

## RAPE IN ISRAEL'S WORLD ... AND OURS: A STUDY OF DEUTERONOMY 22:23–29

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**Abstract:** *Sexual violence toward women is a pervasive and global issue. It is therefore a problem to which biblical scholars, theologians, and ministers must attend. The biblical law codes addressing this topic, however, are difficult for the modern reader to access. As a result, many have concluded that Israel's laws of sexual misconduct were so embedded in traditional and patriarchal systems that they were unable to provide protection or justice for women then or now. For many, this perceived legal dilemma implicates the character of the Mosaic covenant and Yahweh himself. This article revisits the crime of rape in Israel's society, contextualizes that law in its ancient Near Eastern milieu, and compares Deuteronomy's legal response to rape with our own. The conclusion is that within its societal context, the laws of Deuteronomy did indeed protect women, often more effectively than surrounding law codes, and perhaps more effectively than modern legal systems.*

**Key words:** *consent, Deuteronomy 22, law, möhar, rape, seduction, sexual agency, women*

In the never-ending quest for a television program that the entire family can watch without someone winding up with nightmares or an advanced education in human sexuality, my family recently landed upon *Downton Abbey*. I realize that the rest of the world has “been there, done that,” but in the magical world of Netflix this “old” program became “new,” and we were charmed. A few weeks in, however, we reached season 4, episode 3. In this episode—to our horror—the lovely character we know as Anna is brutally raped by a visiting lord's valet. The scene is well-written, well-directed, and well-acted. All of which means it left my family stunned, silent, and wounded. The rape is not visually depicted. Rather the audience is privy only to the original confrontation in which Anna is overpowered by a man she has no physical capacity to combat, beaten into submission, and dragged out of view. We the audience are left behind with an empty screen while her desperate cries echo back at us through the warren of corridors and kitchens below the Abbey. Spaces that we had only known as safe space were in an instant transformed into spaces of entrapment, terror, and assault. How could no one hear her cries for help;

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how could there be no one to intervene? The shocking scene provoked a public outcry when it aired in the UK. Many people felt that a show as typically tame as *Downton* (which of course was why we were watching it) should not journey down those dark paths. The accusation was that the plot twist was nothing more than a sensational play for ratings. Series creator Julian Fellowes countered, saying, “If we’d wanted a sensational rape we could have stayed down in the kitchen with the camera during the whole thing and wrung it out. The point of our handling” was not sensationalism, “we [were] interested in exploring the mental damage and emotional damage” that rape provokes.<sup>1</sup>

Some would say that in a show like the Bible, we also should not journey down those dark paths—that this topic should be silenced or sanitized out of existence. But if current statistics about sexual assault in our modern world have anything to say, and if my well-worn *Law Collections from Mesopotamia and Asia Minor* offers any insight,<sup>2</sup> this is a topic that desperately needs to be talked about. Behavior must be circumscribed, penalties must be severe, and there must be outrage if this atrocity is ever going to end. In Anna’s case, “the mental damage and emotional damage” of rape unfolds in the remaining episodes of season 4.<sup>3</sup> The viewer watches while Anna’s sense of self collapses, as she does her best to make it better for everyone around her at the price of her own soul. We watch as Anna slowly morphs into someone we no longer recognize.

### RAPE IN A MODERN WORLD

What exactly is “rape”? Merriam-Webster defines rape as “unlawful sexual activity ... carried out forcibly or under threat of injury against a person’s will or with a person who is beneath a certain age or incapable of valid consent because of mental illness, deficiency, intoxication, unconsciousness, or deception.”<sup>4</sup> According to the legal dictionaries, lack of consent is pivotal to the definition of rape.<sup>5</sup> In the

<sup>1</sup> John Halliday, “Downton Abbey Rape Scene Defended by Series Creator Julian Fellowes,” *The Guardian*, 8 October 2013, <https://www.theguardian.com/tv-and-radio/2013/oct/08/downton-abbey-rape-scene-defended-julian-fellowes>.

<sup>2</sup> Martha Roth, *Law Collections from Mesopotamia and Asia Minor*, 2nd ed., WAW 6 (Atlanta: Scholars Press, 1997). The abbreviations for ANE laws in this article are standard: LU = the Laws of Ur-Namma and/or Shulgi (ca. 2100 BCE); LE = the Laws of Eshnunna (ca. 1770 BCE); CH = the Code of Hammurabi (ca. 1754 BCE); and MAL = the Middle Assyrian Laws (11th century).

<sup>3</sup> Julian Fellowes as quoted in Halliday, “Downton Abbey Rape Scene.”

<sup>4</sup> *Merriam-Webster Dictionary*, s.v. “rape,” <https://www.merriam-webster.com/dictionary/rape>.

<sup>5</sup> California Code, Penal Code - PEN §261 reads as follows:

Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances: (1) Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act. (2) Where it is accomplished against a person’s will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another. (3) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused. (4) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. (<https://codes.findlaw.com/ca/penal-code/pen-sect-261.html>)

US legal system, “a freely given agreement to have sexual intercourse or sexual contact” is the expectation for “consent.”<sup>6</sup> In 1975, Susan Brownmiller’s important book *Against Our Will: Men, Women, and Rape* helped set these parameters by exposing an array of “rape myths” that had shaped our societal response to this crime.<sup>7</sup> She was the first to publish firsthand accounts from victims. She went down those dark paths. Brownmiller demonstrated that any woman—like Anna—can be a victim, regardless of age, appearance, ethnicity, or status. Brownmiller clarified that rapists are not necessarily degenerates or mentally ill (as thought in previous decades), and that rapists are not necessarily strangers. She exposed the fact that coercion, intimidation, and force take many forms. And she forced the world to see that this crime was happening far more often than anyone wanted to believe. Her book called attention to past practices of victim-blaming and triggered important changes in societal perceptions. Current commentary has gone further, identifying our culture (and others) as “rape cultures”—a social environment in which “rape is pervasive and normalized due to attitudes about gender and sexuality.”<sup>8</sup> These attitudes are understood as part of a continuum of ideas that begins with sexism, moves into objectification and degradation, and culminates with assault. Committed activists and academics agree with Vogelman that “rape will continue to exist as long as women are oppressed and as long as women’s subjugation is anchored in the structure of society.”<sup>9</sup> As a result, these same activists and academics see patriarchal societal systems, by default, as rape cultures.<sup>10</sup> Although I fully concur that the dehumanization of women is a major contributor to the inculcation of this crime in any society, I am not convinced that a traditional culture should be condemned as a

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<sup>6</sup> Kathleen C. Basile, Sharon G. Smith, Matthew J. Breiding, Michele C. Black, and Reshma Mahendra, *Sexual Violence Surveillance: Uniform Definitions and Recommended Data Elements*, version 2.0 (Atlanta: National Center for Injury Prevention and Disease Control, 2014), 11, [https://www.cdc.gov/violenceprevention/pdf/sv\\_surveillance\\_definitions-2009-a.pdf](https://www.cdc.gov/violenceprevention/pdf/sv_surveillance_definitions-2009-a.pdf). Among more radical feminist publications, the concept of “consent” is seen as largely irrelevant, as most sexual acts are understood as acts of coercion: “Rape is only the most dramatic epitome of the inequality of men and women and of the degradation and oppression of women by men” (Igor Primoratz, “Sexual Morality: Is Consent Enough?,” *Ethical Theory and Moral Practice* 4.3 [2001]: 208–9).

<sup>7</sup> Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (New York: Random House, 1975).

<sup>8</sup> Matthew B. Ezzell, “Pornography, Lad Mags, Video Games, and Boys: Reviving the Canary in the Cultural Coal Mine,” in *The Sexualization of Childhood*, ed. Sharna Olfman (Westport, CT: Praeger, 2008), 9. See Dianne F. Herman, “The Rape Culture,” in *Women: A Feminist Perspective*, ed. Jo Freeman, 2nd ed. (Palo Alto, CA: Mayfield, 1979), 45–53; John Nicoletti, Sally Spencer-Thomas, and Christopher M. Bollinger, *Violence Goes to College: The Authoritative Guide to Prevention and Intervention* (Springfield, IL: Charles C. Thomas, 2001); Emilie Buchwald, Pamela R. Fletcher, and Martha Roth, eds., *Transforming a Rape Culture*, 2nd ed. (Minneapolis: Milkweed, 2005).

<sup>9</sup> L. Vogelman, “Sexual Face of Violence: Rapists on Rape,” National Criminal Justice Reference Service, 1990, <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=127046>; cf. Primoratz, “Sexual Morality: Is Consent Enough?,” 208–9.

<sup>10</sup> Following Robin Morgan’s groundbreaking publication *Going Too Far: The Personal Chronicle of a Feminist* (New York: Random House, 1978), many claim (and quote) that any form of sexual encounter that “has not been initiated by the woman, out of her own genuine affection and desire” is in reality “rape” (134). Others like Michelle Madden Dempsey and Jonathan Herring argue that the sexual act itself is *prima facie* a moral wrong, an assault of sorts on another human being (“Why Sexual Penetration Requires Justification,” *Oxford Journal of Legal Studies* 27.3 [2007]: 467–91).

“rape culture” based simply on its organizing structure. What we do know is that rape is primarily committed by males,<sup>11</sup> rape by strangers is less common than rape by people the victims know, and rape can happen to anyone. Moreover, as informed “consent” is the demarcator of ancient and modern “rape,” the crime is notoriously difficult to prosecute.

### RAPE IN ISRAEL’S WORLD

Our larger pericope is Deuteronomy 22:13–29. It is typically set apart as “laws about marital and sexual misconduct.”<sup>12</sup> Here, five cases, all “populated by characters who act in response to particular situations,” illustrate appropriate legal responses to sexual misconduct.<sup>13</sup> The core issue is the capital crime of adultery. As is standard to ancient Near Eastern (ANE) law codes, these cases are presented to us as exemplars, and they assume that the audience has knowledge of intermediate and analogous cases.<sup>14</sup> First is the case of a new husband accusing his bride of premarital promiscuity; second, the case of consensual sex with a married woman; third, consensual sex with an engaged virgin; fourth, the rape of an engaged virgin; and fifth, the seduction or possible rape of an unengaged virgin. The chapter has a clear and succinct structure: verses 13–22 deal with crimes involving a married woman; verses 23–29 involve crimes with an unmarried woman.<sup>15</sup>

The structure of the larger passage has much to do with the centrality of marriage as an organizing institution in Israel’s traditional and tribal society.<sup>16</sup> Marriage in the ancient world was “essentially ... an alliance between two families,” and its most important purpose was to provide legitimate heirs to the household.<sup>17</sup> Thus, “the expectation of virginity on the part of a bride” as well as her ongoing sexual fidelity as a wife “was universal in Israel and Mesopotamia.”<sup>18</sup> This is true in part because of the patrilineal nature of ANE society. Offspring must be legitimate heirs of the *bêt ’āb*.<sup>19</sup> Thus, any sexual contact between a married or engaged woman and

<sup>11</sup> World Health Organization, “Violence against Women,” <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>.

<sup>12</sup> Jeffrey H. Tigay, *The JPS Torah Commentary: Deuteronomy* (Philadelphia: The Jewish Publication Society, 1996), 204.

<sup>13</sup> Caryn Reeder, “Deuteronomy 21.10–14 and/as Wartime Rape,” *JOT* 41.3 (2017): 313–36.

<sup>14</sup> Raymond Westbrook, “Adultery in Ancient Near Eastern Law,” *RB* 97.4 (1990): 571.

<sup>15</sup> See Gordon McConville, *Deuteronomy* (Leicester: Apollos; Downers Grove, IL: InterVarsity, 2002), 336. Each clause shares the same structure: (1) the legal case is opened with an *’im* or *’et* clause; (2) the judgment and penalty are presented; and (3) the judgment is explained (cf. Ellen Van Wolde, “Does *’innā* Denote Rape? A Semantic Analysis of a Controversial Word,” *VT* 52.4 [2002]: 528–44). Carolyn Pressler prefers to divide the unit into three sections: (1) vv. 13–21, a bride accused; (2) vv. 22–27, adultery involving a married or engaged woman; and (3) vv. 28–29, the violation of an unbetrothed girl (*The View of Women Found in the Deuteronomistic Family Laws*, BZAW 216 [Berlin: de Gruyter, 1993], 21).

<sup>16</sup> See Carol Meyers, “The Family in Early Israel,” in *Families in Ancient Israel*, ed. Leo Perdue, Joseph Blenkinsopp, and John J. Collins (Louisville: Westminster John Knox, 1997), 1–47.

<sup>17</sup> Raymond Westbrook and Bruce Wells, *Everyday Law in Biblical Israel* (Louisville: Westminster John Knox, 2009), 55–56.

<sup>18</sup> McConville, *Deuteronomy*, 339; cf. Westbrook, “Adultery in Ancient Near Eastern Law,” 547–49.

<sup>19</sup> See Sandra L. Richter, *The Epic of Eden: A Christian Entry into the Old Testament* (Downers Grove, IL: InterVarsity Press, 2008), 25–46, for an accessible introduction to traditional cultures and the Israel-

a man other than her husband or fiancé constituted adultery. As Westbrook states: "Adultery was a complex offense, being at the same time a wrong by the wife against her husband, by the lover against the husband, and by both against the gods."<sup>20</sup> The extramarital relations of a married man, although discouraged, did not necessarily constitute adultery—unless, of course, the other woman was married. Egypt and Ugarit name adultery the "great sin" because of its profoundly negative impact on social cohesion.<sup>21</sup> Moreover, adultery was recognized as a "sin against the gods," named frequently in the Middle Babylonian *Šurpu* incantation series as the potential source of a sinner's divinely induced suffering (cf. Gen 12:10–12; 20:9; 26:6–11).<sup>22</sup> But in Israel, adultery is also named a crime against the community—a crime that defiles its perpetrators, pollutes the land, and leads to exile (Lev 18:20, 28–29; Num 5:13). Thus, in Israel adultery, like murder, was a capital crime. Stoning was the prescribed penalty—a penalty that physically communicated public outrage and required each citizen to take responsibility for "purging the evil from among you" (Deut 22:24).<sup>23</sup> Tigay believes that Israel's legal response was unique in that there was no option of the husband "or any other human authority" to forgive or redeem the penalty.<sup>24</sup> Westbrook disagrees, claiming that although the injured husband or father was indeed entitled to punish the woman for her infidelity, or seek revenge against her lover, he was also free to accept a ransom in lieu of that revenge.<sup>25</sup>

In Deuteronomy 22:13–29 we are offered several representative cases of sexual misconduct, arranged as a chiasm.<sup>26</sup> Verses 13–22 offer us crimes involving a

ite *bēt 'ab*; cf. Carol Meyers, *Rediscovering Eve: Ancient Israelite Women in Context* (New York: Oxford University Press, 2013), 200–201.

<sup>20</sup> Westbrook and Wells, *Everyday Law*, 80–81. Although what we would deem adultery on the part of a married man was not litigable unless the woman herself was married, it was still sometimes "censured as immoral" (Westbrook, "Adultery in ANE Law," 543 n. 3; cf. Raymond Westbrook, "The Enforcement of Morals in Mesopotamian Law," *JAOs* 104 [1984]: 753–56).

<sup>21</sup> See Tigay, *Deuteronomy*, 71 n. 109; cf. *ANET* 23–25; J. J. Rabinowitz, "The 'Great Sin' in Ancient Egyptian Marriage Contracts," *JNES* 18 (1959): 73; and W. L. Moran, "The Scandal of the 'Great Sin' at Ugarit," *JNES* 18 (1959): 280–81. In the Egyptian "Tale of Two Brothers," when the younger resists the older brother's wife, he speaks of this "great crime" into which she was inviting him.

<sup>22</sup> Among other examples, Westbrook cites a hymn to Ninurta which condemns the "One who has intercourse with the wife of a man: his sin/punishment is grievous," and a hymn to Shamash in which "One who casts his [eye] upon his companion's wife will [die] before his appointed time." He notes that divine punishment is particularly appropriate, as adultery tends to be a "secret" sin. (Westbrook, "Adultery in Ancient Near Eastern Law," 566).

<sup>23</sup> The phrase "purge the evil from your midst" utilizing the verb *בָּעַר* "to burn" is unique to Deuteronomy. It always communicates capital punishment. Offenders so penalized include the false prophet (13:5), the heretic (17:7), the one usurping the power of the court (17:12), the murderer seeking refuge (19:13), the false witness (19:19), the promiscuous daughter (22:21), the adulterer (22:22, 24), and one guilty of kidnapping (24:7).

<sup>24</sup> Tigay, *Deuteronomy*, 71; compare also Proverbs 6:32–35, in which a ransom is attempted but refused. See as well H. McKeating, "Sanctions against Adultery in Ancient Israelite Society," *JSOT* 11 (1979): 57–72, and A. Phillips, "Another Look at Adultery," *JSOT* 20 (1981): 3–26.

<sup>25</sup> Westbrook, "Adultery in Ancient Near Eastern Law," 576–80, and Hosea's redemption of Gomer in Hosea 3:2.

<sup>26</sup> McConville, *Deuteronomy*, 336.

married woman. The second section (vv. 23–29), offers parallel scenarios regarding an unmarried woman.

Figure 1: The Chiastic Structure of Deuteronomy 22:13–29

Crimes involving a married woman, vv. 13–22

**A** vv. 13–19, the accused bride, innocent, damages due<sup>27</sup>

**B** vv. 20–21, the accused bride, guilty, executed by her community

**C** v. 22, consensual tryst between a man and a married woman, both executed by the community

Crimes involving an unmarried woman, vv. 23–29

**C'** vv. 23–24, consensual tryst between a man and a betrothed woman, both executed by the community

**B'** vv. 25–27, the accused man, guilty, executed

**A'** vv. 28–29, the accused man, innocent, damages due

**C'** is the consensual tryst with an unmarried woman that results in execution.

<sup>23</sup>If there is a girl who is a virgin engaged to a man, and a man finds her in the city and lies with her, <sup>24</sup>then you shall bring the two of them to the gate of that city and you shall stone them with stones until they are dead; the girl, because she did not cry out in the city, and the man, because he has *'innā*<sup>28</sup> his neighbor's wife. Thus you shall burn (purge) the evil from your midst.<sup>29</sup>

כִּי יְהִיֶּה נַעֲרָה בְּתוּלָה מְאַרְשָׁה לְאִישׁ וּמִצְאָהּ אִישׁ בְּעִיר וְשָׁכַב עִמָּה: <sup>23</sup>

וְהוֹצֵאתֶם אֶת־שְׁנֵיהֶם אֶל־שַׁעַר הָעִיר הַהוּא וְסָקַלְתֶּם אֹתָם בְּאֲבָנִים וּמָתוּ אֶת־הַנַּעֲרָה עַל־דְּבַר אֲשֶׁר לֹא־צָעָקָה בְּעִיר וְאֶת־הָאִישׁ עַל־דְּבַר אֲשֶׁר־עָנָה אֶת־אִשְׁתּוֹ רָעוּהוּ וּבְעֵרַת הָרָע מִקֶּרְבְּךָ: <sup>24</sup>

As with current rape law in the US, it seems that our writer is attempting to clarify whether or not this “unlawful sexual activity” was “carried out forcibly or under threat of injury against a person’s will.”<sup>30</sup> The Qumran Temple Scroll (11QTa 66:4–5) clarifies that the intent here is not simply city versus countryside, but any “far-away place, hidden from the city”<sup>31</sup>—in other words, the question is one of consent

<sup>27</sup> One hundred shekels (v. 19) is two times the rape penalty, and potentially three times the bride price. The fact that the man can never divorce may be an example of *lex talionis*—he made the accusation to end the marriage quickly, and now the marriage is irreversible (McConville, *Deuteronomy*, 343).

<sup>28</sup> HALOT, s.v. “ענה II,” piel meaning 2b, “to violate [justice].”

<sup>29</sup> Unless otherwise indicated, all biblical translations are the author’s own.

<sup>30</sup> Merriam-Webster Dictionary, s.v. “rape,” <https://www.merriam-webster.com/dictionary/rape>.

<sup>31</sup> 11Q Temple Scroll\* (11Q19 [11QT\*]) 66:4–5; cf. Tigay, *Deuteronomy*, 207 n. 61, and Johann Maier, *The Temple Scroll: An Introduction, Translation, and Commentary*, JSOTSup 34 (Sheffield: JSOT Press, 1985), 56, 135.

and force. Tigay states that Philo, Josephus, and halakhic sources further clarify that any “evidence that there was no one who could have saved her, that she resisted, or that her life was threatened if she resisted, would establish innocence; evidence to the contrary would establish guilt.”<sup>32</sup> So why is this woman guilty? Because she apparently did not attempt to stop this crime against her fiancé, her family, and her community—she at some level consented. Why is this man guilty? Because he has, according to most translations (ESV, NAS, NIV, NLT, RSV), “violated” his neighbor’s wife.<sup>33</sup>

But should not the crime here be violating his neighbor, the *woman*? Not her husband? The verb in question here is *’inná*,<sup>34</sup> often present in descriptions of unlawful sexual conduct (e.g., the rape of Tamar in 2 Sam 13:22), and often translated as “rape.” Ellen van Wolde’s very thorough semantic study (contra Gravett<sup>35</sup>), teaches us that the correct meaning here is neither violation nor force; rather this man has “lowered the social status of his neighbor’s wife.”<sup>36</sup> Take Genesis 31:50, for example, where Laban demands that Jacob not mistreat his daughters by taking additional wives. Laban’s plea is based on the premise that taking additional wives would *’inná* Rachel and Leah.<sup>37</sup> Jacob has long since secured Laban’s permission to marry, paid the bride price, and consummated his union with both women—so forced or illicit sex cannot be the issue. But additional wives would indeed lower Rachel and Leah’s social ranking, diminish their power over the household, and cut into their children’s inheritance, thereby lowering their social status (and by association, their family’s). In sum, Deuteronomy 22:24, assumes that this was a consensual encounter, that the man found (מצא) the woman and lay (שכב) with her. He did not force her. The issue at hand is not her violation, but the violation of another family in the community. The *mōbar* has been paid; the date has been set; another man is waiting to make this woman his wife. The man and the woman have committed a crime against a neighbor and against her family and will pay with their lives.

<sup>32</sup> Tigay, *Deuteronomy*, 207; cf. Philo, *Spec.* 3:77–78; Josephus, *Ant.* 4.252; Sifrei 243; Ramban to v. 22; Maimonides, *Hilkhot Na’arah Betulah* 1:2.

<sup>33</sup> One reason for the distinction between male and female sex crimes in ancient Near Eastern law was the polygamous nature of marriage. In the ANE although a husband had exclusive rights to his wife, a wife shared her husband with other wives (Westbrook and Wells, *Everyday Law*, 56).

<sup>34</sup> HALOT, s.v. “ענה II,” piel meaning 2b, “to violate [justice].”

<sup>35</sup> Sandie Gravett, “Reading ‘Rape’ in the Hebrew Bible: A Consideration of Language,” *JSOT* 28.3 (2004): 279–99.

<sup>36</sup> “To treat someone improperly in a way that degrades or disgraces them by disregarding the proper treatment due people in each status” (van Wolde, “Does *’inná* Denote Rape?,” 536; cf. Tikva Frymer-Kensky, “Virginity in the Hebrew Bible,” in *Gender and Law in the Hebrew Bible and the Ancient Near East*, ed. Victor H. Matthews, Bernard M. Levinson, and Tikva Frymer-Kensky, *JSOTSup* 242 [Sheffield: Sheffield Academic, 1998], 87; Harold C. Washington, “‘Lest He Die in the Battle and Another Man Take Her’: Violence and the Construction of Gender in the Laws of Deuteronomy 20–22,” in Matthews, Levinson, and Frymer-Kensky, *Gender and Law in the Hebrew Bible*, 208).

<sup>37</sup> Van Wolde, “Does *’inná* Denote Rape?,” 533–34. Cf. Moshe Weinfeld, *Deuteronomy and the Deuteronomistic School* (New York: Oxford University Press, 1972), 286; Lyn M. Bechtel, “What If Dinah Is Not Raped (Genesis 34)?,” *JSOT* 62 (1994): 19–36, esp. 25–27; and Pressler, *View of Women*, 14, 38 n. 48. As Pressler points out, 22:24 reports that the man who has had consensual intercourse with a betrothed woman is still reported to have *’inná* the wife of his neighbor—obviously not a forced encounter.

The pericope now turns to a nonconsensual encounter with an unmarried, but engaged woman, vv. 25–27 (B’).

<sup>25</sup>But if in the field the man finds the engaged girl [ארשׁ<sup>38</sup>] and the man seizes her [חזק], and the man lies with her, then the man who lay with her shall die, he alone. <sup>26</sup>To the girl you shall do nothing; she has committed no capital crime [lit. there is no death sin belonging to the young woman]. For just as a man rises up against his neighbor and murders him [רצח], so is this case. <sup>27</sup>When he found her in the field, the engaged girl cried out, but there was no one to save her.

וְאִם־בְּשָׂדֵה יִמְצָא הָאִישׁ אֶת־הַנְּעִר הַמְּאֲרֻשָּׁה וְהַחֲזִיקָהּ הָאִישׁ וְשָׁכַב עִמָּה  
וּמָת הָאִישׁ אֲשֶׁר־שָׁכַב עִמָּה<sup>26</sup> וְלֹהֲנֵעַר לֹא־תַעֲשֶׂה דָבָר אִין לְנֵעַר חַטָּא מוֹת כִּי  
כַּאֲשֶׁר יְקוּם אִישׁ עַל־רֵעֵהוּ וְרָצְחוֹ וְרָצַח וְנָפֵשׁ בֶּן הַדְּבָר הַזֶּה:<sup>27</sup> כִּי בַשָּׂדֵה מְצָאָהּ צָעָקָה  
הַנְּעִר הַמְּאֲרֻשָּׁה וְאִין מוֹשִׁיעַ לָהּ:

Note the introduction of a new verb here, חזק, “to seize”;<sup>39</sup> the same collocation is used in the rape of Tamar in 2 Samuel 13:11–14 and the Levite’s concubine in Judges 19:25, 29. Within his cultural framework, the biblical author is communicating what contemporary lawmakers would name “consent.”<sup>40</sup> She did not.<sup>41</sup> And rather than naming her guilty until proven innocent, this law is declaring the young woman innocent unless proven guilty. Indeed, our ancient legal commentator goes to extreme lengths to clarify that this young woman is in no way culpable; she is the victim of a violent crime.<sup>42</sup> Moreover, this young woman is apparently *expected* to report the crime. A far cry from most rape cases in my world. The man, however, is guilty, and he will pay for his crime with his life. These two laws do not cover every

<sup>38</sup> HALOT, s.v. “ארשׁ,” pual participle, “to be, become engaged.” This is a woman for whom the *mohar* had been given (cf. Exod 22:15; Deut 20:7, 28:30; 2 Sam 3:14; Hos 2:19 [Eng.], 22).

<sup>39</sup> HALOT, s.v. “חזק” hiphil with ב. Similarly, in MAL A §55 *ṣabātum* is utilized for a forced sexual encounter “to seize, overcome a person” (CAD 16, s.v. “*ṣabātu*”).

<sup>40</sup> “This law is notable in the distinction it makes between consensual and nonconsensual sex; nowhere else in the Bible is the woman’s lack of consent a mitigating factor in her guilt” (Adele Berlin, “Sex and the Single Girl in Deuteronomy 22,” in *Mishneh Todah: Studies in Deuteronomy and Its Cultural Environment in Honor of Jeffrey H. Tigay*, ed. Nili Sacher Fox, David A. Glatt-Gilad, and Michael J. Williams [Winona Lake, IN: Eisenbrauns, 2008], 18). Joann Scurlock highlights that “in the parallel laws from other ancient Near Eastern societies,” the question of a virginal girl’s resistance appears inconsequential (“But Was She Raped? A Verdict Through Comparison,” *Journal of Gender Studies in Antiquity* 4.1 [2003]: 75).

<sup>41</sup> LU §6, LE §26, and CH §130 repeat the essential aspects of this law for the married woman. MAL §12 affirms that a married woman forced into a sexual encounter is equally innocent as long as she resists: “she shall not consent but she shall [resist] . . . they shall kill the man; there is no punishment for the woman” (Roth, *Law Collections*, 17, 63, 106, 157–58). HL §197 offers a close parallel: “If a man seizes a woman in the mountains (and rapes her), it is the man’s offense, but if he seizes her in her house, it is the woman’s offense: the woman shall die.” But unlike Deuteronomy, “If the woman’s husband discovers them in the act, he may kill them without committing a crime” (Roth, *Law Collections*, 237; cf. Westbrook, “Adultery in Ancient Near Eastern Law,” 571).

<sup>42</sup> Five clauses clarify the young woman’s innocence: (1) the man alone will die; (2) to the girl you shall do nothing; (3) she has committed no capital crime; (4) for just as a man commits murder (רצח) so is this case; (5) when the girl cried out there was no one to save her (cf. Pressler, *View of Women*, 33 n. 33).

potential scenario, but in the words of McConville they “almost certainly operate together to establish parameters within which wise counsel might prevail.”<sup>43</sup>

The final scenario (A' Deut 22:28–29) is a case of seduction requiring damages to be paid.

<sup>28</sup>If a man finds a girl who is a virgin, who is not engaged [for whom no *mōbar* has been given], and lays hold of her [חזק תפוש *not תפוש*] and lies with her and they are discovered, <sup>29</sup>then the man who lay with her shall pay the girl's father fifty shekels of silver, and she shall be his wife; her whom he *'innā*, he can never divorce.

The anticipation that the verbs *tāpas*, “to seize or ensnare”<sup>44</sup> and *'innā*, “to lower the social status of”<sup>45</sup> do not communicate force is confirmed by a parallel expression of this same law in Exodus 22:15–16.

And if a man *patā* a virgin who is not engaged,<sup>46</sup> and lies with her, he is required to pay a bride price for her to become his wife. <sup>16</sup>If her father absolutely refuses to give her to him, he shall pay silver equal to the bride price for virgins.

וְכִי־יִפְתֶּה אִישׁ בְּתוּלָה אֲשֶׁר לֹא־אָרְשָׁה וְשָׁכַב עִמָּהּ מִהָרְגָה לֹא לְאִשָּׁה:  
אִם־מָאֵן יִמְאֵן אָבִיהָ לְתַתָּהּ לֹא בְּסֹף יִשְׁקַל כְּמֹהַר הַבְּתוּלוֹת:

Although Gravett, following Crenshaw, attempts to read *patā* here as “rape,” most disagree.<sup>47</sup> HALOT defines the piel of פתה as “to persuade, to tempt, to allure.”<sup>48</sup> Exodus 22:15–16 is a case of seduction, not of rape. And although too many have also attempted to read Deuteronomy 22:28 as a case of rape (e.g., the NIV), as Pressler details, our deuteronomic writer is going to great lengths to distinguish this final law in our section from the case of rape previously discussed (vv. 25–27).<sup>49</sup> The girl in Deuteronomy 22:28 surely could have been manipulated or be under what we would consider a proper age, but not assaulted. Therefore, this law is designed not to punish the man for a violent capital crime, but to protect the young woman from the economic and legal insecurities that this irresponsible man has introduced. She becomes a wife in perpetuity—an apt consequence for our “walk-away Joe.” The seducer must offer a handsome *mōbar* for a girl who may no longer

<sup>43</sup> McConville, *Deuteronomy*, 343.

<sup>44</sup> HALOT, s.v. “תפוש,” “to lay hold of, seize.” תפוש may be utilized with things (musicians “lay hold” of their instruments, Gen 4:21) or people (Saul attempts to “lay hold” of David to arrest him, 1 Sam 23:26) or even abstractly as wicked schemes might “lay hold” of their designer (Ps 10:2).

<sup>45</sup> See the discussion above. “The widespread opinion that the verb *'innā* in the *Piel* refers to ‘rape’ or ‘sexual abuse’ is not acceptable” (van Wolde, “Does *'innā* Denote Rape?,” 543).

<sup>46</sup> Tigay holds that *lā' 'orasā* communicates a girl who has never been engaged and therefore a father who has never received a *mōbar* (*Deuteronomy*, 208; cf. Pressler, *View of Women*, 33–34).

<sup>47</sup> Gravett, “Reading ‘Rape,’” 294; cf. James L. Crenshaw, *A Whirlpool of Torment* (Philadelphia: Fortress, 1984), 39. Contra Pressler, *View of Women*, 37, and Berlin, “Sex and the Single Girl,” 13. It is noteworthy that Samson is פתה by Delilah and becomes ענה after his hair is shaved (Judg 16:5, 19).

<sup>48</sup> HALOT, s.v. “פתה,” piel.

<sup>49</sup> Pressler stresses that “the drafters want to distinguish the man’s action in v. 28 from both forcible rape of a resisting girl in v. 25 and from the seduction of a consenting girl in v. 23” (Pressler, *View of Women*, 38 n. 49).

have been able to attract one.<sup>50</sup> Indeed, as de Vaux noted decades ago, this *mōbar* is equivalent to the price Pharaoh Amenophis III paid for the women of Gezer selected for his harem.<sup>51</sup> And whereas Leviticus 27:5–6 specifies that a woman dedicated to the sanctuary may be redeemed for ten shekels (from age five to twenty) or thirty shekels (from age twenty-one to sixty), our philanderer is committed to fifty shekels for his untimely union—the redemption price for a man in his prime.<sup>52</sup> More importantly, unlike surrounding codes, Deuteronomy has no expectation that a young woman should marry her rapist.<sup>53</sup>

This would be a good juncture in which to discuss the *mōbar*. Known in Akkadian as the *terhatum*, in Hittite as the *kuššata*, and in Aramaic as the *mubra*, the paying of a “bride price” is clearly the standard practice for a respectable couple in the ANE, and it is still standard practice in many tribal cultures today.<sup>54</sup> Here the groom’s family offers a negotiated sum to the bride’s family to establish the marriage contract.<sup>55</sup> As biblical and ANE texts teach us, neither the groom nor the bride is party to the negotiations (cf. Rebecca, Gen 24:34–49, 51; Dinah, Gen 34:12; Delilah, Judg 14:1–5).<sup>56</sup> Once the price is paid, the young woman becomes *mē ʾorāsā* (the pual participle of אָרַשׂ) “engaged,”<sup>57</sup> and from this point onward is called “wife” (Cf. Gen 29:21; 2 Sam 3:14; Deut 20:7).<sup>58</sup> Although the exact etiology of the *mōbar* is unknown, it is not (as some might argue) a purchase price.<sup>59</sup> According to

<sup>50</sup> See Gen 34:12; 1 Sam 18:25; Berlin, “Sex and the Single Girl,” 12–16; and Pressler, *View of Women*, 35–41.

<sup>51</sup> Roland de Vaux, *Israel: Its Life and Institutions* (Grand Rapids: Eerdmans, 1997), 26.

<sup>52</sup> See Meyers, “Procreation, Production, and Protection: Male-Female Balance in Early Israel,” in *Community, Identity, and Ideology: Social Science Approaches to the Hebrew Bible*, ed. Charles E. Carter and Carol L. Meyers (Winona Lake, IN: Eisenbrauns, 1996), 505–7.

<sup>53</sup> Requiring a raped woman to marry her assailant to preserve family “honor” is well represented in surrounding law codes (e.g., MAL A §55), and it continues in traditional cultures today (Pernilla Ouis, “Honourable Traditions? Honour, Violence, Early Marriage and Sexual Abuse of Teenage Girls in Lebanon, the Occupied Palestinian Territories and Yemen,” *International Journal of Children’s Rights* 17.3 [2009]: 467).

<sup>54</sup> Westbrook, “Adultery in Ancient Near Eastern Law,” 570. See Gordon P. Hugenberger, *Marriage as a Covenant: A Study of Biblical Law and Ethics Governing Marriage, Developed from the Perspective of Malachi*, VTSup 52 (New York: Brill, 1994), 240–47.

<sup>55</sup> E. Lipinski, “גִּהָר,” *TDOT* 8:142–49. “The stipulation in Ex. 22:15f (16f.) presupposes that there was a customary price which could vary from village to village and from clan to clan” (145). The oldest record of this custom is in Ugarit, the poem of the marriage of the moon god (*KTU* 1.24, 19–21). Attestations are present in the Hittite laws, the Alalakh marriage contracts, at Mari, in the Amarna letters, the Code of Hammurabi, and the Elephantine Papyri.

<sup>56</sup> Westbrook and Wells, *Everyday Law*, 58, point out at least two instances in which the groom negotiates for himself: Jacob with Laban due to Isaac’s absence (Gen 29:15–20) and David’s promise to secure 100 Philistine foreskins for Saul (1 Sam 18:22–26). We may also note the intrusion of the prince of Shechem into the marriage negotiations between Jacob and Hamor (Gen 34:12).

<sup>57</sup> *HALOT*, s.v. “אָרַשׂ.”

<sup>58</sup> There were four legal stages in the formation of a marriage: (1) the agreement between the parents of bride and groom; (2) the gifting of the *mōbar*; (3) “the formal claim by the groom of his bride”; and (4) the completion and consummation of the marriage. All four of these stages may be found throughout the ANE (Westbrook and Wells, *Everyday Law*, 56).

<sup>59</sup> Hugenberger states that although “marriage by purchase” was the majority view of an earlier generation, this interpretation has been repeatedly called into question, and “all but abandoned among

Westbrook (contra Lipinski) neither was the *mōhar* a payment of compensation for household labor lost to the bride's family.<sup>60</sup> Rather, the principal of the *mōhar*, like the Mesopotamian *terḥatum*, seems to have remained the woman's possession;<sup>61</sup> and once the *mōhar* was given, it could not be taken back by any of the parties involved without penalty (cf. CH §159, 160, 161).<sup>62</sup> The *mōhar* granted the groom the right to take the girl out of her father's household into his own, and it gave the groom exclusive sexual rights to her. Therefore, once a girl was engaged, sexual relations with any other man is identified as "adultery."

Thus, in the case of the young woman seduced (A' Deut 22:28–29), the law serves to protect her from the economic and social fallout of the encounter. Her seducer is required to offer the security of the *mōhar* and an irrevocable marriage contract.<sup>63</sup> The man who hoped for an "uncomplicated" affair, is now saddled with all the standard responsibilities of marriage. He who 'innā a virgin in Israel can never divorce. In all of this, the girl's father retains the right of refusal, and according to the *halakha*, the girl shares that right.<sup>64</sup> In sum, this deuteronomic law recognizes that the woman's social status has been violated, but not necessarily her body.<sup>65</sup>

How do these laws compare with others from the ANE?<sup>66</sup> There are similar expectations regarding virginity, the *mōhar*, engagement and the sanctity of marriage

recent Assyriologists" (Hugenberger, *Marriage*, 244; cf. Raymond Westbrook, "Old Babylonian Marriage Law" [Ph.D. diss., Yale University, 1982], 137–49). *HALOT*, s.v. "מָהָר," states the *mōhar* was not a purchase price for the bride but "an indemnity for her family."

<sup>60</sup> Westbrook, "Old Babylonian Marriage Law," 137–49. See Westbrook and Wells, *Everyday Law*, 60. E. Lipinski differs: "The *mōhar* was understood as compensation granted the family for the loss of the girl as an economic asset, as a worker, or as a means to advantageous connections" (Lipinski, "מָהָר," *TDOT* 8:142–43; cf. Carol Meyers's treatment of Prov 31:10–31 in *Rediscovering Eve*, 15).

<sup>61</sup> It seems the girl's father could utilize the interest. In later times, it is clear that the *mōhar* was kept by the bride's father to be used for her benefit (Tigay, *Deuteronomy*, 188; Lipinski, "מָהָר," *TDOT* 8:145–46; Hugenberger, *Marriage*, 254).

<sup>62</sup> CH §159: "If a man who had dispatched a marriage-gift to the house (i.e., estate) of his father-in-law and given the *terḥatum*, has become attracted to another woman and said to his father-in-law, 'I will not marry your daughter,' the father of the daughter shall keep for himself (take full legal possession of) whatever had been brought to him." CH §160: "If a man has dispatched a marriage-gift to the house (i.e., estate) of his father-in-law, and given the *terḥatum*, and the father of the daughter declares, 'I will not give my daughter to you,' he shall return two times everything that was brought to him." CH §161: "If a man had dispatched a marriage-gift to the house (i.e., estate) of his father-in-law, and given the *terḥatum*, and then his friend slanders him, (so that) his father-in-law declares to the husband, 'You will not marry my daughter,' he must return two times everything that was brought to him; moreover, his friend will not marry his (intended) wife" (cf. Roth, *Law Collections*, 111).

<sup>63</sup> As Allen Guenther states, "Marriage was as much a distribution of wealth as it was an instrument of personal and political alliances. All the parties stood to benefit from astutely and strategically arranged marriages" (Allen Guenther, "A Typology of Israelite Marriage: Kinship, Socio-Economic, and Religious Factors," *JOT* 29 [2005]: 388). Hugenberger entertains the possibility that the sum was named in part to protect an impassioned suitor (and therefore seducer) from extortion (*Marriage*, 254).

<sup>64</sup> Tigay, *Deuteronomy*, 208.

<sup>65</sup> Joann Scurlock's detailed discussion of a similar scenario in Mesopotamian law suggests that this statute may have served as a legal "loophole" allowing "true love" to conquer arranged marriage—a couple in love might overcome a father-in-law's resistance to the union by forcing the issue ("But Was She Raped?," 61–103).

<sup>66</sup> See Westbrook for the "scientific tradition" common to these ANE codes of law, in which long lists of interrelated cases are compiled to illustrate the array of legal variables involved in a particular

throughout Israel's world. The societal understanding that a woman's fertility was a resource of her *bēt 'ab* to be stewarded and deployed for the benefit of the family, and that sexual access to a woman was the fiduciary responsibility of first her *pater familias*, and then her husband—these are universal as well.<sup>67</sup> Indeed, as Westbrook explicates in his masterful piece, “Adultery in Ancient Near Eastern Law,” these principles “were common to all the legal systems of the ancient Near East for which we have evidence.”<sup>68</sup> But whereas the penalties for violation of these norms in Israel focus upon “purging the evil” from the community, as MAL A §55 colorfully illustrates, the penalties in surrounding societies are much more focused on avenging the diminished honor of the household. Hence:

If a man seizes [*išbatma*<sup>69</sup>] and rapes [*umanzi'si*<sup>70</sup>] a young girl [*batulita*<sup>71</sup>] who is living in her father's house, [...] who is not engaged, who is [...] who is not married and against whose father's house there is no outstanding claim—within the city or in the countryside, or at night whether in the main thoroughfare, or in a granary, or during the city festival—the father of the young girl shall take the wife of the perpetrator [*na'ikāna*<sup>72</sup>] ... and hand her over to be raped [*man-zu'el*]; he shall not return her to her husband, but he shall take her;<sup>73</sup> the father shall give his daughter who is the victim of illicit sex [*nikta*] into the protection of the household of her perpetrator. If he (the perpetrator) has no wife, the perpetrator shall give a third of silver as the value of the girl to her father; her perpetrator shall marry her; he shall not send her away. If the father does not desire

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infraction. According to Westbrook, only a “fraction of their discussion” was preserved in written form, but when properly compiled and compared they yield the “underlying law” that connects the whole (“Adultery in Ancient Near Eastern Law,” 547–49, 556).

<sup>67</sup> Meyers, “Family in Early Israel,” 27–35.

<sup>68</sup> Westbrook, “Adultery in ANE Law,” 577.

<sup>69</sup> *CAD* 16, s.v. “*šabātu*,” 1a, “to seize, overcome (a person).” This may be the Akkadian equivalent to Hebrew *חזק* utilized in the rape law of Deut 22:25.

<sup>70</sup> The D-stem of Akkadian *mazu'u* is the standard expression of “to rape” (*CAD* 10.1, s.v. “*mazū*”; *AHW* 637). Literally meaning “to press” or “to squeeze out liquid,” used in the G and N stems of ingredients being prepared for use in medicine (*AHW* 637, “*auspressen*”). Hebrew has no specific word for “rape,” and the difference between “seduce” and “rape” in the biblical codes is not always clear. In contrast, Mesopotamian law is quite clear. As translated by Scurlock, CH §130 speaks of a man “pinning down” his victim; MAL A §12, a man who “seizes her [*šabātum*] says to her: ‘I want to have intercourse with you,’ (and) she does not agree (and) defends herself continually (and) he takes her forcibly (and) has intercourse with her...”; MAL A §23, a man “entering her by force” (Scurlock, “But Was She Raped?” 69).

<sup>71</sup> Although cognate to Hebrew *בתולה*, “virgin,” Akkadian *batultu* is typically translated “adolescent” or “nubile girl” and “denotes primarily an age group; only in specific contexts ... does it assume the connotation ‘virgin’” (*CAD* 2, s.v. “*batultu*,” see p. 174; cf. *HALOT* s.v. “*בתולה*”). As in the discussion of Hebrew *בתולה* versus *נערה* (“young unmarried girl”), it is broadly recognized that a young girl of adolescent age in the social milieu of the ANE would also be a virgin, hence the interchangeability of many of these terms (*HALOT* s.v. “*נערה*”).

<sup>72</sup> *CAD* 11.1, s.v. “*nāku* (*niāku*[m]),” 1a, “to have illicit sexual intercourse; to fornicate.”

<sup>73</sup> This sort of “slave-concubinage” for a guilty man's wife may be Job's expectation in Job 31:10 (cf. Westbrook, “Adultery in Ancient Near Eastern Law,” 569).

it so, he shall receive a third of silver for the young girl, and he shall give his daughter in marriage to whomever he chooses.<sup>74</sup>

Here we find that in Mesopotamia, in contrast to Israel, a girl raped was expected to marry her rapist, “slave-concubinage” for the rapist’s wife was a standard penalty for a man’s sexual misconduct, and “revenge-rape” directed at the wife of the perpetrator was a sanctioned penalty.<sup>75</sup> I am grieved to say that “revenge-rape,”<sup>76</sup> “honor killings,”<sup>77</sup> and compelling a young woman to marry her rapist in order to expiate the shame she(!) has brought upon the household,<sup>78</sup> are still prescribed in many traditional societies. The objective of these penalties is to rehabilitate the injured honor of the household in the eyes of their community. In comparison, Deuteronomy shows no interest in the victimization of an innocent party to rehabilitate anyone’s honor. Nor does deuteronomic law require a woman to marry her rapist. Deuteronomic law executes the rapist. Thus, in its world Deuteronomy does seem to communicate a more humane and dignified treatment of women than surrounding societies.

Of great interest to me is the focus of deuteronomic law on restoring and maintaining the integrity of the covenant community. “Thus you shall purge/burn the evil from among you.” This phrase is repeated verbatim seven times in Deuter-

<sup>74</sup> Author’s translation (cf. Roth, *Law Collections*, 174–75; Scurlock, “But Was She Raped?,” 90 n. 118).

<sup>75</sup> See Joann Scurlock’s encyclopedic collection of rape and seduction laws in Mesopotamian law in “But Was She Raped?,” 61–103. Note as well MAL §20 in which a man guilty of sodomy is first raped, and then castrated for his crime.

<sup>76</sup> In Pakistan revenge rape is often utilized to end a feud or “even a score” (Parveen Azam Ali and Maria Irma Bustamante Gavino, “Violence against Women in Pakistan: A Framework for Analysis,” *The Journal of the Pakistan Medical Association* 58.4 (2008): 198–203 [https://jpma.org.pk/article-details/1372]). See also Asma Afsaruddin, *Hermeneutics and Honor: Negotiating Female “Public” Space in Islamic/ate Societies* (Cambridge, MA: Harvard University Press, 1999); and Diah Hadid, “Tribal Council Orders ‘Revenge Rape’ In Pakistan,” NPR https://www.npr.org/sections/goatsandsoda/2017/07/27/539765693/tribal-council-orders-revenge-rape-in-pakistan.

<sup>77</sup> Avi Shveka and Avraham Faust’s recent article “Premarital Sex in Biblical Law: A Cross-Cultural Perspective,” *VT* 70.2 (2020): 1–24, marshals an array of ethnographic data from the Mediterranean basin illustrating the ongoing preponderance of “honor killings” in our contemporary world. Quoting Pernilla Ouis, the authors state: “If a girl becomes a victim of sexual abuse and perhaps gets pregnant, she can be ... killed in the name of honour” (Shveka and Faust, “Premarital Sex,” 14; cf. Ouis, “Honourable Traditions?,” 445–74). Ouis further specifies, “honour-related violence against girls is nearly always committed by family members” (“Honourable Traditions?,” 449). In contrast, Berlin notes that, in Israel, punitive action within family law was “carried out by the residents of the town. Deuteronomy does not permit ‘honor killings’ by members of the woman’s family” (“Sex and the Single Girl,” 10). The 2000 UN report clarifies that “as many as 5,000 women and girls are killed annually in so-called ‘honor killings’” (Nafis Sadik, *The State of World Population 2000: Lives Together, Worlds Apart: Men and Women in a Time of Change* (United Nations Population Fund, 2000), 5, https://www.unfpa.org/sites/default/files/pub-pdf/swp2000\_eng.pdf).

<sup>78</sup> As Ouis demonstrates, in many traditional societies, even as late as the twentieth century, it was common to cancel the punishment of the rapist if he married his victim (Shveka and Faust, “Premarital Sex,” 18; cf. Ouis, “Honourable Traditions?,” 456–57). “What is important is the family’s honor, and if marriage can hide the shame, the family will opt for marriage. If not, the girl will be killed” (Shveka and Faust, “Premarital Sex,” 19). Unfortunately, due to their lack of attention to semantic and linguistic detail, Shveka and Faust render Deuteronomy 22:28–29 as a case of rape instead of one of seduction.

onomy (13:6; 17:7; 19:19; 21:21; 22:21, 24; 24:7), ten times if we allow the variation of “from Israel” for “from among you” and “blood” for “evil” (17:12; 19:13; 22:22). Here the crimes of adultery and rape are seen as contagions, which, if left unchecked will infect the entire community and therefore must be eradicated.<sup>79</sup> This concept is not found in the Middle Assyrian or Hittite Laws, the Laws of Eshnunna, or the Code of Hammurabi. As a result, some would name Deuteronomy a “utopian program,” a rewrite of Israel’s past according to a late, sentimental, and overly idealized deuteronomic school.<sup>80</sup> But what if that is not the case? What if these codes—although ideals as law is in any society<sup>81</sup>—were actually deployed in Israel’s national experience? If so, then we must engage with a populace who believed that sexual misconduct (rape, adultery, and incest) were crimes against God, so serious that they defile the land and lead to exile.<sup>82</sup> Crimes that, if allowed to continue, would unravel the very fabric of society. I must say that looking at my current world and the impact of these crimes on my society, I would be inclined to agree.

Still, many find the deuteronomic sex and marriage laws patriarchal, and therefore unjust. In her important book, *The View of Women Found in Deuteronomic Family Law*,<sup>83</sup> Carolyn Pressler concludes, as do many like her, that because biblical law curtails the woman’s agency in deference to the cultural norm of male-dominated family structures, these laws are by definition unjust.<sup>84</sup> Because the husband has exclusive rights over his wife’s sexuality, and “the wife has no such reciprocal claim,”<sup>85</sup> biblical marriage law is therefore another vehicle of a society that “uses” women for the “procreation of legitimate children.”<sup>86</sup> As Esther Fuchs writes, this corpus “promotes a male-supremacist social and cognitive system.”<sup>87</sup>

The implication is that because Israelite women lacked sexual agency, the Bible dehumanizes women.<sup>88</sup> Furthermore, as our modern definitions of rape depend

<sup>79</sup> As Tamar says to her brother Amnon as he presses her for sex, “No, my brother, do not humiliate me [*innā*], for such a thing is not done in Israel; do not do this disgraceful thing!” (2 Sam 13:12).

<sup>80</sup> See among others, Cynthia Edenburg, “Ideology and Social Context of the Deuteronomic Women’s Sex Laws,” *JBL* 128.1 (2009): 59. Edenburg concludes that “the uncompromising nature of the laws of Deuteronomy 22:13–29 mark them as part of a utopian program in which the demand for absolute fidelity replaces consideration of exigent circumstances and contingencies” (59).

<sup>81</sup> On this topic, see Berlin, “Sex and the Single Girl,” 5–6.

<sup>82</sup> E.g., Lev 18:1–28 and 20:10–22, “so that the land to which I am bringing you to dwell will not spew [שִׁטָּף] you out!” (20:22); and Deut 5:33 and 32:47, “that you may live long in the land!”

<sup>83</sup> Pressler, *The View of Women*; cf. C. Pressler, “Sexual Violence and Deuteronomic Law,” in *A Feminist Companion to Exodus to Deuteronomy*, ed. Athalya Brenner (Sheffield: Sheffield Academic, 1994), 102–12.

<sup>84</sup> The bibliography on women’s well-being, empowerment, and autonomy is enormous. For an introduction to the topic focused on the living communities of India (largely a traditional society) see Nripendra Kishre Mishra and Tulika Tripathi, “Conceptualising Women’s Agency, Autonomy and Empowerment,” *Economic and Political Weekly* 46.11 (2011): 58–65.

<sup>85</sup> Pressler, *View of Women*, 42–43.

<sup>86</sup> Reeder, “Deuteronomy 21.10–14 and/as Wartime Rape,” 322.

<sup>87</sup> Esther Fuchs, *Sexual Politics in the Biblical Narrative: Reading the Hebrew Bible as a Woman*, JSOTSup 310 (Sheffield: Sheffield Academic, 2000), 12, 34.

<sup>88</sup> See Tikva Frymer-Kensky’s discussion of Genesis 34 in *Reading the Women of the Bible* (New York: Schocken Books, 2002), 179–83; and Pressler’s discussion of “rape” in deuteronomic law versus “con-

on informed and cognizant consent, how do we evaluate sexual misconduct in a world that offers a woman limited power to consent?

The first thing we must do is recognize that a great distance lies between this ancient configuration of society and our contemporary, democratic ideal of individual agency. Robert Kawashima offers a particularly insightful discussion in his article "Could a Woman say 'No' in Biblical Israel?"<sup>89</sup> He points out what should be obvious—in biblical Israel it was not the individual that constituted a legal entity but rather the *household*. Thus, an individual's legal status did not derive from an abstract universal notion of personhood but rather from an individual's particular position within the *bet 'ab*. As a result, the Bible betrays little if any awareness of individual human rights. Rather, the mutual obligations, duties, and claims that characterize the kinship circle are the focus. In our world, the individual is variously endowed with power and privilege to act in the individual's self-interest. This is the definition of "human rights" as articulated in the Universal Declaration of Human Rights, adopted by the United Nations in 1948.<sup>90</sup> Thus, our definition of "rape" assumes that a woman has the right to determine for herself who her sexual partners will be. "Rape" is when that right is taken from her by force or intimidation.

By contrast, in Israel's world, a woman's fertility (like a young man's strength, Deut 21:18–23) was the curated resource of the *bēt 'ab*. And in Israel's kinship-based, traditional society, it was the patriarch who stood responsible and bereft if that resource was despoiled in some fashion.<sup>91</sup> This is why Susan Brooks Thistlethwait states that "rape" is in most, if not all, of the Hebrew Bible "the theft of sexual property."<sup>92</sup> We find this foreign at best, offensive at worst. But to interpret ancient laws correctly, one must reconstruct the legal concepts and principles operating in the society in question. And in Israel, no one in the *bēt 'ab* was fully autonomous.<sup>93</sup> Even the *pater familias* must function within the corporate legal identity of the extended family. As Kawashima clarifies, due to the principle of patrilineal succession, "the household itself constituted but a moment in the larger life of the

temporary American legislation," in *View of Women*, 37 n. 46; and Pressler, "Sexual Violence and Deuteronomical Law," 102–12.

<sup>89</sup> Robert S. Kawashima, "Could a Woman Say 'No' in Biblical Israel? The Genealogy of Legal Status in Biblical Law and Literature," *AJS Review* 35.1 (2011): 1–22.

<sup>90</sup> <https://www.un.org/en/universal-declaration-human-rights/>.

<sup>91</sup> Islam continues to have a similar conversation in which current views of individual human rights crash into Qur'anic religion (particularly Qur'an 4:34). See Ziba Mir-Hosseini, "Muslim Legal Tradition and the Challenge of Gender Equality," in *Men in Charge? Rethinking Authority in Muslim Legal Tradition*, ed. Ziba Mir-Hosseini, Mulki Al-Sharmani, and Jana Rumminger (London: Oneworld, 2015), 13–43.

<sup>92</sup> Susan Brooks Thistlethwaite, "You May Enjoy the Spoil of Your Enemies': Rape as a Biblical Metaphor for War," *Semeia* 61 (1993): 62.

<sup>93</sup> Autonomy may be defined thus: "A person (in this case a woman) is autonomous when his/her behavior is experienced as willingly enacted and when the individual endorses the action in which he/she is engaged" (Mishra and Tripathi, "Conceptualising Women's Agency, Autonomy and Empowerment," 60). Cf. Srilatha Batliwala, "The Meaning of Women's Empowerment: New Concepts from Action," in *Population Policies Reconsidered: Health, Empowerment, and Rights*, ed. G. Sen, A. Germain, and L. C. Chen (Cambridge: Harvard University Press, 1994).

'lineage.'"<sup>94</sup> The family estate was a "continuous possession" that "linked generation to generation," and no individual patriarch had the right to dispose of some portion of it for his own benefit.<sup>95</sup> Rather, the holdings of the *bēt 'ab* were corporately owned, belonging to both past and future.<sup>96</sup>

The point here is that no member of the *bēt 'ab* was truly autonomous. Levels of relative autonomy were defined by gender, age, and birth order. And the fact that women were subject to the will of the household was not unique to their gender. As regards a woman's sexual agency, Kawashima suggests an analogue that helps translate this traditional worldview into our own, that being current legal categories of "minor" versus "major" status.<sup>97</sup> In most Western legal systems, a minor remains under the protection and control of her guardian until the age of majority, and one aspect of minor status is that a child cannot legally choose or be chosen as a sexual partner.<sup>98</sup> As a result, a minor's "sexual consent" would never hold up in a court of law. Neither would an Israelite woman's.

So, shall we condemn the laws of Israel as unjust or abusive because they emerge from a tribal and patriarchal, as opposed to a bureaucratic and democratic, culture? In Kawashima's words, shall we criticize the past for not being more "modern," and attempt to "remake it in our own image"?<sup>99</sup> Or shall we, as McConville urges, seek first to understand what a biblical law essentially communicates, second, question our own assumptions, and then question the text?<sup>100</sup>

Proceeding from the latter, what does the rape law in Deuteronomy essentially communicate? In Israel, sexual boundaries were understood as the guardrails that kept society from careening off the highway of life into the abyss of delinquency, trauma, and economic ruin. A crime against another family's daughter or a neighbor's marriage was a crime against the community. Although there is much more that can and must be said regarding Deuteronomy 22:13–29 and its catalogue of case law involving sexual misconduct, as involves rape, here is a legal system that values the well-being of its female citizens, has empowered them with a voice in the

<sup>94</sup> Kawashima, "Could a Woman Say 'No?'," 7. Among the many reference works on this topic, see Meyers, "Family in Early Israel," 19, and Philip J. King and Lawrence E. Stager, *Life in Biblical Israel*, Library of Ancient Israel (Louisville: Westminster John Knox, 2002), 36–57.

<sup>95</sup> Kawashima, "Could a Woman Say 'No?'," 7.

<sup>96</sup> The inalienable land law of Leviticus 25:23–28 is illustrative. An individual patriarch does not have the right (or the agency) to sell off the patrimony of the clan. The patrimony forever belongs to the larger kinship circle and even the most legally authoritative member of the household, the *pater familias*, is not autonomous.

<sup>97</sup> Kawashima, "Could a Woman Say 'No?'," 18.

<sup>98</sup> "The age of majority is the legally defined age at which a person is considered an adult, with all the attendant rights and responsibilities of adulthood. The age of majority is defined by state laws, which vary by state, but is 18 in most states. Rights acquired upon reaching the age of majority include the rights to vote and consent to marriage, among others" (<https://definitions.uslegal.com/a/age-of-majority/>). "Statutory rape" refers to sexual relations with someone below the "age of consent." "People who are underage cannot legally consent to having sex, so any form of sexual activity with them violates the law. This is true even in situations where they signal their agreement" (<https://criminal.findlaw.com/criminal-charges/statutory-rape.html>).

<sup>99</sup> Kawashima, "Could a Woman Say 'No?'," 23.

<sup>100</sup> McConville, *Deuteronomy*, 344.

courts (be these private or public tribunals), investigates “consent,” and bases its decisions upon civic authority and rational proof.<sup>101</sup>

## CONCLUSIONS

Is Deuteronomy therefore, as Harold Washington states, a law code that does nothing to prevent or punish violence against women, but “function[s] as a discourse of male power”?<sup>102</sup> Or put another way, should patriarchal societal systems, such as Israel’s, be identified by default as “rape cultures”? There is no question that Israel was a traditional, tribal, and patriarchal culture that viewed women as dependent members of the household. As a result, women did not possess what a modern reader would identify as “sexual agency.” But Israel was also a traditional society that sought to protect its own.<sup>103</sup> In Deuteronomy, victims of sexual misconduct were constitutionally protected from the economic consequences of assault and seduction. “Walk-away Joes” were required to “man up” as regards the woman they had compromised and the potential children they had created. Rape victims were assumed innocent. Women so abused were *expected* to report. Convicted rapists were executed.

If we were to compare Israel’s legal and cultural posture toward rape with contemporary traditional societies, we might consider modern-day India. As the 2005 documentary “India’s Daughter” painfully chronicles, it was not until the Delhi gang rape of 23-year-old Jyoti Singh in December 2012 that this nation finally mobilized to protest the epidemic of unprosecuted sexual assaults in their country.<sup>104</sup> Jyoti and her male friend were ambushed on a moving passenger bus on their way home from a movie. He was beaten unconscious, and she was so violently assaulted that when her five assailants finally threw her from the bus, only five percent of her intestines remained inside her body. The bus driver—who had other passengers drive so that he could participate in the rape—was unimpressed by her injuries. He stated that the graduate student deserved her fate because “a decent girl won’t roam around at nine o’clock at night,” that girls are always “far more respon-

<sup>101</sup> See Mishra and Tripathi, “Conceptualising Women’s Agency,” for definitions of these categories of well-being, empowerment, and agency. Examples of nonrational proof in the ANE include the judicial oath and infamous “River Ordeal” of Mesopotamia found in *LU* §13–14; *CH* §2, 132; *MAL A* §17, 22, 24–25 among others (Roth, *Law Collections*, 18, 81, 106, 159, 160, 161–63).

<sup>102</sup> Harold Washington, “Lest He Die in Battle and Another Man Take Her: Violence and the Construction of Gender in the Laws of Deuteronomy 20–22,” in *Gender and Law in the Hebrew Bible and the Ancient Near East*, ed. Victor Matthews et al., JSOTSup 262 (Sheffield: Sheffield Academic, 1998), 185–213, esp. 213; cf. Berlin, “Sex and the Single Girl,” 1–2.

<sup>103</sup> Carol Meyers reminds us that in Israel, “the asymmetrical location of legal authority of men over women in Israelite society with respect to certain formal transitions, such as those involved in marriage, inheritance, and the like, does not automatically indicate either the existence of an equally asymmetrical preponderance of power or influence of male over female or of a lopsided positive evaluation of male over female” (Meyers, “Procreation, Production, and Protection,” 504).

<sup>104</sup> It took five years and hundreds of protests, but on March 20, 2020, the four men convicted (there were six involved) were finally executed at the Tihar jail (*India Today*, <https://www.indiatoday.in/india/story/nirbhaya-convicts-didn-t-resist-when-taken-for-execution-vinaybroke-down-tihar-official-1657957-2020-03-20>).

sible for rape than a boy,” and that the men on the bus had the “right” to teach the girl a lesson.<sup>105</sup> Or we might consider South Africa, another primarily traditional society in which one out of every four young men admits to having committed a rape, and one out of every five a gang rape.<sup>106</sup> Or perhaps Pernilla Ouis’s study of Lebanon, the Occupied Palestinian Territories, and Yemen, where sexual assault is both common ... and invisible.<sup>107</sup> Or perhaps we should turn our gaze to our own egalitarian and democratic society, where, according to the American Rape and Incest National Network, a woman is sexually assaulted every seventy-three seconds.<sup>108</sup> America, where less than 40% of all rapes are reported to police, less than 10% on the typical college campus.<sup>109</sup> Our progressive and bureaucratic culture grants adult women sexual agency, but only five in one thousand rapists will ever go to jail. And violent, torturous, inconceivable crimes against women are daily fare on our news media.<sup>110</sup> I therefore must conclude that societal structure does not necessarily predict attitudes toward violent sexual crime. I also must conclude, based on what I read in the constitution and bylaws of ancient Israel, that my daughters likely would have been safer wandering the hill country of Iron Age Israel than attempting to cross the quad at UCLA.<sup>111</sup>

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<sup>105</sup> “Delhi Rapist Says Victim Shouldn’t Have Fought Back,” *BBC News*, 3 March 2015. When interviewed, one of the perpetrators reported his rape of a 5-year-old girl. Rather than remorse, he was pleased to communicate the details. When questioned on his attitude, he responded, “She was a beggar girl, her life had no value” (Leslee Udwin, 3 March 2015 interview, <https://www.bbc.com/news/magazine-31698154>).

<sup>106</sup> These statistics come from Rachel Jewkes, Yandisa Sikweyiya, Robert Morrell, and Kristin Dunkle who have been researching rape in South Africa for a number of years. The reasons offered for the frequency of rape in this society? “Fun,” to relieve boredom, or, the majority, to punish a woman they thought had wronged them (“Gender Inequitable Masculinity and Sexual Entitlement in Rape Perpetration South Africa: Findings of a Cross-Sectional Study,” *PLoS ONE* 6.12 [2011], <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3247272/>; cf. Jewkes, Sikweyiya, Morrell, and Dunkle, “Why, When and How Men Rape: Understanding Rape Perpetration in South Africa,” *South African Crime Quarterly* 34 [December 2010], <https://journals.assaf.org.za/index.php/sacq/article/view/874>).

<sup>107</sup> Ouis, “Honourable Traditions?,” 445–74.

<sup>108</sup> RAINN, <https://www.rainn.org/statistics/victims-sexual-violence>; cf. Lani Anne Remick, “Read Her Lips: An Argument for a Verbal Consent Standard in Rape Law,” *University of Pennsylvania Law Review* 141 (1993): 1103–51.

<sup>109</sup> RAINN, <https://www.rainn.org/statistics/victims-sexual-violence>.

<sup>110</sup> E.g., Laura Smith, “It Took the Kidnapping, Rape, and Death of a White Woman to Bring Down the KKK,” *Timeline*, January 2018, <https://timeline.com/it-took-the-kidnapping-rape-and-death-of-a-white-woman-to-bring-down-the-kkk-330b1d3581bd>; “Mother of Rape Suspect May Be Involved,” *East Bay Times*, 14 March 2006, <https://www.eastbaytimes.com/2006/03/14/mother-of-rape-suspect-may-be-involved-2/>; Adrienne LaFrance, “What Makes the Stanford Rape Case So Unusual,” *The Atlantic*, June 9, 2016. <https://www.theatlantic.com/politics/archive/2016/06/what-makes-the-stanford-rape-case-so-unusual/486374/>.

<sup>111</sup> Keshav Tadimeti, “Throwback Thursday: UCLA’s Handling of 1987 Rape Case Brought Campus Security Issues to Forefront,” <https://dailybruin.com/2018/04/05/throwback-thursday-ucla-handling-of-1987-rape-case-brings-campus-security-issues-to-forefront/>.