

Divorce and a Deafening Silence: Exegesis of Exodus 21:10-11 in the Twentieth Century

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A Senior Thesis submitted in partial fulfillment
of the requirements for graduation
in the Honors Program
Liberty University
Spring 2011

Acceptance of Senior Honors Thesis

This Senior Honors Thesis is accepted in partial
fulfillment of the requirements for graduation from the
Honors Program of Liberty University.

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With the publication of his 2002 *Divorce and Remarriage*, David Instone-Brewer seemed to have ignited a miniature firestorm over a millennia-old issue: the biblical grounds for divorce. His landmark study of the topic in the context of the ancient Near East, Judaic, and Greco-Roman backgrounds inspired a round of discussion and criticism from within Evangelical Christian circles.¹ However, perhaps the most telling criticism and diagnosis of Instone-Brewer's work emerged from far outside the Evangelical fort. David Van Biema, a senior religion writer for Time magazine, wrote in the conclusion to his 2007 article on Instone-Brewer's work:

Still, the controversy suggests that even the country's most rule-bound Christians will search for a fresh understanding of scripture when it seems unjust to them. The implications? Flexibility on divorce may mean that evangelicals could also rethink their position on such things as gay marriage, as a generation of Christians far more accepting of homosexuality begins to move into power....It could also give heart to a certain twice-divorced former New York mayor who is running for President and seeking the conservative vote. But that may be pushing things a bit.²

This quotation demonstrates that, regardless of what a controversial Christian release might actually say, an unbelieving public stands ready to perceive that publication another way. What, then, is the message of Instone-Brewer? What does he proclaim in *Divorce and Remarriage* that warrants this kind of attention? Most importantly, how can

¹See especially John Piper, "Tragically Widening the Grounds of Legitimate Divorce," Desiring God Blog, <http://www.desiringgod.org/resource-library/taste-see-articles/tragically-widening-the-grounds-of-legitimate-divorce> (accessed November 2, 2010). Tomson's critical article is another fiery attack: Peter J. Tomson, "Divorce and Remarriage by David Instone-Brewer," *Theologische Lieteraturzeitung* 129 (2004): 7-10. At this point, the reader must be directed to Instone-Brewer's website for his book: <http://www.divorce-remarriage.com/>. This website includes dozens of reviews (scholarly and otherwise), dozens of personal replies to readers' comments and questions, and links to teaching aids relating to all of the content in *Divorce and Remarriage*.

²David Van Biema, "An Evangelical Rethink on Divorce?" *Time*, November 5, 2007, <http://www.time.com/time/nation/article/0,8599,1680709,00.html> (accessed November 2, 2010).

his work—and the response of the Christian Church to divorce and remarriage in general—be re-tooled so the world perceives that response as a “solution” rather than an “excuse”?

Introduction to Instone-Brewer’s Arguments on Divorce

As a part of his 2002 breakthrough study on divorce and remarriage in the Bible, David Instone-Brewer isolates three separate grounds for divorce in Exod. 21:10-11: the withholding of food, clothing, and oil (understood as “conjugal rights”). Though Instone-Brewer is aware that this is not Moses’ intended understanding of this difficult passage, he argues that, by the time of Christ, this passage had blossomed into an entire rabbinic tradition that permeated all of Judaism. As he writes:

[T]here was *no group* in first-century Judaism that rejected the grounds for divorce in Exodus 21:10-11....If Jesus had wanted to teach a rejection of the grounds for divorce in Exodus 21:10-11, he would have had to say so very clearly, and if he said nothing about them, it would have been assumed that, like *all other Jews*, he accepted them [emphasis added].³

As such, by the time of Christ, *all of Judaism* would have understood that Exod. 21:10-11 referred to three grounds for divorce. Thus, discourses on divorce in the New Testament must be examined in the light of the original audience’s pre-understandings. When Jesus’ followers heard him say that divorce was permissible on the grounds of adultery (Matt. 19; Mark 10), Jesus and his audience operate on the common, understood

³David Instone-Brewer, *Divorce and Remarriage in the Bible: The Social and Literary Context* (Grand Rapids, MI: Wm. B. Eerdmans Pub. Co., 2002), 185. Lest the reader think that the message of uniformity in the realm of Exodus 21 exegesis is a limited occurrence, consider the following examples from *Divorce and Remarriage*: “[A]ll branches of Judaism recognized divorce on these grounds of neglect” (117). “None of these details [i.e., the grounds for divorce in Exod. 21] needed mentioning because they were not matters that made the Shammaites distinct from the Hillelites, or even from any other Jews” (165). “It would be more logical to say that he [Jesus] accepted or rejected both of them [i.e., other grounds for divorce and remarriage after the death of a spouse], and the most natural conclusion is that he agreed with the unanimous opinion of the rest of Judaism on these points” (166).

ground that the three *universally-agreed-upon* grounds of divorce in Exod. 21 remain intact unless Jesus explicitly says otherwise.

Though first-century Christians would have been unable to escape the context of Jesus' teaching on divorce (and silent approval on Exodus 21), later generations quickly buried any trace of this Jewish tradition. In fact, due to the destruction of the Temple in 70 C.E. and the subsequent deaths of the voices in the divorce debate, Instone-Brewer writes, "Jesus' teaching about divorce was now utterly incomprehensible to Christians, as well as to most Jews."⁴ Instone-Brewer claims that the modern marriage vow comprises the only remnant of this first-century teaching on divorce and remarriage. Thus, there appears a 2000-plus-year gap between the rabbinic texts—the documents which Instone-Brewer claims show the universal adoption of Exod. 21:10-11 as grounds for divorce—and the 2002 publication of his own book. Yet how does Instone-Brewer's revolutionary claim fit into the scheme of Exodus scholarship in the 20th century?

The Role of this Project

The Goal of this Project

The key to analyzing Instone-Brewer's place in Exodus scholarship is dissecting his work to discover the uniqueness of his approach. Having isolated seven of these "distinct features" in Instone-Brewer's Exod. 21:10-11 work, this project will move toward developing a model for analyzing the relationships amongst 20th-century exegetical commentaries⁵ of that passage. The purposes of this model are threefold: 1) to

⁴Instone-Brewer, *Divorce and Remarriage*, 239.

chart 20th century Exodus scholarship in specific areas relevant to an/the interpretation of Exod. 21:10-11; 2) to locate Instone-Brewer's exegesis of Exod. 21:10-11 within that landscape of commentary; and, 3) using that newfound data, to then assess the quality of Instone-Brewer's research and citations as they relate to Exod. 21:10-11 scholarship.

The Self-Imposed Limitations of this Project: Linguistic and Chronological

Two self-imposed limitations provide the boundaries for this study of Exod. 21:10-11 commentaries in the 20th century. First, research will comprise only those commentaries on Exod. 21 that authors published in, or were translated to, English. "Collateral" reading for this project has fostered a list of foreign-language sources relevant for the topic at hand.⁶ Further research on the topic at hand could examine the

⁵This study will focus on two types of resources specifically: exegetical commentaries and scholarly journal articles. By "exegetical commentaries," two specific features are meant to be emphasized: line-by-line exegesis (rather than a topical exposition of the book of Exodus) and original-language analysis. The guideline used for determining which commentaries should be included in the study was: would Instone-Brewer consider this as a valuable source? Since Instone-Brewer himself places a high premium on original language research (e.g., his lengthy discussion on the meaning of *onathah*) and line-by-line exegesis (e.g., his lengthy commentary on 1 Cor. 7), these two elements are considered most valuable in the research at hand. Many other types of commentaries are included in this study; however, the function of including them is to gain the sense of similarity/ difference amongst these various less-exegetical commentaries and Instone-Brewer's own commentary on Exodus 21. Along those lines, three sources were particularly helpful for developing a bibliography from which to draw for this project. For a remarkable, 122-page, alphabetical collection of articles, monographs, and commentaries, see Ted Hildebrandt, "Rough and Working Bibliography," http://faculty.gordon.edu/hu/bi/ted_hildebrandt/otesources/02-exodus/Text/Bibliography/ExodusBibliography.htm (accessed January 19, 2010). For a more manageable, commentaries-only annotated bibliography, see Jim Rossrup, *Commentaries for Biblical Expositors*, rev. ed. (The Woodlands, TX: Kress Christian Pub., 2004). Additionally, the footnotes and bibliography of Instone Brewer's *Divorce and Remarriage* have been scoured.

⁶The following list provides profitable starting points for further research, as gauged by the English works by these authors: Etan Levine, "On Exodus 21,10 'Onah and Biblical Marriage," *Zeitschrift für Altorientalische und Biblische Rechtsgeschichte* 5 (1999):133-64; Haraldo Reimer, "Un Tiempo de Gracia para Recomenzar. El año Sabático en Exodo 21,2-11," *Revista de Interpretación Bíblica Latinoamericana* 33 (1999): 31-47; Haraldo Reimer, "Leyes y Relaciones de Genero-- Notas sobre Exodo 21,2-11," *Revista de Interpretación Bíblica Latino-americana* 37.3 (2003): 116-27; and, Adrian Schenker, "Affranchissement D'une Esclave Selon Ex 21, 7-11," *Biblica* 69.4 (1988): 547-56.

global journey of the various schools of interpretation on Exod. 21:10-11; however, for the present study, only English commentaries will be examined.

Second, the present study will limit itself to commentaries published within the chronological range of 1891 to 2002. Commentaries published before this time⁷ and commentaries published after this time⁸ prove remarkably valuable for gaining a fuller picture of the Exodus scholarship landscape; however, this project realistically presents a piece of that portrait. The 1891 date stands out as the final publication of Keil and Delitzsch's landmark *Commentary on the Old Testament*. This ten-volume commentary set served as a standard in exegesis of the Hebrew text for much of the twentieth century. As Arnold and Weisberg remark, "Friedrich Delitzsch was a leading Semitist of his day, and it is no exaggeration to say that he was responsible for putting Assyriology on sound philological footing... one of the founders of modern Assyriology."⁹ Still respected today, the *Commentary* that he and Keil wrote serves as an appropriate starting point for

⁷This study exposed several classic Exodus commentaries published no more than forty years before 1891. This list includes: James G. Murphy, *A Critical and Exegetical Commentary on the Book of Exodus* (Philadelphia: Smith, English, and Co., 1868; reprint: Minneapolis, MN: James Pub., 1976); George Bush, *Notes on Exodus* (New York, NY: Newman & Ivison, 1852; reprint: Minneapolis, MN: James & Klock, 1976). Bush in particular is relevant for the current study in that he sees many of the inter-textual linkages that Instone-Brewer does (e.g., linking Exod. 21:10-11 to 1 Cor. 7).

⁸Again, a growing list of scholarly commentaries presents itself for future study. See John Sietze Bergsma, *The Jubilee from Leviticus to Qumran: A History of Interpretation* (Leiden: Koninklijke Brill NV, 2007), 42-43, for a brief analysis of the relationship of Exod. 21:10-11 to other passages tangentially related to the Jubilee. However, this work focuses on the use of slave laws in Deuteronomy and Leviticus. See Brittany Crockett, "A Study of Documentary Sources Relating to Women's Right to Divorce in Ancient Judea," *Constellations* 1.1 (2009): 19-33, for a very recent discussion of a topic that Instone-Brewer develops: the search for a *get* in the Bible. Interestingly, Crockett cites Instone-Brewer in her research indicating Exod. 21:10-11 is a passage about divorce. See also: Douglas K. Stuart, *Exodus*, New American Commentary (Nashville, TN: Broadman & Holman Pub., 2006); Carol L. Meyers, *Exodus*, New Cambridge Bible Commentary (New York, NY: Cambridge UP, 2005); and, Thomas B. Dozeman, *Exodus*, Eerdmans Critical Commentary (Grand Rapids, MI: Eerdmans, 2009).

⁹Bill T. Arnold and David B. Weisberg, "A Centennial Review of Friedrich Delitzsch's 'Babel und Bibel' Lectures," *Journal of Biblical Literature* 121:3 (2002), 442.

study. The year 2002 marks the publication of Instone-Brewer's book, *Divorce and Remarriage in the Bible*. This study excludes those sources published after 2002, because the goal of this study is to assess the network of Exod. 21 scholarship as Instone-Brewer finds it—not as he leaves it or contributes to it. For this reason, the author isolates the range of 1891-2002.

Though these constraints may seem artificial, one must remember the goal of this project: to develop a model for analyzing the commentaries on Exod. 21:10-11. The commentary set studied here is not exhaustive;¹⁰ however, it is representative. This model hopefully will allow the reader to gauge the relationship of yet-unanalyzed commentaries to Instone-Brewer's work.

The Value of Studying 20th-Century Exegesis

As it happens, multiple archaeological discoveries confirm the value of studying this particular century of scholarship. First, as Instone-Brewer discusses, is the discovery of an ancient divorce certificate that has recently come to light. This divorce certificate, the *Se'elim get*, was unearthed in the Judean desert in 1951 and yet was not published until 1995.¹¹ The significance of this document is that it appears to be written with a

¹⁰The following list of unavailable volumes forms yet another possible springboard for further research: RJ Coggins, *The Book of Exodus* (Peterborough, England: Epworth, 2000); Amo Clemens Gaebelein, *The Book of Exodus; a Complete Analysis of Exodus with Annotations* (New York, NY: Our Hope Publication Office, 1912); Moshe Greenberg, *Understanding Exodus* (New York, NY: Behrman House for the Melton Research Center, 1969); Henry J. Grimmelsman, *The Book of Exodus* (Cincinnati: The Seminary Book Store, 1927); James B. Jordan, *The Law of the Covenant : An Exposition of Exodus 21-23* (Tyler, TX: Institute for Christian Economics, 1984); John L. Mackay, *Exodus* (Fearn, England: Mentor, 2001).

¹¹Instone-Brewer, *Divorce and Remarriage*, 87. For a fuller discussion concerning the implications of this discovery, see Instone-Brewer, *Divorce and Remarriage*, 87-90. The author includes a half-page list of relevant sources and describes in detail the process of transmission and publication of this *get*.

woman's grounds for divorce in mind. This document appears to place the occurrence of wife-mandated divorce within the Inter-testamental Period.¹² The relevance of this discovery for Exodus scholarship is that Exod. 21 purportedly provides for grounds for divorce on behalf of a wife; thus, the *get* would demonstrate the propensity for these grounds to have been exercised before the time of Christ.

Secondly, the discovery of the Dead Sea Scrolls and the subsequent explosion of research into the nature of the Dead Sea community bear much weight in the present discussion. Instone-Brewer describes the significance of one particular find, the "Temple Scroll": "The three references to divorce in the Qumran documents appear to allow divorce, and certainly do not condemn it. They do not say anything about restrictions to remarriage after divorce."¹³ For Instone-Brewer, this observation confirms that grounds for divorce existed in the Old Testament (hereafter *OT*). How do the various commentators interact with these archaeological discoveries? How do these discoveries affect Exod. 21:10-11 exegesis? This is a valuable century of research.

Development of Seven Distinctive Features

To uncover seven of the distinctive features of Instone-Brewer's *Divorce and Remarriage* as it relates to Exod. 21:10-11, one must become familiar enough with the author's work and technique to isolate the foundations upon which that work rests. Questions that guide the determination of these distinctive features include: On which

¹²Instone-Brewer, *Divorce and Remarriage*, 87.

¹³Ibid., 66. For a full discussion on the significance of the Dead Sea documents and the "increasing rights for women" therein, see Instone-Brewer, *Divorce and Remarriage*, "Chapter 4: Intertestamental Period," 59-84.

arguments does Instone-Brewer spend the most time? What are words that recur in his commentary? Moreover, the questions formed must be of such a nature that one can pose them to any commentary on Exod. 21:10-11. With these questions in mind, seven of these features have emerged.

For each of these grounds to function as practical, accurate determiners, one must be able to easily and obviously locate each within Instone-Brewer's work. Thus, here, each of the seven "goalposts" will be defined and then illustrated within *Divorce and Remarriage*. Additionally, within each test, the author will consider a subset of commentaries as it relates to the given test. The search for defining characteristics begins at the surface level with a look at three simple topic-based appearance tests. It then proceeds to the level of the Exodus text, considering three exegetical tests. Finally, the search concludes with one significant sub-textual test that diagnoses the pre-understandings of the commentary's author.

Presentation of Seven Distinctive Features

The Graphic Representation of the Features

Before proceeding any further, the author must pause to explain the organization of the data below. For the purpose of effective synthesis of 100+ years of Exodus scholarship, the author selected twenty "Level 1" sources for careful analysis. This list of sources includes commentaries that meet at least one of the following three qualifications: 1) a line-by-line exegetical commentary of the book (regardless of the quality of exegesis on this particular passage); 2) a commentary that includes analysis on this particular passage; or, 3) a journal article on this passage. Additionally, "Level 2"

sources include those less exegetical commentaries that incidentally answer some of the questions presented here. This division should make analysis less cantankerous.

Moreover, the author devised a chart that captures each source's response the seven distinctive feature tests. This chart includes columns for (beginning at the left): the author's name; the year of publication; the short, identifying title of the author's work; and, the responses to the seven tests. These columns are labeled using an abbreviation (A=appearance-based test; E=exegetical test; P=pre-understanding test) and a number (based on the order of appearance in this paper). The full chart appears in an appendix; subsections are presented within discussions of each test.¹⁴

While the goal of this chart is to identify and present certain trends in Exodus scholarship, the author refuses to isolate trends at the expense of accuracy. Thus, the author errs on the side of inconclusiveness—if a given source does not provide a clear answer to the question, an asterisk (*) is listed. Thus, the reader may study trends in scholarship without studying the author's obsession with molding data to fit trends.

Topic-based Appearance Tests

Three topic-based appearance tests fulfill the qualifications listed above for identifying distinctive features. It matters greatly if a given commentary includes discussions on significant terms of art or bodies of literature; much is communicated in a few short words. For example, inclusion of the word “divorce” in a commentary of Exod. 21:10 opens the reader’s mind to the incredible body of literature on ancient Near East marriage and divorce. When an author uses this term of art, at least two authorial

¹⁴The author has excluded Level 2 sources from the graphic representations.

presuppositions are most likely true.¹⁵ First, the author likely believes that the couple in Exod. 21:10 was married. Second, the author likely accepts that a marriage contract was in place, and that, in *divorce*, that contract is broken. In this way, simple *appearance* of a key word can be influential. The first test examines the presence of the concept of divorce in the author's comments on Exod. 21:10-11. Because an author can reference this topic without declaring the events of the passage a “divorce,” the test requires the author to communicate the presence of a divorce in this passage. The second test considers the presence of references to the history of rabbinic debate that surrounded Exod. 21:10-11 from the time of Christ through to the time of the Talmud (as late as 500 C.E.). The third test searches the commentaries in question for a comparison between ancient Near East law codes and Exod. 21:10-11. These three topic-based tests reveal much about the authors presented.

¹⁵This is based on Instone-Brewer's own analysis in *Divorce and Remarriage*. Chapter 1, “The Ancient Near East: Marriage is a Contract” (pp. 1-19) provides these qualifications.

Mention of divorce.

Table 1. *Level 1 Sources' Responses to Appearance Test #1: Divorce*

Author	Year	ID Title	A#1
Keil	1891	<i>Commentary</i>	No
Mendelsohn	1935	“Conditional”	No
Cassuto	1951	<i>Commentary</i>	No
North	1955	“Flesh”	No
Noth	1962	<i>Exodus</i>	No
Paul	1969	“Exod. 21:10”	No
Hyatt	1971	<i>Commentary</i>	No
Childs	1974	<i>The Book</i>	No
Gispen	1982	<i>Exodus</i>	No
Durham	1987	<i>Exodus</i>	No
Turnham	1987	“Male and”	No
Sarna	1991	<i>Exodus</i>	No
Jacob	1992	<i>Second Book</i>	No
Carmichael	2000	“The Three”	No
Enns	2000	<i>Exodus</i>	No
Fleishman	2000	“Does the”	No
Houtman	2000	<i>Exodus</i>	No
Janzen	2000	<i>Exodus</i>	No
Levine	2001	“Biblical”	Yes
Instone-Brewer	2002	<i>Divorce and Remarriage</i>	Yes

At the start of his analysis on Exodus 21, Instone-Brewer remarkably notes that “Exod. 21.10-11 does not, at first glance, have much to do with divorce.”¹⁶ It is important to note that Instone-Brewer does not make the claim that Exod. 21:10-11 is a text about divorce; rather, he argues that this text undergoes an exegetical facelift by application of a single rabbinic technique of exegesis: *qol vachomer*. In this technique, the interpreter applies the following principle: “If that is true, then surely this is also true.”¹⁷ The rabbis

¹⁶Instone-Brewer, *Divorce and Remarriage*, 99.

¹⁷Ibid., 101. Instone-Brewer identifies *qol vachomer* as the “most common exegetical rule before 70 C.E.” and directs the reader to his related work. David Instone-Brewer, *Techniques and Assumptions in Jewish Exegesis before 70 CE*, Texte und Studien zum antiken Judentum 30 (Tübingen: J.C.B. Mohr, 1993).

reasoned that if these rights are true for the slave-wife, then surely they must be true for the free wife as well. In this way, a text about provision for slave-wives morphs into a text about the universal grounds for divorce. Instone-Brewer sees the footprints of the rabbis' exegesis in the *Mishnah Ketuboth*, where the rabbinic author records heated debates (which Instone-Brewer dates as pre-70 CE) over the exact dimensions of the material and emotional support¹⁸ required for a slave-wife. After all, why would the rabbis squabble over the details of one instance of marital provision (i.e., conjugal relations) if the rabbis did not share agreement on the general principle: that Exod. 21:10-11 is about the rights a man must provide to his wife within the bounds of marriage?¹⁹ Because this characterization of Exod. 21:10-11 forms a foundation for Instone-Brewer's argument, one must ask, "Does the given commentary mention the word 'divorce' in connection with Exod. 21:10?" Is there any acknowledgement whatsoever that this text concerns valid grounds for divorce—in its 'original context' or otherwise?

This characterization is significant for two reasons. First, the answer to this question in many ways sets the tone for the reading of the rest of the passage. For example, in his brief comment on v. 11, Sprinkle remarks: "It can be understood to say that if the master is unwilling to fulfill these three requirements... then she is to obtain freedom in what amounts to a divorce without redemption price."²⁰ By using the word

¹⁸A second rabbinic modification to the three terms in Exod. 21:10-11 involves compacting them into these two terms: "emotional and material neglect." Unfortunately, this transformation is not described in detail in *Divorce and Remarriage*.

¹⁹Here, it is important to note that the author's goal is not the maintenance of a particular interpretation of Exod. 21:10-11 (e.g., Instone-Brewer's)—the goal remains to present the variety of interpretations of this passage in a fair and balanced way.

“divorce,” Sprinkle acknowledges a consummated marriage between the master and the slave-wife. The depiction in Exod. 21:7-11, then, is not merely a contract, but it is a relationship. Levine selects as the thrust of his article the notion that the three items presented in Exod. 21:10 are the components of three specific grounds for divorce. He writes: “And the woman under discussion in Exodus is still married (albeit as a co-wife), with the very subject under discussion being what she must be granted lest she be legally entitled to sever that bond.”²¹ These authors concur with Instone-Brewer here.

Conversely, a negative response here shuts the door to a marital relationship. Consider Cassuto’s treatment of the text. He mentions Deut. 24:1 and draws a striking contrast between the two passages, indicating that, since the woman of Exod. 21:10 is not married, “she does not require a divorce.”²² For Cassuto, Exod. 21:10 describes an entirely different set of circumstances—and thus it receives separate mention from Deut. 24:1. Similarly, Janzen holds that this text communicates a non-divorce end.²³ In this way, the reading of “divorce” in this text shapes one’s understanding of the text.

The second reason this feature matters is that a positive answer to this question affects multiple other defining characteristics. For example, acknowledgment that this text is about ‘divorce’ forces one to seriously consider the legitimacy and completeness

²⁰J. Sprinkle, “‘The Book of the Covenant’: A Literary Approach” in *JSOT Supplement II* (Sheffield, England: JSOT, 1994), 54.

²¹Etan Levine, “Biblical Women’s Marital Rights,” *Proceedings of the American Academy for Jewish Research* 63 (2001), 99.

²²Umberto Cassuto, *A Commentary on the Book of Exodus*, first English ed. (Jerusalem: Magnes Press, 1951; this edition: Jerusalem: Magnes Press, 1967), 268.

²³“It appears that the purchase amounts to a committal by the purchaser to marry her, though probably not to a full engagement, since a breach of engagement would amount to a divorce.” Waldemar Janzen, *Exodus*, Believers Church Bible Commentary (Scottsdale, PA: Herald Press, 2000), 293.

of Jewish divorce certificates that Instone-Brewer puts much stock in. In this way, the “divorce” appearance test proves influential. The question posed in this test is: “Does the commentary mention the word ‘divorce’ in connection with Exodus 21:10-11?”

Mention of rabbinic debates.

Table 2. *Level 1 Sources' Responses to Appearance Test #2: Rabbinic debate*

Author	Year	ID Title	A#2
Keil	1891	<i>Commentary</i>	No
Mendelsohn	1935	“Conditional”	No
Cassuto	1951	<i>Commentary</i>	Yes ²⁴
North	1955	“Flesh”	No
Noth	1962	<i>Exodus</i>	No
Paul	1969	“Exod. 21:10”	Yes
Hyatt	1971	<i>Commentary</i>	No
Childs	1974	<i>The Book</i>	No
Gispen	1982	<i>Exodus</i>	No
Durham	1987	<i>Exodus</i>	No
Turnham	1987	“Male and”	No
Sarna	1991	<i>Exodus</i>	Yes
Jacob	1992	<i>Second Book</i>	Yes
Carmichael	2000	“The Three”	No
Enns	2000	<i>Exodus</i>	No
Fleishman	2000	“Does the”	No
Houtman	2000	<i>Exodus</i>	Yes
Janzen	2000	<i>Exodus</i>	No
Levine	2001	“Biblical”	No
Instone-Brewer	2002	<i>Divorce and</i>	Yes

As mentioned above, Instone-Brewer locates in the *Mishnah Ketuboth* the trail of an intense debate between various rabbis about the nature of the three grounds for divorce in Exod. 21:10. The author describes the necessity of rabbinic interpretation: “Exodus 21:10-11 defined the material obligations simply as an undiminished supply of food and clothing. Rabbinic courts had to define these obligations more specifically when they

²⁴He includes a very oblique reference in his definition of *onathah*. Cassuto, *Commentary*, 269.

were faced with actual applications for divorce based on the ground of material neglect.”²⁵ Thus, the vagueness of the Mosaic text demands further interpretation by the rabbis of the 1st century. Instone-Brewer identifies this same history of debate in the discussion of “oil” (Ex. 21:10; cf. *m. Ketub.* 5.6-7), though, in this case, the debate surrounds the frequency of sexual intercourse. In this way, the rabbis “flesh out” the provisions of Exod. 21:10-11.

As such, for a commentary to line up with Instone-Brewer’s argument, ideally, one would expect a similar mention of this history of debate over the three terms in Exod. 21:10. Does the commentary mention the history of rabbinic debate over Exod. 21:10? Does the commentary instead gloss over this formational and foundational portion of exegetical history? Consider Jacob’s comment on the passage as it relates to rabbinic debate:

The matter was important for the *Talmud* as it sought to establish whether the obligation of a man for the provisions of his wife was mentioned in the Torah.... Was it a basic right...or a rabbinic ordinance and understood as compensation for her work? If the latter, she would be able to assert that she preferred to work for herself and nourish herself.²⁶

With this comment, the reader sees how Jacob both aligns himself to Instone-Brewer’s rabbinic appreciation (i.e., by mentioning a rabbinic text) and how Jacob adds to the discussion by adding a level of nuance to the issues debated (i.e., discussing the right of a

²⁵Instone-Brewer, *Divorce and Remarriage*, 103.

²⁶ Benno Jacob, *Second Book of the Bible: Exodus* (Jerusalem: KTAV, 1992), 626. Similarly, Nahum Sarna examines the characterization of this text by much later rabbis (e.g., Rashbam). In doing so, Sarna confirms Instone-Brewer’s acceptance of the importance of these interpretations to deciphering the enduring meaning of the text. For Sarna’s commentary, see Nahum M. Sarna, *Exodus*, JPS Torah Commentary (Philadelphia, PA: Jewish Pub. Society, 1991), 121.

woman to work). Regardless of whether or not Jacob would agree with Instone-Brewer's specific characterization of the *Mishnah*, with this analysis, Jacob indicates a propensity for familiarity with the tradition.

Interestingly, however, the majority of Level 1 commentaries do not make reference to the rabbinic history of interpretation here. Moreover, at least some of those who do mention the rabbinic interpretations of the pericope do not mention the specific sections of the *Mishnah* that Instone-Brewer claims are so formative for understanding this text.²⁷ Thus, a positive answer to the "rabbinic debates" appearance test indicates that the commentator has preserved the genealogy of exegetical knowledge, winding from the time of Christ to the 20th century. In this way, one can isolate a core similarity to Instone-Brewer's research: an attention to rabbinic study of the Pentateuch. The question posed in this test is: "Does the commentary mention the history of rabbinic debate over Exodus 21:10?"

²⁷Sarna, for example, recalls rabbinic debates surrounding the acceptability of a father selling his daughter into slavery. However, no mention is made of the specific rabbinic texts that Instone-Brewer cites. Sarna, *Exodus*, 120.

Mention of ANE law codes.

Table 3. *Level 1 Sources' Responses to Appearance Test #3: ANE Law Codes*

Author	Year	ID Title	A#3
Keil	1891	<i>Commentary</i>	No
Mendelsohn	1935	“Conditional”	Yes
Cassuto	1951	<i>Commentary</i>	Yes
North	1955	“Flesh”	Yes
Noth	1962	<i>Exodus</i>	No
Paul	1969	“Exod. 21:10”	Yes
Hyatt	1971	<i>Commentary</i>	Yes ²⁸
Childs	1974	<i>The Book</i>	Yes ²⁹
Gispen	1982	<i>Exodus</i>	Yes
Durham	1987	<i>Exodus</i>	Yes ³⁰
Turnham	1987	“Male and”	No
Sarna	1991	<i>Exodus</i>	Yes
Jacob	1992	<i>Second Book</i>	Yes ³¹
Carmichael	2000	“The Three”	No
Enns	2000	<i>Exodus</i>	No
Fleishman	2000	“Does the”	Yes
Houtman	2000	<i>Exodus</i>	Yes ³²
Janzen	2000	<i>Exodus</i>	No ³³
Levine	2001	“Biblical”	No
Instone-Brewer	2002	<i>Divorce and</i>	Yes

A third appearance-based test forces the reader to examine the use of relevant ancient Near East (ANE) law codes in deciphering the meaning of Exod. 21:10-11. This list of cited ANE codes includes: Middle Assyrian law; Hittite law; the Code of

²⁸Hyatt includes references to the Nuzi documents and the Mendelsohn article. Hyatt, *Commentary*, 1971.

²⁹Most valuable is a detailed chart that analyzes the presence of various laws across the spectrum of ANE codes. Childs, *The Book of Exodus*, 462-463.

³⁰Includes references to Nuzi parallels and the Mendelsohn article. Durham, *Exodus*, 322.

³¹Includes a five page summary on the various law codes. Jacob, *The Second Book*, 601-606.

³²Nuzi documents are mentioned, but he writes they are “not a true parallel.” Houtman, *Exodus*, 3:125.

³³Janzen does not relate ANE laws to specific Exodus laws. Janzen, *Exodus*, 288.

Hammurabi; and the Laws of Eshnunna.³⁴ Instone-Brewer describes the significance of these texts to his project and to understanding the Book of the Covenant: “Because of the similarity of the Pentateuch with other ancient Near Eastern law codes, we must assume that where the Old Testament is silent, there was broad agreement with the prevailing culture.”³⁵ A brief examination of Instone-Brewer’s interaction with these ANE texts relating to the grounds of marital neglect will demonstrate his commitment to defining this relationship.

Instone-Brewer considers two separate ANE texts dealing with the topic of neglect: the Code of Hammurabi and the Middle Assyrian law. He observes that, in the Code of Hammurabi, there is an allowance for a wife’s having neglecting a house [and a husband] if a husband is taken captive and does not leave “sufficient to live on in his house.”³⁶ Similarly, he discusses the following Middle Assyrian law: “If a woman is still living in her father’s house or her husband made her live apart and her husband has gone off to the fields, without leaving her either oil or wool or clothing or food or anything at all... that woman shall remain true to her husband for five years (and) not go to live with a(nother) husband.”³⁷ In looking at these two ANE codes, Instone-Brewer quickly places Exod. 21:10-11 within the ANE landscape. Given that the Mosaic text mentions some of

³⁴Instone-Brewer quotes extensively from James B. Pritchard, *Ancient Near Eastern Texts Relating to the Old Testament*, 3rd ed. (Princeton, NJ: Princeton UP, 1978, 1992). This is the source for the “Hittite law” he references throughout (e.g., pp. 24-30).

³⁵Instone-Brewer, *Divorce and Remarriage*, 21.

³⁶Pritchard, *Ancient Near Eastern Texts*, 171; quoted in Instone-Brewer, *Divorce and Remarriage*, 25, n15.

³⁷Ibid.; quoted in Instone-Brewer, *Divorce and Remarriage*, 26.

the same material goods as the Middle Assyrian law—and given that both extra-biblical codes provide a strong measure of understanding mercy for the wife—it is reasonable that each portrays the same event. Thus, where the Old Testament is silent or unclear (i.e., the application of Exod. 21:10-11 to free wives), in Instone-Brewer's understanding, there must be broad agreement with the surrounding culture. Thus, the exegetical stretch from slave-wife to free-wife looks much less strenuous. In this way, understanding the Book of the Covenant's peers aids Instone-Brewer in understanding the Old Testament law itself.

The most outstanding example of incorporation of ANE law codes comes from Shalom Paul's work. Paul sets out demonstrate the intimate connection between Exod. 21:10-11 and the law codes of Israel's ANE neighbors, including the law codes mentioned above. He concludes that his “sampling of documents from different periods shows this threefold provision became stereotypic.”³⁸ With a positive answer to the “ANE codes” test, one is not surprised to see Paul chisel away the edges of the Book of the Covenant's uniqueness and instead fit Exodus into the “stereotypic” formula of the ANE codes.

Interestingly, however, one commentator challenges Paul's stereotypic formula. Etan Levine provides a line-by-line deconstruction of Paul's arguments concerning the three items of Exod. 21:10, based on the context of the passage and the extreme differences between the various ANE codes and the Bible. He notes that Exod. 21:7-11

³⁸Shalom M. Paul, “Exod. 21:10: a Threefold Maintenance Clause,” *Journal of Near Eastern Studies* 28.1 (1969), 50. Paul's specific exegesis of Exod. 21:10-11 will be discussed in further detail in the section on the meaning of ‘onathah’.

includes “one biblical law that is unparalleled in the ancient Near East.”³⁹ This commentary answers “no” to the “ANE codes” test, and comes to an entirely separate conclusion than Paul about the nature of Exod. 21:10-11.

Given Instone-Brewer’s reliance on the “legal neighborhood” of the Pentateuch, one must examine the commentaries in this survey for similar attention to ANE backgrounds. Is there an attempt to reconcile the Exodus text with a particular reading portion of one of the other ANE codes? Does the author display a tendency toward rendering passages in Exodus based on the guidelines of these other documents? If so, the given commentary has much in line with Instone-Brewer’s approach to Exod. 21. Thus, the question posed in this test is: “Does the commentary mention other ANE law codes as they *compare* to Exodus 21:10-11?”

Exegetical Tests

In addition to the three appearance tests listed above, the astute reader must consider three tests related to the exegesis of Exod. 21:7-11.⁴⁰ These tests evaluate the interpretative techniques and assumptions of the commentary author, while answering three key questions about this passage: 1) What is the intent of the law given here—is it the woman’s freedom or the woman’s lack of freedom (i.e., marriage)? 2) What is the meaning of “oil” in 21:10—does the word mean the woman has a marital right to conjugal relations? 3) What is the meaning of “these three” in 21:11—does this phrase

³⁹Etan Levine, “Biblical Women’s Marital Rights,” *Proceedings of the American Academy for Jewish Research* 63 (2001), 89. This exegesis will also be discussed further in the section on the meaning of ‘onathah’.

⁴⁰The variation in Scripture reference (as opposed to “Exodus 21:10-11” above) is intentional. The section of 21:1-11 deals with the Israelites’ treatment of slaves: in the first six verses, Moses addresses the plight of *male* servants; in verses 7-11, then, he addresses the treatment of *female* servants.

refer to the three items in 21:10 or to the three scenarios listed in vv. 7-11? Examination of these three questions will locate Instone-Brewer's *exegesis* on the landscape of twentieth-century Exodus scholarship.

The intent of the law.

Table 4. *Level 1 Sources' Responses to Exegetical Test #1: Intent*

Author	Year	ID Title	E#1
Keil	1891	<i>Commentary</i>	* ⁴¹
Mendelsohn	1935	"Conditional"	Marriage ⁴²
Cassuto	1951	<i>Commentary</i>	Marriage ⁴³
North	1955	"Flesh"	*
Noth	1962	<i>Exodus</i>	*
Paul	1969	"Exod. 21:10"	* ⁴⁴
Hyatt	1971	<i>Commentary</i>	* ⁴⁵
Childs	1974	<i>The Book</i>	*
Gispen	1982	<i>Exodus</i>	Freedom ⁴⁶
Durham	1987	<i>Exodus</i>	Freedom ⁴⁷
Turnham	1987	"Male and"	Freedom
Sarna	1991	<i>Exodus</i>	Marriage

⁴¹The authors include a vague reference to Deut. 15:12's modification of the duration of all slaves' service; however, there does not seem to be an intent to answer this question. Keil and Delitzsch, *Commentary*, 405.

⁴²For Mendelsohn, this is especially evident when Exod. 21:10-11 is compared with ANE codes. Mendelsohn, "Conditional," 193.

⁴³"This statute was enacted for the benefit of the girl; since the bondwoman is not just a servant, but also becomes the concubine of her master or of one of his sons, *her status is that of a married woman*, and as such she is permitted to remain in her husband's house all her life just like her mistress, *the legal wife* in the full sense of the term [emphasis mine]." Cassuto, *Commentary*, 268.

⁴⁴This is not the thrust of Paul's analysis here; his conclusion is unclear.

⁴⁵The purpose, according to Hyatt, is "to insure that the female slave would not become merely a prostitute in the owner's possession." Hyatt, *Commentary*, 230. However, is this evidence for release or marriage?

⁴⁶In Gispen's perspective, God uses these slave laws to "eliminate excesses and to gradually restore the general validity of the monogamous marriage in Israel." God's intent is the freedom of the girl when abuses such as those mentioned in 21:7-11 occur. Gispen, *Exodus*, 1982.

⁴⁷For Durham, this text makes clear specific rights granted to the female temporary slave; "if they were violated, she could go free" (322). The implication is that these rights have been violated. Durham, *Exodus*, 322.

Jacob	1992	<i>Second Book</i>	Marriage ⁴⁸
Carmichael	2000	“The Three”	Marriage
Enns	2000	<i>Exodus</i>	* ⁴⁹
Fleishman	2000	“Does the”	Freedom
Houtman	2000	<i>Exodus</i>	Marriage
Janzen	2000	<i>Exodus</i>	Marriage
Levine	2001	“Biblical”	Marriage
Instone-Brewer	2002	<i>Divorce and</i>	Freedom

Which end does Moses intend for the slave wife in Exod. 21:10-11: marriage or emancipation? This first question hinges on the broad intent of the Exod. 21:7-11 pericope. Yet, the reader here encounters a roadblock as Instone-Brewer refrains from discussing Exod. 21:10-11 as it appears within the pericope.⁵⁰ Rather, these verses are wedged from their context within this casuistic law and repeatedly discussed apart from that context.⁵¹ For example, in his opening characterization of the passage, he writes, “It is a law about how someone should treat his slave wife when he marries a second, free wife.”⁵² Despite analysis of the entire *chapters* of other relevant passages in his book (e.g., 1 Cor. 7), here Instone-Brewer avoids even the quotation of the first eleven verses

⁴⁸“The girl was given to the strange man with the expectation of marriage.” Jacob, *The Second Book*, 621.

⁴⁹This commentary makes virtually no mention of marriage; thus, there is no reference to the importance of child-bearing. However, Enns seems to hint at the liberation of the female slave: “Although a daughter is sold to a man, this does not give the owner the right to do as he pleases. She is not to be mistreated.” Enns, *Exodus*, 444.

⁵⁰Indeed, a look at the Scripture Index confirms that 21:7 never appears in *Divorce and Remarriage*, and the pericope as a whole does not occur on the list. Instone-Brewer, *Divorce and Remarriage*, 348.

⁵¹The bulk of Instone-Brewer’s exegesis and interpretation of Exod. 21:10-11 surfaces in the chapter “5. Rabbinic Teaching: Increasing Grounds for Divorce,” the most relevant part ranging from pp. 99-110.

⁵²Instone-Brewer, *Divorce and Remarriage*, 99.

of Exod. 21. Naturally, his concern lies with the meaning of the various grounds listed in Exod. 21:10—and not how this verse fits into a pericope.

As such, one turns to his characterization of the plight of the slave-wife. Does Instone-Brewer describe the freedom that she obtains in a positive or negative light? Is it a freedom from bondage or is it a reluctant surrender of a broken contract? Instone-Brewer consistently characterizes the released slave wife's plight as one that frees and (implicitly) pleases the wife. "This law states that the rights of the slave wife must not be diminished, and that, if they are, the slave wife *must be given* her freedom [emphasis added]."⁵³ This characterization becomes even clearer as the author describes the application of *qol vahomer* to the text: "The penalty if these rights [i.e., those listed in 21:10] were not provided is freedom. For a slave wife this would mean her freedom from the marriage and also her emancipation from slavery without any payment."⁵⁴ The author describes the wife's release as a "penalty" against the husband in which the wife is rewarded with her freedom.

For Instone-Brewer, Exod. 21:10 depicts an abusive marriage in which a wife clamors to receive freedom from a broken marriage vow. As such, Moses here intends to remedy this injustice and provide acceptable grounds for the woman's freedom. Turnham boldly asserts: "If the enslavement does not provide her with the opportunity to function fully in society, then the slavery must end.... [T]he rhetorical movement in the provisions for male slaves is toward permanent slavery, the flow of those for female slaves is toward

⁵³Instone-Brewer, *Divorce and Remarriage*, 99.

⁵⁴Ibid., 101.

freedom. The male slave is encouraged to stay if the situation is good; the female slave is allowed to go if the situation is bad.”⁵⁵ Though not making quite as bold an assertion, some commentators earn the “Freedom” classification due to their foci on the violated rights of the woman involved. Fleishman argues the law puts limitations on the purchaser, while securing the rights of the slave-girl. Since the arrangement has gone awry, the author now must provide justification for escape.⁵⁶

Yet a second possible intent exists: the woman’s maintenance in marriage. When seen against the background of several other commentators, the difference between Instone-Brewer’s emancipation-centric approach and a marriage-centric approach emerges. For example, consider Janzen’s commentary: “In contrast to the male slave law, the main thrust of this law is that the female slave shall *not* be given her freedom. Instead, certain rights and protections are to be assured for her. Only under *special conditions* shall she be set free [emphasis added].”⁵⁷ Cole offers this crucial note of v. 7: “The case of the Hebrew slave-wife is quite different. She does not automatically go out like the man, because *her master-husband still has duties toward her* [emphasis added].”⁵⁸ For these authors, the intent is not the emancipation of the wife—emancipation is a “last

⁵⁵T. J. Turnham, “Male and Female Slaves in the Sabbath Year Laws of Exodus 21:1-11,” *Society of Biblical Literature Seminar Papers* 26 (1987), 548.

⁵⁶Joseph Fleishman, “Does the Law of Exodus 21:7-11 permit a father to sell his daughter to be a Slave?” *Jewish Law Annual* 13 (2000), 49.

⁵⁷Waldemar Janzen, *Exodus*, Believers Church Bible Commentary (Scottsdale, PA: Herald Press, 2000), 292.

⁵⁸R. Alan Cole, *Exodus: An Introduction and Commentary*, Tyndale Old Testament Commentaries (London, England: Inter-Varsity Press, 1974), 166.

resort.” Houtman’s commentary offers a helpful explanation of a separate right (as opposed to emancipation) that underlies and overwhelms the passage:

Back of 21:2-6 lies the assumption that the Israelite community consists of free citizens. An Israelite may lose his citizenship only for a limited time. He is entitled to freedom. He can only waive that right as a matter of free choice. According to 21:7-11 this is different for the bought/sold Israelite woman. As “property” she can change hands from one master to another. Her right is not primarily a right to freedom but a right to good care.⁵⁹

As a reminder, the goal of offering these commentaries is not to suggest a “correct” interpretation of the passage at hand, but simply to point out the contrast between these authors’ readings of Moses’ intent and Instone-Brewer’s approach.

Therefore, the reader should pose the following question to the commentaries here: “What is the over-arching intent of the author in the Exod. 21:7-11 pericope: marriage or emancipation?” An answer of “emancipation” moves a given source slightly closer to Instone-Brewer; an answer of “marriage” pushes the source slightly away. The significance of this test is that, if one accepts that marriage is a prison from which the “slave wife” must escape, then one will be more likely to see the provisions of Exod. 21:10-11 as grounds for divorce. However, if one recognizes marriage as a provision of blessing and *itself* an escape from a life of poverty, then one naturally has a tendency to gloss over these so-called “grounds for divorce.” Establishing the intent of the passage establishes the direction of exegesis.

⁵⁹Cornelius Houtman, *Exodus*, vol. 3, trans. Sierd Woudstra (Leuven, Belgium: Peeters, 2000), 112.

The meaning of ‘*onathah*.

Table 5. *Level 1 Sources’ Responses to Exegetical Test #2: ‘Onathah.*

Author	Year	ID Title	E#2
Keil	1891	<i>Commentary</i>	“Conjugal rights”
Mendelsohn	1935	“Conditional”	“Conjugal rights”
Cassuto	1951	<i>Commentary</i>	“Quarters” ⁶⁰
North	1955	“Flesh”	“Marriage right” ⁶¹
Noth	1962	<i>Exodus</i>	“Marital rights”
Paul	1969	“Exod. 21:10”	“Oil”
Hyatt	1971	<i>Commentary</i>	“Conjugal rights”
Childs	1974	<i>The Book</i>	“Conjugal rights” ⁶²
Gispen	1982	<i>Exodus</i>	“Marital rights”
Durham	1987	<i>Exodus</i>	“Right to intercourse”
Turnham	1987	“Male and”	“Marital rights”
Sarna	1991	<i>Exodus</i>	“Conjugal relations”
Jacob	1992	<i>Second Book</i>	“Anointing oil”
Carmichael	2000	“The Three”	“Intercourse”
Enns	2000	<i>Exodus</i>	“Marital rights”
Fleishman	2000	“Does the”	* ⁶³
Houtman	2000	<i>Exodus</i>	“Sexual intercourse” ⁶⁴
Janzen	2000	<i>Exodus</i>	“Sexual intercourse”
Levine	2001	“Biblical”	“Conjugal rights”
Instone-Brewer	2002	<i>Divorce and</i>	“Conjugal rights”

A second relevant exegetical gauntlet through which the commentary set will pass involves the question: “To what does the word ‘*onathah* in Exod. 21:10-11 refer?” Instone-Brewer stakes his claim for “material neglect” and “emotional neglect” as

⁶⁰“And not as later tradition interpreted it: ‘times of cohabitation.’” Cassuto, *Commentary*, 269.

⁶¹He uses this phrase to indicate the “right to become a mother” and the “right of parenthood.” North, “Flesh,” 206.

⁶²Childs calls Shalom Paul’s interpretation “impressive, but not conclusive” (448), and he translates the text “conjugal rights” (442). Appealing to context, Childs agrees with the “traditional conjecture” of “conjugal rights.” Childs, *The Book of Exodus*, 448.

⁶³This is not the concern of Fleishman’s article—he resolves to decide if slavery is condoned.

⁶⁴Houtman reminds his readers of the significance of childbearing in Israel. Houtman, *Exodus*, 3:130.

grounds for divorce in Judaism on his interpretation of the three items listed in Exod. 21:10, “emotional neglect” stemming from the Hebrew ‘*onathah*. Instone-Brewer stresses the necessity of relying on how the word was interpreted rather than the Hebrew original intent, *per se*: “The interpretation of these words by first-century Jews is the most important consideration for this present study. They provide the best indication of how an original reader of the New Testament would have understood this text.”⁶⁵ As such, Instone-Brewer focuses on these early translations and interpretations of this word, identifying the reading “conjugal rights” to have “almost unanimous agreement” amongst the LXX, the Aramaic Targums, and “early and later rabbis.”⁶⁶ Instone-Brewer’s interpretation of this phrase shapes his understanding of Jewish marriage tradition.

And Instone-Brewer is not alone. Though commentators choose different names for this provision, many of the commentaries in question side with the “conjugal rights” interpretation of ‘*onathah*. Gispen, Kaiser, and Rylaarsdam refer to it as “marital rights.”⁶⁷ Janzen prefers “basic rights to marriage and childbearing.”⁶⁸ North defined this term as “response... her right of parenthood.”⁶⁹ With this interpretation, North preserves

⁶⁵Instone-Brewer, *Divorce and Remarriage*, 100.

⁶⁶Ibid.

⁶⁷Willem Hendrik Gispen, *Exodus*, The Bible Student’s Commentary, trans. Ed van der Maas (Kampen: J.H. Kok, 1982; English ed.: Grand Rapids, MI: Zondervan, 1982), 209; Walter C. Kaiser, “Exodus,” in *The Expositor’s Bible Commentary*, ed. Frank Gaebelein (Grand Rapids, MI: Zondervan, 1990), 431; Rylaarsdam, *The Book*, 996.

⁶⁸“[A] woman’s life was considered to be unfulfilled without them [children] (cf. 1 Sam. 1).” Janzen, *Exodus*, 293.

⁶⁹Robert North, “Flesh, Covering, and Response, Ex. XXI 10,” *Vetus Testamentum* 5.2 (1955), 206.

the *goal* of conjugal relations without condoning the so-called “sense-pleasure or companionship with a disaffected master.”⁷⁰ This exegetical decision has slightly less effect than the others, in that one can support Instone-Brewer’s position here and still accept that the intent of the law is marriage rather than the wife’s emancipation. However, this test still matters—especially as it concerns the use of citations in Instone-Brewer’s work (discussed below).

Much disagreement remains over how the term ‘*onathah*’ should be (or was) interpreted. The reader turns once again to Shalom Paul’s foundational study on the provisions of Exod. 21:10, reading ‘*onathah*’ simply as “oil.” He notes: “[T]he basic necessities of life were epitomized in Mesopotamian legal texts by a formulaic triad of commodities. This then has direct bearing upon Exod. 21:10.”⁷¹ Paul refuses to see any sort of sexual connotation or euphemism in Exod. 21:10 or the ANE legal codes. Rather, Paul argues that due to Mesopotamia’s exposure to the hot sun, the maintenance of a slave wife included the provision of fragrant, protective oils for the skin.⁷² Jacob, too, links this phrase to Hosea 2’s provision of oil, one of the “essentials of life.”⁷³ Oil, then, fits in with the necessities of food and clothing.

Since the publication of Paul’s monumental study, however, many scholars have refined the “conjugal rights” view. Levine argues that, indeed, the uniqueness of this right

⁷⁰North, “Flesh, Covering,” 206.

⁷¹Paul, “Exod. 21:10,” 48.

⁷²Ibid., 52.

⁷³Jacob, *The Second Book*, 627.

is what distinguishes the biblical code from the ANE law codes.⁷⁴ Levine then takes a turn at providing new grounds for the "conjugal rights" interpretation of Exod. 21:10-11. He mentions that the word for "physical oil" appears over 200 times in the OT. Yet, despite this prevalent theme, Moses chooses an entirely different word.⁷⁵ As seen, a multitude of readings exist for this complex *hapax legomenon*.

Thus, one must ask of the commentary set this question: "To what does the word '*onathah* in Exod. 21:10-11 refer?" This question lacks the handy dichotomous answer that the previous tests afforded, but it exposes the wide variety of interpretations of this word.

⁷⁴Levine, "Biblical Women's," 89. Though Levine's article is overwhelmingly informative and profoundly exhaustive, it is sexually explicit at times. His reading of "conjugal rights" rests on an etymological analysis of the Hebrew word '*onathah* as "opening," a reference to the female anatomy. Still, Levine overcomes Paul's unwillingness to consider the immediate context of Exod. 21:10-11 within a pericope.

⁷⁵Levine, "Biblical Women's," 99.

The referent of “these three things.”

Table 6. *Level 1 Sources’ Responses to Exegetical Test #3: Three things.*

Author	Year	ID Title	E#3
Keil	1891	<i>Commentary</i>	Items
Mendelsohn	1935	“Conditional”	Items
Cassuto	1951	<i>Commentary</i>	Items
North	1955	“Flesh”	*
Noth	1962	<i>Exodus</i>	Items
Paul	1969	“Exod. 21:10”	Items
Hyatt	1971	<i>Commentary</i>	Items
Childs	1974	<i>The Book</i>	* ⁷⁶
Gispen	1982	<i>Exodus</i>	Items
Durham	1987	<i>Exodus</i>	Items
Turnham	1987	“Male and”	Cases
Sarna	1991	<i>Exodus</i>	Cases
Jacob	1992	<i>Second Book</i>	Cases
Carmichael	2000	“The Three”	* ⁷⁷
Enns	2000	<i>Exodus</i>	Items
Fleishman	2000	“Does the”	Cases
Houtman	2000	<i>Exodus</i>	Items
Janzen	2000	<i>Exodus</i>	*
Levine	2001	“Biblical”	Items
Instone-Brewer	2002	<i>Divorce and</i>	Items

A final exegetical test that reveals the placement of Instone-Brewer within Exodus 21 scholarship concerns the meaning of “these three” in Exod. 21:11. This text reads: “And if he does not do these three things for her, she shall go out for nothing, without payment of money.”⁷⁸ Yet, what does the phrase “these three things” refer to?

⁷⁶Childs provides the translation: “do these three things for her.” Childs, *The Book of Exodus*, 442. Overall, though a strong exegetical commentary on Exodus overall, Childs’ analysis on this pericope is quantitatively weak.

⁷⁷Carmichael is concerned with relating the other elements of the pericope to the Jacob-Leah saga. He does not exegete this phrase; however, it seems likely that this is the one Mosaic creation—a means of enforcement.

⁷⁸The standard translation for this paper will be the New American Standard, 1995 Update. However, for passages that Instone-Brewer uses in *Divorce and Remarriage*, the text will be copied. His translation is predominantly the Revised Standard Version.

Does it refer to the three items just listed in Exod. 21:10, or does it refer to the three cases described in Exod. 21:7-11? The difference between these two positions becomes clear upon examination of Instone-Brewer in the light of other Exodus commentators.

Instone-Brewer's lack of analysis on the pericope of Exod. 21:7-11⁷⁹ limits the possible interpretations of this phrase in his work. After all, he concerns himself with the use of 21:10's "provisions" rather than 21:11's "release." He writes, "The law states that the *rights* of the slave wife must not be diminished, and that, *if they are*, the slave wife must be given her freedom."⁸⁰ Since he does not quote this pericope as a whole, the reader can assume that, by "the law", he means v. 10. For Instone-Brewer, then, the release of v. 11 hinges on the maintenance of the provisions in v. 10. Currid agrees with this interpretation of the text.⁸¹ Carmichael appears to agree with this interpretation of the text, though on entirely different grounds. In his work, Carmichael identifies the root and origin of the law in Exod. 21:7-11: the Genesis narrative of Jacob, Laban, and Laban's daughters. For each of the three items in the Exodus passage, he identifies a parallel image in the Genesis story. Just as Jacob refuses conjugal relations with Leah, Moses sees the need to protect *this* spouse from neglect.⁸² Though Carmichael's intent is not to

⁷⁹This is discussed further above, in relation to the first exegetical test: the intent of the law.

⁸⁰Though this quotation appears earlier in the presentation, here it serves an entirely different function. Instone-Brewer contracts many ideas and assumptions into few words in his exegesis.

⁸¹John D. Currid, *A Study Commentary on Exodus*, vol. 2 (Darlington, England: Evangelical Press, 2001), 69.

⁸²Calum Carmichael, "The Three Laws on the Release of Slaves (Ex 21,2 --11; Dtn 15,12--18; Lev 25,39--46)," *Zeitschrift für die alttestamentliche Wissenschaft* 112:4 (2000), 519. For a more detailed coverage of how the various laws of the Book of the Covenant fit into narrative, see Calum Carmichael, *The Origins of Biblical Law : The Decalogues and the Book of the Covenant* (Ithaca, NY: Cornell UP,1992).

answer this question,⁸³ the “these three” phrase seems to apply to the three things that Leah is denied and Jacob must provide.⁸⁴ Thus, as the graphic representation demonstrates, Instone-Brewer’s interpretation here is not rare.

An alternative reading of the text, however, links “these three things” to the three conditions (of which 21:10 is one) for maintenance of a man’s contract with a female servant. In this reading, Exod. 21:7-11 depicts a man who has purchased a female servant for the purpose of marrying her. At some point, this woman becomes “displeasing in the eyes of her master” (21:8), and, as a result, one of three things must happen in order to preserve the master’s promise of marriage: the master must allow the daughter to be purchased back by her family; the master must provide his son as a wife for this daughter and the master must ensure her acceptance; or, if the master takes a wife before this slave woman, he must provide the three items listed in 21:10. If the master fails to maintain the terms of the contract (i.e., some form of marriage), then the contract dissolves and the woman may “go out” (21:11). Thus, “these three things” has a broader application than simply the three items of Exod. 21:10. The list of commentators in agreement includes Rawlinson, Davis, and Huey, Jr., in addition to the Level 1 sources.⁸⁵

⁸³In fact, it seems like v. 11 is a Mosaic addition—a means of enforcement, having seen the destruction caused by Jacob’s neglect.

⁸⁴Carmichael, “The Three Laws,” 519.

⁸⁵George Rawlinson, *The Second Book of Moses: Exodus*, Layman’s Handy Commentary Series, ed. Charles John Ellicott (Grand Rapids, MI: Zondervan, 1961), 179; John J. Davis, *Moses and the Gods of Egypt: Studies in the Book of Exodus* (Grand Rapids, MI: Baker, 1971); F.B. Huey, Jr., *Exodus: A Study Guide Commentary* (Grand Rapids, MI: Zondervan, 1977), 96.

Given the scholarly divide on this issue, this test will prove helpful in categorizing Exodus commentaries in this project. However, the function of this question goes beyond merely an organizational one; the interpretation of “these three things” can greatly sway one’s interpretation of the passage at hand. Thus, the question posed is: “To which does the “these three things” of Exod. 21:11 refer: the three items listed in 21:10, or the three cases outlined in 21:8-10?”

A Test of Pre-understanding: The Key Background Understanding of the Passage

Table 7. *Level 1 Sources' Responses to Test of Pre-understanding.*

Author	Year	ID Title	P#1
Keil	1891	<i>Commentary</i>	*
Mendelsohn	1935	“Conditional”	Slavery ⁸⁶
Cassuto	1951	<i>Commentary</i>	Slavery
North	1955	“Flesh”	* ⁸⁷
Noth	1962	<i>Exodus</i>	Slavery ⁸⁸
Paul	1969	“Exod. 21:10”	Slavery
Hyatt	1971	<i>Commentary</i>	* ⁸⁹
Childs	1974	<i>The Book</i>	* ⁹⁰
Gispen	1982	<i>Exodus</i>	Slavery
Durham	1987	<i>Exodus</i>	Slavery ⁹¹
Turnham	1987	“Male and”	Slavery ⁹²
Sarna	1991	<i>Exodus</i>	Slavery
Jacob	1992	<i>Second Book</i>	Slavery
Carmichael	2000	“The Three”	* ⁹³
Enns	2000	<i>Exodus</i>	Slavery
Fleishman	2000	“Does the”	Slavery
Houtman	2000	<i>Exodus</i>	Slavery
Janzen	2000	<i>Exodus</i>	Slavery
Levine	2001	“Biblical”	Marriage ⁹⁴
Instone-Brewer	2002	<i>Divorce and</i>	Marriage

⁸⁶Especially relevant is the Nuzi slavery of daughters. Mendelsohn, “Conditional,” 192.

⁸⁷North’s article is short one with a single task: a redefinition of the three terms in 21:10.

⁸⁸Consider Noth’s preface for the pericope: “The Old Testament law, as that of the whole ancient and oriental world, supposes the presence of an institution of slavery even within Israel. This basic view may only have arisen with the transition to a settled life in an agricultural setting.” Noth, *Exodus*, 179.

⁸⁹Though he classifies Exod. 21:1-11 as “laws on slavery,” no overwhelming indicators appear.

⁹⁰Childs classifies the pericope as “slave law,” but there is not a concentrated effort to explain a specific practice in the text. Childs, *The Book of Exodus*, 448.

⁹¹“Vv 2-11 are a kind of miscellany under the general topic ‘the treatment of one’s slaves,’ ...male (vv 2-6) and female (vv 7-11) slaves.” Durham, *Exodus*, 320.

⁹²Turnham reads the 7-11 pericope as a reflection of 21:2-6. Turnham, “Male and Female,” 548.

⁹³The key pre-understanding is the narrative of Jacob and Leah. Carmichael, “The Three,” 519.

⁹⁴Levine uses this text and the ANE understandings of marriage to demonstrate that Exod. 21:10-11 provides “unalienable rights,” providing for conjugal relations in marriage, taking a stand against polygamy, and ensuring an alternative to divorce. Marriage is his focus and guide. Levine, “Biblical,” 135.

Upon an examination of the surface level of the commentaries and then a look at specific exegetical problems tackled in each of the commentaries, the reader has sufficient information to make one significant conjecture about the source at hand: “Which is the fundamental area of understanding required for interpreting Exodus 21:10-11: marriage or slavery?” Identifying this feature proves considerably more difficult and subjective than the other tests; however, there are three key criteria that the reader can use in answering this question: classification, preoccupation, and introduction.

Classification. How does the author classify this section of Exodus 21? Are verses 7-11 grouped together into the same section as verses 1-6, deemed “slave laws”? Or does the author make a clear distinction between the two sections? Cassuto, for example, classifies the entire section of 21:1-11 as “The Laws on Slavery,” noting that the 7-11 pericope is a “subsection” of that passage.⁹⁵ Similarly, Jacob identifies the structural marker *u'khi* at the beginning of 21:2 and 21:7 as indicating the subsets of this group of slavery laws.⁹⁶ The reader can then contrast these divisions with the technique of Instone-Brewer, who does not once reference the passage Exod. 21:1-11 as a whole and even refrains from mentioning 21:7-11 as a whole. Far from reading continuity with 21:2-6, Instone-Brewer paints a disjunction between the two sections. In this way, classification of the text as one about marriage indicates the interpretative boundaries of the author.

⁹⁵Cassuto, *Commentary*, 268.

⁹⁶Jacob, *The Second Book*, 620-621.

Preoccupation. Which meta-issue (marriage or slavery) occupies the author's time? Is there a preoccupation with a given issue in the commentary? Peter Enns provides two explanations regarding the significance of Exod. 21:1-11. First, Enns explains how Moses places slave law first because of Israel's only-very-recent escape from slavery. Second, Enns provides a lengthy explanation of the need to understand this text beyond its surface level (e.g., the dangers of reading modern slavery into the text).⁹⁷ His concern for clarification on this topic demonstrates Enns' preoccupation with slavery here. Sarna's commentary, too, reveals a spatial preoccupation with slavery. His commentary on the passage spans two pages; still, Sarna takes the space to provide justification for the father's seemingly harsh action of selling his daughter into slavery.⁹⁸ Comparing Instone-Brewer's analysis reveals his natural preoccupation with marriage.⁹⁹

Introduction. What is the necessary introductory material for understanding this passage in its appropriate context? Is there a concentrated effort by the author to explain a specific event, process, or cultural practice that occurs in the text? What is the gateway issue to understanding this passage? Janzen, for example, classifies the Exod. 21:1-11 section as "Slave Law" and explains the various conditions for slavery in Israel in a paragraph about understanding so-called "discrimination" against women in the light of the Book of the Covenant.¹⁰⁰ Turnham is even clearer in his explanation of the

⁹⁷Enns, *Exodus*, 443.

⁹⁸Sarna, *Exodus*, 120.

⁹⁹Instone-Brewer's primary analysis on Exod. 21:10-11 occurs in pp. 99-110. This section is almost entirely about the grounds for divorce in that passage.

¹⁰⁰Janzen, *Exodus*, 292-293.

importance of slavery as a gateway to understanding Exodus: “Now that the laws of Exodus 21:2-11 have been clearly delineated, we can look briefly at the ethical assumptions from which they arose. One principle is that slavery, while an undesirable state, is preferable to poverty.”¹⁰¹ In this way, the reader asks, “What is the necessary introductory material for understanding this passage? Is it marriage certificates of the ANE, or is it the practice of slavery?”

Why, then, does this test of pre-understanding carry weight in the analysis of Instone-Brewer’s work? The pre-understanding that commentators assume to be present in the minds of readers serves as the author’s license for exegesis. Etan Levine’s article on the biblical rights of women in marriage demonstrates this phenomenon. Levine assumes his readers *know* that Exod. 21:10-11 is a text about marriage and divorce; this assumption determines the list of appropriate cross-references, modern points of reference, and peripheral but relevant discussions.¹⁰² In the same way, adoption of the preunderstanding that Exod. 21:10-11 is foremost a text about the rights of a married woman to divorce makes Instone-Brewer’s excursions into rabbinic understanding much more palatable. In this way, the test of pre-understanding reveals much about the author’s foundation for exegesis.

¹⁰¹Turnham, “Male and Female,” 548.

¹⁰²In the realm of peripheral discussions, consider Levine’s literary excursions into reification of monogamy and gerontocracy (rule of elderly men).

Putting it all Together: A Model for Examining Instone-Brewer's Citations

Having developed seven distinctive features of twentieth-century Exodus scholarship, the reader has constructed a detailed map of current literature. However, she or he is also equipped to chart further commentary discoveries and to compare them to the existing body of literature. In that vein, this final section will examine the legitimacy of one of Instone-Brewer's uses of citations in *Divorce and Remarriage*.

David Instone-Brewer relies heavily on the historical leg-work of Shalom Paul. Paul, as discussed above, argues that Exod. 21:10-11 forms one voice in the monotone choir of ancient Near East laws on marriage. Given the reader's assessment of Paul's placement within the Exod. 21:10-11 model, the reader knows about Paul's reliance on ANE documents in exegeting this passage. Instone-Brewer relies on Paul's discovery of the typological stipulating phrase "food, anointing oil, and clothing" in amalgam ANE documents and law codes to demonstrate the similarity of the Bible and ANE codes.¹⁰³ However, as demonstrated through the distinctive features, Paul's findings rest on an assumption that Instone-Brewer does not hold: in every one of those codes, "oil" means "oil"—not "conjugal relations."¹⁰⁴ In the same way, Instone-Brewer's findings rest on an assumption that Paul does not hold: that "emotional neglect" is a legitimate grounds for divorce in ANE law. In this way, the model serves to pinpoint an exegetical technique of the author as it relates to his sources.

¹⁰³Instone-Brewer, *Divorce and Remarriage*, 9.

¹⁰⁴Paul, "Exod 21:10," 50-52.

In this section, the author does not aim to harshly attack Instone-Brewer's source-work or provide detailed analysis of Instone-Brewer's citation of Exodus scholarship; rather, it is to use the model developed in this project to critically examine one example from Instone-Brewer's work. Thus, conclusions about the significance of these discoveries as they relate to Instone-Brewer's argument will be left to further research.

Suggestions for Further Research

Further research on *Divorce and Remarriage* will serve three purposes: to examine the *quality* of Instone-Brewer's exegesis in relation to the Exodus tradition; to consider the validity of specific citations in *Divorce and Remarriage*; and, to analyze the underlying presupposition of Instone-Brewer's work: that, if all of Judaism understood Exod. 21:10 one way, Jesus *had to* have understood the text that same way. The current project exposes three areas where the armor of Instone-Brewer's argument wears particularly thin: the intent of the law, the tension between ANE text and rabbinic law, and the underlying hermeneutical presupposition of the author.

The first area, the intent of the law, is discussed in detail above. While scholars early in the twentieth century seemed reluctant to make an argument about the intent of Moses in this law, serious exegetical scholars since 1990 have argued for the intent of marriage. Instone-Brewer seems to take for granted the idea that the woman of Exod. 21:7-11 is in a slavery-like marriage which she must be liberated from. Further research will hone in on this question: What exegetical/historical details related to Exod. 21:10-11 does Instone-Brewer overlook?

The second area for further research involves the tension between ANE text and rabbinic tradition. Though not discussed in detail here, further research will examine this tension: to what degree are ANE marriage documents and rabbinic texts about divorce and remarriage compatible? Instone-Brewer paints a picture of total cohesion amongst biblical text, rabbinic commentary, and ANE documents. In this way, he is able to describe Exod. 21:10 in terms of both the Mishnah and Nuzi documents. Instone-Brewer masterfully weaves together dozens of background sources in his *Divorce and Remarriage*; however, are these sources so naturally wed?

Finally, further research must analyze Instone-Brewer's presupposition that the reader can separate Jesus' words in Matt. 19 from Moses' original intent for Exod. 21:10-11. Whatever the result of the reader's study of the original intent of Exod. 21:10-11, should one's understanding of Matt. 19 depend on Exod. 21:10-11? The present study reveals a range of variables that one may use to gauge the "volume" of Jesus' silence regarding acceptable grounds for divorce. Ultimately, however, further research into the exegetical techniques of Jesus Himself—not those of "all other Jews"¹⁰⁵—will expose the degree of validity of Instone-Brewer's argument from silence.

Conclusion

With map in hand, the reader returns to David Van Biema's frightening assessment of Instone-Brewer's *Divorce and Remarriage* from the beginning of this project: "Still, the controversy suggests that even the country's most rule-bound Christians will search for a fresh understanding of scripture when it seems unjust to

¹⁰⁵Instone-Brewer, *Divorce and Remarriage*, 185.

them.”¹⁰⁶ How fair is this assessment given the research presented here? Does Instone-Brewer develop a truly “fresh” perspective, or does he follow in the steps of his predecessors along the road of Exodus scholarship? This project demonstrates that, while Instone-Brewer provides new insight with regards to Jesus’ perspective on divorce, Instone-Brewer does not revolutionize the landscape of Exodus scholarship. The distinctive features isolated in this project provide the map on which to locate Instone-Brewer in relation to his twentieth-century peers. Cords of continuity run from Instone-Brewer’s work back through the previous century, even connecting to the influential work of Keil and Delitzsch.

Those cords wrap around the seven features discovered, developed, and analyzed here. These seven features provide seven tests for commentaries of Exod. 21:10-11: three topic-based tests based on the appearance of specific ideas; three exegetical texts based on the understanding of the biblical test; and, one test of pre-understanding about the passage. The development of these seven features, then, provides the basis for synthesis and comparison of Exodus commentaries as they relate to Instone-Brewer’s *Divorce and Remarriage*.

In the case of Instone-Brewer’s revolutionary perspective on Exod. 21:10-11, the edification of the Body of Christ does not provide the license for raucous criticism of a fellow believer; however, it does provide the license for a serious examination of just how “Exorthodox” Instone-Brewer’s approach is within the scheme of 110 years of Exodus scholarship. As repeatedly mentioned, this project does not intend to shed light

¹⁰⁶Van Biema, “An Evangelical Rethink.”

on the “correct” interpretation of Exod. 21:10-11. It does, however, hope to provide a reference tool for those students of the Word taken aback by Instone-Brewer’s approach to the passage. In this way, with the Father’s firm guidance, perhaps scholars, counselors and pastors alike can embrace an understanding of marriage and divorce that, far from acting as a stumbling block to the world’s belief, serves as a beacon of Christ’s love and light.

APPENDIX

Author	Year	ID Title	A#1	A#2	A#3	E#1	E#2	E#3	P
Carmichael	2000	"The Three"	No	No	No	Marriage	"Intercourse"	*	*
Cassuto	1951	<i>Commentary</i>	No	Yes	Yes	Marriage	"Quarters"	Items	Slavery
Childs	1974	<i>The Book</i>	No	No	Yes	*	"Conjugal rights"	*	*
Durham	1987	<i>Exodus</i>	No	No	Yes	Freedom	"Right to intercourse"	Items	Slavery
Emns	2000	<i>Exodus</i>	No	No	No	*	"Marital rights"	Items	Slavery
Fleishman	2000	"Does the"	No	No	Yes	Freedom	*	Cases	Slavery
Gispen	1982	<i>Exodus</i>	No	No	Yes	Freedom	"Marital rights"	Items	Slavery
Houtman	2000	<i>Exodus</i>	No	Yes	Yes	Marriage	"Sexual intercourse"	Items	Slavery
Hyatt	1971	<i>Commentary</i>	No	No	Yes	*	"Conjugal rights"	Items	*
Instone-Brewer	2002	<i>Divorce and</i> <i>Second Book</i>	Yes	Yes	Yes	Freedom	"Conjugal rights"	Items	Marriage
Jacob	1992	<i>Second Book</i>	No	Yes	Yes	Marriage	"Anointing oil"	Cases	Slavery
Janzén	2000	<i>Exodus</i>	No	No	No	Marriage	"Sexual intercourse"	*	Slavery
Keil	1891	<i>Commentary</i>	No	No	No	*	"Conjugal rights"	Items	*
Levine	2001	"Biblical"	Yes	No	No	Marriage	"Conjugal rights"	Items	Marriage
Mendelsohn	1935	"Conditional"	No	No	Yes	Marriage	"Conjugal rights"	Items	Slavery
North	1955	"Flesh"	No	No	Yes	*	"Marriage right"	*	*
Noth	1962	<i>Exodus</i>	No	No	No	*	"Marital rights"	Items	Slavery
Paul	1969	"Exod. 21:10"	No	Yes	Yes	*	"Oil"	Items	Slavery
Sarna	1991	<i>Exodus</i>	No	Yes	Yes	Marriage	"Conjugal relations"	Cases	Slavery
Turnham	1987	"Male and"	No	No	No	Freedom	"Marital rights"	Cases	Slavery

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