

THE LAW OF THE SOTAH AND THE CUP OF WRATH: SUBSTANTIVE AND ADJECTIVE LAW IN THE HEBREW BIBLE*

BY

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ABSTRACT

The law of the sotah is problematic in various respects, the judicial case at hand being unclear, the ordeal unusual, and its legal basis differing from the juridical principles of parallel ordinances in the Pentateuch. This article examines the context in which the law was established in light of the distinction between substantive law and adjective law. An analysis of prophetic and other passages that employ the image of the “cup of wrath” reveals the adjective law that was practiced in relation to the adulterous woman. Comparison of the procedure manifested in this law with the substantive law of the sotah indicates that the law of the sotah was introduced in order to institutionalize the practice reflected in the image, the potion serving as a way of ritually addressing the jealousy of a husband who believed himself to have been betrayed rather than as a punishment intended to harm the woman or her fetus.

Key words: Law of the sotah, ordeal of bitter water, suspected adulteress, jealous husband, cup of wrath, adjective/substantive law

RÉSUMÉ

La loi de la *sota* est problématique à différents égards, le cas judiciaire n'est pas clair d'emblée, l'épreuve inhabituelle et sa base légale diffère des principes juridiques des ordonnances parallèles dans le Pentateuque. Cet article examine

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le contexte dans lequel la loi a été établie à la lumière de la distinction entre droit positif et droit procédural. Une analyse de plusieurs passages, en particulier des passages prophétiques, qui emploient l'image de la « coupe de colère » révèle le droit procédural qui était pratiqué dans le cas de la femme adultère. Une comparaison de la procédure utilisée dans cette loi avec le droit positif de la *sota* indique que la loi de la *sota* a été introduite afin d'institutionnaliser la pratique reflétée par l'image, la potion servant de moyen pour répondre rituellement à la jalousie d'un mari qui croyait avoir été trahi plutôt que comme punition ayant pour but de nuire à la femme ou à son fœtus.

Mots clés : Loi de la *sota*, épreuve de l'eau amère, adultère suspectée, mari jaloux, coupe de colère, droit procédural/positif.

INTRODUCTION

To date, most scholarly interest in the biblical law of the sotah – the (suspected) adulteress – in Num 5:11-31 has focused primarily on the issue of textual unity in light of the many repetitions and duplications that mark the passage. Important as it may be, this textual discussion has received more attention than the clarification of issues basic to the understanding of the legal process and the unique procedure described. An examination of these issues arising from the law in light of the legal principles reflected in parallel laws in the Pentateuch highlights the difficulties they raise.¹

In this article, I shall review the problems attendant upon the text, proposing their resolution based on Ludwig Köhler's recognition of the importance non-legal texts possess for understanding the judicial system followed in ancient Israel.² Köhler identified the ordinance stipulating that the adulterous woman be stripped bare and shown to the assembled people – a regulation not found in any of the biblical law codes – on the basis of various prophetic texts, such as Hos 2:5: "Else I will strip her naked and leave her as on the day she was born".³ Since Köhler's work, the distinction between adjective (procedural) law – that embodied in non-legal texts – and substantive law – that encoded in the judicial system – has constituted the cornerstone of our understanding of the norms and customs practiced in daily life in ancient Israel.⁴ In order to elucidate the

¹ For the unique process depicted in this text and ancient and modern treatments of it, see Baruch A. LEVINE, *Numbers 1–20* (AncB, 4A), Garden City, NY, Doubleday, 1993, 200-212.

² Ludwig KÖHLER, "Archäologisches", ZAW 34 (1914) 146-149.

³ Unless otherwise noted, scriptural quotations (and numbering) follow the NJPS.

⁴ For an extensive discussion of the relationship between the various legal sources that have survived from the ancient world and the Bible, including both legal codes and

law of the sotah, I shall analyze texts from the prophetic, wisdom, and psalmodic literature that refer to the image of the “cup of wrath”.⁵ Some of these have already been treated in the context of the sotah; others have not. This discussion enabling us to identify the way in which the sotah was treated in practice, we shall then be able to elucidate the broad context in which the law developed – as a substantive law added to the punishment of stoning stipulated in Deut 22:23-24 and that of burning applied to the daughter of a priest who engages in harlotry in Lev 21:9. This understanding will provide a persuasive resolution of the difficulties inherent in the law.

The article is divided into three parts: a) a systematic analysis of the texts relevant for understanding the image of the cup of wrath; b) a demonstration that these texts reflect the adjective law practiced in relation to the sotah; and c) recognition that the substantive law of the sotah was written in order to institutionalize and refine the adjective law.⁶

texts reflecting legal practice, see Meir MALUL, *Society, Law, and Custom in the Land of Israel in Biblical Times and in the Ancient Near Eastern Cultures*, Ramat-Gan, Bar-Ilan University Press, 2006, 9-44, esp. 27-28 (Hebrew); idem, “*These are the Laws You are to Set before Them:*” (*Exodus 21:1*). *Law Collections and Other Legal Compilations from the Ancient Near East*, Haifa, Pardes, 2010, 15-21 (Hebrew). Some scholars reject this distinction, however. Stuart, and in slightly different fashion Frymer-Kensky, deduce from the disparities between the adulteress’s formal punishment (stoning or burning) and those depicted in the prophetic literature that the latter references serve solely as metaphors of national calamity (siege, war, exile, etc.): Douglas STUART, *Hosea–Jonah* (WBC, 31), Nashville, TN, Thomas Nelson, 1987, 48; Tikva FRYMER-KENSKY, *In the Wake of the Goddesses: Women, Culture and the Biblical Transformation of Pagan Myth*, New York, NY, The Free Press, 1992, 148-149. Although Gravett criticizes those scholars who make no essential distinction between formal and theoretical law, she also rejects the view that every metaphor – irrespective of whether it is paralleled in the Hebrew Bible or elsewhere – reflects actual legal practice: Sandra L. GRAVETT, “That All Women May be Warned”: Reading the Sexual and Ethnic Violence in Ezekiel 16 and 23, PhD diss., Duke University, 1994, 59-60.

⁵ Herein, I shall use the general term “image” rather than “allegory”, “metaphor”, “proverb”, etc. For a discussion of the appropriate terminology, see Ishay ROSEN-ZVI, “Another Look at the Adulteress’ Punishment in Ezekiel 16 and 23”, *Beit Miqra* 50 (2005) 163-193, 167 n. 10 (Hebrew). The “cup of wrath” is also referred to variously as the “cup of God’s wrath”, the “cup of fate”, the “cup of reeling”, etc.

⁶ Several scholars have already proposed that the law of the sotah was intended to protect innocent women rather than to punish those found guilty: see Jack M. SASSON, “Numbers 5 and the ‘Waters of Judgment’”, *BZ* 16 (1972) 249-251; Herbert C. BRICHTO, “The Case of the *ŠŌTĀ* and a Reconsideration of Biblical ‘Law’”, *HUCA* 46 (1975) 55-70; Jacob MILGROM, “The Case of the Suspected Adulteress, Numbers 5:11-31: Redaction and Meaning”, in: Richard E. FRIEDMAN (ed.), *The Creation of Sacred Literature*, Berkeley, CA, University of California Press, 1981, 69-75; Eve Levavi FEINSTEIN, “The ‘Bitter Waters’ of Numbers 5:11-31”, *VT* 62 (2012) 300-306. The nazirite law that occurs in close proximity to that of the sotah represents a further example of a substantive law written in order to institutionalize an existing practice: see below.

THE LAW OF THE SOTAH

The duplications and repetitions that occur in the account of the ritual which the sotah is required to endure are immediately apparent. The priest presents the woman twice before God (vv. 16, 18), adjures her twice (vv. 19, 21), and administrates the ordeal of the bitter water twice (vv. 24, 27). The water is deemed “holy” in v. 17, “bitter” in vv. 18, 19, 23, 24, 27, and to “induce a spell (המאררים)” in vv. 18, 19, 22, 24, 27. The ashes are both mixed with the water (v. 17) and the curse said to be rubbed off into it (v. 23). The meal offering is defined once as the “meal offering of jealousy” (v. 15) and once as the “meal offering of remembrance which recalls wrongdoing” (ibid). It is both waved and offered “on the altar (אל המזבח)” in v. 25 and a token part of it scooped out and turned into smoke “on the altar (המזבח)” in v. 26.⁷

While some scholars maintain the text’s consistency, the majority posit that it contains more than one stratum.⁸ Amongst these, some deny the possibility of identifying the various layers.⁹ Others propose diverse and creative ways of dividing the section into its original elements.¹⁰ While pinpointing different strata within the law – such as Jeon’s convincing distinction between the layer of priestly law and that of the Book of Holiness – resolves the textual difficulties adduced above, it fails to address the thematic issues outlined below. These derive from the unclear definition of the legal case, its exceptional nature, and the fact that its starting points conflict with the legal principles set forth in parallel laws (the priestly law, the Book of Holiness, and the Deuteronomistic law):

- 1) The duplication in the opening verses of the law makes it difficult to properly define the legal case being addressed. It is first stated that “If any man’s wife has gone astray and broken faith with him” (vv. 12-13)

⁷ For these duplications, see Bernhard STADE, “Beiträge zur Pentateuchkritik”, *ZAW* 15 (1895) 157-178, 166-178; George B. GRAY, *Numbers* (ICC), Edinburgh, T&T Clark, 1965, 49; John MARSH, “The Book of Numbers”, in: *The Interpreter’s Bible*, 2, Nashville, TN, Abingdon-Cokesbury Press, 1953, 137-308, 167-168.

⁸ The former include, with minor variations, Michael FISHBANE, “Accusations of Adultery: A Study of Law and Scribal Practice in Numbers 5:11-31”, *HUCA* 45 (1974) 25-45; H. C. BRICHTO, “*ŠŌTĀ*”, 55-70; Jacob LICHT, *Numbers 1-10*, Jerusalem, Magnes Press, 1985, vol. 1, 72-73 (Hebrew).

⁹ Noth, for example, maintains that the text incorporates two or three strata so tightly intertwined that they cannot be distinguished: Martin NOTH, *Numbers* (OTL), London, SCM Press, 1968, 49.

¹⁰ For a comprehensive and lucid summary of the array of approaches adopted in the literature, see Jaeyoung JEON, “Two Laws in the Sotah Passage (Num. v 11-31)”, *VT* 57 (2007) 181-207, 181-185.

and then that “if he is wrought up about the wife who has defiled herself; or ... he is wrought up about his wife although she has not defiled herself” (v. 14). These conflicting definitions also recur at the end of the law: “This is the ritual (תורה) in cases of jealousy, when a woman goes astray while married to her husband and defiles herself” (v. 29) vs. “or when ... he is wrought up over his wife ... the priest shall carry out all this ritual (תורה) with her” (v. 30). These definitions indicate that the law recognizes two distinct legal cases: the woman who has defiled herself by sleeping with another man and the woman who has merely aroused the suspicion of her husband.¹¹

- 2) Legal cases can only be tried on the basis of the testimony of at least two witnesses (Deut 19:15; cf. Num 35:29-30; Deut 17:6) or of evidence (Deut 22:15). Here, however, it is explicitly stated “there is no witness against her since she was not caught in the act” (v. 13 [NRSV]).
- 3) If an ordeal can serve as an effective means of proving the committing of a sin even in the absence of witnesses or evidence, why is it not employed in other ordinances? The law of the betrothed girl who has relations with a man other than her intended in Deut 22:23-27, for example, rests on the premise that if she cries out in the city she is likely to be heard, aid being less likely to arrive if she is out in a field. In the city, the girl is thus likely to be found guilty even when she has not consented to the act and to be acquitted even if she is a willing participant if the act took place in a field. Applying the ordeal could prevent such distortions of justice.¹²
- 4) If, having drunk the water, the woman is found guilty, why is she not put to death in accordance with the law (Lev 20:10; Deut 22:22)?¹³

¹¹ The two “laws” were identified by early scholars: see B. STADE, “Beiträge zur Pentateuchkritik”; Bruno BAENTSCH, *Exodus, Leviticus, Numeri* (HK, I/2), Göttingen, Vandenhoeck & Ruprecht, 1903, 470-477; G. B. GRAY, *Numbers*, 49.

¹² In contrast to the Hebrew Bible, the ordeal was prevalent in other ancient Near Eastern laws. Clause 132 of Hammurabi’s code, for example, states: “If a finger has been pointed at the married lady with regard to another man and she is not caught lying with the other man, she shall leap into the holy river for her husband”: see Godfrey R. DRIVER and John C. MILES, *The Babylonian Laws*, London, Clarendon Press, 1955, vol. 2, 53. Cf. Amélie KUHRT, *The Ancient Near East c. 3000–330 BC*, London, Routledge, 1995, vol. 1, 106-108.

¹³ While the Pentateuch states that only the betrothed girl is executed by stoning (Deut 22:24; although the stoning is also referred to in v. 21, it is difficult to determine whether this relates to a betrothed girl – or even an unmarried woman), it seems probable that the same punishment was also meted out to the married woman: see David DAUBE, *Collected Works of David Daube: Talmudic Law*, ed. by Calum M. CARMICHAEL, Berkeley, CA, Robbins Collection, 1992, 169.

And conversely, if it transpires that she has done nothing, why is there no punishment for the person who accused her of adultery (her husband)?¹⁴

- 5) The man and woman who commit adultery receive the same punishment (Lev 20:10; cf. Deut 22:22). Why does the law of the sotah only address the adulteress and not the part played by the adulterer?

In light of these problematics, the question arises why the author of Numbers devotes space to a law whose case is not clearly defined and whose legal views are so exceptional.

THE CUP OF WRATH: BACKGROUND AND EARLIER STUDIES

The cup serves in several biblical texts as an image of the fate that befalls various people. Also known as the “cup of fate”, it may be salutary or either punitive in nature: “The LORD is my chosen portion and my cup; you hold my lot” (Ps 16:5 [NRSV]); “On the wicked he will rain coals of fire and sulfur; a scorching wind shall be the portion of their cup” (Ps 11:6 [NRSV]).¹⁵ It is accompanied by a more detailed image depicting a cup full of bitter, poisonous water or intoxicating, poisonous wine – the “cup of wrath”.

The early scholars who discussed the two images – without making any essential distinction between them – assumed that they reflect a specific *Sitz im Leben*.¹⁶ Subsequent commentators failing to identify this situation due to the lack of any clear parallel in other biblical and extra-biblical texts, they were compelled to relate them to diverse aspects of Israelite monarchy, ritual, mythology, etc.¹⁷ The difficulty in finding analogous

¹⁴ In the laws of the Ancient Near East, the accuser is punished when the woman accused is proven innocent by the river ordeal. Clause 11 of Ur-Nammu’s code, for example, states: “If a man accused the wife of a man of fornication, and the river (- ordeal) proved [her] innocent, then the man who had accused her must [pay] one-third of a mina of silver”: see Jacob J. FINKELSTEIN, “The Laws of Ur-Nammu”, in: James B. PRITCHARD (ed.), *Ancient Near Eastern Texts Relating to the Old Testament*, 3rd ed. With Supplement, Princeton, NJ, Princeton University Press, 1969, 524. Cf. Clause 2 of Hammurabi’s code in: G. R. DRIVER and J. C. MILES, *The Babylonian Laws*, 13-15.

¹⁵ See Rémi LACK, *La symbolique du livre d’Isaïe* (AnBib, 59), Rome, Biblical Institute Press, 1973, 180-183.

¹⁶ Hugo GRESSMANN, *Der Ursprung der israelitisch-jüdischen Eschatologie* (FRLANT, 6), Göttingen, Vandenhoeck & Ruprecht, 1905, 129-136; Wilhelm LOTZ, “Das Sinnbild des Bechers”, *NKZ* 28 (1917) 396-407.

¹⁷ For an extensive discussion of the early proposals suggested, see Hendrik A. BRONGERS, “Der Zornesbecher”, in: Jacobus G. VINK (ed.), *The Priestly Code and Seven Other Studies* (OTS, 15), Leiden, Brill, 1969, 177-192.

literary texts or real-life circumstances led some later scholars to argue that the image had no basis in actual reality.¹⁸ Its frequent usage, however, and the fact that the authors who employed it saw no need of explaining it to their audiences – even in texts in which it is alluded to indirectly – have convinced most scholars to presume that it reflects a real-life situation.¹⁹

Two suggestions have become widely accepted in this regard. Cassuto argues that the image derives from the custom of giving goblets of wine to one's guests, the "host" representing God who determines the fate of individuals and nations.²⁰ McKane proposes that it originated in the ordeal that forms part of the law of the sotah. Although wine is not poisonous, it may prove so to those found guilty – just as the bitter water drunk by the suspected adulteress is not toxic but may curse the woman indicted.²¹ Neither of these arguments properly explain all the texts in which the image appears, however, nor the totality of elements they contain. Cassuto's use of the banquet image hardly suits the legal context in which the cup would generally be administered. The fact that the guest cannot refuse the cup is also difficult to reconcile with the extension of hospitality.²² McKane's assumption of an ordeal, on the other hand, is at variance with the fact that the majority of the texts relate unequivocally to a bitter, toxic drink. The poisonous aspect is consistent with the direct impression that the cup serves as a means of punishment rather than a test of guilt.

Jer 13:20-27 makes it clear that the two images are not separate and cannot be linked to a *Sitz im Leben* in which the banquet serves as the basis for the image of the "cup of fate" and the ordeal as the basis for the "cup of wrath". This passage portrays Jerusalem's judgment as an

¹⁸ Delbert R. HILLERS, *Lamentations* (AncB, 7A), Garden City, NY, Doubleday, 1972, 93; T. FRYMER-KENSKY, *In the Wake of the Goddesses*, 148-149; Adele BERLIN, *Lamentations* (OTL), Louisville, KY, Westminster John Knox Press, 2002, 114.

¹⁹ See, for example, John L. MCKENZIE, *Second Isaiah* (AncB, 20), Garden City, NY, Doubleday, 1968, 123-124.

²⁰ Umberto CASSUTO, *Biblical and Oriental Studies*, Jerusalem, Magnes Press, 1975, vol. 2, 131. Although he primarily addresses the "cup of fate" – references to which he identifies in Ugaritic letters – he also maintains that the same custom gave rise to the image of the "cup of wrath" (ibid, n. 70).

²¹ William MCKANE, "Poison, Trial by Ordeal and the Cup of Wrath", *VT* 30 (1980) 474-492; idem, *Jeremiah 1-25* (ICC), Edinburgh, T&T Clark, 1986, 191. Greenberg weighs up the two options and sides with Cassuto: Moshe GREENBERG, *Ezekiel 21-37* (AncB, 22A), Garden City, NY, Doubleday, 1997, 492-493.

²² See Christopher NORTH, *The Second Isaiah*, Oxford, Clarendon Press, 1964, 216. For a banquet scene that lacks any judicial elements, cf. Isa 25:6-8.

adulteress: “It is because of your great iniquity That your skirts are lifted up” (v. 22), her punishment being depicted as “This shall be your lot, Your measured portion from Me” (v. 25). The use of the image of the “cup/lot of fate (גורלך)” rather than the “cup of wrath” in the determination of the adulteress’ punishment indicates their parallelism.

In the following section, I shall address the numerous texts that refer directly or indirectly to the image in all its forms, examining their characteristic features and the contexts in which they appear. These findings will help identify the *Sitz im Leben* upon which it is based.

THE CUP OF WRATH IN THE PROPHETIC, WISDOM, AND PSALMODIC LITERATURE

The most common occurrence of the image is in the prophetic literature, wherein it is applied to various addressees. In some cases, these are all the nations: “So I took the cup from the hand of the Lord and gave drink to all the nations ... all the royal lands which are on the earth ... For the Lord has a case against the nations, He contends with all flesh” (Jer 25:17-31); “That same cup that you drank on My holy Mount shall all the nations drink evermore ...” (Obad 16).²³ Other prophecies address specific nations: “Get him drunk ... Moab shall vomit till he is drained” (Jer 48:26); “If they who rightly should not drink of the cup must drink it, are you [Edom] the one to go unpunished? You shall not go unpunished; you will have to drink!” (Jer 49:12); “I trampled peoples [Edom] in My anger, I made them drunk with My rage” (Isa 63:6); “Alas for you [Chaldeans] who make your neighbors drink ... Drink, you yourself, and stagger! The cup in the Lord’s right hand will come around to you” (Hab 2:15-16 [NRSV]).²⁴

In Psalms, the image is applied to the wicked rather than the nations. Psalm 11 refers to God as sitting on His holy mount and separating the righteous from the wicked and meting out their reward: “On the wicked he will rain coals of fire and sulfur; a scorching wind shall be the portion of their cup” (v. 6 [NRSV]). In praising God for His rule of justice and integrity, Psalm 75 states: “There is a cup in the LORD’s hand with foaming wine fully mixed; from this He pours; all the wicked of the earth drink, draining it to the very dregs” (v. 9).

²³ As Raabe notes, this verse evinces that Judah shares the same fate as that suffered by the nations. While Judah’s punishment is temporary, that of the nations is final, however: see Paul R. RAABE, *Obadiah* (AncB, 24D), New York, NY, Doubleday, 1996, 233.

²⁴ This perhaps should be read *והרעל* as in the LXX and 1QpHab: see *BHS*.

Another usage occurs in Jer 51:7: “Babylon was a golden cup in the Lord’s hand, It made the whole earth drunk; The nations drank of her wine”. Here, Babylon is an instrument of wrath in God’s hand, all the nations – including Judah and Israel – drinking her potion. This prophecy – which recalls Isa 10:5 (“Ha! Assyria, rod of My anger, In whose hand, as a staff, is My fury!”) – provides a political commentary on those that employ the image of the bitter draft. Babylon serves as the cup of wine through which God will requite the nations’ deeds.²⁵ Another political commentary, which portrays Jerusalem as the cup of wrath “for all the nations”, occurs in Zech 12:2. As these texts indicate, the moral reflected in the image adapts itself to the historical circumstances of the time.

In all these texts, the drinking serves as a form of punishment, in some cases even functioning as a formal indictment.²⁶ None of them refer to a specific sin, however, in contrast, analysis of many of the other passages in which the image occurs evinces that the punishment is closely related to sexual offences.²⁷ Nahum likens Nineveh to “the harlot, the winsome mistress (זונה טובת הן)” (3:4) who is punished by having her skirts lifted over her face in order to “display your nakedness to the nations and your shame to kingdoms” (3:5) and drunkenness: “You too shall be drunk and utterly overcome” (3:11). Other prophets associate the image with the sin of adultery derived from the perception of Israel’s relationship with her God as one of husband and wife.²⁸ This usage occurs in the

²⁵ Jeremiah also refers to Babylon as a powerful nation forced to drink the bitter draft: “and last of all, the king of Sheshach (ששך) shall drink” (25:26) (Sheshach symbolizing Babylon according to the אהבש code: see Yair HOFFMAN, *Jeremiah 1-25: Introduction and Commentary* [Mikra Leyisrael], Tel Aviv, Am Oved, 2001, 501 [Hebrew]). Cf. Rev 16:19: “God remembered great Babylon and gave her the wine-cup of the fury of his wrath” (NRSV). It also makes the connection with sexual immorality explicit: “Fallen, fallen is Babylon the great! She has made all nations drink of the wine of the wrath of her fornication” (14:8; cf. v. 10, 17:5, 18:2-3). Here, Babylon is most likely an allusion to Rome.

²⁶ The difficult phrase וּבְצַעַם בְּרֹאשׁ כָּלֵם in Amos 9:1 can also be read as a description of execution by poisoning (רֹאשׁ/רִישׁ): see Friedrich HORST, “Die Visionsschilderungen der alttestamentlichen Propheten”, *EvTh* 20 (1960) 193-205, 196; Kevin J. CATHCART, “Rōš, ‘Poison’, in Amos IX 1”, *VT* 44 (1994) 393-396.

²⁷ These are discussed below.

²⁸ See Julie GALAMBUSH, *Jerusalem in the Book of Ezekiel: The City as Yahweh’s Wife* (SBLDS, 130), Atlanta, GA, Scholars Press, 1992; Nelly STIENSTRA, *YHWH is the Husband of His People: Analysis of a Biblical Metaphor with Special Reference to Translation*, Kampen, Kok Pharos Publishing House, 1993; Richtsje ABMA, *Bonds of Love: Methodic Studies of Prophetic Texts with Marriage Imagery (Isaiah 50:1-3 and 54:1-10, Hosea 1-3, Jeremiah 2-3)* (SSN, 40), Assen, Van Gorcum, 1999. According to Malul, the metaphor is far more than a rhetorical device, reflecting the historical legal-theological

framework of the *rîb* – a type of legal suit in which the injured party (God) sets out his complaints against the other side (Israel) for not fulfilling her obligations.²⁹

In Ezekiel 23, the prophet likens the religious and political behaviour of the kingdoms of Samaria and Judah to two promiscuous sisters – Oholah and Oholibah (v. 4). Ohalibah/Jerusalem – more wanton than her sister Oholah and thus receiving the full brunt of the prophecy – will be judged and punished. These events are depicted in two parallel units (vv. 22-34 and vv. 36-49).³⁰ The first pericope portrays the judgment: “I will entrust your punishment to them, and they shall inflict your punishments on you” (v. 24). The punishments consist of bodily injury (vv. 25, 34), death by the sword (v. 25), the taking away of their sons and daughters (v. 25), death by fire (v. 25), stripping bare (vv. 26, 29), and drinking of the cup of desolation and horror (vv. 31-34). The judgment is also described in the second unit: “Arraign Oholah and Oholibah, and charge them with their abominations” (v. 36); “But righteous men shall punish them with the punishments for adultery and for bloodshed, for they are adulteresses and have blood on their hands” (v. 45). Here, their punishment consists of stoning, the sword, and burning (v. 47), without any mention of the preceding stages – namely, the stripping bare and drinking of the cup, etc.

Ezekiel 16 – a parallel to Ezekiel 23 – also depicts the adulteress’ judgment: “I will inflict upon you the punishment of women who commit adultery and murder” (v. 38). In this case, the punishments enumerated are stripping bare (vv. 37, 39), stoning (v. 40), piercing by the sword (v. 40), and burning by fire (v. 41).³¹ The judgment contains no reference to the drinking of the cup.

relations between God and the people: Meir MALUL, “The Relation Between Tearing the Fence Down in the Song of the Vineyard (Isaiah 5:1-7) and Stripping the Woman Naked in the Old Testament”, *Beit Miqra* 47 (2001) 11-24, 12 n. 4 (Hebrew).

²⁹ For this model and the relationship between the speeches that occur in it in the prophetic literature – in many of which God also acts as both plaintiff and defendant – and its legal procedure, see Michael DE ROCHE, “Yahweh’s *rîb* Against Israel: A Reassessment of the So-Called ‘Prophetic Lawsuit’ in the Preexilic Prophets”, *JBL* 102 (1983) 563-574.

³⁰ Two of the most conspicuous divergences between the two units relate to the addressees (Oholibah alone in the first and both sisters in the second) and the sin (adultery in the first and adultery and bloodshed in the second). Many scholars have analyzed the relationship between the two pericopae. Greenberg argues that the second is a first draft of the first, being added as an addendum: M. GREENBERG, *Ezekiel 21–37*, 493.

³¹ The stripping bare is referred to twice. In v. 37, God exposes her nakedness and in v. 39, her lovers do so. Greenberg (*Ezekiel 1–20* [AncB, 22], Garden City, NY, Doubleday,

Comparison of these prophecies in Ezekiel draws attention to a number of interesting points. Firstly, the punishment consists of several elements.³² Secondly, some of the elements are repeated in varying forms – death by fire, death by the sword, and death by stoning, for example.³³ Thirdly, the order in which the punishments are meted out does not reflect what would have happened in reality – as indicated, for example, by the reference to the stripping of clothes, which occurs after the death by fire. Finally, the details in the prophecies are not completely consistent.³⁴ We may thus conclude that Ezekiel does not provide us with a depiction of a systematic and fixed mode of execution that represents the formal, official method of punishing the adulteress but rather reflects a reality in which each case was dealt with separately. The mode is determined by the husband (God), whose role differs. He may act as both judge and punisher: “I will put her cup into your hand” (23:31).³⁵ On other occasions, He may serve as the judge but does not execute the punishment: “Then they shall assemble a mob against you to pelt you with stones and pierce you with their

1983, 286) maintains that the woman was stripped once before the judgment (v. 38) and again after having been indicted. He also draws attention to the variants between the MT: *ושרפו בתוך באש* and the Peshitta: *ושרפוך בתוך האש*, arguing that the burning belongs to the destruction of Jerusalem in the moral rather than to the woman’s punishment in the parable (ibid, 288).

³² Hosea describes the stripping of the adulteress and her death by thirst: “Else I will strip her naked and leave her as on the day she was born: and I will make her like a wilderness, render her like desert land, and let her die of thirst (...*אפשיטנה ערמה*... *כן אפשיטנה ערמה*... *כוס שמה ושממה*... *ושתית אותה ומצית ואת חרשיה תגרמי*...”) (2:5). This may point to another mode of execution. Not referred to by other prophets, it may also, however, reflect death by drinking the cup. This association is created by the linguistic affinities between the two passages: *ועובך עירם ועריה*... *כוס שמה ושממה*... *ושתית אותה ומצית ואת חרשיה תגרמי*... (Ezek 23:29-34). Prior to her stripping, Hosea observes: “Rebuke your mother, rebuke her, for she is not My wife and I am not her Husband” (2:4). He thus adds divorce to the elements of the punishment. Nahum introduces an additional element: “I will throw loathsome things over you and disfigure you” (3:6). See Raymond WESTBROOK, “Adultery in Ancient Near Eastern Law”, *RB* 97 (1990) 542-580.

³³ Even if the woman does not die from the stoning, she surely does so after being pierced by the sword. Rosen-Zvi (“Another Look at the Adulteress’ Punishment”, 179-180) suggests that she is executed by stoning, the piercing by the sword adding insult to injury after her death as common in public lynchings.

³⁴ These features have led some scholars to assume that the various elements of punishment listed in the prophecies should be viewed as metaphorical rather than reflecting punishments actually meted out. Day bases this assumption on the blurred distinction in the various prophecies between the charges of adultery and of prostitution and on the punishment of piercing by the sword – unparalleled in biblical or ancient Near Eastern law codes: see Peggy L. DAY, “Adulterous Jerusalem’s Imagined Demise: Death of a Metaphor in Ezekiel 16”, *VT* 50 (2000) 285-309, 299-305.

³⁵ In these three passages, He also pronounces the verdict: “Now, O harlot, hear the word of the LORD” / “thus said the Lord GOD” (16:35-36/23:22, 47).

swords” (16:40).³⁶ On others, He only appoints the judge and the punisher: “Assuredly, Oholibah, thus said the Lord GOD: I am going to rouse against you the lovers from whom you turned in disgust ... And I will entrust your punishment to them, and they shall inflict their punishments on you ...” (23:22, 24).

In his appeal to comfort Jerusalem, Deutero-Isaiah depicts the punishment the city received via precisely the same image: “... O Jerusalem, you who from the LORD’s hand have drunk the cup of His wrath, you who have drained to the dregs the bowl, the cup of reeling!” (51:17).³⁷ The “daughters of Jerusalem” – an expression the prophet employs in order to sharpen the image of the kingdom as a mother and wife – lie swooning, knocked senseless by God’s wrath (חמת ה’), “drunk, but not with wine!” (51:21). Unlike Ezekiel 23, this prophecy provides us with more details regarding the drink. While the term חמת signifies God’s wrath, its primary sense – as the parallelism with the noun תרעלה indicates – relates to its toxic nature.³⁸ This meaning occurs in other texts, such as Job’s account of God’s poison-carrying arrows (Job 6:4). Its origin appears to lie in natural toxins: “venomous creepers in dust (חמת זחלי עפר)” (Deut 32:24); “the pitiless poison of vipers (חמת תנינים)” (ibid, 33); “Their venom is like that of a snake (חמת למו כדמות חמת נחש)” (Ps 58:5); “They sharpen their tongues like serpents; spiders’ poison is on their lips (שננו לשונם כמו נחש חמת עכשור)” (Ps 140:4).

In two prophecies in Jeremiah, the kingdom of Judah is accused of adultery, the punishment she receives being the drinking (and eating) of a toxic substance. The adultery adduced in these passages serves is described as whoring after other gods: “Why is this people – Jerusalem – rebellious with a persistent rebellion? ... For the LORD our God has doomed us, He has made us drink a bitter draft, because we sinned against the LORD” (8:5, 14); “[they] followed their own willful heart and followed

³⁶ He may also participate in it with others. Thus, for example, in Ezekiel 16 He exposes the woman’s nakedness (v. 37) while her lovers strip off her clothes (v. 39). Zimmerli thus argues that vv. 36-38 constitute a secondary addition intended to represent God as the person directly responsible for imposing the punishment: Walther ZIMMERLI, *Ezekiel*, trans. Ronald E. CLEMENTS, Philadelphia, PA, Fortress Press, 1979, vol. 1, 347.

³⁷ Oswalt questions the conventional proposal that the כוס here is a gloss for the term קבעה: John N. OSWALT, *The Book of Isaiah: Chapters 40–66* (NICOT), Grand Rapids, MI, Eerdmans, 1998, 349 n. 73. He also argues that the concluding words שתית מציה are original (ibid, n. 75). Support for this view can be adduced from other verses: cf. Ezek 23:34; Ps 75:9.

³⁸ Harold R. COHEN, *Biblical Hapax Legomena in the Light of Akkadian and Ugaritic*, Missoula, MT, Scholars Press, 1978, 85-86; John GOLDINGAY, *Isaiah* (NIBCOT, 13), Peabody, MA, Hendrickson, 2001, 297.

the Baalim ... I am going to feed that people wormwood and make them drink a bitter draft (הַנְּנִי מֵאֲכִילִם אֶת הָעֵם הַזֶּה לְעֵנָה וְהַשְׁקִיתִם מִי רֹאשׁ) (9:13-14). In another passage employing the image, the prophets themselves are charged with adultery: “For the land is full of adulterers ... Adultery and false dealing ... I am going to make them eat wormwood and drink a bitter draft (הַנְּנִי מֵאֲכִיל אוֹתָם לְעֵנָה וְהַשְׁקִיתִם מִי רֹאשׁ)” (23:10, 14, 15).³⁹ Here, it is difficult to determine whether it represents a metaphor or a concrete accusation. *מי רֹאשׁ* is water made bitter by plants – like the “wine [which] is the venom of asps, the pitiless poison of vipers (עֲנַבְמוֹ עֲנַבְמוֹ)” referred to in Deut 32:32.⁴⁰ Alongside the plant poison, the prophet also adduces the intoxicating and corrupting nature of wine: “This wicked people who refuse to heed My bidding ... Every jar should be filled with wine” (13:10, 12).

A comparison of Deutero-Isaiah and Jeremiah reveals that the two prophets attribute differing contents to the cup – animal toxin (חֶמֶת), plant toxin (רֹאשׁ), and wine (possibly not poison but merely meant to intoxicate, its fermentation perhaps turning it toxic as in Ps 75:9). Their prophecies thus appear to reflect a reality in which different potions might be given to each suspected adulteress. The specific nature of the poison was determined by the woman’s husband (God), both judging and carrying out the judgment.

The image of the cup of wrath appears in all these prophecies as part of the metaphor of God’s marital relationship with Israel. The people (the wife) are unfaithful to God (their husband), whoring after other gods and being punished with the bitter draft. The prophets spoke in terms of adultery and its punishment because it formed part of the legal culture during the biblical period. Just as Ezekiel attributes diverse elements to the punishment, so Deutero-Isaiah and Jeremiah describe the cup divergently. These differences reflect the adjective law, which embodies the modes of punishment adopted in disparate places and periods.⁴¹

³⁹ For the prophets’ sins, see John BRIGHT, *Jeremiah* (AncB, 21), Garden City, NY, Doubleday, 1965, 151-152; W. MCKANE, *Jeremiah 1–25*, 575.

⁴⁰ Kaddari notes that the primary meaning of *רֹאשׁ/רוֹשׁ* is a poisonous plant and that the phrase *רֹאשׁ-פְּתָנִים* (Deut 32:33; Job 20:16) carries the sense of “venom”: Menahem Z. KADDARI, *Milon ha-ivrit ha-miqra’it* [*Dictionary of Biblical Hebrew*], Ramat-Gan, Bar-Ilan University Press, 2006, 980 (Hebrew).

⁴¹ The story of Judah and Tamar – in which Judah states “Bring her out and let her be burned” (Gen 38:24) and then repents of his verdict – constitutes a further example of the divergence between adjective and substantive law: the father of the household (the husband) judges the woman (his wife) as he sees fit. It is unclear what proof is brought in order to justify the burning or on what grounds the judgment was rescinded. The mode of execution is burning rather than stoning and the role of the adulterer is ignored.

The image also occurs in the psalmodic literature. The daughter of Edom is cursed in Lam 4:21: “To you, too, the cup shall pass, You shall get drunk and expose your nakedness (גם עליך תעבר כוס תשכרי ותתערי)”.⁴² Although this curse is not due to the Edomites’ sexual promiscuity but to the fact that they are rejoicing over the calamity and destruction that has befallen “Fair Zion” (v. 22), it serves as another example of the use of the image as a form of punishment for adultery. The author hopes that “Fair Edom (בת אדום)” will be punished by being made to drink the cup because this was the punishment meted out to “Fair Zion”. This is clear from the גם עליך (“to you, too”) in v. 21. The expectation is thus hinted at in the previous verses: “Let all their wrongdoing come before You, and deal with them as You have dealt with me for all my transgressions” (1:22). The writer calls Jerusalem “Fair Zion (בת ציון)” (1:6, 2:1, 4, 8, 10; et al.), “Fair Jerusalem (בת ירושלים)” (2:13, 15), “Fair Maiden Zion (בתולה בת-ציון)” (2:12), and “my poor people (בת-עמי)” (4:3, 6, 10) because, like the prophets, he wishes to portray her as a woman who has been unfaithful to her husband (cf. 1:1, 2, 19). The epithet “Fair Edom” (4:21, 22) serves to draw an analogy between the two kingdoms.⁴³ The punishment of “Fair Zion”, who has been unfaithful to her husband – “The LORD vented all His fury, poured out His wrath (כילה ה’ את המתו שפך חרון אפו)” (4:11) – must thus be understood as referring to the bitter draft. This is in line with the author’s expectation that “To you, too, the cup shall pass (גם עליך [אדום] תעבר כוס)” (v. 21). The idea of the exchange of roles – in the framework of which the person made to drink becomes the person administering the drink – recurs in several other passages: “Herewith I take from your hand the cup of reeling, the bowl, the cup of My wrath ... I will put in the hands of your tormentors (הנה לקחתי מידך את כוס התרעלה ... ושמתיה ביד מוגיך)” (Isa 51:22-23); “Ah, you who make others drink to intoxication as you pour out your wrath ... The cup in the right hand of the Lord shall come around to you (הוי משקה רעהו ... שתה גם אתה והערל תסוב עליך)” (Hab 2:15-16).

As in Lamentations, Psalms also employs the image to describe Israel’s fall: “You have given us wine that makes us reel [Or: You have sated Your people with a bitter draft] (הראית עמך קשה השקיתנו יין תרעלה)” (Ps 60:5).⁴⁴

⁴² In contrast to other passages, this verse creates the impression that the potion forms a way of exposing the woman and baring her nakedness rather than serving as an independent punishment.

⁴³ See D. R. HILLERS, *Lamentations*, xxxvii-xxxix.

⁴⁴ The term קשה here is customarily understood to signify a cup on the basis of the Ugaritic קש: see Mark S. SMITH and Wayne T. PITARD, *The Ugaritic Baal Cycle*, Leiden, Brill, 2009, vol. 2, 80.

While the image does not occur in the wisdom literature, allusion to it may nonetheless exist. On several occasions in Proverbs, the son is cautioned to beware of the Strange Woman who “forsakes the companion of her youth and disregards the covenant of her God (העובת אלוף נעוריה) שכתה (ואת ברית אלהיה שכחה)” (2:17). On one of these, she is depicted as being “in the end ... as bitter as wormwood (ואחריתה מרה כלענה)” (5:4). Even if the reference is not to her ultimate fate but to the end of her seduction, as frequently asserted, the choice of this image is not accidental, ironically playing on the punishment of the bitter draft such a woman deserves.⁴⁵

Like the texts discussed above, in this passages the drinking serves as a form of punishment. Here, however, it is associated with a specific sin – namely, adultery. We may thus conclude, following Köhler, that its repeated occurrences reflect an adjective law pertaining to the adulteress – and perhaps even the prostitute. The texts do not reveal the precise way in which the draft worked: did it impinge upon her dignity by prompting her to strip naked and bare her body, as in the words of Lam 4:21: “you shall get drunk and expose your nakedness”?⁴⁶ Did it cause pain and suffering, sickness, or even death?⁴⁷ Or was it intended to bring about the loss of the embryo which she might be carrying?⁴⁸ The fact that this “law” – like that of the stripping of the adulteress – has no

⁴⁵ For the common assertion, see William MCKANE, *Proverbs* (OTL), London, SCM Press, 1970, 314; Bruce K. WALTKE, *The Book of Proverbs: Chapters 1-15* (NICOT), Grand Rapids, MI, Eerdmans, 2004, 309. This may also be the proper way to relate to Qohelet’s depiction of the woman as “more bitter than death; she is all traps, her hands are fetters and her heart is snares (וחוטא ... אסורים ידיה) (ליכד בה)” (7:26). Many scholars argue that this relates to the Strange Woman of Proverbs: see, for example, Wesley J. FUERST, *The Books of Ruth, Esther, Ecclesiastes, the Song of Songs, Lamentations* (CBC), Cambridge, Cambridge University Press, 1975, 133-134; Choon-Leong SEOW, *Ecclesiastes* (AncB, 18C), Garden City, NY, Doubleday, 1997, 270-275. Here, the image is elaborated, dealing with women in general rather than merely their fate.

⁴⁶ Cf. also the description of Noah: “He became drunk, and he uncovered himself within his tent” (Gen 9:21).

⁴⁷ Seybold (Klaus SEYBOLD, “la’ānā”, in: *TDOT* VIII, 1997, 14-16, 15) argues that the prophets’ usage of the metaphors of poison weed and wormwood reflects the death the bearers of prophecy may expect.

⁴⁸ Many scholars argue that the law of the sotah is intended to prevent the birth of bastards: Tikva FRYMER-KENSKY, “The Strange Case of the Suspected ‘Sotah’ (Numbers 5:11-31)”, *VT* 34 (1984) 11-26; Alice BACH, “Good to the Last Drop: Viewing the Sotah (Numbers 5.11-31) as the Glass Half Empty and Wondering How to View it Half Full”, in: J. Cheryl EXUM and David J. A. CLINES (eds.), *The New Literary Criticism and the Hebrew Bible* (JSOTS, 143), Sheffield, JSOT Press, 1993, 26-54. For medical knowledge regarding abortions in the ancient world, see Jacob J. FINKELSTEIN, “On Some Recent Studies in Cuneiform Law”, *JAOS* 90 (1970) 243-256, 246-247 n. 15.

mention in any legal passage demands that we regard its existence as mere conjecture.⁴⁹

In some passages, the bitter draft – and eating of poisonous plants – constitutes a conventional idiom for suffering and affliction (Ps 69:22; Lam 3:15). Poison weed and wormwood also frequently function metaphorically: “Perchance there is among you some man or woman ... whose heart is even now turning away from the Lord ... a stock sprouting poison weed and wormwood” (Deut 29:17).⁵⁰ Hosea and Amos both apply the analogy to the distortion of judgment: “[Ah,] you who turn justice into wormwood” (Amos 5:7); “Yet you have turned justice into poison weed and the fruit of righteousness to wormwood” (ibid, 6:12); “... justice degenerates into poison weeds” (Hos 10:4). The choice of this image may derive from the custom of using these plants as legal sanctions. The prophets accuse the judges of turning the legal process into (metaphoric) poison weed and wormwood which – when used wisely – form the means of legitimate punishment. Psalm 58 similarly creates a contrast between the perversion of justice by human magistrates and God’s justice.⁵¹ Here, the scales – designed to ensure judicial fairness – are adduced as a tool corruptly misused for gain (v. 3).⁵² Those responsible for justice are also described as abusing the judicial system by acting as snakes who refuse to listen to their charmer, biting rather than protecting: “Their venom is like that of a snake ... (חמת למו כדמות חמת נחש)” (vv. 5).

The idiomatic cup may also hold a positive connotation, denoting deliverance from affliction: “my cup overflows” (Ps 23:5 [NRSV]); “I

⁴⁹ Drinking a cup as part of an ordeal is mentioned in a Hittite law dealing with a priest suspected of eating consecrated food: see *ANET*, p. 210 IV: 50ff. The custom of drinking animals’ blood as part of an ordeal was practiced in several ancient cultures: see Philippe GUILLAUME, “Drinking Golden Bull: The Erased Ordeal in Exodus 32”, in: Helen R. JACOBUS, Anne Katrine DE HEMMER GUDME, and Philippe GUILLAUME (eds.), *Studies on Magic and Divination in the Biblical World* (Biblical Intersections, 11), Piscataway, NJ, Gorgias Press, 2013, 135-147, 136. Drinking poison is found in various contexts, in particular in Indian consecration rites and African ethnography: see Theodor H. GASTER, *Myth, Legend, and Custom in the Old Testament*, New York, NY, Harper & Row, 1969, 280-300; Jan VANSINA, “The Bushong Poison Ordeal”, in: Mary DOUGLAS and Phyllis M. KABERRY (eds.), *Man in Africa*, London, Tavistock, 1969, 245-260; Steven FEIERMAN and John M. JANZEN, *The Social Basis of Health and Healing in Africa*, Berkeley, CA, University of California Press, 1992, 218-219.

⁵⁰ K. SEYBOLD, “la^anā”, 14-15; Gunther FLEISCHER, “rō’s II”, in: *TDOT* XIII, 2004, 262-264, 263. Cf. also Lam 3:5: “All around me He has built misery and hardship (יִקְקֶה רָאשׁ וְתִלְאָה)”.

⁵¹ Mitchell DAHOOD, *Psalms II: 51-100*, 3rd ed. (AncB, 17), Garden City, NY, Doubleday, 1979, 57-64.

⁵² Cf. Prov 16:11: “Honest scales and balances are the LORD’s; all the weights in the bag are His”.

will lift up the cup of salvation” (Ps 116:13).⁵³ Another expression appears in Jer 16:7: “No one shall ... give them the cup of consolation” (NRSV).⁵⁴

THE LAW OF THE SOTAH IN LIGHT OF THE CUP OF WRATH

The law of the sotah is immediately followed by that of the nazirite (Num 6:1-21). The latter appears to carry the status of substantive law intended to regulate an existing practice by limiting the length of a nazirite vow – as indicated by the recurrence, in several forms, of the phrase “throughout the term of his vow as nazirite (כל ימי נזיר)” (× 7).⁵⁵ The law of the sotah similarly seems to be intended to regulate the prevailing biblical procedure of the bitter potion. In this case, the legislator sought to ensure that the priest (mentioned 12 times) rather than the husband was in charge of the ceremony and that the potion consisted of water (to test for guilt) (11 times) rather than wine or poison (as a form of punishment).⁵⁶ These two elements highlight the disparity between the two forms of law – substantive and adjective. The substantive law clearly distinguishes between a woman caught in adultery and a woman not caught. In the first instance, both the woman and the man are punished by stoning (Lev 20:10; Deut 22:22). In the second, the woman not being punishable, the case is determined by God – via the ordeal. From this distance in time it is difficult to establish whether any significance was attributed to the outcome of the procedure or whether it was merely meant to placate the husband’s jealousy, the accompanying elements – dust, ink, oath, and meal offering – serving to help convince him that the “affair” was being taken with the seriousness it deserved.⁵⁷

⁵³ Carol L. MEYERS and Eric M. MEYERS, *Zechariah 9-14* (AncB, 25C), New York, NY, Doubleday, 1993, 314.

⁵⁴ Bright suggests that the origin of this idiom lies in the comforting of mourners. If so, this is the only biblical text to refer to such a practice: J. BRIGHT, *Jeremiah*, 110.

⁵⁵ G. B. GRAY, *Numbers*, 57-60. See also M. NOTH, *Numbers*, 54; B. A. LEVINE, *Numbers 1-20*, 229. Samson’s lifelong pledge seems to have been frowned upon.

⁵⁶ For a discussion of the “bitter water”, see E. L. FEINSTEIN, “The ‘Bitter Waters’ of Numbers 5:11-31”.

⁵⁷ The frequency of miscarriages and death of the mother or child at birth reduced the fear that people would lose faith in the process. Cf. the story of R. Meir who told a woman whose husband was jealous of her to spit in his eye in order to appease him (*Lev. Rab.* 9:9). According to Boyarin, this interpretation is consistent with “rabbinic notions that the function of the Sota ordeal was not to find out and punish guilty wives but to remove the jealousy of paranoid husbands” (Daniel BOYARIN, *Carnal Israel: Reading Sex in Talmudic Culture*, Berkeley, CA, University of California Press, 1995, 188).

By understanding the law as developed in order to regulate existing practice, we resolve the textual difficulties enumerated above:

- 1) It deliberately addresses two judicial cases – a defiled woman and a man possessed by jealousy – in order to create an identity between them. Hereby, the legislator elucidates that the woman who has defiled herself but cannot be proved guilty because there are no witnesses or evidence is thus legally only the object of the suspicion of her jealous husband. In both instances, the legislator refrains from delivering a verdict, stipulating that she must be tried at the hands of heaven.
- 2) The legal process demands witnesses and evidence. The “law” of the sotah is thus not a legal procedure. Its sole purpose is to mitigate – or possibly undermine – the accepted process, which is not grounded on the judicial principles behind the substantive law of the woman who has committed adultery.
- 3) The ordeal plays no part in any other law because it is not recognized as a legitimate element of the formal legal system. Its function here is to ensure that the potion consists of water rather than wine or poison.⁵⁸
- 4) The woman is not executed in accordance with the law (either by stoning or burning), nor is her husband punished if he has accused her falsely, because the criteria required for proving her innocence or guilt (witnesses and evidence) are absent.
- 5) The law ignores not only the part played by the adulterer but also in effect that played by the adulteress herself.

CONCLUSION

Both the procedure depicted in the law of the sotah and the judicial principles that lie at its base deviate from and conflict with the legal premises formulated in parallel laws given in the Pentateuch. The circumstances raise questions regarding the role the procedure plays and the essence of the regulation. An examination of the non-legal texts that refer or allude to the bitter draft reveals the existence of an image used to depict the punishment meted out to people regarded as adulteresses – the cup of wrath. When this image is compared with the pentateuchal law of the sotah, clear differences arise. In the image, the husband is responsible for making the woman drink the potion, the law ascribing this responsibility

⁵⁸ Milgrom (“The Case of the Suspected Adulteress”) also adduces this fact to explain the absence of the ordeal in other ordinances.

to the priest. The cup is filled with poison in the image, with water in the law. The bitter draft serves as a punishment of the woman in the image and as a way of testing her guilt in the law. These fundamental divergences demonstrate that, while at first glance the law appears to reflect the practice embodied in the image, the reverse is in fact true. While varying across time and place, the adjective law punished the suspected adulteress by making her drink a bitter draft. In the absence of any witnesses or evidence, the substantive law recognized that such a woman could not be punished by a court and was thus judicially only a wife suspected by a jealous husband. In order to persuade him that his concerns were being addressed, it imposed an ordeal upon the woman. At the same time, however, it sought to mitigate the common practice of giving her wine or poison. McKane's premise regarding the cup of wrath is thus inversely correct. Rather than the image deriving from the law of the sotah, the law was based on the practices reflected by the image.