

A NEW INTERPRETATION OF LEVITICUS 18:22 (PAR. 20:13) AND ITS ETHICAL IMPLICATIONS*

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Abstract

The laws in Lev. 18:22 and 20:13 are general considered to prohibit homosexual intercourse between men. A renewed investigation of the vocabulary used in the prohibition, taking an important cue from Gen. 49:4, points the way to a different understanding. As Reuben lay on his father's bed, having intercourse with his father's concubine, so the man addressed in Lev. 18:22 and par. is prohibited to lie on the bed of a woman, having sex with her man. The laws prohibit homosexual intercourse involving a married man.

THE laws in Leviticus 18:22 and 20:13 are not the only passages in the Hebrew Bible mentioning same-sex intercourse. Nevertheless, the thrust of the other passages lies elsewhere. The demand of the Sodomites: 'Bring out your guests to us, so that we may *know* them' (Gen. 19:5) suggests an intention to have sex with the angels Lot had welcomed. This is condemned in the story, but not because the projected sex was between males (if angels are males), but because it was not consensual.¹ The command in Deut. 23:19: 'You shall not bring the fee of a prostitute or the wages of a *male prostitute* (literally: a dog) into the house of the LORD your God', remains obscure and does not provide a firm basis for biblical ideas on homosexuality.² The story of David and Jonathan in 1 Samuel is not explicit about the type of relationship existing between the two men, and it is hard to know whether it comported a sexual aspect.

The only Old Testament texts that address the issue of same-sex intercourse directly are the two verses in Leviticus.

* This is the substantial part of a paper presented on 28 May 2018 at the University of Geneva in the framework of a reflection on the integration of same-sex couples in Protestant and Roman Catholic churches.

¹ The same is true for the parallel motif in Judg. 19:22.

² The preceding verse, Deut. 23:18, is equally obscure.

They are rightly considered key verses in the debate on the biblical view of same-sex intercourse. The import of the verses is nearly the same. Lev. 20:13 parallels 18:22 in form and content, the main difference being that while 18:22 simply prohibits a specific act, adding that it is ‘an abomination’, 20:13 stipulates a punishment. In what follows, I will focus on Lev. 18:22 on the understanding that 20:13 is similar and does not change the picture much.

The context of Lev. 18:22 is a series of laws on incest: sexual intercourse with a mother, sister, granddaughter, aunt, and proximate female in-laws is forbidden (Lev. 18:6–17). To this list, a miscellaneous collection of other rules is appended, not all of which are clear. It is forbidden to marry two sisters while both are alive (18); to have sex with a menstruating woman (19); to have sex with a married woman ‘for seed’ (20);³ to give of one’s seed to Moloch (21);⁴ and, for men and women, to have sex with an animal (23). Between the rule on Moloch and that on bestiality, Lev. 18:22 says:

וְאִתְּ-זָכָר לֹא תִשְׁכַּב מִשְׁכָּבִי אִשָּׁה

w'e'et zakar lo' tishkab mishk'êbê 'isha
 And-with a male not you-will-lie 'lyings-of' a woman
 'You shall not lie with a male as with a woman' (NRSV)

The verb *shakab* ‘to lie down’ is often used in reference to sexual intercourse. The verse unambiguously addresses sexual relations between males, and has widely been interpreted as a blanket prohibition of male–male homosexual intercourse. Nevertheless the verse contains a difficult phrase that makes its exegesis uncertain. The Hebrew expression *mishk'êbê 'isha* is attested only here and in the parallel verse Lev. 20:13. Its grammar, notably the ostensible use of the plural, is not transparent, and the semantics of the noun *mishkab* are ambiguous. These difficulties have led to much discussion in recent years.

³ The formulation of this verse indicates that something other than straightforward adultery is meant, perhaps consensual relations with a married woman whose husband is sterile.

⁴ The implications of this prohibition are very unclear. It seems ill-advised therefore to make this verse a key for the interpretation of verse 22 as was done by Thomas Hieke, ‘Kennt und verurteilt das Alte Testament Homosexualität?’, in Stephan Goertz (ed.), *Wer bin ich, ihn zu verurteilen?* *Homosexualität und katholische Kirche* (Freiburg i. Br.: Herder, 2015), pp. 19–52, at 35–6.

TRADITIONAL INTERPRETATION

According to its traditional interpretation the verse prohibits that a man should have sex ('to lie') with a male *as he would have sex* with a woman. This understanding underlies the NRSV version of the verse quoted above, and most other translations of Leviticus. In a very detailed essay published in 1994, Saul Olyan defined the forbidden act more explicitly as involving anal penetration and effusion of sperm. Olyan thought the law was originally aimed at the 'insertive partner' only.⁵ But he admitted that at least in the present version of Leviticus, both partners, the 'insertive' and the 'receptive' in his terminology, were considered guilty. Lev. 20:13 explicitly states: 'Both of them have committed an abomination; they shall be put to death.'

In its traditional interpretation the verse is to be understood as condemning a type of behaviour, not a sexual orientation. Translations such as: 'Homosexuality is absolutely forbidden, for it is an enormous sin' (The Living Bible) miss the mark. Leviticus mentions only male-male intercourse—the Hebrew Bible has nothing to say about female same-sex relations. Also to be underscored is that the male with whom one lies is not further defined in terms of age or status: 'with *a male* you will not lie'.⁶ Nor does the verse relate to what motivated the intercourse: male-male attraction, the desire to humiliate, irresistible lust, or other factors. Even the question of the partner's consent remains unmentioned. The text single-mindedly focuses on the sexual act.

To my mind it is precisely this legal minimalism that creates a possible problem for Jewish and Christian ethics. Even if we accept that biblical law cannot be applied to our modern-day society, but only studied for its underlying values, there is a potential clash. Several Old Testament scholars in recent years have argued that Leviticus does not condemn homosexuality as it is understood today.⁷ This is no doubt true. But our verse in Leviticus, would still, in its traditional interpretation, prohibit something that is part and parcel of the male homosexual experience.

⁵ Saul M. Olyan, 'And with a Male You Shall Not Lie the Lying down of a Woman': On the Meaning and Significance of Leviticus 18:22 and 20:13', *Journal of the History of Sexuality* 5 (1994), pp. 179–206. According to Walsh only the passive partner was addressed; see Jerome T. Walsh, 'Leviticus 18:22 and 20:13: Who Is Doing What to Whom?', *JBL* 120 (2001), pp. 201–9.

⁶ For distinctions of this kind made in other ancient societies, see Olyan's article.

⁷ See e.g. Hieke, 'Kennt und verurteilt', where further literature is listed.

The prohibition of male–male sex is unparalleled in the Hebrew Bible, as we saw above, but also in the Ancient Near East more generally. Homosexual rape is occasionally condemned, e.g. in Assyrian Laws and Egyptian Wisdom, as is sex between male members of a nuclear family, notably in a Hittite ritual text.⁸ But consensual sex between males is not much of a theme. In Persian sources, however, a blanket condemnation of anal intercourse, including male–male anal sex, is found.⁹ The *Videvdad*, a Zoroastrian text difficult to date, contains the statement (8:32): ‘Ahura Mazdâ said: the male who is sodomized, the male who sodomizes ... he is a *daêwa* before death, he becomes a spiritual *daêwa* after death, when a man releases semen in a man or a man receives semen of men.’

In a forthcoming essay, Idan Dershowitz has argued that the laws of Lev. 18:22 and 20:13 reflect influence of these Persian statements.¹⁰ He also tries to show that an earlier version of the law contained in Leviticus 18 did not prohibit male same-sex relations in general, but only, as in the Hittite text referred to above, incestuous ones. The latter point is ingeniously argued on the basis of verses 7 and 14:

You shall not uncover the nakedness of your father
You shall not uncover the nakedness of your father’s brother

Although in the version that has come down to us these clauses are explained as pertaining to one’s mother and aunt respectively, Dershowitz suspects in an earlier version they were aimed at sex with a father or a paternal uncle. This would imply that other male–male relations were licit.

I find both the notion of Persian influence on Lev. 18:22 and the idea that we can reconstruct an earlier form of the text problematic.¹¹ But even if Dershowitz were right, this would not solve

⁸ See the review of the evidence in Martti Nissinen, *Homoeroticism in the Biblical World: A Historical Perspective* (Minneapolis: Fortress, 1998).

⁹ See Olyan, ‘And with a Male’.

¹⁰ Idan Dershowitz, ‘Revealing Nakedness and Concealing Homosexual Intercourse: Legal and Lexical Evolution in Leviticus 18’, forthcoming in *HeBAI*.

¹¹ As Dershowitz helpfully points out, the *Videvdad*’s prohibition is not the same as the one in Lev. 18:22, since it prohibits anal sex irrespective of gender. Also, the *Videvdad* encourages incestuous relations, which are strongly condemned in Leviticus 18. Persian influence seems unlikely under these circumstances. As to the postulated earlier form of the chapter, this seems to hark back to earlier approaches to the Holiness Code that are nowadays widely abandoned. The reconstruction of the earlier form rests on pure speculation.

the problem signalled above. Understanding how a problem was created does not make it go away. Readers of the Bible need to relate to the final form of the text.

A NEW APPROACH

A few recent studies on the laws on same-sex intercourse in Leviticus have set out a path to a very different understanding. The Hebrew noun *mishkab* has two distinct meanings. It can designate *the act* of lying down, or *the place* where one lies down, the bed.¹² The first meaning, 'lying down', is the one attributed to the noun in the traditional interpretation of our verses: *mishkēbê 'isha* 'the lying-down of a woman'. This understanding is not unreasonable in the light of the parallel Hebrew expression *mishkab zakar*, 'the lying-down of a male', which certainly refers to sexual intercourse: young women who have not known the 'lying-down of a male' (*mishkab zakar*) are virgins who may be taken as spoil in holy war according to Num. 31:18 and Judg. 21:11–12. Nevertheless, there are two philological problems. First, because the males in Lev. 18:22 are not lying with a woman but with another male, one expects a particle, *kē*, meaning 'like', indicating comparison (or approximation): 'With a male, you shall not lie *like* the lyings of a woman'. But this particle is absent.¹³ Second, the parallel in Numbers and Judges does not explain the ostensible plural form *mishkēbê* 'lyings'. As a parallel to *mishab zakar* 'the lying of a male' one expects the singular: *mishkab 'isha* 'the lying of a woman'.

In the light of these problems, David Stewart and Bruce Wells have proposed to abandon the meaning 'act of lying' and try to understand the verse on the basis of the meaning 'bed'.¹⁴ This

What does seem helpful in Derschovitz's study is the view that the prohibition of male–male sex with family members in verses 7 and 14 is not only a euphemism for sex with the mother or the aunt, but also prohibits such relations in a literal sense.

¹² This ambiguity is not exceptional. Note that the analogous noun *mōshab* (from the root *yashab* 'to sit, to dwell') similarly designates either the action, the 'dwelling' (Exod. 12:40), or the place 'the seat' (Gen. 27:39).

¹³ As noted by Wells (see the following note).

¹⁴ Bruce Wells, 'The Grammar and Meaning of Leviticus 18:22 and 20:13 Reconsidered'. A version of this paper was read at the 2014 SBL in San Diego (where I heard of the idea for the first time). I thank Bruce Wells for sending me a much expanded version of his study, which will appear in a journal soon. I know Stewart's study only from Wells's reference to it: David Tabb Stewart, 'Ancient Sexual Laws: Text and Intertext of the Biblical Holiness Code and Hittite Law' (Ph.D. diss., University of California, Berkeley, 2000).

turns out to be a fruitful avenue. Reading the noun as *mishkab* 'bed' directed David Stewart to Gen. 49:4, where it is said of Reuben: 'you went up onto your father's bed'. Because this verse uses *mishkab* in the meaning 'bed' it largely escaped exegetes of Leviticus 18 and 20. But in fact the verse is an important parallel. Gen. 49:4 almost certainly refers to a story similar to what is told in Gen. 35:22, 'While Israel lived in that land, Reuben went and lay with Bilhah his father's concubine.' As in Lev. 18:22, the subject matter is illicit sexual intercourse. In addition, Gen. 49:4 shares two distinctive features with the verses in Leviticus:

1. the noun appears in the form *mishk^ēbê*, a form found only in these three verses in the entire Hebrew Bible;¹⁵
2. the following noun designates a person other than the one with whom intercourse is had: just as in Lev. 18:22 the man is not lying with a woman, so in Gen 49:4 Reuben is not having sex with his father.

These similarities between Lev. 18:22 and Gen. 49:4 are hardly due to chance.

Stewart and Wells deserve credit for opening up a new approach to our verses. But having done so, they get lost in their own readings of Lev. 18:22. Both of them end up, by different itineraries, interpreting Lev. 18:22 as a prohibition of *incestuous* sex between males: the verse prohibits sex between males within the same limits of kinship as the male–female relations forbidden in the earlier verses (parents, siblings, children, and grandchildren, and a few more distant relations). This interpretation would seem to be misguided. Nothing in Lev. 18:22 indicates a limitation to male members of the same family. In addition, as we saw, the list of incestuous relations already refers to male kin (the father in v. 7 and the uncle in v. 14). I would like therefore to take the idea in another, more straightforward, direction.

¹⁵ The plural is used a few times in the Dead Sea Scrolls, in clear dependence on the biblical occurrences. The expression מִשְׁכְּבֵי זָכָר in 1QSa 1:10 means 'sexual intercourse with a male' and corresponds to מִשְׁכְּב זָכָר in Num. 31:17, 18, 35 and Judg. 21:1, 12. The plural form is due to mutual influence between those passages and Lev. 18:22 and 20:13. Note that Targum Onkelos and Jonathan also use the plural form מִשְׁכְּבֵי in the passages in Numbers and Judges.

—First, let us revise the translation of Lev. 18:22 in the light of the insight that *mishk^ebê* means ‘bed’:

w^e’et zakar lo’ tishkab mishk^ebê ’isha
 And-with a male not you-will-lie (on) the bed of a woman
 ‘You shall not lie with a male *on the bed* of a woman’ (adapted from the NRSV)

As Wells indicated in his paper, this is a perfectly legitimate way of construing the syntax of the verse.¹⁶ Reuben’s ‘going up’ onto the bed (*mishk^ebê*) of his father means that he had sex with his father’s concubine. Jacob’s bed is the place where he has intercourse with his wife, in this case Bilha. Analogously, the Israelite who is told not to lie on the bed (*mishk^ebê*) of woman is in effect forbidden to have sex with the woman’s husband. This understanding logically implies a prohibition of sexual intercourse between Israelite males when either or both of them are married.

If this interpretation is acceptable, it suggests a specific meaning for the form *mishk^ebê*. Stewart thought the plural indicates illicit relations in contrast to the singular, which indicates permitted ones. Wells argued that the plural connotes an abstract meaning, ‘the sexual domain of someone’, instead of the concrete meaning ‘bed’. But the conjugal aspect of the three texts where it is found suggests another possibility. Note that in all three texts the reference of the form is singular—Ruben went up to the *bed* of his father, not the beds. Add to this that the most frequent plural of *mishkab* is in *-ot*: *mishkabot* ‘beds’. Only in Gen. 49:4 and Lev. 18:22 and 20:13 do we find the form *mishk^ebê*. It is plausible, then, to take the form *mishk^ebê* not as a plural but as a dual designating a double bed. In all three texts the reference is to a conjugal bed, housing two people. One of the uses of the Hebrew dual is in reference to single objects that somehow present a dual aspect. A good example is *delatayim* ‘double door’, which like *mishkab* has a singular, *delet* ‘door’, and a plural, *delatot* ‘doors’.¹⁷

¹⁶ See notably 2 Sam. 11:9 (quoted by Wells), which reflects exactly the same syntactic structure as Lev. 18:22:

וַיִּשְׁכַּב אֲוִיָּהּ פֶּתַח בַּיִת הַמֶּלֶךְ, אֶת פְּלִעְעָבָיו אֲדָנָיו
 ‘And Uriah lay / (at) the door of the house / with the servants of his master.’

There is no suggestion of intercourse here, but the verb *shakab* is accompanied by an accusative of place and a further prepositional phrase just as in Lev. 18:22.

¹⁷ Note also טַלְקָתַיִם ‘tongs’, מֵאֲזֵנַיִם ‘scales’, נְחֻשְׁתַּיִם ‘double fetters (?)’, and others.

The dual does not mean 'two doors': it refers to a single door, with two panes. Similarly the dual of *mishkab* may refer to a single bed, meant for two people. Unfortunately, the absolute state *mishkabayim* 'twin beds' is not attested, but its existence is philologically plausible. The exegesis does not depend on this grammatical point, but it does seem to fit nicely.

In conclusion, I propose to interpret Lev. 18:22 (and 20:13) as a prohibition of male-male intercourse with a married man.

CONCLUSIONS

The traditional interpretation of Lev. 18:22 and 20:13 is universally reflected in the earliest translations of the Hebrew Bible, parabiblical literature,¹⁸ Philo and Josephus,¹⁹ and the New Testament.²⁰ It has remained more or less uncontested until a few years ago. It may seem presumptuous to call this unanimous opinion into question. Nevertheless, the alternative interpretation is philologically possible and merits due consideration.

The blanket condemnation of male-male intercourse is a *Fremdkörper* in the Hebrew Bible and the Ancient Near East. In contrast, the 'protection' of the union of man and wife as the paradigmatic form of human relationships is ubiquitous in the Hebrew Bible. The prohibition of adultery is reiterated many times and in many forms. On the new interpretation, Lev. 18:22 participates in this protection. One could say it comes to close a legal loophole. The law is formulated in a male-centred perspective: sex with a married woman is forbidden. But what about sex with a married man? This is not covered by the prohibition of adultery. But it is covered in our verses.

The new interpretation is apt, I would say, in the context of Leviticus 18. Much has been written on the motivation underlying the laws on incest. The parenetic framework of the law in verses 1-5 and 24-30 sets great store by the notion of impurity. This has led many exegetes to the view that the laws on incest reflect a priestly concern with ritual purity. This is not wrong. One should remember, however, that the Holiness Code, of which Leviticus 18 is a part, motivates all kinds of regulations with a reference to holiness and purity. While 'P', roughly the first 16 chapters of Leviticus, is concerned with issues of impurity in the

¹⁸ See e.g. Jub. 20:5; Or. Sib. 3:185, 596; 5:166, 387; Arist. 152.

¹⁹ See Josephus, *Ant.* 3:275; Philo, *De Abr.* 135; *Spec.* ii 50; iii 37-42; *Vit. Cont.* 59-63.

²⁰ Notably Rom. 1:27 (but see below. n. 23).

primary sense (e.g. how to confine blood, sperm, and skin disease), 'H', Lev. 17–26, extends the discourse on purity and holiness to matters such as respecting one's parents and helping the poor. These reflections should lead us to recognize that the incest laws in Leviticus 18 are not primarily concerned with ritual purity but, as some exegetes have recognized, with orderly life in the Israelite family. The incest in question involves not only sex with consanguineous partners, but also with a stepsister, stepmother, or stepdaughter, as well as aunts by marriage. The main concern is not the 'mixing of sperms' as some exegetes have argued, but the avoidance of conflict between close family members living in the same compound. The proposed meaning of verse 22 would fit well into this framework.

The law still stands at some distance from modern mentalities. The effect of Lev. 18:22, on the new reading, is to strengthen the value of the heterosexual couple as a paradigm for human relationships in general: the rights of a woman to her man's sexuality are given precedence over occasional sexual encounters between men. Homosexual relations are relegated to the realm beyond marriage. This view of human sexuality falls short of contemporary demands for equal rights for same-sex relationships. From the creation stories in Genesis 1 and 2 to the prophetic parables presenting Israel as God's wife, the heterosexual couple is the norm.²¹ This is true too for the incest laws in Leviticus 18 and 20, which take it for granted that the Israelite addressed in the law would have parents, a wife, and married children—even if the distinction between offspring 'born at home or born abroad' and other indications show that the law was not wholly naive about the actual vicissitudes of married couples.²²

But a norm is not a blueprint to be followed by everyone. Biblical law's prohibitions delimit a space of freedom. Transgressing the commandments leads to death, but whatever is not forbidden is open for exploration. This principle—if the new

²¹ Admittedly, many biblical characters are presented as polygamous, and this is true even for YHWH in Ezekiel 23. Nevertheless, the creation accounts in Genesis 2 and 3 suggest that monogamy is somehow true to the human being's nature. Perhaps it is fair to say that monogamy is an emerging norm in the Old Testament.

²² Leviticus 18 and 22 do not envisage strict monogamy: the prohibition to marry two sisters while both are alive (Lev. 18:18) indicates that other forms of polygyny were considered legitimate.

interpretation of Lev. 18:22 is accepted—opens up the possibility of a biblical ethics of same-sex relations.²³ Homosexual intercourse with a married man is forbidden, but other forms of male-male intercourse are not.

²³ In a Christian context, Rom. 1:27 would have to be addressed. Yeshaya Gruber has pointed out to me that this verse could be read in a way that is compatible with the new interpretation of Lev. 18:22 par. The phrase ἀφέντες τὴν φυσικὴν χρῆσιν τῆς θηλείας, ‘giving up natural intercourse with women’ (NRSV), may imply that the men in question were actually married. The article in τῆς θηλείας would, in this case, not refer to the category (as in the NRSV), but function, as it often does, as a stand-in for the possessive pronoun: ‘giving up natural intercourse with “their female”’ (i.e. their wife).