



Ethics in Brief

formerly *The Whitefield Briefings*

Spring 2007 (Vol.11 No.5)

The Community Context of Biblical Sexual Ethics ¹

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The Sexual Offences Act 2003 set out a new public sexual ethic. This article considers how its three 'big ideas' – consent, equality and protection – compare with the values that underlie sexual offences in biblical law. First, we find that consent in biblical law is not merely a matter for the actors involved in the sexual behaviour, but goes wider to include others who are affected. Second, whereas modern law identifies certain classes as morally indistinguishable and therefore 'equal' (e.g. making no distinction between heterosexual and homosexual intercourse), biblical law builds its idea about equality on a different set of moral distinctions. And, third, whilst modern law properly focuses on protecting children and other vulnerable persons, biblical law goes much further to consider the protection of the family and society as a whole. In addition, biblical law knows of further categories within which to structure sexual offences, including a concern for order and the good of the Creator's original intent.

Introduction

The Sexual Offences Act 2003 aimed to 'reset the boundaries' regarding a public sexual ethic. It replaced the last major piece of legislation in this area, the Sexual Offences Act 1956, and ushered in wide-ranging reforms. For example, on publication the Act was hailed by an *Independent* editorial for bringing an end to what it described as 'the persecution of consensual gay sexual conduct'.² This article considers the main ideas that presently inform public sexual ethics, namely, consent, equality and protection in the light of the ideas that underlie sexual offences in biblical law.

Three big ideas: consent, equality and protection

First, *consent*. This undergirds the whole of the Act because its underlying goal is to protect persons from non-consensual sexual activity. 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 is usually sufficient to negate consent. Consent is central to modern ideas about individual freedom and 'cultural liberty', making the Act a typically late-modern piece of legislation.

Second, *equality*. So far as possible, the Act does not discriminate between men and women nor between those of different sexual orientation. 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.

Third, *protection*. The Sex Offences Review Group (an advisory body which shaped the legislation) took the view that the right 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'.³ Consequently, a third major theme of the Act is the protection of vulnerable groups, principally children and the mentally disordered.

How does this compare with biblical law?

Like modern law, biblical law reflects a concern for consent, equality and protection. However, we will see that biblical law offers us a different perspective. Before doing so, it is necessary to say a word about the formation of marriage in early Israel. Raymond Westbrook identifies four stages.⁴ First, parents commence negotiations with the family of the bride, even in cases where the son chooses his own bride (e.g. Genesis 34:4; Judges 14:1–5). Second, the groom brings a marriage present to the bride's father, and as soon as this has been accepted, the bride is betrothed to the groom. Unlike engagement today, betrothal was a kind of 'inchoate' marriage which changed the woman's legal status and conferred the protection of a fully-married woman. Third, the groom claims the bride. Finally, the marriage is completed when the father-in-law provides a banquet before delivering his daughter to the groom (e.g. Genesis 29:22).

Consent

Understanding this sequence is important for understanding sexual offences in the Bible. The story of Dinah and Shechem is usually presented as a 'rape case' but in fact Shechem's offence is not one of rape (Genesis 34). He debases Dinah socially by not following the customary steps in the formation of marriage as noted above (Genesis 34:2; some translations use the word 'humbled'). He reverses the normal procedure by having intercourse with Dinah (v. 3) before opening negotiations via his father (v. 4). At this point in the biblical period, intercourse is not regarded as inherently creating betrothal although it is an act that should, in the normal course of events, lead to very serious negotiations. This is the reason why 'Hamor the father of Shechem went out to Jacob to speak with him' (v. 6). The reader expects negotiations between the house of Jacob and the house of Hamor, leading to settlement and damages. Dinah herself would not be 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 (vv. 30–31).

This is consistent with the offence described in Exodus 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. If her father utterly refuses to give her to him, he shall pay money equivalent to the marriage present for virgins.' Again, this is not a 'rape' case, rather, it is a

case of an unconventional marriage. Unlike modern law, then, biblical law looks beyond individual consent to include the consent of the father and, by extension, other family members who may have an interest in negotiating terms of marriage.

Equality

As applied to sexual offences law reform, 'equality' means identifying classes of sexual behaviour within which it is not possible to make distinctions for the purpose of applying criminal sanctions. We can see that, in this sense, there is a concept of equality in biblical law that contributes to the structuring of sexual offences. Unmarried and unbetrothed women (or men who have relations with them) are treated equally in the sense that no formal sanction attaches to them personally for their sexual behaviour (e.g. Deuteronomy 22:28–29). By contrast, women who are married or betrothed (or men who have relations with them) will be punished for sexual wrongdoing (e.g. Deuteronomy 22:22, 23–27).

Protection

Unlike modern law, which relies on legal sanction where an individual (a child or a mentally disordered person in particular) does not have the capacity to give consent, one of the main ways in which biblical law sought to protect the vulnerable from sexual exploitation was by conferring the status of marriage. The typical threat to marriage was adultery.

Adultery

It is noteworthy that the typical case of adultery in biblical law is committed by a married man with a married woman; 'adultery' *per se* does not appear to be committed by a married man with an unmarried woman because, presumably, no male interest is threatened thereby. It follows that the married woman enjoys a more elevated status and to this extent greater protection in ancient Israel, compared to the unmarried woman, because sexual relations with her are treated more seriously. The reverse of this is that her increased status brings increased responsibility. Consequently she (along with the male offender) is liable for a capital crime whereas the unmarried woman (as well as the man with whom she has relations) is not.

Paternity, not virginity

This is consistent with the relative lack of concern in biblical law with virginity. It is usually claimed that

Deuteronomy 22:13-21 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 Deuteronomy 22:13-29 suggests that the primary concern of verses 13-21 is whether or not the girl had intercourse during the period of betrothal, which would make her offence one of quasi-adultery. The so called 'proof of virginity' (as in e.g. the NIV) may, rather, to be understood as 'evidence of menstruation' – in short, a pregnancy test. On this reading, Deuteronomy 22:13-21 is concerned to clarify the paternity of a child born shortly after marriage. In addition to its concern for vulnerable individuals, biblical law thus demonstrates a wider concern to protect marriage and family as social institutions.

Lessons from Leviticus 20

We can see that biblical law is familiar with the categories of consent, equality and protection although it defines them differently and more expansively than contemporary legislation. In addition, biblical law conceives of sexual offences using categories we have lost. This can be seen by a careful reading of Leviticus 20.

Idolatry and community

The structure of Leviticus 20, which mirrors the Decalogue, indicates that it recognises sexual disorder as essentially symptomatic of idolatry. In contrast to the rather sterile and individualistic category of consent, there is also a community aspect to sexual ethics in the Bible. Both aspects can be seen in the prohibition of child-sacrifice to Molech in 20:2-5. Here there is a clear responsibility upon the community to purge the land of wickedness. Where they fail through 'closing their eyes' to duly punish, God will 'set his face' against that man and his family. The community as a whole risked punishment if it failed to punish such offenders. As noted above, this reflects the concern for marriage and family as institutions and the well-being of the nation as a whole, including its vocation (20:24) and covenant relationship with Yahweh (20:26).

Honouring parents

It is hugely significant that the list of sexual offences in 20:9-21 is presented as a literary whole and is preceded by a negative reiteration of the command to 'honour your father and mother'. This is surprising and tells us that the sexual offences which follow are prototypical of what it means to 'curse' father or mother, that is, to reject their authority. In

other words, sexual offences are defined explicitly in terms of the family and, conversely, the boundaries of the family in terms of sexual offences. Verse 19, for example, is unique in the whole of the chapter because it does not carry a penalty. This is because it is a hard case that stands at the edge of what constitutes 'near kin' or 'family' in early Israel as far as sexual ethics is concerned. Using the categories of biblical law, therefore, it is more appropriate to speak in terms of 'family offences' than 'sexual offences'.

Forms of adultery

How does Leviticus 20 go on to organise the family offences which follow in 20:10-21? Just as the prohibition of Molech worship relates to the first commandment and 'cursing parents' to the fifth, so the prohibition of adultery evokes the Decalogue and in 20:10 heads the list of family offences. Adultery, in its various forms, therefore is the frame within which family offences are conceived; there is no need to invent a new category since the Decalogue has already provided it. A similar approach to classification may be found in the New Testament. What we nowadays refer to as 'sexual fantasy' may perhaps be regarded by Jesus not as a distinct category but as another form of adultery (Matthew 5:27-28). This form of classification challenges our tendency to over- or under-rate certain sexual sins. At the same time 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 (20:14) and (3) relations between humans and animals (20:15-16). It is striking how this sequence mirrors modern social trends

Biblical law, like modern law, operates with concepts of consent, equality and protection. However it employs additional categories such as: idolatry; community protection; honouring parents; adultery; 'forms of adultery' as well as a general concern for the order of creation and the institutions of marriage and family. Marriage is the central image of a good sexual relationship and everything else is defined in relation to it. As noted, the structural similarity of Leviticus 20 to the Decalogue indicates that the primary issue is idolatry and the secondary issue is the offender's relationship with his father and mother. This order of priorities sees sexual misbehaviour as raising two key questions: first, what does it 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? By setting limits to sexual expression and suggesting that sexual deviancy is an expression of spiritual and familial dysfunction and a threat to the wider community, Leviticus 20 is a world apart from the modern tendency to affirm sexual minorities in the name of cultural liberty. Biblical law presents us with a coherent sexual ethic – and a worldview we have lost. The task is not to ‘rest’ the boundaries, in the manner of the Sexual Offences Act 2003, but to rediscover the boundaries presently lost from sight.

End notes

1 This is adapted from J. P. Burnside, *Consent versus community: What basis for sexual offences reform?* (Cambridge: Jubilee Centre, 2006), with the permission of the Jubilee Centre.

2 *The Independent*, 20 November 2002.

3 Sex Offences Review Group, *Setting the Boundaries: Reforming the law on sex offences. Volume 1.* (London: Home Office Communications Directorate, 2000), 98.

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

For further reading

- J. P. Burnside, *Consent versus community: What basis for sexual offences reform?* Cambridge: Jubilee Centre, 2006. (Internet only; <http://www.jubilee-centre.org/Resources/resourcecatalogue.php?cat=16>). 73 pp.
- J. P. Burnside, ‘Strange Flesh: Sex, Semiotics and the Construction of Deviancy in Biblical Law’, *Journal for the Study of the Old Testament* 30/4 (2006), 387 – 420.
- Christopher Ash, *Marriage: Sex in the Service of God*, Inter-Varsity Press, 2003.
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- Christopher J. H. Wright, *God’s People in God’s Land*, Paternoster Press, 1997.

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