

## SEX, LIES, AND VIRGINAL RAPE: THE SLANDERED BRIDE AND FALSE ACCUSATION IN DEUTERONOMY

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Deuteronomy 22:13–21 recounts a statement that a newly married husband makes concerning his wife.<sup>1</sup> The scandalous nature of the statement has led some to dub this text “the case of the slandered bride.”<sup>2</sup> The gist of the statement is that the woman was not a virgin at the time of the wedding, as the man expected her to be. The main section of the text (vv. 13–19) prescribes a course of action if the husband is lying and his statement turns out to be false. The two concluding verses (vv. 20–21) stipulate what to do if the husband is telling the truth. The text states:<sup>3</sup>

<sup>13</sup>If a man takes a wife and sleeps with her, but then hates her <sup>14</sup>and brings charges against her and causes an evil name to come upon her, saying, “I married this woman, but when I approached her, I did not find in her the

<sup>1</sup> In addition to the abbreviations in *The SBL Handbook of Style: For Ancient Near Eastern, Biblical, and Early Christian Studies* (ed. Patrick H. Alexander et al.; Peabody, MA: Hendrickson, 1999), the following abbreviations are used: BE = The Babylonian Expedition of the University of Pennsylvania; BZABR = Beihefte zur Zeitschrift für altorientalische und biblische Rechtsgeschichte; Cyr = J. N. Strassmaier, *Inschriften von Cyrus, König von Babylon (538–529 v. Chr.)* (Babylonische Texte 7; Leipzig: Pfeiffer, 1890); FLP = Free Library of Philadelphia; HL = Hittite Laws; LE = Laws of Eshnunna; LH = Laws of Hammurabi; LL = Laws of Lipit-Ishtar; LU = Laws of Ur-Nammu; MAL = Middle Assyrian Laws; NBL = Neo-Babylonian Laws; ND = field numbers of tablets excavated at Nimrud (Kalhu); VAS = Vorderasiatische Schriftdenkmäler der Staatlichen Museen zu Berlin; ZSS = *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*. In addition, I would like to thank Bernard M. Levinson, F. Rachel Magdalene, P. Kyle McCarter, Jr., and Raymond Westbrook, who read and commented on earlier drafts of this article.

<sup>2</sup> Tikva Frymer-Kensky, “Virginité in the Bible,” in *Gender and Law in the Hebrew Bible and the Ancient Near East* (ed. Victor H. Matthews, Bernard M. Levinson, and Tikva Frymer-Kensky; JSOTSup 262; Sheffield: Sheffield Academic Press, 1998), 79, 95. See also William W. Hallo, “The Slandered Bride,” in *Studies Presented to A. Leo Oppenheim, June 7, 1964* (Chicago: Oriental Institute of the University of Chicago, 1964), 95–105, esp. 101–2.

<sup>3</sup> All translations of biblical and nonbiblical texts, unless otherwise noted, are my own.

signs of virginity,”<sup>15</sup> then the father of the young woman and her mother shall take the signs of her virginity and bring them to the elders of the city at the gate.<sup>16</sup> The father of the young woman shall say to the elders, “I gave my daughter to this man as a wife, and he has hated her.<sup>17</sup> See, he has brought charges against her, saying, ‘I did not find in your daughter the signs of virginity.’ But these are the signs of my daughter’s virginity.” And they shall spread the garment before the elders of the city.<sup>18</sup> Then the elders of the city shall take the man and flog him,<sup>19</sup> and they shall fine him one hundred shekels of silver and give them to the father of the young woman, because he has caused an evil name to come upon a virgin of Israel. And she shall be his wife; he may not divorce her for the rest of his days.<sup>20</sup> But if the charge is true—signs of virginity were not found in the young woman—<sup>21</sup> then they shall bring the young woman to the door of her father’s house, and the men of her city shall stone her to death, because she has committed a shameful act in Israel by prostituting herself in her father’s house. Thus you shall purge the evil from your midst.

Most analyses of this passage, for both rhetorical and source-critical reasons, maintain a distinction between the pericope’s two basic parts: vv. 13–19 (part A) and vv. 20–21 (part B).<sup>4</sup> The first section, part A, describes the husband’s negative conclusions regarding the condition of his wife. The implication is that another man has had sexual intercourse with her, thereby depriving the groom of exclusive right to the woman’s sexual and reproductive services.<sup>5</sup> The

<sup>4</sup> Anthony Phillips, *Ancient Israel’s Criminal Law: A New Approach to the Decalogue* (New York: Schocken, 1970), 115–16; A. D. H. Mayes, *Deuteronomy* (NCB; Grand Rapids: Eerdmans, 1981), 309–11; Alexander Rofé, “Family and Sex Laws in Deuteronomy and the Book of Covenant,” *Henoah* 9 (1987): 131–59, esp. 135–46 (repr. in *Deuteronomy: Issues and Interpretation* [Old Testament Studies; New York: T & T Clark, 2002]); Carolyn Pressler, *The View of Women Found in the Deuteronomistic Family Laws* (BZAW 216; New York: de Gruyter, 1993), 30; and Eckart Otto, *Gottes Recht als Menschenrecht: Rechts- und literaturhistorische Studien zum Deuteronomium* (BZABR 2; Wiesbaden: Harrassowitz, 2002), 252. These scholars believe different authors (or redactors) were responsible for the two parts. Others see the purgation formula (וּבְעֵרָהּ) “thus you shall purge the evil from your midst” in v. 21b as the only part that was added later (e.g., Timothy M. Willis, *The Elders of the City: A Study of the Elders-Laws in Deuteronomy* [SBLMS 55; Atlanta: Society of Biblical Literature, 2001], 222–30). For yet another perspective, which still distinguishes the two parts but sees essentially the same author at work on both, see Clemens Locher, “Deuteronomium 22, 13–21: Vom Prozeßprotokoll zum kasuistischen Gesetz,” in *Das Deuteronomium: Entstehung, Gestalt, und Botschaft* (ed. Norbert Lohfink; Leuven: University Press, 1985), 298–303.

<sup>5</sup> The exact details of the accusation are debatable. Traditionally, it has been held that after the wedding night—the night of sexual consummation—the husband would have expected to find “bloodstained sheets resulting from a ruptured hymen” (Eugene H. Merrill, *Deuteronomy* [NAC; Nashville: Broadman & Holman, 1994], 302–3; see also Pressler, *View of Women*, 25–28; and Frymer-Kensky, “Virginity,” 79–80, 93–94). Thus, these sorts of blood stains would be the “signs of her virginity” (v. 14) that the husband claims he did not find (see Samuel R. Driver, *A Critical and Exegetical Commentary on Deuteronomy* [3rd ed.; ICC; Edinburgh: T & T Clark, 1965], 255).

woman's parents go before the elders of the city and present the evidence necessary to disprove the charge.<sup>6</sup> The text then lays down a threefold penalty for the man: a flogging, a fine of one hundred shekels of silver, and a prohibition against divorcing this particular woman.<sup>7</sup> The second section, part B, describes what should happen if the man's suspicions turn out to be true. If the woman was not a virgin at the time she was given to the man for consummation of the marriage, the text calls for her death by stoning in front of her father's house.

### I. The Passage about the Slandered Bride and the Law of False Accusation

The punishment inflicted on the man in part A appears to differ significantly from the punishment inflicted on the woman in part B. The former seems much less severe than the latter. This presents a difficulty in light of the law in Deuteronomy that governs false accusation.<sup>8</sup> Since the husband, as

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Gordan J. Wenham differs from the traditional interpretation and says that the husband here is actually claiming that there has been, since the wedding, no sign of menstruation by his wife. Thus, the claim is that the wife was pregnant by a different man at the time of the wedding. The garment produced by the parents to exonerate their daughter, then, would contain signs that she was menstruating right up until the wedding and was therefore not pregnant at the time of the wedding ("Bētūlāh—A Girl of Marriageable Age," *VT* 22 [1972]: 330–36). Regardless of which view one holds on this point, the issue remains the sexual purity of the bride at the time of the wedding.

<sup>6</sup> On the nature of this evidence, see preceding note.

<sup>7</sup> Some scholars question whether the word *ḥāq* ("to discipline") in v. 18 means that the man was flogged (Anthony Phillips, "Another Look at Adultery," *JSOT* 20 [1981]: 9; Mayes, *Deuteronomy*, 310; and Merrill, *Deuteronomy*, 301–3). Provisions in other law collections (LH §127 and MAL A §18) indicate, however, that men who falsely accused women of sexual infidelity were often flogged. For concurrence with this idea, see Clemens Locher, *Die Ehre einer Frau in Israel: Exegetische und rechtsvergleichende Studien zu Deuteronomium 22, 13–21* (OBO 70; Göttingen: Vandenhoeck und Ruprecht, 1986), 322; Frymer-Kensky, "Virginity," 94; Sophie Lafont, *Femmes, Droit et Justice dans l'Antiquité orientale: Contribution à l'étude du droit pénal au Proche-Orient ancien* (OBO 165; Göttingen: Vandenhoeck & Ruprecht, 1999), 280; and Willis, *Elders of the City*, 222.

<sup>8</sup> I am using the term "law" in a particular sense. It appears unlikely that the actual text of Deuteronomy ever functioned as legislation for ancient Israelite or Judahite society. For a review of the scholarship dealing with this topic, as well as the general nature of biblical and other ancient Near Eastern law codes or collections, see Anne Fitzpatrick-McKinley, *The Transformation of Torah from Scribal Advice to Law* (JSOTSup 287; Sheffield: Sheffield Academic Press, 1999), 81–112. Nevertheless, these law collections, including that of Deuteronomy, very likely reflect, in many respects, legal rules and procedures that were in effect and adhered to (Raymond Westbrook, "Cuneiform Law Codes and the Origins of Legislation," *ZA* 79 [1989]: 201–22; and Bruce Wells, *The Law of Testimony in the Pentateuchal Codes* [BZABR 4; Wiesbaden: Harrassowitz, 2004], 11–15). Thus, an individual legal provision within a text like Deuteronomy may still be

described in part A, would seem to be a false accuser, one would expect the law of false accusation to apply in this situation. This law occurs in Deut 19:16–21:

<sup>16</sup>If a malicious witness rises against another to accuse the other falsely,  
<sup>17</sup>then both parties to the dispute shall appear before Yahweh and before the  
priests and the judges who are in office in those days. <sup>18</sup>The judges shall  
investigate thoroughly, and if the witness is a false witness and has accused  
the other falsely, <sup>19</sup>then you shall do to the witness just as the witness  
intended to do to the other person. Thus you shall purge the evil from your  
midst. <sup>20</sup>The rest of the people shall hear and fear and shall never again com-  
mit any such evil among you. <sup>21</sup>Your eye shall not pity; it shall be life for life,  
eye for eye, tooth for tooth, hand for hand, foot for foot.

Here the text states that if someone falsely accuses another of wrongdoing, and the falsehood of that accusation is discovered, then the false accuser should receive the same punishment that he or she was trying to inflict on the other person. This is the principle of talionic retribution, and it would seem to require that the two penalties in the passage about the slandered bride be mirror images of each other. The lying husband in part A should be punished in a fashion similar to the punishment that part B requires. The apparent discrepancy in punishments seems to indicate significant incompatibility between the passage about the slandered bride and the law of false accusation.<sup>9</sup> Scholars

referred to as a “law,” even though it may only be *describing*—rather than *prescribing*—the law that was in effect at the time.

<sup>9</sup> Different literary or redactional strata could be a possible cause of this incompatibility. A number of scholars have argued that the laws in Deuteronomy that refer to “elders” come from a literary stratum different from that which provides most of Deuteronomy’s other laws. That stratum would contain the passage about the slandered bride and might reflect a different way of handling legal matters, when compared with laws such as the law of false accusation. For both an overview of the relevant literature and the view that the stratum of the “elders” is earlier, see Bernard M. Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation* (New York: Oxford University Press, 1997), 124–27. For the opposite view, that the “elders” stratum postdates the bulk of the Deuteronomical Code, see Jan Christian Gertz, *Die Gerichtsorganisation Israels im deuteronomischen Gesetz* (FRLANT 165; Göttingen: Vandenhoeck & Ruprecht, 1993), 173–225. These views tend to assume that the administration of justice by elders would not—even could not—have occurred simultaneously with the administration of justice by a professional judiciary. This assumption has been critiqued, however, by Willis, who argues that “traditional judicial authority (held in Deuteronomy by city elders and, perhaps, priests) and professional judicial authority (held by appointed ‘judges and officers’)” could have coexisted and “were actually complementary” (*Elders of the City*, 36–50, here 35). Thus, Willis does not see the need to posit a separate “elders” stratum of laws and marshals modern ethnographic and ancient comparative evidence in support of his conclusion (*ibid.*, 33–88). If Willis is right about this, then the notion of different literary strata becomes less helpful as a means of explaining the apparent incompatibility between the passage about the slandered bride and the law of false accusation. But even if a separate “elders” stratum exists, the question remains as to whether there is logical consistency between the two laws in the final redaction of the text.

have generally accepted this incompatibility for a variety of reasons.<sup>10</sup> They agree that the two penalties do not match, and they tend to concur with the sentiments expressed by C. Locher:

Dass auch Dtn 22,13–21 zu den Fällen von Nicht-Anwendung des Talionsprinzips gehört, ist unmittelbar einsichtig: Denn die Frau wird hingerichtet, wenn die Beschuldigung ihres Ehemanns zutrifft, sie sei bei der Heirat nicht mehr unberührt gewesen; dagegen trifft den Ehemann bei Unhaltbarkeit seiner Aussage zwar eine empfindliche dreifache Sanktion (Züchtigung, Schadenersatz, Scheidungsverbot), aber eben nicht die Kapital-strafe.<sup>11</sup>

The premise of this article, however, is that another and more likely possibility exists: that the passage about the slandered bride actually complies with the principle of talionic retribution. Among other things, I will attempt to demonstrate that the intentions of the lying husband, as depicted in the text, do indeed return upon his own head in the punishments that he receives. Thus, the passage about the slandered bride presents a situation in which the law of false accusation is essentially enforced. To arrive at this conclusion, I employ the methodology of comparative-historical legal analysis.<sup>12</sup> As applied here, such analysis involves the exploration of other legal systems in the ancient Near East in order to glean information on how they would have handled situations that were in some way comparable to that of the case of the slandered bride. I then seek to interpret the biblical text in light of what that information reveals

<sup>10</sup> See, generally, the literature cited by Stephen M. Passamaneck, “The Talmudic Concept of Defamation,” *RIDA* 12 (1965): 25–31; Locher, *Ehre einer Frau*, 373–80; and Lafont, *Femmes*, 240–52. To that may be added Raymond Westbrook, “Adultery in Ancient Near Eastern Law,” *RB* 97 (1990): 575–76; J. Gordon McConville, *Deuteronomy* (Apollos Old Testament Commentary 5; Downers Grove, IL: InterVarsity, 2002), 339–40; and Richard D. Nelson, who states: “Yet in light of what is supposed to happen to a malicious witness (19:18–19), he [the husband] seems to get off lightly” (*Deuteronomy: A Commentary* [OTL; Louisville: Westminster John Knox, 2002], 270).

<sup>11</sup> Locher, *Ehre einer Frau*, 322.

<sup>12</sup> Despite the fair amount of attention that has been devoted to comparative-historical work in general, much less discussion has occurred with respect to legal analysis as a method of biblical interpretation. Two important works that explore the issue are Meir Malul, *The Comparative Method in Ancient Near Eastern and Biblical Legal Studies* (AOAT 227; Kevelaer: Butzon & Bercker, 1990); and *Theory and Method in Biblical and Cuneiform Law: Revision, Interpolation and Development* (ed. Bernard M. Levinson; JSOTSup 181; Sheffield: Sheffield Academic Press, 1994). In addition, recent scholars who ground their work in modern critical legal studies reveal one way of utilizing legal analysis, albeit not in typically comparative-historical fashion (Harold V. Bennett, *Injustice Made Legal: Deuteronomic Law and the Plight of Widows, Strangers, and Orphans in Ancient Israel* [The Bible in Its World; Grand Rapids: Eerdmans, 2002]; and Cheryl B. Anderson, *Women, Ideology, and Violence: Critical Theory and the Construction of Gender in the Book of the Covenant and the Deuteronomic Law* [JSOTSup 394; London: Sheffield/Continuum, 2004]). This article is, in part, an attempt to employ comparative-historical legal analysis on a particular biblical text as a way of demonstrating how the method may be used.

about the nature and workings of ancient Near Eastern law.<sup>13</sup> The remainder of the article is divided into two major sections, both of which rely on this methodology. In the first I examine the more important scholarly attempts to maintain the idea that the passage about the slandered bride does not comply with the law of false accusation. I identify how and why my study diverges from those viewpoints. In the second section I lay out the details of a different view—namely, a view of congruence. I will point to the high degree of compatibility between the law in the passage about the slandered bride and the law of false accusation, when viewed against the larger backdrop of ancient Near Eastern law and legal literature.

## II. Previous Proposals

Most of the previous attempts to explain the issue of apparent incongruity between the passage about the slandered bride and the law governing false accusation can be divided into three groups, each with its own identifying rubric. The first group consists of those views that point to the *irresolvability* of the issue. They do not see any way to reconcile the passages. The two texts probably come from the hands of different authors or redactors and, quite simply, contradict each other. In light of this, they claim, it is futile to attempt to find any level of coherence between the two. The second group consists of those views that point to the *inapplicability* of the law of false accusation to the passage about the slandered bride. Scholars who hold this type of view argue that the husband is merely spreading rumors about his wife and is not making a legal accusation against her; thus, the law of false accusation is irrelevant to the situation. In the third group are those views that claim it is the *inequality* with which the law treats men and women that becomes the key to understanding this issue. Men who falsely accuse women receive a lighter punishment than if

<sup>13</sup> Admittedly, this assumes that the legal practices of ancient Israel and Judah, as reflected in biblical texts, were similar to those of other ancient Near Eastern societies. The theory of a shared set of legal traditions across the ancient Near East is argued at length by Raymond Westbrook (“Biblical and Cuneiform Law Codes,” *RB* 92 [1985]: 247–64; *Studies in Biblical and Cuneiform Law* [CahRB 26; Paris: Gabalda, 1988]; and “What Is the Covenant Code?” in *Theory and Method in Biblical and Cuneiform Law: Revision, Interpolation, and Development* [ed. Bernard M. Levinson; JSOTSup 181; Sheffield: Sheffield Academic Press, 1994], 15–36). This article follows that basic theory. This is not to say that there was direct dependence of one system or body of law on another, but that the weight of the evidence—the amount and degree of similarity across systems in the ancient Near East—strongly favors the conclusion that most ancient Near Eastern societies, including Israel and Judah, appear to have operated by many of the same legal rules and customs. Understanding how law worked in one society can then aid in understanding how law may have worked in another.

they had falsely accused another man. The discussion below examines the arguments of those scholars who best represent each group.

### *Irresolvability*

For those who say that the tension between the two laws is irresolvable, the best representative is Alexander Rofé, who speaks of a “legal inconsistency” between the passage about the slandered bride and the law of false accusation. He claims that, based on the law in Deut 19:16–21, “the husband who brought unfounded charges against his wife should have been sentenced to death.”<sup>14</sup> In the section below that argues in favor of congruence between the two laws, I will explain at length why this conclusion is without sufficient justification. There I will show that the husband in the passage did not intend for death to be used as a punishment against the other party in the case; therefore, death could not be used against him as a false accuser. For now, it is necessary to respond to another key point that Rofé emphasizes. He states that part B of the passage about the slandered bride not only contradicts the law of false accusation but also, because it “indiscriminately confers a death sentence upon a girl who is proved not to have been a virgin at the time of her first marriage, is in conflict with every other sex law [in the Hebrew Bible] concerning matters of virginity.”<sup>15</sup>

The key law, apart from the law of false accusation, with which Rofé finds part B in conflict occurs in Deut 22:28–29 and deals with virginal rape:

If a man finds a virgin who is not betrothed and seizes her and lies with her, and they are discovered, the man who lay with her shall pay fifty shekels of silver to the father of the young woman, and she shall be his wife. Because he has violated her, he may not divorce her for the rest of his days.

One of the chief differences, Rofé argues, is that Deut 22:28–29 makes a distinction between betrothed and unbetrothed virgins, whereas the passage about the slandered bride does not.<sup>16</sup> This means, according to Rofé, that an unbetrothed virgin who is forced into sex, as described in Deut 22:28–29, but whose deflowering is covered up or goes undetected, could end up in the situation envisioned by part B of the passage about the slandered bride. She would then suffer the death penalty, the penalty prescribed for adultery (Deut 22:22), even though she would not seem to be guilty of adultery.

If that were to happen, however, a violation of the husband’s rights would have taken place that is similar to the violation of adultery. Even though the woman who becomes his bride may have been raped while she was yet a virgin,

<sup>14</sup> Rofé, “Family and Sex Laws,” 136.

<sup>15</sup> *Ibid.*, 136–37.

<sup>16</sup> *Ibid.*

if her husband-to-be is not informed of this prior to consummation of the marriage, he has suffered a wrong, according to the ancient Near Eastern mind-set, akin to that of a man whose wife sleeps with another after marriage. His wife has been had by another man. Rofé is right that the act described in Deut 22:28–29 is not enough to make the woman involved guilty of adultery. But an act such as that, in combination with false pretenses that cause another man to believe she is a virgin and to marry her, constitutes a much more serious form of wrongdoing. I term it *pre-consummation sex plus deception*.

It is the element of deception that is the crucial difference between the two passages.<sup>17</sup> In Deut 22:28–29, that element is missing. There has not yet been any chance for that to occur. The man who rapes an unbetrothed virgin now knows that she is no longer unblemished, as it were. When he pays the bride-price to her father, he is fully aware of the sexual history of his bride. Neither she nor her father has perpetrated a deception upon him. The situation in the passage about the slandered bride differs precisely in this regard. That he has been deceived is the chief complaint of the accusing husband. He was expecting a virgin on the night of consummation; his bride and her father had, presumably, indicated that she was yet chaste; and he had a right to expect that they were telling the truth. Upon the alleged discovery of evidence that his bride was sexually active in the past, the husband claims that he has been lied to, deceived. It is the deception that renders the wrongdoing tantamount to an act of adultery.<sup>18</sup>

The societies of the ancient Near East considered two types of sexual infidelity to be adulterous.<sup>19</sup> The first may be termed *adultery post-consummation* and involved a fully married woman having sex with any man other than her husband.<sup>20</sup> The circumstances in the passage about the slandered bride are plainly not related to this type of adultery. The second type is *adultery while betrothed* and occurred during the period of inchoate marriage or betrothal.<sup>21</sup> This period began when a man paid the bride-price for a particular woman and lasted until there was physical consummation on the wedding night, when the man and woman were deemed fully married. From the ancient legal point of view, sexual intercourse between the woman and another man during this period of time constituted an adulterous relationship.<sup>22</sup> From the moment the

<sup>17</sup> Locher, *Ehre einer Frau*, 63; and Westbrook, "Adultery," 574.

<sup>18</sup> Westbrook, "Adultery," 574–76.

<sup>19</sup> See, in general, *ibid.*, 542–80.

<sup>20</sup> As in Deut 22:22, which stipulates death for both the woman and her lover.

<sup>21</sup> G. R. Driver and John C. Miles, *The Babylonian Laws* (2 vols.; Oxford: Clarendon, 1956, 1960), 1:249–51; and Raymond Westbrook, *Old Babylonian Marriage Law* (AfO Beiheft 23; Horn, Austria: Berger & Söhne, 1988), 34–38.

<sup>22</sup> As described in Deut 22:23–27, where the text also calls for the execution of both the

groom pays the bride-price, the woman is inchoately married or betrothed, and the man has exclusive sexual rights to her.<sup>23</sup> This means he has the right to have his wife delivered to him as a virgin at the time of consummation.

This is the right that the man in the passage about the slandered bride claims has been violated. It is true that he may not know exactly when his bride had sex with another man. We are not told if he thinks—or is pretending—that the act occurred prior to or after the payment of the bride-price. But the timing does not matter. This is why the passage does not distinguish between betrothed and unbetrothed virgins, as Rofé seems to think it should. That the bride and her father have maintained the pretense of her virginity throughout the period of inchoate marriage and up to the time of consummation puts *pre-consummation sex plus deception* on an equal footing with *adultery while betrothed*. In other words, regardless of the timing, the element of deception makes it as if sexual intercourse has taken place between the woman and another man during the period of inchoate marriage.<sup>24</sup> The man established his right with the payment of the bride-price, and now that right has been violated. In this way, understanding the nature of the deception in the passage about the slandered bride obviates the need to posit a contradiction between it and Deut 22:28–29. It also forms an important step in the process of determining the nature of the relationship between the passage about the slandered bride and the law of false accusation.

### *Inapplicability*

Those whose views fall in the second group see no contradiction whatsoever between the passage about the slandered bride and the law of false accusation. As Carolyn Pressler states, “the contradiction is more apparent than

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woman and her lover, unless the woman was forced into the act against her will, in which case only death for the male lover is required.

<sup>23</sup> The word “betrothed” is used in the sense of “betrothed as a wife.” See 2 Sam 3:14, where David sends a message to Ishbosheth that says, “Give me my wife Michal whom I betrothed (אֶרְשָׁה) to myself for one hundred Philistine foreskins.” Michal is betrothed to David only after he pays the bride-price, which in this case was set by Michal’s father, Saul, at the foreskins of one hundred Philistine men (1 Sam 18:25). Since David has paid the bride-price (1 Sam 18:27), he may refer to her as his “wife,” even though their relationship is that of inchoate marriage.

<sup>24</sup> It is quite possible that the woman did indeed have sex during the period of inchoate marriage. This is the view of Eckart Otto, “Das Verbot der Wiederherstellung einer geschiedenen Ehe: Deuteronomium 24,1–4 im Kontext des israelitischen und jüdischen Eherechts,” *UF* 24 (1992): 309–10. The details of the text, though, remain ambiguous as to the timing of the alleged act. Westbrook states: “It is most likely that the woman had been inchoately married at the time when she committed fornication . . . The ruling does not, however, rely on that contingency, and in any case, her fornication (with person or persons unknown) could have been prior to any period of inchoate marriage” (“Adultery,” 574).

real.”<sup>25</sup> The reasoning is that the law of false accusation is inapplicable to the actions of the husband in the passage about the slandered bride. The husband is not making any claims, argues Pressler, in a legal context; he is simply disparaging his wife in the community at large. Since smearing the reputation of one’s wife before one’s neighbors does not constitute a formal accusation, the law of false accusation is irrelevant.<sup>26</sup>

In support of this conclusion, Pressler argues that part A of the passage about the slandered bride shows the parents of the bride initiating the action before the elders. They are the accusers, the plaintiffs in the case, while the husband is the defendant. If anyone should be subject to the law of false accusation, it would be the parents, even though the passage seems unconcerned with this aspect of the situation. Sophie Lafont continues this theme:

L’homme comparaît devant les Anciens comme accusé dans un procès en calomnie engagé contre lui par ses beaux parents. Il est dès lors inutile de chercher une équivalence entre le châtement qui lui est infligé et la peine de mort prescrite aux vv. 20–21 contre la « fiancée infidèle ». Ces deux versets montrent par ailleurs que les parents ne sont pas punis pour avoir faussement imputé à leur gendre des intentions malveillantes: seule la femme coupable est mise à mort, en application de la sanction contre l’adultère.<sup>27</sup>

The chief piece of evidence that Pressler and Lafont have to support their conclusions is that the text mentions the parents as the first ones to go to the elders (v. 15).<sup>28</sup> One must assume, however, that this is the very beginning of the very first legal proceeding regarding the matter.

<sup>25</sup> Pressler, *View of Women*, 24. Her argument is followed by Victor H. Matthews, “Honor and Shame in Gender-Related Legal Situations in the Hebrew Bible,” in *Gender and Law*, ed. Matthews et al., 111 n. 65. Willis (*Elders of the City*, 222–25) follows Pressler only in part. He concurs that the parents are accusers and bring charges of their own in an attempt to counter the husband’s actions. With respect to the latter, though, Willis states: “Whether these are formal accusations or informal gossip is unclear” (p. 222).

<sup>26</sup> Other scholars have sensed the exact opposite from the text. Consider, for example, the following opinion: “No other background for the statement [of the husband] except a court makes sense because the charge is certainly not idle talk; it is obviously intended to lead immediately to a judicial inquiry” (Passamaneck, “Talmudic Concept of Defamation,” 26).

<sup>27</sup> Lafont, *Femmes*, 284.

<sup>28</sup> Don C. Benjamin seems to follow this view when he writes, “This case regards the wife’s parents as plaintiffs” (*Deuteronomy and City Life: A Form Criticism of Texts with the Word CITY (‘ir) in Deuteronomy 4:41–26:19* [Lanham, MD: University Press of America, 1983], 226). He appears to contradict this statement elsewhere, however. He refers to the husband’s charge against his wife (v. 14b) as “testimony . . . given in the municipal court” (p. 223) and as a “public accusation” (p. 224). This would seem to make the husband the plaintiff. Moreover, when describing the judicial setting of the passage about the slandered bride, he claims that “the defendants [in this case] are citizens” (p. 233). With this statement, Benjamin seems now to be calling the parents of the bride the defendants instead of the plaintiffs. For, if the parents are the plaintiffs, there is only one defendant, the husband, not “defendants” in the plural.

Several important aspects of trial procedure from other ancient Near Eastern societies show that this assumption is unwarranted. First, not every trial or legal proceeding had to begin before a formal court of law. Such proceedings often began away from a court, typically with a pretrial confrontation between the parties.<sup>29</sup> That the text does not explicitly place the husband's statement in v. 14 in the context of a trial, therefore, means little. Second, trials could be conducted in stages.<sup>30</sup> For example, in the initial stage, the accusation might be made and recorded;<sup>31</sup> in a subsequent stage, testimony might be heard and evidence examined;<sup>32</sup> in a final stage, the case might be summarized and a verdict rendered.<sup>33</sup> The actions of the parents in v. 15, therefore, constitute merely *one* stage—not necessarily the *initial* stage—in the legal proceeding that the passage about the slandered bride describes. Third, because trials could be held over the course of several stages, the documents that record a given stage do not always begin with the plaintiff going to court and speaking to the judges. Sometimes they show the defendant performing these actions.<sup>34</sup> Thus, it is not necessary to conclude that the parents, who are the first ones in the text explicitly to speak before the elders, are the plaintiffs and that they are accusing the husband of slandering their daughter and besmirching her reputation. On the contrary, they seem to be the ones acting as the defendants in the case.

The husband is the plaintiff. The statements attributed to the husband in vv. 14 and 17 tend to fit the expected pattern of a legal accusation. In v. 14, the

<sup>29</sup> Eva Dombradi, *Die Darstellung des Rechtsaustrags in den altbabylonischen Prozessurkunden* (2 vols.; FAOS 20; Stuttgart: Steiner, 1996), 1:296–98.

<sup>30</sup> Mariano San Nicolò, "Parerga Babylonica XI: Die *mašaltu*-Urkunden im neubabylonische Strafverfahren," *ArOr* 5 (1933): 301–2; idem, "Eine kleine Gefängnisneuterei in Eanna zur Zeit des Kambyses," in *Festschrift für Leopold Wenger: Zu seinem 70. Geburtstag dargebracht von Freunden, Fachgenossen und Schülern* (2 vols.; Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte 35; Munich: Beck, 1945), 2:8–10; Ira Spar, "Three Neo-Babylonian Trial Depositions from Uruk," in *Studies in Honor of Tom B. Jones* (AOAT 203; Kevelaer: Butzon & Bercker, 1979), 157–72.

<sup>31</sup> See, e.g., the Neo-Babylonian documents *JCS* 28 45 no. 39, *TCL* 13 134, and *VAS* 6 82.

<sup>32</sup> See, e.g., the Neo-Babylonian document *AnOr* 8 38, in which a stolen temple cow is brought into court and two witnesses give testimony concerning the theft. No verdict is recorded. For other Neo-Babylonian documents that record witness statements but no verdict, see *YOS* 6 144 and *YOS* 6 235.

<sup>33</sup> See, e.g., the Neo-Babylonian documents *Iraq* 13 96–97 and *YOS* 6 169. See also Mariano San Nicolò, "Parerga Babylonica IX: Der Monstreprozeß des Gimillu, eines Širku von Eanna," *ArOr* 5 (1933): 61–77, on *YOS* 7 7.

<sup>34</sup> See, e.g., the Neo-Babylonian documents *Cyr* 332 and *TCL* 12 122. In the latter, the defendant begins speaking and goes on to quote an earlier statement made by the plaintiff (see the discussion of this document in Cornelia Wunsch, "Und die Richter berieten . . . : Streitfälle in Babylon aus der Zeit Neriglissars und Nabonids," *AfO* 44–45 [1997–98]: 68–70). This seems to be exactly what the wife's parents do in the passage about the slandered bride.

text does not make clear whom the husband is addressing. Taken by itself, the statement could perhaps be understood as a rumor the husband was intent on spreading.<sup>35</sup> But this possibility dissolves in light of v. 17. There the statement attributed to the husband by the father of the bride shows the former addressing the latter directly in the second person: *לא מצאתי לבהך בתולים* (“I did not find in your daughter the signs of virginity”). As alluded to previously, it was not uncommon for plaintiffs or accusers to address defendants directly in a pretrial confrontation and then to present their accusations before the court in a less personalized statement.<sup>36</sup> This is what happens in the trial of Jeremiah.<sup>37</sup> He is first confronted and addressed directly by his accusers (Jer 26:8–9). Then, in contrast to that, the accusation that follows the convening of a court refers to Jeremiah in the third person and is directed at those who are going to judge the case (Jer 26:11). In the passage about the slandered bride, the husband’s statement that is quoted by the bride’s father in v. 17 directly addresses the latter and would have occurred in a pretrial confrontation. It would have made clear the charges at issue and put the bride’s father in the position of defendant, since the statement was directed at him. The husband’s statement in v. 14, on the other hand, would have taken place before a court, perhaps composed of elders or others who could adjudicate the matter. Any context other than a formal legal one is highly unlikely for the combination of these two statements.

In addition, data from cuneiform law indicate that it would be unlikely for a husband to make public any sort of sexual infidelity on the part of his wife. It would actually be a disgrace to him that his wife had shamed him by her unfaithfulness and/or deception, and that he was taking no serious action to remedy the situation and redeem his reputation. Two paragraphs from the Laws of Hammurabi reveal this. The first, §131, prescribes what a wife should do if her husband accuses her of adultery. She may swear an oath before the gods avowing her innocence and then return to her house. Thus, the matter is kept private, and the husband’s public reputation is unaffected.<sup>38</sup> The very next

<sup>35</sup> Hans J. Boecker, for one, would not see this as a possibility. For him, this statement clinches the legal nature of the husband’s actions. “Dabei findet sich in v. 14b ebenfalls eine wörtlich formulierte Anklagerede” (*Redeformen des Rechtsleben des Alten Testament* [WMANT; Neukirchen-Vluyn: Neukirchener Verlag, 1964], 77).

<sup>36</sup> For a detailed discussion of the pretrial confrontation, see Pietro Bovati, *Re-Establishing Justice: Legal Terms, Concepts, and Procedures in the Hebrew Bible* (trans. Michael J. Smith; JSOTSup 105; Sheffield: Sheffield Academic Press, 1994), 30–166; see also n. 29 above.

<sup>37</sup> Boecker, *Redeformen des Rechtsleben*, 71–72; see also Frank-Lothar Hossfeld and Ivo Meyer, “Der Prophet vor dem Tribunal: Neuer Auslegungsversuch von Jer 26,” *ZAW* 86 (1974): 30–50.

<sup>38</sup> If the wife takes this oath, she will be deemed innocent. Does this mean that the husband should then be subject to punishment for false accusation? The courts of the ancient Near East do not appear to have imposed such punishments when a case was decided by a judicial oath (see

paragraph, §132, prescribes a different procedure when a third party accuses a man's wife of adultery. In this case, the wife must submit to the river ordeal "for the sake of her husband" (*ana mutiša*).<sup>39</sup> The factor that requires a more immediate and dramatic resolution in the second instance is the presence of public knowledge.<sup>40</sup> Because someone in the community suspects infidelity, the husband's reputation is now at stake. It is for his sake that the woman cannot escape with a mere oath but must subject herself to the ordeal. Thus, classifying the husband's statements in the passage about the slandered bride as mere rumor may not be the most satisfactory solution.<sup>41</sup>

### *Inequality*

The third group of views is best represented by the extensive and detailed work of Clemens Locher on the passage about the slandered bride.<sup>42</sup> Based on

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Wells, *Law of Testimony*, 144 n. 38). In the situation presented by LH §131, then, the husband would most likely not be subject to a penalty for falsely accusing his wife.

<sup>39</sup> "It is his [the husband's] reputation which is of greatest concern; it is his name which must be cleared" (Willis, *Elders of the City*, 197). Related to this point is the question of whether the wife is risking her life by submitting to the river ordeal. In other words, if the ordeal indicates her guilt, does this mean she drowns? Or does it mean that she is fetched from the water and punished in some other way? According to Tikva Frymer-Kensky, even if the court wanted to impose the death penalty, it may have had a person pulled out of the water and then executed in some fashion other than drowning ("The Judicial Ordeal in the Ancient Near East" [Ph.D. diss., Yale University, 1977], 491–93). A literary reference to the ordeal from the Neo-Babylonian period (CT 46 45) also reveals the authorities trying to retrieve a person from the river, "montrent clairement que le rituel est probatoire et ne constitue en rien un mode d'exécution du coupable désigné par le dieu" (Sophie Lafont, "Considérations sur la pratique judiciaire en Mésopotamie," in *Rendre la justice en Mésopotamie: Archives judiciaires du Proche-Orient ancien [III<sup>e</sup>-I<sup>er</sup> millénaires avant J.-C.]* [ed. Francis Joannès; Saint-Denis: Presses Universitaires de Vincennes, 2000], 30).

<sup>40</sup> See Michael Fishbane, "Accusations of Adultery: A Study of Law and Scribal Practice in Numbers 5:11–31," *HUCA* 45 (1974): 37–38.

<sup>41</sup> The comments of Clemens Locher on this issue must also be noted. He, like Pressler, considers if possibly "handelt es sich hier nicht um falsche Anschuldigung, sondern bloss um Verleumdung—wobei ich (e silentio!) voraussetze, dass bei blosser Verleumdung eine Strafe unterhalb der exakten Talion verhängt wird" (*Ehre einer Frau*, 323). This is a view, however, that he ultimately rejects (pp. 379–80). He does so based on a careful analysis of the pertinent sections of the ancient Near Eastern law collections (pp. 324–72). He finds that "für 'Verleumdung' gibt es keine eindeutige mesopotamische Parallele" (p. 380). This makes it unlikely that Deuteronomy has mere slander in view. In addition, Locher argues that Deut 22:13–19 follows a particular pattern, according to which some ancient Near Eastern court decisions were recorded. He explains how this would mean that the husband's actions involved an actual accusation, which the court eventually deemed groundless (pp. 96–98, 379; see also Locher's brief essay on this point, "Prozeßprotokoll," 298–303).

<sup>42</sup> Locher actually has two explanations that he thinks may work. The one not discussed in the body of this article has to do with the fact that the bride's accuser is her very own husband. He surmises that the law is more concerned about keeping the marriage together than it is about matters

his analysis of the stipulations in the ancient Near Eastern law collections regarding false accusation, acts of adultery, and accusations of adultery, he argues that men and women were treated differently by the law.<sup>43</sup> There was a kind of gender inequality in the justice system.<sup>44</sup> When a case involved a man accusing another man, then the law of false accusation applied. The false accuser would receive the punishment that was threatening the defendant. If, however, a case involved a man accusing a woman, the man, if a false accuser, was subject to a penalty less harsh than the penalty that would be inflicted on the woman if she were found to be guilty.

Locher argues that the evidence for this conclusion comes primarily from those provisions in the cuneiform law collections that present situations in which a man accuses a woman of adultery, but this evidence turns out to be less than compelling.<sup>45</sup> The real problem with Locher's position, though, is that he is assuming that the bride in Deut 22:13–21 is the defendant in the case. In point of fact, the defendant in the case is not the woman but her father.<sup>46</sup> Mar-

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of false accusation (*Ehre einer Frau*, 380). He bases this idea on LH §131, discussed above, which prescribes what a wife must do if her husband accuses her of adultery, but which says nothing regarding consequences for the husband if his accusation is false (pp. 376–77). Locher admits, however, that this is essentially an argument from silence (p. 375). In addition, see n. 38 above.

<sup>43</sup> Locher, *Ehre einer Frau*, 323, 338, 375, 380.

<sup>44</sup> Undoubtedly, there was, from a modern perspective, a good deal of gender inequality in the ancient Near East. For example, married men could have sex, legally, with single women (prostitutes, for example), whereas a married woman who had sex with a single (or married) man other than her husband was considered adulterous and liable to be killed.

<sup>45</sup> In fact, of all the provisions in the various cuneiform collections, “reduziert sich das Problem auf CU [LU] §14, CH [LH] §131, sowie MAG [MAL] A §18,” according to Locher (*Ehre einer Frau*, 376). But these three provisions do not provide strong support for Locher's position. First, Locher assumes that LU §14 speaks of a man accusing the wife of another man of adultery. The new edition of the text by Claus Wilcke shows, however, that it is just as likely, if not more so, that the accusation is directed at a male lover, not a wife (“Der Kodex Umma: Versuch einer Rekonstruktion,” in *Riches Hidden in Secret Places: Ancient Near Eastern Studies in Memory of Thorkild Jacobsen* [ed. Tzvi Abusch; Winona Lake, IN: Eisenbrauns, 2002], 291–333). This makes LU §14 problematic as evidence for Locher's view. Second, LH §131 describes, as mentioned earlier, a particular option that is available to a wife whose husband accuses her of adultery. It allows the wife to absolve herself by taking a judicial oath before the gods. The provision itself, though, does not say anything, one way or the other, about the punishment that the husband should receive if his wife takes the oath, is pronounced innocent, and thereby proves his accusation false. This, too, is questionable support for the kind of gender inequality that Locher espouses (in addition, see n. 38 above). Finally, MAL A §18 allows punishments other than death for a man who falsely accuses another's wife of adultery. But Herbert Petschow points out that in this instance, the law may be extending to the false accuser the same kind of leniency that MAL §§14–15 allow a husband to extend to his adulterous wife (“Altorientalische Parallelen zur spätrömischen Calumnia,” *ZSS 90* [1973]: 27–29). Thus, although Locher may be onto something, his arguments are far from decisive on this point.

<sup>46</sup> The text states that the mother acts in conjunction with the father, but it is the latter who is

riages were contractual agreements, typically arranged between the father of the groom and the father of the bride. If either of the fathers was deceased, others, such as the mother, the groom himself, a brother of the bride, or even the bride herself, could become one of the contracting parties.<sup>47</sup> In the case of the passage about the slandered bride, the fact that the bride's father is still alive at the time of the dispute almost certainly indicates that he was one of the parties when the marriage contract was first made. Whether the groom or the groom's father was the other party is not made clear. But if the groom or his family perceive that the contract has been breached, it is the other contracting party, namely, the father of the bride, against whom all claims would be made. The groom in the passage about the slandered bride does indeed make such a claim—that the woman given to him was not a virgin as she should have been.

Although it may be that the authors of Deuteronomy believed that a bride involved in *pre-consummation sex plus deception* should be punished for her complicity in the deception and possible consent to the illicit tryst, the legal claims of the husband run straight to her father. The fact that the father in the passage about the slandered bride must mount a defense before the city elders presumes that the husband alleges knowledge on the part of the father. His accusation implies that the father of the bride knew she had slept with another man previously but that he is pretending that she is a virgin and that no breach of the marriage agreement exists. Moreover, as the head of household, he has allowed his daughter's purported misconduct to take place under his supervision, and, as the contracting party, he has breached his duty to ensure the maintenance of his daughter's virginity.<sup>48</sup> He is the one responsible for the act of *pre-consummation sex plus deception* that has violated the husband's rights. The husband, therefore, seeks redress from the father. Thus, Locher's assessment of the situation is not entirely accurate. It is not a case of a man falsely accusing a woman. It is man versus man.<sup>49</sup> This is a particularly crucial point to

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the primary representative of the defending party. He is the only one to speak to the elders (vv. 16–17), and when the punishment is meted out to the lying husband, the fine of one hundred shekels of silver is paid only to the father, not to the father and the mother.

<sup>47</sup> See Samuel Greengus, "The Old Babylonian Marriage Contract," *JAOS* 89 (1969): 505–32; Jonathan Paradise, "Marriage Contracts of Free Persons at Nuzi," *JCS* 39 (1987): 1–36; and Martha T. Roth, *Babylonian Marriage Agreements, 7th–3rd Centuries B.C.* (AOAT 222; Kevelaer: Butzon & Bercker, 1989), 5–6.

<sup>48</sup> As Hallo states: "if the groom is proved correct, it is a sign . . . that the girl 'has played the harlot (in) her father's house,' that is, that her father did not watch over her as he should have done between the contracting of the marriage and its consummation" ("Slandered Bride," 102). Mark E. Biddle, too, sees the husband "claiming breach [*sic*] of contract between him and her father" (*Deuteronomy* [Smyth & Helwys Bible Commentary; Macon, GA: Smyth & Helwys, 2003], 338).

<sup>49</sup> Pressler, for one, would agree that the case is a dispute between two men (*View of Women*, 22–31). But, again, she reverses their roles and makes the husband the defendant instead of the accuser.

keep in mind, as the section below presents a different interpretation of the passage about the slandered bride and its relation to the law of false accusation.

### III. A View of Congruence

The view set forth here sees a remarkable degree of congruence between the passage about the slandered bride and the law of false accusation. I will make three arguments in support of this assertion. First, a close examination of part A reveals that the authors of the text do not portray the husband as seeking his wife's death when he makes his accusation. At the outset of the case, there are indications that other penalties are being sought against the bride's father, the defendant in the case. The punishments imposed on the husband in part A actually correspond to those penalties, as the law of false accusation would require. Second, the legal systems of the ancient Near East allowed the same infraction to be punished with different penalties. The wronged party often had the right to choose which penalty or penalties to impose on the offending party. A husband who had been wronged by *pre-consummation sex plus deception* thus had a range of penalties from which to choose, including what part B of the passage calls for—namely, the death of the bride. He could, however, seek other penalties instead, as the husband in part A is said to do. Third, the provisions in biblical and cuneiform law collections dealing with the commission of a wrong typically list only the most severe penalty allowed by law and leave other possible penalties unmentioned. One would expect, therefore, part B of the slandered bride passage to contain the penalty that it does, even though the husband was not obligated to pursue it. Each of these arguments will now be expanded.

#### *Matching Penalties in Part A*

Part A of the passage about the slandered bride reveals that the penalties inflicted on the husband essentially match the penalties he was seeking to impose on the other party—the father of his bride—thereby satisfying the law of false accusation. In part A the husband's accusations are shown to be false, and he is punished. The penalties imposed by the elders are three: a flogging, a fine of one hundred shekels of silver, and a prohibition against divorcing the woman. The punishment of flogging, like many types of corporal punishment in the ancient Near East, was meant to serve as a means of humiliating the man.<sup>50</sup> Thus, the consequences for the husband's actions entail, at a basic level,

<sup>50</sup> On flogging as a shaming punishment, see Paul Koschaker, *Rechtsvergleichende Studien zur Gesetzgebung Hammurapis Königs von Babylon* (Leipzig: Veit, 1917), 207–10; cf. LH §202;

the elements of humiliation, money, and divorce. If the applicability of the law of false accusation is to be assumed, it must also be assumed that the intentions of the husband involved the same three elements. The man in our passage intended his accusation to result in negative consequences for the other side in the case—consequences involving humiliation, money, and divorce. I begin with divorce.

### *Divorce*

Divorcing a wife in the ancient Near East was a legal act that involved a man's declaring the dissolution of the marriage and sending the woman away from the household, either to fend for herself or to return to her father's household.<sup>51</sup> Her former husband was no longer responsible for providing for her. If the husband in the passage about the slandered bride wants to send his new bride away, he would in essence be returning her to her father and forcing the latter to support her, probably for quite some time. Other men would be reluctant to marry her since she had already been with at least one man. Indeed, the biblical text itself portrays the husband as having this in mind.

This indication comes with the word *שׂוֹנֵא* ("to hate") in v. 13. The word may actually carry the meaning "to divorce" in this context.<sup>52</sup> Usage of the term "to hate" in the Hebrew Bible and other ancient Near Eastern documents shows that it is often associated with the act of terminating a marriage and that it sometimes does indeed convey the meaning of "divorce" entirely on its own.<sup>53</sup> As other scholars have pointed out, the standard spoken formula for enacting a

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and Matthew W. Stolper, *Entrepreneurs and Empire: The Murašû Archive, The Murašû Firm, and Persian Rule in Babylonia* (Uitgaven van het Nederlands Historisch-Archaeologisch Instituut te Istanbul 54; Leiden: Nederlands Instituut voor het Nabije Oosten, 1985), no. 91.

<sup>51</sup> See, generally, Reuven Yaron, "On Divorce in Old Testament Times," *RIDA* 4 (1957): 117–28.

<sup>52</sup> "Le v. 13 précisant que le mari 'hait sa femme' désigne techniquement l'action de divorcer et non pas la malveillance du conjoint" (Lafont, *Femmes*, 240 n. 12). Lafont makes this statement to support her assertion that the husband's slander of his wife was made in public. This, however, overlooks the fact that the husband's claims about his wife, in the context of divorce, constitute a legal accusation, because his claims must be deemed legally acceptable in order to get the kind of divorce he wants. This will be explained further below.

<sup>53</sup> Yaron, "On Divorce," 117–18; Delbert Hillers, "Some Performative Utterances in the Bible," in *Pomegranates and Golden Bells: Studies in Biblical, Jewish, and Near Eastern Ritual, Law, and Literature in Honor of Jacob Milgrom* (ed. David P. Wright, David Noel Freedman, and Avi Hurvitz; Winona Lake, IN: Eisenbrauns, 1995), 757–66, esp. 765; and Eckart Otto, *Das Deuteronomium: Politische Theologie und Rechtsreform in Juda und Assyrien* (Berlin: de Gruyter, 1999), 269, and the other literature he cites in n. 315. See also Raymond Westbrook, "The Prohibition on Restoration of Marriage in Deuteronomy 24:1-4," in *Studies in Bible, 1986* (ed. Sara Japhet; ScrHier 31; Jerusalem: Magnes, 1986), 399–403.

divorce, as reflected in the Aramaic papyri from Elephantine, is “I hate PN, my wife” or “I hate PN, my husband.”<sup>54</sup> Similar pronouncements are found in cuneiform records from Syria and Mesopotamia, where the standard phrase is “I hate and divorce my wife/husband.”<sup>55</sup> Even if the term שָׂנֵא does not technically mean “to divorce,” the action behind the word in the passage about the slandered bride is most likely one of divorce.<sup>56</sup>

The two clauses following the word שָׂנֵא are difficult to interpret but detract neither from the conclusion that the husband’s actions have legal import nor from the idea that divorce is what he intends. If anything, they may provide further support. The first contains the phrase עלִילָה דְּבָרִים (“acts of words”), an expression that, while it occurs nowhere else in the Hebrew Bible, has been plausibly interpreted as referring to the pronouncement of a formal accusation.<sup>57</sup> The second clause contains שֵׁם רָע (“an evil name”), a phrase found only here in the passage about the slandered bride (vv. 14 and 19) and in Neh 6:13. In the latter, Nehemiah recounts how his enemies tried to entrap him in wrongdoing so that they could claim “an evil name” concerning him and perhaps, therefore, have something of which to accuse him. It was argued above that the husband is bringing formal legal charges, even though the charges may turn out to be groundless. These two clauses seem to be consistent with that idea. The action of divorce is the probable context, if not the only plausible one, in which a husband “hates” his wife and brings a legal accusation regarding her. Thus, the authors do not present the husband as seeking the

<sup>54</sup> J. J. Rabinowitz, “Marriage Contracts in Ancient Egypt in the Light of Jewish Sources,” *HTR* 46 (1953): 91–97; and Reuven Yaron, *Introduction to the Law of the Aramaic Papyri* (Oxford: Clarendon, 1961), 54–55.

<sup>55</sup> See, e.g., the Old Babylonian document *CT* 6 26a; the Alalakh tablet *JCS* 8 7 (no. 94); and the Neo-Assyrian document *Iraq* 16 37–39 (ND 2307).

<sup>56</sup> Pressler puts forth another reason why שָׂנֵא here might mean “divorce.” “It is just possible (given the judgment in Deut 22:19 that ‘she shall be his wife’) that in 22:13, שָׂנֵא refers to the act of divorce, and that the situation is to be understood as a husband having divorced his wife, and being ordered by the elders to remarry her” (*View of Women*, 23 n. 4). She rejects this idea, however, because Deuteronomy prefers the *piel* stem of שָׁלַח to indicate divorce. Lafont objects to Pressler’s argument. Although she misrepresents Pressler—Lafont claims that Pressler says it is the *piel* form of שָׂנֵא that Deuteronomy uses to indicate divorce—Lafont points out, significantly, that Deut 24:3 uses שָׂנֵא in the context of divorce (*Femmes*, 240 n. 12). Thus, שָׂנֵא cannot be excluded from Deuteronomy’s vocabulary for divorce.

<sup>57</sup> “The word *ʿaliloth* also means acts or deeds, cp. I. Samuel 2:3, Psalms 105:1, and others. A translation of the phrase as an ‘act of words’ with the sense of a formally phrased charge of words may reflect the biblical meaning more accurately. The content of the *ʿaliloth devarim* is fully stated. The phrase may well allude to an ancient juristic term for a statement of the case by the plaintiff. . . . There is no pressing reason to discount *a priori* the possibility that *ʿaliloth*, a more poetic and unusual word, could refer to the act of words in respect of a formally stated charge or accusation” (Passamanek, “Talmudic Concept of Defamation,” 26 n. 24). Other translations vary; many are comparable to Nelson’s “shameful charges” (*Deuteronomy*, 263).

death of his bride, but rather divorce. He wants to return his newly acquired bride to her father and force him to take care of her.

### Money

The issue of money emerges with further consideration of the word  $\text{שנא}$  (“to hate”). The term refers to a particular kind of divorce. Raymond Westbrook has shown, through an examination of a variety of ancient Near Eastern sources, that the term “hate” (Hebrew  $\text{שנא}$ ; Akkadian *zêru*), when used in a legal context, represents an unjustified motivation for the action with which it is associated.<sup>58</sup> This does not mean that the action is illegal or criminal, but rather

<sup>58</sup> Westbrook, “Prohibition on Restoration of Marriage,” 401–4. Others disagree. Otto (*Gottes Recht*, 256) thinks that Westbrook is trying too hard to guess at the motives involved. He believes that it is impossible to determine a person’s subjective thoughts from terms like  $\text{שנא}$  and *zêru*. But this misses Westbrook’s point. Westbrook is referring not to a person’s own subjective feelings or thoughts but rather to the law’s judgment of that person’s motivation. It is when a person’s actions are without sufficient grounds in the eyes of the law that  $\text{שנא}$  and *zêru* are used. Jacqueline E. Lapsley also misses this point when she interprets Westbrook’s reference to a subjective motivation as a reference to an emotion (“Feeling Our Way: Love for God in Deuteronomy,” *CBQ* 65 [2003]: 358–59). Westbrook has in view legal decisions, not human emotions.

Pressler, too, takes issue with Westbrook on this point. She states that he is unable “to cite any cases which clearly use *zêru* to indicate that the party initiating the divorce was at fault” (*View of Women*, 57 n. 43). Her statement is actually true. For the instances when  $\text{שנא}$  and *zêru* occur have to do with divorces where no one is technically “at fault.” They occur to show that the person *not* initiating the divorce is not at fault and that the initiator, therefore, cannot claim wrongdoing on the part of the spouse and profit financially thereby. Such a divorce (where the spouse has done nothing wrong) is not an illegal divorce; but it is without sufficient grounds to warrant imposing financial penalties on the other person. In the passage about the slandered bride, as we will see, the husband is not wrong or “at fault” for trying to divorce his wife, but he is wrong for claiming that her misconduct is the basis for his action.

One of the texts that uses *zêru* and plays an important role in this debate is LH §§142–143 (this section of LH is also discussed later in this article in nn. 83–86). Pressler claims that this text refers to a wife who “hates” (*zêru*) her husband and breaks off the marriage agreement, when it is actually her husband who is at fault (*View of Women*, 56–57). But this is not what the text says. It begins with this statement: “If a wife (an inchoately married one) hates (*zêru*) her husband and says, ‘You shall not (fully) marry me,’ her situation will be investigated by the local authorities.” This statement indicates that when a woman wants to dissolve an inchoate marriage agreement, the law, being the patriarchal product that it is, automatically assumes that her husband is not at fault and that her action finds no basis in his misconduct. Moreover, the local authorities are going to investigate to determine if there is something more to this situation than meets the eye. The rest of the text comes in two parts; each begins with *šumma* (“if”) and so is on an equal level with the other in terms of the passage’s structure. The first states what should happen if the husband is really at fault; the second, if the wife is at fault. (There is no explicit consideration of what to do if both have been behaving properly and the inchoately married woman still wants to end the relationship.) Thus, the law in LH §§142–43 does not use *zêru* of the wife when the husband is at fault. It says nothing more than that the local authorities are going to assume that a wife who wants to break off the agreement

that the person who carries out the action may have to forfeit certain legal rights. For instance, in the Laws of Eshnunna (§30) and the Laws of Hammurabi (§136), when a man “hates” his city and runs away, the man is leaving or fleeing without justification. He is not punished for committing a crime, but he loses the right to reclaim his wife when he returns, if she has decided to go and marry another man. In the eyes of the law, there was no good reason for the man’s action, despite what the man himself may have thought. In the same way, a man who pronounces the formula, “I hate and divorce my wife,” is admitting that, at least with respect to the law, his act of divorce is without grounds. He is divorcing his wife simply because he wants to—a perfectly legal act—not because he can find justification in his wife’s misconduct. In such instances, ancient Near Eastern law required that the man forfeit his right to his wife’s dowry and return it to her.<sup>59</sup>

By using the term נִשְׁוּ, then, the authors of part A of the passage about the slandered bride are revealing the dubious nature of the husband’s endeavor right from the start. One might paraphrase v. 13 in this way: “If a man takes a wife and sleeps with her, but then rejects her without justification . . . .” The authors are slanting the description of the situation in favor of the final verdict, which decides on the falsehood of the husband’s accusation.<sup>60</sup> It will eventually be revealed, they seem to say, that the husband’s move to divorce is without justification. When the husband makes the accusation, however, he is claiming to have a perfectly good reason. *He* is certainly not referring to his actions with the term נִשְׁוּ. Rather, he alleges that his father-in-law pretended to give him a woman who was a virgin, when actually she was not. Thus, he is claiming that he should be allowed to send her away with justification because of the violation of *pre-consummation sex plus deception*. Generally in the ancient Near East, a man who succeeds in establishing justification for the divorce of his wife finds a significant financial benefit awaiting him—the keeping of his wife’s dowry and often the right to an additional sum of money from her or her family.<sup>61</sup> By seeking a justified divorce, a man is usually out to be rid of his wife and to garner a profit, both in one fell swoop.<sup>62</sup>

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has no basis in her husband’s misconduct until they get the chance to investigate. If their investigation shows otherwise, then so be it. But until that point, the assumption stands.

<sup>59</sup> He may have been required to pay her an extra sum of money, as well (LH §§138–40). In so doing, the man was helping to provide, in part, for her future support and giving up his right to be entirely free of providing for her—a right he would certainly have if her misconduct had caused the divorce.

<sup>60</sup> Locher, “Prozeßprotokoll,” 298–303.

<sup>61</sup> On the loss of the dowry, see Westbrook, “Restoration of Marriage,” 396–98. On the additional payment, see Samuel Greengus, “A Textbook Case of Adultery in Ancient Mesopotamia,” *HUCA* 40 (1969): 39; and Westbrook, “Adultery,” 558–59.

<sup>62</sup> Regarding the husband in the passage about the slandered bride, Frymer-Kensky remarks,

The same is essentially true of the man in this passage but on somewhat different terms. Typical divorce may not be the husband's intention. In a typical divorce, the other party involved would be the wife. Here the husband is taking action against the father-in-law. A different sort of divorce or, more precisely, annulment may be what he has in mind. In the ancient Near East, when a father failed to make good on an inchoate marriage agreement, by letting another man have his daughter or the like, he was often required to return to the original groom twice the amount that was paid as the bride-price.<sup>63</sup> This is, in essence, the situation in which the husband claims he finds himself. His bride's father has broken the marriage agreement by allowing the young woman to have sex with another man and then deceiving him; therefore, he says, he has justification for initiating a case against his father-in-law, dissolving the marriage, and requesting the appropriate compensation, namely, twice the amount of the bride-price.<sup>64</sup> A number of scholars believe that Deut 22:29 reflects fifty shekels of silver as the amount of a bride-price at that time.<sup>65</sup> If that is true, then the husband is requesting a payment of one hundred shekels from his wife's father. The element of money thus becomes clear in the husband's intentions.<sup>66</sup>

### *Humiliation*

The third element must now be addressed. The husband is punished not only in terms of money and divorce but also by being flogged, the purpose of that punishment being to shame and humiliate the man. Is there any indication in the text that the imposition of shame and humiliation was also part of the husband's intentions when he first brought the case? The primary indication comes with the idea of dissolving the marriage and sending the wife away from

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"[H]e may have base motives and, not finding the girl to his liking, may want to be rid of her without losing his brideprice or her dowry" ("Virginity," 93).

<sup>63</sup> See LU §15, LL §29, LE §25, and LH §§160–61.

<sup>64</sup> Several scholars argue that the husband's intention is the recovery of the bride-price, though they do not claim that twice that amount is what the husband is after (Mayes, *Deuteronomy*, 309; Louis Stulman, "Sex and Familial Crimes in the D Code: A Witness to Mores in Transition," *JSTOT* 53 [1992]: 56; Frymer-Kensky, "Virginity," 93; and McConville, *Deuteronomy*, 340).

<sup>65</sup> For example, Willis notes that one hundred shekels is twice the amount of the original bride-price (*Elders of the City*, 222–23). He does not, however, think that the husband is trying to recover any of that money when he brings his charges (*ibid.*, 226 n. 94). See also Phillips, "Another Look," 9; Rofé, "Family and Sex Laws," 137; and Otto, *Gottes Recht*, 252.

<sup>66</sup> One might wonder what happens to the dowry if the husband's accusation proves true, and if he is seeking the penalties that part A considers. Because the husband would be seeking an annulment in this case, any property that had exchanged hands as part of the marriage agreement would probably revert to its pre-agreement owner. Getting back twice what he paid as the bride-price, however, would likely mollify the husband for any newly acquired dowry property that he might have to give up.

his house. It was not unusual for husbands who sent their wives away in the ancient Near East to shame and humiliate them by means of a number of actions.<sup>67</sup> One of these actions, mentioned in several places, is that of stripping the wife naked before sending her away.<sup>68</sup> Other actions include mutilating the wife's face and shaving her pudenda.<sup>69</sup> If the husband in the passage about the slandered bride had succeeded in his efforts to end the marriage and send his wife away, it is likely that he would have been able to inflict one of these shaming actions upon her. This would have humiliated not only his former wife but also her family, and in particular her father, who had allowed her virginity to be violated while she was under his supervision.<sup>70</sup> He is the one primarily responsible for what has happened, and shaming his daughter in this way is tantamount to shaming him. Thus, the element of humiliation can also be seen in the husband's intentions.

All of this means that the charge of sexual misconduct is not a lone accusation. It is part of an effort by the husband to execute a justified annulment as a result of his father-in-law's breach of contract. This is an action he cannot perform independently. He must bring the case to court—perhaps before a tribunal of elders—in order to justify his action and reap its benefits. The text, though, reveals the fraudulent nature of the man's actions and shows how he is punished. In this way, the authors of part A constructed the situation to satisfy faithfully the demands of the law governing false accusation. The same three penalties—humiliation, money, and divorce—that the lying husband intended to inflict on the other party turn up in the punishments that he suffers as a false accuser. In fact, the punishments are a remarkable mirror image of the man's original intentions. First, instead of seeing his wife and her father publicly humiliated, he undergoes a form of public humiliation himself. Second, the financial penalty enforced against the man is one hundred shekels of silver, the exact amount the man would have received if his charges had been believed. Instead of having one hundred shekels of silver pass from his father-in-law to himself, the man must take one hundred shekels of silver from his own resources and transfer them to his father-in-law.<sup>71</sup> Finally, instead of being rid

<sup>67</sup> Westbrook, "Adultery," 558–63; and Otto, *Gottes Recht*, 258–59.

<sup>68</sup> See, e.g., a document from the Old Babylonian period: ZA 55 71. On this text, I follow the interpretation of Greengus, "Textbook Case," 33–44.

<sup>69</sup> See MAL A §15 and ZA 55 71.

<sup>70</sup> Frymer-Kensky, "Virginity," 93–94.

<sup>71</sup> McConville believes that one hundred shekels is twice the amount of a standard bride-price. He also believes that the groom is out to recover the bride-price, though not twice that amount (*Deuteronomy*, 340). He then comes close to the mark when he says, "There is an aspect of talion in the double restitution" (*ibid.*).

of this woman forever and forcing her father to care for her, he must bring her back into his household and be permanently responsible for her support.<sup>72</sup>

#### *Different Penalties for the Same Infraction*

If the foregoing analysis is an accurate assessment of part A, the question arises of why part B seems to say nothing regarding the penalties that the husband is said to seek in part A. At first glance, part B seems to mention the stoning of the bride at the door of her father's house as the only possible punishment to be inflicted if the husband's charges are true. Yet the husband's plan in part A must have been based on a legally viable alternative for husbands in his situation. This means that the husband had the option of choosing what sorts of penalties he would seek when bringing his case. Support for this idea comes from the judicial systems of the ancient Near East and the types of penalties they allowed for illegal actions. These systems permitted different penalties of varying severity for the same infraction. They did not require that the same penalty be inflicted every time a particular wrong was committed. With any given illegal action, a choice could be made regarding what type of punishment to impose on the perpetrator. Typically, the choice rested with the victim.

#### *Full and Partial Measures in the Ancient Near East*

In the ancient Near East, victims and victims' families had recourse either to full measures or to partial measures.<sup>73</sup> Victims could ask that the harshest penalty allowed by law be imposed, or they could accept something less severe. In the case of murder, for instance, the family of the victim possessed the legal right—enforceable by the court—to seek full measures and demand the death of the murderer, even to carry out the execution themselves. It was also the case, though, that “that same right could be commuted into a money payment, i.e. that revenge could be bought off with a ransom.”<sup>74</sup> This would be settling for partial measures. Full and partial measures appear in biblical texts such as

<sup>72</sup> Merrill also sees the prohibition against divorce as a form of talionic punishment (*Deuteronomy*, 303). This is because the husband is out to end the marriage, albeit with the death of the bride in Merrill's view (pp. 303–4).

<sup>73</sup> Westbrook (*Studies*, 39–88) uses the two categories of revenge (physical penalties) and ransom (financial penalties) to describe the options available to victims. These are similar but not identical to the categories of full and partial measures. The latter allow for overlap between what Westbrook calls revenge and ransom. For instance, partial measures often entailed financial punishments, but a physical punishment less harsh than the harshest allowed by law would also fall into the category of partial measures.

<sup>74</sup> *Ibid.*, 45.

Exod 21:29–30 and Num 35:9–34. The first passage considers the issue of an ox that has been known to gore and injure people. If such an ox kills a man or a woman, the text states that its owner shall be killed (v. 30). It goes on to say, however, that a lesser penalty may be allowed, presumably by the victim's family, in which case the owner pays whatever amount of money may be demanded in order to save his life (v. 30). The passage from Numbers deals with murder. The text makes clear that the victim's family has the right to slay the murderer if the act was premeditated (v. 19). But then the text proscribes the option of any partial measure in the form of a monetary payment (v. 31). It stipulates that such payment not be accepted in the case of premeditated murder and that such murderers always be put to death. This shows that penalties short of death were still a generally accepted option for murder even in the days of the Priestly writers. If such penalties had not been, there would have been no need to say anything about them at all.

Sexual misconduct was no exception to this principle. For example, women guilty of *adultery post-consummation* could receive full or partial measures. That the death penalty constituted full measures is made clear by provisions in several law collections.<sup>75</sup> Half of these same provisions, as well as several related texts, also point out that the life of an adulterous wife may be spared.<sup>76</sup> Moreover, the laws are explicit about the fact that the choice to kill or to spare the guilty wife rests with her husband, the victim in the case. If the husband decides to spare his wife, he has the right to inflict partial measures, typically taking the form of a justified divorce.<sup>77</sup> As noted previously, when the wife is guilty of misconduct such as adultery and the husband wishes to divorce her, she must submit to public humiliation, to the loss of her dowry, and often to paying an additional sum of money, perhaps obtained from her family, to her husband. These are the punishments that a husband may choose to impose upon his adulterous wife in lieu of the death penalty.<sup>78</sup>

<sup>75</sup> LU §7, LE §28, LH §129, HL §§197–98, MAL A §§14–15, and Deut 22:22–27.

<sup>76</sup> LH §129, HL §§197–98, and MAL A §§14–15. See also ZA 55 71 (as discussed by Greenus, "Textbook Case," 34–43), and Jer 3:8 (in which Yahweh is said to have divorced, instead of executed, the nation of Israel for her adultery).

<sup>77</sup> Henry McKeating argues plausibly that this was a more commonly chosen punishment than the death penalty ("Sanctions against Adultery in Ancient Israelite Society, with Some Reflections on Methodology in the Study of Old Testament Ethics," *JSOT* 11 [1979]: 57–63). As for the male lover of the adulterous wife, he too has the chance to have his life spared by paying a ransom. See Prov 6:32–35 and the discussions of this text in Bernard S. Jackson, "Reflections on Biblical Criminal Law," in *Essays in Jewish and Comparative Legal History* (SJLA 10; Leiden: Brill, 1975), 59–61; and Samuel E. Loewenstamm, "The Laws of Adultery and Murder in Biblical and Mesopotamian Law," in idem, *Comparative Studies in Biblical and Ancient Oriental Literatures* (AOAT 204; Kevelaer: Butzon & Bercker, 1980), 146–53.

<sup>78</sup> There has been a great deal of debate among scholars about whether this holds true for biblical law. Some argue that the pentateuchal laws mandate death for adulterous wives and allow

*Full and Partial Measures in the Passage  
about the Slandered Bride*

The categories of full and partial measures can also be applied to the passage about the slandered bride. Part B reveals what full measures would look like were the husband to choose that option. The men of the city were to stone the woman at the door of her father's house. Part A, on the other hand, is about partial measures. There the man is not interested in the death of his bride; he prefers simply to dissolve the marriage and receive a handsome sum from the father. Thus, the law in Deut 22:13–21 assumes that partial measures were permitted, since part A is based on the premise that the husband selects that option. This is true, even though the only clearly stated penalty is that of full measures. A corresponding situation from Mesopotamia helps to clarify this understanding further.

Scholars have searched with little success for a parallel to the passage about the slandered bride in the legal documents from Mesopotamia.<sup>79</sup> Overlooked, though, has been the Old Babylonian document ZA 82 204–5 (FLP 1340), which tends to confirm much of the analysis set forth above. It records litigation that dates to Hammurabi's fifteenth year.<sup>80</sup> The subject matter appears to be an inchoate marriage that has turned sour because of a dispute between the groom and the father of the bride, partly involving the bride's chastity or lack thereof. After a list of twenty-two witnesses, the document states:

These are the witnesses before whom Aḫuni raised the silver lance and said: "I definitely purchased the house; you did not give it to me as a bride-price (*terhatum*)."<sup>80</sup> Iddin-aba responded: "I will not marry your daughter. Bind her and throw her into the river."

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for no other punishment. Others claim the opposite. For an overview of the discussion and the relevant literature, see Otto, "Verbot," 301–10; and Willis, *Elders of the City*, 219–22. Clearly, the analysis of the passage about the slandered bride presented in this article supports the view that biblical law does not make death mandatory in the case of adultery. As Willis states, "Israelite society always held that adultery was an offense serious enough to warrant death, yet lesser punishments were commonly deemed to be sufficient" (*Elders of the City*, 220–21).

<sup>79</sup> BE 6/2 58 (republished as UrET [= UET] 5 256) has received some attention in this regard (Hallo, "Slandered Bride," 101–2). The document, however, is fraught with difficulties, and there is a clear lack of scholarly consensus on its meaning (Lafont, *Femmes*, 253–56). Moreover, it has been shown that Hallo's interpretation of the document as a parallel to Deut 22:13–21 cannot be maintained (Eckart Otto, review of William W. Hallo, *Origins: The Ancient Near Eastern Background of Some Modern Western Institutions* [SHCANE 6; Leiden: Brill, 1996], in *ZABR* 3 [1997]: 256).

<sup>80</sup> It is published and edited in David I. Owen and Raymond Westbrook, "Tie Her Up and Throw Her into the River! An Old Babylonian Inchoate Marriage on the Rocks," *ZA* 82 (1992): 202–7. See the brief discussion in Dominique Charpin, "Lettres et procès paléo-babyloniens," in *Rendre la justice en Mésopotamie*, ed. Joannès, 92–93.

Aḥuni is the father of the bride. His opening statement indicates that the groom, Iddin-aba, has apparently demanded that the bride-price be returned to him. The bride-price in this case appears to be a house as opposed to actual money. It is not clear if this is all that Iddin-aba is asking for or not. Regardless, the father of the bride refuses to comply with the groom's wishes, claiming that he purchased the house and that the groom did not give it as a bride-price. The groom responds: "I will not marry your daughter. Bind her and throw her into the river."

The groom could certainly not say this unless he is alleging that a very serious wrong has been committed. In all probability, it is *adultery while betrothed*: his bride has had sex with another man during the period of inchoate marriage. This would mean that the marriage agreement he had with the bride's father has been broken. What the groom appears to want, though, is not to see the woman die, but to exact partial measures—to free himself from having to marry her and to receive compensation from her father. It is likely that he brought a suit against the father in order to achieve these objectives. The above text may contain the father's refusal to comply with the groom's original demand. The end of the text would then show that the groom has changed his mind and now intends to pursue full measures. In so doing, however, he has not dropped his suit against the father and initiated a new one against the daughter; rather, he is still pursuing his original case against the bride's father.<sup>81</sup> What this text demonstrates is important in at least two respects for understanding the passage about the slandered bride.

First, if the groom were to follow through with his demand that the bride suffer death by drowning, that particular punishment would come as a consequence of the legal action he took against the bride's father. The death of the bride would be a punishment against her father, the defendant in the case. It is true that the Laws of Hammurabi contain a provision specifying the death penalty for a woman who commits *adultery while betrothed* (§§142–43) and that this punishment is directly against the woman.<sup>82</sup> Yet the provision in LH

<sup>81</sup> The evidence from this Old Babylonian court record runs contrary to the suggestion of Benjamin (*Deuteronomy and City Life*, 229–30) that the defendant in part B of the passage about the slandered bride may be different from the defendant in part A. According to Benjamin, the father of the bride is perhaps the only defendant in part A, while the bride herself is the only defendant in part B. In this Old Babylonian text, though, the groom's dispute is strictly with the father, both when he is not interested in the death of the bride (as in part A) and when he is (as in part B).

<sup>82</sup> There is some disagreement over what exactly is at issue in LH §§142–43. One question has to do with the woman's marital status. If *ahāzum* is accepted as the technical term in Old Babylonian for "to marry," as אָהַב is in Hebrew, then the woman must be an inchoate bride, and her statement in LH §142 has to mean, "You shall not fully marry (*ahāzum*) me" (see below for a full

§§142–43 does not appear to be applicable to the case in ZA 82 204–5. The issue in LH §§142–43 does not stem from a dispute between the groom and the bride’s father. Instead, the question of infidelity “emerges from litigation between the woman and her inchoate husband, in which each of the parties charges the other with misconduct.”<sup>83</sup> Moreover, the text seems to say the woman has not been living in her father’s house.

<sup>142</sup>If a woman hates her (inchoate) husband and says, “You shall not marry me,” her case shall be decided in her local court, and if she is chaste and has no sin and her husband is going out and greatly deprecating her, that woman has no fault; she shall take her dowry and go off to her father’s house. <sup>143</sup>If she is not chaste and is going out, scattering her house, deprecating her husband, they shall cast that woman into the water.<sup>84</sup>

If the woman is justified in her repudiation of her husband, the text states that she may “go off to her father’s house.” It may be presumed, therefore, that she was not living in her father’s house at the time of the dispute.<sup>85</sup> It may also be presumed that, if she is guilty of misconduct, the woman was living elsewhere at the time of her wrongdoing as well. Thus, in this situation, her father is not the one responsible for the bride’s misconduct, nor is he the object of legal action taken by the groom. This is why the death of the bride in LH §§142–43 functions as a punishment directly against her, whereas the death of the bride in the situation described by ZA 82 204–5 would have been seen by the legal system of that time as punishing her father.

This understanding of the Old Babylonian material may help to explain the relationship between the passage about the slandered bride and the law in

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translation of LH §§142–43). Westbrook argues cogently for this point of view (*Old Babylonian Marriage Law*, 14–16, 45–47). Cf. Otto, who is less certain (“Verbot,” 304 n. 26); and Locher (*Ehre einer Frau*, 290–95), who disagrees with Westbrook. Locher claims that the woman is already fully married and is saying that her husband may no longer have sexual relations with her. For the view that the misconduct on the part of the woman is sexual in nature, see J. J. Finkelstein, “Sex Offenses in Sumerian Laws,” *JAOS* 86 (1966): 362–63. Thus, sexual misconduct by an inchoate bride points to *adultery while betrothed*.

<sup>83</sup> Westbrook, “Adultery,” 573. As for the passage about the slandered bride, Westbrook says, “the question of infidelity arises during litigation between the husband and the wife’s father” (p. 575). This question of who the parties at trial are is important to bear in mind. To reiterate, in LH §§142–43, it is the bride herself and the groom. But in ZA 82 204–5 and the slandered bride passage, it is the groom versus the bride’s father.

<sup>84</sup> This translation comes from Westbrook, “Adultery,” 572.

<sup>85</sup> The words “go off” translate *ittallak*, a Gt durative form of *alāku*. The Gt stem of this verb has the sense “to go away, depart from/for” (see *CAD A/1* 322). It seems unlikely that the text would have used *ittallak* if she had still been living with her father. Moreover, it was not uncommon for betrothed women to live somewhere else, even in the house of the groom’s father, a situation often referred to with the term *kallūtu*: “status of a woman living in a household other than her father’s” (*CAD K* 85).

Deut 22:23–24, which calls for the death of an inchoately married woman who commits *adultery while betrothed*.<sup>86</sup>

<sup>23</sup>If there is a virgin who is betrothed to a man, and another man finds her in the city and sleeps with her, <sup>24</sup>then you shall bring the two of them out to the city gate. You shall then stone them to death—the young woman because she did not cry out in the city, and the man because he violated the wife of his fellow. Thus you shall purge the evil from your midst.

Although this text is not specifically about *pre-consummation sex plus deception*, the two situations are closely related. In both, it is possible for the woman involved to suffer the fate of death. In the case of the slandered bride, her death functions primarily as a punishment against her father. In Deut 22:23–24, the punishment looks to be directly against her. One possible reason for this is that the law in Deut 22:23–24 may be assuming a situation similar to the one described in LH §§142–43. The text may be assuming that the woman was not living in her father's house at the time of her illicit sexual activity, was not under his supervision, and thus was not his responsibility. The authors of Deuteronomy quite likely considered death in the case of the slandered bride, too, to be a just penalty for the woman. They would have deemed her to carry moral culpability: “because she has committed a shameful act in Israel by prostituting herself in her father's house” (Deut 22:21). This would be so, even though her father was the only one to possess contractual culpability and, therefore, the only one against whom the husband could take action in a trial court.<sup>87</sup> Thus, in cases of *pre-consummation sex plus deception* or *adultery while betrothed*, the identity of the responsible party—legally, not necessarily morally—may have depended on whether or not the bride was living in her father's house and under his supervision. If so, her father took the blame.<sup>88</sup> If not, the law held her

<sup>86</sup> In Deut 22:25–27, an exception is made for an inchoately married woman who is raped. Only the rapist is punished.

<sup>87</sup> It may be that the law contradicted by the passage about the slandered bride is not the law of false accusation but the law in Deut 24:16: “Parents shall not be put to death for their children, nor children put to death for their parents. Persons shall be put to death for their own sin.” But, again, the authors of Deuteronomy may be focusing on moral culpability here. Even though the husband in the passage about the slandered bride can make legal claims only against the bride's father, the bride herself, from the authors' point of view, is not morally innocent. Thus, her death, which is a judicial punishment of her father for his breach of contract, also functions as a punishment of her moral failure.

<sup>88</sup> A potential problem for this conclusion comes from LH §130: “If a man forcibly restrains another man's wife, who has not yet had sexual relations and is still living in her father's house, and he is seized lying in her lap, then that man shall be killed; that woman shall be released.” It is, perhaps, possible to infer from this law that an inchoately married woman, like the one described here, who is still living in her father's house, would herself be held responsible, were she willingly to commit adultery while betrothed. It is also possible to argue, however, that the father of the woman

responsible. The intricate workings of the legal system, though, were probably lost on the unfortunate brides, whose lives were at risk in either case.

There is a second way in which ZA 82 204–5 sheds light on the passage about the slandered bride. It demonstrates that the groom, in this type of situation, can choose between two options. One is the full-measures option, which includes the death of the bride. The groom reveals the other option by what he chooses first. He initiates the case, it would seem, by asking for partial measures—dissolution of the inchoate marriage and compensation. When the father balks, he switches, perhaps to motivate the father to accept his earlier demands. The right to choose which penalty to pursue rests with the groom, the plaintiff. So too, in the passage about the slandered bride, the intention of the husband controls the choice of penalty.

If the groom in the passage about the slandered bride chooses to seek the full measures of part B, those measures still contain the three key elements of humiliation, money, and dissolution of the marriage—the same three that define the penalties the husband seeks in part A. First, the defendant in the case—the father of the bride—would be terribly shamed and humiliated were he to have his daughter stoned in front of his house. Again, strictly in terms of the dispute between the husband and the bride’s father, this is not a death penalty. It is, rather, a punishment of humiliation. Second, it goes without saying that the death of the woman would dissolve the marriage and the husband would forever be free of having to support her. Finally, the husband would be entitled to some sort of financial compensation. He might keep the dowry, which had come directly from his father-in-law’s assets, or he might receive back twice the bride-price as described previously. Moreover, his father-in-law would be deprived of a financial asset in the daughter.<sup>89</sup>

How, then, would the principle contained in the law of false accusation apply to a situation in which a husband, when he first brings his case, declares that he is seeking the full measures of part B? The text does not make clear exactly what punishments such a husband would receive, if the court were to deem him a false accuser. It would stand to reason, however, that he would receive penalties corresponding to the objectives that he was trying to accom-

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would be the one held responsible. Among the penalties meted out to the father, there might well be one that would make his daughter the object of punishment, even as she is in the passage about the slandered bride. If she had not consented to the sexual encounter, then, according to LH §130, she would be exempt from any such punishment. Moreover, there is “a small group of Old Babylonian marriage contracts, in which a guardian has been appointed over the [inchoately married] bride. In one of these (CT 48 56) the guardian is said to be responsible, *inter alia*, ‘for her sins’ . . . . The nature of the responsibility is not specified, but whatever responsibility a guardian has by contract, a natural parent would have by virtue of his status” (Westbrook, “Adultery,” 575).

<sup>89</sup> Using her for household work or marrying her off again for another bride-price would, quite obviously, be precluded.

plish by pursuing full measures. Since the shame and humiliation of the bride's father would be greater with the enforcement of full measures, perhaps the husband would suffer a form of public humiliation harsher than that in part A. Perhaps he would pay a stiffer fine, since the bride's father, with the loss of his daughter, would suffer a greater financial blow than if the husband had pursued only partial measures. The husband would also, presumably, be responsible for the perpetual support of the woman, as he would be in the case of partial measures as well. But he would still not be subject to the death penalty, since the defendant in the case—the father-in-law—was never in jeopardy of that. Whether the husband were to seek full or partial measures, and whether the charges were sustained or proven false, the penalties would still involve humiliation, money, and dissolution—or solidification, in the case of false accusation—of the marriage.

#### *The Most Severe Penalty in Part B*

That part B of the passage about the slandered bride speaks only of full measures should not be terribly surprising. When one compares part B with similar provisions in ancient Near Eastern legal material, it becomes clear that part B fits the standard manner in which the most basic aspect of a law was formulated. Ancient Near Eastern law could not easily express general legal principles.<sup>90</sup> In order to do so, it would usually take a given legal problem, describe the typical violation in casuistic style, and then prescribe the one penalty that was the most severe allowed by law. This would function as the general rule for that legal problem. It might then describe other situations that were variations on the theme contained in the general rule. Several examples could be cited, including one from the Middle Assyrian Laws.<sup>91</sup>

Middle Assyrian Laws A §13 describes the typical adulterous situation and stipulates death for both the woman and her lover. The provisions in MAL A §12 and §§14–16 add other details to this general principle. Most of the details have to do with where the illicit tryst took place, whether the woman gave her consent, and what penalties her husband could choose. In §15, for instance, the husband is allowed to inflict penalties other than the death penalty on his wife. The main point of §15 is that the wife's lover can be punished no more severely

<sup>90</sup> Bernard S. Jackson, "Principle and Cases: The Theft Laws of Hammurabi," in his *Essays in Jewish and Comparative Legal History* (SJLA 10; Leiden: Brill, 1975), 64–74.

<sup>91</sup> The Covenant Code offers a biblical example of a general rule followed by other provisions that vary the circumstances described in the first. "In the BC [Book of the Covenant, i.e., Covenant Code] the general rule of the case of killing in Exod. 21:12 was followed by Exod. 21:13–14, which differentiated between fatal bodily injury and murder" (Eckart Otto, "Aspects of Legal Reforms and Reformulations in Ancient Cuneiform and Israelite Law," in *Theory and Method in Biblical and Cuneiform Law*, ed. Levinson, 195). Other examples include LH §§9–13, §§138–40, and NBL §§8–13.

than the husband decides to punish his wife. One would not know about these lesser penalties, however, simply from reading §13. The provision in §13 omits such details, since its purpose is to describe the most basic aspect of the law and the general principle involved. This is also the purpose of part B in the passage about the slandered bride; thus, it omits mention of other penalties as well. It is part A that contains altered circumstances—namely, the husband's specific intentions—that affect the application of the law and entail other potential penalties.

It should be emphasized that casuistic laws attempting to make statements of general principles usually address the violation of the pertinent legal rule. Thus, in the passage about the slandered bride, the statement of the general principle occurs in the section that assumes the truth of the husband's charges and the existence of *pre-consummation sex plus deception*. That section then prescribes the type of punishment that is the most severe penalty allowed by law for that violation. One should, therefore, expect part B to contain the penalty that it does. This does not mean that full measures would necessarily take place. Part A makes that point clear.

One final comment relates to the nature of Deuteronomy's laws in general. There is no question that the legal material in Deuteronomy is highly colored by ideology or, at least, theology. The religious reformers who were most likely responsible for the laws of Deuteronomy had an agenda they were intent on pursuing, particularly in terms of cultic centralization. But there were other matters that were surely important to them as well. The overall sense one gets from the passage about the slandered bride is that these reformers, at least in theory, would prefer that the more extreme penalty—that of part B—be the typical punishment for the kind of misconduct described in the passage. By the way they construct part A, they acknowledge that the option of choosing partial measures is available in this situation. Nevertheless, they seem to believe that their society would achieve a greater degree of religious purity and divine approval if harsher measures were to prevail more often than not.

#### IV. Conclusion

In light of the preceding discussion, the full relationship of the passage about the slandered bride to the law of false accusation becomes apparent. If the husband brings false charges, he will be punished according to his intentions. If he wants simply to annul the marriage, to get back twice what he paid in the bride-price, and to inflict a comparatively minor form of humiliation, then he is after partial measures. As a false accuser, he will receive the three penalties described in part A, which correspond to his three intentions. If, on the other hand, he is pursuing the full measures of part B, he is out to inflict more severe punishments on the bride's father. The most striking of these is the

dreadful humiliation that the father would suffer with the stoning of his daughter. In addition, the husband would be free of the marriage and entitled to financial compensation. If his pursuit of full measures turns out to be based on false charges, it logically follows, based on the law of false accusation, that the husband would be punished in equal measure. Thus, his punishments would still entail public humiliation, financial penalties, and the obligation to provide for the woman's permanent support, as in part A, but these punishments would probably take, as his intentions did, a more extreme form.

Furthermore, the structure and content of the passage about the slandered bride would have seemed quite natural to legal minds of the ancient Near East. Part B contains the statement of the general rule, including the most severe penalty allowed, while part A describes how certain details would affect the law's handling of the situation. The most significant aspect of part A involves the intentions of the man bringing the accusation. It is his right to choose the full measures of part B or the partial measures of part A. Why the authors of Deuteronomy chose the particular situation that part A contains is hard to say. It may be, as Locher argues, that the authors had in their possession the record of a particular court case, and they relied on it to fashion the scenario in part A.<sup>92</sup>

Throughout this discussion, it has been assumed that the legal tenets revealed in the passage about the slandered bride may have actually been practiced at some point in ancient Israel.<sup>93</sup> Some scholars have argued, however, that many of Deuteronomy's nonsacral laws represent only the beliefs of a group of ideologues who may not have ever expected their ideas to be followed in actual practice.<sup>94</sup> Regardless, the apparent tension between the passage about the slandered bride and the law of false accusation exists. The evidence adduced above dissolves the tension by showing how the authors or final redactors of the book were able to maintain a level of consistency with their use of these two passages.

<sup>92</sup> Locher, "Prozeßprotokoll," 298–303. Cf., however, Frymer-Kensky ("Virginity," 95) and Nelson (*Deuteronomy*, 270), who seem doubtful that any husband would really want to initiate such a case, since the evidence necessary to disprove him would probably not have been difficult to produce or even to fake.

<sup>93</sup> Levinson is one scholar who believes that the authors of Deuteronomy wanted Israelite society actually to put into practice the laws contained in the book (*Deuteronomy and the Hermeneutics of Legal Innovation*, 3–22). "Their concern was to implement their own agenda: to effect a major transformation of all spheres of Judaeon life—culturally, politically, theologically, judicially, ethically, and economically" (p. 16).

<sup>94</sup> With respect to the passage about the slandered bride, at least, Stulman doubts if the stipulations were "intended to be carried out" ("Sex and Familial Crimes," 56 n. 4). For support, he cites Tikva Frymer-Kensky ("Law and Philosophy: The Case of Sex in the Bible," *Semeia* 45 [1989]: 93), who sees the passage about the slandered bride as embodying a "theoretical principle" as opposed to binding law.