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# Sex or Power? The Crime of the Bride in Deuteronomy 22\*

Aaron Koller (Yeshiva University, NY)

“My Lord Sir Lancelot, I have given thee the greatest riches and the fairest flower that ever I had, and that is my maidenhood that I shall never have again.”

Dame Elaine<sup>1</sup>

## 1. Introduction

### a. Recent work

The case of the law of the slandered bride (Deut 22:13–21) has received an extraordinary amount of attention in recent years. Four articles in major journals, a long and important article in a Festschrift, and part of a book on *Sexual Transgression in the Hebrew Bible* have all dealt with the law extensively.<sup>2</sup> Yet there is something more

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\* The ideas in this paper were worked out in conversations with Shira Hecht, who was also kind enough to read an early draft of the paper. A version of this was presented at the SBL International Meeting in Tartu, Estonia, in July 2010. I am indebted to Yeshiva University for making my trip to this beautiful city possible, and to the participants in the session on biblical law for their comments and criticisms. Later, Dr. Shalom Holtz read a draft and made important critical comments which assisted in formulating the arguments, and Profs. Jeffery H. Tigay and Moshe J. Bernstein read drafts and provided valuable criticisms and references.

1 Sir Thomas Malory, *Le Morte d'Arthur: The Winchester Manuscript*, ed. Helen Cooper; Oxford: Oxford University Press, 1998, 285.

2 Bruce Wells, Sex, Lies, and Virginal Rape: The Slandered Bride and False Accusation in Deuteronomy, *JBL* 124, 2005, 41–72; Cynthia Edenburg, Ideology and social context of the Deuteronomic women's sex laws (Deuteronomy 22:13–29), *JBL* 128, 2009, 43–60; Joseph Fleishman, The delinquent daughter and legal innovation in Deuteronomy xxii 20–21, *VT* 58, 2008, 191–210; Meir Malul, What is the nature of the crime of the delinquent daughter in Deuteronomy 22:13–21? A rejoinder to J. Fleishman's suggestion, *VT* 59, 2009, 446–459; Adele Berlin, Sex and the single girl in Deuteronomy 22, in *Mishneh Todah: Studies in Deuteronomy and Its Cultural Environment*, in Honor of Jeffrey H. Tigay, ed. Nili Sacher Fox, David A. Glatt-Gilad, and Michael J. Williams; Winona Lake, Eisenbrauns, 2009, 95–112; Hilary B. Lipka, *Sexual transgression in the Hebrew Bible*, HBM 7, Sheffield, Sheffield Phoenix, 2006, 93–101. The only book-length treatment remains Clemens Locher, *Die Ehre einer Frau in Is-*

to say, in part because some of these studies were published so close together that the authors did not have the chance to build on each other's insights, and in part because important earlier insights into the law do not seem to have been sufficiently integrated into the more recent work.

#### b. The central problem

The law has raised a number of issues in the minds of recent commentators. One is the role of the bride's parents in the proceedings. Fleishman writes that their role is to defend their daughter.<sup>3</sup> But he also writes that the bride's alleged crime is primarily a crime against her parents, rather than her husband,<sup>4</sup> and it is difficult to accept that they are present as both victims of the crime and defense attorneys. Malul, on the other hand, believes that the primary victim is the husband, and the harm to the parents is merely collateral damage; their role in the case, on his reading, is merely that of custodians of the evidence.<sup>5</sup>

This question is actually only secondary, however, to the most difficult question regarding this law: what did this bride do to deserve the death penalty? The problem may be stated succinctly. Even if we assume that the groom's claim of non-virginity is to be taken as reliable, a ruptured hymen does not indicate that there was any sexual transgression on the bride's part, and certainly not a capital crime. The hymen may well have been damaged in the course of non-sexual acts, such as horseback riding, as noted by the Rabbis (bKet 11b).<sup>6</sup> And even if it could be known that it was sexual activity which resulted in the torn hymen, if the sexual act was either coerced or prior to betrothal, there is no crime to speak of.<sup>7</sup>

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rael: Exegetische und rechtsvergleichende Studien zu Deuteronomium 22,13–21, OBO 70, Freiburg and Göttingen, Universitätsverlag Freiburg and Vandenhoeck & Ruprecht, 1986.

3 Fleishman, *The Delinquent Daughter* (above, n. 2), 201.

4 Fleishman, *The Delinquent Daughter* (above, n. 2), 195.

5 Malul, *What is the Nature* (above, n. 2), 455–456.

6 The Rabbis discuss cases which show that this is a tenuous assumption (bKet 10a–b); see Jeffrey H. Tigay, *Examination of the Accused Bride in 4Q159: Forensic Medicine at Qumran*, *JANES 22: Muffs Volume*, 1993 (129–134), 129 with n. 2. For the unreliability of the absence of hymeneal blood as proof of non-virginity more generally in late antique and medieval cultures, including discussion of some of the Talmudic texts, see Kathleen Coyne Kelly, *Performing Virginity and Testing Chastity in the Middle Ages*, *Routledge Research in Medieval Studies 2*, London and New York, Routledge, 2000, esp. 19–20 and 28–30, as well as the discussion in Hanne Blank, *Virgin: The Untouched History*, New York, Bloomsbury, 2007, 88–90 and 112–113, with further references to classical and medieval literature. For the rabbinic construction of the law of the slandered bride, see especially the sophisticated analysis of Moshe Halbertal, *Interpretive Revolutions in the Making*, Hebrew, Jerusalem, Magnes, 1997, 84–92, and also Joseph Fleishman, *The husband's sin and punishment in Deuteronomy 22:18–19 in early Jewish law*, *Jewish Law Association Studies 18*, 2008, 70–87. It should be noted that one Tanna (R. Eliezer b. Jacob) argued that the law was “as written”, but the dominant rabbinic view reinterpreted essentially every detail, bringing it in line with regular judicial proceedings.

7 Certainly it does not seem fair to say that the law “mandate[s] that a woman could be killed for a lack of virginity (Deut. 22.13–21)” (Cheryl B. Anderson, *Woman, Ideology, and Violence:*

This paper argues that the key to the law is the realization that although the groom accused the bride of a sexual wrongdoing, she is punished (if she is) for something different.<sup>8</sup> The sexual activity alleged is hardly criminal, but she may yet be punished for the subversion of societal hierarchies, in particular, of the control parents are supposed to have over their daughter's sexuality. The law cannot – by design – ascertain whether an illicit sexual union took place, because that is irrelevant to the issues at hand. Indeed, the question is not whether there was licit or illicit sex, but whether the parents were aware of the sexual activity taking place. The crime, if there was one, was not just the sex itself – not just *liznōt* – but the flouting of the parental authority – *liznōt bēt avīhāh* (v. 21).<sup>9</sup> If the parents were not aware of their daughter's sexual past, the crime of subverting social hierarchies is proven, and the bride is stoned to death.

## 2. The workings of the law

### a. Dynamics of the legal proceedings

When the groom comes forward with his accusation, the burden of proof shifts to the parents of the bride, who are asked to produce the “signs of their daughter's virgin-

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Critical Theory and the Construction of Gender in the Book of the Covenant and the Covenant Code, JSOT Sup 394, London, T&T Clark, 2004, 49), or that the bride's concealment of the sexual experience is itself the proof necessary to show that the sex was after betrothal, and thus a capital crime (so Richard M. Davidson, *Flame of [Yhwh]: Sexuality in the Old Testament*, Peabody, MA, Hendrickson, 2007, 358). Besides questions of reasonable doubt and the like, all the cross-cultural parallels show that in a society which prized virginity, women could be expected to hide any experiences which deprived them of theirs. In any event, virginity in and of itself was not the issue; for an extensive discussion of texts relating to virginity from the Bible and the Ancient Near East, see Locher, *Die Ehre einer Frau in Israel*, 117–237.

<sup>8</sup> The details of the groom's accusations will be set aside here. Tigay argues that the case is one in which rather than quietly approaching the bride's family with his complaint, the groom went public with the accusation (Jeffrey H. Tigay, *Deuteronomy*, JPS Torah Commentary, Philadelphia, Jewish Publication Society, 1996, 204). Also important is the meaning of the phrase *wē-šām lah 'ālilōt d' bārīm*. The NJPS translates, “he makes up charges against her”, according to which the reader knows from the outset that the accusations are false. Tigay corrects, this, however, offering instead the rendering “accuses her of misconduct” (Tigay, *Deuteronomy*, 204 and 384 n. 45), which allows that the accusations may or may not be true. This possibility is supported by the “hierarchical ordering of conditionals”: the main law begins with *kī*, and the secondary case (in v. 20) begins *'im*. For this to be coherent, it would appear that the phrase *wē-šām lah 'ālilōt d' bārīm* has to govern both the case in which the bride is convicted and the case in which she is acquitted – which means that it cannot, in itself, tell us whether the charges are slanderous or accurate. For further discussion of *'ālilōt*, see S. R. Driver, *A Critical and Exegetical Commentary on Deuteronomy*, ICC 5, New York, Scribner, 1895, 254–255. The term “hierarchical ordering of conditionals”, and the logic of this analysis, is drawn from Bernard M. Levinson and Molly M. Zahn, *Revelation Regained: The Hermeneutics of כִּי and אִם in the Temple Scroll*, DSD 9 2002 (295–346), 314–327.

<sup>9</sup> The significance of this phrase in this context was pointed out to me by Jeffrey Tigay.

ity”,<sup>10</sup> the bloody sheets from the consummation of the marriage. The parents are not, it seems, playing the role of defendants.<sup>11</sup> Instead, the parents are being challenged to be the *prosecutors*. This is the upshot of Tikva Frymer-Kensky’s important analysis of this law; she observed on a number of occasions that there is significance to who takes possession of the bloody sheets from the deflowering of a bride.<sup>12</sup> Whereas in certain cultures the blood-stained garments are displayed to the family or to a wider audience immediately,<sup>13</sup> the law in Deuteronomy assumes that the parents of the bride will take possession of the garments without displaying them, holding on to them for future use if the need should arise. In the 19<sup>th</sup> century, Samuel David Luzzatto pointed out an important implication of this situation: “it is possible that the evidence is fraudulent..., but the Torah eased the hardship on the bride by commanding that we believe the evidence of the blood, although it is evidence which one can have doubts about”.<sup>14</sup> In the next century, Frymer-Kensky elaborated on this point:

“It is quite easy to imagine a scenario in which the parents, finding a blank cloth and either believing their daughter’s protestations of virginity or having a vested interest in ‘believing’ them, simply falsify the blood on the cloth. If they had known that she was not a virgin and have committed fraud, or if they are more angry at the accusation than at the girl, they can always spread some animal blood on the sheets before they spread them out before the elders. This vindicates their own honor and shames the bridegroom in one fell swoop. The girl will die only if the parents are so enraged at her that they will

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- 10 From context it appears that this must be the translation of *b<sup>o</sup>tūlīm* in our passage. For discussion of the “signs” which the husband claims to not find, and which the parents are expected to produce, see Tikva Frymer-Kensky, Deuteronomy, in *Women’s Bible Commentary*, ed. Carol A. Newsom and Sharon H. Ringe, Louisville, KY, Westminster John Knox Press, 1998, 62.
- 11 Edenburg, *Ideology and Social Context* (above, n. 2), 51 with n. 25 observes that the burden of proof does not usually fall on the defendant. She cites a suggestion by Bruce Wells that the law “might reflect a legal principle according to which the litigants with the best access to evidence are required to produce it in order to prove their case”, but Edenburg rejects this idea.
- 12 Tikva Frymer-Kensky, *Virginity 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, JSOT Sup 262, Sheffield, Sheffield Academic Press, 1998, 95. There are a number of fascinating literary twists on the motif of the bloody sheets, which are worthy of a study of their own, for example, Desdemona’s bloody sheets in *Othello*, which are bloodied by her death rather than her sexual experience, and the blood from the wounded Lancelot staining Guinevere’s sheets and leaving their own sexual relationship ambiguous (on which see Gary Ferguson, *Symbolic Sexual Inversion and the Construction of Courtly Manhood in Two French Romances*, *The Arthurian Yearbook* 3, 1993, 203–214).
- 13 See, for example, the citations in Driver, *Deuteronomy*, 255.
- 14 S. D. Luzzatto, *Commentary on the Five Books of the Torah*, Tel Aviv, Dvir, 1965, 542. I am indebted to Jeffrey Tigay for drawing my attention to Shadal’s comments.

show the elders clean sheets. In the final analysis, the fate of the girl rests with her parents.”<sup>15</sup>

Once it is realized that the possibility of faking the evidence of the bloody garments is built into the law itself, the pieces fall into place. Rather than defending their daughter, the parents are actually being asked to decide her fate. The elders, ostensibly the judges in the case, do not have any judicial role in this case; they do not investigate, do not interrogate, and do not pass judgment.<sup>16</sup> There is only one question: can the parents produce the bloody sheet? As Frymer-Kensky said, there appears to be no reason in the world why they would not produce a bloody sheet. We recall that Joseph’s brothers had no trouble passing off the blood of a goat as the blood of their brother, and as Adele Berlin noted, this possibility only vanished with the advent of DNA technology.<sup>17</sup>

#### b. Fake evidence and its implications

Lest a cynic claim that the ancients were more trusting, and it is only skeptical moderns who realize that the hymeneal blood can be easily faked, it may be useful to point out that fake hymeneal blood is a common trope in both folk literature and ethnographic reports.<sup>18</sup> In the Palestinian Talmud the possibility of the bride using a bird’s blood is entertained.<sup>19</sup> A very similar motif is found in *Alf layla wa-layla*. In one story, Princess Budur, disguised as a man, has no choice but to marry the beautiful Hayyat al-Nufus. When Hayyat begs Budur to finally deflower her, Budur is forced to admit that she cannot, and instead produces a bird to slaughter for its blood. “You need only show her these,” Budur says, “for happily custom does not allow any further examination”.<sup>20</sup> More recently, informants in Morocco reported that if a bride was not a virgin, a chicken would be slaughtered to produce bloodied

15 Frymer-Kensky, *Virginity and the Bible* (above, n. 12), 95; Frymer-Kensky, *Law and Philosophy: The Case of Sex in the Bible*, *Semeia* 45, 1989, 93; Frymer-Kensky, *Deuteronomy* (above, n. 10), 61–63; Frymer-Kensky, *Reading the Women of the Bible*, New York, Schocken, 2002, 172.

16 My thanks to Jeffrey Tigay for confirming that the elders are not “judges” anywhere in Deuteronomy. Contrast Pamela Barmash, *Homicide in the Biblical World* (Cambridge: Cambridge University Press, 2005), 89–90 with n. 69 (“the elders do exercise judicial functions in general”), and Frymer-Kensky, *Deuteronomy* (above, n. 10), 63, who speaks of the elders having the “power to decide”.

17 Cf. Berlin, *Sex and the Single Girl* (above, n. 2), 109.

18 See Kelly, *Performing Virginity* (above, n. 6), 128–130; Theodora A. Jankowski, *Hymeneal Blood, Interchangeable Women, and the Early Modern Marriage Economy in Measure for Measure and All’s Well that Ends Well*, in *A Companion to Shakespeare, Volume IV: The Poems, Problem Comedies, Late Plays*, ed. Richard Dutton and Jean D. Howard, Malden, MA, Blackwell, 2003, 89–105.

19 yKet 1:1 (25a). See again Tigay, *Examination of the Accused Bride* (above, n. 6), 130 and n. 3, with references also to Abarbanel’s recognition of the possibility of fraudulent blood.

20 The translation in front of me is Powys Mathers, *The Book of the Thousand Nights and One Night*, London, Routledge, 1986, 2.48–49.

sheets,<sup>21</sup> and others from the same culture told of grooms who had slept with their brides would cut themselves to avoid humiliation on the wedding night.<sup>22</sup>

Since the parents of the bride are expected to produce the bloody sheets, and they have the ability to fake this evidence without any difficulty, the groom must know that the case is stacked against him.<sup>23</sup> Indeed, he is in position to know with certainty prior to the start of the case whether there was a bloody sheet the morning after the nuptials, and one might think that he would not choose to initiate this suit unless he knew well that the evidence was on his side.<sup>24</sup> Yet the parents of the bride are given the ability to fabricate the evidence without any difficulty. Why would a groom bring such a charge, then? And why would the parents *not* produce the proof of their daughter's virginity. As Frymer-Kensky said, it would have to be because "the parents are so enraged at her that they will show the elders clean sheets".

If the parents knew their daughter was not a virgin, and the parents and the daughter had together colluded to trick the groom into marrying her under the pretense of her virginity, they will presumably continue to collude and produce fraudulent bloody sheets. If the parents actually believed that she was a virgin, however, they are now the litigants in the case, since it was her parents, first and foremost, whom the bride defrauded. Thus I would agree with the judgment of Fleishman that „the criminal behavior of the daughter lies within the scope of her relationship with her parents rather than with her husband”.<sup>25</sup> They may choose to punish her by failing to find bloody sheets, and thus ensure that she be convicted and punished.<sup>26</sup>

When the groom brings the charge of non-virginity, then, he is actually the party best positioned to know the truth. If there had been bloody sheets, it is hardly conceivable that he would have initiated the suit to begin with.<sup>27</sup> When he does bring the claim, one might claim that he is not really asking whether or not there was hymeneal blood on his wedding night; no one knows the answer to this question better

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21 See the ethnographic data cited in Meir Malul, *Susapinnu: The Mesopotamian Paranymp and His Role*, JESHO 32, 1989 (231–278), 264–265.

22 Susan Schaeffer Davis and Douglas Davis, *Dilemma of Adolescence: Courtship, Sex, and Marriage in a Moroccan Town*, in *Everyday Life in the Muslim Middle East*, 1<sup>st</sup> ed., Bloomington, Indiana, Indiana University Press, 1993, 87–88, and Kelly, *Performing Virginity* (above, n. 6), 129. In the second edition of *Everyday Life in the Muslim Middle East*, the article by Davis and Davis is gone, but there is another study with much relevant information: Angel Foster, *Young Women's Sexuality in Tunisia: The Health Consequences of Misinformation among University Students*, pp. 98–110; see esp. 102–106 on virginity and its value.

23 Lipka, *Sexual Transgression* (above, n. 2), 101; Berlin, *Sex and the Single Girl* (above, n. 2), 109.

24 Andreas Kunz-Lübcke emphasized (p.c.) that the case is presumably not occurring the day after the wedding, based on 21:13 (“if a man marries a woman ... and then despises her”).

25 Fleishman, *The Delinquent Daughter* (above, n. 2), 195, contra Malul, *What is the Nature* (above, n. 2), 450. Contra also Blank, *Virgin* (above, 6), 30–31, who claims it is a crime against God.

26 Timothy Willis, *The Elders of the City: A Study of the Elder-Laws in Deuteronomy* (SBL Monograph Series 55; Atlanta: Society of Biblical Literature, 2001), 190.

27 This point is again made by Shadal (above, n. 14), 542.

than he does. The question he is asking the parents (who must know as well as he does that there was no hymeneal blood) is whether they want to take responsibility for their daughter's non-virginal status.

### 3. The implications of the law being about power rather than sex

Having argued that the details of the law show that it can only be about the power of the family structure, not the sexual crime, we now turn to explore some of the implications of this realization. In particular, the role of the family in the "family laws" of Deuteronomy, the place of execution of the non-virginal bride, and the punishment legislated for the groom whose accusations turn out to be falsified by the evidence, will all be examined in this light.

#### a. The parallel to *ben sorer u-moreah*

Taking the law to be fundamentally about the power of the parents over their daughter's sexuality further strengthens the connection between the law of the slandered bride and the law of the *ben sorer u-moreah* "the incorrigible son", a comparison which has been noted by many.<sup>28</sup> Among recent writers, both Fleishman and Berlin noted the parallels, but both also noted that the role played by the parents seems to differ in the two cases.<sup>29</sup> Once it is realized that the parents in the case of the slandered bride actually do possess the power, however, the differences fade away. Again, Frymer-Kensky already said as much:

"The case of the slandered bride and the case of the rebellious son both present circumstances in which children endanger their parents' honor and wellbeing, the daughter by lack of chastity and the son by drunkenness and profligacy. The parents do not have the legal authority to execute their children. The authority to sentence them to death resides with the council of elders. But in both cases, the parents have the real power to determine how the council will act."<sup>30</sup>

In the case of the non-virginal bride, the parents cannot be the ones to first bring the charges: either they were in collusion with their daughter, or they have no way of knowing that their daughter is no longer a virgin. But when the matter is brought to their attention, the ball is in their court. If they wish to allow her to be punished for ignoring their parental authority, they have the ability to do so: all they have to do is

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28 Willis, *The Elders of the City*, 187.

29 Berlin, *Sex and the Single Girl* (above, n. 2), 111–112 with n. 42; Fleishman, *The Delinquent Daughter* (above, n. 2), 201.

30 Frymer-Kensky, *Virginity and the Bible* (above, 12), 95. The claim that "the authority to sentence them to death resides with the council of elders" is not quite true: the elders, as mentioned above, provide only the forum for the declarations of the various parties to the case.

fail to produce bloody sheets. But if they do not wish their daughter to die (either because they knew all along or because they would rather handle the affair in some other way), all they have to do is produce the “evidence” of her virginity.

The real point is that when the court asks the parents about their daughter’s virginity, they are not really asking about her sexuality, but about the parents’ control over that sexuality.<sup>31</sup> If they want to admit that they have lost control over her, the entire town is prepared to solve the problem by executing the daughter. This is precisely comparable to the case of the incorrigible son, in which the parents are not obligated to bring their son to the elders for judgment, but have the right to do so. If they complain, in that case, that their son is out of control, the town will, in that case as well, solve the problem by stoning the out-of-control child to death. As Berlin explained, “these children [in the two cases] are juvenile delinquents. The boys get drunk, join gangs, and engage in petty crimes and sexual exploits...; the girls sleep around and get pregnant”.<sup>32</sup>

In this regard, it is noteworthy that there are hints in rabbinic literature that the Rabbis, too, saw these two laws as comparable. In fact, the punishment of flogging for the groom if he is determined to be lying (more on which below) was derived by the Rabbis from a comparison between this law and the law of the incorrigible son:

“It was taught [in a *beraita*]: ‘they shall punish him’ – this is money; ‘they shall chastise him’ – this is flogging. It is well [understood] that ‘they shall punish’ refers to money, since it says, ‘they shall punish him a hundred [shekels of] silver and give it to the father of the girl’, but how do we know that ‘they shall chastise’ is flogging? R. Abbahu says: we learned [the meaning of] ‘chastise’ from [the attestation of] ‘chastise’ elsewhere and ‘son’ from ‘son’...” (b. Ketubbot 46a).

As the Talmud explains, the flogging for the slandering groom is derived from a *gezera shava*, since the word *yiss<sup>e</sup>rū* appears in both the law of the incorrigible son – where the punishment of flogging is already known to the Rabbis – and the law of the slandered bride.<sup>33</sup> Pointing out this verbal connection may be one way the Rabbis signaled that they perceived a connection between the two laws.

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31 This is not, of course, what bothered the groom himself when he began to spread word of his bride’s status at marriage, as Tigay pointed out. The groom’s complaint was either that he married a non-virgin or that he was the victim of fraud, but only indirectly is he concerned with his in-laws’ control over their daughter.

32 Berlin, *Sex and the Single Girl* (above, n. 2), 111. Compare again Frymer-Kensky, *Virginity in the Bible* (above, n. 12), 95, and see Blank, *Virgin* (above, n. 6), 10–11, on virginity as a female attribute cross-culturally (despite n. 35 below).

33 The flogging of the ‘incorrigible son’ is, in turn, derived through a *gezera shava* between the incorrigible son and the casuistic law of two men fighting at the beginning of Deut 25. I am indebted to Moshe Bernstein for reminding me of this passage from Bavli Ketubbot and pointing out its implications for our discussion.

All this is to reiterate that the crime committed by the bride, for which she is to be executed according to Deut 22:20–21, was not a sexual crime at all, but the same crime committed by the incorrigible son: the non-virginal bride is subverting power structures and undermining hierarchies; according to the laws in Deut 21–22, such subversiveness is a capital crime.<sup>34</sup> Frymer-Kensky pointed out that this also gets at the heart of *why* virginity was prized and protected in biblical culture.<sup>35</sup> She argued convincingly that within that culture, the value of virginity had nothing to do with sex:

“The chastity of the girl thereby becomes an indicator of the social worth of the family and the men in it. The honor of the family is at stake, for real men have the strength and the cunning to protect and control their women. . . . Virginity becomes a tangible reason for the family’s right to control their women.”<sup>36</sup>

Furthermore, because the issue is not sex, but power, the operative question is not whether or not a daughter is a virgin, but whether she is *perceived* as a virgin. Thus the parents do not have to act until there is a public charge against their daughter. At that point, they have to decide if they want to save her, by falsifying evidence, or punish her, by letting her behavior become public knowledge. Regarding modern Bedouin societies, anthropologist Joseph Ginat wrote, “murder [of a daughter as punishment for illicit sexual activity] occurs only when there is a *public accusation by an injured party*”.<sup>37</sup> Biblical law does not countenance murder – un-

34 This also the view of Carolyn Pressler, *The View of Women Found in the Deuteronomic Family Laws*, BZAW 216, Berlin, Walter de Gruyter, 1993, 30. I do not accept the formulation of the crime offered by Wells, as being “sex plus deception” (*Sex, Lies, and Virginal Rape* [above, n. 2], 49–50 and *passim*). Sex has nothing to do with the crime, any more than eating meat has to do with the crime of the incorrigible son. Meat and sex are merely the symptoms or indicators of the true crime. For a different rejection of Wells’ position in this regard, see Fleishman, *The Delinquent Daughter* (above, n. 2), 194. For a different view regarding the crime, cf. Malul, *What is the Nature* (above, n. 2), 455–456.

35 It should not be thought that this is true for other cultures in which virginity was held dear. In early medieval French and British culture, male virginity was treasured as much as that of females, as can be seen in Malory’s *Le Morte d’Arthur*: Sir Galahad’s “maidenhood” (sic!) is what enables him to achieve the Holy Grail, and to balance the statement of Dame Elaine (cited above, at n. 1), one could cite the words of Sir Percival: “How nigh I was lost, and to have lost that I should never have gotten again, that was my virginity, for that may never be recovered after it is once lost” (Malory, *Le Morte d’Arthur* [above, n. 1], 344). In this culture virginity is symbolic of the repudiation of earthly pleasures for the sake of spiritual purity (see also Cooper’s note on p. 554 regarding sexuality in the Garden of Eden), but this is far from the biblical conception.

36 Frymer-Kensky, *Virginity in the Bible* (above, n. 12), 84–85; also *Reading the Women of the Bible* (above, n. 15), 9. Indeed, Blank, *Virgin* (above, n. 6), 26–27, has argued (following others – see references on p. 260) that virginity became a culturally significant category in human history as a way of ensuring paternity claims.

37 Joseph Ginat, *Blood Revenge: Family Honor, Mediation and Outcasting*, 2<sup>nd</sup> ed., Brighton and

supervised and unregulated. But it does provide a mechanism for fulfilling the mandate of honor killings through the protocols of the elders.<sup>38</sup>

#### b. Power of the father/parents

This understanding of the law also has implications for understanding the power of the *pater familias* as conceived in the law. Berlin suggested that the law is specifically intended to remove the parents from the judicial proceedings to some extent; the execution is carried out by the townspeople, since “Deuteronomy does not permit ‘honor killings’ by members of the woman’s family”.<sup>39</sup> This needs to be slightly modified: Deuteronomy does not permit *private* honor killings. What it does permit, in both the case of the incorrigible son and the case of the slandered bride, is honor killing with at least a veneer of judicial process.<sup>40</sup> The parents cannot make their problem child suddenly go missing or be found on the bottom of a well; the only legal way to deal with the issue is to make it a public issue. In the case of the son, they may simply present him to the elders with the claim that he is rebellious; in the case of the daughter, if her groom accuses her of unchastity, the parents may choose to admit as much by not providing bloody sheets. Either way, the parents are handing over their children to be publicly executed by stoning.

This also provides a fitting explanation for the catchphrase *u-bi’artā ha-rā’ miqqirbēkā* “you shall purge the evil from your midst”, found in Deut 22:21 (as well as in 21:21, regarding the incorrigible son). This is not, I believe, related to issues of gender roles, as Edenburg argued.<sup>41</sup> Instead, the “evil” that has to be purged is the subversion of the authority of parents over their children.<sup>42</sup> A daughter who has flouted her parents’ authority and carried on a sexual relationship without their knowledge, like a gluttonous and drunkard son, is an evil which must be purged from society.

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Portland, Sussex, 1997, 133.

38 It is worth comparing this to the biblical laws of the blood avenger, but this would take us too far afield.

39 Berlin, *Sex and the Single Girl* (above, n. 2), 102.

40 It should again be emphasized that there is no real judicial process, and the elders have no actual judicial power. See above, at n. 16.

41 Edenburg, *Ideology and the Social Context* (above, n. 2), 47. Edenburg further suggests that the text is arguing that “maintaining the proper relations between the sexes – particularly with regard to the uncompromising fidelity incumbent upon women to maintain toward their patron... – is as critical to preserving the proper social order as maintaining exclusive fidelity to YHWH”.

42 The other occurrence of “you shall purge the evil from your midst” are: Deut 13:6, regarding the false prophet; 17:7, regarding an idolater; 17:12, regarding one who flouts the ruling of the court in Jerusalem; 19:19, regarding the plotting witness; 21:21, regarding the ‘incorrigible son’; 22:22-23, regarding adulterers; 24:7, regarding a kidnapper who sells his victim. No single factor needs to explain all of these, but a number of them (one who flouts the court’s ruling, plotting witness, the incorrigible son, adulterers) may plausibly be seen as subverting societal norms and structures, and it is possible to interpret the others in this light, as well.

## c. Stoning at her parents' house

Understanding that it is the parents who are actually the ones actively choosing to punish their daughter also assists in clarifying the significance of one of the legal details in the text. The bride, if she is convicted, is to be stoned at the entrance to her parents' house. Some scholars have seen this as a dramatic way of shaming the parents; according to them, the choice of locale "marks this spot and this household as frauds, open to sanction by the community due to a breach of contract".<sup>43</sup>

This seems to presuppose that the parents are on the daughter's side, and the family is being punished, as a bloc, by some unnamed other party (the elders?). When it is realized that the parents are actually the ones responsible for the execution of their rebellious daughter, however, the significance of the site of the execution has to be understood differently. In fact, precisely the opposite interpretation seems more reasonable. The daughter is executed at her parents' house because her crime was violating the orderliness and hierarchical structure of her parents' house. By taking her immediately outside the house and, at the parents' command, so to speak, executing her, the house is cleansed of its problem and restored to its good standing within the community.<sup>44</sup> This accords with the practices known from other cultures, where the execution of the person bringing shame on a family restores the family's honor.<sup>45</sup> According to one anthropologist, in "many traditional Mediterranean societies[...a]n unmarried girl's loss of virginity brings unbearable shame to her family or lineage who, if they are to recover their honor, must ... kill the girl".<sup>46</sup> In light of our analysis, the society depicted in Deut 22 shares these beliefs.

In this sense this law differs from that of the "incorrigible son", who is apparently stoned at the city gate ("they shall take him out to the elders of his town, to the gate of his locale").<sup>47</sup> This difference between the two laws highlights one final aspect of the law of the slandered bride. The son who flouts authority and subverts societal hierarchies is executed, because the subversion in itself is a danger to so-

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43 Victor H. Matthews, Honor and shame in gender-related legal situations in the Hebrew Bible, in *Gender and Law* (above, n. 12), 112; see also Lipka, *Sexual Transgressions* (above, n. 2), 100.

44 Compare Fleishman, *The Delinquent Daughter* (above, n. 2), 204–205.

45 See, for example, the story in Ginat, *Blood Revenge* (above, n. 37), 149–150. See also Gideon M. Kressel, *Sorricide/Filiacide: Homicide for Family Honor*, *Current Anthropology* 22, 1981, 141–152, and especially the critique by Ginat on p. 153.

46 Jane Schneider, *Of Vigilance and Virgins: Honor, Shame and Access to Resources in Mediterranean Societies*, *Ethnology* 10, 1971, 21. In Schneider's cases, the family also has to kill "their daughter's lover". Not so in the biblical context, although whether this is a technicality (because his identity is not known) or a substantive point (since she and no one else is responsible for her own sexuality) is not clear. Whether "Mediterranean societies" is a category with any explanatory significance has been challenged effectively by Frank Henderson Stewart, *Honor*, Chicago and London, University of Chicago Press, 1994, 75–78.

47 The significance of this point was first pointed out to me by Shira Hecht, and then reiterated by Jeffrey Tigay.

ciety and something which cannot be tolerated.<sup>48</sup> The daughter who has arrogated to herself control over her own sexuality is equally subversive in this regard, and also is to be executed. But there is also something further: she has shamed her family in a way the son cannot. Again, cross-cultural evidence demonstrates that the family's honor is often dependent on perceptions of the sexuality of the females in the family.<sup>49</sup> The shame brought upon the family by the groom's accusations are what lead to the distinctive place of execution of the slandered bride, and which also, as will be discussed in the following section, assist us in understanding the punishments legislated for the groom if he is convicted of lying about his bride.

#### d. The punishment for the groom

Finally, we turn to the punishments meted out to the groom in the case in which his accusations turn out to be falsified (not to say false). In that case, we will have to reformulate our analysis. The groom's accusations had the power to shame the bride's family with the claim that the parents had no control over their daughter's sexuality. Had the parents thought it was appropriate, they could have restored the family honor by executing the girl and thus purging the problem. In this case, however, they produced the bloody sheets allegedly from the wedding night, and thereby defused the accusation and restored their family's standing.<sup>50</sup>

The groom now has to be punished for the crime he attempted to commit. That there are multiple clauses to the punishment is clear, but the exact number has been subject of some discussion. The verses (Deut 22:18–19) legislate:

18 וְלָקְחוּ זָקְנֵי הַשְּׂעִיר־הַהוּא אֶת־הָאִשׁ וְיִסְרוּ אֹתוֹ: 19 וְעָנְשׂוּ אֹתוֹ מֵאָה כֶּסֶף וְזָתְנוּ לְאָבִי הַנְּעֻמָּה  
כִּי הוֹצִיא שֵׁם רַע עַל בְּתוּלַת יִשְׂרָאֵל וְלֹדְתָהּ לְאִשָּׁה לְאִיּוֹכַל לְשִׁלְחָהּ כָּל־יָמֶיהָ:

“The elders of that city shall afflict him (*w<sup>e</sup>-yiss<sup>e</sup>rū ’ōtō*) and they shall fine him a 100 [shekels of] silver, and give [the silver] to the father of the bride, since he slandered an Israelite virgin; she shall be his wife and he shall not be able to divorces one at.”

Precisely how many punishments are legislated has been a matter of contention; the issue hinges on the meaning of *w<sup>e</sup>-yiss<sup>e</sup>rū ’ōtō*. In brief, the possibilities are that

48 The Rabbis argue that he is “judged based on his end” (mSan 8:5), i.e., he is executed for what we expect he will do in the future. This is, I believe, another way of saying that it is not the particular actions done – eating meat and drinking wine – which have earned him the death penalty, but the danger to society which his attitude represents. (The Mishnah itself continues, “let him die innocent, and not die guilty”, which may indicate another way of thinking about his execution.)

49 See the many examples collected from the Bedouin world in Ginat, Blood Revenge (above, n. 37) and Stewart, Honor (above, n. 46).

50 Among the Bedouin, there are similarly two ways of restoring honor which has been impugned: admitting the wrong and righting it, or disputing the accusations. See Stewart, Honor (above, n. 46), 79–85.

it means “they shall flog him”, or “they shall punish him”. If it means “they shall flog him”, three punishments are laid down for the slandering groom: flogging, a monetary punishment (“hundred [shekels of] silver”), and forfeiture of the right to divorce. If it means “they shall punish him”, though, the following verse (v. 19) is explanation of what that punishment is to be, and  $w^e\text{-}yiss^e r\bar{u} \text{ } \bar{o}t\bar{o}$  is not an independent punishment.<sup>51</sup> Following the latter interpretation, the NEB translates, “The elders shall take the man and punish him: they shall fine him a hundred pieces of silver....”

Lexically, either of these interpretations seems possible.<sup>52</sup> A brief review of the ancient interpretations of the law shows that both were attested already two millennia ago; a review of the ancient Near Eastern parallels, especially in light of our analysis of the law above, shows that those parallels strongly support understanding  $y\bar{s}r$  as referring to corporal punishment.

#### *i. Ancient interpretations*

The only explicit testimonies we have from antiquity took  $w^e\text{-}yiss^e r\bar{u} \text{ } \bar{o}t\bar{o}$  to be an independent punishment, flogging.<sup>53</sup> Josephus writes (*Antiquities* 4.248), “Let him, for having brought an accusation and slander boldly and rashly, pay and additional penalty, receiving forty lashes minus one, and let him pay fifty shekels to the father.”<sup>54</sup> The standard rabbinic (= Babylonian) Targumim take  $w^e\text{-}yiss^e r\bar{u} \text{ } \bar{o}t\bar{o}$  to require corporal punishment: Onqelos (as well as Pseudo-Jonathan) has  $wylqwn \text{ } yth$

51 Anthony Phillips, Another Look at Adultery, *JSOT* 20, 1981 (3–25), 9, rejects  $y\bar{s}r$  as a reference to corporal punishment, and takes it as “to admonish, discipline”; Mayes, Deuteronomy, 310, argues that with the exception of 21:18,  $y\bar{s}r$  is never otherwise used to refer to corporal punishment, so better “to punish”, and the following verse prescribes a fine as punishment. Mayes is followed by Pressler, *View* (above, n. 34), 28 n. 17. For a different perspective that for our purposes may be lumped with the above, see Hayim Tawil, Hebrew  $\text{סר}$ , Akkadian *esēru*: A Term of Forced Labor (Lexicographical Note IX), in *T<sup>e</sup>shūrôt LaAvishur: Studies in the Bible and the Ancient Near East*, in *Hebrew and Semitic Languages: Festschrift Presented to Prof. Yitzhak Avishur on the Occasion of his 65<sup>th</sup> Birthday*, ed. Michael Heltzer and Meir Malul, Tel Aviv-Jaffa, Archaeological Center Publications, 2004, 185–190.

52 The basic meaning of the root  $y\bar{s}r$  is “to discipline”, and the word appears a few times with this meaning even within Deuteronomy, but in our verse and in a few others, it seems plausible that the sense has developed to “physical discipline → flogging”. Cf. Moshe Weinfeld, *Deuteronomy and the Deuteronomistic School*, Oxford, Clarendon Press, 1973, 303 and n. 3 there.

53 The LXX has  $\kappa\alpha\iota \ \pi\alpha\iota\delta\epsilon\upsilon\sigma\sigma\upsilon\sigma\iota\nu \ \alpha\upsilon\tau\bar{o}\nu$  “and they shall educate/chastise him”, which is unhelpful because  $\pi\alpha\iota\delta\epsilon\upsilon\sigma\sigma\iota\nu$  is the word generally used to translate forms of  $\text{סר}$  in all stems (See Edwin Hatch and Henry Redpath, *A Concordance to the Septuagint*, 2<sup>nd</sup> ed., Grand Rapids, Baker Books, 1998, 1047). The Temple Scroll (65:14), too, merely cites the text from Deuteronomy verbatim. See Yigael Yadin, *The Temple Scroll*, Jerusalem, The Israel Exploration Society, 1983, 2.295. Yadin actually translates, “they shall whip him”, but this is based on his understanding of the biblical text, not on anything in the Temple Scroll.

54 Translation according to Louis Feldman, *Judean Antiquities 1–4*, Flavius Josephus, Translation and Commentary, ed. Steven Mason, volume 3; Leiden: Brill, 2000, 424. Feldman there notes that “Josephus understands the word  $\text{ויסר}$  ... to mean ‘whip’”.

וילקון יתה. The Palestinian Targumim are more reticent to disclose its legal tradition in this case: Neofiti has *ywrđwn tyth* “they shall chastise him”, although a marginal gloss supplies *wlqwn* “they shall flog”.<sup>55</sup> This is also the common rabbinic interpretation, as seen already in the Sifre *ad loc.* (§237, ed. Finklestein, p. 270), which comments, “*They shall chastise him – with lashes; and they shall punish him – monetarily*”.<sup>56</sup> In other words, in rabbinic law as derived exegetically from this verse, the punishment for the slandering groom (known in rabbinic law as the *motzi shem ra*<sup>6</sup>) who slandered his wife’s virginity, is conceived of as a double punishment, including both lashes and a fine.

There is one ancient text, however, which might provide some support for the other reading. 4Q159, published by Allegro in *DJD* 5, cites our law:<sup>57</sup>

כי יצוי איש שם רע על בתולת ישראל ל אס ב ניוסן קתתו איתה יואמר ובקרוה(נשים)  
נאמנות ואם לוא כתש עליה והומתה ואם בשןקר) ענה בה בענש שני מנים [ואשתו לוא]

55 Alejandro Diez Macho, Neophyti I, Madrid, Consejo Superior de Investigaciones Científicas, 1978, 5.187.

56 See also bKetb 46b; yKet 3:1; bSan 71b; and bMak 4b, with Rashi s.v. *lwqh wmslm*.

57 The text and translation given here rely primarily on that prepared by Moshe J. Bernstein and available on the Dead Sea Scrolls Electronic Library, CD-ROM, Leiden, Brill, 2006. The original publication was by Allegro, but important reconstructions and improvements were suggested by John Strugnell, Notes en marge du volume V des ‘Discoveries in the Judaean Desert of Jordan’, RQ 7, 1970, 175–179; Yigael Yadin, A Note on 4Q159 (Ordinances), IEJ 18, 1968, 250–252; and especially Tigay, Examination of the Accused Bride in 4Q159 (above, n. 6), 129–134. Compare also Lawrence H. Schiffman, Ordinances (4Q159 = 4QOrd<sup>a</sup>), in *The Dead Sea Scrolls: Hebrew, Aramaic, and Greek Texts with English Translations*, ed. James H. Charlesworth, Tübingen and Louisville, J.C.B. Mohr (Paul Siebeck) and Westminster John Knox Press, 1994, 154–157. As Tigay notes, according to Hallo, there is an Akkadian text which also deals with a husband who slanders his wife’s virginity; the text states that the verdict depends on the testimony (presumably based on physical inspection) of the female elders (or, Tigay adds, female witnesses). Also in Ginat’s “Case History XLVII” (Blood Revenge [above, n. 37], 136), virginity is tested by “an old [Bedouin] woman”, supervised by a policewoman, who tried to push a hard-boiled egg into a girl’s vagina (in this case, post-mortem). See William W. Hallo, *The Slandered Bride*, Studies Presented to A. Leo Oppenheim, June 7, 1964, Chicago, The Oriental Institute, 1964, 95–105. Hallo comments, “Here as elsewhere, then, Biblical case law preserves a more archaic stage of legal development than the corresponding provisions of Babylonian codes and contracts” (102). Now that we have the Qumran text, however, the picture may become significantly more complicated. The law that existed in Old Babylonian times is absent throughout the biblical text, but reappears in post-biblical Jewish law. Other such cases have been noted; see especially Samuel Greengus, *Filling Gaps: Laws Found in Babylonia and the Mishna but Absent in the Hebrew Bible*, MAARAV 7, 1993, 149–171. Hallo’s interpretation has not been accepted, however, by Raymond Westbrook, *Old Babylonian Marriage Law*, AfO Beiheft 23, Horn, Austria, Verlag Ferdinand Berger & Söhne Gesellschaft, 1988, 44 n. 109 (reference in Tigay, Examination [above, n. 6] 134 n. 15 [end]). Westbrook does not provide any objections to Hallo’s reading, however, and his translation of the text (on p. 116) allows it. Wells, Sex, Lies, and Virginal Rape, 65 n. 79 states that “it has been shown that Hallo’s interpretation of the document as parallel to Deut 22:13-21 cannot be maintained”; see also Eckart Otto, Review of Hallo, *Origins*, ZAR 3, 1997, 256.

“If a man shall present an accusation against a young girl in Israel, if, at [the time] he married her he says so, trustworthy [women] shall examine her. And if he has not lied about her, she shall be put to death. But if he has testified [false]ly regarding her, he shall be fined two minas [and not] divorce her for his entire lifetime.”

Conspicuously absent from the punishment legislated in this text is any mention of corporal punishment.<sup>58</sup> Could it be that this Qumran text understood *w<sup>e</sup>-yiss<sup>e</sup>rū* *’ōtō* not as requiring a separate punishment, but as somehow introductory to the fine imposed?

Over all, then, it would seem that the dominant interpretation was that represented most explicitly in the rabbinic texts – taking *w<sup>e</sup>-yiss<sup>e</sup>rū* *’ōtō* as a separate, corporal, punishment – but that there may have been another view floating around in antiquity (possibly finding a voice in the Qumran text) which understood that the slanderer received no corporal punishment.

## ii. Mesopotamian Analogues

There are no exact parallels to our law among the other Near Eastern law collections. A particularly relevant partial parallel is MAL §18, which prescribes,

*šumma a ṭlu ana tappā ṭišu lu ina puzre lu ina šalte iqbi mā aššatka ittinikku mā anāku ubār ba ṭura la ila ṭe la uba ṭer a ṭla šuātu 40 ina ḥaṭṭāte imahḥuṣuṣ iitēn uraḥ ūmāte šipar šarre eppaš igaddimuš u 1 bilat annaka iddan*

“If a man says to his comrade, either in private or in a public quarrel, ‘Everyone has had sex with your wife’, and further, ‘I can prove the charges’, but he is unable to prove the charges and does not prove the charges, they shall strike that man 40 blows with rods; he shall perform the king’s service for one full month; they shall cut off his hair; moreover, he shall pay 3,600 shekels of lead.”<sup>59</sup>

The case in the protasis is not exactly the same as in Deuteronomy, since the slander was not about the slanderer’s own wife, and the damages are (therefore?) not

58 Also conspicuously absent, as Moshe Bernstein pointed out to me, is any mention of the bride’s parents, who play a central role in the biblical law. This may indicate something about how the law was read in Qumran, but it also may indicate something of the genre of 4Q159, a legal text of an opaque genre. For discussion of these issues, see Moshe J. Bernstein, *The Re-Presentation of “Biblical” Legal Material at Qumran: Three Cases from 4Q159 (4QOrdinances<sup>a</sup>)*, in *Shoshanat Yaakov: Ancient Jewish and Iranian Studies in Honor of Professor Yaakov Elman*, ed. Shai Secunda and Steven Fine, Leiden, Brill, forthcoming 2011; I thank Dr. Bernstein for sharing his paper with me prior to publication.

59 Text and translation from Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor*, Society of Biblical Literature Writings from the Ancient World 6, 2<sup>nd</sup> ed., Atlanta, Scholars Press, 1997, 159. Weinfeld, *Deuteronomy and the Deuteronomistic School* (above, n. 52), 293 with n. 2, and Wells, *Sex, Lies, and Virginal Rape* (above, n. 2), 43 n. 7.

to the maligned woman but to her husband. It is striking, however, that in this case of slander, too, both financial and corporal punishments are prescribed.<sup>60</sup>

Other Near Eastern legal texts did prescribe only monetary penalties in similar cases, however. Both Laws of Ur-Nammu §14 and the Laws of Lipit-Ishtar §33, which discuss cases of a third party accusing another man's wife (in the case of LU §14) or daughter (in the case of LL §33), prescribe only financial indemnities.<sup>61</sup> Comparative evidence cannot, therefore, be used unreflectively. The evidence has to be weighed and sorted in an effort to determine which interpretation actually makes the best sense of the law.

### *iii. Flogging is needed to complete the punishment*

Although Tigay notes that “the triple punishment is exceptional”, he also cites the interpretation proffered already by medieval Jewish thinkers and exegetes: “each element corresponds to a part of the husband's offense”.<sup>62</sup> In other words, the extraordinary triple punishment is mandated by the principle of talion. Not all modern scholars have been convinced that talion was at work here, but in fact this well explains the details of the punishments.<sup>63</sup>

60 One other interesting parallel should be noted in LH §127 (Roth, Law Collections [above, n. 59], 105): *šumma awilum eli uq̄baltim u aššat awilim ubānam ušatrišma la uk̄tīn awilam šuāti maḥar dayānī inaṭṭūšu u muttassu ugallabu* “If a man causes a finger to be pointed in accusation against an *ugbaltu* or against a man's wife but cannot bring proof, they shall flog the man before the judges and they shall shave off half his hair.” Note that G.R. Driver and John C. Miles, *The Babylonian Laws*, Oxford, Clarendon Press, 1952, 1.278) argue that the word ought not be read *inaṭṭūšu* “they shall flog him”, but *inaddūšu* “they shall cast him down”, and they explain, “the man is brought to his knees and thrown to the ground before being shaved”; for a rebuttal, see Roth, Law Collections (above, n. 59), 141 n. 24. These two views are strikingly similar to the two views discussed in this paper regarding Deut 22:18–19: according to Roth's rendering, there are two punishments prescribed in LH §127 for slander (flogging and shaving), and according to Driver and Miles, the clause taken previously as requiring flogging is taken as merely a description of how to impose the other punishment. Incidentally, in Driver and Mill's earlier work, *The Assyrian Laws*, Oxford, Clarendon Press, 1975, 70, they assumed that LH §127 required flogging.

61 LU §14: “If a man accuses the wife of a young man of promiscuity but the River Ordeal clears her, the man who accused her shall weigh and deliver 20 shekels” (Roth, Law Collections (above, n. 59), 18). LL §33: “If a man claims that another man's virgin daughter has had sexual relations but it is proven that she has not had sexual relations, he shall weigh and deliver 10 shekels of silver” (Roth, Law Collections (above, n. 59), 33).

62 Tigay, *Deuteronomy* (above, n. 8), 205, relying especially on Maimonides, *Guide*, 3.49.

63 Locher, *Die Ehre einer Frau in Israel*, 315–380, explains at length why talion does not apply here; see also Pressler, *The View of Women* (above, n. 34), 24–25, with references. Wells, on the other hand (*Sex, Lies, and Virginal Rape* [above, n. 2]) argues that in fact the principle of talion is in effect here; some of his specific proposals have been rightly (in my view) rejected by Fleishman, *The Delinquent Daughter* (above, n. 2), 194, Edenburg, *Ideology and Social Context* (above, n. 2), 49–50 with n. 20, and Berlin, *Sex and the Single Girl* (above, n. 2), 100, but the basic thesis seems reasonable.

The divorce clause is straightforward: he was using the slander as a means to obtaining a divorce, and now he is forbidden from doing so. The money, too, makes good sense: the groom was apparently trying to get back the bride-price he paid, and, if we can allow Deuteronomy 22:29 to be our guide, 50 shekels was the bride-price for virgins.<sup>64</sup> It is possible that the groom is being judged as a thief, who pay double what they stole.<sup>65</sup> Alternatively, Wells argues the groom was actually trying to extort 100 shekels, since LU §15, LL §29, LE §25, and LH §160–161, all stipulate that if a father failed to make good on an inchoate marriage, he was required to return to the original groom twice the amount paid as a bride-price; perhaps the same was true in cases of a father passing off a non-virgin as a virgin, and perhaps the same was true in Israel.<sup>66</sup>

In light of our analysis, this double punishment would fall far short of exacting a punishment from the groom commensurate with what he tried to do to the bride, however. Above all, he was shaming the bride and her family, and his punishment must be geared at shaming him. Public flogging accomplished precisely that.<sup>67</sup> Thus the understanding of the law as revolving around shame and honor assists in the philological and legal study of the passage, as well.

As mentioned at the beginning of the paper, recent scholars have debated whether the principle of talionic punishment is at work in this law. If the law is properly understood, I believe that indeed the punishment matches the attempted crime, point for point.<sup>68</sup> The financial aspect is the most easily dealt with; the issue of divorce is also easily resolved. The crux of the crime, however, would have been that the bride's family would be deeply shamed. Finding adequate punishment for this is not simple, and the law fell back on one of its central tools, public flogging, to serve this purpose.

#### 4. Conclusions

In sum, this study has argued that the law of the slandered bride is not primarily about sex. It is a law about power, in particular the power of the parents over their

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64 For doubts, see Tigay, Deuteronomy (above, n. 8), 208.

65 Thus Maimonides, *ibid.*, and Tigay, Deuteronomy (above, n. 8), 384–385 n. 51.

66 Wells, Sex, Lies, and Virginal Rape (above, n. 2), 61.

67 The same point was made by Tigay (Deuteronomy [above, n. 8], 205): “He is flogged, and thereby degraded (see 25:3), because he defamed her family. He is fined because his accusation would have forced her father to return the bride price. He loses the right to divorce, which was probably his aim in slandering her.”

68 This can be contrasted further with the approach of Eckart Otto, *False Weights in the Scales of Biblical Justice? Different Views of Women from Patriarchal Hierarchy to Religious Equality in the Book of Deuteronomy*, in *Gender and Law* (above, n. 12), 137, who argues that the tension between the punishment for the groom if he is lying and the punishment for the bride if he is not are so great that it indicates that 22:13–19 and 22:20–21 were originally independent compositions, redacted with inconsistencies.

daughter's sexuality, and is therefore closely parallel to the law of the 'incorrigible son', which is about the power of the parents over their son's behavior. By charging that his bride was not a virgin, the groom accused the parents of not having control over their daughter, and thereby severely shamed the family. The parents had two options open to them to restore their family's honor. They could fail to produce any evidence to counter the groom's claim, and thereby ensure their daughter's death; this would result in what would essentially be an institutionalized and court-endorsed honor killing on the part of the community. Alternatively, they could produce evidence, however dubious its value, of their daughter's virginity at marriage, and thereby rebut the accusations and restore their honor. If the latter route was pursued, the groom then needed to be punished. His tri-fold punishment addresses the three realms which his own accusations had threatened in his bride's family. The fine imposed responded to the financial implications of his accusations; his loss of the right to divorce retaliated for his attempt to dissolve his own marriage on fraudulent grounds. Finally, the flogging shamed him in return for the shame he attempted to bring on the bride's family.