

# The Case of Virgin Rape: Deuteronomy 22

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In 2012, sixteen-year-old Amina Filali killed herself by ingesting rat poison after being forced to marry her rapist by the Moroccan judicial system.<sup>1</sup> While the situation might shock us, her response comes as no surprise since Amina would have shared the bed of her rapist for the rest of her life, giving him the “right” to repeat the initial act indefinitely. Sadly, such an arrangement is no stranger to ancient Israel’s law. This article will evaluate three patriarchal themes that arise from the literary and historical contexts of Deut 22:28–29 in order to produce three outcomes: a greater understanding of the law’s original sociological intentions, its potential theological implications, and recommendations regarding how the contemporary church might respond to such a text.

### The Law and Its Context

If a man meets a virgin who is not engaged, and seizes her and lies with her, and they are caught in the act, the man who lay with her shall give fifty shekels of silver to the young woman’s father, and she shall become his wife. Because he violated her he shall not be permitted to divorce her as long as he lives. (Deut 22:28–29 NRSV)

The law under discussion is found within a larger grouping of laws (Deut 22:13–30) that seem to fall under the seventh commandment, the prohibition of adultery.<sup>2</sup> Within this grouping appears a subset of laws pertaining to rape. The penalty for the rape of an unengaged virgin, the law under discussion, concedes to prescribe the least severe of the available punishments (Deut 22:23–29). The rape of a married or engaged woman—implying “ownership” of the woman was already guaranteed by the payment of a bride-price—always leads to the male perpetrator’s death (Deut 22:23–25). Two considerations influence the assessment of a rape case: the extent to which a woman appeared to have consented and her status in relation to a man.

Notwithstanding, scholars argue whether we can speak of the Deuteronomic law as having a category for sexual assault/rape, since this category, in our modern definition, depends on the victim’s (lack of) consent.<sup>3</sup> While the man is said to aggressively seize the woman in order to lie with her, in the purview of Deuteronomic laws women were not granted what we might call “bodily integrity”; that is, they did not necessarily have the authority to give their consent.<sup>4</sup> Further, neither the law under discussion nor any extra-biblical evidence attempts to empower the female victim to speak on her own behalf. While Deut 22:27 provides that a woman’s scream may serve as her ability to refuse consent, this is only credited to her if she is immediately found. If it is her word against her attacker’s after-the-fact, sadly, her word will not hold. In this way, the first patriarchal theme imposed by

Deut 22:28–29 comes to light: failure to take seriously a woman’s voice about an issue that affects her wellbeing.

In order to properly discuss the scope of the law, the extent of the patriarchal context of ancient Israel must be determined. In Israel, like many other ancient cultures, “violence and domination [were] central to the discursive production of the gender subject,” that is, the male subject.<sup>5</sup> Consequently, the Deuteronomic law, having been produced in such a cultural milieu, seems to understand rape as what Harold Washington considers an inevitable expression of masculinity since it needs to be addressed in the first place and only refers to the case of a male committing such an act.<sup>6</sup> This is also reflected in the retribution of rape, which changes according to the way a woman is (or is not) attached to a man, always serving to protect the male’s entitlements and privileges.<sup>7</sup> In this way, injury to a woman was primarily viewed as an injury to her father, husband, or fiancé.<sup>8</sup>

In the case of an engaged woman who had been raped, the consequence for the perpetrator was always death (Deut 22:23–27). This is due to the fact that the bride-price had already been paid for the woman, which meant that the act of rape was a direct affront to the reproductive “rights” of the man who “possessed” her by paying her bride-price.<sup>9</sup> In the case of an unattached virgin, the act of rape did not affront any man except her father. In this case, the only “right” taken away was the father’s “right” to his daughter’s bride-price, which could be settled by the payment of fifty pieces of silver (Deut 22:29). Notice, the settlement is made between two men without acknowledgment of the woman except for the fact that she had to marry her attacker without the possibility of him divorcing her.<sup>10</sup> Arguably, the economic profitability of the victim’s virginity, fifty pieces of silver, is intended to outweigh the violation, humiliation, and injury suffered by the victim.<sup>11</sup> Albeit, the rape of a virgin in the Exodus code allowed the woman’s father to refuse the marriage but maintain the bride-price (Exod 22:6–17); nevertheless, the father remained in control of the woman’s future and the Deuteronomic code leaves this rather significant stipulation out. This observation leads to a secondary patriarchal theme that is maintained by Deut 22:28–29: placing concern for the wellbeing of the male above and instead of the female.

For these reasons it is tenable that the sociological intent of the Deuteronomic rape law was to protect the patriarch whose property, rights, and honour had been compromised, in this case, by devaluing his virgin daughter. Still, some scholars argue that the intentions of this law served to protect the victim, the virgin woman. Rightly, this position emphasizes that the violation of a young woman’s virginity included not only economic consequences that put her bride-price in jeopardy, but also social consequences that would have left her unmarriageable in a society that venerated female virginity.<sup>12</sup> Further, the demand

for a marriage (of the victim to her rapist) without the right to divorce is understood as ensuring lifelong provision for the woman and protection from the accusation of sexual impropriety as determined in 22:20–21.<sup>13</sup>

Despite these plausible attempts to justify or make sense of the law in question, such an interpretation of Deut 22:28–29 serves as an example of what Cheryl Anderson says “communicates the message that the faith tradition does not (and should not) consider the possibility that women might have different yet valid perspectives” on an issue of tremendous concern to them.<sup>14</sup> Attempting to view the restitution for the rape of a virgin as an example of a “reparative marriage” that benefits or protects the woman is to assume, as Washington notes, “the woman is somehow better off in the household of her attacker than she would be if she remained in the household of her father or guardian.”<sup>15</sup>

Further, given that this law is casuistic (that is, it has developed over time as applied to various cases), it does not actually prohibit sexual violence against women, but stipulates “the terms under which a man may commit rape.”<sup>16</sup> Reinhart suggests this law could have even incentivized rape as a way of securing an unbetrothed woman who was outside of a man’s social class, or whose father refused to give her in marriage.<sup>17</sup> Equally important, the law under question “assumes that the deed will be found out” (v. 28), but does not provide protection for the woman if the attack goes undiscovered and she seeks out justice on her own behalf.<sup>18</sup> Rather, she is left to deal with the consequences of Deut 22:20–21. While some commentators might try to argue for the redemptive nature of the law, they overlook the fact that the law does not actually protect victims from attack in the first place nor provide an adequate remedy for violence and violation.<sup>19</sup> Moreover, the law merely affirms the reality that women were at men’s disposal.<sup>20</sup>

Compared to rape laws in the greater ancient Near East, retribution in the Deuteronomic code is far *less* radical. Nineteenth-century BC laws from the Mesopotamian city-state of Eshnunna, for example, call for the death of a man who seizes a woman forcibly without the consent of her parents, depriving her of her virginity.<sup>21</sup> Middle Assyrian rape laws require that the rapist pay triple the normal bride-price, marry the victim upon being given the father’s consent, and be denied the right to divorce.<sup>22</sup> In Assyrian law, if the rapist had a wife the “measure-for-measure punishment” was added, which included that the victim’s father could have the rapist’s wife raped and then keep her.<sup>23</sup>

Considering the lenient rape laws of Deuteronomy, compared to other ancient Near Eastern cultures, and the fact that the law did not actually ensure protection for the virgin woman, the potential theological implications of the law code remain rather inconclusive. While some provision of protection may be seen in

the attempt to make sure a woman was not left desolate (socially and maritally) post-rape, it is wrong, and in fact disturbing, to view the forced marriage of a victim to her perpetrator as demonstrative of YHWH’s protective nature.<sup>24</sup> Jeremiah might shed some unwanted light on this subject when he prophesies about Judah’s impending captivity, “it is for the greatness of your iniquity that your skirts are lifted up, and you are violated. . . . I myself will lift up your skirts over your face, and your shame will be seen” (Jer 13:22, 26 NRSV). Eighteen chapters later, Jeremiah pictures YHWH as making a new marital covenant with Judah (Jer 31:31–33).

This disturbing and confusing image is upsetting for many contemporary readers since it goes against the church’s role as a place of protection as well as the way the church rightfully understands YHWH’s protective nature. So, what this law might reveal about YHWH is either bound to cultural context, needing to be re-interpreted with a contemporary frame of reference, or is extremely troubling, or both. Nevertheless, Deut

22:28–29 can be seen as enforcing a third patriarchal theme: the image of a male God who operates out of cruel logic rather than creative compassion.

### The Law in Our Context

To our great despair, the mistreatment of women’s bodies is both a universal and perennial issue. Research shows that a quarter of women will face sexual abuse at some point in their life, and two women will be murdered by their current or former male partner each week.<sup>25</sup> In this way, it becomes clear that the patriarchal themes that arise in Deut 22:28–29 have carried into the twenty-first century. These connections, along with recommendations for the church moving forward, are threefold.

#### Repentance

Missing from widespread biblical interpretation is what Anderson cites as “conscientization . . . a process that seeks to make both the privileged and the non-privileged aware of the values of hierarchical systems in both written texts and the world around them that privilege some over others and that they have subsequently internalized.”<sup>26</sup> We see evidence of the disregard of a woman’s voice about an issue that primarily pertains to her, not only in court cases, but in our own congregations by way of inadequate and uninformed interpretation that continues to determine the female experience as secondary. Does it do the church any good in our contemporary context to claim this law as a good option for the woman, as so many have? We might take Bruce Birch’s advice and move toward reclaiming the biblical text “from elements that distort or limit its moral witness” as Deut 22:28–29 does;<sup>27</sup> practically, the church does this by donning the garments of repentance that cease to reconcile, explain, or justify a text of terror such as Deut 22:28–29.

**With this attitude of repentance the church might move forward in the way it handles cases of sexual assault and rape, giving women a safe place to heal from male-instigated trauma, and a platform to be taken seriously.**

While we claim our holy book to be countercultural, this law reveals a cultural limitation within it.<sup>28</sup> The character of YHWH as a just and loving provider that we read of earlier in Deut 10:18 and later in 31:6, for example, does not seem to be fully rendered in 22:28–29. As Morgan Reinhart suggests, Deuteronomy “could have ordered that a rapist cannot marry his victim, but must provide financial support for her for his entire life . . . or have ordered that rape victims are in no way sullied or unmarriageable, while their attackers are both.”<sup>29</sup> We must finally admit that “justice” for the virgin is actually a life sentence of pain, not redemption. With this attitude of repentance the church might move forward in the way it handles cases of sexual assault and rape, giving women a safe place to heal from male-instigated trauma, and a platform to be taken seriously.

### Mourning

An article in the *New York Times* talks about the era of social media as “a period when the whisper network moved online and became a shout. Suddenly, in a way they never had before, women have a voice, people are listening, and men are paying consequences.”<sup>30</sup> Historically, Christianity has failed to elevate women to their proper status as bearers of God’s image (Gen 1:27), and in turn, has failed to validate the female experience.<sup>31</sup> Instead, it has typically enforced an ancient patriarchal system in a world that *can no longer operate in such a way*. In doing so, the church has often prioritized the reputation of male perpetrators. The church will move forward in pursuing a kingdom of redemption and healing when it is moved to mourn. We mourn for Israel’s women who were forced to share the bed of their rapist, mourn for women who are told to submit to men who have sexually, physically, and emotionally abused them, and mourn alongside survivors of rape. While we mourn, we remember that YHWH always acts in favour of those who have been previously disregarded and unheard.<sup>32</sup> With this memory, the church might begin to embody the fulfillment of Rev 21:4, which imagines YHWH as wiping away every tear. Unlike our current situation, what an incredible turn of events it would be if the church, rather than social media, became the primary platform for women to be taken seriously!

### Action

Finally, the church is to stand actively with women against the systems of oppression that we ourselves have enacted. We do this by actively fighting against rape culture, which Elaine Storkey defines as, “the use of misogynistic language, the objectification of women’s bodies, the glamorization of sexual violence and the entitlement given to men” that defines manhood as dominance and sexual aggression.<sup>33</sup> We also do this by rethinking the way we talk about YHWH, such as resurfacing the female attributes of YHWH that might present a different side of Deut 22:28–29. Consider, for example, Isa 66:13, which speaks of YHWH saying, “As a mother comforts her child, so will I comfort you; and

you shall be comforted in Jerusalem” (NRSV). One can hardly imagine this motherly figure condemning her daughter to share the bed of her attacker. In this way, the church embodies both repentance and mourning by taking any means necessary, even challenging the way it typically speaks about YHWH, to assure that the occurrence of Deut 22:28–29 and the demeaning of a woman’s personhood is no longer reflective of our faith tradition. By doing so, the church can continue the trajectory of the text—justice in light of an atrocious act—but learn from the ways that it fell short of protecting women then, and be moved to protect them now. Practically, we can start by ceasing to justify texts that are not wholly reflective of the creatively compassionate protector that YHWH is.

### Conclusion

Having evaluated the literary and cultural context of Deut 22:28–29, it is clear that its primary sociological and theological intentions reflect three prominent patriarchal themes. First, women were at a man’s disposal since their voice and ability to consent were faint. Second, the rights and entitlements of a male were to be protected at all costs. Third, the law is reflective of an incomplete, masculine

image of YHWH, who operates out of cruel logic rather than creative compassion. These themes are not exclusive to Deut 22:28–29 but appear in our contemporary context as well.

Unfortunately for the credibility of the church, secular activists have led the Western world to acknowledge “that women are fully adult, fully responsible, [and] fully free partners with men in the human enterprise.”<sup>34</sup> Accordingly, it is the church’s duty to move away from justifying inadequate interpretations of our sacred text, toward an informed understanding characterized by compassion and advocacy for victims and survivors of sexual abuse and rape. As such, it is with this lens that the patriarchal themes instilled in Deut 22:28–29 can be countered by repentance, mourning, and actively standing against our own systems of gendered oppression.

### Notes

1. “This Exists: Law Allows Rapists to Escape Prison if They Marry Underage Victims,” Amnesty International USA, <https://amnestyusa.org/this-exists-law-allows-rapists-to-escape-prison-if-they-marry-underage-victims/>.
2. Peter C. Craigie, *The Book of Deuteronomy* (Eerdmans, 1976) 294; Stephen A. Kaufman, “The Structure of the Deuteronomical Law,” *Maarav* 1/2 (1978–79) 105–58.
3. 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 *Gender and Law in the Hebrew Bible and the Ancient Near East*, ed. Victor H. Matthew, Bernard M. Levinson, and Tikva Frymer-Kensky, JSOTSup 262 (Sheffield Academic, 1998) 208.
4. Washington, “Lest He Die,” 208.
5. Washington, “Lest He Die,” 193.
6. Washington, “Lest He Die,” 186.
7. Walter Brueggemann, *Deuteronomy* (Abingdon, 2001) 222.

8. Mary J. Evans, "Deuteronomy," in *The IVP Women's Bible Commentary*, ed. Catherine Clark Kroeger and Mary J. Evans (IVP, 2002) 102.
9. Mark E. Biddle, *Deuteronomy* (Smyth & Helwys, 2003) 337.
10. Brueggemann, *Deuteronomy*, 225.
11. Biddle, *Deuteronomy*, 341.
12. William S. Morrow, *An Introduction to Biblical Law* (Eerdmans, 2017) 243.
13. "If, however, this charge is true, that evidence of the young woman's virginity was not found, then they shall bring the young woman out to the entrance of her father's house and the men of her town shall stone her to death, because she committed a disgraceful act in Israel by prostituting herself in her father's house. So you shall purge the evil from your midst" (Deut 22:20–21 NRSV).
14. Cheryl B. Anderson, *Ancient Laws and Contemporary Controversies: The Need for Inclusive Biblical Interpretation* (Oxford University Press, 2009) 4.
15. Washington, "Lest He Die," 211. Although, the case of Amnon and Tamar in 2 Sam 13:20 reveals this was not always the case.
16. Washington, "Lest He Die," 211.
17. Morgan Reinhart, "What God Has Brought Together," *Humanist* 72/6 (Nov 2012) 9.
18. Biddle, *Deuteronomy*, 341.
19. Biddle, *Deuteronomy*, 213.
20. Biddle, *Deuteronomy*, 213.
21. Codex Hammurapi, 129–31; ANET I, 152; cf. Biddle, *Deuteronomy*, 339.
22. Duane L. Christensen, *Deuteronomy 21:10 – 34:12* (Thomas Nelson, 2002) 522.
23. Christensen, *Deuteronomy*, 522.
24. Examples of this can be seen in Deut 10:18 and 31:6; see also Pss 5:11, 12:5, 140:4.
25. Elaine Storkey, *Scars across Humanity: Understanding and Overcoming Violence against Women* (IVP, 2018) 77, 118.
26. Anderson, *Ancient Laws and Contemporary Controversies*, 7.

27. Bruce C. Birch, *Let Justice Roll Down: The Old Testament, Ethics, and Christian Life* (Westminster/John Knox, 1991) 43, quoted in Anderson, *Ancient Laws and Contemporary Controversies*, 9.
28. Further evidence for this claim is seen especially with regard to Deuteronomy's acceptance of slavery, which would not be affirmed as a current Christian value (e.g., Deut 15:12–18).
29. Reinhart, "What God Has Brought Together," 9.
30. Claire Miller, "How Social Media Gives Women a Voice," <https://nytimes.com/interactive/2018/02/09/technology/social-media-gives-women-a-voice.html>.
31. For examples, see the writings of Origen, Chrysostom, Augustine, etc. In *The Kind of Women Who Ought to Be Taken as Wives*, Chrysostom says, "God maintained the order of each sex by dividing the business of human life into two parts and assigned the more necessary and beneficial aspects to the man and the less important, inferior matters to the woman" (Patricia Cox Miller, *Women in Early Christianity: Translations From Greek Texts* [Catholic University of America Press, 2005] 271).
32. An example of this is found in the recount of YHWH's salvation of Israel in Deut 10:17–22.
33. Storkey, *Scars across Humanity*, 130.
34. Brueggemann, *Deuteronomy*, 226.



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—Paul Chilcote, Ashland Seminary