

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.

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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,

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*

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

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.

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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 _____ 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 _____ 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

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

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

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.

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

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.

e shall not uncover the nakedness of your sistr’s wife; ia]

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

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

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:

In 2 Samuel 13, we have an explicit account of sibling incest. Amnon is said to be

sister, sister-in-law, aunt, uncle's wife, and menstruating women," these acts "are outside

ensure the continuity of Elimelech's name

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 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 a .

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” (), 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 i(Thi This This This Th ti)T1 0 0 1 72.024 267.53 Tm[(intviBT1 0 0 1 72.ET7 sa)3(me)] T1 0 7i1 5

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 gen

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 *homoerotic* 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 *homoerotic* 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

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,

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

“the adulterer and the adulteress” (). 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.

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.

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

¹⁵⁸Friedman 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 inter

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

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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,

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.

In the 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 (*i e e*) with his equal (*me*) 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

attitudes of all of Israel.¹⁸⁷

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.

head of household treats the wome

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

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

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 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

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

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

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