

Women in War in the Ancient Near East and the War Captive Wife in Deuteronomy

Dominik Markl

Warriors were generally men in the ancient Near East, while women were exposed to the consequences of war, which could entail both slavery and sexual exploitation. Although such a general description might not be wrong,¹ a more nuanced analysis needs to consider the role of women in the specific military strategy frequently employed in the ancient Near East – siege warfare with ensuing mass deportations – and the status consequently accorded to deportees. This wider perspective will provide the background for analysing the only legal text attested from antiquity that regulates the treatment of a female war captive chosen as a wife. It is found in the biblical Book of Deuteronomy (21:10–14). While this text presupposes a general attitude and practice of male domination, it is unique in prescribing legal protection and in encouraging basic standards of respect for female war captives married by victorious men.

1. Women in War: Siege Warfare, Sexual Violence and Mass Deportations

The fortification of major settlements with massive walls from the Neolithic period² onwards went hand in hand with the development of poliorcetics, the art of conducting and resisting sieges.³ Siege warfare – the earliest iconographic evidence for which dates back to the second half of the 4th mill. BCE⁴ – contin-

¹ For a fine survey on the roles of women in the context of war in the ancient Near East, including cases of active participation, see Kuhrt, Amélie, *Women and War*, *NIN Journal of Gender Studies in Antiquity* 2 (2001), 1–25. On gender roles and war in the Bible see Rakel, Claudia, *Judit – über Schönheit, Macht und Widerstand im Krieg. Eine feministisch-intertextuelle Lektüre*, *BZAW* 334, Berlin 2003.

² One of the best known examples is the Neolithic wall of Jericho from the late 9th millennium BCE, which is preserved to a height of 5.75 m in trench I. See Kenyon, Kathleen M., art. *Jericho*, in: *NEAEHL* 2 (1993), 674–681; esp. 676.

³ Eph'al, Israel, *The City Besieged. Siege and Its Manifestations in the Ancient Near East*, *CHANE* 36, Leiden 2009.

⁴ See the impressions from Susa and Chogha Mish in Amiet, Pierre, *Temple sous terrasse ou forteresse?*, *RA* 81 (1987), 99–104, here 101, fig. 2 (Louvre, AO 29389) and 103, fig. 3.

ued to be one of the principal military strategies throughout the history of the ancient Near East and showed high standards of technical development in the Neo-Assyrian period.⁵ As sieges aimed at starving both the city's armed force and general population, they inevitably caused extreme hardship among civilians, which is reflected in many texts.⁶ Famine under siege could force women to sell themselves and their children, especially daughters, into slavery.⁷ The severity of famine under siege is drastically captured in the literary motif of parents who eat their own progeny – with great rhetorical effect, e.g., in Moses' curses (Deut 28:54–57).⁸ In a desperate attempt to appease the gods when endangered by military attack, children were even sacrificed in some cultures of the Levant.⁹

When a city was breached and conquered, women may well have been exposed to sexual violence,¹⁰ as some biblical texts suggest.¹¹ Reflecting on the

⁵ See De Backer, Fabrice, *L'art du siège néo-assyrien*, CHANE 61, Leiden 2013; Mayer, Walter, *Politik und Kriegskunst der Assyrer*, ALASP 9, Münster 1995; esp. 470–474. Hamblin, William J., *Warfare in the Ancient Near East to 1600 BC. Holy Warriors at the Dawn of History*, New York 2006; esp. 215–236; Hasel, Michael G., *Military Practice and Polemic. Israel's Laws of Warfare in Near Eastern Perspective*, Berrien Springs 2005; esp. 95–123.

⁶ See Lee, Nancy C., *The Singers of Lamentations. Cities Under Siege, from Ur to Jerusalem to Sarajevo...*, BilnS 60, Leiden 2002; Dobbs-Allsopp, F. W., *Weep, O Daughter of Zion. A Study of the City-Lament Genre in the Hebrew Bible*, BibOr 44, Rome 1993. For the literary reflection of siege in the curses of Deut²⁸ see Sonnet, Jean-Pierre, *The Siege of Jerusalem between Rhetorical Maximalism (Deut 28) and Narrative Minimalism (2 Kgs 25)*, in: Dubovský, Peter – Markl, Dominik – Sonnet, Jean-Pierre, eds., *The Fall of Jerusalem and the Rise of the Torah*, FAT 107, Tübingen 2016, 73–86. On Josephus' use of the motif see Reeder, Caryn A., *Pity the Women and Children. Punishment by Siege in Josephus's Jewish War*, JSJ 44 (2013), 174–194.

⁷ See Kuhrt, *Women and War*, 15.

⁸ On Neo-Assyrian and biblical comparative material see Steymans, Hans Ulrich, *Deuteronomium 28 und die adê zur Thronfolgeregelung Asarhaddons. Segen und Fluch im Alten Orient und in Israel*, OBO 145, Freiburg 1995; esp. 183; Hübner, Ulrich, *Sterben, überleben, leben. Die Kinder und der Tod im antiken Palästina*, in: Karrer-Grube, Christiane et al., eds., *Sprachen – Bilder – Klänge. Dimensionen der Theologie im Alten Testament und in seinem Umfeld*. FS R. Bartelmus, AOAT 359, Münster 2009, 49–73; esp. 61.

⁹ For an overview of (potential) evidence see Eph'al, *The City Besieged*, 153–159; Dewrell, Heath D., *Child Sacrifice in Ancient Israel*, *Explorations in Ancient Near Eastern Civilizations* 5, Winona Lake 2017, esp. 42–50; and my discussion of some of the material in: *Polemics against Child Sacrifice and the Construction of the Other in Deuteronomy and the Deuteronomistic History*, in: van Kooten, George – van Ruiten, Jacques, eds., forthcoming.

¹⁰ While it seems probable that sexual violence has been intertwined with wars throughout history, there has been little research on this phenomenon in antiquity. For a potential reference to rape in a Hittite war narrative see Miller, Jared L., *Vergewaltigung*, in: RIA 14 (2016), 540–545; 544. Herodotus refers to gang rape resulting in death conducted by retreating Persian soldiers. Cf. Harrison, Thomas, *Herodotus and the Ancient Greek*

conquest of Judah by the Babylonians, Lam 5:11 reads: “They debased (ענה pi.) women in Zion, girls in the towns of Judah.”¹² Typical scenes of conquest seem to be reflected in Isaiah’s oracle against Babylon: “Their infants will be dashed before their eyes; their houses will be plundered, and their wives raped (גל ni.)” (Isa 13:16). A similar scenario is described in Zechariah’s vision of an eschatological sack of Jerusalem: “the city shall be taken and the houses looted and the women raped (גל ni.)” (Sach 14:2). In exceptional cases, warriors would even slit open the wombs of pregnant women in a symbolic act of exterminating the unborn of the enemy’s forthcoming generation.¹³

During the looting of a taken city,¹⁴ the population could be massacred, as King Mesha claims in his conquest of the town of Nebo, “I killed [its] whole population (וזהרג כל[ה]), seven thousand male citizens(?) and aliens(?), and female citizens(?) and aliens(?), and servant girls; and I had put it to the ban (החרמתה) for Ashtar Kemosh”.¹⁵ The same idea is reflected in the biblical motif of the “ban” (חרם: e.g., Deut 2:34; 3:6; 7:2):¹⁶ “They devoted to destruction by

Idea of Rape, in: Deacy, Susan – Pierce, Karen F., eds., *Rape in Antiquity*, London 1997, 185–208; here 188; Ziolkowski, Adam, *Urbs direpta, or how the Roman sacked cities*, in: Rich, John – Shipley, Graham, eds., *War and Society in the Roman World*, London 1993, 69–91; esp. 72–73, argues that “sexual violence was intrinsic to the notion of *direptio*” – the Latin technical term for the sack of cities – “on a par with looting itself” (72). Research on sexual violence in modern warfare has become the object of serious research only since the 1990s. Cf., e.g., the research review in Skjelsbæk, Inger, *Sexual Violence and War. Mapping Out a Complex Relationship*, *European Journal of International Relations* 7 (2001), 211–237; and the bibliographical references in Mühlhäuser, Regina, *Reframing Sexual Violence as a Weapon and Strategy of War. The Case of the German Wehrmacht during the War and Genocide in the Soviet Union, 1941–1944*, *Journal of the History of Sexuality* 26 (2017), 366–401. While sexual violence in war is a pervasive phenomenon, it is not invariable, which precludes simplistic generalizations. Cf. Wood, Elisabeth Jean, *Armed Groups and Sexual Violence. When is Wartime Rape Rare?*, *Politics and Society* 37 (2009), 131–162.

¹¹ On the following see Rakel, Judit, esp. 189–197.

¹² Van Wolde, Ellen, *Does ‘innā Denote Rape? A Semantic Analysis of a Controversial Word*, *VT* 52 (2002), 528–544, argues that ענה pi. refers to the “social debasement” (542) as a consequence of a sexual act.

¹³ This practice is visually documented in a Neo-Assyrian relief (BM 124927). See Dubovský, Peter, *Ripping Open Pregnant Arab Women. Reliefs in Room L of Ashurbanipal’s North Palace*, *Or* 78 (2009), 394–419. In addition, the motif is found in several biblical texts (2 Kgs 8:12; 15:16; Hos 14:1; Am 1:13) and in a middle Assyrian text (VAT 13833): Cogan, Mordechai, “Ripping Open Pregnant Women” in *Light of an Assyrian Analogue*, *JAOS* 103 (1983), 755–757. See also Stol, Marten, *Women in the Ancient Near East*, trans. by Helen and Mervyn Richardson, Boston 2016, 336.

¹⁴ On looting as an incentive, especially in the Neo-Assyrian empire see Richardson, Seth F. C., *Mesopotamia and the “New” Military History*, in: Brice, Lee L. – Roberts, Jennifer T., eds., *Recent Directions in the Military History of the Ancient World*, Claremont 2011, 11–51; esp. 30–33.

¹⁵ KAI 181,16–17; Klaas A. D. Smelik’s translation from CoS 2.23.

¹⁶ On the issue of the “ban” see Monroe, Lauren A. S., *Israelite, Moabite and Sabaean War-ḥêrem Traditions and the Forging of National Identity. Reconsidering the Sabaean*

the edge of the sword all in the city, both men and women, young and old, oxen, sheep, and donkeys” (Josh 6:21). Although the narratives in the book of Joshua do not represent historical facts, the attribution of cultic significance to the destruction of cities and the massacre of their population most probably did play a role in historical warfare.

More frequently, at least part of the population was kept alive to serve the interests of the conquerors.¹⁷ Women – just like men and children – were frequently treated as booty. Egyptian imagery has soldiers carry female captives over their shoulders.¹⁸ Papyrus Lansing, a school text from the late 20th dynasty, ironically describes the misfortune of the soldier: “When victory is won, the captives are handed over to his majesty, to be taken to Egypt. The foreign woman faints on the march; she hangs herself (on) the soldier’s neck” (10,3–5).¹⁹ After a campaign to Asia, Amenhotep lists among his booty 232 sons and 323 daughters of rulers.²⁰ If not taken captive by the aggressor, young women could be given as tribute by the defeated. “200 nubile girls I received”, noted Ashurnasirpal II (883–859 BCE) after a campaign to the land of Hatti.²¹

Comparable cultural attitudes are reflected in stories and poems in the Hebrew Bible. In an Israelite campaign against the Midianites, Moses commands

Text RES 3945 in *Light of Biblical and Moabite Evidence*, VT 57 (2007), 318–341; Hoffman, Yair, *The Deuteronomistic Concept of the Herem*, ZAW 111 (1999), 196–210; Schmitt, Rüdiger, *Der „Heilige Krieg“ im Pentateuch und im deuteronomistischen Geschichtswerk. Studien zur Forschungs-, Rezeptions- und Religionsgeschichte von Krieg und Bann im Alten Testament*, AOAT 381, Münster 2011; Braulik, Georg, *Die Völkervernichtung und die Rückkehr Israels ins Verheißungsland. Hermeneutische Bemerkungen zum Buch Deuteronomium*, in: idem, *Studien zum Deuteronomium und seiner Nachgeschichte*, SBAB 33, Stuttgart 2001, 113–150; idem, *The Destruction of the Nations and the Promise of Return. Hermeneutical Observations on the Book of Deuteronomy*, VeEc 25 (2004), 46–67.

¹⁷ Vidal, Jordi, *Ugarit at War (3). Prisoners of War*, UF 42 (2010/2011), 719–729; here 720: Prisoners of war (POWs) “could provide significant economic benefits since men, women and adolescents could serve as a workforce for the palace or could be sold as slaves, women could be taken in marriage, POWs could be ransomed for money, etc.”

¹⁸ Helck, Wolfgang, art. *Kriegsgefangene*, in: LÄ 3 (1980), 786–788; here 788. Dramatic scenes of women being taken captive by Roman soldiers are shown on the column of Marcus Aurelius in Rome. See Krierer, Karl R., *Konzept, Struktur und narrative Methode der Bildprogrammatische römischer Triumphsäulen. Trajanssäule und Mark Aurel-Säule*, in: Bietak, Manfred – Schwarz, Mario, eds., *Krieg und Sieg. Narrative Wanddarstellungen von Altägypten bis ins Mittelalter. Internationales Kolloquium 29.–30. Juli 1997 im Schloß Haindorf bei Langenlois, Untersuchungen der Zweigstelle Kairo des Österreichischen Archäologischen Institutes 20, DÖAW 24, Wien 2002, 161–173; here 173.*

¹⁹ Lichtheim, Miriam, *Ancient Egyptian Literature. A Book of Readings. Volume II: The New Kingdom*, Berkeley 1976, 172.

²⁰ Keel, Otmár, *Kanaanäische Sühneriten auf ägyptischen Tempelreliefs*, VT 25 (1975), 413–469; here 441.

²¹ RIMA 2, A.0.101.1 iii 67, quoted by Kuhrt, *Women and War*, 14; see *ibid.*, 14–15, for further examples.

the army to kill all males and all deflowered females, “but all the female children who have not known a man by sleeping with him, keep alive for yourselves” (Num 31:18). According to Deuteronomy’s war legislation, however, only the male warriors are to be killed, while “women, the children, livestock, and everything else in the town” can be taken as booty (Deut 20:13–14). Sisera’s mother and her “wisest ladies” boast: “Are they not finding and dividing the spoil? A woman or two for every man!” (Judg 5:30). In a Hellenistic context, Jewish authors have Judith accuse the Assyrians of wanting to “kill my young men with the sword, and dash my infants to the ground, and seize my children as booty, and take my virgins as spoil” (Jdt 16:4). Attacks may even have occurred for the purpose of taking wives, as the story about the raid against Jabesh-gilead (Judg 21:1–14)²² and the Roman legend of the Rape of the Sabines²³ may suggest.

After the military conquest of a city, mass deportation was frequently employed as a strategy to destroy the city’s political and social structure and, at the same time, to use the deportees for the conquering power’s own purposes.²⁴

²² Boling, Roberg G., *Judges. Introduction, Translation, and Commentary*, AB, Garden City 1975, 294, refers to comparable motifs in Greek literature: “The Messenians in Greek legend are reputed to have abducted maidens from Laconia during a festival of Artemis. The theme of the rape of maidens in comparable circumstances recurs in Greek poetry.” A myth from Ugarit (*KTU* 1.14–16) tells the tale of a king who goes out to war to conquer a wife for himself. See Ginsberg, Harold Louis, *The Legend of King Keret. A Canaanite Epic of the Bronze Age*, BASOR.S 2/3, New Haven 1946.

²³ On the legend see Fantham, Elaine et al., *Women in the Classical World. Image and Text*, New York 1994, here 216–218; Kowalewski, Barbara, *Frauengestalten im Geschichtswerk des T. Livius*, BzA 170, München 2002; esp. 17–33.

²⁴ See esp. Le Bohec, Yann, art. Prisoners of War, in: Brill’s New Pauly 11 (2007), 875–878; Klengel, Horst, art. Krieg, Kriegsgefangene, in: *RIA* 6 (1981), 241–246; Helck, Kriegsgefangene; Fales, Frederick Mario, *Guerre et paix en Assyrie. Religion et impérialisme*, Les conférences de l’École Pratique des Hautes Études 2, Paris 2010; esp. 212–219; Oded, Bustenay, *Mass Deportations and Deportees in the Neo-Assyrian Empire*, Wiesbaden 1979; Freydanck, Helmut, *Die Rolle der Deportierten im mittellassyrischen Staat*, in: Herrmann, Joachim – Sellnow, Irmgard, eds., *Die Rolle der Volksmassen in der Geschichte der vorkapitalistischen Gesellschaftsformationen. Zum XIV. Internationalen Historiker-Kongreß in San Francisco 1975*, Veröffentlichungen des Zentralinstituts für Alte Geschichte und Archäologie der Akademie der Wissenschaften der DDR 7, Berlin 1975, 55–63. On war captives in the Persian empire see Dandamaev, Muhammad A., *Slavery in Babylonia. From Nabopolassar to Alexander the Great (626–331 BC)*, DeKalb 1984, esp. 580–584. For ancient Greece: Ducrey, Pierre, *Le traitement des prisonniers de guerre dans la Grèce antique des origines à la conquête romaine*, Paris 1999²; Panagopoulos, Andreas, *Captives and Hostages in the Peloponnesian War*, Athens 1978 (Amsterdam 1989²). On the Roman practice: Volkmann, Hans – Horsmann, Gerhard, *Die Massenversklavungen der Einwohner erobert Städte in der hellenistisch-römischen Zeit*, FASK 22, Stuttgart 1990²; Welwei, Karl-Wilhelm, *Sub corona vendere. Quellenkritische Studien zu Kriegsgefangenschaft und Sklaverei in Rom bis zum Ende des Hannibalkrieges*, FASK 34, Stuttgart 2000. On the Mediaeval and Modern history of war imprisonment see Overmans, Rüdiger, ed., *In der Hand des Feindes. Kriegsgefangenschaft*

Although we do not have the means to reconstruct precise figures for any region or period, it is certainly not exaggerated to estimate that during antiquity millions suffered the fate of deportation.²⁵

The process of siege warfare – from siege via assault to looting, punishment and deportation – was represented in narratively arranged wall relief cycles in Neo-Assyrian royal palaces,²⁶ such as in the Lachish reliefs.²⁷ Rooms with such reliefs were created to receive delegations of subjected peoples, who had to contemplate Assyrian power, being “directly involved in the heroic actions of the Assyrian army”,²⁸ as part of Assyrian propaganda and psychological warfare.²⁹ Notwithstanding the atrocities shown in these reliefs, they contain intimate, surprisingly sensitive representations of deported women and children.³⁰ While the fate of deportation after conquest was always harsh, it may have played out in quite diverse ways depending on the concrete circumstances of the deportees and their status in the land for which they were destined.

von der Antike bis zum Zweiten Weltkrieg, Köln 1999; Scheipers, Sibylle, ed., *Prisoners in War*, Oxford 2010.

²⁵ Oded, *Mass Deportations*, here 20, arrives for the Neo-Assyrian empire at “an estimated total of four and a half million deportees for a period of about three centuries.” The number of slaves deported by the Romans in only 50 years from 200–150 BCE is estimated 250.000 (Volkman – Horsmann, *Massenversklavungen*, 115 with 166–167).

²⁶ On the program see Bleibtreu, Erika, *Zum Schema der Kriegsdarstellungen auf neuassyrischen Wandreliefs des 9.–7. Jahrhunderts v. Chr.*, in: Bietak – Schwarz, eds., *Krieg und Sieg*, 69–79. On the growing artistic complexity of presentation during the Neo-Assyrian period see Czichon, Rainer Maria, *Die Gestaltungsprinzipien der neuassyrischen Flachbildkunst und ihre Entwicklung vom 9. zum 7. Jahrhundert v. Chr.*, München 1992. For Egyptian examples of the iconography of attacks on cities see Heinz, Susanna Constanze, *Die Feldzugsdarstellungen des Neuen Reiches. Eine Bildanalyse*, DÖAW 18, Wien 2001; esp. 265–278 and *passim*; several examples of Egyptian attacks on Canaanite cities are treated in Keel, *Kanaanäische Sühneriten*; cf. Spalinger, Anthony J., *War in Ancient Egypt*, Oxford 2005, 224–225, 243.

²⁷ See Barnett, Richard D. – Bleibtreu, Erika – Turner, Geoffrey, *Sculptures from the Southwest Palace of Sennacherib at Nineveh*, 2 vols., London 1998, room XXXVI, vol. 1, 101–105, and vol 2, plates 322–352; Ussishkin, David, *The Conquest of Lachish by Sennacherib*, Tel Aviv 1982; Ühlinger, Christoph, *Clio in a World of Pictures – Another Look at the Lachish Reliefs from Sennacherib’s Southwest Palace at Nineveh*, in: Grabbe, Lester, ed., ‘Like a Bird in a Cage’. *The Invasion of Sennacherib in 701 BCE*, JSOT.S 363, London 2003, 221–305.

²⁸ Nadali, Davide, *Sennacherib’s Siege, Assault, and Conquest of Alammu*, SAAB 14 (2002–2005), 113–128, here 113.

²⁹ Mayer, *Politik und Kriegskunst*, 478.

³⁰ Kuhrt, *Women and War*, 14–15: “Interestingly, almost the only representations of women in Assyrian palace relief art are of such female deportees, shown feeding or carrying their children, riding with them in carts, or solicitously bending down to pick them up. It is the maternal, reproductive role that is emphasised in this context, as deportations primarily served to swell the man-power at the disposal of king and state.” On these images see Stol, *Women*, esp. 333–335.

2. The Legal and Social Status of Deportees

The need for workers in Egypt led to raids on Nubia aimed at making slaves on a large scale and specifically at the mass enslavement of prisoners of war.³¹ The evidence from Mesopotamia, however, suggests that war captives were not generally reduced to slavery.³² Raymond Westbrook argued concerning the legal status of war captives that “they were not automatically slaves, but they were without rights and therefore potential slaves.”³³ Especially in the Neo-Assyrian and Neo-Babylonian periods, mass deportations of defeated peoples generally did not lead to enslavement. As Bustenay Oded has shown, in the early Neo-Assyrian period, deportees “continued to be employed in their professions and trades according to the needs of the empire.”³⁴ The concrete status and socio-economic situation of the deportees could thus vary significantly,³⁵ which is also seen in variegated terminology.³⁶ They worked in agriculture, as craftsmen, scholars, businessmen, state officials, but could also become servants, slaves or prisoners.³⁷ From Tiglath-pileser I to Sargon II, the standard phrase *ana/itti nišē (māt) kur Aššur amnūšunūti*, “together with the citizens/subjects/inhabitants/people of the land of Assyria I counted/considered them”³⁸ was applied to deportees, suggesting that “there was no essential distinction between deportees who had been settled in a certain conquered country and the indigenous inhabitants of the same country.”³⁹ With the expansion of the empire, however, the

³¹ Helck, *Kriegsgefangene*, 787.

³² For textual evidence on prisoners of wars in the 3rd and 2nd mill. BCE see Altman, *Tracing the Earliest Recorded Concepts of International Law. The Ancient Near East (2500–330 BCE)*, Legal History Library 8, Leiden 2012, esp. 32–33; 43–44; 62–64; 103; 108–110; Neumann, Hans, *Bemerkungen zum Problem der Fremdarbeit in Mesopotamien (3. Jahrtausend v. u. Z.)*, AOF 19 (1992), 266–275; esp. 271–275; Gelb, Ignace J., *Prisoners of War in Early Mesopotamia*, JNES 32 (1973), 70–98; Hoffner, Harry A. Jr., *The Treatment and Long-Term Use of Persons Captured in Battle according to the Mašat Texts*, in: Yener, K. Aslihan et al., eds., *Recent Developments in Hittite Archaeology and History. Papers in Memory of Hans G. Güterbock*, Winona Lake 2002, 61–72.

³³ Westbrook, Raymond, *Slave and Master in Ancient Near Eastern Law*, *Chicago-Kent Law Review* 70 (1995) 1631–1676; here 1641. For earlier works on slavery in Mesopotamia see Dandamaev, *Slavery in Babylonia*; Mendelsohn, Isaac, *Slavery in the Ancient Near East. A Comparative Study of Slavery in Babylonia, Assyria, Syria, and Palestine from the Middle of the Third Millennium to the End of the First Millennium*, New York 1949.

³⁴ Oded, *Mass Deportations*, 77.

³⁵ *Ibid.*, 75–115. See also Younger, K. Lawson, *The Deportations of the Israelites*, *JBL* 117 (1998), 201–227; esp. 219–224.

³⁶ Oded, *Mass Deportations*, 79: “The terms *šallatu*, *kišittu*, *ḥabātu* are used to denote prisoners of war, captives, deportees, but have no defined social, economic and legal connotations, and therefore cannot indicate the status of a deportee after he had been resettled.”

³⁷ For examples see Oded, *Mass Deportations*, 91–115.

³⁸ *Ibid.*, 81.

³⁹ *Ibid.*, 84.

need for cheap labour grew and deportees were increasingly employed in *corvée* labour, which is also reflected in the reliefs of Sennacherib.⁴⁰

Similar conditions can be reconstructed for the Neo-Babylonian period.⁴¹ Nebuchadnezzar II and Nabonidus especially employed deportees from many peoples in their construction projects. Nabonidus, for example, refers to “2850 (people) from the troops (of captives), booty from the land of Ḫumē”, whom he employed in building work.⁴² At the same time, families of deportees could work in agriculture and engage in legal affairs as, for example, the Al-Yahudu archive shows.⁴³

War captives are referred to in a few passages of ancient Near Eastern law collections. Codex Hammurabi regulates issues concerning Babylonians who were taken captive (§ 32, 133–135). For redeeming a man taken captive during a royal campaign, funds from his city’s temple or palace could be used, unless there were sufficient means in his own estate (§ 32). The Hittite Laws refer to war captives (NAM.RA/*arnuwala*)⁴⁴ twice in the context of the attribution of land and related obligations (§ 40 and § 112)⁴⁵ and once concerning sexual relations between a Hittite man and female deportees: “If anyone is regularly cohabiting with an *arnuwalaš*-woman, and has intercourse with her mother and her sister, it is not an offence” (§ 200).⁴⁶ The situation is thus parallel to the laws that would apply if the women were slaves (§ 194),⁴⁷ while the same act with free women who live in the same country would be illegitimate (§ 191).⁴⁸

⁴⁰ *Ibid.*, 90.

⁴¹ Altman, *International Law*, 187–188. On the Neo-Babylonian practice of deportations see Vanderhooff, David Stephen, *The Neo-Babylonian Empire and Babylon in the Latter Prophets*, HSM 59, Atlanta 1999, esp. 110–112; MacGinnis, John, *Mobilisation and Militarisation in the Neo-Babylonian Empire*, in: Vidal, Jordi, ed., *Studies on War in the Ancient Near East. Collected Essays on Military History*, AOAT 372, Münster 2010, 153–163; esp. 159.

⁴² Babylon-Stele IX 31’–32’. Translation after Schaudig, Hanspeter, *Die Inschriften Nabonids von Babylon und Kyros’ des Großen samt den in ihrem Umfeld entstandenen Tendenzschriften. Textausgabe und Grammatik*, AOAT 256, Münster 2001, 527. Dandamaev, *Slavery in Babylonia*, 562–563, refers to this text, mistakenly identifying it as “the stele of Nabonidus found in Harran”.

⁴³ Pearce, Laurie E. – Wunsch, Cornelia, *Documents of Judean Exiles and West Semites in Babylonia in the Collection of David Sofer*, CUSAS 28, Bethesda 2014. On the social context see Waerzeggers, Caroline, *Locating Contact in the Babylonian Exile. Some Reflections on Tracing Judean-Babylonian Encounters in Cuneiform Texts*, in: Gabbay, Uri – Secunda, Shai, eds., *Encounters by the Rivers of Babylon*, TSAJ 160, Tübingen 2014, 131–146.

⁴⁴ Alp, Sedat, *Die soziale Klasse der NAM.RA-Leute und ihre hethitische Bezeichnung*, JKAF 1 (1950), 113–135.

⁴⁵ Hoffner, Harry A. Jr., *The Laws of the Hittites. A Critical Edition*, DMOA 23, Leiden 1997, esp. 48, with 187–188. Otherwise, the Hittite laws do not contain “any general prescription on warfare or on military affairs as such”: Korošec, Viktor, *The Warfare of the Hittites – from the Legal Point of View*, Iraq 25 (1963), 159–166, 165.

⁴⁶ Hoffner, *Laws of the Hittites*, 158.

⁴⁷ *Ibid.*, 153.

⁴⁸ *Ibid.*, 151: “If a free man has intercourse with free sisters who have the same mother and also with their mother–one in one country and the other in another, it is not an of-

Roman legal thought and practice abandoned prisoners of war, as they lost ‘Roman citizenship’. “Nothing had less esteem in Rome” than a prisoner of war.⁴⁹ The Roman practice of mass enslavement, and many forms of maltreatment of the populations of conquered territories throughout the history of the ancient Near East, seem to be based on the assumption of the ‘unlimited right of the victor’.⁵⁰ “Au Proche-Orient ancien, comme dans la plupart des sociétés de l’Antiquité, les vaincus ne jouissaient d’aucun droit.”⁵¹ Limitations to killing and dehumanizing cruelty generally depended solely on good will and considerations of self-interest on the part of the victor.⁵²

3. The Protection of a Female War Captive in Deuteronomy 21:10-14

The fate of women and deportees in ancient warfare, some aspects of which have been outlined so far, is the major cultural framework in which a passage from the biblical book of Deuteronomy deserves special attention. Deut 21:10–14⁵³ is curious in that it is, as far as I can see, the only text within a collection of laws that has come down to us from antiquity explicitly addressing the treatment of a woman taken captive. The passage is placed in the context of a collection of predominantly criminal and civil laws (Deut 19–25).⁵⁴ It is connected, via the introductory phrase “When you go out to war against your enemy”, with the war legislation of Deut 20 (cf. 20:1; 21:10) and, at the same time, it is thematically related to the subsequent family laws.⁵⁵

fence. But if it happens in the same location, and he knows (the women are related), it is an unpermitted sexual pairing.”

⁴⁹ Le Bohec, *Prisoners of War*, 877, with reference to Lev 22:59.

⁵⁰ Thus Welwei, *Sub corona vendere*, 153: “Massenversklavungen von Kriegsgefangenen und Einwohnern erobelter Städte und Siedlungen aller Art resultierten letztlich aus archaischen Vorstellungen vom schrankenlosen Siegerrecht.”

⁵¹ Fales, *Guerre et paix*, 212.

⁵² For a document on food provisions for deportees, which are meant to keep the captive work force alive, see Fales, Frederick Mario, *Cibare i deportati. Una lettera al re assiro Tiglath-Pileser III* (nd 2634), in: Morandi Bonacossi, Daniele et al., eds., *Tra Oriente e Occidente. Studi in onore di Elena Di Filippo Balestrazzi*, Padova 2006, 47–64.

⁵³ See Otto, Eckart, *Deuteronomium 12–34*, Bd. 1: *Deuteronomium 12,1–23,15*, HThKAT, Freiburg i.Br. 2016; esp. 1610–1628; 1650–1653.

⁵⁴ Deut 12–18, in contrast, is predominantly concerned with matters of religion and public offices. On the literary features, which distinguish these two major parts see Markl, Dominik, *Gottes Volk im Deuteronomium*, BZAR 18, Wiesbaden 2012, esp. 25–32.

⁵⁵ Deut 21:15–17 concerns the right of the firstborn, vv.18–21 a rebellious son (see Clifton, Bruno, *What if Israel was God’s Stubborn and Rebellious Son?*, ZAR 20 [2014], 115–126); sex crimes and family law are treated in 22:13–30. Deut 21:1–9 treats the issue of a murdered person found in the open field, connects thematically and via the issue of “innocent blood” (19:10, 13; 21:8–9) especially with 19:1–13. Cf. Otto, *Deuteronomium*, 1624–1625; Braulik, Georg, *Die deuteronomischen Gesetze und der Dekalog. Studien zum Aufbau von Deuteronomium 12–26*, SBS 145, Stuttgart 1991, esp. 70.

The preceding war laws had ruled that if a city is taken by military force, the men shall be killed, but women and children taken as spoil (20:10–14) — the background against which the present law regulates conduct towards female captives chosen as wives.⁵⁶ Within the larger framework of the (deuteronomistically redacted) book of Deuteronomy, it is clear that the cities concerned cannot be Canaanite, since the latter are subject to the ban (7:1–2). This distinction is explicitly introduced in 20:15–18 — a classical example of what is probably a redactional specification.⁵⁷ Since the captive women, then, are not Canaanites, who would turn Israelites away from Yhwh (7:3–4), the ‘non-proximate other’ wives are acceptable for marriage.⁵⁸ The only reference to God in the passage occurs in the introduction, “and Yhwh, your God, delivers him into your hand” (21:10; cf. 20:13),⁵⁹ a token of the ancient Near Eastern ideology of divine warfare.⁶⁰

Dietrich, Jan, *Kollektive Schuld und Haftung. Religions- und rechtsgeschichtliche Studien zum Sündenkuhritus des Deuteronomiums und zu verwandten Texten*, ORA 4, Tübingen 2010, 339 n.31, suggests that the theme of the dead body in the open field in 21:1–9 could have been read as related to war and thus led to the redactional insertion of the war legislation in Deut 20; 21:10–14.

⁵⁶ Since the introduction in 21:1 is worded in parallel with 20:1, which refers to a battle in the open field, and no city is mentioned, 21:10–14 can refer to both battles in the open field with the subsequent deportation of the population of unfortified settlements (cf. Num 31:9–11) or to siege warfare (as 20:10–14).

⁵⁷ Otto, *Deuteronomium*, 1569–1570; Fishbane, Michael, *Biblical Interpretation in Ancient Israel*, Oxford 1985, 200. Within the redacted text, the passage reads like an “after-thought”: Bartor, Assnat, “When you go forth to war against your enemies...”. *Narrative Reading of Deuteronomic Warfare Legislation*, in: Berner, Christoph – Samuel, Harald, eds., *The Reception of Biblical War Legislation in Narrative Contexts*, BZAW 460, Berlin 2015, 1–21; here 17.

⁵⁸ Crouch, Carly L., *The Making of Israel. Cultural Diversity in the Southern Levant and the Formation of Ethnic Identity in Deuteronomy*, VT.S 162, Leiden 2014, 200–201. Interestingly, “Rabbinic homilies express fierce opposition to a man marrying a female captive”: Rofé, Alexander, *The Laws of Warfare in the Book of Deuteronomy. Their Origins, Intent and Positivity*, JSOT 32 (1985), 23–44; here 41 n.28.

⁵⁹ Besides Deut 20:13; 21:10, the motif of Yhwh’s “delivering” (נתן ביד) somebody to somebody else occurs in Deut 1:27; 2:24, 30; 3:2, 3; 7:24.

⁶⁰ See Oded, Bustenay, *War, Peace and Empire. Justifications for War in Assyrian Royal Inscriptions*, Wiesbaden 1992; Otto, Eckart, *Krieg und Frieden in der Hebräischen Bibel und im Alten Orient. Aspekte für eine Friedensordnung in der Moderne*, ThFr 18, Stuttgart 1999; Achenbach, Reinhard, *Divine Warfare and YHWH’s Wars. Religious Ideologies of War in the Ancient Near East and in the Old Testament*, in: Galil, Gershon et al., eds., *The Ancient Near East in the 12th–10th Centuries BCE. Culture and History*, AOAT 392, Münster 2012, 1–26; Crouch, Carly L., *War and Ethics in the Ancient Near East. Military Violence in Light of Cosmology and History*, BZAW 407, Berlin 2009; Liverani, Mario, *Guerra santa e guerre giusta nel Vicino Oriente antico (circa 1600-600 a.C.)*, StSt 43 (2002), 639–659. Cogan, Mordechai, *Imperialism and Religion. Assyria, Judah and Israel in the Eighth and Seventh Centuries B.C.E.*, SBLMS 19, Missoula, MO 1974.

3.1 Text and Translation of Deut 21:10–14

In the following, I shall present the Hebrew consonantal text of Deut 21:10–14 with my translation. Wherever the translation is unusual, it will be explained in the subsequent interpretation. The passage is divided into case (vv.10–13) and sub-case (v.14).

<p>כִּי־תֵצֵא לְמַלְחָמָה עַל־אֵיבֶיךָ וְנָתַנּוּ יְהוָה אֱלֹהֶיךָ בְיָדְךָ וּשְׁבִית שְׁבוּיָיו וּרְאִיתָ בַשְּׁבוּיָה אִשָּׁה יִפְתָּח־תָּאֵר וַחֲשַׁקְתָּ בָּהּ וּלְקַחְתָּ לָךְ לְאִשָּׁה וְהִבֵּאתָה אֶל־תּוֹךְ בֵּיתְךָ וְגִלַּחְתָּ אֶת־רֹאשָׁהּ וְעִשְׂתָּה אֶת־צַפְרֹנֶיהָ וְהִסִּירָה אֶת־שְׂמֹלֶת שְׁבוּיָהּ מֵעָלֶיהָ וְיֹשְׁבָה בְּבֵיתְךָ וּבְכַתָּהּ אֶת־אָבִיהָ וְאֶת־אִמָּהּ יָרַח יָמִים וְאַחֵר כֵּן תָּבוֹא אֵלֶיהָ וּבְעִלְתָּהּ וְהִיְתָה לָךְ לְאִשָּׁה</p>	<p>¹⁰ When you go out to war against your enemy and Yhwh, your God, delivers him into your hand and you deport him</p> <p>¹¹ and you see among the deportees a woman of beautiful appearance, and you fall in love with her and you take (her) as (your) wife,</p> <p>¹² you shall bring her into your house. And she shall shave her head and trim her nails</p> <p>¹³ and take away the garb of her deportation from on her and live in your house and bewail her father and her mother, a month of days, And after that you may go to her and become her husband and she will be your wife.</p>
<p>וְהָיָה אִם־לֹא חָפְצָת בָּהּ וּשְׁלַחְתָּהּ לְנַפְשָׁהּ וּמָכַרְתָּהּ לֹא־תִמְכְּרָנָהּ בְּכֶסֶף לֹא־תִתְעַמֵּר בָּהּ תַּחַת אֲשֶׁר עִנִּיתָהּ</p>	<p>¹⁴ If, however, you do not desire her (anymore), you shall send her away in independence, that is, by no means can you sell her for money. You must not constrain her since you have debased her.</p>

3.2 The Main Case (Deut 21:10–13): How to Perform Marriage

To interpret the principal case, it is important to determine the end of the protasis and the beginning of the apodosis. The key to answering this question is, in my view, the repetition of the phrase לָךְ לְאִשָּׁה (“for you as a wife”) at the endings of v.11 and v.13 respectively. This device suggests that the addressed Israelite’s initial step of taking a war captive as a wife is the decisive point at which the protasis arrives (v.10–11), while the legal procedure for its completion is the

subject of the apodosis (v.12–13).⁶¹ The sequence of seeing, desiring and taking (v.11) is a habitual course of events that does not require regulation. The apodosis, in contrast, goes against the ‘natural’ course of events. Given the general tendency to assume an unrestricted right of victors over captives, a man may well assume that he has the right to conclude a marriage with a woman chosen in this way – and to fulfil his sexual desire, explicitly addressed in v.11 – immediately. The apodosis, however, requires a delay and a specific procedure.

The protasis (v.10–11), though formulated consistently in the second person singular, implies a subtle shift of reference. The actions described in v.10 – going to war, conquest and mass deportation – refer to a collective agent, the Israelite army, and thus the “you”-address can be read as a collective or distributive singular.⁶² The following “you”, however, clearly refers to an individual man who sees a specific woman⁶³ and wishes to engage in a private relationship.⁶⁴ With “and you see” (וּרְאִיתָ, v.11), the man’s perspective is adopted.⁶⁵ The wom-

⁶¹ Pressler, Carolyn, *The View of Women Found in the Deuteronomic Family Laws*, BZAW 216, Berlin 1993, here 10, argues, the apodosis should be seen only from “she shall shave” onwards. The main reason for this assumption is that otherwise, according to Pressler, the text were taken to present the man marrying the women twice, before and after the month of mourning. This is not the case, however, if one reads the first instance in v.11 as an inchoate marriage, as Otto suggests (*Deuteronomium*, 1651–1652; on comparative material from Babylonia see Greengus, Samuel, *Redefining “Inchoate Marriage” in Old Babylonian Contexts*, in: Abusch, Tzvi, ed., *Riches Hidden in Secret Places*. *Ancient Near Eastern Studies in Memory of Thorkild Jacobsen*, Winona Lake 2002, 123–139). Otto, on his part, argues that the apodosis starts with “you shall take her as your wife” in v.11. This reading is also favoured by Rofe, *Laws of Warfare*, 30, with reference (*ibid.* 41 n.26) to Ehrlich, Arnold B., *Mikra ki-Peschuto I*, Berlin 1899, *ad loc.* This interpretation is not impossible, but not the most probable in my view (see above). Schiffman, Lawrence H., *Laws Pertaining to Women in the Temple Scroll*, in: idem, *The Courtyards of the House of the Lord*. *Studies on the Temple Scroll*, STDJ 75, Leiden 2008, 519–540; here 528, translating the version of the Temple Scroll, renders both options. Perhaps one should even consider the possibility of the text being deliberately open to both readings. Readers who would take the wish for marriage granted, find the apodosis in the regulation of its realization. Those who are surprised at the idea of marriage in such situation, will consider the requirement of marriage and its realization the substance of the apodosis.

⁶² This corresponds with the reference to the “enemy” in the collective singular – a stylistic device usually not rendered in translations. The collective action in war is addressed explicitly in 20:1–2 in a shift from singular (20:1) to plural: “And it shall be, as you (plural) draw near to the battle, the priest shall approach and speak to the people” (20:2). The dynamics towards the focus on the individual in 21:1–2 contrasts with the focus on the “people” in 20:1–2.

⁶³ The shift in focus from the collective to the individual is concisely realised, with regard to the woman, in the formulation בְּשִׁבְיָהּ אִשָּׁה “among the deportees a woman”.

⁶⁴ Communicative continuity is granted through the possibility of reading both verses as employing the distributive singular.

⁶⁵ Bartor, *War*, 11. The same verb and literary technique are used in Deut 20:1. There, the sight of the enemy’s military power inspires fear; the sight of a woman after the war

an is beautiful in his eyes,⁶⁶ he falls in love with her with burning desire.⁶⁷ The initial communicative change (v.1–2) encapsulates the dynamics of the entire formulation as it shifts from the public to the private sphere.⁶⁸ This is further developed in the change of focus from the broad perspective of the battle to the intimate location of “the midst of your house” (תוך ביתך, v.12), intensified by the even closer focus on the “head” and “nails” of the woman (v.12) and, on the social and emotional levels, by the theme of bewailing her father and mother. Only subsequently is the intimacy of marriage mentioned (v.13).

The requirement to take the woman “into your house” (v.12) to “live in your house” (v.13) demands, with double emphasis, the integration of the woman into the private (and social) life of the man’s household. No fewer than five verbal clauses are dedicated to the actions of the woman, which turns attention away from the man towards her experience and assigns an active role to her in adapting to the radically new situation in her life. Just how unusual the degree of attention directed towards the woman is becomes clear in comparison with the

provokes desire. Bartor, *War*, 13: “The focalization of the subjects from the perspective of the protagonist illustrates the effect this sight has and the intensity of emotion it arouses (this time it is not fear, of course, but lust).”

⁶⁶ Bechmann, Ulrike, *Die kriegsgefangene Frau* (Dtn 21,10–14), *BiKi* 60 (2005), 200–204; here 201, points out that references to the beauty of women play out in dangerous situations for them in several narratives, e.g. for Sarai (Gen 12:11,14), Abigail (1 Sam 25:3), Tamar (2 Sam 13:1; 14:27) and Abishag (1 Kgs 1:3–4). In addition, it is interesting to note that the precise formulation used here, “of beautiful appearance” (יפה תאר), occurs in diverse narrative contexts. In the case of Rachel, it causes Jacob’s very sincere love (Gen 29:17–18). Joseph’s beauty brings him into a precarious situation caused by the lustful gaze of a woman (Gen 39:6–7). Abigail is characterized as both intelligent and beautiful (1 Sam 25:3); these qualities enable her to prevent men from shedding blood. And Esther adds to her beauty (Esth 2:7), which secures her the favour of a king, the intelligence and courage to rescue her people. (Moreover, the beauty of baby Moses, expressed differently in Exod 2:1, introduces the saving of his life, which foreshadows the deliverance of Israel.) These contexts suggest that beauty may well entail dangers related to sexuality, but it may also be a powerful asset for saving lives, especially if beauty is paired with wit.

⁶⁷ The only biblical narrative context in which the expression חשק ב־ is used is that of Shechem’s relationship with Dinah. Having “seen” Dinah, Shechem immediately “took” Dinah, slept with her and thus “debased” her (Gen 34:2; cf. the different, but not unrelated, dynamics in Deut 21:10–14). Shechem’s father Hamor uses the expression חשק ב־ to refer to his son’s inclinations towards Dinah (Gen 34:8), Shechem’s “soul” (נפש) being the subject of the phrase. This suggests that חשק ב־ means falling in love, involving powerful emotions and desires. The fact that Hamor uses the expression in attempting to achieve a positive response from Dinah’s father and her angry brothers – and that it is applied to God in Deuteronomy – suggests that the expression is positive or, at least, neutral. Against this background, the use of חשק ב־ with Yhwh as subject in Deut 7:7; 10:15 is very strong. Both passages refer to the initial phase of God’s love for Israel and could thus be translated as God’s “falling in love with” the people.

⁶⁸ The contrast between the public and dangerous sphere of war and the safe privacy of home plays out in exemptions from war service as well (Deut 20:5–7; 24:5).

LXX and the Temple Scroll. Both make the man the subject of these actions: “and you shall shave (or ‘cut’) her head and pare her nails, and remove her captive’s garb.”⁶⁹ The contrast between the respectful space created by Deuteronomy and the intrusive actions required from the man in these early transformations is remarkable.

The three actions of shaving, trimming and taking away “the garb of her deportation” have been correctly interpreted as a *rite de passage*.⁷⁰ Shaving the hair and trimming the nails involve the removal of what has grown in the past, thus bidding farewell to an earlier stage in life.⁷¹ Taking away “the garb of her deportation” explicitly refers to the woman’s change of status from captivity to freedom, realised in a symbolic act. It implies that the man should take care to provide her with new clothing. She shall “live in your house and bewail her father and her mother, a month of days”: this process envisions a protected space (“your house”) and time (a full month)⁷² for a process of wailing. This requires

⁶⁹ Translation of the Temple Scroll’s version by Schiffman, *Laws Pertaining to Women*, 528. On the relationship with LXX see idem, *The Septuagint and the Temple Scroll. Shared “Halakhic” Variants*, in: Brooke, George J. – Lindars, Barnabas, eds., *Septuagint, Scrolls and Cognate Writings. Papers Presented to the International Symposium on the Septuagint and Its Relations to the Dead Sea Scrolls and Other Writings*, SBLSCS 33, Atlanta 1990, 277–297; esp. 290–291.

⁷⁰ Otto, *Deuteronomium*, 1652; Crouch, *Making of Israel*, 202; Niditch, Susan, *War in the Hebrew Bible. A Study in the Ethics of Violence*, New York 1993, 85.

⁷¹ These acts could entail other shades of meaning, but they are difficult to determine (cf. the recommendation of caution in von Rad, Gerhard, *Das fünfte Buch Mose. Deuteronomium*, ATD 8, Göttingen 1968², 98). They could be a hygienic measure after a period of lack of water caused by a siege. The closest parallel for the combination of changing clothes and shaving is Joseph’s release from the dungeon in Gen 41:14. These measures prepare Joseph for an honourable appearance before Pharaoh, which suggests that they give him an acceptable appearance and do not debase him. Shaving is related to purification in Lev 13:33; 14:8–9; Num 6:9. In Num 6:18–19, the shaving of the Nazirite signifies his transition to a different stage of life, in which he is freed from the obligations connected with the Nazirite. In the case of Samson, it implies the loss of his strength (Judg 16:19). A strongly negative meaning for shaving is implicit in Isa 7:20, in the context of an Assyrian assault.

⁷² Thirty days are the period of “bewailment” (בכה) for Aaron (Num 20:29) and Moses (Deut 34:8), while the “mourning” (אבל; also used in Deut 34:8) for Joseph lasts seven days (Gen 50:10) and the people “fast” (צום) for seven days after the death of Saul (1 Sam 31:13). Washington, Harold C., ‘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, Victor H. – Levinson, Bernard M. – Frymer-Kensky, Tikva, eds., *Gender and Law in the Hebrew Bible and the Ancient Near East*, London 1998, 185–213, 206, argues that the “month” of mourning before sexual intercourse in Deut 21:13 is meant to make sure that the progeny is from the Israelite man and not from previous sexual intercourse. While this may be a consideration behind the text, David L. Baker is right in pointing out that the present text claims that mourning is the reason for the delay: Baker, David L., *Concubines and Conjugal Rights. ענה in Exodus 21:10 and Deuteronomy 21:14*, ZAR 13 (2007), 87–101; here 93 n.30.

respect for the traumatic experience the woman has gone through and implies that the man will have to accompany his fiancée perceptively through the mourning process. Such attention to the woman's emotional life is in sharp contrast with the man's initial fixation on the woman's external beauty.⁷³ Similarly, the attention paid to the woman's mourning contrasts with the man's initial emotion of sexual desire – חשק and בכה being the only verbs of emotion in the main case (v. 10–13). Only then – the temporal sequence is emphasized through וְאַחַר כֵּן – is he allowed to consummate marriage (“you may go to her and become her husband”), which completes the legal process of marriage (“and she will be your wife”). Within a cultural framework in which war captives could generally not claim any rights, this regulation limits the totality of male domination,⁷⁴ encourages respect for the psychological process of the woman and grants her protection in a regular marriage.⁷⁵

3.3 *The Sub-case (Deut 21:14): Divorce and Freedom*

The sub-case envisions the possibility of the man's losing his desire for the woman, and his subsequent wish for divorce. The closest point of comparison for the verb חשק, “to desire”, is Deuteronomy's law on levirate marriage (25:5–10) – the only other context for the verb in Deuteronomy. There, חשק is used twice with reference to a man who does not wish to marry his deceased brother's wife, the reason being a lack of desire – a circumstance significantly referred to twice. First, the voice of the lawgiver describes the man's lack of desire (v.7), but then, after public exposure of the fact by the widow and a reprimand from the elders, the brother himself declares: “I do not desire to take her” (v.8). This ultimate refusal is punished by public shaming of the man by his brother's widow (v.9). The levir's refusal to commit himself to marital relations on the grounds of lacking desire is met with the utmost contempt, which may suggest that the wish for divorce because of a lack of desire is also viewed critically as a neglect of moral obligations.

The formulation “you shall send her away לַנְּפֹשָׁה”, literally “for her soul/life/person”, clearly has a technical legal meaning, but it is difficult to interpret. It has only one close parallel in Jer 34:16, which refers to slaves who had been “sent away free לַנְּפֹשָׁם” and thus combines a technical expression for the release

⁷³ Perceptively observed in Bartor, War, 13 n.27.

⁷⁴ Pressler, View of Women, 15: “The law clearly assumes a male dominated situation. It addresses the male. It assumes that the male is the primary actor: he desires and takes, he no longer desires and sends out. While it defines the woman's legal status (wife) and provides her protection in that status (she may not be sold), it does so by limiting the man's actions.”

⁷⁵ For the relationship between this law and Babylonian marriage law see Otto, Deuteronomium, 1652.

of slaves⁷⁶ with the expression in question. “To send away” (שלח) can refer to both to the dismissal from marriage (cf., e.g., Deut 24:1) and the release of slaves. In each case it means dissolving a relationship of dependence. The expression “for his/her soul/life/person” (ל + נפש + suffix) thus most likely refers to the status of independence and self-responsibility.⁷⁷ This aspect is reinforced in the prohibition on selling the woman as a slave for money,⁷⁸ which is formulated with great rhetorical emphasis in *figura etymologica*.⁷⁹ Moreover, this phrase forms the structural centre of the subcase.⁸⁰

The concluding formulation, “you must not constrain her since you have debased her”⁸¹ deduces a moral obligation on the side of the man based on his

⁷⁶ On the term for “freed person” see Lohfink, Norbert, art. חפשי, in: TDOT 5 (1986), 114–118.

⁷⁷ On Westbrook’s interpretation of לנפשה see below (n.88). Otto, Deuteronomium, 1618, translates the expression “wenn sie es will”, but without explanation. It seems unlikely to me that the expression refers to a requirement for the consent of the woman. Lundbom, Jack R., Deuteronomy. A Commentary, Grand Rapids 2013, 599, translates “according to her desire”, and explains, “i.e., she shall be free to go anywhere she wants” and referring to Jer 22:27; 34:16 as evidence for נפש designating desire. In Jer 22:27, the word is used in an idiomatic expression (נפש + נשא), but in 34:16 it is used in the context of legal language (cf. above). Tigay, Jeffrey H., Deuteronomy דברים, JPSTC, Philadelphia 1996, translates “you must release her outright”, without explanation. The diversity of translations is an indication of the difficulty exegetes have with the expression.

⁷⁸ According to CH § 146–147, a female slave who was given to her husband by his wife to bear children cannot be sold if she has born children, but can be sold if she has not.

⁷⁹ This device is employed, when the lawgiver senses the need to convince: e.g., Deut 15:8, 10, 11, with the warning in v.9, or the three instances of *figura etymologica* in Exod 22:22 combined with a threat in v.23.

⁸⁰ It is the third of five verbal clauses, in each of which the woman is the object, referred to by the suffix of the third person singular.

⁸¹ “Constrain”: עמר hitp. occurs only twice in the Hebrew Bible, in Deut 21:14; 24:7. The object is in each case a person who is made unfree, and the possibility of “selling” (מכר) the person occurs in the immediate context. BDB proposed the translation “deal tyrannically with (ב)” based on an Arabic cognate. David, Madeleine, *HIT’ĀMĒR* (Deut. XXI 14; XXIV 7), VT 7 (1951), 219–221, proposed, based on the noun עמר, “sheaf”, and the contextual occurrence of מכר, a verb derived from the language of grain trade. Assuming a reciprocal meaning of the hitp., she proposed the translation “to do business” (“Handel treiben”, *ibid.* 221). Alt, Albrecht, *Zu HIT’ĀMĒR*, VT 2 (1952), 153–159, assumed a relationship with the Ugaritic *gmrm*. This plural noun, however, is attested only in one single document, and Alt arrives via tentative considerations at his proposed meaning “the newly recruited” (“eine Bezeichnung der neu der Wehrpflicht Unterworfenen”, *ibid.* 159). If this is correct, the word would refer to the submission of persons under state control, while the Hebrew cognate in Deut 21:14; 24:7 would refer, in analogy, to the submission of a person under the control of an individual. Alt was fully aware of the conjectural nature of his proposal (*ibid.* 159). An important indication for the meaning of עמר hitp. is the sequence of verbs in Deut 24:7, which suggests a temporal sequence of events: the abduction of a person (גנב), followed by עמר hitp. and then the sale (מכר). A necessary act before a human being can be sold is his or her coercion into an unfree state, which may be done by physical shackling or by psychological coer-

conduct towards the woman. The phrase “since you have debased her” creates a strong link with the case of a man who forces a virgin into sexual intercourse (22:28–29: תחת אשר עניתה, identical formulation in 21:14) and the case of an adulterer who is to be stoned (22:24: על דבר אשר ענה).⁸² In the immediate context of Deuteronomy’s law collection, therefore, the verb ענה is strongly connected with the sexual act and its social consequences.⁸³ Although the sexual act with the war captive taken as wife is clearly not illicit as such, 21:14 denotes it as harmful to the woman.⁸⁴ In all three cases immediately relevant for comparison (21:14; 22:24, 29), the sexual act has the social consequence of preventing the woman from being an ‘honourable potential wife’ for another man. The fact that marriage has deprived the war captive woman of this ‘capital’ becomes harmful as soon as she is exposed to a precarious situation through divorce. The social debasement is caused, in this case, by the combination of (forced) marriage and divorce.⁸⁵

Recalling the contrast between the man’s desire and the woman’s mourning in the main case (v.11, 13), the sub-case is framed by two verbal clauses with contrasting emotional implications: “if you do not desire her” – “since you have debased her”. In Hebrew, the clauses are formulated in a parallel rhythm and they rhyme:

cion. Since some occurrences of the noun עמר, seem to refer to a “sheaf” that is bound together (Lev 23:10–15), the verb עמר could relate to the act of binding the sheaf; the only occurrence of עמר pi. in Ps 129:7 does not provide enough context to determine its precise meaning. עמר hitp. could then mean “to bind for oneself” and עמר ב- hitp. could be an idiomatic expression for coercion into a state of unfreedom as a slave, which I am tentatively rendering “to constrain”. While these etymological considerations must remain speculative, it seems quite probable that עמר ב- hitp. refers to coercing a person into an unfree state for the purpose of selling him or her into slavery.

⁸² On the comparable motive clause in Exod 21:8, “for he dealt faithlessly with her”, see Fleishman, Joseph, *Father-Daughter Relations in Biblical Law*, Bethesda 2011, 52–53.

⁸³ The treatment of the verb in Baker, *Concubines*, 95–96, is an example of its complexity and the lack of clarity that results. Baker claims that ענה “denotes taking advantage of a woman by having intercourse without granting her the rights of marriage or concubinage, or ignoring culturally-approved patterns for sexual relationships.” Yet, in Deut 21:10–14 the man has intercourse with the woman, granting her (initially) the rights of marriage or concubinage, and does not ignore the culturally-approved patterns for sexual relationships. In consequence, Baker suggests to translate תחת אשר עניתה in 21:14 “because you have had conjugal relations with her” – a translation that hardly fits in 22:29. For a nuanced treatment of ענה pi. see Müllner, Ilse, *Gewalt im Hause Davids: Die Erzählung von Tamar und Amnon* (2 Sam 13,1–22), HBS 13, Freiburg i.Br. 1997, 260–272.

⁸⁴ A common denominator among the three cases is that the sexual act did not occur under the “normal” circumstances of (arranged) marriage: Deut 22:24 refers to the circumstance that the woman was belonged (by betrothal) to “his neighbour” (רעהו) and 22:28 explicitly refers to violence (“to seize”, תפש).

⁸⁵ I thus agree with Van Wolde in her analysis that ענה refers to the social debasement as the consequence of a sexual act (cf. n.11).

אִם-לֹא חִפְצָת בָּהּ – תַּחַת אִשֶּׁר עֲנִיתָהּ

The two expressions are parallel – in both cases the man is the subject and the woman the object, referred to by the female suffix of the third person, but their emotional implications contrast. “If you do not desire her” refers to the man’s interest in pleasure and, consequently, his acting out of selfish considerations, while “you have debased her” connotes, and must make the man aware of, the negative emotions that he has caused in the woman. The relationship between the two phrases, placed at the beginning and the end of the sub-case, is causal. The man’s lack of desire leads to divorce, which causes the marriage to mean debasement for the woman. In addition to the negative overtone that the lack of desire may acquire in light of the law of the levir (25:7–8, see above), the literary construction of the sub-case may well imply a negative moral judgement on the man who divorces his war captive wife because he is lacking in lust.

3.4 *The Woman’s Legal Status*

Discussions on the legal status of the woman concern first whether she should be considered a concubine or a wife and second whether (and at what stage) she should be considered free or unfree. Several commentators have suggested that the woman is a concubine rather than a wife.⁸⁶ It must be emphasized, though, with the majority of commentators, that Deut 21:10–14 employs the specific terminology for marriage,⁸⁷ while there is no reference to concubinate whatsoever.⁸⁸ The question of her freedom depends on the interpretation of 21:14. Raymond Westbrook suggested:

In my analysis, the captive woman is initially a slave, marriage makes her a free person, but subsequent termination of the marriage revives her previous status: her husband becomes her master again, and therefore can in principle sell her as a slave.⁸⁹

⁸⁶ For a recent argument to this effect see Baker, *Concubines*, 93–94. An example of an early interpretation based on the comparison with Mesopotamian evidence is Feigin, Samuel I, *The Captives in Cuneiform Inscriptions*, *AJSL* 50 (1933/34) 217–245, esp. 243–245.

⁸⁷ See Otto, *Deuteronomium*, 1652.

⁸⁸ Westbrook, Raymond, *The Female Slave*, in: Levinson – Frymer-Kensky – Matthews, eds., *Gender and Law*, 214–238, 235, thus concluded: “There is no question of slave concubinage here; the text explicitly refers to the formation of marriage and to its termination by divorce.”

⁸⁹ Westbrook, *Female Slave*, 235: “... he must divorce her ‘to herself’ (*ʿl-napsāh*). This curious and seemingly redundant expression is another facet of splitting the juridical personality. The woman is reunited with herself, that is, she receives back the ownership of herself that was ceded to her captor when she became a slave, regained during marriage, but lost again to him following her divorce.” This interpretation of לְנַפְשָׁהּ is, in

While this is a possible interpretation, the passage could also be read as assuming the woman to be free through the act of marriage⁹⁰ and claiming that this status cannot be changed by divorce, thus undeceiving the man of a potential misinterpretation of her legal status after divorce.

3.5 *The Pragmatics of Legal Literature: Morality beyond Legalism*

The preceding analysis read Deuteronomy's law on the war captive wife both from a literary and a legal point of view. Doubtless, Deuteronomy's laws consider specifically legal issues, but they are not limited to the legal dimension in a technical sense. They are integrated into a larger narrative context,⁹¹ they themselves contain narrative elements,⁹² and they employ rhetorical strategies.⁹³ Their moral claims may well go beyond their legal substance. The levir (Deut 25:5–10), for example, is not legally coerced into marrying the widow of his deceased brother, but the ritual of shame envisioned in case of his refusal clearly shows the lawgiver's moral stance. Similarly, one may detect moral attitudes in Deuteronomy's law on the war captive wife that go beyond its immediately legal substance.

The most important device in this regard is the double change of perspective analysed above. In both the main and the sub-case, the voice of the lawgiver addresses the male protagonist and adopts his point of view, referring to his inner motivations, his lustful desire (v.11) and his lack thereof (v.14). In each instance, though, the perspective changes, attention is directed towards the woman, her mourning for her father and mother (v.13), and her being debased (v.14). Reference to the woman forms the final motif in each case: "she will be your wife" (v.13) places solemn emphasis on the legal status she acquired through his act of consummating the marriage. "You have debased her" (v.14) is the final – moral – verdict over the man who divorces her out of lack of lust. First and foremost, the formulation of the law seems to be a school of perception: moving away from the drive of sexual need as the prime incentive for action towards consideration for the person affected by such action.

substance, close to my proposal (see above, 3.2). One may question, however, if Israelite legal experts really thought in terms of split juridical personality.

⁹⁰ Cf., e. g., Müllner, *Gewalt*, 265: "Die Rechtsfolgebestimmung, die durch ענה II pi. begründet wird, hat in Dtn 21,14 ausschließlich die Sicherung der sozialen Stellung der Frau als freier Israelitin, die sie durch die Heirat geworden war, im Blick."

⁹¹ On the specific tension between 'historical etiology' and 'law' in the literary construction and contexts of Deuteronomy see Markl, Dominik, *Deuteronomy's "Anti King": Historicized Etiology or Political Project?*, in: Dubovský, Peter – Gianto, Agustinus, eds., *Changing Faces of Kingship in Syria-Palestine 1500–500 BCE*, AOAT, forthcoming.

⁹² Bartor, *War*, esp. 2–5.

⁹³ A beautiful example of rhetorical devices is Deut 15:1–18: Oosthuizen, Martin J., *Deuteronomy 15:1–18 in Socio- Rhetorical Perspective*, ZAR 3 (1997), 64–91.

Rhetorical emphasis is also employed when it comes to the legal substance of the law: only “after that” (אַחֲרַיִךְ) is the man allowed to approach the woman sexually. And “by no means” can he sell her for money in case of divorce. The legal regulation is interested in securing a certain degree of respect for the woman by allowing her human space for mourning, and freedom after being released from a man whose initial desire may fade in the tranquillity of domestic life. But the moral thrust of the law, which is seen in the subtle details of its formulation, goes beyond such minimal requirements and aims at an elevated moral awareness. By contemplating potential human dynamics – addressing men before they go to war, it seeks to instil ethical sensitivity.

Another morally relevant aspect may be seen in the shift from the public to the private sphere subtly realised in the protasis (v.10–11). The private issues of marriage and the treatment of one’s wife are placed in a context that concerns the people at large and their relationship with God. The people go out to war together, and it is Yhwh who delivers the enemy into Israel’s hand. Thus, the Israelite’s treatment of his war captive wife is not detached from the public realm; he gained his wife through the collective endeavour of the people’s army and she is ultimately a gift of God. The protagonist has responsibility, even in his private actions, in a wider collective and religious context.

4. Ethical Relevance: the Awareness of Victors

Contemporary evaluations of Deuteronomy’s law on the war captive wife are extremely diverse. Alexander Rofé has a decidedly positive view: “This humane ruling reflects a universal concern with limiting soldiers’ unbridled brutality and demonstrates consideration for the feelings of captives.”⁹⁴ Harold Washington, in contrast, suggests in his critical reading: “By authorising 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.”⁹⁵

In trying to evaluate the ethical quality of ancient texts we should carefully distinguish between, first, their meaning within their specific cultural framework and, second, judgements made about them from a modern perspective. While the latter is legitimate in its own right, it may be mislead if the first is not considered with care or if the two are light-handedly mixed with each other. To be sure, we can never detach ourselves completely from our ethical attitudes, nor can we ever completely immerse ourselves in the reality of our historical inquiry. It is, therefore, a delicate issue to propose any ethical judgement.

While it is clear that the ethical thrust of Deuteronomy’s law on the war captive wife needs to be understood within its larger cultural framework, its con-

⁹⁴ Rofé, *Laws of Warfare*, 30.

⁹⁵ Washington, *Lest He Die*, 207.

crete historical setting is less clear. Was it originally written during the pre-exilic period to address an audience that could realistically go to war and take captives?⁹⁶ Or was it composed after the demise of the monarchy, so that it would speak to an audience with no realistic means of going to war?⁹⁷ In the first case, it would support, in essence, the ideology of an aggressive state, while in the second it might react to the experience of imperial tyranny and conquest. The difference is significant, but the scholarly guild is divided on this question and any option for either possibility is necessarily based on hypothetical assumptions. I shall, therefore, concentrate here on what is quite certain. This text has unique features among all the legal traditions that have come down to us from antiquity. It is the only text within a collection of laws that addresses the treatment of a female war captive. It is clearly concerned with limiting abuse by the victorious husband. Moreover, it employs fine strategies to raise awareness regarding the woman's experience.

We will be critical, from our modern perspective, of any ideology that sees gods fighting for their nations – an absolutely natural assumption in antiquity. We will be horrified at the idea of a war captive girl being sold or taken for sexual enjoyment by the victor – quite common, and never legally prohibited, conduct in antiquity. Immersing ourselves imaginatively in the world of antiquity, we might find ourselves surprised by the critical potential that our text has within its cultural framework. And we might understand the pride that a late redactor of Deuteronomy takes in his law, boasting of it in the voice of Moses: “Who is the great nation that has just statutes and ordinances as this entire torah that I am setting before you today?” (Deut 4:8). We are facing ethical challenges today that are different from those in antiquity, but perhaps greater than at any previous time, so strategies are needed that encourage awareness of the suffering caused by victors in the global arena. In this regard, we may have something to learn from Mosaic wit.

⁹⁶ Thus, e.g., Rofè, *Laws of Warfare*, 36, dating the original series of the war laws “quite a few generations later than David and Solomon—from the middle of the monarchic period onward.”

⁹⁷ E.g., Otto, *Deuteronomium*, 1635, who attributes Deut 20:1–20; 21:10–14 to his Moab redaction. Schmitt, *Krieg*, 63, who suggests such late dating, consequently thinks that the law considers a purely hypothetical option or, according to Schmitt more likely, does not really concern the question of war captives, but the integration of foreign slaves.