence before God and marries the second marriage is valid and not deemed adultery, yet the broken vow is worse than adultery.²⁰⁵

Roman Catholic: Sacrament of Marriage

Augustine's reference to the "sacramental bond"²⁰⁶ aspect of marriage between believers which depicted Christ's union with the Church influenced the development of the view of marriage as a sacrament that became established in the Roman Catholic Church²⁰⁷ and codified by the Council of Trent (1545-1563) in Session Twenty-Fourth on November 11, 1563. Concerning "The Doctrine of the Sacrament of Matrimony" the Council declared that Adam, under the Spirit's influence, had declared the "bond of matrimony perpetual and indissoluble," that based on Ephesians 5:32,²⁰⁸ matrimony is deemed a great sacrament and "in the evangelical law, excels in grace, through Christ, the ancient marriages," and that for good reason "holy Fathers, the Councils, and the tradition of the universal Church, always taught, that it is to be numbered amongst the sacraments of the new law." The Council then proceeded to pronounce its anathemas on those who held certain views contrary to the Roman Catholic position that marriage is a sacrament, and hence indissoluble:

CANON I.-If any one saith, that matrimony is not truly and properly one of the seven sacraments of the evangelic law, (a sacrament) instituted by Christ the Lord; but that it has been invented by men in the Church; and that it does not confer grace; let him be anathema.

CANON V.-If any one saith, that on account of heresy, or irksome cohabitation, or the affected absence of one of the parties, the bond of matrimony may be dissolved; let him be anathema.

CANON VII.-If any one saith, that the Church has erred, in that she hath taught, and doth teach, in accordance with the evangelical and apostolical doctrine, that the bond of matrimony cannot be dissolved on account of the adultery of one of the married parties; and that both, or even the innocent one who gave not occasion to the adultery, cannot contract another marriage, during the life-time of the other; and, that he is guilty of adultery, who, having put away the adulteress, shall take another wife, as also she,

who, having put away the adulterer, shall take another husband; let him be anathema.

CANON VIII.-If any one saith, that the Church errs, in that she declares that, for many causes, a separation may take place between husband and wife, in regard of bed, or in regard of cohabitation, for a determinate or for an indeterminate period; let him be anathema.

CANON XII.-If any one saith, that matrimonial causes do not belong to ecclesiastical judges; let him be anathema.

The Roman Catholic Church thereby further canonized its long-standing tradition that marriage was an indissoluble sacrament and was instituted by Christ; that there is no biblical ground for divorce, whether adultery, desertion, heresy or otherwise; that no remarriage is allowed while both spouses are living; that one who remarries is an adulterer, without regard to guilt or innocence of marital conduct; that an indeterminate separation of spouses from bed and board or cohabitation is permissible without divorce;²⁰⁹ and that the determination of matrimonial causes are within the province of ecclesiastical judges.

The Reformation: John Calvin's Geneva

The Protestant Reformation rejected the Roman Catholic view of marriage as a sacrament. John Calvin wrote about the oppressive consequences of the Roman Catholic doctrine,²¹⁰

By making marriage a sacrament, the Roman Church initiated a whole series of abominations; they set up special marriage courts and hedged marriage round with innumerable rules and regulations which are a tyranny to the human spirit. For example, they prohibit marriage within the seventh degree contrary to the laws of all nations and against the ordinance of Moses, and say "a man who has put away an adulterous wife is not permitted to take another" and impose other unscriptural regulations and restrictions. "They took over the hearing of matrimonial cases; as it was a spiritual matter, it was not to be handled by secular judges. Then they passed laws by which they strengthened their tyranny, laws in part openly impious toward God, in part most unfair toward men."

In 1536 Geneva formally adopted the Protestant Reformation and vowed to “live henceforth according to the law of the gospel and the word of God, and to abolish all papal abuses” and the Roman Catholic “prince-bishop who had been sovereign in both the political and religious realms was forced to leave.”²¹¹ Shortly thereafter, John Calvin was passing through Geneva and was persuaded to remain until he was expelled from Geneva in April 1538.²¹² Calvin became a pastor to the French Reformed congregation in Strasbourg during his exile from Geneva from 1538-1541. During this Strasbourg period Martin Bucer urged Calvin to marry, and in 1540 he married a local Strasbourg widow Idelette de Bure, who had children from her first marriage.²¹³ Calvin was invited back to Geneva and he returned September 13, 1541. The town council accepted his revision of city laws, with some amendments. In his *Ecclesiastical Ordinances (1541)* Calvin drafted detailed guidelines governing every aspect of the church’s existence with the goal of a disciplined, well-ordered and structured church.²¹⁴ The *Ecclesiastical Ordinances* created an order of ministers (called the elders) which would work together with the pastors in the newly formed Consistory to share responsibility over moral discipline of Genevans.²¹⁵ Calvin sought to bring every citizen under the church’s moral discipline and to oversee religious orthodoxy, and he began daily preaching.

In 1545 and 1546 Calvin’s draft *Marriage Ordinance* was submitted to Geneva city government, but was not enacted formally until the adoption of the revised *Ecclesiastical Ordinances* in 1561, which contained comprehensive laws on marriage from the previous *Marriage Ordinance*.²¹⁶ The provisions of the 1546 *Marriage Ordinance* addressed matters including “engagements and marriage . . . , marital property . . . , spousal care and

responsibilities . . . , abuse, adultery, desertion, separation, and divorce.”²¹⁷ If the married couple had “conflicts and quarrels” and did not live at peace, the couple would be summoned to the Consistory and “admonished” and “remonstrated with” about their fault as the case required [#35]. An abusive²¹⁸ husband is to appear before the Council to be “expressly forbidden to beat her, under pain of certain punishment” [#36]. The *Marriage Ordinance* provided for the grant of an absolute divorce to a husband who alleged and proved his wife’s adultery by sufficient testimony or evidence and requested to be separated by divorce, and empowered the man to marry another if he later desired [#39]. Significantly, the *Marriage Ordinance* applied this provision equally to a wife who alleged and proved her husband’s adultery and wanted to be divorced [#40]. In the case of a husband’s request provision is made to “exhort him to pardon his wife,” and in the case of the wife’s request “strong admonitions” of reconciliation may be proffered, but the innocent spouse should not be compelled either to divorce or reconcile against that spouse’s will. Moreover, a spouse is not eligible to request divorce if that spouse was deemed culpable through “evident fault” regarding the other spouse’s adultery, or if the parties engaged in some fraud to obtain a divorce [#40].

The *Marriage Ordinance* goes on to discuss physical desertion and abandonment, contrasting a situation where a husband goes away on business or some other legitimate purpose and his whereabouts cannot be determined for a considerable period of years as opposed to a circumstance where “a man through debauchery or some evil feeling goes away and abandons his place of residence.” In the latter case a process is provided to seek to compel the return of the husband to his home and to advise him that if he fails to return

proceedings will go forward in his absence. If he cannot be compelled to return, proceedings should go forward: first, he will be proclaimed a deserter in church every other Sunday for three Sundays over six weeks, and similar proclamation will be made three times in the “Lieutenant’s court,” and two or three of his closest friends or relatives are to be notified of this proclamation; second, if the husband fails to appear, the wife may then go to the next Consistory meeting to request separation, and it should be granted to her; third, the Consistory would then send the wife before the Council for their judicial decision about the matter; fourth, the rebellious deserting spouse should be banished forever, but if he appears “let them be reconciled in good accord and in the fear of God” [#42]. A man who habitually abandons his wife should be punished the second time “by imprisonment [on] bread and water” and “commanded with strong threats not to do so any more”; and “greater rigor” should be used against him a third time, but if he shows no improvement, “let one provide that the wife is no longer bound to such a man, who gives her neither faith nor companionship.” If such an abandoning husband cannot be found after a year, then the wife may come before the Consistory, “and if it is known that she needs to marry,” she will be sent before the Council so that she and his closest friends and relatives may testify under oath concerning his whereabouts. Then the matter will proceed with the previously discussed proclamations before the church and court “to give the woman liberty to remarry.” In that event, if the absent husband thereafter returns, he is to receive reasonable punishment [#44]. The provisions contain less stringent requirements on a husband where the wife is the one who departs, and the husband seeks to be separated from her with the freedom to remarry [#45]. In such case, if she returns after the proclamations and he rejects her because of

suspicions about adultery, inquiry is to be made of how she conducted herself during her period of absence and the husband is to be compelled to reconcile absent evidence or proof sufficient to prove her unfaithfulness; but upon facts evidencing a strong presumption of the wife's fornication,

let the husband's request be heard and he be granted what reason justifies. If she does not appear during the term, let the same procedure be followed against her as against the husband in a similar situation [#45].

The *Marriage Ordinance* contains an interesting provision respecting possible collusion or "voluntary divorces" [#51]:

If a man, after his wife has abandoned him, makes no complaint but remains silent, or a wife likewise abandoned by her husband dissimulates without saying a word about it, and this comes to be known, let the Consistory make them appear to find out how the case stands. This will prevent all scandals, since there may be some collusion, which is not to be tolerated, or even something much worse. And having found out the facts, let one deal with it according to the means available, so that there may be no voluntary divorces, that is at the pleasure of the parties without the authority of the law. And let married parties not be permitted to live apart from each other. Nevertheless, at the request of the husband let the wife be compelled to follow him if he wishes to change his habitation or is compelled to it by necessity, provided that he is not a debauched man who is leading her astray and into an unknown country, but that it is reasonable country where he wants to make his residence in a decent place to live as a respectable man and keep a proper household.

Prior to any formal statutory enactment of the 1546 *Marriage Ordinance* it "was binding customary law" and many of its terms guided the Consistory and Council proceedings.²¹⁹ As part of the 1541 Ecclesiastical Ordinances, in 1542 Calvin had established the Consistory, that reported to the Small Council of Geneva, comprising twelve lay elders (selected annually by magistrates), and all the members of the Venerable Company of Pastors (which rose from nine in 1542 to nineteen in 1564) to promote ecclesiastical discipline.²²⁰ The Consistory, which met every Thursday, also had a secretary

who was a registered notary and an officer or summoner who was responsible for bringing people before the Consistory for questioning.²²¹ Calvin insisted that it was the Consistory's, not civil authority's, right and power to impose spiritual discipline sanctions of the ban from communication or of excommunication.²²² Although the Consistory could exercise its power to preclude someone from participation in communion or exclude someone from the church, it lacked any formal legal power and cases were referred to the Small Council for further investigation and punishment.²²³

With respect to jurisdiction over matrimonial cases, the 1546 Marriage Ordinance [#52] stated:

Let all matrimonial cases concerning personal relations, not property, be handled in the first instance in the Consistory, and there, if friendly settlement can be reached, let it be made in the name of God. If it is necessary to pronounce a judicial sentence, let the parties be remanded to the Small Council with a statement of the decision of the Consistory, to give the definitive sentence about it.²²⁴

Although marital cases could be initiated by the Consistory's summons, ordinarily proceedings were initiated by the petition of a person in the community seeking assistance.²²⁵ The Consistory was a quasi-judicial institution that had the right to hear such petitions, investigate the claims, and make a written report to the Small Council containing the Consistory's recommendation, but the resolution and final decision in marital cases was made by secular government.²²⁶ Sometimes cases were resolved at the Consistory level through the summoned party's acceptance of "remonstrances" or "admonitions."²²⁷ The Consistory would forward to the Small Council cases where the summoned party's conduct apparently violated Genevan laws, such as adultery, and warranted some secular sanction.²²⁸ The Small Council sometimes remanded a matter to the Consistory for imposition of

spiritual sanctions, and the Council usually established criminal or civil penalties, and would decree a couple's divorce on the ground of a spouse's adultery or desertion.²²⁹ Cases involving adultery usually were investigated and tried before the Small Council, and cases involving "notorious and repeated adultery" such as prostitution by a married woman could be punished (after 1560) by execution, usually by drowning.²³⁰

Prior to the Reformation, the Roman Catholic sacramental view of marriage prevailed throughout Europe and it was virtually impossible to become divorced from the indissoluble marriage. While Roman Catholicism did allow for annulment on certain grounds, it was only as a result of the Protestant Reformation that divorce became legally available in Geneva and many other European jurisdictions.²³¹ While divorce with permission to remarry was now possible in Geneva and other places, divorce was not prevalent and remained somewhat limited in many respects. The available divorce grounds were restricted to adultery and desertion, efforts at reconciliation were pursued, the process took several months (or even years) to complete, some still resisted based on Roman Catholic canon law tradition, and financial and property considerations may have been a deterrent. Kingdon reports that during the twenty-three year period (1541-1564) of Calvin's ministry in Geneva, there were "only twenty-six divorces . . . granted for adultery, not many more for other causes."²³²

The Puritans

Although English law at the time of the Puritans recognized "only declarations of nullity and judicial separation from bed and board," J. I. Packer asserts that

Puritan thinkers generally agreed that divorce with right of remarriage was biblically permitted after adultery by one's spouse, and most Puritans followed [William]

Perkins in regarding desertion, broadly interpreted to cover all behavior that nullified the matrimonial relationship in practice – ‘malicious desertion’, when ‘they require of each other intolerable conditions’, ‘long absence’, cruelty, diseased conditions, and insanity are specified – as ground for the same grant, with equal rights for men and women.²³³

Packer asserts that Perkins’ teaching was the same position was in fact that held by Zwingli and Bucer, but that Luther, Calvin, and Beza merely allowed, unspecifically, that deliberate desertion could entitle the innocent party to divorce and remarry.”

Conclusion

Heth claims that of the major interpretations of the meaning of the exception phrases, the only interpretation that allows remarriage after divorce for serious sexual sin is the evangelical Protestant (or “Erasmian”²³⁴) view whose proponents include John Murray,²³⁵ and that “All the other views affirm unanimously that, in the teaching of Christ, remarriage following divorce for whatever reason amounts to adultery.”²³⁶ Wenham still maintains his position that although divorce is permissible in some instances “all the Gospel divorce texts should be understood as condemning remarriage after divorce.”²³⁷ However, since the initial 1984 publication of *Jesus and Divorce* Heth has rethought his “no remarriage” position and has rightly adopted the majority evangelical Protestant view that permits remarriage after a valid divorce with just cause.²³⁸ This traditional Protestant view accords with Jesus’ teaching on marriage, divorce, and remarriage that one who divorces a spouse on the ground of sexual immorality may legitimately remarry and does not commit adultery by such remarriage. Moreover, in a case where the marriage is dissolved because a permissible divorce under the sexual immorality exception is obtained, *both* parties (including the guilty spouse) are free to remarry and the subsequent marriage is not adulterous.²³⁹

Chapter Five: A JUST DIVORCE PROPOSAL

Introduction: A Just War Analogy

While it is true that a threshold question when a Christian is considering divorce is whether there is a biblically just ground for divorce, much of the debate among Christians seems to end with such an analysis, often leading to unjust results. And even if a legitimate divorce ground is pursued there are other factors to be considered to make sure that the divorce process itself is used justly, and that the result is just and right and fair.

In summer 2006 I took the course “Pastoral & Social Ethics” at the Charlotte, North Carolina campus of Reformed Theological Seminary. The required reading included John Murray’s *Principles of Conduct*, Arthur F. Holmes’s *Ethics: Approaching Moral Decisions*, and J. Douma’s *The Ten Commandments: Manual for the Christian Life*, and each student had to submit an essay or position paper on an ethical issue. As I was driving to the Maryland post office to meet the mailing deadline for submitting my 12 page essay “A Just Divorce or Just a Divorce” it occurred to me that principles that are considered to decide whether a war is just could serve as general touch points in determining whether a divorce is just. My mind raced through typical “just war” theory principles requiring 1) Just cause; 2) Just intention; 3) Last resort; 4) Formal declaration; 5) Limited objectives; 6) Proportionate means; and 7) Noncombatant immunity.²⁴⁰

It occurred to me that the usual analysis of and debate about divorce and remarriage issues and the pertinent biblical texts and general biblical principles of conduct could be organized and illuminated by incorporating them into the just war construct. Applying just war considerations is not a forced or arbitrary analogy. It is an attempt to apply wisdom to an

unfortunately common situation of divorce in order to achieve a righteous result in a fallen world. Just war concepts may be applied generally to divorce because the type of questions asked in deciding the justness of war have apparent counterparts in determining the justness of divorce. Thus, in the divorce decision one must consider not only 1) the biblical justification (“just cause”); but also 2) motives (“just intent”); 3) alternatives short of divorce (“last resort”); 4) juridical aspects of civil law and church discipline (“formal declaration”); 5) goals (“limited objectives”); 6) the means used to attain goals, and consequences of divorce and the process (“proportionate means”), including 7) the impact on “civilians or noncombatants” such as the minor children of the divorcing family as well as the effect on family, friends, and other third parties (“noncombatant immunity”).

An interesting aspect of just war considerations is that they seek to address not only the decision whether to go to war, but also what constitutes the ethical prosecution of war. Just as significant in a concept of just divorce would be not only biblical justification for pursuing divorce, but also the justness of the manner in which the divorce is pursued. In the process someone faced with the possibility of divorce may conclude that it is not just to pursue a particular divorce. Although I was excited at the possibility of this “just divorce” construct, alas, my essay was due and there was no time to rework my thoughts into a revised essay. In this final portion I will attempt to use this “just war” analysis to both summarize the main points of the earlier discussion of this paper and to stimulate discussion toward a more holistic approach to the matter of what constitutes a just divorce.

Moreover, “Certainly, divorce is part of a sinful order, but no less a right for that matter in dealing with that sinful order. Warfare is a part also of a sinful order, but no less

right under godly circumstances, and the right of the sword is by no means withheld merely because war belongs to the state of sin. Hardly an aspect of our lives can be separated from this sinful order in any full sense, but the law speaks to covenant-keepers in a sinful world, not to men in heaven.”²⁴¹

1. Just Cause

“All aggression is condemned; only defensive war is legitimate.”²⁴²

This consideration addresses whether a Christian is ever justified in initiating a divorce proceeding or in acquiescing to, or defending against, a divorce sought by a spouse, and focuses on what, if any, biblically permissible cause or ground for divorce exists. From the outset of this paper the covenantal character of marriage was emphasized, and it was also stressed that God’s intention “from the beginning” was the one-flesh union of husband and wife in a permanent marriage relationship during their joint lives.

However, the view that interprets this “covenant” of marriage as intrinsically indissoluble and that the Bible does not permit divorce for any cause is unpersuasive and places restrictions where God allows freedom in a fallen world. Contrary to the “no divorce” position represented by J. Carl Laney and others, we have shown that the Scriptures teach that both adultery and willful desertion are cause for divorce.

We need wisdom to apply Scripture to situations not expressly covered by Jesus and Paul. Wisdom promotes justice, and wisdom’s road is the “way of righteousness, along the paths of justice” (Prov 8:20, NIV). A goal of wisdom described in Proverbs 1:3 is “righteousness, justice and equity” (ESV, NSRV), or to learn what is “right and just and fair” (NLT, NIV). These virtues carry both moral and communal connotations, “deal explicitly

with the way social relations are to be structured and justice is to be executed,” and are “indispensable for the maintenance and governance of the community.”²⁴³

The divorce exceptions of Jesus and Paul are similar to each other in that they involve “the person whose marriage is ended against his or her will.”²⁴⁴ The two divorce exceptions have in common that a) marital unfaithfulness and desertion destroy fundamental parts of the marriage covenant; b) they both recognize the last resort nature of divorce; and c) both grounds “leave one party without any other options” if reconciliation efforts are rejected.²⁴⁵ These exceptions are not meant to give an easy out to spouses facing marital problems or inconveniences, but may absolve from blame one who tried unsuccessfully to keep the marriage together as “their spouse’s unrepentant adultery, abandonment, or abuse *de facto* destroyed the marriage bonds.”²⁴⁶ Not only does physical desertion destroy the marriage bond, but also persistent verbal, emotional or physical abuse; cruelty of treatment; marital neglect such as intentional withholding of financial support and living necessities; and such other grave behavior that communicates a deliberate renunciation of the deserter’s marriage covenant. Accordingly, other severe kinds of willful misconduct by a believer are not necessarily ruled out as a ground for divorce. When such behavior occurs in a marriage between two believers, it ultimately may be just and biblically lawful for a divorce to occur to prevent even greater evil. Of course, we must guard against both divorce based on “aversion” (Mal 2:16) and a “no-fault” easy out when one becomes merely displeased with a marriage partner for inconsequential reasons.

2. Just Intention

“The only legitimate intention is to secure a just peace for all involved. Neither revenge nor conquest nor economic gain nor ideological supremacy are justified.”²⁴⁷

Although there may exist a biblical basis or cause for divorce, that does not mean that a divorce should always be pursued, and motive and intention are pertinent considerations. John Murray discusses *lex talionis* (“an eye for an eye and a tooth for a tooth” – Exod 21:24; Lev 24:20; Deut 19:21; cf. Matt 5:38-39; 1 Pet 3:9-12) which was part of the Mosaic jurisprudence and an aspect of the order of public justice.²⁴⁸ Murray reminds us that our actions should not be motivated and determined by “vindictive resentment” when others infringe our rights, invade our liberties, and subject us to various wrongs. Rather, Christians are called to love their enemies and are not to return evil for evil. However, “the demand of love . . . does not abrogate the demand of justice” as “they are really one” and are not contradictory.²⁴⁹ Christians are called to “strive for peace with everyone” (Heb 12:14) and should live at peace with everyone “so far as it depends on you” (Rom 12:18; see Jas 3:17, 18; Pet 3:11). However, the dictates of peace may mean that a Christian who is deserted by an unbelieving spouse is not bound to insist that the marriage stay intact (1 Cor 7:15) – such insistence may actually be contrary to the rule of peace. It is difficult to evaluate motives in and of themselves as separate matters apart from actions. One’s real motives may become clearer as they are expressed in conduct which will be discussed under other considerations such as limited objectives and proportionate means.

3. Last Resort

*“War may only be entered upon when all negotiations and compromise have been tried and failed.”*²⁵⁰

Divorce should not be pursued as a matter of course or first alternative, but only after attempts to remedy the situation and bring reconciliation have been attempted.²⁵¹ As we have seen, Jesus did not affirm rabbinic teaching that mandated divorce, rather Jesus highlighted the opportunity and possibility of forgiveness and reconciliation rather than mandatory marital dissolution. In Calvin’s Geneva, although divorce was made possible for adultery and desertion, both the *Marriage Ordinance* and the Consistory’s practice encouraged and sought reconciliation in the first instance. Among possible approaches to pursue reconciliation are two that have been suggested by Craig Blomberg and Jay Adams. Adams proposes a “reconciliation/discipline dynamic” be followed by which marital wrongs are addressed in accordance with the principles of Matthew 18:15-18.²⁵² If reconciliation is refused, then the matter would proceed in accordance with more formal church discipline that ultimately may lead to the last resort excommunication of the unrepentant spouse.²⁵³ If the unrepentant spouse continues in his stubbornness even after being placed outside the church, then such spouse would be treated as an unbeliever and the innocent spouse would be permitted to divorce for desertion and would be free to remarry.

Blomberg would involve the Christian community less formally and says divorce and remarriage would be permitted

when an individual, in agreement with a supportive Christian community of which that individual has been an intimate part, believes that he or she has no other choice

or option in trying to avoid some greater evil. All known attempts at reconciliation have been exhausted.²⁵⁴

It would be appropriate to involve the church in efforts to preserve the safety of the abused spouse, to exhort a partner to fulfill financial responsibilities to the family, and to uphold the sanctity of marriage where possible, and to determine the legitimacy of pursuing divorce where the break up cannot be remedied.

4. Formal Declaration

“Since the use of military force is the prerogative of governments, not of private individuals, a state of war must be officially declared by the highest authorities.”²⁵⁵

Even if a biblical cause for divorce is apparent, the motives of the divorcing spouse pure, and sincere reconciliation attempts have failed, yet there remains the issue of whose province or authority it is to declare a divorce to be legitimate. The paradigmatic marriage of Adam and Eve was ordained by God and declared by Adam. However, both biblical and ancient Near East practices have a somewhat familial covenantal/contractual aspect that establishes that a marriage relationship exists, rather than the imprimatur of a religious or governmental pronouncement. If marriage was significantly a private family matter with economic aspects that sometimes required civil involvement, then who is authorized to determine the legitimacy and propriety of a divorce? Some view divorce as solely a private matter, others as a matter within the exclusive realm of the church, and still others as something to be determined within the jurisdiction of civil government alone.²⁵⁶ Some disagreement may be due to a paucity of biblical teaching concerning the role of government, the distinction between the theocratic Old Testament nation of Israel and the

Church, and the general lack of a well defined theology of the state and church-state relations.

John Frame discusses several approaches including the Anabaptist, Meredith Kline's "intrusion ethic," the Lutheran distinction between the "two kingdoms," "principled pluralism," and theonomy. Frame sees the state as an extension of family authority and uses the term "'state" to refer to the family elder-structures beyond the nuclear and extended families":

Church and earthly nation are related, then, as two different families with overlapping members, occupying the same territory. They both serve the kingdom of God, but it is misleading, in my view, to describe them as two institutional forms of the kingdom coordinate with one another, as is often done in Reformed literature . . . The church is the organization which has as its goal the spreading of God's kingdom through the earth. The state, if it is not a Christian state, does not share that goal at all, but may in spite of itself perform some services to the kingdom of God. If the state *is* Christian, it will represent the church in its earthly concerns, using earthly tools denied to the church as such, defending it from physical attack and so forth. It will be a kind of adjunct tool for the church, not an institution coordinate with it . . . The church elders would come to overshadow the state courts, pretty much the reverse of the situation today. Most disputes within the society would be settled by the church elders. But some state courts would remain (staffed by Christian elders probably, for who else would be wise enough to solve disputes in a godly way?) to serve the small unbelieving remnant of the population . . . The legislative and executive branches of the state would seek to bring the laws of the land (and their implementation) into accord with biblical standards. They would still not put all of Old Testament law literally into practice. They would have to re-apply those laws, making allowance for the lack of a tabernacle or temple (see above), and taking account of other situational changes . . . I have suggested that the state is essentially the government of a tribe or clan with, to be sure, some difference from the nuclear family in its rights and powers. Theologically, states are the government of the earthly tribes, which will in time be superseded by the government of the heavenly tribe, the church. Until that time, however, a Christian state may serve the church by resolving its temporal disputes with worldly powers. To carry out this task faithfully, it must be obedient to the law of God in Scripture, carefully applying that law to the present situation, taking account of changes both in redemptive history and in human culture.²⁵⁷

Kline sees the state as a “complementary institution alongside the previously existing family within the common grace order.”²⁵⁸ He goes on to explain the relationship between the family and state as follows:

By reason of its prior presence as a discrete sphere of sovereign responsibility established by God, the family set bounds on the sphere of the state’s functioning. At the same time, the family presented the state with positive obligations, namely, to recognize, protect, and preserve the rights and role given to the family as an associate common grace institution. The state was to provide a supportive framework for the life of the family. Likewise the family was in turn to recognize and honor the state in its God-given task. The public and private institutional spheres each defined the other’s limits. Besides being supportive of the family, the state was to perform a role supplementary to that of the family . . . Specifically and emphatically in the Scriptures the state is charged with responsibility in the matter of rights and their violation, that is, with the maintenance of justice within human society, particularly by way of punishing violations of rights . . .²⁵⁹

The Israelite theocracy was “a typological special situation, which imposed on the civil magistrates thus involved special demands that do not obtain otherwise,” and the involvement of the Israelite king in theocratic cultic functions is not normative for civil magistrates.²⁶⁰ In the post-fall common grace order, the state is to be “a non-confessional, a-religious institution.”²⁶¹ The common state is precluded from disciplining the covenant cultus, and “the common state is designed by God to provide a supportive framework for the life and mission of God’s covenant people, in keeping with the fundamental purpose of common grace to make possible a general history within which God’s redemptive program might unfold.”²⁶²

Augustine contrasted the City of God which was built on love of God even to contempt of self, with the worldly city that was founded on love of self even to the contempt of God. A point of contact with the earthly city is the concept of Justice. The state is grounded on Justice and should have as an end the promotion of Justice, for without

Justice government is merely a gang of robbers. Ultimately true justice is derived from true faith. The State can best learn what Justice is – from grace (revelational) and from the church (derived from teaching of church). Although the Church and state are distinct, they need each other. Part of this mutual dependence involves the church offering moral advice to the state.²⁶³

That wisdom is foundational to righteousness, justice and equity is apparent in the outline of the judicial system that we are able to glean from the Old Testament. Moses listened to his father-in-law Jethro's advice to select from all the people "some capable, honest men who fear God and hate bribes" (Exod 18:21, NLT) and appoint them as judges over groups of one thousand, one hundred, fifty, and ten men to solve the people's common disputes, with Moses to decide the "difficult" cases that lacked precedent (Exod 18:13-26).²⁶⁴ These judges appointed by Moses are described as the "wise, understanding and respected" men selected by the people from each tribe who were charged to decide cases fairly and impartially (Deut 1:9-18). This judicial system established at Sinai was to continue in the towns God would give Israel, the appointed judges were to judge fairly and to "follow justice and justice alone," and additional provision was made concerning handling difficult cases which involved participation of the priests to some extent in the administration of justice (Deut 16:18-20; 17:8-13). David took a count of the 38,000 Levites, and from the divisions of the Levitical clans 6,000 were assigned duties away from the temple as officials and judges over Israel (1 Chr 23:2-4; 1 Chr 26:29). By the time of David's death, a carefully devised political and religious structure was in place.²⁶⁵ In addition to building the Temple, Solomon built a royal residence which included a Hall of

Justice among the several structures.²⁶⁶ During the monarchy Israel's judicial system extended from the elders in the town gate to the king on his supreme throne in the Hall of Judgment (2 Sam 14:4-11; 15:1-6; 1 Kgs 3:16-28; 7:7; 2 Kgs 8:1-6). His judgment seat was located "at the right hand of God's throne in the temple, at the heart of which stood the Ten Commandments," with righteousness at the top under girding the whole judicial system.²⁶⁷ Solomon asked God for wisdom – "discernment in administering justice" -- and God blessed him with a "wise and discerning heart" (1 Kgs 3:7-12). Solomon was known throughout the ancient world as the wisest of all humans (1 Kgs 4:31), and he displayed his wisdom in his judicial rulings (see 1 Kgs 3:16-28).

Later, Jehoshaphat, who reigned in Judah from 873-848 BCE, introduced sweeping changes in the nation's judiciary (2 Chr 19:5-11), placing judges in all the fortress cities of Judah. In Jerusalem he established a kind of supreme court comprising religious and non-religious personnel, whose responsibility was to hear cases referred to them from the lower courts. Over all of them were the chief priest and the leading official of Judah. All of the appointees of the king were charged to judge fairly, as before Yahweh, for it was he to whom they were ultimately responsible.²⁶⁸ This brief overview shows that the character of the judges and the judicial structure were all designed to wisely administer what is right, just and fair, reflecting the very character of God's wisdom, righteousness, justice and equity.

Among Calvin's insights that would be particularly helpful to the church today are his concept of church-state relations and the complementary nature of religious and secular powers²⁶⁹ in which

civil government has as its appointed end, so long as we live among men, to cherish and protect the outward worship of God, to defend sound doctrine of piety and the position of the church, to adjust our life to the society of men, to form our social behavior to civil righteousness, to reconcile us with one another, and to promote general peace and tranquility;²⁷⁰

and Calvin's thought has impacted liberty and church-state relations in the centuries after his death.²⁷¹ This paper examined Calvin's efforts to implement some of his ideas in Geneva through the *Ecclesiastical Ordinances (1541)*, *Marriage Ordinance (1546)*, and the workings of the Consistory and Council. Article 52 of the *Marriage Ordinance* provided for a sharing of jurisdiction over matrimonial cases:

Let all matrimonial cases concerning personal relations, not property, be handled in the first instance in the Consistory, and there, if friendly settlement can be reached, let it be made in the name of God. If it is necessary to pronounce a judicial sentence, let the parties be remanded to the Council with a statement of the decision of the Consistory, to give the definitive sentence about it.²⁷²

The Consistory was vested with imposition of spiritual sanctions, and the Council determined criminal or civil penalties, and would decree a couple's divorce on the ground of a spouse's adultery or desertion.²⁷³

The Westminster Confession of Faith strikes a balance when it aptly states that where neither the church nor the civil magistrate is able to remedy sufficient causes for divorce, "a public and orderly course of proceeding is to be observed, and the persons concerned in it not left to their own wills and discretion in their own case."²⁷⁴

Although Calvin was deeply concerned with charitable discipline of church members, he does not make discipline a mark of the true church.²⁷⁵ Evidencing his pursuit of reformation from within the church and his desire to maintain the purity and unity of the church, Calvin warns against the sin of schism.²⁷⁶ These words are instructive to our age

where we are quick to sever ties with individuals, churches and denominations that do not meet our theological litmus tests or even our preferred form of worship. Indeed, we live in an increasingly individualistic, privatized, secularized, consumerist, therapeutic culture in which religion is subject to individual whim, and “religious commitment begins to be seen as something to be chosen or discarded, not on the basis of truth, but only on the basis of its perceived value in the process of self-construction.”²⁷⁷ American society is one of

loose individuals . . . : loose from marriage and family, from the school, the church, the nation, job, and moral responsibility . . . a rising number of individuals playing fast and loose with other individuals in relationships of trust and responsibility.²⁷⁸

At the outset of marital difficulties the church should intervene in the manner of the Geneva’s Consistory to admonish and remonstrate toward reconciliation, or pursue Jay Adams’s “reconciliation/discipline dynamic” under Matthew 18:15-18. The most minimal involvement in a potential divorce decision would at least follow the Blomberg less formal approach where a supportive community of believers assesses the situation, exhausts all means of reconciliation, and provides appropriate and necessary assistance. Through this spiritual involvement reconciliation may be pursued, and perhaps the matter resolved. However, if this does not succeed and one party remains obstinate or refuses (or is unable) to change marital misconduct, then the innocent spouse would have the Christian community’s acceptance of the necessity to pursue civil remedy or resolution, including a judicial decree or judgment of divorce and determination of financial and property rights, and any issues concerning child custody and visitation.²⁷⁹

Obviously, there are likely many instances where a judicial divorce has been decreed, but the church only gets involved after the fact. Many of those civil divorce

judgments may on their face appear to be based on a ground for divorce that is not biblically authorized, e.g. “mutual and voluntary separation.” In such cases the church should not accept this on its face and determine that a believer acted without biblical warrant, but instead should be willing to look behind the divorce decree to determine whether a spouse who was divorced on such a “no fault” grounds was instead victimized by a sufficient biblical ground such as willful desertion, spousal abuse, or adultery. In those cases where divorce was biblically justified, the church should extend the right hand of fellowship to any believer whose marriage was so dissolved; where biblically proper grounds were not present, the church should provide additional spiritual counsel including seeking to establish repentance and even marital reconciliation, if possible. Because spouses may be attending different churches efforts may have to involve various church or other Christian communities.

Sol Linowitz, attorney and former ambassador to the Organization of American States under Presidents Johnson and Nixon, argues that the legal profession has lost its way in recent decades, marked by declining legal ethics, a diminished sense of public service, and increased attention to personal income, which has transformed lawyers from trusted advisors into a “legal services industry” that no longer pursues its responsibility to the court and public. In challenging the legal profession, Linowitz observes:

Law is at its heart an organized, reasonable, accepted way for people to live together and settle their disputes without resort to force . . . All communities need law, and all the people who live in those communities need to feel they enjoy the equal protection of the law. Especially where ethnic rivalries seethe and people of different religions, colors, and loyalties must share the same pieces of land, it must be credible that all can come to the law and have their quarrels adjudicated without reference to their group.²⁸⁰

It is clear that resolution of marital causes often involves the combined resources of families, churches and civil government. Whether or not a church or civil government is patterned after the Mosaic structure or otherwise, both religious and civil decision makers should seek to wisely administer what is right, just and fair, reflecting the very character of God's wisdom, righteousness, justice and equity.

5. Limited Objectives

“If the purpose is peace, then unconditional surrender or the destruction of a nation's economic or political institutions is an unwarranted objective.”²⁸¹

The concepts of limited objectives and proportionate means are closely related. When reconciliation efforts have been unsuccessful and divorce is determined to be a biblically sound course, a just divorce involves pursuing objectives limited to what is just, fair and right. Clearly, many who are caught up in the divorce process have objectives that seem bent on the unjust personal or financial destruction of the other spouse. The vindictive motive may become more apparent as a spouse's goals are expressed or pursued. As Janet R. Johnson and Vivienne Roseby write, divorce can be

seen as being more or less successful or as having failed to accomplish its purpose. In a successful divorce, the adults are able to work through their anger, disappointment, and loss in a timely manner and terminate their spousal relationship with each other (legally and emotionally), while at the same time retaining or rebuilding their parental alliance with and commitment to their children. A successful divorce can relieve children of the daily stress of overt parental conflict and associated anger and depression. Fortunately, the majority of couples appear to achieve this kind of transition relatively successfully.²⁸²

6. Proportionate Means

“The weaponry and the force used should be limited to what is needed to repel the aggression and deter future attacks, that is to say to secure a just peace. Total or unlimited war is ruled out.”²⁸³

Some divorces sadly resemble wars and some spouses use disproportionate means to deal with even trifling offenses, and then pursue a “scorched earth” method or get caught up in a zero-sum process that escalates to its utter destructive end.²⁸⁴ Sometimes a Christian may be thrust into divorce proceedings she or he does not want, and sometimes is faced with what could even be termed the wicked conduct of a fool who is not concerned for justice or the interests of others (Prov 28:5; Prov 29:7), but is self-interested and cares only about what may benefit him. Moreover, the fool not only scoffs at justice, he also sometimes desires to merely ridicule, rant and rave. Thus, it is important to have a sense of the fool with whom you are dealing: is this person one with whom you should pursue engagement, or are you dealing with one who would sap your strength. “If a wise man goes to court with a fool, the fool rages and scoffs, and there is no peace” (Prov 29:9; see Prov 26:4). There is no arguing calmly with a fool who will try any approach except the quietly rational.²⁸⁵ To litigate with a fool, you have to reckon “with unreasonable and objectionable behavior and a complete lack of moderation and proportion.”²⁸⁶

Moreover, the adversarial court system is not well-suited to handling such highly personal matters as are involved in divorce proceedings, and sometimes the nature of litigation itself carries the parties along. The wise person realizes that litigation does not always bring a peaceful resolution, but instead may merely foment conflict, take on a life

of its own, spin out of control, make matters worse, create new problems, and incite new grounds of conflict. Indeed,

[T]he psychology of litigation suggests that *litigation is dedicated to carrying on strife, not resolving it*. . . The litigious mind is devoted to strife because strife gives life to litigation. Litigation lives only so long as strife is maintained. Resolution of conflict means death to litigation. In a Darwinian struggle to survive, litigation must keep strife alive to preserve and perpetuate itself. It's a matter of litigation protecting its own self-interest.²⁸⁷

Thus, the wise person may sometimes have to not merely consider objectives but also to seek ways to diffuse anger, even exercising some forbearance rather than pressing all rightful claims. One thing that spouses who are going through the process of separation and divorce do not need is additional conflict that exacerbates and incites further disharmony. Because divorce touches upon some of the most private and personal aspects of life, and tends to draw others (including children) into the adversarial litigation process that inevitably perpetuates strife, churches and courts should continue to use and develop alternative conciliation approaches to resolving marital causes.

In administering justice, an aspect of this “winnowing” process (Prov 20:8, 26) is the judge’s responsibility to examine the demeanor of witnesses, to determine their biases and motivations, and to assess their credibility. An interesting Biblical narrative depicting the discerning heart of Solomon in winnowing out the good from evil involves the story about the two prostitutes who claimed the same baby and brought the matter to Solomon for his determination. Solomon ordered that the baby be cut in two with each claimant to receive one-half of the infant. The true mother, expressing her genuine maternal love and compassion, relinquished her claim so that the baby’s life would be spared. The malice and bitterness of the other woman became manifest, and Solomon gave the child to the true

parent. Clearly, Solomon in his wisdom understood both God's character and the heart of those created in God's image.

However, the formal rules of evidence and other procedural aspects often are obstacles to doing what is just, right and fair. Although access to court has become somewhat more user friendly in Maryland, such as through the availability of forms for use by self-represented litigants, this creates a greater expectation for litigants once they are in the system. However, although litigants may more easily enter the court system, the system itself must appear as somewhat of a maze to the novice, and the formal rules of evidence and other procedural aspects often are obstacles to doing what is just, right and fair. With increased expectation comes greater disappointment and disillusionment, and the poor and oppressed do not always receive justice. Access to the courts and the promotion of justice is also evident in other court-provided services such as foreign language interpreters, the appointment of Guardians *ad litem* or "Best Interest Attorney" to represent the best interests of minor children, appointment of independent custody evaluators to investigate the family and make a report to the court concerning custody and visitation issues, and the availability of supervised visitation programs that ensure the safety of minor children. These kinds of services promote justice and a just divorce.

7. Noncombatant Immunity

*"Since war is an official act of government, only those who are officially agents of government may fight, and individuals not actively contributing to the conflict (including POW's and casualties as well civilian nonparticipants) should be immune from attack."*²⁸⁸

When marital discord occurs between a couple, friends, neighbors, and family may be drawn into the situation and even asked or compelled to take sides. Alliances are

formed, Christian fellowship is broken, relations with third parties are damaged or destroyed, but even more troublesome is the effect on children who are caught in the middle of parental conflict. Parents are charged with raising their children in the fear and instruction of the Lord (Gen 1:28; Deut 6:1-9; Eph 6:4). Although children may learn to live with their parents' divorce, for almost all children

the first two to three years are exceedingly difficult. Not only must they adjust to major changes in their life circumstances, they must also acquire a whole new understanding of what constitutes a "family."²⁸⁹

Common issues of ongoing conflict between parents are parenting skills (mistrust of the other parent's capabilities, fear that child's endangered in other parent's care), transition times (child's actions and adjustment before and after visits), time sharing (one parent wants more time which is resisted by the other parent), details of visits (drop-off and pick up times, failure to communicate changes), and disparaging talk (negative remarks about the other parent made in children's presence).²⁹⁰ Children are put in a "loyalty bind" predicament when parents

ask them to take sides, in effect to form a coalition against the other parent. A loyalty bind may be no more than a father's mild encouragement not to comply with the mother's request; or it may be a serious effort to undermine her parental authority. All divorced parents place their children in loyalty binds from time to time. Even the most conscientious people subtly, and often inadvertently, create such a dilemma for their children. It is when a parent fails to take corrective action to minimize such binds that the legacy of damage begins. Children understand that they are part of each parent. They report feeling divided within themselves."²⁹¹

Because parental high conflict has an extensive adverse impact on children, parents must endeavor to mitigate their conflict to keep children out of these loyalty binds and seek to limit anxiety and distress experienced by their children.²⁹²

Conclusion

How we perform our various callings in the world is evidence of the quality of our relation to the world, to our neighbor, and ultimately to God. The legal profession is one that would seem to require a deep understanding of justice and mercy, and a will to do justice, righteousness and equity. The doctrine of calling is deeply individuating and personalizing, and the notion of calling does not allow us to separate our work, family life or relationships in this world from our faith in and our responsibility before God. That our calling in life, whether it be a particular employment, or the calling as a spouse or parent, is to be undertaken in faith is sobering and liberating for it means that we are not so much responsible for achieving “results” in the world, as for simply walking before the LORD in humility and for showing justice and mercy to our neighbor (Mic 6:8). God’s covenant love to us should motivate us to even greater covenant loyalty: to love God with all of our heart, soul, and mind; to love our neighbor as ourselves; and to do justice, to love kindness and to walk humbly with our God (Mic 6:8). This loving obedience is the true worship and sacrifice God desires of us, and is the faithful response of a grateful covenant servant to his or her exalted King and Lord.

The foregoing “just divorce” considerations may serve a useful pedagogical purpose in broadening the way in which divorce and remarriage are viewed by the church, and in providing some new perspective to a debate that often generates more heat than light. In many cases these considerations will not provide definitive answers as we seek to apply God’s Word to every area of our lives. However, the simplistic “no divorce” and, or,

“no remarriage” lines drawn by some lack biblical warrant, callously break a bruised reed, and impose burdens on believers that God does not call them to bear.

It is important for the Christian community, individually and collectively, to exhibit compassion and love to individuals and families that are struggling with applying biblical principles to a ruptured marriage and the aftermath of divorce. While to the casual observer it may appear to be “just another divorce,” we must seek to assure that it is a “just” divorce, and that both parties are treated with righteousness, justice and equity. We must “develop a balanced, biblical attitude toward divorce – on the one hand, hating all those things that God hates about divorce, while recognizing that in this sinful world there are those situations in which (as God Himself demonstrated) it may be necessary to obtain a divorce.”²⁹³

NOTES

¹ The Barna Group, “Born Again Christians Just As Likely to Divorce As Are Non-Christians,” The Barna Update, September 8, 2004. n.p. [cited 16 March 2007] Online: <http://www.barna.org/FlexPage.aspx?Page=BarnaUpdate&BarnaUpdateID=170>.

² Andreas J. Kostenberger, with David W. Jones, *God, Marriage and Family: Rebuilding the Biblical Foundation* (Wheaton, Ill.: Crossway Books, 2004), 89.

³ The Westminster Confession of Faith states, “Marriage was ordained for the mutual help of husband and wife; for the increase of mankind with a legitimate issue, and of the Church with an holy seed; and for preventing of uncleanness” [sexual immorality] (WCF 24:2); Gen 1:28; 2:18; Mal 2:15; 1 Cor 7:2, 9. Because God said that it was “not good” for man to be alone, Jay Adams emphasizes “companionship” as the “essence of marriage” and refers to marriage as “*The Covenant of Companionship*.” Jay E. Adams, *Marriage, Divorce, and Remarriage in the Bible: A Fresh Look at What Scripture Teaches* (Grand Rapids: Zondervan, 1980), 8.

⁴ Several biblical texts indicate that God desires that his sanctified people not intermarry with those outside the faith and that they should “marry in the Lord” (Deut 7:3; Ezra 10:10; Neh 13:23-27; Mal 2:10-12; 1 Cor 7:39; 2 Cor 6:14-7:1).

⁵ Because extended families often resided together, this leaving did not necessarily mean establishing a separate house; rather, this aspect of the marriage covenant to “leave . . . and be united” means *to transfer one’s fundamental allegiance from parents to spouse*” and “[o]ne flesh’ describes the interpersonal intimacy that should characterize the marriage partnership and culminate in sexual relations.” Craig L. Blomberg, *Matthew* (NAC 22; Nashville: Broadman, 1992), 290; see also Gordon P. Hugenberger, *Marriage as a Covenant: Biblical Law and Ethics as Developed from Malachi* (Grand Rapids: Baker, 1998), 159-160, 163.

⁶ See also Prov 2:17; Ezek 16:8, 59, 60, 62; the Hos 2:18-22 marriage analogy; and 1 Sam 18-20.

⁷ Hugenberger, *Marriage as a Covenant*, 166-167, 341-343.

⁸ Hugenberger, *Marriage as a Covenant*, 171-172, 174.

⁹ Meredith G. Kline, *Treaty of the Great King: The Covenant Structure of Deuteronomy: Studies and Commentary* (Grand Rapids: Eerdmans, 1963), 17; Meredith G. Kline, “The Two Tables of the Covenant,” *WTJ* 22 (1960), 137; Meredith G. Kline, “Law Covenant,” *WTJ* 27 (1964), 17; see also John M. Frame, *The Doctrine of God* (Phillipsburg: P & R, 2002), 30-33.

¹⁰ Kline, “Law Covenant,” 3, 17.

¹¹ Kline, “Law Covenant,” 17.

¹² Kline, *Treaty of the Great King*, 13-20. In *Treaty of the Great King*, 28ff, Kline also analyzes the book of Deuteronomy as a covenant renewal document in the legal form of a suzerainty treaty: 1) Preamble (1:1-5); 2) Historical Prologue (1:6-4:49); 3) Stipulations (5-26); 4) Curses and Blessings or Covenant Ratification (27-30); 5) Succession Arrangements or Covenant Continuity (31-34).

¹³ Kline, *Treaty of the Great King*, 21.

¹⁴ Meredith G. Kline, “Canon and Covenant: Part 2,” *WTJ* 32 (1970), 181.

¹⁵ Meredith G. Kline, "Oath and Ordeal Signs," *WTJ* 27 (1965), 127-128. The legal process was conducted by messengers. In the first of its two distinct phases messengers delivered one or more warnings. These were couched in a form that reflected the pattern of the original treaty. Stylistically, interrogation was a distinctive feature. The vassal was reminded of the suzerain's benefits and of the treaty stipulations, explanation of his offences was demanded, and he was admonished to mend his ways. He was also confronted anew with the curses of the covenant, now in the form of an ultimatum, and warned of the vanity of all hope of escape through recourse to any alien quarter.

¹⁶ Bruce Waltke, "Micah," in *The Minor Prophets: Volume 2: Obadiah, Jonah, Micah, Nahum and Habakkuk* (ed. Thomas Edward McComiskey; Grand Rapids: Baker, 1993), 726-727.

¹⁷ See Kristen Nielsen, "Yahweh as Prosecutor and Judge: An Investigation of the Prophetic Lawsuit (Rib Pattern)," *Journal for the Study of the Old Testament, Supplement Series* 9 (Sheffield: JSOT, 1978).

¹⁸ A contrite King David, after being confronted by Nathan the prophet concerning his sin with Bathsheba, had acknowledged that God does not delight in mere sacrifice or burnt offerings, but rather the sacrifices of God are "a broken spirit; a broken and contrite heart" that he will not despise, and God delights in righteous sacrifices and burnt offerings (Ps 51:16-19).

¹⁹ Meredith G. Kline, *Kingdom Prologue: Genesis Foundations for a Covenantal Worldview* (Eugene: Wipf & Stock, 2006), 152, 149-153.

²⁰ Kline, *Kingdom Prologue*, 150-151. In *Kingdom Prologue* Kline suggests that "in the course of the temptation and subsequent interrogation the man and the woman had put asunder what God had joined together and that it was in fact their state of divorce that accounted for the shame that had come to attach to their nakedness. In that connection we observed that the condition of nakedness figures in biblical and extra-biblical legal symbolism as a sign of divorce. For God to cover the nakedness that publicized our first parents' state of divorce was to reunite them in marriage. In fact, quite apart from the situation of divorce, a man's spreading of a garment over a woman constituted a symbolic pledge of marriage. This fact is instructive at both levels of covenant ratification that we find ourselves dealing with in Genesis 3:21. At the level of the God-man covenant, God's covering the human covenanting party with a garment would itself (even apart from the identification of the skin-garments as symbolic of the *imago Dei*) symbolize directly God's renewal of his covenant with man (cf. Ezek 16:8). And at the human level, the covering of Adam and Eve with garments of skin would then serve, irrespective of the divorce background, as a marriage ratification ceremony. (The fact that the term for skin is singular might then be significant – the garments symbolic of their oneness being appropriately derived from one skin.) Thus recognized as the record of the remarriage of Adam and Eve, verse 21 forms the appropriate sequel to verse 20. Viewing verse 20 at the level of God's covenant with man, we have interpreted Adam's statement as a confession of faith. But obviously implicit in Adam's naming of Eve was also a resumption of their marital commitment to one another, and the ceremony of marriage described in verse 21 then follows after that in natural sequence." Kline, *Kingdom Prologue*, 151.

See also Meredith G. Kline, *Images of the Spirit* (Grand Rapids: Baker, 1980), 50-56, which discusses image-investiture and covenant, the allegory of Ezek 16, and the record of the Covenant of Creation. In discussing Gen 2 Kline notes that "marriage covenant is present explicitly in the form of a societal analogue to mankind's covenantal-image relationship to God. Through the parable of the marriage relationship of the man and the woman, established by creation ordinance, instructive insight was afforded into the nature of the covenant between God and men." Kline, *Images of the Spirit*, 56.

²¹ Kline, *Kingdom Prologue*, 152.

²² Kline, *Kingdom Prologue*, 152.

²³ Kline, *Kingdom Prologue*, 152. In Jer 3:8 God says that for all of Israel's adulteries (i.e., idolatries) for which she had not repented "I had her sent away with a decree of divorce," i.e., the 722 BC deportation by Assyria. Even following this divorce God remained long-suffering and still called for faithless Israel to acknowledge her guilt and rebellion, and to repent and physically return.

²⁴ Kostenberger, *God, Marriage and Family*, 85, 91.

²⁵ John Stott, "Marriage and Divorce" in *Our Social & Sexual Revolution: Major Issues for a New Century* (Grand Rapids: Baker, 1999), 137.

²⁶ Adams, *Marriage, Divorce, and Remarriage in the Bible*, 5-6; see also Craig L. Blomberg, "Marriage, Divorce, Remarriage, And Celibacy: An Exegesis of Matthew 19:3-12," *TrinJ* 11 (1990), 168. Adams goes on to say: "This point – that sexual relations do not constitute a marriage – is absolutely essential to any proper understanding of marriage, divorce and remarriage. Marriage is bigger than and distinct from (though inclusive of the obligation of) sexual union. It is neither constituted nor dissolved by sexual relations." Adams, *Marriage, Divorce, and Remarriage in the Bible*, 6-7. Adams later states that "covenant, we have seen, is made at the time of engagement by contract (not by sexual union), but the two begin to fulfill all the terms of the covenant only after the wedding ceremony and celebration when they actually begin to live together." Adams, *Ibid*, 15-16.

²⁷ Hugenberger, *Marriage as a Covenant*, 216-279.

²⁸ Hugenberger, *Marriage as a Covenant*, 248, see especially 248-279.

²⁹ Hugenberger, *Marriage as a Covenant*, 216, 216-279.

³⁰ Hugenberger, *Marriage as a Covenant*, 216.

³¹ Blomberg, "Marriage, Divorce, Remarriage," 167, 168.

³² That marriage is intended as a "relationship which binds a couple until death" is "implicit in the concept of cleaving – being 'glued together' or bound in one-flesh relationship" and is explicitly stated by Jesus in Matt 19:6 and Mark 10:9. J. Carl Laney, *The Divorce Myth* (Minneapolis: Bethany House, 1981), 26, 138. See also Rom 7:2-3; and 1 Cor 7:39. Craig Blomberg notes that "Much has been written about the Hebrew and Greek words for 'cleave,' likening them to glue and its effects, but the word itself cannot settle any debates regarding the dissolubility or indissolubility of marriage in God's eyes." Blomberg, "Marriage, Divorce, Remarriage," 167. David Atkinson writes that "marriage is not a metaphysical status which cannot be destroyed; it is rather a moral commitment which should be honored," David Atkinson, *To Have and to Hold: The Marriage Covenant and the Discipline of Divorce* (Grand Rapids: Eerdmans, 1979), 91. D. A. Carson argues for the indissolubility of marriage stating that "If marriage is grounded in *creation*, in the way God has made us, then it cannot be reduced to a merely covenantal relationship that breaks down when the covenantal promises are broken," (contra Atkinson, *To Have and To Hold*, esp. pp. 114ff.). D. A. Carson, *Matthew: Chapters 13 through 28*, EBC (Grand Rapids: Zondervan, 1995), 412. Blomberg writes that against "D. A. Carson's objection that marriage is indissoluble since it is grounded in creation, in the way God has made people, it must be noted that only the institution is grounded . . . Transferring one's fundamental loyalties from parents to spouse does not suggest a state that renders marriages indissoluble, but a volitional commitment which should remain permanent yet which can be rescinded." Blomberg, "Marriage, Divorce, Remarriage," 167-168. Thus, marriage is a covenant which ought not to be broken, but it is not "indissoluble" in some intrinsic or sacramental sense of "unable to be broken," Blomberg, *Ibid*, 169-170.

³³ Hugenberger, *Marriage as a Covenant*, 279. Blomberg says that although becoming “one flesh” may focus on the marital sexual union, it “incorporates every aspect of intimacy and interdependence which should ideally render the married couple a unified entity at the deepest levels of interpersonal communion.”

Blomberg, “Marriage, Divorce, Remarriage,” 167.

³⁴ David Instone-Brewer, *Divorce and Remarriage in the Bible: The Social and Literary Context* (Grand Rapids: Eerdmans, 2002), 3-4.

³⁵ Instone-Brewer, *Divorce and Remarriage in the Bible*, 7-8. Instone-Brewer says that “Although the distinction between “covenant” and “contract” is a useful one in theological language, we must take care not to read later theological development back into the Old Testament . . . However, the theological development of this term should not determine the way in which Old Testament language is understood.” Instone-Brewer, *Ibid*, 16-17.

³⁶ Instone-Brewer, *Divorce and Remarriage in the Bible*, 18-19.

³⁷ Instone-Brewer, *Divorce and Remarriage in the Bible*, 1-19.

³⁸ Instone-Brewer, *Divorce and Remarriage in the Bible*, 8-14.

³⁹ Michael L. Satlow, *Jewish Marriage in Antiquity* (Princeton: Princeton University Press, 2001), 84.

⁴⁰ Satlow, *Jewish Marriage in Antiquity*, 84.

⁴¹ “Document of Wifehood,” translated by Bezalel Porten (*COS* 3.63:153-157, 154 n 12). See also Gen 24:53; Exod 22:16-17; Hos 3:2.

⁴² R. J. Rushdoony argues that the breach of obligation to provide the specified wife’s rights applicable to a captive woman (Deut 21:10-14), and a Hebrew “slave” or bonded woman (Exod 21:10), implied that “it is applicable as grounds for divorce for endowed wives. St. Paul referred to this law in I Corinthians 7:3-5, where the requirement of sexual relations and all “due benevolence” (or “obligations” BV) is specified. St. Paul spoke of the failure to meet the sexual responsibilities of marriages as defrauding the marital partner. (It can also be described, and has been, as a form of desertion.) The reference to Exodus 21:1-10 is clear; St. Paul spoke in the context of Biblical law.” R. J. Rushdoony, *The Institutes of Biblical Law* (Phillipsburg: Presbyterian & Reformed, 1973), 403. See also Instone-Brewer, *Divorce and Remarriage in the Bible*, 192-197.

⁴³ See Hugenberger, *Marriage as a Covenant*, 75.

⁴⁴ Hugenberger, *Marriage as a Covenant*, 47.

⁴⁵ Hugenberger, *Marriage as a Covenant*, 83. Although Laney interprets this verse as God expressing the attitude that he hates divorce, he notes that “God does not say, “I hate the *divorcee!*” Believers should not be hostile to those who have suffered a marital disaster, but should reflect Christ’s attitude of loving concern.” Laney, *The Divorce Myth*, 48.

⁴⁶ Hugenberger, *Marriage as a Covenant*, 51, 67-76, 83. Hugenberger argues that this “interpretative approach” “is most faithful to the text, requiring minimal or no emendation of the [Masoretic Text], and as most congruent with the larger context of Mal. 2:10-16” Hugenberger, *Ibid*, 67. He asserts that the “subject of the antecedent of ‘he hates’ is not Yahweh, but the divorcing man or, more exactly, an impersonal subject: ‘if one hates . . .’” and that “hate . . . is often found elsewhere in the Old Testament in the context of marriage, where it refers to the attitude of husbands towards their wives” as in Gen 29:31; Deut 21:15-17; Deut 22:13, 16; 24:3; Judg 15:2; Prov 30:23; and Isa 60:15. Hugenberger, *Ibid*, 70.

⁴⁷ Hugenberger, *Marriage as a Covenant*, 76. Hugenberger's view, following that of J. Wellhausen and others, is that "the offences of mixed marriage and divorce were merely parallel examples of the infidelity . . . which Malachi condemns in 2:10 and that there was no necessary causal connection between them." Hugenberger, *Ibid.*, 122, 98-100, 105.

⁴⁸ John H. Walton, *Ancient Israelite Literature in its Cultural Context: A Survey of Parallels between Biblical and Ancient Near Eastern Texts* (Grand Rapids: Zondervan, 2000), 69-77, especially content chart on 76-77.

⁴⁹ Satlow, *Jewish Marriage in Antiquity*, 74. Raymond Westbrook asserts that the proscription in Deuteronomy 24:1-4 against remarrying a former wife following her intervening marriage to a third party is based on considerations of financial payment and penalties relating to marriage and divorce. Upon a husband putting away his wife on a groundless basis, the woman would have retained her dowry. She also would have retained any dowry from her second marriage when it ended in divorce. Thus, the first husband would unfairly benefit financially upon remarrying his former wife. Instone-Brewer, *Divorce and Remarriage in the Bible*, 7, citing Raymond Westbrook, "Prohibition of Restoration of Marriage in Deuteronomy 24:1-4," in *Studies in Bible 1986*, ed. S. Japhet, *Scripta Hierosolymitana* 31 (Jerusalem: Magnes, 1986), 387-405. This paper will discuss other interpretations and aspects of Deuteronomy 24:1-4 elsewhere.

⁵⁰ The Sumerian Ur-Nammu law code was produced during the Ur III Dynasty period of Sumerian history (approx. 2112-2004 BCE), and should be credited to either the founder of the dynasty, Ur-Nammu (r. 2112-2095 BCE), or his son and successor, Shulgi (2094-2047 BCE). "The Laws of Ur-Nammu," translated by J.J. Finkelstein (*ANET*, 523-525); Bill T. Arnold and Bryan E. Beyer, eds., *Readings from the Ancient Near East: Primary Sources for Old Testament Study* (Grand Rapids: Baker Academic, 2002), 104-106; and "The Laws of Ur-Namma (Ur-Nammu)," translated by Martha Roth (*COS* 2.153:408-410).

⁵¹ This section of text does not appear in *ANET*, but is translated in "The Laws of Ur-Namma (Ur-Nammu)," translated by Martha Roth (*COS* 2.153:409).

⁵² Arnold and Beyer's selection reads "they shall restore to him twofold the bride-wealth that he brought." Arnold and Beyer, *Readings from the Ancient Near East*, 108; similarly, see "The Laws of Lipit-Ishtar," translated by Martha Roth (*COS* 2.154:410-414); the *ANET* translation says they shall present the rejected man with "the betrothal-gifts which he brought." "Lipit-Ishtar Lawcode," translated by S. N. Kramer (*ANET*, 159-161).

⁵³ "Lipit-Ishtar Lawcode," translated by S. N. Kramer (*ANET*, 159-161); Walton, *Ancient Israelite Literature*, 71; Arnold and Beyer, *Readings from the Ancient Near East*, 106-109. Walton dates Lipit-Ishtar's reign to 1875-1864 BCE, while Arnold and Beyer's selection records the dates as 1934-1924 BCE.

⁵⁴ Roth translates this as "If a man's first-ranking wife loses her attractiveness or becomes a paralytic, she will not be evicted from the house; however, her husband may marry a healthy wife, and the second wife shall support the first-ranking wife," and a variant reading of the last part is that "he shall support the second wife and the first-ranking wife." "The Laws of Lipit-Ishtar," translated by Martha Roth (*COS* 2.154:413).

⁵⁵ "Lipit-Ishtar Lawcode" (*ANET*, 160-161); Arnold and Beyer, *Readings from the Ancient Near East*, 106-109; "The Laws of Lipit-Ishtar," translated by Martha Roth (*COS* 2.154:413).

⁵⁶ The sixty-paragraph Laws of Eshnunna were composed in the end of the nineteenth or beginning of the eighteenth century BCE, and sponsorship is often attributed to Dadusha, King of Eshnunna, and the Eshnunna kingdom ended when King Hammurabi captured the city in 1766 BCE; "The Laws of Eshnunna," translated by Martha Roth (*COS* 2.130:332-335); Walton, *Ancient Israelite Literature*, 71-72. The eighteenth

century BCE Babylonian Code of Hammurabi, who reigned from 1792-1750 BCE, is the “most extensive of extant law codes,” containing 282 laws covering both criminal matters and civil matters such as marriage and divorce. See “The Code of Hammurabi,” translated by Theophile J. Meek (*ANET*, 163-180); Walton, *Ancient Israelite Literature*, 111-114; “The Laws of Hammurabi,” translated by Martha Roth (*COS* 2.131:335-353); and Arnold and Beyer, *Readings from the Ancient Near East*, 114-115.

⁵⁷ “The Laws of Eshnunna,” translated by Albrecht Goetze (*ANET*, 161-163); see also “The Laws of Eshnunna,” translated by Martha Roth (*COS* 2.130:332-335); and Walton, *Ancient Israelite Literature*, 109-110.

⁵⁸ However, if the wife was not careful, but instead was a “gadabout” who neglected her house and humiliated her husband, then she was to be thrown into the water (Hammurabi 143).

⁵⁹ Walton, *Ancient Israelite Literature*, 74; Arnold and Beyer, *Readings from the Ancient Near East*, 115; “The Hittite Laws,” translated by Albrecht Goetze (*ANET*, 188-196); “Hittite Laws,” translated by Harry A. Hoffner, Jr. (*COS* 2.19:106-119).

⁶⁰ “The Hittite Laws,” translated by Albrecht Goetze (*ANET*, 188-196). Note Hittite laws 197 distinction regarding the location of the man seizing the woman: if it occurs “in the mountains” then it is deemed his crime and he will be killed; if it occurs in the woman’s house then it is deemed her crime and she will be killed (*ANET*, 196).

⁶¹ Walton, *Ancient Israelite Literature*, 73; Arnold and Beyer, *Readings from the Ancient Near East*, 114; “The Middle Assyrian Laws,” translated by Theophile J. Meek (*ANET*, 180-188); “The Middle Assyrian Laws (Tablet A),” translated by Martha Roth (*COS* 2.132:353-360).

⁶² “The Neo-Babylonian Laws,” translated by Theophile J. Meek (*ANET*, 197-198); Arnold and Beyer, *Readings from the Ancient Near East*, 116-117; “The Neo-Babylonian Laws,” translated by Martha Roth (*COS* 2.133:360-361).

⁶³ “The Neo-Babylonian Laws” (*ANET*, 197); Roth translates this as “A man who makes an oral promise of the dowry for his daughter, or writes it on a tablet for her, and whose estate later decreases – he shall give to his daughter a dowry in accordance with the remaining assets of his estate; the father-in-law (i.e., the bride’s father) and the groom will not by mutual agreement alter the commitments.” “The Neo-Babylonian Laws,” translated by Martha Roth (*COS* 2.133:361).

⁶⁴ i.e., “and thus her claim is satisfied.” “The Neo-Babylonian Laws,” translated by Martha Roth (*COS* 2.133:361).

⁶⁵ John J. Collins, “Marriage, Divorce and Family in Second Temple Judaism,” pp. 104-162 in *Families in Ancient Israel*. Edited by Don S. Browning and Ian S. Evison (Louisville: Westminster John Knox, 1997), 107.

⁶⁶ “Aramaic Papyri from Elephantine” and “Aramaic Letters,” translated by H. L. Ginsberg (*ANET*, 222-223, 491); “The Mibtahiah Archive (472-410 BCE),” translated by Bezalel Porten (*COS* 3.59-3.68:141-167). Collins, “Marriage, Divorce and Family in Second Temple Judaism,” 107-109.

⁶⁷ “Bequest of House to Daughter,” translated by Bezalel Porten (*COS* 3.61:147-148).

⁶⁸ cf. “If . . . afterwards my daughter hate you and go out from you . . .” “Grant of Usufruct to Son-in-Law,” translated by Bezalel Porten (*COS* 3.62:152).

⁶⁹ “Aramaic Papyri from Elephantine” (*ANET*, 222); see also “Grant of Usufruct to Son-in-Law,” translated by Bezalel Porten (*COS* 3.62:151-153).

⁷⁰ The value of the listed silver and goods constituting Mibtahiah’s dowry aggregated 65.5 shekels. See “Document of Wifehood,” translated by Bezalel Porten (*COS* 3.63:154-155).

⁷¹ “Aramaic Papyri from Elephantine” (*ANET*, 222-223); In 440 BCE, while Mibtahiah was apparently married to Eshor, she settled some litigation with an Egyptian builder named Pi or Peu. The settlement, sworn by an Egyptian deity and witnessed by individuals who were neither Jewish nor Egyptian, refers to a “wifehood document” and records Peu stating: “about the suit which we made in Syene, a LITIGATION about silver and grain and clothing and bronze and iron – all goods and property – and (the) wifehood document.” “Withdrawal from Goods,” translated by Bezalel Porten (*COS* 3.65:160-161). Ginsberg in “Aramaic Letters: Settlement of Claim by Oath” (*ANET*, 491) had asserted that “Mibtahiah had apparently married the Egyptian Pi’ and then the marriage had been dissolved. The marriage had meant Mibtahiah’s exit from the Jewish community and adoption into the Egyptian. Even its liquidation necessitated her swearing by an Egyptian deity. The witnesses to this document are neither Jewish nor Egyptian.” Ginsberg interprets this document as their divorce settlement pursuant to their marriage contract, whereby the parties implemented the terms of their marriage contract to their respective satisfaction and ratified the dissolution of their marriage.

⁷² Satlow, *Jewish Marriage in Antiquity*, 95.

⁷³ Satlow, *Jewish Marriage in Antiquity*, 95-97.

⁷⁴ “Document of Wifehood,” translated by Bezalel Porten (*COS* 3.71:171-173).

⁷⁵ “Document of Wifehood,” translated by Bezalel Porten (*COS* 3.71:172 n 18).

⁷⁶ “Document of Wifehood,” translated by Bezalel Porten (*COS* 3.76:182-186).

⁷⁷ Satlow, *Jewish Marriage in Antiquity*, 96. Satlow also discusses the mini-archives relating to at least six early second century CE Jewish marriages in Mehoza in Arabia; the “documents show a pattern, also seen in those from Elephantine, which links marriage to gifts of property to a daughter by her father.” Satlow, *Ibid*, 97-99.

⁷⁸ Collins, “Marriage, Divorce and Family in Second Temple Judaism,” 108.

⁷⁹ Walton, *Ancient Israelite Literature*, 80, 90.

⁸⁰ Walton, *Ancient Israelite Literature*, 92.

⁸¹ Walton, *Ancient Israelite Literature*, 80, 90.

⁸² See Raymond Dillard and Tremper Longman, III, *An Introduction to the Old Testament* (Grand Rapids: Zondervan, 1994), 132, citing R.L. Hubbard, Jr., *The Book of Ruth* (NICOT; Eerdmans, 1988), 48-51.

⁸³ Roland Kenneth Harrison, *Introduction to the Old Testament* (Grand Rapids: Eerdmans, 1969, 1982), 647.

⁸⁴ Everett Ferguson, *Backgrounds of Early Christianity* (3d ed.; Grand Rapids: Eerdmans, 2003), 75; Instone-Brewer asserts that the Pentateuch authorized a woman to divorce her husband if he neglected to provide her food, her clothing, or her marital rights (Exod 21:10). Instone-Brewer, *Divorce and Remarriage in the Bible*, 28-31.

⁸⁵ Instone-Brewer, *Divorce and Remarriage in the Bible*, 28-31.

⁸⁶ Ferguson, *Backgrounds of Early Christianity*, 493-495.

⁸⁷ *m. Git. 2:5*. “The receipt which the divorced wife signs on receipt of her [*ketubah*], marriage settlement.” Blackman, *Mishnayoth: Volume III: Order Nashim*, 401, *m. Git. 2:5* n 4.

⁸⁸ Blackman, *Mishnayoth: Volume III: Order Nashim*, 410, *m. Git. 4:3* n 4.

⁸⁹ *m. Git. 4:7*. See Blackman, *Mishnayoth: Volume III: Order Nashim*, 413, *m. Git. 4:7* n 1.

⁹⁰ Blackman, *Mishnayoth: Volume III: Order Nashim*, 439.

⁹¹ *m. Git. 9:4*. Blackman, *Mishnayoth: Volume III: Order Nashim*, 440.

⁹² *m. Git. 9:4*. Blackman, *Mishnayoth: Volume III: Order Nashim*, 440.

⁹³ *m. Git. 9:9*. Blackman, *Mishnayoth: Volume III: Order Nashim*, 443-444.

⁹⁴ Ferguson, *Backgrounds of Early Christianity*, 74.

⁹⁵ Lohse, *New Testament Environment*, 149; Ferguson, *Backgrounds of Early Christianity*, 75. Ferguson cites rabbinic teaching that men are ready for marriage at age eighteen, Ferguson, *Backgrounds of Early Christianity*, 75, 112; Satlow summarizes rabbinic sources as indicating “Men in their late teens married women in their early teens, both under the watchful eyes and active intervention of their fathers.” Satlow, *Jewish Marriage in Antiquity*, 104. However, the reality is more likely that in Palestine and the Western Diaspora Jewish men married around thirty to women in their mid or late teens, and “Babylonian rabbinic men may have married earlier to women in their early teens,” and this comports with comparative materials suggesting “Greek and Roman men also tended to marry when they were in their late twenties or early thirties” and the “women also appeared to have married in their mid or late teens, again paralleling what might have been Jewish behavior.” Satlow, *Ibid*, 108-109.

⁹⁶ Ferguson, *Backgrounds of Early Christianity*, 74; Matthew 1:18-19 shows that at least some first century CE Jews followed this inchoate marriage form during the Second Temple period, but “Jews outside of Palestine, and perhaps even within the more cosmopolitan areas within Palestine, did not appear to engage in inchoate marriages,” but betrothal was “an established principle in rabbinic law.” Satlow, *Jewish Marriage in Antiquity*, 69-73. According to Satlow, betrothal represents the “handing over” of the right of control of the woman, either by the appropriate male guardian or by the woman herself if she was independent. Satlow, *Ibid*, 78-79. An important rabbinical concern in establishing the meaning of betrothal was so that the issue of what constitutes adultery could be addressed. Satlow, *Ibid*, 75-76.

⁹⁷ Ferguson, *Backgrounds of Early Christianity*, 74.

⁹⁸ Lohse, *New Testament Environment*, 149; Ferguson, *Backgrounds of Early Christianity*, 74. Egyptian papyri dated 13 BCE is representative of everyday life in the Roman Empire, such as the following papyrus contract of marriage: “To Protarchus from [Wife] . . . and from [Husband]. [Wife] and [Husband] agree that they have come together to share a common life, and the said [Husband] acknowledges that he has received from [Wife] by hand from the house a dowry of a pair of gold earrings weighing three quarters and . . . silver drachmae; and from now [Husband] shall furnish to [Wife] as his wedded wife all necessities and clothing in proportion to his means and shall not ill-treat her nor cast her out nor bring in another wife, or he shall straightway forfeit the dowry increased by half, with right of execution upon both the person of [Husband]

and all his property as if by legal decision, and [Wife] shall fulfill her duties towards her husband and their common life and shall not absent herself from the house for a night or a day without the consent of [Husband] nor dishonor nor injure their common home nor consort with another man, or she again if guilty of any of these actions shall, after trial, be deprived of the dowry, and in addition the transgressing party shall be liable to the prescribed fine. The 17th year of Caesar [emperor Augustus], Pharmouthi 20.” B.G.U. 1052 (H.E. 3) in Barrett, *The New Testament Background: Selected Documents* (New York: Harper & Row, 1961), 37-38. The Egyptian papyri non-literary private documents are the “primary data for the study of ... family life” and provide information about the “common people, not the intellectuals and upper classes represented in literature.” Ferguson, *Backgrounds of Early Christianity*, 134.

⁹⁹ Lohse, *New Testament Environment*, 149; Ferguson, *Backgrounds of Early Christianity*, 74.

¹⁰⁰ Lohse, *New Testament Environment*, 149. A 13 BCE Egyptian papyrus Roman deed of divorce states: “To Protarchus from [Wife] ... and from [Husband]. [Wife] and [Husband] agree that they have separated from each other, severing the union which they had formed on the basis of an agreement made through the same tribunal in Hathur of the current 17th year of Caesar, and [Wife] acknowledges that she has received from [Husband] by hand from his house the material which he received for dowry, clothes to the value of 120 drachmae and a pair of gold earrings. The agreement of marriage shall henceforth be null, and neither [Wife] nor other person acting for her shall take proceedings against [Husband] for restitution of the dowry, nor shall either party take proceedings against the other about cohabitation or any other matter whatsoever up to the present day, and hereafter it shall be lawful both for [Wife] to marry another man and for [Husband] to marry another woman without either of them being answerable. In addition to this agreement being valid, the one who transgresses it shall moreover be liable both to damages and to the prescribed fine. The 17th year of Caesar, Pharmouthi 2.” B.G.U. 1103 (H.E. 6) in Barrett, *The New Testament Background: Selected Documents*, 39.

¹⁰¹ There were no particular prescribed rituals or formalities, but “various ritual phrases may have been used and there was often a celebration and written documents which accompanied the dowry and which provided circumstantial evidence that a marriage was intended.” Susan Treggiari, “Divorce Roman Style: how Easy and how Frequent was it?” in *Marriage, Divorce, and Children in Ancient Rome*, pages 31-46 (ed. Beryl Rawson; New York: Oxford University Press, 1999), 32-33.

¹⁰² Ferguson, *Backgrounds of Early Christianity*, 74-75; Roman law was “not involved in the initiation and continuation of a particular valid marriage” nor in its termination; however, when a valid marriage commenced was important for legitimacy of children and determination whether a transfer of property constituted dowry. Treggiari, “Divorce Roman Style,” 33.

¹⁰³ Lohse, *New Testament Environment*, 214; Ferguson, *Backgrounds of Early Christianity*, 75; Treggiari notes that a verbal formula such as “take your things for yourself” was a familiar aspect in Roman divorce, but no fixed formula was legally required. She notes that by the time of the “late Republic, divorces were customarily initiated “by formal notification by a letter or a messenger or both,” but receipt of notice was not essential to a valid divorce. Consensual divorces may also have been less formal because there was no need for messages and messengers as the couple and their friends were aware of the divorce. Treggiari, “Divorce Roman Style,” 35-38.

¹⁰⁴ Mireille Corbier, “Divorce and Adoption as Familial Strategies” in *Marriage, Divorce, and Children in Ancient Rome*, pages 47-78 (ed. Beryl Rawson; New York: Oxford University Press, 1999), 52; Treggiari, “Divorce Roman Style,” 35-36.

¹⁰⁵ Treggiari, “Divorce Roman Style,” 38-39.

¹⁰⁶ Corbier, “Divorce and Adoption as Familial Strategies,” 52.

¹⁰⁷ Treggiari, “Divorce Roman Style,” 40.

¹⁰⁸ Corbier, “Divorce and Adoption as Familial Strategies,” 50-51.

¹⁰⁹ K. R. Bradley, “Remarriage and the Structure of the Upper-Class Roman Family” in *Marriage, Divorce, and Children in Ancient Rome*, pages 79-98 (ed. Beryl Rawson; New York: Oxford University Press, 1999), 80. Bradley studied Roman “consular families of the period from 80 BC to 50 BC” and concluded that with respect to remarriage after widowhood or divorce “many, perhaps most, men and women would anticipate at least two marriages in the course of their adulthood, the birth of children in each marriage, and step-parental associations with other children.” Bradley, *Ibid*, 85.

¹¹⁰ Treggiari, “Divorce Roman Style,” 39; Bradley, “Remarriage and the Structure of the Upper-Class Roman Family,” 89-90.

¹¹¹ Treggiari, “Divorce Roman Style,” 46. Treggiari notes that the “availability of divorce and the ability of either husband or wife to divorce unilaterally without validation by public authority would strongly affect the nature of marriage, even if neither spouse chose to exercise the option. The Romans made marriage rest on free consent. Customary law gave the individual freedom. Whether the individual chose to exercise that freedom could depend on economic interest, on considerations of the welfare of children, on estimates of the blamelessness of the spouse. In theory at least, the Roman ideal was a lofty one. Nor is there yet evidence to show that in practice their system had a worse effect on morality than any of the more restrictive and authoritarian systems which have replaced it.” Treggiari, *Ibid*, 46.

¹¹² Satlow, *Jewish Marriage in Antiquity*, 74.

¹¹³ John Murray, *Divorce* (Phillipsburg: P&R, 1961), 10-12.

¹¹⁴ Murray, *Divorce*, 12.

¹¹⁵ Blomberg, “Marriage, Divorce, Remarriage,” 164, citing Trans. Herbert Danby, *The Mishnah* (London: Oxford, 1933), 321: “The School of Shammai say: A man may not divorce his wife unless he has found unchastity in her, for it is written, *Because he hath found in her indecency in anything*. And the School of Hillel say: [He may divorce her] even if she spoiled a dish for him, for it is written, *Because he hath found in her indecency in anything*. R. Akiba says: Even if he found another fairer than she, for it is written, *And it shall be if she find no favour in his eyes*. (*Gittin* 9:10)”; see also Craig S. Keener, *A Commentary on the Gospel of Matthew* (Grand Rapids: Eerdmans, 1999), 463; C. K. Barrett, ed. and trans., *The New Testament Background: Selected Documents* (New York: Harper & Row, 1961), 140-141; Eduard Lohse, *The New Testament Environment*, Translated by John E. Steely (Nashville: Abingdon, 1976, 1987), 118, 149; and Everett Ferguson, *Backgrounds of Early Christianity* (3d ed.; Grand Rapids: Eerdmans, 2003), 490-491, 518. There were other differences between the two Schools concerning divorce, e.g. if a man writes a writ of divorce but continues living with his wife, the School of Shammai says a man may dismiss his wife with this “old” letter of divorce, while the accepted view is that of the School of Hillel which would prohibit releasing a wife with an old writ (*m. Git.* 8:4); if a man divorced his wife and they then spent a night together in an inn, the School of Shammai would not require the woman to get from the man another letter of divorce, while the School of Hillel would require her to obtain a second letter of divorce from him except if the divorce occurred after betrothal rather than after a wedding (*m. Git.* 8:9). See Phillip Blackman, *Mishnayoth: Volume III: Order Nashim* (2d ed.; Gateshead: Judaica Press, 1990), 433, 437.

¹¹⁶ See Blackman, *Mishnayoth: Volume III: Order Nashim*, 444, n 6: “In amplification of the view of [Hillel], repeating that he must give her a bill of divorcement (if he discovered in her any unseemly matter) before she regains favour in his eyes and he condones her misconduct. *Even if he found another more beautiful than her*

– in which case it would ordinarily be highly immoral to divorce his wife for a prettier woman, therefore it is stressed . . . that this is no deterrent to the divorce of the unfaithful wife.”

¹¹⁷ Blomberg, “Marriage, Divorce, Remarriage,” 171; Blomberg notes that Jesus preached a higher standard of kingdom righteousness for his followers than Mosaic Law: God “did not originally create people to divorce each other, and he therefore does not intend for those whom he re-creates – the community of Jesus’ followers – to practice divorce,” and “hardheartedness” is not “a legitimate excuse for Christians divorcing,” Blomberg, *Matthew*, 291. Concerning this standard of higher ethics set forth by Jesus, Darrel L. Bock comments that Jesus is “in effect saying that if you make a vow to marry and be faithful to your spouse before God, then breaking that vow and entering into another marital union can be called adultery because the original vow was not kept . . . If you are faithful you will keep your vows and not get into this situation. The essence of righteousness is integrity; the essence of sin is violating one’s promises made to God. Living in the kingdom means keeping one’s commitments to God and others.” Darrell L. Bock, *Luke 9:51-24:53*, (BECNT 3B; Grand Rapids: Baker, 1996), 1356.

¹¹⁸ See Keener, *Matthew*, 466-67.

¹¹⁹ Blomberg, *Matthew*, 289; For example, note the emphasis in Luke 16:18 that a man commits adultery by divorcing his wife and marrying another as well as by marrying a divorced woman. By removing a husband’s favored position and applying the same standards to the husband and wife and condemning the practice of divorce to marry another, Jesus’ declarations were more stringent than contemporary rabbinic teaching and more relaxed Jewish mores. I. Howard Marshall, *The Gospel of Luke: A Commentary on the Greek Text*, NIGTC (Grand Rapids: Eerdmans, 1978), 631; Joel B. Green, *The Gospel of Luke*, NICNT (Grand Rapids: Eerdmans, 1997), 603.

¹²⁰ Blomberg, “Marriage, Divorce, Remarriage,” 177; Blomberg, *Matthew*, 292; see also D. A. Carson, *Matthew: Chapters 13 through 28*, 413: “the indecency was any lewd, immoral behavior, sometimes including, but not restricted to, adultery – e.g., lesbianism or sexual misconduct that fell short of intercourse.” See also John R. W. Stott, *Christian Counter-Culture: The Message of the Sermon on the Mount*. The Bible Speaks Today (Downers Grove: InterVarsity, 1978), 96-97; and Bock, *Luke 9:51-24:53*, 1358. Laney concedes that *porneia* can be broadly interpreted to cover various unlawful sexual conduct, but argues that “Jesus was using the term in a specialized sense to refer to incestuous marriage” “within the prohibited relationships of Leviticus 18:6-18.” Laney, *The Divorce Myth*, 77. Blomberg sets forth several arguments against both the “premarital sex” and “incestuous marriages” interpretations of the use of *porneia* and concludes that, “as with the interpretation of *porneia* as premarital sex, taking the term to refer to incest ignores the background of the Shammai-Hillel debate. Such sins, finally, would actually have required annulment rather than divorce.” Blomberg, “Marriage, Divorce, Remarriage,” 176-177.

¹²¹ Blomberg, *Matthew*, 110-11.

¹²² Laney writes: “Today people debate, ‘Is it right for divorced people to remarry?’ Christ dealt with the issue, ‘Is it right for married people to be divorced?’ Note the contrast! The answer Jesus gives is, ‘Absolutely not!’ The clear teaching of Jesus concerning divorce and remarriage as recorded in the Synoptic Gospels is that the God-ordained marriage union is indissoluble, and that divorce and remarriage is adultery.” Laney, *The Divorce Myth*, 78; Note, however, Jeremiah 3:8 where God, in referring to faithless Israel, says “She saw that for all the adulteries of that faithless one, Israel, I had sent her away with a decree of divorce.” Jay Adams comments that “If God Himself became involved in divorce proceedings with Israel, it is surely wrong to condemn any and all divorce out of hand . . . [I]t is certain that sometimes, in some ways, divorce, for some persons, under some circumstances is altogether proper and not the object of God’s hatred.” Adams, *Marriage, Divorce, and Remarriage in the Bible*, 23.

¹²³ Leon Morris asserts that “Jesus is not here suggesting a law for society at large. He is saying that this is how God’s people regard marriage.” Leon Morris, *The Gospel According to St. Luke*, TNTC (Grand Rapids: Eerdmans, 1974), 251. In discussing Matthew 5:32 Blomberg argues that “divorce itself, except when it is for sexual sin, is metaphorical adultery-faithlessness to the person to whom one promised permanent loyalty,” that “the adultery (faithlessness) occurred at the time of divorce,” and that “Even if one divorces for unbiblical reasons and remarries, such a person does not enter into an ongoing adulterous relationship. The commission of adultery is a one-time act” Blomberg, “Marriage, Divorce, Remarriage,” 174-75, and the noun “adulterer” or “adulteress” is not used “but the verb *makes her commit adultery*. There is no indication here that a second marriage, even following an illegitimate divorce, is seen as permanently adulterous. Divorced Christians who have remarried should not commit the sin of a second divorce to try to resume relations with a previous spouse (see again Deut 24:1-4) but should begin afresh to observe God’s standards by remaining faithful to their current partners.” Blomberg, *Matthew*, 111.

¹²⁴ “The teaching of Jesus in Mark 10:11-12 and Luke 16:18 is simply that divorce and remarriage by either the husband or the wife is adultery. There are no exceptions recorded by Mark as he prepared his gospel for the Roman readers or by Luke as he wrote for the Greek Gentiles. It was a very strict view on divorce and remarriage that Jesus taught, for it contradicted the views held by both the liberal and conservative Jewish theologians of His day.” Laney, *The Divorce Myth*, 59.

¹²⁵ Apart from the exception clause, a significant difference between Matt 5:32 and Luke 16:18 is that Matthew asserts that the one who divorces his wife makes or causes her to commit adultery, while Luke states the man himself is guilty of adultery if he marries another woman. Marshall, *Luke*, 630-631. The underlying assumption of Matt 5:32 and Luke 16:18 “is that divorce will lead inevitably to remarriage.” Bock, *Luke 9:51-24:53*, 1357.

¹²⁶ Robert H. Stein, “Is It Lawful for a Man to Divorce His Wife?” *JETS* 22 (1979), 118-120.

¹²⁷ Blomberg, “Marriage, Divorce, Remarriage,” 163; “[T]here can be no doubt that an except clause is original,” and “there is no overwhelming reason why the except clauses, both here and in [Matthew] 5:32, should not be authentic,” Carson, *Matthew: Chapters 13 through 28*, 413, 418.

¹²⁸ Stott, *Our Social & Sexual Revolution*, 144.

¹²⁹ Carson, *Matthew: Chapters 13 through 28*, 412.

¹³⁰ Sinclair B. Ferguson, *Kingdom Life in a Fallen World: Living Out the Sermon on the Mount* (Colorado Springs: NavPress, 1987), 113.

¹³¹ Ferguson, *Kingdom Life in a Fallen World*, 124.

¹³² Blomberg, *Matthew*, 111.

¹³³ Blomberg, *Matthew*, 111.

¹³⁴ Keener, *Matthew*, 189.

¹³⁵ Keener, *Matthew*, 192.

¹³⁶ Blomberg, *Matthew*, 113.

¹³⁷ Bock, *Luke 9:51-24:53*, 1356.

¹³⁸ Bock, *Luke 9:51-24:53*, 1356.

¹³⁹ Bock, *Luke 9:51-24:53*, 1358.

¹⁴⁰ Bock, *Luke 9:51-24:53*, 1358.

¹⁴¹ Bock, *Luke 9:51-24:53*, 1359.

¹⁴² Green, *The Gospel of Luke*, 603. Marshall also notes that Jesus “places the husband and wife on the same level,” and that “Whereas in Jewish law a man who divorced his wife and married another was not guilty of any offence, Jesus here declares that this act is one of adultery; the implied object of the sin is the first wife.” Marshall, *Luke*, 631.

¹⁴³ Blomberg, “Marriage, Divorce, Remarriage,” 162-163 n5.

¹⁴⁴ Bock, *Luke 9:51-24:53*, 1358 n27.

¹⁴⁵ Blomberg, *Matthew*, 287; Blomberg notes that “Few try to make the pronouncements in various other controversy or pronouncement stories absolute (cf., e.g., Matt 19:21, 9:15, and esp. 13:57, a particularly interesting parallel because of its similar exception clause – yet prophets are sometimes without honor away from home or with honor at home), so one should be equally wary of elevating 19:9 (or Mark 10:11-12) into an exceptionless absolute.” Blomberg, “Marriage, Divorce, Remarriage,” 162.

¹⁴⁶ Blomberg, “Marriage, Divorce, Remarriage,” 162.

¹⁴⁷ Blomberg, “Marriage, Divorce, Remarriage,” 164-165.

¹⁴⁸ Blomberg, “Marriage, Divorce, Remarriage,” 174. Ferguson similarly concludes that “Mark assumes here the teaching found elsewhere in the New Testament that marital unfaithfulness or blatant desertion may end a marriage in any case (Matt 19L9 and 1 Cor 7:15ff).” Sinclair B. Ferguson, *Let’s Study Mark* (Carlisle, Pa.: Banner of Truth, 1999), 158.

¹⁴⁹ Ancient Jews, Greeks, and Romans “almost universally agreed that lawful divorce granted a person the right to remarry,” and “Jesus’ words would almost certainly have been taken as permission for remarriage when divorce was permitted, i.e., after marital unfaithfulness. In other cases divorce causes adultery,” Blomberg, *Matthew*, 111; Keener asserts that “a valid divorce by definition included the right to remarry, as is attested by ancient divorce contracts . . . and the very meaning of the term,” Keener, *Matthew*, 469.

¹⁵⁰ Bock, *Luke 9:51-24:53*, 1357.

¹⁵¹ Blomberg, “Marriage, Divorce, Remarriage,” 187; “The specific historical background that informed this debate, the particular way in which the question is phrased, and the unscrupulous motives behind the Pharisees’ approach all warn us against the notion that Jesus was comprehensively addressing all relevant questions about marriage and divorce.” Blomberg, *Matthew*, 289-290.

¹⁵² Blomberg, “Marriage, Divorce, Remarriage,” 192.

¹⁵³ Adams, *Marriage, Divorce and Remarriage*, 41; Frame makes an interesting observation that “Deut. 24:1-4, like Mark 10:11-12 and Luke 16:18, describe non-exceptional divorce situations,” and argues that in the exceptional case “a second marriage does not ‘defile’ the divorced person, for the second marriage is not adultery. So if the second marriage ends in death or divorce for sexual immorality, and the original partner is free, then the original partners may remarry one another.” Frame, *The Doctrine of the Christian Life*, 725.

¹⁵⁴ Blomberg, "Marriage, Divorce, Remarriage," 188.

¹⁵⁵ Laney, *The Divorce Myth*, 88-89.

¹⁵⁶ Laney, *The Divorce Myth*, 87.

¹⁵⁷ Adams notes that the believer could not remarry an unconverted partner as this would violate the command that believers are to marry "only in the Lord" (1 Cor 7:39), Adams, *Marriage, Divorce and Remarriage*, 48.

¹⁵⁸ WCF 24:6 states that "Although the corruption of man be such as is apt to study arguments, unduly to put asunder those whom God hath joined together in marriage; yet nothing but adultery, or *such willful desertion as can no way be remedied by the church or civil magistrate*, is cause sufficient of dissolving the bond of marriage: wherein a publick and orderly course of proceeding is to be observed, and the persons concerned in it not left to their own wills and discretion in their own case." (Emphasis added)

¹⁵⁹ Frame, *The Doctrine of the Christian Life*, 729.

¹⁶⁰ Stott, *Our Social & Sexual Revolution*, 148.

¹⁶¹ Adams, *Marriage, Divorce and Remarriage*, 47.

¹⁶² Frame says "What is needed is a focus on the question of whether the unbeliever makes a credible claim to upholding his marital vows. When that claim is no longer credible, because of physical or verbal abuse, emotional entanglements with people other than the spouse, failure to provide, literal desertion, etc., the church may declare the original marriage null and void and the partners free to remarry. But, as the Westminster Confession says, these forms of "desertion" must be such as "can no way be remedied by the church, or civil magistrate." The church should recognize divorces in these cases only when all available remedies have failed." Frame, *The Doctrine of the Christian Life*, 728.

¹⁶³ See J. Carl Laney, "Paul and the Permanence of Marriage in 1 Corinthians 7," *JETS* 25:3 (1982), 283-294. Laney argues against any right to remarry, asserting that all the church fathers, except Ambrosiaster, agreed that even in the case of adultery the "innocent" spouse was not entitled to remarry, and he says that the "clear teaching of Paul in 1 Corinthians 7 is that the God-ordained marriage union is indissoluble except by death." Laney, *Ibid*, 292-294.

¹⁶⁴ William A. Heth and Gordon J. Wenham, *Jesus and Divorce* (Carlisle, U.K.: Paternoster Press, 3rd ed., 2002; orig. ed. 1984), 120.

¹⁶⁵ See also William A. Heth, "Another Look at the Erasmian View," *JETS* 25:3 (1982), 270.

¹⁶⁶ See Blomberg, "Marriage, Divorce, Remarriage," 178-180; Phillip H. Wiebe, "The New Testament on Divorce and Remarriage: Some Logical Implications," *JETS* 24:2 (1981), 131-138; Phillip H. Wiebe, "Jesus' Divorce Exception," *JETS* 32:3 (1989), 327-333; John Murray, *Divorce*, 36-43, although Blomberg concurs with Heth and Wenham that Murray has overstated his case in *Divorce*, 40-41. Blomberg, "Marriage, Divorce, Remarriage," 179; Adams, *Marriage, Divorce, And Remarriage*, 86.

¹⁶⁷ Carson, *Matthew: Chapters 13 through 28*, 416.

¹⁶⁸ In addition to what has been said elsewhere to show that the Matthean exception clauses do not contradict Mark-Luke or other passages, see also Carson, *Matthew: Chapters 13 through 28*, 417-418. Carson points

out, among other things, that “Matthew and Mark-Luke have this in common – they abrogate any permission for divorce in Deuteronomy 24:1 if that permission extends, or is thought to extend, beyond sexual sin.” Carson’s discussion in his commentary effectively answers the Heth/Wenham interpretation.

¹⁶⁹ William A. Heth, “Another Look at the Erasmian View,” 264. See Instone-Brewer, “History of Divorce: Interpretations in Church History,” *Divorce and Remarriage in the Bible: The Social and Literary Context*, 238-267, which summarizes interpretations from the early Church Fathers through the post-Reformation period; David L. Snuth, “Divorce And Remarriage From The Early Church To John Wesley,” *TrinJ* 11 (1990): 131-142; and Atkinson, *To Have and to Hold*, 36-69.

¹⁷⁰ Blomberg, “Marriage, Divorce, Remarriage,” 180-181.

¹⁷¹ *The Pastor of Hermas* Com 4 (ANF 2:21-22).

¹⁷² Cyril C. Richardson, ed. and trans., “The First Apology of Justin, the Martyr,” pages 225-289 in *Early Christian Fathers* (New York: Macmillan, 1970), *Apology* 1.9-20, 246-255.

¹⁷³ Richardson, *Early Christian Fathers*, 250. Richardson notes that Justin’s reference “is mainly to remarriage after divorce, though the phrase could cover remarriage of any kind, which many early Christians disliked and some actually condemned.” Richardson, *Early Christian Fathers*, 250, n. 54; Theophilus, a late second century apologist and bishop in Antioch, wrote his *Apology to Autolycus*. He writes concerning chastity stressing that holy word and Gospel teaching that one who looks on and lusts after a woman not his wife, has already committed adultery with her in his heart; and he goes on to quote the Gospel teaching that one who marries someone who is divorced from her husband commits adultery and that whoever puts away his wife, except for the cause of fornication, causes her to commit adultery; and he further warns that one who has sexual relations with a married woman shall not be innocent. *Theophilus to Autolycus* 3.13 (ANF 2:115).

¹⁷⁴ *The Second Apology of Justin* 2 (ANF 1:188-189).

¹⁷⁵ Richardson, *Early Christian Fathers*, 246-255; Athenagoras, *A Plea for the Christians* (ANF 2:129-148).

¹⁷⁶ Richardson, *Early Christian Fathers*, 336-337; Athenagoras, *A Plea for the Christians* 32 (ANF 2:146).

¹⁷⁷ Richardson, *Early Christian Fathers*, 337; Athenagoras, *A Plea for the Christians* 33 (ANF 2:146).

¹⁷⁸ Richardson, *Early Christian Fathers*, 337; Athenagoras, *A Plea for the Christians* 33 (ANF 2:146-147).

¹⁷⁹ Richardson, *Early Christian Fathers*, 338; Athenagoras, *A Plea for the Christians* 34 (ANF 2:147).

¹⁸⁰ Bart D. Ehrman, “Tertullian: ‘To His Wife’,” pages 399-404 in *After the New Testament: A Reader in Early Christianity*. New York: Oxford University Press, 1999), 399, from *Tertullian: Treatises on Marriage and Remarriage*, ed. William P. Le Saint (Mahway, N.J.: Paulist Press, 1951); Tertullian, *To His Wife* 1.1 (ANF 4:39).

¹⁸¹ Ehrman, *After the New Testament*, 400; Tertullian, *To His Wife* 1.7 (ANF 4:43).

¹⁸² Ehrman, *After the New Testament*, 400; Tertullian, *To His Wife* 1.2 (ANF 4:39).

¹⁸³ Ehrman, *After the New Testament*, 401; Tertullian, *To His Wife* 1.3 (ANF 4:40).

¹⁸⁴ Ehrman, *After the New Testament*, 401; Tertullian, *To His Wife* 1.4 (ANF 4:41).

¹⁸⁵ Tertullian, *On Monogamy* (ANF 4:59-73); see also Tertullian, *On Exhortation to Chastity* (ANF 4:50-58), which was written after *To His Wife* and before *Monogamy*, in which Tertullian similarly argues against any second marriage.

¹⁸⁶ Tertullian, *On Monogamy* 9 (ANF 4:66). He argued for “one marriage” alone, stating that Adam and Eve demonstrate the lasting monogamous “unity of marriage” and reveal the individuality of marriage as “it was from the beginning.” Tertullian, *On Monogamy* 1, 4, 5 (ANF 4:59, 61, 62). He also appeals to: Noah and his wife, as well as Noah’s family, the animals and even the unclean birds on the ark, *On Monogamy* 4 (ANF 4:61); Christ, who is a monogamist in spirit with the church his bride, *On Monogamy* 5 (ANF 4:61-62); Abraham whose “faith” preceded in monogamy;” and Isaac, the seed, who maintained “unity of marriage to the last.” *On Monogamy* 6 (ANF 4:63). He asserts that “A divorced woman cannot even marry legitimately; and if she commit any such act without the name of marriage, does it not fall under the category of adultery, in that adultery is crime in the way of marriage?” *On Monogamy* 9 (ANF 4:66).

¹⁸⁷ Tertullian, *On Monogamy* 9 (ANF 4:67).

¹⁸⁸ Tertullian, *On Exhortation to Chastity* 2 (ANF 4:50).

¹⁸⁹ Tertullian, *On Monogamy* 12 (ANF 4:69). Tertullian expounds elsewhere that “There is “one God, one faith,” one discipline too. So truly is this the case, that unless the laics as well observe the rules which are to guide the choice of presbyters, how will there be presbyters at all, who are chosen to that office from among the laics? Hence we are bound to contend that the command to abstain from second marriage relates *first* to the laic; so long as no other can be a presbyter than a laic, provided he have been *once for all* a husband.” Tertullian, *On Exhortation to Chastity* 7 (ANF 4:54). Tertullian also argues if it were lawful under the law to remarry after a spouse’s death, “inasmuch as you have now been made dead to the law, it cannot be lawful for you, now that you have withdrawn from that (law) in the eye of which it *was* lawful for you.” Tertullian *On Monogamy* 13 (ANF 4:70).

¹⁹⁰ Tertullian, *On Monogamy* 14 (ANF 4:70-71): “If it was worthy of God and of Christ to check “hard-heartedness” when the time (for its indulgence) was fully expired, why should it not be *more* worthy both of God and of Christ to shake off “infirmity of flesh” when “the time” is already *more* “wound up?” If it is just that marriage be not severed, it is, of course, honorable too that it be not iterated. . . . “Hardness of heart” reigned till Christ’s time; let “infirmity of the flesh” (be content to) have reigned till the time of the Paraclete. The New Law abrogated divorce – it had (somewhat) to abrogate; the New Prophecy (abrogates) second marriage, (which is) no less a divorce of the former (marriage).” Moreover, Tertullian asserts with respect to Paul that “In granting indulgence, he alleges the advice of a prudent *man*; in enjoining continence, he affirms the advice of the HOLY SPIRIT. Follow the admonition which has divinity for its patron.” Tertullian, *On Exhortation to Chastity* 4 (ANF 4:53).

¹⁹¹ Tertullian, *On Monogamy* 15 (ANF 4:71).

¹⁹² Clement of Alexandria, *The Stromata, or Miscellanies* 2.23 (ANF 2:377-379).

¹⁹³ Instone-Brewer, *Divorce and Remarriage in the Bible*, 246-249, citing Origen, Matthew, 2.14.24 from the New Advent collection translation at <http://newadvent.org/>. Origen noted that although other conduct may seem worse than adultery or fornication, e.g. any murder, including murdering the couple’s infant, poisoning a spouse, and although a husband may share some responsibility for his wife’s adultery, yet “to act contrary to the design of the teaching of the Savior, every one would acknowledge to be impious.” Instone-Brewer, *Ibid*, 248.

¹⁹⁴ Jerome, *The Letters of St. Jerome* 55.3 (NPNF² 6:110).

¹⁹⁵ Jerome, *The Letters of St. Jerome* 55.3 (NPNF² 6:110).

¹⁹⁶ Jerome, *The Letters of St. Jerome* 55.3, 4 (NPNF² 6:110-111). In a later letter written around 399 CE, Jerome eulogizes Fabiola, who is believed to be the woman referred to in Letter 55. Before extolling Fabiola's good deeds, Jerome addresses the issue of her having left her first husband and taken a second husband. He cites the Lord's commandment that a wife must not be put away "except it be for fornication, and that, if put away, she must remain unmarried," and Jerome says this "logically applies to women also. For it cannot be that, while an adulterous wife is to be put away, an incontinent husband is to be retained." While affirming that Fabiola's husband's conduct was cause for her to put him away, Jerome went on to say that the "charge against her that after repudiating her husband she did not continue unmarried, I readily admit this to have been a fault, but at the same time declare that it may have been a case of necessity" and "She did not know that the rigor of the gospel takes away from women all pretexts for re-marriage so long as their former husbands are alive." After the death of her second husband, Fabiola "came to herself" and "put on sackcloth to make public confession of her error," and her penance purged her sins. Fabiola was restored to communion, she sold her property and gave it to the poor, even founding a hospital. She went on to lead an exemplary chaste life, and all of Rome assembled to mourn her death. Jerome, *The Letters of St. Jerome* 77 (NPNF² 6:157-163). Jerome argues that "chastity was always preferred to the condition of marriage" and he presents a negative assessment of second marriage in Jerome, *Against Jovinianus* 1 (NPNF² 6:346-386).

¹⁹⁷ Chrysostom, *Homilies on the Gospel of St. Matthew* 17 (NPNF¹ 10:118-119).

¹⁹⁸ See also Chrysostom, *Homilies on the Gospel of St. Matthew* 62.2 (NPNF¹ 10:383), in which he comments on the disciples' reaction to Christ's teaching about divorce in Matthew 19:1-10. "For indeed it seemed to be a very hard thing to have a wife full of every bad quality, and to endure a wild beast perpetually shut up with one in the house. . . . But what is, "If such be the case of a man with his wife?" That is, if to this end he is joined with her, that they should be one, or, on the other hand, if the man shall get to himself blame for these things, and always transgresses by putting away, it were easier to fight against natural desire and against one's self, than against a wicked woman."

¹⁹⁹ Chrysostom, *Homilies on First Corinthians* 19.7 (NPNF¹ 12:110-111).

²⁰⁰ Augustine, *On Marriage and Concupiscence* 1.11 (NPNF¹ 5:268); See also Augustine, *On the Good of Marriage* (NPNF¹ 3:397-413), wherein Augustine had 18 years earlier in 401 CE made similar statements: According to the marriage compact commended by Scripture "neither is it allowed one put away by her husband to marry, so long as her husband lives: nor is it allowed one put away by his wife to marry another, unless she who have separated from him be dead." Augustine, *On the Good of Marriage* 3 (NPNF¹ 3:400); "For whosoever putteth away his wife, except for the cause of fornication, maketh her to commit adultery." To such a degree is that marriage compact entered upon a matter of a certain sacrament, that it is not made void even by separation itself, since, so long as her husband lives, even by whom she hath been left, she commits adultery, in case she be married to another: and he who hath left her, is the cause of this evil." Augustine, *On the Good of Marriage* 6 (NPNF¹ 3:402); "But a marriage once for all entered upon in the City of our God, where, even from the first union of the two, the man and the woman, marriage bears a certain sacramental character, can no way be dissolved but by the death of one of them. For the bond of marriage remains . . . it is not lawful for them to separate . . . and to join themselves unto others. And if they shall so do, they commit adultery with those unto whom they join themselves, but themselves remain husbands and wives." Augustine, *On the Good of Marriage* 17 (NPNF¹ 3:406); "Therefore the good of marriage throughout all nations and all men stands in the occasion of begetting, and faith of chastity: but, so far as pertains unto the People of God, also in the sanctity of the Sacrament, by reason of which it is unlawful for one who leaves her husband, even when she has been put away, to be married to another, so long as her husband lives, no not even for the sake of bearing children: and, whereas this is the alone cause, wherefore marriage takes place, not even where that very thing, wherefore it takes place, follows not, is the marriage bond loosed, save by the death of the husband or wife." Augustine, *On the Good of Marriage* 32 (NPNF¹ 3:412).

²⁰¹ Gregory L. Lombardo, trans., *Saint Augustine: On Faith and Works* (ACW 48; Mahwah, N.J.: Newman, 1988).

²⁰² Lombardo, *Saint Augustine: On Faith and Works* 19.35 (ACW 48:42-43).

²⁰³ Deasley, Alex R. G. *Marriage & Divorce in the Bible and the Church* (Kansas City: Beacon Hill, 2000), 205, citing *Retractiones II*, 83. ET *The Fathers of the Church*. Saint Augustine, *The Retractions*, trans. Mary Inez Bogan (Washington, D.C.: Catholic University of America Press, 1968), 247.

²⁰⁴ Augustine, *On the Good of Widowhood* 6 (NPNF¹ 3:443).

²⁰⁵ Augustine, *On the Good of Widowhood* 13-14 (NPNF¹ 3:446). Augustine further stated that one whose spouse is dead, may remarry a third time if the second spouse also dies (see Matt 22:29, 30), and so on, but Augustine says “to every widow; you will be more blessed, if you shall have so continued” without remarrying. Augustine, *On the Good of Widowhood* 15 (NPNF¹ 3:447).

²⁰⁶ Gregory J. Lombardo writes that “Augustine sees in the sacrament of marriage a sacred sign. It is thus that he considers marriage as a figure, a symbol, a sign. Christian marriage is a sacred symbol of the union between Christ and the Church. But one does not find in him any clear allusion to marriage as a sacrament instituted by Christ. Nor does he ever speak explicitly of the grace connected with this sacrament. Yet, if we consider the whole of Augustine’s doctrine concerning the sacraments of the New Law, which, according to him, all confer the grace they signify, we can say that marriage also produces grace, since he attributes to it the sanctity of a sacrament,” and that “Augustine does not think of marriage as indissoluble in itself. Christian marriage is indissoluble for him because it is a symbol, a sensible sign of the inseparable union of Christ with the Church For Augustine, Christian marriage is a sacrament, and this is the fundamental reason why it is indissoluble.” Lombardo, *Saint Augustine: On Faith and Works* (ACW 48:79n56, 80n57).

²⁰⁷ Thomas Aquinas taught that marriage was a sacrament and indissoluble. “Marriage consists essentially in an inseparable union of souls, husband and wife pledging unbreakable loyalty to one another for the purpose of bearing and bringing up children,” and that the sacrament of marriage “maintains the church by way of propagation.” St. Thomas Aquinas, *Summa Theologiae: A Concise Translation* 51.29.2, 56.65.4 (ed. Timothy McDermott; Notre Dame: Ave Maria, 1989), 516, 561. In “some way the New Law sacraments cause grace” – “they not only signify grace but cause it.” Aquinas, *Summa Theologiae* 61.4-62.1, 550. “The sacraments however produce certain special effects that are needed in the Christian life . . . and this is something special over and above the ordinary activity of the soul’s powers . . . Just as virtues and gifts add something to our generic notion of grace – namely, the perfect disposing of our powers to their own activities – so the grace of each sacrament adds something to the generic notion of grace and to that of the virtues and gifts – namely, a certain divine help in achieving that sacrament’s goal. In this way the grace of a sacrament is something more than the grace of the virtues and gifts. The grace of the virtues and gifts disposes the substance and powers of the soul well enough in regard to the general structure of its activities, but the grace of the sacraments serves certain special effects needed in a Christian life.” Aquinas, *Summa Theologiae* 62.1, 551-552; “But in holding the sacrament to be an instrumental cause of grace we are attributing to the sacrament a sort of instrumental power for producing that effect, power of the sort appropriate to a tool. . . . Just as the power of tools comes from being moved by their user, so the sacraments derive their spiritual power from Christ’s blessing and the action of the person administering the sacrament.” Aquinas, *Summa Theologiae* 62.4, 553.

²⁰⁸ Jerome’s Latin Vulgate translated the Greek term *mysterion* (“mystery”) in Ephesians 5:32 by the Latin word *sacramentum*. According to John Calvin, “This confusion arises from the translation of “mystery” and their low view of marriage. The term “sacrament” deceived them. The Vulgate, rather than translating the word as mystery or secret, chose to use the word “sacrament,” but in the same sense that the word “mystery” had been used by Paul. In other instances the Vulgate had used the word “mystery” to translate this, but they only press “sacrament” here.” Calvin, *Institutes*, 4.19.36. John Stott writes: “Jerome’s Latin translation in the

Vulgate is *sacramentum hoc magnum est*. He used *sacramentum* in its older meaning of a ‘mystery’ containing some hidden truth or sacred symbolism, as in 1 Tim. 3:16. He did not imply, nor does the Greek teach, that marriage is a ‘sacrament’ in the sense which later Roman Catholic theology gave it. It is ‘sacramental’ only in Paul’s sense here, namely that the union of husband and wife symbolizes the union of Christ and his church.” Stott, *Our Social & Sexual Revolution*, 229 n5.

²⁰⁹ This legal separation is what is commonly known as divorce *a mensa et thoro* (from bed and board) that did not sever the marital bond as opposed to a divorce *a vinculo matrimonii* (from the bonds of marriage).

²¹⁰ Calvin, *Institutes*, 4.19.37.

²¹¹ Alister McGrath, *A Life of John Calvin* (Malden, Mass.: Blackwell Publishers Ltd., 1990), 94; John Witte, Jr. and Robert M. Kingdon, *Sex, Marriage, and Family in John Calvin’s Geneva: Volume 1: Courtship, Engagement and Marriage* (Grand Rapids: Eerdmans, 2005), 62.

²¹² McGrath, *A Life of John Calvin*, 99-100.

²¹³ McGrath, *A Life of John Calvin*, 100; Alexandre Ganoczy, “Calvin’s life,” in *The Cambridge Companion to John Calvin* (ed. Donald K. McKim. Cambridge: Cambridge University Press, 2004), 14. Their only child, a son, died as an infant, and Idelette became seriously ill in 1545, ultimately dying in March 1549, leaving her two children in Calvin’s care. While Calvin had initial reservations about marriage, his affection for Idelette grew such that in her death he lost “the best companion” of his life and a “true helper” in his ministry. Ganoczy, “Calvin’s life,” 14.

²¹⁴ McGrath, *A Life of John Calvin*, 111. An article concerning marriage stated as follows: “Regarding disputes in matrimonial cases, since this is not a spiritual matter but mixed up with civil law, it shall remain a matter for the Council. Nevertheless we have advised that the duty of hearing the parties should be left to the Consistory, so that they may report their decision to the Council for it to pass judgment. Suitable ordinances are being drawn up which will be followed henceforth. . . .” Witte and Kingdon, *Sex, Marriage, and Family in John Calvin’s Geneva: Volume 1*, 91.

²¹⁵ Robert M. Kingdon, *Adultery and Divorce in Calvin’s Geneva* (Cambridge, Mass.: Harvard University Press, 1995).

²¹⁶ Witte and Kingdon, *Sex, Marriage, and Family in John Calvin’s Geneva: Volume 1*, 12-13.

²¹⁷ Witte and Kingdon, *Sex, Marriage, and Family in John Calvin’s Geneva: Volume 1*, 12; see pages 50-61 for the text of *Marriage Ordinance* (1546).

²¹⁸ The council becomes involves “If it is known that a husband mistreats his wife, beating and tormenting her, or that he threatens to do her an injury and is known to be a man of uncontrolled anger,” whereas the prior provision had shown the Consistory would provide initial admonition of a quarrelsome, strife-ridden couple. Thus, it would seem that if the couple did not heed the Consistory admonition and conflict escalated, the civil magistrate became more directly involved with possible sanctions, including criminal proceedings.

²¹⁹ Witte and Kingdon, *Sex, Marriage, and Family in John Calvin’s Geneva: Volume 1*, 12-13.

²²⁰ McGrath, *A Life of John Calvin*, 111.

²²¹ Witte and Kingdon, *Sex, Marriage, and Family in John Calvin’s Geneva: Volume 1*, 66. Individuals summoned before the Consistory were identified, advised of the reasons they were summoned, asked to respond to the charges, and questioned by members of the Consistory under the direction of the presiding

officer, witnesses were summoned, and evidence was submitted and reviewed by the Consistory, which frequently sought reconciliation, especially regarding divorce petitions. Witte and Kingdon, *Sex, Marriage, and Family in John Calvin's Geneva: Volume 1*, 66-67.

²²² McGrath, *A Life of John Calvin*, 114; Witte and Kingdon, *Sex, Marriage, and Family in John Calvin's Geneva: Volume 1*, 67-68. Concerning the exercise of church discipline the *Ecclesiastical Ordinances* (1541) state "All this is to be done in such a way that the ministers have no civil jurisdiction and wield only the spiritual sword of the Word of God, as St. Paul commands them, and that there is no derogation by this Consistory from the authority of the Council or the magistracy; but the civil power shall continue in its entirety. And in cases where there is need to administer some punishment or to restrain the parties, the ministers together with the Consistory having heard the parties and administered such reprimands and admonishments as are desirable, shall report the whole matter to the Council, which thereupon shall take steps to set things in order and pass judgment according to the requirements of the case." Witte and Kingdon, *Sex, Marriage, and Family in John Calvin's Geneva: Volume 1*, 93.

²²³ Witte and Kingdon, *Sex, Marriage, and Family in John Calvin's Geneva: Volume 1*, 68-69.

²²⁴ Witte and Kingdon, *Sex, Marriage, and Family in John Calvin's Geneva: Volume 1*, 61. Witte and Kingdon analyzed Consistory cases about sex, marriage, and family in three sample years: 1546 (year *Marriage Ordinance* first being applied), 1552 (year of intense opposition to Calvin and Consistory), and 1557 (year Calvin and supporters at height of influence). A partial conflation of the tables from pages 75-76:

Subject Matter		No. of		Resolved by	Communion	Removed to	Excommunication
		Cases	Admonition				
Fornication/Adultery	1546	94	29		4	47	
	1552	94	22		19	55	
	1557	97	22		46	60	5
Desertion	1552	8	4		2	4	
	1557	16	7		4	8	1
Spouse/Family							
Quarrels (includes parent/child also)	1546	66	39			18	
	1552	89	54		9	22	
	1557	83	48		28	23	
Wife Beating	1546	1	1			0	
	1552	3	3				
	1557	19	9		5	7	1
Divorce	1546	6	0			6	
	1552	15				9	
	1557	13	2			8	

A comparison shows the Consistory's increased involvement in later years in addressing desertion and wife abuse, the greater use of the spiritual disciplines of communion ban and excommunication, and the cooperative and complementary relationship between the Consistory and Small Council. "In marriage and family cases, the Consistory would first call parties to their higher spiritual duties, backing their recommendations with (threats of) spiritual discipline. If such spiritual counsel failed, the parties were referred to the Small Council to compel them, using civil and criminal sanctions, to honor at least their basic civil duties for marriage." Witte and Kingdon, *Sex, Marriage, and Family in John Calvin's Geneva: Volume 1*, 79. Robert Kingdon's *Adultery and Divorce in Calvin's Geneva* examines in greater detail several marital and divorce cases that came before the Consistory and Small Council involving claims of adultery and desertion and the resulting decisions.

²²⁵ Kingdon, *Adultery and Divorce in Calvin's Geneva*, 16.

²²⁶ Kingdon, *Adultery and Divorce in Calvin's Geneva*, 16.

²²⁷ Kingdon, *Adultery and Divorce in Calvin's Geneva*, 17-18.

²²⁸ Kingdon, *Adultery and Divorce in Calvin's Geneva*, 21.

²²⁹ Witte and Kingdon, *Sex, Marriage, and Family in John Calvin's Geneva: Volume 1*, 70.

²³⁰ Witte and Kingdon, *Sex, Marriage, and Family in John Calvin's Geneva: Volume 1*, 71-73. Although the first explicit evidence for the death penalty for adultery appears in a Geneva law adopted in 1566 (two years after Calvin's death), and one provision demonstrates movement toward a more gender-neutral approach: "If the man and woman were both married, they were both to be put to death." Kingdon, *Adultery and Divorce in Calvin's Geneva*, 116-117. However, for several years prior to this law, the death penalty was occasionally executed by the secular government for adultery. The basis for the death penalty was found in Mosaic Law as well as Roman law codified in the *Corpus iuris civilis*; but it was the Lieutenant and the Small Council alone that handled most cases of that resulted in the death penalty, and in some cases the Consistory was consulted "only on preliminary and collateral matters, before the full investigation of suspected adultery began." Kingdon, *Adultery and Divorce in Calvin's Geneva*, 118-119. Kingdon examines several adultery cases that were tried before the Small Council during the period 1560-1566 in which execution was meted out for notorious adultery. Kingdon, *Ibid*, 116-142.

²³¹ Kingdon, *Adultery and Divorce in Calvin's Geneva*, 180.

²³² Kingdon, *Adultery and Divorce in Calvin's Geneva*, 176.

²³³ Packer, J. I., *A Quest for Godliness: The Puritan Vision of the Christian Life* (Wheaton: Crossway, 1990), 269, citing Perkins, *Works* (1616-1618), III:690, 688, 683-684. "In England prior to the Matrimonial Causes Act of 1857 there was no legal procedure for divorce and remarriage save the passing of a special Act of Parliament in each case, a device that was first used in 1669." Packer, *A Quest for Godliness*, p. 269 n. 33.

²³⁴ Heth and Wenham designate this as the "Erasmian view" because "the exegetical tradition started by Erasmus and amplified by Luther and the other Reformers" was confirmed in WCF 24.5 and 24.6. *Jesus and Divorce*, 83. WCF 24.5 states that "In the case of adultery after marriage, it is lawful for the innocent party to sue out a divorce, and, after the divorce to marry another, as if the offending party were dead" and WCF 24.6 provides: "Although the corruption of man be such as is apt to study arguments, unduly to put asunder those whom God hath joined together in marriage; yet nothing but adultery, or such willful desertion as can no way be remedied by the church or civil magistrate, is cause sufficient of dissolving the bond of marriage: wherein a public and orderly course of proceeding is to be observed, and the persons concerned in it not left to their own wills and discretion in their own case."

²³⁵ William A. Heth, "Another Look at the Erasmian View," 264 fn 6. Murray concludes that a man's putting away his wife on account of her fornication "has the effect of dissolving the bond of marriage with the result that he is free to remarry without thereby incurring the guilt of adultery." Murray, *Divorce*, 43. The Westminster Confession of Faith 24:5 states that "In the case of adultery after marriage, it is lawful for the innocent party to sue out a divorce, and, after the divorce, to marry another, as if the offending party were dead."

²³⁶ William A. Heth, "Another Look at the Erasmian View," 265.

²³⁷ Gordon Wenham, “Does the New Testament Approve Remarriage after Divorce?” *SBJT* 6:1 (2002), 30.

²³⁸ William A. Heth, “Jesus on Divorce: How My Mind Has Changed,” *SBJT* 6:1 (2002), 4-29. Heth changed mind was partly influenced by a fresh understanding of “covenant” and the nature of marriage as a covenantal relationship, and by Blomberg’s commentary on Matthew.

²³⁹ See Murray, *Divorce*, 98-103; and John M. Frame, “Chapter 39: The Seventh Commandment: Divorce and Remarriage” in *The Doctrine of the Christian Life*, 725 [cited 17 March 2007]. Online: <http://reformedperspectives.org/hof/Ethics2006/DCL39%20%20The%20Seventh%20Commandment%20%20Divorce.doc>); contra Blomberg, “Marriage, Divorce, Remarriage,” 186, who observes “Some would automatically permit the unfaithful partner to remarry as well, but this would make adultery the way to get out of an unwanted marriage legitimately!”

²⁴⁰ See John M. Frame, “Chapter 36: the Sixth Commandment: War and Punishment,” *The Doctrine of the Christian Life*: 647-668. Cited 24 March 2007. Online: <http://reformedperspectives.org/hof/2006.asp/category/hof/site/#ethics2006>, 661, citing Arthur Holmes, “The Just War,” in Robert G. Clouse, ed., *War: Four Christian Views* (Downers Grove: InterVarsity Press, 1981), 127. The concept of “just war” as historically developed provides that “a just war must be waged (1) by a legitimate government, (2) for a legitimate cause, (3) with a legitimate purpose, (4) with consideration of benefits and costs, (5) with means proportionate to the offense, and (6) recognizing the difference between civilians and soldiers. . . . The goal of war must always be peace, and any program of armament must be pursued in the context of preserving peace.” J. Douma, *The Ten Commandments: Manual for the Christian Life* (trans. Nelson D. Kloosterman; Phillipsburg: P&R, 1996), 239-240. Holmes also says “In regard to war, the “just war” theory sets forth conditions under which it would be morally just (and loving, in Christian versions of the theory) to go to war, and it establishes limitations that must then be placed on the conduct and continuation of the conflict. We are never exempted, even in such exceptional cases, from justice and love.” Arthur F. Holmes, *Ethics: Approaching Moral Decision* (Contours of Christian Philosophy; Downers Grove: InterVarsity, 1984), 55. Chapter 23.2 of the Westminster Confession of Faith asserts that to maintain “piety, justice, and peace” the civil government “may lawfully ... wage war upon just and necessary occasions.”

²⁴¹ R. J. Rushdoony, *The Institutes of Biblical Law*, 404-405.

²⁴² Frame, *The Doctrine of the Christian Life*, 661, citing Holmes, “The Just War,” 127. Frame notes that others would see “preventive war” and a “crusade” as legitimate causes. Frame, *Ibid*, 662.

²⁴³ William P. Brown, *Character in Crisis: A Fresh Approach to the Wisdom Literature of the Old Testament* (Grand Rapids: Eerdmans, 1996), 27, 29.

²⁴⁴ Keener, *Matthew*, 191.

²⁴⁵ Blomberg, *Matthew*, 293.

²⁴⁶ Keener, *Matthew*, 192.

²⁴⁷ Frame, *The Doctrine of the Christian Life*, 661, citing Holmes, “The Just War,” 127.

²⁴⁸ John Murray, *Principles of Conduct: Aspects of Biblical Ethics* (Grand Rapids: Eerdmans, 1957), 174-180.

²⁴⁹ “A just war is simply war undertaken and conducted in the defense and promotion of the dictates of justice; there can be no incompatibility between the demands of love and the conduct of such a war. The wounding and killing involved are the use of the sword which God has put into the hand of the civil

magistrate as the instrument of maintaining justice and punishing evil-doers. The sword is never intrinsically, and should never be in practice, the instrument of vindictive and malicious hate. Whenever a nation, or even a soldier on the field of battle, uses the weapons of war as the instruments of vindictive revenge rather than as the instruments of retributive justice, then the dictates of both justice and love are desecrated. This is to say that war is never just when it is the instrument of hate. It is hate that contradicts love, and it always does. But war in the protection and vindication of justice is not prompted by hate but by the love of justice, and such love never contradicts the love of our enemies which the Lord himself always and unequivocally demands.” Murray, *Principles of Conduct*, 179.

²⁵⁰ Frame, *The Doctrine of the Christian Life*, 661, citing Holmes, “The Just War,” 127.

²⁵¹ The Westminster Confession of Faith says that the only sufficient cause for divorce is “adultery, or such willful desertion *as can no way be remedied by the church or civil magistrate.*” WCF 24.6 (emphasis added).

²⁵² Adams, *Marriage, Divorce and Remarriage*, 57-59. Matthew 18:15-18 provides: “If your brother sins against you, go and tell him his fault, between you and him alone. If he listens to you, you have gained your brother. But if he does not listen, take one or two others along with you, that every charge may be established by the evidence of two or three witnesses. If he refuses to listen to them, tell it to the church. And if he refuses to listen even to the church, let him be to you as a Gentile and a tax collector. Truly, I say to you, whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed in heaven.” The Westminster Confession of Faith (30.3) states that “Church censures are necessary for the reclaiming and gaining of offending brethren; for deterring of others from the like offences; for purging out of that leaven which might infect the whole lump; for vindicating the honor of Christ, and the holy profession of the gospel; and for preventing the wrath of God, which might justly fall upon the church, if they should suffer his covenant, and the seals thereof, to be profaned by notorious and obstinate offenders.”

²⁵³ In order to attain the ends of appropriate church censures or discipline, the church officers may use admonition, suspension of the offender from partaking in the Lord’s Supper, and excommunication as the circumstances warrant. (WCF 30.4).

²⁵⁴ Blomberg, “Marriage, Divorce, Remarriage,” 193-94.

²⁵⁵ Frame, *The Doctrine of the Christian Life*, 661, citing Holmes, “The Just War,” 127.

²⁵⁶ For example, Douma says that “The state regulates *civil* relationships among citizens, also when it grants a divorce. But what the state breaks asunder is not thereby broken in heaven. In her teaching and discipline relating to marriage and divorce, the church must proceed from what the Bible says and not from what the state does. Surely the church has her own message to proclaim in response to the vague provisions in most modern Western law codes with all their talk about “incompatibility” and “total and permanent marital breakdown.” Someone may be free in terms of the civil law to remarry, but that does not mean that he or she is free in terms of God’s law. There are certain realities, however, no matter how defective, that the church simply cannot ignore. If a marriage has been legitimated with a civil ceremony without the church’s blessing, the church cannot act as if the marriage does not exist. Suppose one of the parties gets an unbiblical divorce and remarries (or simply lives with someone apart from marriage); in this situation a new relationship has been formed that has consequences. The first marriage no longer exists, because it has been completely destroyed by adultery. Church leaders can hardly forbid the other spouse (who is now entirely free from the first marriage) to remarry.” Douma, *The Ten Commandments*, 280.

²⁵⁷ John M. Frame “Toward a Theology of the State,” *WTJ* 51:199-226 (1989), 214, 221-222, 226.

²⁵⁸ Kline, *Kingdom Prologue*, 173.

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- ²⁵⁹ Kline, *Kingdom Prologue*, 174.
- ²⁶⁰ Kline, *Kingdom Prologue*, 180.
- ²⁶¹ Kline, *Kingdom Prologue*, 179-180.
- ²⁶² Kline, *Kingdom Prologue*, 180.
- ²⁶³ Augustine, *Concerning the City of God against the Pagans* 2.21, 19.21, 19.24 (Trans. Henry Bettenson; London: Pelican, 1972; Repr. London: Penguin, 2003), 72-75, 881-884, 890-891.
- ²⁶⁴ In addressing possible state interference with family, Frame discusses Exodus 18:17-27, “stressing the distinction between nuclear family and mega-family or tribe . . . There are powers given to the mega-family which are not given to the nuclear family, and vice-versa . . . By analogy, I would think that the "officials over thousands" would not seek to solve all the problems among their people, but would hear cases "too hard" for the officials over hundreds, and so on down the line. Thus the chief decision-making unit is on the "tens" level-- possibly the nuclear family itself. The higher levels of state power only handle cases too small to be decided locally. The essential localism, the from-the-bottom-up nature of this organization protects the nuclear family against intrusive assaults from broader courts, but also allows the wisdom of the wider community to be brought in cases where the nuclear family admits its inability to handle a problem. This is essentially the same model presupposed in Presbyterian church courts.” Frame “Toward a Theology of the State,” *WTJ* 51 (1989), 199-226.
- ²⁶⁵ Eugene H. Merrill, *Kingdom of Priests: A History of Old Testament Israel* (Grand Rapids: Baker Books, 1996), 283-84.
- ²⁶⁶ Merrill, *Kingdom of Priests*, 296.
- ²⁶⁷ Bruce K. Waltke, *The Book of Proverbs: Chapters 15-31* (NICOT; Grand Rapids: Eerdmans, 2004), 134.
- ²⁶⁸ Eugene H. Merrill, *Kingdom of Priests: A History of Old Testament Israel* (Grand Rapids: Baker Books, 1996), 342-343.
- ²⁶⁹ McGrath, *A Life of John Calvin*, 171.
- ²⁷⁰ Calvin, *Institutes*, 4.20.2.
- ²⁷¹ Douglas F. Kelly, *The Emergence of Liberty in the Modern World* (Phillipsburg: P&R Publishing, 1992).
- ²⁷² Witte and Kingdon, *Sex, Marriage, and Family in John Calvin’s Geneva: Volume 1*, 61.
- ²⁷³ Witte and Kingdon, *Sex, Marriage, and Family in John Calvin’s Geneva: Volume 1*, 70.
- ²⁷⁴ WCF 24.6.
- ²⁷⁵ Calvin, *Institutes*, 4.12.1.
- ²⁷⁶ Calvin, *Institutes*, 4.1.10-16.
- ²⁷⁷ Craig M. Gay. *The Way of the (Modern) World: Or, Why It’s Tempting to Live As If God Doesn’t Exist* (Grand Rapids: Eerdmans, 1998), 211.

²⁷⁸ Robert Nisbet, *The Present Age: Progress and Anarchy in Modern America* (New York: Harper & Row, 1988): 88, quoted in Gay, *The Way of the (Modern) World*, 193.

²⁷⁹ The section on “noncombatant” will discuss some issues concerning the parties’ children. Courts generally seek to decide child custody and visitation issues in accordance with the child’s “best interests,” which involve examining parental fitness and numerous other factors. One factor to be considered that has appeared in Maryland child custody cases is a parent’s religion and the child’s religious upbringing to the extent it impacts the child’s physical or emotional welfare. The court may not weigh the merits of different religions or non-religious upbringing. In a child custody case a court “may consider evidence of the religious views or practices of a party seeking custody, along with other factors impacting on the child’s welfare, to the extent that such views or practices are demonstrated to bear upon the physical or emotional welfare of the child.” There has to be a clear showing that a parent’s religious practices have been or are likely to be harmful to the child, before the court will interfere with those religious practices. A clear showing requires more than simply the general testimony that the child is “confused” or “upset” by conflicting religious practices. A factual finding of a causal relationship between the religious practices and the actual or probable harm is required. See *Kirchner v. Caughey*, 326 Md. 567, 606 A.2d 257 (1992); *Bienenfeld v. Bennett-White*, 91 Md. App. 488, 507, 605 A.2d 172, cert. denied, 327 Md. 625, 612 A.2d 256 (1992); and *Levitsky v. Levitsky*, 231 Md. 388, 190 A.2d 621(1963).

²⁸⁰ Sol M. Linowitz with Martin Mayer, *The Betrayed Profession: Lawyering at the End of the Twentieth Century* (New York: Scribners, 1994), 239-40.

²⁸¹ Frame, *The Doctrine of the Christian Life*, 661, citing Holmes, “The Just War,” 127. Augustine says that “it is an established fact that peace is the desired end of war. For every man is in quest of peace, even in waging war, whereas no one is in quest of war when making peace. In fact, even when men wish a present state of peace to be disturbed they do so not because they hate peace, but because they desire the present peace to be exchanged for one that suits their wishes. Thus their desire is not that there should not be peace but that it should be the kind of peace they wish for . . . We see, then, that all men desire to be at peace with their own people, while wishing to impose their will upon those people’s lives. For even when they wage war on others, their wish is to make those opponents their own people, if they can – to subject them, and to impose on them their own conditions for peace . . . It comes to this, then; a man who has learnt to prefer right to wrong and the rightly ordered to the perverted, sees that the peace of the unjust, compared with the peace of the just, is not worthy even of the name peace.” Augustine, *City of God* 19.12, 866-869.

²⁸² Janet R. Johnson, Ph.D. and Vivienne Roseby, Ph.D., *In the Name of the Child: A Developmental Approach to Understanding and Helping Children of Conflicted and Violent Divorce* (New York: The Free Press, 1997), 1.

²⁸³ Frame, *The Doctrine of the Christian Life*, 661, citing Holmes, “The Just War,” 127.

²⁸⁴ “The traditional adversarial court system has long been criticized for the polarization of the parties’ positions and the escalation of family conflict. The institutionalized polemics between attorneys, the established procedures for fact finding and assembling of evidence, and the costly, cumbersome, and often lengthy procedures involved in custody litigation appear to fashion the ideal social environment for escalating divisiveness and blaming between parents. Attorneys in particular have long been implicated for contributing to rather than resolving disputes, because of their advocacy role within an adversarial judicial system. Advising their clients not to talk to the other spouse, making extreme demands to increase the bargaining advantage, and filing motions that characterize the other parent in a negative light are all typical examples. Needing to show evidence of neglect, abuse, physical violence, or emotional or mental incompetence to win their client’s case, attorneys compose documents that are a public record of charges and countercharges, citing the unhappy incidents and separation-engendered desperate behaviors of the emotionally vulnerable parties, often out of context. The consequent public shame, guilt, and fury at being so

misrepresented motivates the other party's compelling need to set the record straight in costly litigation." Johnson and Roseby, *In the Name of the Child*, 9.

²⁸⁵ Derek Kidner, *Proverbs: An Introduction & Commentary* (TOTC; Downers Grove, Ill.: InterVarsity Press, 1964), 174.

²⁸⁶ William McKane, *Proverbs: A New Approach* (OTL; Philadelphia: Westminster Press, 1970), 636.

²⁸⁷ Benjamin L. Sells, *The Soul of the Law* (Rockport, Mass.: Element, 1994), 82.

²⁸⁸ Frame, *The Doctrine of the Christian Life*, 661, citing Holmes, "The Just War," 127.

²⁸⁹ Carla B. Garrity and Mitchell A. Baris, *Caught in the Middle: Protecting the Children of High-Conflict Divorce* (San Francisco: Jossey-Bass, 1994), 12.

²⁹⁰ Garrity and Baris, *Caught in the Middle*, 23-24.

²⁹¹ Garrity and Baris, *Caught in the Middle*, 24-25.

²⁹² Garrity and Baris, *Caught in the Middle*, 26. "For children, the one tragic effect of divorce can be the complete loss of a mother or father. Sometimes a parent can no longer bear the strain of sustained combat with an ex-spouse and simply walks out of the children's lives. Or a child, weary of being constantly in the middle of parental wars, sees severing contact with one parent as the only escape. Finally, in what has come to be known as "parental alienation syndrome," one parent encourages a child to reject the other parent." Garrity and Baris, *Caught in the Middle*, 65. Approximately "one fourth to one third of divorcing couples report high degrees of hostility and discord over the daily care of their children many years after separation and well beyond the expectable time for them to settle their differences . . . For about one tenth of all divorcing couples, the unremitting animosity will shadow the entire growing-up years of the children . . . Current estimates are that about one fourth of all divorcing couples with children have considerable difficulty completing the legal divorce without extensive litigation . . . In sum, high-conflict parents are identified by multiple, overlapping criteria: high rates of litigation and re-litigation, high degrees of anger and distrust, incidents of verbal abuse, intermittent physical aggression, and ongoing difficulty in communicating about and cooperating over the care of their children at least two to three years following their separation. Probably most characteristic of this population of "failed divorces" is that these parents have difficulty focusing on their children's needs as separate from their own and cannot protect their children from their own emotional distress and anger, or from their ongoing disputes with each other." Johnson and Roseby, *In the Name of the Child*, 4-5.

²⁹³ Adams, *Marriage, Divorce and Remarriage*, 24.

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