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The sexual politics of the head: the legal history of the veil

Summary

To trace the origins of legal provisions pertaining to the veiling of women, Mesopotamian legal documents of the early second and first millennia BCE are scrutinized in order to determine their first entries regarding the veil, the specific intentions of the legislator, and the cultural background of the legislation. Were the investigation to reveal only the material detail of the first legislation on veiling, the historical impact of patriarchy would remain obscure. Consequently the introduction of the veiling laws is evaluated against the background of a tradition of patriarchy which had a total disregard for the equality of women and reified their sexuality. The importance of this aspect lies in the fact that this inculcated degradation of women persists, even without the veil, in contemporaneous patriarchal societies. However, marked changes in the "sexual politics of the head" are currently discernible nationalist movements within Muslim countries and communities.

Seksuele politiek van die kop: die regsgeeskiedenis van die sluier

Met die oogmerk om die oorsprong en konteks van die regsvoorskrifte wat verband hou met die sluiering van vroue te bepaal, word die vroegste Mesopotamiese regsdokumente van die tweede en eerste millennia vC deurgewerk om die bedoeling en die kulturele konteks van die eerste regsinskriftings te bepaal. Indien die ondersoek sou stop by die behandeling van die materiële evidensie van die regsvoorskrifte ten opsigte van die sluier, sal die beslissende rol van patriargie nie duidelik blyk nie. Daarom word die wetgewing oor die sluier geëvalueer teen die agtergrond van 'n patriargale tradisie wat die gelyke regte van vroue verontagsaam en vroue en hul seksualiteit geobjektiveer het (reïfikasie). Dit word aangetoon dat die ingeburgerde tradisie van die onderwaardering van vroue verder strek as die sluier en steeds voortgesit word in huidige patriargale samelewings. Daar is egter tans besliste veranderinge in die "seksuele politiek van die kop" binne nasionalitiese bewegings in Muslimlande en -gemeenskappe.

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Ancient Near Eastern and Classical studies have often been justifiably accused of studying the historical dimensions of cultural phenomena without providing any explanation of their connection with and/or relevance to contemporary cultural expressions of those phenomena. Revisitations of the historical dimensions of human culture should fundamentally and critically expose their continuities and discontinuities (or incongruities) with contemporary cultural issues. The methodology implied here does not simply hark back to diachronic reasoning, but may also include analogous comparison. Similar expressions of culture often occur in different contexts without direct influence or borrowing. This article will concentrate on assumptions subjacent to the social appreciation of women in Mesopotamia, and then transpose them onto the development of the subservience of women in current patriarchal societies.

For the purposes of the current investigation it is important to contextualise the laws pertaining to the veiling of women in terms of their historical and socio-cultural position in the ancient Near East, and to demonstrate the underlying assumptions and ideologies of the patriarchal system from which this legislation emanated. Possible references to the structures and ideologies of current patriarchal societies are also to be clarified. This is more easily said than done. The challenge of uncovering the salient features of patriarchy which have played a significant role in the establishment of the psyche of male-dominated societies remains. One may even hypothesise that current male-dominated societies explicitly or covertly marginalise women and violate their rights in accordance with a history imbued with patriarchy. The evolution of patriarchy is the result of a gradual process, and through experience and education it has become ingrained to such a degree that it is almost impossible to free oneself from its hegemony.

The efforts to legislate the public appearance of women formed part of patriarchy's imposition of male dominance and the idea of women as chattels. I term the investigation a "sexual politics of the head" because veiling was an aspect of the sexual exploitation of women and an infringement of their freedom of movement. The investigation accordingly aims not only to revisit the past and ascertain the historical origin of legislation pertaining to the veil, but also to connect those findings with current assumptions of patriarchy.

In order to cast additional light on the legislation under discussion, a brief exposition of the social position of women and the development of patriarchy is required.

1. The social and legal position of women in the ancient Near East and the patriarchal system

A comprehensive discussion of the social position of women in the ancient Near East goes beyond the scope of this project. Only those aspects of immediate relevance to the investigation of the laws of veiling will be dealt with.

The concept of patriarchy, though frequently adduced, defies definition. For our current purposes it suffices to emphasise only the significant dimensions of its definition, viz male supremacy and hierarchy, as well as the inequality of women. Even this delimitation is fraught with problems, in that male dominance and the inequality of women vary in accordance with the differences between cultures. Various evaluations also proceed from different feminist assumptions, as pointed out by Meyers (1987: 27). In our investigation the evolution of patriarchy, the objectification of women, and the reification of their sexuality will receive attention.

Women have been treated with varying degrees of respect through the ages, while their contribution to societal life has been considerable from the inception of human history. The problem, however, is that the historical and socio-economic role of women has always been portrayed from the perspective of a male-dominated society, and therefore pictured within the parameters of patriarchy. Gerda Lerner (1986: 5) puts it poignantly that men devised the play, wrote the “playwright”, and allocated the roles. In terms of this prejudiced script, women have not received due recognition for their contributions to humanity, and have been prevented from writing their own his(her)story.

It goes without saying that women in the ancient Near East were considered socially, economically and legally inferior to men. The most comprehensive study on the development of patriarchy, undertaken by Lerner (1986), shows that patriarchy has its own history and developed through the ages. Although it never evolved as a historic-

al succession to an originally matriarchal society, its systemic identity resulted from a historical process. Changes in kinship, economic relations, bureaucratic administration and ideological or religious sanction created the familiar structures on which patriarchy would thrive. A historical process not only determines the social structures of a male-dominated governing system; it also establishes the symbolism and the concepts which obstruct a non-patriarchal approach to society as a whole. A metaphysics of divinely ordained male supremacy, coined as an androcentric dualism, is engendered and language itself is coached in terms of predestined gender roles.

A plethora of theories has been devised to explain male over-lordship and female subservience. The theories range from different biological functions, evolutionist ideas of the weaker sex, and the natural bond to nature and the body, to sociological and anthropological explanations of the developmental conditions of the state and systems of social meaning (cf Lerner 1986: 15-35). Most of these theories are either essentialist or reductionist in nature, and fail to assess the complex historical development of patriarchy which is neither linear nor uniform. It is therefore impossible to develop a coherent evolutionary history of patriarchy.

The crucial question is whether the aim of this investigation can be reconciled with the denial of a unilinear history. The rationale for focusing on the Mesopotamian context is that it constitutes the cultural cradle of the dominant religious text influencing Western society (the Bible). Developments in Mesopotamia were closely followed in Israel and throughout the Graeco-Christian tradition. The inevitable conclusion is that the Mesopotamian context is of significance to the inherited Western traditions of patriarchy.

In shifting our focus to the legal position of women in the ancient Near East, it should be borne in mind that legal provisions were aimed primarily at the order and well-being of a community, and that they form part of the cultural development of an imperial society. Whether such provisions were codified in legal indices, such as the Code of Hammurabi or that of Justinian, or broadly seen as uncoded or even sacred law, their aim was to establish and maintain societal structures and order, and they were therefore less concerned with private individual matters. Even the most "private" matters, such as

Nel/The legal history of the veil

marriage and divorce, were public issues (Meyer 1987: 155). This is in keeping with the essence of legal rules as generalisations, so that the private interests of individuals are of marginal interest to the legislator. "Private" matters such as marriage and divorce were not thus excluded, however, since the family was the source of soldiers for the imperial army. (This may not be the only reason but it does underlie the extremely well-developed Roman system of Family Law).

It is abundantly clear from the legal provisions that the rights of women were universally protected in all ancient Near Eastern societies. The protection afforded was dictated from the male vantage point and in actual fact served to protect male interests. Cases of adultery with a married woman were severely punished, not necessarily to protect women but rather in the interest of husbands and of upholding the patriarchal family. The protection so afforded even applied to slave girls, because even in the days of the Roman republic slaves were regarded as family members. It follows logically that in cases where damage was caused by criminal conduct, protection served mainly the interests of males: husbands or fathers.

Initial perusal of the legal codices of the ancient Near East creates the impression that the rights of women were taken seriously. This was indeed the case, but only in so far as it did not distort the socio-cultural and economic values enshrined by the patriarchal system. In fact, there was no legal equity. In Biblical law, for example, a daughter was able to inherit her father's estate only if there were no male heirs (cf Westbrook 1991: 17). If in a fight a woman seized the genitals of her husband, her hand was cut off, but the same penalty did not apply to a man who did this to a rival or antagonist. The faithless (adulterous) husband is also conspicuously absent from Biblical law.

Although legal parity between men and women did not exist,¹ the social position of women varied in the various ancient Near Eastern countries. Women in Egypt enjoyed the highest degree of freedom and no prohibitions concerning clothing (cf Jansen 1995: 383-

1 Hallo (1996: 245-50) argues from the evidence of specific Mesopotamian marriages that women enjoyed rights equal to those of men. However, the status of these women is not clear from these cases and the scanty evidence cannot be treated as though gender equality formed part of the jurisprudence of the day.

93) curtailed their status. Even in legal terms they were in a much better position than their counterparts elsewhere in the ancient Near East. As far as we know, the only punishment for an adulterous woman was divorce. Women played quite an important role in private life (cf Pinch 1995: 363-81) and it was even possible for women to become pharaohs, as evidenced in the case of Hatshepsut (eighteenth dynasty), the daughter of Tuthmose I.

In Mesopotamia, conditions were less favourable, particularly in Assyria. Except for some legendary female rulers such as Ku-Bau of Kish, there is no evidence of female rulers in Mesopotamia. These facts do not detract from the exalted position enjoyed by women at the royal court (cf Hallo 1996: 255-6; cf also Oppenheim 1964: 104, 304, 371, 386). Generally speaking, however, the status of a family was determined by the father, and girls were married off at a relatively early age. Girls were regarded as chattels, and substantial prices were paid to prospective fathers-in-law. The dowry received from the bride's father on her behalf could not be alienated and the wife's property was protected by various measures. The husband as "owner" (*bêlu*) of a wife and daughters could in circumstances of destitution sell off his wife and daughters as slaves (Bottéro 1987: 186; Contenau 1959: 18-9).

Even though marriage in Mesopotamia was usually monogamous, a husband was allowed to marry more than one wife and to have children by slaves. A high premium was placed on the virginity of a bride, and the penalty inflicted upon an adulterous woman was death, either by drowning or by impaling (cf Driver 1952: 313). Adultery on the part of a husband was not punishable, except where it involved the wife of another citizen (Lerner 1986: 114). Rape was punishable, but here again the injured party was the husband or the father of the victim (cf Epstein 1942: 194). This is not surprising in the light of the fact that legal protection was intended to further the interests of the patriarchal family. A husband was free to have sexual relations with the bevy of prostitutes and female devotees at the temple (*kezertu* and *qadisbtum* women, cf Stol 1995: 492-4). Bottéro (1987: 186-7) bluntly calls this the "free love" privileges of the male. According to Lerner (1986: 69-75) the transition from a kin-dominated family (linked by blood ties) to a patriarchal family went hand-in-

Nel/The legal history of the veil

hand with the institutionalisation of slavery and with women's being regarded as subordinates and as economic property. Notwithstanding these deprecating evaluations, women played a significant role in education, in the economic sphere and even in religious ceremonies.

A similar state of affairs pertained to women in the Biblical period in Israel. Society was patriarchal and the status of women was determined by the status of the patriarchal families. Although polygamy was not rife, a husband could marry more than one wife and could have children by slaves. A slave girl was often included in a dowry. Laban gave his two daughters in marriage to Jacob and added two slave girls by way of dowry (Gen 29: 22-9). In a patrimonial system marriage was legally considered as part of property transmission, therefore entailing the typical negotiated arrangements between the heads of the families involved (cf Meyer 1987: 186). Although these marriage arrangements were patrimonially conceptualised, there is no compelling reason to conclude that women, particularly in the pre-state period, were relegated to inferior positions in the household (cf Meyer 1987: 174). Despite the rather low estimate of women they played an important role in the upbringing of children, in education and in the economic activities of the household (cf Gruber 1995: 633-48). Carol Meyers (1987: 171) is of the opinion that women may have shouldered as much as 40% of the productive tasks in early Israel. Some women played important political roles, for instance Deborah (Judg 4-5), Jezebel (2 Kings 16: 29-22) and Athaliah (2 Kings 11), the only queen of Judah. Although the encomium of the ideal women of Proverbs 31 is portrayed from a patriarchal perspective, it demonstrates women's involvement in a range of economic activities (cf Snell 1997: 87-90).

The position of women went from bad to worse with the advent of a more centralised bureaucracy controlling production and market-related economies.² Smaller households were affected by organised economic conditions, and women lost their positions of importance (cf Snell 1997: 89-91). Women's sexuality and reproductive potential became economic commodities in the newly founded patriarchal class

2 Cf Lerner's (1986: 49-53) view of how women became reproducers, as a substitute function of their productive role, once the appropriation of women as private property had been established in a differentiated economy.

system, and females could therefore be sold into slavery and economically exploited (Lerner 1986: 76-82). Consequently, the value of women as economic assets and sexually exploitable commodities impacted upon the appreciation of women. Eventually, quite negative estimations of women began to surface (cf Ecclesiastes), and in Israel the tendency persisted into Rabbinic traditions (cf Swidler 1976: 79-82).

2. The veil and sexual politics

According to Islam, a woman's dress should be sober and not seductive. The veil and headscarf of Muslim women have always been seen in close connection with the customs and cultures of the Semitic peoples of Old Mesopotamia, and certainly go back to pre-Islamic traditions. Iran, Iraq, Saudi Arabia, Pakistan and Afghanistan, the current countries of that region, are still perceived to be the guardians of the religious family law (*shari'ah*), including prescriptions for women's dress.

Among Muslims the veil (*bidjab*) and covering cloth (*carsaf*) are a familiar sight and indeed part of a religious taboo. It is often required of women not only to cover the lower part of their faces with a kerchief, but to be entirely covered, up to the eyes. The Qur'an contains only seven references to veiling practices, and veiling is mainly prescribed for the wives of the Prophet (Lewis 1979: 359). In the early Islamic tradition it was a prerogative of women of rank. In orthodox Muslim societies it has become a symbol of servitude. Women are not only veiled but also "walled in", and when they do venture into the open with their faces veiled, they are more often than not accompanied by a young boy who shouts to warn men to turn their backs on them.

Since the late nineteenth century, and particularly in the early twentieth century, Muslim countries such as Egypt and Turkey have deliberately granted women greater social and economic freedom and done away with strict laws on dress. After the establishment of the Turkish republic in 1923, Western clothing largely replaced the veil and in 1998 it was banned (with severe criticism) by the university of Istanbul. However, the wave of Muslim fundamentalism and cultural resistance to Western influence over the last couple of decades

Nel/The legal history of the veil

has certainly strengthened the re-instatement of typical *shari'ah* clothing customs (Timmerman 2000: 24).

For the Biblical period there is no specific evidence on which to conclude in favour of the practice of veiling women. The earliest Biblical reference alluding to the possibility that women may have been veiled in the Hellenistic era is to be found in the apocryphal book of Daniel (13: 31-32). It is mentioned here that Susanna, charged with adultery, was unveiled in court. Whether this refers to a custom of everyday life or merely an act of modesty on the part of the pious Susanna, to hide her beauty, is not clear from the context. In early Judaism, however, it became obligatory for women to be veiled in public places. The face was covered by a veil up to the eyes. For a woman to go out with her head uncovered was considered a shame so heinous that it provided her husband with adequate grounds for divorce (Swidler 1976: 121). This tradition, now seen as part of a moral code, is concomitant with a patriarchal history of infringements of women's



Figure 1: The head of a woman from the Sumerian city of Girsu, during the time of king Gudea, 2130 BCE (Amiet 1977: 436, 444).

Acta Academica Supplementum 2002(1)

rights and freedom. In orthodox Judaism it is currently still a requirement for women to cover their hair, but not to veil their faces.

The earliest pictures of women in Mesopotamia, up to the Middle Assyrian period (1500-1000 BCE), show women wearing their hair drawn back in a plait or pig tail, and often piled on top of the head (cf Figure 1). Frequently, the hair is secured by a ribbon or kerchief



Figure 2: A picture on the basalt grave stele of a scribe from the Anatolian city of Maras, eighteenth century BCE. The mother is holding her son (Amiet 1977: 397, 448).



Figure 3: A scene on an Anatolian vase depicting a husband (?) removing the veil of a woman, ca early 1st millenium BCE (slide collection of I Cornelius, University of Stellenbosch).

(Collon 1995: 504-10). Sometimes a scarf net is shown pinned to the hair at the back of the head (cf Figure 2). A scene on an Anatolian vase shows a veil covering the body except for the face (Figure 3). A later sculpture from Carthage pictures the goddess Tanit wearing a similar veil (Figure 4). The face is never covered with any cloth resembling the veil. In Is 47:2 we find a reference to a Babylonian or Chaldean woman removing her veil. If this is to be so understood, one may assume that the tradition referred to in the Middle Assyrian laws (see later) also spread to the Neo-Babylonian context, but whether this veil refers to a face-veil, or to the long shawl covering the dress, is uncertain.

The same holds true for Egyptian customs (Pinch 1995: 371). There are no signs that women in Egypt veiled their faces. Elaborate



Figure 4: Statue of the Phoenician goddess Tanit, from Carthage, a colony of Tyre in North Africa, ca 6th century BCE (slide collection of I Cornelius, University of Stellenbosch).

headdresses are well-known, but no picture or reference to a kerchief or scarf covering the face has been found, as far as I am aware.

In Biblical times we have no evidence that women veiled their faces. The references to the covering of the faces of Tamar (Gen 28) and Rebecca (Gen 24: 65) have nothing to do with veiling in the usual sense of the word, since the conduct of these women, although differently motivated, was designed to avoid recognition in their particular circumstances. A number of figurines from various sites in Palestine dating from the eighth century BCE and earlier clearly show a shawl or veil covering the head and body (cf Figure 5). Israelite women taken captive by the Assyrians after the destruction of Lachis in 700 BCE are pictured wearing veils on an Assyrian relief from the palace of Nineveh (Figure 6).



Figure 5: A collection of figurines and press forms from the Israelite sites Ta'anach, Tell el-Far's, Megiddo and Samaria, ca 8th century BCE (Keel & Uehlinger 1992: 185-7).

Headdresses were quite common in Egypt and Mesopotamia. Elaborate headdresses were associated with status, and therefore queens and priestesses wore such easily recognisable insignia. The queens of Egypt were never pictured without headdresses (cf Figure 7, the well-known sculpture of the wife of Amenophis III, fourteenth century BCE). The representation of goddesses obviously also follows this trend. Identifiable insignia of a particular goddess were usually attached to the headdress.

The impression to be gained from the scanty evidence available is that representations of women wearing headdresses and kerchiefs or scarves to cover part of their hair are indicative of their status, rather than linked to sexual policies or patriarchal incrimination. In the Old Testament, scarves (*mitpachat*) were long, covering the head and extending from the forehead down the back for the full length of the dress (Gruber 1995: 643). The pictures of women with headscarves in Mesopotamia show them with their hair (not their faces) covered



Figure 6: A section from the Assyrian relief in the palace of Nineveh, depicting the destruction of the Israelite city of Lachis (700 BCE) and the deportation of women in captivity (London: British Museum).

and, less frequently, with the ordinary decorated ribbons holding the hair (Collon 1995: 506-7).

The textual and pictorial evidence is not conclusive as to the real nature of the veil and its associated customs. If the illustrations referred to serve as evidence of real customs of veiling, it can be concluded that veiling did not imply the concealment of the entire face.

The question now arises as to when, where and how it came about that veils became mandatory for certain women. Did veiling consist of covering part of the face, not only the back of the head?

It is interesting to note that there is no legislation extant in Israel or Egypt providing that women should be veiled. The Sumerian laws of Ur-Nammu (ca 2100 BCE), Lipit-Ishtar (ca 1930 BCE) and Eshnunna (ca 1770 BCE) are silent on this matter. It is absent from the Babylonian laws of Hammurabi (ca 1750 BCE) and also from the royal or administrative documentation of the period. Although the



Figure 7: A wooden sculpture of the head of Teje, the wife of Amenophis III, a Pharaoh during the Amarna period, 14th century BCE (Eggebrecht 1997: 135).

laws of Hammurabi deal extensively with the rights of citizens (*awilum*), women, and slaves, with the protection of women's rights, and with damages to women as the property of the male head (husband or father), no reference is made to any distinction of class or privilege based on clothing. The very first legal provisions pertaining to the veiling of women occur in the Middle Assyrian laws (ca 1076 BCE).

The Middle Assyrian laws date back to the time of the Assyrian king Tiglat-Pileser I, in the eleventh century. This was the period in which Assyrian dominance in Mesopotamia began, in the wake of the waning influence of their political rivals, in particular the Hittites. It was the phase in which Assyria developed into a regional power with economic and military power. Assyria's dominance was only

curbed in the seventh century BCE when the Neo-Babylonian empire, in alliance with the Medes, managed to overthrow the administration of Nineveh (612 BCE). Although there was a lapse of some centuries between the economically strong Old Assyrian empire (Middle Bronze era) and the beginning of the Late Assyrian period with Tiglat-Pileser I, the Assyrians were known for their administrative skills. They were the first to develop a highly sophisticated market economy (Barrel 1998). It is important to note that economy-driven Assyrian society differentiated between administrative and military power, because all these factors may have contributed to the development of the concept of women as chattels with a monetary value in a patriarchal society.

The first tablet of the Assyrian laws (*Middle Assyrian Laws A*, henceforth *MAL A*) deals almost exclusively with women's involvement in crimes such as theft, injury, assault, and sexual offences. It should be noted that society was structured into two classes of people: the citizen (*a'ilu* or *awilum* in Babylonian), including the citizen's wife and property, and on the other hand the slave, including quite a range of male and female slaves (*urdu* and *amtu*), among whom different sexually available groups (prostitutes?) can be distinguished. The degree of injury and the penalty imposed were measured in terms of this stratification.

For the sake of completeness and to portray the spirit of the laws, the two articles dealing with the veiling of women will be quoted here from Roth's (1997: 167-9) translation (cf also the excellent German translation by Borger (1982: 87-8)). Technical indications, conjectures, and damaged sections of the texts will be omitted from the quotations. Assyrian designations will be inserted, for the sake of distinctions drawn in the discussion which follows.

MAL A (v 42-106)

Wives (*assatu*) of a man (*a'ilu*) or widows, or any Assyrian woman who go out into the thoroughfare shall not have their heads bare.

Daughters of a man [...] with either a [...] -cloth or garments or [...] shall be veiled (*pasumu*), their heads [...]

When they go about in the main thoroughfare during the daytime, they shall be veiled.

A concubine (*esirtu*) who goes about in the main thoroughfare with her mistress is to be veiled. A married *qadiltu*-woman [sacred pros-

Nel/The legal history of the veil

titute, Nel]³ is to be veiled when she goes about in the main thoroughfare, but an unmarried one is to leave her head bare in the thoroughfare, she shall not veil herself. A prostitute (*barimtu*) shall not be veiled, her head shall be bare.

Whoever sees a veiled prostitute shall seize her, secure witnesses, and bring her to the palace entrance. They shall not take away her jewelry, but he who has seized her takes her clothing; they shall strike her 50 blows with rods; they shall pour pitch over her head. And if a man should see a veiled prostitute and release her, and does not bring her to the palace entrance, they shall strike that man 50 blows with rods; the one who informs against him shall take his clothing; they shall pierce his ears, thread them on a cord, tie it at his back; he shall perform the king's service for one full month.

Slave women (*amatu*) shall not be veiled, and he who should see a veiled slave woman shall seize her and bring her to the palace entrance; they shall cut off her ears; he who seizes her shall take her clothing. If a man should see a veiled slave woman but release her and not seize her, and does not bring her to the palace entrance, and they then prove the charges against him and find him guilty, they shall strike him 50 blows with rods; they shall pierce his ears, thread them on a cord, tie it at his back; the one who informs against him shall take his garments; he shall perform the king's service for one full month.

MAL A (vi 1-13)

If a man (*a'ilu*) intends to veil his concubine (*esirtu*) he shall assemble five or six of his comrades, and he shall veil her in their presence, he shall declare, "She is my *assutu*-wife"; she is his *assutu*-wife. A concubine who is not veiled in the presence of people, whose husband did not declare "She is my *assutu*-wife", she is not an *assutu*-wife, she is indeed a concubine. If a man is dead and there are no sons of his veiled wife, the sons of the concubines are indeed sons; they shall (each) take an inheritance share.

It is important to note that for the first time the mood of the legal formulations has changed here. In all previous laws the typical casuistic formulations were used. Here prohibitive formulations dominate, instructing rigorously and authoritatively. The laws above stipu-

- 3 The sacred prostitute was mainly involved in rituals to ensure fertility, and as a partner in the enactment of the *hieros gamos* — the holy marriage between the fertility god and goddess. It is uncertain as to whether she was involved in other forms of prostitution at the sacred temple site. In most cases these "prostitutes" were women of status.tributable to the *qadistu*-prostitute is more diverse than in Assyria. It is, however, clear that she was a woman of high status and regarded by the community as such.

late that certain classes of women should be veiled when in public (entering the main street) and that others should not. Those to be veiled are clearly those with immediate ties to the respected citizen (*a'ilu*), who are considered to be his property. These classes of women include the ordinary wife (*assatu*) of the citizen and his concubine (*esirtu*), who might be a slave girl, bought or acquired as payment of a debt from a fellow citizen. The other class comprises the *qadiltu* or temple prostitute⁴ (cf Brongers 1060: 150; Bottéro 1987: 189), consecrated by prominent citizens to special temple services. Her duties included ritual sexual availability (cf the dimensions of sacred prostitution in Lerner 1986: 125-9). Although there may have been higher ranking female temple servants, the fact that they also had to be protected by the veil shows that they were obviously honoured women held in high esteem. They were usually daughters of citizens (the upper levels of society) and in special circumstances their children could have the same legal rights as the ordinary children of a citizen (*a'ilu*).

Why these categories of women had to be veiled is only intelligible against the background sketched above, where women were regarded as the property of their husbands. In an organised and differentiated state such as Assyria, the inferior position of women was already enshrined. The main priority of these legal provisions was to ensure the prevention of damage to the property of citizens. In this respect, women regarded as property had to be distinctively identified. This is a new dimension introduced by the Middle Assyrian laws. These laws therefore promulgated the wearing of the veil to make it manifestly clear which women were owned by citizens. Consequently, if they were injured in any way, the perpetrator would be delictually liable to the owner. They were veiled for the sake of their spouses and therefore the veil symbolised their identification as property. The emphasis was not merely on the fact that they were mar-

4 Driver (1952: 369-71) translates the word with "hierodule". According to him the hierodule was connected to the temple for longer or shorter periods and could be involved in sacred prostitution. He allows for the possibility that the hierodule referred to in the Babylonian laws may have differed in some respects from her Assyrian counterpart. In the Babylonian laws the range of activities attributable to the *qadistu*-prostitute is more diverse than in Assyria. It is, however, clear that she was a woman of high status and regarded by the community as such.

Nel/The legal history of the veil

ried (cf the view of Gardascia 1969: 48) and should therefore be veiled in public, but rather on the fact that they were veiled and therefore entitled to protection afforded to the property of a citizen. The class distinctions between veiled and unveiled women in the provisions illustrate the spirit sustaining these laws: to discourage indiscriminate injury to women. Women owned by a fellow male citizen should be veiled as a means of preventing illegal injury.

The conditions of the law pertaining to a slave girl explicated in *MAL A 41* (see the quotation above) should also be seen in this light. If a citizen should veil his concubine, thereby raising her status, it should be at a public event where the citizen declares overtly that the concubine is his legitimate “wife” (*assatu*). Only in such circumstances does the concubine (*esirtu*) enjoy the same status as the actual wife. An unveiled concubine is not considered to be the wife of a citizen and is therefore not protected by the delictual provisions applicable to the wives of citizens.

The symbolic or rather metaphorical use of the veil, the only other textual reference, is evident from the Middle Assyrian Palace Decree of Ashur-resh-ishi I (ca 1132-1115 BCE). In terms of this decree, court personnel were not allowed to flirt with female palace employees, and any eyewitness was under an obligation to report any such incident to the king. The penalty was death by burning (being thrown into an oven). The women were seen as the property of the king, and therefore “veiled for their master” (cf Roth 1997: 205).

The classes of women not to be veiled are those (non-respected) women who could be injured without any delictual liability arising therefrom because no injury to an owner (*a'ilu*) was involved. Adultery, sexual intercourse and forms of harassment were allowed. The underlying purpose of these provisions was to give male citizens a clear indication of the people with whom conduct of a sexual nature would not give rise to delictual liability. The ordinary prostitute/harlot (*barimtu*) and the slave girl (*amatu*) were not to be veiled in any circumstances. Only legitimate concubines (*esirtu*) could have their faces veiled.

It is quite evident that these class distinctions based on the sexual availability of certain women (including commercial prostitutes) to male citizens arise from the inferior and objectified role ascribed

to women. The sexual activity of women was used to discriminate between classes of women in public, which meant that their sexuality became reified as a measure of class distinction. Gerda Lerner (1986: 133) assumes that commercial prostitution was a direct outcome of the enslavement of women and the formation of classes. The degree of control to which male-dominated class distinctions and privileged sexual voyeurism led is evident from the the rest of the legal formalities. It was required that cases involving illegally veiled women be brought before the king's court (at the entrance to the palace). It was not an ordinary matter for judges (*dayyanu*) presiding over an ordinary or lower court. The implication of this ruling is that unlawful veiling of women was seen in a serious light. It was regarded as harmful to the societal structure and as a crime punishable by the state as represented by the king and the court of justice. The unlawfully veiled woman was not only punished by 50 strokes with a rod, but was publicly dishonoured by having hot pitch poured over her head and by being stripped of her clothes. The punishment for not reporting unlawfully veiled women was equally harsh for men found guilty of that offence.

One can well imagine that being veiled afforded women a measure of protection against abuse by males and ensured respectability. Consequently, being illegally veiled was well worth the risk of detection.

Because of the lack of conclusive pictorial images of the veil in this period, one may assume that the veil did not cover the entire face. The textual description refers to the covering/concealing of the face. Although one cannot equate the Assyrian veil with modern veils, one may accept that the lower part of the face was probably covered by the veil. For this reason a slave girl could conceal the identifying marks of slavery on the forehead or the side of the face and pose as a respectable member of society.⁵ The idea of the veil was not to cover the face so that women offered no seduction or enticement to men, but rather to make obvious which women were "untouch-

5 Malul (1988: 41-76, 311-8) has indicated that the symbolic action in terms of which a slave girl could receive manumission refers specifically to the "cleansing of the forehead". It might allude to the symbolic removal of class identity marks. Driver (1952: 305-9, cf also Contenau 1959: 20) accepts that a variety of slave markings were made on the forehead or the side of the face.

able” as the property of citizens and which were freely available for sexual play. In this respect the Assyrian usage differs from the conventional traditions of Islam and Judaism. It was certainly part of the sexual regulation of all women as well as of the fostering of class distinctions manifest in an increasingly male-dominated society. The sexual activities of women were organised by this male-dominated society so that injury to women, which could entail malicious injury to property, could be avoided.

The class structure imposed by organised Assyrian male society contributed to woman’s position of subservience to their male counterparts. The same structure objectified their sexuality in terms of distinguishable and available sexual activities.

3. Conclusion

The first customary and criminal laws regulating the public appearance of women by veiling prescriptions occur in the Middle Assyrian period, in the eleventh century BCE. The harshness of the penalties for unlawfully veiled women, as well as the status of such cases at the king’s court (supreme court), suggests that the offence was regarded as a threat to public order.

The selectivity with which these legal provisions were applied to specific classes of women is indicative of the male-dominated nature of society. It was a society in which discrimination against women and a fundamental conviction about their subservient status had reached the stage in the evolution of patriarchy where it was regarded as quite natural to regulate women in terms of their class and their sexual activity. A woman with immediate ties to a citizen should be “respectably” veiled so that a male fellow-citizen could have no excuse if delictual injury was caused to her, violating the property rights of her owner. In circumstances where the property rights of a citizen were not threatened, women could “show” their availability, and as a “non-respected” class they could appear unveiled in public. Whether veiled or unveiled, women’s degraded position and inferiority were enshrined by these patriarchal laws.

No conclusive picture of the use of the veil in the Ancient Near East could be established from the textual and iconographical sources

discussed. If the legal provisions pertaining to the veil suggest the covering of part of the face — as probably was the case — the pictorial evidence from Mesopotamia is not congruent with these legal prescriptions.

The symbolism and ideology behind the custom of veiling, projecting a subservient position for women, has a history which runs parallel to the evolution of patriarchy. These symbols and ideologies are neither natural nor innocent.

It is, however, also important to take cognisance of changes in the “sexual politics of the head” in contemporary Muslim countries and communities. The veil (including the *carsaf*) is not necessarily viewed by women in the new, nationalist Islamic movement as a symbol of oppression, but rather as one of cultural identity and cultural resistance to Western influence. One must therefore be careful not to project a colonial Western perception of subservience onto all veiled women. The conflict between the Muslim world and the West has certainly given rise to degrees of animosity and alienation. Cultural expression, whether in clothing or in observance of religious and cultural morals, is seen nowadays as reflecting national and cultural pride in many contexts. In Turkey and Egypt, the first countries to react against the social and economic enslavement of women, there is again strong positive sentiments towards traditional dress. A study by Timmerman (2000: 16-27) also shows that Muslim communities in Europe tend to be particularly sensitive to cultural and national identity.

The history of the “sexual politics of the head” becomes shrouded in irony when the origins and symbolism of the veil are seen against the backdrop of current moves towards its re-instatement as a symbol of cultural and national pride.

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Acta Academica Supplementum 2002(1)

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