Legal Status

This entry contains six subentries: ANCIENT NEAR EAST; HEBREW BIBLE; ROMAN WORLD; NEW TESTAMENT; EARLY JUDAISM; *and* EARLY CHURCH.

Ancient Near East

The world's oldest laws are found in the ancient Near East. Dating from the twenty-sixth century until the fourth century B.C.E., abundant corpora of laws, the products of numerous societies, languages, cultures, and political systems, widely dispersed chronologically and geographically, attest to a long-standing concern regarding legal status and societal issues throughout ancient Near Eastern history. Though scholars debate whether one can speak of "ancient Near Eastern law" as a meaningful academic endeavor, others argue that despite the nearly three thousand years of history the commonalities in the laws were so great that these ancient Near Eastern societies belonged to a common legal culture (Westbrook, 2003). Whether these laws were actually practiced or whether they were simply products of a scribal intellectual activity, they offer valuable insight into the societal concerns of the ancient world.

Sources.

While the canonical cuneiform law collections provide the majority of information regarding legal status and gender, they are supplemented by a myriad of records of daily life, such as letters, contracts, administrative and economical documents, and trial records of civil disputes. Gender ideology and status are also revealed throughout the literary and mythical texts, as characteristics and actions of the gods and goddess tend to mirror societal norms. In addition to the laws found in the Hebrew Bible, seven surviving collections of cuneiform laws are the benchmark for any scholarly study of the ancient Near Eastern law. Concentrated mainly in two historical periods: the Old Babylonian period (nineteenth to sixteenth century B.C.E.) and the Neo-Babylonian/Persian period (sixth to fourth century B.C.E.), these collections of texts enable an understanding of the fundamental legal concerns of the peoples in the ancient Near East. A chief responsibility of the king was to uphold the laws with principles of justice and equality; therefore many of the law collections are attributed to various kings.

The earliest two law collections, the Sumerian Laws of Ur-Namma (LU), dated to 2112–2095 B.C.E., and the Laws of Lipit-Ishtar (LL), dated to 1932 B.C.E., are from the cities Ur and Isin in southern Mesopotamia respectively. Written in Old Babylonian Akkadian and stemming from a similar cultural milieu, the Laws of Ešnunna (LE), dated to ca. 1770 B.C.E., and the Laws of Hammurabi (LH) written within the same century (ca. 1750 B.C.E.) suggest that the law collections may have been meant as supplementary to one another. Later Akkadian law compositions include a collection of fourteen fragmentary tablets from 1076 B.C.E., called the Middle Assyrian Laws (MAL) and the Neo-Babylonian Laws (NBL), a school tablet containing an excerpt from a larger collection, dated to approximately 700 B.C.E. A Hittite collection of laws (HL) from Anatolia, dated to the sixteenth and the twelfth centuries B.C.E., parallels many of the Mesopotamia laws. Documents from Nuzi, an administrative center in northeastern Mesopotamia (1450–1340 B.C.E.), also contribute to our knowledge of legal status. These formal law collections, however, are often incomplete and were not likely intended as exhaustive or comprehensive sources for all legal situations.

Of all the cuneiform laws the most famous collection and one that garners the greatest attention from biblical scholars is the Babylonian Laws of Hammurabi. The longest continuous cuneiform inscription in the ancient Near East, the text is inscribed on a large diorite stela in three sections. The first section, a poetic prologue, describes Hammurabi's military conquests, his divine selection as king, and his role as champion of social justice as one who will "crush the evil-doer and protect the weak from the strong." A formulaic prose section of approximately 282 casuistic law stipulations follows, and the stela concludes with an epilogue. These laws draw upon earlier legal traditions and establish ancient Near Eastern societal norms that later find commonalities in the writings of the neighboring cultures and the Hebrew Bible. The written laws followed a standard format: they are stated in a casuistic (if/then) formula that contains a protasis (a conditional clause) followed by apodosis (stating the penalty if the condition in the protasis was met).

Gender and Legal Status.

The subject of the laws is the adult male of the free citizen class. Though each gender had distinctive rights and responsibilities, the laws generally protect and reinforce the privilege of the male citizenry. The father and husband were authoritative as the heads of the household and managed the family's estates. Female heads of household, especially among royal families, were well-attested in the Neo-Assyrian period (Radner, 2003). Women had no special status under the law but were considered subordinate members of a household; their status is

designated in relation to a male family member. A woman remained legally as the "daughter of a (free) man" until she was betrothed, when she then assumed the status of the "wife of a (free) man." Women's rights and legal obligations were restricted within their statuses of wives, mothers, and daughters. Women who did not legally belong to a man—widows, divorcées, prostitutes, and priestesses such as the *nadītu* (women dedicated to a god)—were in a special legal category and were granted greater autonomy. In many cases, they were afforded rights that married women lacked. They could manage the household and own property until their sons were old enough. A man could award his wife property with a sealed document, so that, after his death, the sons could not claim it. The widow, then may bestow her estate to whichever son she chooses (LH 150). A widow could also collect the amount of her dowry and her bride price from her husband's property. If she had no dowry, a judge appraised the property and awarded her an equivalent value (NBL 12). Some texts mention women other than widows as property owners. If a daughter became a priestess during her father's lifetime, she had an equal share along with her brothers in her father's estate (LL 22; LH 180–181). A slave, whether male or female, was considered chattel, but in the case of a female slave, her owner could sexually exploit her, sell her, or put her in concubinage. In general, however, most women were subject to legal control by a male. Husbands had exclusive financial, sexual, and legal jurisdiction over their wives and fathers over their daughters.

In addition to binary male/female gender categories, legal status was also determined by age, marital status, family position, wealth, class, and citizenship. Motherhood, for example, had social implications resulting in a wife's higher position inside the family hierarchy. A native born citizen had more rights than a foreigner. All of these multiple factors, which must be taken into consideration, produce complex understandings when determining one's individual's legal status (Roth, 1998). The law codes of Hammurabi denote social stratification, detailing three types of statuses in Babylonian society: the *awīlu*, a free citizen, normally native born, and a member of one of the landholding families; the *muškenu*, a commoner or a free citizen who did not possess land; and the *ardu* and *amtu*, male and female slave. The Middle Assyrian laws also reveal a similar tripartite division of society. Remedies and punishments fluctuated greatly according to social standing. Persons of the free citizen class abided by a different standard than one of the commoner or the slave classes. Despite this stratification, there is some evidence that the classes were not always rigidly separated as one could presumably suffer a hardship, a loss of land, or be sold in debt slavery and therefore descend to a lower social class. Other than a free citizen marrying his slave woman and raising her status to a concubine, there was little opportunity of upward social mobility.

Family Laws: Betrothal, Marriage, and Divorce.

The basic unit of society was the patriarchal household, structured around the "father's house," the paternal estate. The household might consist of up to three generations of family, along with slaves, apprentices, and indentured servants. Familial laws covering marriage, divorce, widowhood, incest, adultery, dowries, and inheritance practices were therefore indispensable for the proper functioning of the social order. Marriage and betrothal in the ancient Near East were legal contracts, often made for economic reasons. Almost all the law collections include provisions regarding marriage, betrothal, and divorce. Marriages were arranged by the father (or eldest male relative) of each family. The bride was not a party to the contract but rather was the object of the transaction. The agreement between the two families included formal contracts and financial exchanges. In most cases, the groom's family paid a bridal gift (*terhātu*) and often a marriage-settlement (*nudunnû*) to the bride's father. Once the *terhātu* was exchanged, the woman's legal status changed and the betrothed was then called a wife, even though the marriage was not yet completed. Though not a legal requirement and varying in amount depending on a number of factors—family wealth, class standing, and historical period—the bride's father usually bestowed upon his daughter's husband a dowry (*šeriktu* in LE, LH and *širku* in MAL). This dowry, though administered by the husband and subsumed into the husband's property during the marriage, remained the legal property of the bride to be returned to her in the case of divorce or widowhood. A married woman's property consisted of her dowry, personal possessions, and other items given to her by her father-in-law at her marriage. Though inheritances passed through sons as male heirs, daughters received a share of the paternal estate through their dowries upon marriage. Legally speaking, the dowry is an advanced form of inheritance, and this property given to a woman was protected to keep it within the family.

The laws also detail provisions for failed or broken troths. Some allow the father to nullify his daughter's betrothal and/or give her to another man (LH 160, LH 161, LU 15–16, LE 25). In situations of a broken betrothal, like any other contractual argument, financial compensation to the injured party was warranted. If the father broke the engagement, he was required to pay back the *terhātu*, often at twice the price. LE 25 reads, "If a man claims his bride at the house of the father-in-law and his father-in-law rejects him and gives his daughter to another, the daughter's father shall return double the bridal payment that he received." The fiancé can also break the agreement. LH 159 discusses a situation of a betrothed man whose attention has been diverted to another woman. He must declare to his father-in-law, "I will not marry your daughter," and then forfeit all claims to the *terhātu*. The daughter's legal status reverts back to the control of her father.

Polygamy was legal in the ancient Near East, though for economic reasons monogamy was more likely the norm among the everyday citizen. A man might take a second wife if his first wife was barren. He could also marry his female slave and procure children by her. Several laws stipulate protections for the first wife when a man marries a second. LH 148 refers to the first wife suffering a (presumably incurable) disease. The husband may take a second wife, but he is obligated to continue to support the first one and keep her in his household for as long as she lives. LL 28 provides a similar safeguard for first wife who has become blind or paralyzed.

Marriages could be terminated by the death of one of the spouses, desertion, and divorce. Just as the establishment of marriage was a legal proceeding, divorce required the legal dissolution of contractual agreements. The husband possessed the right to initiate divorce on any grounds. Declaring a formulaic statement, "you are/she is not my wife," effectively dissolved the marriage. Some texts also mention the divorcing husband as "cutting the (wife's) hem," possibly a symbolic ritual action to end the marriage.

If a husband divorced his wife for reasons other than adultery, he was normally required to provide economic support to his wife, either in the return of the dowry or another stipulated price. In the laws of Ur Namma (LU 9, 10) the husband paid her sixty shekels of silver, or, if she was a former widow, thirty shekels. In the Hammurabi laws, a childless wife was entitled to the full amount of the *terhatu* and her *šeriktu* at the divorce (LH 138). However, this is not consistent, as in the Middle Assyrian laws, a man could divorce his wife without grounds and was not obliged to pay her any compensation (MAL A37).

Though divorce initiated by a wife was legal, it was dangerous and often came with harsh punishments—the forfeiting of her children, loss of her dowry, substantial financial penalty, and in some situations, her death. A man could divorce his wife without any reasons, but a woman's case for divorce must be justified, investigated by authorities, and proven to be truthful or she risked her life with her claim. If the outside authorities determine that her accusations are warranted and that she is without any fault, her divorce is granted. She is allowed to take her

dowry and return to her father's house (LH 142). However, if her charges are gratuitous, she has disparaged her husband. She is "cast into the water" and dies (LH 143). An Old Babylonian marriage agreement contains a comparable situation. If the wife says (to her husband), "You are not my husband," she is bound and thrown into the water (Westbrook, 2003). These cases indicate that female-initiated divorce was probably not very common as the consequences for the wife could be severe.

Laws of Adultery, Incest, and Rape.

The ancient Near Eastern laws regulating the sexual conduct of women are numerous and precisely detailed (LH 129; MAL A13–14; 22–23; HL 198; cf. Deut 22:22; Lev 20:10). Adultery was generally described as consensual sexual relations between a married woman and any man other than her husband. A man could legally have sexual relations outside of marriage with any woman who was not betrothed or married to another man, including prostitutes, female slaves, and in some cases, widows. Even the (unwarranted) accusation of a woman's extramarital relations could be grounds for severe punishment. As a wife's sexual rights were the exclusive property of her husband, adultery was regarded as a grave offense against the husband, allowing the wronged husband to inflict, control, or even waive his wife's punishment. He was entitled to divorce her and penalize her in a variety of manners. In the Middle Assyrian laws, he could physically assault her by such means as striking her, mutilating her, or plucking out her hair, in addition to any other punishments required (MAL A57, 58, 59). In committing adultery both the wife and her lover have committed an offense against the woman's husband. MAL requires death for both parties, especially if the accused man knew the woman was married (MAL A13 and 15). If he did not know, he is innocent (MAL A14). In some cases, especially if the lovers are caught in the act, the husband retained the right to have them both killed, provided the same level of punishment was inflicted on both of them. If the husband allows the wife to live, he also must allow her lover to live and be spared any further penalty (LH 129; HL 198). Some of the earlier laws, however, imposea death sentence for the unfaithful wife alone. In the Laws of Ur-Namma, only the woman was put to death, whereas the man received no punishment (LU 7). Similarly, if the husband catches the wife "in the lap of (another) man," she is killed. There is no mention of penalty to the man (LE 28). A woman could be accused of adultery by her husband or by a third party (LU 11; LH 131,132; MAL A17, 18). A false accusation of adultery penalized the person making the claim, as the accusation is legally considered slander against the husband. In the Laws of Lipit-Ishtar, a false accusation against the daughter of a free man was remedied by a fine of ten shekels of silver (LL 33). Other times, the punishment was more severe. MAL A18 prescribes forty blows with a rod, a month's conscription in the corvée, a slave mark, and a fine of 3,600 shekels of lead to the accuser. If the husband accused his wife of adultery but she was not caught in the act, she could make an exculpatory oath proclaiming her innocence and then return to her house (LH 131, cf. Num. 5:11–31). If a wife is accused of adultery by a third party, but there was neither evidence nor was she caught *in flagrante delicto*, there were methods to ascertain her innocence or guilt. Often she had to vindicate herself by submitting to an ordeal. In Mesopotamia and Anatolia, the River Ordeal was known. Used particularly for accusations of witchcraft (LH 2) and adultery (LH 132, MAL A17 and 22) in the absence of witnesses or solid evidence, the river meted out divine justice. The details of the procedure are not completely known. Likely it involved one or both of the accused parties undergoing something in the water, such as swimming a distance or floating. If the accused person was innocent of the charge he or she floated, but if deemed guilty by the river, then the person drowned. Known also from court cases from Mari, the River Ordeal may have functioned as a last resort when other attempts at verification of the charges had failed.

Common taboos against incest were widespread throughout the ancient Near East law collections. Sexual relations between a son and his natural mother were strictly prohibited (LH 157; HL 189 cf. Lev 18:7), even if the father was already deceased. In LH 157, both the mother and the son were burned to death. This prohibition extended to sexual relations between a son and his father's wife; however, the penalties were less severe, such as disinheritance from the father's house (LH 158). No penalty is stipulated for the woman. Sexual relations between other close relatives such as a father with a daughter (LH 154) and daughter-in-law (LH 155) were also forbidden.

Like adultery, rape was also considered a serious offense against the husband (or father), and further demonstrates how a woman's body is subject to male authority. Several factors were weighed regarding a rape. First it had to be determined if the sexual act was consensual. If not, then the marital status of the woman as well as the location of the rape was considered. Rape of a virgin or an unmarried woman was an offense against her father. "If a man raped a free man's virgin daughter, then her father could then take the wife of the rapist and give her to be ravished." He did not have to return her to the rapist but could keep her as his own (MAL A55). Here the rapist's wife was just as victimized as the raped daughter herself. The wife of the rapist is only protected if the rapist swears that the daughter gave herself willingly to him. His word was taken over the young woman's. His penalty was payment in silver to the father equal to the value of the daughter, and he was free to keep his wife (MAL A56). The rape of a betrothed virgin daughter brought the death penalty for the man, but the woman was to go free (LH 130; LU6.). Location of the rape also mattered. If the rape occurred in a remote location such as in the mountains, or away from the city, where the woman could presumably cry out for help and not be heard, penalty is exacted on the man. For example, Hittite law states that if a man rapes a women in the mountains or open country, he is executed and she is blameless. But if she is raped in her house, it is her crime and she will be killed (HL 197; cf. Deut 22:23–27). In MAL A12, a woman who is walking along a main throughway must "protect" herself (possibly by screaming out for help) against a man who attempts to rape her.

Conclusion.

As the legal system is concerned with societal order, several laws specifically deal with the social, familial, economic, and status of persons. Gender roles were strictly divided in the patriarchal and patrilineal society of the ancient Near East, but a women's legal status or treatment was not stagnant or uniform throughout history. While changes in the laws display the societal value placed upon women during various historical periods, some general similarities are apparent. First, the very fact of being female makes the woman dependent upon a male, regulating and restricting her societal roles to a far greater extent than that of a man's. Laws regulated women's sexuality with harsh penalties for violations. Women were economically dependent on males, but in some cases, such as with widows, priestesses, and abandoned wives, women could control their own means.

[*See also* ECONOMICS, subentry ANCIENT NEAR EAST; GENDER AND SEXUALITY: ANCIENT NEAR EAST; MARRIAGE AND DIVORCE, subentry ANCIENT NEAR EAST; *and* RELIGIOUS LEADERS, subentry ANCIENT NEAR EAST.]

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Julye Bidmead

Hebrew Bible

This entry considers ways in which gender and sex functioned in the social realm of ancient Israel to grant or deny various legal rights and duties. After addressing overarching issues in defining legal status, it then turns to specific legal statuses of various classes of people, demonstrating that women of whatever class were under more legal strictures than men.

Ascribed Characteristics and Legal Status.

Persons may be granted power and status in a society based on ascribed characteristics, which are determined by circumstances beyond one's control such as race, ethnicity, gender, citizenship, class, caste, kinship, legitimacy of birth, religion, and physical abilities or disabilities (Kemper, 1974, pp. 845, 848). Achieved characteristics and status, on the other hand, are earned (Davis, 1950, p. 96). Inequitable stratification in a given society is often related to ascribed characteristics (Kemper, 1974, p. 852; Parsons, 1951, p. 96). Gender is one of the primary ascribed characteristics that determine one's social and legal status.
Ancient Israel was a patriarchal, patricentric, and patrilinear culture (Block, 2003, pp. 40–45) with a patrimonial government (Schloen, 2001). The patriarch had authority (*patria potestas*) within his household. Patriarchs were chosen not by personal charisma but through traditional rules of inheritance (Weber, 1947, p. 328). In ancient Near Eastern patrimonialism,

> *"the entire social order is viewed as an extension of the ruler's household—and ultimately of the god's household. The social order consists of a hierarchy of subhouseholds linked by personal ties at each level between individual "masters" and "slaves" or "fathers" and "sons." There is no global distinction between the "private" and "public" sectors of society because governmental administration is effected through personal relationships on the household model rather than through an impersonal bureaucracy. (Schloen, 2001, p. 51)"*

The fundamental social ranking in the Hebrew Bible begins with a male God, to whom the male king is subordinate, to whom, in turn, each male householder is subordinate, to whom, in turn, every person in that male's household is subordinate. Biblical laws support the authority of the deity, king, and individual male householder in that order; all others are subordinate to them. Thus, gender was a significant feature of the structure of ancient Israelite society. Cheryl Anderson argues that gender is the "master-status" identity because laws regarding women "assume the perspective of the free, privileged, Israelite males" and disadvantage women (Anderson, 2004, pp. 74–75). Gender was more than simply legal asymmetry (as articulated by Pressler, 1993) but of such import that cross-dressing was prohibited (Deut 22:5).
Though critical in determining social and legal status, gender was not the only distinguishing feature of status in ancient Israel. Whether one is free or slave, or emancipated or unemancipated also contributes to one's position in society. "Emancipation," its meaning derived from Roman law, refers to releasing a person from the *patria potestas*, while "manumission" refers to release from slavery. One is free if born to free parents or if a manumitted chattel slave. Unemancipated persons exist under the authority of the head of household and are legally incapacitated in important regards (Wunsch and Magdalene, 2014). Through marriage or betrothal a woman was transferred from her father's *potestas* to that of husband or father-in-law (Driver and Miles, 1952, pp. 248–249; Westbrook, 1990, p. 570; see Gen 24:50–60), and adultery provisions apply to both. Within each social and legal category of free or slave, emancipated or unemancipated, married or unmarried, the female ranked lower than the male.

Legal Statuses by Class of Person.

In the next section, the legal status of various classes of persons in the Hebrew Bible is discussed.

Free male householders.

Free male householders (sometimes "elder," *zāqēn*, lit. "bearded one") held the highest legal status (McKenzie, 1959, p. 522); nobles and officers ("elders of [the king's] house" [e.g., 2 Sam 12:17; cf. Ps 105:22]) emerged from their ranks (Willis, 2001, p. 8). Such householders

could serve in a judicial capacity within an assembly, reflecting their superior legal standing (Willis, 2001, p. 8). The male head-of-household held legal authority and reported only to those superior in rank. He provided for and protected those living in his household, including wives, free concubines, children, daughters-in-law, other relatives (such as a widowed mother, unmarried sisters, and young brothers), and manumitted slaves unless they were emancipated (Wunsch and Magdalene, 2014). The *paterfamilias* was expected to be a religious man, instruct his family in the laws, uphold their reputation, and represent them in public and legal spheres (Block, 2003, pp. 47–48, 99–100; van der Toorn, 1996, p. 21). He exercised power over those in his household, able to place them under the control of another individual or institution (e.g., in adoption, as an apprentice, for temple services, for sexual purposes [e.g., Gen 19:8; Judg 19:24; cf. Lev 19:29]) or pledge or sell them in times of need (Exod 21:7–11; Neh 5:5, 8). He determined inheritance (Gen 27:1–40; 49:1–28) and dowry amounts (Gen 29:24, 29; 1 Kgs 9:16; Mic 1:14) for children, although some strictures applied to inheritance (e.g., Deut 21:15–16). He held powers of life and death over household members (Gen 22; 38:24; Judg 11; cf. Deut 21:18–21).

This power over persons was so great that it may appear that everyone in the *paterfamilias*'s household was his property (e.g., Pressler, 1993, pp. 90–91; Wegner, 1988, pp. 12–13). Such may not be the case, however. Even though the Decalogue includes wives in a list of property that one might covet (Exod 20:17; cf. Deut 5:21 [MT 5:18]), free persons living under the householder's *potesta* were not property from a legal standpoint. Only chattel slaves were human property (Wunsch and Magdalene, 2014). Unemancipated persons were, rather, legal "infants" and incapacitated in numerous regards (Wunsch and Magdalene, 2014). Gender affected the type and extent of their incapacity. Gender also affected how and when emancipation occurred and what duties were owed the household while unemancipated.

Sons and daughters.

In the case of free sons, emancipation occurred automatically on their father's death (Westbrook, 2003, p. 39). Until then, their legal rights were limited. Sons were expected to work for the household. They could not litigate in court. A son's marriage plans had to meet his father's approval, and marriage did not change his legal status. His wife usually joined his father's household (Gen 24:51–67); Jacob (Gen 29) and Moses (Exod 2:21)) were exceptions to the rule, residing in their father-in-laws' homes. Sons owed duties of support (*kabbēd* "to honor"; Exod 20:12; Deut 5:16; Westbrook, 2008, p. 114) and respect (Exod 21:15, 17; Lev 20:9; Deut 21:18–21; 27:16) to parents. They also performed mourning rituals for parents (Deut 21:13). A son was not to humiliate his father by having sexual relations with his father's wife or concubine (Gen 35:22; Deut 23:1; 2 Sam 16:21–22; 1 Kgs 2:17–25). Sons could disgrace the householder by being a *nabal*, one who willfully ignores general rules of propriety (Prov 15:20), or a drunkard and glutton (Deut 21:20; Bellefontaine, 1979).

Daughters born to free parents were generally free, but they could lose that status by being taken into captivity during war (e.g., Lev 25:44; Num 31:9–18; Deut 20:14; 1 Kgs 9:20–21) or given over to debt slavery (EXOD 21:7; Lev 25:47; Neh 5:5, 8; cf. Deut 28:68; cf. Lev 25:39–43). Free women were rarely emancipated from a male *potestas*. Women who never married generally remained unemancipated in the household of their father or oldest surviving male relative until death, although they could inherit ((Num 26:33–27:11; 36). When the woman moved to her husband's or father-in-law's home, she was not emancipated; instead, the *potestas* under which she lived transferred from her paternal household to that of her husband or his family (cf. Westbrook, 2003, pp. 39–40). As long as a daughter lived with her father, she had no right to sue and could not serve as a recording witness. Unemancipated daughters were dependent on their fathers and could be treated harshly (Gen 19:8; Judg 11; 19:24). A father could repudiate any vow of his daughter if he did so on the same day he heard of it (Num 30:3–5 [MT 30:4–6]). Women's legal inferiority is also seen in the valuation of a vow: e.g., 30 shekels for a woman and 50 for a man (Lev 27:3–4). Single daughters existed to assist the family until marriage (and were equal to sons in terms of duties of respect and parental burial) and to form bonds between their father's family and that of their husband at marriage (e.g., 1 Kgs 3:1; Matthews, 2002, p. 294), especially in the case of royal daughters (e.g., 1 Kgs 3:1; cf. 1 Kgs 16:31).

Marriages were typically arranged by the father or eldest surviving male (e.g., Gen 24; 29). The bride, as unmarried daughter, was expected to be a virgin (e.g., 2 Sam 13:1–13); unmarried women dishonored their fathers by being unchaste (e.g., Deut 22:13–21). Priests could only marry a virgin (Lev 21:13; Ezek 44:22). Non-virgins were marriageable, if less desirable (Matthews, 2003, p. 9). The bride's family was given some property as a bride-price (better "bride-wealth") to replace her services to the family and not as a purchase price, as is commonly suggested. The betrothed bride was given a dowry by her father (e.g., Gen 29:24, 29; 1 Kgs 9:16). The dowry was generally considered to be a portion of the inheritance, although it was more in the nature of a gift, the amount of which was at the father's discretion. The dowry, except for slaves and personal items, was usually controlled by the woman's husband or his family during the marriage, but technically it remained her property. It was to be returned to her in any divorce in which she had no fault (Frymer-Kensky, 2003, p. 1010); it was for her support in case of widowhood (cf. Judg 17:1–4) and was to be inherited by her children at the time of her death (Westbrook, 1991, pp. 154, 156).

Married women.

Married women were not emancipated, lived under the *potestas* of their father-in-law or husband, and did not generally hold and manage property. A woman was expected to be subservient to the male head of household, although occasional narratives report that wives took initiative without their husbands' consent (e.g., 1 Sam 25; 2 Kgs 4:8–47). They were responsible for domestic chores of the household, and their ideal traits are set forth in Proverbs 31:10–31.

A married woman was expected to provide exclusive sexual and reproductive services to her husband (cf. Judg 19:25). Adultery was defined as illicit sexual intercourse between a married or betrothed woman and a man other than her husband or intended. The female focus of this law is evident, since a husband was not bound to monogamy. He could marry other women and have sexual liaisons with prostitutes and concubines as long as they were not married or betrothed to another man (e.g., Gen 38:15–16; 1 Sam 1:1–8; 2 Sam 19:5 [MT 2 Sam 19:6]). These provisions are extended to inchoately married women in Exodus 22:16–17 (MT 22:15–16) and Deuteronomy 22:23–25, 28–29. These verses instruct that to avoid capital punishment a betrothed woman must cry out that she is being taken by force, although her attacker is guilty of adultery whether or not she cried out. If she is not betrothed, however, her attacker need only pay the bride-wealth and marry her; neither shall die. Genesis 38:24, where Tamar is subject to the death penalty for being pregnant, also recognizes adultery by an inchoately married woman, because she is inchoately married under levirate marriage law.

Adultery was absolutely prohibited (Exod 20:14 [MT Exod 20:13]; Lev 18:20; 20:10; Deut 5:18 [MT 5:17]; 22:22). It was a capital crime (e.g., Gen 20:9; 39:9; Ezek 22:11) and subject to divine punishment (Ezek 16:38; Mal 3:5). The community was understood to be adversely impacted by adultery and expected to intervene (Deut 22:22; cf. Lev 18:24–30). Whether lesser punishments were allowed by the cuckold husband is debated (pro: e.g., Lowenstamm, 1980; McKeating, 1979; contra: e.g., Otto, 2000; Phillips, 1981); in these cases, divorce seems likely (Deut 24:1; Jer 3:8; Hos 2:4–6; Prov 6:33) as well as monetary damages (Lev 19:20–22; Prov 6:35; see also Job 31:11). If lesser punishments were allowed, the wife and paramour would suffer the same punishment to avoid collusion of wife and husband against a

paramour (Wells, 2005; Lev 20:10; Deut 22:22).

The gravity of adultery is reflected in biblical narratives (e.g., Gen 12; 20; 26; 38; 39; 2 Sam 11), in prophetic texts as a metaphor for disobedient Israel (Jer 3:8 passim; Ezek 16; 23; Hos 2—4), and in the wisdom literature (e.g., Prov 5, 6—7; Job 24:15; 31:1, 9–12). This evidence demonstrates that adultery was understood to have significance beyond injury to the cuckold male: it also was an affront to Yahweh. Women's obedience to their husbands was one of the standards by which men's obedience to Yahweh was measured (Mernissi, 1986, pp. 98–99).

Because ancient Near Eastern societies favored procreation to pass on land through inheritance and to make one's mark on the world, women were expected to have and raise children, especially sons. Procreation was a sign of divine blessing (e.g., Gen 1:28; 12; 15; 17; Exod 23:26; Deut 7:14; Ps 127:3–4). Infertility was deemed a tragedy (e.g., Gen 16:1–4; 30:1; 1 Sam 1–2), while births were a cause for rejoicing (Jer 20:15). Contraception by coitus interruptus was unacceptable (Gen 38:8–10). Miscarriage was understood as the result of divine curse (Hos 9:14; cf. Exod 23:26), and involuntary miscarriage that resulted from the violence of another was an actionable crime (Exod 21:22–25).

A child conceived in marriage was legally protected, presumed to be the husband's as a matter of law, and under the *potestas* of the husband. This status is reflected in the laws of adultery, especially the "ordeal" of Numbers 5:11–30. The ritual involves a husband who suspects his wife of adultery but has no concrete evidence. Some scholars suggest that the husband has no reasonable grounds for suspicion (e.g., McKane, 1980, p. 474), but others argue that he believes she is pregnant (e.g., Levine, 1993, pp. 201–204). During the ordeal, she takes an oath and ingests a bitter potion of holy water, tabernacle earth, and ink from a written oath, mixed in an earthen vessel. If she is guilty, Yahweh will make her "womb discharge, [her] uterus miscarry" (author's translation; vv. 21b–22a; cf. Ps 58:8 [MT 58:9]; Isa 26:18–19). Most scholars argue that she suffers something like a prolapsed uterus and infertility (e.g., Frymer-Kensky, 1984, pp. 468–469), but others argue that the potion is an actual or mystical abortifacient, meant to rid the wife of the illicitly conceived fetus and make her again fertile to her husband in case he did not wish to kill her (Levine, 1993, pp. 192–210; Magdalene, 2009, pp. 139–140; cf. Brenner, 1997, pp. 69–70; Stol, 2000, p. 32). It appears, then, that if a woman conceived a child by her paramour the husband had the right to kill her and the fetus with her. The fetus was under the *potestas* of the male head-of-household. A husband could abort the fetus of another man gestating in his wife's womb because it violated his right to use his wife's womb.

Divorced and widowed women.

Divorce was the prerogative of the husband, although Deuteronomy 24:1–2 requires a bill of divorce so the wife could marry again (cf. Jer 3:8; Isa 50:1). A husband who raped his wife before marriage could not divorce her (Deut 22:28–29). In other cases, a husband might divorce his wife with fault (Deut 24:1–2)) or without (*śānē'*, lit.: he "hates" her; Mal 2:16; Westbrook, 1986, pp. 401–403). If he had cause for divorce, she would forfeit her dowry. If he had no cause, she could take her dowry and be emancipated. In most cases, she returned to the house of her father or oldest living male relative and submitted to his *potestas*.

Financially, a widow received her dowry but no inheritance (Num 27:8–11; Pressler, 1993, pp. 69–71; Westbrook, 1991, p. 145). Her life could be precarious. If she had sufficient funds or no family, she would be emancipated at widowhood (1 Kgs 17:9–24). A widow might return to her father's house (Lev 22:13). A young widow with small children might remain with the husband's family as an unemancipated daughter-in-law. If the widow was childless and fertile, she might have been expected to remain in the husband's family and marry another son (Gen 38:6–11; Deut 25:5–6) or next of kin (Gen 38:12–26; Ruth 3–4) through the operation of the levirate, although a man might be released from this duty (Deut 25:7–10; Ruth 4:1–7). If the widow was older with adult children and unable to support herself, she often remained with her eldest son, who inherited the bulk of his father's estate. The possible emancipated status of widows and divorcees is acknowledged by the fact that their vows are binding (Num 30:9 [MT 30:10]).

Women's nondomestic roles.

Some women in the Hebrew Bible also took on nondomestic roles. Many of these appear in narrative or prophetic texts, including Israelite queen consorts and queen mothers (1 Kgs 18–19; 2 Kgs 9:30–35; 11:1–20; 2 Chr 22:10—23:21; 24:7; 1 Kgs 15:13; 2 Chr 15:16); queens of foreign nations (1 Kgs 10:1–13; 2 Chr 9:1–12; Esther); women in other political and religious capacities (Judg 4–5; Exod 15:19–21; Mic 6:4; 2 Kgs 22:12–20; Neh 6:14; 2 Sam 14:1–24; 20:16–22), singers (Neh 7:67; 2 Chr 35:25); weavers (cf. 2 Kgs 23:7); midwives (Gen 35:17; 38:28; cf. Exod 1:15–21); and wet-nurses (Exod 2:7–9; cf. Num 11:12).

Prostitutes (*iššâ zonāh* and other terms) were emancipated but socially marginalized (Lev 19:29; Amos 7:17; Matthews, 2003, pp. 2–3). Priests could not marry them (Lev 21:7), and a priest's daughter who was a prostitute could be burned (Lev 21:9). Both men and women could be illegally involved in so-called black arts (e.g., Lev 19:31; Deut 18:10–12) and could be expelled (e.g., 1 Sam 28:3; cf. Kiboko, 2010) or put to death (e.g., Lev 20:27; cf. Exod 22:18 wherein only women are put to death).

Freed slaves and temple oblates.

Based on comparison with other ancient Near East cultures, women might have also been freed slaves or temple oblates (*nᵉtînîm*). Freed slaves remain members of, and are expected to work for, the household unless also emancipated at the time of manumission or a later date (Wunsch and Magdalene, 2014). Temple oblates, mentioned fifteen times in Ezra-Nehemiah ((Ezra 2:43 passim) and in 1 Chronicles 9:2, are similar to the Mesopotamian temple *širkū*: they are free but unemancipated and permanent dependents of the temple (Wunsch and Magdalene, 2015).

Female chattel slaves and debt-slaves.

Because of their sexual and reproductive capacity, female slaves were governed by special rules (Westbrook, 1998, p. 215). As property, they were subject to both sale and sexual exploitation. If taken as concubines to produce children for their master, they were given limited protections. In Mesopotamia, the Laws of Hammurabi indicate that they were freed upon their master's death (LH §171) and that if given by their mistress to the master they maintained dual status in regard to husband and wife (LH §§146–147). If a slave woman bore a child, she might be demoted in the household but not sold. Such regulations parallel Genesis 16, where Hagar is treated harshly by Sarah and returned by Yahweh when she flees.

Even if fathered by the master, children of slave women were considered house-born slaves and generally deemed fatherless, without the right of inheritance. Abraham goes beyond these rules, claiming Ishmael by naming him (Gen 16:15) as he does Isaac (Gen 21:3). Sarah recognizes Ishmael's inheritance right in Genesis 21:10, which leads her to cast out Hagar and Ishmael (Gen 21:9–21). Adultery laws do not apply in the same way to betrothed slave women (Lev 19:20–22). In such cases, neither the man nor the woman would be executed but the paramour instead paid the owner compensation and brought a guilt offering (cf. Exod 21:8).

When free daughters were given in concubinage, they lost rights (implied by Exod 21:7–11) and were given the normal protection for

concubines (Westbrook, 1998, p. 219). Nevertheless, where a woman displeased her master, she could not be set free and emancipated, as could male slaves, but rather was redeemed by her family. She could not be sold to a foreign people where no one could redeem her. If the master gave the woman to his son, the husband was required to treat her as wife and the master to treat her as daughter-in-law. If not provided for as wife, she was set free without payment of the redemption price.

Other Indices of Women's Lower Status.

Women were deemed unclean for a substantial portion of their adult lives because of the rules surrounding menstruation and childbirth. Women were isolated for seven days during their menstrual period or as long as they bled, plus an additional seven days (Lev 15:19–29), and for seven days after birth of a male child and fourteen after the birth of a female child (Lev 12:1–5). After intercourse, women were required to wash and remained unclean until evening, similar to their partner (Lev 15:18). Those who touched her in this unclean state were also unclean (e.g., Gen 31:35; Lev 15:19; 33). Sexual relations during menses were a crime (Lev 20:18).

The Hebrew Bible reports many incidents of violence against women, which reveals further their lesser social and legal status. Rape, both within and beyond the context of war, is a common theme throughout the Hebrew Bible (Magdalene, 1995; Scholz, 2010). Women lived under the constant threat of sexual and physical violence.

Despite their inferior legal status, however, women were required to learn and uphold the law in a manner equal to men (e.g., Num 5:6; Deut 17:2, 5; 29:18; 31:12; Neh 8:3). Rules of negligence and homicide apply equally whether men or women were victims (e.g., Exod 21:18–21). Both men and women could take the Nazirite vow (Num 6:2). Nevertheless, given the manifest lesser legal status of women attested throughout the Hebrew Bible, these few instances of equality should not be overrated.

[*See also* FAMILY STRUCTURES, subentry HEBREW BIBLE; IMAGERY, GENDERED, subentry PROPHETIC LITERATURE; MALE-FEMALE SEXUALITY, subentry HEBREW BIBLE; MARRIAGE AND DIVORCE, subentry HEBREW BIBLE; RACE, CLASS AND ETHNICITY, subentry HEBREW BIBLE; RELIGIOUS PARTICIPATION, subentry HEBREW BIBLE; *and* SEXUAL TRANSGRESSION, subentry HEBREW BIBLE.]

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F. Rachel Magdalene

Greek World

See FAMILY STRUCTURES, subentry GREEK WORLD; *and* MARRIAGE AND DIVORCE, subentry GREEK WORLD.

Roman World

Any overview of legal status and gender in the Roman Empire is obliged to acknowledge that in Roman law distinctions between male and female were in some ways outweighed in importance by distinctions between free and enslaved persons and, in the case of free persons, between citizens and noncitizens. This is because Roman law, based on notions of personality, applied only to those who were both free and citizens. Slaves, who were neither free nor citizens, were “nonpersons” with no rights in Roman law. The many inhabitants of the empire who were not citizens also had no rights in Roman law until the granting of universal citizenship by the emperor Caracalla in the third century C.E. Women who were free citizens, meanwhile, had access to law as a means of regulating aspects of social and economic life and often used it to their advantage.

Nevertheless, the law did not grant equal rights to men and women. A focus on legal status and gender helps to demonstrate how granting rights or imposing limitations based on gender-based norms was part of the development of law and public policy in the early Roman Empire. Gender-based assumptions and stereotypes are detectable in the writings of the so-called classical jurists, legal scholars who were active from the first century B.C.E. to the third century C.E. These assumptions, whether encoded in legal rights and restrictions or expressed directly by the jurists, influenced the relationship of Roman citizens to the law and to institutions such as marriage. This overview of legal status and gender focuses on the evidence of the early Imperial period, highlighting both the opportunities and the limitations it created for women.

Sources of Roman Law.

The *Digest* of Justinian provides most of the source material for Roman law of the first century B.C.E. to the third century C.E. The *Digest*, a massive text compiled in the sixth century C.E. by legal scholars working under Emperor Justinian, contains excerpts from the Latin works by early Imperial jurists. For ease of reference, Justinian’s compilers organized the books of the *Digest* by topic, such as marriage or divorce, with relevant segments of classical juristic works cited. Jurists whose writings are particularly well represented in the *Digest* are Ulpian, Julian, Papinian, Modestinus, and Paul. The jurists, who were neither judges nor lawyers, did not make or enact laws; rather, they worked as a small

circle of intellectuals sponsored by the emperor, offering comment and interpretation on how the law should apply and sometimes disagreeing with each other.

Apart from the *Digest,* the *Institutes* of Gaius, a second-century legal handbook that survives in its entirety, provides evidence for certain Roman legal institutions that were keyed to gender roles, such as the guardianship of women, as we will see below. A later source, the *Excerpts from Ulpian's Writings* (*Tituli ex corpore Ulpiani*) was composed in the fourth century C.E. Some written responses, or rescripts, of Roman emperors to legal questions submitted by citizen petitioners also survive. Found in the *Codex* of Justinian, compiled in the sixth century C.E., these second- and third-century rescripts provide insight into how law played a part in the lives of citizens and into how the emperor responded to citizen requests. Finally, documentary papyri that have survived from Roman Egypt, such as records or requests by petitioners to a civic official, are invaluable for revealing how gender-based legal rights and restrictions affected the daily life of citizens.

Legal Capacity: Rights and Restrictions.

In the Roman Empire, a free citizen female was likely to be under the legal authority of a male. If her father was alive, she was under paternal power (*patria potestas*). By this power, her father (*paterfamilias*) owned all of her possessions; he also had the traditional "right of life and death" (*ius vitae necisque*), which, although rarely exercised by the early empire, permitted him to end the life of his offspring. His approval was also legally required for her marriage to be valid. It should be noted that these aspects of paternal power, including approval of marriage, applied to male as well as female children. Nor was *patria potestas* eliminated once a child passed the age of puberty and ceased to be a minor; adults with living fathers, too, were under *patria potestas.*

In an early form of Roman marriage, a wife was transferred into the power of her husband (*manus*), at which point she was removed from the power of her father. The legal consequences of *manus* were in some ways similar to the consequences of *patria potestas*, although the evidence for *manus* is scant. As the jurist Gaius notes, a wife in *manus* was held to be "in the position of a daughter" if her husband died without leaving his will, leaving her to inherit a share of the estate equal to that of each of her children (Gaius, *Institutes*, 3.1–3). There is no conclusive evidence, however, that a husband held the right of life and death over his wife who was in *manus*, and thus there is reason to believe that *manus* was a less all-encompassing power than *patria potestas.* By the early empire, moreover, *manus* marriage was not common, and a married woman remained in *patria potestas* as long as her father was alive.

Upon the death of the *paterfamilias*, citizen women as well as men became legally independent, or "in their own power" (*sui iuris*); in this area, the law made an important gender-based distinction. An adult male became a *paterfamilias* when his father died, with *patria potestas* over his offspring; an adult female did not acquire an equivalent legal status. Female children or adults who were *sui iuris* remained under the legal control of an appointed male guardian (*tutor*), in the institution of guardianship (*tutela*). The guardianship of adult women (*tutela mulierum*) brought with it some restrictions on an individual woman's freedom, including the requirement that her *tutor* give approval for major legal transactions, including entering a marriage, bringing certain types of lawsuits, or writing a will (*Excerpts from Ulpian's Writings*, 11.27).

The limitations, however, on women's freedom to manage their affairs appear to have been limited. Even without a *tutor* women had some ability to alienate property, take up lawsuits, and act as creditors (Gaius, *Institutes*, 2.80–81, 85). The gender-based assumptions behind the institution of guardianship, too, attracted the notice of the jurists. Gaius expressed skepticism at the explanation commonly given for permanent guardianship, women's "weakness of judgment" (*levitas animi*), and observed that in some situations a *tutor* gave permission for a transaction solely as a matter of form and often could be compelled by a civic official, the praetor, to give permission even if unwillingly (Gaius, *Institutes*, 1.190–191).

Although it appears that the constraints of guardianship were gradually eroded or circumvented, there was also a positive legal right granted to women, beginning in the first century C.E. with Emperor Augustus, which explicitly linked legal and economic freedom with successful childbearing. This "right of (three) children" (*ius* [*trium*] *liberorum*)—"three" is sometimes, but not always, included in ancient citations of the right—allowed women who had given birth to three children to be freed from guardianship. Although evidence for *ius liberorum* is not plentiful, one surviving third-century C.E. document on papyrus from Roman Egypt attests that some women exercised it. For example, a woman named Aurelia Thasous, from the town of Oxyrhynchus in the Fayyum region of Egypt, undertakes a business transaction independently. She notes, in addressing the prefect, that she manages her own affairs because she possesses the right of three children (*P. Oxy.* XII.1467).

Although the implementation of such a right for women suggests an effort to expand rather than curtail their legal and economic freedom, it also generated worries that women would not be capable of managing their affairs. The perceived need to protect women from financial harm prompted actions by the Roman senate to place limits on their freedom to do business. By the provision of the Velleian senatorial decree (*senatusconsultum Velleianum*) in the first century C.E., women were forbidden from "interceding" on behalf of others, including their husbands, by taking on or guaranteeing their debts. As the jurist Paul notes (*Digest*, 16.1.1), the justification for this restriction was that women should not be allowed to assume too much risk when it came to their family property.

The Velleian senatorial decree addressed a perceived vulnerability faced by inexperienced women who undertook financial transactions. Although this was a valid concern, it is worth noting that disparities between the expertise of men and women in business affairs were primarily a reflection of traditional Roman social values, such as the premium placed on female modesty. Such concerns were pronounced enough to prompt restrictions on the ability of a respectable citizen woman to engage in some activities or types of work. Women's role in politics was extremely limited; for example, women were unable to vote or hold public office. In professional life, they were ineligible for the position of *tutor*, as noted above, and could not take on the position of banker, nor could they represent others in court.

In discussing each of these examples, jurists such as Neratius, writing under Emperor Hadrian, and Ulpian, writing a century later under Emperor Septimius Severus, expressly state that certain careers are more suitable for males (*Digest*, 26.1.16 pr.; 2.13.12; 3.1.1.5). They do not mention women's weakness of judgment as in discussion of the reasons for guardianship, but rather suggest that certain professions or activities bring with them the risk of corruption of female virtue. This is perhaps most evident in Ulpian's mention of the behavior of Carfania, a woman who assumed the role of lawyer, as the initial spur for the prohibition. Ulpian's mention of Carfania's example reveals the discomfort provoked by independent female action in the world of the courtroom. A similar concern for virtuous femininity is implied in the prohibition on banking (*Digest*, 2.13.4), a semipublic activity. Ultimately, these restrictions imply an additional assumption about women's lives, namely that respectable women would occupy themselves in the private, domestic sphere and have little need to enter the public world. The vision of a respectable woman as playing the role of household manager likely explains an exception to one of the gender-based restrictions on guardianship: a woman could seek permission from the emperor to assume the role of *tutor* for her minor-age children and thus to manage

their estate (*Digest*, 26.1.18).

Marriage.

The jurist Modestinus (*Digest*, 23.2.1) described marriage as "the union of a male and a female," and Roman law emphasizes procreation as the purpose of marriage, implying that heterosexual unions were envisioned as the norm. Assumptions about gender roles also influenced the legal rules related to marriage and divorce. In Roman legal thought, marriage was based on the agreement of the partners; valid matrimony required initial and ongoing consent and "marital affection" (*affectio maritalis*), as Ulpian calls it, of both husband and wife. The requirement of mutual consent meant, too, that divorce could be achieved by either spouse unilaterally, as we will see below.

Although consent and affection appear to endorse marriage as a voluntary union, the state, beginning with Emperor Augustus, also undertook to compel citizens of childbearing age to marry and reproduce. The emphasis on procreation is most evident in the legislation enacted by Augustus in 18 B.C.E. and 9 C.E., the *Julian and Papian Laws*. One part of this legislation required male citizens ages 25 to 60 and female citizens ages 20 to 50 to marry and have children or be penalized in their ability to inherit from persons to whom they were not closely related. Those married couples who did not have children, for example, could inherit only one tenth of each other's property (*Excerpts from Ulpian's Writings*, 15.1–2, 16.1–2). The laws also for the first time made adultery a criminal offense to be adjudicated in the court system rather than in the household.

The state's emphasis on reproduction as the purpose of marriage prompted the Roman jurists to consider how the ability to procreate should affect eligibility for marriage. The minimum age for entry to marriage, around the age of puberty for both boys and girls, suggests that sexual maturity was a criterion (*Excerpts from Ulpian's Writings*, 5.2). Occasionally, a jurist's consideration of a problem related to procreation and eligibility for marriage will offer insight into Roman cultural perceptions of gender categories. In one case, Ulpian considers the question of whether a eunuch (*spado*), who was incapable of fathering children, should be able to marry. Given the emphasis placed by the state on procreation, a negative answer might be expected. Ulpian suggests otherwise, however, noting that a eunuch should be eligible to marry as long as his condition is congenital and not the result of castration (*Digest*, 23.3.39.1). This interpretation of the law appears to imply an objection to castration rather than a worry about infertility; that it does so underscores the notion that concerns about status could occasionally overwhelm concerns about the proper fulfillment of reproductive roles.

In Ulpian's view, a couple need not be able to procreate to be married, yet it is clear that once a husband and wife had children, the patriarchal structure of the Roman family had an effect on the relationship of the father and mother to their children. Because the Roman family (*familia*) was based on a model of agnatic kinship, with emphasis on the male line and *patria potestas*, a wife was technically not in the *familia* of her children—she remained in the power of her father for as long as he lived and then was in her own power. This had some legal consequences for women, as we will see below, in the case of child custody upon divorce.

Divorce and Remarriage.

The Augustan legislation makes clear that the Roman state was willing to use law to usher citizens into marriage, but this legislation did not encourage marriage by prohibiting or restricting divorce. Roman law, more generally, took a surprisingly hands-off approach to divorce, which could be achieved by either spouse—sometimes, it appears from juristic discussion, without even notifying the affected spouse. Some literary sources indicate that divorced women, especially, could be socially marginalized, but there is little sign of this in the discussion of the jurists. "No-fault" divorce was the accepted model, in which the divorcing spouse was not required to prove that an offense had been committed against the marriage by the other spouse.

Divorce may have been easy to initiate, but a wife undergoing divorce could also confront a challenge in regard to the dowry she had brought to the marriage, and this challenge reflects gender-based norms. Her dowry, although recoverable upon divorce (or death) of her husband, presumably to facilitate remarriage, was under her husband's control for the duration of the marriage. If the marriage ended in divorce, a portion of the dowry—which could be made up of a number of elements, including slaves, land, and cash—could be retained by the husband if he could prove his wife had committed a moral offense; a portion could also be kept for the children if he could show that he had committed no moral wrong. The deductions that might be taken from the dowry for the support of children also highlight that in cases of divorce, the children of the union typically went with the father, as an opinion of Ulpian makes clear (*Digest*, 43.30.3.5). In the case of child custody, it appears that *patria potestas* was privileged over the maternal relationship.

Extramarital and Illegal Sexual Relations.

Beginning with the legislation of Emperor Augustus in 18 B.C.E., the state enforced marital fidelity by punishing the offense of adultery, which was defined in terms of the status of the woman who was involved. Specifically, adultery was defined as extramarital sexual relations by or with a married woman. Although concerned with the conduct of men as well as women, the criminal charge of adultery largely focused on women, since uncertainty about paternity could lead to offspring being deemed illegitimate. The legislation served to distinguish married women from prostitutes, with whom sexual relations were not illegal. From this feature of the law, it is clear that the ideologies of status as well as those of gender were of interest to the emperor in its creation.

Likewise, questions about the proper punishment for adultery centered, in juristic discussion, on women. A father who apprehended a daughter in the midst of adulterous behavior was granted a very limited "right to kill" (*ius occidendi*) (*Digest*, 48.5.21–22; 48.5.24 pr., 4). A husband was permitted to kill an adulterer discovered with his wife in their home (*Digest*, 48.5.25 pr., 1) and might have his punishment mitigated if he overstepped this right, as a rescript of third-century Emperor Alexander Severus suggests (*Codex of Justinian*, 9.9.4.1). He was, however, as the jurist Papinian wrote, prohibited from killing his wife (*Digest*, 48.5.39.8). These efforts to delineate and restrict the right to kill an adulterous woman speak to the juristic interest in limiting it. The alternative punishment, however, could be severe and lasting. A woman convicted of adultery could face a range of punishments, including loss of a portion of her dowry and the inability to remarry (*Excerpts from the Writings of Ulpian*, 13.2; *Digest*, 23.2.43.12–13).

The hard line taken against female adultery is made in an extraordinary case discussed by Ulpian, in which a girl who has not yet turned 12, the minimum age of marriage, can be accused of adultery as a fiancée (*Digest*, 48.5.14.8). This categorization of a betrothed girl as an

adulteress vividly illustrates how gender-based ideology could exert a strong influence on decisions about legal status, with potentially serious consequences for young women. Meanwhile, assumptions about women's proper place in relation to legal procedure are implied in the restriction on their bringing an accusation of adultery to court. A rescript of the emperors Septimius Severus and Caracalla, from the third century C.E., states that in a public trial women were not permitted to bring an accusation of adultery, even against their husbands (*Codex of Justinian*, 9.9.1).

Although women were punished harshly for adultery, the high value placed on modesty meant that they were also protected by the law against sexual assault or harassment of respectable women. The punishment of this assault or harassment, which is labeled *stuprum*, or "illicit sexual activity," similarly seems pointed toward protecting male interests. In the case of an unmarried virgin, the interests of her *paterfamilias* are being protected; in the case of a wife, the interests of her husband are central.

Recent Debates.

Contemporary studies of women's role in Roman law and society have taken up the question of whether gender-based categories in legal and nonlegal texts show points of contact with each other and what this might imply about the interplay between Roman law and social norms. Using the evidence of the *Digest* and other legal and nonlegal texts, scholars have attempted to evaluate the extent to which Roman law responded to social attitudes toward gender; on the other side, scholars have asked whether law acquired a normative dimension, shaping assumptions and expectations in society as much as being influenced by them.

These lines of inquiry raise related questions about the level of contact the inhabitants of the Roman Empire had with the institution of the law. Among the citizenry, how far up and down the social ladder, for example, were Roman legal rules observed and enforced? Moreover, although female Roman citizens in Asia Minor or Egypt were subject to the same set of laws as were their counterparts in Rome itself, the unevenness of the evidence—apart, perhaps, from papyrological evidence in Egypt—prevents us from concluding much about the impact of law on the daily lives of citizens across the geographically expansive empire. The debate on these topics is ongoing, and many of the secondary sources listed are engaged in it.

[*See also* ECONOMICS, subentry ROMAN WORLD; FAMILY STRUCTURES, subentries on NEW TESTAMENT *and* ROMAN WORLD; LEGAL STATUS, subentry NEW TESTAMENT; *and* MARRIAGE AND DIVORCE, subentries on NEW TESTAMENT *and* ROMAN WORLD.]

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Lauren Caldwell

New Testament

Gender has to do with how bodies are configured and scripted to perform in certain ways. Gender, therefore, is about identity, about identifying with and being identified by a certain bodily configuration or performance. The law, however, is concerned with regulating and disciplining bodies. It is an important, sometimes dominant, script in this process of shaping and scripting bodies—individual and communal, male and female, free and slave. Legal texts, therefore, offer insight into the complex negotiation involved in identity construction.

Pursuing the question of gender and legal status in the New Testament provides a window into how the ancients engaged in this complex negotiation of identity and, more tellingly, how the early Christ-follower communities both mimicked and resisted the dominant scripts (and scripting) of the ambient cultures of the Mediterranean. Although the influence of a Greco-Roman and Jewish scripting on the body—the *ekklesia*—of Christ-followers is clearly evident, it is equally important to note that this body negotiated a new ethnic identity. The New Testament is thus both a product of a scripting influence and itself engaged in rescripting and reconfiguring the bodies comprised therein.

Reading the New Testament with a view toward tracing how legal status and gender intersect is to read how gendered bodies are regulated and disciplined to perform in certain normative ways and how this happens through law, both narrowly and broadly defined. Such a reading requires careful consideration for how gender and law are but parts of a more thickly layered interplay of social categories. This entry seeks to navigate the confluence and contestation of these social categories, the connective tissue that holds together the concrete setting within which the early Christ-follower communities negotiated identity in the shadow of the empire.

Intersectionality: Overlapping Social Categories.

The tendency to treat topics such as gender and legal status or law as mutually exclusive social categories results in a "single-axis framework" (Crenshaw, 2011, p. 25) that does not do justice to how law actively engages in an act of gender scripting. It is necessary, therefore, to approach the topic intersectionally, reading gender and law within a multiaxial framework that wrestles with the interplay and overlapping of these categories, as well as a range of others (Kartzow, 2012). These overlapping and interlocking systems play a significant role in the scripting of identity in general and of gendered identity in particular.

When applied to the New Testament, intersectionality draws attention to the reality of overlapping arenas and enables a more thickly textured reading of gender, or power, confirming that "gender is the primary way of signifying relations of power" (Scott, 1999, p. 48). This approach presupposes that gender (identity) is constructed (Lieu, 2004) and that such construction reflects the overlapping of social, economic, ethnic, political, and religious scripts that inform and shape bodily performance—that is, the continuous rehearsal of certain behaviors, traits, and expectations that constitute femininity and masculinity.

The regulation and scripting of gendered bodies raises several key questions with which we must wrestle: (1) How was the regulating and scripting achieved? (2) Who constructed and controlled the means by which that regulating and scripting took place? (3) To what degree was the regulating and scripting effective; that is, is there evidence of resistance?

Legal Status and Gender.

Regulating and scripting bodies was achieved by means of a complex web of *texts*. The word *"texts"* here refers both to actual texts (literary sources) and to the mass media of the Mediterranean world (a range of images). The literary data include extant legal texts (e.g., *The Institutes of Gaius*, Justinian's *Digest, Code of Justinian*, and *Theodosian Code*). Although these literary texts give us access to a particular vantage point from which to view the role of the law in regulating and scripting bodily performance, their angle of vision is narrow. The textual data alone can obscure the more complex machinations of gender construction and legal status, precisely because the authors of texts are engaged in an act of constructing. They control what (or who) is made visible and what (or who) is kept from view.

To fill out the picture, the broader material culture (graffiti, reliefs, inscriptions, friezes, etc.) must figure in our reconstruction of how bodies were regulated, not only by legislation, but also by authoritative (normativizing) texts and images. Material culture illuminates those aspects that texts tend to hide from plain view. This is particularly important when studying legal texts since they provide only the perspective of the elite for whom the legal codes are put into service. Furthermore, the legal codes obscure any evidence of resistance because they seek to effect conformity to particular norms.

Gender and identity: Text and image.

Identity in the ancient world was actively constructed (Punt, 2012) and its construction was achieved through both text (as a crystallization and reproduction of memory) *and* image.

The early Christ-follower communities of the first century C.E. were rooted within a rich textual tradition and were themselves developing a textual tradition of their own, which served as a way of both reflecting and constituting a particular identity. These texts were a crystallization of the cultural memory of the Christ communities and served "to stabilize and convey that society's self-image" (Punt, 2012, p. 30).

Since texts have "both a 'life' and an 'effect'" (Vander Stichele and Penner, 2009, p. 83), they give us access to "how *the shaping of a body of literature has a correlating effect on the formation of early Christian identity*" (p. 83, italics added). So while the early Christ-follower communities were engaged in an exercise of scripting bodies through the development of a body of texts, the enterprise was, in macrocosm, being undertaken by the empire, where the role of texts as a reproduction of memory, even mythical memory, in the construction of social identity can be seen as, for example, in Virgil's *Aeneid*.

To read a body of texts is to read the body of a community, and to do so is to read how bodies, individual and collective, were visually (re-)presented and (re-)imaged in the first century. In this setting, the gendered bodies of women and men become the social and political sites for regulating and disciplining social norms and conventions and for reinscribing the deeply entrenched hierarchy of the Greco-Roman world. The physical body, however it is (re-)presented, is a symbol of the social body, the body politic—and in the case of the New Testament, the Roman imperial body politic.

Although bodies became sites for imaging the social structuring of society, it is important to note that not all bodies were the same. Some bodies mattered more than others. Some bodies were merely scaffolding for the construction of identity for bodies that really mattered (e.g., slave bodies and the bodies of conquered nations were all textually represented to underwrite the identity of those in power).

The intersection of textual representation with art, architecture, and sculpture becomes an important intertext for making sense of how bodies were being configured and often disfigured (Kahl, 2010). Engagement with texts and the broader material culture enables a more complex picture of how bodies were constructed to emerge. Furthermore, such engagement also enriches the interplay between text and image in the construction of identity. This is critical to the question of gender and legal status since in many ways the images we have to work with often provide evidence of how identity was in fact constructed quite apart from the ideals expressed in some of the texts.

In addition to a sculptural program that depicted conquered nations as female bodies (e.g., the many friezes of the Sebasteion at Aphrodisias; see Lopez, 2008), we may note too how women's bodies became the site of Roman imperial ideology, with emperors using their wives to persuade other women, especially those of higher social rank, to conform to the normativizing script of the empire. This illustrates the use of women's bodies for political and social ends and functioned as the means by which a normative sense of gender distinction and place in society was inculcated. Bruce Winter (2003) frames the matter this way: "The imperial clothing and hairstyles of wives were meant to make them icons and trend-setters and…were deliberately used to counter influences in society which were judged detrimental to its well-being" (p. 176).

Legislation in the Roman period.

Within the classical period of Roman history (ca. 200 B.C.E.–300 C.E.), it is important to note that the ancient legal system of the Romans reflects the intersection of social coding (honor/shame, belonging, status, etc.) and legislation. The legal system, established by the social elite, reflected the attempt of the elite to both prop up a particular social hierarchy and, through social coding, maintain and exercise control (Knapp 2011, p. 34). Thus, at both the implicit and the explicit level, the Roman legal system was not simply a matter of regulating through legal prescription or sanction. Instead, a more complex notion of social conditioning emerges. This is evident in the legislation governing dress and adornment and reinforces the notion that "Roman jurisprudence distinguished between them [respectable married women and high-class prostitutes and others] by means of their appearance which was defined in terms of apparel and adornment" (Winter, 2003, p. 4). By

projecting the ideal imperial family onto society, Augustus (and some who would come after him), for whom appearance was critically important, was engaging in a normalizing scripting of the ideal woman, of the ideal family.

In the Roman legal system, then, we find legal sanction intermingled with social conditioning, which, despite its potency, failed on one level to curtail certain behaviors, particularly as it related to gender. On this, Winter's (2003) study on the emergence of "new women" who resisted the traditional roles assigned to them by actively participating in public life and by pushing the boundaries around sexual propriety is particularly instructive, especially for our reading of the New Testament.

Roman law and the family.

The Roman family reflected a strong bias toward men, establishing the *pater* (father) as the head of the *familia*, "the basic Roman social and property-owning unit" (Gardner, 2009, p. 4). In this role, the *pater* exercised almost omnipotent power and authority over the members of the household, which included wives, children, grandchildren, and slaves (and often their children, claimed as property of the estate). This power and control, known as the *patria potestas*, over the household was a legal right of the *pater* and is noted by Gaius, a mid-second-century jurist who comments on its uniqueness: "Again, we have in our power our children, the offspring of a Roman law marriage. This right is one which only Roman citizens have; there are virtually no other people who have such power over their sons as we have over ours" (*Institutes*, 1.55). The *pater* would exercise this control for as long as he lived, regardless of the whether "his descendants matured and established independent households" (Arjava, 1998, p. 148). This had far-reaching implications for the legal status of the family members, the *filius familias* (male children) and *filia familias* (female children).

Under the *potestas* of the *pater*, adult children were not in any position to engage in economic transactions without the consent of the *pater*, could not own property, and were often at the mercy of the *pater* when it came to marriage. When adult children did engage in economic transactions, with consent, all acquisitions were accrued to the *pater*. Thus adult children could make their way through life (at least for the duration of the *pater's* life) with either an allowance or a sum of money (or property), known as a *peculium*. Adult children were therefore nothing more than an extension of the *pater* and lived under his *potestas*.

The family served as an overlay for the empire and the Roman family as a microcosm of the empire. Structured as a larger family with a *pater* (caesar) in place, the empire was constructed to make a clear distinction between those who belonged to the family, Roman citizens, and those who did not. At this juncture we have a very interesting interplay, legally speaking.

Some recent interpreters have illustrated the legal semiotics attached to Roman imperial ideology. As a means of analyzing social codes and structures, semiotics is concerned with "how, and in whose interests, reality is constructed" (Lopez, 2008, p. 20). In her analysis of the Great Altar of Pergamon, Brigitte Kahl (2010) attempts to trace out a series of binaries that reflect how Roman imperial ideology sought to construct the *other* visually: "rationality versus stupidity, true manliness and courage versus self-destructive fearlessness and rashness, moderation and self-discipline versus excessive emotion and brainless action, righteousness versus lawlessness" (p. 103). The ubiquity of images such as these illustrate how the Romans sought to define themselves over against the other, and of particular interest is how this lawless other is so often cast in gendered terms as a woman's body. We will note this tendency again in our section on slavery.

Roman law and marriage.

Marriage becomes one more site for the intersection of legal status and gender. Under Augustus three important pieces of legislation, designed to promote the particular vision of the empire, come into play: *lex Iulia de maritandis ordinibus* (18 B.C.E.), the *lex Iulia de adulteriis* (18 B.C.E.), and the *lex Papia Poppaea* (9 B.C.E.). Each of these laws reflects the attempt of the powerful to construct identity through legal sanction (and incentive). And although these laws were designed to promote marriage and childbearing, they carried specific gendered implications for Roman women in particular and likely much wider since, as Winter notes, the influence of Roman law and Roman society was not restricted to Roman citizens (Winter, 2003, p. 2).

For example, the *lex Iulia de adulteriis* granted the *pater* the right to impose "summary justice on a daughter caught in the act of adultery in his son-in-law's house" (Gardner, 2009, p. 6). This piece of legislation is clearly directed against women and seeks to curtail certain behaviors deemed out of place or inappropriate for women. And although it is evident that during the time of Augustus women charged with adultery were charged criminally, rather than capitally (Winter, 2003, p. 20), penetration of women's bodies and not penetrating men becomes the real issue. The sexual act is "about social and economic relations," and thus penetration was understood as a "social act that maps dominant and subordinate relationships in the ancient world" (Vander Stichele and Penner, 2009, p. 45).

Likewise, women "were for their entire lives subject to some degree of limitation on their capacity for independent legal action" (Gardner, 1986, p. 4). Throughout their lives girls and women were under some form of guardianship. Even in marriage, women were restricted legally. Whether with their husband or, in his absence through death, an assigned tutor, women could only operate with reference to their guardian. The *lex Papia Poppaea*, however, did make provision for manumission from tutelage if women had three children.

Judaism and gender in the shadow of the empire.

The presence and influence of Roman ideology was felt across the empire. Visually, conquered nations were constantly reminded (through architecture, coinage, art, etc.) of Rome's power to monopolize, control, and define the *other*. The extent of this presence meant that "There was no 'Rome-free' zone" (Kahl, 2010, p. 218). Jews, like the peoples of all other conquered nations, were eventually thoroughly integrated into the imperial mind-set (Pucci Ben Zeev, 2010, p. 351). Consequently, Jewish notions of gender, family, slavery, etc., were "virtually identical with those of its ambient culture(s)" (Cohen, 1993, p. 2).

In this contestational space, the right to claim bodies, to construct them, becomes a hard-fought battle. The negotiation of identity in the Roman Empire can be traced in the complex relationship between conqueror and conquered. This relationship allowed for a kind of flexibility in the exercise of Jewish rights, and although these were "neither permanent nor inherently stable" (Pucci Ben Zeev, 2010, p. 351), Jews were in some measure free to construct identity around specifically Jewish distinctives. Josephus notes this freedom in his *Jewish Antiquities* (11.338, also 12.142, 12.150), indicating that Jews were granted the right "to observe their country's laws." However, things are never quite so straightforward. We also have evidence to support the curtailment of such freedoms, which was always dependent "on the personal goodwill of the ruler who happened to be in power" (Pucci Ben Zeev, 2010, p. 368).

The active construction of identity, especially as it relates to the role of legal texts, defined broadly—the regulating role of sacred texts, and narrowly—the actual codification of legislation, in gender identity, meant that while the empire exerted its influence in such construction, Jews themselves actively engaged in this task. As Helena Zlotnik (2002) notes, "to be a Jew involves a complex series of prescriptive and preventive injunctions, do's and don'ts. To be a Jewess primarily means the latter" (p. 1). So although the Hebrew Bible and its interpretations, as regulating canon, present a general frame for what it meant to be Jewish, it did so in ways that cast women, in particular, by means of a

series of negative examples. Women's bodies become sites for articulating boundary crossing. And where this is not the case, women's bodies are employed as exemplars of virtue (Zlotnik, p. 2). We must, however, be careful not to overstate the case and play into the notion that an absence of evidence of more positive examples of women and their roles necessarily implies "the male distortion of women's lives" (Kraemer, 1993, p. 101).

Slavery, gender, and legal implications.

The intersection of slavery and gender constitutes another avenue to pursue when exploring the question of legal status and gender. Here again, bodies are at stake.

In ancient slaveholding cultures, slaves were considered commodities, rather than fully valorized human persons. This meant that slaves did not qualify as legal persons since they were objects, instruments, or, in Aristotle's terms, "tools that breathe" (*Politics*, 1.1252a–1256a). According to ancient political and religious scripts, slave bodies belonged to their masters, and slaves could not legally form families of their own.

The category of slaves was nuanced enough to recognize how gender difference played out in bodily ways, that is, in how such gendered bodies were utilized by their masters. Commenting on slaves' bodies as surrogates for the elite, Kartzow (2012) notes that slaves "could be imprisoned or beaten on behalf of their owners, and *both male and female slaves were sexually available for both their owners and others*. The most important sign of free male status was bodily integrity, that is, that they were not subject to sexual penetration or corporal punishment, a privilege also held by the poorest among free men, in contrast to slaves" (p. 38, italics added).

Although J. Albert Harrill (2006) notes that the physiognomic distinction between slaves and free bodies was a literary construction, these distinctions carried massive practical implications for notions of masculinity. Effectively, the literary distinctions served to construct a particular configuration of what it meant to be male, especially as it relates to the ability to exercise *auctoritas*, domination over others (Harrill, p. 36). The distinction, thus, had little to do with the relationship between free and slave. Instead, it had to do with how the free employed servile descriptions as invective against other free men. In other words, the slave physiognomics serves as just one more example of how the bodies of slaves were used in the construction of manhood (for the free).

Navigating Law, Gender, and the New Testament.

This entry has attempted to provide a basic road map for reading gender and law or legal status in the New Testament. It has mapped out some key hermeneutical ideas that show the connection between bodies and gender, bodies and law, and has done so intersectionally. The navigational points sketched above may provide directionality for reading, for example, the *Haustafeln* in Paul, or the way in which Mark's Gospel seems to foreground women in discipleship. But perhaps most importantly, this entry has attempted to sensitize contemporary readers to the ways in which our engagement with authoritative texts—"legal" in the broad sense—continue to be put into the service of those at the center to script normative gender discourses. If in our reading of these sources, textual and visual, we do not see our own proclivities toward constructing identity—and gendered identity in particular—in restrictive ways, then we might be implicated in perpetuating exclusionary discourses. Ultimately, this entry signposts a journey toward much deeper wrestling with how legal status intersects gender and what the implications of that intersection are for our reading of New Testament texts.

[*See also* FAMILY STRUCTURES, subentries on NEW TESTAMENT and ROMAN WORLD; GENDER TRANSGRESSION, subentry NEW TESTAMENT; INTERSECTIONAL STUDIES; LEGAL STATUS, subentry ROMAN WORLD; RACE, CLASS, AND ETHNICITY, subentry ROMAN WORLD; *and* RHETORICAL-HERMENEUTICAL CRITICISM.]

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Robert N. Stegmann

Early Judaism

The Talmud, a key text of Judaism, is composed of two distinct strata: the Mishnah, published orally ca. 200 C.E., and the Gemara, a wide-ranging commentary on the Mishnah, also published orally, circa 650 C.E. The Talmud addresses and analyzes a wide range of subjects, from Jewish ritual practice to civil and criminal law to interpretation of biblical passages. The spokespeople, all men, are called rabbis, or teachers. Women played no role in composing or compiling this literature, although they are frequently mentioned in it. The Talmud is a layered text, with each generation of rabbis interpolating its comments into the discussion units transmitted from the previous generation.
The Dead Sea Scrolls, a collection of materials dating to the first century C.E., also comment on women's legal status. However, since they are sectarian writings, their rules apply only to members of the group. The Tosefta and the Halakic Midrashim, rabbinic texts from the same time period as the Mishnah, are likely to have influenced the thinking of the rabbis of the Talmud but did not themselves become normative works.
There are two Talmuds. The Babylonian Talmud is the product of study houses in Babylonia, today Iraq, the place to which many Jews relocated in the centuries following the destruction of the Second Temple in 70 C.E. The Jerusalem Talmud, produced by rabbis living in the land of Israel, was completed ca. 425 C.E. Much material is common to both Talmuds because teachings were transmitted from one country to the other.
The two Talmuds do not describe how most Jews lived in the first five or six centuries of the first millennium. They focus on rabbis and their families and those individuals who associated themselves with the rabbinic movement. As time passed, rabbis gained in influence and became religious and political leaders of the Jewish community in both Babylonia and the land of Israel.
Rabbinic society, as portrayed in the many laws and anecdotes, was patriarchal. Men controlled women, first as fathers and later as husbands. Women were dependent on men for financial support, social standing, and physical protection. Although women functioned primarily in the domestic sphere, they were not isolated from contact with the outside world. A home in the rabbinic period was not private, as it is today, but rather open to vendors and service providers of all sorts. It follows that women at home regularly interacted with a wide variety of tradespeople.
A dominant feature of rabbinic life, as suggested by the Talmud, is participation in Torah discussions. The study venue, or *bet midrash*, was sometimes a physical structure but often was the home or courtyard of a rabbinic master. It was thus possible for rabbinic wives, daughters, and even mothers to overhear and occasionally participate in Torah discussions, as evidenced by anecdotes scattered throughout the Talmud (see, for example, *b. Qidd. 12b*). Women did not formally participate in study sessions, however.
One of the six main orders of the Mishnah is Nashim, which is usually translated as women, but more accurately means married women or wives, for this order deals with a wide variety of rules governing Jewish marriage. The volumes that constitute this order are rich in information on gender relations.

Marriage.

According to both the Bible (Deut 22:13ff.) and the Talmud, women were expected to be virgins at the time they married. The Mishnah places a premium on virginity, stipulating a 200-zuz marriage settlement for virgins but only 100 zuz for nonvirgins (*m. Ketub.* 1:2). Men favored virgins for the obvious reason of knowing with certainty the lineage of their children. They also wished to avoid a woman who was "used goods." The Talmud adds another reason: marrying a virgin meant that a wife would not be able to compare her husband's sexual performance to that of another man (*b. Pesaḥ. 112b*). It is clear that a husband's emotional, social, and sexual needs were viewed as paramount.
Some marriage rules appearing in the Talmud are the same as those in the Bible: it is he who betroths her, not she who betroths him; he may take more than one wife, but she may not be married to more than one husband; he may divorce her, but she may not divorce him.
Other marriage rules changed. According to the Torah (Deut 22:29)), a prospective husband pays 50 pieces of silver to the bride's father to "purchase" a virgin. According to the Talmud, a husband does not deal with the father of the bride but rather hands a symbolic payment of one penny (*perutah*) or more, or an object worth a penny or more, to the bride herself (*m. Qidd.* 1:1). Unlike marriage in the Torah, she must consent to the match. Income from a wife's assets accrues to the husband for the duration of the marriage. He, in return, is required to feed and clothe her and provide her with a home, both in his lifetime and after his death. She is expected to perform a variety of household tasks for him.
The rabbis instituted a ketubah, a marriage contract, which stipulated that should the husband predecease or divorce the wife, he or his estate would pay her a lump sum of money (*b. Ketub. 82b*). The ketubah also stated that whatever assets she brought into the marriage would accompany her when she exited. Viewed together, all of these rules transformed marriage from the purchase of a bride from her father into a negotiated relationship between a man and a woman.
Did women in the ancient world have ketubot? Were they drawn up in accordance with rabbinic law? The evidence so far suggests that women entered into marriage with various kinds of financial arrangements, but not exactly the same ones established by the rabbis. The documents left by Babatha, a wealthy woman who lived in the first part of the second century C.E., show both similarities and differences between common practice and rabbinic law. Her marriage document contains a number of the clauses stipulated by the rabbis as well as a number of other clauses. Her documents also show that women were able to buy and sell goods and petition the court to approve their requests.

Procreation.

Other than the blessing "be fruitful and multiply" (Gen 1:28)), the Torah does not view procreation as a commandment. The rabbis do. They assume that women will be sexually available to their husbands and bear children for them. However, they require only men, not women, to

procreate, in particular to produce two children (*m. Yebam.* 6:6). Since women are of necessity drawn by men into fulfillment of this requirement, women do behave as if obligated. If a woman does not succeed in becoming pregnant, her husband may divorce her. The rabbis recognized that men, too, could be the infertile partner and therefore allowed a woman to sue for divorce in a rabbinic court if she claimed her husband was impotent (*b. Yebam. 65a*). Women could also ask the rabbinic court to assist them in obtaining a divorce if they did not produce a child after years of trying to do so (*b. Yebam. 65b*). Although the letter of the law did not grant women the right to a divorce in such circumstances, the Talmud presents cases in which the rabbinic judges found in their favor.

Levirate Marriage.

Levirate marriage is another patriarchal institution of the Bible that was modified by the rabbis. According to Deuteronomy 25:5–10, should a man die childless, his wife must marry his brother (i.e., her levir). The couple is expected to produce a child who will carry on the name of the deceased. If the brother of the deceased does not want to marry the widow, he may choose to undergo a *halizah* (release) ceremony with her. Its purpose is to shame a man who refuses to keep his brother's memory alive.
The most significant change that the rabbis introduced into the institution of levirate marriage is that they permit a daughter to count as offspring, although she will not prevent her father's name from being blotted out. It is possible that in the time of Josephus (first century C.E.) this change had already been adopted. The rabbis also developed a series of cases in which levirate marriage would not be permitted, such as when the surviving brother shares a mother with the deceased but not a father. As for the widow, she was not given a choice. Upon her husband's death, she was considered already betrothed to her brother-in-law.

The Menstruant (*Niddah*).

As stated in the Torah, genital discharges lead to ritual uncleanness for both men and women (Lev 15:1–33). In particular, menstrual blood conveys impurity (vv. 19–24).). The Torah does not prescribe a purification ritual for the menstruant, but the rabbis do: immersion in a ritual bath (*mikvah*). The Torah elsewhere proscribes sex with a *niddah* during her seven "blood days" (Lev 15:19; 18:19).). Later rabbis added seven "white days" to the ban on intimacy (*b. Nid. 67a*). Rabbinic law places the *niddah* in her own home, performing household tasks (*b. Ketub. 61a*). She is not sent away for the duration of her period of menstrual uncleanness.

Divorce.

To divorce a wife the Torah requires the husband to prepare a bill of severance and put it into her hand (Deut 24:1). Just as a slave needs a writ of manumission to prove he is a free man, a divorcée needs a *get*, a writ of divorce, to prove she is free to remarry. The rabbis later standardized the language of the *get*, reducing the likelihood of forgeries and simplifying verification, thereby benefiting women.
The Mishnah pays little attention to grounds for divorce. The last paragraph of *m. Gittin* (9:10), which deals with bills of divorce, suggests that a husband has the right to divorce a wife for any reason whatsoever or even for no reason. As for a wife, the Mishnah lists a number of grounds on which she may ask the rabbinic court to assist her in getting a divorce from her husband. They include cruel treatment of the wife by the husband, such as denying her the freedom to visit family or attend weddings or refusing to have sexual relations with her for a period of time (*m. Ketub.* 7:1–5). Rabbinic divorce remained an asymmetrical institution: by withholding a *get*, a husband could stop a wife from remarrying; she could not prevent him from taking a second wife. A woman no longer living with her husband but unable to obtain a writ of divorce from him is called an *agunah*, an anchored woman.

Sotah.

According to the Torah, if a husband suspects a wife of infidelity but lacks evidence of her alleged misbehavior, he may nonetheless require her to go with him to the Kohen, apparently to the cultic center, and subject her to a trial by ordeal (Num 5:11–31). If the waters she is forced to drink show her to be innocent, the husband's suspicions would be allayed. If they show her to be guilty, she would suffer physical deterioration.
Following the destruction of the Second Temple the ordeal could no longer be administered. The entire discussion of the errant woman, called a *sotah*, is hypothetical and hence revealing of rabbinic attitudes to women. A review of the tractate shows that, on one hand, the rabbis added pornographic details to the ordeal, saying, for instance, that when she is forced to drink the waters her hair should be loosened and her garments ripped, and a crowd should gather to view her debasement (*m. Soṭah* 1:5, 6). On the other hand, these same rabbis introduced legislation that made it nearly impossible to carry out the ordeal. The Mishnah states that two men must witness her husband issuing a warning to her not to talk to a particular man, and two witnesses must then see her closet herself with that very man (*m. Soṭah* 1:1, 2). Requirements like these show that the rabbis oppose the biblical institution, probably because they object to both trial by ordeal and abusive treatment of women.

Rape and Seduction.

The Bible regards the rape and seduction of a virgin not as a crime but as a means of contracting marriage. If a man engages in forced sex with an unbetrothed virgin, he has thereby taken her to be his wife and must pay her father the bride price (Exod 22:15, 16; Deut 22:29).). Unlike the Torah, rabbinic law treats these instances of forced sex as cases of assault and battery and hence punishable. The rapist or seducer is required to pay for injury, pain, medical expenses, and shame (*m. Ketub.* 3:4). The moneys go to the victim's father since it is he who suffers financial loss. Most important, marriage is not forced on the rape victim. She (or her father) may opt out (*b. Ketub. 39b*).

Forbidden Marital Unions.

The Torah mentions a number of prohibited marital unions, and the rabbis add many more. For instance, the Torah says that a Kohen may not marry a *zonah* (Lev 21:7), a prostitute, but the rabbis interpret that word as referring to any woman who had sex prior to marriage. They thus

further limit the marital choices of a Kohen. They define *mamzer*, a word left unclear by the Torah (Deut 23:3), as the product of an incestuous or adulterous relationship. Such a person, according to the rabbis, could only marry another *mamzer* or a convert (*m. Qidd.* 4:1). They also decided that the Jewishness of a child was to be determined solely by his or her mother; only if the mother were Jewish could the child be Jewish by birth (*m. Qidd.* 3:12). The Jewishness of the father played no role. This is not necessarily an affirmation of women but a consequence of not knowing with certainty who the father is.

Inheritance.

Perhaps the clearest deviation of rabbinic law from Torah law appears in conjunction with inheritance. The Torah relates that when the daughters of Zelophehad approached Moses and requested to be assigned their father's parcel of land in Israel, he turned to God to find out the laws of inheritance (Num 27:1–11). The main principle is that sons—not daughters—inherit their father's estate. Only if a father leaves no sons do daughters inherit. The Torah later reports that in response to a complaint by the men of Zelophehad's tribe, Moses had to stipulate further that when daughters inherit their father's parcel of land, they must marry within the tribe (Num 36:1–9). The underlying patriarchal assumption is that sons identify with their father's tribe, not their mother's. When the mother dies and the sons inherit her land, the land passes from her tribe to their father's, thus diminishing her tribe's holdings.

The rabbis included women in the laws of inheritance. They incorporated into Jewish law the Roman institution of gifts in contemplation of death and in this way made it possible for a father to give his daughter on his deathbed whatever share of his estate he wished (*m. B. Bat.* 8:5). The rabbis also inserted a clause into the marriage contract, called the "ketubah of male offspring," which stated that a woman's sons would inherit her entire dowry and not have to share it with their half-brothers. In this way, fathers of daughters were encouraged to give them a generous dowry on the day they married because the fathers could be sure that the assets would remain in the family. Dowry, in other words, is the way that daughters "inherit" a share of their father's wealth (*b. Ketub. 52b*).

Civil and Criminal Law.

In nonmarital areas women fare better than in marital areas. In most matters of civil and criminal law, women are treated in the same way as men. The Talmud states in several places that the Torah's phrase "a man *or a woman*" (Num 5:6)), appearing in the context of making restitution for robbery, implies that all are equal before the law in civil cases (*b. B. Qam. 15a*). Even in criminal cases, women are to be treated like men, with only minor differences. If a man is convicted of a capital crime, he is executed and then hanged; a woman is executed but not hanged (*m. Sanh.* 6:4). The reason, it seems, is to prevent men from gazing upon a woman's body.

A key procedural difference between men and women, however, is that a woman may not serve as a witness or judge in either civil or criminal cases. The Torah does not explicitly exclude women from giving testimony, but the rabbis interpret the Torah as doing exactly that (*b. Šebu. 30a*). Even so, they provide exceptions to their own rule by permitting women to testify in a number of critical cases, such as allowing a female witness to establish a man's death, which would then permit his widow to remarry (*m. Yebam.* 16:7). The Talmud says that the rabbis relaxed their own restrictions to avoid creating a situation in which a woman would remain an *agunah*, chained to a dead husband (*b. Yebam. 88a*).

Ritual Acts.

The Torah does not require women to perform ritual acts. For instance, only men are expected to show up at the cultic center on the three pilgrimage holidays (Exod 23:17). The rabbis regard women as independent religious personalities and require them to perform ritual acts, but not as many as men. According to *m. Qiddushin* 1:7, all Torah prohibitions apply to men and women equally, for instance, not eating leavened products on Passover (Exod 13:7) or not working on the Sabbath (Exod 20:10).). However, key religious acts, like hearing the shofar blown on the New Year or dwelling in a booth on the festival of Sukkot, are incumbent on men only. A number of remarks in the Talmud suggest that it was women's second-class social status that led to their lower level of obligation (*b. Meg. 23a*). Men did rely on women to perform rituals in the home, such as separating a portion of the dough for the Kohen or designating a tithe from produce grown on their own fields (*m. Ketub.* 7:6).

Relations between the Sexes.

The Torah portrays men as having sexual needs that they seek to satisfy, inside or even outside of marriage. For example, the Torah relates that Judah, whose wife had died, had sex with a woman he thought was a prostitute (Gen 38:15, 16).). The Talmud similarly holds that men's libido pushes them to act out sexually in any situation in which it is possible to do so. The Mishnah says that a man may not be alone with two women lest he engage first one and then the other in sex (*m. Qidd.* 4:12). Two men, it goes on to say, may be alone with one woman because each will restrain the other from having sex with her. One might have thought that in a situation of this sort a woman is vulnerable to rape. But no, says the Mishnah, each man will protect her from his fellow man, for her sake, one imagines, but also to stop a man from committing an immoral act. In this pair of scenarios, it is the men who are making overtures to the women. The Talmud's view of women is that they can be seduced or overpowered by men, but the average woman is not portrayed as a temptress.

The Talmud has little to say about women's libido. It understands that women have sexual needs. Rabbinic rules of marriage require that a man engage his wife sexually. If not, she can sue for divorce. Lesbian relations among women are tolerated. How women behave with each other does not seem to be of interest to the rabbis. As for same-sex relations among men, the Torah forbids them (Lev 18:22).

The Torah knows of only two genders, male and female. The Talmud recognizes four—male, female, androgyne, and *tumtum* (a person of indeterminate gender). In matters of civil and criminal law, all four genders are treated equally. In ritual matters, anyone who is not fully male is regarded as lower on the scale of religious obligation.

Summary.

The Torah's rules are the basis of rabbinic legislation. Even so, there is no doubt that the practices of surrounding cultures also entered into rabbinic thinking, as did evolving ethical sensibilities. Overall, the rabbis did not view women as deserving of equality with men before the law,

in particular in the areas of marriage and religious ritual. Like most men in the ancient world, they saw themselves as occupying the highest social status and regarded women, who occupied lower social standing, as in need of men's care and protection. In summary, the rabbis changed women's status from chattel, as in the Torah, to second-class citizen in their legislative scheme.

Scholarly Debates.

There are not many scholarly debates regarding women's legal status in ancient Judaism. One topic that arouses dispute is whether the rabbis of the Talmud improved women's legal status relative to the Bible or worsened it. Those who argue that the rabbis worsened women's legal status usually cite biblical narratives to support their view, not biblical legislation. As shown above, when the two legal systems are set side by side, changes for the better characterize rabbinic legislation about women. Another debate is whether the small legal anecdotes in the Talmud are literary constructions for the purpose of making a point or whether they reflect, albeit in an edited version, the actions of real women. Either way, the anecdotes, which are often at odds with the rule they come to illustrate, indicate that women carried out the law but tweaked it somewhat.

[*See also* CHILDREN, subentry EARLY JUDAISM; GENDER TRANSGRESSION, subentry EARLY JUDAISM; MALE-FEMALE SEXUALITY, subentry EARLY JUDAISM; MARRIAGE AND DIVORCE, subentry EARLY JUDAISM; *and* SEXUAL VIOLENCE, subentry EARLY JUDAISM.]

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Judith Hauptman

Early Church

In the pre-Constantinian era, the legal status of Christians was not well defined. Nevertheless, it is still common for scholars to assert that the Romans classified Christianity as an illegal religion (*religio illicita*). This belief apparently stems from two passages in Tertullian's *Apology*. In the first, Tertullian complains that the Romans unfairly classify Christianity as unlawful (4.4; cf. 38.1), while in the second he refers to Judaism as a legitimate religion (*religio licita*), implying that Christianity was not (21.1). The silence of Roman sources, however, makes this reconstruction difficult to sustain: not only is there no evidence that the Romans distinguished religions with the categories *licita* or *illicita*, but there is also no indication that imperial authorities—whether the senate or emperor—ever issued a judicial proclamation outlawing the faith (Barnes, 1968, pp. 32–33; Millar, 1973, p. 145). Indeed, the earliest Roman source on Christianity comes from a governor who admits that he was unfamiliar with Christianity and uncertain of the methods he should use to judge Christians (Pliny the Younger, *Letter* 10.96.1). The emperor's response that there is no "general rule" or "fixed standard" for dealing with Christians only confirms the absence of formal legislation against the movement (Pliny the Younger, *Letter* 10.97).

Instead of imagining that an official law guided the Romans in their evaluation of Christianity, it is more probable that imperial officials exercised considerable latitude in their approach to the religion. Their primary goal was to maintain the "peace of the gods" (*pax deorum*), a concept that relied on a well-regulated social order. Because this idea undergirded the legitimacy of the empire, how administrators preserved the peace was less important than their success in ensuring that it was a palpable reality. To gain the gods' favor, Roman officials insisted on fidelity to the time-honored religious traditions of their ancestors (*mos maiorum*). The performance of sacrificial rites was the primary mechanism to ensure peace, and thus these practices constituted *religio*, true religion (Cicero, *On the Nature of the Gods* 1.117; 2.72). The threat to *religio*, and thus the compact with the gods, was superstition (*superstitio*), a term used to classify foreign cults that exhibited a "foolish fear of the gods" and extreme displays of emotion, and that engaged in false prophecy, astrology, soothsaying, and magic (Cicero, *On Divination* 2.149; Seneca, *On Superstition*, fr. 34–35; Janssen, 1979). Imperial officials were thus deeply suspicious of groups that promoted such activities, not only because they refused to honor the (Roman) gods but also because they preyed on weak minds and upset one's mental tranquility (Cicero, *On the Nature of the Gods* 1.117; Cicero, *On Divination* 2.81; Horace, *Satires* 2.3.79–80; Seneca, *On Mercy*, 2.5.1). Fearing that these mental disturbances could lead to seditious thoughts, the Romans exercised vigilance in monitoring the activities of these associations (Livy, *The History of Rome* 39.8.1–19.7; Valerius Maximus, *Memorable Doings and Sayings* 1.3; Tacitus, *Annals* 2.85; Suetonius, *Tiberius* 36; Cassius Dio, *Roman History* 52.35–36).

Roman Representations of Early Christianity and Ancient Gender Codes.

Not surprisingly, when Roman writers encountered Christianity they saw *superstitio*. Pliny the Younger (*Letter* 10.96.8), Tacitus (*Annals* 15.44), and Suetonius (*Nero* 16.2) all adopt this category and modify the term with pejorative adjectives—"depraved and excessive" (*pravam et immodicam*); "pernicious" (*exitiablilis*); and "novel and mischievous" (*novae ac maleficae*)—that register their derision and contempt. As members of this type of association, Christians suffered under the weight of a variety of other abusive labels, the three most popular being atheism, immorality, and misanthropy. The failure to acknowledge Roman divinities meant that Christians were "godless and impious" and guilty of worshiping a corpse (Justin Martyr, *2 Apology* 3; Athenagoras, *Plea Regarding the Christians* 4; Origen, *Against Celsus* 7.68). Connecting these defective judgments with intellectual weakness allowed Roman writers to expand their negative evaluation of Christianity into the realm of ethics. Charges of cannibalism and incest (Athenagoras, *Plea Regarding the Christians* 3; 31; Minucius Felix, *Octavius* 8–9) and contempt for the human race (Tacitus, *Annals* 15.44; Origen, *Against Celsus* 1.1; 3.5) feature prominently in these discussions. Perhaps the most visible sign of Christian irrationality, however, was the Christians' stubborn rejection of Roman *religio*: by refusing to demonstrate their loyalty to the emperor through sacrifice, even at the cost of their lives, Christians presented Roman writers with an irrefutable sign of their "madness" (Epictetus, *Discourses* 4.7.6; Pliny, *Letter* 10.96.3; Galen, *Plato Arabus* 1.99; Marcus Aurelius, *Meditations* 11.3; Origen, *Against Celsus* 8.65).

Such descriptions are part of a larger collection of stereotypes that ancient writers employed when they sought to define or "know" the "other." Through these acts of representation, the writers were also advancing their own self-understanding ("we" are unlike "them"), a strategy designed to establish a hierarchical power relationship between themselves and Christians/ity (Foucault, 1995, pp. 27–29). In antiquity, these power/knowledge formulations were produced through a linguistic system that was both produced and informed by patriarchal cultural patterns that privileged masculinity over femininity (Conway, 2008; Laqueur, 1992; Marín, 2006; Montserrat, 2000). The result was the development of a language permeated by phallogocentric thinking: man/woman; universal/derivative; perfect/deficient; reason/emotion; self-control/passions; active/passive; mind/sense perceptions; spirit/flesh; soul/body are just a few of the binary "truths" these writers created and assumed (Diogenes, *Thales* 1.33; Ovid, *Metamorphoses* 3.316–338; Philo, *Questions in Genesis* 1.33, 37, 43; Galen, *On the Usefulness of the Parts of the Body* 2.630; 14.6–7; Dio Chrysostom, *Oration* 74.9–10; Apuleius, *Metamorphoses* 9.14). Because gendered thinking is embedded in language, gender criticism may elucidate a text even when bodies, human anatomy, or sex and gender roles are not explicitly discussed therein. It is a distinct "ideological apparatus" that targets the production of identities, boundary formations, and power relationships (Clark, 1991).

This insight is especially relevant when studying antiquity, which did not think of gender as a fixed essence or a predetermined "fact" that derived from a person's biological sex. Instead, the ancients believed that gender was fluid and processual, the product of stylized "performances," and that these acts in turn determined one's sexual identity (Laqueur, 1992). A person's gendered identity could thus shift along a masculine–feminine axis based on the person's self-presentation and the public reception of these performances. This sliding gender scale provided writers with considerable freedom to make judgments about a person's physical and moral worth based upon visual inspections (Polemo, *Physiognomy* 2.1.192–194F; Dio Chrysostom, *Oration* 33.51–61). For ancient writers, the ideal male demonstrated virtues such as reason, self-control, justice, prudence, courage, excellence, and domination. Ideal femininity consisted of displays of modesty, obedience, chastity, and faithfulness (Cobb, 2008, pp. 18–32). "Slippage" from one pole to the other could provoke a variety of reactions, from shame and reproach to amazement or outrage.

When viewed through the lens of gender criticism, Christianity failed to achieve masculine status in the eyes of the Romans. From their predilection for sexual deviance to their excessive obsession with death, Christians consistently demonstrated an inability to master their emotions. A further indication of Christianity's lack of manliness stemmed from the fact that the people who joined the movement—women, children, and slaves—were notable for their undeveloped or defective intellectual capacities (Aristotle, *Politics* 1260a). Celsus, for instance, mocks the Christian recruiters for strategically targeting people incapable of exercising reasoned judgments: "Their injunctions are like this. 'Let no one educated, no one wise, no one sensible draw near. For these abilities are thought by us to be evils. But as for anyone ignorant (*amathēs*), anyone stupid, anyone uneducated (*apaideutos*), anyone who is a child, let him come boldly.'…they want and are able to convince only the foolish (*ēlithious*), dishonorable (*agenneis*), and stupid (*anaisthētous*), and only slaves, women, and little children" (Origen, *Against Celsus* 3.44). Lucian too satirizes their mental deficiencies by marveling at how quickly a charlatan like Peregrinus managed to infiltrate a Christian community and become revered as a god. In this story, Lucian singles out gullible Christians—again women and children—who were so impressed with Peregrinus that they hailed him as "the new Socrates" (*The Passing of Peregrinus* 11–12). Both of these portraits engage in self-definition and the formation of power relationships: as the authors denigrate Christian femininity they simultaneously preserve masculine honor for the intellectual elite.

Gender in Early Christian Rhetoric.

Of course, early Christians refused to accept such characterizations. To counter the negative impressions that dominated the Roman record, they became active agents in their own self-presentation. To rehabilitate their image, Christian authors turned to the rhetoric of gender to attack their opponents and defend themselves. Early Christian identity formation was thus firmly anchored in and informed by a critical engagement with the gendered discourses of the age.

Christians on Christians on trial: Apologies and martyrologies.

Although the Romans did not officially proscribe Christianity, their negative impressions of the group left its members vulnerable to abuse during moments of acute social pressure. When such situations arose, Christians were brought before the authorities for interrogation. In these exchanges, the accused who acknowledged their Christian status were subject to execution, even if they had not been definitively linked to any criminal activity (Pliny the Younger, *Letter* 10.96.2–3; Justin Martyr, *1 Apology* 4; *2 Apology* 2; Athenagoras, *Plea Regarding the Christians* 2; Eusebius, *Ecclesiastical History* 5.1.10, 20–22; Tertullian, *Apology* 1–3; cf. Hadrian's rescript in Justin Martyr, *1 Apology* 68). In an environment when confrontations could erupt with little warning, Christian anxieties were understandably high. Constructing arguments that were aligned with Greco-Roman gender codes was one strategy for defusing social tensions.

For Christian writers, the notion that a person could receive a capital sentence simply for acknowledging his religious identity seemed capricious and cruel, especially since this practice had no history in Roman jurisprudence (traditionally, the courts established guilt by weighing evidence of a crime). Apologists attempted to solve this problem by linking Christianity with rational beliefs and virtuous practices, and castigating Rome for its folly (Knust, 2006, pp. 89–112). To develop this idea, they insisted that Christians could hardly be atheists when

they worship the true God "in reason and truth" and live according to the *logos*, the rational principle of the cosmos (Justin Martyr, *1 Apology* 6; 13; *2 Apology* 6; 8; 10). Moreover, their fidelity to reason prohibited them from participating in depraved behaviors. Instead, in a world dominated by lust and violence, they distinguished themselves by their commitment to chastity and their refusal to murder or even attend the public games (Athenagoras, *Plea Regarding the Christians* 33; 35; Tertullian, *Apology* 45.3). In their thoughts and deeds, then, the apologists maintained that Christians were "men" whose performance of *virtus* was noble because it sustained the social order (Tertullian, *Apology* 32.1; 39.2, 21).

Identifying Christianity as the true religion leads to the conclusion, found most forcefully in Tertullian's *Apology*, that Roman religion and its cultural institutions were in fact grounded in superstition (24.2; 38.4; 40.1; 41.1; Clement of Alexandria, *Miscellanies* 7.1). Roman persecution of Christianity was thus explained as a mistake made by people who lived according to irrationality and willful ignorance (Athenagoras, *Plea Regarding the Christians* 4; 13; Tertullian, *Apology*, 1.4). Many apologies thus begin with an exhortation to their addressees (usually emperors and other high-ranking officials) to reject this anti-intellectual stance and embrace reason. When Christians came to trial, the authors assert, truth, piety, and justice should guide Roman deliberations (Justin Martyr, *1 Apology* 2–3; Athenagoras, *Plea Regarding the Christians* 2). The apologists are critical, however, of previous hearings in which judges failed to uphold these masculine attributes and instead practiced violence and tyranny. As Justin Martyr exclaims, these leaders did not investigate the charges carefully, but "giving in to unreasoning passion" they exacted punishments "without trial or consideration" (*1 Apology* 5; *2 Apology* 1). In this the apologists simply followed their accusers whose irrational opinions and love of rumor instigated the proceedings (Justin Martyr, *1 Apology* 2; Athenagoras, *Plea Regarding the Christians*, 11; Tertullian, *Apology* 7.8–14). The outlandish charges they leveled at Christians were the result of "madness" and "unsound judgment" and proved their mental weakness (Athenagoras, *Plea Regarding the Christians* 4; 35). Complementing the opponents' feminine intellect is a corresponding lack of control over the passions: greed, violence, and lust, so the apologists maintain, are the hallmarks of a corrupt Roman society (Justin Martyr, *1 Apology* 14; Tertullian, *Apology* 40.1).

Christian martyr narratives dramatize the arguments found in the apologies. Staging public punishment is a way for rulers to reinscribe social hierarchies: the judge and executioner, symbolizing state power, use the criminal to reinforce political and juridical authority and discipline the crowds (Foucault, 1995). Yet by employing a series of literary reversals and inversions, the martyrologies reject imperial scripts (Castelli, 2004). In these texts the martyrs—elderly men, women, youths, and slaves—refuse to accept their assigned role as condemned criminals in the emperor's spectacle. Rather, they comport themselves as hypermasculine heroes who display courage, endurance, military valor, rhetorical skill, and athletic prowess, traits that stand in stark contrast to their effeminate opponents. Polycarp and Pothius (eighty-six and ninety years old, respectively), for instance, face their arrests and trials with stoic fortitude, deliver unwavering testimony on trial, and die with noble resolve (*Martyrdom of Polycarp* 5.1; 7.2; 9.1–12.1; 13.3–15.1; Eusebius, *Ecclesiastical History* 5.1.29–31). Similarly, when the Romans parade martyrs in the amphitheater, the martyrs rejoice in the battle: as they become transformed into gladiators and noble athletes, their heroic endurance enables them to overcome their torturers and claim the crown of immortality (Eusebius, *Ecclesiastical History* 5.1.7, 17, 19, 24, 36, 40–61; *Martyrdom of Perpetua and Felicitas* 10; 18–21; cf. Tertullian, *To the Martyrs* 2–3).

Predictably, the authors denigrate the Romans (and occasionally the Jews) for their feminized characteristics. The authorities exhibit unreasonable judgment, are ineffectual in speech-making, and respond to Christian oratory with amazement and shame (Eusebius, *Ecclesiastical History* 5.1.9; *Martyrdom of Polycarp* 8.2; 12.1; *Martyrdom of Perpetua and Felicitas* 16.3–4). The mobs too show none of the characteristics of masculine honor; on the contrary, they are irrational, demonically inspired beasts who misunderstand Christianity and rage at the righteous martyrs (*Martyrdom of Polycarp* 17.2; Eusebius, *Ecclesiastical History* 5.1.7, 15, 38, 50). Most notably, the tortures of the executioners fail to have their intended effect: rather than reinscribing imperial *auctoritas* by triumphing over the helpless criminal, they either rely on the martyr to finish the job and thus assume the role of the heroic gladiator (*Martyrdom of Perpetua and Felicitas* 21.9–10; cf. Seneca, *Letter* 30.8), or they become physically exhausted by the suprahuman stamina of the martyrs whose bodies not only withstand the pain but are even invigorated by it (Eusebius, *Ecclesiastical History* 5.1.17–19, 21–26). In these passages it becomes clear that Roman *imperium* cannot dominate the Christian body, whose tortured and punished frame discloses the cracks in the empire's ideology, strikes a blow against demonic power, and testifies to Christian truth, represented most forcefully in the words of Justin Martyr, "you are able to kill us, but you cannot hurt us" (*1 Apology* 2; cf. Origen, *Against Celsus* 8.44).

Cultivating a masculine community.

When Polycarp arrives at the stadium for his trial, he hears a voice from heaven exhorting him to "be strong" and "act like a man" (*ischue… andrizou*) (*Martyrdom of Polycarp* 9.1). This statement highlights both the separation between sex and gender in antiquity (one does not necessarily follow the other) and the performative aspects of gender. Early Christians were sensitive to these issues and expended considerable energy delineating and cultivating masculine gendered identities that were consistent with Greco-Roman *mores*.

Ignatius's *Letter to Polycarp* and *The Shepherd of Hermas* both posit that manly presentations of Christianity begin with its officers. Drawing from the tropes of Roman *virtus*, Ignatius advises the young bishop to clothe himself in the weapons of faith and become a "perfect athlete" in order to exhort others to salvation, bear the burdens of those who suffer, and endure the wiles of false teachings (1.2–3; 3.1–2; 6.6.2). *The Shepherd of Hermas* too offers instructions for enacting masculine Christian leadership. In this text, Hermas, who had been struggling to guide his community, receives a heavenly command to "act like a man" (*andrizou*) (*Herm. Vis.* 1.4.3). A series of visions unfold that detail Hermas's journey from an ineffectual leader into an authoritative *paterfamilias* who demonstrates mastery over himself and his community (*Herm.* 10.4.1; Young, 1994). Critical in this gender transformation are the appearance of female virgins whose embodiment of self-control (*enkrateia*) and related virtues (*Herm. Vis*. 3.8.1–8; *Herm*. 9.2.5) are instrumental for Hermas in the management of his own desire (*epithumia*) and self-fashioning as a man (*Herm. Vis*. 1.1.8; *Herm*. 5.6–7; 9.11.1–8; 9.15.1–3; Lipsett, 2011, pp. 19–53).

Other texts target the larger community in an attempt to regulate the proper performance of gender. In *Christ the Educator*, for example, Clement of Alexandria presents a discourse on Christian education (*paideia*) that offers instruction on living that would distinguish members of the true faith from outsiders (Buell, 1999, p. 108). The counsel he delivers repeatedly underscores the importance of exhibiting self-control, especially in one's approach to food, alcohol, and sexual relationships (2.1–34, 40–44, 83–102). By encouraging his audience to adopt a moderate stance on these topics, one that resists acting on impulse (2.90), Clement promotes a masculine Christianity directed by reason, a tactic designed to counter attempts to link the Christian behaviors with feminine excess.

Clement's manual includes discussions of the proper comportment of men and women. On this topic he displays an interest in maintaining social conventions that correspond to Greco-Roman values. Thus, men should utilize their "natural" proclivities (wisdom, temperance, and the exercise of bodily control), while women should conform their lives to the virtues peculiar to their sex (silence and modesty) (Clement of

Alexandria, *Christ the Educator* 2.1, 33, 46, 110). Deviations from these patterns, such as men who pay too much attention to their appearance or women who assume the active role in sex, represent shameful, unnatural behaviors deserving of censure (2.68; 3.15–25). This thinking reaches a more strident register in the writings of Tertullian, whose insistence that male and female gender roles remain distinct dominates a number of his moral treatises (*On the Veiling of Virgins*; *On the Apparel of Women*).

Gender transgressions and polemics.

The variety of approaches to self-definition in early Christianity helps explain the church fathers' relatively conservative stance on gender. While they promoted the fiction that gender distinctions were fixed and grounded in natural law, many other Christians were busy experimenting with new forms of gendered behaviors that reconfigured masculine *virtus*. For instance, in some texts the call to make oneself male or to "flee femininity" may be read as a metaphor to encourage all people to seek spiritual perfection (*Gospel of Thomas* 114; *Second Treatise of the Great Seth* 65.24–30; *Zostrianos* 131.5–12; Clement of Alexandria, *Miscellanies* 6.12.100; cf. Philo, *Questions in Exodus* 1.8; Meyer, 1985). Yet it is only a short step to link this metaphor to chastity, so that femininity becomes shorthand for the rejection of "polluted intercourse" and continence a requirement for attaining salvation (*Book of Thomas the Contender* 144.8–10; *Acts of Peter* 34; *Acts of Thecla* 5–6; 12; *Acts of Thomas* 12–15). Encratite and Marcionite theologies appear to have developed their theologies around these ideas (Tatian, *Oration to the Greeks*, 8.1; 33.2; Tertullian, *Against Marcion* 1.29). Authors supportive of this ascetic discipline exploited the fluidity of gender categories to attribute a masculine *ethos* to the men and women who practiced these behaviors. In the *Apocryphal Acts of the Apostles*, for example, celibacy among the apostles and their converts exemplifies an intensified commitment to self-control, while characters such as Thecla, Cleopatra, and Mygdonia signified "manly" women whose commitment to sexual renunciation was, along with their other masculine attributes (rational comportment, public ministry), a clear indication that they had transcended the "natural" weakness of their sex.

The rejection of marriage and sexuality conflicted with mainstream pagan philosophy, which identified the genitalia as a locus of masculine honor and considered celibates as enemies of civilization (Epictetus, *Discourses* 1.2.25–28; Musonius Rufus 14; cf. *Acts of Thecla* 9). Emerging proto-orthodox writers also found this practice objectionable because it upset the divinely ordained gender distinctions found in the Bible (Gen 2—3; 1 Cor 11:2–16). Moreover, these biblical passages anchored the sociocultural "fact" of patriarchy. The thought of men rejecting their honored status as progenitors and women assuming roles normally ascribed to men represented threats to a carefully calibrated society whose foundations rested on the fiction of stable gender identities (Upson-Saia, 2011). It is thus not surprising that effeminate men and masculine women cause these writers anxiety (Clement of Alexandria, *Christ the Educator* 3.15; Tertullian, *On Baptism* 17.4).

Early Christian debates over identity reveal the prominent role that gendered rhetoric played in the formation of the categories "orthodoxy" and "heresy." Examinations of the polemics that survive (mainly from the proto-orthodox writers) have revealed that Christian writers slandered their opponents using many of the same tactics that the Romans deployed against Christianity. The goal is the same too; namely, to classify and denigrate the "other" as morally deviant and to produce a true Christian moral identity, one that is superior to both heretical Christianities and Rome's ethical traditions (Knust, 2006, pp. 1–13). Clement of Alexandria's typology that classifies all heresies as either libertine or ascetic illustrates this power/knowledge dynamic. In his *Miscellanies*, he uses these two categories as a foil to illustrate the proper attitude toward marriage. After demonstrating that neither extreme leads to knowledge of God, he positions his moderate approach to marriage, one that teaches a mastery of desire through self-control, as the true form of Christianity (*Miscellanies* 3.40–60).

Similarly, the heresiological technique of establishing genealogical trees to identify groups within and outside the family of God is dependent upon gendered language. Justin and Irenaeus are the primary proponents of this strategy: in their writings neither the Jews nor the heretics can claim a place in the divine economy because of their enslavement to desire (Knust, 2006, pp. 143–63). A number of overlapping strategies for exclusion emerge from heresiologists' accounts: the founder is a charlatan who pronounces blasphemous doctrines and trades in magic (*superstitio*!); the group places women in leadership roles but their teachings are not grounded in reason or they introduce innovative, deviant practices; the heretic and its members participate in sexual perversion (Irenaeus, *Against the Heresies* 1.13, 22, 25; Hippolytus, *Refutation of All Heresies* 1.9; Tertullian, *Against Marcion* 1.1; Stratton, 2007). Such portraits thus enable the authors to introduce their own understandings of Christianity as normative and authentic (Irenaeus, *Against the Heresies* 1.10).

[*See also* GENDER TRANSGRESSION, subentry EARLY CHURCH; LEGAL STATUS, subentries on NEW TESTAMENT and ROMAN WORLD; MASCULINITY AND FEMININITY, subentry EARLY CHURCH; POPULAR RELIGION AND MAGIC, subentry EARLY CHURCH; *and* SEXUAL TRANSGRESSION, subentry EARLY CHURCH.]

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David M. Reis