

Transgressing Boundaries:

Nonproductive Sex

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Introduction: Nonproductive Sex

There has been a significant amount of scholarship in the field of biblical studies on family development, and sexual relationships. Within this area of study, the challenge for many scholars examining sexuality in the ancient Near East is the task of separating their own modern construction of sexuality from the sexual mores¹ of ancient Israel. The first step in analyzing ancient values is defining what constitutes sexuality in the ancient Near East. Hilary Lipka writes “sexuality is the network of social meanings in the form of norms, definitions, practices, interpretations, prohibitions, and representations that the members of a particular culture create, maintain, and apply to sexual roles and sexual interactions.”² This network forms the social construction of the categories masculine and feminine.³ In this system, gender and sexuality are perceived to be the framework within which social identities are produced in ancient Israel, and the rest of the ancient world.⁴ However, these dominant gender paradigms are not ‘natural;’ and what is more, the construction of gender is not unproblematic.⁵

¹ Hilary Lipka defines mores as “a specific sub-set of behavioral norms in which determinations of right and wrong play a central role in regulating interpersonal relationships among members of society.” See Hilary B. Lipka, *Sexual Transgression in the Hebrew Bible*, Hebrew Bible Monographs 7 (Sheffield: Sheffield Phoenix, 2006), 19.

² *Ibid.*, 2.

³ Anthropologist Pierre Bourdieu writes, “[t]he biological difference between the sexes, i.e. between the male and female bodies, and, in particular, the anatomical difference between the sex organs, can ... appear as the natural justification of the socially constructed difference between the genders.” See his discussion of gender and masculinity in Pierre Bourdieu, *Masculine Domination* (Stanford, Calif: Stanford University Press, 2001), 11. Virginia Burrus argues that the terms women and men “demarcate positionalities both distinctly unstable and fissured by difference, joined also at times by unexpected, even unpredictable, affinities or alliances.” See Virginia Burrus, “Mapping as Metamorphosis: Initial Reflections on Gender and Ancient Religious Discourses,” in *Mapping Gender in Ancient Religious Discourses*, Todd Penner and Caroline Stichele (eds.) (Netherlands: Brill, 2007), 1-10, esp. 3; see also Judith Butler’s preface in *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990), where she discusses the construction of gender and sexuality, and proposes a genealogical critique of gender (influenced by Foucault and Nietzsche).

⁴ Burrus, “Mapping as Metamorphosis,” 11. David Carr writes, “in henotheistic and monotheistic Israel, gender and love have become key concepts describing power differentials on multiple levels of the cosmic hierarchy.” For a detailed analysis of gender in ancient Israel and the history of interpretation see David Carr, “Gender and the Shaping of Desire in the Song of Songs and Its Interpretation,” *Journal of*

As Virginia Burrus writes, gender in the ancient world was not a fixed binary, but rather a dynamic spectrum, a gradation of masculinity and femininity.⁶ What was sexually normative in one culture or community, may not be sexually normative in another.⁷ When discussing sexuality in ancient Israel scholars must ask: what acts did the ancient Near East consider to be sexual, when and with whom was it appropriate to engage in these acts, and what boundaries did they place upon these interactions?⁸ Jeffrey Weeks argues, for example, that rather than viewing sexuality as a constituent element of gender identity, we have to recognize that there are various sexualities; such as class, racially specific, and gendered sexualities.⁹ Weeks believes as “historians of sexuality [we] must try to understand these, both in their distinctiveness and in their complex interactions.”¹⁰ In this paper I explore human sexual relations in the Hebrew Bible; in particular, I investigate permissible and impermissible acts of sex and physical relationships to determine the parameters of illicit sex in the ancient Near East.

Biblical Literature, 119, no. 2 (2000): 11; see also Saul M Olyan, *Rites and Rank: Hierarchy in Biblical Representations of Cult* (Princeton, N.J.: Princeton University Press, 2000), 10.

⁵ Jeff Hearn, *Men in the Public Eye: The Construction and Deconstruction of Public Men and Public Patriarchies*, (New York; NY: Routledge, 1992), viii.

⁶ Burrus, “Mapping as Metamorphosis,” 4. Nissinen uses Burrus’s concept of relative masculinities to argue that “the spectrum of masculinities... made it important to signify and identify acceptable ways of masculine performance. In fact, manhood was a vulnerable quality that was constantly endangered and had, therefore, always to be demonstrated, done, and accomplished by means of a proper male performance.” See “Relative Masculinities in the Hebrew Bible/Old Testament” in *Being a Man: Negotiating Ancient Constructs of Masculinity*, Studies in the History of the Ancient Near East, Ilona Zsolnay (ed.) (New York, NY: Routledge, 2016), 224.

⁷ Lipka argues that although “sexual acts appear to be the same across cultures, the meaning of and motivations attached to such acts vary greatly from society to society, and even from subculture to subculture.” For example, “the content and meaning of man-boy fellatio in contemporary Western society is completely different from the content and meaning of man-boy fellatio among the Sambia and other Melanesian societies. While in our culture most people consider such activities to be a deviant form of sexual gratification that is harmful to the child, in Melanesian cultures boy-insemination rituals are institutionalized rites of passage that are required for a boy to become a man.” See Lipka, *Sexual Transgression in the Hebrew Bible*, 3, 7.

⁸ *Ibid.*, 3; See also John DeLamater, “The Social Control of Sexuality,” *Annual Review of Sociology*, 7 (1981): 265–67 and; Jeffrey Weeks, “Sexuality and History Revisited,” in *Sexualities in History: A Reader*, Kim M. Phillips and Barry Reay (eds.) (New York: Routledge, 2002), 32.

⁹ Weeks, *Sexualities in History*, 37.

¹⁰ *Ibid.*

This paper will begin with a general discussion of sexual acts in which some principles that determine biblical attitudes towards adultery, prostitution, and rape will be identified. My investigation of three forms of sexual deviance identified and combined in Leviticus 18 and 20 begins in section I. I will discuss the nature and range of these prohibitions with the support of data taken from comparative religion, gender theory, and principles derived from the survey of biblical proscriptions on adultery, prostitution, and rape. The paper will be summarized in a concluding section with some indications of directions for further research on the determinants of normative and non-normative sexuality in the Bible and the ancient Near East.

Deviations from the “accepted” sociosexual mores of the ancient Near East are usually assumed to consist of adultery,¹¹ prostitution,¹² rape,¹³ incest,¹⁴ bestiality,¹⁵ and male same-sex relations.¹⁶ William S. Morrow classifies these transgressions as high-handed sins.¹⁷ The punishment for these offenses varied from social displacement to the death penalty.

¹¹ Davidson writes adulterous relationships are severely penalized in Lev 20:10; Deut 22:21, 24; Exod 20:14. He adds, “According to Lev 18:23, bestiality is defiling ... to the person engaging in the practice. The only other prohibited practice indicated as defiling ... in Leviticus 18 is adultery. Jacob Milgrom discusses the significance of this connection of adultery with bestiality: “Adultery [v. 20] and bestiality (v. 23) are the only prohibitions in the entire list containing the root *ṭm*’ Considering that of all the listed prohibitions, this one, adultery, was by far the most widespread, the legist may have purposefully attached the impurity label here [Lev 18:20, referring to adultery] to allude to its grave implications.” Milgrom further points out that the defilement from bestiality [*ṭm*’ v. 23], like the defilement for adultery [*ṭm*’ v. 20], “is not cultic, but moral.” See Richard M. Davidson, *Flame of Yahweh: Sexuality in the Old Testament* (Peabody, Massachusetts: Hendrickson Publishers, 2007), 174.

¹² The practice of prostitution itself is suspect; however there are no explicit prohibitions against that act anywhere in the Hebrew Bible. I will elaborate more on the nature of prostitution below.

¹³ The Hebrew Bible does not have a word that is equivalent to rape. Rape may be implied in Deuteronomy 22:25. Genesis 19 and Judges 19 clearly prohibit male same-sex penetrative violence. Additional biblical narratives address matters of sexual violence; however “rape” may not be the issue. I will discuss the term rape and its usage later in this section.

¹⁴ Incest (father or son’s wife) Leviticus 20:11-12; sibling incest (brother and sister) Leviticus 20:17.

¹⁵ Exodus 22:19; Leviticus 20:15-16

¹⁶ Leviticus 20:13

¹⁷ High-handed sins, as defined by Morrow, are “infractions against moral and cultic regulations committed deliberately and in full knowledge (Num 15:30-31).” See *An Introduction to Biblical Law* (Grand Rapids: Eerdmans Publishing Co, 2017), 150.

Some scholars may also consider male masturbation¹⁸ as a departure from sociosexual norms. The emission of semen renders the male unclean (Lev 15:16), and the act itself could be considered a misuse of one's seed, or perhaps more pointedly, an irregular use of sex. Biblical scholars remain divided on the classification of masturbation, often referring to the case of Onan in Genesis 38. However, like Lev 15:16, Genesis 38 demonstrates a concern for a seminal emission and not necessarily masturbation. Further, Onan does not appear to be masturbating, as Michael Coogan writes, he was practicing *coitus interruptus*.¹⁹ The phrase the "spilling of seed" also does not refer to other instances in which semen is expended without reproductive purposes, such as: "sex with a pregnant woman, sex after menopause, [self stimulation], [non-vaginal] intercourse, and birth control of various sorts."²⁰ As such, since the nature of masturbation is unclear, it should be considered an exception to the list of sexual deviations.

This introductory section will briefly outline the first three aforementioned sexual deviations, identifying the key issues for the authors of the ancient Near East. The rest of this paper will delve deeper into the structure of house relations with respect to three classes of sexual transgressions in ancient Israel: incest, male same-sex intercourse, and bestiality. One of its concerns will be to see how key issues operative in the proscription of adultery, prostitution and rape play out in these other categories. My focus for the latter part of this paper will be on the components of prohibited sexual acts between human and human-animal relations, and the manner in which these sex acts are embedded into the larger network of power relations in the ancient Near East, vis-à-vis family, honour, and matters of sexual productivity. Leviticus 18 and

¹⁸ As Friedman and Dolansky write, female masturbation does not appear to be a concern in the Hebrew Bible. Richard Elliott Friedman and Shawna Dolansky, *The Bible Now* (Oxford ; New York: Oxford University Press, 2011), 10–11.

¹⁹ Michael David Coogan, *God and Sex: What the Bible Really Says*, 1st ed. (New York: Twelve, 2010), 110.

²⁰ Friedman and Dolansky, *The Bible Now*, 10.

20 combine issues of adultery, prostitution, and sexual impropriety as these acts—like incest, male same-sex intercourse, and bestiality—are linked by a common concern for normative gender behaviour and reproduction within the kinship group. This paper demonstrates how these laws are bound in the same corpus through concerns for illegitimate relations, sexual non-viability (non-procreative intercourse), violations of property, and the transgressing of gender roles.

Adultery

Adultery is defined in the Hebrew Bible as extramarital intercourse between a married woman and a man that is not her husband.²¹ Adulterous actions for the Israelites undermined family integrity and threatened household stability chiefly because the issue of adulterous relations in the ancient world was both political and economical. Politically, “adultery affected the state because it could result in confusion about the legitimacy of its citizens.”²² Economically, adulterous relations were considered “crimes of property” because a woman’s sexuality was subject to the ownership of patriarchal rule (her husband, father, or brother).²³ Conversely, extramarital intercourse of a married man is not adulterous (unless the male is engaging in intercourse with a married woman).²⁴

The legislative treatment of sex acts in the Hebrew Bible varies based on the perceived severity of the infraction. As Morrow identifies, “all sins can be expiated according to Priestly

²¹ Berquist notes that the Israelites are warned against the dangers of “loose women” or adultery in Exod 20:14; Lev 20:10; Deut 5:18; Prov 2:16, 5:3, 7:5, 22:14, 23:27. See *Controlling Corporeality: The Body and The Household in Ancient Israel* (New Brunswick, N.J: Rutgers University Press, 2002), 97.

²² Elisabeth Meier Tetlow, *Women, Crime and Punishment in Ancient Law and Society: The Ancient Near East*, vol. 1 (New York, NY: Continuum, 2004), 153.

²³ Sandra L. Gravett et al., *An Introduction to the Hebrew Bible: A Thematic Approach*, 1st ed. (Louisville, Kentucky: Westminster John Knox Press, 2008), 112.

²⁴ See Deuteronomy 22:22-24; Leviticus 18:20; 20:10.

law, but not all could be expiated by the sacrificial system.”²⁵ According to Priestly law, the impurity of adultery,²⁶ idolatry,²⁷ and murder,²⁸ can only be reconciled by death.²⁹ However, Morrow also points to other instances in the Tanakh where a lesser penalty may be accepted for adultery.³⁰ Prov 6:35 suggests monetary compensation can be paid to the husband, whereas Isa 50:1-2, and Jer 3:8 stipulate divorce rather than execution.³¹ Further exceptions are made for adultery between a man and a betrothed slave woman as indicated in Lev 19:20-22. The punishment here is not death, but rather the man must present a ram to YHWH as a guilt offering. The priestly author does not address the slave woman.

The laws addressing adultery place emphasis on female virginity. We can look to the Deuteronomistic laws concerning family sexuality to explicate the relationship between virginity and adultery in the laws of Leviticus. Tikva Frymer-Kensky claims that Deut 22:13-21 and 22:28-29 “operate[s] on the premise that unmarried girls are supposed to remain virgins until they are married to a man of their father’s choosing.”³² These laws protect the interest of familial relations by asserting authority over the sexual and procreative rights of the daughter. The right of the father to decide the retribution for his daughter (Exod 22:16), suggests that adultery was viewed not only as a crime of honor, but was also economically disruptive. Despite Frymer-

²⁵ Morrow, *An Introduction to Biblical Law*, (Grand Rapids: Eerdmans Publishing Co., 2017), 150.

²⁶ See Lev 20:10; Deut 22:22.

²⁷ See Lev 20:2-3

²⁸ See Exod 21:12; Lev 24:17, 21; Num 35:16-21, 31.

²⁹ For a thorough list of infractions and their penalties see Morrow, *An Introduction to Biblical Law*, 150–52.

³⁰ *Ibid.*, 244.

³¹ See *ibid.*

³² Frymer-Kensky further adds, “in the intercourse provision [Deut. 22.28-29], the girl’s sexual experience is revealed while she is still under her father’s jurisdiction. In the case of the slandered bride [Deut. 22.13-21], the bridegroom of the newly married girl claims that he is not the first. Both circumstances flaunt the assumption of daughterly chastity and both precipitate a crisis that the laws seek to resolve.” See “Virginity in the Bible,” in *Gender and Law in the Hebrew Bible and the Ancient Near East*, Victor H. Matthews, Bernard M. Levinson and Tikva Frymer-Kensky, (eds.) (New York, NY: A&C Black, 2004), 79.

Kensky argument against the value of a female as commodity, it would seem apparent that the demand of a “bride price” supports the notion that female virginity is to some degree linked to the economic welfare of the kin group.³³

The constructions of family values are similar in the laws of the Decalogue. The commandments address a property-owning adult male, placing emphasis on the social construction of class and gender within the household.³⁴ Danna Nolan Fewell and David M. Gunn observe that the Decalogue is framed by “powerful images...of the family or household, where the husband/father/master/owner is focal.”³⁵ Within this socioeconomic stratum, the patriarch has both authority and ownership over the household: in other words, the family is property.³⁶

³³ Frymer-Kensky argues that adultery concerns the defilement of the family’s worth, but is not an economic concern. She suggests that “the defilement of the female unmans the men: they lose their honor by the demonstration that they lack the qualities of real men.” See *ibid.*, 82–85. Although the honor of the male is certainly a factor within the household law, it is also possible that the concern of honor is associated with the theft of the right for the paterfamilias to determine a bride price. ; Jane Schneider argues, “intra-community conflict is a tremendously important feature of the rural Mediterranean, on both sides. Sometimes this is simply because people are competing for honor, and quarrel with each other over insults, or challenges to honor... Mediterranean people have quarreled over encroachments on boundaries, usurpations of water rights, abusive pasturing, animal theft, the destruction of crops, adultery, and murder. They consider such violations as challenges to the honor of the property holding group. Thus honor can be thought of as the ideology of a property holding group which struggles to define, enlarge, and protect its patrimony in a competitive arena.” See Jane Schneider, “Of Vigilance and Virgins: Honor, Shame, and Access to Resources in Mediterranean Societies,” *Ethnology* 10, no. 1 (1971): 2; Morrow explains, “Deuteronomy 22:28-29 also addresses a case of rape. The violation of the young woman’s virginity has economic as well as social consequences, as the ability of the family to demand a good bride-price would be lost when it became known the girl was not a virgin. The perpetrator, therefore, must pay a substantial fixed bride-price, marry the woman, and give up the right to divorce her. [He adds,] “demanding marriage without divorce extends some protection to the woman. It gave her security when she might be left socially vulnerable.” See Morrow, *An Introduction to Biblical Law*, 243–44.

³⁴ Danna Nolan Fewell and D. M. Gunn, *Gender, Power, and Promise: The Subject of the Bible’s First Story* (Nashville: Abingdon Press, 1993), 96.

³⁵ *Ibid.*

³⁶ *Ibid.*

Deut 22:22-30 includes the legal proceedings for accounts of both sexual impropriety and adultery.³⁷ These verses address circumstances in which the law may be mitigated.³⁸ If intercourse occurs between a man and an engaged woman within the city, both the male and female are to be punished by death. However, if the act occurs outside of the city- the woman is not perceived to be at fault as the community is to assume she was victimized. Under these circumstances the male is executed. Additionally, Num 5:11-21 enables the husband to bring his wife to trial if he assumes adultery. As Tikva Frymer-Kensky observes, “this ritual allowed a husband to resume marital relations after he suspected adultery. Otherwise, intercourse with a wife who had slept with another man could be expected to pollute the land.”³⁹ As I have noted, the transgression of an adulterous relationship extends beyond the family. Adultery posed a threat to social order (as demonstrated in Lev 18:28).⁴⁰ The laws prohibiting adultery control the sexuality of the family by preventing a male from illicit interactions with a woman from another household, whilst also controlling and protecting the sexuality of female kin. Adultery, can be considered an “affront to procreation because [it] produces illegitimate progeny.”⁴¹ The punishment of death safeguarded the nation from the polluting effects of illicit sexual intercourse, and protected YHWH from impurity.

³⁷ For a thorough analysis of women in Deuteronomic law, see Morrow's *An Introduction to Biblical Law*, 239–57; See also Carolyn Pressler, *The View of Women Found in the Deuteronomic Family Laws* (Germany: Walter de Gruyter, 1993), 21–44.

³⁸ Ilona N. Rashkow discusses Deuteronomy 22:23-27 in greater detail in, Ilona Nemesnyik Rashkow, *Taboo Or Not Taboo: Sexuality and Family in the Hebrew Bible* (Minneapolis, MN: Fortress Press, 2000), 25–26; See also Tetlow, *Women, Crime and Punishment in Ancient Law and Society*, 1:135.

³⁹ Tikva Frymer-Kensky, *In the Wake of the Goddesses: Women, Culture, and the Biblical Transformation of Pagan Myth* (New York, NY: Free Press, 1992), 197.

⁴⁰ Berquist writes, adultery “is a matter of contact between households that leads to the dissolution of one of the households; the boundaries between them are broken and destruction follows.” See Berquist, *Controlling Corporeality*, 105.

⁴¹ David Biale, *Eros and the Jews: From Biblical Israel to Contemporary America* (New York, NY: Basic Books, 1992), 29.

Prostitution

The arrangement of prostitution in the ancient Near East reflects an interest in protecting male privilege. It does not restrict men from procuring, marrying, or engaging sexually with a prostitute. Rather, the legal text provides regulations on the treatment of a female prostitute, chiefly because prostitution involves the act of sexual intercourse for the purpose of obtaining a pecuniary advantage. The Hebrew Bible discusses prostitution as an act practiced by both men and women in the ancient world. The Holiness Code does not govern the Israelite male laity's use of a prostitute but it does place restrictions on the high priest. Lev 21:7, 14 prohibits a priest from "marrying a prostitute or a woman who has been defiled." Further, Leviticus 21 prohibits the priest's daughter from engaging in sexual acts of ill repute. The daughter's prostitution not only defiles her sexuality, but also desecrates the holiness of her father (21:9). The punishment for the daughter's actions under these circumstances is death through fire. Additionally, a father is prohibited from sexually exploiting his daughter as the act of prostitution defiles her sexuality and the land becomes "depraved" (19:29). It is possible that the father who commits this infraction will incur a similar punishment to the adulterous male who has fornicated with a slave woman, designated for another man—the judicial or divine treatment of these actions is unclear (Lev 19:20).

Morrow draws a link between adultery and prostitution. He writes:⁴²

The need for clean lines of descent is an expression of the assumption that various kinds of mixing are to be avoided in the areas of Body, Temple, and Community. Note, for example, how the motif of adultery is applied to concerns of both Community and Temple. Adultery is proscribed literally (Lev 18:20; 20:10), but it also becomes symbolic. According to Lev 20:6, turning to divination specialists and wizards is "prostitution" or "whoring" (Hebrew root *z-n-h*). This usage echoes the imagery of prostitution and adultery as ways of describing illegitimate religious activities in prophetic literature (e.g., Jeremiah 2; Ezekiel 16; Hosea 4).

⁴² Morrow, *An Introduction to Biblical Law*, 176.

Deuteronomy provides further restrictions on prostitution. Verses 23:17-18 acknowledges the practice of prostitution while condemning it in a manner that safeguards the holiness of the Temple. The law appears to delineate a class of prostitute; the *qādēš* or “Temple prostitute:”

None of the daughters of Israel shall be a temple prostitute; none of the sons of Israel shall be a temple prostitute. You shall not bring the fee of a prostitute or the wages of a male prostitute into the house of the LORD your God in payment for any vow, for both of these are abhorrent to the LORD your God.

Restrictions on the *qādēš* in Deuteronomy suggest the existence of sacred prostitutions. However, beyond the legal proscriptions in Deuteronomy there is insufficient evidence to determine whether sacred prostitution occurred in the ancient World.⁴³ Although the verses address both male and female prostitution, there is very little that can be deduced about the role of the prostitute in this context. As Richard Friedman and Shawna Dolansky suggest, the “issue is that one should not use their price for a vowed donation to the Temple. This law does not... forbid one to be a prostitute, male or female.”⁴⁴ The author of Deuteronomy is concerned with the donating of an impure income and its potential to defile the Temple, and in turn, YHWH. As a result, the prostitute has the potential to destabilize the community by violating the stability of the family (Lev 19:29), as well as the potential to tarnish the Israelites’ relationship with YHWH by bringing sexually charged material into the temple precincts.

‘Rape’ as a Sexual Impropriety

The Bible’s treatment of sexual impropriety teaches of Israel’s interest in protecting male privilege and family integrity. The case of nonconsensual intercourse effaces the woman’s social value, while simultaneously violating the household, chiefly because in ancient Israel, the

⁴³ Stephen O. Murray, *Homosexualities* (Chicago: University of Chicago Press, 2002), 295.

⁴⁴ Friedman and Dolansky, *The Bible Now*, 27.

forceful sexual violation of the body would not be recognized as ‘rape,’ as it is in the West.⁴⁵ Rather, the defilement would be considered a sexual impropriety—which would imply any non-consensual misconduct that is sexual, as determined by the community and (or) kin group. The term most often used to describe occurrences of sexual aggression in the Hebrew Bible is *‘innah*, which loosely translates to “humble, afflict, oppress, or violate.”⁴⁶ From this we can speculate that the authors of these biblical texts found the act of sexual violence to be degrading and abhorrent. However, in this context, scholars must be discerning of perceived acts of sexual aggression in the Hebrew Bible before they determine if impropriety occurred. In this section, I will examine biblical descriptions of sexual acts in which impropriety can be assumed or is implied.

Frank M. Yamada maintains that *‘innah* must be interpreted as an expression of violence rather than a form of solicitation.⁴⁷ He acknowledges that there are several narratives in the Hebrew Bible where the verb *‘innah* occurs in cases of sexual violence.⁴⁸ However, in order to examine issues of violence, Yamada holds that scholars must first examine how “the legal

⁴⁵ Feinstein writes that the contemporary verb ‘rape’ is problematic as the factors which qualify an act as rape in the West may not align with the legal system of ancient Israel. See *Sexual Pollution in the Hebrew Bible* (Oxford ; New York: Oxford University Press, USA, 2014), 68–69.

⁴⁶ *Ibid.*, 71.

⁴⁷ Frank M. Yamada, *Configurations of Rape in the Hebrew Bible: A Literary Analysis of Three Rape Narratives* (Peter Lang, 2008), 25; Frymer-Kensky writes, “In the sexual uses of this root, there are instances where it means rape in Judges 19–20, where the concubine in Gibeah was raped to death, and in the story of Amnon and Tamar, in which he is said to have overpowered her (2 Sam 13 12–13), and in Lamentations, in which the women of Zion are said to have been raped (Lam 511). But forcible rape is not always the issue; some cases are ambiguous. In Deut 22 28–29 a man has grabbed an unbetrothed girl, he must marry her and not divorce her, because he has illicitly had sex with her. The same scenario is involved in the story of Dinah and Shechem (Genesis 34). There is no indication in the story that Shechem overpowered her. The issue is that she was not free to consent, and he should have approached her father first. Similarly, the man who sleeps with a menstruant (Ezek 22 10) or with his paternal sister (Ezek 22 11) is said to have ‘raped’ her only in the sense of ‘statutory rape,’ i.e., that he had no right to have sex with her even if she consented. In Deut 21 10–13, the verb paradoxically seems to imply a failure to offer a sexual relationship.” See fn. 9 in, “Law and Philosophy: The Case of Sex in the Bible,” *Semeia* 45 (1989): 100.

⁴⁸ Yamada, *Configurations of Rape in the Hebrew Bible*, 25.

material functions to provide an alternative to the violent post-rape responses that are found in Gen 34, Judges 19, and 2 Samuel 13.”⁴⁹ Yamada observes that despite the excessive male violence illustrated in biblical sexual impropriety narratives, the legal material on this subject in the Hebrew Bible is intended to prevent extrajudicial violence.⁵⁰ In consideration of the legal and narrative texts that describe non-consensual sexual intercourse, Yamada turns to Deut 22:22-30:

The Deuteronomic legal code provides two laws to determine culpability for sexual impropriety and adultery. Culpability is addressed by stoning the engaged virgin for not calling for help in the town, as well as persecuting the man for violating his neighbor’s betrothed (22:23-24). Non-culpability is determined if the sexual act took place outside of city limits. Under these circumstances the female is vindicated when the community determines that help was not accessible, and the male is prosecuted (22:25-27). It should be noted that these proceedings are communal, with the execution taking place at the city gate.⁵¹

Yamada argues that the Deuteronomistic text can be divided into three key issues: “the marital status of the woman involved; the question of the woman’s consent or lack of consent; and the issue of who is the injured party.”⁵²

1) The question of matrimony places emphasis on adultery rather than sexual impropriety.⁵³ If the woman is pledged to be wed, or already married, the act is punishable by death. The law appears to present the female in these circumstances as a spoken-for commodity. The punishment of the illicit union is determined partially by whether or not the woman resides

⁴⁹ Ibid., 22.

⁵⁰ Ibid.

⁵¹ See Morrow’s complete discussion of judicial practices in Morrow, *An Introduction to Biblical Law*, 228–38.

⁵² Yamada, *Configurations of Rape in the Hebrew Bible*, 22.

⁵³ Ibid., 23.

with her father or has been bound to a partner. This matter of ownership leads to the second bone of contention, the question of consensual behaviour.

2) The woman's culpability is predicated on her consent; however, the act is only considered a crime on the part of the female if it happens in the jurisdiction of her family and or partner. As Yamada notes, sexual impropriety within city limits is treated as adultery, however "the woman could have cried out without anyone hearing."⁵⁴

3) Finally, the last law addresses the sexual impropriety of an unattached virgin, which reaffirms my position that the woman is viewed as an object rather than autonomous. If a man forcefully lies with the virgin "and they are caught in the act, the man who lay with her shall give fifty shekels of silver to the young woman's father, and she shall become his wife" (22:28-29). The third law seeks the father's consent rather than the woman's, and assumes a non-violent approach to prosecution. The reasoning here is twofold: the male's forceful seizing of the virgin robs the father of his entitled "bride price."⁵⁵ The law protects the property interests of the paterfamilias. As Feinstein explains, "the laws treat both rape and seduction of an unbetrothed virgin as property offenses against the girl's father and secondarily as offenses against the young woman, insofar as they undermine her marital prospects."⁵⁶ The punishment of marriage also absolves the father from the financial burden of supporting both his unwed daughter and the unborn child; and further establishes familial ties for the young woman.

⁵⁴ Ibid.

⁵⁵ David P. Wright observes that both Deuteronomy and the Covenant Code have similarities to MAL A. The Covenant Code appears to use seduction to protect the unbetrothed virgin who would likely be sold into slavery. In contrast, the Deuteronomist follows the same law set out in the case of the betrothed virgin, in which case issues of consent are related to the punishment of death. See David P. Wright, *Inventing God's Law: How the Covenant Code of the Bible Used and Revised the Laws of Hammurabi* (Oxford University Press, 2009), 48, 110–114, and 130.

⁵⁶ For more on issues of rape and property offenses see Feinstein, *Sexual Pollution in the Hebrew Bible*, 80; see also Lipka, *Sexual Transgression in the Hebrew Bible*, 176–77; Thalia Gur-Klein, *Sexual Hospitality in the Hebrew Bible: Patronymic, Metronymic, Legitimate and Illegitimate Relations* (Sheffield, Eng: Routledge, 2014).

Feinstein further examines the similarities between the Middle Assyrian Laws (MAL) and the Deuteronomist's treatment of sexual impropriety. She observes that Deuteronomy's understanding of this sex act has parallels to the account of sexual impropriety presented in MAL A §55.⁵⁷ Feinstein maintains that the main similarity is the treatment of the virgin as property: MAL A views sexual impropriety as a property offense against the father, whereas the biblical account treats the sex-act(s) as an offense against the family.⁵⁸ More importantly she notes, "in none of the laws is rape in and of itself a crime."⁵⁹ As such, Feinstein, following the scholarship of Hilary Lipka, argues that although the sex-act may not wholly be viewed as a crime, sexual impropriety is a "transgression of personal boundaries" and thus has a negative connotation in the Israelite ethos.⁶⁰

An examination of biblical and ancient Near Eastern laws on adultery, sexual impropriety, and prostitution reveals a preoccupation with the protection of male privilege, family integrity, and cultic purity. The purpose of this paper is to discover how these principals are connected to other forms of sexual transgressions in Leviticus 18 and 20. The following section will examine how the rules regarding too-close family relations, same-sex interactions, and licentious encounters with animals all have a homologous relationship to the previously discussed class of transgressions. I maintain that these prohibitions are designed to protect the

⁵⁷ Feinstein, *Sexual Pollution in the Hebrew Bible*, 79.

⁵⁸ *Ibid.*, 80.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*; Lipka explains, "Sexual norms that insure the cohesiveness of the community by preventing conflict between its members usually include those concerning adultery and incest (which prevents conflict on the level of the family, the basic unit of society), in addition to rape and other forms of sexual assault. Just as acts of adultery create a conflict between the adulterer and the cuckolded husband that must be resolved for the community to continue to function effectively, acts of rape and sexual assault create a conflict between the aggressor and the legal guardian of the victim." See Lipka, "Such a Thing Is Not Done in Israel," 30–31.

social structure of the family, the larger community (Israel), and define the range of male sexual privilege.

I. Incest

The fear of sexual contagion for the Priestly authors of Leviticus demonstrates a rejection of the practices of Canaan and Egypt (Lev 18:1-5). The allocution at the end of Leviticus 18 instructs the Israelite's not to commit the listed abominations, for if they do, they will "be cut off from their people" and rejected from the land (24-30). Included in this ordinance is the prohibition against the act of incestuous relations.⁶¹ Lev 18:6 prohibits sexual liaisons between kin. Notably other legal material in the Hebrew Bible and the law codes of ancient Near East demonstrate little concern for the practice of incest.⁶² The laws of incest in Leviticus convey a

⁶¹ Hilary Lipka writes, "Incest is treated as a transgression against religious boundaries in two of the legal collections (the H texts Lev 18:6-18 and 20:11-12, 14, 17-21 and the D texts Deut 23:1 and 27:14-16) and one prophetic text (Ezek 22:10-11), with some variation among these as to which relationships are considered to be incestuous. Interestingly, several sexual relations and marriages occur or are proposed in narrative texts between parties whose unions are considered incestuous (and are prohibited) in the legal collections (e.g. half-siblings in Gen 20:12 and 2 Sam 13:13, aunt and nephew in Exod 6:20, son and mother-in-law in Gen 35:22; 49:3-4 and 2 Sam 16:21- 22; 20:3). These relationships are not in any way problematized as transgressions against religious boundaries. Several of the unions are considered problematic for other reasons, but there is no conception of these acts as a transgression against Yahweh." See Hilary B. Lipka, "Such a Thing Is Not Done in Israel": The Construction of Sexual Transgression in the Hebrew Bible" (Ph.D., Brandeis University, 2004), 56.

⁶² Debora W. Rooke observes that the topic of incest "does not occur at all in the Book of the Covenant (Exodus 20-23), and Deuteronomy, for all its concern with female sexual purity and continence, has only one actual law against incest, prohibiting males from having sex with their father's wife (Deut. 23.1). It also curses those who lie with their father's wife, with a beast, with one of their sisters, or with their mother-in-law (Deut. 27.20-23), although these curses are not part of the central law code... Hammurabi (c. 1750 BCE) inveighs against the man who has sex with his daughter (LH 154), the man who sleeps with his daughter-in-law (LH 155) and his daughter-in-law-to-be (LH 156), and the man who sleeps with his mother (LH 157) or his father's principal wife (LH 158), but no other liaisons between kin by blood or marriage are mentioned. The Middle Assyrian Laws (c. 1076 BCE) have a large number of provisions on Tablet A concerning issues of marriage and fornication, but apparently nothing on incest (although, of course it is possible that there were such provision but they have not survived)... The law code with the most elaborate extant provisions on unlawful sexual couplings is the Hittite Laws (c. 1650-1500 BCE). The incestuous liaisons it prohibits are a man with his own mother, daughter or son (189), a man with his stepmother during the lifetime of his father (190), a free man with free sisters and their mother if he knows the women are related to each other (191), a man with his living wife's daughters, mother or sister

preoccupation with sexual boundaries and the potential violation of sexual norms within the family.⁶³ Primarily, the structure of sexuality in ancient Israel is formulated as a household experience.⁶⁴ The demarcation of sex as a matter of the household functions as a method to protect the Israelites from a surreptitious corruption. Jon L. Berquist observes, “ancient Israelite culture... primarily deployed sexuality as a bond to keep households together and to define their limits in ways to protect themselves against outside incursions.”⁶⁵ In addition to a concern for outside contaminants, the authors of Leviticus also express a concern for pollution within the household. By regulating sex within the household bond, Israelite culture becomes susceptible to potential problems within the home.⁶⁶ This section examines how the Priestly legislators address incestuous interactions as a violation against the family.

Within the Israelite household the male head of the home “controlled the sexuality of all persons within the household; conversely the boundaries of the household were marked by the extent of the head’s sexual control.”⁶⁷ Legal and sexual authority is appointed to the male in Lev 18:23: the male is told that he “shall not have sex with a beast, nor shall a woman.”⁶⁸ The instruction is given to the male head, implying that in addition to the male’s sexual authority; he

(195b-c). However, not even this can match the wide-ranging prohibitions on sexual relationships with kin by blood or marriage that appears in Leviticus.” See Deborah W. Rooke, “The Bare Facts: Gender and Nakedness in Leviticus 18,” in *A Question of Sex?*, vol. 14, Hebrew Bible Monographs (Sheffield: Sheffield Phoenix Press, 2007), 21–22.

⁶³ Stephen Bigger writes, “Incest prohibitions relate to a man’s sexual intercourse with a woman who bears a specific relationship towards him at the time of the offense. This would naturally prevent marriage since no society-and certainly not the Hebrews- segregates sexual and marital roles.” See Stephen F. Bigger, “The Family Laws of Leviticus 18 in Their Setting,” *Journal of Biblical Literature* 98, no. 2 (1979): 194.

⁶⁴ Berquist, *Controlling Corporeality*, 85.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*; Rooke argues that “incest is a worse crime than (mere) adultery (which is effectively wrongful sex) because it threatens the basic family structures and disrupts the social hierarchy in a more fundamental way than adultery does.” See Rooke, “The Bare Facts: Gender and Nakedness in Leviticus 18,” 33.

⁶⁷ Berquist, *Controlling Corporeality*, 85.

⁶⁸ Rooke, “The Bare Facts: Gender and Nakedness in Leviticus 18,” 26.

also has legal authority (and/or responsibility) over the sexual actions of his kin.⁶⁹ Further, the paterfamilias was permitted to engage in sexual relations with the adult women of his household; however, he was prohibited from uncovering the nakedness of “anyone near of kin” (18:6).⁷⁰ The Priestly lawgiver proceeds to list the boundaries of household sexuality (18:7-18 NRSV):⁷¹

You shall not uncover the nakedness of your father, which is the nakedness of your mother; she is your mother, you shall not uncover her nakedness.

You shall not uncover the nakedness of your father’s wife; it is the nakedness of your father.

You shall not uncover the nakedness of your sister, your father’s daughter or your mother’s daughter, whether born at home or born abroad.

You shall not uncover the nakedness of your son’s daughter or of your daughter’s daughter, for their nakedness is your own nakedness.

You shall not uncover the nakedness of your father’s wife’s daughter, begotten by your father, since she is your sister.

You shall not uncover the nakedness of your father’s sister; she is your father’s flesh.

You shall not uncover the nakedness of your mother’s sister, for she is your mother’s flesh.

You shall not uncover the nakedness of your father’s brother, that is, you shall not approach his wife; she is your aunt.

You shall not uncover the nakedness of your daughter-in-law: she is your son’s wife; you shall not uncover her nakedness.

You shall not uncover the nakedness of your brother’s wife; it is your brother’s nakedness.

You shall not uncover the nakedness of a woman and her daughter, and you shall not take her son’s daughter or her daughter’s daughter to uncover her nakedness; they are your flesh; it is depravity. And you shall not take a woman as a rival to her sister, uncovering her nakedness while her sister is still alive.

These incest laws prohibit sex with three types of kin relations: relatives of blood origin (consanguineous relations); “adultery with the wives of fellow group members (‘incestuous adultery’ or a ‘group-wife prohibition’);” and relatives through marriage (implied affinal kin).⁷²

⁶⁹ Ibid., 27.

⁷⁰ Feinstein explains, “The expression ‘his own flesh’ ... is a general term for kindred, and more specifically for blood kin.” See Eve Levavi Feinstein, *Sexual Pollution in the Hebrew Bible* (Oxford; New York: Oxford University Press, USA, 2014), 109.

⁷¹ All biblical translations are from the NRSV, unless otherwise stated. I have chosen to paraphrase Lev 18:7-18 to highlight similarities.

⁷² George Peter Murdock, *Social Structure* (New York: Macmillan Company, 1949), 288; Bigger, “The Family Laws of Leviticus 18 in Their Setting,” 193.

George P. Murdock observes that incest taboos typically concern the nuclear family.⁷³ However, in some communities incest taboos address both consanguineal and affinal kin relationships.⁷⁴ The Levitical proscriptions appear to prohibit Israelite men from violating all forms of kin relations. Deborah Rooke explains that the gendering of these laws “reflect a *construction* of masculine sexuality, in that breaching them results in forfeiting one’s identity as part of the community that is promulgating them.”⁷⁵ According to Rooke, the distinction is what is considered to be the sexually accepted masculine behaviours of the Israelites over and against the immoral acts of the Canaanites.⁷⁶

The Priestly law code demarcates different types of pernicious conduct, using the phrase *uncover the nakedness* both euphemistically for sexual intercourse, as well as to the possibility of incestuous marriage.⁷⁷ Rooke posits that “the incest laws are addressing a situation where kinship links might lead men to think that they were entitled to sexual rights over particular women.”⁷⁸ Although it is not clear that “nakedness” language applies specifically to the sexual control of the male, it does suggest an attempt to eliminate the potential solicitation of females in one’s own consanguineal family.⁷⁹ The euphemism also emphasizes the gendered human body.⁸⁰ The symbolic logic of the body is attached to a social structure, as to give logical order to familial boundaries. As such, the incest laws can be interpreted as “an exercise in male bonding,

⁷³ Murdock, *Social Structure*, 288.

⁷⁴ *Ibid.*, 289.

⁷⁵ Rooke, “The Bare Facts: Gender and Nakedness in Leviticus 18,” 24.

⁷⁶ *Ibid.*

⁷⁷ Feinstein suggests “the expression “it is Y’s nakedness” in Leviticus 18 and 20 is best understood as an anatomical metaphor, similar to the metaphor expressed by the word “flesh.” While consanguineous kin share the same flesh, according to this view sexual partners share the same “nakedness,” having been joined at the genitals. As a result, when ego uncovers the nakedness of his father’s wife, he also uncovers the nakedness of his father, who is ego’s own “flesh”... This interpretation is supported by the Deuteronomic conception that sex with one’s father’s wife is tantamount to “lifting one’s father’s skirts” (Deut 23:1, 27:20).” See *Sexual Pollution in the Hebrew Bible*, 111.

⁷⁸ Rooke, “The Bare Facts: Gender and Nakedness in Leviticus 18,” 28.

⁷⁹ *Ibid.*, 29.

⁸⁰ *Ibid.*

that is, in protecting the kinship bonds between men by making sure that they are not in competition with each other for the same women.”⁸¹ The laws of intercourse in Leviticus 18 and 20, and the assignment of autocratic authority, protect direct lines of descent from progenitor, as well as collateral descendency.⁸²

Feinstein maintains that “the incest prohibitions in Leviticus 18 assume that the ego, [the adult male,] will mate only with females.”⁸³ For example, Leviticus 18 does not address intercourse with affines in the case of terminated marital relations—by death or divorce—to the ego’s consanguine.⁸⁴ However, she argues that the prohibition must still apply for “if this were not the case, sex with affines would be covered by the prohibition of adultery, and there would be no need to include a separate set of prohibitions based on kinship.”⁸⁵ Anthropologically the incest taboo functions to establish and maintain social order.⁸⁶ Judith Lewis Herman explains that the taboo protects not only the family, but also “interferes with [the family’s] natural tendency to isolate itself,” thus “family groups are organized into a society through the operation of the incest taboo.”⁸⁷ Similarly, Claude Lévi-Strauss regards the incest taboo as universal in human culture.⁸⁸ The prohibition of sex within the family encourages socialization outside of the family group, promoting “social alliance.”⁸⁹

⁸¹ Ibid., 30.

⁸² Morrow, *An Introduction to Biblical Law*, 176; Rooke, “The Bare Facts: Gender and Nakedness in Leviticus 18,” 30.

⁸³ Feinstein acknowledges the prohibition against male same sex relations in v. 22. See *Sexual Pollution in the Hebrew Bible*, 104.

⁸⁴ Ibid.

⁸⁵ Feinstein adds, “The exception that proves the rule is the prohibition of sex with two sisters, which is explicitly restricted to the period during which both sisters are alive (v. 18). In this case, adultery is irrelevant, since the sister of one’s wife is not necessarily married, but the explicit restriction here indicated that the other prohibitions are not limited this way.” See, *ibid.*

⁸⁶ Judith Lewis Herman, *Father-Daughter Incest* (New York: Harvard University Press, 2012), 59.

⁸⁷ Ibid., 58.

⁸⁸ Gale Swiontkowski, *Imagining Incest: Sexton, Plath, Rich, and Olds on Life with Daddy* (New Jersey: Susquehanna University Press, 2003), 77.

⁸⁹ Herman, *Father-Daughter Incest*, 58.

Among the list of incest taboos, scholars have observed that Leviticus 18 does not prohibit intercourse between father and daughter explicitly.⁹⁰ As Feinstein writes, Lev 18:17 achieves the desired result by declaring: “You shall not uncover the nakedness of a woman and her daughter.”⁹¹ She maintains that the lack of a direct prohibition can “best [be] explained as an accidental loss due to homoioarcton,” a scribal error during textual transmission.⁹² Scholars may note that the lists of sexual prohibitions in Leviticus 20 and Deuteronomy 27 are also inattentive of father-daughter incest, suggesting ignorance or acceptance.⁹³ However, this is unlikely, as Feinstein observes, Lev 18:10 prohibits sex between father and his granddaughter because “[her] nakedness is [his] own nakedness.”⁹⁴ From this, one can assume that the justification used for 18:10 also applies for the nakedness of his daughter.⁹⁵

⁹⁰ Herman notes that historically men and women in a patriarchal society observe the incest taboo differently. Herman’s research indicates that “the most strictly observed incest taboo must be the prohibition on sexual relations between mother and son; [and] the most frequently broken taboo must be that on relations between father and daughter.” See, *ibid.*; See, Morrow, *An Introduction to Biblical Law*, 176; Deborah L. Ellens, *Women in the Sex Texts of Leviticus and Deuteronomy: A Comparative Conceptual Analysis* (London: T & T Clark, 2008), 87; Johanna Stiebert, *Fathers and Daughters in the Hebrew Bible* (Oxford, United Kingdom: Oxford University Press, 2013), 114; Berquist, *Controlling Corporeality*, 87.

⁹¹ Feinstein, *Sexual Pollution in the Hebrew Bible*, 170.

⁹² *Ibid.*, 104.

⁹³ Berquist argues that the son is first prohibited from engaging in intercourse with his mother “because it violates the father’s rights of sexual access to the mother.” He maintains, with little evidence, that the father was prohibited from engaging in sex with his daughter (or step-daughter) while his wife was still living. He suggests that the apparent justification of father-daughter relations appears to be rooted in the social championing of reproduction and kinship. In Israelite culture, it would appear that the social situation is regulated by attempts to safeguard an existing pattern of descent. Berquist holds that the permissibility of father-daughter intercourse after the death of the materfamilias could be linked to age, fertility, and genealogical diversity. He asserts (rather implausibly) that “it would be sensible for a man to be sexually involved with women of two different generations (let alone those separated by a generation) because it is very unlikely that these two women would both be fertile.” According to Berquist, if the probability of fertility is high within the household, a sexual partnership between father and daughter could be enforced to increase the likelihood of producing offspring. Although Berquist argues for tolerability of incest in Leviticus, the lack of condemnation does not equal approval. See *Controlling Corporeality*, 87; Feinstein, *Sexual Pollution in the Hebrew Bible*, 170.

⁹⁴ Feinstein, *Sexual Pollution in the Hebrew Bible*, 171.

⁹⁵ *Ibid.*

Morrow presents a similar case; he cites Lev 18:6, 17; 20:14; and 21:2 as evidence prohibiting father-daughter relationships.⁹⁶ Although presented indirectly, 18:17 and 20:14 both interdict sex with a mother and her daughter.⁹⁷ Morrow further adds that “rabbinic authorities used these verses to prohibit father-daughter incest (m. Sanh. 9.1).”⁹⁸ Thus, one could intimate that the daughter is among the list of prohibited kin in Priestly thought, as implied by 18:6, and directly stated in 21:2.⁹⁹ In addition to the aforementioned prohibitions, Feinstein observes that both the Babylonian and Hittite laws condemn incestuous relations between father and daughter:¹⁰⁰

If a man should carnally know his daughter, they shall banish that man from the city (LH¶ 154).¹⁰¹

If a man sins (sexually) with (his) daughter, it is an unpermitted sexual pairing (HL¶ 189).¹⁰²

Cases of incestuous relations (from the perspective of the Holiness Code) appear multiple times in the household culture of ancient Israel. Narratologically, not all accounts of incest are depicted as unacceptable sexual relations. For example, Abraham is married to his sister Sarah, sharing the same father but a different mother (Gen 20:12).¹⁰³ Jacob marries the sisters Rachel and Leah, challenging the lines of appropriate kin relations (Genesis 29). Jacob serves Laban for seven years in exchange for Rachel. However, after Jacob completes his seven years of labour,

⁹⁶ Morrow, *An Introduction to Biblical Law*, 176.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ Feinstein, *Sexual Pollution in the Hebrew Bible*, 170.

¹⁰¹ Irmtraud Fischer and Mercedes Navarro Puerto, *Torah* (Atlanta: SBL Press, 2011), 130.

¹⁰² *Ibid.*

¹⁰³ Keith Hopkins observes that brother-sister relations were quite common among the ancients. He writes, “In the Egyptian royal family, we know of brother-sister marriages as far back as the eleventh dynasty in about 2000 BC... Brother-sister marriages in the royal family were frequent, and from the middle of the second millennium BC, perhaps in imitation of family, it became usual for commoner husbands to call their wives, ‘sister.’” See Keith Hopkins, “Brother-Sister Marriage in Roman Egypt,” *Comparative Studies in Society and History* 22, no. 3 (1980): 311.

Laban forces Jacob to marry the eldest sister, Leah. Jacob agrees to work an additional seven years to marry Rachel. Seth Daniel Kunin notes that the sexual problem in this narrative is the subversive family structure: “When [Jacob] eventually marries Rachel, rather than marrying someone from the outside, he actually marries his symbolic sister, because she is his sister’s sister.”¹⁰⁴ In addition to the potential incest relations in Gen 20:12 and 29, we also have the incestuous relations of Lot and his daughters, Ruth and Boaz, Judah and Tamar, Reuben and his father’s concubine, and Ham’s exposure of Noah:

Father-daughter relations are addressed explicitly in the narrative of Sodom and Gomorrah’s destruction (Genesis 19). Lot and his family are instructed to “flee to the hills, or else... be consumed” (19:17). Lot’s wife disobeys and looks back at YHWH’s destruction of the land and is turned into a pillar of salt (19:26). After seeking refuge in a cave, Lot’s daughters believe they are responsible for repopulating the earth. Together the daughters encourage their father’s inebriation and force sex with him so as to produce and “preserve offspring through [him]” (19:34). The overt theme of incest in this narrative, coupled with Lot’s intoxication and physical vulnerability, emphasizes the antithetical relations of Lot’s descendants to Israel. The sexual encroachment on the father serves an etiological purpose. The actions of Lot’s daughters lead to the origins of two of Israel’s closest neighbours, the Moabites and Ammonites. The use of the incest motif implies not only a curse on the descendant nations, but also polemically explains why the Moabites and Ammonites are estranged from Israel. Lot’s fornication, and his daughter’s unlawful sexual behaviour, thus results in the prohibition of the Ammonites and Moabites citizenship in Israel.¹⁰⁵

¹⁰⁴ Seth Daniel Kunin, *The Logic of Incest: A Structuralist Analysis of Hebrew Mythology*, *Journal for the Study of the Old Testament* 185 (Sheffield, Eng: Sheffield Academic Press, 1995), 122.

¹⁰⁵ Amy Kalmanofsky writes, “With names Moab, “from father,” and Ben-Ammi, “from my kinsman,” there is no doubt that Lot fathers his own grandchildren. His line may be perpetuated, but it is forever

In 2 Samuel 13, we have an explicit account of sibling incest. Amnon is said to be tormented with love for Tamar. With his friend Jonadab, he devises a plan to be alone with the virgin. Pretending to be ill, Amnon asks his father, King David, to “let [his] sister Tamar come and make a couple of cakes in [his] sight, so that [he] may eat from her hand” (2 Sam 13:6). When Tamar is alone with Amnon, he requests she lie with him. Tamar refuses his proposition, saying: “No, my brother, do not force me; for such a thing is not done in Israel; do not do anything so vile!” (13:12). Amnon ignores her refusal and takes her by force. As a result of Amnon’s actions, Tamar is left defiled. The act of illicit sex means she cannot wed.¹⁰⁶ She is publicly shamed by her loss of virginity. Amnon’s violation of his sister “brings about fratricide and civil war within the house of David.”¹⁰⁷ Commentators have taken issue with David’s lack of reproach of Amnon’s actions. Punishment is expected as Lev 18:29 prescribes both death and loss of lineage. However, it should be noted that although Leviticus 20 prohibits “sex with a

tainted by incest. In time, it is even made taboo because Deut 23:4 unequivocally states: “No Ammonite or Moabite will enter into YHWH’s community, even unto the tenth generation none will enter into YHWH’s community forever.” See *Dangerous Sisters of the Hebrew Bible* (Minneapolis, MN: Augsburg Fortress Publishers, 2014), 84. It is also worth noting that the curse that befalls Ham’s descendants in Genesis 9- the Canaanites- serves a similar etymological function as the descendants of Lot’s daughters. The narrative explains the ideological distance between the Canaanites and the Israelites. Ham is identified as ‘the father of Canaan,’ because the author, in a broad context, appears to be explaining the disparity between Canaan and the Israelites. The curse of Ham’s actions echo the general prohibition against the practices associated with foreigners found in Lev 18:28; and offer further explanation to the genealogical division found in Gen 10:16-18, with the Canaanites depicted as the ‘outsider.’

¹⁰⁶ Tikva Frymer-Kensky explains that Tamar “disappears into Absalom’s house and stay there as a *šōmēmā*, a ruined woman. Cities and women can be ruined, left with neither husband nor children. Lamentations tells us how Zion became a *šōmēmā*, faint all day as God rained fire upon her (Lam. 1:13). Someday, at the redemption, Isaiah promises his beloved city-woman Zion that she will have more children than the married woman (Isa. 54:19). But there is no such redemption for Tamar, who is desolate in both senses of the word: ruined and miserable. She cannot marry, not because nonvirgins cannot marry, for they could, but because her non-virginal state would have to be explained exposing Amnon. And this is exactly what Absalom has told her not to do.” See Tikva Frymer-Kensky, *Reading the Women of the Bible: A New Interpretation of Their Stories* (New York, NY: Knopf Doubleday Publishing Group, 2008), 167.

¹⁰⁷ Kalmanofsky, *Dangerous Sisters of the Hebrew Bible*, 101; See also Mary A. Bader’s excellent analysis of Tamar’s rape and sibling incest in, *Sexual Violation in the Hebrew Bible: A Multi-Methodological Study of Genesis 34 and 2 Samuel 13* (New York, NY: Peter Lang, 2006).

sister, sister-in-law, aunt, uncle's wife, and menstruating women," these acts "are outside societal sanctions and are to be punished by God."¹⁰⁸ Instead the narrative ends with Tamar vanishing. We are told that Absalom later names his daughter Tamar in 2 Sam 14:27, which Kalmanofsky suggests "symbolically perpetuates the legacy of incest."¹⁰⁹

Athayla Brenner believes that the incestuous action of Amnon also confronts the matter of fraternal marriage. As the daughter of a monarch, it is possible that Tamar would follow the practice of dynastic marriage. Some commentators have suggested that her request for Absalom to seek David's approval could imply the possibility of sibling marriage. As Morrow noted in conversation, "in some Middle-Eastern societies, cross-cousin marriage is considered the ideal pairing. As Tamar is Amnon's half-sister, this possible union is not that far removed from the cross-cousin ideal." Tamar's proffering of this option, coupled with Abraham and Sarah's union in Gen 20:12, suggests that the issue of incest may not have been a concern in 2 Samuel 13. Rather, Amnon's sexual behaviour may be interpreted as a threat to familial order, in which sexual impropriety results in a collapse of family relations.

Ruth's story focuses on the family of Elimelech of Bethlehem at a time when the land is infertile.¹¹⁰ We are told that Elimelech moves his family to Moab, where his two sons marry Moabite women, Orpah and Ruth, who are unsuccessful in bearing children (Ruth 1:4-5). After all the men die, Naomi and her daughters-in-law begin to journey back to her homeland (1:6). On this journey Ruth clings to Naomi and pledges her loyalty (1:16-18). To prove her commitment to Naomi's family, Ruth follows Naomi's instructions to seduce Boaz, "a prominent rich man, of the family of Elimelech" (2:1-4). Ruth, as a Moabite, subverts the sexual customs of Deut 23:2 to

¹⁰⁸ Frymer-Kensky, *In the Wake of the Goddesses*, 194.

¹⁰⁹ Kalmanofsky, *Dangerous Sisters of the Hebrew Bible*, 101- 14.

¹¹⁰ See Biale's discussion of Ruth in *ibid.*, 14; For an excellent analysis of Ruth and Naomi's relationship see Athalya Brenner, "Naomi and Ruth," *Vetus Testamentum* 33, no. Fasc. 4 (1983): 385-397.

ensure the continuity of Elimelech's name by seeking the nearest equivalent to levirate marriage (contrary to the spirit, if not the letter of the prohibitions in Lev 18:16 and 20:210-21): Boaz marries Ruth, and redeems the inheritance from both her departed father-in-law and husband (Ruth 3:6; 4:1-10).¹¹¹ After their union we are told Boaz and Ruth "came together, the LORD made her conceive, and she bore a son" (4:13).¹¹²

David Biale focuses on the "erotic brashness" of Ruth, noting that "eroticism, procreation, and agricultural fertility are intertwined throughout the book, as befits a tale from a predominantly agrarian society."¹¹³ In this folktale, Ruth restores the lineage of Elimelech through a subversive sexual act. When she encounters Boaz "she came stealthily and uncovered his feet, and lay down", suggesting a clear sexual intention.¹¹⁴ Boaz's "legs" here are thought to be a euphemism for genitals, indicating that Ruth exposes Boaz, and implying that her actions were indicative of a sexual violation.¹¹⁵ This is further supported by Ruth's subsequent request for Boaz to spread his cloak over her (3:6), which Biale interprets to mean marriage: "To "uncover" the genitals is a transgression, but to "cover" them by marriage makes sexual activity permissible."¹¹⁶ In the context of levirate marriage, Ruth's sexual relationship with Boaz secures a "rebirth" of the family. What makes her act sexually subversive is the means by which she

¹¹¹ Morrow in conversation has noted that Ruth's relations may not resemble a real case of Levirate marriage. He writes, "True, she seeks sexual union with a near kinsman of her dead husband, but neither Boaz nor the unnamed kinsman redeemer appears to be actually the physical brother of her husband. Ruth is seeking the nearest equivalent she can to Levirate marriage, which certainly violates the spirit of Leviticus 18 and 20, if not the letter." ; See also, Biale, *Eros and the Jews*, 11-32.

¹¹² As Biale observes, "the point of the levirate is to perpetuate the name of the childless deceased. In a sense, the death of Elimelech and his sons at the beginning of the book is final; instead of perpetuating their names, Boaz's redemption of Ruth creates a new family with Boaz as the patriarch and Naomi as the matriarch." See note 13 in *ibid.*, 235.

¹¹³ *ibid.*, 14.

¹¹⁴ Ruth 6:7; see *ibid.*

¹¹⁵ *Ibid.*, 15; See also Coogan, *God and Sex*, 10-11.

¹¹⁶ Biale, *Eros and the Jews*, 15.

achieves security; initiating a sexual encounter in order to prompt a levirate marriage with a distant relative.

Ruth's story is not the only instance of sexual subversion from the perspective of Leviticus in the Bible that contributes to the pre-history of David.¹¹⁷ In the last chapter of Ruth the people in the court bless Boaz saying "may your house be like the house of Perez, whom Tamar bore to Judah" (Ruth 4:12). The author of Ruth refers to Perez because of the clear similarities between the story of Perez's birth in Genesis 38, and the sexual initiatives of Ruth.¹¹⁸ As Biale notes, the commonalities between the stories of Ruth and Tamar are too apparent to be coincidental.¹¹⁹

Tamar's tale, like Ruth's, begins with the death of two brothers, leading Tamar to sexually transgressive behaviour in order to ensure a child. Tamar disguises herself as a *prostitute* and waits by the roadside to seduce her father-in-law on his way back from shearing sheep (Genesis 38:14-16). Her seduction of Judah results in the birth of the twins Perez (Boaz's ancestor) and Zerah (38:27-30). Kunin suggests that the text fails to mention Tamar's origins because the author "is trying to intimate that she is Israelite rather than Canaanite. In most cases Genesis describes the origins of women if they marry into the Israelite line. By not stating Tamar's origins, the text includes an ambiguity which creates the possibility that she was an acceptable wife."¹²⁰ It would appear that although Tamar's actions are inappropriate according to Israel's sociosexual order (as outlined in Leviticus and also in Deut 25:5-10), the practice of incest was, as Kunin argues, mythologically necessary.¹²¹

¹¹⁷ Biale argues that the "ultimate purpose of Ruth's sexual initiative is to bear the child who will be the grandfather of King David." See *ibid.*, 16.

¹¹⁸ *Ibid.*, 18.

¹¹⁹ *Ibid.*

¹²⁰ Kunin, *The Logic of Incest*, 148.

¹²¹ *Ibid.*, 149-50.

In Gen 35:22 Reuben engages in a sex act with Bilhah, his father's concubine by assuming paternal privilege: Reuben is in violation of Leviticus 18:8 and 20:11, however the author appears to focus on his property violation: "assuming the rights of inheritor before his father's death."¹²² It is often noted that Reuben is not punished with expulsion, as directed by Leviticus 18:29. Rather, the primogeniture, the right of succession, is taken from Reuben because of his crime, and is given to "Judah, who is exalted over all his brothers."¹²³ Unlike the negative portrayal of Israel's neighbours, the Moabites and Ammonites, in Genesis 19 Giovanni suggests that Reuben has a positive representation throughout the biblical narrative.¹²⁴ The textual illustration of Reuben emphasizes his sparing of Joseph's life (Gen 37:26-27); his scorn for the actions of his brothers (42:22); and his offering of his own two sons for sacrifice to rescue Benjamin from Egypt (42:37).¹²⁵ Further, the blessing of Moses in Deut 33:6 positively address Reuben: "May Reuben live, and not die out, even though his numbers are few."¹²⁶ Thus we might assume that the juridical concern with Reuben's actions lie solely in his violation of Israelite property and inheritance rights—both connected to the principal of paternal privilege.

In Leviticus, incest connotes nonproductive acts of intercourse, as they either produce illegitimate offspring (as is the case for prostitution and adultery), or they debase hierarchical relationships by transgressing their boundaries (as is the case for adultery and sexual impropriety).¹²⁷ The illicit actions of Lot's daughters result in the production of descendants

¹²² Ibid., 266.

¹²³ Giovanni Garbini explains in further detail, "The motif of sex, present in different degrees in all the narratives about the sons of Jacob, is intertwined in some of them with the motif of primogeniture. Because of his incest, Reuben loses his rights of firstborn to Joseph's advantage, at least according to Jacob's words in Genesis 49." See *Myth and History in the Bible* (Sheffield, Eng: Bloomsbury Publishing, 2003), 39, 37.

¹²⁴ Ibid., 39.

¹²⁵ Ibid., 38.

¹²⁶ Ibid., 49.

¹²⁷ Morrow, *An Introduction to Biblical Law*, 176–77.

unworthy of inheriting the Promised Land. For the ancient Israelites, incest, like other intentional sexual transgressions, could lead to the pollution of the sancta, the defilement of the land, or a corruption of household order. This section demonstrated that male privilege is constrained in the interest of the family. The laws against incestuous relations protect the boundaries of the household by maintain normative gender relations. The following section will consider how same-sex relations, are moral transgressions that are similar, if not analogous, to the crime of incest and bestiality.

II. Same-Sex Intercourse

Analyses of the biblical perspective on same-sex relations primarily focus on Lev 18:22 and Lev 20:13. These laws forbid sexual intercourse between men, labeling such activity as an “abomination” (*tō ‘ēbāh*), thus potentially providing insight into Israelite social practices.¹²⁸ In this section we find that concerns over same-sex relationships between males may actually be limited by the same constraints that limit male sexual privilege in incestuous relationships. I maintain that the biblical material does not have to be read as extending the prohibition of same-sex relationships beyond definable consanguineous and affinal relations. The potential same-sex interactions in the Hebrew Bible should not be dismissed as a result of the prohibitions in Leviticus; rather these relationships should be reconstructed against the fabric of their social and cultural environment. I examine how ancient Israelite society regulates male same-sex intercourse, and the ways in which these sexual restrictions connect to notions of sexual possession, domination, and male-male power relations. I posit that the sexual regulations of Leviticus reflect Priestly ideals and principles that may not have reflected the norms of all of ancient Israel. Finally, I observe how the perspectives of male same-sex relations in the Holiness

¹²⁸ Friedman and Dolansky, *The Bible Now*, 15-22.

Code, when appraised in light of ancient Near Eastern laws and narratives related to sexuality, are evidence of a variety of different constructions of sexuality and masculinity in first millennium BCE Israel.

The study of same-sex relations in ancient Israelite society is limited by modern Western notions of sexual orientation in which we assume sexual relations exist as a binary. The categories of homosexual and heterosexual, for the purposes of my argument, are intended as descriptions of performed behaviours rather than of social identities.¹²⁹ In other words, we cannot examine nonconforming identities on the expectations of a fixed gender binary, as matters of gender and orientation are fluid. As the historian Robert Padgug states, a homosexual “identity” is not an inherent human attribute.¹³⁰ In order for a male to be viewed socially as a homosexual in the ancient context, he must demonstrate “more than individual inclinations” towards the same sex.¹³¹ Furthermore, as indicated by Martti Nissinen, “[a]ncient authors did not create the binary categories of homosexuality and heterosexuality but rather made observations about same-sex preferences, among other deviations of conventional sexual practice.”¹³² By acknowledging this distinction we are able to conceive of same-sex interactions in the ancient Near East without concerning ourselves with an implicit category of sexual orientation.

The use of the term homosexuality, despite its Western connotation, does not need to limit one’s ability to discuss sexual preference within the ancient world. For example, Susan

¹²⁹ Robert Padgug writes “[h]omosexual’ and ‘heterosexual’ behaviour may be universal; homosexual and heterosexual *identity and consciousness* are modern realities... society create[s] all of the sexual categories and roles within which they act and define themselves.” For a more thorough discussion of class and gender as social constructions. “Sexual Matters: On Conceptualizing Sexuality in History,” *Radical History Review* 1979, no. 20 (1979): 14.

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² For a historical discussion of homosexuality see Nissinen, *Homoeroticism in the Biblical World*, 8.

Ackerman argues that just because we lack a word for *x* it does not mean that *x* ceases to occur.¹³³ The practice of taxonomically categorizing individuals based on sexual orientation existed before the terms heterosexual and homosexual were applied to human behaviour in the nineteenth century.¹³⁴ Despite not having a distinct system of classification in the ancient world, we as scholars can recognize practices that are or may appear to be *homosexual* according to our modern taxonomy. I will use the designation homoerotic and homosocial to refer to same-sex erotic acts and close same-sex relations; I will use the term homosexual when engaging with scholarly analysis of these relationships.

In ancient cultures, same-sex relations or interactions, sexual or cordial, although widely practiced, did not constitute a mode of being.¹³⁵ I demonstrate, based on ethnographic data that the social construction of sexuality in the ancient Near East reflects a system not based on sexual preference, or any contradistinction to heteronormativity.¹³⁶ Ancient concerns with male same-sex relations appear to stem from concerns with male virility, and the sexual misconduct of the neighboring nations.¹³⁷ As Virginia Burrus writes, men in the ancient Near East must establish

¹³³ Susan Ackerman, *When Heroes Love: The Ambiguity of Eros in the Stories of Gilgamesh and David* (New York, New York: Columbia University Press, 2013), 5.

¹³⁴ *Ibid.*; Alice Ogden Bellis and Terry L. Hufford, *Science, Scripture, and Homosexuality* (Eugene, Oregon: Wipf and Stock Publishers, 2011), 17.

¹³⁵ Dolansky writes “[h]istorical texts from the ancient Hittites, Babylonians, Assyrians, Egyptians, and Greeks describe legal and cultural boundaries pertaining to male homosexuality, and male homosexual intercourse is actually depicted in art from Uruk, Assur, Babylon, and Susa from as early as the third millennium BCE.” For a detailed discussion of homosexuality see, Friedman and Dolansky, *The Bible Now*, 28.

¹³⁶ Ackerman, *When Heroes Love*, 9.

¹³⁷ Nissinen observes that the word *tô'ēbâ* as it appears in Leviticus 18:22 and 20:13, “is often used in connection with different, usually not fully defined customs of a mostly cultic nature affiliated with worship of foreign gods... Both the term *tô'ēbâ* as well as the sermon that frames the commands has led many commentators to think that same-sex sexual acts between men were attached to a cult that involved sexual activity and that was practiced by the neighboring people... The surprising reference to child sacrifice in a list of sexual offenses strengthens the impression that there is a cultic background. It has been commonly assumed, therefore, that the writers of the Holiness Code associated homoerotic behaviour with sex connected to cultic practices.” See Nissinen, *Homoeroticism in the Biblical World*, 39.

their virility, or risk being feminized.¹³⁸ The issue of male-male sexual contact in the ancient Near East was viewed in the same context as male and female sexual relations.¹³⁹ Male homoerotic relations in ancient Israel “caused the [passive] partner to acquiesce in a female role. Hence, the penetrated partner lost his manly honor, gender boundaries were transgressed, and gender roles mixed.”¹⁴⁰ In order to understand the nature of these boundaries, we must turn to the Israelite legal codes.

The topic of sexual purity was of primary concern for the authors of the Holiness Code and Priestly source (P) of the Pentateuch. The prohibitions against male same-sex intercourse in Leviticus are both found in the Holiness Code, where the concern with same-sex acts are rooted deeply in the priestly fear of sexual pollution and the defilement of the land.¹⁴¹ The Holiness Code is later than much of P, and is “characterized by certain distinct literary, thematic, and theological features.”¹⁴² Eve Levavi Feinstein outlines these distinctions in three points. First

¹³⁸ Burrus, “Mapping as Metamorphosis,” 4.

¹³⁹ Nissinen, *Homoeroticism in the Biblical World*, 44. The Levitical prohibition against same-sex intercourse only applies to men. There appears to be no equivalent interdiction against female same-sex relations. Tikva Frymer-Kensky reasons that the lack of concern with female same-sex relations is “not because these Levitical laws concern only male behavior: bestiality is explicitly specified to include both male and female interactions with beasts.” The absence of a prohibition against female same-sex intercourse in the legal code could simply translate to a lack of concern among the priestly authors for female-female sexual engagement. As Frymer-Kensky notes, sex between two women in the ancient context did not “result in true physical “union” (by the male entering the female).” The lack of injunction against women could also be explained in light of ancient Israelite social roles. In the case of male same-sex relations, the act of penetration marks the receptive partner as socially inferior and therefore feminine. It appears that women are not forbidden from same-sex acts as there is not the same concern for maintaining social status. See, Frymer-Kensky, *In the Wake of the Goddesses*, 196.

¹⁴⁰ Ibid.

¹⁴¹ In recent scholarship there has been a great deal of attention on the nature of purity and pollution in the Hebrew Bible. For a complete discussion on this topic I recommend, Feinstein, *Sexual Pollution in the Hebrew Bible*, 11–41; Jonathan Klawans, *Impurity and Sin in Ancient Judaism* (New York: Oxford University Press, 2000); Friedman and Dolansky, *The Bible Now*, 12, 20–24; Olyan, *Rites and Rank: Hierarchy in Biblical Representations of Cult*, 38–62; Tracy M. Lemos, ““Where There Is Dirt, Is There System?”: Revisiting Biblical Purity Constructions,” *Journal for the Study of the Old Testament* 37, no. 3 (2013): 265–294; and Lipka, *Sexual Transgression in the Hebrew Bible*.

¹⁴² Feinstein, *Sexual Pollution in the Hebrew Bible*, 101; See William Morrow’s discussion on the dating of P and H in his *An Introduction to Biblical Law*.

Feinstein argues the Holiness Code is more concerned with life rather than cult structure and function (although the text does deal with cultic matters). Second, the Holiness Code illustrates a more personal God, using direct statements from the deity, unlike P which has YHWH speak through Moses. And finally, the use of the term “holy” refers to a quality of YHWH and his people in the Holiness Code, whereas in P refers to cultic space.¹⁴³

The two laws prohibiting male-male intercourse are part of the purity system in the Holiness Code. The way the Bible’s priestly regulations are viewed is largely dependent on one’s understanding of Israel’s purity system. In the ancient Near East notions of purity and impurity represented cultural ideologies. The construction of purity is a social boundary; it not only draws distinctions between pure and impure acts, but it also differentiates one community from another.¹⁴⁴ Purity systems, as we see in the Priestly literature, regulate social functions, and their laws establish and enforce proper modes of conduct (both cultic and communal).¹⁴⁵ The construction of imposed boundaries over the body and one’s behaviour is seen in many of the prohibitions found in P and the Holiness Code. The following two, found only in the Holiness Code, are the focus for our discussion of same-sex relations.¹⁴⁶ These laws say:¹⁴⁷

You shall not lay a male the lyings of a woman; it is an offensive thing.

¹⁴³ For Feinstein's analysis of the Holiness Code see *ibid.*, 100–103.

¹⁴⁴ Klawans, *Impurity and Sin in Ancient Judaism*, 5; Jonathan Klawans, *Purity, Sacrifice, and the Temple: Symbolism and Supersessionism in the Study of Ancient Judaism* (Oxford; New York: Oxford University Press, 2006), 19.

¹⁴⁵ Saul Olyan examines in great detail how both social and cultic hierarchies are created and regulated by purity constructions. See Olyan, *Rites and Rank: Hierarchy in Biblical Representations of Cult*, 38; See also, James W Watts, *Ritual and Rhetoric in Leviticus from Sacrifice to Scripture*. (Leiden: Cambridge University Press, 2007); David P. Wright, “The Spectrum of Priestly Impurity,” *Priesthood and Cult in Ancient Israel* (Sheffield: JSOT Press, 1991), 150–81; and Feinstein, *Sexual Pollution in the Hebrew Bible*.

¹⁴⁶ Friedman and Dolansky state, the “Priestly laws in general and...the Holiness Code in particular are concerned with purity, and this law about homosexual acts is a matter of purity to these priests...[In] Leviticus purity is placed alongside holiness in importance to priests (‘to distinguish between the holy and the secular, and between the impure and pure’).” See Friedman and Dolansky, *The Bible Now*, 20; Klawans, *Impurity and Sin in Ancient Judaism*, 55.

¹⁴⁷ A literal translation from Friedman and Dolansky, *The Bible Now*, 10.

(Lev 18:22)

And a man who will lay a male the lyings of a woman: the two of them have done an offensive thing. They shall be put to death. Their blood is on them.

(Lev 20:13)

In discussing the Priestly source, many scholars treat the impurity laws and the pollution that results from their transgression as a unified system that “encompasses all of the Hebrew Bible.”¹⁴⁸ What scholars ignore in doing so however is that these laws, like the narratives of the Bible, are composed by different authors who have distinct ideologies and experiences. As Lipka asserts, “there is very little in the way of sexual behaviours or attitudes that may be considered universal”—even within biblical Israel.¹⁴⁹ We must then recognize that the authors of the Priestly source were constructing ideals and principles for their people that may not have reflected the norms of all of ancient Israel. Moreover, even if Leviticus 18 and 20 prohibit male same-sex intercourse, this cannot be interpreted as normative for all ancient Israelite communities; these prohibitions do not represent the ideals of all authors of the texts of the Hebrew Bible, nor the communities whose mores were never recorded or preserved in writing.¹⁵⁰ This claim is further supported by Morrow, who writes:¹⁵¹

Leviticus 18 and 20 may be based on independent formulations of a common tradition. This tradition must have originated in the Holiness school, because it mandates stringent punishment for sexual relationships that were not necessarily disapproved of in earlier times. Consider the following:

¹⁴⁸ Tracy Lemos argues that “those who have written on Israelite purity ideas have in the majority of cases tried to subsume all of the references to purity under one overarching rubric.” In her paper she demonstrates that “there is no one rubric that can make sense of all of the sources of impurity attested in Israelite texts and that the attempt to uncover one structure...is at best counterproductive.” She proposes that we evaluate the diversity of these systems and examine the impurity constructions and lived experiences of Israelites.” See “Where There Is Dirt, Is There System?,” 265–267.

¹⁴⁹ Lipka, *Sexual Transgression in the Hebrew Bible*, 2.

¹⁵⁰ Friedman and Dolansky, *The Bible Now*, 19–20.

¹⁵¹ Inset: Variations in the Assessment of Sexual Relations in Biblical Literature, as seen in Morrow, *An Introduction to Biblical Law*, 175.

Variations in the Assessment of Sexual Relations in Biblical Literature

	Unpunished	Punished
Marriage to two sisters at the same time	Gen 29:21-29	Lev 18:18
Marriage to father's sister	Exod 6:20	Lev 18:12; 20:20
Marriage to half sister	Gen 20:12; 2 Samuel 13:13	Lev 18:0; 20:17
Marriage to a dead brother's wife	Deut 25:5-6	Lev 20:21
Sex during menstruation	Lev 15:24	Lev 18:19; 20:18

In order to understand what ancient Israelite ideas about same-sex relations may have been, beyond the laws in the Holiness Code cited above, we must look to the wider ancient Near Eastern context. Although the prohibitions of male-male intercourse may be clear for the communities of the author of the Holiness Code, comparative data indicates that a similar ban was not applied anywhere else in the ancient Near East.¹⁵² This prohibition of male same-sex intercourse is found “only in the law code of one biblical author,” which is also among the latest of the legal texts.¹⁵³ Saul Olyan’s examination of male same-sex intercourse in Leviticus is noteworthy. He writes:¹⁵⁴

The law of Lev. 18:22 addresses only one of the participants (“you” m.s.); in contrast, the formulation in 20:13 begins by mentioning “the man who lies” (i.e., “you” of 18:22) but changes number from singular to plural in the middle of the verse. As it now stands, the formulation with the penalty in Lev. 20:13 emphasizes the guilt of both parties: “they—the two of them—have committed a *tô ‘ēbā*; they shall certainly be put to death; their blood is upon them.” The change of number from the beginning of the law to its conclusion is awkward; it suggests redactorial activity intended to widen the scope of the law to include both parties. The emphatic attention to the culpability of both partners also leads me to suspect editorial recasting. Are there analogous cases of such redactorial reworking elsewhere among the laws in the Holiness Source? The best example is Lev. 20:10, a law concerning adultery, which shares characteristics with Lev. 20:13. Leviticus 20:10 begins by mentioning “a man who commits adultery with the wife of his neighbor” and states that “he shall surely be put to death” (*môt yūmat*); then it adds, awkwardly,

¹⁵² *Sexual Pollution in the Hebrew Bible*, 175.

¹⁵³ Friedman and Dolansky, *The Bible Now*, 19-20.

¹⁵⁴ Olyan, “‘And with a Male You Shall Not Lie the Lying down of a Woman’: On the Meaning and Significance of Leviticus 18:22 and 20:13,” *Journal of the History of Sexuality* 5, no. 2 (October 1, 1994).

“the adulterer and the adulteress” (*hannō ’ēp wēhannō ’āpet*). As in Lev. 20:13, the law begins by focusing on a singular subject (“the man who commits adultery”); in contrast to 20:13, the penalty is prescribed for the man alone, and only afterward is the adulteress included in the penalty. At all events the effect is the same: laws originally mentioning a single guilty party were recast awkwardly in order to apply the death penalty to both partners. In the case of Lev. 20:10, the law originally applied to the adulterer alone; in the case of Lev. 20:13 (as in 18:22), to the insertive partner in a male-male coupling. If my suggestion of editorial reworking is correct, then only the respective insertive partners (the adulterer and the insertive partner of the male-male coupling) were punished by both of these laws at an earlier stage in their formulation. In the final form of the various laws of Lev. 20, all parties involved in sexual boundary violations are to be put to death or otherwise penalized. But this says nothing about the earlier form of these laws, several of which appear to have been more restricted in their application.

I acknowledge Jerome Walsh’s criticism of Olyan, in which he argues that the Levitical text does not reflect a concern for the transgressing of gender boundaries.¹⁵⁵ However, I give distinction to Olyan as his research in this area has not only greatly advanced our understanding of the verse, but he is also championed by a number of scholars who support his claim.¹⁵⁶ Daniel Boyarin similarly suggests that the Levitical author is concerned with the insertive partner, as his actions render the receptive partner “feminine.”¹⁵⁷ Olyan reframes however, from examining the similar nonproductive acts of incest, bestiality, and adultery.

Friedman and Dolansky note that “[there] are at least four separate authors of biblical law, writing over a period of centuries in ancient Israel.”¹⁵⁸ In the three other legal sources we do

¹⁵⁵ Walsh, “Leviticus 18:22 and 20:13: Who Is Doing What to Whom?,” *Journal of Biblical Literature* 120, no. 2 (2001): 202.

¹⁵⁶ See Bernadette J. Brooten, *Love Between Women: Early Christian Responses to Female Homoeroticism* (Chicago, Illinois: University of Chicago Press, 2009), 61; Dale Launderville, *Celibacy in the Ancient World: Its Ideal and Practice in Pre-Hellenistic Israel, Mesopotamia, and Greece* (Collegeville, MN: Liturgical Press, 2010); Brenner, *The Intercourse of Knowledge*; see also Dolansky and Friedman, who, in their extensive analysis of Lev 18:22 and 20:13, trace these laws to “an Aaronid priest in ancient Judah”. They further write that male same-sex intercourse “does not appear to be a concern in biblical law until a fairly late stage.” See *The Bible Now*, 19–20.

¹⁵⁷ Boyarin, “Are There Any Jews in the History of Sexuality?,” *Journal of the History of Sexuality*, 1995, 341.

¹⁵⁸ Friedman and Dolansky, *The Bible Now*, 19–20.

not find any laws prohibiting same-sex relations or homoerotic acts.¹⁵⁹ This shows that male same-sex intercourse may have only been a concern for *one* author in *one* ancient Israelite community.

In addition to having only one source in the Pentateuch that condemns male same-sex intercourse, comparative evidence reveals that there are no similar proscriptions against same-sex acts in the rest of the ancient Near East.¹⁶⁰ The extant legal collections from Babylon are silent on the matter.¹⁶¹ The Middle Assyrian and Hittite laws both address male-male intercourse; however unlike the Priestly source, neither are a direct prohibition.¹⁶² By focusing on the comparative literature we see that the cultural discourse on male same-sex interactions varies within the ancient Near East.

Feinstein observes that within the Hittite Laws, a man was only prohibited from having intercourse with his male kin, thus suggesting that same-sex intercourse outside of the family unit was permissible.¹⁶³ Jacob Milgrom comes to a similar conclusion; he observes that the prohibition in Leviticus only addresses “illicit heterosexual unions. Thus carnal relations are forbidden only with males who are of the equivalent degree of the females prohibited in these lists.”¹⁶⁴ Milgrom argues that the regulation of same-sex intercourse, within the priestly text,

¹⁵⁹ Ibid.

¹⁶⁰ Ibid., 30; See also Feinstein, *Sexual Pollution in the Hebrew Bible*, 175.

¹⁶¹ Friedman and Dolansky, *The Bible Now*, 30.

¹⁶² Feinstein, *Sexual Pollution in the Hebrew Bible*, 175. This claim is further supported by Saul Olyan who observes that “[n]owhere in this corpus is there a general interdiction of male-male couplings.” He further writes, “[p]aragraph 189 of the Hittite Laws states that a man may not have sexual relations with his mother, daughter, or son. The context suggests that kinship is the issue in the case of the son, not his sex: he is mentioned as one-third of the family triad.” See Olyan’s comparative analysis in Saul M. Olyan, “‘And with a Male You Shall Not Lie the Lying down of a Woman’: On the Meaning and Significance of Leviticus 18:22 and 20:13,” *Journal of the History of Sexuality* 5, no. 2 (October 1, 1994): 192. Also see Friedman and Dolansky, *The Bible Now*, 28–35 for a critical analysis of these laws.

¹⁶³ Feinstein, *Sexual Pollution in the Hebrew Bible*, 175.

¹⁶⁴ Milgrom writes, “the occurrences of the prohibition (18:22; 20:13) contain the phrase *miškevē iššā*, an idiom used for only illicit heterosexual unions... For example, the prohibited relations would be nephew-aunt, grandfather-granddaughter, and stepmother-stepson, but also nephew-uncle, grandfather- grandson,

concerns only those who are within the same family.¹⁶⁵ Renato K. Lings provides further supports for this claim, noting that the “Leviticus legislator is warning Israelite men that incestuous acts with members of either sex are punishable.”¹⁶⁶ As such, one might conclude that same-sex acts outside of the family may not have been condemned.¹⁶⁷

In the Middle Assyrian Laws (MAL) we have two passages which address the act of male same-sex intercourse. MAL A-19 “concerns false accusations of a male engaging in repeated, apparently voluntary *receptive* intercourse; [notably] it says nothing about repeated penetration of other males.”¹⁶⁸ It is found in a series of laws concerning wrongful acts against married women.¹⁶⁹ When they are viewed in their cultural context we can conclude that these Middle Assyrian authors considered the receptive partner in male same-sex intercourse as analogous to a female.¹⁷⁰ Olyan writes, “Middle Assyrian Laws A 19-20 occur in the context of a series of laws addressing crimes committed against married women. G. Cardascia and J. Bottero have both concluded that the placement of MAL A 19-20 suggests that the receptive partner in a male-male coupling was viewed in this legal setting as the equivalent of a woman.”¹⁷¹ Likewise, the phrase, “the lyings of a woman” in Leviticus 18:22 implies that the penetrated male is analogous to a

and stepfather-stepson. This implies that the homosexual prohibition does not cover all male-male liaisons, but only those within the limited circle of family. But homosexual relations with unrelated males are neither prohibited nor penalized.” See *ibid.*

¹⁶⁵ Prohibited relations, according to Milgrom, “would be nephew-aunt, grandfather-granddaughter, and stepmother-stepson, but also nephew-uncle, grandfather-grandson, and stepfather-stepson.” See *ibid.*

¹⁶⁶ K. Renato Lings, “The ‘Lyings’ of a Woman: Male-Male Incest in Leviticus 18.22?,” *Theology & Sexuality* 15, no. 2 (2009): 245.

¹⁶⁷ Milgrom, *Leviticus 17-22*, 1786; Jacob Milgrom, *Leviticus: A Book of Ritual and Ethics : A Continental Commentary* (Minneapolis, MN: Fortress Press, n.d.), 196–97.

¹⁶⁸ Emphasis added. Olyan, “And with a Male You Shall Not Lie the Lying down of a Woman,” 192.

¹⁶⁹ Friedman and Dolansky, *The Bible Now*, 31.

¹⁷⁰ *Ibid.*; Feinstein notes that the penalty for this act is rape and castration. She further states that “the penalty of rape clearly indicates that homosexual intercourse was not prohibited in all circumstances.” See Feinstein, *Sexual Pollution in the Hebrew Bible*, 175.

¹⁷¹ Olyan adds, “It seems as if the law in A 20 is concerned with the rape of a man by another of equal status or close relationship, while the law in A 19 concerns repeated, voluntary assumption of the receptive role in intercourse.” See Olyan, “And with a Male You Shall Not Lie the Lying down of a Woman,” 193.

female's role in heterosexual intercourse.¹⁷² In both texts, the receptive male partner appears feminized.

In MAL A-20, a man is prohibited from forcefully penetrating a male of the same status. Olyan states the "equal status of the partner is suggested by the word *tappā'u*, often translated "companion," "colleague," or "neighbor."¹⁷³ Olyan further observes that "[o]nly the insertive partner is punished in MAL A 20 (and with rape and castration); the receptive partner (the *tappā'u*) is apparently viewed as the victim of aggression so that no penalty is prescribed for him."¹⁷⁴ It is noteworthy that the punishment of the active agent is anal penetration- which

¹⁷² According to Boyarin, "penetration of a male constituted a consignment of him to the class of females, but rather than a degradation of status, this constituted a sort of mixing of kinds, a generally taboo occurrence in Hebrew culture... Thus when one man 'uses' another man as a female, he causes a transgression of the borders between male and female...the issue does not seem to have been status so much as an insistence on the absolute inviolability of gender dimorphism." See "Are There Any Jews in the History of Sexuality?," *Journal of the History of Sexuality*, 1995, 341–43. Although I agree that the receptivity of the male partner constitutes feminization. Boyarin's claim that the act does not result in a degradation of status goes unfounded. As Michael Satlow observes, later rabbinical interpretations suggest a concern for the humiliation of the penetrated male. What is more, in the Greco-Roman world, as seen elsewhere in the texts of the ancient Near East, "To penetrate was to reaffirm, perhaps even assert, this power. To be penetrated was perceived as being as women were perceived, that is, weak and dominated. The adult male citizen who allowed himself to be sexually penetrated, especially in Roman society, was looked upon with loathing." See "They Abused Him Like a Woman': Homoeroticism, Gender Blurring, and the Rabbis in Late Antiquity," *Journal of the History of Sexuality* 5, no. 1 (1994): 9, 2. Similarly, Olyan, following the scholarship of Thomas M. Thurston, argues that the prohibition in Leviticus 18:22 "is present because the receptive male in anal intercourse does not conform to his class (male as opposed to female): boundaries are blurred when a male plays the receptive role." See "And with a Male You Shall Not Lie the Lying down of a Woman," 199. For Steven Greenberg the prohibition in Leviticus addresses the act of penetration. He writes, "The receptive party's guilt is interpolated into the prohibition in one way or another, but he is not the main focus of the interdiction. This is particularly remarkable because in many societies men who penetrate other men are not considered deviant. It is receptive men who violate the given social order by playing a woman's role in sexual intercourse. Whatever the reason or reasons that undergrid the prohibition in Leviticus, the text appears to be concerned primarily with the male on top, the penetrating partner, and only in a derivative fashion with the receptive partner." See *Wrestling with God and Men: Homosexuality in the Jewish Tradition* (Madison, Wisc: University of Wisconsin Press, 2004), 84. Morrow provides a similar explanation; he writes "Leviticus 18:22 and 20:13 appear to reflect an ancient opinion that it was wrong for a man to allow himself to be penetrated like a woman." See Morrow, *An Introduction to Biblical Law*, 176–77.

¹⁷³ Olyan, "And with a Male You Shall Not Lie the Lying down of a Woman," 193.

¹⁷⁴ *Ibid.*; Feinstein suggests that the punishment of rape, "which reenacts the penetration and 'feminization' that the perpetrator inflicted on his fellow... clearly indicates that homosexual intercourse was not prohibited in all circumstances." See *Sexual Pollution in the Hebrew Bible*, 175.

suggests that penetrative same-sex intercourse is a permissible act during legal proceeding. As Martti Nissinen explains, the regulations regarding these sexual acts “apply the principle of talion, that is analogous punishment... On the other hand, the intent is to prevent the male-factor from repeating the crime (by castration).”¹⁷⁵ The punishment of castration and non-consensual penetration has the same perceived effect as the act of same-sex intercourse, shame and feminization.¹⁷⁶

The fixation on the social classification of the penetrated partner demonstrates a regard for gender classifications and a fear of feminization.¹⁷⁷ As Friedman and Dolansky note, these Middle Assyrian “laws and cultural norms do not seem concerned with homosexual behaviour itself. They are concerned rather with the issue of social status and the shame of being feminized when a freeborn male citizen assumes the passive/receiving role in a homosexual partnership.”¹⁷⁸ These laws express a concern not categorically for male same-sex relations, but more specifically, how these exchanges are perceived in the male social space. Further evidence on the nature of male passive and active same-sex relations comes from the Middle Babylonian divination text, *Šumma Ālu*.

¹⁷⁵ Nissinen, *Homoeroticism in the Biblical World*, 25.

¹⁷⁶ Ibid.

¹⁷⁷ Feinstein points to similar proscriptions in Athens and Rome which permit male homoeroticism “so long as the receptive partner is a social inferior.” See Feinstein, *Sexual Pollution in the Hebrew Bible*, 175.

¹⁷⁸ Friedman and Dolansky, *The Bible Now*, 31. Texts from Ugarit make no single clear reference to homoeroticism. Some Hittite laws resemble the literary context of the biblical prohibitions of sexual conduct between two men (Lev. 18:22; 20:13). They forbid various forms of incest, including sexual relations with one’s own son, but mention no other types of same-sex acts.” See Nissinen, *Homoeroticism in the Biblical World*, 20; Richard M. Davidson writes, “No solid evidence for homosexual practice has yet been discovered in the art or literature of Ugarit, although, as will be discussed below, such evidence does appear for bestiality and incest. There is one reference in ‘The Bow of Aqhat’ to the Canaanite goddess Anath as one who ‘takes away men’s bows, that is, who changes men into women’; this may imply, as in the similar Mesopotamian statements about Ishtar, that the goddess has transformed men into homosexuals.” See Davidson, *Flame of Yahweh*, 141.

In the *Šumma Ālu* there is no direct prohibition against male same-sex intercourse, only a concern for the roles and statuses of the men involved.¹⁷⁹ The passage reads: “If a man copulates (*iṭehhe*) with his equal (*mehrišu*) from the rear, he becomes the leader among his peers and brothers.”¹⁸⁰ Friedman and Dolansky write, “[For] the Babylonian author in this period, being the active partner in homosexual intercourse with someone of high social status...brought good luck.”¹⁸¹ Moreover, the active partner assumes the status superior position over “his peers and brothers.” Following Martti Nissinen we may also consider these relations as homosocial rather than homoerotic.¹⁸² Homosocial, as defined by David Morgan, is “a collective name for an important set of relationships, referring not simply to the preference of men for each other’s company, but for the location of these relationships in public or semipublic regions... and for the particular set of exchanges and interdependencies that grow between men.”¹⁸³ The affinity for male same-sex bonding could be explained by the division of social space in ancient Mesopotamia.¹⁸⁴ As Nissinen observes, the sexes were socialized in different spaces, thus creating an environment for intimate companionship and homosocial bonding.¹⁸⁵

As Friedman and Dolansky observe, in the case of ancient Near Eastern literature, “sexual acts between men were expressed only when they concerned the... enforcement of power hierarchy.”¹⁸⁶ Modern interpretations of Leviticus 18:22 and 20:13 often wrongly construe the sexual ideologies of the priestly author of the Holiness Code with the sexual

¹⁷⁹ Friedman and Dolansky, *The Bible Now*, 30.

¹⁸⁰ Translation in, *ibid.*

¹⁸¹ *Ibid.*

¹⁸² Nissinen, *Homoeroticism in the Biblical World*, 24, 56.

¹⁸³ D. H. J. Morgan, *Discovering Men*, Critical Studies on Men and Masculinities (London ; New York: Routledge, 1992), 67.

¹⁸⁴ Nissinen, *Homoeroticism in the Biblical World*, 24.

¹⁸⁵ *Ibid.*

¹⁸⁶ Friedman and Dolansky, *The Bible Now*, 32.

attitudes of all of Israel.¹⁸⁷ Lipka has noted that “even when they are dealing with other genres such as narrative and prophetic text, scholars often seek to reconcile the construction found in these texts with the sexual prescriptions and proscriptions presented in the legal collections.”¹⁸⁸ Rather than force coherence, Lipka proposes that we emphasize the difference and diversity of other forms of biblical evidence.¹⁸⁹ By doing so, she believes “we can attain a more rounded view of the constructions of sexuality in ancient Israel, revealing at least some of the culture’s heterogeneity.”¹⁹⁰ The sexual regulations of Leviticus reflect Priestly ideals and principles that may not have reflected the norms of all of ancient Israel. As indicated by the historical texts from the ancient Hittites, Babylonians and Assyrians, the prohibition on male homoeroticism and same-sex intercourse was not normative; but same-sex relations between classes, if the penetrated partner was of a lower status *was* normative, or at least acceptable everywhere except in the community of Leviticus 18 and 20.

While the Holiness Code gives us our only categorical prohibition against any male-male intercourse in the entire ancient Near East, other ancient Near Eastern texts appear to be only concerned with social distinctions, namely the status-superior male. The nonlegal sources of the Hebrew Bible, and the Pentateuch’s other legal codes, do not provide convincing evidence for “either categorical acceptance or categorical rejection of homosexuality in ancient Israel”; in fact they do not mention it at all.¹⁹¹ The absence of similar laws suggests that “this proscription can only be considered in the context of the Holiness legislation.”¹⁹² Furthermore, as we see in the

¹⁸⁷ Lipka, *Sexual Transgression in the Hebrew Bible*, 12.

¹⁸⁸ Hilary Lipka argues that this “tendency to interpret texts from other genres in light of the legal collections has led them to draw conclusions about sexuality in Israel as a whole based on limited, incomplete, and potentially non-representative evidence.” See *ibid.*

¹⁸⁹ *Ibid.*, 13.

¹⁹⁰ *Ibid.*

¹⁹¹ Feinstein, *Sexual Pollution in the Hebrew Bible*, 175.

¹⁹² *Ibid.*

narrative and legal comparative literature, the rest of the ancient Near East assumes homoeroticism as normative.

From the discussion above, it will be clear that scholars differ about whether the party originally condemned in Levitical law is the passive or active partner in same-sex male intercourse. Lings's perspective on the meaning of the phrase "the lyings of a woman," therefore, is important to consider:¹⁹³

That *miškevē 'iššâ* may be rendered in English with the clumsy-sounding expression "the lyings of a female." If at the same time we keep in mind the massive emphasis on incestuous relations in Lev. 18, "a female" may tentatively be interpreted as "a female family member.

Lings furthers his argument by suggesting that the prohibition against same-sex interactions are included in, and not paralleled with, the incest laws of Leviticus. He writes:

The amplified equivalent of Lev. 18.22 is found in 20.13. From a literary point of view, the most remarkable detail is the fact that the two preceding verses clearly speak of incest. Thus Lev. 20.11 and 12 announce the death penalty for incestuous acts. According to 20.13, the same punishment applies to all males who engage in *miškevē 'iššâ*. Following a brief parenthesis, which presents the penal framework for other sexual crimes, the incest theme is resumed in v. 17 and vv. 19-21. In this context, and in the light of the material examined so far, the composition of Lev. 20 invites a preliminary conclusion. It is impossible to speak with absolute certainty, but various factors point in the direction of a possible location for *miškevē 'iššâ* within the biblical vocabulary pertaining to incestuous relationships.

The overlap between the prohibitions suggests that the laws regarding same-sex actions are not independent. The logic espoused by Lings is also supported by Milgrom, who maintains that the priestly attitudes towards illicit same-sex interactions only concerned kin groups.¹⁹⁴ Both the incest laws and the prohibition of same-sex liaisons concerns male kinship and household boundaries. Berquist argues that Leviticus bans "a man taking another man into the household for sexual purposes and treating that man as member of the household, of the same status as a

¹⁹³ Lings argues that "*'iššâ* has not two but rather three meanings: 'woman,' 'wife,' and 'female.'" See "Lings, 'The 'Lyings' of a Woman,'" 242–43.

¹⁹⁴ Milgrom, *Leviticus 17-22*, 1786.

head of household treats the women” primarily because this would confuse the social stratification of the family.¹⁹⁵

Further, the concern with improper sexual couplings in both interdictions could be reduced to the nonproductive nature of the sex act. Male same-sex relations raise questions of reproduction insofar as the act of anal penetration is a non-normative and non-procreative act: the male’s seed is wasted. However, female sexuality does not involve issues of procreation, as although the act is non-generative, female same-sex intercourse does not involve the waste of an ejaculate, nor does it hinder a woman’s reproductive abilities. As previously discussed, incest is nonproductive as it creates genealogical corruption.

The concerns among the ancient authors appear to be with the physical, social, and economical consequences of same-sex relations. The regulation of male same-sex relations functions to maintain power distinctions. Socially, power and authority is given to the active penetrating partner during sexual intercourse. The phrase “the lyings of a woman,” suggests that the receptive male partner acquiesces into a position of inferiority, in which, once feminized he becomes devoid of honour and is given a subordinate status among the totality of his community. Further, if we accept that the “the lyings of a woman”—as presented in conjunction with the Levitical laws on incest—can be interpreted as “the lyings of a female family member,” then we have good reason to believe that the author is concerned with same-sex relations between close relatives. From the previously discussed legal codes one may deduce that the punishments of homoerotic acts in Leviticus were designed to discourage same-sex penetrative intercourse in the family. It is plausible that the purpose of the legal text is to orient males within their social circles by establishing boundaries between same-sex liaisons with male kin. The penalty towards

¹⁹⁵ Berquist, *Controlling Corporeality*, 95. A man taking another man into the household for sexual purposes could suggest a slave relationship, in which case “the situation of Israelite slaves...is analogous to that of women. They were considered property of their master.” See Kunin, *The Logic of Incest*, 56.

penetrative intercourse established and maintained a social hierarchy in homosocial groups, thus illustrating the transformative power of sexual relations in androcentric communities. The social stratification of the family is connected with gender gradation and social class; thus Israel must maintain the relative position of sex and function in the household.

III. Bestiality

Scholarship on the practice of bestiality in the ancient Near East is less extensive than previously discussed sexual transgressions. Bestiality laws are addressed in all three extensive legal collections (Leviticus 18:23, 20:15-16; Deuteronomy 27:21; and Exodus 22:19). The only other known prohibition against bestiality appears in the Hittite laws (HL¶ 187-88; 199-200).¹⁹⁶ These laws permit sex with a horse or mule (HL¶ 200A), however, intercourse with an ox, sheep, pig, or dog was forbidden.¹⁹⁷ In Deuteronomy, like Leviticus, the prohibition against sex with animals appears alongside three incest prohibitions: sex with one's father's wife (27:20); sex with one's sister, "whether the daughter of his father or the daughter of his mother" (27:22); and sex with one's mother-in-law (27:23). Bigger observes that these laws "were motivated by concerns similar to those behind the laws of Leviticus 18, but exhibit no interdependence."¹⁹⁸ He argues that these laws are unified by the term *šākab*, "to lie with"—which he believes expresses a concern for the improper mixing of seed.¹⁹⁹ Feinstein also notes that "the inclusion of the word "any" in Lev 18:23 (and in the parallel laws in Lev 20:16 and Deut 27:21) suggest a deliberate

¹⁹⁶ Milgrom, *Leviticus 17-22*, 1570.

¹⁹⁷ *Ibid.*

¹⁹⁸ Bigger, "The Family Laws of Leviticus 18 in Their Setting," 188.

¹⁹⁹ Bigger further writes, "The Priestly Code formulated more detailed laws relating to personal purity for use in the postexilic period. They reveal that 'pollution' resulted from childbirth, menstruation, sexual intercourse and the ejaculation of semen, and had to be countered by purification rituals." See, *ibid.*

effort to include all nonhuman members.”²⁰⁰ The punishment for these crimes also appears to coalesce, with the laws sanctioning curses or death:

You shall not have sexual relations with any animal and defile yourself with it, nor shall any woman give herself to an animal to have sexual relations with it: it is perversion (Leviticus 18:23).

If a man has sexual relations with an animal, he shall be put to death; and you shall kill the animal.²⁰¹ If a woman approaches any animal and has sexual relations with it, you shall kill the woman and the animal; they shall be put to death, their blood is upon them (Leviticus 20:15-16).

“Cursed be anyone who lies with any animal.” All the people shall say, “Amen!” (Deuteronomy 27:21)

Whoever lies with an animal shall be put to death (Exodus 22:19)

One possible reading would suggest that interspecies intercourse, like male same-sex penetration, and incest, are united by their perversion of natural and social boundaries. As Piers Bierne writes, “crimes against nature have...been proclaimed to those in which the emission of seed is not accompanied by a procreative intent, as in masturbation, anal and oral sex, incest, adultery, rape, and bestiality.”²⁰² Incest, same-sex copulatory acts, and bestiality are affronts to the procreative purposes of heterosexuality. Bestiality, like same-sex intercourse, results in the blurring of bodily boundaries, with the mixing of semen violating human and animal roles.²⁰³

The regulation of the animal-human boundary, like the other household boundaries, functions to maintain “the categories of existence (pure and impure, holy and profane,

²⁰⁰ Feinstein, *Sexual Pollution in the Hebrew Bible*, 115.

²⁰¹ Elijah Judah Schochet suggests “that an animal, like a human being, bears blood-guilt. In cases of sexual contact between man and beast, both the former and the latter are put to death...The animal has come to symbolize the degradation of a human being, and its death may more accurately be viewed as the eradication of a degrading symbol than as an infliction of a punishment per se.” See Elijah Judah Schochet, *Animal Life in Jewish Tradition: Attitudes and Relationships* (New York: Ktav, 1984), 54.

²⁰² Piers Bierne, “On the Sexual Assault of Animals: A Sociological View,” in *The Animal-Human Boundary: Historical Perspectives*, Angela N.H Creager and William C. Jordan (eds.) (New York: Harvard University Press, 2002), 199.

²⁰³ Bigger, “The Family Laws of Leviticus 18 in Their Setting,” 203.

permissible and impermissible foods, family lines, sacred time, sacred space).”²⁰⁴ Frymer-Kensky suggests that human-animal mating threatens these categories for the same reasons as same-sex intercourse, or incestuous relations—these sexual transgressions are associated with the cultic pre-Israel inhabitants.²⁰⁵ Illicit sex, as illustrated in Leviticus 18:28 and 20:22, defiles the land. The prohibitions mediate sexual behaviour by enforcing a hierarchical order. The following illicit unions demonstrate a scribal extension of the principals implied in incestuous and male same-sex relations, against the abstract possibility of animal intercourse:²⁰⁶ For example, father-daughter intercourse poses a threat to the internal order of her kin group. Their actions are both a crime of property against the family as well as a violation against Israel’s social order. Inbreeding pollutes bloodlines, and thus results in a “collapse of family relations: sex with daughter-in-law is explicitly called *tebel* (“mixing”) in Leviticus 20:12.”²⁰⁷ Similarly, Davidson writes:²⁰⁸

A Hebrew word describing bestiality serves to underscore the innate defiling nature of this practice and linkage to the creation order. According to Lev 18:23, bestiality is *tebel*, "perversion." Derived from the verb *bālal*, "to mix, confuse," *tebel* refers to a "confusion" or "mixture" of categories—"a violation of the order of nature." Such a violation is not tied to the society of Israel; as a preservation of the creation order, the prohibition has universal and permanent force.

Davidson further explains that bestiality defiles because the act extends beyond normal human-animal boundaries: Structurally, the laws concerning bestiality are similar to the anxieties around male same-sex intercourse within the household. The author parallels the illicit behaviour with the actions of neighboring nations, implying that the Israelites are also guilty of these

²⁰⁴ Frymer-Kensky, *In the Wake of the Goddesses*, 195.

²⁰⁵ *Ibid.*, 196.

²⁰⁶ Milgrom writes that the laws consist of a “discernible order... Consanguinity and affinity are the principles that govern the primary relationships in [Leviticus] 18:6-18, and they are followed by miscellaneous sexual practices in 18:19-23... In chap. 20, another principle is operative: the penalties. They are precisely graded according to their severity.” See Milgrom, *Leviticus 17-22*, 1593.

²⁰⁷ Frymer-Kensky, *In the Wake of the Goddesses*, 191.

²⁰⁸ Davidson, *Flame of Yahweh*, 174.

infractions. The use of the term abomination applies to both misdemeanors, with the punishment of nonproductive sex being social displacement and death.²⁰⁹

In Mesopotamian and Ugaritic texts the attitude towards bestiality is quite different. Milgrom suggests this is because the practice is “limited to the realm of mythology.”²¹⁰ In the *Epic of Gilgameš* sex transforms Enkidu from animal to human. In addition to the transgression of gender roles, “Ishtar is depicted as the wanton lover of a bird, lion, and stallion (ANET 84, 11. 48-56); [and in a Ugaritic poem] Baal copulates with a cow and fathers an ox, a heifer, and a buffalo (ANET 142).”²¹¹ In other words, the practice of bestiality takes on a normative or non-transgressive role in some of the literature and art of Mesopotamia and Ugarit. These cultic myths cast further light on Israel’s interdiction against animal-human relations. They suggest that bestiality is proscribed in part because it reflects the homology between body, temple, and community. The rule against sex-acts with beasts concerns the self-organization of the body against the human-animal boundary. The sexual impurity of the body has the potential to defile the temple. Further, the holiness of the community is compromised by the impurity of the Israelite- which could result in being “vomited from the land.” In Leviticus, the judicial condemnation of bestiality reinforces Israel’s aversion to foreign cults as well as to bodily defilement.

Conclusion

This paper explored the Hebrew Bible’s categories of sexual infractions and illicit relations. The objective was to examine the Israelites transgressions of personal boundaries and the commonalities in the Holiness legislations attitude towards these behaviours. This analysis

²⁰⁹ Ibid., 170.

²¹⁰ Milgrom, *Leviticus 17-22*, 1570.

²¹¹ Milgrom, *Leviticus 17-22*, 1570.

demonstrated that the laws of Leviticus function as a measurement of a family's composition. I have argued that the social stratification of the household is threatened when kinship ties are compromised by illegitimate sexual unions. My investigation of sexuality in the Israelite ethos has produced a number of key observations.

The prohibitions of Leviticus 18 and 20, which focus on the sins associated with neighboring nations, predominantly address various forms of nonproductive sex, followed by the allotment of punishments for these transgressions.²¹² The list of prohibited sexual relationships is formulated within the Israelite household. As such, it would appear that the laws concerning incest and other sexual offenses are analogous; expressing a concern for nonproductive sex and the violation of male privilege. What characteristically links these illicit sexual acts together are the threat to procreation and proper descent within the family.

Among the list of prohibitions, incest, same-sex relations, and bestiality have the following commonalities: they result in a sexual actions that are a) non-procreative and therefore debase hierarchical relations (as is the case bestiality and same-sex unions); b) result in illegitimate offspring (as is the case for incest and adultery); c) and they govern the range of sexual privilege that can be exercised by males. In all cases of illicit sexual actions, the text reflects a preoccupation with procreation. These laws oppose actions that transgress household lineage and pose a threat to the land of Israel and YHWH. Moreover, through the homology of Body, Community and Temple in Holiness thinking, they threaten the purity of the Israelite cult.

Leviticus explicitly expresses anxieties about transgressing divinely sanctioned boundaries. The lists of prohibited relationships are designed to protect both the social structure of the family and Israel. With respect to the incest laws, I have illustrated that the sexual

²¹² Lipka, ““Such a Thing Is Not Done in Israel’: The Construction of Sexual Transgression in the Hebrew Bible” (Ph.D., Brandeis University, 2004), 56.

infractions of the household are also implicated in the laws concerning same-sex unions.

Although the prohibitions against same-sex intercourse have commonly been read separate from the incest laws, the translation of the “lyings of a woman” in Lev 18:22 implies that the prohibitions of same-sex liaisons concern only sexual interactions with one’s own kin. The priestly legislator was concerned with incestuous relations between both sexes. Similarly, incest shares commonalities with adultery and bestiality as it confuses lines of descent and the boundaries of the family.

Illicit sex in priestly thought reflects a variety of sociosexual mores in Israel and the ancient Near East. The similarities within the Holiness code to other laws and narratives of the Hebrew Bible, Mesopotamian and Ugaritic texts, and the Babylonian and Hittite laws, reflects a multitude of influences that work to shape and change the dominant gender ideologies of Israelite religion.

We are not done examining nonproductive sex in the ancient Near East. Scholars must continue to investigate the relationships between juridical concern with illicit sex and the social stratification of the family. I hope this paper has shown some useful directions for future research on the nature of sexuality in biblical and ancient Near Eastern literature

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