

○ 'BACK THEN IT WAS LEGAL'

THE EPISTEMOLOGICAL IMBALANCE IN READINGS OF BIBLICAL AND ANCIENT NEAR EASTERN RAPE LEGISLATION

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The article examines the epistemological imbalance that currently exists in the area of biblical and ancient Near Eastern rape laws. The imbalance reflects a larger development in western intellectual discourse in which we are moving from an empiricist-positivist epistemology to a postmodern epistemology. The former is characteristic of the modern western worldview and assumes objectivity, value neutrality, and universality. It is primarily interested in the historical quest. The latter recognises the contextualised, particularised, and localised nature of all exegetical work, and emphasises the readers' responsibilities in the meaning-making process. Three sections structure the investigation. The first section examines how empiricist-positivist readings present Deut. 21:10-14 as a law on marriage and not on rape. The second section analyses Deut. 22:22-29, and shows how this biblical passage emerges as adultery laws within the modern paradigm of interpretation. The third section focuses on ancient Near Eastern legislation to demonstrate that the laws address the rapes of women, children and certain kinds of animals when a reader, living in the contemporary global rape culture, searches for rape in the ancient legislative materials. A conclusion acknowledges the current impasse between modern and postmodern epistemologies in reading biblical and ancient Near Eastern legislation and suggests that currently this imbalance cannot be evened out.

Even though the influential thinker of postmodernity, Jacques Derrida, passed away on October 8, 2004, the postmodern era is here to stay.¹ 'Master narratives' do not convince anymore, and so they have to be asserted over and over again since their authority and power are gone, as is the consensus about history, identity, and core cultural values (Lyotard 1984). We are living under a new configuration of politics, culture, and economics, which is sometimes called 'late capitalism' (Jameson 1991). In this new configuration transnational economies, based on the global reach of capitalism, dominate human life and organisation almost everywhere.

Ours is the early stage of a new period that subsumes, assumes, and extends the modern. This is the time after the modern age in which hybridity and the postcolonial flourish. We mix styles of different cultures and time periods, whether in the arts, literature, architecture, language, or food. We know there are many ways of doing things, an insight which fundamentalist movements resist worldwide, trying to suppress or ignore the drive toward multiplicity, diversity, and alternative ways of seeing and living life. Although most of humanity is excluded from the benefits of our era's advances due to incredible levels of global poverty, Planet Earth has become a 'global village' in which the nation-state is redefined, human networks of communication are mediated by technology, and ecological changes affect humans everywhere. We live in huge and complex networks of relations, interdependent from each other and this planet's ecology. Accordingly, most earthlings know that they could go somewhere else if they had the money or the opportunity, and more people are refugees now than ever before.² They leave home due to economic, political, or cultural devastation and sometimes they succeed in making a better living elsewhere. Little remains stable. Ours then is a time of remarkable tensions between the raw forces of social, political, economic, and religious conservatism on the one hand and openness and the need, even sheer necessity, for change on the other hand.

In biblical studies the tensions between conservatism and change play out primarily on the level of textual interpretations grounded in empiricist-positivist³ or postmodern epistemological assumptions. The former is characteristic of the modern western worldview and assumes objectivity, value neutrality, and universality; it is primarily interested in the historical quest.⁴ The latter recognises the contextualised, particularised, and localised nature of all exegetical work, and emphasises the readers' responsibilities in the meaning-making process. The trouble is that biblical interpreters are not always conscious of their epistemological assumptions, which makes them claim as fact what is only an assertion of 'truth' according to modern conventions.⁵ This article examines the particularities of this epistemological dynamic in the area of biblical and ancient Near Eastern rape laws. There, an imbalance prevails because many exegetes continue interpreting the ancient legal texts primarily within the modern paradigm. They define the task of reading ancient legislation as historical, and so they search for authorial meaning.⁶ Contextualised readings based on a postmodern epistemology are rarely found.

Different epistemological assumptions lead to different views on ancient rape laws, a situation that has serious implications for people living in a global rape culture.⁷ The empiricist-scientific epistemology erases rape from the analysis because it considers rape a contemporary category that does not fit the ancient legislation. It accepts androcentric meaning as historically accurate and rejects connections between interpretations and readers. The ancient laws become rules on marriage, adultery, or seduction. Yet when readers take seriously that we live, work, and interpret in a global rape culture, different meanings for the same laws emerge. They turn into rules on various rape situations when rape is understood as forced sexual intercourse without the consent of one of the partners – mostly of girls and women. Such a move makes scholars often nervous because they fear that suddenly 'anything goes'. This, however, is not the case. What is required is that readers acknowledge their interpretative interests and look critically at the social, political, economic, or religious implications of their readings. In the context of a global rape culture, it is crucial to uplift ancient rape legislation and to identify past and present strategies that continue obfuscating the prevalence of rape even today.

Accordingly, this article is not an exercise in authorial meaning and in fact rejects such meaning as unattainable. It subscribes to the conviction that readers create textual meaning even when they claim to reiterate only positions of the original writers (Mailloux 1998). Interpreters who look for rape legislation in the ancient codes find it there, and readers who do not bring this interpretative interest to the texts raise other issues, depending on their assumptions. It is futile to argue over the appropriateness or insufficiency of each other's interpretations when the underlying issue is a difference in epistemology. If one subscribes to the principles of an empiricist-positivist epistemology, one will identify readings grounded in postmodern epistemology as biased, circular, or subjective. There is no middle ground for a compromise because it would come across as contrived, awkward, and false.

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legislative materials. A conclusion acknowledges the current impasse between modern and postmodern epistemologies of reading and suggests that currently this imbalance cannot be evened out.

1. A CASE FOR MARRIAGE? THE LAW OF THE ENEMY WOMAN (DEUT. 21:10-14)

When scholars of an empiricist-positivist epistemology interpret the case of the enemy woman (Deut. 21:10-14), they present this law as a ruling about marriage during or after war. Accordingly, the law is often characterised as a rule about ‘Marriage with a Woman Captured in War’ (Christensen 2002, p. 471; Tigay 1996, p. 194). When the passage is discussed as part of the larger literary unit in Deut. 21, exegetes sometimes classify it more generally as a text on ‘Issues of Life and Death: Murder, Capital Offenses, and Inheritance’ (Clements 1994, p. 443) that regulates the ‘treatment of a woman taken as a captive in war and subsequently married by her captor, or purchaser’ (Clements 1994, p. 445).⁸ Empiricist-positivist epistemology advances androcentric ideology.

Since commentators do not usually elaborate on their hermeneutical perspectives, except perhaps to say that they rely on historical and literary methodologies, interpretations take on the aura of objectivity and inevitability. They claim to present ‘the’ meaning of the law as it was understood in its original context, a position that usually softens the soldierly claim for the ‘enemy woman’ and emphasises the need for marriage as the law’s noble intention. That the marriage is coerced does not become a problem. For instance, one interpreter, Duane L. Christensen, appreciates the law as advice on abstinence in pre-marital consensual relationships. He explains that the law stresses ‘the importance of a husband and wife sharing common spiritual values as the proper basis of a lasting union’. He also suggests: ‘We would do well to follow the example here in deliberately delaying commitment in marriage for a period of time to assure that the decision to marry is not based primarily on physical lust’ (Christensen 2002, p. 475). By asserting the law of Deut. 21:10-14 as morally and spiritually commendable, Christensen not only ignores its particularities – a soldier ‘desiring’ an enemy woman, but also that the woman has no choice but to convert to the soldier’s habits and religion. His interpretation mutates this rape law into a benign and even desirable ruling on marriage.

Ronald E. Clements, another exegete, also minimises the coercion in the biblical law when he writes: ‘Even when the marriage was to a woman who had been taken as a captive and turned into a slave, that marriage could never be reduced simply to a master/slave relationship’ (Clements 1994, p. 448). To Clements, marriage rather than coercion is the important lesson although he does not give a reason for the claim. Writing from an empiricist-positivist epistemology, the commentator assumes the omniscient stance of an objective, universal, and value-neutral observer who does not disclose his interpretative interests. Hermeneutical assumptions remain hidden, and a particular perspective appears as objective information. In the case of Deut. 21:10-14, it is the perspective of the male soldier.

To some interpreters who assume a modern epistemology, this law regulates a specific kind of marriage, in which a male soldier wants to marry an enemy woman when the war is over. This position is perhaps most extensively and comprehensively developed in Carolyn Pressler’s study on women in Deuteronomic law (Pressler 1993, p. 10-15). Pressler asserts that Deut. 21:10-14 does not regulate a rape situation during war – a position she claims dominated earlier

scholarly treatments (p. 11). Instead, she explains that the law regulates the marriage between a male soldier and a foreign captive woman after the war. To Pressler, therefore, the law provides the legal means for marriage when ‘normal procedures for contracting marriage are impossible’ (Pressler 1993, p. 11; Anderson 2004, p. 47). It also depicts a ritual necessary for the ‘former captive’ (Pressler 1993, p. 12) so that the soldier is legally qualified to marry her. Pressler stresses that the law refers only to this particular constellation and does not prohibit a ‘man from engaging in sexual relations with the woman without marrying her’ (p. 43).

As typical for readers grounded in an empiricist-scientific epistemology, this commentator does not disclose her interpretative interests. She proceeds as if reading from ‘nowhere’, wanting to read the text as a ‘window to historical reality’ (Schüssler Fiorenza 1999, p. 43) but only illuminating the perspective of the male soldier and the original legislators. Her reading therefore is grounded in the modern fallacy of objective literalism, scientific value-neutrality, and apolitical detachment. Interestingly, Pressler also hints at the possibility that the law is a rape law. Firmly rooted in the reconstruction of authorial meaning, Pressler suggests that the law’s drafters might have viewed the marriage as an imposition on the woman. It violated the woman ‘in some way’, Pressler writes, and the original authors used the verb *‘innah* in v. 14 to indicate the violation (Pressler 1993, p. 22). In other words, the original writers might have acknowledged that the woman does not consent to the marital act. They might have regarded the law as a regulation on rape.

Another interpreter writes from a more tentatively argued empiricist-positivist framework and clearly defines Deut. 21:10-14 as a rape law. In a study on violence in biblical narrative, Harold C. Washington maintains that readings are always located ‘somewhere’ even if they presume to read from ‘nowhere’. Accordingly, he attempts to connect contemporary lawsuits with biblical constructions of rape law when he writes: ‘My aim...is to contribute to the genealogy of this peculiar legal subject who appears in the courts even today – the man who by ‘virtue’ of his violence confirms his control of a feminine subject... My interest is not in the juristic application of these laws in ancient Israel... Instead I am concerned with the discursive capacity of these laws to construct gender’ (Washington 1998, p. 186). This is not a historical reconstruction of the legal practice on rape cases in ancient Israel, but a more broadly conceived study on the historical discourse of gender as it emerges from the ancient laws. Washington writes from a ‘poststructuralist view of gender as a discursive product’ (p. 92) and examines the ancient laws as ‘foundational texts of Western culture... [that] authenticate the role of violence in the cultural construction of gender up to the present day’ (p. 187).

The interpretation covers several legal texts in the Hebrew Bible, but it also investigates Deut. 21:10-14. According to Washington, this law has the following purpose: ‘The primary effect of the law is to assure a man’s prerogative to abduct a woman through violence, keep her indefinitely if he wishes, or discard her if she is deemed unsatisfactory...’ (Washington 1998, p. 207). Unlike other interpreters, Washington recognises the violence to which the woman is exposed in the situation described by the law. He names clearly that she is the object of the soldier’s action, and he emphasises the effect of the law on the woman’s ability to be in control. Washington is even clearer about the effect of this law when he writes: ‘The fact that the man must wait for a month before penetrating the woman... does not make the sexual relationship something other than rape... Only in the most masculinist of readings does the month-long waiting period give a satisfactory veneer of peaceful domesticity to a sequence of defeat, bereavement, and rape’ (p. 205).

To Washington, the law is unambiguously about rape. Other readings are ‘masculinist’, and Washington charges them with favoring the soldier’s perspective.

Yet despite this clear language and the interpretative focus on gender as a ‘discursive product’, Washington locates the legal meaning of Deut. 21:10-14 primarily within the ancient text. The law is the agent, and so Washington writes: ‘By authorizing the violent seizure of women, this law takes the male-against female predation of warfare out of the battlefield and brings it to the home’. The law creates the meaning as if it advanced male violence in the home, ignored the women’s perspective, authorised androcentric bias, and were not the basis for a reader’s opposition to androcentric policy. In other words, Washington succumbs to an empiricist-scientific epistemology in which the reader is not in charge when Washington addresses the particularities of Deut. 21:10-14. Nevertheless, Washington’s reading is a rare example for exposing androcentric bias in other readings, recognising the need for writing from a woman’s perspective, and illustrating the potential for multiple meaning in biblical law. In contrast to other interpretations, Washington does not promote Deut. 21:10-14 as a marriage law and uses the contemporary term of rape. He claims postmodern assumptions even though he falls back to empiricist-scientific convictions. His reading thus struggles with the epistemological imbalance prevalent in interpretations of the ancient rape legislation.

2. THE DEATH PENALTY FOR ADULTERY? THE LEGISLATION IN DEUTERONOMY 22:22-29

The epistemological imbalance also appears in studies on another set of legislation found in Deut. 22:22-29. The debate about the meaning of these laws is contested, but most scholarly interpreters search for authorial intent and distance themselves from characterising these laws as rape legislation. Reconstructing the views of the ancient legislators, interpreters rely on androcentric assumptions that, according to them, prevailed in those days. The legal meaning that they reconstruct emerges as undisputed and fixed. Deut. 22:22-29 contains four rulings that modern-scientific interpreters often characterise as cases on adultery. The verses are part of a larger section on – what interpreters call – ‘family and sex laws’ (Rofé 1987, pp. 131-159), ‘Marital and Sexual Misconduct’ (Tigay 1996, p. 204; Christensen 2002, p. 510), ‘Miscellaneous Laws, relating chiefly to Civil and Domestic Life’ (Driver 1965, p. 244), or ‘a subset of the general law of adultery preceding them in Deut. 22:22’ (Washington 1998, p. 208). In the history of interpretation the four rulings are rarely, if ever, regarded as rape legislation.

The first case appears in v. 22. There a man and a wife of another man receive the death penalty after they are found ‘lying’ together. The question is if their ‘lying’ was consensual, an ambiguity that the literature does not emphasise. Many interpreters assume that the law addresses consensual sex, and thus they characterise it as a rule on adultery. For instance, Jeffrey H. Tigay entitles his interpretation on the law as ‘Adultery with a Married Woman’ (Tigay 1996, p. 206). He relates the law to a ritual procedure, described in Num. 5:11-31, when a husband suspects his wife’s adultery. Tigay also relates the Deuteronomic law to Lev. 20:10 which orders capital punishment for adulterous behavior. Similarly, another interpreter, Tikva Frymer Kensky, follows Tigay’s lead and characterises Deut. 22:22 as a law against adultery (Frymer-Kensky 1998, p. 63; Engelmann 1999, p. 73; Anderson 2004, pp. 43-44).

Yet the situation is not that simple. The prose in Deut. 22:22 is terse and does not provide conclusive information on the precise nature of the relationship between the man and the woman. The law focuses on the punishment and not on the description of the crime; it does not specify if the 'lying' is consensual or forced, and it elaborates only on the consequences of him lying with her. Did the woman consent? It is possible to conjecture that the man threatened or forced her, but the focus is on the penalty. Both the woman and the man are to be killed. Why do both receive the penalty? Most interpreters believe that the punishment indicates the guilt of the woman. To them, 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.

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 penalty. For instance, Middle Assyrian Law 15 stipulates:

15. If a seignior has caught a(nother) 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).⁹

Like the Deuteronomic law, this law focuses only on the moment when a husband finds his wife with another man. The emphasis is on the post-discovery phase. Similarly, MAL 15 does not specify the nature of the crime or the consent of the woman. Yet unlike the biblical parallel, MAL 15 authorises 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.

A similar case appears in §129 of the Code of Hammurabi which also contains various penalty options that range from drowning to leniency. It, too, emphasises the post-discovery phase and does not detail whether the woman consented. The scholarly literature classifies this law as one on adultery although it does not name the actual crime.

129. 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. In other words, ancient Near Eastern laws do not exclusively prescribe the death penalty for cases that scholars 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.¹⁰ Yet none of the biblical

or ancient Near Eastern laws identifies itself as a law on adultery, leaving the question of consent to the readers. Possibly, then, Deut. 22:22 is a rape case in which androcentric jealousy condemns a woman as guilty regardless of her consent.¹¹

The second case in Deut. 22:23-24 supports the notion that v. 22 is a rape case although the scholarly literature considers these verses sometimes as a mere case on seduction. In vv. 23-24, the law orders the death penalty for both an engaged young woman and a man who has sex with her in town. The law explains that he 'met' her in town, and it finds both guilty because nobody heard her cry for help.¹² Many interpreters explain that this law assumes her consent and so they, too, classify it as a law on adultery. Tigay, for instance, entitles his interpretation of this and the next unit as 'Adultery with an Engaged Virgin (vv. 23-27)' (Tigay 1996, p. 207). Rofé elaborates on vv. 23-24 in a section on ancient legislation on adultery (Rofé 1987, p. 147), and Duane L. Christensen talks about 'the law of the seduction of a betrothed woman' (Christensen 2002, p. 51). Only some commentators characterise this case as rape legislation (Engelmann 1999, p. 74) because, to them, the law does not exclude that the woman called for help. After all, it merely states that nobody heard her, and it thus describes a potential situation of rape in which a man forces a woman to have sex with him. As in the previous case of v. 22, the law prescribes the death penalty to both the woman and the man. Yet the penalty does not clearly mention the woman's consent. It is androcentric ideology that sees no need in listening to a woman's viewpoint. 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.

The third case in vv. 25-27 depicts a clear-cut situation of rape, even for androcentric sensibilities. Here a woman is raped 'in the open country'. According to the law, her innocence is undisputed because nobody was able to hear her cry for help. Androcentric ideology, which relies on outside witnesses rather than a woman's word, does not need to hear anything else. The rapist is declared guilty, and interpreters comply as usual. It has to be stressed that this and the previous law in vv. 23-24 use important vocabulary to describe the sexual violation. The verb 'to rape' (pi'el; *innah*) appears in v. 24, and in v. 25 the man 'seizes' or 'catches' the woman. These verbs convey her unwillingness and his active effort of getting her.¹³ The verbs also appear in ancient Near Eastern rape legislation where they emphasise the force of the attack (Lafont 1999, p. 138).¹⁴ Accordingly, these laws are about rape, although androcentric bias is clearly present and many readers accept it. They follow what they think is the law. Empiricist-scientific assumptions make interpreters ignore that it depends on the readers whether the law emerges as rape legislation in androcentric disguise, or whether it refers to consensual but socially unacceptable acts of sexual intimacy.

The androcentric perspective, mostly taken for granted in the scholarly literature, is at its most horrendous in the last part of the Deuteronomic rape legislation (vv. 28-29). This fourth 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 §156 and MAL 55. The biblical law orders that the rapist marry the young woman 'because he raped her' (v. 29). Again Deuteronomic law is considerably harsher than ancient Near Eastern law, specifically §156 of the Code of Hammurabi which allows the raped woman to marry whomever she wants. The biblical law is also more restrictive than MAL 55, giving the father of the raped woman

several options, only one is to marry his daughter to the rapist. In biblical law codes only Ex. 22:16, a case of pre-marital consensual sex between a young woman and her lover, mentions a father's options. There, the father is authorised to order or to refuse a wedding between the two, or to demand financial compensation.¹⁵

Deut. 22:28-29 is unquestionably androcentric in its emphasis on the interests of the father, and interpreters of a modern-scientific mindset accept the androcentric bias. As Harold C. Washington remarks correctly: 'The laws do not interdict sexual violence; rather they stipulate the terms under which a man may commit rape...' (Washington 1998, p. 211). The problem is that interpreters follow this stipulation and do not question the legal bias that promotes male sexual violence. They subscribe to empiricist-positivist assumptions and perpetuate as objective, value neutral, and universal a concern that represents only one possible reading. They do not analyse as rhetorical constructs what may never have regulated ancient people's 'real' lives. After all, these laws were probably never used for legal practice in ancient Israel and the Near East.¹⁶ Whether these regulations are discussed in the context of adultery, seduction, or rape rests therefore on the readers, and it is a limitation of the modern-scientific mindset to drop rape as an explanation for these cases of sexual violence.

3. 'IF A MAN...': RAPE LAWS IN ANCIENT NEAR EASTERN CODES

Scholars of ancient Near Eastern rape laws do not show much, if any, appreciation for the notion that all exegetical work is contextualised, particularised, and localised, and that readers are central in the process of 'meaning-making'. Instead, they, too, assume the objectivity, value neutrality, and universality of all exegetical work. They classify as sex offenses, adultery, or laws about marriage what are rape laws according to an interpretation located in a global rape culture. Interestingly, older studies are sometimes more open towards the characterisation of these cases. Yet the earlier studies, too, do not consistently define the laws as rape legislation (Neufeld 1951, p. 194). For instance, written in 1966, the influential article by J.J. Finkelstein on 'Sex Offenses in Sumerian Laws' differentiates between 'coercive' and 'consentive' Sumerian laws, and only a chart defines the 'coercive' laws as rape laws (Finkelstein 1966, pp. 355-372). Mostly, however, Finkelstein uses the term 'adultery'. He provides only indirectly a rationale for his terminological preference when he comments on the meaning of a text called 'A Trial at Nippur (3N-T403+T340)'. The first line of the Sumerian law reads:

Lugalmelam, son of Nanna'aramugi seized Ku(?)-Ninšubur, slave-girl of Kuguzana, brought her into the KI-LAM building, and deflowered [*sic*] her (Finkelstein 1966, p. 359).¹⁷

The key question here is: what happened between the man called Lugalmelam and the enslaved young woman called Ku(?)-Ninšubur? Finkelstein allows for the possibility that the woman was raped but then dismisses it as socially 'immaterial' for Mesopotamian law. He also suggests that rape, seduction, and consensual sex be interchangeable offenses against the slave owner. Here is his comment:

From the juridical point of view it may be worth mentioning that the trial does not discuss the question of whether the slave-girl was raped or was a willing

partner in the offense. This is unquestionably [*sic*] to be explained by the fact that in the eyes of Mesopotamian law, consent in such cases is immaterial. Hence, her sexual violation, whether by rape, seduction, or even by her own solicitation, is exclusively considered as a tortuous invasion against her owner, for which he may seek redress... (Finkelstein 1966, p. 360).

In other words, Finkelstein claims to read from the perspective of the presumed original writers ('the eyes of Mesopotamian law') when he characterises the slave owner as the violated person who 'may seek redress'. Identifying with the ancient lawgivers, he takes his choice for granted and considers it irrelevant whether the woman was raped, seduced, or participating in consensual sex. To him, the law protects the slave owner, and from this perspective Finkelstein develops the law's meaning. He does not acknowledge that this is what he is doing, which enables him to mention the possibility of rape but then to dismiss it as an interpretative option. He reads from the perceived status quo of Mesopotamian society that favors the male owner or husband. As a result, it does not occur to Finkelstein to consider the law from another perspective. Hence, most of his article examines legal cases on 'adultery' as perceived by the supposed status quo of ancient society even though the title promises a study on 'sex offenses'.

The influence of Finkelstein's analysis should not be underestimated for it continues to inform current work. For instance, in an article on 'Adultery in Ancient Law', Raymond Westbrook refers to Middle Assyrian Law 12 as an illustration for vocabulary that is sometimes used to make a point about the rights of a husband when his adulterous wife is discovered '*in flagranti delicto*' (Westbrook 1990, p. 562). To make his point, Westbrook quotes the law to explain the legality of punishing an adulterous woman. Yet a connection between MAL 12 and vocabulary on adultery is awkward because this law is a recognised rape law. Perhaps, to Westbrook, the difference between rape and adultery is irrelevant since he asserts that according to ancient law 'adultery forms part of a complex of interrelated scholarly problems discussing social offenses such as seduction and rape' (p. 548).¹⁸ Assuming an empiricist-positivist epistemology, Westbrook does not disclose his hermeneutical perspective, which makes his study appear to be an objective treatment of ancient law. He posits as a fact that adultery and rape are linked and fails to discuss the rationale for this relationship.¹⁹

Yet to readers who acknowledge reading in a global rape culture, ancient Near Eastern law codes address rape as a distinct problem, which is part of a long history 'abundantly documented in the legal codes from the Sumerian to the Roman period' (Lafont 1999, p. 133). Unfortunately, during the past century, not a single scholarly study examined ancient Near Eastern rape laws in depth. For instance, the multi-volume *Reallexikon der Assyriologie und Vorderasiatischen Archäologie* has yet to publish a single entry on rape (Ebeling and Meissner 1928). Following is therefore a discussion of selected laws in the Codex of Ur-Nammu, the Laws of Eshnunna, the Code of Hammurabi, the Middle Assyrian Laws, and the Hittite Laws. They are read as legislation on rape.

THE CODEX OF UR-NAMMU FROM SIPPAR

The fragmentary tablet contains two laws on rape in §§6 and 8. According to Fatma Yildiz, the first paragraph reads as follows:

6. If a man
the wife of a young man in service (*guruš*)
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'²⁰ (Lafont 1999, p. 467). 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'. 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, §8, about another situation of sexual violence. There a man rapes an enslaved woman.

8. 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 §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, and usually commentators maintain that the money goes to the slave owner. They also assert that the penalty represents the value of an average enslaved woman who is of less value to her owner than a married woman.²¹ Moreover, they assert that the rape of an enslaved woman does not raise paternity issues in contrast to the first law about an engaged virgin. Yet interpreters do not usually point out that the 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. The rape of a married young woman requires a more severe penalty than the rape of an enslaved woman, clearly an offensive expression of classism.²² Yet at the same time, both laws refer to a situation of rape, and it is due to the modern-scientific epistemology, enmeshed with androcentric bias, that the scholarly literature has not emphasised this point.

THE LAWS OF ESHNUNNA

The laws of Eshnunna contain two rape cases that are similar to §§6 and 8 of the Codex of Ur-Nammu. They read as follows:

26. If a man gives bride-money for a(nother) 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.

31. 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. Class discrimination leads to discrimination in the extent of the penalty.

THE CODE OF HAMMURABI

Several laws of the code of Hammurabi relate to forced sexual intercourse, but the scholarly literature acknowledges only the law of §130 as a rape law. It reads:

130. If a seignior found the (betrothed) wife of a(nother) 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 emphasises that she is not to be punished. Only the rapist receives the death penalty. This is a clear rape law and recognised as such by Finkelstein: 'This case too is an act of rape...' (Finkelstein 1966, p. 356).

Sometimes, however, scholars avoid the term 'rape', especially when they speculate about the rationale of ancient Near Eastern marriage laws. For instance, Raymond Westbrook (1988) refers to §130 of the Code of Hammurabi as being similar to §26 of the Laws of Eshnunna. To Westbrook, both laws explain what happens under the conditions of an 'inchoate marriage' (p. 30),²³ which is defined by 'a lapse of time between conclusion of the marriage contract and the act of marriage' (p. 32). To Westbrook, §130 of the Code of Hammurabi is part of the marriage laws, and thus his book on 'Old Babylonian Marriage Law' does not discuss rape despite references to this and similar laws.

Westbrook is not alone in this treatment of ancient Near Eastern rape legislation. Much of the scholarly literature has not identified rape as an issue. In fact, as they do in studies on biblical legislation, scholars often treat ancient Near Eastern rape laws as cases on marriage and adultery. For instance, Eckart Otto supports the view that §130 of the Code of Hammurabi describes marital procedures (Otto 1987, pp. 184-185).²⁴ Walter Kornfeld mentions 'the case of a rape of a young engaged girl' in his study on adultery but he refrains from further comments (Kornfeld

1950, p. 98).²⁵ Similarly, Benno Landsberger's translation and commentary mentions the relevant rape terminology in German (i.e. the verbs *vergewaltigen* and the old-fashioned *notzüchtigen*, and the nouns *Vergewaltiger* and *Notzucht*), but he discusses the laws within the larger topic on virginity (Landsberger 1968, pp. 53, 56, 63-64). Androcentric bias and modern-scientific epistemology merge to a potent combination eliminating interpretative alternatives that unambiguously classify these laws as rape legislation.

Yet when this potent combination is dismantled and interpretative interests are disclosed, the Code of Hammurabi holds additional rape laws, more specifically laws on incestuous rape. They are §§154, 155, and 156, and the first one reads like this:

154. If a seignior has had intercourse with his daughter, they shall make that seignior leave the city.

If interpreters mention this law at all, they discuss it as a case on incest. Yet it is certainly also relevant as a rape law. The law of §154 refers to the problematic constellation in which a father rapes his daughter, a constellation that biblical laws do not address.²⁶ The law does not prescribe the death penalty for this crime because, as scholars often explain, the rape does not threaten another man's paternal rights or legal authority. He is the man in charge and is only required to leave town.

The next law, §155, describes another situation of incest.

155. 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.

In this case the father has sexual intercourse with the lover of his son. Is it imaginable that the bride consented? 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?

Another incest law focuses on the bride of a father's son.

156. 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.²⁷ This case, too, does not mention whether the bride consented. It is a potential rape law which grants the woman decision-making power (Hoffner 1973, pp. 81-90).

THE MIDDLE ASSYRIAN LAWS

Another set of ancient Near Eastern legislation addresses cases of rape. The Middle Assyrian laws describe four such scenarios, all of which refer to explicit situations of a man raping a woman. In §§12, 16, and 23, the woman is married, and in §55 she is young, single, and lives in the parental home.

12. If, as a seignior's wife passed along the street, a(nother) seignior has seized her, saying to her, 'Let me lie with you', since she would not consent (and) kept defending herself, but he has taken her by force (and) lain with her, whether they found him on the seignior's wife or witnesses have charged him that he lay with the woman, they shall put the seignior to death, with no blame attaching to the woman (Pritchard 1969, p. 181).²⁸

This law presents an undisputable rape scene. A married woman is attacked by a man in the street. She resists, but he succeeds in raping her. It is the classic rape scenario, and the Akkadian terminology is unambiguous. The phrase, *emûqa sabâtu*, is usually translated with 'to take by force' (Lafont 1999, p. 137).

The punishment for the rapist is the same as in other ancient Near Eastern laws. He receives the death penalty only if – and this is the androcentric limitation of this particular law – other people or witnesses charge the rapist with the crime. The charge depends on others because the woman is not accepted as an accuser. Still, the very existence of the law demonstrates that rape was perceived as a problem even if this law was never legislatively practiced or served the Middle Assyrian Empire for other purposes (Westbrook 1985, pp. 247-264).²⁹

Another law presents a rape case next to one on adultery. In MAL 16, the first case refers to a married woman who invites a man to have sex with her. The second case mentions a man who forces a woman to have sex with him, possibly a situation of acquaintance rape. In the second situation the husband has the authority to decide the fate of the other man, but it remains unclear if the woman is handed over to her husband's authority or if she is innocent. The second case in MAL 16 reads:

16. ... If he [a seignior] has lain with her [another seignior's wife] by force, when they have prosecuted him (and) convicted him, his punishment shall be like that of the seignior's wife (Pritchard 1969, p. 181).

The hermeneutical problem is, of course, that the law mentions adultery, rape, and the various penalties in one long law. Additionally, the husband appears as the injured party but not the raped wife, an androcentric bias that western laws overcame only in recent decades.

Yet another law portrays a rape of a married woman. The second part of MAL 23 refers to a situation in which a wife is invited to the house of another woman where she is raped by a man who is already there. She is declared innocent if she decides to press charges. The other woman and the rapist receive the death penalty. If, however, the raped woman does not press charges, her husband has the authority to penalise her. In either case the other woman and the rapist receive the death penalty. The section reads as follows:

23. ... However, if the seignior's wife did not know (the situation), but the woman who brought her into her house brought the man to her under pressure and he has lain with her, if when she left the house she has declared that she was ravished, they shall let the woman go free, since she is guiltless; they shall put the adulterer and procuress to death. However, if the woman has not (so) declared, the seignior shall inflict on his wife such punishment as he sees fit (and) they shall put the adulterer and the procuress to death (Pritchard 1969, p. 182).

In contrast to the rape laws of MAL 12, 16, and 23, according to which the woman is married, MAL 55 refers to a rape of a single young woman who lives with her parents.

55. In the case of a seignior's daughter, a virgin who was living in her father's house, whose [father] had not been asked (for her in marriage), whose hymen had not been opened since she was not married, and no one had a claim against her father's house, if a seignior took the virgin by force and ravished her, either in the midst of the city or in the open country or at night in the street or in a granary or at a city festival, the father of the virgin shall take the wife of the virgin's ravisher and give her to be ravished; he shall not return her to her husband (but) take her; the father may give his daughter who was ravished to her ravisher in marriage. If he has no wife, the ravisher shall give the (extra) third in silver to her father as the value of a virgin (and) her ravisher shall marry her (and) not cast her off. If the father does not (so) wish, he shall receive the (extra) third for the virgin in silver (and) give his daughter to whom he wishes (Pritchard 1969, p. 185).

This law is significant for several reasons. It states unambiguously the rape of a young and single woman.³⁰ It also acknowledges that a rape may take place anywhere, 'in the midst of the city or in the open country or at night in the street or in a granary or at a city festival'. In other words, the charge of rape does not depend on the presence of other people.³¹ Yet the range of penalties reflects an ingrained androcentric perspective. No matter what the penalty is, the girl's father authorises it. He has three basic options. He may seek revenge according to 'vicarious punishment' (Cardascia 1969, p. 252) and rape the rapist's wife and afterwards marry his daughter to the rapist. Alternatively, the father may accept money if the rapist does not have a wife, and then he may marry his daughter to the rapist. Finally, he may choose none of the prior options, but accept money and marry his daughter to whomever he wishes to marry her. Cruel androcentrism rules while women are imagined as the recipients of male violence and authority.

Interpreters note the stark contrast in the penalty choices here and in the other three rape laws. For instance, Driver and Miles explain that the penalty is more lenient in §55 than in the other cases because the woman is single. 'The draftsman' of these laws 'never lost' this distinction because they 'always stated definitely at the outset whether the woman is unmarried or married' (Driver and Miles 1935, p. 37; Cardascia 1969, p. 249). The interpreters conclude from this consistent distinction that a 'sexual offence' with an unmarried woman was 'a comparatively trivial offence' in Assyrian law. However, the problem is that these interpreters do not clearly

object to this understanding of the law. Steeped in modern scientific epistemology, the interpreters hand off this androcentric explanation as acceptable, and thus they perpetuate androcentric views on women and rape. Reading from an empiricist-scientific paradigm, they are content to pass on as objective categories what are androcentric biases toward women's relations to male power.

THE HITTITE LAWS

The Hittite laws, too, contain several texts on rape. Scholars recognise only one of them and usually classify the others as laws on adultery, incest, and bestiality. The undisputed rape law, §197, is reminiscent of Deut. 22:29 and reads:

197. 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 (Neufeld 1951, p. 194; Grothus 1973, p. 35). 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.³² If, however, the husband discovers the couple, he has the right to kill both of them. Some commentators maintain that this option is part of a third situation that continues in §198 and is similar to other ancient Near Eastern laws such as MAL 15 or §129 of the Code of Hammurabi (Haase 1994, pp. 7-10). In this case the husband discovers the couple and has the opportunity to decide upon the fate of his wife and the other man, either sparing their lives or ordering their death.

It is important to note that the Hittite term 'woman' refers to a woman of any status, whether she is young and single, married, widowed, free or enslaved (Haase 1994, p. 7), even when the law includes the option that a woman's husband may kill the attacker and the woman. The terminological inclusiveness indicates that rape is not only a crime when a woman is married or in the process of getting married. According to §197, the rape is punished under all circumstances when it takes place outside a town. The other part of the law is more problematic since it prescribes punishment for both the woman and the man when the attack takes place in a house. The penalty seems to assume consensual sex although the man might have forced the woman into the house. Thus, this law, too, reflects an androcentric worldview that privileges men over women.

Several other Hittite laws are not usually classified as rape laws, but they should be seen as such when rape is defined as 'the crime of forcing another person to submit to sex acts, especially sexual intercourse' (American Heritage Dictionary 2000) and the term 'person' is expanded to include other creatures than humans only. The laws mention two cases on incest and four cases on bestiality. §§189 and 190 are the incest laws:

189. If a man violates his own mother, it is a capital crime. If a man violates his daughter, it is a capital crime. If a man violates his son, it is a capital crime.

190. ... If a man violates his stepmother, there shall be no punishment. (But) if his father is living, it is a capital crime.

The law of §189 describes three cases, two of which are unmistakable cases of incestuous rape. The first case mentions a son raping his mother. The second and third cases refer to a daughter and a son being raped by their father. Importantly, the punishment is not specified, and the law does not make the penalty dependent on the father's so-called property rights. All three cases are called 'capital crimes'. In the law of §190, a stepson violates his stepmother, which appears to be a crime only when the father is alive. If the father is dead, the son is not punished for raping his stepmother. Enveloped in androcentric bias, this law does not consider the position of the stepmother and focuses only on the son or the father.

The Hittite codes also include four laws on bestiality that, according to animal advocates, could be considered as possible rape legislation. They are §§187, 188, 199, and 200. Animals are unable to consent, and if they could, one would not know, as explained by animal rights people (Adams 2004, pp. 22-23). In fact, Harry A. Hoffner identifies an eighteenth-century legal decision that declared a female donkey as 'a victim of [sexual] violence' (Hoffner 1973, p. 83 n13). So perhaps it is in the realm of the possible to discuss the following laws as rape legislation:

187. If a man does evil with a head of cattle, it is a capital crime and he shall be killed. They bring him to the king's court. Whether the king orders him killed, or whether the king spares his life, he must not appeal to the king.

188. If a man does evil with a sheep, it is a capital crime and he shall be killed. They bring him to the king's court. Whether the king orders him killed, or whether the king spares his life, he must not appeal to the king.

199. If anyone does evil with a pig, (or) a dog, he shall die. They will bring them to the gate of the palace and the king may order them killed, the king may spare their lives; but he must not appeal to the king...

200 (A). If a man does evil with a horse or a mule, there shall be no punishment. He must not appeal to the king nor shall he become a case for the priest... (Pritchard 1969, p. 196-197).

The four laws illustrate that, strangely, sexual acts with cows, sheep, pigs, and dogs are punished with the death penalty whereas sexual acts with horses or mules remain penalty free. This distinction leads to two questions. Why did these laws become necessary in the first place, and why do the laws treat the rape of horses and mules differently from other animals? The first question cannot be answered conclusively, of course. Did the laws become necessary because bestiality was such an enormous problem in ancient Near Eastern societies that it required laws to 'regulate' such practices? Did the legislators attempt to recognise an owner's property rights? Or are these laws only scribal fantasies? We do not know. The second question about the different treatment of horses and mules has received attempts of answers. For instance, commentator E. Neufeld expressed his surprise about the distinction. He suggested that cows, sheep, pigs, and dogs were regarded as sacred in 'the cult of animals'. Since horses and mules were 'late comers' in the geographical area of the Hittite empire, they were excluded from animal cults and exempted

from the laws (Neufeld 1951, p. 188). Another commentator, Harry A. Hoffner, refrains from any hypothesis and simply acknowledges his inability to give a reasonable explanation for the distinction (Hoffner 1973, p. 82). In any case, the laws provide a glimpse into the violent pattern of male sexual fantasy or practice. They are disturbing whether or not they are viewed as legislation on rape.

It is important to note that the incest and bestiality laws share a crucial grammatical characteristic. They use the same Hittite verb, *katta waištai*, to communicate the action performed by the man. Different translations of the verbal phrase provide different meanings. The translation given above is found in the renowned edition by James B. Pritchard, which offers two translations of the verbs. In the law on incest the English verb is rendered as ‘to violate’ and in the law on bestiality the same verb is translated as ‘to do evil’. Other translations use the same English term for the Hittite verb. E. Neufeld translates the verb with ‘to sin’. The bestiality law of §187 thus reads:

If a man sins with a cow, (it is) an abomination, he shall die.

Similarly, the incest law in §189 is translated:

[If a man] sins with his mother, (it is) an abomination. If a [man] sins with a daughter, (it is) an abomination. If a man sins with a son, (it is) an abomination.

Neufeld explains that the verb *katta waštai* ‘means literally ‘sin together (sexually)’ (Neufeld 1951, p. 53) and ‘denotes indecent exposure or carnal knowledge and is an idiomatic description of sexual intercourse’ (p. 188). In other words, the verb depicts the same action in the incest and bestiality laws. The translation in Martha Roth’s edition of ancient laws is explicit when it reads §187 as: ‘If a man has sexual relations with a cow...’, and §189: ‘If a man has sexual relations with his own mother...’ (Roth 1995, p. 236). The verb is the same, and so a reader decides whether the verb implies physical and psychological violation or a moral transgression of normative behavior in Hittite culture. Does the verb connote sexual violence, an ‘evil’ deed, or ‘sinful’ behavior in general? These actions are characterised as *hurkel*, a Hittite noun for a sexual act that, according to Hoffner, does *not* refer to a crime involving ‘a sexual combination which is condemned by social mores’ (Hoffner 1973, p. 83) but more generally is used for a ‘forbidden sexual combination, incest’ (Hoffner 1973, 84). In other words, the act is something that is ‘forbidden’. Was the forbidden deed an act of rape? It depends on a reader to make this decision.

The difficulty about the meaning of these laws relates to the limited number of existing Hittite laws. Yet clearly the laws on incest and bestiality describe situations of sexual harm for humans and animals. Whether or not the legislators themselves identified these acts as ‘rape’ is not a question we can answer nor does the answer matter much, especially since we do not even know if these laws were ever used legislatively (Westbrook 1985).³³ What matters is that ancient Near Eastern codes contain an impressive number of rape laws. Whether fantasy or reality, they indicate that rape was an issue in the ancient Near East.

In short, scholarship on ancient Near Eastern rape legislation would greatly benefit from the epistemological insights of postmodern theory. If all interpretations are always ‘located somewhere’, the study of biblical and ancient Near Eastern laws reveals more about the hermeneutical

interests of readers than the authorial meaning of ancient lawgivers. Yet many scholars seem undeterred by the epistemological advances of the last decades, and much work remains to be done. Clearly, an epistemological imbalance prevails and a bridging conversation is not in sight.

4. TOWARD A CONCLUSION, NOT A RESOLUTION

The purpose of this article has been threefold. It brings attention to the current epistemological imbalance in interpretations on rape law. It invites scholars to acknowledge that interpretative differences are based on epistemological differences. And it reminds scholars in the field of ancient law that authorial meaning, too, is coming from ‘somewhere’. The scholarly opposition to this threefold purpose is strong. Generally, many empiricist-positivist interpreters insist on placing the meaning of biblical and ancient Near Eastern texts into the safe distance of ancient history, and they avoid the debate about the ongoing cultural, historical, political, or religious significance of their interpretations. They continue reading from ‘nowhere’, which makes their explanations vulnerable to androcentric bias and alienates readers aware of the global rape culture. They also disregard why the next generation should limit the scholarly work to authorial intent when it only reproduces historically fixed meaning and is disconnected from contemporary life on earth.

We face, then, a serious epistemological imbalance in the study and teaching of biblical law. If the position of empiricist-positivist scholars is that ‘back then rape was legal’ because it was mostly understood as marital, adulterous, or seductive behavior by men who were legally in charge and able to do as they pleased, it is pedagogically irresponsible to transmit such a history to students without critical commentary. Yet the pedagogical impetus is entirely absent from research on ancient rape laws. The postmodern notion of the contextualised nature of all exegetical work would easily solve these problems. What is required is a vibrant and fresh debate on these matters.

If this discussion does not take place, the terrain will be left to the increasingly dominant discourse of the Christian right that insists on the literal meaning of the Bible, a notion that is closely aligned with scientific objectivist hermeneutics.³⁴ Ancient rape laws represent a promising opportunity for people of the twenty-first century C.E. to debate the hermeneutical uncertainties and complexities of sacred texts like the Bible. It also enables us to relate the epistemological imbalance in studies on ancient rape legislation to the larger arena in which we live, and to communicate the urgent need for dialogue across the hermeneutical, religious, cultural, and political divide in biblical scholarship and elsewhere.³⁵

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ENDNOTES

- 1 For an extensive obituary, see ‘Jacques Derrida’, in *The Times* (London, October 11, 2004).
- 2 The document on ‘Refugees By Numbers 2003’ by the United Nations High Commissioner for Refugees states: ‘At the start of 2003 the number of people ‘of concern’ to UNHCR was 20.6 million

– roughly one out of every 300 persons on earth – compared with 19.8 million a year earlier’. The document is available at http://www.irr.org.uk/pdf/unhcr_2003.pdf (cited June 17, 2005).

3 The term ‘empiricist-positivist epistemology’ was coined by Elisabeth Schüssler Fiorenza (1999 pp. 41-42). She explains on p. 24: ‘The scientific ethos of value-free detached inquiry insists that the biblical critic needs to stand outside the common circumstances of collective life and stresses the alien character of biblical materials. What makes biblical interpretation possible is radical detachment and emotional, intellectual, and political distancing. Disinterested and dispassionate scholarship enables biblical critics to enter the minds and world of historical people, to step out of their time, and to study history on its own terms, unencumbered by contemporary questions, values, and interests. Apolitical detachment, objective literalism, and scientific value-neutrality are the rhetorical postures that seem to be dominant in the positivistic paradigm of biblical scholarship.’

4 For a poignant critique of this approach, see Keith W. Whitelam (2003, pp. 402-422). For the effort to integrate historical criticism with postmodern epistemological assumptions, see Gina Hens-Piazza (2002).

5 To most lay people, the entire discussion on the epistemological divide in biblical studies is completely lost. A recent editorial in *The New York Times* by Nicholas D. Kristof (2004) illustrates many lay people’s lack of basic knowledge in biblical studies.

6 Intentional fallacy was dismantled years ago; see, e.g., Wimsatt and Monroe (1972).

7 For more information on the global rape culture of our time, see Buchwald and Fletcher (1995).

8 This law was probably never practiced. For instance, Harold Washington acknowledges that ‘there is reason to doubt that this law was extensively applied’; see Washington (1998 p. 202).

9 For another more recent translation, see Martha T. Roth (1995).

10 According to some scholars, the harsh punishment is due to the fact that, different from ancient Near Eastern law, biblical law considers all crimes as transgressions against God, the lawgiver; see, e.g., Moshe Greenberg (1993, pp. 283-300, esp. 288-289).

11 All forms of punishment mentioned in these laws are at best unreasonable from a contemporary western perspective on rape. First, only the rapist and not the victim-survivor should receive a penalty. Second, the Universal Declaration of Human Rights gives everyone the right to life in its Article 3, which, for instance, the organization of Amnesty International interprets as a rejection of the death penalty. The Charter of Fundamental Rights of the European Union is explicitly rejecting the death penalty in its Article 2. It is, however, highly unlikely that any of the biblical or ancient Near Eastern penalties were ever practiced since their status as practiced law is questionable.

12 See also Middle Assyrian Law 55 and §197 of the Hittite Laws, and the discussion of these laws below.

13 Against the view of Tikvah Frymer-Kensky (1989 p. 93), who maintains that in this context the verb means ‘illicit sex’, sex with someone with whom one has no right to have sex’. Frymer-Kensky’s position is also supported by Mayer I. Gruber (1999 pp. 119-127) and Washington (1998 pp. 208-212). For a recent study of these and related verbs, see Sandie Gravett (2004 pp. 279-299).

14 For an opposing view, see Anthony Phillips (1981 p. 13).

15 Against Frymer-Kensky who considers Ex. 22:16 as a ‘comparable law’ to Deut. 22:28-29; see Frymer-Kensky (1989 pp. 93-94). Her arguments stand in a long tradition of premishnaic readers; see Robert J. V. Hiebert (1994). Anderson also considers the act in Ex. 22:16 as consensual when she uses the term ‘seduction’, see Anderson (2004 p. 40).

16 See the comment by Henry McKeating (1979 p. 70): ‘What I am suggesting, to put it in another way, is that the ethics of the Old Testament and the ethics of ancient Israelite society do not necessarily coincide, and the latter may not be represented altogether accurately by the former. Old Testament ethics is a theological construction, a set of rules, ideals and principles theologically motivated

throughout and in large part religiously sanctioned. Were the principles by which real Israelites actually lived quite so closely determined by religious faith? It may be that they were, but we cannot without further ado assume so’.

17 The choice of translating the Sumerian verb into English as ‘to deflower’ reflects an inherently androcentric perspective.

18 In this very context, Westbrook refers to the study of Finkelstein in footnote 26 on p. 548.

19 The 1995 translation of ancient Near Eastern rape laws, edited by Martha Roth, exhibits a similar reliance on Finkelstein’s work. The index of ‘Selected Legal Topics and Key Words’ lists the category ‘sexual offenses’ under which the following terms appear: ‘adultery and fornication, consent, defloration, flirtatious behavior, incest, procuring, promiscuity, rape and sexual assault, seduction, sodomy’. Why these terms are part of the category ‘sexual offenses’ is clear only when one studies the history of scholarship. Still, it is hard to believe that adultery, consent and flirtatious behavior appear as ‘sexual offenses’ in the index of a 1995 publication. See Roth (1995 p. 282).

20 In the original French: ‘Si un homme a fait violence à l’espouse d’un jeune homme, qui n’était pas déflorée, et l’a déflorée, cet homme sera tué’. My translation from the French.

21 For a discussion of the rape of enslaved women, see Lafont (1999 pp. 144-145).

22 For an extensive discussion of classism in combination with androcentric cooption of women in the Hebrew Bible, see Scholz (2004).

23 The terminology of ‘inchoate marriage’ appeared initially in the early decades of the twentieth century, see Benno Landsberger (1968 pp. 40-41).

24 For a discussion on Egyptian texts about adultery, see C. J. Eyre (1984).

25 My translation from the French original. Other examples are R. Yarou (1965 p. 29). The article on adultery (‘Ehebruch’) in the German *Reallexikon der Assyriologie*, vol. 2 (1938) refers to more information about rape (‘Notzucht’). Yet the word ‘Notzucht’ in volume 10 refers readers to an article on ‘Vergewaltigung’, the contemporary German term for rape. A volume on terms beginning with ‘v’ has, however, not been published yet.

26 See the omission in Lev. 18:6ff.

27 See, e.g., §156 of the Code of Hammurabi, MAL 55, or Deut. 22:28-29, as discussed above.

28 Roth (1995 p. 282) lists MAL 9 as a rape law in the index but the meaning of this law is vague and not included here.

29 An early publication supports the notion of rape being a problem in the ancient Near East; see *The Assyrian Laws* by Driver and Miles (1935): ‘If it is true that so many laws argue so many sins, this offense [adultery] must have been rife in Babylonia and Assyria; for a large number of sections in the Babylonian code and in these laws are concerned with it’ (p. 37).

30 Against Driver and Miles, (*The Assyrian Laws*, 52f), who, on the basis of a grammatical ambiguity, argue for the possibility that §55 describes either a rape or consensual sex and is followed by the law of §56 in which ‘the girl is the prime mover’.

31 Other laws have different views about this matter; see §197 of the Hittite Laws and its discussion below.

32 For a similar law with a different assessment on the significance of the location, see MAL 5 and Deut. 22:23-24 and the discussions above.

33 See also footnotes 16 of this article.

34 Other scholars also see this connection between the Christian right and the modern worldview; see, e.g., Schüssler Fiorenza (1999): ‘In spite of their critical posture, academic biblical studies are thus akin to fundamentalism insofar as they insist that scholars are able to produce a single scientific, true,

reliable, and nonideological reading of the Bible. Scholars can achieve scientific certainty as long as they silence their own interests and abstract from their own sociopolitical situation' (p. 42).

35

I owe the idea of connecting the epistemological imbalance in ancient rape law to the current (US) socio-political and religious divide to Charles Nelson, professor emeritus of German at Tufts University, Boston MA, during a conversation on November 6, 2004.

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