

Mitteilungen

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Response to: »Was There Ever an Implicit Acceptance of Male Homosexual Intercourse in Leviticus 18?« by George M. Hollenback in ZAW 131/3 (2019), 464–466.

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I am grateful for the opportunity to respond to George Hollenback's critique of my article on the evolution of the incest laws in Lev 18 and the implications thereof for the prohibition of male-male intercourse.

In a nutshell, my argument regarding Lev 18 is that in a previous incarnation, the incest laws in this chapter included two male relatives in the list of forbidden sexual partners—the father and the paternal uncle—and that those prohibitions were »interpreted away« by an editor, leaving only females in the list. This was done, I suggest, to relieve a perceived tension between laws detailing specific forbidden males and a later blanket prohibition against the penetration of any male, which was introduced by the authors of the Holiness Code and is recorded in both Lev 18:22 and 20:13.

Hollenback has recently published an article in which he argues, following Walsh,¹ that the prohibition against homosexual relations in Lev 18:22 is addressed not to the penetrating party, as is commonly understood, but to the penetrated one.²

Hollenback's primary critique of my analysis is that, if his and Walsh's interpretation is correct, there would have been no reason for a jurist from the Holiness school to alter incest laws prohibiting the sexual penetration of particular male family members. As he writes, »[T]he supposedly subsequent addition of verse 22—as correctly understood—would have made the penetrated fathers and uncles the guilty parties!«³ Assuming the incest laws were addressed to the penetrating party, there would have been no legal conflict between them and Lev 18:22, if, as Walsh and Hollenback argue, the latter condemns only the penetrated individual.

1 Jerome T. Walsh, »Leviticus 18:22 and 20:13: Who Is Doing What to Whom?«, *JBL* 120/2 (2001): 201–209.

2 George M. Hollenback, »Who Is Doing What to Whom Revisited: Another Look at Leviticus 18:22 and 20:13«, *JBL* 136/3 (2017): 529–537.

3 George M. Hollenback »Was There Ever an Implicit Acceptance of Male Homosexual Intercourse in Leviticus 18?« *ZAW* 131/3 (2019): 465.

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I will presently evaluate their analysis of Lev 18:22. But before doing so, I should note that the matter is largely moot, given that Hollenback concedes that the second mention of homosexual intercourse in the Holiness Code, namely Lev 20:13, criminalizes the penetrator.⁴ That passage explicitly states that both parties are culpable: »both of them have committed an abomination; they shall be put to death; their blood is upon them«. Therefore, even if we accept Walsh's and Hollenback's interpretation, the only ramification for my thesis is that the catalyst for the editor's emendations becomes a law found in a single clause in the Holiness Code, rather than in two.

I will now briefly discuss the phrase *שכב את זכר משכבי אשה* (Lev 18:22; 20:13), which is typically understood as »lie with a male as one lies with a woman«⁵ but which Walsh and Hollenback take to mean »lie with a male *as a woman lies*«. I will also consider a new associated theory put forth by Hollenback in his most recent article.

Hollenback writes that »the construction ›lie down a lying down‹ is a cognate object construction like ›dream a dream‹ or ›sin a sin.«⁶ Or as Walsh previously put it, the phrase »lies [...] the lying down of a woman‹ [is] a cognate direct object construction to be compared with such standard Hebrew idioms as ›to dream a dream‹, ›to sin a sin‹, and the like.⁷ For Walsh and Hollenback, this construction »describes an action performed by the subject, not the subject's experience of someone else's action.«⁸ Therefore, Hollenback argues, »[T]he verse [is] actually admonishing members of its adult male Israelite audience not to lie down the way a woman would lie down with another male, that is, not to assume the role of the receptive, penetrated partner.«⁹

There is much to unpack here. First, it is not at all clear why their understanding of the phrase *אשה משכבי* as describing an action performed by the subject of the sentence should lead them to conclude that it must mean »as a woman lies«. Those who see the penetrator as the addressee of the law also see him as the one performing *משכבי אשה*. They simply understand the woman to be the object of, as well as patient in, *the construct phrase*.¹⁰ Only if one's point of departure is that *אשה משכבי* means »as a woman lies« does the sentence's subject »experience [...] someone else's action«.

More fundamentally, their identification of the phrase as a cognate (direct) object construction is erroneous. In support of his interpretation, Walsh cites the section on the effect-

4 Ibid. 466.

5 Or, perhaps, »bed a male as one beds a woman«. This formulation takes *את* to be an object marker, rather than a synonym of the preposition *עם*, and thus conveys directionality.

6 Ibid. 465.

7 Jerome T. Walsh, »Leviticus 18:22 and 20:13: Who Is Doing What to Whom?«, *JBL* 120/2 (2001): 205.

8 Ibid. 205.

9 Hollenback, »Acceptance«: 465.

10 It is context and semantics, not construction, that determines the relationship between the elements of a construct phrase. Either element can be subject or object. Compare, for instance, *משפט הגוים* (2 Kgs 17:33) and *משפט אבינים* (Jer 5:28; Ps 140:13). In the first case, the *גוים* are the subject of the *משפט*; in the second, the *אבינים* are its object. Grammar therefore does not dictate if the woman in *אשה משכבי* is performing the lying or, rather, if it is being performed upon her. I thank Na'ama Pat-El for these examples and for her helpful comments on this matter.

ed-object accusative in *An Introduction to Biblical Hebrew Syntax* by Waltke and O'Connor.¹¹ That section indeed discusses formulations such as »dream a dream«. It does not, however, mention Lev 18:22, Lev 20:13, or any analogous passages, for the simple reason that they are not, in fact, examples of the phenomenon.

There is an essential difference between constructions such as »dream a dream« and the case at hand. The phrase »dream a dream« is considered an effected-object accusative, since the object – the dream – is effected by the action itself. This can be contrasted with »recounted a dream«, where the dream's existence is not predicated on the action of recounting. None of this is relevant for Lev 18:22 and 20:13, where the phrase *משכבי אשה* is not objective at all. Rather, it is an adjunct that specifies the precise type of lying that is forbidden between men.

A comparison of our phrase with similar constructions in H and throughout the Hebrew Bible supports the view that *משכבי אשה* means »as one lies with a woman« and that there is no grammatical imperative to gloss »as a woman lies«. For instance, Lev 25:42 (H) includes the phrase *לא ימכרו ממכרת עבד*, meaning »they shall not be sold as one sells a slave«; it surely does not mean »as a slave sells«. Lev 26:36 (H) has *ונסו מנסת חרב*, which is rendered as »they shall flee as one flees from the sword« – not »as the sword flees«. Ezekiel 16:38 contains the phrase *דם ושפכת דם ושפטיך משפטי נאפוח ושפכת דם* which translates as »I will judge you as one judges adulterers and blood shedders«, and not »as adulterers and blood shedders judge«.

This brings me to Hollenback's new argument regarding the Priestly jurist's underlying objection to male homosexual intercourse. In his response to my article, Hollenback suggests that the fundamental sin is the emission of semen without potential for conception, as evidenced—in his view—by the prohibition against a man having sex with a menstruating woman.¹²

Intercourse with a menstruating woman is not, however, prohibited due to a concern with unproductive emission of semen. Lev 20:18 reads: »If a man lies with a menstruating woman, uncovering her nakedness, he has exposed her source and she has uncovered the source of her blood; both of them shall be cut off from their people«. The sin is explicitly tied to the menstrual blood, and not to the semen.

Furthermore, were the concern unproductive emission of semen, we would expect Priestly prohibitions against masturbation, coitus interruptus, heterosexual anal sex, oral sex, sex with pregnant women, sex with postmenopausal women, and sex with prepubescent girls—not one of which is present. Indeed, a straightforward prohibition against »squandering« semen would not have gone astray.

Even if correct, the contradiction Hollenback sees between licensing the penetration of most males and forbidding intercourse with menstruating women is extraneous to my argument. He writes: »It is patently absurd to believe that people who had an issue with a man's depositing semen into his own wife's temporarily infertile womb would have had no issue with a man's depositing semen into another man's permanently infertile rectum.«¹³

In my article on the topic, however, I attribute both the prohibition against male homosexual intercourse and the law forbidding sex with menstruating women to H.¹⁴ My argument is that

¹¹ Bruce K. Waltke and Michael O'Connor, *An Introduction to Biblical Hebrew Syntax* (Winona Lake, IN: Eisenbrauns, 1990), § 10.2.1f.

¹² Hollenback, »Acceptance«: 466.

¹³ *Ibid.* 466.

¹⁴ Idan Dershowitz, »Revealing Nakedness and Concealing Homosexual Intercourse: Legal and Lexical Evolution in Leviticus 18,« *Hebrew Bible and Ancient Israel (HeBAI)* 6/4 (2017): 521.

*a previous incarnation of the incest laws was understood by a later editor to have permitted male homosexual penetration.*¹⁵ Tension between different legal strata is to be expected and is not problematic in the least.¹⁶

Finally, it must be noted that Hollenback's two arguments are mutually incompatible. On the one hand, he maintains that the jurist's primary concern vis-à-vis homosexual intercourse is the experience of being penetrated. But on the other hand, the individual »depositing semen« unproductively is, necessarily, the penetrator.

To conclude, I find neither of Hollenback's arguments persuasive. Moreover, both are orthogonal to my proposal; even if correct, they do not controvert my analysis of Lev 18.

Abstract: I comment on George Hollenback's response in ZAW 131/3 (2019) to my article »Revealing Nakedness and Concealing Homosexual Intercourse: Legal and Lexical Evolution in Leviticus 18,« *Hebrew Bible and Ancient Israel (HeBAI)* 6/4 (2017): 510–526.

Keywords: Homosexual Intercourse, Lev 18,22, Lev 20,13

Résumé: Réponse à un commentaire dans ZAW 131/3 (2019) 464–466 sur un article de l'auteur (»Revealing Nakedness and Concealing Homosexual Intercourse: Legal and Lexical Evolution in Leviticus 18,« *Hebrew Bible and Ancient Israel (HeBAI)* 6/4 (2017): 510–526).

Mots-clés: Relations homosexuelles masculines, Lev 18,22, Lev 20,13

Zusammenfassung: Die Mitteilung nimmt Stellung zu einer Reaktion auf einen Artikel des Autors (»Revealing Nakedness and Concealing Homosexual Intercourse: Legal and Lexical Evolution in Leviticus 18,« *Hebrew Bible and Ancient Israel (HeBAI)* 6/4 (2017): 510–526) in der ZAW 131/3 (2019) 464–466.

Schlagwörter: Männlicher homosexueller Geschlechtsverkehr, Lev 18,22, Lev 20,13

¹⁵ Ibid. 525, et passim.

¹⁶ Hollenback appears to conflate these proposed strata elsewhere, as well, writing: »Moreover, since verse 22 [of Lev 18] as correctly understood would have made all receptive male parties guilty, such male-on-male relationships—especially if voluntarily entered into by adult male Israelites—would have had to exist under the strain of the receptive partners' possibly being found out and »cut off from among their people« (v. 26). This can hardly be thought of as a »gay-friendly« atmosphere«. Hollenback, »Acceptance«: 466. But I never suggest that Lev 18:22 reflects a gay-friendly atmosphere. Indeed, my article's point of departure is the precise opposite.