

RAW MATERIAL

Studies in Biblical Sexuality

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Chapter 7

Leviticus 18 & 20

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Leviticus 18 and 20

The grand central station of sexual law in the Hebrew Scriptures is chapter 18 of the book of Leviticus. Chapter 20, the other great gathering of sexual laws, depends on Leviticus 18 for its order. There are two smaller clusters of sexual law in the Hebrew Bible, Deut 27:20-23 and Ezekiel 22:9-11. All four clusters of sexual laws combine incest and non-incest prohibitions. In Leviticus 15 are the laws concerning genital emissions, laws which probably lay behind some of the sexual laws of Leviticus 18.

Chapter 18 places sexual prohibitions into two general categories, incest (vv.6-18) and non-incest (vv. 19-23). The other collections, Leviticus 20, Deuteronomy 27 and Ezekiel 22 contain both types as well, but without the segregation found in Leviticus 18. This indicates two things — ancient Israelite law had a common category for laws governing sexual activity, and within this category were two general classes of prohibited activity, incest and non-incest.

Incest in Leviticus 18 is characterized by the phrase, “uncover the nakedness of” the offended party. The offended party was usually male, though sometimes female. Although gender is kept distinct through the chapter, most prohibited relationships have their counterparts included where the genders are switched. An important exception is that nephew-aunt relationships are forbidden, but not uncle-niece relationships. Though incest between a man and his daughter is not explicitly condemned, it is included in a ban on relations with a woman and her daughter (v. 17). Prior to modern technology a man could not have a daughter without first having sex with her mother, which would make a man’s daughter off-limits. Verse 17 not only effectively bans intercourse between father and daughter, but also between step-father and step-daughter as well. In chapter 20 this ban is less explicit in a ban on intercourse with a woman and her mother (20:14).

Note that the incest laws are indifferent to biological incest — inbreeding. In the Bible incest is defined solely in terms of family linkage with little or no interest in the appearance of recessive genetic traits. Incest laws exist to establish family order. In another study (Miller 2000a) I showed that in Genesis the only incest recognized as taboo crossed the generational divide, as when Ham viewed his father’s nakedness, when Lot impregnated his daughters, when Reuben bedded his father’s concubine Bilhah, and when Tamar seduced her father-in-law Judah. Incestuous relationships within the generation, Abram’s marriage to his half-sister Sarah and

Jacob's marriage to a pair of sisters are treated as unexceptional relationships. A similar pattern may be found in 1 & 2 Samuel, where incest between Absalom and his father's concubines is an important defilement, but marriage between half-brother and sister, Amnon and Tamar, is treated as a serious option.

Genesis and Samuel treated incest only in the most important cases of keeping family order, preserving the boundary between generations. Leviticus 18 and 20 have a broader reach, preserving family order across additional boundaries. In chapter 18 the incest regulations are grouped by relationship. They begin with a man's parents, the closest relatives of the parents (including their children, the man's siblings), the man's children, and finally a pair of sisters – related to each other, not to the man.

The incest laws of Leviticus 18 do not contemplate levirate marriage. They do not specify whether the relative is living or dead. In levirate marriage a man is expected to impregnate the childless widow of a near relative, but only of certain relatives. In Genesis 38 apparently Judah considers his levirate intercourse with his son's widow to be incest, while levirate intercourse with a brother's widow is permissible, indeed required. Also Genesis seems to establish a pattern where adultery is exclusive of incest (Miller 2000, p 49). Both are unlawful, but adultery seems to occur only outside the family, and incest only within the family.

The non-incest laws of Leviticus 18 may seem a miscellaneous grouping, but probably are united by a controlled body fluid — semen. In these laws the most common term is *zera'* (זרע, semen/seed). LXX and Syriac versions indicate that verse 23 should have the term לזרע restored to the Hebrew text, giving it the same phrase found in verse 20 (literally, “do not give your lying to seed to defile in it”; Miller 2000b).

As with the incest laws, the non-incest laws are explicitly gender-specific. First notice that the person addressed is in the second person masculine. The significance of this is apparent in verse 23, where “you” (a man) are not to deposit semen in an animal, nor should a woman (third-person hypothetical) allow an animal to deposit semen inside her. In the case where the male addressee is not a participant the second person is avoided altogether. The addressee is the male as penetrator (Olyan 186).

Again in verse 23 male intercourse with an animal is condemned first, then female intercourse with an animal. One law cannot cover both genders, but each must be addressed separately. In the previous verse male homosexual activity is condemned but female

homosexual activity is ignored. Of course no semen is present in a female couple. When confronted with the lack of prohibition on female homosexuality some blame "patriarchy" and cite a lack of interest in female issues.¹ This dismissal of the problem is anachronistic at best. Leviticus 15 is as interested in a woman's genital emissions as in the emissions of a man, and the man's emissions hold the key to the ban on male homosexual activity. The woman's genital emission, menses, is not necessarily present when a woman is engaged in sexual activity. The man's genital emission, semen, is almost always present when the man is engaged in sexual activity.

A classic case of gender specificity is adultery, which is defined through the female. No limit is placed upon the male for how many women he can take as wives,² but a woman is allowed in marriage one man only. Any married woman who has sex with a man other than her husband is guilty of adultery, but a man is guilty of adultery only if he has sex with a woman married to someone else. The man is not considered an adulterer if he has a second wife or a concubine or if he visits a prostitute.

In sexual laws generally, and in Leviticus 18 in particular, sexual law is gender specific. In the non-incest laws of Leviticus 18 the gender specificity seems to be based on the male genital emission, semen. Semen is an important regulated body fluid.

זרע as a Regulated Body Fluid

In Leviticus 15 four fluid emissions from human genitals are specified as controlled body fluids: male non-seminal emission, seminal emission, menstrual emission, and female non-menstrual emission. Only semen does not produce contagious uncleanness. With semen only direct contact with the fluid itself transmits uncleanness. Though a priest with a seminal emission is barred from the Sanctuary (22:3-4), the text does not state that a disobedient priest would make anything there unclean. Seminal uncleanness is non-contagious.³ Also seminal

¹ Related to this, Olyan proposes it is a male playing the female role which informs the prohibition. More specifically Olyan specifies anal intercourse here, a position seconded by Walsh.

² However, Ex 21:10 requires the polygamist to provide conjugal rights to each wife, limiting him to the number of wives he can satisfy.

³ In contrast, legal writings from Qumran (11Q 45.10; CD 12.1-2) and rabbinic

uncleanness has the shortest incubation period of the four forms, and the simplest method of restoring cleanness.

The phrase used for seminal emission in 15:16-18,32 is *shikbat-zera'* (שִׁכְבַת זֶרַע) a word pair which also occurs in Leviticus 18. The verb *shakab* (שָׁכַב) is commonly used as a euphemism for sexual intercourse and most commentators accept the literal meaning as "to lie (down)." This meaning is assumed by the Septuagint translators who use *koimao* (κοιμᾶω), likewise a sexual euphemism which means to lie down. On the other hand, the verb may be a non-euphemism meaning, "to ejaculate", hence its association with *zera'*, semen / seed.

Chapter 15 tells us few things about semen as a regulated body fluid. Though the text deals only with acceptable forms of seminal emission (nocturnal emission/masturbation and heterosexual intercourse), presumably one may misuse seminal fluid. As a controlled body fluid, misuse of semen could conceivably produce more than simple uncleanness. In addition to *zera'* there is another repeat term in these non-incest laws. The root *TM'* (טָמָא, unclean / defile) appears as the noun *tum'ah* in 18:19 and as the infinitive verb in verses 20 and 23. *טָמָא* is the operative term in the semen law of Leviticus 15:16-18 and may indicate the presence of a controlled substance which causes uncleanness, such as semen. Legal texts such as those in chapters 18 and 20 may provide the specifics as to the forms of misuse and the seriousness of the offences, but in principle any substance which is controlled may be subject to abuse, and misuse in the holiness code would produce defilement or uncleanness.

What happens when two controlled body fluids, such as semen and menses come in contact with each other? Here chapters 15 and 20 are in conflict. In chapter 15 the male merely shares the woman's menstrual uncleanness, and nothing is specified for the female. However in 20:18 the two of them are to be "cut off", clearly a stronger result, and a penalty shared by both individuals. It seems that 15:24 merely contemplates the results of personal contact with menses with no thought of semen, in spite of the seminal material in the preceding section. In contrast, if chapters 18 and 20 emphasize the misuse of semen, the contact between the two fluids is the offence of 20:18 and thus a stronger penalty is stated.

sources (Mishna *Zabim* 4.4-5), do treat seminal uncleanness as contagious.

Infertile emission does not seem to be a misuse of semen. If the commentators are correct in identifying nocturnal emission and masturbation as the subject of 15:17, the law assumes the legality of seminal emission which has no fertile possibility. Elsewhere, as in chapters 18 and 20, some commentators conclude that the prohibitions on male homosexuality and bestiality have to do with the infertility of these forms of intercourse. However, adultery is included in the laws of chapters 18 and 20, and adultery has fertile possibilities (as does menstrual intercourse, though less often). In chapter 15 infertile emission is accepted as a normal activity, covered by the same law as heterosexual intercourse. The fault in male homosexuality and bestiality lies with a factor other than infertility.

It is possible to separate these non-incest laws and interpret each in isolation, but there are dangers in interpreting texts outside of their context. If these prohibitions have support within other contexts, a fuller picture of the prohibition may be formed beyond that of this one context.

The Relationship Between Chapters 18 & 20

Most of the material in chapter 18 is covered in chapter 20, often with the same language. The material in chapter 18 has a simple arrangement. Verse 6 introduces the principle of incest prohibition, and verses 7-18 detail the forms of incest. The common phrase used to define incest throughout this section is to uncover the nakedness of a relative. Following the incest laws, verses 19-23 cover a variety of other sexual offences which cannot be described as incest. In this bloc of text only the prohibition on menstrual intercourse speaks of uncovering the nakedness of an offended party. As the menstrual prohibition initiates the second bloc of laws, the theme of uncovering nakedness bridges the two sets of laws.

When compared to chapter 18, the laws of chapter 20 seem to be an assorted hodge-podge, as if this chapter had undergone a major upheaval in its transmission. However, while chapter 18 is apodictic, chapter 20 is casuistic, and the penalties provide the organizing principle for the latter chapter. Except for verse 14, 10-16 specify death for the malefactors, with the notation that their blood is on their own heads. Verse 14 specifies the form of execution, burning. Verses 17-18 specify the penalty of being cut off (banishment?/execution? c.f. Ex 31:14-15), and verses 20-21 specify childlessness. Also verses 17 and 19-21 specify that the malefactor will bear the guilt of the transgression.

The penalties specified in chapter 20 organize much of the chapter, but do not explain the order of the largest segment, verses 10-16. Verses 10-16 make up a single bloc of penalty, but mix incest laws with non-incest laws, often showing some of the order of chapter 18. For instance 18:22-23 is represented in 20:13,15-16, and the intrusive verse 14 follows verse 12 as in 18:15,17 (18:16 is reflected in 20:21, a different bloc of penalty). Simply by switching 20:14 and 15 the order of chapter 18 may be restored in chapter 20, leaving one group of incest laws intact. Another bloc of laws intact in chapter 20 are verses 19-21 which reflect 18:12-14, 16.

Apparently chapter 18 is the standard against which the contents of chapter 20 were ordered, or from which the contents of 20 were disordered. It is against this standard that 20:1-9 must be understood. Though the molek law of 20:2-5 reflects 18:21, the laws in 20:7-9 have no sexual content whatsoever and are similar to several other passages in Leviticus. Verse 6 is related to the preceding molek material in prohibiting idolatrous fornication and necromantic activity. Possibly the entire bloc of verses 2-9 was imported into chapter 20 to give it a molek prohibition which reflects 18:21. That is to say, the anomalous bloc of 20:1-9 illustrates the influence of chapter 18 on the construction of chapter 20. Without the influence of chapter 18, 20:6-9 seems a random insertion of foreign material. With the influence of chapter 18 the foreign material remains foreign, but its presence is explained by the requirement for a molek prohibition in chapter 20, and in fulfilling that requirement an anomalous bloc of legal material accompanied the molek text. Notably, all other elements of 18:19-23 are reflected with identical material in chapter 20:10,13,15-16,18. The external molek material fills out the requirements of chapter 20 by providing a casuistic version of 18:21.

Though 20:2-5 seems an external bloc of law added to chapter 20, its placement here illustrates not only the influence of chapter 18 over chapter 20, but also the integral place of molek legislation within sexual law. Commentators have long recognized the problem of a seemingly non-sexual prohibition on molek worship in this setting of sexual law. Snaith (125-126) for instance went so far as to speculate that sacred prostitution is the topic here, even though sacred prostitution is not elsewhere associated with molek sacrifice. Instead, in this sacrifice children seem to be the “seed” passed through the fire. In Leviticus 18 and 20 only here is procreation part of sexual transgression.

Whether “seed” in molek law is read as children already produced or as referencing sexual intercourse to produce molek-dedicated offspring, the sexual nature of its language

connects this law and the contents of both chapters 18 and 20. The molek terminology must be allowed its weight in determining the organizing factors of these chapters. Thus the heavy use of *zera'* (זרע) in 20:2-5 as well as 18:21 provides a strong basis for understanding *zera'* as an organizing factor in 18:19-23. The molek law of chapter 18 is preceded by the adultery law which also uses *zera'*, intensifying the connection. *Zera'* seems to play a significant role in the non-incest laws of Leviticus 18 and 20, implicating a misuse of semen as an organizing factor in these laws.

Childlessness

The penalties of 20:20-21 specify that the couple would die *'ryrym* (ערירים), usually translated “childless.” The term occurs only four times in the Hebrew Scriptures. In Genesis 15:2 it does indeed seem to mean childless, but this is far from clear in Jeremiah 22:30. The Septuagint in Genesis and Leviticus translates the word as childless (*ateknos* / ατεκνος), but is ambiguous in Jeremiah. The Syriac consistently translates “without children” (*dl' bny'n*), and the Targums likewise translate the term as childless. However some doubt remains and modern translations provide varied renderings. As this penalty is found on both of the last two laws (20:20-21), some have applied this penalty to the preceding incest laws. The penalty of childlessness raises the issue of the community's responsibility in enforcement.

Often unspoken, the problem with the childless penalty is the precise meaning of its application. When chapter 20 specifies that a malefactor should die or be “cut off” the reader may assume it is the community's responsibility to execute or expel the malefactor. If verses 20-21 specify childlessness, then it is the community's responsibility to insure that the malefactors do not produce children from their union. That is to say, if the woman is already pregnant it is the duty of the community to prevent the birth of the child, most probably by executing the mother-to-be. The existence of this law in Scripture may have far-reaching implications for modern questions about the personhood or legal value of a fetus. There is no Biblical law of this nature for illegitimate or incestuous children who are already born.

Greater and Lesser Laws

Law collections, such as in Leviticus 18 and 20, are subject to being dismantled and having the laws treated in isolation. This is not as much of a problem with some laws as with

others. One context for these laws is these two chapters in Leviticus, but another context for the church is the canon as a whole. Laws which occur in a variety of contexts throughout the canon are less likely to be misunderstood when removed from one particular context. Less widely distributed laws are less stable outside of context and more liable to interpreter error.

The treatment of incest in Genesis indicates that some of the sexual laws are far more significant than others. For instance, the prohibition on marrying a pair of sisters (Lev 18:18) is not repeated in chapter 20 or elsewhere in the Hebrew Scriptures, and it is flouted in Genesis 29 with no awareness of a taboo. Also Ezekiel 23 tells a parable of God's marriage to a pair of sisters, Oholah (Samaria / Israel) and Oholibah (Jerusalem / Judah) again with no apparent awareness of this incest law. Abraham's marriage to his half-sister is ignored as incest as it does not break the generational divide. For Genesis the most important line which incest crosses is that between generations (e.g. Lot and his daughters, Reuben and Bilhah, Tamar and Judah). This same line seems operative in 2 Samuel where Tamar could recommend marriage with her half-brother Amnon, but David shut up as widows his concubines who were implicated publicly for incest with his son Absalom (2 Sam 13:13; 20:3). The incest laws are about preserving family order, and this order is disrupted more when the generation divide is crossed.

Leviticus 18:18 begs for further treatment. It has become popular in some conservative Protestant circles to make this verse a prohibition on all polygamy (e.g. Davidson, pp 193-198). Emphasis is placed on the difference in form between this verse and the preceding incest laws. There are three problems with this reading of Leviticus 18:18. The explicit meaning of the text as written is an incest prohibition against marrying a pair of women who are sisters – close relatives of each other – like the mother and daughter of the preceding verse. Second, the prohibition is not repeated in chapter 20 – or elsewhere, which weakens and isolates this prohibition, however it is understood. Surely a ban on polygamy would merit something more substantial than this. Finally, there is a painfully obvious desire on the part of certain scholars to get this particular result. This desire to outlaw polygamy within the laws of Moses seems likely to derail careful, objective analysis of this verse.

The non-incest laws all have solid reinforcement outside of Leviticus 18 and 20 except for the ban on male homosexuality. Adultery is the most commonly reinforced prohibition, with narrative support in Genesis and 2 Samuel, a place in the Ten Commandments, and use as a metaphor for transgression in the prophets. There is no surprise when we find adultery prohibited

in a variety of ancient legal texts outside the Bible as well. There are many contexts, Biblical and non-Biblical, through which adultery may be understood.

Menstrual intercourse receives a few legal notices, such as Leviticus 15:25, and menstrual uncleanness itself has substantial narrative reinforcement (e.g. Genesis 31:34-35) and figurative use (e.g. Is 30:22; 64:6). Molek sacrifice has several notices in the laws, in the narratives of 2 Kings and in the prophecies of Jeremiah and Ezekiel. The prohibition of bestiality receives a strong narrative aetiology in Genesis 2:19-20 and is reinforced in Exodus 22:18/19 and Deuteronomy 27:21. But male homosexuality is not treated in any other portion of the law codes, it is not used by the prophets literally or as a symbol or simile, and in the Hebrew Scriptures male homosexuality has only two brief, weak narrative treatments which are focused on something else entirely.

Homosexual activity is threatened in Genesis 19:5 and Judges 19:22, but the threat is not carried out. Also the two narratives deal with violent inhospitality and rape, offences which overwhelm any helpful information on homosexuality which might be derived from these narratives. For instance Genesis 19:8 and Judges 19:23 define the wickedness of the crowd by the fact that the strangers have come under the protection of the householder (who himself is a resident alien). At no point is the theme of same-sex relations developed, and in Judges 19 the mob satisfies itself with heterosexual rape of the Levite's concubine. In Genesis the theme of hospitality is already a strong theme through the parallels between 18:2-8 and 19:1-3 (Amit 1999), and in Judges 19 hospitality is also a theme running through verses 4-21 (Hobbs 22-23). The violent inhospitality of the mob is made stark by the strong context of hospitality.

Rabbinic exegesis of Genesis 19 tends to ignore the same-sex demands of the mob, concentrating more on the other injustices of Sodom, such as those of Ezekiel 16:49-50 (e.g. *Genesis Rab* 49.5.2-3; *bSanhedrin* 109a-b cf. *Pirke Aboth* 5.13). In the New Testament the references tend to be about inhospitality (Matt 10:15; Mark 6:11; Luke 10:12; c.f. Luke 9:52-54) or destruction (Luke 17:29).

Jude 7 is explicit about the sexual desires of the Sodom mob, but uses language which excludes homosexual desires (Hays 404, n.5). Jude finds that they desired *sarkos heteras* (σαρκος ἕτερας, "different flesh"), the opposite of *homosexuality* where the concern is over the sameness of the two partners. Most commentators look at the popular Jewish literature of this period and find a concern over angels having sex with humans, and interpret "different

flesh” as the non-human flesh of the two angels. However, the reference could also be to the outsider status of the two visitors. They were strangers, and thus the subject of hospitality or inhospitality. In Matthew 10:14-15 and Luke 10:10-12 Sodom epitomizes inhospitality, and in Luke 9:53-54 fire from Heaven is recommended by disciples for inhospitable cities. Remember that the mobs in both Genesis 19 and Judges 19 rejected the daughters of the household because the daughters were local and known.⁴ It was the strangers they wanted — of either gender. An unknown person, an outsider, could be the referent of “different flesh.”

In Genesis 19 and Judges 19 homosexuality is not the offence of either Sodom or Gibeah. Homosexual rape is mentioned briefly on the path to the real themes of these stories — hospitality, inhospitality, rape and violent retribution for the city’s violence. Yet these are the strongest supporting texts for the prohibition on male homosexual activity in Leviticus 18 and 20. In spite of the great quantity of ink spilled over the question of homosexuality in the Bible, it receives only marginal treatment in the Hebrew Scriptures as well as in the New Testament. The marginal treatment should be considered in determining how much weight we place on our understanding of these texts (Hays 381).

Support from the literature of Mesopotamia, Egypt or Ugarit is of marginal value. Male homosexuality receives no notice in surviving Ugaritic literature, and only an occasional mention in Mesopotamian and Egyptian literature. In Mesopotamian legal and oracular texts male homosexuality is treated as shameful and sometimes criminal, depending on the relative social positions of the two participants (Nissinen 24-36). The principal controlling factor in these texts seems to be power relationships. In the Egyptian pyramid texts the deceased denies, among other things, that he has had sex with a boy (sex with a man is not mentioned). In one of the stories of Horus and Set, Set attempts to get his semen inside Horus through anal intercourse. Horus manages to sideline the semen of Set and tricks Set into consuming Horus’ semen. The result is a kind of pregnancy for Set. Apparently the problem here was the deposit of semen from one man into the body of another man. Another problem is that divine semen manages to impregnate anything, including fellow males. In the Hurrian / Hittite *Song of Kumarbi*, Kumarbi

⁴ Rabbinic tradition further explains Lot’s status as a citizen of Sodom. Noting that his wife is never mentioned before he moves to the valley, they conclude that Lot’s wife was from Sodom and she turned back to see the destruction of her parents’ home (Targums Neofiti & psJonathan on Gen 19:26). In this reading Lot’s daughters would be relatives of local citizens.

manages to emasculate his predecessor by biting off his genitals, with the unwanted result that Kumarbi became pregnant with the semen he swallowed. There is almost no parallel between this literature and the two legal texts in Leviticus 18 and 20 on male homosexual activity except for the importance of semen.

It seems most likely that semen is the controlling factor in the non-incest prohibitions of Leviticus 18 and 20. The laws prohibit deposit of semen in contact with menstrual fluid (18:19), the deposit of semen in a woman contracted to another man (18:20), the giving of your semen/seed to molek sacrifice (18:21), the deposit of semen in another semen producer (18:22), the deposit of semen in an animal or the attempt to have an animal deposit its semen in a woman (18:23). These laws are dependent, in part, on the holiness laws which control semen. Additional reasons for these prohibitions may be added from other texts in other contexts. Genesis 2:24, for instance, is used to define adultery though lacking any connection with semen. Likewise outside of Leviticus 18 and 20 molek sacrifice is condemned without mention of semen / seed. But the condemnation of male homosexuality is limited to the context of these two chapters until we reach the New Testament texts.

The New Testament treatment of male homosexuality, and the possible treatment of female homosexuality will be discussed in a later chapter. Briefly, female homosexuality is often understood in one text (Romans 1:26), but the text is not explicit and probably refers to a heterosexual activity (Miller 1995). The three texts on male homosexuality seem specific to pederasty (Miller 1997). These readings are supported in the writings of the early Church Fathers and will be discussed in the first Patristic Excursus, Chapter 18.