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BETWEEN RULE AND RESPONSIBILITY:
THE ROLE OF THE 'ĀB AS AGENT OF RIGHTEOUSNESS
IN DEUTERONOMY'S DOMESTIC IDEOLOGY

A Dissertation
Presented to
the Faculty of
The Southern Baptist Theological Seminary

In Partial Fulfillment
of the Requirements for the Degree
Doctor of Philosophy

by
Rebekah Lee Josberger

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BETWEEN RULE AND RESPONSIBILITY:
THE ROLE OF THE 'AB AS AGENT OF RIGHTEOUSNESS
IN DEUTERONOMY'S DOMESTIC IDEOLOGY

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Date November 5, 2007

To the three men in my life:

My father, Gerald Allen Currie, who taught me how to live,

My *Doktorvater*, Daniel Isaac Block, who taught me how to learn,

And my husband, James Haven Josberger, who taught me how to love.

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LIST OF ABBREVIATIONS

11QT	<i>Temple Scroll</i>
1QSa	<i>The Rule of the Community</i>
AASOR	<i>The Annual of the American Schools of Oriental Research</i>
ABD	D. N. Freedman, ed., <i>The Anchor Bible Dictionary</i>
Aboth	<i>Pirke Aboth</i> (First section in the Fourth Division [Nezikin] of the <i>Mishnah</i>)
AFER	<i>African Ecclesiastical Review</i>
A.H.	After Hijra
ANE	Ancient Near East(ern)
ANET	J. B. Pritchard, ed., <i>Ancient Near Eastern Texts Relating to the Old Testament</i> , 3rd ed. with supplement
AO	Archiv für Orientforschung
AOAT	Alter Orient und Altes Testament
AOTC	Apollos Old Testament Commentary
ARM	Archives royales de Mari
ArtB	<i>Art Bulletin</i>
BA	<i>Biblical Archaeologist</i>
BAR	<i>Biblical Archaeology Review</i>
BASOR	<i>Bulletin of the American Schools of Oriental Research</i>
BCOT	Biblical Commentary on the Old Testament
BDB	F. Brown, S. R. Driver, and C. Briggs, <i>The Brown-Driver-Briggs Hebrew and English Lexicon</i>
BEATAJ	Beiträge zur Erforschung des Alten Testaments und des Antiken Judentums 13
BETL	Bibliotheca ephemeridum theologicarum lovaniensium

<i>BFA</i>	<i>Bulletin of the Faculty of Arts</i> , University of Cairo
<i>BI</i>	<i>Biblical Interpretation</i>
BibSem	The Biblical Seminar
<i>BN</i>	<i>Biblische Notizen</i>
BSC	Bible Student's Commentary
BSL	Biblical Studies Library
<i>BTB</i>	<i>Biblical Theology Bulletin</i>
BZAW	Beihefte zur Zeitschrift für die alttestamentliche Wissenschaft
<i>CBQ</i>	<i>Catholic Biblical Quarterly</i>
CM	Cuneiform Monographs
<i>COS</i>	William W. Hallo, ed., <i>Context of Scripture: Monumental Inscriptions from the Biblical World</i> , 3 vols.
<i>CTA</i>	A. Herdner, ed., <i>Corpus des tablettes en cunéiforms alphabétiques découvertes à Ras Shamra-Ugarit de 1929 à 1939</i>
<i>DCH</i>	D. J. A. Clines, ed., <i>The Dictionary of Classical Hebrew</i>
<i>Did</i>	<i>Didaskalia</i>
<i>DKHG</i>	William Chomsky, trans., <i>David Kimḥi's Hebrew Grammar (Mikhlol)</i>
ETS	Evangelical Theological Society
<i>Gittin</i>	(Sixth section in the Third Division [<i>Nashim</i>] of the <i>Mishnah</i>)
GKC	E. Kautzsch, <i>Gesenius' Hebrew Grammar</i> , ed. A. E. Cowley
GTS	Gettysburg Theological Studies
<i>GVG</i>	C. Brockelmann, <i>Grundriss der vergleichenden Grammatik der semitischen Sprachen</i> , 2 vols.
<i>HALOT</i>	L. Koehler, W. Baumgartner, and J. J. Stamm, <i>The Hebrew and Aramaic Lexicon of the Old Testament</i> , trans. and ed. M. E. J. Richardson, 4 vols.
HL	Hittite Laws
HOH	Head of household
<i>HS</i>	<i>Hebrew Studies</i>
HSS	Harvard Semitic Series

<i>IBHS</i>	B. K. Waltke and M. O'Connor, <i>Introduction to Biblical Hebrew Syntax</i>
ICC	The International Critical Commentary
<i>JAAR</i>	<i>Journal of the American Academy of Religion</i>
<i>JANES</i>	<i>The Journal of the Ancient Near Eastern Society of Columbia University</i>
<i>JAOS</i>	<i>Journal of the American Oriental Society</i>
<i>JATS</i>	<i>Journal of the Adventist Theological Society</i>
JB	Jerusalem Bible
JBS	Jerusalem Biblical Studies
<i>JCS</i>	<i>Journal of Cuneiform Studies</i>
<i>JETS</i>	<i>Journal of the Evangelical Theological Society</i>
<i>JJS</i>	<i>Journal of Jewish Studies</i>
JLA	The Jewish Law Annual
<i>JNES</i>	<i>Journal of Near Eastern Studies</i>
Joüon	P. A. Joüon, <i>Grammar of Biblical Hebrew</i> , trans. and rev. T. Muraoka
JPSTC	The Jewish Publication Society Torah Commentary
<i>JQR</i>	<i>Jewish Quarterly Review</i>
<i>JR</i>	<i>Journal of Religion</i>
<i>JSOT</i>	<i>Journal for the Study of the Old Testament</i>
JSOTSup	Journal for the Study of the Old Testament Supplement Series
<i>JSS</i>	<i>Journal of Semitic Studies</i>
KB	Ludwig Koehler and Walter Baumgartner, eds., <i>Lexicon in Veteris Testamenti Libros</i>
<i>KTU</i>	M. Dietrich, O. Loretz, and J. Samartín, eds., <i>Keilalphabetische Texte aus Ugarit: einschliesslich der keilalphabetischen Texte außerhalb Ugarits</i>
<i>KTU2</i>	M. Dietrich, O. Loretz, and J. Samartín, eds., <i>The Cuneiform Alphabetic Texts from Ugarit, Ras Ibn Hani and Other Places</i> (KTU: 2 nd enlarged ed.)
LAI	Library of Ancient Israel
Lane	Edward Lane, ed., <i>An Arabic-English Lexicon</i> , 2 vols, 1863
LCBI	Literary Currents in Biblical Interpretation

LCL	Loeb Classical Library
LE	Laws of Eshnunna
LH	Laws of Hammurabi
LL	Laws of Lipit-Ishtar
LNB	Neo-Babylonian Laws
LU	Laws of Ur-Namma
LXX	Septuagint
MAL	Middle Assyrian Laws
MSME	Michigan Series on the Middle East
n.	note (footnote or endnote)
NAC	New American Commentary
NIBC	New International Bible Commentary
NICOT	New International Commentary on the Old Testament
<i>NIDOTTE</i>	Willem VanGemeren, ed., <i>New International Dictionary of Old Testament Theology and Exegesis</i>
OBT	Overtures to Biblical Theology
OTL	The Old Testament Library
OTM	Old Testament Message
OTS	Oudtestamentische Studiën
PBST	Publications of the Baghdad School Texts
<i>PRU</i>	<i>Le Palais Royal d'Ugarit</i> , eds, C. F. A. Schaeffer and J. Nougayrol
<i>PWCJS 5</i>	<i>Proceedings of the Fifth World Congress of Jewish Studies</i>
QGS	Quaderni di Geografia Storia
<i>RA</i>	<i>Revue d'Assyriologie et d'Archéologie orientale</i>
<i>RB</i>	<i>Revue Biblique</i>
<i>ResQ</i>	<i>Restoration Quarterly</i>
<i>RevExp</i>	<i>Review and Expositor</i>
<i>RHA</i>	<i>Revue hittite et asianique</i>

RS	Ras Shamra, ancient Ugarit
<i>RTR</i>	<i>The Reformed Theological Review</i>
SAA	State Archives of Assyria
SAHL	Studies in the Archaeology and History of the Levant
<i>SBJT</i>	<i>The Southern Baptist Journal of Theology</i>
SBLDS	Society of Biblical Literature Dissertation Series
SBLMS	Society of Biblical Literature Monograph Series
SBLWAW	Society of Biblical Literature Writings from the Ancient World
<i>ScrHier</i>	<i>Scripta Hierosolymitana</i>
SLEx	Sumerian Laws Exercise Tablet
SLHF	Sumerian Laws Handbook of Forms
SVT	Supplements to Vetus Testamentum
<i>TB</i>	<i>Tyndale Bulletin</i>
<i>THAT</i>	<i>Theologisches Handwörterbuch zum Alten Testament</i>
UET	Ur Excavations Texts
<i>UF</i>	<i>Ugarit-Forschungen</i>
USFSHJ	University of South Florida Studies in the History of Judaism
VAS	Vorderasiatische Schriftdenkmäler der Königlichen Museen zu Berlin
<i>VT</i>	<i>Vetus Testamentum</i>
VTE	Vassal Treaties of Esarhaddon
WBC	Word Biblical Commentary
<i>Yeb.</i>	<i>Yebamot</i> (First section in the Third Division [<i>Nashim</i>] of the <i>Mishnah</i>)
YJS	Yale Judaica Series
<i>ZÄS</i>	<i>Zeitschrift für Ägyptische Sprache und Altertumskunde</i>
<i>ZAW</i>	<i>Zeitschrift für die alttestamentliche Wissenschaft</i>

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PREFACE

My interest in the role of the father in ancient Israel was first ignited by Daniel Block's article "Marriage and Family in Ancient Israel." Further research led to the observation that little had been written on the relationship of a head of household to the members of his family. Where the issue is addressed within scholarship (typically within commentaries and studies on woman's issues), treatments tend toward either a defense of the text (and thus an avoidance of evidence of the abuse of authority within the OT), or such extreme offense at male authority that the OT comes to be blamed for many of the problems faced by women throughout history. Dr. Block's emphasis on the responsibility of the head of household for those under his care seems to offer a corrective to the pejorative connotations associated with the prevalent notion of Israel as a "patriarchal" society. Furthermore, his emphasis on responsibility commensurate with the rights envisions a paradigm of behavior whereby abuses of authority within the text can be concretely labeled as such rather than glossed over or ignored.

This work originally intended to test Dr. Block's article by providing a detailed study of all OT evidence. It quickly became apparent that this task was far too broad for the constraints of a dissertation. The focus then shifted to the task of uncovering as much as possible concerning the ideal paradigm of household leadership, with a focus on prescriptive texts. Once again the focus had to be narrowed and the so-called Deuteronomic Law Code (Deut 12-26), with its stated emphasis of reminding the Israelite

people of how they were to live inside the Promised Land, was chosen as a basis from which to investigate Deuteronomy's ideal role a head of household would play within ancient Israel. This selection of the Deuteronomic text was particularly advantageous because it lined up with Dr. Block's work on a forthcoming commentary on Deuteronomy, thus allowing increased depth of dialogue during the research process. Further, certain works published during this research process, especially that of Richard M. Davidson (of which I was privileged to view a pre-publication copy) and Hennie Marsman, significantly added to the body of supporting data.

Besides his providing the impetus for this study, I am indebted to Dr. Block for his patience and faithfulness throughout this process. Even after moving to another institution, he continued to mentor me through the research and writing process with a level of diligence and focused attention that would have been remarkable even if distance had not been a factor. In his ongoing research, he offers a model of scholarship that is both instructive and inspiring; and in his interaction with and care for others, he embodies a life of worshipful service to our Lord. My respect, admiration and appreciation for this amazing man go beyond what words could possibly express. During his physical absence from campus, other professors here at Southern fielded questions with gracious enthusiasm any time I asked. The investment of time and instruction by Drs. Mathews, Drinkard, and Gentry helped to make this project a reality.

Often I am asked how a mother of three can even consider completing a Ph.D. The answer is simple—with lots and lots of help. From the support of our families, who have never complained because of our lack of visits home and have even funded vacations so that we could all enjoy time together, to the friends who long ago accepted

that I would have little to offer in the form of time or attention but stood by us with a faithfulness that has grown deeper over the years—we have never suffered for lack of support. From colleagues who have challenged me and treated me as a sister even when I felt at times that I could never “keep up with the pack” (Jason DeRouchie, Miles Van Pelt, Kenneth Turner, Gregory Smith, James Harriman, Bryan Cribb, Elizabeth Robar, and Steven Guest) to professors who have offered patience and grace but have never allowed me to settle for less than my best, I have been given the opportunity to grow in ways I never imagined possible. From pastors and church members who, over the years, have called or written words of encouragement reminding us that they see value in this task, to friends who have made meals, helped us on the home front, and, for entire seasons, taken our children into their homes, treating our girls as their own and not as a job, so that I might study, we have been blessed and humbled by the outpouring of love and help. And by Elizabeth (a doctoral student and a mother herself) and Douglas Robar, who set aside weeks at the end of this process in order to help me edit and polish this paper so that others might actually be able to read it, I have been reminded that, even in the academic pursuit, it is ultimately the service of others for the sake of the kingdom that matters.

Nowhere has the support been more consistent or more willingly offered than in my immediate family. Our girls, Mia, Amanda and Emily, have sacrificed more than they will ever know so that I could complete this task. It is my prayer for you three, that when you think back on these years you will remember the depth of our love and not the piles of dirty laundry, the conversation and the laughter every night at the dinner table, but not the fact that meals were hastily prepared and often eaten at the school library, and

the camping trips and weekends to Chicago to meet with Dr. Block, rather than all the extracurricular activities that you had to miss out on. Finally, I pray that you remember the dissertation as a privileged act of obedience rather than as a dreaded task that kept Mommy at the library too late to tuck you in bed.

Finally, to my greatest support of all, my high school sweetheart and husband of nearly thirteen years (every one of them spent in school), I offer my greatest thanks. Although you may never read this dissertation, you embody the principles of the text on which it is based. Besides your friendship, your investment in our marriage, our children and our home, and your absolute belief in me, the greatest gift you gave me in this process was the gift of believing that I was not a burden to this family, demanding service and resources, but a valued partner working toward the goal that you believed in as strongly as I did. In your gentle yet unwavering strength, you have been my rock and my greatest comfort. Thank you for believing that God has gifted me and that he might someday see fit to use those blessings for the advancement of his kingdom.

And to my God, who has granted me to come thus far, I only ask that he continue to grant me faithfulness in each new task I am given.

Rebekah Lee Josberger

Louisville, KY

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CHAPTER 1

INTRODUCTION

Few topics pull more on the emotional, social and political heartstrings of twenty-first-century American culture than family. From pop culture to politics, from Hollywood to PBS, from podiums to pulpits, and from marches on Washington to bloggers in their own homes, the issue of family is the subject of everyone's attention. Every aspect of family dynamics is under scrutiny. Concerns include discussions of gender roles, presentations of different parenting philosophies, solutions to the challenges of caring for aging parents, and even disputes over the very definition of family. Stay-at-home moms tune in to talk shows in hopes that their favorite celebrity can help with their latest family crisis; and books, both secular and Christian, fly off the shelves as readers seek to become better husbands, fathers, wives, and mothers. Everyone seems to care about family.

The family was a central issue in the ancient world as well, not because of any attempts to redefine the basic family structure (as is the case today), but because the family structure defined society. A family, or household, was the primary social unit in ancient Israelite society.¹ Archaeological and textual insights indicate that family

¹Lawrence E. Stager, "The Archaeology of the Family in Ancient Israel," *BASOR* 260 (1985): 22.

structures in Israel were different than today's in both constitution and social significance. The family, or **בֵּית־אָב** (literally, "father's house"), typically consisted of a father (or head of household)² and his wife, along with adult sons or grandsons and their wives and children. (Adult daughters and granddaughters would join the households of their husbands upon marriage.)³ Members of the household also included some who were not related by blood, namely servants, maidservants and possibly even foreigners and resident Levites. Even livestock seem to have been considered part of the household.⁴ These family units lived together, sharing land and livestock, and depended on the head of household for leadership. They did not necessarily all live under one roof,⁵ but they functioned as one family unit—at least until the death of the oldest adult male, at which point the family structure usually experienced a shift.

The purpose of this dissertation is to look at the head of household, the **אָב** of the **בֵּית־אָב**, through the lens of the book of Deuteronomy. Traditionally the **אָב** is considered by scholars to represent the oldest living male within a genealogical line. He carried the ultimate authority within the household. Yet from narrative texts it is evident that adult sons could belong to the household of their father while simultaneously establishing their own households. Thus Joseph was the head of his own household while

²Since ancient Israelite society was fundamentally patricentric, the terms "father" and "head of household" (HOH) are used interchangeably in this paper.

³Stager, "Archaeology of the Family," 20.

⁴Ibid., 12.

⁵Family compounds often consisted of more than one dwelling, but were still considered one "household," Stager, "Archaeology of the Family," 18-23.

still demonstrating deference to the authority of his father's household.⁶ Although the term **אב** is used in Hebrew to represent a genealogical relationship (father to child), when understood in relation to a man's role as the head of a **בית-אב**, the function of the **אב** extended beyond his role as parent.⁷ Within the **בית-אב**, the functional role of the **אב**, or the head of household (HOH), extended to each member of his household.⁸ As the first step to understanding the role of the HOH, this study will focus primarily on his relationship to the primary members of his household, his wife and children.⁹ At its most basic level, this dissertation will attempt to answer the question, "How does the book of Deuteronomy portray a righteous head of household as he relates to his immediate family?"

Thesis

The purpose of this dissertation is to investigate the function, role and responsibility of the HOH in Israelite society as prescribed in the book of Deuteronomy. Further, this dissertation seeks to determine what principles underlie Deuteronomy's vision for the ideal household. Where past discussions of the HOH have tended to focus

⁶Gen 50:8. See discussion in n. 46 below. For this reason, this study has included texts (particularly, Deut 24:5) in which the man exercising authority over his household may not be the oldest living male of his genealogical line.

⁷Although not referred to in the text as an **אב**, Abram was a head of household with all the implied duties of provision, protection and authority, even when he did not have an heir. See Abram's reference to his own household in Gen 15:2-3.

⁸Because the paradigmatic household included children, Hebrew has no separate word for a head of household without children. Consequently, not every text included in this study has the word **אב** in the Hebrew, although each addresses the relationship between a head of household and another member of his family.

⁹Further studies should consider an HOH's role in relation to other members of the household, such as servants and even livestock and land.

on the boundaries of the exercise of his power, the concern of this study is to determine the ideology that was to drive the exercise of that authority. Given the centrality of the HOH's role in ancient Israel, one might assume that this study, or one like it, already exists. Surprisingly, this topic corresponds to a tremendous gap in scholarship. Despite the centrality of his role in the society of ancient Israel, the HOH may be the most neglected figure in OT studies. Before moving to the proposed thesis of this project, it might be helpful to explain how such a gap in scholarship could exist.

After an extensive survey of the literature, two features that explain the absence of scholarly work devoted to the role and responsibility of the father in ancient Israelite society stand out. (1) It would be misleading to say that the father is ignored in scholarship, but he is studied solely in relation to his patrimonial or patriarchal function in society.¹⁰ Critical scholars have written extensively on the social structure of Israel,¹¹ at the heart of which is the household. In this society based on kinship and corporate solidarity, the father represented the household and the household the father. Thus, in studies seeking to understand the structure of Israelite society, the HOH becomes a

¹⁰Most studies treat the household (בֵּית-אָב) and the father (אָב) almost as one entity. However, when they do ask questions of the role of the father, such questions are not concerned with the father's interpersonal relationships and responsibilities, but with his function in society. Questions addressed include the following: Who is the 'father'? What is his authority? How is the authority passed down to the firstborn son? to the next oldest brother? How long could a father maintain his authority over mature, productive sons?

¹¹Cf. Johannes Pedersen, *Israel: Its Life and Culture*, vol. 1, USFSHJ 28 (Atlanta: Scholars Press, 1991); Roland de Vaux, *Ancient Israel: Its Life and Institutions*, trans. John McHugh (New York: McGraw-Hill, 1961); Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, trans. and ed. Guenther Roth and Claus Wittich (Berkeley: University of California Press, 1978), 2:1006-69; Norman K. Gottwald, *The Tribes of Yahweh: A Sociology of the Religion of Liberated Israel, 1250-1050 B.C.E.* (Maryknoll, NY: Orbis, 1979), 237-341; and Paula M. McNutt, *Reconstructing the Society of Ancient Israel* (Louisville: Westminster John Knox Press, 1999), esp. 216-17.

natural focal point and is studied in terms of his rights and his function within society as a whole. This present study acknowledges such work as foundational, yet recognizes a gap whereby the HOH is seldom studied in terms of his ethical and moral obligations to the members of his household. (2) In the foreword to King and Stager's *Life in Biblical Israel*, Douglas Knight points to the trend in which focus shifts away from study of the leading figures, events, and institutions of Israelite history and toward an increased focus on the elements of everyday Israelite society.¹² Simultaneously there has been a growing concern in modern culture for the right treatment of women and minorities. Thus, the increased interest in everyday societal issues has focused primarily on the less-dominant members of society—women, poor, sojourners, widows—instead of the heads of household. The result of these two trends working together is that only a handful of pages have been written on the role and responsibility of the HOH as he relates to members of his own household.¹³ These trends will be given more attention in the section on Background Material below. However, it is the contention of this paper that a study on the role and responsibility of the Israelite HOH within his immediate family is both warranted and needed.

Preliminary study of the book of Deuteronomy suggests that two main themes motivate those passages that address the HOH's relationship with the various members of his household. First, when functioning as HOH,¹⁴ the primary responsibility of the father

¹²Philip J. King and Lawrence E. Stager, *Life in Biblical Israel*, LAI (Louisville: Westminster John Knox Press, 2001), xvii.

¹³It is not uncommon to open a work on family and find that the discussion follows this pattern: patriarchy (or patrimonialism), women, children, servants, etc. E.g. *ibid.*, 36-58.

¹⁴Although this paper is concerned primarily with the father's role as the head of his

was to promote the welfare of his household and its members.¹⁵ When exploring this proposal, it will be important to remember that the definition of well-being was very different in ancient Israel than it is today. Western culture increasingly (if also incorrectly) equates well-being with happiness. In this mode of thinking, it is difficult to see how the turning over of a rebellious son to be stoned,¹⁶ or the leading in the stoning of a brother, son, daughter, wife, or dear friend who entices you to stray from YHWH and worship other gods,¹⁷ could be viewed as contributing to well-being. However, Deuteronomy provides a standard by which to measure well-being that is very different from our modern culture's. Deuteronomy defines well-being as devotion to YHWH demonstrated through a life characterized by covenant faithfulness, namely, worship of YHWH alone and adherence to covenant stipulations that would result in divine blessing. It is to this end that a HOH was expected to act when relating to or on behalf of members of his household.

Second, it is the contention of this dissertation that the book of Deuteronomy has as an underlying theme an attempt to curb the potential abuse of power within the patriarchal society to which and within which God chose to reveal Himself. On the one hand, the texts instruct the HOH to work proactively to the advantage of the members of his household. On the other hand, many texts seem intended to curb his influence on (or

household, the father had many other responsibilities in Israel. For example, he may have served as an elder in the community, he was likely called upon for military service, he had a responsibility to the land and to livestock, and he was to act uprightly in relating to his "brothers" or fellow Israelites.

¹⁵In Israelite society "his household" and "its members" would have been one and the same.

¹⁶Deut 21:18-21.

¹⁷Deut 13:6-11.

control over) their lives. In a society so dependent on a HOH's role and rule, one consequence of his authority is its potential abuse. Deuteronomy makes it clear that practices and behavior that may have been acceptable in other patriarchal societies were not to be tolerated in Israel. The text of Deuteronomy works both positively (promoting welfare) and negatively (preventing abuse) to encourage the core of Israelite society, the family, to reflect **דִּסְדָּר** at every level.¹⁸

Background Material

Within OT scholarship, sociological studies of family and related issues (gender roles, sociological structure, etc.) are currently popular.¹⁹ So are topical studies that look to Deuteronomy or to OT "law codes" to inform present understanding of the roles, responsibilities and relationships of various members of ancient Israelite society.²⁰ However, to date no one has combined these two specifically with regard to the ancient Israelite HOH. The very issue of the role of the HOH seems to have been drowned out by the clamor to understand better Israelite social structure in general or to focus on gender

¹⁸Some may suggest that these assertions reflect a very optimistic view of the text—one that would defend this patricentric society as idyllic, even normative. However, to acknowledge these two underlying themes in the Torah of Deuteronomy is to acknowledge that these correctives likely were needed. Apart from their instructions, conditions were anything but idyllic. Indeed, the picture that emerges from the narratives of the OT includes both abuse and neglect, at every level.

¹⁹Cf. Ken M. Campbell, ed., *Marriage and Family in the Biblical World* (Downers Grove, IL: InterVarsity Press, 2003); S. Bendor, *The Social Structure of Ancient Israel: The Institution of the Family (Beit 'Ab) from the Settlement to the End of the Monarchy*, JBS 7 (Jerusalem: Simor, 1996); McNutt, *Reconstructing the Society of Ancient Israel*; and J. David Schloen, *Patrimonialism in Ugarit and the Ancient Near East*, vol. 2 of *The House of the Father as Fact and Symbol*, SAHL 2 (Winona Lake, IN: Eisenbrauns, 2001).

²⁰Cf. Carolyn Pressler, *The View of Women Found in the Deuteronomical Family Law*, BZAW 216 (New York: Walter de Gruyter, 1993); Timothy M. Willis, *The Elders of the City: A Study of the Elders-Laws in Deuteronomy*, SBLMS 55 (Atlanta: Society of Biblical Literature, 2001).

issues in the OT. Furthermore, scholarship that does concern itself with the role of the HOH (usually as a subservient concern to the gender issue) typically employs a disturbing methodology. In emphasizing the abuse of women in the OT, scholars frequently fail to take into consideration the overall context in which the biblical data are presented and, in so doing, assume that the abuse reported in the text is considered acceptable by the narrator. The present study seeks to address both of these concerns: (1) it fills a void in OT scholarship, and (2) it provides a corrective to a methodological flaw that exists in many secondary treatments of the HOH in ancient Israelite society.

The State of the Discipline—Filling a Void

To say that little has been written on the HOH might suggest that the overall field of socio-historical studies is also sparse. Nothing could be further from the truth. The field is inundated with works that examine the ancient biblical world from nearly every possible vantage point. To complicate the discussion, scholars employ many different approaches (archaeological/historical, sociological/anthropological, textual/literary) to reconstruct this ancient society—sometimes combining many approaches within the same work.²¹ Any attempt to categorize the literature for the sake of presenting a clear overview will be artificial at best. Yet an overview is necessary, especially since many works not directly focused on the HOH will inform the overall discussion of his role and responsibilities in ancient Israel. This review of the literature will focus on scholarly works that (1) specifically address the question of the role or

²¹I.e., Carol Meyers, "Procreation, Production, and Protection: Male-Female Balance in Early Israel," *JAAR* 51 (1983): 569-93. In her article she uses anthropology, comparative sociology and textual study to build a case for the high value placed on women in ancient Israelite culture.

function of the אב in ancient Israelite society, (2) address the household (בֵּית-אָב) itself either in terms of its physical reality or its paradigmatic role in Israelite society, (3) focus on the role of women in ancient Israelite society and related gender issues and (4) study the roles of other members of distinct Israelite social classes, i.e., widows, slaves, and elders.

The Role of the אב in Ancient Israel

Many of the short discussions on the role and/or responsibilities of the אב appear in popular works, usually devoted to the family in general. Such works include those written or edited by Edith Deen,²² Victor Matthews and Don Benjamin,²³ Carol

²²Edith Deen, *Family Living in the Bible* (New York: Harper & Row, 1963). A single chapter is devoted to the head of household. The study begins with a summary of the father's ultimate authority, but stresses that the goal of that authority is the protection and welfare of all members of the family (67-68). However, this optimistic outlook lacks credibility, especially since in an earlier discussion of husband-wife relationships, Deen cites Abraham as the paradigmatic figure of a devoted husband (56). Apparently this issue of his abandoning Sarai twice is excusable since he was trying to save their lives. While the attention to the role of the father is commendable, the presentation is scattered and the interpretation of the texts is highly suspect.

²³Victor H. Matthews and Don C. Benjamin, *Social World of Ancient Israel 1250-587 BCE* (Peabody, MA: Hendrickson, 1993). This work highlights what the social sciences can add to our understanding of the biblical world. According to Matthews and Benjamin, a father held authority over the life and death of his children from the moment they were born (10). In matters of legal authority, such as rebellious sons or assaults against members of the household, the father had the authority to judge the case (11). It is encouraging to see someone address the role of the father at a slightly deeper level. However, several features of this work appear difficult. Occasionally the authors make sweeping comments without clarification or substantiation. For example, "the father exercised the power of life and death in the household. But the authority of the father was not absolute. For example, he did not have the power of life and death over his grandsons, his brother, his father, his grandfathers, or his uncles" (9). Although Matthews and Benjamin often cite their sources (biblical and secondary literature) they offer no support for this statement. Nor do they clarify it. Some of their statements also seem contrary to scripture, or at least evidence poor interpretation. For example, Deuteronomy makes it clear that both the mother and the father were to deal with a rebellious son. What is more, the parents were not to deal with such rebellion within the confines of their own household, but take him before the elders (Deut 21:18-21). Further, these authors interpret the account of Jephthah and his daughter as an example of typical fatherly authority. Contrary to the assertion of these authors, the context of the book of Judges suggests that while this may have been typical behavior it does not represent the biblical norms associated with fatherhood. Such abuse of power should be recognized as violating Deuteronomy's norm, not exemplifying it. See Daniel I. Block,

Meyers,²⁴ and Richard Hess and Daniel Carroll,²⁵ all with short discussions on the role of the אב in relation to other members of his household.²⁶

Perlitt

To the best of my knowledge, there is only one article to date that expressly focuses on the role of the אב as portrayed in the OT. In a collection of German essays on the portrayal of the father in the Bible, Lothar Perlitt contributes a fifty-one page essay, “Der Vater im Alten Testament.”²⁷ He begins with a brief discussion of the social structure of Israel, but makes it clear from the outset that his task is to determine what the OT has to say about fathers. Perlitt’s article focuses on the father-son relationship. He uses the biblical text as the basis for his study, even providing separate discussions of the

“Unspeakable Crimes: The Abuse of Women in the Book of Judges,” *SBJT* 2, no. 3 (1998): 46-55; idem, *Judges, Ruth*, NAC, vol. 6 (Nashville: Broadman & Holman, 1999).

²⁴Carol Meyers, “The Family in Early Israel,” in *Families in Ancient Israel*, ed. Leo G. Perdue et al. (Louisville: Westminster John Knox Press, 1997), 1-47. She deals more with the tasks of various members of the household, agricultural, technological, etc. Her discussion on patriarchy and fathers is included in the section on women’s studies because her main contribution/focus is in this field.

²⁵Richard S. Hess and M. Daniel Carroll R., eds., *Family in the Bible: Exploring Customs, Culture, and Context* (Grand Rapids: Baker Academic, 2003). Three scholars in separate articles devote a handful of pages to the role of the father. In his article on “Family in the Non-narrative Sections of the Pentateuch,” Sanchez discusses the roles of women, of parents, and of children (38-41). The article by Tsumura, “Family in the Historical Books,” devotes one page to the father’s role and a few pages to parental authority including the father-son relationship, although he focuses primarily on bad examples from the Bible—Eli, Saul, Jesse, etc. (65, 72-77). His discussions are brief and vague, but he does address the topic. In discussing the family in Proverbs, Tremper Longman provides a seven-page treatment on the role of the parent and another six pages on the relationship between husband and wife (83-99). His purpose is to draw general principles from the book of Proverbs where these relationships play a major role in the book.

²⁶Another approach to the topic is found in David Tasker, *Ancient Near Eastern Literature and the Hebrew Scriptures about the Fatherhood of God* (New York: Peter Lang, 2004), who studies the metaphor of God as father. In his conclusion Tasker sets forth principles of divine fatherhood to be applied to human fatherhood.

²⁷Lothar Perlitt, “Der Vater im Alten Testament,” in *Vaterbild in Mythos und Geschichte*, ed. H. Tellenback (Stuttgart: Verlag W. Kohlhammer, 1976), 50-101.

father in legal material and in wisdom literature. He notes that mother and father are portrayed as equals in the realm of parenting and focuses a great deal of attention on the son's responsibility in terms of honoring his father (and mother) and heeding his father's wisdom. He includes an intriguing section on the grieving father (Jacob and David) that illustrates the deep love a father has for his children. Perlitt is particularly interested in father-son conflict and discusses certain examples in detail (Eli, David).

Perlitt's attention to the issue is extraordinary considering that he is alone in his field.²⁸ The most significant limitation of Perlitt's work is his limited definition of the **בן** in ancient Israel. Although Perlitt is aware of sociological treatments of the household and the HOH in critical scholarship, he understands **בן** exclusively in the Western sense of one who has or raises children.²⁹

Block

Within the English-speaking world, Daniel Block has paved the way for discussion on the role of the **בן** in Israelite society. Embedded in his article on "Marriage and Family in Ancient Israel"³⁰ is a twenty-one-page summary of the issue subtitled "The Status and Roles of Husbands and Fathers in Ancient Israel."³¹ Block begins his

²⁸In fact, in the endnotes his citations are limited to five general sources and three dictionary entries because of the lack of any directly related scholarly literature. "Mangels direkt themabezogener Literatur kann nur auf folgende Übersichtswerke und Wörterbücher hingewiesen werden," *ibid.*, 162.

²⁹This critique may seem odd to a modern reader. Does not fatherhood have to do with children? This may be correct technically, but in ancient Israel, the role of father was associated with the role of head of household and involved much more than a parent-child relationship.

³⁰Daniel I. Block, "Marriage and Family in Ancient Israel," in *Marriage and Family in the Biblical World*, ed. Ken M. Campbell (Downers Grove, IL: InterVarsity Press, 2003), 33-102.

³¹*Ibid.*, 40-61.

discussion on the role of the אב with a thoughtful section on terminology, specifically as it relates to the use of the term *patriarchy* (rule of the father). Like Meyers³² he rejects the term *patriarchal* for describing the Israelite ideal. He does so primarily because of the pejorative connotations of the term. While Meyers prefers the term *androcentric* (male-centered), Block prefers the term *patricentric* (father-centered) for describing Israelite society because it was the father, not just the male, who was at the center of Israelite social structures.

Block understands the authority that comes with this central position of the אב to be that of responsibility rather than right. However, he acknowledges that this responsibility was not always upheld, and fathers often twisted and abused their authority. Drawing on biblical support, Block lists nine fundamental responsibilities by which the אב was to “serve the family.”³³ In addition to these duties, the אב had responsibilities to the other members of his household, specifically his wife (or wives), sons, daughters, and servants.

Block’s discussion provides a helpful starting point for the study of the role of the אב. He interacts with secondary literature, with ancient Near Eastern background material, and most importantly with the text. His presentation of authority as implying

³²Meyers, “Family in Early Israel,” 33-34.

³³Block, “Marriage and Family in Ancient Israel,” 47. These responsibilities include (1) modeling strict personal fidelity to YHWH; (2) leading the family in national festivals and keeping alive the memory of Israel’s salvation; (3) instructing the family in the Torah; (4) managing the land in accordance with the instructions in the Torah to insure the family’s security with God; (5) providing for the basic needs of food, shelter, clothing, and rest; (6) defending the household against outside threats; (7) functioning as elder and representative of the family; (8) maintaining well-being of individuals and harmonious operation of the household activities; and (9) implementing decisions made in the larger clan of which the household was a part.

primarily responsibility reflects the “other-centeredness” of the text.³⁴ This presentation turns the common assumption of patriarchal³⁵ power in ancient Israel completely on its head. For example, no longer is the divorce text of Malachi 2:10-16 an indication of the moral right of a husband over a wife, but of a moral offense committed by a husband against a wife.³⁶ Further, this emphasis on responsibility allows Block to avoid the trap into which many scholars fall, namely, falsely equating a person’s level of authority with his or her worth or value. Finally, it allows for discussion of HOH’s who fail in their responsibility. Block is to be commended for acknowledging that the OT is full of stories of weak and abusive HOH’s.

As much as this work represents an excellent starting point, it also demonstrates that more work is needed on this topic. For a summary of the role of the central figure in Israel’s foundational social structure over a period of more than a thousand years as recorded in thirty-nine books, Block’s summary is invaluable. He gives a biblically-based, broad overview of the general role of the HOH in relation to other members of his family. Yet this treatment of the **בא** is just a summary. The positions expressed in Block’s thematic essay are being confirmed by further analysis on related texts in Deuteronomy.³⁷ His hypothesis that the HOH’s authority is lived out in terms of

³⁴The Decalogue provides an excellent example of the “other-centered” nature of the OT. Rather than promoting the rights of the head of household to whom it is addressed, it reins in his rights by stressing the rights of his neighbor. He is no more to exploit his family (fourth commandment) than he is to murder, steal, or even covet his neighbor or his neighbor’s household. Cf. *ibid.*, 44.

³⁵I recognize that Block avoids the term *patriarchal*, but scholarship in general does not.

³⁶Block, “Marriage and Family in Ancient Israel,” 52.

³⁷Daniel I. Block, “The Gospel According to Moses: A Commentary on Deuteronomy” (forthcoming); *idem*, “‘You Shall not Covet Your Neighbor’s Wife’: A Study in Deuteronomistic Domestic Ideology” (paper presented at the annual meeting of ETS, Washington, DC: November 2006), 1-37.

responsibility toward and on behalf of the members of the family should be tested in a systematic, thorough examination of the biblical text.³⁸

House and Household

Although they are two separate identities, in ancient Israel the אב is virtually equated with his household. The rights and responsibilities of the household (בֵּית־אָב) are the rights and responsibilities of the אב. In dealing with the אב, scholars have been concerned primarily with the household as a whole, the בֵּית־אָב. They frequently mention the *paterfamilias* (head of household) but add little to the common understanding of his relationship to other members of his household.³⁹ Although these scholars ask different questions of the data, this investigation is indebted to their work and could not be done without this foundation.

Stager/King/Schloen

The ancient Israelite household holds particular fascination for Lawrence Stager (along with Philip King) and his student J. David Schloen. These scholars approach the topic from the perspective of archaeology and a sociological interpretation of ancient Near Eastern history. Their discussions on agrarian Israelite society, on the

³⁸The ideas expressed by Block regarding the father's role and responsibilities of the father in ancient Israel are also reflected in various other treatments of Deuteronomy, in particular, Christopher J. H. Wright, *Deuteronomy*, NIBC (Peabody, MA: Hendrickson, 1996) and Jeffrey H. Tigay, *Deuteronomy*, JPSTC (Philadelphia: Jewish Publication Society, 1996). However, the assembly of texts pertaining to the father and his relationship with immediate members of the household, and the synthesis offered here, are unique to this paper.

³⁹For example, in terms of defining roles and positions, King and Stager are more concerned with the *na'ar*, unmarried man not yet a head of household (Stager, "Archaeology of the Family," 25-28), and with children, women, marriage and the elderly (King and Stager, *Life in Biblical Israel*, 40-59).

three- and four-room houses, and on the nuclear and compound family dwellings provide a context within which to understand the different family relationships.⁴⁰ Further, the proposal that kinship was so fundamental to Israelite society that even the redistribution of tribal affiliations during the monarchy did not dissolve these ties⁴¹ suggests that the family structure may have been one of the most stable elements in Israel's often chaotic history. King and Stager's theory that kingship was not a foreign institution superimposed on Israelite social structure, but that kingship in Israel was simply a higher level of (fictive) kinship⁴² reflects the depth and significance of the family structure in this society.⁴³

Bendor

S. Bendor provides another significant work on the household. Bendor's study of the social structure in ancient Israel focuses on the institution of the family (בֵּית-אָב)

⁴⁰Stager, "Archaeology of the Family," 1-23. See also Schloen, *Patrimonialism in Ugarit and the Ancient Near East*. Schloen's first volume of a proposed two-volume set provides a massive addition to the field. Schloen begins with a lengthy discussion of philosophical considerations reflecting the influence of Paul Ricœur. He is also influenced strongly by the sociological model set forth by Max Weber. In his discussion of the בֵּית-אָב, Schloen emphasizes that this reality was so deeply rooted in society that it became a living symbol, enduring through both synchronic (cultural) and diachronic (millennial) spans. This work is a landmark in the field. It is useful especially for its philosophical explanations (part one of volume one) and its detailed treatment of Ugaritic and Near Eastern culture of the fourteenth and thirteenth centuries BC. The yet unpublished second volume will deal specifically with developments within Israelite culture and may be more directly relevant to this dissertation.

⁴¹One of the main pieces of evidence for this suggestion is the reference to the clans in the Samaria ostraca. See Stager, "Archaeology of the Family," 24; and Schloen, *Patrimonialism in Ugarit and the Ancient Near East*.

⁴²Philip J. King and Lawrence E. Stager, "Of Fathers, Kings, and the Deity: The Nested Households of Ancient Israel," *BAR* 28, no. 2 (2002): 42-45, 62; idem, *Life in Biblical Israel*, 39.

⁴³Given the longterm stability of the household paradigm and the depth of its significance in Israelite society, the precise date assigned to the selected texts likely would have little bearing on our theological interpretation. Consequently, issues of date and provenance are not addressed.

in Israelite society as presented in the biblical text.⁴⁴ Probably the most helpful contribution of this work is Bendor's explanation of the dynamic nature of the Israelite household. Not only was the household structure in constant flux,⁴⁵ but it was viewed differently by different household members and in different settings.⁴⁶ In addition, Bendor suggests that the **בֵּית-אָב** was not the primary unit in ancient Israel, but that within the **בֵּית-אָב** a smaller unit existed which he calls the nuclear family (husband and wife with their children).⁴⁷ Following this principle of the nuclear family, Bendor argues that a person's position in society was determined by his⁴⁸ position within the **בֵּית-אָב**. Given the continuous change, complex dynamics, and desire for social status (often related to issues of authority and inheritance), Bendor asserts that tensions often existed

⁴⁴Bendor, *Social Structure of Ancient Israel*.

⁴⁵Changes (births, marriages, divorces and deaths) brought constant transition to a household so that a household in which someone grew up was never the same as the household in which that person raised his family. (The use of 'his,' here, follows the androcentric pattern of the text. A basic understanding of the patrilocal society already makes it clear that the wife's adult family is different from the family of her childhood because she has moved and now lives with her husband's family.)

⁴⁶It may be helpful to realize that a household involved more than a physical reality. It was not just a matter of who slept under which roof, but was also a matter of kinship (or to use a more modern term—family relationship) and authority. Thus Joseph could speak both of *his* house and *his father's* house (Gen 50:7-8) and not be referring to two mutually exclusive entities. *His* house was the household that he founded and of which he was the head. Yet when Joseph functioned "with his brothers and *his father's* house" it was the house of Jacob to which Joseph and his brothers belonged. Bendor also points out the obvious but helpful fact that a household was described differently by its members. For example, Jacob refers to his household as "my house," while his sons referred to the same entity as "my father's house."

⁴⁷Bendor cites Deut 25:5-10; 21:15-17; and Judg 11:2 as evidence for a smaller unit within the **בֵּית-אָב**. Here his arguments are very condensed and it is hard to tell if he has identified proof of a smaller unit (the nuclear family), or if he is missing another element of the text (a concern for the future line, for the well-being of the widow, or some other factor).

⁴⁸Bendor's study is not concerned with women in the household. The study focuses on the household as the primary building block of Israelite society, and the authority and transfer of authority within the household. This struggle for authority is primarily played out among the males—grandfathers, fathers, firstborn sons, younger brothers, etc.

within the **בֵּית-אָב**—tensions between brothers, and between sons and fathers.⁴⁹ Finally, Bendor proposes that the kinship structure of society was stable at least into early monarchic times.⁵⁰ Bendor's presentation of the household is both complex and dynamic. For that reason it is likely more realistic than the static descriptions of Israelite households found in much of the secondary literature.

Cowling

The analyses discussed above, as well as the larger fields they represent, seem to present a rather homogeneous picture of the state of the discipline. There have been some “advancements” in the field, for example the recurring notion that the family structure survived through the monarchy. However, by and large, scholars build off of the same basic concept of the **בֵּית-אָב**. In a short article on “The Biblical Household” published in 1986, Geoffrey Cowling challenges the entire field.⁵¹ Cowling argues the following: (1) The Hebrew word for house (**בֵּית**) and the technical phrase **בֵּית-אָב** should not be equated, and **בֵּית-אָב** should never be translated as “household.” (2) The

⁴⁹These unresolved tensions call for a scholarly re-examination of the notion of corporate solidarity. Any view of kinship solidarity (see Pedersen, *Israel: Its Life and Culture*) must take into account the conflict that occurs as men (and women) seek to establish themselves. Bendor appreciates Pedersen's work, but suggests that he fails to recognize the balance between unity and tension in the family unit, Bendor, *Social Structure of Ancient Israel*, 197-204.

⁵⁰Contrary to common scholarly consensus as represented by Albrecht Alt, “Das Königtums in den Reichen Israel und Juda,” *VT* 1 (1951): 2-22; Antonin Causse, *Du Groupe Ethnique à la Communauté Religieuse: Le problème sociologique de la Religion D'Israël* (Paris: F. Alcan, 1937); de Vaux, *Ancient Israel*; and Max Weber, *Ancient Judaism*, trans. and ed. Hans H. Gerth and D. Martindale (Glencoe, IL: Free Press, 1952). Bendor's work seems to be independent of (and in its original form precedes) similar suggestions made by Schloen, King and Stager (Bendor, *Social Structure of Ancient Israel*, 216-28).

⁵¹Geoffrey Cowling, “The Biblical Household,” in *Wünschet Jerusalem Frieden: Collected Communications to the XIIth Congress of the International Organization for the Study of the Old Testament, Jerusalem, 1986*, ed. Matthias Augustin and Klaus-Dietrich Schunck, BEATAJ 13 (New York: Verlag Peter Lang, 1988), 179-91.

criteria for being included in the household (בֵּית) are dependence and residence, not kinship. (3) The master of a household was not considered a member of the household. (4) Households did not make up clans. (5) Households were not “extended.” In other words, sons moved out upon marriage to set up their own households. These conclusions are radical, going against the grain of scholarship over the last century.⁵² While Cowling may have over-stated his case, some of the textual features that disturb Cowling are the same features Bendor uses to describe the dynamic structure of the household in Israel. Although they present very different suggestions, both Bendor and Cowling argue that neither the בֵּית nor the בֵּית-אָב in OT studies was as simple and uni-dimensional as some studies present it.

Summary

The recent work done on the בֵּית-אָב within the social structure of Israel provides a strong framework for further discussion on the role and place of the אָב. It confirms the importance of his role as well as the stability and longevity of this social structure, thus providing strong motivation for further studies in this area. Bendor also reminds the researcher that no simple formula will account for the בֵּית-אָב. Rather, it includes complex, dynamic social structures that often produce both cooperation and conflict.

⁵²The prevailing disregard for Cowling may be the result of weak argumentation. For example, his assumption that dependants in residence cannot be subsumed under some kind of fictive kinship suggests a misunderstanding of the role of kinship and kinship language in ancient Near Eastern society.

The Role of Women within the בֵּית־אֵב

Although women's studies are seldom overtly concerned with the specific role of the male HOH, the issue of his authority in relation to the OT woman is a constant underlying theme. Cheryl Anderson,⁵³ Susan Ackerman,⁵⁴ Athalya Brenner,⁵⁵ Esther Fuchs,⁵⁶ Heidi Parales,⁵⁷ Carolyn Pressler,⁵⁸ Ilse Seibert,⁵⁹ Tikva Frymer-Kensky,⁶⁰ and

⁵³Cheryl B. Anderson, *Women, Ideology, and Violence: Critical Theory and the Construction of Gender in the Book of the Covenant and the Deuteronomic Law*, JSOTSup 394 (New York: T. & T. Clark, 2004). This work will be addressed under the treatment of social classes within Deuteronomy.

⁵⁴Susan Ackerman, "Women in the Ancient Near East," in *Near Eastern Archaeology: A Reader*, ed. Suzanne Richard (Winona Lake, IN: Eisenbrauns, 2003), 150-56. Ackerman utilizes Ugaritic background material and biblical texts. While she concludes that women were under the authority of men, she follows Meyers in understanding that women's restrictions in economic and political spheres were caused primarily by weighty household responsibilities.

⁵⁵Athalya Brenner, *The Israelite Woman: Social Role and Literary Type in Biblical Narrative*, BibSem 2 (Sheffield: JSOT Press, 1985). Brenner examines women in the OT based on professions, social institutions and literary paradigms.

⁵⁶Esther Fuchs, *Sexual Politics in the Biblical Narrative: Reading the Hebrew Bible as a Woman*, JSOTSup 310 (Sheffield: Sheffield Academic Press, 2000). Fuchs holds that the narratives of the biblical text are prescriptive. She focuses on the ways in which it "legislates and authorizes the political supremacy of men over women" (7). She concentrates heavily on literary type-scenes to understand what she calls "sexual politics" in the biblical world.

⁵⁷Heidi Bright Parales, *Hidden Voices: Biblical Women and Our Christian Heritage* (Macon, GA: Smyth & Helwys, 1998). This work includes a general overview followed by a short study of various women mentioned in the OT. The work appears to be written for use within a study group of lay people. She follows the paradigm set forth by Carol Meyers that suggests women's status declined throughout Israelite history. She acknowledges that God gave some laws to protect women (Num 27:1-8; 5:11-31; Lev 12:1-7; Deut 22:13-30), but also asserts that "rules were written by the males to exclude and devalue women" (Parales, *Hidden Voices*, 28). It is hard to tell if by "rules" she means prescriptive texts or "unwritten rules" governing different stages of Israelite society.

⁵⁸Pressler, *View of Women*. This work will be addressed under the treatment of social classes within Deuteronomy.

⁵⁹Ilse Seibert, *Die Frau im Alten Testament* (Leipzig: Edition Leipzig, 1973).

⁶⁰Frymer-Kensky is a prolific writer. Her works overlap many areas of study. She has written on the family ("The Family in the Hebrew Bible," in *Religion, Feminism, and the Family*, ed. Anne Carr and Mary Stewart Van Leeuwen [Louisville: Westminster John Knox Press, 1996], 55-73), on the overall field of women's studies with its trends and contributions to the study of the Bible ("The Bible and Women's Studies," in *Feminist Perspectives on Jewish Studies*, ed. Lynn Davidman and Shelly Tenenbaum [New Haven, CT: Yale University Press, 1994], 16-39), and on issues of women in OT law ("Patriarchal Family Relationships and Near Eastern Law," *BA* 44 [1981]: 209-14; and "Virginity in the Bible," in

Phyllis Trible⁶¹ have all made significant contributions in the field. Scholars that have contributed directly to the dialogue concerning the HOH (or male) as a pivotal figure in the Israelite community include Raphael Patai, Phyllis Bird, Carol Meyers, Hennie Marsman, and Richard Davidson.

Patai

Raphael Patai represents those scholars who look at the role of the HOH almost solely in terms of his authority in the ancient patriarchal society.⁶² Patai argues that in Israel the HOH had full authority over members of his household, including the authority over life and death.⁶³ Besides pointing to evidence from biblical narratives (e.g., Abraham and Jephthah) Patai draws heavily on examples from modern (i.e., nineteenth-century) African and Middle Eastern cultures to demonstrate that such authority over life and death in patriarchal cultures is the norm. Patai's views on authority are often cited in

Gender and Law in the Hebrew Bible and the Ancient Near East, ed. Victor H. Matthews et al., JSOTSup 262 [Sheffield: Sheffield Academic Press, 1998], 17-24). Her views line up closely with those of Patai (see n. 63) in that she sees the father's authority as extreme. Unlike Patai, Frymer-Kensky makes a firm distinction between a father's authority over his children (whom, according to Frymer-Kensky, he is permitted to beat) and over his wife (whom he is not permitted to beat). However, in terms of sexuality, the father's authority over a woman was absolute. The sexuality of a wife (or a daughter's chastity) was the possession of the head of household. See Frymer-Kensky, "Family in the Hebrew Bible," 55-73.

⁶¹Phyllis Trible, *Texts of Terror: Literary Feminist Readings of Biblical Narratives*, OBT 13 (Philadelphia: Fortress Press, 1984). Trible studies four cases of horrific abuse in the biblical narrative from a literary perspective (set within an underlying framework of the suffering [maid-] servant).

⁶²Raphael Patai, *Sex and Family in the Bible and the Middle East* (Garden City, NY: Doubleday & Company, 1959); idem, *Family, Love and the Bible* (London: Macgibbon & Kee, 1960).

⁶³Patai, *Sex and Family*, 127-37. Specifically Patai discusses the authority of a father over his children, from deciding at birth whether that child should be allowed to live, to deciding at any point that a child should be put to death for being disobedient or rebellious. Using the example of Reuben (Gen 42:37) Patai argues that a father could decide to slay a child for no reason at all. Patai deduces that this authority over life and death applied to any member of the father's household.

women's studies. He understands the authority in the OT negatively as demonstrating the inferiority of other family members and causing harm to women and children.⁶⁴

Bird

Phyllis Bird's aim in studying the text is to define the image of women in the OT.⁶⁵ She suggests that male dominance in both cultic and military settings created a double liability for women. Thus women were dependent on men in religious and in political and economic spheres. Further, women were always under the authority of a male—first the father and then the husband. According to Bird this male authority indicates that the woman was considered inferior in every role.⁶⁶ Finally, Bird states that a woman's primary contribution to the family involved her sexuality. According to unwritten law, her sexuality was the exclusive property of her husband.⁶⁷

⁶⁴While Patai is to be commended for not overlooking difficult texts, his work suffers from two weaknesses. First, Patai does not seem to make a distinction between what was, and what should have been. Patai seems to be addressing the first issue, namely, what authority did a father have? However, based on what was (which he deduces, sometimes improperly, from narrative texts), he infers that such authority was both tolerated and acceptable. Second, his use of relatively modern sociological patterns to verify ancient custom is suspect. This suspicion applies not only to his methodology, but also to the selectivity with which he examines the modern parallels. For example, in the chapter on patriarchal authority, Patai provides many examples of societies that have zero tolerance for premarital pregnancies—killing promiscuous girls and/or their babies (ibid., 132-37). However, in the next chapter he provides just as many examples of societies that are widely accepting of different kinds of promiscuity and in which “women . . . give themselves up to immorality, and their closest relatives, even their own fathers, cannot prevent their doing so” (ibid., 139). Yet his conclusions do not take into account the diversity of his finds, thus casting doubt on the far more difficult application to an ancient society.

⁶⁵Phyllis A. Bird, *Missing Persons and Mistaken Identities: Women and Gender in Ancient Israel*, OBT (Minneapolis: Fortress Press, 1997).

⁶⁶Bird acknowledges that the law seems to treat mothers as having equal authority over their children (ibid., 30) but later asserts that a woman was considered inferior even within the sphere of her primary activity, the family (ibid., 57).

⁶⁷Ibid., 23-24. The husband's ownership of his wife's sexuality is demonstrated by the (also unwritten) law that demands virginity of a bride (cf. Deut 22:13-21).

As for the laws of Israel, Bird cautions that they give only an incomplete picture of a society. However, she holds that law is a primary source for reconstructing the ideals and practices of a society. Bird views Israelite laws as primarily intended to “assure the integrity, stability, and economic viability of the family as the basic unit of society.”⁶⁸ She equates the interests of the family with the interests of the head of the family, the **בית**. Thus she views the laws as primarily benefiting the HOH.⁶⁹ Bird’s work is relevant to the present study both in her understanding of the authority of the HOH⁷⁰ and her understanding of the function of the law.⁷¹

Meyers

Of all the work done in women’s studies and gender roles, one of the most helpful for the purposes of this investigation is that of Carol Meyers.⁷² Not only has she

⁶⁸Ibid., 23.

⁶⁹Bird writes, “His rights and duties are described with respect to other men and their property. The laws focus mainly upon external threats to the man’s authority, honor, and property, though they may occasionally serve to define and protect his rights in relation to members of his own household (slaves: Exod 21:20-21; children: Deut 21:18-22; wife: Num 5:11-31). Only in rare cases, however, are the laws concerned with the rights of dependents (Exod 21:26-27; Deut 21:10-14, 15-17; 22:13-21),” *ibid*.

⁷⁰The intent of this dissertation is not to debate the role of women in Israelite society, but to understand her husband’s and father’s role in relationship to her (and to other members of his household). Bird’s assumption that male authority over a woman necessarily pointed to a woman’s inferiority is problematic. (In what sense was she inferior? Is worth determined by authority?)

⁷¹Bird’s view of the function of the law is questionable. She views the laws as oriented toward the well-being of the household, which is equated with the well-being of the head of house. The picture of law here is one that serves the interests of the father. However, the book of Deuteronomy seems to provide a very different picture. There is no denying that the law is andro- or patricentric (directed at the male or father), but it may be asked whether or not it revolved around his rights. In fact, contrary to today’s society where we (especially Americans) are preoccupied by our rights, Deuteronomic instruction appears other-centered. It seems to focus on the responsibilities an Israelite owes to other members of societies. If anything, Israelite law restricts a man’s rights for the sake of the well-being of others. Cf. Block, “‘You Shall not Covet Your Neighbor’s Wife,’” 1-37.

⁷²Carol Meyers, “The Roots of Restriction: Women in Early Israel,” *BA* 41 (1978): 91-103; *idem*, “Procreation, Production, and Protection,” 569-93; *idem*, *Discovering Eve: Ancient Israelite Women*

written a great deal in the field, but her ideas have influenced many others in women's studies. Essentially Meyers argues that women in ancient Israel were highly valued members of society. In a period where famine, war, and overall instability created extremely high death rates, women were essential for procreation—to replenish the population. In addition, in the pre-settlement period Israelite men were busy with war (offensive and defensive) and establishing settlements, including building homes and preparing the land for farming. With the men preoccupied in this way, by necessity women had to be active in the production of food and overall maintenance of the household. Meyers argues that tasks were distributed evenly between men and women in an ancient Israelite household, which inevitably meant that women were highly valued members of society. Thus Meyers argues that early Israelite society was not patriarchal (ruled by the father) as much as it was androcentric (male-centered).⁷³ This optimistic view of the position of women is reserved for ancient society. With the added political and economic stability, women's roles were diminished to the point that they became victimized and abused members of society. Israelite society moved from equal participation to male dominance and thus negatively affected women down through the ages.

in Context (New York: Oxford University Press, 1988); idem, "Of Drums and Damsels: Women's Performance in Ancient Israel," *BA* 54 (1991): 16-27; idem, "Family in Early Israel"; and idem, "Women and the Domestic Economy of Early Israel," in *Women in the Hebrew Bible: A Reader*, ed. Alice Bach (New York: Routledge, 1999), 33-43.

⁷³Meyers, *Discovering Eve*, 24-46. She acknowledges that society was both patrilocal and patrilineal, but suggests that women had great influence in the home, evidenced by references to the mother's house in Gen 24:28; Ruth 1:8; Cant 3:4; 8:2. Cf. Prov 9:1; 14:1; 31:10-31. (Meyers, "Family in Early Israel," 34). Further, she points out that the term patriarchy developed in the nineteenth century and carries negative, sexist connotations. She does not try to deny male dominance, but dominance does not necessarily imply abusive rule.

Meyers' work demands careful attention. Her view that women were highly regarded in ancient Israel is refreshing in light of other works in the field, as is her careful scholarly research and fine style of presentation. However, her work raises some questions. First, it is often difficult to determine the source of her evidence for defining early Israelite society. That she uses archaeology and history is clear, as is her use of anthropology and sociology. However, it is difficult to tell which texts she considers relevant for the study. This critique is linked directly to a second difficulty, namely her insistence that the point of decline in the life of an Israelite woman began in the time of the monarchy. How does this account for the book of Judges? Furthermore, her equating the kingship with the demise of women does not fit well with King's and Stager's theory that kingship in Israel was the natural extension of the **בֵּית-אָב**.⁷⁴ While there may be value to Meyers' claim, these issues require further attention. Finally, her rejection of the term "patriarchal" in favor of "androcentric" to describe early Israel is problematic given her admission that the **אָב** did have authority over women in public spheres and in the home.⁷⁵ Coupled with the reality that Israel was both patrilineal and patrilocal, the OT's focus on the **בֵּית-אָב** suggests that perhaps a better term might be "patricentric."⁷⁶

Marsman

In this massive volume of well-researched and clearly presented material, Marsman sets forth to answer the question of whether the social and religious position of

⁷⁴King and Stager, "Of Fathers, Kings, and the Deity."

⁷⁵Meyers, *Discovering Eve*, 187.

⁷⁶As recommended by Block, "Marriage and Family in Ancient Israel," 41-44.

women in Israel was better, worse, or equal to that of women in polytheistic countries, especially Ugarit.⁷⁷ Marsman examined women as they interacted in various stages of family life (i.e., betrothal, marriage, household, divorce) and in various social positions (queen, queen-mother, princess, court positions, etc.). In the end she concludes that patriarchy was pervasive throughout the ancient Near East, and that, because of the male-dominated cultures, even those women in high social positions experienced an inordinate level of subordination.

Marsman's treatment of a woman's role throughout the different phases of her life evidences a firm grasp of both Israelite and ancient Near Eastern background material. Her work is well supported by textual evidence and by extensive interaction with other scholars. Wherever the interests of this study of selected texts in Deuteronomy coincides with Marsman's work, her insights have been found exceedingly helpful. However, her overall focus is different from this present study. Marsman is concerned with historical expression (how things were), rather than an ideological ideal (how things ought to have been). Further, Marsman appears to judge quality of life based on independence, and inherent value based on authority. Although narrative biblical texts often portray a pejorative attitude toward women, it is the contention of this study that prescriptive texts within Deuteronomy demand that a high value be placed on women and their treatment, even though (and especially because) they are subject to male authority.

⁷⁷Hennie J. Marsman, *Women in Ugarit and Israel: Their Social and Religious Position in the Context of the Ancient Near East*, OTS 49 (Leiden: Brill, 2003).

Davidson

Unlike the previous works, that of Richard Davidson is not exclusively devoted to woman's studies. However, as a comprehensive theology of human sexuality and gender relationships it encompasses a similar field of study and therefore demands attention.⁷⁸ Davidson's work considers every OT passage related to human sexuality, paying special attention to the canonical form, incorporating relevant ancient Near Eastern data, and utilizing the work of prior scholarship to understand the OT's comprehensive and cohesive presentation of a theology of human sexuality. Davidson understands the original relationships established at creation (Gen 1-3) as idyllic, but evidenced in twisted form after the fall. He sees in the Hebrew Bible an attempt to reestablish the boundaries of healthy and right relationships, so that adultery is corrected by faithfulness, denigration and abuse of women replaced with value and honor, and distorted sexual practices replaced by the ideal, whole marriage relationship. Through instruction in the biblical ideal, Davidson conveys a hope that the ideal can be reestablished in a healthy marriage relationship—a "return to Eden."⁷⁹ Davidson insightfully distinguishes between that which is recorded as taking place in Israel (but represents the twisted practices of a fallen world), and that which is set forth as the biblical ideal.

Davidson's work is comprehensive, methodically researched, clearly presented, and cogently argued without sacrificing the personal and intimate flavor

⁷⁸Richard M. Davidson, *Flame of Yahweh: Sexuality in the Old Testament* (Peabody, MA: Hendrickson, 2007).

⁷⁹*Ibid.*, 545-658.

appropriate to the topic. His recognition of the high value placed on women throughout the scriptures is distinctive as is his treatment of the roles and responsibilities of the male within male/female relationships.⁸⁰ Where Davidson's work overlaps that of this project—usually in those deuteronomic texts involving the relationship between husband and wife—Davidson's insights heavily inform this study.

Summary

Many studies of women's issues and gender roles characterize OT society as patriarchal and misogynistic. Accordingly, women are considered inferior and even treated like property. Other studies suggest that, at least for a time, the roles of men and women in ancient Israel were evenly divided and that women were valued members of society.

Social Classes

Consistent with the trend of growing interest in the more mundane elements of Israel's experience, the last few decades have evidenced a growing scholarly interest in the social classes of ancient Israel: women, elders, the poor, widows, the fatherless, foreigners, and servants. Combined with this growing interest is a tendency for scholars to examine biblical legal texts that, in the words of Jeffries Hamilton regarding Deuteronomy 15, "set forth how society ought to operate."⁸¹ The studies that combine

⁸⁰One difficulty with this work involves the proposed dichotomy in Davidson's understanding of the relative roles of male and female. He understands God's design for harmony after the fall exclusively in relation to a wife's submission to her husband. Thus, he sees this submission as limited to the marriage relationship alone and not applicable to any other male/female relationship, including the role of women in the believing community (ibid., 58-80).

⁸¹Jeffries M. Hamilton, *Social Justice and Deuteronomy: The Case of Deuteronomy 15*,

these two interests, social classes and the law codes, are most pertinent to this study.

Willis

Willis' study centers on the laws of Deuteronomy as they relate to the role and function of local elders.⁸² These local elders appear in five texts,⁸³ each of which he examines almost solely from the standpoint of the mention of the elders. Willis relies heavily on ethnographic evidence from contemporary kinship-based cultures.⁸⁴ His study exemplifies the tendency of scholars to choose shorter blocks of material in order to cover that material more extensively. Rather than looking at elders in general, he narrows the field to elders of the city as they appear in the laws of Deuteronomy.

SBLDS 136 (Atlanta: Scholars Press, 1992), 8. Hamilton examines social justice in Deuteronomy with an eye to the poor and oppressed based on Deut 15 and the two release laws mentioned there. After studying the rhetoric (language and structure) of Deut 15, Hamilton discusses in detail the context of these laws (ANE, other biblical law codes, and other release laws in Deuteronomy). He concludes that (1) in Deuteronomy social justice is not an abstraction, but something that can be detailed; (2) care of those in society who are most vulnerable is of central importance for the ideal society, and conversely, the health of a society is measured by its justice; (3) Deuteronomy sees care of the needy as an obligation of the more powerful members of society, and (4) God serves as the advocate of the dependent and the powerless (135-37). Hamilton ends his analysis with a lengthy discussion of the relevance of the text for today's reader.

According to Hamilton's view, "in the case of the law codes . . . the primary concern is of what values society should have when it approaches problems which at first glance can be taken as merely a matter of legality or illegality," *ibid*; see also pages 56-62 on understanding biblical law.

⁸²Willis, *Elders of the City*.

⁸³Deut 19:1-13; 21:1-9; 21:18-21; 22:13-21 and 25:5-10.

⁸⁴Willis adopts controls set forth by Robert Wilson for handling this comparative data. (See Willis, *Elders of the City*, 25.) However, even with these controls, the use of modern cultural studies to explain ancient Israelite society raises some questions. While societal structure and practice may look the same externally, the underlying principles that drive similar behavior can be very different. This is especially true when we consider that Deuteronomy is first and foremost a theological document (as opposed to a history or a legal code), and as such its "laws" will have both sociological *and* theological grounds. One must ask if the same is true of the African and Middle Eastern societies included in Willis' study. If so, what are the theological elements that drive these cultures?

Pressler

Pressler examines what she calls “family laws,”⁸⁵ with the express purpose of exploring the view of women found in these laws.⁸⁶ She offers a helpful corrective to the field by arguing that studies on the deuteronomic view of women are inaccurate when they fail to take into account the context of the laws in which women are mentioned.⁸⁷ The first half of Pressler’s book is devoted to careful exegesis of all family laws related to her topic. She argues that

The laws presuppose the dependence of women within male-headed households and the subordinate role of women within the family. The laws aim to support the stability of the family structures. They also protect dependent family members. Their efforts to protect dependents do not, however, fundamentally challenge the hierarchal family structure.⁸⁸

Pressler’s observation that certain laws begin by “assuming and then limiting the authority of the husband or father”⁸⁹ is especially significant. That said, she knowingly dismisses evidence that Deuteronomy was revolutionary in its treatment of women and other dependent members of society. Her primary conclusion is that the laws of Deuteronomy failed to combat male/female hierarchical structures.⁹⁰

⁸⁵Pressler includes four sets of laws: Deut 21:10-21; 22:13-29; 24:1-4; and 25:5-12 (*View of Women*). In 1973 Anthony Phillips suggested this category of “family laws” (in addition to his “crimes” and “torts”) (“Some Aspects of Family Law in Pre-Exilic Israel,” *VT* 23 [1973]: 349-61). Pressler selects texts based on theme (family), and suggests that these laws are connected by common vocabulary, structure, and, to some extent, placement.

⁸⁶Pressler, *View of Women*.

⁸⁷*Ibid.*, 2.

⁸⁸Pressler, *View of Women*, 1. In this statement she is countering the suggestion by others that the Deuteronomic redactor expressed a concern for the “equity of the sexes.” Cf. Moshe Weinfeld, *Deuteronomy and the Deuteronomic School* (Oxford: Clarendon Press, 1972), 291.

⁸⁹Namely Deut 21:10-14 (captive bride) and 21:15-17 (firstborn son); Pressler, *View of Women*, 9.

⁹⁰Pressler is correct on this point. Deuteronomy does not seem to undermine the societal

Anderson

Anderson takes the work of studies like Pressler's to a new level with the basic premise that the male dominance/female subordination found in the Book of the Covenant and the Deuteronomic Law Code constitutes a form of violence against women.⁹¹ This assertion of violence is based on the philosophical understanding of the power of language. While it seems extreme, Anderson's view represents a current direction of women's studies. In her concluding chapter, "Implications," Anderson admits that the use of the term "violence" may seem harsh, but she goes on to demonstrate that "the inherent violence of the gender paradigm makes actual violence against women more likely."⁹² According to Anderson, biblical law has a primarily non-judicial function, namely to construct identity. Therefore, it cannot be used to reconstruct Israelite society.⁹³

Summary

The works mentioned above explore the position of various social classes within ancient Israel by examining biblical law codes to determine underlying patterns, trends and ideologies. These studies and others like them set a methodological precedent for using prescriptive texts to study different aspects of ancient Israelite society. The

hierarchal structure. However, Pressler's thesis appears anachronistic in that she imposes modern ideals on an ancient society in which such concepts would have been foreign.

⁹¹Anderson, *Women, Ideology, and Violence*.

⁹²Ibid., 101. Objection to Anderson's rather bold claim is softened somewhat when the reader sees in this final chapter her deep concern for the well-being of women in a world where the reality of abuse is rampant.

⁹³Ibid., 10-20.

typical approach to such studies involves the collection of relevant passages followed by focused exegetical studies augmented by various methodological approaches (ANE background, ethnogeographical studies, philosophical speech act theories, etc.). Although the subject matter of the works listed above is not identical to that of the present work, the methodology followed here takes its cue from such works.

***Addressing a Significant Problem
in Modern Scholarship***

While not the intended focus of this study, the emerging results suggest that this project will address a prominent aspect of modern scholarship, namely the issue of the abusive male in Israelite's patriarchal society.⁹⁴

At the beginning of his article on "Marriage and Family in Ancient Israel,"⁹⁵ Daniel Block acknowledges some of the difficulties inherent in any attempt to reconstruct the social/legal structure of the ideal Israelite family based on the use of biblical texts.

When we try to reconstruct a picture of family life in ancient Israel we must always ask ourselves whether the texts we are reading present a normative picture, or whether the authors have consciously described a deviation from the norm. Historical realities should not be confused with domestic ideals.⁹⁶

Here Block addresses a serious problem in current biblical scholarship. Discussions that allude to the issue of the role, function, or responsibility of the HOH in ancient Israelite society frequently do so from a perspective that emphasizes the mistreatment, even abuse, of women in that culture. To be sure, the biblical narratives provide plenty of data to fuel

⁹⁴Cf. Tribble, *Texts of Terror*.

⁹⁵Block, "Marriage and Family in Ancient Israel," 33-102.

⁹⁶Ibid., 34.

their arguments. From Abraham to David and beyond, even the “heroes of the faith” are often guilty of treating women and children in ways that are considered reprehensible by today’s standards. The problem with much of current scholarship is not that it invents abuse in the text, though that is sometimes the case.⁹⁷ The problem is that scholars often assume that the behavior reported in the text is considered acceptable by the narrator—that what is considered reprehensible today was perfectly acceptable in ancient Israel. From this starting point it is further assumed that the God of Israel condoned such behavior, even to the extent that he exemplifies abusive traits himself.

The weakness of such scholarship is that it fails to take into consideration the overall context in which the biblical data are presented. For example, as Block points out in “Unspeakable Crimes: The Abuse of Women in the Book of Judges,” the book of Judges attests to horrible atrocities against women.⁹⁸ But the whole point of the book of Judges is that things have gone terribly wrong in the land. The narrator no more condones the gang rape and subsequent murder of the concubine in Judges 19, or the patently abusive actions of her husband and the host who not only failed to protect her but literally handed her over to the mob, than he condones the idol worship that has spread throughout the land.⁹⁹ In fact, the behavior of the Israelites rarely reflects the ideal standards of conduct within the covenant community. Recent scholarship has often misrepresented the text and the God behind the text when scholars have not understood the underlying

⁹⁷Cf. Anderson who asserts that the family laws in the Deuteronomic Law Code and the Book of the Covenant represent a form of violence against women (*Women, Ideology, and Violence*).

⁹⁸Block, “Unspeakable Crimes.”

⁹⁹Judg 2:11-19.

message of the author. The question then becomes, how can one uncover the ethical framework¹⁰⁰ within which the narrator evaluated behavior?¹⁰¹ How can one determine the ideal against which recorded behavior is to be judged? More specific to this study, within the context of ancient Israelite society, what does a righteous הוה (HOH) look like?¹⁰²

Methodology

To answer that question, this investigation will follow the lead of recent studies which, in choosing depth over breadth, have focused primarily on prescriptive texts to determine the ideal role and function of a particular social class. While a comprehensive study on the Israelite HOH must eventually take into account all relevant OT texts, the focus on prescriptive texts provides an advantageous starting point in that it

¹⁰⁰This investigation is influenced by the work of Christopher J. H. Wright in the field of OT ethics, particularly his work *An Eye for an Eye: The Place of Old Testament Ethics Today* (Downers Grove, IL: InterVarsity Press, 1983), printed in England as *Living as the People of God: The Relevance of Old Testament Ethics* (Leicester: InterVarsity Press, 1983). This volume is revised and expanded in *Old Testament Ethics for the People of God* (Downers Grove, IL: InterVarsity Press, 2004). Wright recognizes three pillars in Israel's worldview: God, Israel (the people) and the land. Wright conceptualizes these three pillars in the form of a triangle of interconnected relationships, demonstrating that every area of Israelite life was profoundly theological and ethical. Ethical behavior in Israel was to be rooted in response to YHWH's mighty acts of redemption and provision. Further, the intent of such ethical behavior was that Israel (individually and corporately) might reflect the holy character of God. Wright does not just discuss issues of Israelite or OT ethics but urges readers to adapt OT principles to the contemporary context. See *Old Testament Ethics for the People of God*, 74, 315-25 for an exhortation and discussion of applying OT law in contemporary context.

¹⁰¹Admittedly, this statement assumes some sort of ethical standard underlying the work of the different authors of the OT. Even those who do not hold to an overall unity of the OT often assert that the various books represent contributions by the religious elite of society—the Yahwists who won the day.

¹⁰²Answering this question will not solve all the problems related to the offenses against women, etc. First, the texts do not provide a comprehensive system of ethical behavior for the head of household (nor was that its purpose). Second, there will likely remain a “clash of the cultures” between the ancient Israel of Deuteronomy and twenty-first-century social standards.

acknowledges the distinct contribution of prescriptive texts as an OT literary genre.¹⁰³

The results of this study will provide a foundation for evaluating a HOH's actions and attitudes as reflected in narrative passages.¹⁰⁴ The most prominent bodies of prescriptive texts in the OT are the Book of the Covenant (Exod 20:23-23:19), the Holiness Code (Lev 19-26) and the Deuteronomic Code (Deut 12-26).¹⁰⁵ To be able to devote adequate attention to the text, the present study will focus exclusively on the Deuteronomic Code. Although any one of the texts might be an appropriate starting point, Deuteronomy stands out in multiple respects. As a covenant renewal document, it expands and enlarges on the themes in the other two, and as Moses' parting words, it carries urgency and pastoral fervor in its exhortations to Israel regarding how they were to live in the land of Canaan as the covenant people of God.

Considering that the **בֵּית-אָב** was the primary unit of Israelite society, one would expect Deuteronomy to include a wealth of information on the Israelite family.

¹⁰³I.e., narrative texts, being by nature descriptive and not prescriptive, describe how things were rather than how they ought to have been. As such, any application of narrative texts for reconstructing a picture of the societal ideal must be exercised with caution. Cf. Wright, *Old Testament Ethics for the People of God*, 47; who points out the need for study of the narratives, Prophets, Psalms and Wisdom literature to see how these laws were applied (or ignored) in the life of the nation.

¹⁰⁴Just as a study of Deut 17:14-20 provides a measuring stick by which to evaluate the actions of David, Solomon, et al., in 1 Samuel—2 Kings.

¹⁰⁵For a brief summary of these law codes, see Wright, *Old Testament Ethics for the People of God*, 284-88. For a discussion of the parallels between the Book of the Covenant and the Deuteronomic Law Code, see Gerhard von Rad, *Deuteronomy: A Commentary*, OTL (Philadelphia: Westminster Press, 1966), 13-15; and Dale Patrick, *Old Testament Law* (Atlanta: John Knox Press, 1973). Also helpful, although more limited in focus, is Deborah L. Ellens, "A Comparison of the Conceptualization of Women in the Sex Laws of Leviticus and in the Sex Laws of Deuteronomy" (Ph.D. diss., Claremont Graduate University, 1998), forthcoming as *Women in the Sex Texts of Leviticus and Deuteronomy: A Comparative Conceptual Analysis*, The Library of Hebrew Bible/Old Testament Studies (New York: T. & T. Clark, 2007.).

The book does not disappoint. Familial language is pervasive in the book,¹⁰⁶ especially in chapters 12-26. Those passages whose primary interest is the establishment of ideals to govern relationships within the family have been identified by scholars as Family Law texts.¹⁰⁷ Within these family texts, the passages of immediate relevance to the present study are those that specifically address the relationship between the 'āb (אב) and the other members of his household, namely Deuteronomy 21:10-14; 21:15-17; 21:18-21; 22:13-21; 24:1-4; 24:5; and 25:5-10.¹⁰⁸ Although they reflect related concerns and lend insight to the social dynamics of ancient Israel, texts within the Deuteronomic Code that focus on illicit sexual relationships have been excluded for two reasons. First, the issue of sexual, moral and social standards and their implications is a vast and previously explored topic.¹⁰⁹ Second, the relationships represented in many of these texts extend

¹⁰⁶Even if one limits the study of vocabulary to the most basic terms (father, mother, son, daughter, child, brother, sister, widow, and orphan), familial language occurs in every chapter of the book.

¹⁰⁷See Phillips, "Some Aspects of Family Law," 349-61; idem, "Another Example of Family Law," *VT* 30 (1980): 240-43; Alexander Rofé, "Family and Sex Laws in Deuteronomy and the Book of the Covenant," *Henoah* 9, no. 2 (1987): 131-60.

¹⁰⁸Although not all texts in Deuteronomy dealing with the father are treated individually, all references to family in Deuteronomy have been considered and are incorporated where appropriate in the second chapter of this study. Texts that fall within Deut 12-26 but are not granted individual treatment in this study include the following: (1) Deut 17:17 which prohibits kings from taking multiple wives. While a king's leadership is similar to a father's (if only greater), this instruction targets the king's elevated role in leadership. Interestingly, where the leadership role is increased, so are the restrictions. (2) Deut 18:10 which includes a general prohibition against child sacrifice. Not typically considered a "family law," the primary focus of this instruction is the prohibition of idolatrous and occultic activity. (3) Deut 20:5-7 in which the call to war is not extended to a betrothed man. While emphasizing the cultural importance of marriage, this passage deals with impending marriage—the woman has not yet been taken into this man's household. (4) Deut 22:8 which addresses the responsibility of a man to ensure the safety of those physically present in his home. While certainly including the protection of his family members, this text emphasized a head of household's responsibility to the entire community. (5) Deut 25:11-12, which addresses the actions, not of the head of household, but of his wife who, in coming to his defense, disregards common propriety. Two other categories of texts not treated individually are the lists of family members (Deut 12:12, 18; 16:11, 14; also 5:14) and those passages that demonstrate the father's role by showing what is lacking in his absence (Deut 14:29; 24:17, 19-21; 26:12-13; 27:19, also 10:18).

¹⁰⁹Cf. Ellens, "A Comparison of the Conceptualization of Women."

beyond the physical and social parameters of the household. Where illicit behavior affects the HOH's relationship with other members of his household (e.g., Deut 22:13-21) the texts have been included.

Acknowledging that Deuteronomy was not written as a handbook for biblical fatherhood, this work does not seek to reconstruct a comprehensive vision of the ideal for fatherhood in ancient Israelite society, but rather to infer the underlying principles structuring the ideal Israelite society as portrayed in Deuteronomy, and to isolate those outlining the responsibilities of a righteous HOH. Although Deuteronomy in some ways resembles other ancient Near Eastern law codes, it is driven more by a concern for righteousness than for justice.¹¹⁰ Righteousness is that which God requires of his people, thus explaining why retribution in Deuteronomy tends to be theologically motivated and is based on a concern for the peoples' right relationship with YHWH, rather than fairness or financial compensation. Uncovering the principles defining the righteousness of the HOH in his familial relationships is the primary objective of this study.

In an effort to uncover these principles, chapter 2 will examine each individual text with special focus on the characters involved, the setting (including relevant OT and ANE background material), and ultimately the main concern or concerns driving each text. Finally, those main concerns will be analyzed to see what implications the text has for the role and responsibilities of a righteous **אב** in ancient Israel.

Each discussion will contain a presentation of the Hebrew text and an English

¹¹⁰Deut 16:20. See Block, "Gospel According to Moses," s.v. "Deuteronomy 16:18-18:22." See also Peter T. Vogt, *Deuteronomistic Theology and the Significance of Torah: A Reappraisal* (Winona Lake, IN: Eisenbrauns, 2006), 212-213.

translation designed to highlight the syntax of the paragraph and visually display the flow of ideas. The Hebrew text is presented clause by clause, with elements in a series also isolated on their own lines. Circumstantial and verbless clauses are indented to reflect the element modified. Hebrew word order has not been changed. The relationship between the indented phrase and that which it modifies is further represented by a solid connecting line. This author intentionally sacrificed detailed representation of all modifying words or phrases in order to strive for visual clarity that communicates the flow of ideas. Arrows are used to demonstrate the relationship between the protasis and the apodosis, and direct speech is set off by dashed boxes and presented as an independent syntactical unit. The accompanying English translation is based on the clause-by-clause treatment of the Hebrew. While aiming for clarity, a smooth English translation is sometimes sacrificed in order to parallel the Hebrew syntactical flow. Finally, the initial *vav* of each phrase is often placed at the end of the preceding English line in order to front the main idea of each phrase. Although placing the conjunction at the end of the preceding line may sacrifice a more literal representation of the Hebrew clause, it allows the English reader to more readily follow the flow of ideas.

Chapter 3 will present the conclusions drawn from this study. The primary function of this chapter will be to synthesize the recurring themes in the passages discussed as well as to identify the principles that were to dictate the actions and behavior of a righteous HOH within Israel. Finally, this last chapter will reexamine the thesis set forth above to determine Deuteronomy's contribution to our understanding of a **אב**'s role within his household: according to the teaching of Deuteronomy, was his role only one of privileged rule or even more so of profound responsibility?

CHAPTER 2

EXAMINATION OF THE EVIDENCE

Deuteronomy 21:10-14

The subject matter of Deuteronomy 21:10-14 makes it particularly difficult to handle. With the harsh reality of war as its backdrop, the subjugation of women as its focus, and the mysterious symbolic rituals in its midst one can only wonder what, if anything, this text has to say about righteousness. Yet perhaps herein lies the beauty of this text. The Torah addresses the most difficult human situations and calls for righteous behavior, nonetheless.

For the text and translation of Deuteronomy 21:10-14, see Table 1.

The Setting

Two settings deserve consideration within these short verses. First, there is the context of war¹ in which an Israelite army has just defeated a foreign people. At this point, the central figure in the text is the warrior, and the central event the victory granted by YHWH. The lexical and thematic links between Deuteronomy 21:10-14 and

¹On the complex issue of war in the OT, see Gerhard von Rad, *Der Heilige Krieg im Alten Israel* (Göttingen: Vandenhoeck & Ruprecht, 1958), translated into English by Marva J. Dawn, *Holy War in Ancient Israel* (Grand Rapids: Eerdmans, 1991); Yigael Yadin, *The Art of Warfare in Biblical Lands in the Light of Archaeological Study*, 2 vols. (New York: McGraw-Hill, 1963); Peter Craigie, *The Problem of War in the Old Testament* (Grand Rapids: Eerdmans, 1978); T. R. Hobbes, *A Time for War: A Study of Warfare in the Old Testament*, OTS 3 (Wilmington, DE: Michael Glazier, 1989); and Susan Niditch, *War in the Hebrew Bible: A Study in the Ethics of Violence* (New York: Oxford University Press, 1993).

Table 1. Text and translation of Deuteronomy 21:10-14

Text	Verse	Translation
כִּי־תֵצֵא לַמִּלְחָמָה עַל־אֹיְבֶיךָ	10a	When you go forth to battle against your enemies, and
וַנִּתֵּן יְהוָה אֱלֹהֶיךָ בְיָדְךָ	10b	the Lord your God gives him into your hand, and
וְשָׁבִיתָ שְׁבוּיִם:	10c	you take captives, and
וְרָאִיתָ בַּשְּׁבוּיָה אִשָּׁת יְפֹת־תֹּאֵר	11a	you see among the captives a beautiful woman, and
וַחֲשַׁקְתָּ בָּהּ	11b	you desire her, and
וְלָקַחְתָּ לָּךְ לְאִשָּׁה:	11c	you take her to be a wife, and
וְהֵבֵאתָּה אֵלֶיךָ בֵּיתְךָ	12a	↓ you bring her into your house;
וְגִלַּחְתָּ אֶת־רֹאשָׁהּ	12b	then she shall shave her head, and
וַעֲשֶׂתָה אֶת־צַפְרֵנֶיהָ:	12c	she shall do her nails, and
וְהִסִּירָה אֶת־שִׁמְלַת שְׁבוּיָהּ מֵעָלֶיהָ	13a	she shall cast aside the garments of her captivity from upon her, and
וַיֵּשֶׁבָה בְּבֵיתְךָ	13b	she shall dwell in your house, and
וּבְכָתָה אֶת־אָבִיהָ וְאֶת־אִמָּהּ יָרַח יָמִים	13c	she shall mourn for her father and her mother for thirty days, and
וְאַחֲרַיִם כֵּן	13d	└ after this
תָּבוֹא אֵלֶיהָ		you may go to her, and
וּבָעַלְתָּהּ	13e	you may become her husband, and
וְהָיְתָה לְךָ לְאִשָּׁה:	13f	she will be your wife.
וְהָיָה	14a	Now,
אִם־לֹא תִפְצֹתָ בָּהּ		↓ if you do not delight in her,
וְשִׁלַּחְתָּהּ לְנַפְשָׁהּ	14b	then you shall send her freely, and
וּמָכַר לֹא־תִמְכְּרֶנָּה בַּכֶּסֶף	14c	you may not sell her for silver, and
לֹא־תִתְּעַמְרָה בָּהּ	14d	you may not treat her as a commodity
תַּחַת אֲשֶׁר עֲנִיתָהּ: ם	14e	└ because you have degraded her.

Deuteronomy 20 are noted by commentator and casual reader alike.² The usefulness of Deuteronomy 20 for our purposes is that it established the right of the warrior that will be circumscribed in Deuteronomy 21:10-14. From chapter 20 it is apparent that, as unpleasant as war is, it is a very real part of Israel's existence. God is actively involved in Israel's warfare.³ He controls victory and defeat.⁴ The reality of war is neither condemned nor glorified—it is presupposed. The literary flashback to chapter 20 also reminds the reader of the vulnerability of the beautiful captive woman. According to Deuteronomy 20:14 the women, children, livestock and spoils of a conquered city outside the Promised Land belong to Israel.⁵ As abrasive as it may sound to modern ears,

²Both Deut 20 and 21:10 begin with identical wording. Both mention the fact that YHWH accompanies them in battle (20:1, 4; 21:10), and both declare that it is YHWH who delivers the enemy into Israel's hands (20:13; 21:10). Due to these similarities it is sometimes suggested that Deut 21:10-14 originally belonged as part of the material in Deut 20. See Alexander Rofé, "The Laws of Warfare in the Book of Deuteronomy: Their Origins, Intent and Positivity," *JSOT* 32 (1985): 26, 27; and S. R. Driver, *A Critical and Exegetical Commentary on Deuteronomy*, 3rd ed., ICC (Edinburgh: T. & T. Clark, 1978), 236. Rofé's explanation for the insertion of Deut 21:1-9 between Deut 20 and 21:10 as an "editorial mishap" ("Laws of Warfare," 27) is unsatisfactory. Although there is an obvious relationship between Deut 20 and 21:10-14, the emphasis on household concerns (marriage and subsequent divorce of a captive woman) in 21:10-14 is at home in chap. 21. The instructions regarding warfare in chap. 20 provide a backdrop against which to understand the initial setting of war in Deut 21:10, 11. See also Duane L. Christensen, *Deuteronomy 21:10-34:12*, WBC, vol. 6b (Nashville: Thomas Nelson, 2002), 472, 473.

³God commands Israelites to wage war (Deut 2:24; 20:10-18), sets limits on their warfare (Deut 2:5; 9:19), gives instructions for their behavior during wars (Deut 20), arranges circumstances so that they will be forced to wage war (Deut 2:30), goes with them (Deut 20:1, 4), and fights for them (Deut 20:4). War is gruesome and inhumane, but according to Deuteronomy, it is one of the ways that God has chosen to act in history.

⁴Deut 20:4; 21:10.

⁵This practice is not unlike that of surrounding ancient Near Eastern cultures. The practice of taking the captives and spoils of war seems to have been standard and widespread (temporally and geographically). There is textual evidence of women, including a special class of priestesses, taken as war booty and used as slaves in the textiles recounted in a letter from Zimri-Lim (X-123) of OB Mari. See B. F. Batto, *Studies on Women at Mari* (Baltimore: Johns Hopkins University Press, 1974), 83-85. Iconographic evidence from the ancient world also confirms the widespread and longstanding tradition of pillaging the enemy. Reliefs of raids by Rameses III against the Philistines (1192-1160 BC) include depictions of women and children in the wagons of the Philistines right in the midst of the fray (Yadin, *Art of Warfare*, 2:338), and engravings on the gates of Shalmaneser III of Assyria (858-824 BC) depict captives and spoils of war being presented to the king from Qarqar on the Orontes and Hamath (Yadin, *Art of Warfare*, 2:396-

according to the rules of ancient warfare the belongings of the vanquished foe were transferred to the victor. Consequently a warrior who took plunder for himself was not unlawfully seizing another's belongings, but rather appropriating what now rightfully belonged to him. These women and children were destined to lives of slavery in service to Israel, and the livestock and spoils were to be added to Israel's national wealth.⁶

What little has been written on the treatment of women as prisoners of war in the ancient Near East reveals a gruesome picture. The extra-biblical evidence is primarily iconographic and portrays women as captive and enslaved.⁷ The biblical text provides an

97). A relief from the palace of Sennacherib at Nineveh (Assyria, 704-681 BC) shows captive women and children being herded past the impaled bodies of their fallen countrymen (Yadin, *Art of Warfare*, 2:432-35).

⁶In fact, the text makes it clear that servitude was a merciful outcome compared to the end that awaited those nations occupying the Promised Land prior to Israel's arrival. These nations were to be completely destroyed so that nothing that breathes was left alive (Deut 20:16-18; see also Deut 7:1-2).

⁷Much has been written on the subject of women and war in general, particularly on the historical prevalence of violence and abuse against women. See Bernard A. Cook, *Women and War: A Historical Encyclopedia from Antiquity to the Present*, 2 vols. (Santa Barbara, CA: ABC-CLIO, 2006); Cheryl B. Anderson, *Women, Ideology, and Violence: Critical Theory and the Construction of Gender in the Book of the Covenant and Deuteronomical Law*, JSOTSup 394 (New York: T. & T. Clark, 2004); Claudia V. Camp and Carole R. Fontaine, eds., *Women, War, and Metaphor: Language and Society in the Study of the Hebrew Bible*, Semeia 61 (Atlanta: Scholars Press, 1993); and Jean Bethke Elshtain, *Women and War* (New York: Baker Books, 1990). However, there is virtually nothing written on documented wartime practices, specifically regarding the treatment of vanquished women, in the ancient Near Eastern cultures. This omission in scholarship seems to stem from the lack of primary sources currently available.

One area that has been explored recently is that of the appearance of women in Assyrian scenes of battle and conquest. The notable features discussed include the characteristic posture of the woman with her hands to her head (perhaps signifying mourning) and the presence or absence (depending on one's interpretation) of implied sexual degradation. See Zainab Bahrani, *Women of Babylon: Gender and Representation in Mesopotamia* (London: Routledge, 2001), 124-30; Megan Cifarelli, "Gesture and Alterity in the Art of Ashurnasirpal II of Assyria," *ArtB* 80 (1998): 220-23; Michelle Marcus, "Geography and Visual Ideology: Landscape, Knowledge, and Power in Neo-Assyrian Art," in *Neo-Assyrian Geography*, ed. Mario Liverani, QGS 5 (Rome: Università di Roma, La Sapienza, 1995), 193-202; and Pauline Albenda, "Woman, Child, and Family: Their Imagery in Assyrian Art," in *La Femme dans le Proche-Orient Antique*, ed. Jean-Marie Durand (Paris: Editions Recherche sur les Civilisations, 1987), 17-21.

Textual evidence from Mari confirms the wartime subjugation of women. See particularly the letter from Zimri-Lim (X-123) in Batto, *Studies on Women at Mari*, 83-85. Ugaritic epic poetry also reports that Keret used war to capture a bride (*KTU* 1.14). Manfred Dietrich, Oswald Loretz, and Joaquín Sanmartín, eds., *Keilalphabetischen Texte aus Ugarit: einschliesslich der Keilalphabetischen Texte*

occasional glimpse into the wartime practices of Israel's neighbors. Foreign treatment of captured Israelite women and children ranges from servitude, as in the case of Naaman's servant girl who seems to have been well-treated,⁸ to the heinous abuse depicted in Amos 1:13 in which the Ammonite warriors ripped open the wombs of pregnant women in Gilead. In the Song of Deborah, the ladies-in-waiting of Sisera's mother soothe her concern that her son has not returned from battle by suggesting that he is merely detained by the process of dividing the spoils of war: "Are they not finding and dividing their spoil? To every man a girl or two!" (lit. "a womb, a pair of wombs," Judg 5:28). Here Canaanite treatment of women in wartime extends far beyond servitude.⁹

From the homeland of the conquered woman, the text shifts to an Israelite setting in the warrior's home.¹⁰ Although she has been taken under the protective wing of an Israelite household, she is now completely at the mercy of the HOH. In a time when national and religious identities were intricately bound and could not be separated from social identity, this woman was an outsider. Within this setting she is a heathen foreigner, a defeated foe and a woman who has been completely cut off from her father's house. She has no social standing, few rights, and no direct advocate.¹¹

außerhalb Ugarit, Teil 1 Transcription, AOAT 24/1 (Neukirchen-Vluyn: Neukirchener Verlag, 1976).

⁸This suggestion is inferred from her expression of interest in her master's healing (2 Kgs 5:2).

⁹Regarding the use of "womb(s)" as a metonymy for women, Block writes concerning Sisera's mother, "Her preference for this overtly sexual expression reflects the realities of war: to victorious soldiers the women of vanquished foes represent primarily objects for their sexual gratification, another realm to conquer" (Daniel I. Block, *Judges, Ruth*, NAC, vol. 6 [Nashville: Broadman & Holman, 1999], 243).

¹⁰Here is where the text lines up most clearly with the topic of this dissertation, for this man has now taken this woman into his household (נָקַח) as his wife.

¹¹What advocate a bride would normally have would come from the household of her father. In this case however this woman has been cut off from her family, see Deut 21:13—"she shall (perhaps may) mourn for her father and mother for thirty days" (literally: "a month of days" which, according to the lunar

The Characters

Deuteronomy 21:10-14 is addressed to the victorious Israelite warrior—a conquering hero caught in the rush of adrenaline that accompanies victory. The jubilation of dividing the spoils throughout the ancient Near East is evident in such poetic texts as Isaiah 9:2.¹² It is to this man, who already enjoys a certain measure of authority in this patricentric (and thus, to a degree androcentric) culture, and who now has the plunder of a defeated nation at his disposal, that the text addresses itself.

However, the primary concern of this law is not for the warrior, but for his behavior toward the beautiful captive woman. Thus the captive woman is the *raison d'être* of this text. Here in this war-torn city the beautiful woman is in her homeland, but her homeland is no longer able to offer her any security. Perhaps her best hope would have been to be sold into slavery, while her worst fears may have made the fate of her slain countrymen seem preferable. This beautiful woman is in a vulnerable situation the urgency of which cannot be overstated. In terms of her immediate status, she is in every way inferior to this man. Socially, he is a man in a patricentric society, thus he holds the authority.¹³ Physically, the warrior is almost definitely stronger than she, not to mention

month would equal thirty days). Whether her parents were killed in the war, were separated from her by distance, or were severed from her by her integration into Israelite society, they are as good as dead to her. The reference to mourning her parents might indicate that she was unmarried and still living in her father's home. She may well have been a young, virgin girl whose parents are literally dead. However, the purpose of this phrase is not to define every girl in this situation or to delimit the girls from whom the warrior is allowed to choose. The purpose of this phrase in context is to call the warrior to respect her physical and emotional vulnerability and her cultural need to fulfill mourning rites. It is reasonable to assume that the actual nature of the girl's loss as well as her prior social status may have varied from case to case.

¹²Eng 9:3. See also Gen 49:27; Exod 15:9; 1 Sam 30:16; and Isa 33:23.

¹³Even if women were considered valuable members of society (as they were in Israel), this woman would have been dependent on men for her protection. Whether married, widowed, or still living at home (the text does not say), the men who should offer this woman protection were rendered powerless by

that he is armed. Politically, he is the valiant conqueror and she the defeated foe. Religiously, she is a heathen, which to an Israelite should have been considered repugnant. This religious stigma would only have increased when she was taken back to Israel. Here her religious inferiorities would have been two-sided. Not only would her Israelite captors have seen her as one who did not know or serve YHWH, she would have seen herself as one who served a god who had just been defeated, thus spiritually impotent.¹⁴ Even her one asset, her beauty, has turned into a liability. Thus Deuteronomy 21:10-14 addresses a situation in which the strongest member of Israelite society (made even stronger by virtue of his recent success) is free to prey on the weakest member, the most vulnerable and likely to be abused.

The Issues

There are actually two issues addressed in this short text.¹⁵ The first issue is the

their defeat. This helplessness is probably why the text is not concerned with the woman's marital status (that, along with the fact that according to Deut 20:13 all the men were to have been slain).

¹⁴In surrounding polytheistic cultures of the ancient Near East, gods were often seen as rulers of territories or domains. Simply put, if the beautiful woman's nation was defeated by Israel, then her nation's gods were defeated by Israel's God. Not only has her god been defeated, she is then brought to a land which, to her way of thinking, may have been beyond the territory of her god(s)' domain. See Daniel I. Block, *The Gods of the Nations: Studies in Ancient Near Eastern National Theology*, 2nd ed., ETS Studies (Grand Rapids: Baker Books, 2000), esp. 75-91. Commentators make much of the problem of intermarriage in this passage. Deuteronomy forbids intermarriage with the surrounding Canaanite nations citing as its reason the potential for a foreign spouse to turn an Israelite toward other gods and away from serving YHWH (Deut 7:3-4). This captive woman's self-perceived spiritual impotence may explain why her integration into an Israelite household is not a major concern. Whether she views her god as having been defeated or as requiring appeasement she is unable to offer, she seems to pose very little spiritual threat.

¹⁵Pressler aptly refers to the two pieces of legislation in Deut 21:10-14 as a case and a sub-case. The law in vv. 10-13 addresses the case of a man wishing to take a captive woman as his bride, causing the sphere of war to collide with the sphere of family law. The sub-case (21:14) deals with what should happen if that man later decides to divorce her. This sub-case belongs entirely to the realm of family law. Carolyn Pressler, *The View of Women Found in the Deuteronomic Family Laws*, BZAW 216 (New York: Walter de Gruyter, 1993), 9-10.

warrior's desire to take this beautiful woman. The second is the man's desire to divorce the woman. In each, the man wishes to change completely the woman's social status (from defeated foe to wife, and from wife to non-wife). Matters are complicated by the fact that she is first a stranger, and then a stranger in a strange land.

From Defeated Foe to Wife— Deuteronomy 21:10-13

To understand the issues at the heart of the text, one must first understand the text. The structure of Deuteronomy 21:10-13 is quite simple: **כִּי** + *yiqtol* followed by a long string of *weqatal* forms. The problem, ironically, is that the structure is so simple. In this long string of *weqatal* clauses, there is no clear formal grammatical marker to delineate between the protasis and the apodosis.¹⁶ There are three possible locations for the beginning of the apodosis: the beginning of 21:11c, the beginning of 21:12, or at the beginning of 21:12b, as shown in Table 2.

Option 1

. . . *and you desire her*, then *you may take her as a wife* This interpretation provides a logical translation of the text.¹⁷ Further it blends nicely with the ethical bent of Deuteronomy by presenting the text as anti-rape legislation in which the only acceptable way for a man to act on his desire is to marry the captive woman. In this case the text is

¹⁶In Hebrew conditional clauses the apodosis is marked by a *weqatal* form (*IBHS* 38.2). This can generate confusion when the protasis also consists of a series of *weqatal* forms.

¹⁷The appeal to logical sequence is not unique to option one. Without a visual marker in Hebrew, any suggestion for the start of the apodosis must be logical to be considered viable. For example, no one suggests beginning the apodosis with **וְרָאָה** because the translation, “if you see a beautiful woman among the captives, then you must desire her” is not a logical option.

Table 2. Three options for the beginning of the apodosis

Option 1 (21:11c) ^a	Option 2 (21:12)	Option 3 (21:12b)
When you go to war...	When you go to war...	When you go to war...
And YHWH ... gives ...	And YHWH ... gives ...	And YHWH ... gives ...
And you take them captive	And you take them captive	And you take them captive
And you see ... a woman ...	And you see ... a woman ...	And you see ... a woman ...
And you desire her	And you desire her	And you desire her
Then take her	And you take her	And you take her
And bring her to your home	Then bring her to your home	And bring her to your home
And she must shave her head...	And she must shave her head...	Then she must shave her head...

^a These translations are intended merely to serve as a visual presentation of the different options. Translational values were chosen based on space restriction. Here the *vav* is represented at the beginning of each clause to clarify the sequence of the text as it moves from protasis to apodosis.

understood as establishing an exception to the Deuteronomic prohibition against intermarriage, thus providing an explanation as to the purpose for its inclusion in the text.¹⁸

As attractive as this interpretation may be, its advantages are not as pronounced as they first appear. This interpretation depends on an argument for the logical succession of seeing, desiring and taking such that permission to take would naturally follow his desire. However, this argument is double-edged as it can also be used to support the suggestion that these verbs belong together and should not be interrupted by an apodosis. Moreover, there is no blanket statement forbidding intermarriage in the Israelite constitutional texts such as would necessitate an exception to the rule to be clearly stated.¹⁹ The rationale for this prohibition was the potential religious seduction of

¹⁸The JB, NEB and NIV all translate this passage with the apodosis beginning in v. 11c.

¹⁹The OT's stance on intermarriage is consistent in this regard: marriage between an Israelite and a non-Israelite was considered toxic to the faith of the Israelite spouse (Exod 34:15, 16; Deut 7:3, 4; Judg 3:5, 6; 1 Kgs 11:1, 2, 8; Ezra 9, 10; Neh 13:23-27). The law codes of the OT only record one direct

an Israelite by a non-Yahwistic spouse which may have been minimized by the woman's status as a captive.

Option 2: Two variations

First variation. . . . *you desire her and you take her as a wife, then you shall take her into your household and she shall shave her head* Understanding the apodosis as beginning in verse 12 has two main advantages. First, the beginning of the apodosis falls in line with a *soph pasuq* (a verse division). Although the verse numbers are not original to the text, they represent an accentuation system that is very old and, more often than not, indicate syntactical breaks helpful in translation and interpretation. Second, the beginning of verse 12 marks a shift in setting. Deuteronomy 21:10-11 relates everything that takes place on foreign soil, and Deuteronomy 21:12-14, everything that is to happen at home in Israel. However, this shift in setting is just as likely an explanation for the major accent (i.e., the verse break) as it is an indication of the apodosis. It may or may not be significant that the oldest translation of the Hebrew, the LXX, understood the apodosis as beginning at verse 12.²⁰ This translation probably makes the least sense. If he has married the woman, of course he will take her home, if only to protect his interest in

prohibition against intermarriage, and this prohibition is limited to seven distinct people groups (Deut 7:1, 3), presumably referring to Canaanites in their entirety. Later prophets and narrators of Israelite history clearly assume that the people should know of the dangers of intermarriage and abstain (1 Kgs 11:2, Ezra 9, 10). To complicate matters, narrative texts record numerous examples of intermarriage, and some are recorded with no discernable pejorative appraisal (Moses and Zipporah, Rahab and Salmon, Ruth and Boaz).

²⁰Deut 21:11b-12a, καὶ λάβῃς αὐτὴν σεαυτῷ γυναῖκα, καὶ εἰσάξεις αὐτὴν ἔνδον εἰς τὴν οἰκίαν σου, John William Wevers, ed., *Deuteronomium*, Septuaginta: Vetus Testamentum Graecum (Göttingen: Vandenhoeck & Ruprecht, 1977).

her.²¹ Translated in this way, the emphasis is not on whether or not such a marriage is allowed, but on how it is to be carried out.

Second variation. . . . *you desire her and you wish to take her as a wife* (*understanding this verb here in the modal sense*), then *you shall take her home and she shall shave her head* . . . There is a second translational possibility for option 2.

Translating *וְלָקַחְתָּ* with a modal sense (you want to marry) sets the stage for the conditions set forth in the text. While a modal nuance is grammatically possible, its insertion in a string of indicative verbs is forced and atypical of Hebrew. The main impetus for this translation seems to be (1) that the verb *חָשַׁק* carries the meaning “to desire”²² and its meaning becomes predominant. In context *וְחָשַׁקְתָּ בָּהּ* refers to desire for

²¹To be fair, this claim may not be as obvious as it sounds. A common model of marriage in ancient Mesopotamia involved the wedding feast (and probably also the consummation of the marriage) being held in the bride’s parents’ house. According to Karel van der Toorn, this nine-day feast would have ended with the groom and his family heading back home while the bride continued to live with her family for four months until her husband brought her home to live with him (and his family). Karel van der Toorn, *From Her Cradle to Her Grave: The Role of Religion in the Life of the Israelite and the Babylonian Woman*, trans. Sara J. Denning-Bolle, BibSem 23 (Sheffield: JSOT Press, 1994). Although van der Toorn does not cite evidence for this reconstruction, a similar situation is described in a list of extensive wedding expenses accrued by a father-of-the-bride living in Ur. See UET 5 636, lines 32-45 as presented and translated in Samuel Greengus, “Old Babylonian Marriage Ceremonies and Rites,” *JCS* 20 (1966): 57. Biblical evidence suggests a similar model may have been operational in Israel as well. For example, according to Deut 22:12-19 the bride’s parents are in possession of the “proof of her virginity,” presumably because the wedding and wedding night took place in their home. See also Gen 2:24; 29:21-28; Judg 14:10-20. Other examples demonstrate that the bride did move in with her husband immediately (i.e., Isaac and Rebekah, Gen 24). (Although Samson might be considered an Israelite example of a man returning to his father’s house without his bride after the wedding, the Philistine response to his action may indicate that it was inappropriate and signified a rejection of the new wife. The ambiguities are sufficient to caution us against assuming anything here was normative [Judg 14:1-15:3].) In short, our ability to piece together and re-create the order of Israelite marriage ceremonies is extremely limited and incomplete at best. However, even if we allow for the possibility that an Israelite bride may not have moved in with her husband right away, it is hard to imagine what else the warrior would have done with a captive woman. His options are extremely limited, and not just because she seems to have had no other means of provision. From a purely selfish perspective, the warrior would want to bring her home to protect her from falling into the hands of someone else. He, of all people, would know how vulnerable she was, and would not want someone else to take her.

²²The word *חָשַׁק* is fitting for this context. Its semantic range overlaps the idea of “want” and “love.” Thus anything Solomon wants, he receives (1 Kgs 9:19, 2 Chr 8:6). The word can also signify love

the woman,²³ but in this translation the idea of “desiring” is carried onto the next verb, קָלַף , in the sense of “desiring to marry.” The conflation of the two verbs is improper. (2) Understanding the verb קָלַף as indicating a wish or desire avoids a possible problem encountered in verse 13 when the man is told he may marry her only *after* he has followed the stipulations set forth in verses 12 and 13. Without the modal nuance here, it might appear that the man is told to marry her both before and after the stipulations are carried out. If the first reference to marriage is expressed as a desire, this perceived redundancy is eliminated. A more careful study of קָלַף clarifies the matter. The Hebrew $\text{קָלַף} + \text{אִשָּׁה} (\text{לָ})$ means to procure as a wife but does not include the consummation of the marriage unless the phrase stands, *pars pro toto*, for the entire marriage process.²⁴ The sequence of verbs here reveals that the man may take the woman but not actually live with her as wife (consummate the marriage) until after the following stipulations have been carried out.

This translation returns to that posited in option 1, namely, that the man wants

and is used alongside בָּחַל (Gen 34:3, 8; Deut 10:15) and הִבָּחַל (Deut 7:7, 8). That the emotions associated with קָלַף can be positive and reliable is evidenced by the fact that God is used as the subject of this verb. (It is interesting that even in these instances where YHWH is the subject, there is always another element—either the negative particle [Deut 7:7, 8] or YHWH is not the direct speaker [Deut 10:15; Isa 38:17]. When YHWH is the speaker, it is man who is the subject of קָלַף and YHWH the object [Ps 91:14].) Yet some uses of this word in scripture are shrouded in ambiguity. For example, קָלַף is used to describe the desire Shechem has for Dinah (Gen 34:8). That he truly loved her seems supported by the use of בָּחַל in this context and by his actions. Yet, the fact that he defiled her and that he seemed to desire a connection with her family as much as he desired her, leaves the reader quite suspicious of the sincerity of his intentions toward her. This ambiguity is present in Deut 21:10-14 as well. The circumstances are somewhat suspect, and certainly less than ideal. The text seems to leave open the possibility that this is desire driven by love, yet the semantic range of קָלַף allows that it could be mere lustful desire.

²³The 3fs suffix (her) is marked as the direct object by the בָּ .

²⁴In isolation קָלַף can stand for the entire marriage process (i.e. Exod 2:1). However, when it occurs in the presence of other semantically related verbs, it refers to acquiring a woman, but, as Gen 20:2-4 makes clear, does not in itself refer to the consummation.

the woman and the law grants him permission to marry her under certain conditions.

Option 3

... you take her as a wife and you take her into your household, then she shall shave her head . . . This translational option is perhaps the least familiar of the three.²⁵ Traditional understandings of the text, arguably influenced by the popular AV²⁶ and NIV,²⁷ typically see the focus of this law as beginning earlier in the text and as directed toward the man's rights (i.e., you may marry her, or you may take her into your home). However, the first grammatical shift present in the text, that from 2ms to 3fs, occurs here. This grammatical shift may coincide with a structural break between the protasis and the apodosis.²⁸ A break here also lines up with what has already been noted concerning the cultural backdrop of war in Israel. It was taken for granted that, following a victory, a warrior would be entitled to the plunder. As such it would seem redundant for Deuteronomy to give permission to the warrior to take her to his house. The cultural

²⁵This translation is not unique to this paper. It is attested by the ESV and NRSV and is supported in scholarly works by Pressler, McConville and others. See Pressler, *View of Women*, 10-11; and J. Gordon McConville, *Deuteronomy*, AOTC 5 (Leicester, England: Apollos, 2002), 329.

²⁶AV begins the apodosis at v. 12a: Deut 21:12a, "Then thou shalt bring her home to thine house . . ."

²⁷NIV begins the apodosis at v. 11c: Deut 21:11, "if you notice among the captives a beautiful woman and you are attracted to her, you may take her as your wife."

²⁸In the LXX and the Temple Scroll (11QT) the shift in subject from 2ms to 3fs does not occur until "she will dwell" and "she will mourn." According to these witnesses, the instructions to shave her head, do her nails, and cast off her captive garments are directed to the warrior. See 11QT Col. VXIII: 12, 13 as presented by Yigael Yadin, *Megillat ham-Miqdas, The Temple Scroll* (Jerusalem: The Israel Exploration Society, 1983), 3. The text-critical principle of choosing as original the reading that explains the others suggests that the witnesses with the subject shift to 3fs are more reliable at this point. Whether a copy error or intentional change, it is easy to see how a scribe might have made the shift from 2ms to 3fs—either by analogy with the preceding string of five consecutive 2ms verbal forms in the text or because male-directed speech is common and expected in this genre.

context thus indicates that the apodosis would not begin until sometime after he brings her into his house.²⁹ Understood this way, Deuteronomy 21:10-14 is not addressing the issue of a man's right to marry a foreign woman from among the captives. This right is presupposed. Rather, this legislation sets the parameters for how this marriage is to be carried out. The issue at hand is not the man's right to the woman, but the man's responsibilities to and for the woman.

This translation, as the others, has its difficulties. One of the problems it raises is that the man's role in Deuteronomy 21:12b through 13b is somewhat vague. This legislation is addressed to the man, yet at the focal point of the text his involvement is undefined. Moreover, this translation places the emphasis of the passage on rituals whose symbolism is foreign and whose significance is lost to us.³⁰ To be fair, these issues are difficult no matter where one chooses to see the beginning of the apodosis. The difficulty is more pronounced here because the ritual stipulations are understood to form the heart of this legislation by virtue of their position at the beginning of the apodosis.

Problems raised in translation often serve as a benefit—drawing attention to a

²⁹Pressler also argues that the apodosis begins here in 12b (*View of Women*, 10). Her treatment is helpful, although she fails to mention what this paper has treated as option 2, namely the apodosis beginning with v. 12. This omission is surprising because the ancient translations (LXX, Vulgate) as well as the majority of English translations (AV, NAS, NLT, to name a few) begin the apodosis in v. 12a. She also fails to recognize the difference between the various Hebrew words for marriage. As argued above, these different terms represent stages of the Israelite marriage process.

³⁰These rituals include shaving (גָּלַח) the head, doing (עָשָׂה) the nails, and casting off (סָרַח, *Hiphil*) the clothes of her captivity. Suggestions concerning the significance of these rituals include (1) to set the woman apart from other Israelites, (2) to make her less attractive, thus discouraging the man from marrying a foreigner, (3) to symbolize the casting off of her slavery, (4) to visually display the severing of ties with her old life and her attachment to Israel, (5) to facilitate her mourning process, or (6) any combination of the above. Such suggestions usually follow detailed study of lexical usage and of ancient Near Eastern customs (although some are clearly driven by a theological agenda). Unfortunately, the full significance of the rituals is impossible to ascertain with any degree of certainty, at least with the information presently available.

difficulty and forcing the reader to investigate more closely. In this way, the weaknesses of this proposed translation may be re-cast as strengths. Regarding the issue of the man's undefined role, it is precisely this ironic twist that also would have caught the attention of the ancient audience. Just when the warrior expects to hear what the law requires of him, the focus of the text shifts to the woman. Whether she is forced, coerced, compliant or willing, the woman is the principle actor—not the man. On one level, the meaning of the text is the same regardless of the subject used: certain requirements must be met before the warrior may marry the woman. But language is a powerful tool that functions on many levels. While it could be said that the meaning is not affected by the subject shift, the tone is. There is a subtle but significant difference between the warrior being given the right to act against the woman (*you* shave her head), and his being given the responsibility to see that certain conditions are met (*she* shall shave her head).³¹ How remarkable given the culture, the woman's deplorable situation, and the male-oriented disposition of these instructions that the text speaks of her as her own entity and not as an object to be acted against.

This series of rituals directed toward the woman creates a further difficulty in understanding this text, one that arises not from problems in the text itself, but from our own inability to recapture the significance of the series of rituals this woman is to perform. She is to shave her head, do her nails, and remove the clothing of her captivity. She is also to dwell in the warrior's home and to mourn for her father and mother for

³¹As a paradigmatic case, this text is not forcing her to mourn but granting her the right. A translation seeking to draw out the graciousness of the text toward the woman might translate the text as "she may."

thirty days. Scholars have searched the scriptures and the archives of the ancient world for any parallel word or idea to help us understand the symbolism intended by these activities.³² Unfortunately, the precise meaning of some of these phrases, especially the shaving of the head and the doing of the nails, continues to elude even the most diligent scholarly investigation. The most likely suggestions are, either that these activities are associated with mourning rites, or that they signify a dissociation with her former land and people and a corresponding association with the land and people of Israel instead.³³

³² An Arabic parallel has been suggested in which a widow, who as part of the mourning process has neglected her personal hygiene, signifies the end of her mourning by a formal act such as cutting her nails or plucking hair from her face. Lane, "*fadda* (stem viii)," 2:2409. Lane cites the "Táj el-'Aroos," a compilation of the best and most copious prior Arabic Lexicons which was completed in 1767-1768, and the "Kámoos," another early lexicon from ca. 800 A.H. (ca. AD 1430). For a suggested parallel from Mari, see Georges Dossin, *Correspondance de Šamši-Addu et Ses Fils*, ed. André Parrot and George Dossin, ARM I (Paris: Imprimerie Nationale, 1950), nos. 8 and 75, pp. 38-39, 141-42. Du Buit interprets these texts as signifying that the captured women were stripped of anything that would remind them of their origin, including their clothes and hair. Du Buit interprets "the adornments of their heads" (mentioned in no. 8) as hair. Hair itself is not explicitly mentioned, although clothing and belts are. See M. du Buit, "Quelques Contacts Bibliques dans les Archives Royales de Mari," *RB* 66 (1959): 576-77. Another mention of hair in texts from Mari indicates that it was included in messages or in the making of a contract along with a fringe from a garment to confirm the identity of the sender. Nelson interprets this practice to indicate that a person's hair and clothing were seen as an extension of self. See *ANET*, 623-24, 629-32. See also Richard D. Nelson, *Deuteronomy*, OTL 5 (Louisville: Westminster John Knox Press, 2002), 258-59. Finally, Maurice H. Farbridge includes a lengthy discussion of the symbolism of hair in other cultures. He concludes that hair was regarded as the seat of life and a symbol of strength. Unfortunately he does not clearly cite his sources. It would be difficult to re-create his body of evidence. Further, his study makes no distinction between ancient and modern cultures, thus Aboriginal custom is weighed on the same scale as Moabite evidence. Maurice H. Farbridge, *Studies in Biblical and Semitic Symbolism* (New York: KTAV Publishing House, 1970), 233-39.

³³ See Gerhard von Rad, *Deuteronomy: A Commentary*, OTL (Philadelphia: Westminster Press, 1966), 137; Richard Clifford, *Deuteronomy with an Excursus on Covenant and Law*, OTM 4 (Wilmington, DE: Michael Glazier, 1982), 113; and Mark E. Biddle, *Deuteronomy*, Smyth & Helwys Bible Commentary 4 (Macon, GA: Smyth & Helwys, 2003), 323. A slightly different interpretation is posited by S. R. Driver. He cites an Arabic parallel to suggest that these actions symbolize the ending of her mourning period (and thus, the start of her new life). Driver, *A Critical and Exegetical Commentary on Deuteronomy*, 245. This idea that the mourning rituals symbolize a break with her old culture and/or a transference to a new culture is also suggested by A. D. H. Mayes, *Deuteronomy* (London: OLIPHANTS, 1979), 303. Mayes builds on a text from ancient Mari as interpreted by du Buit, "Quelques Contacts Bibliques," 576. See also Eugene H. Merrill, *Deuteronomy*, NAC 4 (Nashville: Broadman & Holman, 1994), 291; and Nelson, *Deuteronomy*, 258-59. Based on biblical references to shaving (Lev 14:8; Num 8:7), Jan Ridderbos suggests that the rituals in Deut 21:11-12 are a part of a purification ceremony (*Deuteronomy*, trans. Ed M. van der Maas, BSC [Grand Rapids: Zondervan, 1984], 219). In truth, shaving the head is mentioned frequently in the OT.

The symbolism of the removal or casting aside (*Hiphil* of סָרַר) of the garments of her captivity is more familiar to the OT. In the OT, the setting aside or taking off of a specific type of clothing signifies a dissociation with whatever status the removed clothing represents.³⁴ When this woman casts aside the clothes of her captivity, she is laying with them the extreme social stigma that comes from being a captive foreigner among Israelites.

The injunction, “she shall live in your house,” is not qualified with explanation, but its significance is easily inferred.³⁵ The potentially negative ramification is that she will *not* live among the captives, and the positive that she *is* to benefit from the provision and protection of the warrior’s household. The inclusion of a one-month period of mourning during which the captive woman is given the chance to weep for her parents

Even if the study of shaving in the OT is restricted to the term גָּלַח, the symbolism of the action includes shame (2 Sam 10:4), purification (Lev 14:8), and mourning or contrition (Jer 41:5). In other contexts the symbolism is more subtle (2 Sam 14:26—perhaps strength) or mysterious (Judg 16:17, 19, 22). The more common verb for the shaving associated with mourning in Hebrew is קָרַח (Lev 14:1; Jer 16:6; Ezek 27:31; Mic 1:6; see also Isa 3:24 where the noun form is used indicating humiliation).

³⁴In the OT, as perhaps in any culture, clothing is strongly symbolic. Although clothing occasionally figures in mourning rituals (i.e., tearing of garments or putting on sackcloth), the removal of garments is commonly used to denote the dissociation with the cultural stigma attached to that item of clothing. In the OT this phenomenon is mostly evidenced in highly stylized language like poetry or prophetic oracle, although the idea also appears in narrative. For example, when a king lays aside his crown and his royal robe it signifies a loss in kingly status (Ezek 21:31 [Eng 21:26]; 26:16), and when Tamar casts off her widow’s garb she is no longer treated as a widow (Gen 38:14-15). The strength of the symbolism to convey this idea is even more pronounced when the clothing is figurative as in Job 19:9 in which Job uses language of a crown being removed from his head to indicate that he has been stripped of honor, or in Zech 3:4 in which the removal of filthy garments symbolizes the cleansing of sins. Likewise, the donning of garments signifies an association with the social status symbolized by the clothing. When Joseph is placed as second in command over Egypt, he is clothed with royal garb (Gen 41:42). It is interesting here that the symbolism is that of dissociation (with her captive status) rather than of association.

³⁵The text has already said that she has been taken to his house. This second mention of his house is not redundant, but emphatic—he must care for her while he waits to marry her.

is especially interesting.³⁶ This phrase does more than alert the reader to the tragic loss the woman has endured and the precarious circumstance in which she now finds herself. It demonstrates the very heart of this piece of legislation. This valiant (strong and powerful) man is to treat this heathen, captive (powerless and vulnerable) woman as a human being. Regardless of their initial difference in social status, or perhaps precisely because of this difference, he is required to respect her human need to grieve and give her a period of time, however brief, to begin to adjust and to cope with her new surroundings. She is not a war slave or a concubine—she is to be his wife. Even before he marries her he is to demonstrate at least the minimum level of respect, not as a war trophy, but as a human being. Only *after* these conditions are met is this man allowed to exercise his right to this woman.³⁷

Although the translation options may seem complex, in truth the difficulty stems from the fact that we have an intentionally fluid text, so that the series of verbs proceeds logically and virtually seamlessly. Whether these verses are intended to establish an exception to the legislation against intermarriage, to deter rape on the

³⁶The literature is full of speculation as to the purpose of this one-month mourning period. Those uncomfortable with the idea of this interracial marriage propose that the month allowed the man time to cool off and change his mind. See R. Hammer, trans., *Sifre: A Tannaitic Commentary on the Book of Deuteronomy*, YJS 24 (New Haven, CT: Yale, 1986), 224-25. More recent suggestions, influenced by sociological models, suggest that waiting a full month provided assurance that the woman was not pregnant and that any future offspring would belong to the new husband. Harold C. Washington, "Violence and the Construction of Gender in the Hebrew Bible: A New Historicist Approach," *BI 5* (1997): 350-51. Both of these suggestions are reasonable considering the circumstances, but neither finds any support in the text. In fact, we are told plainly that she is to mourn the loss of her father and mother. A thirty-day mourning period is also mentioned in Num 20:29 and Deut 34:8. Elsewhere an appropriate mourning period is listed as seven days (Gen 50:10; 1 Sam 31:12; 1 Chr 10:12).

³⁷The rhythmic repetition of the text is abruptly interrupted by an emphatic **וְאַחֲרַיִךְ** in v. 13. Although this text may not be intended primarily as anti-rape legislation, the text is very clear on the proper sequence of events. He is not to touch her until after he has taken her into his home, cared for her and given her a month to grieve.

battlefield, to provide a system whereby the captive woman can be integrated into an Israelite household and community, or to establish respectful ground rules for the humane treatment of war's living casualties, they accomplish all of these things. The only real uncertainty we face today is, which one of these issues was the primary goal of the text. As demonstrated above, it appears that the primary goal of Deuteronomy 21:10-13 is to call the Israelite man to treat his new wife with at least a minimum level of respect—all the while caring for her welfare by offering her the protection and provision of his household.

We began this section by stating that the main issue of the text is the change in social status of the woman from that of foreign captive to wife of an Israelite.³⁸ The text is addressed to the warrior as it is he who initiates this change (with no apparent regard for the thoughts or wishes of the woman). In today's society of political correctness, it is all too tempting to approach the text with the question, "why or how should he have that right?"³⁹ But the question driving the text is, "*how should he exercise that right?*" This

³⁸I appreciate Pressler's suggestion that this text provides a way to marry a woman when the parents are not available to give their consent (*View of Women*, 11). This suggestion helps in that it provides a rationale for this law other than the giving of permission to marry this woman or as anti-rape legislation, neither of which fits, given the proposed translation. However, Pressler's suggestion is somewhat short-sighted. First, this cannot be the only case in which parents are not available for consultation. Given all the injunctions to care for widows, orphans, the poor and alien, we can be assured that there were instances where a young maiden would find herself completely unattached. Why is her situation not addressed? Further, why the extreme concern for the status of the woman? The primary question of the text is not, "how do I marry her if I cannot get her parents' blessing?" The driving question of the text is how this woman is to be treated in regard to both her personal well-being and her social status. How does a non-Israelite become an Israelite wife? How does this affect her social status, and what happens to her if that marriage ends?

³⁹Much of the frustration, even anger, in modern scholarship regarding this text stems from asking a question that the text does not answer and does not try to answer. It would be naïve to propose that this text or even the interpretation presented here smoothes over any offenses perpetrated against women in times of war, and it is not the aim to do so. Modern readers will naturally and appropriately be offended by the realities of war and the subjugation of women evidenced in this text. Nevertheless, to interpret this text in light of modern, politically correct notions is hermeneutically unsound. Not only should a text be judged

text does not call the warrior's right into question, but demands that he exercise that right in a manner that demonstrates at least some level of patience, protection, provision, compassion and respect. Remarkably, the foreign woman in this text seems to be elevated socially to the position of an Israelite woman simply based on her marriage to an Israelite man.⁴⁰ This inference is confirmed in verse 14.

From Wife to Non-Wife— Deuteronomy 21:14

Deuteronomy 21:14 furthers the instruction of the preceding verses while moving on to address a new issue. Deuteronomy 21:10-13 spells out the responsibilities of a man who chooses to marry a captive woman. But what happens if he later decides he no longer wants her as his wife? Here again, the fundamental rights of the man are assumed (this time his right to divorce).⁴¹ The issue is not that he may divorce her, but

against the standard of its day, but the biblical text should be the standard by which we judge the culture of today. Are we to conclude then, that were it not for this text, this Israelite warrior would have treated this woman better? The purpose of this text is clearly to regulate and minimize any abuse against this helpless woman in this patricentric society. Contra Washington, "Violence and the Construction of Gender," esp. 344.

⁴⁰Cf. McConville, *Deuteronomy*, 330; and Jeffrey H. Tigay, *Deuteronomy*, JPSTC (Philadelphia: Jewish Publication Society, 1996), 194. Ridderbos claims that the woman is free after the divorce (21:14), but not during the marriage (*Deuteronomy*, 219). Whether this woman is of the status of a free woman or not is unclear from the text. In ancient Israel slave women could be wives, so to argue automatically that the captive became a free woman upon marriage is a bit of a stretch. Cf. Carolyn Pressler, "Wives and Daughters, Bond and Free: Views of Women in the Slave Laws of Exodus 21.2-11," and Raymond Westbrook, "The Female Slave," in *Gender and Law in the Hebrew Bible and the Ancient Near East*, ed. Victor H. Matthews, Bernard M. Levinson and Tikva Frymer-Kensky, JSOTSup 262 (Sheffield: Sheffield Academic Press, 1998), 147-72 and 214-38 respectively. See also Rainer Kessler, "Die Sklavin als Ehefrau: Zur Stellung der 'amah," *VT* 52 (2002): 501-12. What is clear from Deut 21:10-14 is that, upon divorce, this woman was to be granted her freedom, and until that point she was to be treated as a wife, not as a captive.

⁴¹The term "sent" (שָׁלַח) is clear divorce language. See Deut 22:19, 29; 24:1-4; Isa 50:1; Jer 3:1, 8 and Mal 2:16. It is widely understood that, despite God's hatred of divorce (Mal 2:16), the practice was allowed in Israel. See also C. John Collins, "שָׁלַח," NIDOTTE, ed. Willem A. VanGemeren (Grand Rapids: Zondervan, 1997), esp. 4:120. See also Gordon P. Hugenberger, *Marriage as a Covenant: Biblical Law and Ethics as Developed from Malachi*, BSL (Grand Rapids: Baker Books, 1994), 72.

how he must act, or not act, toward her during the process.⁴² This time the text is not setting requirements, but explicitly restricting his actions against the woman during and after the divorce procedure.

The restrictions are straightforward. When the man sends her, she is free to go wherever she chooses. The phrase *לְנַפְשָׁהּ* (according to her wish/desire) is unusual, but simply means that after he divorces her she is free to make her own decisions. This construction also appears in Jeremiah 34:16 to describe slaves who are freed from their servitude.⁴³ The comparison to the text in Jeremiah does not permit one to compare marriage to slavery, but confirms that the construction *לְ + נַפֵּשׁ* signifies a freedom to act according to one's own plan or desire without being forced to submit to the influence or authority of another.⁴⁴ In case there is any doubt, the phrase *וְשָׁלַחְהָּ לְנַפְשָׁהּ* is

⁴²In v. 14 there is some confusion as to where the protasis (if . . .) ends and the apodosis (then . . .) begins. The options are as follows: (1) If you do not delight in her, *then send her "freely,"* you must not sell her . . . and (2) if you do not delight in her and you send her freely, *then you must not sell her* . . . The confusion in 21:14 is more easily solved than in 21:10-13. According to the rules of Hebrew grammar, the second option is not grammatically valid because an infinitive absolute cannot take a *vav* of apodosis (Joüon, 2:§176m). Thus the first option (If you do not delight in her, then send her freely . . .) is to be preferred. Although grammatically significant, this observation does little to affect the interpretation. Either way, the emphasis is on the manner of sending (freely, according to the will of the woman). The man here is not being given permission to divorce. He is being told what the divorce must look like, or better, what it must not look like. Contra Joe M. Sprinkle, "Old Testament Perspectives on Divorce and Remarriage," *JETS* 40 (1997): 533-35. Sprinkle holds the extreme view that divorce here is not only permitted, but commanded. He seems to miss the text's emphasis on the manner in which the divorce is to be enacted.

⁴³Although, in Jeremiah they later are subjected unjustly to slavery once again.

⁴⁴Cf. Mayes, *Deuteronomy*, 303. This freedom is spelled out clearly in later Jewish divorce contracts from Elephantine in Egypt (fifth century BC) made available by Bezalel Porten and Ada Yardeni, *Textbook of Aramaic Documents from Ancient Egypt: Contracts* (Winona Lake, IN: Eisenbrauns, 1989), B2.6 line 25 (pp. 2:30, 2:33) and B3.8 line 24 (pp. 2:78, 2:82). These contracts come from a later date, but evidence a longstanding tradition whereby, upon divorce, a woman is freed from any authority her former husband might presume to have over her. This emphasis on freedom as part of the divorce process may even stem back to a common tradition of divorce evidenced in ancient Mesopotamian civilization and preserved in Hammurabi's laws as well as in Middle Assyrian laws and even continued in Neo-Babylonian Marriage Documents. See more on this proposal in Shalom E. Holtz, "'To Go and Marry Any Man that You Please': A Study of the Formulaic Antecedents of the Rabbinic Writ of Divorce," *JNES* 60 (2001):

strengthened and clarified by the following prohibition in which the man is emphatically commanded not to sell her or profit from her in any way.⁴⁵

Based on the types of restrictions placed on the man's authority, it seems that the potential for abuse in this situation stems from the woman's former status as a captive, and not his position as her husband.⁴⁶ Further, these restrictions suggest that the woman's status after divorce is in question. Before marriage she was a captive destined for a life of servitude. Deuteronomy 20:14 implies that all spoils of war are to be used to Israel's advantage. Thus the behavior restricted in Deuteronomy 21:14 (influencing her decisions and selling or profiting from her in some way) might have been considered acceptable treatment of a foreign, captive woman. We have suggested that casting aside her garments of captivity symbolized a dissociation with her pre-marital captive status. Yet what becomes of her if this marriage ends? Does she return to a life of captivity and

241-58.

⁴⁵The instruction not to sell her is emphatic as marked by the infinitive absolute: וְמָכַרָּהּ לֹא-תִמְכְּרָנָהּ. The following verb is a *Hithpael* of מָכַר, עָמַר. This word occurs only here and in Deut 24:7. Albrecht Alt has suggested a Ugaritic cognate based on a noun used to describe a group of people liable for military service. Building on the work of M. David, Alt suggests that the related root pertains to commercial transactions including the unquestioned authority of disposal. See M. David, "Hit 'āmēr (Deut. XXI 14; XXIV 7)," *VT* 1 [1951]: 219-21; and Albrecht Alt, "ZU HIT'AMMER," *VT* 2 (1952): 153. Swart and Cornelius suggest that the word connotes oppression, mistreatment and a servile existence based on the fact that it occurs in the same context as עָמַר in Deut 21:14 ("עָמַר," *NIDOTTE*, ed. Willem VanGemeren [Grand Rapids: Zondervan, 1997], 3:441). Particularly noteworthy, however, is the fact that in both uses, this word is linked with מָכַר (to sell). Whether this is a reference to how a slave would be treated (cf. G. Brin, *Studies in Biblical Law: From the Hebrew Bible to the Dead Sea Scrolls*, JSOTSup 176 [Sheffield: JSOT 1994], 28 n. 17) or is to be understood as having commercial significance, there appears to be economic significance involved. This man is not to benefit from this woman in any way after their divorce. To do so would be an abuse of his authority.

⁴⁶From the discussion of divorce later in Deuteronomy we learn that a husband of a free woman would not presume to tell her what to do once he divorced her, and selling her for profit would be unthinkable. See Deut 24:1-4 and discussion below.

belong again to the Israelites to be used for their advantage?⁴⁷ There is evidence in the Hittite Laws that a slave who marries a free man still retains her lower status if the marriage ends.⁴⁸ This example provides a weak parallel for many reasons, yet it suggests the possibility that, apart from this text, the man might have assumed a return to this captive status and been tempted to treat this woman according to those terms. What is remarkable about this text, especially in light of the time and place in which it is written, is that upon divorce, this woman is free.⁴⁹

The discussion of divorce in Israel will be resumed in Deuteronomy 24:1-4.

For now the main concern is not how divorce is to be handled in general,⁵⁰ but that the

⁴⁷See Deut 20:14.

⁴⁸According to Hittite law, if a slave man and a slave woman are married and have children, upon the termination of that marriage they divide their possessions and she takes all but one of the children. If a free man and a slave woman are married and have children, upon the termination of the marriage they divide their possessions and *he* takes all the children except one. See Hittite Laws from the Old Kingdom (ca. 1650-1500 BC) translated by Harry Hoffner in William W. Hallo, ed., *The Context of Scripture: Monumental Inscriptions from the Biblical World* (Leiden: E. J. Brill, 2003), 2:109, §31 and §33. Based on Hoffner's reconstruction of the text, it seems reasonable to presume that the woman's lower status affects the distribution of the children. If this is correct, then it is also reasonable to assume that her lower status follows her even after the divorce.

⁴⁹This statement regarding the change in this woman's social status may seem a bit strong. It is tempting to argue that she is free only in regard to this one man's treatment of her. He is not to sell her or profit from her, but presumably someone else could still take advantage of her captive status and feel justified doing so based on the prescriptions for war set forth in Deut 20. This interpretation would be possible except for the specific terms of her divorce. She is to be sent "according to her wish/desire." As mentioned above, this phrase is powerful in demonstrating that she alone may decide her next move. She is no longer under anyone's authority but her own. Thus, technically, she is free. Although free, a woman in this situation still would have been extremely vulnerable. While her marriage to an Israelite may have resulted in her freedom, it did not solve all of her problems. In an ideal situation a divorced Israelite woman would have been able to count on a certain level of support from her father's household (Lev 22:13, etc.), but this woman appears to have no one and nothing.

⁵⁰The emphasis on the restriction of a man's rights in the handling of this divorce may explain why there are so many elements the text does not discuss. For example, it does not tell why he no longer wants her, when he makes this decision, or what say, if any, the woman has in his decision. It does not address the issue of whether or not this couple had children together, and if so, what is to happen to the children. Cf. LU ¶ 9, ¶ 10; LE ¶ 58; LH ¶ 137-42; HL ¶ 26b, in Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor*, 2nd ed., SBLWAW 6 (Atlanta: Scholars Press, 1995). (Note that any words in parentheses represent material added in the English translation, *ibid.*, xiii.) Worse, it makes no provision

captive woman be treated like any other Israelite wife. Her captor turned husband had at one time assumed a great deal of authority over her, and may have presumed that this authority ought to continue after he no longer wanted her as a wife. The potential for abuse in this situation is magnified by the fact that, likely, this woman had no one protecting her outside of her husband's household. But Deuteronomy 21:14 is clear. Upon divorce that authority is terminated and the potential for abuse is restrained. Once again this woman finds an advocate in the text.

The final clause of Deuteronomy 21:14 explains why he may not take advantage of this woman for his own profit: תַּחַת אִשָּׁר עֲנִיתָהּ ("because you lowered her"). The precise meaning of עֲנִיתָהּ in contexts involving women has sparked a great deal of discussion. Many equate this term with rape or other illicit sexual behavior when used with a female as its object.⁵¹ Van Wolde exemplifies a move in a new direction when she suggests that עֲנִיתָהּ, when used in the *Piel* with a woman as its object, "is used as an evaluative term in a juridical context denoting a spatial movement downwards in a social sense Thus, 'innâ should be translated as 'debase.'"⁵² When rape or other illicit

for this penniless, defenseless, unattached outsider once she leaves her husband's home. As frustrating (and potentially offensive) as these omissions are, they highlight the focus of this passage. This verse is not establishing the man's right to divorce or prescribing the exact procedure for that divorce. This text is restricting this man's potential rights to profit from or exercise authority over this woman. He is to behave toward her as he would toward an Israelite wife.

⁵¹Cf. Pressler, *View of Women*, 11. Pressler understands עֲנִיתָהּ in this passage as referring to legalizing what would otherwise be illicit behavior. However, she interprets this behavior in light of other passages that detail rape or illicit sexual offense against women based on the similarity between the motive clauses of Deut 21:14 and Deut 22:29 (ibid., 16, n. 17).

⁵²Ellen van Wolde, "Does 'INNÂ Denote Rape?" *VT* 52 (2002): 543. One element of van Wolde's study requires comment. After recognizing the spatial character of עֲנִיתָהּ (denoting movement downward), she observes that many of her thirteen selected texts appear in context with spatial language. As her first point of evidence she notes that, "the verb 'innâ is often linked to the preposition *tahat*, 'under,'" and cites Gen 16:9, Deut 21:14 and Deut 22:29 ("Does 'INNÂ Denote Rape?" 531). However, the presence of תַּחַת, which she translates as "under," in Deut 21:14 does not support van Wolde's claim. In

sexual conduct occurs in a text, these actions are signified by other words in context.⁵³

This conduct is described or evaluated by עָנָה and is found to debase the woman, lowering her status such that it affects her social standing and/or her legal rights.⁵⁴

Van Wolde's article makes a notable stride in the study of עָנָה. Her conclusions well reflect the fundamental meaning of עָנָה⁵⁵ and demonstrate a keen sensitivity to the underlying social and legal matters. However, the violent sexual acts against women addressed in the OT demonstrated far more than physical or even emotional abuse. To restrict עָנָה to a term used to describe sexual activity, even as severe as rape, is to miss the severity of the broader social and juridical ramifications these

this verse, תַּחַת is a preposition meaning "in place of," or "instead of." The use of תַּחַת denotes a logical, not a spatial, relationship between the preceding prohibition and the subsequent imbedded clause (עֲנִיתָהּ). Here תַּחַת is followed by אֲשֶׁר which functions as a nominalizer, indicating that the following phrase (עֲנִיתָהּ "you degraded her") be understood as the object of the preposition תַּחַת. Idiomatically, this construction may be translated "because" (logical), but not "under" (spatial). Contra van Wolde's treatment of Deut 21:14 ("Does *INNĀ* Denote Rape?" 534-35). See KB, "תַּחַת," 1026. This same grammatical construction appears in Deut 22:29, disqualifying the second of three texts upon which van Wolde builds this particular argument. However, van Wolde's conclusion that עָנָה is an evaluative term indicating a social movement downward is well supported without this linguistically unfounded claim. It finds support within the fundamental root of עָנָה and from context.

⁵³I.e., Gen 34:2 and 2 Sam 13:14 (עָנָה). See van Wolde, "Does *INNĀ* Denote Rape?" 541, where van Wolde analyses the word order in the usages of עָנָה with a female object, noting a pattern in the verbal sequence. Interestingly, Deut 21:10-14 is not included in this analysis.

⁵⁴Ibid., 544.

⁵⁵עָנָה occurs about eighty times in the Hebrew Bible. It is hard to be more specific because it is not always clear which root, "to answer" or "to be made low" is intended (i.e., Ps 55:20 [Eng 55:19]). From these uses, it appears that the term has to do with exercising power or authority (properly or improperly) over something or someone else so as to lower it. This lowering can include humiliation, trial, oppression, degradation or submission. Different means are used to inflict this "lowering" (fasting to humble the soul, loud noises in attempt to subdue a lion, sexual assault to degrade a woman), but the term עָנָה is evaluative. It seems to focus on the results of that action rather than the action itself. (As with anything, the line between the cause and the effect is easily blurred, thus the result may at times act as a metonymy for the action that caused that result, as in Exod 1:11 or Judg 20:5.) The results are almost always painful or difficult to bear, even if the final outcome is positive (as in Ps 119:71). When the authority is abused, the result is that the one acted against is taken advantage of and abused. Cf. R. Martin-Achard, "עָנָה, 'nh II elend sein,' *THAT*, ed. Ernst Jenni and Claus Westermann (München: Chr. Kaiser Verlag, 1976), 2:342-50.

women and their families faced. Further, to restrict social debasement against women in the OT to that of a sexual nature is to underestimate the breadth of potential hardships these women encountered.

Van Wolde's work should be taken one step further, especially in reference to Deuteronomy 21:14.⁵⁶ Van Wolde assumes that this text is all about a form of sex between an Israelite and a captive that is acceptable in Israel. This paper has already suggested that Deuteronomy 21:10-14 is not about sex, but about marriage and divorce. That sexual intercourse takes place is clear from the text,⁵⁷ but this action occurs within the context of a marriage situation,⁵⁸ and is a facet, not a focus, of the text. If עַנָּה is freed from the constraints of sexual activity in this text as van Wolde freed it from the constraints of rape,⁵⁹ what happens to our understanding of עַנָּה in this text?

First it must be demonstrated that עַנָּה can be used to express the lowering or debasing of a woman in a manner that does not involve sexual activity.⁶⁰ There are

⁵⁶In her treatment of this passage, it is intriguing that, despite her own findings, van Wolde is unable to break free from the traditional understanding that עַנָּה in Deut 21:14 refers to sexual (mis-)conduct. Although she does not say this directly, van Wolde sees the arrangement between the captive woman and the Israelite man as some sort of acceptable sexual slavery. This reapplication of an old theme causes her to fall shy of applying the full weight of her overall conclusion to this text.

⁵⁷וַיִּבְרָא אֱלֹהֵי יִשְׂרָאֵל בֵּן תְּבוּאָה אֶלֶּיָּהּ (Deut 21:13) For a list of references where בּוֹא + אֶל signifies a sexual encounter, see *DCH*, 2:113.

⁵⁸Marital language is pervasive in this text. These few verses include a common phrase for describing marriage (וַיִּקְחָהּ לָהּ לְאִשָּׁה) (*DCH*, 4:573), as well as reference to both the consummation of the marriage (תְּבוּאָה אֶלֶּיָּהּ), and a possible allusion to a marriage formula (וַיִּבְרָא אֱלֹהֵי יִשְׂרָאֵל בֵּן תְּבוּאָה לָהּ לְאִשָּׁה). Cf. Hugenberg, *Marriage as a Covenant*, 216-79; and Raymond Westbrook, *Old Babylonian Marriage Law*, AO 23 (Horn, Austria: Verlag Ferdinand Berger & Söhne Gesellschaft M. B. H., 1988), 48-68.

⁵⁹Van Wolde, herself, points to the fact that עַנָּה does not always refer to sexual activity, even when a woman appears as the object, "Does 'INNÁ Denote Rape?" 542.

⁶⁰As mentioned, van Wolde suggests that עַנָּה is not restricted to sexual conduct. Frymer-Kensky also argues that the word does not always have sexual connotations when used in reference to a female. Regarding Deut 21:14 she argues that the humiliation or mistreatment is the result of the warrior *not* having intercourse with her, but sending her away before the marriage is consummated. See Tikva

nineteen occurrences of the *Piel* of הָנִיף with a female object in the OT.⁶¹ Of these nineteen, seven appear within a context that is clearly non-sexual.⁶² In the case of Numbers 30:14,⁶³ a woman has made a vow concerning the humbling or lowering of her own soul.⁶⁴ Obviously, there is no suggestion of sexual activity in the actions of this woman against herself. Similarly, in Genesis 16:16 Sarai is given permission to “degrade” (הָנִיף) her maidservant, Hagar, in return for being treated with contempt by her.⁶⁵ And in verse 9 Hagar is commanded in turn to “humble herself” (הָנִיף) under Sarai’s hand. In both cases sexual activity is absent.⁶⁶

While the use of הָנִיף with females as both subject and object need not imply

Frymer-Kensky, “Law and Philosophy: The Case of Sex in the Bible,” *Semeia* 45 (1989): 100, n. 7. Pressler rejects this interpretation. Based on the fact that the motive clauses in Deut 21:14 and Deut 22:29 are so similar, Pressler suggests that the use of הָנִיף in Deut 21:14 refers, at least in part, to sexual activity acted against this woman (*View of Women*, 15, esp. n. 17). However, Pressler fails to note an important piece of the data. While the motive clauses are indeed similar, the outcome of the humiliation/degradation is very different. Deut 21:14 deals with a case of divorce, while Deut 22:29 explicitly forbids divorce because of the offense committed.

⁶¹Gen 16:6, 9; 31:50; 34:2; Exod 22:21, 22 (2x) (Eng 22:22, 23); Num 30:14 (Eng 30:13); Deut 21:14; 22:24, 29; Judg 19:24; 20:5; 2 Sam 13:12, 14, 22, 32; Ezek 22:10; Lam 5:11. Interestingly, van Wolde handles only thirteen of these, omitting Exod 22:21, 22 (2x) (Eng 22:22, 23); Num 30:14; Ezek 22:10; and Lam 5:11.

⁶²Gen 16:6, 9; 31:50; Num 30:14 (Eng 30:13); Cf. Exod 22:21, 22 (2x) (Eng 22:22, 23). These seven occurrences span four contexts.

⁶³Eng 30:13.

⁶⁴It is not unusual to find the soul (נֶפֶשׁ) as an object of הָנִיף . Num 30:14 is included here because it is specifically the soul of a woman that is afflicted. Some examples of the explicit manner of subjugation or humiliation of one’s soul include rest/not working (Lev 16:29, 31) and fasting (Isa 58:3, 5; Ps 35:13).

⁶⁵Jo Ann Hackett argues that “contempt” may be a bit strong (“Rehabilitating Hagar: Fragments of an Epic Pattern,” in *Gender and Difference in Ancient Israel*, ed. Peggy L. Day [Minneapolis: Fortress Press, 1989], 12). At the very least Hagar demonstrates that Sarai has become less in her eyes in terms of position and social status.

⁶⁶Cf. van Wolde, “Does *’INNA* Denote Rape?” 532-33.

any form of sexual activity, it might be asked if the same applies when the subject is male and the object still female. Four such instances occur in two separate contexts. In Exodus 22:21, 22 (2x)⁶⁷ the subject of the *Piel* 2ms verb **עָנָה** is the addressee—the adult Israelite male. He is not to degrade any widow or fatherless, for if he does, the widow and the fatherless will cry out to God, and God will hear their cry. This text refers to taking advantage of those who are most vulnerable in Israelite society and is not intended as a prohibition against sexual exploitation. Consequently, **עָנָה** can be used to depict a man degrading a woman (or child) apart from any sexual deed. Finally, in Genesis 31:50 Laban makes Jacob swear an oath that he will not degrade (**עָנָה**) Rachel and Leah, or take any other wives. It is unlikely that Laban is worried about Jacob sleeping with his own wives. Laban is concerned that Jacob not act in a way that lowers the social or juridical standing of his daughters, Rachel and Leah, perhaps by taking other wives or possibly even through divorce.⁶⁸ Here we have a specific male, Jacob, with the ability to degrade or lower his wives without acting out sexually against them.⁶⁹ While there are many passages using **עָנָה** that involve inappropriate sexual conduct between a man and a woman (usually explicitly enacted against a woman, although in some instances it is unclear who holds the blame), **עָנָה** can equally refer to the humbling or degrading of a woman without requiring that she be approached sexually.

⁶⁷Eng 21:20, 21.

⁶⁸The possibility that domestic or physical abuse is in view here is unlikely due to the parallel between **עָנָה** and the prohibition against taking other wives (Gen 31:50).

⁶⁹Van Wolde writes, “Laban is not referring to any physical abuse of his daughters, but is referring to very practical, legal-economic matters” (“Does *‘INNÁ* Denote Rape?” 534).

If **עָנָה** is an evaluative term denoting social or juridical lowering, and it is not constrained to the evaluation of sexual conduct, then to what activity is **עָנָה** referring in Deuteronomy 21:14? Four options are possible: (1) captivity, (2) the so-called stipulations, (3) marriage and (4) divorce. These are the four activities in which the woman has been involved in this text. The question then becomes, according to the text, by means of which of these did this man degrade or lower this woman?

The most notable feature of this list is the one element that is not included—the sexual relationship. Almost every scholarly treatment of this text cites sexual degradation as having some involvement in her humiliation.⁷⁰ Thus a word of explanation is in order regarding its omission. Although an argument from silence, it ought be noted that while one might assume that rape on the battlefield was a common occurrence, there is no mention of such activity in this text. Second, the only explicit reference to sexual activity in this passage occurs within the context of marriage, thus the social ramifications would relate to her becoming a wife and be treated as marriage. Finally, assuming van Wolde's definition of **עָנָה** is correct, the action referred to must have negative social and/or juridical ramifications. The reference to sexual activity in this text functions as part of the marital process and actually serves to elevate, not degrade, the woman's social status. The actions that might have debased the women, then, are those listed below.

The first possible referent is captivity. The move from free woman to Israelite

⁷⁰Frymer-Kensky is alone in suggesting anything to the contrary ("Law and Philosophy," 100 n. 7).

captive obviously involves a downward move in this woman's social status. However, according to the perspective of this text, the man's first direct involvement with this woman is when he "sees" her. She is already a captive at this point. Although he undoubtedly plays a role in her becoming a captive, his is an indirect role. In fact, it is God who is credited with handing the foreign nation over to the Israelites.

The second possible cause of degradation is the enactment of the rituals. As discussed, there are four stipulations this woman was expected to carry out. She shall shave her head, do her nails, discard her captive garments and mourn for thirty days. It is easy to imagine that these activities would be degrading to this woman. The matter is complicated by our own difficulty in understanding the significance of two of the rituals, namely shaving the head and doing the nails. However, of the two whose significance is clear, one denotes a social movement away from captivity (removal of garments associated with captivity), and the second evidences a rare and culturally unexpected⁷¹ level of patience and respect (thirty-day mourning period). The more elusive stipulations (shaving her head and doing her nails) probably also refer to either a mourning ritual or are symbolic of a cultural transfer. If these interpretations are correct, it seems unlikely that the rituals signify the man's social degradation of this woman.

The third possible act of degradation based on the actions performed in this text is marriage. This option should be the easiest to dismiss. However, perceived offense and cultural differences between ancient and modern times sometimes cloud the

⁷¹"Unexpected" given her status as a captive. It is hard to imagine that any ancient Near Eastern culture placed a high priority on meeting the emotional needs of its captives.

obvious,⁷² namely that marriage would have been an advancement over captivity in terms of social status and judicial rights.⁷³ This assertion that marriage involved a social escalation should not be understood as implying that this woman was “one of the lucky ones” who should have been grateful or flattered by her new station. She may well have felt personally degraded.⁷⁴ Yet, if she began as a captive, and the warrior brought her into his home as a wife, his actions did not lower, but rather lifted, her social standing within the Israelite community.

The final possible referent for the humiliation of this woman is the act of divorce. As indicated by the Hebrew term used to express the concept, divorce in Israel involved a sending forth of the wife from the household and a severing of the marital

⁷²Today’s reader is offended at the man’s presumed right to this beautiful, vulnerable woman. His taking her for marriage with no apparent thought to her wishes is easily interpreted as an obvious disregard for her personhood. This offense is only escalated when it finds its base in a culture that holds to the ideals of the Geneva Convention and further values the freedom of an individual to choose his or her own mate. Moreover, marriage in general is often perceived today as the act by which a woman gives up her independence and her identity. Even if these verses were to be touted as a Cinderella story (quite a stretch from the common understanding), today’s woman has long since decried Prince Charming and denied needing any man or institution to “rescue” her.

⁷³This author is aware of the view that marriage in this situation was little more than legalized rape (cf. Washington, “Violence and the Construction of Gender,” 344). Indeed, this stance shows a tender regard for the vulnerability of this woman and may even reflect her perception of the situation. However, the interpretation of marriage here as a validation of a man’s long-term possession of a woman confuses cause with effect. What Washington and others are recognizing here is precisely that situation which led to the need for this law. The man’s right to this woman is assumed. He is the victor and she the social outcast, the weaker sex, the foreigner, the heathen, the homeless, the unattached. She has nothing and no one—not even a home to which she can return (nor, as a captive, the right to return if she wanted). This is the situation the text is addressing, and the concerns of the text are these: that he not treat her as a captive, but as a wife; and that, should he grow weary of her, she be treated as a free woman.

⁷⁴As indicated above, this passage includes a clear reference to sexual contact between the warrior and this woman. However, this act took place as part of the marriage process, thus the social change for this woman was the marriage and not the intercourse. Said differently, the significance of the intercourse is that he became her husband and she became his wife (וַיִּבְעַץ לָהּ וַיְהִי יָדָהּ לָהּ לְאִשָּׁה). Again, marriage, not sex is the focus of Deut 21:10-13. (Thus, neither sexual degradation nor loss of virginity is at issue here.)

relationship. It is hard to imagine that divorce would have been any less painful or difficult then than now. The allusion to “something indecent”⁷⁵ in Deuteronomy 24:1 or to a husband slandering his bride and giving her a bad name in Deuteronomy 22:14 suggests that there may have been a strong social stigma attached to divorce. More significant, however, are the concrete social ramifications of a woman’s change in marital status (from wife to divorcée). A divorced woman lost whatever protection and provision she gained through marriage.⁷⁶ A divorced woman also lost whatever position of authority she would have held within her household. Hints in the text suggest that, as a wife, she would have ruled alongside her husband in certain matters pertaining to the running of the household.⁷⁷ For example, many of the instructions concerning children in the book of Deuteronomy list the mother alongside the father, indicating that she was equally responsible (and accountable) for them.⁷⁸ Finally, she lost whatever influence her husband’s social status might have afforded her as a member of his household. Divorce

⁷⁵As translated by the NIV.

⁷⁶A woman who lost the protection of a household either through divorce or the death of her husband was in a vulnerable situation. On the roles of a woman in ancient Israel, especially in relation to men, see Phyllis A. Bird, *Missing Persons and Mistaken Identities: Women and Gender in Ancient Israel*, OBT (Minneapolis: Fortress Press, 1997), and Carol Meyers, *Discovering Eve: Ancient Israelite Women in Context* (New York: Oxford University Press, 1988). Akkadian texts from Emar in the Late Bronze Age explain how a divorced woman was to leave her husband’s home without a stitch of clothing (naked). This gesture communicated not just shame, but total lack of economic security. See John Huehnergard, “Five Tablets from the Vicinity of Emar,” *RA* 77 (1983): 17-24, 30; idem, “Biblical Notes on Some Akkadian Texts from Emar (Syria),” *CBQ* 47 (1985): 431-34. If a widow or divorcée had no children to care for her, she might return to her father’s household to dwell there (Lev 22:10-13). It seems that the most secure place for a woman in Israelite society was in the home of her father, in the home of her husband, or under the care of her sons. Interestingly, Deut 21:14 does not concern itself with the maternal status of this woman, and it is hard to imagine that she would have a father’s household to which she might return.

⁷⁷Bird, *Missing Persons and Mistaken Identities*, esp. 30, 57.

⁷⁸Deut 5:16; 21:10-14; 18-21; 22:13-19. The extent of a woman’s authority may have varied greatly depending on a number of factors such as her position among other wives (i.e., Sarai and Hagar, Leah, Rachel, Bilhah, and Zilpah), her husband’s affections, and the number of children she bore.

degraded an Israelite woman, lowering her social status and leaving her without the protection or position that would have been hers as a member of her husband's household.⁷⁹

Divorce provides the most likely referent for *ענה* in Deuteronomy 21:14. It is contextually relevant, provides a close antecedent and involves an obvious example of an instance in which this man has exercised his authority against this woman in a way that degrades her and lowers her socially. Could it be that this man's right to terminate the marriage is harmful to this woman and that, from the perspective of the text, it is looked down upon and evaluated as degrading? The answer appears affirmative for both. Other behavior enacted by the warrior was humiliating and perhaps even abusive according to modern standards. Yet the one behavior that negatively affected her social and legal standing within the community was divorce. So great is its offense that she is protected from further social degradation—especially that which he might selfishly enact against her for his own benefit.

⁷⁹There is a notion in OT studies that because of their dependence on the husband's household, Israelite wives were considered inferior to their husbands. It has even been argued that wives were considered property and handled as commodities. Although this notion has lost popularity, the accompanying belief that a wife was not highly valued or that she had very few social or legal rights persists. See Bird, *Missing Persons and Mistaken Identities*. This belief is fed by the presupposition that conditions in modern western culture reflect vast improvements over ancient, and therefore less civilized, cultures and is buttressed by the fact that the OT clearly reflects a patricentric culture. By contrast, Carol Meyers argues that women were extremely valuable, and therefore highly honored and appreciated, members of ancient Israelite society (although women's worth since that time has been on the steady decline). See Carol Meyers, "Procreation, Production, and Protection: Male-Female Balance in Early Israel," *JAAAR* 51 (1983): 569-93. Regardless of the conclusions concerning the relative social standing of a wife in Israel, one can be certain that her position in society was higher/more secure than a divorced woman (not yet remarried). The social and legal vulnerability of an unmarried woman is well represented by the repeated reference to the plight of widows in the book of Deuteronomy (Deut 10:18; 14:29; 24:17-22; 27:19).

Conclusion

Deuteronomy 21:10-14 addresses the difficult situation of wartime atrocities and domestic tension. Of the obvious offenses in Deuteronomy 21 and the text's response to such offenses, Christopher Wright comments,

We might like to live in a world without wars and thus without prisoners of war. However, OT law recognizes such realities and seeks to mitigate their worst effects by protecting the victims as far as possible. If we ask whose power is being restricted, the answer, equally clearly, is the victorious soldier. The law is thus a paradigm case of the OT's concern to defend the weak against the strong, war being one of the most tragic human expressions of that situation.⁸⁰

Wright recognizes that the driving theme of this text is the desire to protect the victim of war and that this goal is reached by curtailing the rights of the soldier.⁸¹ His focus on the defense of the weak against the strong demonstrates a recognition of the lopsided distribution of rights represented in this passage.⁸² However, it is not just in the context of

⁸⁰Christopher J. H. Wright, *Deuteronomy*, NIBC (Peabody, MA: Hendrickson, 1996), 234. Wright does an commendable job of recognizing the driving focus of this text. However, he may be guilty of focusing so heavily on the concern for the woman that he fails to do justice to the harsh reality of the situation in which she finds herself. In fact, he refers to the law as "superficially harsh" (234). Even if we allow for the difference in political climate and expectations between then and now, it is safe to assume that there was nothing "superficial" about the harshness of the circumstances from the perspective of this woman. Those who recognize the reflection of grace and righteousness in the text must not be afraid to admit equally the fallen and abusive culture to which this text was revealed. Whether the Bible promotes male headship or it is merely an aspect of fallen humanity is not the issue here. The issue here, as Deuteronomy makes clear, is that he or she who holds the authority must exercise it in a manner that considers the well-being of the other over the rights of self.

⁸¹In a similar vein, Pressler speaks of Deut 21:14 as defining the woman's legal status by limiting the man's actions. "The law clearly expresses a male dominated situation. It addresses the male. It assumes that the male is the primary actor: he desires and takes, he no longer desires and sends out. While it defines the woman's legal status (she may not be sold), it does so by limiting the man's actions. The captive bride is clearly subordinate, but she is nonetheless viewed as a person with clearly defined rights . . . rather than as chattel." Pressler, *View of Women*, 15.

⁸²Michael Walzer suggests that Deut 21:10-14 represents the earliest attempt at regulating the wartime treatment of women. Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (Baltimore: Johns Hopkins University Press, 1977), 133-36. My findings correspond with his. In fact, I found even Deut 20 to be unique among ancient Near Eastern documents in that it explicitly addresses the issue of the treatment of women and children during wartime. I was unable to find any other ancient Near Eastern legislation that intentionally addresses the treatment of these victims of war.

war that this woman faces abuse, but also in the context of family, especially in the case of divorce.⁸³

Into this less than ideal context, Deuteronomy speaks words of regulation and restriction. Although addressed to the male, this text has as its primary focus the well-being of the woman. This study does not wish to deny the presence of male dominance or the captive woman's subservience, nor to imply that the text solves every problem this woman faces. It is precisely because of these issues that this text exists. What is amazing about this text is not that it demonstrates that women were treated equally in ancient Israel as some scholars claim. Rather, it is that the text of Deuteronomy dared to encroach on the assumed rights of the HOH, holding back his authority and forcing him to consider the well-being of one over whom he had authority—literally assigning rights to one without those rights, and in so doing, curtailing the rights of the one whose authority theoretically would have had no bound. Regarding the righteous response of a man who finds himself in this situation, the basic concerns of the text are these: that the Israelite warrior not treat his vanquished bride as a captive, but as a wife; that he acknowledge her humanity in her time of transition and mourning; that he place her need to mourn above his own desires for her; and that, should he grow weary of her, she be treated as a free woman.

In short, Deuteronomy tackles a situation fully reflective of the fallen world and in which potential for abuse of authority looms heavily. To this situation

⁸³Wright's presentation is not intended as an in-depth study of the passage, but an evaluation of the passage in light of the rest of his work on Deuteronomy. This may explain why he concentrates heavily on the elements of war at the expense of the familial matters that, although they are not initial, do appear to be primary in importance. Wright, *Deuteronomy*, 234-35.

Deuteronomy speaks restraint by requiring that a husband treat his wife with respect—considering the needs of the woman even as he acts out of his desires for her—even when she is of the lowest social class. Further, the text protects this woman in the event of the humiliation of a divorce by curtailing the rights of her husband such that he not treat her according to her former captive status in an attempt to benefit from her. The implications of these issues for the significance of the marriage bond are profound. More pertinent to this discussion, however, are the implications for the role of the HOH. As husband he is to exercise his authority in a manner that demonstrates restraint, respect, and dignity (rather than humiliation)—even in a cultural situation in which he might feel entitled to added authority.⁸⁴

Deuteronomy 21:15-17

Deuteronomy 21:15-17 serves as a stark reminder that we live in a very different world than that in which these texts were originally recorded. Modern, Western readers may find it difficult to understand a culture in which wives share a husband and the status of “firstborn” can be bestowed upon one who was not born first. Yet, in many ways the text of Deuteronomy 21:15-17 is among the least troublesome of the texts in this study. Once we accept the cultural differences and understand the social implications at play in the text, the underlying principles harmonize nicely with our nation’s deep English roots,⁸⁵ our sense of fairness, and our natural inclination as a society to root for

⁸⁴If these principles are carried to their logical conclusion, this man, who has the potential to cause this woman unmentionable harm, has the potential to be a tremendous blessing to this woman. He can offer her provision, protection, position, relationship, and a religion with lasting ramifications.

⁸⁵Greenspahn rightly points out that our national ties to England and English tradition affects American understanding of inheritance rights. Although Americans rejected primogeniture (the right of the

and defend the underdog. Yet today's bias toward the defense of an underappreciated woman and her son's rightful place may not have been as immediately apparent in this ancient Israelite culture. In Israel the **בן** held the seat of authority and appears to have assumed the right to bestow blessing as he saw fit.⁸⁶ Furthermore, this text addresses the very real and often muddled world of relationships, and one can understand a husband's desire to honor his beloved with the status he so wished for her. Deuteronomy 21:15-17 speaks to a tender and difficult situation in a way that serves to guide a husband toward the most righteous application of his authority in a scenario where emotions easily blur the boundaries of what is right and just.

For the text and translation of Deuteronomy 21:15-17, see Table 3.

The Setting

The setting of this passage is a polygynous⁸⁷ marriage, or more accurately in this case, a bigynous⁸⁸ marriage in which one wife is favored above the other.⁸⁹ Also

firstborn child to inherit his parents' entire estate) before the Revolution, "its legacy persists in our deep-seated certainty that it is conceptually, and thus historically, prior to other systems." Frederick E. Greenspahn, *When Brothers Dwell Together: The Preeminence of Younger Siblings in the Hebrew Bible* (New York: Oxford University Press, 1994), 38.

⁸⁶Consider the example of Jacob's intentional preference of Joseph's younger son, Ephraim (Gen 48:13-20), which effectively demonstrated preference for the boys' father, Jacob's own younger son, Joseph (Gen 48:21).

⁸⁷Following Marsman, the more precise term "polygyny" (more than one wife) is used to describe the situation in Deut 21:15-17 rather than "polygamy" (more than one spouse). See Hennie J. Marsman, *Women in Ugarit and Israel: Their Social and Religious Position in the Context of the Ancient Near East*, OTS 49 (Leiden: Brill, 2003), 122 n. 1.

⁸⁸The example set forth is technically that of bigyny, having two wives. However, the verses may refer to bigyny as an example that could be applied, hypothetically, to any polygynous situation.

⁸⁹Although in today's society the issue of polygyny raises serious moral questions, this practice was part of ancient Israel's cultural identity. These verses in Deut 21 do not condemn the practice, although they do point to some of the complications that arise when a husband's interests are divided.

Table 3. Text and translation of Deuteronomy 21:15-17

Text	Verse	Translation
כִּי־תִהְיֶינָה לְאִישׁ שְׁתֵּי נָשִׁים	15a	If two wives belong to a man ^a the one is loved, and the other is hated, and the loved (wife) and the hated (wife) bear him sons, and the firstborn son belongs to the hated (wife)
הָאֶחָת אֲהוּבָה	15b	
וְהָאֶחָת שְׂנוּאָה	15c	
וַיֵּלְדוּ־לוֹ בָּנִים הָאֲהוּבָה וְהַשְּׂנוּאָה	15d	
וְהָיָה הַבֵּן הַבְּכוֹר לַשְּׂנוּאָה:	15e	
וְהָיָה	16a	It will be ^b
בְּיוֹם הַנְּחִילוֹ אֶת־בָּנָיו		on the day that he causes his sons to inherit └ that which belongs to him
אֶת אֲשֶׁר־יִהְיֶה לוֹ	16b	
לֹא יוּכַל לְבַכֵּר אֶת־בֶּן־הָאֲהוּבָה	16c	He will not be permitted to place as firstborn the son of the loved (wife) └ instead of └ the son of the hated └ the firstborn
עַל־פְּנֵי בֶן־הַשְּׂנוּאָה הַבְּכוֹר:		
כִּי אֶת־הַבְּכוֹר בֶּן־הַשְּׂנוּאָה יִכִּיר	17a	for he must recognize the firstborn son of the hated (wife) └ by giving ^c him two thirds └ of everything that he has └ because he is the first of his strength └ the custom of the firstborn belongs to him.
לָתֵת לוֹ פִּי שְׁנַיִם	17b	
בְּכָל אֲשֶׁר־יִמְצָא לוֹ	17c	
כִּי־הוּא רִאשִׁית אָנוֹ	17d	
לוֹ מִשְׁפַּט הַבְּכוֹרָה: ס	17e	

^aFor smoother English rendering, read, “If a man has two wives. . .” However, in an attempt to accurately reflect the Hebrew subject (wives), we have opted for the more literal, if also more awkward, “If two wives belong to a husband. . .” See also clause 15e.

^bThe Hebrew construction with וְהָיָה is idiomatic and usually best left untranslated in English. It is included in the text here in order to demonstrate that the apodosis begins with 16a, even though that phrase is circumstantial (therefore indented) and supports the information presented in 16b.

^cFor an explanation of the gerundive or explanatory infinitive, see *IBHS*, 36.2.3e and Joüon, 2:§124o.

significant to the setting of this passage are the inheritance rights of Israelite sons. In the situation described in Deuteronomy 21:15-17, the HOH's preference for one wife threatens to interfere with the rightful inheritance of his firstborn.

Ancient Near Eastern Background

The practice of polygyny in the ancient world was complex, as is the task of reconstructing the cultural constraints exercised in the nations surrounding Israel.⁹⁰ From the available literary evidence it would appear that the most common reason for taking more than one wife was to produce offspring.⁹¹ In Mesopotamia, a wife's status within a polygynous marriage seems to have been determined primarily by marriage order.⁹² Within Babylonia, the first wife a husband took retained her primary status even if a husband decided to take another.⁹³ Not only was her consent required in order for a second marriage to take place (at least in some cases), but certain social protocols existed in order to preserve the first wife's position.⁹⁴ Texts from Mesopotamia suggest that,

⁹⁰For extensive treatment of polygyny, see Corinna Friedl, *Polygynie in Mesopotamien und Israel: Sozialgeschichtliche Analyse polygamer Beziehungen anhand rechtlicher Texte aus dem 2. und 1. Jahrtausend v. Chr.*, AOAT 277 (Münster: Ugarit-Verlag, 2000). See also Marsman, *Women in Ugarit and Israel*, 122-53; and Westbrook, *Old Babylonian Marriage Law*, 103-11.

⁹¹LH ¶ 144-45 (Roth, *Law Collections*, 108-09) and VAS 6 3 (transliterated and translated as "marriage agreement no. 3" in Martha T. Roth, *Babylonian Marriage Agreements 7th – 3rd Centuries B.C.*, AOAT 222 [Neukirchen-Vluyn: Neukirchener Verlag, 1989], 41-42). Other reasons for polygyny include illness (LH ¶ 148-49) and misconduct of the first wife (LH ¶ 141), Roth, *Law Collections*, 107-09. See Marsman, *Women in Ugarit and Israel*, 126-28. The story of Jacob, Leah and Rachel suggests that other reasons existed as well (Gen 29:16-30).

⁹²Admittedly, social status also seems to have played a role in determining a wife's status within marriage. For more on the various types of licit sexual relationships in the ancient Near Eastern world (i.e., wives, slave-wives, slaves of wives, concubines, etc.), see Friedl, *Polygynie in Mesopotamien und Israel*, 194-207, 226-41, and 262-70.

⁹³Westbrook, *Old Babylonian Marriage Law*, 109-10.

⁹⁴*Ibid.*, 109.

even if she became ill⁹⁵ or was unable to bear children,⁹⁶ the first wife retained an honored position. This elevated status of the first wife is not evident in the OT. Rather a wife's favorable status appears to have been the result of obtaining her husband's favor—which some wives hoped would come as the result of bearing him children.⁹⁷

Within the extra-biblical material, there is a strong link between polygynous relationships and concerns for inheritance rights.⁹⁸ When the issues arise in the ancient literature, inheritance practices appear to follow two patterns. Either (1) there was no distinction between birth order or maternal line and all of a man's sons inherited equally from their father's estate,⁹⁹ or (2) inheritance rights were directly related to the mother's

⁹⁵LL ¶ 28 (ca. 1930 BC) and LH ¶ 148 (ca. 1750 BC). If a woman became seriously ill, her husband could marry another wife, but had to continue to provide for his first wife. In the case of LL ¶ 28, the new wife was responsible to support the first wife. See translations presented in Roth, *Law Collections*, 31-32, 109.

⁹⁶VAS 6 3 (624 BC) records a marriage agreement in which a married, but childless, man extends the offer of marriage to a second wife. The contract stipulates that any children this woman bears will be his heirs. However, should his first wife eventually bear children, the children of his first wife will inherit two-thirds of the husband's estate and the children of the second wife (with whom this agreement is being made) will inherit one-third. The greater inheritance awarded to the children of the first wife seems to reflect her elevated status. For a translation of VAS 6 3, see Roth, *Babylonian Marriage Agreements*, 41-42.

LNB ¶ 15 (ca. 700 BC) supports the notion that the first woman a man marries holds a favored position as reflected by her children's inheritance. In this case, the situation is not polygyny, but remarriage after the death of the first wife. In the event that the second wife also has children, her children will also inherit from their father, but the children of the first wife will receive the preferred inheritance of two-thirds of their father's estate. See Roth, *Law Collections*, 148.

⁹⁷E.g., Gen 29:32-34. The birth of each new son renews Leah's hope that her husband's heart will turn toward her.

⁹⁸For extensive treatment on inheritance issues and the alleged preference of firstborn sons in the OT, see Greenspahn, *When Brothers Dwell Together*; and Arthur Mason Brown, "The Concept of Inheritance in the Old Testament" (Ph.D. diss., Columbia University, 1965).

⁹⁹Cf. LH ¶ 167 (ca. 1750 BC). The situation described here is similar to that in LNB ¶ 15 (about 1000 years later) in that a man's wife has died, he has remarried and the second wife has borne him children. In this earlier text from the Code of Hammurabi, the children of both wives split the father's estate equally upon his death. The practice of dividing an estate equally among sons also is evidenced in Egypt before the fourth dynasty (Ariste E. Théodoridés, "The Concept of Law in Ancient Egypt," in *The Legacy of Egypt*, 2nd ed., ed. J. R. Harris [Oxford: Clarendon Press, 1971], 293, 303).

status within a marriage, with the son(s) of the first wife inheriting the favored share.¹⁰⁰

Deuteronomy's injunction to consider birth order in matters of inheritance appears to contrast with the practice of Israel's neighbors.¹⁰¹ Interestingly, the elevated status of the firstborn lines up more closely with Egyptian practices from the third century BC.¹⁰²

Related Old Testament Evidence

Interest in the privilege or favor shown a firstborn son is evidenced throughout the OT narratives. Ironically, the most prominent examples involve cases where the first son born does not inherit the primary blessing. For all its emphasis on the firstborn,¹⁰³ the history of Israel is replete with stories of younger children rising to the position of blessing and honor.¹⁰⁴ Even the term בְּכוֹר, traditionally rendered "firstborn," is now understood by some scholars as indicating a position of social status rather than of chronological birth order.¹⁰⁵ Deuteronomy 21:15-18 is one of the strongest pieces of

¹⁰⁰See n. 96.

¹⁰¹The above presentation seems to contradict Greenspahn's statement, "As one would expect, Israel's inheritance customs fit well within the context of ancient Near Eastern practice . . ." (*When Brothers Dwell Together*, 48). However, the difference between this argument and that of Greenspahn is one of emphasis, not data. Greenspahn's concern is to demonstrate that preference for the firstborn son was neither standard Israelite nor ancient Near Eastern practice. To do this, he argues that primogeniture (the right of the firstborn son to inherit the father's *entire* estate) was not exercised by Israel or the surrounding nations, thus, Israel does indeed fit into the standard Mesopotamian practice whereby each legitimate son inherits something from his father. However, in issues of inheritance rights or preference for the firstborn, while Israel may not have reflected the extremes of primogeniture, both narrative and prescriptive OT texts attest to the elevated position of the firstborn.

¹⁰²Cf. Kurt Sethe, "Ein Prozessurteil aus dem alten Reich," *ZÄS* 61 (1926): 69; and Girgis Mattha, "Rights and Duties of the Eldest Son According to the Native Egyptian Laws of the Third Century B.C.," *BFA* 12, no. 2 (December 1950): 115.

¹⁰³Exod 13:2, 11-16; 22:28-29 (Eng 22:29-30); 34:19-20; Num 3:11-13, 40-51; 8:15-19; 18:15-17.

¹⁰⁴E.g., Seth, Isaac, Jacob, Rachel, Joseph, Ephraim, Moses, Samuel, David, and Solomon.

¹⁰⁵Greenspahn, *When Brothers Dwell Together*, 59-69. See also Isaac Mendelsohn, "On the

evidence for this understanding of the term. The passage suggests that a father might establish as firstborn (*Piel* בְּכֹר) a son not born first. In Greenspahn's words, "The fact that someone could be made *bēkōr* makes no sense if that word means 'firstborn' in a literal way, since that would be a biologically and not a socially determined status."¹⁰⁶ Further biblical evidence includes Psalm 89:28 where God makes (נָתַן) David his בְּכֹר; Exodus 4:22 where Israel is called YHWH's firstborn son (בְּנִי בְּכֹרִי יִשְׂרָאֵל); and the many examples in the OT narratives where the "blessing of the firstborn" (בְּכוֹרָה) is sold or is given by the father to a younger son (i.e, Esau¹⁰⁷ and Manasseh and Ephraim¹⁰⁸).¹⁰⁹

Greenspahn's interpretation of בְּכֹר as "an assigned, not an automatic

Preferential Status of the Eldest Son," *BASOR* 156 (1959): 38-40; and Nisan Rubin, "The Social Significance of the Firstborn in Israel" (in Hebrew), *Bet Mikra* 33 (1987/88): 155-70.

¹⁰⁶Greenspahn, *When Brothers Dwell Together*, 59.

¹⁰⁷Gen 25:29-34; 27:36.

¹⁰⁸Gen 48:12-20.

¹⁰⁹While the above arguments rightly emphasize the social aspects of the Hebrew word בְּכֹר, they also raise some questions. Regarding the designation of David and of Israel as the firstborn of YHWH, one must ask how far a metaphor should be pressed. In the relationship between the two elements of a metaphor the comparison is not intended to be comprehensive, thus reference to something or someone as "firstborn" could refer to any one of the elements associated with that term (preeminence, social status, benefits of inheritance, redemption, etc.) and need not imply that the social position was typically assigned by the parent anymore than the metaphor of God as Father need imply that we are biologically his children. Further, it may be noteworthy that, even in the instances where a younger son usurped the honor of an older son, the younger son is never referred to as a בְּכֹר (admittedly an argument from silence). In 1 Chr 5:1 Reuben is listed as the בְּכֹר, even though the text acknowledges that his sinful behavior caused him to forfeit the privileges of that position (בְּכוֹרָה), which were enjoyed by Joseph instead. In 1 Chr 26:10 a younger son who was awarded social prominence by his father is referred to as the head (רֹאשׁ) even though he appears to function in the role traditionally associated with the firstborn. Despite his elevated social status (or perhaps because of it) the text specifically mentions that he was not the actual בְּכֹר. Admittedly these passages occur within genealogy lists which, for theological reasons, may be referring to an original birth order rather than later reassignment of the birthright.

status,”¹¹⁰ demonstrates a sensitivity to the traditions in Israel and to the texts that record those traditions. His understanding of the term **בְּכוֹר** helps to explain the frequent deviations from the cultural norm (elevated status of the firstborn son) as evidenced throughout Israel’s history. This passage in Deuteronomy and the historiographic traditions of ancient Israel suggest that the birthright could be granted to one other than the oldest, living son. Although, from the example of Reuben’s forfeiture of the birthright, and Joseph’s consternation over Jacob’s giving his blessing to a younger son, it would appear that a father needed good reason to grant the birthright or blessing to one other than his oldest son.

The Characters

Deuteronomy 21:15-17 involves a husband, his two wives and their offspring. Of the husband we are told very little. He married two women and both bore him children. Scholars frequently argue that polygyny was likely the exception rather than the rule in Israelite culture, due to the expense of acquiring a bride and the complications inherent in the arrangement.¹¹¹ However, the benefits of having extra hands to tackle the rigors of the agricultural life as well as the urgent desire for offspring may have outweighed both cost and complications.¹¹²

The initial focus of this text involves a telling description of the wives—one is

¹¹⁰Greenspahn, *When Brothers Dwell Together*, 59.

¹¹¹Block points out that Elkanah is the only OT example of a common Israelite man having more than one wife. Daniel I. Block, “The Gospel According to Moses: A Commentary on Deuteronomy” (forthcoming), s.v. “Deuteronomy 21:15-17.”

¹¹²Ultimately, the prevalence of this practice within Israel is not at issue here in Deut 21:15-17.

loved (אָהֵבָה) and the other hated (שָׂנְאָה).¹¹³ Moran's work has been most helpful in establishing Deuteronomy's view of love, specifically in the divine-human relationship, as resoundingly covenantal. Analogous to it is a profane (human-to-human) love that, like the divine love, is "also one that can be commanded, and it is a love too that may be defined in terms of loyalty, service and obedience. It is, like the love of God in Deuteronomy, a covenantal love."¹¹⁴ The most helpful illustration of this profane yet covenantal love, in contrast with its antonym "hate," may come when Joab rebuked David for grieving a rebellious son but disregarding those loyal to him. In 2 Samuel 19:6-7 Joab charges David with shaming those loyal to him לְאַהֲבָה אֶת־שֹׂנְאָיו וְלִשְׂנֹא אֶת־אֹהֲבָיו, by loving those who hate him and hating those who love him. By his excessive grief, David has proclaimed devotion to the son who had repudiated his relationship and authority, and has simultaneously disregarded (to the point of shame) his followers who had demonstrated unwavering loyalty. As this text illustrates, "love" can refer to the expression of allegiance and devotion while "hate" is the disregard or repudiation of relationship.

In the context of Deuteronomy 21:15, the "loved" wife is one who has received the full allegiance and devotion of her husband, while the other wife has been (at least by contrast) disregarded.¹¹⁵ This interpretation should not diminish the difficulties faced by

¹¹³While these words do convey an emotive element, אָהֵב and שָׂנֵא can be formal covenantal terms representing faithful fulfillment or unfaithful rejection of covenant commitment. See William Moran, "The Ancient Near Eastern Background of the Love of God in Deuteronomy," *CBQ* 25 (1963): 77-87. See also Susan Ackerman, "The Person Is Political: Covenantal and Affectionate Love ('ĀHEB, 'AHĀBĀ) in the Hebrew Bible," *VT* 52 (2002): 437-58.

¹¹⁴Moran, "The Ancient Near Eastern Background of the Love of God in Deuteronomy," 81-82.

¹¹⁵Block, "Gospel According to Moses," s.v. "Deuteronomy 21:15-17."

the unappreciated spouse. The depth of her suffering is indicated by the threefold repetition of this antonymous word pair (שְׂנֵאָה/אֲהֵבָה). This unfortunate domestic situation parallels that of Rachel and Leah in which the relationship of these terms is further clarified. Genesis 29:30-31 first states that Jacob loved Rachel more than Leah and then goes on to identify Leah as the “hated” wife. While the account of Leah offers no sign of blatant abuse, it does indicate that, at least on one occasion, she was forced to barter for the right even to share her husband’s bed.¹¹⁶ We should likely understand “hated” here as “disregarded” but not so strong as “repudiated,” since there is no evidence that Jacob was unfaithful to his marriage covenant with Leah. A poor spousal relationship is difficult in any culture, but the difficulties for a wife are only heightened in a patricentric culture such as ancient Israel in which societal authority lay primarily with the male and a woman’s identity was closely bound up with her role and position within her immediate family.

The recorded testimony of Israelite women, especially those competing for their husband’s affection, emphasizes the value they placed on their ability to bear children. The birth of a child, particularly in cases involving polygyny, brought a wife comfort and status.¹¹⁷ To any Israelite wife, the birth of a child represented not only a hope for the future but the fulfillment of a yearning so deep that at times not even an

¹¹⁶Gen 30:14-16.

¹¹⁷With the conception of Ishmael, Hagar began to see herself as elevated above Sarai. With the birth of each of her sons, Leah dreamt of being favored by her husband. Although loved by Elkanah, Hannah was tormented by her co-wife for not having children and yearned so deeply for her own son that nothing else brought her comfort.

attentive husband could understand it, let alone compensate for it.¹¹⁸ To an unloved wife, a child represented all of that in addition to the possibility that she might finally gain the favor of her husband.¹¹⁹ Further, given the preeminence expected for the firstborn son, his birth brought hope of unique status and privilege. In Israel, the oldest son was traditionally awarded a birthright that includes a greater inheritance¹²⁰ and a greater responsibility in the long-term care of the family and the aging parents. The status of firstborn (בְּכוֹר) represented blessing and honor, and to be deprived of the birthright was a serious matter.¹²¹

The Issue

In Deuteronomy 21:15-17 the father is prohibited from extending favoritism to the son of his beloved wife at the expense of his older son, born to a wife he does not favor. According to the passage, a father might assume the right to appoint a younger son to the position of firstborn based merely on his deep love for the child's mother.

¹¹⁸1 Sam 1:8. (Elkanah fails to understand the depth of Hannah's yearning.)

¹¹⁹See Gen 6:6-13; 29:32-34.

¹²⁰For discussion on the actual amount of the inheritance, see Eryl W. Davies, "The Meaning of *Pîšēnayim* in Deuteronomy XXI 17," *VT* 36 (1986): 341-47; A. Goetze, "Number Idioms in Old Babylonian," *JANES* 5 (1946): 202; Frithiof Rundgren, "Parallelen zu Akk. *šinēpūm* '2/3,'" *JCS* 9 (1955): 29-30; and A. Sachs, "Notes on Fractional Expressions in Old Babylonian Mathematical Texts," *JNES* 5 (1946): 202-14. The Hebrew expression "two mouths" has caused a great deal of scholarly debate. Some interpret this phrase as indicating that a firstborn inherits a double portion while others believe this phrase should be translated two-thirds, so that the firstborn inherits two-thirds of everything and the rest of the children divide the remaining one third. Two observations warrant comment. First, in the example case addressed in this passage, there are only two brothers involved. Thus "two-thirds" would have the same value as a "double portion." Second, this passage is not written to address proper inheritance procedure.

¹²¹Reuben lost his birthright due to sinful conduct that showed blatant disrespect for his father (Gen 49:3-4; 1 Chr 5:1). Esau was distraught upon losing his birthright and blessing to Isaac. So deep was Esau's distress that his parents feared for Isaac's life (Gen 27).

Deuteronomy restricts this assumed right in order to protect the position of the less-favored, but rightful, firstborn¹²² and his mother.¹²³

Although phrased as a restriction on the favoritism toward a younger son, the underlying concern in Deuteronomy 21:15-17 is that the eldest son not be denied his birthright simply because he was not the son of his father's favorite wife. As argued by Greenspahn, this passage does not dictate that the eldest son must always inherit the favorable portion. Rather it restricts arbitrary assignment of בְּכוֹרָה in this particular situation.¹²⁴ A father is forbidden from penalizing his son for being born to a woman whom he does not love. In the same way, the father is forbidden from withholding from a wife the honor of bearing the בְּכוֹרָה. Such concern is consistent with the divine compassion demonstrated throughout the pages of Israelite history toward the unloved wife.¹²⁵

The reason for the restriction of a father's authority is stated in Deuteronomy 21:17—because he is the first of his father's strength and the custom of the firstborn belongs to him. These words carry profound significance, but also beautiful simplicity. In their profundity they speak to the blessing that accompanies the birth of that first child and the tangible evidence of a man's fertility and future hope.¹²⁶ In their simplicity, the

¹²²Christopher Wright notes that Deut 21:15-17 protects a son from an unfair father while Deut 21:18-21 protects a father from an incorrigible son (*Deuteronomy*, 235).

¹²³Cf. McConville, *Deuteronomy*, 330.

¹²⁴Greenspahn, *When Brothers Dwell Together*, 58.

¹²⁵E.g., Gen 29:31, וַיֵּרָא יִהוָה בְּיִשְׁשַׁכָּרָה לְאֵהָ וַיִּפְתַּח אֶת־רַחֲמָהּ וַיֵּרָחַל עֲקָרָהּ.

¹²⁶For a discussion on the significance of the firstborn, see S. Bendor, *The Social Structure of Ancient Israel: The Institution of the Family (Beit 'Ab) from the Settlement to the End of the Monarchy*, JBS 7 (Jerusalem: Simor, 1996), 175-88; and Tigay, *Deuteronomy*, 196.

meaning of the phrase is as basic as “you cannot take it away from him because it is his” thus implying that the father needed a far better reason to strip his son of his privileged position than his desire to please a woman. Not only would the father’s action dishonor his eldest son, it would bring not only loss (of privilege and status) but also shame to that son’s mother. For in the same way that the husband wished to honor his beloved with the transfer of status, so would the removal of status bring hurt and shame to the unfavored wife. This passage calls for a HOH to demonstrate the proper respect for his family members, a respect dictated by societal norms, and not to allow favoritism to rob a son of the position that otherwise belonged to him.

Conclusion

Following on the heels of the passage regarding the proper treatment of the captive woman, this text also demonstrates a concern to curb potential abuses within the marital relationship. This text is not a legal document issued to prescribe protocol for proper inheritance procedures. Rather, it instructs fathers on the righteous application of their authority in matters of passing on blessing and inheritance to their children when complicated family arrangements might otherwise interfere. Such instruction not only protects a son from becoming the victim of his parents’ poor relationship, but also protects an unloved wife from being deprived of the honor associated with being the mother of the **בְּכוֹר**. Without removing the father’s authority in matters of birthright and inheritance, this text requires that neither a son, nor consequently his mother, be denied the social respect due them merely on the grounds of favoritism within a complex marital situation.

Deuteronomy 21:18-21

Of all the texts in Deuteronomy, the instruction regarding the rebellious son may be the most difficult for modern readers to accept. Even when one considers that this passage concerns a grown child, the mandated response to rebellion is so extreme that few can reconcile this instruction with their own view of a loving Heavenly Father. Although this Israelite father and mother are not called to cast the fatal stones, the accusation of these parents will result in the death of their own child. Furthermore, when one considers the cultural background of the day, the loss of this son extends even beyond the agony that accompanies the premature death of a child to include a loss of family honor and future security. In a culture in which the greatest imaginable curse was to be childless, how could one consider executing a son who has beaten the odds of childhood accidents and illness and survived to adulthood? How can we make sense of such harsh instruction, and how does this passage inform our view of a righteous Israelite HOH?

For the text and translation of Deuteronomy 21:18-21, see Table 4.

The Setting

This passage concerns parent/child relationships set within the ancient Israelite family context. This two-sided relationship called for children, young or old, to demonstrate respect for their parents. At the same time, parents were responsible to exercise their authority in a manner that promoted righteousness. Both instruction and correction were to be used to achieve this end. When the mutual relationship of respect and the exercise of authority broke down, the results were disastrous.

Table 4. Text and translation of Deuteronomy 21:18-21

Text	Verse	Translation
כִּי־יִהְיֶה לְאִישׁ בֶּן	18a	If a man has a son
סוֹרֵר	18b	
וּמוֹרֶה	18c	
אֵינָנוּ שֹׁמְעֵי בְּקוֹל אָבִיו		<ul style="list-style-type: none"> stubborn^a and rebellious not obeying
וּבְקוֹל אִמּוֹ		
וַיִּסְרוּ אֹתוֹ	18d	and they discipline him
וְלֹא יִשְׁמַע אֶל־יְהוָה:	18e	but he does not obey them,
וַתִּפְשׁוּ בּוֹ אָבִיו וְאִמּוֹ	19a	then his father and his mother shall seize him, and
וְהוֹצִיאוּ אֹתוֹ אֶל־זִקְנֵי עִירוֹ	19b	they shall bring him
וְאֶל־שַׁעַר מְקוֹמוֹ:		<ul style="list-style-type: none"> the elders of his city, and to the gate of his place, and
וְאָמְרוּ אֶל־זִקְנֵי עִירוֹ	20a	they shall say to the elders of his city,
בְּנֵנוּ זֶה	20b	<div style="border: 1px dashed black; padding: 10px;"> This is our son <ul style="list-style-type: none"> stubborn and rebellious disobeying our voice gluttonous and a drunkard. </div>
סוֹרֵר	20c	
וּמוֹרֶה		
אֵינָנוּ שֹׁמְעֵי בְּקוֹלֵנוּ	20d	
זוֹלֵל	20e	
וְסָבָא:		

^a Although not formally presented in a diagram, most interpretations of this passage understand “stubborn and rebellious” as defining “son,” and the following three phrases as further defining stubborn and rebellious. See Joseph Fleichman, “Legal Innovations in Deuteronomy XXI 18-20,” *VT* 53 (2003): 312. However, “stubborn,” “rebellious” and “disobedient” are all active participles suggesting that they are grammatically parallel. The same situation occurs in Deut 21:20 where “son” is followed by five participles, all of which function to describe that son. Although the terms “stubborn” and “rebellious” as well as “gluttonous” and “drunkard” are traditionally treated as hendiadys, they are represented separately in the diagram above in order to maintain consistent representation of the different clauses.

Table 4—Continued.

Text	Verse	Translation
וְגָמְדוּ כָּל-אֲנָשֵׁי עִירוֹ בְּאֲבָנִים	21a	Then all the men of his city shall stone him with stones, and
וְיָמָת	21b	he will die, and
וּבְעֵרְתָּ הָרַע מִקֶּרְבְּךָ	21c	you will purge evil from your midst, and
וְכָל-יִשְׂרָאֵל יִשְׁמְעוּ	21d	all Israel will hear, and
וְיִרְאוּ: ס	21e	they will fear.

Filial Responsibility

Filial responsibility was critical in ancient Near Eastern culture. In a dissertation on the topic presented to Johns Hopkins University in 1997, Jan Verbruggen examines evidence from Akkadian, Ugaritic, Aramaic and Hebrew material.¹²⁷ He concludes that the basic filial duties expected in each culture¹²⁸ included (1) tangible honor and respect for parents such that their public position was enhanced, (2) material provision of both parents when age made the maintenance of normal activities too difficult for them, (3) physical care of the parental estate not just after the parents died but beginning as soon as the children are old enough to contribute, and (4) visible mourning of a parent's death and caring for burial arrangements.¹²⁹ Interestingly, the measure of filial responsibility was dependent on capability, not age. Some of these tasks required the strength and maturity of an adult, indicating that a child's duties to his or her parents were not restricted to childhood, but continued as a lifelong responsibility.

This issue of filial responsibility was fundamental to Israelite culture and religion;¹³⁰ so fundamental that the instruction to "honor father and mother" not only

¹²⁷Jan L. Verbruggen, "Filial Duties in the Ancient Near East" (Ph.D. diss., The Johns Hopkins University, 1997).

¹²⁸Verbruggen examines evidence from Babylonia, Assyria, Syria, and Palestine/Israel from the Old Babylonian Period to and including the Neo-Babylonian Period (approximately the twentieth century BC to the fifth century BC). *Ibid.*, 3-4. He concludes that "the texts from the different periods and societies, and indeed from different genres, all agree on the basic filial duties and how they were to be performed, showing that there was indeed a common approach to this social question throughout the ancient Near East." *Ibid.*, 260.

¹²⁹*Ibid.*, 259-60. In some cultures funeral arrangements extended well after the parent's death and included regular offerings and libations.

¹³⁰According to Deuteronomy, Israelite culture and religion would have been synonymous. Everything in Israelite life was associated with religion. Even the mundane elements of life were to reflect the people's relationship with YHWH—from what people ate (Deut 14:3-12) to how they dressed (Deut 22:5) and how they cared for their elderly parents (Deut 5:16).

appears in the Ten Commandments,¹³¹ but it directly follows the commandments relating to man's relationship with YHWH and precedes the prohibitions against murder, adultery, stealing, false testimony and covetousness. As Daniel Block points out, the "Ten Words" are addressed to the adult Israelite, so that the injunction to honor one's parents is not confined to the obedience of childhood, but includes the respectful submission to parental authority as well as the care of both parents when age robs them of their independence.¹³² The exhortation toward honorable and respectful treatment of one's parents also appears in the book of Proverbs, in which the wisdom that brings delight to a parent's heart is defined in terms of obedience to the Torah.¹³³

Parental Responsibility

Deuteronomy frequently addresses the issue of parental responsibility to train children in matters of covenant obedience. A parent's instruction is to take the form of both teaching¹³⁴ and discipline.¹³⁵ The goal of the instruction is that the children learn the

¹³¹Deut 5:16 and Exod 20:12.

¹³²See Daniel I. Block, "'You Shall Not Covet Your Neighbor's Wife': A Study in Deuteronomistic Domestic Ideology" (paper presented at the annual meeting of ETS, Washington, DC, November 2006), 8, 11. See also Elizabeth Bellefontaine, "Deuteronomy 21:18-21—Reviewing the Case of the Rebellious Son," *JSOT* 13 (1979): 15.

¹³³From the many proverbs dealing with the parent/child relationship, I have tried to separate those that specifically address the child's responsibility: Prov 1:8-9; 4:1-9; 6:20-21; 10:1, 5; 13:1; 15:5. See also the excellent discussion of familial Proverbs in Phillip R. Callaway, "Deut 21:18-21: Proverbial Wisdom and Law," *JBL* 103 (1984): 346-47.

¹³⁴Deut 4:9-10; 6:7, 20-25; 11:19-21; 32:46. Also, Deut 5:14; 12:12, 18; 16:11, 14 refer to the specific inclusion of sons and daughters (as members of the household) in the celebration of holy days and feasts. The inclusion of each member of the household not only restricts a head of household from using his authority to exclude some, but also serves as an opportunity to train children in proper observance of covenant obedience.

¹³⁵Deut 8:5 and 21:18-21.

statutes and the ordinances of the covenant, including the history of YHWH's mighty deeds. The frequent exhortations to teaching are accompanied by serious incentive which an Israelite would not have treated lightly—long and prosperous lives in the Promised Land for generations to come.¹³⁶

Two further roles of the אב are emphasized in passages that deal with his absence from the family structure. A study of the passages regarding the widow (אַלְמָנָה)¹³⁷ and the fatherless (יָתוֹם) demonstrate that the lack of a father figure leaves a family defenseless¹³⁸ and without sufficient provision.¹³⁹ Thus we conclude that it was the responsibility of the אב to defend and provide for the members of his household—including, of course, his children.

Deuteronomy's treatment of parental roles depicts involved and loving authority, attentive to the well-being and proper training of each child. In comparison with other ancient texts, Deuteronomy provides a surprisingly sensitive glimpse at the tender relationship between parent and child. Phrases like “as a father carries his son,”¹⁴⁰

¹³⁶Deut 11:19-21.

¹³⁷For more on widows in the OT, see Naomi Steinberg, “Romancing the Widow: The Economic Distinction Between the 'almānā, the 'iššā- 'almānā and the 'ēšet-hammēt,” in *God's Word for Our World: Biblical Studies in Honor of Simon John De Vries*, ed. J. Harold Ellens et al. (New York: T. & T. Clark, 2004): 1:327-46; Karel van der Toorn, “Torn Between Vice and Virtue: Stereotypes of the Widow in Israel and Mesopotamia,” in *Female Stereotypes in Religious Traditions*, ed. R. Kloppenborg and W. Hanegraff (Leiden: E. J. Brill, 1995), 1-13; and F. C. Fensham, “The Widow, Orphan and the Poor in Ancient Near Eastern Legal and Wisdom Literature,” *JANES* 21 (1962): 129-39.

¹³⁸Deut 24:17 and 27:19.

¹³⁹Deut 10:18; 14:29; 24:19-21; 26:12-13. The interpretation of these passages as reflected here differs significantly from that of Harold V. Bennett, *Injustice Made Legal: Deuteronomic Law and the Plight of Widows, Strangers, and Orphans in Ancient Israel* (Grand Rapids: Eerdmans, 2002).

¹⁴⁰Deut 1:31, כְּאִשָּׁר יִשָּׂא אִישׁ אֶת־בְּנוֹ.

and “when your sons asks, . . . why . . .”¹⁴¹ reflect those common yet cherished moments that foster a relationship of intimacy and trust between a father and his child. The strong yet gentle arms of the father in the image of Deuteronomy 1:31 symbolize the strength of a provider and defender balanced by the gentle patience of a teacher. Yet this image seems nearly impossible to reconcile with the instruction in Deuteronomy 21:18-21.

While the tasks of training, protecting and providing accurately represent a HOH’s role in ancient Israel, a few texts not yet mentioned help to clarify the core ideology that was to drive him in these tasks, as well as any others, that he undertook. These verses serve to define further the responsibilities of a parent. In so doing, they reveal the framework in which all parental responsibilities are couched, thus relieving some of the tension created in Deuteronomy 21:18-21 in which the image of a strong and loving father clashes with that of a man essentially sentencing his own son to death.

Deuteronomy 12:31 and 18:9-12 both address the issue of child sacrifice. Israelite parents are forbidden to engage in this pagan practice.¹⁴² This prohibition obviously protects the defenseless child, but both references to child sacrifice in Deuteronomy reveal that the rationale behind this proscription extends beyond the preservation of the child’s well-being. Theologically, the prohibition attempts to safeguard Israel from all forms of pagan idolatry and sorcery. In other words, the core

¹⁴¹Deut 6:20, מָה הָעֵדוּת וְהַחֻקִּים וְהַמִּשְׁפָּטִים אֲשֶׁר צִוָּה יְהוָה אֱלֹהֵינוּ אֲתָכֶם . . . כִּי־יִשְׁאַלְךָ בֶּןְךָ.

¹⁴²For a discussion of child sacrifice in the OT, see Paul Mosca, “Child Sacrifice in Canaanite and Israelite Religion” (Ph.D. diss., Harvard University, 1975). See also George C. Heider, *The Cult of Molek* (Sheffield: JSOT Press, 1985); Shelby Brown, *Late Carthaginian Child Sacrifice* (Sheffield: JSOT Press, 1991); and Lawrence E. Stager and Samuel Wolff, “Child Sacrifice at Carthage - Religious Rite or Population Control,” *BAR* 10, no. 1 (1984): 30-51.

concern of the injunction against child sacrifice is not based on sentimentality but the need for righteousness. This understanding of Deuteronomy's stance on child sacrifice parallels another instruction to Israelite parents, namely the prohibition against giving Israelite sons or daughters in marriage¹⁴³ to the surrounding Canaanites. The stated intent of this instruction involves a concern to protect the hearts of Israel's young people from turning to follow other gods.¹⁴⁴ Here again, a parent's authority was to be used to protect and preserve righteousness in Israel.

Although not exclusively devoted to the parent/child relationship, the instruction in Deuteronomy 13:7-12¹⁴⁵ underscores the priority of covenant faithfulness within Israel.¹⁴⁶ Even the closest conceivable relationships, those of full brother, son, daughter, beloved wife or dearest friend, were never to be held in higher regard than adherence to righteousness and YHWH worship. That a parent was to safeguard Israel from evil influence, even from his own offspring, further emphasizes that, according to Deuteronomy, a parent's authority was to be exercised for the primary purpose of protecting and advancing righteousness—which by the grace of God's design was the only way to achieve well-being for his people.¹⁴⁷ From training in matters of covenant

¹⁴³This expression, “giving sons and daughters in marriage,” reflects modern idiom regarding marriage. In Hebrew, marriage typically is expressed as Israelite fathers “giving” (תָּתַן) their daughters and “taking” (קָיַץ) foreign daughters for their sons.

¹⁴⁴Deut 7:3-4.

¹⁴⁵Eng 13:6-11.

¹⁴⁶Timothy Willis also highlights the connection between Deut 21:18-21 and Deut 13:7-12 (Eng 13:6-11). See Timothy M. Willis, *The Elders of the City: A Study of the Elders-Laws in Deuteronomy*, SBLMS 55 (Atlanta: Society of Biblical Literature, 2001), 172, 178, 183-84.

¹⁴⁷The following verses all promise blessings and well-being as a reward for righteous and faithful behavior: Deut 4:40; 5:29, 33; 6:2-3, 18-19; 6:24-25; 7:9, 11-16; 8:1; 11:8-9, 13-16, 18-25; 12:28; 28:1-14; 29:8 (Eng 29:9); 30:1-10, 15-16. Yet Deut 9:4-5 provides a helpful corrective. Lest the Israelites

obedience to including children in religious celebrations; from cradling a small child to defending a grown daughter from a slanderous husband; and from putting food on the table to providing a worthy spouse—every aspect of Israelite parenting was to be driven by a concern for preserving and promoting righteousness in Israel.¹⁴⁸

Parental Authority Rejected

As discussed above, filial responsibility represented a fundamental virtue in the ancient Near Eastern social system. At the core of such responsibility was an underlying respect for the leadership of the HOH. The monochromatic picture of Israelite social structure typically presented in scholarship suggests that a HOH had nearly unquestioned authority. In reality, family tensions often ran high as grown sons sought to establish their own names in the household of an aging and perhaps ailing parent.¹⁴⁹ According to the biblical record, even some of the most influential men of history occasionally met with opposition as adult sons challenged their authority (e.g., Jacob and Reuben;¹⁵⁰ David and

interpret these blessings a result of their own goodness, Deuteronomy reminds the people that the blessings stem from YHWH's merciful and gracious character. Likewise, Deuteronomy spells out curses which will surely come as a result of unfaithful behavior: Deut 4:25-28 (here followed by the promises of 4:29-31); 6:15; 7:4, 10; 8:19-20; 11:16-17; 28:15-68; 29:17-27 (Eng 29:18-28); 30:17-18.

¹⁴⁸The well-being of the child and the community were the promised result of righteous behavior and acted as an incentive, but the *purpose* of the instruction was the protection and promotion of righteousness. Willis' view that the instructions involving elders are driven primarily by a pragmatic concern for the well-being of the community (*Elders of the City*, 184-85) should probably be modified.

¹⁴⁹Verbruggen explores the intergenerational tensions reflected in documents from the ancient Near Eastern world. While respect, honor and submission were required, they were not always given. See Verbruggen, "Filial Duties in the Ancient Near East," 144-87. See also Devora Steinmetz, *From Father to Son: Kinship, Conflict, and Continuity in Genesis*, LCBI (Louisville: Westminster John Knox Press, 1991); Bendor, *Social Structure of Ancient Israel*, 194-97; and H. W. Wolff, "Problems between the Generations in the Old Testament," in *Essays in Old Testament Ethics*, ed. J. L. Crenshaw and J. T. Willis (New York: Ktav, 1974), 79-94.

¹⁵⁰Gen 35:22.

Absalom¹⁵¹).

Ancient Near Eastern Parallels

While there is no exact parallel to the instruction in Deuteronomy 21:18-21, literary evidence from the ancient world reveals that parent/child relationships were not always idyllic. In his article on “Juvenile Delinquency in the Bible and the Ancient Near East,” David Marcus provides an extensive list of ancient Near Eastern texts that reflect a breakdown in parental authority.¹⁵² Although by no means comprehensive, Table 5 follows Marcus’ text selections to provide an overview of the different offenses and corresponding punishments discussed in the extra-biblical literature. The texts vary in genre (letters, law codes, adoption contracts, practice legal texts), in date and in location.

Many observations could be made from this chart, but caution must prevail as each text represents only a slice of a wide and varied tradition of guarding a parent’s honor. Compared to Deuteronomy 21:18-21, these punishments may seem mild, yet when taken at face value, most would agree that the acts of being disinherited (especially in a society in which social order revolves around family structure) or being sold as a slave represent rather extreme forms of “tough love.”

Two other ancient Near Eastern texts not included in Table 5 deserve notice. LH ¶ 195 reads, “If a child shall strike his father, they shall cut off his hand.”¹⁵³ This text

¹⁵¹2 Sam 13-18.

¹⁵²David Marcus, “Juvenile Delinquency in the Bible and the Ancient Near East,” *JANES* 13 (1981): 33-44.

¹⁵³Translated by Roth, *Law Collections*, 120.

Table 5. Offenses and punishments in extra-biblical literature^a

Text	Cent BC	A/B	Offense	Against Whom	Punishment
KAJ I, 6:17-23 (Assyrian)	12th	A	Disrespects	F	Shaved; Sold as slave
PRU III, 55:11-14 (Ugarit)	14th	A	Hates (rejects)	F	Disinherited
HSS V, 7:18-30 (Nuzi)	15th	A	Disrespects/ disobeys (2 or 3 times before judges)	F & M	Disinherited
LH ¶ 192 (Babylonian)	18th	A	Says, “You are not my father/mother”	F or M	Tongue cut off
LH ¶ 193	18th	A	Finds and returns to biological parents	F or M	Eye plucked out
YOS 2,50:5-12 (Babylonian)	18th – 17th	A	Runs away	M	Disinherited
Urkunden 215:31-34 (Babylonian)	18th – 17th	A	Does not provide clothing, oil and supplies		Disinherited
Urkunden 258:4-14 (Babylonian)	18th – 17th	A*	Does not provide clothing, oil and supplies		Disinherited (case before the court)
Ana Ittishu III:10-16 (Sumerian/Akkadian)	18th – 17th		Revolts, runs away, flees		Disinherited
Ana Ittishu 3, iv:40-43	18th – 17th	A	Hates (rejects)	F	Forfeited possessions
Ana Ittishu 7, iii:23-33	18th – 17th	B	Says “You are not my father”	F	Shaved; Sold as slave
Ana Ittiah 7, iii:23-33	18th – 17th	B	Says, “You are not my mother”	M	Humiliated; Disinherited
YBC 2177 rev. col. IV:4 (Sumerian)	18th – 17th	B	Says “You are not my father/mother”	F & M	Disinherited; Sold as slave

^a Due to restrictions of space, the following abbreviations have been used: A = Adopted Child (* = daughter), B = Biological Child, F = Father and M = Mother.

provides a partial parallel to Exodus 21:15, “He who strikes his father or his mother shall surely be put to death.” Although most noticeable is the radical difference in degree of punishment, as Marcus observes, the underlying principles remain the same.¹⁵⁴ In each culture, the punishment for striking a parent is significantly more extreme than that for striking any other member of society,¹⁵⁵ thus revealing the seriousness with which ancient Near Eastern cultures regarded parental authority and their interest in safeguarding that authority.

Finally, LH ¶ 168-69 addresses the case of a father who wishes to disinherit his son. Without specifying the grounds for disinheritance, the text stipulates that a man cannot disinherit his son after the first offense, even if he has just cause. A private adoption contract from fifteenth-century Nuzi also indicates that a son, this time an adopted son, cannot be disinherited until he has been called before the judges two or three times.¹⁵⁶ Like the son in Deuteronomy 21:18-21, a child is only severely disciplined after repeated offense.

Related Old Testament Texts

Even within the OT, Deuteronomy 21:18-21 has no exact parallel. However, many OT texts reiterate the seriousness of an offense enacted against parental authority. Aside from the positive injunctions to honor father and mother mentioned above (Exod

¹⁵⁴Marcus, “Juvenile Delinquency,” 33-34.

¹⁵⁵In LH ¶ 202-04 the punishment for striking a person other than a parent is either a flogging or a fine, depending on each party’s relative status. The punishment for a slave who strikes his master is that the slave’s ear be cut off (LH ¶ 205). See Roth, *Law Collections*, 121-22.

¹⁵⁶HSS V, 7:20-30. Presented and discussed by E. A. Speiser, “New Kirkuk Documents Relating to Family Laws,” *AASOR* 10 (1930): 34-35.

20:12; Deut 5:16), the Torah also includes negative injunctions designed to discourage a child from encroaching on the very serious business of a parent's honor. The acts of striking (נִכָּה) ¹⁵⁷ and belittling or despising (קָלָה/קָלַל) ¹⁵⁸ a parent are punishable by death. Furthermore, any sexual relationship between a grown child and his parents is strictly forbidden. Also prohibited to a son is any wife of his father—even if the woman is not his mother. ¹⁵⁹

This severe attitude toward offense against parents is not reserved for the prescriptive Torah. Israel's wisdom tradition reflects the urgency of a parent's proper training and a child's proper response. ¹⁶⁰ Yet when a child fails to demonstrate appropriate respect for authority, Proverbs' metaphorical description of his demise is almost harsher than the injunction in Deuteronomy 21:18-21. The images imply not merely death, but dishonor, hopelessness and shame by threatening the extinction of a person from Israel and the mutilation of his (neglected) corpse by wild animals. ¹⁶¹

The Characters

Deuteronomy 21:18-21 prescribes a procedure by which a father and mother take their son before the body of city elders. The cast of characters is simple: a stubborn,

¹⁵⁷Exod 21:15.

¹⁵⁸Exod 21:17; Lev 20:9. See discussion of the meaning of קָלַל in Joseph Fleishman, "Legal Innovation in Deuteronomy XXI 18-20," *VT* 53 (2003): 315-19.

¹⁵⁹Lev 18:7-9; Deut 23:1 (Eng 22:30). Transgression of this prohibition was a grave offense with serious ramifications (i.e., Reuben, Gen 49:3-4 and 1 Chr 5:1; Absalom, 2 Sam 16:21-22; and Adonijah, 1 Kgs 2:17, 22).

¹⁶⁰Prov 1:8-9; 4:1-9; 6:20-21; 10:1, 5; 13:1, 22, 24; 15:5, 20; 17:2, 6, 21, 25; 19:13, 18, 26; 20:7, 11, 21; 22:6, 15; 23:13-14, 22, 24-25; 28:7, 24; 29:3, 15, 17.

¹⁶¹Prov 20:20; 30:17.

rebellious and disobedient son, his father and mother, and the elders of his city.

The Son

This man is both an adult member of the community and a son subject to his parents' authority. While this situation sounds paradoxical to Western thinkers, it represents common reality in the ancient Near Eastern world where an אב maintained a level of authority over his sons until the time of his death.¹⁶² Two factors indicate that "son" here does not refer to a young child. First, the active participles indicate not a one-time action, but behavior that has come to characterize the son. The parents' discipline also must have been regular, in order for the son to rebel against it. This discipline (יִסָּר) most likely refers not only to chastening or punishment, but also to training and instruction,¹⁶³ again indicating a long-term process rather than a one-time occurrence. Second, the repeated use of the third masculine singular suffix ("the elders of *his* city," and "the gate of *his* place")¹⁶⁴ seems to identify the son as a member of society in his own right.¹⁶⁵ Although grown, the text indicates that this man would still be subject to his

¹⁶²The OT narratives provide many examples of this social arrangement. Consider Joseph who, although he was second only to the Pharaoh, considered himself a member of his father's household and subjected himself to his father's authority—even when Jacob was feeble and his health was failing, Gen 48.

¹⁶³"The vb. *ysr* specifically relates not to formal education but to the instilling of values and norms of conduct by verbal (hortatory) means or, after the fact, by rebuke or even physical chastisement. . . . There is a fine line between coercive instruction (discipline) and correction or even punishment, and the OT use of *ysr* reflects this ambivalence in numerous places." Eugene H. Merrill, "יִסָּר," *NIDOTTE*, ed. Willem A. VanGemeren (Grand Rapids: Zondervan, 1997), 2:479-80. For an example of each usage within Deuteronomy, see 4:36 (instruction) and 22:18 (discipline).

¹⁶⁴Emphasis mine (עִירוֹ Deut 21:19b, 20a, 21a; and מִקְמוֹ Deut 19b).

¹⁶⁵See also Deut 22:21; 25:8. In Deut 22:21 the suffix is feminine, corresponding to the slandered bride. This subtlety is significant because it clarifies that the suffix cannot be intended to represent the father.

parents' authority. For modern readers, the phrase "rebellious son" conjures up the image of a rude and disrespectful teenager. Yet this text is not referring to a son who is sullen or impolite. "Disobedience" assumes authority. In other words, this man is not merely dishonoring his parents with a smirk, a tone or an unflattering remark: he is willfully rejecting their authority.

One of the most difficult features of this passage is the characterization of this son. The seriousness of his punishment causes scholars to wonder what precisely he might do to deserve death. Two of the four verses in this text are devoted to defining this man, yet the exact nature of his "crime" remains elusive. Most treatments of this passage focus on the description of the son as "stubborn and rebellious"¹⁶⁶ with occasional reference to him as a "glutton and drunkard."¹⁶⁷ Surprisingly absent, however, is much discussion on "disobedient"—even though the accepted grammatical analysis understands the phrase "who refuses to obey" as in apposition to, and further explaining, "stubborn and rebellious."¹⁶⁸ This omission is surprising given the attention the text itself

¹⁶⁶For example, Joseph Fleishman understands the hendiadys **סוֹרֵר וּמוֹרֵד**, which he defines as wayward and defiant, as identifying the son. He understands the following phrases (not obeying, they discipline him, and he does not obey) as further defining the meaning of wayward and defiant ("Legal Innovation in Deuteronomy XXI 18-20," 312). This interpretation explains the intense interest in the terms **סוֹרֵר וּמוֹרֵד**. However, Fleishman's interpretation does not correspond to the grammar of the passage. The son in v. 18 is defined by three participles, two positive (the so-called wayward and defiant) and one negative (not obeying). These three terms, the first two probably a hendiadys, describe the son. A similar pattern is repeated in Deut 21:20, although this time two more participles are added as descriptors, these also a hendiadys. Stubborn and rebellious are the internal root of the outward disobedience, of which a telling manifestation is gluttony and drunkenness.

¹⁶⁷Many scholarly discussions focus on the phrase **זוֹלֵל וְסָבָא** (a glutton and a drunkard) and the implications of this phrase for understanding the redactional history of this passage, rather than the passage itself. Cf. Bellefontaine, "Rebellious Son" and Fleishman, "Legal Innovation in Deuteronomy XXI 18-20," 319-27.

¹⁶⁸See n. 166 above.

focuses on disobedience. The passage mentions that he is gluttonous and drunken only once, that he is stubborn and rebellious twice, but that he is disobedient—refusing to listen to the voice of his father and his mother—is stated three times, one of which occurs with a double object, emphasizing the completeness of his disobedience and virtually raising the count to four.¹⁶⁹ Relative to rebellion, disobedience is concrete and quantifiable. Continual disobedience stemming from a stubborn and rebellious spirit is deliberate and calculated. And the repeated rejection of corrective discipline indicates that this disobedience has become comprehensive and absolute.

What, then, might this son's act of disobedience involve? In another setting this question would be difficult to answer given the lack of direct contextual referents. However, considering the setting of this passage within the book of Deuteronomy with its emphasis on both the need for and the nature of parental instruction,¹⁷⁰ a conclusion may be offered. Deuteronomy's focus on parental instruction is exclusively concentrated on teaching the words and instructions of YHWH and the history of his mighty deeds on behalf of his people.¹⁷¹ Thus, rejection of parental instruction is tantamount to rejection of the Torah. It is not expected that this son has merely refused to telephone home on the holidays, bring the grandchildren to visit or build a parapet on his roof. Nor is it expected that he has committed a one-time malevolent act such as theft or the seduction of a young

¹⁶⁹Although she does an excellent job of establishing the continuity and the severity of סוֹרֵר וּמוֹרֵד (Bellefontaine, "Rebellious Son," 14-29), Bellefontaine ignores the focus on disobedience, stating rather that "the accusation brought forward by the parents is twofold: a) the son is stubborn . . . and rebellious . . . ; and b) he is a glutton . . . and a drunkard . . ." (ibid., 16).

¹⁷⁰Deut 4:9-10; 6:1-7, 20-25; 11:18-21; 32:46.

¹⁷¹According to Deut 6:20 these two elements of training are inseparable.

maiden. Rather, he has utterly refused to listen to the instruction and the discipline of his parents.¹⁷² Aside from breaking one of the fundamental commandments, complete rejection of parental authority within Israel is synonymous with rejection of YHWH's covenant relationship with Israel.¹⁷³ The punishment for the rebellious son is thus the same as the rebellious member of the covenant community.

In the father's address to the elders, the text includes a third description of this son, זֹלֶל וְסָבָא. Tigay has suggested that gluttony and drunkenness are examples of the many forms a child's rebellion could take.¹⁷⁴ Building on that suggestion, these two characteristics may represent examples of the tangible nature of a son's disobedience. Given the teaching in Proverbs,¹⁷⁵ gluttony and drunkenness are outward expressions of the foolish rejection of wisdom—whereby wisdom is understood as reverent adherence¹⁷⁶ to the covenant stipulations. These characteristics reflect complete and longstanding rejection of all the teachings of his parents, which, according to Deuteronomy, consist of all the words of the Torah.

¹⁷²He will not hear their voice, even after repeated instruction and discipline (Deut 21:18).

¹⁷³On the relationship between keeping the “statutes and commandments” and living a life of loyalty to Yahweh, especially as these elements are related to the supremacy of YHWH, see Peter T. Vogt, *Deuteronomistic Theology and the Significance of Torah: A Reappraisal* (Winona Lake, IN: Eisenbrauns, 2006), 197-98. According to McConville, “Rejection of parental authority is tantamount to breach of covenant in Israel” (*Deuteronomy*, 331). While he probably intended this statement to represent the seriousness with which the OT handles issues of authority, this statement neatly summarizes my interpretation of the son's behavior in Deut 21:18-19.

¹⁷⁴Tigay, *Deuteronomy*, 197. See also McConville, *Deuteronomy*, 331; and Driver, *A Critical and Exegetical Commentary on Deuteronomy*, 247-48.

¹⁷⁵Consider Prov 23:20-21 (within the larger context of chap. 23).

¹⁷⁶Understand “reverent adherence” to mean careful and fearful obedience.

The Father

The father described in this passage may be one of the most tormented figures in the OT. Not only has his son rejected his authority and thereby his participation in the covenant community, but now this father is called to exercise his authority in the most extreme form imaginable and to reject his own son, his heir and his hope for the future.

To appreciate this passage we must understand that it anticipates a situation in which everything has gone wrong. Within Israel, the family structure formed the skeletal framework of society with the HOH as its backbone. Even Israel's pagan neighbors understood the need for family stability and respect for authority. In this patricentric culture, a man was expected to respect and obey the wishes of his father even after he had established a family of his own.¹⁷⁷ However, respect, honor and obedience of authority are wholly lacking in the situation described in Deuteronomy 21:18-21. One can hardly imagine the level of shame it must have brought a father to have a son blatantly ignore his words. J. G. McConville suggests that a parent may have had practical reasons for turning such a son over to the elders, citing potential future shame, abuse of inheritance or physical threat to the parent or community.¹⁷⁸ Ironically, bringing him to the elders does not alleviate these difficulties. The process would involve shame, and this son's death would threaten the family line and leave these parents with one less child to care for them as they age. Either way, this father faces agonizing and humiliating results.

¹⁷⁷In fact, the Israelite head of household was so influential that King and Stager have suggested the role and structure of the Israelite monarchy developed from the familial paradigm, with the king representing the ultimate father figure. Philip J. King and Lawrence E. Stager, "Of Fathers, Kings, and the Deity: The Nested Households of Ancient Israel," *BAR* 28, no. 2 (2002): 42-45, 62.

¹⁷⁸McConville, *Deuteronomy*, 331.

The Mother

An Israelite mother's involvement in the lives of her children was not constrained by the borders of a family compound. The instructions of Deuteronomy demonstrate that an Israelite mother was an active participant both in defending¹⁷⁹ and prosecuting¹⁸⁰ her children. Although in other texts the father occupies the primary role while in the company of the elders,¹⁸¹ here the two parents act as one,¹⁸² an extraordinary feature of the text considering the patricentric nature of the community, and even more astonishing considering our own modern portrayal of that culture which often appears more *patriarchal* than *patricentric*.

This woman's parental authority is repeatedly affirmed in the text. First, disobedience to her instruction is listed as grounds for the death penalty.¹⁸³ Second, in response to her son's complete rejection of their authority, this woman is to join her husband in exercising that authority by force¹⁸⁴ in order to bring him before the elders. Third, as mentioned, she is to join her husband in declaring her accusations before the elders.¹⁸⁵ Finally, with regard to the outcome of this "trial," this woman stands to suffer

¹⁷⁹Deut 22:15.

¹⁸⁰Deut 21:19.

¹⁸¹Deut 22:16-17.

¹⁸²וְאִמּוֹ, Deut 21:20. I do not mean to argue that the parents necessarily spoke in unison. Rather, the text portrays them as united and does not give weight to one over the other, for example, by giving one a speaking role and thereby implying an elevated level of social recognition.

¹⁸³Literally, "not obeying . . . the voice of his mother" Deut 21:18.

¹⁸⁴Deut 21:19, וְהִכּוּהוּ "they shall seize," conveying a forceful taking hold of the person.

¹⁸⁵Deut 21:19.

the same loss as her husband.¹⁸⁶ Nothing in this text suggests that the mother's position or authority with regard to this son is in any way inferior to that of her husband. However, this observation of equality would be small comfort to the mother facing this responsibility toward her son even if for the sake of her community and for the purpose of preserving righteousness in Israel.

The Elders

The inclusion of the elders in this passage has generated much scholarly interest, not only among those who focus specifically on the role and function of the elders,¹⁸⁷ but also among scholars who seek a more humane, and in some ways more palatable, interpretation of this text.

Elders played an important role in ancient Israel and are frequently listed among the leaders of the people in the book of Deuteronomy.¹⁸⁸ The body of elders was most likely made up of heads of households. Not only would these men have agonized with a father facing the situation described in Deuteronomy 21:18-21, but they would have recognized the necessity of order, obedience and respect for authority. Furthermore, according to the book of Deuteronomy, elders were endowed with special responsibility in terms of proclaiming and preserving the Torah. In Deuteronomy 27:1 the elders join

¹⁸⁶In fact, this woman may face greater potential loss than her husband, considering her increased dependency on her sons in the event that she becomes a widow.

¹⁸⁷Cf. Willis, *Elders of the City*, 163-85; Don C. Benjamin, *Deuteronomy and City Life: A Form Criticism of Texts with the Word CITY ('ir) in Deuteronomy 4:41-26:19* (Lanham, MD: University Press of America, 1983), 211-21, 228; and Hans Jochen Boecker, *Law and the Administration of Justice in the Old Testament and Ancient East*, trans. Jeremy Moiser (Minneapolis: Augsburg City Life, 1980), 30.

¹⁸⁸Deut 5:23; 27:1; 29:10; 31:9, 28; 32:7.

Moses in instructing the people of Israel in the commandments of the Lord, and in Deuteronomy 31:28 the elders of the tribes are among the leaders whom Moses holds accountable for the predicted collapse of Israel. Finally, Deuteronomy 32:7 indicates an overlap in the role of the **זקן** and that of the elder in terms of training and instructing Israelites in the history of YHWH's mighty deeds among his people. This similarity in responsibility may be present because of the overlap in roles (an elder was an **זקן**), but is more likely to be explained in terms of functional overlap—elders were to Israel what the **זקן** was to his household.

In the passage at hand, the elders' main function seems to have been to provide a forum before which parents could bring their son when discipline failed to work. Practically speaking, their presence suggests an implementation of social order in which a relatively objective third party acts to protect both the parents and the son. Presumably the son would be protected from unfounded charges leveled against him by his parents. As members of the same community, the elders would have been able to substantiate or refute these charges. Moreover, this father and mother are to be protected from a son who shows no regard for his own parents' authority. More importantly, though, the presence of the elders demonstrates a community's response to a public problem. Although a family matter, this son's sin affects the entire community¹⁸⁹ and has national implications.¹⁹⁰

Some suggest that the involvement of the elders provides the key to

¹⁸⁹Note the phrase **וּבְעֶרְתָּ דֹרַע מִקִּרְבְּךָ** in Deut 21:21, “and you shall purge evil from your midst.”

¹⁹⁰See Deut 21:21 **וְכָל-יִשְׂרָאֵל יִשְׁמָעוּ וְיִירָאוּ**, “and all Israel will hear and fear.”

understanding the significance of this passage. According to this view, the necessity of elder involvement marks an evolution in parental authority. From narrative texts it appears that Israelite fathers once held autonomous authority over their children—including power over life and death.¹⁹¹ Scholars cite Judah and the death sentence he pronounced on Tamar as evidence of Abraham's intended sacrifice of Isaac and his earlier banishment of Ishmael.¹⁹² If the patriarchal period was characterized by absolute authority of the fathers, then the delimitation of that authority both by involving the mother and by demanding that the case be tried before elders marks an important legal innovation. Thus, the significance of Deuteronomy 21:18-21 would be not so much the harsh punishment of a son, but the restriction or societal control of an אב's authority.

While the presence of elders in Deuteronomy 21:18-21 does indicate a level of accountability for parental authority, this observation should not be allowed to overshadow the primary message of the text. First, the extent of paternal authority during the earliest days of Israel's history is difficult to establish. To use Judah's condemnation of Tamar as proof of parental authority is likely fallacious. Adultery, or prostitution, by a woman was worthy of death. It is Judah's perceived duty to expose Tamar to what she deserves (according to Judah's understanding, or lack thereof, at this point in the narrative).¹⁹³ Furthermore, while it appears that Judah had final say, he was not entirely

¹⁹¹For a discussion on the absolute authority of the head of household, see Raphael Patai, *Sex and Family in the Bible and the Middle East* (Garden City, NY: Doubleday & Company, 1959), 127-37.

¹⁹²For Tamar, see Gen 38. See also Gen 42:37; Judg 11:34-40; Zech 13:3. Tigay, *Deuteronomy*, 196. For Abraham, see Gen 22 and 21:8-14 respectively.

¹⁹³Genesis attests to weaknesses in Judah's character that cast suspicion on the appropriateness of his behavior in pronouncing judgment on his daughter-in-law. Although credited with saving Joseph's life, Judah was an accomplice in the kidnapping and sale of his brother (Gen 37:26-27), he did not follow through on his responsibility to provide a husband for his daughter-in-law (Gen 38:11, 14), and he slept

alone in his decision-making process, but operated within a social structure where others are present and even involved in the case. Any time a non-prescriptive text is used to confirm a social practice, one must exercise caution. By its very nature, a narrative or historiographic text reflects what *did* happen rather than what *should* have happened. Second, it is hard to imagine that the original audience would have understood the instruction recorded in Deuteronomy 21:18-21 as lessening the weight of their responsibility. The message of this text is burdensome and fearful. Trying to soften the blow leaves the reader with a bitter taste of incongruity as if one should now celebrate this passage, which requires that the severest of punishments be meted out against one's own flesh and blood.¹⁹⁴

While the presence of the elders may have protected sons from the capricious whim of a powerful and malevolent father figure, Deuteronomy 21:21 indicates that the purpose of the text, and of the elders' involvement, was to protect the community of Israel from an unrighteous, covenant-breaking, wayward son.

The Issue

The instruction in Deuteronomy 21:18-21 centers on the proper handling of a (grown) child who utterly and completely rejects the authority of his parents. Although the death penalty is always harsh, this son exhibits every characteristic of a man in open and persistent rebellion against YHWH. He is stubborn and rebellious. These attributes

with a woman he believed to be a prostitute (Gen 38:18). By Judah's own admission, his behavior toward Tamar is lacking (Gen 38:26).

¹⁹⁴See also Willis, *Elders of the City*, 163-85.

are characteristic of the hardhearted, the unbelieving, and in biblical parlance, the wicked.¹⁹⁵ He is repeatedly and unwaveringly disobedient to the instruction of his parents, thereby rejecting the covenant commandments and the history of YHWH's relationship with Israel.¹⁹⁶ And he is a glutton and a drunkard, characteristics of the ungodly who have rejected the wisdom of the Torah.¹⁹⁷ Despite every effort at intervention (discipline), the son in Deuteronomy 21:18-21 refuses to conform to the standards set forth in the covenant. From a theological perspective, this son is guilty of sin as grave as striking or cursing a parent, and as serious as adultery or murder. This son has turned his back on YHWH and his covenant—not by a one-time act of disobedience, but by a complete rejection of the relationship YHWH offers to Israel.

The central point of this passage is neither to strengthen parental authority¹⁹⁸ nor to delimit it.¹⁹⁹ The purpose is not to protect the parents from the son²⁰⁰ or the son from the parents.²⁰¹ While all of these are potential results and valid observations, the central purpose of this passage as stated in Deuteronomy 21:21 is twofold: (1) to purge evil from Israel's midst, and (2) that all Israel might hear and fear. The concern of Deuteronomy 21:18-21 is a family matter that has become a public issue in that this

¹⁹⁵Cf. Deut 9:7, 23-24; 31:27; Josh 1:8; 2 Sam 12:15 and Jer 5:23; 6:28-40; Hos 9:15.

¹⁹⁶Deut 4:9-10; 6:7, 20-25; 11:19-21; 32:46.

¹⁹⁷Prov 23:19-22.

¹⁹⁸Cf. Ridderbos, *Deuteronomy*, 221.

¹⁹⁹Cf. Tigay, *Deuteronomy*, 196.

²⁰⁰Cf. McConville, *Deuteronomy*, 331.

²⁰¹Cf. Wright, *Deuteronomy*, 235.

man's sin has threatened to subject the community to the curses of the covenant. The curses of the covenant are spelled out in the book of Deuteronomy²⁰² and apply to those who reject the covenant stipulations. The dangers of not removing an offender from their midst requires no guess-work or speculation. Such zealous commitment to preserving righteousness in Israel was rarely, if ever, practiced.²⁰³ According to OT accounts, the ultimate result of this lack of zeal was experienced in the exiles that took place later in Israelite history. In light of such agony and turmoil, the death of this obstinate and reprobate son no longer appears improperly harsh. The harshness was necessary and even critical. Further, the urgency to purge evil²⁰⁴ from the midst of the community takes on a renewed intensity when considered in light of the threatened curses of Deuteronomy.²⁰⁵

The death sentence called for in Deuteronomy 21:21 is to serve the dual purpose of removing the offense and reminding the people—inciting them to fear the Lord.²⁰⁶ The fear of God is always a difficult concept because of the pejorative connotations involved with the English word fear. Yet, according to Deuteronomy, the fear of the Lord is a fundamental element of the covenant relationship²⁰⁷ and is instilled

²⁰²Deut 11:26-28; 27:15-26; 28:15-68.

²⁰³One might wish to consider the zeal demonstrated by the Levites in Exod 32:25-29 as a form of such commitment to YHWH. However, no record exists of the instruction in Deut 21:18-21 ever being implemented.

²⁰⁴*HALOT*, 1:145-46. Instances of the purge formula in Deuteronomy include 13:6 (Eng 13:5); 17:7, 12; 19:13, 19; 21:9, 21; 22:21, 22, 24; 24:7.

²⁰⁵Deut 4:25-28 (here followed by the promises of 4:29-31); 6:15; 7:4, 10; 8:19-20; 11:16-17; 28:15-68; 29:17-27 (Eng 29:18-28); 30:17-18.

²⁰⁶See also Deut 13:12 (Eng 13:11); 17:12-13 where, like Deut 21:21, the death penalty to be imposed serves the purpose of causing the people to fear YHWH. See also Deut 19:19-20.

²⁰⁷Deut 10:12-22; 13:5 (Eng 13:4).

in his people through hearing his instructions and learning of his mighty deeds.²⁰⁸ The fear of YHWH in the book of Deuteronomy is directly linked with survival and prosperity,²⁰⁹ while not fearing YHWH leads to plague, destruction and exile.²¹⁰ Even in the harsh instruction of Deuteronomy 21:18-21, grace abounds in that the punishment for complete absence of fear of the Lord is designed specifically to instill that attribute in others.

Conclusion

The relationship represented in this passage—that of parent and child—captivates the reader. How can a parent consider bringing death to his or her own offspring in the name of righteousness? This passage involves a son who wants no part of YHWH's covenant with Israel. Deuteronomy teaches that, in order to preserve righteousness, extreme forms of evil must be removed from the midst of the community, i.e., idolaters, murderers, those who reject YHWH and incite others to do the same, and even those things that might lead others to go astray, such as intermarriage with idolatrous people groups. Therefore, it is not surprising or even extraordinarily harsh considering the standards of Deuteronomy, that such blatant rejection of YHWH should meet with the death penalty.

What is extraordinary is the manner in which Deuteronomy prescribes the

²⁰⁸Deut 4:10; 17:18-19 (fear comes from studying Torah—a record of the instructions and deeds of YHWH); 31:12, 13. Interestingly enough, these same elements that instill fear (hearing the instruction and the acts of God in history) are to be incorporated in the training of a child.

²⁰⁹Deut 5:29; 6:2, 24.

²¹⁰Deut 28:58-68.

issue be handled. It is not the neighbors who are bothered by this son's riotous behavior, the co-laborers who might have suffered from his deceit or injustice, or even the elders who carry heavy moral responsibility for the community who are called to deal with this man. It is his parents—those who were initially responsible for his training, who are most likely to have his best interests at heart, and who would be most burdened by the task before them. The weight of this responsibility as it is thrust on the shoulders of an already distraught set of parents is more than a testimony of the strength and importance of the family unit within ancient Israel. It is an indication of the immense responsibility of a parent, not just to his or her child, but to that child for the sake of the community: a responsibility ultimately driven by a love of righteousness above all. This righteousness required from the HOH the refusal to endanger his family and community for the sake of his own son and established his authority as subordinate to Israel's covenant with YHWH. Just as he was to protect his family members from external threats, so he was called upon, in the extreme, to sacrifice even a family member for the cause of righteousness. As elsewhere in Deuteronomy, a person's commitment to YHWH must surpass that of all other human relationships.²¹¹ As an offshoot of that commitment to YHWH and his covenant, a parent must train his or her child in the ways of the Lord as if that child's very life depended on it, for it well could. The task of parenting was not to be taken lightly.

Deuteronomy 22:13-21

The passage involving the slandered bride is pertinent to this study on two

²¹¹Deut 13:7-12 (Eng 13:6-11); 33:8-9.

counts. First, it regulates the actions that a husband may take against his new bride (and her father's house). Second, it addresses the responsibility of a HOH (and his wife) to protect his daughter both while she is in his household and even after she has married. Thus we are granted insight into the function and expected behavior of the אב in his role both as husband and as father.

For the text and translation of Deuteronomy 22:13-21, see Table 6.

The Setting

This lengthy passage is set against the backdrop of an Israelite society that placed a high value on sexual purity before marriage. The concern for the chastity of a young bride is not exclusive to Israel, but is reflected in the law codes of other ancient Near Eastern nations as well.²¹² In this ancient culture, sexual activity belonged not to an individual, but to an institution, namely to marriage.²¹³ Until a girl married, it was her family's responsibility to protect her purity, presumably from any promiscuous whim of her own as well as from the unwelcomed advances of another. This task ultimately fell to a girl's father, although other members of the household shared some of the weight of this responsibility.²¹⁴

An Israelite man facing marriage had the right to assume that his new bride

²¹²Cf. LL ¶ 33; SLEx ¶ 7-8; LH ¶ 130; MAL A ¶ 55-56; as presented in Roth, *Law Collections*, 33, 44, 106 and 174-75 respectively.

²¹³Cf. Richard M. Davidson, *Flame of Yahweh: Sexuality in the Old Testament* (Peabody, MA: Hendrickson, 2007), 335, 362.

²¹⁴In this passage a girl's mother is also involved in preserving her daughter's reputation (Deut 22:15). The OT narratives also suggest that a girl's brothers are intensely protective (Gen 34:13-31; 2 Sam 13:20-22).

Table 6. Text and translation of Deuteronomy 22:13-21

Text	Verse	Translation
כִּי־יִקַּח אִישׁ אִשָּׁה	13a	If a man takes a wife, and
וּבָא אֵלֶיהָ	13b	he goes in to her, and
וּשְׂנָאָהּ:	13c	he hates her, and
וְשָׂם לָהּ עֲלִילֹת דְּבָרִים	14a	he levels charges ^a against her, and
וְהוֹצִיא עָלֶיהָ שֵׁם רָע	14b	he sends forth an evil name concerning her, and
וַאֲמַר	14c	he says,
אֶת־הָאִשָּׁה הַזֹּאת לָקַחְתִּי		I took this woman and I drew near to her but I did not find tokens of her virginity. ^b
וַאֲקָרַב אֵלֶיהָ	14d	
וְלֹא־מָצָאתִי לָהּ בְּתוּלִים:	14e	
וְלָקַח אָבִי הַנֶּעֱרָ וְאִמָּהּ	15a	Then the girl's father, along with her mother, shall take, and
וְהוֹצִיאוּ אֶת־בְּתוּלֵי הַנֶּעֱרָ אֶל־זִקְנֵי הָעִיר	15b	bring forth the tokens of the girl's virginity to the city elders at the gate, and
הַשֹּׁעֲרָה:		
וַאֲמַר אָבִי הַנֶּעֱרָ אֶל־הַזִּקְנִים	16a	the girl's father shall say to the elders,

^a The Hebrew is awkward at this point **וְשָׂם לָהּ עֲלִילֹת דְּבָרִים**. Woodenly translated, “he set against her deeds of a word/matter.” With the aid of context this phrase is usually understood to indicate that the husband has leveled charges of shameful conduct against his wife. See also Deut 22:17a.

^b “Tokens of virginity” is used here to translate **בְּתוּלִים**. While the word **בְּתוּלָה** most likely refers to a woman, either concerning her youth or her virginity (*DCH*, “[289-90]” **בְּתוּלָה**...[**בְּתוּלָה**]), its usage in this passage refers to an object that can be brought before the elders (22:15) and is equated with the garment (**הַשִּׁמְלָה**) that is spread before the elders (22:17).

Table 6—Continued.

Text	Verse	Translation
אֶת־בִּתִּי נָתַתִּי לָאִישׁ הַזֶּה לְאִשָּׁה וַיִּשְׁנָאָהּ:	16b 16c	I gave my daughter to this man as a wife, and he hated her.
וְהִנֵּה־הוּא שֹׂם עָלֶיהָ דְּבָרִים לֵאמֹר	17a 17b	See, he leveled charges against her saying,
לֹא־מָצָאתִי לְבִתִּי בְּתוּלִים	17c	I did not find your daughter's tokens of virginity
וְאֵלֶּה בְּתוּלֵי בִּתִּי	17d	but these are the tokens of my daughter's virginity.
וּפָרְשׁוּ הַשְּׂמָלָה לִפְנֵי זִקְנֵי הָעִיר:	17e	And they shall spread the garments before the elders of the city.
וְלָקְחוּ זִקְנֵי הָעִיר־הַהוּא אֶת־הָאִישׁ וַיִּסְרוּ אוֹתוֹ:	18a 18b	Then the elders of that city shall take the man, and they shall discipline him, and
וַעֲנֹשׁוּ אוֹתוֹ מֵאָה כֶּסֶף	19a	they shall fine him one hundred (pieces) of silver, and
וְנָתְנוּ לְאָבִי הַנַּעֲרָה	19b	they shall give (these) to the girl's father
כִּי הוֹצִיא שֵׁם רָע עַל בְּתוּלַת יִשְׂרָאֵל	19c	for he caused to go forth an evil name concerning the virgin of Israel
וְלֹו־תִהְיֶה לְאִשָּׁה	19d	and she will be his wife
לֹא־יִוָּכַל לְשַׁלְּחָהּ כָּל־יָמָיו: ס	19e	and the man will not be permitted to divorce her all his days.

Table 6—Continued.

Text	Verse	Translation
וְאִם־אִמְתָּ הִיא הַדָּבָר הַזֶּה	20a	↓ But if there is truth to this word
לֹא־נִמְצְאוּ בְּתוּלִים לַנַּעַר:	20b	↓ tokens of the girl's virginity are not found,
וְהוֹצִיאוּ אֶת־הַנַּעַר אֶל־פֶּתַח בֵּית־אָבִיהָ	21a	then they will send the girl forth to the door of her father's house, and
וּסְקִלֶיהָ אַנְשֵׁי עִירָהּ בְּאֲבָנִים	21b	the men of the city shall stone her with stones, and
וּמָתָהּ	21c	she will die
כִּי־עָשְׂתָה נְבִלָה בְּיִשְׂרָאֵל	21d	⌞ for she has done foolishness in Israel
לְזָנוֹת בֵּית אָבִיהָ	21e	⌞ by fornicating ^c in the household of her father, and
וּבַעֲרַת הָרָע מִקִּרְבָּךְ: ס	21f	you will purge evil from your midst.

^c For the modal use of the infinitive, see *IBHS* 36.2.3e and *Joüon* 2:§124o.

had never been with another man. In fact, Deuteronomy states that if this woman had been with another before she was betrothed, the other man was to have married her²¹⁵—possibly because the sexual act itself was related to marriage,²¹⁶ but also because, by sleeping with the girl, the man had reduced her chances of finding marriage elsewhere.²¹⁷ The husband's accusations of premarital unfaithfulness in Deuteronomy 22:13-17 bring great shame on the bride's household of origin and could, quite literally, end this woman's life.²¹⁸

A secondary setting to consider in these verses involves the legal arena in which this family matter is handled. The legal system of Israel has generated a great deal of discussion, especially with regard to the function of city government²¹⁹ and the role of the elders.²²⁰ While this case contains definite legal aspects, the overlap between city government and everyday life was greater then than our rigid and carefully defined legal systems today.²²¹ Elders were not strangers but fellow members of the Israelite

²¹⁵Deut 22:28-29.

²¹⁶See Hugenberger, *Marriage as a Covenant*, 240-79.

²¹⁷Compare the story of Tamar and Amnon. Not only does Tamar never marry after Amnon rapes her (2 Sam 13:20), she responds with more horror at being sent away following the rape than at the rape itself (2 Sam 13:16). Cf. SLEx ¶ 7-8 and MAL A ¶ 55, ¶ 56; presented in Roth, *Law Collections*, 44 and 174-75.

²¹⁸ To compare other treatments of accusations of sexual misconduct from the ancient Near Eastern world, see: LU ¶ 14; LL ¶ 33; MAL A ¶ 17-18. Roth, *Law Collections*, 18, 33, 159.

²¹⁹See Boecker, *Law and the Administration of Justice*; and Benjamin, *Deuteronomy and City Life*.

²²⁰See Willis, *Elders of the City*.

²²¹The following observations touch on commonly debated elements of Deut 22:13-21. The presence of the elders in many of these so-called "family-laws" piques scholarly interest in the legal system of ancient Israel. Thus this passage is frequently treated in terms of its legal setting. General questions are asked of the text, such as: What do these verses reveal about the role of the elders in ancient Israel? Or, what did Israelite city government look like? On matters pertaining to the specific issue at hand, inquiry is

community,²²² and today's distinction between plaintiff and defendant may be more formal than in the legal practices of Israel.²²³ Although not a legal textbook, the language of Deuteronomy suggests that a case brought before local government was not handled as a case of plaintiff versus defendant, but as a situation of dispute between brothers in which either party could be declared guilty or innocent.²²⁴

That said, the Deuteronomic family texts involving elders evidence a high degree of structure on the literary level that may correlate to structure on a practical level. Daniel Block has identified a pattern that incorporates all three family texts in which elders are included.²²⁵ Likewise Don Benjamin presents the shared formal elements of Deuteronomy 22:15-17 and Deuteronomy 21:18-21, two texts that align closely with regard to structure.²²⁶ Rather than prescribe precise legal protocol, the instruction in Deuteronomy 22:13-21 provides for this matter to be handled in a controlled manner before the elders. Thus a husband may not simply defame his wife and then send her

concentrated around the task of identifying the plaintiff versus the defendant (husband versus wife, husband versus father, or father versus husband) and defining/defending the relationship between this injunction and the penalty against false testimony in Deut 19:16-19. Cf. Pressler, *View of Women*, 22-31; Clemens Locher, *Die Ehre einer Frau in Israel: Exegetische und rechtsvergleichende Studien zu Deuteronomium 22,13-21*, OBO 70 (Göttingen: Vandenhoeck & Ruprecht, 1986), 373-80; and Anthony Phillips, *Ancient Israel's Criminal Law: A New Approach to the Decalogue* (Oxford: Basil Blackwell, 1970), 115 n. 28.

²²²Thus the elders would likely have been familiar with the accusations whether they were made formally in their presence or maliciously spread as rumors throughout the community.

²²³Cf. Boecker, *Law and the Administration of Justice*, 31-35.

²²⁴Deut 1:16; 19:17; 25:1. In the American legal system, the purpose of hearing a case is to resolve a given citizen's complaint. In the Israelite system, the practical purpose was to pursue and re-establish righteousness and communal harmony. Cf. Willis, *Elders of the City*.

²²⁵Deut 21:18-21; 22:13-19; and 25:5-10. See Block, "Gospel According to Moses," s.v. "Deuteronomy 22:13-21." His literary divisions include The Issue, The Judicial Response, The Verbal Charges and The Sentence.

²²⁶Benjamin, *Deuteronomy and City Life*, 228.

away (social death), nor may he execute her (actual death).²²⁷ Moreover, the parents of the bride are offered a public arena in which to defend their daughter and themselves.

The Characters

This passage consists of three sets of characters: a new husband and wife, a father and mother, and the elders. The stated issue connecting these characters is the matter of the woman's purity at the time of her marriage. However, an underlying tension connects the characters at a deeper level, namely the issue of authority. As husband, this man has the right to assume his bride's sexual purity has been preserved for him. By claiming that such is not the case, he is challenging his father-in-law's execution of authority up to the time of the wedding. The woman's parents answer this challenge by showing proof of their diligent watch over their daughter. In so doing, they not only defend their own name, but call into question this husband's treatment of his bride. To the extent that a man has a level of authority over his wife, this husband has either abused that position by slandering her character publicly, or considered her behavior a threat to the community. Yet neither the authority of the father nor the husband is absolute, as demonstrated by the presence of the elders in this situation.

The Bride

This passage concerns a young, newly married Israelite woman. According to custom, her husband would have been chosen for her based, not solely on the mutual

²²⁷Cf. MAL A ¶ 14-15 (see also MAL A ¶ 59) with an emphasis on a husband's right to handle a wife's infidelity any way he deems appropriate. Roth, *Law Collections*, 158, 175-76.

attraction of the pair, but on whatever factors her parents deemed admirable.²²⁸ While OT narratives contain many examples of family conflict, marriage relationships are often portrayed as strong and communicative, especially in matters relating to children. Still, in a society in which the well-being of a woman depended on the provision, protection and simple thoughtfulness of the men in her life, the risk of marrying poorly must have been a terrifying thought. For similar reasons, she would have spent most of her life preparing to be the best wife possible—not just so that she might marry well, but so that she might have the skills necessary to make the transition to her husband’s household as smooth as possible. Her preparation would have required that she learn all the skills of her mother. In Israel, it also involved honoring her future marriage by guarding her virginity.

Although the passage revolves around her, this bride has virtually no active role. However, it would be presumptuous to assume from this passage that women in ancient Israel were without a voice.²²⁹ The presence and participation of the girl’s mother contradict any such notion of female helplessness. Rather, the idea behind this passage is that the bride is either guilty or innocent, as the evidence will indicate. Richard Clifford suggests that this girl’s parents are called to her defense because of her youth and inexperience.²³⁰ However, it is more likely that her word would carry little weight once

²²⁸See discussion in Marsman, *Women in Ugarit and Israel*, 51-54. Marsman’s analysis fits what we know of cultures like Israel (consider, for example, Isaac for whom Jacob sought a bride based on her family lineage). However, one must also allow the beautiful picture of intense, mutual attraction in Song of Solomon and the desire both of Shechem for Dinah (Gen 34:2-4) and Samson for the woman in Timnah (Judg 14:1-2) to inform our understanding of Israelite marriage arrangements.

²²⁹Cf. Gen 24 where Rebekah is consulted by her brother and her mother for her approval following an offer of marriage.

²³⁰Clifford, *Deuteronomy with an Excursus on Covenant and Law*, 120.

her reputation has been called into question. Rather than a sign of her weakness, it is a sign of the strength of the family structure that her parents are called to her aid even after she has moved into another household. It is equally an indication of the value placed on her that her new husband cannot dismiss her without providing an opportunity for her defense.

The Husband

Upon marriage, an Israelite woman typically left the household of her father to join that of her husband. With this shift in locale came a shift in authority and responsibility.²³¹ But instead of the expected, “he married her and he loved her,”²³² this husband married her and “hated” her—a far cry from the paradigmatic relationship of Isaac and Rebekah. The term “hate” is frequently used in covenant contexts to denote the breeching of a covenant bond.²³³ This husband does not just feel antagonism toward her,

²³¹See Num 30:3-15. See also Marsman, *Women in Ugarit and Israel*, 84.

²³²Gen 24:67, וַיֵּקַח אֶת־רֵבְקָה וַתְּהִי־לֹוֹ לְאִשָּׁה וַיֹּאדָהְבָּהּ.

²³³Deut 5:9; 7:10. Hate (שָׂנֵא) here is seen as the antithesis of love (אָהַב). Moran defines the love between YHWH and his people in the book of Deuteronomy as “a love that can be commanded. It is also a love intimately related to fear or reverence. Above all it is a love which must be expressed in loyalty, in service, and in unqualified obedience to the demands of the Law . . . It is, in brief, a love defined by and pledged in the covenant—a covenantal love.” Moran, “The Ancient Near Eastern Background of the Love of God in Deuteronomy,” 78. See also Ackerman, “The Person Is Political,” 437-58. Ackerman does not go so far as to state that the interpersonal use of “*’āhēb*, *’ahābā*” in the OT is identical to the political use. However, she does point to the interconnectedness between the two. As used in the male-female, parent-child, and divine-human relationships, *’āhēb*, *’ahābā* is one-sided and is attributed to the hierarchically superior partner. Ackerman, “The Person Is Political,” 447. While Ackerman does not deny the emotive element of *’āhēb*, *’ahābā* in interpersonal relationships, she emphasizes a fluidity of meaning that allows it to include “the hierarchical construing of love that more typically characterizes Israel’s suzerain-vassal covenant relationship with Yahweh” (“The Person Is Political,” 457). Interestingly, Ackerman also points to the potential abuse when the dominance of this hierarchical relationship becomes instead domination. The scriptures, she argues, do not condone such abuse (“The Person Is Political,” 456-57). The husband in Deut 22:13 is teetering along this line when, as the hierarchical superior figure, he offers “hate” instead of “love.”

but actively sets out to ruin her reputation. Obviously this counters the unity intended in an ideal marriage relationship. If his bride is innocent, this husband's behavior is horribly abusive. If she is guilty, then she would already have broken the covenant of marriage by not honoring the sanctity of the sexual relationship within that context. And he will have rejected her and his relationship with her, for that reason.

The Father of the Bride

The charge brought against this woman by her husband appears to stem from a time when the bride still lived in her father's house—either during her childhood or her betrothal period. Thus the woman's parents, her father along with her mother,²³⁴ are called on the scene. In this text, the parents form a united front, although the father assumes the more active role in the public setting. As a faithful parent, he is responsible to provide evidence of his daughter's purity up to the time when he gave her to her husband on her wedding day. In the event that he can provide such evidence, he not only clears her name, but also calls his new son-in-law to task for wrongfully questioning his daughter's purity. In clearing his daughter's name, he also clears his own by demonstrating that he has reared a virtuous daughter and protected her from anyone who might wish to take advantage of her. His charge against the slanderous husband is an extension of his protection of her and his household. The picture of successful parenting according to this passage includes physical protection, social security, and the cultivation of moral integrity in one's children.

²³⁴Joüon 2:§150p. Note the *vav of accompaniment* in Deut 22:16.

The Mother of the Bride

The inclusion of the girl's mother in this passage is remarkable. In this patricentric culture, she stands alongside her husband, before the elders, to defend her daughter.²³⁵ One might also suspect that she played an even greater role in the moral and practical instruction of this daughter in matters of sexual purity than did her father, for such is naturally the role of a mother. The impression from this text is that, within the family setting, both parents carry the authority and bear the responsibility with regard to their children, while in the judicial and/or social setting the father ultimately represents his household in both authority and responsibility.

The Elders

As noted above, the elders of the city are not strangers, but also husbands and fathers residing in the same city.²³⁶ They have the responsibility of purging evil from the midst of the community. Their involvement in this issue emphasizes the communal effect of any sinful act, even one as private as this.

While the elders hold the authority to impose drastic disciplinary measures, they do not appear to have any real decision-making authority here. The evidence determines the verdict, and the punishments are prescribed by this instruction. The elder's primary purpose is to provide a public forum in which to air the dispute. In this way charges of impurity progress from malicious gossip to public concern, and the sinful

²³⁵See also Deut 21:18-22 where the mother is involved in a life and death decision regarding her grown child.

²³⁶Deut 22:15, 17, 18.

behavior can be addressed.²³⁷ Just as importantly, this public arena ensures that the situation is handled fairly. If individuals are allowed to resolve their own problems, the stronger usually prevails, resulting in the abuse of power rather than the establishment of justice. Providing a public forum offers the bride and her family the opportunity to defend her innocence and lessens the chance that she will be falsely accused or executed for a sin she did not commit. In the case of a woman's innocence, the elders provide her with an additional layer of defense. In the same way they are responsible to defend the community—either from the sin of premarital promiscuity or from the execution of an innocent bride.

The Issue

The issue at the forefront of this passage involves a woman's sexual purity at the time of marriage. This issue not only defines the arrangement of the passage,²³⁸ it also

²³⁷Deut 22:21. The call to purge the evil from the midst of the community indicates the severity of the alleged incident and the necessity of action on the part of the people. See further discussion below.

²³⁸The full treatment of the issue is often divided into two sections, Deut 22:13-19 assuming the woman's innocence, and Deut 22:20-21 stipulating her punishment should she be found guilty. Based on the assumption that the original law would have been short and simple, Locher systematically strips away all elements of the text that he considers evidence of a later redactor based on theologically driven phrases, stylistic variation, and internal inconsistencies. Clemens Locher, *Die Ehre einer Frau in Israel*, 47-67; idem, "Deuteronomium 22:13-21: Vom Prozeßprotokoll zum kasuitischen Gestezt," in *Das Deuteronomium: Entstehung, Gestalt und Botschaft*, ed. Norbert Lohfink (Leuven, Netherlands: Peeters, 1985), 298-99. He concludes that the first section (22:13-19—most of which he discarded as secondary) would have been based on an actual trial while the later portion (22:20-21) would have been added secondarily to form the passage into a case law.

Locher's dismantling of the text seems unnecessary, as many of the instructions in Deuteronomy are treated in two sections including either a case and a counter-case (Deut 25:5-10) or a case and a sub-case (Deut 21:10-14). Further, Block points to a similar structure in the Code of Hammurabi (involving a lengthy case including a verbal charge, involvement of authorities and an investigation to determine guilt followed by a shorter counter-case without these elements), whose unity and validity are unchallenged. LH ¶ 142-43; cf. Roth, *Law Collections*, 108. Block further argues that Moshe Greenberg's criteria for determining authenticity in Ezekiel apply here in Deuteronomy ("Gospel According to Moses," s.v. "Deuteronomy 22:13-21"). See Moshe Greenberg, "What Are Valid Criteria for Determining Inauthentic Matter in Ezekiel?" in *Ezekiel and His Book: Textual and Literary Criticism and Their*

explains its placement within Deuteronomy 22.²³⁹ However, as verse 21 indicates, the matter of the sexual purity of the bride (or the lack thereof) extends far beyond the woman and even beyond her marriage relationship. According to Deuteronomy 22:13-21, sexual promiscuity²⁴⁰ is a sin that involves the woman, her father's household under whose authority she sinned,²⁴¹ and ultimately the land of Israel. Far from an individual

Interrelation, ed. J. Lust, BETL 74 (Leuven: Leuven University Press/Peeters, 1986), 123-35.

²³⁹Chapter 22 addresses a number of situations involving inappropriate sexual behavior. Unfortunately full treatment of these texts falls beyond the scope of this paper. Deuteronomy 22:13-21 is included in this study because of the involvement of both husband and father. However, Deut 22:13-21 is part of a larger context that deals specifically with the place of sexuality in Israelite culture and general male-female relationships, focusing specifically on extra-marital sexual encounters, including the case of a man sleeping with a married woman who is not his wife (22:22), a betrothed woman who does not resist him (22:23-24), a betrothed woman who is helpless to resist him (22:25-27), and a young, unbetrothed woman (22:29). Implied in each of these cases is the fact that the couple is either caught in the act or reported. In any event, both the man and the woman are implicated. But what about the case when a man finds that a woman who is supposed to be a virgin is not? In this case the community can assume there has been foul play even if they cannot find the corresponding male participant. For further comment on the structure of Deut 22:13-29, see Pressler, *View of Women*, 21 n. 1, including her counter of Gordon J. Wenham and J. G. McConville, "Drafting Techniques in Some Deuteronomic Laws," *VT* 30 (1980): 248-52.

The indictment of the woman (and not of a man) in Deut 22:21 causes some to conclude that Deuteronomy evidences inconsistent sexual expectations between men and women (cf. Ridderbos, *Deuteronomy*, 224-25.) Yet considering the patricentric nature of the culture (particularly evident in its language) certain features of chap. 22 should be noted. First, these instructions are addressed to men with the purpose of defining which women are off-limits to them. Second, if a man may not sleep with a woman who is married or betrothed to someone else, and a father is to protect his daughter from sleeping with anyone before she is married, then a man in Israelite culture was restricted to his wife—making sexual relations within marriage the same standard for both genders. (See also Davidson, *Flame of Yahweh*, 361.) The fact that a man is not held accountable in Deut 22:13-21 is probably due to the fact that his guilt cannot be established, rather than an indication that he was not guilty. As unbalanced as it may appear today, the execution of this woman confirmed the standard to which Israel was held accountable—as opposed to the subjectivity expressed in the laws of some of her neighbors in which the degree of punishment for one party was dependent on the punishment inflicted on the other (MAL A ¶ 14), or in which the offending male was set free or fined while the father or husband was free to punish the woman in any manner he chose (MAL A ¶ 14, ¶ 16 and ¶ 56). (See Roth, *Law Collections*, 158-59, 175.) In Israel, not even the elders had the authority to decide what level of punishment was appropriate. If someone could be proven guilty of intentional extra-marital sexual relations, he or she was to be executed.

²⁴⁰Indicated by זָנָה in Deut 22:21.

²⁴¹לְזִנוּת בֵּית אָבִיהָ (Deut 22:21) See also Pressler, *View of Women*, 30; and Phyllis A. Bird, "To Play the Harlot: An Inquiry into an Old Testament Metaphor," in *Gender and Difference in Ancient Israel*, ed. Peggy L. Day (Minneapolis: Fortress Press, 1989), 77.

matter, a woman's premarital act of sexual unfaithfulness affects the entire community. The purpose of Deuteronomy 22:13-21 is to instruct the people to purge this evil from their midst.

From the Deuteronomic perspective, the sin of the woman is established as a transgression of the covenant relationship. Further, the woman's guilt extends far beyond the woman herself. The concentric circles of Figure 1 represent the scope of the effect of this woman's sin upon the community. In terms of guilt, the first and most obvious person affected by premarital fornication is the woman herself.²⁴² After their wedding and their wedding night, the husband has come to suspect that his wife was not a virgin. If בְּתוּלַי הַנֶּעֱכָר is a reference to some sort of cloth from the wedding night, his suspicions may arise from the lack of bleeding expected during a woman's first sexual experience.²⁴³

The description of her sin (נִבְכָּלָה)²⁴⁴ and the punishment prescribed (stoning) demonstrate that a promiscuous woman is guilty of a grave sin in the eyes of YHWH.²⁴⁵

²⁴²This discussion is not directed toward those who are wounded by her action, in which case the husband would be included. The issue at hand is limited to those who are culpable.

²⁴³Such is the traditional understanding of this passage. Gordon Wenham argues for a different understanding. Arguing that בְּתוּלָה means "girl of marriageable age," he suggests this proof would include signs of menstrual blood, the absence of which, Wenham argues, would demonstrate that the girl got pregnant during her time of betrothal. Thus, Deut 22:13-21 is not about premarital promiscuity, but adultery. Gordon Wenham, "Bēṭūlāh 'A Girl of Marriageable Age,'" *VT* 22 (1972): 326-48. See also John H. Walton, "בְּתוּלָה," *NIDOTTE* 1:781-84. While his fundamental understanding of the Hebrew term בְּתוּלָה is sound, some uses of the term clearly indicate virginity (Lev 21:13-14; Ez 44:22); see Locher, *Die Ehre einer Frau*, 121-238; Pressler, *View of Women*, 26-27. The idea that a husband would sleep with his wife on their wedding night, and then accuse her of having had a previous affair when she ends up pregnant is hard to reconcile. Furthermore, lack of menstruation is not proof of any illicit relationship. The situation then becomes one of hearsay and opinion—the very thing Deut 22:13-19 seems to go to great lengths to avoid. See further discussion on the identity of the בְּתוּלָה in Mayes, *Deuteronomy*, 310; and Anthony Phillips, "Another Look at Adultery," *JSOT* 20 (1981): 7.

²⁴⁴Cf. Gen 34:7; Josh 7:15; Judg 19:23, 24; 20:10; 2 Sam 13:12; Jer 29:23.

²⁴⁵The man with whom this woman sinned is guilty as well. Deuteronomy 22:23-29 addresses the issue of how to handle him—if he can be identified. However, this passage leaves the man unaddressed.

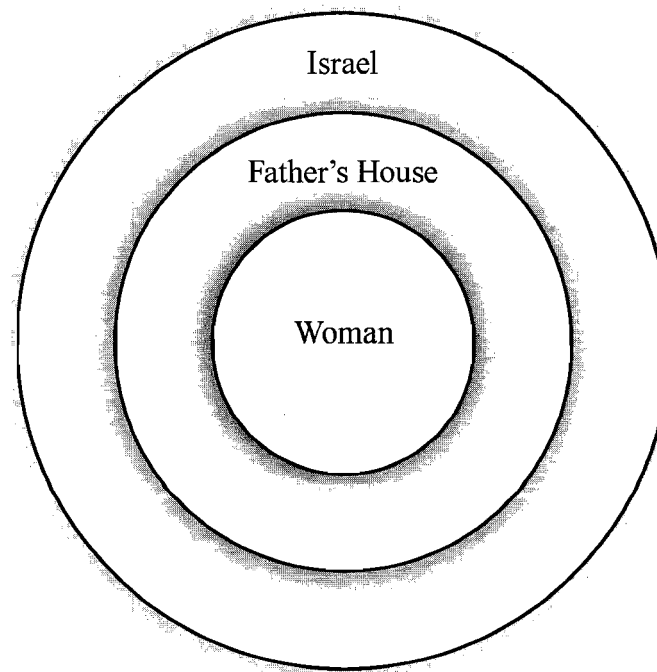


Figure 1. The extension of the woman's guilt under the covenant

The woman's impurity²⁴⁶ affects more than just her marriage relationship and herself. It affects the household of her father, for it was while living in his home and under his authority that her purity was compromised.²⁴⁷ The father's culpability is reflected in the

Cf. Willis, *Elders of the City*, 228 n. 98.

²⁴⁶Assuming her guilt. The text allows that the charges of impurity may be false, but at this point in the paper, the goal is to establish the severity and extent of premarital promiscuous behavior. Considerations of her innocence will be handled below.

²⁴⁷Such strong concern for the father's name can appear to the modern reader as misplaced or even inappropriate. First, why should he be held liable for the actions of another? Second, and more to the point, the focus on the father in terms of the payment of the penalty seems unreasonable and unfair considering that it is the woman who has been slandered. Yet, if one concedes the patricentric mindset of the text and is willing to look past the initial offense, this concern for the father's reputation, especially when expressed as it is here, serves as an advantage to the women under his protection. In any culture, no matter how barbaric or refined, a woman is at risk of becoming sexual prey. The father's zeal for his reputation serves to protect her from unwelcomed sexual advances. Further, it provides a system of "checks and balances" during the time when the woman is transitioning from the authority of her father to that of her husband. The risk of marrying poorly is another universal concern, but in a system of defined male authority it can pose an even greater risk to women. If the slandered woman's father is as ignoble as her

text in three ways. First, the husband of the woman appears to make a case against the father and mother as much as against the bride. Second, it is the father and mother who answer his charge in defense of their now married daughter. Third, in the event of the bride's guilt, the father faces severe punishment.

While the second element of the above argument is self-evident, the first and third require some explanation. From this passage it is difficult to reconstruct the specifics of the legal scene as it might have unfolded within ancient Israel. Don Benjamin interprets this passage as a charge of fornication brought by a husband against his wife.²⁴⁸ However, hermeneutical conflict arises when Benjamin reads Deuteronomy 22:18-19 in light of Deuteronomy 19:16-19 which states that, in the event of false testimony, the punishment for the accuser must equal that intended for the accused.²⁴⁹ Thus one would expect that, in the event of the woman's innocence, her accuser (husband) would receive the death penalty. Carolyn Pressler suggests that this intertextual dilemma is more apparent than real in her interpretation that the formal charge is that brought by the father against his son-in-law for defaming the woman's good name.²⁵⁰ Another option is that the

husband, then at least a concern for his own reputation will prompt him to her defense. Further, the fact that parental involvement is both accepted and encouraged challenges the notion that females were not highly prized members of a father's house or that a husband's authority over his wife was absolute—though both are pictures frequently painted in modern reconstructions of the Israelite household.

²⁴⁸Benjamin, *Deuteronomy and City Life*, 229-30.

²⁴⁹Benjamin interprets the discrepancy between Deut 22:13-19 and 19:16-19 as suggesting that (1) Deut 19:16-19 does not apply to heads of household (in his reasoning, even elders of the community do not have the authority to execute someone as powerful as a head of household), and (2) Deut 19:16-19 applies only to the testimony of one man against another (not against a woman). Benjamin, *Deuteronomy and City Life*, 229-30. These conclusions, especially when cited together, render the instruction in Deut 19:16-19 virtually null and void. If the instruction does not apply to women or to married men, this instruction's window of application is so insignificant one wonders why it would even be included in the book.

²⁵⁰Pressler, *View of Women*, 23-25. Pressler does not deny that the ancient Israelite legal

son-in-law brings a charge against his father-in-law for providing him with a bride under false pretences of purity.²⁵¹ Bruce Wells builds a formidable case for this option by pointing out the correlation between the punishment of the husband (should the bride be found innocent) and the consequences for the father (should she be found guilty).²⁵²

This scholarly discussion may be overly influenced by the American legal system and its rigorous distinction between plaintiff and defendant. The hypothetical situation described in Deuteronomy 22:13-21 involves a dispute between brothers, i.e., fellow Israelites (אֲחֵי). Moreover, the above debate evidences an incomplete grasp of the seriousness and the extent of the issue involved. The effects of impurity are not confined to the bride alone, nor do the shameful accusations affect only the father's household.

Regarding the legal structure of Deuteronomy 22:13-21, the instructions in Deuteronomy 1:16; 19:17 and 25:1 suggest that cases were handled as disputes among brothers with opportunity granted for both parties to register their complaints. Thus, the charge of a husband against his wife (for alleged impurity) and against his in-laws (for alleged misrepresentation) would have been considered alongside the concurrent charges by the mother- and father-in-law that this husband has slandered their daughter's name.²⁵³

Regardless of the formal charge initially made, the father in this example

system was more flexible than the American system, and even allows that the plaintiff of a case could later become the defendant.

²⁵¹Phillips, "Another Look at Adultery," 6-9.

²⁵²Bruce Wells, "Sex, Lies, and Virginal Rape: The Slandered Bride and False Accusation in Deuteronomy," *JBL* 124 (2005): 41-72.

²⁵³Although they do not address the issue in this manner, both Willis and Davidson discuss the implications this case has on all three parties: the bride, her husband and her parents. Willis, *Elders of the City*, 222-28; and Davidson, *Flame of Yahweh*, 354-57.

understands that he is implicated with his daughter's guilt. While the husband's words in 22:14 explicitly refer only to a complaint against the bride, the father's restatement of the charge indicates that he takes the accusation personally.²⁵⁴ Further, the indictment against the husband in the case of the woman's innocence reflects a reversal of the consequences against both the father²⁵⁵ and the bride.²⁵⁶

Regarding the third point, namely that the father suffers severe punishment should the bride be found guilty of sexual misconduct prior to marriage, traditionally the focus has been on the element of shame involved in this punishment. Deuteronomy 22:21 states that, if guilty, the woman is to be stoned at the door of her father's household. All the men of the city are to be involved in this stoning. Whether *אֲנָשֵׁי עִירָהּ* is another designation for the elders or is intended to show the extent of those affected by what may have been initially conceived of as a private, personal act, is unclear. What is clear is that this household will forever carry the stigma of punishment and shame. However, a point

²⁵⁴The father's restatement of the husband's charges makes the issue personal: Deut 22:17c, "I did not find *your daughter's* tokens of virginity." Emphasis added.

²⁵⁵The fine of 100 pieces of silver is to be paid to the father. Both Phillips and Davidson point out that this fine is double the brideprice mentioned in Deut 22:29, a fact that suggests the husband had used the slanderous charge to assert his right to the return of that money. Phillips suggests the doubling of the brideprice reflects punitive damages awarded to the father, suggesting that the original fifty pieces of silver would have been returned to the husband had his charge stood. Phillips, "Another Look at Adultery," 9. Davidson points to ancient Near Eastern laws that award a husband twice the brideprice if the father does not uphold his end of the marriage contract (LE ¶ 25, LH ¶ 160, HL ¶ 29. Roth, *Law Collections*, 62-63, 111 and 221 respectively), suggesting that the husband was required to pay to the father the amount that his slanderous testimony would have otherwise cost him (i.e., the father). Davidson, *Flame of Yahweh*, 355. In either case, the payment of the fine to the father demonstrates that he is viewed as an injured party. See also Wells, "Sex, Lies, and Virginal Rape," 41-72.

²⁵⁶The prohibition against divorce (*לֹא-יָרֵכַּח לְשִׁקְצָהּ בֶּל-יִמְיוֶיהָ*) in Deut 22:19 provides permanent security for this woman on the social level, demonstrating a recognition of the harm inflicted upon her in this process.

often overlooked is that this father²⁵⁷ loses a daughter, all the while knowing that the community holds him responsible for the act that led to her death. How deeply every father's heart must have felt is expressed by David's words, מִי־יָתֵן מוֹתִי אֲנִי תַחֲתֶיךָ, "If only I had died instead of you."²⁵⁸

Yet the extent of guilt in Israel as a result of this sin reached beyond the walls of the father's house. The final phrase of this passage, וּבְעֶרְתָּ הָרָע מִקֶּרְבְּךָ, indicates that the entire community is affected by one sinful act.²⁵⁹ Phrases like this occur eleven times in the book of Deuteronomy and are associated with all sorts of covenant-breaking activity including idolatry, murder, adultery, kidnapping, and rebellion against authority.²⁶⁰ Just as godlessness is driven out before the people upon their entrance into the Promised Land,²⁶¹ so shall the community remove evil once they are in the land. The command to purge any evil from their midst stems from the nature of God as a holy and jealous God.²⁶² Thus it protects the people from sin and its consequences, namely God's wrath. The injunction to purge evil from the midst of the community was a serious matter

²⁵⁷The mother as well, of course. Because this work focuses on the role and responsibilities of the father, it is only he that will be fully discussed.

²⁵⁸2 Sam 18:33. David's response upon hearing of the death of his son Absalom.

²⁵⁹See also Davidson, *Flame of Yahweh*, 356.

²⁶⁰Of the eleven such phrases, six are identical to that found here in Deut 22:21 (13:5; 17:7; 19:19; 21:21; 22:24; 24:7), two replace "from your midst" with "from Israel" (17:12; 22:22), and two refer to purging innocent blood once "from Israel" (19:13) and once "from your midst" (21:9). Note that three of these eleven occurrences appear in Deut 22.

²⁶¹The word "evil" (רָע) is not used to describe the sins of the foreign nations in Deuteronomy (esp. Deut 7). However, the instruction that the Israelites destroy the peoples and do not pity them (Deut 7:16) is similar to the instructions surrounding many of the "purge" passages which involve executions, sometimes by stoning, and even the occasional injunction to show no pity (Deut 19:13; 13:8).

²⁶²Cf. Deut 4:24; 6:13-19.

that affected the fundamental relationship between Israel and her God.

Having established the gravity of the situation at hand, one would expect the passage to move quickly from the charge in 22:13-14 to the punishment in 22:20-21. Further, the pejorative impression of the husband's accusation in verses 13 and 14 might be seen in a different light if one considers that he may be exercising his responsibility to protect the community from any breach of the covenant,²⁶³ and in the event of such a breach, to restore the relationship between YHWH and the people. In a situation such as the hypothetical one described in this passage, the husband might easily hide behind the severity of the alleged sin of his bride. Yet even in the face of an accusation of the magnitude described in Deuteronomy 22:13-14, the husband is not allowed to use the charge of defiling the land to trump the rights of a woman to due process. This passage is primarily about the appropriate response to promiscuity in order to restore and preserve the relationship of God with his people. However, the presentation of this issue is driven by a concern to restrain the abuse of authority even under the pretense of righteousness.

The importance of such restraint from the perspective of the text is demonstrated by the concern for the innocence of this bride. Rather than moving directly from the charge to the punishment, this passage focuses the weight of its attention on the potential innocence of the bride in the face of a frivolous charge by her husband. A word count is a simple indicator that the investigation into her innocence (22:15-19) is more

²⁶³Whatever has aroused his suspicion, this man's negative feelings toward his wife as reflected in vv. 13-14 are the natural reaction of a man who suspects unfaithfulness. Unfaithfulness before a wedding would have been as serious an issue as adultery after a wedding, in a culture that preserves sexual intercourse for the marriage relationship.

than twice as long as the indictment, should she be found guilty (22:20-21).²⁶⁴ The demonstration of the woman's innocence, and thus the innocence of the parents, involves (1) a forum before which to defend her name,²⁶⁵ (2) the provision of a means by which innocence can be established,²⁶⁶ (3) an opportunity to hold her accuser accountable,²⁶⁷ (4) punishment for the husband who slandered her name,²⁶⁸ (5) the vindication of her name²⁶⁹ and (6) the security that she will not be cast aside, used and unloved.²⁷⁰ With this lengthy treatment of the bride's potential innocence, Deuteronomy demonstrates a sensitivity toward the vulnerability that intimacy invites. The potential for the sexual

²⁶⁴69 words : 30 words. Words combined with a *maqgef* were counted separately. The direct object marker (וְ) was not counted unless it included an object suffix.

²⁶⁵Deut 22:15a-b. The issue is to be settled before the city elders.

²⁶⁶Deut 22:15b, 17e. The nature of the charge involves intimate knowledge of his bride, knowledge only available to the husband. Frymer-Kensky points out that the bloody cloth could easily be fabricated, "Law and Philosophy," 93. Without modern forensic tools, the admission of such evidence is in itself a measure of grace, for there would be no other way for a woman to prove herself innocent of this accusation. In a case of "he said" versus "she said," his higher status in both public and legal settings would put her at an extreme disadvantage.

²⁶⁷Deut 22:16a-17d. The father turns the tables on the husband. The accuser now stands accused (not intended as legal terminology, but reflective of a response to the husband's having raised the issue). Such sensitivity to the reputation of the bride and her family is extraordinary. Consider our own society in which a verdict of innocence does not include a charge against the accuser. For example, if one is charged of a sexual misdemeanor, an innocent verdict clears the accused's name legally, but does nothing to provide social vindication. Even with an innocent verdict, the accusation alone is often enough to cause loss of job, family and reputation without any recourse against the accuser.

²⁶⁸Deut 22:18b. Scholars debate the precise meaning of יָסַר in 22:18. Some suggest that it refers to chastisement (von Rad, *Deuteronomy*, 142), while others interpret the term to mean "to admonish or punish," arguing that this usage is more common (Pressler, *View of Women*, 28 n. 177). If we are correct in interpreting the fine and the prohibition of divorce as retribution for the parents and the bride respectively, it seems appropriate that there may have been a punishment in addition to this retribution. See Well, "Sex, Lies, and Virginal Rape," 61-63 (although Wells interprets the floggings as retribution for the public humiliation that would have come to the father had the charge of impurity been verified).

²⁶⁹Deut 22:19a-c. Although the fine goes to the father (for reasons discussed above), the text clearly recognizes the slander against the bride's name. See Deut 22:14, 19.

²⁷⁰Deut 22:19d. See discussion below. See also Pressler, *View of Women*, 29.

abuse of women is not limited to rape, nor is she safe even from those whose responsibility it is to protect her. In a society where honor and purity are exalted—even required by YHWH—where men hold public and legal authority, and in a situation of complete privacy and intimacy, what is to stop a man from falsely charging this young and vulnerable woman with lack of purity, all in the name of righteousness? The instruction in Deuteronomy 22:13-19 acts as a layer of defense for the newly married bride by placing the verification of her guilt ahead of a premature attempt to purify the land of evil.

Conclusion

In his book *The Elders of the City*, Willis counters the suggestion that Deuteronomy 22:13-21 curbs the authority of either the father or the husband. He astutely notes that the very nature of the situation delimits the authority of both men. Since the offense took place in the father's household and thus under his authority, the husband would not have had the authority to exercise punishment on his bride. On the other hand, since the father handed his daughter over to her husband, the father's authority to punish her would have been limited as well. Willis argues, "this case *naturally* comes before the city elders because it entails a dispute between two families . . . [And] . . . could not be adjudicated by one husband or father alone, since it involves persons outside their individual jurisdictions."²⁷¹ Thus Deuteronomy 22:13-21 is not challenging a patriarchal system in which the man carries almost unquestioned authority, especially in matters pertaining to his own household. Nor is the sole purpose of this instruction to transfer this

²⁷¹Willis, *Elders of the City*, 227-28. Emphasis added.

autonomous authority to a public forum, in order to protect the woman from abusive discipline at the hand of either husband or father.²⁷²

While Willis' argument demonstrates an awareness of the situation's social complexity, a more accurate reflection of the text understands that both men have a level of authority, particularly considering each man's role as protector and defender of righteousness in Israel. According to the institution of Israel's legal system, a man who knows of a covenant offense against YHWH must bring it to light so that the evil can be purged from the land.²⁷³ This text represents another instance in which purging evil from the land can require actions even against members of one's own household. In Deuteronomy 21:18-21 purging evil required bringing forth a rebellious son to be judged and sentenced. In this text, the insistence on the death penalty and the urgency of the rationale offered indicate that the bride's sin, if actual, falls within the same category. Thus a righteous man might even consider himself responsible to disclose the hidden sin of a wayward bride.

The remarkable feature of this text, especially considering the severity of the covenantal implications of her sin, is the extensive attention granted to the potential innocence of this woman. Under the pretense of following the commands of YHWH, a husband could easily abuse the vulnerability of his wife, the intimacy and the privacy of the marital union, and his authority within the community. This instruction is presented in

²⁷²Willis interprets this passage as intended to prevent future hostilities, so as to remove conflict from the community, rather than as a restriction of the authority of either a husband or a father, *ibid.*, 228.

²⁷³Deut 17:2-7.

such a way as to protect a bride, not from the allegedly autonomous authority of a patriarchal husband, but from the malicious, self-serving slander of a husband in a patricentric society who might seek to rid himself of an unwanted bride. Further, the prohibition against divorce in this case limits the man's future authority over this woman. Having demonstrated that he does not have her best interests at heart, Deuteronomy 22:19 curtails the husband's social and legal authority in order to prevent any further degradation.²⁷⁴

As father, the אב, joined by his wife, is held responsible for his daughter's sexual purity and is now called upon to defend her against erroneous charges, even after she has left his household. He carries the grave responsibility of guarding her virginity, both by instilling virtue and providing physical protection. Rather than a possession to be owned, her virginity is a treasure to be guarded for her eventual marriage. Considering Judges' portrayal of the depravity of the people of Israel, and Proverbs' comments regarding the wayward woman, this task would have been no small matter. Considering further that his failure in this responsibility could cost his daughter her life and his household its good name, the weight of this responsibility must have rested heavily on his shoulders.

Deuteronomy 24:1-4

The cultural differences between ancient Israel and today are not so great that we face none of the same social ills. For that reason, the text of Deuteronomy 24:1-4 is of

²⁷⁴The prohibition against future divorce creates discomfort among readers. However, in ancient Israelite society, a divorce would have resulted in further degradation with profound social implications. See discussion of Deut 21:14 above.

particular interest to the modern church. This text provides one of the few places where the OT speaks directly to the problem of divorce—a problem that seems only to have grown with the passing millennia. Yet, ironically, this text can be as perplexing as marriage itself. The strong language of verse 4 reflects the gravity of the issue presented in the text and fuels the urgent quest to understand the underlying principles addressed in this passage.

For the text and translation of Deuteronomy 24:1-4, see Table 7.

The Setting

Deuteronomy 24:1-4 is set against the backdrop of family life, but not the romantic notion of family life that the modern church sometimes naïvely seeks in the scriptures. Deuteronomy 24:1-4 bears a closer resemblance to a soap opera than a Sunday school lesson. The passage concerns a marriage that ends in divorce, followed by remarriage, the ending of that marriage either by death or divorce and the consideration of a third marital union, this time between the woman and her first husband. This marriage, divorce, remarriage, end of marriage chain provides the setting for the prohibition of Deuteronomy 24:4.

Ancient Near Eastern Background

Deuteronomy 24:1-4 has no direct parallel either in the scriptures or in extant ancient Near Eastern texts. But in the absence of direct parallels, there are many ancient texts that address matters relating to family and provide relevant background material. Ancient Near Eastern law codes are replete with legislation pertaining to family

Table 7. Text and translation of Deuteronomy 24:1-4

Text	Verse	Translation
כִּי־יִקַּח אִישׁ אִשָּׁה	1a	If a man takes a wife, and
וּבָעֱלָהּ	1b	he marries her, and
וְהָיָה אִם־לֹא תִמְצָא־חֵן בְּעֵינָיו	1c	she does not find favor in his eyes
כִּי־מָצָא בָּהּ עֲרוּת דָּבָר	1d	^L for he finds concerning her something indecent, and
וְכָתַב לָהּ סֵפֶר כְּרִיתָת	1e	he writes for her a certificate of divorce, and
וְנָתַן בְּיָדָהּ	1f	he gives (it) into her hand, and
וּשְׁלָחָהּ מִבֵּיתוֹ:	1g	he sends her from his house, and
וַיֵּצֵאָהּ מִבֵּיתוֹ	2a	she goes forth from his house, and
וְהָלְכָה	2b	she goes, and
וְהָיְתָה לְאִישׁ־אַחֵר:	2c	she becomes (a wife) to another man, and
וּשְׂנֵאָהּ הָאִישׁ הָאֲחֵרוֹן	3a	the other man hates her, and
וְכָתַב לָהּ סֵפֶר כְּרִיתָת	3b	he writes for her a certificate of divorce, and
וְנָתַן בְּיָדָהּ	3c	he gives (it) into her hand, and
וּשְׁלָחָהּ מִבֵּיתוֹ	3d	he sends her from his house
אוֹ	3e ^a	Or
כִּי יָמוּת הָאִישׁ הָאֲחֵרוֹן		if the other man . . .
אֲשֶׁר־לָקַחָהּ לוֹ לְאִשָּׁה:	3f	. . . who took her as his wife . . .
[יָמוּת]	3e ^b	. . . dies;
לֹא־יִוָּכַל בַּעֲלָהּ הָרִאשׁוֹן	4a ^a	her first husband . . .
אֲשֶׁר־שְׁלָחָהּ	4b	. . . who sent her . . .
לָשׁוּב לִקְחָתָהּ לִהְיוֹת לוֹ לְאִשָּׁה	4a ^b	. . . is not allowed to take her again to be his wife
אַחֲרֵי אֲשֶׁר הִטְמִינָהּ	4c	after he has caused her to declare herself unclean
כִּי־תוֹעֵבָה הוּא לִפְנֵי יְהוָה	4d	^L for that is an abomination before the Lord, and
וְלֹא תַחַטִּיא אֶת־הָאָרֶץ	4e	You shall not cause the land to sin
אֲשֶׁר יְהוָה אֱלֹהֶיךָ נָתַן לְךָ נַחֲלָה: ס	4f	^L which the Lord your God is giving you as an inheritance.

matters.²⁷⁵ Among these texts, a few themes emerge that seem to overlap the peculiar interests of Deuteronomy 24:1-4: (1) ancient Near Eastern laws concerning marriage and divorce, (2) texts addressing the right of a husband to reclaim a woman who was previously his wife, and (3) legislation concerning a husband's obligation to care for a wife who, because of physical malady, is unable to function as a proper wife.

The most notable feature of ancient Near Eastern texts regarding marriage and family matters is their focus on economic issues, or more precisely their focus on fairness and justice as achieved by economic means. When discussing the cultural background of marriage and divorce as reconstructed from extra-biblical sources,²⁷⁶ it is tempting to focus primarily on side issues such as dowry, bridewealth, compensation, and inheritance. Such concerns are paramount in the ancient world since they represent the greater concerns of provision for the woman and the preservation of family wealth such that the larger social stability is maintained, despite a breakdown of family at the most basic level. Deuteronomy 24:1-4 is remarkable in that, on the surface, the text evidences little to no concern for economic issues. The text includes no overt mention of dowry,

²⁷⁵See LU ¶ 4-15 (¶ 12 not well preserved); LL ¶ b-f, 20b-33; SLEx ¶ 1-8; LE ¶ 17, ¶ 18, ¶ 25-35, ¶ 59; LH ¶ 128-95; LNB ¶ 8-15 (¶ 14 not well preserved); MAL A ¶ 1-5, ¶ 8, ¶ 9, ¶ 12-18, ¶ 21-46, ¶ 48-59 (¶ 49, ¶ 56, ¶ 57 not well preserved), B ¶ 1-5, O ¶ 3; HL ¶ 17, ¶ 18, ¶ 26-37, ¶ 46, ¶ 187-200a (¶ 187-200a relate to unpermitted sexual pairing). Roth, *Law Collections*. See also the Babylonian laws of Ana Ittišu §6, 7 presented in G. R. Driver and John C. Miles, *The Babylonian Laws* (Oxford: Clarendon Press, 1955), 2:310-11. Marriage contracts from the ancient Near Eastern world also provide helpful background information. See a presentation and discussion of marriage contracts from Old Babylonia in Roth, *Babylonian Marriage Agreements*, 1989; and Raymond Westbrook, *Old Babylonian Marriage Law*, appendix, 112-38; as well as fifth-century BC Jewish documents from the Aramaic papyri at Elephantine made available by Porten and Yardeni, *Textbook of Aramaic Documents from Ancient Egypt*.

²⁷⁶For treatment of divorce in ancient law codes see LU ¶ 9-11; LL ¶ 30; SLHF iv. 12-20; LE ¶ 59; LH ¶ 137-43, 148-49; MAL A ¶ 37-38; HL ¶ 26a-b, 31-33. See Roth, *Law Collections*, 18, 32, 50, 68, 107-09, 166-67, 220-21.

bridewealth, compensation, provision for the woman, and, interestingly enough, the text does not mention the presence or absence of children even though the woman has been married twice.²⁷⁷ By contrast, the extra-biblical ancient texts dealing with marriage and divorce are consumed by issues wholly lacking in the biblical text.²⁷⁸

As part of the overall concern with economic justice, the ancient texts address two specific issues, each providing a partial parallel to the concerns of Deuteronomy

²⁷⁷Children were not only seen as a blessing from YHWH, they played a very important role in the financial structure of ancient Near Eastern marriages and are frequently mentioned in legislation relating to divorce.

²⁷⁸Westbrook has suggested that these economic concerns provide the key to understanding the mysterious prohibition of remarriage to the first husband in Deut 24:1-4. According to Westbrook, this difficult text becomes clear when modern readers recognize that the two marriages ended on different terms. In the first divorce, the explicit reference to “something indecent” (עֲרֵוַת דִּבְרָר) indicates that the husband had valid grounds for divorce. According to ancient Babylonian marriage laws, a woman divorced on valid grounds was sent away empty-handed, presumably indicating that her dowry remained in the possession of her husband’s estate. (Westbrook cites LH ¶ 141.) The second marriage either ended in the death of the husband or in a divorce with no valid grounds (this being the implication of וְשָׂנְאָהּ in Deut 24:3 according to Westbrook’s interpretation). Westbrook argues that a woman divorced under these terms was eligible for her dowry (if she had been granted a second dowry by her father’s household), a financial compensation from her husband, and any gifts bestowed on her by her husband during the second marriage. Raymond Westbrook, “The Prohibition on Restoration of Marriage in Deuteronomy 24:1-4,” in *Studies in Bible*, ed. Sara Japhet, *ScrHier* 31 (Jerusalem: Magnes Press, 1986), 387-405. See also Westbrook, *Old Babylonian Marriage Law*. His interpretation claims to account for the main elements of Deut 24:1-4. However, even if one assumes the validity of relying on a neighboring culture to reconstruct Israelite practices, Westbrook’s suggestion is problematic. First, Westbrook fails to account for the lack of concern for economic matters in Deut 24:1-4, a lack that is even more notable when compared to extra-biblical documents such as law codes and marriage contracts. Second, Westbrook’s interpretation of וְשָׂנְאָהּ (to hate) as “dislike” or divorce without any other grounds than disdain fails to take into account the biblical evidence suggesting that וְאָהַב (to love) and וְשָׂנְאָהּ (to hate) are frequently used to declare covenantal faithfulness and unfaithfulness, or allegiance and repudiation, respectively (see discussion of Deut 21:15-17). The context of the breaking of the marriage covenant through divorce suggests the use of וְשָׂנְאָהּ here may be more than purely emotive. See Moran, “The Ancient Near Eastern Background of the Love of God in Deuteronomy,” 77-87; and Ackerman, “The Person Is Political,” 437-58. Third, Westbrook places more weight on ancient Near Eastern evidence than on the biblical context. The idea that the verb וְשָׂנְאָהּ in Deut 24:3 indicates that the second husband divorced his wife without significant grounds is crucial to his argument. Yet the same verb is used in Deut 22:14 where the context allows that a husband may have a valid charge against his wife (Deut 22:20-21). Finally, although Westbrook’s view accounts for many of the variables in the text, it does not explain why or how this woman comes to be considered unclean/defiled (Deut 24:4). See also the critique by Eckart Otto, “Das Verbot der Wiederherstellung einer geschiedenen Ehe: Deuteronomium 24,1-4 im Kontext des israelitischen und jüdischen Eherechts,” in *UF* 24 (Neukirchen-Vluyn: Neukirchener Verlag, 1992): 303-05.

24:1-4. The first involves the right of a husband to claim his wife once she has married another. In one text from the Sumerian Laws Handbook of Forms a husband is forbidden from claiming a woman whom he has divorced if she is married to another man. SLHF iv 17-18 reads “(Another man) shall marry her; he (the first husband) will not declare that ‘She is my spouse.’”²⁷⁹

In Akkadian laws dealing with a husband’s desertion (due to national concerns), the primary focus of the laws is the husband’s right to reclaim his wife if she found another husband while he was away.²⁸⁰ The following are suggestive:

LE ¶ 29 If a man should be captured or abducted during a raiding expedition or while on patrol(?), even should he reside in a foreign land for a long time, should someone else marry his wife and even should she bear a child, whenever he returns he shall take back his wife.

¶ 30 If a man repudiates his city and his master and then flees, and someone else then marries his wife, whenever he returns he will have no claim to his wife.²⁸¹

LH ¶ 133a If a man should be captured and there are sufficient provisions in his house, his wife [...], she will not] enter [another’s house].

¶ 133b If that woman does not keep herself chaste but enters another’s house, they shall charge and convict that woman and cast her into the water.

¶ 134 If a man should be captured and there are not sufficient provisions in his house, his wife may enter another’s house; that woman will not be subject to any penalty.

¶ 135 If a man should be captured and there are not sufficient provisions in his house, before his return his wife enters another’s house and bears children, and afterwards her husband returns and gets back to his city, that woman shall return to her first husband; the children shall inherit from their father.

²⁷⁹As translated by Roth, *Law Collections*, 50 (lines iv 12-16 include reference to his divorcing her and cutting her hem—presumably a symbol of her being cut off from any provision).

²⁸⁰Based on the context of the law, it appears that the man is absent due to his involvement in the military campaigns of his country, his capture either at home or while in military service, or because he fled to avoid military service. Although his desertion is related to national concerns, the laws recognize that the wife will suffer the practical ramifications of his absence. The text does not address the situation in which a man has simply abandoned his wife.

²⁸¹Roth, *Law Collections*, 63.

¶ 136 If a man deserts his city and flees, and after his departure his wife enters another's house—if that man then should return and seize his wife, because he repudiated his city and fled, the wife of the deserter will not return to her husband.²⁸²

MAL A ¶ 36 If a woman is residing in her father's house, or her husband settles her in a house elsewhere, and her husband then travels abroad but does not leave her any oil, wool, clothing, or provisions, or anything else, and sends her no provisions from abroad—that woman shall remain (the exclusive object of rights) for her husband for five years, she shall not reside with another husband. (iv 93) If she has sons, they shall be hired out and provide for their own sustenance; the woman shall wait for her husband, she shall not reside with another husband. (iv 97) If she has no sons, she shall wait for her husband for five years; at the onset of(?) six years, she shall reside with the husband of her choice; her (first) husband, upon returning, shall have no valid claim to her; she is clear for her second husband. (iv 103) If he is delayed beyond the five years but is not detained of his own intention, whether because a ... seized him and he fled or because he was falsely arrested and therefore he was detained, upon returning he shall so prove, he shall give a woman comparable to his wife (to her second husband) and take his wife. (v 4) And if the king should send him to another country and he is delayed beyond the five years, his wife shall wait for him (indefinitely); she shall not go to reside with another husband. (v 8) And furthermore, if she should reside with another husband before the five years are completed and should she bear children (to the second husband), because she did not wait in accordance with the agreement, but was taken in marriage (by another), her (first) husband, upon returning, shall take her and also her offspring.²⁸³

MAL A ¶ 45: If a woman is given in marriage and the enemy then takes her husband prisoner, and she has neither father-in-law nor son (to support her), she shall remain (the exclusive object of rights) for her husband for two years. During these two years, if she has no provisions, she shall come forward and so declare. If she is a resident of the community dependent upon the palace, her [father(?)] shall provide for her and she shall do work for him. If she is a wife of a hupsu-soldier, [...] shall provide for her [and she shall do work for him.] (vi 58) But [if she is a wife of a man(?) whose] field and [house are not sufficient to support her(?)], she shall come forward and declare before the judges, "[I have nothing] to eat"; the judges shall question the mayor and the noblemen of the city to determine the current market rate(?) of the field in that city; they shall assign and give the field and house for her, for her provisioning for two years; she shall be resident (in that house), and they shall write a tablet for her (permitting her to stay for the two years). She shall allow two full years to pass, and then she may go to reside with the

²⁸²Ibid., 106-07.

²⁸³Ibid., 165-66.

husband of her own choice; they shall write a tablet for her as if for a widow. (vi 72) If later her lost husband should return to the country, he shall take back his wife who married outside the family; he shall have no claim to the sons she bore to her later husband, it is her later husband who shall take them. As for the field and house that she gave for full price outside the family for her provisioning, if it is not entered into the royal holdings(?), he shall give as much as was given, and he shall take it back. (vi 85) But if he should not return but dies in another country, the king shall give his field and house wherever he chooses to give.²⁸⁴

Although the details vary among the different law codes, the basic principle is that, if the man were faithful to his country and utterly incapable of returning, he would be entitled to reclaim his wife even if she had taken another husband during his absence. If, however, he were unfaithful to his country or had not been detained by insurmountable obstacles and she had waited the appropriate number of years (or, in some cases, lacked adequate provisions to wait), her first husband had no right to her.²⁸⁵

If Israel lived by standards like those represented in the extra-biblical laws, these partial parallels suggest the following: (1) there was not a natural, universal repulsion when a woman returned to her husband after an intervening relationship,²⁸⁶ and (2) the question of a man's right to his former wife was a concern that reached beyond the borders of Israel. However, there are significant differences between these laws and the circumstances in Deuteronomy 24:1-4. In the Sumerian law (SLHF iv 17-18), the first marriage ended in divorce, but there is no indication that the second marriage ended. The situation appears to be that of a first husband trying to usurp the rights of the second on the basis of his previous marriage with the woman.²⁸⁷ The desertion texts address a

²⁸⁴Ibid., 170-71.

²⁸⁵See LE ¶ 29-30, LH ¶ 133a-136 and MAL A ¶ 36, ¶ 45; *ibid.*, 63, 106-07, 165-66, 170-71.

²⁸⁶Cf. David and Michal (1 Sam 25:44; 2 Sam 3:13-15—although 13:16 casts a negative shadow over David's assertion of his authority). Cf. also Samson and his Philistine wife (Judg 14:20-15:6).

²⁸⁷SLHF iv 10-22. In her 1979 dissertation Roth compares SLHF iv. 10-22 with Ai VII ii 43-iii

situation in which the first marriage was not officially ended by divorce. Rather the husband was taken from his wife against his will. It might also be noted that the desertion texts frequently convey a sense of concern for the provisional needs of the wife in the absence of her husband. However, the focus of the legislation is on a man's right to his wife based on the nature of his actions.²⁸⁸

A second link between extra-biblical texts and Deuteronomy 24:1-4 involves the expected treatment of a wife who faces severe medical complications that prohibit her from functioning as a healthy wife. One of the oldest extant law codes, the Laws of Lipit-Ishtar from ca. 1930 BC, evidences concern for the care of a wife who "loses her attractiveness" or "becomes a paralytic."

LL ¶ 28 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 (a variant reads: a second wife), and the second wife shall support the first ranking wife.²⁸⁹

A second law in the Babylonian Laws of Hammurabi from ca. 1750 BC demonstrates a similar concern for a wife who is overcome by some misfortune.

LH ¶ 148 If a man marries a woman, and later *la'bum*-disease²⁹⁰ seizes her and he

6, a text that likely preserves an Old Babylonian "legal textbook," although the earliest extant copy comes from the twelfth century BC. Martha T. Roth, "Scholastic Tradition and Mesopotamian Law: A Study of FLP 1287, A Prism in the Collection of the Free Library of Philadelphia" (Ph.D. diss., University of Pennsylvania, 1979), 13-14, 157-60. In Ai, the divorce procedure is followed by the potential for a new marriage. Finally, instead of "... he (the first husband) will not declare that 'She is my spouse,'" (SLHF iv 17-18), Ai iii 6 reads "her (former) husband may have no further claim upon her." Ibid., 158.

²⁸⁸Specifically, showing regard or disregard for his responsibilities toward his country and his wife.

²⁸⁹Presented and translated by Roth in *Law Collections*, 31-32.

²⁹⁰Possibly a contagious skin disease. See Marten Stol, *Epilepsy in Babylonia*, CM 2 (Groningen: STYX Publications, 1993), 143. For more on diseases in the ancient world, see Jo Ann Scurlock and Burton R. Andersen, *Diagnoses in Assyrian and Babylonian Medicine: Ancient Sources, Translations, and Modern Medical Analysis* (Urbana: University of Illinois Press, 2005), esp. 208-56.

decides to marry another woman, he may marry, he will not divorce his wife whom *la'bum*-disease seized; she shall reside in quarters he constructs and he shall continue to support her as long as she lives.

¶ 149 If that woman should not agree to reside in her husband's house, he shall restore to her her dowry that she brought from her father's house, and she shall depart.²⁹¹

The parallel between these texts and Deuteronomy 24:1-4 is by no means complete. While these laws list specific ailments, the reference to עֲרֻת דָּבָר in Deuteronomy 24:1 is vague and elusive. Furthermore, it is never safe to assume that a law in one country would correspond directly with the law or practice of another country. The most that can be said is that, within the ancient Near Eastern world, among Israel's pagan neighbors, a husband was expected to care for the needs of his wife. This responsibility for her care was to be extended to her even in the most extreme situations, including times when she faced physical hardship so that she was of little value to him. Paragraph 149 is particularly interesting in that it demonstrates that the husband's responsibility to care for the woman was not driven by some ulterior motive. For example, this provision was not a veiled attempt to force her into confines dictated by the husband. Rather, his responsibility to provide was based solely on a concern for the well-being of the woman. If *la'bum*-disease was indeed a contagious skin disease, the wife was not only unable to act as wife,²⁹² she was a potential health hazard to her husband and his household. Yet according to Hammurabi, a noble man was to care for his wife even in this situation.

²⁹¹Presented and translated by Roth in *Law Collections*, 109.

²⁹²Obviously marital relations would be strained, but much more was at stake here. A wife had many responsibilities, not the least of which included bearing and rearing children and caring for the everyday needs of her family. See van der Toorn, *From Her Cradle to Her Grave*.

Deuteronomic Background

Contrary to popular treatment, Deuteronomy 24:1-4 is not the book's only comment on divorce.²⁹³ Deuteronomy 21:14, 22:19 and 22:29 all speak to the issue of a husband's sending his wife away, thereby terminating the marriage—namely, divorce. Regardless of one's persuasion concerning authorial issues in Deuteronomy, without contest these passages provide a context that is closer in proximity, genre, style and agenda than any of the extra-biblical materials. They must accordingly be treated as likely having greater value for their aid in interpretation.

Deuteronomy 21:14 demonstrates that divorce was socially degrading to the woman.²⁹⁴ Deuteronomy 22:19 and 22:29 reflect two different contexts in which divorce is forbidden. In these two situations the man involved has already enacted harm against the woman,²⁹⁵ and his authority over her is curtailed to prevent further degradation. Thus, in all three other references to divorce in the book of Deuteronomy, the practice is seen as socially degrading at the very least. Further, whether divorce was exercised or forbidden, these three passages all represent situations in which the response to a man's initial harmful actions against a woman involves the restriction of his authority regarding future decisions that affect the woman's social status.

The Characters

The cast of characters in Deuteronomy 24:1-4 is rather simple—a woman and

²⁹³Cf. McConville, *Deuteronomy*, 357.

²⁹⁴See discussion on Deut 21:14, above.

²⁹⁵The damaging affect of the man's actions are confirmed by the Hebrew phrase in Deut 22:19 *לְיִשְׂרָאֵל בְּתוּלַת יְהוָה* and by the phrase *אֲשֶׁר עָנָה* in Deut 22:29.

her two successive husbands.²⁹⁶ In this passage, the characters themselves seem less important than the circumstances in which they find themselves. There is no mention of other family members such as children, other wives, or the bride's parents.

The only other information provided involves the woman. It is said that after marrying her, the first husband is displeased with her (lit. she does not find favor in his eyes) to the point of wanting to end the marriage because he finds “something indecent” עֲרוֹת דָּבָר (lit. “nakedness of a thing”) concerning her.²⁹⁷ The phrase עֲרוֹת דָּבָר is cryptic and vague, presumably by intention.²⁹⁸ The noun עֲרוֹת, which occurs fifty-five times in the OT,²⁹⁹ literally means nakedness—specifically with regard to those parts of the body that are to remain discretely covered.³⁰⁰ Figuratively, the word often functions

²⁹⁶To recapitulate: the first man married the woman, but that marriage ends in divorce. The woman then goes and remarries a second man. When the second marriage ends, whether by death or divorce, the first man re-enters the picture. This paragraph in Deuteronomy forbids the first husband from remarrying his ex-wife. (The language of “ex-wife” is somewhat anachronistic, but conveys the idea clearly and simply.)

²⁹⁷Debate concerning this phrase (עֲרוֹת דָּבָר) can be traced back to early rabbinic tradition. The school of Shammai held that the phrase referred to scandalous behavior such as adultery or inappropriate actions falling just short of adultery. Those following the teachings of Hillel held that the phrase referred to anything that the husband found unacceptable (*Gittin* 9:10). Modern scholars still entertain this debate although most now concede that it is unlikely that adultery was intended by those words. See the classic arguments in John Murray, *Divorce* (Philadelphia: Presbyterian and Reformed Publishing Co., 1961), 10-12.

²⁹⁸Language designed to express the unmentionable invites the hearer to understand that more is meant than is being said. Yet how much more and in what vein is not always spelled out. Often there is a natural blurring of lines between the literal and figurative meanings. Such blurring of lines can be seen in Isa 20:4 where literal nakedness (of captives) is equated with the “nakedness” (weakness, vulnerability, humiliation) of Egypt.

²⁹⁹In addition, there are six occurrences of the word עֲרוֹת, Ezek 16:7, 22, 39; 23:29; Mic 1:11; Hab 3:9.

³⁰⁰See Exod 28:42 and probably also Gen 9:22, 23, although it has been suggested that the term is used here to convey inappropriate sexual activity. See Gerhard von Rad, *Genesis: A Commentary*, rev. ed., OTL (Philadelphia: Westminster Press, 1972), 137. For a discussion of עֲרוֹת, see Boyd V. Seevers, “עֲרוֹת” *NIDOTTE*, ed. Willem A. VanGemeren (Grand Rapids: Zondervan, 1997), 3:527-31.

as a euphemism for sexual activity, usually inappropriate activity.³⁰¹ It is also used metaphorically to describe hidden vulnerabilities of a land,³⁰² a king,³⁰³ or possibly even a common person.³⁰⁴ Many of the contexts in which this word occurs also convey shame or humiliation.³⁰⁵ In the prophets, especially Ezekiel, the figurative language reaches new depths when the euphemisms are used metaphorically to speak of Israel's relationship with foreign gods.³⁰⁶ The specific phrase עֲרֹת דָּבָר found in Deuteronomy 24:1 also occurs in Deuteronomy 23:15³⁰⁷ to refer to excrement. If the author is inviting the reader to compare these two occurrences, it may be significant that the עֲרֹת דָּבָר in Deuteronomy 23:15 refers to something that is shameful and even repulsive, but no one would argue that it is unnatural or that any fault is ascribed to a person for needing to relieve himself.³⁰⁸ Although we may never know the nature of the problem (whether a

³⁰¹See Lev 18 and 20.

³⁰²See Gen 42:9, 12.

³⁰³Aramaic; Ezra 4:14.

³⁰⁴Exod 20:26.

³⁰⁵See especially 1 Sam 20:30 and Isa 20:4.

³⁰⁶See Isa 47:3; Ezek 16:36, 37; 22:10; 23:10, 18, 29; Hos 2:11 (Eng 2:9).

³⁰⁷Eng 23:14.

³⁰⁸Roy Gane has argued that the reference to עֲרֹת דָּבָר in Deut 23:15 refers to that which should have been concealed, placing emphasis not on the excrement, but the fact that it should have been covered. With regard to the woman, the most natural thing that should have been covered is herself, so he interprets the עֲרֹת דָּבָר in Deut 24:1 as indecent exposure. Indecent exposure of her body can occur in the context of sexual relations, thus the phrase in Deut 24:1 refers to some type of illicit sexual encounter (short of that which is punishable by death in the OT). Roy Gane, "Old Testament Principles Relating to Divorce and Remarriage," *JATS* 12, no. 2 (2001): 44-45. A similar idea is presented in an article by Richard Davidson. Davidson's work is earlier, but relies heavily on an unpublished version of Gane's article. Richard M. Davidson, "Divorce and Remarriage in the Old Testament: A Fresh Look at Deuteronomy 24:1-4," *JATS* 10 (1999): 2-22. The assertion that a degree of sexual immorality may be implied in this verse may be sustainable. However, to argue for this interpretation based on the connection with Deut 23:15 is unconvincing.

physical condition or a moral flaw³⁰⁹), this woman appears to struggle with something that is personal, private and probably shameful. Whether or not this phrase reflects a culpable act remains to be determined.

The results of this lexical study are supported by the immediate context. Here caution is advised since there is much that the text does not clarify. Having acknowledged this limitation, a few features seem clear. As for its severity, עֲרוֹת דָּכָר refers to a shameful and maybe even repulsive feature, but not so grave that it warrants the death penalty³¹⁰ or exclusion from the Israelite community.³¹¹ If it were a lasting problem, such as a physical malady or imperfection, it was not serious enough to prohibit

³⁰⁹The husband's complaint is rooted in one of two possible situations. Either she is guilty of a moral infraction (probably of a sexual nature), or she is afflicted by some sort of physical condition. These two options are suggested both by the semantic range of עֲרוֹת (see above) and by the term טָמֵא (unclean) in Deut 24:4. Either moral actions such as deviant sexual behavior (i.e., Gen 34:5, 13, 27; Lev 18:20, 23) or physical conditions such as skin disease or the emission of bodily fluids (i.e., Lev 13; 14; 15:2, 16) can make a person unclean. (Uncleanness can also be caused by contact with something that is unclean or simply by declaration of YHWH, as in the case of the unclean animals.) Scholars' attempts to tie this action to a moral weakness such as sexual impurity are unconvincing. Since adultery and other extreme sexual offenses are punishable by death, some scholars suggest a moral offense that is slightly less offensive, i.e., not punishable by death. One such suggestion is that the phrase implies incest. See Allen Guenther, "Interpreting the Silences: Deuteronomy 24:1-4," *Directions* 24, no. 1 (1995): 41-53. However, incest would still be adultery for a married woman. Another suggestion is some sort of inappropriate physical contact or other immodest act has taken place such as kissing, aggressive flirtation or indecent exposure. See Gane, "Old Testament Principles Relating to Divorce and Remarriage," 45-49. This suggestion demands an interpretation of עֲרוֹת that is elsewhere unattested and one step further removed from the already figurative use of עֲרוֹת as a euphemism for sexual intercourse. Furthermore, when עֲרוֹת is used euphemistically, the offending male uncovers (נָגַד) or sees (רָאָה) the nakedness. The relationship between uncovering and seeing nakedness and intercourse is clear. However, in the context of Deut 24:1-4, there is no reference to an offending male, let alone his uncovering or seeing the woman. Furthermore, the connection between nakedness and kissing, etc. is not clear, but requires an additional semantic leap for which there is no other evidence. See also the discussion by Block, "Gospel According to Moses," s.v. "Deuteronomy 24:1-4."

³¹⁰Which would have been the result of a grievous sexual sin such as adultery (Deut 22:22) or sexual promiscuity prior to marriage (Deut 22:13-21).

³¹¹The most severe forms of sexual impurity are answered with the death penalty, and the most severe forms of uncleanness are dealt with by a form of quarantine in which the unclean person must live in isolation outside the camp (Lev 13:36).

the woman from marrying a second time, nor to necessitate a second divorce.³¹² It is possible to read this text as though hers was a pre-existing condition that was not discovered until after the marriage. In this case it was not something readily apparent, for the first husband “finds” it after he has married her. Indeed this phrase may refer to something that she could have kept hidden from all but her most intimate relationships.³¹³

Finally, it may be significant that the text traces the journey of the woman from one husband to the next. Nothing is said about what the first husband does after the divorce,³¹⁴ and the second husband is so insignificant that whether or not he hates his wife does not matter. Once again we have a passage written to a man regarding his behavior toward a woman that focuses more on the woman than the man.

The Issues

Although it has come to be regarded as the divorce text of the OT, Deuteronomy 24:1-4 is not primarily about divorce, but about a man’s rights, or lack thereof, with reference to a woman once he has divorced her and she has married another.³¹⁵ Most scholars now agree that the first three verses form the protasis, setting

³¹²The second marriage could have ended in the death of the husband instead of divorce. Death, obviously, would not be correlated with the wife’s condition.

³¹³Intimacy here need not imply sexual intimacy, although that is within the realm of possibility.

³¹⁴Kaiser’s assertion that the first husband “subsequently has been the husband of another woman” is unsubstantiated by the text. Walter C. Kaiser, *Toward Old Testament Ethics* (Grand Rapids: Zondervan, 1983), 202.

³¹⁵See also von Rad, *Deuteronomy*, 150; and J. A. Thompson, *Deuteronomy: An Introduction and Commentary* (Downers Grove, IL: InterVarsity Press, 1974), 243. Von Rad and Thompson represent just two of the many scholars who recognize remarriage rather than divorce as the primary issue in this passage.

the stage for the instruction in verse 4.³¹⁶ Verses 1-3 presumably reflect common practice relating to divorce in ancient Israel. These verses are not intended to define or describe acceptable grounds or methods of divorce. They merely indicate that in ancient Israel divorce was accepted as a legitimate way to end a marital relationship.³¹⁷ Their primary function in this text is to set the stage for the instruction in verse 4.

Protasis—Deuteronomy 24:1-3

As noted earlier, the situation described in Deuteronomy 24:1-3 involves a fairly complex set of circumstances. The primary setting is marriage; a man has taken a

³¹⁶This interpretation is reflected in the LXX as well as most modern treatments of the text. A dissenting opinion is offered by Andrew Warren, who uses textlinguistic analysis to argue that Deut 24:1-4 contains two if-then clauses. Based primarily on the subject shift in v. 2, Warren argues that v. 2 contains a Deontic (modality of volition, i.e., may/must) apodosis: “*If* she doesn’t find favor in his eyes because he has found some indecency in her, *then* he may/must write her a certificate of divorce.” He offers three arguments in support of this interpretation. (1) The inclusion of the three elements of the divorce indicates that the focus is on the procedure and not the fact of the divorce, thus implying that the procedure is being stipulated. (2) The idea that she did not find favor naturally infers that the husband will respond by divorcing her, therefore the mention of divorce in the text is redundant if it represents a reality rather than a stipulation. (3) A subject shift occurs in the text, which (as Warren notes earlier in the article) is one way of noting the beginning of an apodosis. See Andrew Warren, “Did Moses Permit Divorce? Model *wegatal* as Key to New Testament Readings of Deuteronomy 24:1-4,” *TB* 49 (1998): 39-56, esp. 39-45. David Instone-Brewer adopts this interpretation because of its affinity with the early Jewish interpretations. See his article “Deuteronomy 24:1-4 and the Origin of the Jewish Divorce Certificate,” *JJS* 49 (1998): 39-56. In response to Warren, (1) emphasis on the procedure does not necessarily imply that the purpose of listing the procedure is to establish protocol. For example, the procedure itself could have implications for the intended meaning of the text. (2) It is hard to see how one can equate “not finding favor” with divorce to the extent that the first automatically implies the second. Moreover, the mention of not finding favor serves a specific function in the verse (providing the grounds for the divorce) so that neither the grounds nor the resulting divorce can be considered “superfluous” (Warren, “Did Moses Permit Divorce?” 44). (3) The subject shift in v. 2 is hardly noteworthy when considered in light of the many subject shifts within the first three verses of this passage. Finally, Warren’s interpretation appears to be driven by a desire to understand Deut 24:1-4 in light of NT discussions regarding divorce, rather than from pure linguistic analysis as he claims. While his interpretation may reflect the pharisaical understanding, Jesus’ understanding of the passage seems to reflect the holding off of the apodosis until v. 4 (cf. Matt 19:1-9). See also the solid argumentation of Pressler, *View of Women*, 46-47; and an extensive treatment of this issue in Block, “Gospel According to Moses,” s.v. “Deuteronomy 24:1-4.”

³¹⁷Reference to divorce here and in Deut 21:14 indicates that divorce was tolerated. Further, instances in which a man was forbidden to divorce a woman (Deut 22:19, 29) suggest that without this prohibition, the man would have viewed divorce as an option.

woman to be his wife and married her.³¹⁸ Yet rather than marital bliss this marriage fails to fulfill expectations and ends in divorce. In its presentation of the demise of this relationship, two features of the text stand out. First, the grounds for the divorce are not disclosed in detail. Neither the timing nor the precise nature of the indecency is noted.³¹⁹ A footnote above suggests that the indecency involves a physical condition rather than a moral weakness, but ultimately the text does not specify.³²⁰ Whatever this woman's defect, her husband finds it offensive enough that he no longer wishes to be married to her and sends her away from his household. Second, the wording of the text suggests a deeper problem than the matter of the woman's indecency. The efforts by modern scholars to uncover the text's view of the acceptable grounds for divorce has distracted from a deeper problem in the text. Once attention is diverted away from the elusive referent to the "indecency," other features of the text emerge: subtle but deliberate clues that invite the reader to see through to the heart of the problem. In isolation, each clue may appear minor, but together they suggest that the woman's indecency was not the primary problem in this marriage.

The first clue involves the explanation of the husband's response to his wife.

The text states that the woman "did not find favor (lit. grace) in his eyes" (אֵם-לֹא (תִּמְצָא־יָן בְּעֵינָיו). To understand this phrase as simply implying that he was displeased

³¹⁸In Hebrew, these phrases (יָקַח אִישׁ אִשָּׁה and וַיִּבְרָאֶלֶה) are common expressions for marriage. "Taking" (לָקַח) alone can refer to a man's intention for marriage or a betrothal, but when these phrases are all used together there is no question that the marriage has been finalized. Contra David Volgger, "Dtn 24,1-4 – Ein Verbot von Wiederheiratung?" *BN* 92 (1998): 85-96.

³¹⁹The indecent matter appears to have been discovered quickly, but the lack of specific reference to time allows that it may have emerged later.

³²⁰See n. 309.

is to fall short of the fuller meaning.³²¹ The phrase itself occurs forty-three times in the OT³²² and, while a general sense of goodwill is almost always implied, the full meaning rarely stops there.³²³ Typically favor is sought from a person who holds a position of authority, even if that authority is relative or pertains only to a particular situation.³²⁴ Finding favor usually involves a gracious deed enacted on behalf of the “lesser” party. The careful wording of Deuteronomy 24:1 conveys the husband’s displeasure with his wife while hinting at the essence of the marital dilemma. She does not become the recipient of his favor—he does not extend grace to her.³²⁵

The phrase כִּי־מֵצָא בָהּ עֲוֹנוֹת דָּבָר, “because he finds something indecent

³²¹Some modern English translations focus solely on the notion of displeasure or disdain represented here. Cf. NIV, NRSV, JB. In Deut 21:14 the text specifically states that the man desires divorce because he does not delight in his wife (אִם־לֹא הִפְצִיתָ בָּהּ). Otherwise, the term used to explain the desired end of a marriage is the covenantally rich term “to hate” (Deut 22:13 and 24:3: וְשָׂנְאָהּ).

³²²Gen 6:8; 18:3; 19:9; 30:27; 32:6 (Eng 32:5); 33:8, 10, 15; 34:11; 39:4; 47:25, 29; 50:4; Exod 33:12, 13(2x), 16, 17; 34:9; Num 11:11, 15; 32:5; Deut 24:1; Judg 6:17; 1 Sam 1:18; 16:22; 20:3, 29; 25:8; 27:5; 2 Sam 14:12; 15:25; 16:4; 1 Kgs 11:19; Jer 31:2; Prov 3:4; 28:23; Ruth 2:2, 10, 13; Esth 5:8; 7:3; 8:5.

³²³Probably the best depiction of the propensity toward action occurs in 2 Sam 14:22. The only texts involving finding favor where the favor did not have some tangible effect recorded in the context of the passage are found in Esth 2:15, 17 and 5:2. Interestingly, these phrases do not use the verb מֵצָא (to find), but נָשָׂא (to lift/carry). These three passages have not been included in the forty-three passages listed above.

³²⁴A typical example would be a person seeking or finding the favor of a king (2 Sam 14:22) or of God (Gen 6:8). See also Ruth 2:2, 10, 13. (The same general elements הָיָה + מֵצָא are used for both seeking and granting favor.) However, not all requests for favor are made by a person of lesser authority to a person of greater authority. In Gen 30:27 Laban seeks grace from Jacob because he wants Jacob to stay and care for his flocks. Laban is the older of the two men and is head of household (of which Jacob is a part), positions that suggest that he would have had more authority than Jacob. However, once Jacob had paid off his debt, he alone held the authority to decide where his family would live. Even though Jacob is not Laban’s superior, Laban seeks Jacob’s favor because Jacob holds the authority to make that particular decision. Likewise, in Gen 33 Jacob and Esau have become relative equals, yet Jacob seeks favor from his brother upon his return home (Gen 33:8, 10, 15). Presumably, as the offended party, it is up to Esau to decide whether he will hold a grudge against his brother and seek vengeance, or forgive his brother and allow him to return safely home.

³²⁵By its very nature, grace is not obligatory. However, if there is one place that grace is appropriate, even necessary, it is within the marriage relationship.

concerning her,” provides a second hint. The construct chain עֶרְוַת דְּבָר (indecentcy, lit. “nakedness of a thing”) provides the grounds for this man’s lack of favor toward his wife. Without making light of the potential gravity of the situation, or the surprise it must have caused her husband, the clause in which it is couched suggests that the burden of appropriate response lies with the husband. Of the fifty-five occurrences³²⁶ of עֶרְוָה, all but three³²⁷ appear in the immediate context of either seeing (רָאָה) or uncovering/covering (כָּסָה/גָּלָה respectively). In each context, covering (כָּסָה) refers to concealing, hiding, and protecting and is the appropriate response. Seeing (רָאָה) or uncovering (גָּלָה) are negative responses leading to shame and humiliation. Neither seeing nor covering/uncovering is used here in Deuteronomy 24:1. Rather, the text uses the ambiguous notion of finding (מָצָא) to identify the husband’s initial involvement with his wife’s situation. A reader familiar with the lexical propensities of עֶרְוָה is hereby invited to entertain a brief moment of suspense. Will the husband reveal his wife’s hidden shame, or cover her “nakedness,” protecting her from the prying eyes of the larger community? Will he hide her indecency, or will he uncover her shameful secret? To an English reader this question may seem forced, but the elements of seeing and uncovering/covering are so closely associated with the word עֶרְוָה that the morally neutral מָצָא invites the reader to consider that this man has a choice in how he responds.

In the scenario presented in Deuteronomy 24:1-4, the husband responds by

³²⁶Gen 9:22, 23(2x); 42:9, 12; Exod 20:26; 28:42; Lev 18(24x); Lev 20(8x); Deut 23:15 (Eng 23:14); 24:1; 1 Sam 20:30; Isa 20:4; 47:3; Ezek 16:8, 36, 37(2x); 22:10; 23:10, 18, 29; Hos 2:11(Eng 2:9); Lam 1:8; Ezra 4:14.

³²⁷Deut 24:1; 1 Sam 20:30 and Isa 20:4.

issuing his wife a certificate of divorce and sending her away. The divorce certificate is traditionally viewed as a document of great benefit to the woman. The divorce certificate grants her freedom—freedom *to* do as she wished, and freedom *from* any future interference by her former husband.³²⁸ This document is mentioned again in verse 3 as part of the hypothetical second divorce and may well have been part of standard divorce procedure. Isaiah and Jeremiah both mention this document in the metaphorical discussion of the Lord’s divorce of Israel caused by her adultery with other nations and their gods.³²⁹ The proposal that the divorce certificate existed to ensure the woman’s freedom is consistent with the evidence from the ancient Near Eastern world.³³⁰

Nevertheless, however beneficial a divorce certificate may have been, it was a public document recording the humiliating reality of a divorce. Any indiscretion she had

³²⁸The Akkadian laws regulating a husband’s right to his wife even after a prolonged period of absence lead scholars to believe that a divorce certificate was necessary to protect a woman from a former husband’s attempts to reassert his control over her after he had already sent her away. Instone-Brewer, “Deuteronomy 24:1-4 and the Origin of the Jewish Divorce Certificate,” 237. In those laws, the former husband is entitled to reclaim his wife and even offspring born to a second husband if the first husband can reestablish claim to her (by demonstrating that his absence was legitimate). See LE ¶ 29-30, LH ¶ 133a-136 and MAL A ¶ 36, ¶ 45 in Roth, *Law Collections*, 63, 106-07, 165-66, 170-71. With that kind of a threat, no man would want to marry a woman who could not demonstrate that her marriage had legally ended, and with it, any claims her husband might try to make against her.

³²⁹Isa 50:1 and Jer 3:8.

³³⁰A divorcée with a divorce certificate was free to return to the house of her father or to remarry. Her former husband could not dictate her actions. According to Instone-Brewer, there are only two surviving divorce documents from the ancient Near Eastern World, and both speak directly to the issue of the woman’s freedom. Unfortunately Instone-Brewer only cites one such document, a cuneiform tablet found in Kirkuk in the early 1900’s believed to be from 1400 BC. This tablet can be found presented with accompanying transliteration and translation in Par C. J. Gadd, “Tablets from Kirkuk,” *RA* 23 (1926): 58-59, 111, 150. See also Instone-Brewer, “Deuteronomy 24:1-4 and the Origin of the Jewish Divorce Certificate,” 236. The concern for a woman’s freedom upon divorce is also preserved in ancient marriage contracts. See Babylonian Marriage Documents nos. 2, 4, 5, 6, 15, 16, 19, 20, 26, 30 as presented in Roth, *Babylonian Marriage Agreements*, 40-100. See also fifth-century BC Jewish marriage contracts from the Aramaic papyri at Elephantine, Cowley §7:25 and Kraeling §7:23, made available by Porten and Yardeni, *Textbook of Aramaic Documents from Ancient Egypt*, §B2.6:25 and §B3.8:24 (pp. 2:30, 2:33 and 2:78, 2:82 respectively).

previously concealed is now fodder for public discussion. By divorcing this woman publicly on the grounds of her indecency, this man uncovers her shame to the world.³³¹

Once given the divorce certificate and sent away from her husband's house, the woman goes out and marries another. This second marriage is confounding. The marriage itself seems to introduce a pivotal twist in the plot. Yet from the perspective of the text it appears that the second husband is significant only in this—he exists.³³² According to verbal semantics, he does not even take the initiative in marrying the woman. She becomes his wife. And the marriage ends. It does not matter whether the marriage ends by divorce or remarriage. It might be said that the most impressive textual feature of this second relationship is its insignificance. What, then, is its relevance, and how does it affect the previous relationship?

At the very least the second marriage indicates that this woman who was cast aside by her former husband does have value as a wife. This woman is not unlovable. Her

³³¹This understanding of Deut 24:1-4 adds significance to Joseph's response toward Mary in Matt 1:18-19.

³³²Those who have proposed theories concerning the second husband's role have had to either look later in the text or read between the lines. For example, based on the rare form of נִשְׁאָר in v. 4, some propose that the inclusion of a second marriage in this text is the source of the wife's defilement (based on the NT teaching that such a marriage is considered adultery). See C. F. Keil and F. Delitzsch, *Pentateuch*, trans. James Martin, BCOT (Edinburgh: T. & T. Clark, 1981), 1:418. Another theory, proposed by Raymond Westbrook, interprets this text against the backdrop of the ancient Near Eastern guidelines for the financial consequences of divorce. His intriguing proposal is summarized in n. 278. Ancient Near Eastern texts relating to marriage (and divorce) are indeed consumed by a concern for financial matters—an astute observation that undoubtedly prompted Westbrook's proposal. However, the elements expressing financial concern that are ubiquitous in ancient Near Eastern texts (brideprice, dowry, children, other wives, etc.) are completely lacking in this text. Furthermore, among the ancient Near Eastern witnesses, disparity outweighs consistency. Even if it could be demonstrated that this text was driven by financial concerns, we have no way of knowing what the standard practice in Israel would have been. Nor is there a consistent practice among her neighbor's with which to compare. Cf. LU ¶ 9, ¶ 10 versus MAL A ¶ 37, as listed in Roth, *Law Collections*, 18 and 166-67 respectively. John Walton's view will be discussed below. See John H. Walton, "The Place of the *Hutqattēl* within the D-Stem Group and its Implications in Deuteronomy 24:4," *HS* 32 (1991): 7-17.

actions do not warrant death. Her deformity, if she has one, is not so hideous that marriage is unthinkable for her. One might even infer from the text that she was capable of a lasting marriage relationship. The text allows that her second husband might divorce her, but it also allows that he might choose to stay married to her for the length of his life. Thus one might conclude that her “defect” does not necessitate divorce. Finally, the second husband is significant in his eventual absence. In order for the question of the first husband’s rights to be addressed, this second marriage must come to a legitimate end. The only way for the marriage to end is through death or divorce.³³³ His exit strategy is irrelevant; the only requirement is that he leave. His role is to be her husband and then make his departure.

One final note of interest involves the subject shifts in Deuteronomy 24:1-4. After the first marriage, the focus of the text is on the social movements of the woman. Grammatically, the subject of the text shifts from masculine to feminine. Even the second marriage is described from the perspective of the woman.³³⁴ However, when the text turns to matters of divorce (or death) by the second husband, it reverts back to a

³³³The two divorces in this passage have received considerable attention. Recorded back-to-back as they are, it is easy to see how this text could have been understood as existing to establish acceptable divorce procedure. Both represent the same pattern: (1) intent or grounds for divorce, (2) the writing of a divorce certificate, (3) the act of placing it in the woman’s hand, and (4) the dismissal of the woman from the husband’s household. Raymond Westbrook suggests that the divorce in the second marriage was different than the divorce in the first marriage in that the first divorce was considered justifiable and the second was not (“The Prohibition on Restoration of Marriage,” 387-405). A more likely explanation is that the grounds for the second divorce are simply expressed in more general terms. Thus Deut 24:3 covers any situation in which the second marriage ends. See the response to Westbrook in n. 278.

³³⁴Deut 24:2 וְהָיָה לְכֹהֵן וְהָיְתָה לְאִשׁ-אָחֵר. Typically male involvement dominates the linguistic presentation of marriage, and one expects language like that found in 24:3, “. . . who took her as his wife.” Although the expressions “to belong to a man (in marriage)” and “to become a wife” are not uncommon, they demonstrate that the focus of the text is on the woman, not her husband. Cf. Gen 20:12; Num 36:6, 8, 11, 12; Lev 22:12; Num 30:7 (Eng 30:6); 36:3, Deut 22:19, 29; 24:2; 25:5; 1 Sam 25:42; 1 Kgs 4:11; 2 Kgs 8:18.

masculine subject. This subject shift coupled with the patricentric character of ancient Israelite society suggests that the husband held the decisive authority in matters regarding the termination of marriage. Extra-biblical data support this idea.³³⁵ Some evidence suggests that among Israel's neighbors women could refuse their husbands or even leave if their situation were desperate enough.³³⁶ Even if this were true in Israel, the main authority for matters pertaining to divorce resided with the male.³³⁷

In summary, (1) The phrase “she finds no favor in his eyes” seems to highlight the fact that this husband did not demonstrate grace to his wife. (2) The text does not reveal the specific reason for the husband's disfavor. The reference to עֲוֹנוֹת דָּבָר probably refers to a physical or, less likely, moral defect involving something private (hidden), probably shameful, and possibly not her fault, his discovery of which is due to his position as her husband. (3) The morally neutral use of מָצָא in the phrase, “he found something indecent concerning her” may suggest that the husband had a choice in how he was to handle the matter of the wife's defect. He can cover up her nakedness or expose

³³⁵Language pertaining to the regulation of divorce often was written in patricentric language—it was directed toward the husband. See LU ¶ 9-11; LL ¶ 30; SLHF iv. 12-20; LE ¶ 59; LH ¶ 137-43, ¶ 148; MAL A ¶ 37-38; HL ¶ 26-b, ¶ 31-33. Presented in Roth, *Law Collections*.

³³⁶According to some Semitic legal traditions, women could initiate divorce. LH ¶ 142, ¶ 143, ¶ 149 (read in context of ¶ 148) and HL ¶ 26a. Roth, *Law Collections*, 109, 220. The extent of this practice in ancient Mesopotamia and the actual equality of roles regarding divorce is still a matter of question. The Code of Hammurabi suggests that a wife who initiated divorce would have been the exception rather than the rule. If her character were found to be flawed, it cost her her life. For an excellent treatment of the issue, see E. Lipiński, “The Wife's Right to Divorce in the Light of an Ancient Near Eastern Tradition,” in *The Wife's Right to Divorce*, ed. Bernard S. Jackson, JLA 4 (Leiden: E. J. Brill, 1981), 9-27. As for Israel, Exod 21:7-11 suggests that a married woman had some recourse if she were not well cared-for (based on the assumption that a free woman would have had at least as much right as a slave woman).

³³⁷Like the language of the ancient law codes, the OT passages that address the issue of divorce are directed toward the male: Deut 22:19, 29; 24:1-4. See also Yair Zakovitch, “The Woman's Rights in the Biblical Law of Divorce,” in *The Wife's Right to Divorce*, ed. Bernard S. Jackson, JLA 4 (Leiden: E. J. Brill, 1981), 28-46.

her shame to the community. (4) Although a divorce certificate probably served as protection for a divorced woman, it was also undoubtedly a form of public disgrace.

(5) The text provides little concrete information regarding her second marriage. The only conditions are that she marry another man and that the marriage end. (6) In ancient Israel, the husband held the position of authority in matters of divorce.

Apodosis—Deuteronomy 24:4

“The first husband who divorced her may not remarry her” The main issue—the restriction of a man’s right to remarry a former wife after he has divorced her for an indecency and she has been remarried—is straightforward. Yet the rationale behind this restriction remains elusive. What is it about the circumstances in verses 1-3 that creates a situation whereby this man is no longer allowed to marry this woman if she should again become eligible? Many suggestions have been proffered, but few are tenable.³³⁸ The difficulty in understanding Deuteronomy 24:1-4 is made more frustrating

³³⁸The task of representing all proposed interpretations of Deut 24:1-4 is daunting. Even the more popular proposals are applied differently by each fresh set of eyes. The history of scholarship on this passage is traditionally traced back to Philo, who holds that by marrying the second husband the woman is guilty of committing adultery and that the first husband will become party to her sin by remarrying her. Philo, *Special Laws*, 3.30-31. Presented and translated in G. P. Gould, *Philo VII*, LCL 320 (Cambridge, MA: Harvard University Press, 1984), 492-95. The following treatment is not comprehensive, but is intended to provide a representative overview of those interpretations that have dominated the discussion.

S. R. Driver sees this instruction as intended to prevent hasty divorce. Although he views vv. 1-3 as part of the protasis, Driver sees this law as prescribing restrictions to the practice of divorce. He also posits that this law might encourage the first husband to seek reconciliation before his former wife remarries. Finally, he suggests that this law might protect the second husband from a wife who desires to return to her former home (*A Critical and Exegetical Commentary on Deuteronomy*, 269-73). This view is picked up in Yaron’s work. Yaron points out that this law is a highly ineffective way to prevent divorce. Reuven Yaron, “Restoration of Marriage,” *JJS* 17 (1966): 5.

Peter C. Craigie suggests that the law places further restrictions on already existing divorce practices so that divorce does not become too easy and therefore little more than legalized adultery. He suggests that the language of the text (*defiled*) suggests that the second marriage is tantamount to adultery (*The Book of Deuteronomy*, NICOT [Grand Rapids: Eerdmans, 1976], 304-06). Although not alone in suggesting that the second marriage is adultery, it is difficult to see how one can hold that “something indecent” cannot refer to adultery because the penalty for adultery is death *and* at the same time hold that

because the text includes its own rationale, but it is a rationale more obscure than enlightening to the modern reader.

This rationale begins with the phrase **אֲחֶרֶי אִשָּׁר הָטְמְאָהּ**, a phrase that is particularly troublesome because it contains one of only four³³⁹ examples of the *Hotpaal*³⁴⁰ stem in the Hebrew Bible. Most translate this phrase “because she is unclean”

the second marriage is adultery but not requiring the death penalty.

Reuven Yaron interprets the problem in Deut 24:1-4 as one of incest, not adultery. (Although he offers very little explanation of what he means by incest.) His primary thesis is that Deut 24:1-4 was intended to protect the second marriage should either the first husband or the wife desire to rekindle the old relationship (“Restoration of Marriage,” 1-11). The main weakness of this interpretation is its failure to account for the possible situation in which the second husband dies.

Calum Carmichael argues that remarriage to a former spouse after an intervening marriage would have been considered naturally repulsive. He bases his theory on analogy with the situation Abraham and Sarah faced with Pharaoh and later Abimelech (*The Laws of Deuteronomy* [Ithaca, NY: Cornell University Press, 1974], 203-07). Difficulties with this interpretation abound, not the least of which involves the inexactness of the parallel between Deut 24:1-4 and Gen 12 and 20.

Gordon J. Wenham compares Deut 24:1-4 to the laws of incest in Lev 18 and 20. He regards remarriage between the first husband and the wife as a type of incest based on the idea that husband and wife become “one flesh” (“Restoration of Marriage Reconsidered,” *JJS* 30 [1979]: 36-40; idem, “Marriage and Divorce in the Old Testament,” *Did* 1, no. 1 [1989]: 6-17). The primary problem with this interpretation is that it does not account for the text’s deliberate inclusion of the second marriage.

Raymond Westbrook argues that Deut 24:1-4 should be understood in light of the financial consequences for the dissolution of marriage as represented by extra-biblical texts (“The Prohibition of Marriage in Deuteronomy 24:1-4,” 387-405). This view is addressed more fully in n. 278 above. This suggestion does not account for the reference to defilement in v. 4.

William F. Luck views this text as intended to protect a wife from a hard-hearted husband. Luck does see an element of adultery in the text, but the guilt is attributed to the husband first for divorcing her (breaking his covenant commitment) and second for allowing her to be united with another. Despite this element of guilt, divorce is allowed in order to protect the woman from a miserable marriage (*Divorce and Remarriage: Recovering the Biblical View* [San Francisco: Harper & Row, 1987], 57-67). Luck himself recognizes the main problem with this view—it is not consistent with the prohibition against divorce in Deut 22:19 and 22:29.

³³⁹The four occurrences include: Lev 13:55, 56; Deut 24:4 and Isa 34:6. Some grammarians include the four occurrences of **הָטְמְאָהּ** (from **הָטַם**): Num 1:47; 2:33; 26:62 and 1 Kgs 20:27. Cf. Joüon, 1:§53g. However, both Walton and Brockelmann have argued on different grounds that this form represents a Gt-stem. See Walton, “The Place of the *Hutqattēl*,” 9; and Carl Brockelmann, “Hebräische,” *GVG*, 1:529-30. If these four forms are included, then there are eight examples of this stem in the Bible. The inclusion of these terms does not affect the results of Walton’s study as discussed below.

Carolyn Pressler rejects the existence of a *Hothpaal* form. She follows the work of Charles Torrey who suggests that the Massoretic pointing was intended to suggest that there were two possible readings, *Hithpaal* or *Hophal*. See Pressler, *View of Women*, 48-49 n. 9; and Charles Torrey, *The Second Isaiah* (New York: Charles Scribners, 1928), 284. However, such skepticism regarding this stem is unwarranted.

³⁴⁰Referred to by some grammarians as the *hutqattēl* (Walton, “The Place of the *Hutqattēl*,” 7-

or “because she has been made unclean.” The questions for many scholars then become how and why she became unclean, who and what caused her uncleanness, and why does her state of uncleanness affect a potential relationship with her first husband? Many possible answers have been proposed.

Based on Waltke and O’Connor’s³⁴¹ proposal for outlining the Hebrew verbal system by identifying the voice of the subject and the undersubject,³⁴² John Walton argues convincingly that this phrase should be translated “after she has been caused to make herself unclean” or “after she has been made to declare herself unclean.”³⁴³ To understand Walton’s argument, a summary of the profile of the D-stem is needed. The D-stem (the *Piel*, *Pual*, *Hithpael*, and *Hotpaal*) is characterized by a passive undersubject. Since נִמְצָא is stative in the *Qal*, it is factitive in the *Piel*. “She is unclean” (*Qal*) becomes “He made her unclean” (*Piel*). All the D-stem possibilities are represented in Table 8.

In summary, the *Pual* is the passive form of the *Piel*. The *Hithpael* adds a reflexive element, and the *Hotpaal* is the passive of the *Hithpael*.³⁴⁴ Thus the verbal

17) or the *hothpa’al* (GKC, 54.3.h). The primary distinction of this stem is that it belongs to the D-stem and is the passive of the *hitqattēl* (otherwise referred to as the *Hithpael*).

³⁴¹See *IBHS*, 21.2.2. This suggestion builds on the foundational work of Albrecht Goetze, “The So-called Intensive of the Semitic Languages,” *JAOS* 62 (1942): 1-8; and Ernst Jenni, *Das hebräische Pi’el: Syntaktisch-semasiologische Untersuchung einer Verbalform im Alten Testament* (Zürich: EVZ-Verlag, 1968); Ernst Jenni, “Zur Funktion der reflexiv-passiven Stammformen im Biblisch-Hebräischen,” in *PWCJS* 5 (Jerusalem: World Union of Jewish Studies, 1973), 4: 61-70. (Note that *IBHS* translates this term, “she has been defiled,” *IBHS*, 26.3b.)

³⁴²The undersubject is that which is defined by the subject.

³⁴³Walton, “The Place of the *Hutqattēl*,” 7-17, esp. 11.

³⁴⁴The idea that the *Hotpaal* reflects the passive of the *Hithpael* can be traced back at least to the medieval grammarians. See William Chomsky’s translated and annotated version of David Kimḥi’s Hebrew grammar, where he is able to trace Kimḥi’s understanding of the verb back to Ibn Janah. William Chomsky, trans., *David Kimḥi’s Hebrew Grammar (Mikhlol)* (Philadelphia: Dropsie College for Hebrew and Cognate Learning, 1933), §27e n. 166, p. 107.

Table 8. D-stem verbal system

Stem	Subject (A)	Undersubject (B)	Translation
<i>Piel</i>	Active	Passive	A makes B unclean
<i>Pual</i>	Passive	Passive	B is made unclean (by A)
<i>Hithpael</i>	Active (reflexive)	Passive	A makes B to make/declare himself unclean
<i>Hotpaal</i>	Passive (reflexive)	Passive	B is made to make/declare himself unclean (by A)

Source: Adapted from Walton, “The Place of the *Hutqattēl*,” 12.

system of D-stem verbs evidences a logical and coherent order. Further, Walton demonstrates that translating the *Hotpaal* with a passive reflexive subject and a passive undersubject fits in each context.³⁴⁵

If Walton’s interpretation is correct,³⁴⁶ his translation has profound implications for the way we understand this passage. The offense separating this woman from her first husband is the fact that she was forced to make/declare herself unclean. The fundamental significance of this interpretation is that the focus of the text shifts from the source of uncleanness (e.g., adultery, disease, irregular bleeding) to the factor at the root of that source. This shift in focus affects the interpretation of the entire passage. What scholars often view as a statement of judgment concerning this woman’s impurity is really a statement in judgment of the person and process that forced her into a situation of public disgrace.

³⁴⁵Walton, “The Place of the *Hutqattēl*,” 10-11.

³⁴⁶Walton’s argument is sound, his proposed outline of the D-stem verbal system corresponds with historical discussion in the field, his results suggest a logical and coherent grammatical system (restricted in this article to the D-stem), and the results of his proposal work in context.

What, then, does it mean that “she was caused to make/declare herself unclean”? We are not asking what caused her to be unclean, but who or what was the agent that caused her, either to come into contact with that which made her unclean, or to be declared unclean with regard to herself (in essence making her unclean before the community)? Only one possibility presents itself, although it can be worked out in two different ways. The agent in either case was the first husband and his action of divorcing her. Either, (1) divorce sent her to the arms of a second husband, and in remarrying she committed adultery—thus becoming unclean; or (2) through the process of divorcing her first husband, she was forced to declare herself unclean (thus becoming unclean in the eyes of the community).

Option 1: Uncleanness Caused by Divorce

The first husband’s act of divorcing his wife prompted her to marry a second time, and this marriage constitutes adultery. The support for this interpretation is threefold. (1) Adultery does cause a person to become unclean.³⁴⁷ (2) This interpretation explains the inclusion of the second marriage in this passage. And, (3) later biblical treatment of this topic might suggest that this passage necessarily involves unfaithfulness and/or adultery.³⁴⁸

However, the absence of contextual evidence weakens this interpretation. (1)

³⁴⁷Cf. Lev 18:20; Num 5:12-13.

³⁴⁸See Jer 3:1 for unfaithfulness; Matt 5:31-32; 19:7-9; Mark 10:4-12; Luke 16:18; 1 Cor 7:10-11 for adultery.

While adultery can cause a person to become unclean, the OT records many other means by which a person can be defiled, including some that might fit better within the context of Deuteronomy 24:1-4.³⁴⁹ (2) Nothing else in this passage indicates that there is a problem with the woman marrying a second time. If this second marriage constituted a sin as serious as adultery, one might expect that sin to be addressed directly. Further, Leviticus 21:14 implies that marrying a divorcée would have been acceptable for anyone other than a priest. (3) The phrase “she has been made to make/declare herself unclean” is an indictment of the first husband and his divorcing her. Yet it is difficult to see how the actions of the first husband forced her into a second marriage. In ancient Israel, it was difficult for a woman to survive without the protection of a male household, but the woman may have had other economic options, such as turning to a father or a brother for support.³⁵⁰ (4) Finally, interpreting the second marriage as adultery does not explain why

³⁴⁹A person can become unclean many different ways. Inappropriate or improperly timed sexual activity (including adultery, promiscuity, bestiality, incest, etc.: Gen 34:5, 13, 27; Lev 15:18, 24, 25; 18:20, 23; 21:11; Ezek 18:6, 11; 33:26), contact with death or something/someone that is unclean (Lev 5:2; 11:8, 24, 25, 27; 17:15; 19:19; 21:1-4; 21:11; 22:4; Num 5:2; 6:7, 9, 12; 9:6-10; 19:11, 13, 14, 16, 18; Ezek 44:25; Hag 2:13. Here we might also include those things that were declared unclean by God so that Israel was not to eat or sacrifice them: Lev 11:4-42; 22:4; Deut 14:7, 8, 19), skin disease (Lev 13; 14:36-46; 22:4; Num 5:2), blood or other bodily fluids (Lev 15:2, 16-33; 22:4; Num 5:2; Ezek 36:17), or idolatry and witchcraft (Lev 18:30; 19:31; 20:3; 2 Kgs 23:8, 10, 13, 16; Isa 30:22; Ezek 20:26, 31) all cause a person to become unclean. Unfortunately, the breadth of potential sources for uncleanness does not aid in isolating the specific cause referred to in Deut 24:4. The marital context suggests to some that the root of the uncleanness involves a sexual sin such as adultery, but like עֲרֵוֹת דִּבְרֵי, the range of referents is broader than sexual issues. In this case, it might also refer to a bleeding problem or other disorder.

Murray claims that the defilement in the text is a reference to moral rather than ritual defilement. He bases this claim on the observation that no purification procedure is prescribed. In a somewhat questionable form of argumentation, Murray suggests that the lack of prescribed purification indicates that none was available, i.e., the moral offense was too grave (*Divorce*, 13). However, the focus of this text is not on the uncleanness itself, therefore a purification ritual is not to the point. Rather, the *Hotpaal* suggests that the concern of the text is the humiliation or abuse the woman suffered at the hand of her first husband.

³⁵⁰See Lev 22:13.

the text specifically restricts the first husband from (re)marrying her as opposed to restricting any future marriage whatsoever.³⁵¹

***Option 2: Uncleanness Made
Known through Divorce***

The first husband's act of divorcing his wife causes her to declare herself unclean publicly.³⁵² This interpretation goes against most scholarly treatment of this passage, but finds support in context. (1) Beginning in the protasis, the text suggests that the problem with the situation is deeper than the matter of indecency faced by the wife. The description of the first marriage in verse 1 indicates that the husband is less than gracious with his wife's situation. She suffers from some flaw or imperfection (עֲרֹתָ (דִּבְרָה) that may be related to the reference to uncleanness in 24:4. Her defect was hidden and would not have been public knowledge until exposed by her husband during the divorce procedure. (2) The apodosis emphasizes the action of divorce enacted by the first husband against his wife, thus the responsibility for her uncleanness (Deut 24:4) is cast on him. Immediately preceding the phrase in question, the text emphasizes the first husband's action against his wife. Here in verse 4 he is identified as "the first husband *who divorced her*."³⁵³ Having already been absolutely identified as "the first husband," the additional phrase "who divorced her" draws attention to the man's social humiliation

³⁵¹The attempt to explain remarriage to the first husband as making the adultery "even more complete" is unconvincing. Craigie, *The Book of Deuteronomy*, 305. It is hard to imagine that the highly prized state of marriage would regress to legalized wife-swapping among the Israelites without this law.

³⁵²A similar interpretation is suggested by Walton, "The Place of the *Hutqattēl*," 7-17.

³⁵³Emphasis added.

of this woman. (3) Grammatical evidence suggests that a woman in this situation does not bear responsibility for the uncleanness.³⁵⁴ As the passive object (undersubject) of this D-stem verb (הִטְמָאָה), she does not actively contribute to the idea expressed by the verb, i.e., uncleanness.³⁵⁵ (4) The interpretation of divorce as a socially degrading act corresponds with the larger context of Deuteronomic Torah. In Deuteronomy 21:14 the act of divorce is referred to as humiliation (הִכָּזָה).³⁵⁶ (5) Finally, regarding the cultural context, the idea that such disposal of an unwanted wife would have been unacceptable corresponds to extra-biblical evidence. Although such evidence must be applied with caution, ancient Near Eastern law codes from Babylon indicate that a man is responsible to care for his wife even in extreme cases of physical malady.³⁵⁷

The first challenge to this interpretation arises from the common understanding that later biblical references to divorce, in particular Jesus' comments, indicate that divorce causes adultery perforce.³⁵⁸ Closer readings, such as that by Craig Keener on

³⁵⁴This does not mean that the woman is freed from the responsibility of dealing with her uncleanness, but that the responsibility of the woman to deal with her uncleanness is not addressed in this text which focuses instead on the man's culpability in causing her to be made or to declare herself unclean.

³⁵⁵In discussing the difference between the causal notion of the *Hiphal* verses that of the *Piel*, Waltke and O'Connor write, "With the *Piel* the object is transposed passively into a new state or condition. Philosophers would refer to this transposition as 'accidental' because the object makes no contribution to the verbal notion," *IBHS*, 27.1d. Walton notes that this idea of passivity applies to all of the stems in the D group, "The Place of the *Hutqattēl*," 12. In Deut 24:4 the woman is both the passive subject and the passive object/undersubject.

³⁵⁶See the discussion above.

³⁵⁷See LL ¶ 28, and LH ¶ 148-49, presented and translated by Roth in *Law Collections*, 31-32 and 109, respectively.

³⁵⁸Matt 5:31-32; 19:7-9; Mark 10:4-12; Luke 16:18; 1 Cor 7:10-11. These passages are heavily debated among scholars. Cf. Jay E. Adams, *Marriage, Divorce, and Remarriage in the Bible: A Fresh Look at What Scripture Teaches* (Grand Rapids: Zondervan, 1980); H. Wayne House, *Divorce and Remarriage: Four Christian Views* (Downers Grove, IL: InterVarsity Press, 1990); Craig Keener, . . . *And Remarries Another: Divorce and Remarriage in the Teachings of the New Testament* (Peabody, MA: Hendrickson, 1991); E. Hamel, "The Indissolubility of Complete Marriage: Theological, Historical, and Pastoral

Matthew 5:31-32, recognize the language of adultery as causing divorce to be rhetorical overstatement (consistent with the hyperbolic nature of the Sermon on the Mount).³⁵⁹ The purpose of Jesus' statements, according to Keener, is first the sanctity of marriage, and second, in "addressing the hardness of legal interpreters' hearts (19:8), Jesus opposed divorce to protect marriage and family, thereby seeking to prevent the betrayal of innocent spouses."³⁶⁰ This interpretation turns a potential difficulty into additional support for our interpretation.

As for those passages on divorce and remarriage that appear later in the OT, the closest support for interpreting the second marriage as adultery is found in Jeremiah 3:1 with its reference to the prostitution (זָנָה) of the people. However, one must exercise caution when comparing Jeremiah 3:1 with Deuteronomy 24:1-4 because of the extensive differences in the literary features of each text. While both passages appear to refer to the same instruction, the text in Jeremiah is poetry, not prose, with its main stylistic feature being metaphor, blurring the lines between the two texts even further.³⁶¹ The other important OT passage on divorce is found in Malachi 2:16.³⁶² Whether one interprets this

Reflections," in *Sexuality, Marriage, and Family: Readings in the Catholic Tradition*, ed. Paulinus Ikechukwu Odozor (Notre Dame, IN: University of Notre Dame Press, 2001), 369-99; and David Instone-Brewer, *Divorce and Remarriage in the Bible: The Social and Literary Context* (Grand Rapids: Eerdmans, 2002).

³⁵⁹Craig Keener, *A Commentary on the Gospel of Matthew* (Grand Rapids: Eerdmans, 1999), 189-92; 469. According to Keener, it is not divorce that causes adultery, but the illegitimacy of the divorce. Although some might consider the divorce of Deut 24:1-4 illegitimate according to Jesus' standards, we must acknowledge that the OT and NT do not always approach sexual ethics from the same perspective particularly clear in the case of polygamy and monogamy.

³⁶⁰*Ibid.*, 192.

³⁶¹Contra Pressler, *View of Women*, 58-62. In her treatment of the passage, Pressler emphasizes the relationship between Deut 24:1-4 and Jer 3:1.

³⁶²Another difficult text, Mal 2:16 has also generated a great deal of discussion. See excellent

verse as referring to divorce in general or to divorce merely on the ground of aversion,³⁶³ the message of the text carries a strong warning against divorce. Malachi 2:16 leaves little doubt that divorce was considered a grave matter in the OT, a sentiment we suggest was shared by Deuteronomy 24:1-4.³⁶⁴ Finally, one wonders if Hosea were not an exception to the instruction in Deuteronomy 24:1-4, but rather an embodiment of the fundamental principle at the heart of this Deuteronomic instruction—gracious faithfulness.³⁶⁵

The second challenge facing this interpretation involves an underlying assumption that adultery and divorce involve different levels of offense within the OT perspective. Adultery is clearly a high offense, punishable by death, while divorce is tolerated—perhaps even accepted.³⁶⁶ Thus the strong language of verse 4 is considered

treatments of the text and its surrounding scholarship in Hugenberg, *Marriage as a Covenant*; and Davidson, *Flame of Yahweh*, 417-22.

³⁶³Compare the traditional translation as represented by the RSV with the translation represented by Gordon Hugenberg.

RSV: "For I hate divorce, says the Lord the God of Israel, and covering one's garment with violence, says the Lord of hosts. So take heed to yourselves and do not be faithless," (Mal 2:16).

Hugenberg's translation (with paraphrase): "If one hates and divorces [that is, if one divorces merely on the ground of aversion], says Yahweh, God of Israel, he covers his garment with violence [i.e., such a man visibly defiles himself with violence], says Yahweh of hosts. Therefore, take heed to yourselves and do not be faithless [against your wife]," Hugenberg, *Marriage as a Covenant*, 76.

³⁶⁴Cf. W. J. Dumbrell, "Malachi and the Ezra Reforms," *RTR* 35 (1976): 47.

³⁶⁵See also Daniel I. Block, "Marriage and Family in Ancient Israel," in *Marriage and Family in the Biblical World*, ed. Ken M. Campbell (Downers Grove, IL: InterVarsity Press, 2003), 51-52.

³⁶⁶Many readers of the biblical text assume that everything recorded represents acceptable or ideal behavior (at least as judged by the standards of its day) unless otherwise noted. Perhaps this inclination to idealize the text stems from the long held (but not original) assumption that Deuteronomy contains a law code. As such, everything it addressees is considered permissible, acceptable behavior. One quick example should help demonstrate the fallacy of this line of thinking. Deuteronomy 22:22 reads, "If a man is found lying with a married woman. . . ." Such behavior is clearly wrong according to the standards of the OT. One might argue that the "case" of Deut 22:22 is different because the situation described in the protasis met with grave punishment. What then of Deut 22:28, "If a man finds a virgin girl who is not betrothed and he seizes her and lies with her and they are found"? Here the punishment is less severe, yet

more appropriately descriptive of adultery than divorce. If adultery is involved, one can more easily understand why the situation described in Deuteronomy 24:1-4 is so grievous.

Within the OT, adultery is associated with both defilement (טָמֵא)³⁶⁷ and abomination (תּוֹעֵבָה).³⁶⁸ However, within the context of Deuteronomy 24:1-4 neither term refers specifically to adultery. As discussed above, הַטְּמָאָה emphasizes the process by which the woman was forced into a situation of publicized impurity—here interpreted as the first husband’s act of divorcing his wife. The action labeled as an abomination (תּוֹעֵבָה) in verse 4 is the remarriage of the first husband, the one that initiated the divorce, to his former wife. Abomination³⁶⁹ typically refers to such offenses as idolatry or that which is associated with cultic impurity,³⁷⁰ or with extreme sexual impurity.³⁷¹

no one assumes that the action in 22:28 was considered acceptable. Interestingly enough, here the consequences of the man’s actions against the woman involve a restriction of the man’s rights in his choice of actions against this woman—he may not divorce her. Deuteronomy 22:28 does not allow for seizure and rape of a young, virgin woman; it is an instance of a pastor addressing a real-life situation in order to offer an appropriate response to an inappropriate situation. So, too, the circumstances in Deut 24:1. Just as Deut 22:28 addressed an unrighteous situation (seizing or lying with a virgin girl) and responds by restricting the future rights of the man against this woman, so Deut 24:1-4 addresses an unrighteous situation (divorce) and restricts any future rights this man might assume over this woman (remarriage). Regarding the NT treatment of this passage, note the role that the Pharisees play in the conversation (Matt 19:7 and Mark 10:4). It is their interpretation that is recorded and to which Jesus responds.

³⁶⁷Lev 18:20.

³⁶⁸Jer 7:9-10. Syntactically, the reference to an “abomination” in v. 4 cannot refer to adultery, but only to the remarriage of a man to his former wife once she has been married to another.

³⁶⁹For a comprehensive treatment of the term, see P. Humbert, “Le substantif *to ‘ēbā* et la verbe *t’b* dans l’Ancien Testament,” *ZAW* 72 (1960): 217-37.

³⁷⁰Idolatry (Deut 7:25, 26; 12:31; 13:14; 17:4; 20:18; 27:15; 32:16; 2 Kgs 21:2-11; Jer 32:35); child sacrifice (Lev 18:26-30; Deut 12:31; 2 Kgs 16:3; 21:2, 11); all types of sorcery and witchcraft (2 Kgs 21:2, 11; Deut 18:9); idols themselves (2 Kgs 23:12; Isa 41:24; 44:9); blemished or vain sacrifices (Deut 17:1; Isa 1:13) or offerings collected in an immoral way (Deut 23:18).

³⁷¹Homosexuality (Lev 18:22; 20:13; 1 Kgs 14:24); incest and bestiality (Lev 18:26, 27, 29, 30).

Jeremiah includes a list of abominations that looks as though it could have come straight from the Decalogue: stealing, murdering, adultery, perjury and idolatry.³⁷² Aside from those items already listed, Deuteronomy includes measuring with false weights to cheat one's neighbor as an abomination.³⁷³ This inclusion is particularly interesting because it demonstrates that those things loathed by YHWH extend beyond the offensive sins of idolatry and adultery to include a man's unjust treatment of others. The abomination of remarriage to a former wife after her intervening marriage need not be an issue of sexual or religious purity. In divorcing his wife, this man demonstrated a disregard for her as an individual and for his covenant commitment to her. He exercised his authority in a manner that placed his own interests ahead of his responsibility to care and provide for his wife. Such behavior is loathsome to YHWH.³⁷⁴

Whether (1) the divorce caused the woman to remarry and that remarriage constituted adultery or (2) the divorce caused the woman to declare herself unclean to the community, the emphasis in verse 4 is on the person (first husband) and process (divorce) by which this woman was caused to make or declare herself unclean. In Deuteronomy 24:1 this husband assumed the right to divorce his wife. The harm this caused her (defilement) is the basis for the restriction of any future rights to her, rights he could assume only through remarriage.

³⁷²Jer 7:10.

³⁷³Deut 25:16.

³⁷⁴The injunction *וְלֹא תַחַטִּיִּא אֶת־הָאָרֶץ אֲשֶׁר יְהוָה אֱלֹהֶיךָ נָתַן לָךְ בַּחֲלָה* (do not cause the land to sin) is unique to Deut 24:4. It calls to mind the tripart relationship between YHWH, Israel and the land. See Block, *Gods of the Nations*, esp. 20.

Conclusion

It has been argued above that Deuteronomy 21:10-14 identifies divorce as a degrading act and that this divorce is the basis for the restriction of a man's authority over a captive woman. Because of the woman's hidden shame, however, the case in Deuteronomy 24:1-4 may have involved even greater humiliation. In ancient Israel, to charge someone publicly with being unclean was a serious charge, although it need not have indicated a serious offense.³⁷⁵ The public degradation of divorce coupled with the humiliation and shame of being declared unclean demonstrates a lack of regard for the well-being of the woman. As her husband, this man was to offer her provision and protection, and ideally, love and grace. Yet he uses his authority against her. Deeming her unworthy of living in his household he rejects her publicly, exposing her to social degradation and humiliation. Having demonstrated that he cannot be trusted to care for her well-being, Deuteronomy nullifies any future rights over this woman.³⁷⁶ The purpose of this text may thus be seen to restrain some of the worst abuses of husbands against

³⁷⁵In Israel a person could become unclean from everyday natural events such as having intercourse with one's spouse or having a menstrual period. Yet being unclean meant that the person was not free to fellowship with the rest of the Israelite community. Not only was that person not free to join community worship, but his or her uncleanness was contagious (Lev 15:18-19). See David J. A. Clines, "טמא," *DCH* (Sheffield: Sheffield Academic Press, 1996), 3:366-68; and Richard E. Averbeck, "טמא 3237," *NIDOTTE*, ed. Willem A. VanGemeren (Grand Rapids: Zondervan, 1997), 2:365-76.

It may be asked, what then should the husband do regarding an issue of uncleanness of this wife? Leviticus 5:1 seems to indicate that the husband who "finds" the matter would be responsible to deal with it. Everyone in that society was occasionally unclean. Different offenses required different measures. If this woman were indeed guilty of some uncleanness, this situation would have been an issue for her, her husband and possibly the priests. One thinks of Job offering sacrifices on behalf of members of his household, thereby "covering" their offenses before YHWH (Job 1:5).

³⁷⁶It is a cruel irony that abused women often fall into a cycle of abuse—returning again and again to a man or a type of man who exploits whatever power he has over her for his own benefit rather than her well-being. This regulation restricts some of the worst of such cycles.

wives—particularly against wives who may not have the capacity or the courage to protect themselves.

Deuteronomy 24:5

It is hardly coincidental that this short instruction on newlywed exemption follows on the heels of the divorce text. The discouraging picture of repeated marital difficulty is balanced by the depiction of intentional priority shown a bride by her attentive husband. Yet the delightful wisdom set forth in Deuteronomy 24:5 receives relatively little attention in spite of its profound practical, anthropological and theological significance.

For the text and translation of Deuteronomy 24:5, see Table 9.

The Setting

Deuteronomy 24:5 addresses a man's social responsibilities during the first year of a couple's married life. In order to appreciate the measure of exemption extended a new husband, we must consider the cultural backdrop against which this injunction is set, especially with regard to the societal demands typically faced by Israelite men.

In Israel, the demographic of marriageable men overlapped that of those most valuable for service in society.³⁷⁷ Scholars estimate the typical age at which an Israelite married to be around eighteen to twenty years of age, although certain factors such as

³⁷⁷Carol Meyers uses the set of valuations in Lev 27 as descriptive of an Israelite's worth in terms of his or her ability to contribute to the "labor pool." The point of her article is to demonstrate the relative value of a female in ancient Israel. However, her presentation of the data also demonstrates that an adult Israelite male is extremely valuable to society in terms of his ability to contribute to the activities of a community. His relative value jumps from twenty shekels before age twenty, to fifty shekels over age twenty. See Lev 27 and Meyers, "Procreation, Production, and Protection," esp. 582-89.

Table 9. Text and translation of Deuteronomy 24:5

Text	Verse	Translation
כִּי־יִקַּח אִישׁ אִשָּׁה חֲדָשָׁה	5a	↓ If a man takes a new wife
לֹא יֵצֵא בַּצָּבָא	5b	he shall not go forth in military service, and
וְלֹא־יַעֲבֹר עָלָיו לְכָל־דָּבָר	5c	nothing shall be passed over to him.
נָקִי יִהְיֶה לְבֵיתוֹ שָׁנָה אֶחָת	5d	He shall be free to his household for one year,
וְשִׂמַּח אֶת־אִשְׁתּוֹ אֲשֶׁר־לָקַח: ס	5e	so that he may bring joy to his wife whom he married.

economic instability, death of a spouse and even divorce or polygyny contributed to men also marrying later in life.³⁷⁸ Today a twenty-year-old male is considered in many ways a youth and has years ahead of him before he is expected to influence society. However, with the average life expectancy for a male in ancient Israel estimated at forty to fifty years,³⁷⁹ these newly married men would have been literally middle-aged. Their contribution to society carried greater urgency and heightened expectation at a younger age. Even those men who married later in life and who probably carried even greater responsibilities, would still be expected to comply with the same exemptions.

Israelite women were primarily responsible for household affairs although they also contributed economically and even held certain important offices during the course of Israel's history. Men also invested heavily in household matters—involving themselves in the instruction of children,³⁸⁰ the maintenance of order among household

³⁷⁸The biblical text nowhere specifies an appropriate age for marriage. However, scholars estimate that Israelite men began marrying between eighteen and twenty years of age. A saying of the ancient Rabbis recorded anywhere from 300 BC to AD 200 suggests that a man is ready for marriage at age eighteen. (*Aboth* V 24.) Buchanan argues that this age corresponds with the age of moral maturity and responsibility as recorded in IQSa 1.6-18 (a document from Qumran otherwise known as "The Rule of the Community"). George W. Buchanan, "The Old Testament Meaning of the Knowledge of Good and Evil," *JBL* 75 (1956): 114-20.

While one might assume from similar cultures that marriage typically took place shortly after the onset of puberty (see Victor Hamilton, "Marriage [OT and ANE]," *ABD*, 562-63), both Isaac and Joseph were full-grown adults before they were married. Genesis 25:20 reports that Isaac was forty when Rebekah was chosen for him, and Joseph was thirty when he was given a wife (Gen 37:45-46).

³⁷⁹Cf. Carol Meyers, "The Family in Early Israel," in *Families in Ancient Israel*, ed. Leo Perdue et al. (Louisville: Westminster John Knox Press, 1997), 28. The OT includes many examples of men living past their fortieth birthdays. This estimated life expectancy likely reflects the prevalence of widespread diseases, the rigors of harsh working conditions and death on the battlefield. According to Meyers this figure does not include women, whose life expectancy is ten years less due to the health risks involved with childbearing. See also H. W. Wolff, *Anthropology of the Old Testament*, trans. M. Kohl (Philadelphia: Fortress Press, 1974), 119-20.

³⁸⁰Deut 32:46-47; Prov 1:8; 4:1; 6:20; 13:1. See also Christopher J. H. Wright, *God's People in God's Land: Family, Land, and Property in the Old Testament* (Grand Rapids: Eerdmans, 1990), 81-89.

members and much of the physical care of both the land and the livestock.³⁸¹ In this patricentric society, the involvement of an אִשָּׁה in his household should not be minimized.³⁸² Yet, a man's responsibilities also extended beyond the home.

The distribution of roles in Israelite society left the task of protection squarely in the hands of the men.³⁸³ Thus young, able-bodied men formed the core of Israel's military force. From its inception, Israel's history was volatile, being marked by frequent military conflict, a factor that only serves to emphasize the importance of strong, well-staffed troops. Furthermore, men formed the backbone of Israelite social structure, filling roles such as elders, priests, judges, and later, officers in service to the king. It is difficult to know at what age or stage of life men would have been called upon to fill these roles, but Deuteronomy 24:5 indicates that, whatever duties might normally fall to a man, they would not apply during his first year of marriage to a new wife. Although no small loss to the community and its well-being, the first year of marriage was to be set aside as wholly devoted to the wife, before resuming all additional societal roles.

³⁸¹A newly married man may have had fewer household responsibilities, although such would not always have been the case. If this marriage is not a man's first, he may already have a household for which he is responsible. Furthermore, a newly married man faces the task of establishing a household, which task might include building a home and any number of other grueling tasks. See Meyers, "Family in Early Israel," 24. The idea that this text would apply to any and every marriage and not just a first marriage (for the man or the woman) is supported by the initial phrase in v. 5. See n. 392.

³⁸²See Block, "Marriage and Family in Ancient Israel," 48-61. The fact that Israelite men were actively involved in household matters suggests an even greater need for the equal distribution of societal responsibilities—which distribution is made more difficult when a portion of the population is granted an exemption.

³⁸³Num 1:3.; 14:29; 26:2; 32:11; 1 Chr 27:23; 2 Chr 25:5. See also Meyers, "Procreation, Production, and Protection," 574-75.

Ancient Near Eastern Background

Explicit instructions regulating the societal obligations placed on newlyweds appear only in the OT. However, texts from the ancient world suggest that nations outside of Israel's borders may also have exercised a form of military exemption. A Ugaritic text discovered at Ras-Shamra describes a military event so significant that it required full participation. To emphasize the demand for total involvement, the text includes even those who would not typically be called for military service, i.e., the invalid and the blind. The mention of the newlywed in this context is interpreted as indicating that he would otherwise have been exempt from military duties.

CTA 14.2 (85-103) . . . Your army will be a numerous host, three hundred myriads, soldiers without number, archers without count. They will go by thousands like storm clouds, by myriads like rain. After two, two go, after three, all of them. The only son must shut up his house, the widow hire someone (to go). The invalid must take up his bed, the blind man grope his way along. The newlywed must go forth, entrusting his wife to someone else, his beloved to someone unrelated.³⁸⁴

While the evidence from Ugarit suggests that in that culture newlyweds would normally have been granted military exemption, a letter from Mari indicates that in other cultures military involvement was required of every man.

ARM I 6 (15-19) . . . reprimand them severely in the following terms: "If the king goes on an expedition, everybody down to the youngsters should immediately assemble. Any sheikh whose men are not all assembled commits a sacrilege against the king even if he leaves only one man behind!"³⁸⁵

³⁸⁴*CTA* 14.2: ii 96-103 (|| iii 154-end). Translation provided by *COS* I:334-35. See also *KTU* 1.14: II 47-50 (|| IV 26-28). Watson argues that the last lines be translated "He will leave his wife behind on account of another, his beloved on account of the enemy," as there would be no man with whom to leave a wife if all men were called to serve. See Wilfred Watson, "Ugaritic and Mesopotamian Literary Texts," *UF* 9 (1977): 277-79.

³⁸⁵*ARM* I 6 (esp. 15-19). Transliteration and French translation provided in *ARM* vol. I. English translation provided in A. Leo Oppenheim, *Letters from Mesopotamia* (Chicago: University of Chicago Press, 1967), 96-97.

Again, these conclusions are inferred from texts not intended to describe or prescribe standard military practice, but from letters and epics that make passing reference to isolated events.³⁸⁶

Old Testament Background

The closest parallel to Deuteronomy 24:5 is found in Deuteronomy 20:7 where a betrothed man is excused from military service with instructions to go home and marry, lest he die in battle and someone else take his wife. These texts share a number of similarities. Both concern wartime behavior, at least in part.³⁸⁷ Both address an early stage of the marital relationship. In addition, both are rooted in the idea that Israel's victories are not based on the size and strength of her army, but on the power and presence of her God.³⁸⁸ Finally, both texts suggest an underlying desire for the people of God to partake fully in the blessings of YHWH.³⁸⁹ This theme is most pronounced in Deuteronomy 20:5-7 where the grounds for military dismissal are the antithesis of the

³⁸⁶Some suggest a connection between the newlywed military exemption and the Sumerian epic, "Gilgamesh and the Land of the Living." However, the text as translated in *ANET* does not appear to support a solid connection. "Who has a house, to his house! Who has a mother, to his mother! Let single males who *would do as I* (do), fifty, *stand* at my side . . ." *ANET*, 48, lines 50-60. The suggestion here is that anyone who had any other obligation was excused from Gilgamesh's escapade, not simply a newlywed. A full presentation, transliteration and translation of this text is offered by Samuel N. Kramer, "Gilgamesh and the Land of the Living," *JCS* 1 (1947): 3-46.

³⁸⁷Deuteronomy 24:5 also includes exemption from all other social obligations.

³⁸⁸See for example Deut 3:22; 20:4; Josh 6; 11:6; Judg 7.

³⁸⁹Ridderbos writes concerning the military exemptions of Deut 20:5-7, "These exemptions are not based on an abstract concept of human dignity and the correlative notion of human rights, but rather on something else. In Deuteronomy the promise of earthly blessing stands in the foreground, a blessing Israel would receive on the basis of election and of the covenant, if they are obedient to God's will." Ridderbos, *Deuteronomy*, 214.

curses in Deuteronomy 28:30.³⁹⁰

Having emphasized the similarities, it is also appropriate to acknowledge the differences between these two texts. The most obvious difference regards matters of time and scope. Although both deal with the relationship between war and marriage, Deuteronomy 20:7 addresses the betrothal period, while Deuteronomy 24:5 is concerned with the first year of married life. Furthermore, Deuteronomy 20:7 is limited by virtue of its context to a release only from war-time responsibilities, while Deuteronomy 24:5 includes military duties as well as all other social obligations. The most significant difference pertains to the focus of the texts. Jeffrey Tigay astutely observes that Deuteronomy 20:7 addresses the interests of the man, in this case his concern about marrying (or his right to marry) the woman to whom he is betrothed. On the other hand, Deuteronomy 24:5 is concerned with the interests of the wife.³⁹¹

The Characters

This remarkable piece of legislation is directed toward a newlywed man and highlights consideration for his bride.³⁹² As mentioned above, the husband could have

³⁹⁰Cf. W. M. de Bruin, "Die Freistellung vom Militärdienst in Deut. XX 5-7," *VT* 49 (1999): 21-33.

³⁹¹Tigay, *Deuteronomy*, 223.

³⁹²Deuteronomy 24:5 literally reads, "If a man takes a new wife . . ." The expression "new wife" has led to some speculation as to just when this exemption applied. Tigay suggests that the phrase "new wife" is inspired by the verse's relationship to the preceding divorce text in order to avoid a loop-hole by which a couple could divorce and remarry to avoid military duty (*Deuteronomy*, 222). However this suggestion misrepresents the purpose of these so-called "laws." The most likely understanding is that this phrase intends to include any new marriage. In a society where polygyny and divorce were realities, the omission of the word "new" might be understood as applying only to a husband's first marriage. Yet this instruction provides the same gracious initial environment for each married woman, whether she is the primary wife, a secondary wife, or a divorced or widowed woman entering another marriage.

Incidentally, if the primary purpose of this instruction were to ensure procreation, the deliberate identification of a "new" wife—implying any new marriage—would be superfluous. If offspring

been as young as eighteen, would have been keenly aware of his important role(s) in society, and, while probably still under the ultimate authority of his own father, would have been involved in household affairs for much of his life. The bride may have been as young as thirteen or fourteen, according to some estimates,³⁹³ and would have left her father's household to join the husband's family at the time of her marriage. Her new surroundings may have made the adjustment to married life somewhat overwhelming,³⁹⁴ although one can imagine that in a healthy, smoothly running household there may have been family members besides her husband (mother-in-law, sisters-in-law) ready to help make her transition as easy as possible. If her own family had prepared her well, the managing of household duties would not have been problematic for her. Israelite women yearned for the added responsibility of caring for a growing family. Given the cultural and religious value placed on children, it is likely that the greatest wish of every newly married woman was to become a mother, a passion surely shared by each Israelite husband.³⁹⁵ Yet despite this intense desire for children, the OT suggests that procreation was not the sole function of marriage. Ideally, marriage also included a level of intimacy (physical and relational) that would bring delight to both husband and wife.³⁹⁶

were the main focus, that need would usually be met after the first marriage, and this legislation no longer be needed in subsequent marriages.

³⁹³See *Yeb.* 62b. See also Marsman, *Women in Ugarit and Israel*, 54, 68-69; Meyers, "Family in Early Israel," 28; and Hamilton, "Marriage (OT and ANE)," 562-63. Like men, some women found themselves marrying later in life.

³⁹⁴Ancient Israelite women were responsible for many vital (and rigorous) household tasks. See Meyers, *Discovering Eve*, 142-49, and Marsman, *Women in Ugarit and Israel*, 164-67.

³⁹⁵See 1 Sam 8:1-20; Pss 103:13; 127:3, 4; 128:3, 6; 144:12; Prov 3:12; 17:6; Ezek 24:25. See also the discussion on the desirability of motherhood in Marsman, *Women in Ugarit and Israel*, 191-243.

³⁹⁶Hugenberger notes those verses that celebrate the erotic pleasures of marriage (Prov 5:18-

The Issue

As previously stated, Deuteronomy 24:5 restricts a man from serving in the military or having any other societal responsibility placed on him during the first year of marriage. He is to be free of any obligations involving service to his community, so that he may be involved establishing his household. During this first year his primary commitment is to be to his wife to such an extent that all his other societal obligations are set aside.

This prohibition against community service during the first year of marriage likely has more than one intended benefit. The husband's guaranteed presence around the home would not only aid the wife in her transition to his family, but it would also allow time for the new marriage relationship to grow and strengthen.³⁹⁷ Hardly a one-year vacation, this time at home would also ensure an opportunity for a husband to care for the tasks involved in the establishment and settlement of their physical home. It is difficult to determine the level of dependency connecting a young Israelite man to his parents. However, Genesis 2:24 suggests that even when a married man remained in his father's household, marriage brought a measure of independence. Archaeological findings suggest that the building of a new home³⁹⁸ or even the redistribution of family tasks may have reflected this independence.

19; Cant 4:1-6; Eccl 9:9), as well those that honor the less sensual aspects (Gen 2:18, 24; Prov 31:10-31). Hugenberg, *Marriage as a Covenant*, 335 n. 227. To that list must be added the beautiful description of the relationship between Isaac and Rebekah in Gen 24:67.

³⁹⁷Craigie, *The Book of Deuteronomy*, 306.

³⁹⁸While the new couple probably lived with the head of household (unless the man was the head of his own household), they may have had their own dwelling. See Lawrence Stager, "The Archaeology of the Family in Ancient Israel," *BASOR* 260 (1985): 18-23; and Philip J. King and Lawrence E. Stager, *Life in Biblical Israel*, LAI (Louisville: Westminster John Knox Press, 2001), 28-35.

Military exemption not only guarded against a husband's being called away from home, it also protected against premature death in battle.³⁹⁹ Prolonged absence from the home or early death would create great hardship for the new wife. Furthermore, it could threaten the entire family line. Procreation was a major concern of Israelite marriage, and it was hoped that one year of co-habitation would allow time for a woman to become pregnant.⁴⁰⁰ Every Israelite man and woman should have the blessing of offspring, even if they happened to marry during volatile, war-ravaged years.

Although there are many implied benefits of the temporary exemption from social obligations, there is only one stated purpose. The new husband is to be free to be home for one year *so that he may bring joy to his wife*. The text does not define or delimit the possible means by which he brings her joy. Romantic and physical love could be implied here, as could the delight that bearing a child might bring her. Nor are the simple pleasures of being provided for, protected and appreciated, beyond the realm of possibility. The extraordinary feature of this verse is not its interest in creating an environment that might foster a healthy marriage, but that this environment is achieved for the sake of the remarkable and somewhat unexpected concern for the Israelite wife. The entire first year of Israelite marriage was an object lesson in sacrifice and other-oriented service.⁴⁰¹

³⁹⁹McConville, *Deuteronomy*, 360.

⁴⁰⁰Thompson, *Deuteronomy*, 245; Carmichael, *The Laws of Deuteronomy*, 122, 182, 208; Mayes, *Deuteronomy*, 323-24; Wright, *Deuteronomy*, 256; McConville, *Deuteronomy*, 319; Marsman, *Women in Ugarit and Israel*, 145. Procreation assured a continuing name for the husband and security for the woman should she become widowed.

⁴⁰¹As an aside, because of the decline of marriage in our own culture, this verse inspires comments that may not have seemed necessary in earlier studies. By setting aside an entire year for a husband to concentrate on delighting his wife, Deut 24:5 not only speaks to the love, honor and respect

Conclusion

Readers may wonder why so much attention is spent on a verse that is relatively straightforward. This verse reflects the heart of biblical teaching on marriage and family relationships. First, it demonstrates the importance of the marriage relationship. While perhaps not a unique practice in the ancient world, it is remarkable nonetheless that the establishment of a new marriage relationship takes precedence over community responsibility and even national security. Second, the instruction that a new husband is to bring joy to his wife indicates that marriage is founded on an attitude of service and genuine, active interest in the well-being of the other. It further indicates that that patricentrism need not be synonymous with misogyny or any other form of behavior that encourages the degradation of women. On the contrary, according to Deuteronomic teaching, the strength and authority of the husband is to be exercised for the benefit of his wife.⁴⁰²

Deuteronomy 25:5-10

It is hard to imagine an issue that could feel more removed from the modern Western mindset than levirate marriage. This custom calling for the marriage of a childless widow to her husband's brother clashes sharply with today's cultural values.⁴⁰³

called for by the foundational instructional text of the Israelite society (reflecting the wife's inherent value), it also demonstrates that marriage was understood as a state-of-being rather than a one-time ceremony. Marriage, as presented by this passage in Deuteronomy, entails a life of service and self-sacrifice and includes elements of joy and delight. From a biblical perspective marriage is not the glorified notion of a fancy wedding, after which life fades slowly into monotony, then boredom, restlessness, conflict and divorce.

⁴⁰²Likewise, Gen 2:20-25 makes it clear that the role of the wife is to serve her husband.

⁴⁰³Nowhere is this clash more evident than in African cultures in which forms of levirate marriage are still practiced. In these societies the church has floundered in its attempts to hold converts to

Furthermore, it appears to place harsh obligations on both parties involved—all so that a man who is no longer alive might benefit from their sacrifice. Yet the importance of levirate marriage within Israelite culture can be assumed by its attestation in the text. Genesis contains a clear example of the levirate,⁴⁰⁴ the Torah of Deuteronomy specifically addresses the issue,⁴⁰⁵ and the situation described in the book of Ruth may represent a variation of the levirate practice.⁴⁰⁶ The pertinent question for this paper is this: What is the primary message of the prescription regarding levirate marriage in Deuteronomy, and how does this message affect the HOH as he interacts with his family?

For the text and translation of Deuteronomy 25:5-10, see Table 10.

The Setting

The setting of this passage is rooted in a practice known as levirate marriage.

Although completely foreign to Western readers, levirate marriage has been witnessed in

the standard Judeo-Christian view of marriage in a culture that practices levirate marriage as a primary means of caring for its widows. See Gabriel K. Falusi, "African Levirate and Christianity," *AFER* 24 (1982): 300-08.

⁴⁰⁴Gen 38.

⁴⁰⁵Deut 25:5-10.

⁴⁰⁶Scholars are divided on the issue of what role, if any, the practice of levirate marriage plays in the book of Ruth. See A. A. Anderson, "Marriage of Ruth," *JSS* 23 (1978): 171-83; H. H. Rowley, "The Marriage of Ruth," in *The Servant of the Lord and Other Essays in the Old Testament* (London: Lutterworth Press, 1952), 163; J. M. Sasson, "The Issue of *Ge'ullāh* in *Ruth*," *JSOT* 5 (1978): 52-64; D. R. G. Beattie, "Book of Ruth as Evidence for Israelite Legal Practice," *VT* 24 (1974): 251-67; and Dale Manor, "A Brief History of Levirate Marriage as It Relates to the Bible," *ResQ* 27 (1984): 136-38 for representatives of those who argue for the dissimilarities between the book of Ruth and the practice of levirate marriage. Studies that highlight the similarities include J. A. Loader, "Of Barley, Bulls, Land and Levirate," in *Studies in Deuteronomy: In Honour of C. J. Labuschagne on the Occasion of His 65th Birthday*, ed. Florentino Garcia Martinez et al., SVT 53 (Leiden: E. J. Brill, 1994) 123-38; Eyrl W. Davies, "Inheritance Rights and the Hebrew Levirate Marriage: Part 1," *VT* 31, no. 2 (1981): 138-39; Gene Schramm, "Ruth, Tamar and Levirate Marriage," *Studies in Near Eastern Culture and History: In Memory of Ernest T. Abdel-Massih*, ed. James A. Bellamy, MSME 2 (Ann Arbor: University of Michigan, 1990), 191-200; and Block, *Judges, Ruth*, 675-76.

Table 10. Text and translation of Deuteronomy 25:5-10

Text	Verse	Translation
כִּי־יֵשְׁבוּ אֲחִים יַחְדָּו	5a	↓ When brothers dwell together, and
וּמֵת אֶחָד מֵהֶם	5b	one of them dies
וּבֶן אֵין־לּוֹ	5c	↓ and he has no son, ^a
לֹא־תִהְיֶה אִשְׁת־הַמֵּת הַחוּצָה לְאִישׁ זָר	5d	the wife of the dead man shall not be (married) outside to a foreign man.
יָבֵמָה יָבֹא עָלֶיהָ	5e	Her brother-in-law shall go in to her, and
וְלָקַחָהּ לִוּ לְאִשָּׁה	5f	take her as his wife, and
וַיַּבְמָהּ:	5g	perform the duty of a brother-in-law.
וְהָיָה הַבְּכוֹר	6a ^a	The firstborn . . .
אֲשֶׁר תֵּלֵד	6b	. . . whom she bears . . .
יָקִים עַל־שֵׁם אָחִיו הַמֵּת	6a ^b	. . . will raise up the name of the dead brother,
וְלֹא־יִמְחָה שְׁמוֹ מִיִּשְׂרָאֵל:	6c	so that his name will not be blotted out of Israel.
וְאִם־לֹא יַחְפֹּץ הָאִישׁ לָקַחַת אֶת־יְבִמָּתוֹ	7a	↓ If the man does not desire to take his sister-in-law,
וְעָלְתָה יְבִמָּתוֹ הַשַּׁעֲרָה אֶל־הַזְּקֵנִים	7b	his sister-in-law shall go up to the gate, to the elders, and
וְאָמְרָה	7c	she shall say,
מֵאִין יָבָמִי לְהָקִים לְאָחִיו שֵׁם	7d	My brother-in-law refuses to establish . . . a name
בְּיִשְׂרָאֵל		for his brother
לֹא אָבָה יָבָמִי:	7e	in Israel
		He is not willing to perform the duty of a brother-in-law.

^a Literally, “a son does not belong to him.” The translation above more accurately reflects the meaning of the phrase than the stilted, literal translation, but unfortunately the idiomatic expression does not preserve the Hebrew subject—son. Compare with 21:15a.

Table 10—Continued.

Text	Verse	Translation
וְקָרְאוּ לוֹ זִקְנֵי-עִירוֹ	8a	Then the elders of his city will call to him, and
וְדָבְרוּ אֵלָיו	8b	Speak to him, and
וְעָמַד	8c	he will stand, and
וְאָמַר	8d	say,
לֹא חָפְצָתִי לְקַחְתָּהּ:	8e	I do not desire to take her.
וְנָשָׂה יִבְמָתוֹ אֵלָיו	9a	Then she shall approach her brother-in-law
לְעֵינֵי הַזִּקְנִים		^L in the presence of the elders, and
וְחָלְצָה נַעֲלוֹ מֵעַל רַגְלוֹ	9b	she shall remove his sandal from his foot, and
וְרָקָה בְּפָנָיו	9c	spit in his face.
וְעָנְתָה	9d	She will answer
וְאָמְרָה	9e	She will say
כָּכָה יַעֲשֶׂה לְאִישׁ	9f	Thus is done to the man
אֲשֶׁר לֹא־יִבְנֶה אֶת־בֵּית אָחִיו:		^L who does not build the house of his brother
וְנִקְרָא שְׁמוֹ בְּיִשְׂרָאֵל	10	And his name will be called in Israel:
בֵּית חָלוּץ הַנֶּעֱלָ:		The house of the removed sandal

one form or another in societies throughout the world, continuing even to the present day.⁴⁰⁷ Of relevance for this paper is levirate marriage as it was practiced by Israel and her neighbors.

Ancient Near Eastern Background

Literary evidence from the ancient world suggests that nations outside of Israel exercised a practice that sounds much like that attested in Deuteronomy 25:5-10. The Hittite and Assyrian law codes both include instruction regarding the marriage of a widow to members of her deceased husband's family, and cuneiform tablets from Nuzi and Ugarit demonstrate a familiarity with the concept of a widow marrying her husband's brother.

In the Hittite Laws, of which the earliest copies are dated between 1650 and 1500 BC, provisions are made for a widow to remain within her husband's family after his death.⁴⁰⁸

HL ¶ 193 If a man has a wife, and the man dies, his brother shall take his widow as wife. (If the brother dies,) his father shall take her. When afterwards his father dies, his (i.e., the father's) brother shall take the woman whom he had.

On the surface, this Hittite law appears to portray a situation similar to that addressed in

⁴⁰⁷Westermarck lists three full pages of examples of levirate marriage practiced in various forms in both ancient and modern cultures, Edward Westermarck, *The History of Human Marriage* (London: Macmillan & Co., 1921), 3:209-11. See treatments of the modern practice in some African societies in Betty Potash, "Widows of the Grave: Widows in a Rural Luo Community," in *Widows in African Societies: Choices and Constraints*, ed. Betty Potash (Stanford, CA: Stanford University Press, 1986), 44-65; and Falusi, "African Levirate and Christianity," 300-08. See also the discussion of kinship-based marriages in contemporary African and Middle Eastern societies in Willis, *Elders of the City*, 238-43.

⁴⁰⁸Roth, *Law Collections*, 236.

Deuteronomy.⁴⁰⁹ Both represent a case in which a man dies leaving behind a widow who is to be married by one of the males from the deceased's household. However, the focus of this Hittite law differs fundamentally from that of Deuteronomy 25:4-10. HL ¶ 193 appears in a long list of laws concerning sexual offenses. This list, which extends from HL ¶ 187 to ¶ 200, addresses the issue of acceptable and unacceptable sexual relationships; for example a relationship between a man and his animal or a man and his mother was never acceptable,⁴¹⁰ while a sexual relationship with a man and his step-mother was acceptable as long as the man's father was no longer living.⁴¹¹ As suggested by context, the purpose of this law is not to obligate a man to take his dead brother's wife, but rather to condone it as an acceptable relationship.⁴¹² A New Hittite copy of the law, dated sometime between 1500-1180 BC,⁴¹³ includes the phrase, "There is no offense."⁴¹⁴

Further evidence for the practice of a form of levirate marriage in the ancient Near Eastern world is found in the Middle Assyrian Laws.

⁴⁰⁹Obviously, there are a few differences. The characters and the setting are different in this law and the text of Deuteronomy. Deuteronomy specifies that the instruction applies "when brothers dwell together," whereas no such stipulation is included in HL ¶ 193. Furthermore, HL ¶ 193 appears to list all the males who might marry this woman and the order in which they become eligible. Deuteronomy mentions only the brother. The Hittite law also makes no mention of offspring.

⁴¹⁰HL ¶ 187-189.

⁴¹¹HL ¶ 190.

⁴¹²It is unclear why Roth chose to translate HL ¶ 193, "his brother *shall* take her" suggesting obligation. In the previous law (HL ¶ 192) the verb appears to be missing, but Roth supplies the verb "may": "If a man's wife dies, [he may take her] sister [as a wife.] It is not an offense."

⁴¹³Roth, *Law Collections*, 214.

⁴¹⁴Ibid., 240 n. 63. HL ¶ 195a clarifies that "if a man sleeps with his brother's wife while his brother is alive, it is an unpermitted sexual pairing," (ibid., 236-37). Note that a further purpose of this text may be to indicate the order in which the deceased's family members are eligible to marry this woman.

MAL A ¶ 33 If a woman is residing in her own father's house, her husband is dead, and she has sons [...],⁴¹⁵ or [if he so pleases], he shall give her into the protection of the household of her father-in-law. If her husband and her father-in-law are both dead, and she has no son, she is indeed a widow; she shall go wherever she pleases.⁴¹⁶

As evident above, MAL A ¶ 33 is fraught with difficulties of its own. The brackets in the text indicate where the tablet is corrupt or missing and no definite reading can be offered. Furthermore, the setting of MAL A ¶ 33 appears to target a situation in which a woman does not reside in her husband's household. This setting is repeated in a number of the Middle Assyrian laws and may indicate a specific concern related to the appropriate handling of a woman in this situation, especially regarding inheritance, the possession of gifts from her husband, dowries, and even her ability to remarry.⁴¹⁷ Whether or not this text reflects a practice of levirate marriage, it demonstrates the wife's position as a member of her husband's family even after the death of her husband.

The cuneiform tablet providing evidence from Ugarit records a decree issued by Arhalbu, King of Ugarit, before his death in order to ensure proper succession to the throne. It reads:

RS 16.144 On this day Arhalbu, King of Ugarit declares thus: "If in the future I die, and anyone, Kubaba, daughter of Takan, my wife, from my brother takes, May Baal

⁴¹⁵This ellipsis represents five lines of broken text, lines 59-64. As a point of reference, ¶ 33 extends from lines 56-70. Ibid., 165.

⁴¹⁶Ibid.

⁴¹⁷See MAL A ¶ 25, ¶ 26, ¶ 27, ¶ 32, ¶ 33, ¶ 36, ¶ 38. The expression "still living in her father's house" has aroused a great deal of speculation among scholars. The wife usually moved into and became part of the husband's household upon marriage. This expression could refer to a betrothed woman, a woman who has married but not yet moved in with her husband's family, a woman who has returned (or been sent) to her father's home. The suggestion that these laws indicate an *errēbu*-type marriage in which a father adopts a son while at the same time giving the adopted son his daughter in marriage (Millar Burrows, "Ancient Oriental Background of Hebrew Levirate Marriage," *BASOR* 77 [1940]: 2-15) has since been deemed unlikely. See the review of scholarly discussion in Marsman, *Women in Ugarit and Israel*, 84-86.

drown him! May he not enhance the throne! May he not inherit the palace! May Baal, the Lord of Mount Cassius, drown him!”⁴¹⁸

According to Cyrus Gordon, Kubaba, wife of Arhalbu, was contractually entitled to bear the next king.⁴¹⁹ The notable feature of this text is that it seems to demonstrate a concern for an heir, an element lacking in the Hittite and Assyrian law codes.

Cyrus Gordon writes regarding a document from Nuzi, “[a] father in getting a bride for his son, specifies that if the son dies, she is to be married to another son of his.”⁴²⁰ From Gordon’s explanation of the passage, the situation represented here appears to parallel the situation also evident in the Middle Assyrian Laws, whereby the death of a potential bride or groom did not necessarily negate the union between the two families if a brother (in the case of the groom’s death) or a sister (in the case of the bride’s death) were available for marriage. Again, as described by Gordon, this Nuzi document reveals the extent to which a bride identified with her new family. However, the parallel with the Israelite levirate marriage system seems to end there. The bride’s sister is nowhere in sight in the Israelite text, nor the family line of the deceased in the Nuzi text.

⁴¹⁸Presented in *PRU*, 3:76 (in French). English translation provided by Cyrus H. Gordon, “Father’s Sons and Mother’s Daughters: The Problem of Indo-European—Semitic Relationships,” in *Crossing Boundaries and Linking Horizons: Studies in Honor of Michael C. Astour on His 80th Birthday*, ed. Gordon D. Davis et al. (Bethesda, MD: CDL Press, 1997), 275 n. 21. See also Tsevat Matitiahu, “Marriage and Monarchical Legitimacy in Ugarit and Israel,” *JSS* 3 (1958): 237-43.

⁴¹⁹Gordon, “Father’s Sons and Mother’s Daughters,” 275 n. 21.

⁴²⁰Cyrus Gordon, “The Status of Women Reflected in Nuzi Texts,” *ZA* 9, no. 43 (1936): 163. This same document is discussed in Cyrus Gordon, “Parallèles Nouziens aux Lois et Coutumes de l’Ancien Testament,” *RB* 44 (1935): 37. The document is recorded in Akkadian script in Edward Chiera, *Joint Expedition with the Iraq Museum at Nuzi: Mixed Texts*, PBST 5 (Philadelphia: University of Pennsylvania Press, 1937), 441 plate CDXXV. However, I have been unable to track down any translation or even transliteration of this text.

Old Testament Background

The OT refers to levirate marriage in both narrative and instructional texts.⁴²¹

The story of Judah and Tamar in Genesis 38, the instruction in Deuteronomy 25:5-10, and the narrative of Ruth⁴²² all involve situations in which a man dies without leaving any offspring.⁴²³ Interesting and helpful clues about levirate marriage emerge from both the texts in Genesis and Ruth.

The literary treatment of the widow in Genesis 38 and in Ruth suggests that the practice of levirate marriage is extremely beneficial to her. The tenacity of Tamar in her pursuit of a child suggests that levirate marriage, and more importantly, the child produced by that union, secures her future. Not only does she submit to a second marriage and wait many years for a third, she risks her reputation and even her life when she tricks Judah into fathering a child. Likewise, Naomi's comment in Ruth 1:12-13 implies that her not having more sons is a disadvantage to her widowed daughters-in-law.

⁴²¹While it is helpful to have at our disposal different texts relating to the same (or similar) practice, variations in the application of the levirate as witnessed in the texts have prompted a great deal of scholarly discussion, not least of which includes the development of the levirate practice in Israel (cf. Samuel Belkin, "Levirate and Agnate Marriage in Rabbinic and Cognate Literature," *JQR* 60 [1969]: 275-329; and Eryl W. Davies, "Inheritance Rights and the Hebrew Levirate Marriage: Part 2," *VT* 31 [1981]: 267) and the understanding of Deuteronomic "law" (Raymond Westbrook, *Property and the Family in the Biblical Law*, JSOTSup 113 [Sheffield: JSOT Press, 1991], 71).

⁴²²Some scholars would challenge the legitimacy of citing Ruth as an example of levirate marriage. See Derek R. G. Beattie, "Book of Ruth," *VT* 24 (1974): 265; Robert Gordis, "Love, Marriage, and Business in the Book of Ruth: A Chapter in Hebrew Customary Law," in *A Light Unto My Path: Old Testament Studies in Honor of Jacob M. Myers*, ed. Howard N. Bream et al., GTS 4 (Philadelphia: Temple University Press, 1974), 252; and Anderson, "Marriage of Ruth." The position that the situation in the book of Ruth is at least related to levirate marriage (see Block, *Judges, Ruth*, 675-76) is defended by Westbrook as representing a more acute understanding of the nature of ancient, and more specifically, Deuteronomic law codes. Westbrook, *Property and the Family*, 71. However, even if the relationship between Boaz and Naomi/Ruth is not related to levirate marriage, Naomi's comments in Ruth 1:12-13 seem to reflect the practice.

⁴²³Note also the NT concern for this issue, as indicated by the Sadducees in Matt 22:23-32.

Hints in Ruth suggest that an advantage of levirate marriage for the widow appears to be related to the property rights that are secured by the heir.⁴²⁴

It may be significant that in Genesis and Ruth both young widows remain a member of their husbands' households even after the deaths of their husbands. After the second of the brothers dies, Tamar is sent home to her father's house, but still falls under the authority of her father-in-law. Not only is he responsible for her when it is found that she is pregnant,⁴²⁵ but she also does not remarry into another family despite the passing of many years. One must assume that if she were desperate enough to disguise herself as a prostitute and clever (and desirable) enough to succeed, then surely she would have remarried had she been free to do so. In the book of Ruth the young widows, Orpah and Ruth, seem determined to remain with the family of their husbands even after all the men in the family have died. Ruth's continued dedication to Naomi is exceptional, but even Orpah protests leaving Naomi,⁴²⁶ suggesting that these women identified themselves as members of their husbands' family.⁴²⁷

⁴²⁴See Ruth 4:5, 10. Regardless of whether or not the relationship between Boaz and Ruth represented levirate marriage, Boaz's explanation establishes a clear link between the preservation of the name and issues related to property. For further discussion on the connection between name and property, see Westbrook, *Property and the Family*, 69-89.

⁴²⁵Gen 38:24.

⁴²⁶Ruth 1:10.

⁴²⁷In trying to understand the role and position of women in ancient Israel, some have suggested that a wife belonged to her husband and his family. Many scholars interpret the examples of levirate marriage in the ancient Near Eastern world as supporting the idea that the wife was in some sense property of her husband, and as such was passed on with the rest of his inheritance. Cf. P. Koschaker, "Zum Levirate nach Hethitischem Recht," *RHA* 2 (1933): 77-89; Cyrus Gordon, "Fratriarchy in the Old Testament," *JBL* 54 (1935): 231; Westermarck, *History of Human Marriage*, 209; Millar Burrows, "Levirate Marriage in Ancient Israel," *JBL* 59 (1940): 27-28. While it certainly appears that the provision of levirate marriage was made to keep a wife in the family, whether to provide for her well-being or because they saw her as an asset that they did not wish to lose, the simple example of Orpah and Ruth contradicts the view that a wife was regarded as property. These two women sought to remain with their

Finally, the practice of levirate marriage as described in the OT attests to an overarching concern for producing an heir for the deceased. Genesis 38, Deuteronomy 25:5-10, and even the more questionably related story of Boaz and Ruth all express a clear understanding that the purpose of a union between the widow and the levir (or “redeemer” in the case of Boaz) was to conceive a son who would establish the name of the dead husband.⁴²⁸ This focused concern for an heir, coupled with the understanding that the child produced by such a union would be regarded legally as the son of the deceased, seems to set Israel apart from her neighbors.

Deuteronomic Background

The setting for the Deuteronomic instruction on levirate marriage is described as, “If brothers dwell together, and one of them dies without a son” The reference to brothers dwelling together suggests that the instruction has a particular setting in which it is applicable.⁴²⁹ The Talmud interprets this phrase as referring to brothers who lived contemporaneously so that brothers born after the man’s death would have been exempt.⁴³⁰ While this interpretation is defensible, current understanding of the social

family even when there was no male figure to exert authority over them.

⁴²⁸Onan intentionally avoided impregnating Tamar because he knew the child would not legally be his (Gen 38:8-10). Deuteronomy expressly states that the first son will establish the name of the dead brother so that his name will not be blotted out within Israel (Deut 25:6). Twice Boaz declares that the purpose of a marriage to the widow is to maintain the name of the dead with his property (Ruth 5:4, 9-10).

⁴²⁹Contra Thomas Thompson and Dorothy Thompson, “Some Legal Problems in the Book of Ruth,” *VT* 18 (1968): 90.

⁴³⁰Yeb. 2.2 as presented in Zvi H. Preisler, ed., *Babylonian Talmud: With the Entire and Minor Tractates* (Jerusalem: Ketuvim Publishers, 1998), 406; for an English translation, see Herbert Danby, trans., *The Mishnah: Translated from the Hebrew with Introduction and Brief Explanatory Notes* (Oxford: Oxford University Press, 1991 [originally 1933]), 219. See Belkin for a more thorough treatment of Tannaitic tradition regarding the understanding of “brothers dwelling together,” “Levirate and Agnate Marriage,” 280-82.

structure of the Israelite family suggests a more likely scenario. In ancient Israel, married sons often lived as members of their father's household both before their father died⁴³¹ and after his death but before the land and/or inheritance was divided.⁴³² In this scenario the brothers quite literally lived together as members or even joint heads of household. It is also possible that the reference to dwelling together simply refers to geographical proximity⁴³³ so that a brother who had moved too far away would not be bound by this familial obligation. Whether dwelling together under one roof, on a family compound or spread throughout a local territory, the main point is that these brothers are members of a common household of which the wife, now widowed, also would have understood herself to be a member.

The Characters

The characters in Deuteronomy 25:5-10 include the deceased, the widow, the

⁴³¹Consider Judah and his sons Er and Onan, Gen 38.

⁴³²This view, presented by D. Daube ("Consortium in Roman and Hebrew Law," *JR* 62 [1950]: 71-91), is championed by Raymond Westbrook (*Property and the Family*, 77-80). See LE ¶ 16, LH ¶ 165, and MAL A ¶ 25 for references to dividing estates within Mesopotamian law (Roth, *Law Collections*, 61, 112, and 162 respectively). The suggestion that this phrase refers specifically to the time after a father's death but before the division of the household, during which brothers are functioning as joint heads of household, may represent an actual transitory period in the cycle of the Israelite household. The primary difficulty with this suggestion is that it does not reflect the complexities of actual practice. Bendor's helpful study on the *בית-אב* reminds us that the ancient Israelite household was a complicated and dynamic organization in a constant state of flux. Within a family each person filled many roles—a woman could be simultaneously a wife, grandmother, mother, daughter, sister and aunt. Likewise it is likely that a man, besides being brother, son, grandson, nephew and uncle, could be the head of his own house (which Bendor refers to as a nuclear family) while still belonging to a larger household, namely that of his father. (See Bendor, *Social Structure of Ancient Israel*.) Westbrook's treatment of the passage does not address this factor, but almost suggests that the situation involving households and inheritance was a clean process, so that once a man had received his property and established his own house, his ties and responsibilities to the former household (that of his father) were dissolved and with it his obligations to its members. In theory Westbrook's proposal is strong. Practically it may be somewhat simplistic.

⁴³³See Tigay, *Deuteronomy*, 231, who points out that "dwelling together" also occurs in Gen 13:6 and 36:7, referring to living close enough to use the same pasture land.

brother, the potential offspring and the elders. A discussion of the characters in Deuteronomy 25:5-10 is complicated by the fact that they are identifiable by different roles. Thus the deceased is both a husband and a brother, while the woman is referred to as both the wife of the dead man and the sister-in-law. Interestingly, the brother-in-law may have a household of his own for which he must provide. Yet the text shows little to no regard for the brother's role as head of his own household. In this text he functions only as brother and brother-in-law. This limitation of roles emphasizes that this instruction focuses on the household of the deceased.

The Deceased

The principle character binding the rest together is no longer alive, although very much in the picture. This HOH, in whose interest the passage is written, is entirely passive; he does not have any further responsibility toward his wife. His fate now rests in the hands of his widow and his brother(s). His significance in this passage lies in the fact that he was married, but had no sons. Children in the ancient Near Eastern context signified more than eighteen or so years of tortured bliss. They represented security and provision, but more significantly, they represented a man's legacy. Children and then grandchildren were as close as a man could come to eternal life. The greatest curse in Israel was not death: it was the cessation of a man's family tree.⁴³⁴

⁴³⁴Cf. 1 Sam 25:22, 34; 1 Sam 21:20-22; 2 Kgs 10. Extra-biblical texts also provide evidence of this curse. The theme of destroying one's name and seed from the land is common in the Vassal Treaties of Esarhaddon (VTE), especially in the section dealing with treaty curses. See VTE lines 140-41, 161, 255-56, 315, 435-36, 524-25, 537-39, 540-44, 660 as presented and translated by Simo Parpola and Kazuko Watanabe, *Neo-Assyrian Treaties and Loyalty Oaths*, SAA 2 (Helsinki: Helsinki University Press, 1988), 28-58.

The Widow

Technically this woman is not referred to as a widow (אַלְמָנָה) in Deuteronomy 25:5-10.⁴³⁵ She is identified in the text according to her relationship with her deceased husband (אִשְׁת־הַמֵּת, wife of the dead man) and her husband's brother (יְבִמָתוֹ, his sister-in-law). Paula Hiebert represents those who suggest that the tendency to identify a woman as the wife of a dead man indicates that the marriage bond extends beyond death.⁴³⁶ She also points out that "in most traditional societies based on a kinship structure, marriage is not so much the union of two individuals as it is the union of two families."⁴³⁷ It may be more accurate to infer that it is the bond between the woman and her husband's family, established through that marriage, that extends beyond his death. This familial bond also explains why the exhortation to marry a brother-in-law or for him to marry her would not have been seen as presumptuous in that culture. When marriages were arranged, candidates were likely chosen as much for their family as for their personal charm. If one son were good enough for a man's daughter, presumably the others were as well. Likewise, if a father deemed a woman worthy of joining his family

⁴³⁵ According to MAL A ¶ 33 an Assyrian woman is not considered a widow unless she has no sons and her husband and father-in-law are dead—that is, until there is no male left in her husband's family to care for her. However, in Israel a woman was considered a widow upon the death of her husband. After the death of Onan, Tamar was sent to her father's house to "live as a widow" (אַלְמָנָה) even though her father-in-law still had authority over her and she was supposedly betrothed to Er's youngest brother. (In a twist of literary irony—she is virtually a widow even by Assyrian standards in that he who was to have provided for her does not.) Furthermore, the woman whom Joab sends before King David identifies herself as a widow (אַלְמָנָה) because her husband has died, even though she has a son (2 Sam 14:5).

⁴³⁶ Paula S. Hiebert, "'Whence Shall Help Come to Me?': The Biblical Widow," in *Gender and Difference in Ancient Society*, ed. Peggy L. Day (Minneapolis: Fortress Press, 1989), 128-30. In fairness to Hiebert, she does suggest that in Israel this idea of the marriage bond extending beyond death is based on the bond between a woman and her husband's family.

⁴³⁷ Ibid., 129.

in marriage to one of his sons, she was likely worthy of another son.⁴³⁸

The plight of the widow is a common theme in the book of Deuteronomy,⁴³⁹ and this woman's vulnerability upon the death of her husband is increased because she has no son to carry on the family line. Nevertheless, from a strictly literary perspective, her vulnerability is not the focal point of this text. Rather she is called to action and granted unexpected authority. Framed in the negative, the text exhorts her to remarry within her husband's family. Further, she is given authority to take initiative against her brother-in-law should he decide not to fulfill his duty. In true Deuteronomic style,⁴⁴⁰ her greatest hope for herself comes only through the process of acting on behalf of her husband.

Brother/Brother-In-Law

The general assumption concerning this figure is that he and the deceased share at least a common father.⁴⁴¹ This supposition seems to stem from the notion that a typical Israelite household is made up primarily of an **בית**, his wife or wives, his sons (and their families) and his unmarried daughters. Biblical attestation to the practice of levirate marriage includes a clear example in which the actual brother (son of the same father)

⁴³⁸Evidence of this view of marital compatibility, while totally foreign to Western culture, is found throughout the ancient world. Thus, in texts dealing with the complexities of the marriage transaction, especially in cases of unforeseen complications such as the death of an intended bride or groom, a father often has the option to substitute another son or daughter rather than simply canceling the arrangement. See MAL A ¶ 30 and ¶ 31 as presented in Roth, *Law Collections*, 164-65.

⁴³⁹Cf. Deut 10:18; 24:17, 19, 21; 26:12, 13; 27:19. Contra Bennett, *Injustice Made Legal*.

⁴⁴⁰Characterized by a call for "other-oriented" behavior. See Block, "'You Shall Not Covet Your Neighbor's Wife,'" 10.

⁴⁴¹Cf. Willis, *Elders of the City*, 286.

was to fulfill the duty of the levir.⁴⁴² Among extra-biblical references to levirate marriage, the word for brother is contrasted with “father” and “father’s brother,” suggesting a context within the immediate family.⁴⁴³ Finally, it is logical that a man’s line be propagated, if not by himself, than by his closest living relative.

While this popular consensus may be accurate, three factors suggest that the range of possible levirs might have been broader than traditionally assumed.⁴⁴⁴ First, the term “brother” (אָבִי) is capable of a wide range of referents. More accurately stated, the Hebrew word אָבִי can be used to express any level of shared ancestry. Within Deuteronomy alone the term is used to describe contiguous blood relationships ranging from sons sharing the same mother⁴⁴⁵ to people groups who trace their blood relationship

⁴⁴²Gen 38. First Onan and then Shelah were to fulfill this duty, although interestingly enough, neither did, and the duty fell to the father-in-law (not a brother in the sense of the term as understood today) through the influence of Tamar’s deception.

⁴⁴³Meek suggests that MAL A ¶ 33 contains reference to a literal son (of the father-in-law), which would clearly indicate that the levir is an actual brother of the deceased. However, the text is fragmented at this point and his reading may be conjectural. See MAL A ¶ 33, translated by Theophile J. Meek in *ANET*, 182.

⁴⁴⁴Some would argue that the term “brother” refers to “clan brothers” rather than blood brothers (brothers sharing the same parent). See Johannes Pedersen, *Israel: Its Life and Culture*, USF Studies in the History of Judaism 28 (Atlanta: Scholars Press, 1991), 1:78. See also Donald A. Leggett, *The Levirate and Goel Institutions in the Old Testament: With Special Attention to the Book of Ruth* (Cherry Hill, NJ: Mack Publishing Co, 1974), 42 n. 29. The implication of this interpretation is that anyone in the clan might fulfill the duty of levir, or, as in the case of Samaritan or Jewish Karaite practice, anyone *but* a blood brother (in order to guard against incest). See Louis M. Epstein, *Marriage Laws in the Bible and the Talmud* (Cambridge, MA: Harvard University Press, 1942), 89, 92. Yet this interpretation does not deal adequately with “dwelling together,” nor does it explain how any one man could be held accountable to the degree that discipline might also be meted out against him. The two references to brothers dwelling together in Genesis suggest that the implied relationship involved being members of a common household and therefore committed to the well-being of that household.

⁴⁴⁵Deut 13:6 (thereby also assuming the same father). In a culture where polygyny was practiced, the reference to sharing a mother emphasizes that these men share the closest possible common ancestry.

with Israel back to the days of Esau.⁴⁴⁶ By far the most frequent referent of אֶלֶף within the book of Deuteronomy is a fellow Israelite.⁴⁴⁷

Context often provides a key to the propinquity of the ancestral bond. In Deuteronomy 25:5-10 the context appears to be that of a household, which might suggest that the modern notion of brother (males sharing a common parent) is intended. However, a second important element to consider involves the complicated and fluctuating nature of the family household. Theoretical models of the taxonomy of an ancient Israelite family are often intentionally simplistic⁴⁴⁸ and rarely reflect the complexity of actual family dynamics.⁴⁴⁹ To assume that only literal “brothers” (sharing a common parent) would have dwelt together, thus obligating them to follow the instruction in Deuteronomy 25:5-10, may represent an overly simplistic understanding of the constitution of an Israelite household.

The final clue that “brothers dwelling together” in Deuteronomy 25:5 might not be limited to men who share the same father comes from the accounts in Genesis.

Twice the book of Genesis speaks of men dwelling (יָשָׁבוּ) together (יָחִידִים).⁴⁵⁰ In setting

⁴⁴⁶Deut 2:4.

⁴⁴⁷The word occurs 48 times in Deuteronomy. Most can be understood as references to fellow Israelites in general, and many are clearly identified as such. Cf. Deut 1:16, 28; 3:18, 20; 10:9; 15:3, 7; 15:12; 17:15; 18:2, 7, 15; 22:2; 24:7; 33:24. Clear exceptions include references to foreign nations as brothers (the children of Esau who lived in Seir [Deut 2:4] and the Edomites [Deut 23:7]) and men who shared biological parents (Deut 2:4; 32:5).

⁴⁴⁸Cf. Stager, “Archaeology of the Family,” 22. See Bendor, *Social Structure of Ancient Israel*.

⁴⁴⁹Cf. Joel F. Drinkard, Jr., “An Understanding of Family in the Old Testament: Maybe not as Different from Us as We Usually Think,” *RevExp* 98 (2001): 485-501. Drinkard writes, “The ‘ideal’ or ‘perfect’ family existed no more in the Old Testament than today,” 498. Within the complex family structure exceptions are more common than the rule. He points out that “household” (בֵּית־אָב) is a kinship term, but it is also made up of individuals who are attached to the family without necessarily being kin.

⁴⁵⁰Gen 13:6 and 36:7 (three times if one allows for the fact that dwelling together [יָשָׁבוּ] is

the stage for the genealogy of Esau, the narrator informs the reader that Jacob and Esau had to separate because their possessions had grown too great for them to continue to dwell together (מִשְׁכַּת יְחָדָיו).⁴⁵¹ The two men identified as מִשְׁכַּת יְחָדָיו were not only natural brothers, but twins. However, the same scenario is presented earlier in the book with regard to Abram and Lot who are uncle and nephew, yet who travel together and seem to have been part of the same household.⁴⁵² As God blessed them, their combined possessions became too great for the land to support—so that the two could no longer dwell together (לִשְׁכַּת יְחָדָיו).⁴⁵³ In seeking to find a suitable solution Abraham appeals to his nephew Lot to help put a stop to the quarreling that has ensued, with his rationale being “For we are brothers (אֲחִים).”⁴⁵⁴ This uncle and nephew team, most likely brought together through their own mutual need for family,⁴⁵⁵ could well be an example of “brothers dwelling together.”⁴⁵⁶

יְחָדָיו occurs twice in Gen 13:6). The exact wording יִשְׁבוּ אֲחִים יְחָדָיו is unique to Deut 25:5, although a similar phrase occurs in Ps 133:1 where the psalmist praises the harmony displayed by brothers dwelling together (שִׁכְתָּ אֲחִים גַּם-יְחָדָיו).

⁴⁵¹Gen 36:7 (יְחָדָיו + יִשְׁבַּח Qal infinitive construct of יָשַׁב).

⁴⁵²Abram and Lot demonstrate well the complexity of the Israelite family. The fact that Abram takes Lot with him after the death of Lot’s father (Abram’s brother) suggests that Lot becomes part of Abram’s household. They travel together and defend one another (notice that Abram’s commitment to Lot’s well-being did not end when the household divided). Yet it is clear that Lot achieves some sort of independence in that the text speaks of his wealth independently of Abram’s. When they finally separate, Lot does not inherit from Abram; rather the situation more resembles that of the brothers Jacob and Esau. Certainly some patterns would have stabilized after the Israelites inherited the land, but undoubtedly families were forced together by difficult circumstances long after the conquest.

⁴⁵³Gen 13:6 (יְחָדָיו + יִשְׁבַּח Qal infinitive construct of יָשַׁב).

⁴⁵⁴Gen 13:8. For the unusual phrase בְּרִי-אֲנִשִּׁים אֲחִים אֲנִי, see Gordon J. Wenham, *Genesis 1-15*, WBC, vol. 1 (Waco: Word Books, 1987), 297.

⁴⁵⁵The death of Lot’s father and the barrenness of Abram’s wife.

⁴⁵⁶See the similar suggestion by Davidson, *Flame of Yahweh*, 466.

Regardless of the brother's identity, he is the primary authority figure in this marriage triangle simply because he is a living male. Yet, it could be said that he stands to gain the least in the arrangement.⁴⁵⁷ While the widow is also called to act on behalf of her deceased husband, her intense interest in the levirate union suggests that the future of both the dead man and his wife rests in the hands of the brother. The aforementioned lack of emphasis on the brother's concern for his own household or family line notwithstanding, his role as levir suggests that the responsibilities of a male HOH extend beyond what we today would consider his immediate family (wife and children).

Potential Offspring

Hardly a full-fledged character, this potential child is the focus and purpose of the entire passage. If and when he⁴⁵⁸ is born, he is to be considered the child of his

⁴⁵⁷Despite the attention the text gives to the potential rejection of the woman, it is possible that to obtain a wife even through levirate marriage would have been desirable. Yet his first child with her would not carry his name. In the event of an undesirable union, a possibility anticipated by the text, the brother is offered an escape, but at the cost of great shame.

⁴⁵⁸The gender issues in this passage are somewhat uncertain. The text says that the man dies without a son (בֶּן), which term can occasionally stand for a child of either gender (Deut 1:39). Numbers 26 and 36 establish provisions for daughters to inherit from their father in the absence of sons. The grounds for this provision are strikingly similar to Deut 25:5, namely that the father's name not disappear from his clan (Num 27:4). It might be argued that if a man left behind a daughter he would not need further offspring, based on Num 26. However, Num 26 also provides for the distribution of property in the event that there are no children at all (in which case the inheritance is to be given to the brother), so following that argument to its logical conclusion negates any need for Deut 25:5-10. A second issue regards the gender of the potential offspring. The text says that the firstborn (בְּכוֹר) shall be attributed to the deceased husband. Understanding this term to refer to the child chronologically born first leads one to wonder if a daughter would have fulfilled the purpose of the levir. However, the term (בְּכוֹר) is masculine. (A similar, though morphologically distinct, feminine term is used to indicate an oldest daughter [בְּכִירָה]. See Gen 19:31, 33, 34, 37; 29:26; 1 Sam 14:49.) However, if one understands that the term בְּכוֹר is socially and not chronologically assigned, and that it need not refer to the oldest child (although it often does) but describes a position of social preeminence, one can understand that the levirate family would proceed as any other family, except that when it came time to divide the inheritance, the woman's child who was in the primary position would inherit from the mother's first husband. See Greenspahn, *When Brothers Dwell Together*, 59-69.

mother's first husband rather than his biological father. This child offers hope to the two most vulnerable characters in this scenario, the childless woman who seeks to extend the line of (male) provision and the deceased man who faced the extinction of his family line in the absence of a son to carry on his name.⁴⁵⁹

Elders

The elders serve a role only if the duties of the brother-in-law are neglected (and from Ruth, it would appear that they sometimes were). Their essential role is not to make an authoritative decision, but rather to provide an arena for the woman to lodge her complaint publicly and safely to call shame upon her brother-in-law's name.⁴⁶⁰ This potential shaming likely provides incentive for a reluctant brother to act on this family's behalf. Although the elders' role is subtle, it is ironic that those who are not as close to the household may at times act more in the interests of the deceased and his widow than a brother.

The Issues

From the cast of characters the inclusion of Deuteronomy 25:5-10 in a dissertation concerned with the HOH as he relates to his wife (wives) and children may not appear obvious. The passage was originally included in this study because it concerns

⁴⁵⁹The significance of the continuation of the name may extend to the widow in more ways than simply provision by way of her son's inheritance. In Ruth 4, Boaz is listed as the father of Jesse in the genealogy, but the text also emphasizes Naomi's name through the lips of the women who rejoice with her (Ruth 4:17). If Ruth 4 does evidence an example of levirate marriage, the difficulty becomes, what happened to the "names" of Elimelech, Malion of Chilion?

⁴⁶⁰See Willis, *Elders of the City*, who argues the elders are involved to preserve the well-being of the community by upholding moral integrity and social solidarity, 304.

a type of marriage⁴⁶¹ and in so doing suggests a relationship between a husband (in this case the levir) and wife (in this case the widow). However, this passage says little about this levirate relationship—except in the case where the duty is not fulfilled. The principle relationship here is not that of the levir and the widow, but that of the deceased husband and his family. This passage addresses what happens when the **בן** is prematurely absent from the household.

Deuteronomy 25:5-6

The instruction in Deuteronomy 25:5-10 can be divided into two sections. The first, Deuteronomy 25:5-6, involves a straightforward explanation of what should happen if a man dies before he has children. The primary problem in this passage is that the HOH has died prematurely. His death is premature because, although he has married and established a household, he has not yet become a father. This crisis is difficult to express adequately.⁴⁶² In a culture gap as vast as that between the modern Western world and ancient Israel, family might be the place where one would expect to find common ground. Yet modern, individualistic, success-driven societies with few connections to the

⁴⁶¹We do not know how levirate marriage might have related to a more traditional marriage. In some cultures the role of the levirate is simply to produce offspring. Often in these cases the levir has very little interaction with either the child(ren) or the wife of his dead brother. Potash, “Widows of the Grave,” 44-65. The OT presentation suggests that Israel’s levirate practice bore a closer resemblance to a traditional Israelite marriage. The reference to firstborn (בְּכֹרֶת) in v. 6 may suggest that more than one child might come from this union, possibly suggesting a lasting relationship. Judah does not continue a relationship with Tamar, but that may be because he was not technically eligible to serve in the role in the first place. Or the inclusion of the phrase “he did not know her again” (Gen 38:26) may indicate that he had the right, but chose not to exercise it.

⁴⁶²The crisis represented in Deut 25:5-10 is literally a life-or-death matter. Its significance is underscored by the Genesis narrative in which Onan is punished by death for not wanting to produce an heir (Gen 38:8-12), and Tamar is willing to risk her life to bear a child (see Gen 38:24).

past and just as limited regard for the distant future have difficulty grasping the significance that a community-minded, ancestrally-rooted society, whose hopes for the future continue עַד-עוֹלָם, places on the continuity of a family line.

Two parties are responsible to come to the deceased husband's aid at what is literally his darkest hour. The first instruction is leveled at his wife. She is not to marry outside the family. Those who argue that this instruction to the woman is evidence of her status as family property overlook the focus on offspring in this text. This woman is her late husband's only hope for an heir. Instead of marrying outside the family, her husband's brother is to marry her. The focus of this marriage is procreation,⁴⁶³ and the firstborn of this union will establish the name of the deceased in Israel.

The relationships involved in Israelite levirate marriage presented in Deuteronomy 25:5-6 may be illustrated as shown in Figure 2. The thick line represents the initial husband/wife relationship. As stated above, the intent of this relationship was to produce children. The family line was seen as continuing through the father. The mother's womb was viewed as the seedbed for carrying his seed, and as such was indispensable and highly valued.⁴⁶⁴ In this diagram the husband's line is only potential (indicated by a dotted line) as it is not yet established through an heir. Apparently the continuation of the family line is important enough that not even death should stand in its way. Upon the death of the husband, the wife and the brother are called upon to establish that line in the deceased's name. The lighter, solid lines represent the relationship of these

⁴⁶³ Arguably valid for all Israelite marriages. See above discussion of Deut 24:5.

⁴⁶⁴ Block, "Marriage and Family in Ancient Israel," 72.

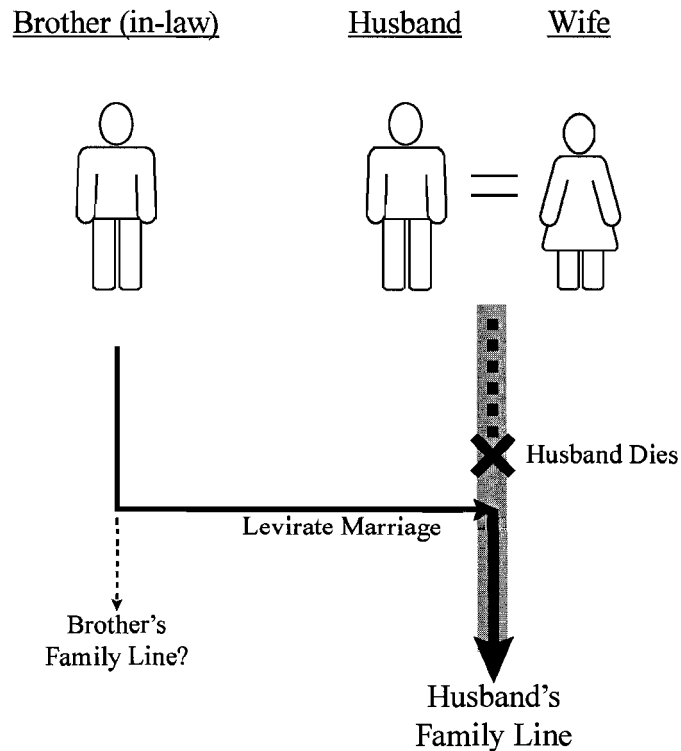


Figure 2. The relationship involved in Israelite levirate marriage as presented in Deuteronomy 25:5-6.

two individuals. Although now in a relationship with a different man, the wife is fulfilling her original purpose as seedbed for her husband's offspring. On the other hand, the brother-in-law has his own line to worry about but must set aside that concern, temporarily, to serve as levir. The light, dotted lines in this illustration represent the brother's concern for his own family line. This concern is not addressed by the text. However, it is likely that after fulfilling his duty to his brother and producing a firstborn, the focus of this new relationship might shift to building his own line. This figure emphasizes the prominence of the first husband. Even after he is dead, he initially remains a primary focus of the levirate marriage. However, the levirate marriage also involves a relationship between the brother-in-law and wife, not as prominently

represented in this figure.

The paragraph above spells out the mechanics of the relationships as outlined in Deuteronomy 25:5-6. From this point, it would be easy to jump right to a study of the sub-case in Deuteronomy 25:7-10. However, in addressing the concern for the posterity of the family line even after the death of the HOH, this passage has astonishing implications regarding the inherent value of each member of an Israelite family.

The value of the potential child is perhaps the most obvious feature of this text. This offspring represents the fundamental purpose of Israelite marriage. As delightful and cherished as newborns are, it is intriguing that a seven-pound, helpless bundle could compensate for the death of the HOH—incidentally the most prominent and influential member of an Israelite society. Yet the future of this man, and therefore this family, depended on the child. To an Israelite, a child, especially a son, was in essence a memorial to his father's name.⁴⁶⁵

The continuation of a man's name through his seed represents an issue that extends far beyond the levirate marriage passages.⁴⁶⁶ Certainly infertility or premature death posed a threat to a man's family line, but so did death in battle or the intentional annihilation of a family after periods of internal political strife, situations frequently addressed in the pages of the OT.⁴⁶⁷ Further, the continuance or destruction of a man's

⁴⁶⁵See 2 Sam 18:18 where Absalom erected a pillar since he had no son to cause his name to be remembered (אֵין־לִי בֶן בְּעֵבֹר הַזֶּכִּיר שְׁמִי).

⁴⁶⁶See Num 27:4; 1 Sam 24:22 (Eng 24:21); 2 Sam 14:7; 18:18; 1 Kgs 14:10; Pss 37:28; 45:18 (Eng 45:17); Prov 10:7; Isa 14:20; 56:5; Jer 11:19; Amos 8:10.

⁴⁶⁷In Israel, the ultimate revenge was not killing one's enemy; it was wiping out his male descendants from the face of the earth. Likewise, this destruction of offspring is cited as a form of divine punishment.

name is often portrayed as a sign of blessing or curse respectively. As mentioned above, the cutting off of this seed represented a curse far worse than death. For a man to die without issue “would mean the extinction of his family, and that equivalent to his own annihilation.”⁴⁶⁸

Concerning the text in Deuteronomy, some argue that the primary importance of a name was linked to property rights and inheritance.⁴⁶⁹ Thus Westbrook suggests that “name” in the levirate marriage texts is equal to a “title to . . . landed inheritance.”⁴⁷⁰ Indeed, land is inextricably linked to Israelite life and theology⁴⁷¹ and thus plays an important role in passages that mention the continuation of a family line.⁴⁷² Yet this pragmatic explanation creates tension when applied to other passages that reflect a similar deep desire for the continuation of a man’s name in Israel.⁴⁷³ The tie between name and land is more theological than practical as it represents a man’s (likewise a family’s) participation in the blessings of YHWH. A man’s name in Israel is carried on in his seed. In some ways an Israelite son represented a man’s virtual immortality. Moreover, it represented his privilege at being included in the eternality of God’s promised blessings.

⁴⁶⁸Falusi, “African Levirate and Christianity,” 302.

⁴⁶⁹Davies, “Inheritance Rights: Part 1,” 139-44; Beattie, “Book of Ruth,” 265, 267; Loader, “Of Barley, Bulls, Land, and Levirate,” 135. Many who see the maintenance of family property as the primary purpose for levirate marriage suggest that it also served to provide support and protection for the Israelite widow.

⁴⁷⁰Westbrook, *Property and the Family*, 77.

⁴⁷¹See Block, *Gods of the Nations*, esp. 20.

⁴⁷²Num 27:4, Ruth 4:5, 10.

⁴⁷³When Saul pleads with David that his name not be destroyed, nothing in the text suggests that property rights play a role in his concerns (2 Sam 24:22 [Eng 24:21]).

The focus on the continued family line also speaks to the inherent value of the **בן**. Even in his death, this man continues to be a valued and respected member of the community. Unlike so many of Israel's neighbors, the honor due him by his wife, his brother(s) and the elders is not focused backwards toward his death,⁴⁷⁴ but forwards toward a form of continued life for his name and his household. That each family name mattered is noteworthy, especially considering the tendency of scholars to emphasize the corporate identity so characteristic of Israelite culture. Further, the nature of the crisis created by his death speaks to the importance of his role within the family unit. The crisis in Deuteronomy 25:5-10 is not merely economic, i.e., it cannot be solved simply by the provision of food or shelter.⁴⁷⁵ Rather, the crisis as addressed in this text concerns the fundamental procreative function of the **בן**, for the purpose of passing on his name and

⁴⁷⁴Many of Israel's neighbors practiced ancestor worship, and children were expected to care for the souls of their dead parents by providing offerings of food and drink. Cf. Tigay, *Deuteronomy*, 482-83. Deuteronomy never promotes or condones such activity, but points instead to the endurance of the household of the deceased.

⁴⁷⁵The Israelite practice of levirate marriage addressed more than one need felt by a household upon the death of a childless, married man. As mentioned earlier, Tamar's reckless determination for a child indicates his potential value to her, and comments surrounding Obed's birth suggest that this helpless newborn functioned as Naomi's redeemer, capable of restoring her soul and assuring her of provision in her old age (Ruth 4:14-15). Ruth's marriage to Boaz secured her place in Israelite society (and history), and connections between property and the perpetuation of a name suggest that matters of land and inheritance were also tied to the levirate practice (Num 27:4; Ruth 4:5, 10). These issues form the basis of most scholarly discussion regarding the purpose of the levirate instruction. See Davies, "Inheritance Rights: Part 1," 138-44; idem, "Inheritance Rights: Part 2," 257-68; Westbrook, *Property and the Family*, 69-89. They also make Deuteronomy's single-minded focus on establishing a name for the deceased all the more remarkable.

It is tempting to suggest that since levirate marriage obviously benefited the widow, and Deuteronomy as a book expresses concern for the widow, the purpose of Deut 25:5-10 is to promote the well-being of this poor woman in the midst of her tragic loss. Not only would this statement appeal to a major drive in the Torah of Deuteronomy, it would lend support to the thesis of this project. However, this text is no more about the widow than Deut 21:10-14 is about the warrior. The primary concern of this text is with a character more vulnerable than the widow—her deceased husband and his not yet existent offspring. Ultimately, this instruction involves an attempt to preserve the family line—the core of Israelite society, grounded in its connection to the fathers and rooted in the inheritance of the promised land.

essentially assuring a future generation within Israel, suggesting his unique value as the head of his family. The father's intended role as perpetuator of life helps to explain why he held such an honored position in Israelite society.

Likewise, the woman in this passage is presented as the bearer of life.⁴⁷⁶ Far from being family property to be hoarded, the wife is the key to family survival.⁴⁷⁷ Without her the deceased husband has no hope. Her womb is needed to carry his child. This observation is not an indication that she was defined merely by her sexual role, for nearly any woman can bear a child. And presumably any brother could father one. What is remarkable about this passage is not that a brother could provide a child for a man to whom he is probably related by blood, but that this woman, who joined the family from a different household, was able to bear a child for her husband without his involvement. It speaks volumes of the marriage bond that a man's wife would be considered the only possible carrier of her late husband's heir. Further, the importance of her role in this situation hints at the honor and esteem a woman held by virtue of her position as wife. Without her there is no line, no legacy, and no eternal inheritance as promised by YHWH.

Deuteronomy 25:7-10

The levirate instruction could have ended after verse 6. However, the text goes

⁴⁷⁶I am indebted to Daniel Block for pointing out the connection between the ideas presented in this passage and Adam's naming of Eve in Gen 3:20.

⁴⁷⁷An opposing view is expressed by Bird, *Missing Persons and Mistaken Identities*, 23-24. However, in her brief discussion she focuses on the woman as "the exclusive property of her husband" whose duty it was to build the house of her husband (probably a reference to Deut 25:5-10 although her discussion is of Israelite women in general). What she does not point out is that the reverse is also true. Not only is she to build his line exclusively (i.e., be faithful to him)—*only* a man's wife can build his line.

on to anticipate what may have been a common problem. What happens if the brother-in-law neglects his duty and refuses to marry this woman? Verses 7-10 reflect the complicated and frustrating emotions that often accompany family relationships. At the same time they reflect a gracious sensitivity to the plight of the characters caught in difficult circumstances. To the man, they offer an escape.⁴⁷⁸ To the woman, they offer a measure of social empowerment by granting her the authority to utilize the power of persuasion that accompanies public humiliation.

Even here the emphasis is on establishing a name for the deceased. In both her accusation before the elders and in the public ceremony by which she shames her brother-in-law, this woman is to demonstrate a concern, not for herself (i.e., “he refuses to marry me”), but for the name of her husband. Whatever benefits this arrangement might carry for the widow, her expressed concern is with the continuation of her husband’s household.⁴⁷⁹ If anyone demonstrates a loss of focus on this issue, it is the brother who, by virtue of not wanting to participate, has already indicated an inclination toward self-

⁴⁷⁸Block notes many reasons why a man might want an escape. He may already be married and not wish for rivalry or dissension in his family; he may dislike or disrespect the woman; he may view her as bad luck for having already caused the death of his brother; he may object to his own firstborn carrying another man’s name; or he may calculate that he will be entitled to a larger portion of his father’s estate if there is no one to inherit from his brother. See Block, “Gospel According to Moses,” s.v. “Deuteronomy 25:5-10.”

⁴⁷⁹The OT consistently depicts the childless, widowed woman as tenacious in this pursuit. Gen 38; Ruth. See also 2 Sam 14:7. Cf. Victor H. Matthews, “Female Voices: Upholding the Honor of the Household,” *BTB* 24 (1994): 8-15. In speaking of Tamar, Esther Fuchs writes, “the mother-figure is not valorized for her interest in her own security, but rather in the stability of a patrilineal genealogy,” in *Sexual Politics in the Biblical Narrative: Reading the Hebrew Bible as a Woman*, JSOTSup 310 (Sheffield: Sheffield Academic Press, 2000), 80.

The benefits to the woman have been discussed above, and may help explain her persistence in pursuing the levirate marriage. However, the text emphasizes her concern for the preservation of her husband’s line. (These two concerns may have been synonymous in her mind if she viewed herself as part of that line based on her understanding of her place within Israelite society.)

serving behavior. Although he may have valid justification, his simple response, “I do not desire to marry this woman,” suggests that he is driven less by concern for the well-being of the family than by his own desires.⁴⁸⁰

Finally, the ceremonial *halitzah*⁴⁸¹ drives home the urgency of the responsibility placed on these characters. The precise symbolic meaning of the removal of the sandal would have been clear to the original hearers, but even today the gesture vividly portrays the gravity of the situation.⁴⁸² This unwilling brother is singled out and humiliated in front of his entire community.⁴⁸³ As a measure of retributive justice, the ultimate result of this ceremony is that his own name, and thus the name of his future line, is shamed.⁴⁸⁴ This example of poetic irony further demonstrates that the purpose of

⁴⁸⁰An interesting chiasmic structure emerges when one examines the instruction, specifically to the levir, and the verbal responses of the characters in this sub-case of the levirate marriage instruction.

25:5e Go into her (יָבֵא עִלֶיהָ) (יְבִמָּהּ יָבֵא עִלֶיהָ)

25:5f Take her as a wife (וְלָקַחְתָּהּ לְךָ לְאִשָּׁה) (וְלָקַחְתָּהּ לְךָ לְאִשָּׁה)

25:5g Perform the duty of a levir (וְיָבִמָּהּ) (וְיָבִמָּהּ)

25:6a Establish a name (וְקָם עֲלֵיךָ שֵׁם אֶחָיו הַחַי) (וְקָם עֲלֵיךָ שֵׁם אֶחָיו הַחַי)

25:7d Refuses to establish name (לֹא אֶבְרָא שֵׁם אֶחָיו הַחַי) (לֹא אֶבְרָא שֵׁם אֶחָיו הַחַי)

25:7e Will not perform duty of a levir (לֹא אֶבְרָא יְבִמָּהּ) (לֹא אֶבְרָא יְבִמָּהּ)

25:8e I do not desire to take her as a wife (לֹא חֲפָצְתִּי לְקַחְתָּהּ) (לֹא חֲפָצְתִּי לְקַחְתָּהּ)

⁴⁸¹The ceremonial untying of the man’s sandal.

⁴⁸²For scholarly discussion concerning the significance of this ceremony, see Herbert Channon Brichto, “Taking-Off of the Shoe(s) in the Bible,” in *PWCJS* 5 (Jerusalem: World Union of Jewish Studies, 1969), 225-26; Tigay, *Deuteronomy*, 233; Farbridge, *Studies in Biblical and Semitic Symbolism*, 9, 274; Calum M. Carmichael, “Ceremonial Crux: Removing a Man’s Sandal as a Female Gesture of Contempt,” *JBL* 96 (1997): 321-36; Manor, “A Brief History of Levirate Marriage,” 133-34. On parallel examples in the ANE, see Gordis, “Love, Marriage and Business in the Book of Ruth,” 247.

⁴⁸³Here the woman’s role in appearing before the elders and bringing public shame to her brother-in-law for his failure to preserve her husband’s line (which, incidentally, is not an entirely self-sacrificial act as it strengthens the levir’s own clan) once again calls into question the modern notion of the Israelite woman as socially powerless.

⁴⁸⁴On the implications of shame in Israelite culture, see D. A. deSilva, “Honor and Shame,” *Dictionary of the Old Testament: Pentateuch*, ed. T. Desmond Alexander and David W. Baker (Downers Grove, IL: InterVarsity Press, 2003), 431-36; and A. C. Hagedorn, “Honor and Shame,” *Dictionary of the Old Testament: Historical Books*, ed. Bill T. Arnold and H. G. M. Williamson (Downers Grove, IL: InterVarsity Press, 2005), 497-501.

this instruction⁴⁸⁵ is to establish a name for the man who has died with no offspring.

Conclusion

The other passages treated in this study address specific instructions to an Israelite male concerning aspects of his role as אב. In this Deuteronomic instruction, the אב is absent. He has died without producing an heir. In his absence, he reveals his ultimate significance. Within Israel, value is placed on the role of a man as husband and father, and his most valued function is to build his household. Should he die before his wife has conceived, he leaves his household at the risk of extinction.

Further, this passage demonstrates an ironic reversal of roles in the husband and wife relationship. When the wife is in a position where her husband is more vulnerable than she (for example, when he has died), she is called upon to act in his interest. More specifically, she is called to act on behalf of his household, his family line. Undoubtedly, a large part of this responsibility falls to the deceased's brother, but the wife is granted the authority to pursue aggressively the solution that the levirate relationship offers, even in the face of a reluctant levir.

Much has been made of the rights of the widow and the disbursement of property before and after an unsuccessful levirate arrangement. Would the brother-in-law normally inherit all the property that would have gone to a nephew, thus potentially doubling his estate? Does the withdrawal of the man's sandal indicate that the widow

⁴⁸⁵A clear distinction can be made between the purpose of the Deuteronomic instruction and the purpose of levirate marriage in general. In saying that Deuteronomy focuses almost solely on the name of the deceased, this author is not denying other relevant functions of the levirate system as practiced in Israel.

inherits the property should the brother-in-law neglect his obligations to his brother's household? When is the widow free to remarry, and what possessions does she take with her to her new home? All are excellent questions, but any answers are speculative at best. This passage does not focus on the rights of the woman or the brother-in-law. Rather, it defines the appropriate response to a family in dire crisis. Not surprisingly, this response includes a setting aside of what may otherwise have been acceptable actions ("rights")⁴⁸⁶ in favor of promoting the well-being of another.

This passage reveals a unique perspective concerning the relationship between a man and his household. With the emphasis traditionally placed on the primacy of the HOH, one would expect that in his absence and in the absence of offspring, the household would cease to exist. That the household can be established after the death of a childless man indicates that the household is not synonymous with its head and can continue even without him. Apparently the household itself is greater than the HOH. Ramifications for the responsibilities of the HOH are profound. As hinted in each of these family texts, the **אב**'s fundamental role within the **בֵּית-אָב** is to promote the well-being⁴⁸⁷ of his household and its members. By implication, the household does not exist to serve its head, but the head (and other members) to serve the household.

⁴⁸⁶I.e., a widow's right to remarry after the death of her husband, or the right of the brother-in-law to have his seed carry on his own name.

⁴⁸⁷As indicated in the introduction and to be further pursued in the conclusion, well-being is not synonymous with the modern notion of happiness, but rather is directly related to righteousness.

CHAPTER 3

CONCLUSION

An examination of the seven family texts from the prescriptive material of Deuteronomy speaks directly to the issue of the righteous application of a HOH's domestic authority within the context of ancient Israel. While these texts do not establish a comprehensive paradigm for the ideal vision of the role of the HOH, they speak to issues of his authority and the proper exercising of that authority. From these texts it is possible to draw conclusions regarding the underlying principles that were to have governed the HOH's behavior in relationship to the other members of his household. Further, these guiding principles have implications for the understanding of the function of household within the larger Israelite community.

The Role of the Head of Household

Contrary to popular understanding, our observations indicate that establishing the rights of the HOH is not the goal of these prescriptive texts. Although many of the texts address the issue of the HOH's authority, they do so by presupposing his rights. Instead of establishing rights, these texts focus on the responsibility of the **אב** to exercise that authority for the well-being of those under his care. In some texts this takes the form of restrictions on the authority he holds in society, in order to prevent the abuse of that power. Other texts focus on the weight of responsibility within the family and for the

sake of the community.

Responsibility Required

Although often thought of in terms of a privileged right that endows its possessor with inherent value and indicates elite status, Deuteronomy's portrayal of a HOH's authority is not focused on his worth or his right to rule. It treats his authority as a grave and at times burdensome responsibility. Deuteronomy's emphasis on the responsibility of an אב to exercise his authority is driven by a concern for the well-being of the household (and the community).

In relation to his children, a father is given the weighty responsibility of not only recognizing the bearing of his own conduct on the well-being of the household (Deut 5:7-9), but also training his children in the ways of the covenant¹ and holding them accountable to the standards of the Torah. The extent of the father's responsibility is revealed in the extreme case of a son who has rebelled against the covenant. It is he,² not the elders or fellow community members, who is to initiate the proceedings that ultimately lead to his son's death. In this case the אב's concern for the well-being of the household supercedes his concern for the well-being of this individual member.

This high level of parental responsibility applied to daughters as well as sons. Specifically, the texts emphasize the father's responsibility to guard his daughter's sexual purity, presumably through moral instruction as well as physical protection. Further, both Deuteronomy 21:18-21 and Deuteronomy 22:13-21 indicate that parental responsibility

¹Deut 4:9-10; 6:7, 20-25; 11:19-21; 32:46; implicit in Deut 21:18-21.

²Along with the mother.

did not end when the child reached adulthood. This responsibility occasionally extended beyond the boundaries of the family compound, expecting that he could come to his daughter's aid after she had become part of another household. An אב's responsibility extended beyond holding his children accountable, to coming to their defense when falsely accused.

In relation to his wife, the HOH presumably held certain rights within Israel, rights that related to the status and even the number of women he married and the ability to end marriage through divorce. In the passages involving marriage, Deuteronomy stresses the husband's responsibility toward his wife. These responsibilities ensure that he exercise his authority in a manner that demonstrates respect for his wife. Even a warrior marrying a captive foreign woman was required to treat her not as a prisoner-of-war, but as a full-fledged Israelite wife. The respect for the wife is highlighted in the exhortation to devote the first year of marriage to bringing joy to the wife.³ The text's pervasive concern for the responsibility of the husband to ensure the well-being of the wife presents a striking contrast to the view that Deuteronomy promotes the mistreatment and oppression of women.

Rule Restricted

More surprising than Deuteronomy's call to responsibility is the emphasis on the restriction of his authority. Although scholars are justified in condemning the abuse of authority by HOH's in OT narratives, the findings of this study indicate the concern of many of the family texts in Deuteronomy is precisely to protect family members from

³Deut 24:5.

such abuse of authority. While his basic societal rights are not challenged (the HOH still retains the primary social, legal and perhaps religious authority within Israel), the exercise of those rights is restricted in order to safeguard weaker, or hierarchically inferior, members of society.

The restriction of a father's authority over his children is demonstrated in Deuteronomy 21:15-17 where a father is prohibited from transferring the birthright from an older son to a younger son based merely on a desire to honor a wife whom he loves. Although the father appears to retain the right to assign the birthright to a child other than his firstborn, his motive for doing so is scrutinized and subsequently restricted. He may not deprive his eldest of the honor and inheritance typically assigned to him, simply because he was born to a wife whom the husband does not cherish. At the same time he is prohibited from further shaming a wife, who already suffers as the neglected and unfavored spouse, by transferring to another her honored position as the mother of his firstborn. A further example of the restriction of a father's authority in relation to his children involves the case of the rebellious son. While the expressed purpose of Deuteronomy 21:18-21 is to preserve and promote covenant faithfulness within Israel, the role of the HOH in this passage indicates that, within Israel, a father's authority had boundaries. Although exhorted to deal with this son's lack of obedience, the father (along with the mother) is not permitted to execute judgment independently, but must bring him before the elders so that the punishment is exercised by the community. Further, that the mother must cooperate with the father in bringing the issue to the elders shows that the **אב** did not have unmitigated authority even within his own household.

The most notable restrictions on the authority of a HOH occur in texts where a

man has socially degraded a woman. In each case the woman is protected by limiting the man's authority with regard to future decisions that would affect the woman's social standing. In Deuteronomy 21:14, once the husband has divorced his captive bride, thus lowering her socially from the status of spouse to divorcée, his authority over her is terminated. In the case of the slandered bride (Deut 22:13-21), a husband who has publicly shamed his wife through a false accusation is prohibited from bringing the further social humiliation of a divorce. Finally, the woman who has been defiled and socially humiliated through the divorce process, and has subsequently remarried (Deut 24:1-4), is protected from returning to a situation in which she could be further abused. In openly abusing his authority over the woman, the first husband has forfeited the potential right to continue to exercise authority over her. In each case, the man who has demonstrated a disregard for a woman's well-being through an abuse of his authority finds his further authority over her curtailed. Having socially degraded her once, he may do so no more.

The Absence of the Head of Household

In six of the texts studied the addressee is the HOH, but the concern of the texts is for those members of his household. These texts focus on the proper exercise of his authority, both positively in terms of responsibilities and negatively in terms of limits on potential abuse. The one text that does not fit this pattern is Deuteronomy 25:5-10. This text is not addressed to the HOH, for he has died. The concern here appears to be for the deceased—that his name might live on. More accurately, the concern is with the establishment of the household itself. That the household can be continued even after the

HOH has died indicates that the household itself is greater than any of its individual members—even its head. The implications of this text help us understand the primary principle underlying the other six texts. Within the household, the **אב** is the head, but not the center. The household does not exist to serve him, but his function is to serve the household.

Righteousness over All

The focus of this project has been on the domestic role of the HOH. However, these texts demonstrate what the sociological models have suggested for years. The HOH's function within the family is bi-directional—focused both inwardly on his relationship with the members of his own household and outwardly on his responsibilities for the sake of the larger community.⁴

Just as the cases of the slandered bride and the rebellious son reveal that an individual's sin against the covenant brought guilt to the widening circles of household and community, so the HOH's concern for each member of his family is set within the context of the well-being of both the household and the community. Deuteronomy understands well-being as the product of covenant faithfulness. The HOH's pursuit of the well-being of his household can only be achieved through a zealous commitment to righteousness. All other concerns must be subservient to those of the covenant and the community's faithfulness to it.

With the emphasis on the importance of a righteous response to the covenant,

⁴The family's relationship to the community is two-sided. Not only does the well-being of the family affect the community, but these texts implicitly call the community to safeguard the family. The most obvious example of this is the inclusion of elders in some of these texts.

it is tempting to regard Deuteronomy as a book of ideals. The stated purpose of this study has been to explore these prescriptive texts *not* in order to describe how HOH's actually behaved, but to set a paradigm for how HOH's were supposed to have behaved in response to their covenant relationship with YHWH. Yet this study challenges the notion that the covenant text idealizes society and presents a picture of an idyllic world. These texts demonstrate a keen awareness of the harsh and ugly realities of the fallen world into which the covenant enters. This applies to the issues in every text examined: war and captivity, polygyny and favoritism, rebellion and disobedience, slander and impurity, divorce and heartbreak, and death without any hope of a future line. Even the most idyllic of these texts, Deuteronomy 24:5, anticipates the realities of potential family conflict and premature death. These texts do not create an illusion of unattainable perfection, but rather explain how the head of a household is to respond righteously to the difficult realities of life.

The picture of fatherhood that emerges from this study is not that of a patriarchal dictator ruling over his household with unquestioned authority for the primary purpose of promoting his own well-being. Rather, these seven texts suggest that Deuteronomy's ideal vision for Israelite domestic life includes a HOH who exercises his authority (sometimes with restraint) for the well-being of his family and his community, and for the purpose of protecting and preserving righteousness within Israel—even within the midst of a fallen world.⁵

⁵Not surprisingly, the overall concern for righteous living lines up nicely with Deut 16:20, צֶדֶק צֶדֶק תִּרְדֹּף לִמְעַן תַּחֲיֶה וְיִרְשָׁתָּ אֶת־הָאָרֶץ אֲשֶׁר־יְהוָה אֱלֹהֶיךָ נָתַן לָךְ:

Implications for Further Study

The implications of these conclusions suggest that further work in the field is not only warranted, but necessary—if only to test the work presented in this study.

Suggestions for further study fall into two categories: (1) the extension of this study into the rest of the OT and (2) the expansion of its themes in related fields.

The Head of Household in Ancient Israel

The picture of the role of the Israelite HOH that emerges from this study represents only a small piece of the OT's presentation of the issue. Much work is left to be done in the field. The same methodology needs to be applied to other bodies of prescriptive texts, including not only the Book of the Covenant (Exod 20:23-23:19) and the Holiness Code (Lev 19-26), but also other prescriptive texts found within the book of Deuteronomy and the rest of the OT.⁶ However, while prescriptive texts provide an excellent starting point in that they set forth the required righteous behavior, a comprehensive understanding of the role of the Israelite HOH cannot be restricted to the prescriptive texts alone. Eventually all relevant texts within the OT must be studied with respect to both their immediate context and their genre. Only then can we grasp a full picture of the role of the HOH in ancient Israel—what was, and what should have been.

Further, a complete study of the role of the HOH will take into account the entire scope of his household, including his relationship to his servants and his responsibility to his livestock. All were under his authority, and his treatment of them (both actual and ideal) speaks to the OT's understanding of his role.

⁶I.e., Deut 4:9-10; 5:14, 18, 21; 6:7, 20-25; 11:19-21; 32:46; Gen 2:24; Num 30.

Of all the practical implications that could come from such an understanding, perhaps the most helpful would be the application of this study to the use of the metaphor of God as Father.

Related Studies

The primary goal of this paper was to examine the role of the Israelite HOH within his own household. In the pursuit of this task, several recurring themes arose that warrant further investigation. The suggestions below are tentative and preliminary.

Studies in Deuteronomy

Although this dissertation focuses on the role of the HOH within ancient Israel, the findings of this study suggest implications for the understanding of Deuteronomy as a whole. In *Deuteronomic Theology and the Significance of Torah: A Reappraisal*, Peter Vogt suggests that the supremacy of YHWH is at the very heart of Deuteronomic theology and that the Torah “teaches the means by which Yahweh’s supremacy is lived out by his people.”⁷ Vogt points out that the instruction to the kings reflects a radical counter-cultural ideology in which even Israel’s leaders are subservient to YHWH, and where the role of the people is highlighted in a way that contrasts with the emphasis on the role of leadership in ancient Near Eastern societies. This Deuteronomic ideology is substantiated by the findings of the present study in which the behavior of the authority figure (HOH) was (1) to reflect a concern for Torah and, to borrow a phrase from Vogt, for the supremacy of YHWH in all matters—even (and especially) those closest to a

⁷Peter T. Vogt, *Deuteronomic Theology and the Significant of Torah: A Reappraisal* (Winona Lake, IN: Eisenbrauns, 2006), 229.

father's heart; and (2) to reflect a fundamental concern for the wellbeing of those under his care, such that his rights as HOH are tempered by and exercised through responsibility.

The Old Testament's View of Leadership

With regard to the HOH, the texts focus not on his power or his right to rule, but rather on the inherent responsibility that comes with his authority. This authority is at times deliberately curbed for the sake of protecting others from its abuse. The validity of this view of authority needs to be tested against and compared to other presentations of OT leadership, including, but not limited to, kings, elders, judges, warriors and priests.⁸

Marriage

Despite the many contexts in which marriage appears in these seven texts, in each a similar theme is present. Consistently the dignity associated with the ancient Israelite marriage relationship is emphasized. A new marriage is worthy of a full year's exemption from social responsibilities.⁹ A captive woman chosen as a bride must be accorded the status of an Israelite wife simply because of the marital union.¹⁰ Within that union, husband and wife share responsibility in training, disciplining and defending their children.¹¹ In the event of the premature death of a husband, the marriage bond enables

⁸Work in this field has already begun. See Daniel I. Block, "Leader, Leadership," in *The New Interpreter's Dictionary of the Bible*, ed. Katherine Doob Sakenfeld (Nashville: Abingdon, forthcoming).

⁹Deut 24:5.

¹⁰Deut 21:10-14.

¹¹Deut 21:18-21; 22:13-31.

the wife to continue his family line without him.¹² The dissolution of marriage, while allowed, is accompanied by serious and often harmful ramifications.¹³ And violation of the covenant of marriage is punishable by the highest penalty of Israelite law: death.¹⁴ These texts represent but a few of the OT passages regarding marriage, which need to be studied as a whole in order to measure the conclusions drawn above.

A Woman's Role

A discussion of the role of women in ancient Near Eastern society needs to account for the fact that the abuse demonstrated in narrative texts does not align with the instruction provided the HOH in the prescriptive texts of Deuteronomy. More attention needs to be paid to its exhortations that he exercise his authority in such a way as to bring her blessing, not harm.

¹²Deut 25:5-10.

¹³Deut 21:14; 24:1-4.

¹⁴Deut 22:13-21.

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ABSTRACT

BETWEEN RULE AND RESPONSIBILITY: THE ROLE OF THE 'AB AS AGENT OF RIGHTEOUSNESS IN DEUTERONOMY'S DOMESTIC IDEOLOGY

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This dissertation explores the relationship between the ancient Israelite HOH and the members of his family as portrayed in the prescriptive texts of Deuteronomy. In choosing the prescriptive texts, this study distinguishes between the actual (what was) and the ideal (what should have been).

Chapter 2 examines those texts, elsewhere referred to under the rubric of “family law,” which specifically address the rights and responsibilities of the father in relation to other members of his household. These texts include Deuteronomy 21:10-14; 21:15-17; 21:18-21; 22:13-21; 24:1-4; 24:5 and 25:5-10. Each text is examined with focus on the characters involved, the setting (including relevant Old Testament and ancient Near Eastern background material), and ultimately the main concern or concerns driving each text. Those concerns are analyzed to see what implications the text has for the role and responsibilities of a righteous father in ancient Israel. This study seeks to establish from these texts the underlying principles that were to govern the use of his authority within the household.

Chapter 3 consists of a synthesis of the results of the study and suggestions for

further research.

This work contends that these texts presuppose, rather than establish, a father's rights. Further, the texts view the father's authority in terms of responsibility, namely responsibility for the well-being of the members of his household to be achieved through zealous commitment to righteousness. Finally, it is proposed that abuse of a man's authority resulting in social degradation of a woman is followed by restrictions on that man's authority.

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