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**Ancient Sexual Laws:
Text and Intertext of the
Biblical Holiness Code and Hittite Law**

by

David Tabb Stewart

**B.S. (University of Oregon) 1978
M.A. (University of Utah) 1990
C.Phil. (University of California, Berkeley) 1998**

**A dissertation submitted in partial satisfaction of the
requirements for the degree of
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in
Near Eastern Studies
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GRADUATE DIVISION
of the
UNIVERSITY OF CALIFORNIA, BERKELEY**

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by

David Tabb Stewart

Dedicatae

In Memoriam:

**Ethan Andrew Stewart, my son
Elsie Lucille Banks Stewart, my mother
William Moseley Stewart, Sr., my father**

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List of Abbreviations

AB	The Anchor Bible
ABD	Freedman, David Noel (Ed.). 1992. <i>Anchor Bible Dictionary</i> . 6 vols. New York: Doubleday.
ABH	Archaic Biblical Hebrew
Abod. Zar.	Abodah Zarah
ABoT	Ankara Arkeoloji Müzesinde bulunan Bogazköy Tabletleri
acc.	accusative
AG	Ungnad, Arthur. 1992 [1969]. <i>Akkadian Grammar</i> . 5th corrected ed., rev. by Luther Matouš. Trans. by Harry A. Hoffner, Jr. SBL Resources for Biblical Study 30. Atlanta: Scholars.
Akkad.	Akkadian
ANE	Ancient Near East(ern)
ANEP	Pritchard, James B. 1994 [1969a]. <i>The Ancient Near East in Pictures Relating to the Old Testament</i> . 2nd ed. with supplement. Princeton: Princeton University Press.
ANET ³	Pritchard, James B. (Ed.). 1992 [1969b]. <i>Ancient Near Eastern Texts Relating to the Old Testament</i> , 3rd ed. with supplement. Princeton: Princeton University Press.
AOAT	Alter Orient und Altes Testament
AOS	American Oriental Society
Aram.	Aramaic
ARM	<i>Archives royale de Mari</i> . 1941-. Textes cunéiformes, Musée de Louvre 22-. Paris.
b.	Babylonian Talmud
BCE	Before the Common Era
BDB	Brown, Francis, S. R. Driver, and Charles A. Briggs. 1951. <i>A Hebrew and English Lexicon of the</i>

	<i>Old Testament. Corrected ed. Oxford: Clarendon.</i>
Ber.	Berakhoth
BH	(Classical) Biblical Hebrew, the Hebrew of most of the documents of the HB
BHS	<i>Biblia Hebraica Stuttgartensia</i> . 1997. Editio quinta emendata. Stuttgart: Deutsche Bibelgesellschaft.
Bo	= Boğazköy. Inventory of unpublished texts recovered in the campaigns from 1907-1912 stored in Istanbul and Berlin.
BoTU	Emil Forrer (Ed.). 1922. <i>Die Boghazköi-Texte in Umschrift</i> . WVDOG 41-42. Leipzig. J. C. Hinrichs.
c.	common gender
CAD	Chicago Assyrian Dictionary = Gelb, Ignace J. et al. (Eds.). <i>The Assyrian Dictionary</i> . 1965-. Chicago: University of Chicago, Oriental Institute.
CANE	Sasson, Jack M. et al (Eds.). 1995. <i>Civilizations of the Ancient Near East</i> . New York: Charles Scribner's Sons.
CBQ	<i>Catholic Biblical Quarterly</i>
CC	Covenant Code
CE	Common Era
CH	Code of Hammurabi (ca. 1750 B.C.E., Babylon)
CHD	Chicago Hittite Dictionary = Güterbock, Hans Gustav and Harry A. Hoffner. 1980-. <i>The Hittite Dictionary</i> . Chicago: University of Chicago, Oriental Institute.
CLL	Melchert, H. Craig. 1993. <i>Cuneiform Luvian Lexicon</i> . <i>Lexica Anatolia</i> 2. Chapel Hill, NC: Author.
1Cor.	First Corinthians
CS	Common Semitic (= Proto-Semitic)
CT	Cuneiform texts from Babylonian tablets in the British Museum, London, 1896-.
CTA	Herdner, A. 1963. <i>Corpus des tablettes en cunéiformes alphabétiques découvertes à Ras Shamra</i>

- *Ugarit de 1929 à 1939. Mission de Ras Shamra 10.*
Paris: Paul Geuthner.

- CTH Laroche, Emmanuel. 1971. *Catalogue des textes hittites. Études et commentaires*, 75. Paris: Klincksieck. Supplements in *RHA* 30 (1972) and 33 (1975).
- CTH³ Collins, Billie Jean. 1997. "Catalog of Hittite Texts (CTH)." <<http://scholar.cc.emory.edu/scripts/ASOR/CTHHP.html>> Accessed: 23 July 1997).
- D Deuteronomic Code
- dat./loc. dative/locative
- DCH Clines, David J.A. 1993-. *The Dictionary of Classical Hebrew*. Sheffield: Sheffield Academic Press.
- De Sec. Leg. Philo Judaeus. *De Specialis Legibus*.
- Deut. Deuteronomy
- Deut. Rab. Midrash Deuteronomy Rabbah
- DLL Laroche, Emmanuel. 1959. *Dictionnaire de la langue louvite. Bibliothèque archéologique et historique de l'Institut français d'archéologie d'Istanbul*, 6. Paris: A. Maisonneuve.
- Dtn. Non-legal portions of Deuteronomy
- Dtr. Deuteronomist
- dupl. duplicate
- E E-Source, or Elohist Source
- EIEC Mallory, J.P. and D.Q. Adams (Eds.). 1997. *Encyclopedia of Indo-European Culture*. London and Chicago: Fitzroy Dearborn.
- EJ *Encyclopedia Judaica*. 1971-. Jerusalem: Keter; New York: Macmillan.
- EM *Entsiqlopediah miqra'it*. 1954-. 3rd ed. Jerusalem: Bialik. [Hebrew].

Eng.	English
Eth.	Ethiopic
Exod.	Exodus
Ezek.	Ezekiel
FHL	Durand, J.-M. and E. Laroche. 1982. "Fragments hittites du Louvre," 73-107. In <i>Mémorial Atatürk: Études d'archéologie et de philologie anatolienne</i> . Recherche sur les civilisations 10. Paris: Institut français d'études anatoliennes.
frag.	fragment
Gen.	Genesis
Gen. Rab.	Midrash Genesis Rabbah
GKC	Gesenius, W., E. Kautzsch, and A. E. Cowley. 1985 [1910]. <i>Gesenius' Hebrew Grammar</i> . Rev. 2nd English ed. Oxford: Clarendon.
Gortyn	Code of Gortyn (codified in the seventh cent.(?); inscribed ca. 480-460 BCE, Crete); in Willetts, Ronald F. 1967. <i>The Law Code of Gortyn</i> . Berlin: Walter de Gruyter.
H	Holiness Code (Leviticus 17-26)
Hab.	Habakkuk
HALAT ¹	Köhler, Ludwig and Walter Baumgartner. 1995. <i>Hebraisches und aramaisches Lexicon zum Alten Testament</i> . 3. Auflage. Leiden: E. J. Brill.
HALAT ²	Köhler, Ludwig and Walter Baumgartner. 1995. <i>The Hebrew and Aramaic Lexicon of the Old Testament</i> . Trans. by M.E.J. Richardson. Leiden: E. J. Brill.
HB	Hebrew Bible [=Old Testament]
HE ²	Friedrich, Johannes. 1960. <i>Hethitisches Elementarbuch, 1. Teil: Kurzgefaßte Grammatik</i> . 2nd ed. Heidelberg: Carl Winter.
Heb.	Hebrew
HED	Puhvel, Jaan. 1984-. <i>Hittite Etymological Dictionary</i> , v. 1: Words Beginning with A; v. 2:

Words Beginning with E and I; v. 3: Words Beginning with H; v. 4: Words Beginning with K. Trends in Linguistics: Documentation. Berlin and New York: Mouton de Gruyter.

- HEG Tischler, Johann. 1977-94. *Hethitisches etymologisches Glossar*, Teil I (1977-83): A-E-H-I-K; Teil II (1990-91): L-M-N; Teil III (1991-94): T/D. Innsbrucker Beiträge zur Sprachwissenschaft 20. Innsbruck: Institut für Sprachwissenschaft der Universität Innsbruck.
- Hif. Hif'il: causative verbal stem in Hebrew
- Hitp. Hitpa'el: primarily reflexive/reciprocal counterpart to the Pi'el verbal stem in Hebrew
- Hitt. Hittite
- HL Hittite Law; editions: Hrozný (1922); Neufeld (1951); Güterbock (1961; 1962); Imparati (1964); Haase (1968); Friedrich (1971); Hoffner (1997)
- Hof. Hof'al: passive causative counterpart to Hif'il verbal stem in Hebrew
- Hos. Hosea
- HoS Foucault, Michel. 1986-90 [1978-86]. *The History of Sexuality*, v. 1: An Introduction; v. 2: The Use of Pleasure; v. 3: The Care of the Self. Translated by Robert Hurley. New York: Random House.
- HSED Orel, Vladimir E. and Olga V. Stolbova. 1995. *Hamito-Semitic Etymological Dictionary: Materials for a Reconstruction*. Leiden: E.J. Brill.
- HTR *Harvard Theological Review*
- HUCA *Hebrew Union College Annual*
- Huqq. Hittite treaty of Šuppiluliuma I with Huqqana of Hayaša (ca. 1344 B.C.E.).
- HW Friedrich, Johannes. 1991. *Kurzgefaßtes hethitisches Wörterbuch: Kurzgefaßte kritische Sammlung der Deutungen hethitischer Wörter*. Unveränderter Nachdruck der Ausgabe 1952-1966, 1-3. Heidelberg: Carl Winter.
- HW² Friedrich, Johannes and Annelies Kammenhuber. 1975-. *Hethitisches Wörterbuch*. Zweite, völlig

neubearbeitete Auflage auf der Grundlage der
 edierten hethitischen Texte, v. 1: A-Atta
 [=Lieferungen 1-8 (1975-1984); v. 2: E-Ezza
 [=Lieferungen 9-10 (1988)]; v.3: H-Hant
 [=Lieferungen 11-13 (1988-1998)]. Heidelberg: Carl
 Winter Universitätsverlag.

- HZ Rüter, Chriatel and Erich Neu. 1989. *Hethitiachea Zeichenlexikon*. StBoT Beiheft 2. Wiesbaden: Otto Harrassowitz.
- IBoT *Istanbul Arkeoloji Muzelerinde bulunan Bogazköy Tabletleri* [= Bogazkoy tablets in the Archaeological Museums of Istanbul = Bogazköy-Tafeln im Archäologischen Museum zu Istanbul]. (Istanbul, 1944-1954)
- IE Indo-European
- IEW Pokorny, Julius. 1959. *Indogermanisches etymologiache Wörterbuch*. Bern and München: Francke.
- Isa. Isaiah
- J J-Source, or Yahwistic Source
- JAOS *Journal of the American Oriental Society*
- Jastrow Jastrow, Marcus. 1989 [1903]. *A Dictionary of the Targumim, the Talmud Babli and Yeruahalmi, and the Midraahic Literature*. New York: Judaica.
- JBL *Journal of Biblical Literature*
- JCS *Journal of Cuneiform Studies*
- JNES *Journal of Near Eastern Studies*
- Jdg. Judges
- Jer. Jeremiah
- JHS *Journal of the History of Sexuality*
- Josh. Joshua
- JSOT *Journal for the Study of the Old Testament*
- JSOTSup. *Journal for the Study of the Old Testament Supplement Series*

Jub.	Jubilees
K.	Tablets in the Kouyundijk collection of the British Museum, London.
KBo	Keilachrifttexte aus Boghazköi I-VI (Leipzig, 1916-23); VII- (Berlin, 1954-).
Kgs.	Kings
Kil.	Kil'ayim
KTU	Dietrich, Manfred, Oswald Loretz, and J. Sanmartín. 1976. <i>Die keilalphabetischen Texte aus Ugarit</i> . AOAT 24. Kevelaer: Butzon & Bercker; Neukirchen-Vluyn: Neukirchener Verlag.
KUB	Keilschrifturkunden aus Boghazköi (Berlin, 1921-)
Lam.	Lamentations
LBH	Late Biblical Hebrew
LE	Laws of Eshnunna (ca. 1770 B.C.E., Eshnunna)
Lev.	Leviticus
lit.	literally
LL	Laws of Lipit-Ishtar (ca. 1930 B.C.E., Isin)
LU	Laws of Ur-Namma (ca. 2100 B.C.E., Ur)
Luw.	Luwian
LXX	Septuagint; cf. Wevers, John William. 1986. <i>Leviticus. Septuaginta: Vetus Testamentum Graecum</i> , v. II:2, <i>Leviticus</i> . Göttingen: Vandenhoeck & Ruprecht.
m.	Mishnah
MAL	Middle Assyrian Laws (ca. 1076 B.C.E., Assur); editions: Driver & Miles (1935); Cardascia (1969); Roth (1997)
MH	Middle Hittite
Mic.	Micah
Mish.H	Mishnaic Hebrew

Ms(s) .	Manuscript(s)
MS	Middle (Hittite) Script
MVAeG	Mitteilungen der vorderasiatisch-ägyptischen Gesellschaft. Leipzig. 1896-.
Nah.	Nahum
NH	New Hittite
Nif.	Nif'al: passive/middle/reflexive/reciprocal counterpart to the Qal verbal stem in Hebrew
NJPS	New Jewish Publication Society version of the Bible
NS	New (Hittite) Script
ns	New Series
Num.	Numbers
obv.	obverse side of tablet
OH	Old Hittite
OS	Old (Hittite) Script
OV	Object-Verb syntactic order
P	Priestly Source
P₁	Basic layer of P, as per Milgrom (1991).
Pap.	Papyrus
p^s	Grundchrift of P, mostly Priestly narrative
pl.	plural
Prov.	Proverbs
Ps.	Psalms
1QapGn	Qumran, Genesis Apocryphon, Cave 1; in Fitzmyer, Joseph A. 1971. <i>The Genesis Apocryphon of Qumran Cave 1: A Commentary</i>. 2nd rev. ed. Rome: Biblical Institute Press.
4Q	Qumran, Cave 4
4QDe	Qumran, Deuteronomy, Cave 4

4QMMT	Qumran, Miqṣat ma'aseh ha-Torah, Cave 4 = 4Q394-399
11Q	Qumran, Cave 11
Qidd.	Qiddušin
Resp. Lac.	Xenophon. <i>Reapublica Lacaedaemonica</i> [Constitution of Sparta].
rev.	reverse side of tablet
RHA	<i>Revue hittite et aaianique</i>
RHB	Ehrlich, Arnold Bogumil. 1968 [1908-14]. <i>Randgloaen zur hebräiachen Bibel</i> . 7 vols. Hildsheim: Georg Olms; o.p. Leipzig: J. Hinrichs.
RIDA	<i>Revue internationale dee droits de l'antiquité</i>
RLA	<i>Reallexikon der Aaayriologie und vorderaaaiatiachen Archäologie</i> . 1928-. Berlin and New York: Walter de Gruyter.
Roš Haš.	Rosh Hashana
RS	Ras Shamra, field numbers of tablets
Sam.	Samuel
Sanh.	Sanhedrin
sg.	singular
Sifré Deut.	Sifré Deuteronomy.
SLEx	Sumerian Law Exercise Tablet (ca. 1800 B.C.E.) = YOS 1 28 or YBT I 28.
SoS	Song of Songs
StBoT	Studien zu den Bogazkhoy-Texten
SupVT.	Supplements to Vetus Testamentum
sx.	suffix
t.	Tosefta
TDOT	<i>Theological Dictionary of the Old Testament</i> . 1977-. Edited by G. Johannes Botterweck and Helmer

Ringgren. Translated by David E. Green et al. Grand Rapids, MI: Eerdmans.

Tg.	Targum
ThWAT	<i>Theologisches Wörterbuch zum Alten Testament</i> . 1972-. Edited by G. Johannes Botterweck and Helmer Ringgren. Stuttgart: W. Kohlhammer.
Tunn.	The eclectic text of the Tunnawiya Ritual (CTH 409; KUB 7.53 + KUB 12.58) as worked out by Albrecht Goetze, <i>The Hittite Ritual of Tunnawi</i> , American Oriental Series 14 (New Haven: American Oriental Society, 1938).
UF	<i>Ugarit-Forschungen</i>
Ugar.	Ugaritic
VBoT	<i>Verstreute Boghazköi-Texte</i> . Edited by A. Götze. Marburg, 1930.
VO	Verb-Object syntactic order
VT	<i>Vetus Testamentum</i>
WBC	Word Biblical Commentary
WVDOG	<i>Wissenschaftliche Veröffentlichungen der Deutschen Orient-Gesellschaft</i> . Leipzig. 1900-.
y.	Talmud Yerušalmi = Jerusalem Talmud
Yaz.	Yazilikaya
Yeb.	Yebamoth
ZA	<i>Zeitschrift für Assyriologie</i>
ZAH	<i>Zeitschrift für Althebraistik</i>
ZAW	<i>Zeitschrift für die alttestamentliche Wissenschaft</i>
Zec.	Zechariah
Zeph.	Zephaniah

Sigla in Hittite Transliterations

[]	Encloses textual lacuna - any text supplied from duplicate, similar lines, or by hypothesis

[()]	Text supplied from duplicate tablet
< >	Emendation - not in text; omitted by scribal error
o	Space within a lacuna for a sign
!	sic.
XX	Italicized capital letters: Akkadogram
XX	Capital letters: Sumerogram
xx	Transliteration of Hittite cuneiform signs
^x xx	Raised letter: predeterminative
►	Winkelhaken
-	Hittite supplementation to Akkadogram or Sumerogram
=	Morpheme boundary in enclitic string
/	Line break
-----	Paragraph divider on tablet
H	capital ḥ

Key to Hebrew Transliteration

Consonants:

א	ʾ	ל	l
ב	b	מ	m
ג	g	נ	n
ד	d	ס	s
ה	h	ע	ʿ
ו	w	פ	p
ז	z	צ	ṣ
ח	ḥ	ק	q
ט	ṭ	ר	r
י	y	ש	ś (Sin)
כ	k	שׁ	ś (Shin)
		ת	t

Vowels:

ā qāmea gadol
a pataḥ
ā ḥaṭap pataḥ
ā ḥX ā + h
āyw ḥX
ayim ḥX
ē aḥrē
e aegōl
ē ḥaṭap aegōl
ē ḥX ā/e + y
eh ḥX e + h
• shewa

ī ḥX ḥfrīq gadol
i ḥfrīq qatan
ō ḥōlem qatan
o qāmea ḥṣṭūp
ō ḥaṭap qamea
ō ḥX ḥōlem gadol
ū qibbūa gadol written
defectively
u qibbūa qatan
ū ḥX ṣūreq

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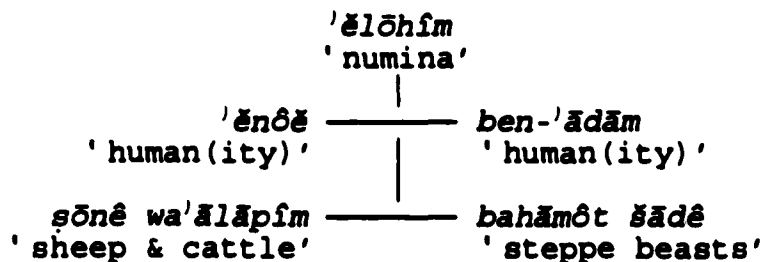
Of course none of these are responsible for my errors and omissions; they are mine alone.

CHAPTER ONE: Biblical Sexual Prohibitions: An Omnibus

1.1: A Modal

If we begin with a hierarchy of beings not unlike that of Psalm 8:5 and v. 8 (Figure 1.1),

Figure 1.1: Hierarchy of Beings in Psalm 8



we have a model over which we can lay the fraught sexual relationships of the biblical world.

In Lev. 18 humanity is elaborated into the categories of *kol-š'ēr b'šārō* 'any near kin' (v. 6),¹ *āmītkā* 'your countryman' (v. 20), and the Ego and his wife, *īš* and *iēšā*. The frame surrounding the legal kernel of Lev. 18 adds the *gēr* 'resident alien',² but leaves out the *nokrī* 'foreigner, outsider' circumscribing *ēnōš* to just those who live in the

¹ The *š'ēr haqqārob* (Lev. 21: 2), or near relations, include the *ēm*, *āb*, *bēn*, *bat*, *āḥ*, and *aḥot habbētūlā haqqrōbā 'ēlēkā*. Ratray (1987) links this list to the *š'ēr b'šārō* (Lev. 18:6), or the extended family depicted in Lev. 18:7-17.

² Or, *w'haggēr haggār b'tōk'em* "the alien who resides among you" (Lev. 18:26). For H's interest in the *gēr*, cf. also Lev. 22:18.

Land.³ Sheep and cattle are subsumed under the more general *b'hāmōt* 'beasts, quadrupeds'. Within the Israelite community fraught sexual behaviors become violations of each of the axial relations (Figure 1.2).

What are these behaviors? If one turns to Lev. 18:19-23 there is a representative summary:

- (1) (Lev. 18:19-23)
 ואל-אשה כנודת טמאתה לא תקרב לנלות ערותה:
 ואל-אשת עמיתך לא-תתן שכבתך לזרע לטמאה-כה:
 ומזרעך לא-תתן להעכיר למלך
 ולא תזלל את-שם אלהיך אני ה-:-
 ואת-זכר לא תשכב משכבי אשה תועבה הוא:
 וככל-כהמה לא-תתן שכבתך לטמאה-כה
 ואשה לא-תעמר לפני כהמה לרכעה תכל הוא:

(19) As for the woman in her menstrual impurity: Do not encroach on (her) to uncover her nakedness.

(20) With respect to the wife of your fellow citizen: Do not employ your penis for seed to defile yourself with her.

(21) And from among your progeny, do not dedicate (any) to sacrifice to *mōlek*; Do not desecrate the name of your God. I the Lord (have spoken).

(22) With respect to the male: Do not lie the lyings-of-a-woman -- it is an abhorrence.

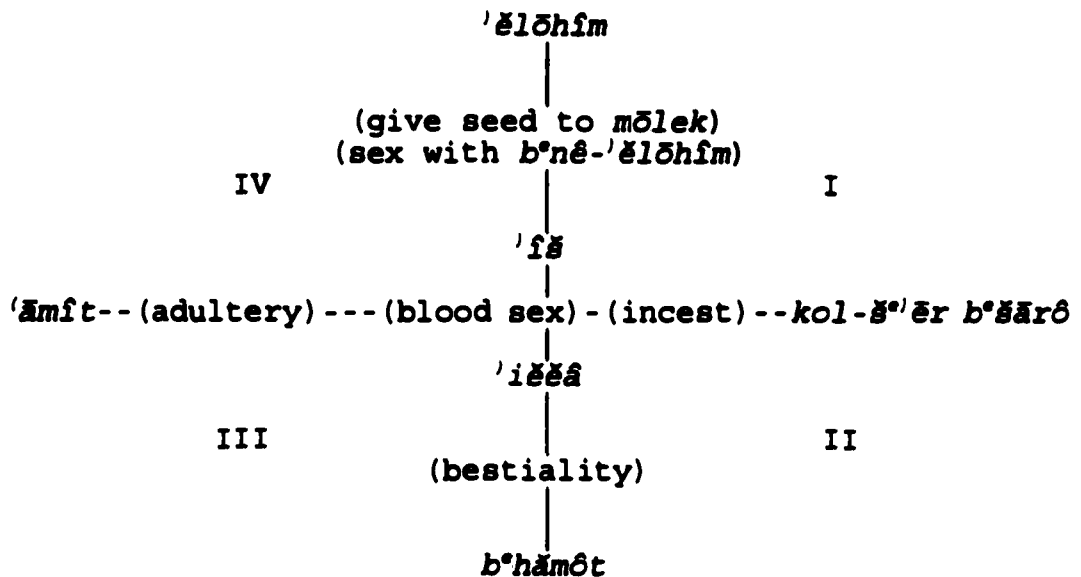
(23a) With respect to any quadruped: Do not place your penis in it to defile yourself.

(23b) And with respect to a woman: Let her not stand in front of a quadruped to mate with it -- it is confusion.

The representative behaviors are "blood sex" with the *niddā* (v. 19); adultery with a fellow Israelite's wife (v. 20); passing seed to *mōlek* (v. 21); male-male incest (v. 22); and bestiality initiated by man (v. 23a) or woman (v.23b).

³ E.g., Exod. 21:8; Deut. 7:15; but not in H.

**Figure 1.2: Forbidden Sexual Relations in Lav. 18
and the Hierarchy of Beiağa**



Reading Figure 1.2, "interspecies" relations, either metonymic ("giving seed" for generation now attached to "passing seed to mōlek"), or concrete (as the b'nē-'ēlōhīm "sons of God" lying with the daughters of men; or men and women with animals), are forbidden on the vertical axis. The horizontal axis restricts certain exogamous and endogamous relations.

We can imagine other kinds of linkages between the two axes. Explicit mention of zera' with both adultery and passing seed to mōlek, and mention of zēnūt with both mōlek and the deeds of the priest's daughter,⁴ link the realms of 'āmīt and 'ēlōhīm. Prophets will later overlay idolatry with adultery

⁴ Discussed under the rubric of adultery below.

and *zēnūt* (Figure 1.2, IV).⁵ Transgressions assigned to the same category, *tebel* (i.e. bestiality and daughter-in-law incest) link the realms of *b'hāmōt* and *š'ēr b'šārō*, as do a similar penalty, *d'mēhem bām*. So Freud (1946), and the ethnographers he read, overlay the realm of totemic animals with incest (Figure 1.2, II).

Even in the remaining quadrants of Figure 1.2, readers have found metonymic relations. Folkloristic studies tie the first stories of Genesis and their incests with the divine realm. For example Eve's epitheton, "mother of all living," hints she is a mother-goddess: her imagined relations with Cain ascend to the hierogamous (Kikawada 1972; Wyatt 1986; 1995; viz. Figure 1.2, I). Nathan's parable (2 Sam. 12:1-12) links the world of animals and human adultery (cf. Simon 1967). The prophet encodes King David's adultery as theft of a beloved ewe lamb who had nestled in a poor man's bosom. Each of these readings, incestuous hierogamy (I), totemism (II), animal theft as adultery (III), adultery as idolatry (IV), relies on a (clockwise) transposition that maps one set of sexual relations on a different set of social relations.

If Lev. 18:19-23 is a representative summary of fraught sexuality, its organizing principle is a puzzle. The central verse, speaking of "passing seed to *mōlek*," is anomalous. It is by no means the only anomaly. Why is sex with the

⁵ Cp. Deut. 31:16; cf. Adler [Goodfriend] (1990) for her extended discussion.

menstruant, something North Americans would resist as a fundamental category of sexuality, placed first? Why is a man so graphically enjoined not to use his genitals for sex with his fellow's wife? What are the "lyings-of-a-woman?" Why are female bestial relations given such attention? At first glance, the collection appears to be little more than a miscellany, added as an afterthought to the more coherent incest section preceding it.⁶

Philo saw the underlying fundament as "unfruitful unions," a violation of the command in Gen. 1:28, *prû ūrbû*.⁷ While this notion nicely wraps around *niddā*-, bestial-, and male/male-relations (and perhaps also passing seed to *mōlek*), it snaps apart in the face of adultery. Philo's misprision of Lev. 18:20 -- adulteries only occur here with sterile women -- finds Leviticus condemning useless repeated matings.⁸ Among the moderns, Biale recapitulates Philo's reading when he asserts the priests connected "proper sexual behavior and fertility." "What unifies all these acts," he argues, "is that they are considered affronts to procreation, either because they are sterile ..., produce illegitimate progeny ..., [or]

⁶ Tigay, writing about Deut., notes: "Even within groups of laws about the same topic, the arrangement often does not follow systematic principles of the sort that modern readers expect, such as: Keeping to a subject and completing it before going on to another, and arranging laws about a subject logically or chronologically" (1996:449).

⁷ *De Spec. Leg.* iii 32-45.

⁸ *De Spec. Leg.* iii 34-36.

destroy progeny ..." (1992:29).

Philo subverts this fertility principle in his own discourse. When he comments on the Decalogue he makes all laws against sexual behavior species of adultery.⁹ For him the Decalogue is a grand organizing principle -- one used by many critics who see in it the "constitution" for ancient Israel. Any such valorization requires adultery to head the banquet of poisoned sexual delights, but then adultery subsumes both the sterile and the fertile.

Adultery's dominion evaporates in a second way. Adulterers receive the death penalty in Lev. 20:10. However, all illicit unions do not earn death. Relations with the *niddā* (20:18) and incest with half-sister (20:17) draw the *kārēt*-penalty. For incest with the uncle's wife, one bears his guilt (20:20). For marrying a brother's wife (divorced or widowed), one goes childless (20:21). If we equate laws by penalty, then these are not adultery.

A third organizing principle brought forward to explain the sexual laws in Lev. 18:19-23 is that of *kil'ayim*, or the notion of forbidden mixtures. What is at stake when things are intermixed? "The erasing of differences" and "threat to identity" Kristeva would answer (1982:101). Thus when Houtman (1984) applies the principle of forbidden mixtures to sodomy, bestiality, and sex with divine beings, it is "difference" that is at stake -- the differences between genders and

⁹ *De Dec.* 121-131, 168-9; *De Spec. Leg.* iii:8-11.

between the several hierarchic realms of beings. When Countryman (1988) invokes intermixture to explain condemnations of incest and male homosexuality, the mixing of family and gender roles is at stake. Even the prohibition of crossbreeding (Lev. 19:19a) can be read as a prohibition of mixed, exogamous unions, as does Carmichael (1982). For him the Deuteronomic mixture rules (22:9-11) forbid the taking of non-Israelite wives (thus forbidding the mixture of nations and their gods). But even if we were to allow Carmichael's reading, the principle of *kil'ayim* does not explain all five prohibitions in Lev. 18:19-23.¹⁰

Kil'ayim-as-explanation cannot work in tandem with the notion of fertility either. Applying the principle by analogy assumes that there is at least one point of similarity and one point of difference. If we bracket the difference of content (cloth, animal or plant species), what is similar? One trait in common among all the *kil'ayim* is a useful (and desirable) result: cloth, mules, hay. On the face of it "unfruitful" sexual unions would seem excluded, since the practical goal of crossbreeding species is fruit. Indeed, it is the incests, the daughters-of-men cavorting with sons-of-God, and adulteries with fellows' wives that produce (forbidden) fruit-of-the-womb.

¹⁰ I will argue below that Lev. 18:20 forbids adultery with the wife of a fellow countryman only. It cannot forbid intermarriage. Lev. 18:26, part of the chapter's frame and not the kernel, modulates this by extending the sexual regulations to the resident alien.

Nor should we confound the categories "intermixture" with "impurity" (so Kristeva 1982:101). Milgrom, in his forthcoming comment on Lev 19:19, has noted that the lower cover for the Tabernacle, the curtain closing off the adytum, the high priest's ephod, breastplate, and belt all contain mixtures of linen and wool. The mixtures are reserved for the sacred sphere and are not a metaphor for rejected sexual behaviors or intermarriage. Here we come to a new possibility -- at least some mixed things are forbidden because they are sacred, not because they are impure. *Kil'ayim* cannot have the valence of corruption, or at least of corruption alone. Perhaps the interspecies sexual "mixings" are forbidden because they too impinge on divine prerogative -- to create "kinds." Thus, *kil'ayim's* neutral (or ambiguous) valence and its limited interpretive span undermine its power to explain sexual rules in Lev. 18. Thus we return to our puzzle: what principles underlie the sexual prohibitions of the Holiness Code (Lev. 17-26), and in particular, Lev. 18:19-23?

I do assume a coherence for the sexual system of the Holiness Code [H] -- that it represents a "systematic ensemble" in Foucault's phrase. However, the Hebrew Bible [HB] transmits this "ensemble" in a diffuse way. With respect to other parts of the biblical corpus, the sexual ideas of H "counterbalance, correct, or cancel out each other." In other words, the Bible does not depict just one system of sexuality and its several systems are in tension with each other. Within

H itself the complex interplay of elements, attested in the review of candidate principles underlying Lev. 18:19-23, calls for a "theory of diffuseness" (such as Foucault's). Even to the degree we may uncover coherence, real behaviors would still obey or resist, respect or disregard, or in Biale's view, subvert H's proscriptions (1992:16).

1.2: Methodologies

How might we discover the over-arching views of sexuality taken by the biblical Holiness School [H] and Hittite culture? Biale (1994:46) argues that the study of sexuality is a "construction of ... history" since it involves a scholarly discourse and a category ("sexuality") that is recent. If the search for a biblical sexual system is ultimately constructive, prior studies have hardly gotten past description. Even at the descriptive level, most biblical studies give little attention to the categories inherent in the texts. The "constructs" of sexuality, offered by the Bible encyclopedists, harmonize discrepancies and usually privilege Deuteronomy as the "biblical" view. The situation with the analogous Hittite sexual laws is hardly better. But if we follow Biale's notion of the (sexual) historian's task, she will define what constitutes data "by defining first the questions which in turn construct the data."

The very lexicon of sexuality itself may yield "the naive

picture of the [sexual] world hidden in lexical meanings."¹¹ Comparison of these words throughout the relevant biblical and Hittite texts allows the reconstruction of several word fields and the "folk picture of the world" they embody: the anatomy and physiology of sexual (dis)union, the *Wortfeld* of the sexual act, along with language that categorizes, condemns, reproves or approves its use among kin and community. These lexica, discriminated according to the appropriate historical layer of each language, offer occasional traces of their semantic development. Genus-species analysis may then reveal hierarchies of lexica that assist in category (re)construction.

Foucault's "history of mentalities" provides us with an "archaeology of texts" that affords us a second way to reconstruct a biblical or Hittite "history of sexuality." That is, the texts themselves "defamiliarize" sexual behaviors provoking social, economic, or political difficulties. Such problematizations lead to varying textual solutions that help us to reconstruct (by a kind of triangulation) the original cultural problem and its precipitating question.

Reading the stories as part of the literary world of the two cultures allows a third means of tracing their "history of sexuality." Beyond the "text" of "life-setting" composed of "language" and "social practice," is another sort of "text" -- the literary "intertext" or setting within the literary world

¹¹ Goddard (1998:242) citing Jurij Apresjan.

itself. H draws on both Yahwist-stories (Gen. 2-3, 6:1-4, 9:20-27) and Priestly-narratives (Gen. 9:1-17). The Holiness School is not precisely a "cultic legist"; it reads and interprets earlier texts. As evidence of this, H leaves a trail of allusion within its pages. Allusion -- indeed the trope of exegesis -- allows H to appear not to legislate *de novo*. As for the Hittite laws, we may turn to their Indo-European roots and other Hittite works (myths, treaties, rituals, omens, and dream texts) to show that Hittite (sexual) law is not simply a borrowed product of Mesopotamia.

a. Semantic Fields

In the work that follows, I have collected much of the sexual vocabulary of Classical Biblical Hebrew [BH] and Hittite along with that of adjacent word fields. These I have discriminated, as much as possible by biblical "source" (an authorial construct with hypothetical dating),¹² and by Old [OH], Middle [MH], and New Hittite [NH].¹³ My primary focus for BH has been the Holiness School [H], a particular construct, containing several editorial layers that

¹² Woude argues that source analysis is "[not] a great help to the study of the semantics of classical Hebrew. It can assist us to be alert to the meaning of certain terms in certain contexts ... " (1995:54). This is primarily so because we cannot assume that an author was limited to the vocabulary and semantic uses deployed.

¹³ As noted in the standard lexicons, particularly *CHD*, *HED*, and *HW*², although these disagree about the status of MH. The Hittite language layers are partially dated by differences in script styles (e.g., Old Script [OS]; New Script [NS]) on the tablets (Neu & Rüster 1973, and Rüster & Neu HZ 1989; Heinhold-Krahmer et al. 1979; Hoffner 1997).

collectively date to the 8th-6th cent. BCE. Dating of H pivot around 586 BCE -- the date of the exile -- some placing the source squarely in the exile or later. I start with the assumption that H is pre-exilic in the main and therefore within the bounds of Classical Biblical Hebrew [BH], and not Late Biblical Hebrew [LBH].¹⁴ H is distinguished from other authorial constructs such as "J" (10th?-8th? cent. BCE) and "D" (7th cent. ca. 621? BCE) or "Ezekiel" (6th cent. BCE in Babylon) by lexicon, style, and ideology.

Zatelli (1995:61-63) drawing on Eugenio Coseriu's ideas of "functional language" -- a scheme that considers dialect, register, and rough genre -- divides BH and LBH into seven groups:

- BH1 "historical/narrative" language;
- BH2 "poetic" language;
- BH3 "poetic" language of Amos;
- BH4 "juridical/cultic" language;
- LBH1 late "historical/narrative" language;¹⁵
- LBH2 late "poetic" language;¹⁶ and
- LBH3 the "poetic" language of Job.

This further atomization does allow for more rigorous synchronic comparisons. Coseriu's notion of the semantic field, "the lexematic structure," is "a group of words that

¹⁴ I essentially follow Milgrom in this. That the language of P is Classical BH and not LBH, see Hurvitz (1983:94). As to a pre-exilic date for P, see Haran (1981; 1983).

¹⁵ Polzin's (1976) database for LBH includes Chronicles, Ezra-Nehemiah, Esther, Daniel, and Ben-Sira.

¹⁶ 2nd Isa., Zech. 1-8, etc. Though the language of Ezekiel appears to represent a stage between BH and LBH (Rooker 1990), I have placed it here for the convenience of presentation.

stand in paradigmatic opposition to one another and that share at least one semantic component" (Fronzaroli 1993:79). Each "lexematic structure" compares meanings in "one and only one functional language" (80). Thus legal uses are compared with legal; narrative with narrative. Most of the texts considered below fall in BH1 (e.g., Genesis) or BH4, with a few in LBH2 (e.g., Ezekiel).

While some of the work of assembling the lexicon by semantic field has been done for Hittite,¹⁷ and for BH,¹⁸

¹⁷ E.g., Benveniste (1969) as pertaining to Indo-European [IE]; Weeks (1985) keyed to the IE semantic fields in Buck (1988); Arbeitman (1980) for "sexual anatomy" in IE and Hittite; Watkins (1979) for "moveable wealth"; Catsanicos (1991) "faute"; among the studies that inventory terms: Kammenhuber (1961) "equines" and "horsemanship"; Ertem (1965) "fauna"; Moyer (1969) "purity"; Hoffner (1974) "food" and "edible plants"; Poetto (1979) "body parts and secretions"; Melchert (1983) "pudenda"; Collins (Forth.) "body parts."

¹⁸ For listings of BH lexical items in relation to the reconstruction of Common Semitic [CS] by anatomy, natural phenomenon, religion, wild and domestic nature (Fronzaroli 1964-69); and similarly Tyloch (1975) for agriculture and animal husbandry; for studies of "associative fields" in BH: Feliks (1954) for animals; Barr (1969) for "time"; Sawyer (1972) for "salvation"; Arbeitman (1980) for sexual vulgarities; Andersen (1969) and Rattray (1987) for kinship terms; and Stewart (1998) for disability terms. For more on the *Assoziationsfeld*, cf. Kedar (1981:44-45) and Aphek & Tobin (1982:32). Such a "word system" includes more than just words with a semantic common denominator, but also phonological, folk-etymological, syntagmatic, word-pattern (in Heb., the morphosemantic *binyan*), or other associative links.

A few studies use a rigorous definition of "semantic field": Fronzaroli (1969b) and Brenner (1982) for color terms; Vivian (1978) for "separation"; Zatelli (1978) for "purity"; and Salvaneschi (1979) for "time"; for evaluation of the literature and further bibliography, cf. Fronzaroli (1993:85-86). The "Semantics of Ancient Hebrew Database" project has launched studies of the fields of "roads and ways," "cursing," "weapons," "purity," "knowledge," "justice," "covenant," "kinship and royal appurtenances," "metals," "domestic

semantic studies themselves have often been a by-product of theological dictionaries.¹⁹ But as Barr notes, "in methods of semantic analysis our Hebrew lexicography does not appear to have made great advances" (1973:119).

What is new in this study is the attempt to bring "all" the sexual lexemes of H and Hittite (especially Hittite legal literature) together in one place (Tables 1.1-1.4; 6.1-6.3; 6.5).²⁰ The results are several. In a few cases one can observe diachronic relationships and something of the process of semantic change -- especially pejorization.²¹ Sometimes the lexica can be organized into taxonomic hierarchies (cf. Figures 3.1; 3.2; 5.1; 5.6) following Berlin's principles.²² The enumeration of semantic features has helped uncover underlying categories that divide the sexual world in

animals," and "fragrant plants" (Muraoka 1998:x-xi). The point here is that little attention, indeed almost none, has been given to the BH *Assoziationsfeld* "sexuality".

¹⁹ E.g., *ThWAT* and its translation *TDOT*. Barr severely criticizes the "theological" approach (1973:124). However semantic study of BH on its own merits has been gaining ground: the European Science Foundation's "Workshop in the Semantics of Classical Hebrew" whose proceedings dominate *ZAH* 6/1 (1993) and 7/1 (1994), and its "Symposium" papers published in Muraoka (1995).

²⁰ Cf. also the "Index of Principal Words" below.

²¹ That is, as euphemistic expressions become more and more "contaminated" by their tabooed referents, they are exchanged for new euphemisms, cf. Allan & Burridge (1991).

²² Berlin (1972; 1992); Berlin, Breedlove, and Raven (1973); and a critique in Wierzbicka (1996:351-375).

unexpected ways (cf. Figure 5.2; Table 6.4).²³ Nevertheless, the inventory presented here is really preparatory for further semantic study.

A few trends emerge. The organization of the lexical inventory by functional language does highlight one of the ostensible differences between the narrative and the legal: the emergence of technical jargon. A polysemous *zera'* 'semen; offspring' divides into *zera'* 'progeny' (Lev. 18:20) and *šikbat-zera'* 'semen' (Lev. 19:20). There could also be a counter-trend to generalize usages: the specific *yārēk* 'thigh; ♂ genitals' BH4 also applies to '♀ genitals'. But one cannot make too much of this: it may only be an epiphenomenon of the limited BH corpus.

It is also apparent that BH had a rich, albeit euphemistic, vocabulary for pudenda. Drawing on adjacent body parts, or metaphors from the natural world, this richness occludes vision of the original Common Semitic [CS] or BH colloquial words.

This situation also prevails with other colloquial language. Except for *√š.g.1.* 'violate', marked by the Massoretes as obscene, the literary language, and perhaps the modesty of the text, excludes the rough language of the city gate and field. We have nothing like the play with the Modern Hebrew *ziyyēn* 'fornicate (vulgar)'. The register of narrative,

²³ Componential analysis has been used as a heuristic device rather than as a rigorous method.

the jargon of law, the elevated language of poetry leave few lexical remains of this other world.

BH4 attests specialized terms for prohibited sex, *n'p*, *glh 'rwh*, suggesting the emergence of sexual "kinds" **ni'ûp*,²⁴ **gflûy 'ārāyôt*. BH4, especially H, is rich in other categorical language (Table 1.4). Underneath the "kinds" of sexual behavior lies a deeper structure of intersecting evaluative categories, semantically loading each term and evocatively linking them to a host of associations.

²⁴ Plural at Ezek. 23:43; suffixed at Jer. 13:27 for 'idolatrous worship'. Cp. with the hapax *na'āpûpêhā* (Hos. 2:4) also for 'idolatrous worship'.

**Table 1.1a: Sexual Anatomy & Physiology
by Functional Language**

	BH1 "narrative" ^a	BH4 "legal/cultic" ^b
♂	<i>bāšār</i> 'flesh; penis' <i>zera</i> 'seed; semen' ^c <i>ḥāq</i> 'lap' <i>yārāk</i> 'thigh; genitals' ' <i>orlā</i> 'foreskin'	' <i>ōn</i> 'manly vigor' ' <i>ešek</i> 'testicle' <i>bāšār</i> 'flesh; penis' <i>ḥāq</i> 'lap' <i>m'būšīm</i> 'private parts' <i>š'kōbet</i> 'penis' <i>šikbat-zera</i> 'semen' ' <i>orlā</i> 'foreskin'
♀	<i>derek nāšīm</i> 'way of women' ' <i>ednā</i> 'sexual delight; vaginal moistness' ^d <i>reḥem</i> 'womb'	<i>dāwā</i> 'menstruous' <i>yārēk</i> '♀ genitals' ^e <i>reḥem</i> 'womb'
♂ ♀	' <i>erwā</i> 'nakedness; pudenda'	' <i>erwā</i> 'nakedness; pudenda'
	ABH "poetic" ^f	BH2 "poetic"
♂	' <i>ōn</i> 'manly vigor'	' <i>ōn</i> 'manly vigor' <i>maqāl</i> 'rod, phallus' ^g ' <i>ēs</i> 'stick, phallus' ^g
♀	<i>reḥem</i> 'womb'	<i>ḥōr</i> 'hole, vagina' ^h <i>reḥem</i> 'womb'
	LBH2 "poetic"	Post-biblical
♂	<i>yād</i> 'hand; penis' ⁱ <i>bāšār</i> 'flesh; penis' <i>zirmā</i> 'organ; semen flow' ^j	' <i>ēber</i> 'limb; penis' ^k

^a Narrative JE and P, Dtr, etc.

^b A technical set covering the Book of the Covenant (Exod. 20:22-23:19), the minor Book of the Covenant (Exod. 34:10-26), the Deuteronomic Code (Deut. 12-26) and Cursing Liturgy (Deut. 27:14-26), the two Decalogues (Exod. 20; Deut. 5), and Leviticus. Zatelli (1995) does not include P legislation in Numbers: so I add the legal provisions such as Num. 5:11-31.

^c זרע *zera*: Orlinsky (1944:39, n.26) argues against BDB 282c 'semen'; however, its use at Gen. 38:9a [J] is polysemous, both 'semen' and 'offspring'.

^d עדנה *ednā*: Gen. 18:12; BDB 726, hapacious form; Alter (1996:79).

^e ירך *yārēk* '♀ genitals': Num. 5:31 [P]; cf. Frymer-Kensky (1984:19-20).

^f ABH includes only poetic texts such as Gen. 49.

^g מקל *maqāl* Hos. 4:12; 'membrum virile' Ginsberg (1967:74-75); likewise עץ *ēs* Hos. 4:12.

^h חור *ḥōr* SoS 5:4; per Arbeitman (1980:83).

ⁱ יד *yād* Isa. 57: 8, 10; cf. DCH 3:82, 94; Arbeitman (1980:82-83).

^j זרמה *zirmā* Ezek. 21:37; cf. HALAT 'phallus'; Greenberg (1997:480) 'effusion (of semen)'.

^k אבר *ēber*, cf. Arbeitman (1980:84).

**Table 1.1b: Sexual Anatomy and Physiology
by Biblical "Source"**

	JE	D
♂	zera' 'seed; semen' ḥēq 'lap' yārēk 'thigh; genitals' 'erwā 'nakedness; pudenda' 'orlā 'foreskin'	'ōn 'manly vigor' ḥēq 'lap' m'būšīm 'private parts' 'erwā 'nakedness (fig.)'
♀	derek nāšīm 'way of women' 'ednā 'sexual delight; vaginal moistness' reḥem 'womb'	
	P	H
♂	bāšār 'flesh; penis' š'kōbet 'penis' šikbat-zera' 'semen' 'erwā 'nakedness; pudenda'	'ešek 'testicle' š'kōbet 'penis' šikbat-zera' 'semen' 'orlā 'foreskin'
♀	dāwā 'menstruous' reḥem 'womb'	dāwā 'menstruous'
♂ ♀	yārēk 'thigh; ♂ ♀ genitals'	'erwā 'nakedness; ♂ ♀ pudenda'

**Table 1.2a: BB Betrothal and Marriage Lexica
by Functional Language**

	BH1: "narrative"	BH4: "legal/cultic"
Marriage:		
Betrothal	<i>dbr</i> 'propose'	' <i>rā</i> 'betroth' <i>b'tūlā</i> 'virgin' <i>b'tūlfm</i> 'tokens of virginity' <i>hrp</i> 'assign' <i>y'd</i> 'assign or designate a concubine' → <i>yd'</i> <i>mhr</i> 'pay brideprice'
Marital State	<i>mōhar</i> 'brideprice' <i>ntn</i> 'give ♀' <i>šillūhfm</i> 'dowry' <i>b'l</i> 'possess as wife' <i>hyh l'iššā</i> 'become wife' <i>htn</i> '(inter)marry' <i>lqh</i> 'take (wife)' > {LBH1: <i>nš</i> ' 'take (as wife)'} <i>pflegeš</i> '2ndary wife' <i>š'nū'ā</i> 'hated co-wife' Conception <i>ntn-zera</i> 'give offspring'	<i>mōhar</i> 'brideprice' <i>b'l</i> 'possess as wife' <i>hyh l'iššā</i> 'become wife' <i>hōtenet</i> 'mother- in-law' <i>lqh</i> 'take (wife)' <i>ybm</i> 'do levirate' <i>yābām</i> 'levir= husband's brother' <i>ntn-zera</i> 'lh'byr <i>lmlk</i> 'give seed to pass to <i>mōlek</i> (fig.)' Post-Marital ' <i>almānā</i> 'widow' <i>grš</i> 'divorce' <i>g'rūšā</i> 'divorcee' <i>śn</i> 'hate' <i>hašš'nf'ā</i> 'the hated (wife)' <i>šlh</i> 'send away', divorce'
Conception		
Post-Marital		

Table 1.2b: BH Betrothal and Marriage Lexica by "Source"

	JE	D
Marriage: Betrothal Marital State Conception Post-Marital	'rš 'betroth' b'tûlâ 'virgin' y'd 'assign or designate a concubine' → yd' mhr 'pay brideprice' ntn 'give ♀' šillûhfm 'dowry' b'l 'possess as wife' ba'al 'husband' hyh l'iššâ 'become wife' ybm 'do levirate' yābām 'levir= husband's brother' htn ' (inter)marry' hātān 'bridegroom; son-in-law' hōtēn 'father-in-law' lqh 'take (wife)' pflgeš '2ndary wife' š'nû'ā 'hated cowife' ntn-zera' 'give offspring' 'almānā 'widow' grš 'drive away' šlh 'send away'	'rš 'betroth' b'tûlâ 'virgin' b'tûlfm 'tokens of virginity' b'l 'possess as wife' b'ulat-ba'al 'husband's wife' hyh l'iššâ 'become wife' ybm 'do levirate' yābām 'levir= husband's brother' hōtenet 'mother-in-law' lqh 'take (wife)' 'almānā 'widow' aēper k'rftut 'bill of divorce' šn' 'hate' šlh 'send away, divorce'
	P	H
Betrothal Marital State Conception - Fig. Misuse Post-Marital	'almānā 'widow' g'rûšā 'divorcee'	b'tûlâ 'virgin' hrp 'assign' lqh 'take (wife)' ntn zr' lh'byr lmlk (Fig.) 'almānā 'widow' g'rûšā 'divorcee'

Table 1.3a: BH Sexual Lexica by Functional Language

	BH1: "narrative"	BH4: "legal/cultic"
Legitimate Sex		<i>bw' 'l-</i> 'go in to (first time)'
Legitimate and Illegeitimate Sex	<i>bw' 'l-</i> 'go in to (first time)' <i>yd' 'know'</i> <i>lqh' 'take'</i> <i>shq' 'play'</i> <i>škb' 't-/m-</i> 'sleep with'	<i>lqh' 'take'</i> <i>qrb' 'approach;</i> encroach' <i>škb' 't-</i> 'sleep with'
Forbidden Sex Adultery & Fornication Rape Incest Bestiality	<i>b'l' ' (wrongly)</i> possess' <i>hyh' 'm-</i> 'be with' <i>znh' 'fornicate'</i> <i>zôñâ' 'prostitute'</i> <i>ng' 'touch'</i> <i>pth' 'seduce'</i> <i>qēdēšâ</i> 'prostitute' <i>qrb' 'approach'</i> 'nh' 'abuse'	<i>b'l' ' (wrongly)</i> possess' <i>znh' 'fornicate'</i> <i>lqh' 'take</i> (forbidden wife)' <i>m'l' 'break faith'</i> <i>n'p' 'commit</i> adultery' <i>pth' 'seduce'</i> <i>šth' 'go astray'</i> <i>'nh' 'abuse'</i> <i>h̄zq' 'seize'</i> <i>tpš' 'force'</i> <i>glh' 'rwh' 'uncover</i> nakedness' <i>'md' 'stand'</i> <i>qrb' 'approach'</i> <i>rb' II. 'lie down'</i>
	BH2 "poetic"	LBH2/3 "poetic"
Forbidden Sex Adultery & Fornication	<i>grr/gdd</i> 'fornicate' <i>pth' 'seduce'</i> <i>šgl' 'violate</i> (obscene)'	<i>t̄hn' 'grind'</i> <i>'bd (?) 'serve'</i> <i>pth' 'seduce'</i> <i>šgl' 'violate</i> (obscene)'

Table 1.3b: BH Sexual Lexica by "Soures"

	JE	D
Legitimate Sex	bw' '1- 'go in to (first time)' yd' 'know' lqh 'take' shq 'play' škb 't-/m- 'sleep with'	bw' '1- 'go in to (first time)' lqh 'take' qrb 'approach' škb 'm- 'sleep with'
Forbidden Sex	hyh 'm- 'be with' znh 'fornicate' zōnā 'prostitute' tm' 'become unclean' yd' 'know' lqh 'take' ng' 'touch' 'nh 'abuse' pth 'seduce' qšdešā 'prostitute' qrb 'approach'	b'l 'remarry (former wife)' znh 'fornicate' hzq 'seize' 'nh 'abuse' tpš 'force'
	P	H
Legitimate Sex	yd' 'know' škb 't 'sleep with'	lqh 'take'
Forbidden Sex	m'l 'break faith' šth 'go astray' tpš 'force'	glh 'rwh 'uncover nakedness' znh 'fornicate' lqh 'take' n'p 'commit adultery' 'md 'stand' qrb 'encroach' rb' II. 'lie down'

**Table 1.4a Terms of Evaluation by
Functional Language**

	BH1 history/narr.	BH4 legal/cultic
Evaluative terms	ḥṭ' 'sin' ṭm' 'become unclean' n ^o bālā 'foolish thing' ḥārā'ā hagg ^o dōlā 'the great evil'	zimma 'lewdness' ḥṭ' 'sin' ḥll 'profane' ṭm' 'become unclean' ma'al 'sacrilege' n ^o bālā 'foolish thing' niddā 'impurity' ra' 'evil' tebel 'confusion' tō'ebā 'abhorrence'

Table 1.4b Terms of Evaluation by Source

	JE	D
Evaluative terms	ḥṭ' 'sin' ṭm' 'become unclean' n ^o bālā 'foolish thing' ḥārā'ā hagg ^o dōlā 'the great evil'	n ^o bālā 'foolish thing' ra' 'evil'
	P	H
Evaluative terms	ḥll 'profane' ṭm' 'become unclean' ma'al 'sacrilege' niddā 'impurity'	zimma 'lewdness' ḥṭ' 'sin' ḥll 'profane' ṭm' 'become unclean' niddā 'impurity' tebel 'confusion' tō'ebā 'abhorrence'

b. Problematisations

Are notions of "sexuality" historically subordinate to terms for sexual organs or behavior? Just the opposite (HoS 1:57). While language speakers may use the body to map sexual possibilities and generate genera of sexual behavior, sexuality itself is culturally constructed. Taxonomies of "sexuality" are elaborated in response to felt "problems." Thus we could speak of the four major nineteenth century problematizations of sexuality: women's sexual hysteria, onanism, fetishism, and interrupted coitus (HoS 1:154); or discuss the sexual anxiety themes of ancient Greek culture: sex as a costly yet irrepressible act bringing harm to body and health; the relations of men and women as a contest that impinges on the right preoccupation with obtaining descendants (HoS 2:137-38).

Foucault argues that the "proper task of a history of thought is: to define the conditions in which human beings 'problematize' what they are, what they do, and the world in which they live" (HoS 2:27). His category 'history of thought' is really metahistorical. Distinct from the history of ideas (for him, the analysis of 'systems of representations') and from a history of 'mentalities' ('attitudes and types of actions [schémas de comportement]'), "thought ... is what allows one to step back from the way of acting or reacting, to present it to oneself as an object of thought and to question it as to its meanings, its conditions, and its goals"

(1994:117).

For 'thought' to examine a behavior, something(s) must have made the behavior "uncertain," defamiliarized it, or "provoked a certain number of [social, economic, or political] difficulties around it" (117). Thought as 'problematization' develops "a given into a question" and transforms "difficulties into problems." When 'thought' intervenes, "it doesn't assume a unique form that is the direct result or the necessary expression of these difficulties" (118). Rather diverse cultural solutions might result from a specific problematization (119).

Thus, for Foucault, this 'history of thought' attempts to reconstruct the questions asked that precipitate problems. It is an archaeology of questions. To discover the questions, one works backward from the different (and even divergent) solutions proposed (in law and literature, art and religion). This recovery of a genealogy of 'thought' allows one to envision how solutions to a problem have been constructed and how different solutions stem from a specific problematization (119).

Problematic sexual acts are not just those forbidden by law but also those permitted, even though reprehended. For the Greeks, sex between a male adult and a post-pubescent teenage boy was not forbidden. Yet it became problematized from the perspective of one living a "beautiful life." A philosopher might love a boy but his abstention from sexual relations with

the boy was admired. Thus one might abstain from certain permitted sexual relations for aesthetic reasons. As Foucault notes, the sounding of such a theme had a historical destiny far beyond Greek culture (HoS 2:93).

The evidence for the problematization of this Greek sexual behavior is found not only in legal formulations but also in speeches, ancient dream analyses, epigrams, poems, and philosophical discourses. Should we then be surprised if "law, anecdote, and literature give us not only differing but conflicting views of [sexual] reality" (Richlin 1993:572)?

If we could speak of a holistic sexual world view (but we cannot) such a "whole" would neither be static nor simple. Bible encyclopedists and their ilk commonly reduce the biblical view of sex to one harmonic system.²⁵ But to the degree the Bible represents a set of documents assembled, edited, even rewritten on occasion, we should expect a train of development. That is, notions of sexuality should follow trajectories -- reveal a sequence of sexual development. Yet even this view is too simple implying one view of sexuality per era. To discover the views and dissents of an epoch, we immediately face the problem of texts produced for and by political and religious elites. We may learn from them (some) of their views, but how can we ever know the views of the

²⁵ Baab *IDB* (1962); Cohn *EJ* (1971); Frymer-Kensky *ABD* (1992); Jakobovits *EJ* (1971); Taber *IDBSup.* (1976). Goodfriend *ABD* (1992) is less guilty of harmonizing. Some recent writers have stressed the differences in sexual views between the sources, e.g., Ellens (1998).

common people? Here comparativism raises its head and suggests reference to ethnographies, folklore compendia, and sociological studies. We can gain a sense of human possibilities -- the menu perhaps from which Israel and Hatti-land made their choices.

Thus the relations of "sex" to "sexuality" are not static but form "matrices of transformation" (HoS 1:99). These matrices carry trace elements of past views into the present and give us a connection to our "sexual" past. But likewise, neither are our present constructions of sexuality just the same as what the ancients meant. In the contemporary West we might speak of hetero- and homosexuality as dividing the sexual world in two. (Some may add notions of bisexuality and transgenderism. Already the model drifts into complexity). But these constructs seem partially alien to the ancient world. EGO in the fifth century BCE Greek world might have relations with his wife; with his *erōmenos* or boy; and with his male or female slave all legally and acceptably. We might call this "bisexual" except that relations between two adult freeborn males was frowned upon.

While the method followed here involves a close reading of "texts," these readings do not lead to the "objective fact" of indisputable interpretation. Texts are squirrely. They squirm away from your grasp. So I unrepentantly acknowledge the burial of logical positivism here. Rather, I hope to offer a "construction" of the texts that has explanatory power.

Like Foucault I've come to break with the notion that sexuality was or is a constant -- that it is a "historically singular experience" (HoS 2:4). With him, I undertake a genealogy, an archaeology, of the biblical and Hittite knowledge of sexuality. This began as a history based on interdictions -- those of the biblical Holiness Code in contrast to the Hittite Laws with some reference to other ancient "codes." But with Foucault, I've found the study break out of its bounds: "interdiction is one thing, the moral problematization is another" (HoS 2:10).

c. Biblical Problematisations

If we identify the problematizations of the pentateuchal sources, using the rough rule of amount of ink spilled on codex, distinctions emerge. Bestiality takes the initial position in Genesis 2-3. All the business of picking the proper mate involves the contemplation of other creatures as possible mates. The elaborate exercise leads to the rejection of all paraded animals as mates and to the creation of woman.

Another problematic pericope, viewed perhaps as a contributing cause to the Flood, is the copulation between the sons of God and the daughters of men in Gen. 6:1-4. This sex with numinal beings leads to the birth of the *nēpīlm* 'fallen ones(?)'. However, it is not only procreative sex that is condemned. In the subsequent incident at Sodom (Gen. 19), where the men of the city contemplate a gang rape of the male-identified angelic beings, same-sex contact with the numinous

is also rejected.

Following the Flood -- after Noah plants his vine, makes his own Garden, and becomes inebriated -- his son Ham views his nakedness (Gen. 9:20-27). Whether he gazes erotically, attempts a sexual act, castrates his father, or mocks his father's genitalia to his brothers, the text brackets some kind of male-initiated incest or sexual contempt. Its textual position, at the new beginning, at the new "creation," marks its importance as a sexual problem, the sexual corruption of the male heir.

After the primeval history, we find a series of stories involving attempted adultery with the Patriarch's wife, Abram's Sarai with Pharaoh (Gen. 12) and Abraham's Sarah with Abimelech (Gen. 20); Isaac's Rebekah at risk (Gen. 26). These highlight the common ANE heritage of adultery as forbidden and yet presents simultaneously the puzzle of Sarah's and Rebekah's familial relationship to their husbands. They are half-sisters and cousins. Why isn't incest with female consanguines a problem?

What is a problem is incest with an affine. Reuben goes up to the bed of his father, that is to his father's concubine's bed, his stepmother's (Gen. 35:22). This incest does not lead to his death, but to his disinheritance (Gen. 49:4).

Another sexual "problem" of the Genesis J-source, is the rape of Dinah (Gen. 34). While this event may match

contemporary definitions of rape, it seems a problem to the characters for another reason -- she loses her virginity and is treated as a harlot. But harlotry itself seems accepted though socially suspect, as the story of Tamar and Judah in Gen. 39 suggests. Indeed, Jacob rebukes his sons for an overreaction concerning Dinah, and later disinherits the ringleaders, Simeon and Levi (Gen. 49:5-7).

A final problem for J: Can a slave refuse sexual relations with his mistress as Joseph with Potiphar's wife (Gen. 39)? Is a male slave like a slave woman, without any say about his own body (just as Hagar who is given to Abraham by Sarah)? Or does a slave owe something to God first?

If we collect these, JE seems worried by bestiality, numinal sex, a son-initiated sexual act, with or against the father, homosexual or violent (in Ham's case), incest with the stepmother (in Reuben's case), adultery, loss of a sister's virginity, and the control of a male Israelite slave over his own sexuality. It does not problematize polygamy, prostitution, or incest (beyond Ego with father or stepmother).

While the law codes do incorporate some of these concerns, they do not limit their field of interest to the problems of the narratives. The Decalogue does include a rule about adultery. The Covenant Code [CC] does offer a law against bestiality (Exod. 22:18) and the seduction of virgins (22:15-16). But what exercises CC are the issues that surround

the marriages of slaves (Exod. 21:2-11). CC defends the right of a slave to stay with his wife: If he brought her into slavery he can take her out; If he received her from the master, he can stay in the master's household. Likewise, the slave-woman who no longer pleases her master (as wife or son's bride) has a right to maintenance or freedom: He must let her be redeemed; or he must provide for her; or he must let her go free (Exod. 21:7-11; Paul 1969).

P, on the other hand, concerns itself with ritual impurity resulting from semen and menstrual blood. Menstrual blood pollutes both partners in intercourse (Lev. 15:18). Semen, pollutes the emitter whether intercourse transpires or not (Lev. 15:16).

In H, however, we have an extravagant permutation of rules about incest (Lev. 18:6-16, 22).²⁶ Not only this, H is concerned about the general situation of a man taking any two women related by blood (Lev. 18:17-18) and two blood-related men taking the same woman (Lev. 18:8, 14-16; 21:14) -- "two-women" and "two-men" rules.

H raises entirely new issues: Why does it stress the male genitals in its adultery rule (18:20)? What, after all, is "passing seed to mōlek" (18:21)? Why is H concerned with male-male incest (18:6-7, 14, 22)? Or specifying female-initiated

²⁶ As compared to D, which picks up the theme of stepmother incest (Deut. 23:1) alone, though the Deuteronomic cursing liturgy speaks to incest with the stepmother (27:20), as well as paternal and maternal (half)-sisters (27:22), and the mother-in-law (27:23).

bestiality (18:23)? Why does H punish relations with the *niddā* by *kārēt* (20:18), something P resolves by washing, laundering, and waiting till sundown? Indeed, all of the penalties of Lev. 20 move the sexual crimes away from vendetta justice or punishment by the *paterfamilias* to public or divine justice. These questions lead us to the heart of this study.

H wrestles with five other sexual problems: slave sexual relations (19:20-22); the father's prostituting his daughter (19:29); restrictions on who the high priest and the priestly class can marry (21:7, 14-15); the *zēnūt* of the priest's daughter (21:9); and the *mūm* of damage to the priest's genitalia (Lev. 21:20-21).

d. Problems of Genre and Source

When we speak of the "problem" of these archaic stories, we raise the issue of the interrelatedness of the "world" of the text with the social world behind the text. Does the text draw from a contemporaneous social world, remember or imagine an earlier world, or generate social details from the advance of plot, the needs of characterization, or other strictly literary concerns?

If we reject the anti-literary fundamentalism of James Kugel, that is, there is nothing more here than a "faithful and naive recording" (1981:303), neither can we simply unearth the social world behind the text as if the text *qua* text exerts no influence (Coleman 1999:125-26). Why? The text's framing, its inter- and intratextual allusions, its

polyvocality, and its irony, together illuminate and conceal the presentation of such a "world." Alter takes this a step further. Biblical writers "exercised a great deal of shaping power over the[ir] materials" specifying narrative detail and inventing dialogue (1981:41). Here we have an antipode to Kugel. Biblical narrative becomes an "instance of the birth of fiction" (42).

Thus our question should become "how rather than whether the literary coexists with the social..." (Sternberg 1987:35, emphasis mine). On the one hand, can one go looking for a social world ignoring the constraints of the text? On the other, can we say there are no elements of the social world that shape the imagined landscape? The text controls our excavation of its "world"; the "world" constrains the text.

David Daube offers us a methodological pathway through these worlds. Untangling the interrelatedness of biblical law and narrative, Daube argues that a "law handed down to us in late collections may perfectly well underlie early narratives" just as Plautus may allude to a legal provision "the proper text of which appears for the first time in Gaius," a second cent. CE jurist (1949:89).

To establish such an interrelation, we first ask, does the narrative passage have a legal ethos? In particular, does it appear to quote a law, or a sentencing formula? Does the situation reject punishment under particular circumstances, implying that under other conditions punishment would prevail?

If our palate taste any legal flavor, how piquant is it? Is there some critical mass of linguistic parallels (unusual phrases repeated, *Leitwörter* or other repeated words and phrases) or *topoi* (similar penalties, or parallel story and case elements)?

With this further caveat we may proceed: such parallels between a late law and an early narrative need not mean that a written or customary law actually existed at a certain date in Israel. (Cuneiform parallels can suggest that neighbors thought similar thoughts -- that certain *topoi* were available to Israel's legal palette). But the legist as a reader may assume a law did exist, and make it the occasion for a legal "midrash." In this way our own reading may recapitulate the ontogeny of particular laws.

Of course, all this impinges on the question of whether the biblical "codes" are precisely "law." For the Torah, like the novel, seems to absorb all other genres. It maintains a skeletal narrative frame (e.g., Lev. 17:1-2 recapitulated at each chapter head) which occasionally bursts into full flower (cp. 24). Nested inside the narrative, it can also place a second sermonic frame (Lev. 18:3-5, 24-30). It does make use of apodictic and casuistic legal formulations, but adds lists (Lev. 27:3-8 for the redemption of vowed persons) and poems (Lev. 26:4-13; 14ff). The *ḥuqqōt* and *mišwōt* 'inscribed commands and laws' (Lev. 26:3) are also *tōrōt* 'teachings', and teaching snags all genres into its web of pedagogy.

Sources. In general, I follow the designations of Martin Noth (1972:17-36), with a bow to Holzinger (1893), for the Yahwist [J], Elohist [E] and priestly narrative [P^a] passages.²⁷ For the Holiness School [H] and the Priestly Writer(s) [P], I follow Milgrom (1991), with an occasional bow to Knohl (1987; 1995). While all of these accounts of the literary "sources" fray at the edges, they do describe what one might call 'complexes of interest'.

In particular, there is now widespread agnosticism about J -- the center does not hold. The main components of primeval history, patriarchal history, and the exodus story pull apart into autonomous units. Some scholars now assign the Joseph Cycle (Gen. 37-50) and other elements of Genesis post-exilic dates.²⁸ Likewise, agnosticism about the existence of H as a separate entity from P has also grown.²⁹ However, the burial

²⁷ Cf. Lohfink (1994:145) for a recent assessment of P^a.

²⁸ Pury (ABD 6:1018); Blenkinsopp (1995:12-15), who himself accedes to late-datedness, summarizes the discussion.

²⁹ Hartley (1992:251-260), exhaustively recounting the history of research on the Holiness Code, throws his weight behind Sun's conclusion (1989; 1992) that there is no independent, self-contained document "H". Sun himself builds upon Wagner's (1974) structural analysis that suggests H is really part of a larger section, Exod. 25-Lev. 26. When considered together with H's "fragmented sources," Wagner believed H "fades away." Wagner himself had built on Elliger's (1966:16) denial that the Holiness Code ever had an independent existence. Most recently Propp (1996:477) and Rendtorff (1996:27-29) seem to accept these conclusions without feeling the need to argue them. But Hartley acknowledges that Knohl's work (1987; 1995) has yet to be answered adequately.

Here briefly, are the arguments against and for the existence of H:

of H is premature as the arguments of Milgrom and Knohl have yet to be adequately answered. These are too lengthy and detailed to be repeated here, but are preappoed. In particular, I accept their hypotheaia that H is the editor of P.

Following the earlier work of Kaufmann (1960), both Knohl and Milgrom date H and P as pre-exilic and pre-Deuteronomic at least in their fundament.³⁰ The earlier consensus, that P was post-exilic (and redacted in the days of Ezra) enduring from the days of Wellhausen, had already begun to erode in the 1950's when Eissfeldt could argue that P had affinities with Second Isaiah.³¹ And although Mowinckel (1964:43-47) attempted to answer the first arguments of Kaufmann (Mowinckel, for instance, saw the tent-of-meeting as a retrojection of the Temple), the arguments for P's pre-exilic

Against: (1) Nothing unites the various internally congruent blocks, Lev. 18-20, 21-22, 23 + 25; and its inverse proposition, (2) H cannot be homogeneous because cps. 17, 24, and 26 do not fit in. (3) None have demonstrated the existence of a "redactional layer that goes through the whole corpus." (4) The language of H is really very much like the language of P; and (5) the laws show a lack of order, some rules even given twice with nearly identical wording (Hartley 1992; Joosten 1996:5-6).

For: (1) Like the other biblical "codes" (B, D, P and Ezek. 40-48), H begins with laws about the "place of sacrifice" (Lev. 17). (2) Like D it closes with blessings and curaes (Lev. 26). (3) Parenetic explanations and motivational distinguish Lev. 17-26 from the rest of the Priestly corpus. (4) H differs from P in lexicon, style, and theology (Knohl 1995; Joosten 1996:6-7).

³⁰ To whom we can add Zevit (1982) and his nice summary of overt Deuteronomic references to P.

³¹ Cited by Kapelrud (1964:59).

dating have yet to be systematically refuted.³²

The relative age and position of one source to another is relevant here to the question: "Who reads whom?" For indeed, the sources appear to read each other. They expand or reduce, exegete or misprise. One falls out as geno- and another as pheno-text, the read and the reading. D seems to read H (and P) and both seem to read from JE³³.

The direction of reading is not stable, but varies in some measure with the assumptions the reader brings to the text. Milgrom, for instance, builds on the earlier discovery of D.Z. Hoffmann that when Deut. quotes itself it uses a participial construction **אֲשֶׁר אֲנִי מצוה** "that which I command" (e.g., Deut. 4:2).³⁴ When Deut. quotes the Tetrateuch, it uses the perfective **כִּאֲשֶׁר צִוָּה\נִשְׁכַּח דָּבָר** "which/as he commanded/

³² This, despite the summary attempt of Blenkinsopp (1996) who surveys the arguments against Kaufmann's position and those of some of his disciples. He gives scant attention to the arguments of Milgrom and Knohl.

³³ Contra Schwartz (1998:12) who asserts that "the priestly document, while admittedly later than J and E, was composed by writers who had no literary familiarity with them." For this argument he leans on Haran who, on this point, offers the support of a broken reed: "There may be in P a certain reaction to the preceding sources, that is, J and E (which indeed were anterior to P) and perhaps P could be explained as a dialectic response to views characterizing those sources, but P certainly contains no reactions whatsoever to D ..." (1981:329; 1983); and see my arguments *infra*, that, precisely, H contains dialectic responses to J.

³⁴ Hoffmann (1913:168, s.v. Deut. 12:21 citing 12:15); cf. Fishbane (1985:164).

swore/promised" (e.g., Deut. 24:8 to Lev. 13).³⁵ Sun imagines P [=H] reading D, Lev. 17 presupposing a knowledge of Deut. 12 (Hartley 1992:258), a position that accepts Wellhausen's ordering of the putative sources.³⁶ The constant here is the reading of one text by another, i.e., the notion of intertextuality.

e. Intertextuality

Intertextuality as theory and mode of analysis finds its origins in Bakhtin's discussion of *dialogičnost* 'dialogism' by which he means an author enters into dialogue with other texts and the world beyond the text-under-production (Wolde 1994:162; Todorov 1995:60-74). Kristeva's adoption and systematization of his ideas led to her coinage of 'intertextuality'.³⁷

Intertextuality in its most general sense conceives of a "collective text" that includes the words of all authors: everything is text; everything is intertext. However, at the level that "intertextuality is everything," it is hardly available as a tool of analysis. So we must pass to

³⁵ "Deuteronomy's 'cf.'," Milgrom (1976b:3); cf. Zevit (1982:502); Fishbane (1985:164).

³⁶ But Lev. 17:3-7 cannot be reconciled with Deut. 12 (cf. Schwartz 1996:38-40). Among the reasons: D permits profane slaughter and requires all sacrifice at the central sanctuary. For H, profane slaughter ceases to exist as a category. Israelites must bring all sacrifice to the sanctuary, but multiple sanctuaries are not forbidden (per Milgrom Forth. 2000a).

³⁷ Kristeva (1969:146).

intertextuality in a stricter sense. That specific sense confines its use "to demonstrable relations between texts" based primarily on repetitions of (parts of) sentences or larger textual units (Wolde 1994:165).³⁸

If one applies this notion to biblical studies, "there are two possible, contradictory versions": one that focuses on "text production" and a diachronic ordering of "sources" with a limited number of possible relations; or one that focuses on "text reception" and a synchronic field of texts allowing an unlimited number of possible interrelations (Wolde 165). Eco argues that "an artistic text contains[s], among its major analyzable properties, certain structural devices that encourage and elicit interpretive choices" (1990:50). Such allow us to limit the "semiosis of infinite play" (Eco 1990:34), and so restrict the intertextual palette of all possible allusion to a smaller through a descriptive poetics.

What techniques portend connection? Ben-Porat's notion of the "marker of allusion"³⁹ can include Zeidel's Rule of

³⁸ Bakhtin's (1986) notion of the "utterance" as the basic unit -- not the sentence -- helps us. An "utterance" includes its genre, boundaries, addressivity, and expressive intonations.

³⁹ "Literary illusion is a device for the simultaneous activation of two texts. The activation is achieved through the manipulation of a *special signal*, a sign In a literary allusion ... the ... sign points towards another text ... in which the symbol constituting the sign may acquire different denotation(s). These particular denotations ... of the *evoked text*, are independent of ... the world of the *alluding text*. The built in *directional signal*, is often called the allusion; but in order not to confuse it with the device which it triggers [= the device of allusion], I propose

inversion in quotation,⁴⁰ or Buber and Roenzweig's *Leitwortstil* (Buber 1962). Fishbane's (1985) discussion of legal "inner-biblical exegesis"⁴¹ also considers the intra-textual, self-citation within a "source," inscribed by phrases such as וְכַדִּיבְרָה 'according to regulation'.⁴² Aside from such explicit marking, we have texts that reuse legal material, in Fishbane's phrase, "without identification." This unmarked material is simply "marked" in other ways: by ungrammatical usages,⁴³ by recombinations of *topoi*,⁴⁴ and by paraphrases of other cases.⁴⁵ To this we can add *inclusio* (Talmon 1975:362), the "breakup pattern" found from splitting a hendiadys or other word pair (338), or a chiasm (358-59). This taxonomy of possible intertextual "markers of allusion" is not exhaustive, but recounts some of those preferred by H and H's tradent Ezekiel.

to use the term 'marker' for the latter [= the directional signal]. The marker is always identifiable as an element or pattern belonging to another independent text" (Ben-Porat 1976:107-108, emphasis mine).

⁴⁰ Zeidel (1955-56:150-51; 1978); Talmon (1975:358, 361); "rediscovered" by Beentjes (1996).

⁴¹ Fishbane does not give attention to the legal exegesis of narrative, one of the interests of this study.

⁴² E.g., Lev. 5:10 of Lev. 4 [P], Fishbane (1985:209).

⁴³ E.g. singular pronouns recalling plural antecedents; Fishbane (1985:183); Wolde (1994:183); Savran (1994:50).

⁴⁴ E.g., Exod. 22:30 + 23:19 = Deut. 14:21; Fishbane (1985:228-229).

⁴⁵ Fishbane (1985:225).

A constellation of markers, of course, adds to the probability that one text refers to another. In this regard, Hays (1989:29-31) offers his seven "intertextual principles" for gauging alleged relations: (1) Is the prior text available to the author? (2) What is the density or volume of repetition? (3) Are there multiple recurrences of the same prior text? (4) Does the echo have thematic coherence with the cited text? (5) Would the (implied) author's implied reader understand the allusion? (6) Have any other readers ever noticed the allusion before? (7) Does the proposed reading illuminate?

My intention, however, is not to use the theories of intertextuality as a "restrictive tool" to nail down "authorial intent" or "literary influence" (Aichele & Phillips 1995:7), even though I restrict its use as a methodology to tracing observable relations. Rather, my intent is to use the tracing of intertexts to expose conflicts and tensions -- the problematizations of sexuality -- as the texts transpose the biblical sexual system(s) from one domain to another.

f. Hittite-Israelite Comparisons

(Ezek. 16:3) ואמרת נה-אמר אדני ה- לירושלם
מכותיך ומלותיך מארץ הכנעני אביך האמרי ואמך חתית:
Thus says the Lord to Jerusalem: "Your origin and
your birth is from the land of the Canaanite; your
father, an Amorite; your mother, a Hittite."

The mention of Hittites in the Bible⁴⁶ fires the imagination to find connections between the two cultures. Maisler (Mazar 1930) and Forrer (1936: 1937) were perhaps the first of the moderns to take seriously possible linkages between Israel and Hatti. Forrer takes the name Hittite in ancient Israel as having two separate historical origins: people of Kurušamma who emigrated from northeastern Anatolia to Syrian territory subject to Egypt ca. 1353 BCE;⁴⁷ and the "Tabalians" in northern Syria (1937:115; cf. Hoffner 1969:29, n.5). However the biblical references to *bnê ḥēt* (Gen. 49:32) or *hahittî* (Gen. 49:29) probably do not refer to the aboriginal Hattians of Anatolia, nor to the mid third-millennium Indo-European invaders, but rather to the neo-Hittite refugees and rump princedoms that survived the demise of the Hittite Empire (Hoffner 1969:28).

Kempinski (1979), surveying the material remains of Anatolian cultures in Israel, finds artifacts dating as early as the Hittite Old Kingdom (30-43): two Hittite jugs in a Megiddo tomb (ca. 1650 BCE); hieroglyphic Luwian seals from the Late Bronze Age; Syro-Hittite ivories (furniture inlays);

⁴⁶ References include: Gen. 10:15; 23; 26:34; 27:46; 49:29, 30, 32; 50:13; Exod. 3:8, 17; 13:5; 23:23, 28; 33:2; 34:11; Num. 13:29; Josh. 1:4; 3:10; 9:1; 11:3; 12:8; Judg. 1:26; 1 Sam. 26:6; 2 Sam. 11:3, 6, 17, 21; 12:9-10; 23:39; 24:6; 1 Kgs. 9:20; 10:29; 2 Kgs. 7:6; Ezek. 16:3, 45; 2 Chr. 1:17, 8:7.

⁴⁷ But not Palestine, as Forrer thought; cf. Bryce (1998:129).

the Hazor lions similar to those at Hattuša;⁴⁸ a Hittite bulla at Tel Aphek;⁴⁹ a 13th cent. BCE Hittite krater at Khirbet Raddana (near Ramallah) with hollow piping and bulls' heads on the rim's everted lip similar to those from central Anatolia;⁵⁰ and Hittite-like jar burials⁵¹ at Kfar Yehoshua (Jezreel Valley)⁵² and Azor (near Tel Aviv).⁵³ Although the 14th cent. emigration of Hittites from Kurušamma to Egyptian-controlled territory (and possibly Egyptian-controlled Palestine) relies on literary evidence,⁵⁴ it is congruent with the Hittites' mid-second millennium diplomatic ties with neighboring kingdoms.⁵⁵

Recent archaeological finds offer some support to the

⁴⁸ Kempinski & Avi-Yonah (1978:69; Pl. 29). Lions and temple plans are alike at both Hazor and Alalakh showing "how far advanced was th[e] process of cultural symbiosis in the Syro-Palestinian region."

⁴⁹ The first bulla found south of the Hittite Empire is probably an *en route* find, originally attached to diplomatic correspondence; Singer (1977:186); Kempinski (1979:34, 36).

⁵⁰ The Raddana Bowl has structural characteristics similar to the İnandık and Eskiypar Vases (Callaway & Cooley 1971).

⁵¹ Mellink (1956:45-50); cp. HLS173b: "If a slave rebels against his owner, he shall go into a clay jar" (Roth 1997:234).

⁵² Druks (1966).

⁵³ Dothan (1975: 1:147).

⁵⁴ Mentioned in the "Deeds of Šuppiluliuma" (CTH 40) and the "Plague Prayers of Muršili II" (CTH 378, §§4-5; ANET 394-395).

⁵⁵ Attested by diplomatic correspondence and many treaties such as that between Hattušili III and Ramses II ca. 1269 BCE (CTH 91) and the Kurušamma treaty (CTH 134).

conjecture "that at the beginning of the 12th century, a stream of Hittite emigrants or refugees established the principality of Hamath in central Syria, while other Hittites continued on to Canaan."⁵⁶ A Hittite diaspora may then have occurred during the collapse of the Hittite New Kingdom (ca. 1180 BCE) precipitated either by the migration of the Sea-Peoples (Mazar 1981:78-79; 1986:42) or by the devastation of Hattuša by the Kaškean nomads (Houwink ten Cate ABD 3:221). Neo-Hittite states in northern Syria also carried on the Hittite traditions for five more centuries. With the discovery of the Neo-Hittite king Ku(n)zi-Tešub,⁵⁷ of the city-state of Carchemish, we now have a genealogical link between the kings of the Hittite Empire and the Neo-Hittite states (Hawkins 1988:101-4). Thus, either through the effects of a Hittite diaspora or through the survival of Hittite rump-states such as Carchemish, contacts with Israel could have developed. Within this context, David's diplomatic correspondence with Tō'ū (=Tuḫḫiya?), king of Hamath (1 Chr. 18:9-10), or the notice of Solomon's horse-trading with the neo-Hittite state Adana/Que and other "Hittites" (1 Kgs. 10:28-29), or the worry of the Arameans that "Hittite" armies had been hired as mercenaries (2 Kgs. 7:6) may well preserve historical

⁵⁶ Kempinski (1979:43); a theory first formulated by Mazar (1930:77-80).

⁵⁷ Son of Talmi-Tešub who was the great-great-great-grandson of Šuppiluliuma I. Talmi-Tešub was viceroy of Carchemish during the reign of Šuppiluliuma II, the last king of Hattuša (Bryce 1998:384-5).

memories.

While one can assert the possibility of culture contact by the results of archaeological and historical studies, examining cultural "residues" in texts offers another witness. Contrary to Hoffner's now dated view (1969:38), these residues are not "scanty."

Bikerman's (1950-51:143) notice of a similarity between several Hittite rituals (e.g., "Ritual of an Army in Retreat," CTH 426) and the biblical notion of "cutting a covenant" preceded Mendenhall's seminal study, *Law and Covenant in Israel and the Ancient Near East* (1954, 1955). Out of this beginning (and earlier work) a generation of comparative studies have flowered covering Biblical and Hittite law and instructions,⁵⁸ ritual,⁵⁹ historiography,⁶⁰ and philology.⁶¹

The Hittites themselves were cultural borrowers, freely taking the Old Babylonian cuneiform signs to write their Indo-European language, borrowing terminology from Akkadian, Sumerian and several other languages, as well as literary forms (cf. Mendenhall 1955:27). From the Hurrians, they took

⁵⁸ Greengus (1992), Grintz (1966), Lehmann (1953), McCarthy (1963), Milgrom (1970a; 1991), Otto (1993a), Segal (1983-84), Weinfeld (1973; 1993).

⁵⁹ Gane (1992), Hoffner (1966), Janowski (1993), McCarthy (1969; 1973); Moyer (1983), Weinfeld (1983; 1990), Wright (1984; 1986; 1993).

⁶⁰ Cancik (1976), Malamat (1955), Tsevat (1984), Wolf (1967).

⁶¹ Fronzaroli (1956), Hoffner (1967b, 1968), Rabin (1963), Rosén (1955).

myths, gods, names, and queens (Güterbock 1954). It may be, as Mendenhall wrote, that Hittite materials "simply happen to be the source from which we know customs which were to a large extent common property to many cultures" (1955:28, n.2).

From these things we know that Israelite-Hittite comparative studies must rest on one or another assumption. First, Israel had specific cultural contacts with Hittite refugee/colonists and Neo-Hittite kingdoms. As a result, Israel had occasion to borrow directly from (or better, dialogue with) their culture. Or second, Israel "dialogued" with the ancient Near Eastern cultural background from which the Hittites also borrowed and to which they contributed. The former we might call the "strong hypothesis" of Hittite cultural contributions to Israel; the latter, the "weak hypothesis."

Weinfeld (1983) argues a version of the "weak hypothesis" when he writes: "the formulation of the prescriptions in the Priestly Code are very similar to that of Hittite ones ... and seem therefore to have a common origin" (99). In particular he compares a festival offering at Karaḥna,

- (2) One (fattened) bull... seven lambs for the deity
... one goat for the protective god of Karaḥna ...
they shall offer for the weather god and put upon
it bread and groats ... and libate wine (CTH 681;
KUB 25.32 i 4-24).⁶²

with the offering for the day of shofar blasts:

- (3) One bull of the herd, one ram, and seven yearling

⁶² Dinçol & Darga (1969-70:100-103).

lambs ... the meal offering with them ... one goat
for a sin offering ... each with its libation ...
(Num. 29:2-6).

And similarly, from one of the Hittite cult inventories we
read,

- (4) For the Storm-god of Wattarwa the daily offering is
as follows: 1 handful of flour, 1 cup of beer;
(for) the two festivals, (i.e.) one festival of the
fall and one festival of the spring: 1 bull, 14
sheep, 5 PA(RĪSU of barley'), 4 *seshs* of flour, 4
vessels of low-grade beer, 10 vessels of beer; 1
ḫuppar-vessel of beer; (and) 3 *seshs* of spelt for
the *hars̄i*-vessel My Majesty instituted. The town
gives them. (CTH 509; KBo 2.1 ii 25-29).⁶³

Weinfeld compares this with the daily offering of fourteen
sheep throughout *Sukkoth* (100).⁶⁴ However Weinfeld's analysis
of both these cases does not make much of the differences
between these texts. He masks by an ellipsis the "ram" (Num.
29:2) and likewise the association of the libations with the
tāmīd and *hšṭṭā't*, not the festival offering (Num. 29:6).
These correspondences, such as they are, may support a "weak
hypothesis," but he goes on to assert a "strong hypothesis"
when he writes:

These similarities [he adduces others than those
I've quoted] can be explained, in my opinion, by
the fact that the Jerusalemite priesthood which
stands behind the composition of the Priestly Code
drew upon the cultic heritage of the pre-Israelite

⁶³ My translation slightly different from Carter (1962:54,
64).

⁶⁴ כִּנְשִׂים בְּנֵי-שָׁנָה 'yearling lambs', but not full-grown
sheep, UDU^{HI.A} (KBo 2.1 ii 27); cf. Num. 29:13, 17, 20, 23, 26,
29, 32. However, of the several inventories of supplies used
to celebrate spring and fall festivals in CTH 509, only that
for the Storm god of Wattarwa approximately matches the 'ōlā
in Numbers.

Jerusalem kingdom, which was of Hittite-Hurrian origin ... (102-103).

As to Weinfeld's thesis that pre-Israelite Jerusalem was Hittite-Hurrian, it is possible that the power elites were tinged with Hurrian civilization, or that the leaders spoke Hurrian. There is general agreement among scholars that the Jebusites of Jerusalem were non-Semitic.⁶⁵ To the degree that the upper classes were Hurrian,⁶⁶ they may also have been exposed to remnants of Hittite culture -- these two had achieved a kind of synthesis in the Syrian neo-Hittite kingdoms. Just as the Palace in these kingdoms spoke Luwian (a sister language to Hittite) and included leaders with Hurrian names, so Jerusalem may have reflected a similar sociological situation. There is no evidence that the neo-Hittites themselves controlled city-states farther south than Hamath. We are left with Ezekiel's record of a genealogical tradition: "Thus says the Lord to Jerusalem: ... 'your mother (was) a Hittite'" (16:3).

Weinfeld presents several more parallels between Hittite and Israelite festival practices.⁶⁷ He argues that the Hittite "festival of cutting the grape" and the "festival of

⁶⁵ Cf. Reed *ABD* 3:652-53.

⁶⁶ The position of an earlier generation of scholars that "Semitised Hurrians" populated Canaan was based on onomastic evidence. See Ginsberg & Maisler [Mazar] (1934) and Feller (1939).

⁶⁷ Weinfeld offers a score or so of cultural parallels between Israelite and Hittite religion.

the grain pile" should be compared with Hebrew *ḥag ḥā'āsip* (Exod. 23:16; Weinfeld 1983:122, n.143). Weinfeld compares elements of the Hittite AN.TAḪ.ŠUM^{AAA} festival with Sukkoth. Just as certain plant products are "taken" during Sukkoth (Lev. 23:40), so also is the AN.TAḪ.ŠUM plant, a crocus or lily, "taken" in the Hittite spring festival (120). Perhaps both are "carried" ceremonially as suggested in Jubilees 16:30-31. Moreover, "the great assemblies" of days nine, ten, and sixteen of the AN.TAḪ.ŠUM festival "parallel the solemn gathering [*'āseret*] attached to the main festivals in Israel (Lev. 23:36; Num. 29:35 comp. Deut. 16:8)" (119) by which he means Sukkoth and Matsoth. Further, the AN.TAḪ.ŠUM festival ends with the performance by the king of the "Rain Festival" reminiscent of the prayers for rain on *šēmēnī 'āseret* (119). The fourteenth and fifteenth days of the month are important in the priestly calendar (Lev. 23:5, 6, 34) and likewise in the Hittite AN.TAḪ.ŠUM. On the fourteenth day in the evening, a priest goes into the tarḫu-house. The next day the king follows and they sacrifice to the weather god. Their offerings consist of "meat and bread and libations" (118). In addition, Weinfeld also notes similarities between the "racing, mock fighting, eating and drinking" in Hittite festivals (especially the *purulli*-) and David's dancing before the ark (2 Sam. 6:5, 20f) and the joy mentioned in Deut.⁶⁰ (121-122). Weinfeld concludes that "the festival of Sukkot as described

⁶⁰ Deut. 12:12; 14:27; 16:11, 14.

in Lev. 23:40 [taking branches of trees] thus has its antecedents in Hittite and Ugaritic cultic feasts and is therefore to be seen as the true reflection of the old Israelite autumn festival" (121).

While Weinfeld's comparisons are suggestive and stimulating, they are too sanguine (See Table 1.5). He has not stressed the differences between those customs he compares. For instance, most of his comparands do not come from Hittite fall festivals. Weinfeld has felt comfortable pulling items that resonate with Israelite practice from anywhere in the Hittite festival corpus. Moreover, the plant products taken and ceremonially carried are different (crocus vs. branch). The great assemblies of the AN.TAH.ŠUM do not happen on its final day as do the 'Āseret of Sukkoth and Matsoth. Finally, Day 15 of the AN.TAH.ŠUM festival does not seem to have any correlation with the full moon as Day 15 of the first or seventh month does in Israel. While Weinfeld's methodology of extracting Hittite festival topoi from their contexts and comparing them with de-contextualized Israelite festival topoi has produced some resonances, it has not proven his "strong hypothesis."

Weinfeld also pursues similarities between Hittite substitution rituals and the Azazel ritual in Lev. 16:21 [P] on the Day of Purgations (113-114). Wright makes much of this, finding parallels of hand placement and the driving away of animals bearing pollution (1984). Yet here we come up against

the same conundrum: "deapite formal similarities with the Azazel rite ... the dissimilarities should not be overlooked" (Milgrom 1991:1075). In this regard, Gane (1992) limns a new methodological direction. He decomposes the Day of Purgations' ritual complex into its ritual syntagma. These he compares with like syntagma of certain Babylonian rituals and the ritual complexes of the fourth day of the Hittite Ninth Year Telipinu Festival. He concludes that his ritual units exhibit common "syntactic relations," that is, they show common "systems of nonsemantic logical relationships between hierarchically ordered ritual components" (2). Gane focuses on one aspect of context that Weinfeld overlooks: not the comparable "meaning" of *topoi* but rather the sequences and other structural relationships between ritual elements.

Cross-cultural comparisons of an isolated detail from one culture with an isolated detail from another offer little. Unfortunately, as seen above, one still finds this approach in Hittite-Israelite comparative studies.⁶⁹ Scattered coincidental similarities cannot prove lines of dependence or origin. However contrastive comparison, as a heuristic device, may profitably review similar phenomena in differing cultures and lay their "thick descriptions"⁷⁰ side by side. Observing differences leads to questions about the nature of difference and why it exists.

⁶⁹ See Wright (1984:1-12; 1993) for further critique.

⁷⁰ The phraae is from Geertz (1973).

**Table 1.5:
Weinfeld's Comparison
of Sukkoth with Hittite Festivals**

Israelite custom in Sukkoth	Compared to Hittite custom in		
	Spring faativala	Fall faativala	Other festivals
14 yearling lambs/day as part of 'ōlā	for Storm god of Wattarwa, 14 sheep	for Storm god of Wattarwa, 14 sheep	
ḥsg hā'āsip		"festival of the grain pile"	"festival of cutting the grape" in Hittite "summer"
Tree branches taken	crocus in AN.TAḤ.ŠUM		
'Āseret on Day 8	"great assembly" on days 9, 10, and 16 of AN.TAḤ.ŠUM		
Day 15 of month 7 = Day 1 of festival	Day 15 of AN.TAḤ.ŠUM is important		
Joy	purulli-featival		

1.3: Blood Sax: Lev. 18:19 and 20:18

(4) וְאִשָּׁה כַּנֹּדֶת טִמְאָתָהּ לֹא תִקְרַב לְנִלּוֹת עִרְוָתָהּ: (Lev. 18:19)
 w'el-'iṣṣā b'niddat ṭum'ātāh lō' tiqrab l'gallōt
 'erwātāh:

As for the woman in her menstrual impurity:⁷¹ Do not encroach on⁷² (her) to uncover her nakedness⁷³

⁷¹ כַּנֹּדֶת-טִמְאָתָהּ b'niddat-ṭum'ātāh 'in her menstrual impurity' stresses her tabooed condition; contrast with וְהָיָה כַּנֹּדֶת w'haddāwā b'niddātāh 'a menstruous woman in her menstruating' (Lev. 15:33 [P]) suggesting her "flow" as per mē-dāwā 'waters of menstruation' (Isa. 30:22 LXX); and contrast with the euphemistic kf derek nāṣfīm 'according to the way of women' (Gen. 31:35 [E]; cf. DCH 2:468d). Cf. also וְהָיָה.

נִדָּה niddā 'menstrual impurity (Lev. cps. 12, 15); impurity in general (e.g., 2 Chr. 29:5); lustration (e.g. Num. 19:9)' per Milgrom (1991:744-745); cf. Milgrom, Wright & Fabry in TDOT 9:232-235; 'bleeding, menstruation' for Lev. 18:19 following Elliger (1966) in HALAT⁷⁴ 2:263.

⁷² קָרַב q.r.b. 'approach' is a euphemism for sex (Milgrom Forth. 2000a). It does not precisely mean 'approach' in P and H, but rather something closer to 'encroach on' or 'infringe on', that is, implying actual physical contact (Milgrom 1970b:16-21).

⁷³ לְנִלּוֹת עִרְוָתָהּ l'gallōt 'erwātāh (pi'el) 'to uncover the nakedness', a euphemism for having sexual intercourse (Milgrom Forth. 2000a ad loc.; Zobel TDOT 2:479); 'to uncover, expose, reveal, disclose nakedness' DCH 2:348-352); 'to uncover the genitals' (Melcher 2000); cf. also the more idiomatic 'to sleep with' HALAT⁷⁵ 1:192).

As per Zobel, the most frequent object of the Pi'el of g.l.h. is עִרְוָה 'erwā 'nakedness, pudenda', but also חֲנִלּוֹת 'feet' (Ruth 3:4-7), שׁוֹק 'leg (i.e., calf)' (Isa. 47:2), נִשְׁכָּב 'bed' (Isa. 57:8), כִּנִּי 'skirt' (Deut. 23:1 (22:30), 27:20); שֹׁל 'skirt of robe' (Nah. 3:15; Jer. 13:22), נִבְלָה 'outrage, vile thing' (Hos. 2:12(10)); and away from the sexual realm, נִסְדּוֹת 'foundations' (e.g., 2 Sam. 22:16). The sexual contexts include: (1) incest (Lev. 18:6-18; 20:11, 17, 19-21 [H]; Deut. 23:1 [D]; 27:20 [Dtr.]; Ezek. 22:10); (2) anticipation of the levirate (Ruth 3:4-7); (3) relations with the niddā (Lev. 18:19, 20:18 [H]); (4) fornication (Hos. 2:12(10); Ezek. 16:36-37; 23:18 parallels z.n.h.); (5) idolatry as fornication (Isa. 57:8); and perhaps (6) rape (Ezek. 23:10, 29).

Uncovering the woman's מְקוֹר 'source' in Lev. 20:18 shares with the metaphors of uncovering city foundations (Mic. 1:6), or the foundations of the earth (2 Sam 22:16 = Ps. 18:16(15),

(i.e., have sexual relations).

We begin with a verse about women's power. A woman's menses has a (mildly) negative valence for the Priestly Writers.⁷⁴ She becomes טמא 'impure' for seven days (Lev. 15:19), a condition that (mostly) confines her to home or tent. But this very "condition," and the rules pertaining to her "cleansing" and re-entry into social relations, can subvert the male-dominated social order. Anyone who touches her is unclean until evening. Anything she lies on, or sits on, is unclean. Anyone who now touches her bed becomes unclean until evening (Lev. 15:20-23). Her liminal status gives her rest: from labor, from male touch, and from conjugal duties. She has the power to contaminate others.

Something of this power is felt in Genesis, at the first allusion to menses, where Rachel keeps her father at bay:

(5) ותאמר אל-אביה אל-יחור העיני אדני (Gen. 31:35a)
כי לוא אוכל לקום מפניך כי-דורך נשים לי
wattōmer 'el-'ābîhā 'al-yîḥar b"ênê 'ādōnî
kî lô' 'ûkal lāqûm mippāneykā kî-derek nāšîm lî

She said to her father: "Let not anger burn in my lord's eyes⁷⁵ because I cannot rise before you, for the way of women is upon me."

or the "gates of death" (Job 38:17), the sense of uncovering the fundament. Indeed, all of the objects of g.l.h. in sexual contexts are metonymies for the pudenda, one of the fundamentals of life.

⁷⁴ For the history of the interpretation of the valence of niddā, see Steinberg (1997).

⁷⁵ Or more idiomatically, "let not my lord be incensed" per Alter (1996:ad loc.).

She claims it is physically difficult for her to stand and hints that it is because of her flow. Whether true or ruse, she covers what she has taken -- the household gods -- and defeats her father.⁷⁶ Laban has chased after her and Leah and Jacob when they fled during sheep-shearing. Laban's daughters agreed readily to go -- "Do we have any share in the inheritance of our father's estate?" They ask (Gen. 31:14). No, he has kept the brideprice, Jacob's fourteen years of labor, and not added it to their dowries. Rachel's theft of the *teraphim* is a kind of measure for measure return.

The Bible's first mention of menses problematizes it, ironically reframing weakness as the power to subvert the household cult -- the cult of the clan Rachel leaves. There is also an echo of this in a later story. We read that Michal, David's wife, loyally stands with her husband against her royal father. She places *teraphim* under the bedclothes to deceive the king's officers concerning his whereabouts. There is no mention of her menses. The penumbral memory of the earlier deception shadows the scene and prevents the ruse from succeeding for long. The men rip away the bedding, but David has escaped (1 Sam. 19:13-16).

The Priestly Writer constrains this power by coding it as

⁷⁶ "The writer ... by having her invoke her menstrual flow ... reminds us of her condition as the wife constantly waiting for conception, and disappointed each month when the flow returns.... Jacob's rash words at this juncture will prove to be a kind of curse, as she will perish amidst the blood-flow of childbirth" (Alter, personal communication).

"impurity" **תמא**. Buckley & Gottlieb observe: "the common fact of menstruation among all women challenges the social order of a male-dominated society and defines and bounds a female subgroup within the society, thereby creating a new and dangerous order" (1988:28-29). Thus the power of her "pollution" (34-36) not only relieves her of normal duties and identifies her with a subgroup, it also gives her a special power over her sexual partner: "If a man lies with her and her monthly flow touches him, he will be unclean seven days" (Lev. 15:24a). Menstrual blood has then not only the power to separate women apart, and the power to pollute all those who touch her or her things, but also the power to pollute her partner for a full seven days -- as long as she must stay aside (Wright & Jones *ABD* 2:205). Beyond any horror of blood, or practical taboo from prehistoric hunter culture; beyond the ability to manipulate everyday encounters, this ability to remove her partner from social intercourse constitutes a kind of temporary castration.

If we have a measure of the significance of the problem of menstruation for P, we cannot forget that P⁹ coded blood as "life" (Gen. 9:4), as will H in Lev. 17:11. Life leaking away, life out of place, bespeaks its binary pair, death.⁷⁷ Now if J associates the pretense of menstruation with subversion of the clan left behind, and P places bounds around this power to unravel the social order, how does H problematize it?

⁷⁷ Wright & Jones (*ABD* 2:207); Wenham (1983:433-34).

H concerns itself with "blood sex" and its effects. H does not just address the relations of husband with wife, nor has P at Lev. 15:24. Any man who approaches any woman in menses is at risk. P frames its concern casuistically, "If a man..."; H apodictically. But more, H by the idiom נלה ערות 'uncover nakedness or pudendum' links blood sex with incest. This euphemistic turn-of-phrase H associates with these two sexual acts alone, and by its use, Lev. 18:19 reprises the first mention in 18:6:

(5) איש איש אל-כל-שאר כשרו (Lev. 18:6)
לא תקרכו לנלות ערוה ...

ואל-אשה כנדת טמאונה (Lev. 18:19)
לא תקרב לנלות ערותה:

'îš 'îš 'el-kol-š'ēr b'šārô (Lev. 18:6)
lō' tīqr'bû l'gallôt 'erwâ ...

w'el-'iššâ b'niddat ṭum'ātâh (Lev. 18:19)
lō' tigrab l'gallôt 'erwātâh:

Any man of you with respect (Lev. 18:6)
to any of his own flesh,
you (pl.) shall not encroach on (them)
to uncover nakedness ...

As for the woman (Lev. 18:19)
in her menstrual impurity,
you (sg.) shall not encroach on (her)
to uncover her nakedness.

Notice that 18:19b is the most complete recapitulation of 18:6b in the chapter. We can think of this as a reprise, or in the terms of our discussion, an intratextual marker of allusion. Other, less complete, reprises have maintained the topic, e.g., לא תנלה ערות- (lō' t'gallēh 'erwat-, 18:8b) and לא תקרב (lō' tīqrāb, 18:14b), but none maintains both verbs

(q.r.b.) and נלה (g.l.h.). At v. 17c there is a clause similar to 18:6b, but with לקח (l.q.h.) swapped for קרנ (q.r.b.): לא תקח לנלות ערותה (18) tIqqah l'gallôt 'erwātâh). In v.18 we have the same phrase as v. 17c but with the finite verb separated from the infinitive by לצרר (lIṣrōr).

The nearly exact quotation at Lev. 18:19b of 18:6b signals the start of a new paragraph (cf. #6 below). The small changes (C to C'; D to D') complement the switch in topic: from איש איש 'פ'פ' (A) to אשה 'פ'פ'. This topic was raised at v. 18, אשה ו'פ'פ' (A') and is continued in v. 19 ו'el-'פ'פ' (A''), and maintained by mention of the אשה 'פ'פ' in all the subsequent verses except v. 21.

A double inclusio envelopes the first paragraph, Lev. 18:6-17. Three elements of v. 6a parallel v.17b: the mention of שמר (B and B'); the apodictic command involving a verb implying sexual relations "do not approach" and "do not take in marriage" (C and C''); and the phrase לנלות ערוה "to uncover nakedness" (D) with the enclitic 3rd person feminine possessive pronoun added in (D'). The second (v.7a) and next-to-last position (v. 17a), the inner inclusio, repeats the phrases: לא תנלה ... X-ערוה, where "X" is a male relation in v. 7a, and a female in v. 17a. This inversion foreshadows what appears in the next verse.

V. 17 acts as a "hinge"⁷⁸ between vv. 7-17 and v. 18.

⁷⁸ Milgrom observes an "inverted hinge" pattern in Lev. 15:18-19 (1991:930-31). Our example is like Parunak's "direct hinge" (1983:541).

Vv. 17-18 both share a common atichoa: לא תקת לנלות ערותה (C'D'). But v. 18 takes up the generic אשה mentioned at v. 17a (A'). V. 18 also acts as a hinge connecting vv. 6-18 to v. 19. V. 19 reuses אשה (A'') and לנלות ערותה (D'), but also reprises v. 6a as noted above, changing the number of the verb קרב from plural (C) to singular (C').

Thus, the topic of אשה is foreshadowed in v. 17a, raised at v. 18 (A') and established at v. 19a (A''). It is only at v. 19b that we recover the second arm of the topic sentence in v. 6 (CD). This reprise recalls the first topic, emphasizes the new topic, and signals the start of the next paragraph. The phased "hand-off" of the topic reminds one of a two-way hinge or the interconnection of two links in a chain.

(6) D C B A ♂
 (6a) אִישׁ אִישׁ \ אֶל-כָּל-שָׂאֵר בָּשָׂרוֹ \ לֹא תִקְרְבוּ \ לְנָלוֹת עֲרוּתָהּ

♂
 (7a) עֲרוּת-אִנִּיךָ ... לֹא תִנָּלָה

♀
 (17a) עֲרוּת-אִשָּׁה ... לֹא תִנָּלָה

D' C' B' ... (17bα)
 (17bβ) שְׂאֵרָה הִנֵּה ...

D' C' A' ♀
 (18) וְאִשָּׁה ... לֹא תִקְרְבוּ \ לְנָלוֹת עֲרוּתָהּ

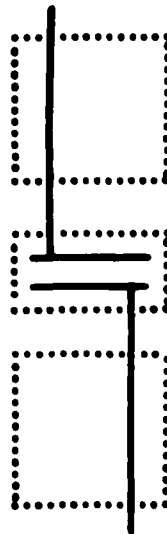
D' C' A' ♀
 (19) וְאֶל-אִשָּׁה ... לֹא תִקְרַב \ לְנָלוֹת עֲרוּתָהּ

The transition between vv. 6-17a and 19-23 has led some to exclude vv. 17b-18 as a later addition (proponents of the decalogue theory), and others to draw the dividing line between the paragraphs at different points:

- (a) topically, vv. 6-18 "incest" and vv. 19-23 "other" (Kalisch 1867-72);
- (b) form critically, vv. 6-17a in one and vv. 17b-23 in another (Elliger 1966:232);
- (c) or, vv. 6-17 in one and vv. 18-23 in another (Tosato 1984:205-06).

The difference in perceptions flows from the phased "hand-off" of the topic change (cf. Figure 1.3).

Figure 1.3: The "Hinge" in Lev. 18:17b-18



Within vv. 19-23, there are many other signs of interconnectedness: the use of שָׁכַב (š.k.b.) in vv. 20b, 22b, and 23b, the paralleling of לַטִּטֵּן ... שָׁכַבְתָּךְ (lō' tittēn š'kābt'kā ... l'ṭom'â-bâh) in vv. 20 and 23 along with the instance of טִמְאַתָּה (ṭūm'ātâh) in v. 19a. These, along with the repetition of אִשָּׁה ('iššâ), envelop the center, v. 21. V. 21 repeats זָכָר (zākār) from v.20 along with לֹא תִטֵּן (lō' tittēn). Finally, v. 21d repeats v. 6c, אֲנִי ה' ('ānî h-). These repetitions in v. 21 represent a kind of "hook-and-eye" arrangement tying the verse to the paragraph in which it is

found and to the previous paragraph. Collectively these linkages lend a sense of artful unity to the paragraph and connection to the larger pericope. They also assist the persistence of the topic אִשָּׁה ('iššā) throughout this section.

To say that the topic has changed to אִשָּׁה ('iššā) is not to say that all these prohibitions are directed at women (although this is so in v. 23, forming an envelope around the second paragraph of sexual laws), nor is it to say that all take a women's perspective (although in a fashion vv. 18-19 do). Rather, it is to say that this *Leitwort* links a set of associations about women. How can we overlook this -- this elaborate switching of the primary topic from one gender to another -- if we are to understand Lev. 18:19?

If we return to the elements that v. 19 and v. 6 hold in common, לַנְּלוֹת עֲרוּהָ, how is blood sex like incest? H offers an explanation:

(7) וְאִישׁ אֲשֶׁר-יִשְׁכַּב אֶת-אִשָּׁה דוּהָ וְנָלָה אֶת-עַרְוֹתָהּ (Lev. 20:18)
אֶת-מִקְרָהּ הָעֲרָה וְהָיָא נָלְתָה אֶת-מִקְוֵר דְּמִיָּה וְנִכְרְתוּ שְׁנֵיהֶם
נִקְרַב עִמָּם:

w^eišš 'āāer-yiškab 'et-'iššā dāwā
w^egillā 'et-'erwātāh 'et-m^eqōrāh he'ērā
w^ehf' gilltā 'et-m^eqōr dāmeyhā
w^enikr^etū š^enēhem miqqereb 'ammām:

If a man lies with a menstruous woman⁷⁹ and uncovers her nakedness (has sexual relations with her), he has exposed her source, and she also has uncovered the source of her blood. Both of them

⁷⁹ דוּהָ dāwā 'menstruous' (Lev. 20:18 [H]; 'menstruous woman' (Lev. 15:33 [P]; 'menstrual cloth' (Isa. 30:22 MT) or 'menstrual flow' (LXX); 'faint, sick' (Lam. 1:13, 5:17), cf. HALAT⁷⁸ 1:216, DCH 2:424-425, but especially Milgrom (1991:745-746) for the most recent (and thorough) word. From CS DAWIY- 'suffering' (Fronzaroli 1964b:264, #2.13).

must be cut off⁶⁰ from their people.

The imagined woman inverts the actions of Rachel who covered her source; this woman uncovers. The very act of sexual relations presumes her complicity; the sexual act is taken as a kind of objective evidence of her consent. It is not the mention of the woman's pudendum that is new. When Ego uncovers his father's genitals he also uncovers his mother's (18:7). When Ego takes other female relations, H can code this as a revelation of the female pudenda (Lev. 18:9-11, 15). But here at Lev. 20:18 a female actor replaces the male, and her acting is dangerous.

If the woman's initiative in the sexual act introduces a difference from the foregoing incests, the similar element remains the revelation of the intimate body to those, including her husband, who have no right to see. By preserving this private part, H subverts the notion of "wife-as-property." But a woman's source does not precisely belong to her either as she too suffers the *kārēt*-penalty if she reveals it.

What is the *kārēt*? It is something entirely different from bearing pollution for seven days, washing, and laundering -- the fate of the *niddā* and the man who sleeps with her in P. The Deity must enforce this penalty: They will die prematurely; Their progeny will die and leave no children;

⁶⁰ קָרַע *kārēt* 'cut off-penalty'. *Kārēt* refers to early death and childlessness or death of one's progeny without issue (Goodfriend ABD 1:82; Wold 1977).

Their name will disappear (Wold 1977).

Perhaps Ezekiel feels the injustice of the presumptive consent -- even rebellion -- assumed in the *niddā*'s sexual relations. He speaks of the *niddā*'s rape:

- (8) ערוֹת-אִם נִלְה-בָךְ טַמְאָת הַנְּדָה עֲנוּ-בָךְ; (Ezek. 22:10)
'erwat-'āb gillā-bāk; ṭ'mē'at hanniddā 'innū-bāk:

One has uncovered the father's nakedness in you;
they have abused the impure menstruant in you.

The prophet evinces the residual case to Lev. 18:19: the *niddā* taken with violence and without restraint. Thus, in rebellious Jerusalem no taboo has gone unbroken. Ezekiel has made avoidance of relations with the *niddā* a matter of judgment and justice:

- (9) וְאִישׁ כִּי-יְהִיָּה צָדִיק וְנָטָה מִשְׁפָּט וְצִדְקָה: (Ezek. 18:5, 6b)
...וְאִם-לֹא-טָמָא וְלֹא-טָמְאָה נְדָה לֹא יִקְרָב:
w'īš kī-yih'yē šaddīq w'āsā mišpāt ūs'dāqā:
... w'et-'ēšet rē'āhū lō' ṭimmē w'el-'iššā niddā lō'
yiqrāb:

A man who is righteous and does (what is) just and right ... he will not defile his neighbor's wife, nor will he (sexually) approach a menstruant.

Not only does Ezek. appear to read the residual case of Lev. 18:19 in (#8) above, but also here again in v.6. He takes 'approach' of Lev. 18:19 instead of the 'sleep with' of Lev. 20:18. Juxtaposing the abuse of the *niddā* with the reprobation of adultery recapitulates the juxtaposition of Lev. 18:19-20. Ezekiel takes the root טָמָא 'to be impure' (18:20) and not the root נָאָם 'to commit adultery' found in the similar law at Lev. 20:10; but prefers רֵעֵהוּ 'his neighbor' (20:10) to the nearly synonymous עֲמִיתְךָ 'your fellow

(Israelite)' of Lev. 18:20. This trope not only recalls the several appropriate passages of Leviticus, but also achieves a kind of synaesthesia of opprobrium.

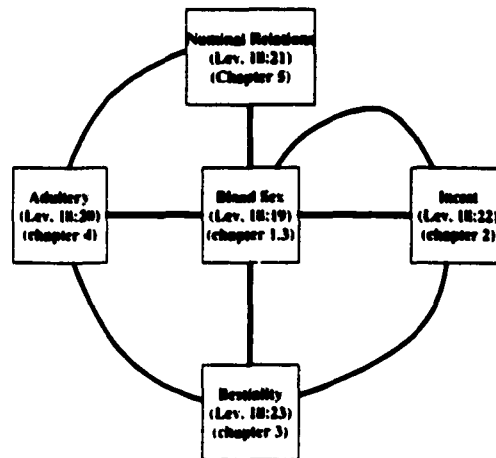
I cannot but feel that this paradigmatic *māqôr* 'source' or 'spring' is at the center of H's conception of the sexual world. Its penetration of the marriage relationship itself, dividing between husband and wife, betrays its fundamental nature.⁶¹ Moreover, it recalls another basic principle from the chapter just preceding: "The life of the flesh is in the blood" (Lev. 17:11) governs H's slaughter rules, and in turn recalls the Noahide prohibition of eating flesh with blood (Gen. 9:4-5 [P]). So the text figures the woman's "source" as a spring and outflowing stream of her life. "Let your spring (*māqôr*) be blessed; rejoice with the wife (*'iššâ*) of your youth" (Prov. 5:18). The proverb's parallelism does not precisely equate *'iššâ* and *māqôr*: *'iššâ* is a synecdoche for *māqôr*. Does this springing stream -- an emblem of womanhood -- then connect, or at least touch, all the other sexual prohibitions?

If the reader were to imagine again Figure 1.2, the field of prohibited sexual relations postulated for the world of the

⁶¹ Dale Patrick's (1985) reading of Lev. 18:19 represents all those who would diminish the importance of this verse. He asserts that Lev. 18:20, 22, and 23 "treat more serious offenses" (perhaps relying on the penalties of cp. 20). Then he notices that adultery is "an intervention in the one-flesh unity of the married couple, breaking up the fundamental unit of society" but misses the implications of the *niddâ*-rule. Avoiding relations with one's menstruating wife places an episodic (and long recurring) divide in "one-flesh unity."

Holiness Code, and imagine a spiral starting at its center, she will follow these traces. From blood sex she will pass to incest (chapter two), already linked to the menstruant by the phrase *gillā 'ērā* and the surprising "diagnosis" of levirate marriage as *niddā* in Lev. 20:21, and in turn to bestiality where women's initiative finds a reprise (chapter three), to adultery where her lover turns to some other *māqôr* (chapter four), and finally to numinal relations that betray YHWH, to whom the *māqôr* and its stream of blood belongs (chapter five).

Figure 1.4:
Lev. 18:19-23: The Organization of This Study



CHAPTER TWO: Leviticus 18:22 and 20:13: An Incest Prohibition?

2.1: The Problem

- (1) :ואת-זכר לא תשכב משכבי אשה תועבה הוא (Lev. 18:22)
w'et-zākār lō' tīškab mīškabē 'īššā tō'ēbā hī':

Do not lie with a male as one lies with a woman; it is an abhorrence (NJPS).

- (2) ואיש אשר ישכב את-זכר משכבי אשה (Lev. 20:13)
תועבה נעשו שניהם מות יומתו דמיהם נם:
w'īš 'āšer yīškab 'et-zākār mīškabē 'īššā
tō'ēbā 'āsū š'nēhem mōt yūmātū d'mēhem bām:

If a man lies with a male as one lies with a woman, the two of them have done an abhorrent thing; they shall be put to death -- their bloodguilt is upon them (NJPS).

Together these two verses represent the *locus classicus* for the apparent biblical ban on homosexuality. Bailey offers "It is hardly open to doubt that both the laws in Leviticus relate to ordinary homosexual acts between men ..." (1955:30) and Wenham confirms "that the Old Testament condemns homosexual acts is well known" (1990-91:359) adducing our verses as evidence. This interpretation has wide popular acceptance and finds its way into the theological and political discourse of our era. Facing such a consensus, one hesitates to ask "What do these verses mean?"

As one attempts to approach these verses with a fresh mind, it appears that our interpreters depend on a metonymy¹ rather than the "literal aenae." If this verse condemns all homosexuality why are נקבות 'females' not mentioned? If this

¹ Or more specifically, a synecdoche.

verse condemns all male homosexual acts why are only **משכני אשה**, "the lyings of a woman," mentioned? This recognition of a metonymy leads one to seek the meaning of the phrase that is made to stand for the whole. While Elliger (1966:241) restricts the proscription here to pederasty and Milgrom (1993-94) to homoerotic acts of Jews, ancient or modern living in **הארץ** (i.e. "the Land"), they do not distinguish among specific homoerotic acts. Boyarin (1995:336), Daube (1986:447-48), and Olyan (1994:186) understand these verses as prohibiting male-male anal intercourse: Boyarin relying on arguments from the history of rabbinic interpretation, Daube on grounds of comparative law, and Olyan on philological grounds. The net effect of their arguments is to restrict the meaning of the phrase to a specific homoerotic act rather than to restrict its proscription by age, geography, or cultural identity. Olyan in particular argues that **משכני אשה**, "the lyings of a woman," speaks of "vaginal receptivity" (1994:185) equating women's sexual experience with that of male homosexuals. Indeed the NJPS-translation quoted above also feels the need to supply a **-ו**, an "as", in their translation so that we end up with the semantic relation: male-male anal intercourse is "like" male-female vaginal intercourse.

Thus, underneath the metonymy of some interpreters (allowing **משכני אשה** to stand for all homoerotic acts) lies a deeper structure of metaphor. The two sorts of intercourse have aspects shared and unshared. The metaphor, taking the

variables common to each (e.g., there is a receptive partner), analogizes the two different behaviors. This metaphor appears to underlie most (if not all) interpretations of our verses.²

Thus we come to the question: Could *מִשְׁכַּב אִשָּׁה*, "the lyings of a woman," have any other metaphoric relations? For it seems that *וְאִישׁ אֲשֶׁר יִשְׁכַּב אִתּוֹ-זָכָר*, "a man who lies with a male ..." (Lev. 20:13), should be sufficient to indicate homosexual relations on analogy with *כַּחֲמֵשׁ שָׂכַב אֶחָד הֵנֵם אֶת-אִשְׁתּוֹ*, "one of the people might have lain with your wife" (Gen. 26:10), or *וַיֵּלֶךְ רְעֻבֵן וַיִּשְׁכַּב אֶת כְּלָהָהּ*, "Reuben went and lay with Bilhah" (Gen. 35:22). Nevertheless, we have the additional phrase, *מִשְׁכַּב אִשָּׁה* "the lyings with a woman," an instance of "marking."

Jakobson (1963) suggests that marking is an "iconic" principle of language, i.e. the more form one has, the more meaning.³ If the category of sexual relations is normally

² One could sketch then the history of text-reception and come to understand how *וְאִישׁ אֲשֶׁר יִשְׁכַּב אִתּוֹ-זָכָר מִשְׁכַּב אִשָּׁה* (*u'fšer yiškab 'et-zākār miškab 'iššā*) became understood as representing male-male anal intercourse, or all male homosexual behaviors, or the homosexual behaviors of all genders. We might find there a developmental trajectory (cf. Olyan) that leads us through the interpretations of the Sages and Rabbis, the New Testament writers, the church fathers, the medieval exegetes, up to our present era and the invention of the categories "homosexual" and "heterosexual" in the nineteenth century (Halperin 1990; Katz 1995). This history-of-ideas sketch, important in itself, is beyond the scope of this chapter.

³ This principle, originally restricted to phonology and syntax, may be applied in part to semantics. "The farther away something stands from what is representative, the more complex is its expression in language" (Wolde 1994:178; cf. Pater & Langendonck 1989:279-87).

unmarked, e.g., PN/PRN-את "lay with PROPER NAME/ PRONOUN" alone without additional explanatory phrases (cf. BDB 1012b), what does this cognate accusative phrase, *šākab mišk'bē 'iṣṣā*, mark?

We could argue that male-male anal intercourse is sufficiently out of the ordinary that the Scripture offers an explanatory gloss, in our case an appositive in Lev. 20:13. But in Lev. 18:22 we already have a topicalized phrase, ואת-זכר "with regard to a male," and need משכבי אשה "lyings of a woman" as an object.⁴ The phrase thus carries both semantic and syntactic weight. If we build a concordance of the similar phrases attested in Biblical Hebrew in (3) we find that "fronting" a class of individuals such as "males" or "women" or "virgins" is common and X-[']משכבי, *mišk'b[ē]-X*, may stand alone as an object or as one arm of a double accusative:

- (3a) ואת-זכר לא ומשכבי אשה (Lev. 18:22a)
w'et-zākār lō' tiškab mišk'bē 'iṣṣā

With respect to the male, do not lie the lyings of a woman.

- (3b) ואיש אשר ישכב את-זכר משכבי אשה (Lev. 20:13a)
w'iš 'āšer yiškab 'et-zākār mišk'bē 'iṣṣā

⁴ It is possible that we have a double accusative in both Lev. 18:22 and 20:13 (Cf. Waltke & O'Connor §10.2.3c in light of the ambiguity created by the homography of the accusative marker 'ot/'et and the preposition 'itt-. I prefer to read את in Lev. 16:22 as topicalized, that is as a *casus pendens* (cf. Waltke & O'Connor §10.3.1c, 4.7b), with the missing pronominal referent in the "comment" clause understood. The new topic, by nature diacontinuous, "fronts" the clause. See Givón (1983) for a discussion of topicalization in Biblical Hebrew.

The man who lies with a male the lyings of a woman

- (3c) כי עלית משכני אביך (Gen 49:4b)
ki 'ālītā mīškābā 'ābīkā

For you went up to the lyings of your father

- (3d) דעתה... וכל-אשה ידעת איש למשכנך וזכר הונו (Num. 31:17)
w'attā ... w'kol-'iššā yōda'at 'iš l'mīškab zākār
hārōgū

Now then ... every woman who has known a man, i.e. the lying of a male, slay.

- (3e) וכל הסף כנשים אשר לא-ידעו משכנך וזכר (Num. 31:18a)
w'kol haṣṣap bannāšīm 'āšer lō'-yod'ū mīškab zākār

But every girl who has not known the lying of a male ...

- (3f) ונפש אדם מן-הנשים אשר לא-ירעו משכנך וזכר (Num. 31:35a)
w'nepeš 'ādām mīn-hannāšīm 'āšer lō'-yod'ū mīškab zākār ...

and human beings, namely the women who had not known the lying of a male ...

- (3g) כל-זכר וכל-אשה ידעת משכנך-וזכר (Jdg. 21:11bα)
kol-zākār w'kol-'iššā yōda'at mīškab-zākār ...

Every male, and every woman who has known the lying of a male ...

- (3h) נערה כתולה אשר לא-ידעה איש למשכנך וזכר (Jdg. 21:12aβ)
na'ārā b'tūlā 'āšer lō'-yod'ā 'iš l'mīškab zākār ...

the nubile young woman (of marriageable age) who has not known a man, i.e. the lying of a male ...

The verses from Leviticus along with that describing Reuben's relations with his stepmother (Gen. 49:4) yield a model phrase of:

- (4) שכנ\עלה משכני-X
š.k.b./'l.h. mīškābē-X
lie/go up to the lyings/bed of X

where X is a kin or gender role noun. Contrasting (4) with (3d-g) concerning the carnal relations of אשה, טף, נערה כתולה, i.e. "a woman," "a girl," or "a nubile young woman," with men in the incident of Peor (Num. 31:17, 18, 35) and Jabeah-Gilead (Jdg. 21:11, 12), we have:

- (5) [לא] ידעו [איש] [ל]משכב זכר
[lō'] yod'û [l'īš] [l*]mīškab zākār

They have [not] known [a man, i.e.] the lying of a male = They have not had carnal relations.

Milgrom (1990:259), following the *Keter Torah* and Ehrlich (1968 [1910]), reads the singular construct משכב זכר with ידעו (mīškab zākār + √y.d.('.) in (5) as referring to licit sexual relations. He reserves X-משכב (mīškabē-X) of (4), the plural construct, for carnal sexual relations (Milgrom Forth. 2000a).

Olyan, on the other hand, builds his philological arguments on the notion that the comment phrase in Jdg. 21:12, אשר לא-ידעה איש למשכב זכר "who has not known a man, i.e. the lying (down) of a male," must "define" the topic phrase נערה כתולה as "virgin[s]" (1994:184). For him the examples from Numbers and Judges contrast virgins with non-virgins. Thus, he argues, משכב זכר "the lying down of a male," must mean "male vaginal penetration" resulting in the loss of virginity. Since *משכב נקבה (*mīškabē nēqēbā) and *משכבי איש (*mīškabē 'īš) are not attested, משכב זכר (mīškab zākār) and משכבי אשה (mīškabē 'īšā) become a contrastive pair. By inversion to its antonym משכבי אשה (mīškabē 'īšā) must mean "vaginal receptivity" (Olyan 1994:184-85).

However, one can take the comment phrase of Jdg. 21:12 as qualifying, not defining, "nubile young wom[e]n" (cf. Wenham 1972). From among the class of all the nubile young women from Jabesh-Gilead, only the virgins would not fall under the ban and be eligible for marriage to the Benjamites. Marriage is the concern of this pericope (cf. Jdg. 21:14; not discussed by Olyan). So when Olyan omits discussion of the immediate context of מִשְׁכַּב זָכָר (mīškab zākār) which includes its association with the Verb יָדַע (y.d. '.) and not שָׁכַב (š.k.b.) and the collocated discussion of marriage, he misses that legitimacy of sexual relations (through marriage) is at issue, not virginity *per se*.

Olyan also misses the contrast between singular and plural constructs among our clauses in (3). Thus, a phrase similar to מִשְׁכַּבִּי זָכָר (*mīškabî zākār) or מִשְׁכַּבִּי אִישׁ (*mīškabî 'iš) is found in Gen. 49:4. Israel censures Reuben who went up to the מִשְׁכַּבִּי אָבִיךָ (mīškabî 'ābīkā 'the bed of your father'). On the one hand, the semantic deep structure of Gen. 49:4 points to "heterosexual" relations, as can be seen from the reconstructed composite of Gen. 35:22 and 49:4 below:

(*6) וַיֵּלֶךְ וַיַּעַל וַיִּשְׁכַּב אֶת-כְּלֵהָה מִשְׁכַּבִּי אָבִיהוּ

*Reuben went (up) and lay with Bilhah,
i.e. the lyings/bed of his father.

But on the other hand, the surface structure casts a penumbral image: a male goes to a male's bed. Reuben's incest with his stepmother is put in terms of the men, as if it were incest

between son and father.⁵ Thus, *משכני זכר\איש (mīškab zākār/'īš) in its biblical instantiation, משכני אביך (mīškab 'ābīkā), can refer to illicit male-female relations or, through metonymic association, to illicit male-male relations.

If we collect these observations we find the details of morphology, syntax and semantics for the phrases משכנ זכר (mīškab zākār) with ידענ' (y.d.') and משכני אשה (mīškab 'īššā) with שכנ את- (šakāb 'et-) do not suggest a contrast between male penetration and female receptivity. Rather, they contrast licit and illicit sexual relations. Among illicit relations, the gender switch between the semantic surface and deep structures in Gen. 49:4 (reflecting the metonymic substitution of father for stepmother) ambiguates *משכני זכר\איש (*mīškab zākār/'īš). One cannot assign it the meaning "illicit heterosexual relations" in contradistinction to משכני אשה "illicit homosexual relations."

What then are the illicit sexual relations suggested by משכני אשה (mīškab 'īššā)? If we return to Lev. 20:13:

- (7) ואיש אשר ישכנ את-זכר משכני אשה
w'īš 'āšer yiškab 'et-zākār mīškab 'īššā

If a man has illicit sexual relations with a male,
i.e., the lyings of a woman

we seem to have a fuller version of משכני אשה (18')

⁵ Kugel (1995:535) wants to take the expression "went up to your father's bed" as a polite way of saying "had sexual relations with your father's wife." But if we take the expression au pied de la lettre (as he tries, and contra Milgrom as "technical language"), do we not end up with a male in a male's bed? Kugel misses that euphemism is a form of metaphor.

tīškab mīšk[°]bē 'īššā, Lev. 18:22) just as our hypothetical sentence (*6) is a fuller version of כִּי עָלִיתָ מִשְׁכְּבִי אִנִּי (kf 'ālītā mīšk[°]bē 'ābīkā, Gen. 49:4). אִשָּׁה ('īššā) in (7) functions as a placeholder for relevant female kin just as אִישׁ ('īš) is a placeholder for male kin such as אָב ('āb) in the reconstructed phrase אִישׁ *מִשְׁכְּבִי ('īš) (*mīšk[°]bē 'īš). The clause in (7) becomes the general case for which

(*8) וְאִישׁ אֲשֶׁר יִשְׁכַּב אֶת-זָכָר מִשְׁכְּבִי אִם
 *w[°]'īš 'āšer yīškab 'et-zākār mīšk[°]bē 'ēm

*If a man has illicit sexual relations with a male relationally equivalent to the mother (i.e., father or stepfather)

could be a particular instance. Thus, just as the plural construct מִשְׁכְּבִי אִנִּי (mīšk[°]bē 'ābīkā) speaks of incest, so also מִשְׁכְּבִי אִשָּׁה (mīšk[°]bē 'īššā) speaks of incest. The former speaks of incest with a female relative in terms of a male relative; the latter speaks of incest with male kin in terms of female kin. What female kin? Kin of all the same degrees of relation already spoken of in Lev. 18:7-18.

Lev. 18:22 and 20:13 together prohibit male-male incest to the same degree of relation as Lev. 18:7-18 prohibits male-female incest. To understand why this is so, we must look at a series of contexts for these verses: their possible intertextual relations with other parts of the Bible, their own pericopae, and the ancient Near Eastern legal environment.

a. Male-Male Incest

Some scholars have argued that the Bible forbids a

particular case of male-male incest: that initiated by the son with the father. They offer Lev. 18:7a, Deut. 23:1b, or the Noah and Ham story in Gen. 9:20-27 in support of this theory.

Lev. 18:7 begins with a puzzle (cf. Bigger 1979:196):

- (9) עָרוֹת אָבִיךָ וְעָרוֹת אִמְךָ לֹא תִגְלֶה הֵיא (Lev. 18:7ab α)
'erwat 'ābīkā w'erwat 'Imm'kā lō' t'gallāh 'Imm'kā hī'

Do not expose the nakedness of your father
(and/which is) the nakedness of your mother, she is
your mother!

What is the function of the waw that connects עָרוֹת אָבִיךָ ('erwat 'ābīkā) with עָרוֹת אִמְךָ ('erwat 'Imm'kā)? Is this awkwardly felt waw conjunctive or explicative? This phrasing has been the basis for the assignation of עָרוֹת אָבִיךָ ('erwat 'ābīkā) to a later stratum of H or for its dismissal as a gloss (e.g., Elliger 1955, 1966; Kilian 1963; Cholewiński 1976; Sun 1989). If we have a waw-explicative, "the nakedness of your father which is the nakedness of your mother," (cf. Rashi; Ramban; Neufeld 1944:194; Milgrom Forth. 2000a; cp. Lev. 20:11) then we have a ban on incest between the son and mother; if we have a waw-conjunctive, "the nakedness of your father and the nakedness of your mother," we have a ban on incest initiated by the son with both the father and the mother.⁶ Even with a waw-explicative we may achieve the same end as with a waw-conjunctive. If with Ibn Ezra we remember that the father is the head of the biblical family, the crime falls against him; or that when two "become one flesh" Gen.

⁶ So R. Judah in b.Sanh. 54a; Daube (1947:81); Phillips (1980:39); Ziskind (1988:101-02); Cohen (1990:13).

sister of marriageable age who is a near relation to you."⁷ Rattray uses the equation of $\text{רַחֵם אֶת־בְּתוּלָתִי}$ (š'ēr b'šārō) to $\text{רַחֵם אֶת־בְּתוּלָתִי}$ (š'ērō haqqārōb) to argue for the existence of a prohibition of father-daughter incest in the head case. The absence of this particular prohibition in Lev. 18:7-18 has led some to the absurd conclusion that such was permitted (Luria 1965; Cardascia 1980:10), or to speculation about its accidental omission (Neufeld 1944:199), and hence to the reconstruction of a (do)decatalogue that includes the prohibition (Elliger 1955, 1966:234; Kilian 1963:21). The lack of explicit incest prohibitions for primary family relations is part of what Daube labels the "self-understood in legal history" (1973:130-31). Ancient legists expound on the less obvious cases. There is, for example, no sister-incest prohibition in Hittite Law. Yet Šuppiluliuma I refers to a customary prohibition in his treaty with Huqqana of Hayasa (§§ 25-26, 29).⁸ Rattray's elegant answer is now accepted by Hartley (1992) and Milgrom (Forth. 2000a) in their commentaries.

⁷ This set of consanguine kin intersects with another kin list, one that contains both consanguines and affines. Noah's $\text{בָּנָיו וְאִשְׁתּוֹ וְנָשֵׁי בָנָיו}$ (bayit) as he entered the ark included $\text{בָּנָיו וְאִשְׁתּוֹ וְנָשֵׁי בָנָיו}$ ($\text{bānāyw w'īštō ūnšš-bānāyw}$, "his sons, his wife, and his sons wives," Gen. 7:7).

⁸ CTH 42. The main text is found in KBo 5.3 and dates from ca. 1344 B.C.E. The most recent translation is found in Beckman (1996). Suppiluliuma I forbids his treaty partner committing incest with his sister, sister-in-law (by wife or brother), and female cousin, claiming this is the custom of Hatti.

'ābīw

No man shall marry his father's wife so as to/(and none shall) uncover his father's skirt.

that is, both parts of the verse prohibit stepmother incest. "No man shall marry his father's wife, so as to remove his father's garment, i.e., lay claim to what his father had possessed" (NJPS). Carmichael (1985:170ff) argues that the Reuben-Bilhah story lies behind this text. But Phillips notes that Reuben does not marry (cf. נקח, l.q.h., in Deut. 23:1a) his stepmother. He seduces her rather. Deut. 27:20 reprehends the secret sexual encounter.

(12) אָרֹר שֹׁכֵב עִם-אִשׁוֹ כִּי נָלַח בְּנִקָּח אִשּׁוֹ (Deut. 27:20)
'ārūr šōkēb 'īm-'ēšet 'ābīw kī gillā k'nap 'ābīw

Cursed be he who lies with his father's wife, for he has uncovered his father's skirt.

Thus we have the same contrast we found earlier between "licit" and "illicit relations." One is forbidden to both licitly נקח "take in marriage" and illicitly שֹׁכֵב "lie with" one's אִם-אִשׁוֹ "father's wife." Phillips seeks to take Deut. 23:1b as something different and not tautologous with Deut. 23:1a and 27:20. Thus he argues that it "prohibits some kind of sexual immodesty or act with one's father" (1980:40). It evokes the story of Noah and Ham, the story that "has led to the Deuteronomic provision."

We might accept Phillips point that there is a distinction between Deut. 23:1a and b and that the connecting waw is conjunctive and not explicative. Nevertheless, if we then compare 23:1b with Deut. 27:20b we can argue that 23:1b

forbids "illicit" incest with the stepmother such that v. 23 encompasses both the licit and the illicit. Deut. 27 adds a curse just as Lev. 20 adds penalties to the incests spoken of in Lev. 18. Stepmother marriage had been practiced in royal successions (Tsevat 1985) and licit after the death of the father if not before. So the need to make this prohibition explicit could well motivate Deut. 23:1a-b.¹⁰

While Phillips rejects Carmichael's linkage of Deut 23:1b to Reuben he makes use of Carmichael's thesis that "[t]he lawgivers of the Pentateuch formulated biblical laws in relation to biblical narratives" (1996:27). That is, biblical law develops out of its *Sitz in der Literatur* rather than its *Sitz im Leben*. Carmichael's approach does raise a question that Phillips did not ask (and that Carmichael has only recently asked himself). What is the relation of H-texts with other biblical narrative texts?¹¹ In particular, could Lev. 18 represent an inner-biblical exegesis of the J-story of Noah and Ham in Genesis 9?

¹⁰ The need to specify a prohibition against both carnal relations and marriage with a stepmother after the father's death speaks to the possible dependence of Deut. 23:1 on Lev. 18:8 rather than the reverse. Lev. 18:8 does not explicitly forbid marriage (it does not use $\Pi\eta\eta$, l.q.h.). Deut. makes what is implicit explicit.

¹¹ Here I follow the relative chronology of the P, H, and D sources established by Milgrom (1991) and Knoch (1995). That is, P and H are pre-exilic in the main, and precede D. In addition, Milgrom takes H as the editor of P, not the reverse. Phillips and Carmichael depend on the reverse chronology, that P and H are late and borrow from D. They allow Deut. 23:1 dependence on a J-text, but see Lev. 18 as dependent on Deut. 23:1.

The Noah story opens the topic of "uncovering the nakedness of the father" when we read:

- (13) וַיֵּרָא תָם אָבִי כְנָעַן אֶת עֶרְוַת אָבִיו (Gen. 9:22a)
wayyar' hām 'ābī k'nā'an 'ēt 'erwat 'ābīw
Ham, Canaan's father, saw his father's nakedness.

Noah lay naked in his tent drunk with wine when Ham entered and exited with news for his brothers. Shem and Japheth carefully enter and walking backwards, וַיֵּכְסוּ אֶת עֶרְוַת אָבִיהֶם "covered their father's nakedness" (Gen. 9:23aβ). Consequently they do not see their father's nakedness, וְעֶרְוַת אָבִיהֶם לֹא רָאוּ (Gen. 9:23bβ). When Noah awoke from his wine we learn וַיֵּדַע אֵת אֲשֶׁר-עָשָׂה-לוֹ כְּנוֹ הַקָּטָן "he knew what his youngest son had done to him" (Gen. 9:24b). This somewhat delicate account continues with our *paterfamilias* cursing the descendants of Ham for the indiscretion. What is it?

Four theories have been offered to explain this laconic moment in the narrative:

- (a) Ham (or Canaan) castrated Noah (b.Sanh. 70a citing a discussion of Rab and Samuel; cf. the myth recounted by Philo Byblius of El-Kronos who castrated his father, and similar accounts in Ugaritic, Greek, and Hittite myth);
- (b) Ham (or Canaan) sexually abused Noah (b.Sanh. 70a; Simpson 1952; Forrest 1994:15; Satlow 1995:204; Carmichael 1996:68, 195, n.20), or Noah's wife (Bassett 1971; Croatto 1997:71-72; compare Lev. 18:7 and Deut. 23:1);
- (c) Ham only saw his father's nakedness (Satlow 1997:448,

problematized because they were social unequals). However most commentators who hold this position cannot resist adding that Ham complicated his seeing with either not covering his father (Goodman 1986:31) and mocking (Westermann 1984:488), or mockingly displaying the garment (Jacob 1974:67), or tempting his brothers with the "forbidden Knowledge" of his father's nakedness (Tomasino 1992:130), or "looking with unclean intent" and speaking "unchaste words" (Cassuto 1964:151-52); or looking so as to "acquire his father's [sexual] potency" (H. Cohen 1974:14-17);

(d) The text does not reveal what was done, that is, the implied author was intentionally silent (Ibn Ezra; Cassuto 1964:151; Vawter 1977:139).

Nearly all of these positions postulate some degree of sexual transgression. Even asserting motivated silence begs for speculation about the writer's intention for silence. Cassuto allows that silence and brevity may stem from the squeamishness of the writer or a concern for the sensitive consciences of readers (1964:151, 161). Indeed, he concludes: "The primary sin of Ham was transgression against sexual morality, the disrespect shown to his father being only an aggravation of the wrong" (1964:152; *contra* the emphasis of Westermann 1984:484-85 and Goodman 1986:31).

However, the very opacity of the incident that calls Talmudic sages, medieval commentators, and modern exegetes to

explain the incident spurs later biblical writers to do the same. The collocation of drinking and exposure of genitals is also found at Gen. 19:32-35, Hab. 2:15-16, and Lam. 4:21 (Haak 1992:68, 70). In particular, Habakkuk seems to give us a reading of the story (the NJPS even points us to it with a footnote):

(14) ... הוֹי מַשְׁקָה רַעְהוּ (Hab. 2:15)
 וְאִם שָׁכַר לְמַעַן הַכִּיט עַל-מַעֲוִיָּהֶם
 hōy mašqēh rē'ēhū ... w'ap šakkēr l'ma'an habbīt
 'al-m'ōrēhem

Woe to the one causing his friends to drink ... --
 even making drunk -- in order to look upon their
 genitals (Haak 1992:68-69).

If the Subject makes his friends drunk in order to look upon their genitals, does he intend a sexual encounter? In any case, he himself will drink and be exposed (v. 16) perhaps in the same manner that enemies are stripped naked for punishment (Satlow 1997:448; cf. Isa. 20:4).

The allusion in Habakkuk to Noah and Ham is suggested not only by the collocation of topics, but also by the hint of sexual encroachment. However, the relationship of these two texts may fall out from reading but not have been "intended" by the text. Some allusion is stronger, ascertainable by traces of writerly intention.

In Lev. 18:3ff we have several "markers of allusion" and other hints that Lev. refers to the Noah and Ham story. Already we noted the phrase עֲרוֹת אֲבִיךָ at Lev. 18:7 and 8, עֲרוֹת אֲבִיךָ at Gen. 9:22, and עֲרוֹת אֲבִיהֶם twice at Gen. 9:23. This coincidence is telling. Although H uses the verb נָלַח (g.l.h.)

with X-נרות ('erwat-X), and the Genesis J-text ראה (r.'.h.), Lev. 20:17 parallels them semantically:¹²

- (15) ואיש אשר-יקח את-אחותו ... וראה את-נרותה ...
נרות אחתו נלה
w^a'iš 'āšer-yiqqah 'et-'āhōtō ... w^arā'ā 'et-'erwātāh
... 'erwat 'āhōtō gillā ...

If a man marries his sister ... so that he sees her nakedness ... He has uncovered his sister's nakedness ...

Genesis 9:22 opens the topic of the "nakedness of the father" and Leviticus 18:7f continues it under the general head of the נלווי עריות (*gillūy 'ārāyōt) opened in Lev. 18:6.

It is in the parenetic frame of Lev. 18 that we see a second connection with the genotext:

- (16) כמעשה ארץ-מצרים אשר ישבתם-נה (Lev. 18:3a-bβ)
לא תעשו
וכמעשה ארץ-כנען אשר אני מביא אתכם שמה
לא תעשו ...
k^ama'āśāh 'ereš-miṣraym 'āšer y^ašakbtem-bāh lō' ta'āśū
ūkma'āśāh 'ereš-k^ana'an 'āšer 'ānī mēbī' 'etkem lō'
ta'āśū ...

Do not act according to the customs of Egypt where you dwelt, nor act according to the customs of Canaan where I will bring you ...

ארץ-מצרים ('ereš-miṣraym) points us to Ham the father of Mizraim (Gen. 10:6) and ארץ-כנען ('ereš-k^ana'an) to its namesake, Canaan. It is Canaan who is cursed as a result of

¹² Noted by Bassett (1971). Note also that Deut. 23:1 uses the verb נלה (g.l.h.) rather than ראה (r.'.h.) along with substituting an article of clothing, כנף (kānāp), for נרות ('erwat). There does seem to be an allusion here to the Noah and Ham story, but mediated through the lens of Lev. 18:7, 8.

the incident with Noah in the tent.¹³ For Cassuto, Canaan symbolizes the practices of the Canaanites, so perhaps we have an anachronistic overlay of a later historical situation onto the story (Cassuto 1964:154-57; cf. Hoftijzer 1958).

If it is true that the origin of H comes at a period of massive "influx of nonnative cults and customs" (Knohl 1995:218), then this also motivates the social setting for H's intertextual observations of the Noah story. Lev. 18 ascribes its own forbidden sexual practices to the surrounding peoples, Egyptians and Canaanites.¹⁴ Noah's fall (not Adam's), at the beginning of the post-diluvian age and the genesis of the new races of humanity, reveals the caveats of the new age. H now makes these explicit.

To accomplish this, H takes up the parade example of sexual transgression against the father (whether voyeurism or abuse).¹⁵ This story is perhaps more than just one among

¹³ Cassuto, feeling it an offense to the religion of Israel to accept that Noah cursed his grandson for his son's sin, or even magically the scions of Canaan, argues rather that Noah's curse is commentary on the customs of the Canaanite people.

¹⁴ While we don't know anything about homosexual incest among the Canaanites beyond what is asserted in our chapter, we do learn from Egyptian mythology how the god Seth had carnal relations with his younger brother Horus (Westendorf 1977: 2:1272-73; cf. pKahun and Gurob, Tf. 3; and pChester Beatty I).

¹⁵ We reject Bassett's restriction of *נראה ערוה* to a euphemism for relations with a woman and his consequent conclusion that Ham must have committed incest with Noah's wife. This also implies that Gen. 9:22 is the pheno- or referring-text and Lev. 18:8 or Deut. 23:1 is the geno- or referent-text. In other words, J read H and D.

several crime and punishment stories in Gen. 2-11 (Westermann 1984:485). Tomasino senses the importance of the story when he notes its many connections with Gen. 3 (1992:129-30). Noah, "the man of the earth" who "plants a vineyard," אִישׁ הָאֲדָמָה וַיִּטֵּעַ ("ish hā'ādāmā wayyifṭa' kerem, Gen. 9:20), inverts the image of God's planting (וַיִּטֵּעַ, wayyifṭa') a garden for אָדָם (hā'ādām). A crisis arises when Noah consumes the fruit like Adam and Eve. On the one hand, the eyes of the primeval couple are opened and they see they are naked (Gen. 3:7). They hide and cover themselves (Gen. 3:8). On the other hand, Noah's senses are dulled and he lies uncovered (Gen. 9:21). That this tale of Noah stands as a kind of inverted parallel to the Adam and Eve story suggests its importance and suitability for later commentary.¹⁶

Among biblical texts that may speak to the issue of son-father incest, Genesis 9:22ff is the most probable. The laconicity of the text together with its importance as a counterpart to the fall of Adam and Eve invite further commentary. Lev. 18 marks its allusion to the passage by partial quotation in vv. 7-8 and mention of the practices of Canaan and Mizraim in its frame at v. 3. The incest laws begin

¹⁶ It is more than opacity that calls for inner-biblical exegesis here. One could also mention that Lev. 17 takes up the question of ingestion and disposal of blood, an issue in the first part of Gen. 9. One could speculate that H begins with an exposition and application of the post-diluvian commands, commands akin to those subsumed under the rabbinic notion of the "laws of Noah" (b.Sanh. 56a-60a). See chapter five below.

at 18:6 with a general prohibition for uncovering the nakedness of kin that includes a father, son, and brother. Starting with an allusion to the example of Noah and Ham, נָלוֹץ עֶרְוַת אָב (gillûy 'erwat 'āb) is explained as נָלוֹץ עֶרְוַת אִמָּה (gillûy 'erwat 'ēm). Incest with a male relation is defined to include incest with near female relations, affines and consanguines.

Likewise, the nakedness of a brother's wife is that of the brother (v. 16), and of an aunt that of a father's brother (v. 14). Indeed, the plain reading of Lev. 18:14a, נָלוֹץ עֶרְוַת אָבִיךָ "the nakedness of your father's brother do not uncover," could even stand alone from the following clause (לֹא תִקְרַח לְאִמְּךָ) as a separate prohibition: "do not commit incest with your father's brother." One expects to find a *waw* between the two clauses; instead they are asyndetic. As to form, the verse breaks away from the chiasmic pattern of the clauses of the other incest prohibitions. Halbe (1980) shows that the incest prohibition clauses tend to follow two patterns: ABCB'A' with a motivation clause in the middle (so vv. 7 and 15), or ABA' (so vv. 8, 12-13, 16). Only vv. 9-11 and 14 depart from these patterns. V. 14 follows the structure ABB'C.¹⁷ Both the asyndeton and the different structure of v. 14 point toward the independence of its clauses and the consequent specific prohibition of incest with the paternal

¹⁷ See the discussion in Milgrom (Forth. 2000a).

uncle.¹⁸

In the light of this new male incest prohibition and the various extensions of incest laws to female affines, one can suggest a motive for H's use of the J-text at Gen. 9:22ff. It roots and justifies this efflorescence of the laws of incest.

b. Hook-and-Eye Linkages

If Lev. 18: 22 and 20:13 are incest prohibitions, why are they placed where they are? What is the significance, if any, of their collocations with other verses? Lev. 20:13 stands between a prohibition of incest with the daughter-in-law (20:12) and a prohibition of marrying a woman and her mother (20:14). The latter passage works out one of the permutations of Lev. 18:17a, under whose head it may be subsumed, and adds mothers-in-law to the list of prohibited relations. While Lev. 20:13 is sandwiched between two incest prohibitions concerning affines (and lies near the penalties for bestiality in 20:15-16), Lev. 18:22 follows the *mōlek* prohibition and precedes the prohibition of bestiality (18:23). Lev. 18:22b and 23e show further interconnection by sharing similarly constructed motive clauses.

Similarly, the cursing liturgy of Deut. surrounds a single malediction concerning bestiality (Deut. 27:21) with three concerning incest (Deut. 27:20, 22-23). The incest

¹⁸ The fact that the two clauses of v. 14 could stand alone was also felt in b.Sanh. 54a and m.Sanh. 7.4.

prohibitions of the Hittite Code (HL §§ 189-91, 194-95, 200aβ) are enclosed by a ring of bestiality laws (HL §§ 187-88, 199-200aα). Thus, the topics of bestiality and incest are frequently juxtaposed, and if our thesis is correct about the nature of Lev. 18:22 and 20:13, their placement is not surprising. By contrast, to collocate a new topic, homosexuality, with these would be an innovation.

Chapter 1.3 discussed at length the transition in topic from אִשָּׁה 'išā to אִשָּׁה 'iṣṣā in Lev. 18:17-19. The outcome of this topical shift is that Lev. 18:19-23 contains a set of associations concerning women. Among these associations is an inversion in the way of speaking about incest relations. Just as Gen. 49:4 speaks of Reuben's incest with his stepmother in terms of his father, a move echoed in Lev. 18:7f, now incest between males is spoken of in terms of all the נְרוֹת אִשָּׁה 'erwat 'iṣṣā developed in the prior paragraph. That is, just as Lev. 18:7-16 speaks of incest with a woman in terms of a man's nakedness, Lev. 18:22 speaks of incest with men in terms of the lyings-of-a-woman. This "gender inversion" trope hooks together the two paragraphs. It is a clever way, in my way of thinking, to at once lay bare the perspective of women in violated familial relationships and extend the ban on male-male incest to the same degree of coverage as female kin.

When we turn to the setting of Lev. 20:13, vv. 9-16 form a unit prescribing the death penalty for the crimes in question. Of these vv. 9-13, 15-16 contain a variant of the

phrase מות יומתו (*mōt yūmātū*, "they shall be put to death") and vv. 9, 11-13, 16 דמיהם בט (*d'mēhem bām*, "their blood is on themselves") or דמיו בו (*dāmēyw bō*, "his blood is on himself"). These features envelop v. 14 where a threesome are burned, the man who takes a woman and her mother. Together with vv. 11-13, we have a variation of the "n, n+1" numerical trope: שניהם (*š'nēhem*, "the two of them") appears three times followed by an instruction to burn the three. Collectively these center attention on v. 14, as does the descant of putting to death one human and one beast in vv. 15-16.

It should be noted that neither 18:22 nor 20:13 are the foci of their paragraphs. Rather, these paragraphs focus attention on 18:21 and 20:15-16. The *mōlek* topic of 18:21 is resumed in 20:2-5, a significant connection between these chapters. Lev. 20:15-16 recalls the bestiality prohibition of Lev. 18:23. The focal verses act like hooks-and-eyes, clasping one chapter to another.

Lev. 20:13 repeats and enlarges on 18:22, becoming part of the complex interplay between the two chapters. The motive clause of 18:22, תועבה הוא (*tō'ēbā hū*, "it is an abhorrence"), has expanded with further explanation, תועבה עשו שניהם (*tō'ēbā 'āšū š'nēhem*, "they have done an abhorrence"). This mention links both verses to the hortatory frame of 18:24-30 at v. 26a, ולא תעשו מכל התועבות האלה (*w'lō' ta'āšū mīkōl hattō'ēbōt hā'ēlleh*, "you must not do any of these abhorrences"). תועבה *tō'ēbā* recurs in vv. 27, 29 and 30. Even if with Cholewiński

(1976) we assign vv. 26b and 29 to a later hand, we are left with two mentions in the frame.

The noun תולנכת *tōlēnāḥ* occurs 116 times and the verb תענ *t'ēn* 23 times in the Bible (L'Hour 1964; Milgrom 1982). The term is used in primarily four contexts: idolatrous ritual and magic, sexual issues, food and diet, and weights and measures (Weinberg 1977).¹⁹ The use of תולנכת *tōlēnāḥ* at 18:22 and 20:13 is not to emphasize a unique abhorrence to the behaviors described. Indeed the frame of cp. 18 asserts that all of the behaviors of cp. 18 are תולנכת *tōlēnāḥ* (18:26a). These תולנכת *tōlēnāḥ* are the reprehended customs of the Egyptians and Canaanites mentioned at 18:3.

Now we have come full circle. Lev. 18:3, 7-8 marks an allusion to the story of Noah and Ham. The behaviors of the Canaanites and Egyptians reflect the example of their purported ancestors, Canaan and Ham. These customs are תולנכת *tōlēnāḥ* as is the "marked" example in 18:22 and 20:13. Indeed, though we cannot make too much of the use of the common verb נעשה *'śh*, Lev. 20:13 and Gen. 9:24 share it. The behaviors of Lev. 18:22 and 20:13 are marked as תולנכת *tōlēnāḥ* to associate them in turn with the parade example of male-male incestuous behavior.

¹⁹ Klein & Sefati (1988) find the semantic equivalents of תולנכת (*tōlēnāḥ*) in Sumerian *nī-g-gig* "bad thing (in the ethical aphere)" and its Akkadian cognate *ikkibu*. The meaning of *ikkibu* corresponds to the Sumerian in the second millennium but comes to refer to cultic taboo in the first.

2.2: Male-Male Incest in Hittite Law

After the Holiness Code, the Hittite Laws [HL]²⁰ offer the most complete set of documented incest prohibitions in the ancient world.²¹ Of these, the most important provision for our consideration is HL §189:

- (17) [takku LÚ-iš] api[el=pat] annaš=<š>aš katta waštai,
ḫurkil.
takku [LÚ-iš] DUMU.MUNUS-aš katta waštai, ḫurkil.
takku LÚ-[iš] DUMU.NITA-aš katta waštai, ḫurkil.

If a man violates his own mother,
it's a severe offense.
If a man violates a daughter,
it's a severe offense.
If a man violates a son,
it's a severe offense.

We notice that a male-male incestuous relationship is explicitly forbidden in the context of other male-female incestuous couplings. Incest with both son and daughter are explicitly forbidden here while only implicitly subsumed under Lev. 18:6. However, though both father- and son-initiated incest are presumably forbidden at Lev. 18:6 (and 18:22; 20:13), and son-father incest reprehended in Gen. 9:22ff (and maybe at Deut. 23:1b), HL alone specifies father-son incest.

Other incestuous relations are also categorized as ḫurkel. HL §195a prohibits "sleeping" (šešk-) with the wife of a living brother; and (HL §195b) "approaching" (šalik-) the

²⁰ Cf. Hrozný (1922) for cuneiform transcriptions of the largest text fragments and Hoffner (1997) for the current standard critical edition. Haase (1977) offers a helpful discussion of our pericope.

²¹ For further discussion of incest prohibitions in Bronze and Iron Age legal materials, see chapter six.

daughter-in-law of a free wife, or (HL §195c) the mother- or sister-in-law of a free wife. HL §190 prohibits incest with the stepmother if the father is living. These incest violations join certain bestial relations (with an ox (HL §187 or sheep (HL §188) as *ḥurkel*.²² Rather than reading *ḥurkel* as "abomination" on analogy with Lev. 18:22, תועבה,²³ or "confusion" on analogy with Lev. 18:23, תכל, it seems better to read with Hoffner (1997) "unpermitted sexual pairing" or simply "severe offense."²⁴ The term stands in contrast to *natta ḥaratar*, "not an offense," and is distinct from *papratar* "(ritual) impurity, defilement" (CHD P:103ff).

In contrast to Lev. 18:6, 22, HL does condemn father-initiated incest with the son by name. The crime may have initially been punished by the death penalty along with a limited number of other incestuous relations and bestiality that share the designation *ḥurkil* (cp. Lev. 20:13, 15-16). However, unlike the biblical prohibitions that apply the most

²² Some incestuous relations are declared *natta ḥaratar* "not an offense": sex with a ghost (possibly of a family relation, HL §190); a stepmother if the father is dead (HL §190); sex with a free woman, either two sisters or sisters and their mother in different locales (HL §191; contra Lev. 18:18, 17); or slave-girls who are sisters (HL §194; contra Lev. 18:18); or with a civilian captive and her mother (HL §200Ab; contra Lev. 18:17).

²³ As does Neufeld (1951).

²⁴ The prohibition in Lev. 20:14a categorized as *zimmā* "lewdness" (Steingrímsson TDOT 4:88) is remarkably similar to the prohibition in HL§195c categorized as *ḥurkel*. Is not *zimmā* then our Biblical Hebrew translation for *ḥurkel*? See the further discussion in chapter six.

severe penalty to both partners without reference to social class or perpetrator, HL applies the penalty only to the father.²⁵ These laws potentially ameliorate the penalty by royal commutation (for the free elite) and banishment (for the slave). HL found it important not to penalize "homosexuality" per se, but the violation of a male heir by his father. Unlike the laws of Lev. 18, perhaps left to the *paterfamilias* to enforce, the HL are ultimately enforced by a political authority external to the family. Thus it is possible to have an explicit condemnation of father-son incest because it is punishable, something a *paterfamilias* would have been reluctant to enforce against himself. Although we cannot draw a line of dependence between the Holiness Code and HL in the matter of male-male incest, we can argue that male-male incest was known, understood, and prohibited in its own right in one corner of the ancient Near East.

²⁵ The death penalty is commanded for proscribed bestial relations (HL §§187-88; and in §199a for relations with pig and dog not labelled as *ḫurkil*) but its mention is omitted for incestuous relations. One may ascribe this to artful elision, but this is not certain. However, death for bestial *ḫurkil* could be commuted by the king (HL §§187-88). HL §196 punishes the *ḫurkil* committed by male or female slaves with exile to different cities. Several Hittite rituals expiate the effects of *ḫurkil* in a town ("Ritual of Iriya," CTH 401.03), for incest ("Ritual to Expiate Incest" in the cases of daughter, sister or mother, CTH 445), for bestiality ("Ritual to Expiate Bestiality" in the case of sheep or a nanny-goat, CTH 456.05), and for *ḫurkilaš pešneš* "men of *ḫurkil*" ("Ritual of Zuwi," CTH 412.03; *HED*:402; Puhvel 1986:154-5). So it seems that death for *ḫurkil* was by no means a certainty. Rather, the severest penalty, dating from the beginning of the Old Kingdom, underwent amelioration (cf. Hoffner 1973:85; Archi 1979).

2.3: Summary

Retracing our atepa, male-male incest is not so rare, nor is its explicit prohibitions so strange, that it does not appear in the ancient Near East. The explicit prohibition in Hittite Law is not subsumed under ostensible homosexuality, but is placed together with incest prohibitions involving the nuclear family. In Israelite law there appears a sudden flowering of interest in legislation about incest. Beginning with marked allusions to the first biblical example of sexual encroachment on a father by a son, Lev. 18:6-23 elaborates the incest prohibition through a series of male and female kin. Beginning with the "understood" interdiction of son-father and brother-brother incest, it explicitly extends the law to the nephew who would have sexual relations with his father's brother (18:14) and, by analogy with interdicted female kin, to all the equivalent male kin (Lev. 18:22).

It is true that male-male incest, from a twentieth century perspective, is also "homosexual." However, our "interpretive grid" laid over the sexual world of the ancients may only obscure what was important to them. It appears that the incestuous nature of these relations was more important than the fact they were done between males. For H incest becomes the "Great Sin," joining adultery and bestiality in the infernal circle of sexual reprobation.²⁶

²⁶ Chapter four below discusses adultery and idolatry as "great sins."

CHAPTER THREE: Interspecies Sexuality: Animals

3.1: Primary Texts: Lev. 18:23 and 20:15-16

Such a topic -- bestiality -- is far afield from modern, urban experience and one breaks a taboo merely by its mention. The HB does not shrink from broaching the issue and neither do the early Jewish exegetes. Their discussions, expounding the implications of the biblical passages, cover (1) the constituents of the crime and its punishment, (2) bestial marriage, (3) bestial adultery, (4) the lack of offspring from animal-human relations, and (5) how to avoid the crime.

For example, the Mishnah and Babylonian Talmud prescribe stoning as the usual punishment (m.Sanh. 7.4; b.Sanh. 54a-58b). The tractate *Sanhedrin* further explains that the law excludes a minor under nine years from punishment (54b), but covers all sorts of adult sexual practices with animals (so Aqiba). Abbaye makes a finer division: he argues that Exod. 22:18 does not refer to the active sexual partner -- that's the point of Lev. 18:23. R. Pappa suggests that any orifice is meant -- so bestiality comprehends "natural" and "unnatural" relations. Although the "Noahide" law universalizes the prohibition (58a), a non-believer should be executed by the sword rather than stoning (57b), and the animal with which he consorts should not be slain (55a-b).

Besides reproving bestiality as a crime these early exegetes preserve a tradition about bestial marriage and adultery. One of the animals could have been a mate for Adam

(b.Yeb. 63a). Some suggest that the snake had relations with Eve (b.Abod. Zar. 22b; b.Yeb. 103b), or at least hoped to marry her (b.Sota 9b). Even the raven on board the Ark accuses Noah of desiring its mate when Noah releases him to fly over the waters (b.Ber. 59a; b.Roš Haš. 11b-12a; b.Sanh. 108b). But the *Tosefta* recognizes that human-animal unions are unfruitful and rationalizes their prohibition for this reason (t.Kil. 5.8b).

To prevent the crime, unmarried men should avoid cattle herding (m.Qidd. 4:14; b.Qidd. 81b-82a). Widows should not raise dogs (b.Abod. Zar. 22b). Cattle should not be left in pens at Gentile or Samaritan inns. Their stable boys and cattleherds are suspect (m.Abod. Zar. 2:1; t.Abod. Zar. 3:1-2).

The issues with which early rabbinic exegesis wrestles are not so different from the *topoi* that appear in the broader fields of world folklore. Thompson's *Motif Index* (1966) not only includes a rubric for the topic of (1) intercourse between humans and animals (T465; 5:389), but also notes (2) the punishments accorded humans and animals when the behavior is reprov'd, (3) the phenomena of bestial marriage (B600-699; 1:461ff), and (4) bestial adultery, along with (5) the consequent offspring of animal-human matings.

The folkloric particulars fill out a little the palette of animal-human possibilities. Various animals are tried out as wives (B600.1); animal suitors (B621) approach human women;

one might marry a person trapped in animal form (B641.6; B651.4), or marry a god in the same guise (B641.3). Animal paramours take human lovers (B610). The minotaur emerges from an animal-human mating (B23.1; 1:365); all the animals issue from the union of a snake with a person (A1732; 1:251). The folk do not wince at the notion of animal liability for crimes (B272; 1:413), nor do they avoid contemplating animal-execution as an appropriate punishment (B275.1). Indeed, Thompson avers, the motif of animal marriage is extremely common (1:451).

Animal-human sexual motifs are not only common to folklore they are also present in dreams. Plato speaks of dreaming where one, "freed from every restraint of shame and reason, attempt[s] to have intercourse ... with any other creature, human or divine or animal ..."¹ Among Artemidorus' oracular interpretations for "unnatural" sexual dreams, are those where a person mounts an animal (favorable), or is mounted (unfavorable) (*Oneirocritica* §80).

One should pause and remember for a moment that rabbinic lore -- whether aggadic elaboration of bestial motifs or halakhic expansions of laws against bestiality -- does not vouchsafe the original understanding of biblical law. Together with ancient dream interpretations and other folk motifs they do grant this: the topic exercises the human imagination. In Tambiah's useful phrase, "Animals are good to think" (1969).

¹ *Republic* 571b; cf. Dresner (1991:317).

That is, humans map social relations -- and sexual relations -- onto the animal world.

It should not come as a surprise then, that in Lev. 18's catalogue of prohibited sexual behavior one finds a rule about bestiality. What is a surprise is the importance given the law -- something that will become clear in our review.

- (1) וּכְכֹל-כְּהֵמָה לֹא-תִתֵּן שִׁכְבְּתְךָ לְטִמְאָה-כֹּה (Lev. 18:23)
וְאִשָּׁה לֹא-תַעֲמֹד לִפְנֵי כְּהֵמָה לְרִכְנָה
תָּכַל הוּא:

ûbkol-b'hēmā lō'-tittēn š'kobt'kā l'tom'ā-bāh
w'iššā lō'-ta'āmōd lipnē b'hēmā l'rib'āh²
tebel hū'

And with respect to any livestock (quadruped),³ do not place your penis⁴ in it to defile yourself. And with respect to a woman, let her not stand in front of livestock (quadruped) to mate⁵ with it. It is confusion

² Mappiq in "he" of l'rib'āh missing at Lev. 20:16: l'rib'ā 'ōtāh.

³ כְּהֵמָה b'hēmā 'livestock; quadruped', i.e., domestic livestock or four-legged wild animals; or metonymically, 'any animal', 3lx in Lev. Milgrom (Forth. 2000a, s.v. Lev. 18:23) stresses here any animal. Cf. Botterweck (TDOT 2:6-20) and Figure 3.1 for how כְּהֵמָה fits into a hierarchy of BH animal terms.

⁴ נָתַן שִׁכְבְּתְךָ ב- nātan šēkōbet b- 'place your penis in' or more euphemistically, 'lie carnally'; for šēkōbet 'penis', cf. Orlinsky (1944:37-39); Milgrom (1991:927); cp. נָתַן שִׁכְבְּתְךָ לְזֶרַע, cp.5, n.17.

⁵ עָמַד לְרִכְנָה 'āmad l'rib'ā 'mate with', lit. 'stand for lying down'; 'stand (before a beast) for carnal intercourse' (BDB 764c); only Lev. 18:23 [H]. The phrase ta'āmōd lipnē 'present oneself before', Milgrom suggests (Forth. 2000a following Wessely), indicates the act is voluntary: it uses the active Qal instead of the passive Nif. That is, the woman actively entices the animal. Cf. קָרַב לְרִכְנָה.

רָכַב r.b.'. 'lie stretched out, lie down' (BDB 918a s.v. II. רָכַב); for repose (Ps. 139:3); for copulation, i.e. bestiality (Lev. 18:23, 20:16) [H]; Hif., for animal

(tebel).⁶

crossbreeding (Lev. 19:19) [H]. The root in early rabbinic literature has a slightly different nuance: 'mount' b.Yeb. 25a, b.Sanh. 9b, 70a (male homoerotic intercourse), cf. Jastrow 1444c; Satlow (1995:202).

'תבל *tebel* 'confusion, violation of nature or the divine order', the exuberant translation of BDB (117d); similarly 'gegen die natürliche Weltordnung' (Hoffman 1906:2:71); 'Vermischung; Schändlichkeit [intermixture; disgraceful act]' (HALAT³ 2:1551); '(improper) mixing' (Frymer-Kensky ABD 5:1145); 'perversion' (Milgrom Forth. 2000a: ad loc.); only at Lev. 18:23 (bestiality of the woman) and Lev. 20:12 (incest with a daughter-in-law) [both H]. My rendering: '(improper hierarchical) mixture'.

It may be that the hapax תכליתם *tablītām* 'their wasting? destruction?' [תכלית* + 3PL POSS. PRN] (Isa. 10:25), understood as stemming from *√b.l.h.* 'wear out' (BDB 115a), is actually *tebel* (Rashi) as a few Mss. have תכלם 'their perversion' (cf. Levine 1989:83).

Etymology. Cp. with the hapax תכלל *t^oballūl* 'confusion, obscurity' (BDB 117d) in the phrase תכלל בעיניו *t^oballūl b'ēnō* 'discoloration or growth in the eye' (Lev. 21:20) [H]; cf. Milgrom (1991:723). Thus:

t^oballul < *b.l.l.l.* < *b.l.l.* < **bVl*

Cf. Akkad. *balālu* 'mix (clay), brew (beer), make alloy, knead; be spotted or variegated' noting particularly *ballu* 'STATIVE: is mixed' and *balil* 'spotted' (CAD B:39-42)} + {*t^o*- 'NOUN PREFIX MARKER', Blau (1976:74, §40.24.1)}, cf. Stewart (1998); on analogy with *šākūl* 'childless' > *šakkūl* 'robbed of offspring' (BDB 1013d-1014a), the *qāṭṭūl* form denoting 'INTENSIFIED QUALITY' (Blau §40.21). For *tebel* we imagine:

tebel < *t^obelel* < {*t^o*- + *√b.l.l.*} < **bVl*

where the vowels supplied to the root may have followed the *qeṭel/qatīl*- noun-pattern (§40.0). The addition of a noun prefix marker caused the apocope of *C₃* and the lengthening of *V₁*, mimicking the *qeṭel*-pattern, to compensate. Ibn Janah first suggested that *tebel* derives from the root *b.l.l.* I. 'mix, mingle, confuse' (BDB 117b; EM 8:407) rather than *t.b.l.* < Arab. *tabala* 'arousal of the male by the female' (EM 8:407-408). But Fabry and Meeteren believe the etymology remains unclear (ThWAT 8:547).

Associated words in its semantic field. *Tō'ēbā* 'abhorrent

The prohibition of male-initiated bestiality has its counterpart in the earlier "apodictic" law in the Covenant Code [CC]:

- (2) כָּל-שֹׁכֵב עִם-כְּהֵמָה (Exod. 22:18 [19E])
מוֹת יוֹמָת:

kol-šōkēb 'im-b'hāmā
mōt yômāt

Anyone lying with livestock (quadruped), he will surely be put to death.

along with the curse in D:

- (3) אָרוּר שֹׁכֵב עִם-כָּל-כְּהֵמָה (Deut. 27:21)
וְאָמַר כָּל-הָעָם אָמֵן:

'ārūr šōkēb 'im-kol-b'hāmā
w'āmar kol-hā'ām 'āmēn

Cursed be the one who lies with any livestock (quadruped). And all the people said, "Amen."

It is not clear whether CC and D prohibit animal sexual contacts by women. Incidence figures from Kinsey suggest that animal-human female contacts are extraordinarily low, although not uncommon for males. Kinsey found 1:14 U.S. males (7%) reporting one or more lifetime contacts (1948:670). However,

thing' (Lev. 18:22) precedes *tebel* (18:23) and follows it in the chapter's paraenetic frame (18:26-27, 29-30) suggesting either that *tebel* is a species of the *tō'ēbōt*, or possibly, an evaluative intensification (per Fabry & Meeteren, ThWAT 8:547). However, *tō'ēbā* (20:13) follows *tebel* (20:12) in another context. *Zimmā* 'lewdness' (20:14) follows these two and precedes the notice of bestiality where *tebel* is not used (20:15-16). The paraenetic frame exhorts: *lō' tiṭamm'ū bāhem* "Do not defile yourselves with them" (18:30; cf. vv. 24-25), i.e., with any of the behaviors of 18:6-23. Thus things *tebel* also fall under the rubric *ṭum'ā* 'uncleanness'. My rendering of '(improper hierarchical) mixture' contrasts with *kil'ayīm* '(improper or sacred) mixture (of two things at the same categorical level)'. See discussions of these terms *passim*.

contacts rise to the 40-50% level for farm boys and to 65% in some rural communities in the Western U.S. (671).⁷ Thus where animals are readily available, incidence is higher; and among adolescents, it is also higher.⁸

Thus, simply on the basis of the realia, it is a surprise to find a specific prohibition of animal contacts for women (contra Levine 1989:123). When Kinsey includes "dream" contacts, fantasies, and arousals from general body contact, 3.6% of adult U.S. women reported animal sexual encounters (1953:505, 509). However, only two of his female informants actually reported coitus with animals. The commands in the Covenant and Deuteronomic Codes may cover women: it does not matter. Women are not singled out. Considering the rarity of female-initiated bestiality, why does H problematize it? Why does H mention it at all?⁹

Women are marked in Lev. 18:23, not only by specific mention, but also by virtue of position in the concatenation of sexual crimes. They are last. This is not a matter of movement from the most to the least important sexual crime, something we would expect in Hittite law (Korošec 1964:181),

⁷ With calves, burros, and sheep as the main sexual objects (Kinsey et al. 1948:674).

⁸ Kinsey et al. speculate that such is "the product of erotic arousal contemplating animal coitus." The man or boy desires to try what he sees; or, the animal becomes the object of a displaced desire because of limited opportunities to connect with women (1948:675).

⁹ Is it, perhaps, no more than a projection of male sexual desires, as Kinsey et al. suggest (1953:502)?

it is a matter of placing the crime in trump position. Indeed, in case we were inclined to overlook it, H adds the diagnostic phrase *tebel hū'*. Although the pericope Lev. 18:19-23 concerns the topic, *'iššā* 'woman', this is the first (and only) prohibition that specifically addresses women's sexual behavior in Lev. 18.¹⁰ The woman here is active, the aggressor. *תעמד* 'stand' suggests that she entices the animal. She is an agent; "she departs from the properly passive receptive position."¹¹ Thus in every way -- by trump position, by diagnosis, and by a contrary-to-expectation "active" role -- Lev. 18:23 yields the parade example of "unnatural" female sexual behavior.¹²

Lev. 20:15-16 repeats the mention of the male and female perpetrators, adding penalties:

- (4) ואיש אשר יתן שכבתו כנהמה (Lev. 20:15-16)
 מות יומת
 ואת-הנהמה תהרגו:
 ואשה אשר תקרב אל-כל-נהמה לרבעה אתה

¹⁰ Levine also makes this point (1989:123). However, women's behavior is addressed, not the woman directly. Lev. 18:23b makes use of a jussive instead of a 2nd imperative. The addressee is named in the frame: Moses who will speak to the Israelite people (Lev. 18:1-2a; cf. R. Adler 1998:243, n.54).

¹¹ Brenner (1997:147).

¹² And thus the probable object of horror in Romans 1:26, "for their femalea changed natural relations into what is contrary to nature" (per Eichler 1976:96-97 and Haacker 1994; contra Brooten 1996). At least one classical author found the offspring more horrific than the act. Pasiphaë, wife of King Minos, resting inside the wooden cow built by Daedalus, mates with the bull and bears the Minotaur, "a monstrous thing" (Diodorus Siculus iv 77; Philo *De Spec. Leg.* iii 43-44). Her passion was divinely caused: by it Poseidon punished Minos for not offering him the fairest bull.

והרנת את-האשה ואת-הבהמה
 מות יומתו
 דמיהם כס:

w'îš 'āšer yittēn š'kobtô bibhēmā
 môt yūmāt
 w'et-habb'hēmā tahārōgū
 w'îššā 'āšer tiqrab 'el-kol-b'hēmā l'rib'ā 'ōtāh
 w'hāragtā 'et-hē'îššā w'et-habb'hēmā
 môt yūmētū
 d'māhem bām

With respect to the man who lies carnally with livestock (quadruped), he shall surely be put to death; As for the woman who approaches¹³ any livestock (quadruped) to lie down with it,¹⁴ you shall kill the woman and the livestock (quadruped) -- they shall surely be put to death; their blood(guilt) is upon them (alone).¹⁵

The death penalty for bestiality in CC (#2) H extends to both the woman (Phillips 1970:125-127) and the animal. The Hittite Laws [HL] explicitly place the animal partner (pig or dog, HL§199a), or the animal perpetrator (bull, HL§199b) under the ban, but remain silent about their fate in other cases. This

¹³ -לך qārab l'rib'ā 'el- 'approach to mate with'; 'approach sexually' BDB 897b; 'sich geschlechtlich nahen' HALAT³ 2:1057d; where penalties are stipulated לך denotes more than 'approach', something more like 'encroach', by which Milgrom means there is also {+physical contact} and {+intent} (1970b:16-21). The phrase is attested only once -- for a woman initiating bestial relations (Lev. 20:16) [H].

-לך qārab 'el-, of a man: Gen. 20:4 [E] (adultery); Deut. 22:14 [D] (relations after marriage); Lev. 18:6 (incest with close relations), 14 (incest with father's brother's wife), 19 (relations with the niddā) [all H]; Ezek. 18:6 (niddā); Isa. 8:3 (relations after marriage with hann'bf'ā). Cf. עמד לך.

¹⁴ Reading with LXX 'ittāh "with it" instead of MT 'ōtāh.

¹⁵ To whom does bām refer? The woman and the aggressor animal (v. 16), or the man (v. 15) and the woman (v. 16) only (as per Wessely)? As for the animal bearing guilt, the case of the goring ox exhibits another instance of animal culpability (Exod. 21:28-29).

is not simply a question of animal liability and guilt, as in the case of the goring ox (Exod. 21:28-32; LE§§54-55). H explicitly condemns all animal partners to death, rendering the issue of animal initiation or consent mute. H has problematized the status of the violated or violating animals. What is the source of this new found horror?

There are more clues. This horror does not extend to all animals. H chooses from the rich BH vocabulary for animals נֶחֱמָה, a term that operates at several taxonomic levels as both 'domestic livestock' and 'quadruped'. It is not clear in H whether only domesticates or all quadrupeds (the functional equivalent of non-creeping land animals) are in view. The fluidity of the term, its ability to function at multiple taxonomic levels determined by context, leaves an ambiguity. What does seem likely is that all animals are not under discussion. The early rabbis feel this omission in the tale of Noah and the raven's wife and their consequent extension of the prohibition to birds (b.Sanh. 108b). Lev. 18:23 and 20:15-16 do not use the most general term for animals, or "unique beginner" in Berlin's parlance (cf. Figure 3.1).

Lev. 20 yields a final clue in the importance it places on bestiality. It has "centered" this law (vv. 15-16) in the inverted structure of Lev. 20:10-21, just as Lev. 18 "centers" the *molēk* rule (v. 21) in Lev. 18:19-23. Hildenbrand, a structuralist, observes that "the center of an inverted

structure is the ideological focus of the discussion"¹⁶ and yet he cannot believe his own discovery: "One might wonder at the appropriateness of these two laws regarding bestiality at the center of the inversion..." (1998:148). The two "centered" passages also fasten their respective chapters together. Like a hook to its eye, Lev. 18:21 latches to 20:2-5; Lev. 20:15-16 hooks back to 18:23. This is not an epiphenomenon of redaction -- it is a matter of design.¹⁷

In summary, only biblical and Hittite law, among the ancient codes, take up the topic of bestiality. If we assume with Lambert that the silence of the Mesopotamian codes does not preclude a customary prohibition (1992:147), we must still ask: Why was it necessary to make the prohibition explicit? If we collect the verbs used to describe the bestial act -- **לִנְכַּח**, the most general used with nearly all forbidden sexual acts (Figure 4.1); and the specific gendered idioms, **לִנְכַּח לְאִישׁ** for males, **לִנְכַּח לְאִשָּׁה** and **לִנְכַּח לְאִשָּׁה** for "active" females (cf. Figure 3.2) -- why does H problematize gender? In Hatti, the Hittite king could commute the death penalty for bestiality or banish slave perpetrators; but why does the Holiness Code prescribe death for all comers in all cases? And in particular, why does it -- in contrast to the Covenant and Deuteronomic Codes -- even problematize the behavior of

¹⁶ Rosenberg, speaking of biblical narrative, observes that "biblical stories are often best understood from their center outward" (1984:62), and it may be, biblical law too.

¹⁷ See the discussion in cps. §1.3 and §2.1.b.

beasts? Why does the law focus on quadrupeds? And why does H signal, by organizational structure, the law's importance? H attaches horror -- indeed its own special horror -- to bestiality.

**Figure 3.1: Genua-Species Analysis¹⁸
of Some Biblical Hebrew Animal Terms**

Level 0: "Unique Beginner"

נפש חיה
'living creature'
Gen. 2:7, 19 [J]
Lev. 11:2 [P]

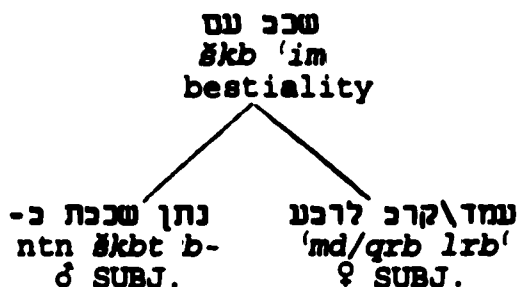
Level 1: "Polytypic"

Land	Air	Water
חיות השדה	עוף השמים	דגת הים
'land animals'	'birds of the sky'	'fish of the sea'
Gen. 2:19 [J]	Gen. 2:19 [J]	Gen. 1:28 [P]
Gen. 3:1 [J]		
בהמה	בהמת השדה	בהמת יער
'domesticate, livestock'	'steppe beasts'	'forest beasts'
Gen. 2:20 [J]	1 Sam. 17:44	Mic. 5:7
Lev. 18:23 [H]		

Level 2: "Folk Genera"

בקר	צאן	נחש	רמש
'cattle'	'sheep & goats'	'serpent'	'creepers'
Lev. 1:2 [P]	Deut. 14:4f [D]	Gen. 3:14 [J]	Gen. 1:24 [P]

Figure 3.2: Lexica of Baatiality



¹⁸ Cf. Berlin (1992; 1972) and Berlin et al. (1973).

3.2: Genasis Stories a. Adam and the Animals: Gen. 2:18-24

The sources of H's horror must be his reading of the Genesis stories surrounding the creation of woman. J's account of Adam's task includes not only the naming of the animals but also his search among them for an appropriate mate.

- (5) וַיִּקְרָא הָאָדָם שְׁמוֹת לְכָל-הַבְּהֵמָה וְלַעוֹף הַשָּׁמַיִם (Gen. 2:20)
 וְלִכְל חַיַּת הַשָּׂדֶה וְלָאָדָם לֹא-מָצָא עֹזֵר כְּנֹדָו;
 wayyiqrā' hā'ādām šāmōt l'kol-habb'hāmā
 ūl'ōp haššāmayim ūlkōl hayyat haššādeh
 ūl'ādām lō'-māšā' 'ēzer k'negdō

And the human gave names to all the livestock and to the birds of the sky and to all the (rest of the) land animals; but as for the human, no helper was found like him.

The fact that Adam himself is both like and not like the animals sets up his failure to find a suitable mate. His (un)likeness appears in the comparison of Gen. 2:7 with its reprise, 2:19:

- (6) וַיִּצַּר יְהוָה אֱלֹהִים אֶת-הָאָדָם עֹפֶר מִן-הָאֲדָמָה (Gen. 2:7)
 וַיִּפַּח כְּאִפּוֹ נְשָׁמַת חַיִּים וַיְהִי הָאָדָם לְנֶפֶשׁ חַיָּה:

(Gen. 2:19) וַיִּצַּר יְהוָה אֱלֹהִים מִן-הָאֲדָמָה
 כָּל-חַיַּת הַשָּׂדֶה וְאֶת כָּל-עוֹף הַשָּׁמַיִם ...
 וְכָל אֲשֶׁר יִקְרָא-לּוֹ הָאָדָם נֶפֶשׁ חַיָּה הוּא שְׁמוֹ:

- (7) wayyīšer YHWH 'ēlōhīm et-hā'ādām 'āpār min-hā'ādāmā
 wayyipah b'appāyw nišmat hayyīm
 way'hī hā'ādām l'nepeš hayyā

(v.19) wayyīšer YHWH 'ēlōhīm min-hā'ādāmā
 kol-hayyat haššādeh w'ēt kol-ōp haššāmayim ...
 w'kōl 'āšer yiqrā'-lō hā'ādām nepeš hayyā hū' š'mō

(v.7) The Lord God formed from the earth the dirt clod-man and he blew into his nostrils the breath of life and the human became a living creature.

(v.19) The Lord God formed from the earth all the creatures of the land and all the birds of the sky ... and whatever the human would call each living

creature, that was its name.

The human being and beast are each a *nepeš hayyā* that God forms from the earth. Adam's likeness opens the possibility that a suitable mate might be found among his fellow living creatures. But despite such fundamental similarity, human and beast are ultimately not alike. The hierarchy of being, borrowed from the Psalmist in chapter one, divides the human creature from the animal. God breathes into Adam's nostrils and Adam uses his new found breath to speak the animal's names: God inspiring; man inspired naming; animals named. Adam shares with God creative action; he shares with the animals being acted upon.

Now if we take the human at the nexus of the divine and created worlds, does the text genuinely entertain the possibility of his finding a bestial mate? "Adam -- being already like a twenty-year old man -- felt jealous of their loves, and though he tried coupling with each female [animal] in turn, found no satisfaction."¹⁹ Is there genuinely a "tradition that man's first intercourse was with animals?"²⁰

The Adam of Genesis is not quite the man-beast Enkidu who lives among the gazelles and jostles wild beasts at the watering hole. Though earlier commentators on *Gilgameš* suggest Enkidu had sex with the animals, their argument depended on silence -- Mesopotamian law does not explicitly condemn

¹⁹ b.Yeb. 63a; cf. Graves & Patai (1964:65).

²⁰ Graves & Patai (1964:67).

bestiality. But what if the harlot of that tale introduces Enkidu to both cultural maturity and sexual experience, as per Bailey (1970:139)?

The whole exercise in Gen. proves the undesirability of such mating. None are like him; none share his visage. Yet the search awakens his longing (Cassuto 1961:128). Once God forms Eve (vv. 22-23), the text forecloses the possibility of an animal mate once and for all (Eichler 1976:96).

b. Eve and the Serpent: Gen. 3:1-7

If the man's true mate is not an animal but Eve; is the woman's true mate Adam? Their reciprocal relation (Gen. 2:25) will be severely tested by the insinuation of the most liminal of animals, the *nāḥāš* 'serpent'. Adam's naming had betrayed his own difference from all other animals, but here is a talking animal and a clever one too. Eve, in a lonely moment, will be drawn into social intercourse with the beast.²¹

It is the serpent's animality, and not its symbolic possibilities that are at stake here. Not as "Satan," not as "Egypt," not as an avatar of divinity, not as any of the myriad other suggestions for its identity,²² the serpent as

²¹ Edmund Leach explores the anomalies here: Eve is anomalous to the opposition Adam-Animal; The serpent is anomalous to the opposition Man-Woman; Creepers are anomalous to land, air, and marine animals (1969:14).

²² For summaries of the serpent's interpretive history see Fabry (*ThWAT* 5:384-5, 391-3, s.v. *nāḥāš*) and Holter (1990). The serpent is often seen as a symbol of evil: (1) either as Satan (Ezek. 28, NT, Pseudepigrapha, late rabbinic

a נחמה straddles the border between human and beast. When God will condemn him to crawl on the ground, he will cross another boundary from quadruped to creeper.²³

In the enormous literature surrounding the story of the serpent in Paradise readers consistently find something sexual about the tale. What, after all, is the "knowledge of good and evil?" For some it is primarily, or exclusively, sexual

literature); or (2) a demon; or (3) analogous to the monster Tiamat (Cassuto 1961:141; Alter 1996:13); (4) or as chaos; or (5) as a symbol of Israel's political enemies in the time of J (Holter 1990:106). Akin to the mythological is the cultic role of the serpent in (6) non-Yahwistic Egyptian (Görg 1982) or (7) Canaanite religion (Hvidberg 1960; Loretz 1968:121). Coppens views the serpent as (8) a phallic symbol associated with a fertility cult (1948:92-117; so McKenzie 1963:165), (9) taking "the role of a god in relation to the woman" (Boomershine 1980:123). If not a symbol of fertility, the serpent is sometimes one of (10) regeneration or (11) wisdom. The problem with comparing the Gen. serpent with other serpents in the ANE is the extraordinary diversity of the parallels. As Cassuto observes: we have sacred serpents and serpent gods; serpents as symbols of gods, or life, or fertility; serpents that guard sanctuaries or boundaries; and serpents that prognosticate the future. But there is no serpent like ours in Gen. 3 (1961:140).

In contrast, some interpreters see the serpent primarily as an animal: (12) one that is magical but not mythological (Vriezen 1937; Wolde 1994:4-5); or (13) simply as an "ordinary animal" (Soggin 1975:110), or "king over all beasts" (b.Sota 9b) that (14) derives its function from the structure of the fairy tale (Westermann 1984:238). When R. Aha asserts that (15) "the snake was your snake, and you [Eve] were the snake for the man" (Gen. Rab 20:11), he has in view the snake's story function. Thus, when the reader can escape the interpretive tradition of the serpent as Symbol, she can see its narrative use as an unusual animal.

²³ Jewish exegetes imagined the serpent with legs (cf. Roitman (1995:158-61, 174-75). Among them: Gen. Rab. 20:5; Deut. Rab. 5:10.

knowledge.²⁴ By this reading, exercise of sexual knowledge is delayed until Gen. 4:1. Because there is no mention of sexual intercourse until then, so the argument goes, the first couple had no in-born knowledge of it and come to it by the actions of the serpent. In this view, the first couple, naked without shame, discovers shame for their nakedness by their new knowledge. The phallic serpent, like Enkidu's harlot, leads the way to this "wisdom" in the lush garden's scene of eating -- both metaphors for sexual love in the Song of Songs. At least one biblical tradent seems to read "the knowledge of good and evil" in a similar way: Barzillai the Gileadite sees himself as too old to participate in the goings-on at court. "Can I tell the difference between good and evil? Can your servant taste what he eats and drinks? Can I still listen to the singing of men and women?" (2 Sam. 19:36). We understand him to speak of bodily pleasures and sensual delights.²⁵ Coppens brings us to the apotheosis of this line of thought:

²⁴ For the history of interpretation, see Bailey (1970:144); cf. also Boomershine (1980:126) and Milgrom (1994:21). The alternative, that the "knowledge of good and evil" is knowledge *qua* knowledge, the "knowledge of every thing possible," also has a long and hoary tradition. Thus for some, "[t]he text in no way purports to allude to any aspect of sexual relationship" (Cassuto 1961:148); so Soggin (1975:107). For Dante, "il trapassar del segno" (Par. xxvi:117), it is passing bounds that is at stake. Wright observes that the story hints both ways: the couple is sexually (in)active (1996:312). For further bibliography supporting the "no-sex" view, cf. Wright (1996:313, n.30).

²⁵ And likewise Dtr. at Deut. 1:39 where children who do not yet "know good and evil" will enter the Land (cf. Milgrom 1994:21).

the point of the story for him is the condemnation of "licentious cults" and their serpentine, phallic, fertility deities (1948:24).

The reader does not have to foreclose some broader sense to the "knowledge of good and evil" (e.g., knowledge *qua* knowledge) to notice the sexual atmosphere of the tale. Foremost among these are the judgments for eating the fruit -- pains in childbirth; a sexual urge for the husband;²⁶ thorns and thistles filling the earth -- which fall on reproduction and fertility (Bailey 1970:149-50). Second, the episode in the garden follows immediately after Adam's search for a mate. It begins with a play on words:²⁷

- (7) ... והנחש היה ערום מכל חית-השדה (Gen. 3:1aα)
 w'hannāḥāš ḥāyā 'ārūm mikkōl ḥayyat haśśādeh...
 The serpent was clever, more so than any (other)
 land animal...

which recalls the nakedness of the pair in the prior verse, the end of the last pericope:

- (8) ... ויהו שניהם ערומים האדם ואשתו (Gen. 2:25a)
 wayyih'yū š'nēhem 'ārūmāw hā'ādām w'ištō...
 The two of them, the man and his woman, were naked.

The text further echoes this play with עירומים 'ērummīm 'naked' (Gen. 3:7) and עירם 'ērōm (3:10, 11). The hinge between the tales, 'ārūm/'ārūmmīm, invites us to hold in mind all that has

²⁶ Woman's desire for the man now complements the man's clinging to the woman (Gen. 2:24).

²⁷ Oft remarked, including Cassuto (1961:143-44); Wolde (1994:7); Alter (1996:11). BDB hypothesizes different roots: 'ārūm, √'rm (791a); 'ērummīm, √'wr II (735d-736a); and 'ārūmmīm, perhaps a bi-form of the latter (736a).

gone before including the problem of selecting the best mate.²⁸

Though the text shows a certain reserve, rabbinic interpretation is blunt: R. Yohanan said, "at the time that the snake had intercourse with Eve, he introduced filth into her" (b.Yeb. 103b; b.Abod. Zar. 22b). In the view of R. Yohanan, the woman is the victim of sexual aggression. As Boyarin notes, the "filth transmitted is lust for illicit sex -- either adultery or bestiality or both."²⁹ *Genesis Rabbah* picks up the thread when it asserts that "the snake became inflamed with lust for Eve after he saw them having intercourse and comes to Eve while Adam subsequently dozes" (Boyarin 83; Gen. Rab. 18:6 + 19:3). This, Boyarin observes, reverses pre-rabbinic interpretations where the serpent teaches Adam and Eve how to have sex.

Now the history of the reception of the text cannot prove or disprove that Eve had intercourse with the serpent. The text is silent; there is only room for readerly imagination in the textual gap. Nevertheless what the text does bequeath to us is sexual tension. The humans are naked; the snake is (nakedly) clever. Eve talks with the serpent, Adam absent. She eats. In the resolution of the tale, God declares:

²⁸ The chapter division, after all, is not canonical: it artificially divides the texts.

²⁹ Boyarin (1993:82); cf. also the 5th cent. CE, *Life of Adam and Eve* 10:3-4 (Johnaon 1985), perhaps relying on the earlier rabbinic tradition.

- (9) ...תשוקתך לְאִשׁ-לְךָ (Gen. 3:16b)
w^{el}-l'šēk t'šūqātēk...
Your longing³⁰ shall be for your husband...

To what end? Because her urgent desire (ta'āwā) had lit upon another object, i.e. the fruit, or the serpent, or wisdom itself?³¹ The man was perhaps convinced by his lengthy naming exercise that no beastly mate was suitable. In a much more abrupt way, God reins in woman's desire by a sentence of judgment.

We must distinguish between the several layers in the narrative and its later history-of-reception. If this tale originally told the story of the discovery of sexuality -- one that reflects a folkloric vision of the serpent teaching Eve, and Eve teaching Adam -- it seems embedded in an earlier account of the first innocent couple.³² These pictures (from different traditions) are now assembled together in a kind of triptych: "Adam and the Beasts" on the first panel (Gen. 2:18-24); "Adam and His Proper Mate" on the central panel (Gen.

³⁰ תשוקה t'šūqā 'longing' of woman for man (Gen. 3:16) [J]; man for woman (SoS 7:11); of a beast to devour (Gen. 4:7) [J], BDB 1003c, HALAT³ 2:1658.

³¹ תאוה-הוא לעיניו ta'āwā-hū' lā'ēnayim "it was lust to the eyes" (Gen. 3:6; cf. Alter 1996:12).

³² Soggin (1975:109) envisions three layers in the text: (1) the received text where J reduces the serpent to a cunning animal that speaks, names God Yahweh, and reshapes the story as an ethical tale; an earlier (2) Canaanite story where a serpent goddess teaches humans the secrets of fertility. This latter was formed by merging (3) two earlier myths -- one about creation; another about paradise lost. While I reject Soggin's specifics about a Canaanite fertility cult, his insight about the multilayeredness of the text informs my argument.

2:25); and "Eve and the Beast" on the last (Gen. 3:1-16). The human-animal sexual motif is underplayed in the received narrative in contrast to the later rabbinic retellings.

Just as the neighboring pericopae Gen. 2:18-24 and 3:1-16 flirt with the possibility of beastly mates, so Lev. 18:23a-b and 20:15-16 juxtapose the possibilities of male and female bestiality. What is conveyed by hints and atmosphere in Genesis, Leviticus makes explicit. Leviticus 18:23a and 20:15 present the man as sexual initiator; Adam, at God's behest, names the animals; none pursue him. But Lev. 18:23b and 20:16 contemplate an active sexual role for the woman: they both show the woman initiating. So Eve, after contemplating the fruit, on her own initiative eats (3:6a β), and gives to eat (3:6b). Lev. 18:25 appears even to pick up the theme of the curse of the land from Gen. 3:17 -- the fertile land will now vomit out its inhabitants where once it exercised them (cp. Lev. 26:14-42). Where do the Holiness writers get their concern about a woman and a beast? Do they invent the problem *ex nihilo*? No. Rather, they enter the history of the interpretation of these very texts.

3.3: Lav. 19:19 and Kil'ayim

The traditional antipathy in the English-speaking world between legal discourse and metaphor Lord Mansfield captures when he declaims "nothing in law is so apt to mislead [as] a

(i.e. linen and wool), you shall not dress yourself up (in such).

In chapter one we found that the principle of *kil'ayim* is sometimes offered as an explanation for the collection of sexual laws in Lev. 18:19-23 -- often in tandem with notions of fertility or purity. But these explanations were rejected. If relations with a fellow's wife were a forbidden mixing, such an intermixture is not necessarily infertile; nor are all mixtures themselves impure. Lev. 19:19's three examples are key to the last two points: the intermixture of seeds and some animal species may well be fertile; *šā'aṭnāz* has a sacred use in the high priest's ephod.

Even if all of the sexual rules of Lev. 18:19-23 are not instances of mixing, what of bestiality? Things *kil'ayim* and animal-human relations are sometimes held together in the same category -- R. Yohanan in a comment on Gen. 6:12 offers hybridization and bestiality together as explanations for the cause of the Flood:

- (11) This teaches that [the men of the generation of the flood] made a hybrid match between a domesticated beast and a wild animal, a wild animal and a domesticated beast, and every sort of beast with man and a man with every sort of beast.³⁶

Are animal-human sexual relations forbidden because they blend two categories together? Are they a species of *kil'ayim*? In

different kind' noting the Akkadian cognate *kilallān* means 'both, pair, two', and the Targuma render it by 'ērubīn, 'frēbūbīn 'mixtures'; cf. also Licht (1954).

³⁶ B.Sanh. 108a (Neusner trans.); cf. also Houtman (1984).

The Sages did recognize a liminal case, the case of the "wild man" or primate.⁴¹ In their understanding, the law of diverse kinds forbade crossbreeding of wild and domestic species near to each other: a rooster with a peahen, a bull with a wild ox, or a sow with a wild boar.⁴² A reader of the Sages might infer that a human and a "wild man" should not mate because they are too close, wild and domestic versions of the same thing. The Sages do not explicitly draw that conclusion. For purposes of *kil'ayim* a "wild man" is a wild animal (we could not yoke an ape and a tamed monkey together); but, R. Yosé says, for purposes of corpse uncleanness, a "wild man" contaminates a tent like a man. We could forbid sexual relations between humans and primates by the mishnaic dicta of *kil'ayim* only if we bracketed the humanity of humans. But as "wild animals," primates would still fall under the rule of bestiality.

Thus we have a kind of confirmation of axes in our heuristic model (Fig. 1.2). Intermixtures that occur on the same niveau are regulated by the law of diverse kinds -- *kil'ayim*. Sexual mixings between different hierarchical levels are ... *tebel* 'confusion'. The Holiness Code uses this last term for two things: the human female initiating sexual relations with an animal; a father-in-law lying with his

⁴¹ Chimpanzee, ape, or orangutan. The "wild man" is regarded as either a man or an animal (m.Kil. 8:5).

⁴² M.Kil. 8:2; t.Kil. 1:7-8, 8:4; y.Kil. 1:6.

daughter-in-law (Lev. 20:12). What is common here? A violation by one from "above": higher in the chain-of-being or clan rank (and from a preceding generation to boot); and a violation of one not "near": one from a different order of being or an affine (not a consanguine). We could thus summarize the features of *kil'ayim* as {+(same) rank, +near (species)} and of *tebel* as {-rank, -near}.

This overlay of the vertical plane of confused mixes by the horizontal plane of diverse kinds mirrors another misprision observed by Bird. She understands humans "made in the divine image" (Gen. 1:26) as a statement about relationships in a "vertical plane." The existence of gender (Gen. 1:27) becomes the "root metaphor" in the "horizontal plane" of human relationships. "Traditional interpretation of Genesis 1-2 has commonly imposed the vertical concept of the image [of God] on the horizontal concept of sexual differentia [gender], transforming the hierarchy of orders [heavenly, human, beastly] into a hierarchy of sexes" (1997a:167). Likewise with reference to species-mixing and orders-of-being, prior readers have transmuted one plane into another.

If the features of the law of *kil'ayim* have come into clearer focus, what then is its significance? Some have despaired of answering, appealing to the notion of a royal decree (Rashi), or collective forgetfulness; or without evidence appealing to apotropaic magic (Rad 1966:141), or a fertility cult (Dresner 1991:312). Akin to these "black box"

explanations are certain appeals to rationality: *kil'ayim* rules prevent unfruitful matings or environmental degradation from excessive crop load (Philo De Spec. Leg. 4:211-14; Feliks 1971:171-72). But we know that many hybrids are fruitful (so Dresner can argue, crossbreeding occasionally serves the pagan cult of fertility). Most commentators eventually come to the notion that this rule protects the created order from disruption or dissolution (Houtman 1984:227; Brenner 1997:146). Inherent to this view is the feeling that the law preserves fundamental categories by forbidding crossover mixes (Frymer-Kensky 1989:96; 1992:5:1145).

However, if we recall Milgrom's observation that some liminal creations are not so forbidden, the use of *šā'aṭnēz* in sacred clothing and coverings for instance, we are faced with the conclusion that the products of mixes do not violate "fundamental categories," they are a category tabooed by association with the divine. That crossbreeding sometimes serves as a metaphor for intermarriage with idolaters could make sense. Such intermarriages touch the divine realm and mix at the same "level" in the chain-of-being.⁴³ But unlike the sacred uses of *šā'aṭnēz*, the intermarriage metaphor reverses the valence of mixing from positive to negative. Other metaphorizations along the same lines are less satisfying: "ass" and "ox" standing for Hamor's Hivites (Gen. 34) and

⁴³ 4QMMT B 11.75-82; Eilberg-Schwartz (1990:123); Milgrom (Forth. 2000a ad. loc.) for further literature.

Jacob's Israelites, and so transforming the law into an allegory against intermarriage for example.⁴⁴

Why doesn't the valence inversion satisfy? Because it confuses mixtures with a value judgment. Even on the vertical axis, our chain-of-being, we find sacredness ascribed to mixes. The cherubim, who are human-lion-ox-eagle hybrids (Ezek. 1:5-11), are marvelous creatures associated with the numinal realm.⁴⁵ Thus, the products of both vertical- and horizontal-mixes may be "holy." Therefore, the laws of things *kil'ayim* and *tebel* do not abhor the product of mixed unions. Rather, they must reprove the human agency that impinges on divine prerogative. Mixing is not taboo because it crosses species-boundaries -- it does not exactly undo the order of creation. Mixing mimics creation, an act reserved to the Godhead.

3.4: Why Reprove Bestiality?

When the critical literature approaches the question of why bestiality is forbidden, it leaves us with a host of rationalizations: such injures the animal (Sanders 1994:822,

⁴⁴ Though Hamor might serve as "Mr. Ass," Jacob nowhere has the epithet "Ox" and he even describes one of his own children as a strong-boned ass (Issachar, Gen. 49:14). Carmichael (1982:403-04) essentially employs a literary version of the clan-totem, a notion first connected to biblical tribes by Robertson-Smith (1880:75, 80-93, 99) and recently resurrected by Eilberg-Schwartz (1990:115-16).

⁴⁵ Milgrom (Forth. 2000a, s.v. Lev. 19:19) takes the cherubim as his "initial indication ... that mixtures belong to the divine realm."

n.267), breeds disease (Dekkers 1994:129-30), harms the nuclear family (Dresner 1991:312), and produces infertile (Ramban; Ibn Ezra) or monstrous unions (Philo *De Spec. Leg.* iii 49). But these, except perhaps for the last, are all anachronizing interpretations.

We must also eliminate anthropological explanations based on totemism. Even if we were to take Lev. 18:23 as forbidding sex with all animals -- and thus forbid marriage based on any animal-clan system -- not all Israelite tribes have candidate totem animals.⁴⁶ Nor can we follow Brenner's avowal that the link between male-male sexual behavior and bestiality is "unmistakable" (1997:145). Her argument depends on no more than juxtaposition (Lev. 18:22 abuts 18:23; but note 20:13 does not abut 20:15-16). I have argued above in chapter two that Lev. 18:22 is an incest prohibition, and incest rules are often juxtaposed to bestiality rules in Lev. 20, Deut. 27, and Hittite Law.

Robertson-Smith's (1880) argument that bestiality rules prohibit a matrilineal totem-system and its incestuous consequences is seductive. It would wonderfully solve two of the problems I have raised elsewhere: the sudden flowering of incest rules in Leviticus (presaging the cultural victory of patriarchy) and their juxtaposition with bestiality rules. The problem lies with the evidence itself. If we lay aside the possibility of plant and astral totems (not covered by a

⁴⁶ E.g., Reuben, Simeon, Levi, and Zebulun; Gen. 49.

bestial prohibition), and bracket the critical problems associated with totemism itself, a law against bestiality has already appeared in the Covenant Code outside an incest context (#2). This animal-human sexual prohibition seems to be just that -- a literal prohibition. In any case, CC, H, and D, and the patriarchal narratives too, suggest that patriarchy had already won.

Some transpose the violation of hierarchical relations inherent to bestiality to another set, divine-human relations. By this reading, bestiality becomes a metaphor for hierogamy (Eichler 1976:96). If the animal is an avatar of the god having physical relations with it achieves physical union with the deity. Such a cultic practice, the reader imagines, magically transfers sexual prowess or fertility.⁴⁷ Despite the fashion of earlier twentieth century scholarship, there is little evidence for such a fertility cult in ancient Israel.⁴⁸ Indeed, numinal relations are possible directly: the Sons of God with the daughters of men (Gen. 6:1-4).

However, there is another way in which animal-human relations might serve as a metaphor for human-divine encounters. Observing again that Lev. 20:15-16 problematizes the penalty for the beast (beast and human perpetrator die; there is no penalty for the beast in the Covenant Code and the

⁴⁷ Biggs (1967:33); Krebs (1963:20-21); Leick (1994:206); Phillips (1970:121).

⁴⁸ E.g., Janzen (1990:607).

Deuteronomic cursing liturgy), under what other circumstances are humans and beasts executed together? "Whoever touches the mountain shall be put to death ... beast (כְּהֵמָה) or man, he shall not live'" (Exod. 19:12-13 [J]).⁴⁹ That is, either beast or human who trespass sacred ground will die. In the case of the habitually goring ox that kills a free person, both beast and owner will die (Exod. 21:29 [E]).⁵⁰ By homology of penalty, does H then imagine some equivalency between bestiality, trespass of sacred precincts, and the shedding of lifeblood?⁵¹ There is insufficient warrant here to do more than hint at an answer -- the beast must also trespass the sacred, trespass against God's prerogatives.

Not only are sancta dangerously contagious (Milgrom 1991:45), pollution is also contagious and impairs one's access to the divine. In Lev. 18:23 (#1) male-initiated relations are coded *ṭāmē'* and female-initiated relations, *tebel*. Biblical *ṭūm'ā* includes status impurity with the power to pollute others: the *niddā* herself, the corpse and animal

⁴⁹ Noth provisionally places this passage in J (1972:31). The nineteenth century critics, including Wellhausen, assign it to E (Holzinger 1893: 2:7).

⁵⁰ This is an aggravated case of the rule that any animal or human who sheds blood must die (Gen. 9:5 [P]) -- aggravated because both the animal and the human together have a role in the homicide.

⁵¹ The mishnaic explanations of the beast's execution -- the animal will be pointed out and induce others; the animal is disposed to and will invite it; the initiating animal is culpable to begin with (m.Sanh. 7:14) -- only beg the question of why it is a crime for the beast.

carcasses (*nēbālôt*), scale disease (*gārāb*, *āra'at*, *yallepet*), and the 'ōbōt w'yidd'ōnīm 'ghosts and departed spirits (or necromancers; or their equipage)'; and sexual behaviors such as adultery, certain incests, and relations with the *niddā* (Wright 1991:163). All these directly or indirectly (by loss of blood or semen; or resemblance) evoke death. Thus Milgrom codes *ṭūm'ā* 'pollution, impurity', {+death}, and *qōdeš* 'holiness', {+life}.⁵²

That the male crime of bestiality is *ṭūm'ā* -- it involves semen -- seems self-evident within P's schema, yet its specification as such represents an innovation. CC and D do not mark the crime this way. Moreover, we cannot just assume that *√ṭ.m.* in Lev. 18:23a also categorizes the bestiality of the woman in v. 23b, unless she is a *niddā* or has scale disease. We are confronted again with this difference: the woman's crime is *tebel*. Lev. 20:15, calling upon 18:23a, prescribes death for a male crime -- a polluting act; Lev. 20:16, remembering 18:23b, prescribes death for a female crime -- a confusing encroachment.

The woman's crime is thus an anomaly, and the liminal power of that anomaly is in a category of its own. A mistress of animals stands outside all Pales. Might this crime embody, then, androcentric fears of the uncontrolled woman?⁵³

⁵² Milgrom (1991:731-33); cf. also Wright (ABD 1992).

⁵³ In Walls' words concerning the Ugaritic goddess Anat: "[m]ale ambivalence towards feminine sexuality in androcentric ideology results in a general need for male control of

In the end, the frame of Lev. 18 problematizee my reservation of *ṭûm'â* to the male perpetrator: v. 24 renders all of the sexual crimes of the chapter such. These two voices, the one speaking from within the frame playing with categories, and the one speaking by the frame enlarging the field of *ṭûm'â* homiletically, suggest there cannot be just one rationale for this crime.⁵⁴ The several rationales emerge out of the heteroglot text: its dialogue with itself and competing texts near and far.

Returning to the problematizations observed and the questions they precipitate, we have some provisional answers. Why did the Holiness Code make explicit the prohibition of bestiality? The implied author appears to read Genesis; the laws stem from the momentum of exegesis. The stories from Gen. 2-3 raise the issue of bestial marriage and take up the motif of "Woman with the Animal." Lev. 18 and 20 diagnose the violated categories and supply the consequences. Why does H problematize the gender of the perpetrator? Not only because Genesis attends to gender, but because the Yahwist problematizee gender too. Eve acts independently of God and man, and the woman of Lev. 18:23 also dangerously takes initiative.⁵⁵ While Eve attempts to ascend, the woman of Lev.

feminine energies to avert social chaos" (1992:220).

⁵⁴ Per Wright (1991:150).

⁵⁵ Not unlike the Eve of Dante's *Purg.* (xxix:23-27) who questioned authority.

18:23 descends the axis that relates divinity to humans and humans to animals. If male action pollutes, female action in v. 23 more than pollutes; it encroaches on the divine prerogative of creation.

CHAPTER FOUR: Adultery in Ancient Israel

"The laws regarding adultery [in the Bible] are quite clear"¹ -- but are they? With such an affirmation one hesitates to ask the question, what do they mean? McKeating avers that we readers share a common set of assumptions and a common definition of adultery; that ancient Near Eastern societies share the same definition also; and that this definition is transparent to us. That this notion is anachronistic Bird, Brenner, Pressler, and others have already observed.²

To understand the biblical views of adultery³ and rape,

¹ McKeating (1979:57).

² Countryman (1988:159): "The understanding of adultery both in the Torah and in the New Testament era ... proves to have been quite different from that current in the contemporary Western world." Cf. also the anthropologists, Cucchiari (1981:39) and Goody (1969:13).

³ **q1n3** **ai'ûp** 'adultery' (BDB 610c-d; HALAT³ 621d-622a; ThWAT 5:123-129 s.v. **nā'ap**); sometimes loosely **zônût**, **zônûn** 'fornication(s)' (BDB 275c), traditionally translated 'whoredom, harlotry'. In relation to **ni'ûp**, **zônût** "is the more general or inclusive term" (Bird 1997b:221). The root **n.'p.** signifies the violation of a husband's sex rights; the root **z.n.h.** signifies all other sex apart from marriage except incest and bestiality (cf. Bird 1997b:222). **z.n.h.** refers to:

- (1) premarital sex (Gen. 34:31; Deut. 22:21, Hos. 4:13-14; Lev. 19:29; 21:9);
- (2) prostitution (Gen. 38:15; Lev. 19:29; 21:9; Deut. 23:19; Jer. 2:20; Hos. 2:7; 3:3; Amos 7:17);
- (3) post-marital sex (Gen. 38:15; Hos. 2:7; 3:3); or
- (4) sex otherwise outside marriage (Isa. 57:3; Hos. 4:14) including the prostitute/fornicator as a wife-candidate prohibited to priests (Lev. 21:7, 14) and sex by a **pīlēgā** 'concubine' (Judg. 19:2); and
- (5) overlaps with **n.'p.** in reference to extra-marital sex (e.g., Gen. 38:24; Hos. 4:14; cf. Adler [Goodfriend]

a close reading of Yahwist stories, D, and H offers a thick description of the issues on the margins of the topic -- the boundary cases. The sources distinguish different voices, albeit mostly voices of competing male elites. The tendency to collapse these differences into one 'biblical' view (usually privileging D),⁴ even among those who distinguish sources or

(1990:310) and Brenner (1997:147)).

Thus *z.n.h.*, from the root *z.n.y/w.*, means 'fornicate, act as a prostitute' with similar meanings for its cognates in Aram., Arabic, Eth., and Tigré (Erlandsson TDOT 4:99-104); 'commit fornication, be a harlot' (BDB 275c-276b); 'to become involved with another man, to commit fornication' (HALAT³ 1:275a-d); 'prostitute oneself, fornicate' (DCH 4:121-123). The fornicator or prostitute is a *zōnā*: Tamar (Gen 38:15), Rahab (Josh. 2:1; 6:17, 22, 26); and the mother of Jephthah (Jdg. 11:1). Cf. nn. 27 (*zōnā*), 49 (*z.n.h.* in H and P), 85 (Hif.), 86 (+ *zimmā*).

N.'p. 'commit adultery', cf. BDB 610cd; HALAT³ 1:621d-622a; ThWAT 5:123-129. For *ni'ûp*, the "marital status of a woman's partner is inconsequential since only the married or betrothed woman is bound to fidelity. The infidelity of a married man is not punishable by law" unless, of course, it is with a married woman (Goodfriend ABD 1:82). For more on the "double standard," see Frymer-Kensky (ABD 5:1144). An anthropologist explains why this should not be a surprise: "Although in European law adultery is defined as sexual intercourse where one of the partners is married, in most other societies it is only considered adultery when the woman is married. ... The reason for this is that in general marriage confers relatively exclusive sexual rights on a man over the sexual services of a woman. It is most unusual to find that the woman acquires similar rights over the male, even in matrilineal societies" (Goody 1969:24).

Gender asymmetry shapes these two terms in another way. *N.)p.* "refers to the illicit sexual activity of both men and women"; *z.n.h.* in its primary sense refers to the illicit sex of females only (Adler [Goodfriend] 1990:313). *Z.n.h.* has male subjects only in Num. 25:1 (fornication with Moabite women in an idolatrous context), Ezek. 23:43-44 (with Samaria and Jerusalem), and at Qumran in 4QDe 11.1:13 ("improper sex acts with one's wife" DCH 4:121b).

⁴ Cf. Pressler (1993:33) as an example of the globalization of D's notion of adultery: "In Israel, as in the rest of the ancient Near East, adultery is defined as sexual

literary genres, suppresses the texture of, and tensions between, these voices.

It is just these "tensions" -- or what Foucault would call 'problematizations' -- that interest me. Foucault's project, his 'history of sexuality', attempts to reconstruct the questions asked that precipitate these problems. To undertake such an archaeology of questions, one works backward from the different (and divergent) solutions proposed. A recovery of a genealogy of 'thought' allows one to envision how solutions have been constructed and how different

relations between a married or betrothed woman and a man other than her husband. The second variable, the woman's consent or lack of consent, determines whether the woman, as well as the man, is held accountable." Cohn (EJ 2:313) limits adultery to "voluntary sexual intercourse between a married woman, or one engaged by payment of the brideprice, and a man other than her husband" (*italics mine*), an example of reading our contemporary Western understanding into the past. Cohn also believes that the *nihi* of a priest's daughter is actually adultery (EJ 2:316). Cf. also Phillips (1970:112), Westbrook (ABD 5:552-553), and Goodfriend (ABD 1:82).

We could just as easily have generalized P's definition of adultery as per Brichto's understanding of Num. 5:12b-13 (1975:56): "In the case of any man whose wife may [commit adultery, expressed in four clauses:] go astray [תשטה אשתו] (a), breaking faith with him [והעלה כו מעל] (b), (13) in that a man beds her in sexual intercourse [ושכב איש אתה שכבת זרע] (c) ... so that she becomes defiled [והיא נטמאה] (d)...." These verses place the onus on the woman, do not contemplate the inclusion of the betrothed, or the possibility of forced intercourse (לא נתפשה).

Baab's approach to defining the notion of adultery in the HB is additive rather than normative (1962: 1:51). Under his heading of 'adultery', he absorbs relations with another man's wife, seduction of a virgin (Exod. 22:16), relations with a female war captive (Deut. 21:11-14), and intercourse with a betrothed slave (Lev. 19:20-22) into the same category.

Westbrook (ABD 5:553) sees the biblical sexual laws as fragmentary artifacts "of the traditional scholarly problems" of cuneiform law. He thus places them in a unitary ANE tradition.

solutions stem from a specific problematization.

For J,⁵ 'adultery' includes relations between a free married woman and another man irrespective of her consent (Gen. 12:10-20), thus including relations we would subsume under 'rape'. The "problem" for the text, one which J and E observe three times, is whether this constitutes adultery even when the husband consents (cf. Gen. 20 [E] and Gen. 26:1-11). This stands in contrast to the case of Tamar who saves the family lineage by deceiving her father-in-law into performing neglected levirate duties, something not viewed as "adulterous" though she was pledged to Shelah (Gen. 38). The felt injustice of the charge against Joseph in the case of Potiphar's wife, problematizes the issue of a slave's responsibility for results (apparent attempted rape) rather than guilt (Gen. 39). Forcible sexual intercourse with an unbetrothed free Israelite woman (Dinah, Gen. 34) is avenged as if it were adultery: Where Pharaoh, Abimelech, and the men of Gerar stood at risk of death (Gen. 12; 20; 26), Shechem and his townsmen actually die. "Consent" implicitly threads these cases together -- but not the consent of the woman. Is there a crime if the husband consents? If a slave does not consent? If the *paterfamilias* does or does not consent?

⁵ For our purposes, we assert the existence of J -- whether dated classically to the tenth cent. BCE or post-exilically (Pury ABD 6:1017). Among those who reject the existence of J, some still speak of "unities" which include the "primeval history" (Gen. 1-11) and the "patriarchal narrative" (Gen. 12-50). It is to the latter composite or "unity" that I direct my attention.

D differs from J's representation of "adultery" by explicitly extending the prohibition to betrothed women (Deut. 22:23-24), and by penalizing substantiated charges of "premarital adultery" (Deut. 22:20-21), but specifically excluding the rape or seduction of an unbetrothed girl (Deut. 22:28-29). This latter move defines out of *ni'up* 'adultery' the case of Dinah. The emergence of "location" as an indicator of consent (a woman seized in the country ostensibly does not consent to intercourse (Deut. 22:25-27)) obscures the fact that a betrothed woman remains responsible for the results of relations in a town irrespective of her consent, or if she cannot prove her virginity at the consummation of marriage. Although the location *topos* appears in Hittite Law (§§197-98) and at Gortyn (II.20-24), D assigns it a meaning, "consent" -- something not placed in the foreground in Hatti-land. Moreover, D's specification of "betrothal" draws a sharper distinction between *ni'up* and *zēnūt* 'fornication'. Why was it necessary to make what may have been "understood" about betrothal explicit?

H, like D, prescribes the death penalty for both partners in adultery, but again draws the boundaries slightly differently. An assigned slave-girl is not guilty (Lev. 19:20-22), though her ravisher is responsible for the results of intercourse. As a reader of J, H takes up the *topos* of slave-status, offering it as a mitigation. H also makes a countermove to D, defining into the class of "adultery" (by

homology of penalties) a case of *šēnūt* by a priest's daughter (Lev. 21:9). Here, priestly family status increases the seriousness of the offense. Unlike H, D does not address the implications of social status for the definition of 'adultery'. Unlike J, where Gentile kings rebuke Abraham and Isaac for their passive assent to wife sharing, Lev. 19:29 explicitly condemns an Israelite father for prostituting his daughter. Finally, H addresses male perpetrators in a most direct way: "You shall not use your penis for sex with your neighbor's wife" (Lev. 18:20, cf. Milgrom Forth. 2000a), though penalties are addressed to both men and women (Lev. 20:10). Why such directness? Perhaps we have a trace-element of a (male-mediated) women's view that counters the prophetic and Wisdom literature notion of the adulterous woman as seductress. One should also note that the consent of the neighbor's wife is not in view, conflating rape and adultery. In all, a woman's consent comes into sharp focus in only one case, in D's legislation concerning the rape of the betrothed.

In defining and theorizing about the cluster of behaviors we might distinguish as 'rape', 'adultery', and 'fornication', Pentateuchal texts shift and change the boundaries. Differences in exceptions (husband's consent, slave-status, levirate, non-betrothal, non-consent defined by location), inclusions (betrothal), and aggravated violations (priestly family, rape by non-Israelite) reveal the different textual solutions to the question, "What is adultery?"

4.1: Lexicon of Adultery

When the legist declares **q̄m̄n n?** 'Do not commit adultery' in the Decalogue (Exod. 20:14; Deut. 5:18), what does it mean? Following Goody's lead (1969:16), we can approach the meaning of adultery in ancient Israel by analysis of the lexica used, the various cases that mark off boundaries and represent the problems under discussion, and the sanctions applied. The last notion is really an index of 'horror'. We can scale the sexually horrific by the severity of the penalty and the evaluative language used (Goody 1969:18, 25).

Legitimate sexual relations, such as those between Judah and the daughter of Shua following marriage, Genesis describes with this verbal sequence:

(1) **וַיֵּרָא... וַיִּקַּח וַיָּכַח אֵלֶיהָ:** (Gen. 38:2)

wayyar'... wayyiqqāḥehā wayyābō' 'ālêhā:

He saw (Bat-Shua)... He took her (in marriage)' and he cohabited with⁶ her.

⁶ **q̄m̄n n.**'p. 'commit adultery'; cf. n. 3 above.

⁷ **l. q. h.** 'take; take in marriage' (BDB 542c, 543b); 'marry, take in or for marriage, or for sexual intercourse' (DCH 4:573b-574c); e.g., 'take as wife': Gen. 6:2; 12:19; 34:4, 9; 38:2, 6 [all J]; Gen. 20:3, 12 [E]; Deut. 22:13, 14 [D]; Lev. 21:7, 14 [H]; 'take into harem': Gen. 12:15 [J]; 20:2 [E]; 'take sexually' outside of marriage with an implication of force: Gen. 34:2 [J].

⁸ **לָא בָּנָא b.w.**'⁸ **'el**, lit. 'come in, go in, enter' (BDB 97c, 98a) and so a euphemism for sexual relations: With female subject, of a bride coming into her husband's house (Josh. 15:18, Jdg. 1:14); with a male subject, of a man entering a woman's quarters with the implication of coitus, e.g., Gen. 6:4, 16:2, 4; 38:2, 8, 9, 16, 18; 39:14, 17 [all J]; Deut. 21:13b; 22:13 [D]; with **לָא**, Gen. 19:31 [J] (for incest with daughters); Deut. 25:5 (levirate) [D]. Cf. RHB 1:61, s.v. Gen.

Thus the sequence ראה\לקח\נשא 'see/take/cohabit with' connotes legitimacy.' The verbal chain that follows in Gen. 38:3, ותהר ותלד בן ויקרא 'she conceived and bore a son and named (him)', shows the outcome -- a legitimate birth.¹⁰ When the J-writer exchanges the verbs in ex. (1) for others, the result is iconic of the breakdown of legitimacy:

(2) וירא אתה... ויקח אתה וישכב אתה ויענה: (Gen. 34:2)

wayyar' 'ōtāh... wayyiqqah 'ōtāh wayyiškab 'ōtāh way'annehā:

He saw her... and he took her and lay with her and abused her.

16:2; DCH 1:113b.

Alter finds 'enter into' misleading because the "term clearly refers not merely to sexual penetration but to the whole act of sexual consummation" (1996:xxx). Alter argues that this phrase is used with precision "to indicate a man's having intercourse with a woman he has not yet had as a sexual partner, whether she is his wife, his concubine, or a whore. The underlying spatial imagery of the term ... is of the man's entering the woman's sphere for the first time through a series of concentric circles: her tent or chamber, her bed, her body" (1996:xxx-xxxi). He translates: 'come to bed with'.

Westhuizen (1990:96) translates: 'to cohabit with', contrasting the neutral connotation of this phrase with שכב עם 'immoral sex' (97) and ידע אה 'sexual relationship accepted and approved by the community' (94). For the latter, Alter would agree. "[ידע אה] indicates sexual possession by a man of his legitimate spouse" (1996:xxx). Such distinctions, however, are suppressed in the Palestinian Targums where z.m.n. Htp. translates bw' 'l, bw' 'l, škb 'm, škb 't, qrb, ng', and b'l (Margain 1995:15).

⁹ Contrast the illegitimate relations of Lev. 20:17, וראה את-ערוותה ותיא-תורה את-ערוותו 'he sees her nakedness and she sees his nakedness', a double- euphemism for incest (Milgrom Forth. 2000a) substituted for ונלה את-ערוותה 'he uncovers her nakedness' per Hoffmann (1905-06: 2:75). I thank Sarah Melcher for allowing me to see her dissertation-in-progress which alerted me to this example (cf. Melcher 2000).

¹⁰ I owe the observation about this verb chain to Harris Lenowitz. Cf. also Gen. 4:1; 38:4.

Thus **שכנ** replaces **לא**, כוא, **ענה** 'afflict' appears in the trump position at the end, and **לקח** 'take' takes on a coloring of violence. What began well, Shechem's interest in Dinah, ends in rape and ultimately vengeance by her brothers against his clan.

'Legitimacy' falls apart in another way in the story of Judah and Tamar:

- (3) ... ויראה... ויחשכה לזונה... ויט...
 ויאמר הכה-נא אכוא אליך...

wayyir'ehā... wayyahš'behā l'zōnā... wayyēṭ...
 wayyō'mer hābā-nā' 'ābō' 'ēlayik...

When he saw her... he took her for a prostitute...
 and he turned aside... and said: "Here, let me come
 in to you."

The appraising gaze (**ראה**) in exs. (1) and (2) above led to the marriage bed or a proposal of marriage. Judah's gaze and appraisal lead him "to turn aside" (**נסה**) before he beds her.

Illegitimacy comes to full flower in the story Potiphar's wife tells her servants about Joseph:

- (4) ראו הכיא לנו איש עברי לצחק בנו
 כא אלי לשכב עמי ואקרא בקול נדול:

r'ū hābī' lānū 'iṣ 'ibrī l'saḥeq bānū
 bā' 'ēlay liškab 'immī wā'eqrā' b'qōl gādōl:

"See, he had to bring us a Hebrew to sport with¹¹

¹¹ צחק *s.h.q.* 'laugh, sport, play' (BDB 850b), and so a euphemism for sexual relations three-four times in the HB: with **-ב**, 'make a toy of' (Gen. 39:14, 17 [J]); with **-את**, foreplay of husband and wife (Gen. 26:8 [J]); and perhaps Exod. 32:6 [J] without **-ב** or **-את**, "the people sat down to eat and drink and rose up to play" as per Toorn (ABD 5:510); cf. HALAT³ 2:955cd.

us! He came to me to lie with me,¹² but I really

¹² -לְיָכַבְתִּי -לְיָכַבְתִּי *š.k.b.* 'im-/et- II 'lie with (for sexual relations)', cf. BDB 1012b, ThWAT 7:1309-1311, HALAT³ 2:1378cd. Alter observes that Eng. 'lie with' is "vaguely euphemistic." In BH the expression is "brutally direct" or "carnally explicit without being obscure" (1996:xxx). There are 27 instances of לְיָכַבְתִּי (לְיָכַבְתִּי): Gen. 19:32, 34, 35; 30:5, 16; 39:7, 12, 14 (all J per Noth); Exod. 22:15, 18 (E per Holzinger); Lev. 15:33 (P, per Milgrom 1991:63); Deut. 22:22 (2x), 23, 25 (2x), 28, 29; 27:20, 21, 22, 23 (D and Dtn); 2 Sam. 11:4, 11; 12:11, 24; 13:11; and 20 instances of -לְיָכַבְתִּי (לְיָכַבְתִּי) II (N.B. -לְיָכַבְתִּי 'with' and not the nota accusativi): Gen. 19:33, 34; 26:10; 34:2, 7; 35:22 (all J per Noth); Lev. 15:18, 24 (P, per Milgrom); 18:22; 19:20; 20:11, 12, 13, 18, 20 (H); Num. 5:13, 19 (P); 1 Sam. 2:22; 2 Sam. 13:14; Ezek. 23:8. With these we mention: -לְיָכַבְתִּי (לְיָכַבְתִּי) 'lie upon' (Lev. 15:24b [P, per Milgrom]) and -לְיָכַבְתִּי (לְיָכַבְתִּי) 'lie beside' (Gen. 39:10 [J per Noth]) which both have sexual contexts; and לְיָכַבְתִּי without a preposition in the Qere substituted for לְיָכַבְתִּי 'violate, ravish' (BDB 993c; Orlinsky 1944:23): Deut. 28:30 (Dtn., alluding to the rape of betrothed women in Deut. 22:23-27); Jer. 3:2 (alluding to the remarriage rule of Deut. 24:4); Isa. 13:16; Zec. 14:2. The Massoretes apparently understood לְיָכַבְתִּי as obscene and supplied the more euphemistic לְיָכַבְתִּי 'lie' in its place, although the Tg. Pseudo-Jonathan supplies לְיָכַבְתִּי at Deut. 28:30.

As can be seen from the list, -לְיָכַבְתִּי (לְיָכַבְתִּי) is preferred by the Priestly literature (P, H, Ezek.), and -לְיָכַבְתִּי (לְיָכַבְתִּי) by Deuteronomic literature. In J, the two are bi-forms (Orlinsky 1944:21, 32; Beuken ThWAT 7:1310a).

Orlinsky rejects the notion that one of the forms denotes licit and the other illicit sex as suggested by Rashi (s.v. Gen. 19:34) and Malbim (s.v. Gen. 19:34 and Lev. 15:18). While I agree that there is no distinction of licitness between the forms, the four examples he adduces for licit sex (Gen. 30:15-16 [J] and Lev. 15:18, 24 [P]) do not bear up under scrutiny. It is not clear, as he argues, that all these cases are between man and wife: Lev. 15:18, 24 are between any man and a menstruant (forbidden in Lev. 18:19). In Gen. 30, Rachel buys mandrakes from her co-wife Leah, selling the privilege of relations with Jacob for that night. The narrative attention to this exchange of conjugal privileges 'marks' it as problematic. It receives coloration from the inverse image of Esau selling his birthright to Jacob, and from the gender inversion of Judah hiring Tamar for bed.

Westhuizen (1990:97) wants to assign -לְיָכַבְתִּי (לְיָכַבְתִּי) alone the connotation of 'immoral sexual relationship'. He misses the uses of -לְיָכַבְתִּי (לְיָכַבְתִּי). Both forms are used for illicit or problematic sexual relations:

- (1) Rape or adultery with a married woman (Gen. 26:10; Num. 5:13, 19; Deut. 22:22; 2 Sam. 11:4, 12:11);

cried out."

He 'plays' (תצחק) with her like Isaac with Rebekah (Gen. 26:8); he comes to her (בא אל) -- literally now, but retaining a double entendre for the hearers -- and tries to sleep with her (שכב עמה). Now the tendency for שכב עמה to appear when the text understands the sex as illegitimate (as in ex. 2 above, or with the bi-form את שכב in ex. 4) is marked (Westhuizen 1990:97). Thus we have the sequence:

(*5) ראה \ לקח את-פלוגית לאשה \ כוא אל
See / take someone as a wife / cohabit with

for legitimate sexual relations in J, and for illegitimate:

(*6) ראה \ שכב עם פלוגית
See / lie with someone.

The Deuteronomic Code [D], when explaining how a man

-
- (2) or with a betrothed woman (Deut. 22:23, 25; 28:30 in Targum Pseudo-Jonathan);
 - (3) or with an "assigned" slave girl (Lev. 19:20);
 - (4) or the seduction of or accusation against a male-slave (Gen. 39:7, 12, 14);
 - (5) the seduction or rape of an unbetrothed girl (Gen. 34:2, 7; Exod. 22:15; Deut. 22:28-29);
 - (6) sex with a menstruant (Lev. 14:24, 33; 20:18);
 - (7) sex with a wife in time of war (2 Sam. 11:11);
 - (8) sex with a woman after her lover has killed her husband (2 Sam. 12:24);
 - (9) male-female incest (Gen. 19:32-35; 35:22; Lev. 20:11, 12, 20; Deut. 27:20, 22-23) including incestuous rape (2 Sam. 13:11, 14);
 - (10) male-male incest (Lev. 18:22; 20:13);
 - (11) bestiality (Exod. 22:18; Deut. 27:21);
 - (12) issues involving co-wives such as a co-wife "hiring" her husband from another co-wife (Gen. 30:15-16);
 - (13) and the metaphorical adultery of co-wife Oholah/Samaria against YHWH (Ezek. 23:8);
 - (14) priests with female sanctuary workers (1 Sam. 2:22);
 - (15) minor pollution from semen emission in carnal relations (Lev. 15:18, cf. Milgrom 1991:987; Wenham 1983) but contra Wenham, not restricted to relations in marriage.

might legitimize relations with a female war captive, instructs the prospective husband to allow a period of mourning to the woman, after which:

- (7) :תכוא אליה ונעלתה והיתה לך לאשה (Deut. 21:13b)
 tābō' 'ēlēhā ūb'altāh w'hāytā l'kā l'iššā:

You may come to her and possess her, and she shall be your wife [NJPS].

The very notion of husbanding (נעל) in D is bound up with possession:¹³

- (8) כי-ימצא איש שכב עם-אשה כעלת-נעל (Deut. 22:22)
 ומתו נם-שניהם האיש השכב עם-האשה והאשה
 ונערת הרע מישראל:

ki-yimmāšē' 'iš šōkēb 'im-'iššā b'ūlat-ba'al
 ūmētū gam-šneyhem hā'ish haššōkēb 'im-hā'iššā
 w'hā'iššā ūbi'artā hārē' mfyiśrē'ēl:

If a man is found lying with a woman, i.e. one who is possessed by a husband, both of them -- the man who lay with the woman and the woman -- shall die. Thus you will sweep away evil from Israel.

Not only does D appropriate J's language of legitimacy (כא מל, in ex. 7 above) and illegitimacy (שכב עם, ex. 8), the law speaks to the illegitimate accusation of Potiphar's wife. It is not sufficient that the woman be someone's wife -- either

¹³ b. 'l. 'marry; rule over' and analogously to Arabic and Aramaic cognates 'own, possess, or take possession of a wife or concubine' (BDB 127a); in the sense of 'marry', Gen. 20:3 (Blohim to Abimelech of Sarah) [E]; Deut. 21:13 (ex. 7); 22:22 (ex. 8); 24:1 (remarriage of a divorced wife) [all D]. B'l used in marriage contexts is primarily restricted to E, D, 2Isa., 3Isa., Jer., and Proverbs; cf. Kutler (1980:119-120). B'l takes on a more restricted meaning in later Mishnaic Hebrew, 'marry' [BH] > 'have intercourse (with a woman)' [Mish.H] (Sarfatti 1995:38).

primary wife, *pilegeš*,¹⁴ or concubine, slave or free, i.e., she must 'be possessed' -- the pair also must be caught in *flagrante delicto*.

It is in the Priestly Source [P] that we get an intimate male view of a woman's adulterous behavior:¹⁵

- (9) :איש איש כי-תשטה אשתו ומעלה כו מעל: (Num. 5:12b-13)
ושכב איש אתה שכבת-זרע ונעלם מעיני אישה
ונסתרה והיא נטנאה... והוא לא נתפשה:

īš īš kī-tišṭeh 'išṭō ūmā'alā bō mā'al:
w'sākab 'īš 'ōtāh šikbat-zera' w'ne'lam mē'ānē 'īšāh
w'nist'rā w'hī' niṭmā'ā ... w'hī' lō' nitpāšā:

If any man's wife has gone astray and broken faith with him in that a man has lain with her ejaculating semen unbeknownst to her husband, and she keeps secret the fact that she has defiled herself ... without being apprehended.¹⁶

Like Judah, who turns aside (נטה) to the imagined prostitute ex. (3), a husband imagines that his wife has gone astray (שטה). But more -- she breaks faith (נעל), lies with (שכב את)

¹⁴ פילנש, פילנש, *pflegeš*, *pilegeš* 'secondary wife; concubine', cf. BDB 811bc. In some cases the *pilegeš* is a kind of matrilocal wife similar to Gideon's wife who lived at Shechem with her father (Jdg. 8:31, cf. Vaux 1965:28).

¹⁵ Cf. Milgrom (1981) and Frymer-Kensky (1984; 1986) for further literature.

¹⁶ נתפשה, Nif. of תפש t.p.š. 'apprehend'. So Milgrom (1990:37-38, 302, n.37, 349-350) relying on the Targums, Ibn Ezra, the Qaraites, and Shadal; 'be seized, arrested, caught' BDB 1075a; 'erfasst, ertrappt werden' HALAT³ 2:1638c; and likewise Greenberg (1983:249, s.v. Ezek. 14:5); cf. Ezek. 21:28 (v.23 Eng.). Another opinion: 'be forced', thus excepting rape. This reading follows Deut. 22:28-29, the case of the unbetrothed virgin, where t.p.š. Qal is found with 'n.h. Perhaps here we have further evidence of the tendency to read biblical sexual rules through the lens of the Deuteronomist.

a man who ejaculates (שִׁכְבַּת-זֶרַע),¹⁷ even though she is not apprehended (לֹא נִתְפָּשָׁה). For the cuckold, all hinges on the woman's sexual wandering and betrayal. Although no one catches the pair *in flagrante delicto*, there may yet remain ambiguous evidence arousing his suspicions -- ejaculation stains on cloth or leather (Lev. 15:17).

This phrase, שִׁכְבַּת-זֶרַע, P's editor (H)¹⁸ echoes:

(10) וְאֵל-אִשְׁתּוֹ עָמִיתָךְ לֹא-תֵתֶן שִׁכְבְּךָ לְזָרָה (Lev. 18:20)
:לְטַמְאָהּ-כֹּה:

w'el-'ēšet 'āmītkā lō'-tittēn š'kobt'kā l'zāra'
l'tom'ā-bāh:

With respect to the wife of your fellow citizen,¹⁹

¹⁷ שִׁכְבַּת-זֶרַע *šikbat-zera'*, lit. 'outpouring of seed', is the idiom for 'semen' (Milgrom 1991:927) here in Num. 5:13a (with a woman suspected of adultery) [P]; cf. Lev. 15:16 (under any circumstances), 17 (on cloth or leather), 18 (with a woman), 32 (all circumstances) [all P]; Lev. 19:20a (with a slave-woman); 22:4 (an Aaronide's under any circumstances) [both H].

Distinguish *šēkābā* 'ejaculation' above from *šēkōbet* 'penis': שִׁכְבַּת לְזָרָה *nātan šēkōbet ləzera'* 'have sexual relations', lit. 'give lying for seed' or better, 'use (your) penis for sex' (Milgrom Forth. 2000a, s.v. Lev. 18:20); *šēkōbet* as 'penis' (Orlinsky 1944:37-39; Milgrom 1991:927), cf. Num. 5:20 [P]; Lev. 18:20 (ex. 10), 23; 20:15 [all H]. Cf. n. 56.

¹⁸ Following Milgrom and Knohl.

¹⁹ עָמִית *'āmī* 'associate, fellow, relation' = 'am + sx. -ft (Blau §40.25.3), although this assumes a root of 'mh, a disputed matter (Zobel *ThWAT* 6:210-213; Milgrom. Forth. 2000a: s.v. Lev. 18:20); except for Zec. 13:7, only in P (two times) and H (nine times), BDB 765c; Wenham (1979:267) 'fellow citizen'; NJPS 'kinsman'; Milgrom (Forth. 2000a, s.v. Lev. 18:20; s.v. Lev. 19:17-18) 'neighbor; fellow'.

Ezekiel replaces *'āmī* with *rēa'* and *'āh* (Ezek. 18:6, 15) and Lev. 19:11-18 treats *rēa'* 'fellow', *'āh* 'brother, kinsman', *'āmī* 'fellow', and *'am* 'countrymen, kin' as near synonyms for 'Israelite'. Wenham (1979:267) observes a kind of piling up of terminology: *'āmī* (vv. 11-12); *rēa'* (vv. 13-14); *rēa'* + *'am* +

do not employ your penis for sex (lit. seed/semen)
to defile yourself with her.

The male subject, either lover or rapist, stands warned. Here, unlike D, it is not just any כַּעַל-כַּעַל, it is the אִשָּׁת-עַמִּיתָךְ 'the wife of your fellow citizen' who is interdicted. The rationale for the prohibition has also shifted from violation of property rights (כַּעַל) to defilement (טֻמְאָה) as in ex. (9). Even the man who sleeps with and consummates relations with an 'assigned' slave girl must make a reparation offering (זָבַח) to expiate his sin (נִסְתָּח):

(11) (Lev. 19:20a) ואיש כי- ישכב את-אשה שכבת-זרע
והוא שפחה נחרפת לאיש ...

'āmft (vv. 15-16); and these three plus 'āh (vv. 17-18). Noteworthy is the paralleling of rāa' and 'am in Lev. 19:16 and also in v. 18, and between 'āh and 'āmft in v. 17.

פִּינ 'āh 'brother; fellow countryman': Note that "your brother" 'āhfkā (Lev. 25:39) is redeemed from "your countryman" mē'imnāk and returns to "his clan" mišpahtō (v.41). The redeemer of your brother comes from his clan, not yours (vv.48-49). Thus, this 'āh is really your fellow Israelite (Milgrom, personal communication).

Kin hierarchy. The subtribe or phratry (*mišpāhā*; rarely 'elep) is larger than the *šē'er haqqārōb* (consisting of the mother, father, son, daughter, brother, sister of marriageable age; Lev. 21:2), or the *mōledet bayit* 'extended family; clan' (Lev. 18:9) or *mōledet 'ab* (Lev. 18:11) which include paternal and maternal half-sisters along with stepsisters (Milgrom. Forth. 2000a; Rattray 1987). For further on kin terminology cf. Kutler (1980:253-254) and especially Andersen (1969). However, neither gives special attention to kin terms in H, nor allows for the variant usages or shifting boundaries between kin levels (Rendtorff 1986:81). For H we have this kin hierarchy:

'ah/'āmft// 'am/rāa' 'fellow Israelite'
 |
 mišpāhā 'clan; phratry'
 |
 mōledet bayit/mōledet 'ab' 'extended family; clan'
 |
 šš'er haqqārōb 'nuclear family'

... 'לה' את-אנשו (Lev. 19:21a)

w^afš kf-yiškab 'et-'iššā šikbat-zera'
w^hf' šiphā nehērepet l'^afš ...
w^hēbf' 'et-'āšāmō l'YHWH ...

And a man, if he consummates carnal relations with a woman who is a šiphā-slave assigned to a man ... he will bring his reparation offering to YHWH ...

Thus when H adopts the technical language (קנא) of the Decalogue:

(12) ואיש אשר ינאף את-אשתו (Lev. 20:10)
איש אשר ינאף את-אשת רעהו מות-יומת הנאף והנאפת:

w^afš 'āšer yin'ap 'et-'ēšet
f' 'ēšet yin'ap 'et-'ēšet rē'ehū mōt-yūmat
hannō'ēp w'hannō'āpet

With respect to the man who commits adultery with a woman: the man who commits adultery with a fellow Israelite's wife,²⁰ he will surely die, i.e. the

²⁰ רע rēa' 'friend, companion, fellow' (BDB 945d); 'neighbor' (Wenham 1979:269); 'fellow citizen' in biblical law (Kellermann ThWAT 7:545-555); 'fellow' (Milgrom Forth. 2000a, s.v. Lev. 19:17-18). Because love for the resident alien is enjoined in Lev. 19:34 Milgrom (following Sipra, Qedoshim 8:4) argues that rēa' at Lev. 19:18 should be reserved for 'fellow Israelite'.

Cognates appear throughout ancient semitic languages: Akkad. rū'u 'friend, comrade', rū'utu 'friendship, brotherhood'; Ugar. r' 'friend, companion' in parallel with 'b' 'brother' in KTU 5.9:8, 10; Aram. of Ahiqar proverbs, byt r'h 'house of one's neighbor'; Eth. 'ar'ūt 'yoke' and mr'w 'be married'. Kellermann takes the fundamental meaning of the root r'w as 'to bind in companionship, or to cultivate social relations, or to have a friend'.

The range of meaning of rea' in the Bible covers 'ally' (1 Sam. 30:26), 'friend' as in the title 'King's Friend' (1 Kgs. 4:5), juxtaposes 'ohēb (Ps. 88:19), 'neighbor' (cf. Prov. 25:17), and 'another' in the pronominal idiom 'fš 'el re'ehū.

In legal contexts rea' appears in the Decalogue (four times), the Covenant Code (ten times), D (16 times), and H (four times; Lev. 19:13, 16, 18; 20:10). It always refers to a person to whom the laws apply, i.e. a fellow citizen, or someone who lives in the same place. In the Covenant Code, a rea' is one's fellow citizen or simply associate (Exod. 20:22-23, 33). In D rea' is associated with boundary markers (Deut.

adulterer and the adulteress

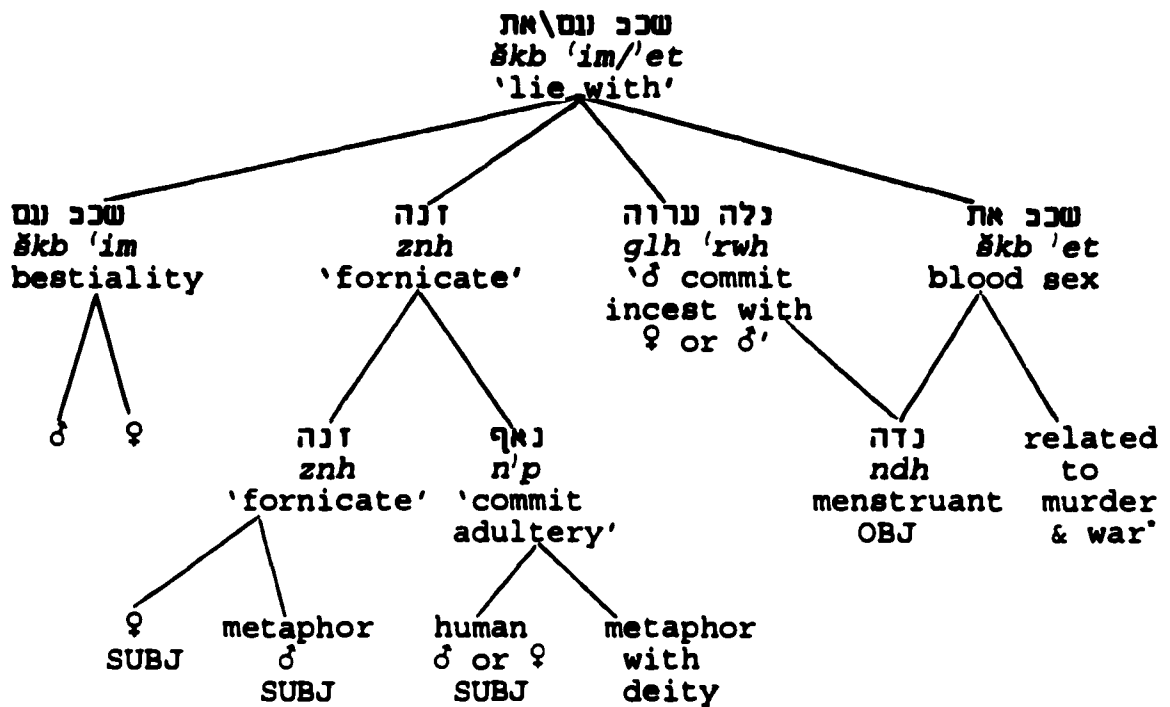
we leave with the realization that not every possible adultery falls under the rubric of this penalty. Rather, our text restricts the crime to that committed with a fellow Israelite's wife, a circle excluding the wives of resident aliens, travellers,²¹ foreigners like Potiphar's wife (ex. 4), and female war captives (ex. 7). Only the frame (Lev. 18:26) extends the law to cover the resident alien, *haggēr*, and presumably his wife. (Lev. 24:22 will adduce the general principle -- one law for the citizen and *gēr* alike). Not only is the circle of condemned lovers narrower than D's, the threshold for punishment also differs: consummation of relations rather than two discovered together. Potiphar's wife's accusation would fail for insufficiency.

Now the differences of emphasis between the sources, and the differences of motivation for the laws, the discussion of the cases will elaborate. Closer reading will allow us to construct 'emic', or cultural-insider, theories of adultery and contrast these with the 'etic' theories suggested by several recent scholars. Our review so far yields this hierarchic model for the lexica of prohibited sex in Figure 4.1 below:

19:14; 27:17) suggesting the sense of geographical 'neighbor'. Only in Lev. 19:18b is one told to love the *rea'* where the term parallels 'am 'kin, fellow citizen, comrade' in v. 18a.

²¹ H is silent about travellers. Although Job 31:32 limns the custom of hospitality, Judges 19:24-25 allows the outrageous rape of a guest's *pilegesš* or secondary wife.

Figure 4.1 Lexica of Prohibited Sexuality



* Ezekiel links adultery with the shedding of blood (16:38; 23:37, 45). One may also think of the period of mourning and cleansing allowed to the female war captive (Deut. 21:13), or the blood revenge rape may precipitate (Gen. 34), or murder as the concomitant of rape (Jdg. 19).

4.2: Stories, Cases, and Laws about Adultery

One reading of the cases found in biblical law takes them as instantiations of the traditional scholarly problems of cuneiform law (Westbrook ABD 5:553). This reading is strongly schematic and deductive. Westbrook finds the general principle in MAL A §13:

- (13) If the wife of a man has gone out from her house to a man where he lives and he has had intercourse with her knowing that she is a man's wife, both the man and the woman shall be killed (*italics mine*).

MAL thus stresses the *topoi* of the wandering woman and the man having knowledge that she is another's wife. For Westbrook, Lev. 20:10 and Deut. 22:22 essentially reflect the general case embodied in MAL. All other cases, wherever found in the ANE, he subsumes under this principal case. They are:

(a) the seduction of the unwitting man (MAL A §14b; LU §7; Gen. 12:10-20; 20; 26:6-11);

(b) the husband who catches the lovers in *flagrante delicto* and kills them on the spot (HL §197, LE §28, MAL A §15b), or brings them to court (CH §129; MAL A §15b) where the king might spare them (HL §198);

(c) the betrothed found not to have kept her chastity (Gen. 38:24; Deut. 22:20-21, 24);

(d) the husband who accuses his wife of adultery without direct evidence (CH §131; Num. 5:11-31);

(e) the rape of a married woman (MAL A §§12, 23; HL §197); or

(e') a betrothed woman (LU §6; LE §26; CH §130; Deut.

22:25), or

(e'') an unattached girl (MAL A §55; Gen. 34; Deut. 22:28-29).

Yet this is not the only possible way of classifying these rules as Szlechter (1985) shows in his gender analysis:

(a) the adultery of the woman (i.e., the woman as 'subject': LU §7; LE §§27-28; CH §129); including

(a') the woman accused of adultery (CH §§127, 131, 132); and the related cases of

(a'') the defamation of a man's daughter (LL §33); and

(a''') a woman who murders her husband on account of the paramour (CH §153);

(b) the adultery of the man (i.e., the man as 'subject': LL §30); including

(b') the defloration or rape of a married woman whose marriage is not yet consummated (LU §6; CH §130); and

(b'') the defloration or rape of a female slave (LU §8; LE§31); and

(b''') the defloration or rape of a man's daughter (LE §26);

Finkelstein (1966:366) parses the ANE construct of "adultery and rape" into four main classes:

(a) coercive sex with a married or betrothed woman (LE §26; CH §130; MAL A §§12, 23b; HL §197a; Deut. 22:25; and

incestuous rape, CH §155);

(b) coercive sex with an unmarried woman (SLEx §7; LU §6; LE §31; MAL A §55; Lev. 19:20; Deut. 22:28-29; and seduction as statutory rape, Exod. 22:15);

(c) consensual sex with a married woman (LU §7; LE §28; CH §§129, 133b; MAL A §§13-16, 23a, c; HL §197b; Lev. 20:10; Deut. 22:22, 23-24);

(d) consensual sex with an unmarried woman (SLEx §8; MAL A §56; with *ex post facto* disclosure, Deut. 22:20). He adds two additional classes of accusation of adultery:

(e) accusation of (c) (LU §14; CH §§127, 131, 132; MAL A §17);

(f) accusation of (d) (LL §33).

If we return to Westbrook's paradigm, he reduces all the cases to permutations of the features {±marriage}, {±evidence in cases of accusation}, and nuancing of the former with an intermediate category of {±knowledge of the woman's marital status}. Szlechter's paradigm also recognizes issues of evidence and marital status but further parses the latter by an intermediate category of {±consummation of marriage}. The issue of consent, which emerges in Finkelstein's analysis, Szlechter submerges under the gender of the subject and {±free status}. Finkelstein's paradigm places the feature {±consent} at center, with some attention to {±marriage}, and {±evidence}.²²

²² As Finkelstein puts it: "[T]he cases in all the 'law codes' are derived from a comparatively limited repertory of circumstance (i.e., seduction, rape, consent) and statuses of

Some of the differences in these analyses flow from the different lists of laws reviewed. Read together they give us a useful checklist. While these schemata stress the relatedness of *topoi* in cuneiform and biblical law, they also flatten the particularities -- just what is of interest to us here.

a. Genesis Scenarios

i. Unwitting Man with a Married Woman

While LU §7 addresses the case of the wife initiating sexual relations with another man ("They shall kill that woman; the male shall be released" Roth 1997:18), MAL divides this case into two. The seduced man may know the woman is wed (ex. 13); or he may not know (MAL A §14b). The sexual pitfalls of this unwitting man are the subject of three biblical narratives. These three I view as a kind of triptych, or hinged panel painting, in the text of Genesis. In each a foreign ruler has (or almost has) intercourse with one of Israel's matriarchs. However, contra Westbrook (ABD 5:553), seduction of the unwitting is not the "problem" of these

the women involved (i.e., unmarried, betrothed, married, free, slave). The different 'law codes' combine selected elements among these in constructing the hypothetical cases they choose to exemplify ... None of the codes attempts to combine these elements in anything approaching an exhaustive series of possible permutations" (1966:367). Hence Finkelstein reads the cases as part of one master paradigm. But just why doesn't any code explore the full set of permutations? Our answer is that the 'problematizations' are more illustrative than the putative system. Cf. also the discussion in chapter six below.

texts. Rather, it is whether adultery is adultery even when the husband consents or indeed, proposes the arrangement.

In Gen. 12:10-20 [J] Abram urges his wife to declare herself his sister. He is afraid that the Egyptians might kill him to take possession of her beauty. When God afflicts (וַיַּכּ) Pharaoh with great plagues on account of Sarai (v. 17), incredulously he asks Abram, "What have you done to me?" (v. 18b). Having once taken her into his harem (וַיִּקַּח, v. 19), he now orders, "You take her and begone!" Whether Pharaoh had relations with Sarai remains ambiguous. The accustomed sequence of verbs fails: His use of וַיִּקַּח initiates the steps towards consummation, but there is no וַיִּשְׁכַּב or וַיִּבְרָא. We are left to imagine that her rescue was complete.

In the second "panel" of this triptych, King Abimelech of Gerar also takes (וַיִּקַּח) Sarah into his harem (Gen. 20:2-3). Abraham describes her again as אִשְׁתִּי "my sister" (vv. 2, 12), but she herself declares אִמִּי הִוא "he is my brother" (v. 5), as Abimelech reports in his dream conversation with Elohim. The king is incredulous at God's sentence of judgment: "You are to die" (20:3, וְהָיָה מָוֶת; cf. 20:7, מוֹת תָּמוּת). The narrator assures us that he has not approached her (v. 4, לֹא קָרַב אֵלֶיהָ);²³ and God declares "I did not let you touch her" (20:6, לֹא-נִגַּחְתִּיךָ).

²³ קָרַב q.r.b. 'approach (sexually)': a euphemism for intercourse by male subject in Gen 20:4a (E); Deut. 22:14b (D); Lev. 18:6, 14, 19 (all H); Isa. 8:3; Ezek. 18:6; with לֹא and woman as subject (bestiality): Lev. 20:16 (H); cf. BDB 897b.

מִלִּיה לִנְנֵנִי).²⁴ What was ambiguous in Gen. 12 is now made explicit: the lineage has not been contaminated, the promise of an heir not overthrown. To make the point triply clear, God shuts up the wombs of all Abimelech's women (v. 17). No conception can occur, not even in Sarah.

The most telling point of contact between the first and second panel, besides the repetition of the words and motifs noted, is the quotation in Gen. 20:9 of Gen. 12:18b. Abimelech asks Abraham, מַה-עָשִׂיתָ לָנוּ "What have you done to us?", just as Pharaoh asked Abram, מַה-זֹּאת עָשִׂיתָ לִּי "What is this you have done to me?"

This central panel of the triptych offers the fullest narrative: we learn for instance that Abimelech could have brought on himself and his kingdom a "great sin" (20:9, חַטָּאת נְדִלָּה *ḥāṭṭā'ā g'dōlā*).²⁵ This explanation, given to Abraham (and

²⁴ נָנַע n.g.'. 'touch (sexually)': another sexual euphemism: Gen. 20:6 (E); Prov. 6:29 (context of adultery); Ruth 2:9 'molest' (coloration of possible sexual violence); cf. BDB 619a.

²⁵ חַטָּאת נְדִלָּה *ḥāṭṭā'ā g'dōlā* 'great sin' in the HB five times: Gen. 20:9 [E]; Exod. 32:21 [E], 30, 31 [both J]; 2 Kgs. 17:21. The behaviors so labelled include adultery, the worship of the golden calf and the calf of Jeroboam. (Here we are reminded of metaphorical references to idolatry as "adultery." Cf. Goodfriend ABD 1:85). At Gen. 39:9: הָרַעָה הַנְּדִלָּה הַזֹּאת *hārā'ā hagg'dōlā hazzō't* 'this great evil' used in context with חַטָּאת *ḥ.ṭ.*'.

Akkadian documents at Ugarit (cf. Nougayrol 1956:129-148) concerning the wife of King Ammištamru II of Ugarit, assert that she is guilty of an unexplained sin. She flees Ugarit and takes refuge in her native Amurru. Ammištamru requests her extradition from Šaušgamuwa who refuses. The King of Ugarit takes recourse to Tudḥaliya IV of Hatti who orders Šaušgamuwa to return the woman. Moran argues there "should be little doubt" that adultery is at issue. Her crime is consistently

the reader), offers a motivation for the *kōper* or 'ransom' he also pays: 1,000 silver pieces, sheep, oxen, male and female slaves (vv. 14, 16).²⁶ Whereas Pharaoh expels Abram, Abimelech commands Abraham to settle anywhere in his land (v. 15). In the end Abraham intercedes for Abimelech -- the wombs of his household bear children again -- so all's well that ends well.

The very fullness of this story provokes a "hermeneutics

designated throughout the diplomatic correspondence as *ḥiṭ(ṭ)a rabā* (280; e.g., RS 17.372A: rev. 6, 12; RS 17.228: 6). Similarly, Möller (1918) discusses four Egyptian marriage contracts making references to the "great sin" in a context implying adultery (Berlin Pap. 3048 (ca. 850 BCE); Cairo Pap. 30907 and 30909 (ca. 675 BCE); and Corpus papyrorum Aegypti Nrs. 18 and 19 (ca. 588 and 547 BCE respectively). These papyri from upper Egypt are in hieratic script and assigned by Möller to the 22nd-26th dynasties; cf. Rabinowitz 1959:73).

While this evidence is suggestive, it is probably too much to say that "[T]hroughout the ancient Near East, adultery is conceived as a crime against the husband but also against the gods. Witness these three Genesis narratives (Gen. 20:6; 26:10; 39:9b). Not only do all of them specify that adultery is a sin against God but the specification itself is made to or by a non-Israelite. Thus the narrator assumes that Israel shared with its neighbors the conviction that adultery was an affront to the deity" (*italics mine*, Milgrom 1976a:132). Gen. 26:10 does not explicitly say it is a sin against God although it worries that *āšām* 'consequential guilt' might be brought upon "us." Nougayrol's evidence does not explicitly name the sin -- it is presumptive. Šurpu does assert that Šamaš (ii 129-133) and other gods punish adultery (ii 47-48); as does Marduk (iv 1, 6); cf. Reiner (1970:14, 16, 25); and the HB speaks of it as a sin against God (Gen. 20:6 [E]; 39:9 [J]; Ps. 51:6 with v. 2). However, in Hatti-land the goddess is sometimes seen as the author of adultery (cf. chapter six below). One can say: In some parts of the ANE adultery was an affront to deity; It numbered among the "great sins."

²⁶ Cf. Prov. 6:34-35. Perhaps also the reference to "a covering of the eyes" in Gen. 20:16 is a hint at re-veiling, discussed in chapter six below. A husband veils his wife again (the bride is veiled when she comes to her husband at first) if he accepts her as his wife after an affair.

of suspicion." In the central panel everything is disambiguated. We know the details of the plague, the details of Abimelech's relationship with Sarah, and the details of his penance. We learn that Sarah actively participates in the dissimulation. We are even given a moral -- it doesn't matter that Abraham consented; it is still a "great sin" because of what God demands. We are left with suspicions: Is the Elohist story reacting to the ambiguities of the Yahwist tale? Has the editor placed this story in a central position to allow the ambiguities of the first to tantalize us? That these stories have been hinged together becomes clear in the third panel.

As in the second panel Abimelech of Gerar appears, but he is on stage with Isaac and Rebekah. As with the first panel, there is a famine in the land that has provoked a movement of peoples (v. 1). But unlike both tales before, Rebekah is not taken into a harem. Isaac says of her, like his own father of his mother, וְהָיָה אֵשֶׁתִּי "she is my sister" (v. 9), for he too is fearful of the consequences of her beauty (cp. Gen. 12:11). But in a story, oddly reminiscent of the Hittite story of Mariya, Abimelech looks out from his window and sees Isaac "sporting" (וְהָיָה אֵשֶׁתִּי) with Rebekah (v. 8). In the Mariya tale, the king's father observes from an upper window Mariya gazing lustfully at a palace woman. As a consequence, he is executed. In the Isaac tale, Abimelech simply rebukes him. Someone could have lightly lain with her (וְהָיָה אֵשֶׁתִּי) bringing down punishment (וְהָיָה אֵשֶׁתִּי), by which we are to know that no one did (v. 10b). To

Isaac he further aaya: "What is thia that you have done to ua?" נָשִׂית לְנִי מִה-זֹּאת נַעֲשִׂית לְנִי (v. 10a), combining the נָשִׂית-מִה of Gen. 12:18b with the לְנִי of Gen. 20:9. Indeed, the aentence of judgment avoided by Abimelech, מוֹת תָּמוּת "you ahall die" (Gen. 20:7), becomea a warning to all who might touch (נָשָׂה) Rebekah or Isaac: מוֹת יִוָּמָת "he shall be put to death" (26:11).

Linking all three panels of the triptych are the motifs of the unwitting man, the narrowly missed adultery, the wife-aa-sister, and the incredulous נָשִׂית-מִה placed in the mouth of the king in each caae. Three times the patriarch dissembles and three timea he is rebuked. Three times the Leitwort נָשָׂה appears. It ia used three waya: 'touch (in affliction)' (12:16), 'touch (sexually)' (20:6), 'touch' in both senses (26:11). Finally, each of the panels repeats motifs of the others: נָשָׂה with the sense 'take into harem' in Panels I and II (Gen. 12;15b, 19; 20:2-3); the death threat in Panels II and III (Gen. 20:7; 26:11).

What is the question behind the problematizations of these stories? Is it not whether the husband is the sole possessor of his wife's sexuality? He cannot give it away at will; he cannot proatitute her. In aome fundamental way her sexuality belongs to the Deity who has covenanted to provide progeny. Each of the "panela" of this thrice-told tale portrays the same problem and reaolvea it similarly. The Deity vouchsafea the promiaed seed against the acts of husband or

wife.²⁷

Alter argues that the nexus of the second panel, the sojourn at Gerar (cp. 20), lies first and foremost with its preceding and following stories. These neighboring narratives evoke certain details within the tale (1990:157). For example, although plagues affect both Pharaoh and Abimelech, the exposition delays revealing the plague in Gerar until the very end (Gen. 20:18). The death threat at the start (20:3) first aligns the story with the destruction of Sodom. Indeed, is Gerar another Sodom? Abraham himself worries that "there is no fear of God in this place" (20:11) until Abimelech's actions demonstrate the contrary (Alter 1990:156).

Another detail, God's remembering Sarah (Gen. 21:1), evinces a contrast by virtue of its juxtaposition to the shut wombs in Gerar (20:18). Thus if we wonder about the narrative delay extending from YHWH's annunciation of the birth of an heir (cp. 18) to the actual birth of Isaac (cp. 21), we gain a "sense of perilous history." The destruction of Sodom, Lot's incest with his daughters, Sarah's sojourn in Abimelech's harem and the consequent plague of infertility, all intervene. The narrative sequence underscores the divine providence of opening Sarah's womb (Alter 1990:157).

Thus, one might argue, the plague on Gerar does not

²⁷ And so J ironically undercuts the patriarchy. The authority of the husband over the wife, already part of the curse at Gen. 3:16, works against the preservation of the patrilineage.

reveal a penalty for law violated. It is a fictional event constructed to thread together a series of stories. However, such an observations does not preclude a legal ethos for other details in Gen. 20. For instance, the foregrounding of the death threat does not gainsay the evocation by Gen. 20:3 of Deut. 22:22. The phrase *b'ūlat-ba'al* 'wife of a husband' appears only in these two passages (discussed below). The very threat in Gen. 20:3 implies that, in general, adultery was considered a capital offense (Daube 1949:92). *Hinn'kā mēt* "Behold, you will die" reads like a sentence of judgment. Abimelech's question, *hāgōy gam-šaddiq tahārōg* "Will you destroy a righteous nation," reads like an appeal. Fairly administered justice commands us: *w'nāqf w'aadfq al-tahārōg* "The innocent and the righteous do not slay" (Exod. 23:7b). Indeed MAL A §14 exempts from punishment a man who cohabits with another's wife not knowing she is married (cf. Daube 1949:91-92). Like the novel, biblical narrative devours bits and pieces of other genres, including law, in the presentation of its stories (Bakhtin 1981).

An ironic inversion of these near-adultery tales comes in the successful dissimulation of Tamar (Gen. 38). Whereas Sarah in Gen. 20:4 actively dissimulates, other accounts register only the silence of Sarai and Rebekah. We presume their passive acquiescence. However, Tamar aggressively seduces her father-in-law, the unwitting man.

Tamar had married Judah's firstborn son, Er. When he dies

after "displeasing" God, Judah orders Onan, his second son, to do the duty of the levir so as to raise up progeny for Er (Gen. 38:8). Onan, by coitus interruptus, avoids his duty and complications for his own heirs. God takes him too. The third son Shelah is not yet mature, so Judah sends Tamar as a widow to her own father's house to await his coming of age. We surmise that she is "inchoately married" to Shelah.²⁸

After Judah's wife, Bat-Shua, dies and Tamar observes that Shelah is not given to her though grown, she dresses as a *zōnā*.²⁹ Judah "goes in to her." When pregnancy reveals her sexual activity, the paterfamilias abruptly orders her to be

²⁸ So Cohn (EJ 2:315), Emerton (1975:359), Goodfriend (ABD 1:84), and Westbrook (ABD 5:553); contra McKeating (1979:58). In Westbrook's paradigm, this scenario better fits the case of the "seduction of the unwitting man." The scenario also approximately fits the case in Deut. 22:20-21, a true accusation of premarital adultery. However, to make it fit the latter we must not only presume inchoate marriage but also ignore that Shelah does not accuse Tamar (nor do they marry). Deut. contemplates the sentence of a court, death by stoning; the paterfamilias, Judah, orders Tamar's burning.

The *topos* of the unwitting man shows up elsewhere. In Genesis, Jacob does not know he has married Leah rather than Rachel (29:25). Cf. also the discussion above about Gen. 12: 20; 26. In HL §191 a man who takes either two co-uterine sisters or a woman and her mother who live in the same location, and knows it, has committed a criminal offense. This implies that in the residual situation, where he does not know they are related, he commits no offense. MAL A §14b: "If he should fornicate with her [in an inn or on the main thoroughfare] without knowing that she is the wife of a man, the fornicator is clear" (Roth 1997:158).

²⁹ נָשִׂי ,נָשִׂי *zōnā*, *zōnā* 'woman occasionally or professionally committing fornication; prostitute; harlot' HALAT³⁸ 1:275d. Contra Aatour (1966:1994), Tamar is not a 'cult prostitute'. Rather, we learn from Hos. 4:14 that *qēdēšā* in Gen. 38:21-22 is a poetic synonym for *zōnā*, the "regular word for prostitute" (Gruber 1986:134-135). Cf. Ginsberg (1967:75, n.2); Bird (1997:220-21); nn. 3, 49, 85-86.

burned. Ironically, the patriarchy has once again worked against its own interests. Judah fails to uphold the levirate institution³⁰ and its consequent preservation of the proper lineage; Judah nearly destroys the embryonic life of the heir. As they take Tamar away she reveals the identity of the father who remarks: "She is more in the right than I" (v. 26).

The story presses on us the question, when is *zēnūt* not *zēnūt*? When the lineage is at stake. It is remarkable that concern about adultery yields here to concern for the lineage. On the one hand, three stories extend the "boundary" of adultery to include near adulteries: Kings rebuke patriarchs for dissembling about their wives. They have put all parties at risk and the promised "seed" on the line. In contrast, Tamar heroically preserves the "seed" (and the patriarchy). Concerns about adultery bow to a concern about a proper male heir. This is a fundamental issue for J. Adultery is a problem to the extent that it confuses the line of descent.

ii. Slave's Adultery

Such an explanation is not sufficient, however, to account for J's problematization of Potiphar's wife's seduction of Joseph. Although the motif of wife-as-seducer is

³⁰ *עַל יְדֵי* y.b.m. 'husband's brother' (Deut. 25:5, 7 [D]; 'do the duty of a husband's brother to a brother's widow' (only Pi'el): Gen. 38:8 [J]; Deut 25:5, 7 [D]; cf. BDB 386a. The meaning becomes more restricted and technical in later Mishnaic Hebrew, 'brother-in-law [=husband's brother]' [BH] > 'brother-in-law who is legally obligated to marry the widow of his deceased brother' [Mish.H] (Sarfatti 1995:38).

not a surprise, that the seduction begins with a woman's gaze is a new twist (Gen. 39:7).³¹ It inverts the situation from Gen. 38 where Judah's sexual adventure begins with the male gaze. It hints of trouble.

From day to day the mistress begs Joseph עֲנֵנִי "Lie with me" (vv. 7, 11). From day to day he resists, or as Thomas Mann would have it in *Joseph and His Brothers*, teases and flirts. In any case it is dangerous to accede to and dangerous to deny the mistress' wishes. Indeed, Joseph becomes responsible for the outcome (*Erfolgshaftung*) and not for his actual guilt (*Verschuldenshaftung*) in this household. That is, he has "strict liability" -- there is no obligation to show his intent to commit an offense. When the mistress accuses Joseph of attempted rape, there is no inquiry launched by Potiphar to see if this is true.

The reader's knowledge of the injustice of the accusation creates part of the tension in the narrative. Joseph has asserted his non-consent when he flees and when he has said: וְאֵיךְ אֶעֱשֶׂה הָרָעָה הַגְּדוֹלָה "...?" (v. 9b α). He problematizes the issue of a slave's consent to sexual use by adding וְחַטָּאתִי לַאלֹהִים "and sin against God?" (v. 9b β). The thematic undercurrent in the earlier triptych now blooms in the dilemma of the slave. We might re-ask his question thus: Can a slave not consent to sex? The question emerges out of the second theory of adultery internal

³¹ Cp. the male gaze in exs. (1), (2) and (3) above.

to J: adultery is against the interest of the Deity (who intends to preserve the patriarchal lineage).

Gen. 39 may raise the issue of consent for the male slave but the issue is not yet given notice for women. Can we imagine that Hagar, a *šiphā*-slave³² could refuse when Sarai told Abram **אֶת-אִשְׁתִּי לֵקַח לְךָ** "Consort with my maid" (Gen. 16:2 [J])? She takes her maid (**לָקַח**) and gives her (**נָתַן**) to Abram, mimicking the language of marriage (v. 3).³³ When Hagar conceives by Abram and gloats, Sarai treats her harshly (**עָנָה**) until she runs away (v. 6). Ironically, **עָנָה** is one of the terms used in the context of rape.³⁴ This language is the language of manipulation -- the language of men manipulating women's lives. Potiphar's wife manipulates the sexuality of a slave ultimately owned by her husband; so does Sarai.

³² Cf. Lev. 19:20a in ex. (11) above.

³³ **לֵקַח אִתָּהּ אִשָּׁה** 'take someone for a wife' either directly, as Pharaoh taking Sarai (Gen. 12:19 [J]) or indirectly, Hamor arranging to get Dinah for Shechem (Gen. 34:4 [J]), or Judah obtaining Tamar for Er (Gen. 38:6 [J]); in D reduced to **לֵקַח אִשָּׁה** (Deut. 22:13) or **לֵקַח אִתָּהּ** (Deut. 22:14b); in H likewise, **לֵקַח אִשָּׁה** (Lev. 21:7, 14b) or **לֵקַח אִתָּהּ** (Lev. 21:14a).

נָתַן אִתָּהּ אִשָּׁה 'give someone in marriage', normally the action of the bride's father, as Shechem, the hopeful groom, asks Jacob to give him Dinah (Gen. 34:12 [J]), or Hamor, Shechem's father, the same for his son (Gen. 34:8 [J]). So now Sarai: **וַתֵּן אֶת-הָאִשָּׁה לְאֶבְרָם** "So Sarai took ... Hagar ... and gave her to Abram (as) his wife" (Gen. 16:3).

³⁴ Cf. n. 7 above. MAL A §23 prescribes death for the "female procurer" if the procured woman does not know to what she has agreed.

iii. Approaching Rape

Kornfeld (1950:95) observes that rape and adultery were not distinguished in the ancient Near East in terms of punishment. But this is not always true. Although LE §28 penalizes the married woman caught *in flagrante delicto* in "the lap of another man" (not distinguishing whether by her own will or by force), LE §26 penalizes the man who abducts and deflowers a betrothed woman (not his fiancée), an act committed against the will of the victim (Szlechter 1985:73). Likewise, in the case of the defloration of a wife before a marriage is consummated (LU §6), an act against the will of the victim, the rapist alone is punished with death (89-90). CH §130 covers the same situation, remarking on the violence (*ukabbilši*) and punishing the rapist.³⁵

It perhaps is more accurate to say with Westbrook that rape is considered "in the context of a discussion of adultery" (ABD 5:552).³⁶ This does not gainsay Brenner's observation that 'rape' does not exist as an independent

³⁵ See also HL §197 and Deut. 22:25 where the law punishes the rapist alone.

³⁶ ANE writers could mark the woman's lack of consent or the use of force by the rapist. In MAL A §16 the Akkadian verb *ni'āku* 'take' is used with *emūqāmma* 'by force' (Lambert 1992:147). Likewise in Gen. 34:2, עָנָה is added to the verbal chain (עָנָה \ שָׁכַב עִמָּה \ וָלָךְ \ וָרָא 'see / take / sleep with / force') to show Shechem forced Dinah. In Gen. 38:2, by way of contrast, Judah takes the daughter of Shua in marriage and consummates it without force (וָלָךְ \ וָרָא \ כִּי אֵלֶּה 'see / take / go into'). Finally, in the ritual concerning the suspected adulteress, the text specifically notes the woman was not forced (לֹא נִתְפָּשָׂה).

category in the HB (1997:137-138), it is subsumed under 'adultery' and 'fornication'. The juxtaposition of *zōnā* 'female fornicator' and *hālālā* 'profaned or raped' woman' in the list of wives prohibited to priests (אִשָּׁה זֹנָה וְחִלָּלָהּ, Lev. 21:7; וְחִלָּלָהּ (וְזֹנָה), Lev. 21:14) shows their close mental association.

However, the observations above do belie Brenner's assertion that the HB lacks a "conceptual reference to [rape]" (137). The problem is not that the HB fails to address sexual violence, but that a modern Western definition of rape is anachronistic.³⁷

Force, indicated by a panoply of terms, becomes relevant in the biblical sources in specific circumstances: in D for the betrothed woman (Deut. 22:25, Hif. חִזַּק) and for the unbetrothed virgin (Deut. 22:28, תָּפַשׁ; v.29, עֲוֹנָה); in J for a particular unbetrothed virgin, Dinah (Gen. 34:2, עֲוֹנָה). Each of these circumstances evokes different outcomes, so the terms are not correlated with the penalties. That the woman raped in the city is presumed to consent (Deut. 22:23-24, עֲוֹנָה) forcefully reminds us that D's categories are not our own. עֲוֹנָה is often used in conjunction with שָׁכַב עִם-אִתּוֹ (Gen. 34:2; Exod. 22:15; Deut. 22:23-24, 29); חִזַּק with שָׁכַב עִם- (Deut.

³⁷ "[Rape] consists of bodily sexual violation (including penetration but not limited to it) performed by an active agent on a non-consenting recipient. The key issue is corporeal, inclusive of sexual autonomy and the right to choose, the human right denied to the attacked by the attacker" (Brenner 1997:136).

22:25) and with ידע אִתּוֹ (Jdg. 19:25). ידע אִתּוֹ is used once alone in the context of attempted rape of numinous males (Gen. 19:5). נגַּח n.g.'. 'touch', twice used as a sexual euphemism in contexts of adultery (Gen. 20:6 [E]; Prov. 6:29), also carries the sense of 'strike'. Thus in Ruth 2:9 it hints of sexual violence. The root שָׁגַל š.g.l. 'violate, ravish' (which the Massoretes thought obscene substituting שָׁכַב š.k.b. in the Qere) twice involves a prophetic threat of rape.³⁰

Collecting these observations, 2 Sam. 13:14b yields a paradigmatic sentence for rape:

- (14) וַיִּחְזַק מִמֶּנָּה וַיַּעֲנֶה וַיִּשְׁכַּב אִתָּהּ (2 Sam. 13:14b)
 wayyehēzaq mimmennā way'annehā wayyiškab 'ōtāh
 He seized her, forced her, and lay with her.

though usually the order is different while using only two verbs:

- (*15) {חָזַק or עֲנֶה} + {יָדַע or שָׁכַב אִתּוֹ-אִתָּהּ}
 {y.d.'. or š.k.b. 'im-/et-} + {h.z.q. or 'n.h.}
 {'know' or 'sleep with'} + {'seize' or 'force'}

These can be reduced simply to 'n.h., as a kind of shorthand, and then perhaps swapped for the more euphemistic n.g.'. 'touch' or t.p.š. 'hold, seize', or the more vulgar š.g.l. 'violate'. Rape produces a חֲלָלָה, a 'profaned woman', who is (as we shall see) טְמֵאָה or 'defiled' by the נִלְוָה, the 'shameful act'.

In the first explicit biblical account of a rape, Dinah's "mistake" appears to be that she "went out to visit the

³⁰ שָׁגַל š.g.l. 'violate (Obscene)': Deut. 28:30; Jer. 3:2; Rape threat: Isa. 13:16; Zec. 14:2; cf. BDB 993c; Orlinsky (1944:23).

daughters of the land" (Gen. 34:1). Away from her tent:

(16) וַיֵּרָא אֶחָה שָׁכֵם בֶּן-חָמוֹר הַחִוִּי נָשִׂיא הָאֶרֶץ (Gen. 34:2)
וַיִּקַּח אֶתָּה וַיִּשְׁכַּב אִתָּה וַיַּעֲנֶה

wayyar' 'ōtāh š'kem ben-ḥāmōr haḥiwvī n'šī' hā'āreš
wayyiqqah' 'ōtāh wayyiškab 'ōtāh way'annehā

Shechem, son of the chieftain of the country, Ḥamor the Hivite, saw her and took her and lay with her and abused her.

Immediately we have an odd resonance with Gen. 16:6. Both Shechem and Sarai use force against a woman. Afterwards Shechem speaks tenderly to her, falls in love and engages his father to obtain her as a wife in the proper manner.³⁹ But:

(17) ... וַיִּשְׁמַע יַעֲקֹב כִּי טָמְא אֶת-דִּינָה כְּתוּ (Gen. 34:5a)
w'yā'šqōb šāma' kī ṭimmā' 'et-dīnā bittō ...
Jacob heard that he (Shechem) had defiled⁴⁰ his

³⁹ To which we can compare Amnon's cold rejection of Tamar bat-David. Beginning with "love" he ends with hate (2 Sam 13:11-17).

⁴⁰ טָמְא ṭ.m.'. 'be(come) unclean', 110x (Lev. 11-16 [P]), 30x (Lev. 11:43-45; 15:31; cps. 17-26 [H]), cf. Kugler (1997:27, n.16). More narrowly, in sexual contacts (BDB 379a-c): Qal with -נ: 'become unclean (sexually)': Lev. 18:20 (by adultery), 23 (by bestiality) [both H]; Ezek. 23:17 (by metaphorical adultery); Lev. 18:25, 27 [H] (the land metaphorically defiled by various sexual crimes); Nif. 'defile oneself (sexually)': Lev. 18:24 [H] (the land by sexual crimes); Num 5:13a, 14 (2x), 20, 27, 28, 29 [P] (by adultery); Pi'el with -תָּא 'defile (sexually)': Gen. 34:5, 13 [both J], 27 [Redactor?] (defloration by rape); Ezek. 18:6, 11, 15; 33:26 (adultery); 22:11 (incest); 23:17 (by metaphorical adultery). The verb, used primarily in adultery contexts within the Priestly literature (14x), J and J's redactor (P?) apply to defloration (3x). H also specifically uses the verb with reference to bestiality (1x) and by extension to all sex crimes including adultery, blood sex, bestiality, and incest (3x). Ezek. makes the application to incest explicit (1x).

טָמֵא, טָמֵא' 'impure'. In matters related to male genitals, seminal emissions of all sorts are labelled ṭāmē' by a declaratory formula ṭāmē' hū' (Lev. 15:2) or ascriptively (Lev. 15:16). These emissions include those of the zāb, a person with diseased genital discharges (Lev. 15:3-15, 28-30),

daughter Dinah.

The language of the narrator, *ṭimmē*, gives an interior glimpse of the mind-set of the characters -- shedding the blood of Dinah's virginity is a defilement. Shechem has committed *נלנל* 'outrage'⁴¹ by lying with Jacob's daughter (v. 7). Indeed, the narrator places the notion of defilement in the interior thoughts of Jacob's sons (v. 13) and makes it the motivation for their revenge (v. 27). They do avenge her just as Absalom later avenges the rape of his sister Tamar bat-David (2 Sam. 13). These two narratives may record a late Iron

and the minor impurity of an ejaculation with a wife or other woman (Lev. 15:18) [all P]. To this we can add metaphorical emissions such as passing seed to *molēk* (Lev. 20:3b α [H]). Cf. Milgrom (1991:986-987).

In matters related to female genitals, the *niddā* 'menstruant' (Lev. 15:24 [P]), both those with *niddat dēwōtā* 'menstrual infirmity' (Lev. 12:2 [P]) and *niddat tūm'ātā* 'menstrual impurity' (Lev. 18:19 [H]), are *tāmē*, as is a woman after *tazrfa* 'childbirth' (Lev. 12:2 [P]). We may deduce that a *m'šakkēlā* 'miscarrier' (cf. Exod. 23:26; Hos. 9:14) should also be *tāmē* in the Priestly world view.

Other things *tāmē*, neither genital nor sexual, include eating the carcass of an animal which died of itself or by a wild beast (Lev. 17:15; 22:8); consorting with 'ōbōt and *yid'onfm* 'ghosts' and 'familiar spirits' (Lev. 19:31, per Milgrom Forth. 2000a); ingestion of unclean beasts (Lev. 20:25); contamination from a *nēbēlā* 'corpse' (Lev. 21:1-5); *sārūa* 'scale disease' (Lev. 22:4a α) [all H]; cf. Wright (1991:13-19). *Tāmē* 'unclean' has the feature {+Death}, and is antonymic to *qādōē* 'holy' {+Life} and *tāhōr* 'clean' (Harrington 1993:28-29; Milgrom 1991:1000-1004).

⁴¹ *נלנל* *n'bālā* 'shameful or disgraceful (sexual) thing' (cf. BDB 615b), 'outrage' (NJPS), 'scurrilous thing' (Alter 1996:190); with respect to adultery (1x), Jer. 29:23; with respect to fornication probably committed during the betrothal period and thus "adultery" (1x), Deut. 22:21b α [D]; with respect to rape (6x), Gen. 34:7 [J]; Jdg. 19:23, 24b β ; 20:6, 10; 2 Sam. 13:12b. Used five times for other shameful acts including inhospitality or religiously profane speech and action.

Age memory of the early Iron or Bronze Ages -- sexual predation calls for blood vengeance -- as witnessed by the Hittite laws §§37, 197.⁴² But unlike Absalom who kills the perpetrator alone, and HL§37 which contemplates the death of two or three, Simeon and Levi kill all the males of the town (v. 25). Of this Jacob complains. It has put him at risk for retaliation from the Canaanites (v. 30).

Jacob's reaction betrays what the text problematizes. It is not the rape per se, but the disproportionate blood-vengeance of his sons. The rape itself defiles -- his daughter has become *ṭ'mē'ā*. The revenge brings into question the whole notion of blood vengeance as the appropriate punishment.

D equates the case of the betrothed woman raped in the open field to murder (Deut. 22:26b), a crime that could invoke blood vengeance.⁴³ But Dinah was not betrothed, nor was she raped in the open country, but in a town. If we persist in reading this text through the eyes of D, we find that a man who abuses (נָחַץ) an unbetrothed girl pays the girl's father 50 shekels of silver as a retroactive brideprice. In addition, he marries her without right of divorce (Deut. 22:28-29).⁴⁴ Jacob and his sons accept no composition and they refuse the

⁴² See the discussion in chapter six below.

⁴³ Similarly, Ezekiel closely links adultery and shedding blood (Ezek. 16:38; 23:37, 45).

⁴⁴ Cp. with MAL A §55, the sexual assault of an unbetrothed girl, requiring payment of a triple brideprice and marriage if the father chooses. Other cases of sexual assault are treated in MAL A §§9, 12, 16.

marriage. Thus the laws in D may well represent an "after-the-fact" critique of Simeon and Levi.

iv. Summary

Now the scenarios in J(E), the triptych of near adulteries (Gen. cps. 12, 20, 26), the *zēnūt* of Tamar (Gen. 38), the rape of Dinah (Gen. 34), and the rape accusation against Joseph (Gen. 39), have yielded several theories of adultery and rape internal to the text: (1) Adultery threatens the lineage by confusing who is the proper heir; (2) Adultery is a sin against the divinity (who is engaged in protecting the lineage); (3) Adultery and violent defloration of the unbetrothed daughter defile.

These theories emerge as the texts wrestle with sexual problems: (1) Is it adultery if the husband consents? (2) When is *zēnūt* not adultery? (3) What is the nature of a slave's responsibility for adultery? (4) Is blood vengeance the appropriate punishment for adultery and sexual predation?

If we collect the "penalties" in J we find in them a series of extravagant excesses. God threatens a near-adulterer with death, closes the wombs of a nation, or plagues a people on behalf of a matriarch. A *paterfamiliaa* hastens to burn an offending widow, part of his extended family. A falsely accused slave, held accountable for the (mere) appearance of adultery, descends to prison. Brothers avenge the blood of their sister's defloration with the blood of an entire town.

Some of these punishments flow from a certain narrative

logic: the plague on Pharaoh for Sarai foreahadowa the plagues of the exodua (Alter 1996:52); Joaeph descends thrice: to the pit, to Egypt, and to priaon. While we may distrust the specifics as indicative of actual legal practice, we can trust their problematizing. Should punishment proceed without inquiry? Should the justice of the *paterfamilias* yield to the justice of the community? Should vendetta accede to civil puniahment? In every case family justice has imperilled the survival of the "seed."

Such problematizations of the "judicial processes" within Genesis suggest "rape and adultery" divides from other *zēnūt* along an unsuspected fault: the intervention of the Deity to keep alive the promised seed. The actions of the male line imperil that seed. Yahweh must contravene Pharaoh and Abimelech; hide his hand in the descent of Joseph; and work his will through unexpected means such as the *wiae zēnūt* of Tamar.

Figure 4.2 summarizea certain "featurea" of the J-scenarios discussed above. Conaent of the parties, even "location" as an "objective" standard of consent, does not interest the narrator. Neither, oddly, does marital status. Nor does focus on the initiator, male or female. When relating stories of adultery and rape the text recounts the (mistaken) exercises of family juatice and the rescues of divine providence.

Figure 4.2: Featural Analysis of Adultery and Rape in J

"A D U L T E R Y"

**Rape of Unbetrothed
Girl: Dinah & Shechem**

♂	♀
+Initiates	
+Free	+Free
-Marriage	-Betrothed
+Consent	-Consent
+City	+City
+Penalty	-Penalty
-death	

**Adultery in Town:
Sarai & Pharaoh
Sarah and Abimelech**

♂	♀
+Initiates	
+Free	+Free
+Marriage	+Marriage
+Consent	±Consent
+City	+City
+Penalty	-Penalty
-plague	+Husband's
-closed	consent
wombs of	
household	
-Knowledge of	
♀ status	

**Slave Accused of
Rape: Joseph and
Potiphar's Wife**

♂	♀
	+Initiates
-Free	+Free
-Marriage	+Marriage
-Consent	+Consent
+House	+House
+Penalty	-Penalty
-prison	

**Adultery in
Open Country:
Tamar & X**

♀
+Initiates
+Free
+Betrothed?
+Consent
-City
+Penalty
-burning

N O T "A D U L T E R Y"

**Slave Concubine:
Hagar and Abraham**

♀
+Wife (Sarai) Initiatee
-Free
-Marriage
±Consent?
-City
-Penalty

Levirate (לוי'): Tamar and Judah

♀
+Initiates
+Free
+Betrothed?
+Consent
-City
-Penalty

b. Deuteronomic Cases

Otto (1998:133) analyzes the Deuteronomic adultery rules as consisting of a "principal provision"⁴⁵ forbidding adultery with a married woman (Deut. 22:22), a counter case of sex with an unbetrothed girl (vv. 28-29) encircling two cases of relations with a betrothed woman, consensual (vv. 23-24) and non-consensual (vv. 25-27). In effect, Otto limits "adultery" to the three cases of Deut. 22:22-27. To these and the counter case, Pressler adds the false (vv. 13-19) and true accusations (vv. 20-21) of pre-marital fornication, along with the "counter case" (vv. 28-29). These six cases constitute for her the Deuteronomic understanding of "adultery" (1994:106). My understanding of D's notion of adultery holds with Otto against Pressler the exclusion of the rape of the unbetrothed girl, and against Otto but with Pressler the inclusion of the true accusation of pre-marital fornication. As seen in Figure 4.3, homology by penalty holds these four together. At least one party in each case is executed.

If we compare Figure 4.2 with Figure 4.3 the shift in the boundaries of the definition of "adultery" becomes apparent. The cases of Dinah and Tamar would now fall outside the pale. D does not punish the rape of the unbetrothed with death (Shechem would only pay a brideprice and marry, something he desired anyway). D would presume Tamar did not give consent if

⁴⁵ Hamae (1996:131) suggests that among cuneiform laws one often serves as a general rule or contains a definition. After a general rule instances are then ordered.

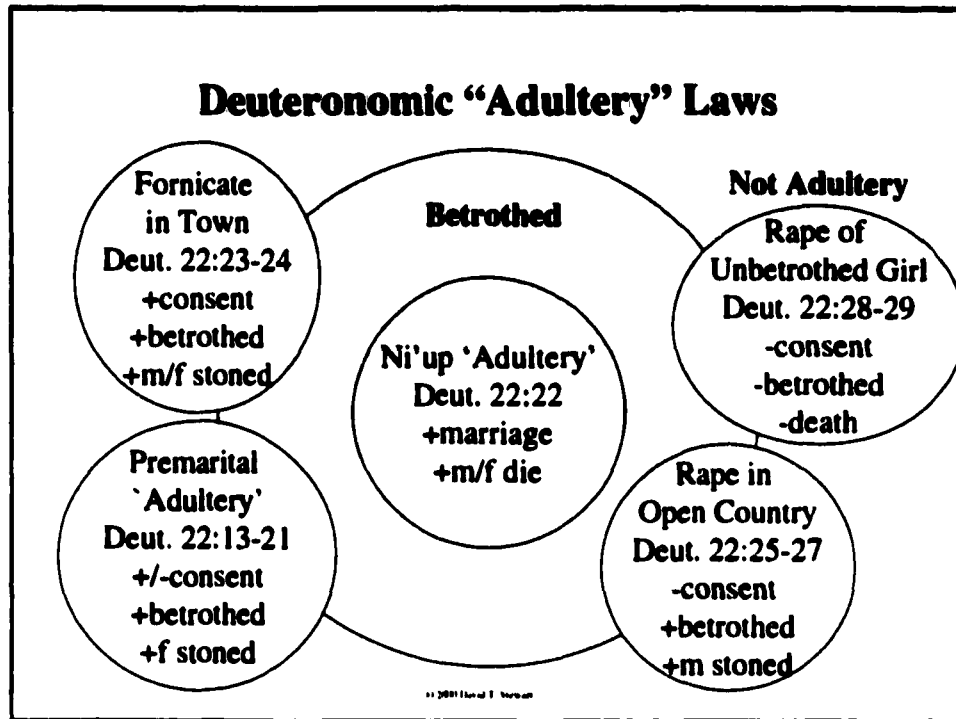
it were known events had transpired in the open country -- her screams were not heard. She would not face death by burning. Moreover, by making explicit that adulteresses married or betrothed face the same penalty (stoning), D defines betrothal into marriage and acts of fornication out of "adultery and rape."⁴⁶ Adultery, rape, and fornication are no longer a contiguous field.

The issue of "consent," subsumed under slave status in J, shifts under the rubric of "location" in D. Indeed, slave status does not appear as a category affecting sex crimes at all. D also consolidates penalties for "adultery and rape" to one, stoning. Finally, the locus of judgment has shifted away from the *paterfamilias* to the community.

D covers only a very small range of adultery cases: only those detected in *flagrante delicto* (Fishbane 1974:25; Otto 1996:134),

⁴⁶ But Deut. 22:13-21 may include the possibility of sexual relations before betrothal (so Phillips 1970:115). However Rashi (s.v. Deut. 22:20), Ibn Ezra (v. 21), and Nahmanides (v. 13) argue that this refers only to sexual relations after betrothal. The unbetrothed girl's case is also treated in Exod. 22:15-16 [B] but uses the Pi'el of נָסָה p.t.h. 'seduce'. By contrast, וּשְׁתַּחֲוֶה t.p.s. 'hold, seize' (Deut. 22:28) and וְנָחַם 'n.h. 'humble, afflict, force' (Deut. 22:29) speak of sexual violence. Ignoring this difference in language, Pressler wants to see the two cases in Deut. 22:28-29 and Exod. 22:15-16 as "essentially" the same (1993:39). Somewhat differently, Phillips views D as only amending the penalty in B ('must marry without divorce' as opposed to 'must marry if the girl's father approves'). He does not believe D raises the issue of consent by using the language of sexual violence (1970:113).

Figure 4.3



(18) ...כעל-כעל-אשה נעל-כעל (Deut. 22:22a)

kf-yimmāššā 'iš šōkēb 'im-'iššā b'ūlat-ba'al ...

If a man is found lying with a woman, i.e., a wife
of a husband ...

along with the proven case of premarital fornication (Deut. 22:20-21). This requirement of sufficient evidence protects the man and woman from severe penalties as most cases of adultery are not discovered in these ways.⁴⁷ So D not only has shifted the locus of judgment to civil authorities, it has also set in place standards of evidence not envisioned in the narrative texts.

However it does not seem that the legal texts in D have developed in isolation from the narratives. Whether D reads JE or JE reads D, there is at least one explicit linkage between the two. The phrase כעל-כעל-אשה b'ūlat-ba'al (ex. 18) appears in Gen. 20:3bβ [E], and although the root appears elsewhere in contexts of marriage, the phrase is unique to these two passages (Phillips 1981:14). Well might D quote from Gen. 20, the central panel of the adultery triptych, in its principal provision on adultery.

If D is a reader of J, D reads to overturn. Both Dinah (Gen. 34) and the unbetrothed girl (Deut. 22:29) were forced (עונה), yet the outcome for the unbetrothed girl, marriage by her ravisher, inverts the outcome with Dinah. In a second

⁴⁷ As Frymer-Kensky notes, death penalty convictions also require the testimony of two witnesses (Deut. 19:15), yet few adulteries are performed in front of such (1986:47).

case, Deut. 22:21 makes a small syntactic inversion of a sentence in Gen. 34:7:

(19) כִּי-עָשְׂתָה נָכְלָה כִּי־יִשְׂרָאֵל לְזָנוֹת כִּית אִמְיָה (Deut. 22:21a β)

kī-ʿāštā nābālā bʾyīsrāʾēl liznūt bēt ʾābīhā ...

For she did a shameful thing in Israel, committing fornication (while in) her father's house.

(20) כִּי-נָכְלָה עָשָׂה כִּי־יִשְׂרָאֵל לְשַׁכַּב אֶת-בַּת-יַעֲקֹב (Gen. 34:7b α)

kī-nābālā ʿāśā bʾyīsrāʾēl liškab ʾet-bat-yaʿqōb...

For he did a shameful thing in Israel, lying with Jacob's daughter.

We not only have an inversion of נָכְלָה from OV in ex. (20) to VO in ex. (19), but also an inversion of the subject's gender, male to female.⁴⁸ Perhaps these inversions not only show evidence of citation, but also contain a halakhic commentary on Dinah's wandering (Gen. 34:1); that is, the results for D (shame to the father) are more salient than the rape of the daughter. In this schema, Dinah is responsible for the results.⁴⁹

c. Laws from the Priestly Literature

It is in H rather than D that we find a more sustained

⁴⁸ Cf. also 2 Sam. 13:12 for the same *Leitwörter*, עָשָׂה and נָכְלָה, in a similar context.

⁴⁹ Carmichael (1985:218-220) prefers to topically compare the rape of Dinah with Deut. 22:28-29, the rape of the unbetrothed. He also suggests that Deut. 22:13-21 (discovery of premarital loss of virginity) evokes the wedding night surprise of Leah's presence in place of Rachel (Gen. 29:15-30). The common thread for him between these two pericopae is surprise (210-214). But in the latter, Jacob does not discover pre-marital adultery. Carmichael does not usually discuss the differences between his comparands.

reading of the Genesis stories of adultery and rape.⁵⁰ All passages concerning literal *ni'ûp* and *zēnūt*, Lev. 18:20; 19:20-22, 29; 20:10; 21:9,⁵¹ refer in some fashion to the triptych of near matriarchal adulteries and the stories of Hagar, Dinah, Tamar, and Potiphar's Wife.

1. Lev. 18:20

When Carmichael (1997:52) reads Lev. 18:20 (ex. 21), he asks, Why spell out the adultery offense at this point in the law code? He answers: It is necessary to oppose the attitudes shown by Abraham and Sarah in Gen. 20 -- they actively encourage adultery. He argues that the point of the law is to make clear a wife is not to have sex under any circumstances with a man who is not her husband. But why allude to Gen. 20 here?

Carmichael's general theory proposes that the priestly lawgiver makes and orders sexual laws by "examining the ancestral sexual history" (51). The immediately previous passage (Lev. 20:19) refers to the menstruant; the immediately prior element of Sarah's sexual history is her acknowledgment

⁵⁰ Contra B. Schwartz (1998) who, desiring to valorize the independence of the Priestly literature, erects a fire wall between P and the other biblical sources.

⁵¹ Bracketing out those using *z.n.h.* metaphorically, for worship of *molēk* (Lev. 20:5, 6), goat demons (Lev. 17:7), and Moabite gods (Num. 25:1-2 [P]) discussed in chapter five. *Z.n.h.* appears in Lev. 19:29; 21:9 (and Num. 14:33; 15:39 [P]). *N.'p.* is used in Lev. 20:10 four times. Lev. 18:20 and 19:20-22 cover circumstances related to these notions, though neither word is used.

of menopause (Gen. 18:11). Gen. 20 deals with her near adultery rather than her anticipated intercourse with Abraham; Lev. 18:20 legislates against adultery. The priestly lawgiver, legislating out of the narratives, juxtaposes these two rules because the underlying issues are sequenced so in the narrative sexual history.⁵²

Aside from this observation of a succession of topics, there are no "markers of allusion" (Ben-Porat 1976). Carmichael shows us no repetition of either *Leitwörter*, phrases, sentences, motifs, or plot structure as observed above for Deut. 22:22 and Gen. 20:3 (נָטַל-נָטַל). Even if we begin with Carmichael's "structural" motivation for citation of narrative passages, Gen. 12 has raised the issue of matriarchal adultery already, and in a manner that leaves the question open as to whether it has actually happened. Gen. 20

⁵² Thus, Lev. 18:19 represents a new departure point following the laws of incest, Lev. 18:6-18 (Carmichael 1997:47). Carmichael links Lev. 18 with the narratives as follows: vv. 6-7, Gen. 9:18-27 (Noah and Ham); v. 8, Gen. 35:22 and 49:3-4 (Reuben and Bilhah); v. 9, Gen. cps. 12 and 20 (Sarah as wife-sister); vv. 10-11, Gen. 19:30-38 (Lot's daughters); vv. 12-13, Exod. 6:16-18 + Num. 26:59 (Moses' parentage); v. 14, Gen. 24 (Isaac born late could have married an aunt but didn't); vv. 15-17, Gen. 38 (Judah and Tamar); v. 18, Gen. 30:14-18 (Rachel and Leah's competition). As noted above, v. 19, Gen. 18 (Sarah and menopause); v. 20, Gen. 20 (Sarah and Abimelech); v. 21 (molēk), Gen. 22 (Aqedah); v. 22, Gen. 19 (Sodom); v. 23 (bestiality), Gen. 34 (Dinah and Shechem, son of Hamor or 'Ass'). One can see from the complete scheme that Carmichael's "lawgiver" does not exactly follow the order of the narratives. His primary criterion is topical association, but when this fails he looks for associations based on the silence of the text (Isaac's non-marriage to an aunt), or word play (the bestiality rule is a skill for a rule against intermarriage). Cf. Carmichael (1997:58-59 and *passim*).

makes it clear that it has not. Moreover, the issue is raised again in the third panel of this triptych of stories, Gen. 26. Any of these panels might have served as starting points for H's interest in adultery.

Moreover, adultery with any נעלה-נעלה is not prohibited in Lev. 18:20, but rather with any נעלה-נעלה 'wife of a fellow citizen'. Could we argue that King Abimelech is Abraham's fellow citizen? No, Abraham is an alien. This law in H has a narrower scope than Elohim's pronouncement to Abimelech in Gen. 20:3. It is something more akin to a "group-spouse" prohibition (Goody 1969:24), wives forbidden on other criteria than near consanguinity (e.g., affines or wives of clan members).

Thus, while Carmichael's notion of an interconnection between Gen. 20 and Lev. 18:20 may be true in the largest possible sense of intertextuality -- that it is part and parcel of all prior texts and their infinite bricolage -- his formulation lacks precision. In any case, Carmichael makes no appeal to any theories of intertextuality such as those of Kristeva or Bakhtin.

However, the notion that Lev. 18:20 focuses on intra- and inter-clan adulteries allows us to look in another direction for intertextual links:

(21) ואל-אשת עמיתך לא-תתן שכבתך לזרע (Lev. 18:20)
לטמאה-כה:

w'el-'ššet 'šaftek lš'-tittēn š'kobt'kē l'sšra'
l'tom'ā-bāh:

(22) Gen. 38:8b-9) והקם זרע לאחיו;
 (v. 9a) וידע אונן כי לא לו יהיה הזרע
 (v. 9bα) והיה אם-כא אל-אשת אתיו ושחת ארצה
 (v. 9bβ) לכלתי נתן-זרע לאחיו;

Judah: ... "and provide offspring for your brother." But Onan, knowing that the seed would not be his, let it spill on the ground whenever he went in to his brother's wife, so as not to give offspring to his brother.

(*23) NEG. n.t.n. z.r. ' 1-/el-{Kin Noun}.

⁵³ Cf. ex. (10).

as genotext.

It isn't just penetration that Lev. 18:20 regulates. H implies that any non-penetrative use of the penis for ejaculation with a fellow's wife -- on the ground or on the woman, consensual or not -- is polluting.⁵⁴ When Lev. 18:20 evaluates the act as נדב, we recall the same evaluative language in the story of Dinah (Gen. 34:5, 7). She was 'defiled' by a Canaanite's rape. An Israelite man defiles himself by rape or adultery with a fellow's wife.

Although the above constitutes a one word echo, and we don't want to make too much of it, it is still an important word -- the word of evaluation. It is also one word more than offered by Carmichael for the purported allusion to Gen. 20. Thus, though Lev. 18:20 has in view the topic of "adultery and rape" and mimics the evaluative language of the rape of Dinah, it primarily evokes the story of Onan and Tamar.⁵⁵

⁵⁴ Although rape is subsumed here (Milgrom Forth. 2000a: s.v. Lev. 18:20 citing his seminar student, S. Rattray), if we take *š'kobt'kā l'zera'* precisely, "Oneida Colony sex" (penetration without ejaculation) is not specifically condemned. If all male emissions are *ṭāmē'* (Lev. 15:2, 16, 32 [P]), just so any with a woman, wife or not (Lev. 15:18 [P]). But what if there is no emission? Because it seems absurd that "Oneida sex" with a fellow citizen's wife could escape prohibition, we must conclude that the expression *š'kobt'kā l'zera'* is not precise technical language. Rather, it is metonymic -- one element standing for the larger whole of cohabitation. Milgrom (Forth. 2000a) notes P's more precise use of language than H.

⁵⁵ Carmichael links the story of Onan and Tamar with Lev. 18:15-17; 20:21 (1997:38, 174). As both passages prohibit incest with a brother's wife, these are further examples of his reliance on topical association as the primary indicator of allusion.

11. Lev. 20:10

Another "adultery and rape" rule leads off the section of sexual laws in Lev. 20:10-21.⁵⁶ Westbrook finds here the "general principle" similar to Deut. 22:22 (ABD 5:553) with which it shares the term קָנַן n.'p. Phillips also takes Lev. 20:10 as a sort of "principal case" followed by subordinate cases, "the first stage of reinterpretation of the crime of adultery to include all unnatural sexual unions" (1970:125). However, we should first notice that this adultery rule does not apply universally, but only to an אִשָּׁתוֹ 'a wife of a man' who is also an $\text{אִשְׁתֵּי אֶחָד מֵעַמִּית}$, the 'wife of a fellow Israelite'.⁵⁷ We have a rule prohibiting "non-group adultery."⁵⁸ Contra Westbrook, our rule is not as general as Deut. 22:22 which also covers wives of resident aliens, second-rank wives, and concubines. So in H's terms we have two concentric circles of prohibition (Figure 4.4): the innermost circle restricts adultery with a fellow Israelite's wife, $\text{אִשְׁתֵּי אֶחָד מֵעַמִּית}$;⁵⁹ the outer, with anyone's wife, אִשָּׁתוֹ .

⁵⁶ Read by Hildenbrand as a "structural" unit of 12 prohibitions focused on family relations (1998:145).

⁵⁷ The specification of this rule to Israelites is also noted by Fishbane, "the law has thus been restricted to manageable ethnic proportions" (1985:169).

⁵⁸ Goody (1969:24, 29): Intercourse with the wives of kinsmen (agnates, not consanguines) is "group-wife adultery"; with consanguines, "incestuous adultery"; with all others, "non-group adultery."

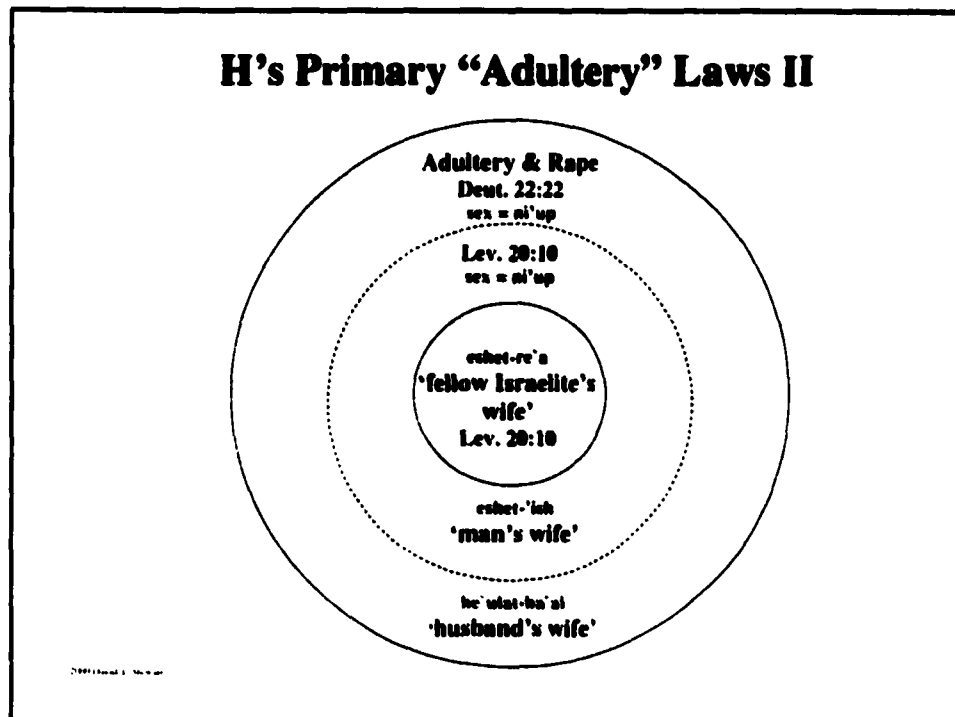
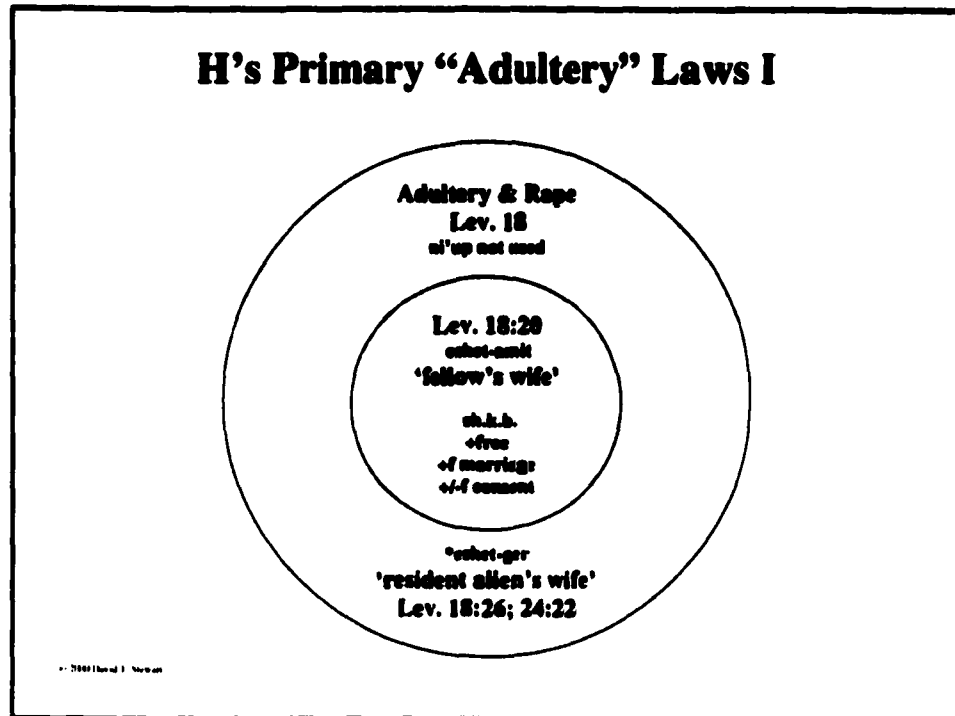
⁵⁹ This term is "equivalent" to $\text{אִשְׁתֵּי אֶחָד מֵעַמִּית}$, except that Lev. 18:20 does not use it with the verb קָנַן .

If we compare the rule in Lev. 20:10 (ex. 12) to the central panel of the adultery triptych in Gen. 20 and its prohibition of relations with the כַּנְעָלִית-כַּנְעָל, we again face the problem found comparing Gen. 20 to Lev. 18:20: Abimelech is not a רֵעַ, a 'fellow Israelite', just as he was not an עַמִּיט. Of course, the character "Abimelech" exists before the character "Israel" exists. So following the narrative timeline we should not expect anything more than an evocation of the general rule (in Gen.) by a specific (in Lev.). However, our specific rule does use a term (אִשָּׁת-אִישׁ) that evokes the same level of generality as כַּנְעָלִית-כַּנְעָל in Gen. 20:3.

Gen. 20:7 also gives the penalty for adultery. Elohim tells Abimelech: מוֹת תָּמוּת môt tāmût "You shall surely die."⁶⁰ When Abimelech finds himself at risk (again) in the case of Rebekah, he transforms Elohim's pronouncement into his own command to the people of Gerar: If any take Rebekah, מוֹת יוּמָת môt yūmāt "he shall be put to death" (Gen. 26:11 [J]). It is this Hop'al (passive causative) form and not the Qal that Lev. 20:10b takes up. Although the use of singular yūmāt with a compound subject ("adulterer and adulteress") is not unusual, its particular use at Lev. 20:10 makes sense as a quotative

⁶⁰ Of course echoing Gen. 2:17 [J], the promised punishment for eating the fruit of the forbidden tree.

Figure 4.4



trope.⁶¹

Thus, while the command is addressed to the lover alone in Lev. 20:10 (as in Lev. 18:20), the penalty is applied to both adulterer and adulteress. Here also, if we believe Westbrook (ABD 5:553-54), is another allusion to the Genesis triptych. This "anti-collusion" provision would prevent the sort of conspiracy between Abraham and Sarah or Isaac and Rebekah to permit the wives' entry into a royal harem. Unlike the tale in Genesis, Sarah would die. H would overturn the matriarch's escape from punishment.⁶²

Carmichael notices the similarity in penalty between Lev. 20:10 and Gen. 20:7 but does not restrain his interpretive flight. Through a *petiḥta'*-like string of associations he links Gen. 20 to cp. 39. By his accounting, the branding of both Abimelech and Joseph as guilty and the escape from punishment of the truly guilty (Abraham and Potiphar's wife) connect the two stories (1997:155-157). By this chain we arrive at his conclusion: the legist creates Lev. 20:10 in

⁶¹ To say that *mōt yūmāt* is a "frozen technical term" (Goodfriend ABD 1:84; Fishbane 1974:25, n. 2) or a "stereotyped" sentencing formula (Rendtorff 1986:93) does not explain why in four other death penalty cases in our pericope (Lev. 20:10-21) we have the third plural *yūm'tū*: vv. 11, 12, 13, 16. Therefore, since the stereotyped formula can concord with the number of its subject, the lack of concord at Lev. 20:10b invites a second explanation. The third singular *yūmat* also appears at v. 15 in the penalty for bestiality (and prior to our pericope at Lev. 20:2 for passing seed to *molēk*).

⁶² Neither could they collude to kill the lover and escape (inverting CH §153). Nor could the two men collude (postmodernly) to overcome the husband's infertility (Westbrook ABD 5:554).

response to the story of Joseph and Potiphar's wife."³

H does make use of Genesis narratives, but not in the way Carmichael imagines. Aside from the common topics of adultery and the double death penalty outlawing such schemes as Abraham's and Sarah's, the phrase *môt yûmat* links Lev. 20:10 to the triptych, and most particularly to Gen. 26:11. It is this "marker" that gives substantiality to any allusion, not Carmichael's method of (free) association.

H appropriates the evaluations and occasions of Genesis' narrative but modifies the penalties, exceptions, and circles of application. The adulteress (as in D) becomes subject to the death penalty; the circle of concern narrows to the sphere of Israel and its clans (in contrast to the universality of D's prohibition). The evidentiary base also shifts. JE's accusations, dreams, and divine signs are not so different from P's husbandly suspicion and miracle of the *šotah's* medical crisis.⁴ But Lev. 20:10 [H] speaks of no evidentiary

³ The rest of his associative scheme for Lev. 20 is: vv. 2-9, Gen. 38 (Tamar as cult prostitute); v. 10, Gen. 39 (Joseph and Potiphar's wife); v. 11, Gen. 35:22 (Reuben and Bilhah); v. 12, Gen. 38 (Tamar); v. 13, Gen. 19 (Sodom); v. 14, Gen. 38 (Tamar); vv. 15-16, Gen. 34 (Dinah and Shechem); v. 17, Gen. 12 and 20 (Sarah's near adulteries); v. 18, Gen. 18:11 (Sarah's menopause); vv. 19-20, Exod. 6:16-18 + Num. 26:59 (Moses' parentage); v. 21, Gen. 38 (Onan and Tamar); cf. Carmichael (1997:passim).

⁴ In Num. 5:11-31 [P] where "a prolapsed uterus in which the uterus falls through the pelvic floor, either to lodge in the vagina, or actually to fall out, when it would swell up like a balloon ... marks the end of a woman's procreative life" (Frymer-Kensky 1986:49; cf. 1984:20).

basis for conviction at all."

iii. Lev. 19:20-22

Bracketed between Lev. 18 and 20 are two sexual laws, Lev. 19:20-22⁶⁶ and v. 29. The former takes up the issue of sexual relations with a slave, not broached by D, but of concern to J. Carmichael, following his scheme of topical association, notices the slave-status topos and connects the passage with Joseph and Potiphar's wife (1997:109). Joseph is, after all, an 'ebed 'ibraf or 'Hebrew slave' (Gen. 39:17).⁶⁷ He

⁶⁶ Fishbane (1974:25). He wishes to read Lev. 20:10 with Deut. 22:22, the latter supplying the evidentiary basis for conviction. By this hermeneutical move he includes Lev. 20:10 under the rubric of "witnessed adultery" (39).

⁶⁷ Milgrom (Forth. 2000a:ad loc.) believes this pericope stems from the hand(s) of P because of its style, its non-H terminology (e.g., *šiphā*), and its agenda (H abolishes slavery; This passage regulates it). But, as discussed below, this passage unravels the slave's *Erfolgshaftung*, or responsibility for (sexual) results found in J. Therefore, it is consistent with H's deconstruction of slavery. On this pericope, see also Phillips (1970:114); Milgrom (1976a:129-137; 1977); B. Schwartz (1986); Goodfriend (ABD 1:82-83); Otto (1994:71-73); Carmichael (1997:108-113, 156).

⁶⁸ The older view of Alt (1966[1934]:93-96), echoed in greater or lesser measure by Ellison (1973) and Lemche (1975), argues that the 'ebed 'ibraf is not an ethnic Israelite slave, but rather a person who belongs to a particular social stratum (not nomads, nor military deserters, nor runaway slaves, says Na'aman (1986:275), but displaced people). Both Na'aman (285) and Lemche temporize: They allow 'ibraf(m) to function as both a gentilic or appellative noun. Thus in the Covenant Code (Exod. 21:2), seen as a quintessential Israelite invention, and in the Joseph narrative where 'ibraf stands in opposition to *mišraf* 'Egyptian' (Gen. 43:22), 'ibraf functions as an ethnonym (Freedman & Willoughby *ThWAT* 5:1039-1056). Just so our verse, Gen. 39:17. This is true despite the fact that Joseph does not have an Israelite master as perhaps in Exod. 21:2. A further circumlocution often indicates this last

does not consent to sexual relations. He is falsely accused and imprisoned. The injustice of his accountability for acts for which he is not individually guilty (*Verachuldenhaftung*), Carmichael finds rectified in Lev. 19:20-22. Here an inquiry (*biqqōret*) takes place -- the very inquiry that should have taken place for Joseph (113) -- and the slave-girl is absolved.

But here Carmichael runs afoul of other elements in the text of Lev. 19:20-22. The slave woman is a *šiphā* or 'female family slave',⁶⁰ like Hagar, Bilhah, and Zilpah. She is also *nehērepet* 'assigned'⁶¹ to a freeman for marriage. The result,

possibility: *šhfkā hā'ibrī* or *hā'ibrīyā* (Deut. 5:12); reduced to *šhfkā* (Lev. 25:39; Loewenstamm EM 6:13-14).

⁶⁰ מִשְׁפָּחָה *šiphā* 'female family slave' < *mišpāhā* 'kin group, clan' (Milgrom Forth. 2000a: s.v. Lev. 19:20); "houseborn girl, not the legal daughter of the *paterfamilias*, given as a maidservant to a daughter who is leaving the household for marriage" (Lipiński 1994:15); Hagar (Gen. 16:1, 2, 3); Bilhah (Gen. 35:25); Zilpah (Gen. 35:26). Each of these is also called an *'āmā* 'female slave', the term parallel to *'ebed* '(male) slave' (cf. Lev. 25:44). Following B. Schwartz (1986:244) Milgrom writes, "This is the only legal case where *šiphā* appears instead of *'āmā*; the probable reason is aesthetic-stylistic, to create an alliteration with *hupāā*.... Otherwise, *šiphā* ... and *'āmā* ... are equivalent and enjoy the same legal status ..."

⁶¹ נֶהְיָרַפַּת *nehērepet* 'assigned', Nif. participle of *h.r.p.*: "refers to premarital status, i.e., 'espoused, given early to a man', which points to the Akkadian antonymous pair *ḫarāpu / apālu* 'be early'/'be late' ... Hence, the exact rendering would be 'assigned in advance' (Levine[']s 1989 rendering)) that is, in advance of redemption or manumission" (Milgrom Forth. 2000a: s.v. Lev. 19:20). "Loewenstamm (1980[a]:94) recognizes that **ḫārūpā* is not completely equivalent to *'arūšā* 'betrothed' but is of lesser legal force" (ibid.). Similarly, B. Schwartz, "a status ... less finalized than that of the betrothed maiden in Deut. 22:23ff" because "a contract of marriage has been entered into but not executed" (1986:245-

in Milgrom's view, is a liminal status of half-free, half-slave.⁷⁰ This peculiar status, coupled with something akin to P's prescription for an inquiry in manslaughter cases (Num. 35:20-25, 30; but H per Knoch 1995:106), motivates the *biqqoret*: is she yet a slave? If she has already been ransomed (Exod. 21:8), both she and her ravisher receive capital punishment (Lev. 20:10). If she is yet a slave, is she truly 'assigned'? If not, the ravisher may compensate the owner (Exod. 22:8, 15). If she is still a slave and 'assigned', the owner is not given any damages.⁷¹ Thus, the investigation not

246). One difference, Deut. 22:23 prescribes death for violation of the betrothed woman. Westbrook (1988:106-107) speculates, without reference to the Akkad. cognate above, that *hrp* was technical language for 'pledge contract' such that the woman in question was sold into debt slavery. Though he rejects the liminal status of a woman "betrothed by promise" and not bride money, we have just such a circumstance in HL §28a.

One possible scenario: A man purchases a woman with the view of giving her to his son (Exod. 21:9) -- a woman whom, once married, he must treat as a daughter. Before the marriage or betrothal takes place, the son (or even some other) has relations with her. However, the language of H differs from JE. In the Covenant Code the terms used are *'āmā* (v.7) instead of *šiphā*, and *yf'ādennā* 'selects her' (v.9) instead of *nehērepet* 'assigned' -- *ṭṭ' y.'d.* 'appoint', especially in contexts of "acquiring or designating a wife" BDB 416d.

For more on *ṭṭ' y.'d.* 'betroth', cf. BDB 76d-77a; HALAT³ 1:88d; DCH 1:399a.

⁷⁰ Milgrom (Forth. 2000a: s.v. Lev. 19:20). Cf. Lambert (1992:133): "The clearest case of women who did not fit into the ordinary legal and social categories [in the ANE] was slave girls, and a male owner was free to treat them as concubines ..."

⁷¹ So Milgrom (1977:44) in contrast to the 18th cent. BCE LE §31: "If a man should deflower the slave woman of another man, he shall weigh and deliver 20 shekels of silver, but the slave woman remains the property of her master" (Roth 1997:64); and in contrast to the 21st cent. BCE LU §8, "If a

only ascertains whether sexual relations have occurred (as Carmichael wishes for Joseph) but also the status of the slave-girl.⁷²

The quasi-betrothed status of the slave girl also evokes Deut. 22:23-27. For Otto this is telling. His redactor of Lev. 19 has borrowed snippets from the Book of the Covenant (B), D, and the Decalogue in his construction of the chapter and fused them together (1994:71). Lev. 19:20-22 emerges as a fugue: the melody of Deut. 22:22-29 contrapuntal to the expiation theology of P noted by DUMM , נאמן , נאמן (75). The result falls on the cusp between the cases of Deut. 22:23-27 and vv. 28-29. In the former, the lover of the betrothed woman is liable for the death penalty; in the latter, not. The lover of the near-betrothed falls between these two, liable for an 'āšām, but not death. Otto assumes the priority of D in his analysis, and thus the ubiquity of D's definition of 'adultery' -- P holding

man acts in violation of the rights of another and deflowers the virgin slave woman of a man, he shall weigh and deliver 5 shekels of silver" (18).

⁷² The view of the classical exegetes, Rashi, Rashbam, and Ibn Ezra, along with Wessely, Loewenstamm (1980a:97), and Milgrom (1976a:131). Against this B. Schwartz argues that the girl's "assigned" status is the primary datum -- verification is unnecessary. He takes the phrase נקרת תהיה *bigqōret tihyeh* as legal language meaning "there is a legal distinction." The phrase thus, in his view, emphasizes that this case does not involve a capital offense. (1986:249, 251-252). Westbrook (1988:103), following Loewenstamm's demonstration that Akkad. *baqāru* does not refer to a 'claim in damages', asserts rather that it refers to a 'claim for the return of one's property', an *actio in rem*. Thus Westbrook takes נקרת תהיה as "there is an *actio in rem*" (105). In his schema, the husband who sold his wife into debt-slavery has the right to claim his property back after she has been violated by her master.

essentially the same understanding.

However, the multiple hapax legomena in Lev. 19:20-22 belie P's (or H's) dependence on D.⁷³ Among them, the unique use of *šiphā* 'female (clan) slave' in a legal text, stands in contrast to D's preference for *'āmā* 'female slave'.⁷⁴ Moreover, the sexual life of slaves is not at issue in D. The emerging value of "consent" D subsumes under the *topos* of location, not the *topos* of slave or free status. Thus, placement of Lev. 19:20-22 between the Deuteronomic cases observes only one of the relevant axes -- the axis of penalty scaled to betrothal status -- and not the axes of consent or slave status. The *topoi* and *facta* of Lev. 19:20-22 are disparate.

It is true that our pericope shares the slave *topos* with the story of Joseph and Potiphar's wife; indeed, unmentioned by Carmichael, both share the verb *חטא* 'sin' (vv. 21, 22 and Gen. 39:9b). Our passage does contrast with Joseph's responsibility for results: the responsibility in Lev. falls squarely on the perpetrator, the token of which is the *'āšām*. But we cannot assume with Carmichael that the law reflects only a shift from *Erfolgshaftung* to *Verschuldenschaftung*, or that its primary allusion is to the story of Joseph.

Milgrom has noticed the pregnant use of *'āšām* at Gen.

⁷³ These hapax legomena are: *נחלפנו* 'assigned'; *נתן חפשי* 'give freedom'; *נקה* 'inquiry'; and the unique use of *שפחה* 'female (family) slave' in a legal text.

⁷⁴ Deut. 12:12, 18; 15:17; 16:11, 14.

26:10.⁷⁵ In the story, Abimelech rebukes Isaac concerning Rebekah:

(24) כמעט שכנ אחד העט את-אשתך (Gen. 26:10b)
והנאת עלינו אש:

kim'at šakab 'ahad hā'šm 'et-'išteka
w'həbš'tā 'elēnū 'āšm:

One of the people might have lain with your wife,
and you would have brought guilt upon us (NJPS)

which yields several echoes in our pericope:

(25) והוא שפחה נחרפח לאיש (Lev. 19:20a)
והפדה לא נפדוה או חפשה לא נתן-לה
(20b) כקרת תהיה לא יומתו כי-לא חפשה:
(21a) והכיא את-אשמו לה' אל-פחח אהל מועד
(21b) איל אש:
(22a) וכפר עליו הכהן כאיל האש לפני ה-
על-חטאחו אשר חטא
(22b) ונסלח לו מחטאחו אשר חטא:

w'ifš ki-yiškab 'et-'iššā šikbat-zera' (20a)
w'hi' šiphā nehērepet l'ifš
w'hopdāh lō' nipdātā 'ō hupšā lō' nittan-lāh
biqqōret tihyeh lō' yūmtū ki-lō' hupšāš: (20b)
w'hēbf' 'et-'āšmō l'YHWH 'el-petaḥ 'ōhel mō'ēd (21a)
'ēl 'āšm: (21b)
w'kipper 'ēlšyw hakkōhēn b'ēl hā'āšm lipnē YHWH (22a)
'al-hattā'tō 'āšer hātā'
w'nislah lō māhattā'tō 'āšer hātā': (22b)

(20a) And a man, if he consummates carnal relations with a woman who is a šiphā-slave assigned to a man, but has not been redeemed nor given her freedom,

(20b) there shall be an inquiry; they shall not be put to death since she has not been freed.

(21a) He will bring his reparation offering⁷⁶ for YHWH to the entrance of the Tent of Meeting,

(21b) a reparation offering ram.

(22a) The priest shall expiate for him with the

⁷⁵ "It may now be surmised that the narrator's choice of the root 'šm in this case (Gen. 26:10) of suspected adultery was not accidental" (Milgrom 1976a:132, n. 472).

⁷⁶ Milgrom (Forth. 2000a): "penalty."

reparation offering ram before YHWH, for his sin that he sinned, (22b) and the sin that he ains shall be forgiven him (emphasis mine).

In Gen. 26:10b (ex. 24), 'āšām refers to unspecified guilt;⁷⁷ in the cultic passage Lev. 19:20-22 (ex. 25), 'āšām is the technical term for a reparation offering (resolving liability).⁷⁸ Both verses use b.w.' (Hif.) 'bring' with 'āšām and šakab 'et- for the sexual misdeed. It is the use of 'āšām, however, which is striking; or, in Milgrom's words, "not accidental" (1976a:132).⁷⁹

⁷⁷ So Milgrom (personal communication). This is the only use of the noun 'āšām or the root 'š.m. in Genesis.

⁷⁸ Cf. Milgrom (1991:339-42); the "cultic use" of 'āšām "connotes both the wrong and the retribution" (339). The wrong involves a liability because sancta were damaged by mā'al 'sacrilege' (342). This theory resolves all cases of the 'āšām except the one under discussion. Here, expiation by the 'āšām is the default penalty for a crime normally punished by death (but the penalty is prevented by the woman's slave status). Where an 'āšām can normally be redeemed (cf. Lev. 5:15, 18, 25), here the ram must actually be sacrificed (so B. Schwartz 1986:253-254). Milgrom harmonizes this 'āšām with the others by postulating a violation of the collective oath at Sinai (1976a:136). Oath violations are one of the classes of mā'al. However, per Schwartz, this would be true of any violation of the decalogue (1986:252, n. 49). Milgrom's solution leaves a residual problem: why is this particular covenantal violation marked?

Milgrom's defense: The spareness of the decalogue (limited to ten "directions" without penalties) accounts for the lack of a specific mention of our case. All of the decalogue's provisions are penalized elsewhere (one such is our passage). Moreover, Lev. 19:20-22 falls into a gray area. The "marking" of the case is thus an epiphenomenon of its marginality (Personal communication). My (partial) solution: The "marking" of our case is an artifact of H's reading (and alluding to) J.

⁷⁹ The 'āšām for desecration makes this case eligible for inclusion under the chapter's rubric (Lev. 19:2), q'dōšīm tiḥ'yū "Be holy" (Milgrom, personal communication). From

To put the point more forcefully, Lev. 19:20-22 evokes the two stories of Abimelech and a matriarch, the second and third panels of the near-adultery triptych. In a case where no adultery has taken place, Abimelech is careful to observe its dangers. One of the people, one of the knights or freemen really,⁹⁰ might have taken Rebekah bringing down retribution on all. This *Kollektivhaftung*, or collective responsibility, is something to which Elohim has already sensitized him (in Gen. 20).

Abimelech's sin in Gen. 26 is inchoate, even less substantial than when he took Sarah into his harem. That near adultery with Sarah, the near-*נִשְׁאָרָה* (Gen. 20:9), also echoes in the *נִשְׁאָרָה* of the nearly-betrothed (Lev. 19:21, 22). Elohim keeps Abimelech from sinning (*נִשְׁאָרָה*). If Elohim had not, under P's regime Abimelech would still have owed an 'āšām for his unwitting sin (Lev. 5:17-19). It is the penalty (an 'āšām) that reinforces the homology. Abimelech's hypothetical knight who could possibly take Rebekah unwittingly is like a freeman taking a nearly-betrothed family slave, one not necessarily

another perspective, the perspective of inner-biblical exegesis, P (or H) selected 'āšām to mark the allusion -- a technical use of the word evoking J's use of its broader sense. Alternatively, we could imagine its insertion in J by J's editor, P.

⁹⁰ *עַם* 'am 'people bearing arms' BDB 766c #2c, common in JE. Cf. nn. 17-18, 90. In this context the most likely candidates are Abimelech's courtiers as opposed to the 'common people'.

Israelite.⁸¹ Both cases are near to 'adultery'.⁸²

The theme of this fugue on Gen. cps. 20 and 26 (with fainter resonances from the stories of Hagar and Joseph) is to extend the bounds of the law of adultery. It implies what is inside the boundary and worthy of death: adultery with the *šiphā* who is married (e.g., Bilhah in Gen. 35:22 and Lev. 20:11). Neufeld (1944:165) clarifies the condition for counting relations with a *šiphā neḥšrepet l'iš* as 'adultery'. Such depends not on her quasi-betrothed status but on whether she is fully freed or redeemed. Thus by this measure, only relations with the unredeemed-*šiphā neḥšrepet* (Lev. 19:20a₁ per se) fall outside 'adultery'.

iv. Lev. 19:29

The second passage bracketed between Lev. 18 and 20, takes up the issue of a father prostituting his daughter and the consequent damage to the land as a whole. By this *zānūt* the land risks widespread fornication and its attendant divine punishments:

(26) אל-תחלל את-בתך להזנותה (Lev. 19:29)
ולא-תזנה הארץ ומלאה הארץ זמה:

'al-t'ḥallēl 'et-bitt'kā l'haznôtāh
w'lō'-tizneh hā'āreṣ ūmāl'ā hā'āreṣ zimmā

⁸¹ As Milgrom notes, H does not forbid intermarriage (Personal communication).

⁸² Phillips (1970:114) places the case of Lev. 19:20-22 outside the construct of 'adultery' since the slave woman was the property of a master. But we do not have the master's sexual use of the slave in view here.

Do not defile⁸³ your daughter by prostituting⁸⁴ her, lest the nation fornicate and the land become full of lewdness.⁸⁵

⁸³ זָמַם h.l.l. III Pi'el 'pollute, defile (sexually)', BDB 320b; cf. Lev. 19:29, 21:9, 15a [all H]; Hif. or Nif. with LXX, Num. 25:1b [P]; a root that often goes with z.n.h. (Milgrom 1990:323, n. 6), but does not form a hendiadys (Zipor 1987:265).

⁸⁴ הָנִיחַ z.n.h. Hif. 'to encourage to commit fornication' (Lev. 19:29), +יָנַח and metaphorical (Exod. 34:16); 'to commit fornication' (Hos. 4:10-18), metaphorically (Hos. 5:3), cf. HALAT⁸⁶ 1:275c. For other uses of the root, cf. nn. 3, 27, 49.

⁸⁵ זִמְמָה zimmā 'lewdness' (but more specifically in H, a sexual crime for which one could be burned) in which sense we can see a connection with Ethiopic zamana 'fornicate'. Cognates in Arabic and Aramaic have the sense 'think' as does the Heb. verb z.m.m. The root is "semantically neither NEG or POS" Steingrimsson (TDOT 4:88). Cp. 'evil device' especially 'unchastity' (BDB 273c); 'Schandtät' or 'foul deed, crime' (HALAT⁸⁷ 1:261cd); 'wickedness, lewdness' (Steingrimsson TDOT 4:87-90); and Loewenstamm (EM 2:929). Cf. my comparison to Hitt. ḫurkel in chapter six, n. 136 below.

In the principal sense of z.m.m., zimmā appears six times: Isa. 32:17; Ps. 119:150; Prov. 10:23; 21:27; 24:9; Job 17:11. The last has a positive or neutral connotation.

In a sexual sense, which HALAT⁸⁸ speculates may come from a different root (1:261d), zimmā appears 23 times (predominantly in Priestly literature: H, 4x; Ezek., 14x):

- (a) man with two women in an incestuous love triangle (Lev. 18:17; 20:14 twice);
- (b) father prostitutes daughter (Lev. 19:29);
- (c) literal adultery (Job 31:11);
- (d) metaphorical adultery (Ezek. 16:27, 43, 58; 23:21, 27, 29, 35, 44, 48 (2x), 49; 24:13), as does Jer. 13:27. Ezek. 23:44 equates an הָנִיחַ-יָנַח 'prostitute, fornicator' with אִשּׁוֹת-הַזִּמְמָה 'the women of zimmā', Samaria and Jerusalem, who are metaphorically wed to YHWH. Zimmā is also linked with z.n.h. in Ezek. 23:21, 27, 29, 35 and Lev. 19:29;
- (e) pursuing incest with a daughter-in-law (Ezek. 22:11);
- (f) the outrage at Gibeah (Jdg. 20:6) involving the rape and murder of a secondary-wife. The initial "offer" to appease the violent townsmen included a virgin daughter;
- (f) as a rubric for several kinds of sexual relations (Ezek. 22:9): having incestuous relations with a father's or son's wife, or paternal sister; adultery, and relations with the niddā (vv. 10-11; cf. Loewenstamm EM 2:929). Ezekiel achieves an over-the-top effect in this

Carmichael connects Lev. 19:29 with Gen. 38, Judah and Tamar. To justify its setting, isolated from other sexual laws, he notes its placement just after the mourning laws of Lev. 19:27-28. Likewise, Gen. 38 follows Jacob's mourning Joseph's death in cp. 37. A bloody garment deceives Jacob; a prostitute's garment deceives Judah." Just as these two linked stories follow one another, so, Carmichael believes, Lev. 19:27-29 juxtaposes the same topics in the same order. In any case, as Gen. 38 links a daughter-in-law with *zēnūt*, so Lev. 19:29 connects a daughter with *zēnūt*.

But why link a daughter's and daughter-in-law's *zēnūt*? For certainly there is a stronger topical parallel with the daughters of Lot whose sexual services he offers to deter the violent men at his gate; or the virgin daughter of the man of Gibeah offered with the Ephraimite's *pflege* to appease the violent men of the town (Jdg. 19:24). The outcome is actually described as *zimma* (Jdg. 20:6). Nor is H limited to juxtapositions to motivate the placement of its laws, and indeed, the binding threads may lead elsewhere.

The root *z.n.h.* is commonly used for fornication and

last passage by a sort of synaesthesia of sexual evaluation terms. Terms habitually used to describe one sort of sexual crime (in declaratory formulas similar to *hi' zimma* 'it is lewdness', Lev. 18:17; 20:14; Job 31:11) are applied to new crimes;

(g) other evil deeds: murder (Hos. 6:9); murder, bribery, and fraud (Ps. 26:10).

" Rabbi Yohanan connects the presentation of Joseph's robe to Jacob with the presentation by Tamar of Judah's staff and signet, thus linking the two deceptions (Gen. rab. 84:19).

adultery. But the difficult-to-translate lemma *zimmā* in Lev. 19:29 arrests the reader. By it, we are lead to associate Lev. 18:17; 20:14; and a verse from an H-tradent, Ezek. 20:11. What is *zimmā*? For H, sexual relations or marriage with two women, either a mother-and-daughter, or with one of these and the granddaughter, qualifies. If we look for *zimmā* in the case of daughter-in-law incest (Lev. 20:12), we are at first put off by the descriptor *tebel* 'confusion' instead. But Ezek. 22:11a^β exchanges *tebel* for *zimmā*: וְאִשׁ אֶת-כַּלְתּוֹ טָמְא כְזֹמָה "in his *zimmā*, a man has defiled his own daughter-in-law." Perhaps Ezekiel also felt the connection between Lev. 19:29 and Tamar's *zēnūt* and so included it among things *zimmā*. Thus the three behaviors included together are: prostituting one's daughter; pursuing incest with one's daughter-in-law; and having both a mother and her (grand)daughter, no matter whom one takes first. Later readers, the writers of Job and Ezekiel, understood *zimmā* as literal and metaphorical adultery. Indeed, Job 11:31 uses the same declaratory formula, *hi' zimmā*, as Lev. 18:17 and 20:14.

Bringing the category of things *zimmā* into high relief makes understandable the puzzling penalty of burning with fire.⁹⁷ Judah orders Tamar's burning (Gen. 38:24); H orders

⁹⁷ Astour (1966:194) notes that there is no evidence that burning was the usual punishment for adultery. Phillips (1970:129) observes that our only evidence for a patriarchal burning penalty is Gen. 38:24. Stoning is prescribed in D for the pre-marital adultery of a new bride (Deut. 22:13-21) or for the betrothed woman (Deut. 22:24), and in H for giving offspring to *molēk* (Lev. 20:2), a crime listed among sexual

the man, along with the woman and her mother whom he takes, to be burned (Lev. 20:14). To these, H adds a case of *zēnūt* not labelled *zimmā*:

(27) וכת איש כהן כי תחל לזנות (Lev. 21:9)
את-אכיה היא מחללת נאש ושרף:
אם-אכיה היא מחללת נאש ושרף:

ûbat 'iš kōhēn kī tēhēl liznōt
'et-'ābīhā hī' m'hallelet bā'eš tiššārēp

When the daughter of a priest defiles herself with

crimes. Traditional Jewish sources assume strangulation for cases of the death penalty where the method is not described (Sipra, Qedoshim 10:8; b. Sanh. 52b; Goodfriend ABD 1:84). For sexual misdeeds in H, burning is the only "marked" means of punishment.

Phillips suggests that the burning penalty may have been borrowed by H (Lev. 20:14; 21:9) during the exile from CH §§110, 157 and then retrojected into Genesis by Priestly glossing. Rejecting his specifics, I still appreciate his sensitivity to the intertextualities -- CH as an exilic genotext for H and J. The connection is problematic simply on the grounds of content. CH §157 prescribes burning both the man and his mother with whom he has incestuous relations after his father's death, something possibly approached (but not reached) by Ezek. 22:9(-11). Lev. 20:14 speaks to the case of relations with a woman and her mother, i.e., a two-woman rule. CH § 110 prescribes burning for an uncloistered female cult worker, either a *nadītu* or an *ugbābtu* (cf. Lambert 1992:135, 140-141), who enters a tavern for beer. The *ugbābtu* (Akkad.) copulated with rulers at major seasonal festivals in some areas and periods (143). Whether the *nadītu* was a prostitute hinges on the whole Sumero-Babylonian theology of sexuality (135). Again there are no strict parallels with the content of the biblical cases. Judah threatens Tamar with burning for *zēnūt*, ostensibly what a *nadītu* or an *ugbābtu* does legitimately on occasion, and not for being a "cult prostitute", nor for revelling at taverns. At best we could say, special limitations were placed on the behavior of some women in the priestly classes. Violations were punished in some instances by burning (per Lev. 21:9) just as other priestly misdeeds were subject to punishment by divine fire (Lev. 10:1-2). One other basis for a late Babylonian borrowing might be Jeremiah's threat against the false prophets Zedekiah and Ahab: they would burn in Babylon (29:22).

Note that a much later Jubilees 20:4 (ca. 100 BCE) extends the class of women subject to burning. Abraham instructs his children to burn all female fornicators.

fornication, she profanes her father; she shall be burned by fire.

Something of the inverse of Lev. 19:29 (ex. 26), Lev. 21:9 echoes the former with the root *h.l.l.* conjoined with *zēnūt* and the spoiled relations between father and daughter. Lev. 19:29 began with the father initiating the *zēnūt* of a woman in his charge; in Lev. 21:9, the priest's daughter has taken the initiative herself."¹

By equation of penalties the crime of Lev. 21:9 becomes like the incestuous crime of Lev. 20:14. In the latter, a man takes women of two generations who are mother and daughter. The three are burned. In Lev. 21:9, two generations are affected -- a woman and her father. The woman is burned. Both reveal intergenerational consequences; both include immolated women.

The resonances between things *zimmā* (Lev. 18:17; 19:29; 20:14; Ezek. 22:11) and the sex for which one is burned (Gen. 38:24; Lev. 20:14; 21:9) suggest a homology. Ezekiel ties together these threads when YHWH assures Oholibah, one of two sisters who are his allegorical and yet adulterous wives, that she will be burned with fire (Ezek. 23:25). Oholibah's adulteries are Jerusalem's idolatries. When YHWH repeats the threat in a taunt song of burning (Ezek. 24:9-10, 12), Ezekiel adds a word of explanation: it is *b'ṭum'ātēk zimmā* "for your

¹ Ephraim the Contentious discussing a view of R. Mair connects Lev. 21:9 to Gen. 38:24: Tamar was a "daughter of Shem" who was a "priest."

vile lewdness" (v. 13).⁹ If things equal to the same things are equal, the homology also suggests a definition: asexual crimes for which one is burned are *zimmā*. By this we assert that the *zēnūt* of a priest's daughter is also *zimmā*.

Returning to Lev. 19:29 (ex. 26), we find another homology with men who control their women's asexuality, who hold potestas. The near-adultery triptych has followed the woe of the patriarcha willing to pass off their wives as sisters. This protective strategy is not unlike that of Lot who offers his daughters, and the host at Gibeon who offers both a daughter and a secondary wife to distract townsmen from violently attacking their house guests. These five narrative instances share the same motif: a male in control of a woman's body permits others to take control for self-protection. In Lev. 19:29, the motive of the father is not specified. Whether he prostitutes her for profit or protection, it is *zimmā*.

There is another thread that weaves together the near-adultery triptych and Lev. 19:29. Just as the lands of Pharaoh and Abimelech bear plagues and infertility when they take Sarah into their harems, so will the land bear its punishments when fathers prostitute their daughters. This is the implication of saying *ʾamāl'ā hā'āreṣ zimmā* "the land shall

⁹ Among things *ṭāmē'*, it is interesting to note that fabric affected by malignant mold (*ṣāra'at*) is also burned (Lev. 13:51-52 [P]).

become full of zimmā.⁹⁰ The paraenesis of Lev. 18:24-25; 20:22-25 all run so: Nations before you committed sex crimes; The land became unclean (ṭēmē'ā) because of it; The land vomited out its inhabitants. Who were these nations? Why, the very nations of Egypt and Canaan, of Pharaoh and Abimelech. So Gen. cps. 12, 20, and 26 along with Lev. 19:29 share a notion of collective responsibility (*Kollektivshaftung*).

In sum, Lev. 19:29 shares at least two points of contact with the adultery triptych in Genesis: (1) a male prostituting the sexuality of a woman in his control; (2) communal liability for the crime. That such a connection between the triptych and our verse is hermeneutically possible, Ezekiel confirms. He explicitly connects (metaphorical) adulteries with the collective responsibility of the nation. Likewise, he links his taunts to the tale of Tamar. Both she and Oholibah are threatened with burning.

v. Sexual Defilement of the Priestly Class

The discussion of an enhanced punishment (death by burning) for a class of aggravated sexual crimes (things zimmā), has lead us to H's special attention to sexual violations in the priestly class. Of these there are essentially three: (1) a condemnation of the priest's daughter's zēnūt (ex. 27, Lev. 21:9), and a proscription of marriageable partners for the (2) priest and the (3) high

⁹⁰ Ezekiel, who shares the Holiness Theology of H, makes this more explicit: when Jerusalem is punished for zimmā (23:49), there will be an end to zimmā in the land (23:48).

priest (Lev. 21:7, 14). Priests,

(28) אִשָּׁה זֹנָה וְחִלְלָה לֹא יִקְחוּ (Lev. 21:7)
 וְאִשָּׁה נְרוּשָׁה נְזִירִית לֹא יִקְחוּ
 כִּי-קֹדֶשׁ הוּא לַיהוָה:

 'iššā zōnā wahālālā lō' yiqqāhū
 w'iššā g'rūšā mē'īšāh lō' yiqqāhū
 kī-qāḏōš hū' lē'lōhāyw:

they shall not marry a woman (who is) a fornicator,
nor one profaned;⁹¹ nor shall they take a woman
divorced from her husband; for he is holy to his
God.

Reversing the order of the list and placing the addition at
its head, the text refocuses the reader -- the high priest may
not even marry a widow.

(29) אִלְמָנָה וְנִרְדָּשָׁה וְחִלְלָה <ו>זֹנָה (Lev. 21:14)
 אֶת-אִלָּה לֹא יִקְחַ
 כִּי אִם-כְּתוּלָה מִעַמּוּיּוֹ יִקַּח אִשָּׁה:

⁹¹ אִלְלָה hālālā 'profaned woman (i.e., raped?)' (Lev. 21:7, 14), following Milgrom's translation 'one who was raped' (Forth. 2000a). He argues that the text lists the disqualified wives in descending order of blemish: fornicator/prostitute (who consents), raped woman (who does not consent), divorcee. Cp. with Gen. 34:27 הַחֲלִיף, reading hahōlīm 'the profaned or deflowered' instead of הַחֲלָלִים hahālālīm 'the slain', making the town's people victims of rape (and rapine). One could imagine a certain root play evoking the story of Dinah's rape.

However, I have argued that "consent" is not foregrounded in H. Only in D does "consent" explicitly emerge from the background (Deut. 22:25-27). My suggestion: The hālālā is the 'profaned daughter of a priest's unsanctioned marriage'. That is, not the offspring of an incestuous or adulterous union as per halakhic interpretation, but the child of a priest and a zōnā or divorcee.

Other suggestions: 'woman sexually dishonored' BDB 321a; 'deflowered' HALAT, 1:320c. The juxtaposition of hālālā with zōnā suggests that the two terms might constitute a hendiadys. However the result, 'profaned prostitute/fornicator', doesn't give us very much. As Milgrom asks, is there "a zōnā who is not degraded or disgraced?" Zipor (1987) suggests that hālālā might be a specific term for a cult prostitute. But cult prostitution in ancient Israel is a fantasy (cf. Gruber 1983; 1986; Goodfriend ABD; etc.).

'almānā ūgrūšā wahšlšlā <w>zōnā
 'et-'šlšlā lō' yiqqāh
 kf 'im-b'tūlā mš'ammāyw yiqqah 'iššā:

He may not marry these: (neither) a widow, nor a divorcee, nor one profaned, <nor>³² a fornicator; only a nubile young woman (who is a virgin) from his own kin³³ may he take (as) a wife.

A common Israelite may marry a fornicator, a profaned woman, a divorcee, or a widow. A priest may marry a widow. But a high priest may only marry a young woman who is a virgin of his own clan. Here is a conspicuous difference from the 'adultery' rules observed in J and D: H's sexual laws depend on class: šiphā-slaves, common Israelites, priests, and high priests.

These classes are not just observed, they matter. The status of the šiphā-slave if she is unredeemed ameliorates penalties. Membership in the priestly classes aggravates penalties. Even if we had no rule for burning defiled priestly daughters a member of her class could not marry her anyway. This is true whether she consented to relations or not.

By the use of the reflexive Nif. of ḥ.l.l. 'defile oneself' (Lev. 21:9; ex. 27),³⁴ the willfulness of the

³² Samaritan, LXX, Tg. Pseudo-Jonathan, and the Vulgate versions attest וְיִשְׁשָׁא.

³³ mš'ammāyw 'of his own kin', so Milgrom (Forth. 2000a) and Philo *De Spec. Leg.* 1:110-11. 'am 'kin' also in Gen. 17:14; 25:8 [both P per Noth] and 'clan' in Ugar. (2Aqht 1;19-28). Cf. Kutler's lengthy discussion of this lexeme (1980:245-276, esp. 271-73). Unfortunately, he gives scant attention to its use in P and H. Cf. also nn. 17, 18, and 81 above.

³⁴ Cf. Milgrom (1990:323, n.6); BDB 320a.

priestly daughter's *zēnūt* contrasts with the violation of the *ḥālālā* 'profaned woman'. Like the unredeemed *šipḥā* who is not punished, the profaned woman should not be burned. The one profaned or raped and the divorcee, though they still may marry a common Israelite, suffer another consequence: downward social mobility. If they marry, they leave the priestly class.

If we read these provisions back into Genesis, Levi's sister Dinah (Gen. 34:1 with 29:32-34) is a role-model for future priestly daughters. Raped, she becomes *tēmē'ā*. We do not hear of her again as a mother in Israel. Tamar, the *'almānā* of Er, could not be a chief priest's wife; nor for her *zēnūt*, a priest's wife. The institution of the levirate, which Tamar rescues, is ultimately and unequivocally interdicted in the person of the high priest. If he cannot marry a widow, he cannot act as a levir.

What do these rules mean? What does H problematize about the sexuality of priests? Lev. 21:15 offers us a rationale;

(30) ולא-יחלל זרעו מעמיו כי אני ה- מקדשו: (Lev. 21:15)

w'lō'-y'ḥallēl zar'ō b'ammāyw
kī 'ānī YHWH m'qaddōšō:

that he (the high priest) not profane his offspring
among his kin (by taking a widow, etc. as a wife);
for I am YHWH who sanctifies him.

The reason ex. (30) gives us, "profaning the seed," resonates with the theories of 'adultery' we met in J. There, 'adultery' threatens the lineage. Presumably H's adulteresses have been executed -- parentage would not become confused. The lineage is threatened on some other axis. If those who have committed

adultery are *ṭēmē'ā* (ex. 9, Num. 5:13) or *ṭāmē'* (ex. 10, Lev. 18:20), if Dinah is *ṭēmē'ā* (ex. 17, Gen. 34:5), do the prohibited wife-candidates, such as the *ḥālālā*, also cast an aspersion of impurity? Though the priest does not receive the contagion of uncleanness, he becomes *ḥōl*⁹⁵ by his unsanctioned marriage. Apparently, neither he nor his children may officiate, though they may still enter the sacred precincts (as may any lay Israelite).

The high priest's family may inherit profanation. He "profanes" (*ḥ.l.l*) his offspring by his unsanctioned marriage,⁹⁶ the generational mirror of the unchaste daughter "profaning" (*ḥ.l.l.*) her father (ex. 27, Lev. 21:9). Something of this latter is also felt in the story of Dinah. The narrative repeats three times that Dinah had become defiled (*ṭēmē'ā*, Gen. 34:5, 13, 27) and that Shechem had committed an outrage (*nēbālā*) lying with Jacob's daughter. The entire family feels the situation acutely.

Our texts reinforce the profanation rationale in a second way: *kī 'anī YHWH m'qaddōš* "for I am YHWH who sanctifies him" (ex. 30) echoes the rationale, *kī-qāddōš ḥū' lē'lōḥāyw* "for he

⁹⁵ *לִי חֹל* 'profane, common' (Lev. 10:10 [P]; 1 Sam. 21:5-6; Ezek. 22:26; 42:20; 44:23; 48:15), cf. BDB 320d. *Ḥōl* is opposite to *qāddōš* 'holy'; it is the absence of holiness. The holy can never become impure and things *ṭāmē'* may never become *qāddōš*. Thus *ṭum'ā* 'impurity' is also in semantic opposition to *qēdūšā* 'holiness' (Milgrom 1996a:72; 1991:1001-02; Harrington 1993:28-29; Barr 1973:123).

⁹⁶ Maimonides (*Sefer Qēdušā* 19.1): "Who is deemed a profaned woman? One born to a priest and a woman forbidden to him."

is holy to his God" (ex. 28). Taking a wife from the wrong list desanctifies the priest;" a priest's daughter marrying a layman renders her ineligible to eat the sacred donations (Lev. 22:12) -- she too becomes desanctified. YHWH has set the priestly families apart. Taking the wrong mate confuses this. Desanctifications by ill-marriage or daughterly *zēnūt* have not, however, rendered the affected generation *ṭāmē'*. In this way these acts are similar to certain *mūmīm* or 'blemishes' which render profane but are also not *ṭāmē'* -- *mūmīm* such as injuries to the genitals."

That 'adultery' is a sin against the deity in J, H has now elaborated in two ways: (1) *ni'ūp* and *zēnūt* make participants *ṭāmē'*; (2) *zēnūt* can project effects onto priestly husbands and fathers rendering them *ḥōl*. Thus 'adultery' not only threatens the certainty of lineage for priestly families, it also threatens the "spiritual" lineage of the nation -- the priesthood that manages ritual processes to undo pollution. That is, it threatens the remedial system itself.

⁹⁷ Milgrom argues in this direction although he doesn't draw this specific point: "[A]lthough priests are genetically holy, they diminish, and can even forfeit, their holiness by their violation of commandments" including those of Lev. 21 (1996a:68); Zipor (1987) anticipates my conclusions: "[I]f a (high?) priest has transgressed the law and entered into marriage with one of the prohibited women, his posterity becomes disqualified from the (high?) priesthood" (262).

⁹⁸ Lev. 22:20-21 + v. 23. Cf. Stewart (1998).

vi. Summary

If we restrict ourselves to H cases and laws, 'adultery' means: (1) ejaculative sex (not just insertive) with the wives of fellow citizens (Lev. 18:20) and fellow Israelites (Lev. 20:10), consensual or not; a rule extended to (2) *gērīm* (Lev. 18:26; 24:22); plus (3) relations with Israelite or non-Israelite *šēpāhōt* who are married or a *šiphā nehērepet* who is freed or redeemed (Lev. 19:20); plus (4) the aggravated case of the priestly daughter's *zēnūt* (by homology of the penalty of death, Lev. 21:9 with 20:10). A special boundary class includes the violation of an unredeemed *šiphā nehērepet* and the prostituting of one's daughter (Lev. 19:29). In the former, the woman goes unpunished; the man makes an 'āšām in place of the death penalty. The latter resonates with the misuse of potestas by husbands in the Genesis near-adultery stories. One remembers how Abraham readily surrenders his wife to another's harem. Though prostituting one's daughter is *zimmā* no penalty is specified here. This crime, like Abraham's, is near to 'adultery', as in Figure 4.5 ("Priestly Texts' 'Adultery' Laws"), but does not fall within its sphere.

This definition emerges from what H problematizes about 'adultery'. First and foremost, H problematizes "class." Is an unredeemed slave-girl guilty of adultery? Her violator? How do *nī'ûp* and *zēnūt* threaten the priestly class? The classes in question, slave, lay Israelite, and priest, push out of focus the application of sexual laws to the non-Israelite.

Moreover, H has problematized the notion of responsibility for asexual acts. With its rule about the unredeemed *šiphā nehērepet* it unravels the principle of responsibility for results or "strict liability," pushing forward a doctrine of individual responsibility. Both women and men now bear the penalty for their willful misdeeds (Lev. 20:10). Individuals are not just responsible for their crimes alone, but perpetrators carry responsibility for the collective social result borne intergenerationally in the priestly class (Lev. 21:7, 14-15) and by "the land" as a whole (Lev. 18:24; 19:29). Ultimately, Israel shares a collective responsibility for the sexual crimes of the nation, as the threats of Lev. 26 bear out.

H also evaluates and categorizes sex crimes. Overlaying the genus and species of sexual behaviors uncovered in our discussion of the lexicon (bestiality, fornication, incest, and blood sex per Figure 4.1) are evaluative categories: things *zimmā*, things *hālāl*, things *ṭāmē'*, things *tebel*, and things *tō'ēbā*. Figure 4.6, "Evaluative Terms in H for 'Adultery' and Other Sex Acts," collects our observations.

Figure 4.6 also gives us a sense of the development of evaluative language and the preferences of various sources. It is in the paraenetic frames of H that *ṭāmē'* (and *tō'ēbā*) are ascribed to all sexual crimes. Within P and the earlier layers

of H," *tāmē'* is applied to "adultery and rape" (perhaps echoing J)¹⁰⁰ and to the *niddā*; in H to the "interspecies sex" of male-initiated bestiality and to metaphorical adulteries with deities. Ezekiel continues the metaphorical application of *tāmē'* to idolatry, along with its application to literal adultery and the menstruant. Ezekiel also adds incest to his list, a newly specific application of *tāmē'* echoing the paraenetic frame of H. Thus we have a kind of developmental trajectory traced: Extended metaphorically from specific application to "adultery and rape" to gradually larger circles, *tāmē'* is ultimately applied to the most inclusive category, all sexual crimes. The use of alternative evaluative terms in H for particular incests (*tebel*, *tō'ēbā*, *zimmā*), female-initiated bestiality (*tebel*), fornication (*hālāl* [P and H], *zimmā*), and for a profaned woman (*hālālā*) further suggests the process. Some terms applied to specific species or genera of prohibited sexual behaviors rise to higher taxonomic levels.¹⁰¹

Out of these problematizations H's theory of the nature

⁹⁹ I follow Milgrom's notion of H as the redactor of P (1991:63). I take Ezekiel to be a reader of H, not (one of) its writer(s).

¹⁰⁰ It is worth noting that D and texts in the Deuteronomic tradition prefer *n'bālā* for crimes in the category of "adultery and rape."

¹⁰¹ In the early stages of the division of a taxon into two categories, one of the terms will be "polysemous with its superordinate generic" (Berlin 1972:60). Thus, by a kind of taxonomic metonymy, generic labels are extended up and down in the hierarchy of ethnobiological terms.

of adultery emerges. Adultery pollutes. It precipitates both the minor uncleanness of sexual emissions, but also projects uncleanness onto others: lovers and even the whole nation. For the priestly circles, *zēnūt* also precipitates desanctification, *ḥālāl*, intergenerationally. The "contagion" of impurity and the genetic "mutation" away from *qāduš* threaten to unravel the lives of individuals, the priestly circle which acts to remediate, and the elect people. H is not exercised over the degradation of property rights for the holder of *potestas*: husband, father, or master. It does not compensate the owner of the *šiphā neḥārepet* for instance. Neither is H much exercised to protect the patrilineage: it unravels the levirate. Rather, H's concern is for the abrasion of the holy.

H's problematizations contrast with those of JE and D. Where Tamar rescues the levirate (Gen. 38) and D keeps the institution on a respirator (Deut. 25:5-10), H buries it for the high priest (Lev. 21:14-15) and lay Israelites (Lev. 18:16; cf. cp. six below). Having unravelled the levirate institution, H refracts the Tamar tale into spectral elements: the burning penalty, the violation of *potestas*, the spilling of seed; and makes use of each in turn: the priestly daughter fornicating, the father prostituting, and the male misusing his semen. Finally, the Priestly literature suggests a judicial process. No inquiry was made on Joseph's behalf; but

now one is made in a marginal case (Lev. 19:20-22).¹⁰² Application of the death penalty does not follow D's high standard of partners caught in *flagrante delicto* on the word of two witnesses (Deut. 19:15). H prescribes no standard.¹⁰³

If we return to Westbrook's claim that biblical law takes up the traditional scholarly problems of cuneiform law (ABD 5:553), the tenuousness of this notion as applied to H now appears. Other than its embrace of sexual issues surrounding slavery (a concern that emerges in Szlechter's analysis, not Westbrook's), H sidesteps issues of evidence, consent, consummation of marriage, and knowledge of the woman's marital status. Even the relevance of a marriage agreement is blurred in Lev. 19:20. Instead, H wrestles with a comprehensive problem entirely different from the other "codes" -- "contagions" related to sex.

¹⁰² This is not to say that there was any narrative room for an inquiry in the story of Joseph. How would even-handedness have aroused the reader's sympathy? An inquiry would make it a different story. However, a Priestly reader/writer might react to the gap -- backfilling it with a rule for inquiries in certain future slave cases.

¹⁰³ To say that H uses D's standards of evidence may be true and is certainly a possibility. But such an observation uses D as the hermeneutical lens to interpret H, a reflexive motion I reject.

Figure 4.5

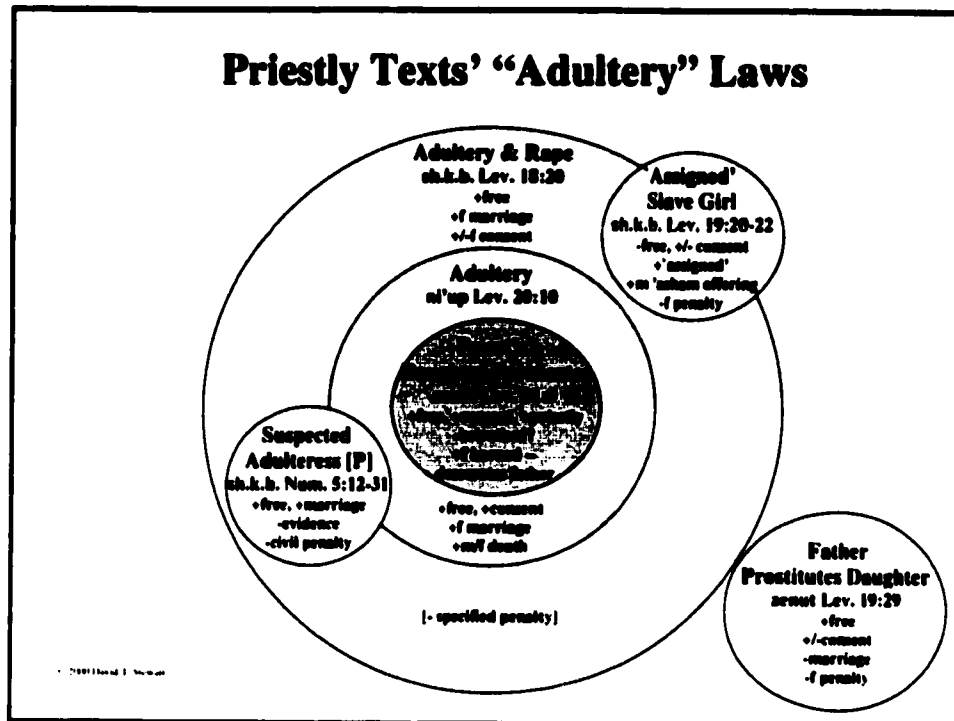
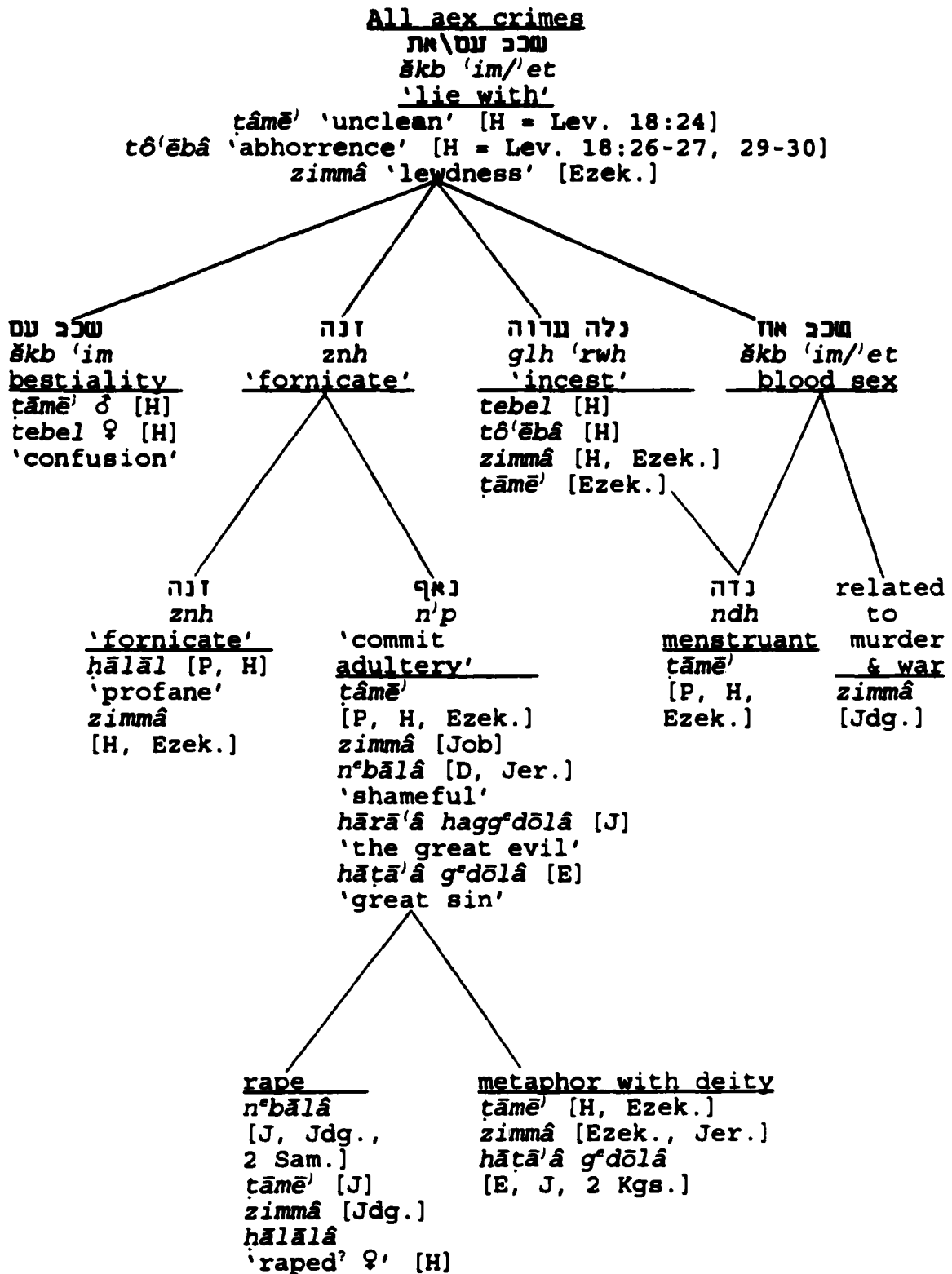


Figure 4.6: Evaluative Terms in H for 'Adultery' and Other Sex Acts



4.3: Theories of Adultery and the Problematisation of Penalties

We have tried to suggest that the problems on which H, D, JE, and the other Iron and Bronze Age legal "codes" focus are not identical. What each problematizes flows from differing "theories" about the nature of adultery and results in differing cases included under adultery's rubric.

How then can any "unified field" theory of adultery be maintained? Nearly all these theories have some basis in the biblical texts, but, I argue, none exerts hegemony as the singular cultural understanding of 'adultery' in the biblical world. Thus when scholars propose that:

(1) Adultery is a violation of property rights (Pressler 1994; 1993; Countryman 1988; Epstein 1967; Baab 1962; closely allied to theft: Daube 1949; minor role only: Frymer-Kensky ABD; Goodfriend ABD; but rejected as an explanation: Frymer-Kensky 1989);

or its concomitant:

(2) Adultery threatens the preservation of the husband's lineage from extinction by mistaken paternity (Pressler 1993; Goodfriend 1992; Countryman 1988; Phillips 1970; minor role only: Frymer-Kensky 1992; 1989); or by exclusion from the congregation of the *mamzer*, the fruit of illicit unions (Goodfriend 1992);

or its corollary:

(3) Adultery undermines the authority of the *paterfamilias* (Pressler 1993);

they take up the concerns of *D*, find resonance with earlier Mesopotamian law, or make common cause with early exegetes.¹⁰⁴

Rather than a (1) tort against property, or an offense against the husband (2 and 3), a second scholarly school asserts adultery is a sin against Yahweh. Thus they argue:

(4) Adultery is a "great sin" that repudiates YHWH (Goodfriend 1992; Adler [Goodfriend] 1990; Cohn EJ; Phillips 1970; Moran 1959; Rabinowitz 1959; Kornfeld 1950), a theory present in Ugarit, Egypt, and JE;

or its concomitant concern:

(5) Adultery defiles participants (Goodfriend 1992; Cohn EJ; in a moral sense: Epstein 1967; minor role only: Countryman 1988), the theory we have emic to J and H;

or its corollary:

(6) Adultery defiles the land, endangering the whole people (Milgrom Forth. 2000a; Goodfriend 1992), the theory we have found emic to H.

This second set of theories resonates with an old notion of Fustel de Coulanges (1901:43, 93-94) that filiation rests not on bloodlines, but on religious lineage. Only the proper son inherits the priesthood of the ancestor cult and the ability to seek the ancestors' favor. Likewise in H, the "effects" of adultery on priestly families threaten the right to minister.

¹⁰⁴ Mistaken paternity was an issue for Philo (*De Dec.* 24:126-129) and Ben Sira (23:22-23).

Oddly, perhaps from our postmodern perspective, is the lack of interest our texts have shown in the notion that:

(7) Adultery threatens the nuclear family as an "institution" (Frymer-Kensky 1992; 1986; Goodfriend 1992; Patrick 1985; rejected by Pressler 1993; and Baab 1962). This concern indexes one of the problematizations of sexuality in our own era -- the "defense of the family."

Akin to this is Cohen's political theory of adultery penalties (1969:665). He suggests that adultery laws prescribing capital punishment have four principal consequences: (1) they weaken local corporate groups; (2) they strengthen bonds (in the nuclear family) that cannot serve as sources of political rebellion; (3) they control polity by restricting the conjugal pair's mobility; (4) they maintain social distance between the rulers and ruled. Such penalties promote sexual exclusiveness and thus "affectively charged bonds" between husband and wife -- an effect subversive from the point-of-view of wider kin ties. Cohen finds a correlation between death penalties for adultery and political development from tribal confederations to "incorporative states."

Whether or not the biblical texts problematize 'adultery' vis-à-vis statebuilding is opaque to us. We could perhaps rationalize rules against stepmother incest in this way: they are the political concerns of Ahithophel, when he counsels Absalom to take the pilage--David, and Solomon, when he rejects Bathsheba's intercession for Adonijah to marry

Abishag.

That the biblical texts prescribe different penalties and judicial processes to arrive at the penalties is apparent. Daube (1978), for instance, models the developmental trajectory of adultery laws on who punishes the crime. In his first developmental stage, whoever holds *poteataa*, the *paterfamilias* or wronged slave master, punishes or acquits the wife (Gen. 38). The community is not involved. In his stage two, the community brings the adulterer to account, but the wronged husband deals with his wife.¹⁰⁵ In stage three, the woman is placed in the public criminal process (Num. 5; Deut. 22:20-21). Kornfeld (1950) suggests the steps in the process are not nearly so discrete: little by little things move from private to public punishment and not synchronically in all legal spheres. We have seen that the actions of the *paterfamilias* are of interest to JE, and this interest stands in opposition to the community based punishments of Deut. 22 and Lev. 20.

Moreover in Lev. 20:10 and Deut. 22:22 we do find the

¹⁰⁵ Menelaus, as part of the Achaean force, betters Paris in battle until Aphrodite whisks him away (*Iliad* iii 369-382). Ultimately, Menelaus brings his wife Helen to account for her affair with Paris (dramatized in Euripides' *Troiadea*' third episode, 860-1059, esp. 860-879 and 1055-59; and in the *Helen* 651-673, esp. 666). Menelaus appears ready to spare Helen. Likewise in ANE law, the wronged husband may spare his wife in CH §129, MAL A §§14-16, and HL §198. In CH the king's discretion to pardon appears bound by the will of the husband. In HL the king may override the husband's will (cf. Jackson 1976:61). We might see such regulation of the husband's right of revenge as an intermediate step between Daube's stage two and three.

specification expected in Daube's third stage -- women also face the death penalty for adultery. Phillips (1970; 1981; 1982), following Daube's lead, takes this as a stunning development. Women are made subject to Israel's criminal law in D's reform (1981:10; 1970:110). As Phillips argues:

The Deuteronomic legislation on adultery and seduction is therefore not to be understood as the repetition of ancient laws somehow of no concern to the Book of the Covenant. Rather it clearly reflects the contemporary interests of the Deuteronomist and directly results from their innovatory (sic.) legislation in bringing women within the scope of the criminal law of adultery (1981:14).

The question is, do the texts problematize penalties for adultery, and in particular, the death penalty for women?

Otto (1998) disputes whether there was any such development within the historical world behind the text. For him, that men and women faced death for adultery was a feature of "traditional Judean law" in some age prior to the pre-Deuteronomic writers. Such a problematization would occur outside of biblical textual time.¹⁰⁶ It is true that when we

¹⁰⁶ Daube (1949) argues that behind the Abimelech and Sarah narrative (Gen. 20 [E]), "there is legislation of the kind preserved in Deuteronomy [22:22]" (92). But the statute in Deut. "with its insistence on the equal guilt of the adulterer and adulteress could not have evolved from the narrative, which entirely lacks the idea" (94). Rather, a statute like Deut. 22:22, but not identical, must have been known to the E-Source. Else, why would Elohist law punish only bestiality with death (Exod. 22:18 [19]) and not adultery? As to the narrative, the discussion between Elohim and Abimelech presumes a death penalty for the adulterer, part of some statute or unwritten custom (95). Thus Daube would hold for the innovation of the woman's death penalty after the E-narrative's writing.

Pressler (1993:34), like Otto, argues against a

turn to cuneiform law we do find death prescribed for both men and women in certain adultery cases (e.g., CH §129; HL §197b; MAL A §§13, 15).¹⁰⁷ But we also find non-parity: the woman killed alone (LU §7; LE §28; CH §133b) and the man killed alone (CH §130; MAL A §12). Importantly, for Otto, D's legislation extends the notion of 'adultery' to cover inchoate marriage (betrothal), and posits the obligation to show *mens rea*, or the intent to commit an offense, in place of the principle of "strict liability" for adultery's results. In

Deuteronomic innovation of punishing women for adultery. She rejects the narratives as data because (a) they are not about commoners, but kings and patriarchs; (b) they are stories not history and law; and (c) they are retrojections of later authors into the ancestral period. They do present problematizations of sexuality. Some author(s) imagined that women could receive a different penalty from their lovers. Further, we should not forget that our legal texts are embedded in and framed by a narrative. They are documents presented in a story. Pressler's argument, privileging "law" over "story," is ultimately reductionist. (Daube would find in the narratives the initial traces of legislation in D and P; 1949:90). We are left with the fact that biblical narrative texts problematize adultery's penalty differently. Even if these penalties were different only for heroes we must ask, "Why?"

¹⁰⁷ This returns us to the question of whether customary Judaeon law is synonymous with the putative cuneiform corpus. Not only does it flatten differences between cuneiform codes themselves, it brackets out the possibilities of (a) an independent Judaeon element in Judaeon customary law, (b) a different rate of social development (where family justice continues into a later period than in Mesopotamia), and (c) JE retaining a memory of Bronze Age practice in Iron Age (or later) Israel. Moreover, it disallows the possibility of a late borrowing from Mesopotamian practice such as that attested in Neo-Babylonian marriage agreements: "Should 'PN (wife) be discovered with another man, she will die by the iron dagger" (Roth 1988:186-87). These contracts date from a period some would see as contemporaneous with D and H, 635-523 BCE.

Otto's view, D's reform concerns the characterization of responsibility, not its gender.

Otto responds to Phillips (1970:125-127), who has postulated an entirely different developmental program for the penalties in Lev. 20:10ff. Indeed, we must keep in mind that D's reform (Otto's focus) is not H's reform. Phillips proposes a first stage of pre-D sexual laws where women are not yet liable -- e.g., the law of bestiality (Exod. 22:18) was once applied only to men. Lev. then extends the law to women (18:23; 20:16).¹⁰⁸ In stage two, by homology of laws involving execution, 'adultery' subsumes all sex crimes involving execution in H.¹⁰⁹ When it subsumes these crimes it also absorbs the punishment of women, part of the bestiality law.¹¹⁰ Stage three follows with a secondary reinterpretation of the crime of 'adultery'. Provisions are made for divine activity in judgment.¹¹¹ In a fourth stage of the development of sex offense laws, H reinterprets the old customary law of the patriarchal family to prohibit "all sexual relations, whether within marriage or not, with any relative who ... is

¹⁰⁸ For our discussion of the pivotal importance of these provisions, see chapter three.

¹⁰⁹ An interpretation not unlike Philo in *De Dec.* or *De Spec. Leg.*

¹¹⁰ A trace of this legal development shows in the 3rd sg. *môt yûmat* with plural subject of adulterer and adulteress in Lev. 20:10 (Phillips 1981:6) which, I argue above, is an artifact of citation.

¹¹¹ E.g., "They shall bear their guilt" in Lev. 20:17b, 19.

near kin." In a final stage, the "excommunication" formula is added.¹¹² For Phillips, H first stiffens and universalizes the penalties for sex crimes; then ameliorates them.

It is true that the HB offers differing penalties for adultery and adultery-like crimes: death by unspecified means (Lev. 20:10; Deut. 22:22), or by stoning (Deut. 22:21), or burning (Gen. 38:24; Lev. 20:14; 21:9); divine punishments of plague (Gen. 12:17), closed wombs (Gen. 20:17-18), or public rebuke (2 Sam. 12:1-12) and subsequent death of the child of the union (2 Sam. 12:14-15); the sacrifice of an 'āšām (Lev. 19:21-22); mutilation (Ezek. 16:39; 23:25 but identified as a foreign method in v. 24, cf. MAL A §15); stripping (Hos. 2:5, 12; Jer 13:22-26; Ezek. 16:37-39; 23:26, 29; Nah. 3:5); divorce (Hos. 2:4; Jer 3:8); and ransom (Prov. 6:32-35; Job 31:11). This spectrum could represent a trend towards stiffening penalties, or amelioration, or a state in which multiple penalties existed at once, some not actually carried out. For Greenberg (1960:12-13), none could ameliorate the death penalty for adultery in Israel; for Loewenstamm (1962; 1964; 1980b:153, 172), God would exact an ultimate punishment but the husband or assembly might exercise discretion in the interim; for Jackson (1975:61-62), the Israelite king could extend mercy; for McKeating (1979), Israel (mostly) never

¹¹² By this he means the *kārēt*-penalty (Lev. 20:17-18 for sex crimes. Cf. also Gen. 17:14, Exod. 30:33, 38; Lev. 17:4, 9; 19:8; 20:3, 5-6). *Kārēt* refers to early death and childlessness or death of one's progeny without issue (Goodfriend ABD 1:82; Wold 1977).

exacted death; for Cohen (1969), it doesn't matter -- a threat "on the books" is good enough to achieve the desired political results.¹¹³

H penalizes 'adultery' with death by unspecified means or by burning for an aggravated case; and by a reparation offering for a boundary case. H's tradent, Ezekiel, mentions stripping and mutilation. The divine punishment of closed wombs in Genesis for near-adultery is akin to the *kārēt*-penalty¹¹⁴ in H for sister-marriage and sex with the *niddā* (Lev. 20:17b-18). Genesis also knows of burning. Thus, it is hard to sustain Phillips' notion that H's several penalties developed internally (1982:143). They were readable in JE. By invoking "burning," H may well archaize in the face of roughly contemporary Iron Age legal practice. The city of Gortyn in Crete assessed fines from a set schedule;¹¹⁵ even Proverbs admits a *kōper* or 'ransom' for adultery, cautioning it might not appease the cuckold; Job calls adultery an '*šwōn pēlilīm* (31:11), for Speiser an 'assessable

¹¹³ Phillips also subscribes to the deterrent theory of punishment, at least as underlying D's death penalty (1981:9).

¹¹⁴ Understanding the *kārēt*-penalty with Wold (1977), following Rashi and Ibn Ezra, as a "conditional divine curse of extinction" rather than as excommunication or some other human punishment.

¹¹⁵ Gortyn II.20-27. An oral tradition harkening back to the 7th cent. BCE may well precede the inscription of the Code of Gortyn ca. 480-460 BCE (Willettts 1967:8).

transgression'.¹¹⁶

While we may observe a certain paradigm -- a transcultural logic of development -- no individual culture is under evolutionary obligation to recapitulate the legal ontogeny of another. Nor did Israelite law necessarily inherit all the development of cuneiform law.¹¹⁷ Israel's legal development, as evidenced in its "codes," betrays discontinuities. Israelite law may recapitulate indigenously some developments of other; borrow some; legislate against some; invent some.

Figure 4.7 lays out our observations about judicial process and penalty (with reference to 'adultery') over against Daube's model. Judgment moves from the *paterfamilias* to the community, from family law to civil and from civil law to criminal, with consequent changes in evidentiary requirements and the application of penalties.

Parallel to this movement is a transformation of the penalties themselves. Diamond (1971:98-101), drawing on his

¹¹⁶ Speiser (1963:304) suggests that all instances of the root *pll* share the underlying concept of 'assess'-- thus implying here that the adulterer could compensate the cuckolded husband.

¹¹⁷ Otto (1993b): "It [is] no longer possible to claim a dependence of Israelite law on cuneiform law just by comparison without answering the question of how the legal transfer of cuneiform law into Israelite law took place" (4). Otto resolves this crux of influence by concluding that the "single casuistic legal sentence ... had its indigenous origin in the [Israelite] rural local court" (21) and the drafting techniques for Israelite "codes" were "rooted" in cuneiform legal tradition (20): ergo local content, borrowed structure.

analysis of ANE, early Greek, Roman, English, and German law, proposes a model for the development of personal injury torts. Pecuniary sanctions for bodily injuries transmogrify into the *lex talionis*. Contrary to the popular view, corporal punishments are not the most primitive penalties. Diamond assigns biblical law and the Roman *Twelve Tables* to a transitional stage -- one which evidences a mixed system of fixed fines and talion (101).

When we move to the realm of 'adultery', though Diamond's model must be modified, we can hold onto its core notion.¹¹⁸ The community controls the cuckold's revenge by first restricting the circumstances under which he can have his way. Thus, when criminal law is in its infancy (Diamond's "early" stage), the sanctions for adultery and rape are pecuniary (1971:66). Perhaps based on notions of bride- or slave-price, composition emerges as an alternative to blood-vengeance -- one that is ultimately institutionalized in a system of tariffs (Gortyn; Lev. 27:1-8). The community wrests from kin-groups the right of vendetta to eliminate the bloodbaths contemplated in HL §37.¹¹⁹ Just as the community standardizes ransom in a fixed schedule of fines, so it moves to standardize corporal punishments for adultery: the cuckold cuts off his wife's nose (MAL A §15) and both lacerates the

¹¹⁸ Unfortunately, Diamond contradicts himself when discussing the adultery laws of his "central" and "late" phases (1971:77, 85, 99, 101).

¹¹⁹ See chapter six below for a discussion.

face and castrates the lover; or the adulterer's wife is likewise ravished (MAL A §55).¹²⁰

With the principles of analogy and parity in view, the community takes over the punishment of the adulteress and scales it to the punishment of the adulterer. This assumption of the woman's punishment also marks the criminalization of 'adultery'¹²¹ -- a departure from a strict view of the wife as a husband's property. The move to criminalize also creates pressure to maintain or escalate penalties and restrict exceptions. The impracticality of killing all adulterers ultimately leads to various meliorations: royal pardons, high evidentiary standards, restricted liability for certain groups. Figure 4.8 models these hypothetical processes.

Stage I appears in the blood revenge for Dinah, Judah's order to burn Tamar [both J], and the ransom given by Abimelech to Abraham [B]. Stages II and III roughly correspond to developments we noticed in cuneiform law. Both D and H participate in the penalty aggravations and civil meliorations of Stages III and IV.

To return to our earlier question, "Do the biblical 'codes' problematize penalties for adultery," we can now say, "Yes." The penalty phase is taken from the family; stated

¹²⁰ I would agree with Westbrook (1988:41-47) that talion and composition can coexist as remedies, but against him, not all the time.

¹²¹ Assigned by Diamond to both his "central" and "late" phases of pre-modern legal development (1971:77, 85, 99).

penalties replace customary ones; the death penalty becomes the standard; and for H at least, the text rationalizes the penalties theologically.

Do the texts problematize adultery's penalty for women? Yea, we say, in two ways. If parity of punishment for adultery was a standard and understood, why now bother to mention it? Why explicitly mark the adulterer's and adulteress' punishment? It can only be that this was not understood; that prior to D and H its practice was inconsistent. Second, there is a partial unwinding of the asymmetry of the crime. It is true that a husband's extramarital sex with unmarried women is not condemned. But the misuse of authority by the holder of potestas, a father prostituting his daughter or a husband his wife, is condemned. It remained to the prophets to condemn other unfaithfulness of husbands.

Finally, we must note, that all of these approaches to the penalty phase presume the legislation reflects some *Sitz im Leben*. Against this Carmichael (1997; 1985) argues for a *Sitz in der Literatur*. That is, D and H legislate out of the narratives, sometimes taking up the topics in the same order or otherwise associatively linking the laws to the concerns of the narratives. But in the very matter of penalties we have a counter-example. There is no idea in the Genesis near-adultery triptych that adulteresses are punished like adulterers. Parity in punishing women was not a concern of the narratives, and so, *prima facie*, they can not be a genetic source for the

dual penalties in Deut. 22:22 and Lev. 20:10. Against Carmichael, I have argued that H reads and cites and argues against the narrative. Some of H's laws find an exegetical starting point in narrative, but the relationship is rhetorical. We might rather say: H finds for its sexual laws a *Sitz im Lesung*.

Figure 4.7: Development in 'Adultery' Laws

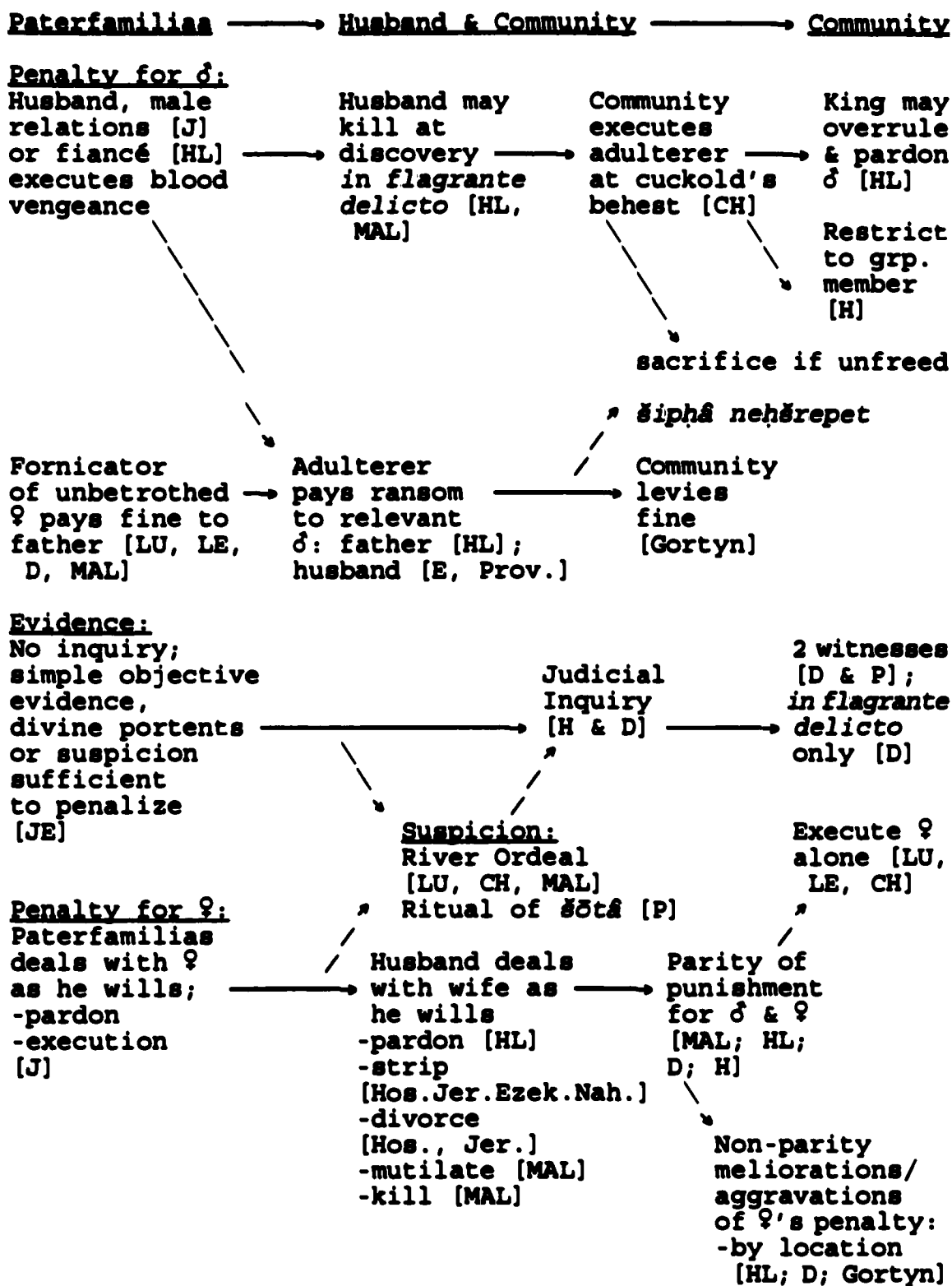
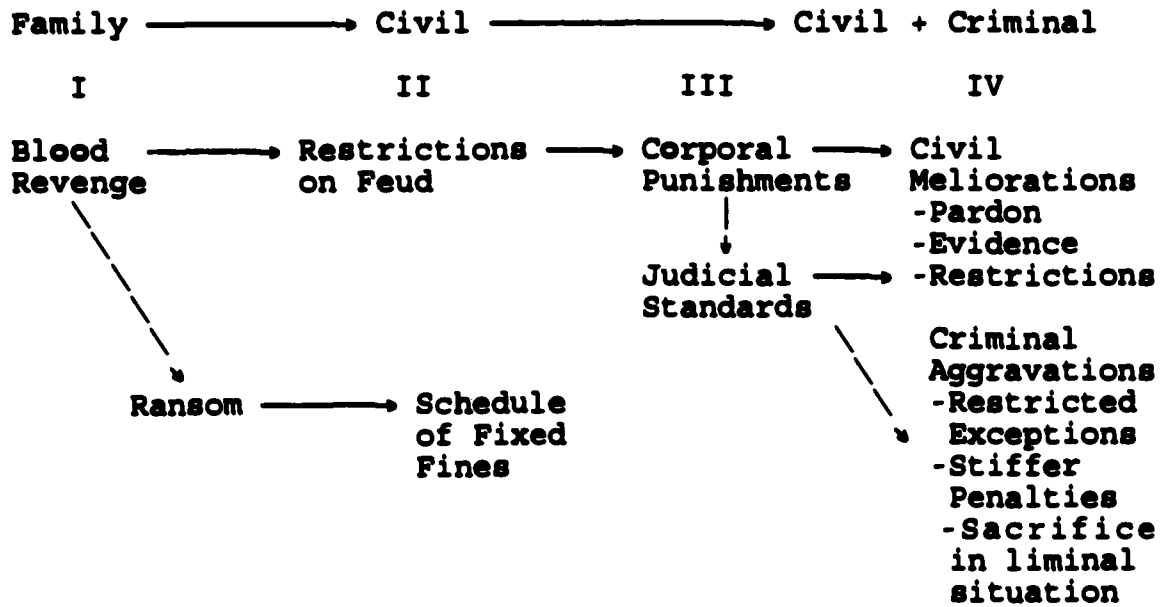


**Figure 4.8: Developmant of Adultery Penalties:
A Theoretical Modal**



CHAPTER FIVE: Interspecies Sexuality: Musina

5.1: Primary Texts: Lev. 18:21 and 20:1-5

- (1) ומזרעך לא-תתן להעביר למלך (Lev. 18:21)
ולא תחלל את-שם מלהיך אני יהוה:

ûmizzar'ākā lō'-tittēn l'ha'ābīr lammōlek
w'lō' t'hallēl 'et-šēm 'ēlōhēkā 'ānī YHWH:

And from among your progeny (seed),¹ do not dedicate (any) to sacrifice to Mōlek; Do not desecrate the name of your God. I the Lord (have spoken).

- (2) איש איש מכני ישראל ומן-הנר (Lev. 20:2aβ)
הנר כישראל אשר יתן מזרעו למלך מות יומח
עם הארץ ירנחכו כאבן:

'īš 'īš mibbnē yiśrā'ēl ūmin-haggār
haggār b'yiśrā'ēl 'āšer yittān mizzar'ō lammōlek
mōt yūmāt 'am hā'āreš yirg'muhū bā'āben:

Any man from among the Israelites or the aliens who reside in Israel who dedicates any of his progeny (seed) to Mōlek, he shall be put to death. The people of the Land shall pelt him with stones.

Lev. 18:21 is a puzzler. Not only the cruxes of who or what is *mōlek*² and why the idiom, *nātan l'ha'ābīr*,³ have

¹ זרע *zera* 'seed' also used for 'children, offspring' at Gen. 38:8-9 [J] in the story of Tamar. Cf. discussion in cp. 4.2.c.i.

² לַמֶּלֶךְ *lammōlek* 'to the Mōlek'; the definite article contributes to the case that Mōlek is a god, as does the phrase *liznōt 'ahārē [hammōlek]* (Lev. 20:5) -- an expression used for idolatry in other contexts (Milgrom Forth. 2000a; Toorn 1988:204, n.26; Heider 1985:235-45; contra Müller TDOT). Texts that refer to *mōlek* include: Lev. 18:21; 20:2-5 [H]; 1 Kgs. 11:7 (but emend to Milcom? cf. Day 1989:1, n.2); 2 Kgs. 23:10; Jer. 32:35a; cp. Deut. 18:10-12; Jer. 7:31; 19:5 (children as burnt offerings to Baal). Other implicit references may include: Isa. 28:15, 18; 30:33-34; 57:9; Zeph. 1:5 (Day 1989:1). Milgrom asserts that the evidence tilts toward Lev. 18:21 "prohibiting the practice of sacrificing children to Molek." Cf. Müller TDOT 8:375-88) and Bauer et al.

baffled readers, but also the strange location of the prohibition. The verse is in the middle of a group of six laws, five of which regulate sexual behavior.⁴

Some explanations simply beg the question. When Hartley & Dwyer argue that the various sex offenses and the *mōlek* prohibition are grouped together as kin violations, they forget that some are not (bestiality, relations with any *niddā* or fellow citizen's wife). When they argue that all of these disregard the "personal integrity of the victim," they are too modern. When they link sex offenses and *mōlek* by penalty, they forget that some sexual crimes do not call for death. When they argue that some connection existed "deep in the tribal social consciousness," they simply affirm that an unknown link connects all these behaviors (1996:90).

Kilian (1963:30) and Cholewiński offer a redactional

(1993:130-31) for bibliography.

³ נתן להעביר *nātan l'ha'ābīr*, 'dedicate to transfer; present an offering'; *nātan* as 'dedicate': Exod. 22:28-29 (Eng. 29-30). Theories about the meaning of "passing seed to *mōlek*" include: child sacrifice (Milgrom Forth. 2000a; Hartley & Dwyer 1996:89-90; J. Day 1989:19-20; M. Smith 1975:477; Heider 1985:233; M.S. Smith 1990:137); compel to labor as slaves (Samaritan and LXX versions); initiation to a cult (Weinfeld 1972:154; 1979:411). Milgrom finds especially compelling the sequence: $\sqrt{z.b.h.}$ 'sacrifice' and $\sqrt{\dot{s}.h.t.}$ 'slaughter' with $\sqrt{n.t.n.}$ + $\sqrt{b.r.}$ *Hif.* 'present an offering' (Ezek. 16:20-21).

⁴ As argued above: sexual relations with the *niddā* (v.19); adultery with or rape of a fellow citizen's wife (v.20); male-male incest (v.22); bestial relations by the male (v.23a); bestial relations initiated by the female (v.23b).

The reader descends these steps until he or she suddenly faces Yahweh:

- (4) Don't give seed to a fellow's wife to defile yourself;
Don't give seed to ^dMōlek [to defile yourself];
Don't [give seed to] profane ^dGod,
^dYHWH.

If the placement of v.21 is a redactional product, the editing is not casual. The work has been done too artfully to justify divorcing the verse from its context.

The collocation of v.21 with the several sexual laws of Lev. 18 has suggested throughout the history of the text's reception that the verse addressed "some undefined sexual offence" (Wiesenberg 1986:193). "Why does the prohibition of Molekh worship figure in a Leviticus chapter dealing with זָנוּיִם?" asks Vermes, noting "critical exegetes are not curious about this matter" (1981:122). "Once the compiler of Lev. 18 inserted the law in question into a collection of sexual prohibitions -- I am not prepared to accept without further ado that this happened inadvertently -- חֲזָרָא לָא תַתֵּן לְהַעֲבִיר was bound to acquire sexual connotations" (123). Thus Vermes credits the implied author for placing the text in an appropriate setting. Indeed, we would expect that if the mōlek

word (or key phrase) of the preceding one" (Watson 1986:212-3). Fischel speaks of "indigenous creations" in the HB that precede the standardized Greco-Roman *sorites* (1973:151) most famously observed in Psalm 133:2-3a (Tsumura 1980:417-17). My "loose" *sorites* is like Fischel's Ethical-Metaphysical type: a chain of rejected unethical behaviors ends with a (sudden) transition to the divine realm (1973:132).

However, both of these readings, while privileging the sexual context, abandon any "plain" sense of the text. The intermarriage interpretation depends on a chain of metonymies: Mōlek is a false god; foreigners worship false gods; to marry a foreigner is to marry an idolater; an idolatrous spouse will teach your children idolatry; your children will thus pass over to Mōlek. But we already have a plainspoken prohibition of intermarriage in the so-called Minor Book of the Covenant (Exod. 34:15-16) [J].⁹ If need be, why not quote it?

As for temple prostitution, this depends on reading *nātan l'ha'ābīr* as 'dedicate' not 'sacrifice'. Now there are a pair of *Leitwörter* that could connect the tale of a *gedēšā*, Tamar, with the *mōlek* laws: *zera'* as 'progeny' (Gen. 38:8-9; Lev. 18:21; 20:5) and *√z.n.h.* (Gen. 38:15, 24; Lev. 20:5). Both the laws and the tale speak of the untoward manipulation of "seed." In the tale we have Tamar politely referred to as a *gedēšā*, sometimes understood as 'sacred prostitute'. But this commonplace understanding, a residue of the influence of Frazer's *Golden Bough*, has essentially been overthrown.¹⁰ There is really little evidence of any "sacred" prostitution in Israel. But even if there were, the paradigmatic story of

⁹ And also at Deut. 7:3-4 concerning intermarriage with Canaanites.

¹⁰ Cf. Yamauchi (1973:213, 218) for the early history of this idea in biblical studies and Elaine Adler [Goodfriend] (1990; 1992:5:505-510) for the recent literature. As early as 1941 Beatrice Brooke cast doubt on this theory (236); it was left to Mayer Gruber to give it the death blow (1983; 1986; 1988), though Karel van der Toorn partially demurs (1992).

a child dedicated to the cult -- Samuel, to the sanctuary at Shiloh -- does not show him functioning as a temple prostitute. Though the *mōlek* laws may evoke the Tamar tale and its *zēnūt*, they do not evoke the notion of "sacred prostitution."¹¹

Hence our question: Is it possible to retain the significance of a sexual context for Lev. 18:21 without resorting to allegorizing or sexual fantasy? For in the end, it seems, this passage must be about something both idolatrous and sexual. That is, with respect to things idolatrous, the law forbids the sacrifice of children to the god *Mōlek*;¹² as for something sexual, the general context invites us to consider it. JE has labelled both idolatry and adultery "great sins," placing them in one category.¹³ This in itself provides sufficient warrant for the prophets to take adultery as a metaphor for idolatry (e.g., Jer. 3:1-9), and may motivate the juxtaposition of our verse v. 21 to v. 20's adultery prohibition.

The argument for a connection between the *mōlek*-cult and

¹¹ I must also reject Cohen's suggestion of a semen-sacrifice, the product of his hyperliteralism -- he cannot accept that *zera'* might be used in two senses in adjacent passages, though Gen. 38:8-9 has already given us such an example (1990:13).

¹² As per the notes to the translation of exs. #1 and #2 above.

¹³ See the discussion in cp. 4 concerning the "great sins" of adultery (Gen. 20:9; 39:9) and idolatry (Gen. 32:21, 30-31).

seek to rape the divine messengers (though unaware of their heavenly origins). Despite attempts to de-mythologize the former, there have always been interpreters ready to see here divine beings:

- (8) (Gen. 6:1-4) ויהי כי-החל האדם לרנ על-פני האדמה
 וכנות ילדו להם:
 (2) ויראו בני-האלהים את-כנות האדם כי טכת הנה
 ויקחו להם נשים מכל אשר כחרו:
 (3) ויאמר יהוה לא-ידון רוחי כאדם לעלם כשנם
 הוא כשר והיו ימיו מאה ועשרים שנה:
 (4) הנפלים היו כארץ כימים ההם ונח אחרי-כן
 אשר יכאו בני האלהים אל-כנות האדם וילדו להם
 המה הנכרים אשר מעולם אנשי השם:

- (1) way'hî kî-hēḥēl hā'ādām lārōb 'al-p'nē hā'ādāmā
 ūbānōt yull'dū lāhem:
 (2) wayyir'ū b'nē-hā'ēlōhîm 'et-b'nōt hā'ādām kî ṭōbōt
 hānnā,
 wayyiqhū lāhem nāšîm mikkōl 'āšer bāḥārū:
 (3) wayyō'mer YHWH lō'-yādōn rūḥî bā'ādām l'ōlām
 b'ēaggam hū' bāšār
 w'hāyū yāmāyw mē'ā w'ešrîm šānā:
 (4) hann'pîlîm hāyū bā'āreš bayyāmîm hāhēm w'gam
 'ahārē-kēn 'āšer yābō'ū b'nē hā'ēlōhîm 'el-b'nōt
 hā'ādām w'yoldū lāhem
 hēmmā haggibōrîm 'āšer mē'ōlām 'anāš haššēm:

And it happened as humankind began to multiply over the earth and daughters were born to them, (2) that the sons of God¹⁵ saw that the human daughters were comely, and they took themselves wives,¹⁶ howsoever they chose. (3) And the Lord said, "My breath shall not abide in the human forever, for he is but flesh. Let his days be a hundred and twenty years." (4) The Nephilim¹⁷ were then on the earth, and

¹⁵ בני האלהים b'nē-hā'ēlōhîm 'sons of God'. See the discussion below and Weatermann (1984:371-3) for a summary of the literature.

¹⁶ לקח √l.q.h. 'take (in marriage)', cf. cp. 4.

¹⁷ הנפלים hann'pîlîm 'the fallen ones' only at Gen. 6:4 and Num. 13:33, though Ezek. 32:27 has נפלים מערלים in combination with ננורים, i.e. gibbōrîm nōp'îm mē'ārēlîm: "So they lie not down with the mighty ones, fallen from the uncircumcised." Perhaps this is a word play on Gen. 6:4

afterward as well, the sons of God having come to bed with the human daughters who bore them children: they are the heroes of yore, the men of renown (cf. Alter 1996).

Because of its several cruces, the story of the "sons of God" with the "daughters of men" has spawned a vast (and often) speculative literature.¹⁸ The first of these, the identity of the "sons of God," has generated five main theories: They are (1) *humana* (Jacob 1974:45) from a superior class, e.g., "[antediluvian] dynastic rulers who ... established royal harems by force" on the model of Gilgamesh (Clines 1979:34-5); or they are (2) all the male children of Adam and Eve whom Eve saw as acquired from Yahweh (Gen. 4:1, 25; Savasta 1994:212-13); or (3) only the descendants of Seth, i.e., "godly" men (Luke 1983:292);¹⁹ or (4) only the

(Vervenne 1995:26). Gese takes Gen. 6:1-4 as an etiological tale to explain the *n'pīlīm*. Together with the *r'pā'īm* he counts them as the heroic primal race (1973:84-85; Petersen 1979:54). Indeed, our passage explains that "they are the heroes of yore, the men of renown," most commentators taking *n'pīlīm* and *gibbōrīm* as referring to the same beings, "the children that were born as a result of mixing ... who are half God and half human" (Wolde 1994:67), apparently gigantic (Num. 13:33). Cassuto (1961:298) argues that they were called *n'pīlīm* because "they all fell (*nāp'lū*) by the sword and descended to Sheol (Ezek. 32:20-21). Another possibility: the *gibbōrīm* are a biblical adaptation of the Babylonian antediluvian kings; the *n'pīlīm* are related to the Greek titans (Hendel 1987; Petersen 1979:50-51; Kraeling 1947:200).

¹⁸ Cf. Westermann (1984:363-64, 369, 370, 373, 376, 379) and Vervenne (1995:21, n.7) for an extensive bibliography; Dexinger (1992) for a review of pseudepigraphical, and early Jewish and Christian interpretation.

¹⁹ This is the classic Christian interpretation and includes Augustine, Aquinas, Luther, and Calvin among its adherents.

descendants of Cain, ironically described (Eslinger 1979:71); or, in contrast, (5) divine beings (1QapGn ii 1-17; Cooke 1964:24; Wolde 1994:66), i.e. either good angels (Philo; Josephus) or demons and destroying angels (Cassuto 1961:292-94), or just plain gods (Childs 1960:49; Loretz 1967:126).

Benno Jacob (1974:45) attempts to dismiss the divine beings-theory with two arguments: (1) angels do not have sexual urges (Matt. 22:30); but even if they did, (2) rebellious angels would have been punished, not the humans involved. Cassuto answers (1961:292-94): (1) rabbinic tradition allows sexual urges to demons (b.Ḥagiga 16a) and indeed, the text does not employ the term *mal'ākīm* 'angels'; (2) the phrase *b'nē hā'ēlōhīm* signifies the members of a class (gods) just like *b'nē hann'bi'īm* 'sons of the prophets' signifies men who belong to the prophetic class; (3) at nearby Ugarit, *bn ilm* connotes the congregation of the "assembly of the gods" (cf. Job 1:6; 2:1; 38:7); and (4) the story is not to be taken negatively -- the divine beings do not sin (here I demur). To these reasons I add one more: (5) the playfulness of the text. If the text teases out gender (*bānīm*; *bānôt*), can it not also toy with the chain of being (*'ēlōhīm*; *'ādām*)?

Gen. 6:1-4 makes use not only of a mythologoumenon, *b'nē hā'ēlōhīm*, but also a mytheme: gods marrying human women.²⁰ So

²⁰ Hierogamy, or sacred marriage, represents one model of sexual relations between the divine and human realms. It can involve "the sexual union of two persons both divine or one divine and the other human but in some way sacred" (emphasis mine; Rose 1979:651). For the union of two divinities, Hera

though our text might be but a fragment of a myth, even a critique of a myth, it still retains its piquancy -- a strange divine realm touching the human.

comes to Zeus in a carriage, like a Boetian bride at the Daedala (*Iliad* 14:292-351); the goddess Hellotis in Mycenae weds Welkhanos under a plane tree (Faure 1981:269-70). For the union of a divinity and a human bride, Dionysus takes the wife of the Basileus of Athens on the day of the Choes; Herodotus mentions the union of a god with a prophetess at Patera in Lycia and similar customs in Babylon and Egypt (I.181-82); Zeus recounts his human mistresses and their children (*Iliad* 14:317-328). For the union of a goddess and a human groom, Hesiod gives us a long list of goddesses "who shared the beds of mortal men and gave them godlike children" (*Theogony* 965-1020).

Hierogamy in ancient Mesopotamia, however, involves the "deified king in the role of the fertility god Dumuzi and a priestess representing Inanna, the goddess of love" -- two humans playing divine roles unite the human and divine within themselves (Klein *ABD* 1:138; for bibliography see Klein *ABD* 5:869; Renger *RLA* 4:250-59; for iconography, Cooper *RLA* 4:259-69; for discussion of texts, Kramer 1969, Cooper 1993). Renger elaborates the typology of divine marriage in Mesopotamia allowing (1) gods and goddesses joined as divine pairs, (2) divine marriages made in cultic rituals, and (3) "cosmogonic marriages" that function as etiologies of cosmic events, e.g., the union of heaven and earth to produce vegetation.

For sacred marriage at Ugarit, Wallace (1985:165-68) summarizes the possibilities in CTA 10 (Ba'al and Anat), CTA 4.4.20-39 (El and Asherah), CTA 24 (the marriage of Nikkal and Yarik), and RS 24.244 (incantation against snakebite). To this Driver (1956:23) and Wyatt (1986:92) would add "The Birth of the Twin Gods" (CTA 23); however, Hendel demurs: "the sexual mixing of gods and mortals is unattested ... in West Semitic lore" (1987:16-17, n.16). In "The Birth of the Twin Gods" El has relations with two women, described as both his wives and daughters, and the wives of another (human?) husband. Their kind, human or divine, remains (deliberately?) ambiguous (KTU 1.23 i 30-ii 27). The women produce the two divine children, Dawn and Dusk, reminiscent of the Dioscuri, and for that matter, the children of Lot and his daughters (Porter 1978:131-35).

For fantasies about sacred marriage in ancient Israel, see Wyatt (1985:44-45; 1986:88-89), Kramer (1969:85ff), and Loretz (1967:127); for the imagined repression of sexual feelings for God by Adam and Eve, see Piskorowski (1992:314-317); for possible sacred marriage in Hatti-land, cf. Haas (1994:153-56, 436) and Özgüç (1988:102-104).

Returning to my demurrer: **וַיִּקַּח אֱלֹהִים** 'take a wife', it is true, could denote legal marriage and therefore indicate nothing problematic about the intercourse of "sons of God" with human women. Perhaps nothing immoral is described, neither rape, nor polygamy (Harland 1996:24), nor adultery (Cassuto 1961:294). But **וַיִּקַּח אֱלֹהִים** can also suggest 'take (into a harem)', an act that is not always legitimate (Gen. 12:15) but simply represents superior power to work one's will. At Gen. 6, in particular, the phrase is part of a verbal sequence: **וַיִּקַּחוּ לָהֶם נָשִׁים ... וַיֵּרְאוּ** "they saw ... and they took wives," similar to the sequence in Gen. 34:2. J often problematizes the sexual gaze: the appraising look leads not only to Sarah's placement in Pharaoh's harem, but also to rape in Gen. 34, and a curse in Gen. 9 (Ham and Noah). Thus we can not automatically say that **וַיִּקַּח אֱלֹהִים** connotes legitimacy, nor legitimacy here.

Wolde (1994:70-4) tries to rehabilitate this tale of sexual-taking another way. If Gen. 5 stresses the spread of sons, Gen. 6:1-4 stresses the proliferation of daughters. That the women are **טֹבֹת** 'good' shows that "[t]he sons of God had the discriminating power to see what no man saw before: the goodness of women" (73). Wolde keenly observes the gender alternation in the talea, and recapitulates the internal argument the divine beings use to persuade themselves to take earthly wives. However, she overlooks Eve who makes the same argument to persuade herself -- she saw that the fruit was **טֹב**

'good' (Gen. 3:6). We may well wonder if this *Leitwort* might link the two tales.

For Westermann, the answer would be yes -- both tales are *Schuld-Strafe*-, 'sin-punishment'-stories (1984:53ff). That the story prepares us for the flood, the placement of the story immediately before the flood, its forming a frame with Gen. 9:20-27 (another *Schuld-Strafe*-tale) around the flood narrative (Forrest 1994:6), its intimate structural connections to the following pericope Gen. 6:5-12,²¹ these all show us. Whether or not they are the final outburst of evil precipitating the flood, the acts of the "sons of God" did necessitate a new divine decree: "Let [the human's] days be a hundred and twenty years" (Gen. 6:3).

At first it appears that the "sons of God" receive no penalty and that the human race bears the punishment of a restricted life span alone (Westermann 1984:373; Hendel 1987:16). But the offspring of the "sons of God" are made mortal. They will be cut off by the flood; the giants will fall to heroes after the flood. As Hendel says, the Nephilim are made to die (21). Thus the "sons of God" suffer something

²¹ For instance the repetition of *√r.b.h.* in Gen. 6:1 and 6:5. Savasta (1994:196, 204-210) links 6:3a-c (the center of the *inclusio* formed by 6:1-2, 4) with 6:5-7 and 11-12 (the *inclusio* that envelops 6:5-12); she links 6:3d (the balance of the centerpiece of 6:1-4) with 6:8 and 9b-10 (a second framing piece inside 6:5-12). The result is like a telescope pulled open to reveal the final length of scope, Gen. 6:9a "This is the line of Noah." The total effect is to heighten the contrast between the sons of God and their offspring and Noah and his sons.

akin to the *kārēt*-penalty, the "cut-off" of their progeny.²² In this they parallel the post-diluvian penalty exacted on Noah's son Ham. He is not punished directly for his sexual gaze that dishonors his father. Rather, a curse falls on his son Canaan and his descendants.

What then, exactly, does the Gen. 6:1-4 problematize? The hybridization of humans and gods? The parodying of the image of God in humankind (Vervenne 1995:36-37)? The distinction between Yahweh and humans? The eradication of humanity as a distinct species (Frymer-Kensky ABD 5:1145)? Whichever of these, the boundary between beings human and divine is reset by the divinely decreed limit to a life span (Petersen 1979:59). The act that first breaks the bounds is sexual: if the results are problematized, so are the means.

Borgonovo (1994) observes something else unexpected here: not human men with goddesses as we find in Hatti-land, but human women and "sons of God." This models, in his phrase, a "metahistorical etiology" of Israel whoring after other gods. But this is only partly correct -- there is nothing here about the women seeking out sexual contact with the "sons of God." We have {⁴ō → ʔ} in Gen. 6, not {ʔ → ⁴ō} as in Jer. 9 and elsewhere. We might say that "whoring after" gods began with the gods lusting after humans, that once the breach was made

²² *Kārēt* refers to early death and childlessness or death of one's progeny without issue (Goodfriend ABD 1:82; Wold 1977). This is the penalty assigned by Lev. 20:17 to sister and half-sister incest; and by 20:18 to relations with the *niddā*.

from above it could be made again from below.

These cross-gender, divine-human relations are not the only possibilities, for we have something like { $\delta \rightarrow \delta'$ } in Lev. 18:21 (assuming Mōlek is a male divinity) and also in Gen. 19 below:

- (9) ... ויכאן שני המלאכים סדמה כערך... (Gen. 19:1a α , 5)
ויקראו אל-לוא ויאמרו לו
איה האנשים אשר-כאו אליך הלילה
הוציאם אלינו ונדעה אתם:

wayyābō'ū ānē hammal'ākīm s'dōmā bā'ereb...
wayyiqr'ū 'el-lōt wayyō'm'rū lō
'ayyāh hā'ānāšīm 'āšer-bā'ū 'ālēkā hallāylā
hōaī'ām 'ēlēnū w'nād'ā 'ōtām:

And the two messengers²³ came into Sodom at evening
.... And they [the townspeople] called out to Lot
and said, "Where are the men who came to you
tonight? Bring them out to us that we may know²⁴
them!" (Alter 1996).

²³ מלאכים *mal'ākīm* usually 'angels' or 'divine messengers'; sometimes 'human messengers'.

²⁴ ידע *y.d.* 'know a person carnally, have sexual relations (with)' DCH 4:100d; permitted relations: Gen 4:1, 25 (Adam of Eve); 4:17 (Cain, his wife) [all J]; 1 Sam. 1:19 (Elkanah, of Hannah); eodasamed relations: Gen. 19:5 (attempted rape by men of Sodom of divine visitors) [J]; Jdg. 19:22 (attempted rape by men of Gibeah of a male wayfarer); 19:25 (rape by men of Gibeah of the wayfarer's pīlegeš); relations seemingly ambiguous in valance: Gen. 19:8 (Lot, his daughter); 38:26 (Judah, speaking of his subsequent abstention from relations with his daughter-in-law Tamar) [both J]; with respect to virginity: Gen. 24:16 (of Rebekah's virginity) [J]; Num. 31:17-18 (proscription of Midianite women not virgin; virgin war captives permitted to live) [P; Kohn-H]; Jdg. 11:39 (virginity of Jephthah's daughter); 21:11-12 (proscription of those at Jabesh-gilead who were not virgin); 1 Kgs. 4:26 (David, not consummating relations with Abishag). Cf. BDB 394b, HALAT²⁵ 390-92; Botterweck TDOT (1986:5:448-81). Alter, following Amos Funkenstein, takes it as "the one term for sexual intercourse associated with legitimate possession -- and in a few antithetical instances, with perverse violation of legitimate possession" (1996:16, n.1); similarly Westhuizen (1990:93-94).

While Gen. 6:1-4 speaks of *b'nê hā'ēlōhîm*, whether angels or some other spirit, this text plainly uses *mal'ākîm*. But we are not in doubt as to their identity: three men had appeared to Abraham at the terebinths of Mamre (Gen. 18:1-2), two of whom went on to Sodom (v.22) while the Lord spoke to him. These two are the Lord's companions. Thus, though the men of the city call them *'anāšîm*, the reader remains aware of their origin. In addition to the violation of hospitality -- in addition to the horror of the prospective gang rape -- the reader knows that if these acts were possible it would be a rape of the numinous.²⁵ Just as the rape of the *niddā*, spoken of by Ezekiel (22:10), adds an extra measure to normally contaminating relations (by the willful and violent embracing of pollution), so also this desire that is blind to the holiness of its object. The reader feels this tension on the narrative level. In the kernel of the tale, and from the character's point-of-view, these are just human visitors until they reveal themselves otherwise. That moment comes when they blind the men of Sodom at Lot's door.

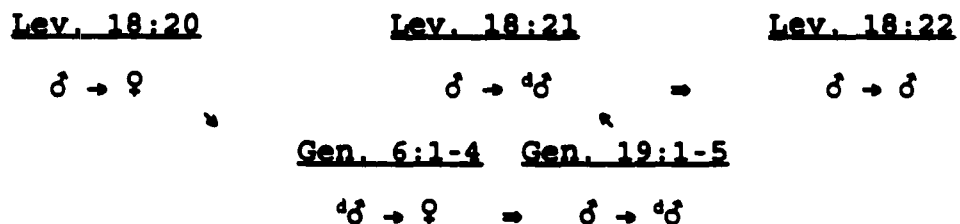
It is precisely in this fraught way that the New Testament *Epistle of Jude* reads the passage: "Sodom and Gomorrah and the neighboring towns which practiced immorality in the same way as the angels hankered after strange flesh (*σαρκὸς ἑτέρας*)" (Jude 7, cf. v.6). In Bauckham's reading: "As the angels fell because of their lust for women, so the

²⁵ So Eilberg-Schwartz (1994:95).

Sodomites desired sexual relations with angels" (1983:54). Thus Jude reads Gen. 6:1-4 together with 19:1-5, perhaps following the earlier Testament of Naphtali 3:4-5 (2nd cent. BCE) which makes the same hermeneutical gesture.

With both of the tales of divine-human sex in view -- one heterosexual with progeny; one an attempted same-sex rape; one initiated by numina; one pursued by men -- we can appreciate the gender "play" in Lev. 18:20-22. The switch from women to men as objects of desire occurs in the fraught background of Lev. 18:21 as Figure 5.1 illustrates:

Figure 5.1: Gender Switching in Lev. 18:20-22



Though the problem in Gen. 19 is not precisely the horror J has for numinal sex, but the sexual violation of guests -- a notion echoed again in Jdg. 19 -- the reader retains the knowledge of the guests' numinous origin and feels a heightened tension because of it. Thus the townsmen of the story violate the cultural value of hospitality in multiple ways: they do not host the wayfarers; they seek to violate the guest; they unwittingly seek to violate those from the divine realm. Job asserts in his oath of clearance (Job 31:31-32):

- (10) If²⁶ the men of my tent ever said:
 "Oh, who'll give some flesh?"²⁷ Someone isn't
 sated."²⁸
 An alien wouldn't lodge outside.
 I'd open my doors to the wayfarer.

Job has done the opposite. He has hosted wayfarers, and perhaps hints that he has protected them from sexual mishap.

The tension about numinal identity in a sexual encounter that the Gen. narrator vouchsafes the reader runs against the tide elsewhere in the ancient Near East. In this wider realm, kings contemplate hierogamy and nobles seek visits from the goddess for help with impotence. It is not a strange thing for the divine and the human to intermix sexually. The Yahwist problematizes this sexual interpenetration of realms and sets the stage for the later prophetic characterization of idolatry itself as *ni'ûp* or *zēnūt*, as adultery or fornication. In a sense, J gives us the etiology of the metaphor.

5.3: "Whoring after" Ghosts and Familiar Spirits: Lev. 20:6

- (11) והנפש אשר תפנה אל-האכת ואל-הידוענים (Lev. 20:6)
 לזנות אחריהם ונתתי את-פני כנפש ההוא
 והכרתי אתו מקרב עמו:

²⁶ 'im lō'. Lō' should be vocalized as lu', the particle for unfulfilled action, according to Pope (1965:207).

²⁷ ~~besser~~, cf. Pope (1965:207). He thinks this is a reference to a homosexual act, and may be a violation of hospitality similar to the incident in Sodom (Genesis 19:4-6) and the rape in Judges 19:22-6. Zerahiya ben Shealtiel mi-Bartselonah also compares this to the Gibeah and Sodom incidents. Habel (1985:438) disagrees and takes the traditional position that this refers to a failure to share food. I've tried to preserve the ambiguity.

²⁸ Or, "We would consume his flesh insatiably!" (NJPS).

w^ahannepeš 'āšer tipneh 'el-hā'ōbōt
w^ael-hayyidd^a'ōnfm liznōt 'ahārēyhem²⁹
w^anātattf 'et-pānay bannepeš hahiw'
w^ahikrattf 'ōtō³⁰ miqqereb 'ammō:³¹

Anyone who turns to ghosts and familiar spirits³²
to whore after them -- I will set my face against
that person; I will cut him/her off from the midst
of his/her kin.

The metaphor of liznōt 'ahārē 'whoring after', already
used in connection with mōlek (Lev. 20:5), is used again here
with ghosts and familiars ('obot and yidd^a'onfm), and again in
Lev. 17:5-7 for satyrs or "goat demons" (š^a'frim). All these
species of the numinous realm fit under the more general
rubric of 'ēlōhfm. H's interest in species stands in contrast

²⁹ לִזְנוֹת אַחֲרָי לִזְנוֹת אַחֲרָי liznōt 'ahārē 'whoring after' 26x in HB:
goat demons (Lev. 17:5-7); Mōlek (Lev. 20:4-5); 'ōbōt
w^ayidd^a'ōnfm (Lev. 20:6) [all H]; and heart and eyes following
the lustful urge (Num. 15:37-39) [P; H for Kahl]. The phrase
is used as a metaphor for idolatry: e.g., Exod. 34:15-16 [J];
Deut. 31:16; Jdg. 2:17; Ezek. 20:30-31 (connecting idolatry to
passing children through the fire) (Milgrom Forth. 2000a, s.v.
Lev. 17:7; Heider 1985:242-45).

³⁰ 'ōtāh 'her' in the Samaritan and LXX.

³¹ 'ammāh 'her people' in the Samaritan and LXX.

³² וְיִדְּעוּנִים אֲכַת 'obot and yidd^a'onfm 'ghosts and familiar
spirits'. Note that these could refer to the technology of
necromancy (the ritual pits used to conjure the dead as per
Hoffner's (1967b) discussion of the 'ōb, Hitt. āpi-); the
conjurers themselves; or the conjured spirits (Wohlstein
1961:30-33). While 'ōb alone has concrete associations with
ritual pits elsewhere in the ANE, the BH word-pair has become
associated by metonymy with the conjured spirits. Milgrom
(Forth. 2000a) argues this conclusion because the idiom liznōt
'ahārē always precedes a name or term for god or demon; this
would be the one exception if the 'obot and yidd^a'onfm were
other; the idiom yihyeh bāhem 'is a medium for (lit., has in
them)' in Lev. 20:27 eliminates the possibilities of the pair
standing for either the technology or the conjurers
themselves. The 'obot and yidd^a'onfm are never termed mal'ākfm
'angels'; they are spirits.

to the genus-level prohibitions concerning "whoring after" 'ēlōhīm in J (Exod. 34:15-16), Dtr (Deut. 31:16; Jdg. 2:17), and Ezekiel, who uses mocking terminology instead -- gillūlīm ' (dung) balls' (20:31; cp. Lev. 26:30). The more concrete sexual advances by b'nē hē'ēlōhīm or upon mal'ākīm yield to the metaphorical "whoring after" various 'ēlōhīm.

Both the Holiness Code and Hittite Law form a nexus of rules concerning bestiality, incest, and "intercourse" with spirits of the dead.³³ HL §190a includes a rule about sexual relations with the dead (perhaps in a dream):

(12) If one, whether man or woman, has sex with a deceased person, (it's) not an offense (HL§190a).

HL permits contact with such spirits, even sexually charged contact. But H counts contact of any sort with the spirits of the dead, sexual or not, as zēnūt. As it is wont to do, H restricts permitted sexual behaviors and eliminates exceptions (discussed in chapter six).

The nexus of the Holiness Code is more diffuse, for the first notice against necromancy is at Lev. 19:31, and not in Lev. 18. In the second movement of Gen. 19 there are three sexual prohibitions: the commands against interspecies mating (v.19a), carnal relations with an unredeemed but "assigned" slave girl (vv.20-22), and a father prostituting his daughter (v.29). We can only read ghost-inquiry as "sexual" because of

³³ The Covenant Code sandwiches a law concerning sorcery (Exod. 22:17) between a fornication rule (vv. 15-16) and a law forbidding bestiality (v. 18).

the idiom *līznōt 'ahārē* at 20:6.³⁴ The prohibition does not find a place squarely with the sexual laws; rather it is juxtaposed to the extended discussion of *mōlek* in 20:2-5 and precedes the sexual penalties of 20:10-21.

However 20:6 curiously forms an inclusio with v.27 (which also echoes the stoning of v.2, #2 above):

(13) ואיש או-אשה כי-יהיה כהם אונ או ידעני (Lev. 20:27)
מות יומתו כאכך ירנמו אתם דמיהם כם:

w'fš 'ō-'iššā kf-yihyeh bāhem 'ōb 'ō yidd'ōnf
mōt yūmātū bā'eben yirg'mū 'ōtām d'mēhem bām:

A man or a woman who has a ghost or a familiar spirit shall be put to death; they shall be pelted with stones -- their bloodguilt shall be upon them (NJPS).

This concern about ghosts and familiars encloses and wraps all of the sexual prohibitions of vv.10-21, the paraenesis of vv.22-26, the command to holiness in vv.7-8, and the prohibition against insulting parents in v.9. Not only does this wrapping suggest an association between idolatry of the dead and forbidden sexuality, but also suggests that prohibited numinal intimacies subsume all forbidden sexual intimacies. It heads some larger category of "violated intimacy."

Whereas Lev. 20:5 speaks of men and their kin "whoring after" *mōlek*, 20:6 speaks of the *nepeš* who does so. Even though the Massoretic text [MT] uses masculine pronominal suffixes on 'ōtō and 'ammā, the Samaritan and LXX use feminine

³⁴ Perhaps we could add root-play on *yidd'ōnf*. The root, *y.d.'.*, sometimes carries a sexual connotation.

-- the gender inversion is possible because of the gender inclusive *hannepeš*. It is possible that the gender specificity of the Samaritan and LXX versions was influenced by the story of the witch of Endor (1 Sam. 28:8-9), though this particularizing is by no means required in Lev. 20:6. In any case, where women might have been among the kin pursuing *mōlek*, men and women are brought to the fore in our verse, though two (later) textual traditions assign this crime to women alone. Returning to the Hittite law of permission -- "if one, whether man or woman, has sex with a deceased person" -- both HL and H in the MT share this gender inclusiveness.

Thus considering HL §190a, what is squarely placed in the midst of incest laws and permitted -- sex with a deceased person, in a dream or with a ghost -- is transformed in H. All associations with spirits of the dead, characterized as *zēnūt*, frame sexual violations and are forbidden. This inversion of the *topos* (in terms of permission, structural placement, and metaphoricization of sex) arouses one's wonder -- did H react to the *topos* in some received tradition?

To recapitulate the argument so far, Lev. 18:21 has a sexual context; Lev. 20:2-5 adds a sexual charge to the *mōlek*-prohibition with the idiom *liznōt 'ahārē*, a metaphor repeated in 20:6 (and 17:5-7) with other numina. The tales in Genesis 6 and 19 suggest an etiology for this metaphor -- a movement from the more literal but mythic relations between *b'nē 'ēlōhīm* and human women, and human men and *mal'ākīm*, to a metonymic

transposition of sexual behavior onto any idolatry, and then particularized to the chthonic worship against which H struggles. The inclusio formed by the prohibition against "whoring after" ghosts and familiars in Lev. 20 iconizes both its importance and suggests the nexus in H of various sexual behaviors and the dead, a nexus we will also find in Hittite law when it brings together bestiality, incest, adultery, and sex with the dead. Thus the relationship between Lev. 18:21 and 20:2-5, more than just a latch or hook-and-eye, suggests a new metaphor -- a telescope. As the spyglass is pulled open, it retains its connectedness as new parts of the instrument appear. Lev. 18:21 opens into 20:2-5 which opens out into the wide inclusio of 20:2, 6, and 27.³⁵

5.4: A Hermeneutical Gesture: Blood and Seed in H

The crime of Lev. 18:21 and 20:2-5 is a double crime of idolatry and murder (Milgrom Forth. 2000a), a crime of "seed" and blood misused. In this way Lev. 18:21 shares something with the restriction on relations with the *niddā* (v.19) -- blood and seed.³⁶ In the former, under the figure of "seed" blood is shed; in the latter, under the figure of blood, seed

³⁵ Paton senses this telescoping when he argues that "Lev. XX. is a hortatory commentary on the foregoing code in XVII.-XIX." (1894:120). While agnostic about the structure and order of cp. 20, he views its similarity of diction as evidence for its quotation from the prior chapters (118-121)

³⁶ Eilberg-Schwartz notes the metaphor-complex "blood-and-semen" (1990:177-94), as does Linke a similar in Proto-Indo-European -- 'inside-blood' and semen (1985:343-50).

is spilled -- what I have called "blood sex."

The notion of the misuse of blood first appears in the "Noahide" laws of Gen. 9:4-6 [P]. Of particular relevance is the first couplet in v.6:

(14) ךָשׁוּ דַם אָדָם בְּאָדָם דָּמוֹ יִשָּׂא (Gen. 9:6a)

šōpāk dam hā'ādām bā'ādām dāmō yiššāpēk

Whoever sheds human blood; by a human shall his
blood be shed.

At issue is the eating of blood (v.4) and the shedding of human blood by man or beast (vv.5-6). This misuse of blood falls within the envelope of prū ūrbū ūmil'ū 'et-hā'ārea "Be fruitful and multiply and fill the earth" (Gen. 9:1, 7). Shedding blood (and eating it) represents the very opposite motion, the undoing of fruitfulness.

If we ask, where does H address the misuse of blood? Is it not in Lev. 17? Indeed the whole chapter elaborates five rules pertaining to the handling of animal blood: there shall be no profane slaughter (vv.2-7); and so no sacrifice away from a sanctuary (vv.8-9); no eating of blood (vv.10-12); nor casual disposal of the blood of wild game (vv.13-14); nor eating of flesh where the blood was not drained properly, i.e. from animals torn by other beasts or which died of themselves and so retain blood within their carcasses (vv.15-16). The rationale for all this is in v.11: "the life of the flesh is in the blood" -- blood represents life -- "and I have assigned it to you for making expiation" -- blood has a particular cultic function.

Thus we can see Lev. 17 as an extended exegesis of Gen. 9:2-4: What does it mean to give humans permission to eat animal flesh? This hermeneutic move of H, this desire of the implied author to explain the laws of the postdiluvian world, we saw once before in chapter two. H takes up the issue of "uncovering the nakedness of the father" at Lev. 18:7ff, a recollection of Ham's error in Gen. 9:20-27. Thus Lev. 17-18 take up two of the issues of Gen. 9, not just for exegesis but for the specification of regulations. Its hermeneutical move is analogous to the work of a modern bureaucracy charged with "implementing" legislation -- it makes the rules to make the law work.

If H takes up the issue of "eating blood," does it take up its shedding? It has troubled scholars who have tried to find a (do)decatalogue in Lev. 19, for instance, that there seems to be no rule about murder. But if there is no law of murder there, one finds it here -- in Lev. 18:21 -- and such a law of murder it is, one that captures the very heart of *prû ûrbû ûmil'û*. For if one obeys *prû* and brings forth seed, doesn't he disobey *r'bû ûmil'û 'et-hā'āres* when he kills his own progeny? Thus H's *mōlek*-prohibition implicitly links the positive command to multiply and fill with its negative invert, a command against shedding human blood.

There is also an explicit linkage too: for the *Leitwort* *וְנָתַתִּי* of Lev. 18:21 appears in Gen. 9:9: "I now establish my covenant with you and your offspring (*וְנָתַתִּי*) after you." This

evocation of the precious seed also echoes the promise to the serpent of enmity between "your offspring (זרעך) and hers (זרעה)," that is Eve's (Gen. 3:15). This Leitwort appears repeatedly throughout the narratives of Genesis, at every juncture where God gives a promise of progeny to matriarchs and patriarchs (e.g., Gen. 22:16-18; 26:24; 28:13-14; 32:13).

Another Leitwort that appears to connect our *mōlek*-prohibition with Genesis 9 is the *karēt*-penalty of Lev. 20 and Gen. 9:11. In the latter, no more will human progeny be "cut off" by flood. In the latter, God will cut off those who sacrifice seed to *mōlek* (v.3); those who "whore after" ghosts and familiars (v.6); those who have relations with a sister or a half-sister (v.17); and the man who has relations with the *niddā* along with the *niddā* herself (v.18).

The concern of Lev. 18:21 for seed (and blood), as observed above, fans out in Lev. 20 to a wider discussion of the meaning of the *mōlek*-prohibition, the related prohibition against "whoring after" ghosts and familiar spirits, and the reframing of the sexual prohibitions by unpermitted connections with the numinal world of the dead. There is a quality that spilled semen, shed blood, and the corpse share -- they all pollute (√*t.m.*').).

(15) כי חזרעו נתן למלך למען טמא את-מקדשי ולחלל את-שם קדשי (Lev. 20:3b)

kī mizzar'ō nētan lammōlek l'ma'an ṭammā 'et-miqdāšf
 ūlhallēl 'et-šēm qodāš:

For he gave of his seed to *Mōlek* and so defiled my sanctuary and profaned my holy name.

The sacrificed child -- either directly in death or representationally as "seed" -- embodies all three.

What then is the conceptual glue that holds together all our laws in Lev. 18 & 20 and explains the inclusion of the *mōlek*-prohibition there? It is the misuse of blood and seed, life substances that belong to God. One misuse, in bestial relations for instance, mimics the creation of species and violates God's prerogative; another misuse, in the *mōlek*-cult, undoes the fruit of creation.

CHAPTER SIX: Sexuality in Hittite Law and Literature

Slender surveys of the sexual life of the Hittites have appeared from time to time: most notably in Neufeld (1951), Hoffner (1973; 1995), Imparati (1995), Ofitsch (1997), Lafont (1999), and Collins (Forth.). Collins' topical schema is illustrative. In a larger article about conceptions of the body, she briefly discusses sexual vocabulary,¹ sexual mores under headings of marriage and divorce, virginity, and forbidden sexual behaviors. She mentions weddings, impotency, homosexuality, hermaphroditism, and sexual abstinence. Imparati's rubrics include marriage, divorce, adultery, procreation, incest, and bestiality. Even with a topical approach, both miss sexual dreams and relations with numinous beings. While both accounts are helpful, the cultural history of Hittite sexuality remains at the level of text collection and topical analysis. There is no discussion of the florescence of laws about forbidden sexual behaviors; no discussion of why some behaviors appear problematic and others not; no discussion of how literary or redactional structures shape laws and rituals, carrying another level of information about what is or isn't important.

If we look at the sheer volume of matter related to sexual behavior (all of the nuancing in law, treaty, myth, and

¹ Collins (Forth.:35-36). Hoffner (1967a:79) offers a somewhat longer short list. Imparati (1964:311-12) offers a good brief discussion of terms used in Hittite law.

ritual) and attempt to identify the issues under cultural discussion, a different set of topics falls out:

- (1) When does bestiality constitute a crime?
- (2) When do relations with affines constitute incest?
- (3) When does "rape" or seduction constitute adultery?
- (4) How does difference in social status affect punishment for unpermitted sexual behaviors and marriage?
- (5) When may temple personnel have sexual relations?
- (6) How do impotent males heal and beget offspring?
- (7) What are the implications of sexual relations with numina?

These questions, asked in texts of various genres and various periods in Hittite history, do not always receive the same answer. We must also imagine that the Hittites had an intellectual history -- their ideas could "progress" or "regress" or be influenced by nearby cultures. In some sense, because of the paucity of data, we are looking at the trajectories of quantum particles that appear and disappear, enter and leave existence.

6.1: A Model of the Hittite Sexual World View

a. Semantic Fields

The lexemes related to sexuality fall out into three rough semantic fields: those related to genitals and nearby body parts, animal sexuality, and permitted and unpermitted

human sexuality. Terms for male anatomy include:² *ḥapuša-*,³ *ḥarniu-(?)*, *lalu-*, *pišnatar* 'penis';⁴ *ḥapuri-* 'foreskin, prepuce'; *arki-*,⁵ ^(UZU) *tašku-* 'testicle'; NUMUN 'sperm, seed; posterity, descendants'; ^(UZU) *genzu-* 'scrotum(?)', *lap(?)*'; *ḥupparatīyat-* 'pelvis'; for female anatomy: ^(UZU) *šarḫuwant-* 'abdomen, stomach, belly, innards, foetus, afterbirth'; *taggani-* 'chest, breast'; ^(UZU) *tīta-* 'nipple, (female) breast'; **wen-* 'vulva?' or *kūša-* 'bride; vulva?'.⁶ Also relevant are terms for the backside, e.g., *arra-* 'arse, anus';⁷ ^(UZU) *iškiš-* 'back(side), rear; small of the back'.⁸

Two of these terms show up in lemmata for animal sex:

² I depend primarily on Collins (Forth.). Cf. also Weeks (1985) §§ 4.49 and 4.67.

³ *ḥapusa-* 'shaft, penis' < IE **h₂puaós* "an early euphemism for penis" (EIEC:507).

⁴ *piānatar* 'penis' < IE **pésnes-* (EIEC:507).

⁵ *arki-* 'testicle' < IE **h₂orǵhis* (EIEC:507); Weeks (1985:73); cf. his §4.49.

⁶ My suggestions for a Hitt. reconstruction of 'vulva': **wsa-* similar to Luw. *wana-* and Hitt. *ku(wa)n(a)-* 'woman' (HED 4:306-308) from an IE **g^wu-en* 'fold, bulge' > 'female sex organs' or IE **g^w(u)eH-/ *g^w(u)H-* 'female sexual organs, vulva' as per Carruba (1991:167, 171-173).

kūša- 'bride', a related or bi-form of *ku(wa)n(a)-*? (HED 4:288-289, 307). Arbeitman (1980:81) and Weitenberg (1975:66) suggest an etymological meaning similar to Eng. vulgar 'cunt'. Both suggestions are analogous to Hitt. *pešna-* 'man' or 'person with a penis'.

⁷ HED 1:122; HW² 1:234.

⁸ HED 2:424-25.

=šan iškiša pai- 'go to the back, mount (by bull or ram)' and ark-^(B) 'mount, breed (bull, ram, bear); be bred (cow, ewe)'.¹⁰

Other terms for animal sexuality include: arnuant- 'brought (to mating); impregnated (cow, sow)';¹¹ šalik- 'push, strike;

⁹ =šan iškiša pai-: HED 2:425, Weeks (1985:73-74). Incantation Fragment (CTH 458), 3 GU₄.MAH kuēš=šan ANA GU₄.ĀB iškiša nāwi pānteš, 18 UDU.ŠIR kuiš=šan ANA UDU.SÍG+MUNUS iškiša nāwi pānteš "three bulls who have not yet mounted a cow, eighteen rams who have not yet mounted a ewe" (KUB 17.28 iii 26-29).

¹⁰ ark-^(B): < IE *h₂órgʰei 'mounts, covers' (EIEC:508). Puhvel suggests, uncolloquially, 'cover in coition, mount, copulate, couple', though 'breed' would be the standard term among stockbreeders (HED 1:142-43). More vulgarly, 'ball' would follow the etymology, as Calvert Watkins (1975:12) intimates, distinguishing it from its supposed synonym, iškiša pai-. Watkins points out the metonymic connection between arki- 'testicle' and ark-^(B) 'breed' stemming from the routine castration of domestic animals. Simply, those remaining with testicles are the breeders (1975:14). Kammenhuber restricts the meaning 'mount' to transitive uses; for intransitive uses: 'climb (on trees)' (found only in CTH 414 discussed in n. 28 below, s.v. kattan šešk-). Puhvel distinguishes the synonyms as follows: cattle 'go to the backside' iškiša pai-; bears and sheep 'pair' ark-^(B) (HW² 1:416, n.61).

KI.LAM Festival (CTH 627.15), 1 UDU šuppištuwaran natta arkantan "one pure sheep that has not (been) bred" (KBo 2.12 v 9'-10'); 1 GU₄.MAH šuppiš[tuwaran] natta arkanta[n] "one pure bull who has not bred" (KBo 2.12 ii 13'). A metaphoric use appears in the Ritual for the Netherworld Deities (CTH 446): UDU.A^{LUM} UDU.SÍG+MUNUS=ia a[(r)g]a, nu=za armaḫḫi kāšš=a=za URU-az parnanz=šša [UD]U.A^{LUM} DÜ-ru, nu LÍL-ri GE₆-in KI-an argaru "Even (as) the ram breeds the ewe and she becomes pregnant, so too from this town and environs, let one act as a ram and breed the Netherworld in the steppe," nu=za ē[šḫ]ar papratar waštul GE₆-iš KI-aš armaḫḫu'[ddu "May the Netherworld become pregnant with blood, uncleanness, (and) sin!" (KUB 41.8 iv 29-32) [MH/NS; NH, HW² 1:301c]. The punch line shows that 'impregnation', not 'covering' as per Puhvel (HED 1:142), is in view. Cf. Otten (1961:138-39); Watkins (1975:13-14).

¹¹ arnuandam:, acc. sg. c. participle of arnu- 'make go; bring; bring (a female animal) to mating' HW 32a: HL §§77, 83, and 84, for an impregnated or bred cow and sow (KBo 6.2 iv 6, 19, 21 = text A) [OH]; "corrected" to armawandan 'pregnant' in text B (=KBo 6.3 iii 78, iv 15, 17). I take the lectio

approach, draw near; mate (horses)';¹² *katta šešk-* 'sleep with (lion, panther)', *watku-* 'spring, leap on; (sexually) leap upon (bull/boar subj.; human obj.)'.¹³ Table 6.1 summarizes these observations.

Hittite has its own trove of metaphoric expressions for

difficilior following Puhvel (HED 1:167) and not Hoffner (1997:83, 86-87, 194).

armu- in a human sexual context: Hymn to Ištar (CTH 717), MUNUS'-n[an kuiš'] *pupuwalaizzi nu=za=kan pupuwalatar ZAG-aš arnuzzi* "He who fornicates with a woman and brings the fornication to consummation" (KUB 24.7 i 40-42) [NH].

¹² *šalik-*: Treaty of An III (CTH 286), "Then one puts on them (horses) a muzzle and then he leaves them" *nu=u[š katt]a šalikiuwanzi* "and they mate" (KUB 29.53 i 10) [MH]; Kammenhuber (1961:192-93).

¹³ *watku-*: HL §199b for a sexual attack, initiated by an excited cow (or swine) on a human, *takku GU₄-uš LÚ-[ni] watkuzi* "If an ox leaps on a man (in sexual excitement)" (KBo 6.26 iv 19) [OH].

ZI parā watku-: for relations between a god and a cow, Tale of the Cow and Fisherman (CTH 363), *UTU-uš=kan AN-z(a) GAM au[šta], [A/NA GU, ZI-aš parā watk[u]t* "The Sun God looked down from the sky and his desire leaped forward upon the cow" (KUB 24.7 ii 54) [NH], Hoffner (1990:65), Otten (1958:123); desire by a god for a rock, Ullikummi (CTH 345.01), *katta=kan kuit ḫarzi nu=kan [...]* *ZI-anza parā watkut* "what she [the rock] has below [genitals] ... his mind sprang forth [in sexual arousal]" and he slept with the rock (KUB 33.98 + 36.8 i 16-17), HED 3:147 s.v. *ḫar(k)-*, Güterbock (1951:146-149), Hoffner (1990:61 and n.17); a metaphoric reference to desire for an unpermitted court woman (?) as the later context would suggest, *Huqq.* (CTH 42), *ZI=KA parā wat[kuzi* "Your desire springs forth" (KUB 26.38 obv. 8) [NH], Collins (Forth.:21); and an ironic twist on the theme of desire with *asta watku-* in *Huqq.* (CTH 42), *ŠA É.GAL^{LIT} kuwapi MUNUS aut n=ašta KASKAL arḫa mekki watgabḫut* "Whenever you see a palace woman, really jump out of the way" (KBo 5.3 iii 49-50) [NH]. Though Neufeld (1951:195) tries to limit *watku-* to 'copulation of mammals', the metaphoric extension in NH preserves not just the "springing" image but also some notion of "boundary crossing."

the sexual parts: ¹⁴TUKUL para nianza 'battle ready weapon' and ¹⁵MESEDDU mēn 'like a cart pole' for the phallua; and katta=kan kuit ḥarzi 'what she has below' ¹⁶GIŠ.ŠAR-aš=ma-aš GIM-an ilaliyan[za] dammetarwantit šūwanza 'she is desired like a garden filled with luxuriance' ¹⁷and GA.KU, GIM-a[n] 'like sweet milk' ¹⁸for the female erogenous zones.

Terms for permitted sex are often euphemistic or metaphoric uses of common verbs: ¹⁹armaḥḥ- 'be pregnant; impregnate'; ²⁰aššiya- 'love'; but aššiyouwant- 'lover'; ²¹

¹⁴ CTH 443, KBo 15.10 ii 5-6, 34-35 [MH/MS]; Szabó (1971); CHD e.v. nai- N:354d.

¹⁵ My thanks to R. Stefanini for his suggestion of relating Hedammu's phallus to the cart pole; Hedammu (CTH 348), KUB 8.67 rev. iv 15; Siegelová (1971:40-41) frag. 2:15.

¹⁶ Song of Ullikummi (CTH 345.01), KUB 33.98 + 36.8 i 16; Güterbock ed. (1951:149).

¹⁷ RS 25.421 obv. 36; Laroche (1968b:774-775) and Puhvel (HED 2:355) translate differently taking the participle in its rare use as a verbal adjective (HE² §277c): "She is like a desired garden." But see HE² §277a for the more common use of the participle as the passive for a transitive verb.

¹⁸ Hedammu (CTH 348) KUB 33.109, 8'-9'; Siegelová (1971:38-39) frag. 1:14.

¹⁹ It is common for terms for sexual behaviors to behave as if they were iconic, i.e. be treated as if the word were the act. "Tabooed" expressions then tend to be avoided and speakers replace the tabooed word with a new euphemistic expression (Hock 1991:293). Euphemisms often then "degenerate into a taboo term through contamination by the taboo topic" (Allan & Burridge 1991:22). This forms an endless chain of replacements.

²⁰ armaḥḥ-: Kumarpi (CTH 344), āšma=ta armaḥḥun ²¹IM-it nakkit, Anu speaking to Kumarpi: "Take note! I have impregnated you with the Mighty Storm God" (KUB 33.120 i 31); cf. HED 1:156.

=aa armaḥḥ- intrane. 'become pregnant, conceive' (HED

(=sa DAM-anni) *har(k)*- 'have/hold (someone in marriage)';²²
 DAM-an iya- 'make (someone) a wife';²³ (=sa DAM-anni) *pai*-
 'give (in marriage)';²⁴ and *wen*- 'poke; fornicate; rape'.²⁵

1:155-56); HW² 1:323a.

²¹ *aššiya*:- Kessi (CTH 361), DAM=KA=pat=wa=ta=kan *aššiyattat* "only your wife has become dear to you" (KUB 33.121 ii 9), HED 1:190, Friedrich (1949:234), HW² 1:401-405; cf. Carruba (1991:157-159) for an IE reconstruction.

aššiyauwant:- (CTH 315) *aššiyauwanzaš=ma=aš* [...] GIM-an *ilaliyauwannit UL ha[ššikanza* "she [is] like a lover not satiated with desire" (RS 25.421 rev. 62-63), HED 1:191, Laroche (1968b:774, 779). Cp. *šeli*-.

²² (=sa) *har(k)*:- Hoffner (1997:154); HED 3:145 'possess, have as wife'. With =sa: sister incest in Telipinu Proclamation (CTH 19), "Telipinuš=az 'Ištapiyan hantezziyan NIN=ZU *hartā* "T. had [as wife] I., his oldest sister" (KBo 3.1 ii 9-10) [OH/NS], HED 3:151; avoiding sister incest in *Huqq.* (CTH 42), *nu ap[pat=at apiya zik=šmaš=za NIN=ZU ku]it harši* "While you (hold) that one (in) it (=matrimony), you must hold them as sisters with respect to yourself" (KBo 5.3 iii 27) [NH]; *karu=za kuin harši 'NAPTER=ma=ta āra aškanzi* "the one whom you already have, they shall legitimately treat her as your second-rank wife" (KBo 5.3 iii 63-64) [NH], cf. HED 3:146.

Without =sa: HL§193, *takku LÚ-iš MUNUS-an harzi ta LÚ-iš aki DAM=ZU ŠE[Š=Š]U dāi* "If a man has a woman and the man dies, his brother takes his wife" (KBo 6:26 iii 40-41) [OH], HED 3:147; HL§195b, *takku LÚ-aš 'arauwanin harzi* "If a man has a free woman (sexually)" (KBo 6.26 iii 50-51) [OH]; HL§195c, *takku DUMU.MUNUS=ŠĀ harzi* "If he has the daughter (sexually)" (KBo 6.26 iii 52) [OH].

Without =sa but with DAM: Telipinu Proclamation (CTH 19), *nu=za 'Har[ap]šekin [NIN Mur]šili DAM-anni hartā* "He had H., M.'s sister, as wife" (KBo 3.1 i 30-31) [OH/NS], HED 3:151; *Madduwatta Treaty* (CTH 147), *nu=wa=]ši ŠĀ ŠĀ=ŠU [DUMU.MUN]US=ZU ANA DAM=ŠU harzi* "his (M.'s) very own daughter he has for his (the enemy's) wife" (KUB 14.1 obv. 80), HED 3:147; cf. Goetze (1928).

²³ DAM-an iya:- *Huqq.* (CTH 42), DAM-an=ma=an=za *le iyaši* "But you shall not make her your wife" (KBo 5.3 iii 65) [NH].

²⁴ (=sa) (DAM-anni) *pai*:- Zalpa (CTH 3.1) with =sa and without DAM, *nu=za DUMU.MUNUS=ŠĀ ANA DUMU.NITA=ŠĀ paiš* "She gave her daughters to her sons" (KBo 22.2 obv. 17) [OS], Otten (1973:6); *Šaušgamuwa treaty* (CTH) without =sa and with

Particular sexual pairings, thought unbecoming in other contexts, are designated *natta ɣaratar* 'not an offense' in the laws.²⁶

DAM, nu=ta NIN=IA DAM-an[ni] peɣɣun "I gave you my sister for wifeship" (KUB 23.1 ii 2-3) [NH], CHD P:45c s.v. pai- B, Kühne & Otten (1971:8-9); Huqq. (CTH 42) without =sa or DAM, n=an ŠEŠ-ni pai "and give her to a brother" (KBo 5.3 iii 66) [NH]. "Giving in marriage" is the step that follows betrothal. Cf. ɣamenk- in HL §29, HED 3:64, 66 s.v. ɣam(m)a(n)k-.

²⁵ wen-: Or more idiomatically, 'fuck', as per Hoffner (1997:307), and possibly from an IE *g^wu-en 'fold, bulge; female pudenda' or g^w(u)eH- 'female sexual organs, vulva' as per Carruba (1991:167, 171-173); cf. Pokorny on IE *wen- 'love' > 'Venus' (IEW:1146). Hoffner argues that it does not mean 'deflower' as some previously thought (1997:225). Contra Weeks (1985:272 §21.44) and Puhvel (HED 1:55 s.v. anna-), rape is not necessarily indicated. In three OH instances the relations in question are designated *natta ɣaratar* 'not an offense': HL §191a (relations with two maternal sisters in different locations), §194a (relations with two slave-sisters or slave-mother and daughter), §200A ("sleeping" with a female deportee and "poking" her mother or sister). At issue in all of these is affinity, not sexual violence.

However, 'rape' is a possible translation in military contexts: (CTH 16), nu=kan ɣumanduš wēnta "He raped all of them" (BoTU 146 = KBo 3.42 5') in a legendary story of the Hurrian wars; Cannibal Story (CTH 17), mēn ^(URU)Nuḫayanaz arḫa uwawen nu paiuwen KUR ^{URU}Ilanzura(ki) parḫuwen GU, ^{URU}ŠU LÚ ^{URU}ŠU dauwen antuḫḫuš uwanḫikuwen "When we left Nuḫayana, we went and attacked Ilanzura. We took its cattle and people (and) we habitually raped the people [men and women?]" (BoTU 21 = KBo 3.60 rev. iii 9'-12') [OH/NS]; cf. CHD P:145c; Hoffner 1997:225. Cf. ep(p)- 'seize; rape' and pupuwalai- 'fornicate' below.

²⁶ *natta ɣaratar*: Sex (or a dream of sex) with a ghost, but probably not necrophilia. See my discussion below (HL §190a); sexual relations with a stepmother when father is dead (§190b); with two free, co-uterine sisters in different locales (§191a); with the wife's sister after the wife's death (§192); levirate (§193); with two slaves, sisters or mother and daughter (§194a); brothers who sleep with same free woman (§194b); father and son who sleep with same slave or prostitute (§194c); sexually excited pig leaping at a man (§199c); sex with horse or mule (§200A); and when sleeping with a half-free female deportee, also fornicating with her mother or sister; if a man finds his wife and her lover in

Some sexual lemma are used in contexts both permitted and unpermitted: *ilaliya-* 'desire, want';²⁷ (=za) *šak(k)/šek(k)-* 'acknowledge; know (sexually)';²⁸ *šalik-* 'push, strike;

flagrante delicto and kills them, *ḫaratar=šet NU.GÁL* "he has committed no offense" (§197). See note below on *natta ḫaratar*.

²⁷ *ilaliya-* and permitted: (CTH 315), *GIŠ.ŠAR-aš=ma=aš GIM-an ilaliyan[za]* "But she is desired like a garden" (RS 25.421 obv. 36); *āššiyauwanzaš=ma=aš [...]* *GIM-an ilaliyauwannit UL ḫa[ššikanza]* "she [is] like a lover not satiated with desire" (RS 25.421 rev. 62-63), cf. Laroche (1968b:774, 779); HED 2:355.

ilaliya- and unpermitted: *Ḫuqq.* (CTH 42), *danna=ma=za le ilaliyaši* "but do not desire to take (sexually)" (KBo 5.3 iii 38) [NH].

²⁸ =aa *šak(k)/šek(k)-* and permitted: *Paškuwatti* (CTH 406), *nu=du=za kaša kaš antuwaḫḫaš UL šekta* "Till now this man has not known you" in a context where the patient is waiting for the goddess *Uliliyašši* to come and sleep with him (KUB 9.27 ii 14-15) [MH/NS], cf. Hoffner (1966:286) who reads =za *šek-* as meaning more than 'acknowledge' and "suggestive" of sexual relations because of the context.

Unpermitted: Instructions of *Tudḫaliya IV* to Princes and Lords (CTH 255), *n=aš mən kuiš imma kuiš [(MUNUSTM ŠA)] LUGAL mən=aš 'SUHUR.LÁ, mən=aš [(ELLU.nu=za)=ka]n šakta kuiški kuinki [(kinunn=)]a=kan UL EGIR GAM karašzi ... GAM NIŠ DINGIR^{LM} GAR-ru* "If whatever king's woman, whether she be a lady's servant or free, (if) someone used to know someone (like that), and does not now separate (from her) ... let it be placed under oath" (KUB 26.1 iv 30-33, 37) [NH], Justus (1981:48, ex. 122 different). In the context even acquaintanceship would arouse suspicion of sexual knowledge. Justus' ascription of 'intentionality' to =za with *šak-* (1981:1), Beckman rejects (1986b:29, n.63).

šak(k)/šek(k)- in an unpermitted sexual context: Here without =za. HL §191b, *takku 2-el pedi nu ša'kki, ḫurkil* "(But) if (it happens) in the place of the two (= same geographic location of the two maternal sisters), he knows! (It's) a sexual crime" (KBo 6.26 iii 35, Hoffner's p-text) [OH/NS]. What does he know? He knows that "the women are related" (Hoffner 1997:151). Thus *šakk-* here refers to knowledge of identities and not sexual knowledge per se. Nevertheless, its use within a sexual context carries a hint of polysemy. Cp. Justus (1981:28-29, ex. 54).

approach, draw near; intrude, have asexual intercourse with';²⁹ (katta(n)) šeš(k)- 'sleep; sleep with (sexually)';³⁰

²⁹ Šalik- and permitted: see above for context of horse-mating (CTH 286) [MH]. See šeli- below.

Šalik- and unpermitted: Zalpa (CTH 3.1), [nu] le šaliktumari "Do not have asexual intercourse" in the context of incest with sisters (KBo 22.2 obv. 19) [OH]. HL §195b-c, unpermitted pairings with affines: stepdaughter, mother-in-law, and sister-in-law through the wife [OH] (cf. Hoffner 1997:258, 295). Note the use in a context of sexual violence in the Kumarpi myth (CTH 344): EGIR-anda-šši saligaš "Kumarpi "Kumarpi drew near him (Anu)" (KBo 33.120 i 23). Although Kumarpi only "approaches" Anu, Šalik- retaining a more literal and innocent use, the scene ends with Kumarpi biting off Anu's genitalia. Cp. with ep(p)- below. See also NH maninkuwan tiya- and maninkuwan pai.

For a non-sexual context in the Hedammu myth (CTH 348), the refusal of hospitality: [adanna=ma-šši ^{GIS}BANSUR-un] unuwer nu-šan para UL šali[kta] "They spread [a table for her to eat at] and she didn't approach it" (KBo 19.112 obv. 5'-6'); R. Stefanini suggests "lean over" because of the context of finely nuanced actions.

šali-(?) 'lover (?)': HW 190a; Hoffner (1997:297). Hapax-form but root related to šalik-? Cf. HE§11 for ablaut of the initial stem vowel between /a/ and /e/ and Puhvel (HED 1:111 s.v. ar-/er-, 3:156, s.v. har(k)-) for reasons behind loss of the stem final -k-. HL§31, takku LÚ-aš ELLUM GEME-aš=a šelieš n-at anda aranzi "If a free man and a female slave are lovers (?) and come together (lit. 'come within' = 'settle down?')" (KBo 6.3 ii 16) [OH], cf. HED 1:109; Hoffner (1997:40). Cp. aššiyauwant-.

³⁰ From PIE *šeš- (atelic, durative) vs. *šwep- (punctual), cf. Jamison (1982-83) and Barton (1985:18). Barton believes that in Hittite, the original atelic *šeš- expands into the domain of its competitor. In NH šeš- "undergoes a reformalization" as telic =za šeš- 'go to sleep, lie down', with atelic šeš- unmarked for 'sleep, be sleeping, remain' (28-28, 32).

For 'sleep with (sexually)', mostly katta(a) šeš(k)-. Permitted: HL§§194b-c, 200aš [OH]; reprehended: Zalpa (CTH 3.1), nu k[att]i=šmi še[š]k- "and w[ith] them sle[pt] (sexually)" (KBo 22.2 obv. 20) [OH]; HL §195a (cf. Hoffner 1997:297). Hoffner speculates that the iterative -šk- form may mean 'conduct an affair' (1997:153, n.547) [OH]. Against this notion we must set the OH charm addressed to the trees which are cut down for the construction of a sacred building. When the king goes to the mountains to request trees from the Storm-god, he speaks to the trees in the Building Ritual (CTH

414): UR.MAH-aš kattan šaškit UG.TUR-aš=<š>maš kattan šeškit
 ʔartaggaš=ma=šmaš šarš arkiškitta "The lion has coupled; the
 panther has coupled by you; but the bear has repeatedly bred
 up against you" (KUB 29.1 i 29-30) [OH] taking Puhvel's
 datives of spatial relations (1981:416, n.61; HED 1:142, s.v.
 ark-^(B)).

Watkins finds the meaning of this sexual metaphor obscure
 (1975:14, 20). Puhvel imagines this might refer to animal
 self-stimulation (attested in Ford & Beach (1951:149-152) and
 Yerkes (1973 [1927]:520)). However, Kammenhuber expresses
 great incredulity at any sexual nuance in this passage based
 on the wider context (cattle and sheep graze in the following
 lines, 32-33; HW² 1:301c). Rather, the lion and panther
 'sleep' under the trees, and the bears 'climb up' (šarā
 arkiškitta). Puhvel admits the latter expression remains
 controversial but rejects Kammenhuber's "excessive literal-
 mindedness." He takes kattan šeš- as a euphemism for "human
 coital posture" extended to animal intercourse, at least for
 the big cats (1981:416, n.61). Cf. Table 6.1.

MAHAR X šeš- and unpermitted: HLS195a, takku LÚ-aš MAHAR
 (= Hitt. piran) DAM ŠEŠ-SU šeškizzi "If a man sleeps with his
 brother's wife" (KBo 6.26 iii 49) [OH], cf. Ofitsch
 (1997:139); MAHAR is construct state for Akkad. maḥru 'front
 side' (Hoffner 1997:331; HW 309d-310a). If we read this
 hyperliterally, perhaps specifying procreative sex.

(katta) šeš- and permitted: Instructions to Temple
 Officials (CTH 264), 'have sexual relations' (KUB 13.4 ii 77;
 iii 68) [MH/NS] vs. šeš- without a preverb, 'sleep; have
 sexual relations' (KUB 13.4 iii 2; iii 74) [MH/NS]; Paškuwatti
 (CTH 406), the goddess sleeping with the patient, katti-šši
 šešzi (KUB 9.27 iv 4, 10), but iv 1, šešzi alone [MH/NS];
 human with goddess in the Illuyanka Myth (CTH 321), mā(n)=wa
 katti=ti šešm[i n]u=wa uwami kardiaštaš iyami [n=aš']
 ka[tt]i=šši šešta "(Hupašiya to Inara) 'If I may sleep with
 you then I will come and perform your heart('s desire).'" [So]
 he slept with her" (KBo 3.7 obv. i 25-26), Laroche (1968a:27);
 Hoffner (1990:12); a god with a rock in the Song of Ullikummi
 (CTH 345.01), n=aš=za=aš ^{ma}p[eruni] [kat]tan šešta "and with
 the rock he (Kumarpi) slept" (KUB 33.98 + 36.8 i 17-18), ed.
 Güterbock (1951:148-49); Elkunirša Myth (CTH 342),
 ehu=wa=mu=za katta šeš (Ashertu to Baal through female
 messengers) "Come and sleep with me yourself" (KUB 36:35 i
 10), cf. Hoffner (1990:69) and Goetze in ANET:519.

šašnu-: Cf. Friedrich (1947:302) on the causative of šeš-
 , nu=mu=za katti=šši šašnut "he let me sleep with her
 (sexually)" (KUB 33.118, 24).

►ššaššumai- (preceded by a single Winkelhaken) ' (go and)
 sleep with sexually(?)': HW 364b, DLL:87, ANET:519, Otten
 (1953:126-27, 132-33). But Melchert calls this definition a
 "mere guess" (CLL:192). Related to šeš-? See HE² §§141d, 398.2

(=sa DAM-anni) dā- 'take (asexually or in marriage';³¹ (=šan)

for the Luwian iterative -šš-, and HE² §11 for ablaut. The one example is found in the Elkunirša Myth (CTH 342), Elkunirša to Baal about Ashertu in the context of her reported seduction attempt, it=war=an >ššššumai >[xx / ... "Ašerdun DA]M=IA [n]u=war=an luriyaḥ "Go and sleep with her, [... Ašertu] my [w]ife, and humble her" (KUB 36.35 i 20-21) after which Baal reports he has killed all her sons. Thus CHD translates "Go! Bereave(?) her!" (L:87 s.v. luriyaḥḥ) and Hoffner, "Go threaten(?) her" (1990:69). But these translations remove the hint of the Storm-god's sexual treachery.

³¹ (=sa) (DAM-anni) dā- for permitted relations: HLS§31 with =sa and DAM, n=an=za ANA DAM=ŠU dāi "He takes her as his wife" (KBo 6.3 ii 17) and HLS§34 [OH]; with =sa and without DAM: Song of Ullikummi (CTH 345.01), nu=ši=kan LÚ-natar and [n / ... n=a]n=zan=kan 5-ŠU dāš [namma=man=z]an=kan 10-ŠU dāš "and (his) manhood (entered) into her. 5 times he (Kumarpi) took her (the rock) [and again] 10 times he took her" (KUB 33.98 + 36.8 i 18-20), ed. Güterbock (1951:148-49); also HLS§§32-33 (B-texts) [NS]; HLS§27 without =sa and with DAM, takku LÚ-aš DAM=ŠU dāi "If a man takes his wife" (KBo 6.5 ii 4) [OH] and HLS§30; HLS§193 without =sa and without DAM-anni, DAM=ZU ŠE[š=š]U dāi, tan ABU=ŠU dāi "his brother takes his wife; secondly, his father takes (her)" (KBo 6.26 iii 40-41, cf. also 43) [OH] and HLS§§32-33. Note that dā- can indicate all the expectations of marriage, including consummation, as seen in Ullikummi and strongly implied in the levirate rule (HLS§193, cf. Ofitsch 1997:138). DAM-atar 'wifhood; state of marriage' also implies consummation. It is not used for 'wedding ceremony' (Weeks 1985:30, §2.34) and is distinct from 'Š.GA₄.A-atar 'bridehood; engagement'.

For uapezmited (incestuous) marriages or couplings: Zalpa (CTH 3.1) with =sa and without DAM, [n]=uš=za nekuš=muš daškenen[i] "We're taking them, our sisters, (sexually)!" (KBo 22.2 obv. 19) [OH], Otten (1973:6); Huqq. (CTH 42), nu=za namma MUNUS^{ms} ŠA ŠEŠ=KA NIN=KA lē daškiši "You shall no longer habitually take (sexually) the wives of your brothers, i.e. your sisters" (KBo 5.3 iii 59-60) [NH], cf. Weeks (1985:29, §2.33); Huqq. (CTH 42), ŠEŠ=ŠU=za NIN=ŠU 'ānninniyamin daškan[zi] "(There) brothers regularly take their sisters (or) female cousins" (KBo 5.3 iii 33) [NH]. Another possibility is that we have a list: "They habitually take (sexually) the brother, the sister, or female cousin," cf. Schuler (1965:7) but rejected by Klinger (1992:193). But note that we do not have DAM here (or in the example below) so that sexual relations, not marriage, are at issue. Huqq. (CTH 42), danna=ma=<an>=za lē ilaliaši "But you may not desire her to take her" (KBo 5.3 iii 38) [NH]; without =sa and without DAM, ŠEŠ=[ŠU] MIN=ZU 'ānninniyamin UL dāi "One does not take his

(*maninkuwan*) *tiya-* 'go near, approach; approach (sexually); have sex';³² and the noun, *tešša-* 'sleep; dream; coition'.³³ It is just here that we have our most general terms for sex in Hittite.

Terms for unpermitted sex also include some metaphoric or euphemistic uses of common verbs: *ep(p)/ap(p)-* 'seize; rape';³⁴ *ḫatkiš(ša)nu-* 'pester; rape';³⁵ *ḫurkel iya-* 'do

brother, sister or female cousin (sexually)" (KBo 5.3 iii 29) [NH], or "The brother does not take his sister (or) female cousin (sexually)" reading *ŠEŠ-[aš-sa]* for *ŠEŠ-[šU]* as per Klingner (1992:192).

Da- is semantically akin to *ep(p)-*.

³² (=šān) *tiya-* and permitted with =šān: (HL §190a), *takku=šān GIDIM-it' tiezi*, *LÚ=MA MUNUSTM UL ḫaratar* "If one, whether man or woman, has sex with a deceased person, (it's) not an offense" (KBo 6.26 iii 29) [OH], cf. Hoffner (1997:150). Hoffner takes =MA as an Akkadogram used as a copula (n.527).

Without =šān: "When a Woman Conceives" (CTH 489), [*maḫḫan ITU.7'.KAM tiya]zzi*, *nu namma LÚMUZA=ŠU ITTI DAM=ŠU UL tiy[azzi]* " [When the seventh(?) month (of pregnancy) arrives, then the husband does not app[roach] his wife any longer" (KBo 17.65 obv. 5) [MH], cf. Beckman (1983:132-33, 149, 152-53) who renders the expression more crudely as 'enters'.

maaiakuwan tiya- and unpermitted: *ḫuqq.* (CTH 42), *nu=ši maninkuwan lē tiaši* "Do not approach her (with sexual interest)" (KBo 5.3 iii 46-47) [NH], in parallel with *maninkuwan pai-*. See also OH uses of *šalik-*.

³³ *tešša-* has the connotation *Beischlaf* 'cohabitation, coition' both Friedrich (HW 222a) and Tischler (HEG T:335) note. Moyer (1969:51-52) makes much of this, but his translation of *teššaz parkuiš* 'pure from sexual intercourse' neither Beckman (1983:94-95) nor his dissertation director Hoffner (1998:63) accept; cf. the birth rituals (CTH 477; KUB 9.22 ii 29-32; ABoT 17 (iv) 9). In the Appu Tale (CTH 360) the statement, [*"A]ppuš Ū-az parkuiyatat* "Appu awoke from sleep" (KUB 24.8 i 31), precedes the upbraiding by his wife for failed performance as a husband.

³⁴ *ep(p)/ap(p)-*: 'Seize' by metonymy becomes 'rape', specifically the rape of a woman in HL §197 [OH]. Contrast this with the seizing of a man and woman as prisoners (without

hurkel; commit a aex crime';³⁶ maninkuwan pai- 'go near (aexually)';³⁷ katta(n) wašta- 'sin, commit an offense'.³⁸ To

rape?) as the army marches back from enemy territory in the Ritual of Puliša (CTH 407), [Š]A KUR⁷² 1 ^{LO}ŠU.DAB 1 Mf^{72N}-ia appanzi "They aeize from the land 1 POW and 1 woman" (KBo 15.1 i 7). We also find it in an early stage of a male rape scene (between divinities) that culminates in biting off the penis, Kumarpi (CTH 344): EGIR-anda-ššī šaligaš "Kumarpi, n-an GİR⁷² ēpta "Anun, n-an=kan nepišaz katta ħittit "Kumarpi drew near him, aeized Anu by the feet/legs, and dragged him down from the sky," (KUB 33.120 i 23), cf. Hoffner (1990:40). Cf. OH wen- and šalik- above. Ep(p)- is semantically akin to da- 'take' (HED 2:281). Cf. ħatkiššanu- 'pester; rape'.

ep- 'acquire' in the context of uxori-local marriage where a slave obtains a live-in son-in-law (HL\$36) [OH].

katta ep- for an inaeination taking hold: Appu (CTH 360), UL-wa kuššanqa katta epta [nu]-wa kinun katta epta "never was there conception, now has there been conception?" (KUB 24.8 i 28-29, 33-34) [NH], HED 2:277. Kammenhuber (HW² 2:71-72, esp. 71d) rejects Beckman's reading 'take (sexually) correctly', i.e., katta ep- is "an expression of dynamic sexual performance on the part of the male" (1983:3, n.8).

³⁵ ħatkešnu-, ħatkiš(ša)nu- 'pester, beleaguer', from ħatk- 'shut, close; press' (HED 3:267-68); 'molest' (Oppenheim 1956); Dreams of the Queen (CTH 584), ŠĀ Ū⁷²=kan GIM-an 'LUGAL INA ^UUyamma 'tarnui EGIR-an ^{LO}MEŠ GURUŠ kuiešqa ħatkiššanuškir 'LUGAL=ma=za=kan ŠĀ Ū⁷² 1 'tarnu=zan ŠĀ GUŠKIN ANA 'LUGAL=ma ^UUurikina IKRŪB "When in a dream, in the town of Iyamma in the rear of the tarnu-house some young men had repeatedly molested/raped the queen, the queen made a vow in the dream to the god Šarruma of Urikina: 1 gold tarnu-house" (KUB 15.1 ii 6-11; cp. ii 37-41) [NH]; Oppenheim (1956:227); CHD 3:117a.

³⁶ ħurkel iya-: 'commit a aex crime'; HL \$196 [OH]; Ritual to Expiate Inceat (CTH 445): mēn UN-aš ħurkil iyazi "If a man commita a sex crime (in that) he (sexually) takes his daughter, hi[s sister?] or his mother" (KBo 12.115 rev. 2'-3' + IBoT 2.117 iv 2'-3').

³⁷ manakuwaa pai-: Huqq. (CTH 42), nu-šī mani[nku]wan lē paišī "Do not go near her (aexually)" (KBo 5.3 iii 47) [NH], in parallel with maninkuwan tiya-. CHD (3/2:142, s.v. ma(n)ni(n)kuwan 4'b') ascribes a sexual connotation to this paaage. Cp. with Gilgameš (CTH³ 341.III): [LŪ-aš (mani)]nkuwan nēwi paiz[zi] "Before the man haa gone near to her" (KUB 8.55 l. 6 + KUB 8.51 rev. 8), cf. Friedrich (1929:10-11); CHD 3/2:142; cp. Gilgameš I.iii.23 in ANET (72). See also OH uaea of šalik-.

these we can add the specialized verbs *pupuwalai-* 'fornicate, seduce'³⁹ and *ᵐpupuwatar iya-* 'fornicate, commit adultery';⁴⁰ and their related nouns, *ᵐpupu-* 'fornicator, seducer, lover'⁴¹ and *pupuwalatar* 'fornication, adultery'.⁴² We may

³⁸ *katta(a) wašta-*: with *katta(a)*, HL §§187, 188, 189, 190, 199 with genitive object [OH]; §200A with dat./loc. [OH] (Hoffner 1997:224, 306); Ritual to Expiate Bestiality (CTH 456.05) with dat./loc., *mān LÚ-a]š UDU-i našma UZ₄-i GAM wašta[i* "When a man with a sheep or a nanny-goat sexually transgresses" (KUB 41.11 obv. 2) [NH]; Treaty with the *Habiru* (CTH 27), [*n=uš katta' w]aštai, nu ᵐpup[uw]atar iezzi* "He sins [against them] and commits adultery(?)" (KBo 9.73 obv. 6).

Without *katta(a)* and not in a sexual context: Treaty with *Alakšandu* (CTH 76), *nu kšš=ma zik "Alakšanduš PANI NIŠ DINGIR^{mes} waštaši* "Take note, O Alaksandu, you will transgress the oath (if you do not report conspiracies)" (A iii 1-2, 29-30; A= KUB 21.1 + KUB 19.6 + KBo 19.73 + KBo 19.73a + FHL 57) [NH], Friedrich (1930:66-67). Other non-sexual contexts include omitting to celebrate ritual feasts, blasphemy, perjury, and violating an order (Catsanicos 1991:40). In a sexual context, Ritual to Expiate Bestiality (CTH 456.05), *kaša=war=aš apāš [kuiš' x x x-3sg. w]aštaš-wa kuiš ḫaratar-wa kuiš DŪ-at* "See! Each one [who has verbed'] (or) sinned (or) done an offense" (KUB 41.11 obv. 21'-22') [NH]. Compare *wašta-* with New English "waate" (Weeks 1985:237); Puhvel, 'miss (a target)' in shooting, i.e. a "basic meaning" of 'draw a blank' rather than 'fail' contra Catsanicos (1991) and Hutter (1992:221, 226). Cf. *waštai-* and *waštul* below.

³⁹ *pupuwalai-*: Güterbock: "all kinds of love affaire other than marriage" either poaitively or negatively construed (1983:161). The realm of fornication in *Hatti-land* also includes rape as HL§198a (discussed below) shows. See *pupuwalatar* below.

⁴⁰ *ᵐpupuwatar iya-*: Treaty with the *Habiru* (CTH 27), [...] *ANA ÉRIN^{mes} SA.GA[Z] idālu natta kui[ški / iyazi nu=šmaš' katta' w]aštai nu ᵐpup[uw]atar iezzi* "no one [will do] evil againat the *Hapiru*-people in that he sins [against them(?)] and commita adultery(?)" (KBo 9.73 obv. 5-6) [OS]; Otten (1957:220-221); CHD P:382b; Güterbock (1983:161) 'commita fornication'. This could alao include rape (as discussed below).

⁴¹ HL §198 [OH/NS].

now organize the above into terms referring to interspecies sexuality (Table 6.2) and terms for permitted and unpermitted sex (Table 6.3).

In the lexica discussed above we find that Hittite employs a number of types of euphemism: circumlocutions such as *katta=kan kuit ḫarzi* 'what she has below'; figurative expressions such as ⁴²*TUKUL para nianza* 'battle ready weapon'; and general-for-specific substitutions such as *kattan šešk-* 'sleep with' for the usual-activity-during-which-a-specific-event-takes-place. Most favored are quasi-omissions like Eng. "I need to go [to the bathroom]": *maninkuwan tiya-* 'go near (sexually)', *šalik-* 'draw near (sexually)', *dā-* 'take (sexually; in marriage)'. In law, treaty, and ritual, technical jargon appears: *ḫurkel iya-* 'do ḫurkel'; *kattan wašta-* 'sin'; ⁴³*pupuwatar iya-* 'fornicate, commit adultery'.

These behaviors are variously described as *natta āra* 'not

⁴² *pupuwalatar*: Hymn to Ištar (CTH 717), *MUNUS'-n[an kuiš'] pupuwalaizzi nu=za=kan pupuwalatar ZAG-aš arnuzzi* "He who fornicates with a woman and brings the fornication to consummation" (KUB 24.7 i 40-42) [NH]; CHD P:381 translates as 'seduction(?)' but cf. note on *arnuandan* above; on a list with *malatar* 'folly' (KUB 24.7 i 52); oracle question using liver and lot (CTH³ 578), *'ANA DINGIR^{LIN} SISKUR pupuwalannaš [...]* "to the deity a sacrifice (to atone for) fornication" (KUB 49.94 ii 11) [NH], cf. CHD P:382a (differently); oracle fragment (CTH³ 582), *'ANA 'Ištar^{UMU}Šamuḫa-wa=za pupuwalannaš BAL-aḫḫi* "I will sacrifice to Ištar of Šamuḫa for fornication" (VBoT 25 obv. 3-4), cf. CHD P:382a (differently). We might reconstruct a possible course of development as follows: ⁴⁰*pupu* [OH] > ⁴⁰*pupuwatar iya-* [OS] > *pupuwalatar* [NH] and *pupuwalai-* [NH]. Cf. *pupuwalai-*.

⁴³ See Allan & Burridge (1991:14-20) for a typology of euphemism.

right, impermissible';⁴⁴ *ḫaratar* 'offense';⁴⁵ *ḫurkel* 'sex crime, unpermitted sexual pairing';⁴⁶ *waštai-*⁴⁷ and *waštul*

⁴⁴ *natta* *šra*: cf. HW² 1:219a-221c; HED 1:118; Weeks 1985:236-37. In *Zalpa* (CTH 3.1), take sisters to wife (KBo 22.2 A obv. 19-20) [OH]. In *Huqq.* (CTH 42) sexually take sister or female cousin (KBo 5.3 iii 33-34); sexually desire sister-in-law through wife, paternal half-sister, or female cousin (iii 35-38); sexually take brother's wife (living or dead not specified) (iii 59-60, 61-62) [NH]. Laroche (1960:127-28) details eleven other impermissible deeds (five of which are violations of Temple sancta).

⁴⁵ *ḫaratar*: cf. HED 1:140-41; Weeks (1985:238 §16.76); Hoffner (1997:276); primarily found in the phrase *natta ḫaratar* (see above) or the doublet *ḫaratar waštull-a*: Ritual to Expiate Bestiality (CTH 456.05): ... *ḫaratar waštul apāš dau* "Let that one ... take the offense and sin" (KUB 41.11 obv. 27) [NH]; Papanikri (CTH 476): nu 2 MUŠEN *ḫaratni wašduli warnuwanzi* "They burn two birds for the offense [and] sin" (KBo 5.1 ii 2).

⁴⁶ *ḫurkel*: The latter is Hoffner's (1997:228) aseptic rendering. Cf. also Friedrich (1971:112-13) 'abomination', Weeks (1985:271-72 §21.41) 'hanging matter, capital crime, abomination', and HED 3:401-02 'severe sexual offenses such as bestiality and incest'. Starke (1990:343-44) shows that *ḫurkel* with suffix vowel [e] is typically Hittite, and *ḫurkil* with suffix vowel [i] is typically Luwian, hence my standard spelling with [e]. However, *ḫurkel* is mostly written with -il in the laws and -el in NH copies (Hoffner 1997:254). Cf. Kronasser (1966:324) for a discussion of l-stem nouns.

Justus (1992:456-461) takes up an old notion of Forrer's from the dawn of Hittite studies that *ḫurkel* comes from the substrate language Hattic: *ḫurki-* plus an appellative suffix -e/il. Thus, 'belongs to *ḫurki-*' on analogy with *nerkil* 'the one of Nerik' (460). By metonymy, *ḫurkel* becomes "nasty old Hattic crime" and is an "unadulterated loan [word]." Justus observes correctly that *ḫurkel* has more to do with incest than homosexuality (contra Puhvel), but it is hard to swallow her speculation that the term gains currency from the Hittite patrilineal suppression of a Hattic matrilineal system.

ḫurkel: HL §§187-191, 195 [OH]; Zuwi (CTH 412.03), *UMMA* *IM ANA LÚ*⁴⁸ *ḫurkilas* "Thus (speaks) the Temple of the Storm God to the men of *ḫurkel*" (KUB 12.63 i 22; also 21, 23) [OH/NS]; Bēl Madgalti Instructions (CTH 261), *karuliyaz-ia maḫḫan KUR.KUR-kan anda ḫurkilaš išḫiul iyan* "and as from the olden days in the land, the law of *ḫurkel* is enforced (lit., 'practiced')" (KUB 13.2 iii 11; cf. 13-14) [MH/NS], cf. HED 3:401; Iriya (CTH 401.03) *ki wātar GIM-an arḫa ḫarkzi, ki inan*

'fault, ain, offense'.⁴⁶ Thua the unpermitted asexual

ešhar NIS DINGIR^{LW} pāngauwaš EME-aš ħurkil arĥa QATAMMA ħarkdu "Just as this water fully disappeared, so let this sickness, blood, perjury, slander of the crowd, (and) asexual impropriety fully disappear" (KUB 30.34 iv 16-18) [MH/NS]; and similarly another text, kinunn=a-wa ki[edani .../ U]N-ši HUL-lu alwanzatar ēš[ħar .../ l]ingaen ħurkil [.../ GAM]-an arĥa zennešdu "now for th[ia ma]n let X make an end of evil, sorcery, bloodshed, perjury (and) ħurkel" (KUB 58.78 obv. iii? 7'-10').

ħurkel iya-: (HL §196) [OH], and CTH 445 (see note above).

ħurki- 'wheel': (HL §§123, 198) [OH] related by root or paranomasia.

⁴⁷ waštai-: HL §197, MUNUS-naš waštaiš "(It's) the woman's offense" [OH], cf. Catsanicoa (1991:56).

⁴⁸ waštu: HL §§146a, 147, 148, 197 [OH]; Instructions for Temple Officials (CTH 264) concerning a capital asexual crime, mān=za MUNUS-i kuiš GAM-an šešzi ... n=aš ITTI MUNUS⁷¹ QATAMMA paidu ... nu=za [ħ]u[d]šk warpdu ... mān=ma=aš karštari=ma n=at=ši waštu "If anyone has sexual relations with a woman: ... let him go to the woman ... let him bathe himself at dawn ... but if he neglects (it), it's a sin for him" (KUB 13.4 iii 68-74) [MH/NS], cf. Sturtevant (1934:388-389); Ritual for Netherworld Deities (CTH 446), nu=za ē[šħ]ar papratar waštu GE₆-iš KI-aš armaħħu[ddu "may the Netherworld become pregnant with blood, uncleanness, [and] sin" (KBo 10.45 iv 33; dupl. KUB 41.8 iv 31-32) [MH/NS], cf. HED 1:156 s.v. armaħħ-, CHD P:105d s.v. papratar; Huqq. (CTH 42), n=an waštu IŠEAT "He caught him (in) the (sexual) offense" (KBo 5.3 iii 55 + KUB 40.35 iii 55) [NH]; Ritual to Expiate Beotiality (CTH 456.05), kedaz waštulaz parkuiš ššdu "Let him be free of impurities from this sin!" (KUB 41.11 obv. 28) [NH]. Note that beotiality is ħurkel in OH law and here waštu in a NH ritual. In a bird oracle (CTH 573), [...]x=kan zik "Tutħali ŠĀ É.NA, DINGIR^{LW} IŠTU GUD UDU wašdulawandaz [...]kulez=ka maršanuwanz nu SU⁷² SIG₆-ru "If you, Tudħaliya, in the stone Temple of the gods through sinning with cow (or) sheep, (but not) through something else, are deceived, then shall the entrails omen be favorable" (KUB 16.39 obv. ii 11-12), cf. Otten (1958:108-109).

For non-sexual traaagrasaiona: Treaty of Hattušili III with Tiliura (CTH 89), n=an waštulli appanzi "They seize him in delicto" (KUB 21.29 iii 43, 48) [NH], cf. HED 2:275, Schuler (1965:147); Hedammu (CTH 348), amm]el waštu "My sin" (IBoT 2.135 obv. 4'). Hoffner suggests that waštai- and waštu are confined to "sexual misconduct" within the laws (1997:2). For further see Cataanicoa (1991: 40, 56, 72) and katta(n)

relations, those natta āra, may be {± ḥaratar}, {± ḥurkel}, or {± waštul} (see Table 6.4 below).

What things are ḥurkel? Unpermitted sexual pairings include: bestiality with cattle, sheep or goats (§187-188; CTH 456.05); incest within the nuclear family, i.e. with mother, daughter, or son (§189); incest with the stepmother when the father is alive (HL§190); incest with brother's wife when brother is alive (HL§195a); sleeping with two maternal sisters in the same location (HL§191b); concerning relations between a free man and woman, fornicating with the daughter (HL§196b), or mother or sister (HL§195c); or if married, stepdaughter, mother-in-law, or sister-in-law. Note that ḥurkin 'wheel (of justice?)', written over an erased ḥurkel, is used in the context of adulterers caught in *flagrante delicto* (HL§198).⁴⁹ One cannot say whether this is a word play, mistake, or overcorrection.

What things are waštul? Subsuming things waštai- or the fruit of katta wašta-: incest in the nuclear family, with mother, daughter or son (also ḥurkel, HL§189); incest with the stepmother (also ḥurkel if father is alive but not ḥurkel if the father is dead, HL§190); all classes of bestiality (ḥurkel with ox, sheep or goat but not ḥurkel for pig, dog, horse or mule, HL§§187-88, 199; CTH 456.05), adultery or rape under treaty conditions (¹⁰pupuwatar iya-, CTH 27); for a man, rape

wašta- above.

⁴⁹ Hoffner (1997:156, n.560).

of a woman in the mountains (HL§197); for a woman, her rape in her own house (HL§197); gazing at palace women (Huqq.); farmers and stockbreeders speaking to alien Kaškaen slaves or allowing them entrance to the city (CTH 89).

What emerges from this analysis is that things *ḫurkel* have attestations only in connection to sexual crimes; things *waštul* include non-sexual transgressions; and both sets intersect, but are not the same. Further, things punishable, those that are *ḫaratar*, can be either *ḫurkel* or *waštul*; and things not an offense, *natta ḫaratar*, may be either *waštul* or not.⁵⁰ The practical effect of identifying these organic categories will be to correct readings that view *ḫurkel*, *ḫaratar*, and *waštul* as synonymous.

⁵⁰ Hoffner asserts that *aatta ḫaratar* is "a phrase occurring essentially only in the case where *ḫurkel* might otherwise be suspected. In practice *UL ḫaratar* seems almost to mean 'there is no *ḫurkel*'" (1997:225). Thus, there does not seem to be a category:

[-*ḫaratar*
+*ḫurkel*]

When HL§197 rules blood vengeance for adultery is "not an offense," *ḫaratar=šet NU.GÁL*, we have:

[-*ḫaratar*
-*ḫurkel*]

But this formulation implies, by Hoffner's dictum, that killing under other circumstances is *ḫurkel*. However murders of varying degree are never termed *ḫurkel* (e.g., in HL§§1-6) so that:

*[+*ḫaratar*
-*ḫurkel*]

is possible (See Table 6.4 for another possibility). See note on *natta ḫaratar* above.

One notices that there is hardly any attention given in the surviving literature to women's sexuality. Even when we read: šššiyauwanzaš=ma-aš [...] GIM-an ilaliyauwannit UL ḥa[ššikanza, "she [is] like a lover not satiated with desire,"⁵¹ the perspective is still male. Indeed, parents give their daughter in marriage (=za DAM-anni pai-), to a man who takes her into wifhood (=za DAM-anni dā-) and makes a marriage (DAM-an iya-). He sleeps with her (katta(n) šešk-), enters her (tiya-), and if the conception 'takes' (katta ep-) she becomes pregnant (=za armaḥḥ-). Alternatively, when a free man and a slave woman are lovers (šelieš), and come together (anda ar-), he may marry her (=za DAM-anni dā-), and together with her make a household and children (=za É-er Û DUMU^{meš} iya-).

Likewise, little attention is given to sexual relations between men: an explicit prohibition of father-son incest (HLS189), a possible prohibition of brother-brother incest (Huqq. §29), possible rape of male P.O.W.s in the Cannibal Story (CTH 17), and an ironic treatment of male rape in the Kumarpi myth (CTH 344). In the relevant scene from Kumarpi, the chain of verbs illustrates a sequence:

EGIR-anda-šššī šaligaš °Kumarpi
 n=an GĪR^{meš} špta °Anun
 n=an=kan nepišaz katta ḥuittit
 ...
 ššma=ta armaḥḥun °IM-it nakkit
 (KUB 33.120 i 23, 31)

⁵¹ RS 25.421 rev. 62-63; Laroche (1968b:774, 779).

Kumarpi drew near him, seized⁵² Anu by the feet,
and dragged him down from the sky ...
Anu: "Take note! I have impregnated you with the
Mighty Storm God."

Kumarpi draws near (*šalik-*), seizes Anu (*ep-*) and drags him down. During the fight, he bites off his *pišnatar*, the penis of Anu. Anu had been the reigning god and former vizier of the high god Alalu. Now he has the last laugh. Anu impregnates (*armaḥḥ-*) Kumarpi with his future nemesis, Teššup. The use of *armaḥḥ-* reinforces the irony of the impregnation. With the reflexive particle *-za* its customary meaning is 'become pregnant'. This feminization of Kumarpi has an echo in a military context. The Soldier's Oath (CTH 427.1) contains a self-curse: "Whoever breaks these oaths and plots evil against the king, queen, and princes, let these oaths change him from a man into a woman!"⁵³

Puhvel speculates that *ḫurkilaš pešneš* 'men of *ḫurkel*' in the Ritual of Zuwi (CTH 412.03) are "effeminate catamites" (1986:154-55; HED 3:402). Much of his argument rests on linking *ḫurkel* etymologically with terms for strangulation and then citing archaeological evidence of strangled catamites in Danish and German grave sites. However, as Stefanini has pointed out, one can accept the IE etymology and still note the lack of evidence for criminalization of homosexuality in

⁵² Here *ep-* means no more than 'seize' -- not rape. However, the whole tale describes a violent encounter with sexual elements -- a rape.

⁵³ KBo 6.34 obv. ii 42ff, Hoffner (1966:327-28, 332).

Anatolia; the lack of evidence that corpses with rope remains around their necks were catamites; and the anachronistic overlay of modern categories on the linguistic data.⁵⁴ Thus I cannot side with Puhvel and include this text under the rubric of homosexuality.

Another sequence of verbs, found in the *Huqqana Treaty* (CTH 42), speaks in the style of Wisdom literature about avoiding seduction and consequent adultery:

nu=ši maninkuwan lē tiyaši
nu=ši mani[nku]wan lē paiši
memian=a=ši lē mematti
İR-KA-ia=ši GEME-KA maninkuwan lē paiz[zi]
n=an=za=an⁵⁵ mekki ušgaḥḥut
ŠA É.GAL^{LIN} kuwapi MUNUS aut
n=ašta KASKAL arḥa mekki watgaḥḥut
n]u=ši KASKAL arḥa tuwa tarna
(KBo 5.3 iii 46-51)

Do not approach her and do not go near her, nor even speak a word to her. Your male and female slave shall not go near her. Beware of her. Whenever you see a palace woman, really jump out of the way and make a wide swath around her.

The path to seduction begins with an approach, *maninkuwan tiya-* and *pai-*, speech, or the intercession of servants. In contrast to the sexually excited animal who springs at a man, the sexually excited prince, springs out of the way (*watku-*).

Out of the semantic fields considered above emerge the topics of sexual interest: bestiality (*ḥurkel iya-*, *katta(n) wašta-*, *watku-*), incest (*ḥurkel iya-*, *šalik-*, *MAḤAR šešk-*,

⁵⁴ Ruggero Stefanini, personal communication, December 9, 1997.

⁵⁵ Pleonastic repetition of the enclitic pronoun.

katta(n) wašta-), adultery and rape (ep(p)-, ilaliya-,
 pupuwalai-, ¹⁰pupuwatar iya-, maninkuwan pai- and tiya-, wen-),
 and marital (aššiya-, =za armaḫḫ-, (katta) ep-, DAM-an iya-
 and ((=za) (DAM-anni)) dā-, katta šešk-, tiya-) and other
 permitted relations (=za šek-, katta šeš-, =šan tiya-, wen-).
 From Table 6.5 we can now see that (katta(n)) šeš(k)- 'sleep
 with' is the most general verb for having sexual intercourse
 - it appears in all contexts. The most general verb for
 marrying and marital intercourse is dā- 'take'; for
 intercourse outside of marriage, wen- 'fornicate'; for
 bestiality and incest, ḫurkel iya- 'commit a sex crime'. It is
 just these categories that the Hittite Laws regulate: DAM-atar
 marriage', pupuwalatar 'fornication', and ḫurkel 'sex
 crime(s)'.

Table 6.1
Hittite Semantic Field for Animal Mating

	Cattle	Pigs/Dogs	Horse/Mule	Wild
♂	bull; ram: =šan iškīša pai- 'mount'; bull; ram: ark- 'breed'		stud: šalik- 'mate'	lions; panthers: kattan šeš- 'couple(?)' bears: šarā arkišk- 'pair(?)'
♀	cow: arnuwandan 'impreg- nated'; ewe: ark- 'be bred'; =za armahh- 'become pregnant'	sow: arnuwandan 'impreg- nated'	mare: šalik- 'mate'	

Table 6.2
Hittite Semantic Field for Interspecies Sexuality

	+ Animal	+ Human	- Animal - Human
♂ Animal		watku- 'leap on' ♂; or ♀?	
♂ Human	katta(n) wašta- 'sin with' ♀; or ♂?		=šan tiya- 'approach' deceased
♀ Deity		=za šek- 'know'; katta šeš- 'sleep with'	
♂ Deity	watku- 'leap on' ♀		kattan šeš- 'sleep with' rock

**Table 6.3: Hittita Semantle Field
for Permitted and Unpermitted Human Sex**

Agent	Patient			
	♂		♀	
	Unpermitted natta āra	Permitted āra	Unpermitted natta āra	Permitted āra
♂	armahh- 'impreg- nate' hurkel iya- 'commit a sex crime'		ep(p)- 'seize' hatkešnu- 'molest' hurkel iya- 'commit a sex crime' pupuwatar iya- 'act as a fornicator' pupuwalai- 'fornicate' šakk- 'know' šalik- 'have sex' katta šešk- 'sleep with' dā- 'take' maninkuwan tiya- 'approach' maninkuwan pai- ^Λ 'go near' katta(n) wašta- 'sin' ilaliya- 'desire'	pupuwalatar ZAG-aš arnu- 'consum- mate' =za armahh- 'become pregnant' aššiya- 'be dear' katta ep- 'conceive' DAM-an iya- 'make wife' (=za DAM- anni) har- 'have as wife' (=za DAM- anni) pai- ^B 'give in marriage' =za šek- 'know' (katta(n)) šeš(k)- 'sleep with' (=za DAM- anni) dā- 'take in marriage' (=šan) tiya- 'approach' wen- 'fuck'
♀		ilaliya- 'desire'		

Table 6.4
Categorical Paaturaa of Hittite Sexual Behaviors

	+waštul	-waštul
+ḫaratar +ḫurkel	Bestiality with cattle, sheep, goats EGO incests mother, son, daughter EGO incests stepmother when father living	EGO incests daughter- or mother-in-law (EGO with sister?)' (EGO with brother?)' EGO + wife's sister when wife alive EGO with free co- uterine sisters in same locale EGO with brother's wife, bro. alive
+ḫaratar -ḫurkel	Bestiality with pig/dog Rapist in mtns. Rape/Adultery in house Fornication with Ḫapiru Gazing at palace women Man at whom ox springs ^o	
-ḫaratar -ḫurkel	Bestiality with horse or mule EGO with stepmother after father dead Man at whom pig springs ^o	Rape victim in mtns. EGO with deceased EGO fornicates 2 related ♀: slave or half-free arnuwalaš Levirate EGO + wife's sister after wife's death EGO with free co- uterine sisters in diff. locales Brothers who sleep with same free ♀ Father/son sleep with same slave or prostitute ♀ Deity + human or cow Military rapes Residual cases
-ḫaratar +ḫurkel		

¹ The same verb (šalik-) is found in the context of Ego's relations with sister as well as daughter- and mother-in-law. On that basis I have placed it here.

¹ Hggg. (CTH 42) say reprehend brother-brother incest. If so, this practice logically fits with sister-incest, though not termed ḫurkel. Greek Iron Age legal materials attest brother-brother incest prohibitions.

^o [-waštul], deduction based on head case in HL8199.

**Table 6.5: Hittite Semantic Fields:
Generic Categories of Human Sexuality**

Semantic Fielda	Old Hittite or OS	Middle/New Hittite
I. Sex in Marriage:		
Marriage	=za pai- 'give' (=za) (DAM-anni) dā- 'take in marriage' ep- 'acquire' (=za) ḫar- 'have'	DAM-anni pai- 'give in wifehood' (=za) dā- 'take' DAM-an iya- 'make a wife' =za ḫar- 'have'
Sex	katta(n) šešk- 'sleep with'	aššiya- 'love' tiya- 'approach' (=za) dā- 'take'
Conception		katta ep- 'conceive' =za armahḫ- 'become pregnant'
II. Sex Outside of Marriage:		
with Free or Unfree Person	anda ar- 'come together' šalik-? > šeli- 'lover' katta šeš- 'sleep with' wen- 'fornicate'	pupuwalai- 'fornicate' pupuwalatar ZAG-aš arnu- 'consummate'
III. Sexual Usurpation: Adultery and Rape		
	ep- 'seize, take' wen- 'rape' ¹⁰ pupuwatar iya- 'commit fornication'	ḫatkešnu- 'molest' ilaliya- 'desire' pupuwalai- 'fornicate' maninkuwan pai- or tiya- 'go near' katta' wašta- 'sin (against)'

IV. Hurkel	hurkel iya- 'commit a sex crime'	
Bestiality	katta(n) wašta- 'sin with'	(katta(n)) wašta- 'sin with'
Incest	šalik- 'draw near' MAHAR šešk- katta še[šk-] 'sleep with' katta(n) wašta- 'sin with'	

b. Problematization

i. Bestiality

In the Bronze Age, extant legislation about bestiality is unique to the Hittite Laws. Later in the Iron Age, the Covenant Code (Exod. 22:19), the Holiness Code (Lev. 18:23; 20:15-16), the Deuteronomistic Code [D] (Deut. 27:21) all prohibit bestiality, but H in the most detail. Among the Greeks, passing reference is made to its reprehensibility in Plato's *Republic*.⁵⁶ HL, H, D, and Plato collocate prohibitions against incest and bestiality.

The Hittite laws of sexuality begin with bestiality, and laws about bestiality frame the entire section focused on sexual behavior (§§187-188, 199-200Aα):

§187: takku LÚ-iš GU₄-aš katta [waš]tai, hurkil,
aki-aš
LUGAL-uš šēki uwa[dan]zi
kuenzi=ma=an LUGAL-uš, huišnuzi=ia=an LUGAL-uš,
LUGAL-i=ma=aš UL tiyaizzi⁵⁷

⁵⁶ 571c-d.

⁵⁷ KUB 6.26 iii 20-22.

If a man sexually sins with a cow, (it's) *ḫurkel*. He will be put to death.⁵⁹ They will bring him to the King's Gate. Whether the king slays him, or lets him live, he must not approach the king.

§188: takku [LÚ-iš UDU-aš katta wašt]ai, ḫurkil, aki-aš
[LUGAL-an aški uwadanz]i
kuenzi=ma=an LUGAL-uš, [ḫuišnuzi=i]a=a[n LUGAL-u]š,
LUGAL-i=ma-aš UL tiezzi⁵⁹

If a man sexually sins with a sheep, (it's) *ḫurkel*. He will be put to death. They will bring him to the King's Gate. Whether the king slays him, or lets him live, he must not approach the king.

...

§199a: takku ŠAH UR.GI,-aš katta kuiški waštai, aki-aš
ANA KÁ É.GAL^{LIN} uwateizzi
kuenzi=uš L[UG]AL-uš, ḫuišnuzi=ia-aš,
LUGAL-i=ma-aš UL teizzi⁶⁰

If a man sexually sins with a pig (or) a dog, he will be put to death. One shall bring him to the palace gate. The king may slay them (animal + human), or he may let them live. But he (the human) shall not approach him, i.e. the king.

§199b: takku GU₄-uš LÚ-[ni] watkuzi, GU₄-uš aki
LÚ-šša UL a[ki]
1 UDU LÚ-naš kšššaš ḫuittiya[nta
n=an=kan kunanzi⁶¹

If a bull leaps at a man, the bull will be put to death.
But the man will not die. They will offer one sheep instead of the man and put it to death.

⁵⁹ Normatively, the perpetrator is taken to the place of judgment and execution (the King's Gate). The expectation is that "he will die," unless the king grants clemency.

⁵⁹ KBo 6.26 iii 23-25.

⁶⁰ KBo 6.26 iv 16-19.

⁶¹ KBo 6.26 iv 19-21.

§199c: takku ŠAH-aš LÚ-ni watkuz[i], UL ḥaratar⁶²
If a pig leaps at a man, (it's) not an offense.

§200Aα: takku LÚ-aš ANŠE.KUR₄.RA-i našma
ANŠE.GÎR.NUN.NA katta waštai, UL ḥaratar
LUGAL-uš=aš UL tiezzi, ¹⁰SANGA-š(a) UL kiša⁶³

If a man sexually sins with a horse or a mule,
(it's) not an offense. He may not approach the
king, nor shall he become a priest.

Unlike the Holiness Code with its sweeping prohibition of bestiality with quadrupeds, HL mentions three classes of animals for which it regulates interspecies relations: ox/sheep, pig/dog, and horse/mule. Table 6.6 below shows how the regulatory information from the laws falls out.

At first glance it seems there may be only two categories: ox and pig as lead animals in one; horse as the head of another. Both Collins (Forth.) and Hoffner (1997) assume that relations with a pig or a dog are also ḥurkel. After all, the same verb of intercourse is used, and the same penalties apply (though no sacrificial substitute is mentioned for the man violated by a pig in §199c). Both read silence as a ditto mark. We might find support for their approach from Carmichael's (1972) notion that legists tack on redactional

⁶² KBo 6.26 iv 22.

⁶³ KBo 6.26 iv 23-25.

Table 6.6: Hittite Regulation of Bestiality

	Ox/Sheep/Goat	Pig/Dog	Horse/Mule
Nature of the offenae	+ḫaratar 'offenae' +ḫurkel 'sex crime' katta wašta- 'sin with' +waštul 'sin'	(+ḫaratar) (-ḫurkal) katta wašta- ∴ +waštul	-ḫaratar (-ḫurkel) katta wašta- ∴ +waštul
Freeman as initiator, ♂	Death; or king may spare; not see king	Death; or king may spare; not see king	No death penalty; not see king; not be priest
Non-free aa initiator, ♂♀, ḫurkel iya- 'commit a sex crime'	Town may banish; offer aheep aa substitute		
Animal aa initiator, ♂ watku- 'leap on'	Ox killed; aheep killed as substitute for man	Pig killed; no mention of substitute	No mention

() Surmised, not attested.

amendments to the end of ancient law codes. Thus §§199-200Aa would amend §§187-88 by adding new cases while presuming what came before (and so eliding repetitive material because of limited space on the tablet). However, most of the formula from §§187-88 is actually repeated in §199. So we might turn to haplography, the scribe's eye missing material he should repeat, aa an explanation of the elision. Or, is it

deliberate?"

Cattle and sheep vs. pigs and dogs. While we cannot speak to either the intentions of the jurist or the scribe, there is evidence that separates 'pigs and dogs' into a separate class. The most striking (and perhaps fanciful) is the greater degree of "accountability" accorded a bull over a boar.⁴⁵ While both a bitch and a sow are put to death when they are the passive partners in human-initiated bestiality (HLSS199a),⁴⁶ only the bull is punished when it springs at a man in sexual excitement

"The function of silence is always a problem, but not without its students. Applying Ortega y Gasset's (1959:2) postulate, "Every utterance is deficient," i.e. a text says less than it wishes, we can imagine that the absence of information has more causes than error or space limitations. Saville-Troike's (1985:16-17) taxonomy includes: boundary-marking, maintenance of social space, subordinate status, and iconicity of spoken silence. Here is our problem: do we read the absence of *hurkel* in our text as "subordinate status," i.e. just another species of the genus such that mention of *hurkel* is redundant? Or does silence mean "absence of *hurkel*?"

If silence speaks a message, Saville-Troike's proposition that silent "communication acts" depend on adjacent vocalizations allows us to turn to the surrounding context to fill the blank. Fontanille (1990:162-66), grappling with the implicit in Hittite law, offers a (Greimasian) grammar for its propositions. As she says: "Aucun article de notre corpus ne réalise en effet la chaîne complète" (162). Immediate context may supply the elided elements of her "chain" of protasis and apodosis, or some larger background. Again Ortega y Gasset offers a postulate: every text appears as a fragment of a whole (1959:2) -- a whole we must also reconstruct.

⁴⁵ A bull is large enough to kill a man while charging or with its horns. An animal which is wont to charge is simply dangerous and must be destroyed. However, a charging boar can also be dangerous. So this rationalizing explanation doesn't account for all the facts.

⁴⁶ And presumably, the ewe and cow a fortiori, though on this the text is silent.

(HL§199b).⁶⁷ The boar is not (HL§199c).⁶⁸ Thus the boar and bull are not "ethically" parallel,⁶⁹ nor are the categories they represent. This is why sexual relations with a pig may not be *hurkel*.

⁶⁷ Folk-motifs and anecdotes from animal researchers suggest the possibility of interspecies sex initiated by the animal. Thompson, in his *Motif-Index of Folk Literature*, records examples of various beasts as suitors (including the pig (§B621.6); cf. §B620-B629 for others) and the bull as a husband (§B641.3, marriage of Zeus in bull form to Europa; cf. §§B640-B649 for others).

Yerkes (1970[1929]:78) offers the instance of a confined female gorilla, without a mate of her species, making a display of her genitalia and aggressively attempting to start coitus with her keeper. Ford & Beach (1951:148-150) discuss several other examples of female primates doing the same. They suggest that animal initiation of cross-species coitus happens under three circumstances: (1) intraspecies copulation is prevented (all the above cases); (2) the animal is unable to discriminate the species (as among various toads); and (3) the location is an accustomed setting for mating, e.g., a pen where the male is used to finding receptive females (151). This latter suggestion provides a possible scenario for the bull and boar springing at a human male. In our case a human male is the object of a male animal's sexual advance. Perhaps the man gets in the way of a bull or boar pursuing its female in heat.

Though Hoffner embraces the reality of the forbidden behavior (1975:83; 1997:227), it is possible that the law registers some "metaphysical horror" (Robert Alter, personal communication) grounded in fantasy or projection of human sexual behavior onto the animal realm (Thompson 1966, §§B280-B289).

⁶⁸ Hoffner, however, takes silence as implying punishment (1973:83; 1997:227).

⁶⁹ For animals treated as moral agents or legal persons: in ancient Greece and the Near East, see Fensham (1988); in medieval Europe, see Dubois-Dessaule (1905), Evans (1906), Berkenhof (1937), and Boon (1979) all cited by Dekkers (1994); in the anthropological literature, Tambiah (1969:435-37) and Thompson (1966) for folk-motifs of animals in legal relations (§§B270-B279) and executed for crimes (§B275.1). In general, various animals are held accountable for (1) killing a human; (2) bestiality; and (3) entering tabooed land.

If HL treats bulls and boars differently it treats culpable men and oxen in parallel ways. The HLs put to death oxen and men in similar circumstances; oxen and men may escape execution by the substitution of a sheep. In HL §166 a man guilty of sowing seed on top of seed already sown is tied to a plow. Teams of oxen are hitched to each side and pull the malefactor apart. Then the oxen are killed. The following law, HL §167, replaces this penalty with the substitution of one sheep for the man and two for the oxen. Why should the oxen have been killed? Did they trespass on sancta?⁷⁰ Did the oxen participate in the original crime? Must animals who kill a man, even as executioners, also die (Hoffner 1997:215)? A shared death penalty and substitutionary sacrifice appear again in the bestiality laws. Both the man who approaches an ox and an ox who springs at a man die (HL §§187, 199b), but the man at whom an ox springs may resolve this breach by the substitution of a sheep. Men and oxen share, at least sometimes, a substitutionary "atonement," whereas pigs do not.

Among domesticates, the bull once played a significant role in pre-Hittite religion (leaving traces of its cult at Nerik where women sang the "Song of the Bull" (Hutter

⁷⁰ Fensham (1988:90) following Cuq (1929:501) thinks the draconian penalty of HL§166 shows the land was consecrated to the gods (and so offends the gods). Or, following Hoffner (1997:213), the penalty may reflect an offense against the tutelary deities of the field, or seed, or boundaries, or crop growth. The law would thus regulate sancta trespass, but such explanations are speculative.

1997:77)). The sun god is styled "the shepherd of humanity,"⁷¹ and in the "Tale of the Cow and the Fisherman" mates with a cow.⁷² Even the horse is associated with several gods: Pirwa of Kaneah (Hutter 1997:101), Pirinkir, and an anonymous horse god.⁷³ However, neither dogs nor pigs are mentioned as avatars of Hittite gods. Indeed dogs were problematic for temple personnel charged to keep them away from the temple threshold and from food and utensils dedicated to the gods.⁷⁴

Similarly, textual references to ritual rhyta speak of vessels shaped like the head of a bull, cow, steer, aurox, ram, mountain sheep, wild sheep, horse, and (rarely) pig, but never a dog (Carruba 1967:89). Ox and sheep have different ritual functions from the pig and dog. Bulls (GU.MAH) are frequently offered to the storm god; cows and sheep are offered to the rest of the pantheon. Indeed sheep, as Collins notes, because of their relatively lesser cost, are the sacrificial animals of choice (1995:89).

On the other hand, pigs and dogs are not used as offering animals except to the chthonic deity, 'IMIN.IMIN.BI 'the

⁷¹ CTH 372: ABoT 44a ii 3'-4'; Beckman (1988:42-43).

⁷² CTH 363: KUB 24.7 ii 54; cf. note on watku-.

⁷³ IBoT 1.33 obv. i 10; Haas (1994:416).

⁷⁴ Instructions for Temple Officials (CTH 264): KUB 13.4 i 20-22; iii 60, 64-65.

Pleiades'.⁷⁵ Puppies and piglets, however, are most often used in "transfer rituals" to prevent or purify impurities:⁷⁶ puppies lick or touch the patienta; their excrement forms medicines; ritual performers wave puppies over their subjects; patienta spit in puppies' mouths. In "severing rituals" humans (or horses) pass through divided carcasses: puppy and piglet heads to one side; bodies to the other.⁷⁷ In several cases black puppies and piglets are specified. Tunnawiya waves a black puppy and piglet over the patient, recites a charm, and burns them;⁷⁸ Pupuwanni adds a black puppy to the list of

⁷⁵ Collins (1990:225). The Ritual of Dandanku (CTH 425.02: KUB 7.54 ii 20-22) cuts in pieces a kid goat, piglet, and puppy to appease the underworld. Cf. also infernal pig sacrifices in the Incantation of the Moon (CTH 730; KUB 17.28 i 4-5) and the Ritual for ⁴LAMMA kuršaš (CTH 433; KUB 36.83 i 3, 7) and comments by Schuler (1965:77) and Moyer (1969:96). Cp. with the dog sacrifice mentioned in a Mari letter (ARM 2.37), and the sacrifice of pig and dog, man and donkey foal, in Isa. 63:3 (Sasson 1976). The pig replaces the cereal offering; the dog replaces a lamb.

⁷⁶ Collins (1990:214, 225-26). In Zuwi's Ritual (CTH 412: KUB 35.148 iii 14-28) a puppy licks afflicted body parts clean of their illness. In Huwarlu's Ritual (CTH 398: KBo 4.2) a tallow puppy protects the king and queen from evil; a live puppy waved over the pair purifies them (Collins 1990:212). In the Luwian Ritual of the Cow (CTH 760.02) the celebrant ritually manipulates a pig to remove ailments from the body of a patient (KUB 9.4 iii 22).

⁷⁷ In the Ritual of an Army in Retreat (CTH 426), a man, buck of the goats, puppy, and piglet are slaughtered and laid in two ranks by a river. The troops pass between the rows before they wash themselves in the water (KUB 17.28 iv 45-48); cf. Bossert (1946:103); O. Masson (1950:5-6); Kümmel (1967:150-153); and Moyer (1969:95).

⁷⁸ Tunn. i 12, 60-61; iii 17-18; cf. Collina (1990:217). Tunnawiya'a Ritual (CTH 409) aerves for any uncleanness resulting from miscarriage, the death of children, or the dysfunction of asexual organs (i 1-6).

ritual supplies."⁷⁹ The very color black suggests an association with the chthonic. Masson speaks of the dog as the chthonian animal par excellence, noting both the Greek's consecration of dogs to Hecate (1950:22) and the Hittite's use of puppies to absorb impurity.

The "Instructions to Temple Officials" exhorts temple workers not to let a pig or a dog stay at the door when sacrificial loaves are broken; nor to let a pig or a dog open the door of the temple kitchen; nor to let them come near wooden and bitumen vessels. The kitchen worker must throw the latter away lest they inadvertently feed dung and urine to the gods.⁸⁰ When priests seek the source of the gods' displeasure by a MUŠEN HURRI oracle, they may find a dog has entered the temple, shaken the sacrificial loaves off a table, and eaten them.⁸¹ Thus, adult pigs and dogs are particular nuisances. Their inherent association with impurity and the chthonic set them apart from cattle and sheep.

Cattle and sheep vs. horses and donkeys. We know from Watkins' analysis of the folk taxonomy of wealth that the Hittites divided mobile (non-human) wealth, GUD UDU, into two categories: GUD or *Großvieh* 'large cattle', and UDU or

⁷⁹ CTH 408: IBoT 2.115, KUB 7.2.

⁸⁰ CTH 264; KUB 13.4 i 20; iii 60, 64-65. Cf. Sturtevant (1934:386-389) and ANET³ (207, 209) for editions; and Moyer (1969:113) for a discussion.

⁸¹ CTH 574; KUB 5.7 obv. 24, 34. Cf. ANET³:497; Moyer (1969:113); and Ünal (1993:123, n.6).

Kleinvieh 'small cattle'. Large cattle were further divided into {equines}: ANŠE and GUD (1979:285). UDU simply covers 'sheep and goats'.

In contrast to cattle and sheep, the horse plays no role in sacrifice, except in one ritual for the dead.⁶² However, just as humans can be ritually purified, so may horses. Chariot horses, like a defeated army, pass through ritually severed carcasses to cleanse themselves from pollutions (that have or will contribute to defeat).⁶³ One wonders if among the possible pollutions, such as ešhar 'blood', might also be found waštul 'sin'?⁶⁴ Just as men can be ritually cleansed

⁶² Haas (1994:417). For use in the ritual for the dead, cf. KUB 34.235 rev. 6'-8'. The burnt offering of a horse is a possibility, but depends in this fragmentary context on its adjacency to the offering of eight sheep and one cow (220). There is one Ištānuwian (i.e. Luwian) festival ritual that places the following on an offering list: horse stallion, foal mare, mule, mule mare, donkey foal, horse mare, cf. KUB 35.142 + Bo 6190. In the (H)iššuwa Festival Ritual of Kizzuwatna, a small tablet fragment reports an offering to a deified horse (KBo 22.245 1'-6'); cf. Haas (1994:856 with n.32).

⁶³ CTH 644: A= KBo 10.84; B= KUB 29.56. This ritual is similar to the Ritual of an Army in Retreat (CTH 426; KUB 17.28 iv 45-56); cf. Beal (1995:67, 74-75).

⁶⁴ In Iriya's Ritual (CTH 401.03) we read: ki inan ešhar NIŠ DINGIR^{LIN} pangauwaš EME-aš ḫurkil arḫa QATAMMA ḫarkdu, "Let this sickness, blood, oath, slander of the crowd, and sexual impropriety fully disappear" (KUB 30.34 iv 17-18, MH). This listing-trope is common for distresses (cf. CHD, s.v. lala-) and can include other elements: idalu papratar alwazatar ātayaratar DINGIR^{MS}-aš karpin NIŠ DINGIR^{LIN} pangauwaš EME-an manikuwandan MU-an, "evil, uncleanness, sorcery, sin, anger of the gods, perjury, slander of the crowd, short life" (KUB 7.53 iii 5-8) [NH], cf. CHD, s.v. papratar). These lists represent the field of possibility for things resolved by transfer or severing rituals. In Iriya's Ritual itself, a town undergoes purification because, presumably, trouble from one or more of these sources plagues it. The list purports to be exhaustive

from sexual *waštul* (see below), so might horsea (from relations with humans)? In contrast, sacrificial animals (bull, sheep) are ritually pure if they have not mounted nor been mounted.⁶⁵

To press the analogy between horse and human a little further, in one instance the term for fornication among humans, *šalik-*,⁶⁶ is used with respect to breeding horses, rather than *watku-* 'leap (upon)', *ark-* 'ball; mount, copulate', or *iškiša pai-* 'mount on the back'. The opposite is also true: *šalik-* is not found in contexts of cattle or swine breeding (see Table 6.1 above). These hints of connection between human and horse (rare as sacrifice, possibility of ritual cleansing, a shared verb for intercourse) contrast with the qualities of livestock (preferred for sacrifice, pure if not yet mated at sacrifice, a shared set of verbs for intercourse different from humans and horses).⁶⁷

Equines differ in another important respect from oxen and sheep. Horses and mules are the most valuable of all domestic animals (Moyer 1983:25, n.25; Hoffner 1997:7). This is clear

perhaps because the root cause is not actually known.

⁶⁵ 1 UDU *šuppištuwaran natta arkantan* "one pure sheep that has not been mounted" (KBo 2.12 v 9-10); 1 GUD.MAH *šuppiš[tuwaran] natta arkant[a]* "one pure bull that has not copulated" (KBo 2.12 ii 11-12), cf. HED 1:142, s.v. *ark-*.

⁶⁶ CTH 286: having fed the horses, their grooms muzzle them and leave: *n=u[š katt]a šalikiwanzi* "and they mate" (KUB 29.53 i 10). See above for further discussion.

⁶⁷ Lions and panthers may also share with humans a verb for intercourse, *katta(n) šešk-*.

from their sale prices" and the fines for stolen animals."⁹⁰ But such does not take into account the possible higher value of trained chariot horses over draft or riding horses" (also intimated by the higher penalty for killing a trained dog over a watch dog).⁹¹ Indeed, horses need much care and were often pampered in the ancient Near East, as suggested by their decoration (Borowski 1998:100; ANEP, Fig. 27).

To sum up, the three animal categories of the laws against bestiality are not ad hoc. GUD UDU or cattle and sheep, are favorites for sacrifice and ritual meals. Bulls are held accountable for sexually attacking humans. The category of "pig/dog" appears now as more than an accident of haplography in the laws. Piglets and puppies, favorites for ritual manipulations transferring impurities and sickness, have an association with the netherworld. Valuable horses, exempted from bestiality rules, may themselves be patients of purification rituals.

⁹⁰ For a mule, 40 shekels; a draft horse, 20 shekels; a horse, 15 shekels (HL\$180); but for a plow ox, 12 shekels; a bull, 10; a pregnant cow, eight; an adult cow, seven (HL\$178); and for a sheep, one shekel (HL\$179).

⁹¹ If one steals a mare, he must repay with two two-year olds, two yearlings, and two weanlings (HL \$68), approximately 56 shekels if purchased; for a stallion, the equivalent animals are worth 140 shekels (HL\$58); but for a plow ox, 52 shekels (HL\$63), a stolen cow, 32 (HL\$67); a ram, approximately 12.5 (HL\$59); a pig, six actual shekels (HL\$82); and for a ewe, five shekels worth of sheep (HL\$69).

⁹² My thanks to Prof. Gary Holland for this suggestion.

⁹³ A herdsman's dog, 20 shekels (HL\$87); a dog trainer's dog, 12 (HL\$88); a watch dog, one shekel (HL\$89).

"Tripartite ideology" and eleeeee of animals. If we consider the penalties exacted for bestiality noted in Table 6.6 above, we find that although bestiality with animals in the "horse/mule" class is natta ḥaratar 'not an offense', the law still uses the verb katta wašta- ' (aexually) transgress' and still proposes a penalty. As with "cattle and sheep" and "pigs and dogs," the perpetrator could not appear in the preaence of the king. Something about the relations retains a risk of contagion, or at least, disapproval. Moreover, the perpetrator is barred from entering the priestly class. This problematizing of behavior that is "not an offenae" is precisely what invites note.

Thus we ask: did the association of chariot horses with the warrior class lead to their special status? Was their specific exemption from the law a concession to the military? On the one hand, the isolation of the military during a campaign from suitable sexual partners creates the opportunity for animal sexual abuse;²² and on the other hand, the investment in chariot horses and pack animals makes them too valuable to execute.

Here is a moment to invoke Dumézil's notion of the Indo-European "tripartite ideology."²³ Dumézil's basic idea was that IE-speaking regions shared a "common set of myths

²² So Moyer (1983:26, n.25).

²³ Cf. Dumézil (1954; 1958); summary in Littleton (1982:4-19).

functionally interrelated to a common set of social institutions [and] a common ideology" (Littleton 1982:3). IE societies (at their earliest period) organized for the commonweal into three hierarchically ordered social classes -- priests, warriors, and producers (Dumézil 1958:18). These three classes assured the prosperity of all by pursuing three fundamental activities or "functions": "souveraineté magique et juridique," "force physique," and "fécondité et prospérité" (Dumézil 1954:73-74). Together these social classes and their functions constitute an "ideology" underlying all kinds of IE beliefs, practices, and institutions including notions of sex, marriage, and kinship. The first function involves two class strata: the "moitié Mitra" or sacerdotal class; and the "moitié Varuna" or the governing class (74). The second function involves the warrior stratum; the third, the breeder-cultivator class and its representatives. The three classes also correspond to a trifunctional religious ideology: sovereign gods, martial gods, and gods of fecundity and prosperity. While the "structure" is recognizable across cultures, the morphology of gods and practices is diverse.³⁴

Dumézil postulates that (1) before proto-IE society broke

³⁴ E. Masson suggests that in Hatti-land the sun god of heaven (sovereign over justice) and the goddess of the earth (mistress of magic) represent the first function; the storm god, the second function; and the tutelary deities ³⁴KAL/³⁴LAMMA represent the third function in the divine world. Among the latter are the goddesses of virility, verdure, and the animal world (1991:241-244). However, Masson is too sanguine. Hittite religious syncretism ultimately blurs the contours of inherited IE religious forms.

up it was characterized by this tripartite ideology, (2) elements of which survived among its inheritors. These trace elements (3) can be discovered in IE myth and epic, to which Watkins would add law.⁹⁵ Finally, this ideology is uniquely IE⁹⁶ -- it is not paralleled in other ancient Near Eastern cultures. His postulates reflect an intellectual indebtedness to structuralism, Durkheimian sociology, and the methods of historical linguistics (Littleton 1982:227-28).

In this light, the class structure of the penalty for bestiality with horses and mules comes into focus. Men most likely to engage in relations with horses and mules, those of the military class, are barred from personal contact with the juridical sovereign (the king) or from becoming a priest. They are denied class mobility.

Pigs are also associated with a class, the quintessential class of outsiders for the Hittites, the Kaškeans. The Hymn and Prayer of Muršili II stigmatizes the Kaškeans as

⁹⁵ Haudry (1985:90) and Watkins argue for the existence of an unwritten proto-IE *Ur-Recht* "carried in traditional formulae and articulated according to fixed schemas, principally that of the [Dumézilian] three functions" (Watkins 1994a:719).

⁹⁶ Dumézil asserts that this ideology is not found in Finno-Ugric, Siberian, Chinese, biblical, or Mesopotamian cultures (1958:16) but is reflected in Rome and Vedic India. He does not attempt to identify the ideology in Hittite culture, believing they had lost most of their IE heritage prior to their written history (1958:91). However, Palmer (1955), E. Masson (1991), and Watkins (1994a; 1994b) have made a case for Hatti-land. Polomé criticizes the use of Dumézil's theory in Hittite studies: The royal archives of Hattuša reflect the ideas of the ruling class and reveal little of the lower strata (1992:374).

"swineherds."⁹⁷ Indeed the Treaty of Hattušili III with Tiliura forbids farmers and stockbreeders to speak to alien Kaškaen slaves or to let them into the city. The treaty partner must seize and punish violators for their *waštul*.⁹⁸

Purification rituals. We have already noted at least one mechanism for purifying the horse. Likewise there were rituals for purifying the human perpetrator and other mechanisms to ameliorate punishment. The king could commute a death penalty (§§187-88, 199) for freemen. Likewise the freeman, attacked by a sexually excited ox or sheep, could avoid death by offering a sheep to kill in his stead. If a male or female slave committed a sex crime, they too avoided execution: a town might banish them to separate communities or offer a scapegoat, that is a *scapesheep*, in their place.⁹⁹ It is this same substitution that comes to the fore as we move from the Old Kingdom period (source of the laws) to the Empire period (source of rituals for expiation).

The New Hittite ritual CTH 456.05 expiates the pollution

⁹⁷ CTH 376, KUB 24.3 ii 39; cf. Gurney (1940:101).

⁹⁸ CTH 89, KUB 21.29 iii 43, 48.

⁹⁹ One might argue that the mention of both genders here suggests that *ḫurkel iya-* refers to the *ḫurkel* of incest alone. However, standing as it does among laws against both same-sex and heterosexual incest and bestiality termed *ḫurkel*, it seems reasonable to view this law as summarizing their application to slaves.

of bestiality, at least for sheep and goats¹⁰⁰:

[mān LŪ-a]š UDU-i našma UZ₆-i GAM waštai
[nu UDU' danzi]
n=an=kan 'É.GI₆.A-aš iwar anda ka[rianzi]
(KUB 41.11 2')

When a man sins with a sheep or a nanny-goat
they take a sheep(?)
and decorate it as a bride

Of interest here is the absence of the word *ḫurkel* and the use of the verb *katta wašta-* as in HL §199. But unlike §199, where the behavior with the horse was *natta ḫaratar*, the pair *waštul* and *ḫaratar* here characterize the act (see below and Table 6.6).

The ritual actor strikes one sheep and a *HURRI*-bird of 'sin', or *waštul*, on a rock, on the cornerstone of a building, at a park, at a place of "witness." This pair (or others like them) is styled "sheep (and) bird of wrath," "of peace," "of cursing," and of "weeping." The two are dispatched as "scapegoats," [1 UD]U 1 MUŠEN nakuššan tarnanzi. The decorated sheep carries away a "dowry":

nu UDU arḫa tarn[an]zi
[oooooo] kišan memanzi káša-war-aš apāš
[kuiš ooo-3sg. w]aštaš-wa kuiš ḫaratar-wa kuiš DŪ-
at [ooooo n]'an=kan kaša iwaruwaz IŠTU KŪ.BABBAR
GUŠKIN [NAGGA URUDU ḫumand]az aššanun
NUMUN¹⁰¹-wa=šši anniyanun (KUB 41.11 rev. 20'-24')

They dispatch the sheep. [...] Thus they say: "See!
Each one who has [verbed] (or) sinned (or) done an
offense [...] See! I have set him aright¹⁰¹ by

¹⁰⁰ KUB 41.11. Note that nanny-goat is distinguished from UDU here. UDU may also represent both sheep and goats in the notion 'flock' as per Watkins (1979).

¹⁰¹ Cf. HED 1:194.

means of¹⁰² the [whole] dowry, i.e. silver, gold,
[tin, and copper --] and I have produced
offspring¹⁰³ for him."

We picture the sheep decorated with these valuables carrying
it away to some hapless finder.

nu=za kuiš kaš UDU-un KAR-zi
[ooooo] ḥaratar wāštul apāš dau EN.SISKUR=m[a o]
[kēdaz waštul]az parkuiš ēšdu (KUB 41.11 26'-28')

And whoever finds this sheep ...
let that one take the offense and sin.
Bu[t] the subject of the ritual
let him be free of impurity from [this sin]!

The "dowry" becomes a trap. The one who seizes the "straying"
sheep also receives the impurity.

In the Old Hittite, Ritual of Zuwi¹⁰⁴, ḥurkilas pešneš
or "men of ḥurkel" are exorcised:

nu=kan antuḥšaš ZI=ŠU¹⁰⁵ ḥalziḥḥi n-at-še-pa anda
pa[(ir n=an ep)pir]

¹⁰² Ablativus instrumenti, HE² §217.

¹⁰³ Lit. "I have sown seed" (cf. HED 1:66-69), but here
metaphoric 'offspring'. The words spoken by the men, as
Stefanini suggests, are put in the mouth of the ovine bride.
That is, the men speak the lines the ewe would speak if she
could talk.

¹⁰⁴ CTH 412.03: A= KUB 12.63 + KUB 36.70.

¹⁰⁵ ZI = Hitt. ištanza(n)- 'breath, soul, spirit, mind,
will, self, etc.' cf. HED 2:468-471. Otten notes that ZI can
represent (1) the individual faculty, sensibility, or mind of
a person; (2) the soul of a god; (3) human personality; (4) a
living substance like a person's heart; (5) a metonym for
one's life; (6) its own "humoral" substance, i.e., like water;
(7) feelings such as sexual desire; (8) the soul of a ghost
(GIDIM ZI-an); (9) a protecting deity associated with a human;
or, (10) reflects the underlying Akkad. NAPIŠTU 'personal'
(1958:122-124).

udaš paimi É ¹⁰⁶IM-ni¹⁰⁶ temi kuidani epten ...
(KUB 12.63 obv. 18-19 + KUB 36.70 7'-8')

I name the apirit of the man. They have entered him and poaaea[*sed*] him. I go to each. I speak to the Storm God. "Take hold (of it [=the spirit]) from whichever one! ..."

The Temple then charges the "men of *hurkel*" with a task and they agree:

UMMA É ¹⁰⁶IM ANA LÚ¹⁰⁶ hurkilaš
temi-wa=šmaš k[*uin* INIM-an iy(at)ten']
kūnn=a peḥḥi nu-war-an=za-an¹⁰⁷ peḥuttani
UMMA LÚ¹⁰⁶ hu[rkilaš]
teit-war-at-naš iyaweni-war-at
(KUB 12.63 obv. 22-24 + KUB 36.70 11')

Thus (speaks) the Storm God to the men of *hurkel*:
"The word that I say to you, do it; and this (is what) I give (out to be done); you yourselves must bring it to pass." The men of *hurkel* (speak) thus:
"Say it to us and we shall do it."

The oracle propoases an ordeal:

talugawuš-wa KASKAL¹⁰⁸ maniku[wandaḥten
manikuwanduš] taluganutten
HUR.SAG¹⁰⁸ pargawuš manikuwandaḥten
manikuwanduša' pa[rganutten]

UR.BA.RA kiššarta epten
UR.MAH ganut epten
īD-an p[atet¹⁰⁹ epten']¹⁰⁹
MUŠ-an zuwalwalatten
n=an LUGAL-wa=aš aška peḥutetten
nu DI'-[eššar ḥannai]¹¹⁰
(KUB 12.63 obv. 24-27)

¹⁰⁶ The theonym, "Temple of the Storm God," is a metonym for the Storm God Tessup.

¹⁰⁷ Pleonastic repetition of the enclitic pronoun.

¹⁰⁸ pata- is consistent with the body imagery; pa- is consistent with the traces.

¹⁰⁹ Or, *ḥarkten* 'stop'?

¹¹⁰ See KUB 12.63 obv. 33'.

"Sho[rten] the long roads,
lengthen the short!
Lower the high mountaina,
elevate the low!

Catch a wolf by the hand!
Catch a lion by the knee!
[Catch?] a river [with] the f[oot?]
Uee the zuwalwal-tool on a snake
and bring him to the King's Gate"
and [he will render] a ver[dict?]

If the spirits do this they can remain, presumably, with their human prey. But the "men of *ḫurkel*" are not heroes and return in failure: *UL=za šuwaweni*, "We're not up to it!" (l. 29'). Whereupon, in epic style, they repeat all the details of what was not achieved. The spirits do not succeed in capturing wild animals, and the priest has tricked them into leaving their human hosts.¹¹¹

For humans the law ameliorates the harsh penalty for bestiality.¹¹² But why, and first among all extant legal corpora, do the Hittite Laws criminalize bestiality? If we have found that bestiality was sufficiently fraught in Hittite thought to manifest a grid of responses, why was it a problem in the first place?

We must eliminate as an explanation the notion that violating the animals in question was the same as violating an

¹¹¹ Puhvel argues that the Hittites strangled the wild beasts as substitutes for the embodied men (HED 3:402; Puhvel 1986:154-55). He does not read the "men of *ḫurkel*" as possessing spirits coming from men once executed for their crimes.

¹¹² Cf. Korošec (1963); Hoffner (1973:85); Archi (1979:37).

avatar of the deity.¹¹³ First, some of the Hittite gods were associated with wild animals: eagle, lion, hare, and stag.¹¹⁴ No law regulates sexual relations with these. Second, among domesticated animals associated with the divine, the taboo is distributed unevenly. Bestiality with the bull¹¹⁵ or Inana's

¹¹³ Contra Neufeld (1951:188).

¹¹⁴ Lebrun (1984:95); Loon (1985:30-31): The mountain god Iskisa holds an eagle and a lion in his left hand. The patron gods of nature stand on a stag and hold a lion and a hare in their left hands. The plague god and various war gods stand on lions. The deity standing on its attributive animal is probably a motif borrowed from Mesopotamian iconography (Alexander 1993:2). Collon argues that animals associated with a divinity symbolize some characteristic of the god's nature or represent the god's country or the country of defeated enemies (1984:83).

¹¹⁵ In general, the bull cult in Anatolia fades away during the 3rd mill. BCE (Hutter 1997:77; Haas 1994:315ff). However, there remain some 2nd mill. traces. On a seal impression from Karum Kanesh, Level II (ca. 1900-1820 BCE), storm gods "mount and stand over bulls, their animal attributes, who are restrained by leashes leading to rings in their noses" (Alexander 1993:2-3). In the Old Hittite period (1700-1400 BCE) rhyta for the storm-god appear bull-shaped (Bitik vase, ca. 1600 BCE; Loon 1985:12; Figure 6.4 below), or the bull appears as a cult image (İnandık Vase, ca. 1600 BCE, cf. Fig. 6.5 below). Indeed, the storm god alone has an animal cult image (Loon 1985:30-31). In the Empire period (1400-1185 BCE), the king and queen worship the bull, as at Alaca Höyük (Loon 1985:13, 41 Pl. XVd; ca. 1300 BCE), or the bull is adjunct to the god. In Yaz. 42, a rampant calf stands behind the storm-god -- the divine calf Šarruma, son of Tešup and Hepat (Alexander 1993:1, 8; Laroche 1969:62, 67). At Imamkulu, a relief carved on a large boulder marking the highway to the imperial capital, the god rides a bull-drawn chariot, the prince standing by (Alexander 1993:6, Fig. 2). The bull appears on the seal of King Muwattali (Güterbock 1942:50-51, ca. 1300 BCE). By the neo-Hittite period, the seal of Kuzi-Tešup at Carchemish replaces the bull of the royal seals with small running animals (13).

sheep¹¹⁶ results in death -- but not with Pirwa's horse.¹¹⁷

Further, we must eliminate a hygienic notion: that bestiality was criminalized for animal food sources. Game and fowl remain uncovered by the rulee, and the pig-dog category contains meat sources both to eat and not. The quality they do share is human utility. While the ox, sheep, goat, and pig are good for meat and hides and the ox for plowing, the dog is useful for hunting, shepherding, and guarding.¹¹⁸

Their common utility reflects the history of domestication. The Anatolian-Mesopotamian domestication model proposes five species for first domestication: the auroch, Asiatic mouflon, bezoar goat, wild swine, and wolf. Early types of domestic animals arriving in Europe from Anatolia include the turbarry and copper sheep, the twisted-horn prisca goat, the primigenius and brachyceros cattle, the turbarry pig, and the dog (Bökönyi 1993:5). Here are our five kinds of animals with whom sexual relations are prohibited. As the

¹¹⁶ Cf. Collon (1975:83) for the association of Inana with sheep and lion. Both "mother" goddesses and sun goddesses have sheep as pedestals (Loon 1985:30-31). On a relief slab at Alaca Höyük we find a priest leading a ram and goats (Loon 1985:41, Pl. XVc; ca. 1300 BCE).

¹¹⁷ The horse goddess, Pirwa, is depicted on a horse (Loon 1985:31).

¹¹⁸ Cf. HL §§ 87-89; Collins (1990:211). However, the view of temple personnel was different: dogs and swine were a nuisance to them (Instructions for Temple Officials, CTH 264: KUB 13.4 i 20-22); as was the king's view: temple workers must keep dogs and swine away from the kitchen's threshold and utensils (Instructions to Temple Officials, CTH 264; KUB 13.4 iii 60, 64-67; Moyer 1969:113; Ünal 1993:123).

earliest domesticates, they are at once the group most vulnerable to sexual advances because they are the most available and the most controlled.

Neither can we defer to some notion of "metaphysical horror" to explain the bestiality prohibition. The destruction of the violated and violating animals is unevenly applied. Even if we postulate an ancient taboo carried forward from the days of domestication, we are still left with a problem: Why was it not sufficient to leave such a longstanding customary prohibition unexpressed (Daube 1973)? Considering with Kinsey the large number of rural folk who have sexual relations with animals,¹¹⁹ what is at stake?

ii. Incest

After the Holiness Code, the Hittite Laws¹²⁰ offer the most complete set of documented incest prohibitions in the ancient world.¹²¹ HL §189 lays out the cases for the nuclear

¹¹⁹ Kinsey et al. (1948) found about 1:14 (or 8%) of the male population had had animal sexual contact in the U.S. (670). However, when he focused on the segment of population that had access to animals, i.e. males raised on farms, 17% had orgasms with animals after onset of adolescence (671). In some Western areas of the U.S. confirmed incidence figures ran as high as 65% (671). Women's contacts were much lower, only 1.2% having a specific sexual contact as opposed to a fantasy (Kinsey et al. 1953:505).

¹²⁰ Haase (1977) offers a helpful discussion of our pericope.

¹²¹ Other Bronze Age law, the Code of Hammurabi [CH] §§ 154-58, forbids father-daughter, father-daughter-in-law, son-mother, son--foster-mother incest. CH prescribes the death penalty (§§155, 157) for some violations and banishment from

family:

[takku LÚ-iš] api[el=pat] annaš=<š>aš katta waštai,
hurkil.
takku [LÚ-iš] DUMU.MUNUS-aš katta waštai, hurkil.
takku LÚ-[iš] DUMU.NITA-aš katta waštai, hurkil.¹²²

If a man violates his own mother,
it's a sexual crime.
If a man violates a daughter, it's a sexual crime.
If a man violates a son, it's a sexual crime.

and like the Code of Hammurabi [CH], bans son-mother (CH§157)
and father-daughter (CH §154) relations (as in Figure 6.1a).

One cannot draw a strict line of dependency here between

home and city (§§154, 158) for others. Hayaša, a pre-Indo-European Caucasian tribal area, apparently permitted marriage to full sisters, paternal half-sisters, female cousins, and sisters-in-law through the wife (Huqq. §§29-30).

In post-Iron Age Indo-European law (attested in the Classical, Hellenistic, and Roman periods): Athens permitted marriage with paternal half-sisters but forbade it with maternal (Solon cited by Philo in *De Spec. Leg.* iii:22; cf. Fragment 47 in Ruschenbusch (1966:85-86); Gagarin (1986:67)). Plato condemns son-mother relations (Rep. 571c-d) and brother-brother, brother-sister, father-son, and father-daughter relations as νόμος ἄγραφος 'unwritten law' (Laws VIII, 838a-b). Sparta permitted marriage with maternal half-sisters but forbade it with paternal (Solon cited by Philo in *De Spec. Leg.* iii:22), brother-brother, and parents with children (Xenophon *Resp. Lac.* II:13; *Memorabilia* IV, 4, 21-23 citing Socrates. Cf. Ruschenbusch 1966; Foucault, *HoS* 2:59). To these we can add a third cent. C.E. Greek source, Artemidorus in his *Interpretation of Dreams*, who counts father-daughter, father-son, and brother-sister incest as *para nomon* 'contrary to law'. He can't quite decide if brother-brother incest is "contrary" or *kata nomon* 'according to law' (II, 78-79). We might also mention Paul's horror of stepmother incest in 1Cor. 5:1.

Iron Age Biblical law. Other than H: The Deuteronomic Code (Deut. 23:1 Heb. [22:30 Eng.]) forbids stepmother incest; the Deuteronomic Cursing Liturgy (Deut. 27:20, 22-23) imprecates incest with stepmother, paternal and maternal sister, and mother-in-law. Qumran traditions extend the incest ban to niece marriage (4Q251 frag. 12 l. 3; 11Q19-20 col. 66 17; Damascus Document A 5:7-11).

¹²² KBo 6.26 iii 26-28.

HL and Hammurabi. CH banishes the freeman if he takes his daughter; it burns the son and mother if the son takes her after his father's death. Instead, HL proffers different penalties: death for a freeman's *hurkel* in both cases, or commutation by the king (HL§§187-88), or banishment for slaves and a substitutionary sacrifice (HL§196). Not only are there differences in penalties but also slippage between categories. CH stretches the category "daughter" to include the betrothed and espoused daughters-in-law (CH§155-56), and expands the category "mother" to include the stepmother (CH§158). But it takes no notice of father-son incest, a category unique to HL in the Bronze Age. Finally, there are differences in ordering the prohibitions. CH begins with the daughter; HL begins with the mother. There is little here to suggest the legist of HL had CH in view, unless we take the inversion of the order of cases as a quotative trope.

When the CH raises the issue of the decease of the father in the case of the son sleeping with his mother, it hints that at one time this practice may have been permitted or tolerated. Again in the case of the stepmother after the father has died, CH adds the condition "if she had borne children" before it prescribes a penalty (banning the perpetrator from the parental home). The residual case -- the father is dead and the stepmother has not borne children -- leaves open the possibility that her stepson may take her. The life status of the male relative hovers as a legal topos in

the background of CH.

The Hittite Laws forthrightly embrace this topos. HL §190b-c treats the case of the stepmother as follows:

takku LÚ-aš 'annawannaš=š<aš> katta waštai,
UL ḫaratar
takku addaš=šiš=a TI-anza, ḫurkil
(KBo 6.26 iii 30-31)

If a man sexually sins with his stepmother, (it is) not an offense. But if his father is living, (it's) a sexual crime.

Under any conditions the son may take his stepmother after his father's death, not just if she's childless.¹²³ What is more important, the life status of a male relative is one of the conditions determining ḫurkil (Figure 6.1b).

"Life status" does not just apply to the male relatives, but to all familial relations. HL§190a enunciates this principle:

takku=šan GIDIM-it¹²⁴ tiezi
LÚ=MA MUNUS^{rw}, UL ḫaratar
(KBo 6.26 iii 29)

If one, whether man or woman, has sex with a

¹²³ This is the residual case to HL§194c, that is, the father and son sleeping with the same free woman.

¹²⁴ akkantit in KUB 29.34 iv 11 (text y₁), Hoffner (1997:150). The participle akkant- 'dead person; soul of a dead person, ghost' underlies GIDIM as demonstrated by the duplicate (cf. HED 1:19). It does not conceal tarpī 'demon' (cf. HEG T:214-17 for the term). As Otten points out (1958:74-75, 143-144), GIDIM/akkant- can also mean 'Totengeist' as it does in the Totenritual (KUB 30.23 ii 13) and elsewhere (KUB 16.32 ii 24; 16.16 obv. 23ff; Tunn. ii 31-33 in a list of gods, ghosts, and men). Just so here.

deceased person, (it's) not an offence
(HLS190a).¹²⁵

A hyperliteral reading of GIDIM might suggest the law permits necrophilia, but this stretches credulity.¹²⁶ The possibility of ghost marriage is engaging, but unfortunately we do not have the fuller expression GIDIM ZI here.¹²⁷ Dreaming commends itself as the most likely context for this law, though we have little evidence. A Greek writer, Artemidorus (3rd cent. CE), writes of dreams about sexual relations with the dead: mother, sister, wife, mistress, or some other (Oneirocritica 1.80). He gives a lengthy interpretation of such with the mother (1.79). In one Mesopotamian text we have incestuous dreams involving a (living) mother or sister (K.2315+; Oppenheim 1956:227-28). Unfortunately there are few extant and relevant Hittite dreams. In the "Dreams of the

¹²⁵ Hoffner renders: "If he has sex with a deceased person--be it man or woman--it is not an offence," reading the appositive phrase as modifying the object rather than the subject (1997:150).

¹²⁶ Hittites often buried their dead in pithoi doubling up the body or contracting the knees (Mellink 1956:45). While this is not the only method, they also used cist- and inhumation-graves, there is an absence of family-graves or ossuaries (47). These practices would seem to defeat, if not prevent, necrophilia.

¹²⁷ As per Neufeld (1951:189-90) who relies on comparative anthropological evidence. But, *akkantaš* ZI for GIDIM ZI 'the soul of the dead' (HED 1:19), or ZI alone for 'spirit' as in the Ritual of Zuwi (CTH 412.03; KUB 12.63 obv. 18), is not here.

As to whether one might see the ghost of a dead relative, one ritual for the dead depicts a deceased mother approaching a man and taking his hand (KUB 30.28 rev. 11-12; cf. Otten 1958:96-97; Hutter 1997:85).

King"¹²⁸ and the "Dreams of the Queen"¹²⁹ the dead appear, though not in a sexual context. In a rare sexual episode, the queen dreams that strong men rape or molest her in the tarnu-house of ritual ablutions (CTH 584.01; KUB 15.1 ii 6-10; Oppenheim 227). Unlike Artemidorus we have no dreams of sex with deceased relatives.

On a second level, this law acts as an incipit, introducing the principle of {±life (±*huišwatar*)} underlying the restrictions and permissions that follow.¹³⁰ In life, free women who are like mothers, daughters, and sisters married to fathers, sons, and brothers are forbidden. Death makes the forbidden permissible. Ego can approach his deceased relatives and their widows.

That HL has a different set of issues from Hammurabi can be further seen in how it handles the category 'daughter'. There is no explicit incest rule for daughter-in-law in HL. The father can take the son's unmarried sexual partner if she is a slave or prostitute (HL§194c), or as levir he can take his daughter-in-law after the son's death (HL§193). Implicitly, he cannot take his daughter-in-law while his son is alive. This residual category is understood, not explicitly

¹²⁸ CTH 583; KUB 15.5 iv 34-35 [NH]; Oppenheim (1956:193).

¹²⁹ CTH 584.05; KUB 31.77 [NH]; Oppenheim (1956:204).

¹³⁰ *huišwatar*=*ma=pa* anda *ḫingani ḫaminkan ḫingan=a=ma=pa* anda *ḫuišwanti=ia ḫaminkan* "Life [is] tied to death, and death [is] tied to life" or perhaps, "betrothed to life" (KUB 33.10 obv. 10), cf. HED 3:339.

borrowed from CH.

CH, on the other hand, does not invoke the life status of the son. Rather it seeks to establish whether the son had had intercourse with his betrothed or not. If the son has had relations, then the father is bound and thrown into the river (CH§155); if not, the father must restore the betrothed's dowry (CH§156). Thus CH§155 presumably forecloses the possibility of levirate marriage with the daughter-in-law.¹³¹

A second principle comes to the fore when HL addresses casual relations with a woman from a lower social class had by both father and son:

takku GÉME-aš našma 'KAR.KID-aš katta attaš Ū
DUMU-ŠU šeškanzi, UL ḫaratar (KBo 6.26 iii 47-48)

If father and son sleep with the same female slave
or prostitute, (it is) not an offense (HL§194c).

Likewise, the law permits daughters of slave partners to Ego (HL§194a), but forecloses stepdaughters of free women (HL§195b). This illustrates that the *topos* of socioeconomic class, whether free or slave or half-free, also determines *ḫurkel*. Relations of a certain degree, an offense between free, are not offensive between free and slave.

In the case of a mother-in-law or partner's mother:

takku DUMU.MUNUS-ŠĀ ḫarzi
ta anni-ŠĀi našma NIN-i-ŠĀi šaliga, ḫurkel
(KBo 6.26 iii 52-53)

If he has her daughter and approaches her mother or
her sister sexually, (it's) *ḫurkel* (HL§195c).

¹³¹ Mendelsohn (1948:30), following Koschaker (1933), limits the levirate to the betrothed widow only.

But,

takku LÚ ELLUM GEME¹³²-uš annanekuš annaš-šman-a
wenzi, UL ḫaratar (KBo 6.26 iii 44-45)
If a free man fornicate¹³² with co-uterine slave
sisters and also with their mother, (it's) not an
offense (HLS194a).

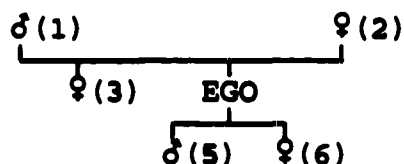
Thus HL limits restrictions on intercourse with distaff
relations by class (Figure 6.1c).

While both CH and HL problematize and expand their
categories of "mother" and "daughter" for purposes of incest
regulation, they do so using two different sets of principles
and end with different results. For CH, the living status of
the male relative is no longer (if ever it was) a mitigation.
Rather at issue is consummation (son with daughter-in-law) and
conception (son with stepmother or foster mother). For HL the
living status of the male relative is the point; and to this
it adds the socioeconomic status of the woman. If the
rationale for Hammurabi is not to confuse the bloodlines of
the heir, for HL it seems transparent: an heir must be
produced for the family of the same social class; alliances
with the non-free do not count.

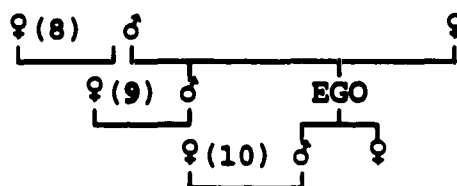
If both CH and HL ask implicit questions -- Who is my
mother? or who is my daughter? -- Hittite law and treaty ask
a new question, who is my sister? Not explicitly named in the
laws and called a "custom" in the Treaty of Šuppiluliuma with

¹³² But Puhvel translates 'rapes' (HED 1:55, 58 s.v.
anna-, annaneka-); but see note on wen- above.

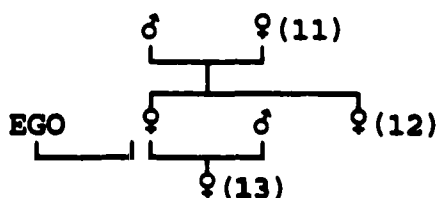
Figure 6.1
Incestuous Relations in Hittite Laws and Myth
a. Forbidden Core Relations: HL§189 & Zalpa



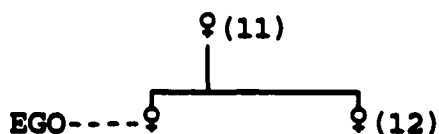
b. Limited Restrictions in HL§§190b-e, 193, 195a
 {± male relative alive}



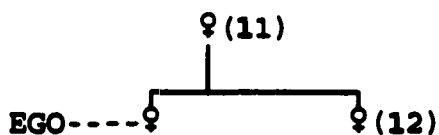
c. Restrictions on Distaff Relations: HL§192, 195c
 [{+DAM-atar, +Free}, Šalik- with relatives]



d. Restrictions on Distaff Relations in HL§191b
 [{-DAM-atar, +Free, +Same Location},
 wen- with relatives]



e. Unrestricted Distaff Relations
in HL§§191a, 194a, 200AM
 {-DAM-atar, -Free, ±Same Location}
 {-DAM-atar, +Free, -Same Location}



KEY:

Sibling link - 
Husband-wife link -  = -sa DAM dā-
EGO-lover link - --- = wen- or šeš(k)-
Parent-child link - ⊥ or γ

- (1) atta- 'father'
- (2) anna- 'mother'
- (3) nega-; NIN 'sister'
- (4) negna-; ŠEŠ 'brother'
- (5) DUMU.NITA 'son'
- (6) DUMU.MUNUS 'daughter'
- (8) annawanna- 'stepmother'
- (9) DAM ŠEŠ 'brother's wife'
- (10) daughter-in-law
- (11) mother-in-law or partner's mother
- (12) annaneka- 'co-uterine sister'
- (13) stepdaughter

Huqqana of Hayaša (CTH 42), we have to look to the Zalpa-myth (CTH 3.1) for an OH reprehension of sister-incest:

[n=]uš=za neku=šmuš¹³³ dsškewen[i]
We're taking them, our sisters! (KBo 22.2 obv. 19)

exclaims the youngest brother in a horror of *anagnorisis*.

What might be offered as legitimated, brother-sister incest from the Middle Hittite period, the marriage of Arnuwanda and Ašmunikal¹³⁴ can be resolved with reference to the marriage of Tuttulla's daughter Zizzatta and Zidi, described in the Akkadian Inandik tablet dated to the Old

¹³³ ni-e-ku-šum-mu-uš 'our sisters' where -amuš is a bi-form of -šmi-; cf. Otten (1973:74, 76).

¹³⁴ Otten (1971:231) on a Bogazköy seal (No. 60; KBo 5.7) naming Arnuwanda and Ašmunikal as both children of Tutḫaliya; Güterbock (1940:31-32, 68; Tafel IV, No. 60); Beckman (1986a: 23); cf. Bryce (1998:139) and Klengel (1999:121, n.165) for the received explanation.

Kingdom period.¹³⁵ Tuttulla adopts Zidi as his son,¹³⁶ as must Tutḥaliya, the father of Aḥmunikal, his son-in-law Arnuwanda.

The best evidence within the laws for a sister-incest prohibition, or a movement during the HL's redactional phases toward a prohibition, is the prohibition of "sister-like" incest: the brother's wife,

takku LÚ-aš MAḤAR DAM ŠEŠ-ŠU šeškizzi
ŠEŠ-ŠU=ma ḥuišwanza, ḥurkil
(KBo 6.26 iii 49-50)

If a man sleepa with his brother's wife,
his brother yet alive, ḥurkil (HLS195a).

and the wife's sister,

takku DUMU.MUNUS=ŠĀ ḥarzi
ta anni=šši našma NIN-i=šši šaliga, ḥurkel
(KBo 6.26 iii 52-53)

If he has the daughter (in marriage) and approaches
her mother or sister sexually, ḥurkel (HLS195c).

The sister-in-law, i.e. a brother's wife, like stepmother and daughter-in-law are forbidden while the male relative is alive (HLS195a), but permitted to the levir when the brother is dead (HLS193) as in Figure 6.1b. Neither are relations with two sisters forbidden if they are non-free (HLS§194a, 200Aβ;

¹³⁵ Balkan (1973:42-44) for transliteration and translation; text (86-87); dating (70-72).

¹³⁶ Beal (1983:115-119); Beckman (1986a:17). The adoption, Beal proposes, is in tandem with an antiyant-marriage where the prospective father-in-law to Ego pays a "groom"-price. The son-in-law comes to live in the father-in-law's house -- it is a kind of uxori-local marriage (HLS36; Balkan 1948). Presumably, the father-in-law has no sons and so adopts a male heir.

Figure 6.1e).

HL offers a new distinction in the matter of co-uterine sisters:

takku LÚ ELLUM arauwanniūš annanekuš
anna(n)=šmann=a wenzi
kāš takia utnē kāš=a takia utnēya, UL ḫaratar
takku 2-el pedi, nu šakki, ḫurkil
(KBo 6.26 iii 32-35)

If a free man fornicates with co-uterine free sisters and their mother, one in one country, the other in another country, (it's) not an offense. If in the place of the two (women), he knows!¹³⁷ It's a sexual crime (HL§191).

Apart from the matter that this is a crime of intention and not ignorance, the HLs introduce the principle of location: relations with two free sisters are verboten if they live in the same place. This holds whether they are full-sisters, half-sisters, sisters-in-law by marriage (HL§192), or casual sexual partners (HL§195c; see Figure 6.1d). But presumably, it does not hold for all these classes when they are geographically dispersed (HL§191a). Again, for slave or half-free sisters, the rule of location does not hold, since they are permitted under all conditions (HL§§194a, 200Aβ; see Figure 6.1e).

By the time of the Huqq. treaty (ca. 1344 B.C.E.), all of

¹³⁷ Whether in the same house, neighborhood, or village, it was impossible not to know that the women were related. Sophie Lafont agrees with this point: "La *scientia* est rendue plus vraisemblable par le fait que les femmes vivent dans la même region. L'ignorance et la bonne foi, plausible dans le premier casus, sont écartées dans le second" (1999:233). Thus, the man must know. He is culpable. A free woman related to the first opens the door for the liaison, and so she is also culpable. See note on *šak(k)* - above.

these nuances collapse into a hard and fast "law"¹³⁸ for the treaty partner with a stiffened penalty -- death in all cases.

namma=ta ^{UTU} <ku>in kun NIN=IA ANA DAM-ut[ti=K]A
 ADDIN
 nu=ši NIN^{me}=ŠU ŠA MÁŠ=ŠU ŠA NUMUN=ŠU mekkaeš ašanzi
 [nu ap]āt=at apiya zik=šmaš=za NIN[(=ZU ku)]it
 ḫarši
 ANA KUR ^{URU}Hatti=ma-kan šaklaiš duq[(qa)]ri
 ŠEŠ=[ŠU] NIN=ZU 'ānninniyamin UL [(dāi)]
 UL=at āra kuiš=ma=at iezi apeniš[šuw]an uttar
 n=aš ^{URU}Hattuši UL huiššuiizzi aki=pa [nu=š]an
 šumeinzan KUR-e dampupi kuit anda=at
 za[luganu]anš'a<ri>
 ŠEŠ=ŠU=za NIN=ŠU 'ānninniyamin daškan[zi]
^{URU}Hattuši=ma=at U[(L)] āra
 (KBo 5.3 iii 25-34 + KUB 19.24 rev. 9-17)

Furthermore (with respect to) this one, that is my sister, whom My Majesty gave to you for your wife, she has many sisters, either full or paternal (half-) sisters.¹³⁹ While you (hold) that one in it

¹³⁸ Šaklai-: Huqq. [NH] labels the incest rule šaklai- 'custom, law, rite' or perhaps 'traditional knowledge' (cf. Weeks 1985:258, 267) rather than ḫanneššar 'judgement, decision' or išḫiul 'treaty, law' as in the Bēl Madgalti Instructions (CTH 261), ḫurkilaš išḫiul iyan 'the law of ḫurkel is enforced (lit. 'practiced')' (KUB 13.2 iii 11-12) [MH/NS]. In another sexual context, Paškuwatti's Ritual (CTH 406): nu=wa=[za MUNUS-aš'] šaklin arḫa namma pešši[a]t'; nu=wa=za šarš LÚ-aš š[ak]lin [datta] "You have cast off the (sexual) behavior expected [of women]; [you have taken] to yourself the behavior expected of men!" (KUB 9.27 i 27-29) [MH/NS]. However, in "Tudḫaliya's Instructions to the Military" (CTH 259), LUGAL-uwaš šakliya means something closer to 'King's law' (KUB 13.20 i 31) [MH]; cf. Alp (1947b:392, 407) 'rule(s) of the King'. With Hoffner (1997:1), this "custom ... often has a force as strong as law."

¹³⁹ Lit.: "There remains many sisters (to her), of her family, (and) of her seed"; Beckman (1996): "sisters from her own family as well as from her extended family." As to the possibility that NIN^{me}=ŠU ŠA MÁŠ=ŠU ŠA NUMUN=ŠU 'sisters of her family, of her seed' refers to the niece rather than the full sister and the *pappaneka- 'paternal half-sister' seems very unlikely. For one, niece-incest is not an issue elsewhere in the ancient Near East until Qumran (4Q251 frag. 12 l. 3, 11Q19-20 col. 66 l. 17, Damascus Document A 5:7-11). Most importantly, all other verboten relations in Huqq. are on the

(wifery), you must hold them sisters with respect to yourself. But with respect to Hatti, it is an important rule. The brother does not take his sister or female cousin (sexually). It is not permitted. But whoever does it, i.e. this very thing, he does not remain alive in Hattuša, since he is put to death. Because your land is barbaric, they stick to it. The brother regularly takes his sister or female cousin. But in Hattuša it is not permitted (Huq. §29 in Friedrich (1930); §25 in Beckman (1996)).¹⁴⁰

The king presents new content for the regulated category *negatar*, "sisterhood": "Sisters" include sisters-in-law through the wife who have the same father (while the wife is alive or not divorced), one's own sisters, and female cousins. The treaty also specifies ŠA DAM=KA ... NIN=ZU našma ŠA [NUM]UN NIN=ZU "the sister of your wife or her sister of the seed,"¹⁴¹ i.e. the wife's full sisters, and her paternal half-sisters; and MUNUS¹⁴² ŠA ŠEŠ=KA NIN=KA "the wives of your brother(s), i.e. your sisters(-in-law)." This covers all the permutations except the sister-in-law who is the wife of a wife's brother as shown in Figure 6.2.

In sum, when kin are dead, or the governing relative is dead, any sexual relations that had been *ḫurkel* become *natta ḫaratar*. In the laws of incest, these features operate in tandem:

lateral axis in Ego's generation (Figure 6.2).

¹⁴⁰ See the discussion under *da-* for alternative translationa yielding a brother-brother incest prohibition.

¹⁴¹ KBo 5.3 iii 35.

¹⁴² KBo 5.3 iii 59-60.

$$\begin{bmatrix} +\text{hurkel} \\ +\text{haratar} \\ +\text{huišwatar} \end{bmatrix} \quad \text{or} \quad \begin{bmatrix} -\text{hurkel} \\ -\text{haratar} \\ -\text{huišwatar} \end{bmatrix}$$

Second, we can postulate a developmental trajectory for incest rules. From a focus on the nuclear family (Figure 6.1a), a widened lens holds in view women forbidden during the life of their spouse (Figure 6.1b). Of these, the stepmother is the emblematic relation. Symmetrical relations are prohibited in the wife's family (Figure 6.1c). Huqq. reveals a final move, the extension of "sisterhood" to all women of the same generation within two degrees of Ego (Figure 6.2). To this we add the possibility of a (symmetrical?) prohibition of the brothers. Thus the Hittites, in problematizing incest, extended their prohibitions to an ever enlarging circle of relations.

Why did this development occur and what was its motivation? Little of the cultural discussion has come down to us. We have no "motive" clauses in these laws to help us out. The featural analysis above does connect the incest laws with notions of "life," "proximity," and "social class." Šuppiluliuma's rationale to Huqqana gives us something more -- to marry sisters is *dampupī* 'barbaric'.¹⁴³ It is the behavior of the "other," the outsider, the uncivilized. Šuppiluliuma

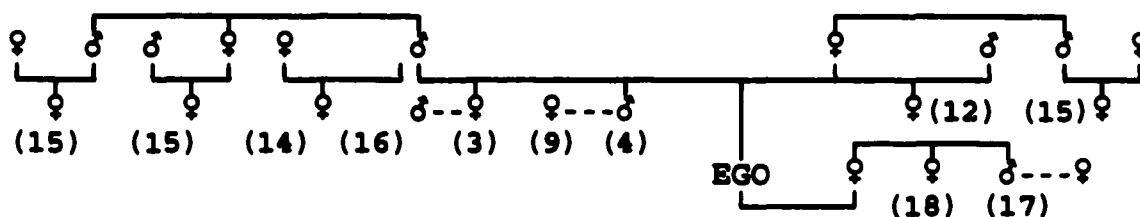
¹⁴³ *dampupī* -: 'barbaric; unskilled, untrained' (HEG T:88-89); Klinger (1992:191-94); Hoffner (1997:208, n.31). An Akkadian-Hittite lexical text equates Akkad. nu-'-ū 'dumb, barbaric' with *dampupī*- (KBo 1.30 i 8'-9'). In HLSS147 and 177, this term describes "unskilled" men or women who are bought and sold. Schuler notes its use with aliens from the north of Anatolia, the Kaakaena (1965:6).

draws his vasaal from afar to the civilized center of Hattuša and has trained his protégé in the requisite sexual behavior for the royal court. To return to the sexual mores of Hayaša is to reverse the irreversible. This matter is under the treaty oath and the oath gods will avenge it. The reasoning is at once protective of royal prerogative and aesthetic.

To the degree that Athenian and other IE codes are traditions of Hittite law and treaty, we see the discussion of paternal half-sister incest continuing. Solon permits marriage to non-co-uterine sisters and Sparta forbids it. The reverse is true for co-uterine half-sisters. There is also innovation -- or at least specification. Greek law adds brother-brother incest to the list of prohibited relations in the nuclear family.¹⁴⁴ Incest with a full-sister is explicitly forbidden as in Huqq. Likewise, Greek legal tradition carries forward the explicit prohibition of father-son incest.

¹⁴⁴ Plato (*Laws* VIII, 838a-b); Xenophon (*Resp.* Lac. II:13). However, a concern about brother-brother incest may be sublimated in the exemption from offense of two brothers routinely sleeping with the same free woman in HL§194b. That is, just as HL exempts father and son from offense when they sleep with the same prostitute (HL§194c), even though they are prohibited relations directly (HL§189c), the same is true for brothers. Also, as noted above, one reading of the Huqq. treaty would add a customary prohibition of brother-brother incest to Hatti-land, See note on da-.

Figure 6.2
Prohibited "Sister" Marriages in the Huggana Treaty



KEY:

Unpermitted "sister" - ♀

Sibling link - []

Husband-wife link - []

Parent-child link - T

(3) nega-; NIN 'sister'

(4) negna-; ŠEŠ 'brother'

(9) DAM ŠEŠ 'brother's wife'

(12) annaneka- 'co-uterine sister'

(14) NIN^{ms}-ŠU ŠA MAŠ-ŠU ŠA NUMUN-ŠU 'offspring of the family of her sisters';
ŠA [NUM]UN NIN-ZU 'her sister of the seed' or 'sister of shared
paternity'; *pappaneka- 'sister(s) having same father'¹⁴⁵

(15) 'ānninniyami- 'female cousin (including mother's brother's child)'¹⁴⁶

(16) ¹⁴⁶kaena- 'brother-in-law'¹⁴⁷

(17) ¹⁴⁸kūša- 'wife related male in-law (wife's brother or wife's sister's
husband)'¹⁴⁸

(18) wife's sister

¹⁴⁵ Cf. CHD P:97 s.v. *pappanegna-*.

¹⁴⁶ HED 1:71-72, from a Luwoid 'mother's brother's son' and then generalized; Weeks (1985:26).

¹⁴⁷ HED 4:12-14. Also 'son-in-law'.

¹⁴⁸ HED 4:288-89; *kūša* 'feminine or female'.

**iii. Does the Biblical Holiness School Know Hittite Law?
Lev. 18:16-18, 20:14a and HL§§192-195**

Just as the Codex Justinianus (529 C.E.) would read Deuteronomy a thousand years later, and after another millennium the Napoleonic Code (1804) would read both,¹⁴⁹ did the Holiness School know the Hittite legal tradition or read the tablets themselves?

If we turn to the topic of incest, the Holiness Code [H] implicitly prohibits incest in the nuclear family (i.e., Ego with daughter, son, mother, brother, and virgin sister) at Lev. 18:6, and extends these rules to female affines¹⁵⁰ and certain female¹⁵¹ and male consanguines (i.e., Ego with father (Lev. 18:7), father's brother (Lev. 18:14), and all male affines of a similar degree as the verboten women (Lev. 18:22)).

Where did H get all this? If we imagine H turning to Mesopotamia to make use of Hammurabi [CH] (because here too we have a few incest laws), or even to the Mesopotamian scribal-school tradition, we find an enigma. The mystery is not that what is explicit in CH is implicit in H (i.e., prohibition of father-daughter incest), nor that which is nuanced (i.e., daughter-in-law and stepmother incest) becomes categorical in

¹⁴⁹ Merton Smith (1996:85).

¹⁵⁰ Stepmother, stepsister, father's brother's wife (aunt by marriage), sister-in-law, and daughter-in-law.

¹⁵¹ Mother, paternal or co-uterine half-sister, granddaughter, paternal aunt, and maternal aunt.

H,¹⁵² but rather the extravagant permutation of forbidden relations. So we are led to look in another direction to understand this perplexity. Among H's new incest prohibitions we discover some of the same tortured nuancing as in Hittite law, or even argumentation against HL's exceptions.

In particular, if we take up "two-women rules" we find several surprising parallels. Compare H§195b:

takku LÚ-aš 'arauwanin ḫarzi
ta DUMU.MUNUS-ši-ya šaliga, ḫurkil
(KBo 6.26 iii 50-52).

If a man has a free woman and approaches her daughter (asexually), ḫurkil (H§195b).

with Lev. 18:17:

ערוֹת אִשָּׁה וּכְתָה לֹא תִנָּלֶה
אֶת-כֶּתֶךָ וְאֶת-כֶּתֶךָ לֹא תִקַּח לְנָלוֹת עִרוֹתֶיהָ
שְׂמִירָה הִנֵּה זֶמֶה הוּא:

'erwat 'iššā ūbittāh lō t'gallāh
'et-bat-b'nāh w'et-bat-bittāh lō' tiqqah l'gallōt
'erwātāh, ša'ārā hēnnā, zimmā hf'.

You shall not uncover the nakedness of a woman and her daughter; nor take her son's daughter or her daughter's daughter and uncover her nakedness. They are kindred; it is zimmā (Lev. 18:17).

First of all, it is precisely this two-women topos that H and HL share, here forbidding to Ego mother and daughter. H trumps the HL by an order of magnitude -- H extends the rule to three

¹⁵² See CH§§155-156 (Two-men rules: if the father sleeps with the daughter-in-law after the son and is caught in *flagrante delicto*, he dies; if the father sleeps with the betrothed daughter-in-law, he pays a fine and she's free to marry whomever she chooses) vs. Lev. 18:8; and CH§158 (Ego sleeps with his father's principal wife who had borne children, after his father dies, he is disinherited) vs. Lev. 18:15.

generations. Second, both laws "diagnose" the practice:¹⁵³ in Hittite, *ḫurkel* 'sexual crime'; in Hebrew, *zimmā* 'lewdness'.¹⁵⁴ But H takes the "diagnosis" a step further: all these mother-daughter pairs are *ša'ārā* 'kindred' (though not *š'ērō haqqārōb*).

Now compare HL§195c:

takku DUMU.MUNUS-ŠĀ ḫarzi
ta anni-šāi našma NIN-i-šāi šaliga, ḫurkel

If he has her (=the free woman's) daughter and approaches her mother or her sister sexually, *ḫurkel* (HL§195c).

with Lev. 18:18 and 20:14:

ואשה אל-אחותה לא תקח לצרר לנלות ערותה עליה כתייה:
w'iššā 'el-'āḥōtāh lō' tiqqāḥ liš'rōr l'gallōt
'erwātāh 'ālēhā b'hayyēhā.

You shall not take a woman as a rival to her sister, to uncover her nakedness, during her lifetime (Lev. 18:18).

ואיש אשר יקח את-אשה ות-אמה זמה הוא
w'iš 'āšer yiqqāḥ 'et-'iššā w'et-'immāh,
zimmā hf'

The man who takes a wife and her mother -- it is *zimmā* ... (Lev. 20:14a).

HL's two-women rules, applying to a woman and her mother

¹⁵³ Daube (1981:100-02; 1986:447) calls this a "diagnosis form" because it is reminiscent of ancient medical instructions.

¹⁵⁴ Contra Neufeld's glossing Hitt. *ḫurkel* with BH *tō'ēbā* 'abhorrence, abomination' (1951:53-56), or Hoffner's suggestion of BH *tebel* 'confusion' (1997:224). Steingrimsson defines *zimmā* as 'wickedness, lewdness' (TDOT 4:88); cf. Lowenstamm (EM 2:929-30); BDB 273b-c.

or sister, are split between two laws in H.¹⁵⁵ Relations with a woman and her mother are again respectively *ḫurkel* in Hittite and *zimmā* in Hebrew. To H's co-uterine sister rule we have a motive added: not that they are kindred (Lev. 18:7) -- they are -- but more poignantly, not to rival (*liš'rōr*) her. Here a woman's perspective peeks through in a recollection of Jacob's wives (Gen. 29-30).

There is more. H allows an exemption: after a man's wife dies he can marry his former sister-in-law. Thus the incest rule against marrying the distaff sister-in-law is not permanent - it is limited to the life of the intervening relation. In this way Lev. 18:18 mimics the "in-life" restriction of another Hittite law, HL§192:

takku LÚ-aš DAM=ŠU aki, AHA=[ŠÀ [DAM-anni dāi], UL ḫara[taṛ] (KUB 29.34 1v 17b-18 = text y₁).¹⁵⁶
If a man's wife dies, [he may take her] sister as a wife. (It's) not an offen[se] (HL§192).

Both H and HL proscribe the marriage during life and permit it after death.

While H allows an incest exception for the distaff sister-in-law, it does not mimic the Hittite exemptions for

¹⁵⁵ And perhaps incomplete. The Huggana treaty extends the proscription to half-sisters and cousins (Greengus ABD 4:246).

¹⁵⁶ The p-text shows an erasure of a longer law which Hoffner thinks is identical to the one in text y₁. Thus KBo 6.26 iii 37 reads ^{(L)¹⁰}HA.LA=ŠU 'his partner' in place of AHA=ŠU and MUNUS-ni (dat.) in place of the stiff DAM=ŠU. Thus: "If a man dies to a woman (i.e. "predeceases"), his (business) partner shall take his wife," cf. Hoffner (1997:151-52). This law appears to be an alternative to the levirate that follows in HL§193 (Hoffner 1997:226).

slaves and half-free arnuwalaš-women (HL§§194a, 200Aβ),
conaiatent with H's general approach of minimizing exceptiona:

takku LÚ ELLUM GĒME^{HI.A}-uš annanekuš anna(n)=šman=a
wenzi, UL ḫaratar (KBo 6.26 iii 44-45)
If a free man fornicates with a slave sisters of the
same mother and also with the mother, (it's) not an
offense (HL§194a).

takku arnuwalan [kuiški] katta šeškizzi
anna(n)=šman n[e]k[an=šman=a wenzi]
UL ḫaratar (KBo 6.26 iv 25-27).
If anyone regularly sleeps with an arnuwalaš-woman
and fornicates with her mother and her sister, not
an offense (HL§200Aβ).

The biblical prophet Amos and HL also address the issue
of two men taking the same woman. If the woman is a slave, HL
§194c permits the shared liaison:

takku GĒME-aš našma 'KAR.KID-aš katta attāš ū
DUMU-ŠU šeškanzi, UL ḫaratar (KBo 6.26 iii 47-48)

If father and son sleep with the same female slave
or prostitute, (it is) not an offense (HL§194c).

But Amos decries the same behavior:

וְאִישׁ וְאָבִיו יֵלְכוּ אֶל-הַנְּעִרָה לְחַנֵּן חָלַל אֶחָד-שֵׁם קֹדֶשׁ:
w'iš w'ābīw yēl'kū 'el-hanna'šrā l'ma'an ḥallēl
'et-šēm qodšī

A man and his father go to the (same) girl and so
profane my Holy Name (Amos 2:7b).¹⁵⁷

Presumably HL would forbid two related men the same partner if
she were a free woman. But Amos condemns all such, slave or
free, for a father and son. The inversion of the order of
father and son, in biblical contexts a quotational trope, may
iconize Amos' rejection of this permissive tradition.

However, not all woman-aharing by male relatives is

¹⁵⁷ BHS wonders if this atichoa is a gloss.

rejected in Israel. The *yibbûm*- or levirate-institution¹⁵⁸ permits brothers, fathers, and other male relatives to take Ego's wife after his decease (Gen. 38:8-9; Deut. 25:5-10; Ruth 3:12-13). However, both H and the Deuteronomic Source [D] seek to limit the levirate institution. Deut. 25:5. allows the husband's brother to take the deceased brother's wife "if brethren dwell together." Even these brothers can escape the duty if they are willing to undergo a shame ritual (Deut. 25:7-10). D presumably allows the levir to take his deceased brother's wife while his own first wife is living (as hinted in the case of Onan in Gen. 38:8-9). But H now draws the line: "The nakedness of your brother's wife you shall not uncover" (Lev. 18:16).¹⁵⁹ Congruent with its propensity to eliminate exceptions, H ends the incest exemption for levirate marriages except for cousin-*yibbûm*.¹⁶⁰

The Hittite "levirate" is similar to the dying Israelite

¹⁵⁸ The male relative, however, is not always a levir or *yābām* 'husband's brother, brother-in-law'.

¹⁵⁹ Beattie ascribes this view to an unnamed Qaraite (1974:254, n.1; 259).

¹⁶⁰ Lev. 18:8, 14-16, and especially 21:14 contribute to the ban. H shifts the focus of *ge'ulā*-institution from levirate to land (Lev. 25:25). Just as P has already restricted the *go'el haddām* by protecting accidental manslaughter in cities of refuge (Num. 35), H refocuses on the redemption of Israelites who have fallen into poverty and sold themselves to *gerīm* (Lev. 25:47-49). A shift has been made away from the redemptions that manipulate blood and seed (vendetta and marriage of the deceased brother's wife) to redemptions that preserve the *'ahuzzā* (lit. 'possession', the inherited portion of the land) and the freedom of the *'āh* (one's kin).

institution:

takku LÚ-iš MUNUS-an ḫarzi, ta LÚ-iš aki
DAM-ŠU ŠE[Š-Š]U dāi, tan ABU-ŠU dāi
mān tēn ABU-ŠU-ia aki
MUNUS-nan=a kuin ḫarta
A¹⁶¹ ŠEŠ-ŠU dāi, UL ḫaratar
(KBo 6.26 iii 40-43)

If a man has a woman and the man die, his brother
shall take his wife (in marriage); secondly, his
father takes (her in marriage).
If then his father die, and his (father's)
brother's son(?) takes the woman whom he had (in
marriage), (it's) not an offense (HLS193).¹⁶²

The order of the Hittite levirate is: Ego's brother, father,
paternal cousin (or possibly the paternal uncle).¹⁶³

¹⁶¹ Hoffner takes this as A, Akkad. *māru*, similar in meaning to the DUMU found in texts aa and y, yielding 'paternal uncle's son', i.e., a 'male cousin' (1997:152 and n.541). Despite his transliteration, he notes "this usage is not attested elsewhere in Boğazköy" and translates 'father's brother'. The single broken vertical could also stand for the number 'one' yielding the phrase "one of his brothers" which would support Hoffner's translation (but not his transliteration). However, in light of the fact that other manuscripts support the reading 'son', A is to be preferred.

¹⁶² Notice that HLS193a is the residual case to HLS195a, that is, one cannot take a brother's wife while the brother is still alive. However, two brothers may otherwise take the same free woman (HLS194b). For relevant literature see Koechaker 1933 and Price 1926. Hoffner's suggestion (1997:226 following Friedrich (1930:128-29)) that Šuppiluliuma's order to Huqqana to "take your daughter away from Mariya and give her to a brother" (KBo 5.3 iii 65-66) is an example of the levirate seems strained. There is no evidence that this Mariya has deceased (though a namesake had been executed in an earlier day). A political explanation seems more plausible in light of the treaty context. Mariya was part of a competing clan aspect to the Hittite court and perhaps under the sway of Mitanni.

¹⁶³ If we read -ŠU of DUMU ŠEŠ-ŠU aa referring to the head case, then a nephew might be in view. This possibility seems less likely because of age.

If we read 1 ŠEŠ-ŠU, again taking -ŠU aa referring to the head case of the law and not the immediately preceding

In the Middle Assyrian Laws we have an 11th cent. Mesopotamian attestation of something like the levirate. If a widow lives in her father-in-law's house, her father-in-law may give her to her husband's brothers (MAL A §33). Though several lines are broken away here, we can reconstruct the law making use of a companion case, MAL A §46, and cases involving the death of a fiancé, MAL A §30 and §43 (Driver & Miles 1935:400-01; Cardascia 1969:177-180). Or, Ego's father may give his son's widow to himself if she has no other sons who may care for her. In the event Ego's father is dead and the widow also has no son, the process aborts. She goes free. Alternatively, if a widow elects to stay in her own home after her husband dies, one of her stepsons may marry and support her (MAL A §46).

If we turn to the J-narrative of Judah and Tamar (Gen. 38:8-26), the order of succession is: husband's brother from oldest to youngest,¹⁴⁴ then father. Another narrative, Ruth 3:12-13, shows male kin of varying degrees may stand in. Such might include a paternal cousin. Jeremiah (32:6-10) steps forward to redeem his own cousin's field, a process linked to the levirate in Ruth. As a tradent of the Deuteronomic tradition, Jer. fills out the possibilities of Deut. where the

context, it would yield "one of his (the husband's) brothers." This produces the unlikely result: if the eldest brother dies, Ego's father steps in before the widow passes on to the next oldest brother.

¹⁴⁴ As in MAL A §43.

husband's brother alone marries the deceased brother's widow (Deut. 25:5-10). H, lacking an order for the levirate proper, does give an order of succession for male kin who act as *go'el* 'kinsman redeemer': Ego's brother, paternal uncle, or paternal cousin (Lev. 25:48-49). Likewise P¹⁶⁵ offers an order of inheritance (Num. 27:9-11): brothers (after Ego's sons and daughters), paternal uncles, and then one of the remaining *šer haqqārōb* (cf. Lev. 21:2), i.e., Ego's father, mother, or unmarried sister.

Collecting these observations for Ego's male paternal relations, we can make a chart:

(1) HL§193, some mss.:	Brother, Father, Cousin
(2) HL§193, alt. rdg.:	Brother, Father, Uncle
(3) MAL A §33 [+\$§30, 43]:	[(Brothers)], Father
(4) MAL A §46:	Stepson
(5) Gen. 38:8-26 =J	Brothers, Father
(+ Ruth 3:12-13):	(+ Male kin of other degrees)
(6) Deut. 25:5-10	Brother
(+ Jer. 32:9):	(+ Cousin)
(7) Num. 27:9-11 =P:	Brother, Uncle, (Father)
(8) Lev. 25:48-49 =H:	Brother, Uncle, Cousin

Among these traditions the same male relations are generally in play, though MAL and Deut. show the most attenuated orders of succession. The Genesis narrative's abbreviation of the sequence is a function of its narrative requirements. No more information needs be given. If we ask, "What male kin stand in after brothers and the father in male succession rules?" The answer is paternal uncles and cousins. Strikingly, the priestly sources (P and H) and HL share this understanding.

¹⁶⁵ But Knohl assigns to H (1995:105).

To summarize, both H and HL§§192-195 (a) appropriate the two-women topos, (b) reject Ego's relations with a woman and her daughter and (c) reformulate this regulation in terms of a woman and her mother; (d) they preclude Ego's relations with two sisters while both are alive, yet (e) permit Ego to marry the distaff sister-in-law after the death of Ego's wife, even though permission to marry the brother's widow is unravelling in H. Further, both H and HL (f) use diagnostic nominal sentences to evaluate these behaviors, and (g) elaborate the male succession beyond brother and father for kin duties. Thus we have several substantive similarities and one of legal style.

H and HL§§192-195 also differ. Though Lev. 18:17 parallels HL§192 and Lev. 18:18 partly parallels HL§192 and §195c, H is more rhetorical. It offers motives for compliance and tries to persuade: A woman and her daughter are kindred; Two sisters should not be taken while either is alive lest they be rivals. Consistent with its propensity to extend sexual regulations, H applies the two-women rules to three generations, not just two. H makes no exceptions to these rules for social class. Finally, H rejects the levirate and so rejects a previously sanctioned way for two related males to share the same woman.

Did H have reference to some tradent of the Hittite legal tradition? However we might imagine a "chain of utterances," using Bakhtin's felicitous phrase (1986:93), linking the

Hittite Empire through neo-Hittite successor states to the Kingdom of Judah, perhaps refracted through the final redaction of Amos, the convergences between H and HL are tantalizing but not straightforward. As reader or hearer, H draws from a similar palette of legal topoi, H contends with, and H transforms the received tradition.

iv. Adultery and Rape.

A poster reads: "Sex or rape: Do you know the difference?" By the standards of the late twentieth century West, the Hittites did not:

takku LÚ-aš MUNUS-an HUR.SAG-i ēpzi,
 LÚ-naš waštul, n=aš aki
 takku É-ri=ma ēpzi,
 MUNUS-naš waštaiš, MUNUS-z(a) aki
 takku=uš LÚ-iš wemiazi,
 t=uš kuenzi, ḫaratar=šet NU.GÁL
 (KBo 6.26 iv 6-9)

If a man rapes a woman in the mountains,
 (it's) the man's sin. He shall be put to death.
 But if a man rapes a woman in a house,
 (it's) the woman's sin. The woman shall be put to
 death. If the man (=the husband) finds them (in
 delicto), and kills them, (there's) no offense
 (imputed) to him (HL§197).

We tend to read this in the following way: The law presumes the woman has given consent when the act occurs in a house. Therefore it is adultery (not rape) and that is why in the second case the law punishes the woman (too).¹⁶⁶ However, the

¹⁶⁶ So Finkelstein (1966:366); Tsevat (1975:235); Imparati (1995:594). Collins (Forth.) reads "her house" for "a house," sharpening the point. The Code of Gortyn suggests the house might be a father's, brother's, husband's or other male guardian's.

law uaaa the same verb, ep(p)- 'seize' or 'take', for the encounter in the house as for the mountains. There is no overt testimony about "conaent," and to imagine it plays into the stereotype that women consent to rape. Such a reading is anachronistic in a second way: It asserts one of our mores, clearly communicated consent, as one of their ethical categories.

I also imagine this reading is strongly influenced by Deut. 22:23-27. Here the biblical text explains that when the young woman was raped in the open field she cried out, but no one heard her to help her. Ergo, she did not consent. But by any accounting, Deut. was written well after the Hittite Laws. If there is an intertextual link, D offers its own explanation and we cannot assume that it is the Hittite rationale.

What we can say is that these Hittite laws do not focus on consent. Consent may be "backgrounded" in the location (the house) along with a set of assumptions about keeping men out of the house. In any case, Deuteronomic law brings the issue of consent into the foreground.¹⁶⁷

The witness of the Code of Gortyn, however, reinforces

¹⁶⁷ As Gary Holland suggests. The strong reading (i.e., the woman conaents) imagines the woman safely locked inside the house until she opens the door and lets in her ravisher. Thus, though "the decision of a judge aa to whether you are guilty or not is based on a atrict, archaic, 'objective' kind of proof," e.g., "location," this does not completely supplant the 'subjective', e.g., "consent" (Daube 1947:87, 92).

the sense that the meaning behind 'location' is ambiguous.¹⁶⁸ Here if a woman is taken in adultery (*μοικίῳν*) in her father's, brother's, or husband's house, the perpetrator pays 100 gold staters; if in another's house, the fine is 50 staters (II.20-27). The distinctions among houses seems to imply insult to the patriarchy.¹⁶⁹ The Code of Gortyn does not prescribe a penalty for the woman. The lack of a penalty makes her consent moot.

A law from the first table of HL illustrates an analogous situation:

takku DUMU.MUNUS LÚ-ni taranza
 tamaiš-an pittenuzz[i
 [kuššan] pittenuzzi=ma
 nu ḥantezziaš LÚ-aš kuit p[ešta]
 ta=še šarnikzi (KBo 6.3 ii 5-7)

If a daughter has been promised to a man
 (but) another runs off with her
 as soon as he runs off
 what the first man gave
 he shall make restitution to him (HL§28a)

The end of the story follows in HL§37:

takku MUNUS-nan kuiški pittinuzzi

¹⁶⁸ "Out of the house" (that is just the opposite from HL, Deut., and Gortyn) is the location of consent in MAL A §13 (cf. Westbrook 1990:549). However, noting that the woman in MAL is implicitly still in the town, Bal might view "city-house-room" as a unity -- the "traditional symbolism" for the vagina (1987:55).

¹⁶⁹ Willetts takes "another's house" in Gortyn's Code as "the house of a relative in charge of an heiress." He takes the smaller fine as reflective of a later stage in the development of the Code where fines were paid to family groupings, "and a *kēdestas*, as representing a family grouping, naturally received less than a father, brother or husband" (1967:59). This "naturalness" refers to the graded rights of patriarchy.

n[u=kan šardlieš appan anda pš[n]z[i]
takku 3 LÜ^{mes} našma 2 LÜ^{mes} ak[kanzi],
šarnikzil NU.GÁL
zik=wa UR.BAR.RA-aš kištat (KBo 6.2 ii 10-12)

If anyone runs off with a woman
and a group of supporters¹⁷⁰ goes after (them)
if three men or two men are killed, no
compensation. "You have become a wolf."

Here also the issue of consent is opaque.¹⁷¹ Did the woman agree to "elope" or does a rejected suitor steal a wife? The woman was "promised" to a first man, not married (as in HL§198) or betrothed.¹⁷² A repayment of the bride-price (kušata-) should be sufficient damages for this usurpation of rights over the woman. But if the first man or the woman's family becomes riled, and in a fit of passion a party follows the abductor, and in a battle two or three of the abductors die, none can demand a recompense for their deaths.¹⁷³ The sentence, "You have become a wolf," more than a rhetorical

¹⁷⁰ Who constitutes the šardiyas or 'group of supporters'? Either friends of the abductor (Imparati 1964:221; Friedrich 1971:96; Weitenberg 1991:191-92) or more likely, the pureurs, friends or members of the jilted groom's or bride's family who do not accept the theft (Neufeld 1951:153; Hoffner 1997:186-87).

¹⁷¹ Also noted by Hoffner (1997:183).

¹⁷² Contra Imperati (1964:221) who asserts this is a law concerning the abduction of a married woman (HL§§28 and 35 covering theft-marriage of the unmarried). But as Weitenberg (1991:190) notes, there is no indication that the woman is married here. What is different -- people get killed.

¹⁷³ As they might under HL§§1-2.

flourish, has a legal effect (Weitenberg 1991:192).¹⁷⁴

What is the same and what is different in these two laws (HL§§197 and 28a)? In both cases there is a second man who takes control of a woman; both episodes could end in blood feud where no one is held accountable; both have two locations -- away or in the mountains, near or at home. They are different: the woman is married in HL§§197-98 but only promised in HL§28a, 37; the vengeance happens at home in the first case, and abroad in the second. The differences show us what matters in Hittite sexual usurpation law: marriage status and location.¹⁷⁵

One of the legal *topoi* that HL holds in common with the Middle Assyrian Laws [MAL] is the rule of parity in punishment for adulterers:

If a man should seize another man upon his wife and they prove the charges against him and find him guilty, they shall kill both of them ... if the woman's husband kills his wife, then he shall also kill the man; if he cuts off his wife's nose, he shall turn the man into a eunuch and they shall lacerate his entire face; but if [he wishes to

¹⁷⁴ Both Hoffner (1997) and Weitenberg read the sentence, "You have become a wolf," against the abductors -- Weitenberg as a declaration that the abductor's party cannot make a legal claim for their deaths. The abductor's actions are outside the law. Thus there is no right to ask compensation for casualties.

¹⁷⁵ In this way, Finkelstein's (1966:366) featural analysis of adultery and rape laws in the ancient Near East is half right. He lays them all out in a matrix of $\pm$ marriage and $\pm$ consent. As genuinely helpful as his analysis is as a first approximation, he himself must sense the anomalies when he has to postulate statutory rape (Exod. 22:15) and asterisk most of his "unmarried coercive" cases because they involve a third factor, slavery.

release] his wife, he shall [releaae] the man (MAL A §15; cf. Roth 1997:158).

as we see in HL§198:

takku=uš ANA KÁ É.[G]AL uwatezzi,
nu tezzi, DAM⁷⁷ lš aki
nu DAM=ŠÚ ħuišnuzi ¹⁶pupu=nna ħuišn[u]zi
SAG.DU=ŠÚ waššiezzi¹⁷
takku [t]ezzi, 2=pat akkandu
ta ħurkin ħal[i]enzi
kuenzi=uš LUGAL-uš, ħuišnuzi=aš LUGAL-uš
(KBo 6.26 iv 10-15).

If he brings them to the palace gate and says,
"Let not (my) wife be put to death" and so causes
his wife to live, he also lets the lover live. He
will veil her head. If he says, "Let the two indeed
be put to death," and they 'roll the wheel,'¹⁷⁷ the
king may kill them (or) the king may let them live.

Thus parity is maintained in MAL with life granted to both,
death to both, or mutilation to both (albeit the paramour is
twice mutilated: castrated and scarred on the face). The
offended husband metes out the punishment. In HL the cuckold
who has not taken immediate blood vengeance can only speak his
preference to the court. Wife and paramour may live, or they
become subject to king's justice and the enigmatic "rolling of

¹⁷⁶ waššiya-: 'to clothe or cover' (HW 248a-c, 411b);
Hoffner (1997:226, 306). However, *apa waššiya- 're-clothe;
re-veil' is not attested in the lexicons.

¹⁷⁷ Or Puhvel (HED 3:400): "then they set in motion the
ħurkin," i.e. "start the wheels of justice turning." With
Hoffner (1997:157, n.564), it is "an expression of uncertain
significance." The ħurkin does seem to be a "wheel" but one
can't help noticing its phonetic similarity with ħurkel
(indeed the scribe erased ħurkel and wrote ħurkin on one
tablet (KBo 6.26 iv 14)).

the wheel."¹⁷⁸

But this principle of punishment parity for the two participants does not hold constant in HL. As we saw earlier, only the rapist is punished in HL§197 when the act takes place in the mountains. Likewise, only the sexually excited bull is "executed" when it jumps a man (HL§199b). In the immediately preceding case of MAL (A§14), a man who has lain with another man's wife in the street not knowing her status, is absolved. However, the woman may be punished as seen fit by her husband.¹⁷⁹ This inverts the Hittite principle where the man is punished but the woman is not when a woman is raped "outside" the house.

Much has been made of a third element in HL§198: the husband veils his wife. The consensus once blandly asserted that the husband marks the paramour with the Hittite equivalent of a scarlet letter,¹⁸⁰ a mark equivalent to MAL's scarring the face. Only Tsevat suggested that marking the woman might be in view.¹⁸¹ But the problem, of course, as he

¹⁷⁸ Consider also the rule in CH§129: "If the wife of a seignior has been caught while lying with another man, they shall bind them and throw them into the water. If the husband of the woman wishes to spare his wife, then the king in turn may spare his subject" (ANET:171).

¹⁷⁹ If the rapist or seducer does know of the woman's status as seignior's wife, the case falls under the parity of punishment principle for adulterers in MAL.

¹⁸⁰ Friedrich (1971:115); Imparati (1964:179, 321); reading SAG.DU-ŠU as 'his head'.

¹⁸¹ Tsevat (1975:235, n.4), but not in San Nicolò (1938:301) as he asserts.

pointed out (1975:235) and Hoffner accepted (1997:226), is that "clothing the head" is not an idiom for mutilation in Hittite, and there's no corroborating evidence for mutilation of adulterers in Hatti-land. Tsevat correctly analyzes the pronominal referent as the woman and brilliantly concludes that the husband (re-)veils his wife as a public act of reinstatement (1975:240; see Figure 6.4). One imagines the veiled "bride" going with the "groom" to their nuptial bed as depicted on the Inandik Vase (Figure 6.5).¹⁸²

Thus, I argue, the relevant features of Hittite sexual usurpation laws (as we find them) are {±Marriage} and {±Inside Location} and not {±Conaent}.¹⁸³ The retention of the death penalty for violation of the marriage bed, in contrast to compensating the jilted suitor for thieving his intended, shows plainly that marriage (and its consummation) mattered,

¹⁸² A restoration roughly like that of Hosea and Gomer in Hosea 3. Veiling is the opposite motion from that in Hosea 2:5, 12 -- stripping the adulteress in public (Whitt 1992:62-63) as a gesture of divorce. As a caveat, Hitt. *apa waššiya- 're-veil' does not underlie this reading.

Note that MAL A §§40-41 requires a freewoman to go veiled in public, but others, not. The Akkad. *esirtu* 'concubine' should be veiled in public, if accompanied by her mistress, or her owner could make her a legal wife by a formal veiling. The Akkad. *qadiltu*-woman (Assyrian dialect for *qadištu*) walked in public veiled only if she was married. The Akkad. *ḫarīmtu* 'prostitute' always walked in public unveiled (Lambert 1992:141).

¹⁸³ The parties are responsible for results, *Erfolgshaftung*, and not guilt, *Verachuldenhaftung*. In U.S. legal contexts, the offender has "strict liability" - there is no obligation to show *mens rea*, or the intent to commit an offense. Examples include traffic violations such as running a red light and statutory rape, i.e. sex with a minor (Richard J. Roas, Esq., personal communication).

as opposed to say the later Cretan Code of Gortyn where rape, adultery, and abduction are collapsed into one category.¹⁸⁴ Moreover, the "veiling" of the forgiven wife evokes the original nuptial itself. Second, location is relevant because it distinguishes between rapes. Rape outside the house and far away, and thus away from the marriage bed, sets aside any doctrine of parity in punishment. The male perpetrator is punished alone. The two-location topos, which already appears in the law of co-uterine sisters and is, in some sense, inherent in the outsider/insider incest rules of the *Huqq*. treaty, now makes its appearance again in the rape laws.

The residual case, i.e. one where there is no marriage and yet retains the feature of "insideness," becomes problematized in the Treaty with *Huqqana*. One might have imagined from the two-women cases above that fornication not otherwise accounted *hurkel* is permitted (cf. Table 6.4). Like the free man and slave woman who are lovers in HL§31, they would come together and marry, resolving any difficulties their affair posed to the property rights of her owner.¹⁸⁵ Whatever usurpation of property rights the original affair

¹⁸⁴ With differential fines for differing socioeconomic statuses of violator and victim (Gortyn ii 2-27; Willetts 1967:10, 28, 40). Fines for rape and seduction were less severe in Solon's laws (Plutarch *Sol.* 23; cited by Willetts 1967:58; cf. Ruschenbusch 1966). The Code of Gortyn (codified in the seventh cent. (?); inscribed ca. 480-460 BCE) is unique in the Greek world for its size and comprehensiveness (Willetts 1967:8).

¹⁸⁵ As in Exod. 22:15(H).

implied, the slave woman began "outside" the inner circle of Hittite society. Just as relations with two consanguine slave women were not *ḫurkel*, so there is no *ḫurkel* here. What sexual prohibitions matter for two free co-uterine sisters in the same locale, do not matter when they are dispersed. Laying these two principles side by side, we discover that the status of "non-free" is a kind of location -- a location "outside." The Kaškaens embody these two features in Hatti-land: they are at once despised outsiders and slaves.¹⁸⁶

The Huqq. treaty raises the issue of casual sexual relations with palace women. What is not at issue is whether it might be wrong for Huqqana to have relations with women married or unmarried in the King's house. Šuppiluliuma instructs his vassal Huqqana on how to sexually behave in the palace. His teaching is not that dissimilar from other "Wisdom" instruction such as that in Proverbs 6:24-35 where a father explains to his son the dangers of adultery. The father of Proverbs tells a story showing the foolishness of males in the face of a seductress' wiles.

Šuppiluliuma also tells a story, the tale of Mariya, a member of a competing clan in Hayaša who was formerly elevated to a place in the palace:

Mariaš kuiš ešta

¹⁸⁶ Cf. Schuler (1965). The Treaty of Hattušili III with Tiliura (CTH 89) enjoins the treaty partner to seize those who transgress bringing Kaškaen slaves into the city and those farm laborers or shepherds who dare to talk with them (KUB 21.29 iii 43, 48). See note on *waštul* above.

n=aš kuedani uttani <šer> BA.ÚŠ
 UL 'SUHUR.LA, iyatat
 apaš=an=kan anda aušzi
 ABI 'UTU¹⁸⁷=ma=kan imma ^{or}AB-az arḫa aušzi
 n=an waštul IŠBAT
 zik=wa=kan apun anda kuwat aušta
 n=aš apēdani uddani šer BA.ÚŠ
 nu tuwaz uwanna=ia¹⁸⁷ šer antuḫšaš ḫarakta
 nu=za zikka mekki ušgaḫḫut¹⁸⁹

There was a certain Mariya, and for what reason did he die? Did not a lady-in-waiting¹⁸⁹ walk by and he stared at her? But the father¹⁹⁰ of My Majesty glanced out the window and caught him (in) the offense: "You, why did you look at her?" So he died for that reason. The man perished just for looking from a distance. So you beware!¹⁹¹

Mariya is executed for his gaze. The implicit question answered by this story is: When does adultery begin? With seduction, approach, desire, or one's gaze? Here intent is sufficient when evidenced by an adequate gesture within the royal precincts.

This leads to an interesting result. If we unbracket "consent," we find that all the cases above (including the last where the woman's consent is also ambiguous) cluster around a vacant middle. The boundary cases surround the

¹⁸⁷ A₁-text, KUB 40.35 iii 57 haa tuwaz(a) uwantu. This is probably a scribal error as an imperative doesn't work here in place of the infinitive.

¹⁸⁸ A-text = (KBo 5.3 iii 53-58 + KUB 40.35 iii 53-58) + B-text = (KUB 14.6 obv. 1-5 + KBo 22.40 obv. 37-43).

¹⁸⁹ A 'lady's servant, attendant woman' (HZ:267 s.v. sign 349); or 'lady's maid' (Beckman 1996:28) but probably not 'hierodule' (Friedrich 1930:129).

¹⁹⁰ Tudḫaliya III.

¹⁹¹ Beckman (1996) = §28; Friedrich (1930) = §32.

situation where both partners are consenting (see Figure 6.3). If we include this consensual sex, *a fortiori*, in "adultery" (along with its boundary cases), then what is promised in the Treaty with the Hapiru (CTH 27) emerges:

[...] ANA ÉRIN¹⁹² SA.GAZ idālu natta kui[ški iyazi
nu=šmaš' katta' wjaštai
nu ¹⁰pup[uw]atar iezzi (KBo 9.73 obv. 5-6)

No one [will do] evil against the Hapiru-people in
that he sins [against them(?)] and commits
adultery(?)¹⁹²

Pupuwatar should include approaching with sexual intent a free married woman of the treaty partner, or consensual sex with her, or rape at home or away. That it includes the culmination of sexual relations is seen in the Hymn to Ištar (CTH 717):

MUNUS'-n[an kuiš'] pupuwalaizzi
nu=za=kan pupuwalatar ZAG-aš arnuzzi
n=at tuedaz(a) ¹⁰GAŠAN-liz[(a) tarān ...
He who fornicates (with) a woman and carries the
fornication to consummation,¹⁹³ that [has been
decreed] by you, O Ištar ...¹⁹⁴

Thus, both the seduction, so vividly portrayed in the tale of Mariya, and its culmination are intimated by pupuwalai-. It replaces OH wen- (Table 6.5).

The tale problematizes adultery in a second way. The case

¹⁹² Following CHD P:382b.

¹⁹³ Lit. 'fornication of the limit', perhaps like the Eng. notion '(go) all the way', but ZAG is not in the expected position for a genitive (HE² §209). Thus CHD P:381 normalizes the transliteration: ZAG-a=š[an]. If we take ZAG-a as an OH directive, yielding 'to the limit', the problem of a second local particle in the same sentence (=kan and =šan) remains -- something incredibly rare (CHD P:381d-382a).

¹⁹⁴ KUB 24.7 i 40-42; cf. Güterbock (1983:157); CHD P:381d.

of Mariya is anomalous. It brackets questions of consent, marriage, and social status. We do not know if the lady-in-waiting reciprocates, is unmarried, or free. Her presence inside the royal palace trumps all other factors. Conceptually, it straddles the boundary in Figure 6.3.

This exercise in reconstructing the meaning of "adultery" for the Hittites and the problems around which their discourse revolved, reveals our difficulties in reading ancient texts. We "know" what adultery is, and it is difficult to remember that the ancients might map the sexual landscape differently than we do.

Indeed, the Hymn to Ištar above offers a *Hittite* theory of adultery -- a goddess provokes it.¹⁹⁵ That at least some Hittites saw a goddess behind *pupuwalatar* further reshapes the definition. Seduction (and "adultery") are not "consensual," at least in the view of this text, because they are "providential," a result of a divine will.¹⁹⁶

¹⁹⁵ As in the *Iliad* iii 383-449 and in Euripides' *Troiaidea* 946-949. In the latter, Helen pleads her case before Menelaus (and Hecuba) by blaming the goddess Aphrodite for her abduction and seduction. If even Zeus is a slave to her, did she really have any chance? Indeed, Priam himself blames the gods for Helen's action (*Iliad* iii 164) and when Helen tries to resist Aphrodite, the goddess rebukes her (iii 413-415). Hecuba changes the ground in her rebuttal (Helen's point is irrefutable) and argues that Aphrodite is a figment of the mind (*Troiaidea* 981-990). My thanks to Robert Alter for suggesting this comparison.

¹⁹⁶ Ištar's involvement with adultery is complex. She also receives sacrifices (to atone?) for adultery: an oracle fragment (CTH 582), ANA IŠTAR ^{umu}Šamuḫa-wa-za [(SISKUR)] pupuwalannaš BAL-aḫḫi "I will offer the [sacrifice] of adultery(?) to Ištar of Šamuḫa (VBoT 25 obv. 3-4), cf. CHD

The gode undergird sexuality in a second way. The Hittites invoke and implore them to grant sexual virility.¹⁹⁷ Paškuwatti, for instance, leads her patienta through an elaborate ritual to heal impotency. As a first step she procures a virgin to help the patient overcome his infirmity.¹⁹⁸ If this does not succeed, she has the patient "incubate" at the offering table of Uliliyašši,¹⁹⁹ seeking her in dreams, waiting for her to come and sleep with him, and heal him sexually.²⁰⁰ The goddess, through her priestess, leads the sexual patient to healing through relations other than those with his wife. Indeed, too much (sexual) devotion

P:382a. SISKUR can be reconstructed by comparison to KUB 52.72 obv. 13 and to a liver and lot oracle question (CTH 578): [...] ANA DINGIR^{LIN} SISKUR pupuwalannaš "to the deity a sacrifice of adultery(?)" (KUB 49.94 ii 11') [NH], cf. CHD P:381d. In context this oracle: [KI] kuit ŠĀ É.DINGIR^{LIN} DI' (=KI) UTU²¹ [pup]uwalannaš INIM-ni šer SIXŠĀ-at "concerns the fact that in the midst of the temple a case of His Solar Majesty regarding a matter of adultery was determined by an oracle" (KUB 49.94 ii 2'-3') [NH], cf. CHD P:381d.

¹⁹⁷ Beckman (1983:18). Compare with the Mesopotamian ŠĀ.ZI.GA (potency) incantations. Ten of these invoke the aid of various love goddesses - mostly Ištar, but also Išhara, and Nanaya (Biggs 1967; see his incantation nos. 1, 10-13, 19-21, 25 mostly from Aaur, but some from Sultantepe). Although Biggs does not discern any direct link with the Hittite "Ritual against Sexual Impotence" of Paškuwatti (CTH 406) (1967:10), it is just here in the invocation of the love goddess that we have a comparandum. Compare also CTH 802, an Akkadian "Ritual against Sexual Impotence" found in Anatolia Cf. Biggs for an edition (1967:54-61).

¹⁹⁸ Hoffner (1987:282).

¹⁹⁹ Goddess of the open country and patroness(?) of wild plants and animals (Hoffner 1987:281).

²⁰⁰ CTH 406 §§10, 15; Hoffner (1987:282). See note on katta šeš- above.

to one's wife leads the gods to complain, as in the myth of Kessi, that their sacrifices stand neglected.²⁰¹

Not only does Ištar's authority stand against the consent model (of Finkelstein and Imparati), but it also shortcircuits the notion that adultery in Hatti might primarily be a sin against divinity.²⁰² We cannot read into Hittite culture the strong biblical position that adultery is a sin against God because gods are among its authors here. If adultery is a feature of patriarchal institutions (Willetts 1967:28), this Hittite Hymn is a counter-voice within the culture. And if adultery is a tort against property (Hoffner 1995:558), then why is the death penalty a possibility for its commission? Animal theft is not so treated, and why anyway destroy the stolen goods? Any of these theories of adultery may be true in one culture or another, and yet not true here. We must place "adultery" in quotation marks to distinguish this

²⁰¹ The Hunter Kessi (CTH 361), nu-šan "keššiš parā 'ANA DAM-ŠU=pat IŠ[.ME] nu=za namma "keššiš DINGIR^{meš}-uš NINDA ḫaršit išpanduzzi UL ka[pp]uizzi "(Kessi's wife was beautiful). As a result Kessi had ears only for his wife. He no longer took account of the gods with thick loaves of bread and libations" (KUB 33.121 ii 5-8), Hoffner's 1990 translation (67); cf. Friedrich (1949:234-35). The odors of lovemaking may well defeat Kessi's primary task of hunting. Indeed, Enkidu finds that his wild animal companions flee away after his time with a prostitute (Gilgameš I.iv.22-27).

²⁰² Kornfeld (1950:97) asserts the heinous nature of adultery in Babylon flows from its nature as a sin against the gods. Paul (1990:345) points to the "absolute wrong" of adultery in biblical law (Lev. 20:10; Deut. 20:23-24) -- a wrong "unpardonable by man."

reconstructed emic²⁰³ view (Figure 6.3) from the etic constructs of earlier commentators.

Hittite "adultery" is an offense against marriage and against the inside realm of house and palace. The consent of the woman is irrelevant to the Hittite crime, but perhaps indicative of the workings of a goddess. The tension between providence and home finds resolution in the remarkable instructions of HL§198 and their possibility for ameliorating the penalties. Do you want your wife to live? Veil her. Do you want your wife to die? "Roll the wheel" and King and Providence will decide.

We can construct a rough trajectory for the development of Hittite "adultery" laws. The OH legist(s) define "adultery" by boundary cases (theft-marriage or elopement) was outside the pale; rape of a freeman's wife was inside the pale for both parties unless outside a house). The HL themselves provide internal evidence of movement from punishments meted out by offended kinsmen to state control of justice. Afterwards, during the Empire period and within the most important house, the palace, the borders of adultery were enlarged. Approaching a woman, even staring at her, fell inside the pale.

This development is also marked by the transformation of penalties. In MAL adultery was a private tort. The civil realm wedged an opening into the familial world when CH permitted

²⁰³ That is, a view from within the culture.

the king to spare the paramour if the cuckolded husband spared his wife. Parity of punishment for the parties governed penalties in both MAL and CH. In HL the provenance of justice moves to the royal court, though the cuckold is not punished if he wreaks vengeance in the heat of discovery. With the balance shifting from private tort to civil, the wronged husband may petition the court for a remedy. In contrast to the principle of punishment-parity (that presumes consent of the woman), the law punishes the man alone for rape in the mountains. By the time we come to the Iron Age Code of Gortyn, adultery is exclusively a civil tort and the punishments are completely standardized in a complex system of fines. Israelite law participates in the standardization of penalty (death), and Israelite Wisdom literature allows composition as a remedy (Prov. 6:35).

Figure 6.3

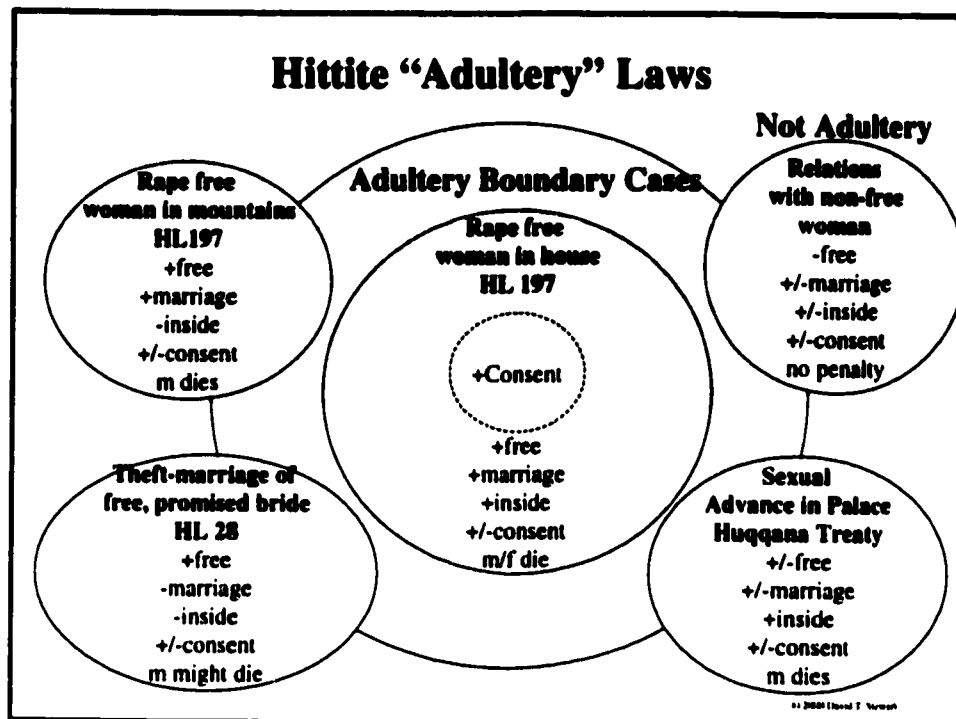
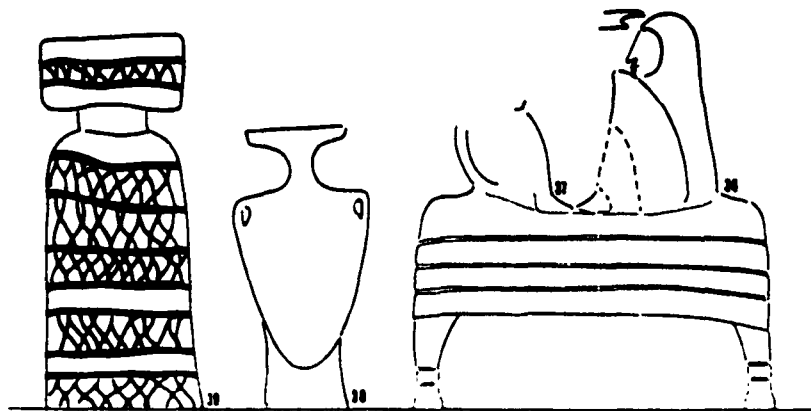


Figure 6.4
Bitik Vase: Unveiling the Wife²⁰⁴



²⁰⁴ **Bitik Vase:** Fragment from a large relief vase, ca. 1600 B.C.E., Ankara, Archaeological Museum. Cf. Akurgal & Hirmer (1961:89, Pl. XIV); Tsevat (1975:239); Bittel (1976:143-45, 316, 330, Fig. 140); Loon (1985:11, 40, Pl. XII); Özgüç (1957; 1988:93-94, 96, 102-03, Pls. 67-69; 1993:476-77, Pl. 81); Hoffner (1995:558-59); Collins (Forth.).

Figure 6.5
İnandık Vase: The Nuptial Bed²⁰⁵



²⁰⁵ **İnandık Vase:** Scene from a large relief vase, ca. 1600 B.C.E., Ankara, Archaeological Museum. **Literature:** Özgüç (1988; 1993:476-77, Pl. 81); Haas (1994:318, 523-25, 759, Abb. 94a-c); Hoffner (1995:558-59); Collins (Forth.). **Comparable Iconography:** Alp (1947a); Goetze (1947); Opificius (1961:167, 235, 268 Tafel 20 #612); Cooper (1972-75:264d-265b); Bittel (1976).

6.2: (Regulated) Hittite Sexuality as a System

In Tables 6.1, 6.2, 6.3, and 6.5 above survey the structure of the Hittite semantic fields associated with sexuality. The structure of the pericope containing the Hittite laws of sexuality also seems to reflect aspects of the featural analysis in Table 6.4. Figure 6.6 below lays out an analysis of the overall structure of the sexuality laws. Rather than a disjointed collection, or an order dependent on word associations, the laws reflect an internal organization based on semantic feature and artfulness.²⁰⁶

The "law concerning *hurkel*," alluded to in the MH Bēl Madgalti Instructions (CTH 261),²⁰⁷ underlies the OH Code: Its provisions and exceptions fall under §§167-196. The "law concerning sexual *waštul*" extends from §§197-200A. Although the animal-initiated sexuality rules (§199bc) do not use *waštul*-language,²⁰⁸ the punishment for the ox parallels that of rapist who rapes in the mountains (§197). Both are punished by death.²⁰⁹ Law 200B, a non-sexual law, amends an earlier section of tariff laws (but may have been redacted into the

²⁰⁶ Contra Neufeld who asserts that there is a "lack of system" in how these laws are ordered (1951:103).

²⁰⁷ KUB 13.2 iii 11.

²⁰⁸ Although the head case (§199a) does.

²⁰⁹ This parity of punishment creates a homology: an ox that springs is like a rapist in the mountains.

set at the same time as the sexual laws).²¹⁰

Within this broad division there are a series of nested topical inclusions. Bestiality rules (§§187-188, 199-200A_a) envelop incest (§§189, 196-196) and adultery rules (§§197-198). Laws referring to incest with the living (§§189, 190c-

²¹⁰ Korošec, judging from internal evidence, discerns five redactional layers in the HL: HL₁ (this and the following are my sigla) associated with a pastoral economy and corporal punishment (e.g., §§57-59, 78, 166); HL₂ associated with expiatory offerings, delimitation of fields, and finder's laws (e.g., §§ 45, 66, 71, 167-168); HL₃ associated with high fines; HL₄, the 22 prescriptions reading karū...kinuna 'formerly...but now' moderating fines (e.g., §9) plus laws extending responsibilities and protections to slaves (1957:100-104). The final section HL₅ (§§187-200A) represents "une addition postérieure" because of its thematic disconnection with earlier sections (1963:125). However, his basis for assigning corporal punishment laws to HL₁ rests on his feeling that they are primitive, something Diamond (1971) would dispute.

Hoffner's (1997:5-7) redactional history makes use of an entirely different category of evidence, manuscript differences. Presumably, a first layer must exist (Pre-HL) before the karū/kinuna laws, a layer not attested by independent tablets. The second stage (HL₂) encompasses the reduction of fines and changes in modes of punishment (fines and expiatory sacrifices replace execution by bee-sting (§92), or by ox and plow (§121), and ritual spear gestures (§101)). Slight changes from the main recension of OH to NH Mss., reducing fines the more, constitute a third stage HL₃. Differences embodied in the late "Parallel Text" (affecting only §§1-100) represent stage four, HL₄. Hoffner does not address Korošec's suggestion that §§187-200A are a late addition.

Hoffner seems unaware of Diamond's theory that asserts the late development of corporal punishment in the history of law. The shift from corporal punishment to fines represents a move "from the purely punitive view of law to a compensatory one," Hoffner suggests (1997:7), perhaps reflecting on the humanitarianism of the Hittites (Archi 1979). While HL does abandon particular modes of execution, it does not abandon the death penalty itself. The evidence is insufficient to settle whether HL₅ represents a separate redaction of Pre-HL or HL_{4-b}. That §200E represents a "coda" added later seems likely (Daube 1947; Carmichael 1972).

191) interconnect with laws concerning the dead (§§190ab, 192-193). This chain-link trope occurs again with the dietary rules (§§192-193, 195a) that interlock with the two-women laws (§§194, 195bc).

Within each topic there is also evidence of an internal logic. Bestiality rules move from the severest penalties (§§187-188) to beatiality of the second (§199) and third degree (§200A α). Rules for relations with unfree women punctuate (§§194a, 194c) the *hurkel* subsections; Rules for slaves (§196) and half-free (§200A β) follow those for freemen in the larger paragraphs concerning *hurkel* and *waštul* laws.²¹¹

Encompassing the entire set of sexual laws is a topical merismus. The first two laws, HL§§187-188, cover sexual relations with GUD UDU (a merism in itself for 'livestock'); the final law (§200A β) covers sexual issues with *arnuwalaš*-women, a subset of NAM.RA or 'war captives'. NAM.RA GUD UDU represents the "totality of mobile wealth," as Watkins notes (1994:655). Thus, in inverse order, the primary representative of moveable wealth bookends the Hittite sexual laws.²¹²

Thus, the concatenation of these laws is not merely a

²¹¹ Hittite law often moves from the most to the least important case (Korošec 1964:181; Haase 1994:223 and n.11; Hoffner 1997:218).

²¹² Cf. Watkins' discussion of the catalogue of moveable wealth in the "Merchant Epic," KBo 12.42 iii 1-16 (1979:281).

Figure 6.6
Structure of the Hittite Sexual Laws

L A W O F H U R K E L		HLSS	Topic	Features ¹	Features ²
	A	187-88	Bestiality with cow/sheep [GUD UDU]	+ḫaratar +ḫurkel +waštul	SUBJ. +free ³ +human OBJ. -human
	B	189	Intergenerational incest: mother, daughter, son		SUBJ./OBJ. +free +human
	C	190a	Principle of ±living: (Dream of) sex with deceased (ghost?)	-ḫaratar -ḫurkel +waštul	-living ♂ SUBJ. +human OBJ. -human
	D	190b	Stepmother, father dead		-living ♂ relative SUBJ./OBJ. +free +human
	E	190c	Incest: stepmother but father alive	+ḫaratar +ḫurkel +waštul	+living ♂ relative SUBJ./OBJ. +free
	F	191a	Principle of ±location: different & 2 co- uterine sisters	-ḫaratar -ḫurkel -waštul	-location SUBJ./OBJ. +free
	G	191b	Same location & 2 co- uterine sisters	+ḫaratar +ḫurkel -waštul	+location SUBJ./OBJ. +free
	H	192	-Living: wife's sister: wife dead;	-ḫaratar -ḫurkel -waštul	-living ♀ relative SUBJ./OBJ. +free
	I	193	-Living: wife: husband dead		-living ♂ relative SUBJ./OBJ. +free
	J	194a	2 ♀ rule		SUBJ. +free OBJ. -free

L A W O F W A S T U L	K	194b	2 ♂ rule: brothers with same ♀	-ḥaratar -ḥurkel -waštul	SUBJ. +free OBJ. +free
	L	194c	2 ♂ rule: father & son with same ♀		SUBJ. +free OBJ. -free
	K	195a	+Living: brother's wife, brother alive	+ḥaratar +ḥurkel -waštul	+living ♂ relative SUBJ./OBJ. +free
	L	195bc	2 ♀ rules		SUBJ./OBJ. +free
	M	196	Slaves do ḥurkel	+ḥaratar +ḥurkel ±waštul	SUBJ./OBJ. -free
	N	197	Rape in mountains	+ḥaratar -ḥurkel	SUBJ./OBJ. +human
	O	198	Rape/adultery in House	+waštul	+free ¹
	P	199a	Bestiality with pig/dog		SUBJ. +human OBJ. -human
	Q	199b	Ox springs at man	+ḥaratar -ḥurkel -waštul	SUBJ. -human OBJ. +human
	R	199c	Pig springs at man	-ḥaratar -ḥurkel -waštul	
	S	200Aα	Bestiality with horse/mule	-ḥaratar -ḥurkel +waštul	SUBJ. +human OBJ. -human
	T	200Aβ	Relations with 2 arnuwalaš [=NAM.RA] ♀	-ḥaratar -ḥurkel -waštul	SUBJ. +human +free OBJ. +human -free

¹ Cf. Table 6.6.

² Cf. discussion in 6.1 above.

³ Implied by summary case M. and so posited for cases A-L.

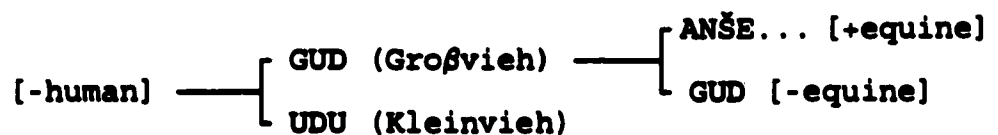
⁴ Implied by final case T.

matter of the attraction of key words -- else the law of the springing ox (§199b) should stand near the law forbidding relations with an ox (§187). Nor does "adjacency" yield the most important hermeneutic key. Nor does identifying the topic of these laws as "asexuality" discover their glue. Rather, what stands before us is a complex and artistic organization of the sexual laws -- one that uses a merismal frame, adduces principles in principal cases ({±hurkel} §187; {±living} §190a; {±location} §191a; two related people with the same partner §194a; {±waštul -hurkel} §197), and orders by inclusio and chain-link intertwining.

What asexual behaviors did the Hittites problematize? That is, what sexual acts are not simply approved or condemned but rather generate rationalizing explanations, fall on categorical boundaries, or reflect tensions and contradictions with other Hittite texts?

First, bestiality with equines, though not punished, remains waštul. This communicates more than the residual disapproval Lafont finds in another context (1999:225). The perpetrator cannot come before the king or become a priest. This rule defends the purity of the royal family and the integrity of the class of priests.

The "animal system" worked out in the laws is more elaborate than that postulated by Watkins (1979:279):



The HLe reveal another category: ŠAH UR.GI, or 'pig/dog'. Their is no textual evidence that allows us to subordinate pigs and dogs to the claaa UDU, although thia could have a certain logic in Watkins' schema. We have, rather, a system of three categories: GUD UDU, ANŠE..., and ŠAH UR.GI,. Aa Tambiah pointe out, in his quaintly titled article "Animals are Good to Think" (1969), animal worlds function as fields on which to project thinking about the social order. Likewiae here, the Hittites think about their social claaees.

The HLs protects the royal class: those who have relations with any of the categorically representative animals -- ox, sheep, pig, dog, horse, or mule -- may not approach the king. Priests appeace the chthonic with piglets and puppies, but guard their compounds from the nuisance of hogs and dogs. The horse-abuser may not enter on the profession of priest. Those with access to horses (military and merchanter) avoid the punishment of death for sexual relations -- and valuable horses are not killed. Kaškeans, the quintessential "other," are demonized as "swineherds." Stockbreeders and farmers, keepers of oxen, sheep, pigs, and dogs, must stand off from Kaškeans or risk waštul. Something like the claaees of the IE tripartite functional ayatem come into view: royals and priesta stand protected from military, merchants, stockbreeders, and farmera who violate their animals. On the other end of the apectrum, the claaa reaponable for fecundity (stockbreeders and farmera), are walled off from aocial

intercourse with the marginalized and enalaved Kaškeane. While breeder and farmer risk death for animal violations, horse-handlers receive an exemption, and slaves of all stripes risk banishment instead (§196). Thus we have these homologies:

A	"Oxen and sheep"	: (Free)men
B	"Horses and mules"	: Soldiers (and merchants?)
C	"Swine and dogs"	: Barbarians (and slaves?)

Members of classes "B" and "C" can contaminate the priestly class or sancta. Anyone from these three classes could contaminate the king by their bestial acts.

Just as those of the producer class face possible death for sexual improprieties, priestly workers can also face death for asexual impurities. In the same section of the "Instructions for Temple Officials" (CTH 264) that exhorts temple kitchen workers to stand guard against pigs and dogs, it also exhorts other temple workers to bathe after sexual relations and before returning to work. "If he with malice aforethought postpones (the bath), and, (when) he has not yet bathed he defiles the ordinary bread and the libation bowl of the gods (by being) unclean near (them); or (if) his fellow servant knows (about) him ... let them both die."²¹³ Here is a capital "sexual" crime restricted to the priestly class.

The problematization of intercourse between social classes brings a surprise: the HLLs take pains to permit sexual relations with slaves otherwise verboten to the free. The law

²¹³ Sturtevant & Bechtel's translation (1935:160-163) of their eclectic text, 3.78-83 (cf. also Sturtevant 1934:388-389; KUB 13.5 iii 43-49).

permits a freeman to take two slave aisters; or a slave mother and her daughter; or the same if they are deportees or civil prisoners; or a father and son the same slave. All these would prove *hurkel* or incestuous among the free. It is not as if no sexual boundary exists between free and slave. A free woman marrying a slave becomes a slave (§§34-35); a slave woman marrying a free man retains her disadvantages (cp. §31 with §32). It is also possible for slaves to commit *hurkel* among themselves, although punished by banishment or remitted by sacrifice (§196) whereas the free may die. The great divide between free and unfree neutralizes or nullifies *hurkel*.

The differences in punishments for *hurkel* between free and unfree may encode an economic motivation. After all, the Hittites accept composition paid in people (one to four persons) for murder (§§1-4), even taking the murderer himself in one notorious case (§43). Might the case of slave *hurkel* also reflect this same legal ideology? All workers are needed for the work. There are none to spare (cf. Greenberg 1960). It also preserves the sexual hegemony of the free classes over all others: it gives them fertile fields for their seed. Thus, relations between the free and the non-free are always counted "exogamous."

The status of non-free is like also like a "location" outside society. Just as the free find no punishment for otherwise verboten sex with slaves, they find no punishment for relations with free aiatara who live in different locales.

Merchants or military or others may take a wife here and her sister far away. This trope of place also protects the free woman from punishment when a man rapes her in the mountains. The location codes it as "rape," or at least unpunishable, whether she consents or not. In the complementary case, a woman and a man in a house, the law provides a strict liability. Both die. There is no inquiry as to whether she consents. To establish the place -- a town, two sisters living nearby -- bypasses any need to establish consent. Shared location may stand as a token of consent, but it is not a perfect equation.

If we imagine that "outside location" forms a homology with non-free status, so do they both with death. The HLs problematize living status and sex. When an intervening spouse or parent dies, a man may marry his former sister-in-law, a woman her brother-in-law, a son his stepmother. Not only is this true for relations by marriage, but also for consanguines. Whether by dream or by intercourse with a ghost, sexual relations with the deceased go unpunished. It is not that death ends consanguinity -- we have rituals that speak of the deceased mother coming to greet her dead son (Hutter (1997:85); KUB 30.28 rev. 11-12) -- but rather it nullifies *burkel*.

Thus the farther from the cultural center one travels, the fewer sexual restrictions remain in force. Whether one ascends the mountains, descends into slavery, or has truck

with the realm of the dead, one escapes the regulation that intensifies approaching temple and palace. At the center, where the king will not see to the face those accused of bestiality, where the royal pair stand at risk of contracting some impurity that impairs their reproductive health, the strictest sexual regulation appears. A barbarian vassal with access to the court may not send his slaves as emissaries to, may not associate with, may not even stare at a palace woman (Huqq.). Just as the outsider Kaškeans are forbidden social intercourse with stockbreeders and farmers within a city (CTH 89), so also the outsiders Huqqana and Mariya may not pursue social or sexual intercourse with the Ladies of the court. Why? Stockbreeders and farmers are too close in class to Kaškean swineherds; Huqqana, married into the royal family, is now inside. Šuppiluliuma does not end his treaty requirements here. He extends the customary mores of Hatti-land to the vassal's court in Hayaša. Huqqana may not act as if he is "outside" Hattuša and take his wife's sisters and cousins into his harem.

The Hittite sexual prohibitions thus fall on two kinds of gradients. From cultural center to cultural margin, palace to perimeter, urban to steppe, urbane to barbarian, sexual mores "decline." But also from Ego's social center to Ego's social boundaries sexual mores relax. Whether free or unfree, royal or not, access to those closest in class and status law and custom restrict. Thus for Hatti-land, the relaxation of sexual

mores measures "otherness." In contrast, it is just the outer sexual margina that the biblical Holiness Code fortifies: no incest exemptions for affines and consanguines; no exemptions for certain animals; no sexual relations with the divine; no relatione with those leaking their life-blood.

CHAPTER SEVEN; Afterword

The pagee that have come before limn both the sexual system of the Holineee Code and that of Hatti-land. The particulars of each can be read against the other for contrast or the occaeional similarity. Theee reconetructed systems are mostly self-referential -- though it is possible that H, for its polemic against "two women rules" for instance, draws on some tradent of the Hittite system. Beyond the particulars of each system, what are the issues -- revealed by inconsistencies, intertextual tensions, and extended discussions -- with which they grapple? What do they problematize and what queetions underlie their problematizations?

Hittite eexual queetions. Hatti-land seems to ask: What constitutes 'bestiality'? When do relations with consanguines and affines constitute 'incest'? Does ignorance of blood relation and distance ameliorate this crime? Under what circumstances for 'rape and adultery' do you hold the male perpetrator accountable alone? Can one sexually use a slave ae one wante? How should the power elites assure offspring from the correct class and lineage? How do the elites prevent the sexual impurities of others from threatening their fertility? Can the normal sexual behavior of the priestly class affect the cult? What sexual behaviors are ħurkel? What is waštul? What is natta ħaratar? Should punishment for sexual crimes be left to vendetta?

Sexual questions implied in the Holiness Code. The writers of the Holiness Code seem to ask: How does gender affect sexual crimes? Why are relations with the *niddā* more serious than its temporary polluting effects? Why is a woman's relations with a beast especially horrific? What does "uncovering the nakedness of the father" encompass? Does levirate marriage "uncover nakedness" and so pollute the nation? What is adultery? What is *zēnūt*? What aggravates *zēnūt* to make it like adultery? Why is adultery dangerous? Indeed any sexual crime? How is conjuring the dead, child-sacrifice to *Mōlek*, and offering blood to satyrs like a sexual crime? What is *tāmē'*? What is *tō'ēbā*. or *zimmā*, or *tebel*, or *niddā*? What things related to the sexual realm desanctify priests? How do slave- or priestly-status ameliorate or aggravate sexual crimes? How is "blood sex" like incest? Incest like bestiality? Bestiality like adultery? Adultery like traffic with divine beings?

So we find, for example, blood-sex is like incest because each uncovers nakedness and involves *niddā* (Lev. 18:19; 20:21). Incest is like bestiality when each is *tebel* (Lev. 18:23b; 20:12). Male bestiality is like adultery because each misuses the penis (Lev. 18:20, 23a). Adultery is like sacrifice to *Mōlek* because each misuses "seed" (Lev. 18:20, 21).

It is the questions above -- questions imputed to the text or its implied authors -- that are the fruit of this

study. I began with my own questions -- Why is there such a flowering of incest rules? What does the text say about homaexuality? Why does the text bother with bestiality? Do the texts recognize rape? Why is the *mōlek* command placed with the sexual laws? But these are the questions of a late twentieth century reader -- questions that have their own validity because they stem from our problems. So our answers -- to the degree we try and draw them from ancient texts -- must be every bit as "constructive" as my enterprise to reconstruct the "indigenous" questions.

The enterprise of "construction" might well have a bias toward harmony and order -- the suppression of difference between "now" and "then"; the desire to account for anomalies and make them fit. Indeed, is there a (coherent) sexual system in the Holiness Code or Hittite Law? Is that of H different from or supplementary to views of sexuality implied in biblical narrative or the other "codes," Covenant, Deuteronomic, or the larger Priestly? Should Hittite law, treaty, ritual, and myth be harmonized together? The answer must be that both sexual "systems" -- Holiness and Hittite -- are "systematic ensembles" containing competing voices in dialogue with ideas in and out of their cultures.

Excluded sexual acts. The discussion of "coherence" and the task of "construction" inevitably stumble over the silences of the text. What sexual behaviors do H and HL exclude from their discussion, as Foucault would have us ask?

What is not problematized (and why)? For H, the answer might be that some sexual acts are discussed elsewhere. For instance, Genesis speaks of direct sexual relations with numinous beings (Gen. 6:1-4) but does not speak of idolatry in terms of adultery. Genesis deploys the Leitmotif of the infertile or post-menopausal wife (e.g., Rachel and Sarah), and pays passing notice to Sarah's "pleasure" and the technology of fertility, but none of this is at issue in H. Narratives may contemplate "gang rape" (Gen. 19 and Jdg. 19), and legal texts the "rape" of female war captives, or betrothed women found on the steppe, or unbetrothed women (Deut. 21:10-14; 22:25-29), but only Lev. 19:20-22, among any possible H text, makes exception for one abused -- a "promised" slave girl. Likewise, H ignores fornication with unbetrothed women (Exod. 22:15-16), relations with a female slave by the master or his son (Exod. 21:7-11), "adultery" with a betrothed woman (Deut. 22:23-24), or any other premarital relations by a woman before her wedding night that damage her virginity or result in pregnancy (Deut. 22:13-21). If we were to read the Bible synchronically, these are supplements -- there is no need to discuss them in H; they are already covered. If we were to read diachronically we must ask: Does H ignore these problems because it accepts the narrative discussion of JE or the legal solutions of D? Or, have the problems not yet occurred to H?

For H, numinal relations are transposed to the domain of

cultic interactions with Mōlek, satyrs, ghosts, and familiar spirits. Rape is not (yet) decoupled from adultery and fornication. The boundary of marriage does not explicitly extend to betrothal. These transactions do suggest directions of reading: H metaphoricizes J's mythic "literalness." D does begin to disassociate rape from adultery (Deut. 22) and so may make an advance over H.

There are also sexual relations not explicitly discussed in H (nor anywhere else in the Hebrew Bible) and yet analogous to those above. What of the rape of male POWs? The sexual use of male slaves by the master? Moreover, neither anal, nor oral, nor other non-procreative sexual acts in homo- or heterosexual relations are in view. Nor do male-male relations explicitly appear beyond the circle of forbidden consanguines and affines, as I have argued above. Nor lesbianism. Though an androgynous *hā'ādam* appears in J (Gen. 2), H barely touches the sexual issues of intersexed persons:¹ genital-*mūmīm* desanctify priests from service (Lev. 21:20-21).

H does not enjoin prostitution per se, but does reprove the flagrant case of the father prostituting his own daughter, and does forbid the priest marrying a *zōnā*. Neither does H address a widow's sexual activity, though it restricts the high priest -- he may not marry her. H implicitly prohibits levirate-marriage to kin closer than a cousin (Lev. 20:11-12,

¹ Including androgynes, transsexuals, and persons of indeterminate or mixed gender.

20-21) and explicitly prohibits all such marriages to the high priest. The two-women rules of Lev. 18:17-18 also regulate permutations of prostitution, *šēnūt* of a widow, concubinage, and polygamy. But there remains an unregulated residuum.

Hittite law also does not specify particular sexual behaviors: anal, oral, or vaginal.² Rape is not distinguished from adultery or fornication in "houses"; nor is gang rape mentioned, nor lesbianism, nor the acts of intersexed persons, nor relations during menstruation. The Hittite laws do not mention brother-sister (or brother-brother) incest. The *Huqq.* treaty labels the prohibition of sister-incest customary. So we are left with another sort of residuum -- the ambiguity of silence. Does silence mean something is actually 'forbidden', yet too obvious to mention, or 'not forbidden'? Or might the claim of customary prohibition simply be polemic?

The Hittite and Holiness Code's sexual systems compared. What then is similar between Hittite law and the Holiness Code? First, there are the deep structures of the categories of reproof: for Hatti-land, *ḫurkel* and *waštul*, categories that actually structure the ordering of the laws; for the Holiness Code, *ṭāmē'*, *tō'ēbā*, *tebel*, *zimma*, *niddā*, or *ḥālāl*, and a certain artful distribution of categories, even a playfulness. Things *tebel* (Lev. 18:23b; 20:12) and *niddā* (Lev. 18:19; 20:21) hook together two pericopae, Lev. 18:19-23 and 20:10-21, framing what falls between. All the sexual acts of Lev.

² Unlike MAL A §§19-20.

18:6-23 convey *tûm'â* and are *tô'âbôt* (Lev. 18:24-30).

Second, both Hittite sexual laws and the sexual laws of the Holiness Code take bows to social class. In Hatti-land, perhaps by virtue of the Indo-European tripartite ideology, relations between slave and free are permissive, but intra-class relations restricted. H recognizes certain stricter standards for priests; and relaxes penalties where a slave woman is abused.

Third, the HL levirate-rule records a similar order of male-succession as that in H's *gê'ûlâ*-institution. HL and H juxtapose laws concerning bestiality, incest, and relations with the dead. Both "codes" have "two-women" rules (a single male sharing two related women). Though HL permits such under conditions of ignorance or across social classes, H categorically forbids it.

What then is different? Beyond the specific differences noted in cp. six above, there is one overall difference of tone: HL permits; H regulates and regulates. The laws of H not only encompass new species of adultery, incest, and bestiality, they include relations with the *niddâ*, and interactions with *Môlek*, satyrs, ghosts, and familiars. Moreover, H confronts gender as a category -- a gender inversion underlies Lev. 18. The text speaks of incest with female kin in terms of "uncovering the nakedness of males" (vv.7-16). Vv. 17-18 elaborately hinge this pericope to another regulating male behaviors in terms of women (vv.19-

23). Framed by the male pursuit of the niddā and woman-initiated bestiality (vv.19, 23b), v.22 describes male-male incests as the "lyings-of-a-woman." The rule for adultery subverts the usual male perspective. Adultery is no longer spoken of in terms of wifely betrayal (Num. 5:12ff), but in terms of a man misusing his virile member (v.20); that is, from a woman's perspective not a man's. Similarly, the text mentions a man's genitals again when speaking of male-initiated bestiality (v.23a). At the center of this little structure stands the mōlek-rule (v.21) fraught with the mythic background of numinal relations in Genesis (See Fig. 5.1).

Finally, the apodictic prohibitions of Lev. 18 appear to be inner-biblical halakhot, i.e. legal expositions of earlier materials from the Genesis narratives (and the Covenant Code). Hittite case law does not hide its debt to earlier cases and decrees, but any specific intertextual allusions in the sexual laws are not available to us.³ The most notable intertextual agenda in H is the exposition of the issues of Gen. 9. The regulations concerning blood manipulation in Lev. 17 implement the ban on eating blood found in Gen. 9:4. The incest rules elaborate the notion of seeing the father's nakedness in Gen. 9:20-23. The law against human sacrifice to Mōlek (Lev. 18:21; 20:2-5) specifies one reckoning for human lifeblood (Gen. 9:5-6). This is to say that the beginning of the Holiness Code is

³ The man who springs (waku-) out of the way of a palace woman in the *Hugq.* treaty may allude to the sexually excited animal that springs (waku-) at a man in HL.

a kind of axpoaition of "Noahide law," or at least, the first issuea of the post-diluvian world.

It is to another of P's commands that we must turn for a final word. All these possible sexual violations hark back to the beginning, to the era when God set in motion the ongoing re-creation of humankind. H's rules protect the channels of creation. The humans are not to step along the path toward the tree of life. They are not to manipulate the divine technologies of reproduction -- neither by mixing the phyla of humanity, divinity, or animals; nor by manipulation of blood and seed; nor by congress with the dead. We might say these commands are flashes from the cherubim's fiery sword guarding the way to the tree of life (Gen. 3:24). They represent the bounds of the command, *prû ūrbû ūmil'û 'et-hā'āreš* "Be fruitful and multiply and fill the land" (Gen. 9:7).

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