

OpenTheo

Q&A#138 The Troubling Absence of Consent in OT Law and Narrative

July 17, 2019



Alastair Roberts

Today's question: "The issue of consent has been much discussed in the wake of, among other things, the #MeToo movement, and I was wondering how we can relate that to the types of marriage practices that we see in the Bible, where consent really is not at the forefront, if relevant at all. What are we to make of concubinage, war brides, bride kidnapping (in Judges), rape laws (where unbetrothed virgins may be given in marriage to their rapists) or just the fact that Mosaic law seems to place a daughter's choice of spouse entirely in her father's hands? Many have highlighted that what David did to Bathsheba was most likely rape, but do we also change the way we speak about, say, Abraham and Hagar? As a concubine/slave, was Hagar in a position to consent? How do we speak honestly and forcefully about the evil of forced marriage and the importance of consent, considering that the Bible does not seem to condemn these things in a straightforward way? The Church has historically held that mutual consent is necessary for marriage, but was that arrived at independent of the biblical witness or in proper extrapolation from it? I would love to hear your thoughts on this issue."

I make the beginning of an answer to a question that needs a far fuller and more searching treatment. I explore the story of David and Bathsheba in more depth here: <https://theopolisinstitute.com/the-reopened-wounds-of-jacob/>.

My blog for my podcasts and videos is found here: <https://adversariapodcast.com/>. You can see transcripts of my videos here: <https://adversariapodcast.com/list-of-videos-and-podcasts/>.

If you have any questions, you can leave them on my Curious Cat account: <https://curiouscat.me/zugzwanged>.

If you have enjoyed these talks, please tell your friends and consider supporting me on Patreon: <https://www.patreon.com/zugzwanged>. You can also support me using my PayPal account: <https://bit.ly/2RLaUcB>.

The audio of all of my videos is available on my Soundcloud account: <https://soundcloud.com/alastairadversaria>. You can also listen to the audio of these episodes on iTunes: <https://itunes.apple.com/gb/podcast/alastairs-adversaria/id1416351035?mt=2>.

Transcript

Welcome back. Today's question is, the issue of consent has been much discussed in the wake of, among other things, the Me Too movement. And I was wondering how we can relate that to the types of marriage practices that we see in the Bible, where consent really is not at the forefront, if relevant at all.

What are we to make of concubinage, war brides, bride kidnapping in Judges, rape laws where unbetrothed virgins may be given in marriage to their rapists, or just the fact that Mosaic law seems to place a daughter's choice of spouse entirely in her father's hands? Many have highlighted that what David did to Bathsheba was most likely rape. But do we also change the way that we speak about, say, Abraham and Hagar? As a concubine or slave, was Hagar in a position to consent? How do we speak honestly and forcefully about the evil of forced marriage and the importance of consent, considering that the Bible does not seem to condemn these things in a straightforward way? The Church has historically held that mutual consent is necessary for marriage. But was that arrived at independent of the biblical witness, or in proper extrapolation from it? I would love to hear your thoughts on this issue.

This is clearly a very important and difficult question, yet timely and necessary, never more timely than in the context of the Me Too and Church Too debates. When we're thinking about questions of the Mosaic law, it's very important that we consider the scope and the realm in which the law was operating, and also the situation and the context into which it was speaking. The law was dealing with a hard-hearted people, a people who had certain allowances that need to be made for them.

When Jesus talks about the laws concerning divorce that were given in the Pentateuch, he speaks about them as given for the hardness of heart of the people. Some allowance needs to be made for the fact that the people are wicked people, are hard-hearted people, are people who are stiff-necked. When we think about the laws that we give to different persons as they grow up, we can see some example of this.

There are ways that you will have house laws that address the unruly toddler. There will be certain restrictions, but also a recognition that the law can only accomplish so much. And if the household laws that you have are excessive, then they will be ineffectual and they'll just be flouted with impunity.

You will not be able to keep them. There will be other occasions where you recognise that certain of the regular laws and sanctions that you would resort to are just not going

to work with someone who's set their heart against obeying anything. When there's a fundamentally rebellious person, it's very difficult to have effective law.

A society where there is not effective law is a dangerous society. Because if you have laws and they cannot be kept, and people do not keep them, consistently do not keep them, and where there is not effective sanction carried out against those who do not keep the law, then the law itself becomes a dead letter. It becomes a word that no one really acknowledges because everyone knows that other people break it.

It's a problem in a society where there is a widespread dishonouring of the law. And so the law, to be good, it needs to speak to the specific sort of social condition that we are dealing with. It also needs to speak in a way that is effective.

To have effective sanctions, for instance. To speak to a social situation with the means to affect its judgments. And where that does not exist, that power to affect the judgments that the law declares, then the law is not good.

Even if it's speaking to an issue that is important. The other thing to recognise is matters of jurisdiction. When we think, for instance, about something like fetal endangerment laws.

Many of the laws that certain territories have on their law books about fetal endangerment, I think, trespass beyond the proper bounds of the law. They are speaking into a realm where the law does not truly belong. Public law, criminal law, just does not belong in that realm.

It's overstepping its bounds. That is a realm that belongs to the woman's body. That doesn't mean that everything that the woman does with her body is appropriate or good or morally sanctioned.

It doesn't mean that it's legitimate. It just means that that's not the realm that the law has a right to go into. There are other realms where the law would be overstepping its bounds, perhaps.

And also where the law could not deal effectively with things in that realm. And if the law were to step into that realm, it would find itself over-faced very quickly and unable to deal with the problems that would arise for itself. We can think about many of the issues of the family within the ancient world.

The family would be a realm to itself that would be distinct from the sort of realm that we would have in more public relations. Within the realm of the family there are many things that are abusive and evil and wicked and that should be dealt with. But yet there are many of those sorts of issues that simply can't be dealt with.

There's no effective agency that could do so, certainly within the ancient world. So, for

instance, you can imagine a child that is beaten repeatedly and that physically abusive relationship with a parent. How does the law speak to that issue? The law is limited in what it can do in that sort of situation.

That doesn't mean that the law sanctions or justifies or says that that situation is okay. When we're dealing with issues of marriage, a similar situation applies. The law very much operates in a realm outside of the immediate relationships of the family.

And so the law is also speaking to the situation where the people who wield actual power in the situation are men. Now, the woman's consent is something that really makes a difference when the men around her care about it. When the men around her don't care about the woman's consent, the consent really is not very effective one way or another.

And so the law is addressing a situation where the determinative reality is a society where there are structures of male power and women are very vulnerable to these things. And there is not an effective way that law can speak into those contexts that can speak against them in many ways. Rather, this is why the law speaks very much to the father of the child, of the woman who gets married.

Because the father and her brothers are the ones who are in a position to act on her behalf in a way that is effective. And so the law will generally speak to them. Now, the question of consent would operate between the father and the daughter or between the brother and the sister.

The one who would be acting in the sister's or the daughter's name in those marriage negotiations. And so the law generally operates between men as the ones who exercise the actual power in an honour society. Now, an honour society is not the best sort of society by any means.

But yet it's the society that exists in a relatively socially undeveloped society. In a society where there are not police structures, where there are not strong institutions, where there is not a settled life that has developed in a way that would enable us to have structures that could speak beyond those existing power structures of the family. And so the law of Moses is given into a structure of family power.

And within those family structures, the relationships that really mattered were the ones between the men who had the power to act in the situation. Now, that doesn't mean that the consent of women did not matter. Rather, it means that it is not that which holds actual power, effective power within the situation.

So the men in the situation matter and they are spoken to because they are the ones who wield effective force. They are the ones who actually could act on behalf of their sister or their daughter. Now, the laws also need to accommodate themselves to a situation where if they are ineffective, the law itself will be seen as weak.

And when you're dealing with a situation where people have hardness of heart, there is very little that you can do when you're dealing with certain abuses. Certain abuses that take place in a realm that is restricted. So, for instance, questions about marital rape are complicated.

Not because marital rape is itself an issue that is really complicated, that we just cannot say that it is wrong for a man to rape his wife or to coercively have sexual relations with her. That should be clear enough. The real knotty questions are how can the law of society more generally effectively speak to this issue that exists in the privacy of the marital home.

And in ancient law, there was far less that the law could do in such a situation. And so by that virtue of that alone, it would not often speak to these sorts of issues. Rather, it would speak to the men in the situation because they were the ones who could exercise effective power.

And so many of these issues would be dealt with within the structure of the families themselves. And there were allowances made for this. Many of the practices of bride price, of dowry, of other things like that were a means of providing security for the women involved.

Or they were a means of providing some sort of independent wealth that she would have. It could also be a way of vetting potential suitors or of empowering the men of her family to act on her behalf if they needed to. In all these ways, there was provision made within the structure of the family itself for dealing with these sorts of issues.

But yet these issues were very much issues within the private domestic realm of the household, not matters of public or criminal law. And recognizing that can help us to understand why the law does not speak to some of the issues that we clearly and appropriately see are wrong. It does not mean that the law or that God did not see that these were matters of concern.

We can also think about the ways that the law is dealing with a situation where people are dependent upon a family structure. And within that structure, concepts of consent work differently too. There is a stronger concept of presumed consent if someone is - there can be arranged marriage.

There are also situations of slavery. And these situations are not good, but yet they can often be necessary within a structure where there is no other way of dealing with debt. There is no easy way of dealing with someone who is improvident, that needs to be dependent upon others.

It's a way that you deal with criminals. It's a way that you deal with war captives, other things like that. When you're dependent upon the family structure, there needs to be a

way of bringing certain people into that.

And many of the laws that we have concerning marriage concern that sort of situation. For instance, concubinage is in part a way to ensure that poorer women can marry up and that they will not be in a situation where there's just a greater divide between the rich and the poor. It can be a means of reducing the difference between the rich and the poor through concubinage.

Other things that we need to consider are things like the unbetrothed virgin and rape. The whole point is that this is protecting or gives full bride price to the father of the one who has been raped. And the point is that that's to protect her from a situation where no one would want to marry her.

That the bride price has already been paid. And so it gives her that greater degree of security. It's also a situation where the man who raped her or this is not necessarily a situation of rape.

It could also be a situation of seduction where he's in a position where the father can demand of him a shotgun wedding. Now that would be presumably, we are to presume, in consultation with his daughter. Does she actually want to marry this man? Is this man someone who will provide for her? Is this man someone who loves her? Was this seduction or was it coercive rape? These are questions that would be asked.

We can think about the situation of Shechem and Dinah. That's not clearly a situation of rape. It's a situation of seduction and it could well be a situation of seduction.

And in that sort of situation the brothers and the father could negotiate with someone who's put in a position where he can pay whatever price they demand of him. That's what we see in that situation with Shechem in chapter 34 of Genesis. He says I'll pay whatever price you demand of me.

Just let me marry her. Now in that sort of situation we should expect that Dinah would be consulted. That's not stipulated in the law because the law is not dealing with that internal relationship within the family.

But it would be expected of an honourable man that he would deal with his daughter in that way. And if he didn't it would be like a man who was beating his son. It would be like a man who was abusing the members of his household.

It's not justified but it's not dealt with within that realm of the law. We can think about the example of Rebecca when she's sent with the servant of Abraham. She is asked first whether she consents to go with the man.

There is the assumption in that situation I think that you would ask for the consent of the woman. Now when we move beyond that sort of social situation, move beyond that type

of honour culture where we have greater structures to protect people, where we have more effective institutions, police force, where we have church and other institutions like that that can act on behalf of others, that can provide some sort of structure, some sort of jurisdiction and some sort of effective sanctions, then many of the things that would be dealt with within the realm of the family itself are properly dealt with in the context provided by the state or the context provided by the church or the context provided by other sorts of structures and institutions. And the church in that context recognised that marriage at its heart should involve consent.

And where it does not involve consent there is a breaking of the proper form of marriage. Marriage involves cohabitation, it involves sexual relations as implied in cohabitation, it involves consent. And there are certain conditions that must be met for that consent to be true and free.

Within a society like ancient Israel or the ancient world more generally, structures of consent are very limited because the degree to which people are dependent upon others, particularly within a structure of slavery, and also within just the relationships between men and women more generally. Scripture should not lead us to glorify those relationships as they existed within ancient Israel. They were a necessary feature of that time where there were limited structures to deal with certain problems, where society had not developed very far and the social and political structures were those of a clan-based society.

Within that sort of society there will be limits to what the law can achieve. That does not mean that we should not develop beyond that. We should most definitely develop beyond that.

And in a society like ours I think the church has appropriately recognised that those things that speak to the inner life of the household very clearly in Scripture speak about the importance of love and consent. We see that even in the Old Testament the emphasis, for instance in the Song of Songs, that speaks to the inner life of the household. This is what the household should be like.

The marriage relationship should be one characterised by consent and love. And where the conditions for that do not exist, the law or some party that can act effectively within that situation should do so. This is why I think the law was appropriately developed in a way that would speak to those issues of consent.

When we're dealing with issues of war brides we also need to consider some of these questions. In Deuteronomy there is provision made for war brides. Now you can imagine in that sort of society where you're cut off from all these people that would have provided for you, when you're rendered a widow, you'd be dependent upon a family-structured society.

But yet you had no family. And so the bringing of war brides into other families, the bringing of female war captives into families through marriage, was a means by which they could be provided for. In that sort of society consent was very much supposed to be connected to provision.

And a man's provision and protection, a return for that, would be expected sexual relations. Now scripture speaks about this in a way that recognises that it is not the ideal situation. It talks about that as the humiliation of the woman in that situation.

And it makes provision for her, that if she is not provided with marital rights, if she is not provided with her food and if she is not provided with proper affection and these sorts of things, she can go free. And she will receive, set free in a way that honours her as a wife, not just as a slave. She can't be sold on to someone else.

And so there's a certain structure of protection that's made. It's also a recognition that a reality of war is rape. And as armies go into countries, we talk about impregnable fortresses.

One of the realities of breaking through the defences of a city was the impregnation of the women within it. And scripture talks to a society where that was the norm. When we think about the Song of Deborah in Judges, it talks about the mother of Sisera speaking about the dividing of the women among the men.

And each one will have a woman to sleep with. This is the sort of situation that the law of Moses was speaking into. And the law of Moses does not allow the rape of people in warfare.

Rather it says if you find a woman in that situation to be attractive, then you have to give her certain time to mourn, to cut herself off from her people. To spend time mourning that and to be prepared for a new form of life. And in that situation you must marry her.

She must be your wife and she must have all the rights and privileges that a wife should have. She should not be treated just as a body to be raped. And so scripture is speaking into a situation where abuse is rampant.

Where there are limits to the structure of society to support people who are widows. And people who are dependent upon, who do not have means to provide for themselves. We think about characters like Naomi and Ruth who would be gleaning.

They would be dependent upon, even if they used to own land, they are dependent upon gleaning other people's land. Now within scripture the salvation for Ruth is through marriage. The salvation through Naomi likewise.

For the war captive, that marriage held in a way that recognises her rights as a wife and

protects her from certain abuses would in many cases be a merciful thing. It would be far better than the situation that she would experience otherwise. That is not to say that it is a situation to be celebrated, that it is a positive thing.

It is an accommodation to a society where there are very limited means for dealing with those sorts of situations within the existing social structure. And so we need to be aware of creating these sorts of situations as ideals or as models that we should follow in our own society. They are certainly not that.

They are accommodations to an ancient society built upon a family structure and they are speaking to that sort of reality. They can teach us certain principles of equity perhaps. They can teach us some of the ways that we can mitigate some of the evils that might come with some of our social practices, some of our social forms.

We might think about the evils of imprisonment and the whole carceral system. How do you deal with that in a way that is good? It is a necessary evil perhaps. But how do you deal with necessary evils? Scripture deals with a number of necessary evils like slavery.

And some of these other structures are addressing a society that has not yet matured to the point where it has its own means to expand its repertoire of forms of justice that it can use to speak into these situations. When we deal with cases like David and Bathsheba, I think we need to be careful of resting too much upon the language of rape which may be a category that does not quite fit neatly there within the context of that day and age where sexual relations and consent would be considered differently. But yet we should beware of avoiding that language altogether because on the other hand, Scripture does give some weight to that language when it compares what happens to Bathsheba with what happens to Tamar in the following chapter.

In the following chapter, or the following chapter after Nathan's condemnation of David, Tamar is raped by her brother Amnon. And as we read through that passage, we will see that there is a very clear parallel with David's situation. There is Jonadab's involvement.

Now, Jonadab is in the same relationship to David as Joab is. Likewise, as Joab is a conspirator with David, so Jonadab is a conspirator with Amnon. And their involvement together expresses David's sin in the next generation.

The fruit of David's sin is seen in the way that Tamar is treated by her brother Amnon. Now, that's not an easy situation and not an easy passage to think through. But what it does is it presents what David did in an even more ugly light.

It shows up his sin. Amnon begins in his bed. David began in his bed before going out on the rooftop.

There is a story of people being brought to and fro and that's what we see in the story of Amnon. In the story of Amnon, David is made complicit in the sin of Amnon and his rape

of Tamar. We see a similar thing in the story of David where he makes people complicit in the killing of Uriah and the taking of Bathsheba.

And so that story itself is a commentary upon the story of David and Bathsheba. It helps us to see that whatever the character of David's sin with Bathsheba, whether we use the term rape or not, God blows up that sin in a way that shows that it has a rape-like character to it. Implicitly, even if not explicitly, it is a sin of rape.

As it develops in the chapters that follow, we also see Absalom sinning with his father's concubines on the rooftop where David looked out and saw Bathsheba. These sins have a way of blowing up. And so scripture talks very clearly about the consequences of these sins and the character of these sins.

It presents these sins as not things that could just be justified by virtue of power, but they are rape. They are abusive. They are things that will be punished.

And as we look through the story of David, we'll see his whole kingdom, his whole reign is brought down over time as a result of his sin with Bathsheba. He is never the same force again. He has changed.

He becomes an ineffectual king from that point onwards. And God's judgment upon his action with Bathsheba I think is clear as we see what happens following. Likewise with Hagar and Abraham.

Their relationship with Hagar is seen as a fall event. The story previously is the story of Abraham bringing together animals, going into a deep sleep and then God speaking to him. And in that situation God says that his descendants will be strangers in a land not their own and they will be afflicted there.

And then in what happens following, Sarah wants to be built up through Hagar. And Hagar's name reminds us of the stranger. She ends up being afflicted in that passage.

And Hagar is given by Sarah to her husband Abraham. And when Abraham listens to the voice, heeds the voice of his wife, he takes Hagar. She conceives and as she conceives she despises her mistress.

Eyes are opened. She flees from her mistress. She hides herself.

The angel of the Lord confronts her and speaks to her. It's a playing out of a fall narrative. And as we read the story of Hagar further, we'll see that Hagar is treated in a way that is like the way that Israel itself will be treated in the house of the Egyptians.

The Egyptian is mistreated in the house of the Hebrews. Later on the Hebrews will be mistreated in the house of the Egyptians. In the story of Joseph this pattern plays out.

He is brought down by the Ishmaelites into Egypt. He is there mistreated by the mistress

of the house who says that her husband has brought in this Hebrew servant to mock us, to laugh at us. That's exactly what Sarah said concerning Ishmael.

Or that's exactly what Sarah took issue with concerning Ishmael, that he was laughing at Isaac. And so the story of Hagar does not go away. God sees and pays attention to the way that Hagar has been mistreated.

And he acts in her situation. He provides for her in the wilderness. But he doesn't just do that.

He deals with the oppressors. They must experience what it is like to be in Hagar's shoes. As you read through the story of the Old Testament I think we'll see this pattern more generally.

That the sin of Abraham and Sarah concerning Hagar is seen as a full event. And the experience of Hagar is foregrounded for us. We're supposed to see the story from her perspective.

She is the one who is experiencing an exodus-like event. She is the one who is delivered and dealt with in the wilderness. And God is the one who deals with her primarily, not just with Abraham and Sarah.

And as we look through this story I think we're seeing a commentary upon the actions of Abraham in that situation. The actions of Sarah. This is oppressive and it is seen in its truest character later on when we see the events concerning Joseph in the house of Potiphar and his wife.

And also concerning Israel in the house of the Egyptians where they are mistreated, where they are abused, where they are fruitful and hated by the people who fear them as a result of their fruitfulness. As we look through these passages then I think we're seeing the way in which a true character of proper relations comes to the forefront. That we see that consent is important.

That these structures of abuse and exploitation of power are not good things. We also see the limitations within those sorts of power structures and the ways that those power structures will need to be mitigated within a mature society. And so as we move into the New Testament we need to recognise that the household laws, household codes, speak to the internal life of the household.

They speak to the internal life of the household in a way informed by all these Old Testament passages. They recognise that the internal life of the household is one structured by, for the most part, the power of the husband. De facto the husband has a power to be abusive within that realm.

That is not justified. Rather the husband is called to be loving and to be kind and to be

one who does not exasperate his children. One who loves and serves and lays down his life for his wife.

But the reality of the situation is that there are limits. The law cannot actually effectively deal with a husband who is abusive to his wife for the most part. Because the law is hamstrung within such a society.

It does not have the advantage of moral people necessarily. And it also does not have the advantage of the power that a modern society would have or the sophisticated institutions. When you have this strong clan structure these things will be dealt with more internal to the life of the family.

So the church and the gospel speaks to that realm. But it does so in a way that recognises the fallenness and the imperfectibility of society. I think this helps us to understand why it is not to be taken as a validation of those structures.

When the New Testament speaks about wives that might be abused by their husbands. And their need to honour and try and win over their husbands even without words. These are not good situations.

In the same way it is not good for people to be in an abusive state. To be in a society where they have tyrants that will abuse them. And where they may need to be submissive to tyrants.

These are tough questions. And it is good that we live in a society where there are structures that provide mitigating forces for the powers that could otherwise be tyrannical over us. And it is good for us to try and develop those sorts of structures.

So I hope this goes some way to answering this question. Considering the limits of the law, the realm in which it is operating. The ways in which the law and the Old Testament more generally speaks to the situation of people who have been abused.

People like Tamar, Bathsheba, people like Hagar. And characterises them in a way that helps us to see the situation from their perspective. It recognises the actual power of the men within those situations.

And that where there are abusive men there may not be a whole lot that can be done about it. And it does speak to the moral duty of men as husbands and as fathers and as owners of slaves to be loving and good to those within their households. But recognising those structures we should not feel ourselves bound to them.

When we talk about the submission of wives to their husbands in the modern context we need to be careful to distinguish the modern household where we do have a lot of structures that mitigate these forms of abuse. From the ancient structure of the household where often wives were at the mercy of their husbands and abusive husbands

at that. I hope this is of help.

If you have any further questions please leave them in my Curious Cat account. If you would like to support this and other videos like it please do so using my Patreon or PayPal accounts. God bless and thank you for listening.