DID MOSES PERMIT DIVORCE?
MODAL *wĕqāṭal* AS KEY TO NEW TESTAMENT READINGS OF DEUTERONOMY 24:1-4[1]

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Summary

The New Testament discussions of divorce, both in Matthew 19 and elsewhere, are dominated by a distinction between Permission and Obligation. It is generally assumed that the debate arises from a 'presupposition' of divorce in Deuteronomy 24. An improved syntactic analysis of the Old Testament text shows Moses to have in fact issued a specific directive on divorce, but in such a way that it was open to the kind of misunderstanding that we see corrected by Jesus. This analysis is supported by all the New Testament texts. By applying the categories of linguistic modality to main-clause verbs, verbs of reporting, verbs of divorcing and conditional clauses, it is possible to shed more light on how Jesus and the Pharisees dealt with the Old Testament text, and to show just what was wrong with the Pharisees' understanding of Hebrew grammar.

I. Modal Force: Permissive and Obligative

The study of modality conventionally[2] distinguishes between the Epistemic (modality of knowledge, *e.g.* subjunctive) and the Deontic (modality of volition, *e.g.* imperative). Each of these systems includes weak ('may') and strong ('must') modal force. In Epistemic terms, these represent respectively Possibility and Necessity; in Deontic terms, Permission and Obligation.[3] Hence the following schema:

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[1]This paper is greatly indebted to discussion with, and forthcoming publications of, David Instone Brewer, Research Librarian at Tyndale House.

[2]So, for example, in the relevant sections of F.R. Palmer, *Mood and Modality* (Cambridge Textbooks in Linguistics; Cambridge: CUP, 1986) and J. Lyons, *Semantics*, 2 vols. (Cambridge: CUP, 1977).

[3]These and other key terms are capitalised in the following for clarity.

	EPISTEMIC 'It is so'	DEONTIC 'So be it!'
WEAK 'I don't know'	Possibility 'It may be raining.'	Permission 'You may come in.'
STRONG 'I say so'	Necessity 'It must be raining.'	Obligation 'You must come in.'

The Deontic morphological mood, the 'imperative', may be used to express weak or strong modal force—'Come in!' may be an expression of Permission or Obligation. These categories may help in understanding New Testament interpretations of Old Testament instructions on divorce.[4]

II. New Testament Interpretations: Pharisees reading Obligative and Jesus Permissive

In Matthew 19, on the question of Moses's attitude to divorce, we find Jesus correcting the Pharisees' Obligative ἐντέλλω, 'command', to Permissive ἐπιτρέπω, 'allow':

> Some Pharisees came to him, and to test him they asked, 'Is it lawful for a man [εἰ ἔξεστιν ἀνθρώπῳ] to divorce his wife for any cause?'… They said to him, 'Why then did Moses *command* us to give a certificate of dismissal and to divorce her?' [τί οὖν Μωϋσῆς ἐνετείλατο δοῦναι βιβλίον ἀποστασίου καὶ ἀπολῦσαι αὐτήν…] He said to them, 'It was because you were so hard-hearted that Moses *allowed* you to divorce your wives [ὅτι Μωϋσῆς πρὸς τὴν σκληροκαρδίαν ὑμῶν ἐπέτρεψεν ὑμῖν ἀπολῦσαι τὰς γυναῖκας ὑμῶν], but from the beginning it was not so.…' (Mt. 19:3-9, NRSV)

Hays comments on these readings of the Law as follows:

> The distinction between permission and command, marked by the verbs employed in this exchange, provides the basis for Jesus to escape the charge of opposing Moses: the Torah certainly does not

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[4]These categories are also applied to the Hebrew of the Psalms in my doctoral thesis, and to other New Testament texts at the end of this paper.

mandate divorce. Indeed, the passage in question, Deuteronomy 24:1-4, presupposes the practice of divorce and merely prohibits a man from remarrying his divorced wife after an intervening second marriage; that is the only commandment actually stated in the passage. The certificate of divorce was no doubt originally intended as a document of legal protection for the woman, proving that she was free to remarry; again, however, this is presupposed rather than legislated by Deuteronomy 24:1.[5]

In the following, I hope to show that, far from 'presupposing' the procedure for divorce, Deuteronomy 24:1 does in fact legislate upon it, and, moreover, in such a way that both 'permission and command' can naturally be read. I try to show from a grammatical perspective why a Permissive reading must be correct.

III. Deuteronomy 24 *wĕqāṭal:* Permissive or Obligative

Deuteronomy 24:1-4 is a case law, prohibiting remarriage to one's former wife after she has meanwhile remarried and been divorced again. The syntax of these verses is mostly unmarked, being a series of *wĕqāṭal* clauses. I here suggest a reanalysis of the syntax, which gives a new, Deontic main-clause status to the first mention (v. 1bb) of the tripartite procedure for a legally valid divorce.

1. Traditional Reading: *wĕqāṭal* as Conditional Protasis
The structure of this law has been traditionally understood, since the Septuagint, as a number of protases, leading up to one apodosis in v. 4. So, for example, LXX, RSV, NIV, NASB:

> When a man takes a wife and marries her, *if then she finds* no favour in his eyes because he has found some indecency in her, *and he writes* her a bill of divorce *and puts* it in her hand *and sends* her out

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[5]R.B. Hays, *The Moral Vision of the New Testament: A Contemporary Introduction to New Testament Ethics* (Edinburgh: T. & T. Clark, 1996) 347-78, 350; though this appears in Hays's discussion of Mk. 10, he clearly has Mt. 19 in mind.

of his house… *then* her former husband… may not take her again…
(Dt. 24:1-4, RSV)

According to this reading, Moses makes no ruling on the Permissibility or otherwise of divorce. Rather, the whole procedure ('if… he writes… and puts… and sends…') occurs in a subordinate clause as a 'presupposed' (so Hays above) social convention. As Yaron writes,

> The execution of a bill of divorce… is mentioned only *obiter*, as part of the relevant facts of the case.… Only the beginning of verse 4 is taken up by the operative provision.[6]

2. New Reading: *wĕqāṭal* as Modal Apodosis

A textlinguistic appreciation of the various shifts in grammatical subject (underlined below) and certain patterns of repetition tends to suggest a new reading of Deuteronomy 24:1-4, based on four levels of conditional protasis, all finally resolved in v. 4.[7]

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[6]R. Yaron, 'The Restoration of Marriage', *JJS* 17 (1966) 1-11, 3. See also C.M. Carmichael, *The Laws of Deuteronomy* (Ithaca and London: Cornell UP, 1974) 203-7; G.J. Wenham, 'The Restoration of Marriage Reconsidered', *JJS* 30 (1979) 36-40; R. Westbrook, 'The Prohibition on Restoration of Marriage in Deuteronomy 24:1-4', in S. Japhet (ed.), *Studies in Bible 1986* (Scripta Hierosolymitana XXXI; Jerusalem: Magnes, 1986) 387-405. These scholars are mainly concerned with the reason behind the prohibition in v. 4, whilst here I reanalyse the grammatical relations between parts of the text.

[7]P = protasis; A = apodosis; subordinate clauses are indented and in smaller type. An alternative analysis might treat v. 4, within the larger apodosis (vv. 1b-4), as resolving the compound protasis vv. 1b-3 (אם) thus:

1a   When כי…
1b   THEN והיה…
          IF אם…
1bb   THEN ו…
2   And IF ו…
3   and IF ו…
                 or IF וא כי…
4   … THEN…

My reading of 1bβ as apodosis is unaffected.

1a	¹ᴾWhen כי	*a man* takes a woman	*yiqtōl*
		and ו marries her:	*wĕqātal*
1ba	¹ᴬTHEN והיה…		*wĕqātal*
	IF אם	*she* doesn't find favour in his eyes	*yiqtōl*
		because כי he has found some indecency in her,	*qātal*
1bb	²ᴬTHEN ו	*he* may/must write her a certificate of divorce,	*wĕqātal*
		ו put it in her hand	*wĕqātal*
		and ו send her from his house.	*wĕqātal*
2	³ᴾAnd IF ו	*she* goes out of his house	*wĕqātal*
		and ו goes	*wĕqātal*
		and ו becomes [the wife] of another man	*wĕqātal*
3a	⁴ᴾ¹and IF ו	*the second man* hates her	*wĕqātal*
		and ו writes her a certificate of divorce,	*wĕqātal*
		ו puts it in her hand	*wĕqātal*
		and ו sends her from his house,	*wĕqātal*
3b	⁴ᴾ²or IF או כי	the second man dies,	*yiqtōl*
		who אשר has taken her as his wife,	*qātal*
4a	¹ᴬ…THEN [Ø]	*her first husband*,	
		who אשר sent her away,	*qātal*
		cannot again take her to be his wife	*yiqtōl*
		after אחרי אשר she has been declared unclean[8]	*qātal*
		for כי that is an abomination before the LORD.	
4b	Thus ו you will not bring guilt on the land		*yiqtōl*
		which אשר the LORD your God is giving	*qōṭēl*
		to you as an inheritance.	

The traditional reading is undoubtedly correct in considering v. 4 (anticipated in והיה v. 1b) the principal apodosis of the text. However, the *wĕqātal* form used in v. 1, וכתב, which the traditional reading understands as coordinate ('and if he writes'), is also the s

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8Declarative, or more properly, 'delocutive' (D.R. Hillers, 'Delocutive Verbs in Biblical Hebrew', *JBL* 86 (1967) 320-24) *hothpaʿel*, that is, *hothpaʿel* interpreted as equivalent to *hophʿal*. So Bauer-Leander, 285 §38j' and (tentatively) Joüon-Muraoka, 159 §53h; *contra* J.H. Walton, 'The Place of the *hutqaṭṭēl* within the D-Stem Group and its Implications in Deuteronomy 24:4', *HS* 32 (1991) 7-17 (who reads 'after she has been made to declare herself to be unclean'), Bergsträsser, II 99 §g note (who reads as equivalent to *hithpaʿel*) and Meyer, 2.156 §81.4c (who reads as causative reflexive). This is important, since it supports Westbrook's interpretation of the first divorce as having been based on a legal pronouncement of her uncleanness (ערות דבר).

tandard verbal form, especially after a conditional marker such as אם or כי ('if'), for marking a Deontic apodosis ('then he may/must write').[9] Therefore, protasis and apodosis here need to be distinguished by means of lexis and discourse-level features, in particular, by *shift in main-clause subject* .

The opening formula **...כי**, 'When…' (1P), is often used as the introduction to case laws, and can be read as a title/topic to which והיה, 'and it may/must be…',[10] introduces the text/ comment (anticipating v. 4). The next protasis (2P) is then clearly marked by אם, 'if…', and a subject-shift (Man #1 to Woman).[11]

The first apodosis (2A) can be argued to begin with וכתב as follows. Firstly, the detailing of all three elements ('write… put… and send') shows that the focus here is on the *procedure* for divorce, not the mere *fact* of it—this is a stipulation, not a presupposition. Second, 'not finding favour' naturally infers that the husband will act, especially if the ערוה ('indecency') is a sexual impropriety; if 'write… put… and send' were coordinate to this, they would be a superfluous reference to the implementation of his 'not finding favour'. The text is not saying 'If he doesn't like her, and if, what's more, he divorces her', but rather, 'If he doesn't like her, then he may/must write… put… and send…'. Thirdly, there is another subject-shift here (Woman to Man #1).

The next protasis (3P) is marked by repetition of ויצאה מביתו ('and if she goes out of his house') after the preceding ושלחה מביתו ('and send her from his house') and a subject-shift (Man #1 to Woman). The next subject-shift (Woman to Man #2) marks a distinct sub-protasis (4P1), within which the procedure for divorce is spelled

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[9]See, for example, after μα: Ex. 21:8a, 11, 23; after כי: Ex. 21:35; Dt. 17:4b (so NIV), 5. B.K. Waltke and M. O'Connor, *An Introduction to Biblical Hebrew Syntax* (Winona Lake: Eisenbrauns, 1990) 526 §32.2.1b.

[10]Or, more idiomatically, 'shall', which, it should be noticed, is also volitional, not a pure future (if such exists!).

[11]On the distinction between כי and אם in casuistic law, see R.A.F. MacKenzie, 'The Formal Aspect of Ancient Near Eastern Law', in W.S. McCullough (ed.), *The Seed of Wisdom: Essays in Honour of T.J. Meek* (Toronto: University of Toronto Press, 1964) 31-44, 35.

out, though its status is this time clearly that of 'given' information. The repetition of האיש האחרון ('the second man') (4P2) shows that 3a and 3b are parallel, both following on from the conditional force of 3P. Finally, the main apodosis is clearly v. 4, marked by prohibitive לא, the modal verb יכל ('can') and a last subject-shift (Man #2 to Man #1).

The various levels of conditional dependency and their subject-shifts may be summarised as follows:[12]

1P	When		M1	marries W
1A	→THEN…			
2P		IF	W	displeases M
2A		→THEN	M1	may/must divorce W
3P		∩IF	W	marries M2
4P1		∩IF	M2	dislikes and so divorces W
4P2		∩IF	M2	dies
1- 2- 3- 4A	→T H E N		M1	may not marry W.

The complexity lies in the way each condition depends on the preceding one, so that the final apodosis is in fact dependent upon and resolves all four levels of condition: the title (1P), the first marriage and divorce (2P/A), the second marriage (3P), and the second divorce or bereavement (4P1/2). In other words, the final ruling 'he may not marry her again' is only applicable if the four preceding compounded conditions have been fulfilled—if a man marries a woman (1P), and divorces her (2P/A), she remarries (3P) and is divorced again or bereaved (4P).[13]

Within this context, it has been shown that v. 1 'write… put… and send' is to be understood as a first apodosis, with the full volitional force of the *wĕqāṭal* form. In contrast to the reading of LXX, RSV *etc.* above, then, I read:

> When a man takes a woman and marries her: *If she doesn't find favour in his eyes, because he's found some indecency in her, then he may/must write* [וכתב] her a certificate of divorce, *put* it [נותן] in her hand, *and send* her [ושלחה] from his house.

[12]Compare Westbrook, 'Restoration of Marriage', 388.

[13]In Je. 3:1 and Mt. 5:32, the first marriage (1P) and the second divorce (4P) are simply assumed.

3. וכתב as Modal: Permissive or Obligative

In contrast to LXX, which simply presupposes the procedure for divorce, we have seen that MT as understood above *does* in fact stipulate a procedure. Only this reading could have given rise to the Permission/Obligation debate found in the New Testament, and this ambiguity lies in the *wĕqāṭal* form of וכתב ... ונתן...ושׁלחה ('he may/must write… put… and send…') in Deuteronomy 24:1. Like *yiqṭōl*, *wĕqāṭal* most often (if not always) has a modal meaning, which, like that of the subjunctive in many languages, covers the entire modal range from Permissive ('he may') to Obligative ('he must').

Thus the most literal version of Deuteronomy 24:1 found in the New Testament in fact appears in Matthew 5:31 (similarly 1 Cor. 7:15 and Josephus, *Ant.* 4:253):

> It was also said, 'Whoever divorces [o}" a]n ajpoluvsh/] his wife, let him give [dovtw] her a certificate of divorce.' (Mt. 5:31, NRSV)

The volition to divorce implied by the Hebrew condition אם־לא תמצא־חן בעיניו ('If she doesn't find favour in his eyes') is expressed here with the subjunctive ὃς ἂν ἀπολύσῃ ('Whoever *would* divorce'[14]). The modality of the *wĕqāṭal* apodosis וכתב...ונתן ('then he may/must write… put'[15]) then corresponds to that of the third-person imperative dovtw ('let him give'). Thus this New Testament text confirms my reading of Deuteronomy 24:1bb as an apodosis, and of the *wĕqāṭal* form as volitional. The Greek third-person imperative (like the English imperative 'Come in!' under 1 above) has the full modal range from Permission to Obligation, as is attested in, for example, Robertson's list of functions of the

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[14]*Contra* NRSV, which appears to read the subjunctive as due to the indefinite subject.

[15]The Hebrew verb here, נתן, is of course usually translated 'give'; it appears here as 'put' purely for the sake of English idiom with the locative complement 'in her hand'.

imperative: 'Command or Exhortation', 'Prohibition', 'Entreaty', 'Permission' and 'Concession or Condition'.[16]

The interpretations of Deuteronomy 24:1 וכתב...ונתן...ושלחה considered under Section II above may be summarised as follows:

1. Conditional Protasis ('if he writes…')
   Ἐὰν ....γράψει...καὶ δώσει...καὶ ἐξαποστελεῖ... (LXX)
2. Permissive Apodosis ('then he may write…')
   ἐπέτρεψεν...(ψράψαι καὶ) ἀπολῦσαι... (Mt. 19:8//Mk. 10:4)
3. Obligative Apodosis ('then he must write…')
   ἐνετείλατο δοῦλαι...καὶ ἀπολῦσαι… (Mt. 19:7)

The first interpretation has been ruled out above by discourse analysis of MT, the wording of the dispute in Matthew 19// Mark 10, and the version in Matthew 5. The second and third interpretations are *both* possible in the third-person imperatives of Matthew 5 and 1 Corinthians 7:15;[17] in Mark 10, the Pharisees read Permissive, whilst in Matthew 19, as we have seen, the Pharisees read Obligative and Jesus Permissive.[18]

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[16]A.T. Robertson, *A Grammar of the Greek New Testament in the Light of Historical Research*, 3rd edn. (New York: George H. Doran Company, 1919) 946-48. See his various examples, including, under 'Permission', the divorce text in 1 Cor. 7:15: χωριζέσθω, 'let him leave'. Similarly F. Blass, A. Debrunner, and F. Rehkopf, *Grammatik des neutestamentlichen Griechisch* (Göttingen: Vandenhoeck & Ruprecht, 1976) 313 §387.1: 'Der Imperativ… drückt keineswegs bloß einen Befehl aus, sondern auch eine Bitte oder ein Zugeständnis.'

[17]Similarly, Josephus, *Ant.* 4:253.

[18]A brief note on Mk. 10 is in order here, since it appears to present the roles as exactly the reverse of those in Mt. 19. It is true, as stated above, that the Pharisees here express a Permissive interpretation (e[xestin, ejpevtreyen), but not, in fact, that Jesus expresses the Obligative. The text reads as follows:

> Some Pharisees came, and to test him they asked, '*Is it lawful* [ἔξεστιν, ἐπέτρεψεν] for a man to divorce his wife?' He answered them, 'What did Moses *command* you? [τί ὑμῖν ἐνετείλατο Μωϋσῆς…]' They said, 'Moses *allowed* a man to write a certificate of dismissal and to divorce her [ἐπέτρεψεν Μωϋσῆς βιβλίον ἀποστασίου γράψαι καὶ ἀπολῦσαι].' But Jesus said to them, 'Because of your hardness of heart he wrote this *commandment* [ἐντολὴν] for you…' (Mk. 10:2-5, NRSV)

Though Jesus here uses a verbal and a nominal form from ἐντέλλω (ἐνετείλατο, ἐντολὴν), it should be noted that this does not necessarily represent the modality of the legislation itself—it is possible to *command/prescribe that something is Permissible* (though it is not possible to *Permit that something is Obligatory*—see below, section 6). It is this generic use of ἐνετείλατο and ἐντολὴν that is to be

IV. Inherent Modality: Old Testament Obligative 'send' to New Testament Permissive 'release'

The formal procedure of the three verbs in Deuteronomy 24:1 and 3 may be summarised from a linguistic perspective as two actions. The first action is the *writing* and *giving* of the certificate of divorce; this action is summarised in Mark 10:4 as 'writing' and in Matthew 5:31 and 19:7 as 'giving'. In the second action, *sending* the woman away (an Obligative action, meaning 'You must go!'), the New Testament makes a modal[19] distinction by using the term 'release', which is inherently Permissive ('You may go!').

In the Old Testament, שׁלח, 'send away' (consistently ἐξαποστέλλω in LXX), is used of divorce together with the term ספר כריתת ('certificate of divorce') in the Law (Dt. 24:1-4) and the Prophets (Is. 50:1; Je. 3:8). It also occurs in other legal restrictions on divorce (Dt. 22:19, 22), a prophetic repudiation of divorce (Mal. 2:16) and the accounts of Abraham's dismissal of Hagar (Gn. 21:14[20]) and then his concubines (Gn. 25:6). Both the Hebrew and the Greek appear to have the status of technical terms. שׁלח is basically Obligative, as is shown by its use for banishment (Gn. 3:23; Is. 16:2), commanding slaves (Gn. 20:2), defeating enemies (Lv. 18:24) and firing arrows (Ps. 18:14). It is clearly *Permissive*, however, in the request by the man wrestling with Jacob at Penuel that Jacob should let him go:

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understood here. Further, one might note that the initial question here is slightly different to that in Mt. 19. There, Jesus was asked—at least initially (though see below on the change in v. 7)—about the Permissibility of *Hillelite* divorce (κατὰ πᾶσαν αἰτίαν, 'for any cause'); here there is no such specification.

[19]Hence my term here 'inherent modality' for what is usually termed 'fientivity' or 'dynamism'.

[20]LXX has unprefixed ἀποστέλλειν here.

(Gn. 32:27) ויאמר <u>שלחני</u> כי עלה השחר
ויאמר <u>לא אשלחך</u> כי אם־ברכתני

Then he said, '*Let me go…*'
But Jacob said, '*I will not let you go…*' (NRSV)

In the New Testament, ἀπολύω, 'release', is used in all four main divorce texts in the Gospels (Mt. 5:31-2; 19:3, 7-9; Mk. 10:2, 4, 11-12; Lk. 16:18) as well as in the account of Joseph's intention to divorce Mary (Mt. 1:19); the non-prefixed form λύω is used in Paul's discussion in 1 Corinthians 7:27. ἀπολύω is undoubtedly basically Permissive, as is shown by its use for cancelling debts (Mt. 18:27), releasing prisoners (Lk. 23:16-25; Acts 4:21-23; 16:35-36 *et passim*), healing (Lk. 13:12) and forgiveness (Lk. 6:37). However, it is clearly *Obligative* in the disciples suggestion that Jesus tell the persistent Canaanite woman to go away:[21]

καὶ προσελθόντες οἱ μαθηταὶ αὐτοῦ ἠρώτουν αὐτὸν λέγοντες:
    ἀπόλυσον αὐτήν, ὅτι κράζει ὄπισθεν ἡμῶν.   (Mt. 15:23)
And his disciples came and urged him, saying,
    '*Send her away*, for she keeps shouting after us.' (NRSV)

A further context where we see terminology with inherent modality being used with extended meaning is in Paul's treatment in 1 Corinthians 7:10-16. Predominant terms here are χωρίζω, 'separate' (1 Cor. 7:10-11, 15; also Mt. 19:6; Mk. 10:9) and ἀφίημι, 'send away' (1 Cor. 7:11-13). Hays has argued persuasively for synonymity between these two terms on the basis of the parallel between vv. 10 and 11:[22]

γυναῖκα ἀπὸ ἀνδρὸς μὴ χωρισθῆναι, 'a woman should not be
    separated from her husband' (1 Cor. 7:10)
ἄνδρα γυναῖκα μὴ ἀφιέναι, 'a man should not send away his wife'
(1 Cor. 7:11)

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[21]It has occasionally been argued, however, that it is Permissive here, in the sense 'Let her go!', *i.e.* 'Grant her request!'. See the discussion in W.D. Davies and D.C. Allison, *The Gospel according to Saint Matthew*, vol. 2 (Edinburgh: T. & T. Clark, 1991) 549-50.
[22]Hays, *The Moral Vision of the New Testament*, 358.

This may, however, be simply a question of active and passive participant roles.

Whilst acknowledging a certain flexibility in the use of all of the terms discussed, we may conclude that שׁלח is essentially Obligative and ἀπολύω essentially Permissive. There has therefore been a striking shift in all the New Testament texts towards a Permissive attitude in a man's divorcing of his wife.

V. Compositional Modality

It is well known that the (morphological) aspect of a clause interacts closely with the inherent (lexical) aspect of its verb. Similarly, we may say that the modal force of the clauses with which we are concerned here (ἐντέλλω *vs.* ἐπιτρέπω [Section II above]; *wĕqāṭal* as Obligative or Permissive [Section III.3 above]) interacts with the inherent modality of the terms involved (שׁלח/ἐξαποστέλλω *vs.* ἀπολύω [Section IV above]). This presents four possibilities:

Clause: Verb:	OBLIGATIVE *wĕqāṭal*, ἐντέλλω	PERMISSIVE *wĕqāṭal*, ἐπιτρέπω
OBLIGATIVE שׁלח/ἐξαποστέλλω	'He must send.' (Dt. 24:1)	'He may send.' (Dt. 24:1)
PERMISSIVE ἀπολύω	'He commanded to release.' (Mt. 19:7)	'He allowed to release.' (Mt. 19:8/Mk. 10:4)

Thus the New Testament texts reflect a two-pronged shift towards a more Permissive attitude.

VI. The Protasis: Conditionality and Modal Force

I hope the above discussion will have served to bring some clarity to the modal force of particular grammatical forms and lexical items. It has left some questions of clausal contingency unanswered, however.

In particular, it has focused solely on the Permissive/Obligative apodosis of Deuteronomy 24:1. Here, we turn to the conditional protasis.

The subjective *Volition* to divorce, אם־לא תמצא־חן בעיניו ('If she doesn't find favour in his eyes') is only a *secondary* condition in Deuteronomy 24:1—the *primary* condition is the objective *Offence*, כי־מצא בה ערות דבר, 'because he has found some indecency [?] in her'.[23] Thus one might paraphrase:

> *If* he has found some indecency in her [Offence]
> *and if* she *therefore* doesn't find favour in his eyes [Volition],
> *then* he may/must write…

This compound condition[24] was dissected in at least two distinct ways by Rabbinic Judaism. On the one hand, Mishnaic legislation *Obliged* a husband to divorce his wife if she committed adultery, thus crossing directly from the Offence to (their Obligative reading of) the ruling itself, effectively reading: אם...מצא בה ערות דבר וכתב..., 'If… he has found some indecency in her, then he must write…'.[25] On the other hand, the liberal, Hillelite (Permissive) reading of כי־מצא בה ערות דבר, by the very admission of R. Akiba, renders this Offence clause effectively synonymous with the Volition clause, אם־לא תמצא־חן בעיניו, 'If she doesn't find favour in his eyes', thus telescoping both conditions into the

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[23]Contrast the second divorce (Dt. 24:3a), based purely on שׂנא, for which Westbrook, 'Restoration of Marriage', 402, argues that 'The verb "hate" is used to show that the action arose from a subjective motive and without objective grounds to justify it—and for this reason is blameworthy.' See, however, in response, also D.R. Hillers, 'Some Performative Utterances in the Bible', in D.P. Wright, D.N. Freeman and A. Hurvitz (eds.), *Pomegranates and Golden Bells: Studies in Near Eastern Ritual, Law, and Literature in Honor of Jacob Milgrom* (Winona Lake: Eisenbrauns, 1995) 757-66, 765.

[24]Compare that which spans Dt. 24:1-4, as discussed above.

[25]*m. So3a* 4; 6:1.

secondary Volition.[26] These two Rabbinic manipulations of the Old Testament text meant, on the one hand, that it was 'righteous' of Joseph to want to divorce Mary (*cf.* Mt. 1:19), and on the other, that one could divorce one's wife for spoiling one's food (דבר) or simply if one found someone more beautiful (אם־לא תמצא־חן בעיניו).

The secondary condition, the husband's *Volition* to divorce (Dt. 24:1 אם + modal *yiqṭōl*), corresponds to the subjunctive 'Whoever would divorce' (ὃς ἄν ἀπολύσῃ) in Matthew 5:31, the indicative 'if… separates' (εἰ...χωρίζεται) in 1 Corinthians 7:15 and the verb 'to want' (γυναικὸς...βουλόμενος διαζευχθῆναι) in Josephus, *Antiquities* 4:253. In all four of these texts, the modal strength of the apodosis is unspecified (*wĕqāṭal* and imperatives respectively), so how are we (or the Pharisees in Mt. 19, for that matter) to decide whether these texts permit or oblige one to divorce one's wife? The answer lies in the protasis.

In purely linguistic terms, a protasis based in the Hearer's volition can only govern Permission.[27] Any other protasis can govern Permission or Obligation. Consider the sample sentences:[28]

> Moses said,
> (1)   'If Bathsheba commits adultery [ØVOL(H)],
>   then Uriah *may* [ØVOL(S)] divorce her.'
> (2)   'If Bathsheba commits adultery [ØVOL(H)],
>   then Uriah *must* [+VOL(S)] divorce her.'
> (3)   'If Uriah *wants to* divorce his wife [+VOL(H)],
>   then he *may* [ØVOL(S)] divorce her.'
> (4)*   'If Uriah *wants to* divorce his wife [+VOL(H)],
>   then he *must* [+VOL(S)] divorce her.'

In (1), neither Speaker nor Hearer has expressed volition, so this ruling has no necessary outcome; combined with the Hearer's Volition, it may effect a divorce in Matthew 19:8// Mark 10:4. (2) and

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[26]*m. Gi3* 9:10, where the conservative, Shammaite reading (reflected in Mt. 19:9 μὴ ἐπὶ πορνείᾳ and Mt. 5:31 παρεκτὸς λόγου πορνείας) is explained as focusing on the word ערות, whilst the liberal, Hillelite reading (reflected in Mt. 19:3 κατὰ πᾶσαν αἰτίαν and Josephus, *Ant*. 4:253 καθ᾽ ἀσδηποτοῦν αἰτίας) is explained as focusing on the word דבר and (so R. Akiba) the Volition clause.

[27]Borrowing terms from the philosopher, J.L. Austin, one might say that 'Deontic *cans* are constitutionally iffy'; 'Ifs and Cans', in J.L. Austin, *Philosophical Papers*, ed. J.O. Urmson and G.J. Warnock (3rd ed.; Oxford: OUP, 1979) 205-232.

[28]VOL = volition, H = Hearer, *i.e.* Uriah, S = Speaker, *i.e.* Moses, and * = ungrammatical. The names are of course just examples.

(3), by contrast, both express volition on behalf of one of the parties, and so both result necessarily in a divorce; (2) is the Mishnaic Obligation of divorce in the event of adultery, and (3) the Hillelite Permission of divorce for any reason. (4) is ungrammatical because it legitimates the Hearer's volition in the protasis, whilst delegitimating it in the apodosis. In our analysis of those Hebrew and Greek forms which are unspecified for modal strength, we can therefore apply the rules:

> Rule 1:   If the protasis expresses Volition [+VOL(H)],
>   the apodosis is Permissive [ØVOL(S)].
> Rule 2:   If the apodosis is Obligative [+VOL(S)],
>   the protasis expresses the Offence [ØVOL(H)].

VII. Reading the Apodosis: Permissive or Obligative?

As we have seen, Deuteronomy 24:1 has a compound protasis of primary Offence and secondary Volition.

> *If* he has found some indecency in her [Offence]
> *and if* she *therefore* doesn't find favour in his eyes [Volition],
> *then* he may/must write…

Only Jesus's Permissive reading (Mt. 19:8) is compatible with both the Offence clause (as sample sentence (1) above) and the Volition clause (3). The Pharisees' Obligative reading (Mt. 19:7) is only compatible with an Offence protasis (Rule 2); it therefore corresponds exactly to the Mishnaic Obligation to divorce an adulteress. We may conclude that their question in v. 3,

> Is it lawful for a man [εἰ ἔξεστιν ἀνθρώπῳ] to divorce his wife for any cause [κατὰ πᾶσαν αἰτίαν]?

relates to the Hillelite Permission of divorce in the case of Volition, whilst their question in v. 7,

> Why then did Moses command [ἐνετείλατο] us to give a certificate of dismissal and to divorce her?

relates to the Mishnaic Obligation of divorce in the case of the specific Offence of adultery. The Pharisees have themselves redefined the condition as adultery by using the term 'command'. It is impossible to understand the Offence implicit in 'Why did Moses command us…?' (v. 7) as present in the preceding 'for any cause' (v. 3), since this would mean 'Moses commanded us to divorce our wives for any cause'!

Jesus's answer must be read in this light. In particular, it should be noted that he refers to 'the beginning' (ἀπ᾽ ἀρχῆς) to counter both their Permission of divorce for any reason (v. 3-4) *and* their Obligation of divorce in the case of adultery (v. 7-8).[29] According to Jesus, then,

> Moses said,
> > '*If* your wife has committed adultery [Offence],
> > *and if* you therefore want to divorce her [Volition],
> > *then* you may do so.'
> but it wasn't like that to start with.

Jesus is therefore not *redefining* the Law in any way, but following the Pharisees' interpretation (v. 7) of ערות דבר as adultery, taking both the Offence *and* the husband's Volition as necessary conditions, and therefore (inevitably!) reading וכתב as Permissive. Both the Mishnaic Obligation to divorce an adulteress and the Hillelite Permission to divorce 'for any cause' are simply due to bad grammar, and are excluded by the wording of Deuteronomy 24:1. Jesus's 'new' contribution goes beyond all this, as he argues that the order of creation made no provision for divorce even in these circumstances.

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[29]Compare the Qumran Damascus Document against divorce (or perhaps polygamy): CD 4:21 יסוד הבריאה זכר ונקבה ברא אותם ('the foundation of creation is "male and female he created them"').

VIII. Conclusion

A new analysis of the structure of Deuteronomy 24:1-4 has shown that Moses *did* in fact issue a ruling on the procedure for divorce, rather than (as has been commonly held since the LXX) simply presupposing it. The *wĕqāṭal* form used admits the range of modal interpretation from Permissive 'may' to Obligative 'must'. This explains New Testament references to divorce, which either retain this ambiguity with third-person imperatives (Mt. 5:31; 1 Cor. 7:15; similarly Josephus, *Ant.* 4:253) or resolve it as 'may' (Mt. 19:8//Mk. 10:4) or 'must' (Mt. 19:7). The terminology used has generally been moderated from the Old Testament's Obligative שלח/ἐξαποστέλλω to the New Testament's Permissive ἀπολύω. Volitional conditional clauses have been shown to be incompatible with Obligative main clauses, so that the Permissive reading of Deuteronomy 24:1 (Mt. 19:8//Mk. 10:4) *must* be the correct one, and the Pharisees' Obligative reading in Matthew 19:7 must be both manipulative of the Old Testament text and even discontinuous with their own previous Permissive reading in v. 3. This discontinuity also means that Jesus's Permissive reading relates not to the Hillelite Volition condition of v. 3, but to the Shammaite adultery condition of v. 7. Matthew 5:31 and Josephus, *Antiquities* 4:253 must also be Permissive.[30]

By reducing main-clause verbal forms (*wĕqāṭal*), verbs of speaking (ἐντέλλω, ἐπιτρέπω) and verbs of divorcing (שלח/ἐξαποστέλλω, ἀπολύω) all to the two modal values of Obligation and Permission, and conditional protases to objective and subjective categories (Offence and Volition), it has been possible to clarify in a more systematic way than previously the relationships between Biblical divorce texts. Though diachronic linguistic study can certainly still clarify the relationships between the various verbs used for divorcing, and historical research may reveal the background to Pharisaical interpretations of the Torah text, an economical linguistic

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[30]A still unresolved problem is the indicative–imperative sequence of identical verbs in 1 Cor. 7:15 εἰ δὲ ὁ ἄπιστος χωρίζεται, χωριζέσθω ('But if the unbeliever separates, let him separate'); one may need to think in terms of inceptive–imperative or real–attitudinal.

model has produced a solid basis for such further study.

Finally, these conclusions will affect our reading of some related texts. They may illuminate the force of other third-person imperatives such as ἄνθρωπος μὴ χωριζέτω (Mt. 19:6//Mk. 10:9), which is clearly forcefully Prohibitive ('man must not separate'), though standardly rendered so weakly as to sound Expressive/Optative ('let man not separate').[31] Secondly, the closing comment,

> Anyone who divorces his wife (except for unchastity) and marries another commits adultery,

which is present with variations in Matthew 5:32; 19:9; Mark 10:11-12 and Luke 16:18, will no longer be read as Jesus's 'new' contribution (see *e.g.* Mt. 5:32 NRSV 'but'), but as the natural extension of his reading of Deuteronomy 24. What *is* new, as Hays so powerfully demonstrates,[32] is Jesus's location of the Deuteronomic Law within the creational paradigm of marriage as a divine—and therefore binding—institution.[33]

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[31]Similarly, the 'commandments' in 1 Cor. 7:10 and 1 Jn. 4:21!

[32]Hays, *ibid.*

[33]The modal categories used here might be used in the interpretation of other imperative, subjunctive and optative forms, and of Deontic clause types, including: wishes (Mt. 26:39, 42; Jn. 17:21, 23), curses (Mt. 21:19// Mk. 11:14; Acts 1:20; 8:20; Rom. 11:9-10) and blessings (*passim*); dismissals, whether 'letting someone go' or 'sending someone away' (Mk. 11:6; Mk. 5:12//Mt. 8:31//Lk. 8:32; Mk. 7:29; Jn. 4:50; Acts 24:25), expressions of permission (Lk. 17:8), requests for permission (Acts 10:29; 21:37) and even a request for a command (Mt. 14:28). Applications of theological importance might include 1 Cor. 7:6 ('I say this as a concession, not as a command.'), 1 Cor. 6:12-13//10:23 ('Everything is permissible but not everything is beneficial.'), the various NT versions of Isa 6:10 ('lest they see with their eyes and hear with their ears'—Mt. 13:10-17; Mk. 4:11-12; Lk. 8:10; Jn. 12:37-41; Acts 28:24-28; Rom. 11:7-8) and discussions such as Rom. 14.