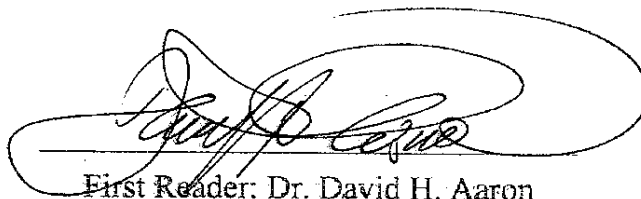


LAW AND LORE OF THE ADULTERESS, FROM MIQRA TO MISHNAH:
THE EVOLUTION OF ADULTERY IN JUDEAN TEXTS

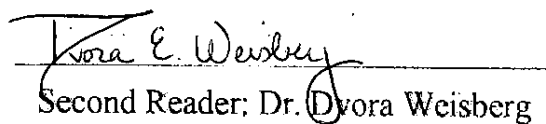
A DISSERTATION
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Matthew Alan Boersma

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First Reader: Dr. David H. Aaron



Second Reader: Dr. Dyora Weisberg

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ABSTRACT

The *sotah* ordeal from Numbers 5:11-31 takes on a different tone when the Rabbis describe it in the rabbinic texts of the Mishnah and Tosefta. The Rabbis are working with a different set of assumptions than those of the biblical *sotah* ordeal, and their views do not align neatly with other Judean and Jewish texts prior to the Rabbis. In this dissertation, I look at the *sotah* ordeal and other biblical texts on adultery through the lens of Michel Foucault's theories on text and power to illuminate the thinking behind each of the texts. I attempt to construct the power dynamics of the *sotah* ordeal itself, and of adultery, based on how the text presents the characters and their choices. I then explore the evolution of the societal response to adultery with texts from other time periods. When we get to the rabbinic texts, I find that their interpretations are more aligned with Roman law than with previous Jewish texts on adultery. The power the Rabbis grant themselves mirrors the power the Roman government was claiming over Roman marriages. The Rabbis are setting themselves up as the arbiters of Roman custom for their communities. How they approach their own sacred texts reveals their Romanized thinking.

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1. INTRODUCTION

וְעֵבֶר עָלָיו רוּחַ־קִנְיָה וְקָנָא אֶת־אִשְׁתּוֹ וְהָיָה נִטְמָאָה אוֹ־עֵבֶר עָלָיו רוּחַ־קִנְיָה וְקָנָא אֶת־
אִשְׁתּוֹ וְהָיָה לֹא נִטְמָאָה וְהָבִיָּא הָאִישׁ אֶת־אִשְׁתּוֹ אֶל־הַכֹּהֵן

Should a spirit of zeal come upon [a husband], and he is zealous about his wife, and she is unclean, or should a spirit of zeal come upon him, and he is zealous about his wife, but she is not unclean, then [in either case] he may bring her to the priest.

Numbers 5:14-15a

In Numbers 5:11-31, we encounter the ordeal of the *sotah*: what a husband should do when he believes his wife has committed adultery but has not caught his wife in the act. Numbers provides a trial-by-ordeal in which the woman is made to drink a potion concocted by the priest for this occasion. A trial-by-ordeal is different than a trial-by-evidence. In a trial-by-evidence, the court would rely on witnesses or other physical evidence to decide guilt. This kind of trial is what is implied for much of the biblical law. In a trial-by-ordeal, there are no witnesses or evidence, or the witnesses and evidence are contradictory, and so another source of judgment needs to be found. In a trial-by-ordeal, the source of judgment is the divine: God or the gods are called to bear witness to some ordeal, usually dangerous, and control the outcome such that justice is done. The *sotah* potion thus tests the woman's fidelity: if she has committed adultery, her body is afflicted with some sort of malady of her uterus or vagina; if she has not committed adultery, nothing happens, or she becomes fertile. This *sotah* ordeal takes place with a priest, at the altar of God. While this could have been done at any altar to God, the Rabbis and later interpreters have interpreted this as requiring the Temple altar, as they believed it to be the only valid altar to perform such rituals.

By the time rabbinic literature was beginning, there was no longer a Temple. The *sotah* ordeal could not be performed, as the Rabbis lacked the required location and tools to

perform the rite. Moreover, the Rabbis themselves claim in *m. Sotah* 9:9 that the *sotah* ordeal no longer works, even prior to the loss of the Temple. Despite the ordeal being unavailable to the Rabbis, rabbinic discourse in the Mishnah and the Tosefta debate the ordeal: when it was performed and what its uses could have been. Much of this discourse focuses on women and their perceived sexual desire. The Rabbis explore their own fears about adultery and women's sexuality through this discourse on the *sotah* ritual, and in what they say about adultery. Yet throughout the Mishnah and Tosefta texts, they are concerned about the actions of the husband as well. What actions are required of the husband when his wife is accused (by himself, or others) of adultery? The Rabbis prescribe actions not just for the accused wife, but also for her husband, whether he is the one making the accusations. The Rabbis blame *male* adultery for the loss of the *sotah* ordeal. The Rabbis assume a role of power over the wife, but also over the husband. They insert themselves into an ordeal which in the biblical text is a choice for a husband, and only the husband. Where did the Rabbis get the idea for assuming this power? Further, do the Rabbis of the Mishnah and Tosefta more closely align with the positions on adultery found in the earlier Judean/Jewish¹ texts, or do the Rabbis more closely align with Roman points of view? Did Roman culture affect rabbinic thought beyond the brute force of imperial rule? Did Roman morals influence rabbinic morals?

To address the Rabbis' assumption of new power, we will need a framework to investigate power and how a discourse shapes power. Michel Foucault's works have all dealt with how discourse around a topic, from mental health to punishment to sex, shape an individual's choices and actions. Put another way: how a society talks about a subject affects

¹ The development of Judean ethnicity into the Jewish religion is blurry at best, especially during this time.

how an individual interacts with that subject. Foucault traces how power shapes the discussion of sanity, punishment, medical care, sex, and other topics in his works. According to Foucault, how the Rabbis talk about adultery and the *sotah* ordeal itself will tell us how they conceive of adultery. Whom do they hold responsible? Do they believe it begins inside the house, or outside it? Is adultery a concern for just the husband, or does the wider society need to be concerned?

How other texts speak of adultery can help us trace where the ideas the Rabbis are espousing may have arisen. The Rabbis did not write these texts in a vacuum. Prior to the Rabbis, other authors interpreted the *sotah* ordeal and other biblical texts on adultery. The Hebrew Bible also interacts differently with adultery. None of the biblical texts cite the *sotah* ordeal, or provide us a narrative example of its use, but these texts do wrestle with similar concerns of power and culpability in their framing of adultery. Between the Rabbis and the Bible are also several texts by other authors addressing adultery. While we cannot trace a clear path from the Bible through these texts to the Rabbis, we can look at how Israelite and later Judean cultures viewed adultery and construct a trajectory for the cultural ideas around adultery up to the Rabbis. Additionally, all these texts were written in different cultural contexts. Egypt, Assyria, Babylon, Greece, and Rome held varying levels of political and military power over Israel and Judah at different times, which in turn impacted the cultures of Israel and later Judah/Judea.

In this project, I will explore how the *sotah* ordeal and other biblical texts on adultery have been interpreted in the various time periods and cultures, ultimately looking at the Rabbis and how they wrestle with the *sotah* ordeal in the Mishnah and Tosefta. I will examine the discourse in the Bible, the Mishnah, the Tosefta, and other materials and show

how the discourse uses the *sotah* ordeal text and other texts on adultery to foreground their specific moral concerns. The discourse is framed in ideological ways to promote a particular set of reactions to adultery. I will use Foucault's theory and method to illuminate how the Rabbis and other authors attempted to control women and men. The goal of this project is to illuminate how the Rabbis' discussion of sexual morals, not just legal thought, shows the influence of Roman culture on the Rabbi's thinking. I will show that the rabbinic interpretation of the *sotah* ordeal and their framing of adultery aligns more with Roman thought than with Hellenistic, ancient Near Eastern, or Judean approaches to adultery.

OUTLINE OF PROJECT

In Chapter 2, I will review the scholarship related to the *sotah* ordeal, sexuality in Judean texts (biblical and later), Rabbinic texts (focusing on gender and sexuality work), and sexuality in ancient Near Eastern, Hellenistic, and Roman cultures. I will begin with a survey of studies on the biblical passage, Numbers 5:11-31, itself. From there, I will look at studies focusing on the rabbinic texts that address the *sotah* ordeal. While the *sotah* ordeal is dealt with from a *halakhic*, or legal, approach, it is heavily based on rabbinic interpretation of biblical texts. As such, I will review the scholarship on *midrash*, rabbinic interpretive techniques, as well as a review of works looking at Second Temple era interpretive techniques. Finally, I will review the scholarship of Hellenistic and Roman legal and narrative texts around adultery to provide the cultural context of the texts I will interpret.

In Chapter 3, I will explore and summarize Foucault and his works, as well as the theoretical tools each work develops. While *Discipline and Punish* is the work which most strongly connects to the subject of this study, all of Foucault's works deal with how text and power interact, as well as how the individual interacts with power. I will also address some

authors who interacted with Foucault, offering critiques and expansions of Foucault's theories. I will construct a methodological framework to use in the following chapters.

In Chapter 4, I will apply Foucault's theory to the *sotah* passage itself, Numbers 5:11-31. I will offer a verse-by-verse analysis of the text. The focus will be on where the text places power and who can make decisions, showing that the ordeal is presented as assuaging a husband's emotional distress. The ordeal is used to put the husband back in control of his wife. I will then look at how the ordeal and the text of Numbers might have been applied in various time periods, from pre-Temple Israel through the Babylonian Exile and the Persian restoration.

In Chapter 5, I attempt to place the *sotah* ordeal in an original context. To do so, I will compare the *sotah* ordeal with other ancient Near East approaches to adultery. I will then work through the biblical material which both directly pertains to adultery and texts about similar forms of sexual immorality. This includes the legal texts barring adultery and other sex crimes, the narrative stories in which adultery or related events occur, and how the prophets use adultery as a metaphor for their messages. In this chapter, I will show that the biblical material treats adultery as a crime in which an outside individual harms the husband. Even when the wife invites the adultery, the crime is against the husband and not wider society, and it is the husband's emotional state which requires satisfaction, and his control of the household which needs to be re-established.

In Chapter 6, I will turn to the Hellenistic era. I will offer a summary of Greek views on adultery and sexuality, to better understand the culture surrounding the Judean authors. I will then work through several Jewish texts from this era. While the Septuagint would be the most direct text on the *sotah* ordeal, it does not offer much enlightenment, given the

translation's literal rendering of the text. I will investigate other texts, though none of the extant texts directly comment on the *sotah* ordeal itself. I will look at how *Jubilees* and *The Testaments of the Twelve Patriarchs* address the adultery narratives from Genesis. I will show that while the texts view adultery as a problem, they are more concerned with other sexual sins. When they do address adultery, they assume a strong emotional response from the husband or other male presumed to have control over the woman's sexuality.

In Chapter 7, I will turn to the rabbinic works themselves, specifically the Mishnah and Tosefta tractates on the *sotah* ordeal. I will explore the Roman context of these texts, looking at how Rome shifted toward treating adultery as a wider social ill: one which required particular responses from the husband. I will briefly look at the Christian texts and their addressing of adultery and sexuality. I will then systematically work through first *m. Sotah* and then *t. Sotah*, with particular attention to where the Rabbis assign agency and culpability in their interpretation of the *sotah* ordeal. I will show that the Rabbis, as Ishay Rosen-Zvi has noted, use the *sotah* ordeal to control women's sexuality through a hypothetical ordeal which they cannot put into practice.² However, the Rabbis also present several requirements on the husbands of these wives, requiring that they submit their wives to the *sotah* ordeal, or to the (rabbinic) courts, and then if the wives are found guilty, the men must divorce them. The Rabbis state that failure to comply will place the husband outside the rabbinic community. The Rabbis have assumed power over the husband, as well as the wife, and demanded particular actions from him. In Augustan law, Roman emperors had made the same claim for Roman men—demanding that a wife who was accused of adultery be brought by her husband to court, and that any husband who did not could be tried as a pimp. The

² Ishay Rosen-Zvi, *The Mishnaic Sotah Ritual: Temple, Gender and Midrash*, (Leiden: Brill, 2012), 225.

Rabbis interpret the *sotah* ordeal to give their courts the same power that Roman law had claimed for itself.

In Chapter 8, I will provide my conclusions. The four major conclusions of this study are:

1. The *sotah* ordeal was not feasible to practice in much of the time the Hebrew Bible has existed. It could have been a ritual ordeal provided by a local shrine, but once the cult is centralized to the Temple in Jerusalem, it effectively becomes at best the providence of the local elite.
2. The understanding of adultery in Israel and Judah is as a crime against the husband, provoking an emotional response; the Rabbis present adultery as a circumstance in which the husband has acts he must perform to remain within the rabbinic community. In the Bible and the Hellenistic Jewish texts, adultery is presented as personal crime against the husband, and the husband can control the punishment of those involved. In rabbinic works, the husband has prescribed actions he must take.
3. The Rabbis assume a level of power over the husband and his household that previous courts and priests did not. The power the Rabbis claim closely resembles the power claimed by Roman emperors in Augustan law.
4. Wives do not have power to defend themselves. Further, the only power granted to wives is that they can control if adultery happens: if they do not seduce outside men, adultery (and the *sotah* ordeal) will not happen to them.

I will also present how Foucault's methods have allowed me to illuminate these conclusions and provide a historical trajectory for the Rabbis' discourse in *m. Sotah* and *t. Sotah*.

2. REVIEW OF SCHOLARSHIP

Scholars have written about the rabbinic texts and the intersection of Rabbinic and Roman cultures. Other scholars have examined the rabbinic texts and the treatment of women and gender. Yet other scholars have explored how the Romans interacted with sex and sexuality. These kinds of study have not dealt with the intersection of all three areas: rabbinic culture, Roman culture, and issues around sexuality.¹ Furthermore, most of the rabbinic studies have focused on the *halakhic* texts—the Mishnah and the Talmudim—while the Roman studies have looked at both legal text and what we might term cultural texts, literary to graffiti. I will begin this review by looking at the biblical text and some key studies of it in its ancient Near Eastern context. I will then look at Second Temple era studies and rabbinic era studies, as well as some works which span these two eras. I will finish with a look at major works studying Roman sexual culture.

THE BIBLICAL SOTAH

The *sotah* ordeal is found in Numbers 5:11-31. I will fully explore this passage in its ancient setting and apply Foucault's method of discourse analysis later; I will also explore the similarities and differences between the *sotah* ordeal and the river ordeal of the ancient Near East. Here, I want to focus on other studies of the biblical text and how other modern scholars have approached the *sotah*. I will show that many scholars approach the *sotah* ordeal through later readings of the text—readings which are steeped in later cultures which the scholars inject into their reading of the biblical text.

¹ Or at least what we would call sexuality. As we will see when we examine sexuality in the Roman world, Romans did not view sex and pleasure through the same lens of sexuality and identity that we do today.

Baruch A. Levine works through the *sotah* ordeal using the later interpretations of the Rabbis to illuminate the text. He views the text as a trial-by-ordeal, like the river ordeals of the ancient Near East.² Levine does indicate that while the river ordeal of other ancient Near East cultures resulted in the death of the guilty, the *sotah* ordeal left the guilty alive. Using the Rabbis' readings of the text, he views the ordeal as invoked when a husband suspects but has no proof, in order that the husband might divorce his wife (Levine sees biblical law as preventing divorce save in the cases of adultery or incest).³ Levine works through the phenomenology of the ordeal, showing how the dust of the Sanctuary and the sacred words erased into the potion work to bring the divine presence into the ordeal, and even into the body of the accused woman.⁴ He describes the outcome for the guilty woman as some sort of pelvic prolapse, where the uterus would drop through the vaginal opening, though Levine does mention that the potion may simply have caused an abortion.⁵ Levine's interpretation of the text rests heavily on later rabbinic readings of Numbers and the wider biblical text. For example, biblical divorce law (Deuteronomy 24:1) does not explicitly state the causes a man might have for divorcing his wife. Rabbinic interpretation on the matter is vague, as well, with some Rabbis stating that the woman must commit some sexual sin before a divorce can be sought, and other Rabbis saying the woman may simply ruin a meal.⁶ Further, biblical law is fairly clear on the punishment for adultery once guilt has been established: death.⁷ Given that the purpose of the ritual is to confirm the suspicions of the husband, Levine projects the later morality of the Rabbis (who would

² Baruch A. Levine, *Numbers 1-20: A New Translation with Introduction and Commentary*, Anchor Bible Commentaries, vol. 4a (New York: Doubleday, 1993), 204-05.

³ Levine, *Numbers 1-20*, 202-3.

⁴ *Ibid.*, 210, 212.

⁵ Levine, *Numbers 1-20*, 201.

⁶ See *m. Gittin* 9:10

⁷ Lev. 20:10, Deut. 22:22-24.

divorce an adulterous wife) into the text of Numbers. The text of the *sotah* ordeal assumes that any woman found guilty by the ordeal would stand condemned of adultery, and the only biblical punishment for adultery was death, not divorce.

Milgrom, like Levine, notes there is discussion on the exact effects of the potion on a guilty woman, though Milgrom offers fewer details in his comments, other than to say that whatever the ancients thought was to happen would leave the woman barren.⁸ Milgrom traces the similarities and differences between biblical law and ancient Near East law. While both regard adultery as a religious as well as civil offense, ancient Near East law allowed the husband to waive the death penalty, while the Bible does not; and while the Bible provides dire consequences if adultery is tolerated, the other codes from the ancient Near East lack such provisions.⁹ Milgrom, similar to Levine, reads the text as not demanding further punishment of a guilty woman, and instead treats the punishment as inherent to the ordeal.¹⁰ Milgrom believes that since the text in Numbers avoids the term זָנָה, “adultery,” that the author is trying to avoid connecting it with other legal texts on adultery, and thus avoid the required death penalty. While this would explain the lack of the technical term in the ritual, this stylistic difference is not enough to disconnect the ordeal from other legal texts. More likely, this ordeal comes from traditions (and linguistic styles) which are more removed from legal language found in other adultery law. Milgrom’s second excursus on the *sotah* constructs a theory of the sources of the text, arguing for two merged sources with a postscript; however, he does not comment extensively on the content of the biblical text itself, and instead focuses on the structure of the

⁸ Jacob Milgrom, *Numbers: Traditional Hebrew Text with the New JPS Translation*, The JPS Torah Commentary (Philadelphia: Jewish Publication Society, 1990), 41.

⁹ Milgrom, *Numbers (JPS Torah Commentary)*, 348–47.

¹⁰ Milgrom, *Numbers (JPS Torah Commentary)*, 350.

text.¹¹ Given that the later authors I am focusing on treat the text as a unified whole, the sources of the text are not relevant to this analysis of those later readings.

Counter to Milgrom and Levine, James Kugel approaches the *sotah* ordeal from how it interacts with later readings about divorce. Kugel shows that later readers of the Bible, including the sectarian authors among the Dead Sea Scrolls, the New Testament, and the Rabbis, seem to read adultery as the only valid cause for divorce.¹² These positions seem to be based on how to understand the passage in Deuteronomy 24:1-4. They interpret the phrase, “he has found an indecency,” to mean that the husband has found evidence that the wife had committed adultery. Even in these cases, many of these readers of the Bible do not allow the man to remarry until the death of the first wife. However, Kugel goes on to show that the Bible itself does not make this connection; rather, within the Bible, adultery is a capital offense and there is no talk of divorce.¹³ Kugel shows that other Second Temple and rabbinic interpreters agree, arguing that divorce can happen on any grounds brought by the husband. Kugel only mentions the *sotah* ordeal to point out that the text does not offer divorce as the outcome for a guilty woman, and that the ordeal itself (and not divorce) was used when a wife was suspected of adultery.

Tivka Frymer-Kensky approaches the *sotah* ordeal text in a holistic way, rather than treating it as an amalgam of multiple sources. The repetitions and resumptions within the text serve to detail all the possible outcomes of the ritual.¹⁴ The repetitions would then come from the register and style being used to write the text, as could the avoidance of the technical term for

¹¹ Milgrom, *Numbers (JPS Torah Commentary)*, 350–54.

¹² James L. Kugel, *Traditions of the Bible: A Guide to the Bible as It Was at the Start of the Common Era* (Cambridge, MA: Harvard University Press, 1998), 838–39.

¹³ Kugel, *Traditions of the Bible a Guide to the Bible as It Was at the Start of the Common Era*, 840–41.

¹⁴ Tikva S. Frymer-Kensky, “The Strange Case of the Suspected Sotah (Numbers V 11-31),” *Vetus Testamentum* 34, no.1 (1984): 12–13.

adultery. As such, there would be no need to look for multiple sources within the text itself. Frymer-Kensky also focuses on the physical effects on a guilty woman, and links them to what modern medicine would call uterine prolapse.¹⁵ She holds that, as there is no reason to assume the woman is pregnant, the potion must be doing something which would affect both pregnant and non-pregnant women.¹⁶ The problem with the potion causing uterine prolapse is that modern medicine does not know of a medicinal or herbal concoction to cause uterine prolapse. Rather, uterine prolapse is brought about by multiple pregnancies and births, causing a weakening of the tissues holding the uterus in place.¹⁷ While uterine prolapse could fit the physical description in Numbers 5, it cannot be brought about by a potion—at least, not one known to modern science. Further, Frymer-Kensky's approach assumes a physical reality to this text and the potion within it when the text itself allows only ink and dust to be dissolved into the potion. The text is treating this as a magical ritual, not a medical one. If we attempt to concretize the magic of the ritual, we must make too many logical jumps and search modern scientific research for things which are close to what is described. As such, we could just as easily read this as a potion which would induce either menstruation (if the woman were not pregnant) or an abortion (if she were). Given that we know of abortifacient agents in the ancient world and given the lack of substances capable of inducing the strain of multiple pregnancies in an instant, the most likely physical explanation for the potion is an abortifacient.

¹⁵ Frymer-Kensky, "The Strange Case of the Suspected Sotah (Numbers V 11-31)," 20–21.

¹⁶ Frymer-Kensky, "The Strange Case of the Suspected Sotah (Numbers V 11-31)," 18.

¹⁷ Nicole Boersma, M.D., private conversation, 9 September 2012.

RABBINIC FOCUS

Daniel Boyarin's work, *Carnal Israel*, explores rabbinic sexuality and its place in Rabbinic-early Christian discourse.¹⁸ Boyarin uses Foucault's approach of text as discourse and Stephen Greenblatt's approach to history through *cultural poetics*, which focuses on the interactions between text and history.¹⁹ Boyarin works to show that the rabbinic construction of a human was far more embodied than either a Christian's or Philonic Jew's view of humanity. As such, Boyarin shows that while the Rabbis do not see sexual relations as something to be avoided (as the Church Fathers would have), they still struggled with aspects of sexuality. Boyarin's focus on the Early Christians means that he does not engage with the positions of pagan Rome. Early Christianity rejects sexuality as physical and tainted; pagan Rome was more accepting of sex and other aspects of the physical body. While there were elements of pagan Roman culture that argued for asceticism like that of Christianity, other groups within Roman culture were more at home in the physical body. These elements of Roman culture are much closer to Boyarin's descriptions of the Rabbis in their struggle with the physical body, but Boyarin does not address how the Rabbis might have engaged with these Romans. Boyarin assumes that the Rabbis represented a part of Jewish society that attempted to stay apart from Roman society; however, recent scholarship has questioned just how set apart the Rabbis were, at least from a political point of view.

Seth Schwartz attempts to construct the history of the Rabbis in the Roman Empire in his

¹⁸ Daniel Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture* (Berkeley: University of California Press, 1995) 1-4.

¹⁹ Boyarin, *Carnal Israel*, 11-14.

book, *Imperialism and Jewish Society: 200 B.C.E to 640 C.E.*²⁰ Schwartz shows that the traditional history of the Rabbis, as recounted in their own texts, is highly suspect. While the Rabbis claim strong religious, civil, and criminal powers for their courts, Schwartz shows that these cases are more likely utopian reconstructions that the Rabbis were using to imagine their idea of a Pentateuchal society under Roman auspices. Schwartz argues that archaeological and literary evidence does not support the Rabbis' claims. Instead, Schwartz depicts the Jews prior to the arrival of Islam as more Hellenized than the Rabbis present them. It is the Rabbis who retrojected rabbinic courts into the Hellenistic and Roman eras, to solidify the ethical-religious boundaries of Judaism.

Hayim Lapin's book, *Rabbis as Romans*, investigates the presentation of the Rabbis in the rabbinic texts and attempts to situate them within, as opposed to outside, Roman provincial culture.²¹ Lapin places the Rabbis, as a group of provincial leaders, between the Roman officials and the Jewish people of Judea. He argues that the Rabbis were supported by the Romans in these positions insofar as they could serve as civil and cultural arbiters for the Jews. Romans themselves handled actual criminal cases, but the Rabbis served as a civil and religious court. Lapin holds that the Rabbis held the tacit support of Roman provincial officials, if they were not working against the interests of Rome. Lapin shows how the Rabbis could have evolved from ruling over religious and cultural issues to more civil and economic issues. Lapin does this by aligning the recorded cases chronologically and showing such a shift from religious to civil issues in their content.

²⁰ Seth Schwartz, *Imperialism and Jewish Society: 200 B.C.E. to 640 C.E.* (Princeton: Princeton University Press, 2001) 1-2.

²¹ Hayim Lapin, *Rabbis as Romans: The Rabbinic Movement in Palestine, 100–400 C.E.* (Oxford and New York: Oxford University Press, 2012).

Lapin's argument implies a more prominent position for the Rabbis than Schwartz's work does, though Lapin portrays the Roman acceptance of the Rabbis as tolerance for a small, relatively insignificant provincial group, rather than as an official liaison between the Roman Empire and the Jews. Lapin's argument assumes that the texts present somewhat accurate depictions of actual legal cases, while Schwartz argues that these cases are fictions, or at least heavily fictionalized, to project rabbinic authority into an era in which the Rabbis had none. This impasse between Lapin and Schwartz grows out of how they see the cases themselves. There is no way to know if the cases recorded in the texts are either historical or fictive representations. Regardless of their historical accuracy, someone has clearly selected which cases would be depicted, thus creating what Foucault would call an "archive of texts." Without knowing the selection process of these traditions, we cannot decide whether these cases are fictive or historical. As such, we might combine these two approaches: when reconstructed by scholars into chronological order, the rabbinic texts show a progression from religious to civil cases. This progression demonstrates an evolution of rabbinic authority. The rabbinic texts as they are constructed do not attempt to show the growth of rabbinic power, but instead the discourse is constructed to imply that rabbinic authority has been constant.

MIDRASH AND SECOND TEMPLE TEXTS

In addition to Roman influence, the Rabbis were influenced by the biblical texts. The Rabbis may also have been aware of numerous other texts inspired by and competing with the biblical texts themselves. James Kugel's work in, *Traditions of the Bible: A Guide to the Bible as It Was at the Start of the Common Era*, attempts to show how different biblical traditions were

interpreted at various times, up to and including the rabbinic era.²² He does this by tracing several biblical narratives through non-canonical texts from the Hellenistic and Roman eras, and then into the rabbinic texts. Kugel offers little commentary as to how or why these traditions moved through these eras. While this approach lacks the interpretive power of others, tracing ideas through these texts shows how the ideas on a particular subject evolved.

While Kugel traces multiple stories through various eras, Mary Anna Bader traces just the narrative of Dinah through Jewish and proto-Jewish sources in her work, *Tracing the Evidence: Dinah in Post-Hebrew Bible Literature*.²³ Bader traces directions of influence to show how the Dinah narrative evolves, and how those evolutions reflect the concerns of later authors. According to Bader, Dinah shifts from active to passive in retellings and expansions. Different texts treat the figure of Dinah differently than they treat the men of the narrative: while Dinah will shift between culpable and innocent, the brothers are universally defended. Bader's work shows how to interpretively trace a narrative through retellings of a core story, showing how interpretations change given the situation of the interpreters. Given the Rabbis will have a radically different position from that of other interpreters of the *sotah* ordeal, we should expect that situation to alter their reading of the text.

In both *Midrash and Theory* and *Parables in Midrash*, David Stern works through how the Rabbis use parables within their arguments.²⁴ According to Stern, while the Rabbis often employ parables, they often leave out elements, and do not always explain every part of a

²² Kugel, *Traditions of the Bible* 35-40.

²³ Mary Anna Bader, *Tracing the Evidence: Dinah in Post-Hebrew Bible Literature* (New York: Peter Lang Publishing, Inc., 2008), xii.

²⁴ David Stern, *Midrash and Theory: Ancient Jewish Exegesis and Contemporary Literary Studies* (Evanston, IL: Northwestern University Press, 1996); David Stern, *Parables in Midrash: Narrative and Exegesis in Rabbinic Literature* (Cambridge, MA: Harvard University Press, 1991).

parable. The rabbinic texts, through how they construct their discourse, guide the reader to a particular interpretation.²⁵ Stern argues this is an attempt to keep the parables contained, and to guide a reader to a particular understanding. However, this univocal method of reading a parable is in stark contrast to the multivocal methods used by the Rabbis to read the biblical text itself. Would they necessarily have understood a parable only in one particular way? Would they have only read a parable in isolation, or would they have contextualized that parable amid the sea of biblical and rabbinic metaphors already established? From another position, many, if not most, of these rabbinic parables were created with the Rabbi's argument in mind: the stories were shaped to give the end the Rabbis wanted.²⁶ From this perspective, the Rabbis are not just shaping how the reader understands the story through an implied interpreter, but rather the Rabbis are shaping the content of the story itself toward the goal of their argument. Despite these issues in Stern's work, he nonetheless shows how the Rabbis influenced the understanding of a story. With additional work, Stern's approach could be used to trace retellings of the same or similar traditions, and how those traditions are recast by later authorities.

In *The Rabbis' King-Parables*, Alan Appelbaum focuses specifically on rabbinic parables involving a king.²⁷ He analyzes the structure of the parables, as well as some elements common among them. One parable comes from *Leviticus Rabbah* 27.8. This parable addresses the issue of the golden calf. The parable speaks of how a king invites a rumored lover of his wife to be the guest of honor at a banquet, as the king has complete faith in his wife. The Rabbis use this to explain why God would make the bull the most honored sacrifice despite Israel's worship of it in

²⁵ Stern, *Midrash and Theory*, 52.

²⁶ Richard Sarason, private correspondence, 15 December 2016 –10 Jan 2017.

²⁷ Alan Appelbaum, *The Rabbis' King-Parables: Midrash from the Third-Century Roman Empire*, Judaism in Context, vol. 7 (Piscataway, NJ: Gorgias Press, 2010).

the form of the golden calf. Appelbaum points out that the Rabbis directly subvert the possible reading of this as a case of actual adultery, as the wife in the parable is innocent of adultery, but Israel was guilty of idolatry and worshipping the calf.²⁸ However, Appelbaum does not explore why they would make this shift. This study hopes to continue this approach to the stories, showing how external cultural concerns and apologetics directed outward shape the Rabbis' interpretation and use of stories in their works.

As this study will use adultery as its focal point for exploring rabbinic morals, some discussion of the Rabbis and their views on gender will be necessary. Judith R. Wegner provides one of the key studies of the Rabbis and women in her work, *Chattel or Person?: The Status of Women in the Mishnah*.²⁹ In this study, Wegner works through several Mishnaic rulings that pertain to women, searching for whether the woman is treated as a full person with agency, or as a man's chattel. She finds that when the legal issue at stake regards a woman's sexuality or reproductive abilities, the woman is treated as the property of a man under the law. If the woman's sexuality or reproductive abilities are not pertinent to the legal issue at hand, the woman is treated as a full person under the law. Wegner finds that women occupy a dual status of both legal person and non-person, depending upon the legal question at hand. Thus, women are not treated as full persons in legal issues, while men are treated as full persons regardless of whether the issue is their sexuality. Wegner limits her study to the Mishnah, effectively limiting it to the legal sphere. She does not analyze either additional legal materials or non-legal texts to see if this dichotomy of person-chattel carries through into other textual settings. Wegner also does not attempt to contrast the rabbinic legal status of women with the Roman legal status of

²⁸ Appelbaum, *The Rabbis' King-Parables: Midrash from the Third Century Roman Empire*, 113–14.

²⁹ Judith Romney Wegner, *Chattel or Person?: The Status of Women in the Mishnah* (New York: Oxford University Press, 1988).

women. Finally, Wegner also does not address the issue of social class: that is, how does the treatment of free women in rabbinic law differ from the treatment of enslaved women? This said, Wegner's study does thoroughly investigate the status of women under Mishnaic law.

Wegner serves as a starting point for studying women in rabbinic texts, but most studies which follow deal specifically with specific legal questions. Charlotte Fonrobert works with the rabbinic treatment of menstruation, showing that with respect to this one issue, the Rabbis were content to allow women an element of control.³⁰ Though her work focuses on earlier eras, Tal Ilan has shown that the Rabbis viewed women as somehow "Other" than men: beings with strong differences from men, differences which they could not change.³¹ Finally, Elizabeth Alexander's work deals with the intersection of gender and *mitzvot*, showing that the idea of women being exempted from certain time-constrained commandments began as a descriptive statement and then became a prescriptive statement in later texts.³² All of these scholars have done important work, but they have all focused on the legal implications of the rabbinic views on gender, rather than any social or moral implications.

In *Midrashic Women: Formations of the Feminine in Rabbinic Literature*, Judith Baskin explores how the Rabbis construct women as Other in midrashic texts.³³ Baskin argues that the Rabbis perceive women as wholly different from men, and as a source of pollution and distraction for men. For the Rabbis, women held an inferior position in society, which was

³⁰ Charlotte Elisheva Fonrobert, *Menstrual Purity: Rabbinic and Christian Reconstructions of Biblical Gender*, Contraversions: Jews and Other Differences (Stanford: Stanford University Press, 2000).

³¹ Tal Ilan, "The Woman As 'Other' in Rabbinic Literature," *Jewish Identity in the Greco-Roman World*, ed. J. Frey, D.R. Schwartz, and S. Gripentrog, Ancient Judaism and Early Christianity, vol. 71 (Leiden: Brill, 2007).

³² Elizabeth Shanks Alexander, *Gender and Timebound Commandments in Judaism* (New York: Cambridge University Press, 2013).

³³ Judith Reesa Baskin, *Midrashic Women: Formations of the Feminine in Rabbinic Literature*, HBI Series on Jewish Women (Hannover: University Press of New England for Brandeis University Press, 2002).

sanctioned by biblical narratives. Further, the Rabbis assumed women would be married; in that marriage, they were to be under the protection and control of their husbands, both socially and sexually. Groups of women were to be trusted even less. Baskin does not compare these rabbinic views on women with those of wider Roman culture.

Gail Labovitz wrote *Marriage and Metaphor* about the Rabbis' approaches to marriage.³⁴ Labovitz explores how the Rabbis talk about marriage, from the metaphors surrounding how a woman is taken as wife, those surrounding married life in general, and those surrounding divorce and other aspects of ending a marriage. She only mentions adultery directly in a pair of footnotes, to point out what constitutes adultery, and to state that the Rabbis required the divorce of an unfaithful wife.³⁵ She does not explore from where the requirement to divorce one's unfaithful wife came, and why the Rabbis would not have called for the biblical sentence of death on the adulteress.³⁶

In *The Mishnaic Sotah Ritual*, Ishay Rosen-Zvi sets out to explore the Mishnah's presentation of the *sotah* ritual, with particular focus on the elements which do not have a clear biblical precedent.³⁷ Rosen-Zvi analyzes in turn the added elements: the legal warning (chapter 1), the threat (chapter 2), the humiliation of the woman (chapter 3), and the potion and its effects when drunk, namely the death of the woman (chapter 4). In this process, he engages with Foucault's work on public punishment as an instrument used by those in power over those whom

³⁴ Gail Susan Labovitz, *Marriage and Metaphor: Constructions of Gender in Rabbinic Literature* (Lanham, MD: Lexington Books, 2009).

³⁵ Ibid., 56n29, 58n51.

³⁶ One could argue that the Rabbis lacked the political position to call for the death penalty, but the existence of *karet*, the death penalty enacted by God, shows that they simply shifted the burden of action from the community or state to the Divine in such cases.

³⁷ Ishay Rosen-Zvi, *The Mishnaic Sotah Ritual: Temple, Gender and Midrash*, Supplements to the Journal for the Study of Judaism, vol. 160 (Leiden: Brill, 2012).

they are attempting to dominate.³⁸ Rosen-Zvi uses the second half of his book to contextualize the ritual in rabbinic thought, showing that much of the additions to the ritual come from readings in the prophet Ezekiel and the spectacles of the Roman arena. He concludes that the Rabbis turned the biblical ritual of the *sotah* into a fantasy of control over women and the threat women pose to men; not in adultery explicitly, but in her ability to seduce men and in her own sexual agency.³⁹ While Rosen-Zvi engages with the Roman arena and with Foucault, he does not branch out into other areas of Roman thought, or into Foucault's later works. For example, while he does mention that the Rabbis attempted to keep the body intact and inviolate, going so far as to construct methods of execution which would leave the external body whole, he does not connect this to the Roman idea of the impenetrability of the citizen *vir*.⁴⁰

In contrast to Rosen-Zvi, Lisa Grushcow argues in *Writing the Wayward Wife* that the rabbinic materials on the *sotah* ritual are not primarily focused on controlling the woman/women, but rather are focused on developing legal procedures and in condemning adultery.⁴¹ Grushcow also argues that the disappearance of the *sotah* ritual itself is best explained by the development of rabbinic authority.⁴² For Grushcow, the *sotah* represents a place where the Rabbis worked to further develop their legal procedures, some of which were oppressive to women and some of which gave women more rights than other practices. She contrasts the Rabbis' approach with that of Philo, showing that Philo interprets the *sotah* as equally guilty and innocent, though she mentions that Philo elsewhere had opportunities to condemn adultery, while

³⁸ Rosen-Zvi, *The Mishnaic Sotah Ritual*, 97–98, 202–3.

³⁹ Rosen-Zvi, *The Mishnaic Sotah Ritual*, 225.

⁴⁰ Rosen-Zvi, *The Mishnaic Sotah Ritual*, 226.

⁴¹ Lisa Grushcow, *Writing the Wayward Wife: Rabbinic Interpretations of Sotah*, *Ancient Judaism and Early Christianity*, vol. 62 (Leiden, Boston: Brill, 2006), 264–65.

⁴² Grushcow, *Writing the Wayward Wife*, 272.

the Rabbis both work through the ritual and condemn adultery in the same texts.

Dvora Weisberg approaches the rabbinic view of marriage from another angle: by exploring levirate marriage and the Rabbis' views on family.⁴³ She documents how the Rabbis moved away from the biblical understanding of levirate marriage and constructed their own use for it, while not fully removing it from their purview. Weisberg shows how this shift in the Rabbis' view of levirate marriage demonstrates a difference between the biblical view of family (as extended tribe) and the rabbinic view of family (focusing on the nuclear family). Weisberg indicates that this shift is possibly due to the growing urbanization of the rabbinic world,⁴⁴ but an additional source of influence may have been Roman focus on the nuclear family, in particular the *paterfamilias* as male head-of-household.

ROMAN LAW AND CULTURE

The requirement of divorce, the spectacle of the Mishnaic *sotah* ritual, and the rabbinic shift in the view of family could be examples of the influence of Roman law and thought moving into rabbinic law and thought. Judith Grubbs compiled a book on the topic: *Women and the Law in the Roman Empire*.⁴⁵ In this book, Grubbs details how Rome adopted several new laws that shifted adultery from a private crime against the husband to a public crime against the community. Men became required to report and prosecute adultery,⁴⁶ adultery was explicitly defined,⁴⁷ and Roman law eventually allowed the community itself to bring charges against a

⁴³ Dvora E Weisberg, *Levirate Marriage and the Family in Ancient Judaism*, HBI Series on Jewish Women (Waltham: Brandeis University Press, 2009).

⁴⁴ Weisberg, *Levirate Marriage and the Family in Ancient Judaism*, 201.

⁴⁵ Judith E. Grubbs, *Women and the Law in the Roman Empire: A Sourcebook on Marriage, Divorce and Widowhood*, Routledge Sourcebooks for the Ancient World (London, New York: Routledge, 2002).

⁴⁶ Grubbs, *Women and the Law in the Roman Empire: A Sourcebook on Marriage, Divorce and Widowhood*, 63.

⁴⁷ Grubbs, *Women and the Law in the Roman Empire: A Sourcebook on Marriage, Divorce and Widowhood*, 84.

woman if a husband would not.⁴⁸ Marilyn Skinner has worked with this, as well, in her book, *Sexuality in Greek and Roman Culture*.⁴⁹ Skinner demonstrates that while in Greek culture, adultery was something a husband suffered and thus could seek retribution for, in Roman culture, adultery was viewed as a communal offense that had to be punished by the community.⁵⁰ Jerome, in later Christian Rome, goes so far as to deny remarriage after a divorce for adultery for both the adulterous spouse and the (presumed) faithful spouse.⁵¹ And yet, Rome was awash in sexual deviance. Harry Wedeck has catalogued several passages from Roman literature in which various sexual vices are either extolled or condemned.⁵² Adultery was high on this list, as numerous authors speak on it, some condemning it and using accusations of cuckolding as insults, while others seem to revel in the seduction of other men's wives.

Amy Richlin explores the world of Roman invective and sexual humor in *The Garden of Priapus*.⁵³ She opens with a description of Roman obscenity and how it centers around sex crimes: not crimes such as assault, but rather adultery or other sexual taboos. Such actions socially stained an individual.⁵⁴ This staining then created a class of person who was socially untouchable precisely because of the ways that people are said to have touched that person.⁵⁵ Richlin shows how these characters were used in various genres: from literature and poetry to street graffiti and courtroom invective. Richlin concludes that this humor created and reinforced

⁴⁸ Grubbs, *Women and the Law in the Roman Empire: A Sourcebook on Marriage, Divorce and Widowhood*, 307-08n138.

⁴⁹ Marilyn B. Skinner, *Sexuality in Greek and Roman Culture*, 2nd ed. (John Wiley & Sons, 2013).

⁵⁰ Skinner, *Sexuality in Greek and Roman Culture*, 197.

⁵¹ Grubbs, *Women and the Law*, 209–10.

⁵² Harry Ezekiel Wedeck, *Roman Morals: A Survey of Depravity* (Lawrence, KS: Coronado, 1980).

⁵³ Amy Richlin, *The Garden of Priapus: Sexuality and Aggression in Roman Humor*, rev. ed. (New York: Oxford University Press USA, 1992).

⁵⁴ Richlin, *The Garden of Priapus*, 29.

⁵⁵ Richlin, *The Garden of Priapus*, 30.

a sexual hierarchy, where the Roman man, the *vir*, used sexual penetration (or the threat thereof) to create the in-group of Roman *vir* or *vir*-aspirants and the out-group of all others, including women, enslaved people, and *cinnaedii*.⁵⁶

Jonathan Walters demonstrates that the dominant, hegemonic idea of Roman manhood was one in which the *vir* was an impenetrable penetrator, both with regard to sex and violence.⁵⁷ To be a *vir*, a Roman man could not allow himself to either be sexually penetrated, or to submit to physical violence. Walters shows that Roman law and literature both protected Roman citizen men from these forms of penetration, but there were areas of uncertainty. With regard to sex, Rome had inherited the Greek idea of pederasty: that is, of older free men taking up a mentoring role over younger free men, with the understanding that these young men would be sexually available to the older men.⁵⁸ With regard to violence, the Roman soldier not only was exposed to violence from the enemy, but was subject to physical beatings by superior officers, and yet the Roman soldier embodied most of the elements of the Roman *vir*.⁵⁹ In these uncertain cases, Roman authors spent time working out the nuances of their culture.

These boundary cases are where much of the discourse on Roman texts focuses. Continuing the idea of proper roles in sexuality, Holt Parker constructs a chart of gender and roles in various sex acts in Roman thought.⁶⁰ Only when a person of a specified gender performs a specific role in a sex act does the action become problematic to a Roman. Looking at sex acts

⁵⁶ A man who sought the receptive role in sex between men. In Roman literature, they are portrayed as effeminate and craving all forms of sex, not just with men.

⁵⁷ Jonathan Walters, "Invading the Roman Body: Manliness and Impenetrability in Roman Thought," in *Roman Sexualities*, ed. Judith P. Hallett and Marilyn B. Skinner (Princeton, NJ: Princeton University Press, 1997), 29–30.

⁵⁸ Walters, "Invading the Roman Body: Manliness and Impenetrability in Roman Thought," 31.

⁵⁹ Walters, "Invading the Roman Body: Manliness and Impenetrability in Roman Thought," 40.

⁶⁰ Holt N. Parker, "The Teratogenic Grid," in *Roman Sexualities*, ed. Judith P. Hallett and Marilyn B. Skinner (Princeton, N.J: Princeton University Press, 1997), 49.

between men, Roman texts excoriate the man receiving the other man's penis, while they either ignore or lift up the man doing the penetrating.⁶¹ Similarly, when a woman takes the active role in sex,⁶² she is also cast in a strongly negative light. Sex is not the only realm in which these social stigmas occur. Catherine Edwards explores how Roman literature often equates the prostitute (who is seen as being sexually passive for their john) with actors and gladiators.⁶³ In Rome, anyone who used their body to entertain or pleasure others, in whatever form, did so at the expense of their social standing.

The Roman social world was also constructed by its languages. Anthony Corbeill describes the use of grammatical gender in Latin and Greek texts to shape the understanding of the world.⁶⁴ Corbeill observes that modern grammarians dealing with modern languages describe grammatic gender as a meaningless artifact of language: there is no meaning in the gender of a table.⁶⁵ When Corbeill shifts back to ancient grammarians, he finds that they do see meaning in grammatic gender; moreover, grammarians especially note when an author changes the gender of a word or object in their work as an indicator of meaning.⁶⁶ Corbeill spends much of his book examining how Roman authors and scholars commented on how the use of gender in language helped to delineate the proper hierarchy and organization of the world, as well as to show meaning.

⁶¹ The Rabbis hold a different position, condemning both the active and the passive parties to deviant sexual behavior. For example, in *m. Sanhedrin* 1:4, both a woman convicted of bestiality and the animal she used would be condemned to death.

⁶² Which is portrayed as a penetrative role, even when with a man.

⁶³ Catherine Edwards, "Unspeakable Professions: Public Performance and Prostitution in Ancient Rome," in *Roman Sexualities*, ed. Judith P. Hallett and Marilyn B. Skinner (Princeton, N.J.: Princeton University Press, 1997), 66–95.

⁶⁴ Anthony Corbeill, *Sexing the World: Grammatical Gender and Biological Sex in Ancient Rome*, (Princeton, NJ: Princeton University Press, 2015).

⁶⁵ Corbeill, *Sexing the World*, 1.

⁶⁶ Corbeill, *Sexing the World*, 38–40.

In *Sex and Sensuality in the Ancient World*, Giulia Sissa pushes beyond the dualism of Foucault's active/passive sexuality and into a broader exploration of sex and sensuality in Greek, Roman, and early Christian literature.⁶⁷ Sissa shows how desire is viewed as affecting men and women differently: men are petrified by desire, ceasing their action, while women are driven toward their goals by their desire.⁶⁸ As she explores the literature, desire for both genders becomes something insatiable. While Foucault sees Platonic thought as working out how to use desire, Sissa argues that Platonic thought was abandoning the use of pleasure precisely because it did not solve the problem (desire) in a lasting way.⁶⁹ She shows that the Stoics shift the question away from viewing pleasure as a temporary solution to desire, to the view that "[p]leasure is the enjoyment of present things; desire is the impatience to enjoy them."⁷⁰ Desire becomes the problem, which the Christians use to build a concept of moral responsibility: desiring to do an action becomes a sign that one will do such an action.⁷¹

It is within this Roman milieu that the Rabbis were living. They clearly sided with the Roman moralists on these issues: adultery was a problem that needed to be stopped; the genders had certain roles they were to perform; certain professions (prostitution) were inherently shameful if not amoral, etc. When the Rabbis engaged these deviancies, were they engaging them from what we might call a "biblical" point of view, or are they using the Bible to uphold the Roman morality around them? In the case of adultery, did they see adultery as something of a communal crime to be punished, barring the woman from remarriage? If so, would this have

⁶⁷ Giulia Sissa, *Sex and Sensuality in the Ancient World* (New Haven: Yale University Press, 2008).

⁶⁸ Sissa, *Sex and sensuality in the ancient world*, 33.

⁶⁹ Sissa, *Sex and sensuality in the ancient world*, 46.

⁷⁰ Sissa, *Sex and sensuality in the ancient world*, 190.

⁷¹ Sissa, *Sex and sensuality in the ancient world*, 191.

impacted how the Rabbis read biblical adultery metaphors for Israel's sins? Would explain why the Rabbis in *Leviticus Rabbah* altered the narrative of the golden calf, at least in their parable explaining it, to remove any actual adultery? In relationships between men, did they feel the same social danger about pederasty that Roman authors struggled with? Did the Rabbis prescribe similar sexual roles for men and women as the Romans, and did they fear the same blurring of these roles? Many Roman authors implied or explicitly accepted a level of violence in sex, often implying that the women wanted such sexual violence. Did the Rabbis see sex as inherently violent? Did they view women as wanting violent sex? These questions center on a general one: how did Roman morality influence the Rabbis' own sense of morality? And if so, how can we identify this influence in rabbinic thought?

3. FOUCAULT'S WORK AND THEORY

Here then is the hypothesis I want to advance, tonight, in order to fix the terrain—or perhaps the very provisional theatre—within which I shall be working. I am supposing that in every society the production of discourse is at once controlled, selected, organized and redistributed according to a certain number of procedures, whose role it to avert its powers and its dangers, to cope with chance events, to evade its ponderous, awesome materiality.¹

Michel Foucault has had a deep influence on a vast number of fields of study. Several of his major historical works focus on France between the seventeenth and nineteenth centuries.

Foucault explores some of the major social changes, doing so through unconventional means.

While he does not always enunciate his method, and his method has evolved through his works, Foucault focuses on questions of power and discourse: how does power affect the discourse of society? Which things cannot be spoken? More to Foucault's own focus, what is one allowed to say in discourse? By discourse, Foucault means more than simple discussion, but rather any element of culture through which one attempts to convey a message.

I will use Foucault's methodology and theory of discourse to show how Roman influences shaped the Rabbis' interpretations of their own traditions, specifically around sex and sexual deviance. First, I construct a view of Roman identities around sex: gender, sexual roles, pleasure and its pursuit, the use of sex in narratives, and the dangers and rewards of sex. I will survey modern scholars of Roman sexuality, as well as explore their primary sources. After this, I will construct a similar view of rabbinic identities around sex, including the influences of Scripture and other non-Roman sources. This exploration will require that I trace the evolution of particular narrative traditions through rabbinic sources, as well as look at the differences between

¹ Michel Foucault, *The Archaeology of Knowledge: And the Discourse on Language* (New York, NY: Harper & Row, 1976), 216.

the rabbinic and the non-rabbinic Jewish and Christian sources. With these two worldviews constructed, Foucault's theories can come into play, and I can explore how the dominant, hegemonic Roman view of sex and sexuality is reflected in rabbinic works, in ways that it is not reflected in earlier, pre-Roman sources. I can also illustrate how Roman views are (or are not) reflected in non-rabbinic sources. I hope to identify elements of Roman thought pulled into rabbinic thought, asking how the power systems of Roman hegemony shape the rabbinic mindset.

But what is power? While Foucault admits that in the European medieval era, the monarch would serve as the embodiment of power, in the modern world (and arguably even in that medieval one), power is far more nebulous. For Foucault, power "is quite different from and more complicated, dense and pervasive than a set of laws or a state apparatus."² Power is not just the political State and its instruments. Rather, power is a nebulous collection of relationships, each of which affect the individual. This power is not a pyramid structure which functions solely from the top down.³ Power functions up the social hierarchies just as much as down: leaders are expected by their subjects to act in certain ways. Power achieves this control of both leaders and subjects by overtly and covertly guiding individuals into specific roles and actions. We as individuals are guided by these systems of power into particular roles or identities, which prescribe and proscribe specific behaviors.

Foucault illustrates the use of power in the context of sex and sexuality. Initially, his hypothesis was "the idea that power created sexuality as a device to say no to sex."⁴ He believed

² Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972-77* (New York: Pantheon Books, 1980), 158.

³ Foucault, *Power/Knowledge. a Selected Interviews and Other Writings 1972-77*, 159.

⁴ Foucault, *Power/Knowledge. a Selected Interviews and Other Writings 1972-77*, 190.

that social forces—doctors and psychiatrists—came up with labels for what were considered deviant sexual behaviors (homosexuality, hysteria, child masturbation, etc.) and then medicalized these behaviors to control them. Foucault admits this approach focused on the negative aspects of power—how power stopped particular actions. Foucault moved on to the idea that power was also acting in positive ways. “...in the West this systemisation of pleasure according to the ‘laws’ of sex gave rise to the whole apparatus of sexuality.”⁵ Rather than simply banning or containing deviant sex, sexuality allows an individual to choose certain sets of sex acts and name them pleasurable. Moreover, by claiming a sexuality, an individual is then informed by power (or the discourses controlled by power) of what acts the individual should find pleasurable. Modern sexuality allows an individual to define themselves (or “find their truth”) through the kinds of sexual pleasure they seek out; by claiming that identity, power allows the individual certain kinds of pleasure. Thus, a person claiming the label “gay” accepts with that label a set of sexual behaviors, as well as other behaviors around gender expression and social interaction. The discourse around sexuality is controlled by various systems of power (medical, psychological, religious, etc.), and in turn these discourses can be used by the individual to define themselves.

Foucault applied his method to a variety of institutions and ideas as he evolved his theory. He began his work with a study of madness and how civilization interacted with it in the birth of the modern era. Foucault moved through several other topics in his works, including the medical gaze and clinic, fields of scientific study, incarceration and punishment, and finally, sexuality. I want to trace the evolution of Foucault’s thought through his major works before looking at how we might apply it to the works of the Rabbis.

⁵ Foucault, *Power/Knowledge. a Selected Interviews and Other Writings 1972-77*, 191.

MADNESS AND CIVILIZATION

One of Foucault's first books, *Madness and Civilization: A History of Insanity in the Age of Reason*,⁶ works to construct a history of madness, focusing not on the development of psychology and its precursors, but rather on how madness was approached by Western societies in the seventeenth through nineteenth centuries. While the content of this book is not directly relatable to this study of ancient rabbinic morality, Foucault does begin developing his method and theory in this book.

Foucault opens with a preface stating that histories of mental illness have all hitherto been based on "[t]he language of psychiatry, which is a monologue of reason *about* madness" (emphasis original).⁷ Foucault holds that such approaches do not give us a full account of the development in how the West approached madness. Instead, Foucault recounts how the West shifted from its experience of madness in the Middle Ages and the Renaissance, when madness was seen as the spiritual world forcing itself into the human world, to the humanist approach to madness, where it is seen through the medicalized language of mental illness. He shows how Western society used various tools to affirm reason over madness, and to confine and condemn those persons labeled mad or irrational—not because they were victims of spiritual violence, but because of their own personal failings.

According to Foucault, beginning in the seventeenth century, Western societies begin to place people labeled "mad" into various "houses of confinement," which include France's *Hôpital Général*, Germany's houses of correction, and England's workhouses. In each of these,

⁶ Michel Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason* (New York: Vintage Books, 1988).

⁷ Foucault, *Madness and Civilization*, xi.

authority figures (usually royal or political figures) could confine someone indefinitely. People deemed mad were thus detained with the poor, the unemployed, and criminal prisoners.⁸ The detained would then often be put to work, as it was believed at the time that idleness was to be avoided. Foucault points out that this had the tendency to simply shift economic distress: those that were most acutely victimized by economic downturns would be confined, usually in another area of the country, and once there, they would be put to work (often taking jobs away from those living in the area around the place of confinement). Foucault shows how the powerful used the system of confinement against people who failed to conform to societal demands.⁹

But Foucault's analysis does not stop there. He delves into how societies defined madness. Prior to the eighteenth century, the West tended to view passion—specifically passionate outbursts—as a cathartic release of spirits or energy, which prevented madness. During the eighteenth century onward, passion starts to be the precursor of madness: too much passion did not mean one was staving off madness, but rather that one was descending into it.¹⁰ While authority figures might have used outbursts as evidence against the mad, they also had to fear similar accusations against themselves. Madness thus was not just used as an element of control, but also a self-applied control on those who wielded power.

Foucault shows that as Western society refined its approach to confining people for madness, political authorities, who previously held the power of confinement, relinquished that authority to the medical community. Authority figures began by developing a framework in which they could confine disruptive elements. As this framework developed, it became

⁸ Foucault, *Madness and Civilization*, 38–39.

⁹ Foucault, *Madness and Civilization*, 45.

¹⁰ Foucault, *Madness and Civilization*, 89.

something that all members of a society feared, including those in authority. By the end of the nineteenth century, Foucault shows that the doctor, or more generally the medical community, held control over madness as a label. Further, people in the West had internalized the idea that madness had to be contained so well that places of confinement no longer needed physical restraints to hold their prisoners: the social expectation that they would obey the medical staff was enough to hold the patient at the asylum.¹¹

In *Madness and Civilization*, Foucault attempts to look at how madness was treated, not by chronicling the medical field or physical institutions, but by analyzing how the language around madness shifted. Foucault shows what began as a tool for Power to control others eventually grew in force and was amalgamated into the ostensibly objective medical field. Thus, what had been authority held in the hands of the political elite became socialized into a force which could act upon any level of society. Yes, those with political and other forms of social authority were more resistant to the use of this force, but even they could become its victims. The fear of madness became part of the social order which steered all levels of society toward compliance with socially constructed norms. Individuals could not cross certain socially defined lines without suffering the consequences.

BIRTH OF THE CLINIC

In his next study, Foucault traces the shift in medicine from speaking about humors, essences, and other imperceptible qualities of the patient toward the more modern attempts to speak only of what is objectively measurable.¹² This shift occurred between the French Revolution at the

¹¹ This is not to say that there were no physical restraints ever, nor that every asylum functioned the same way. Rather, Foucault describes the emergence of institutions that required physical action only rarely.

¹² Michel Foucault, *The Birth of the Clinic: An Archaeology of Medical Perception* (New York: Vintage Books, 1994).

end of the eighteenth century and the mid nineteenth century, along with a host of other shifts in medical care. Foucault focuses on the medical gaze: the way in which the physician encounters the patient and framed the diagnoses in discourse: specifically, how a physician describes the afflictions of the patient.

In the eighteenth century, disease was viewed as a surface, a single now, and modern discourse of disease processes, in which diseases develop over time through stages, would likely have been misunderstood in this era.¹³ Diseases had a taxonomy like plants and animals:¹⁴ diseases which caused similar symptoms were considered related to one another.¹⁵ The hospital became a locus of disease. It was seen as a place where diseases intermingled: not as contagions, but as essences which would build upon one another, strengthening in the process. At the turn of the nineteenth century, the medical community began to restructure itself, in no small part because of this view of hospitals, coupled with concern about how physicians were trained. What emerged in France was the clinic—not the medical office we think of today, but a structure in which doctors-in-training could examine exemplar cases. Clinics were what we might think of as a teaching hospital or residency program. Through this change in the formal structure of teaching—away from lectures and classroom study of theory, towards a hands-on approach—new physicians began using different discourse about their patients. By the early nineteenth century, the medical profession had reorganized itself under the medical gaze:

the gaze traverses the sick body attains the truth that it seeks only by passing through the dogmatic stage of the *name*, in which a double truth is contained: the hidden, but already present truth of the disease and the enclosed truth that

¹³ Foucault, *The Birth of the Clinic*, 5–6.

¹⁴ Foucault, *The Birth of the Clinic*, 7.

¹⁵ This should not be confused with modern typology of the bacteria, viruses, and other organisms that cause diseases. Medical professionals in the eighteenth century had little knowledge of germ theory, and thus did not link similar disease-causing organisms into an organizational structure. Rather, diseases were categorized by symptomology.

is clearly deducible from the outcome and from the means. So it is not the gaze itself that has the power of analysis and synthesis, but the synthetic truth of language, which is added from the outside, as a reward for the vigilant gaze of the student (*emphasis original*).¹⁶

These new physicians first observed their patients (or perhaps, the disease as reflected in the patients) and then created medical truth by putting their observations into discourse and naming each disease.

Foucault notes the changes in the language used by the physicians of the time. He begins by showing how doctors in the eighteenth century spoke in ways foreign to modern medicine, and with terms which cause us to question what they claim to have seen. Foucault argues that these doctors were approaching disease differently than we, and that difference could be seen through the language. He provides evidence, working through a series of texts, to show how the discourse changes over time. For the eighteenth-century doctor, disease was something which changed the essence of the afflicted individual; for the nineteenth century doctor, these essences were nowhere to be found, and instead disease afflicts the organs and tissues of the individual.

In *The Birth of the Clinic*, Foucault describes the evolution of medical thought as:

The faces of discourse would then have to be treated not as autonomous nuclei of multiple significations, but as events and functional segments gradually coming together to form a system. The meaning of a statement would be defined not by the treasure of intentions that it might contain, revealing and concealing it at the same time, but by the difference that articulates it upon the other real or possible statements, which are contemporary to it or to which it is opposed in the linear series of time. A systematic history of discourses would then become possible.¹⁷

¹⁶ Foucault, *The Birth of the Clinic*, 60.

¹⁷ Foucault, *The Birth of the Clinic*, xvii.

ORDER OF THINGS

In his next work, Foucault attempts to outline the shifts in scientific thought during and after the Classical age.¹⁸ Specifically, he looks not at the hard sciences, but the social or human sciences: natural history (later, biology), general grammar (philology), and the study of wealth (political economics). Foucault outlines first shifts in these areas of study from the Renaissance into Classical thought, and then how each of these sciences experiences a collapse and reorganization around the birth of the nineteenth century. In the English version of the book, Foucault offers this as an explanation of his method and goals:

In short, I tried to explore scientific discourse not from the point of view of the individuals who are speaking, nor from the point of view of formal structures of what they are saying, but from the point of view of the rules that come into play in the very existence of such discourse: what conditions did Linnaeus (or Petty, or Arnauld) have to fulfill, not to make his discourse coherent and true in general, but to give it, at the time when it was written and accepted, value and practical application as scientific discourse—or, more exactly, as a naturalist, economic, or grammatical discourse?¹⁹

Foucault's question, then, is Which rules shaped the discourse to make it valuable and practical for that era? He is looking for what guides and restrains the discourse in natural history, general grammar, and the study of wealth. What allowed these fields to become modern biology, philology, and economics?

Foucault admits that there are several problems with his approach, among which are: 1) not many people study these questions; 2) this is a comparative work, and as such, he brings seemingly disparate things together; 3) he is working at a deeper level of discourse, looking at elements of history which other historians of science do not examine, specifically looking at how

¹⁸ Michel Foucault, *The Order of Things: An Archaeology of the Human Sciences* (New York: Vintage Books, 1994).

¹⁹ Foucault, *The Order of Things*, xiv.

discourse constrains scientific understanding; 4) he answers few of his questions; and 5) while he may be called a structuralist, he is not claiming to be one.²⁰ These problems make Foucault's work more difficult to compare to other historians, but with regards to this work, these concerns will have little impact. This study on the *sotah* also examines the discourse more than the historical reality of particular events, much as Foucault admits that his work is more concerned with discourse than specific events.

Foucault examines how cultures organize their knowledge. He opens with a commentary on the painting, "Las Meninas," by Diego Velázquez, showing that the painting's structure and organization draw the viewer to realize that they are the focus of the painting, even though the viewer is outside the work. Foucault argues that this painting is representative of Classical thought: while there is meticulous detail in several elements around the focus of scientific study, Foucault identifies the core of study to be the scientist themselves, and their influence on the study is never directly acknowledged by the scientific work.²¹ Foucault says later:

In return, however, at the meeting-point between representation and being, at the point where nature and human nature intersect - at the place in which we believe nowadays that we can recognize the primary, irrefutable, and enigmatic existence of man—what Classical thought reveals is the power of discourse. In other words, language in so far as it represents—language that names, patterns, combines, and connects and disconnects things as it makes them visible in the transparency of words. In this role, language transforms the sequence of perceptions into a table, and cuts up the continuum of beings into a pattern of characters. Where there is discourse, representations are laid out and juxtaposed; and things are grouped together and articulated.²²

Foucault concludes that through these studies, Classical thought grew closer to defining the individual as distinct from the human being. As modern thought emerged in the nineteenth

²⁰ Foucault, *The Order of Things*, ix–xiv.

²¹ Foucault, *The Order of Things*, 16.

²² Foucault, *The Order of Things*, 310–11.

century, “Western culture has constituted, under the name of man, a being who, by one and the same interplay of reasons, must be a positive domain of *knowledge* and cannot be an object of *science*” (*emphasis original*).²³ The individual emerges in the nineteenth century and forces the sciences to reconstitute themselves, just as the viewer of “Las Meninas” is forced to re-evaluate the contents of the work when they recognize themselves as its central focus.

In the study of the *sotah*, I want to use a similar question to Foucault’s: Which ideas shaped the discourse around adultery in Judean texts? What do those ideas tell us about the culture which produced these texts? I am looking for what guides the discussion around adultery. How do these ideas change through the different eras of Judean history and how does that shape the resulting texts? Foucault describes the emergence of the individual as a guiding force in the discourse of the sciences. In the Judean discourse of adultery and illicit sex, what are the core concerns and how do they change?

ARCHAEOLOGY OF KNOWLEDGE

In his next volume, *The Archaeology of Knowledge*, Foucault documents his method from his earlier works.²⁴ His objectives are: 1) to show the changes within “historical thought” as they happened on their own, not to specifically introduce the idea of structuralist history; 2) to question systems and structures as a tool to understand history; and 3) to de-center anthropological concerns about humans and human consciousness from his historical method.²⁵ Foucault argues against a style of history which tends to unify and remove differences between eras in an attempt to view history as fitting a structure or system. Traditional historians, Foucault

²³ Foucault, *The Order of Things*, 366–67.

²⁴ Foucault, *The Archaeology of Knowledge*.

²⁵ Foucault, *The Archaeology of Knowledge & the Discourse on Language*, 14–15.

might argue, would describe history through a series of actions or choices made by individuals. Foucault works to show how outside forces, dominant ways of thinking, and other non-human forces limit the choices of an individual and guide historical change. He does not view himself as a structuralist, as he does not see these outside forces as some dominating structure of history, but rather as organic amalgamations of external forces.

Foucault argues that we need to let go of over-arching systems which claim to link ideas together: tradition, spirit, influence, and evolution/progress.²⁶ That is, we should stop narrating history as if it is the product of a system which produced certain events. These systems should at least be questioned, as they often hide actual changes behind a veneer of similarity. Similarly, disciplines are used to divide ideas up when these ideas often occur and interact in multiple disciplines at the same time. Foucault argues we need to be willing to discard our traditional and preconceived ideas of how things are ordered and related; if we do not do so, we are imprinting our modern (or postmodern) framework onto a past world which organized itself on quite different lines. When we discard these traditions and disciplines, we need to seek another way to organize our statements. Foucault offers multiple possible ways to do this but takes issue with each of them. Instead, Foucault settles for building a “system of dispersion” among the elements which make up his study, and he admits this will not provide us with the clean unities we previously held, but it allows us to see more clearly how the world of the past organized their thoughts.²⁷

Foucault argues that all objects of study exist in a complex system of connections, but the relationships are external to the objects themselves, and there are multiple kinds of relationships.

²⁶ Foucault, *The Archaeology of Knowledge & the Discourse on Language*, 21.

²⁷ Foucault, *The Archaeology of Knowledge & the Discourse on Language*, 37f.

Foucault finds that discourse takes place at the boundaries these relationships form.²⁸ It is in the discourse that we can begin to see the shapes of disciplines, not in the objects they study, but in the rules which make up their discourse. Foucault uses shifts in these rules to trace the evolution of the discourse of a discipline. It is not what is studied or what conclusions are made in a discipline, but rather how the discipline shapes its questions and its answers that Foucault is interested in. Thus, knowledge itself becomes dependent on discourse: without language or discourse, we can have no thought.²⁹ Knowledge is not something external with a concrete existence; facts are not stones which can be used to build a building, step by step. Rather, the discourse of a field of knowledge builds thoughts in a far more fluid system, in which individual streams may be successive chains, but in which multiple chains are being constructed simultaneously.

If discourse is required for knowledge, what makes up discourse? Foucault names the *statement* as the primary element of discourse; however, a statement is not a sentence, nor a proposition, nor even a speech act. Statements are defined by their function, which is both linguistic and physical.³⁰ Foucault gives four qualities to statements: 1) a relationship with something(s) beyond themselves (the enunciative function); 2) a relationship with a subject (not necessarily the author/speaker); 3) they can operate outside of a domain/context; and 4) they have some sort of material existence. A statement is a series of signs in a linguistic performance with relationships to a domain of objects. Discourse is a series of statements that belong to single system of formation (domain).³¹ Without the relationships, there is no statement, and that

²⁸ Foucault, *The Archaeology of Knowledge & the Discourse on Language*, 45.

²⁹ Foucault, *The Archaeology of Knowledge & the Discourse on Language*, 50f.

³⁰ Foucault, *The Archaeology of Knowledge & the Discourse on Language*, 86.

³¹ *Ibid.*, 107–08.

statement must serve some function within the domain in which it exists. While this function is not always apparent for all observers of the discourse, this does not make the function hidden; rather, it is present, but only for those intended to hear it.³² Statements exist with intent, for a function, and that intent may require the observer to understand the domain in which the statement exists.

Any single statement is unique in its context and there are nearly infinite possible statements which could have been said instead, with varying degrees of plausibility and meaning. Foucault argues that because certain statements are/were said, and certain statements are preserved or are continued to be said, we can see by what rules and systems the statements accumulate: which are preserved, reinforced, and otherwise brought forward. This accumulation of statements becomes the archive: “*the general system of the formation and transformation of statements.*”³³ In the archive, we can see the system of rules which gives rise to a particular series of statements, to particular discourses. While we cannot explicitly define the archive, we can show what is shaping the statements by showing how the archive functions on particular statements.

In exploring the *sotah* passage and its related materials, Foucault’s archive will help to illuminate broader aspects of power in the culture creating (and preserving) the texts studied. While a single text can show a particular author’s point of view, if we find a trend through multiple documents preserved in the same collection, we will see a broader societal trend. By sequencing archives, we can see which ideas continue to dominate and which are reinterpreted (or forgotten) as Judean society changes.

³² Foucault, *The Archaeology of Knowledge & the Discourse on Language*, 108–10.

³³ *Ibid.*, 130. Emphasis original.

DISCIPLINE AND PUNISH

Foucault turns to the areas of justice and punishment in his next book, whose English title is *Discipline and Punish*. At the start, he sets certain ground rules for his exploration: 1) punishment should be seen as a complex social structure, and not simply society punishing the “bad”; 2) punishments are not simply the results of legislation, but are shaped by political positions and tactics in multiple areas of society; 3) new technologies change how punishment is applied; 4) punishments have shifted from expiating the “bad” to reforming the criminal.³⁴ What Foucault is looking at is the shift in punishment from the eighteenth century and earlier to the prisons of the nineteenth and twentieth centuries. Judicial punishment prior to the nineteenth century included several physical punishments, including methods of execution, and rarely used confinement as a punishment. By the twentieth century, judicial punishments were nearly all imprisonment, usually into highly structured prisons. With this shift, Foucault also notes a shift from the public nature of the earlier tortures and executions to modern imprisonment (and execution) being secretive and hidden from public view.

Foucault traces how this shift in punishment occurred, looking at the social forces pushing for change. During the Enlightenment, social thinkers began to accept the criminal as human, and thus forced the state to recognize that humanity.³⁵ Judicial punishments ceased to reflect a state enacting revenge against those who would challenge its position. As such, punishment was reframed as a reformation of the criminal. This reframing also shifted the expected audience of the punishment, and what it was saying. In the earlier systems of physical punishments, spectacles spoke to those who had not committed the crime: warnings were written

³⁴ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (S.I.: Vintage, 2009), 23.

³⁵ Foucault, *Discipline and Punish*, 74.

on the flesh of the criminals, not for the condemned, but for those watching. Such punishments also allowed the state and society an element of cathartic release. In the newer system, punishment was not speaking to the condemned. Punishments were to convince the punished not to commit crimes again. Foucault is reading punishment as the discourse.

Foucault documents technical changes that occurred at the same time as the change in punishment. Methods of instruction were adopted from military and educational systems to regiment the days of the prison. The physical structure of the prison was constructed in such a way as to allow surveillance at all times. Surveillance itself became part of the discourse: while the condemned were not actively observed all the time, the prison made them think they were. Thus, potential surveillance by the state (or its representatives) became an act of discourse whereby the state attempted to alter the behavior of the condemned.

Foucault's focus in *Discipline and Punish* is on how the state, an agent of power, attempts to control an individual's choices, conforming them to a "normal."³⁶ While his previous works focus on how discourse is shaped by power, in this work, Foucault is looking at how power uses discourse to shape the individual. He focuses on the emergence of the prison; however, he notes similar patterns of control emerging in other areas of society, such as military education. While the goals of the state in this shift were to turn the criminal into normalized citizens, Foucault points out that the rate of recidivism was high enough that this system did not appear to be working as it claimed.³⁷ The prison constructed a system which contained those marked by society as delinquents, but it did not reform all of them. For Foucault, the state's discourse of punishment did not obtain its goal. However, the state never admitted the system

³⁶ Foucault, *Discipline and Punish*, 294.

³⁷ Foucault, *Discipline and Punish*, 264–68.

was flawed; instead, it deemed the prison system in need of reform, claiming that the discourse would work, if it was improved.³⁸

HISTORY OF SEXUALITY, VOLUME 1

Foucault begins his multi-volume work on sexuality by detailing his premise, method, and the questions he plans to answer. All of that can be summarized in these lines: “The question I would like to post is not, Why are we repressed?, but rather, Why do we say, with so much passion and so much resentment against our more recent past, against our present, and against ourselves, that we are repressed?”³⁹ Foucault is stating that 1) we are not as repressed as we say we are; 2) sexuality is bound up in the discourse around and about it; and 3) we have a vast discourse on sexuality and its alleged repression. Starting with the seventeenth century and the emergence of modern capitalism, modern histories have tended to show an emerging system of sexual repression, and this narrative of repression continues to hold sway. Foucault intends to challenge this narrative, and to offer another narrative of sexuality since the seventeenth century.

Beginning with the Counter-Reformation, Foucault traces an increase in the discourse around sex and sexuality. Specifically, there was a growing trend to push for a confession of sexual acts—not just general statements of such, but specific details.⁴⁰ Continuing into the eighteenth century, the discourse continued to expand, this time into medical, psychological, and other scientific fields of discourse, which in turn created entirely new vocabularies around sex.⁴¹

Foucault states:

³⁸ Foucault, *Discipline and Punish*, 268.

³⁹ Michel Foucault, *The History of Sexuality*, trans. Robert Hurley (New York: Vintage Books, 1988), 1:8.

⁴⁰ Foucault and Hurley, *The History of Sexuality*, 1:19.

⁴¹ *Ibid.*, 1:45.

We must therefore abandon the hypothesis that modern industrial societies ushered in an age of increased sexual repression. We have not only witnessed a visible explosion of unorthodox sexualities; but—and this is the important point—a deployment quite different from the law, even if it is locally dependent of procedures of prohibition, has ensured, through a network of interconnecting mechanisms, the proliferation of specific pleasures and the multiplication of disparate sexualities.⁴²

Foucault is arguing that although discourses were seeking to limit actions of individuals to specific sexual practices, by labelling those practices with specific terms, the discourse was helping to make those sexual practices distinct, resulting in an increase of sexual variety. In the medieval period, he argues, there were very few kinds of sex available, licit or illicit, and they were governed by few laws. Beginning in the eighteenth century, the ever-increasing number of sexual labels was allowing broader discussion of sexuality at the very time when traditional histories claim that sexuality was being repressed. Foucault admits that sexual practices did fall into and out of favor in various localities, but this is not the repression that is depicted in traditional narratives.

What do these discourses tell us? Foucault says, “these [modern] power mechanisms are, at least in part, those that, beginning in the eighteenth century, took charge of men’s existence, men as living bodies.”⁴³ Where ancient and medieval society, at least in the West, had shaped sexuality through law, Foucault is arguing that power in modern times attempts to shape the individual not through legal prohibitions, but through every increasing list of labels and discourses. Power asserts control over the individual’s sexuality through presenting a normalized set of expectations for individuals claiming a sexual expression or identity. Foucault’s objective

⁴² Ibid., 1:49.

⁴³ Foucault and Hurley, *The History of Sexuality*, 1:89.

for his study is to look at how discourse in society shifted in this period around sex from that of law to that of normalization.

To do this, Foucault must define what he means by “power.” Here is his definition:

It seems to me that power must be understood in the first instance as the multiplicity of force relations immanent in the sphere in which they operate and which constitute their own organization; as the process which, through ceaseless struggles and confrontations, transforms, strengthens, or reverses them; as the support which these force relations find in one another, thus forming a chain or system, or on the contrary, the disjunctions and contradictions which isolate them from one another; and lastly, as the strategies in which they take effect, whose general design or institutional crystallization is embodied in the state apparatus, in the formulation of the law, in the various social hegemonies.⁴⁴

Power is not simply the state acting, through either force or law. Nor is power the desire of any one individual or even a core group of individual leaders. Power is an amalgamation of force-relations: relationships between individuals and groups, confronting and changing one another. Power does include the state—the laws it makes and how it implements them—but power also includes the forces shaping why the state makes certain laws, why the state enforces its laws with specific kinds of force, and so on. Power also includes social forces which act on the individual which are outside the state: social groups and structures. Foucault uses power to encompass both the state and the social cliques which shape an individual’s choices through life. In his study of sexuality, Foucault looks at the discourses around sex beyond state law.

HISTORY OF SEXUALITY, VOLUME 2: THE USE OF PLEASURE

Foucault published the second volume in his *History of Sexuality*, titling it *The Use of Pleasure*. In this work, he pushes back much further into history than his previous works,

⁴⁴ Foucault and Hurley, *The History of Sexuality*, 1:92–93.

looking at texts from ancient Greece. Foucault asks the question, “[W]hy is sexual conduct, why are the activities and pleasures that attach to it, an object of moral solicitude?”⁴⁵ Why is our society (and those societies of the past) concerned with the individual’s sexual activity and pleasure? Foucault traces the traditional history which places the blame on Christianity for this initial moral focus on sex. Traditional historians, he argues, say that the Christians had a distinct sexual morality from Greeks and Romans. Foucault argues that when one looks at the sources, the ideas surrounding the Christian sexual moral stances are all found in Greek and Roman thought beforehand, though Foucault does admit that Christianity systematized its sexual morality in a way that Greeks and Romans had not previously done.

Foucault then focuses on Greek ideas about sex: how Greeks spoke about certain sexual acts, beyond their strict legality, and how the discourse around these acts either encouraged such behaviors or discouraged them. He argues that ancient Greeks did not conceive of sexuality in a modern sense, but instead held an idea of *aphrodisia*, translated as “pleasures of love” or “sexual pleasures.”⁴⁶ Greek discourse framed its discussions on acts or uses of *aphrodisia*. Foucault argues that there were three major elements to Greek *aphrodisia*: one’s role in the sex act, divided by gender/status; control of one’s desire; and freedom from being ruled by desire.

Foucault argues that Greeks divided sexual roles into active and passive. Active sexual roles were performed by the person inserting into the other: this penetrator was the one who was seen as actively pursuing pleasure. The penetrator role was assigned a higher, masculine status in the sexual encounter, though his partner could be a man as well. Generally, a sex act was accepted as long as the active partner was the higher-status individual. When lower status

⁴⁵ Ibid., 2:10.

⁴⁶ Foucault, *The History of Sexuality*, 2:35.

persons (enslaved people, women, etc.) actively pursued sexual pleasure from a higher-status person (even with that person's consent), it was seen as immoral.

Foucault explains that Greeks saw that pleasure was used to sate desire, but just as one ought not eat more than needed, one ought not seek excess sexual pleasure. They did not want a complete removal of desire, as Greeks thought it more valorous to control desire than it to simply not have it. Later, Christians would problematize having the desires in the first place, but Greeks admitted that people had desires. Higher-status people were assumed to be able to control their desires and only sate them as needed.

The final element of *aphrodisia* is related to the second: Greeks thought men⁴⁷ should be free, not from desire, but from being controlled by desire:

this freedom was more than nonenslavement, more than emancipation that would make the individual independent of any exterior or interior constraint; in its full, positive form, it was a power that one brought to bear on oneself in the power that one exercised over others. In fact, the person who, owing to his status, was under the authority of others was not expected to find the principle of his moderation within himself; it would be enough for him to obey the orders and instructions he was given.⁴⁸

If one was, by status, subject to another (an enslaver, a husband, etc.), then one was not seen as free to control one's own desires. Just as a slaver was responsible for feeding those he enslaved, he also dictated fulfillment of their sexual desires. Similarly, the husband would decide what acts would sate a wife's desires. Greeks thought the husband was the only one free enough to exhibit self-control over his desires.

⁴⁷ The Greeks framed most of their discussions about men, and the few statements they do make about women seem to assume that women cannot overcome their desires and are always subject to them.

⁴⁸ Foucault, *History of Sexuality*, 2:80.

Foucault then shows how the Greeks constructed their discourse around these ideas. He explores how the Greeks constructed regimens of healthy sexual activity.⁴⁹ These go into detail about how often and with whom one should have sex, and what those sex acts would do to the body. Foucault also highlights the Greek economics of sex, which focus on married men's sexual activities and how to ensure the husband's desire was primarily toward his wife.⁵⁰ Finally, Foucault also looks at the Greek unease around "the love of boys"—which is not synonymous to the modern idea of homosexuality.⁵¹ In Greek practice, older men (often married) would pursue teen boys who were not yet socially adults, often in a mentor-like relationship in which the boys would be sexually available to the men. Greek discourse shows unease with this, as the boys themselves would become men, and once men, they had to cease being the passive partner in sex. Boys were also not to enjoy the passive role or seek it too strongly.⁵² Much of the discourse around these ideas attempts to delineate how much or how little one should pursue sex, and whether one should enjoy specific roles in sex or not. Greek discourse was not about what was legal, but rather what was morally acceptable, and thus, what was seen as healthy for the man.⁵³

HISTORY OF SEXUALITY, VOLUME 3: THE CARE OF THE SELF

Foucault turns to the Roman world in his third volume on sexuality. In the first two centuries of the Common Era, Roman philosophers and physicians began to intensify discourse centered on sex and pleasure.⁵⁴ The focus was on making oneself into a better self, including moral

⁴⁹ Foucault, *The History of Sexuality*, 2:97–98.

⁵⁰ Foucault, *The History of Sexuality*, 2:183–84.

⁵¹ Foucault, *The History of Sexuality*, 2:187.

⁵² Foucault, *The History of Sexuality*, 2:212–13.

⁵³ Again, most of Greek discourse centers on the actions of free male citizens. Since enslaved people and women were not free to make their own choices, they were not seen as responsible for controlling their desires, at least as presented in the male-authored literature of the time.

⁵⁴ Foucault, *The History of Sexuality*, vol. 3, 39.

imperatives on problematized sex. Roman medical texts began to enforce their sexual regimens more rigidly.⁵⁵ At the same time, marriage underwent a culture shift, with greater focus on the relationship between husband and wife.⁵⁶ Romans begin to restrain the husband's sexual activity, though they framed it as an example of the husband's self-control, more than as any sort of reciprocity or justice for the wife.⁵⁷ Romans also addressed sexual relations with boys, outlawing such acts with freeborn young men: for Romans, the only sexually available boys were enslaved.⁵⁸

Foucault notes how elements of power attempt to contain the actions of individuals through discourse. While Romans used law more than Greeks, both used cultural elements and moral prohibitions to shape individuals' lives. Additionally, medical texts framed several of the regimens of sex in terms of what was healthy for a human body: good sex was defined by what the doctor said was healthy. This approach is like ways in which medicine will again gain power, as Foucault has already explored in earlier works, such as *Madness and Civilization*, *The Birth of the Clinic*, and *Discipline and Punish*. In each of these, medicine made proscriptions about aspects of life and gained the ability to define "normal" or "healthy" for individuals. Individuals could choose not to follow these instructions (at least in some cases), but to do so was seen as willfully damaging one's own health. Similarly, the Roman physicians made specific sexual recommendations, and to indulge in more or less than what was prescribed (or to do so in ways proscribed) was to damage one's health.

⁵⁵ Foucault, *The History of Sexuality*, 3:104.

⁵⁶ Foucault, *The History of Sexuality*, 3:147–49.

⁵⁷ Foucault, *The History of Sexuality*, 3:174–75.

⁵⁸ Foucault, *The History of Sexuality*, 3:189–90.

Foucault argues that rather than being a clean break from Greek and Roman sexual practices, Christian sexual teachings grew out of them.⁵⁹ While Romans nor Greeks pronounced sex an evil in the same way Christians did, both cultures did show an increasing unease with sexuality and an increasing wariness about desire. Sex was seen as problematic, and while dominant views did not advocate complete abstinence, sex was kept in specific, tightly controlled spaces: in the case of the dominant Christian view, marriage.

FOUCAULT AND THE RABBIS

Foucault's works have been applied to rabbinic works by several scholars. Daniel Boyarin uses Foucault's approach of treating texts as discourse in *Carnal Israel*.⁶⁰ Boyrain looks at how the Rabbis and Christians differed in how they defined themselves and their sexuality but does not look at how power influenced those relationships. Boyarin explores discourse within the Judaisms of the early Common Era, including nascent Rabbinic Judaism and the Philonic Judaisms, in addition to Christianity. While there is discourse in the sense of these groups defining themselves against one another, Boyarin does not look at how power systems outside of these groups controlled the discourses within them.

Hayim Lapin's work, *Rabbis as Romans*,⁶¹ explores the interactions of these two groups, but not from an analysis of the discourse. Rather, Lapin works with rabbinic cases, attempting to show that the Rabbis had an evolving influence on their followers' lives, starting with religious

⁵⁹ Foucault, *The History of Sexuality*, 3:237–38.

⁶⁰ Boyarin, *Carnal Israel*.

⁶¹ Lapin, *Rabbis as Romans*.

elements and slowly expanding into civil law. Methodological issues aside,⁶² Lapin's work focuses on negative aspects of power: the law and its jurisdiction. Foucault's later works expand outside simple legal analysis and into how the individuals perceived themselves and their world. By focusing instead on *aggadic*, narrative elements of rabbinic texts, I intend to explore how Rabbis conceived of themselves and how their views aligned with Roman culture.

Works on Roman and rabbinic sexuality have been influenced by Foucault's last two works, in which he directly addresses texts on Greek and Roman sexuality. Foucault challenges the presentation of Greek and Roman society as sexually promiscuous, which had been the traditional rendering of it from the later Christian (and rabbinic) sources. As there have been many works on Roman sexuality since Foucault, I will discuss these newer scholars, looking at current understandings of Roman sexuality and how the Romans perceived and pursued pleasure.

Each of Foucault's major works can be mined for methodological elements to apply to this study. To relate the approach from *Madness and Civilization* to the Rabbis and Roman moralists, I want to examine how each group worked to construct what was and was not socially acceptable regarding sex. Like Foucault's exploration of madness, we should be able to see what the Romans and Rabbis allowed themselves to say about sexuality, how their discourse evolved. The Rabbis in particular allow us to watch this evolution through generations of texts. We might have looked for this evolution based on the generations of the Rabbis themselves, but since we cannot assume that all attributions in any of the texts are meant to be historical (and if they were intended to be historical, that they were historically accurate), such a comparison would be fraught with methodological issues. Further, even if they were historical, the editors of each

⁶² Such as questions about how well or poorly these rabbinic case presentations reflect reality, whether the Rabbis were intending this sort of evolution to be seen by their readers, and whether these cases were meant to be either purely historical or claims to authority.

collection of traditions would have held ultimate authority over which discourse was included and which was not. Since the texts themselves display different discourses, we can at least say that those compiling the texts allowed different discourses on the subjects, which shows how those discourses evolved, without issues of attribution of the traditions contained in the compilations. When a tradition is transmitted in multiple texts, the changes between the texts show us how the editors shaped discourse around the topic. By looking for a trajectory of the discourse through time, we can see if the Rabbis were moving toward a Roman morality. Similarly, in the Roman world, we can see how the Romans themselves were shifting their discourse over time.

In *The Birth of the Clinic*, Foucault sequences medical texts to show how medical thought evolved at the beginning of the nineteenth century. I can sequence rabbinic material in a similar fashion, as we are already left with a series of texts, redacted at various times and locations, which we can sequence. The texts share enough similarities in genre that the discourses they contain are in a similar register and use similar language structures. While later issues of canon have shaped how these texts have been dispersed and treated by later generations of Rabbis, we should be able to use the texts among themselves relatively easily. To parallel this with Foucault, certain texts he uses maintain positions which are more in keeping with modern medical practice than others, and as such, have received differing amounts of value and authority placed upon them by later readers. The medical texts certainly do not have anything like the religious weight of canon on them, but there are certainly texts which modern practitioners of medicine might label as more “right” or “canonical” than others. If we can trace how the Rabbis framed their discourses around adultery, prostitution, premarital sex, and other forms of sexual deviance, we can build a trajectory of thought. We can then place that trajectory into its historical

context and compare it with other trajectories, such as those among pagan Romans and early Christians.

In *The Order of Things*, Foucault presents a methodological framework that he expands on in his later work, looking for what shapes discourse in his fields of study. I intend to use this approach with the rabbinic texts, determining which forces, both internal and external, work to shape rabbinic discussions, specifically those discussions on adultery and sexual immorality. To do this, I will look at the evolution of rabbinic discourse through the rabbinic archive. I will also identify how the external Roman discourse is changing in the Roman discourse.

Foucault expands his methodology in *The Archaeology of Knowledge*, explaining how systems of rules evolved out of accumulated discourse. I intend to apply his method to the rabbinic texts, hoping to show how the Rabbis' discourses evolved over time. This evolution led to a system of rules about sexuality in rabbinic texts which, while never explicitly constructed, arose out of those discourses.

Out of *Discipline and Punish*, we can pull Foucault's focus on how power interacts with deviancy. For the Rabbis, we can look at how they engage those who have broken their system of rules around sex and pleasure. What does discourse around the *sotah* and other sexual deviations look like? On the Roman side, we can look at discussions of *cinnaedi* and *tribades*, both framed by Roman moralists as sexual deviants.

Foucault's *History of Sexuality*, especially the second and third volumes, gives us a good model of how to apply his thought and method to ancient texts. However, Foucault looked at too narrow a selection of ancient sources, himself, to consider the *History of Sexuality* as anything more than a philosophical starting place in studying Roman sexuality. I will, instead, look at recent scholars who have studied Roman sexual morals and attempted to construct a wider

understanding of how Roman culture framed sex and pleasure. I will then apply Foucault's methods to the Rabbis' discourses on sex, looking for similarities and differences between the Rabbis and Roman moralists.

4. THE BIBLICAL *SOTAH* ORDEAL

THE TEXT

In *Discipline and Punish*, Foucault works with legal texts and accounts of judicial proceedings similar in nature to the *sotah* ordeal of Numbers 5.¹ He explores some of the general trends in the application of torture and public punishment in France of the eighteenth century, looking at how these events play out within society. Foucault looks at how the public application of corporal and capital punishment constructed a dialogue within society and at what that dialogue was saying.

Foucault names these forms of interrogation and punishment a “ritual”:

[T]orture forms part of a ritual. It is an element in the liturgy of punishment and meets two demands. It must mark the victim: it is intended, either by the scar it leaves on the body, or by the spectacle that accompanies it, to brand the victim with infamy[.] ... And, from the point of view of the law that imposes it, public torture and execution must be spectacular, it must be seen by all almost as its triumph.²

While Foucault is working with a different ruling structure in a different time, the spectacle in his work and in the *sotah* ordeal share some commonalities. Both attempt to mark the suspect, though the *sotah* ordeal has the potential for a positive outcome, and both intend to be a message to the wider community. Foucault also names these punishments political acts:

The public execution is to be understood not only as a judicial, but also a political ritual. It belongs, even in minor cases, to the ceremonies by which power is manifested.³

¹ Foucault, Michel. *Discipline and Punish: The Birth of the Prison*. Translated by Alan Sheridan. Reprint, [S.I.]: Vintage, 2009. For an example of a general legal overview, see the discussion of execution and torture on pages 32-33. For an example of a specific case, see the discussion on how public torture/execution was linked to specific crimes on pages 44-45. Further examples of both are throughout the chapter.

² Foucault, *Discipline and Punish*, 34.

³ Foucault, *Discipline and Punish*, 47.

The *sotah* ordeal is not carried out by the political power, the king of Judah, but by the religious power, the priests. Depending on the era, there is not much difference between the two seats of power, but the language used by each is different. This ordeal serves to establish the power of the priests in an otherwise civil arena. While Foucault's work examines a time and location far removed from the biblical text we are looking at, he deals with the same sort of physical ritual inflicted on a suspect, possibly as a public spectacle. We can apply his method to the *sotah* passage to show what the ordeal communicates, to both those who read it and those who witnessed it. To do this, I will work through the text slowly and look for choices and actions, as well as look for who is responsible for these choices and actions.

A note on the translation: the sematic field of the stem סנן covers areas of emotion which English would label "jealousy" and "zeal," while also including aspects of "hate" or "enmity." The Hebrew term lacks the Western social distaste for the idea of "jealousy" and presents this as an understandable (and correct) response in various situations. In my translation, I have opted for the idea of hate or enmity for this root in its various forms, as there is no lover present in this passage for the husband to be jealous of.

TRANSLATION—NUMBERS 5:11-31

¹¹Yahweh spoke to Moses:

¹²Tell the Israelites: Should there be a man whose wife has gone astray and has been disloyal to him, ¹³if a man has intercourse with her, and should this be hidden from the sight of her husband, and should she hide that she has become impure, and should there be no witness against her nor was she caught [in the act], ¹⁴then should a spirit of enmity come upon him, and he hate her and she is defiled,

or should a spirit of enmity come upon him and he hate her and she is not defiled,
¹⁵then the husband should bring his wife to the priest, and he should bring her offering with her, a tenth of an ephah of flour, without pouring oil upon it, and without putting spice upon it, as it is an offering of enmity, an offering of memorial, memorializing sin.

¹⁶The priest should draw her near and stand her before Yahweh.

¹⁷The priest should take sacred water in a clay pitcher. The priest should take some of the dust on the floor of the sanctuary and place it on the water. ¹⁸The priest should stand the wife before Yahweh and loose the [hair of] the head of the wife. He should place in her hand the offering of memorial, the offering of enmity. The priest will hold the cursing bitter waters. ¹⁹The priest shall have her swear; he shall say to her, “If a man has not lain with you, and if you have not turned away from your husband into defilement, then may you be free from these cursing bitter waters. ²⁰But if you have turned away from your husband, and if you have been defiled, and a man, other than your husband, has taken you to lie with him...” ²¹The priest shall make the wife swear these oaths, and the priest will say to the woman, “May Yahweh make you a curse and an oath among your people! May Yahweh make your thigh fall and your belly swell! ²²May these cursing waters come into your entrails to swell your belly and to make your thigh fall!” And the wife should say, “May it be so! May it be so!”

²³The priest should write these words on a scroll and then dissolve them into the bitter water. ²⁴He should make the wife drink the cursing bitter waters, and the cursing waters should enter her to embitter [her]. ²⁵The priest should take from the

hand of the wife the offering of enmity, and he should wave it before Yahweh, and then he should offer it upon the altar. ²⁶The priest should take a handful of the flour as an offering and he should burn it upon the altar. Afterwards, he should make the wife drink the waters.

²⁷He should make her drink the waters, and then it will be that should she have been defiled, should she have gone astray from her husband, when the cursing waters come into her to embitter [her] that her belly will swell and her thigh will fall. The wife will have become a curse among her people. ²⁸If the wife was not defiled, should she be clean, then she will be free, and she will bear seed.

²⁹This is the guidance for enmity when a wife has gone astray from her husband and is defiled. ³⁰Or for when a man, upon whom a spirit of enmity comes and he hates his wife, he shall make the wife stand before Yahweh and the priest should follow all this guidance. ³¹The man shall be free from sin, but this wife will bear her sin.

ANALYSIS

The *sotah* ordeal is presented as an option for a husband who has become suspicious of his wife but has no evidence that she has committed adultery. Should he feel strongly enough (the “spirit of zeal,” which will be discussed below), he can bring his wife to a priest, along with an offering, and the priest will perform a ritual to determine the woman’s guilt or innocence. The ritual is not explicitly a punishment for adultery, but rather an attempt to divine whether she has committed adultery. The priest accepts the offering, makes the wife swear an oath, and then feed her a mixture of “sacred water,” ash or dust, and the writing of the same oath. When she has drunk the

potion, the wife will either be untouched (should she be innocent of adultery) or have some sort of obvious physical reaction to the potion, likely involving her genitals (should she be guilty of adultery). The ritual does not offer a way to divine the identity of the male lover, but only to know the guilt or innocence of the wife. The men involved in the ritual (the husband, the priest, and the potential lover) are all absolved of any guilt. Strangely, while God is invoked in the oath, God takes no direct action in the ritual text.

Comparing this with Foucault's rituals of torture and execution, we find some similarities and some differences. As stated above, the ritual of torture was meant to "mark the victim."⁴ The *sotah* ritual does just that, though it offers both a positive and a negative mark. If the woman is innocent, she bears children (5:28). As depicted elsewhere in the Bible, bearing children is seen as a positive outcome for the wife.⁵ Meanwhile, should the wife have committed adultery, she not only undergoes a physical punishment ("her belly swells and her thigh drops"), but she would also "become a curse among her people" (5:27), meaning she would be infamous—marked by the ritual. Given the wording of verse 27, this also shows the power of the ritual (and thus the priests) to the wider society, just as Foucault names the rituals of torture and execution methods of showing the power of the monarch to society. One of the major differences between the *sotah* ordeal and Foucault's definition of torture is that the *sotah* ordeal does not physically punish the innocent wife. While she is still made to submit to the social stigma of the ordeal, she is untouched by the potion (or perhaps made fertile by it, a positive outcome). In Foucault's rituals, the suspect "always deserved a certain punishment; one could not be the object of

⁴ Foucault, *Discipline and Punish*, 34.

⁵ A positive outcome from the point of view of the male audience, at least. We do not know how much women of the era desired pregnancy, especially given the medical risks of pregnancy at the time. The book of Ruth would seem to present having a child as a positive experience, but as Naomi and Ruth are both widows, the child provides them legal standing they did not have previously. Likely, women's desire for children varied by circumstance.

suspicion and be completely innocent.”⁶ Other similarities and differences will arise while working through the text of the *sotah* ordeal on a more granular level, but Foucault’s analysis will help us identify what the text of the ordeal is saying and how it is saying it.

The *sotah* passage opens in Numbers 5:11-12a with the statement, “Yahweh spoke to Moses: ‘Tell the Israelites:’” The ordeal is presented as divinely ordained. The ordeal is endorsed by God and thus its outcome will also, by implication, be endorsed. Further, Yahweh guarantees the ordeal will produce results. This kind of divine framing is standard for revelatory law and ritual in the Pentateuch. Some rituals are extrapolated or built from narrative events. The *Pesach* ritual is presented as a mix of divine decree and narrative events. Exodus 12 reads as a divine decree about a ritual, like the *sotah* ordeal, but *Pesach* is a set of instructions that the Israelites are to carry out immediately, as well as ritualize in the future. In the case of the *sotah* ordeal, the outline of the ordeal is divinely dictated, but we have no record of it being implemented. The *sotah* ordeal is described as a procedure pertaining to a potential crime, similarly to the casuistic laws in much of the Covenant Code and Deuteronomy. This kind of discourse in the *sotah* ordeal implies that the ritual is prescriptive, and that God is going to stand behind the outcome. The order to tell the Israelites makes the content of the ordeal public. This text is not particular knowledge only for priests, nor are these legal descriptions which function only within the judicial system. This text is a public decree, the contents of which are to be known by the wider population. How the decree is to be disseminated will vary considerably at different points in history.

⁶ Foucault, *Discipline and Punish*, 42.

The ordeals Foucault studied are also known to the public. Public torture and execution serve multiple purposes to their audience. By witnessing the punishment for certain crimes, the watching crowd is warned against doing those act themselves.⁷ By witnessing it, they also become a part of the punishment, and as such, the “vengeance of the people is called upon to become an unobtrusive part of the vengeance of the sovereign.”⁸ The crowd serves as both witness to power and hand of that same power. Further, witnessing the punishment of the crime serves to remind the crowd that crimes will be punished. Deuteronomy 19:20 makes such deterrence explicit, as it says that those who witness punishment will remember and not do the crime which is being punished.

The torture and execution Foucault examined are at the behest of the state and serve as punishment to a crime, though torture also serves an investigative purpose. The *sotah* ordeal is written as part of the religion and framed as a divination. Rather than the sovereign, it is the priest who holds power in this ritual, as the intermediary for God. Whether the *sotah* ordeal was public or not depends a lot on how one imagines it being carried out—in a sanctuary or at the Temple. Lacking an actual description of the ordeal, we can only conjecture, though the fact that the ordeal had taken place was likely to be public enough, especially given the end of the passage’s claim of infamy for a guilty wife. As the opening lines of this ordeal state that Moses is to tell the Israelites about it, the existence of the *sotah* ordeal is presented as public knowledge: people know the ordeal is possible, even if they do not know of a specific occurrence of it. A public declaration of the law serves to remind the public of the existence of the ritual, serving as a deterrent against adultery.

⁷ Foucault, *Discipline and Punish*, 58.

⁸ Foucault, *Discipline and Punish*, 59.

The next section of text, 5:12b-14, describes when the ordeal is to be invoked. There are three people involved in this section: a husband, a wife, and another man. Each is described as to their situation. The husband has had a “spirit of enmity” come upon him and he suspects his wife of adultery but has not caught her *in flagrante*. This state of hate or enmity with his wife is not the desired state between spouses. Further, this enmity may or may not be justified, depending upon his wife and her past actions. The wife has two possible states: either she is defiled, because she has committed adultery, or she is not defiled, as she has not committed adultery. The state of the husband is unchanged by the actual state of the wife: in both cases, the text holds that he may be afflicted by a spirit of enmity. Without this emotional state, the husband has no need of this ritual. The third person, the other man, may or may not exist, depending on the past actions of the wife. The existence of the *sotah* ordeal also limits the husband’s reactions. Rather than allow the emotional state of the husband to excuse any action the husband might take, the ordeal prescribes a legal process for him to follow. Despite the husband’s emotions, he is to rely on the *sotah* ordeal to provide a resolution, not his own action.

The description of the wife’s possible adultery is significantly longer and more detailed than the description of the chaste wife. The text lingers in verse 13 on the act itself, its hidden nature, and the wife’s state of uncleanness. While the verse is rendered above as “a man has had intercourse with her,” the text is וַיִּשְׁכַּב אִישׁ אֶת־הָאִשָּׁה שְׁכַבְתָּ-זָרָעָה, “a man lay with her, ejaculating.” The discourse draws attention to the act of ejaculation. By dwelling on the salacious details, the text focuses its audience on the illicit acts. The other man has ejaculated with the wife, potentially in the wife, implying an illegitimate pregnancy. These details serve to highlight the potential justification of the husband’s feeling of enmity toward his wife. However, the husband is not described as becoming angry or feeling enmity towards his wife; rather, the spirit of enmity falls

upon the husband. This spirit absolves the husband from being responsible for his emotions: after all, it is the spirit who is causing them. While it is true this may be an idiomatic phrase in the language, the use of this idiom, rather than any of the many other phrases about experiencing emotions in biblical Hebrew, is a choice. This choice to use a spirit as the source of the emotion shifts the blame for the emotion from the husband to the spirit. The focus of the text is on two things: the unknown fidelity of the wife and the spirit of enmity on the husband.

Thus far, little choice or agency has been described: the discourse removes agency by how it phrases each of the steps of the ritual. The description of the husband's emotions is such that they are beyond his control. The text goes so far as to imply some outside spirit which brings the enmity the husband feels toward his wife. The husband has been able to invoke the ordeal, but even that is framed as the logical reaction to the husband's emotional state. The other man, existing only potentially, has no agency, implied or otherwise. While a man caught *in flagrante* with another man's wife would be guilty, in this case, the man is only there because his existence is a necessity for the potential crime of adultery. Even with only a potential existence, it is the male adulterous lover who performs the sex act. Verse 13 reads וְשָׁכַב אִישׁ אֶת־הָאִשָּׁה שְׁכַבְתָּ-וְזָרַע "if a man has had intercourse with her," the potential man is the actor, and the wife the object of that act. Yet, the wife is the only one with any potential choice or agency. She is the one who is described as possibly having committed adultery. Her lover could potentially be married as well, though the laws about sexuality all assume men could have multiple partners, if none of the women were married to another man. Her unknown status is the source of her husband's enmity and discord in the marriage. The ordeal has been framed in a way that it is to resolve a husband's distress, distress which he himself is not responsible for causing, either by past action or because of his current emotions. The wife is responsible for her husband's emotional state, as she is the only

one with implied agency, albeit for an action in the narrative past of the ordeal. The ordeal serves to reveal her past actions and resolve the husband's emotional state.

In Foucault's study, torture and execution also needed to serve a purpose. "If torture was so strongly embedded in legal practice, it was because it revealed truth and showed the operation of power."⁹ Foucault argues that torture served to bring the crime into the public view, to reveal what it was that was causing power to afflict such things on a subject. The *sotah* ordeal serves to bring to light the past actions of the wife, and thus justify (or not) the husband's emotional state. If the wife is found guilty, then the husband's emotions are justified, and the recompense for the emotions is physically written onto the wife's body. Just as Foucault's tortures expose the criminals' crimes upon their bodies, so does the *sotah* ordeal make infamous the wife's adulteries through physically marking the parts of her body associated with the crime.

In verse 15, the husband is given an action to perform: to bring his wife and a prescribed offering to the priest to initiate the ordeal. The husband is provided with a method to resolve his emotional state. How this plays out is given in the ordeal text itself, which follows, but it is the husband who takes the wife and the offering to the priest. The wife cannot initiate the ordeal to prove her innocence. Nor can the priest or another outside individual initiate the ordeal. The husband stands as the only injured party of the potential crime. He is the only one in distress about the situation, though one presumes the wife becomes distressed, at least after accusations are made, the text does not record the wife's expected emotional state. Within this framing, the potential adultery is a personal crime: the husband is the affronted party and as such, has the right to institute the investigation.

⁹ Foucault, *Discipline and Punish*, 55.

The offering to be brought is a “tenth of an ephah of flour.” This flour is not to be brought combined with oil or spice. Oil and spices are used for standard grain offerings, as we see in Leviticus 2. The *sotah* offering is to be plain, as it is called an “offering of enmity” and an “offering of memorial, memorializing sin.” The *sotah* offering is distinct, lacking the oil and spice which would have made it more enticing, elements which other offerings include. The lack of spice and oil would make the kind of offering being made more obvious to those who could observe the offering: if someone were to show up with the flour, but no oil or spice, then what they were doing there would become apparent. This distinction assumes that the offerings listed in the biblical texts are relatively comprehensive. It is conceivable that there could be offerings not recorded with similarly plain components. Working within the extant texts, this offering is distinct.

The offering is given two names: enmity and memorial. The first name focuses on the discord between the husband and the wife, brought about by the spirit of enmity in the husband. The second focuses on the (potential) sin the wife may have committed. The ordeal text does not say this offering is to absolve the sin, simply that this offering is required for the ordeal, payment to God and to the priests for resolving the enmity between husband and wife. The dual names for the offering stress the uncertain status of the wife. Just as the wife is one of two things, the offering is one of two things. The offering either represents the enmity which has come between husband and wife, if there has been no adultery, or it serves to identify the sin which caused that enmity, if the wife has committed adultery. Considering the pair of names and the bareness of the offering, it is marked as distinct from other offerings: this offering is not a sin offering for the wife’s potential guilt. By making the offering distinct, the text stresses the unusual character of the ordeal and its circumstances. The husband is given a distinct option specifically to address

his emotional state and what may have caused it. Further, the ordeal does not absolve the wife of any potential guilt, as we will see at the end of the text.

Foucault does not explicitly cover the economics of torture and execution. In the system he describes, the state pays for all interrogation and execution expenses. No one pays the state for justice, at least not overtly. The offering in the *sotah* ordeal is in effect payment for the ritual. It is specific, such that one cannot covertly begin the ordeal. The husband is the one funding justice here, as well as the affronted party. Below, I will discuss how the sovereign in Foucault and the husband of the *sotah* share other aspects of power.

The next verse (16) instructs that the priest should bring the woman before Yahweh, introducing the divine into the process of the ordeal. The woman is thus passed from mundane space to sacred space, from the ordinary world to the presence of the divine. This is the liminal moment when the ordeal begins. The husband has brought the woman to the priest to start the ordeal, but it is the priest bringing the woman before Yahweh which begins the ordeal proper. The text does not give the priest a choice in beginning the ordeal; rather, it prescribes that if the husband has brought the necessary elements, namely his wife and the offering, then the priest is to begin the ordeal itself. The priest cannot insist upon a certain amount or kind of suspicion or evidence.

Yahweh's presence in the ordeal serves to certify the results of the ordeal. Yahweh would appear to serve as judge, but as we move through the ordeal, we see that Yahweh does not explicitly act or judge, but rather serves as a witness to the ordeal. Yahweh makes no direct action to influence the ordeal, nor is it Yahweh's action which discloses the final verdict. Yahweh's presence does mean that all the participants are to accept the outcome of the ordeal without question, but Yahweh takes no direct action.

In verse 17, the priest takes “sacred water” (מֵי קֹדֶשׁ) and mixes in ash or dust (רֶעָפָר) from the floor of the sanctuary. The sacred water is unique to this ritual. While water serves several liturgical purposes in the Bible, none of them refer to such water as sacred. Leviticus 16:24 has Aaron bathing in water in a holy place, but there the place is sacred, not the water. The term “sacred” could simply mean water set aside for the ordeal. The text does not describe what makes this water sacred. The ash or dust mixed into the water could be many things, from the dirt collected on the floor over time to the ash remains of burnt offerings. Even if the ordeal is referring only to the dirt on the floor of the sanctuary and not ashes from sacrifices, the dirt’s nearness to the place of sacrifice means that it is already particularly holy. The water and the ash are blended to make a doubly sacred potion. In addition to the sacred nature of the components of the potion, the ritual is taking place לִפְנֵי יְהוָה “before Yahweh.” This phrase could be interpreted as physically near Yahweh but could also mean under Yahweh’s scrutiny. In either case, the Divine is particularly interested in the ordeal. Thus, God is not only present for the ordeal, but the key item of the ordeal is itself suffused with divine presence, if not divine action.

The priest functions here like the magistrate in the legal systems studied by Foucault. That magistrate was charged with finding out the truth, but to do so secretly and quickly.¹⁰ While the magistrate could accept any sort of evidence or testimony they wanted, there was a structure to any potential evidence, with the ultimate evidence being the confession.¹¹ Foucault is studying a wider array of crimes, and as such there is no one system for determining truth. Just as the monarch (or his functionaries) would bring the accused to the magistrate to determine guilt, the husband brings his wife to the priest. The priest functions like the magistrate in that his

¹⁰ Foucault, *Discipline and Punish*, 35.

¹¹ Foucault, *Discipline and Punish*, 38.

appointed task is to determine the guilt or innocence of the husband's wife. Yet, the priest is presented with a single method to do this: the *sotah* ordeal. The priest is not given the task to seek out the potential lover or to interview potential witnesses. Rather, the priest must go directly to the ordeal. According to Foucault, the magistrate also had certain rules which must be followed, though given the wider range of situations covered, these were less prescribed than the single ritual.¹² Even torture was "a strict judicial game," with rules about exactly what, and for how long, could be done to the accused under interrogation.¹³ While the magistrate had more options available, both he and the priest had prescribed means to ferret out the truth of the situations they were charged with investigating.

Foucault describes how the magistrate had strict rules to follow when applying torture. There was something of the trial-by-ordeal in torture: if the accused held out through the most stringent tortures allowed to the magistrate, they would be cleared of the charges, or at least have the death penalty removed from possible punishments.¹⁴ Torture was a tool "that 'produced' truth according to a ritual."¹⁵ The *sotah* ordeal has more of the traditional trappings of religion in it (sacred materials, sacred space, a priest as functionary), but both it and the judicial torture Foucault describes were rituals. These rituals served the function of producing truth, and both had strict rules of how they were to proceed.

In verse 18, the priest stands the wife before Yahweh and unbinds her hair. This uncovering may simply be a symbolic act through which the ordeal seeks to uncover the wife. It is unclear whether women were required by law or custom to cover their hair, though by the time

¹² Foucault, *Discipline and Punish*, 36.

¹³ Foucault, *Discipline and Punish*, 40.

¹⁴ Foucault, *Discipline and Punish*, 41.

¹⁵ Foucault, *Discipline and Punish*, 41.

of the Rabbis, women were required to cover their hair in public.¹⁶ By undoing whatever held her hair, the priest has shifted the woman from her public coifed self, revealing her private self, the one not covered, to shame her. The priest's act foreshadows the purpose of the ordeal: to bring private actions into the divine (and possibly public) view. The text reiterates that the wife has been placed before Yahweh, making the events which are occurring now clearly in the view of Yahweh. If the ordeal is done publicly, this also shifts her private actions into the public view. The text gives no direct indication of an audience. In verse 27, a guilty verdict brings infamy to the wife, so even if the ordeal's performance is not public, its outcome is. Just as the hair of the wife is exposed, so shall the possible adultery be exposed. The *sotah* ritual acts just as torture does for Foucault: it serves to determine a private crime and make it publicly known.¹⁷

The priest then places the offering into the wife's hands, with the text continuing to use dual names for the offering. This duality stresses the wife's dual status: both potentially adulterous and faithful. The priest himself holds the waters, though now they are named "cursing bitter waters" (מִי הַמְּרִים הַמְּאָרְרִים). The blending of the dust and water have made something new, which is bitter and potentially afflicts those who drink it. The construction of the phrase here is awkward. While we might expect "bitter" to be an adjective, here it is placed as an absolute substantive, with "waters" in the construct at the beginning of the phrase. Thus, the term is not (just) describing the taste of the water, but rather that the waters are "waters of bitterness." While other phrasing could be used, the terms as constructed create assonance, adding poetic weight to the potion being created and stressing that the bitterness is not just about taste.

¹⁶ Leila Leah Bronner, "From Veil to Wig: Jewish Women's Hair Covering," *Judaism* 42.4 (1993): 466–68.

¹⁷ Foucault, *Discipline and Punish*, 34.

The priest continues to serve the ordeal and the divine as functionary, carrying out the actions which much occur for the ordeal to make its revelation. The priest creates the waters and presents of the wife before Yahweh. The text assumes the priest is to make no judgment or choice himself, as his actions are to be the same regardless of the wife's guilt. The priest is there to carry out the steps of the ordeal and to be sure the steps taken by others are carried out correctly.

The priest serves as a functionary of the divine, but God does not take direct part in the ordeal. When the wife drinks the potion, God takes no action in how it affects the wife: the water of the potion acts on its own. Nor does God touch the potion or take any other action. Rather, God is invoked as witness and guarantor of the ordeal, while the potion is constructed of things near to God. The text offers no explanation of why God takes no action. Similarly, in Foucault, the monarch takes no action in public torture or execution, but rather a functionary is tasked with a set of actions which they are to perform for the monarch.¹⁸ Power sits nominally with God or the monarch but is granted to their functionaries (the priest and the magistrate, respectively) to carry out these ordeals. Within the ordeal, the priest becomes the agent of God within the ritual. The discourse of the *sotah* ordeal imbues the priest with the power of God.

Verses 19 and 20 contain instructions for the priest to make the wife swear the central oath of the ordeal. The *hiph'il* of שבע grants the priest agency in this sentence: he is the one who is making the wife swear—the wife does not act of her own volition. The oath itself presents two conditional statements. First, the oath states that should the wife be guiltless of adultery, the waters will not affect her. The oath is phrased with a double protasis: if another man has not lain

¹⁸ Foucault, *Discipline and Punish*, 35.

with the wife, and if she has not turned away from her husband. It removes the sexual act itself from the wife's agency: instead, it is the other man who would have had sex with her. The second part of the protasis *does* grant the wife agency, though. In it, the wife would be the one who has made the choice and taken the action to move away from her husband, into defilement. While she is not the active agent in sex, the wife is culpable for her state of defilement. The first part of the oath covers the absence of conditions, thus the apodosis of the conditional is that the wife would be free of the effect of the cursed water. The double protasis stresses the potential seriousness of the issue at hand, while at the same time granting the wife agency only for her possible state of defilement.

When we move to verse 20, the text continues to the other side of the oath, which applies if the woman has committed adultery. Here, there is a three-part protasis: if the wife has turned away, and if she has become impure, and if a man other than her husband has lain with her. Each of these conditions approaches the situation differently. In the first, the wife has made the choice to turn away from her husband. She is clearly responsible for her action. In the second, the wife's status is discussed. She has become impure from an implied sexual encounter. In the third, the wife no longer has agency, but instead a man not her husband has had sex with her.

While the first protasis in verse 19 starts with the denial of a sex act and then goes to the wife's status, the second protasis from verse 20 begins with the wife's choice (which is absent in the first), then the wife's status, and ends with the potential lover's performing sex on her. This shift changes the stress placed on the elements of the statements. In the first protasis, it is the lack of adultery which is stressed, giving the wife the default status of not being defiled. In the second protasis, the wife's "going astray" becomes the focus, with the results elaborated afterward. This

shift in order stresses the wife's past choice, implying that it will dictate the outcome of the ordeal.

The discourse shifts in verse 21 to narrative text, reminding us that the priest is making the wife swear this oath, before continuing to the apodosis in the second half of 21 into verse 22. The interruption breaks the flow of the discourse. Instead of a simple "if you were good, great; if you were bad, terrible," progression, the text stops and reminds us who is speaking. The discourse stresses who is the actor, who is doing the act, solidifying the priest as in control of the oath. The interruption could be either purposefully giving Yahweh a slightly more active role or merging two versions of the oath. Given that I am focusing on the final form of the ordeal, the reason for the insertion is immaterial, especially given that Hellenistic and Roman era readers would not have questioned whether this was the original form. This interruption comes just before invoking the divine name. By stressing the priest as the speaker, the text would keep Yahweh distanced from the potentially impure wife brought before him. While the wife may be clean, the ordeal has not yet established this, and so the divine needs to be protected from the possibly impure nature of the wife. Further, it stresses that the priest is making the woman swear: she is not speaking the oath on her own. The wife is denied agency again by the discourse of the ordeal.

The oath continues in the latter half of 21, and says that should the wife have committed adultery, Yahweh will make her a curse among her people, that her "thigh will fall" and her "belly swell". The wife affirms this oath with a simple "אמן אמן" or "May it be so; may it be so." The discourse of the ordeal does not have the wife speak any more than this. She need not speak the words of the oath themselves, but instead simply affirms the words of the priest in the

presence of God. While the Rabbis will attempt to make meaning of the double Amen, this is a standard response to such an oath, such as in Nehemiah 8:6.

Foucault examines confessions, which serve a similar purpose to the oath. In the cases studied by Foucault, confession by the condemned serves several purposes. First, it makes the condemned part of their own condemnations: it is not power arbitrarily assigning punishment, but the condemned accepting it.¹⁹ Second, it serves as a public announcement of the truth of the crime.²⁰ Finally, it connects the punishment to the crime.²¹ The public confession justifies power's use of violence on the condemned, and even power's previous use of violence to procure the confession. For the *sotah* ordeal, the oath comes before any possible punishment. Nothing has yet been inflicted upon the wife's body; only her social status may have been touched by the invocation of the ordeal. By swearing the oath, the wife agrees with the possible outcomes of the ordeal. As she is not given a choice in the swearing of the oath, this may not justify the outcome to a modern reader, the ancient audience accepts her oath, forced or otherwise. The oath also serves to connect the ordeal with the potential crime by reciting the possible crime in the oath itself. The discourse of the oath also connects the outcome of the ordeal—both possible ones—to the potential adultery (or faithfulness) in the past.

The medical details of what will happen if the wife has committed adultery are uncertain. Presumably, the ancient audience has some idea of what was intended by the wife's belly swelling and her thigh falling. Tivka Frymer-Kensky suggests that this may be describing a flooding of the uterus followed by uterine prolapse, a condition in which the uterus falls partially

¹⁹ Foucault, *Discipline and Punish*, 43.

²⁰ Foucault, *Discipline and Punish*, 43–44.

²¹ Foucault, *Discipline and Punish*, 44–45.

out of the vagina.²² However, modern medicine does not know of any method to chemically induce uterine prolapse. As it is encountered today, uterine prolapse is caused by multiple pregnancies and vaginal births, and it is not something which can be induced through any known medication or herb.²³ While it is potentially possible that some lost herb or concoction could have been used to cause stress akin to multiple labors and deliveries of children, it is unlikely this is the case. If we need a physical reaction to the *sotah* ordeal, what is described could be some sort of abortion. “Thigh” and other parts of the leg are often used as euphemisms for the genitals, and something falling from the vagina, such as an aborted pregnancy, would be a suitably dramatic sign, but this is conjecture. Abortifacients were known in the ancient world, but it is unclear if the ingredients of the potion would have included such things. The ordeal text simply assumes that the guilty outcome will be obvious and dramatic for those observing it, and that it is not necessary to mention how the outcome would have come about.

In verse 23, the priest writes out the oath, including the divine name, and then dissolves the oath into the water. Through this act, the words of the oath become the potion which will test the wife’s honesty and fidelity. The oath is physically joined to the act which will verify it. The potion will be doing the action in this ordeal, not Yahweh. Verse 21b does call on Yahweh to curse the wife if she has been unfaithful, making Yahweh the source of the potion’s power, but verse 22 switches to the water as the cause of the wife’s physical signs. In verse 19, when the wife has been faithful, it is also the water from which the wife is protected, not Yahweh. The priest, the husband, and Yahweh cannot take any action which could affect the outcome of the ordeal once the potion is taken. The husband is not present for the ordeal (he is not brought

²² Tikva S. Frymer-Kensky, “The Strange Case of the Suspected *Sotah* (Numbers V 11-31),” *Vetus Testamentum* 34, no.1 (1984): 18–21.

²³ Nicole Boersma, MD, private correspondence.

before Yahweh, as the woman is). The priest does take actions, but they are carefully dictated by the ordeal itself. He makes no choices about what to do or when to do it. While Yahweh is invoked and asked to take future action depending on the wife's status, Yahweh takes no explicit action during the ordeal itself. The wife takes no current action in this process, either; her past choice dictates which conditional statement will apply to her.

Yahweh's inaction in the *sotah* parallels the monarch's lack of direct action in Foucault. While both are the sources of power behind their respective rituals, neither takes direct action against the accused. The sovereign, who was responsible for waging war against external enemies, could turn that same violence against internal enemies.²⁴ The criminal was someone who, "by breaking the law... [had] touched the very person of the prince."²⁵ To break a law was in effect to deny the sovereign's right to rule; therefore, breaking any law had to be punished. But in both war and punishment, the sovereign did not need to take any direct action. While monarchs could ride forth in war, they were often not a deciding factor in military success. Similarly, while the monarch might witness an execution, the monarch would not swing the ax. The *sotah* ordeal has no monarch; instead, there is both a husband and God.²⁶ The function of the monarch is split between the two. It is the husband who can invoke the ritual and accuse his wife, just as the crown could charge a magistrate to investigate. The husband initiates the ordeal, the husband provides the cost of the ordeal (the offering), effectively making the husband the acting source of power, akin to the sovereign in Foucault. God serves as an implied source of power for the ritual, with the priest serving as the proxy of the power of the Divine. While God takes no

²⁴ Foucault, *Discipline and Punish*, 50.

²⁵ Foucault, *Discipline and Punish*, 49.

²⁶ It is possible the *sotah* ordeal was known and even practiced during the kingdoms of Judah and Israel. However, the *sotah* text makes no mention of a monarch, and we lack any textual evidence of this ordeal being used in either kingdom.

direct action during the ordeal, the potion is constructed from multiple elements associated with God. While the text has the potion performing the actions, the text implies God is the source of the potion's power. While God does not act, God is present through the ordeal and infused into its elements. God serves to legitimize the proceedings and act as a source of power—through the priest, God's intermediary, the husband can achieve his goals.

In verse 24, the priest makes the wife drink the potion, and the potion enters her. This sentence could have been phrased as “the wife drinks the waters.”²⁷ Instead, the text first uses a *hiph'il* for the priest's action, and then makes the water the actor in the second clause. The text goes so far as to construct the strange phrase of the water “entering” the wife, instead of using a verb associated with drinking. The phrase, **בא**, is used to refer to sex, though not exclusively. The choice of this phrase may be sexual innuendo, with the water entering the wife just as the potential lover may have entered her. This phrasing also avoids granting the wife agency. She had no choice or action to take, even when the ordeal requires her to drink the waters. Instead, the agency is given to the priest and the water itself, rather than the wife. The wife is left again with nothing to do but follow the ordeal passively. As we have seen in the opening verses of this passage and will see in other passages, women are not expected to take an active role in sex, at least from the text's phrasing. Rather, sex is something done to women, and here the drinking of the potion is also something being done to the wife, to reveal if she let another man “do the sex” to her. Sex as something done to women forms part of the “discursive practice,” to use

²⁷ The verb may have to change stem as well as binyan to do this, as the verb stem used, **שקה**, is used primarily in passive or causative stems.

Foucault's term, of the culture.²⁸ Generally, the discourse does not depict women as the agent of sexual acts.

The following two verses, 25 and 26, return to the priest and give him directions on how to handle the offering. Before the wife is made to drink, the priest takes the offering from her and presents it to Yahweh, burning a portion of the flour on the altar. The offering is here only presented with one name, "the offering of enmity," rather than the dual names it had earlier. The shift in naming may simply be for the flow of the text. But by shifting to one name, the text of the ordeal may be signaling that the wife's double status will become one. When the offering had two names, the wife had two potential states. Now, with the offering having a single name, the wife's actual status will be revealed. She will exist in one state or the other.

This name, "the offering of enmity," is used to stress that this is *not* a sin or guilt offering—this offering is not to absolve the wife's sin, but is because of the emotions of the husband, which are present regardless of the actual status of the wife. The presentation of the offering is like other grain offerings described elsewhere, such as in Leviticus 2. The largest difference between the *sotah* offering and other grain offerings is that the *sotah* offering is forbidden to have oil or spices with it. This difference marks the offering as special, but it is otherwise presented to Yahweh in a manner like other grain offerings.

Verse 26 ends with a reiteration of the priest making the woman drink the waters. By inserting the offering text here, the text reiterates where the ordeal is taking place: the sanctuary. The presentation of the offering interrupts the drama of the drinking of the potion, reminding the reader of the sacred location, and at the same time, drawing out the conclusion of the ordeal.

²⁸ Michel Foucault, *The Archaeology of Knowledge: And the Discourse on Language* (New York, NY: Harper & Row, 1976), 117.

The ordeal continues in verse 27, once again restating that the priest is making the wife drink, and that it is not the wife taking a drink for herself. The text splits again into two possibilities: the wife has previously committed adultery or the wife has not committed adultery (in verse 28). The first conditional statement covers the case in which the wife has committed adultery. The statement offers a double protasis: “if she has been defiled and if she has gone astray from her husband.” The first protasis is a passive construction, so again the wife has taken no direct action. The second protasis does describe an action the wife has taken, though it is one in the past. Again, the ordeal leaves little current action for the wife—there is no active defense she can take. The phrasing here differs from the phrasing used in the oath of verse 20. While it uses the same phrases, it does so in a different order. In the oath, the wife’s action of turning away is first, which is followed by her status as defiled. Here, when the oath is fulfilled, her status as defiled is mentioned first, followed by her causative action. The oath also has a third element to its protasis: the potential lover’s act of sex is explicitly mentioned. In the fulfillment of the oath in verse 27, the lover and sex act are not explicitly mentioned. The oath requires the nature of the defilement to be explicitly stated; the water of the ordeal does not. Here, where the oath is tested, it is the wife’s potentially defiled state which determines the outcome, so it is mentioned first. The wife’s action of going astray is only mentioned to remind us what kind of defilement is being addressed, but the ordeal need only a reminder, and so the sex act itself need not be mentioned.²⁹ If the wife is in a state of defilement and she has taken the action to go astray from her husband, then the waters will make her bitter—again, an action done to her. Her belly will swell, and her thigh will fall. The wife also becomes a sign for others among her people,

²⁹ Additionally, mentioning the absent lover at this time, when the oath’s outcome is being inflicted, would draw attention to the fact that the male lover is not affected by this ordeal. The lover gets away with adultery: it is only the wife who is punished.

presumably a warning to other wives and an assurance to husbands that adultery will be found out and punished.

Verse 28 continues with a second conditional, also with a double protasis. The first again is passive, “if the wife was not defiled,” again removing agency from the wife. The second protasis is stative, simply describing the wife as “clean.” Compared to the oath’s conditional for the case of the faithful wife, this conditional changes the language, but not the order. Both this conditional and the oath conditional’s protasis in verse 19 end with the declaration of the wife being clean. They reach that end in different ways. The oath starts with the statement, “if no man has lain with you,” which removes the wife’s agency in the sex act, as mentioned above. The result protasis in verse 28 begins with “the wife was not defiled,” again in the passive. Both conditionals start without agency for the wife. The second clause of the oath protasis is that the wife has not “turned aside into uncleanness,” granting her some bit of agency. Verse 28’s second clause is “she is clean,” a simple statement of her status, without action or even negated action (“did not turn aside”). While there is some similarity of order, the oath statement grants that the wife had a choice. In the conditional describing the results in verse 28, the wife is simply described by her status: no action nor inaction has been assigned to her. The apodosis of verse 28 states that the wife will be free from judgment and will bear seed, presumably for her husband. The ritual does not address the wife’s treatment or emotional state after having been tried for a capital crime. Having been justified, the wife is rewarded with what a patriarchal society wants from women: children.³⁰

³⁰ Athalya Brenner, *The Intercourse of Knowledge : On Gendering Desire and “sexuality” in the Hebrew Bible* (Leiden; New York: Brill, 1997), 55–56.

The affliction of the guilty wife's body serves to both reveal her adultery and (at least begin) to punish her for it. In Foucault's work, judicial torture (torture seeking evidence) was also a means to both investigate and punish a crime: "the regulated pain involved in judicial torture was a means both of punishment and of investigation."³¹ Torture could justify itself if evidence (a confession) were produced. Similarly, the *sotah* ordeal's method of revelation justifies itself: the wife will only be physically afflicted if she is guilty. Should she be innocent, she may suffer socially for the accusation, but will eventually produce children, which as mentioned before, is considered a social boon. Foucault's suspect suffers more physically than a faithful wife subjected to the *sotah* ordeal, but in both cases the physical punishment is seen as justified, given the evidence they produce.

The end of the description of the ordeal closes with a reference to what the ordeal is for. Verses 29 and 30 explain that the ordeal is the action to take when a husband suspects his wife of adultery, whether she has done it or not. The text again describes the wife who has committed adultery as one who has "gone astray from her husband and is defiled." Here, the case of the blameless wife is not described. Instead, the text states that a spirit of enmity has come upon the husband, causing him to hate his wife. While this may have been abbreviated to close the passage, the text is still removing agency from the wife, focusing on the emotions of the husband (and again invoking this spirit of enmity as the source of the emotions, not the husband himself). The wife is not credited for her fidelity; instead, the only named action for a wife in these closing verses is that she might have gone astray. The ordeal, started by the husband's emotional state, is about justifying the husband's emotions, ones for which he himself is not held responsible.

³¹ Foucault, *Discipline and Punish*, 42.

If the *sotah* ordeal is about the husband's emotions, what of Foucault's described spectacle? While civil law might have sought to rebalance society, the criminal code of the time had a different goal:

[T]he punishment is carried out in such a way as to give the spectacle not of measure, but of imbalance and excess; in this liturgy of punishment, there must be an emphatic affirmation of power and of its intrinsic superiority. And this superiority is not simply that of right, but that of the physical strength of the sovereign beating down upon the body of his adversary and mastering it[.]³²

The sovereign expresses their anger through the violence of the punishment. The excess in punishment displays that power will not tolerate assaults upon it. That those who have “touched the very person of the prince” must be physically put in line.³³ The sovereign is not explicitly said to be angry, but the violence of their response implies an anger at the affront to be punished. The *sotah* similarly inflicts physical marks upon the wife's body for the emotions of the husband. In both cases, this violence is represented as the natural course of events following such assaults on the seat of power, and the violence is done to the accused through the proxies of power. The proxies claim the power of those they represent and use that power violently on the accused.

The final verse of the passage, verse 31, states that וְהָאִישׁ “the husband” will not bear any responsibility for the outcome of this ordeal, though the wife is responsible for any discovered sin. This verse states that the husband is not responsible, should the accusation of adultery against his wife be false. In ancient Near East law, bringing a false accusation often meant that the plaintiff would be punished with the punishment that he tried to bring upon the defendant.³⁴ The discourse states that the husband is exempted from any punishment for a false accusation,

³² Foucault, *Discipline and Punish*, 49.

³³ Foucault, *Discipline and Punish*, 49.

³⁴ See the first four of the Laws of Hammurabi for prime examples of this.

much as the husband is also not held responsible for his emotional state in the ordeal itself. The text does not indicate concern for a male adulterer free and unpunished in the community, as the only emotional concern in the ordeal is for the husband. The wife is responsible for any sin discovered. In the case of a false accusation, this would mean the wife is responsible for making her husband doubt her enough to accuse her of adultery. While she may be found innocent, she is offered no recompense for going through the ordeal, except the possibility of children, presumably with the man who just accused her of adultery. The ordeal then becomes both a method for finding guilt, if the wife is guilty, and punishment for causing the husband's suspicion, if the wife is innocent of adultery. In the case of a guilty wife, this passage would mean she has been found guilty of adultery and presumably, that she should face the penalty for adultery: death. If the wife survives whatever the outcome the text describes as "her belly will swell, and her thigh will fall." It should be noted that while death is the penalty for a guilty verdict in other legal texts on adultery, the *sotah* ordeal itself prescribes no further action against the guilty wife. While other cultures would use ordeals as a source of evidence against a defendant, it is unclear how this ordeal fits into the legal system at large. I will address this later, but as we lack texts or other evidence showing the use of this ordeal, any conclusions are at best speculative. We will see how later readers will assume either further punishment, or that the *sotah* ordeal itself was lethal.

THE *SOTAH* IN CONTEXT

Analyzing this passage presents some challenges, one of the most prominent being that we do not know the context in which to place the *sotah* ordeal. Further, the text of the *sotah* ordeal likely started in one context, and then was placed within a later discourse. By doing this, the redactors of Numbers took the *sotah* ordeal text and put it into their legal discourse. As the

ordeal was likely not practiced in these later contexts, it is possible that redactors altered the discursive framing of the ordeal, effectively changing its function. As discourse cannot happen in a vacuum, when and where we place this text will affect what meaning the discourse has.

The contexts for the laws and legal scenarios of Numbers and the wider Pentateuch are generally unavailable. There is a wide range of opinion as to when and where these texts originate: scholars such as James Hoffmeier might date the origin of the text close to the events the narratives within it depict, while other scholars would push the construction of the text of the Pentateuch closer to the Persian period.³⁵ Even if the Pentateuch was constructed at a later date, the texts may have been created in one context, but then shifted to another when placed in the Pentateuch itself: for example, the *sotah* ordeal text by itself may have been intended as instructions on how to perform the ordeal, but when moved into the book of Numbers, its discursive function took on additional ideological elements based on its position in the text and use of the new text. While the text of the *sotah* ordeal may originally have been meant as simple instruction to the priest, by including it in Numbers, the redactors have imbued it with additional functions in the wider community. Further, there is the question of how much authority any one text might have had at any one time. Theodore Mullen works with the idea of a constructed traditional law under Persia, which granted additional authority to specific extant texts.³⁶ All this uncertainty means that we are unable to give a firm date as to when this passage might have been

³⁵ For the older dating, see James K. Hoffmeier, *Ancient Israel in Sinai: The Evidence for the Authenticity of the Wilderness Tradition* (New York, NY: Oxford University Press, 2005). For younger dating, see Angela R. Roskop, *The Wilderness Itineraries: Genre, Geography, and the Growth of Torah*, History, Archaeology, and the Culture of the Levant, vol. 3 (Winona Lake, IN: Eisenbrauns, 2012) and John Van Seters, *A Law Book for the Diaspora: Revision in the Study of the Covenant Code* (New York: Oxford University Press, 2003).

³⁶ E. Theodore Mullen, *Ethnic Myths and Pentateuchal Foundations: A New Approach to the Formation of the Pentateuch* (Atlanta, GA: Scholars Press, 1997). While the entire book deals with this issue in various forms, see chapter two on the idea of the “Pentateuch” and chapter three for the effects of Persian imperial policy on textual authority.

written: it could be a record of an extant ritual from the monarchic or pre-monarchic period of Israel and Judah, or it could be a text created to comment on the River Ordeal while in Exile. Regardless of when the text was written, it was passed through later contexts and its discourse changed, even if the text of the passage remained relatively unchanged. I will pick up the *sotah* ordeal as it is incorporated in the text of Numbers, as the Pentateuch coalesces during the Persian era. I am accepting John van Seters general dating of the sources and on E. Theodore Mullen's narrative of the emergence of the Pentateuch as a source of authority under Persia.

When Persia conquered Babylon in 539 BCE, numerous policies were instituted over conquered peoples. While Babylon (and Assyria before them) used deportation and resettlement—at least of the elites—to prevent rebellion of conquered nations, Persia allowed a certain level of self-rule. Cyrus, who was king of Persia, is depicted in the Cyrus Cylinder as restoring the worship and temples of various Babylonian gods, as well as bringing peace and resettlement to Babylon.³⁷ The Bible itself records a decree like the Cyrus Cylinder in Ezra 1:2-4, in which Cyrus decrees that Yahweh has charged Cyrus with seeing the Temple rebuilt. In Ezra 6, Darius, the king of Media, cites this same decree by Cyrus to re-establish worship at the Jerusalem temple, accounting for the Temple's reconstruction. The wording in both these passages is like that found in the Cyrus Cylinder, though the biblical text shifts from addressing Babylon's Marduk to Judah's Yahweh.

Persia changed how conquered nations were administered, especially around those nations' cultic practices. While prior ancient Near Eastern empires might have viewed the gods of conquered nations as defeated (and possibly destroyed) by the god(s) of the conquering

³⁷ James B. Pritchard, ed., *Ancient Near Eastern Texts Relating to the Old Testament*, 3rd ed. (Princeton: Princeton University Press, 1969), 315–16.

nation, Persian policy was to allow the worship of conquered gods to continue. In both the Cyrus Cylinder and the decree cited in Ezra, Cyrus decrees that the local gods should have their sacrifices. By this, Persia attempted to convert these gods (or at least their followers) into a view friendly and supportive of Persian imperial power. In turn, local religions got Persian support.

Lester Grabbe describes the empire as divided into satrapies, and each of these further divided.³⁸ These divisions were ruled from a temple-based government, though Grabbe describes these not as theocracies, but simply that the Persian administration had its offices in local temples. Imperial support for local temples, even if purely as administrative tools for Persia, would have granted the acting cult of that local temple political status. Regardless of whether the Persian authorities were “true believers” in the local deity, their presence at the local temple would have given that temple, and those practicing there, the appearance of government support.

Persia further allowed a certain level of local autonomy and self-rule, if it was in line with the local traditional religion. Persian policies thus placed emphasis on these traditional laws and would have begun the idea of a “canon,” or official group of laws or texts upon which the local cult was based.³⁹ In the case of Judah, this emphasis apparently fell to the Pentateuch, and perhaps other writings. Whatever status or form the Pentateuch had in exile, in the Persian era, Judean temple leaders needed to solidify some sort of official traditional law so that they could take advantage of the benefits Persia was willing to bestow on such law. Regardless of what laws existed prior to the Persian era and what official status they might have had in Babylon or under the Judean Monarchy, the Jerusalem priests could solidify their own control of the local district

³⁸ Lester L. Grabbe, *A History of the Jews and Judaism in the Second Temple Period*, Vol. 1, *Yehud: A History of the Persian Province of Judah*, The Library of Second Temple Studies (London; New York: T & T Clark, 2005), 132–33.

³⁹ Mullen, *Ethnic Myths and Pentateuchal Foundations*, 72–73.

by presenting (or perhaps constructing) a traditional law text to Persian officials. Persian influence on the idea of canon does not necessarily mean that the Pentateuch or other books lacked religious, political, or social authority prior to the Persian empire; however, Persian backing of the Pentateuch would mean an outside force granting specific authority to a specific group of texts, over and against other texts. Prior to Persia, any number of factions might have been vying to be the dominant literature of Judah and Israel. After Persia, there was a solidifying core of texts which emerged as the dominant texts, though the wording may still have been in flux. This dominant core of texts begins to resemble the Pentateuch. Even assuming the books of the Pentateuch predate Persia, and that the act of collecting texts together occurred prior to Persia, the Persian empire still anointed a specific selection of texts as official, as an outside political power granting authority to a specific group of people.

Foucault studied a time and place where this shift in imperial power did not occur so strictly. While the French Revolution did occur within his timeframe, no outside power conquered France, rather internal forces altered the structure of power within France. The Persian empire radically changed how authority interacted with the peoples who had been conquered by Babylon. Under Babylon, the *sotah* ordeal would have been an element of the lost past, perhaps even a counter-cultural touchstone used to recall the culture of a conquered people. Under Persia, this same ordeal now becomes part of the authorized legal code, with the weight of empire not against it, but behind it.

What does this mean for the *sotah* passage? How does it function now under the auspices of Persian imperial policy? Two of the functions this passage serves radiates out in different directions from the Judean elite. The first function works down from the centers of Judean power

to the people of Judah. The second aims up from those within the ruling Judean elite toward the Persian officials watching the Judean Temple.

The discursive function of the *sotah* passage downward would conceivably provide much of the same sorts of force as in earlier periods discussed above. If it had been enacted, the *sotah* ordeal would have served as a method for solving the judicial problem of a husband accusing his wife of adultery. The presence of this ordeal warns women not to commit adultery. The ordeal also assuages husbands that should they be suspicious of their wives, they have a means to test their wives' faithfulness. However, we lack evidence that this ordeal was put (back?) into practice. What kind of evidence we might even look for is difficult to describe. The ordeal itself requires no specialized equipment which could be identified and destroys the only items within it peculiar to it. We lack non-biblical descriptions of the ordeal until Hellenistic documents, and these seem to deal with the biblical description as well. Ideally, some sort of record of rituals performed at the Temple would be the proverbial smoking gun, but we lack any such documents in this time, assuming they were even kept.

Even if the ordeal were not performed, its legal description still serves a discursive function in Persian-era Judean society. The text of Nehemiah 8:1-12 describes how Nehemiah and Ezra institute the practice of public reading of the "law of Moses." We know in later eras that the text of the Pentateuch was read for public gatherings from other sources describing Judean and later Jewish practice. Given the scarcity of records, we cannot be sure when this practice began for certain, but if we take the text of Nehemiah at its word, then the practice of public reading of the "law of Moses" could have started during the Persian era. It is also difficult to identify which texts would be regarded as the "law of Moses." Traditionally, this has been interpreted to mean the Pentateuch, though the text of Nehemiah makes no claim as to which text

was read. Assuming the text of Nehemiah represents some sort of historical claim, the description of the covenant in chapter nine appears to align with the dominant ideas of Deuteronomy, if not the whole of the Pentateuch. Without direct citation in the text, though, we cannot be sure if this is a version of Deuteronomy, the entire Pentateuch, or some other text which tells the same narratives of the Pentateuch.⁴⁰

For the present, I want to put aside the question of which text might have been read, and ask the question: what purpose would publicly reading the text of the *sotah* ordeal have served? Nehemiah assumes all genders were listening, at least at Ezra's initial reading (Neh. 8:2), and men and women would likely have heard the *sotah* passage differently. For men, there would have been a reassurance the ordeal could provide an answer to suspicions about their wives. If the ordeal were not reinstated, then the reading may instead have stressed the lost sense of assurance and their present uncertainty. Without being able to perform the ordeal, men would have lacked the tools needed to quiet their suspicions. Judah itself would have been politically unstable, existing only while it served Persia's goals of a steady tax stream and a peaceful realm. Judah could know peace and relative autonomy, though both could be threatened by things beyond its control. Similarly, the men of Judah may have a peaceful home life, but they could not be certain their wives were faithful without some sort of divine assistance. The text of the

⁴⁰ Much in this paragraph is admittedly conjecture or assumption. We lack the evidence to push for a firm idea as to the origins of public reading of the Pentateuch (in some form) until well after the Persian era, though when it does arrive, it appears to be a settled practice and not one which is controversial or new. Further, there is considerable debate about the contents of what Nehemiah might call the "law of Moses." As I am using the *sotah* text as an exemplar of how such texts might have been used discursively, I am setting aside this question for others to answer. If the *sotah* passage were not read aloud, we could apply similar analysis to other passages which were more likely to have been read. This ambiguity is the danger of attempting Foucauldian analysis on a text without a fuller understanding of the context in which the text was used. These tools are much better suited when we emerge into the Hellenistic and later eras in the following chapters, where we can see how authors are approaching the *sotah* text within their contexts and interpreting it to fit discursive functions. For an overview of the evidence around public reading, see Lawrence H. Schiffman, "The Early History of Public Reading of the Torah," in *Jews, Christians, and Polytheists in the Ancient Synagogue*, ed. Steven Fine (New York, NY: Routledge, 1999), 44–56.

sotah ordeal would give the men of Judah the possibility of that divine assistance, but if they could not put the ordeal into practice, then that divine assistance was out of reach. They are presented with an uncertain stability, provided that outside forces do not upset it.

Women listening to the text would have heard the threats, but without the ordeal being performed, how might they have reacted? They may instead have heard that the men of Judah once had this power to know of their infidelities but lost it. The possibility of reinstating the *sotah* ordeal may have served as a deterrent, but it is hard to gauge how likely women might have thought this ordeal would affect them. It is also possible that while Nehemiah includes women in his description of who was listening, the men constructing and reading the texts were not interested in what the women might have thought at these readings. Thus, the question of how women may have heard the text would not have been a concern of those transmitting the text. The public reading of Torah, assuming it was practiced, was likely conceived of as a male activity aimed at a male audience.

The *sotah* ordeal in this context has some parallels with the spectacles studied by Foucault. For Foucault, spectacle serves the discursive function of warning the wider public of the consequences of crime.⁴¹ The crowd of the spectacle, though, would need to know that they could be charged, assuming they broke a law. Since the *sotah* ordeal only ferrets out female adulterers, the parallel only applies to the wives of the text's audience. Men reading or hearing the *sotah* ordeal would have no fear of the ordeal being used upon them. While the spectacle in Foucault applies to all who witness it, the *sotah* ordeal would serve this function of warning only against the wives of the audience. Husbands parallel the sovereign in Foucault's study: men have

⁴¹ Foucault, *Discipline and Punish*, 34.

their emotional distress assuaged by the outcome of the ordeal, just as the sovereign's right to rule (via violence if necessary) is reaffirmed by spectacle.⁴²

Judean leadership could also have used the *sotah* ordeal within the larger legal corpus in their interactions with the Persian authorities. In this case, the content of the ordeal text is less important than the presence of the ordeal within the legal corpus. As noted above, the *sotah* ordeal has several similarities with other trials-by-ordeal, such as the River Ordeal. While the *sotah* ordeal was more confined in its use than the River Ordeal, the *sotah* ordeal's presence makes the Judean legal texts look like other ancient Near Eastern law texts. Since Persia allowed its vassals some level of self-rule based on their traditional legal texts, the Judean elite would have wanted a text which was acceptable to Persian authorities. If the texts were acceptable, then the Persians would allow those texts to be implemented, in effect granting imperial authority to those backing (and backed by) the texts. To assure Persian support, Judean scribes would have wanted a legal collection which included many of the same elements found in other ancient Near Eastern cultures: treaty structures, legal codes, ritual/ordeal descriptions, and methods for discerning divine will, among others. The *sotah* ordeal serves the purpose of looking like these other trial-by-ordeal rituals, filling a hole in the Judean legal collection. At the same time, the ordeal asserts men's agency to control women, and in turn the priest's power to invoke the divine for the laity. The Judean legal collection would then look more authentically ancient to the Persian authorities, who would then grant autonomy to the Judean leadership behind the law collection. In this discourse, the *sotah* ordeal is simply one piece in the wider collection of texts, but each small piece contributes to the formation of the wider collection. While the *sotah* ordeal

⁴² Foucault, *Discipline and Punish*, 49–50.

is unlikely to have been the exemplar text Persian authorities could use to justify Judean rule, it might have played at least a cumulative role in that transfer of power.

Power structures shift over time, though not always as dramatically as with a military conquest. The Judeans were attempting to reconstruct their culture under shifting leadership. Persian power structures granted different types of power to the local power structures than previous empires did, and as a result, local power structures (i.e., the Judean leadership) needed to construct new discourses with that ruling power. In his *History of Sexuality*, Foucault charts the shift from premodern thoughts on sex into the classical age. Prior to the seventeenth century, Foucault claims, sex was mostly governed by which specific acts were barred by various sources of power.⁴³ Once we enter into the eighteenth and nineteenth centuries, the idea of a continuous sexuality (as opposed to discrete sex acts) began to take shape, and these sexualities were branded with medical terms.⁴⁴ This shift moved the centers of power over sex from the legal realm to the medical realm: in effect, society began to have different discourse around sex because a different power structure was shaping the discourse around it. Similarly, Judeans constructed a new form for their legal texts as the discourse with the ruling imperial power shifted. While Babylon might have inspired texts of lament and resistance, Persia called for a legal code, of sorts, which could lead to some level of self-rule. The shift in power structures would in turn change how Judeans would interact with their legal texts, including the *sotah* ordeal. For Judah/Yehud, these texts were no longer a view of what *used* to be, but were now a view of what *could* be.

⁴³ Michel Foucault, *The History of Sexuality*, trans. Robert Hurley, vol. 1 (New York: Vintage Books, 1988), 1:37–39.

⁴⁴ Foucault, *The History of Sexuality*, 1:69–70.

IN SUMMARY

Throughout the *sotah* passage, the main actors are allowed specific actions. The priest has the bulk of prescribed actions: standing the wife before Yahweh, making the wife swear her oath, making the concoction, offering the offering, and finally making the wife drink. The priest is thus responsible for the proper performance of the ordeal, making sure each of the key actions is done. The husband is instructed to bring his wife and the offering to the priest for the ordeal, but he himself does little else. Even his emotions are implied to be caused by some sort of spirit rather than his own responsibility. Further, the *sotah* ordeal provides a response for the husband to take and limits other actions the husband might take. The ordeal is the correct response to the husband's suspicions, and if he uses the ordeal, it absolves the husband of responsibility for anything which happens in it, regardless of the wife's guilt or innocence. Yahweh serves only to witness the ordeal, as the text grants agency to the water and makes it the source of the action on the wife's body. The wife is only allowed the ability to speak, only to affirm the oath as spoken by the priest. The text assumes some sort of action (or perhaps inaction) on the part of the wife before the ordeal is invoked, but only when defining various possible current statuses: the text assumes the wife has already either committed adultery or remained faithful, and these past actions are responsible for her current state, which the ordeal will uncover. Even if she has been unfaithful, the only verb the wife has performed is הִתְחַטְּטָה "to become unclean," a passive verb. The actual sex is described as the act of the male lover. The wife does not even get to perform the act of drinking the potion, but instead the priest makes her drink, and then the water enters into her.

That the priest is allowed as many actions as he is should not be surprising. The priest is the functionary of the cult, and this is a ritual done within the cult system. His acts are done so

that the ordeal functions as it should. However, the ordeal does not allow the priest any choice in its outcome. The ordeal itself will determine the guilt or innocence of the wife—the priest need not even interpret the signs, as they are obvious. Either the wife’s body undergoes some obvious horrific event, or it does not. While the priest is active in much of the ordeal, the priest’s actions are described simply as a series of steps done to invoke this ordeal. The priest serves to perform the ordeal on the wife: the wife is not an active participant, but a passive component of the ordeal.

The husband is not involved in the ordeal at all. He is allowed the ability to instigate the ordeal, as it is his emotional state which determines if the ordeal should be invoked. The husband need not offer any reasons or evidence for his suspicions. His emotional state is reason enough to begin the ordeal; however, even those emotions are said to be not his own. A spirit of enmity is named as the cause of his distress, whether his wife has committed adultery or not. While the husband invokes the ordeal, he is not responsible for either the emotions which caused him to invoke it, nor the eventual outcome of the ordeal itself. The husband is allowed a free choice to invoke the ordeal, with little direct consequence to himself, beyond the financial costs.

Yahweh takes no direct action at all in the ordeal. While the oath in verse 21 invokes Yahweh to curse the wife should she be guilty, the text quickly returns to the water as the source of the action, not Yahweh. Yahweh instead serves as a witness to the ordeal and to grant approval to the outcome. Even in the final climax, when the wife drinks the water, Yahweh takes no direct action. Instead, the water performs the action on the wife, the text describing this almost chemical reaction in which the water meets the stuff of adultery and causes the outcome described. The oath implies that Yahweh will influence the outcome of the ordeal, but the description of the outcomes never states that Yahweh takes any specific action for or against the

wife. Instead, the water does the acting on its own. By not describing Yahweh as doing the action, the text of the *sotah* ordeal removes Yahweh from potential contact with an adulterous wife and her body's reaction to the potion. Since it is the water causing this reaction, and not Yahweh striking the wife, Yahweh remains apart from the contamination. Further, Yahweh is also not directly involved, should the wife be found innocent. In the case of the faithful wife, the only bad actor can then be the spirit of enmity which came to the husband. In both the case of the adulterous wife and the faithful wife, Yahweh remains distant from any possible source of contamination or misdeed.

The wife is presented as having had a choice in the past: either she committed adultery, or she did not. In the ordeal, the wife takes only one direct action herself: she affirms the oath the priest speaks. She is placed before Yahweh, she has things taken from her and given to her, she is made to swear, and she is made to drink. She does not get to offer any sort of defense. She does not bring her own offering. She is not even allowed to drink the potion which will determine her guilt, but rather it is fed to her and then the potion is granted agency to "enter her." Save for affirming the oath, the wife is completely passive during the ordeal. Even the descriptions of her potential adultery allow her only the action to "go astray," the actual act of sex is done by the hypothetical adulterous lover.

The text of the *sotah* ordeal is thus framed to grant the husband control over a situation in which he otherwise would have no direct method of control. The husband invokes the ordeal, and no one else decides from that point forward. The text goes so far as to absolve the husband of any guilt or reprise should he falsely accuse his wife. The husband is allowed a risk-free method of assuaging an emotion he is not even responsible for. As a form of divination, in that the ordeal attempts to uncover unknown information, one might expect a priest to have to read

some sort of sign, but this ordeal makes its outcome explicitly clear on its own. The husband does not need the priest to interpret the outcome: he only needs the priest so that the offering can be properly offered, the potion can be made, and the wife presented before Yahweh for her oath. Even Yahweh has no direct action in this text. Once the husband invokes the ordeal, no one else is allowed an action to stop it or choose its outcome—they are simply prescribed steps which must be taken. The waters created in the ordeal simply react to the state of the wife, and that reaction brings about two possible outcomes. The text of the *sotah* ordeal is written to directly assuage men's fears of adultery and to grant them the power to answer their fears.

The other source of power in this text is given to the priests. While the husband is the one who can invoke the ordeal, the priest is necessary for it to function. Without the priest, husbands have no way to perform the ordeal, regardless of the era in which the husband encounters this text. While removing Yahweh from the performance of the ritual does keep Yahweh from contamination, it also means that Yahweh is not the one responsible for the outcome. Instead, it is the priest who makes the bitter waters and feeds them to the wife. The priest holds the power to perform the ritual, and it is constructed in a way which implies that simply asking Yahweh to reveal the wife's status will not be enough. Instead, the ritual ordeal must be performed, and performed correctly, for judgment to be made, and it is the priests who can perform this ritual. As we have seen, depending on the era this text is being encountered, the priest may or may not have the actual ability to perform the *sotah* ordeal. Even if the ordeal cannot be performed due to the lack of a sanctuary, the text still holds the priest (and not a legal court) as the person to adjudicate suspected adultery. The text of the *sotah* ordeal gives the priests power, regardless of the era in which the text is encountered.

As we move later in time, the text of the *sotah* ordeal also serves another aim of power: to construct a cultural identity distinct from those around it. During both the Babylonian Exile and the later Persian reconstruction, the text of the *sotah* ordeal (and the wider law) serves to place certain sources of power in the hands of the Judean priestly elite. The priests become the source of culture for the Judean people. They are the ones who can help distinguish the boundaries of Judean society.

Under Persia, these legal texts serve another purpose: to shore up official support of the Judean elite as political rulers. The *sotah* ordeal serves both as a parallel to Babylonian and other cultures' trials-by-ordeal and as a clear message of patriarchal control of wives. The *sotah* ordeal mimics the place of the River Ordeal in Judean legal texts, at least in the case of adultery, making the Judean legal texts appear like other legal traditions under Persia. Additionally, the presence of this ordeal not only assuages husbands that they can control their wives, but assuages Persia that the Judeans will support a patriarchal family structure, where husbands have various levers of control over their wives.

The *sotah* text approaches adultery as a source of emotional distress for the husbands. Husbands can be afflicted by this spirit of enmity, causing him to be suspicious and resentful of his wife. The ordeal text presents husbands with a way to answer these suspicions, either justifying them or clearing the wife. In either case, the husband is assured that he need not forever be suspicious of his wife. The text establishes a clear distinction of power: the husband has control over this ordeal, the wife must simply submit to clear her name. Wives are not viewed as wanting to invoke this ordeal to clear themselves. Rather, wives only interact with this ordeal either by submitting to it, or by being warned by hearing of its use on other wives.

Foucault's works have helped to show how the *sotah* ordeal text allocates power within the participants. Further, Foucault's works have also helped explain the *sotah* ordeal's place within wider Judean culture, both as an ordeal and as a text. Through his work on punishment, Foucault has shown how such ordeals work, as both sources of judicial evidence and as punishment for the crimes being investigated. In his works on madness and medicine, Foucault has shown how a shift in power structures can change how texts and other elements of discourse are interpreted, just as the *sotah* ordeal would have shifted in its interpretation as the power structures of and around Judah shifted. In his work on sexuality, Foucault has also shown how power structures shift how discourse is interpreted within wider society. Foucault's lens will continue to be useful as I look at other biblical passages which touch on adultery and the power structures around sexual infidelity.

5. CONTEXTS

As a text from the Pentateuch, the *sotah* ordeal has found itself in many contexts with a wide range of authority and status. Context is where statements, the elements of discourse according to Foucault, can display their “enunciative function”; that is, context is where statements can convey their meanings.¹ As such, if a statement, such as a biblical passage, moves through different contexts, different meanings will be drawn from it. Part of that context is what Foucault names the “discursive practice”: the rules about what one can and cannot say within a particular social context.² In this chapter, I hope to uncover both what the texts are saying, but also some of that discursive practice, framing the discussion of adultery and sexual deviance in the social context prior to the rise of the Hellenistic kingdoms and Roman empire. In the subsequent chapters, I will evaluate Hellenistic and Roman interactions.

Treatment of the relevant passages will be based on three distinct eras, starting with the emergence of the Pentateuch and other sacred writings under Persian rule. Within these emerging biblical texts, I will investigate how legal, narrative, and prophetic texts approach adultery and accusations of adultery. In this pre-Hellenistic (post-biblical) era, I will focus primarily on biblical texts, as these come from the same culture as the *sotah* ordeal. I will also briefly address some of the cultures and texts around the Hebrew Bible prior to Alexander the Great.

Just as with the *sotah* passage, I will analyze who is given agency by the text, and who is given culpability. One of the limiting factors with this analysis is that there are few texts clearly commenting on one another. Few texts seem to be directly engaging in the same discourse, let

¹ Michel Foucault, *The Archaeology of Knowledge: And the Discourse on Language* (New York: Harper & Row, 1976), 108–10.

² Foucault, *The Archaeology of Knowledge*, 116–17.

alone discourse on another text. Instead, each text often appears independent, with at best oblique references to one another. While intertextual connections certainly exist within the Bible, few of them do about adultery. The texts do emerge from a similar cultural milieu, though that milieu covers a relatively wide range of history and has nebulous boundaries.

After the conquest of the Levant by Alexander the Great, Hellenistic culture began to have a stronger influence on Judean thought. New texts arose during the Hellenistic era, many of which engaged the texts of the Bible, including the *sotah* ordeal. These engagements allow direct analysis of how people of this era were reading and interpreting the *sotah* text itself. In the following chapter, I will analyze several Hellenistic era texts which address the *sotah* ordeal specifically or adultery generally. I will also look at pagan Hellenistic culture for the same questions of agency and culpability in adultery and legal action.

With the conquests of Pompey and rise of Herod the Great in the first century BCE, Roman influence began to strengthen in the region of Judea. By the time of the Mishnah, two main competing religions were emerging out of the milieu of Judaism from the first century CE onward. Rabbinic Judaism began to solidify, while Christianity began to find its own distinct voices. Both religions claimed the Bible as their heritage, so both offered texts which interacted with the *sotah* ordeal itself, as well as other biblical texts on adultery. Additionally, wider pagan Rome had a distinct approach to the issue of adultery. In all of these, I will look at questions of agency and culpability for adultery and legal action around adultery.

PRE-HELLENISTIC ERAS

The status of the Pentateuch prior to the Persian era is still debated. Theories attempt to explain the origins of the texts, starting with Wellhausen's Documentary Hypothesis and its many modern

variants, while also including Mullen's *Ethical Myths and Pentateuchal Foundations* and Van Seters' *A Law Book for the Diaspora*.³ While each of these scholars have their differences (some of the distinctions are radical), they all generally accept that the Pentateuch as we have it is the product of some sort of editorial revision and merging, and that this editorial activity culminates sometime in the Persian era, at least for the Pentateuch. Distinctions between the theories center on questions of how many sources we can identify and the order in which these sources were merged, along with when the editorial events happened. Rearguing these cases, while fruitful for other studies, will not help when I turn to how Hellenistic and Roman authors read the text of the *sotah*. None of the readers in either era sought to distinguish the sources of the *sotah* ritual or the Pentateuch at large. Rather, these readers accepted the books of the Pentateuch as single source books without editorial divisions. The Pentateuch texts were generally accepted as Mosaic, though we can debate what exactly each ancient author meant by that designation. As such, I am going to make no attempt to situate the text of the *sotah* ordeal in a particular source, nor am I going to attempt to date its origins or its editorial revisions. I am not going to attempt to date the text of the book of Numbers or the emergence of the Pentateuch. None of these issues were important to the Hellenistic or the Roman readers we will be engaging later, and on whom I am focusing this study. Instead, I am going to accept that by the end of the Persian era, the Pentateuch, including the book of Numbers and the text of the *sotah* ordeal, had been accepted as a core cultural text for the emerging culture of Yehud.⁴ As Yehud becomes Judea under

³ Julius Wellhausen, *Prolegomena to the History of Ancient Israel: With a Reprint of the Article, Israel, from the Encyclopedia Britannica*, Meridian Library ML6 (New York: Meridian Books, 1957); E. Theodore Mullen, *Ethnic Myths and Pentateuchal Foundations: A New Approach to the Formation of the Pentateuch* (Atlanta, GA: Scholars Press, 1997); John Van Seters, *A Law Book for the Diaspora Revision in the Study of the Covenant Code* (New York: Oxford University Press, 2003).

⁴ Judah, Yehud, and Judea all refer to the same general area of land and to a culture in that region which evolved over time. While they are not interchangeable terms, they do represent a continuity through colonization by outside

Hellenistic control, we will see the emergence of other texts wrestling with the ideas contained within the Pentateuch and what it means for those texts to be cultural cornerstones.

I will briefly consider some ancient Near East sources which predate the Pentateuch. Numerous law collections from the ancient Near East contain laws about adultery and offer similar solutions to the *sotah* ordeal. However, most of these law codes are centuries older than the text of Numbers. The goal is not to claim these texts influenced the *sotah* ordeal, but rather give us a glimpse of the cultural milieu around Judah. As many of these ancient Near Eastern texts were still known and copied up into the Persian period, it is possible that they may have been known to the redactors of the Pentateuch and other biblical texts, but again I am not attempting to claim these texts influenced the *sotah* ordeal. Rather, these texts show that the *sotah* ordeal was in keeping with the cultures around Judah and Israel in the pre-Persian years.

This is not to say that we cannot say anything about the *sotah* ordeal's context prior to Hellenism. While we do not have direct commentary on the text, we do have similar texts wrestling with the same societal issues around adultery: Who is responsible? What punishment should be meted out? Who should bear culpability? The texts do not directly ask these questions, but by examining how the statements of the text are framed, we can uncover the discursive practice in use and compare them across documents to see if similar practices existed across these sources. There are also extant texts from cultures around and pre-dating biblical text that comment on adultery and provide similar views into the discursive practice of the cultures surrounding Judah/Yehud. There we can look for continuity or discontinuity between ancient Near Eastern cultures.

forces, at least as constructed by the later literature of Judea. I will use Judah when referring to pre-Persian culture, Yehud during Persian rule, and Judea for Hellenistic and later eras.

The Egyptian texts we have span a long period of time, and while their response to adultery changed over time, it is not always clear when those changes occurred, or from what impetus.⁵ The Greek historian Diodorus wrote that Egyptians would emasculate men and disfigure women who were convicted of adultery; however, Egyptian literary texts state that the penalty for adultery was death.⁶ There are problems with using literary texts to determine cultural attitudes.⁷ While a literary text would need to reflect the realia of the culture it represents to be accepted by its audience, such a text need not represent it perfectly. Given the fantastic elements in literary texts from Egypt and other ancient Near Eastern cultures, we cannot be certain how closely any narrative might represent actual events. However, even if literary responses to adultery were hyperbolic, they would still represent the expected emotional response to such an event: even if husbands did not immediately slay their wives when discovering them in adultery, husbands would be expected to want to kill them, at least in the immediate aftermath of such a discovery. C. J. Eyre states that should an Egyptian husband have killed his wife and her lover upon discovery, the law provided him legal protection; otherwise, adultery was the husband's legal problem to sort out, as while the courts might have ruled in his favor, Egyptian courts lacked methods of enforcing their decisions.⁸

Raymond Westbrook has compared biblical and ancient Near East law collections.

Westbrook points out a difference between ancient Near East law collections and the Bible:

⁵ C. J. Eyre, "Crime and Adultery in Ancient Egypt," *The Journal of Egyptian Archaeology* 70 (1984): 97–98.

⁶ Eyre, "Crime and Adultery," 96–97.

⁷ I refer to Egyptian texts as "literary" rather than "narrative" primarily because many were written in poetic form, rather than prose. This difference in genre and style between Egyptian and Hebrew stories adds another layer to be aware of when attempting to construct societal views from these texts.

⁸ Eyre, "Crime and Adultery," 102.

while the Bible is constructed into a canon of authoritative texts (at least, eventually), ancient Near East law collections acted as a series of legal reasoning problems based on a standard set of legal issues.⁹ Ancient Near Eastern law collections were not a series of laws attempting to cover every possible legal situation, and were not designed to be consulted by a court to determine a ruling. Rather, these collections were a set of legal exercises that scribes would work through to develop their expertise, so that when they were in court, they could offer sound legal reasoning. Simple, obvious cases would rarely appear in such codes; instead, the collections focus on obscure, outlier issues. As such, ancient Near Eastern law collections are of a distinctly different genre than the texts of the Bible itself.¹⁰

Westbrook argues that the Bible and ancient Near Eastern law treat adultery similarly: that adultery represented a complex issue of personal affront to the husband and a source of collective religious sin.¹¹ He argues that in both the ancient Near Eastern law and the Bible, it is assumed that the husband can mitigate severe punishments required by law.¹² He notes that while death is often the explicit punishment, these laws assumed that divorce would also be a valid option open to the husband, should he choose to pursue it instead of execution.¹³ Westbrook does admit that these laws, both the biblical and non-biblical ones, do not always explicitly mention the option to request a lesser penalty.¹⁴ Westbrook is interested in how these laws were actually applied, whereas this study is focusing on the explicit text. Westbrook can make logical

⁹ Raymond Westbrook, "Adultery in Ancient Near Eastern Law," *Rev. Biblique* 97.4 (1990): 548.

¹⁰ The biblical law codes, or at least their original sources, may be akin to these scribal legal exercises, but the Pentateuch adds a layer of narrative over it and attempts to present them as a proper legal code, rather than a collection of legal exercises. Thus, while the source of the biblical law code might have been like ancient Near Eastern law collections, the form we have now is of a different genre.

¹¹ Westbrook, "Adultery in Ancient Near Eastern Law," 452, 468.

¹² Westbrook, "Adultery in Ancient Near Eastern Law," 545, 556.

¹³ Westbrook, "Adultery in Ancient Near Eastern Law," 544, 554, 558–61.

¹⁴ Westbrook, "Adultery in Ancient Near Eastern Law," 558.

assumptions about the legal use of these ideals in a court of law: I am not looking for how the texts may have been applied, but rather, under Foucault's method, I am looking at what this text says to and about the culture that is using it. By not explicitly offering the option of a husband to mitigate the penalty, these laws imply that the correct choice for the husband is the one they explicitly state. While the husband may have had the right to wave the death penalty, the authority of the text states that the correct option is to execute adulterers. Westbrook also argues that the biblical text implies consent in these laws, going so far to offer a discussion on rape versus consensual sex.¹⁵ But as shown in the texts cited below, the consent of the woman is completely ignored (both in the commission of the crime and in its punishment). Westbrook's assumption that biblical texts imply consent lacks direct evidence, in most cases. We lack a law in which consent is explicitly mentioned; instead, we only have Deuteronomy's nuancing of sex in the town verses in the field.¹⁶

Jonathan Ziskind addresses consent in ancient sex laws, though his focus is on incest laws. He notes that Hammurabi, Middle Assyrian laws, and Hittite laws all assume a male agent in incest, however both men and women involved were punished, save in certain circumstances the women were not.¹⁷ Specifically, if the woman was not able to consent (or withhold consent), then she was not punished: specifically, if she was socially inferior to the man (daughter, niece, or other legal dependent), she was not held responsible.¹⁸ The texts Ziskind examines do not make this consent concern explicit; rather, certain laws call for the punishment of the woman, and certain laws do not. Ziskind works through which couplings resulted in the punishment of

¹⁵ Westbrook, "Adultery in Ancient Near Eastern Law," 549, 570–71.

¹⁶ Deut. 22:23–27. See below for further discussion of this passage.

¹⁷ Jonathan R. Ziskind, "Legal Rules on Incest in the Ancient Near East," *Revue Internationale des Droits de L'Antiquité* (1988): 81, 83, 84, 86.

¹⁸ Ziskind, "Legal Rules on Incest," 81.

the woman and which did not, and from there makes his claim that it depended on the social status of the woman compared to the man. While incest is a different form of sexual deviancy from adultery, there are similarities in how they are treated. Both sets of laws tend to focus on the male agents of the act. Both sets of laws cover the same circumstances: when a man had sex with his stepmother, he was committing both incest and adultery (if the father was still alive). Ziskind notes that in some of the incest cases, there is no blood-relationship (such as man and his stepmother), and thus the prohibitions might have been an attempt to avoid adultery or the appearance of adultery, since some laws prohibited such sex even after the death of the father.¹⁹

Ancient Near Eastern law is rarely concerned with women's consent to sexual acts, and as such are framed as laws pertaining to men even though these laws assume a woman participated in the sex act in some way. The laws are addressed to the man in the sex act, not to the woman. Using Foucault's idea of discursive practice, ancient Near Eastern laws are framing the sex acts as the actions of men, even though women must also be part of the acts as described. Incest is a crime men commit, even though men need a woman related to them to do it. As in some sexual circumstances the women are not punished, we see there are cases in which a woman could be considered innocent. Specifically, when she was unable to go against the wishes of the man, given status differences. Yet the laws would have been written by men and for men, and this masculine lens also shaped the discursive practice, limiting legal discourse to issues concerning men only.

Pnina Galpaz-Feller argues that while many ancient Near Eastern law collections and the Bible approach adultery with similar punishments, Near Eastern law codes present adultery as

¹⁹ Ziskind, "Legal Rules on Incest," 87–88.

more of a personal than a public or religious crime.²⁰ She also points out that the Bible has a longer redactional history than most ancient Near Eastern law collections, and that because of this, Egyptian texts might provide a better parallel to biblical texts.²¹ We lack extensive legal material from Egypt, at least in the same style and volume as ancient Near Eastern law collections and the Pentateuch, but we do have some examples of adultery laws and cases. Galpaz-Feller notes that in the Egyptian texts, it is the husband who determines the punishment for adultery, whether this is the immediate execution of the wife and lover, or if it involves other legal punishments.²² In this case, the *sotah* ordeal serves to limit the power of the husband, and somewhat protect women from arbitrary actions from the husband. Galpaz-Feller does explore a letter about a divorced woman, working through the letter and how it focuses on the divorced woman's economic situation. She mentions that this divorcée might have been divorced for adultery, though the details are not mentioned.²³ Galpaz-Feller also brings an interesting case where a man is harassed by his village for having a mistress.²⁴ Given the sexual freedom accorded to men in the legal collections, it is interesting that a man might be held accountable for being unfaithful to his wife, despite the lack of laws explicitly prohibiting it. This incident might also show a difference between Egyptian and other ancient Near Eastern cultures. Galpaz-Feller notes that despite the Bible's railing against "what they do in Egypt," Egyptian texts seem to be more akin to biblical adultery laws than other ancient Near Eastern texts.²⁵

²⁰ Pnina Galpaz-Feller, "Private Lives and Public Censure: Adultery in Ancient Egypt and Biblical Israel," *Near Eastern Archaeology* 67.3 (2004): 154.

²¹ Galpaz-Feller, "Private Lives and Public Censure," 154.

²² Galpaz-Feller, "Private Lives and Public Censure," 155.

²³ Galpaz-Feller, "Private Lives and Public Censure," 156–57.

²⁴ Galpaz-Feller, "Private Lives and Public Censure," 157.

²⁵ Galpaz-Feller, "Private Lives and Public Censure," 158.

Applying Foucault here highlights the difference in genre between legal texts and the actual letters. Legal codes could focus their discourse on hypotheticals, and thus have a narrower discursive practice. These Egyptian letters deal with actual cases, and thus force the discourse to account for what is actually happening. While most of the law codes prescribe execution for adultery, letters show that, at least in Egypt, this was not always the case. Further, even as the law codes focus on a wife's infidelity, the second letter shows an awareness, at least, of the idea of male fidelity.

Ancient Near Eastern laws are often used to construct a cultural milieu for biblical laws, even though there several issues with this approach. Many ancient Near Eastern law collections are from Akkadian texts, which are dated to the second and third millennium BCE, leaving a significant gap of time between the creation of these non-biblical texts and the Pentateuch's coalescence under Persia. For example, the Laws of Ur-Namma date to around 2100 BCE.²⁶ These laws predate the evidence we have for the kingdoms of Judah and Israel by more than a thousand years, and are for a civilization which would have risen and fallen by the time of Israel and Judah. Similarly, the Laws of Hammurabi date to around 1750 BCE,²⁷ and have a similar distance between them and any possible precursor to the Pentateuch. Even the Middle Assyrian Laws have some distance, as the copies we have date to 1076 BCE, and are believed to be copies of texts originating in the fourteenth century BCE.²⁸ These laws would at least be contemporary with the beginnings of Israel and Judah, but the Pentateuch as we have it would still not take shape for centuries. Several of these Akkadian texts were still being copied by scribes during the

²⁶ Martha Tobi Roth, Harry A Hoffner, and Piotr Michalowski, *Law Collections from Mesopotamia and Asia Minor* (Atlanta, GA: Scholars Press, 1995), 13.

²⁷ Roth, Hoffner, and Michalowski, *Law Collections from Mesopotamia and Asia Minor*, 71.

²⁸ Roth, Hoffner, and Michalowski, *Law Collections from Mesopotamia and Asia Minor*, 154.

time of the Persian empire and beyond. Van Seters argues that the biblical law code looks similar because the Judean scribes were introduced to these Babylonian law codes while in exile. These scribes then use these codes to fill in gaps in their own Judean law narratives.²⁹ This would explain why similar clusters of laws occur within both Judean and Babylonian law collections.

The Pentateuch as we have it emerges under Persia, with some theories pushing it back into the Babylonian exile. Most of the prevailing theories assume some collection of sources, out of which the Pentateuch was constructed, but we do not have texts for any sources prior to the Pentateuch itself. While several scholars have attempted to identify which passages could be assigned to these prior sources, this is all hypothetical. I generally accept John Van Seters arguments around the sources of the Pentateuch: placing the Deuteronomist relatively early, with the Yahwist working later to construct a narrative around the texts.³⁰ Further, I am looking at the trajectory the texts take after being accepted as authoritative under Persian influences. As such, I am more interested in the direction the texts are being taken by their later reader. As these readers were not interested in where the Pentateuch came from, I am going to accept van Seters general chronology.

Some of the ancient Near East laws do contain ideas like the *sotah* ordeal. While the Bible lacks any other ordeal used to divine judgment, many ancient cultures before the Bible used one or more ordeals in their legal systems. Most of them refer to a primary River Ordeal. The Laws of Ur-Namma are the product of either Ur-Namma or his son, Shulgi.³¹ In this

²⁹ John Van Seters, *A Law Book for the Diaspora Revision in the Study of the Covenant Code* (New York: Oxford University Press, 2003), 125.

³⁰ For Van Seters discussion on the Yahwist reshaping the Deuteronomist, see John Van Seters, *The Life of Moses: The Yahwist as Historian in Exodus-Numbers* (Louisville, Ky.: Westminster/John Knox Press, 1994); For how the Covenant Code could have been constructed specifically for life in diaspora, see Van Seters, *A Law Book for the Diaspora Revision in the Study of the Covenant Code*.

³¹ Roth, Hoffner, and Michalowski, *Law Collections from Mesopotamia and Asia Minor*, 13.

collection, there are laws which deal with the aftermath of the River Ordeal, a ritual in which an oath is required of the accused before they are thrown into or jump into a river. The outcome of this act determines their guilt or innocence. These laws read:

13 If a man accuses another man of ... and he has him brought to the divine River Ordeal but the divine River Ordeal clears him, the one who had him brought (i.e., the accuser) (...) shall weigh and deliver 3 shekels of silver.

14 If a man accuses the wife of a young man of promiscuity but the River Ordeal clears her, the man who accused her shall weigh and deliver 20 shekels of silver.³²

These laws do not lay out the River Ordeal itself, while the *sotah* text does give explicit directions on how to perform the ordeal. The biblical text is focused on how to perform the ordeal; these texts are focused on the legal use of the ordeal itself, that is, to use the River Ordeal when the court lacks evidence to make a decision on its own. These laws are addressing what to do when the River Ordeal proves the defendant innocent. While the *sotah* ordeal was invoked by the husband, the second law here implies that any man may invoke the River Ordeal by accusing a wed woman of promiscuity. By placing a penalty for a false accusation, this second law is attempting to safeguard against random accusations. The second law makes the crime of adultery not just a crime against the husband, but a crime against society. Like the *sotah* ordeal, these texts grant the defendant no agency, both in the case of the male defendant in 13 and the female defendant in 14. Additionally, the first law is unclear on exactly what the man is being accused of, and there is some scholarly discussion on whether it is adultery or sorcery.³³ In both cases, the defendant does not show her innocence through evidence; rather, the ordeal itself clears her. The ordeal is the actor, not the defendant.

³² Laws of Ur-Namma 13 & 14, as translated in Roth, Hoffner, and Michalowski, *Law Collections from Mesopotamia and Asia Minor*, 18.

³³ Roth, Hoffner, and Michalowski, *Law Collections from Mesopotamia and Asia Minor*, 21-22 n12.

Both laws focus on the actions of men. In line with the discursive practice outlined above by Ziskind, the laws are concerned with the actions of men and the consequences which should befall these men. Even when a woman enters the text in 14, she is passive throughout: a man accuses her and the River Ordeal clears her, but she takes no direct action. Thus, these laws were not aimed at controlling women's actions, but at controlling the actions of men. As mentioned with the Egyptian literature above, the River Ordeal and the *sotah* ordeal both prevent the husbands from arbitrarily inflicting punishment on their wives. Both limit the control of husbands over their wives. Foucault explained that power shapes an individual, not by directly forcing them into a particular action, but by shaping the options an individual believes they have.³⁴ These laws do not directly proscribe actions that men should not do, but instead provide a penalty to a man should he make accusations which turn out to be untrue. The laws shape men's behavior without explicitly dictating what men do.

Perhaps the most famous of the ancient Near Eastern law collections, beyond the Bible, is the Laws of Hammurabi, which are from Babylon and date to 1750 BCE.³⁵ In this collection, there is a pair of laws which parallel the *sotah* passage a bit more closely. They read:

131 If her husband accuses his own wife (of adultery), although she has not been seized lying with another male, she shall swear (to her innocence by) an oath by the god, and return to her house.

132 If a man's wife should have a finger pointed against her in accusation involving another male, although she has not been seized lying with another male, she shall submit to the divine River Ordeal for her husband.³⁶

Law 131 covers the case in which a husband accuses his wife without finding her *in flagrante delicto*. In this case, the woman simply needs to swear an oath and she will have satisfied the

³⁴ Foucault, *Power/Knowledge. a Selected Interviews and Other Writings 1972-77*, 73–74.

³⁵ Roth, Hoffner, and Michalowski, *Law Collections from Mesopotamia and Asia Minor*, 71.

³⁶ Laws of Hammurabi as translated in Roth, Hoffner, and Michalowski, *Law Collections from Mesopotamia and Asia Minor*, 106.

court of her innocence. No mention of the husband's emotions or reasons is made. Law 132 is closer to the *sotah*, as this law prescribes a trial by ordeal for the woman accused of adultery. Law 132 does not detail the ordeal itself, prescribing the generic River Ordeal as its legal test. While the *sotah* ordeal can only be invoked by the husband, Hammurabi's law allows accusation of adultery by others. The laws do grant the wife some limited agency in both cases, but only that she may swear an oath, or submit herself to the River Ordeal. While these are acts of submission, they are nonetheless actions performed by the wife, which is more than other ancient Near Eastern texts have granted an accused adulteress thus far.

Law 131 addresses adultery as a concern of the husband, while law 132 addresses adultery as a concern for society. Together, these laws show that adultery is a concern for both the husband and society. Yet these laws do not apportion authority equally. In 131, a husband cannot invoke the River Ordeal, and the court can accept the wife's oath on its own. But in 132, other men can accuse the wife, and she cannot simply swear an oath to clear her name: she must undergo the River Ordeal. Thus, accusations from outside the home are considered stronger than ones from the husband. This may be a check on a husband's power over his wife, as he cannot invoke the potentially lethal ordeal on his own whim. As with the Laws of Ur-Namma, Hammurabi focuses on men, and the discursive practice frames these laws around the cost to men, even when the ultimate cost may be paid by a woman.

The Middle Assyrian Laws are a series of tablets which date to approximately 1076 BCE.³⁷ As these are tablets, it is unclear if this is a collection like the Laws of Ur-Namma and

³⁷ Roth, Hoffner, and Michalowski, *Law Collections from Mesopotamia and Asia Minor*, 153.

the Laws of Hammurabi, or if these are simply scribal exercises. While we have many copies of the Laws of Hammurabi, we have only one copy of most of the Middle Assyrian Law tablets.³⁸

In the Middle Assyrian Laws, there is the law:

A 17 If a man should say to another man, “Everyone has sex with your wife,” but there are no witnesses, they shall draw up a binding agreement, they shall undergo the divine River Ordeal.³⁹

What differs here is that men—the husband and the person making the accusation—participate in the River Ordeal. The text does not say which of them must perform the ordeal, or if they both do. The wife does not participate at all, effectively removing her agency entirely. Like other Ancient Near East laws, any man may make the accusation and invoke the River Ordeal, not just the husband. The discursive practice around this law is such that the issue is less the possible adultery and more the contention between men, even when this contention is primarily about the wife. Framing this law around Foucault’s focus on power, the law is an attempt by power to shape men’s interactions with other men.

All these laws prescribe the River Ordeal to root out the truth about a wife and accusations of adultery, and as such they have some similarity to the *sotah* ordeal. However, as these laws use a generic ordeal, which is used for many other legal situations, they do not reflect the specific situation of the *sotah* ordeal. The *sotah* ordeal is a specific ritual for husbands who have suspicions without proof. These invocations of the River Ordeal reflect a different legal system: when the truth is unknown, there is recourse to divine knowledge through the river. The *sotah* ordeal seeks to soothe the husband’s emotional state, while the River Ordeal is finding

³⁸ There are two extant copies of tablet A of these laws. Roth, Hoffner, and Michalowski, *Law Collections from Mesopotamia and Asia Minor*, 71, 153.

³⁹ Middle Assyrian Law A 17 as translated in Roth, Hoffner, and Michalowski, *Law Collections from Mesopotamia and Asia Minor*, 159. Roth’s note on page 192n12 mentions that the verb used here means that the accusation is clearly that the sex is illicit.

information for a court. The husband's emotions are not part of these laws. Instead, the laws focus on legal accusations.

Ancient Near Eastern law texts are chronologically removed from the *sotah* ordeal and, as we have seen, they are framed differently. While both the *sotah* and these laws deny the wife agency, the *sotah* ordeal is focused on the emotional state of the husband and his ability to control his wife through adjudicating a legal matter. This said, the *sotah* ordeal does limit a husband's response to such emotions, allowing a specific course of action should the husband be suspicious. Ancient Near Eastern adultery laws deal instead with legal accusations between men without mention of the emotions of the parties involved. Both the *sotah* ordeal and the River Ordeal show that ritual ordeals were constructed to solve legal problems, but differences in discursive practice mark them as concerned with different aspects of suspected adultery. Both the ancient Near Eastern adultery laws and the *sotah* ordeal also provide limits on the actions a suspicious husband might take. These extra-biblical legal texts show us that other cultures also used ordeals in the case of suspected adultery, but these cultures had a more widely applied trial-by-ordeal than in the Hebrew Bible. Furthermore, ancient Near Eastern laws treat a husband's suspicions as having less legal weight than accusations from third parties. They use a discursive practice focused on the interactions of men with other men, while the *sotah* focuses on emotional harmony between husband and wife.

THE BIBLICAL CONTEXT

Multiple biblical passages address adultery. There are narratives that deal with adultery as a main element of their plot, wrestling with its moral and legal implications. There are legal texts with circumstances and punishments for adulterers. And there are the prophets, who use adultery extensively as a metaphor for the religious infidelity of Israel to God. Each of these genres of

text frame adultery in particular ways, which in turn show who had agency and who held legal culpability.

Not all these texts come from the same genre as the *sotah* ordeal. While the legal texts may seem the closest in genre, they do not present a ritual for the priest to perform. Instead, the legal texts are focused more on punishments and restitutions relating to incidents. They are also not generally interested in proving a specific event occurred; rather, they focus on what to do after obtaining proof. Similarly, narrative and prophetic texts are distinct genres from the ritual text of the *sotah* ordeal. The differences in genre should not be ignored, as the texts are using the concept of adultery to achieve different ends. However, all these texts can be used to show how their authors approached adultery and how they apportioned agency and culpability to those involved.

Tradition holds that the earliest biblical texts are from Israel and Judah during the divided monarchy, with some passages dating earlier to either the united monarchy or the pre-monarchic period. However, there is little evidence to support this claim, at least for the final form of the Pentateuch and other texts which we have inherited. The Pentateuch in particular needs framing before moving to analysis, and as mentioned above, I am using van Seters' narrative coupled with Mullen's ideas around the use of the Pentateuch during the Persian era. The concern is less with where the text of the Pentateuch came from and more with the direction they are taken. As such, I am primarily looking at how these texts interacted with each other, starting in the Persian era, when they would have begun a dialog in the emerging Pentateuch.

LEGAL TEXTS

The Ten Commandments are a good place to start with legal texts on adultery, as they are often considered the core legal tenants of the Pentateuch.⁴⁰ Both listings of the Decalogue include the command “לֹא תִזְנֶה” or “Do not commit adultery.”⁴¹ William Propp, in the Anchor volume on Exodus, and Moshe Weinfeld, in the Anchor volume on Deuteronomy, note that the definition of זָנָה is a man having sex with a woman married to another man.⁴² Propp does mention that later readers, specifically Abraham ibn Ezra, expand this definition to include all illicit sex.⁴³ Nahum Sarna, in the JPS commentary on Exodus, has a similar definition of the term, though he explicitly notes the woman’s consent, and states that Israel makes adultery a more religious crime than the nations around it, even though Egypt and Ugarit name adultery the “great sin.”⁴⁴

As it is stated in the text, the law is not particularly useful for our exploration of adultery by itself: it is concise and to the point. It uses the explicit term for adultery rather than the circumlocutions used by the *sotah* ordeal. This law differs from the *sotah* passage in that the potential adulterer addressed is a man: the verb used is masculine, meaning this prohibition is explicitly telling men not to have sex with other men’s wives. To an extent, the gender of the verb is likely because the audience is assumed to be men. Hebrew does use a default masculine personal pronoun, so the text may have addressed both men and women; however, even taking

⁴⁰ How influential the Ten Commandments might have been in their ancient context is debatable. However, later readers certainly attach weight to the Decalogue as some sort of legal core.

⁴¹ Exodus 20:14 and Deuteronomy 5:18. Technically, Deuteronomy includes a ו as a conjunction, but this makes no difference in meaning.

⁴² William H.C. Propp, *Exodus: A New Translation with Introduction and Commentary*, Anchor Bible Commentaries, (New York: Doubleday, 1999), 179; Moshe Weinfeld, *Deuteronomy 1-11: A New Translation with Introduction and Commentary*, Anchor Bible Commentaries (New Haven: Yale University Press, 1991), 314.

⁴³ Propp, *Exodus 1-18*, 179.

⁴⁴ Nahum M Sarna, *Exodus: Shemot: The Traditional Hebrew Text with the New JPS Translation*, JPS Torah Commentary (Philadelphia: Jewish Publication Society, 1991), 114.

the grammatical practices of Hebrew into account, the use of a masculine verb stresses that men are the predominant actors. Wives and their choices are not even mentioned. While Sarna states that the law in the Decalogue implies the woman's consent, the text does not mention her consent or lack thereof.⁴⁵

Wives are clearly necessary for the adultery law to have meaning, but at the same time, they and their choices are not part of biblical legal discourse. Another discursive difference is that this law uses the specific verb *נָאָה* to speak about adultery, rather than the *sotah* ordeal's various circumlocutions. Rather than talking about a wife "going astray" or "becoming impure," the Decalogue uses this single, terse verb. The focus in the Decalogue is not on the couple or on any potential transgressions, but on simply forbidding unacceptable behavior by the male audience. The Decalogue does not stipulate a punishment for adultery, which is true of all its legal prohibitions. This lack would imply these laws are not for actual legal proceedings, but instead for providing a framework of societal values. The Decalogue is clearly against the idea of adultery, at least as defined in the ancient Near East, but this is not a particularly surprising position, given that every society around Israel would have agreed. Several ancient Near Eastern laws address adultery, treating it as a capital crime for both wife and lover. With Foucault, these laws become statements speaking to culture.⁴⁶ With no punishment and no enforcement, the text here is not attempting to curb actual adultery; instead, it is shaping the idea of a society ruled by laws.

Unfortunately, the form of the Decalogue means that they speak less about their culture, and the discursive practice shaping them, than other laws. Exodus frames these laws as the core

⁴⁵ I will touch on this more when addressing other sex laws of Deuteronomy, as these other laws do seem to approach the idea of consent, though not from a modern perspective.

⁴⁶ Foucault explores the statement in *The Archaeology of Knowledge*, 107–13.

degree from God to Israel, brought down by Moses from Sinai shortly after the Israelites arrive (chapters 19–20). Deuteronomy similarly frames these laws as the core of the law presented by Moses for God (chapter 5). The laws serve not as functional legal codes, but as propaganda about the culture being constructed. Via Foucault, these texts are attempting to shape what individuals believe they can do.⁴⁷ But they are doing so without telling their audiences the price of resistance, as they list no punishment. Jeffery Nealon explains that Foucault was looking at a similar, though less clearly defined modern example of the same, in sexuality. How much did it cost to be gay in 1980s America? What would one have to give up to come out?⁴⁸ The function of the Decalogue is thus not defining what to do in certain legal cases, but instead delineating the boundaries of a society.

The next set of laws are from Leviticus 18. This chapter has a series of prohibitions regarding sexual relations. Again, the laws are all directed at men, even when the perpetrator of the unlawful act is a woman (e.g., Lev 18:23). Most of them list various relatives with whom the men are prohibited from having sex. Included in this list are your father's wife (v8), your son's wife (v15), your sister-in-law (brother's wife, v16), and your kinsman's wife (v20). Most of these laws deal with incest—sisters, mothers, daughters, cousins, and nieces in varying degrees are all forbidden. Jacob Milgrom states that these laws, as well as the other sex laws in Leviticus 20, were denouncing Egyptian and Canaanite sexual practices.⁴⁹ He argues that the laws are repeated in multiple forms because of their widespread violation.⁵⁰ Galpaz-Feller's reading of Egyptian texts counters Milgrom's reading, as she finds the Egyptian texts themselves to be

⁴⁷ Foucault, *Power/Knowledge*, 73–74.

⁴⁸ Jeffrey Nealon, *Foucault Beyond Foucault: Power and Its Intensifications Since 1984* (Stanford, CA: Stanford University Press, 2007), 18–20.

⁴⁹ Jacob Milgrom, *Leviticus 17-22*, Anchor Bible Commentaries (New York: Doubleday, 2000), 1519.

⁵⁰ Milgrom, *Leviticus 17-22*, 1532.

similar to biblical texts.⁵¹ It's possible that the authors of the biblical texts are disparaging Egypt despite their similarities, but the laws of Leviticus do not make this claim. Rather, Leviticus frames its incest laws as being against Canaanite practice.

Baruch Levine focuses on the metaphorical uses of marriage, sex, and adultery in Israelite religion and law.⁵² Several scholars have read these chapters of Leviticus as commenting on the narratives of the patriarchs and early kings of Israel, who violated several of these laws.⁵³ Douglas Mohrmann takes a different approach and argues that the sex laws of Leviticus are used to define various internal boundaries within the Israelite community: where is the line of “family,” and who is within it?⁵⁴ The laws of Leviticus 18 and 20 are, then, using sex as a boundary in two possible ways. First, using Milgrom's analysis, sex laws are reinforcing external boundaries: while the various Canaanite groups might let these couplings exist, we Israelites do not (even if the accusations against the Canaanites are not based on real sexual practices). Second, the laws also form internal boundaries for who is “family” and who are potential spouses, as per Mohrmann's analysis.

While many of the laws are about incest and its definition, a few are not. Verse 20 is about wider adultery, though it is framed as having sex with a wife of someone else in one's own community (אִשְׁתּוֹ הַזֶּה). This phrasing could allow sex with the wife of someone outside the

⁵¹ Galpaz-Feller, “Private Lives and Public Censure,” 158.

⁵² Baruch A. Levine, *Leviticus: Va-Yikra: The Traditional Hebrew Text with the New JPS Translation*, JPS Torah Commentary (Philadelphia: Jewish Publication Society, 1989), 122.

⁵³ Bradley Embry, “The ‘Naked Narrative’ from Noah to Leviticus: Reassessing Voyeurism in the Account of Noah's Nakedness in Genesis 9.22-24,” *Journal for the Study of the Old Testament* 35.4 (2011): 428; Gershon Hepner, “Abraham's Incestuous Marriage with Sarah: A Violation of the Holiness Code,” *Vetus Testamentum* 53.2 (2003): 143; Tizah Meacham, “The Missing Daughter: Leviticus 18-20,” *Zeitschrift Für Die Alttestamentliche Wissenschaft* 109.2 (1997): 258.

⁵⁴ Douglas C Mohrmann, “Making Sense of Sex: A Study of Leviticus 18,” *Journal for the Study of the Old Testament* 29.1 (2004): 78–79.

community, however broadly that may have been interpreted. Potentially, verse 20 could allow a man to have sex with a woman captured in war from outside the community, or even a wife who is not part of the community.⁵⁵ The law is phrased to focus on internal relationships and is not phrased to protect those outside the Israelite community. Depending on the status of enslaved people, a man may or may not have been able to have sex with a married enslaved woman, as well. The term עַמִּית is primarily used in Leviticus, referring to members of the community protected by the same laws.⁵⁶ The term עַמִּית does seem to imply social equals as it is used in Leviticus. In each case, the laws are dealing with issues of social interaction: theft (Lev 19:11), judgment in court (Lev. 19:15), social interactions (Lev. 19:17), injury (Lev. 24:19), and commerce (Lev. 25:14–17). As such, the adultery law of 18:20 would be limited to barring sex with wives of other men of equal social class within the boundaries of the Israelite community. This reading of verse 20 supports the idea that these laws in general are a form of boundary construction, as Milgrom and Mohrmann argue.

Leviticus 19:20f strengthens the idea of these sex laws being about boundary construction. This passage covers the case of a man having sex with an enslaved woman נְהִרְפֹּת “intended for [another] man.”⁵⁷ This woman is one who הִפְדָּהּ לֹא נִפְדְּתָה אִוָּ חֲפָזָה לֹא נִתְּנָה לָאֱמֹנָה “who has not been redeemed her cost or given her freedom,” meaning the woman is still enslaved when the sex occurs. The text continues that the man and the woman should *not* be

⁵⁵ If read as applying only to members of the community, Genesis 19 and Judges 19 (in which the men of the towns wish to rape visiting men) might be reflecting a similar sexual morality: within the community, there were certain standards and approved acts, but individuals outside that community were not offered such protections. This would require further investigation and is beyond the scope of this project.

⁵⁶ Zechariah 13:7 is only other place the term עַמִּית occurs in the Hebrew Bible, where it is used to refer to someone who trusts the speaker.

⁵⁷ The word נְהִרְפֹּת is from the Akkadian term *harapu*, meaning “to designate.” Ludwig Köhler et al., *The Hebrew and Aramaic Lexicon of the Old Testament* (Leiden; New York: E.J. Brill, 1994).

executed, as she is not free. Rather, there is a *בְּקָרָת* “an obligation to compensate” or “legal debt” that must be paid, as the value of the woman has been diminished with the loss of her virginity. The man is to make an offering at the Temple, and the offense is forgiven him. The woman’s fate is not explicitly stated in the text. Given that this law explicitly bars the usual adultery punishment of death, the text is clearly stating that having sex with a woman enslaved by another man is not the same as having sex with the other man’s wife. The difference in the woman’s social class alters the nature of the offense. The use of the term *אִישׁ* “man” for the slaver would imply someone of the same social status as the *אִישׁ* who stands accused. This is covering the case of a woman enslaved by a man with status: the law would not apply to an enslaved woman wed to someone of her own status. This is assuming that enslaved people would have been allowed marriage. The nature of *אִישׁ* vs. *עֶבֶד*, and when *אִישׁ* includes slavery and when it does not, at least for legal purposes, is beyond the scope of this paper. Class in biblical texts is problematic to work with. While Genesis never names them as such, the patriarchs are not poor men, or at least when they are, they do not remain so. While never “landed nobility” in the medieval sense, patriarchs and their families would likely have more in common with higher social classes of urban societies than lower classes. However, as the patriarchs are not landed, meaning they are nomadic and not connected with a place, they lack some of the traditional elements of nobility. However, as Leviticus 18:20 and 19:20f both use specific language to construct the parties involved, they do appear to be very aware of the social statuses of the people involved in sex acts, altering the legal penalties and expectations thereof. These nuances imply that the legal code of Leviticus, or at least of these chapters, is very aware of social class when determining legal outcomes. Given that the legal codes of other ancient Near Eastern nations are heavily dependent on the social class of both perpetrator and victim, it would not be out of place for the

Bible's legal codes to have some level of social class distinction for various crimes. Given this law, the law of Leviticus 18:20 is thus covering a case in which a man has sex with the wife of another man of the same social class within the same community, and that the woman is also of the same social class.

Leviticus 18 collects the punishments for many of the sex laws together in verses 24–30. These verses name the various sex acts of Leviticus 18 as defiling (v24) and that if these sexual deviances are unpunished, וְהָאֶרֶץ תִּטְמָא הָאָרֶץ “the land will be defiled.” The various illegal sex acts are not simply crimes against specific persons, but instead cause the land itself to be made unclean: that is, they are crimes against the community, not just an individual. If these acts are tolerated, then the community will suffer. These laws thus represent a different view than that of the *sotah* ordeal, in which suspected adultery is an affront to the husband alone. In the *sotah* ordeal, the ordeal is constructed to assuage the husband’s emotions. In Leviticus 18, the focus is on the land and the wider community, as these crimes lead to the land (and by implication, the people) becoming corrupt. Leviticus 18 frames these laws further by pointing to Egypt and Canaan, places that the text claims allowed these sorts of sexual crimes to happen, leading to defilement. The text warns that if the community of Leviticus allows these sexual crimes to happen, it will become defiled just as Egypt and Canaan were (Lev. 18:24–28). Should any of the community or aliens living among them commit one of these sexual crimes, the text says וְנִכְרְתוּ הַנִּפְשֹׁת הָעֹשִׂוֹת הָעֲשֻׂוֹת “the ones who did it shall be cut off from among the people” (Lev. 18:29). While the Rabbis will interpret this as a form of divine capital punishment, the text here would imply that the punishment is exile. The communal punishment threatened in verse 28 is that תִּקְיָא הָאֶרֶץ אֶתְכֶם “the land will vomit you out,” implying that the land would exile the community, should the crimes be accepted. Given that the community is not being destroyed, but exiled from the defiled

land, the individual punishment of being cut off from the people is also exile, at least when describing sexual sins as a group.⁵⁸

Leviticus 20:10f provides another list of sexual crimes, this time listing death as the penalty for each one. Verse 10 covers the case of a man who commits adultery with the wife of his neighbor, and states that both the adulterous man and the wife should be put to death.⁵⁹ This law is followed in verse 11 with the case of a man who has sex with his father's wife, in which case the man and his (step) mother are put to death. Verse 12 similarly condemns a man who has sex with his daughter-in-law. The following verses cover cases which, while sexual, are not explicitly adulterous: two men having sex, a man taking both a mother and daughter as wife, bestiality, and so on. The list is similar, though of narrower scope, to the list of sexual crimes in Leviticus 18. While chapter 18's laws are more apodictic ("Don't do X"), chapter 20's laws are casuistic: if a man does X, then do Y. Most of these laws do not vary in meaning between the two cases, though chapter 20 does assign differing penalties: some are capital cases, some require exile, and two cases state that the crimes will cause the couple to not be able to produce offspring. While Leviticus 18 frames its prohibitions as commands to individual men, chapter 20 is presented as instructions to the court. As such, when addressing crimes, Leviticus 20 explicitly covers the women involved, while Leviticus 18 addresses the men as the actors of the crimes.

⁵⁸ It is possible that the use of exile, especially that of the community being "vomited out" of the land, could be a signal that this text was redacted while the community itself was in exile. Thus, the text could be stating that it was sexual impropriety which brought about the Babylonian exile. It would explain why this passage condemns the acts and then states that the community would be punished if the perpetrators were not punished.

⁵⁹ Verse 10 also duplicates its opening phrase, וְאִישׁ אֲשֶׁר יִנָּאֵף אֶת־אִשְׁתּוֹ אִישׁ אֲשֶׁר יִנָּאֵף אֶת־אִשְׁתּוֹ רֵעֵהוּ, effectively saying "a man who commits adultery with the wife of a man who commits adultery with the wife of his neighbor." I am assuming the duplication is an error of some kind in transmission, rather than an attempt to cover the case where a man has sex with the wife of a man who had sex with someone else's wife (or perhaps the first man's own wife).

The only crime in Leviticus 18 which does not involve a man is the case of a woman committing bestiality. There (18:23b), the text frames the act as the woman giving herself to the animal for the animal to perform sex on her: *וְאִשָּׁה לֹא־תַעֲמֹד לִפְנֵי בְהֵמָה לְרִבְעָהּ תִּתְּבֵל הִוא*. Leviticus 20:16 similarly frames the case as the woman approaching the animal to have sex with it: *וְאִשָּׁה אֲשֶׁר תִּקְרַב אֶל־כָּל־בְּהֵמָה לְרִבְעָהּ אֹתָהּ*. Milgrom notes that the bestiality laws are framed such that the woman initiates the encounter, but the animal performs the actual sex act.⁶⁰ Even though the woman is the only human involved, she is denied agency in the act of sex itself. Both chapters find ways to remove women from the active role in sex, even if that means giving agency to an animal.

Leviticus 20 does end with a warning like Leviticus 18: should the community not prosecute these crimes, the land will become defiled and will vomit out the community (Lev. 20:22–24). However, while Leviticus 18 groups all the crimes together and gives exile as the penalty for all of them, Leviticus 20 marks specific crimes with specific penalties. Some acts are still punished by exile, while others are capital crimes or cause other penalties. Both chapters deal with adultery, but many of the laws deal with situations that are more complex than simple adultery. In several the cases, the women involved are not only the wives of someone else, but the men involved are related in some way. Thus, there is a layering of problematic elements to the sex: they are often both adultery and incest. The laws do not cover how to prove such events occurred, but instead cover what to do when guilt has been established.⁶¹ The only law in which

⁶⁰ Milgrom, *Leviticus 17–22*, 1570–71.

⁶¹ In the case of sex with an enslaved woman (Lev. 19:20–22), there may have been restitution involved as well as punishment, but the phrasing of the verse is unclear on the specifics. An *אִשָּׁה* is brought, which HALOT defines as either a “guilt-offering,” “restitution,” or “gift of atonement.” The gift is given to the temple, not to the slaver, meaning the restitution is owed to Yahweh, not to humans. Elsewhere, the term *אִשָּׁה* is used for offerings given to Yahweh and the Temple. It is not financial restitution to the aggrieved party of a tort.

investigation plays a part is the case of a man having sex with an enslaved woman intended for another man in the community (Lev. 19:20–22).⁶² The laws of Leviticus are all addressed to men, even men are not involved in the sex act described at all, and as such, all assume a male agent. Even when no human man is involved in the sex act, the text frames the woman as seeking out an animal to take the active sex role. Women again do not have agency in the act of sex but are culpable for their status as faithful or defiled.

Foucault argues that power will seek to shape individual behavior through the construction of social boundaries.⁶³ The laws of Leviticus seek to define the boundaries of acceptable Israelite behavior, thus defining the boundaries of Israelite society. By claiming that these criminalized sexual practices are common among Canaanites, the laws mark individuals who transgress them not just as bad citizens, but as defiling outsiders. This sort of power (or at least framing of power) is what Foucault terms contract-oppression: there is a social contract, which can lead to oppressive acts when applied.⁶⁴ But what is out of place with this framing is the threat to the land itself. This threat to curse the land is more in line with Foucault's framing of power as war-repression: the curse is not an abuse of the contract, but rather violence offered as reason to obey.⁶⁵ These descriptions may also be a bit sophisticated, as it is unclear if an individual could opt out of being part of the community of Israel as described in Leviticus. Given the nature of the ancient world, it is unlikely that individuals could simply leave a group or

⁶² The law does not state what is being investigated. Are they to determine the woman's social status (enslaved vs. freed), or are they finding out if sex occurred?

⁶³ Foucault, *Power/Knowledge*, 73–74.

⁶⁴ Foucault, *Power/Knowledge*, 91.

⁶⁵ Foucault, *Power/Knowledge*, 92.

location, should they find social restraints too oppressive. As such, even within what appears to be contractual power schemes, there is the presence of repressive forces.

Exodus also covers adultery, though it has little direct mention of adultery outside of the Ten Commandments which, as discussed above, tell us only that adultery is bad (and that the Decalogue primarily addresses men). Exodus 22:15-16 (16-17 English) does discuss what should happen if a man seduces an unbetrothed virgin woman, but this is not adultery. The text does not treat the sex itself as the problematic issue in this case; rather, it is the lack of prior consent by the father of the woman. William Propp argues that the text is even more removed from our ideas of sexual morality: the issue is that the woman has been stolen/borrowed and then returned in a status different than when she was taken.⁶⁶ Propp notes that the text does not provide for the woman's consent (to either the initial act, or the later marriage), but assumes that "in real life," the woman would have been consulted.⁶⁷ As the text is more concerned with the father than the woman, the text requires the man to pay the father and, if the father allows it, to marry the woman. In this case, a sexual boundary has been transgressed, but it is one that can be rectified. The text again primarily addresses the men involved: in this case, the seducing man and the woman's father. The only time the woman's consent or agency is even implied is in the framing of the man's act as, specifically, seduction. Presumably, this law would not apply, should the man have forced the woman, but as Propp notes, the ancient world likely had a different understanding of what constituted "seduction."⁶⁸

⁶⁶ William H.C. Propp, *Exodus 19–40: A New Translation with Introduction and Commentary*, Anchor Bible Commentaries (New York: Doubleday, 2006), 2:253.

⁶⁷ Propp, *Exodus 19–40*, 2:254.

⁶⁸ Propp, *Exodus 19–40*, 2:253.

Deuteronomy has a similar law in 22:28-29, though this law is worded differently. While Exodus 22:15 clearly names the act seduction, Deuteronomy 22:28 describes the event as a man being found with a woman having וַתִּפְשְׁהָ וַיִּשְׁכַּב עִמָּה “seized her and lay with her.” This phrasing signals force, probably rape. It is difficult to be certain, though, as the woman’s consent is rarely, if ever, considered in the phrasing of these laws. Thus, it may be rape as we would understand it (the woman not consenting), but it may also be that the woman was taken without the permission of the father. Regardless, the Deuteronomy law also requires payment by the man to the father, and then requires the man and woman to be wed, without regard to the father’s or the woman’s consent. Further, the man is barred from divorcing the woman, effectively making him responsible for her for the rest of their lives.

Foucault was working in a much later period but does mention that the “systemisation of pleasure according to ‘laws’ of sex gave rise to the whole apparatus of sexuality.”⁶⁹ In other words, by ordering sex according to various laws, rules, taboos, etc., power created the idea of sexuality, and the various sexualities of the West represent collections of laws defining correct sexual behavior for individuals labelled with that sexuality. While the law in Exodus (22:15-16) is not constructing a sexuality, it is showing the control of sex. Sex in Exodus is the purview of men, even though a woman is involved. Exodus law reassures the male audience that they are in control, even in cases when another man may have seduced, however they understood the term, a woman in their care. The law limits the father’s response to his daughter’s sexual activities, just as the *sotah* ordeal limits the husband to a particular course of action. The father is still allowed to deny the marriage according to the law in Exodus. The Deuteronomy version of the law (22:28-29) is framed specifically around a man forcefully taking a woman and having sex with

⁶⁹ Foucault, *Power/Knowledge*, 191.

her. This law is aimed at an unauthorized man invading the home of the male audience. By forcing the invading man to marry the woman, Deuteronomy addresses the fear that a father might be saddled with a woman whom he cannot marry off and for whom he is still financially responsible. However, the Deuteronomy law also limits the father's response, going further than the Exodus law and not allowing the father to prevent the marriage. Both laws are framing sex as an economic issue of control, and not as its own type of moral issue.

While Deuteronomy 22:28-29 deals with the case of an unbetrothed woman, verses 13-27 cover other cases of sexual deviance. Verses 13-21 involve suspected pre-marital sex. If a newlywed husband makes a charge against his new wife, that she was not a virgin, then the wife's parents are to bring the evidence from the wedding night before the elders of the city. This passage has generated much commentary, as scholars have attempted to work out what the text is attempting to construct or contain. Joshua Kulp has argued that the accused wife, if she was found guilty of the charge, would have been effectively in a polyandrous marriage: she was married-by-sex to her first lover, and is also officially married to her accusing husband.⁷⁰ Bruce Wells notes that if the wife was innocent, the husband should be punished for this false accusation with the same physical punishment he tried to impose on her, but instead the husband is only fined.⁷¹ Wells argues that the husband is not necessarily seeking the death penalty in this case, but that he may be seeking divorce.⁷² However, the text of Deuteronomy does not provide other possible outcomes: if the woman is found guilty, the text requires execution. Finally, Joseph Fleishman reads the case of the slandered bride as a parallel to the rebellious son of

⁷⁰ Joshua Kulp, "'Go Enjoy Your Acquisition': Virginité Claims in Rabbinic Literature Reexamined," *Hebrew Union College Annual* 77 (2006): 36–37.

⁷¹ Bruce Wells, "Sex, Lies, and Virginal Rape: The Slandered Bride and False Accusation in Deuteronomy," *Journal of Biblical Literature* 124.1 (2005): 44–45.

⁷² Wells, "Sex, Lies, and Virginal Rape," 63.

Exodus 21:17f, and that the woman's rebellion is only discovered when she is married off and found not to be a virgin.⁷³

The case in Deuteronomy 22:13-21 is framed initially as the husband making up a charge against his new wife because he dislikes her after consummating the marriage. The text implies that the parents of the bride are the ones to keep the wedding night evidence, presumably the bedsheets or their equivalent. If it is found that the man is making a false accusation, he is to be fined and is prevented from divorcing his wife if he lives (thus making him financially responsible for her). But if his accusation is shown to be true, the woman is to be stoned to death in front of her father's house. This law addresses the idea of suspected sexual impropriety, but it is specifically the case of premarital sex, not adultery. Specifically, this law covers the case when a newlywed husband accuses his new wife of undisclosed premarital sex. In effect, the husband is accusing the woman, and presumably her father, of dishonestly representing the woman's sexual history. There is no divine ritual or inquiry of God, but instead physical evidence is brought before the court to decide the fate of the wife.⁷⁴ Further, there are consequences for the husband should he be making a false accusation. The woman has no active role in her own defense (she is not the one who keeps the sheets), but rather her parents are the ones who defend her before the court. The only act the wife does in this passage is, if she is not a virgin before the

⁷³ Joseph Fleishman, "The Delinquent Daughter and Legal Innovation in Deuteronomy Xxii 20–21," *Vetus Testamentum* 58.2 (2008): 207.

⁷⁴ The evidence is presumably the presence of blood on the marriage bed from a ruptured hymen. This assumes that there would have been such evidence in enough of the cases to merit the blood to be an assumed part of the experience. Additionally, the parents of the woman could have made certain that there were blood stains on the cloth. That said, the text is not explicit as to what is expected.

marriage (or did not leave evidence), then she is accused of having *עֲשָׂתָה נְבִלָה בְּיִשְׂרָאֵל לְזָנוֹת בֵּית אָבֶיהָ* “done folly in Israel by whoring [in] the house of her father.”⁷⁵

The person with evidence is the person with power. While looking at torture, Foucault argues that the goal of torture is to make criminals condemn themselves.⁷⁶ Blame for the torture and punishment then falls squarely on the criminal, and not on the representatives of power (the state, the prosecutor, the judge, etc.). In truth, it will be the one doing the torture who has power, but the perception will be that the criminal had agency in confession. In the case of the slandered bride from Deuteronomy, the parents of the woman are the ones to produce evidence. If we assume the evidence in question is the presence of blood on the marriage bed, the parents are in full control of what is shown in court. The law is thus not addressing husbands’ fears about their wives, but instead addressing parents’ (likely fathers’) fears for their daughters: their daughters will only be found guilty if they, the parents, allow it. Just as the criminal would become part of their own condemnation for Foucault, Deuteronomy involves the parents of the bride in any possible condemnation of her. The bride plays no part in her own defense.

Verse 22 covers the case of a man found having sex with another man’s wife. In this law, both are executed. Deuteronomy does not explicitly offer a difference between rape and consensual adultery. Jeffery Tigay argues that if it were rape, the law would not apply to a married woman, based on later halakhic interpretations.⁷⁷ The text of Deuteronomy only seems

⁷⁵ What this evidence is, exactly, is a matter of debate. Caryn A Reeder, “Wives and Daughters: Women, Sex, and Violence in Biblical Tradition,” *Ex Auditu* 28 (2012): 129n24 discusses some of the points of view on this issue. Traditionally, evidence has been read as blood from a ruptured hymen on the wedding night bedding, but there has been a proposal that it could mean regular menstruation prior to the wedding (thus proving the bride was not pregnant by another man when wed).

⁷⁶ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (S.I.: Vintage, 2009), 38.

⁷⁷ Jeffrey H Tigay, *Deuteronomy: Devarim: The Traditional Hebrew Text with the New JPS Translation*. JPS Torah Commentary. (Philadelphia: Jewish Publication Society, 1996), 207.

to consider rape in the case of engaged, virgin women, and explicitly ignores the woman's consent in other circumstances. Robert Kawashima argues that women's consent was not what these laws are interested in, even the "field law" for betrothed women (Deut. 22:25-27), but instead whether the woman participated in the crime or not.⁷⁸ Kawashima goes on to point out in the narrative of Amnon's rape of Tamar that Tamar does not voice her own refusal as the reason Amnon should stop, but rather that Amnon does not have the consent of their father.⁷⁹ Reading the text of Deuteronomy 22:22, there is no distinction offered for the wife's consent or lack thereof. However, in the case of a betrothed woman not yet wed, the text offers two potential cases. Verses 23-24 cover the case in which a man and a woman who is engaged to another man are found *in flagrante* within the city. In this case, the two of them are to be brought outside the city and stoned, על־דִּבְרֵי אִשָּׁה לֹא־צָעָקָה בָּעִיר, "because she did not cry out [for help] in the city." The text assumes that the woman was complicit, because had she not been willing, she would have cried for help, and given they were found while having sex, those who found them would have been close enough to hear her cries. This text is highly problematic, given that rape may include threats to keep silent on top of the physiological response to fear, which can cause the body to freeze up. While most modern audiences would find this a problem with the assumption the text makes, ancient audiences and authors apparently agreed with its logic. However, the text offers no reason why the couple would have been found out: presumably, this would cover only cases when someone happened to stumble into the room during the act. The following verses of 25–27 cover what to do if the man and the woman engaged to another man are found having sex outside the city. In this case, the assumption is that the woman cried for help and was not heard, thus

⁷⁸ Robert S Kawashima, "Could a Woman Say 'No' in Biblical Israel?: On the Genealogy of Legal Status in Biblical Law and Literature," *AJS Review* 35.1 (2011): 16.

⁷⁹ Kawashima, "Could a Woman Say 'No'," 20–21.

only the man is put the death. Verse 26 does say *כִּי כַּאֲשֶׁר יָקוּם אִישׁ עַל־רֵעֵהוּ וַיִּרְצָחֵהוּ נָפֶשׁ בֶּן הַדָּבָר הַזֶּה* “Since this matter is like a man who rose up against his neighbor and killed him.” This may be a reference to Deuteronomy 21:1–9, when a ritual is given to absolve the guilt of a murder which occurred outside of town, with no other way to solve it. Assuming this connection, the woman would parallel the murder victim and be innocent of the crime committed. Possibly, she may carry a similar impurity to that of the corpse in Ch. 21, but no ritual is provided to purify her. Deuteronomy 22:25–27 condemns the man who had sex with the woman but does not provide a way for identifying the man. (We could assume the woman might identify him in court, but given that women’s testimony is generally not accepted, this should not be assumed.) Verse 26 may be simply referring to the ritual in Ch. 21 and thus to the idea that the man will never be caught. Taking the case of the wife together with the cases for the betrothed woman, the texts imply that if a wife is caught having sex with another man, there is no concern for the wife’s consent at all. But if a woman is caught and her intended husband has not yet had sex with her, her consent matters. Kawashima does mention that the taboo issue at hand could be the series of male partners—husband, other man, husband.⁸⁰

The laws of Deuteronomy 22 are framed to address the concerns of husbands and fathers. In the case of an unengaged virgin, the father’s economic concerns are addressed by marrying the woman off to the man after the father is compensated a standard bride price. In the case of an engaged woman, the law is concerned about whether she is complicit, as the husband would presumably not want a wife who would allow adultery (consensual or otherwise). In the case of a married woman, her consent or complicity is not a concern. The woman’s welfare is not

⁸⁰ Kawashima, “Could a Woman Say ‘No’,” 17n54. Further study of the treatment of polyandry in these texts is beyond the scope of this study.

considered, and she is not the audience of these laws. These laws also shape the husband's reactions: Foucault argues that modern Western society has shifted from laws to social pressures to attempt to shape the individual's behaviors, but these biblical laws are still using legal frameworks to construct correct behaviors for the individual.⁸¹ The husband cannot accept the wife back, regardless of her complicity in adulterous sex, but the man who is merely engaged and not yet wed to a woman can. While other ancient Near Eastern laws allow the husband to waive the punishment of his wife (and her lover), the laws of Deuteronomy do not allow this.⁸²

In all these laws, the sex act is still performed by the man on the woman, typically phrased as *וַיִּשְׁכַּב עִמָּהּ* “he lay with her.” The women take no active role, save for 1) crying out if they did not consent to it; and 2) potentially *זנה* “whoring themselves out.”⁸³ The only law which does not have a man as the actor for the sex act is the law about women and bestiality (Lev. 18:23). But even in that case, the woman does not perform the act, but rather *תַּעֲמִיד לִפְנֵי בְּהֵמָה* “presents [herself] before a beast” for it *לִרְבֹּעָהּ* “to lay [with] her”—the animal is the active agent in the sex act, not the woman. While the woman may not be the active agent in these acts, she is just as legally culpable as the man, at least without specific circumstances which could imply that sex was forced. Even in such circumstances, the text of the laws does not explicitly reference the woman's consent or lack thereof. As such, it is possible to read these texts as ignoring the difference between rape and adultery, should the woman be married.

⁸¹ Michel Foucault, *The History of Sexuality*, trans. Robert Hurley, vol. 1 (New York: Vintage Books, 1988), 1:89.

⁸² The right of the husband to pardon his wife (and her lover) may be constrained to certain circumstances, such as when collusion/entrapment may have occurred. See Westbrook, “Adultery in Ancient Near Eastern Law,” 554–58.

⁸³ The root used is *זנה*, which is traditionally rendered as “to whore” or “to prostitute.” However, usual usage of this term happens most often when the woman is initiating some form of sexual deviancy, but not necessarily an exchange of sex for payment. Given the frequency of this term being used in this manner, it is likely an idiomatic use and we should not assume that this term is used exclusively to mean sex for money. While an exhaustive study of this word is beyond the scope of this project, I have rendered *זנה* as “to whore” in part because the English term has the same problematic slang usage the Hebrew term appears to include.

This is admittedly a harsh reading of the text, but given that the laws are organized together, and given that the case of a betrothed but unwed woman it explicitly gives an option of rape but in the case of a married woman it does not, I believe this reading is possible. Ancient legal collections are notoriously incomplete, meaning that key circumstances are often missing from them, but at the same time, the progression of sex laws in Deuteronomy 22 is such that it appears to be considering the major points it believes important, and it does not include the case of a raped wife as different from the case of an adulterous wife.

What also may be at play is an ancient taboo around a woman alternating between men. This taboo is also present in the construction of the divorce laws of Deuteronomy 24:1–4. While the law does provide some information on divorce, it is framed in such a way as to focus on the woman’s ability to remarry a man from whom she has previously been divorced. If she has married another man in the interim, she is barred from marrying her prior husband. This alternating between men is labeled as *תועבה* *הוא לפני יהוה* “an abomination before Yahweh.” This taboo may also be at play when men have sex with women who are wives. Regardless of whether we would label it as consensual adultery or rape, there would appear to be some cultural reticence to allowing the original husband to have sex with the wife again. We will see this in the some of the narratives around adultery. As Adele Berlin argues, these laws were there to proscribe certain actions done by the men of a patriarchal society, in an attempt to construct a moral community.⁸⁴ Foucault would argue that these laws attempted to construct the moral individual by prescribing and proscribing actions and their responses.⁸⁵ Cynthia Edenburg reads

⁸⁴ Adele Berlin, “Sex and the Single Girl in Deuteronomy 22,” in *Mishneh Todah: Studies in Deuteronomy and Its Cultural Environment in Honor of Jeffrey H. Tigay*, ed. Nili Sacher Fox et al. (University Park, PA: Penn State University Press, 2009), 96.

⁸⁵ Foucault, *The History of Sexuality*, 1:89.

these laws differently, finding them attempts by a patriarchal society to control a woman's sexuality and reinforce the idea that a woman always owes her sexual fidelity to a man: first her father, then her husband.⁸⁶ While the laws can be read in the way Edenburg is arguing, the laws are intended for a male audience, with men as the primary actors. The discourse of the laws is aimed at the men: guiding men into constructing a moral society, as Berlin argues. However, the net result is still a curtailing of women's sexual freedom, as Edenburg describes.

The laws of the Bible show that the cultures which constructed and transmitted them, saw sex as something which the man did to the woman, and the woman's consent or lack thereof was mostly irrelevant. As Kawashima has argued, women were not seen so much as co-conspirators in a crime, as simply necessary for the crime to be committed.⁸⁷ Further, the punishment for adulterous sex was death for both the man and the woman, if she is married, even though other ancient Near Eastern cultures allowed the husband to waive this punishment for his wife. By removing (or at least not mentioning) the ability of the husband to waive punishment, the biblical laws not only control punishment for adultery, but they also control the husband's response to adultery, removing forgiveness as an option. In the case of premarital sex (discovered before the woman is wed), the crime is an economic issue, with the woman's father being the aggrieved party. If the woman is enslaved and was intended for sex with another man, it is also an economic issue. Sexual deviance as described in Leviticus 18 is also a crime against the community. Should the crime go unpunished, then the community would be expelled from their land. Adultery and premarital sex hold a dual position, as laws frame them as both issues for the community (Leviticus 18, 20) and crimes against the husband or father (Deuteronomy 22:13–

⁸⁶ Cynthia Edenburg, "Ideology and Social Context of the Deuteronomic Women's Sex Laws (Deuteronomy 22:13–29)," *Journal of Biblical Literature* 128.1 (2009): 57.

⁸⁷ Kawashima, "Could a Woman Say 'no' in Biblical Israel?," 2.

27). The punishments for these acts are related to the degree of social crime committed: execution when the crimes are grievous enough, restitution to the husband/father/slaver when they do not violate the cultural norms of marriage.

NARRATIVE ADULTERY

While sex plays a part in several narratives within the biblical texts, one story gives a clear narrative of adultery, though it is not within the Pentateuch. The story of David and Bat-Sheba, found in 2 Samuel 11–12, is close to the legal idea of adultery presented above, though it does have some variations, especially from the case of the *sotah*. I will start with this narrative and then touch on several others which are at least adultery adjacent.

The book of Samuel inspires numerous attempts to reconstruct the history of the text and the events behind it. P. Kyle McCarter, Jr., in the *Anchor Bible* volume on Samuel, details some of the early debates on how to date Samuel and how to reconstruct the redaction of the text, starting with early arguments about JEPD redactional layers in the text, to later theories of the Deuteronomistic Historian compiling the document, and other theories.⁸⁸ John Van Seters presents a review of more modern scholarship on Samuel as well, though he places the final form of Samuel much later than McCarter and argues against an early date for portions of the text.⁸⁹ Baruch Halpern marks the text as “clearly early” based on its word use, pre-exilic household structures, the text’s acceptance of multiple shrines, and other elements.⁹⁰ While portions of the text of Samuel may be early (or later versions of early narratives), the final form as we have it was still settling during the Persian period, and later. Given the differences between the Hebrew

⁸⁸ P. Kyle McCarter, Jr., *I Samuel*, Anchor Bible Commentaries (New Haven: Yale University Press, 1980), 12f.

⁸⁹ John Van Seters, *The Biblical Saga of King David* (Winona Lake, IN: Eisenbrauns, 2009), 3–34, 50f..

⁹⁰ Baruch Halpern, *David’s Secret Demons: Messiah Murderer Traitor King* (Grand Rapids, MI: Eerdmans, 2001), 58f.

text and the Septuagint, the text itself may still have been in flux in the Hellenistic era. As such, it is difficult (if not impossible) to offer a date on the text, or even sections of the text, such as the narrative of David and Bat-Sheba. As with the Pentateuch, I accept Van Seters's argument that the core of the narrative, covering the rise of David to power, is the work of the Deuteronomist working in the late monarchy, with the Court History or Succession Narrative added later by a post-exilic hand.⁹¹ Much of the compositional argument is moot, however, as I am looking primarily at the text as accepted in canon, and thus brought into dialog with other Hebrew sources, during the Persian and Hellenistic eras.

In the narrative of David and Bat-Sheba (2 Samuel 11–12), David is reigning in Jerusalem and he has sent his general Joab out to wage war, while David himself stays in his capital. Even this beginning starts out with an abnormal element, as kings were assumed to lead their armies into war. While Joab is out campaigning, David sees Bat-Sheba bathing on her roof. David asks about her, summons her to the palace, and has sex with her. Later, Bat-Sheba sends word to David that she is pregnant. David summons Bat-Sheba's husband, Uriah, back from the war and attempts to get him to go home and sleep with his wife, attempting to provide himself some cover for Bat-Sheba's pregnancy. When Uriah does not do this, David sends him back to the war with a sealed command for Joab to place him at the front of the battle and ensure Uriah's death. When news of the success of David's plan to kill Uriah reaches David and Bat-Sheba has had enough time to grieve, David takes Bat-Sheba into his house as wife. In chapter 12, the prophet Nathan confronts David for his actions and pronounces judgment, though that judgment is not on David or Bat-Sheba. Nathan states that *וְאַתָּה אִשְׁתּוֹ לָקַחְתָּ לְךָ לְאִשָּׁה*

⁹¹ For his initial argument, see John Van Seters, *In Search of History: Historiography in the Ancient World and the Origins of Biblical History* (New Haven: Yale University Press, 1983), 264–71; for his continued examination and defense of his position, see Van Seters, *The Biblical Saga of King David*, 34–39.

“You [David] have struck Uriah the Hittite with the sword and taken his wife as your wife.” (2 Samuel 12:9b). Note the order of the accusation—that David killed him first, then took his wife, which does not match the narrative. Given the accusation’s wording, it is possible that Nathan is only aware that David had Uriah killed and then married his wife, and that Nathan is unaware of adultery earlier in the narrative. Nathan then states that because David has done this:

וְעַתָּה לֹא־תִסְוֹר תָּרַב מִבֵּיתְךָ עַד־עוֹלָם עֶקֶב כִּי בְזוּתָנִי וַתִּקַּח אֶת־אִשְׁתִּי אֲוִרְיָה הַחִתִּי לְהִנּוֹת לָךְ
לְאִשָּׁה: כֹּה אָמַר יְהוָה הַגִּנִּי מְקִים עָלֶיךָ רָעַל מִבֵּיתְךָ וְלִקְחָתִי אֶת־נִשְׁיֶיךָ לְעֵינֶיךָ וְנָתַתִּי לַרְעִידָה וְשָׁכַב
עִם־נִשְׁיֶיךָ לְעֵינֶי הַשָּׁמַשׁ הַזֹּאת:

“Now, the Sword will not depart from your house forever, since you have despised me and you have taken the wife of Uriah the Hittite to be your own wife. Thus says Yahweh, Look, evil will arise against you from your own house, and I will take your wives before your eyes and I will give them to your neighbor, and he will lay with your wives before the eyes of the sun!” (2 Samuel 12:10–11)

David laments this curse, but he is assured by Nathan that David will not die. However, because of this sin, the child will die (2 Samuel 12:13–14). While the legal punishment for adultery is death for the adulterers, here it is their illegitimate child who dies while the adulterous parents live.

Numerous scholars address this Samuel passage regarding its textual critical issues and the historicity of its accounts. Specifically, they have focused on why the text of Samuel is as disjointed and problematic as it is, and whether the united monarchy of David (and the events Samuel records) actually existed.⁹² Kyle McCarter works through the narrative of David and Bathsheba, first pointing out that the war story framing the narrative makes David look worse than simply adulterous.⁹³ He notes that Bathsheba is completely passive in this narrative, a stark

⁹² For an extensive list of approaches to Samuel and its textual and historical problems, see Van Seters, *The Biblical Saga of King David*, chapter 1.

⁹³ P. Kyle McCarter, Jr., *II Samuel*, Anchor Bible Commentaries (New Haven: Yale University Press, 1995), 285.

contrast from her actions in 1 Kings, and that David is entirely at fault for the crimes which occur, with no clear motive given in the text.⁹⁴ Baruch Halpern approaches this story as the start of David's fall, after which David's house and rule begin to implode.⁹⁵ Halpern finds the story of the murder of Uriah unlikely—he argues that other deaths (Ishabaa, Amnon, Absalom, etc.) were effectively at David's bequest, but that Uriah's death is constructed to show how complicated such conspiracies need be.⁹⁶ Stanley Isser aligns the David narrative with the themes of Homeric epics, and thus Bat-sheba is David's moment of hubris.⁹⁷ Isser does note that the narrative of David and Bat-sheba is written such that, even if it were based on historical events, the actual events likely looked nothing like what is described in the book of Samuel; instead, the author includes the narrative of adultery as a way to justify the family turmoil which follows.⁹⁸ John Van Seters marks the parallels between the David and Bat-sheba narrative and the narrative of Ahab and Naboth—in both, a king has someone killed to get what he wants.⁹⁹ More generally, Van Seters points out that the Bat-sheba narrative is constructed to undermine the Davidic dynasty.¹⁰⁰ What makes the Bat-sheba narrative even more out of place for Van Seters is that the victim in the narrative, Uriah, is marked as a Hittite, and that God “appears to take the side of Uriah as his *go'el* in this endless feud for revenge on the house of David. This is very anti-Dtr perspective, a revisionist theology.”¹⁰¹ Van Seters finds the idea of God being on the side of a Hittite to be so foreign to the Deuteronomistic way of thinking that he believes this narrative

⁹⁴ McCarter, *II Samuel*, 288.

⁹⁵ Halpern, *David's Secret Demons*, 34f.

⁹⁶ Halpern, *David's Secret Demons*, 81 (Ishbaal), 87 (Amnon), 89 (Absalom), 92 (Uriah).

⁹⁷ Stanley Jerome Isser, *The Sword of Goliath: David in Heroic Literature* (Atlanta: Society of Biblical Literature, 2003), 27, 148.

⁹⁸ Isser, *The Sword of Goliath*, 158–59.

⁹⁹ Van Seters, *Saga of King David*, 292.

¹⁰⁰ Van Seters, *Saga of King David*, 296.

¹⁰¹ Van Seters, *Saga of King David*, 300.

must have been inserted by a later revisionist, and one working from a decidedly different perspective than that of the Deuteronomist. Jacob Wright addresses this narrative as David's "mid-life crisis."¹⁰² Wright argues the adultery narrative is a later addition to the text, that the original concern was the death of Uriah, with the sex added later.¹⁰³

These scholars are interested in the questions of, "Did this really happen?" and, "Why does Samuel include this narrative about adultery?" Those questions are beyond the scope of this present work. I am instead asking the question, "What does this text say about adultery, and how does it say it?" Van Seters comes close to this approach, as he is more explicit in his approach to the discourse of this text; however, he is looking at how the language of the text speaks to historic events, not to the specific issue of adultery. Halpern, Isser, Van Seters, and Wright all view the narrative of Bat-sheba as offering a justification for the events which happen later. These later events almost exclusively focus on the men in the narratives, so do the modern scholars. Bat-sheba's position and her choices are not addressed: she is seen as a plot point, which sets up later conflicts between men. To be fair to the modern authors, this is effectively how the text of Samuel itself treats Bat-sheba: as McCarter notes, she is completely passive in this narrative, simply following the orders of the king.¹⁰⁴ Bat-Sheba arrives in the narrative of Samuel solely because the beginning of David's downfall requires a woman.

After his sins, David is confronted by the prophet Nathan. Nathan's accusation in chapter 12 is that David took the beloved woman of Uriah, who only had one wife, and used her for his own pleasure, despite David's access to his own wives. That is, that David committed adultery

¹⁰² Jacob L. Wright, *David, King of Israel, and Caleb in Biblical Memory* (New York: Cambridge University Press, 2014), 6.

¹⁰³ Wright, *David and Caleb*, 88.

¹⁰⁴ McCarter, *II Samuel.*, 288.

with Bat-Sheba even though he had other women with whom to sate his lust. The narrative is not quite so clean as this accusation, though. What the accusation of adultery does not consider is David's power. David's actions are those of a king: when he sees what he wants, he takes it. Bat-Sheba's consent or desire is unknown. She does little more than obey the command of her king to come to his palace. David is the actor in all the verbs around the adultery: David sees, David asks, David summons, and David lays with her. Bat-Sheba's only acts are to come when called, to conceive, and to tell David of that conception. The narrative disregards Bat-Sheba's consent or agency. She serves as a plot device to allow David to sin, not as an active seductress.¹⁰⁵ Bat-sheba is as passive as the poor man's lamb in Nathan's parable.

While Leviticus and Deuteronomy are concerned about sexual mores, this text in 2 Samuel is focusing on the abuse of power. The punishment for this sexual sin is also not the standard for adultery. Consulting the legal texts, when a man has sex with a woman married to another man, both the man and the wife should be executed. Nathan all but accuses David of murder and adultery, and yet the punishment does not fall on David or Bat-Sheba, but rather on their unborn child. Within the narrative, the only people to suffer a bad outcome are Uriah and the child. While Bat-Sheba mourns them both, David seems unmoved, save when he thinks his emotional displays might save the child (12:16–23). This story is much more about David and his abuse of power than it is about sexual norms. Adultery and murder are used to show David as abusive of his power and dismissive of the suffering of others from his actions. David does admit guilt (12:13), which saves him from death. As a story about adultery, this text does not come to the same conclusion that the legal texts do: no curse is bestowed on the land, even though David

¹⁰⁵ Even her “seducing” of David is passive and unintended—She is bathing on her roof when David sees her, the text implying that she did not intend for this to happen. The most active we can make Bat-Sheba is that she put herself on display where the king might see her.

breaks the law, and he himself is not killed or exiled. David does lose a child over it, but David does not seem particularly concerned. The text shows David in prayer before the child dies, but as soon as he realizes the child is dead, he ceases any display of emotion (2 Sam. 12:20). While this may seem emotionally distant, given infant mortality rates of the time, David's reaction, while still cold to a modern reader, might be more common than it appears. That said, David's behavior is still noted by his servants to be abnormal (2 Sam. 12:21–23). The narrative uses Bat-Sheba and the child to show David's lack of concern for others, while ignoring Bat-Sheba's own desires and emotions.

In this narrative, David, as king, is the state. In Foucault's analysis of torture and punishment, the monarchy uses violence against its members to get what it wants: assuaging the insult done to power by the violation of the law.¹⁰⁶ David, as king, uses power first to achieve his desire, and then to cover up his wrong. What power does Bat-Sheba have to refuse David's summons? David's actions against Uriah further show how power works to protect itself: just as punishment is used to protect the sovereignty of law, David abuses that power to protect his own public moral standing. The audience of the text serves much the same purpose as the audience of torture and punishment under Foucault. By witnessing the violence of torture and punishment, the crowd both observes the power of the state and reinforces it.¹⁰⁷ The audience of this text is not seeing David, as king, behaving well; rather, he behaves poorly. As Van Seters notes, this undermining of David runs counter to the Deuteronomist's attempt to construct David as ideal

¹⁰⁶ Foucault, *Discipline and Punish*, 47–49.

¹⁰⁷ Foucault, *Discipline and Punish*, 58–59.

king.¹⁰⁸ The narrative is less about adultery and more about power and its corrupting influence—even the ideal king is corrupted by the power of the state.

The story of David and Bat-Sheba begins a series of stories in which David faces increasing internal family strife. As Halpern, Isser, and Wright have noted, the narrative of adultery serves as the beginning of the fall for David.¹⁰⁹ Van Seters places David's fall as beginning with his reaction to the rape of Tamar by Amnon, which is more narratively connected with the following narratives of family strife.¹¹⁰ Following the David and Bat-Sheba story is the narrative of Amnon and Tamar, when Amnon rapes his half-sister and Absalom begins his revolt. Absalom builds his revolt slowly, but at its culmination, when he has driven his father David from power, Absalom publicly has sex with his father's concubines (2 Sam. 16:20–22). McCarter offers no real comment on this act, save that the women are to be “living widows,” without really exploring this term.¹¹¹ Halpern describes how the women are used to further the political aspirations of Absalom and to fulfill the curse on David from Nathan.¹¹² Absalom has sex with his father's concubines to show his power over the household of David. Absalom makes a spectacle of the event, bringing the women to a tent on the roof of the palace. Absalom (and the text) uses this narrative to show David's complete lack of power: he cannot physically protect his concubines, and Absalom has more sexual power in that he can have sex with all of them in series. Like Foucault's spectacles, this one functions within the world of the text to show where power lies. To the reader of the text, though, this spectacle serves to highlight the depravity of

¹⁰⁸ Van Seters, *Saga of King David*, 296.

¹⁰⁹ Halpern, *David's Secret Demons*, 34; Isser, *The Sword of Goliath*, 148; Wright, *David and Caleb*, 6f.

¹¹⁰ Van Seters, *Saga of King David*, 301.

¹¹¹ McCarter, *II Samuel*, 384–85, 423.

¹¹² Halpern, *David's Secret Demons*, 46.

those in power: they are either weak, like David, and unable to protect those in their charge; or they are power-hungry, like Absalom, and willing to do anything to prove their power, even serial incest/adultery.

The women are not given a choice, not that their status as royal concubines would have allowed much consent, even with David. To a modern reader, this act is more than just incest or adultery: it is rape. Within the ancient mindset, it is unclear how much consent a concubine (or any woman) could give the ruling king before they were required to have sex with him. One suspects that a royal concubine's consent mattered little. In this spectacle, Absalom violates several sex laws, as not only are these women belonging to another man, but they are also effectively his stepmothers. Absalom is committing adultery and incest. When Absalom is defeated in his rebellion, he dies at the hand of Joab. Absalom's father, David, was willing to forgive and welcome his son back, even after all of Absalom's sins against him. Viewed from the text of Leviticus 18 and 20, David should have expelled or executed Absalom for the sexual spectacle alone. The text thus shows that David is not concerned about any possible sexual corruption of his son or his land, though he does put the concubines aside when he returns to power (2 Sam. 20:3).¹¹³

David's problems start when he has sex with Bat-Sheba, at least as presented by the text of 2 Samuel. While the text does not explicitly state this, it is arranged to imply that this sexual sin begins the corruption of the household. David's abuse of power for sex would then lead to the downfall of his household. After he has sex with Bat-Sheba, there is a series of calamities: the death of a child, the rape of his daughter Tamar by his son Amnon, the murder of Amnon by

¹¹³ The practice of putting a woman aside after she has had sex with another man seems to be part of a cultural taboo on a woman alternating between men. See note 85.

Absalom, the coup by Absalom, and Absalom's death. While the punishment is not exactly as the legal texts require, David does suffer temporary exile because he allowed adultery, rape, and incest to go unpunished. Eventually, David "atones" for this by the death of his rebellious son, Absalom. Only after the death of Absalom, can David return home. As David is unable to make restitution to the man against whom he initially sins (since he had Uriah killed), David pays for his sins with his own children. While not precisely the same as the Levitical warnings of exile, the narrative of David's household does follow a similar arc of punishment through expulsion and loss.

NARRATIVE SEX AND POWER

David and Bat-Sheba is the only narrative in which a story with clear adultery occurs. However, there are several narratives in Genesis where an adultery-like event occurs, and power interacts with sexual mores. These sexual encounters are between married women or widowed women intended for a brother of the deceased and men who are not their husbands. The narratives are complicated by the familial relationships between the women and the men. The final narrative, of Joseph and Mrs. Potiphar, is about an adultery that did not happen. While these narratives are not about adultery or proving whether adultery happened, their discourse helps to illuminate the same sexual power structures between men and women.

As part of the Pentateuch, Genesis has been subjected to a large amount of redactional and textual criticism. As such, there are many scholarly works which attempt to date both Genesis as a whole, and passages individually. Genesis has been used to illustrate the Documentary Hypothesis: for example, Noah's narrative (Gen. 6–9) and the sister-wife narratives (Gen 12, 20, 26). As I am primarily interested in how the narratives of Genesis interact with the other texts, and how later readers address these narratives, the redactional layers do not

directly impact this analysis. As we will see in the next chapter, Jubilees is not interested in whether a passage is from J, E, or P. As such, I will look at Genesis in the form we have, assuming that the text of the book was relatively stable by the Persian era.¹¹⁴

Numerous stories in Genesis revolve around potential or actual sexual deviance, and usually layer multiple sexual problems on top of each other. Stories include the sister-wife narratives for Abra(ha)m and Isaac, Lot and his daughters, Reuben and Bilhah, Judah with Tamar, and Mrs. Potiphar with Joseph. None of these is about adultery quite like that of David and Bat-Sheba, though the story of Mrs. Potiphar and Joseph comes closest. Issues of incest, gender roles, and consent complicate these narratives, but we can still glean some sense of how each of these texts is approaching adultery.

The sister-wife narratives refer to the three narratives in which a patriarch attempts to pass his wife off as his sister when visiting a foreign king: Genesis 12:10–20, 20:1–18, and 26:1–12. The stories are remarkably similar. For all of them, the patriarch is visiting a foreign ruler. While there, he convinces his wife to present herself as his sister, not his wife, ostensibly because the patriarch fears that the foreigners will kill him and take his wife. In each, the wife is taken into the king's retinue or harem and the patriarch is lauded with gifts. The foreign king discovers that the wife is in fact a wife, not a sister, though the methods vary. At this point, the king is upset that the patriarch has apparently consented to his wife possibly committing adultery with a foreign king (or some other person in one case). The king grants gifts to appease the patriarch for the king's affront of taking the patriarch's wife and sends them on their way.

¹¹⁴ E. A. Speiser, *Genesis* (Garden City, NY: Doubleday, 1964), xvii–lxi offers a view on the redactional history of Genesis.

As for the differences, Abra(ha)m is the patriarch in the first two, with Isaac repeating his father's actions in the third. In chapter 12, Abram is in Egypt and the king is identified as Pharaoh, while the other two involve a meeting with King Abimelech of the Philistines in Gerar.¹¹⁵ In chapter 12, Pharaoh learns that Sarai is Abram's wife through plagues sent by God on the house of Pharaoh, though details are not given. In chapter 20, God speaks to Abimelech in a dream, telling him that Sarah is the wife of Abraham. When Sarah is restored to Abraham, verse 18 reports that God "opens the wombs" of the women of Abimelech's kingdom, though the curse of barrenness is only mentioned at the end of the narrative. In chapter 26, Abimelech sees Isaac רִנָּה "playing with" or "fondling" his wife Rebekah. Isaac's narrative not only removes God from the source of the king's knowledge, but also lets the narrative pun on Isaac's name.¹¹⁶

Nahum Sarna reads these texts as wives being kidnapped by the local kings.¹¹⁷ While the text does not explicitly state as much, Sarna argues that no adultery happened: while Sarah may have been taken into the harem, the kings never have sex with her.¹¹⁸ It is true the texts do not explicitly state that adultery happened, though in both narratives of Abraham, potential adultery is implied with power dynamics which removed Sarah's ability to consent. Isaac's narrative lacks the element of kidnapping or potential adultery, as Sarna points out that Isaac never loses

¹¹⁵ Given that the meaning of "Abimelech" can be "My father is King," this seems an overly generic name—more of a caricature than actual name. Further investigation beyond the scope of this work is needed.

¹¹⁶ E. A. Speiser connects these narratives to Hurrian tradition, in which a man would both marry and adopt the woman who became his wife. The woman was not always related to the man, but by being both sister and wife, it was believed that the marriage would be stronger. Speiser argues that later scribes constructing and copying these narratives would not have known of these traditions, given that the Hurrians date to the 23rd century BCE, thus the scribes would have constructed reasons for Abraham and Isaac to make these claims of sister-wife. For more on this idea, see Speiser, *Genesis*, 151, 203–4. I question whether we can make this assumed connection between Hurrian and Israelite cultures—even Speiser gives no evidence for how it traveled between them—but include this reference for completeness.

¹¹⁷ Nahum M. Sarna, *Genesis: Be-Rešit: The Traditional Hebrew Text with the New JPS Translation*, JPS Torah Commentary (Philadelphia: Jewish Publication Society, 1989), 94, 140.

¹¹⁸ Sarna, *Genesis: Be-Rešit*, 94, 140.

custody of his wife.¹¹⁹ Sarna does link the Abraham and Abimelech narrative to other ancient Near Eastern texts which call adultery “the great sin.”¹²⁰

The differences between the three narratives do not dramatically change the narratives’ results, but their differences on potential adultery are significant. Genesis 12:19 strongly implies that Pharaoh has sex with Sarai. Pharaoh asks Abram לָמָּה אֶמְרָתָּ אֶתְחֵתִי הוּא וְאָקַח אֶתְּהָ לִי לְאִשָּׁה וְעַתָּה “Why did you say ‘She is my sister’ such that I took her for a wife? Now take your wife and go!” The phrase וְאָקַח אֶתְּהָ לִי לְאִשָּׁה implies that Pharaoh took Sarah and consummated his marriage to her. Genesis 20:4 says that וְאַבְיִמֶלֶךְ לֹא קָרַב אֵלֶיהָ Abimelech had not approached her, that is, he had not had sex with her yet. In Genesis 26:10, when Abimelech confronts Isaac, he says מַה־זֹּאת עָשִׂיתָ לָנוּ כִּמְעַט שָׁכַב אֶחָד הָעָם אֶת־אִשְׁתְּךָ וְהִבֵּאתָ עָלֵינוּ אֲשָׁם “What is this that you have done to us? As anyone of the people might have had sex with your wife and brought guilt upon us!” Abimelech’s statement makes clear that no one has done this yet, but someone could have had sex with Rebekah without knowing she was wed. All three narratives show that each of the foreign kings were horrified at the possibility that adultery could have happened, even though in all three the fault could easily have been put on the patriarch for not disclosing information. While the other two narratives strongly point out that no adultery happened, Genesis 12 leaves the reader with ambiguity. This ambiguity stresses Pharaoh’s own uncertainty and horror at his (potential) adultery and Abram’s apparent acceptance of adultery. In all three cases, the patriarchs take the wives back, unlike the narratives in which confirmed adultery takes place.

¹¹⁹ Sarna, *Genesis: Be-Rešit*, 184.

¹²⁰ Sarna, *Genesis: Be-Rešit*, 143.

Only Genesis 20 links adultery with death. When God warns Abimelech, God states that the king is about to die, because he is about to commit adultery. Genesis 12 grants no direct verbal warning or threat of punishment to Pharaoh. In Genesis 26, Abimelech worries about guilt being brought onto the people of his nation and decrees (after Rebekah's status as wife is known) that anyone who touches Rebekah will be put to death. The result of all three narratives is that the patriarchs are enriched because of the possibility of adultery by the king or his subjects. In Genesis 12, Abram has been given gifts in exchange for Sarai, which he keeps when Pharaoh sends him on his way. In Genesis 20, Abimelech gives Abraham large gifts in restitution for his attempted adultery. In Genesis 26, Isaac can settle unmolested in Abimelech's territory and prospers there. While each narrative differs, all three have the patriarchs gaining material wealth after potentially setting their wives up for adultery. As such, the texts do not punish the patriarchs for being bad husbands—as the head of a household should have been willing to defend his wife from foreign seduction—but instead, reward lying to protect themselves. Adultery is seen as a grave sin, but as one against the patriarch, even when the patriarch is apparently willing to allow it. The kings make restitution to the patriarch, not to God. While God provides the warning in two of the cases, the kings must set things right with the patriarch directly, even though the kings are aware that the only reason they are in this situation is because of the patriarch's actions.

In all three of these narratives, the patriarch convinces his wife to say she is his sister. In all of them, the patriarch fears that the people of the land in which he is staying will kill him and take his wife. However, in all three, the patriarch is never in any actual danger. Instead, he gains financially. In Genesis 12, Pharaoh gives wealth to Abram specifically on account of Sarai being taken into Pharaoh's harem (verses 15 and 16). Here, it is payment for the patriarch's sister

(really, wife). In Genesis 20, Abimelech gives Abraham wealth after he returns Sarah to him, to expunge any guilt and to exonerate Sarah (verses 14–16), though it may also be to remove the curse which has befallen Abimelech's household (verses 17–18). Only Genesis 26 removes the gain of wealth from the trading of the wife, but Rebekah is never actually brought into Abimelech's house. Isaac instead gains because he is placed under royal protection and not through direct gift (verses 11–14). In all of these, the wife is placed in danger of adultery to protect the patriarch, and in some cases, to enrich the patriarch.¹²¹

Power is at work in these narratives, but not in clear ways. The obvious candidates for power are the kings. In each of these stories, they gain (temporarily, and perhaps without sexual contact) the wife of another man. The kings take the emblem of the household, the wife, from the patriarch, and in each of these cases, they do so before a child has been born to the patriarch. Yet in each of these, the kings return the wife to the patriarch and the patriarch gains significant wealth. For Abra(ha)m, God intervenes to ensure the return of the wife. For Isaac, it is a chance occurrence, in which the king discovers the true nature of Isaac's relationship with Rebekah.¹²² Power in these stories protects the patriarch, not the king, which contrasts with the narrative of David and Bat-Sheba. David, the abusive king, is protected from the punishment of his actual adultery and murder, while Abraham and Isaac are protected from a king. Foucault does not cover a similar situation. The closest may be when a crowd would prevent an execution or other punishment from occurring at the hands of the state.¹²³ In such cases, the crowd would parallel God's action in the patriarch stories, preventing what the crowd saw as an injustice. The crowd

¹²¹ Other stories when women are placed in sexual danger in order to protect men are Genesis 19 and Judges 19. Further study is needed but is beyond the scope of this paper.

¹²² We could construe this as God working through chance to protect the patriarch's household, but the text does not explicitly name it thus.

¹²³ Foucault, *Discipline and Punish*, 61–65.

in Foucault and God in the patriarch narratives are the sources of ultimate power, as they can overrule the embodiment of political/judicial power.

The other Genesis narratives with adultery deal with various members of Jacob's family. The first is a short snippet, not even a full verse: Genesis 35:22 begins with וַיְהִי בִשְׁכֹן יִשְׂרָאֵל בְּאֶרֶץ "When Israel was dwelling in this land, Reuben came and lay with Bilhah, his father's concubine, and Israel heard." The text provides no details, no motive, no outcome. Speiser agrees that the text of this event is too laconic to give the reason behind it, only that its presence is later used to explain the loss of Reuben's birthright.¹²⁴ Sarna, on the other hand, reads a political motive in Reuben's act: by having sex with one of the women of Jacob, he is challenging his father as *paterfamilias*.¹²⁵ While Sarna's explanation is plausible and, when compared to Absalom's acts with his father's concubines, makes sense, the text of Genesis 35:22 lacks any indication as to Reuben's motive. Combined with the lack of any punishment for the act, I am not certain we can assume that it was a political move by Reuben, even if it seems the most likely option.¹²⁶

From the text, we know that Reuben has sex with his stepmother and his father knows it happened. Other than this, the text tells us nothing. No immediate punishment occurs in the text. Only much later in Genesis 49:4, during Jacob's last words and blessings of his sons, is the event mentioned and its outcome stated. פָּחוּז כַּמַּיִם אֶל-תּוֹמֶר כִּי עָלִיתָ מִשְׁכְּבִי אֲבִיךָ אֲזַח חֲלָלָתָ יְצוּעֵי עֵלָה: "Frothing as water, you will no longer prosper, since you have gone up to your father's bed, you have

¹²⁴ Speiser, *Genesis*, 274.

¹²⁵ Sarna, *Genesis: Be-Rešit*, 244–45.

¹²⁶ Jacob's lack of a response is in keeping with his character elsewhere. He does not punish his sons when Joseph disappears (though he is given a narrative which would exempt them from guilt), when Simeon and Levi attack Shechem, or in any of the other narratives about his sons. There are parallels with David's unwillingness to punish his own sons, but pursuing this thread is beyond the scope of this project.

defiled my couch [by] going up!” Reuben is punished for having sex with Bilhah. The curse by his father is to cease to prosper. Implied, as Reuben was the firstborn, might be a shifting of the primary inheritance from him to another brother. If we read a political motive into Reuben’s act, Reuben may have been trying to replace his father as *paterfamilias*, but instead Reuben is removed from consideration as a leader. In effect, Reuben’s incestuous adultery with Bilhah provides the text with a reason to shift the focus away from the firstborn, and to Judah for Jacob’s later bestowing of the royal line. The laconic nature of both these passages in Genesis makes any deeper analysis highly conjectural. Reuben himself is not directly punished, certainly not with death or exile, for his incest/adultery. The text also completely ignores Bilhah’s consent in the matter, though as an enslaved woman, she may have had little choice in whether to submit to Reuben’s advances.

In Genesis 38, Judah has sex with his daughter-in-law, Tamar, though he does not know it at the time. The narrative begins with Tamar marrying Judah’s eldest son, Er. Er dies, for reasons unspecified. Tamar is passed to Onan by the dictates of levirate marriage. Should a man die without children, his surviving brother was to take his wife, impregnate her, and the child is to be considered the dead husband’s. Onan chooses not to impregnate Tamar, as doing so would provide an heir for his brother, reducing his own inheritance. God kills Onan for not fulfilling his levirate responsibilities. Judah’s remaining son, Shelah, is too young to wed at this time, so Judah sends Tamar away. As time passes, Judah goes out to shear the sheep. Tamar disguises herself as a prostitute. Judah sees her, makes a deal with her, and has sex with her. He leaves his seal and staff with her as collateral for the goat he has promised her. Before Judah can send his payment with a servant, Tamar removes her disguise, and thus payment is never made. Tamar is discovered to be pregnant, and those around her send for Judah to pronounce judgment for her זנה

“whoring,” despite the town having denied the presence of a prostitute at all in verse 21.¹²⁷

Nevertheless, Judah says that Tamar should be burned for her sin. When condemned, Tamar reveals it was Judah who impregnated her, and Judah rescinds judgment.

Speiser labels this narrative an independent unit inserted in between acts of the Joseph story.¹²⁸ He makes no arguments as to why this narrative is inserted where it is. The sexual elements of the narrative play off the story which follows, of Joseph and Potiphar’s wife, and this arrangement may have been to contrast Judah’s and Joseph’s response to temptation. Speiser notes that in the conclusion of the story, Tamar “rewards” Judah with twins, but does not comment on the problematic nature of this framing.¹²⁹ As it was her pregnancy which alerts the town and Judah of her sexual activity, Tamar already has the twins gestating. Judah’s “reward” is earned by not killing her (and thus, the children). Further, the text has Tamar seeking the children, not Judah, so the twins are *Tamar’s* reward, not Judah’s. Given that the society around the text virtually requires a male to care for a woman, Tamar is further justified, as she receives two sons for her action, not just one, to serve as her legal representatives. Sarna works to construct a chronology of narratives to explain the placement of the Judah-Tamar narrative in the middle of Joseph’s story.¹³⁰ His analysis ignores the literary choice to place this text here but does offer a reason for why this narrative might be where it is. When looking at the trial scene, Sarna comments that the punishment Judah sentences Tamar to is unusual (stoning is the legal punishment for adultery), but does not comment on Judah acting as judge.¹³¹ One final point

¹²⁷ For further discussion on the root זנה, see note 32 above.

¹²⁸ Speiser, *Genesis*, 299.

¹²⁹ Speiser, *Genesis*, 300.

¹³⁰ Sarna, *Genesis: Be-Rešit*, 264–65.

¹³¹ Sarna, *Genesis: Be-Rešit*, 269.

from the literature: Caryn Reeder notes that this is the only time when a woman in a narrative is brought to trial and sentenced for a sex crime.¹³² That Judah sentences Tamar to burning, rather than stoning, makes this all the more interesting, as this trial does not fit into any of the legal frameworks offered in the biblical legal corpus.

While the text uses the term זנה to describe Tamar's sin, the exact nature of the charge is difficult to determine. Clearly prostitution was not illegal, as Tamar is not confronted while disguised, and when Judah's servant asks about the prostitute who was supposed to be there, no one acts as if it were something illegal. They simply state that there is no prostitute in town. The concern could be that Tamar has had sex outside of wedlock, but as she is a widow, none of the laws about premarital sex we have seen would apply to her. Since Judah has a living son, Shelah, levirate marriage laws would dictate that she is effectively wed to Shelah, even if he is too young to be married at present. The town may be concerned that Tamar has committed adultery, not merely extra-marital sex, as she would have been technically married through levirate practice. The narrative is not concerned with the legal technicalities of the sexual sin, however. The narrative simply needs Tamar to be brought up on charges of some kind so that Judah can be exposed as the father. For this narrative, the nuance of what kind of illicit sex Tamar has engaged in is not relevant.

The town does notice that some sort of sexual sin has happened. They bring Tamar to Judah for judgment because it is he, as male head of household, who owns her sexuality, despite her having been sent back to her father's household. While Shelah may be her husband-in-waiting, he is not of age, and thus his father, Judah, is the one who has been aggrieved by

¹³² Reeder, "Wives and Daughters," 138.

Tamar's actions. When Judah is exposed as the father of Tamar's child, Judah relents. The town does not then accuse Judah and Tamar of adultery or incest, even though she is his daughter-in-law and nominally married to Shelah. The complication in this narrative is levirate law. By levirate law, Tamar is owed a child by a male relative of Er. Since Onan was unwilling to provide one, and Shelah is too young, Judah becomes the responsible party. The text is not concerned with the issues of incest or adultery, but rather is concerned about the obligations of male relatives to their female dependents. Adultery and incest laws are subverted in order that Tamar be provided a child. The text rewards her with not one, but two male heirs for Er through Judah. Judah himself suffers no punishment for having sex with his son's wife.¹³³

Tamar's pregnancy (and the implied sexual misconduct) is treated by the text as an affront to the father of her household, Judah. For Foucault, crime was an affront against the monarch, the embodiment of power in the system he was analyzing.¹³⁴ Just as the king would need to re-establish his control over a criminal, Judah needs to reestablish control over the woman ostensibly in his control, Tamar. However, in the case of Judah and Tamar, Judah has abdicated some of this control. By sending Tamar to her father's house (Gen 38:11), Judah places her outside his own care, even if he is culturally required to take care of her. He has promised her his youngest son as husband but does not wish to care for her at this time. Yet the society knows where responsibility for the woman lies: when Tamar is found to be pregnant, the people go to Judah and not to her father.¹³⁵ Just as Foucault's state serves as both the aggrieved

¹³³ Sons' wife? Exactly who the culture viewed as the responsible party for Tamar is unclear, as the surviving brother would have been the husband, but the narrative states Shelah is still too young. Moreover, all three sons were still living in their father Judah's household, and thus he might be the only one ultimately responsible for all of them, and possibly their widow Tamar.

¹³⁴ Foucault, *Discipline and Punish*, 47–49.

¹³⁵ Going to Judah is also a narrative constraint. Tamar's father is not the one the narrative is about, and as such has no role to play in the tale, other than to provide a place outside Judah's domain for Tamar to reside. If we read Judah's sending away of Tamar as a divorce of a kind, then her father might have been the one who should have

party and the judge, Judah serves as both the one Tamar has sinned against and the one pronouncing her judgment. The narrative is constructed to show that power resides with the head of household; however, Judah has broken the social contract with Tamar in that he has not provided for her within his domain, but instead sent her away. Tamar highlights this by revealing that her pregnancy is the result of her taking what was due (a child) from the domain of Judah, though by unconventional means. Tamar has shown that power, in this case Judah, has violated its side of the contract, and needs to make amends. Judah relents.

Immediately following the narrative of Judah and Tamar, Genesis provides another story of adultery: Joseph and Mrs. Potiphar in Genesis 39.¹³⁶ In this story, Joseph has arrived in Egypt and been purchased by Potiphar, an officer of Pharaoh. Joseph excels at the tasks given him, and so Potiphar puts Joseph in charge, eventually, of Potiphar's entire household. Potiphar's wife notices Joseph and begins to ask him for sex. While men could demand sex from enslaved people of any gender, the situation for women, especially wives, was more complicated. While wives had some level of control over enslaved people, their own sexuality was effectively owned by their husbands. Whether or not Mrs. Potiphar should have asked, Joseph may have been expected to acquiesce to her demands, given his status as enslaved. Joseph refuses, stating that it would be wrong to sin against God and to break the trust of Potiphar. Mrs. Potiphar eventually corners Joseph in a private room while no one else is around and attempts to rape him. Joseph flees, leaving his garment behind. Mrs. Potiphar then cries out and when members of the

been responsible for her. However, such realia complicate the narrative the author is trying to tell, and as such, is ignored.

¹³⁶ I admit "Mrs. Potiphar" is anachronistic, but the text does not grant her a name, even though she is otherwise a full character in her own right. As such, I am using this anachronism instead of a name.

household arrive, she accuses Joseph of trying to assault her. Potiphar then sends Joseph to prison.

Returning to Speiser, he connects the narrative of Joseph and Mrs. Potiphar to the Egyptian text, the *Tale of Two Brothers*.¹³⁷ In the tale, one brother accuses the other of adultery with his wife, there is a pursuit, and eventually a reconciliation between the brothers when it is revealed that the wife lied. This is not quite the narrative of Joseph, but Speiser argues that this narrative may have influenced Joseph's, as Joseph, an enslaved person accused of raping a slaver's wife, would likely have faced execution for this crime.¹³⁸ Sarna states that this is the only time a woman blatantly propositions a man for sex in the Bible.¹³⁹ He also links this narrative to the *Tale of Two Brothers*, but only for the motif of accusation by the wife, and not for other content in the narrative.¹⁴⁰

This narrative is constructed to show Joseph's moral character: he is presented with an opportunity to indulge himself, likely without being caught, and instead, he avoids the temptation. Potiphar's wife exists as an extension of Potiphar's household: Joseph oversees all of Potiphar's things, and as such, he could avail himself of any of Potiphar's riches. Mrs. Potiphar is never named: the narrative only refers to her as Potiphar's wife or as אִשְׁת־אֲדֹנָיו "the wife of his master." Given that the Hebrew word for wife also encompasses the more generic "woman," this narrative could render her even less specifically as "the woman of his master." By not using her name, the narrative constantly re-enforces her connection to her husband. Yet, Mrs. Potiphar does not act as a passive temptation. She actively invites Joseph to have sex with her, and when

¹³⁷ Speiser, *Genesis*, 304.

¹³⁸ Speiser, *Genesis*, 304.

¹³⁹ Sarna, *Genesis: Be-Rešit*, 273.

¹⁴⁰ Sarna, *Genesis: Be-Rešit*, 410.

he refuses, she attempts to force him to do so. Mrs. Potiphar exists as an agent of her own desires, while at the same time never being named independently of her husband. She is both active in her own right and part of the household which belongs to Potiphar to be overseen by Joseph. Mrs. Potiphar thus represents the temptation for Joseph to abuse his position by having sex with his slaver's wife. If the text had granted her a name independent of her husband, she could be a fully separate actor, which is not the role she is serving in this narrative. Instead, the text refers to her only as his master's wife containing Mrs. Potiphar's agency and culpability. As it is, she can be active, but by constantly referring to her as a wife, the text firmly plants her as part of the household. What this phrasing does is show Potiphar lacks control of his household. Potiphar lacks control even of his wife, and it is Joseph who must control her sexual appetite.

The story of Joseph and Mrs. Potiphar parallels many aspects of the Egyptian story, "The Tale of Two Brothers."¹⁴¹ In the Egyptian story, the wife of the older brother first attempts to seduce the younger brother, then accuses the younger brother of assault when he does not consent. The older pursues the younger, until they are forced to converse, at which point the wife's duplicity and attempted adultery are exposed to the older brother. The older returns to his wife and kills her for this. The biblical narrative differs in several aspects. Joseph is a slave, not a brother, so even though Joseph may have duties in the household, he is not Potiphar's equal. Mrs. Potiphar's lies and attempt to seduce Joseph are not exposed, and Joseph must bear the punishment for them. While the Tale of Two Brothers is warning men against the machinations of women, Joseph and Mrs. Potiphar is a story about resisting temptation, even if it leads to hardship, and the eventual reward which comes from good behavior.

¹⁴¹ James B. Pritchard, ed., *Ancient Near Eastern Texts Relating to the Old Testament*, 3rd Edition. (Princeton, NJ: Princeton University Press, 1969), 23-25.

While Mrs. Potiphar does take steps to get her desire, the text still phrases the sex act as something that Joseph would do. She is the one initiating the encounters, going so far as to try to rape him, but the text still frames the active sexual role as masculine (and allowing Joseph to escape rather than be raped.) This text also wrestles with social status and gender: Joseph, as a man, is still assumed to have enough agency, even though he is enslaved, to deny his slaver's wife, who is a free woman. Had the genders been reversed, there would have been no conflict at all: men frequently raped people they enslaved. In most ancient Mediterranean cultures, Joseph would have also been allowed as a sexual partner to Potiphar, as well. Here though, the issue is the enslaved man and the slaver's wife, and in this case, any sexual contact involves an enslaved person taking something belonging to the slaver. We see this in how the narrative plays out. When Mrs. Potiphar accuses Joseph of assaulting her, Potiphar sides with his wife and sends Joseph to prison. Potiphar is enraged, because the accusation would imply Joseph has assumed more control over Potiphar's household than Potiphar had granted Joseph. Mrs. Potiphar suffers no punishment for her attempted rape or her solicitation of Joseph. The Joseph narrative is focused on constructing the idea of the providence of God. As such, it does not necessarily work to show individual moral actions have specific consequences. Rather it shows that despite being in what looks to be unfair circumstances, things will work out for the better of the community as a whole and to the better eventual outcome for the faithful individual. The story's goal is not to show that attempting to commit adultery or rape will be punished; rather, that if one is faithful, things will work out.

The narrative of Joseph and Mrs. Potiphar shows the limits of power for each of the main characters. Joseph can resist the wife's commands but does so at a cost. Mrs. Potiphar cannot force her will upon Joseph but can ensure that he is punished for rebelling against her. Potiphar

himself cedes power in this narrative, as he is neither in charge of his household nor his wife. Potiphar does imprison Joseph, but only after his wife's accusations: he reacts to her manipulations. Foucault mentions that power exists alongside other relationships, and that such relationships are rarely in a single power hierarchy.¹⁴² Each of the characters in this narrative exercises power and has power used against them: Joseph refuses sex but is imprisoned; Potiphar appoints Joseph, is manipulated by his wife, and later imprisons Joseph; Mrs. Potiphar is denied her desires, but has Joseph punished for his resistance.

These narratives in Genesis all deal with elements of adultery, some more than others. None of them give full agency to the women involved, though Mrs. Potiphar does come close. When described, any sex act is described as something a man does (or would have done) to the woman. In most of these stories, the women bear no consequences. Only Tamar is threatened with consequences, but in her story, those consequences are for זנה “whoring” and not for adultery.¹⁴³ Most of the men do not suffer consequences, save Joseph (even though he never actually has sex). Genesis uses adultery narratives to wrestle with issues other than marital fidelity. The sister-wife narratives are about the morality of the patriarchs and the nations around the patriarchs, Reuben and Bilhah provide justification for Jacob's blessing in chapter 49, Judah and Tamar's narrative is about family responsibilities, and Mrs. Potiphar's narrative is about resisting the temptations of power. Sex plays a part in these stories, but none of them is about sexual morality.

Adultery narratives, both those in Genesis and those in Samuel, use adultery to explore areas other than sexual morality. All these narratives are in a distinctly different style than the

¹⁴² Foucault, *Power/Knowledge*, 142.

¹⁴³ I will admit this nuance is semantic at best, as the term זנה is likely being used imprecisely.

sotah ordeal in Numbers. While the *sotah* ordeal is concerned with ritual purity and controlling the husband's response, these adultery narratives are constructed in a way that the husband's emotional state is as best tangential to the narrative. Uriah never explicitly finds out about his wife. David sets aside his concubines, while displaying far more emotion for the son who raped them. Judah gets angry but relents quickly when he is exposed. Potiphar is angry as well, though that anger appears to be somewhat tempered in that Joseph is not immediately executed. Abraham and Isaac are not angry, but instead seem to instigate a situation in which they know adultery might occur to achieve economic gain, or at least physical safety. Only Judah and Potiphar would seem to match the emotional state of the husband in the *sotah* ordeal, but in both cases, they are simply angry and not consumed by that anger. Further, neither is angry at his own wife: Judah is angry with his daughter-in-law, and Potiphar with his enslaved person. Both men have enough proof for themselves that some sort of sexual sin has occurred—this contrasts with the *sotah* ordeal, which is about potential adultery. None of these narratives directly address a situation like the *sotah* ordeal. All these texts strongly limit women's actions. All of them present a male head-of-household as the aggrieved party. While Joseph says that committing adultery would be a sin against God, Joseph also stresses that such an act would be a sin against his slaver. While it is admitted that adultery is socially problematic, society itself cannot bring charges without the patriarch's will to do so.

PROPHETS AND ADULTERY

In addition to the legal and narrative texts that address adultery, multiple prophetic texts also use adultery in their oracles. The prophets construct a metaphor in which God is married to Israel/Judah, and Israel/Judah's religious infidelity is described in terms of sexual infidelity. Isaiah, Jeremiah, Hosea, and Ezekiel all use this metaphor to describe Israel/Judah's religious

pluralism. These texts span the time around the exile. Isaiah is a complex book, with sections dated to both well before and after the exile. The passages I will examine below all come from the post-exilic sections of Isaiah, often referred to as Deutero-Isaiah.¹⁴⁴ While portions of Jeremiah may date to the time immediately before the exile, the text as we have it has been redacted up through the Persian and Hellenistic eras.¹⁴⁵ Hosea, the prophet, has been placed in the eighth century BCE, but the final form of the book of Hosea is likely from a few centuries later.¹⁴⁶ The content of Ezekiel places the title prophet during the destruction and exile.¹⁴⁷ Thus, all of these works are at least begun by the exile to Babylon. While these texts may not yet have the canonical status they will later, by the Persian period they are all extant and part of the cultural discourse of Yehud. Further, both Jeremiah and Ezekiel name themselves priests, placing them within the religious power structure of Judah and later Yehud.

These prophets extend the marriage metaphor to describe God's anger and punishment of Israel and Judah as a husband punishing his wife for adultery. While these are not legal texts, nor do they have the prescriptive moralism of a narrative, these prophetic texts do show us how prophets used the social thought around adultery by applying it to religious infidelity. Thus, we

¹⁴⁴ Blenkinsopp also mentions that 56–66 are often broken off as a third redactional layer, and that modern attempts to work on the text often end up rendering the text into a complex series of editorial revisions. The Dead Sea Scrolls 1QIsa and the Old Greek translation do offer an endpoint for the redaction of the text in the 2nd century BCE. See Joseph Blenkinsopp, *A History of Prophecy in Ancient Israel* (Louisville, KY: John Knox Press, 1996), 98–99.

¹⁴⁵ While portions of Jeremiah may be early, the text's redaction continues well into the Hellenistic era. The MT and LXX have distinctly different versions of the book, with major sections appearing in various orders and the LXX being significantly shorter than the MT. In the Dead Sea Scrolls, there have been fragments which match both versions (MT and LXX), implying that the book of Jeremiah was still undergoing redaction in the Hellenistic era. See Blenkinsopp, *A History of Prophecy in Ancient Israel*, 129–35.

¹⁴⁶ Francis I. Andersen and David Noel Freedman, *Hosea: A New Translation with Introduction and Commentary*, Anchor Bible Commentaries (New York: Doubleday, 1980), 40, 57; similarly, Blenkinsopp notes that editorial changes likely continued into the Second Temple Era. See Blenkinsopp, *History of Prophecy*, 87–88.

¹⁴⁷ Blenkinsopp argues that while the book may have started as the work of Ezekiel, it has a long history of redaction through a group of disciples with knowledge of the cultic side of Judahite religion in the years following. See Blenkinsopp, *History of Prophecy*, 165–71.

can see how adultery was perceived, and the expected cultural and emotional reaction to it. The prophets' use of adultery likely does not line up with any real adulterous event, but instead played on social expectations around adultery.

Isaiah uses the adultery metaphor, but not in a consistent or sustained polemic. In 57:7-10, the poet shifts back and forth between using terms of adultery and idolatry. Isaiah does not construct an ongoing narrative as a metaphor; rather, he uses terms and motifs of adultery to describe idolatry. Joseph Blenkinsopp connects Isaiah's metaphor with a passage in Hosea,¹⁴⁸ looking at double meanings used in the passage, highlighting its sexual content.¹⁴⁹ However, Blenkinsopp labels the wider passage (Isaiah 57:3–13) as a condemnation of a sorceress, and not strictly an adulteress.¹⁵⁰ He does not focus on the framing of the discourse and how the passage speaks about sex. God here speaks as if accusing a wife of adultery while describing Israel's idolatry. In verse 7, God accuses Israel, saying *שָׁמַתְּ מִשְׁכְּבְּךָ* “You set your bed” at the high places *לְזִבְחֵם זָבָח* “to sacrifice sacrifices.” The text mixes the metaphor, switching between the signifier and the signified. God's accusations are of both adultery and idolatry, switching between the two as if they were one and the same. This blurring of the metaphor works to highlight God's emotional state. By using the language of the aggrieved husband, the prophet stresses God's emotional response to idolatry. The prophet does not argue the futility of idols in these adultery metaphors, but rather that idolatry causes emotional distress in God.¹⁵¹ While using the language of adultery, the poet does not explain the emotional response or even attempt to justify it. Rather,

¹⁴⁸ Joseph Blenkinsopp, *Isaiah 56–66: A New Translation with Introduction and Commentary*, Anchor Bible Commentaries (New York: Doubleday, 2003), 155–57.

¹⁴⁹ Blenkinsopp, *Isaiah 56–66*, 161.

¹⁵⁰ Blenkinsopp, *Isaiah 56–66*, 152.

¹⁵¹ Isaiah does label idols as futile and powerless. For example, 57:13 tells the audience to cry out to their idols for help, and not to Yahweh, but that doing so will not get them an answer.

the poet assumes his audience will understand the emotional response of a husband whose wife has committed adultery. The poet uses this assumed understanding to describe God's emotional response to idolatry.

Jeremiah also uses adultery amidst several other metaphors when describing Israel's apostasy. In 2:20, God accuses Israel of *נָחַל בְּזָנִי* "laying down to whore" at every high hill and under every tree, places where worship would occur.¹⁵² Jeremiah uses other sexual metaphors for Israel as well, calling Israel a "wild ass... in heat" (2:24). But the text does not hold a sustained metaphor through the chapter. In fact, the metaphors used are often problematic: Jack Lundbom notes the "wild ass" in 2:24 is male, and thus can't go into heat.¹⁵³ Lundbom works through how Jeremiah uses bad sex as a metaphor for rebellion, but given some of the imagery, the text's choices may speak of the spread of a fertility cult.¹⁵⁴ The metaphors wander as Jeremiah 2 moves through other descriptions: God saying God is a fountain while Israel prefers a cistern (2:24), Israel as recalcitrant slave (2:20), Israel as wild vine (2:21), and others. Jeremiah uses the adultery metaphor throughout the book, dropping references to adultery or marriage throughout,¹⁵⁵ but just as Isaiah, Jeremiah does not construct a sustained polemic. Rather, adultery is just one of many metaphors used to describe Israel's religious infidelity.

When Jeremiah does use the metaphor, God is portrayed as the angry husband and Israel as the wayward wife. But a wife cannot commit adultery unless there is someone outside the marriage with whom to commit it. While foreign powers (divine and political) are mentioned,

¹⁵² "High places" were used as shrines; trees were places of worship for Asherah. Thus, the prophet is describing worship at these places with sexual imagery.

¹⁵³ Jack R. Lundbom, *Jeremiah 1–20: A New Translation with Introduction and Commentary*. Anchor Bible Commentaries (New York: Doubleday, 1999), 281.

¹⁵⁴ Lundbom, *Jeremiah 1–20*, 278, 282.

¹⁵⁵ Further examples are 13:22 and 31:31–32.

they are not described in terms of a seducing outside agent. Rather, Israel is depicted as a woman who is actively seeking out other men to have sex. God's anger is justified, Israel's behavior is condemned, and the "other man" of the other nations escapes any active judgment. The prophet has aimed his polemic internally, at Judah, and as such, these other nations escape punishment. Within the metaphor, we might have expected equal condemnation for the man committing adultery with a married woman, at least given the legal texts on adultery. Instead, the polemic highlights the adulterous woman and ignores the man. Only the woman/Israel is condemned in the text and is the sole focus of God's anger.

The book of Hosea constructs a more sustained metaphor around adultery. Beginning in chapter 1, God commands the prophet Hosea to get אִשָּׁת זְנוּנִים "a wife of whoring," or perhaps "woman of fornication," and to also get יְלָדֵי זְנוּנִים "children of whoring." This language is not precise: God could be commanding Hosea to marry a prostitute, or this might be a command to take a wife without some sort of marriage ceremony—some sort of illegitimate marriage. The latter is unlikely, as the language here of "taking a woman/wife" is a standard biblical Hebrew idiom for marriage. Further, the text's use of the adultery metaphor only works if Hosea's marriage is legitimate. When a man and woman become husband and wife, the wording is often simply that the man "takes a wife," though the precise roots will sometimes shift. How one would "take a wife" but still have זָנָה with her is unclear. We might be able to clarify this by rendering the אִשָּׁת as "woman" and not "wife," giving us "take a woman of whoring," but as the same word is used for woman and wife in Hebrew, the text cannot be firmly rendered one way or another. Likely, the ambiguity is intentional. Similarly, getting a "child of whoring" would imply that any children begotten would be illegitimate, though if Hosea is married to this woman, it is unclear how. Likely, the wording is not trying to represent some sort of actual marriage

arrangement. The wording is intentionally ambiguous, allowing the prophet to construct the image of a marriage, but at the same time keeping the wording of זָנָה whoring. With this ambiguity, the prophet is constructing a polemic which will be used later in the text of Hosea to argue about the nature of the relationship between God and Israel. As such, the phrasing of this part of the text likely does not map onto an actual marriage relationship. Nothing later in chapter 1 would suggest that this marriage is abnormal, save that God dictates the names of Hosea's children.

Moving to chapter 2, Hosea's polemic shifts. The text now has God speaking through Hosea's voice, addressing his children. The text tells the children to plead with their mother about her adultery:

Strive with your mother!
Strive since she is not my wife, and I am not her husband,
That she turns her whoring from her face,
Her adultery from between her breasts

Lest I strip her naked and leave her as the day of her birth
I will make her like a desert, I will make her like a dry land,
I will kill her with thirst.

I will not be merciful with her children,
As they are children of whoring.

Because she whored, she shamed their conception.
Since she said, "I will go after my lovers,
I will give them my bread and my water,
my wool and my flax, my oil and my drink."¹⁵⁶

The chapter continues with God/Hosea speaking about the sexual crimes of his wife. The text starts to shift out of metaphor when it turns to how God will punish Israel, though it keeps some of the language of adultery:

¹⁵⁶ Hosea 2:4–7 (Eng. 2:2–5).

But now, I will expose her shame in the sight of her lovers.
None shall save her from my hand.

I will stop all her joys from her pilgrimages,
Her new moons, and her sabbaths,
All of her appointed festivals.¹⁵⁷

The metaphor of adultery is used by Hosea to stress the emotional response of God to Israel's apostasy. But when Hosea begins to describe the consequences of that emotional response, the text starts to shift between the sign (the husband takes away his economic support in verse 11) and the signified (God stopping the religious ceremonies in verse 12). God, as the angry husband, punishes Israel, God's wife. The text makes no moral or legal arguments that this is just; rather, it assumes that the audience will agree that a husband should be able to punish his wife if she has committed adultery. The text also does not phrase the punishment as a legal consequence. The wife is not brought to court and judged—the husband simply punishes her on his own. Adultery is not something that is brought to court here, even though we have images of a divine court throughout the Hebrew Bible. Rather, adultery is something the husband reacts to. The husband's anger is not questioned, nor is his use of his anger in his reaction.

After that anger is sated, Hosea continues, the wife is offered a renewed relationship with the husband. In verses 16-17,

Thus, Lo, I will persuade her,
I will go with her in the desert,
I will speak to her heart

I will give to her from the vineyards,
the Valley of Achor for a door of hope
She will answer there as the days of her youth,
as the day she came up from the land of Egypt.¹⁵⁸

¹⁵⁷ Hosea 2:12–13 (Eng. 10–11)

¹⁵⁸ Hose 2:16–17 (Eng. 14–15)

God offers Israel its place back, offering to restore the gifts given previously. The shifting between anger and forgiveness is disturbing to a modern reader, as we have identified this kind of punishment-forgiveness cycle with domestic abuse. Renita Weems explores the adultery metaphor in the prophets extensively in her work, *Battered Love*, and there she argues that we should be disturbed by these metaphors, which assume some level of abusive relationship.¹⁵⁹ Weems describes the culture around the prophets' adultery metaphor as unlikely to question the actions of the husband, given that the husband's behavior in the prophets' narratives was the assumed behavior of the culture.¹⁶⁰ Weems argues that we can find this metaphor problematic, and still understand what the prophet was trying to convey in their own culture. In the text of Hosea, the prophet assumes that this image of the angry and punishing husband would be accepted as genuine and just.

Francis Andersen and David Freedman take Hosea's marriage as a factual event in the life of the prophet Hosea.¹⁶¹ The actual life of the prophet is thus recorded and metaphorized into the relationship of Israel and God as the text continues, though they note that the text blurs often between the real and the metaphorical.¹⁶² The historicity of Hosea and Gomer, and their relationship, is not the focus of this investigation, but rather the shape of the discourse and how the text speaks of the adultery and its aftermath. Andersen and Freedman do not discuss the language used by the text, as much as they discuss the events, especially the reaction of the "abused husband."¹⁶³ They admit that "[e]verthing seems to be a metaphor about Yahweh and

¹⁵⁹ Renita J. Weems, *Battered Love: Marriage, Sex, and Violence in the Hebrew Prophets* (Minneapolis: Fortress Press, 1995), 110.

¹⁶⁰ Weems, *Battered Love*, 84.

¹⁶¹ Andersen and Freedman, *Hosea*, 46–47.

¹⁶² Andersen and Freedman, *Hosea*, 47–48, 58.

¹⁶³ Andersen and Freedman, *Hosea*, 118.

Israel,” but do not comment on why that means Hosea and Gomer need to be historical figures.¹⁶⁴ They also deny that the marriage metaphor can be used to explore historical marriage customs.¹⁶⁵ If the metaphor had pushed too far afield from actual marriage practice, it would not have made sense to the audience of the text. Metaphors should be approached with caution, but it is precisely their grounding which makes them useful in communication. Finally, Andersen and Freedman do not call out the abusive nature of Hosea’s message of “repent or I’ll punish you some more,” especially within a romantic relationship.¹⁶⁶

Ezekiel uses the adultery metaphor in two sustained oracles: chapter 16 and chapter 23. Like Hosea, Ezekiel portrays God as the angry husband who has cared for his wife and provided for her, yet she had decided to commit adultery. The chapters have some differences from each other, so I will look at each in turn, but both are steeped in the image of an angry, cuckolded husband as God.

In chapter 16 of Ezekiel, the prophet begins with the story of the wife’s birth. The oracle tells the story of an infant girl who was abandoned by her parents. None of the usual care was provided for this girl, and the husband finds her in the field, left to die (vs. 4-6). The girl grows up under the care of the husband, who notices that she has come of age. The husband takes the girl as wife, providing her with all kinds of luxuries (vs. 7-14). The woman then starts to look for and take lovers from all the nations around her, with the only reason given that the woman is seduced by her own sexual power (vs. 15-29). God as husband then declares that he will bring all the woman’s lovers and strip her naked before them before letting them do violence to her (vs.

¹⁶⁴ Andersen and Freedman, *Hosea*, 124.

¹⁶⁵ Andersen and Freedman, *Hosea*, 125.

¹⁶⁶ Andersen and Freedman, *Hosea*, 51.

35-43). Yet after this violence against her, God as the husband will restore his wife back to himself (vs. 52-63).

Moshe Greenberg connects Ezekiel 16 with Hosea's metaphor, noting the similarities.¹⁶⁷ Greenberg argues that the tale as constructed in Ezekiel 16 requires some changes to the Exodus narrative—namely, that God abandoned Israel while they were in Egypt.¹⁶⁸ His claim requires a particular ordering of the texts, or at least of the major elements of the Exodus story: Ezekiel would need to know the Exodus narrative to alter it. An alternative would be that there were competing Egypt narratives, with Ezekiel using a different narrative than the one we know. Regardless, Greenberg does not explore the discourse elements of this passage and how the text presents adultery.

Ezekiel makes no comment on the shift from daughter-figure to wife-figure in his metaphor. The text simply assumes that when this girl came of age, it was natural for the man (Yahweh) to find her sexually attractive and take her as a wife. While the woman is never named Yahweh's child, modern readers might find the proposition of fostering a young person while they grow and then having sex with that person once they are of age problematic. The ancient text seems to have no problem with this possibility.¹⁶⁹

Chapter 23 of Ezekiel presents a similar narrative. In this one, there are two wives, and the childhood narrative is abbreviated. We lack the longer story of finding the girl in the desert

¹⁶⁷ Moshe Greenberg, *Ezekiel 1–20: A New Translation with Introduction and Commentary* (New Haven: Yale University Press, 2011), 298.

¹⁶⁸ Greenberg, *Ezekiel 1–20*, 301.

¹⁶⁹ Even if the ancient audience would have seen the relationship as father-daughter from the start, the incest laws of Leviticus 18 make no prohibition of father-daughter relationships. Numerous other relationships are banned including other relations' daughters, but one's own daughter is not explicitly barred. This may have been an assumed taboo, but it is never explicitly named.

and raising her to womanhood; God simply takes these two girls as his wives (vs. 2-4). Verse 4 even goes so far as to name which of the wives is Samaria and which is Jerusalem, making the metaphor's meaning explicit. The oracle quickly gets to the accusations of adultery and the titillating details of these accusations against both women (vs. 5-22). This time, the woman for Samaria, Ohalah, is killed by her lover and not at the direct command of God, though God does pronounce that her death was just (vs. 10). The second wife, Jerusalem as Oholibah, continues in the adulteries of her sister, and is eventually given over to her lovers as well (vs. 11-35). The oracle continues, placing the blame for the fates of Ohalah and Oholibah on themselves and declaring God innocent of any wrongdoing (vs. 36-49).

Returning to Greenberg, he notes that the two tents point specifically to two different sanctuaries, with the names clearly giving preference to the Judean sanctuary.¹⁷⁰ In this passage, Greenberg offers a critique on feminist approaches to scripture, arguing that scripture is antithetical to feminist thought. He states that since feminist thought did not exist in the ancient world, any attempt at feminist interpretation is not useful for the historical-philological approach to Scripture.¹⁷¹ The rejection of feminist thought is problematic, as in doing so, Greenberg has confused the tools of feminist approaches with the thought behind it. Feminist tools can be used to analyze non-feminist texts, otherwise there would be virtually nothing to analyze at all (at least until the modern era) and any search for women in history would be fruitless. By dismissing feminist thought, Greenberg refuses to engage with tools and concerns about the text which pre-feminist scholarship has not engaged: the abusive relationship issues, the lack of a voice or agency for the women, etc. Further, we can use feminist tools to uncover how the ideas behind

¹⁷⁰ Moshe Greenberg, *Ezekiel 21–37: A New Translation with Introduction and Commentary* (Garden City, NY: Doubleday, 1997), 474.

¹⁷¹ Greenberg, *Ezekiel 21–37*, 493–94.

these texts shaped men as well as women. The adultery texts of the prophets assume that men should primarily be angry—violently so—should their wives commit adultery. The texts leave little room for other emotions: betrayal, depression, self-blame, and so on. As such, the men are prescribed a certain course of action by the prophetic texts, and any other emotional response to adultery would be viewed as aberrant.

In both narratives, the women are condemned for their adulteries, and they punished violently for their sins. Yet in both narratives, the women are punished at the hands of those with whom they committed adultery. The adulterous men are not punished. While the husband/God is justified in his anger, he simply allows these outside men to punish his wife for him. The male adulterers not only get away with their adultery but mete out the penalty to the women! The women are the only ones who suffer any ill outcome for adultery, despite men being necessary for adultery to have happened at all. These oracles are clearly at odds with the legal materials, which condemn both the wife and the male adulterer. Even Hosea's oracle has the husband active in the punishment of his wife. In Ezekiel, the other men get to both have sex with the women and then punish them for their adulteries.

Ezekiel is likely forced to constrain his adultery metaphor to the events he is describing with it. Ezekiel could not say that Assyria was condemned by God at the same time Israel was condemned because, simply put, Assyria was not. Instead, Ezekiel is describing historical events through the metaphor of adultery, and as such, his metaphor does not represent an actual adultery accusation or how an adultery case might have proceeded. He bends the specifics of his metaphor enough to account for historical reality because he is not interested in making a legal case. Rather, the focus of Ezekiel's oracles is the emotional response from the titillating images of the adultery and the violent anger which follows. Ezekiel stresses emotional aspects to

condemn his targets, which are represented by the women. His targets are not his audience. His audience is a combination of those who survived the conquest, and the generation after them. As such, he can portray the generation of the conquest, and those before them, as the guilty ones, with those who survived and those coming after as redeemed, at least in some way. This gives enough distance that his audience can accept his sex and violence in the metaphor as justified. At the same time, Ezekiel wants his male audience to feel the emotion he is ascribing to God, so he uses the metaphor of adultery to highlight the emotional content of his accusations. Ezekiel is not trying to present anything like an actual adultery case, but rather to play on the emotions of his audience and then to project those emotions onto Ezekiel's understanding of the Assyrian and Babylonian conquests.

The prophets are using the adultery metaphor to make an emotional argument, not a legal one. The prophets are not seeking to punish an actual case of adultery or trying to work out how the society should react to adultery. Rather, the prophets are all invoking adultery to elicit the emotional response their audience has to adultery. They use adultery, not to make a reasoned argument, but to get their audience to feel the betrayal and anger that the prophets claim God felt. Further, the prophets effectively limit the expected reaction to adultery to anger and violence by not even addressing the possibility of other emotional responses. They invoke this anger and then move to the violent punishment of the wife. God either allows or actively causes this punishment, and the prophets justify the severity of the punishment based on the crime of infidelity and the emotional response to that crime. Effectively, the prophets are arguing that just as a husband who catches his wife in adultery is justified for any punishment he metes out in passion, so God is justified in God's punishment of Israel for their collective religious adultery. While adultery is a crime against the husband, idolatry and religious pluralism are crimes against

God. And just as adultery should be punished by the husband (directly or indirectly), so idolatry is punished by God.

Foucault describes crime in the classical sense as a violation against the state, embodied in the king.¹⁷² People who break the law are violating the will of the state, yes, but also directly challenging the embodiment of that state: the king. The prophets are using adultery to describe how religious infidelity is an affront to God. Adultery, as shown above, is often seen as an affront against the husband and against the gods or, put more secularly, against society itself. We can see this in Joseph's response to Mrs. Potiphar: he wants to violate neither the trust of the man who owns him, nor the will of God (Gen 39:8-9). Within the prophets' metaphor, God is the wronged husband. God becomes the source of both outrages: marital and divine/societal. Just as the king/state is the actor for power in Foucault, here God can function as the actor of power in the relationship with Israel and Judah. God is directly sinned against and brings the punishment for that sin. By using the deeply personal idea of adultery, the prophets put their audience emotionally into the position of affronted God, justifying the severity of the punishment against Israel and Judah. While the legal texts attempted to contain male emotions and the narrative texts use them to further their plots, the prophets exploit a masculine emotional response to adultery to prove their point: God was justified in God's behavior.

Foucault describes punishment as an art which, "must rest on a whole technology of representation."¹⁷³ The prophets' punishment of adultery (and symbolically, idolatry) aligns with Foucault's analysis of punishment. The act of punishment itself seeks to correct or change future

¹⁷² Foucault, *Discipline and Punish*, 47.

¹⁷³ Foucault, *Discipline and Punish*, 104.

behavior. As such, it must be connected to the crime it is punishing.¹⁷⁴ The prophets' use of sexual punishments, such as in Hosea and Ezekiel, connects the wife's punishment with her assumed sexual pleasures of adultery. In Foucault, the punishment must be at least as strong as the crime it is punishing.¹⁷⁵ The prophets play up the emotional betrayal and pain of the husband/God to justify the extent of the pain of the wife/Israel. Punishment must be temporally bound: that is, it must end.¹⁷⁶ The prophets are a bit split between how they thought this punishment might end: a few, like Jeremiah, saw reconciliation as possible, but others, such as Hosea, saw things more permanent and dire. The punishment does end, even if it ends in death, for those being punished, and might serve as a warning to those still alive. Punishment also must be understood by its audience—it is not just for the criminal, but also for those witnessing it.¹⁷⁷ The prophets are explicitly linking their descriptions of punishments for adultery to their descriptions of the destruction of Jerusalem. The public nature of such punishments attempts to restructure law, society, and crime, removing the crime (and often the criminal) from society through the application of the law.¹⁷⁸ In a sense, the prophets are working to explain why the punishment happened—they have the evidence of the destruction of Judah and Jerusalem, and now they must explain why God would do such a thing. By aligning it to adultery, the prophets are explaining to their audience that the destruction of their nation was a punishment. Finally, punishment must remove any romantic notions from the crime and the criminal, removing the desire to do the crime in the first place.¹⁷⁹ Throughout their narratives, the prophets are telling

¹⁷⁴ Foucault, *Discipline and Punish*, 104.

¹⁷⁵ Foucault, *Discipline and Punish*, 106.

¹⁷⁶ Foucault, *Discipline and Punish*, 107.

¹⁷⁷ Foucault, *Discipline and Punish*, 108.

¹⁷⁸ Foucault, *Discipline and Punish*, 110.

¹⁷⁹ Foucault, *Discipline and Punish*, 112.

their audiences why the destruction happened, and telling them how to avoid it in the future, if there is one. The prophets are analyzing, through the adultery metaphor, why violence occurred to Judah and Israel.

Did the prophets feel like there could be reconciliation? Some of their texts do include offers of reconciliation from God, if Israel repents. Depending on when the texts were written, the prophets may be using this metaphor as a warning, more than a description of what occurred. Robert Gordis argues that the prophets did believe in reconciliation, given the messages of repentance, and thus because the prophets are still using the metaphor of adultery, they believed that adultery could be forgiven as well.¹⁸⁰ He argues that the punishment of adultery became more lenient over time: during the early nomadic periods, adultery was punished with death, while later, as Israel/Judah became more urban, the societies began to see divorce as the response to adultery.¹⁸¹ But just how much restoration the prophets felt was possible is difficult to determine. Ezekiel and Hosea end with violence against the women in their narratives. It is hard to reconcile with someone if they are dead. Still, they may be framing the metaphors to the historical context, and thus, especially in Ezekiel's case, death may represent the extent of the damage to Israel and Judah. The author of these passages of Ezekiel (chapters 16 and 23) may not have seen much hope for a post-exile existence for Israel or Judah.

OVERALL BIBLICAL CONTEXT

The *sotah* ordeal is, in some ways, an outlier. Not only is it the only ordeal of its kind in the Bible, but other legal texts do not deal with allegations of crimes and how to determine truth.

¹⁸⁰ Robert Gordis, "On Adultery in Biblical and Babylonian Law—A Note," *Judaism* 33.2 (2001): 210–11.

¹⁸¹ Gordis, "Adultery in Biblical and Babylonian Law," 211.

There are passages in which individuals seek an answer from God, but in such cases, there is no ritual which provides an answer: rather, God simply speaks. For example, the passages on the daughters of Zelophehad in Numbers 27:10-11 and 36 have Moses inquiring of Yahweh how to answer a legal question. But in both passages, God responds to a question with direct speech, and there is no ritual described for answering legal questions. Leviticus 24:10-23 also contains an inquiry to God, but the question is not whether the man on trial has done something wrong (there is enough evidence for a conviction); the question being posed was what punishment to mete out.¹⁸² Just as in the Zelophehad case, there is no ritual for Moses to perform to divine the will of God. Instead, Moses simply asks God, who then responds with a clear answer. There are other instances when someone inquires of God, such as 1 Samuel 10:22 (the people inquiring about Saul) and 2 Samuel 5:23 (David inquiring about an impending battle), but again, no method of inquiry is described. In 1 Samuel 14:5, Saul inquires of God using Urim and Thummim, but this is described as casting a lot. If there had been a ritual around such things, it is not described. The *sotah* ordeal is generic: no specific woman is brought to Moses with a claim against her. Instead, the text describes what to do in a hypothetical situation. The *sotah* ordeal is prescribed to show how to divine the knowledge needed to make a legal judgment. The ordeal serves as way to find the truth when there is no evidence, not to make a legal decision.

The other sexual laws all deal with cases when sex is known to have occurred. The only case with ambiguity is the case in which a betrothed woman is found having sex in the wilderness, but the ambiguity is whether she is complicit, and not whether sex occurred. The

¹⁸² The exact legal question is somewhat unclear, as there are legal texts which say not to blaspheme God's name. The question may be more about his identity—Was he to be considered an Israelite and thus punished under their laws, or since his father was not an Israelite, was he considered some other legal status. The other question could be what the punishment for blaspheming should be. The exact legal question is never stated, just what to do with the guilty party, though the answer is phrased in such a way to make it clear that all residents, regardless of social-religious identity should be punished the same.

narrative texts I have examined do not deal with questions of whether the characters in them had sex, though the first of the sister-wife narratives leaves some ambiguity around that. In all the others, the audience knows if sex has occurred or not. The problem becomes the kind of sex which occurred, and all of them deal with more complex situations than straight-forward adultery. Similarly, the prophets do not deal with whether adultery happened or not. Rather, they use adultery to justify the punishment which has been dealt out. We do not have a case in which a woman is suspected of adultery and evidence is sought out, as in the case of the *sotah*. No one invokes the ritual in a narrative to divine whether adultery has occurred.¹⁸³

Despite this, the other texts help frame how adultery was viewed in the cultures which produced the Bible. Adultery was a serious concern, though we cannot tell how frequently adultery occurred. If we view legal texts as an attempt to construct an ideal world (at least, for their elite male authors and audiences), the ideal response to confirmed adultery was the death of the wife and her lover.¹⁸⁴ The laws present adultery as a crime which cannot be undone, and as such, the woman and her lover must die. The laws mostly do not address how the woman is to be executed, and when they do, the laws name stoning, a communal method of execution, rather than something the husband would do himself. Legally, adultery was a social crime, though it had personal ramifications.¹⁸⁵

¹⁸³ To be fair, virtually none of the laws are directly cited by any of the other genres of text in the Bible. For example, there are the levirate laws (Deut. 25:5–10) and the narratives of both Genesis 38 and Ruth, which deal with levirate situations. The narratives never invoke the levirate law directly, and both narratives expand upon the practice as described in Deuteronomy.

¹⁸⁴ Ancient legal texts are difficult to situate, as they were not used as a modern law code is. Instead, they appear to point to the idea of what the ancients thought a just society would look like, a sort of utopianism; they could serve as academic exercises to train scribes in legal reasoning. For more on the idea of law codes as legal reasoning exercises, see Westbrook, “Adultery in Ancient Near Eastern Law,” 548.

¹⁸⁵ Other sex laws do frame deviant sex as a property crime against the father, so the issue is more complex than simply who the crime is against. In the case of adultery, since the punishment is death, what could be occurring is an attempt to control who has the power to put someone to death.

Narrative texts would back up the idea that adultery was a serious concern but seem to show that actual cases were far more complex than the legal codes would make them out to be. The narrative texts seem to consider that an individual woman's situation might affect her decisions around sex and make accusations of adultery more complicated. Several of the narratives about adultery and other sexual deviance place women in positions in which refusing sex is not really an option. As modern readers, we may read these narratives not as adultery but as sexual assault or abuse of power. When adultery does happen, it is narratively framed as a crime against both the husband and God (or wider society). We see this in the sister-wife narratives, when the kings are horrified that they might have transgressed social boundaries and affronted the patriarchs, in Joseph's refusal of Mrs. Potiphar, and in Nathan's rebuke of David over Bat-Sheba. However, in none of the narratives are the adulterers put to death, at least not immediately. Absalom does eventually die, but his adultery with his father's concubines is subsumed into his wider rebellion. Other adulterers and adulteresses all survive, and the only deaths in the narratives are the husband of the woman in the adulterous relationship, and the child from that adulterous relationship. These crimes are serious, but they are complicated, and the narratives do not present clean solutions.

Finally, the prophets present adultery as a highly personal crime—the husband has full rights to punish his wife for adultery, and even when doing so through intermediaries, it is the husband's will that dictates the punishment, in direct contradiction to the *sotah* ordeal's limitations placed on a husband's response to suspicion. Adultery evokes an emotionally charged response from the husband, but those emotions are fully within the husband's rights. The prophets' presentation of the emotional side of adultery matches the *sotah* ordeal's framing of suspected adultery: the issue in the ordeal is less the actual sexual act and more the husband's

(justified) emotional response. Just as the *sotah* ordeal absolves the husband of any responsibility for his emotional state and its outcome, the prophets absolve God of any responsibility for his emotional response to Israel's religious adultery. The emotional response is expected and justified by the texts, with that justification assumed by how the texts presents violent focused anger, which is the accepted response to the betrayal of adultery.

CONCLUSIONS REGARDING BIBLICAL LITERATURE

The Hebrew Bible presents a complex of approaches to adultery. The legal discourse includes a precise set of reactions to adultery and adultery-like situations. Outside of the *sotah* ordeal, the laws attempt to control any emotional response with clear directions on how to mete out punishment. In the case of actual adultery, the legal response is strong condemnation and execution of both parties, apparently regardless of whether they were complicit in the act. The discourse of the narratives admits that actual cases are complex, but allows that emotions are a strong part of the response to sexual infidelity. The prophets use emotional responses to adultery to frame Israel's fall and exile, justifying God's actions as those of a jealous husband. Adultery is a deeply personal crime, though the texts do admit that there are social ramifications. The legal texts state that the land will be cursed if adultery and other sexual deviance are not punished (see Lev. 18:24–30, Deut. 22:22–24). These social implications are tempered, as not every sex law frames its crime as a social one, and the punishments, when not death or exile, are framed as restitution to an affronted party, usually the father.¹⁸⁶ In the capital cases, it is unclear the executions of the adulteress and adulterer are to assuage the husband, the community, or God, as the texts do not address why capital punishment should be invoked in most cases. In several,

¹⁸⁶ If the woman is wed or betrothed, then the punishment is death, save in the case of an enslaved person who is designated for another slaver. In that case, restitution is made to the community through sacrifice.

capital punishment is named in order that the land not become polluted (Lev. 18), but the source of that pollution is not the sexual crimes specifically, but rather their acceptance by the population. In other words, it is not the committing of adultery that pollutes the land—it is when the community accepts that adultery happens and does not punish it. Further, none of the legal texts address an actual case of sexual deviance. We have legal texts which purport to apply to a specific case, such as the blasphemer (Leviticus 24:10-23) and the daughters of Zelophehad (Numbers 27:1-11, 36). But for sexual crimes, we only have the legal texts and their constructions of what should happen in general cases. The narrative texts do present how specific cases might be approached, but none of them use a legal system to come to a conclusion. The Judah and Tamar narrative comes close, but there Judah is summoned as patriarch to serve as judge over his household. We have no examples of the legal text brought out to guide a decision in the case of adultery.

The *sotah* ordeal may have been constructed as an ideal method of dealing with a problem for which its authors lacked another solution. The ordeal is framed around the husband's emotional response to potential adultery, which matches the prophetic texts on adultery much closer than it matches other sex laws or the narratives on adultery. The prophets share the *sotah* ordeal's concern about the husband's emotions, but the prophets use those emotions to push their messages regarding the anger and pathos of God. Some of the sex laws in Leviticus do have an emotional plea, but the concern is not for the cuckolded husband's emotions, but rather a plea that the land not become corrupted by the acceptance of sexual sins. The adultery narratives admit emotional response as part of sexual deviance, but the husband's emotions are never the focus of the story. Of the narratives, only Potiphar and Judah get angry. For Potiphar, there was no actual sex, and for Judah, he is the one who had sex with Tamar. Only

the prophets wrestle with the emotions of the husband, but there, they use these emotions metaphorically, in their polemics against Israel and Judah.

6. ADULTERY, JUDAISMS, AND HELLENISTIC CULTURE

When Alexander the Great conquered the Levant, he imposed a new imperial culture onto Judah. Prior to this, the Levant had been subject to various ancient Near Eastern cultures, both through direct control and through indirect influence. Egypt, Assyria, and Babylon shared many cultural elements with each other and with Judah. While Persia had its differences, one of them being the only empire to not speak a Semitic language, it did not change much of Judah's culture, possibly due to the relatively short period of Persian control. Judah did have contact with the Hellenistic world prior to Alexander, but such contact lacked the power of an imperial conquest. After Alexander, much of Jewish literature presents Hellenism as a particularly invasive and alien culture, seeking to convert Judeans to its ways. Biblical literature contains numerous arguments against ideas of the ancient Near East (idolatry, polytheism, and the like): Hellenistic culture became the target of these same arguments. Judean authors also attacked Hellenistic cultural institutes and practices, such as the gymnasium and the theatre.

Despite what appears to be a surface resistance to cultural syncretism, Greek cultures held similar views on adultery and sexual sins as the ancient Near East. While many texts spoke positively of sexual relations, Greek authors showed a certain caution when addressing unbridled passion. They often found sex to be alluring, but dangerous. Foucault describes the Greek view of sex as a meeting of a self-restrained active partner with a more wanton but passive partner.¹ Within heterosexual couplings in Greek culture, the man was expected to take the active role, and the woman, the passive.² Same-sex couples were known, as well. The passive/receptive male

¹ Michel Foucault, *The History of Sexuality*, trans. Robert Hurley, vol. 1 (New York: Vintage Books, 1988), 2:46–47.

² Foucault, *History of Sexuality*, 2:46–47.

in a male-male couple was often portrayed as wanton and lacking in self-control, especially if he showed any enjoyment in the role.³ In female-female couples, one was assumed to be taking the active/penetrating role, and how she might do this was wildly speculated on among male authors. She was assumed to take on other masculine traits as well as pursuing penetrative sex with men.⁴ To counter the potential breakdown of control, Foucault shows how the Greeks worked to develop a 'diet' of sex: they developed a complex discussion about how often and in what ways (and with whom) a man should have sex.⁵ Foucault documents that this meant women were to have sex only with their husbands, and that the punishments for violating this were meted out by the husband, not a public court.⁶ Greek thought on this was not unanimous, so we will look a bit more into texts beyond Foucault's analysis.

GREEK LEGAL TEXTS

Adultery was seen by the Greek world as a private crime with private punishments, or at least punishments which started in private. The text which Foucault cites, Demosthenes's *Against Neaera*, claims that women guilty of adultery were to be banished from their husband's households and towns.⁷ This punishment is meted out by the husband, in private: he bans his wife from his house. The husband is in control of the punishment of the wife, as opposed to the *sotah* ordeal which limits the response a husband can choose. It then expands into a public punishment, as she is also banned from the city. The husband holds power over the wife and her

³ Foucault, *History of Sexuality*, 2:205–7.

⁴ Judith P. Hallett, "Female Homoeroticism and the Denial of Roman Reality in Latin Literature," *Roman Sexualities*, ed. Judith P. Hallett and Marilyn B. Skinner (Princeton: Princeton University Press, 1997): 179–97.

⁵ Foucault, *History of Sexuality*, vol. 2, pt. II.

⁶ Foucault, *History of Sexuality*, 2:145.

⁷ Foucault, *History of Sexuality*, 2:145.

sentence, even when the sentence is not entirely in private. Other texts portray adultery as similarly internal, though in different ways, as we will explore below.

Lysias, in *On the Murder of Eratosthenes*, defends a husband named Euphiletus. He claims that Euphiletus caught his wife and her lover in bed, and that Euphiletus killed the lover immediately.⁸ John Porter makes the argument that this is most likely a fictional event and speech, used to show off Lysias's speaking ability.⁹ Porter argues that the adultery described matches the trope of a comedic adultery scenario too well to be an actual event.¹⁰ As a cultural trope, this narrative illustrates the assumed cultural trappings of adultery better than an actual occurrence of adultery. Lysias would have attempted to fit the adultery narrative into what his audience would have expected in an adultery tale. Lysias makes the claim in his speech that not only did the law allow a husband to mete out summary justice, but it also allowed a man to do so should he find his mistress (not just his wife) in bed with another man. Lysias frames the crime of adultery as a man invading the private realm of another man, and as such, the wronged man could retaliate against the invader. In the case of the wife, she does not go out seeking adultery; rather, the adulterer works his way into the household. Lysias argues that this is worse than a rapist, who simply invades the realm of the husband by forcing his wife, as the adulterer turns the household (specifically the wife) against the husband. In all of this, the woman is not an active participant: it is a man committing a crime against another man, whether that be seducing his wife or raping her.

⁸ Jennifer Larson, *Greek and Roman Sexualities: A Sourcebook*, (London: Bloomsbury Academic, 2012), 249.

⁹ John R. Porter, "Adultery by the Book: Lysias 1 (On the Murder of Eratosthenes) and Comic Diegesis," in *The Attic Orators*, ed. Edwin Carawan (Oxford: Oxford University Press, 2007), 82.

¹⁰ Porter, "Adultery by the Book," 78.

Seneca the Elder writes his *Controversiae* about Greek orator Hybreas, defending a man who killed his wife when he found her having sex with a woman.¹¹ Seneca is writing significantly later than Lysias, but he is reflecting on Greek cultural values. Like Lysias's case, the story is of a man who finds his wife in the act of being unfaithful to him, though in Seneca's story, there is the added layer of same-sex relations. Not only is the wife committing adultery, but she has become a *tribad* in the process. A *tribad* was a term for a woman who assumed the dominant role in sex, either with another woman or with a man, and thus was seen as the active (and sometimes penetrating) partner in the act.¹² The case is otherwise similar: the speaker in the text presents the infidelity as a valid defense for murder.

GREEK NARRATIVE TEXTS

In narrative texts, Euripides addresses similar concerns in *Bacchae*, when King Pentheus of Thebes has a monologue against the cult of Dionysus, claiming that the religion is just there to let women commit adultery.¹³ Pentheus threatens that he will “stop his thyrsus-thumping and/Hair-tossing, by chopping his head off”;¹⁴ that is, Pentheus will stop the adulterer by killing him. The play does not present a unified voice against bacchic rites, as Tiresias, a seer in the play, responds to King Pentheus with a warning that the rites of Dionysus will not tempt a truly chaste woman.¹⁵ These characters present two warring ideas: the king, desiring to control his domain, sees the rite as a danger to the women under his protection and control, while the seer, a voice from the more mystical side of life, sees women as agents who can choose their own

¹¹ Larson, *Greek and Roman Sexualities*, 148.

¹² Deborah Kamen and Sarah Levin-Richardson, “Lusty Ladies in Roman Imaginary,” in *Ancient Sex: New Essays*, ed. Ruby Blondell and Kirk Ormand (Columbus, OH: Ohio State University Press, 2015), 242–44.

¹³ Larson, *Greek and Roman Sexualities*, 88f.

¹⁴ Larson, *Greek and Roman Sexualities*, 88.

¹⁵ Larson, *Greek and Roman Sexualities*, 89, lines 314–27.

actions. As the play progresses, the women attending the bacchic rites turn feral, reportedly losing their humanity. Meanwhile, Pentheus attempts to spy on the women, but he is led into a trap by Dionysus who is dressed as a woman, and the women kill him. Pentheus's concern that the cult pushes women to lose control is proven correct. Pentheus's attempts to discredit the rites and end the cults are condemned by the play, and the play judges Pentheus's death as deserved. The women's loss of control is attributed to Dionysus's anger at Pentheus's attempts to block the cult. The play effectively says that Pentheus is correct that the rites can cause women to lose control, but also that this loss of control is divinely sanctioned within the rites.¹⁶ The play supports the idea that normal adultery is a personal attack on the husband, granting the husband the right to commit murder should he discover it, while at the same time arguing that a properly chaste wife would not be tempted by even officially sanctioned forms of ecstatic worship.

Homer also addresses the idea that women are allowed less sexual freedom than men.¹⁷ In the *Odyssey*, Calypso has a diatribe about how male gods are allowed dalliances with mortals, but goddesses are not.¹⁸ Throughout the tale, Odysseus has several sexual encounters and enticements along the way, which are only presented as wrong because they prevent him from returning home. Meanwhile, his wife, Penelope, is praised for remaining chaste while Odysseus is away. She stays in her home waiting, the story preventing any accidental adultery by Penelope's ardent defense of her husband's home. The reader knows that Odysseus is still alive, and that if Penelope had sex with one of her suitors, rather than delaying them, she would be committing adultery. Given that Odysseus murders the suitors for attempting to bed his wife

¹⁶ Further study into the idea of the bacchic rites as a source of release for women, otherwise under constant control, is beyond the scope of this work.

¹⁷ The *Iliad* and *Odyssey* are considerably earlier than the other texts we have looked at; however, their influence extends far later than their initial composition.

¹⁸ Homer, *Odyssey*, 5.116–44.

when they thought him dead, one can only imagine the response should Odysseus have returned to find his wife remarried.

While Penelope is chaste, Odysseus has no such restrictions. In Book 10 of the *Odyssey*, Odysseus faces Circe, who has transformed his men into pigs before trying to bed Odysseus. Odysseus refuses to sleep with her at first, not because of some moral compunction to remain faithful to his wife, but because he fears Circe might enchant him.¹⁹ When he has her oath that she will not harm him, he willingly has sex with her. While married women were expected to remain chaste, for married men, the only danger in extramarital sex was what the woman might do, though in this case, Odysseus may have been concerned about Circe's magic.

The *Odyssey* also contains the tale of Hephaestus trapping Ares and Aphrodite while they are committing adultery.²⁰ While Hephaestus does not kill the two adulterers when he finds out about the affair, he does devise a trap and summons the other gods to prove his case. Given the immortal nature of the Greek gods, the story cannot resolve like mortal examples, in which the husband kills the adulterous couple. Instead, Ares is made to promise restitution. Hephaestus does not approach the gods until he has acquired his own proof, and the guilty parties are already restrained. While he does invoke a public court of sorts in this narrative, it is not to prove adultery has occurred, but rather to involve the community in the punishment.

Homer's *Iliad* also deals with the subject of adultery within its narrative, but never directly calls it that. Several of the conflicts are between men over who has the rights to particular women: Agamemnon and Chryses dispute over Chryseis, Achilles and Agamemnon over Briseis, and Paris and Menelaus over Helen. Each of these is framed as a dispute between

¹⁹ Homer, *Odyssey*, 10.321–36

²⁰ Homer, *Odyssey*, 8.266–366.

men about who should have sexual access to the women, with either both parties making a personal sexual claim, or with one party being the father of the woman, claiming the right to decide her fate. Various relationships exist among these men to the women: father-daughter in the case of Chryses and Chryseis, spouses between Menelaus and Helen, and captor-captive with Achilles and Briseis. In most of the discussions on who should have the women, little (if any) attention is paid to what the women desire. In Book 3, Hector berates Paris for “seducing” Helen away from her husband, but the narrative is not as simple as Helen consenting to running away with Paris.²¹ Book 6 contains the story of Anteia, the wife of Proetus, attempting to seduce Bellerophon to her bed, but it is tangential to the main thrust of the story.²² While the narrative uses sexual access/possession of women to induce conflict, it does not do so as a moral or legal issue. Possession of women are conflicts between men—they are framed as personal, even if the conflicts end up involving armies of men and the fates of entire cities. There are no direct consequences for, or consent by the women. These foundational epic poems see women, especially their sexuality, as possessed by men, and that crimes involving sex with women are really conflicts between the men who possess (or should possess) those women.

As Marilyn Skinner has framed it in *Sexuality in Greek and Roman Culture*, the literature of the Homeric age depicts men as desiring sex, but that they should avoid being distracted by sex. She cites Odysseus as a prime example, as many of the delays on his return are women trying to seduce him.²³ Skinner works through later eras as well, in which the legal framework around sex continues to focus on men. She notes that in comparing rape and adultery from a legal standpoint, adultery is found to be worse, because the offending man has tricked or

²¹ Homer, *The Iliad*, 3.39–57.

²² Homer, *The Iliad*, 6.144f.

²³ Marilyn B. Skinner, *Sexuality in Greek and Roman Culture* (John Wiley & Sons, 2013), chapter 1.

otherwise seduced his way into the household, rather than simply forcing his way in. The law is still framed as a man injuring another man, rather than the woman being the cause of any harm.

Philosophical discussion around sex in general is focused on men keeping control of their bodies, and rarely mentions women's agency in sex or their own self-control. Rather, the dominant view is that women need and want sex to be healthy.²⁴ Hippocrates mentions this in *On Generation*, when he discusses how a woman's body was believed to have reacted to sex.²⁵ He frames his description as passive: the woman's body reacts to the man's actions upon her. Hippocrates ends this passage with a list of medical problems a woman may have if she is not having sex, specifically saying that women who have regular intercourse with men will be healthier than women who do not.²⁶ Plato makes similar comments in the *Timaeus*, stating that while both men and women have genitals which are "disobedient and willful," in women, lack of sex, or at least lack of pregnancy, can lead to the womb wandering the woman's body and causing health issues.²⁷ Women were viewed as being biologically incapable of sexual self-control, or at least strongly hampered by their biology should they attempt to control their sexuality. Men were seen as able to control themselves and would even gain health benefits from not having sex. Foucault shows this in his exploration of the Greek sexual regimen and how the Greek texts he is examining prescribe specific patterns of sexual activity and abstinence to better

²⁴ This does not mean there was no concept of rape—clearly there was. Women simply did not have a choice in the matter: the major difference between adultery and rape was how the outside man assaulted the wife of the husband, not whether the woman consented to sex.

²⁵ Hippocrates, *On Generation*, 4.1–3.

²⁶ Hippocrates does not directly comment on the idea of sapphic sex or on female masturbation in this passage. He only explicitly comments on how woman's body reacts to a man's actions upon her. Given that the reactions are based upon the man releasing semen into the woman, we might assume that Hippocrates would argue that sapphic sex or masturbation would not have the same health benefits as sex with a man.

²⁷ Plato, *Timaeus*, 91b–d.

the individual's health.²⁸ According to Foucault's work, Greek authors constructed sexual guidelines for health, in much the same way that exercise is healthy, but varies by individual. The Greek ideal was to have "enough" but not "too much" sex.²⁹

By the time of Greek imperial rule over the Levant, Greek thoughts on sex have begun to shift. Some early Greek thinkers prized pederastic relationships over marriage; in the post-Alexander world, Greek thought de-prioritizes this focus in favor of marriage and family.³⁰ During this same time, women begin to be a more visible part of public life, though they still need men to serve as legal representatives and manage property.³¹ Just as Greeks are confronting pederasty and its issues, they also confront women's sexual agency. Later, as Rome dominates the Mediterranean and begins to influence Hellenistic thought, women and their place in public life also change. Before moving into this era and the beginnings of Roman thought on adultery and sex, we should first look at how Jewish texts from the Hellenistic era approach adultery and the question of agency.

HELLENISTIC JEWISH TEXTS ON ADULTERY

During the Hellenistic era, several Jewish groups began to produce new literature, or perhaps they continued producing literature, as they may have been active prior to and during the Persian era. When presenting the history of Israelite/Judean/Jewish thought, the break between pre-Persian works and Hellenistic works may be overemphasized. As we lack the textual depth for

²⁸ Foucault, *History of Sexuality*, vol. 2, pt. II. This entire section discusses issues covered by Greek authors from different perspectives.

²⁹ Foucault, *History of Sexuality*, 2:115–16.

³⁰ Skinner, *Sexuality in Greek and Roman Culture*, chapter 5.

³¹ Elaine Fantham, "The Hellenistic Period: Women in a Cosmopolitan World," in *Women in the Classical World: Image and Text* (New York: Oxford University Press, 1994), 155–63.

the Persian empire that we have for the Assyrian and Babylonian empires, this apparent break may be simply be due to lack of evidence. Jewish groups under the Hellenistic empires (Ptolemaic and Seleucid) might appear as emergent ideological groups; however, we cannot be certain that they did not have Persian predecessors. The ideologies present in these literatures range wildly, from focusing on orthopraxis in the Temple cult to philosophical re-interpretations of the biblical texts. While each of these texts has its own ideological perspective, we can construct broader social trends in how they approach adultery, specifically its punishment and the *sotah* ritual. Given that the Jerusalem Temple is rebuilt and expanded at this time, Judean rituals could have potentially resumed in practice, including the *sotah* ritual.

One of the first texts to look at should be the Septuagint, the Greek translation of the Hebrew scriptures. While it is often a very literal, word-for-word translation of the Hebrew, it does not always align with the Masoretic text (MT). The nature of the differences varies by book: in the case of Numbers, the differences indicate active editorial work in the details of the text.³² Looking at the *sotah* passage in Numbers 5, the translation is largely direct. The Greek matches the wording of the MT, except in verse 27. There, the Greek stresses that the woman “has escaped the notice of her husband” rather than the MT’s “has been unfaithful to her husband.” The meaning is quite different, as the Greek stresses that the husband did not know, while the Hebrew stresses the woman’s action. The difference could be due to a shifted letter: the Hebrew root for “unfaithful” is מעל while the Hebrew root for “hide” is עלם.³³ Given the Hebrew of this section of the verse (“ותמעל מעל באישה”), there could be a number of reasons for this reading, including missing letters, shifted letters, misreading of the Hebrew, or a different

³² Emanuel Tov, *Textual Criticism of the Hebrew Bible* (Minneapolis: Fortress Press, 1992), 137.

³³ This suggestion is provided in the entry for λήθη in Johan Lust, Erik Eynikel, and Katrin Hauspie, eds., *A Greek-English Lexicon of the Septuagint: Revised Edition* (Stuttgart: Deutsche Bibelgesellschaft, 2003).

Hebrew source text.³⁴ If this is an intentional change when rendered into Greek, either by the translators amending what they were reading, or using a different witness of the Hebrew than we have preserved in the MT, then the Greek would be stressing that this ritual is for when the husband is unable to determine if a crime has been committed on his own. However, given the complexities of reconstructing the Hebrew from the translation, we cannot be certain that this was a purposeful choice on the part of the translators of this passage. Given that the rest of the passage is translated word-for-word, I suspect this variant reading exists due to a close reading of a different text than the MT. Even if it were not the translator making the change, the alternate Hebrew text represents a different view of the ritual. Yet we cannot tell if the translators of the Septuagint purposefully chose this Hebrew text over another one, or if they only had a different text available to them at the time.

Outside of the Septuagint, the *sotah* ritual is not directly addressed by Jewish Hellenistic texts. One indirect and indeterminate reference is by Pseudo-Philo, though this is relatively late compared to the other texts we have examined. In *Biblical Antiquities*, Pseudo-Philo interprets the narrative of the Golden Calf (Exodus 32) with the *sotah* possibly in mind.³⁵ Pseudo-Philo says that Moses broke and burned the calf and used the ashes to make a potion that determined which of the Israelites had wanted the idol made, and which had not, just as the *sotah* ritual potion determined if the wife had committed adultery or not.³⁶ Pseudo-Philo does not explicitly reference the *sotah* ritual, but the idea of a potion to determine guilt is found only in the *sotah*

³⁴ On the complexities of reconstructing translated Hebrew, see Tov, *Textual Criticism*, 122f.

³⁵ See comments on *Biblical Antiquities* 12:7 in James H. Charlesworth, *The Old Testament Pseudepigrapha*, 1st ed., 2 vols. (Garden City, NY: Doubleday, 1983–1985), vol. 2, 320, note f.

³⁶ This connection was indicated in Charlesworth, *Old Testament Pseudepigrapha*, vol. 2, 320, note f.

ritual in the biblical text. In Exodus 32, Moses simply forces the Israelites to drink the potion of idol ashes, and there are no repercussions from the drinking mentioned.

While we do not have much direct evidence of how the Hellenistic readers of Bible might have read the *sotah* ritual, we do have many texts about adultery. By looking at how these texts frame their narratives of adultery, we can see how their authors portray adultery and its repercussions to their readers. Many of these narratives also found in the Bible, specifically in Genesis, as the Hellenistic texts of *Jubilees* and the various *Testament* documents address many of the same stories as Genesis does. For these two sources, *Jubilees* and *The Testaments of the Patriarchs*, I will look at how each of these texts treats a narrative of adultery, or similar sexual issue.

REWRITTEN BIBLICAL NARRATIVES³⁷

There are two major Hellenistic Jewish texts I will be addressing: *Jubilees* and the *Testaments of the Patriarchs*. The texts have different genres, but both cover several events in Genesis with significant variations from the biblical texts. While both cover the same material as the biblical texts, neither one quotes extensively from Genesis, at least not directly. *Jubilees* claims to be the work of Moses, while the *Testaments* claims to record the final words of each of the twelve sons of Jacob.

³⁷ There are no good names for the Hellenistic Jewish documents represented in these texts. James Kugel refers to them as “rewritten scripture,” which can be seen in *Traditions of the Bible: A Guide to the Bible as It Was at the Start of the Common Era* (Cambridge, MA: Harvard University Press, 1998), chapter 1. James Charlesworth adopts the older “Old Testament Pseudepigrapha” in his title, but also speaks of re-telling the narratives of the biblical canon in Charlesworth, *Old Testament Pseudepigrapha*, vol. 2, 2:5 Both of these positions presuppose that the biblical canon—at least the source documents for these narratives—was established before the narratives of the Hellenistic Jewish texts were constructed. However, the Hebrew canon, while beginning to solidify, was still in flux during the last few centuries BCE. Hence, these narratives may represent parallel traditions, rather than interpretations of a canonical text.

Jubilees presents itself as an account of what is revealed to Moses while Moses is on Mount Sinai.³⁸ The book covers several eras of time, with a focus on the stories of Genesis, often with considerable additions. Some of the additions expand or explain elements of plot, as is shown in the analysis below. Other additions are legal arguments, often against the behavior of the characters in the story just recounted. James Charlesworth places *Jubilees* as an established text by the beginning of the first century BCE, given the presence of copies of the book among the Dead Sea Scrolls and the influence of *Jubilees* on other texts found in the Dead Sea Scrolls.³⁹ William Loader places the writing of *Jubilees* in the early second century BCE.⁴⁰ These dates are similar enough to place *Jubilees* firmly in the Hellenistic era of Judah, dealing with the Hellenistic worldview. *Jubilees* wrestles with several stories on sex and sexual impropriety, but its primary concern seems to be with what constitutes legitimate sex, with a heavy focus on intermarriage.⁴¹ *Jubilees* does accept that sex can be good, but only within correct relationships and at correct times.⁴² While adultery is never accepted as legitimate, *Jubilees* focuses on other aspects of the narrative (incest, rape, intermarriage, etc.) rather than adultery itself.

The Testaments of the Twelve Patriarchs is a different genre of text. While *Jubilees* recounts what was revealed to Moses, the *Testaments* claim to record the final words of each of the sons of Jacob. As such, the texts frame their messages differently. While *Jubilees* presents the narratives couched in moral and legal arguments, the *Testaments* are personal warnings from parents to children. Each patriarch also recounts stories from their lives (expanded from the

³⁸ Charlesworth, *Old Testament Pseudepigrapha*, vol. 2, 2:35.

³⁹ Charlesworth, *Old Testament Pseudepigrapha*, vol. 2, 2:43–44.

⁴⁰ William R. G. Loader, *Enoch, Levi, and Jubilees on Sexuality: Attitudes Towards Sexuality in the Early Enoch Literature, the Aramaic Levi Document, and the Book of Jubilees* (Grand Rapids, Mich: William B. Eerdmans Publishing Co., 2007), 113.

⁴¹ Loader, *Enoch, Levi, and Jubilees on Sexuality*, 298–99.

⁴² Loader, *Enoch, Levi, and Jubilees on Sexuality*, 311.

versions in Genesis). Charlesworth places the *Testaments* after the Septuagint (250 BCE by his own dating), specifically toward the end of the second century BCE, save for a few obviously Christian interpolations in the extant versions.⁴³ Loader has a more expansive view: that the extant document is from the late second century CE, but that much of the material is reworked from an earlier document. He argues that the *Testaments* were likely composed and recomposed over an extensive time frame.⁴⁴ Both hold that much of the text's core comes from earlier in the Hellenistic period. We have extant Aramaic fragments of the *Testament of Levi* from the Cairo Genizah, and fragments of Aramaic versions of both the *Testament of Levi* and of *Naphtali* among the scrolls of Qumran. These Aramaic versions, unfortunately, do not clarify the issue of dating or the issue of Jewish or Christian origins, as they show some relationship to the Greek versions we have, but contain some differences.⁴⁵ Lester Grabbe argues the separating any Hellenistic core from the text is problematic, as we lack an ability to control for how much of the text may be from a Hellenistic and Jewish point of view.⁴⁶ All three of these scholars agree that there is some sort of Hellenistic Jewish core to these texts, but they take a differing stance on how much of it can be extracted. As I will show below, the *Testaments* share much of the same concerns as *Jubilees*. Like *Jubilees*, the *Testaments* show a strong concern for intermarriage. I will also use the *Testaments* to contrast with the *Jubilees* interpretations of biblical narratives; however, we should be aware that the specific stances in *Testaments* may represent far later

⁴³ Charlesworth, *Old Testament Pseudepigrapha*, vol. 1, 1:777–78.

⁴⁴ William R. G. Loader, *Philo, Josephus, and the Testaments on Sexuality: Attitudes Towards Sexuality in the Writings of Philo and Josephus and in the Testaments of the Twelve Patriarchs*, *Attitudes Towards Sexuality in Judaism and Christianity in the Hellenistic Greco-Roman Era* (Grand Rapids, MI: William B. Eerdmans Publishing Co., 2011), 368–69.

⁴⁵ Lester L. Grabbe, *Judaic Religion in the Second Temple Period: Belief and Practice from the Exile to Yavneh* (London: Routledge, 2012), 101.

⁴⁶ Grabbe, *Judaic Religion in the Second Temple Period*, 101–2.

ideas. The *Testaments* also contain some of the most misogynistic language contained extant among ancient texts.⁴⁷

REUBEN & BILHAH

The first relevant narrative in the Pentateuch is not even a full verse. Genesis 35:22a reads, “While Israel was dwelling in that land, Reuben went and lay with Bilhah, the concubine of his father, and Israel heard.” The Hebrew text offers little preamble and no postscript. Immediately before this verse, the text speaks of the birth of Benjamin and the death of Rachel. What immediately follows is a list of the sons of Jacob. The text offers no information about the reason that Reuben did this, ignores Bilhah’s consent or lack thereof, and even ignores Jacob’s reaction to hearing about it. The text is vaguely worded: we do not know if “Israel heard *of it*,” meaning he found out later, or if “Israel heard *it*,” meaning he heard the actual sex going on. The difference would only be in the cultural expectations of Israel’s response. If he had merely heard *of it*, then he might be expected to take legal action, as he is not catching them *in flagrante delicto*. If he heard the actual sex happening, he would be expected to react immediately and violently.

It should also be noted that verses 21 and 22 use the name *Israel* for Jacob, while the narratives about Rachel’s death and the following list of Jacob’s sons use the name *Jacob*. We could thus read these verses as an insertion by another hand, potentially as an attempt to disparage Reuben and explain why the firstborn gets none of the choice elements of Israel’s legacy, but such an exploration is beyond the scope of this work.

⁴⁷ Ishay Rosen-Zvi, “Bilhah the Temptress: ‘The Testament of Reuben’ and ‘The Birth of Sexuality,’” *The Jewish Quarterly Review* (2006): 65–67.

When Reuben has sex with Bilhah, he not only commits adultery (as Bilhah is the sexual property of his father, even if she is not a full wife), but he also commits incest according to the Israelite definition (see Leviticus 18:8). While this narrative in Genesis is chronologically set well before the laws of Leviticus were to be given to Israel, later readers clearly assumed that Reuben and Jacob should have been aware of the sexual laws violated in this narrative. Yet the text of Genesis offers us no immediate reaction by Jacob to this act, and virtually no description of the act, either.

Genesis returns to Reuben's crime in Jacob's last words. The text records Jacob as saying, "Reuben, you are my firstborn, my strength, the beginning of my produce/excessively exalted and excessively strong./Passionate as water, you will cease to excel/As you went up to your father's bed/Then defiled it/He went up to my couch." (Genesis 49:3–4). This verse is clearly referencing the act of Reuben having sex with one of his father's women, but his father's punishment is simply that Reuben has been found too impetuous to hold a leadership role. The biblical laws on adultery and incest would have Reuben and Bilhah executed. This clearly does not happen, though it is unclear if this is because Reuben is Jacob's firstborn or if there is some other intervening reason. Jacob is presented as simply not being willing to condemn his own children when they behave badly.⁴⁸

In *Jubilees* 33, the Reuben-Bilhah narrative is greatly expanded: it adds that Jacob and Leah were at Isaac's home, that Reuben saw Bilhah washing and desired her, and that Reuben snuck into where Bilhah was sleeping and raped her. Bilhah awoke and screamed, and Reuben fled. Bilhah did not speak of the assault until Jacob returned: she told him that Reuben "defiled

⁴⁸ The lack of punishment for clear affronts to morality is a theme throughout Genesis, starting with Cain. Jacob's lack of resolve regarding punishments is a continued issue, as can be seen with the narrative of Dinah, but further focus on it is beyond the scope of this project.

me and lay with me at night, but I was sleeping and unaware...”⁴⁹ Jacob became angry with Reuben and ceased to have sex with Bilhah. Immediately following this narrative, *Jubilees* gives the laws of incest, demanding death for both the woman and the man in a case when a son has sex with the wife of his father (even if she is not his mother).⁵⁰ The text of *Jubilees* follows these laws with an explicit note that just because Reuben got away with having sex with his father’s wife, this does not mean that one should tolerate it now. *Jubilees* argues that the law had not yet been given at the time of Reuben, and this is the only reason Reuben was spared.⁵¹

Jubilees still presents incest and adultery as a capital crime. The narrative in *Jubilees* has echoes of another biblical adultery narrative—that of David and Bathsheba—as Reuben is incited to adultery/incest by seeing Bilhah bathing. *Jubilees* also constructs an explanation of what the text meant by “Jacob heard,” rendering it as Bilhah telling Jacob after the events. Jacob is thus angry with Reuben, but just as in the biblical story, no punishment for Reuben is recorded here. The text of *Jubilees* offers that Reuben and possibly Bilhah should have been executed, though the narrative text goes to great lengths to absolve Bilhah of responsibility. In the narrative itself (33:1–9), the text clearly depicts Bilhah as first unaware and later clearly unwilling. But the legal text which follows does not focus on rape; rather, it focuses on incest with one’s father’s wives, focusing the conflict on Jacob and Reuben. The legal text gives a clear punishment for this case, while the narrative reports Jacob being angry, but pursuing no punishment of Reuben. The text ignores the woman, after absolving her of responsibility. The text may also work so hard to remove responsibility from Bilhah so that the reader would assume the legal text should not apply to her; however, the text does state that “there is no forgiveness for it, but only that

⁴⁹ *Jubilees* 33:7 as translated in Charlesworth, *Old Testament Pseudepigrapha*, vol. 2, 119.

⁵⁰ *Jubilees* 33:10-14 as translated in Charlesworth, *Old Testament Pseudepigrapha*, vol. 2, 119

⁵¹ *Jubilees* 33:15-16 as translated in Charlesworth, *Old Testament Pseudepigrapha*, vol. 2, 119

both should be uprooted from the midst of the people. On the day when they have done this they shall be killed,”⁵² which would seem to condemn Bilhah as much as Reuben. The text of *Jubilees* presents the “correct” punishment for this crime as death, though it focuses on the incest aspect more than the adultery, and completely ignores Bilhah’s lack of consent to the act.

The narrative in *Jubilees* does depict one negative outcome of the encounter: Jacob refuses to have sex with Bilhah after Reuben rapes with her. While Bilhah may be absolved of responsibility in the narrative, she has still become off-limits to Jacob permanently. The *Testament of Reuben* also states that Jacob never again has sex with Bilhah (*T. of Reuben* 3:15). Something similar is addressed in Deuteronomy 24:1–4, which states that a woman cannot remarry a husband from whom she has been divorced previously, if she has wed in the meantime (and divorced or widowed) by a second man. The Deuteronomy passage points toward a concern about women having sex with alternating men—a woman having sex with husband A, then with husband B, then going back to husband A. While polygyny (both serial and concurrent) was accepted in the ancient world, these passages show a distinct social distaste for serial polyandry.⁵³ Similarly, the vehemence with which adultery laws in the Bible push for immediate execution, and the stress in *Jubilees* on death as the only possible punishment for incest/adultery, may be based on a similar concern that a husband may take his wife back to his bed after she has been with another man.⁵⁴

The *Testament of Reuben* frames itself as Reuben’s last words to his children. Reuben warns his children not to be like him, not to let youthful lusts drive them to impious actions.

⁵² *Jubilees* 33:17 as translated in Charlesworth, *The Old Testament Pseudepigrapha*, vol. 2, 119.

⁵³ Concurrent polyandry was definitionally adultery.

⁵⁴ The reason for this unease about alternating male partners for women is not clearly explained in these texts, and would be a fruitful area of further research, but it is beyond the scope of this project.

Reuben frames his sin as an adultery, warning in 3:10, “Do not devote your attention to a woman’s looks, /nor live with a woman who is already married /nor become involved in affairs with women.”⁵⁵ Reuben continues, describing how he became aroused by seeing Bilhah bathing, waited for her to drink herself to sleep, and raped her. In this narrative, she does not wake up: a messenger of God reveals the act to Jacob, who comes and laments over Reuben and does not have sex with Bilhah again.⁵⁶ Earlier in the *Testament*, Reuben reveals that after he has sex with Bilhah, “he” (and it is unclear if this should refer to Jacob or God) strikes a wound in Reuben’s loins which nearly kills him. Reuben is only saved after Jacob prays to God that Reuben live.⁵⁷

Reuben warns his children (and his readers) about the dangers of promiscuity and adultery, arguing that these actions only bring ruin upon oneself. Reuben’s retelling of the events also leaves Bilhah fully unaware that it has happened; despite this, the text casts women as evil, using sex and guile to get men to do what they want.⁵⁸ Women are presented as inciting men to sexual impropriety through beauty and strategy. Looking back at Reuben’s account of the events, the text might be attempting to blame Bilhah for her own rape: as Reuben tells it, he claims he would not have needed to rape Bilhah, had he not seen her bathing naked and been so aroused. She then makes herself completely vulnerable by drinking herself to sleep, or so Reuben might be implying. While this framing does attempt to place blame upon Bilhah for passively inciting this specific event, the text does not have her actively seeking out Reuben. If Bilhah has desires for Reuben (or in general), the text does not speak of them. Reuben’s words frame the event as “if she didn’t want to get raped, she shouldn’t have taken a bath and gotten drunk.” Reuben is

⁵⁵ *Testament of Reuben* 3:10 as translated in Charlesworth, *Old Testament Pseudepigrapha*, vol. 1, 783.

⁵⁶ *T. of Reuben* 3:11-15 as translated in Charlesworth, *Old Testament Pseudepigrapha*, vol. 1, 783.

⁵⁷ *T. of Reuben* 1:6-10 as translated in Charlesworth, *Old Testament Pseudepigrapha*, vol. 1, 782.

⁵⁸ *T. of Reuben* 5 as translated in Charlesworth, *Old Testament Pseudepigrapha*, vol. 1, 784.

still the active person, and Bilhah the passive one, but some of the blame is shifted to her. Thus, Reuben warns his (one assumes male) children to avoid women, as women will only incite and seduce them into sexual sins.

Both *Jubilees* and the *Testament of Reuben* present Reuben's assault on Bilhah as an assault on Jacob. Both texts remove Bilhah's agency from the sex act itself, even though Reuben attempts to blame her seduction and drunkenness for inciting him, as both texts depict Bilhah as being asleep during the start of the assault, and by having her not even wake up during the rape in the *Testament of Reuben*. That said, neither text considers this act a rape in a modern sense, as *Jubilees* frames it with incest law, and the *Testament* frames it as adultery. Both texts state that Reuben should have died. *Jubilees* states that a man and woman caught in this kind of sex act should be immediately executed, implying that Jacob's decision to avoid punishing Reuben is incorrect. The *Testament* says that Reuben was injured in such a way that he should have died, and it was only the prayer of his father that saved him. For both texts, it is the husband/father who has control of punishment for this kind of sin, even though these sins are presented as an affront to God.

JUDAH & TAMAR

The next adultery (or adultery-adjacent) narrative is that of Judah and Tamar. Genesis gives us a much more in-depth version of this narrative than it did of Reuben and Bilhah. Recorded in chapter 38, the story in Genesis is this: Judah had moved away from his brothers and married a Canaanite woman. He has three sons: Er, Onan, and Shelah. Enough time passes that Judah marries Er to Tamar. Er dies for some unknown offense to God. Judah follows the levirate marriage practice in giving Tamar to Onan as wife. Onan was not pleased with this, as he knows any children that he might have through Tamar will be accorded to Er. Any such children would

reduce Onan's own share of the inheritance. Onan spills his seed, rather than give Tamar a child. God is angry at this, and Onan dies as well. Judah knows that Tamar should go to Shelah, but Shelah is too young to marry (according to Judah), and Tamar is sent back to her father's house. More time passes. Judah goes out to shear the flock. Tamar changes out of her widow's clothing and dresses in a veil. Judah mistakes her for a prostitute, they work out a deal in which he leaves his seal and staff with her for sex, and they have sex. When Tamar is found to be pregnant, Judah orders that she be brought out to be burned. Tamar offers Judah's seal and staff as her defense, and Judah relents.

The story of Judah and Tamar is not exactly that of adultery—after all, the text never makes that accusation against Tamar. Instead, the accusation against Tamar is that she has “זנתה” “fornicated” and that “הרה לזונונים” “she is pregnant by illicit sex.”⁵⁹ The root זנה means some form of illicit sex, not specifically adultery. However, as Tamar is effectively betrothed to Shelah through the practice of levirate marriage, the only kind of illicit sex she might be accused of is adultery. The townspeople accuse her of fornication, and not the more specific adultery or incest, because the father is unknown. Tamar reveals through the seal and staff that she is not guilty of adultery, but of incest.⁶⁰ The text notes that Judah, as patriarch, has the right to condemn Tamar, as he is the one who sentences her to be burned after the people accuse her. When she reveals that he is the one who impregnated her, Judah lifts his death sentence from Tamar. Judah allows that Tamar has the right to children through his family line, and since Judah did not give Shelah

⁵⁹ Genesis 38:24. See Chapter 5, note 87, for a fuller exploration of the root זנה.

⁶⁰ Leviticus 18:15 forbids a father from having sex with his daughter-in-law, though how this prohibition interacts with levirate marriage practice is hard to say. When levirate marriage is discussed in Deuteronomy 25:5-6, it makes no mention of the father-in-law. Additionally, it is difficult to say if the author of this passage in Genesis is attempting to interact with these laws as presented in Leviticus and Deuteronomy, or is more generally interacting with the practice of levirate marriage.

to her, Tamar is justified in procuring children through him, even if it violates incest laws. This story presents Tamar as far more active than Bilhah, but given the brevity of the biblical text on Reuben and Bilhah, this may not be a fair comparison. Despite Tamar's agency in the biblical narrative, Judah is presented as the decision maker, initially in her marriage to Er, granting her to Onan, refusing her to Shelah, and then finally, in her fate when she is found to be pregnant.

Jubilees tells this same story, though with some expansions, and follows the narrative with a condemnation on incest with either a daughter-in-law or a mother-in-law.⁶¹ The first expansion addresses why Er angered God and was killed: he hated Tamar and would not have sex with her, because she was a woman of Aram. He wanted a Canaanite wife like his father had. Er is then pronounced evil and killed by God. Onan's story is not much changed: he still spills his seed when having sex with Tamar, rather than produce children for his dead brother—because of this, God kills him as well. Judah sends Tamar home to her father until Selah⁶² grows up, just as in Genesis. *Jubilees* reports that Judah's wife, named Bedsuel by *Jubilees*, forbids Selah from ever marrying Tamar, though she dies after doing so. The rest of the narrative unfolds similarly to the Genesis version, though *Jubilees* notes that Judah does not have sex with Tamar again, nor is she given to Selah.⁶³ *Jubilees* then reports that Judah repented of the deed, realizing that he had sinned, specifically that he “uncovered the robe of his son.”⁶⁴ The text reports that Judah is told he is forgiven because of his supplication and because he did not do it again.

Following this narrative, *Jubilees* turns to a condemnation of incest, specifically of sex with a mother-in-law and then a daughter-in-law. The punishment for either is to be burned to

⁶¹ *Jubilees* 41 as translated in Charlesworth, *Old Testament Pseudepigrapha*, vol. 2, 130-32.

⁶² The Greek spelling is Selah, as Greek lacks a /sh/ consonant.

⁶³ *Jubilees* 41:20 as translated in Charlesworth, *Old Testament Pseudepigrapha*, vol. 2, 131.

⁶⁴ *Jubilees* 41:23 as translated in Charlesworth, *Old Testament Pseudepigrapha*, vol. 2, 131.

death.⁶⁵ *Jubilees* explicitly condemns the man who does the act, though the mother-in-law and daughter-in-law are also to be burned. The legal text focuses mostly on the actions of men, with the women condemned but not directly called out as a cause. In the narrative, Tamar acts specifically to get Judah to have sex with her. Despite her actions, Tamar is not condemned by the text, only Judah. After the legal text, *Jubilees* offers a short additional reprieve for Judah: the text says that since neither of his two sons who had been wed to her had sex with Tamar, Judah's seed was accepted as valid, and Tamar's children were not "uprooted."⁶⁶ David Rothstein argues that *Jubilees* carefully constructs the narrative to allow Tamar to be virginal when Judah has sex with her.⁶⁷ As such, *Jubilees* avoids any actual incest, as sex is required to complete the marriage bond. If Tamar has not had sex with any of Judah's children, then she is not fully married to them, and thus Judah can have sex with her himself without her counting as a daughter-in-law. Loader agrees, as he argues the main sexual concern in *Jubilees* is intermarriage, as the text blames much of this whole Tamar affair on Judah's Canaanite wife.⁶⁸ *Jubilees* uses Judah and Tamar to warn against incest but constructs its narrative in a way that allows both Judah and Tamar to escape punishment.⁶⁹

Jubilees allows Tamar to keep the children because there is no contamination between Judah and his sons' seed, and because Judah is willing to condemn Tamar before he realizes who

⁶⁵ *Jubilees* 41:25-26 as translated in Charlesworth, *Old Testament Pseudepigrapha*, vol. 2, 131, which matches the punishment for the same kind of incest in Lev. 20:14 and for the daughter of a priest who practices prostitution in Lev. 21:9.

⁶⁶ *Jubilees* 41:27-28, as translated in Charlesworth, *Old Testament Pseudepigrapha*, vol. 2, 132.

⁶⁷ David Rothstein, "Sexual Union and Sexual Offences in 'Jubilees,'" *Journal for the Study of Judaism in the Persian, Hellenistic, and Roman Period* 35.4 (2004): 364.

⁶⁸ Loader, *Enoch, Levi, and Jubilees on Sexuality*, 180–83.

⁶⁹ Loader, *Enoch, Levi, and Jubilees on Sexuality*, 184–86.

the father is.⁷⁰ *Jubilees* does not consider Onan's interactions with Tamar as sex. Either the text presents "spilling one's seed" as involving non-vaginal penetration, or it does not consider an act of sex if it involves *coitus interruptus* (pulling out from vaginal sex for the man to ejaculate outside the woman). This later interpretive position would be in line with the Hellenistic and later Roman idea that sex is only truly sex when it involves a male climax.⁷¹ *Jubilees* is clearly mostly concerned with whose semen has been inside Tamar, since the text of *Jubilees* explicitly states that neither Er nor Onan had ejaculated in her. Tamar is thus considered "clean" for Judah to impregnate, but not legally available to him, as she is effectively betrothed to his son, Selah. The author of *Jubilees* has carefully constructed his narrative to allow the children of this union to be just legitimate enough that they are not considered abhorrent, but to limit the narrative enough that the story cannot be used as a precedent, should some future father want to bed his daughter-in-law.

As far as agency, *Jubilees* does grant Tamar as much agency as the biblical text does. Tamar is the one who has provided for her own defense in the legal case around her pregnancy. Tamar also takes steps to present herself as sexually available to Judah, though it is Judah who initiates the sexual encounter. Later, it is Judah who controls Tamar's (and his own) destiny. Er and Onan are presented as the cause of their own deaths, both having chosen for different reasons not to impregnate Tamar. Interestingly, *Jubilees* uses Judah's wife as cause of Selah not wedding

⁷⁰ This again brings up the cultural unease of multiple men having sex with the same woman. Tamar becomes sexually problematic at this point: legally, she is married to Shelah, but she is sexually owned by Judah. Neither has a clear sexual right to her, and she is set aside rather than risk any perceived alternation between men.

⁷¹ This is an oversimplification of Greek and Roman views; however, there is evidence that ancient (male) authors had a lot of unease around the idea of women who were active in sex. If it did not involve a substitute phallus, it was not often seen as sex. This is explored in Kamen and Levin-Richardson, "Lusty Ladies." Additionally, this may tie into the unease with women alternating between men as sexual partners. The text implies that even though Onan (presumably) penetrated Tamar, he has not sexually claimed her due to lack of ejaculation. Further exploration of this is beyond the scope of this present work.

Tamar, though she dies immediately after. The placement of her death in the text implies that it is connected to her refusal to honor the betrothal of her son, perhaps shifting enough of the blame that Judah does not shoulder the responsibility for that choice himself. With his wife dead, Judah might also be forgiven in seeking out a prostitute.⁷² As such, *Jubilees* uses Bedsuel to exonerate Judah from some of the blame surrounding Tamar's state. The text of *Jubilees* is ultimately only interested in both exonerating Judah and preventing others from imitating him.

The *Testaments of the Patriarchs* also addresses the narrative of Judah and Tamar. This text adds many of the same sorts of details that *Jubilees* does, though they differ: Er does not have sex with Tamar (because, at the advice of his mother, Er does not want to have children with Tamar), Onan avoids sex with Tamar for a while, and eventually does so only to spill his seed (also because of his mother). In this version of the story, Judah wants Shelah, here called Shelom, to wed Tamar immediately, but Shelom's mother prevents it. His mother goes so far as to find different wife (a Canaanite one) for Shelom, which causes Judah to become angry and curse her. Judah's wife is far more active in this version of the story and is presented as the reason that Judah's sons sin. She dies, "together with her children," though it is unclear if this includes Shelom as well.⁷³ Loader highlights how the Canaanite wife causes these issues by encouraging her sons to practice *coitus interruptus*.⁷⁴ Unlike *Jubilees*, the *Testament of Judah* does not attempt to maintain Tamar's virginity, only to explain the lack of children.⁷⁵ The

⁷² The ancient world legally allowed men to have sex with prostitutes, but many cultures were wary of such encounters. While her focus is later than the era we are currently looking at, this wariness is addressed in Catherine Edwards, "Unspeakable Professions: Public Performance and Prostitution in Ancient Rome," in *Roman Sexualities*, ed. Judith P. Hallett and Marilyn B. Skinner (Princeton: Princeton University Press, 1997), 66–95.

⁷³ Shelom/Shelah is not mentioned again in the *Testament*. The quotation is from *T. of Judah* 11:5 as translated in Charlesworth, *Old Testament Pseudepigrapha*, vol. 1, 798.

⁷⁴ Loader, *Philo, Josephus, and the Testaments on Sexuality*, 400–401.

⁷⁵ It is possible that the text may consider her some sort of virgin, as there has been no semen in Tamar prior to Judah's. This is likely the case, if the main cultural issue with serial polyandry was the potential for mixed semen.

narrative continues with Judah going out to shear sheep, Tamar dressing up to as a prostitute, and Judah becoming drunk enough to not remember having sex with her. When Judah finds out Tamar is pregnant, he wants her to die. She secretly sends him his pledges, at which point he relents. Unlike the biblical account, the public does not know that Tamar is pregnant, and Judah reports that “I [Judah] suppose no one knew that I had gone into her,” meaning that the affair was apparently handled completely privately.⁷⁶ In the *Testament*, Judah blames much of these problems on his choices while drunk: he is drunk when he marries his wife, and he is drunk when he has sex with Tamar. Like *Jubilees*, the *Testament* reports that Judah does not have sex with Tamar again.

The *Testament of Judah* follows the narrative of Judah and Tamar with an explanation of how Judah married a Canaanite in the first place. Judah is convinced to marry the Canaanite woman by her father, who gets Judah drunk and offers him a large amount of gold as a dowry with his daughter. Judah laments his drunkenness and the sex it led him into, warning his children against both.⁷⁷ Loader highlights how Judah blames his poor decisions on wine, both his decision to marry the Canaanite, Bath-shua, and his decision to sleep with Tamar-as-prostitute.⁷⁸ Subsequent blame for all of Judah’s woes falls on this foreign woman, his wife.

While the biblical text and *Jubilees* both state that the public knew Tamar was pregnant, in the *Testament of Judah*, the public is not part of the trial. The other texts imply Judah’s initial sentence and later pardon of Tamar as public knowledge, while the *Testament* stresses that none know Judah is the father, implying that Tamar’s sentence is a private affair—or at least, no one

⁷⁶ *Testament of Judah* 12:10 as translated in Charlesworth, *Old Testament Pseudepigrapha*, vol. 1, 798.

⁷⁷ *T. of Judah* 13 & 14.

⁷⁸ Loader, *Philo, Josephus, and the Testaments on Sexuality*, 404–5.

demands of Judah why he suddenly gives Tamar a reprieve. The *Testament* presents Judah as completely in control of Tamar's fate. Unlike other versions of this narrative, Tamar is not even sent home to her father. The *Testament* blurs the issues of incest and adultery by implying that Shelom dies when his mother dies in 11:5, which would have removed the last levirate husband from the narrative. When the encounter with Judah and Tamar happens, Tamar is described as a widow. While this does not fully ease incest or adultery issues (Judah is still genuinely concerned about not having sex with Tamar again), the *Testament* has taken steps to distance the story from incest and adultery. Like *Jubilees*, the *Testament* also notes Er and Onan did not have ejaculatory sex with Tamar. As in *Jubilees*, when the apparent crime is adultery (of some sort), Tamar is going to be judged and sentenced by Judah, and it is Judah who decides when not to prosecute. While not her husband, Judah is the legal head of household. His sons are dead or otherwise removed from the narrative, leaving him the dominant male figure to make such judgments.

The *Testament* presents two different views on female agency. Judah's wife (who lacks a name through much of the narrative), is presented as actively working against him. She dies for preventing her sons from having sex with Tamar, though the reason for her actions is not stated. Her actions are blamed on her ancestry, as she is repeatedly named a Canaanite, and the text has Judah say, "the race of the Canaanites was evil."⁷⁹ While the text does grant her agency, it does so to highlight the problem of intermarriage. The bad, foreign woman causes Judah and his sons to sin.

⁷⁹ *T. of Judah* 11:1 as translated in Charlesworth, *Old Testament Pseudepigrapha*, vol. 1, 798.

Tamar does act, but the text minimizes her agency. Tamar does not come up with the idea to dress as a prostitute and seduce her father—instead, the text claims “there was a law among the Amorites that a woman who was widowed should sit in public like a whore.”⁸⁰ This custom would turn Tamar’s deliberate action to seduce her father-in-law into a custom which happens to allow the narrative to occur: Tamar is simply following tradition. The only action that the *Testament* makes uniquely Tamar’s is when she keeps Judah’s pledge to identify him. Instead of a Tamar who actively seeks what she wants, the *Testament* presents Tamar as a woman who follows the law quietly and only responds when threatened with what she needs to survive. In contrast to the evil foreign woman, the good Judean girl only does what is expected of her by tradition. By including the reference to Amorite law, the *Testament* minimizes Tamar’s agency in the narrative, leaving Judah the main actor. Whether such a law existed is beside the narrative point. The end effect is the same: Tamar is not problem-solving, but instead obediently follows the law as she knows it.

Both texts portray Judah as repentant for what he has done, though only *Jubilees* explicitly names it incest. Tamar is accused of adultery and sentenced to death before she reveals who impregnated her. All texts, the Bible included, pivot the story on that reveal: when Judah is revealed as the father, Tamar is declared, if not exactly innocent, to be in the right. The charge of adultery disappears, and she is now a woman trying to get what she is owed. The matter also loses any possibility of public censure for the outcome: Judah proclaims Tamar is to be freed, and then no more is spoken of it. The text paints adultery as a purely internal affair, which also happens to completely hide the incestuous aspects of the act.

⁸⁰ *T. of Judah* 12:2 as translated in Charlesworth, *Old Testament Pseudepigrapha*, vol. 1, 798.

The Judah and Tamar narrative in all its forms intersects with levirate marriage practice. Other texts dealing with levirate marriage lack a father figure entirely. The law in Deuteronomy 25:5–10 has no father present in the text at all. In the narrative of Ruth, Elimelech and his sons all die, so there is no male member of the immediate family. Ruth's narrative does imply some sort of hierarchy of male relatives who should perform the levirate marriage, should there be no surviving brother. The role of the dead husband's father is not clearly explored in the available texts. Since Tamar is not punished by the narrative, and instead is "rewarded" by giving birth to two sons, the narrative may be implying that a father should fulfill the levirate duty in such a circumstance. However, the texts of *Jubilees* and the *Testament of Judah* both strongly attempt to limit any other such occurrences of this kind of event, limiting this paternal levirate solution to a single instance.

As a story of adultery, the narrative of Judah and Tamar shows that it is still viewed as a private crime. The patriarch is to decide the truth of any accusations, and the sentence. Even Judah's direct involvement does not remove his authority to judge the case. There is no external critique offered in the biblical version of this narrative. *Jubilees* offers harsh criticisms of Judah but allows him forgiveness, given his repentance. The *Testament* portrays Judah as a drunk, blaming drink for his own actions. Even his sons' actions are ultimately blamed on Judah's wife rather than themselves. Despite where the blame may fall, even the *Testament* allows Judah's judgment to stand. Adultery in these versions of this narrative is seen as a private concern, and the public is expected to abide by the patriarch's internal decision.

JOSEPH & MRS. POTIPHAR⁸¹

Genesis provides another adultery story in chapter 39, though in this narrative, the adultery is attempted but not completed. The narrative avoids questions about incest that we have seen in the stories of Reuben and Judah, but still has issues around consent. The narrative tells of how Joseph is brought to Egypt and purchased by a man named Potiphar. Joseph works for Potiphar and does well—so well that Potiphar puts Joseph in charge of his entire household. At this point in the story, Potiphar’s wife, who is never named in the biblical text, notices Joseph and propositions him. Joseph refuses, citing Potiphar’s trust, as well as God, as reasons not to have sex with her. She persists, and Joseph continues to refuse her. Eventually, Mrs. Potiphar gets Joseph alone in the house and traps him. He escapes from the attempted rape but leaves his garment with her. Mrs. Potiphar summons the house guards and claims that Joseph tried to rape her. Potiphar sends Joseph to the royal prison, where Joseph again finds his way into the good graces of those in charge.⁸²

James L. Kugel’s book, *In Potiphar’s House*, traces the interpretive path specific motifs take in *Jubilees* and *Testament of Joseph*, as well as other texts.⁸³ While his book thoroughly explores how these motifs travel, Kugel does not spend time working through the cultural

⁸¹ I find the name “Mrs. Potiphar” lacking, but the biblical text does not name the wife of Potiphar. Instead, it merely references her in relation to Potiphar and Joseph.

⁸² Imprisonment is not mentioned as a punishment in biblical law, nor in other ancient Near Eastern law, so the imprisonment is unlikely the actual punishment. The legal texts we have, both biblical and non-biblical, would likely have sentenced Joseph, an enslaved person, to death for attempting to rape or otherwise have sex with the wife of a nobleman. The prison serves a narrative purpose of getting Joseph to Pharaoh, but its historicity is hard to tell. It is possible the prison served as a holding place for people whom the king and other nobles were deciding whether or not to punish, and this would fit with the other two inmates Joseph meets in chapter 40. In E. A. Speiser, *Genesis* (Garden City, NY: Doubleday, 1964), 304, Speiser connects the narrative to the Egyptian “Tale of Two Brothers,” in which there is a similar delay of punishment, but also notes that the usual punishment of death would end Joseph’s story before it serves the purpose of bringing Jacob and family to Egypt. A more in-depth look at incarceration in the ancient world is beyond the scope of this project.

⁸³ James L. Kugel, *In Potiphar’s House: The Interpretive Life of Biblical Texts* (San Francisco: Harper Collins, 1990).

implications, nor how the motifs are aligned together within the same document. While he might show how the motif of Joseph's beauty evolves through documents, he does not discuss how *Jubilees* might have used this motif along with other motifs.⁸⁴ As I am using Foucault's approach, I cannot separate a statement (the motif of Joseph's beauty) from the context in which it is used (*Jubilees*).⁸⁵ While useful, Kugel's study approaches different questions than I am raising.

The story of Joseph and Mrs. Potiphar returns the narrative of Genesis to Joseph's story immediately after the narrative of Judah and Tamar. We last saw Joseph back in chapter 37, when he is sold to slavers and brought to Egypt. Joseph's story follows Judah's own story of unsanctioned sex. The placement of this story highlights Joseph's self-control when presented with temptation. While two of Joseph's brothers succumb to temptation (and in Reuben's case, with a woman not explicitly seeking him out), Joseph resists a woman seeking to have sex with him. Joseph's repeated refusal of Mrs. Potiphar contrasts sharply with his brothers, especially since there is no familial link between Joseph and Mrs. Potiphar, and the narrative makes it clear that the two of them were unobserved in the house (at least on Mrs. Potiphar's last attempt).

Mrs. Potiphar is a look at foreign noblewomen through the lens of a biblical author. She is only ever referred to by her relationship to Potiphar: she has no name in the text and is only called "his master's wife."⁸⁶ The text of the narrative stresses the relationships of the other characters—Potiphar and his wife—to Joseph, referring to them as "his master" and "his master's wife," rather than using their names. By only using relative terms and titles for them,

⁸⁴ Kugel, *In Potiphar's House*, 73–75.

⁸⁵ Michel Foucault, *The Archaeology of Knowledge: And the Discourse on Language* (New York: Harper & Row, 1976), 116–17.

⁸⁶ Genesis 39:7f, "אשת-אדניו".

the story keeps its focus on Joseph, even though his only actions are either vague (“prospering” or “finding favor in his master’s sight”) or denials (specifically, of having sex with Mrs. Potiphar). The other characters are responsible for specific actions in the narrative: Potiphar first grants Joseph authority and then sends him to prison, God blesses Potiphar’s house, Mrs. Potiphar makes sexual advances and then lies about Joseph’s actions. Joseph makes few decisions and is effectively along for the ride. Joseph’s only specific action is to deny Mrs. Potiphar’s advances, which contrasts, as said above, with Judah and Reuben’s pursuit of illicit sex. Mrs. Potiphar is presented as sexually unrestrained and vindictive, Potiphar as absent and unable to control his own household.

As with the other narratives, *Jubilees* tells this narrative with its own framing. One major difference is that *Jubilees* moves the story of Joseph and Mrs. Potiphar (as well as Joseph’s rise to power in Egypt) before the story of Judah and Tamar.⁸⁷ This shift in the order of the narratives means that the meta-narrative is no longer contrasting Judah with Joseph, at least not directly. Instead, the story immediately before Joseph’s in *Jubilees* is a story about how the children of Jacob waged war against the descendants of Esau, eventually conquering them. After the narrative of Joseph and Mrs. Potiphar, *Jubilees* continues with Joseph’s story, following him through prison and into the court of Pharaoh. Rather than contrasting the sex life of one child of Jacob with another, *Jubilees* contrasts the political and martial life of his sons.

As for the actual narrative itself, *Jubilees* adds details throughout. Joseph still wins the approval of Potiphar through his success as a manager of the household. Mrs. Potiphar, still unnamed, desires Joseph and seeks to lie with him. Joseph resists, though *Jubilees* gives him

⁸⁷ Joseph and Mrs. Potiphar are in *Jubilees* 39; Judah and Tamar are in *Jubilees* 41.

more concrete support as to why he should: Joseph recalls his father, Jacob, reading the words of Abraham warning against adultery, with a death sentence for adulterers explicitly mentioned. Further, adultery is named as a sin which will be “written (on high) concerning him in the eternal books always before the Lord.”⁸⁸ *Jubilees* reports that Mrs. Potiphar spends an entire year begging Joseph to have sex with her. She also attempts to force him to bed with her, and again, Joseph flees, leaving his garment, but also breaking the door in *Jubilees*’ version. Loader notes that this effectively makes the focus sexual morality, specifically focusing on Joseph’s avoidance of adultery.⁸⁹ Since Loader has noted *Jubilees* focuses on intermarriage very heavily, here it is peculiar that *Jubilees* does not stress the issue of intermarriage—perhaps because Joseph eventually marries an Egyptian woman.⁹⁰ Either *Jubilees* does not have a problem with Israelites marrying Egyptians, or *Jubilees* is ignoring this particular breach of sexual etiquette in an attempt to draw no attention to it.

Jubilees presents the confrontation as one in which Mrs. Potiphar is active, stressing how much effort she puts into trying to have sex with Joseph. While the Genesis text does not explicitly state how long Mrs. Potiphar tries to seduce Joseph, *Jubilees* gives us a timeframe, and it is a rather long one. *Jubilees* also grounds the reason for Joseph’s refusal. Genesis simply has Joseph cite his loyalty to his master and the sin against God; *Jubilees* gives Joseph a text on which to base his refusal. In Genesis, Joseph speaks his defense to Mrs. Potiphar, but in *Jubilees*, the text is what supports Joseph’s choice. *Jubilees* presents Joseph, a man, as ultimately being the one choosing whether sex happens, and the “words of Abraham” are there to inform the man’s choice—they are not presented to the woman to attempt to stem her illicit desire. Instead,

⁸⁸ *Jubilees* 39:6 as translated in Charlesworth, *Old Testament Pseudepigrapha*, vol. 2, 129.

⁸⁹ Loader, *Enoch, Levi, and Jubilees on Sexuality*, 201.

⁹⁰ Loader, *Enoch, Levi, and Jubilees on Sexuality*, 178–79.

the woman is unable to control her lust, eventually attempting to rape Joseph (from which he, as a man, can still escape).

Robert Kawashima argues that Israelite law effectively ignores women's consent to sex: legal texts never fully consult the women involved.⁹¹ Kawashima argues that even the Deuteronomy field law is not about whether the woman consents to sex, but rather whether she actively resisted it or not, as there is no change in the description of the crime of the man based on which version of the law applies.⁹² As we have seen so far, most other texts and cultures we have addressed similarly ignore a woman's consent and frequently remove agency from her with regards to sex. Mrs. Potiphar is an example of ancient literature pushing against this: she wants the sex, but Joseph does not. The text does not name this an attempted rape, but since it is not completed (Mrs. Potiphar does not bed Joseph), the authors of the various versions may not have considered the possibility. Alternatively, the ancient world may not have conceived of this as rape, but rather an attempt at seduction, and the people of the era may not have been able to conceive of a woman forcing a man to do anything.⁹³

The Testament of Joseph further enlarges the narrative of Joseph and Mrs. Potiphar. Whereas the biblical narrative does not give a timeframe (and implies a short one) and *Jubilees* states that Mrs. Potiphar tried for a year, *the Testament of Joseph* claims that he resisted and fasted for seven years.⁹⁴ Loader details how the *Testament* works through several elaborations in

⁹¹ Robert S. Kawashima, "Could a Woman Say 'No' in Biblical Israel?: On the Genealogy of Legal Status in Biblical Law and Literature," *AJS Review* 35.1 (2011): 12.

⁹² Kawashima, "Could a Woman Say 'No'," 16.

⁹³ There are ancient narratives which we would call rape, but ancients would label seduction. The narrative of Reuben and Bilhah, at least in the Hellenistic versions, is rape. When Odysseus is forced into sex with Circe, the text does not call it rape. Ancient authors were aware outright violence could be used in rape, but they did not write about how differences in power interactions could be used by women to force sex.

⁹⁴ *T. of Joseph* 3:4.

two main narratives: one of the attempted seduction and one of his enslavement. Ultimately, the *Testament* says little new about sexuality.⁹⁵ The *Testament* describes a series of ways in which Mrs. Potiphar attempts to seduce Joseph: torture and threats of death (Ch. 3), offers of riches (Ch. 3), praising his self-control so her husband would not suspect (Ch. 4), offers to kill her husband (Ch. 5), magic and poisons (Ch. 6), and threats of suicide (Ch. 7). Finally, she brings her accusations against Joseph when he flees her presence and leaves his clothing. Mrs. Potiphar even offers to have Joseph released from prison if he would only consent to have sex with her (Ch. 9).

The *Testament* then tells the story again, though with significant differences, in chapters 11–17. In this version, Joseph claims to be an enslaved person from Jacob’s house, so as not to shame his brothers. He makes this claim first to the Ishmaelites and then to Pentephris (Potiphar). The story here refers to Mrs. Potiphar as “the Memphian woman,” and claims that she is the one who wants to buy Joseph, not Pentephris himself. She wanted to buy him because of “her sinful passion,” 14:4. This narrative does not go into her attempts at seducing Joseph but does frame Joseph’s arrival at Pentephris’s house as caused by Mrs. Potiphar’s desire. Throughout the narrative, Joseph goes out of his way to avoid shaming anyone, despite the wrongs being done to him.

In both narratives, Mrs. Potiphar is the one seeking adultery. She repeatedly uses her position of power to attempt to induce Joseph into sexual action. The text places significant tension on the social rank of Mrs. Potiphar, a noblewoman, and Joseph, an enslaved man. By their social ranks, Mrs. Potiphar should be able to command Joseph into any act, but as the man,

⁹⁵ Loader, *Philo, Josephus, and the Testaments on Sexuality*, 423–25.

Joseph is supposed to be in control of sex. While the text lets Mrs. Potiphar torture Joseph and gives her near complete physical control of him, the text does not have her rape (or even attempt to rape) him. She attempts to bully his consent from him, but she cannot act without his consent. The text's refusal to allow her to rape Joseph fits into the Hellenistic idea of the active male/passive female duality regarding sex. As the woman, Mrs. Potiphar is to both unable to control her desire for sex and must be passive in acquiring it. Neither *Jubilees* nor the *Testament of Joseph* goes so far as to make her a *tribad* capable of penetrating Joseph. As the man, Joseph is the one whose active consent matters, and who must also have the self-control to resist desire, both his own and that of any potential lover.

Jubilees and *The Testaments of the Patriarchs* both follow similar trends in their expansions from biblical versions of the narratives they cover. Both add considerable details, offering reasoning to support otherwise unsupported events in the biblical text. These two documents are both concerned with sexual immorality, but they tend to focus on incest or intermarriage as the prime sexual sin in each narrative, rather than adultery. The narratives of Joseph and Mrs. Potiphar do focus on adultery, though there it is in avoiding adultery and seduction by a foreign woman.

JEWISH TEXTS AND OTHER SEXUAL SITUATIONS

While the Jewish texts examined above dealt with adultery, many of them wrestled with other sexual issues, focusing more on them than adultery. The telling of Reuben and Bilhah focus on incest while turning the act into a rape. The versions of Judah and Tamar touch on the aspects of intermarriage. In almost all these retellings, men lament their lack of self-control when faced with temptation from women. (Or, in the case of Joseph, show self-control in the face of

temptation.) Even when the women are depicted as attempting to incite men to adultery, it is the men who are presented as culpable for any sexual sins which occur.

In the narrative about Daniel and Suzanna in the Greek additions to Daniel, we see a similar focus on male agency in sex. Two elder men are lusting after Suzanna, and when they corner her alone, they demand she have sex with both. When she refuses, the men charge her with adultery, claiming they saw a man running away from her in the garden. Suzanna is rescued when Daniel cross-examines the men and shows that they have fabricated their story. While she is almost killed, Suzanna herself has little agency in the narrative.

Numerous Jewish texts address the issue of intermarriage. Judah and Tamar in *Jubilees* and the *Testament of Judah* both wrestle with intermarriage, with *Jubilees* placing considerable stress on it.⁹⁶ 1 *Esdras* 8:91–96 tells the story of the mass divorce of foreign women found in *Ezra* 10. While direct, this is not the only Greek Jewish text that addresses marriage to non-Jews. In the Greek additions to Esther, Esther prays to God and proclaims that she hates that she is wed to a Gentile (14:15–18). The story of Dinah (Gen. 34), when told in the Greek texts, focuses on Shechem's ethnicity far more than any concern on the consent of Dinah or her father. *Jubilees* follows the narrative with several laws against intermarriage (*Jubilees* 30). While *Judith* does not tell the story, the book does mention Simeon and Levi's raid, and makes the crime clearly intermarriage (*Judith* 9;2–4). *The Testament of Levi* infers that the crime of Shechem was rape instead (*T. of Levi* 6:8). While the biblical story of Dinah seems to focus more on consent (Dinah's father's and brothers' more than her own), several alternative versions focus on Shechem's ethnicity. Intermarriage is also addressed through narratives in 1 *Enoch* around

⁹⁶ Loader, *Enoch, Levi, and Jubilees on Sexuality*, 155–57; Loader, *Philo, Josephus, and the Testaments on Sexuality*, 432–33.

angels and human women marrying (6:1–9:11) and in the *Testament of Reuben* 5, though here the human women are married, and the issue is complicated. Throughout these texts, sex is problematized when it crosses identity boundaries—while there may be issues around consent or adultery in these stories, the larger issue is the transgressing of ethnic boundaries.

Loader notes that the overarching sexual issue in *Jubilees* is intermarriage, and that this concern is present in other texts, though not always to the level that we find in *Jubilees*.⁹⁷ In his examination of the Pseudepigrapha, Loader notes that many of the texts have a generally negative view of intermarriage.⁹⁸ For example, the additions to Esther claim that Esther hates the Gentile nature of her husband and that her marriage may not have been fully consensual, an aspect lacking in the Hebrew text.⁹⁹ This concern with intermarriage is striking in part because of the little evidence that it was a common occurrence.¹⁰⁰ We might expect the texts to deal more forcefully with what was actually a problem. However, by applying Foucault's methods, we may be able to find an answer. As Loader argues, the views in these texts are those of the educated men who produced them.¹⁰¹ If these texts are not addressing actual problems, they are addressing perceived problems—problems these texts' authors are concerned about. The texts are political statements, as they are not direct commentary or punishment for actual acts, but instead attempts to color how the audience views a subject of concern.¹⁰² The authors of these texts saw intermarriage as a potential problem, likely fearing the integration of the Judean population into

⁹⁷ Loader, *Enoch, Levi, and Jubilees on Sexuality*, 155–57.

⁹⁸ William R. G. Loader, *The Pseudepigrapha on Sexuality: Attitudes Towards Sexuality in Apocalypses, Testaments, Legends, Wisdom, and Related Literature*, Attitudes Towards Sexuality in Judaism and Christianity in the Hellenistic Greco-Roman Era (Grand Rapids, MI: William B. Eerdmans Publishing Co., 2011), 490–92.

⁹⁹ Loader, *Pseudepigrapha on Sexuality*, 241–42.

¹⁰⁰ Loader, *Enoch, Levi, and Jubilees on Sexuality*, 298–99.

¹⁰¹ Loader, *Pseudepigrapha on Sexuality*, 490.

¹⁰² Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (S.I.: Vintage, 2009), 47–49.

the Gentile one through marriage. As such, their concern is less the sexual morality of their readers, and more their readers' ethnic boundaries.

More than intermarriage, most of the warnings about sex in Greek Jewish literature are about male self-control than any specific sexual crime. Self-control in sex is set up as a prime virtue, even with regards to sex with one's wife. *Jubilees* has Abraham warn against sexual immorality, saying the Canaanites have lost this self-control (*Jubilees* 20:1–13). In the Psalms of Solomon, Jerusalem falls because of the promiscuity of women and men's lack of self-control (*Psalms of Sol.* 2:11–14, 4:3–8, 8:4–10). Sirach makes multiple calls for self-control (6:2–4, 19:2) while at the same time warning that women are sexually voracious and problematic for self-controlled men (7:24, 9:1–9, 36:26, 42:6, 42:9–14). In the *Testaments of the Patriarchs*, many of the sons of Jacob make calls for their sons to have self-control in the face of temptation from women (*Reuben* 4–6, *Judah* 13, *Issachar* 3:5, *Naphtali* 8:8, *Asher* 2:8, 4:3, *Benjamin* 8). These authors saw women as a source of temptation and incitement for men, but it was men who were ultimately culpable for any sexual sins which might occur.

CONCLUSIONS

Authors from both Jewish and Gentile perspectives approached adultery with similar views on agency and culpability. In both sets of texts, men are the ones held culpable for adultery (or incest), while women are at best guilty of being alluring. Women may desire adultery or sex in general, but are not allowed to act on their desires, as we see with both Homer's Calypso and Mrs. Potiphar (to varying degrees in her versions). It is men who must initiate sex and who are to be blamed when the sex is deviant. The framing of adultery is that the outside male seduces (or is incited to seduce) the wife away from the husband. Even the framing of the *sotah* is that the woman strays from her husband.

Society at large is left out of these crimes. While Joseph cites God's vigilance as a reason not to sleep with Mrs. Potiphar, no one mentions social repercussions for the wife. The husband is the source of the authority who punishes those guilty of adultery, not the state. When the town wishes to condemn Tamar, they bring their complaints not to a judge, but to Jacob, her father-in-law. Potiphar is the one who condemns Jacob, not Pharaoh or a judge. The men of the *Iliad* do use the state's power of war but do so couched in terms of personal affronts ("my woman was stolen"), and not from issues of state ("the queen has been abducted"). In the *Odyssey*, the suitors of Penelope are punished by Odysseus, though they had no idea they were attempting adultery. The social structures around them supported their attempts to wed Penelope, as she was believed to be widowed.

Texts prior to the Hellenistic era deal with adultery in similar ways. Adultery laws in the Bible, as we saw in the previous chapter, attempt to construct their response without the husband's emotional state in mind, save for the *sotah* ordeal itself. These laws do provide a strong punishment for adultery, which could be in response to the husband's emotional state, but they do not mention that state directly. In contrast, the prophets revel in the husband's emotional response. The Hellenistic texts similarly assume a strong emotional response from the husband (or man in charge of the woman who has done wrong). However, many of these narratives are complicated by additional family relationships of those involved. As such, any emotional responses are tempered: Judah is ready to execute his daughter-in-law until she reveals him as the father; Potiphar throws his favorite enslaved man, Joseph, in jail due to his wife's accusations, etc. None of these narratives bring any sort of court or trial into play. Judah and Tamar come close, but even there it is Judah pronouncing judgment—the patriarch is the source

of judgment, not an outside court. Meanwhile the *sotah* ordeal instead provides a husband with a legal tool to use and proscribes any other personal vengeance.

7. ROME, RABBIS, AND ADULTERY

As Rome comes to power over the Mediterranean world, cultural influences begin to shift again. As Seth Schwartz has argued, under the Hellenistic empires, Palestine became home to a Judean or Jewish society, though that society had many facets and factions.¹ While not unified, this society provided an identity based around the Temple and the sacred texts of the Torah and other religious writings. Under the early years of Rome (pre-70 CE), this society continues, with Rome following the previous empires' support of the Temple, specifically the priests, as a source of ruling power over the Judean/Jewish population.² After the revolts of 70 and 135 CE, Judean culture had lost one of its key unifying elements, the Temple, which had also served as a Jewish source of imperial support.³ While the Torah had been important, without the Temple, it lacked a centralized body of leaders to interpret and implement the texts. Instead, Rome now ruled directly and exerted power over the populace without its previous Judean intermediaries.⁴ While antecedents to the rabbinic movement clearly existed, they were not the leaders of Judaism in the immediate aftermath of the Destruction of 70 CE and the Bar Kokhba revolts of 135 CE. Yet around the time of the emergence of the Mishnah, circa 200 CE, the Rabbis are also emerging as a group within Judaism, asserting certain claims of leadership within their community. Schwartz maintains that the Rabbis were the most successful group attempting to maintain the Torah aspects of emergent Judaism after these revolts, eventually producing the Mishnah and Tosefta, followed by numerous other texts. Yet in the immediate aftermath of the revolts, the Rabbis (or

¹ Seth Schwartz, *Imperialism and Jewish Society: 200 B.C.E. to 640 C.E.* (Princeton: Princeton University Press, 2001), 98–99.

² Schwartz, *Imperialism and Jewish Society*, 55.

³ Schwartz, *Imperialism and Jewish Society*, 105.

⁴ Schwartz, *Imperialism and Jewish Society*, 111.

their predecessors) were not a dominant social group in Judea.⁵ The Rabbis emerged as a marginal group attempting to preserve a form of pre-Destruction Judaism against the rising Christianization of the Roman Empire.⁶

Rabbinic Judaism emerges at the same time Christianity was developing, and Rome is undergoing shifts within its own cultures. This simultaneity of emerging groups gives us three major sources of texts (and myriad smaller ones): Roman texts (including legal, poetic, and narrative) from the dominant culture, Christian texts (those that would become part of the Christian canon and those outside it), and the texts of the Rabbis (specifically the Mishnah and Tosefta). In this chapter, we will look at each of these three sets of texts. The Roman texts will provide a legal and social background for the culture at large, showing how wider power was shaping the conversation around adultery. Christian texts will show one response to the wider Roman culture. Rabbinic texts will provide us another response to that same Roman culture. Hayim Lapin argues that the Christians represent a group which removed itself from dominant Roman culture, while the Rabbinic texts represent a group which, while trying to remain distinct from Rome, did not espouse complete rebellion.⁷ The goal in this chapter is to use Foucault's methods to analyze the Rabbis' interpretations of the *sotah* ordeal, showing that the Rabbis were aligning their interpretations of the *sotah* passage along the Roman response to adultery; in doing so, they were claiming a position of power over the men and women of their communities. Specifically, the Rabbis claimed the ability to arbitrate marriage and adultery, just as the Roman

⁵ Schwartz, *Imperialism and Jewish Society*, 175.

⁶ Schwartz, *Imperialism and Jewish Society*, 291–92.

⁷ For Lapin's full argument, see Hayim Lapin, *Rabbis as Romans: The Rabbinic Movement in Palestine, 100–400 C.E.* (Oxford and New York: Oxford University Press, 2012).

legal position supplanted the traditional role of the *paterfamilias* as adjudicator over adultery, and more generally, the family.

ROME AND ADULTERY

In the early Roman Empire, the law on adultery changed. Previously, adultery had been an internal matter to the household. While there had been ways to prosecute the wife accused of adultery in court, those legal tools had always been the husband's prerogative: he decided when to prosecute his wife. Under the new Augustan law, husbands were required to divorce their wives if they were convicted. Criminal penalties for adultery shifted the crime to a public crime rather than an internal affair for the *paterfamilias*.⁸ Husbands lost some of the control they had over their households, ceding it to the state. Husbands would be accused of pimping their wives out, should they not divorce them. Fear shifted away from a wife controlling her own sexuality to a husband not acting or responding as a proper husband. Martial gives us an example of the concern with husbands acting improperly when their wives are adulterous:

What curly-haired man clings so to your wife?
What curly-haired man, Marianus, is that
Who chatters into the lady's delicate ear,
Draping his arm along her chair,
Whose every finger sports a slender ring,
Whose leg not a single hair profanes?
No answer for me? 'He handles her business', you say.
Yes, a hale and rugged type,
His face proclaims the serious man of business!
Aufidius won't get the better of him!
You deserve a swat upside the head,
Panniculus! 'He handles her business'?
That curly-haired man is handling something, all right.⁹

⁸ Judith E. Grubbs, *Women and the Law in the Roman Empire: A Sourcebook on Marriage, Divorce and Widowhood*, Routledge Sourcebooks for the Ancient World (London, New York: Routledge, 2002), 84.

⁹ Martial *Epigrams* 5.61 as translated in Jennifer Larson, *Greek and Roman Sexualities: A Sourcebook*, (London: Bloomsbury Academic, 2012), 99.

Martial is writing late in the first century CE, his invective coming alongside the change in the law. Martial depicts a young and effeminate man blatantly flirting with Marianus's wife, and gives Marianus no actual reply, other than "He handles her business." Marianus is failing both to control his wife's sexuality and to fight off this unmanly man from his household. What both the shift in Augustan law and Martial's invective convey is a concern about men—that men had become less masculine and that this weakness was a problem to be addressed.

As Marilyn B. Skinner documents, there was the perception in Roman culture that manhood was fragile, despite men needing to project an image of strength.¹⁰ Being a man, a *vir*, was a temporary position in masculine development: as a child and in old age he would lack the strength of a *vir*. Further, manhood was tied to sexual activity. In the Roman construction of sex, there was an active, penetrating partner and the passive, penetrated one. In the heteronormative couple, the man was the active partner, the woman the passive. Thus, being a *vir* also required the ability to penetrate, sexually, which did not exist for children or older men, either. While a *vir* was to be sexually capable (that is, able to penetrate when he wanted), a *vir* had to maintain control of that desire and only do so when appropriate. Uncontrolled desire was feminine, and if a *vir* lost himself in desire, then he lost his masculinity. Being a *vir* was a temporary position: he would lose that position through choices he made (to be penetrated) or through time (to old age).

Foucault focuses on the shift in sexual ethics which occurred in the first two centuries CE. He traces how Roman culture began to construct the idea of developing or caring for one's self and applying that specifically to sexual relations.¹¹ Rome became more interested in the social status of the persons engaging in sex; specifically, the social status of both the penetrator

¹⁰ Marilyn B. Skinner, *Sexuality in Greek and Roman Culture*, 2nd ed. (John Wiley & Sons, 2013), 281.

¹¹ Michel Foucault, *The History of Sexuality*, trans. Robert Hurley, vol. 1 (New York: Vintage Books, 1988), 3:67–68.

and the penetrated. Both moral and personal failings (and health problems) were believed to stem from taking a role which did not match one's station.¹²

Jonathan Walters explores gender in the case of Rome, concluding that the *vir* was just one part of a hierarchy of gender, more complex than our modern male-female binary.¹³ The *vir* was the impenetrable male body who could penetrate others, but must guard his status, both as unpenetrated and as in control. Anthony Corbeill holds that when a man espoused certain behaviors and appearances, he ceased to be a *vir* and became an effeminate man, creating a sort of androgynous man.¹⁴ Marilyn Skinner shows that the fragility of Roman masculinity: male authors used women and *cinnaedii*, effeminate men, to express emotional responses they, as *vir*, could not.¹⁵ These nuances around being a *vir* construct a perilous state in which a man, especially a citizen, needs to protect his *vir* status, lest it be challenged. While in previous eras, adultery was an assault on a husband's household and its unity, in this Roman world, adultery becomes an assault on the husband's masculinity—he cannot be a *vir* if he cannot protect his wife from outside sex sources, or if he cannot control her desires. We see this in the Martial passage above. Martial is insinuating that his target, Marianus, cannot be a *vir*. Martial uses both his wife's infidelity and the effeminate nature of her lover to insult Marianus.

Not every adultery was an attack, though. Plutarch recounts in *Life of Cato the Younger* 25:2–5 an event when a man, Quintus Hortensius, attempts to solicit both Cato and Cato's son-

¹² See chapter 3, above, for a more in depth analysis of Foucault, *History of Sexuality*, vol. 3.

¹³ Jonathan Walters, "Invading the Roman Body: Manliness and Impenetrability in Roman Thought," in *Roman Sexualities*, ed. Judith P. Hallett and Marilyn B. Skinner (Princeton: Princeton University Press, 1997), 29–43.

¹⁴ Anthony Corbeill, "Dining Deviants in Roman Political Invective," in *Roman Sexualities*, ed. Judith P. Hallett and Marilyn B. Skinner (Princeton: Princeton University Press, 1997), 99–128.

¹⁵ Marilyn B. Skinner, "Ego Mulier: The Construction of Male Sexuality in Catullus," in *Roman Sexualities*, ed. Judith P. Hallett and Marilyn B. Skinner (Princeton: Princeton University Press, 1997), 129–50.

in-law to allow Hortensius to impregnate their wives.¹⁶ The entire passage is satirical, which Plutarch uses to highlight the absurdity of the Roman system. Hortensius argues that by having children from a shared wife, he and Cato would become closer due to the shared parentage of their children. Cato does not seem to object to this request, even though Plutarch notes that when Hortensius requests to impregnate Cato's own wife, Marcia, she was already pregnant at the time. Plutarch notes the peculiar nature of this request but does not make a moral judgment on it. While the legal and invective texts above would seem to demand a stronger reaction to such a request, Cato apparently concedes to the request, as does Marcia's father. The text is phrased such that Hortensius might be requesting that Cato divorce Marcia so that he can wed her, since his goal is legitimate offspring, specifically an heir.¹⁷

Perhaps the most notable story from Rome about adultery is the story of Lucretia from Livy's *History of Rome* (1.58).¹⁸ In this narrative, Sextus Tarquinius assaults Lucretia in the night, while staying as a guest in Lucretia's husband's house. While Tarquinius starts with attempts at seduction (at sword-point), in the end he threatens to kill her and his enslaved man and leave their bodies together to be found. Lucretia summons both her husband and her father after Tarquinius leaves. When they arrive, Lucretia recounts the event to them both, has them swear to avenge her, and then takes her own life. She does so, saying "As for me, although I consider myself guiltless, I do not exempt myself from the penalty. No unchaste woman shall use Lucretia as her excuse."¹⁹ She accepts that she herself has done no wrong, and yet still holds

¹⁶ Larson, *Greek and Roman Sexualities*, 226–27.

¹⁷ Hortensius is apparently granted his request, as he does have an heir through Marcia. If Marcia was divorced from Cato when it happened (which seems to be required for the heir to be legitimate), it is unknown if she returned to Cato after Hortensius. See Larson, *Greek and Roman Sexualities*, 298n251.

¹⁸ From Larson, *Greek and Roman Sexualities*, 254.

¹⁹ Livy *History of Rome* 1.58 as translated in Larson, *Greek and Roman Sexualities*, 254.

herself accountable to the punishment of adultery: death. Livy presents his perfect woman, completely bound by patriarchal power. Lucretia is willing to die to preserve her fidelity and her husband's dignity, but when Tarquinius threatens her with both death and shaming her husband, she is forced to relent. Lucretia is bound by the power structures around her: she has found no path to successful resistance. Foucault did not provide an answer to how the individual can resist power but did show that individuals are often forced to navigate conflicting sources of power or control.²⁰

Rome had a myriad of sexual crimes, though many of them were covered under the term *stuprum*: sex with illicit partners (including forced sex).²¹ *Stuprum* would include adultery, as another man's wife would be an illicit partner, but included other acts, including a male citizen taking the passive role in sex. Other laws provided further legal penalties for taking the wrong role in sexual activity.²² These laws worked to help contain what a man, specifically the free citizen man, could and could not do. As Foucault would observe, power, specifically male patriarchal power, is using laws to shape the behavior of the individual.²³ The governing elites of Rome were using legal structures to prescribe how the individual should act, and in doing so, claimed power over the *paterfamilias* by requiring specific action in situations when he previously would have had a choice.

²⁰ Foucault, *Power/Knowledge*, 73–74.

²¹ Kirk Ormand, *Controlling Desires: Sexuality in Ancient Greece and Rome* (Westport, CT: Praeger, 2009), 176.

²² Ormand, *Controlling Desires*, 178.

²³ Michel Foucault, *The History of Sexuality*, trans. Robert Hurley, vol. 1 (New York: Vintage Books, 1988), 1:89.

CHRISTIANITY AND ADULTERY

Christianity offered one response to Roman culture at large, but it was one from the fringes prior to the fourth century. Early Christianity held little official power and as such, had little position to lose. According to Lapin, Christians, as a sub-group within Roman society, sought to remove themselves from wider Roman culture rather than integrate themselves into it.²⁴ Christianity claimed an austere approach to sex in general, though sexual austerity was a wider Roman phenomenon before Christians claimed it.²⁵ Given the general distrust of sex in early Christian literature, its vehement response to adultery is unsurprising.

In some of the earliest Christian sources, Paul addresses marriage and sex, though he highlights celibate self-control as the ideal. In his first letter to the Corinthians, Paul argues that one should either be celibate or faithfully married: εἰ δὲ οὐκ ἐγκρατεύονται, γαμησάτωσαν, κρεῖττον γάρ ἐστιν γαμῆσαι ἢ πυροῦσθαι. “But if they do not control themselves, let them marry, for it is preferable to marry than to burn.” (1 Cor. 7:9). Paul is attempting to define all sex as loss of self-control but allows sex within marriage (and only to one’s spouse, even for men) as a concession to human nature (1 Cor. 7:2–6). Paul’s commands are read in two different directions by later authors. Chrysostom argues that Paul is encouraging everyone to celibacy, not just the priesthood, and that marriage should be used only if one cannot control one’s desire.²⁶ Origen offers a slightly different reading, in which one should not cling to one’s own celibacy if it causes one’s spouse to falter: one should have sex with one’s spouse if the spouse does not have

²⁴ Lapin, *Rabbis as Romans*, 8f.

²⁵ Stephen Garton, *Histories of Sexuality: Antiquity to Sexual Revolution* (New York: Routledge, 2014), 52.

²⁶ Chrysostom, *Homilies on the Epistles of Paul to the Corinthians* 19.1, as translated in Gerald Lewis Bray, *Ancient Christian Commentary on Scripture: New Testament: 1–2 Corinthians*, vol. 7 (Downers Grove, IL: InterVarsity Press, 1999), notes on 1 Corinthians 7:2.

the self-control to remain celibate.²⁷ Both of these readings still hold that celibacy is better than even marital sex, but that marital sex is not itself sinful, though perhaps close enough to sexual sin that it should be avoided when possible.

The Gospel of Matthew offers a direct critique on adultery. Matthew 5:27–30 reads:

Ἦκούσατε ὅτι ἐρρέθη, **Οὐ μοιχεύσεις.** ἐγὼ δὲ λέγω ὑμῖν ὅτι πᾶς ὁ βλέπων γυναῖκα πρὸς τὸ ἐπιθυμῆσαι αὐτήν ἤδη ἐμοίχευσεν αὐτήν ἐν τῇ καρδίᾳ αὐτοῦ. εἰ δὲ ὁ ὀφθαλμός σου ὁ δεξιὸς σκανδαλίζει σε, ἔξελε αὐτὸν καὶ βάλε ἀπὸ σοῦ· συμφέρει γάρ σοι ἵνα ἀπόληται ἐν τῶν μελῶν σου καὶ μὴ ὅλον τὸ σῶμά σου βληθῇ εἰς γέενναν. καὶ εἰ ἡ δεξιὰ σου χεὶρ σκανδαλίζει σε, ἔκκοψον αὐτήν καὶ βάλε ἀπὸ σοῦ· συμφέρει γάρ σοι ἵνα ἀπόληται ἐν τῶν μελῶν σου καὶ μὴ ὅλον τὸ σῶμά σου εἰς γέενναν ἀπέλθῃ.

You have heard it said, ‘Do not commit adultery,’ But I say to you that all who look at a woman to lust for her have already done adultery with her in his heart. Should your right eye cause you to stumble, take it out and discard it! For it is better for you that one of your organs be destroyed than your whole body be cast into Gehenna. And should your right hand cause you to stumble, cut it off and discard it! For it is better for you that one of your organs be destroyed than your whole body to go to Gehenna. (Matthew 5:27–30)

Matthew expands adultery to include more than just sex with the wife of another man. Instead, any man commits adultery when they look at a γυναῖκα woman/wife lustfully. The language used is ambiguous, as γυναῖκα can mean either woman or wife. Matthew may be arguing that lusting after a married woman is just as bad as actually committing adultery, or he may be expanding this to any lustful thought about a woman. At the same time, the woman/wife is addressed, even indirectly. Matthew is arguing that adultery is not something that happens when a wife seduces a man who is not her husband, or even when a man seduces another man’s wife; rather, adultery begins when a man lusts for a woman. Adultery is not an invasion of one’s household or an attack on one’s manhood to be feared, but a sin in oneself.

²⁷ Origen, *Commentary on 1 Corinthians* 3.33.23–25 as translated in Bray, *1–2 Corinthians*, notes on 1 Corinthians 7:2.

Matthew follows this comment on adultery with one on divorce:

Ἐρρέθη δέ, Ὅς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ, δότω αὐτῇ ἀποστάσιον.
ἐγὼ δὲ λέγω ὑμῖν ὅτι πᾶς ὁ ἀπολύων τὴν γυναῖκα αὐτοῦ παρεκτὸς λόγου
πορνείας ποιεῖ αὐτὴν μοιχευθῆναι, καὶ ὃς ἐὰν ἀπολελυμένην γαμήσῃ, μοιχᾶται.

It is said, ‘Whoever would divorce his wife, he should give her a certificate of divorce.’ But I say to you that anyone who divorces his wife, save for sexual immorality, causes her to commit adultery, and should anyone marry a divorcee, he commits adultery. (Matthew 5:31–32)

Matthew continues to expand adultery to include any divorce that does not include sexual immorality as its reason. If a man divorces a woman, he causes her to commit adultery (presumably, should she remarry or have sex with someone else).²⁸ Similarly, if a man marries a divorced woman, he is committing adultery. The Gospels of Mark and Luke record similar prohibitions against divorces, though they do not explicitly allow for divorce in the case of sexual immorality (Mark 10:11–12, Luke 16:18). Loader argues that Matthew is just making explicit what the other two gospels leave implied: that everyone knows adultery requires divorce.²⁹ Loader argues that Paul also holds this position, given the cultural requirement that an adulterous wife be divorced.³⁰ Given the iconoclastic nature of much of Christianity, I am not certain there is complete unspoken agreement between the authors of these texts and wider Roman culture. It may be that Mark and Luke are pushing a stronger position against divorce than Matthew, and that the Christian community was not unified in its response to adultery.

Chrysostom expounds on Matthew’s comments on adultery and divorce. On adultery, Chrysostom points out that Matthew phrases this not simply as desire, as “it is possible for one to

²⁸ The NRSV renders this “unchastity,” but the term *πορνείας* has a significantly wider semantic range. While what Matthew has in mind is likely divorcing a woman because she has committed adultery, it is possible that other sexual sins (having had undisclosed premarital sex, etc.) may fall into this term as well.

²⁹ William R. G. Loader, “Did Adultery Mandate Divorce? A Reassessment of Jesus’ Divorce Logia,” *New Testament Studies* 61.1 (2015): 71–73.

³⁰ Loader, “Did Adultery Mandate Divorce?” 78.

desire even when sitting alone in the mountains,” but rather, that Matthew is talking about “one who thinks about another solely for the purpose of lusting.”³¹ For Chrysostom, Matthew is not talking about lust or desire itself being what is prohibited, but rather purposefully arousing lust with the gaze. Chrysostom compares it to finding a child holding a knife but no injury: one still reacts to remove the knife from the child, and punishes the child so that the child does not do it again.³² Chrysostom connects Matthew’s comments on divorce back to his comments on adultery: It is the man who looks with a lustful gaze who will cause a woman to commit adultery, and thus be divorced from her husband.³³ Just as with his comments on Paul, Chrysostom is encouraging his audience to not just avoid the specific sin—adultery—but to stay a step removed from that sin by avoiding the things which may lead to it.

Early Christianity takes a hard line with sex: ideally, all sex is to be avoided, to prevent one from succumbing to sexual immorality. While married sex was allowed, Paul and other authors treat it as a concession and not the ideal. These texts also speak to men; none address women. Women are treated as sources of potential sin to avoid, not as active agents on their own. Matthew does not talk about a seducing adulteress but places the blame for adultery on men. This does place the blame for adultery on those with more social power to prevent it, but in doing so, Matthew removes the little sexual agency society has allowed women.

Paul is more egalitarian with his comments, admitting that both men and women may have desires and that as such, both husband and wife should grant the other sex to prevent adultery. Paul splits power in the married couple: both the husband and the wife have the power

³¹ Chrysostom, *The Gospel of Matthew Homily*, 17.2 as translated in Manlio Simonetti, *Ancient Christian Commentary on Scripture: New Testament 1A: Matthew*, Ancient Christian Commentary on Scripture 1A (Downers Grove, IL: InterVarsity Press, 2001).

³² Chrysostom, *The Gospel of Matthew Homily*, 17.2 as translated in Simonetti, *Matthew*.

³³ Chrysostom, *The Gospel of Matthew Homily*, 17.4 as translated in Simonetti, *Matthew*.

to aid their spouse in avoiding adultery. Even if one of the spouses can be celibate, Paul argues that the first spouse's celibacy might lead to the other spouse's sexual immorality. Thus, the celibate spouse has power over the other spouse's desire and should use that power to aid them in avoiding sexual immorality.

Chrysostom addresses his comments primarily to men. His comments on Paul are egalitarian, even expanding Paul's recommendation of celibacy beyond the priesthood. In Matthew, Chrysostom focuses heavily on the men involved in both adultery and divorce. It is the man (not the husband) who should control their desire. Further, a man should respect the marriage of another and not lust after another's wife. Chrysostom is granting power to the potential male adulterer, not to the wife or even the husband.

The early Christians are arguing for sexual austerity, which seems at odds with Judean and Greco-Roman ethics. Christians recommend avoiding even the things which might lead to adultery and other sexual immorality. Foucault argues that Christians were taking Hellenistic and Roman ideas and pushing them further: "as the art of living and the care of self are refined, some precepts emerge that seem to be rather similar to those that will be formulated in later moral systems."³⁴ While pagan Rome might push for the control of self and desire, Christian texts argue that the only complete control is celibacy.

RABBIS AND ADULTERY

With the destruction of the second Temple and later assault on Jerusalem, Judaism loses the key unifying forces of imperial support.³⁵ In the Persian and Hellenistic eras, the Temple and its

³⁴ Foucault, *History of Sexuality*, 3:239.

³⁵ Schwartz, *Imperialism and Jewish Society*, 104.

adherents served as an officially sanctioned locus of power, even when that locus of power was more symbolic than actual. With the Temple destroyed, that locus of power is gone. Various Jewish groups propose new loci of power and identity, and the Rabbis are one of these groups. Rome held power in Judea, at least in the political and military sense, after the 135 CE revolt, and there was not an independent political entity present, though it is conceivable that Judeans might have sought out Rabbis, or more accurately their predecessors, to solve civil disputes.³⁶ By the third century CE, a system of patriarchs and rabbis emerges in Galilee with some actual power, though no official Roman sanction.³⁷ These patriarchs and Rabbis implement a particular reading of biblical passages and claim historical connection to previous Jewish groups, including both priests and Pharisees. These Rabbis were at a crux: they were deeply dependent on the good graces of Rome but were attempting to construct a Jewish identity preserved out of their Judean history.³⁸ Their focus became the preservation of Torah—from the actual texts of the Hebrew Bible itself, to the implementation of its rules in daily life.

Two texts emerge with the early Rabbis: the Mishnah and the Tosefta. While these are followed by a number of other works—midrashim, Talmudim, and others—scholarly consensus maintains that these two are the earliest.³⁹ The Mishnah is a collection of legal interpretations and (at least hypothetical) applications, compiled at the earliest around 200 CE.⁴⁰ While these interpretations and applications are clearly influenced by biblical passages, there are relatively

³⁶ Schwartz, *Imperialism and Jewish Society*, 111.

³⁷ Schwartz, *Imperialism and Jewish Society*, 113.

³⁸ Lapin, *Rabbis as Romans*, 64f.

³⁹ There is little firm evidence for this, other than the fact that later texts refer to passages found in these two. Given the amalgamated nature of all rabbinic texts, even sequencing can be difficult. Pericopes float between texts and collect other narrative elements as they coalesce into the rabbinic texts we have.

⁴⁰ Hermann Leberecht Strack and Günter Stemberger, *Introduction to the Talmud and Midrash*, trans. Marcus Bockmuehl (Minneapolis, MN: Fortress Press, 1992), 109.

few direct quotes from the Hebrew Bible, and the Bible is not often used a source of authority in the arguments made within the Mishnah.⁴¹ Jacob Neusner describes the Mishnah as a “philosophical law code.”⁴² This description is apt, as the text of the Mishnah often wanders into hypothetical applications of legal ideas. The Mishnah serves as a core text to the emerging rabbinic movement, becoming the focus of the later Talmudim, both from Palestine and Babylon. The Mishnah provides the philosophical and stylistic core of later rabbinic texts. As for the document itself, it is broken into six parts, each of these broken further down into tractates. I will focus on one of these tractates, *m. Sotah*, which focuses on the *sotah* ordeal from Numbers and its implementation.

The Tosefta has traditionally been seen as a document of supplemental material to the Mishnah, so much so that its name means “addition, supplement.”⁴³ The exact relationship is difficult to determine, other than the fact that the Tosefta is highly reliant on the Mishnah for its structure and logic.⁴⁴ I am going to read the text as a continuation of the debates surrounding the Mishnah, though I am going to remain ambivalent on whether the Mishnah was distilled from a Tosefta-like discourse or if the Tosefta arose to explain the Mishnah. I find it likely that the literary development of both documents could have been simultaneous. Both possibilities shed equal light on how the Rabbis were approaching adultery. Generally, the Tosefta is seen as being redacted after the Mishnah, though exactly how long after is debated, with dates ranging from 220 CE to 300 CE.⁴⁵ While this date range is not insignificant, for the focus of this study, the

⁴¹ Strack and Stemberger, *Introduction to the Talmud and Midrash*, 128–29.

⁴² Jacob Neusner, *Introduction to Rabbinic Literature*, The Anchor Bible Reference Library (New York: Doubleday, 1994), 97.

⁴³ Strack and Stemberger, *Introduction to the Talmud and Midrash*, 150.

⁴⁴ Neusner, *Introduction to Rabbinic Literature*, 129–30.

⁴⁵ Citing Abraham Goldberg for 220–230 CE: see Strack and Stemberger, *Introduction to the Talmud and Midrash*, 151–52. For 300 CE, see Neusner, *Introduction to Rabbinic Literature*, 129f.

span of time is precise enough. The Tosefta is approximately four times the length of the Mishnah, but its comments are not evenly spread over the contents of the Mishnah itself: some passages have lengthy additions, while other passages are skipped over entirely.⁴⁶ While numerous relationships between the documents have been suggested, it is quite possible that these relationships vary on a tractate-by-tractate level, meaning that in some tractates the Tosefta is wholly dependent on the Mishnah, and in others the reverse may be true.⁴⁷ The Tosefta does have the same general outline (6 parts, each subdivided) as the Mishnah, and as the Mishnah, it has its own extensive passage on the *sotah* ordeal, which will be the focus on the text.

ALL MISHNAH AND SOTAH

The Mishnah opens its tractate on *sotah* with a question: המקנא לאשתו “When does a man warn his wife?” (*m. Sotah* 1:1). In the Mishnah, the verb קנא takes on a legal aspect of warning—he is warning her of his emotional state. This question frames the following tractate, or at least the initial focus of it. While it does not explicitly cite the *sotah* ordeal of Numbers 5 at this point, it very quickly becomes apparent that this is what is being referenced by the recorded answers to this question. Rabbi Eliezer’s response is first: מקנא לה על פי שנים, ומשקה על פי עד אחד או על פי עצמו “He warns her by two witnesses, he makes her drink by the testimony of one or his own” (*m. Sotah* 1:1). Rabbi Joshua counters: מקנא לה על פי שנים ומשקה על פי שנים “He warns her by two witnesses, one makes her drink by the testimony of two” (*m. Sotah* 1:1). The opening debate of the tractate is around when the *sotah* ordeal applies. Given these two responses to it, the opening question is not, “What does it mean to be jealous?” but rather, “What constitutes the legal action of being ‘jealous of one’s wife’?” or, as I translated above, “When does a man warn his wife?”

⁴⁶ Strack and Stemberger, *Introduction to the Talmud and Midrash*, 154–55.

⁴⁷ Strack and Stemberger, *Introduction to the Talmud and Midrash*, 155.

Rabbi Eliezer is arguing that two witnesses testifying against her is enough to convict the wife of adultery, while a single witness, even if it is the husband himself, is enough to invoke the ordeal. Rabbi Joshua counters that the *sotah* ordeal should be applied in cases when two witnesses are accusing the woman; by implication, if there is only one witness, the case should be dismissed. The debate between Rabbi Eliezer and Rabbi Joshua is about whether the ordeal should be used to fill the gap when the courts do not have enough evidence to convict, or if the ordeal replaces the court's decision itself. At the time this debate was recorded in the Mishnah, it had not been possible to perform the *sotah* ordeal for over a hundred years. Yet there is an entire tractate of the Mishnah which bears the name of the ordeal, and as we shall see, it works through several details about the ordeal itself.

Scholars have worked on *m. Sotah* from numerous angles. Judith Wegner cites *m. Sotah* as the strongest example of a wife being treated as a husband's sexual property.⁴⁸ Wegner argues that women shift from full person to property throughout the Mishnah, based on whether the woman's sexuality is involved in the legal matter at hand.⁴⁹ According to Wegner, this fluidity of status and the topic of *m. Sotah*, the text heavily focuses on controlling (and owning) the wife's sexuality. Lisa Grushcow identifies two major themes in *m. Sotah*: developing legal procedure and condemning adultery.⁵⁰ We can see this in the brief discussion above about the opening of the tractate. The Rabbis are arguing about where in the legal system this ordeal would fit but are doing so around the control of a suspected adulteress. Ishay Rosen-Zvi looks primarily at *m. Sotah*'s discussion of aspects of the ritual which are not included in the biblical text, in an

⁴⁸ Judith Romney Wegner, *Chattel or Person?: The Status of Women in the Mishnah* (New York: Oxford University Press, 1988), 50–52.

⁴⁹ Wegner, *Chattel or Person?* 168.

⁵⁰ Lisa Grushcow, *Writing the Wayward Wife: Rabbinic Interpretations of Sotah*, *Ancient Judaism and Early Christianity*, vol. 62 (Leiden: Brill, 2006), 264.

attempt to identify what the Rabbis are attempting to construct.⁵¹ Rosen-Zvi references Foucault's treatment of public punishment while addressing the public nature of the Rabbis' reconstruction of the ordeal, and how this shifts the nature of adultery from a private to a public crime.⁵² The Rabbis, according to Rosen-Zvi, are working with a hypothetical ordeal rather than one that was a reality to them, and as such, they allow various Hellenistic ideas to infiltrate their description and interpretation of the *sotah* ordeal.⁵³ The Rabbis turn the *sotah* ordeal into a fantasy of control over women and the threat that women pose through their sexual agency.⁵⁴ Rosen-Zvi's work will help illuminate much of what I will do going forward, though his approach focuses within the rabbinic world itself, while I am attempting to show how the Rabbis relate to previous Jewish concerns and the Greco-Roman cultural environment.

As Rosen-Zvi indicates, Foucault's treatment of public punishment is a useful comparison to the *sotah* ordeal. The *sotah* passage in Numbers does not explicitly note if this is a public ritual or a private one. Placing it at the Temple does include some level of publicity, but the biblical text makes no mention of how much of an audience any ordeal might have had. The Mishnah, as we will see, assumes an audience and a highly public ordeal. Foucault argues that the public use of torture or an ordeal serves two purposes: to function as punishment and to secure a confession.⁵⁵ While this seems at odds with modern judicial practice, ancient and medieval practices allowed torture and ordeals, on the premise that even if the accused were innocent of the crime of which they were accused, they were guilty of something else, even if it

⁵¹ Ishay Rosen-Zvi, *The Mishnaic Sotah Ritual: Temple, Gender and Midrash*, Supplements to the Journal for the Study of Judaism, vol. 160 (Leiden: Brill, 2012), 1-17.

⁵² Rosen-Zvi, *The Mishnaic Sotah Ritual*, 93-94, 97-98.

⁵³ Rosen-Zvi, *The Mishnaic Sotah Ritual*, 167.

⁵⁴ Rosen-Zvi, *The Mishnaic Sotah Ritual*, 225.

⁵⁵ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (S.I.: Vintage, 2009), 32-40.

was just the actions which made them suspect to begin with.⁵⁶ As we will see, the Rabbis depict the *sotah* ordeal as public and make the claim that women subjected to it deserve what happens to them, even when she is innocent of adultery.

Returning to the text of *m. Sotah*, we have seen that the first *mishnah* (1:1) deals with the question of where in the judicial system the *sotah* ordeal would fit. It presents two views with no clear preference for one over the other, other than the order in which they are placed. R. Eliezer argues the ordeal should be invoked when the woman has been warned in front of two witnesses but has violated the warning in front of only one. R. Joshua argues the ordeal is used when the husband has warned her in front of two witnesses and the wife has gone against that warning in front of two witnesses. Given this, one presumes that R. Eliezer would hold that if there were two witnesses of her violating the command, then the husband could divorce his wife without paying her *ketubah*. The text offers no judgment between these two positions.

The second *mishnah* (1:2) turns to the act itself, determining which things must have been witnessed before the ordeal is invoked. First, the husband must publicly (אמר לה בפני שנים) “He should say to her before two [others]”) warn his wife that she is not to speak with a specific individual. Even if she does speak with him, the wife is still to be considered part of the household, even a priestly household. (היא מותרת לביתה ומותרת לאכול בתרומה). “She is permitted to her house and to eat the *terumah*.”) The *terumah* represents a sanctified offering, and only the priest and his immediate household could consume it. By discussing whether the wife may consume the *terumah*, the Rabbis are discussing whether the wife should be considered part of the household or not, given her actions. However, if the wife כנסה עמו לבית הסתר ושהתה עמו כדי

⁵⁶ Foucault, *Discipline and Punish*, 42.

טומאה “hides away with him in a secret place and remains there long enough to become unclean,” then she is forbidden to her house. The text is nuancing how much trust a husband, even a suspicious one, should place in his wife. The wife must do more than simply talk to someone whom the husband has forbidden. These choices limit the power of the husband to control his wife, as she is not assumed to be guilty just for talking to the forbidden man. The Rabbis also give the wife more agency in this passage: she is not simply the object of a potential sex act, but the one choosing to “hide away with” the other man.

The third *mishnah* (1:3) delineates who אסורות מלאכול בתרומה “is prohibited from eating the *terumah*.” This *mishnah* frames the issue as a ritual purity question, but what is being discussed is how much suspicion the wife is under. The acts listed mark her as guilty, or at least guilty enough to be treated as such. The first example is the woman who outright admits אני טמאה לך “I am unclean to you.” While this might cover several circumstances, in this context the phrase is an admission of adultery. This is followed by the wife against whom witnesses testify, who would be guilty by the amount of evidence presented.⁵⁷ The wife who refuses to drink is assumed to be guilty as well. The last two listed are the wife of the man who refuses to make his wife drink, and the wife whose husband has had sex with her since suspicion started. Both of these last two imply some level of control by the husband in these circumstances.

The first of these wives, described as ושבועלה אינו רוצה להשקותה “the one whose husband does not want to make her drink,” is the case in which a wife is suspected of adultery from someone outside the marriage. After all, if her husband does not want to make her drink, he either does not suspect her of adultery, or does not care about it. If he does not suspect her of

⁵⁷ Contrast this with R. Eliezer and R. Joshua’s debate in *m. Sotah* 1:1. R. Eliezer’s position is assumed here, that two or more witnesses is enough to convict without the need of the ordeal.

adultery, why would she be subject to the ordeal? The text of Numbers 5 clearly makes it the husband's suspicion which instigates the *sotah* ordeal. This statement implies that the wife should be tried for adultery through the ordeal, but that the husband does not desire her to do it. If the husband does not want the ordeal to happen and she should drink, then someone else must have the ability to invoke the ordeal against her. Someone else's suspicions must be enough. As seen from Grubbs's work, Roman law had changed and moved adultery from a private crime that the *paterfamilias* punished, to a public crime tried in court; husbands were required to divorce their adulterous wives or be charged with pimping.⁵⁸ This *mishnah* adds an inducement to husbands who do not wish to prosecute their wives: their wives would not be able to partake in the *terumah*, effectively excluding them from a family ritual.

The second wife excluded because of her husband is ושבועלה בא עליה בדרך “the one whose husband has sex with her along the way.” The husband has had sex with his wife, despite her being suspected of adultery. The concern here is the same as the second kind of husband who does not wish to prosecute his wife: the husband who knows of the suspicions of adultery and does not care. The husband who has sex on the way is on the way to the ordeal when he chooses to have sex with his suspect wife. He clearly does not care enough that he plans to divorce her. The Rabbis suggest that a man taking his wife to court for adultery should have a pair of תלמידי חכמים “disciples of sages” with him along the way, should he try to have sex with her. (Though R. Judah says we can trust a husband with his accused wife.) Even if the husband does not think his wife is guilty, he cannot have sex with her until she has been cleared by the ordeal.

⁵⁸ Grubbs, *Women and the Law*, 84.

The concern with husbands not being sufficiently suspicious of their wives is twofold. First, the Rabbis potentially have in mind the concern of Deuteronomy 24:1–4, the only explanation of divorce in the Pentateuch. This passage does not cover simple divorce, though. Rather, it covers the case in which a man marries and then divorces a woman, and that woman remarries another man and ends up widowed or divorced again. In this case, the woman cannot remarry her first husband. The concern is with a form of serial polyandry: men trading a woman back and forth for sex, which is outright barred.⁵⁹ Second, the Rabbis could also be aligning their interpretation of the *sotah* ordeal with Roman law. While the biblical *sotah* is entirely the husband's prerogative, these passages imply that there are circumstances when a husband should (or even must) bring his wife in for the ordeal, just as Roman law required husbands to prosecute and divorce adulterous wives. The Rabbis could be aligning their interpretation with the prevailing Roman thought about adultery purposefully, or at least the Rabbis are so steeped in Roman culture that their framing of adultery is heavily colored by Roman ideas. The Rabbis are claiming that they know when this ordeal should be invoked better than the husband: Roman law makes the same claim to power. The Rabbis are inserting themselves between Roman law and the Jewish husband, claiming that their ancestral law made the same claims as Roman law: that certain husbands had a duty to bring their suspected wives to court and divorce them should they be guilty, though the Rabbis ignore that elsewhere in their ancestral law the punishment for adultery was to death. The Rabbis clearly hold that adultery should be punished, but they have adopted the Roman system to punish it.

⁵⁹ For further discussion of this phenomenon in the biblical text, see chapter 5 note 88.

Continuing in *m. Sotah*, the next *mishnah* (1:4) details how the men (the priest and the husband, and perhaps the chaperones from 1:3) bring the wife to the court in Jerusalem and admonish her.⁶⁰ They, presumably the court, admonish the wife, saying:

בתי הרבה יין עושה, הרבה שחוק עושה, הרבה ילדות עושה, הרבה שכנים הרעים עושים. עשי לשמו
הגדול שנכתב בקדושה, שלא ימחה על המים

My daughter, many things are done in wine, many things are done in jest, many things are done in youthful indiscretion, many things are done for bad friends. For the sake of the Great Name, which is to be written in holiness, that his might not be erased by water...

These admonitions imply that the wife is indeed guilty, only that she committed her adultery while under the influence of alcohol or another circumstance. Implied in this admonition, though, is that it is better for the wife to admit guilt, even if she were not actually guilty, than let the name of God be erased in the ordeal. To get to this point, the wife would need to have maintained her innocence, since there would be no need to test an admitted adulteress. The court is attempting to imply that the wife may have committed adultery but does not remember it. The court is gaslighting the woman, attempting to make her doubt her own recollection of events, to avoid having to write the Divine Name in the ordeal and erase it. As this is the Rabbis' reconstruction of the ordeal, and not a record of actual practice, the Rabbis have constructed a court which held that the written Divine Name was more sacred than a wife's own integrity.

The next two *mishnah* (1:5–6) cover the next steps of the ordeal, and the Rabbis make it clear that they view this ordeal as a public event. If the wife admits her guilt, she avoids any public humiliation, just as confession would avoid (or end) any current public torture in

⁶⁰ The Rabbis are framing this ordeal as one which must be done at the Temple. As discussed in chapter 4, if the ordeal is only available in Jerusalem, the cost for the ordeal is increased, especially for those who live outside the city. Not only would a husband (and wife) must set aside time to do the ordeal itself, but they must also set aside appropriate travel time to and from Jerusalem.

Foucault's study.⁶¹ If the wife maintains her innocence, she is roughly taken and presented publicly. The text encourages a level of roughness: *אם נקרעו נקרעו, אם נפרמו נפרמו* "The priest seizes her garments, and if they are torn, let them tear, if they are torn open, let them tear open." The text states the priest was to rough up the wife, even rending her clothing to expose her before the public. Similarly, her hair was to be disheveled. R. Judah raises an objection at this point: if the wife is attractive, she should not be exposed. Either R. Judah is attempting to protect attractive women (unlikely) or he is attempting not to titillate the priests. Perhaps he even fears that a priest might be more enthusiastic than necessary if the priest finds the accused adulteress attractive. The precise reason for R. Judah's restraint is not provided in the Mishnah.

Continuing into the next *mishnah* (1:6), the Rabbis delineate other ways the woman is to be presented in the ordeal: if she wears white, she should be dressed in black; if she wears jewelry, it should be removed. Next, *מביא חבל מצרי וקושרו למעלה מדדיה* "Bring a rope of twigs and bind it over her breasts." It is unclear if this binding is to expose the wife's breasts (by binding down any remaining clothing and preventing it from covering her) or to provide some minimal covering over the wife's breasts. Given that the text which follows is about exposing the wife to the public gaze, I suspect its intention is to bare her breasts and prevent anything from covering them. Thus bound, the wife is presented to any who would come to see her. The text is a bit contradictory here, as it at first bars the wife's enslaved people from coming to see her, as she has no shame before them, but then immediately follows this exemption with *וכל הנשים מותרות*

⁶¹ Foucault, *Discipline and Punish*, 43–45.

לראותה “All women are permitted to see [her],” though in this case, the term “women” is likely meaning “free women” or “wives.”

These two *mishnah* provide an extensive addition to the biblical text of the *sotah* ordeal. The biblical text only mentions that וּפָרַע אֶת־רֹאשׁ הָאִשָּׁה “he [the priest] should dishevel the wife’s hair.” (Numbers 5:18). These *mishnah* add considerably to this, including ripping the wife’s clothing, exposing her, changing her into dark clothing, removing jewelry, and binding her up. The Mishnah does include the brief line of וּסוֹתֵר אֶת שְׂעָרָה “he [the priest] loosens her hair,” which would parallel the biblical ordeal, but the Rabbis add extensive further humiliation to the wife at this point. Rosen-Zvi spends an entire chapter on these two *mishnah* and how these texts represent the radicalization of the ordeal in rabbinic minds.⁶² The Rabbis have set the ritual up to shame and humiliate the wife for her purported crime. As Foucault describes public torture, the Rabbis are submitting the wife to social torture, in part to elicit a confession, but also to punish her for inciting suspicion.⁶³ The Rabbis seem to relish this claimed power, though there are a few voices of concern: R. Judah worries that the priests will revel too much in debasing the accused wife. The anonymous dissent in 1:6 is concerned that the wife will not feel the requisite shame. Even these dissenting voices do not dissent for the sake of the wife, but rather for the sake of the priest or because the ordeal is not punishing enough.

The following *mishnah* (1:7) skips ahead to the punishment of the wife and claims במדה שֶׁאָדָם מוֹדֵד, בֵּה מוֹדְדִין לוֹ “by the measure which one measures, thus will one be measured.” The text is claiming that the punishments in the ordeal are justified, because they mirror the actions taken in the sin of adultery.

⁶² Rosen-Zvi, *The Mishnaic Sotah Ritual*, chapter 3.

⁶³ Foucault, *Discipline and Punish*, 42.

היא קשטה את עצמה לעברה, המקום נולה. היא גלתה את עצמה לעברה, המקום גלה עליה. בדרך התחילה בעברה תחלה ואחר כך הבטן, לפיכך תלקה הירך תחלה ואחר כך הבטן, ושאר כל הגוף לא פלט

She prepared herself for sin, thus God will disfigure her. She exposed herself for sin; God will expose her. By her thigh [vulva] she began to sin, and then with her womb; thus her thigh [vulva] will suffer first, and after that, her womb. The rest of her body will not escape.

The text steps through the ordeal and its consequences, to show how each step mirrors part of the act of adultery. The previous mishnayot cover disfigurement and exposure, as the priest acts in God's stead to disarray the wife's clothing and hair and then present her, exposed, to the public. The final steps here link how the potion of the ordeal is to affect the guilty wife. According to the biblical passage, וְצִבְתָּהּ בִטְנָהּ וְנָפְלָה יָרֵכָהּ, “her womb shall swell and her thigh fall.” (Numbers 5:27). Presuming that “thigh” is a euphemism for her vulva, the Rabbis assume that she first used her genitals for sex, and then her womb.⁶⁴ The Rabbis justify the exposure of the wife with the same measure-for-measure argument which they use to justify the effects of the potion. While the potion explicitly only affects the guilty, all accused adulteresses are exposed to public humiliation. The Mishnah does not defend this exposure here, but simply accepts it.

Like this, Foucault notes that public punishment was often connected to the crimes they were to punish.⁶⁵ In Foucault's study, punishments might be enacted at the locations where the crimes were committed, they might afflict the body of the condemned in a similar way to the crime committed, or the weapons involved in a crime might be used in the torture of the condemned. Here, the Rabbis construct a way for the ordeal to afflict the wife with the same actions they presume she took to commit the crime. The text of Numbers does not link this punishment explicitly to any act by the wife—the potion of the ordeal simply causes an outcome

⁶⁴ In the ancient understanding of sex, the woman would accept the man's penis into her vulva, and then his seed would plant itself into her womb, thus making both her vulva and womb part of the sex act, in that order.

⁶⁵ Foucault, *Discipline and Punish*, 44–45.

which can be easily interpreted as condemning or acquitting her. At best, the *sotah* ordeal would abort any pregnancy caused by adultery, directly undoing what the act of adultery started, but the text does not draw a connection between this outcome and the sex act itself.⁶⁶ The Rabbis make the connection explicit.

The first chapter ends with two *mishnah* exploring the idea of measure-for-measure. The first of them (1:8) brings up the stories of Samson and Absalom as examples of how they each sinned through parts of their bodies and were punished through those parts. The final *mishnah* (1:9) turns to positive measure-for-measure outcomes: Miriam waits for Moses, thus Israel waits for Miriam to heal; Joseph went to extraordinary lengths to bury his father in Israel, so Moses buried Joseph in Israel; Moses went to extraordinary lengths to bury Joseph, so God buried Moses. The measure-for-measure punishments are more in line with what is described in *m. Sotah* 1:7, as they show how each was punished through part of their body for sins committed with that part. These two mishnayot highlight the idea of measure-for-measure in rabbinic thought but turn the focus away from adultery.

In this first chapter of *m. Sotah*, the Rabbis focus on where this ordeal fits into their system of justice. The first *mishnah* addresses when the ordeal should be invoked: is this ordeal to replace an adultery trial, or only used when there is insufficient evidence to convict in a trial? The Rabbis then cover what both the husband and wife must do to trigger the ordeal, limiting the husband such that he cannot just invoke the ordeal based on his emotional state. The Rabbis tame that aspect of the ordeal, effectively claiming the right to dictate when the ordeal can be invoked: the husband must perform certain actions to show that his wife is indeed acting suspiciously. The

⁶⁶ Presuming the *sotah* ordeal caused abortions. See chapter 4 for more discussion on this possibility.

Rabbis also address how to treat a wife who has been accused, though they do so through discussion around *terumah* and whether she is still able to consume it. While rabbinic wandering into the acts of the ordeal itself is at first a bit of a non-sequitur, the final mishnayot brings it back into this discussion about the rabbinic justice system. First, the Rabbis describe the aspects of punishment and humiliation of the suspected wife. Then, they show how those aspects demonstrate the idea of measure-for-measure punishment. The Rabbis to expand the biblical account of the ordeal, adding in almost titillating detail the process of exposure of the wife and the parts of her body which she allegedly used to commit adultery. While the Rabbis are using this tractate to fit the *sotah* ordeal into their judicial system, they do so by claiming power from the husband and reveling in the salacious nature of the crime being tested and punished.

The second chapter of *m. Sotah* focuses on the physical aspects of the *sotah* ordeal. The first *mishnah* deals with the grain offering which is to accompany the ordeal. In Numbers 5:15, it describes the offering, saying וְהָבִיָּא אֶת־קֶרְבָּנָהּ עָלֶיהָ עֲשִׂירֶת הָאֵיפָה קֹמַח שְׁעָרִים לֹא־יֵצֵק עָלָיו שֶׁמֶן וְלֹא־יִתֵּן וְהָבִיָּא אֶת־קֶרְבָּנָהּ עָלֶיהָ עֲשִׂירֶת הָאֵיפָה קֹמַח שְׁעָרִים לֹא־יֵצֵק עָלָיו שֶׁמֶן וְלֹא־יִתֵּן “he shall bring her offering upon her: one tenth of an ephah of barley flour, with no oil poured upon it and no spice placed upon it.” The Rabbis supply a כַּפִּיפָה מִצְרִית “basket of reeds” to carry the offering in, making sure to note that the wife needs to carry it to the ordeal in order to wear her out.” The biblical text does not explicitly specify how the offering is to be carried, but the Rabbis are likely expounding somewhat on the עָלֶיהָ “upon her” or “on account of her,” taking it in the more physical “upon her” sense. They continue through the other details of the offering, noting the lack of oil or spice, the basket (which is their own addition) rather than a cultic vessel, even the kind of flour being offered. Rabban Gamliel provides a summary reason for these differences from a standard offering: כִּי קֶרְבָּנָהּ מֵאֵכֶל בְּהֵמָה, “as her actions were the actions of livestock, thus her offering is the food of livestock.” His argument is

that because the wife has acted like an animal, all she can bring is what an animal would get, the coarse flour of animal feed. At this point in the ordeal, any sin is still alleged, as there is not yet proof, yet the wife is being treated as if she is guilty. Foucault mentions that those tormenting the accused accept that some who are innocent will be tortured, but those torments are justified because the accused is guilty of something, even if it is just causing suspicion.⁶⁷

The following mishnayot all deal with specific parts of the physicality of the ordeal. In *m. Sotah* 2:2, there is a discussion of how much water is required and where to take the dust from the Temple floor. The next *mishnah* (*m. Sotah* 2:3) discusses how much of the Numbers passage is to be written on the scroll. The Rabbis assume it should be the actual text of the Numbers passage (5:19–22), though there is disagreement on whether certain parts of the text should be included.⁶⁸ The biblical text is unclear what exactly should be written, stating only that **וְכָתַב אֶת־** “the priest should write these curses on a scroll.” The Rabbis do insist this be written on a scroll, and not on other surfaces, and only with ink, so that the writing could be blotted out (*m. Sotah* 2:4). All these deal with the physical minutia of the ordeal. The Rabbis care about the details, but only insofar as they believe these matter to the efficacy of the ordeal. They spend more focus on the uniqueness of the offering than the rest of these details because it allows them to highlight the wife’s potential sin.

In *m. Sotah* 2:5, we return to the wife as she confirms the oath with a simple **אָמֵן אָמֵן** “amen, amen.” Here, the Rabbis attempt to explain why the reduplication—why not simply a single “amen” to affirm the oath? Several explanations are offered. In one, one “amen” is for the

⁶⁷ Foucault, *Discipline and Punish*, 42.

⁶⁸ The majority opinion appears to be from the words **וְכָתַב אֶת־** through **לְעֵינֶיךָ**, excepting the break starting at verse 19 where it repeats the command to make the wife swear. R. Josi argues the whole text should be included and not to skip that repeated command. R. Judah argues for a much shorter passage, with just the curse formula included.

oath, the other for the curse. In another, one “amen” is for each man she is accused of sleeping with. In another, one is that she has not gone astray during the betrothal and the other that she has not gone astray in the marriage (or the levirate marriage parallels). In the last, one “amen” to say she is not unclean, the other to say if she is unclean, the waters may affect her. This last anonymous option makes the wife complicit in the ordeal. She allows the potion to work on her through her affirmation of the priest’s statement. Foucault notes that in such public punishments, there would often be an attempt to get the condemned to justify and accept their own punishment, so that all could function in their prescribed role in such events.⁶⁹ By making the wife complicit in the ordeal, the Rabbis are similarly making her fit into a prescribed role in the theatrics of the ordeal. The only option ascribed to a specific Rabbis is one from R. Meir: אמן שלא אטמא “amen that I have not become unclean, amen that I will not become unclean.” R. Meir offers a reading which assumes the innocence of the wife. If she has not committed adultery, then the ordeal will not affect her and make her unclean.

The final *mishnah* of the second chapter, *m. Sotah* 2:6, limits what the husband can use as his concern for jealousy. The husband cannot bring his wife in for the ordeal because of sex she may have had before she was betrothed to him, or after he has divorced her. Even if the husband remarries her after divorcing her, he cannot use any sex the wife might have had while divorced against her through the ordeal. This stipulation is at odds with Deuteronomic law on divorce (Deuteronomy 24:1–4), which explicitly bars remarriage if the wife has taken a second husband. The Rabbis might be considering a circumstance in which the woman, while divorced from her first husband, had sex with another man but did not get married. However, *m. Qiddushin* 1:1 argues that sex constitutes a marriage. Regardless, here the Rabbis do not seem concerned with

⁶⁹ Foucault, *Discipline and Punish*, 44.

the sexual activity of the woman while she is divorced. The text offers the generality of כל “any way she may have sex and not be prohibited to her husband; he is not to make a matter out of this.” In other words, the husband cannot use his wife’s sexual history against her, provided that such history was outside the time of the betrothal and marriage. The Rabbis are further limiting the husband’s power to invoke the ordeal.

With the next chapter, the Rabbis return to more details of the ritual: *m. Sotah* 3:1 simply states how the priest receives the offering, and *m. Sotah* 3:2 discusses the order of the offering and the drink. Both mishnayot are expanding the text of the biblical passage, but neither is particularly expansive with it.

In *m. Sotah* 3:3, the Rabbis turn to the question of what to do should the wife choose not to drink during the ordeal, or if she suddenly admits guilt. If she refuses to drink before the text is erased, the ordeal is aborted. They are to take the scroll and place it in the *genizah* and to scatter her offering. It is not stated what happens to the wife here, but in other passages, such refusal is treated as paramount to admitting guilt. If she admits guilt after the scroll is erased, her potion is poured out and the offering is scattered. However, if she refuses to drink the potion after the scroll has been erased, then the Rabbis say she is to be forced to drink the potion. Once the potion is created, then the Rabbis feel the only way to avoid drinking it is to admit guilt. By admitting guilt, the wife can avoid the potion (and any ill effects it might have), but she has already gone through much of the public display of the ordeal at this point. The confession takes priority over the ordeal itself.⁷⁰ By allowing the wife to abort the ordeal through confession, the Rabbis have made the ordeal not about the adultery itself, but rather about the wife’s integrity.

⁷⁰ As it does in Foucault, *Discipline and Punish*, 38.

The *sotah* ordeal is not proving the wife did or did not commit adultery, but rather that the wife is or is not telling the truth about whether she has committed adultery. If she admits she was lying (by admitting the adultery), the ordeal is stopped.

The Rabbis then turn to how the potion affects the woman in *m. Sotah* 3:4. They begin with the immediate effect of the potion, saying if visible effects occur right away, the wife should be rushed out of the Temple to avoid any contamination of the Temple space itself. The Rabbis do not spend much time on the actual effects of the potion here, instead turning to the question of how quickly the potion would take effect. The text posits *אם יש לה זכות, היתה תולה לה* “if she has merit, it [the effects of the potion] would be suspended for her.” The text adds that this suspension is increased by the amount of *זכות* “merit” the wife has. Ben Azai argues that because of this, *חייב אדם ללמד את בתו תורה*, “one is required to teach his daughter Torah,” in case she is made to undergo the *sotah* ordeal. R. Eliezar counters that *כל המלמד את בתו תורה, כאלו* “any who would teach his daughter Torah, it is as if he teaches her sexual license.” R. Eliezar fears that if women know that merit protects them from the potion, and their fathers help them earn merit by studying Torah, then women will be free to be sexually promiscuous, because the ordeal will not affect them. The text follows this with comments from R. Joshua about how women lack self-control with regards to sex.

The next *mishnah*, *m. Sotah* 3:5, returns to the discussion around the interaction of merit and the potion. R. Simon argues that merit cannot suspend the effects of the potion, because to do so would mean that the potion would not immediately reveal an adulteress. As such, if an innocent wife were to drink it and have no immediate ill effect, people would just say that the wife was guilty, but had enough merit to suspend the effects of the potion. R. Simon is arguing that any reprieve from the immediate effects of the potion damages the ordeal’s ability to

pronounce a woman innocent. Rabbi offers a halfway position: merit suspends the potion, but only the drastic physical effects. The guilty wife would still be barren and would slowly waste away from the effects of the potion. These Rabbis were struggling with the idea that the potion may not have a visible effect. It is also difficult to determine if they felt the potion would have worked at all, or if parts of their discussion are attempts at explaining away any apparent failures of the ordeal, should it be implemented.

The biblical text makes no implication that any circumstance might alter the immediate effects of the potion, other than the wife's guilt or innocence. The Rabbis simply posit the assumption that merit can suspend this divine judgment, as it can suspend other divine judgments. Other Rabbis then present concerns with this idea. Yet all of them work with the assumption that women want to be sexually promiscuous and it is only the threat of the *sotah* ordeal and other punishment for adultery that stops them. The ordeal becomes a threat of public humiliation, even if the efficacy of the ordeal itself is in question. R. Eliezar's fear directly speaks to this, as he fears that if merit can suspend the effects of the *sotah* ordeal, women will study Torah and then immediately go commit adultery, the study acting either as an inoculation or to give the women explicit boundaries they can use to skirt the effects of the potion. R. Simon at least assumes that some women might be innocent, and that any suspension of the effects of the potion will lead to questioning their morals. The sheer uncertainty about the physicality of the ordeal implies that none of those recording the text knew what the ordeal would have entailed. No one had seen the ordeal done, nor seen how quickly the result would be known. The ordeal, as described in the Mishnah, may be completely hypothetical, rather than a reconstruction of any historical ordeal.

The text then turns its discussion to what should be done with the offerings which have become invalid or unneeded for various reasons (*m Sotah* 3:6). The Rabbis' first concern is with an offering in which something happened to the offering itself to make it invalid. In this case, it is treated the same as other offerings of this type: specifically, if it has not yet been sanctified, it is to be redeemed (effectively replaced); if it had been sanctified, it is to be burned. While specifics of the Temple system as envisioned by the Mishnah are beyond the scope of this paper, three important nuances here are whether an offering is consumed, burned, or redeemed. Assuming a normal sacrifice, the offering would have been consumed by the priests, though part of it might have been burned on the altar, depending on the sacrifice. An offering was burned when something went wrong with the ritual, but the offering was already sanctified or made holy. Because the ritual was incomplete, the priests were not to consume it; because it had been sanctified, the laity could not consume it. A redeemed offering would be when the person making the offering replaced it with money of equal value (or perhaps a substitute offering). The initial offering would still be mundane and could be used by the laity; the new offering (or money) could be used by the priests. The Rabbis then list several other circumstances which lead to the offering being burned: האומרת טמאה אני לך, ושבאו לה עדים שהיא טמאה, והאומרת איני שותה, the one who says, "I am unclean to you," the one against whom witnesses say she is unclean, the one who says, "I will not drink," the one whose husband does not wish for her to drink, the one whose husband had sex with her along the way, and all who are married to priests." Presumably, this passage is specifically talking about women who make these declarations (or whose husbands do) after an offering has been presented to the Temple and the ordeal has begun. If the wife admits guilt, or multiple witnesses arise during the ordeal against her, or she refuses to drink during the ordeal,

the offering is considered invalid and burned. If the husband attempts to stop the ordeal after it has begun, the offering is considered invalid and burned. If it comes out that the husband has accepted the wife back (by having sex with her), then the offering is burned. The final case, that of the wives of priests, is different, though. It is not about guilt being admitted or the ordeal otherwise being aborted, but rather assurance that even priests must pay a cost for the ritual. (If the offering were not burned, then it would be turned over to the priests, and there would be no real cost to the husband, potentially.)

This *mishnah* may also be broader than just applying to the offering of the *sotah* ordeal. The text is unclear about which offerings it is talking. While the Rabbis have been discussing the *sotah* ordeal, this does not preclude them working on parallel or related ideas along the way, as we have seen above with the tangent on measure-for-measure justice. Read this way, this *mishnah* supports the earlier *m. Sotah* 1:3, when the husband is compelled to have his wife submit to the ordeal lest his wife be unable to consume *terumah*. His wife becomes a second-tier member of the family, unable to partake in the same food as her husband. In *m. Sotah* 1:3, the text deals with the interactions between the *terumah* and the *sotah* ordeal. Here the text wrestles with the wider sacrificial system itself. The text is not explicit, but if read as applying to all offerings, if a husband chooses not to prosecute his wife for suspected adultery (or accepts her back regardless of the outcome), he must treat her as something less than a wife, at least until he does submit her to it, or he must violate the rules around *terumah*. As in *m. Sotah* 1:3, the husband loses his ability to manage his household, and instead must submit to the wider social-

religious system. As noted above, this shift is like the Roman shift in adultery law, in which a husband could be prosecuted if he chooses not to prosecute his wife.⁷¹

The discussion shifts, then, to the differences between a man of priestly descent and a woman of priestly descent. It does so starting with the final comment from *m. Sotah* 3:6: that the offerings for all married to priests should be burned. The start of *m. Sotah* 3:7 is בת ישראל שנשאת לכהן, מנחתה נשרפת “an Israelite girl married to a priest, her offering is to be burned.” Following this is the reverse: וכהנת שנשאת לישראל, מנחתה נאכלת “a woman of priestly descent married to a [non-priest] Israelite, her offering is to be consumed.” The husband’s lineage determines the household’s status as priest or non-priest. What follows is a nuancing of the difference between men and women of priestly descent. For men of priestly descent, their offerings are always burnt, they are always considered priestly (may not become laity), they should not contract corpse contamination for the deaths of their loved ones (restrictions on mourning), and they may consume the holiest sacrifices. For women of priestly descent, their offering is consumed (considered that of laity), they may become laity (by wedding a non-priest), they could contract corpse contamination in the case of familial deaths, and they may not eat the most holy sacrifices. Effectively, there is a distinct caste structure, and while the men of priestly descent are firmly in their caste, women of priestly descent may shift out of theirs. While this discussion does not address the *sotah* ordeal directly, its placement does highlight that the chapter is moving into generalities. Since this *mishnah* deals with general concerns around priests and women of priestly descent, rather than the *sotah* ordeal, we have clearly entered a tangent. What is unclear is where that tangent begins. If it is with this *mishnah*, then *m. Sotah* 3:6 could still be talking

⁷¹ Grubbs, *Women and the Law*, 84.

only about the *sotah* ordeal offering. However, if the tangent is read as starting in *m. Sotah* 3:6, with the talk of offerings, then both 3:6 and 3:7 could be read as generalities attached to 3:5.

The final *mishnah* of this chapter, *m. Sotah* 3:8, expands on differences between men and women generally, not just those of priestly descent. Men can appear disheveled, make (Nazarite) vows for their sons, complete their father's Nazarite vow, sell or betroth their daughter.

Additionally, Rabbis allow men to be enslaved to make restitution for theft, and in other cases, to be executed by stoning while naked, and to be hung up after being put to death. Women are not to appear disheveled, may not make Nazarite vows for their sons, nor complete their father's Nazarite vows. Women may not sell their daughters or arrange marriages for them. Women are not to be stoned naked, nor are their bodies to be hung up afterward, nor can they be enslaved to make restitution for theft. The first stipulation (that of their appearance) sets up the social propriety of the genders, with the assumption that a man with a disheveled appearance has done some sort of valid work to appear so, where a disheveled woman presents a source of titillation. The next several differences noted (those pertaining to vows and daughters) address issues of the person's full status in social-legal situations: men are full participants in the social legal system; women may not assume that role. The final set deals with issues of justice: men are fully punished by the judicial system, while women are spared some of the humiliations involved. R. Judah has similar concerns in *m. Sotah* 1:5 about particularly attractive women being stripped during the *sotah* ordeal. The concern is less about the shame of the woman than it is about the titillation of the men involved in the punishment. The woman gets to be stoned clothed and her body is not displayed to avoid male gaze. Similarly, a woman is not enslaved to pay for what she may have stolen, because slaves did not have bodily autonomy, and as such, slaves were sexually

available to their owners. Additionally, the woman is already “owned by” someone, a husband or a father, and thus selling her into slavery punishes her owner.

The Mishnah then turns to the question of the *sotah* ordeal and the various states of marriage in which it can be used. The Rabbis open with ארוסה ושומרת יבם לא שותות ולא נוטלות “A betrothed woman and a woman kept for her *yavam*⁷² do not drink, nor do they receive their *ketubah*. ”⁷³ Both women are in an engagement: not yet married to their new husbands, but not single either. The Rabbis argue that since they are not yet wives, they cannot be subjected to the *sotah* ordeal, as the text of Numbers clearly states אִשָּׁה תַּחַת אִישָׁה “a wife who is under [subject to] her husband” (Numbers 5:29). As neither of these women is currently married, they also do not receive their *ketubah*. Any suspicion is enough to call off an engagement. The Rabbis are strictly applying their construction of marriage, with a clear distinction between a married woman and an unmarried one, especially when it comes to her sexuality and who controls it. While these unwed women may have acted immorally, the Rabbis hold that the shift in status brought on by marriage has not happened yet, and as such the tools of marriage cannot be used against these women.

This *mishnah* (*m. Sotah* 4:1) continues with a series of marriages that violate rabbinic marriage laws: אלמנה לכהן גדול, גרושה וחלוצה לכהן הדיוט, ממזרת ונתינה לישראל, ובת ישראל לממזר ולנתין “a widow married to the high priest, a divorcée, or a woman who underwent *halitzah*⁷⁴ married

⁷² The *yavam* refers to a brother of the woman’s late husband. In the practice of levirate marriage, when the husband dies and there are no children, the wife is kept for the late husband’s brother.

⁷³ The *ketubah* is both the marriage contract itself and a sum of money promised in the marriage contract to the woman, should she be widowed or divorced without cause.

⁷⁴ The *halitzah* ritual was a sort of divorce ceremony done to avoid a levirate marriage. It was invoked by the deceased husband’s brother and annuls the levirate marriage. It was considered different than actual divorce.

to a common priest, a woman of illegitimate birth, a Netinah⁷⁵ woman, a woman married to a man of illegitimate birth, and a woman married to a Netin⁷¹ man. None of these marriages are considered valid marriages by the Rabbis, and thus cannot use the *sotah* ordeal. However, these women also do not receive their *ketubah*, either. The Rabbis put these women in dubious marriages at a social disadvantage from those who formed a proper marriage. While this prevents women from being subject to the ordeal, women would want to count on their *ketubah* protecting them in cases of divorce, and so they would want to be certain their marriage met all the requisite social criteria. This *mishnah* does not explicitly state that these rulings only apply in cases of suspicion of adultery. Thus, the concern about whether the *sotah* ordeal can be invoked may be entirely separate from the concern about the *ketubah*. While the *sotah* ordeal can only be invoked in cases of suspected adultery, the *ketubah* is a concern in any case of divorce. The Rabbis require a valid marriage before the associated customs around marriage (the *sotah* ordeal and *ketubah*) can be invoked.

In *m. Sotah* 4:2, the Rabbis return to the question of what to do if the woman confesses or refuses to drink, though this time focusing on the *ketubah* as well as the *sotah* ordeal. If a wife confesses to adultery, if there are multiple witnesses who swear against her, or if she refuses to drink the *sotah* potion, then the wife is not subjected to the *sotah* ordeal and does not receive her *ketubah*. The wife is found guilty of adultery on a confession, on sufficient witnesses, and on refusal to participate in the ordeal; however, the punishment is not the biblical punishment of death. Instead, she is divorced and does not receive her *ketubah* payment.⁷⁶

⁷⁵ A Netinah/Netin was a person of Gibeonite descent who, in this case, was barred from marrying a full Israelite. See Jacob Neusner, *The Mishnah: A New Translation* (New Haven: Yale University Press, 1988), 1141.

⁷⁶ While the text does not explicitly say she is not executed, if she were to be executed, the point of whether she received her *ketubah* would be moot.

The next two women listed are exempted from the *sotah* ordeal but do receive their *ketubah* through the actions of their husbands: the woman whose husband refuses to have her undergo the *sotah* ordeal, and the woman whose husband has sex with her along the way. In either case, the husband's actions have exempted the woman from the *sotah* ordeal. Yet by saying the women receive their *ketubah*, the text implies that they are still divorced from their husbands. If they were not divorced, the *ketubah* would not be transferred to them, but rather the husband would continue to hold it in trust for them. The text assumes that the suspect wife would be divorced from her husband despite her husband's apparent wishes. Again, this interpretation is not in line with the biblical framing, but rather with the framing of the Roman law referenced above in *m. Sotah* 1:3 and 3:6. The locus of power has shifted from the *paterfamilias* to society. Specifically, the Rabbis have inserted their dictate between husband and wife, and their position happens to mirror the Roman one, allowing them mirror Imperial law and if needed use Roman law to enforce their stated position.

The Mishnah then turns to other women who can neither do the *sotah* ordeal nor receive their *ketubah*, this time dealing with their fertility. R. Meir begins in *m. Sotah* 4:3 with the comment that מעוברת חברו ומינקת חברו לא שותות ולא נוטלות כתובה “a woman pregnant by another, and one nursing the child of another, do not drink, nor do they receive their *ketubah*.” As the *sotah* ordeal is only for suspected adultery, and the woman here is known to either be pregnant by another man, or is nursing her child by another man, one presumes the pregnancy started before the woman was subject to her current husband—the woman was not betrothed or married to the man when the pregnancy started. How often this might have happened is not stated but could be that her current husband married her shortly after her previous husband died. The Mishnah does record that other Rabbis disagreed with R. Meir, stating that the new husband

should set the woman apart from his household for some time, presumably until she has bore the child and finished nursing them. This may also be simply an exercise in legal hypotheticals for the Rabbis.

Next, the Rabbis exclude barren women, older women, and women unable to give birth from both the *sotah* ordeal and from receiving their *ketubah*. Infertile women do not get to test their integrity: the husband's only option is divorce in these cases. It is possible that the Rabbis believed the *sotah* ordeal would induce an abortion as the physical manifestation of the woman's adultery. Tivka Frymer-Kensky, working on the biblical text, dismisses the idea that the wife is pregnant as not relevant, as the Numbers passage does not explicitly mention any pregnancy.⁷⁷ However, the Rabbis will often assume information not explicitly given in the biblical text. The Rabbis may have thought the potion would abort a suspected pregnancy from an adulterous affair.⁷⁸ Given the infertile women listed in this *mishnah* would not be affected by such a potion, the ordeal could not be used on them. R. Meir's previous comment, then, becomes even more confusing. How was the woman to be pregnant by another man, yet not have committed adultery? Together, these passages indicate that R. Meir is considering the possibility that the woman was pregnant by another man before her current husband was either betrothed or wed to her.

Infertile women may also be excluded to prevent the *sotah* ordeal being used as a fertility cure. The text of Numbers clearly states that the potion would not harm an innocent woman, who would instead become pregnant and bear children (Numbers 5:28). While this seems far-fetched,

⁷⁷ Tikva S. Frymer-Kensky, "The Strange Case of the Suspected Sotah (Numbers V 11–31)," *Vetus Testamentum* 34, no.1 (1984): 18.

⁷⁸ Any abortifacients needed to induce an abortion are not listed in either the biblical or rabbinic texts. Further discussion of the *sotah* and abortion is in chapter 4.

the Tosefta will wrestle with this issue, ultimately deciding that the *sotah* ordeal cannot be used in to cure infertility.⁷⁹ This *mishnah* ends with the blanket statement that all other women who have been accused of adultery must either undergo the *sotah* ordeal or forgo their *ketubah*. While forgoing the *ketubah* is not the same as admitting guilt, the outcome is effectively the same.

The final two *mishnayot* of this chapter deal with cases in which the husband has some sort of special status. First, *m. Sotah* 4:4 states that the wife of a priest found to be innocent is permitted back to her husband. The *sotah* ordeal itself does not change the sanctity of the woman, assuming she is found to be innocent. The rest are what we might call defective marriages on the part of the husband. If the husband is a eunuch, she is submitted to the *sotah* ordeal. If the marriage is improper by rabbinic law, if the husband is Deaf, mentally challenged, or imprisoned, then the court is to simply warn the wife.

The Rabbis spend chapter 4 of *m. Sotah* wrestling primarily with questions about which marriages can use the *sotah* ordeal. Coupled with this discussion, the Rabbis also discuss which wives should receive their *ketubah*, should their husbands divorce them. By linking the *sotah* ordeal with the discussion around *ketubah*, the Rabbis suggest that adultery is now a case for divorce, rather than a capital crime. As stated above, if the guilty woman is to be executed, then it makes little sense to discuss whether she should receive her *ketubah* immediately before. The Rabbis are also injecting themselves into the workings of the household itself. While the biblical text presents the *sotah* ordeal as an option for the emotionally upset husband, the Rabbis have begun to frame it as required in particular circumstances. If the husband does not make his wife undergo the ordeal, or if he accepts her back (by having sex with her after the allegations), then

⁷⁹ See comments on *t. Sotah* 2:3, page 54 below.

she is still divorced, but he must pay her the *ketubah* she is owed. The Rabbis at this point have ceased to view adultery as a problem the *paterfamilias* resolves on his own and started to view it as one in which society has constructed a set path a husband must follow. In effect, the Rabbis are constructing a response to adultery in line with Roman law rather than either Hellenistic or biblical principles.

The next chapter of *m. Sotah* turns to questions of ritual purity. The first *mishnah* (5:1) discusses two elements. The first is the effects of the water: כשם שהמים בודקין אותה, כך המים בודקין אותו “just as the water tests her, thus the water tests him.” In this line, the text makes the assertion that the *sotah* ordeal tests the wife’s lover as well, though there is no support offered other than that Numbers says ובאו “they come.” If the Rabbis are envisioning the alleged lover standing with the accused wife, they do not spend much time on it here. They follow this with a discussion of ritual purity: כשם שאסורה לבעל, כך אסורה לבעל “just as she is barred from her husband, she is barred from her lover.” The Rabbis justify this by pointing out that the Numbers text has the woman say she is unclean twice: once for her husband and once for her lover. No one offers a time when she might have been permitted to her lover, but not her husband. The Rabbis are focusing on a guilty verdict and what the woman may do after the divorce: she can neither remarry her original husband nor marry her adulterous lover, at least not in a ceremony sanctioned by the Rabbis. The Rabbis are further claiming power over the guilty wife’s future sexuality.

The mishnayot which follow (*m. Sotah* 5:2–5) all deal with close readings of biblical texts like the ones used in 5:1: 5:2 deals with questions of purity; 5:3 deals with the boundaries of towns and the Sabbath limit; 5:4 interprets how Moses and the Israelites sang the Song of Moses in Exodus 15:1; and 5:5 deals with passages from Job relating to Job’s life. While these

passages are interesting with regards to rabbinic biblical interpretation, none of them address the *sotah* ordeal or adultery.

In *m. Sotah* 6, the Rabbis turn to questions of witnesses and when the *sotah* ordeal may be invoked. Along with this, they discuss which circumstances should end in divorce without a *ketubah* payment and when the divorce should have a *ketubah* payment. The first, *m. Sotah* 6:1, addresses unsourced rumors about a wife's adultery. R. Eliezar states that אפלו שמע מעוף הפורה "even if he heard it from a flying bird," the husband should divorce his wife and pay the *ketubah*. R. Joshua expands this slightly, saying עד שישאו ויתנו בה מוזרות בלבנה "only if those who spin by the moon trade stories about her." The difference between R. Eliezar and R. Joshua is one of degrees: R. Eliezar holds a single wild rumor should be grounds for divorce, while R. Joshua holds that it should be more sustained, though it does not need to be part of public conversation. Both note this divorce is with the *ketubah* payment. Effectively, they are saying that, given the lack of any evidence, the husband is within his rights to divorce his wife, but he cannot withhold his obligation to support her without further proof. Further, wild rumors (of varying degrees) are not enough to invoke the *sotah* ordeal.

In the next *mishnah* (*m. Sotah* 6:2), the text takes up the idea of specific witnesses. While 6:1 dealt with unsourced rumors, in 6:2 specific witnesses are brought: מר עד אחד אני ראיתייה "Should one witness say, 'I saw her become unclean,' she does not drink. Even if the witness is just a slave or a female slave, they are to be trusted, even to invalidate her *ketubah*." One witness is not enough to invoke the *sotah* ordeal. However, enslaved people are to be believed as witnesses, even if it invalidates the *ketubah*. The *mishnah* continues by stating that if the witness is from the husband's family (her mother-in-law, her sister-in-law, her co-wife, her stepdaughter), they are

to be trusted, at least somewhat, as the Rabbis generally believe that these persons are unlikely to be allies of the wife. Her husband's family should be trusted to prevent the need of the *sotah* ordeal but should not be trusted to invalidate her *ketubah*. Effectively, a husband's family cannot work together to provide the husband a way to divorce his wife and keep the *ketubah* owed her.

Next, the Rabbis deal with the question of how many witnesses are needed for a divorce without *ketubah*. They point out that the *sotah* ordeal can be invoked with fewer than the usual two witnesses but argue that this is only because Numbers 5:13 explicitly mentions that there are not witnesses against her. Their main point of contention is this: can the husband divorce his wife (a permanent change in her status) without paying her *ketubah* on the testimony of one witness? The Rabbis combine Deuteronomy 24:1 (the divorce law) and Deuteronomy 19:15 (witness requirements in legal situations) to argue that to withhold the *ketubah* (presumably without the *sotah* ordeal), there must be two witnesses against the wife.

The final *mishnah* of chapter 6 (*m. Sotah* 6:4) addresses what to do when there are conflicting witnesses. עד אומר נטמאת ועד אומר לא נטמאת, אשה אומרת נטמאת ואשה אומרת לא נטמאת, היתה שותה "If a male witness says, 'She is unclean,' and a second male witness says, 'She is not unclean,' or if a female witness says, 'She is unclean,' and a second female witness says, 'She is not unclean,' then she drinks." Effectively, if the witnesses for and against the wife are of equal weight, then the *sotah* ordeal can be invoked against her. אחד אומר נטמאת ושנים אומרים לא נטמאת, היתה שותה "If one witness says, 'She is unclean,' and two witnesses say, 'She is not unclean,' then she drinks." If the witnesses for her outweigh the witnesses against her, the wife still drinks. שנים אומרים נטמאת ואחד אומר לא נטמאת, לא היתה שותה "If two witnesses say, 'She is unclean,' but one witness says, 'She is not unclean,' she does not drink." When the witnesses against her outweigh those for her, the *sotah* ordeal is not used; rather, the wife is presumably found guilty.

The *sotah* ordeal is thus reserved for times when there is uncertainty because evidence is balanced, or when most evidence would clear the wife, while there is still evidence against her.

While previous chapters have dealt with the *sotah* ordeal and interpreting the outcome of the ordeal, this chapter focuses on divorce. The Rabbis work through several different levels of evidence, from the unsourced wild rumor to testimony from specific witnesses. They limit the husband's ability to invoke the ordeal, requiring that if a divorce is to happen when there is little evidence for adultery, the husband will need to provide his soon-to-be ex-wife her *ketubah* payment. Social status does not invalidate a witness's testimony, but those in the women of the husband's family cannot invalidate the *ketubah*, either for financial reasons or for concern about rancor between them and the wife. One case which is not covered by the Rabbis is when the number of witness for and against the wife are the same, but they are of different social statuses. For example, the Rabbis consider in *m. Sotah* 6:4 the cases when there is a pair of male witnesses, one for and one against, but they do not cover the case when one of those witnesses is male and the other is female. Regardless, the Rabbis are constraining the choices available to the husband: he can only invoke the *sotah* ordeal in certain circumstances; in others, his only option is divorce with a *ketubah* payment.

Chapter 7 of *m. Sotah* addresses which recited passages may be spoken in any language, and which should be spoken in Hebrew. Most of this chapter is spent nuancing the decisions and offering support for certain prayers and rituals to be in Hebrew or not. The *sotah* ordeal is mentioned and the Rabbis allow that it can be said in any language, but they do not offer any reasoning as to why. We might assume they allow any language to ensure that the woman swearing knows what she is swearing to and because the text of the *sotah* ordeal makes no statement about what exactly is to be said. That said, there is no explicit defense of this position

in the Mishnah. Willem Smelik argues that the Mishnah often can only be fully understood when read alongside the parallel text in the Tosefta; that is, the Tosefta can inform our understanding of the Mishnah text just as the Mishnah informs our understanding of the Tosefta.⁸⁰ In this case, the Tosefta provides the full reasoning defending the Mishnah's decision that the *sotah* oath should be understood by the accused woman.⁸¹ The other discussions in *m. Sotah* 7 are not relevant to the *sotah* directly, but we do see other rituals which require Hebrew, unlike the *sotah*. Looking at *m. Sotah* 7:4, the Rabbis require the woman to speak the words of the *halitzah* ritual in Hebrew because the text reads (Deuteronomy 25:9) וְעָנְתָהּ וְאָמְרָהּ “she shall declare and say.” The Rabbis hold that this formula indicates the woman is to say the words which follow as they are written, and they make this argument for several other rituals. The *sotah* ordeal offers no such phrasing: (Numbers 5:19) וְהַשְׁבִּיעַ אֹתָהּ הַכֹּהֵן וְאָמַר אֶל־הָאִשָּׁה “the priest should make the wife swear, and he should say to her.”

In the following chapter (*m. Sotah* 8), the Rabbis continue their debate about language, this time regarding warfare (Deuteronomy 20:2f). This discussion is not relevant to the *sotah* ordeal or adultery.

Similarly, *m. Sotah* 9 begins with a discussion about the language used in the ritual of the red heifer (Deuteronomy 21:1–9), which is invoked in the case of a found, murdered corpse. With no evidence to solve the murder, the case proceeds with some similarities to the *sotah* ordeal. The Rabbis spend several mishnayot discussing when the ritual of the red heifer should be invoked. Just as with the *sotah* ordeal and the wife's confession, the Rabbis discuss what to do, should the murder be solved before the ritual is begun, or if it is solved during the ritual itself

⁸⁰ Willem F. Smelik, *Rabbis, Language, and Translation in Late Antiquity* (Cambridge: Cambridge University Press, 2013), 85.

⁸¹ Smelik, *Rabbis, Language, and Translation*, 86.

(*m. Sotah* 9:7). In *m. Sotah* 9:8, the Rabbis have virtually the same discussion about contradictory witnesses as they have with the *sotah* ordeal in *m. Sotah* 6:4. Just as in the *sotah* ordeal, the ritual of the red heifer is only invoked when there is insufficient evidence to convict (fewer than 2 witnesses confirming the murder).

The remainder of *m. Sotah* 9 (mishnayot 9–15) details the slow cessation of the effectiveness of Temple rituals and the slow decline of Jewish culture. While it begins with the ritual of the red heifer, it then turns to the *sotah* ritual: מִשְׁרָבוֹ הַמֵּנַאפִּים, פֶּסֶקוֹ הַמַּיִם הַמְרִים “when male adulterers increased, the bitter waters ceased.” Raban Yohanan ben Zakkai cites Hosea 4:14 for cancelling the ritual, effectively arguing that if male adulterers were going to be tolerated, then they would no longer punish female adulterers. It is unclear if the *הַמֵּנַאפִּים* “male adulterers” refers to men who have sex with another man’s wife, or if it means husbands who have sex with women not their wives. The men who have sex with other men’s wives would be included in the biblical understanding of adultery. The Roman understanding of adultery expanded in 197 CE when Julian law includes husbands having sex with women not their wives, though that same law concluded that a wife did not have the right to bring charge for another person (her husband’s lover’s husband).⁸² If the Rabbis are referring to husbands who have sex with women not their wives, this would expand the definition of adultery for them, while at the same time align the sexual ethics they are espousing with those of Rome. There is not enough evidence in the text of the Mishnah, one way or the other.

⁸² Grubbs, *Women and the Law*, 63.

Reviewing what we have covered, the Mishnah spends much of its time dramatizing the *sotah* ordeal, pushing beyond the scope of the biblical text. As Rosen-Zvi has concluded, the Rabbis spend much of the text creating a fantasy of control over women and their sexual agency.⁸³ The theatrics of the rabbinic presentation do not match the biblical account in Numbers: they seem to consider Hosea's and Ezekiel's imagery of the punishment of adulterous wives.⁸⁴ Several the actions the Rabbis describe serve the same function as elements from Foucault's study of punishment and public torture.⁸⁵

In the analysis here, elements in the rabbinic descriptions shift where control and power rest, moving it from the husband to the courts (and to the Rabbis). The first was in *m. Sotah* 1:3 with the discussion of the *terumah*. There, women are denied the *terumah* if their husbands do not want them to undergo the *sotah* ordeal, or if their husbands took them back (by having sex with them). Effectively, these women are punished by losing their status in the community, specifically that they do not have a valid relationship with a priest, which is how they would be allowed to consume the *terumah*. However, *m. Sotah* 4:2 punishes husbands who do not treat their wives as prescribed: the wives are divorced but receive their *ketubah*. The Rabbis have stepped into cases when women are suspected of adultery, but their husbands do not comply. Rather than let the husbands make decisions internal to their household, the Rabbis have made this a public issue, though the Rabbis only have ritual and civic elements with which to punish the offending individuals. In *m. Sotah* 2:6, the Rabbis also limit the husband's use of the *sotah*

⁸³ Rosen-Zvi, *The Mishnaic Sotah Ritual*, 225.

⁸⁴ Rosen-Zvi, *The Mishnaic Sotah Ritual*, 183ff.

⁸⁵ Rosen-Zvi, *The Mishnaic Sotah Ritual*, 202–3; see specifically Foucault, *Discipline and Punish*, chapter 2.

ordeal. While the text in Numbers only mentions that a “spirit of zeal/jealousy” is needed to invoke the ordeal, the Rabbis limit it only to cases when the husband is supposed to be in control of his wife’s sexuality.

In *m. Sotah* 1:5, the Rabbis grant that the wife can end the ordeal, but only by admitting guilt. While it is framed as a way the wife can affect whether the ordeal happens or not, given the other elements of the ordeal, admitting guilt would lead to divorce without any financial support (no *ketubah*, see *m. Sotah* 4:2). Thus, while it appears to be a choice, there is no option for the innocent wife accused of adultery, other than this humiliating ordeal.

The other power the Rabbis debate is the ability of merit to suspend the effects of the ordeal (*m. Sotah* 3:4–5). Several named Rabbis argue that merit should not suspend the effects of the potion for various reasons: women will be sexually promiscuous if they just need to earn merit to avoid being caught; allowing merit to suspend the ordeal would make innocent women still suspect; or there would be no immediate effects, but the potion would slowly kill the woman. An anonymous opinion is that merit suspends the effects of the potion, and this is accepted as the ruling opinion. Thus, the Rabbis do grant women some agency here: if they have sufficient merit, they can postpone the effects of any liaisons. They would still need to undergo the ordeal, regardless.

Throughout this tractate, the Rabbis assume that the punishment for adultery is divorce. This aligns with Roman practice, while biblical law would require death for the adulteress and her lover. As shown above, the Rabbis in the Mishnah also move the crime from one within the household to one which is tried and punished through their courts, again in line with Roman law rather than biblical. However, as Rosen-Zvi has noted, the Rabbis are also making this ordeal a public spectacle, much in line with the prophetic texts of Hosea and Ezekiel—a fantasy of

control over women's sexuality.⁸⁶ While Rabbis engage in this fantasy, they are also working to shift the power of the *paterfamilias* to the courts. In doing this, two things happen: The Rabbis secure a little more power for their own courts, and they align their legal practice with that of Rome.

TOSEFTA AND SOTAH

The Tosefta's Sotah tractate also opens with a discussion on when and how a husband should express jealousy (קנא) of his wife, with R. Yose ben R. Judah speaking in the name of R. Eliezer: מקנא ע"פ עד אחד או ע"פ עצמו ומשקה ע"פ שנים השיבו "he is jealous [warns his wife] on account of one witness or on account of his own [testimony]. He makes her drink on account of two witnesses." R. Yose is immediately rebuffed by an anonymous They who tell him that under such reasoning, אין [לדבר] סוף "there is no end to the matter." They argue that if they allow husbands to warn their wives on such little evidence, then husbands will be constantly doing so.

Immediately after this passage, the Tosefta turns to how much time a wife must spend in seclusion with a man to allow for the suspicion that sex may have happened. A list of Rabbis present varying descriptions of how much time is required before one might be able to assume sexual contact. Some are relatively innocuous descriptions, such as R. Joshua's כדי מזיגת [הכוס] "sufficient to mix the cup." Others may be veiled sexual innuendos, such as R. Eliezer's כדי חזרת "sufficient to go around the date tree." To an extent, the actual amount of time they are arguing about is immaterial, as the effect is to further set constraints on when the husband can invoke *sotah* ordeal. While *m. Sotah* 1:1–2 states that the wife must be warned and told which

⁸⁶ Rosen-Zvi, *The Mishnaic Sotah Ritual*, 183ff.

men she is not to be around (in front of witnesses), *t. Sotah* 1:1⁸⁷ shifts the concern to how much evidence is enough to invoke the ordeal. Then, *t. Sotah* 1:2 starts to innumerate what the wife needs to do to cross the line the husband has set. Finally, the Tosefta continues by expanding *m. Sotah* 1:2's comments about the wife being prohibited to the husband until the *sotah* ordeal is concluded. In *t. Sotah* 1:2–3, the Rabbis discuss whether the husband can be trusted not to have sex with his wife before the ordeal, concluding that the husband should generally be trusted when his wife is suspected.

This opening, like the opening of *m. Sotah* 1, constrains the husband's ability to invoke the *sotah* ordeal. While the text of Numbers 5 states it is the husband who can choose to invoke the ordeal based solely on his emotional state, the Rabbis in *t. Sotah* 1:1–3 have set up a series of steps which a husband must take before the ordeal can be invoked. Effectively, the Rabbis have claimed the power to control the invocation of the ordeal. They do so, though, not through direct fiat, but rather by defining the terms used in the ordeal itself. Specifically, the Rabbis define קנא “jealousy” as a specific kind of warning the husband must make (in *m. Sotah* 1:1) and then they elaborate on what the wife must do to violate that warning (in *t. Sotah* 1:1–2). This קנא “jealousy” is no longer an emotion or spirit (to use the term from Numbers) but is instead a specific legal requirement which must be met before the *sotah* ordeal can be invoked. The Rabbis have shifted the initial condition from the emotions of the *paterfamilias* to legal conditions under the control of their own courts.

⁸⁷ The numbering of the Tosefta is inconsistent across the versions I have consulted. The text provided in Davka's *Judaic Classics Library* numbers the individual *tosefot* differently than Neusner does in his translation. I have chosen to use the numbering in Lieberman's Hebrew and Neusner's English versions. Both sets of numbering seem arbitrary at places, occasionally breaking the logic and flow of the Tosefta.

The Tosefta then turns to some of the realia of the ordeal. In *t. Sotah* 1:4, the text begins by citing *m. Sotah* 1:5 about the location. The Tosefta then offers 1 Kings 8:31–32 as evidence for that choice, switching between Kings and the *sotah* ordeal in Numbers 5. The Tosefta continues in 1:5 about location and space: היא עומדת מבפנים והכהן עומד מבחוץ “she shall stand in the Presence, and the priest shall stand outside.” The wife is placed in the Temple, and clearly on her own. While these two *toseftot* illustrate interpretive techniques, they do not say much about adultery, save that the ordeal is specifically trying the woman.

Next, *t. Sotah* 1:6 records a counterpart to *m. Sotah* 1:4. In the Mishnah passage, the court is to admonish the woman to not drink and simply admit guilt. The Tosefta records that the court should also require the wife to go through the ordeal if she is convinced that she is innocent. The admonitions in the Mishnah assume the wife’s guilt, but the Tosefta attempts to balance this out, providing encouragement for the innocent wife. The court is to say בתי אם ברור לך שאת טהורה “my daughter, if it is clear to you that you are clean...” They do not phrase it as simply את טהורה “if you are clean.” The wife cannot assert her innocence: she can only claim her view that she is innocent. The Rabbis do not allow that willingness to drink is sign enough that the wife is innocent, but rather only that she believes she is.

This passage on the admonitions interrupts the flow of the Tosefta slightly, as *t. Sotah* 1:6 then returns to technicalities of the ritual. It ends with stating that two accused wives are not allowed to drink at the same time: instead, each must undergo the ordeal on her own. The phrasing of the discussion returns to that of *t. Sotah* 1:4–5, which discusses how the priest places the wife during the ritual. The Tosefta continues with discussion of the steps for the ordeal, stating in *t. Sotah* 1:7 that the priest who is to accompany each accused wife is chosen by lot, even if it is the high priest. It then cites *m. Sotah* 1:5 about not denuding attractive accused

wives, to not arouse the younger priests. Following, in *t. Sotah* 1:8, the Rabbis discuss the amount of dust the priest is to put into the potion for the ordeal, aligning it with the amount of ash from the red heifer and the blood of a bird for a *mesora*. In *t. Sotah* 1:9, the Tosefta allows the priests to add oil and other enhancements to their portion of the offering, but they are not allowed to let it leaven. None of these passages say much about the Rabbis' understanding of adultery.

In the final *tosefta* of this chapter (*t. Sotah* 1:10), the Rabbis discuss the difference between various meal offerings. They start by noting the meal offering of the *sotah* ordeal, along with the meal offering of a sinner, does not get oil or spices added to it, citing Numbers 5:15 for the *sotah* offering. While they discuss other offerings, they return to the *sotah* offering, with R. Tarfon and R. Aqiba disagreeing about the favorability of the *sotah* offering. R. Tarfon argues כל זכרונות שבתורה [נאמרו] לטובה חוץ מזו “all the remembrances in the Torah are favorable, save this one.” He then cites Numbers 5:15, that this offering is to recall the alleged transgression of the wife. R. Aqiba counters אף זו לטובה “even this one is good,” and follows with a citation from Numbers 5:28, in which the ordeal brings about children for the innocent woman. R. Aqiba is arguing that even the humiliation of the *sotah* ordeal, or at least the offering used in it, is potentially positive if the wife is innocent. She will earn children, which is, at least for the men writing this, the goal of all women.

In chapter 2, the Tosefta continues with the ordeal, describing in detail how the priest is to approach the Temple, where he should stop and write out the oath, and how he should go over, in detail, the oath with the wife. The text explicitly spells out that the priest is to be very thorough in his explanation:

ומשמיעה בכל לשון ששומעת כדי שתהא יודעת על מה היתה שותה [וכמה] היתה ומשמיעה בכל לשון ששומעת כדי שתהא יודעת על מה היתה שותה

“he should instruct her in any language that she understands”

so that she understands for what reason she is drinking, and on what account she is drinking, and for what reason she is unclean, and by what account she is unclean.” This could be an attempt to make sure the wife knows why she is to be put through this ordeal. At the same time, by going through explicit detail, the priest would also be submitting the wife to a public litany of the accusations against her. In this description, the priest makes the wife into an example for the audience of the ordeal, warning them much in the same way Foucault describes.⁸⁸ The description of the crime and the illumination of the oath become discourse which highlights the wife’s alleged adultery, making the matter overtly public.

Continuing, *t. Sotah* 2:2 turns to *m. Sotah* 2:5 and the double affirmation of the oath. It cites R. Meir’s comment that one amen is to confirm that the wife has not been made unclean, and the second amen is that she will not become unclean in the future. The Tosefta explains that the *sotah* potion could affect a wife for adultery even after the ordeal is completed: אלא אפילו “but even should she disgrace herself ten years later, the waters would be stirred up against her.” R. Meir’s comment and the Tosefta’s explanation turn the *sotah* ordeal into more than a simple test of a wife’s previous fidelity. Now the ordeal will continue to judge the wife in the future. The text does not deal with the repercussions of this new power for the *sotah* ordeal, even though it is a clear expansion beyond the Numbers passage.

The same tosefta (*t. Sotah* 2:2) continues with the ordeal, describing how the priest would go and blot out the scroll into the water. The text then cites *m. Sotah* 3:3, about what to do if the wife refuses to drink before the scroll is erased. The Tosefta adds other occurrences which would cause the scroll to be preserved and the water poured out: או שאמרה טמאה אני או שבאו עדים שהיא

⁸⁸ Foucault, *Discipline and Punish*, 58–59.

טמאה “or if she says, ‘I am unclean,’ or witnesses testify that she is unclean.” The refusal to drink on its own might have implied guilt, but the text cements that guilt by linking it to both the explicit admission of guilt and there being sufficient evidence found to convict her. Here, *t. Sotah* 2:2 has made it clear that refusing to drink the potion is legally the same as being convicted through either confession or sufficient evidence.

As *t. Sotah* 2:2 addresses what to do if the wife refuses before the scroll is erased, *t. Sotah* 2:3 addresses what to do if she refuses after it has been erased. It continues with the quotation from *m. Sotah* 3:3. After the Mishnah text states she is made to drink, the Tosefta cites a disagreement between R. Judah and R. Aqiba:

ר' יהודה אומר בצבת של ברזל פותחין פיה של זו ומערערין אותה ומשקין אותה בע"כ אמר לו ר"ע [וכי] למה משקין [את זו] לא לבדקה הרי [היא] בדוקה ומנוולת אלא לעולם יכולה היא שתחזור עד שתקרב מנחתה קרבה מנחתה ואמרה איני שותה מערערין אותה ומשקין אותה בעל כרחיה

R. Joshua said, “With tongs of iron they seize her mouth and forcing it [open] make her drink against her will.”
R. Aqiba says, “Why should we make her drink? Is it not to test her? Look, she is tested and guilty already! But she should always be able to retract until her offering is offered. Once the offering is offered, should she say, ‘I shall not drink,’ they open her mouth and make her drink against her will.”

R. Joshua and R. Aqiba have different views on the purpose of the ordeal itself. R. Joshua sees the ordeal as more than a simple test. Like the nature of public torture in Foucault, R. Joshua is using the ordeal to punish the wife for causing suspicion, as well as to determine if the suspicion is true.⁸⁹ R. Aqiba begins by addressing the ordeal as a legal tool to determine guilt. If the wife has effectively admitted guilt already, there is no need for the actual ordeal, and it should be allowed to be aborted at any time. However, R. Aqiba does concede the ritualistic part of the

⁸⁹ Foucault, *Discipline and Punish*, 42.

ordeal, and admits that after a certain ritual threshold, the ordeal must be concluded, even if it is against the will of the wife.

The discourse continues, turning to matters of interpretation. The Rabbis offer opinions on doublets in the text: Why is jealousy mentioned twice? Why does she say amen twice? The passage (*t. Sotah* 2:3) ends with a discussion of Numbers 5:28: וְאִם-לֹא נִטְמָאָהּ הָאִשָּׁה וְטָהְרָה הִיא “if the wife is not unclean, then she shall go free.” R. Simeon b. Eleazar brings up the verse to explain that she would be free from any ill effects of the ordeal or her alleged sin. R. Judah b. Petera argues that it means:

יולדת בצער יולדת בריוח נקבות יולדות זכרים מכוערין יולדת נאים שחורים יולדת לבנים קצרים
יולדת ארוכים אחד אחד יולדת שנים

“If she gave birth in pain, she shall give birth with ease. If she gave birth to females, she shall give birth to males. If she gave birth to ugly children, she shall give birth to attractive ones. If she gave birth to dark-toned children, she shall give birth to fair ones. If she gave birth to short children, she shall give birth to tall ones. If she gave birth one at a time, she shall give birth two at a time [twins].”

This suggestion turns the ordeal into a fertility ritual if the woman has been faithful. The text rejects turning the ordeal into a fertility tool, though, with the phrase תינוק [העולה לחדשיו] הרי זה מכלה עולם “a child that is precocious, look how he uses up the world.”

The text follows the discussion on the outcome of the ordeal with this line: על כל ביאה “for each time her husband has sex with her, he is liable to/for her.” The Tosefta offers no context for this statement, as it immediately turns to the status of the offering. Within the context of the *sotah* ordeal, I assume this text is referring not just to regular sexual encounters between the husband and wife, but rather to any sex the husband might initiate after the ordeal has been invoked, perhaps even any sex after suspicion has arisen. As we have seen in the discussion above in *m. Sotah* 1:3, 3:6, and 4:2, a husband who has sex with his

accused wife annuls his ability to invoke the *sotah* ordeal, though the couple could still be forced to divorce. The meal offering discussion that follows this line from *t. Sotah* 2:4 does quote from *m. Sotah* 3:6, so this is likely why the line is present here. This line expands the Mishnah discussions, effectively labeling each sexual encounter as an individual illicit sex act. This means that the husband is not just annulling his ability to invoke the *sotah* ordeal but is also committing distinct acts of illicit sex. By making each sex act an individual sin, the Rabbis have placed further restrictions on a husband's ability to forgive his wife: if he takes her back, every time they have sex, he is effectively committing a sexual sin. The Rabbis again attempt to control a husband's reaction to adultery, and to align it with the Roman legal system.

The remainder of *t. Sotah* 2:4 concerns the offering. It mostly quotes from *m. Sotah* 3:6, adding that the redeemed unclean offering is eaten, and the discarded unclean offering is allowed to rot and thrown away. What follows in *t. Sotah* 2:5 is a discussion of what to do with the offering if either the husband or wife dies during the process of the offering and focuses on whether the ritual portion of the ordeal is considered completed (and the remainder of the offering can be consumed) or incomplete (and the remainder of the offering must be destroyed). After this, *t. Sotah* 2:6 addresses what to do if witnesses come during the offering, similarly interrupting the ritual portion of the ordeal, with similar outcomes. Additionally, it discusses what to do with the offering when the priest is the aggrieved husband. While these discussions speak to how the Rabbis viewed the sacrificial system of the Temple, they do not illuminate the Rabbis' thinking on adultery. The remainder of *t. Sotah* 2 (2:7–9) discusses the gender roles described in *m. Sotah* 3:7–8, connecting and contrasting them with *m. Ketuvim* 4:4, *m. Qiddushin* 1:7, and *m. Sanhedrin* 8:1, which is discussed above on *m. Sotah* 3:7–8.

The following chapter of *t. Sotah* turns to the question of measure-for-measure punishment discussed in *m. Sotah* 1:7. While *t. Sotah* 3:1 lays out the biblical sources for the principle of measure-for-measure punishment, *t. Sotah* 3:2–5 turns specifically to the *sotah* ordeal. The text details how specific elements of the ordeal as described reflect the crime of which the wife is accused. It begins with היא עמדה [לפניו כדי שתהא נאה לפניו לפיכך כהן מעמידה לפני הכל להראות קלונה “she stood before him to be pretty before him, there for a priest stands her before everyone to show her shame.” For this parallel, the Tosefta cites Numbers 5:18, in which the priest stands the wife before God, but most of the other parallels have no text supporting them. While *m. Sotah* 1:7’s list is relatively short, *t. Sotah* 3:2–5 goes through lurid detail of how the woman prepared for her lover and then committed the act of adultery: she dresses up for him, she does her hair and makeup, she signals to him, she exposes her body, she thrusts her thigh at him, she ties on a belt for him, she takes him on her belly, she feeds him delicacies, she gives him good wine, and she acts in secret. Several of these seem to be hypothetical, there only to provide a parallel for the Rabbis’ description of the punishment: she is put on display, her hair is disarrayed, her face is scarred/afflicted, her fingernails fall out, her cloak is torn off of her, a belt of twine is wrapped around her, her thigh falls, her belly swells, her offering is plain and “fit for a cow,” she must drink bitter water, and God will bring her out of secret into the public eye.

This idea of measure-for-measure, or something akin to it, shows up in Foucault’s work as well. “There were even some cases of an almost theatrical reproduction of the crime in the execution of the guilty man—with the same instruments, the same gestures.”⁹⁰ The goal of this theatrical reconstruction of the crime in the punishment is to link the torture to the crime in public. The Rabbis do much the same, interpreting the elements of the *sotah* ordeal as

⁹⁰ Foucault, *Discipline and Punish*, 45.

representative of acts of adultery. Yet there is a difference: Foucault focuses on the punishment of the guilty. The individuals on display at their execution have been condemned by the courts already. The Rabbis are discussing the *sotah* ordeal, to which suspected adulteresses are subjected. Looking back at the list of parallels, some of them occur before the ordeal is completed and the wife's guilt or innocence is known: being put on display, shamed by undress and disarrayed hair, and the belt of reeds. The harshest punishments (her "thigh falling" and her belly swelling, etc.) only occur to the guilty, but the other aspects of the ordeal happen to any woman accused. This would make it closer to the judicial torture Foucault describes, which was used to procure a confession. It is excused, as the accused must be guilty of something, even if it is just causing suspicion.⁹¹

The Tosefta then continues with a series of narratives the Rabbis use to show the measure-for-measure nature of divine punishment: 3:6–9 the Flood, 3:10 the Tower of Babel, 3:11–12 Sodom, 3:13 Egypt, 3:14 Sisera, 3:15 Samson, 3:16–17 Absalom, 3:18 Sennacherib, and 3:19 Nebuchadnezzar. The text follows this with a series of examples of measure-for-measure rewards. In *t. Sotah* 4:1, the general principles are established, with examples in the following passages: 4:2–6 Abraham, 4:7 Joseph, and 4:8–9 Moses. The text turns back to the *sotah* ordeal in *t. Sotah* 4:10, discussing how with her "thigh," a euphemism for vagina, she sinned, and so the potion affects her vagina. The text then returns to those measure-for-measure punishments, again citing the Flood, Sodom, and Pharaoh, then adding the spies from the Wilderness narrative, the neighboring nations to Israel during the Assyrian and Babylonian conquests, and the prophets of Jerusalem during the conquest of Judah.

⁹¹ Foucault, *Discipline and Punish*, 42.

The Tosefta briefly turns back to the *sotah* ordeal in *t. Sotah* 4:16, in which the Rabbis declare that the wife is barred from sex with both her husband and her lover. After the husband divorces his wife, she cannot be married to her lover, at least not in a rabbinically sanctioned marriage. If the wife were subject to the biblical punishment for adultery—death—this discussion would be superfluous: she cannot marry or even have sex with her lover if she is dead. The Rabbis are assuming that she will be available to marry but wish to deny access to her lover. They follow this brief point with a discussion of the story of the Garden of Eden, when they propose that the snake wanted to kill Adam and marry Eve (*t. Sotah* 4: 17–18). They arrive at this conclusion based on their interpretation of the punishment of the snake. They also apply it to several other narratives, though without specifics mentioned (*t. Sotah* 4:19).

The Tosefta then turns to several cases which intersect with other aspects of rabbinic marriage practices: levirate marriage, barren women, social class differences, etc. This passage parallels parts *m. Sotah* 4. In *t. Sotah* 5:1, the Rabbis cover the case when the wife is warned about another man before the levirate marriage is completed, but allegedly commits adultery after the marriage. She is either to undergo the *sotah* ordeal, or to be divorced and not receive her *ketubah*. Similarly, a barren woman or a woman past menopause either undergoes the ordeal or does not receive her *ketubah*, though *t. Sotah* 5:2 limits this only to such women if the husband has another wife with a child. If the wife has a child by the husband, or is pregnant by the husband, she must submit to the ordeal or lose her *ketubah* (*t. Sotah* 5:3). In *t. Sotah* 5:4, the Rabbis consider a list of couples in which both parties are of equal social class: in these cases, the wife must submit to the ordeal or lose her *ketubah*. R. Simeon b. Eleazar excludes barren women, as the ordeal grants children to the innocent wife. The passage closes with the woman who is awaiting levirate marriage, is warned against a particular man, and goes in secret with

him before her levirate marriage is completed. This woman is not subjected to the *sotah* ordeal, but also does not receive her *ketubah*.

All of these interact with aspects of marriage under rabbinic law. The *sotah* is only available if the marriage was sound according to rabbinic law, and only while it was so. Thus, the *sotah* can be invoked only during marriage, and only when the social classes involved are sanctioned by rabbinic law. The discussion gets more complicated when the wife's fertility comes into it. Barren women are, in some passages, exempted; other places, they are not. If the husband has another wife who has a child, the barren woman must undergo the *sotah* ordeal or lose her *ketubah* (*t. Sotah* 5:2). But, if there is no other wife or children, there is some discussion, as the general text says she must undergo the *sotah*, while R. Simeon b. Eleazar says she does not (*t. Sotah* 5:4). The following tosefta (*t. Sotah* 5:5) states that a barren woman, married to a young man, does not have to drink, but also does not receive her *ketubah*, as the young man was presumably not expecting children. Further, in *m. Yebamot* 6:6, the Rabbis make the statement that a barren marriage should be terminated so that both the husband and the wife can attempt to find someone to have children with, making marriages with the assumption of childlessness dubious in rabbinic thought. There is considerable discussion around barren marriages, so no single answer is provided, and plenty of nuance is offered. The Rabbis are asserting their control over marriage generally, at least within the community. While they can insist that the *sotah* ordeal should take place, the reality was that the ordeal could not actually happen, as they lacked the cultic space to perform it. Wives have a choice: submit to the ordeal, or lose the *ketubah*, but one of those options (the ordeal) cannot be performed. The Rabbis effectively limit the response to adultery to divorce, and a divorce without the economic security of the *ketubah*.

The Rabbis then pivot to the question of which men count for adultery. This discussion is prompted by *m. Sotah* 4:4, which states על ידי כל העריות מקנאין, חוץ מן הקטן, וממי שאינו איש “on account of intercourse with any [man] she is warned, except for a minor and one that is not a man.” In *t. Sotah* 5:6, R. Yose elaborates that this includes one who is Deaf, one who has an intellectual disability, or one who is a minor, though he notes that should these conditions end, then the husband can impose the ordeal on his wife. The implication is that the man the woman commits adultery with must consent to the act, though the text does not address what is happening when the woman has sex with these men who cannot legally consent. The text of the Tosefta adds in that if the husband is overseas or imprisoned, he can still invoke the ordeal when he returns. Similarly, *t. Sotah* 5:7 addresses a woman who has sex with her minor son, with House Shammai invalidating her from marriage into the priesthood, and House Hillel allowing it. This debate seems to be working off *m. Sotah* 4:4’s declaration that a woman is not subject to a warning if the person with whom she is suspected of having an affair is a minor. But what about when an adult lover does not consent? The text does not address what happens if the wife raped the other man. Considering the treatment of the Mrs. Potiphar story in earlier texts, it is possible that the Rabbis simply could not conceive of a woman forcing a man to have sex. Yet these passages in the Tosefta imply that she might be able to convince someone who is not legally culpable to have sex with her. While modern legal proceedings would call this rape or sexual assault, the Rabbis did not have this concept. This follows what Foucault argued—that one’s available language shapes the discourse of a topic.⁹²

⁹² Michel Foucault, *The Archaeology of Knowledge: And the Discourse on Language* (New York: Harper & Row, 1976), 216.

The Tosefta (*t. Sotah* 5:8) then turns to the question of conflicting witnesses, discussing *m. Sotah* 6:4. R. Judah is recorded as saying that a single witness cannot be used to invoke the ordeal, but argues *m. Sotah* 6:4 is really speaking about a case when one witness says one thing, and two witnesses say the opposite—in such a case, one sides with the two witnesses. The anonymous text argues that one witness can be used to invoke the ordeal (or deprive the wife of her *ketubah*). These two positions differ over how they view the ordeal. The anonymous source is arguing that the ordeal is used in place of a second witness, as a judicial tool. R. Judah sees the ordeal as part of the punishment of a suspect wife—it can only be invoked if two witnesses provide testimony. Further, R. Judah does not see the ordeal as replacing a witness—thus the ordeal cannot be invoked (and possibly force the woman out of her *ketubah*) on a single witness.

What follows in *t. Sotah* 5:9 is a passage about men's taste in women, and how they control them:

היה ר"מ אומר כשם שדעות במאכל כך דעות בנשים יש לך אדם שהזבוב עובר ע"ג כוסו מניחו ואינו טועמו זה חלק רע בנשים שנתן עיניו באשתו לגרשה יש לך אדם שהזבוב שוכן בתוך כוסו [זורקו] ואין שותהו כגון פפוס בן יהודה שנעל דלת בפני אשתו ויצא ויש לך אדם שהזבוב נופל בתוך כוסו [זורקו] ושותהו זו מדת כל אדם [שראה] את אשתו שמדברת עם שכניה ועם קרובותיה ומניחה יש לך אדם שהזבוב נופל לתוך תמחוי שלו [נוטלו] ומוצצו וזורקו ואוכל את מה שבתוכה זו מדת אדם רשע [שראה] את אשתו יוצאת וראשה פרוע יוצאת וצדדיה פרומין [גס בעבדיה לבה גס בשפחותיה יוצאה וטוה בשוק רוחצת] ומשחקת עם כל אדם מצוה לגרשה

R. Meir would say: Just as there are tastes in food, so there are tastes in women.

You have the man, that should a fly pass by his cup, he sets it aside and will not taste it. This one is a bad lot for women, who is always looking for a reason to divorce his wife.

You have the man, that should a fly move into his cup, he tosses it and does not drink it. This is like Papos b. Judah, who would lock his door before his wife when he went out.

You have the man, that should a fly fall into his cup, he tosses it away, and drinks it. This is the way of all men who see their wife talking with her neighbors and her relatives and leaves her be.

You have the man, that should a fly fall into his cup, he picks it up, sucks [the soup off] it, tosses it, and then eats what was on his plate. This is the way of the wicked man, who sees his wife go out with her hair wild, her shoulder

bare—she is also bold before her slaves and her female slaves—who goes out and spins in the marketplace, bathing, and speaking with any man. It is an obligation [*mitzvah*] to divorce [such a woman.] (*t. Sotah* 5:9)

The passage then cites Deuteronomy 24:1, the only biblical divorce law, in defense of this position. R. Meir's discourse walks through several potential circumstances, talking about various ways men might react to their wives' behaviors. The first man he mentions divorces a woman for any suspect activity, and R. Meir labels this as bad for women (though does not outright condemn the behavior). The second man is one who, rather than divorce his wife, simply locks her away at home, preventing her from ever going out to the marketplace or otherwise interacting with other men. The third man he describes is the way men are supposed to act: unconcerned if their wife should talk to neighbors or relatives she should meet in her daily life. R. Meir assumes women should have some public life, and it will by necessity mean interacting publicly with other men. The final man is one who does not care about his wife's behavior at all: she can be as brazen as she likes, and the man does not care. R. Meir argues that there are limits to women's public behavior, and that should a wife cross them, the man must divorce her. This *tosefta* is the first time a Rabbi makes a clear demand that a man must divorce his wayward wife. Previous passages we have examined have implied this, such as *m. Sotah* 1:3, 3:6, and 4:2, by taking away certain rights, or access to the *sotah* ordeal, should a husband take his wife back. Here, R. Meir offers an explicit command to divorce a woman who is too unreserved in public. None of the behaviors Meir describes are adulterous on their own, but many might lead someone to suspect the wife of infidelity. As such, not only must the wife be divorced for actual adultery, but she should be divorced if she acts in such a way that the public might suspect her of it.

R. Meir's passage continues through the rest of *t. Sotah* 5:9, working through Deuteronomy 24:1–2 and applying it to his metaphor. He argues that women who are divorced

for wanton behavior should not be married to someone else. The second husband will either divorce her or die, R. Meir says, citing Deuteronomy 24:2. He says: כדאי האיש הזה למיתה שאשה זו כנס לתוך ביתו “this man deserves to die because he received this [kind of] woman into his house.” R. Meir is arguing that men should not allow women to be wanton in public, and if they do (and do not divorce her over it), they are deserving of death. R. Meir’s interpretation shifts the concern of Deuteronomy 24:1–2 from a woman practicing serial polyandry (going back and forth between two husbands) to men accepting wanton behavior of their wives.

The Rabbis shift their discussion in *t. Sotah* 5:10–12 to look at issues of marital harmony. In 5:10, they look at the case of a spouse hoping that the other will die, so they can marry someone else. In 5:11, they look at spouses shamed into marriage by their families. In both cases, the other partner (the one not hoping their spouse will die, or the one not shamed in marriage) will outlive the other, so the Rabbis say. R. Meir continues in *t. Sotah* 5:11 to argue that entering a marriage not sanctioned (for social class reasons) by the Rabbis breaks several negative commands, and that it stops procreation (as the Rabbis held that God would not bless an unsanctioned marriage with legitimate children, though it helped that any children from such a union were considered illegitimate). Through this text, the Rabbis are solidifying their control of marriage, but not speaking directly about adultery. In *t. Sotah* 5:12, the Tosefta includes a narrative of God mediating a conflict between Sarah and Abraham. The point of this narrative is to explain God’s position in Genesis 21:12 and is placed here to shore up the rabbinic argument for a harmonious marriage. Again, the concern is not adultery. In *t. Sotah* 5:13, the text returns to the concerns of *m. Sotah*, specifically 5:2–3; however, this text wrestles with issues around multi-order contamination and *shabbat* limit markers and is not directly related to adultery.

The following chapter, *t. Sotah* 6, expands the discussion found in *m. Sotah* 5:4–5. Just as *m. Sotah* 5:4–5 is useful for exploring rabbinic interpretive techniques, so too is *t. Sotah* 6. However, none of the text relates to the *sotah* ordeal or adultery generally (*t. Sotah* 6:6 does address Sarah and Abraham’s disagreement over Hagar and Ishmael, but again does not address adultery or the *sotah* ordeal).

The text turns to the question of oaths in *t. Sotah* 7, though it does so in a general manner. While *m. Sotah* 7:1 begins with a comment about the oath in the *sotah* ordeal, the Tosefta’s text begins with the general statement that oaths are taken in any language. In *t. Sotah* 7:1, the text makes clear these are oaths administered by a judge in a court. The rest of the chapter addresses how the courts and cult are to be run, as well as addressing the issue of who is exempted from war service, expanding the discussion of *m. Sotah* 7–8. In *t. Sotah* 8, the Rabbis begin their discussion again with a comment from *m. Sotah* 7:5, but quickly move into a side discussion about the crossing of the Jordan River (Joshua 3–4). Chapter 9 of *t. Sotah* begins with a discussion of the red heifer ritual (Deuteronomy 21), paralleling the text of *m. Sotah* 9:2. While the first few *tosefot* focus on the red heifer ritual, the text quickly shifts to a series of passages with a similar exegetical structure to the last part of the red heifer ritual. While this shows several examples of rabbinic exegetical tools, it does not address adultery. Similarly, *t. Sotah* 10–15 continues to expand the interpretive ideas in *m. Sotah* 9:9–15, the catalog of rituals and other miraculous elements of the biblical text which the Rabbis claimed to have ceased. The *sotah* ordeal is included in the Tosefta’s list, expanded only slightly from *m. Sotah* 9:9. In *t. Sotah* 14:2, Rabban Yohanan b Zakkai says that the *sotah* ordeal was ceased because it was intended for cases when there was doubt: now with the abundance of public adultery, there is no cause for doubt, and thus the ordeal does not function. There is little other comment on adultery or the

sotah ordeal, as the Rabbis begin their discussion with biblical events proving their point, before moving on to events contemporary to them.

REVIEW OF THE TOSEFTA

The Tosefta has several themes that pertain to how the Rabbis treated adultery. First, the Rabbis remove agency from the husband in cases of suspected adultery and place it in society: specifically, the courts. Second, they use the description of the *sotah* ordeal to control women's sexuality. Third, they place the ordeal firmly in the public space, even though the ordeal can no longer be practiced. Finally, the Rabbis debate whether the ordeal should be considered a method of obtaining evidence, or a punishment for suspected adultery.

Several passages in the Tosefta remove agency from husbands. In *t. Sotah* 1:1–3, the Rabbis lay out exactly what must happen for a husband to invoke the *sotah* ordeal. This text parallels much of *m. Sotah* 1:1–3. The Tosefta goes into far more detailed discussion, describing exacting limits on the husband's ability to invoke the ordeal. While the biblical text of Numbers 5 only requires a husband's suspicion, the Tosefta requires a publicly recorded warning against specific men for the wife by her husband. Further, the wife must violate that warning in specific ways before the ordeal can be invoked.

The husband cannot forgive his wife and take her back. The Tosefta does not say this explicitly, but two passages effectively bar a husband from taking his wife back once the *sotah* ordeal is invoked. The first is *t. Sotah* 2:4, which bars a husband from having sex with his wife when she is accused. The second is R. Meir's extended metaphor about flies and soup in *t. Sotah* 5:9. R. Meir lays out a correct way of treating women who garner public suspicion about their fidelity: they are to be divorced, regardless of the husband's feelings in the matter. Again, while

Numbers 5 portrays the *sotah* ordeal as being based upon the husband's emotional state, the Rabbis have presented it as a legal tool which is invoked under specific legal qualifiers, and without the husband's choice or emotions considered.

The Rabbis also limit which husbands can invoke the ritual based upon the people to whom they are married. By limiting the *sotah* ordeal to only rabbinically sanctioned marriages (*t. Sotah* 5:1–5), the Rabbis restrict men to approved marriages in general. While the Hellenistic literature was concerned with whom men were marrying, Hellenistic texts were mostly interested in preventing intermarriage with other cultures. The Rabbis are not only concerned with intermarriage, but also with marriage between internal Jewish social classes. The Tosefta also limits which men can invoke the ordeal at all, with minors and others of limited legal agency being denied the ability to invoke the ordeal in *t. Sotah* 5:6–7.

Rabban Yohanan b. Zakkai is recorded as saying that the *sotah* ordeal was annulled because of the increase in adultery (*t. Sotah* 14:2). The Mishnah records a similar statement in *m. Sotah* 9:9, though with less detail. The Tosefta records that Rabban Yohanan blamed the public and blatant adulteries of his current age as voiding the ordeal itself. Effectively, he is arguing that because men are being wanton with their sexual relationships, they no longer have access to the *sotah* ordeal. Numbers, and the Bible generally, places few restrictions on male sexual fidelity, allowing men relative sexual freedom, provided they do not seek out other men's wives and are willing to pay for any virgins they should deflower.

Through these texts, the Tosefta further illuminates what the Mishnah began: a shift of power from the husband to the rabbinic courts. The husband no longer controls matters internal to his household, at least with regards to marriage. Instead, marriage and adultery become the purview of the Rabbis. It is they who can dictate which course of action a husband can take.

While the *sotah* ordeal in Numbers does grant the priest the role of divining information, the ordeal is originally done at the behest and impetus of the husband. Now, the ordeal has been placed in a series of rabbinic rules around marriage and home life, rendering the ordeal part of the wider rabbinic system.

The second major theme is control of women's sexuality. The Rabbis use their reconstructed ordeal to shame any hypothetical adulteress. In *t. Sotah* 1:6, the Tosefta offers a continuation from the Mishnah's admonition to admit guilt (*m. Sotah* 1:4). In a way, the Tosefta's admonition reestablishes the wife's potential innocence: this text allows her to maintain her innocence and encourages her to do so. Yet the text does not fully grant the wife innocence, phrasing it as "if it is clear to you that you are clean..." instead of "if you are clean..." The text still latches onto the suspicion which brought the wife before the court to begin with.

The Rabbis also portray the humiliation of the wife throughout the process of the ordeal. The second part of *t. Sotah* 1:6 makes sure to note that each wife is to undergo this ordeal individually. In *t. Sotah* 1:10, the Rabbis point out how unique the offering in this ordeal is, marking it as shameful. Just bringing the offering for the ordeal announces, publicly, the nature of the wife's visit to the Temple. Similar to Foucault's spectacle, bringing this offering marks the wife as a suspected adulteress, showing her as potentially sinful and her husband as correctly seeking judgment.⁹³ Foucault's spectacle could be interrupted with a confession, but ultimately continued to its conclusion: at a certain point in the *sotah* ordeal, the Rabbis force it to completion, even using tongs to force the wife's mouth open if necessary (*t. Sotah* 2:3).⁹⁴ The

⁹³ Foucault, *Discipline and Punish*, 34.

⁹⁴ Foucault, *Discipline and Punish*, 43–45.

Rabbis do allow confession early enough in the ordeal to abort the ordeal. The Rabbis in *t. Sotah* 2:2 even expand the ordeal to judge future adulteries, expanding the power of the ordeal. This is a prime example of how the Rabbis use this ordeal as a form of wish fulfillment around their unease with female sexuality.⁹⁵ In *t. Sotah* 4:16, the Rabbis forbid the woman to have sex with either her husband or her lover again. They have assumed full control over her sexuality at this point. Coupled with R. Meir's fly analogy (*t. Sotah* 5:9), the text pronounces that women who would commit adultery should be avoided by all good men.

The third major theme centers on the public nature of the ordeal. The text of Numbers makes no clear indication how public the ordeal itself should be. While the ordeal is performed at an altar by a priest, the biblical text only speaks about the outcome of the ordeal being made public. The Rabbis assume the ordeal is to take place at the Temple and very much in public (*t. Sotah* 2:1). The nature of the offering becomes another way the ordeal is announced (*t. Sotah* 1:6). Both the Mishnah and the Tosefta have an extensive description of the way the priest is to humiliate the wife in public. The Rabbis frame this in both texts as an example of measure-for-measure justice, with each act the priest is to do connected back to some imagined step in the wife's seduction of her lover (*m. Sotah* 1:6–7, *t. Sotah* 3:2–5, 4:10). The Rabbis revel in the salacious imaginings around this alleged adultery, inventing aspects as necessary; the biblical text lacks many of these details. Rosen-Zvi argues that that Rabbis' description parallels Ezekiel 16 and 23 more closely than the actual *sotah* passage of Numbers 5.⁹⁶ Rosen-Zvi also notes that the Tosefta marks adultery as something the woman sought out, in its descriptions of the measure-for-measure punishment.⁹⁷ The Tosefta does not address the male adulterer or the idea

⁹⁵ Rosen-Zvi, *The Mishnaic Sotah Ritual*, 225.

⁹⁶ Rosen-Zvi, *The Mishnaic Sotah Ritual*, chapter 7.

⁹⁷ Rosen-Zvi, *The Mishnaic Sotah Ritual*, 138–39.

that he might have seduced the wife. While both the Mishnah and Tosefta construct an ordeal with a series of humiliations for the wife, the Tosefta revels far more in the illicit details of the ordeal and the alleged adultery behind it.

The final theme in the Tosefta involves debates between Rabbis. There is general disagreement about whether the *sotah* ordeal should be considered a tool to gather evidence, or a method of punishing suspicious behavior (or actual adultery). This starts at the beginning: in *t. Sotah* 1:1, R. Yose ben R. Judah limits the *sotah* ordeal to two witnesses. In rabbinic justice, two witnesses are required for a court to pronounce judgment (outside of other evidence). R. Yose is effectively saying that the *sotah* ordeal is to be used as punishment when two witnesses testify against a wife, but no one has caught her *in flagrante delicto*. R. Yose is offering a third opinion to contrast the two found in *m. Sotah* 1:1, in which R. Eliezer held that the warning was an official court act and needed two witnesses, but that the *sotah* ordeal could be invoked with a single witness. R. Joshua disagreed, but held that both warning and invoking the *sotah* ordeal required two witnesses. All this discussion among the Rabbis is an attempt to situate the *sotah* ordeal itself within their judicial system. If the *sotah* ordeal is primarily to gather further evidence (or should be treated as such), then a single witness is needed, even if it is the husband himself. While the court could not grant divorce without *ketubah* in that instance, the court could seek further evidence or testimony, and the *sotah* ordeal fulfills that role. By requiring two witnesses to invoke the ordeal, R. Yose and R. Judah have shifted the ordeal from a purely evidentiary role to one which involves punishment, as well as evidence gathering, even in the case of an innocent woman. Given the Rabbis' graphic descriptions of how the wife is to be treated, these Rabbis may be trying to limit the potential that innocent wives may be subject to it. Yet if a woman caused suspicion in two separate witnesses, she would be guilty of something,

even if it were just causing the suspicion. In public torture and humiliation, Foucault notes there is often a sense that the suspect deserves what is done to them, if only because they caused the suspicion in the first place.⁹⁸

The Rabbis continue to wrestle with whether the *sotah* ordeal is punishment or seeking evidence in other situations, as well. In *t. Sotah* 2:2, the Rabbis suggest the potion from the *sotah* ordeal would cause a woman who commits adultery *after* going through the ordeal to react in the same way. In *t. Sotah* 2:3, R. Judah, and R. Aqiba debate at which point the wife can admit guilt and avoid the ordeal itself. R. Aqiba allows that the ordeal is primarily about seeking evidence, and thus the wife can admit guilt up to a point. After her offering has been placed at the altar, the ordeal must be completed, even if she is forced to drink the potion. Foucault, as mentioned before, notes that the purpose of torture and public humiliation is to illicit further confessions from the suspect: in the case of condemned criminals, this would delay the eventual execution, but not stop it.⁹⁹ Continuing in the same *tosefta*, R. Judah b. Petera wrestles with the idea that an innocent woman might be forced through the ordeal. His solution is to interpret Numbers 5:28 to mean that an innocent woman who undergoes the ordeal would experience “better” childbirth.¹⁰⁰

While there was some debate over the purpose of the *sotah* ordeal, the Rabbis still revel in the humiliation of the woman. In *t. Sotah* 3:1–5 and 4:10, the Rabbis describe exactly how each humiliation of the *sotah* ordeal is a direct punishment of a hypothetical act in the wife’s seduction of her lover. Foucault notes that part of the ritual of torture is to connect it back to the

⁹⁸ Foucault, *Discipline and Punish*, 42.

⁹⁹ Foucault, *Discipline and Punish*, 38, 43–45.

¹⁰⁰ R. Judah b. Petera describes “better” childbirth as producing without pain, producing boys rather than girls, pretty children rather than ugly, light rather than dark, tall children rather than short ones, twins instead of single children.

crimes being punished.¹⁰¹ The Rabbis do this with abandon, inventing elements of the *sotah* ordeal with little textual evidence. They make the *sotah* ordeal into a public spectacle, or at least a hypothetical one, as they admit the ordeal is no longer practiced.

CONCLUSIONS

The Rabbis' interpretation of the *sotah* ordeal demonstrates how they are anchored in their Roman world. The Rabbis decry the Roman tendency toward sexual decadence (*m. Sotah* 9:10, *t. Sotah* 14:2–3), mimicking the Romans' own legal attitudes on sexual immorality. Foucault demonstrated how the Romans were restructuring their own views on sexuality, away from what they considered wanton sex and toward a view of the controlled self.¹⁰² Marilyn Skinner describes the evolving Roman sexual self: first, in dealing with issues of which roles the genders should play; later on, the relationship between self-control and physical self.¹⁰³ Rome was attempting to control the sexuality of citizens, and in doing so, shifted the control of adultery and its response from the head-of-household, the *paterfamilias*, to the imperial court system. A similar shift happens in the rabbinic world, when they begin to interpret the *sotah* ordeal, not as a tool for suspicious husbands, but rather as a part of the rabbinic court system. Just as the Roman courts were claiming power over Roman men's marriages, the Rabbis were claiming power over Jewish men and their wives.

¹⁰¹ Foucault, *Discipline and Punish*, 43–45.

¹⁰² Foucault, *History of Sexuality*, 3:237–38.

¹⁰³ Skinner, *Sexuality in Greek and Roman Culture*, 309, 344.

ROME AND THE RABBIS

As I have shown above, the Rabbis have taken the biblical *sotah* ordeal and interpreted it in line with Roman cultural considerations on adultery. Both the Romans and the Rabbis show similar concerns about adultery: that female sexuality would be uncontrolled, that men would abuse the situation, that men would be too accepting of female sexual freedom. Romans would prosecute men who did not prosecute their wives, and the Rabbis shaped their ordeal into a religious requirement for men whose wives were suspected. Later texts debate whether the *sotah* ordeal is optional, as in *Sifre baMidbar* 7:13: R. Ishmael holds that the ordeal is optional, but R. Eliezer hold the ordeal to be a *mitzvah*, and thus unavoidable. Later in that same text (*Sifre baMidbar* 21:3), Ben Azzai states that a guiltless woman subjected to the ordeal still deserves humiliation for causing the suspicion which promoted the ordeal (presaging Foucault's own statement to the same effect).

That the Rabbis would make their response to adultery more Roman is not particularly surprising. Their position as Jewish leaders was precarious, especially given the Roman response to Jewish leaders in the first and second centuries CE. I see a couple possible reasons they might do this. One possibility is that the Rabbis were attempting to make themselves look like good Roman leadership. As Roman leadership began to take certain moral stances against adultery, the Rabbis mirrored these changes to fit better into the Roman order. The *sotah* ordeal offered the Rabbis a place where their goals and those of the Roman elite were similar: neither group wanted rampant adultery (regardless of the actual reality). Shifting control from the *paterfamilias* to the Rabbis did not threaten them either: it allowed them to consolidate some control under their own auspices. Further, the *sotah* ordeal allowed the Rabbis to make themselves look Roman in something entirely hypothetical: The Rabbis could not invoke this ordeal, as they lack the

Temple and a functioning priesthood. As a hypothetical ordeal, the *sotah* not only allowed the Rabbis to work through their desire to control female sexuality, as Rosen-Zvi has indicated, but also to align their moral stance with that of the Roman elite.¹⁰⁴

We must then ask why the Rabbis would reflect Roman values in a Hebrew text with an entirely hypothetical ordeal. It is unlikely that the Roman elite was reading (at least widely) the Hebrew text of the Mishnah and Tosefta, or that they were engaging within the internal rabbinic debates. The Rabbis were not influential enough to merit such scrutiny. As the *sotah* ordeal could not be performed, the Rabbis could not even perform the ordeal publicly as a way of showing their Roman-ness. The discussions were apparently internal debates among the Rabbis.

Another possible interpretive direction is that the Rabbis were simply letting their already Roman views on sex and adultery color their understanding of the biblical *sotah* ordeal. In this framing, the Rabbis were not trying to pass themselves off as Roman; they were aligning the *sotah* text to their preconceived, Roman cultural ideas of how to control women's sexuality and a man's role as husband. This would explain why the Rabbis would be aligned their interpretation of a defunct ordeal to Roman morality, even within an internal debate. This interpretation pushes the Rabbis in a distinctly more Roman direction than previously thought. Hayim Lapin has argued that the Rabbis were in a "subaltern" position under the Romans: attempting to remain separate from the Romans, but any actual authority they had was held at the pleasure of the ruling Roman authorities.¹⁰⁵ Coupling Lapin's work with this analysis, not only did the Rabbis serve as community leaders under Roman approval, but they adapted some of their interpretations to Roman ways of thinking.

¹⁰⁴ Rosen-Zvi, *The Mishnaic Sotah Ritual*, 225.

¹⁰⁵ Lapin, *Rabbis as Romans*, 3–7.

This second interpretive stance would place the Rabbis firmly within the Roman worldview. The *sotah* ordeal becomes a reflection of Roman adultery law. The Rabbis constructed their *sotah* fantasy ordeal applying Roman cultural assumptions to the biblical text. We cannot be certain why they aligned these two as they did. The first interpretative approach is still possible, as the Rabbis may have been conditioned to self-censor ideas which might have placed their community too at odds with Rome. Given the internal nature of the texts we have and their completely hypothetical contents, I lean toward the second interpretive approach: The Rabbis were acculturated to a Roman worldview already, and thus read the *sotah* not as previous biblical readers did, but through the lens of Roman resistance to adultery.

8. CONCLUSIONS

In this study, I have traced adultery from the *sotah* ordeal in its biblical source of Numbers 5 into the Hellenistic and Roman periods, specifically to look at how ideas on adultery developed in the surviving literature over time. I followed several lines of thought. One was the reality of the *sotah* ordeal itself: could it be performed as described? When? For whom? Second was the development of the legal categorization of adultery, from a private crime in biblical literature to a public one in rabbinic thought. Third was the Rabbis' claim of control over husbands, demanding particular responses from the men with suspect wives, and how the crime of adultery became a public one. I have used Michel Foucault's theories on power throughout this study to examine texts and the discourse around them, which has allowed me to highlight the function the *sotah* ordeal, its text, and other adultery texts in their ancient cultural context. I will use these theories and these conclusions to construct a historical trajectory of adultery in ancient societies of the Mediterranean.

REALIA OF THE RITUAL

Could the *sotah* ordeal have been implemented as described by the documents we have? In chapter 4, we explored how the ordeal might have been performed in Israel/Judah's history. It could have been performed in pre-monarchy Israel before the centralization of the cult in Jerusalem: this would have been a local ordeal done by the local priest for any husband who may have wished it. Problems would have arisen once the cult was fully centralized in Jerusalem. As the ordeal was performed by a priest at an altar, and the texts present the only legitimate altar as at the Temple in Jerusalem. While we do not know if the Jerusalem Temple was the only legitimate Temple (the letters from Elephantine make this a serious issue), later texts certainly

assume it was. Allowing multiple legitimate shrines (or at least accepted shrines, even if the elite in Jerusalem might have viewed them as illegitimate) would have allowed the ordeal to continue to be available through this period but brings into question the narrative in Kings around Temple centralization. Limiting the ordeal to just the Jerusalem Temple would effectively limit its performance to something done only for those able to access Jerusalem.¹ Further, given that the altar was also used for other cultic practices, a single centralized altar as the only legitimate place for the *sotah* ordeal would have limited the number of possible cases.

We do not know if the cultic practice continued in Israel and Judah after its first destruction. The Rabbis and other later authors assumed the cult was stopped, and with it the ordeal. As the Temple was the only legitimate altar, and that altar was destroyed, the cult must have stopped, according to this narrative. When the Babylonian Exile ended and the Temple was restored, the Rabbis described a strong central Temple for all worship. As we move through the Persian era into the Hellenistic, we see the Judean people re-emerging with a strong sense of the second Temple as the core of their religious and ethnic identity.²

Moving into the Hellenistic era, we encounter further texts, but none of these texts addressed the *sotah* ordeal directly. The Septuagint translated the passage, but presented neither interpretive nuances, nor textual variants. As noted in Chapter 6, none of the other Second Temple texts brought up the *sotah* ordeal directly, save for a vague indirect reference in Pseudo-Philo. Either the *sotah* ordeal was not practiced during the Hellenistic era, or it failed to capture the imagination of the authors of the period.

¹ The nuances and historical reality of cult centralization in Israel and Judah are beyond the scope of this study.

² Seth Schwartz, *Imperialism and Jewish Society, 200 B.C.E. to 640 C.E.* (Princeton: Princeton University Press, 2001), 18.

By the late Roman period, the Rabbis began to describe an elaborate *sotah* ordeal, with significant details added to the Numbers description. Yet by the time the rabbinic documents were being written, the Temple had again been destroyed. Given the Rabbis' understanding of the Temple being central to the ordeal (and other rituals), the Rabbis described an ordeal which could not be practiced in their time, in the same manner that they gave detailed descriptions of and proscriptions for sacrifices and other Temple-oriented rituals. The Rabbis gave an additional reason the *sotah* ordeal would not work: the prevalence of adultery (*m. Sotah* 9:9, *t. Sotah* 14:2). Thus, the Rabbis could not see the *sotah* ordeal performed, and even if they could, it would not have worked correctly. As Rosen-Zvi argues, the *sotah* ordeal became a thought experiment for the Rabbis through which they could construct methods of controlling women's sexuality.³ But the Rabbis did more than this with the *sotah* ordeal: they used it to claim control over men's decisions within marriage, as well. The *sotah* ordeal became a tool for the Rabbis—not to stop or adjudicate actual instances of adultery, but instead, to deter adultery and influence a husband's reactions to it.

We lack enough data to know if the *sotah* ordeal was ever implemented. There are no texts recording a performance contemporary with writings in any era. No court documents reference the practice. We lack any physical remains for the ordeal; however, the *sotah* ordeal lacks any sort of key tool or object necessary for its performance, so distinct physical remains are unlikely to exist. If the Rabbis' description of the *sotah* ordeal is correct, it is possible there would be fragments of writing containing the oath formulation in a *genizah* somewhere.⁴ Such

³ Ishay Rosen-Zvi, *The Mishnaic Sotah Ritual: Temple, Gender and Midrash*, Supplements to the Journal for the Study of Judaism, vol. 160 (Leiden: Brill, 2012), 225.

⁴ The Rabbis argued that if a woman admitted guilt or refused to drink before the text was dissolved in the potion, then the text should be preserved in a *genizah*. See *m. Sotah* 3:3.

fragments might be physical evidence that the ordeal was practiced. Without such evidence, the *sotah* ordeal was purely hypothetical, especially by the time the rabbinic texts were compiled.

DEVELOPMENT OF SOCIAL CONCEPTION OF ADULTERY

In the texts we have studied, the social framing of adultery changes over the course of Israel/Judah's history. In the *sotah* ordeal of Numbers 5, suspected adultery caused emotional distress for the husband. The ordeal was constructed to assuage the husband's emotional state, without regard for the wife's emotional state or physical well-being. Other biblical texts treat adultery as a crime against the husband. The David and Bat-Sheba narrative shows that adultery was seen as a man invading the household. Even though the husband, Uriah, never explicitly learned of the adultery, David was condemned for the act, and little blame was assigned to Bat-Sheba. The narrative of Joseph and Mrs. Potiphar also addresses adultery: similarly, Joseph was punished as if he invaded the private space of Potiphar and his wife, even though Mrs. Potiphar instigated the attempted adultery. Other biblical examples of adultery are clouded with other issues, as the characters also violated other societal norms around sex, such as incest taboos. In none of these narratives did the husband invoke the *sotah* ordeal or anything like it. However, adultery was treated throughout as a crime by an outside individual coming into the household.⁵ This view of adultery is like the views found in Egypt, Assyria, Babylon, and Greece.

During the Hellenistic period, the texts shifted focus. They covered many of the same narratives as Genesis but focused on incest and intermarriage. The men of the narratives either lament or are judged for their acts of incest or intermarriage. Even Judah and Tamar's narrative

⁵ The story of Judah and Tamar in Genesis 38 would be the exception to an extent, as the crime which the townsfolk accused her of is זנה "whoring," which is neither adultery nor incest. Further, Tamar did set up the encounter with Judah, though she did not have to seduce Judah into it.

shifts from a story about justice for Tamar to the evils of foreign women. When the Joseph and Mrs. Potiphar narrative forced the issue to be about adultery, control still ultimately rested with Joseph.⁶ He was the one who could choose the outcome of the event—as much as Mrs. Potiphar desired Joseph, she could not force him into sex. All she could do was attempt to induce the men (Joseph and her husband) to act as she wanted. Other Greek texts similarly portrayed adultery as someone a man did, invading the home: The *Odyssey* perhaps most directly, as the suitors continually attempted to convince Penelope to allow them to wed her.⁷ There were consequences for the wives involved, but they were not the ones who instigated adultery.

Things began to shift in the Roman era. The woman could be the instigator of adultery, and Roman law began to insist on specific punishments for adulterous wives, rather than allowing husbands control over the wife's punishment. Legal texts did not always discern between consensual adultery and rape by an outside man. Read one way, we can assume that rape was treated differently than consensual adultery, but we must supply these exceptions to the texts. Read strictly, several of the biblical and other laws would require the death of a wife who was raped. This execution may have had less to do with punishing the wife and more to do with avoiding the taboo of a woman alternating sexually between two men.⁸ By the Roman era, confirmed adultery led to divorce, not execution.

For the Rabbis, the texts of *m. Sotah* and *t. Sotah* both reveled in describing the alleged actions suspected wives took to seduce a man. Adultery was not the man invading the household, but the wife wandering outside of it. Further, the Rabbis began to seek control of the husband's

⁶ Hellenistic texts shied away from highlighting the issue of intermarriage in this narrative, perhaps because Joseph later married an Egyptian woman.

⁷ To be fair, the suitors were not aware Odysseus was still alive, and were not knowingly seeking adultery.

⁸ See the discussion on serial polyandry in chapter 5: specifically writing on the sex laws of Deuteronomy.

responses to adultery. The husband was required to bring his wife in for trial and punishment, though the punishment was understood as divorce without payment of the *ketubah*.⁹ The Rabbis' attempts at delineating the husband's response had parallels in Roman texts, which required men to prosecute their wives for adultery, and to divorce them if the women were found guilty. Roman invective was full of insinuations that men could not control their wives or did not want to. While men were still the focus of these texts, adultery was an issue in which husbands did not control their women, rather than the husband's household being invaded. The rabbinic reading of the *sotah* ordeal shows that their thought was influenced by emerging Roman ideas around adultery, and thus the Rabbis interpreted the *sotah* ordeal according to Roman ideas.

POWER AND FRAMING

As we have seen, the *sotah* ordeal as presented in Numbers was about assuaging the husband's emotions. His zeal, *qan*,¹⁰ was presented as either justified (in that the wife committed the adultery) or as the product of some sort of spirit. The husband was explicitly freed of any responsibility in the text of the ordeal: he was not responsible for his emotions, for his wife's actions, or for any consequences for his wife. The ordeal was presented as a tool the husband could use for his own edification. Even if the wife were innocent, the husband would come out ahead: any innocent wife subjected to this ordeal would bear children.

When we get to the Rabbis, however, divorcing an adulterous wife has become a *mitzvah*, a religious obligation (*t. Sotah* 5:9). In R. Meir's extended pericope about flies and soup, the ordeal was a proper response to suspicious behavior by one's wife. While this parable represents

⁹ While not the death sentence of the Bible, the survival prospects of a divorced woman with no financial means would not be particularly hopeful.

¹⁰ See Chapter 4, footnote 4, for a discussion of the root *qan*.

the clearest case of the Rabbis controlling a husband's response, there are others we have seen throughout both the Mishnah and the Tosefta. The Rabbis barred husbands from having sex with accused women (*m. Sotah* 1:3, 5:1, *t. Sotah* 1:2–3, 2:4), which effectively barred the husbands from not prosecuting their wives. If they did not bring the accused wife in for the *sotah* ordeal, then they were violating the law by having sex with her. Further, if the wife was not cleared by the ordeal, then the husband could not take her back; he could not forgive his wife of the adultery on his own. The courts (specifically, the Rabbis) claimed the role of arbiter between husband and wife. Given that the ordeal could not be performed, and the Rabbis knew this, they effectively made themselves the ones who could choose who could remain married and who could not.

The Rabbis' claim over marriage mirrored Roman legal texts. In the Roman world, marriage and fidelity had shifted from an internal matter, between the husband and his wife, to a public concern. Rome as a society was growing intolerant of adultery or other lapses in marriage. The Rabbis asserted this power over their own communities. They did limit their claim to marriages valid under rabbinic doctrine, as they were quite clear that their view of the *sotah* ordeal only applied to rabbinically sanctioned marriages.

The Rabbis may have reflected Roman values to show they were good Roman citizens. Rather than some backward ritual ordeal, the Rabbis presented the *sotah* ordeal as a tool used much in the same way as the Roman courts. However, it is unlikely that many Romans were reading the rabbinic texts, and the Rabbis were unlikely to have been writing this to a Roman audience. Rather, the Rabbis were likely interpreting the biblical passage with a Romanized mindset. Rather than trying to appear more Roman, the Rabbis already were Roman, at least in this line of thinking, and were adapting the biblical text to their Roman worldview. The Rabbis,

as good Roman citizens, interpreted the *sotah* ordeal to be in line with their (Roman) sensibilities.

CONTROLLING WOMEN

Rabbis were consistently determining which actions a wife could take. The original Numbers text has little that a wife could do, once accused of adultery. The Rabbis imagined several times during the ritual in which the wife could admit guilt or refuse the ritual, but all such actions ended with the wife being declared effectively guilty. Wives were not allowed to present their testimony, though the Rabbis did consider cases in which there were witnesses in support of the wife's fidelity. The ordeal itself became the only way the wife could prove herself faithful. Women had the ability to seduce a man into adultery, but they did not have the ability to defend themselves from accusations, short of performing the ordeal (which was defunct).

The Rabbis used the ordeal as a spectacle to contain women's sexuality. While Hellenistic and earlier texts portray adultery as a man invading the household of another man, these rabbinic texts revel in describing how the wife invited the other man into her husband's home. Adultery was a violation of the household, but the wife invited the invader into the house. Men no longer controlled adultery: women did. The Rabbis admitted women's sexual power but tried to contain it by graphic depictions of the consequences that would befall the woman who used it.

FOUCAULT AND THE *SOTAH*

Foucault's methods provide tools to allow us to better analyze the development of the *sotah* ordeal. First, Foucault shifts us away from the realia of the ordeal that the *sotah* text attempted to describe, and instead focuses us on the societal effects of the *sotah* ordeal and its text, as well as

the text's effects in controlling those who encountered it. Second, Foucault has allowed us to frame the documents themselves as an archive—the act of collecting these texts has meaning we can discover. Finally, Foucault's focus on how power interacts with the individual helps us to show how the text of the *sotah* ordeal might have influenced people, from both positions of power and positions of subjugation.

FOUCAULT AND REALIA

Foucault's own study on punishment focused both on the actual acts of torture and death which were used as punishment, as well as the effects that such acts (and the stories surrounding them) had on the wider public. Punishment was a political act, which the state used to reaffirm its own position of power.¹¹ The *sotah* ordeal was presented in Numbers as a method that a husband could use to reaffirm his position of power over his wife. Thus, the *sotah* ordeal, if it could be practiced, would provide men with a way to assuage their anxiety about adultery.

There is little to no evidence that the *sotah* ordeal was practiced, especially during the later periods of history we have examined. If the actual ritual was no longer being performed, then the discourse about the ordeal served some purpose other than preserving the ordeal itself. By preserving the steps of the ordeal, the Rabbis asserted their claim of authority on religious matters and used their detailing of the *sotah* to assert authority over marriage. In a similar vein, Foucault traced the disappearance of corporal and capital punishment from public view. Crowd justice began to cause problems for the state, as the crowd could overturn the attempts of the state to carry out its punishment.¹² The state began to remove executions and torture from the

¹¹ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (S.I.: Vintage, 2009), 47–49.

¹² Foucault, *Discipline and Punish*, 59–60.

public eye, instead allowing texts about the punishments to be published instead.¹³ These publications were an attempt to serve the same purpose that the public spectacles had previously displayed: allowing the state to show its power over the condemned, as well as to reaffirm the laws of the state. In a similar way, the text of the *sotah* ordeal presented its audience with an idea: men should have the ability to assuage their fears of possible adultery. In the cases studied by Foucault, executions were still carried out, but were no longer public, while in the biblical case, the ordeal ceased to be performed.¹⁴ Just as Foucault's study shows the shift from act to text, we have a shift from act to text for the ordeal. As such, the text served to provide the social functions which the ordeal allegedly held before. For husbands, it assuaged suspicions by telling him that God cared whether his wife had committed adultery. In doing so, the text of the ordeal also reminded the husband that Israel once had a tool a husband might have used to assuage himself, and it set the Rabbis as the arbiters of that tool. For women, the text of the ordeal served as the "curse among her people." Lacking actual women to make public examples of, the text used a hypothetical woman to serve as the example for all women in society.¹⁵ To use Foucault's language, the text acted as a statement replacing the statement of the public performance of the *sotah* ordeal within social discourse.

¹³ Foucault, *Discipline and Punish*, 65–69.

¹⁴ At least, within the narrative history constructed by the Rabbis. We do not have evidence that the *sotah* ordeal was performed at all; however, the Rabbis assumed it was during both the First and Second Temple eras. Working within the archive of rabbinic texts, meaning would have been derived with the assumption that the ordeal had been performed when either Temple still stood.

¹⁵ Assuming that the text was available to women. Given the assumed low literacy rates of women in these eras, few women would have had access to the text directly.

FOUCAULT AND THE ARCHIVE

While history in general works with documents, Foucault attempted to move away from the practice of focusing on rendering a single historical document into its smallest elements of meaning, instead looking at collections of statements. Statements, for Foucault, included documents, but also other public acts and events, such as public executions. He referred to this collection as the *archive*: “the general system of the formation and transformation of statements.”¹⁶ For Foucault, an archive was a system of rules which shaped the documents (and other statements) in their societal context. By looking at how the archive functions regarding these statements, one can see perceptions, assumptions, limitations, etc. that were shaping the statements within the archive. By looking at the topics about which an archive speaks and analyzing the ways in which they speak on those topics (and which ways they do not), one can infer how the culture creating those statements thought.

Foucault was working in an era with a significantly larger number of texts available to him than scholars of the ancient world. I have looked at a relatively small number of texts, when compared with what is available to historians studying the West after the printing press. Additionally, any redactions of the archives for this topic using are unclear. While Foucault could curate the documents he was examining, ancient texts have been curated by both time and the scribes who transmitted the texts. For the Bible, there have been numerous points in history when decisions about what to include and what to exclude have been made. Similarly, the transmission of Jewish Hellenistic texts involved some level of redaction and translation, as many of these texts only exist in secondary (or tertiary) languages. For rabbinic documents, the

¹⁶ Michel Foucault, *The Archaeology of Knowledge: And the Discourse on Language* (New York: Harper & Row, 1976), 130.

coalescence of the Mishnah and Tosefta from earlier sources (whether oral or written) is not a clear process. In these cases, time has also affected the archives, as only a fraction of the texts in them have survived. There are numerous points in which the contents of the archive may have been altered, and Foucault's theory on archives could be applied to explain those shifts, provided we could document the changes.

The archives of ancient texts can still communicate something. The presence of the *sotah* ordeal in Numbers shows that even at the later stages of the redaction of the Pentateuch, the text of the *sotah* ordeal was important or sacred enough to include. Further, the *sotah* ordeal was included despite any other such ordeals not surviving the redaction process. Even assuming the text was sacrosanct at an early stage in its development, we must account for the apparent redactional layers in the text. The *sotah* ordeal served enough of a societal function to survive through the various redactions of Numbers and the wider Bible, even as the judicial-religious system of ordeals and divinations was changing.¹⁷ The function of the *sotah* was a reassurance of the male ego, specifically that God would take the side of the suspicious husband, even though the husband might be living with the anxiety of not being able to perform any of his religious duties.

During the Second Temple Era, the Temple was restored, and some form of Judean cultic practice resumed. The *sotah* ordeal played little part in these texts. While *Jubilees* and *The Testaments of the Patriarchs* did express some concerns on sexual deviance, these texts focused on other sexual sins. When they did address adultery, they did not refer to the *sotah* ordeal or any other such test to determine guilt. The anxiety of a possibly unfaithful wife did not seem to be

¹⁷ Specifically, how the Judean religion lost its primary altar at the Temple and was forced to adapt to a religion in exile; later, how the re-emergence of the sacrificial system with the new Temple under Hellenistic and later Roman auspices.

the focus of these texts. Rather, the texts were more concerned about setting societal boundaries around sex, by defining with whom a Judean man could have legitimate sexual intercourse. Socially legitimate sex was used as a tool for establishing ethnic boundaries, and as such, the texts dealing with sexual deviance were not about assuaging the anxiety of the male ego, but about controlling with whom men could have sex.

Finally, the rabbinic texts greatly expanded the *sotah* ordeal, despite there being no Temple at which to perform or observe the ordeal itself. While I have mentioned that the ordeal did not necessarily require the Temple, just an altar to YHWH, the Rabbis themselves assumed the *sotah* ordeal could only take place at the centralized Temple in Jerusalem. In both the Mishnah and the Tosefta, the Rabbis spent a good deal of discussion on the *sotah* ordeal, working through how it might have played out in various settings. They did this despite the Hellenistic texts, which were written between the final redactions of Numbers and the Rabbis' own texts, not addressing the *sotah* ordeal at all. The Rabbis returned to assuaging the male ego's suspicion about his wife, even though this had not been a concern in previous texts.

Foucault's focus on the archive can help to provide a framework to interpret shifts in focus regarding the *sotah* ordeal. During the Babylonian Exile, the Judean male had little control over his life, and so may have gravitated to the *sotah* ordeal text as a source, however imperfect, of control of one aspect of his life: his wife's fidelity. With the reconstruction of the Temple and the return to Judea, Judean men again had control over their religious lives, and the importance of the ordeal waned. Instead, the focus became defining who was and who was not within Judean society. After the loss of the Second Temple, the Rabbis returned the focus to rituals which could no longer be performed to assuage their religious anxieties, with the *sotah* ordeal conveniently also assuaging a husband's anxiety about adultery. The archives of existing texts from each of

these eras show a shift in men's control of women's sexuality based on the men's own level of control of their own lives.

FOUCAULT AND POWER

Foucault developed two schemas for examining power: a contract-oppression schema and a domination-repression schema.¹⁸ In the contract-oppression schema, power is described through a society's laws and the tools that society uses to enforce them. This schema provides an understanding of how the *sotah* ordeal, if it were practiced, might have allowed the use of power: the husband's ability to invoke it, the effects the ordeal might have had on women subjected to it, and the priest's responsibilities in the performance of the ordeal. Even when working with just a text, as the Rabbis did, they were exploring the ways that the ordeal might have constructed a contract within the society described by the text itself: they were working within the world of the text of Numbers to construct the legal mechanisms of oppression through the legal contract of the *sotah* ordeal. However, without the actual practice of the ordeal, the contract-oppression schema cannot describe how the discourse around the *sotah* ordeal affected society.

The other power schema, the one of domination-repression, describes how power affects behavior while not acting directly upon the individual. Here, power acts through a network of forces which shape the individual's response to certain societal pressures, leading to the individual's eventual choice between submission to power or struggle against it. In the case of the *sotah* ordeal, the text provided a societally acceptable response to suspected adultery. For the Rabbis, the ordeal and the rabbinic discourse around its alleged implementation gave the suspicious husband a set of socially acceptable responses to his suspicions. The Rabbis described

Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972–77* (New York: Pantheon Books, 1980), 92.

a theoretical ordeal which could assuage or confirm a husband's suspicions. Because they were describing it, the Rabbis could define the implementation of the ordeal. Thus, the Rabbis placed themselves as the arbiters of the husband's reaction to suspicions. If certain criteria were met, the husband was obligated to submit his wife to the ordeal. Other criteria would mean the husband was obligated to divorce her. Yet other criteria obligated the husband to let go of his concern about his wife's fidelity. The Rabbis became the authority who can tell the husband if his anxieties were valid or not. By assuming this position, the Rabbis put themselves in place of the defunct ordeal: as they were the ones who could determine if the ordeal would have applied or not; they assumed the authority to judge the outcome of the ordeal. The Rabbis left the husband with the choice: submit to their authority on this matter or struggle against them.

This analysis can also help explain why redacted versions of the Rabbis' discourse resist attempts to reinterpret the *sotah* ordeal. In *m. Sotah* 3:4–5, the Rabbis discussed the effects of זכות “merit” on the ordeal. R. Simon was concerned that if they allowed for merit altering the outcome of the ritual (by delaying it), then the ritual lost its effectiveness as a deterrent. Why would this be a concern if the *sotah* ordeal could not be performed? If the Rabbis were presenting the ordeal as a solution to anxiety, they would not want the ordeal to have any possibility of failing to provide an immediate, concrete answer. Thus, the Rabbis resisted the idea that merit might alter the effects of the *sotah* ordeal.

Similarly, the Rabbis resisted the *sotah* ordeal's implied ability to grant fertility. In *t. Sotah* 2:3, the passage ended with the Rabbis questioning what the text of Numbers meant when it said that the innocent woman “will bear seed” (Numbers 5:28). R. Judah b. Petera argued that the text meant that women who did not have favorable outcomes from pregnancy would have favorable ones, from lower pain in childbirth to twins instead of single children. The Tosefta

immediately followed his suggestion with a phrase rejecting it. The Rabbis, as presented by *t. Sotah*, rejected the idea that the *sotah* ordeal did anything other than determine the guilt or innocence of a suspected adulteress. In *Sifre baMidbar*, a later rabbinic midrashic text on Numbers, Rabbi Aqiba was recorded as saying that the ordeal would even cure barrenness for an innocent woman (*Sifre baMidbar* 19:3). The Rabbis rejected this reinterpretation as well. In both texts, they did not do so by showing this is not what the text of Numbers meant, but rather by arguing that in turning the *sotah* ordeal into a fertility treatment, the Rabbis would cloud the ordeal's purpose. The Rabbis focused on the behavior such interpretations might induce in women, imagining women acting suspicious just to qualify for the ordeal, so that they might cure their barrenness. This change would have altered the ordeal into a tool women wanted to use, rather than the deterrent the Rabbis had constructed it to be. Thus, the texts rejected these reinterpretations as dangerous because they subverted the Rabbis' attempts at solidifying their power over the people in their society.

None of the Rabbis' power over the suspicious husband came from any distinct law they delineate in their discourse or that they could enforce upon the husband. Thus, this power was not of the contract-oppression schema of power. Rather, the rabbinic discourse on the *sotah* ordeal served as a source of domination-repression power over the Judean husband: The Rabbis provided their communities with a solution to adultery anxieties and, in doing so, solidified their position as arbiters over marriage.

HISTORICAL TRAJECTORY

In his synthesis of the emergence of the Rabbis, Lester Grabbe states the Rabbis were reconstructing the Judean Temple cult from biblical texts, rather than from personal experiences of priests or other Temple personnel. He says they were interested in "creating a new, idealized

cult according to the sect's principles."¹⁹ He names these dominant influences as Pharisaic.²⁰ However, Grabbe's reconstruction is based upon the rabbinic texts themselves. Seth Schwartz argues that much of the Rabbis' texts, which were redacted at a later time, were constructed in a way to present the Rabbis as continuous with the Judaism of the Second Temple, as the Rabbis were the dominant group to survive the revolts of 70 and 135 CE.²¹ Despite the Rabbis having wanted to present themselves as continuous with earlier forms of Judaism, we have seen in the analysis above that the rabbinic interpretation of the *sotah* ordeal has a number of elements which more closely resemble Roman adultery laws and norms than those in the Bible or in Hellenistic Jewish texts.

The Rabbis, at least in *m. Sotah* and *t. Sotah*, were not attempting to preserve an understanding of the how the *sotah* ordeal had functioned in either Temple but were instead interpreting the text (and possibly memory) of the ordeal to incorporate Roman norms into their own system. Why would the Rabbis do this? Why focus on Roman rather than Judean concerns? As mentioned above, there are a couple of possible explanations. The Rabbis could have been attempting to present themselves as good Roman citizens, to solidify their position of status over the Jewish population. The Rabbis reinterpreted the *sotah* ordeal from a divinatory trial-by-ordeal into a proto-trial, especially with their ever-increasing reliance on the contractual *ketubah* in their discussions. This framing paints the Rabbis as an elite group of Judeans attempting to solidify or maintain a position of power within their society under Rome. The discussions of the Mishnah and Tosefta were recorded in Hebrew, and the discourse was framed as internal debates between Rabbis—these were not about trying suspected adulteresses in a rabbinic court or

¹⁹ Grabbe, *Judaic Religion in the Second Temple Period*, 122.

²⁰ Grabbe, *Judaic Religion in the Second Temple Period*, 122–23.

²¹ Schwartz, *Imperialism and Jewish Society*, 15.

discussing negotiations with Roman authorities over who would try such adulteresses. The discussions did present themselves as legal options and requirements, but without a way to perform them, the Rabbis simply remained the source of judgment over their communities. If we assume the Rabbis actually held the power to rule over marital disputes (and the rabbinic texts certainly implied that the Rabbis had this power), then the discourse around the *sotah* ordeal would have led the Rabbis who were using it to make adultery rulings like rulings from a Roman court. As such, the rabbinic community would have appeared to be acting in line with Roman law, even if internally the Rabbis claimed their authority from biblical text and not Rome.

Alternatively, the Rabbis could have been acculturated into Roman thinking already—if this were the case, the Rabbis would not have been attempting to make the *sotah* text and its implementation look Roman. Rather, the Rabbis would have already been thinking in Roman terms: they held that men should be required to divorce adulterous wives, and that any suspected adultery should be forced to be publicly prosecuted, as Romans did. When they encountered the *sotah* ordeal, they would have simply framed it with the system they already knew. Thus, the Rabbis would not have been consciously constraining the *sotah* ordeal to make themselves (and Judaism) look more Roman; rather, the Rabbis were already practicing Roman norms and used the *sotah* ordeal to justify their legal presumptions.

In truth, both frames may have been at work, as the Rabbis likely held a tenuous position within the Roman power structure. Schwartz describes the early Rabbis as simply the most successful of the scattered Jewish groups following the failed revolts of 70 and 135 CE.²² The Rabbis' position was not assured, and there would have been tremendous pressure to conform,

²² Schwartz, *Imperialism and Jewish Society*, 175.

when possible, to Roman ideas, to avoid any further Roman attention and repression. Given the failure of the anti-Roman revolts, it is also possible that the leadership that survived was either relatively pro-Roman, or at least had the desire to appear so. Since the *sotah* ordeal could not be practiced, it presented the Rabbis with a canvas on which they could paint a practice that both represented Roman ideas and appeared to those within their culture as genuinely Jewish.

But why this text? The *sotah* passage had little focus on it until the Mishnah and the Tosefta devoted a tractate to it. The Hellenistic Jewish texts were not devoid of sexual concerns by any means, but they devoted attention to sexual boundaries, defining who was and who was not within Judean culture. The concerns of the Hellenistic authors were ones of identity—they saw the forces of Hellenistic culture eroding the differences between Judean and non-Judean, and they used sexual pairings to establish boundaries. The Rabbis were concerned with boundaries as well, to which the lists of proper marriage partners attest. However, the anxiety around adultery was not about where a boundary was, but who was in control. The focus on the *sotah* ordeal addressed two sources of power: the husband and the Rabbis.

For husbands, the Rabbis' interpretation of the *sotah* ordeal allowed the husband to feel control over his wife's sexuality. It provided husbands with a tool should they suspect their wives but have not caught them *in flagrante delicto*. The Rabbis explained to husbands that God was concerned with their anxiety about their wives' faithfulness. By normalizing the ordeal as the expected response to adultery, the Rabbis provided husbands with set of reactions to perform. Though the Rabbis could not perform the ordeal, they placed themselves in a position to provide the husband with resolution.

The Rabbis in turn solidified their cultural power. They were the ones to arbitrate questions of marriage and adultery. While their decisions might not have differed much from

Roman ones, the Rabbis were the ones to make them. By aligning their legal practice with Roman practice, the Rabbis protected their position from the Roman political apparatus. By defending their decisions with biblical texts, they protected their position from others claiming leadership over the Jewish population. They also appealed to those who saw the Bible as a source of Jewish identity. While the Rabbis presented their discourse of the *sotah* ordeal as a tool for the suspicious husband, they also attempted to control his reactions—at least the normalized ones—to adultery. By presenting the husband with a normalized response to suspected adultery, the Rabbis removed other responses from the discourse, effectively limiting a husband's socially acceptable options. The Rabbis used their discourse to establish their positions under Romans, but over the Jewish population.

During the Hellenistic Era, the ruling elite of the Jewish population of Palestine did not need to establish or defend its position. While varying groups might have argued over interpretation of biblical passages and principles, those in political power were upheld by the empires ruling over Judea. The literary elites writing Hellenistic Jewish texts were concerned about establishing boundaries between ethnic groups. The Rabbis did continue to define these same boundaries, but they lacked the political position the ruling Judean elites of the Hellenistic era enjoyed. The Rabbis found in the *sotah* ordeal a way to both implement Roman practice and to insert themselves into a position of power over their community.

FOR FUTURE RESEARCH

While I have accepted Van Seters' timing for the Pentateuch, discourse theory might allow further study into redaction history. For example, one might look at how a passage would have functioned in the discourse at various times in the process, in an attempt to date the emergence of various larger collections of texts, from large cohesive sections of the Pentateuch to specific

books, to the Pentateuch as a whole. While beyond the scope of this project, we can use the *sotah* ordeal as an example of this. How would the passage read to those in a pre-monarchic period, assuming some form of the passage was known then? How would it have read during the United and later Divided Monarchy periods? Would the emergence of the Temple and the idea of centralized worship altered how the passage was read? How would the Deuteronomistic reforms have affected the practice of the *sotah*? To do this, we would need to expand to other passages in the Pentateuch to show how they might have functioned in these various time periods. We would need to contrast how this ritual was preserved and compare it with other rituals in the Pentateuch. Additionally, we would need to look at other kinds of texts in the Pentateuch. Further, much of this would be speculative, as we do not have evidence of the *sotah* ordeal or its text prior to the emergence of the Pentateuch under Persia. Without such, we could not firmly anchor the ordeal or its text to any particular time.

FINAL COMMENTS

In the preceding chapters, I have looked at the *sotah* ordeal in different contexts over time. While the earlier contexts present adultery as a private matter, one within the realm of power of the husband, Roman and rabbinic texts present it as something which must be addressed by society. While husbands held power over their wives and their fidelity in early texts, Roman and rabbinic courts claimed their authority by the time of the Mishnah and the Tosefta. The Rabbis were clearly aligning their interpretations to those of Rome. I have used Foucault's work on punishment and his wider work on power to bring this rabbinic shift to light. By focusing on who held power in these texts, we can see an area of society over whom the Rabbis were claiming control. This claim to power mirrors Rome's own claim of authority over the trial and punishment of adultery under Augustan law. While it is possible the Rabbis were attempting to

make their interpretation look like a good Roman application of the *sotah* ordeal, it is unlikely the Romans were reading the Rabbis' internal texts. Instead, the Rabbis' interpretive stance shows us that the Rabbis were already Romanized in their worldview and interpreting the biblical ordeal in the light of that worldview. Through the lens of Foucault, the Rabbis' discourse of the *sotah* ordeal shows us that the Rabbis were attempting to place themselves in a position of power over marriages in their communities, over which they exercised some localized legal authority, while either already being Romanized themselves, or by attempting to portray their biblical customs as sufficiently Roman.

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