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Revealing Nakedness and Concealing Homosexual Intercourse

Legal and Lexical Evolution in Leviticus 18¹

In memory of Bill Hallo

The list of forbidden unions in Leviticus 18 reflects comprehensive revision that obscures its original character. The motive for reworking this passage was to reverse the original text's implicit sanctioning of male same-sex intercourse. This conclusion finds support in additional biblical and ancient Near Eastern texts.

Keywords: Homosexuality, Sodomy, LGBTQ, Bible, Abomination

Introduction

In this article, I explore the perplexing semantics of the biblical term “uncover nakedness” (גלה ערוה) and argue that its obscurity arose from the re-writing of Leviticus 18 and the subversion of the previous edition's doctrine vis-à-vis male same-sex (henceforth MSS) intercourse. As the hazy lexical parameters lexical parameters of “uncover nakedness” come into focus, so too do the textual boundaries of the earlier stratum.

I make the case that the anterior version not only lacked an explicit blanket prohibition against MSS relations but even reflected *acceptance* of typical MSS couplings. I discuss various pertinent texts from the ancient Near East, concluding with a discussion of possible literary and cultural influences on the Priestly scribe(s) who transformed Leviticus 18–20 into a historically consequential text.²

- 1 I thank Nachum Dershowitz, Raanan Eichler, Erga Herzog, Yishai Kiel, Israel Knohl, Gordon Marx, and Michael Segal for their valuable comments on various incarnations of this article. I received helpful referee comments, for which I am most grateful. I am indebted to Yitzhaq Feder, who directed me to many relevant works and whose thoughtful notes greatly improved the final product.
- 2 The impact of Leviticus 18–20 is ongoing. The Southwestern Baptist Theological Seminary recently purchased a small leather fragment said to derive from the Dead Sea Scrolls (F.162/F.Lev2). See Bruce McCoy (ed.), *Dead Sea Scrolls and the Bible: Ancient Artifacts, Timeless Treasures* (Fort Worth: Southwestern Baptist Theological Seminary,

The Problem

The phrase “uncover nakedness” appears in the Bible almost exclusively in Priestly contexts, viz., P, H, and Ezekiel.³ Nowhere does it appear in denser concentration than in Leviticus 18, the nexus of my investigation. This chapter contains statutes forbidding various sexual unions, all of which are addressed to Israelite males. The core of the chapter is a sequence of eleven verses: Lev 18:7–17. A rigid structural framework runs through this sequence, setting it apart from the surrounding injunctions and discourse. Specifically, each verse begins with the words “the nakedness of X” (X ערוה) and is followed by “you shall not uncover” (לֹא תגלה), with X generally denoting a member of the addressee’s kin.⁴

In nearly all the phrase’s appearances in this chapter, its general meaning is straightforward: It refers to sexual intercourse of some description. Samuel David Luzzatto’s definition is typical: “To uncover nakedness’: To reveal the place of shame⁵ – a euphemism for sex.”⁶ BDB renders ערוה גלה as: “chiefly [a] euphemism for cohabitation.”⁷ That said, the terms “sex” and “cohabitation” do not fully capture the nuance of the biblical term, espe-

2012), 86. The fragment drew a hefty premium, reportedly fetching several hundred thousand dollars, due to its incorporation of text from Leviticus 18 and 20 – the two chapters that include prohibitions of MSS intercourse. The artifact was promptly put on display, along with other items, drawing crowds. Bruce McCoy, director of the exhibition, explained its significance: “The particular passage is a timeless truth from God’s word to the global culture today.”

3 The two non-Priestly instances of the phrase, Exod 20:26 and Isa 47:3, are both literal (although the latter appears in an allegorical passage). Unlike Leviticus 18 and 20, they do not appear to have euphemistic or legalistic connotations.

4 Indeed, the unit is prefaced with the words: “None of you shall approach anyone near of kin to uncover nakedness: I am the LORD” (v. 6). The only exception within the unit is v. 16, where X itself refers to two relatives: a woman and her daughter. Immediately following the nakedness-of-X cluster, additional statutes – structured according to different patterns – appear. These forbid intercourse with married women, sisters, beasts, and males.

5 See Isa 47:3: “Your nakedness (ערוהך) shall be uncovered; yea, your disgrace (חרפתך) shall be seen” and Hos 2:10: “Now I will uncover her shame (גלותה) in the sight of her lovers, and no one shall rescue her out of my hand.” ערוה has an analogue in Latin *pudenda* = “(parts) to be ashamed of.” Cf. מבושים in Deut 25:11. Cf. the causative verb הערה (Lev 20:18,19). (In b. Yev. 55b, הערה is understood to indicate either the contact of male and female sexual organs or penetration per se.) For more on this topic, see E. Levavi Feinstein, *Sexual Pollution in the Hebrew Bible* (Oxford: Oxford University Press, 2014), 63, *et passim*.

6 S. D. Luzzatto, *Il Pentateuco, volgarizzato e commentato da Samuel Davide Luzzatto, Vol. III – Levitico* (F. Sacchetto: Padua, 1874), 137. My translation.

7 BDB “ערה,” p. 789. For more on the semantics of the term, see below.

cially in this legal context. If X has had sex with Y, then Y has, by the same token, had sex with X; the operands are commutative. However, the term *גלה ערוה* has an inherent directionality; when X uncovers the nakedness of Y, it does not follow that X's own nakedness is revealed.⁸ The phrase "sexual penetration" better reflects this asymmetry.⁹

But sexual penetration of *whom*? It hardly seems necessary to specify – surely to "uncover the nakedness of Y" can only mean to penetrate said Y. This is apparent in several unambiguous statutes. Verse 15, for example, reads: "Do not uncover the nakedness of your daughter-in-law: she is your son's wife; you shall not uncover her nakedness." The phrase "she is your son's wife" makes the obvious explicit: To uncover the nakedness of one's daughter-in-law is to perform a sexual act *with her*.

With that in mind, let us turn to the three preceding verses. This sequence contains the following three injunctions:

Do not uncover the nakedness of your father's sister.
Do not uncover the nakedness of your mother's sister.
Do not uncover the nakedness of your father's brother.

Read as reproduced above, these commandments plainly prohibit the male addressee from having intercourse with his paternal aunt, maternal aunt, and paternal uncle. Would that it were so simple. In fact, to illustrate the obfuscating nature of this unit's "explications," I have omitted the coda of each verse. In its complete form, this sequence reads:

¹²Do not uncover the nakedness of your father's sister; *she is your father's flesh*.

¹³Do not uncover the nakedness of your mother's sister; *for she is your mother's flesh*.

¹⁴Do not uncover the nakedness of your father's brother: *do not approach his wife; she is your aunt*.

The first two explications are unremarkable. However, the notion that "uncover nakedness" is merely a euphemism for sexual activity collapses when the last of the three is introduced into the equation. In its present form, the text leaves us with no choice but to infer that "uncover the nakedness of X" indicates one thing in verses 12 and 13 and another thing in verse 14. in

⁸ On Lev 20:17, see note 34, below.

⁹ Although I prefer the asymmetrical language and use it throughout, my arguments are largely independent of this interpretation. For a discussion of activity and passivity specifically regarding MSS intercourse in Leviticus 18 and 20, see S. 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 (1994): 179–206, here 199–205. See also D. Boyarin, "Are There Any Jews in 'The History of Sexuality'?" *Journal of the History of Sexuality* 5 (1995): 333–355.

verse 14. In the first two of these commandments, it refers to a sexual act involving X; in the last one, it refers to an act involving X's *spouse*. Rather than clarify the prohibition, the second half of the third verse transforms the law's meaning entirely.¹⁰

Let us consider another verse. The first of our unit's injunctions begins: "The nakedness of your father and the nakedness of your mother you shall not uncover (ערוות אביך וערוות אמך לא תגלה). Any reader would be forgiven for inferring that the dictate forbids sexual intercourse with one's parents. But the verse continues: "*she is your mother*; do not uncover her nakedness." According to this, "the nakedness of your father and the nakedness of your mother" refers not to father and mother, but to mother alone. What at first seemed like an explicit, unambiguous prohibition of intercourse between the law's male addressee and his father has all but vanished.¹¹ Once again, the ostensible clarification in fact transforms the meaning of the statute.

¹⁰ Several manuscripts have a reconciling conjunction between the two halves of the last verse, suggesting that there are two prohibited individuals here: paternal uncle, and wife of paternal uncle (see SP, LXX, Neofiti, Pseudo-Jonathan, Vulgate, Syriac, *inter alia*).

¹¹ The possibility that this prohibits a son from intercourse with his father was nevertheless considered in b. San. 54a: "The nakedness of your father you shall not uncover" refers to 'your father's wife.' 'You say it refers to "your father's wife," but perhaps it refers literally to "your father"?' 'It says here, "The nakedness of your father you shall not uncover," and it says there (Lev 20:11) "he has uncovered his father's nakedness." Just as the reference there is to (implicitly heterosexual) marital relations, so too is the reference here to marital relations.'" (My translation.) The foregoing is the position of the "rabbis," as construed by the editors of the Talmudic passage, contra R. Judah. Cf. Sifra, Qedoshim 9:12 (ed. Weiss, 92a; cf. mss.); y. San. 7:8, 24d. The extant Palestinian Talmud version reflects some interesting editorial activity. At least twice, the word אשת (the wife of) found its way into what had previously been a citation of v. 7a, effectively transforming it into a citation of v. 8a and further suppressing the disagreeable dictate. For example: "The nakedness of [the wife of] your father" – this refers to (intercourse with) a male." See M. Assis, "On the interpretation of one passage in Yerushalmi Sanhedrin," *Sinai* 99 (1986): 110–127 (in Hebrew); H. W. Guggenheimer (ed.), *The Jerusalem Talmud: Fourth Order: Neziqin* (Berlin: de Gruyter, 2010), 242–245. Maimonides, for example, lists intercourse between a male and his father, and between a male and his paternal uncle, among the Pentateuchal prohibitions. (*Sefer Hamitzvot*, negative commandments 351 and 352.) Among more recent scholars, Daube is noteworthy for preferring the simple reading of 7a at the expense of 7b: "Verse 7 forbids intercourse with father or mother." See D. Daube, *Studies in Biblical Law* (Cambridge: Cambridge University Press, 1947), 81. He is followed by A. Phillips, "Uncovering the Father's Skirt," *VT* 30 (1980): 38–43, here 39. Phillips' argument is discussed below.

Addition as Subtraction

The common denominator between these two paradoxical verses is the perceived gender or sex of the “passive” party.¹² Of the eleven verses in our unit, only these two contain dictates that can be read as prohibitions of same-sex couplings. Furthermore, nowhere else in our unit does the elaboration in the second half of the verse alter the plain meaning of the commandment.¹³ It is therefore worth considering the possibility that these elaborations were added secondarily.¹⁴

But what might compel an author to obscure, and effectively eliminate, two commandments forbidding incestuous relations? It seems unlikely that a biblical writer would have thought that a male Israelite should be permitted to penetrate his father and paternal uncle, but at the same time be strictly prohibited from penetrating his mother and aunt. That MSS penetration is categorically proscribed in the same chapter makes this prospect that much less plausible. It would be understandable and precedented for a scribe to remove laws that he found objectionable, but why do so if he concurred? To answer this, let us compare our unit to a similar set of Near Eastern laws, dated to the mid-second millennium B.C.E.

Hittite Laws (2.19) § 189:

If a man has sexual relations with his own mother, it is an unpermitted sexual pairing.
 If a man has sexual relations with (his own) daughter, it is an unpermitted sexual pairing.
 If a man has sexual relations with (his own) son, it is an unpermitted sexual pairing.¹⁵

¹² Both terms (gender, sex) doubtless map poorly to ancient Judean classifications. In this article, I have generally opted for “male” over “man,” “masculine,” etc.

¹³ For a humorous illustration of this phenomenon, cf. Tim Minchin’s off-color song, “Cont.” Although the remaining explications in Lev 18:7–17 leave the legal content of the dictates undisturbed, they do contribute to the shifting semantics of “uncover nakedness,” since several of the explications (e.g., 16) equate the nakedness of X with that of X’s spouse.

¹⁴ Several scholars have suggested that the elaborations in this unit are late. See note 20. Separately, some have argued that “the nakedness of your father” is an interpolation, leaving only the mother in the proposed original version of v. 7. See, especially, K. Elliger “Das Gesetz Leviticus 18,” ZAW 67 (1955): 1–24, here 1–2. See also, *inter alia*, M. Noth, *Das Dritte Buch Mose, Leviticus* (Göttingen: Vandenhoeck & Ruprecht, 1962), 116–117; J. Roy Porter, *Leviticus* (Cambridge: Cambridge University Press, 1976), 145–146. While this creates a tidy proto-text, the conjectured glossator’s motives are not forthcoming. Also, whereas this eliminates one of the two males in this unit, it leaves the second one intact, which must then be explained independently.

¹⁵ H. A. Hoffner, “Hittite Laws,” CoS 2.19:118. “Unpermitted sexual pairing” corresponds to the Hittite term *hurkel*.

This ancient series of laws proscribes various incestuous relations, and it resembles ours in both content and form. Unlike the canonical version of its biblical counterpart, however, this set of forbidden pairings includes male-female (son-mother, father-daughter) and male-male (father-son). Scholars have extrapolated from the presence of a specifically prohibited male-male pair that the lawgiver viewed non-incestuous MSS intercourse as permissible. Harry Hoffner, for instance, wrote: “A man who sodomizes his son is guilty of *hurkel* because his partner is his son, not because they are of the same sex. [...] [It] would appear that homosexuality was not outlawed among the Hittites.”¹⁶

The logic at play here is *exceptio probat regulam in casibus non exceptis*, the formal English equivalent of which is “the exception proves the rule.”¹⁷ The presence of a *specific* exception betrays the existence of a *general* rule.¹⁸

Returning to our passage, the reasoning applied by these scholars to interpret the Hittite laws neatly explains why a redactor might have altered the

¹⁶ “Incest, Sodomy and Bestiality in the Ancient Near East,” in H. A. Hoffner, Jr. (ed.), *Oriental and Occident: Essays Presented to Cyrus H. Gordon on the Occasion of his Sixty-Fifth Birthday* (AOAT 22; Neukirchen-Vluyn: Neukirchener Verlag, 1973), 81–90. Similarly, Olyan states: “Paragraph 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.” (“And with a Male,” 192). Hoffner in CoS: “Since the blood relationship is specified here, this is probably not a blanket prohibition of homosexual sex such as in Lev 20:13” (2.19: 119, note 65). See also D. Tabb Stewart, “Ancient Sexual Laws: Text and Intertext of the Biblical Holiness Code and Hittite Law” (PhD diss., University of California, Berkeley, 2000), 92–95; and I. Peled, “*Amore, More, Ore, Re ...*: Sexual Terminology and Hittite Law,” in *Pax Hethitica: Studies on the Hittites and Their Neighbours in Honour of Itamar Singer* (ed. Y. Cohen, A. Gilan, and J. L. Miller; Wiesbaden: Harrassowitz Verlag, 2010), 247–260.

¹⁷ Like “begging the question,” whose colloquial sense differs significantly from the formal one, “the exception proves the rule” is often used to mean “the counterexample (counterintuitively) supports the argument,” rather than “the exception indicates the existence of an implicit rule.” The parallel Talmudic term is מכלל לאו אתה שומע הן: Out of a “no” you hear a “yes.”

¹⁸ For example, a sign that reads “OFFICE CLOSED ON WEEKENDS” can be reasonably taken to indicate that said office is open on weekdays. I. Sassoon employs this same principle in his analysis of the Deuteronomic law of the *kadesh*. See idem, “What Does Deuteronomy Say about Homosexuality?” *TheTorah.com* (August 2017): www.thetorah.com/what-does-deuteronomy-say-about-homosexuality. On the limitations of this logic when applied to borrowed laws, see A. Watson, *Legal Transplants: An Approach to Comparative Law* (2nd ed.; Athens: University of Georgia Press, 1993), 10–15, *et passim*. The “rule” implied by a legal exception would not necessarily have been present in every society that adopted a version of the law. The inference therefore applies fully only to the socio-legal context of the dictate’s first author. I am grateful to Noah Feldman for the reference.

biblical text. Just as the father-son prohibition in the Hittite Laws suggests that intercourse between unrelated males was not forbidden, a prohibition against a male penetrating his father or uncle would have indicated general permissibility. In the process of rewriting and expanding the original list of terse dicta, a redactor could have eliminated the two MSS-intercourse prohibitions by “clarifying” that they refer to females, not males. All explications except these two would have left the original prohibitions intact, while the *Fortschreibung* of the male-male prohibitions brought the unit in line with the new material in Lev 18:22 and 20:13, which may have been written by the same hand.¹⁹ Only heterosexual pairs were now included in the list of forbidden unions, and the categorical prohibitions of MSS penetration no longer faced internal competition.²⁰

¹⁹ See note 11. Though the dominant view has always been that Lev 18:22 and 20:13 prohibit MSS intercourse, alternative interpretations abound. I cite a few recent submissions; a critical analysis is beyond the scope of this article. J. Walsh suggests the prohibition is against assuming the *passive* role. See idem, “Leviticus 18:22 and 20:13: Who Is Doing What to Whom?” *JBL* 120 (2001): 201–209. See also G. M. Hollenback, “Who Is Doing What to Whom Revisited: Another Look at Leviticus 18:22 and 20:13,” *JBL* 136 (2017): 529–511. Both Stewart and K. Renato Lings propose that the prohibition is limited to *incestuous* MSS unions (Stewart, “Ancient Sexual Laws,” 66–95; K. Renato Lings, “The ‘Lyings’ of a Woman: Male-Male Incest in Leviticus 18.22?” *Theology and Sexuality* 15 [2009]: 231–250). J. Milgrom accepts this view in “Does the Bible Prohibit Homosexuality?” *Bible Review* 9:6 (1993): 11; reprinted with edits as “Who Says Homosexuality is a Sin?” in idem, *Leviticus 17–22* (AB 3B; New York: Doubleday, 2000), 1786–1788. Elsewhere, Milgrom limits the prohibition to Israelites, or Jews, *physically residing in the “holy land”* (idem, “How Not to Read the Bible,” *Bible Review* 10 [1994]: 14; likewise reprinted in *Leviticus 17–22*, 1788–1790). B. Wells, in an unpublished paper, argues that the commandments sought principally to prohibit sex between *married* men (“The Grammar and Meaning of the Leviticus Texts on Same-Sex Relations Reconsidered” [paper presented at the Annual Meeting of the SBL, San Diego, CA, 24 November 2014]). I thank Marc Brettler for referring me to this paper.

²⁰ The idea that this unit is the product of *Fortschreibung* is not a novel one, nor is the theory that the explications belong to a redactional stratum. Elliger suggested as much in his article, and the proto-text’s contours in our respective analyses are indeed similar. Nevertheless, Elliger did not reach the conclusion that this editorial process impacted MSS-intercourse laws in any way. Elliger wrote that ערות אחי אביך (v. 14) was “obviously” corrupt and should be reconstructed as ערות אשת אחי אביך (Elliger, “Das Gesetz,” 6). This, in turn, allowed him to do away with the bothersome ערות אביך (v. 7), since “only females are listed among the other prohibitions” (my translation). Elliger further supported his argument for the lateness of ערות אביך by pointing out that it conflicts with 7ב (אמך היא לא תגלה ערותה), even though he elsewhere suggested that the explications and repetitions are themselves secondary (“Das Gesetz,” 2, and esp. pages 4–6 on the secondary nature of the explication.) Elliger’s *Urtext* was thus free of forbidden MSS unions. An early, and brief, suggestion of the unit’s rewritten character

Lexical Appropriation and Semantic Evolution

The secondary “explications” did more than obfuscate the original laws – they also muddled the semantics of “(uncover) nakedness,” leading to innumerable unsatisfactory and contradictory proposals. Indeed, few biblical terms have inspired such inventiveness.

The lexical problem is clear: The term appears to refer to female sexual organs in some cases, and in others to *something* belonging to that person’s husband – or in the case of v. 10, that person’s grandfather. A single, coherent definition constituting the common denominator between these senses has proven elusive.

Pseudo-Jonathan resolves the tension by introducing a second subject to v. 7 – the female Israelite: “The nakedness of your father and the nakedness of your mother you shall not uncover. *A female shall not have intercourse with her father and a male shall not have intercourse with his mother.* She is your mother; do not uncover her nakedness.”²¹ Thus, the prohibition against intercourse with one’s with one’s father is is – uniquely – directed toward females. This leaves the semantics of the term intact, even if it results in severe tension with the previous verse: “Every man of you shall not approach his kin to uncover nakedness. I am the LORD.”

Luzzatto suggested that the term can refer equally to man and his wife, because they are said in Gen 2:24 to be a single flesh: “When ‘uncovering nakedness’ is written with regard to males, for instance ‘your father’s nakedness’ or ‘your brother’s nakedness’ [sic], the intention is the nakedness of [that person’s] wife, since man and wife are considered ‘one flesh’; and in verse 10, one’s offspring are also considered ‘one flesh.’”²² This view has been adopted by some modern scholars, including Gordon J. Wenham.²³ This midrashic interpretation accounts for instances where “the nakedness of X” might refer to X’s spouse, but it breaks down when applied to v. 10, where “your own nakedness” refers to a granddaughter.

Following Rashi and others, Baruch J. Schwartz reads v. 7 as follows: “Your father’s nakedness – *that is to say*, your mother’s nakedness – you

can be found in A. Alt, *Die Ursprünge des israelitischen Rechts* (Leipzig: S. Hirzel, 1934), 49; Eng.: idem, “The Origins of Israelite Law,” in *Essays on Old Testament History and Religion* (trans. R. A. Wilson; Oxford: Basil Blackwell, 1966), 79–132, here 115. See note 14, above.

21 ערית אבוק ועריית אמך לא תיבוי איתא לא תשמש עם אבהא וגבר לא ישמיש עם אימיה אימך
היא לא תגלי ערייתא. My translation.

22 Luzzatto, *Il Pentateuco*, 137. My translation.

23 G. J. Wenham, *The Book of Leviticus* (Grand Rapids: Eerdmans, 1979), 255.

shall not uncover; she is your mother, do not uncover her nakedness.” According to Schwartz, the author sought to stress the woman’s relation to both her son and her husband and did so, peculiarly, by interrupting the description of the prohibition itself.²⁴ Unlike Rashi, Schwartz does not see the two ostensibly equated phrases as complementary in terms of stricture. The prohibition relates solely to intercourse with one’s mother. This recalls Nahmanides: “The correct non-allegorical interpretation, in my view, is that ‘the nakedness of your father and the nakedness of your mother’ is a single prohibition and a single warning: to refrain from having intercourse with one’s mother, since in so doing he would uncover both his father’s and his mother’s nakedness. This is why it says ‘she is your mother,’ for you have transgressed doubly ...”²⁵ According to these readings, the term has two definitions, both of which are employed in v. 7.

Sarah J. Melcher elaborates on this idea, writing:

Most frequently the concept ‘*erwā*’ appears in the form ‘*erwat*’ of a [woman designated as inappropriate]. This basic usage denotes “sexual organs” of a woman. In chapter 18, ‘*erwā*’ has another related connotation as well. When it is used in construct with a noun referring to a man, it connotes the man’s jurisdiction over the woman’s sexual function. Verse 8b in 18 is the first clear usage of this idiom, but the structure of the verse makes this usage clear: “The sexual organs of your father’s wife you shall not uncover, your father’s sexual function it is.”²⁶

Jacob Milgrom applies Melcher’s definitions to v. 7, highlighting the acrobatics required to make sense of the simple Hebrew: “The *sexual jurisdiction* (ערוֹת) of your father, *namely* (ו), the *sexual organs* (ערוֹת) of your mother you shall not uncover.”²⁷

Howard Eilberg-Schwartz focuses on the element of exposure, arguing that by revealing his mother’s genitalia, the miscreant also reveals, by one degree of separation, his father’s genitalia: “This curious expression means that when one has relations with this woman, one is trespassing upon the spot where the nakedness of one’s father has already been exposed.”²⁸ Again, this would not seem to apply to intercourse with one’s granddaughter (v. 10).

24 B. J. Schwartz, *The Holiness Legislation: Studies in the Priestly Code* (Magnes Press: Jerusalem, 1999), 207–208 (in Hebrew).

25 Nahmanides, ad loc. My translation.

26 S. J. Melcher, “The Holiness Code and Human Sexuality,” in *Biblical Ethics and Homosexuality* (ed. R. L. Brawley; Louisville: Westminster–John Knox Press, 1996), 87–102, here 94.

27 *Leviticus* 17–22, 1537. Emphasis and parentheticals mine.

28 H. Eilberg-Schwartz, *The Savage in Judaism* (Bloomington: Indiana University Press, 1990), 170–171.

Roy Porter suggests an alternative definition, although the result is similarly convoluted:

Uncovering the nakedness of a male means bringing shame upon him; uncovering the nakedness of a female sometimes means having sexual intercourse with her and sometimes means bringing shame upon her. “You shall not bring shame on your father by intercourse with your mother: she is your mother; you shall not bring shame upon her.”²⁹

Benno Jacob suggested that “uncover the nakedness of X” does not, in fact, relate to sexual contact with either X or X’s spouse. Per Jacob, it is only לא תקרב that has connotations of intercourse, whereas גלה ערוה is the mutual exposure of husband and wife.³⁰ ערוה represents a marital barrier, whether physical or emotional.³¹ The uncovering of nakedness is only possible with a woman related to a third party by marriage. Jacob therefore interprets איש ערוה (v. 6) as “Every man to any of his flesh: do not have sexual relations with the intention of breaking marital bonds.”³²

This interpretation addresses several of the problems noted above. “Do not break your father’s marital bonds or your mother’s marital bonds, for she is your mother,” is considerably more coherent than “do not sexually penetrate your father or your mother, for she is your mother” or “do not have sexual intercourse with your father’s wife or your mother, for she is your mother.” In Jacob’s understanding, the terms לא תגלה and ערות אשת אביך לא תגלה are synonymous and interchangeable, since both refer to the same marital bond. Similarly, the major difficulty with “do not penetrate your uncle; do not approach his wife” is solved if we can instead understand it as “do not break the marital bond of your uncle; do not have intercourse with his wife.”

While this innovative interpretation elegantly reconciles the two verses that suggest intercourse with males in the injunction and with those men’s

²⁹ Porter, *Leviticus*, 143.

³⁰ Cf. Nahmanides’ gloss on Maimonides, *Sefer Hamitzvot*, negative commandment 353.

³¹ Cf. A. B. Ehrlich, *Randglossen zur Hebräischen Bibel: textkritisches, sprachliches und sachliches, Vol. II* (Leipzig: J. C. Hinrichs, 1909), 61.

³² I cite an excerpt from Benno Jacob’s commentary: “Daher bedeutet גלות ערוה ein Eheverhältnis oder eine durch Ehe entstandene Verwandtschaft verletzen. Dieser Sinn ist ebenso umsichtig wie zart und ernst ausgedrückt. Die Familienzusammenhänge entstehen durch einen Vorgang, in welchem die Ehegatten vor sich die Hülle fallen lassen (ערוה), wo sie Ein בשר werden, aber für jedes fremde Auge sind sie umhüllt von dem dichten Schleier des hochzeitlichen Geheimnisses.” I am indebted to Hans-Christoph Aurin for graciously providing me with this unpublished material, which he meticulously transcribed from Jacob’s handwritten manuscript. An edition is forthcoming.

wives in the elaboration, it too falls short when applied to v. 10: “The nakedness of your son’s daughter or of your daughter’s daughter you shall not uncover, for their nakedness is your own nakedness.” Intercourse with one’s son’s daughter breaks no “marital bond” – indeed the perpetrator and his son might have both never married – and Jacob is forced to read the second half of v. 10 verse allegorically.

Though creative, the various interpretations of גלה ערוה to date are ultimately unsatisfactory. As we have seen, however, the diachronic analysis of the passage, together with an identification of motive, frees us from the need to seek perfect semantic coherence in the chapter.³³ Indeed, the rewriting of Leviticus 18 was an exercise in obfuscation; we should not expect to find lexical lucidity.³⁴ The phrase גלה ערוה was usurped by the unit’s *Fort-schreiber*, and until the redacted biblical text gained wide exposure, it is unlikely to have impacted the semantics of this term for the broader linguistic community.³⁵

33 Put differently, editors and authors produce different artifacts. Around the corner from where I live is an establishment by the name of “The Wine and Cheese Cask.” A future philologist might be puzzled by the semantics of “cask” here – perhaps archaeologists should try to locate the twenty-first century vessels that were used to age cheese and wine together? The shop’s original name was, of course, two words shorter.

34 Leviticus 20 reflects the secondary version of the phrase. Indeed, 20:17 blurs the phrase’s semantics even further. Though it does not suggest commutativity, it does allow for the uncovering of a male’s nakedness by a female: “If a man takes his sister, a daughter of his father or a daughter of his mother, and sees her nakedness, and she sees his nakedness, it is a disgrace,” etc. Damascus Document 5:7–11 goes further still: “They take the daughters of their brothers and the daughters of their sisters as wives. Moses said, ‘You shall not uncover the nakedness of your mother’s sister, for she is your mother’s flesh’ (Lev 18:13). Although the consanguinity law is addressed to males, it applies equally to females. Therefore, *if the brother’s daughter uncovers the nakedness of her father’s brother*, [that is forbidden, for] she is [her father’s] flesh.” My translation. Text edition: E. Qimron, *The Dead Sea Scrolls: The Hebrew Writings*, Vol. 1 (Jerusalem: Yad Ben-Zvi Press, 2010), 11.

35 Restoring clarity to the term has repercussions beyond Leviticus 18–20. For example, a relatively recent article advances the extraordinary argument that the object of Ham’s transgression in Gen 9:21–27 was not Noah, but Noah’s unmentioned wife (J. Sietze Bergsma and S. Walker Hahn, “Noah’s Nakedness and the Curse on Canaan [Genesis 9:20–27],” *JBL* 124 [2005]: 25–40). Deuteronomy may contain an analogue. Deut 23:1 reads: “A man shall not take his father’s wife, and he shall not uncover his father’s garment” (my translation). The first half of the sentence has often been understood as an injunction against a male marrying his father’s (former) wife – not as a straightforward prohibition against intercourse with her. According to this reading, the second half of the verse simply rehashes the prohibition using different words. Phillips has suggested an alternative reading. Per Phillips, “ולא יגלה כנף אביו” is better understood as a separate prohibition, this one against intercourse with one’s father himself: Do not take

Revealing the Supplemter

Having detected the general scope and character of the *Fortschreibung* in Lev 18:7–17, the question of the unit's authors' identities arises. Taken as a whole, Leviticus 18 is universally attributed to H. But is this a case of proto-H and H, or is it rather H and post-H? All evidence points to the former.

The language typical of H is not found in our proposed *Vorlage*, but in the *Fortschreibungen*,³⁶ and the same goes for doctrine.³⁷ The feature that gives the so-called Holiness Code, or *Heiligkeitgesetz*, its name is the recurrent demand that even lay Israelites seek holiness – and impurity is antithetical to holiness.³⁸ Whereas P mentions no penalty for sex with a menstruating (or recently menstruating) female – the only stated outcome is the transmission of impurity (Lev 15:24) – the act is a *karet*-incurring sin in the ultimate version of our chapter (Lev 18:19, 29). Since the redactor of Leviticus 18 included MSS intercourse in a list of severely impurity-inducing acts, its proscription is a natural consequence.³⁹ It thus appears likely that an H-affiliated redactor incorporated and reworked an existing legal unit, bringing it in line with the emergent Holiness Code.

your father's wife, and do not penetrate your father (Phillips, "Uncovering"). See also J. R. Ziskind, "Legal Rules on Incest in the Ancient Near East," *Revue Internationale des Droits de l'Antiquité* 35 (1988): 79–109, here 97–104; M. S. Cohen, "The Biblical Prohibition of Homosexual Intercourse," *Journal of Homosexuality* 19 (1990): 3–20, here 13 and note 27. If this analysis is correct, then Deut 23:1 mirrors the original injunction of Lev 18:7*. The mention of Ammonites and Moabites in Deut 23:4 is notable in light of Phillips' theory; according to Gen 19:30–38, these peoples are the outcome of sexual intercourse between two women and their father.

36 Flesh (שָׂרָא), I am the LORD (אֲנִי יְהוָה), etc. The use of גִּלְה עֲרוּה in Leviticus 20 (H) matches that of the secondary stratum here. Lev 20:11: "The man who lies with his father's wife has uncovered his father's nakedness."

37 Olyan, "And with a Male," 202–204; B. J. Schwartz, "Leviticus," in *The Jewish Study Bible* (ed. A. Berlin, M. Z. Brettler, and M. A. Fishbane; Oxford: Oxford University Press, 2004), 242–243; pace J. Milgrom, *Leviticus 1–16* (AB 3A; New York: Doubleday, 1991), 940.

38 This is also characteristic of the *Videvdad*, on which see below.

39 Cf. the sex omens in *Šumma Alu*, discussed below. The outcomes of the various sexual acts listed there vary; most acts do not bring about impurity, but some do. See A. K. Guinan, "Auguries of Hegemony: The Sex Omens of Mesopotamia," *Gender & History* 9 (1997): 462–479. Considering the purity/holiness context of the later version, the absence of any prohibition against female same-sex intercourse is also unsurprising, despite injunctions against other female-initiated sexual acts being present in H (Lev 18:23, 20:16). See Olyan, "And with a Male," 206.

Leviticus 18 in its Ancient Near Eastern Context

While a comprehensive analysis of the ancient Near Eastern arena is beyond the scope of this article, it is worthwhile to survey a few select texts, not all of which have been hitherto discussed in a single place.⁴⁰

As noted above, the Hittite incest laws appear to reflect a context in which typical non-incestuous MSS couplings were not forbidden.

The first-century B.C.E. Mesopotamian *Šumma Alu* omen compendium includes a section (tablets 103–104) relating to various sexual acts. Among others, it contains the following omens:

- § 1 If a man, a woman mounts him, that woman will take his vigor; for one month he will not have a personal god.
- § 14 If a man has sexual relations with a (receptive male) *girseqû*,⁴¹ for an entire year the deprivations which beset him will be kept away.
- § 15 If a man has sexual relations with a male house(-born) slave, hardship will seize him.
- § 16 If a man has sex *per anum* with his social peer (*meḫru*), that man will become foremost among his brothers and colleagues.⁴²

Unlike the relevant portions of Leviticus 18 and 20, *Šumma Alu* is not a legal text. Nevertheless, it seems unlikely that the authors of these omens perceived MSS intercourse as categorically detestable.

The Egyptian funerary *Book of the Dead*, or *Book of Coming Forth by Day*, contains a section known as the Negative Confession (chapter 125), first attested in the mid-second millennium B.C.E. It includes the declaration: “I have not sexually penetrated a penetrated one (*nkk[w]*).”⁴³ The phrase has been variously (mis-)translated as “I have not [...] lain with men,”⁴⁴ “I have

⁴⁰ For a relatively extensive review of the ancient Near Eastern material, see Olyan, “And with a Male,” 192–197.

⁴¹ On this term, see D. F. Greenberg, *The Construction of Homosexuality* (Chicago: University of Chicago Press, 1988), 115; I. Peled, *Masculinities and Third Gender: The Origins and Nature of an Institutionalized Gender Otherness in the Ancient Near East* (Münster: Ugarit Verlag, 2016), 239–252.

⁴² Guinan, “Auguries of Hegemony,” 473–474, et passim. See also idem, “Laws and Omens: Obverse and Inverse,” in *Divination in the Ancient Near East* (ed. J. C. Fincke; Winona Lake: Eisenbrauns, 2014), 105–121. For more on the *Šumma Alu*, see S. M. Freedman, *If a City is Set on a Height: The Akkadian Omen Series Šumma Alu ina Mēlê Šakin* (vols. 1–3; Occasional Publications of the Samuel Noah Kramer Fund 20; Philadelphia: University of Pennsylvania, 1998–2017).

⁴³ See R. B. Parkinson, “‘Homosexual’ Desire and Middle Kingdom Literature,” *The Journal of Egyptian Archaeology* 81 (1995): 57–76, here 61.

⁴⁴ A. E. Wallis Budge, *The Book of the Dead* (London: Kegan Paul, Trench, Trübner, 1901), 2:369–370.

(not) practiced homosexuality,⁴⁵ etc. However, as Parkinson writes, if this is the intent, “it is uncertain why the deceased should not just deny having sex with a ‘male.’”⁴⁶ The passive participle *nkkw* indicates that this male individual is regarded as a receiver of penetrative sex, whether due to preference, profession, or something else.

This may be compared to Middle Assyrian Law A 19, which describes the procedure for addressing an accusation that a male is frequently, or perhaps habitually, penetrated.

If a man furtively spreads rumors about his comrade, saying, “He is frequently penetrated (*ittinikkūš*)” or in a quarrel in public says to him, “You are frequently penetrated,” and further, “I can prove the charges against you,” but he is unable to prove the charges and does not prove the charges, that man shall receive 50 blows with rods; he shall perform the king’s service for one full month; he shall have his hair cut off; moreover, he shall pay 3,600 shekels of lead.⁴⁷

The verb *ittinikkūš* is in the Gtn pattern, which is associated with iterative action.⁴⁸ The issue in both the Middle Egyptian and Middle Assyrian texts seems to be penetrating – or *being* – a male “penetrated one.”

The *Videvdad* (alternatively: *Vendīdād*, *Videvdat*, *Widēwdād*) is a collection of diverse Zoroastrian material that has been used in liturgical settings. Part of it deals with demons, and means of coping with them, giving the collection its name, which can be translated roughly as “the law (תּוֹרָה) keeping away the demons.”⁴⁹ Though it was first put to writing after the Hebrew Bible was complete – certainly well after Leviticus 18 was completed – much of its content is ancient. Most scholars date the oral composition of the

45 T. G. Allen, *The Book of the Dead or Going Forth by Day* (Chicago: University of Chicago Press, 1974), 98.

46 Parkinson, “‘Homosexual’ Desire,” 62.

47 M. Roth, “The Middle Assyrian Laws,” *CoS* 2:132: 355 (with modifications). A 20, the immediately following law, is sometimes cited in the context of MSS intercourse, although it is generally understood to imply the non-consensual penetration of an equal, which is why a form of *lex talionis* applies: “If a man (forcibly) penetrates his fellow (*tappā’u*) and the charges against him are proven and he is found guilty, he shall be penetrated and turned into a eunuch.” See also A. K. Guinan and P. Morris, “Mesopotamia Before and After Sodom: Colleagues, Crack Troops, Comrades-in-arms,” in *Being a Man: Negotiating Ancient Constructs of Masculinity* (ed. I. Zsolnay; Abingdon: Routledge, 2016), 150–175.

48 The roots of the Akkadian and Egyptian terms referring to penetrated males (and sexual penetration more generally) resemble one another. Perhaps there is an etymological association, as well.

49 I am grateful to Shlomi Efrati for first bringing the Old Iranian material to my attention. I am also indebted to P. Oktor Skjærvø for his illuminating comments on the topic.

Videvdad to the first half of the first millennium B.C.E. – before the redaction of the Holiness Code, by all accounts.⁵⁰

As in H, impurity and sin are deeply intertwined in the *Videvdad*. To wit (15:7): “He who releases his semen in a woman [...] in menses, bleeding, for the perpetration of this deed (their) bodies then become forfeit.”⁵¹ *Videvdad* 8:32 treats the topic of MSS intercourse: “Then Ahura Mazdâ said: the male who is sodomized, the male who sodomizes [...] he is a *daêwa* before death, he becomes spiritual *daêwas* after death, when a man releases semen in a man or a man receives semen of men.”⁵² Only in the Old Iranian sphere, as exemplified by this *Videvdad* passage, do we find a pre-biblical, ancient Near Eastern prohibition of MSS intercourse per se.

Although the parallels with Leviticus 18 and 20 are striking, they are not all encompassing. The *Videvdad* opposes anal intercourse irrespective of sex or gender, whereas there are no Levitical prohibitions against heterosexual anal sex. Also, at least at first glance, it appears unlikely that the *Videvdad* influenced the author of the anti-MSS statutes in Leviticus, given that the biblical passages include incest prohibitions, whereas incestuous pairings are praised in the *Videvdad*.⁵³

As is now apparent, however, there is reason to think the laws regarding MSS intercourse in Leviticus 18 derive from a later, distinct H stratum, and they were apparently not introduced by the author who composed the incest laws. This opens the door to the possibility that only the *Fortschreiber* was impacted by the *Videvdad*.⁵⁴

50 See P. Oktor Skjærø, “The Videvdad: Its Ritual-Mythical Significance,” in *The Age of the Parthians* (ed. V. S. Curtis and S. Stewart; London: I. B. Tauris, 2007), 2:105–141. See also J. Kellens, “Considérations sur l’histoire de l’Avesta” *Journal Asiatique* 286 (1998): 451–519; Y. Kiel, “Reinventing Mosaic Torah in Ezra-Nehemiah in the Light of the Law (*dâta*) of Ahura Mazda and Zarathustra,” *JBL* 136 (2017): 323–345, here 331–332.

51 I am indebted to P. Oktor Skjærø for graciously sharing this unpublished translation of the Avestan text. Cf. J. Darmesteter, *The Zend-Avesta: Pt. I, The Vendidâd* (2nd ed.; Oxford: Clarendon Press, 1895), 177.

52 Darmesteter, *Zend-Avesta*, 104.

53 P. Oktor Skjærø, “Marriage; Next-of-Kin Marriage in Zoroastrianism,” *Encyclopædia Iranica*. Available online at: www.iranicaonline.org/articles/marriage-next-of-kin. Accessed February 1, 2017.

54 It has been argued that the later strata of H elsewhere betray more signs of the *Videvdad*’s influence than can be found in H’s Priestly source material. (Y. Kiel, “Zoroastrian and Hindu Connections in the Priestly Strata of the Pentateuch: The Case of Numbers 31:19–24,” *Vetus Testamentum* 63 [2013]: 577–604). At the same time, I. Knohl has recently suggested that the pre-H strata of the Priestly work show signs of Anatolian influence. This is noteworthy in light of the parallel between our unit (especially in its proposed early form) and the Hittite Laws. (idem, “P and the Traditions of Northern

Of the ancient Near Eastern material discovered to date, H's MSS-intercourse prohibitions in Leviticus 18 and 20 have the most in common with the *Videvdad*. Given the consensus that the Holiness Code was redacted during the Achaemenid period, first-millennium Zoroastrianism is a suitable candidate for cultural, religious, and literary influence.⁵⁵

Conclusion

Leviticus 18:7–17 exhibits various marks of disunity. Upon inspection, it is apparent that a previous incarnation of this legal unit included injunctions against specific MSS unions. The singling out of certain pairings seems to have suggested to an early editor that other MSS couplings might be sanctioned, as readers of the similar Hittite laws have been wont to do. Rather than remove the offending dictates, he supplemented and reinterpreted the existing text. Likely working in a province of the Achaemenid Empire, this writer may have been influenced by the *Videvdad* or associated norms. Be that as it may, it is the rewriting of Lev 18–20 that gave rise to the principal proof-text for homophobia and its antecedents.⁵⁶

Syria and Southern Anatolia,” in *Text, Time, and Temple: Literary, Historical and Ritual Studies in Leviticus* [ed. F. Landy, L. M. Trevaskis, and B. Bibb; Sheffield: Sheffield Phoenix Press, 2015], 63–69. See also J. Stackert, “Political Allegory in the Priestly Source: The Destruction of Jerusalem, the Exile and their Alternatives,” in *The Fall of Jerusalem and the Rise of the Torah* (ed. P. Dubovský, D. Markl, and J.-Pierre Sonnet; Tübingen: Mohr Siebeck, 2016), 211–226.

55 For more on Zoroastrian views vis-à-vis MSS intercourse, see P. Oktor Skjærvø, “Homosexuality; In Zoroastrianism,” *Encyclopædia Iranica*. Available online at <http://www.iranicaonline.org/articles/homosexuality-i>; Accessed on December 22, 2017. See also T. Kazen, “Purity and Persia,” in *Current Issues in Priestly and Related Literature: The Legacy of Jacob Milgrom and Beyond* (ed. R. E. Gane and A. Taggar-Cohen; Atlanta: SBL Press, 2015), 433–460.

56 Much contemporary biblical scholarship continues in this vein. See, e.g., R. A. J. Gagnon, *The Bible and Homosexual Practice: Texts and Hermeneutics* (Nashville: Abingdon Press, 2001), which discusses Leviticus 18–20 at length. Gagnon’s stated objective for his book is to demonstrate that, in biblical and modern times alike, “same-sex intercourse constitutes an inexcusable rebellion against the intentional design of the created order” (37). Gagnon rejects the term “homophobia” – it is a “label [that] is employed as a part of an overall strategy of intimidation to forestall genuine debate and belittle vocal dissenters” (26) – while taking pride in his bold decision to “speak out publicly against homosexual behavior” (31–32, *et passim*). Gagnon’s anti-homosexual polemic has received innumerable endorsements and accolades from renowned scholars in the field. Gordon Wenham called it “the definitive exegetical treatment” of the topic (“The Old Testament and Homosexuality,” in *Guarding the Gospel: Bible, Cross and Mission* [ed. C. Green; Grand Rapids: Zondervan, 2006], 155–160, here 160), and James Barr

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wrote that it is “a brilliant, original and highly important work, displaying meticulous biblical scholarship, and indispensable even for those who disagree with the author” (quoted in Gagnon, *Homosexual Practice*, front matter). Bruce Metzger found it “extraordinarily satisfying” (ibid.), and Martti Nissinen heaped praise upon Gagnon for “defending the non-acceptance of homosexual relationships on biblical grounds. In its learnedness, his book will without doubt be in the vanguard of its position and cannot be ignored in future debate even by proponents of discordant views” (ibid.). Brevard Childs commended Gagnon for making “a genuine contribution to the continuing debate by critically evaluating a host of theories developed by defenders of same-sex practices” (quoted on Gagnon’s personal website; archived version: <http://web.archive.org/web/20050206225136/http://robgagnon.net/RevPraise.htm>).