Consent versus Community:

What Basis for Sexual Offences?

J.P.Burnside

JUBILEE CENTRE
A BIBLICAL VISION FOR SOCIETY

'If the people of the land do at all hide their eyes from that man, when he gives one of his children to Molech, and do not put him to death, then I will set my face against that man and against his family, and will cut them off from among their people, him and all who follow him…'

Lev. 20:4-5; God speaking

'Sexual crime…can tear apart the very fabric of society.'

The Rt. Hon. David Blunkett MP,
speaking as Home Secretary on the publication of the
Command Paper, *Protecting the Public*, 19 November 2002

Copyright © Jubilee Centre 2006

The author has asserted his right under Section 77 of the Copyright, Design & Patents Act 1988 to be identified as the Author of this work.

First printed in 2006

ISBN (10 Digit) 0-948476-05-2
ISBN (13 Digit) 978-0-948476-05-1

Published by the Jubilee Centre
Jubilee House, 3 Hooper Street, Cambridge CB1 2NZ

All rights reserved

No part of this publication may be reproduced, or stored in a retrieval system, or transmitted, in any form or by any means, mechanical, electronic, photocopying, recording or otherwise, without the prior permission of the Jubilee Centre.

Contents

Acknowledgements

Thanks are due to Dr. Michael Schluter, Chairman of the Jubilee Centre, for initiating this research and to Jason Fletcher, Director of the Jubilee Centre, for seeing it cheerfully on its way. The author has conducted the following research in a personal capacity and thus the paper represents the views of its author and not those of the University of Bristol.

The translation of the Bible used is the Revised Standard Version (RSV), unless otherwise noted.

Foreword

This is a report that we at the Jubilee Centre have long anticipated. Over the years, we have conducted or commissioned research on a broad range of issues of concern to the biblical writers. When asked 'Why climb Mount Everest?' George Leigh Mallory gave the famous reply 'Because it's there'. The impetus for this research is similar. Sexual offences is an area of human life and conduct about which biblical law is clearly concerned; the material is there and needs to be understood.

Starting from the other end, it is equally clear that sexual offences is an area of great contemporary importance. The reforms introduced in the Sexual Offences Act 2003 are based upon particular value judgements; similar values have subsequently informed the Civil Partnership Act 2004 and the Equality Act 2005. These developments confirm the need for an advanced biblical sexual ethic capable of illuminating and challenging the underlying concepts driving recent legislative reform and the wider social change to which such reform is bound as consequence and cause.

By focussing upon consent versus community, this study opens a powerful line of critique, one the Jubilee Centre is continuing to research. Our contention is that the morality of a decision regarding sexual practice can only adequately be judged when the interests of third parties are taken into account. To put it another way, debate should be focused around a positive concern for the communities we seek to protect. What about the toll upon one's spouse, children, extended family, friends or colleagues – some or all of whom will be affected by decisions 'consenting adults' take? A serious concern to build community requires a new, less individualistic basis for sexual offences. This 'glimpse of a strange land' opens a new, and surprisingly fruitful, way forward.

It is, perhaps, particularly appropriate that a passage from Leviticus should prove so fruitful. In contemporary debate about family policy and sexual ethics it is often dismissed as 'primitive'. By demonstrating the care with which the material in Leviticus 20 is arranged, and the focus of the argument, this report will also, we hope, strengthen the confidence of the Church in the wisdom and authority of this neglected and maligned part of Holy Scripture.

J W Fletcher
Director

Part I

Sexual offences in the twenty-first century: Reform and context

This Part considers the current landscape of sexual offences in England and Wales at the start of the twenty-first century. This landscape is dominated by the reforms introduced by the Sexual Offences Act 2003, and amending legislation such as the Sexual Offences (Amendment) Act 2000. I will first explore the reasons for reform, as well as the principles and ideology underlying the new legislation (see 1 below). I will then turn to consider the Act in more detail, identifying specific offences (see 2 below). This will provide the necessary legislative background against which to consider the particular prohibitions of biblical law in Parts II–IV. I will next consider the social context which has made radical change in our approach to sexual offences appear both necessary and desirable (see 3 below), and identify a number of points which require further reflection (see 4 below). Finally in this Part, I shall offer some brief conclusions that can reasonably be derived from this account.

1. Re-setting the boundaries

The Home Secretary began the process of reforming sexual offences in England and Wales at the end of the twentieth century with the establishment of the Sex Offences Review Group in 1999. Its Terms of Reference were:

> 'To review the sex offences in the common and statute law of England and Wales, and make recommendations that will: (1) provide coherent and clear sex offences which protect individuals, especially children and the more vulnerable, from abuse and exploitation; (2) enable abusers to be appropriately punished; and (3) be fair and non-discriminatory in accordance with the European Convention on Human Rights and the Human Rights Act' (Sex Offences Review 2000a, iii).

Reform was perceived to be necessary because the last major piece of legislation in this area was the Sexual Offences Act 1956, nearly half a century ago, which was itself a consolidating measure that merged older legislation. There were thus at least three main reasons why reform was necessary. These three reasons are conveniently summarised by David Blunkett, as Home Secretary, in criticising the law as 'archaic, incoherent and discriminatory'. First, the existing law was seen as archaic. There have been significant changes to the law on sexual offences since 1956 including the Sex Offences Act 1967 which decriminalised homosexual intercourse in private (s. 1(1)). The Sexual Offences Act 1956 was increasingly felt to reflect the social attitudes and roles of men and women in the nineteenth century rather than those of the twenty-first.

Second, it was claimed that the existing law lacked coherence and structure. 'There is no Highway Code for sexual relations to give a clear indication of what society expects or will tolerate' (Sex Offences Review Group 2000a, iv). Third, and related to the second reason, the current law contained a number of perceived anomalies, especially in regard to homosexual behaviour, where it was seen as discriminatory. Consensual sexual behaviour was treated differently by the criminal law on the basis of sexual orientation, most notably regarding differences in the age of consent between heterosexual and homosexual intercourse, prior to the introduction of the Sexual Offences (Amendment) Act 2000. In addition, penalties for homosexual offences were higher than for equivalent heterosexual offences (Sex Offences Review Group 2000a, 98). This was held to be unacceptable given the perception that modern society is increasingly reluctant to discriminate on the grounds of sexual orientation. The incorporation of the ECHR into English law was thought to give new urgency to resolving these anomalies.

The Sex Offences Review Group took full advantage of their terms of reference to recommend 'root and branch' reform (Sex Offences Review Group 2000a, 1). Issues covered in the Review include: identifying the principles that ought to underlie the law on sex offences; rape and sexual assault; sexual offences against children and vulnerable people; sexual abuse within the family; issues of gender and discrimination; trafficking and sexual exploitation and various deviant acts.

The need to avoid discrimination in regard to sexual orientation and to address the perceived needs of homosexual persons emerged as key issues following

extensive public consultation between 1999 and 2000. One third of all submissions to the Review were directly concerned with discrimination against homosexual persons (Sex Offences Review Group 2000a, 98). The Group's recommendations and points for further consultation were published in a two-volume work, *Setting the Boundaries: Reforming the law on sex offences*, presented to the Home Secretary in 2000.

The Group claimed to produce 'a set of proposals for sex offences which are fair, just and fit for the twenty-first century' (Sex Offences Review 2000a, ii). It identified three key themes in its Report, which it claimed to derive from its Terms of Reference (see above). These themes were: (1) 'protection' (for children, vulnerable people and victims); (2) 'fairness' (i.e. making 'no unnecessary distinctions on the basis of gender or sexual orientation'; Sex Offences Review Group 2000a, 3) and (3) 'justice' (defined as the need to balance protection to complainants with fairness to defendants).

The Group took as its starting point the view that 'the criminal law does not condone or advocate any form of sexual behaviour, but is based on principles of preventing harm and promoting public good' (Sex Offences Review Group 2000a, 98). It thus adopted a classic liberal standpoint by claiming to exclude from legal prohibitions considerations of excellence or value. Personal moral concerns are subordinated to a shared public conception of justice that is said to be objective. However, as Nigel Simmonds writes: 'the neutrality of a liberal legal order is neutrality at the level of justification, not of effect' (2002, 72). Not everyone in a liberal society has an equal chance to pursue his or her own conception of a good sex life and in this sense the classic liberal approach to the criminal law is not neutral. Some people are able to indulge their conception of a good life without hindrance (e.g. consensual homosexual intercourse in private) whilst others are restrained (e.g. consensual heterosexual intercourse in public). This moral stance is reflected in the Act.

The Act's morality is clearly based on the 'harm' principle. The Group states that: 'judgement[s] on what is right and wrong should be based on an assessment of the harm done to the individual (and through the individual to society as a whole'). (Sex Offences Review 2000a, iv). The 'harm' or welfare principle accordingly sets limits to the principle of autonomy. The Group therefore had to acknowledge that 'an adult's right to exercise sexual autonomy in their private life is not absolute, and society may properly apply standards through the criminal law which are intended to protect the family as an institution…' (Sex Offences Review Group 2000a, iv). Naturally, the extent to which sexual choice may be circumscribed through law in order to 'protect the family' is a matter of degree. Where one draws the line says much about how one defines the family, and sees threats to the family and the extent to which one takes either seriously. The Group took the view that constraining sexual autonomy was only necessary where the sexual activity was non-consensual or not legally valid because it involved children or the very vulnerable who required protection (Sex Offences Review Group 2000a, iv). In other words, sexual choice may not be exercised in cases of abuse where the welfare principle clearly outweighs the principle of autonomy. This is a rather minimalist position. The fact that constraints upon choice are limited only to clear cases of abuse and lack of consent suggests that the Group did not attach very much weight to the institution of the family or its need for protection.

In identifying harmful sexual activity, the Review Team claimed to take account of the views of victims of sexual offences (who tended to be women) and academic research (ibid.). Naturally, taking this as a basis for our understanding of harm includes a number of assumptions of which the Group seemed to be unaware. As Kleinhans (2002, 240) points out: 'any such assessment must recognise that definitions of 'harm' have their own ambivalence, slipping between physical and moral terms of harm depending on who maintains the power to define exactly what constitutes a harm'.

'The neutrality of a liberal legal order is neutrality at the level of justification, not of effect'

Most of the recommendations of the Sexual Offences Review team were ultimately adopted into the Sexual Offences (Amendment) Act 2000 and the Sexual Offences Act 2003 (hereafter 'the Act'). This is outlined in the following section. This includes, *inter alia*, a redefinition of the offence of rape (s. 1 of the Act); a new offence of 'sexual assault by penetration' to deal with all other forms of sexual penetration (s. 2 'assault by penetration'); a new offence of 'sexual assault' to replace the existing offence of indecent assault (s. 3); and the replacement of the offence of incest with the modern offence of 'sexual activity with a child family member' (s. 25). A detailed definition of the meaning of the word 'sexual' is found in section 78.

However, not all of the Group's recommendations became part of the Act. For example, the Group recommended the repeal of s. 13 of the Sexual

Offences Act 1956 (the offence of gross indecency) (Sex Offences Review Group 2000a, vii, 101–102) which, *inter alia*, criminalised homosexual activity in public toilets (s. 13(b)). But although the Act did repeal the offence of gross indecency, the House of Lords (led by Lady Blatch and Lady Noakes) added amendments making it a specific offence to engage in sexual activity in a public lavatory (see s. 71 of the Act). In this respect, the Act was not as 'modernising' as the Group intended.

2. The Sexual Offences Act 2003

This section provides an overview of the Sexual Offences Act 2003, which implemented most of the recommendations of the Sex Offences Review Group. Rather than present a section-by-section description of the Act's contents, I have chosen to analyse the Act by grouping its salient provisions around three main strands. However, these three strands are not identical to the three themes identified by the Group in (1) above. The three themes identified by the Group were 'protection', 'fairness' and 'justice', and although it is tempting to provide an overview of the Act which simply follows these predetermined contours, I have chosen to interpret the Act in terms of three slightly different themes, namely, 'consent', 'equality' and 'protection'. There are several reasons for this.

First, it seems to me that 'consent' is a vital, but unspoken, theme of the Act. Assumptions about consent undergird the whole of the Act and provide it with much of its ideological coherence (see (a) below). Second, the Group's concern for 'fairness' might usefully be relabelled as manifesting a concern for 'equality' (see (b) below). Third, in my view, the Group's definition of justice is defined in rather narrow procedural terms. That said, I agree that 'protection' is indeed a key theme and so I have taken this as my third main theme (see (c) below). The usefulness of this approach can, I think, by demonstrated by the way in which the Act coheres around these three related themes, consent, equality and protection. It also gathers in those aspects of the Act that are most relevant for the purposes of this paper, especially when viewed in the light of biblical law (see Parts II–IV).

(a) Consent

The overview of the Act begins with the theme of consent. Consent undergirds the whole of the Act because its underlying goal is to protect persons from non-consensual sexual activity. The Group drew expressly upon the Law Commission's policy paper, *Consent in Sex Offences*, and took the view that: 'the criminal law is not an arbiter of private morality but an expression of what is needed to protect society as a whole' (Sex Offences Review Group 2000a, 98). The result is a structure of sexual offences that is based on respect for private life and thus 'broadly permits consensual acts in private…' (ibid.). This concern for consent reflects the beliefs of the 1957 Wolfenden Committee that 'the criminal law should not intrude unnecessarily into the private life of adults' (Sex Offences Review Group 2000a, iv). The emphasis upon consent is also one of the implications of incorporating the ECHR into English law, especially in regard to Article 8 (the right to a private life). This in turn is related to the harm principle on the basis that most consensual sexual acts between adults in private are perceived as 'harmless' whereas sexual acts that are not consensual, or where consent is not legally valid (i.e. involving children and other 'very vulnerable people'; Sex Offences Review Group 2000a, iv) are seen as harmful. Concern for consent is thus entwined with concerns for privacy and autonomy whilst the corollary of this, that is, lack of consent, is entwined with paternalist concerns about harm and welfare.

A further indication of the importance of consent is its definition in section 74 of the Act. Consent is defined as agreement by choice on the part of a person who has 'freedom and capacity to make that choice'. It follows that a grossly impaired capacity would seem to be sufficient to negate consent. A person who has been made insensible through drink or drugs cannot give consent. Under section 61 it is an offence to intentionally administer a substance to another knowing that the recipient does not consent, with the intention of stupefying or overpowering so as to enable sexual activity to take place. Where the victim is under 13 neither consent nor belief in consent are defences. The Act's emphasis on consent means that consent and belief in consent act as defences to section 1 (rape) and to section 2 (offence of assault by penetration). The Act also provides a new list of circumstances in which it is presumed that consent is unlikely to have been given. Section 75 sets out a series of evidential presumptions regarding consent, noting that the complainant is deemed not to have consented in a range of circumstances (e.g. violence or fear of violence, state of sleep or unconsciousness, unlawful detention and so on). Section 76 makes conclusive presumptions regarding lack of consent where the defendant intentionally deceived the complainant as to the nature or purpose of the relevant act, or impersonated a person known personally to the complainant. It includes whether a victim was subject to force, was unconscious, abducted, subject to threat or unable to communicate by reason of physical disability; or was asleep or unconscious, possibly through drink or drugs.

Rape is the typical case of non-consensual sexual activity. Section 1 of the Act defines rape as the non-consensual penetration by one person of the vagina, anus or mouth of another. The emphasis upon consent means that, for the first time, rape can take the form of forcible oral intercourse. Concern for consent is also seen in section 4 (sexual activity without consent) and situations where the consent of mentally disordered persons is obtained by inducement, threat or deception. This may be in relation to either sexually touching a mentally disordered person (s. 35); engaging in sexual activity in the presence of such a person (s. 36) or causing the person to watch a sexual act (s. 37). In these circumstances there is no valid consent.

As noted in (1) above, the principle of autonomy is outweighed by the welfare principle in cases where the protection of the family as an institution is at stake. Thus certain sexual acts remain criminal even though there is consent on the facts (e.g. sexual activity in a public lavatory ('cottaging'), as noted in (1) above). Another example is sex with an adult relative, under sections 64 and 65. These provisions apply to the person who consents to penetration as well as the person who penetrates. The offence can thus be committed by consenting females, consenting males or consenting male and female blood relatives.

The Act's ideological commitment to consent has made it necessary to create several new sexual offences. These new offences are included in the Act because they are clearly non-consensual. Sections 67-68 create a new offence of voyeurism, which is committed by a person who observes another person doing a 'private act'. The observation must be for the purposes of sexual gratification in circumstances where the person being observed has a reasonable expectation of privacy. Typical cases involve landlords fixing spyholes into tenants' bathrooms or the covert surveillance of changing rooms (Sex Offences Review Group, 2000a, 122).

Section 70 creates a new offence of sexual penetration of a corpse. Necrophilia has never previously been a crime in English law but, once again, the ideology of consent requires its inclusion because it is clearly a case of non-consensual sexual activity. Rather oddly, though, according to s. 70(1)(c) it is the only offence in the entire Act which can be committed recklessly. Bestiality is also included in the Act (s. 69, repealing s. 12 of the Sexual Offences Act 1956). Again, the same logic regarding non-consensual intercourse applies; 'working as we do on the principle of free agreement to sexual activity, this was simply not possible with animals' (Sex Offences Review Group, 2000a, 126). One wonders whether the Group considered the possibility (which is legislated for in Ancient Near Eastern law) of a sexual encounter being initiated by an animal (e.g. Hittite Law 199).

Concern for consent is central to modern ideas about cultural freedom. The United Nations' *Human Development Report 2004* claimed that: 'cultural liberty is an important aspect of human freedom, central to the capability of people to live as they would like and to have the opportunity to choose from the options they have – or can have' (United Nations Development Programme 2004, 13). The Act's concern for consent thus makes it a typically modern piece of legislation.

(b) Equality

A second major theme of the Act is equality. This derives from the Home Office Mission Statement which is 'to create a safe, just and tolerant society' and the Group's belief that: 'in order to have a tolerant society we need equality before the law…' (Sex Offences Review Group 2000a, 1). It is also related to a concern for protection. 'In order to deliver effective protection to all, the law needs to be framed on the basis that offenders and victims can be of either sex' (Sex Offences Review Group 2000a, iv). Equality also reflects one of the implications of incorporating the ECHR into English law, especially in respect of Article 14 (the right to non-discrimination in the enjoyment of ECHR rights). The Group stated: 'It is important that any new or amended offence should operate in a gender and sexuality neutral way. A man and a man – or a woman and a woman – kissing and holding hands in public should no more be criminalised than a man and woman behaving in the same way'. So far as possible, therefore, the Act does not discriminate between men and women nor between those of different sexual orientation. As David Blunkett stated in the House of Commons: 'Criminalising acts between homosexuals that are not against the law for heterosexuals goes against the principle of equality and previous reforms' (19 Nov. 2002).

As a result of this concern for equality, all offences in the Act are gender neutral in their application unless there is good reason to do otherwise. This meant abolishing a number of homosexual offences, including gross indecency between men, other forms of consensual same-sex activity and soliciting by men. The Act was accordingly hailed by an *Independent* editorial for bringing an end to what it described as 'the persecution of consensual gay sexual conduct' (20 November 2002).

There are exceptions to this overriding concern for equality, however. Section 66, which deals with the offence of exposure, is a rare example of an offence that is restricted to male offenders. The Act is framed in terms of the intentional exposure of the male genitals, when the offender intends that someone will see them and be caused alarm and distress. The reason for a gender-specific offence was because 'exposure of the genitalia by women was not common, and did not seem to imply the same degree of threat as exposure of the penis by a man' (Sex Offences Review 2000a, 121).

(c) Protection

The Group took the view that the correct balance to strike between the principles of autonomy and welfare was a structure of sexual offences that 'broadly permits consensual acts in private but is effective against force, coercion and harm' (2000a, 98). Consequently, a third major theme of the Act is the protection of vulnerable groups, principally children and the mentally disordered.

(i) For children

The protection of children is seen in those offences that deal with the rape of a child under 13 (s. 5); assault of a child under 13 by penetration (s. 6); sexual assault of a child under 13 (s. 7) and causing or inciting a child under 13 to engage in sexual activity (s. 8). Sections 9–15 are presented as a bundle of new 'child sex offences'. These include intentionally sexually touching a child (s. 9) and causing or inciting a child to engage in sexual activity (s. 10). Section 10 plugs a gap in the current law which meant it was not an offence to persuade children to undress. This allowed paedophiles to sexually exploit child victims, provided they did not touch them. Section 11 makes it an offence to engage in sexual activity in the presence of a child for the purposes of sexual gratification; whilst section 12 makes it an offence to cause a child to watch a sexual act. Section 14 creates the offence of arranging or facilitating the commission of a child sex offence. Finally, section 15 creates the offence of meeting a child following sexual grooming (though in fact intentional travel is sufficient and no meeting need take place; s. 15(1)(a)(ii)).

Sections 16–24 provide still further protection by creating a bundle of offences concerned with 'abuse of a position of trust' in relation to any person under 18 years of age. These include: sexual activity with a child (s. 16); causing or inciting a child to engage in sexual activity (s. 17); engaging in sexual activity in the child's presence (s. 18) and causing a child to watch a sexual act (s. 19). These offences are similar to sections 9–12, except that sections 16–24 concern those who are in a position of trust. Positions of trust are defined in section 21 and include adults who look after persons under 18 who are accommodated and cared for in an institution. These include hospitals, care homes, children's homes and so on (see s. 21(4)). To 'look after' another is defined further as being 'regularly involved in caring for, training, supervising or being in sole charge' of persons under 18 years of age (s. 22(2)).

However, sections 25–29 provide still further protection by introducing a new bundle of 'familial child sex offences' governing sexual activity within the family. The offences include sexual activity with a child family member (s. 25) and inciting a child family member to engage in sexual activity (s. 26). The 'family setting' is widely conceived and so the scope of these sex offences is wider than the traditional laws of incest.[1] Under section 27, a 'family relationship' is held to exist if one of the parties is, or but for adoption would be, the other's parent, grandparent, brother, sister, half-brother, half-sister, aunt or uncle, or where the offender is or has been the victim's foster-parent. It also includes a relationship of caring within the same household by step-parents or cousins.

As a result of sections 25 and 26, the traditional blood tie of incest is replaced by a wider range of relationships. In doing so, the Act attempts to reflect the looser structure of modern families and protect the victims of sexual crimes that take place within them. In preparing the Act, Ministers of State stressed that they regarded crimes committed in the home, or within a 'family relationship' as a breach of trust and should be treated as an aggravating factor (Travis 2000). That said, a more traditional form of incest still survives in the form of offences that are characterised as 'sex with an adult relative' (ss. 64–65). This deals essentially with incest but the new offence has been much expanded to include any form of sexual penetration (s. 64). Leigh (2003, 11) queries the purpose of this offence since the Act already contains provisions relating to exploitation and notes that some of the rationale of the former offence of incest has been lost.

Finally, sections 47–51 provide yet further protection for children by introducing a bundle of offences relating to the abuse of children through prostitution

1 The criminal law of incest is comparatively recent: it did not become a criminal offence until the Incest Act 1908. Previously it was only an offence under canon law. Despite evidence of permissive attitudes towards sexual behaviour in other areas, incest still appears to retain its status as a taboo. A charity conducting Government-funded research into women who become pregnant as a result of incest is apparently struggling to complete the project because not enough women are willing to discuss the subject (Demopoulos 2005).

and pornography. Section 47 makes it an offence for a person intentionally to obtain for himself the sexual services of another and before doing so makes or promises payment to another, or knows that another person has made such a promise. Section 48 concerns the offences of causing or inciting child prostitution or pornography anywhere in the world. Section 49 provides for intentionally controlling a child prostitute, or a child involved in pornography in any part of the world, whilst section 50 is concerned with the intentionally arranging or facilitating child prostitution or pornography in any part of the world. Sections 72 and 73 are also geared to the protection of children and concern offences in respect of acts done outside the United Kingdom.

(ii) For the mentally disordered

The Act is not only concerned with the protection of children, but also with the protection of others who are vulnerable, especially the mentally disordered. This was considered necessary: the Group found that many mentally impaired people regarded sexual abuse as a normal part of their lives (Sex Offences Review Group 2000a, 61).

Sections 30-37 introduce a bundle of provisions concerned with offences against persons with a mental disorder 'impeding choice'. The fact that the mental disorder impedes choice connects the theme of protection with that of consent. Section 30 creates an offence of intentional sexual touching where the victim is unable to refuse because of a mental disorder, or learning disability, and where the offender knows or could reasonably be expected to know of this condition. Inability to refuse means lack of capacity either to understand the nature of the act or its possible consequences, or to communicate with the offender (s. 30 (2)).

The fact that the mental disorder impedes choice connects the theme of protection with that of consent

Other offences include: causing or inciting a person with such a disorder to engage in sexual activity (s. 31); engaging in sexual activity in the presence of a person with a mental disorder (s. 32); or causing them to watch a sexual act (s. 33). Similar provisions also exist in respect of care workers (sections 38–44).

(d) Summary

To sum up, the main provisions of the Act can be grouped around three main strands: consent, equality and protection. These three themes provide the Act with much of its ideological coherence and legitimacy and form the springboard for many of its innovations. However, it is no accident that the Act embodies these concerns, nor that these themes present themselves as coherent and legitimate to modern society. This is because they have themselves arisen as a result of changes in society which have caused us to think in certain ways about sexual ethics and thus to develop a particular concern for consent, equality and protection which becomes instantiated in law. At the same time, of course, the fact that these concerns are embodied in law in turn conditions the behaviour and responses of individual members of society. There is a systematic loop between law and society. Law and society together make law and society. In order to understand the roots of the Act, therefore, we must briefly consider this interplay between sexual offences reform and the changing social context.

3. The interplay between social change and legal reform

Legal theorists have long recognised the complex relationship between social change and legal reform:

> 'Law is an intensely dynamic thing, flowing from the past of society into its future, tending to make the future of society into what society has willed in the past that its future should be' (Allott 1991, 6).

A number of social changes have made the legal reform of sexual offences appear both necessary and desirable. As noted in (1) above, this includes changes in the roles and social attitudes of men and women since the nineteenth century. In addition to the social changes noted by the Review Group, there are other trends that have led to the pressure for legal reform. These include the rise of 'plastic sexuality' along with the desire to maximise 'sexual diversity' and 'cultural liberty'. This has helped to create a society in which the language of 'consent' and 'equality' is pre-eminent when constructing a public sexual ethic (see (a) below). However, 'plastic sexuality' may also give rise to concern about where the boundaries lie in adult relationships, which in turn gives rise to concern about where the boundaries lie in relation to adults and children. This means that sexual offences reform also speaks the language of 'protection', especially in relation to children and other designated groups (see (b) below). Social changes have also tended to create 'sexual schizophrenia' in modern society. This is the tendency to 'flip-flop' between regarding sexual behaviour as banal one moment and as a matter for criminal regulation the next. This in turn has led to

pressure for reform, as certain formal controls are seen as necessary to deal with the erosion of informal social controls (see (c) below).

(a) 'Plastic sexuality' and 'cultural liberty'

Kleinhans (2002, 238) quotes Anthony Giddens' view that:

> '…late modernity has experienced a free-floating "disembodiment" of sexuality ("plastic sexuality"): [that is] a sexuality that has been freed from its bonds to reproduction'.

Having loosed these bonds, sexuality is 'plastic' in the sense that it is now flexible and pliable. It is claimed that this liberation 'has resulted… in a change in relations between sexes, a striving for relationships that are no longer based on the gender hierarchy of the past' (ibid.). This reminds us of the fact that perceived changes in gender roles formed a major part of the movement for sexual offences reform (see (1) above). In sociological terms, it is fair to say that the effect of 'plastic sexuality' upon inter-gender relations is one of the reasons for the enactment of the Sexual Offences Act 2003.

Maximising 'sexual freedom' is seen as a significant component of 'cultural liberty'. The United Nations Development Programme defines cultural liberty as 'allowing people the freedom to choose their identities – and to lead the lives they want – without being excluded from other choices important to them' (2004, 6). This includes sexual freedom because 'recognition and respect for sexual minorities can make a society more culturally diverse' (2004, 30). The 'politics of recognition' demands formal recognition of the distinctive perspective of sexual minorities (2004, 29) and thus acceptance of the value of diversity. This creates a social context in which the language of 'consent' and 'equality' becomes paramount when constructing a public sexual ethic and this is reflected in the Act.

(b) Concern about adult/child sexual relationships

There is increasing concern that children are becoming 'sexualised' in our society, particularly in consumer contexts. Kenny (2001b, 19) claims that: 'Pre-teen magazines such as *Mad About Boys* – aimed at the nine to 12-year-olds – are principally about grooming the 'tweenie' market for sexual activity'.

> 'The boundary between the sex object and the innocent child is deliberately blurred in commercial pop culture… [T]he 11, 12 and 13-year-olds of the kiddie super group *S Club Juniors* bare their midriffs on publicity shots and invite visitors to their website to 'swoon' and visit their 'secret area" (Gove 2002, 18).

Combined with an acceleration of children's physical maturity (Odone 2002, 18) it appears that the line between adulthood and childhood, and thus between sexuality and asexuality, is becoming blurred.[2] Gove notes that:

> 'At one level, the acceptance of adult behaviour, codes and responsibilities is increasingly deferred. Marriage is postponed, families put off, the period of commitment-free hedonism associated with teenage or student years is extended well into the thirties. Products once aimed exclusively at the young now develop new brands to cater for this 'kidult' market… But even as maturity is postponed, so youth itself is rendered less special, protected, distinct' (2002, 18).

There is also evidence of actual sexual violence against children: in 2002, one in four of all rape victims was a child (Odone 2002, 18).

Perhaps not surprisingly, social commentators have pointed to the 'more general and deep-rooted confusion within this nation over the issues of sex and the relationship of adults to children' (Hall 2003,11), not to mention the high levels of neurosis attached to the subject. According to Kleinhans (ibid.), this is one of the social consequences of 'plastic sexuality'. The plasticity of inter-gender sexuality is mirrored along the child/adult divide as sexuality is transformed into 'a trans-generational concept':

> 'Contemporary disembodied sexuality poses a great challenge to sexual relations between children and adults… Colliding directly with

2 The sexualising of children may be connected to a broader social trend in which children are increasingly seen as having 'adult' concerns, such as fashion-consciousness and eating disorders. A Channel 4 documentary (*Skinny Kids*) broadcast in January 2003 suggested that adult preoccupations with health and fitness affected children. 'The term 'kidult' is supposed to describe adults who behave like children but could just as easily apply to these kids, adults before their time' (Driscoll 2003, 7). Hocking and Thomas (2003), writing for the think tank Demos, tried to assess the pros and cons of 'kidulthood'. Whilst recognising that children's lives have changed for the better in material terms over the past few decades, they warned that many children feel confined and pressured as never before.

> late modern conceptions of the child as an innocent being requiring protection, accepting a notion of plastic sexuality entails recognising children's ability to control and possess their own sexuality. Once we accept the force of Giddens' claim of a transformation of sexuality between genders, we are led down a path towards many other transformations of sexuality…'.[3]

To conclude, the sexualisation of children in our society, together with actual sexual violence against children and cultural anxiety regarding child/adult relationships creates a social context in which the language of 'protection' becomes paramount when constructing a public sexual ethic. This is reflected in the Act. This stated concern for 'protection' is somewhat ironic because, as will be argued in (4) below, the net effect of recent sexual offences reform has been to *remove* protection from children, principally 16 to 18 year olds. It may even be the case that the actual loss of protection makes the rhetoric of protection even more important, on the political ground that the less one is actually doing about something, the more one should be heard talking about it.

(c) 'Sexual schizophrenia'

To a large extent, the Act reflects the fact that, as a society, we continue to be concerned about sexual morality. This contradicts the recent argument by the humanist Joan Smith that there has been a fundamental shift of focus from 'private' to 'public' morality. Smith (2001) predicts that the 'old morality' (concerned with sex) is being replaced by another that puts the concerns of feminists, environmentalists, human rights activists and animal liberationists centre-stage. To put it bluntly, sex is 'out' but Third World debt is 'in'.

But this prediction is flawed. It is true to say that, in some respects, a concern for sexual morality is seen as passé. Evidence for this may be found in increasing tolerance of certain kinds of sexual behaviour, such as premarital sex, cohabitation and homosexuality. On the other hand, we witness popular demonstrations regarding the definition and treatment of 'sex offenders' and proposals for regulating the sex offenders register. Clearly we have not eliminated concern for sexual morality. What we have, in fact, is:

> '…a new double standard where "bonking" is widely regarded as so banal that it hardly matters, yet it can be so serious that a young man who makes a mistake [regarding his partner's last-minute withdrawal of consent] can be stigmatised for life with a criminal record' (Kenny 2001b, 19).

Longley (2000, 23) highlights what he describes as society's schizophrenia regarding sexual morality. 'On the one hand sex is increasingly treated as trivial or casual… [whilst] on the other hand there is increasing alarm over paedophilia and child sex abuse, rape (especially 'date rape'), internet pornography and so on'. As a result we have 'a society which sees a paedophile on every street corner [but] is simultaneously blind to the overt sexualisation of women and children in the name of freedom, entertainment or profit'. It is a distorted view of reality. Such schizophrenia is seemingly also reflected in the choices of individual parents:

> 'Ironically, the same parents who see nothing wrong in allowing little Jane to dress as Britney-in-the-making will forbid their children (boys and girls) from taking the bus to school unaccompanied, ban them from playing out of doors and generally circumscribe their movements as insurance against the bad adult world out there' (Odone 2002, 18).

These social changes flow into the Act, which reflects the confusion of modern sexual culture. On the one hand, it treats sex as trivial, casual and appropriate for children (e.g. the lowering of the age of consent for homosexual intercourse). On the other hand, it treats sex as something serious from which children need protection and contributes to moral panics over paedophilia (e.g. abuse of trust legislation) (see further Burnside 2001).

(d) The desire for certain formal controls

A further social trend is the erosion of informal social controls regarding sexual behaviour.

> 'The boundary between youth and maturity is one that has been dismantled by society not the State, through marketing imperatives, individual hedonism and the death of restraint. The culture which peeks at paparazzi pictures of teenage princesses in their swimsuits on page three of the tabloids, puts bobby-soxed Britney on the cover of a lad's mag and drapes the most desirable

3 This should not, however, be taken to imply that those who commit sexual violence against children are not responsible for their actions.

> fashions on women with barely pubertal figures is one that we have all collaborated in creating' (Gove 2002, 18).

In sociological terms it could be hypothesised that a lack of informal social controls creates a demand for increased formal controls (Garland 2001). Not surprisingly, there has been considerable debate in recent years with regard to the formal regulation of sexual behaviour, especially teenage sexual behaviour.[4] Formal government controls include proposals to hand out free condoms and the 'morning-after pill' in secondary schools and, most controversially, to fund birth control clinics for 11-year olds. Such clinics would be responsible to the local health authority rather than the school. Other proposals include encouraging schools to begin testing sexually active teenagers on a voluntary basis for sexually transmitted diseases (STDs).[5] The government also proposes to offer teenage girls easier termination for unwanted pregnancies through more widespread use of abortifacient drugs. Such drugs have previously only been available in hospital wards and special day units. These proposals have been roundly criticised: '[It is] impossible to ignore the effect on family cohesion if schools usurp the role of parents in setting the boundaries for sexual activity…' (Gove 2002, 18). In all, these proposals amount to a further shift away from informal to formal social controls. The trend towards increasing formal control is, of course, reflected in the Act itself which is by its very nature a formal attempt to regulate the sexual behaviour of society.

4. A contentious sexual ethic?

The relationship between social change and legal reform means that we have constructed a particular, socially determined sexual ethic as a result of a variety of trends and influences. There is nothing immutable about our present sexual ethic. The actual is merely the possible. And the sexual ethic embedded in the Act is contentious[6] and problematic for a number of reasons.

(a) The shadow side of 'sexual diversity'

First, as noted in 3(a) above, the Act embodies the value of sexual diversity as an aspect of sexual freedom and cultural liberty. However, it is clear that the promotion of such values has led to increased sexual and relational disorder. In 2005, the chief executive of the Terrence Higgins Trust (a leading HIV/AIDS charity, which also encourages the establishment of gay youth groups; http://www.tht.org.uk/) declared: 'We now have the worst levels of sexual health in England since the Second World War' (*The Times*, 'Body and soul' supplement, 8 October 2005, 3).

The 'celebration' of 'sexual diversity' has accompanied a decline in the institution of marriage. In 2005, the Office for National Statistics estimated that: 'By 2031 almost half of men will be unmarried compared with 35 per cent in 2003… The number of unmarried women will increase from 28 per cent to 49 per cent. As a result, the number of unmarried cohabiting couples will almost double, to 3.8 million' (Ford and Mansfield 2005).[7] The size of the divorced population is projected to increase 'at most ages' (National Statistics 2005, 77). The principal projection is of 5.1 million persons divorced by 2031 (op. cit., 79), compared to 3.68 million in 2003 (op. cit., 79–80).

The promotion of 'sexual freedom' (and the value of autonomy) is in tension with our desire to 'protect children' (and the value of welfare). In 2002, one in three British girls under the age of 16 was sexually active and Britain had Europe's highest teenage pregnancy rate (Odone 2002, 18). In keeping with this overall trend, there was a sharp rise in terminations to girls aged under 14 in 2004 (Frean 2005, 11). In 2000, the most recent year for which figures are available, eight 11-year-old girls in England and Wales gave birth, as did five girls aged 12 (Gove 2002).[8]

---

4 Lord Millett (a Lord of Appeal in Ordinary, or 'Law Lord') has said that the age of consent (currently 16) should be lowered so as to recognise the realities of today's society (Kenny 2001a). Kenny (2001a, 25) argues for a higher age of consent on the basis that 'allowing and encouraging early sexuality is a sign that a society is undeveloped… Civilisation sets in with the notion of protection and restraint.'

5 One forward-thinking Cornish school plans to hold special 'Pee in a Pot' days to encourage pupils to provide samples for analysis.

6 Just how contentious may be seen in newspaper reports that certain councils (including Bromley Borough Council) are refusing to allow staff to perform same-sex civil partnership ceremonies and are refusing to allow their function rooms to be used for celebration parties after the signing. This refusal would be illegal both as a matter of general public law and under the Human Rights Act (Grosz 2000).

7 The proportion of the adult (i.e. 16 years +) population who are married is 'projected to fall from 53 per cent in 2003 to 42 per cent in 2031 for males, and from 50 per cent to 40 per cent for females' (National Statistics, 2005, 78). The impact of this will be felt in particular age groups because of 'the recent steep fall in marriage rates at ages under 30' (*ibid.*). It is projected that: 'at ages 45–54 the proportion married is projected to fall from 71 per cent in 2003 to 48 per cent in 2031 in males, and from 72 per cent to 50 per cent for females. The proportion never married at ages 45–54 is expected to rise over the same period from 14 to 40 per cent for males and 9 to 35 per cent for females' (*ibid.*).

8 An individual case expresses these trends in microcosm. In 2001 a girl of 12 became pregnant in Rotherham, Yorkshire. Five men were tested for DNA samples to establish which of them is the father, as the girl herself did not know (Kenny 2001b).

(b) Limits to formal controls

Second, there are problems with the increasing tendency to seek formal controls to assuage our anxieties about sexual morality. The reality is that Government in a liberal democracy can have no more than a minimal capacity for good or ill to affect sexual behaviour, precisely because it is the most personal of choices.

(c) Giving the right shape to 'consent, equality and protection'

Third, although the Act takes as its 'guiding lights' ideas of consent, equality and protection, it can be questioned whether these are framed correctly.

(i) Consent

First, regarding consent. The question of consent is confined to certain persons and, as far as the Act is concerned, it is restricted to the actors involved. It may be the case that the wife is deeply affected where the husband has a sexual relationship with the au pair, but her consent is neither necessary nor relevant in modern law. This raises the question whether this limitation is recognised in biblical law and whether the consent of other parties is relevant (see Part III).

(ii) Equality

Second, regarding equality. 'Equality' is a slippery term, especially when applied to sexual ethics. The concern for equality breaks down at certain points in the Act itself (e.g. 'cottaging' is a male crime with no female equivalent, as noted in (2)(b) above). Likewise, although the Sexual Offences (Amendment) Act 2000 flaunts its claims to 'equality' it preserves an inequality regarding the age of consent in the United Kingdom (16 years of age in England, Wales and Scotland but 17 years in Northern Ireland), among other inequalities (Burnside 2001, 433–434). At a more general level it has been pointed out that the language of 'equality' is hard to apply to heterosexual and homosexual activity. As Phillips (2000) points out: 'Some homosexuals themselves concede that their lifestyle involves more of an emphasis on public sex and promiscuity than heterosexuality'.

However, 'actual equality' is not the sense in which the term 'equality' operates in this debate. In moral and political philosophy, equal consideration serves to identify certain classes within which it is not possible to make distinctions. As applied to sexual offences reform, 'equality' means identifying classes of sexual behaviour within which it is not possible to make distinctions for the purpose of applying criminal sanctions. The Act treats consensual homosexual and heterosexual intercourse above the age of consent as 'equal' in the sense that it does not regard any distinction between them as justified in criminal law. Having said that, the criminal law is prepared to regard distinctions between *other* kinds of sexual behaviour as valid. Thus the Act claims that homosexual intercourse is not a criminal offence, but that necrophilia is a criminal offence. This means that the Act's vision of equality is founded (unavoidably) on a series of moral distinctions. It also means that there are limits to equality in the Act. This raises the question as to whether there is an idea of 'equality' in biblical law and if so, upon what moral distinctions is it based (see Parts III and IV, below).

(iii) Protection

The Act raises the question: who are we protecting in sexual offences reform? The answer, in modern law, is certain 'vulnerable' groups, notably children. This raises the question of what groups are protected in biblical law and whether these categories of vulnerable persons go beyond those identified in the Act (see Parts III and IV, below).

Taken on its own terms, the Act's espoused concern for 'protecting children' sits uneasily with the principle of equality enshrined in the Act and other, recent, legislation. Section 1 of the Sexual Offences (Amendment) Act 2000 affirms the principle of autonomy, 'frees' young people to explore their sexuality and affirms the 'right' of 16 and 17 year-olds to engage in homosexual sex. It can be argued that such legislation creates the problem of protection in the first place by reducing the age of consent (Burnside 2001). Vulnerable 16 and 17-year-olds are one category of persons who are not protected and who should be. The 'abuse of trust' provisions in the Sexual Offences (Amendment) Act 2000 can be seen as attempts to 'buy-off' opposition to lowering consent by promising to protect 16 to 18-year-olds from sex with adults (Burnside 2001). For all the Act's claims to 'protect' children, the net effect is a loss of protection. The Act's failure to address the question of protection in a convincing manner may be traced to the original Sex Offences Group report:

> '[The review] has decided to ignore the profound incoherence of modern sexual culture, and instead it has asked who are the vulnerable and how are they to be protected. It does not ask why they are vulnerable in the first place, nor what are the factors that increase the temptation to sexual crime…' (Longley 2000, 23).

The result is an Act that: '…intrudes, obsessively and minutely, into every aspect of our lives where it does not belong and yet does not interfere to protect us where it should' (Marrin 2003, 17, commenting on the (then) Sexual Offences Bill).

The Sex Offences Review Group (2000a, 1) claims that the purpose of the criminal law in this area is to create 'a framework that protects the weaker members of society…who have been subject to sexual abuse or exploitation'. Some campaigners suggest that the greatest force in the 'sexualisation' of the under-age is manufacturers seeking a new market.[9] 'Browse on the high street and you'll find make-up for children [and] perfume for toddlers…' not to mention a child's T-shirt emblazoned with the word 'Flirt' in glittery letters (Odone 2002, 18). In 2002 Kidscape, the child protection charity, led a high-profile campaign against a high-street store selling G-strings for pre-teens decorated with a cherry and the words 'eat me'. Odone (2002, 18) claims that whilst large stores are now more careful, they are still 'crammed with crop tops and high heels for kids' and asks: 'Are our children 'nine-year-olds or nymphets?' (Odone 2002, 18). Remarkably, the Group had nothing to say about the commercially organised 'sexual exploitation' of the under-age.

Some campaigners suggest that the greatest force in the 'sexualisation' of the under-age is manufacturers seeking a new market

More broadly, it may be questioned to what extent the criminal justice system as a whole is able to pursue the value of 'child protection':

> 'Child protection is not listed as one of the priorities that the government sets for police forces… Only a handful of police authorities, such as the Met, have chosen to add child protection as a local priority. Most forces have no incentive to spend money on this area because it isn't one of their targets, and they won't be judged on it' (Russell 2002).

This is compounded by the problem of public willingness to detect and report such crimes.[10]

(d) Where next?

Finally, the sexual ethic that we have constructed and which is promoted in the Act raises the question of: what sexual diversity shall we celebrate next? Evidence from other jurisdictions suggests that there may be pressure to treat polygamous and bestial unions as 'equal' and thus non-criminal.

(i) Polygamy

In the Netherlands, marriage between three persons is not legal but it is legal to have a civil union. The first civil union between three partners, in which a man 'married' two women, took place in the Netherlands in September 2005. This is seen by some as a logical extension of the use of civil partnerships for same-sex unions. It is also seen in some quarters as the 'legalisation' of polygamy in the Netherlands in all but name. This is certainly the view of the man in question: 'We consider this to be just an ordinary marriage' (http://www.brusselsjournal.com/node/301; accessed 10 October 2005).

This movement towards a 'three-party marriage' suggests that the infamous 'slippery slope' is becoming steeper and slicker. Although the Netherlands case involved a man and two women, the next three-way union could just as easily be between two men and one woman, or even between three men, including a man, a father and his son.

Indeed, is there any reason to stop with the number three? In the same month, 'Feminist Initiative' (a feminist political party in Sweden) pledged itself to abolish marriage if it gains power. The party wants 'more than two people to be recognised in a partnership, although definitely not a "patriarchal structure" with harems' (*The Times*, 14 September 2005).

(ii) Bestiality

Now that the Act has come 'out of the closet' by decriminalising the law relating to homosexual

9 Odone 2002, 18 quotes Michelle Elliott, director of the charity Kidscape who claims: 'Theirs [the manufacturers] is purely a marketing exploitation… They're claiming that they're responding to demand. But it's not true. They've run out of teenagers and they're asking – what next?' Odone (*ibid.*) claims that: 'The pop music, film and pharmaceutical industries are equally eager to boost sales by treating children as mini-adults who deserve no special protection'. A 2002 report found that 'tweenagers' (i.e. the 10-13 age group) have a combined spending power of £1 billion a year (Gove 2002).

10 Russell (2002) quotes Peter Spindler, a detective superintendent specialising in child protection for the Metropolitan police, who claims that the real constraint on child protection is in fact the public: 'We can't bear to know what's happening behind so many front doors. We focus on the rare cases of child abductions, but we don't want to acknowledge that the most paedophile violence takes place within the home, with children being secretly and systematically raped by stepfathers, uncles and others. We don't want to lift the lid on it. And we certainly don't want to pay the costs of dealing with it.'

behaviour it appears that the next step is to 'come out of the kennel' (Steyn 2001, 20). After all, 'if it's legal for two humans to have sex and legal for two animals to have sex, why should it be illegal for a human to have sex with an animal?' (ibid.). In the United States, practitioners of bestiality as well as academic philosophers have begun making a case for change. As with homosexuality, bestiality is presented as a 'lifestyle choice' and, like other identity groups, its practitioners demand societal validation (ibid.). Steyn (2001, 20) reports a case in Maine, USA where a father attacked his son with a crowbar because of his son's bestial activities. The son wrote to the judge in charge of his case claiming:

> 'I'd like my significant other to attend by my side if possible… I've been informed your personal permission is needed given that my wife is not a human, being a dog of about 36 lbs weight and very well-behaved.' The letter ended with his signature and a paw-print, and underneath the words 'Phillip and Lady [the name of the dog] Buble' (ibid.).

The man claimed that he and the dog 'live together as a married couple. In the eyes of God we are truly married' (ibid.). Such persons apparently tend to refer to themselves as 'zoo couples', because the word 'bestiality' carries 'negative connotations' (Steyn 2001, 20).

A leading advocate of human/non-human relationships is Peter Singer (Professor of Ethics at Princeton University) who objects to what he regards as 'speciesism' (Singer 2004). Singer argues that animals should be next to benefit from the liberation movements that have so far extended rights to women, black people, Spanish-Americans and homosexuals (Singer 1989) and that the application of 'equality' to animals should permit sexual contact between humans and members of species other than our own (Singer 2001). Singer's claims are consistent with the assumptions underlying 'cultural liberty' and noted in 3(a) above. They are the logical consequence of celebrating diversity in all its variety and they show us what happens when 'plastic sexuality' morphs to a new set of contours. What happens when the walls come tumbling down, not merely between the genders, or between generations, but between species? 'People are left searching in the rubble, helpless before the wind' (Gove 2002, 18).

(e) Summary

The interaction between social change and legal reform has led to the construction of a new public sexual ethic which is enshrined in the Act. This ethic is contentious and problematic for a variety of reasons. First, the Act endorses the value of sexual diversity, even though the evidence indicates that the promotion of these values has led to increased sexual and relational disorder. Second, formal controls can only supplant informal controls to a limited extent. Third, it is questionable whether consent need be restricted to the parties concerned; whether equality should be founded on the moral distinctions in the Act and whether protection should be so limited. Finally, we may question a sexual ethic that can be extended to cover polygamous and bestial unions. Longley (2000, 23) concludes:

> 'Judaeo-Christian sexual morality and all the conventions that supported it have been dismantled and nothing has been put in their place. It is easier to address the symptoms, even if that proves a hopeless task'.

It is to these Judaeo-Christian attitudes that we must turn in the following chapter.

5. Conclusion

What main conclusions can be drawn from this general account of sexual offences reform in the twenty-first century?

- Changes in gender roles and the rise of 'plastic sexuality' have led to a number of social changes.
- These changes have made the reform of sexual offences appear necessary and desirable.
- Our public sexual ethic has been constructed from a set of concerns that include, among others, 'cultural liberty', adult/child sexual relationships, 'sexual schizophrenia' and the desire for formal controls.
- This has resulted in legislation (the Sexual Offences Act 2003) which reflects late-modern, liberal concerns for consent, equality and protection.
- The Act is based upon ambivalent assumptions regarding what constitutes 'harmful' sexual activity and what constitutes 'public good'.
- It also makes assumptions concerning the nature of 'family', perceived threats to the 'family'.
- Constraints upon sexual freedom in order to protect the 'family' are, in the main, limited only to clear cases of abuse and lack of consent. This suggests a rather minimalist conception of 'family'.
- The Act reinforces the confusion of modern sexual culture.
- The Act raises questions regarding the moral basis of 'consent', 'equality' and 'protection'.
- For these and other reasons, the sexual ethic on which the Act is based is contentious and problematic.

Part II

Sexual offences in the second millennium BC: Some methodological issues

Introduction

We turn next to consider what is typically referred to as 'Judaeo-Christian' values in relation to sexual behaviour. These have been historically relevant to thinking about sexual offences in English law, due to the influence of Christianity and the Bible on English cultural and legal history (e.g. Davies 1954). For this reason there has been a rather loose relationship between biblical law and English law regarding sexual offences, although the manner in which this has been expressed has varied over time.[11]

A proper reading of the biblical texts requires us to immerse ourselves in its culture (see generally Barton 1998, 1996, 1978). Cultural immersion is not incompatible with the fact that we have questions to which we want answers; there is an agenda to be set simply by submerging ourselves in the text. This chapter outlines some of the issues we will need to be aware of, both in terms of content and presentation, if we are to be responsible readers of these texts. For the purpose of this report, our immersion in the world of the text is not an end in itself but is in order to explore the boundaries of sexual behaviour in biblical law.

1. Turning from modern to biblical law

When turning from the modern law of sexual offences to consider biblical ethical material we need to remind ourselves that we are turning from one kind of society and legal system to another that is radically different. Biblical law is distanced from modern legal systems not only by time (perhaps four thousand years) but also by space (the Middle East rather than Middle England). We need to remind ourselves that modern liberal legal systems make various assumptions about the nature of law and justice that are very different to biblical society.

Jackson (2000, 70–71) notes major contrasts between Western and biblical approaches to law. At a very basic level, modern liberal legal systems assume that: (1) courts are the usual (and best) method of resolving disputes; (2) adjudication involves applying 'rules' and (3) such rules should be understood in semantic terms (i.e. according to the strict meaning of the words, usually). By contrast, biblical law makes different assumptions, such as: (1) 'people should avoid having their disputes resolved by court adjudication. Dispute settlement is essentially a private rather than public matter: shaming a neighbour in public is reprehensible and self-defeating' (Jackson 2000:71); (2) 'both private dispute settlement and later court adjudication do not necessarily involve the application of rules expressed in language' (ibid.); (3) 'where such rules are used their application is not to be identified with the notion of 'literal meaning' but rather with their narrative, contextual sense' (ibid.).

We have to learn to read biblical law 'from right to left' (that is, as it would have been understood at the time) rather than 'from left to right' (that is, by imposing our own cultural assumptions upon the text). In terms of understanding 'sexual' offences, this includes not imposing our own assumptions about family structures, marriage, sexuality, law, punishment and justice. When we juxtapose the ancient Word with the modern world, we will find that in some respects biblical society will seem somewhat familiar to our own (see Part III). At the end of the day we are still concerned with the expression of sexuality in a fallen world. It is a world – like our own – familiar with adultery (Exod. 20:14); incest (Lev. 20:12); homosexuality (Lev. 20:13); (regulated) prostitution (Prov. 7); bestiality (Lev. 20:15–16) and one where parents put their children out to work as prostitutes (Deut. 22:13–21; see Burnside 2003, 134–155).

In other respects the world of biblical law will seem very different. At times, it may amount to 'glimpses of a strange land' (see Part IV). It is a world where brothers were obliged to have intercourse with their dead brother's wives (Deut. 25:5–10); where wives

11 For a general account of the influence of the Bible on English law see Bailey (1931) and Davies (1954). At certain points in its history, English law bore a superficial similarity to biblical law (though of course there are important questions to ask of both jurisdictions regarding how such regulations were understood and administered). The penalty for bestiality was hanging for men and drowning for women until the Middle Ages, although the death penalty was subsequently revived. As late as 1871 a 77-year old man was hanged for the offence in Sheffield. Between 1533 and 1861 homosexuality was technically a capital offence in England, although it was rarely applied in practice (Morton 1999).

suspected of adultery were obliged to undergo a religious 'ordeal' involving a strange potion (Num. 5:11–31); where the errant daughter of a priest was burnt (Lev. 21:9), and the commoner's daughter executed at the door of her father's house (Deut. 22:20–21). The social world depicted by the patriarchal narratives may seem even stranger: one in which wives encourage their husbands to have intercourse with slave women to sire an heir (Gen. 16:1–4) or where daughters have sex with their father to continue the family line (Gen. 19:30–38).

This Part sketches the approach that will be taken in the rest of this paper to the interpretation of sexual offences in biblical law. It serves the following double-purpose: (1) it sketches some of the parameters that are necessary in handling biblical law and (2) it introduces some of the relevant material regarding sexual offences in the Bible. Space does not permit a detailed treatment of all the texts that might be considered relevant, although a detailed exegesis will be provided of Leviticus 20, given its importance in this context (see Part IV).

Nonetheless, in seeking to move from the modern world to the ancient Word there are certain methodological issues that need to be observed. These include the following: defining biblical law and understanding its purpose; biblical law in the context of ANE (Ancient Near Eastern) sexual offences; the use of various forms in biblical law; the relationship between law and narrative, as well as other aspects of literary presentation in biblical law, including the use of 'narrative' as opposed to 'semantic' interpretations (see (2) below). These elements are part of the celebrated image of the 'hermeneutical circle', in which the subject is also involved in the text that is being interpreted, with each reader bringing a different 'horizon' (or cultural-historical standpoint) to the text (see generally Vanhoozer 1998).

2. Approaching biblical law

Before going any further, we should perhaps define what we mean by the term 'biblical law'. In this paper I take the term 'biblical law' to refer to the legal rules and practices laid down or reflected in the books of the Hebrew Bible. Biblical law thus includes a wide variety of texts, sources and genres[12] relating to sexual offences. These include:

- Individual legal pronouncements regarding sexual offences (e.g. Lev. 21:9);
- A small group of laws concerning sexual offences (e.g. Deut. 22:13–30);
- A large group of laws concerning sexual offences (e.g. Lev. 18:1–30);
- Narratives (e.g. Sodom and Gomorrah (Gen. 19:1–29); and the outrage at Gibeah (Judg. 19));
- A combination of narrative and law (e.g. Exod. 20:1–17 and Exod. 32, where 'rose up to play' in Exod. 32:6 has a sexual meaning);
- Sundry judicial decisions and precedents (e.g. Judah and Tamar (Gen. 38); and the zeal of Phinehas (e.g. Num. 25) which has the character of a judicial execution);
- Juridical parables (e.g. Nathan's parable (2 Sam. 12) which refers to adultery);
- Use of metaphor by the prophets (e.g. the presentation of Israel as a harlot; e.g. Ezek. 23).

Thus, although the term 'biblical law' includes recognisably 'legal' material it also includes material that might not immediately be considered 'law'. This reminds us that there are a number of facets to biblical law. Among other things, biblical law has the character of:

(a) Commands to be obeyed

This is apparent in standard references throughout the biblical material to 'decrees' (*chokkim*); 'judgements' (*mishpatim*) and 'commands' (*mishvot*). The status of biblical law as divine revelation reminds us that biblical law has an inescapably theological character. This marks biblical law out as distinct from other Ancient Near Eastern (ANE) law. As Crüsemann notes: 'the basic notion that Israelite law is direct divine utterance is not at all common in the ancient world' (1996: 15). It is, after all, given in the context of a theophany (Exod. 19 & 20).[13] This does not, of course, mean that biblical law was accepted by all of

12 E.g. the book of *Numbers*, which many readers of the Bible would characterise as a 'legal' text appears to have the greatest number of literary forms of any book of the Bible. Milgrom (1990) claims that there are fourteen different genres in this book, including narrative, poetry, prophecy, victory song, lampoon, diplomatic letter, census list and so on.

13 Biblical legal collections are clearly set in the context of YHWH's covenant with Israel, which is described as a 'covenant of love' (Deut. 7:9, 12 literally, 'a covenant and steadfast love'). This places biblical law in the context of God's larger purposes for Israel. God gave *Torah* for Israel because He had redeemed them from slavery; circumstances that suggest that *Torah* was intended to preserve Israel's newly-won freedom and provide further opportunities for them to put their faith in Him, just as they had done in the journey from Egypt. 'Living by the law' was thus a dynamic relationship and not a duty. *Torah* possessed its own internal dynamic and life-giving properties ('For it is no trifle for you, but it is your life…'; Deut. 32:47) and so the natural consequence of obedience was also 'life' ('You shall walk in all the way which the LORD your God has commanded you, that you may live, and that it may go well with you, and that you may live long in the land which you shall possess'; Deut. 5:33).

the Israelites all of the time. The fact that biblical law did not reflect the views of all Israelites means that we have to reckon with the likelihood that biblical law may have had a prescriptive rather than a descriptive character (see Barton 1978 and cf. Part IV, below).

(b) Teaching or instruction to be learned

Biblical law is designed to be taught (cf. Jethro's instructions to Moses: '*Teach them* [the Israelites] the decrees and laws and *show them the way to live*…' (Exod. 18:20; italics added). Exod. 24:12 portrays God as a teacher of *Torah* who says to Moses: 'I will give you…the law and commands I have written for their instruction', whilst Deut. 1:5 says that 'Moses began to expound this law' (NIV); i.e. 'began to make the meaning clear'. It follows from this that biblical law requires constant reflection and discussion (Deut. 6:6–9) and is thus a suitable basis for meditation (e.g. Pss. 1; 19; 119). This is consistent with the characterisation of *Torah* in the New Testament (e.g. Gal. 3:19–25 where *Torah* is described as a 'pedagogue'). There is a parallel between life 'under the Law' and the period of childhood under a teacher of moral restraint who educated the pupil towards virtue (cf. Part IV, below).

(c) Guidance about how to live in specific situations

It follows from (b) above, and from the fact that biblical law is far from comprehensive, that the Israelites were expected to think creatively about how it might apply in situations that differed (in whatever degree) to those already described. Deuteronomy emphasises the need for the new generation to make its own response to the preaching of *Torah* (e.g. Deut. 30:19), which reminds us that biblical law was and is a living concept that must be appropriated and owned by succeeding generations. The emphasis upon 'this day' in Deuteronomy (the phrase is repeated almost 70 times) and the prospect of immediate entry into the Promised Land indicates that biblical law is always adaptable to new situations. Where individual laws are referred to they are adapted to current circumstances rather than followed exactly (e.g. Josh. 6–7 regarding the sin of Achan) (cf. Part IV, below).

Biblical law was and is a living concept that must be appropriated and owned by succeeding generations

Israel's unique status as a priestly nation (Exod. 19:6) means that Israel stands in the same complex relationship to the world as the priest did in relation to the people. Since the priests were under an explicit obligation to teach *Torah* to the people and provide education in wisdom (Lev. 10:10–11), the same was to apply to Israel in relation to the world – a task that was performed by Israel at her best (1 Kgs. 10:1–13).

3. Biblical sexual offences in the context of ANE sexual offences

We noted in (1) above that biblical law has certain elements that are familiar to us in modern law. However, biblical law inevitably has more in common with ANE law than modern law because they are closer in time and space; though this does not exclude the fact that biblical law is frequently radically different from ANE law (see Barmash's comparison of biblical and ANE law in relation to homicide; Barmash 2005). Legal collections in the ANE include the Laws of Ur-Nammu (c.2100 BC, Sumerian, Ur); Laws of Lipit-Ishtar (c.1930 BC, Sumerian, Isin); the Laws of Eshnunna (c.1770 BC, Eshnunna, Babylon); Laws of Hammurabi (c.1750 BC, Babylon); Neo-Babylonian Laws (c.700 BC, Sippar); Middle Assyrian Laws (c.1076 BC, Assyria, Asur) and Hittite Laws (c.1650–1500 BC, Anatolia).[14]

A substantial number of Pentateuchal laws, especially in the Covenant Code (Exod. 20:22 – 23:33) have recognisable parallels in either form or content with other ANE laws, particularly from Mesopotamia. The large majority of these are set out in casuistic form ('If… then…'). There are many parallels between biblical and ANE law. This is not surprising because biblical law shared in the legal tradition of ancient society. Westbrook (1985) claims that three-quarters of the Covenant Code can be traced back to standard legal problems found in the cuneiform codes. However, no laws have yet been found that are identical in form in both Israel and Mesopotamia.

It is readily apparent that, as far as sexual offences are concerned, biblical and ANE law deal with similar sorts of subject matter:

- Abducting daughters to have sexual relations without parental consent (LE 26 cf. Gen. 34:1–4; Deut. 22:28–29)
- Accusations of fornication (MAL A 22 cf. Num. 5:11–31, Deut. 22:13–21).

14 Some of the relevant material regarding sexual behaviour can be listed as follows: Ur-Nammu (LU) 6-8, 11, 14; Laws of Lipit-Ishtar (LL) 33; Laws of Eshnunna (LE) 26, 31; Laws of Hammurabi (LH) 127; Middle Assyrian Laws (MAL A 9, 12–20, 22–23); Hittite Laws (HL) 28a-c, 31–33, 187, 188, 189, 190–193, 195a , 197, 199, 200a. For a modern translation of these legal collections see Roth 1997.

- Accusations of promiscuity directed by men towards women (LH 127; MAL A 17 cf. Num. 5:11–31, Deut. 22:13–21)
- … followed by a ritual of ordeal for the accused woman (LU 18; LH 132; MAL A 17–18 cf. Num. 5:11–31)
- Adultery (LH 129; MAL A 13, 14, 16 cf. Lev. 18:20; Deut. 22:22)
- Bestiality (HL 187–188, 199, 200a cf. Exod. 22:19)
- Consensual sexual relations with another man during the period of betrothal (LH 130 cf. Deut. 22:23–24)
- Homosexual rape (MAL A 20 cf. Gen. 19:1–29)
- Incest between father/daughter (LH 154 cf. Lev. 18:6)
- Incest between father/daughter-in-law (LH 155; HL 189 cf. Lev. 18:10)
- Incest between father's principal wife/son following father's death (LH 158 cf. Lev. 20:11)
- Incest between mother/son (HL 189)
- … following father's death (LH 157 cf. Lev. 20:11)
- Intercourse by man with daughter and her mother (HL 191 cf. Lev. 20:14)
- Intercourse by man with dead brother's wife (HL 193 cf. Lev. 20:21 (where the marriage is non-levirate, unlike Deut. 25:5–10))
- Intercourse by man with sister (HL 192 cf. Lev. 20:17)
- Intercourse by free man with a female slave (LE 31; HL 31–33 cf. Exod. 21:9)
- Intercourse by husband with slave woman with wife's consent (LH 144–147 cf. Gen. 16:1–4)
- Rape of a married woman (MAL A 12; HL 197 cf. Deut. 22:25–27, where the woman is betrothed)
- Rape of unbetrothed woman (MAL A 55 cf. Deut. 22:28–29)
- Regulating paternity disputes (LH 135 cf. Num. 5:11–31; Deut. 22:13–21).

The fact that most of the biblical legal collections come from the third or early second millennium BC makes it clear that Israel's laws were part of a tradition that predates a conservative dating of biblical law by several centuries. Ultimately, ANE society faced a number of problems common to biblical society, and indeed many of these are still relevant today (e.g. marital unfaithfulness, forms of sexual deviancy, sexual abuse, the regulation of prostitution and so on), even though some sexual deviancy is expressed differently due to advances in technology and the mass media; (e.g. the use of chat-lines, internet pornography, virtual reality and webcams).

Because ANE law is closer to biblical law in some respects than biblical law is to modern law, ANE law can be useful in generating hypotheses about how biblical law might have operated. For example, Lev. 20:11 states that: 'The man who lies with his father's wife has uncovered his father's nakedness; both of them shall be put to death, their blood is upon them'. I shall argue in Part IV that this provision assumes that the father is already dead. Interestingly, one of the Laws of Hammurabi (LH 157) prohibits such incest and expressly states that the father is already dead.[15]

Naturally, parallels between biblical law and other ANE legal sources must be made with the greatest of care. We must recognise that even superficially similar biblical and ANE laws are derived from different social contexts. It is thus likely that even apparently similar laws are applied in different ways. We must also recognise the many differences between biblical and ANE law in the area of sexual offences. For example, ANE law refers to a number of sexual offences that are not mentioned in biblical law. These include: incest between a father and a prospective daughter-in-law (LH 156; although note that incest between a father and an actual daughter-in-law is anticipated in Lev. 18:10); incest between father and son [HL 189] and necrophilia (apparently not a criminal offence in Hittite Law [HL 190]). It is also the case that certain sexual offences that are punished in biblical law seem not to be punished in ANE law. For example, sexual relations with a sister are dealt with differently in Hittite Law [HL 192; 'it is not an offence'], compared with biblical law (Lev. 20:17; the punishment of *karet* ('cut off' from the people)). This reminds us of the many differences that exist, at a more general level, between biblical and ANE law;[16] although one must be

ANE society faced a number of problems common to biblical society, and indeed many of these are still relevant today

15 LH 157 reads: 'If a man, *after his father's death*, should lie with his mother, they shall burn them both' (italics added) (Roth 1997, 11).

16 Some of the principal differences are as follows: (1) Biblical law, unlike ANE law, is presented as divine revelation; (2) Biblical law is made the basis for covenantal life; (3) Moses is presented as a mediator of *Torah*, unlike Mesopotamian kings who commend themselves to subjects and deities alike; (4) Biblical law is primarily concerned with teaching the people as a whole rather than the more limited aims common to ANE law of educating scribes. Related to this concern, there is an increased emphasis in biblical law on its widespread promulgation and accessibility; (5) There seems to be an expectation that biblical law will have greater practical application than is expected of ANE law. Priests are commanded to teach biblical laws (e.g. Lev. 10:10–11); judges are told to follow them (Deut. 16:18 – 20); kings are held accountable to their enforcement; and prophets repeatedly exhort their observance.

careful of making any general claim regarding the 'uniqueness' of biblical law.[17] Nonetheless, the juxtaposition of LH 157 and Lev. 20:11 is just one example of how the ANE may provide some corroborative evidence that assists us in understanding the meaning of biblical sexual offences.

4. Use of forms

Offences relating to sexual behaviour are expressed in a variety of forms. Some offences are expressed in 'apodictic law' (i.e. as unconditional commands). These include unconditional imperatives (e.g. Exod. 20:14 'You shall not commit adultery'); curses (e.g. Deut. 27:20–23 "'Cursed be he who lies with his father's wife, because he has uncovered her who is his father's." And all the people shall say, "Amen."…') and participial sentences concerning capital crimes (e.g. Exod. 22:19 'Whoever lies with a beast shall be put to death').

Other offences are expressed in the form of 'casuistic law', case laws (i.e. 'if… then…'). Some of these laws have a clear remedial quality, proposing a particular legal remedy (e.g. Exod. 22:16 'If a man seduces a virgin who is not betrothed, and lies with her, he shall give the marriage present for her, and make her his wife').

Still further offences are distinguishable because of the use of motive clauses. Motive clauses are usually added to unconditional imperatives (e.g. Lev. 18:24 'Do not defile yourselves by any of these things [i.e. the sexual behaviour described in 18:6–23], for by all these the nations I am casting out before you defiled themselves'). Motive clauses can also be attached to casuistic law, for example to justify and legitimate the form of punishment (e.g. Lev. 20:14 'If a man takes a wife and her mother also, it is wickedness; they shall be burned with fire, both he and they, that there may be no wickedness among you'). They supply theological or moral reasons for obeying particular laws. Their explanatory nature underlines the educative function of *Torah*.

Recognising these various forms is important for our understanding of sexual offences in biblical law. We shall see in Part IV that Lev. 20:19 is unique in Lev. 20 for being the only offence that is expressed apodictically (Lev. 20:19 'You shall not uncover the nakedness of your mother's sister or of your father's sister…'). We shall see that this unusual form is related to the fact that Lev. 20:19 is the only offence in Lev. 20 not to have a prescribed punishment. The form thus signifies that whilst the behaviour is not encouraged, it is not punished either. This reminds us that sexual offences in biblical law have different modalities: behaviours can be prohibited without the need for a specific punishment.

5. The relationship between law and narrative

We noted in (2) above that biblical law is more than a list of commands and decrees. All the Pentateuch's law collections are firmly embedded in their own narrative contexts and thus all biblical law, however narrowly we might try to define it, must be understood in the context of the entire narrative of the Pentateuch, at least. In addition to this general requirement, there are some further specific ways in which biblical law and biblical narrative interact. These include 'narrative envelopes', narrative allusions and thematic repetition.

(a) The 'narrative envelope'

These include prologues and epilogues to the various legal collections. For example, Exod. 20:1–2, which precedes the giving of the law on Mount Sinai, reminds the Israelites: 'I am the LORD your God, who brought you out of the land of Egypt, out of the house of bondage' (Exod. 20:2). The reference to slavery at the beginning of this prologue explains why slavery heads Covenant Code. The laws on slavery (Exod. 21:2–11) include laws regulating sexual relations with slaves (e.g. Exod. 21:9). The application of the law regarding slaves takes place against the narrative of what the God of Israel has done in liberating a slave people. More generally, the regulation of sexual behaviour is to be seen in the context of the 'I am…' statement in Exod. 20:2 ('I am the LORD your God, who brought you out of the land of Egypt, out of the house of bondage'). All laws regarding sexual

17 Certain norms that previously were regarded as purely biblical for lack of any other information have since turned out to represent more widespread ANE practice (e.g. Sarah/Hagar relationship; individualisation of criminal liability). As Yaron (1988, 78) notes: 'The re-emergence of the ancient Near East relieved the Bible and its law from its isolation. As biblical law began to find its proper place within time and region, it began to lose much of its presupposed uniqueness'. There is a distinction to be drawn between 'uniqueness' and 'presupposed uniqueness'. The discovery of more information about the ANE may erode 'presupposed uniqueness' but may affirm (to the extent that we are able) actual uniqueness. Certainly, biblical law does make certain claims to uniqueness (e.g. Deut. 4:6 – 8: 'Keep them and do them; for that will be your wisdom and your understanding in the sight of the peoples, who, when they hear all these statutes, will say, 'Surely this great nation is a wise and understanding people.' For what great nation is there that has a god so near to it as the LORD our God is to us, whenever we call upon him? And what great nation is there, that has statutes and ordinances so righteous as all this law which I set before you this day?').

behaviour relate back to the 'I am…' statement by God about God. It is because God is Creator (cf. Exod. 20:11 'for in six days the LORD made heaven and earth…') and faithful to Israel (Exod. 19:3–6) that sexual behaviour is boundaried.

(b) Narrative allusions

There are allusions between laws relating to sexual behaviour and earlier legal collections and narratives. For example, Lev. 20 has the same internal structure as the Decalogue: 'serving other gods' (Exod. 20:3–4; cf. Lev. 20:2–6) followed by 'honouring father and mother' (Exod. 20:12; cf. Lev. 20:9) and 'adultery' (Exod. 20:14; cf. Lev. 20:10). Lev. 20 derives additional peremptory force from the allusion to the Decalogue and its narrative context. The allusion also signifies that the sexual deviancy listed in Lev. 20:9–16 should be understood as an extended example of the 'typical cases' found in the Decalogue (i.e. idolatry, honouring (and not honouring) father and mother and adultery).

There are important verbal parallels between Lev. 20 and the Decalogue, including the repetition of the phrase: 'I am the Lord your God…' (Exod. 20:2). This key phrase opens the Decalogue and is repeated twice in the motivation clauses of Lev. 20:7–8, 24. There are further verbal parallels in the chapter as a whole. The Decalogue makes a link between honouring father and mother with long life in the land (Exod. 20:12). Lev. 20 does something similar in reverse. It makes a link between the punishment for cursing father and mother (20:9) and the punishment for sexual offences, which are seen as prototypical of cursing parents (20:10–16 and 20:17–21). It then claims that enforcing the appropriate punishment is necessary to retain the land (20:22). Finally, the chiasmus in Lev. 20:2–6 invests the content with the specific and unique authority of God's direct voice to the people (Exod. 20:1, 18–19).

(c) Thematic repetition

There are many examples of thematic repetition in biblical narrative. Jackson (2000: 208–215) highlights the manner in which dreams are repeated in the Joseph narrative (e.g. the pair of dreams in Gen. 37:5–11). The repetition implies that the dreams are divine revelation (and the brothers understand it as such). Sometimes repetition includes a new element; in Gen. 37:9–11 Joseph's second dream includes his parents as well as his brothers. A pair of dreams is repeated later in the cycle (Gen. 40), where the second dream is decoded in the light of the first. The last pair of dreams appears in Gen. 41:1–39. Like the dreams in Gen. 37:5–11, they are two quite different dreams, with a single message. The reason for the repetition is given in the text: 'And the doubling of Pharaoh's dream means that the thing is fixed by God and God will shortly bring it to pass' (Gen. 41:32). Repetition may thus have three purposes: (1) it may signify the force of an utterance, (2) underline its immediacy and (3) contribute to the very process of interpretation.

Jackson (ibid.) argues that repetition in the Joseph narrative provides us with models or hypotheses for considering other forms of thematic repetition of divine messages. Thus the repetition of the giving of the law in Deuteronomy (which of course means 'second law') may reflect the immediacy of the coming-into-force of the laws, given that the context is the imminent entry into the Promised Land. Likewise, the repetition of the giving of the Decalogue (Deut. 5:6–21; cf. Exod. 20:1–17) underlines that the second giving of the law still carries the force of the first (Deut. 5:3 'Not with our fathers did the LORD make this covenant, but with us…'). As in the Joseph dreams, supplemental information may be contained within the repetition (as in the laws of Deuteronomy itself).

This is important for our understanding of sexual offences in biblical law because of the high degree of repetition in relation to sexual offences. Perhaps the most striking example of this is in Leviticus. Chapter 18 provides a long list of prohibited sexual relations which are then largely repeated in chapter 20, with variations and supplementary information. We shall consider the significance of this repetition in Part IV, below.

Thematic repetition in relation to sexual offences is not restricted to legal collections but also appears in biblical narratives. For example, Genesis 34 tells the story of Shechem who has intercourse with Dinah without her father Jacob's consent. Outraged, her brothers resort to trickery to get Shechem in their power and kill him. In the David story we see a similar pattern. 2 Samuel 13 tells the story of Amnon who has intercourse with Tamar without her father David's consent. Outraged, her brother resorts to trickery to get Amnon in his power and kills him. Sometimes the incidence of literary motifs can be so high as to amount to a point-by-point retelling of an earlier story. A good example of this, in terms of sexual offences, is the similarity between the stories about the behaviour of the men of Sodom (Gen. 19:1–20) and the men of Gibeah (Judg. 19). By telling the story of Gibeah after the manner of the story of Sodom, the narrator invites us to make an unfavourable judgement upon the tribe of Benjamin. This is important because the response of the remaining tribes is the basis for the subsequent

civil war (Judg. 20–21). Thematic repetition shapes and informs our judgements regarding sexual offences.

6. Other aspects of literary presentation in biblical law

In addition to the general relationship between law and narrative, there are several other aspects of literary presentation that are integral to our understanding of sexual offences in biblical law.

(a) Use of binary oppositions in biblical law

A binary opposition is 'a pair of terms conventionally regarded as opposites' (Jackson 1995: 510) (e.g. hot/cold; black/white). Binary oppositions are frequently used as a means of structuring biblical thought.[18] They are also frequently used in biblical law (e.g. Burnside 2003: 222–223; Jackson 2000: 216–218). By structuring thought through related oppositions, binary oppositions allow us to establish categories, construct sense and create order; what Douglas (1996: 96) refers to as 'the systematisation of sin'. This is important for our understanding of sexual offences in biblical law because Lev. 20:10–16 generates a series of binary oppositions as against the narrative typification of normal sexual relations. We shall consider this further in Part IV, below.

(b) The importance of literary techniques such as the use of chiasmus

A chiasmus is a literary device in which one part of a text is 'mirrored' by another part, except for a central point which has no counterpart. It is a means of structuring large or small bodies of text. The structure means that the chiasmus has a central focus which indicates the thrust of the section as a whole and very often provides the interpretative key for the whole. Lev. 24:10–23 (the case of the blasphemer) is a good example of a longer body of text that is structured in chiastic form (Jackson 2000, 291–292). Here, the focal point is Lev. 24:20 '…fracture for fracture, eye for eye, tooth for tooth'. The position of this talionic formula at the heart of the chiasmus provides us with its interpretative key. It reminds us that quarrels (the start of the story; Lev. 24:10) are the typical setting in which blasphemy and physical injuries take place. Chiastic structures are important to our analysis of sexual offences in biblical law. This is because they are key to understanding legal collections in which sexual offences appear and they are frequently used as a means of structuring thought in relation to sexual behaviour (see Parts III and IV, below).

Quarrels are the typical setting in which blasphemy and physical injuries take place

7. 'Semantic' v. 'narrative' interpretations of biblical law

There is a difference between 'semantic' (word-for-word) and 'narrative' ('story-based') conceptions of meaning. A 'semantic' (or literal) approach sees a rule in biblical law as 'covering' all cases which may be subsumed under the meaning of its words. By contrast, a 'narrative' approach sees a rule in biblical law consisting of typical stories or 'narrative images evoked by the words within a group which shares the social knowledge necessary to evoke those images without fully spelling them out' (Jackson 2000: 73). A semantic approach proceeds by way of a paraphrase (substituting one set of words by another) whereas a narrative approach invites us to think of the typical situations which the words of the rule evokes.

Jackson (2000: 75–81) provides a number of examples of the difference between adopting a semantic and a narrative approach to biblical law, indicating how a narrative approach makes better sense of the text and appears to have been the way in which law was understood and applied in the biblical period. For example, a semantic approach to the law of the bovicidal ox (Exod. 21:35) means that equal division of the loss will only result from the literal application of the procedure if the two oxen had been of equal value. By contrast, a narrative approach sees the rule as applying to typical cases where the relative values of the two animals are equal or roughly equal (Jackson 2000: 77-79).

The distinction between 'semantic' and 'narrative' readings of the law is part of what it means to acknowledge the institutional context and use of the various biblical laws. It raises the question: what social knowledge do we need to impute to the meaning of the various biblical laws, given that we are working with 'narrative readings' and 'restricted codes'?[19] This is

18 E.g. Kunin (1995: 266) finds that the following oppositions are consistently used in *Genesis*: inside/outside; divine fertility/natural fertility; Israel/the nations and God/humankind. Kunin (1995: 266-267) also notes that 'oppositions with the same structural logic are also developed with respect to creation and the animal world'.

19 'In restricted code we need *not* say everything that we mean, because we can rely upon the shared social knowledge within a small community to fill in what, at the explicit level, would be gaps; elaborated code, by contrast, makes no such assumptions'; Jackson 2000: 72, italics original.

relevant to considering offences of a sexual nature in biblical law. Take Deut. 22:13–21 for example. This is normally read as a case concerning premarital virginity: the husband brings a claim that his wife was not a virgin on the wedding-night. However, this makes hardly any sense because the garment is such that 'the husband is prepared to gamble very heavily that the girl's father cannot produce it' (Wenham, 334). The social knowledge that needs to be imputed to the restricted code of Deut. 22:13–21 is that the 'cloth' (*simlah*) provides conclusive, dateable evidence in regard to menstruation. It thus provides evidence that the woman was not pregnant during the period of betrothal. Read thus, the case is not concerned with virginity, but with paternity (Burnside 2003, 137–155). We will see the importance of social knowledge and narrative readings further in Parts III and IV, below.

All of these approaches are tools for the task of exploring sexual offences in biblical law. It is to this task we shall turn in the next chapter.

8. Conclusion

What general conclusions can we draw from this brief methodological overview?

- We have to learn to read biblical law 'from right to left' (that is, as it would have been understood at the time) rather than 'from left to right' (that is, by imposing our own cultural assumptions upon the text).
- In terms of understanding 'sexual' offences, this includes not imposing our own assumptions about family structures, marriage, sexuality, law, punishment and justice.
- The biblical world is different from that of our own, but it is not completely different.
- The biblical world is different from elsewhere in the ANE, but it is not completely different.
- Material relating to sexual offences needs to be approached with a careful eye to all aspects of its literary presentation and narrative context.

Part III

Glimpses of a familiar land? Consent, equality and protection in biblical sexual offences

Introduction

We now turn to consider sexual offences in biblical law more systematically using the tools identified in Part II. This will be the focus of the rest of the paper. A biblical review of sex offences would ideally aim to address some of the themes covered in the Home Office Review and the Sexual Offences Act 2003. In this context, it is important to ask whether the ideas of consent, equality and protection are relevant when considering the structure of biblical sexual offences.

We noted in Part II that cultural immersion in the world of the text is not incompatible with having questions to which we, as readers, seek answers. As Barton writes:

> '… [texts] survive because they have been found by successive generations to illuminate the human condition, and for that reason we keep coming back to them and never exhaust their meaning' (1998, 7).

Moreover, the universality of sexual needs and behaviour ensures that, however differently sexual boundaries may be conceptualised in the Bible, this is an example of a subject where:

> '… there is enough experience here shared by all to make communication across cultural gaps possible and worthwhile' (Barton 1998, 31).

'We keep coming back to texts and never exhaust their meaning'

In order to consider the extent to which ideas of consent, equality and protection are relevant when considering biblical sexual offences, we must first briefly reconstruct the social world in which sexual intercourse was regulated. This in turn means briefly reconstructing the various stages in the formation of marriage in biblical law, in the light of subsequent developments in Jewish law. This will shed light on various biblical laws and narratives which are normally seen as involving 'rape', for example, which naturally helps to develop the themes of consent, equality and protection.

1. Formation of marriage in biblical law

Westbrook (1996: 11) has identified four stages in the formation of marriage in biblical law, as follows:

(a) 'Agreement between members of the two families that the bride will be given in marriage to the groom' (ibid.)

Parents commenced negotiations with the family of the bride, even in cases where the son chooses his own bride (e.g. Gen. 34:4; Judg. 14:1, 2–5). Gen. 34:13–18 indicates that adult sons could be involved, along with their father, in any negotiations regarding their sister. In terms of consent, it seems that 'the bride was the object of the agreement rather than a party thereto' (ibid.). The groom agreed to make a betrothal payment (*mohar*) to the bride's father. Evidence from the ANE suggests that this would normally have been in silver, which is in fact what we find in Exod. 22:16 (ibid.).

(b) 'Bringing of the mohar *by the groom, who would customarily provide a banquet' (Judges 14:10) (ibid.)*

As soon as the groom has brought the *mohar* to the bride's father, and this has been accepted, the bride is betrothed (*'orashah*) to the groom. There does not seem to have been a period of 'engagement' in biblical law; however, there is a period of 'betrothal'. Unlike engagement, betrothal was as a kind of inchoate marriage which effects a change in the woman's legal status. The betrothed woman is referred to as a 'wife' (Deut. 22:4), which confers the status and protection of a fully married woman. Rape or seduction by a third party is accordingly treated with the severity appropriate to such a person (Deut. 22:22–25). In the early period it seems to have been customary to allow a year between betrothal and marriage. During this period the parties could not have sexual relations with each other but if they had relations with anyone else it would be adultery.

(c) 'Claiming of the bride by the groom on the strength of payment of the mohar*'* *(ibid.)*

Not all payments of the *mohar* were in silver. An atypical example of the *mohar* is Laban's request of seven years' service, upon completion of which Jacob claims his bride ('Bring me my wife, for my days are completed'; Gen. 29:21).

(d) 'Completion of the marriage' *(ibid.)*

The father-in-law now provides a banquet before delivering his daughter to the groom (Gen. 29:22). In the absence of evidence as to special ceremonies or rites, legal completion appears to be constituted by consummation (ibid.). Hugenberger (1994: 343) similarly concludes that: 'sexual union was understood as a complementary covenant-ratifying oath-sign, at least by some biblical authors… sexual union is the indispensable means for the consummation of marriage both in the Old Testament and elsewhere in the ANE'.

2. Historical development of marriage in Jewish Law

The following excerpt from *Mishnah Kiddushin* (a part of the *Mishnah* which deals with the subject of the betrothal ceremony) raises important questions that shed light on our understanding of the biblical texts. *Mishnah Kiddushin*[20] 1:1 specifies that a woman is acquired (i.e. becomes a wife) in three ways: through money, a contract or sexual intercourse:

> 'By three means is the woman acquired (*niknit*) and by two means she acquires her freedom (*vekinah et atsmah*). She is acquired by money, by document (*shtar*)[21] or by intercourse… And she acquires her freedom by a bill of divorce (*get*) or by the death of her husband.'

There is no such systematic treatment in biblical law with regard to marriage and thus the very fact that there is a division in the *Mishnah* with regard to the woman and marriage and divorce shows a significant increase in the systematisation of Jewish law in relation to marriage and divorce. This raises the important question of to what extent this later systematisation is consistent with customary practice in biblical law.

Jackson (unpublished) notes that, substantively, there is a close parallel between the means by which the woman is 'acquired' (*niknit*) and the acquisition of property. We know that both land and women could be acquired by money or by means of a document; as indicated in *Tosefta Kiddushin* 1:1: [22]

> 'By money – how so? If he gave her money or money's worth, and said to her, 'Behold, you are consecrated to me' or 'Behold, you are consecrated to me', or 'Behold, you are consecrated to me', then she is consecrated (*mekudeshet*)'

Notably, in *Tosefta Kiddushin* 1:1 there is not simply payment of money; there is also a statement of intention with regard to the fact that the woman is consecrated to the man. This indicates that the woman is a special form of 'property'. According to *Tosefta Kiddushin* 1:3, intercourse must be with the intention of betrothal:

> 'By sexual intercourse – how so? By any act of sexual relations which is done for the sake of betrothal (*kiddushin*) she is betrothed. But if it is not for the sake of betrothal, she is not betrothed'.

Both land and women can be acquired through use; and in the case of women such 'use' may take the form of sexual intercourse. *Tosefta Kiddushin* 1:3 implies that intercourse must be consensual. However, land can also be acquired through *hazakah* (i.e. the exercise of strength in relation to it). This involves a physical act of taking possession (cf. the act of taking physical control of land through *mancipio* in Roman Law).

Jackson (unpublished) speculates that *Mishnah Kiddushin* 1:1, which refers to the 'woman acquired by intercourse', may historically be associated 'robbery marriage' (*raubehe*; i.e. marriage by rape or capture). It may thus be the case that the origin of intercourse as a source of betrothal was simple 'marriage by capture'. To test Jackson's hypothesis, we turn to the biblical sources, which will advance our understanding of the role of consent, equality and protection in biblical law.

3. Concern for consent? : Seduction and 'rape'

We will consider four cases: Gen. 34 (the 'rape' of Dinah); 2 Samuel 13 (the rape of Tamar); Exod. 22:

20 The word *kiddushin* means 'sanctified' and is usually translated 'betrothal'.
21 It is thought that the reference to 'money' and 'document' in M. Kidd 1:1 refers to betrothal or to inchoate marriage.
22 The *Tosefta* was a parallel compilation of laws omitted from the *Mishnah*.

16–17 (consensual intercourse with an unbetrothed girl of marriageable age) and Deut. 22:28–29.

(a) Genesis 34 (the 'rape' of Dinah)

The relevant excerpt of the story is as follows:

> Now Dinah the daughter of Leah, whom she had borne to Jacob, went out to visit the women of the land; 2 and when Shechem the son of Hamor the Hivite, the prince of the land, saw her, he seized her and lay with her and humbled her. 3 And his soul was drawn to Dinah the daughter of Jacob; he loved the maiden and spoke tenderly to her. 4 So Shechem spoke to his father Hamor, saying, 'Get me this maiden for my wife.' 5 Now Jacob heard that he had defiled his daughter Dinah; but his sons were with his cattle in the field, so Jacob held his peace until they came. 6 And Hamor the father of Shechem went out to Jacob to speak with him. 7 The sons of Jacob came in from the field when they heard of it; and the men were indignant and very angry, because he had wrought folly in Israel by lying with Jacob's daughter, for such a thing ought not to be done (Gen. 34:1–7).

This story is often referred to as the 'rape' of Dinah, on the grounds that verse 2 says: 'he seized her and lay with her and humbled her'. However, later in the narrative, her brothers rhetorically ask their father: 'Should he [i.e. Shechem] treat our sister as a harlot?' (Gen. 34:31). The hallmark of prostitutes is that they provide consensual intercourse. This implies there is consent on the part of Dinah. Shechem's offence is not one of rape; his offence is that he does not follow the customary steps in the formation of marriage (see (1) above). He reverses the normal procedure by having intercourse with Dinah (v. 3) *before* opening negotiations via his father (v. 4). His offence is that he has had intercourse without a prior agreement for marriage with Jacob. This is the key issue: the question of whether intercourse was consensual or not on Dinah's part is at best secondary.

At this point in the biblical period, intercourse is not regarded as inherently creating *kiddushin* (betrothal). However, it is an act that should, in the normal course of events, lead to a very serious negotiation over the creation of *kiddushin*. This is the reason why 'Hamor the father of Shechem went out to Jacob to speak with him' (34:6). Matters deteriorate however, when 'the sons of Jacob came in from the field…' (34:7). The reader expects negotiations between the house of Jacob and the house of Hamor, leading to a settlement and damages. These damages would have been payable to Jacob because his consent was not sought before the intercourse. Dinah herself would not have been the subject of the damages because it is Jacob's lack of consent that is at the heart of the offence. However, instead of reaching a settlement the sons of Jacob embark upon a course of vengeance rather than negotiation. This leads to conflict between Jacob and his sons and conflict between the house of Jacob and the other peoples of the land (Gen. 34:30–31).

To what extent, then, is consent a relevant factor in biblical law? This is not a simple matter: it depends on whose consent we are talking about. As far as customary law is concerned, the order of the formation of marriage in biblical law suggests that we must distinguish between the consent of the submissive partner (typically a daughter) and the consent of her father. As far as Gen. 34 is concerned, consent is important – but it is the consent of the father.

(b) 2 Samuel 13 (the rape of Tamar)

Another comparable story is that of 2 Sam. 13, which concerns the rape of Tamar by her step-brother, Amnon:

> '… he [Amnon] took hold of her [Tamar], and said to her, 'Come, lie with me, my sister.' 12 She answered him, 'No, my brother, do not force me; for such a thing is not done in Israel; do not do this wanton folly. 13 As for me, where could I carry my shame? And as for you, you would be as one of the wanton fools in Israel. Now therefore, I pray you, speak to the king; for he will not withhold me from you.' 14 But he would not listen to her; and being stronger than she, he forced her, and lay with her. 15 Then Amnon hated her with very great hatred; so that the hatred with which he hated her was greater than the love with which he had loved her. And Amnon said to her, 'Arise, be gone.' 16 But she said to him, 'No, my brother; for this wrong in sending me away is greater than the other which you did to me.' But he would not listen to her. 17 He called the young man who served him and said, 'Put this woman out of my presence, and bolt the door after her.' 18 Now she was wearing a long robe with sleeves; for thus were the virgin daughters of the king clad of old. So his servant put her out, and bolted the door after her. 19 And Tamar put ashes on her head, and rent the long robe which she wore;

> and she laid her hand on her head, and went away, crying aloud as she went.' (2 Sam. 13:11–19)

Unlike Gen. 34 the narrative makes it clear that the intercourse is non-consensual (see verses 11–14). The verb for intercourse is simply the usual '[he] lay with her' (13:14), although the context indicates that this is what we would nowadays term 'rape'. In the light of this, Tamar's initial response to Amnon's advance is interesting. She asks him to regularise the intercourse: 'Now therefore, I pray you, speak to the king; for he will not withhold me from you' (2 Sam. 13:14). She is afraid that Amnon will 'jump the gun' by having intercourse with her without first opening negotiations with David. She pleads with Amnon to open negotiations with the king and enable a marriage to be formed and consummated in the customary manner. Amnon refuses, but even after the rape, Tamar hopes that the intercourse might subsequently lead to a full agreement to betrothal. Amnon's refusal to countenance such a possibility, and hence to regularise the intercourse, is seen by Tamar as a worse offence than the rape itself.

This gives us a significant insight into her attitude towards the rape. As far as she is concerned, the key issue is not her lack of consent but whether or not Amnon will subsequently marry her. Sending her away, rather than betrothing her, is thus worse than the actual rape. There is a legal as well as a narrative significance to sending her away: it makes it clear that the intercourse has not led to betrothal (cf. Abraham's 'sending away' of Hagar; Gen. 21:14).

There are some differences, however, between Gen. 34 and 2 Sam. 13. The main difference is that Gen. 34 shows how such problems are customarily dealt with between different tribes, whilst 2 Sam. 13 provides an indication of how it is dealt with within the family. Gen. 34 and 2 Sam. 13 also appear to involve very different experiences for the woman concerned. Yet in both cases, the woman's consent is not at issue. What matters in both cases is the proper role of intercourse in the formation of marriage and in this process, the consent of the father is crucial.

(c) Exodus 22:16–17

We have argued that Gen. 34 and 2 Sam. 13 are best characterised, not as 'rape' cases, but as cases of intercourse where the normal sequence of events leading to marriage (i.e. agreement → *mohar* → inchoate state of marriage → made complete by intercourse) are reversed. This seems to be confirmed by the law in Exod. 22:16–17:

> 'If a man seduces a virgin who is not betrothed, and lies with her, he shall give the marriage present for her, and make her his wife. 17 If her father utterly refuses to give her to him, he shall pay money equivalent to the marriage present (*mohar*) for virgins'.

Again, this is not a 'rape' case, rather, it is a case of an unconventional marriage. What has happened here is that the man has 'jumped the gun' and had (consensual) intercourse with the woman *before* securing her father's consent and negotiating a bridal price. Verse 16 states that, if he has not agreed before intercourse, then he must agree afterwards. Verse 17 indicates that if the father is unhappy at the idea of giving his daughter to the man, then the man must pay extra. He still gets the girl, however (v. 17). The increased price is compensation (impliedly, to the father) because the father is prevented from giving his consent to the marriage. Significantly, this indicates that the victim here is not the woman, but her father. This is fully consistent with what we have noted in Gen. 34 and 2 Sam. 13: the key legal issue is not the consent of the woman, but the consent of her father.

The key legal issue is not the consent of the woman, but the consent of her father

It therefore seems as though Exod. 22:16–17 should not be characterised as a 'rape' case but as a case involving an enforced marriage. This characterization is confirmed by the placing of this particular law within the overall literary unit. Jackson (2006) claims that the Covenant Code is made up of three overlapping 'double series'. (A double series is a series in which the second series recapitulates that of the first, through thematic and linguistic allusions). Jackson identifies the double series as follows: (1) the Decalogue (Exod. 20:22–21:17); (2) Exod. 21:1–22:26 and (3) Exod. 22:20–23:19. Jackson (ibid.) claims that the law of the seducer in Exod. 22:16–17 falls within the second double series. This second double series begins with laws concerning family relationships, commencing with the provision regarding male and female slaves (Exod. 21:2–4). Jackson (ibid.) argues that Exod. 22:16–17 is the first item in the second part of the double series and corresponds to Exod. 21:2–4, which regulates sexual intercourse with slaves. If this is correct, it would provide further corroborative evidence regarding the interpretation of Exod. 22:16–17; because both Exod. 21:2–4 and Exod. 22:16–17 involve cases of an enforced marriage.

(d) Deuteronomy 22:28–29

Exod. 22:16–17 refers to a seduction, whereas Deut. 22:28–29 involves non-consensual intercourse[23]:

> 'If a man meets a virgin who is not betrothed, and seizes her and lies with her, and they are found, then the man who lay with her shall give to the father of the young woman fifty shekels of silver, and she shall be his wife, because he has violated her; he may not put her away all his days.'

However, Deut. 22:28–29 is similar to Exod. 22:16–17 in that, once again, compensation is paid to the father, rather than to the woman. The reason is once again the same: the man has pre-empted the father by having intercourse with the woman regardless of the father's consent.[24] Deut. 22:28–29 is notable because it includes an additional sanction: the man must marry the woman and, extraordinarily, is not able to divorce her.

From a modern perspective, and using modern terminology, it might seem outrageous that a woman is forced to marry her rapist. However, we must be careful not to import Western ideas about women's rights into biblical law. For one thing, in a polygamous society such as ancient Israel, the practical implications of being married are not as great as in a non-polygamous society. The man need not have contact or intercourse with the woman again – but he does have to support her. The woman is protected under biblical law by granting her support and the status of a wife. If he was not forced to marry her and forbidden from divorcing her, the woman would have been raped *and* unbetrothed (the unfortunate position of Tamar; see (b) above).

Consent is therefore relevant to the structure of sexual offences in biblical law. However, it is not based simply upon the consent of the parties to the sexual act, as it is in modern law. Rather, it goes beyond individual consent to include the consent of the father of the woman in question and, by extension, other family members who have an interest in negotiating terms of marriage.

4. Concern for protection?: The relative status of married and unmarried women

We saw in Deut. 2:28–29 that there was explicit concern for the status and protection of the woman who may be viewed from a modern standpoint as a 'rape victim'. In this section, we will develop this theme further. We shall argue that one of the main ways in which biblical law sought to protect the vulnerable from sexual exploitation was by conferring the status of marriage.

(a) Adultery (Deut. 22:22)

There are a number of prohibitions against adultery in biblical law, one of which is found in Deut. 22:22:

> If a man is found lying with the wife of another man, both of them shall die, the man who lay with the woman, and the woman; so you shall purge the evil from Israel.

The typical case of adultery is committed by a married man with a married woman. However, adultery does not appear to be committed by a married man with an unmarried woman in biblical law. This is presumably because no male interest is directly threatened. It is clear that the married woman enjoys a more elevated status in ancient Israel, compared to the unmarried woman, because sexual relations with her are treated more seriously. To this extent, the married woman enjoys greater protection than the unmarried woman. The reverse of this is that her increased status brings increased responsibility. Consequently she is liable for a capital crime whereas the unmarried woman is not.

(b) Intercourse with a betrothed woman (Deut. 22:23–27)

A similar concern with status and sexual behaviour pervades Deut. 22:23–27:

> If there is a betrothed virgin, and a man meets her in the city and lies with her, 24 then you shall bring them both out to the gate of that city, and you shall stone them to

23 There are several differences between Exod. 22:16–17 and Deut. 22:28–29. (1) In Deut. 22 the *mohar* (betrothal payment) is fixed at 50 shekels of silver, whereas in Exod. 22 there is no figure; (2) In Deut. 22 the man cannot divorce the woman, whereas Exod. 22 is silent; (3) In Deut. 22 the fine is paid to the father; whilst Exod. 22 does not mention the father. These variations are fairly typical of the differences between the legal collections of *Exodus* and *Deuteronomy*, with the latter tending to be more specific and 'humanitarian'.

24 A common theme in these texts is the role of the father. But although biblical law emphasises the role of the father, the position of the father becomes less relevant in later Jewish law. Ultimately the point is reached where consensual intercourse between the parties is sufficient. This is the situation contemplated by *Mishnah Kiddushin*, i.e. when the father no longer has a role. There is no negotiation and hence intercourse fulfils marriage.

> death with stones, the young woman because she did not cry for help though she was in the city, and the man because he violated his neighbour's wife; so you shall purge the evil from the midst of you. 25 But if in the open country a man meets a young woman who is betrothed, and the man seizes her and lies with her, then only the man who lay with her shall die. 26 But to the young woman you shall do nothing; in the young woman there is no offence punishable by death, for this case is like that of a man attacking and murdering his neighbour; 27 because he came upon her in the open country, and though the betrothed young woman cried for help there was no one to rescue her.

The betrothed woman is described as 'his neighbour's wife'(v. 24). As noted in (1) above, the betrothed woman enjoys the same status as a married woman. Accordingly, the offence committed is not 'rape' in a modern sense but adultery (by both parties in verses 23–24 and by the man only in verses 25–27). Betrothal increases the seriousness of the offence, in part because there are male interests which the defendant offends against. This reflects the predominantly androcentric values of biblical law.

This passage overlaps slightly with the theme of consent by indicating the use of objective evidentiary tests for consent. The test is objective in the sense that the woman's subjective state of mind is conclusively inferred from the circumstances. The test is based on the assumption that under typical circumstances, the woman who 'cried out in the city' would have been heard; whereas the woman who 'cried out in the countryside' might not have been so heard because the countryside is not as densely populated. From this we can conclude that adultery was regarded as a public matter punishable by the community rather than simply a private matter for the parties themselves. A married woman might defend herself against a charge of adultery by claiming that the act took place in the city and she cried out (for which she would need witnesses) or that it took place in the country.

(c) Intercourse with a 'virgin'

We turn finally to consider the status of the woman of marriageable age, who may or may not be technically a virgin. This is set out in Deut. 22:13–21:

> If any man takes a wife, and goes in to her, and then spurns her, 14 and charges her with shameful conduct, and brings an evil name upon her, saying, 'I took this woman, and when I came near her, I did not find in her the tokens of virginity,' (*betulim*) 15 then the father of the young woman and her mother shall take and bring out the tokens of her virginity to the elders of the city in the gate; 16 and the father of the young woman shall say to the elders, 'I gave my daughter to this man to wife, and he spurns her; 17 and lo, he has made shameful charges against her, saying, 'I did not find in your daughter the tokens of virginity.' And yet these are the tokens of my daughter's virginity.' And they shall spread the garment (*simlah*) before the elders of the city. 18 Then the elders of that city shall take the man and whip him; 19 and they shall fine him a hundred shekels of silver, and give them to the father of the young woman, because he has brought an evil name upon a virgin (*betulah*) of Israel; and she shall be his wife; he may not put her away all his days. 20 But if the thing is true, that the tokens of virginity were not found in the young woman, 21 then they shall bring out the young woman to the door of her father's house, and the men of her city shall stone her to death with stones, because she has wrought folly in Israel by playing the harlot in her father's house; so you shall purge the evil from the midst of you.

It is usually claimed that this text shows that a high value was placed on virginity and that the absence of premarital virginity was a capital matter. But the literary structure of Deut. 22:13–29 suggests that the primary concern of Deut. 22:13–21 is not whether the girl was a virgin at the time of the offence but whether she was betrothed. In keeping with (a)–(c) above, we find that the literary structure of the passage is concerned with status (see Table 1 opposite).

The traditional view implies that *any* intercourse by an unmarried woman is capital. But there is no penalty in biblical law for the unbetrothed girl who engages in consensual relations (Exod. 22:16–17, [H. 22:15–16]). The reason why consensual relations are capital in Deut. 22:13–21 but not in Exod. 22:16–17 is because the *betulah* is 'betrothed' in Deut. 22:20–21 whereas in Exod. 22:16–17 the *betulah* is not betrothed. This signals that the girl's offence in Deut. 22:20–21 is to have had intercourse *during the period of betrothal*. This makes her offence one of quasi-adultery. It is marital status, not virginity, which defines 'seriousness' in Deut. 22:20–21.

Many scholars argue that *betulah* refers to 'virgin' and that the *betulim* or 'tokens of virginity' are the evidence of a perforated hymen on the wedding-night on the

Case no.	Verse(s)	Status of woman	Punishment (if any)	Execution site
Case 1	22:13–19	Married (presumably following betrothal)	Damages (100 shekels) No divorce	N/A
Case 2 [subsidiary to 1]	22:20–21	Married (presumably following betrothal)	Woman executed	At door of father's house
Case 3	22:22	Married	Man and woman executed	No location specified
Case 4 [Relations in town]	22:23–24	Betrothed *betulah* (consents to intercourse)	Man and woman executed. Man said to have 'violated his neighbour's wife'	At city gate
Case 5 [Relations in open country]	22:25–27	Betrothed *betulah* (no consent)	Man executed Woman exempted	No location specified
Case 6	22:28–29	Unbetrothed *betulah* (no consent)	Damages (50 shekels) No divorce	N/A

Table 1: Summary of cases presented in Deut. 22:13

bedsheets. If this is really a virginity test, it is not a very practical one. Medically speaking it is simply not the case that all virgins have intact hymens or bleed the first time they have sexual relations. It might be counter-argued that such women are atypical and that biblical law generally concerns itself with typical cases. But that is not a convincing argument here because, unlike other texts which stress the role of witnesses in capital cases (Deut. 17:6–7), the physical evidence of the *simlah* is conclusive. So whatever the *simlah* is, it must be able to distinguish between virgins who bleed on their wedding night and those who do not.

The other problem is that the garment in Deut. 22:21 is such that 'the husband is prepared to gamble very heavily that the girl's parents cannot produce it' (Wenham 1972: 334). If the *simlah* are the bed sheets, no-one knows better than the husband whether or not they are stained with the *betulim*. If they are stained there is no point in the husband bringing an accusation. He knows in advance that his parents-in-law can produce the evidence (Deut. 22:17), that he will be proved wrong and that he will be punished (Deut. 22:18–19).

An alternative reading is to read the word *betulah* not as 'virgin' but as 'a girl of marriageable age' (i.e. a menstruant who may or may not be a virgin) and the *betulim* as evidence of menstruation. The husband's complaint ('I did not find the *betulim* in her', Deut. 22:13) is that his wife showed no signs of menstruation in the month following marriage. On this reading, Deut. 22:13–21 is concerned with the paternity of an unexpected pregnancy that occurs immediately after marriage. The *betulim* are not so much tokens of virginity as a pregnancy test (cf. the case of the 'war captive' maid Deut. 21:10–14). If paternity is really the concern then proof of menstruation at the time of marriage is just as good as proof of virginity. This explains why the father is responsible and why she is executed at his front door. The case thus concerns a father who puts his daughter out to work as a (cultic or secular) prostitute. She is stoned because she had consensual relations during betrothal but her father is also held responsible because he put her out to work as a prostitute during this period. Once again, the status of the woman in question is critical to understanding the nature of the sexual offence. Had she not been betrothed, the offence would not have been capital. The case also reminds us that conferring the status of betrothal did not automatically protect all women from sexual abuse: in this case, it did not prevent her from being worked as a prostitute.

To sum up, protection is relevant to the structure of sexual offences in biblical law, particularly as regards

the protection of women. An important means of protecting women was to confer upon them the status of betrothal or marriage. This is a logical consequence of the procedure relating to the formation of marriage discussed in (1)–(2) above and the various accounts of its subversion in (3) above. If a man had sexual intercourse with a woman who was not a prostitute or married to someone else, the expectation was that this would result in the status of betrothal or marriage. Thus whilst biblical law has a conception of protection, it is different to that of modern law.

5. Concern for equality?

We noted in Part I that the term 'equality' in moral and political philosophy serves to identify certain classes within which it is not possible to make distinctions. As applied to sexual offences reform, 'equality' means identifying classes of sexual behaviour within which it is not possible to make distinctions for the purpose of applying criminal sanctions.

There is a concept of equality in biblical law that contributes to the structuring of sexual offences

We can see that, in this sense, there is a concept of equality in biblical law that contributes to the structuring of sexual offences. A distinction is made between unmarried and unbetrothed women, on the one hand, and married and betrothed women on the other. Unmarried and unbetrothed women are treated equally in the sense that no formal sanction attaches to them personally for their sexual behaviour. By contrast, married and betrothed women are not regarded as equal to the unmarried and unbetrothed because they will be punished for sexual wrongdoing.

A similar distinction applies to men who have relations with unmarried and unbetrothed women, on the one hand, and married and betrothed women on the other. Men who have relations with the former group are treated equally in the sense that they are not potentially subject to capital punishment. By contrast, men who have relations with women who are married or betrothed to other men are not treated equally because they are potentially subject to capital punishment. We will see in Part IV that biblical law makes further distinctions between different categories of sexual behaviour that give further shape to its conception of equality. We conclude that, as in modern law, biblical law knows of equality, and of limits to equality, although the moral basis of equal consideration is different.

6. Conclusion

What general conclusions can we draw from this section?

- The prevalence of consent, equality and protection in biblical law needs to be set against the norm of heterosexual marriage and, in particular, the customary sequence of events leading to marriage in ancient Israelite society.
- The normal sequence of events leading to marriage appears to be as follows: agreement → *mohar* → inchoate state of marriage → completed by intercourse.
- Problems arise when this sequence is reversed. Biblical laws and narratives are frequently concerned with regulating this disturbance.
- Consent is relevant to the structure of sexual offences in biblical law, although it goes beyond the consent of the parties to the sexual act to include the consent of certain family members.
- Equality is relevant to the structure of sexual offences in biblical law. Equality is being granted to certain categories of men and women and withheld from others.
- Protection is relevant to the structure of sexual offences in biblical law, particularly in relation to women, who are protected by means of betrothal or marriage.
- Concern for consent, equality and protection is structured differently in biblical law, compared to modern law.

Part IV

Glimpses of a 'strange land'? 'Setting the boundaries' in Leviticus 20

Introduction

Having begun to immerse ourselves in the world of the biblical texts in Part II we then considered in Part III whether the biblical texts showed any concern for consent, equality and protection. We did so bearing in mind that there is no inherent conflict between the text itself and the various questions we might bring, granted that text and reader are always part of the hermeneutical circle. The question remains, however, whether there are further categories of thought that might shape our understanding of sexual offences reform.

In a short paper of this nature there is not sufficient space to explore all the possible texts that might yield further categories and ideas. However, there is sufficient space to look at one particular aspect of the legal collections, namely Lev. 20.

This is chosen because the Book of Leviticus, it is generally agreed, reflects the worldview of the Israelite priesthood and their attendant concerns for order and systemisation. Lev. 20 is one of two chapters in the book concerned with the regulation of sexual behaviour (the other being Lev. 18) and the only one of the two that prescribes specific penalties. This means that if there are additional categories in biblical law that can inform our understanding of sexual offences, we are likely to find them here. This means that, methodologically, this Part is the reverse of Part III. In Part III we took what could broadly be described as an etic approach to the biblical texts. In other words, we adopted the position of an 'outsider' and applied pre-established categories (consent, equality and protection) to the biblical data. In Part IV we take an emic approach, that is, we adopt the position of an 'insider' and ask: what intrinsic cultural distinctions were meaningful for persons in ancient Israel? Here the categories emerge from our encounter with the society as represented in the text, rather than imposing categories from outside. By stepping between etic and emic approaches we can explore if the texts overlap with contemporary concerns, whilst at the same time leaving them free to speak with their own voice.

Yet although Lev. 20 is an obvious choice in some respects, it is not an obvious choice in others. It is after all a page from Leviticus, concerning homosexuality,[25] which Sir Ian McKellen, star of *The Lord of the Rings*, admits to tearing from hotel Bibles.[26] To a modern sensibility the laws of Lev. 20 seem harsh, not just regarding homosexuality, but also adultery, incest and bestiality. When set against the social trends noted in section 3, Part I, a text that sets limits to sexual choice, backed up by references to the death penalty in some cases, will quickly find itself labelled a 'text of terror'.

All this is a reason why Lev. 20 has not been examined closely. It is also a reason why it is necessary to break through the barrier of silence surrounding this text. After years of stifling, it is time to let Lev. 20 speak with its own voice. Yet Lev. 20 presents major problems not only in terms of its content but also in its apparent lack of structure. The goal here is to enquire whether Lev. 20 has an internal structure; if so, what that structure is and whether it has a purpose. Against the great majority of biblical scholars I shall argue that Lev. 20 is in fact a highly structured literary work. The overall chapter (20:2–27) is arranged chiastically and can be broken down to three main sections (vv. 2–6; 9–16; 17–21). The first and third of these sections (vv. 2–6; 17–21) are themselves arranged chiastically, whilst the middle section (effectively vv. 10–16) is presented as a series of binary oppositions. Lev. 20 is thus a product of several different literary structures which have been combined to produce a broader literary schema. As far as I am aware, this literary arrangement has never been previously recognised by scholars. This is unfortunate for so notorious a text.

1. Leviticus 20 and the problem of order

Lev. 20 presents problems not only in terms of its content but also in its apparent lack of structure. The first question, therefore, is whether Lev. 20 has any internal structure. Most commentators regard Lev. 20 as a miscellaneous collection that lacks any kind of literary presentation (Bellinger, 2001: 124; Budd, 1996: 289; Harrison, 1980: 206). Grabbe (1997: 80) concedes that original authors or redactors 'may have

25 And not, as it happens, wizards.
26 http://www.mckellen.com/epost/m021110.htm#l, accessed 21 October 2005.

arranged the material according to a logical pattern' but offers no suggestion as to what that model might be. Hartley (1992: 331) claims that 'based on subject matter, these laws seem to be randomly ordered'.

However, there are a number of strong reasons for presuming that Lev. 20 has an orderly structure. First, at a general level, the Priestly worldview that underpins Leviticus is associated with order and not disorder (e.g. Jenson 1992). The classic statement in Lev. 10:10 that the priests are 'to distinguish between the holy and the common, and between the unclean and the clean' reflects the general Priestly concern for separation, order and placing things in their proper category before YHWH. Second, scholars have found numerous thematic and verbal parallels between Leviticus and the early chapters of Genesis (Douglas, 1996: 102; Kiuchi, 2003: 528; Walton, 2003: 165; Wenham, 1987: 21, 61; Wenham, 1979: 217). This is relevant because much of the subject matter of Lev. 20 (gender and sexual relations) has thematic parallels with the highly structured Genesis prologue. In particular, there is a fourfold use of the *hifil* of the verb בדל (to separate) in Lev. 20:24–26; the same verb used in the Creation prologue (Gen. 1:4, 6, 7, 14 and 18) (Milgrom 2000: 1761). Third, Leviticus appears to have an overall structure, even though scholars are not agreed on its precise nature.[27] There is general agreement, for example, that chapters 18 and 20 are thematically similar and flank chapter 19 as the ideological heart of the book,[28] if not *Torah* as a whole (Milgrom, 2000). If Lev. 20 has a wider structural role to play, it is reasonable to presume that it might possess some kind of internal structure as well. Lev. 18 has a distinct internal structure (McClenney-Sadler, 2002), so why not Lev. 20? Fourth, there is evidence that blocks of legal material elsewhere in Leviticus, and which are of similar length to Lev. 20, have a high degree of literary sophistication. Wenham (1979: 216) discovers a chiastic structure in Lev. 15:1–33 whilst Jackson (2000: 291–292) identifies a complex chiasmus in Lev. 24:13–23. Finally, Lev. 20 itself hints at an underlying structure. Towards the end of the chapter we find the following exhortation: 'You shall therefore make a distinction between the clean… and the unclean' (20:25). The exhortation to be discriminating suggests that the preceding material is itself arranged in a discriminating fashion. This is bolstered by the fact that the sequence in which this verse appears (20:24b–26) is itself arranged chiastically (Milgrom, 2000: 1761). For all these reasons, the belief that there is no apparent structure in Lev. 20 is deeply implausible. The remainder of this chapter explores what that structure might be and what purpose, if any, it might serve.

2. The chiastic structure of Leviticus 20:2–27

Lev. 20:1–27 is a distinct unit beginning with the phrase: 'And the LORD spoke unto Moses, saying'.[29]

(a) Milgrom and Hildenbrand's proposal

The most recent and detailed attempt at identifying the structure of Lev. 20 comes, as we might expect, from Milgrom's meticulous study (Milgrom, 2000). Milgrom (2000: 1728) follows Hildenbrand in finding the following chiasmus in Lev. 20:2–27:

A Worship of chthonic deities	
(Molech and necromancy)	(20:1–6)
B Sanctification	(20:7)
C Exhortation to obedience	(20:8)
X Penalties for violation	(20:9–21)
C' Exhortation to obedience	(20:22–25)
B' Sanctification	(20:26)
A' Worship of chthonic deities (necromancy)	(20:27)

Fig. 1: Proposed structure of Lev. 20 by Milgrom (following Hildenbrand)

However, there are two problems with this solution. First, categorising A and A' as 'worshipping chthonic deities' is rather loose. This abstraction is in fact a means of getting round the fact that there is no corresponding mention of Molech in A'. The absence of Molech is a problem for Milgrom. It is not a very convincing chiasmus if Molech is heavily emphasized four times at the start but there is no reference at all to Molech in the concluding section. The second problem is that Milgrom locates the fulcrum of the chiasmus in verses 9–21 which are categorised as 'penalties for violation'. But there are 'penalties for violation' throughout the unit, not just in verses 9–22. In fact, the penalties start in verses 2–6 and continue to v. 27. Thus, I conclude that Milgrom and Hildenbrand's proposal is not persuasive.

27 Although Douglas (1996) finds a so-called 'ring structure' for the book, Kiuchi (2003:524) is not persuaded, claiming that Douglas' 'seemingly arbitrary characterisation of the chapters is doubtful'. Instead, Kiuchi (2003) identifies a chiastic arrangement across three large blocks of material (Lev. 12–16; Lev. 18–22 and Lev. 23–26).
28 Rendtorff (1996: 31) notes that Lev. 19 has a very distinctive and specific character. Sawyer (1996: 18) claims that *Leviticus* 'uniquely focuses on 'loving one's neighbour'' because the phrase 'and you shall love your neighbour as yourself' occurs twice in Lev. 19 and nowhere else in the Hebrew Bible. Sawyer (1996:61) notes that Luke's *Gospel* (Luke 10:27) provides evidence that rabbis at that time were already aware of Lev. 19 being a focal point.
29 This parallels the opening of similarly distinct and adjacent units (Lev. 19:1–37 and Lev. 21:1–24).

The question is: can we find an internal structure for Lev. 20 that is more detailed and less abstract (avoiding my first criticism of Milgrom) *and* that runs throughout the text (avoiding my second criticism).

A clue that this is possible is suggested by reflecting on the place of Lev. 20 within the wider structure of the book. We have already noted that Lev. 20 is commonly seen as part of a broader, possibly chiastic, structure (e.g. Kiuchi, 2003). It certainly mirrors Lev. 18. Both chapters take as their theme 'sexual offences and other customs in neighbouring nations'; indeed, many of the paradigm cases are the same in both chapters. The difference is that Lev. 20 emphasises the penalties. If that is the case, then it is highly possible that the penalties themselves contain the clue to the structure.

(b) A chiastic arrangement based on punishment

Punishment in biblical law is of course a powerful communicative act and as such benefits from the application of a semiotic methodology, as I have argued elsewhere.[30] Semiotics encourages us to ask of any communicative act: who is the sender and who is the receiver? In the context of punishment the question becomes: who is meting out the punishment and who is being punished? From a semiotic perspective, it would not be at all surprising to find that this was the underlying structure of Lev. 20. I suggest that this is indeed what we find.

In verse 2, *humankind* is responsible for meting out punishment ('[the offender] shall be put to death; the people of the land shall stone him with stones'). Verse 3 contrasts this with *YHWH*'s responsibility for meting out punishment ('I myself will set my face against that man, and will cut him off from among his people…'). Short versions of these phrases then recur throughout the chapter. In Lev. 20 the stock phrase: 'shall be put to death' denotes punishment by humankind whilst 'setting my face against' and 'cutting off' are paradigmatic of YHWH's punishment. It follows from this that humankind is expressly responsible for 'putting to death' in verses 2, 9–13 and 15–16. Verse 14 refers to a burning rather than to a simple stoning and hence is phrased differently; however, the implication is that humankind is also responsible. It follows too that YHWH is expressly responsible for punishing in verses 3–6. YHWH also seems to be responsible for punishing in verses 17–18 on the understanding that *karet* is a characteristically divine form of punishment.[31] Other characteristically divine forms of punishment include bearing iniquity (v. 19); dying childless (v.20) and being childless (v.21).[32] This is summarised in Table 1 (below).

Verse	Offence	Punisher
20:2	Molech-worship	Humankind
20:3	Molech-worship	YHWH
20:4–5	Turning a blind eye	YHWH
20:6	Mediums and wizards	YHWH
20:9	Cursing parents	Humankind
20:10	Adultery	Humankind
20:11	Relations with father's wife	Humankind
20:12	Relations with daughter-in-law	Humankind
20:13	Male homosexuality	Humankind
20:14	Relations with wife and mother	Humankind
20:15	Bestiality (man)	Humankind
20:16	Bestiality (woman)	Humankind
20:17	Relations with sister	YHWH
20:18	Menstruant	YHWH
20:19	Relations with mother's sister / father's sister	YHWH
20:20	Relations with uncle's wife	YHWH
20:21	Relations with brother's wife	YHWH
20:27	Mediums and wizards	Humankind

Table 1: Responsibility for punishment

30 Specific forms of punishment in the Hebrew Bible (including forms of capital punishment) are generally 'of their time'. What is informative is the way in which the form of the punishment has a particular symbolic and educative function. Punishment in the Hebrew Bible is a morally communicative act (Burnside 2002: 24 – 29).

31 Traditional rabbinic interpretation sees *karet* as a divine and not human punishment, denoting sudden death (*karet* of days) or premature death before the age of 60 (*karet* of years) (*BT Tractate Keritoth*, ix). Biblical critics claim the penalty implies a form of excommunication or 'cutting off' from the community of Israel. Levine (1989: 18) notes that *karet* is 'sometimes perceived as punishment meted out directly by God in contrast to that imposed by the community and its leaders…'. As noted, this seems to be the contrast set up in verses 2 and 3 of Lev. 20. As in Lev. 20, *karet* is often combined with more stringent penalties, including capital punishment. Lev. 20:2 states that the Molech-worshipper is to be put to death *and* stoned and that YHWH will 'cut him off from among his people' (Lev. 20:3). The same is true of mediums and wizards (Lev. 20:6, 27). This 'double-whammy' (punishment by YHWH *and* humankind) indicates that these offences are seen as the most serious offences in Lev. 20.

32 Children are seen as a gift and blessing from YHWH (e.g. Ps. 127:3) and hence their absence or loss can be seen as a divine curse or punishment (e.g. Lev. 26:22; Deut. 28:18, 32). This is so regardless of the distinction between 'dying childless' and 'being childless' (see Hartley, 1992: 328 for a discussion of Jer. 22:30 where Jehoiachin was put under the curse 'to be written down childless' when he already had several children (1 Chr. 3:17-18 names seven sons)).

It is immediately apparent from this list that responsibility for punishing is arranged chiastically, as follows:[33]

A Humankind (v. 2)
  B YHWH (vv. 3–6)
    X Humankind (vv. 9–16)
  B' YHWH (vv. 17–21)
A' Humankind (v. 27)

Chiastic arrangements are frequently used elsewhere in biblical law (Jackson, 1996: 60). In addition to those noted in (1) above, we find examples of chiasmus in the *mishpatim* as a whole (Exod. 21:2–27; Exod. 23:1–8 and Num. 35:17–25; Jackson, 2000: 215–225). Jackson (1996:120) notes that the spur to promulgating the chiasmus in Lev. 24 is a quarrel (24:10). This explains why the chiasmus deals with blasphemy (24:11–16) and injury (24:17–22): it is because a typical quarrel may give rise to verbal and physical aggression. Similar sequences can be traced through Lev. 20. First, 'spiritual intercourse' (20:5–6) in the form of idolatry is a spur to prohibited physical intercourse, in narrative[34] and conceptual[35] terms. Second, worshipping the gods of the nations is a spur to following the practices of the nations. Finally, sacrificing the next generation (children; 20:3–6) leads to contempt for the older generation (parents; 20:9–16).

(c) Purpose of the chiasmus

Is this overall chiastic structure a purely literary device (art for art's sake)? Or is it an aid to transmitting and retaining information (art for memory's sake)? Or does it have some other purpose?

(i) It brings out the unity of a double-sided event

Wenham (1979: 217) claims that: 'chiasmus brings out the unity of a double-sided event' (e.g. Lev. 15:1–33 where the chiasmus demonstrates the unity of male and female as one gender made in God's image; ibid.). In Lev. 20 there are two sides to punishment (YHWH and humankind). The chiasmus serves to bring out the unity of these events, namely that there is a divine–human partnership in punishment. This divine–human partnership is in fact underlined at the beginning and end of the text. The first offence (Molech-worship) is punished by *both* humankind (Lev. 20:2) *and* YHWH (20:3) in different ways. Likewise the second offence ('turning to mediums and wizards') is punished by *both* YHWH (20:6) *and* humankind (20:27). Levine (1989: 140) is puzzled by the repetition of 'mediums and wizards' at the end of the chapter, but the inclusion gives the chapter its overall chiastic structure (see Table 1). The outer edge of the large chiasmus (20:2, 27), where humankind punishes for Molech-worship and wizardry, parallels the outer edge of the smaller chiasmus (20:3, 6) where YHWH punishes for Molech-worship and wizardry. Normally, when a particular party is given responsibility for punishing an offence, it is assumed that this is on the basis of jurisdiction. Lev. 20, however, is interesting because it shows that the purpose of assigning responsibility is not to parcel up jurisdiction but to emphasise collaboration.

Examples of divine–human partnership in punishment are found elsewhere in the Pentateuch. A classic example is found in Gen. 9:5–6: 'For your lifeblood I [God speaking] will surely require a reckoning; of every beast I will require it and of man; of every man's brother I will require the life of man. Whoever sheds the blood of man, by man shall his blood be shed; for God made man in his own image.' Here, Gen. 9:5 states that God will punish whilst Gen. 9:6 states that man is to punish (unless 'by man' means 'in exchange for that man'). However, these verses are not necessarily incompatible. Human institutions are a remedy but if they fail then God punishes directly. There is a divine–human partnership in punishment, as there is in adjudication generally (cf. Deut. 1:17; 2 Chr. 19:6). This is borne out by narrative and legal accounts of homicide, which demonstrate that both God and humankind have an interest in prosecuting and adjudicating upon homicide (e.g. Gen. 4:9–15 and Num. 35:22–24, respectively). Human institutions do not exclude direct divine involvement.

Human institutions do not exclude direct divine involvement

(ii) It emphasises humankind's duty to punish

A second purpose of the chiasmus is to draw attention to its centre. The fulcrum of Lev. 20 is verses 9–16 which focus on humankind's responsibility to punish.

33 If the 'cutting off' in 20:17 and 20:18 were seen as human rather than divine punishments, this would result in a neater chiasmus balanced by three divine punishments apiece. However, there are several reasons for rejecting this. First, it is contrary to the use of *karet* elsewhere in Lev. 20 and to its typical use in the Hebrew Bible. Second, a chiasmus has validity because of its content and sequence and not because of the length or number of the units that comprise that sequence. Third, and perhaps most important, designating 20:17-21 as divine punishments produces a chiastic arrangement (see 4 below) that balances the chiastic structure of 20:3-6 (see 3 below).
34 Cf. Exod. 32:4-6 where 'rose up to play' is a euphemism for sexual relations.
35 The conceptual link is made by designating the offences in 20:5-6 as 'harlotries'.

Why is the responsibility of humankind stressed? It may be because although God and humankind *together* punish serious offences (see (i) above), humankind has a tendency to shirk its responsibilities. The chiasmus emphasises humankind's responsibility because, of the two parties, humankind is apt to avoid meting out punishment, especially for idolatry, family and sexual offences. This is expressly anticipated by Lev. 20:4 which describes the 'people of the land' 'hiding their eyes' from offences committed in their midst.

This problem is compounded when we reflect that the offences listed in Lev. 20 (and especially 20:9–16) would most likely have taken place either at home or close to home. Thus the people most likely to know whether these offences took place will be the offender's own family. Verse 9 refers to parents and so it is possible that they are the ones who, for all practical purposes, are expected to initiate proceedings. Lev. 20 is not unique in emphasising this responsibility. Biblical law is familiar with the problem of reluctance to prosecute for capital offences, especially among family members (see, e.g., Deut. 13:6–11).[36]

(d) Threefold structure of Leviticus 20

If this overall structure is correct then it follows that Lev. 20:2–27 is divided into three main sections: 20:3–6; 9–16 and 17–21. I argue that each section in turn has a distinct literary arrangement. Both 20:3–6 and 20:17–21 have a chiastic structure (see 3 and 4 below) whilst 20:10–16 is a series of binary oppositions. These sections are set within a surrounding frame (20:2 and 20:27). They are also connected by several hortatory passages (20:7–8; 22–26) that connect each chiasmus to the Decalogue (see 3 and 4 below). The remainder of this chapter explores the chiastic structure of 20:3–6 and 17–21.

3. The chiastic structure of Leviticus 20:3–6

As noted in (2) above, Lev. 20:3–6 is a separate unit because YHWH punishes the stated offences. The unit has a chiastic structure, as follows:

A	Punishment of offender *alone*	'I myself will set my face against *that man* (בְּאִישׁ), and will cut *him* off from among his people…' (20:3)
X	Punishment of offender *and his mishpachah* (i.e. group of families)[37]	'I will set my face against that man (בְּאִישׁ) *and against his* (מִשְׁפַּחְתּוֹ; *mishpachah*), and will cut *them* off from among their people…' (20:4–5)
A'	Punishment of offender *alone*	'… I will set my face against *that soul* (בְּנַפְשׁ), and will cut *him* off from among his people.' (20:6; my translation)

The chiasm moves from the individual offender to the 'offender plus *mishpachah*' and back to the individual offender. The chiastic structure would be perfect if the offender in 20:6 was described as a 'man' (אִישׁ) instead of a 'soul' (נֶפֶשׁ). However, the use of a variant noun highlights the precise nature of the offence, namely the turning towards the אֹבֹת ('familiar spirits') and יִדְּעֹנִים ('those who have familiar spirits'). Also, the word אֲנַפְשׁ has the advantage of not being gender-specific. This makes sense given that the paradigm case of necromancy in 20:27 envisages either 'a man or a woman'. More intriguingly, the dual reference to 'man' (אִישׁ) and 'soul' (נֶפֶשׁ) may reflect humankind's dual nature.[38] It may be that what is being punished is both the human and divine elements of Molech-worship and wizardry. To put it another way, the use of these words may highlight the physical and spiritual aspects of these offences, that is, deeds done with the body and with the spirit. This may help to explain why both humankind and YHWH punish these offences.

The duality of human and divine in 20:3–6 may anticipate another significant duality that runs through the chapter as a whole; namely, rebellion against human and divine forms of authority. Molech-worship and wizardry (20:3–6) constitute rebellion against divine authority whilst cursing parents (20:9)

36 Reluctance to act may also be found in biblical narratives. Niditch (1982) for example highlights the failure of the Benjaminites to deal with the men of Gibeah, claiming that a major theme in Judges 19-20 is the difficulty human beings have with enforcing proper community behaviour. This is a relevant example because the story describes how the Benjaminites' failure to address offending behaviour within their midst almost resulted in the extinction of their tribe (Judg. 21:2-3).

37 Myers' (1997:13) account of biblical terminology for population groups, based on sociological studies of the early Israelite period, concludes that the *mishpachah* was a 'suprahousehold social unit' or 'protective association of families' (1997:37). The *mishpachah* in early Israel appears to have been 'a solidarity of nearby family units that interacted with and sustained each other' (*ibid.*). She claims that the *mishpachah* is 'generally understood to be coterminous with the inhabitants of a village' although it can also represent, perhaps in later periods, 'a somewhat larger regional group or a subdivision of a larger settlement' (*ibid.*). Similar views are taken by Wright (1992: 761; 'smaller than a tribe but larger than a family') and Andersen (1969).

38 Cf. Gen. 2:7 'then the LORD God formed man of dust from the ground, and breathed into his nostrils the breath of life; and man became a living being (לְנֶפֶשׁ חַיָּה)'.

and various sexual offences (20:10–16) constitute rebellion against family authority.[39]

The use of a chiasmus to structure a short list of *divine* punishments may be significant. This is because the basic chiasm takes the form 'ABA' and can be as simple as the phrase עין תחת עין ('an eye for an eye'; Exod. 21:24). It is a perfectly symmetrical literary form. In that sense, the use of a chiasmus is characteristically divine.[40] This may be the reason why a chiasmus is used to structure direct divine intervention. This is not of course to say that this is the only occasion on which a chiasmus may be used. Nonetheless, there is a sense in which this literary form is a particularly appropriate means of structuring offences for which YHWH is the punishing agent.

Why might direct divine punishment have been thought appropriate in these cases? It is interesting to compare cases that are the basis of YHWH's direct divine punishment in 20:3–6 with cases that are the subject of special divine procedures. Jackson (1995: 1806–1815) has distinguished between 'functional' and 'special interest' justifications for the use of divine procedures. The 'functional' view claims that divine procedures are only invoked when there is a functional need for them. Hence they are only used in cases that 'by their very nature are likely to present difficulties – not only of fact determination, but sometimes also of legal uncertainty – to purely human, rational adjudicatory agencies' (1995: 1807). An alternative view argues that divine procedures are used only where there is 'some particular "divine interest" in the subject matter' (ibid.). Jackson (1995: 1815) however, has argued that neither model is sufficient to explain all the relevant cases, nor do they operate as consistent and mechanical principles. Similar conclusions may be drawn regarding the operation of direct divine punishment (see Table 2, below).

Verse	Offence	Punisher	Reason
20:3	Molech-worship	YHWH	Defiles YHWH's sanctuary and profanes YHWH's holy name
20:4–5	Turning a blind eye	YHWH	Humankind fails to perform duty delegated in 20:2
20:6	Mediums and wizards	YHWH	'Intercourse' with spirit world

Table 2: Reasons why YHWH punishes in Lev. 20:3–6

A 'functional' view might explain the punishment in 20:4–5 for the offender and his *mishpachah*. There is a functional need for YHWH to punish because humankind has failed to do so. The case thus presents a particular difficulty in terms of prosecution and punishment. However, this is not a sufficient explanation for YHWH's direct punishment in the other two cases. Here, a 'special interest' model seems more appropriate. YHWH has a special interest in the holiness of his sanctuary and his name (v. 3). YHWH also has a special interest in the 'spiritual' prostitution represented by engaging with 'mediums and wizards'.[41] It therefore seems that the rationale for direct divine punishment displays the same mixture of 'functional' and 'special interest' considerations which Jackson identifies with regard to divine procedures.

Again we must ask whether this chiasmus is purely a matter of literary style, or a means of aiding recollection, or whether it has some other purpose. The chiasmus seems to have several purposes.

(a) Emphasises 'the man and his mishpachah'

First, the fulcrum of this chiasm is the punishment of 'the man and his group of families' (*mishpachah*). The emphasis on penalties for the *mishpachah* is important for several reasons.

First, it provides a powerful motive for overcoming any reluctance to initiate proceedings against an offender (see (c)(ii), above). If humankind fails to punish, YHWH will punish anyway but punishment will fall not only on the offender but also on the *mishpachah*. The offender has a primary responsibility not to lead his *mishpachah* into idolatry and the *mishpachah* has a secondary responsibility not to follow him. Their responsibility is to resist the offender and to root him out. This confirms the suggestion, above, that the offences listed in 20:3–6 are likely to take place close to home. Certainly, it is highly likely that an offence involving the offender's children (Lev. 20:2) will be known within the wider group of families to which he belongs.[42] Failure to act has consequences not only for the offender but also for this social unit. The mid-turn of this chiasmus thus corresponds to the mid-turn of the chiasmus for the chapter as a whole (i.e. humankind's responsibility to act).

Second, there is a further sense in which the mid-turn of this small chiasmus corresponds to the mid-turn of

39 Family authority itself being divinely-appointed (e.g. Exod. 20:12).
40 I owe this point to Bernard Jackson.
41 Hartley (1992: lix) comments: 'Wizardry denied Yahweh's exclusive lordship over life given up in death, over the future, and over the unseen world'.
42 The paradigm case may indeed envisage the offender as an individual who has particular cultic responsibility within his *mishpachah*.

the large chiasmus. The former makes it plain that Molech-worship has repercussions for the *mishpachah*. The same idea is present in the mid-turn of the larger chiasmus; namely that *sexual offences* have repercussions. Neither are simply a matter for the 'man' alone: both involve his family. It is highly significant that Lev. 20:9–16 (the mid-turn of the wider chiasmus) states the punishment for cursing father or mother (20:9) before introducing penalties for sexual offences (20:10–16). This list of offences (20:9–16) form a single unit and as such 'cursing parents' cannot be considered apart from the list of sexual offences. Indeed, the juxtaposition of 20:9 with 20:10–16 implies that these are not 'sexual offences' but 'family offences'. The verb for cursing is the *piel* of קלל ('to be slight… trifling… [and of] little account').[43] This implies that the offences described in 20:10–16 are prototypical of what it means to 'curse' father or mother. The man or, rather, the son, who does any of the things listed in 20:10–21 'curses' or 'holds lightly' the ones who brought him to life. The underlying idea is the offender's rejection of the authority of the father and mother. This is why the mid-turn of 20:3–6 is important. It emphasises the danger an individual may present not only to himself but also to the wider family structure. This corresponds to the fulcrum of the chapter as a whole.

A third function of this small chiasmus is to correspond not only to the mid-turn of the chapter but also to the mid-turn of the chiasmus in Lev. 20:17–21 (see 4 below). The centre of that chiasmus indicates that the boundaries of permitted and prohibited sexual intercourse correspond to the boundary of the *mishpachah*. For these reasons, the chiasmus in Lev. 20:3–6 plays an important role by emphasising the significance of the offender's acts for his *mishpachah*.

(b) Alludes to well-known established texts

Weinfeld (quoted by Jackson, 1996: 120) claims that a chiasmus may be used when the author or redactor wishes to quote from or allude to well-known established texts. It is a means of drawing attention to the source. In Lev. 20:2–6 the chiastic structure is closely connected to the Decalogue. There we find the ban on having 'other gods' besides YHWH (Exod. 20:3) and the ban on 'making' and 'worshipping' an idol (Exod. 20:4). These prohibitions recur in Lev. 20:2–6 which prohibit the 'prostitution' of following Molech (20:2–5) and 'mediums and spiritists' (20:6).[44] It is very striking that the internal structure of both the Decalogue and Lev. 20 follow exactly the same order: 'serving other gods', 'honouring father and mother' and 'adultery'. An important verbal parallel is the repetition of the phrase: 'I am the Lord your God…' (Exod. 20:2). This key phrase opens the Decalogue and is repeated twice in the motivation clauses (Lev. 20:7–8) that follow the first chiasmus (Lev. 20:2–5).[45] They underline the link between the chiasmus and the Decalogue and make it explicit.[46] The chiasmus in Lev. 20:2–6 invests the content with the specific and unique authority of God's direct voice to the people (Exod. 20:1, 18–19). Lev. 20 gains immeasurably in coherence when it is viewed as a literary reworking of themes from the Decalogue. This is not unusual. Jackson (1996: 120–1) has made exactly the same claim in respect of Lev. 24, whilst Hartley (1992: 309–311) has shown the close linguistic similarities between the Decalogue and Lev. 19.

The internal structure of Lev. 20:2–6 is also closely connected to the Covenant Code. Exod. 22:17–19 lists a small group of self-contained cases concerning witchcraft, bestiality and idolatry; a potted summary of what the Israelites appeared to associate with the practices of foreign peoples. Idolatry and witchcraft are the subject of the first chiasmus (Lev. 20:3–6) whilst bestiality appears as the climax of the middle section (Lev. 20:9–16). Allusions to the Covenant Code occur elsewhere in Leviticus. Jackson (1996: 12) notes that the chiastic structure of Lev. 24 is closely connected, thematically, to the first section of the Covenant Code.

4. The chiastic structure of Leviticus 20:17–21

As noted in (2) above Lev. 20:17–21 is a separate unit because YHWH punishes the stated offences. Like Lev. 20:3–6 and the chapter as a whole, this unit also has a chiastic structure, as follows:

43 Milgrom (2000: 1745) cites with approval the rendering by *Tg. Neof.* 'holds cheap the honour'.
44 There are other thematic parallels with the Decalogue. The commandment to 'honour father and mother' (Exod. 20:12) is paralleled by the punishment for 'cursing' father or mother (Lev. 20:9) whilst the ban on committing adultery (Exod. 20:14) is paralleled by the punishment for adultery (Lev. 20:10). Both the Decalogue and Lev. 20 contain historical allusions. Exod. 20:2 refers to the Exodus from Egypt whilst Lev. 20:24, referring to the gift of land, reaches further back to YHWH's covenants with Abraham (Gen. 12:7; 15:16, 18-19). There are also several historical allusions to Sinai itself in Lev. 20:24 and 20:26 (cf. the 'priestly covenant' of Exod. 19:3-6).
45 It also reappears in a motivation clause (Lev. 20:24) following the second chiasmus (Lev. 20:17-21).
46 There are further verbal parallels in the chapter as a whole. The Decalogue makes a link between honouring father and mother with long life in the land (Exod. 20:12). Similarly, Lev. 20 makes a link between punishment for cursing father and mother (20:9) and punishment for sexual offences, which are seen as prototypical of cursing parents (20:10-16 and 20:17-21). Applying the penalties is thus linked with retaining the land (20:22).

A [♂and♀] ♂uncovers nakedness of ♀ *takes* (v. 17)
B [♂and♀]♂uncovers nakedness of ♀ *lies* (v. 18)
[♂and♀] ♂uncovers nakedness of ♀
X (neither takes nor lies) (v. 19)
[♂and♀] ♂uncovers nakedness of ♀
(neither takes nor lies) (v. 19)
B' [♂and♀]♂uncovers nakedness of ♂ *lies* (v. 20)
A' [♂and♀] ♂uncovers nakedness of ♂ *takes* (v.21)

Verses 17–21 consists of six cases, all of which have in common a reference to 'uncovering nakedness'. This phrase is a more general, unspecific reference to sexual intercourse than either 'taking' or 'lying' (Milgrom, 2000: 1534–1535). The chiasm moves from 'taking' and 'lying' in the first two cases to a pair of cases that contain no reference to either 'taking' or 'lying'. We then move to two final cases that refer to 'lying' and 'taking'. Unlike Lev. 20:2 and 20:9–16, all these offences are non-capital and there is no obligation on humankind to mete out punishment. YHWH instead assumes responsibility for the punishment. There is a contrast between A and A' in that, although both 20:17 and 20:21 concern heterosexual relations, the former is constructed as 'uncovering the nakedness of a woman' whilst 20:21 is constructed as 'uncovering the nakedness of a man', namely the offender's uncle. The same is true of B and B' (20:18, 20). This suggests a declining seriousness towards the centre of the chiasm (20:17–19) and an increasing seriousness moving away from the centre (20:19–21). The closer relationship of the sister to the offender as opposed to the unidentified menstruant makes 20:17 arguably more serious than 20:18. Similarly, the closer relationship of the brother to the offender than the uncle makes 20:21 arguably more serious than 20:20. Again we must ask whether this chiasmus is purely a matter of literary style, or an aid to memory, or whether it has some other purpose.

The centre of this chiasm is 20:19. This concerns two cases: the mother's sister and the father's sister.[47] These cases are emphasised because they are hard cases. They are unusual not only because they are at the centre of the chiasm but also because they are the only cases in 20:19–21 – and in the entire chapter – not to have a designated punishment. A motive clause explains the reason for the prohibition 'for that is to make naked one's near kin' (20:19). The reference to 'near kin' indicates that the motive is related to ideas about the nature and extent of the family.

We have already seen that ideas about the family unit are central to chiasms elsewhere in Lev. 20. The mid-turn of this section thus corresponds to the mid-turn of Lev. 20:3–6 (warnings to the *mishpachah*) and the mid-turn of the chapter as a whole (Lev. 20:9–16 where sexual offences are seen as offences against family authority). Family units help to define prohibited sexual behaviour and *vice versa*, in Lev. 20. But family units must have a boundary and there must come a point where that boundary is reached. The cases in Lev. 20:19 are hard cases because they are right on the boundary of what constitutes 'near kin' or 'family' in early Israel, as far as sexual ethics is concerned. The cases in Lev. 20:19 are therefore at the limit of what is classified as wrongdoing. This means that it is hard to find the right punishment and so none is given. That said, the behaviour is not recommended ('they shall bear their iniquity').[48]

The existence of this chiasm shows that there is some internal structure to this section, although it must be acknowledged that some questions about its organisation remain. For example, it is not entirely clear why intercourse with a menstruating woman (20:18) should be regarded more seriously than intercourse with the mother's sister or father's sister (20:19), although Milgrom (2000: 1755) sees the rationale as symbolic.[49] Nor is it entirely clear why intercourse with an aunt by blood (20:19) should be less serious than intercourse with an aunt by marriage (20:20), unless it is assumed that the aunts in 20:19 have never married and hence there are no former husbands to offend against (cf. 20:20).

5. The midsection (Lev. 20:9–16)

The midsection continues the elaborate reworking of themes from the Decalogue noted in 3(a) above. We saw that it was highly significant that Lev. 20:9–16 (the mid-turn of the wider chiasmus) states the punishment for cursing father or mother (20:9) before introducing penalties for sexual offences (20:10–16). It

47 Although the English language does not discriminate between these identities, subsuming both under the term 'aunt', many cultures do distinguish between the two. McClenney-Sadler (2002: 10) claims that of the six conventionally recognised anthropological kinship systems, ancient Israel should be designated 'Normal Hawaiian', citing as a specific indicator the prohibition of relations with the mother's sister.

48 Compensation for the lack of penalty is found in the use of the apodictic instead of the usual casuistic form (literally, 'Nakedness of your mother's sister or of your father's sister not shall you uncover…'). This has greater rhetorical impact because it casts the listener in the position of wrongdoer and makes it easier for respondents to internalise the norm. This is especially important in the absence of a formal sanction.

49 Milgrom sees in 20:18 protection for the woman 'from unwanted advances by her husband during her period of weakness…Thus sex during her physical infirmity (menstruation) is a symbol of sex during her *figurative* infirmity, if widowed or divorced and a vulnerable prey to the males in her household' (emphasis original).

follows that the offences listed in 20:10–16 are not best categorised as 'sexual offences' but as 'family offences'.[50] The offences listed in verses 10–16 are a more detailed elaboration of what it means to dishonour parents. Adultery (v. 10) is presented as the narrative typification of sexual wrongdoing and the offences in verses 11–16 are presented as further negations of a normal sexual relationship. These 'forms of adultery' are developed through an extended series of binary oppositions regarding the identity of the sexual partners, as follows: (1) outside family *versus* inside family (20:10–11); father *versus* son (20:11–12); (3) heterosexual intercourse *versus* homosexual intercourse (20:12–13); (4) non-marriage *versus* marriage (20:13–14)[51] and (5) sex between human beings *versus* bestiality (20:14–15). Each pair of oppositions is placed at relative distance from the norm.[52] The binary oppositions indicate that the paradigm of normal sexual relations is marriage between a man and a woman who does not belong to the man's family.

Biblical law provides us with a coherent sexual ethic

The advantage of this style of presentation is that it can be easily understood. One of the criticisms of modern English law prior to the Act was that the law relating to sexual offences was unclear. It was said that: 'There is no Highway Code for sexual relations to give a clear indication of what society expects or will tolerate' (Sex Offences Review Group 2000a, iv). The Group espoused the ideal that 'Offences should also be as straightforward and readily understood as possible' (2000a, 6) but one of the main criticisms of the Act was that it was '…not much impressed with the virtues of clarity and simplicity' (Leigh 2003, 1).[53] By contrast, biblical law provides us with a coherent sexual ethic. The use of binary oppositions means that guidance can be given in advance regarding *any* kind of sexual behaviour, whether it is specifically anticipated in Lev. 20:10–16 or not.

6. Conclusion

What general conclusions can we draw from this exegesis of Lev. 20?

- Recognising the structure of Lev. 20 is key to interpreting its content.
- The structural similarity to the Decalogue indicates that the primary issue when dealing with sexual offences is idolatry and hence the offender's relationship to YHWH.
- The identification of Lev. 20:9–16 as a distinct unit indicates that the secondary issue is the offender's relationship with his father and mother.
- Lev. 20 thus establishes an order of priorities regarding the offender's relationship to divine and familial authority and sees sexual deviancy as an expression of spiritual and familial dysfunction.
- Within this structure, Lev. 20 sees sexual offending as raising two key questions: first, what does this or that behaviour suggest about the offender's relationship with YHWH and, second, what does it suggest about the offender's relationship with his or her father and mother?
- The use of binary oppositions in Lev. 20 indicates that the paradigm of normal sexual relations is marriage between a man and a woman who does not belong to the man's family.
- All other forms of sexual expression may be characterised as 'forms of adultery' and placed at relative distance from the norm, regardless of whether the offence in question is anticipated.

50 The link between Lev. 20:9 (honouring parents) and 20:10–16 (sexual misbehaviour) suggests that descent relationships have particular significance for family stability. Interestingly, a similar argument has recently been made by the Institute of Community Studies. Dench and Brown (1994, 9) claim that 'In order to uphold marriage, it is essential to recognise and promote descent [relationships] first. It is descent which epitomises the enduring shared interests which family life expresses'.

51 This is the only offence which is punished by burning. The explanation lies in the fact that 20.14 has the *only* motive clause for punishment in the whole of 20.10 – 21. This motive clause states: 'that there may be no wickedness among you (plural).' This implies that the community is somehow tainted by the offence and stands in need of purging. The burning purges the community of 'wickedness'. This is consistent with the purgative function of burning elsewhere in biblical law (e.g. Lev. 21.9; Burnside 2003: 124–125). Why does this offence and not the others taint the community? The answer would seem to be related to the fact that this offence, unlike all the others in 20.10-16, concerns marriage and marriage is a public event. The offenders are walking around as a marital threesome. The community is complicit by allowing the marriage. Lev. 20:14 deals with the situation where a man marries both a mother and her daughter; an arrangement that might seem far removed from contemporary concerns. However, the website www.beonscreen.co.uk, which assists persons who wish to take part in reality TV shows, includes requests for volunteers to take part in a reality TV show called 'Date my daughter' in which 'Single men date mothers before trying to win their daughters' affections'; Martin. (2005, 32).

52 The Sex Offences Review Group (2000a, 1) claims that 'where sex occurs without consent, abusively or inappropriately it is harmful, unpleasant and degrading…'. Biblical law defines this further to say that these consequences are true, to a greater or lesser extent, of any sexual activity that takes place outside marriage.

53 Leigh (*ibid.*) considers whether the Act is an expression of "socialist legality' where offences were minutely defined and punishments weighed with great particularity'.

Part V

Conclusion

The biggest change in the law relating to sexual offences in fifty years means that this is a topic worth exploring from the perspective of biblical law, especially given the influence Judaeo-Christian values have had in this area in the past. The close and careful study of biblical law in this area is difficult, not least because the contemporary social context is in some ways hostile to biblical sexual ethics. There is a tendency to assume that because the sexual ethics of biblical law are different to those of modern society, biblical law must at best be irrelevant or, at worst, should be actively excluded from the debate.

However, this paper has shown that biblical law is not irrelevant to the reform of sexual offences. We have seen that modern law uses a number of categories to shape its constructions of sexual deviancy. At a general policy level, these include certain ideas and assumptions relating to 'family' and 'harm'. At the level of legislation, they also conclude certain convictions about the value of 'consent,', 'equality' and 'protection'. Our analysis of the biblical law relating to sexual offences, both generally and in relation to Lev. 20 specifically shows that biblical law uses similar categories. It is not the case that modern law is concerned with these categories and biblical law is not. However, biblical law uses different conceptions of these categories. In addition to these familiar categories, we find that biblical law uses different categories altogether, which are not present in modern law. These too may inform sexual offences reform.

1. Similarities and contrasts between modern and biblical law

Biblical law uses different conceptions of categories found in modern law, as follows.

(a) The family

We saw in Part I that the Sex Offences Review Group made certain assumptions about the 'family' to construct its reforms. It was acknowledged that adult 'rights' to sexual autonomy in their private life were not absolute and that sexual behaviour could legitimately be regulated by society through the criminal law 'to protect the family as an institution…' (Sex Offences Review Group 2000a, iv). We saw in Parts III and IV that biblical law also relies upon certain assumptions about the 'family' to construct its sexual offences; so much so that in Lev. 20 it seems that 'sexual offences' are really categorised as 'family' offences.

However, it is also clear that the assumptions about 'family' and the value of the family as a social institution that is worth protecting by means of criminal sanctions are different in modern and biblical law.

First, the Sex Offences Review Group believed that adult sexual autonomy should only be constrained when the sexual activity was non-consensual or not legally valid because it involved children or the very vulnerable who required protection (Sex Offences Review Group 2000a, iv). This adopted a rather minimalist definition of the family and suggests that not much value was placed on the family as a social institution. By contrast, biblical law places more limitations on different kinds of sexual behaviour. These constraints are explicitly tied to beliefs about the value of protecting the family unit. We saw that the literary structure of Lev. 20:3–6 makes it clear that applying the penalties for sexual offences is essential to preserving the survival of the biblical family unit.

Second, and related to the first point, there are also different sociological definitions of the family in modern and biblical law. We noted that one of the innovations of the Act is that it introduces the new crime of 'familial child sex offences'. We saw that the traditional blood tie of incest is replaced by a wider range of relationships (sections 25 and 26 of the Act) and that this was an attempt to reflect the looser structure of modern families.[54] These changes have been criticised by social commentators as a move to replace the traditional family by 'a definition of the family as a "loving relationship" of any kind. This

54 A trend that can only be reinforced with the implementation of the Civil Partnership Act in December 2005. Oscarsson and Kerr (2005, 20) quotes Richard Jones of Modern Commitments, a company that offers same-sex couples assistance in organising partnership ceremonies. 'I can't understand how a gay relationship can undermine the family unit. We are creating a unit of our own; it will not affect anyone else'. By contrast, biblical law insists that such a partnership cannot function as any sort of unit. It also insists that same-sex partnerships affect society as a whole, not least when these are publicly affirmed.

strikes directly at the married family by making it meaningless' (Phillips 2000). By contrast, biblical law defines the family in terms of the *mishpachah* (Lev. 20:4–5). This goes beyond the traditional nuclear family unit to include the 'suprahousehold social unit' or 'protective association of families'. It thus provides protection for a broad range of possible family relationships without collapsing into the general 'relationships of caring' in modern law. It is reasonable to suggest that there is some relationship between the expansive, yet robust, sociological definition of the family in biblical law and the value that is attached to protecting it via constraints on sexual behaviour.

Third, and following from the above, there is a difference in the extent to which ideas about the family define sexual offences in modern and biblical law. In Part I, we saw that modern law relies upon a legal definition of the 'sexual' in order to give content to 'sexual offences'. Offences are 'sexual' under s. 78 of the Act because of 'penetration, touching or any other activity' which, from its nature, a reasonable person would consider to be sexual because of 'its nature… its circumstances or the purpose of any person in relation to it…', causing Leigh (2003, 3) to anticipate 'a rich case law based upon erogenous zones'. It could be argued that one of the reasons why modern law is increasingly forced to define the 'sexual' is because there is a weaker social consensus as to what constitutes the 'family'. By contrast biblical law subsumes ideas about the 'sexual' entirely under the ideas about marriage and the family. As a result, Lev. 20 defines the 'sexual' entirely in terms of the 'family' and 'sexual offences' as 'forms of adultery' that deviate from the norm of marriage.

Consequently, biblical law, as with modern law, has a conception of the 'family' but it is a different and more expansive conception of the 'family' and it plays a stronger role in constructing sexual offences.

(b) Harm

We saw in Part I that the reform of sexual offences in modern law is based on assumptions about harm to the individual and society as a whole. However, this definition of harm was rather limited and was based mainly on the views of victims of sexual offences (who tended to be women) and academic research. Modern law claims to recognise '…a clear difference between private and public sexual behaviour' (Rt. Hon. David Blunkett MP in the House of Commons, 20 November 2002). For this reason, modern law treats a number of forms of sexual behaviour as 'victimless crimes' (e.g. adultery, private consensual homosexual behaviour above the age of consent).

By contrast, biblical law is based on a much more far-reaching category of harm. Sexual offences threaten the survival of the entire nation whether they are committed in public or in private (Lev. 22:22–23), although offences that are committed in public (e.g. Lev. 20:14) require the purging of the community. Private acts have public consequences. There are therefore no 'victimless crimes' in biblical law. A broader conception of harm in modern law would cause us to regard certain forms of sexual behaviour more seriously (e.g. adultery and private consensual homosexual behaviour).

Consequently, biblical law, as with modern law, has a conception of harm but it is a different and more expansive conception of harm and it plays a stronger role in constructing sexual offences.

(c) Consent

We noted in Part I that consent in modern law is confined to the actors concerned. By contrast, we saw in Part III that consent in biblical law goes beyond the parties to the sexual act to include the consent of certain family members.

Consequently, biblical law, as with modern law, has a conception of consent but it is a different and more expansive conception of consent.

(d) Equality

We saw in Part I that equality in modern law serves to identify certain classes within which it is not possible to make distinctions for the purpose of criminal sanctions. Thus the Act treats consensual homosexual and heterosexual intercourse above the age of consent as 'equal' in the sense that it does not regard any distinction between them as justified in criminal law. However, although modern law identifies the classes within which it is not possible to make distinctions, this does not mean there are no distinctions *between* classes. Necrophilia and voyeurism are examples of some of the distinctions which the criminal law is prepared to recognise as valid.

The moral basis of equality in biblical law is different to that of modern law

Similarly, in Part III we saw that equality is granted to certain categories of sexual behaviour for men and women and withheld from others. By contrast, we saw in Part III that the moral basis of equality in biblical law is different to that of modern law. In addition, we

saw in Part IV that many categories of sexual behaviour are not treated 'equally' with marital relationships, including homosexual relationships. The Sex Offences Review aspired to a system of penalties in which homosexual offences were no higher than for equivalent heterosexual offences (2000a, 98). In this sense, biblical law is similar to modern law in that homosexual offences are treated as seriously as heterosexual offences. At the level of penalty there is no difference between adultery and homosexual intercourse in biblical law.

Consequently, biblical law, as with modern law, has a conception of equality but it is based on a different set of moral distinctions.

(e) Protection

We saw in Part I that the Act is concerned to protect vulnerable groups, principally children and the mentally disordered. There is a similar concern in biblical law. In Part IV we saw that the prohibition of Molech-worship was designed to protect children from abuse by their parents (Lev. 20:2–5) and the community as a whole risked punishment if it failed to punish such offenders (Lev. 20:4). We also saw in Part III that protection is relevant in biblical law in other ways, particularly in relation to women, who are protected by means of betrothal or marriage. By contrast, we saw in Part IV that punishments for sexual offences were designed to protect the social institutions of marriage and the extended family (or *mishpachah*), as well as the nation as a whole, including its vocation (Lev. 20:24) and covenant relationship with YHWH (Lev. 20:26).

Consequently, biblical law, as with modern law, has a conception of protection but it is a different and more expansive conception of protection.

(f) Additional categories

In addition to these familiar categories, we saw in Part IV that there are different categories in Lev. 20 altogether. These include idolatry (including Molech-worship); honouring parents, adultery, 'forms of adultery' as well as a general concern for the order of creation. The sequence of categories set out in Lev. 20:9–16 is particularly striking in the light of the social trends noted in Part I. Lev. 20:9–16 presents the following behaviours as progressively distant from the norm: (1) homosexual relations (20:13) followed by (2) marriage between a man, a woman and her daughter (Lev. 20:14), and (3) relations between humans and animals (Lev. 20:15–16). We noted a similar logical progression in Part I: the legalisation of homosexual relations and the introduction of same-sex civil partnerships is seen in some quarters as paving the way for three-way civil partnerships (of whatever stripe) which in turn creates pressure for the legalisation of bestiality.

2. Sexual offences in an ethically alert civilisation

We noted in Part I the close and complex relationship between social context and law reform. This has led us to think in certain ways about the nature of family, harm, consent, equality and protection. This in turn leads us to identify certain people as being relevant in giving consent (and not others), or as deserving equality (and not others), or as requiring protection (and not others). This in turn becomes embedded in the criminal law. This is how we have built up a sexual ethic that is highly contentious, problematic and inadequate.

The value of looking at biblical law is that it makes us question the received wisdom of late-modern liberal society. It forces us to shift context and question the seeming naturalness and normality of what appears to be the social consensus. Again and again we have noted that although biblical law shares many of the same categories as modern law, biblical law offers a different and more expansive conception. Modern law appears diminished by comparison.

Our response to the law as it presently stands, therefore, cannot simply be a concern to reform inadequate legislation. The Act points beyond itself to a loss within our collective social consciousness of how we understand sexual behaviour. Moral categories have shrunk and some are lost altogether. What we need is not simply 'better law' but the recapturing of such a vision for society that our spontaneous understanding of family, for example, produces a conception of equality that has a proper moral basis and a conception of protection that really does protect vulnerable individuals, as well as defending the institution of marriage and the life of the nation as a whole.

Do we have this vision of the good? Do we have *any* vision of the good? The Act has a clear idea of what it thinks is wrong, as seen in the minutiae of definitions for particular sexual offences. For example, the Act is sure that voyeurism is wrong (sections 67–68). It thinks that the observation of persons in certain conditions with or without certain elements of clothing is wrong and it even thinks that a third party who operates machinery in order to assist another person to be a voyeur is behaving wrongfully. It is, in short, able to set out its understanding of 'the wrong' in

great detail. But does it actually have a clear vision of the good, beyond the rather vague and somewhat platitudinous values of consent, equality and protection? Dare it say what counts as a fulfilling sexual relationship? Does it, in fact, have any idea of a normative standard against which all other forms of behaviour can be evaluated? Or can it only formulate what is evil?

Aldous Huxley in *The Devils of Loudon* writes that:

> The effects which follow too constant and intense a concentration upon evil are always disastrous. Those who crusade not for God in themselves, but against the devil in others, never succeed in making the world better, but leave it either as it was, or sometimes even perceptibly worse than it was, before the crusade began. By thinking primarily of evil we tend, however excellent our intentions, to create occasions for evil to manifest itself (2005 edn.; 192).

The columnist Matthew Hall relates how, as a young barrister, he once represented:

> … a depressed and pathetic woman in her thirties who was pleading guilty to indecently assaulting her four-year-old niece. In search of mitigation I asked her why she had done it. She sucked on her cigarette, thought for a moment, then said: 'Well, you read so much about child abuse and that in the papers I thought there must be something in it'' (2003).

The most striking thing about the presentation of sexual offences in Lev. 20:9–16 is the way in which the sequence of binary oppositions continually impresses upon us, not the wrongness of the sexual offences concerned but the rightness of the normal sexual relations with which they are contrasted. Lev. 20, with its allusions to the creation narrative and its elaborate reworking of themes from the Decalogue, sets out an uncompromising vision of the good. It emphatically rejects any notion of 'plastic sexuality' (whether inter-gender, inter-age, or inter-species) and so creates a 'safe space' for sexual expression which protects vulnerable persons from abuse.

The ability of biblical law to put forward a vision of the good challenges not only the content of modern law but its mode of presentation. There is a basic issue here about how we conduct sexual ethics and legislative ethics. The Act aimed to codify the law of sexual offences and the result, according to some critics, is 'socialist legality' and an incoherent vision. Biblical law, by contrast, is pictorial, with an ethos that produces a coherent vision regarding sexual relationships. Marriage is the central image of good sexual relationships and everything else is defined in relation to that. In contrast to the rather sterile category of consent (which is partly defined in a list of evidential presumptions regarding lack of consent (section 75)) there is a community aspect to sexual ethics in the Bible. What people do with each other sexually is not a matter for themselves only: it has implications for their families, other families and society as a whole. This perspective is part of what Diane Kelsey McColley describes as an 'Edenic consciousness': 'a sufficiently complex grasp of a complex world of interconnected lives, and of the reverberations between each action and inaction, to render us responsible toward them' (1993, xvi). Biblical law thus creates possibilities for regenerative thinking and the way back to 'an ethically alert civilisation' (op. cit., 5).

Ultimately the biblical law relating to sexual offences is a call to 'reimagine Eden and so re-Edenize the imagination' (op. cit. xi). It is a call to have our lives and imaginations transformed so that we are open to the 'endlessly diverse and expansible' forms of the good (op. cit., xvi). This is true sexual diversity, real sexual freedom and meaningful 'sexual offences reform'. The task is not to reset the boundaries, in the manner of the Sex Offences Review Group, but to rediscover the boundaries presently lost from sight.

Bibliography

Allott, P. 1991. *New International Law*. Unpublished paper, April 1991. 15 pp.

Andersen, Frances I. 1969. 'Israelite Kinship Terminology and Social Structure.' *The Bible Translator* 20:29–39.

Auld, Graeme. 1996. 'Leviticus at the heart of the Pentateuch?'. In Sawyer, J. F. A. (ed.) *Reading Leviticus*. *Journal for the Study of the Old Testament Supplement Series* 227. Sheffield: Sheffield Academic Press, 40–51.

Bailey, S. J. 1931. 'Hebrew law and its influence on the law of England'. *Law Quarterly Review* 47: 533–535.

Barton, John. 1998. *Ethics and the Old Testament*. London: SCM Press.

Barton, John. 1996. *Reading the Old Testament: Method in biblical study*. London: Darton, Longman and Todd.

Barton, John. 1978. 'Understanding Old Testament Ethics'. *Journal for the Study of the Old Testament* 9: 44–64.

Bellinger Jr., W. H. 2001. *Leviticus and Numbers* (NIBC). Peabody: Hendrickson.

Bowley, Martin. 2000. 'Radical review of sex offence laws'. *The Times*. 1 August 2000, 8–9.

Budd, Philip J. 1996. *Leviticus* (NCBC). Grand Rapids: Eerdmans.

Burnside, J. P. 2002. *The Signs of Sin*. *Journal for the Study of the Old Testament Supplement Series* 364. Sheffield: Sheffield Academic Press.

Burnside, J. P. 2001. 'The Sexual Offences (Amendment) Act 2000'. *Criminal Law Review*, 425–434.

Crüsemann, F. 1996. *The Torah: Theology and Social History of Old Testament Law*. Edinburgh: T & T Clark.

Davies, D. S. 1954. *The Bible in English Law*. London: Jewish Historical Society of England.

Demopoulos, Katherine. 2005. 'Research on "last taboo" proves hard to complete'. *Third Sector*. 8 June 2005.

Dench, Geoff and Belinda Brown. 1994. *Towards a New Partnership Between Family and State*. Institute of Community Studies.

Douglas, Mary. 2000. *Leviticus as Literature*. Oxford: Oxford University Press.

Douglas, Mary. 1996. 'Sacred contagion'. In Sawyer, J. F.A. (ed.) *Reading Leviticus*. Journal for the Study of the Old Testament Supplement Series 227. Sheffield: Sheffield Academic Press, 86–106.

Driscoll, Margarette. 2003. 'Stealthily stealing their innocence'. *The Sunday Times*. 19 January 2003, 7.

Ford, Richard and Karl Mansfield. 2005. *The Times*. 'Marriage "to continue decline" as cohabitation becomes the trend'. September 30, 2005.

Frean, Alexandra. 'Abortions soar as careers come first'. *The Times*. 28 July 2005, 11.

Frean, Alexandra. 'Gays on the threshold of "married" bliss'. *The Times*. 15 September 2005, 29.

Gove, Michael. 2002. 'The minimum our children deserve is their youth'. *The Times*. 9 July, 18.

Grabbe, Lester L. 1993. *Leviticus*. Sheffield: Sheffield Academic Press.

Grosz, Stephen. 2005. 'Trouble and strife over same-sex "marriages"'. *The Times*. 20 September 2005.

Hall, Matthew. 2003. 'Are paedophiles victims too?' *The Independent Review*. 18 February 2003.

Harrison, R. K. 1980. *Leviticus: An Introduction and Commentary*. Leicester: IVP.

Hartley, John E. 1992. *Leviticus* (WBC). Dallas, Texas: Word.

Hocking, Gina and Gillian Thomas. 2003. *Other People's Children*. London: Demos.

Hugenberger, Gordon Paul. 1994. *Marriage As A Covenant*. Leiden: E.J. Brill.

Jackson, Bernard. 2006. *Wisdom-Laws: A Study of the Mishpatim of Exodus: 12:1–22:16*. Oxford: Oxford University Press.

Jackson, Bernard. 2000. *Studies in the Semiotics of Biblical Law. Journal for the Study of the Old Testament Supplement* series 314. Sheffield: Sheffield Academic Press.

Jackson, Bernard. 1996. 'Talion and purity'. In Sawyer, J. F.A. (ed.) *Reading Leviticus*. Journal for the Study of the Old Testament Supplement Series 227. Sheffield: Sheffield Academic Press, 107–123.

Jackson, Bernard S. 1995. 'Modelling Biblical Law: The Covenant Code.' *Chicago Kent Law Review* 70:1745–1827.

Jenson, Philip P. 1992. *Graduated Holiness. Journal for the Study of the Old Testament Supplement* series 106. Sheffield: JSOT Press.

Keeley, Graham. 2005. 'Bishops take to the streets to fight gay marriages'. *The Times*. 18 June 2005, 46.

Kellogg, S. H. 1901. *The Book of Leviticus*. London: Hodder and Stoughton.

Kleinhams, Martha-Marie. 2002. 'Criminal justice approaches to paedophilic sex offenders'. *Social and Legal Studies* 11(2), 233–255.

Kenny, Mary. 2001a. 'A high age of consent is a sign of civilisation'. *Sunday Telegraph*. 29 July, 25.

Kenny, Mary. 2001b. 'The uninhibited heirs of our brave new world'. *Sunday Telegraph*. 13 May, 19.

Kiuchi, N. 2003. 'Leviticus, Book of'. In Alexander, Desmond T. and David W. Baker. 2002. *Dictionary of the Old Testament: Pentateuch: A Compendium of Contemporary Biblical Scholarship*. Leicester: Apollos, 522–532.

Leigh, Leonard. 2003. *Sexual Offences Act 2003: An overview*. Unpublished paper given to the International Association of Penal Law, University of Birmingham, 21 November 2003.

Levine, Baruch. 1989. *Leviticus*. Philadelphia: The Jewish Publication Society.

Longley, Clifford. 2000. 'Serious fault lines in our attitude to sex'. *The Times*, 4 August 2000, 23.

McClenney-Sadler, Madeline. 2002. *A synopsis of key findings in 'Re-covering the daughter's nakedness: A formal analysis of Israelite kinship terminology and the internal logic of Leviticus 18'*. Paper presented to Society of Biblical Literature Annual Meeting. http://www.law2.byu.edu/Biblical_Law/papers/missingdaughter.pdf (accessed 22 April 2005).

McColley, Diane Kelsey. 1993. *A Gust for Paradise: Milton's Eden and the Visual Arts*. Chicago: University of Illinois Press.

Magonet, Jonathan 1996. '"But if it is a girl she is unclean for twice seven days…": The riddle of Leviticus 12:5'. In Sawyer, J. F.A. (ed.) *Reading Leviticus*. Journal for the Study of the Old Testament Supplement Series 227. Sheffield: Sheffield Academic Press, 144–152.

Marrin, Minette. 2003. 'This is the public lavatory sex act that Britain needs'. *Sunday Times*, 2 February 2003, 17.

Martin, Tim. 2005. 'Have your private parts ever got you into trouble, then?' *The Times*, 16 July 2005, 32.

Milgrom, Jacob 2000. *Leviticus 17–22*. Anchor Bible Commentary (Vol. 3A). New York: Doubleday.

Milgrom, Jacob. 1990. *Numbers: The JPS Torah Commentary*. Philadelphia: Jewish Publication Society.

Morton, James. 1999. *Sex, Crimes and Misdemeanours*. Little, Brown.

Myers, Carol. 1997. 'The family in early Israel'. In *Families in Ancient Israel*. Leo G. Perdue *et al*. Westminster: John Knox Press. 1–47.

Niditch, Susan. 1982. 'The Sodomite Theme in Judges 19–20: Family, Community and Social Disintegration.' *Catholic Biblical Quarterly* 44:365–378.

Odone, Cristina. 2002. 'Sexy kids: How we exploit our children'. *New Statesman* 15 July 2002, 18–19.

Oscarsson, Sara and Judy Kerr. 2005. 'Gay couples refused partnership ceremonies'. *The Big Issue*. 20–26 June 2005, 20.

Phillips, Melanie. 2000. 'Perfectly designed to ensure more bullying of gays'. *Sunday Times*. 30 January (Features, no page reference).

Rendtorff, Rolf. 1996. 'Is it possible to read Leviticus as a separate book?' In Sawyer, J. F.A. (ed.) *Reading Leviticus*. Journal for the Study of the Old Testament Supplement Series 227. Sheffield: Sheffield Academic Press, 22–35.

Russell, Jenni. 2002. 'Safe indoors'. *The Guardian*. 18 November 2002, 21.

Sawyer, John F. A. 'The language of Leviticus'. In Sawyer, J. F.A. (ed.) *Reading Leviticus*. Journal for the Study of the Old Testament Supplement Series 227. Sheffield: Sheffield Academic Press, 15–20.

Sex Offences Review Group. 2000a. *Setting the Boundaries: Reforming the law on sex offences. Volume 1*. London: Home Office Communications Directorate.

Sex Offences Review Group. 2000b. *Setting the Boundaries: Reforming the law on sex offences. Volume 2: Supporting Evidence*. London: Home Office Communications Directorate.

Simmonds, N. E. 2002. *Central Issues in Jurisprudence: Justice, Law and Rights* (second edn.). London: Sweet & Maxwell.

Singer, Peter. 2004. 'Taking Humanism beyond Speciesism'. *Free Inquiry* 24(6), pp. 19–21. Also at http://www.utilitarian.net/singer/by2004.htm, accessed 10 October 2005.

Singer, Peter. 2001. 'Heavy Petting'. *Nerve*. Also at http://www.utilitarian.net/singer/by2001.html, accessed 10 October 2005.

Singer, Peter. 1989. 'All animals are equal'. In Tom Regan and Peter Singer (eds.) *Animal Rights and Human Obligations*. New Jersey, pp. 148–162. Also at http://www.animal-rights-library.com/texts-m/singer02.html, accessed 10 October 2005.

Smith, Joan. 2001. *Moralities: Sex, Money and Power in the Twenty-First Century*. Allen Lane.

Steyn, Mark. 2001. 'Animal lovers'. *The Spectator* 11 August 2001, 20–21.

The Independent. 'Rape, consent and justice: the difficulty with this reform of sexual offences'. Leader comment. 20 November 2002.

The Times. 2005. 'Women in Sweden promise to abolish marriage'. 14 September 2005.

Travis, Alan. 2000. 'New crime of sexual abuse within families likely in overhaul of act'. *The Guardian* 4 May 2000.

United Nations Development Programme. 2004. *Human Development Report 2004: Cultural liberty in today's diverse world*. United Nations Development Programme: New York.

Vanhoozer, Kevin J. 1998. *Is there a meaning in this text? The Bible, the reader and the morality of literary knowledge*. Leicester: Apollos.

Walton, J. H. 2003. 'Creation'. In Alexander, Desmond T. and David W. Baker. 2002. *Dictionary of the Old Testament: Pentateuch: A Compendium of Contemporary Biblical Scholarship*. Leicester: Apollos, 155–168.

Wenham, G. 1987. *Genesis 1–15* (Word Biblical Commentary). Waco: Word.

Wenham, Gordon. 1986. 'Sanctuary symbolism in the Garden of Eden story'. *Proceedings of the World Council of Jewish Studies* 9:19–25.

Wenham, Gordon J. 1979. *Leviticus* (NICOT). Grand Rapids: Eerdmans.

Westbrook, Raymond. 1996. 'Biblical Law'. In Hecht, N. S. et al. (eds.). *An Introduction to the History and Sources of Jewish Law*. Oxford: Clarendon Press, 1–13.

Westbrook, Raymond. 1985. 'Biblical and cuneiform law codes'. *Revue Biblique* 92(2), 247–264.

Wright, Christopher J. H. 1992. 'Family'. In D. N. Freedman (ed.) *Anchor Bible Dictionary* Vol. 2. New York: Doubleday. 761–769.

Yaron, Rueven. 1988. 'The evolution of biblical law'. In Aristide Theodorides, Carlo Zaccagnini, Guillanme Cardascia, Alfonso Archi and Rueven Yaron (eds.). *La Formazione del Diritto vel Vicino Oriente Antico*. Edizioni Scientifiche Italiane. 77–108.