Michigan Journal of Gender & Law

Volume 13 | Issue 1

2006

Roman Rape: An Overview of Roman Rape Laws from the Republican Period to Justinian's Reign

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O rem ridiculam, Cato, et iocosam,
dignamque auribus et tuo cachinno!
ride quidquid amas, Cato, Catullum:

res est ridicula et nimis iocosa.
deprendi modo pupulum puellae
trusantem; hunc ego, si placet Dionae,
protelo rigida mea cecidi.[1]

—Catullus, Carmen 56

O what a funny and ridiculous thing, Cato,
Worthy of your ears and laugh!
Laugh as much as you love Catullus, Cato:

The thing is funny and very much absurd.
I just now caught a little boy thrusting into a girl;
If it please Diona, I attacked him
With my erect member like a spear.[2]

—Catullus, Poem 56

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1. GAIUS VALERIUS CATULLUS *Poem 56*, in THE POEMS OF CATULLUS 102 (Peter Green trans. 2005).
2. Author's own translation.

The modern Western crime of rape is commonly defined as "[u]nlawful sexual activity (esp. intercourse) with a person (usu. a female) without consent and usu. by force or threat of injury,"[3] and it is often seen as an assault of the person's body[4] and a violation of self-autonomy. However, this differs significantly from the conception of rape in ancient Rome. In fact, "there is no single word in . . . Latin with the same semantic field as the modern English word 'rape.'"[5] For the Romans, the act of rape was covered under a variety of legal terms, but each of those words possessed wider definition fields than the modern word "rape." Thus while charges of seduction, attempted seduction, adultery, abduction, or ravishment all covered rape, there was no legal charge consisting solely of rape itself. Similarly, determination of whether rape occurred greatly differs from Roman times to modern times. While in modern times, attention focuses mostly on the actions of the rapist and sometimes the victim, for the Romans, the occurrence of rape, the possibility of a legal charge, and also the punishment thereof, depended on the victim's status. That is, what actually occurred did not have legal consequences unless the victim fit in a particular social category. Indeed, socio-political factors played a very important role as legislation on sexual activity underwent changes throughout the course of Roman history, and accordingly, the development and refinement of rape-relevant laws strongly reflected this influence.

I. WOMEN IN ROMAN SOCIETY

To understand the legal concept of Roman rape, the treatment and position of women in Roman society must first be examined. As with the Greeks, the Roman woman's sphere was in the house as part of the family under the protection of her male guardians. So intrinsic was the Roman woman's position in the family that it is underlined even by the nomenclature of Roman women. Until late in Roman history, women lacked proper individual names.[6] For instance, names such as Julia, Claudia, and

3. BLACK'S LAW DICTIONARY 1288 (8th ed. 2004).
4. SANFORD H. KADISH & STEPHEN J. SCHULHOFER, CRIMINAL LAW AND ITS PROCESSES: CASES AND MATERIALS 317 (7th ed. 2001).
5. Edward M. Harris, *Review Article*, 40 ECHOS DU MONDE CLASSIQUE/CLASSICAL VIEWS 483, 483 (Issue 16, 1997) (reviewing Susan Deacy and Karen F. Pierce, eds. RAPE IN ANTIQUITY: SEXUAL VIOLENCE IN THE GREEK AND ROMAN WORLDS (1997)) (discussing the concept of rape and what constitutes rape in ancient Greece and Rome).
6. M.I. FINLEY, *The Silent Women of Rome*, *in* SEXUALITY AND GENDER IN THE CLASSICAL WORLD: READINGS AND SOURCES 147, 148–49 (Laura K. McClure ed., 2002)

Cornelia were simply family names with feminine endings attached, and often daughters within one family had the same name and were distinguished only by the addition of "elder" or "younger."[7] This system of naming suggests the desire to identify women as merely passive units within a family, and not as genuine, independent individuals.[8] This lack of independence is also clear in the assertion of male authority over women. Socially and legally, a woman was almost always in the power of a man, whether that be her *paterfamilias*, husband, or guardian (*tutor*).[9] In fact, even when married, a woman was within the legal power of her *paterfamilias*,[10] though depending on the marriage, the woman could also be subject to the power of her husband.[11] Further, the wife had no sexual rights over her husband regarding access to her own body,[12] had limited

(explaining the assignation of Roman women's nomenclature within the context of masculine authority).

7. For instance, one sister would be called Julia the Elder and another sister in the same family would be called Julia the Younger. Also, sisters within the same family could be distinguished just with ordinal nomenclature such as Julia the First, Julia the Second, etc. *Id.* at 148 (discussing various ways of naming women within a Roman family).
8. *Id.* at 149 (stating that every Roman boy was given an individual name and giving individual names was also a possibility for girls; because individual naming of girls was not done in practice, this can be considered a deliberate effort to suppress the independent identity of Roman women).
9. *See* SUZANNE DIXON, READING ROMAN WOMEN 74–75 (2001) (defining *potestas* as power and *tutor* as guardian); FINLEY, *supra* note 6, at 149 ("A Roman *paterfamilias* need not even be a father: the term was a legal one and applied to any head of household."); JANE F. GARDNER, WOMEN IN ROMAN LAW AND SOCIETY 11–12 (1986) (explaining that before marriage, women were under the *potestas* (power) of their *paterfamilias* (head of household, usually their father), while women who married in *manus* (as opposed to 'free' marriage; *see infra* discussion accompanying note 10) were in the power of their husbands or their husband's *paterfamilias*; once their *paterfamilias* died, women were required to have a *tutor* (guardian) for all legal transactions). *See generally id.* GARDNER, at 14–16 (describing the relationship between women and their *tutores*); SUSAN TREGGIARI, ROMAN MARRIAGE 15–36 (1991) (describing the legal institutions whereby women remained in the power of another or became free).
10. GARDNER, *supra* note 9, at 11 ("[D]aughters in 'free' marriage remained subject to the father's *potestas* after marriage."); FINLEY, *supra* note 6, at 149 ("Then, when so-called 'free' marriages became increasingly common—free from the ancient formalities, that is, not free in the sense that the wife or her husband had made a free choice of partner—she remained legally in the power of her *paterfamilias*."). *See generally* TREGGIARI, *supra* note 9, at 15–28 (detailing the various Roman marriage ceremonies and associated formalities thereof); GARDNER, *supra* note 9, at 12–13 (discussing *manus* marriage in particular).
11. *See* GARDNER, *supra* note 9.
12. DIXON, *supra* note 9, at 49 ("As in most states, a husband could force himself on his wife without breaking any law.").

control over the conception of undesired children,[13] and in some circumstances could not keep any child ordered to be killed by her husband.[14]

The term *tutela mulierum perpetua* describes the perpetual guardianship and control of women, and its practice was rationalized as both a safeguard for feminine weakness[15] and a shield from exploitation.[16] Doubtless though, *tutela mulierum perpetua* was instituted by the political authority in power (hereinafter called "the state") to protect male control of familial property because, unlike their brothers, adult women were otherwise likely to transfer their birth-rights to a different family unit through marriage.[17] Just as *tutela mulierum perpetua* was established to preserve family property, the state also controlled the institution of marriage to safeguard property transfer. Marriage was of the utmost importance because the entire structure of property was based in it,[18] and expectedly, women could only marry after obtaining permission from their *paterfamilias*.[19] In addition, "both . . . the family cult and the institu-

13. Note that a man who wanted children with an unwilling wife could resort to rape to impregnate her. *Id. But see* TREGGIARI, *supra* note 9, at 406 (stating that induced abortion and contraception were options though they were often risky or unreliable). In fact, "there seems to have been a phobia that women could control their own fertility secretly, either by contraception or by procuring abortions, . . . [and] the law took cognizance of abortion when it defrauded people of their rights, for instance a divorced or dead husband of his expected progeny, and when a third party supplied a dangerous drug." (citing *Digest* 40.7.3.16; 47.8.8; 48.19.38.5; 48.19.39). *Id.* at 406–407.

14. TREGGIARI, *supra* note 9, at 308 ("A husband who suspected his wife of adultery could, if he chose . . . expose any child which he thought was not his.").

15. DIXON, *supra* note 9, at 73; *see also* MARY R. LEFKOWITZ & MAUREEN B. FANT, *Legal Status in the Roman World*, *in* WOMEN'S LIFE IN GREECE & ROME 94, 95 (2nd ed. 1992) (Table V. Inheritance and Guardianship—1. " . . . Woman [sic], even though they are of full age, because of their levity of mind shall be under guardianship . . . "). On a literary note, it is interesting to observe the grammatical structure of the phrase *tutela mulierum perpetua*, with the word "women" (*mulierum)* being completely circumscribed by the words guardianship (*tutela*) and perpetual (*perpetua*), as if the very words are spatially placed to surround the women in order to further punctuate this idea of total "guardianship".

16. GILLIAN CLARK, WOMEN IN LATE ANTIQUITY 28 (1993) ("Late Roman law often expresses concern for the perceived weakness of women, and seeks to protect them from physical and financial exploitation.").

17. *See* DIXON, *supra* note 9, at 75 (arguing the true basis and subsequent perpetuation of *tutela mulierum perpetua* was due to the desire to maintain control of property in the agnatic Roman system of inheritance and marriage); *see also id.* ("Exogamous marriage, whereby women transfer themselves and their reproductive rights away from the family of their birth, is essential to the workings of patrilineal cultures. . . .but it often results in this kind of institutional suspicion of women.").

18. FINLEY, *supra* note 6, at 151–52.

19. *See* GARDNER, *supra* note 9, at 41 ("The father's consent was apparently necessary in law at all times.").

tion of citizenship required the orderly, regular succession of legitimate children in one generation after another,"[20] and so the rightness of a marriage also from a socio-political view was of great political interest. Before and after marriage, the state was particularly concerned about the chastity and fidelity of a woman because her actions could cast doubt on the legitimacy of her children and thus usurp inheritance rights[21] and familial stability. This partially explains the perpetuation of the societal view that the central position of a Roman woman was as the idealized chaste wife who possessed *castitas*, stainless physical and mental integrity, and *pudicitia*, scrupulous conscience.[22] As a chaste wife with these qualities, she confined all her sexual activity only to her legitimate husband.[23]

The sexual integrity of a woman was vital since it related to the legitimacy of her children, and hence the legitimacy of future Roman citizens. Therefore the state promulgated strict rules regulating marriages and addressing sexually impermissible behavior.[24] Ulpian wrote that when a legal marriage took place, the children possessed the citizenship of the father, but if it did not take place, they followed the nationality of the mother,[25] except where the child was born of an alien father and a Roman citizen mother.[26] Furthermore, sexual relations with married and marriageable women were discouraged because they compromised the marriage and the production of legitimate children. Though sexual relations and the impregnation of an unmarried woman posed less of a problem regarding legitimate children, it may have been perceived that a woman who had previous sexual experience with a man other than her husband was more likely to stray, thus reducing her future reliability as a

20. FINLEY, *supra* note 6, at 152.
21. CLARK, *supra* note 16, at 28 (explaining state interest in women's activities in the context of marriage).
22. TREGGIARI, *supra* note 9 at 233.
23. Elaine Fantham, *Stuprum: Public Attitudes and Penalties for Sexual Offences in Republican Rome*, 35 ECHOS DU MONDE CLASSIQUE/CLASSICAL VIEWS 267, 271 (Issue 10, 1997) (stating that sexually, *pudicitia* for a woman connotes the confinement of sexual activity to a woman's husband but for a man, *pudicitia* meant sexual activity confined "to the conventionally sanctioned partners . . . [including] the man's wife, . . . his own slaves, brothel slaves, and courtesans.").
24. FINLEY, *supra* note 6, at 150 (discussing the political significance of state-defined legitimate children and the reasons for state interest in the regulation of marriage).
25. LEFKOWITZ & FANT, *supra* note 15, at 114 (citing Ulpian *Rules* 5.8.50). In addition to citizenship, a child follows the social status of the mother when there is no legal marriage so that a child born of a slave mother and a free man would be a slave (citing Ulpian *Rules* 5.8.50). *Id.*
26. *Id.* ("The lex *Minicia* directs that when a child is born of parents one of whom is an alien, it shall follow the condition of the inferior parent.") (citing Ulpian *Rules* 5.8.50).

faithful wife and mother.[27] Consequently, the state impeded on a woman's choice of sexual partners and husbands not out of concern for her, but more as a means of addressing political issues.

II. INFLUENCES ON ROMAN SEXUAL VIOLENCE LAWS

In addition to considering the treatment of women in ancient Rome as an important context for looking at Roman rape laws, it is also useful to look at Greek legislation on rape and sexual behavior. Though the Romans were not directly influenced by their Greek counterparts in the development of their legal system, it is likely that they were at least aware of the existence of the Greek laws on rape. As a result, there may be a case for specific influence on the details of their own rape legislation.[28] In fact, Roman tradition states that envoys went to Athens to study Solon's laws,[29] and according to Plutarch one of Solon's laws did address rape.[30] Moreover, in classical Greece, the Draconian homicide law, considered by many the first and initially only law of Athens, included rape[31] as a mitigating circumstance for homicide.[32] Generally in classical Greece, rape was actionable under public prosecution, and the penalty would have been any which the prosecutor could succeed in

27. DANIEL OGDEN, *Rape, Adultery and Protection of Bloodlines in Classical Athens*, RAPE IN ANTIQUITY: SEXUAL VIOLENCE IN THE GREEK AND ROMAN WORLDS 26 (Susan Deacy & Karen F. Pierce eds., 1997) ("It may have been felt that a woman that experienced sex with any man other than her husband was liable to acquire a taste for extra-marital adventures in the future, thus vitiating her reliability as a wife.").

28. *See* HANS JULIUS WOLFF, ROMAN LAW: A HISTORICAL INTRODUCTION 60–61 (1951) (concluding that certain stylistic and substantive features of Roman law have Greek origins).

29. *Id.* at 60.

30. OGDEN, *supra* note 27, at 30 (citing PLUTARCH *The Lives of Noble Greeks and Romans*, Solon 23).

31. Like Latin, ancient Greek did not have one word which denotes the modern idea of rape. *See, e.g.*, HENRY GEORGE LIDDELL & ROBERT SCOTT, GREEK-ENGLISH LEXICON "*biasmos*" (Henry Stuart Jones ed., Clarendon Press 9th ed. 1940) (giving the definition of *biasmos* as forcible disgrace, sexual violence, or dishonor, and included adultery, seduction, and rape); *see also* OGDEN, *supra* note 27, at 25 (defining rape as *biasmos*, etc.); S.G. COLE, *Greek Sanctions Against Sexual Assault*, 79 CLASSICAL PHILOLOGY 97, 98 (1984) ("Several expressions used in Greek to mean assault can, in certain circumstances, denote rape."); HARRIS, *supra* note 5, at 483 (discussing various words in Latin (*stuprum, vis*) and Greek (*ubric, atimia*) used for sexual violence but cautioning that the words are not a direct equation with the modern word "rape");.

32. *See* OGDEN, *supra* note 27, at 26–27 (stating that though this law did not directly address the idea of consensual vs. non-consensual sex, the law's contents would have covered situations of rape).

pursuing.[33] Fines were also imposed on perpetrators, and Plutarch writes that for rape, Solon set a fine of one hundred drachmas.[34] In his time, Lysias wrote that rape of a free person or boy required a fine of double the damage done.[35] While the same punishment seemingly applied to rape of both males and females,[36] Daniel Ogden notes that "the basic rates of fine or punishment for the rape of women may still have been much greater than those for men."[37] Alternatively, he observes that if the punishments for rape were comparable, the rationalization probably differed. For women, the penalty was based on the protection of bloodlines while for males, both men and boys, the penalty was based on personal dignity, with men's personal dignity deemed more important than women's.[38] For the Greeks then, as for the Romans, laws on sexual behavior including rape, adultery, and seduction focused on the woman not for physical protection of the woman in her own right, but because she was the necessary vehicle for carrying on the *oikos*,[39] and for this reason she was of state interest. However, other possible factors "that might be adduced as shaping adultery and rape legislation are the desire to protect the personal dignity of a woman, . . . or the desire to protect the personal dignity of a man (i.e., her husband or guardian)."[40] It is likely that the Roman view of regulating the sexual integrity of their women had similar philosophical roots.

While the roots of Greek rape legislation may have had some influence on the development of Roman rape legislation, Rome's own history and mythology as recorded in literature reflect and probably played a quite significant role in shaping the Roman view of rape and its consequences. For instance, the origins of Roman marriage actually began

33. *Id.* at 30 (explaining that rape could be prosecuted as *graphē hybreōs*, public prosecution for *hybris*—and punishment could include death).
34. *Id.* at 30 (citing PLUTARCH, *The Lives of Noble Greeks and Romans*, Solon 23).
35. *Id.* at 33 (citing Lysias 1.32–33).
36. *Id.* at 35 ("However, the assimilation of punishments here may be more apparent than real, for 'double the damage' is itself a relative, not an absolute term." It could mean that "the offender should pay double the assessed amount for the damage he has caused, or double the fixed fine for the rape of a slave in the same category . . . .").
37. *Id.*
38. *Id.* Thus the rape of a woman was doubly costly due to the desire to protect bloodlines, but rape of a man was doubly costly due to the affront to his dignity.
39. *Id.* at 25–26; *see also*, LIDDELL & SCOTT "*oikos*," *supra* note 31 (giving meaning of *oikos* as home, household, family).
40. OGDEN, *supra* note 27, at 26.

with the collective *raptus*[41] of the Sabine women,[42] and the story of the conjugal kidnapping is recounted in various literary sources including Livy, Virgil, Cicero, and Ovid.[43] According to Livy, after the Sabine women's fathers refused to grant marriage rights to the new Roman community, the Romans collectively abducted and raped the Sabine women.[44] Afterwards, the Sabine women pleaded with their fathers to recognize the abductors as their new husbands, thus establishing the roots of Roman marriage and the continuation of the Roman race.[45] Here, rape seems to be a necessary evil, as the purpose of the rape, the procreation of future Romans, is more important than the act itself. Livy also provides two other important stories of rape: the story of Lucretia, whose rape brought the fall of the monarchy,[46] and the story of Verginia, whose attempted rape sparked the overthrow of the decemvirate in the Conflict of the Orders.[47] First in Lucretia's story,[48] inflamed by her chastity, Lucius Tarquinius Superbus, the last king of Rome, threatens to kill her and leave a dead slave's body next to hers if she refuses to submit to his advances. Rather than being suspected of adultery, especially with a slave, Lucretia relents. Afterwards, she confesses everything to her husband, father, and another witness, and then kills herself in front of them. Deeply incensed by these events, the men incite the people to overthrow the king and the Roman Republic is established.[49]

In the story of Verginia, the tyrant Chief Decemvir Appius Claudius lusts for the daughter of the plebian centurion Lucius Verginius.[50] Knowing he cannot have her because she is a freeborn woman, Appius gets his dependent to claim Verginia as the dependent's slave

41. OXFORD LATIN DICTIONARY, 1574 (P.G.W. Glare ed., Oxford University Press 1984) (1982). (Defines "*raptus*" as "1) The action of snatching or tearing away; 2) Robbery, rapine, plunder, the seizure of prey; 3) The act of carrying off, abduction, rape").
42. Fantham, *supra* note 23, at 275 (recounting how Roman marriage started with a collective act of rape).
43. *Id.* (referencing Cicero *Republics* 2.11–12; Virgil *Aeneid* 8.635–38; Livy *Ab Urbe Condita* 1.11–12; Ovid *Ars Amatoria* 1.101–32).
44. *Id.* (citing Livy 1.11–12).
45. *Id.* (citing Livy 1.3).
46. *See* S.R. Joshel, *The Body Female and the Body Politic: Livy's Lucretia and Verginia in* SEXUALITY AND GENDER IN THE CLASSICAL WORLD [first page of work], 166 (McClure, ed.). The story of Lucretia is recounted in Livy 1.57–60.
47. *Id.* The Conflict of the Orders was a class struggle between the privileged patricians and underprivileged plebian groups. *Id.* The story of Verginia is recounted in Livy 3.44–58.
48. *Id.* at 167–68.
49. *Id.* (recounting the narrative of the virtuous Lucretia and the events following her rape).
50. *Id.* at 166.

while her father is away.[51] Then Appius adjudges Verginia a slave and claims her for himself.[52] To keep Verginia from being raped as an inferior slave, her father kills her and incites fellow soldiers to revolt, which results in the decemvirate being overthrown.[53] In the Lucretia and Verginia stories, the loss of control of the women's bodies by their male guardians resulted in disaster for the women, and the women's bodies are ultimately noble sacrifices for the greater good of the state.

Finally, the supreme rape story comes from the myth of the founding of Rome. In Livy 1.1.8, the priestess Rhea Silva is raped by the god Mars and subsequently gives birth to Romulus, Rome's founder.[54] This rape seems to be particularly acceptable, and almost ennobled, because the mortal woman is raped by a superior god, and the rape begets Rome's first king. In all these literary stories of rape, some greater political interest or benefit is always emphasized over the actual sexual violation of the woman. This idea of rape as political benefit will be a recurrent theme in Roman legislation on rape and sexual violence.

III. Legal Charges for Sexual Violence

For the Romans, all sexual assault, including rape, was treated as a crime, though the legal charge was sometimes obscure.[55] Part of the reason for this legal ambiguity was the fact that for women of the right class, namely freeborn Roman women, a variety of both civil and criminal legal charges could be brought for rape. Depending on the historical period, some were used more than others as legal development progressed, but charges seem to have still often overlapped. One legal charge for rape was *vis*, which was a crime for physical assault including for purposes of lust.[56] Another legal charge covering rape was *stuprum*, which covered any irregular or promiscuous sexual act including acquaintance rape, seduction,[57] and homosexuality,[58] as well as forcible rape.[59] Additionally, later in Roman history, the charge of *raptus* could

51. *Id.*
52. *Id.*
53. *Id.* at 168–69 (recounting how Verginia's father saved her from her impending fate as a lowly slave).
54. *Id.* at 163–64.
55. O.F. Robinson, The Criminal Law of Ancient Rome 50 (1995).
56. *Id.* at 48.
57. Fantham, *supra* note 23, at 271.
58. Robinson, *supra* note 55, at 70–71.
59. Gardner, *supra* note 9, at 118.

be used to prosecute for rape, abduction, or seduction of innocent women.[60] Also, rape as *iniuria*, insult or outrage,[61] could by charged by either the victim or the male guardian because *iniuria* covered attempts upon chastity.[62] The various choices of legal charges for rape punctuated the paramount importance of the Roman woman's sexual integrity. "Rape could not be seen as invasion of a right to choose her own sexual partner so much as the destruction of her chief commodity in the exchange which accompanied marriage and which she was not equipped to negotiate."[63] The extreme value of a woman's sexual integrity can be seen in the way raped women were treated by society and their families. Instead of being seen as victims, raped women were seen as sources of embarrassment to their husbands and fathers.[64] With the loss of their virginity, unmarried women had little hope for a marriage, and married victims suffered shame and despair.[65] The requirement of keeping their daughters and wives untainted for their reproductive capacity was of such utmost importance that some families tried to dispose of rape victims, for they could not be trusted with their primary function, legitimate reproduction.[66] Adding to the facile rejection of the raped woman was the fact that the rapist was usually conceived of as a stranger who penetrated the family and the home from the outside.[67] Thus the rape victim could be considered the weak point through which the stranger was able to invade the home, and as such, the family might eliminate her to hide evidence of the past and prevent possibility of future encroachments. As for the rapist, the development of criminal procedures was gradual and largely ad hoc,[68] and so penalties followed

60. CLARK, *supra* note 16, at 36 ("This was not necessarily rape and did not necessarily imply sexual intercourse: *raptus*, like the eighteenth-century 'ravish', covered abduction, seduction, and rape.").

61. TREGGIARI, *supra* note 9, at 309.

62. ROBINSON, *supra* note 55, at 50 ("Attempts upon chastity might also be interpreted as outrage, and so were lesser acts as calling out lewd names, or a man's exposing his private parts.").

63. DIXON, *supra* note 9, at 53.

64. Elaine Fantham, *Doblhofer, Vergewaltigung in der Antike*, 70 GNOMON 4, 4–5 (Part 1, 1998) (reviewing GEORG DOBLHOFER, VERGEWALTIGUNG IN DER ANTIKE (1994)).

65. *Id.* at 5.

66. *Id.*

67. DIXON, *supra* note 9, at 51 ("[T]he rapist and harasser . . . was constructed as a stranger, attacking the stronghold of the family/household from outside. Roman law displays the familiar refusal to acknowledge the greater likelihood of his being an intimate.").

68. GARDNER, *supra* note 9, at 119 (stating that criminal procedures for crimes other than treason were "gradual, piecemeal and, until the first century B.C., largely *ad hoc*.").

the original tradition of self-help.[69] If the early legal process was used at all for rape, most likely it would have initially been only for redress of damages.[70]

IV. Non-Criminalized Sexual Violence

While rape of Roman citizens had repercussions, forced sexual intercourse in other contexts was not even considered rape. Again, protection of a woman and her security in her own body was not the paramount goal, and Roman sexual legislation emphasized this through the application of rape laws only to those of a certain social status.[71] In many circumstances, acts clearly viewed as modern-day rape were permissible. For example, "a husband could force himself on his wife without breaking any law."[72] Additionally, there were groups of women, including slaves, prostitutes, and foreigners, upon whom rape (*stuprum*) could not be committed due to their social status.[73] Specifically, since the law did not recognize slaves as having legal standing,[74] a master or his sons could satisfy their sexual desires by force or persuasion upon a slave.[75] Moreover, because the Roman slave was merely a piece of the owner's property,[76] slave owners could order their slaves to submit to the demands of others and could hire their slaves out for sexual services.[77]

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69. *Id.* (asserting that self-help as a form of penalty was very common in Roman society).
70. *Id.* at 120 ("If any legal process at all was used to seek redress for rape, it may have been that of the suit for damages, *iniuria*.").
71. Dixon, *supra* note 9, at 49 ("The legal definition of rape was closely tied to a woman's status and circumstances.").
72. *Id.*
73. Sara Elise Phang, The Marriage of Roman Soldiers (13 B.C.–A.D. 235) 254 (2001); Gardner, *supra* note 9, at 121 (A man could rape a "prostitute or woman from other categories, intercourse with whom did not constitute an offence (*in quas stuprum non committitur*)." (citing *Digest* 25.7.1.1)).
74. Fantham, *supra* note 23, at 270 ("Neither society nor the law recognized slaves as legal persons."); *see also* Dixon, *supra* note 9, at 50 ("A female (or male) slave in Roman society had no recognised right to sexual choice or even the right of refusal—she was a piece of property.").
75. Dixon, *supra* note 9, at 50.
76. *Id.*
77. *Id.* ("[G]reat numbers of women—whether actually in brothels, serving primarily as agricultural workers or urban domestic slaves—were by virtue of their servile status condemned to endure any sexual inroads dictated by their owners, who could not only exercise such rights themselves but instruct the women to submit to the demands of others."); Fantham, *supra* note 23, at 270 ("[Slaves] belonged to their master, who could use them for his own sexual needs or hire them out for the pleasure of others.").

Note that in the above rape stories regarding Lucretia and Verginia, the threat of association with a slave or forced slavery makes possible the sexual victimization of both women.[78]

Prostitutes also had no or very limited legal redress against rape, and the Digests seem to permit the rape of a prostitute.[79] In fact, Cato refers to a pronouncement which exempted prostitutes from protection against the legal charge of *vis* as forcible rape.[80] Most likely, a prostitute's only action against rape would be a charge of *iniuria*.[81]

Finally, another context in which rape was the norm, or at least there was no legal recourse, was during war. The fear that victorious armies would rape the vanquished freeborn, both men and women, is expressed in several texts,[82] and women prisoners who were raped could not be accused of the legal charges of *stuprum* or adultery.[83] However, soldiers who raped during peacetime were subject to penalties.[84]

V. LEGISLATION OF THE PRE-REPUBLIC AND THE REPUBLIC

Having looked at the background in which Roman legislation governing sexuality developed, the analysis progresses to the laws and legal

78. Joshel, *supra* note 46, at 177 ("Very importantly, the 'slave' makes possible the victimization of both women.").

79. *See supra* note 72 (referencing GARDNER, *supra* note 9, at 121) (citing *Digest* 25.7.1.1).

80. THOMAS MCGINN, PROSTITUTION, SEXUALITY, AND THE LAW IN ANCIENT ROME 326 n.17 (1998) (citing Cato fr. 212).

81. CLARK, *supra* note 16, at 29 ("It is not clear how they could have had any legal redress against rape, unless they could bring a charge of injury.").

82. Craig A. Williams, *Greek Love at Rome*, 45 THE CLASSICAL Q. 517, 532 n.84 (New Series 2, 1995) (citing Cicero *Philippics* 3.31; Sallust *Catilina and Jugurtha* 51.9; Livy 26.13.5); *see also* PHANG, *supra* note 73, at 254 (stating that the rate of rape rises greatly in wartime since during peacetime, soldiers were separated from civilians and therefore had less opportunities to rape).

83. FANTHAM, *supra* note 23, at 271 n.12 ("[W]omen raped while prisoners of the enemy, for example, could not be accused of either *stuprum* or adultery.") (citing *Digest* 48.5.14).

84. PHANG, *supra* note 73, at 256 (suggesting that in Italy at least, potential prosecution of soldiers for rape included *stuprum* and under the *lex Iulia de vi publica*). However, "it is not clear how a soldier's *stuprum per vim* of Roman women in peacetime was punished." *Id.* Possible punishments include death or being discharged from the army. *Id.* at 257. Note that even though foreign women might not have a legal charge against a Roman soldier for rape, most likely this action was not condoned as it could lead to revolt. Further, it was likely that the socio-economic status of aristocratic or middle-class *peregrine* women was respected, and some justice for rape might have been more easily accessible to them. *Id.* at 258–59.

procedures addressing rape and sexual violence. In the Republican period, the public courts sometimes tried offenses against sexual morality,[85] and in rape cases the requirement of *sciens dolo malo* was crucial for liability.[86] Legally, "blame attached only to the rapist,"[87] but, as mentioned earlier, society often superimposed fault through its treatment of rape victims. "Rape was a capital charge,"[88] which meant that death, exile, or diminution of civil status could be sought against the rapist in legal proceedings.[89] Nevertheless, in Republican times, rape was frequently punished through private revenge,[90] with the criminal's status often determining the penalty.[91] Valerius Maximus writes that families of the raped women often punished male rapists by castration or death.[92] Despite the extremity of these penalties, people accepted the execution of private justice during the time of the Twelve Tables, circa 451 BC,[93] even while they demanded public arbitration of disputes.[94] To avoid these violent private penalties, the accused man's only defense against rape was to claim an honest belief that the woman consented.[95]

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85. ROBINSON, *supra* note 55, at 54.
86. MCGINN, *supra* note 80, at 148 n.77 ("[T]he requirement for an act to be accomplished *sciens dolo malo* was of crucial importance for liability in cases of rape.") (citing Ulpian *Digest* 48.5.14[13].7). *See* TREGGIARI, *supra* note 9, at 279 (defining *sciens dolo malo* as knowingly with malicious intent); Richard A. Bauman, *The Rape of Lucretia, Quod Metus Causa and the Criminal Law*, 52 LATOMUS 550, 560 (1993) (translating "*Haec uerba legis ne quis posthac stuprum adulterium facito sciens dolo malo*" (Ulpian, *Digest* 48.5.13) as "Let no one henceforth commit *stuprum* or *adulterium* knowingly and intentionally.").
87. DIXON, *supra* note 9, at 49.
88. GARDNER, *supra* note 9, at 118; *see also* R.W. LEAGE, ROMAN PRIVATE LAW: FOUNDED ON THE 'INSTITUTES' OF GAIUS AND JUSTINIAN 420 (1st ed. 1906) ("[According to the] *lex Iulia de vi publica seu privata*, . . . if the case amounted to the rape of a virgin, a widow, a nun, or a lady devoted to religion, the guilty person and accessories were punished capitally.").
89. *See* DIXON, *supra* note 9, at 50 (giving the definition of capital offense); ROBINSON, *supra* note 55, at 157 (defining capital punishment as "something putting at risk not always someone's physical life . . . but also his . . . civic life by status loss. . .").
90. ANDREW WILLIAM LINTOTT, VIOLENCE IN REPUBLICAN ROME 26 (1999).
91. DIXON, *supra* note 9, at 50.
92. LINTOTT, *supra* note 90, at 26, 26 n.3 (noting that in the writings of Valerius Maximus vi.I.13 and Horace *Satires* i.2.41–6, 64–6, "death or castration is described as the usual penalties").
93. *See* WOLFF, *supra* note 28, at 54–61 (giving the historical development of the Twelve Tables as the first Roman legislation); *see also* LEFKOWITZ & FANT, *supra* note 15, at 95 ("These laws [the Twelve Tables], the basis of Roman civil law, have their origins in what Romans called the *mos maiorum*, the tradition of their ancestors.").
94. LINTOTT, *supra* note 90, at 26.
95. GARDNER, *supra* note 9, at 121 ("A successful defence that the woman had consented might have released a man from the severest penalty (the maximum penalty for rape

Specific charges for rape during Republican Rome (509 BC through 27 BC) included the charge of *vis*. Originally, *vis* was a crime which involved physical assault for the purpose of lust or gain,[96] and in the Republic, rape as an offense could be categorized as *vis*.[97] The first statute naming *vis* as a crime was the *lex Lutatia*, promulgated circa 70 BC. This statute initially covered armed attack.[98] Later, "anyone who forcibly violated a boy, a woman[,] or a young girl was liable" for the charge of *vis*.[99] Furthermore, anyone who raped a single or married woman automatically faced the extreme permitted penalty of death even if the woman's father forgave the rapist for the injury.[100] Here, the fact that the rapist could still be prosecuted reveals the Republican roots of rape classification as an offense against the public and not just the individual. Another statute addressing rape under *vis* was the *lex Plautia de vi*, but very little is known about this law other than the fact that it was used unsuccessfully against Catiline and that it suggests a woman might have had some type of legal action for rape other than *iniuria*.[101] Probably the most important statute regarding rape as *vis* was the *lex Iulia de vi*, which was most likely introduced in Caesar's dictatorship,[102] circa 45 BC.[103] The *lex Iulia de vi* punished "*per vim stuprum*," intercourse by

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was death) but it would not have got him off scot-free."). Note that the reference to private penalty refers to an individual citizen's personal act of revenge against the supposed perpetrator. That is, there seemed to be no public procedure in enactments of private penalties.

96. ROBINSON, *supra* note 55, at 48.

97. *Id.* (giving a general description of what *vis* covers).

98. *Id.* at 78 (discussing the first probable statute on *vis* and the situation which gave rise to the statute).

99. *Id.* at 48 (citing Marcian 14 *Institutes; Digest* 48.6.5.2).

100. *Id.* (citing Marcian 14 *Institutes; Digest* 48.6.5.2) ("[A]nyone who raped either a single or a married woman was punished by the extreme penalty, without the benefit of a five-year prescriptive period, and even if the woman's father was ready to forgive the rapist for the injury done to him (*sic*).").

101. *See* GARDNER, *supra* note 9, at 119 ("A *lex Plautia de vi*, passed possibly in 70 B.C., was used against Catiline, but although it was superseded by the *lex Iulia* it seems to have been concerned mainly with such offences as armed robbery rather than rape.") (citing Cicero *pro Milone* 35; Sallust *Catilina* 4); ROBINSON, *supra* note 55, at 79 ("The *lex Plautia de vi*, perhaps of 70 B.C. and certainly between 78 and 63, since it was under this statute that we find Catiline accused in 63 B.C. (citing Sallust *Catilina* 31.4), then confirmed the range of offences covered by the *lex Lutatia*, and extended the jurisdiction of the *quaestio* to private offences or, more precisely, offences against private individuals that were *contra rem publicam*.").

102. *Id.* at 118.

103. DIXON, *supra* note 9, at 50 (giving the date as 45 BC).

force,[104] and it defined rape as forcible sexual intercourse with a boy, woman, or anyone else.[105] In its application, however, criminal prosecution could only be brought if the victim was freeborn.[106] A charge of rape under the *lex Iulia de vi* could be brought by the woman's father or her husband,[107] and, significantly, a raped *sui iuris*[108] woman could bring a prosecution in criminal court on her own behalf.[109] However, convention discouraged women from appearing in court, and while the case could be prosecuted for a woman personally, her male guardians would be the ones physically present.[110] If the woman's father chose not to press charges, outsiders could prosecute against the rapist without a time limitation imposed.[111] The explicit inclusion of rape in the *lex Iulia de vi*, and the fact that it was open to prosecution outside the family, denotes

104. GARDNER, *supra* note 9, at 118 ("A criminal prosecution could be brought for rape (*per vim stuprum*: 'intercourse by force') of women or boys . . . ."); *see also infra* notes 113-127 and accompanying text.

105. DIXON, *supra* note 9, at 50 ("The law, and subsequent judgements, are recorded in later compilations, which give as the definition of rape forcible sexual intercourse with a boy or a woman 'or anyone.'") (citing Marcianus *Digest* 48.6.3.4; Ulpian *Digest* 48.5.30.9; Paul *Digest* 2.26.12; and the *Codex Justinianus* 9.20.1); *see also* Bauman, *supra* note 86, at 557 ("According to a fragment of Marcian, the *lex Iulia de ui publica* applies to the forcible violation of a boy, a woman, or anyone else: *punitur huius legis poena, qui puerum uel feminam uel quemquam per uim stuprauerit.*") (citing Marcianus *Digest* 48.6.3.4).

106. DIXON, *supra* note 9, at 50 ("[T]he terms sometimes specify—or imply—that the offence [rape] is wholly criminal only if the victim is *free-born.*"). *Id.* at 175 n.14 ("Ulpian *Digest* 48.6.6 seems to imply the victim must be free-born.").

107. GARDNER, *supra* note 9, at 118 ("As with *iniuria*, prosecution would be open also to husbands and fathers, and a rescript issued by Diocletian and Maximian informs a man that he is entitled to bring a prosecution under the *lex Iulia* for an offence against his son's fiancée.").

108. A.M. PRICHARD, LEAGE'S ROMAN PRIVATE LAW : FOUNDED ON THE *Institutes* OF GAIUS AND JUSTINIAN 97 (1961) ("A male or female *civis* who was not under the power of another was said to be *sui iuris.*"); DIXON, *supra* note 9, at 50 (noting a Roman citizen usually only became *sui iuris* [independent at law] after the father died); GARDNER, *supra* note 9, at 14–15 (stating a *sui iuris* woman would still be required to have a *tutor* or guardian who represented her legally).

109. GARDNER, *supra* note 9, at 118 ("Women *sui iuris* were normally allowed to bring prosecutions in criminal courts only for offences against themselves or their near relations; this would allow the raped woman herself to prosecute."); *see also* DIXON, *supra* note 9, at 50 ("[W]omen were on the same footing as men, though convention discouraged even independent women from appearing in court on their own behalf, and the law from the early empire forbade them to appear on behalf of another, as men did.").

110. DIXON, *supra* note 9, at 50–51.

111. GARDNER, *supra* note 9, at 118; *see id.* (stating for the charge of adultery, the time limit was five years under the *lex Iulia de vi publica*) (citing *Digest* 48.5.30(29).5–7; 48.6.5.2; *Codex Justinianus* 9.12.3).

rape as criminal violence against public order which was to be punished not just by the individual, but by society as well.[112]

Another legal charge in Republican Rome under which a rape action could be brought was *stuprum*. *Stuprum* originally referred to any disgraceful act,[113] and only later did it come to mean sexual immorality[114] or unsanctioned sexual intercourse.[115] Most Republican authors treated it as violation or corruption of the passive partner, and the word connotes acts of sodomy, adultery, fornication,[116] acquaintance rape, and seduction.[117] According to Modestinus, *stuprum* could be committed with a widow, virgin, or boy,[118] and a charge could only be brought for *stuprum* upon citizens.[119] Note here that homosexual male intercourse was only criminal in Rome when, as denoted by *stuprum*, rape or seduction was committed upon a freeborn boy or man.[120] The danger of *stuprum* was that it ruined the maiden for marriage and motherhood, and corrupted the young man by violating his developing virility.[121] As a result, capital charges could be brought for *stuprum*, and like *vis*, there was no five-year prescriptive period.[122] Ulpian writes that "forcible *stu-*

112. DIXON, *supra* note 9, at 50.

113. Fantham, *supra* note 23, at 269 ("We have records of public and private punishment for the offence of *stuprum* from earliest times, but the word had originally a much wider reference, denoting any public disgrace or disgraceful act.").

114. GARDNER, *supra* note 9, at 121 ("In general terms, *stuprum* could refer to any sort of sexual immorality, including adultery.").

115. Fantham, *supra* note 23, at 269 ("[I]t [stuprum] was only secondarily applied to unsanctioned sexual intercourse."); *see also*, GARDNER, *supra* note 9, at 121 ("Once the August *lex Iulia* constituted adultery as a separate criminal offence, *stuprum* took on in addition a more restricted meaning . . . specifically . . . relations with unmarried or widowed women (or indeed with boys).").

116. Fantham, *supra* note 23, at 270 ("*Stuprum* covers both fornication and sodomy."); *Id.* at 271 ("Both a wife's adultery and the sexual activity of an unmarried woman of respectable status came under the term *stuprum*, and the term could also designate a lasting relationship.").

117. *Id.* at 271 ("*Stuprum* would cover both what is commonly called acquaintance rape and seduction, whatever the reality of consent.").

118. *Id.* at 275 (translating Modestinus *Liber Regularum I* "*[S]tuprum in vidua vel virgine vel puero committitur*" as "*Stuprum* is committed with a widow, a virgin, or a boy.").

119. *Id.* at 270 ("[W]e find no instances of *stuprum* that do not involve intercourse with male or female citizens, because the Romans would not have seen anything improper in such acts.").

120. ROBINSON, *supra* note 55, at 70 (citing *Digest* 48.5.35[34].1; Modestinus *Liber Regularum* I). While in 50 BC there is mention of a *lex Scantinia* which seems to be a basis for prosecution of homosexual rape, very little information is available about it. Fantham, *supra* note 23, at 285–86.

121. Fantham, *supra* note 23, at 271.

122. ROBINSON, *supra* note 55, at 71–72; *see also* GARDNER, *supra* note 9, at 119 ("[Kunkel] believes that capital charges could be brought for adultery and *stuprum* under the Re-

prum on either a male or a female is undoubtedly not subject to any time limit, because there is no doubt that the perpetrator committed public violence . . . ."[123] In addition to being its own legal charge, *stuprum* was also considered an offense as *vis publica* (public violence)[124] or as an offense under the *lex Cornelia de iniuriis*,[125] which provided criminal remedy for injuries.[126] While there are records of both private and public punishment for *stuprum*, the *paterfamilias* typically dealt with aggressors of *stuprum* in the Republican period.[127]

The Republican period was also the origin of the civil delict[128] *iniuria*, insult or outrage, which started out as "redress for personal physical assault and battery."[129] In time, *iniuria* broadened to include every kind of offense against "a person's honour, his reputation, his dignity, or his physical integrity."[130] It encompassed such acts as physical or verbal insults,[131] assaults, defamation, sexual approaches,[132] seduction,

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public and assumes that rape was subsumed under these and was then transferred to the *lex Iulia de vi* . . . when these other offences were separately provided for under the *lex Iulia de adulteriis coercendis*.") (citing KUNKEL W. UNTERSUCHUNGGEN ZU ENTWICKLUNG DES ROMISCHEN KRIMINALVERFAHRENS IM VORSULLANISCHER ZEIT [AN INTRODUCTION TO ROMAN LEGAL AND CONSTITUTIONAL HISTORY] 122–23 (1962)).

123. Bauman, *supra* note 86, at 557 ("*Eum autem, qui per uim stuprum intulit uel mari uel feminae, sine praefinitione huius temporis accusare posse dubium non est, cum eum publicam uim committere nulla dubitatio est.*") (translating Ulpian *Digest* 48.5.30.9).

124. LINTOTT, *supra* note 90, at 108 (discussing *vis publica* as public violence); *see also* ROBINSON, *supra* note 55, at 79 (noting the difficulty in distinguishing between *vis publica* and *vis privata* in the Republican period). Robinson points out that "[b]y late classical law at least the distinction drawn between *vis publica* and *vis privata* was that the former was committed by magistrates or officials, the latter by private persons. Both were offences, usually grave offences, against public order." *Id.*

125. ROBINSON, *supra* note 55, at 54 ("Stuprum was a wide enough concept to be seen also as an offence against the *lex Cornelia de iniuriis*, or as *vis publica*.").

126. PRICHARD, *supra* note 108, at 419 (giving the *lex Cornelia* as one law whereby the prosecutor had a choice between a civil or criminal suit).

127. GARDNER, *supra* note 9, at 121–22.

128. *See* PRICHARD, *supra* note 108, at 394 ("The obligation *ex delicto* was merely to make satisfaction for a wrong inflicted."); *see also*, LEAGE, *supra* note 88, at 322 ("The infringement of a right in rem was at Rome called a delict, which, therefore bound the offender to the person wronged by the same kind of juris as that to which contract law gave rise, viz. an obligation; but the obligation was not to perform an agreement, it was to make satisfaction for an unlawful act.").

129. J.A. CROOK, LAW AND LIFE OF ROME, 250 (1967).

130. ROBINSON, *supra* note 55, at 50; *see also* LEAGE, *supra* note 88, at 322–23 ("Injuria or wrong to the person . . . represents the violation of these rights in rem which a man enjoys wholly apart from property, i.e., the 'primordial' rights of the normal citizen to safety and reputation.").

131. DIXON, *supra* note 9, at 50.

132. ROBINSON, *supra* note 55, at 49.

and rape.[133] An unsuccessful attempt of homosexual *stuprum* most likely amounted to a charge of *iniuria*.[134] Paul gave specific examples of the wide ranging applicability of *iniuria* when he stated that a person "suffer[s] outrage (*iniuria*) either in the body or outwith the body; in the body through beating (*verberibus*) or sexual assault, outwith the body by jeering or defamation."[135] The charge of *iniuria* could be brought by either the person wronged, or by a male guardian who could represent the person in court.[136] For example, since insulting the son or daughter of a man also affected the man himself, a father could simultaneously bring both a charge on his own behalf as well as a charge on his child's behalf.[137] In most cases of *iniuria*, the victim could choose between a civil action, such as under the *lex Aquilia*, or a criminal prosecution, such as under the *lex Cornelia de iniuriis*.[138]

The *lex Aquilia*, passed circa 286 BC, was an act which covered "enforcement of compensation for loss occasioned to the plaintiff,"[139] whereas the *lex Cornelia*, established circa 81 BC,[140] covered defamation and assault.[141] However, the distinction between *iniuria* as a crime and as a delict is not clear, and Gaius suggests the two procedures coexisted.[142] Usually though, the reason for the suit was monetary compensation for damages suffered, and damages were assessed based on actual injury as well as the social position of the victim and the overall circumstances.[143] For instance, a man charged with *iniuria* as sexual harassment could bring up the defense that the woman was dressed like a

133. TREGGIARI, *supra* note 9, at 309.

134. ROBINSON, *supra* note 55, at 141 n.248 ("An attempt [of homosexual rape]—presumably unsuccessful—might amount to *iniuria* . . . .") (citing *Digest* 47.10.9.4; *Pauli Sentitiae* 5.4.5).

135. *Id.* at 49.

136. DIXON, *supra* note 9, at 50–51 ("A charge of *de iniuria* could be brought by the victim or by someone who could reasonably represent the victim at court. . . ."); *see also id.* at 51 (citing *Institutes* 4.4.2 which states that a husband may appear for an insulted wife but not vice versa).

137. *Id.* at 50 ("[A] man could bring a charge on behalf of his son or daughter and at the same time on his own behalf, since any insult to them affected him also.").

138. PRICHARD, *supra* note 108, at 419.

139. *Id.* at 410 (stating the date as around 287 or 286 BC).

140. *Id.* at 419.

141. ROBINSON, *supra* note 55, at 49 ("*Iniuria* was [a crime and] . . . also a delict, covering both assault and defamation; these could include an element of financial loss, but the essence of the offence was the outrage suffered.").

142. *Id.* (citing Gaius 3.220).

143. DIXON, *supra* note 9, at 51.

prostitute or slave, in which case the charge would not stand.[144] The Republican legal charge of *inuria*, and *vis* as well, could also be brought for abduction, defined as seizure of a person for sexual purposes.[145] If the victim of abduction was a woman, her husband and father could prosecute even if the victim had accompanied the abductor voluntarily.[146] When a man abducted, sexually assaulted, or raped a girl that was under the marriageable age, her *paterfamilias* could prosecute for damages under the *lex Aquilia*.[147] It is important to note here that the offense was not based on her youth but on her spoiled marriage potential.[148]

Sexual assault could also be charged as *iniuria*, and the fact that prosecution could be brought by someone other than the victim seems to be related to gender roles and the ideas of shame and honor in Roman society. In Rome, the men in the family had the responsibility of guarding the sexual integrity of the women, and often even of the slaves.[149] Thus an insult to a person under his protection, especially through sexual assault or rape, reflected an attack on the male guardian himself. The underlying motive of injury parallels the American legal system where the rape of a slave was seen as a property crime against her master and not a personal crime against the woman.[150] In fact, a Roman slave owner could bring an action of *iniuria* for rape of a slave under the *lex Aquilia* which specifically permitted damages based on death or bodily harm to slaves[151] and allowed for a charge of outrage.[152] Moreover,

144. *Id.* (giving one successful defense to the *iniuria* of *adsectatio* which was the offense of following a freeborn person and making lewd suggestions or calling out lewd names).

145. ROBINSON, *supra* note 55, at 71.

146. *Id.*

147. GARDNER, *supra* note 9, at 125 (Ulpian thought "[one] might sue for damages under the *lex Aquilia* . . . where the girl was free but under marriageable age. The penalty for seducing an under-age girl was by the time of Paul (late second century AD) either condemnation to the mines, or relegation or exile, depending on the man's social status." (citing *Digest* 47.10.25; 48.19.38.3)); *see id.* at 39–41 (giving several sources which indicate the minimum age was twelve).

148. *Id.* at 125 ("In Roman law, what constituted the offence was not the girl's youth but her status as (potentially) marriageable.").

149. MCGINN, *supra* note 80, at 289. In fact, should a man desire, he could, through private contract law, protect a slave he sold from being prostituted by including a *ne serva prostituatur* restrictive covenant. *Id.* at 288.

150. *Id.* at 314 n.143 (citing from K.A. Getman, *Sexual Control in the Slaveholding South: The Implementation and Maintenance of a Caste System* 7 HARVARD WOMEN'S L.J. 115, 146 (1984)).

151. *See* WOLFF, *supra* note 28, at 68 ("The *lex Aquilia* . . . defined the claims a master might raise against one who had inflicted death or bodily harm on his slaves or animals.").

152. MCGINN, *supra* note 80, at 314–15.

Ulpian explicitly wrote that *iniuria* includes attempts on the chastity of a slave.[153] In bringing a legal charge, the owner would be concerned with an affront to his own dignity, rather than the injury to his slave.[154] Additionally, he might be concerned that the rape of a slave, or a slave having sexual relations with an outsider, could possibly indicate "subversion of . . . domestic loyalty."[155]

In addition to the legal charges of *vis, stuprum*, and *iniuria*, rape and sexual assault were also covered under the praetorian edicts. Originally at *ius civile*, a transaction was still valid even if it had been entered into under duress.[156] In the early first century BC, the praetor started to give legal relief under the praetorian edict *Quod per uim aut metum abstulisset*[157] when "disadvantageous acts [were] induced by violence or duress."[158] Regarding the duress aspect, the edict only protected against *metus*, or nonphysical duress,[159] such as "fear of death or serious bodily harm to oneself or one's family . . . [or] assault on one's chastity."[160] Paul later writes that if a woman or man gives something to avoid *stuprum*, the edict protects them because "for respectable people (*viri boni*) fear of violation is worse than the fear of death. . . ."[161] This praetorian edict would protect Lucretia's submission to rape by Tarquinius because she only consented after Tarquinius threatened to kill her and compromise her *castitas* and *pudicitia* by leaving a slave by her side. Relief under this praetorian edict included *restitutio in integrum*, which voided the transaction; *exceptio*, which protected the victim from claims arising from the transaction; and *actio quod metus causa*, which gave quadruple compen-

153. *Id.* at 314 ("Mere attempts on the chastity of slaves might be punished through the action on *iniuria*.") (citing Ulpian *Digest* 41.10.9.4 (male and female slaves)). *But see* LEFKOWITZ & FANT, *supra* note 15, at 104–05 (noting on the other hand, that Paul wrote that any "sexual intercourse with female slaves, unless they had deteriorated in value or there was an attempt against their mistress through them, is not considered an injury") (citing *Pauli Sentitiae* 2.26.16).

154. GARDNER, *supra* note 9, at 118 (citing *Digest* 47.10.1.2).

155. *Id.*

156. Bauman, *supra* note 86, at 552 ("At *ius civile* the validity of a transaction was not affected by the fact that it had been entered into under duress.").

157. *Id.* at 550.

158. *Id.* at 552.

159. *Id.* at 551. Note that true physical duress, i.e., force or *vis absoluta*, would prevent any and all consent (no choice). Prichard gives the following as an example: "[W]here *X* held *Y* down and took his watch, saying he was borrowing it . . . " PRICHARD, *supra* note 108, at 322.

160. PRICHARD, *supra* note 108, at 322.

161. Bauman, *supra* note 86, at 553 (Bauman at 553 n.8: translating *Digest* 4.2.8.2 "*quod si dederit ne stuprum patiatur 'uir seu mulier', hoc edictum locum habet, cum uiris bonis iste metus maior quam mortis esse debet.*"). *Id.* at 553 n.9.

sation in default of restoration.[162] Because Lucretia had not paid off her rapist to avoid the rape, there was no way of restoring what she lost, and thus her only potential remedy would have existed under *exceptio* for any claim against her based on wrongdoing on her own part.[163]

Another praetorian edict addressing attempts on chastity was the edict *de adtemptata pudicitia.*[164] This edict covered sexual advances and any assault on virtue with bad intent.[165] "Sexual advances to persons of either sex, free or slave, gave rise to an action; Ulpian tells us, in the latter case, the slave's master could prosecute."[166] Specifically, a man could be charged for addressing maidens or married women, following them, or taking away their attendants.[167] However, the edict was not applicable if the actions were only in jest or if there was an honorable purpose.[168] Additionally, the edict did not protect slaves or prostitutes in their own right, and should freeborn women be dressed as slaves or prostitutes, the edict offered only limited protection.[169] Under this edict, not only could the woman herself bring an action, but her husband or father could also prosecute because insult to the woman was deemed as directed also to him.[170] Furthermore, Ulpian felt that a fiancé should also have a right of action under this edict.[171] Finally, attacks on the chastity of a Vestal Virgin, while not covered directly by the edict *de adtemptata pudicitia*, was a crime against sacral law.[172]

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162. *Id.* at 552 ("The praetor gave three kinds of relief: *resitutio in integrum* which treated the prejudicial transaction as null and void and restored the status quo; an *exceptio* which gave a defence to any claim under the transaction; and the *actio quod metus causa* which gave a fourfold penalty in default of restoration.").
163. For example, she would be protected against a charge of adultery on her part. *Id.* at 553.
164. GARDNER, *supra* note 9, at 117 (citing Gaius III.220; *Digest* 47.10.15.15–26).
165. *Id.* ("Labeo's commentary, as cited by Ulpian, made it clear that the edict was concerned with sexual approaches, that is, when the intent of the doer was 'contrary to good morals.' 'Address' was explained as 'make an assault upon virtue by blandishing speech' and distinguished from injury by insult or foul language.").
166. *Id.* at 118.
167. *Id.* at 117.
168. *Id.*
169. *Id.* at 118.
170. *Id.* ("An action could be brought not only by the woman herself but also by her husband or father; . . . any insult or injury to the woman was deemed to have been directed at her husband or father.").
171. *Id.*
172. ROBINSON, *supra* note 55, at 54.

VI. LEGISLATION OF THE PRINCIPATE

In the Augustan period (27 BC–AD 14), authorities passed a series of laws which greatly affected women. These laws were a response to the extreme extravagance prevalent in the beginning of the Principate (27 BC–AD 284),[173] and Augustus had been worried about the social and political consequences of the licentious lifestyle of the upper class. In the last century of the Roman Republic, blatant adultery was rampant, and divorce and remarriage became common.[174] Furthermore, marriages decreased among the aristocracy, and even when married, few couples produced children.[175] Hoping to increase the number of the upper classes and to curb immoral practices,[176] Augustus enacted several social laws including the *lex Iulia de maritandis ordinibus, lex Iulia de adulteriis coercendis,*[177] and *lex Iulia de vi.* The purposes of these laws were to regulate marriage, encourage production of offspring, criminalize adultery, and promote public order.

Passed around 18–17 BC,[178] the *lex Iulia de maritandis ordinibus* addressed the procreation of legitimate children[179] and marriage laws.[180]

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173. FINLEY, *supra* note 6, at 151.

174. *See* DIXON, *supra* note 9, at 52 ("[There was a] . . . 'loss of virtue' in the last century of the Roman Republic, when adultery in the upper classes was not viewed as strictly and women could initiate divorce fairly easily or re-marry even after having been themselves divorced for adultery."); FINLEY, *supra* note 6, at 151 ("Augustus was concerned with the social consequences of extravagant and wasteful living, of *public* licentiousness, and in the upper classes, of *female* licentiousness (which may have been on the increase with the breakdown of political morality in the last century of the Roman Republic).").

175. LEFKOWITZ & FANT, *supra* note 15, at 102 ("Among the upper classes, marriage was increasingly infrequent, and many couples who did marry failed to produce offspring.").

176. *Id.* ("Augustus, who hoped . . . to elevate both the morals and numbers of the upper classes in Rome, and to increase the population of native Italians in Italy, enacted laws to encourage marriage and having children.").

177. The code is *ad legem Iuliam de adulteriis et de stupro,* commonly called the *lex Iulia de adulteriis coercendis.* ROBINSON, *supra* note 55, at 58.

178. PRICHARD, *supra* note 108, at 495 (index—"Lex Iulia on marriage").

179. GARDNER, *supra* note 9, at 50.

180. Fantham, *supra* note 23, at 290 ("To strengthen marriage itself, [Augustus] relied on simultaneous legislation *de maritandis ordinibus* defining the limit of marriage across barriers of social status for his governing class, and offering rewards for fertility and penalties in inheritance law for those who neglected their duty of marriage and reproductivity."); *see also* JUDITH EVANS GRUBBS, LAW AND FAMILY IN LATE ANTIQUITY: THE EMPEROR CONSTANTINE'S MARRIAGE LEGISLATION 103–04 (1995) (stating that married men were preferred for government posts and freeborn women with a minimum of three children were exempt from having a guardian). Augustus's

Some of its provisions on marriage included strict enforcement of prohibitions on certain unions between differing classes[181] and the requirement that divorced women remarry after a certain time period.[182] Within a few months of the passage of this law, Augustus used his *tribunicia potestas*[183] to bring another statute, the *lex Iulia de adulteriis coercendis*, before the *concilium plebes.*[184] The principal goal of the *lex Iulia de adulteriis coercendis* was to maintain feminine chastity in marriage[185] and to repress socially unacceptable, non-marital sexual relations, especially through the criminalization of adultery.[186] Richard Bauman hypothesizes that Augustus probably incorporated and revised an earlier 78–67 BC Sullan law on chastity and marriage, and Paul and Seutonius support this conclusion, as each wrote that Augustus's law abrogated several earlier laws on *de adulteriis* and *de puditicia.*[187] However, other scholars believe that since the main source for this conclusion comes from the end of the second century AD, there is not enough corroborative evidence to make conclusions regarding "the number, nature or content" of earlier legislation.[188]

Augustus's *lex Iulia de adulteriis coercendis* created a *quaestio perpetua*, or special court, to handle cases of adultery and other offenses, including *stuprum.*[189] Unlike in earlier Roman periods, the charge for

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inheritance legislation prevented childless couples from giving inheritances or legacies beyond the sixth degree of kinship. *Id.* at 103.

181. For example, a marriage between a senator and a freed woman. Gardner, *supra* note 9, at 57–58.

182. *Id.* at 52 ("Augustus's *lex Iulia* expected divorced women to remarry within six months.").

183. WOLFF, *supra* note 28, at 45 ("The *tribuinicia potestas* were the rights and powers of a tribune of the plebs.").

184. MCGINN, *supra* note 80, at 140. The *concilium plebes* was "an organ to protect . . . [the plebs] against the arbitrary use of the *imperium* by patrician magistrates," and the tribunes had "absolute power to veto any act of a magistrate." WOLFF, *supra* note 28, at 37.

185. GARDNER, *supra* note 9, at 128 ("Clearly, the law was intended primarily to preserve the chastity of women within marriage. That of men did not matter, so long as they kept away from other men's wives.").

186. MCGINN, *supra* note 80, at 140.

187. Plutarch mentions Sulla's earlier law in *Comparatio Lysander et Sulla* 3.2. The references to Paul and Suetonius are as follows: Paul *Collatio* 4.2.2; Suetonius *Augustus* 34.1. Bauman, *supra* note 86, at 564.

188. GARDNER, *supra* note 9, at 123 ("Augustus' *lex Iulia de adulteriis* allegedly superseded several earlier laws on sexual offences, but our source for this statement belongs to the end of the second century A.D., and we have no other evidence for the number, nature and content of these earlier attempts to regulate the sexual behaviour of the Romans.").

189. *Id.*

adultery had a five-year limit for bringing prosecution,[190] and it defined adultery differently for men and women: a married woman was guilty of adultery for any sexual activity outside of the marriage, whereas a man, married or not, was guilty of adultery only if he had sexual relations with a married woman.[191] Defined in this way, a husband could always prosecute an unfaithful wife, but a wife could only prosecute a philandering husband if the other woman was married. In prosecuting adultery, the husband had priority even if he was *in potestate* of his *paterfamilias* and, after sixty days, others could prosecute if the husband chose not to do so.[192] A wife could get her guardian to bring charges against an unfaithful husband, but again, only if the other woman was married and also only if the other woman's father had not prosecuted within the five-year limit.[193] Augustus's *lex Iulia de adulteriis coercendis* with its *quaestio perpetua* was the first law to subject to public prosecution the extramarital sexual activity of women, an issue previously reserved for the family court.[194] These laws penalized convicted adulterers of the nobility with exile and loss of property. In addition to being exiled to different islands, the man convicted of adultery lost half his property, and the woman lost a third of her property and half her dowry.[195] If the man were of low status, he would be sent to the mines or other hard labor.[196] Also, a woman condemned for adultery was forbidden to marry freeborn citizens.[197] When the adulterous couple was

190. *Id.* at 128 ("[T]he [adultery] charges lapsed if the prosecution was not brought within five years.").

191. *Id.* at 127.

192. *Id.* at 128 ("The husband, even if he was still *in potestate*, had priority over everyone else in prosecuting his wife, and after him the woman's father. Sixty days were allowed either from discovery of the adultery or from his divorcing her, if he did divorce her. After that, outsiders were allowed to prosecute; a period of four to six months was usually granted for this."); *see also*, Fantham, *supra* note 23, at 267 ("[E]ither he [the husband] or the woman's father was then given sixty days in which to launch prosecution for adultery against first the lover, then on obtaining his conviction, the ex-wife: in default of the husband or father, once these sixty days had elapsed, outsiders were encouraged to lay charges against the lover, the wife, and the husband himself, for his complicity.").

193. GARDNER, *supra* note 9, at 127–28.

194. Fantham, *supra* note 23, at 267.

195. GARDNER, *supra* note 9, at 128.

196. *Id.* ("With the development of the system of dual penalties, persons of low status were probably sentenced to the mines, or similar hard labour.").

197. *Id.* at 129 ("A woman condemned for adultery belonged to the category of *probrosae*, and as such she was, under the Augustan marriage laws, along with prostitutes, bawds and their freedwomen, stage-performers and women condemned by any criminal court, forbidden marriage with freeborn Roman citizens."). *See generally, id.* ("From

caught *in flagrante*, a father was allowed to kill both his daughter and the man.[198] The husband could kill his adulterous wife's lover only if he were caught in the matrimonial home and if the lover was of a lower class such as slave, freedman, criminal, or gladiator.[199] Finally, most scholars agree that husbands were required to divorce adulterous wives whether the wives were forgiven or not.[200] Expectedly, these social laws were not received well, and they were later modified by the *lex Papia Poppaea* in AD 9.[201]

Covering crimes against public order, the *lex Iulia de vi* was another important law passed by Augustus between 19 and 16 BC.[202] Most likely, it was a reinstatement of the previous *lex Iulia de vi* passed by Caesar,[203] to which Augustus added the abuse of public office as a crime.[204] Because of this, the jurists of the early second century AD called it Augustus's *lex Iulia de vis publica*, but the distinction between *vis publica*, an offense against public order committed by magistrates or officials, and *vis privata*, an offense against public order committed by a

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references in Martial and Juvenal it has sometimes been inferred that convicted adulteresses were even required . . . to advertise their guilt, by appearing in public in the style of clothing worn by prostitutes, or at least in the outer garment, the *toga*. One consequence of this, as we have already seen, would be the loss of some of the protection afforded by the edict *de adtemptata pudicitia* and greater vulnerability to pestering in the streets.").

198. *Id.* at 129–30 ("The woman's father could kill both her and her lover, if they were caught in his or his son's house, but he must kill both together and at once, or neither.").

199. *Id.* (giving examples of the lower class including "slave, freedman of the family, *infamis*, convicted criminal, . . . gladiator and wild-beast fighter.").

200. Husbands were required to divorce adulterous wives. LEFKOWITZ & FANT, *supra* note 15, at 102; *see also* ROBINSON, *supra* note 55, at 61–62 ("Under the *lex Iulia* a husband was required to divorce a wife taken in the act of adultery and to bring an accusation against her, and he must also divorce her if she were convicted of adultery on someone else's charge—perhaps initiated before he had married her, or while he was abroad."). *But see* GARDNER, *supra* note 9, at 128 (suggesting divorce was not necessarily required though if the husband did not divorce and prosecute his wife for the transgression, the husband could himself be prosecuted).

201. LEFKOWITZ & FANT, *supra* note 15, at 102.

202. ROBINSON, *supra* note 55, at 79. PRICHARD puts the date at 8 BC. PRICHARD, *supra* note 108, at 495 (index—"Lex Iulia de vi").

203. Bauman, *supra* note 86, at 556 ("The classical jurists knew of two Julian laws on violence, the *lex Iulia de ui publica* and the *lex Iulia de ui priuata*. They were passed by either Caesar or Augustus, or by the former and restated by the later."). Robinson supports Cloud's assertion that there were two *leges Iuliae de ui*, one by Caesar and one by Augustus. ROBINSON, *supra* note 55, at 79.

204. ROBINSON, *supra* note 55, at 79 ("The novelty of the Augustan law must have been that it brought abuse of office under *vis*.").

private person, probably did not appear in the original statutes.[205] The *lex Iulia de vi* is of importance here because it subsequently covered the charge of modern rape. Originally, rape was indictable because "the rapist had committed *stuprum* or *adulterium*" with the woman,[206] and the victim herself was deemed to have committed adultery with the rapist due to her suspect consent.[207] Subsequently, later jurists state in the *Codex Justinianus* that victims of rape were guilty of neither *stuprum* nor adultery;[208] consequently, rape would have been a man's *stuprum*, for when committed upon a woman, there was no adultery since she did not possess *dolus* (willful intent).[209] In Augustan times, rape became subsumed under the *lex Iulia de vi* while the *lex Iulia de adulteriis coercendis* covered adultery and *stuprum*.[210] Here, it is interesting to note the legal development of the charge *stuprum* because it seems that since the *lex Iulia de adulteriis coercendis* criminalized adultery as a separate offense, *stuprum* then came to mean unacceptable sexual relations with unmarried or widowed women, or boys.[211] The definition of *stuprum* by Augustus's time excluded adultery and rape, as both were covered separately under the *lex Iulia de adulteriis coercendis* and *lex Iulia de vi* respectively. Yet, the charge of *stuprum* could still stand under the *lex Iulia de adulteriis coercendis* (i.e., *stuprum* was something other than simple adultery and also was different from the rape already covered in the *lex Iulia de vi*). The subsumption of rape under Augustus's *lex Iulia*

205. *Id.*

206. Bauman, *supra* note 86, at 558; *see also*, GARDNER, *supra* note 9, at 119 ("Kunkel . . . believes that capital charges could be brought for adultery and *stuprum* under the Republic and assumes that rape was subsumed under these and was then transferred to the *lex Iulia de vi* (apparently regarded as Augustan) when these other offences were separately provided for under the *lex Iulia de adulteriis coercendis.*").

207. Bauman, *supra* note 86, at 558.

208. ROBINSON, *supra* note 55, at 72 (citing *Codex Justinianus* 9.9.20 (290)); *see also*, DIXON, *supra* note 9, at 49 (stating adultery could not be charged against a raped, married women) (citing Ulpian *Digest* 48.5.30.[29].9; Modestinus *Digest* 48.5.40.[39]).

209. ROBINSON, *supra* note 55, at 72 ("Rape, sexual intercourse against the woman's will . . . seems to have been classed as the man's *stuprum* (presumably on the logical ground that, where it was committed on a woman, it could not be adultery since she was innocent of *dolus.*")); *see also*, PRICHARD, *supra* note 108, at 420 (asserting that *dolus* meant willful intent and was a grounds for liability in certain actions).

210. Bauman, *supra* note 86, at 558; *see also*, GARDNER, *supra* note 9, at 119 (stating that the charge of rape was transferred to the *lex Iulia de vi* while adultery and *stuprum* were addressed in the *lex Iulia de adulteriis coercendis*).

211. GARDNER, *supra* note 9, at 121 ("Once the Augustan *lex Iulia* constituted adultery as a separate criminal offence, *stuprum* took on in addition a more restricted meaning. [*Stuprum*] should be used specifically of relations . . . with unmarried or widowed women (or indeed with boys)."); *see also* the Republican meaning of *stuprum* discussed *infra* notes 219, 220 and accompanying text.

de vi probably occurred after an accuser realized its advantages in that the victim could not be charged *de vi* and this statute did not have a five-year limitation as the adultery statute did.[212]

As stated earlier, a claim of consent could be a defense to rape, but this defense lost its strength after the enactments of the Augustan laws. Though a successful defense of consent could save a rapist from the severest penalty under *lex Iulia de vi*, he could still be charged under the *lex Iulia de adulteriis coercendis* for adultery or *stuprum*, depending on the marital status of the woman.[213] A successful defense also had grave consequences for the victim—who would most likely lose her good reputation.[214] Furthermore, the woman would also face charges of *stuprum* or adultery if the defense of consent held, and if the woman was married, the husband would be expected to divorce the woman or face prosecution himself.[215] Moreover, the man acquitted of rape could start an action for the *iniuria* charge of *calumnia* or wrongful, malicious prosecution.[216] Indeed, the legal and social consequences for failure to prove rape would have been a true deterrent for its prosecution, especially starting in the Augustan period.

The later Principate was marked by further development of various points of the previous legislations regarding sexual behavior. The emperor Hadrian (AD 117–138) leniently treated people who resorted to private self-help in response to rape, and he permitted discharge of those who killed their rapists during attack upon themselves or a family member.[217] Writing in the late second century AD during the Severan

212. Bauman, *supra* note 86, at 558 ("A charge under the adultery law having become prescribed, an astute accuser turned to the *lex de ui* which did not have the same five years' limitation. This only gave him a second bite at the cherry against the rapist—the victim could hardly be charged *de ui.*").

213. GARDNER, *supra* note 9, at 121 ("He would still have been liable to a charge of adultery (if the woman was married) or *stuprum* (if she was not)—unless, that is, he had had the forethought to rape a prostitute or a woman from one of the other categories, intercourse with whom did not constitute an offence (*in quas stuprum non committitur*).").

214. *Id.* at 120 (discussing some reasons why women in the Roman world might not have reported rape as including the feeling that they would be stigmatized and that their own innocence might be suspected).

215. *Id.* at 121 ("[T]he success of such defence would leave the woman complainant herself liable to charges of *stuprum* or adultery, and her husband would face prosecution if he did not divorce her.").

216. *Id.* ("The . . . [victim] would be ill-advised to prosecute unless able positively to prove that the sexual act had occurred; otherwise, there could be an action for *calumnia* (malicious prosecution).").

217. *Id.* at 118–19 ("The emperor Hadrian took a lenient attitude towards people who took the law into their own hands and killed someone attempting rape upon themselves or one of their family; he allowed their discharge.").

period (AD 180–235), Paul mentions a number of laws related to rape and sexual assault. In *Pauli Sententiae* 5.22.5, he writes that for the rape of an underage girl, a member of the *humiliores*, lower order, is sentenced to the mines while a man of the *honestiores*, privileged citizen class, is relegated to an island or exiled.[218] On the other hand, all perpetrators faced capital punishment for the rape of a freeborn male, and a freeborn male consenting to *stuprum* lost half his property and also the right to testate the other half.[219] Paul also stated that the act of *stuprum* on an abducted freeborn boy incurred capital punishment while an unsuccessful attempt of *stuprum* would incur exile to an island.[220] Additionally, he clarifies the position on sex with a female slave stating it is not an *iniuria* unless there is a decrease in value or the slave is a means to get at her mistress.[221] Furthermore, Paul writes that as early as the third century, capital punishment could be enacted for abduction with sexual purposes.[222] Later, an AD 290[223] rescript issued by Diocletian and Maximian entitled a man to prosecute rape under the *lex Iulia de vi* on behalf of his son's fiancée, as well as for his own wife and daughters.[224] This same rescript reiterates that a rape victim who gives *inreprehensa voluntas* or blameless consent, is not guilty of adultery.[225] Since Augustus's *lex Iulia de adulteriis coercendis* provided that one should not commit *stuprum* or adultery knowingly and intentionally, *sciens dolo malo*, later jurists probably read the *sciens dolo malo* to encompass

218. ROBINSON, *supra* note 55, at 129 n.87. *Humiliores* and *honestiores* defined in *id.* at 159.

219. *Id.* at 71 (citing to *Pauli Sentitiae* 2.26.12,13); *see also* LEFKOWITZ & FANT, *supra* note 15, at 104 ("Anyone who has sexual relations with a free male without his consent shall be punished with death." (translating *Pauli Sentitiae* 2.26.12)).

220. ROBINSON, *supra* note 55, at 71, 141 n.257 (citing *Pauli Sentitiae* 5.4.14).

221. LEFKOWITZ & FANT, *supra* note 15, at 104–05 ("Sexual intercourse with female slaves, unless they have deteriorated in value or an attempt is made against their mistress through them, is not considered an injury." (citing *Pauli Sentitiae* 2.26.12)).

222. ROBINSON, *supra* note 55, at 67; *Id.* at 138 n.193 (suggesting that the capital punishment here refers to exile) (citing Paul *Digest* 47.11.1.2).

223. Bauman, *supra* note 86, at 559 (dating Diocletian and Maximian's rescript, which is included in the *Codex Justinianus* as *Ad legem Iuliam de adulteriis et de stupro,* to AD 290) (citing *Codex Justinianus* 9).

224. GARDNER, *supra* note 9, at 118 ("[For rape], prosecution would be open also to husbands and fathers, and a rescript issued by Diocletian and Maximian informs a man that he is entitled to bring a prosecution under the *lex Iulia* for an offence against his son's fiancée." (citing *Codex Justinianus* 9.12.3)).

225. Bauman, *supra* note 86, at 559 (citing *Codex Justinianus* 9.9.20); *see also* GARDNER, *supra* note 9, at 120 (translating *Codex Justinianus* 9.9.20 as "they do not attach blame to those who are compelled to *stuprum* by force.").

blameless consent.[226] This would explain Diocletian's position that legal blame does not attach to victims of forcible *stuprum*, and that their reputations are unharmed and they may still marry.[227]

VII. Legislation of the Dominate

In the Dominate (AD 284–476: Western Empire; AD 284–565: Eastern Empire), the most significant changes to laws addressing sexual violence occurred within the context of marriage laws enacted during the reign of the first Christian emperor, Constantine (AD 307–337). By this time, many of the more unpopular former Augustan social laws had become obsolete or had already been repealed.[228] In AD 320, Constantine himself repealed most of Augustus's marriage laws, particularly those restricting inheritances and legacies originally created to encourage marriage and procreation among the upper classes.[229] Furthermore, in AD 326 Constantine specifically repealed the provision in the *lex Iulia de adulteriis coercendis* of opening adultery prosecution to outsiders should the husband or father fail to bring charges.[230] While he agreed that adultery was criminal, he felt it was an intimate matter for the family and not the public, and as a result, Constantine made it easier for families to suppress or ignore adultery.[231] Another pronouncement of Constantine stated that the punishment for a guardian who sexually violated the chastity of his female ward would be forfeiture of all his property to the treasury, followed by deportation.[232]

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226. Bauman, *supra* note 86, at 560 (giving the *mens rea* of *stuprum* and *adulterium* as knowingly and intentionally (citing *Digest* 48.5.13) and asserting the interpretation of *sciens dolo malo* to include *inreprehensa uoluntas*).

227. Gardner, *supra* note 9, at 120 (citing *Codex Justinianus* 9.9.20).

228. Lefkowitz & Fant, *supra* note 15, at 102. However, prohibitions against certain marriages still remained (e.g., between senator and lower class) and the general legal structure against unacceptable sexual behavior was still in place (e.g., adultery and *stuprum* were still criminal). *Id.*

229. Grubbs, *supra* note 180, at 103–04.

230. Clark, *supra* note 16, at 35 (citing *Codex Theodosianus* 9.7.2, established AD 325).

231. *Id.* at 35 ("Adultery, [Constantine] said, was criminal, but a matter for close kin; it was not proper for outsiders to disturb a marriage.").

232. Lefkowitz & Fant, *supra* note 15, at 100 ("When a guardian violates the chastity of his female ward, he shall be sentenced to deportation, and all his property shall be confiscated to the treasury, though he deserves to have suffered the penalty which the law imposes on rapists." (translating *Codex Justinianus* 9.10.1.50)).

Probably the most important contribution of Constantine, however, was his AD 320 law punishing the independent crime of *raptus*.[233] *Raptus* was the abduction of a girl contrary to the agreement of her parents, and it often, though not necessarily, included rape.[234] Instead of being perceived as an infringement of the girl's personal rights or as physical violence against her, *raptus* was defined as a theft from her parents.[235] Whether sexual intercourse had occurred or not, an abducted girl's reputation and marriage opportunities were severely compromised, and her only remaining chance of marriage was to her abductor.[236] The girl who suffered *raptus* was punished along with her aggressor under the belief that she could have prevented the crime by staying at home until married, by defending herself with other efforts, or if the attack occurred in the home, by calling out for help from the neighbors.[237] However, unwilling girls suffered a lighter penalty and only lost succession to their parents' property.[238] Regardless of the violence inflicted, a person convicted of *raptus* was usually punished by death,[239] but penalties for accomplices could differ according to their social status.[240] If the accused

233. DIXON, *supra* note 9, at 51 (giving the date as 320 AD); *see also* CLARK, *supra* note 16, at 36 (citing Constantine's *raptus* law of AD 320 to *Codex Theodosianus* 9.24.1). *But see* GRUBBS, *supra* note 180, at 183 (dating the *raptus* law as April 1, 326 AD).

234. *See* CLARK, *supra* note 16, at 36 ("*[R]aptus* . . . covered abduction, seduction, and rape."); GRUBBS, *supra* note 180, at 184 ("Also called 'bride theft', this is the seizure of an unmarried young woman by a man who is not betrothed to her but hopes to obtain her parents' consent to what is essentially a *de facto* marriage.").

235. DIXON, *supra* note 9, at 51 (stating that since consent by the woman served not to excuse the abduction but would instead result in punishment for the woman, the actual crime was theft from the parents); *see also* CLARK, *supra* note 16, at 36 ("[S]o *raptus* denied a father his right to choose the man who would benefit from his daughter's inheritance.").

236. CLARK, *supra* note 16, at 36 (citing *Codex Theodosianus* 9.24.1.2 (320/6)).

237. ROBINSON, *supra* note 55, at 72 (citing *Codex Theodosianus* 9.24.1.2 (320/6)).

238. *Id.*

239. DIXON, *supra* note 9, at 51; GRUBBS, *supra* note 180, at 186 ("What that penalty actually was is omitted in the text of the Theodosian Code, probably because it was mitigated in a law of 349 (*Codex Theodosianus* 9.24.) which reduced the penalty to *capitalis poena* (the death penalty). The original penalty may therefore have been *summum supplicium* ('the supreme penalty'), a particularly atrocious and degrading form of death such as condemnation *ad bestias* or burning."); *Id.* at 192 (stating that Constantius reduced the punishment to capital penalty) (citing *Codex Theodosianus* 9.24.2 (349)); ROBINSON, *supra* note 55, at 72 ("Constantius reduced the penalty imposed on ravishers to simple capital punishment.").

240. CLARK, *supra* note 16, at 37. For example, a slave accomplice would be burned and a slave nurse who assisted would have molten lead poured down her throat. *Id.*; *see also* DIXON, *supra* note 9, at 51 ("[S]ervants who carried messages from a seducer were to have boiling lead poured down their throats.").

man succeeded in pleading in his defense that the girl had willingly gone with him, not only would the man still be executed but the girl would be executed too.[241] Furthermore, parents who tried to conceal the crime of *raptus* by marrying the girl off to her abductor faced exile, and those who discovered the concealment were encouraged to report it.[242] In fact, any slave who reported a marriage to cover up *raptus* was granted freedom.[243] However, it was later enacted in AD 374[244] that if no one discovered the concealment within five years, the parties were safe from prosecution and any children were considered legitimate.[245] Like Augustus's law on adultery, Constantine's *raptus* law shifted an area of private concern to the public arena,[246] and it characterized *raptus* as an offense against morality which the family had no business to ignore or conceal.[247]

Because Constantine's amendments to the laws on marriage overturned much pre-existing legislation, many attribute Christianity as the impetus for his changes[248] since Christianity was on the rise during the

241. DIXON, *supra* note 9, at 51; *see also* GRUBBS, *supra* note 180, at 186 (stating that a consenting girl received the same punishment as her abductor).

242. DIXON, *supra* note 9, at 51.

243. *Id.*

244. GRUBBS, *supra* note 180, at 193.

245. DIXON, *supra* note 9, at 51 (citing *Codex Theodosianus* 9.24.3); *see also*, GRUBBS, *supra* note 180, at 193 (referring to the five-year statute of limitations in the *Codex Theodosianus* 9.24.3 (374)).

246. Judith Evans-Grubbs, *Abduction Marriage in Antiquity: A Law of Constantine (CTh IX. 24. 1) and Its Social Context*, 79 J. OF ROMAN STUD. 59, 65 (1989) ("*Raptus* is no longer a family affair, but has become a public offence, in much the same way that adultery had been made a public offence by Augustus."); *see also* DIXON, *supra* note 9, at 51–52 ("There are procedural similarities to the Augustan laws on adultery, which punished any husband who had retained a wife he knew to have been guilty of adultery. In that case, too, outsiders were encouraged by the law to bring charges and immunity was gained by husband and wife alike after five years without a prosecution.").

247. DIXON, *supra* note 9, at 52 ("The law on *raptus* . . . added the voice of imperial authority to the cause of private morality, which was thus translated into the realm of public concern. Adultery and elopement, like rape, were specifies of theft from husband and father but *also* offences against morality which husband and father had no business to ignore, whatever their personal inclinations.").

248. GEORGE MOUSOURAKIS, THE HISTORICAL AND INSTITUTIONAL CONTEXT OF ROMAN LAW 355 (2003) ("With respect to private law, the impact of Christianity is particularly noticeable in the sphere of the law of marriage and family relations."); *see also id.* at 354 ("[R]ecognition of Christianity in the early fourth century . . . [led to] influence on the development of Roman law, largely through imperial legislation."). Even some ancient sources, particularly Sozomen, declare that Constantine's reasons for changing the marriage laws were based firmly in the Christian religion, but Grubbs argues that "Sozomen wrote with the hindsight of an inhabitant of the Christian

fourth century AD.[249] However, while it is probably true that Christianity influenced the development of some of his laws,[250] it would be incorrect to characterize Constantine's overall marriage legislation as embodying the teachings of Christianity.[251] To explore more fully this topic, the socio-religious context in which Constantine initiated the changes in marriage legislation must be considered. With regard to religion, "[a]lthough the influence of women within the church was restricted and they were excluded from all important cultic functions from the end of the first century onwards, the Christian religion . . . exerted a powerful attraction on women."[252]

After Constantine issued the Edict of Milan in AD 313, Christians were at last able to practice freely their religion,[253] and beginning in the third century, many women of the Roman nobility started converting to Christianity.[254] Early Christianity espoused celibacy and asceticism as ways to reject sin and become closer to God,[255] and for women of all classes, Christianity could be greatly appealing, even if it meant sacrificing their wealth.[256] First, the choice to remain a virgin could be a protest against masculine control,[257] but virginity and asceticism could also be

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capital of an undeniably Christian Empire whose ruler was well versed in orthodox Christian doctrine. . . . Understandably, he modeled his conception of Constantine's knowledge and support of Christianity on those of his patron Theodosius II."). Grubbs, *supra* note 180, at 131.

249. Jan Willem Drijvers, *Virginity and Asceticism in Late Roman Western Elites*, *in* SEXUAL ASYMMETRY: STUDIES IN ANCIENT SOCIETY 241, 241 (Josine Blok & Peter Mason eds., 1987).

250. GRUBBS, *supra* note 180, at 317 (stating that Christianity influenced mainly two laws: the AD 331 penalty for unilateral divorce and the 320 abolishment of penalties on childless and unmarried individuals). Note, however, that several Constantinian laws do reflect Christian interests including exemptions from onerous public duties for clerics and granting judicial functions to bishops. *Id.* at 318.

251. *Id.* at 317.

252. Drijvers, *supra* note 249, at 241.

253. *Id.*

254. *Id.*

255. *Id.* at 242 (referencing Henri Crouzel, who states that early Christians believed that "[p]eople had to be totally free, mentally and physically, and should have nothing to do with the sins of the world when the end of the world and the Kingdom of Heaven should arrive."). In fact, "[m]aterial wealth and physical pleasure were considered a hindrance to a perfect spiritual life, the aim of which was to get as near to God as possible." *Id.* at 244.

256. *Id.* at 258 ("The propertied women who went over to an ascetic life had to part with their enormous wealth. The easiest way to do so was by performing *piae causae*, such as giving money to the poor, . . . donating money to the church for the care of the sick and the poor, or for the building of churches and monasteries.").

257. *Id.* at 265.

escapes from often dangerous early pregnancies or undesirable marriages.[258] Further, Christianity offered an entrance into a different world through education, since Christian women could learn Greek and Hebrew in their studies of the Bible.[259] Scholars have even proposed that becoming a Christian virgin was a way for women to attain a form of gender equality or increase in social status since Christian doctrines do suggest the possibility of being "neither male nor female" in faith.[260] Since this equality was impossible on a secular level, Christianity provided this opportunity on a religious level.[261] Due to these various incentives, many women, including those of the wealthy senatorial classes, began converting to Christianity.

It is in this dynamic socio-religious context that Constantine passed his new laws, and though Constantine was the first Christian emperor, it would be misguided to assume that Christian beliefs motivated most of his legal changes. For instance, though it is tempting to argue that Constantine specifically changed Augustan inheritance laws in AD 320 to benefit individuals who chose Christian celibacy or to permit the passing of legacies to the clerics, this would be misleading considering Augustus's laws affected few Christians before that time.[262] In fact, the original Augustan inheritance laws, promulgated in order to encourage marriage and procreation, really only affected those in the upper classes with enough wealth and prominence to leave inheritances to people beyond the sixth degree of kinship.[263] This would be a small percentage of the population, while most family property transfers remained unaffected.[264] Moreover, by the time of Constantine, the number of Christians in this elite class would have been rather small since conversion to Christianity among the upper classes had been slower than among the lower classes, and senatorial men were reluctant to convert

258. *See id.* at 265 ("[W]omen were glad to accept the ascetic life because it offered a way out of 'unhappy marriages, early pregnancies or being shut out of the larger world of experience and education.'").

259. *Id.* at 266.

260. *Id.* ("There are suggestions . . . such as the Pauline doctrine of 'neither male nor female' (Gal. 3.28), that a certain degree of equality between men and women was conceivable. . . . Virginity is the [method]: an ascetic life not only gave women the opportunity . . . of attaining to a certain degree the same social status (within the context and boundaries of the church) and spiritual value as religious men.").

261. *Id.*

262. GRUBBS, *supra* note 180, at 135 ("Few Christians in the West before 320 were in the socio-economic bracket with which the Augustan law was concerned; even bishops were not as a rule very well off or socially prominent in the early fourth century.").

263. *Id.* at 105.

264. *Id.*

even during the fourth century AD.[265] Thus, when Constantine repealed the Augustan inheritance laws, he only marginally served the majority of Christians' interests, but rather benefited the wealthy, mostly pagan upper class.[266] Certainly however, Constantine's changed laws served a dual purpose by increasing his esteem among the elites while also showing his support of Christian celibacy.[267]

Similarly, Constantine's main legislation regarding sexual violence, the crime of *raptus*, must also be examined in the appropriate socio-religious context before attributing it to his Christian beliefs. As explained earlier, with more women choosing Christian celibacy, it is quite probable that there was a shortage of marriageable women considering the fact that the birth rate of the upper classes was already low, Christians married at a later age than non-Christians, and widows were often reluctant to remarry.[268] Also, with Christian asceticism, whereby money or property was being given away for *piae causae*,[269] it became harder to contract profitable marriages.[270] "The consequence of this shortage would have been a tremendous pressure by men on women to marry and bear children."[271] It is probable that with maidens choosing celibacy and widows refusing to remarry, men tried violently to force a marriage by abduction and rape.[272] Most likely, Constantine became aware of actual incidents and addressed the situation with the *raptus* law.[273] So

265. Drijvers, *supra* note 249, at 241–42.

266. GRUBBS, *supra* note 180, at 318 ("[T]he abrogation of the penalties for celibacy seems to be a response to the concerns of the largely pagan Roman senatorial aristocracy as much as to Christian celibates, and can be fitted into a context of legislation on inheritance and transmission of property enacted in the first ten years of Constantine's reign and directed toward the wealthier classes in Rome and the West.").

267. *Id.* at 138 ("[Constantine] removed a thorn from the side of the wealthier classes, particularly the senatorial aristocracy. At the same time, he could represent himself as supporting the Christian ideal of celibacy, and his action could be interpreted by contemporary and future Christians . . . as a fundamentally 'Christian' law.").

268. *Id.* at 257.

269. *See generally supra* note 255.

270. *See* Drijvers, *supra* note 249, at 258–59 ("This drain of money and property could bring about the social degradation of a family in the long run.").

271. *Id.* at 257.

272. *Id.* at 258 ("[W]e might conclude that women who had taken the vow of virginity or wished to maintain their widowhood provoked a violent male reaction and that men tried to force women into marriage by rape."); *see also* GRUBBS, *supra* note 246, at 61 (giving other reasons for abduction such as the parent's refusal of the suitor, the breaking off of a betrothal, the suitor's forced delay due to his own family objections or financial reasons, or the threat of another suitor).

273. Drijvers, *supra* note 249, at 257–58 ("[L]aws in the Roman Empire were reactions by the emperor to existing situations and were promulgated as *ad hoc* decisions."); GRUBBS, *supra* note 180, at 192 ("It is likely that Constantine's law was precipitated

serious, or possibly common, was an offense of *raptus* that Constantine references it in a law solely directed toward senatorial men by stating that in a case of *raptus*, senators could not exercise their traditional right of a public trial before the urban prefect of Rome, but had to be tried where the crime was committed.[274] The pressure of the scarcity of marriageable women is also later revealed in a law passed by Constantius II in AD 354,[275] when he explicitly prohibited the rape of women dedicated to God.[276] The same law states the rape should not be a cause for marriage.[277]

Given that Christianity encouraged women to practice celibacy, one might mistakenly think that Constantine's draconian law punishing those committing *raptus* was based on his Christian beliefs. However, the Church's stance on *raptus* was significantly different than Constantine's. First, several sources of Church doctrines[278] from Constantine's time indicate that while the Church opposed abduction and rape to force de facto marriages of unbetrothed girls, if the parents and victim consented afterward, a valid marriage could result.[279] The abductor would still be ecclesiastically penalized, and the Bishop of Caesarea Basil states he should "remain outside the prayers" for three years.[280] If the girl had been previously betrothed, she must be returned to her fiancé; however, her abductor would know that there was a risk of her fiancé refusing her since the girl's virginity was in question.[281] Again, should the parents agree, a valid marriage could take place between the abductor and a previously betrothed girl.[282] The Church's sanction of abduction marriages, as long as they were agreed to by the victim and family, stands in direct contrast with Constantine's law, which prohibited any such marriages. Furthermore, unlike Constantine's law where the victim

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by one or more actual incidents of abduction marriage which had come to his attention.").

274. GRUBBS, *supra* note 180, at 188 (citing *Codex Theodosianus* 9.1.1).

275. Drijvers, *supra* note 249, at 257.

276. ROBINSON, *supra* note 55, at 72; *see also id.* ("Jovian specified that [the punishment] should be capital." (citing *Codex Theodosianus* 9.25.1–3)).

277. *See* Drijvers, *supra* note 249, at 257 ("[I]t states that rape is no cause for marriage, even if the violated woman consented to marriage." (citing *Codex Theodosianus* 9.25.1)).

278. *See generally* GRUBBS, *supra* note 180, at 188–90 (citing the Council of Ancyra [Ancyra Canon 11] and Basil, Bishop of Caesarea [*Epistle* 199: Canon 22, Canon 30, trans. Deferrari]).

279. *Id.* at 189–90.

280. *Id.* at 189 (citing Basil, Bishop of Caesarea [*Epistle* 199: Canon 30, trans. Deferrari]).

281. *Id.* at 190.

282. *Id.*

herself is punished, "[t]he Christian sources assume that the *rapta* is a passive victim, and do not even consider her wishes in the matter at all . . . ."[283] In fact, since the punishments of both parties were so harsh, Church leaders even decided not to turn offenders over to authorities, choosing instead to handle it inside the Church.[284] Here, the Christian view is dramatically different than Constantine's view on abduction marriages, and thus it would be erroneous to conclude such a pure Christian basis in Constantine's enactment of the *raptus* laws. Instead, a possibly more powerful motivation for Constantine's law would have been the control of public order that was threatened by *raptus*.[285]

Two hundred years later in the time of Justinian (AD 527–565), more important developments on sexual legislation occurred, and Justinian's laws were more in consonance with the Christian Church's beliefs. In AD 533, Justinian issued an official statement which affirmed that a woman's virtue was irredeemable once lost,[286] and he enacted several laws which supported this view. For instance, he decreed that a woman should not be put in prison because male guards might abuse her.[287] Regarding sexual violence, while forcible rape was still covered under the *lex Iulia de vi publica*,[288] Justinian particularly asserted that rape or abduction of holy women was one of the worse sins, for those who committed it faced capital punishment without appeal.[289] In fact, the mere attempt of *raptus* against nuns automatically carried a capital punishment of deprivation of citizenship.[290] Some believe his wife Theo-

283. *Id.* at 191.

284. *Id.* at 319 ("And it appears also that in situations involving crimes such as adultery or abduction, individual church leaders not only advocated different solutions, but also refrained from alerting the imperial authorities to the presence of offenders in their congregation, since the law called for the capital penalty.").

285. *See id.* at 319–20 (suggesting that long-term feuds were often started by an abduction).

286. DIXON, *supra* note 9, at 52 (citing *Codex Justinianus* 9.13.1).

287. JAMES ALLAN EVANS, THE EMPRESS THEODORA: PARTNER OF JUSTINIAN 37 (2002) (citing Justinian's 535 law in *Nov.* 5.2).

288. DIXON, *supra* note 9, at 52 ("Forcible rape of any woman was already covered by the Julian law on violence (*lex Iulia de vi publica*) . . . .").

289. ROBINSON, *supra* note 55, at 72–73 ("Justinian abolished those chapters of the *lex Iulia* which were concerned with the rape or abduction of virgins or widows—the old law continued in force as the legal base concerning the rape of married women, but the rape of holy women was, he asserted, even worse—and he imposed capital punishment without the right of appeal.").

290. DIXON, *supra* note 9, at 52 ("The scope of the law *de raptu* was gradually extended to include both maidens and widows consecrated to God. i.e. nuns. A man even attempting to persuade a nun to marry him could be deprived of citizenship under this law."); *see also id.* ("[*Raptus* is] particularly bad if committed against virgins or widows

dora, a devout, reformed Christian and former prostitute herself, was of great influence in these rape laws.[291] In AD 538, in the *Codex Justinianus* 9.13, Justinian refined the definition of *raptus* as abduction, seduction, rape, or ravishment of *all* women, regardless of standing and including slaves.[292] Here, he was most likely influenced by both his Christian beliefs and Theodora's former status, for earlier he had written "'[i]n the service of God, there is no male nor female, nor freeman nor slave.'"[293] Most notably, where Constantine's law blamed the woman even in involuntary abduction, Justinian's law focused blame on the man under the assumption that even a willing woman would not have participated had the man not convinced her.[294] As a result, the man was punished by death but the woman was absolved, with compensation depending on her status.[295] For slaves or former slaves, the victim received nothing,[296] but victims who were freeborn received all the man's estate plus the property of his accomplices.[297] However, as with the Constantinian law on *raptus*, Justinian forbade marriage with a ravisher, and he reiterated his position thirty years later stating that the penalty for *raptus* was death, with the woman receiving the ravisher's property, but no marriage could take place and parents permitting a marriage were to be deported.[298]

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dedicated to God because it is an offence not only against humanity but against the Almighty himself—especially since 'virginity or chastity, once corrupted, cannot be restored.'"(citing *Codex Theodosianus* 9.13.1)).

291. EVANS, *supra* note 287, at 36–37 (suggesting Theodora's influence on Justinian's legal reform, especially those reforms dealing with women).

292. CLARK, *supra* note 16, at 37; *see also id.* ("The category 'those on whom *stuprum* is not committed' does not occur." (citing *Codex Theodosianus* 9.13, AD 528)).

293. EVANS, *supra* note 287, at 37 (citing Justinian's 535 law in *Nov.* 5.2).

294. CLARK, *supra* note 16, at 37 ("Justinian's law shifts the blame, on the grounds that even a willing woman would have no scope for sinning if men did not try to make her do so.").

295. *Id.* ("A *raptor* caught in the act might be killed by the kin or owner of the woman . . . . If the woman was a slave or freedwoman, the *raptor* was executed . . . . [I]f she was freeborn . . . she might marry anyone she chose—except the *raptor*, who was executed.").

296. DIXON, *supra* note 9, at 53 ("If she is a slave or former slave, she receives nothing."); *see also* CLARK, *supra* note 16, at 37 (stating that for victims who were slaves or freedwomen, the perpetrator's heirs could retain his property though he himself was killed).

297. DIXON, *supra* note 9, at 53 ("If she is free-born she receives the estate of the raptor and of anybody who helped him in the abduction. If unmarried, she may take this property as her dowry."); *see also* CLARK, *supra* note 16, at 37 ("If she was freeborn, she took his property and that of any accomplices, and might marry anyone she chose—except the *raptor*, who was executed.").

298. ROBINSON, *supra* note 55, at 73.

Conclusion

After having seen their varying treatment during the different periods of Roman history, it is clear that Roman laws regulating sexual behavior have gone through many changes in their course of development as the social and political climate evolved. While Roman rape laws differ significantly from current Western rape laws by focusing particularly on injury to dignity and preservation of chastity as the primary asset for potential marriage, seeds of modern beliefs can be seen in the ideas of protection from insult to bodily integrity, views of rape as a public offense, and the later imposition of legal blame on the aggressor. Examining the Roman interpretation of and response to rape helps modern legal scholars understand the background and perhaps even reasons for today's legislation on sexual activity, especially in countries strongly influenced by Roman law. Furthermore, considering the history of Roman rape laws helps put into context the rape laws of other modern legal systems which might still be primarily based in the honor/shame system and its relation to sexual gender roles. Undoubtedly, though Roman rape laws greatly differ from Western rape laws today, study of their development is still of much importance.