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A TEXTBOOK CASE OF ADULTERY IN ANCIENT MESOPOTAMIA¹

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IN ZA 55 (1963), 70–77, J. van Dijk republished a Sumerian document, earlier published by him in *Sumer* 15 (1959), 12–14, which records a divorce proceeding between a husband and wife.² While both background events and court proceedings are described in unusually vivid detail, the absence of gender determination in Sumerian raises the problem of determining just which of the parties is plaintiff and defendant. According to van Dijk, the text records how the husband, caught by his wife while engaged in a homosexual act, was brought before the court and penalized. The marriage was dissolved and the wife awarded divorce money while the malfeasant husband was punished by having his pudendum shaven and being led naked through the streets of the city. According to van Dijk's interpretation, the document also records that the husband, prior to his being caught, had arranged for the support and maintenance of his wife and that he had also performed the marriage rites of anointing and veiling;³ these background events were recalled in the document allegedly to refute the husband's defense plea that he was in fact not legally married to his wife at the time of his crime. This interpretation of the

¹ The substance of this article was presented in the form of a paper, "Remarks on a Sumerian Text Allegedly Dealing with Homosexuality and Divorce," delivered before the 174th meeting of the American Oriental Society in Philadelphia on April 19, 1966. We want to thank Thorkild Jacobsen, Adelaide Hahn, and J. J. Finkelstein for their helpful comments and suggestions. For the abbreviations used in this article, one may consult the *Chicago Assyrian Dictionary* (CAD) and the *Akkadisches Handwörterbuch* (AHw). Some additional abbreviations are CH, The Code of Hammurabi (cited after G. R. Driver and J. C. Miles, *The Babylonian Laws* II [1955]); CE, The Code of Eshnunna (cited after A. Goetze, *AASOR* 31 [1965]); CL, The Code of Lipit-Ishtar (cited after the edition of F. R. Steele, *AJA* 52 [1948] 3–28, pls. i–vii); MAL, The Middle Assyrian Laws (cited after Driver and Miles, *The Assyrian Laws* [1935]).

² For the dating of this text to the early Old Babylonian period see the arguments presented at the conclusion of the article, p. 43.

³ For the rites of anointing and veiling, see our discussion in *JCS* 20 (1966), 61 f., 72.

case thus assumes that the husband is the defendant and that the wife is the injured party seeking redress.

It is our purpose in this article to offer another interpretation of the text which would reverse the picture; we would see a husband seizing his wife in *flagrante delicto* with another man; the wife, being an adulteress, is the defendant and the party suffering the penalties. We read the text as follows:

IM 28051

- (1) [ᵈ]Eš₄.dar.um.mi
dumu.munus Ī.lí.a.z[u]
[ᵈ]Īr.ra.ma.lik.ᵋ^ᵋ
[na]m.dam.šè ba.an.du₁₂(TUK)
- (5) [a.r]á.l.kam
[É].ŠE.ni in.buru₃(U)
[a.r]á.z.kam.ma.ka
dug.šab ì.giš.ka.ni
gál bí.in.kíd.ma
- (10) túg i.ni.in.dul
a.rá.3.kam.ma.ka
ugu.lú.ka in.dab₅
su.lú.ka giš.ná.a
in.kéš
- (15) pu.úḫ.ru.um.e
mu lú ugu.na
al.dab₅.ba.aš
kù.dam.tak₄ni [] x []
- (20) i.ni.in.gar.r[e.eš]
x x x ᵋ^ᵋ sur.ra gal₄.la.ᵋ^ᵋ
um[bi]n in.tar.ru.ne
kiriₓ(KA).ni giš.kak.si.sá in.buru₃.uš
uru^{ki} nigin.e.dè
- (25) lugal.e
[ba].an.sum
[di.dab₅.b]a lugal.la.kam
[ᵈ]Iš].me. ᵈDa.gan.zi.mu
maškim.bi.im
- (1) Eštar-ummī
daughter of Ili-asû
did Irra-malik
take in marriage.

- (5) In the first place,
she burglarized his storeroom.
In the second place
in his oil jar
she made an opening and
(10) covered it up with a cloth.
In the third place,
he caught her upon a man;
to the body of the man on the bed
he tied her
(15) (and) carried her to the assembly.
The assembly,
because with a man upon her (*sic*)
she was caught,
his/her divorce money . . .
(20) (they) d e c i d e d;
. . . (her) pudendum
they shaved;
they bored her nose with an arrow
(and) to be led around the city
(25) the king
gave her over.
It is a decision of the king.
Išme-Dagan-zimu
was deputy.

Lines 1–4 record the fact that Irra-malik, the husband, married Ilī-asû; the meaning of these lines is the same regardless of whether one follows van Dijk’s interpretation or our own. Lines 5–10, however, appear in our view to be a series of charges against the defendant rather than a sequence of marriage rites, whose recollection in this record would seem to be superfluous since lines 1–4 already state that Irra-malik married Ilī-asû.

We see altogether (ll. 5–15) three charges against the defendant wife: the second more serious than the first and the third the most serious of all. The first offense (ll. 5–6) is the wife’s breaking into the locked granary without her husband’s permission: [É].ŠĒ.ni in.buru₃(U). In the lexical lists, É.ŠĒ is translated by various terms for granary or storehouse: *arahḫu* (*arḫu*), *našpaku*, *isru*, and *qarītu*;⁴

⁴ Cf. *CAD* A/2 220b (sub *arahḫu*), *CAD* I 204 (sub *isru*; one should add *PBS* 5 106 rev. iv i5 É.ŠĒ = *is-ru*). *CAD* A/2 220b discusses the possible relationship of

while É.ŠE and some of its Akkadian equivalents like *arāḫḫu* and *isru* are not, to our knowledge, found outside of lexical contexts, other equivalents like *našpaku* and *garātu* are frequently found elsewhere, as are terms like *é.uš.gid.da*, *ašlukkātu*, which often occur alongside of É.ŠE in the lexical lists.⁵ We thus can tentatively accept the restoration [É].ŠE despite its lexicographical rarity; it is certainly preferable to van Dijk's [túg] še ì for *túg.ba še.ba ì.ba*, a reading which is nowhere else attested. We would also question his reading *šu₄*, *šakānu*, for U in line 6;⁶ the sign U is again found in line 23 of our text with the reading *buru₃* "to bore a hole"; there is no reason why one should not apply the same reading to line 6. Our text is, after all, a legal record in which we expect explicit and consistent usage; moreover, the reading *buru₃* is more probable than *šu₄*, which is a most rare value of U. Boring a hole through the wall of a building in order to rob that building of its contents is a well-known theme; the Codes speak of tunneling into houses⁷ and *TCL 18 143:10* records how houses were subject to penetration even by household members: *wardum ia'um bītī iplušma*. The first offense is thus the breaking into the granary by boring a hole in the storeroom wall.

The second offense, ll. 7–10, is the charge of the defendant's clandestinely opening a storage jar of sesame oil and covering it with a cloth, giving it the appearance of not having been tampered with. Van Dijk's interpretation of this passage as a description of the marriage rites of anointing and covering the head is weakened by the absence of a verb to describe the actual anointing; in the context of anointing, the operation of opening the jar seems to be a superfluous detail. Also missing is the noun *sag* "head" which is omitted in connection with both the alleged anointing and head-covering rites.⁸

arāḫḫu to *ašāḫḫu*, another term for "granary," more commonly attested in OB texts; in addition to *arāḫ*, É.ŠE has the reading *ašag* in *MSL 2 50:227*.

⁵ *Arāḫḫu* (along with *našpaku*) is also given as an equivalent of *é.uš.gíd.da* in *Kagal I 80*, *Proto Diri 361 f.*, and *Diri V 283 f.* (cited in *CAD A/2 220b*).

⁶ Van Dijk, *ZA 55 72*, translated ll. 5–15 as follows: (5) [Er]stens: (6) Er hat ihr [Kleidung], Gerste (und) Öl ,gestellt'. (7) [Zwei]tens: (8) Seinen [Kr]ug mit Sesamöl (9) hat er geöffnet und (10) sie mit einem Kleid bedeckt. (11) Drittens: (12) Sie hat ihn auf einem Manne ertappt; (13) ,auf den Leib des Mannes (14) hat sie das Bett gebunden (15) (und) es zur Ratsversammlung gebracht'.

⁷ CL § 11 describes the case of a man, negligent of his property, whose neighbor warned him about the danger of possible burglary (xiii 25–27): *kislaḫ.zu al.tak₄ é.mu lú ì.burú.dè é.zu kala.ga.ab*; similarly, CH § H, *nidūka epuš ištu nidūka bītī ipallašūnim*. The tunneling of a thief is again mentioned in CH § 21 where the thief who breaks into a man's house (*būam ipluš*) is to be put to death and impaled at the scene of his crime.

⁸ See *supra*, note 3. For *dug.šab ì.giš* cf. *MSL 7 83 (H) X 135*, which translates

Lines 11–15 record the third and most serious charge of lewd conduct. Van Dijk has taken these lines to describe the wife finding her husband engaged in a homosexual act. There is no evidence that homosexuality was a crime in ancient Sumer or Babylonia. The fact that the Middle Assyrian Laws (§§ 19–20) punish homosexuality does not bear on our period and place; the Assyrian Laws, moreover, do not treat homosexuality as a matrimonial offense but rather as a breach of general social decency. We have no knowledge as to whether or not homosexual behavior would serve as legal grounds for divorce.

In our view, these lines depict the husband finding his wife with another man, his tying them together in the bed, and carrying them off as evidence to the assembly. The husband's feat recalls the classic tale told of the god Hephaestus (Vulcan) who in a similar fashion trapped his wife Aphrodite in bed with Ares. In the *Odyssey* (viii 266 ff.), a minstrel tells the tale:

Now when Haphaestus heard the bitter tidings (of his wife's infidelity) he went his way to the forge, devising evil in the deep of his heart, and set the great anvil on the stithy, and wrought fetters that none might snap or loosen, that the lovers might there unmovably remain. Now when he had forged the crafty net in his anger against Ares, he went on his way to the chamber where his marriage bed was set out, and strewed his snares all about the posts of the bed, and many too were hung aloft from the main beam, subtle as spider's webs, so that none might see them, even the blessed gods; so cunningly were they forged. (Hephaestus then catches the lovers and summons the gods together to deliver judgement).⁹

We find this same story retold by Ovid in his *Ars Amatoria* (ii 577–581):

Vulcan set above and around her bed invisible nets, then pretended to go to Lemnos. The two lovers flew to their accustomed meeting place and both, naked as Cupid, were caught in the treacherous nets. Vulcan then called all the gods together and showed them the spectacle of the imprisoned lovers.¹⁰

The case of Irra-malik vs. Eštar-ummī involved a married woman who stood accused of adulterous conduct compounded by charges of her illicit use of her husband's goods. The combination of the charges of adultery and the unwarranted use of husband's goods is not un-

it as *šikinnu ša ellu* "a jar of sesame oil." To judge from Hh X 125–141, jars of this type were used as storage containers for water, beer, milk, oil, ghee, lard, "fine oil" (cf. also *UET* 5 805:3 *ši-ki-nu-ú ša Ī.DÜG.GA*), wine, and honey.

⁹ *The Odyssey of Homer* translated by S. H. Butcher and A. Lang, New York (1950).

¹⁰ *Ovid's Art of Love; A New Prose Translation* by R. Seth, London (1953), 72.

usual; they are likewise found together in the Code of Hammurabi, §§ 141–143. CH § 141 involves a wasteful and pilfering wife who behaves immodestly but who is not a proven adulteress; her husband may divorce her with no payment of divorce money or he may reduce her to slavery and marry another woman.¹¹ For a wasteful and immodest wife who brazenly states her wish to dissolve her marriage, CH § 143, suspecting the worst, prescribes drowning; only a chaste wife, whose husband is wasteful and loose, may according to CH § 142 leave her husband without penalty.¹²

The cases of the Code do not imply that wastefulness was tanta-

¹¹ CH § 141 describes the wife's misbehavior in a number of phrases: *ana wašim paniša ištakan, sikiltam isakkil, bīssa usappah, and mussa ušamfā*. The verb *wašim*, here and in other contexts, is used to describe promiscuous behavior; see Finkelstein, *JAOS* 86 (1966) 362 f. and especially 363²⁹, where he calls attention to a similar Aramaic usage: *nāfqat bārā* "a woman who goes outside," i. e., "a loose woman." For additional references cf. *CT* 5 4:16 *aššat awlim ušši* "the wife of the man will go out," i. e., "behave immodestly;" *YOS* 10 47:69 *ana ḥarimūtim ušši* (cited in *CAD* A/2 363); cf. further *CAD* A/I 315 sub *ašūtam alākum*. *Sikiltam sakālum* refers to the wife's accumulating a private hoard by pilfering from her husband's stores; see M. Greenberg *JAOS* 71 (1951) 172 ff.; M. Held *JCS* 15 (1961) 11, 16, 38; and now also (OB) *TIM* 1 35:6 f., where a man swears: *sikiltam la askilu mimma šumšu la upazziru kasḫam še'am aḥi la aktumu* "I did not accumulate an illicit hoard (by pilfering); I did not embezzle; I did not hide silver (or) grain with my hand." The theme of the pilfering wife appears again in *MAL* § 3 (*KAV* 1 i 34–37): *ina bit mutiša taltiriq lū ana a'ilim lū ana sinništīm ū lū ana mamma šanīmma taltidin* "(the woman who) has pilfered from her husband's house and sold it to a man, a woman, or any other party." *Bitam suppuḫum*, clearly refers to the squandering of household means; cf. J. Nougayrol *RA* 44 30 f. The expression *mutam šumtām* may likewise refer to belittling the husband by diminishing his means rather than by injuring his dignity. Outside of the code passages, the *šaf'el* of *maḫum* usually refers to the physical diminishing of quantity; cf. F. R. Kraus, *Afo* Beiheft 3 (1939) 25 obv. 1 (= *Bab* 3 298 f.) *DİŠ ŠU EŠ₄.DAR GAR NĪG.GA ū-šam-ḫa* "If the disease 'Hand of Ishtar' strikes, (it means) he will diminish his wealth;" cf. also Gilg. VIII ii 19 *kīma nēšti ša šutamfāt mērā[niša]* "like a lioness deprived of her whelps;" cf. further *diglam šumtū*, *CAD* D 136b. *NSG* 205:19–26 appears to be an Ur III case similar to CH § 141; a woman was suspected of adultery ('PN *dam.e nu.ū.zu.bi lū.kūr in.da.nā.a*; the document records the adultery as a fact in view of the wife's subsequent confession). Since she could not clear herself by oath (*nam.erfm.bi.ta im.ma.ra.gur.ra*) and in fact then admitted the charge (*mu 'PN.e du₁₁.ga.na ba.ni.gi.na.šē*), she was divorced by her husband ('PN *ba.tak₄*).

¹² CH §§ 142–143 describes the brazen wife's behavior by the following four phrases: *lā našrat, wasi'at* (or *wašši'at* — cf. *CAD* A/2 360) *bīssa usappah, and mussa ušamfā*. The last three phrases have already been discussed in the previous note. In the first phrase, the verb *našarum* is clearly related to chastity; one may compare CH § 133 where the wife "did not guard her body (*paḡarša lā iššurma*)," *MAL* A § 12 (*KAV* 1 i 11–24) which describes a woman who resisted rape: *la tamaggur talanašar*, and perhaps also *Grant Doc* 7:10 f. (= *HG* 6 1751) where a mother promised to "guard" her daughter for her creditor in order to give her to him at a later date.

mount to adultery; the Code rather presents ideal, classic cases in which the defendant's blameworthiness is unambiguously clear: an immodest woman of poor reputation whose bad character can also be seen in her habits of household neglect and wastefulness. Our own text seems to describe this same classic situation:¹³ a wife, surprised in a tryst with her lover; a woman whose poor character is also proven by her unauthorized spending of her husband's goods and by her invasion of his locked storeroom.¹⁴

Lines 16 ff. describe how the assembly proceeded to mete out punishment upon the faithless wife (the fate of the other man is not given). Ll. 19 f. describe the payment or nonpayment of divorce money. While divorce money is usually paid by husbands to wives, the reverse is also possible; in that case, van Dijk's restoration of line 19, [x ma.na k]ù.[babbar], can stand.¹⁵ Another possibility is to restore [nu].[lal¹].[e], [è¹].[e], or the like, seeing here a decision of the court to deprive the wife of divorce money. The latter restoration finds support in the penalties of CH § 141, where the wife receives no divorce money or any other quittance (*haranša uzubbuša mimma ul innaddiššim*).¹⁶

Ll. 21–26 describe further punishments meted out by the assembly: the woman was to be shaven,¹⁷ her nose pierced, and she was to be led in public humiliation around the city.

¹³ On the tendency of the ancient "law codes," generally, to deal in classic unambiguous cases, cf. Finkelstein *JAOS* 86 (1966) 368; cf. further F. R. Kraus, *Geneva* 8 (1960) 286, cited below in note 32.

¹⁴ Wastefulness is also linked with the crime of homicide in Ungnad, *VAB* 6 218, where a wife suspected of complicity in the murder of her husband pleaded (ll. 31 f.): *ša akkalu ū ša aprāku ša bēlyama sikiltam [lā a]sakkilu* "Whatever I eat or wear belongs to my lord; I have not accumulated any private hoard."

¹⁵ A wife is seen paying divorce money to her husband in two OB texts. *BIN* 7 173 states: (23) ù tukum.bi u₄.kūr.šè (24) 'PN a-na PN (25) dam.a.ni.ra (26) dam.mu.nu.me.en ba.na.an.dug₄ (27) é a.šà níg.ga a.na.me.a.bi (28) ba.ra.e₁₁.dè (29) ù 1/3 ma.na kù.babbar i.lal.e "And if one day 'PN will say unto PN her husband: 'You are not my husband,' she shall forfeit house, field, and property and pay 1/3 mina silver." And, again, in *BE* 6/2 40 we find: (12) ù tukum.bi 'PN.ke₄ (19) PN dam.a.ni.ra (14) dam.mu nu.me.en ba.an.dug₄ (15) 9 gín kù.bi ba.ra.e₁₁(!).dè (16) ù 1/2 ma.na kù.babbar i.lal.e "And if one day 'PN . . . she shall forfeit the nine shekels silver (her dowry) and weigh out 1/2 mina silver." For the wife's paying divorce money in a MA text, cf. *TIM* 4 45:13–16 *ū šumma 'PN lā mutūmi taqabbi 1/2 MA.NA [KŪ.BABBAR] tašaqgal*. If lines 19 f. of our text do in fact deal with the payment of divorce money by the wife to her husband, then one may translate "they (the judges) set his divorce money at . . . silver."

¹⁶ One may then translate lines 19 f. "they (the judges) decreed [not to pay] her divorce money" or "they decreed [the forfeiture] of her divorce money."

¹⁷ The phrase describing the shaving of the pudendum fits far better for a woman

It is difficult to determine whether the shaving was for public humiliation alone or whether it was intended as a preliminary to enslavement.¹⁸ According to both CE § 28 and CH § 129, the penalty for an adulteress caught in *flagrante delicto* was death.¹⁹ CH § 141 allowed the husband to divorce an immodest and unchaste wife suspected of adultery or to keep her as a slave in his house. CH § 129 allows the outraged husband to save his wife from the death penalty but does not disclose her subsequent fate; from the phrase *ū šarrum warassu uballaṭ*, said apparently of her lover whom the king retains as a slave, we could infer that the wife, too, was kept as a slave in her husband's house, much as the wife in CH § 141.²⁰ Enslavement is the penalty for a wife's act of divorce in BE 6/2 48:15–16: tukum.bi PN PN dam.a.ni.ra dam.mu nu.me.en ba.na.an.dug₄ umbin al.tar.ru.ne kù.šè bí.ib.sum.mu.uš "If PN says unto PN her husband: 'You

than for a male defendant; the term gal₄(SAL).la in line 21, which allegedly on one occasion is used to describe the pubes of a man (A. Falkenstein ZA 45 (1953) 171 f.), is certainly more evidently a term for the pubes of a woman.

¹⁸ For shaving in connection with degradation to slavery, cf. VAS 8 73:13 f., 127:20 f.; BE 6/1 17:16; TCL 1 146:12; CT 8 22b:7 ff.; CT 33 40:21 f.; CT 48 48:11 ff. (*gullubum . . . ana kasṣim nadānum*). For shaving and leaving the *abbuttu* (hair style) as a sign of slavery (*gullubum . . . abbuttam šakānum*), cf. BAP 96:9f. The explicit enumeration of the penalties of shaving, slave mark, and selling is found in BAP 95:20 f.; Ai 2 iv 3', 7 iii 26 f.; ARN 65:rev 22 f.; BE 6/2 57:22 f.

¹⁹ U 7739 i 1–10, the Ur-Nammu Law Code fragment published by Gurney and Kramer (AS 16 (1965) 18), also contains a paragraph on the adulterous wife caught in *flagrante* with another man. The circumstances there, however, appear to have been similar to those in MAL (A) §§ 13–14, 16, where the adulterer did not know that the woman was married (cf. the remarks of J. J. Finkelstein JAOS 86 370 f.); the Ur-Nammu Laws fragment and the Middle Assyrian Laws prescribe the death penalty for the wife but let the man go free. MAL A §§ 13–16 actually give the husband the right to select the punishment for his wife: death, mutilation, or else set her free.

²⁰ The phrase *ū šarrum warassu uballaṭ*, which follows *šumma bēl aššatim ašassu uballaṭ* in CH § 129, has also been understood to imply that the king will allow the lover to live if the husband allows his wife to escape the penalty; in this view one can see CH § 129 as a case similar to MAL A § 15, where the lover goes free if the wife is spared (so most recently J. J. Finkelstein, JAOS 86 (1966) 372 and CAD A/2 250). The role of the king in this or indeed any case of adultery has been questioned; cf. P. Koschaker, RSGH 212⁴⁵. The term "king" has therefore been taken to represent "court" or "state" (as Driver and Miles, Bab. Laws I (1935) 281⁶); but this usage, while possible, has not been demonstrated at all in other Akkadian sources. The king actually can now be seen to figure in OB cases of adultery, both here in our text (ll. 25–27) and also in UET 5 203, which is discussed below in note 26. If scholars are correct in taking CH § 129 to prescribe either death or freedom, then we seem to have in the OB sources a tradition fully similar to that of MAL A §§ 13–15, in that the outraged husband can choose the penalty of death (as in CH § 129 and UET 5 203), mutilation (our text here), or no penalty at all (CH § 129).

are not my husband,' they shall shave her and sell her."²¹ Elsewhere, in CH § 143 and in other Old Babylonian marriage documents, a wife's divorce action is punished by death.²² There may thus be some justification in seeing slavery as an alternative to the death penalty, both in cases of adultery and divorce, where women were judged to have acted unchastely or brazenly. It is therefore possible that in our text the adulteress wife — shaven, mutilated, and humiliated — was to remain a slave in her husband's house.

The possibility of her enslavement seems less likely, however, if we should restore 𒀭kisi₄.ni¹ "half of her (head)" at the beginning of line 21;²³ *muttatam gullubum* is frequently attested but never, apparently, in contexts of enslavement.²⁴ The associated penalties of mutilation and public exposure likewise almost invariably appear in contexts of public humiliation rather than enslavement.²⁵ If we rely on the

²¹ A penalty of slavery for divorce, giving the wife over to be a slave to the palace, may perhaps be indicated in *BRM* 4 52 (Hana); in this text, the wife is penalized as follows (ll. 14 f.): *eriššiša ušši ana bīl rugbat ekallim ušellūši* "she shall go out naked (from his house); they shall haul her up to the upper storey of the palace." *CAD* E 320b, however, takes the last phrase to refer to public exposure.

²² In CH § 143, a wasteful and immodest wife who says *ul taḥḥazanni* "You may (no longer) have me" to her husband is punished by death. Death by drowning is prescribed for the wife who divorces her husband in *BAP* 89:36–38; *BAP* 90:11–16; Böhl, *Leiden Collection* 772:8–10; *CT* 8 7b:17–20; *CT* 48 50:21–23, 51:15–20, 55:21–25; *Kich* I B17:14–17; *PBS* 8/2 252:18–21; *TIM* 4 46:11'–17', 47:21–25, 49:rev 2'–4'; *Ai* 7 iv 1–7. Death by being hurled down from a tower is prescribed in *CT* 2 44:6–11; *CT* 6 26a:9–12; *CT* 48 52:11–14, 56:11–13. Nondeath penalties are prescribed in the texts cited above in notes 15, 20, and 21.

²³ The restoration 𒀭kisi₄.ni¹ (*muttassa*) is favored by the traces as well as by other parallel texts (cited in the text below) in which the same combination of punishments occur. But the complex of signs read as 𒀭¹.sur.ra remain difficult; if the reading 𒀭kisi₄.ni¹ was solidly assured, one would look for additional nouns describing further effects of shaving, e. g., shaving of body hair on her torso between the head and pudendum; cf. *ASKT* 86–87:62 da.ag.a á.ag.a *guliḫāt šaḫāti* MIN *zumri* "hair cuttings from the armpit, ditto from the body" (cited in *CAD* G 128b). One might thus perhaps read in line 21 [mu]nsub.bar(!).ra (*šarat zumri*) "hair of the body (and pudendum)" in place of 𒀭¹.sur.ra; cf. C. Fossey, *Manuel d'Assyriologie* (1926), no. 32326. A collation would be desirable.

²⁴ For *muttatam gullubum* cf. CH § 127 (scourging and shaving); *CT* 8 45b:14–15 (shaving and writing a *ṭuppi lā ragāmim*); *VS* 8 102:78 and *CT* 47 31:22 (fine and shaving); cf. also *Ai* 7 iii 31 ff. and *CT* 45 18:14–16 cited below in the text. Shaving half of the head as a sign of profound disgrace is also seen, outside of Mesopotamia, in 2 Sam. 10:4 f.

²⁵ In texts of the OB period, we know of mutilation and public exposure in *VAS* 8 19:9–11 and *CT* 45 18:14–16 (cited in the text). Outside of our period, facial mutilation, i. e., the boring of a hole in the mouth or nose, is attested in *RTC* 16 rev. ii 1–2 (pre-Sargonic): *giš.kak ka.kiri_x (KA).na šè.gaz* "(If he will put deceit into his words,) a peg will be driven through his nose and mouth" (translation follows A.

evidence of these other contexts which do not indicate slavery, then the likelihood of the wife's being degraded to slavery in our text is diminished; and we are dealing, more likely, with the punishment of adultery by mutilation and disgrace, much as in MAL A § 15.²⁶

The combination of punishments in ll. 21–26 is unusual but it is not unique. In CT 45 18:14–16, a man who disputed an earlier court decision was punished by shaving, facial mutilation, forcible stretching of limbs, and public humiliation: *muttassu ugallibū appašu iplušu idīšu itrušū ālam usaḥḥirūšuma*. A similar dispute in VAS 19 resulted in (ll. 9–11) the penalties of facial mutilation (*appam palāsum*), stretching of limbs (*idī tarāsum*), and public exposure (*ālam suḥḥurum*), whereas *ana ittišu* (7 iii 31–33) prescribes forfeiture of estate, shaving, and public exposure for repudiation of adoption: *kisi₄.a.ni umbin ù.bí.in.si.eš uru^{ki}.a mi.ni.in.fb.nigin.e.[n]e ù é.ta ba.ra.è.[d]è muttassu ugall(a)būma ālam usaḥḥarūšu ū ina bīti ušeššūšu*. There seems to be no observable correlation between the crimes committed and the punishments meted out. While shaving is attested in CH § 127 in connection with a charge of unchaste behavior, it is also found

Falkenstein NSG 1 153¹); cf. further the similar phrases in DP 31, base, DP 32 vii 9 ff., and in IM 14073 ii 10' (published by E. Sollberger ZA 53 (1961) 7 f.), as noted and read by J. van Dijk, ZA 55 (1963) 77¹⁷. In VAS 1 108:5 ff. (MA) we find: *mannu ša ina birišunu ibbalakkatu 1 bilat kaspim 1 bilat ḥurāšim inaddin ū sikkat erim ana pišu imaḥḥašū* "Whoever among them will break the agreement will pay 1 talent silver (and) 1 talent gold; and they will drive a copper stake through his mouth"; cf. also VAS 1 109:15–17 and (fragmentary) 106:15 ff. For other corporal penalties (cutting off of hand and tongue, pouring asphalt upon the head) see M. San Nicolò, *Schlussklauseln der altbabylonischen Kauf- und Tauschverträge* (1922) 21 f.

²⁶ See, on the comparison with MAL 1 § 15, our remarks in note 20. The death penalty for adultery is found not only in CH § 129 but also in UET 5 203 (discussed by F. R. Kraus in WO 2 (1954–59) 131), which records what appears to be a case of adultery similar to that of our own text: a husband surprised his wife in *flagrante delicto* ('PN dam PN₁ PN₁ NITÁ[?].DAM ùr[for úr] PN₂ in.dab₅). The husband asked the king for a trial; the king called the culprits to justice and condemned them to (be impaled on) the stake (lugal.e 'PN ù PN₂ di.da ba.an.dab₅ nam.giš.dim.šē ba.an.sum.mu.uš). (Note: for giš.dim "stake, pole" cf. Hh. vi 143–145: giš.dim = *tim-mu*, giš.dim.gal = *maḥ-ra-šu*, giš.dim.tur = *mat-ru-ú*, giš.dim.tur = *tim-mu šá dš-la-ki* [glossed *ma-zu-ru* in Hg B ii 35]; see MSL 6 63 [and 78]. Cf. further giš.dim.má = *tim-mu šá elippim* Hh iv 357 [MSL 5 182 and CAD G 56 sub *gašīšu*].) The text closes with an enigmatic reference to an oath: *mu.lugal.bi in.pād*; the reason for the oath is uncertain; perhaps it refers to the husband's promise not to blame the king later for killing his wife when he, in fact, would have wished her to live, as in CH § 129 (*šumma bēl aššatim aššassu uballaḥ ū šarrum . . .*). This text is unusual in that it contains no witnesses or date; could we be dealing here with another text from the genre of literary legal decisions? See further on this genre the discussion below.

in repudiation of adoption and in disputed claim.²⁷ The penalties of facial mutilation and exposure also exhibit no observable correlations.²⁸

Lines 27–29 describe the case as a decision of the royal court; our text, however, is not similar to the Ur III court records studied by Falkenstein, van Dijk, Edzard and others²⁹ but, rather, appears to belong to the group of “literary” legal decisions,³⁰ similar to the homicide trial and to the rape of the slave girl trial treated by Jacobsen.³¹ In each of these texts, the *puhrum*, or assembly of Nippur, played a role similar to that of the *puhrum* in our case. All of these texts came from the same general period. Although there is no year date in our text, the name of the deputy in line 28, Išme-Dagan-zimu, indicates that our text is not earlier than the Isin-Larsa period; the Nippur tablets upon which the homicide and rape trials are written can be dated archaeologically to the Isin-Larsa period. The literary legal decisions are also characterized by the absence of witnesses and date, and by the duplicate copies in which these decisions appear. Duplicates of our text are not known, but it, nonetheless, clearly belongs to this genre.

Our study of the adultery case suggests a possible additional characteristic: the literary legal decisions can be related to cases in the Old Babylonian law codes. The homicide trial presages CH § 153; the rape trial, CE § 31; and our own case relates to CH §§ 141–143.

²⁷ On the notion of shaving as a penalty uniquely applied to adulteresses, cf. Büchler, *WZKM* 19 (1905) 106, 110, 135–37, and the criticism of Koschaker, *RSGH* 210.

²⁸ With the exception of our case of adultery, the occurrences of facial mutilation and exposure cited in note 25 all derive from situations where individuals were punished for breaking or contesting agreements. In these situations, the principle would seem to have been as in the words of *RTC* 16 rev ii 1: u₄.da du₁₁.du₁₁.na nígerím ba.gá.gá “(they will punish him with mutilation) on the day when he puts deceit into his words.” In these situations, at least, the principle of talion would seem to have been operative.

²⁹ A. Falkenstein *NSG* I–III; J. van Dijk, *ZA* 55 70–90; D. O. Edzard, *Sumerische Rechtsurkunden des III. Jahrtausends* (ABAW N.F. 67); Çiğ, Kizalyay, and Falkenstein, *ZA*, 53 (1961) 51 ff.; Kienast, *ZA*, 53 (1961) 97 ff.

³⁰ We owe the term “literary legal decisions” to W. W. Hallo, who, in *Studies Oppenheim* 105, independently came to the same conclusion regarding the literary quality of our text.

³¹ For the homicide trial see T. Jacobsen, *Analecta Biblica* 12 (1959), 130–150; Jacobsen there (p. 134) noted the existence of two other cases: a dispute over offices and a case dealing with the seizure of a slave-girl. The text dealing with the slave-girl case was partially published by J. J. Finkelstein, *JAOS* 86 359, who reproduced Jacobsen’s translation and transliteration. A possible fourth case belonging to this genre is *PBS* 8/1 100, which appears to deal with a dispute of heirs over a slave-girl. See also our remarks concerning *UET* 5 203 in note 26.

While the Old Babylonian law may very well be collections of significant principles of adjudication selected for wider application to many related problems,³² there is no reason to deny the possibility of their dependence upon real cases in which these principles were ideally exhibited. The literary legal decisions appear to be records of such real cases from which general principles of adjudication could have been extracted. They appear to be famous cases of archetypal quality which the casuistic formulations of the codes summarize and abstract.

Could it be that we are dealing with fragments of a larger companion literature to the law codes, a literary collection of classic textbook cases, copied and studied along with the codes as part of the vast library of scribal lore?³³ While we cannot at this point assert that every paragraph of the law codes possessed a textbook “forerunner” or more detailed companion piece, we nevertheless do find sufficient evidence to suggest further exploration of this possibility.³⁴

³² So F. R. Kraus in *Aspects du contact sumero-akkadien* (= *Geneva* 8 [1960]), 286: “Es sind keine individuellen, einmaligen Einzelurteile, die sein (Hammurabi’s) Codex enthält; jedes Urteil gilt vielmehr für jeden gleichartigen Fall . . . weil sie eine Fülle verschiedener Fälle betreffen.”

³³ That the law codes are part of a literary, i. e., scribal tradition can be seen from (1) their duplicate copies and from copies made long after the era of their composition, promulgation, and application; (2) a comparison of Sumerian and Akkadian codes which show literary dependencies; (3) their formulation in *šumma* . . . clauses, typical of learned scribal compositions; and (4) evidences of literary endeavor (analogy, extrapolation, editing, variant readings, etc.) in their formulations. For recent discussions on this problem cf. F. R. Kraus, *Aspect du contact* . . . , 286–291, and J. J. Finkelstein, *JCS* 15 (1961) 101, 103 f.

³⁴ The literary properties of the codes and of the “textbook cases” should not, however, prejudice one to deny the possible existence of an empirical core, actual cases, which would have underlain or inspired the scribal composition. In our case, for example, one may label the heroic act of tying the lovers to the bed and carrying them to court as a literary motif; but this may very well be only a literary embellishment of an actual case, a dramatic infusion of storytelling into a legal report. We need not, however, doubt the essential historicity of the trial and the penalties.