

**PRE-BIBLICAL AND OLD TESTAMENT RAPE LAW PARALLELS:
RECURRING ANDROCENTRIC THEMES IN HISTORIC BIBLICAL TEXT**

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ABSTRACT OF THE THESIS

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Rape legislation in ancient Near Eastern texts is very slanted in respect to a pervasive androcentric ideology that drives the punitive outcomes. Unfortunately, evidence shows the lives of women in terms of their perceived societal value are affected (often negatively) in regard to their social status; regardless of region or period. Women did not wield much social power in ancient times and the laws demonstrate resolutions for prescribed transgressions that neglected to include any consideration for the viewpoint of women; who were the primary victims of the rape offense. As a result, women suffered and were historically antagonized by these laws which failed to protect them. This research will illuminate the disparities by examining the laws in various regions of the period and challenge the underlying themes.

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Analysis of Ancient Near Eastern Rape Laws

Women historically in both pre-biblical times and the Old Testament were treated as property. As such, women were used as bargaining chips in negotiations, for labor, sexual gratification, to proliferate families (childbirth/rearing), domestic caretakers, as collateral in debt resolutions etc. Many times women had no input/control in regard to how they were handled socially or domestically. In fact, a woman's social status was often determined by a man's willingness to marry her. This was especially true in the case of rape. If a woman was raped and lost her virginity in the process, she lost her social status. She could only redeem that status if her ravisher came forward and married her. Her unenviable situation could be amended only by the original rapist. And indeed, only after she retrieved her lost honor by forcing him to marry her, did she assume again her female identity and with it her recognized status in society (Malul 2009, pg. 9).

The legislation of the times predicated such outcomes of unfortunate violent acts that were inflicted upon many women in the stories of pre-biblical world, as well as, in the Old Testament. For example,

"the Middle Assyrian laws explicitly authorize inhumane treatment of a deserting wife whose ears can be cut off ; legalized violence in the case of a distrainee; a distrainee laws also legalized violence against a wife. "When she deserves it" a seignor may pull out the hair of his wife, mutilate or twist her ears. There's no liability attaching to him (Padure 2012, Pg 7)."

Also, "in Assyrian Laws: there is death to a wife if she steals from her husband (Padure 2012, Pg 7)." These examples illuminate (in general) the value assessed to the quality of life of women during these times was deplorably low. Women especially were allowed to be dominated, and mistreated; rape was rampant during this period. Sadly, the laws of rape during

the Near East period were more concerned with protecting the financial interests of the beneficiaries of the women; men.

Who were the authors (the reformers) of these laws that governed sexual transgressions? According to Walzer, "in the ancient Near East there was a succession of Kings promulgating new and different legal codes, the most recent one replacing the one before (Walzer 1992, Pg 336)." Overall, so far as the text is concerned, the only author is God himself. But behind this God, covered by his authority and speaking in his name, stands a host of human authors who made the law by writing, reading, commenting on, and applying it. These authors are Priests, Judges, Scribes, Kings, and Prophets (Walzer 1992, Pg 338). Since males predominantly occupied these positions during the period, this is likely the reason for the ideology that ultimately resulted in the androcentric legislation.

Laws of The Old Testament

In Deuteronomy it states "If a man happens to meet a virgin who is not pledged to be married and rapes her and they are discovered, he shall pay the girl's father fifty shekels of silver. He must marry the girl, for he has violated her. He can never divorce her as long as he lives (Deuteronomy 22:28-29)(Clements,1994)." The law sanctions the ravisher (making him pay a monetary penalty and forces the offender to marry the victim; prohibiting divorce) which does protect the social dignity of the women in these cases. However, it does not give her fair consideration of the trauma of the rape and it forces her to stay with the rapist and continue to be his sexual fodder. This exemplifies how women were primarily perceived as tools. Hence there was virtually no consideration for their right to choose; especially when it came to their own bodies. As we examine and compare these laws from pre-biblical and Old Testament eras, we

can see that in no case are women defended or given retribution for suffering the violation. Instead, in all cases, the males are sanctioned, the women seem but an afterthought.

Interestingly, no examples of any of the rape laws (that call for the death of the perpetrator) illustrate they were actually carried out in the Old Testament nor in any Near East stories. The laws were contrived to translate harshly; especially in regard to the perpetrator having to die for his transgression of rape. It seems reasonable to assume that someone would have paid the "ultimate price" for violating a rape law that had a death penalty; at one time or another. Why then are there no depictions of this? Or maybe a better question is why was there such a fervor to deter sexual trespass?

Rationale that formed Ancient Near East Rape Legislation

Its very apparent in the Near East cultures there are strong implications tied to a seemingly fragile foundation of property boundaries and family ownership. When land begins to be considered the property of a family (as an economic foundation for community life and survival), the issue of family continuance rises to the forefront. Issues of proper inheritance are carefully worked out in the law codes, and even enshrined in the language of religion and theology. As such, virginity was paramount to the integrity of this concept; it was a commodity. Now, in a culture in which there could be absolutely no doubt/question about the heirs' legitimacy and paternity, the community law must strongly influence public behavior in support of ensuring that. This is for the community a critical function, needed to insure the orderly life and continuity of the always-fragile social order (Miller 2001).

From a physical standpoint, of course, there is only one way to ensure that a specific child is indeed the genetic heir of the household father: the mother must be a virgin at the time of marriage, and must be completely faithful to the husband until at least after the specific baby is born. There is no other way whatsoever in the pre-DNA testing ancient world to be absolutely sure of this. And so, the community must exert all its legal force on the populace to make sure these two items (i.e., virginity of a bride and fidelity of a wife) are protected by high force.

(Miller 2001).

Punitive outcomes of Rape Legislation in The Old Testament

Practically speaking, what this means is that the legal system will over-penalize violators in these cases. The punishment will not fit the crime in such cases. And, since core survival values of a community are normally enshrined in capital punishments, looking at these can give an observer a quick-key to what is of critical importance to community continuity.

This means that we would expect that individuals who either violated an (1) engaged or (2) likely to be engaged virgin to get the death penalty (or alternately, be forced to marry the woman insuring the paternity of any subsequent children, obviously). And, we would expect that individuals who were responsible for adultery with a married woman (either the woman herself, or a rapist) would also get the death penalty.

A grave concern with regard to the rape laws that assign the death penalty for transgressions is the epistemological integrity of interpreting the ancient legislation concerning rape (Scholz, 2005). The stories in the Old Testament were scribed by interpreting pre-existing data in regard to stories of legend. And so, therein lays an inherent concern of translation through interpretation. The implication is there may be scenarios of rape that were overlooked and determined to be something else; due to androcentric ideology. This school of thought sees no

need to listen to a woman's point of view on an issue. Scholz argues, "It distrusts her word and action, and readers following this ideology do not look for ambiguity. They do not entertain a woman's innocence, and the history of interpretation gives witness to the widespread disregard for her perspective (Scholz, 2005)." For example, the legislation in Deuteronomy 22:22 illustrates a man and the wife of another man are given the death penalty after being discovered lying together. The original interpretation of this law is that it correlates to Adultery with a Married Woman; it seems the law assumes her consent. The prose within the language is concise and inconclusively frames the nature of the relationship between the parties. Instead, the information describes the punitive ramifications and neglects elaborations of the crime. Specifically, it does not specify if the sex is consensual or forced, and it speaks only on the consequences of his sexual encounter with her. Did the woman consent? It is possible to postulate that the man threatened or forced her; however the details surround the penalty. As a result, both the individuals face death as a consequence. Unfortunately (unfairly), the outcome alludes the guilt of the female. There is a presumption that she consented and receives the appropriate penalty as an adulterer. It is, however, possible to argue that the penalty does not indicate her guilt but rather androcentric jealousy, which blames the woman whether or not she consented. (Scholz 2005, pg. 36.5)

Punitive outcomes of Rape Legislation in The Near East

A comparison with ancient Near Eastern laws in cases of assumed adultery shows that sex between a man and a married woman does not always merit the death penalty. Several laws prescribe a range of penalties, leaving it to the husband to determine the severity of the punishment.

Incidentally, the emphasis here is centered after the fact or after the discovery of the incident. This seems to be a consistent quality/characteristic of the Deuteronomic law, as well as, Near Eastern laws. The difference is the Near Eastern laws offer penalties for transgressors that do not involve the death penalty. For example, Middle Assyrian Law 15 stipulates: If a seignior has caught another seignior with his wife, when they have prosecuted him (and) convicted him, they shall put both of them to death, with no liability attaching to him (Pritchard 1969, p.181). If, upon catching (him), he has brought him either into the presence of the king or into the presence of the judges, when they have prosecuted him (and) convicted him, if the woman's husband puts his wife to death, he shall also put the seignior to death, but if he cuts off his wife's nose, he shall turn the seignior into a eunuch and they shall mutilate his whole face. However, if he let his wife go free, they shall let the seignior go free (Pritchard 1969, p. 181).

There is a lot to be said for the epistemological shortcomings of the law codes, as well as, the androcentric viewpoints that influence the interpretations of laws during this period. It seems there are many laws having to do with marriage, adultery, incest, and rape that neglected to include the viewpoint of the female within its schema and thus failed to protect her. For example, the androcentric perspective, (mostly taken for granted) is at its worst in the last part of the Deuteronomic rape legislation (Deut 22: 28-29). This case describes the rape of a single young woman and stipulates that her father has to receive financial compensation; a solution that is also found in the Code of Hammurabi Middle Assyrian Laws. The biblical law orders that the rapist marry the young woman because he raped her (v.29) (Pritchard, 1969). Incidentally, Deuteronomic law is considerably harsher than ancient Near Eastern law, specifically the Code of Hammurabi which allows the raped woman to marry whomever she wants. The biblical law is

also more restrictive than Middle Assyrian Law, giving the father of the raped woman several options; only one is to marry his daughter to the rapist. (Scholz 2005, pg 36.7) The Hittite laws, also contain several texts on rape. The undisputed rape law, 197, is reminiscent of Deut. 22:29 and reads: "If a man seizes a woman in the mountain, it is the man's crime and he will be killed. But if he seizes her in (her) house, it is the woman's crime and the woman shall be killed. If the husband finds them, he may kill them, there shall be no punishment for him." (Pritchard 1969, p. 196). The law describes two situations). In the first case a rapist attacks a woman outside an inhabited area, in the mountain, a location which assumes a woman's unsuccessful opposition to the attack. In the second case the attack takes place in a house, perhaps even in her house. In the first scenario, the rapist receives the death penalty whereas in the second scenario the death penalty is given only to the woman. If, however, the husband discovers the couple, he has the right to kill both of them.

Another interesting scenario prompts the question: What laws apply to the deities when they commit acts of rape? This is an interesting query as we estimate that Gods do not operate within the bounds of "human" societal laws. Therefore, what (if any) punitive consequences will a (male) god receive if he engages a (female) goddess in forcible/non-consensual sex?

Sumerian Texts Analysis

Sumerian laws on intercourse with married women were intended to punish adultery, not rape . . . and the treatment of intercourse between unmarried persons in Sumerian law has even less to do with the crime of rape (Gadotti 2009, pg. 73). Enki has sexual relations with his daughters. Enki's first encounter, with the goddess Ninhursaga, results in pregnancy and after nine days Nin-nisig is born. This is clearly illustrated by the following elements: first, the victim clearly does not consent to the intercourse and as a consequence force (and, in "Inana and Sukaletuda,"

stealth) is used. This is aggravated in the scenarios of both "Enlil and Ninlil" and "Enki and Ninhursaga," where the victims were young and sexually inexperienced, thus making Enlil and Enki's actions even more reprehensible. Moreover, in all cases, the culprit is punished, although the punishment varies depending on the text. Enlil is exiled, Enki becomes sick, and Sukaletuda is sentenced to death (Gadotti 2009, pg.81). Interestingly, when Enlil and Enki are intent on seducing rather than raping their victims, they do so in disguise, Enlil assumes three different personas to seduce Ninlil, whereas Enki dresses up like a gardener when it is time to meet with Uttu. The encounter of "Inana and Sukaletuda" is different, however. The human element is represented by the rapist, Sukaletuda, and the consequences of his actions have a strong impact upon the fellow human beings among whom he finds asylum. However, that Sukaletuda's chosen profession is that of a gardener cannot be a coincidence. This is precisely the persona Enki chooses to assume when he sets out to seduce Uttu. Here too, the contamination among the stories is clear. And as Enlil and Enki, Sukaletuda too has to hide his true identity once the offense is committed. In his case, the dynamics are different, because he, a man, finds refuge and shelter among men, his fellows. But the deception is maintained (Godotti 2009, pg. 82).

The evidence in the Sumerian texts shows a parallel and creates a precedent (if you will) that rape is an acceptable discourse between males and females. The gods engaging in this behavior speaks volumes in regard to how humans historically treat one another; the example is set. And again we have the androcentric recurring theme of males perpetrating violence on females; even in examples from the heavens. Ultimately the activities of the gods are translating into the fabric of human society. Therefore, humans are merely mimicking their creators with regard to criminalized behavior. If this is true, then why is rape wrong?

Rape Criteria

The question of what constitutes rape has evolved throughout history. Contemporary definitions depict rape as forcible sex with an unwilling person (Scholz, 2005). However, in the Old Testament with its patriarchal slant, rape is considered to be forcible sex between a man and a female ward of non-consenting male guardians; who were generally her father and brothers (Gravette, 2004). There is evidence/acknowledgement of the societal trauma suffered by female victims as a consequence of the violation. The Old Testament narratives evaluate the crime, as well as, relate the occurrence. The depictions of rape intrinsically translate the destructive, powerless, helplessness, humiliation, worthlessness, self blame and the ruined lives in its wake. The rape stories from the Old Testament prompt questions. What is the relationship between the victim and the offender? Where is the innocence? Where does the guilt lie? Why does this happen to vulnerable people? Where is God when this is happening? Who side is God on? What did the reformers of the period make of the situation of which they are confronted in the rape narratives? Did their expository agenda get in the way? Do they lose sight of the brutal horror that is a consequence of the crime? (Parsons 2002, pg. 124-125)

Analyzing Deuteronomy 22, Ronald Clements states í

öSuppose a man marries a woman, but after going in to her, he dislikes her and makes up charges against her, slandering her by saying, "I married this woman; but when I lay with her, I did not find evidence of her virginity (Frymer-Kensky, 1998).ö The father of the young woman and her mother shall then submit the evidence of the young woman's virginity to the elders of the city at the gate. The father of the young woman shall say to the elders: "I gave my daughter in marriage to this man but he dislikes her; now he has made up charges against her, saying, I did not find evidence of your daughter's virginity. But here is the evidence of my daughter's virginity (Frymer-Kensky, 1998). Then they shall spread out the cloth before the elders of the town. The elders of that town shall

take the man and punish him; they shall fine him one hundred shekels of silver (which they shall give to the young woman's father) because he has slandered a virgin of Israel. She shall remain his wife; he shall not be permitted to divorce her as long as he lives (Deut:22 v.14-19) (Clements, 1994).ö

In this example, though the daughter is clearly the victim, the father is the party that is given reparation for the offense committed to his daughter. The offender (the daughter's husband) has blemished the reputation of the parents by asserting the corruption of the girl's virginity and further alluding that she intended to deliberately fool him in regard to the status of her virginity; pretending she is pure. This is an attack on the father's integrity as well; almost like someone who sold someone a bad product.

Further elaboration of this law statesí

ö If, however, this charge is true, that evidence of the young woman's virginity was not found, then they shall bring the young woman out to the entrance of her father's house and the men of her town shall stone her to death, because she committed a disgraceful act in Israel by prostituting herself in her father's house. So you shall purge the evil from your midst (Deut 22: v.21-22) (Clements, 1994).ö

This further elaborates the victimization of the female in this case. If she has been deflowered before marriage it most certainly came from being raped. This is a safe assumption based on the importance of virginity to the societal status of a woman. And so, the daughter will suffer a horrific death in the presence of her father due to the discrepancy over her virginity. The offense is so egregious (due to the socio-economic weight of the commodity of virginity) that she gets a penalty of death (considered a purging of evil). However, we can clearly see the recurrence of the androcentric theme once again as they neglect to ascertain what happened to her; by simply asking her. Instead they assume she prostituted herself; its an irrational outcome.

Another verse of Deuteronomy states: "If a man is caught lying with the wife of another man, both of them shall die, the man who lay with the woman as well as the woman. So you shall purge the evil from Israel (Deut 22: v. 22)(Clements, 1994). Yet another stark example of the woman's point of view being completely ignored and priority is assigned to the assumption that the sex was consensual.

In addition,

"If there is a young woman, a virgin already engaged to be married, and a man meets her in the town and lies with her, you shall bring both of them to the gate of that town and stone them to death, the young woman because she did not cry for help in the town and the man because he violated his neighbor's wife. So you shall purge the evil from your midst (Deut 22: v.23-24)(Frymer-Kensky,1998)."

This particular law is one of the worst in regard to its gross inconsideration. Not only does it give the female the death penalty once again, it assumes consent based on an arbitrary and unquantifiable factor; it asserts that the woman made no attempt to cry out for help. Instead, it assumes that if she had cried out in the town she would have been heard and the rape would have been stopped. This is a very irresponsible assessment (that /she neglects to call for help) and I wonder how/why the reformists added this particular part?

More...

"But if the man meets the engaged woman in the open country, and the man seizes her and lies with her, then only the man who lay with her shall die. You shall do nothing to the young woman; the young woman has not committed an offense punishable by death, because this case is like that of someone who attacks and murders a neighbor. Since he found her in the open country, the engaged woman may have cried for help, but there was no one to rescue her (Deut 22: v.25-27)(Clements, 1994)."

In this example, the assumption is that the female did cry for help; to no avail. Therefore, she is allowed to live this time. The language of this law reads differently than the others; the key

word being *šezedö*. Because the incident occurred out in the open country, it is assumed that the sex is not consensual. This time only the man receives the death penalty. Again, why is this outcome different than the others? Why did the reformers devise this law with this unique set of qualifiers? What is really different in this example as compared with the other examples? We still have a man and unmarried woman that had sex (Frymer-Kensky, 1998). Interestingly, in this excerpt, the scribes did not add the qualifier of virginity to the language; though its left up to the reader to assume.

Penalties for Rape

As well *š* If a man meets a virgin who is not engaged, and seizes her and lies with her, and they are caught in the act, the man who lay with her shall give fifty shekels of silver to the young woman's father, and she shall become his wife. Because he violated her he shall not be permitted to divorce her as long as he lives (Deut 22: v.28-29)(Hiebert,1994).*š* Here again, though the act is clear rape of a single woman with upstanding societal status (being a virgin and of marrying age), her only retribution is the preservation of her good social standing. Resultantly, she is forced to marry her ravisher (he marked her and no other man will have her). The law is aligned with economically satisfying the father in this instance. The law alludes that she is now damaged goods thus repaying the father for a *šlossö* and assigning this offender to be her husband; without the option of divorce. Conversely, ancient Near Eastern law, specifically the Code of Hammurabi allows the raped woman to marry whomever she wants (Westbrook, 1990). Similarly, Middle Assyrian Law (A55), affords the father of the raped woman several other options besides marrying his daughter to the rapist. *š* If a man has taken and raped another man's virgin daughter, dishonoring her (she was living in her father's house, was not engaged, and her hymen had not been penetrated since she had not been married), and no one had a claim on the

father's house, the father is to take the rapist's wife and allow her to be raped, and keep her, not returning her to her husband. It does not matter if the (original) rape was in the city, the open country, at night in the street, in a granary, or at a city festival. The father may give his raped daughter to her rapist. If the rapist has no wife, he must give the third in silver (the virgin price) to her father. Then her rapist is to marry her, and will not be allowed to divorce her. If the father does not approve of the marriage he is to be given the third in silver for her virginity, and give her to whomever he wants (MAL, A55) (Westbrook, 1985).

Women treated as Property

Deuteronomy 25 is a further abomination in regard to the rights of women historically, For example, when brothers reside together, and one of them dies and has no son, the wife of the deceased shall not be married outside the family to a stranger. Her husband's brother shall go in to her, taking her in marriage, and performing the duty of a husband's brother to her, and the firstborn whom she bears shall succeed to the name of the deceased brother, so that his name may not be blotted out of Israel (Deut 25: v. 5-6)(Pressler,1993). This is the first part of a more intricate law. It treats the wife as a piece of property. Instead of considering what she may want for herself, it assigns her to marry someone else and she must stay with that family; this is also rape.

As well, the law dictates the name of her first born child; it must be named after the deceased husband. Conversely, the Middle Assyrian Law (parallel) is less restrictive. If a woman is still living in her father's house, but her husband has died, as long as she has sons, she may live in whichever of their houses she chooses. If she does not have a son, her father-in-law is to give her to whichever of his other sons he prefers; or if he wants, he may give her as spouse to her father-in-law. If both her husband and her father-in-law are dead, and she has no sons, she

is a legal widow, and may go wherever she wants (MAL A33)(Westbrook, 1985). Although this law (conditionally) offers a better outcome (ultimately) it still puts the woman in situations of rape by assigning her to marry someone that she did not choose.

The dilemma continuesí but if the man has no desire to marry his brother's widow, then his brother's widow shall go up to the elders at the gate and say, "My husband's brother refuses to perpetuate his brother's name in Israel; he will not perform the duty of a husband's brother to me." Then the elders of his town shall summon him and speak to him (Deuteronomy 25: v. 7-8) (Pressler,1993). Its interesting that other members of the family (male/brother) have the option to refuse following this ruling. However the law will push the issue to try to force the brother to comply. I am curious though if the Middle Assyrian Law A34 would kick in if (though not married) they remained in the same household for two year (as ascribed in the Middle Assyrian Law). The law saysí ÷if a man is living together with a widow without having a marriage-contract for two years, she becomes his wife; she may not leave (MAL A34)(Pressler,1993). If this happened, I assume the brother (despite his dis-interest in the widow) would be obligated to perform husbandly duties.

The Deuteronomy Law continues on thisí If he persists, saying, "I have no desire to marry her," then his brother's wife shall go up to him in the presence of the elders, pull his sandal off his foot, spit in his face, and declare, "This is what is done to the man who does not build up his brother's house."(Westbrook, 1985) Throughout Israel his family shall be known as "the house of him whose sandal was pulled off (Deut 25: v.9-10)(Westbrook, 1985). In this case, I imagine this would publically disgrace the entire family. Also, it condemns the female to

perpetual widow-hood. Also, it leaves a stigma that she is undesirable that a man would refuse to take her.

Overall, the Deuteronomic rape codes have many barriers (as illustrated) when it comes to considerations for the viewpoint of the woman. In many of the cases the woman's perspective gets no attention and assignments to her are made without understanding her position in the particular matter. Sadly, this sometimes results in the death penalty being applied to potentially innocent persons. Its certainly plausible to assume that, if they were asked, at least some of the women would say that the sex in these cases was not consensual.

Near Eastern rape laws have proven to be very androcentric , compartmentalized, and localized in how they read for the period. Consequently, the passive reader may miss a lot of legislation that should be deemed rape laws but because of the rape culture of that period was characterized differently. (Scholz, 2005)

Laws governing the use of forced Sexual Violence against a Woman

The Codex of Ur-Nammu from Sippar contains two laws on rape. According to Fatma Yildiz, the first paragraph reads as follows: 6. "If a man the wife of a young man in service whose marriage has not yet been consummated, using violence deflowers her, that male they shall slay (Yildiz 1981, p. 96)." The particular legal situation remains grammatically unclear in this translation because it stays close to the Sumerian original. A smoother translation rearranges the syntax: "If a man uses violence against the wife of a young man, who has not been deflowered, and deflowers her, this man shall be killed (Yildiz 1981, p. 96). The ancient law

describes a situation that other law codes also mention. A man uses violence against a woman who is in the process of getting married but did not yet have sex with her fiancé. The law orders the death penalty for a rapist who attacks a woman of this status. It is important to note that the Sumerian text relies on two verbs to communicate the action of rape which are rendered into English as to use violence and to deflower. (Scholz 2005, pg. 36.9-36.10)

Accordingly, the woman does not consent or volunteer to sexual activity. She is raped. The Codex of Ur-Nammu from Sippar contains a second law about another situation of sexual violence. There a man rapes an enslaved woman. If a slave-girl who is a virgin a man deflowers with violence, he shall pay 5 shekels of silver (Yildiz 1981, pp. 96-97). In contrast to law 6 about a case with a young and engaged woman, this law does not prescribe the death penalty. When a man deflowers with violence an enslaved young woman, he has to pay only a monetary fee. It is unclear to whom the fee is paid – maybe it goes to the slave owner? Also, does this monetary fee represent the value of a slave? It is a plausible assumption that a married woman would require a larger sum (as the status of married woman vs. slave is starkly disproportionate).

Moreover, the rape of an enslaved woman (likely) does not raise paternity issues; in contrast to the first law about an engaged virgin. It is fair to point out that the (androcentric) laws do not value a woman's perspective whether she is enslaved or free. Instead, they focus on the damages accrued to a husband or a slave owner. Yet at the same time, both laws refer to a situation of rape. (Scholz 2005, pg. 36.10)

The laws of Eshnunna contain two rape cases that are similar to laws 6 and 8 of the Codex of Ur-Nammu. They read as follows:²⁶ If a man gives bride-money for another man's daughter, but another man seizes her forcibly without asking the permission of her father and her

mother and deprives her of her virginity, it is a capital offence and he shall die. If a man deprives another man's slave-girl of her virginity, he shall pay one third of a mina of silver; the slave-girl remains the property of her owner (Pritchard 1969, p. 162). In the first case a man rapes an engaged woman and in the second case he rapes an enslaved woman. In the first situation, he receives the death penalty for the capital offense and in the second situation he is asked to make a payment. It appears class privilege leads to discrimination in the extent of the penalty (Scholz, 2005).

Several laws of the code of Hammurabi relate to forced sexual intercourse, the most prolific seems to be law 130. It reads: "If a seignior found the betrothed wife of another seignior, who had no intercourse with a male and was still living in her father's house, and he has lain in her bosom and they have caught him, that seignior shall be put to death, while that woman shall go free (Pritchard 1969, p. 171). The law of 130 is similar to 6 of the Codex of Ur-Nammu from Sippar and 26 of the Laws of Eshnunna, but it also adds two pieces of information. First, the woman is still living with her parents, and second, the law emphasizes that she is not to be punished. Only the rapist receives the death penalty.

Laws governing Incestuous Rape

Further, the Code of Hammurabi holds additional rape laws, more specifically laws on incestuous rape. There are three interesting laws that should be analyzed. Law 154 states: "If a seignior has had intercourse with his daughter, they shall make that seignior leave the city (Westbrook, 1990)." Interestingly, the law does not prescribe the death penalty for this crime.

Could this be due to the act not threatening another man's paternal rights or legal authority? The rapist happens to be the head of the household; hence is only required to leave town (Scholz 2005, pg. 36.12) The next law, 155, states: "If a seignior chose a bride for his son and his son had intercourse with her, but later he himself has lain in her bosom and they have caught him, they shall bind that seignior and throw him into the water (Westbrook, 1990). The law stipulates that the father has to be drowned if he is caught in the act of raping his son's bride.

Does this mean that he would go free if he were not caught? The law does not address this possibility, and only mentions what happens if he is caught. The position of the young woman is not considered. Does she go free and marry the rapist's son? If a seignior chose a bride for his son and his son did not have intercourse with her, but he himself has lain in her bosom, he shall pay to her one-half mina of silver and he shall make good to her whatever she brought from her father's house in order that the man of her choice may marry her. This law presents a situation in which a bride did not yet have sex with the man whose father rapes her. Accordingly, the father is only required to pay a fine, and she is free to marry whomever she wishes to marry, a surprising offer since other laws order a marriage between the woman and the first man who had sex with her whether or not the sex was violent. This case, too, does not mention whether the bride consented. It is a potential rape law which grants the woman decision-making power (Scholz 2005, pg 36.12 & Westbrook, 1990).

Adultery Law Analysis

Comparing the views of the ancient legislators in regard to adultery scenarios, interpreters continue to cling to androcentric assumptions that prevailed in those days. Consequently, the legal translation emerges as undisputed and fixed; since there no surviving records of anyone challenging these viewpoints from that period.

For example, in Deuteronomy v. 22. a man and a wife of another man receive the death penalty after they are found lying together. Was their lying consensual? This is a component the literature does not address. Many interpreters assume that the law addresses consensual sex, and thus they characterize it as a rule on adultery. Yet the situation is not that simple. (Scholz, 2005 pg. 36.5) The pointed text in Deut. 22:22 insufficiently frames the information on the precise nature of the relationship between the man and the woman. (Scholz, 2005 pg. 36.5) The flaw is the focus on the punishment and not enough on the description of the crime. Specifically, the act of lying whether consensual or forced is not determined; instead the emphasis centers solely on the consequences of him lying with her. Did the woman consent? Assumptions of rape are possible here but this example persists to ignore clarification of the terms of the arrangement; resting instead on the penalty. Incidentally, both the woman and the man are sentenced to die. However, does it really make sense to penalize the woman in this case? The woman being put to death as punishment presumes her guilt. The premise, that she was a willing participant precludes her guilt and infers she received a just penalty for her transgression of adultery. However, another plausible argument here is the penalty does not indicate her guilt in so much as androcentric jealousy; which only considers the woman consented.

Conversely, ancient Near Eastern laws in cases of assumed adultery show that sex between a man and a married woman does not always merit the death penalty. (Scholz, 2005 pg. 36.5) Several laws prescribe a range of penalties, leaving it to the husband to determine the severity of the penalty. For example, a re-examination of the (earlier referenced) Middle Assyrian Law 15 which stipulates: "If a seignior has caught another seignior with his wife, when they have prosecuted him and convicted him, they shall put both of them to death, with no liability attaching to him. If, upon catching him, he has brought him either into the presence of the king

or into the presence of the judges, when they have prosecuted him and convicted him, if the woman's husband puts his wife to death, he shall also put the seignior to death, but if he cuts off his wife's nose, he shall turn the seignior into a eunuch and they shall mutilate his whole face. However, if he let his wife go free, they shall let the seignior go free (Pritchard 1969, p. 181)

Similar to the Deuteronomic law, this edict focuses only on the moment when a husband finds his wife with another man; the emphasis again is on the post-discovery phase. And too, MAL 15 does not specify the nature of the crime or the consent of the woman. Additionally, in contrast to the biblical parallel, MAL 15 authorizes the husband to determine the form of the penalty ranging from the death penalty for both; cutting off the woman's nose and the other man's testicles, or no penalty at all. (Scholz, 2005 pg. 36.5)

A similar case appears in the Code of Hammurabi 129 which also contains various penalty options that range from drowning to leniency emphasizes the post-discovery phase and does not detail whether the woman consented. (Scholz, 2005 pg. 36.5) The literature classifies this law as adultery although it does not name the actual crime. The passage reads: "If the wife of a seignior has been caught while lying with another man, they shall bind them and throw them into the water. If the husband of the woman wishes to spare his wife, then the king in turn may spare his subject (Pritchard 1969, p. 171). Again the emphasis is on the penalties, and the law offers the husband the option to spare his wife and consequently the other man. The example illuminates ancient Near Eastern laws do not exclusively prescribe the death penalty for cases that the interpreters usually view as laws on adultery. Unlike Deut. 22:22, they offer several penalty options. The biblical law is therefore more limited and orders much harsher punishment than comparable ancient Near Eastern laws.

Why are the biblical laws more punitive as compared with Middle Assyrian and Babylonian Law codes? It seems the biblical text regarded adultery as a sin against God beyond man's power to forgive. Babylonian law, on the other hand, treated this as a civil offense (Gourdis, 2001 pg.1). One thing for sure, the overall attitude of the period toward adultery is not easy to understand; from a contemporary context. The main problem is the pervading inequities in regard to the androcentric-dominant perspective underlying all legal thought in regard to these matters; during this period. As a result, the disparity between men and women relating to the longstanding historic inequity of power was perpetuated. Also, there was a need to navigate certain societal concerns that existed at this time. For example, family was a central institution as it provided for the economic sustenance and resources to forge/maintain an existence (land, home, agriculture, livestock, children, education, etc) (Gourdis, 2001 pg.2). Likely, a big family was more desirable because there were more hands to lend support toward fulfilling the obligations of maintaining that lifestyle. This potentially led to the desire for propagation to create the family unit, cultivate wealth, and status. This would result in a woman's value being determined by her fertility or ability to bear children. In this framework , the need for a child as a legacy for the future would be important to a man, as well as, assurance that the child was truly his heir.

Another point, (within the ancient texts) the traditional definition of adultery as a sexual relationship between a married woman and a man who was not her husband, seemed to stay intact but the punitive response to it seemed to have evolved; which may explain the variance between biblical, Middle Assyrian, and Babylonian laws in regard to levels of penalties. In the early history of Israel, adultery was a capital offence with no chance of mitigation (Deuteronomy 22: 22 and Leviticus 20: 10); in the Middle Assyrian and in the Babylonian Law codes a husband

had the option of saving the life of his wife (as long as he saved the life of her lover as well), but this choice did not exist in Hebrew law. Soon after it was put into writing, assigning the death penalty for adultery seems to have dissipated and the actual punishments reduced to something less extreme. (Burnside, 2006 pg.399). There are no surviving records illustrating the (actual) use of the death penalty in cases of adultery. In many cases of adultery, the marriage was dissolved with or without the consent of the husband and the woman was forbidden to marry her lover. Therefore, she may have escaped the death penalty but her position in society was precarious and it was unlikely anyone else would want to marry someone so publicly humiliated (Burnside, 2006 pg. 405).

Since adultery was of necessity a very private, secretive activity, there was a need for a way to deal with suspicion and accusation. For example, a woman accused by her husband, or any other man, was required to undergo an ordeal to establish her innocence. A priest would mix dust from the floor of the temple with a little water, pronounce a curse that would make her belly protrude, her thighs sag, and render her sterile if she had been unfaithful, and make her drink. As a result the woman would be rendered sterile. (Haberman, 2012 pg 23). Most ancient ordeals were designed to produce far more guilty verdicts than innocent ones; this case seems to be the exception for the modern mind can see no way a little dusty water could produce sterility. Some have suggested the process was such a frightening experience that a guilty woman would have confessed rather than undergo it; others have argued that since adultery was a difficult matter to prove one way or another that it was less disruptive to the social order if the matter could simply be pushed aside and forgotten; it had become a social transgression rather than a crime (Gourdis, 2001 pg.2). Ancient people believed in the supernatural power of words; a curse was real to

them. They did not have the distinction between medicine and magic that we have. They would have seen this as a real, supernatural occurrence that would cause the miscarriage.

What happened if a married woman had sex with a man other than her husband; within her own family? Do the ancient laws that govern adultery apply to these scenarios? In Genesis 38, Tamar tricked Judah into having intercourse with her. Levirate laws (which obligate the brother of a deceased man to marry his own brother's widow) would not endorse the sex act between Judah (Father-in-law) and Tamar; normally (Miller, 2000 pg. 41). But when Judah declined to give Tamar to one of his other sons, she devised a scheme to conceive through him so that she can bear a child within his line. When Judah learns that Tamar is pregnant, he becomes incensed and orders the execution of Tamar for adultery. However he later absolves Tamar when she embarrasses him by revealing that she conceived through him. (Miller, 2000 pg.42) This is an interesting case because it possesses the elements of adultery (married woman, sex with another man). However, the family ties change the translation legally because (1) the husband is deceased and (2) Levirate laws do provide for the wife to have relations within the husband's family; specifically with one of his brothers. In this case Judah's failure to follow the tradition of assigning Tamar to one of his other sons becomes the inspiration for Tamar's ruse. This case would likely be construed as a case of incest rather than adultery; as having sex with her Father-in law falls outside the parameters of the Levirate laws (Miller, 2000 pg. 50). Had Tamar's husband been alive at the time of the rendezvous, this would be a clear cut case of adultery. Would both parties face execution (Tamar and Judah) for the transgression? Most likely, Tamar would face death. Possibly Judah would be spared if he successfully made the case that Tamar beguiled him into the sexual encounter. The scenario of Tamar and Judah is particularly interesting because it illuminates a legal distinction between incest and adultery. The

parallel between these offenses seems to be naivety. Tamar was slated to be executed for adultery but discovery uncovers incest and the execution order was recanted. In a different situation, the story of Reuben and Bilhah (Genesis 35.22 and 49.4) brings up another family issue. Can adultery take place with a concubine? Reuben slept with Bilhah (his father's concubine) in his father's bed. The act of defiling his father's bed would be construed as incest. However, if there was a sexual act performed with Bilhah this would be a strong case for adultery. Incidentally, it's not clear if sex actually occurred between Reuben and Bilhah. Therefore, their punishment was not death; instead Reuben lost his birthright which was punishment befitting someone who committed incest; not adultery. There is also a strong possibility that (if sex did occur) Bilhah was forced; thus a case of rape. It's clear there is an avoidance of illustrating actual occurrences of adultery within the narratives of the biblical text. This was certainly a sexual taboo bearing negative implications wherein the blood lines were involved. Therefore, it appears omission may have been a mechanism utilized to avoid publicizing explicit examples of adultery (Miller, 2000 pg. 51).

Interestingly, the story of David and Bathsheba outlines a very clear and distinct case of adultery. Moreover, David purposefully used his authority to cause the death of Bathsheba's husband Uriah; so that he could marry her (Gourdis, 2000 pg. 2). Though the egregious scheme was uncovered and exposed, the only apparent punishment was the death of their first born child from their union. Why were David and Bathsheba not executed for the deplorable adulterous transgression?

Interestingly, Solomon was born a short time later. Was this all part of a divine plan? Or was the birth of Solomon a symbol of forgiveness for David's murderous and contemptuous

actions in this particular instance? Incidentally, David is told that, because of this, the sword will never depart from his house. This places a negative tone on his entire family history, including Solomon.

The various punishments under the ancient biblical law in regard to adultery were predominantly administered by men who had custody of the law and the leverage to decide the degree of punishment levied toward the female transgressors. In the many scenarios discussed previously, the variety of punishments encompass death by stoning, being publically stripped naked (a precursor to rape), mutilation (cutting off the nose), drowning, being forced to drink a concoction that made you physically ill (Sotah), as well as, public flogging (Galpaz-Feller, 2004 pg. 159). And, while both the wife and her adulterous lover were subject to these penances if guilty, no reverse ordeal was instituted. A wife suspecting her husband of infidelity had no recourse. The standards were not the same and men were allowed to be polygamous (Galpaz-Feller, 2004 pg.160). Not a surprise since men had the majority of the power.

Interesting analysis in regard to Deuteronomy 22:17 a man who rapes an unbetrothed virgin knows she is no longer pure/unchaste. Therefore, when he pays the bride-price to her father, he is fully aware of the sexual history of his bride (Haberman, 2012 pg. 25). He is in control and confident in his knowledge of her; neither the girl she or her father has perpetrated a deception upon him. However, the situation in the passage about the slandered bride differs in this regard. The chief complaint being purported by her accusing husband is he was expecting a virgin on the night of consummation. His bride and her father had testified/ indicated that she was yet uncorrupted; he had a right to expect that they were telling the truth ((Haberman, 2012 pg.). Upon the alleged discovery of evidence that his bride was sexually active in the past, the

husband then claims he was deliberately deceived (Galpaz-Feller 2004 pg.159) In this scenario, its the deception that draws the offense parallel to an act of adultery.

Further, the societies of the ancient Near East considered two types of sexual infidelity to be adulterous. The first may be termed "adultery post-consummation" and involved a fully married woman having sex with any man other than her husband (Miller, 2010 pg. 7). The circumstances in the Ancient text/ passage about the slandered bride are plainly not related to this type of adultery. The second type is "adultery while betrothed" and occurred during the period of inchoate marriage or betrothal (Miller, 2010 pg.10). This period began when a man paid the bride-price for a particular woman and lasted until there was physical consummation on the wedding night, when the man and woman were deemed fully married (Miller 2010 pg.6). From the ancient legal point of view, sexual intercourse between the woman and another man during this period of time constituted an adulterous relationship.(Haberman, 2012 pg.27) From the moment the groom pays the bride-price, the woman is presumed married or betrothed, and the man has exclusive sexual rights to her (Haberman, 2012 pg 26). This means he has the right to have his wife delivered to him as a virgin at the time of consummation. This is the right of the man in the passage whereby he claims the bride (slandered) was violated. As well, he may not know exactly when his bride had sex with another man. Moreover, the passages do not illuminate if he thinks or is pretending the act occurred prior to or after the payment of the bride-price. In this circumstance, the timing is not really a factor. This is likely why the passage does not distinguish between betrothed and un-betrothed virgins. The bride and her father have maintained the pretense of her virginity throughout the period of inchoate marriage and up to the time of consummation putting pre-consummation sex and deception on an equal footing with adultery while betrothed. In other words, regardless of the timing, the element of deception

makes it as if sexual intercourse has taken place between the woman and another man during the period of inchoate marriage (Haberman, 2012 pg. 27). And so, the man established his right with the payment of the bride-price, and now that right has been violated.

In this way, understanding the nature of the deception in the passage about the slandered bride precludes the need to postulate a contradiction between it and Deut 22:28-29. It also forms an important step in the process of determining the nature of the relationship between the passage about the slandered bride and the law of false accusation.

Its clear from this research there are stark imbalances/misinterpretations of ancient and biblical rape legislation; adultery as well. The foremost problem is the dominant androcentric viewpoint that permeates all of the laws; regardless of region or period. This view blinded the reformers of these eras to much of the actuality that occurred within the crimes they were legislating. The most egregious offense of the reformers, was ignoring the perspectives of the women who were the primary victims of these transgressions. Most times, their laws did not protect or bring justice to the victims. Instead the laws were quite often perilous to the females who not only endured horrendous physical/psychological mistreatment, but unfortunately became the victim of the misguided laws. Readers of these laws must separate themselves from contemporary global rape and adultery think/assumptions and open their minds (actively read); in order to really understand the problems with these legal frameworks.

Bibliography

- Briggs, Richard S. "Reading the Sotah Text (Numbers 5:11-31): Holiness and a Hermeneutic Fit for Suspicion." *Biblical Interpretation* 17 (2009): 288-319. Academia.
- Burnside, Jonathan P. "Strange Flesh: Sex, Semiotics and the Construction of Deviancy in Biblical Law." *Journal for the Study of the Old Testament* (2006): 387-420. Academia.
- Clements, Robert. *The Book of Deuteronomy : Introduction, Commentary, and Reflections*. Nashville, TN: Abingdon Press, 1994.
- Edenburg, Cynthia. "Ideology and Social Context of the Deuteronomic Women's Sex Laws." *Deuteronomy 22:13-29* (2009): 43-60.
- Frymer-Kensky, Tikvah. *Deuteronomy*. Louisville, KY: Westminster John Knox Press, 1998.
- Gadotti, Alhena. "Why it was Rape: The Conceptualization of Rape in Sumerian Literature." *Journal of American Oriental Society* 129.1 (2009): 73-82.
- Galpaz-Feller, Pnina. "Private Lives and Public Censure-Adultery in Ancient Egypt and Biblical Israel." *Near Eastern Archaeology* (2004): 153-161. Academia.
- Gourdis, Robert. "On Adultery in Biblical and Babylonian Law- A Note." *American Jewish Congress* (2001): 1-2. Academia.
- Gravette, Sandie. "Reading "rape" in the Hebrew bible: A consideration of language." *Journal for the Study of The Old Testament* (2004): 279-299.
- Haberman, Bonna Devora. *The Suspected Adulteress: A Study of Textual Embodiment*. Academic. Indianapolis: Indiana University Press, 2012. Article.
- Hiebert, Robert JV. "Deuteronomy 22:28-29 and Its Premishnaic Interpretations." *Catholic Biblical Quarterly* (1994): 56: 203-220.
- Janzen, David. "The Condemnation of David's "Taking" in 2 Samuel 12:1-14." *Journal of Biblical Literature* (2012): 209-220. Academia.
- Jeon, Jaeyoung. "Two Laws in the Sotah Passage." *Vetus Testamentum* (2007): 181-207. Academia.
- Jones, Jake J. "Pre-Biblical and Old Testament Rape Law Parallels." *Student Paper* (2012): 1-17.
- Malul. "What is the Nature of the Crime of the Delinquent Daughter in Deuteronomy 22:13-21?" *Vetus Testamentum* 59 (2009): 446-459.
- Miller, Daniel. "Another Look at the Magical Ritual for a Suspected Adulteress in Numbers 5:11-31." *Magic, Ritual, and Witchcraft* (2010): 1-16. Academia.
- Miller, James E. "Sexual Offenses in Genesis." *The Journal for the Study of The Old Testament* (2000): 41-53.

- Nicol, George G. "The Alleged Rape of Bathsheba: Some observations on Ambiguity in Biblical Narrative." *The journal for the Study of the Old Testament* (1997): 43-54.
- Padure, Ruxandra. "Comparison between the Biblical and the Near Eastern Laws." *The Scientific Journal of Humanistic Studies* (2012): 230-237.
- Parsons, Michael. "Luther and Calvin on Rape: Is the Crime lost in the Agenda?" *EQ* (2002): 123-142.
- Pressler, Carolyn. *The View of Women found in Deuteromic Family Laws*. Berlin/New York: Walter de Gruyter, 1993.
- Pritchard, James B. *Ancient Near East Texts Relating to The Old Testament*. Princeton, NJ: Princeton University Press, 1969.
- Scholz, Susanne. "Back then it was Legal: The Epistemological Imbalance in Readings of Biblical and Ancient Near Eastern Rape Legislation." *The Bible and Critical Theory, Volume 1, Number 4* (2005): 36.1-36.22.
- Stone, Ira F. "The Precarious Ties That Bind Us: Sotah 2a." *Cross Currents* (2001): 273-287. Academia.
- Wells, Bruce. "Sex, Lies, and Virginal Rape: The Slandered Bride and Flase Accusation in Deuteronomy." *Journal of Biblical Literature* (2005): 41-72.
- Westbrook, Raymond. "Adultery in Ancient Law." *Revue Biblique* (1990): 97:542-580.
- ô . "Biblical and cuneiform law codes." *Revue Biblique* (1985): 92 (2):247-264.
- Wolde, Ellen Van. "Does Inna Denote Rape? A Semantic Analysis of a Controversial Word." *Vetus Testamentum* (2002): 528-544.
- Yildiz, Fatma. "A Tablet of Codex Ur-Nammu from Sippar." *Orientalia* (1981): 50: 87-97.