

## Chapter 7. The Old Testament's teaching on divorce

We “New Testament Christians” rarely seriously study the Old Testament, believing it was nailed to the cross.<sup>23</sup> But Jesus and Paul repeatedly refer to the Old Testament when teaching their students. Indeed, they both assume their readers have a high level of Old Testament knowledge. And yet while we in the Churches of Christ aspire to replicate the Christianity of the First Century, we rarely to replicate the knowledge these early Christians had of the Old Testament. In fact, it's impossible to thoroughly understand Jesus and Paul without knowing the Old Testament background against which they spoke and wrote.

We've already mentioned Jesus' and Paul's use of Genesis 1 and 2 as normative for husband-wife relationships. We've also briefly mentioned Jesus' references to Deuteronomy 24 in his teaching on divorce. The fact is that the Law of Moses allows divorce. Indeed, the right to divorce is assumed in this passage—the question at issue is the right to remarry one's first spouse after being divorced and marrying another. Moses allowed the second marriage but not the third—likely to take away the temptation to engage in wife swapping.<sup>24</sup>

There are other passages in the Law of Moses that relate to the question. For example, Exodus 21:7-11 allows a divorce in the case of abuse or abandonment:

“If a man sells his daughter as a servant, she is not to go free as menservants do. 8 If she does not please the master who has selected her for himself, he must let her be redeemed. He has no right to sell her to foreigners, because he has broken faith with her. 9 If he selects her for his son, he must grant her the rights of a daughter. 10 If he marries another woman, he must not deprive the first one of her food, clothing and marital rights. 11 If he does not provide her with these three things, she is to go free, without any payment of money.”

This passages was interpreted by the pre-Christian rabbis as referring to the rights of a slave girl. If her master marries her, he must not deprive her of “food, clothing and marital rights.” The rabbis reasoned that if a slave has such rights, surely a free woman

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<sup>23</sup> I think this terminology is a vestige of 19<sup>th</sup> Century debates with Baptists who believed the Law of Moses to be still binding in some ways. But the Baptists abandoned that view over 100 years ago—and yet we still use terminology that has long lost its significance. Who *doesn't* claim to be a New Testament Christian? Catholic, Orthodox, Calvinist, Arminian—all recognize the distinction in the covenants. The danger here is that by mindless sloganeering we denigrate and ignore the Old Testament and so fail to truly understand the New Testament.

<sup>24</sup> E.g., P. C. Craigie, *The New International Commentary on the Old Testament—The Book of Deuteronomy* (1976), p. 305: “Thus, the intent of the legislation seems to be to apply certain restrictions on the already existing practice of divorce. If divorce became too easy, then it could be abused and it would become a ‘legal’ form of committing adultery.”

has at least these same rights. Therefore, the rabbis allowed divorce for any failure of a man to provide his wife with food, clothing, or sexual relations. Indeed, the rabbis regulated with great specificity the food, clothing, and frequency of sexual intercourse!<sup>25</sup>

Now, notice that this passage gives the woman the right to divorce her husband, contrary to the frequent assertion that only husbands could divorce their wives. The procedure was for the wife to appeal to the rabbinic authorities who could compel the husband to issue a certificate of divorce.<sup>26</sup>

Notice the importance of the certificate. The wife needed the certificate so she could remarry, as unmarried women often could not survive in a patriarchal society. Most jobs were denied to women. Moreover, in ancient Israel, a woman's primary role was as a bearer and mother of children. The Old Testament records numerous examples of women who were despondent because of their barrenness. Indeed, God's prophets often speak words of comfort to barren women (*e.g.*, Ps. 113:9; Isa. 54:1).

By Jesus' time, the rabbis had also concluded that if a woman may divorce her husband for lack of "food, clothing and marital rights," surely the husband may put his wife away for the same reasons, reinterpreting "food" as the obligation to prepare meals and "clothing" as the obligation to make clothes.<sup>27</sup>

In addition, all rabbis allowed divorce for sexual sin. Deuteronomy 24:1 refers to a divorce due to "some uncleanness" (KJV) or "something indecent" (NIV). The Hebrew word refers most literally to nakedness or shame, and much debate has ensued (and continues) as to the scope of this word.

It has often been argued that it could not refer to adultery, as the penalty for adultery was death—not divorce (Lev. 20:10). By Jesus' time, the rabbis taught that a married woman found alone with a man not her husband should be presumed an adulteress. Women could also be divorced for indecent behavior, such as showing bare arms, loosening her hair, or talking with a man not her husband.<sup>28</sup> Hence, "adultery" was interpreted broadly indeed!<sup>29</sup>

However, stoning for adultery was very rare in those days. Other than the occasional vigilante action (the woman taken in adultery), it just didn't happen, as the Romans denied the Jews the right to impose the death penalty, and the Romans weren't inclined to allow death for adultery. Hence, divorce was the nearly universal remedy for adultery—or presumed adultery.<sup>30</sup>

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<sup>25</sup> Instone-Brewer, pp. 85 *ff.*

<sup>26</sup> *Ibid.*, pp. 85-86.

<sup>27</sup> *Ibid.*, p. 101.

<sup>28</sup> *Ibid.*, p. 98.

<sup>29</sup> *Ibid.*, p. 94.

<sup>30</sup> *Ibid.*, p. 94.

Husbands, however, could not be guilty of adultery, as the acceptance of polygamy meant that husbands had made no promise of sexual fidelity.<sup>31</sup> On the other hand, although the adulterer's wife had no recourse for his infidelity, his infidelity was an offense against his paramour's husband or, if she was unmarried, her father.<sup>32</sup>

Luck has argued that Exodus 21:26 permitted divorce for physical abuse because a slave would be freed if abused by his master.<sup>33</sup> While I think Luck's argument makes sense, I can find no evidence that the First Century rabbis taught such a thing. Of course, our knowledge of their teaching is hardly perfect.

More likely, the rabbis saw no need to reach such a conclusion because of their interpretation of Exodus 21:10-11. "Marital rights" was considered to include more than just sexual relations. The KJV is closer to the meaning when it translates "duty of marriage," and it was easy enough for the rabbis to conclude that physical abuse was a violation of this right. Indeed, the rabbis treated cruelty and humiliation as a violation of Exodus 21:10-11 and so grounds for divorce.<sup>34</sup>

In the centuries between the Old and New Testaments, the Jewish rabbis divided into two schools of thought regarding divorce. Disciples of the rabbi Hillel believed divorce was only permitted on the grounds described in Exodus 21:10-11 or for sexual sin. However, disciples of the rabbi Shammai taught that divorce could be had for any reason. They reasoned that Deuteronomy 24:3 referred to a divorced because the husband "hated" (KJV) or "disliked" (NIV) his wife. Hence, they suggested that he could divorce her for losing her looks or simply burning his toast!<sup>35</sup>

Now, it's important to realize that both schools of thought permitted divorce for the three grounds specified in Exodus 21:10-11. However, the records we have of their rabbinic debates read as though the Shammaites only allowed divorce for adultery. For example, the Shammaites declared, "a man may not divorce his wife unless he finds indecency in her" although they in fact recognized other grounds. This is very typical of the way these debates were recorded, and multiple examples of this style of ignoring other exceptions have been found.<sup>36</sup> It was simply the nature of rabbinic debate regarding Deuteronomy 24 to ignore the other grounds as there was no dispute as to these and the grounds were well known.

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<sup>31</sup> *Ibid.*, p. 98.

<sup>32</sup> *Ibid.*, p. 98.

<sup>33</sup> William Luck, *Divorce & Remarriage* (Harper & Row, 1987).

<sup>34</sup> *Ibid.*, p. 107-109.

<sup>35</sup> *Ibid.*, pp. 99 *ff.*

<sup>36</sup> *Ibid.*, pp. 111, 162-163.

Now, the rabbis, consistent with Deuteronomy 24, allowed a divorced woman to freely remarry.<sup>37</sup> A virgin was under the control of her father and could not choose her own husband, but a divorcee could select her own husband.<sup>38</sup> However, priests were barred from marrying divorced women, and Deuteronomy 24 bars remarriage to a former husband when there's been an intervening marriage.

The rabbis also would not allow the woman to benefit from adultery by marrying the man with whom she committed adultery. However, there's evidence that this rule, not being found in scripture, was not strictly enforced.<sup>39</sup> Moreover, there was no stigma in marrying a divorced woman, unless she was divorced due to adultery.<sup>40</sup>

In short, when Jesus addressed the interpretation of Deuteronomy in the Sermon on the Mount and in Matthew 19, he spoke against this background, as a rabbi, with centuries of pre-existing tradition behind all that he said. When we get to the interpretation of these passages, we'll have to recall these facts, as Jesus' listeners were well aware of existing First Century divorce law, and they would have understood him quite differently from how we often do.

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<sup>37</sup> *Ibid.*, pp. 118-119.

<sup>38</sup> *Ibid.*, p. 118.

<sup>39</sup> *Ibid.*, p. 121.

<sup>40</sup> *Ibid.*, p. 123.