

10 Adultery

Adultery is a specific form of infidelity. A Babylonian would have defined adultery as ‘consensual sexual intercourse by a married woman with a man other than her husband’. The behaviour of the woman is crucial in this definition. One might assume that a Mediterranean man might have intercourse with any other woman, unless the woman was married. But such conduct was always unseemly for a woman, married or not.¹ Young men were warned to avoid such a situation.

You should not laugh with a young married woman. This causes a great amount of gossip,

or

My son, do not sit in a room together with a married woman.²

In the Assyrian law-book the word *nâku* specifically refers to extra-marital sexual intercourse. According to N. Heeßel the word must have carried overtones of shame as it is always used with reference to immoral behaviour.³ This may be true in most cases, but the word basically means ‘to have intercourse’ in some laws (§ 12, 17, 23), and certainly in an incantation to be recited at the birth of a child,

In the waters of intercourse, the bone was created.⁴

Adultery and infidelity mostly takes place consensually. This can be inferred from a Sumerian proverb,

An unfaithful rod suits an unfaithful vessel (SP 1.159).

But mutual consent needs to be proved. The ancient law-books of Mesopotamia also speak of someone forced into extra-marital sex, a subject reserved for our discussion of rape in the next chapter.

1 Thus R. Westbrook at the beginning of his article ‘Adultery in Ancient Near Eastern Law’, *Revue biblique* 97 (1990) 542–580 (= *Writings R. Westbrook I* [2009] 245–287). In general see M. San Nicolò, art. ‘Ehebruch’ in *RIA II* (1938) 209–302; S. Lafont, *Femmes* (1999) 29–91.

2 B. Alster, *Wisdom of ancient Sumer* (2005) 63 Instr. Šur. 33–34.

3 N. Heeßel in: A. Imhausen, *Writings of early scholars in the Ancient Near East, Egypt, Rome, and Greece* (2010) 178–180. According to B. Landsberger the elementary verb *nâku* is used here because this law-book was a scientific work and not meant for everybody; *MAOG 4* (1928–29) 321.

4 M. Stol, *Birth in Babylonia and in the Bible* (2000) 11 (top). B. Landsberger: *nâku* ‘koitieren’, AHw: ‘beschlafen’.

An appropriate law to begin with is found in the Hittite law-book, where three circumstances for an adulterous relationship are specified.

If a man should take a (married) woman in the mountains, it is the fault of the man and he is killed. If however he takes (her) in the house, it is the fault of the woman. The woman is killed. If the husband catches (them both) and kills her, there is no problem (§ 197).

C. Saporetti explains that the woman taken ‘in the mountains’ was a victim of a man’s violent action, which amounts to rape. The woman taken ‘in the house’ would be seen to have seduced her partner and accordingly put to death. In the third case both parties consented to the adulterous act, and the husband would have killed her as her punishment for consenting.⁵

10.1 Women who initiate adultery

Men are not blamed for looking at women. The Babylonians had a special word for such watching, ‘to look lasciviously’ (*balāšu*).⁶ In Hammurabi’s laws a betrothed young man is looking lasciviously at another woman and subsequently tells his father-in-law ‘I will not marry your daughter’. His only punishment is that he loses whatever had been brought to the girl’s father (§ 159). In a self-imprecation in a treaty one of the two partners wishes, to his disadvantage, ‘when I am looking lasciviously at a married woman, may another marry her’.⁷ Women, however, are immediately open to suspicion for no more than turning their heads. After a woman had been betrothed or married to a man she was described by Babylonians as *našrat*, ‘circumspect, chaste’, in contrast to being a gadabout.⁸ That a woman’s first inclination to bad behaviour can lead to worse can be seen from the semantic development of word for a gadabout, into that for a prostitute in later Aramaic and Modern Hebrew.⁹ It is derived from the verb *wašû*, ‘to go out’, and thereby shows her to be ‘a woman who has a reputation for going out’.

⁵ C. Saporetti, *Studia G. Pugliese Carratelli* (1988) 237–241.

⁶ Although this meaning is not in the dictionaries, it was repeatedly stressed by R. Borger; most recently in his *Babylonisch-assyrische Lesestücke*, third edition (2006) p. XIV; BiOr 65 (2008) 439, on CAD P 54, *palāsu* II/2 (‘starren’).

⁷ J. Eidem, *The royal archives from Tell Leilan* (2011) 395, 403 no. 3 v 31 (copy on p. 598). I read *bi-li-iš inājä*, not *pilis* (but the syntax is not clear).

⁸ A. Finet, *Symbolae F.M.Th. de Liagre Böhl* (1973) 137–143; J.J. Finkelstein, JAOS 86 (1966) 362f.

⁹ Finkelstein, 363 n. 29; J. Preuss, *Biblich-talmudische Medizin* (1911) 563, 565; Finet, 142 n. 23, end.

In the Ancient Near East it was thought (and even still now it is widely thought) that the initiator of any act of adultery was the woman. Literary texts tend to lay the guilt on women for being the instigators and proverbs warn men about her advances.¹⁰ A very well-known example is the Biblical story of Potiphar's wife, who tried to seduce Joseph in Egypt (Genesis 39). A particularly colourful passage in the Bible is Proverbs 7, where a young simpleton is seduced by 'the adulteress, the loose woman'. While her husband was on a journey she solicited him on the street and offered her bed smelling of myrrh, aloes and cassia, justifying herself by assuring him that earlier in the day she had paid her vows by making a sacrifice and an offering. This rather surprising remark will be explained later, in Chapter 21. In the Qur'ān the woman is portrayed as full of ruses (*kayd*) and her fatal, bewitching attractiveness (*fitna*) was something to be feared (Surah 12, 23–34).¹¹ In traditional Islam the woman is relegated to a position of complete subservience. This reduces her marriage to the status of a sale, where love is no more than sexual gratification, *eros*. This is what makes the woman a danger, according to European scholars.¹² In the Near East guilt for adultery, or for any sort of extra-marital cohabitation, is always in principle laid on the woman. According to the Bedouin she should never assent to acting thus.

Chaste women are most often to be found among the Bedouin, where courting is unknown. If an illicit sexual relationship is discovered the woman is put to death by her husband or brother, and the man never incurs punishment. The Bedouin, with profound common sense say, 'If she does not want it, he cannot have it'.¹³

Babylonian handbooks on soothsaying have several predictions about a woman being unfaithful, but only a few about the man.¹⁴ The Akkadian word for the secret lover literally means 'he who enters stealthily' (*muštarriqū*). Some omens derived from the appearance of a sheep's liver create an unusual, almost anecdotal, atmosphere.

10 F.M. Fales in S. Moscati, *L'Alba della civiltà I* (1976) 224; G. Steiner, 'Die *Femme fatale* im alten Orient', in: Durand, *La Femme* (1987) 147–153.

11 Thus S. Guth, *Liebe und Mannesehre* (= Islamkundliche Untersuchungen, Band 122) (1987) 24–26.

12 Guth, 1–45.

13 'Si la femme ne veut pas, l'homme ne peut pas'; A. Albert Kudsi-Zadeh, *Le Comte Carlo de Landberg chez les Bédouins. Récits arabes* (1970) 25 f.

14 For citations see CAD N/1 197 f., s.v. *nāku* 'to have illicit sexual intercourse, to fornicate'; see also J.-J. Glassner, CRRAI 47/I (2002) 163a; U. Koch-Westenholz, *ibidem*, 307 f.

A man's wife will have her husband murdered.

A man's wife will constantly write to her secret lover, 'Kill my husband and marry me!'

A man's wife will become pregnant by another man.¹⁵

Men's wives will be slept with and stalk other men.¹⁶

Adultery was condemned as morally reprehensible.¹⁷ References in literary texts and rituals show that certain acts, such as 'approaching the wife of a colleague', 'going secretly to the wife of his friend',¹⁸ and 'sleeping with the wife of another man', were grievous sins needing formal purification.¹⁹

At the end of Chapter 9, about divorce, we mentioned a lawsuit concerning a murder, where the wife of the murdered man had remained silent. We cannot say whether intended or actual adultery was behind it. Another lawsuit, which also served as an example in the schools, was certainly a case of adultery. A married woman was accused of a series of increasingly serious misdemeanours: she had broken into the provisions room, had secretly made a hole in the barrel of sesame oil, and was then discovered in bed with a man. When her husband caught the pair of them he tied them up together, and they were punished by being publicly beaten up and humiliated. The king had her dragged around the town. What follows is an unclear statement about divorce money.²⁰

Erra-malik has taken in marriage Ištar-ummi, the daughter of Ili-asū. In the first place she broke into his storeroom. In the second place she made an opening in his oil jar and covered it up with a cloth. In the third place he caught her upon a man. He tied her to the body of the man on the bed. He carried her to the assembly. Because she was caught with a man

15 U. Koch-Westenholz, *Babylonian liver omens* (2000) 105f. A 5–6; A. R. George, CUSAS 18 (2013) 234:30f. with p. 244a. The liver has a 'hole' suggesting alienation between man and wife; see M. Stol, *Birth in Babylonia and the Bible* (2000) 103; cf. 'the hole' in YOS 10 14:6f.; see below, under 'Punishments'.

16 E. Reiner, RA 69 (1975) 95f.

17 A humiliating description of an adulterous man ('the man lying with the wife of a man') can be found in Sumerian wisdom literature; B. Alster, *Wisdom of ancient Sumer* (2005) 368f., 'The Adulterer'.

18 Šurpu II 48, IV 6; S. Lafont, *Femmes* (1999) 32f.

19 W. G. Lambert, *Babylonian Wisdom Literature* (1960) 119:3f.

20 J. van Dijk, ZA 55 (1963) 70–77; S. Greengus, 'A textbook case of adultery in Ancient Mesopotamia', HUCA 40–41 (1969–70) 33–44; H. Lutzmann, TUAT I/3 (1983) 198; J. van Dijk, Or. NS 39 (1970) 99–102; S. Lafont, 'Sanctions sociales et peines infamantes dans le droit de la famille au Proche-Orient ancien', in: *Hommage à Romuald Szramkiewicz* (1998) 550–554; S. Lafont, *Femmes*, 37–41, 308f., 494f.; W. W. Hallo, *The Context of Scripture* III (2002) 311; H. Neumann, ZABR 10 (2004) 85–88. The explanation that the woman was punished by dressing her up as a *kezertu*, a prostitute (M. Roth, S. Lafont) cannot be correct. The *kezertu* was a temple prostitute and not a whore.

upon her the assembly decided to ... the divorce money ... They shaved her pudendum. They pierced her nose with an arrow. The king handed her over to be led around the city. It is a decision of the king. Išme-Dagan-zimu was the deputy.

S. Lafont has said that it is very likely that the woman would have been lynched in the city.²¹ This text was intended to be instructive for schoolboys of that time, boys typically full of imagination. Messing up the housekeeping and infidelity seem to have been considered typical weaknesses of feminine misbehaviour.²²

The judgement of the king was advisable whenever a death penalty was threatened, and in this way situations of unrestrained revenge were avoided.²³ According to another model lawsuit a woman who had been caught in the arms of a named man was impaled.²⁴ It is striking that in all three lawsuits the king declared his assent to the punishment. These cases could be examples of the application of royal judgements. We can read between the lines and say that it was better to let the king decide than to begin a personal vendetta. There is an unusual passage in an Old Babylonian letter, in which a woman who was clearly betrothed explained how she was almost led astray, and the 'husband' was declared innocent.²⁵

The wife of Sîn-iddinam absolved (?) (*ipšur*) herself of guilt in the following manner. 'Before Sîn-iddinam married (*aḥāzu*, lit. 'to take') me, I agreed with father and son. When Sîn-iddinam went away from his house, the son of Asqudum sent me a message: 'I want to marry (*aḥāzu*) you'. He kissed my lips, he stirred my vessel, but his rod did not enter my vessel. I thought this: 'I shall not do anything wrong against Sîn-iddinam, who has done no wrong to me'. In my house I have done nothing improper.

The law-books carefully consider the status of a woman who behaved in this way, to determine if she was indeed a wife. Some paragraphs in the laws of Ešnunna aim to formulate a definition of a 'wife' and a 'married woman' (*aššatu*) specifically to establish whether or not adultery had been committed:

²¹ Lafont, *Femmes* (1999) 40 f.

²² H. Neumann in H. Barta, *Recht und Religion* (2008) 42 f., who incorrectly explains the opening of the oil jar as ceremonial.

²³ Neumann, 39 f.; Neumann, *Festschrift R. Haase* (2006) 32–34.

²⁴ UET 5 203 with F. R. Kraus, *WdO 2* (1955) 131 f., S. Greengus, *HUCA* 40–41, 42 n. 26, D. Charpin, *Le clergé d'Ur* (1986) 471; Lafont, *Femmes*, 67 f., 73, 495.

²⁵ AEM 1/2 (1988) 423 f. no. 488:29–40, with S. Lafont, *NABU* 1989/44; *Femmes*, 56; L. Marti, *NABU* 2001/76; J. S. Cooper, *CRRAI* 47/II (2002) 96 f.

§27. If a man married (*aḥāzu*) the daughter of a(nother) man without the consent of her father and mother, and moreover did not arrange with her father and mother the (nuptial) feast (*kirru*) or the contract, even though she has resided in the house for one full year, she is not a wife (*aššatu*).

§28. If he ... did arrange the contract and the (nuptial) feast for her father and mother and he married her, she is indeed a wife. On the day she is seized in the lap of a(nother) man she (or: he) shall die, she (or: he) shall not live.

We see a similar construction in the laws of Hammurabi.

§128 If a man married a wife but did not draw up a contract for her, she is not a wife.

§129a. If a man's wife was seized lying with another male, they shall bind them and throw them into the water.

Both law-books agree that if a woman who is cohabiting and who has no contractual obligation has intercourse with another man, she may not be treated as adulterous.²⁶

10.2 Were both lovers treated equally?

That §129a is the first part of a clause of a section in the laws of Hammurabi (§§ 129–136) covering the duty of a woman to maintain conjugal fidelity, the theme of this chapter. It continues by offering a chance for the wife to escape punishment.

§129b. If the wife's 'master' allows his wife to live, then also (*u*) the king shall allow his 'slave' to live.

In principle both parties in the adulterous relationship were put to death, but this clause shows that the usual punishment may need to be modified. A closer examination shows that the legislator wants first to establish the standard punishment in §129a, and then to show that there was a possibility of an element of clemency. The deceived husband could forgive his wife for what she had done, and that is stated in other law-books. Hammurabi here wanted to determine that the adulterous man could likewise be allowed freedom if the wife was pardoned, and that is something new in §129b. Primarily of course it was to offer equal treatment to both parties that this innovation was prompted. So why are the king and his 'slave' mentioned? This is not an easy question to answer. The word slave could

²⁶ H. P. H. Petschow, NABU 1990/81, end.

be used here to mean that the man in question was a royal subject, a subordinate person. The legislator wished for equality in the treatment of two ‘slaves’ by their respective overlords: the husband was the ‘master’ of his wife, as the king was the master of his subject.

In the Hittite Laws (§ 198) we also find the rule that the king could make the final decision to show mercy to both parties guilty of adultery, once the cheated husband had brought both offenders to the palace gate.

§ 198. If he (the deceived husband) brings them to the palace gate and says, ‘My wife shall not die’, he can spare his wife’s life, but he must also spare the lover. Then he may veil her. But if he says, ‘Both of them shall die’, they shall ‘roll the wheel’. The king may have them killed or he may spare them.

Veiling here is the affirmation of the marriage. The treatment of wife and lover are symmetrical.²⁷ This was not the only instance in those laws where the king had such a right according to that law-book.²⁸

Modern legal historians have attempted to find the reasoning behind treating both lovers equally. It could have been a wish to be ahead of any game of deception a colluding couple were playing. A situation could be envisaged where a married couple might arrange to seduce a man so that he would be punished by execution, while the woman would escape with her husband granting her a pardon. But the last requirement of the law § 129b obviates resorting to such a malicious game.²⁹ I find this construction cleverly thought out, but there is no proof for it. The essential modernising element of reform in this law appears to be that the woman was not the only one to be punished, but that she and her lover were punished equally. That both parties should be punished equally appears also to have been an underlying principle of the Middle Assyrian laws.³⁰

Other law-books also raise the problem of what to do to the man. This was raised as early as the time of Ur-Nammu.³¹

²⁷ M. Tsevat, JCS 27 (1975) 235–237.

²⁸ R. Westbrook, *Revue biblique* 97 (1990) 555.

²⁹ Westbrook, 551, 554 f. (it is explicit in the Cretan laws of Gortyna). Driver and Miles and Cardascia (*Les lois assyriennes*, 119) also speak of ‘collusion’.

³⁰ G. Cardascia in: *Hommage à Guillaume Cardascia* (1995) (= Méditerranées no. 3) 169 f.

³¹ Cf. C. Locher, *Die Ehre einer Frau in Israel* (1986) 333–336. One manuscript offers ‘the man (lú) shall kill that woman’ which must be an error; C. Wilcke, *Studies Th. Jacobsen* (2002) 313. This reading was taken seriously (with an artificial explanation) by Th. Jacobsen, *Studies R. Kutscher* (1993) 75 f. M. Civil assumes that the woman is betrothed, as in the preceding § 6. His translation of the verdict is different: ‘(if) he (the prospective husband) kills the woman, he will be set free’; CUSAS 17 (2011) 246, 257. Now C. Wilcke, *Festschrift J. Krecher* (2014) 537.

§ 7. If the wife of a man (*guruš*) on her own initiative should follow some other man (*lú*), and she should lie in his lap, then that woman shall be put to death; that male person (*nita*) shall be released.

Here we can assume that the fornicator was not aware that the woman was married, because she was behaving like a prostitute in her allurements, and so he saw no harm in following her. The act may not have occurred in the place where they lived, a circumstance more clearly described in the Middle Assyrian laws, where we again see a woman taking the initiative:

§ 13. If a married woman should leave her house and go to a man where he lives (and) he should sleep with her, while he knows that she is a married woman, they shall put to death the man and the wife.

§ 14a. If a man should sleep with a married woman, whether in a tavern, or on the street, then they shall do to the man who slept with her according to the way that the husband says should be done to his wife.

§ 14b. If he does not know that she is a married woman and sleeps with her, then he is innocent; the husband shall prove the charges against his wife and do to her as he wishes.

The circumstances described in § 13 are generally accepted as constituting a case of adultery, in that it occurred consensually in the house of another man. Modern commentators attach much weight to the fact that the woman left her house and assume that her husband was absent for a long time. This is trying to read too much into the text. As in § 129 of Hammurabi, first the procedure for a normal, obvious case of adultery is described, and this is a step towards the procedure in cases about which it was more difficult to form a judgement. Again, the equal punishment for both parties described in § 13 reflects the wisdom of the legislator. The reason the man was punished was because he had deceived the woman's husband and violated a husband's exclusive rights to his wife. Moreover, the woman's behaviour was a public scandal, so § 13 demands that they shall kill them both. Her husband could not help her out.

What follows in § 14 is a milder case of adultery. It is perfectly understandable for a man to think that a woman he met in the shadier districts of a town, even though in fact she was married, was to all intents and purposes a prostitute. Here the legal criterion is whether or not he knew she was married. On that basis a guide was given to the deceived husband about what level of punishment was merited. Why in § 14a did the community not step in to decide the level of guilt? The legislator may have been reticent because one could not know how that woman ended up in the disreputable area of town. The husband could have been allowing his wife to work in a brothel or on the street, meaning that there would have been an element of collusion between husband and wife. For this scenario the law protected the man, applying the same principle as in § 129 of the laws of

Hammurabi but formulated more abstractly. Essentially whatever happened to the woman must also happen to the man. The situation in which a man knew nothing about a woman he had met being married is clearly outlined in § 14b. That man should therefore be pronounced innocent.

For the sake of completeness we now give a translation of § 15, although to explain it is not simple.

§ 15. If a man seizes a(nother) man with his wife, (and) they show that he was the one, (and) can prove it, then they shall put them both to death; he himself has no guilt. If they both are caught and brought before either the king or the judges, (and) it can be shown that he is the one and it can be proved, then if the husband of the woman kills his wife, they shall also put the man to death; but if he cuts off his wife's nose, then he shall make the man a eunuch and they shall slash his whole face. But if [he lets] his wife [go free], then [they] shall (also) [let] the man [go free].

In my interpretation the husband is the first to catch the couple and later other people do the same. The latter is indicated by the passive verbal form, in the dual, 'they are both caught and brought', a grammatical subtlety not seen before. The action of the husband was a first step which led to the second, that other people discovered the adultery. They bring both offenders to face justice, and the law seeks to establish equal treatment for both the man and the woman.³²

This law-book has a little more about starting up a relationship with a woman who appears to be married. In those paragraphs a man takes a woman to travel with him, the woman admits a strange woman into the house, or she moves in with another man. In all these cases the crucial point was whether the man knew that the woman was married (§ 22–24).

Having seen how the Assyrian laws expected both parties involved in the adultery to be treated equally, it is time to return to Hammurabi. The text of § 130 actually deals with a rape, a subject to be discussed in the next chapter, but Hammurabi includes it here with the laws about adultery.

§ 130. If a man pins down a man's virgin wife who is still residing in her father's house, and they seize him lying in her lap, that man shall be killed; that woman shall be released.

Here we have a betrothed girl, who had the status of a married woman even though she was still living at home. In his treatment of the subject Hammurabi moves from the one extreme (a guilty woman) to the other (an innocent virgin), passing over any intermediate cases.

³² R. Westbrook, JCS 55 (2003) 96a, gave up his earlier interpretation in *Revue biblique* 97 (1990) 553.

10.3 Caught in the act

The phrase ‘establishing his guilt’ probably amounts to the same as ‘being caught in the act’, a situation with consequences which need further discussion.³³ In order to establish the truth of such claims we often encounter the motif in ancient literature of immediately summoning witnesses. A colourful tale in the *Odyssey* concerns Hephaestus, the smith of the gods, who finds his wife Aphrodite in bed with Ares. He immediately throws a net over the pair of them and brings in everybody to see what had been happening (VIII 295–366), provoking the gods to a bout of Homeric laughter:

an uncontrollable (*asbestos*) laughing broke out among the blessed gods when they saw the tricks of the clever Hephaestus (326 f. and 343).

Calling witnesses is also prescribed in the book of Deuteronomy and in the Roman laws of the Twelve Tables.³⁴ An even closer parallel in place and time is found in a letter from Mari:³⁵

Wariya the merchant has come to me saying, ‘I have taken by surprise a servant of the palace, a guard, with my wife. I have bound them together with a rope and made them leave to meet you. Furthermore, the people who seized them with me are my witnesses.’ I have looked into the matter of the woman ...

After this the text is broken, but the guilty pair were caught unawares and actually bound together. Witnesses to the event will be required. This is so similar to the binding of the couple referred to in a model lawsuit which we translated earlier,

He seized her on a man, he bound her to the body of the man in bed and carried them to the community assembly.

33 For being ‘caught in the act’ the following remarks by Dr Polak about nineteenth-century Persia are apposite. ‘Ertappt ein Mann seine Frau *in flagrante delictu*, so dürfte er sie, streng genommen, tödten. Da aber der Beweis mittels Zeugen sehr schwer zu führen, ja nach der Forderung Ali’s: *Necesse est videre stylum in pixide*, kaum möglich ist, zieht man die Scheidung vor; selbstverständlich muß dann die Frau den Ansprüchen auf ein Heirathsgut entsagen’. J. E. Polak, *Persien. Das Land und seine Bewohner. Ethnographische Schilderungen I* (1865) 215.

34 Deuteronomy 17:6 f.; Twelve Tables VIII 12, 13, according to Cardascia, *Les lois assyriennes*, 121, though no specific cases of adultery are mentioned there.

35 AEM 1/1 (1988) 524 M. 5001; LAPO 18 (2000) 239 f. no. 1064; S. Lafont, *Femmes* (1999) 38.

10.4 Punishment

That adultery was strictly prohibited is shown by the fact that anyone found guilty was condemned to death. The laws of Hammurabi and contracts from his time speak of execution by drowning or being thrown from a high tower.³⁶ An Old Babylonian liver omen says:

If the left lobe looks like a ... and there is a hole in it, then the wife of a man will be slept with and her husband will seize her and will kill her.³⁷

Examples we gave earlier were model lawsuits written in schools in which the woman would be treated humiliatingly by shaving half of her head or her pubic hair, or be impaled.³⁸ In §15 of the Middle Assyrian Laws we saw that provision had also been made for something milder than the death penalty.

And if he should cut off the nose of his wife, then he should change the man into a eunuch and they should slash his face.

Legally speaking these two punishments can be described as symmetrical. For a wife to have her nose cut off is alluded to in a rather obscure Old Babylonian love incantation.

The wives hate their husbands, (so) cut off her lofty nose, lay her nose under my foot.

From this we can conclude that it was a punishment which was actually carried out.³⁹ Neo-Babylonian contracts threaten death by the ‘iron dagger’ (as noted in Chapter 9, about divorce). In the New Testament stoning was designated as the punishment for an adulterous woman, but Jesus challenged the Pharisees to carry out that punishment on one occasion.

Let whichever of you is free from sin throw the first stone at her (John 8:7, REB printed after John 21).

³⁶ G. R. Driver, J. C. Miles, *The Babylonian Laws I* (1956) 495.

³⁷ YOS 10 14:6 f.

³⁸ Shaving her hair: M. Civil, CUSAS 17 (2011) 262 f. Impaled: UET 5 203:17 with D. Charpin, *Le clergé d'Ur* (1986) 471 (nam.giš.dim.šè).

³⁹ C. Wilcke, ZA 75 (1985) 200:47–49. V. Haas, *Babylonischer Liebesgarten* (1999) 66–69, 187 n. 280, investigates the matter of cutting off the nose of a woman and refers to such ‘marginalised women’ in the cult of Ištar of Nineveh among the Hittites.

Although, as we have seen, there was a possibility of being reprieved from execution, clemency was not always granted. The expression ‘she shall die, she shall not live’ in the laws of Ešnunna cited earlier means that there would be no possibility of reprieve.⁴⁰

Extra-marital intercourse was thought to be a cause of illness, since illness was a consequence of sin.⁴¹ One diagnosis in a medical text attributes lumps appearing on pale flesh to the moon god Šin.

If he is covered from head to foot in red lumps and his body is ‘white’, he was found with a woman in bed; it is the Hand of Šin.

If the flesh was ‘black’ the diagnosis was the same. Other related omens speak of ‘red’ flesh, and then it was the Hand of Šamaš the sun god. Other diagnoses attribute white lumps to the sun god, red ones to the moon god and black ones to Ištar.⁴² Another text reads,

If his illness repeatedly leaves him in the middle watch of the night, he has approached a(nother) man’s wife: the Hand of Uraš.⁴³

10.5 Accusations of adultery

10.5.1 The rules

In ancient Near Eastern literature a woman is often accused of adultery but the accusation may have arisen from gossip. A false accusation led to the standard rule that the accuser would be punished with the same punishment that his victim would have received. This principle is analogous to *ius talionis*, well-

40 Contra Yaron (p. 260 f.; attested in Laws Ešnunna §12, 13, 28), who viewed it as just style (‘negated antonym parallelism’). The phrase is now also attested in M. Ghouti, *Florilegium Marianum* [I] (1992) 63:25 (*amat ul aballuṭ*), R. Labat, MDP 57 245 v 5 (*qāt Šulak ul TI.LA UGx-at*). The prophecy to King Hezekiah, Isaiah 38:1 and 2 Kings 20:1, has similar reverberations.

41 N. Heeßel in: A. Imhausen, *Writings of early scholars in the Ancient Near East, Egypt, Rome, and Greece* (2010) 178–180. He points out that modern objective views of ‘venereal diseases’ contrast with the negative connotations the Babylonians had towards them.

42 TDP 28 Tablet III 91–95, including variations in the colour of boils or the skin; see further CAD M/1 119a, sub f; see also G. Wilhelm, *Medizinische Omina aus Hattuša* (1994) 44 f.; N. P. Heeßel in: S. M. Maul, *Assur-Forschungen* (2010) 177 (n. 74).

43 Heeßel, *Babylonisch-assyrische Diagnostik* (2000) 198 Tablet XVII:32.

known from the Bible as ‘an eye for an eye, a tooth for a tooth’.⁴⁴ So it is striking to note that any false accusation of adultery is an exception to this general rule. Adultery by a woman was punished by death, and we have seen in the law-books that the punishment for the man who was her accuser was much less severe in comparison; see also Deuteronomy 22:13–21. The only exception is the story of the famously chaste Susannah. When she was falsely accused by the elders they were put to death.⁴⁵ The man who made a false accusation a law of Lipit-Īštar had only to pay a penalty.⁴⁶

If (anyone) shall say of the virgin daughter of a man ‘she knows the rod’, and it is established that she does not know the rod, then he shall pay ten shekels of silver (§ 33).

Elsewhere in the law-book the Sumerian word *lá* is used for a formal ‘accusation’ (§ 17), while here it is simply the verb ‘to say’ that is used, so it could be just a matter of scandalmongering. The fine demanded for accusing a married woman of adultery was twenty shekels according to Ur-Nammu § 14, so this was only half as much.

Two possible reasons come to mind to explain the mildness shown to a scandalmonger. One is that the legislator was counting on the fact that the adulterous woman would be pardoned, which would have ensured that the death penalty was not automatically demanded. The other is that a woman was always punished more severely than a man.⁴⁷ C. Locher has studied this problem exhaustively and concluded in favour of the second possibility, that favouritism was shown to the man.⁴⁸ By setting out the laws it becomes clear that their tone supports Locher’s conclusion. People evidently accepted the tendency to gossip about the chastity of married women, which was encouraged by a constant mistrust of the female sex. Women were obliged to do their best to defend their reputations.

The relevant clauses in the laws of Hammurabi are §§ 131–132.⁴⁹

44 H. P. H. Petschow, ‘Altorientalische Parallelen zur spätrömischen calumnia’, ZSS 90 (1973), 27 f., 32. In general see S. Lafont, *Femmes*, 237–288. B. Landsberger showed that one could earn money by making false accusations and detected an increase in that bad habit; *Symbolae M. David II* (1968) 55.

45 C. Locher, *Die Ehre einer Frau in Israel* (1986) 377.

46 For a detailed discussion see Locher, 326–329. C. Wilcke: the woman proves that ‘she did not know the rod’; *Festschrift J. Krecher* (2014) 597 f. §g44 (= § 33).

47 Locher, 323, 376.

48 Locher, 376 f. It is in Chapter V, p. 315–380, that Locher first looks for the *talio* principle elsewhere in the law-books and then surveys the articles about accusations of adultery.

49 Locher, 347–352.

§ 131. If her husband accuses his own wife (of adultery), although she has not been seized lying with another male, she shall swear (to her innocence by) an oath by the god, and return to her house.

Here the woman is accused by her own husband. The ‘oath by the god’ spoken by the woman of course contained the declaration that she had never slept with another man. In the laws of Hammurabi people often resorted to this sort of ‘purification oath’, if they had no recourse to natural means to prove their case.⁵⁰ We note here that the burden of proof rested with the woman. The house to which she could return was that of her father, so she could go back to her own family. Part of a man’s purification oath has been found. The text is badly broken but one sentence says,⁵¹

I did not sleep with her; my rod did not enter her vessel.

These words echo those of a girl, quoted earlier from a letter from Mari: ‘his rod did not enter my vessel’.

The Hebrew Bible records a similar accusation by a man made out of jealousy (Numbers 5:11–31).⁵² To prove whether the woman was guilty or innocent depended on her drinking bitter water in an elaborate ritual. At the end we read:

No guilt will attach to the husband, but the woman must bear the penalty of her guilt (Numbers 5:31).⁵³

In a law of Hammurabi we read:

§ 132 If a man’s wife should have a finger pointed against her in accusation involving another male, although she has not been seized lying with another male, she shall submit to the divine River god for her husband.

Here accusations of the woman’s unchastity are made by third parties. The woman was pointed out apparently as the result of gossip rather than being for-

50 In a fragmentary litigation a woman declares under oath, ‘No man, except NN, has lain with me’; NSGU II no. 24.

51 PBS 5 156 with Locher, 140. In general: Locher, 350 (top).

52 Sophie Démare, ‘L’interprétation de Nb. 5, 31 à la lumière des droits cunéiformes’, in: Durand, *La Femme* (1987) 49–52; Locher, 351 f., n. 131 (with literature); Lafont, *Femmes*, 274–276. She compares Deuteronomy 22:13 ff. There it was possible to present physical evidence and no-one had to resort to an ordeal.

53 Démare and others assume that the man is the woman’s lover.

mally accused in court.⁵⁴ Again the burden of proof rested on the woman and again a divine confirmation was required. However it was not enough for her simply to swear an oath, but she had to submit to an ordeal, to follow a risky procedure to discover the verdict of the god. In Babylonia the usual technique to determine the divine will was to make her jump into the river, since the river was regarded as a god. Someone who drowned in this ordeal was considered to have been pronounced guilty by the river god. The same regulation appears in the older Sumerian laws of Ur-Nammu, showing that the woman did not always drown:⁵⁵

If someone (*lú*) accuses the wife of a man (*guruš*) of lying in (someone's) lap, but the River has declared her pure, the man who accused her shall pay twenty shekels of silver (§ 14).

In the Middle Assyrian laws we read:⁵⁶

§ 17. If a man says to (another) man: 'People sleep with your wife regularly', (but) there are no witnesses, then they shall make a binding agreement, they shall go to the River god).

§ 18. If a man, whether in secret or during a quarrel, says to his colleague: 'People sleep with your wife regularly. I shall prove it myself', (but) he cannot prove this (and) he does not prove it, then they shall beat him with forty strokes; he shall do the king's service for one full month. They shall ... him; moreover he shall give one talent of tin.

10.5.2 In practice

Two Sumerian texts show the reactions to these accusations. In the first the wife admits adultery:

U. was married to his wife, K., and U. said that K. without his knowledge had lain with a strange man, but refused to confirm this by an oath. K. however acknowledged his statement and she was divorced.

It is remarkable that the husband was afraid to make an assertive oath, yet his allegation still carried weight. This situation may have been similar to some in the Netherlands in years past, when courts heard 'the great lie'. There adultery had

⁵⁴ Locher, 327 f., 349 f., 373 f., attempted to discover the difference between 'Verleumdung' and 'falsche Anschuldigung' in the law-books. He found it only in CH § 127 and 132, where 'Verleumdung' is meant.

⁵⁵ Locher, 336–338.

⁵⁶ Locher, 356–365.

long been counted as the only ground for divorce, and even if it had not occurred it was admitted. This admission by the wife may have been similar, opening the way for a mutually acceptable divorce. Perhaps we are giving too modern an interpretation. It has also been suggested that the woman had this affair before her marriage and that her husband later ascertained that she was no longer a virgin, a problem known in Old Testament times and dealt with in Deuteronomy 22:13–21.⁵⁷

In the second text a wife claims she has been faithful, declaring under oath that no-one except [another] U. has slept with her.⁵⁸ Possibly she had been accused of adultery. This oath then fits in with § 131 of the laws of Hammurabi, which we translated earlier, under the rules accusing a woman of adultery.

The River as the arbiter of divine judgement occurs in an Old Babylonian letter concerning the wife of Yarkab-Addu, the king of a small state called Zalmaqum. Various accusations had been made against this woman and the river god would have to determine whether what had been said was true or whether it was slanderous.⁵⁹

Has your mistress carried out any sorcery against Yarkab-Addu, her lord? Has she brought a word out of the Palace to outside? Or has another opened the thighs of your mistress? Has your mistress acted (anything) against her lord?

Evidently these accusations, sorcery, telling secrets, and unfaithfulness, typify the misdeeds one may suspect of a married woman, and only divine judgement by ordeal could give a verdict.

That not every wife accused of a crime like adultery was timid can be seen from a proverb cited in an Assyrian letter.

That sinful woman at the judges' gate has a bigger mouth than her husband.⁶⁰

⁵⁷ NSGU II no. 205:18–26 with Locher, 203–206.

⁵⁸ NSGU II no. 24 with Locher, 205, 350; F. Joannès, *Rendre la justice en Mésopotamie* (2000) 46 no. 6.

⁵⁹ AEM 1/1 (1988) 528 no. 249:37–41 with p. 512 and J.-M. Durand, 'Les accusations d'adultère', in: G. del Olmo Lete, *Mythologie et religion des Sémites occidentaux I* (2008) 532–535.

⁶⁰ ABL 403:14 f. with A. L. Oppenheim, *Letters from Mesopotamia* (1967) 117 no. 116. This translation fits with what follows in the letter, but the interrogative sentence of V. Chamaza, *Die Omnipotenz Assurs* (2002) 385 f., does not fit.

10.6 The Mother of Sin

More information about adultery comes from a little-known mythological story. The goddess Inanna sentences a slave-girl to death. She is called Ama-namtaga, a name meaning ‘the mother of sin’. It can be assumed that she had begun a relationship with Dumuzi, the lover of Inanna. When she returned to the underworld, Inanna became particularly angry because she saw Dumuzi celebrating and very little concerned about her ‘death’. Dumuzi had clearly just begun to enjoy himself with this ‘mother of sin’ when Inanna arrived to interrupt proceedings. The goddess handed her over to the public to be lynched, something that may well have sometimes happened in the real world.⁶¹

10.7 An adulterous princess?

A story which did actually happen is recorded in documents about the daughter of the Amorite king, Bentešina.⁶² Her mother was a Hittite princess, known by her title of Great Lady. King Ammištamru II (1260–1235), the king of Ugarit, was married to this woman, but we have no record of her name. The first document in the dossier is a declaration of divorce, which shows that the king of the Hittites, entitled ‘My Sun’, was all-powerful at the time.⁶³

61 K. Volk, *Die Balag-Komposition úru àm-ma-ir-ra-bi* (1989) 60 f.; M. E. Cohen, CLAM II (1988) 592; Th. Jacobsen, *The harps that once* (1987) 24–27. Discussions: Volk, 48–54; S. Lafont in: *Homages à Romuald Szramkiewicz* (1998) 554; *Femmes* (1999) 32; Th. Jacobsen, *Toward the image of Tammuz* (1970) 206; J. Maier, CRRAI 47/II (2002) 345–354. G. Leick, *Sex and eroticism in Mesopotamian literature* (1994) 212–216, gave another explanation: since Dumuzi is not mentioned, it is not adultery, but a transgression of taboos. Still, K. Volk shows that much evidence points to Dumuzi.

62 For the texts, with introduction, see W. H. van Soldt, ‘Een koninklijke echtscheiding te Ugarit’, in: K. R. Veenhof, *Schrijvend Verleden* (1983) 150–159; S. Lackenbacher, *Textes akkadiens d’Ugarit* (2002) 108–126; *Handbook of Ugaritic studies* (1999) 477, 680 f.; S. Lafont, *Femmes* (1999) 35–37; K. Spronk, ‘Vals beschuldigd? Achtergronden bij de scheiding en verdwijning van een Ugaritische koningin uit de dertiende eeuw voor onze jaartelling’, in: C. Houtman, *De leugen regeert ...* (2004) 96–116.

63 PRU IV (1956) 126 f. RS 17.159 with van Soldt in: Veenhof, *Schrijvend Verleden*, 151 f. no. 1; Lackenbacher, 116 f.; Spronk, 102 no. 4. A good photo of the tablet, sealed by the king, was published in the Belgian catalogue Ph. Talon, K. van Lerberghe, *In Syrië. Naar de oorsprong van het Schrift* (no year) 290.

In the presence of My Sun Tudḫaliya, the great king, the king of the Hittites:

Ammištamru, the king of Ugarit, took the daughter of Bentešina, the king of the Amorites, to wife. (Afterwards) ‘she sought sickness of the head for him’. Ammištamru, the king of Ugarit, left the daughter of Bentešina for ever. Let the daughter of Bentešina take with her everything that she brought into the house of Ammištamru. Let her go away from the house of Ammištamru. All that Ammištamru has stolen, the Amorites must confirm under oath and Ammištamru will give it back to them in full.

Utrišarrumma is in Ugarit the successor to the throne. If Utrišarrumma should say, ‘I am going after my mother’, let him leave his cloak on a stool and depart, and Ammištamru shall appoint another of his sons as successor to the throne. If Ammištamru comes to die and Utrišarrumma (would) make his mother queen again in Ugarit, then he must leave his cloak on a stool, (and) go away wherever he wishes, and My Sun shall then appoint another of the sons of Ammištamru to be king.

In the future the daughter of Bentešina may not claim her sons, daughters or sons-in-law. They will stay with Ammištamru. If she does make any claim, this tablet will invalidate her (claim).

The tablet is sealed with the seal of King Tudḫaliya. We do not know what the expression about ‘sickness of the head’ means, which the king blamed on his wife. It could be that she had a headache, or she was perplexed, or she was racking her brain to solve some problem or other. In any case, it is clearly a metaphorical expression. What we do know is that the king her husband wanted to divorce her and this meant that she was free to leave and take her possessions with her. The clause about her son, the crown prince, is striking. We understand from this that she must have had adult children, for he was old enough to have his own opinion. Setting down one’s cloak on a stool was a symbolic gesture, meaning that someone was leaving the family. Widows who went to remarry also did this. The woman’s brother, Šaušgamuwa, was the king of the Amorites at that time, and it was to him that she fled. Other documents in the dossier show that she suddenly became a victim of her actions when the Hittite king, also a member of the family, became involved. He demanded that she be extradited. Accordingly she was imprisoned and her brother offered to hand her over to Ugarit:⁶⁴

Today Šaušgamuwa, the son of Bentešina, the king of the Amorites, spoke thus to Ammištamru, the son of Niqmepa, the king of Ugarit. ‘Well then, as for your wife, the daughter of the Great Lady, who has committed a great sin against you, how long must I keep guarding your sinner? Well then, take the daughter of the Great Lady and do with her as you wish. If you wish, kill her; if you wish, throw her in the sea; or do whatever you wish with the daughter of the Great Lady.’

64 PRU IV 142 RS. 17.228 with van Soldt, 155 no. 8; Lackenbacher, 123 f.; Spronk, 103 no. 5.

These were his words (...). Now Šaušgamuwa, the son of Bentešina, king of the Amorites, has seized the daughter of the Great Lady, who has committed a sin, and given her into the hands of Ammištamru, the son of Niqmepa, the king of Ugarit. And now Ammištamru, the son of Niqmepa, king of Ugarit, shall deal with the daughter of the Great Lady as he wishes. Also Ammištamru, the son of Niqmepa, king of Ugarit has given 1400 pieces of gold to Šaušgamuwa, the son of Bentešina, the king of the Amorites. If Šaušgamuwa, the son of Bentešina, king of the Amorites, comes and says to Ammištamru, the son of Niqmepa, the king of Ugarit, 'This gold is (too) little. Give me more gold', then this tablet shall invalidate (his claim).

The seal of Šaušgamuwa, the son of Bentešina, king of the Amorites.

So we see from judicial agreements and a few letters that the woman had committed 'a great sin'. In fact 'great sin' is also the expression used in the Hebrew Bible for adultery (Genesis 20:9); in an Akkadian preceptive hymn 'Grievous (*kabtu*) is the guilt of him who has intercourse with (another) man's wife'.⁶⁵ It could be said that she had betrayed her husband and her country, but there could have been other circumstances prevailing.⁶⁶ The threat of punishing her by throwing her into the sea certainly suggests adultery, for it is reminiscent of the way Old Babylonian women who wanted to divorce were thrown into the river. Eventually the princess was indeed killed. The high sum offered to the king of Ugarit must have certainly been in compensation for her death. Other documents from the dossier call it 'blood money'.

We are still at a loss to know what wrong she had done. According to the first document translated above, the act of divorce, nothing serious was mentioned. Adultery has been supposed, with the phrase 'sickness of the head' intentionally used to mask the truth. In a broken passage, the citizens of Ugarit say: 'She let your noblemen ... go inside and she laughed with them regularly'.⁶⁷ Here the word 'laugh' suggests flirting and may be a euphemism for sexual intercourse. But K. Spronk has pointed out that she was unlikely to have been flirting with everyone on such a grand scale and thinks that the woman was being falsely accused in this dossier. Another letter was subsequently found which provides us with fresh information, but the end is broken.

⁶⁵ S. Lafont, *Femmes* (1999) 36f. The hymn: W.G. Lambert, *Babylonian Wisdom Literature* (1960) 119:3–4, with B. R. Foster, *Before the Muses II* (1993) 628.

⁶⁶ Lackenbacher, 113.

⁶⁷ PRU III 43 RS. 16.270:23–25 with van Soldt, 154; Lackenbacher, 118f.; Spronk, 100 no. 1 with p. 111.

Yabninu went to the king of Amurru and he took with him a hundred pieces of gold and a wall-hanging for the king of Amurru. And he took oil in his horn and poured it over the head of the daughter of the king of Amurru. Whatever sin ... my mother ...'⁶⁸

Is this a gesture of forgiveness and the beginning of a new marriage for the sinful woman? That harks back to §198 of the Hittite Laws.⁶⁹ Taken altogether these documents provide us with enough basic material for a detective story.

68 RS 34.124 (KTU 2.72) with Spronk, 108 (no. 15); G. del Olmo Lete, J. Sanmartín, *Festschrift M. Dietrich* (2002) 553–558.

69 S. Démare-Lafont, 'A cause des Anges. Le voile dans la culture juridique du Proche-Orient ancien', in: O. Vernier, *Études d'histoire du droit privé en souvenir de Maryse Carlin* (2008) 249. Her restorations of the last lines (following D. Pardee) are uncertain.