

Reading Roman Women
Sources, *Genres* and Real Life

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Bristol Classical Press

To my darling, Rob
viro perfectissimo

This impression 2011
First published in 2001 by
Bristol Classical Press
an imprint of Bloomsbury Academic
Bloomsbury Publishing Plc
50 Bedford Square, London WC1B 3DP

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A catalogue record for this book is available
from the British Library and the Library of Congress.

ISBN 978 0 71562 981 9

Printed and bound in the USA by
IBT Global, Troy, NY

www.bloomsburyacademic.com

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genitals appeared on housefronts and corners and some female ones were in evidence. Graphic depictions of copulation decorated dinner services, elegant mirror-backs and wall-paintings in the public and semi-public areas of Roman houses (Johns 1982, Clarke 1998). This is the context in which we must assess the neglect and the specific treatments of female sexuality and bodies in various *genres*.

What can legitimately be said of Roman literature is that it privileges a dominant perspective which is primarily male, elite, citizen, Rome-centred and middle-aged.⁵⁶ This perspective marginalises other groups: children, slaves, women, foreigners, the free urban poor, peasants. Such groups are typically excluded from particular *genres* altogether or idealised or demonised as 'other.' In comic, satiric and invective forms, their foibles are exploited in stock ways. In *genres* which feature sex and the body – whether by implication, as in love elegy, or directly, as in satire – the sexual gaze is that of the penetrating, elite citizen male. This desiring gaze is fixed on the boy-slave or girl-mistress (in elegy) who can legitimately be penetrated.⁵⁷ Their sexuality is essentially irrelevant.⁵⁸ It is their desirability to the author which is of interest. Their role is to be pursued and penetrated. Elegy highlights the pursuit and the poet's feelings, while the coarser invective *genres* highlight the penetration. The selective authorial tunnel-vision may reflect literary convention as much as a pervasive cultural norm.

Rape in Roman law and myth

The following text is a revised reprint of an article originally published in 1982 as 'Women and Rape in Roman Law' in *Arbejdsnotat* 3/82, by the Women's Research Centre in Social Science, Copenhagen. Rape had become part of the political agenda around the world but was slow in reaching academe: Radical feminists saw rape and attitudes connected with it as crucial to women's oppression (Brownmiller 1976). This article is an early fusion of my political and academic concerns and draws on my experience of agitating for rape law reform in Australia and co-founding a Rape Crisis Centre in Canberra. Many of the circumstances I wrote about have (happily) changed.

Since then, rape has been incorporated in historical studies and the focus has shifted. Judith Evans Grubbs' classic (1989) analysis of abduction marriage was also written from a predominantly legal and anthropological perspective. More recent authors such as Sandy Joshel, Mary Beard and Carol Dougherty no longer need to justify writing about rape, using myth or being 'theoretical'.¹

Readers unfamiliar with Roman law terms might like to consult Appendix 3.

*

In this survey of Roman laws on rape and related offences, designed to tease out underlying cultural assumptions about female 'purity' and its control, I necessarily simplify developments which spanned many centuries and fall back on theory because the legal sources by their nature provide few concrete examples of rape. My focus is on the legal assessment of the rapist's act and the consequences for the female victim. The study concentrates on the period c. 80 BCE to 530 CE, but begins with two stories which precede this period and have no legal force – which are, indeed, of dubious authenticity. Their importance lies in the place they occupied in the Roman national myth.

The first story is set notionally in the late sixth century BCE, when Rome was still a monarchy, and it concerns the noble matron Lucretia. During a military campaign, her husband and other nobles – including the royal

prince, Tarquin – fell to discussing their wives. It was evening, they were drinking, and they became vociferous on the relative merits of the women they had left at home while they made war. The camp was apparently not far from their estates, so one of the quarrelling men suggested that they ride immediately around their homes to surprise the women and settle the question of how well each wife conducted herself in her husband's absence. Accordingly, they mounted their horses and set off (Livy 1.57-9).

Lucretia easily won the title of most virtuous wife: all the other women were found lolling about, drinking wine and enjoying themselves (as their husbands had been doing), but Lucretia sat spinning with her slaves in spite of the lateness of the hour. All the men admired her and envied her husband. It is difficult to know how many of these elements were retained from earlier versions of the story. Tradition held that women had been forbidden wine in early Rome (certainly not the case in Livy's day), so the presence of alcohol at the all-female parties may once have added shock value to the tale (Pomeroy 1975: 154). Romans of the Republic also characterised Etruscan women as lax, so Livy's readers might have seen their behaviour as reinforcing a familiar stereotype (since Lucretia was retrospectively naturalised as quintessentially 'Roman'). In any case, Prince Tarquin's response to Lucretia's signal virtue was the usual one of the wicked tyrant of fable: her virtue inspired his lust. He returned to her home a few days later and, brandishing his sword, tried to force himself upon her. Undeterred by the prospect of death, Lucretia resisted. But when he threatened to kill a male slave and place his body in the same bed with hers, she submitted. As a relative – a connection not usually stressed in Roman nationalist tradition – Tarquin could claim to have killed noblewoman and slave in righteous outrage.² Having established Lucretia's courage and the fact that her good name was more important to her than her life (or the technical preservation of her virtue, for that matter), Livy moves the narrative through its established sequence, with an elaboration typical of the Roman declamatory tradition whereby schoolboys recreated great moments of history with set speeches by the participants.

Once Tarquin left, the ravished Lucretia summoned her husband and father, instructing each to bring a reliable friend to hear grave news. After telling her story to this family court, she took out a dagger and, in spite of their remonstrances, stabbed herself before their eyes. The men then stirred up a revolt against the monarchy. Her violation was held up as a symbol of royal abuse, a pretext for driving out the king and establishing a republic. Henceforth, Lucretia was the embodiment of the prime virtues of the Roman matron: industry and chastity.

The second story bears many similarities to this one. It is traditionally placed in the mid-fifth century BCE when the patrician and plebeian orders were engaged in savage class warfare in which the patrician Appius Claudius played the part of the villain (Livy 3.44-8). His refusal to lay down

his extraordinary office as a member of a ten-strong committee (decemvirate) charged with publishing the law threatened the newly won representation of the *plebs* in the political hierarchy. He exploited his position to gain sexual access to a plebeian girl, Verginia (a word suggestively reminiscent of the Latin *virgo*), whose fiancé Icilius and father Verginius were prominent in the opposition to the patricians.³

Appius had one of his own social dependants (a *cliens*) declare that Verginia was not really Verginius' daughter but the child of a slave. The case, a blatant set-up, was tried before Appius himself in the market-place, where he ruled that Verginia was a slave and should be handed over instantly to the claimant. When her father and some bystanders tried to resist, Appius ordered armed men to seize the girl. In the certainty that the corrupt judgement was designed solely to put Verginia in Appius' power and that her seizure was tantamount to her sexual violation, her father Verginius took up a knife from a nearby butcher's stall and stabbed his daughter to death. Once more, a dead woman became a political symbol. Verginia's corpse was displayed by mourning women as testimony to patrician oppression (Mustakallio 1999). The plebeian response forced Appius and the other corrupt patricians out of their decemviral offices and constitutional rule was restored.

These stories, learned by all Roman children as an inspiring part of their early history, fall into an established tradition in ancient discourse of 'wicked tyrant' excesses. To the modern reader, they suggest other historical parallels, such as the story of the Sicilian Vespers, which presume that a woman's chastity is not merely an individual concern, or even solely a matter of family honour, but could implicate the wider community of her class, status group or nation.⁴ The purity of a woman's body could thus be a sign for the purity, safety or political autonomy of the group.⁵

To the Livian Lucretia, neither death nor rape was quite as terrible as the shameful prospect of her body found in apparent adultery with a slave. Once violated, she took care to make the facts clear to her husband and her male relations before ending her life. Verginia's honour was, if anything, even more closely bound to that of men. As an unmarried girl, she plays a passive role in her own tragedy, defended by her fiancé and then killed – for her own protection – by her father. Where Lucretia's virtue is underscored by her physical courage and determination, Verginia's purity is a contingent quality, like her beauty. In each case, the woman's chastity is a family attribute, a cause which the men of her birth family *and* her husband/fiancé are prepared to defend as their own.

Should we take these stories to mean that chastity was defined 'objectively' in early Roman society? Did it make no difference to family honour whether a woman willingly lost her virtue or was taken by force? This notion is implicit in the Verginia story: when the court case was first scheduled for the following day, to enable her father to travel from his

military camp, her fiancé Icilius insisted that the girl must not pass the intervening night in the custody of the man who claimed her as a slave:

I wish to wed a maiden Verginia and to have a chaste Verginia as my wife.
The fiancée of Icilius shall not spend the night away from her father's home.
(Livy 3.45.6)

Addressing his fellow plebeians after the incident, Verginius said that it had pained him to kill his daughter who was dearer to him than life, but that compassion had compelled him to commit this act of apparent cruelty to prevent her rape as a slave without rights (Livy 3.50.6).

In Valerius Maximus' version of the story, designed for rhetorical use, Verginius is praised because he 'preferred to be the killer of a chaste girl than the father of a despoiled one' (Valerius Maximus 6.1.2). This strongly suggests the view, evident in so many cultures throughout history, that a woman's worth was largely defined in terms of her chastity – that is, the guarantee of exclusive sexual (and reproductive) rights to her body. If this sexual access was abrogated by an unauthorised male, whether with the woman's complicity or against her will, she lost her value as an object of exchange between families and could redeem herself only by death. Solon's early sixth-century BCE reforms purportedly made it illegal to sell any Athenian citizen into slavery, the only exception being an unmarried girl who had been seduced or raped.⁶ A deflowered Verginia, returned to her family by Appius Claudius, would not have been accepted by the father to whom she was dearer than life, and her fiancé Icilius, prepared to fight for her, would not have wanted to marry her unless her dowry came with her virginity.

Livy's account of Lucretia's story is a little more complex. The men to whom she told her version pronounced her innocent. It was Lucretia who insisted that she should die. Both she and the men had made the point that it was her body, not her spirit which had committed the offence.⁷ The Livian Lucretia insists on her own death as a necessary *external* proof of her innocence. She demands of the men that they swear to avenge her by punishing her violator, she demands of herself that she commit suicide:

You will see to it that he gets his deserts. As for me, I absolve myself of wrongdoing, but not of its punishment. Nor will any unchaste woman justify her continued existence by invoking the example of Lucretia. (Livy 1.58.7)

The corollary being that a dead Lucretia will be a very suitable testimony – or monument – to chastity, which is what she did become (cf. d'Ambr 1993: 85-6). Perhaps this is a recognition by Livy of the value and varied potential of stories – only too appropriate in an age of important myth-making by himself, Vergil and Augustus about the origins of the Roman state.

The concept of guilt (*culpa*) as defined by intention rather than action seems rather sophisticated for the sixth-century BCE setting of the story. Perhaps Lucretia's argument represents Livy's attempt to explain to his contemporaries an element in the traditional account which they might find puzzling. While Romans of his day (probably 59 BCE – CE 17) could accept the notion that a man might 'save' his virgin daughter from enslavement and rape by killing her *before* these could take place, they might have had more difficulty in seeing why a married woman who had satisfied her menfolk of her innocence after the event should nonetheless take her own life. Perhaps there had been a shift in the intervening years, whereby the woman's *intention* was taken into consideration. This would emanate from the socially current notion of what constituted chastity (and its opposite), and would have an effect on its legal expression.⁸

Until the marriage laws of 18 BCE, adultery was generally judged within a family council similar to that described in Lucretia's case. Augustus' legislation translated adultery into a criminal charge which could be brought before the courts by any public-spirited citizen.⁹ It was specifically and repeatedly stated in subsequent judgements that a married woman who had been raped could not be charged with adultery.¹⁰

So the reasoning attributed by Livy to Lucretia's kinsmen, that no blame attached to the woman who had been an unwilling partner, seems to reflect the thinking of his own era. The men of archaic Rome probably took the same line apparent in so many cultures, past and present – that the act itself sullied the woman inescapably. The interesting thing about the Roman equivalent is that it should have developed into a more sophisticated notion, recognising an individual concept of guilt by intention rather than passive complicity. The transition was not necessarily neat and wholesale. In a speech delivered in the very late Republican era, Cicero spoke as if some raped women of his own day committed suicide, and the highly artificial speeches of the rhetorical schools of the early empire refer to hypothetical cases of young boys and girls who take their own lives from shame after such an attack – so such instances, even if fantastic, were not unimaginable (Cicero *Pro Scauro* 2.6). But, as far as the law was concerned, blame attached only to the rapist, and in general by the late Republic the victim was seen as someone who had suffered an outrage.

The legal definition of rape was closely tied to a woman's status and circumstances. As in most states, a husband could force himself on his wife without breaking any law. Lord Hale pronounced in the eighteenth century that 'by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract'.¹¹ Despite recent moves for reform, it is still virtually impossible for a woman in any modern state to have her husband charged with rape unless she has at least begun proceedings for a formal separation – the archaic wording

of Hale's judgement expresses a view which still holds at law.¹² The modern woman and the woman of ancient Rome differed from women of early modern England in their access to divorce. A Roman citizen woman of the late Republic or early Empire (c. 200 BCE – 330 CE) who considered herself ill-used could speedily leave her marriage – but we have no way of knowing whether, like so many women throughout history, she accepted a certain amount of sexual abuse and physical assault from her husband as part of the natural order.

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. Verginia's father and fiancé regarded her enslavement as tantamount to sexual violation. This concept had undergone no alteration between early and imperial times. Thus we should be aware that great 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. Cato the Censor wrote in the second century BCE that it was economical for a master to charge his male slaves a fee each time they had sex with the female slaves.¹³

At law, rape was classified as a form of violence, and covered by the *lex Iulia de vi publica*, the 'Julian law on public violence', which was probably established c. 45 BCE. 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', though the terms sometimes specify – or imply – that the offence is wholly criminal only if the victim is *free-born*.¹⁴ The characterisation of rape as criminal violence suggests that it was seen as an offence against public order, to be punished by society rather than the individual victim. As a 'capital' offence, it could be punished by banishment and diminution of civil status or by death. The status of the criminal probably determined the punishment (Garnsey 1970).

Civil proceedings arising under the law *de iniuriis* covered a greater range of sexual nuisance. This very broad heading encompassed a variety of insults, physical or verbal, of which sexual approaches formed only a small part. A charge *de iniuria* could be brought by the victim or by someone who could reasonably represent the victim at court – thus 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. I should point out that a Roman citizen did not normally become independent (*sui iuris*) at law until his or her father died. In this respect, women 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.¹⁵ It is

expressly stated that a husband may appear for an insulted wife but not vice versa (Justinian *Institutes* 4.4.2). The reason for bringing such a suit was to gain monetary compensation for damage suffered: the seriousness of the damage was assessed not only in terms of the actual injury, but the circumstances in which it occurred and the social standing (*dignitas*) of the victim.¹⁶

The rulings *de iniuriis* bear a certain resemblance to modern notions of 'sexual harassment' which some feminist reformers are currently trying to introduce into penal codes.¹⁷ Such actions are carefully defined in the Roman law: for example, *adsectatio*, the offence of following about a free-born girl or boy or a matron, and making lewd suggestions. A man brought to court on such a charge could argue in his defence that the woman was dressed like a prostitute or slave, not as a respectable married woman (*materfamilias*).¹⁸ In modern cases of rape a victim deemed to be dressed immodestly might also find herself penalised for not dressing like a respectable matron, but the standard is based more on undefined notions of propriety (although class bias is by no means unknown) and the cultural presumption that men cannot be held entirely responsible for their own sexual responses (our version of *infirmitas sexus*). As in most legal systems, the rapist and harasser (but not the abductor) 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.

A significant development in Roman law on sexual violence was the emergence of the crime *raptus*, defined in 320 CE under Constantine, the first Christian emperor, as the abduction of a girl without the agreement of her parents. The punishment was death. If the man accused of *raptus* tried to plead in his defence that the girl had gone willingly with him, this would not prevent his execution but would have the result that the girl would also be put to death. The crime is therefore defined as a theft from the parents rather than as physical violence or an infringement of the girl's personal rights. The wording of this ruling was very severe – servants who carried messages from a seducer were to have boiling lead poured down their throats, and a girl who failed to cry out loudly for help on being violently attacked by someone who broke into her home lost the right of succession to her parents' property.¹⁹

Another development was the insistence that parents were not permitted to conceal the crime afterwards by quickly marrying the girl off to her ravisher. Anyone who discovered such a marriage was encouraged to report it – a slave who did so, for example, would be granted freedom – and the guilty parents would be exiled. If the concealment went undiscovered for five years, the parties were safe thereafter from prosecution and any children of the union were legitimate (*Codex Theodosianus* 9.24.3). 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.²⁰

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. Again, informers were encouraged to report instances of the crime (*Codex Theodosianus* 9.25.1-3). In the sixth century CE the definition of *raptus* seems to have covered all single women: honourable or free-born virgins, whether betrothed or not, widows and even freed slaves and slave women (if they belonged to someone other than the ravisher). Married women were cursorily included, as an afterthought. The crime, stated the emperor Justinian, should rightly be punished by death since it is as bad as homicide – it is, he pronounces, particularly bad if committed against virgins or widows 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’.²¹ It would seem that the wheel had come full circle, back to the archaic notion.

It is interesting that this separate legal category, *raptus*, should have arisen in the first place. Forcible rape of any woman was already covered by the Julian law on violence (*lex Iulia de vi publica*), lesser sexual offences could be prosecuted privately, under the law ‘on insult’ (*de iniuriis*), and consensual but unlawful sexual intercourse with a married woman or young girl was punishable as criminal adultery or fornication (*stuprum*) under Augustus’ moral legislation.²²

The law on *raptus* therefore added little, but underlined the importance of parental consent. Like the Augustan law(s) of some three and a half centuries earlier, it 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 species of theft from husband and father but *also* offences against morality which husband and father had no business to ignore, whatever their personal inclinations.

And what of Justinian’s official statement in 533 CE that a woman’s virtue, once lost, was irredeemable? Ancient morality had decreed that it was so, with the consequence that the woman in question became unmarriageable and therefore worthless in social terms.²³ This had apparently ceased to be the necessary result of 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. The tone of the fourth-century laws suggests that at least some parents preferred to sanction the hasty marriage of a daughter who had been raped by – or willingly eloped with – a man of whom they disapproved. They clearly thought the situation

could be retrieved (as it could in Sicily under the prevailing *onore* system) by subsequent marriage. So some, at least, felt that lost chastity *was* recoverable as long as the neighbours did not find out.²⁴

Not only does the imperial code on *raptus* dismiss as irrelevant the question of a young girl’s consent, but Constantine makes the (inaccurate) point that women had traditionally been excluded from judicial processes because of their imperfect powers of judgement.²⁵ This bears some similarity to the reasoning behind the modern notion of a ‘minimum age of consent’, whereby girls below a certain age are deemed incapable of deciding for themselves whether to have sexual relations. It has been argued by some modern jurists that such laws, which claim to protect the young from sexual exploitation, rest in effect on the assumption that a young girl is incapable of appreciating the ‘market value’ of her sexual favours:

A popular conception of a girl’s sexual indulgence or virginity as a single ‘thing’ of social, economic and personal value explains in part, the law’s concern with her desire to ‘understand’. An ‘unwise’ disposition of a girl’s sexual ‘treasure’, it is thought, harms both her and the social structure which anticipates certain patterned uses. Hence, the laws of statutory rape intervene to prevent what is predicted will be an unwise disposition.²⁶

Such an analysis would have made immediate sense to any Roman parent. In a culture in which marriages were regularly arranged by the older generation, and in which girls were married very young, it was taken for granted that a girl could not be trusted to make important decisions such as whom she married or whom she had sex with.²⁷ Rape could not therefore be seen as an invasion of her 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.

The elaborated rules of 533 CE (*Codex Iustinianus* 9.13) throw some light on the connection between virginity and the matrimonial trade-off. The *raptor* must suffer death, but the fate of his property depends on the status of the woman concerned. If she is a slave or former slave, she receives nothing. 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 – that is, she is not entirely unmarriageable, though she may, if she wishes, refuse to marry at all (a possibility unlikely to occur to a pre-Christian legislator). This notion of compensation seems to assume forcible abduction rather than elopement as the usual case, just as it assumes that the ‘typical’ victim is a young virgin (a common modern assumption in culturally elaborated rape discourse).

These laws could be read as a decline (in very general terms) in women’s standing from the last century of the Republic (c. 133-27 BCE) to the era of the Christian emperors from Constantine to Justinian.²⁸ The primitive

unyielding notion of chastity preserved in the traditional tales of Lucretia and Verginia reappears under Christian regimes with a more sophisticated rationale based on a categorical notion of sin and a strong sense of the general importance to the community of chastity – as opposed to a family-based notion of honour. The Julian law on public violence relegated rape to the class of violent assault from which any citizen could expect the protection of the state. *Raptus*, as dealt with by the Christian emperor Constantine, was defined in terms of parental rights and public morality and allowed for the legal penalisation even of the victim of sudden violence. The rights of the father, the purported basis for the rulings on *raptus*, were in fact abrogated, for parents were not permitted to yield to a social sense of shame but had to put public morality above all other considerations. Sexual purity as such was now officially a community concern. Consider the fifth-century ruling that someone who brought an accusation against a family for conniving at a ‘rape/abduction’ (which could include elopement) by agreeing subsequently to marriage was himself immune to charges of being an informer, ‘for a person must not be considered an informer if his humanity invited him to this course for the sake of the purity of religion’.²⁹

The Christians are not entirely responsible for this development. The ground was laid by the Augustan relegation of adultery to the sphere of criminal activity which could be denounced by a member of the public as well as the ‘injured’ father or husband. But the elaboration of an ‘absolute-purity’ principle seems to have been reinforced by Christian ideology. Throughout Roman history, chastity was an important attribute of a (free) woman, and enhanced her value in the marriage stakes. Significantly, it was by marriage that major property redistributions were carried out, by means of the dowry which the bride took with her, and, from about the third century CE, the substantial gift the groom customarily gave her on or before marriage (bridewealth).³⁰ Inheritance, the other chief mode of re-distribution, was eventually determined by marriage links. Hence the connection noted above between the purity of the wife/mother and the reproductive rights, which would ensure the legitimate issue of their right to inherit.³¹

The importance of female chastity was therefore implicit in the Roman economic scheme, but there was a period between rustic simplicity and Christian severity when the notion would appear to have been a little more flexible. This may have been the background to classifying rape as one of many unacceptable forms of violence. The later, increasing emphasis on the ‘theft’ aspect of rape/abduction, the stress on the absolute duty to put public morality before private shame, the inclusion in the definition of criminal *raptus* of persuading a young girl to elope, or a nun to marry – all these seem to mark a hardening of official attitudes.

All this is necessarily speculative. I offer this study of rape in Roman

law as a tentative contribution to those researchers of women in history, of rape in modern society or of the relationship between women’s overall status and economic exchanges, in the hope that it might stimulate their own quests. It seems to me, for example, highly suggestive that the periods of ‘absolute chastity’ in Roman history coincide with those times when divorce was least acceptable in general and when its initiation by the wife was well-nigh impossible. It would be interesting to see if this association between divorce and ideals of feminine purity had parallels. Modern western shifts away from the traditional stress on female chastity are often linked with developments in contraception, but I suggest that they could be influenced as well by the decline in importance of inheritance and immovable property in predominantly urban economies. Comparisons from feminist historians of post-industrial cultures might be productive.

I have not dealt here with the vital issue of male motivation, which is not discussed in Roman law. This should not be taken to mean that I discount its importance, particularly in dealing with the radical feminist argument that rape is universally used by men as a means of intimidating women as a group. In limiting this chapter to two early myths and the later law, I have necessarily placed all my emphasis on the consequences of the act for the woman. I also view rape as a crime of violence, an expression not so much of male sexuality as of male aggression towards women by means of sex. Historically, it has been associated with the woman’s devaluation in the overall social pattern of exchange, and I see this as the basis of the view, common to so many diverse cultures, that the crime shames the victim more than the criminal. The laws which define the crime in any society reflect some dominant attitudes to women and can determine the fate of the victim herself after the event. There are women in Pakistani prisons now because, having been raped, they are technically guilty of the crime of adultery.

Law, however, is only part of the picture. A spokesman for Kosovar refugees in Australia stated (March 2000) that women who had been raped in the war were viewed as ‘damaged’ by many in their own honour-based culture. We all take on the heritage of a past age in every society. We may reject the heritage and eradicate it from our legal system, but its vestiges can still affect us all. Popular responses to rape may echo other times and other views. If we are to combat them, as we combat the anachronistic laws, we can benefit from a deeper understanding of the traditional basis of these views, which have outlived the conditions that gave rise to them.³²