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Surviving instead of Dying – Rabbinic Exceptions: Queer Readings of the Babylonian Talmud Sanhedrin 74 and its Parallels¹

Abstract

From Rabbi Ishmael ben Elisha's saying in the Babylonian Talmud Sanhedrin 74a and from Simeon ben Yehošadaq's opinion in the tractates Sanhedrin of the Babylonian and the Palestinian Talmud (b.Sanh. 74a and p.Sanh. 3:6,21b), it can be deduced that certain biblical interdictions have been subordinated to the principle of surviving. This happened in a rabbinic context when the Jewish population was persecuted and oppressed. Thus, the prohibition of sexual activities between males in Lev. 18:22, among others, may have been abrogated for Jews in life-threatening predicaments. In the Babylonian Talmud Sanhedrin 74a, Rabbi Ishmael ben Elisha builds on the biblical remark in Lev. 18:5 ("Whoever complies with them [that is, the divine statutes and ordinances], will live by them"), saying with particular emphasis, "[...] and shall not die because of them". The application of the Jewish Law shall lead to life and not to its loss.

Resumen

Del dicho de Rabí Ismael ben Eliseo en el Talmud de Babilonia (Sanedrín 74a) y de la opinión de Simeón ben Yehošadaq en los tratados Sanedrín del Talmud de Babilonia y Jerusalén (bSan 74a y jSan 3,6,21b), puede concluirse que ciertas prohibiciones bíblicas se subordinaron al principio de supervivencia. Esto sucedió en un contexto rabínico en el que la población judía fue perseguida y oprimida. Así, la prohibición de actividad sexual entre hombres en Lv 18,22, entre otras, puede haberse visto abrogada para los judíos en situaciones de vida o muerte. En el Talmud de Babilonia Sanedrín 74a, el Rabí Ismael ben Eliseo se apoya en Lv 18,5 ("Por tanto, guardaréis mis estatutos y mis ordenanzas,

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porque el hombre que los cumpla, gracias a ellos vivirá”), remarcando con particular énfasis que “[...] no morirá por ellos”. La aplicación de la ley judía debe conducir a la vida, no a la pérdida de la misma.

Zusammenfassung

Aus Rabbi Jischmael ben Elischas Behauptung im babylonischen Talmud Sanhedrin 74a und aus Simeon ben Jehozadaqs Meinung in den babylonischen und palästinischen Talmudtraktaten Sanhedrin (bSan 74a und pSan 3,6,21b) kann geschlossen werden, dass bestimmte biblische Verbote dem Überlebensprinzip untergeordnet wurden. Dies geschah in einem rabbinischen Kontext, als die jüdische Bevölkerung verfolgt und unterdrückt wurde. So wurde möglicherweise unter anderem das Verbot sexueller Handlungen zwischen Männern in Lev 18,22 für Juden in lebensbedrohlichen Zwangslagen außer Kraft gesetzt. Im babylonischen Talmud Sanhedrin 74a knüpft Rabbi Jischmael ben Elischa an die biblische Bemerkung in Lev 18,5 („Wer sie [das heißt die göttlichen Satzungen und Rechtsbestimmungen] erfüllt, wird durch sie leben“) an, wenn er mit Nachdruck behauptet: „[...] und soll nicht wegen ihnen sterben“. Die Anwendung des jüdischen Rechts soll zum Leben führen und nicht zu dessen Verlust.

Keywords: surviving instead of dying, rabbinic exceptions, sex between males, Babylonian Talmud Sanhedrin 74a, Palestinian Talmud Sanhedrin 3:6,21b, Leviticus 18:5

Introduction

“Surviving instead of Dying – Rabbinic Exceptions” is part of my research on queer readings of the Hebrew Bible and has been written in the course of my work on queer readings of legal texts concerning sex between men. Queer readings focus on non-normative sexualities in the Tanakh or the Old Testament and related Jewish and Christian exegetical traditions as well as works belonging to the visual arts. Queer readings have been developed within the framework of intertextuality: Not only certain passages of the Hebrew Bible are read queerly but also selected rabbinic sayings that build on these passages.² “Surviving instead of Dying – Rabbinic Exceptions” follows on from “Queer Readings of Jewish Male Prostitution in Antiquity”.³

² Cf. Karin Hügel, *Studien zu queeren Lesarten der Hebräischen Bibel* (PhD diss., Vienna 2022) (<https://hdl.handle.net/11245.1/096f67eb-8359-42f1-9b91-ee39be73fb19>, 19 April 2024) and my book with the same title (Brill: Leiden and Boston), Biblical Interpretation Series (forthcoming).

³ Cf. Karin Hügel, “Queer Readings of Jewish Male Prostitution in Antiquity: Mishnah Horayot 3:7 and Two Different Rabbinic Traditions Based on Tosefta Horayot 2:5-6”, in: *Journal of the European Society of Women in Theological Research* 31 (2023), 117-138 (<https://doi.org/10.2143/ESWTR.31.0.3292282>, 19 April 2024).

This article is guided by the question of what ideas existed in the Jewish law about Jewish men and boys who had to endure the disgrace of rape or prostitution at the time of the Roman persecution of the Jewish people. Within the framework of my queer readings of the Hebrew Bible and rabbinic literature, I try to think together the group of themes of halakhic rules for sex between males with rabbinic exceptions in crisis situations. If one assumes – by means of *argumentum e silentio* (that is, a conclusion from silence) – that the biblical prohibition of sexual acts between males in Lev. 18:22 was abrogated for Jews in life-threatening predicaments, then this can be used as an example of the contextuality of such a prohibition of the Holiness Code (Leviticus 17-26). Queer readings within the frame of intertextuality indicate that a literary text is understood as dependent on its environment and a historical or contemporary context.⁴

Rabbinic Exceptions in Crisis Situations in the Babylonian Talmud Sanhedrin 74a and the Palestinian Talmud Sanhedrin 3:6,21b

In the Babylonian Talmud Sanhedrin (“lawcourt”)⁵ in b.Sanh. 74a, similar to the Palestinian Talmud Sanhedrin 3:6,21b, remarkable rabbinic exceptions are created in crisis situations. Jewish persons – at the time of their persecution and oppression – are advised to transgress individual laws of the Torah rather than risk their own lives by observing certain biblical commandments. Thus, it is written in the Babylonian Talmud Sanhedrin 74a:

Rabbi Yoḥanan (bar Nappaḥa, called “the blacksmith,” a second-generation Amora who taught in Galilee, first at his birthplace Sepphoris and later at Tiberias, before he died 279 CE)⁶ said in the name of his teacher Rabbi Simeon ben Yehošadaq:

They [that is the rabbis] voted and resolved on the upper floor of Nitzah’s house in Lydda [the following] [נימנו וגמרו בעלית בית נתזה בלוד]: [Regarding] all the transgressions in der Torah, if a person is told [כל עבירות⁷ שבתורה אם אומרין לאדם], “Transgress [this law], and you will not be killed [עבור ואל תהרג],” he shall transgress

⁴ Concerning my queer readings of the Hebrew Bible within the frame of intertextuality cf. Hügel, *Studien*, s. v. chapter “Introduction”.

⁵ Sanhedrin (from Greek συνέδριον, “lawcourt”) is a tractate in Neziqin (“damages”). Cf. Günter Stemberger, *Introduction to the Talmud and Midrash*, translated by Markus Bockmuehl (T & T Clark: Edinburgh 1996), 114.

⁶ He is said to have been head of the academy for eighty years before he died in 279 CE. Stemberger, *Introduction*, 86.

⁷ עבירות means “transgressions”. Cf. Marcus Jastrow, *Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature* (Hendrickson Publishers: Peabody, Massachusetts 2006), 1038.

[this law] and not be killed [יעבור ואל ייהרג]. [This rule applies to all laws of the Torah] except idolatry, incest prohibitions, and bloodshed [חוק מעבודה זרה וגילוי עריות ושפיכות דמים].⁸ (b.Sanh. 74a)

It is striking that this passage of the Babylonian Talmud is attributed to Palestinian scholars, referring to Rabbi Simeon ben Yehošadaq, who was a first-generation Palestinian Amora⁹ and died in Lydda.¹⁰ Also the meeting of the rabbis on the upper floor of the house of a man called Nitzah in b.Sanh. 74a is said to have taken place in Lydda: Lydda, today's Lod, is a town in the south of Palestine. Its Roman name is Diospolis ("town of Zeus").¹¹ In fact, in the Palestinian Talmud Sanhedrin 3:6,21b – and in the parallel in the Palestinian Talmud Shebi'it (the "seventh year")¹² in p.Shebi. 4:2,35a¹³ –, a similar but somewhat longer saying exists, which is associated with a whole series of Palestinian rabbis and is ultimately traced back to Rabbi Simeon ben Yehošadaq as well:

Rabbi Jacob bar Zavdi said: "I asked in the presence of Rabbi Abbahu: 'Did not [Rabbi] Ze'ira and Rabbi Yoḥanan in the name of Rabbi Yannai, Rabbi Jeremiah and Rabbi Yoḥanan in the name of Rabbi Simeon ben Yehošadaq say'":

They [that is the rabbis] voted on the upper floor of Nitzah's house in Lydda: נמנו [בעלית בית נתזה בלוד]: Regarding the Torah [על התורה מניין], if a goy [that is non-Jew] tells a Jew [אם אמר גוי לישראל] that he shall transgress any commandment of the Torah – except idolatry, incest prohibitions, and bloodshed – [לעבור על אחת מכל מצות], he shall transgress [the commandment] and not be killed [יעבור ואל ייהרג]. This applies only in private [הדא] [דתימר בינו לבין עצמו], but in public he shall not obey him even at the slightest commandment [אבל ברבים אפילו על מצוה קלה אל ישמע לו], as exemplified by Pappos and his brother Julianus to whom they gave water in a coloured glass and they did not accept [כגון פפוס ולוליינוס אחיו שנתנו להן מים בכלי זכוכית צבועה ולא קיבלו מהן].

⁸ My translation from the Mishnaic Hebrew or Aramaic according to Adin Steinsaltz (ed.), *The Talmud: The Steinsaltz Edition, Volume 19, Tractate Sanhedrin, Part 5* (Random House: New York 1999), 72-73. Concerning an English translation, cf. also Isidore Epstein (ed.), *The Babylonian Talmud: Seder Neziḳin 3; Sanhedrin* (Soncino Press: London 1935), 502.

⁹ The Jewish tradition places Rabbi Simeon ben Yehošadaq in Palestine among the first generation of the Amoraim. His sayings were transmitted by Yoḥanan. Stemberger, *Introduction*, 84.

¹⁰ Rabbi Simeon ben Yehošadaq was a teacher of Rabbi Yoḥanan and a priest. Steinsaltz (ed.), *Talmud: Sanhedrin, Part 5*, 72.

¹¹ Epstein (ed.), *Babylonian Talmud: Sanhedrin*, 502.

¹² Shebi'it (the "seventh year") is a tractate in Zera'im ("Seeds"). Stemberger, *Introduction*, 110.

¹³ Concerning p.Shebi. 4:2,35a cf. Heinrich W. Guggenheimer (ed.), *The Jerusalem Talmud: First Order Zera'im; Tractates Kila'im and Ševi'it* (Walter de Gruyter: Berlin and New York 2001), *Studia Judaica* 20, 430-431 (<https://doi.org/10.1515/9783110849196>, 19 April 2024).

He [that is Rabbi Abbahu] said [אמר]:

They¹⁴ do not intend to force you to apostasy, they only want to collect taxes [לא איתכוון משמדהתון¹⁶ אלא מגבי ארנונין¹⁵].

What does “in the public” mean [כמה הן רבים]? The rabbis of Caesarea said [רבנן דקיסרין אמרין]: “Ten [עשרה], for it is written [דכתיב]: *I want to be treated as holy in the midst of the Israelites* [ונקדשתי בתוך בני ישראל]. [Lev.22:32]¹⁷ (p.Sanh. 3:6,21b)

This rabbinic resolution on the exceptions in crisis situations in Lydda, which occurs both in the Babylonian and the Palestinian Talmud Sanhedrin, is usually placed at the time of the persecution of the Jews by the Roman emperor Hadrian¹⁸ shortly before,¹⁹ during or after the abortive Bar Kokhba revolt of 132-135 CE against the Roman Empire.²⁰ From the Amoraic perspective – as passed down, among others, both in the Babylonian Talmud Sanhedrin 74a and in the Palestinian Talmud Sanhedrin 3:6,21b – the attempt to cause the Jews to transgress their religious precepts stood at the heart of the Roman policy against the Jewish people.²¹

¹⁴ Cf. Rabbi Yannai’s decree, which can be read previously in p.Sanh. 3:6,21b and which will be mentioned later in this article.

¹⁵ אָרְנוֹן, an adaption of Latin *annona*, means “tax from crops and other farmer’s produces delivered in kind” מיגבי ארנונין means in the context of p.Sanh. 3:6,21b “to collect taxes”. Jastrow, *Dictionary*, 123.

¹⁶ Chald. שָׁמַד means “to force to apostasy”. Jastrow, *Dictionary*, 1592.

¹⁷ My translation from the Mishnaic Hebrew or Aramaic according to Heinrich W. Guggenheimer (ed.), *The Jerusalem Talmud: Fourth Order Neziqin; Tractates Sanhedrin, Makkot, and Horaiot* (Walter de Gruyter: Berlin and New York 2010), *Studia Judaica* 51, 119 (<https://doi.org/10.1515/9783110219616>, 19 April 2024). Concerning another German translation cf. Martin Hengel, Jacob Neusner, and Peter Schäfer (eds.), *Die Übersetzung des Talmud Yerushalmi 4.4: Sanhedrin – Gerichtshof*, translated by Gerd A. Wewers (Mohr Siebeck: Tübingen 1981), 89-90.

¹⁸ Cf. Hermann L. Strack and Paul Billerbeck, *Das Evangelium nach Matthäus erläutert aus Talmud und Midrasch* (C. H. Beck’sche Verlagsbuchhandlung: München 1922), *Kommentar zum Neuen Testament aus Talmud und Midrasch* 1, 221.

¹⁹ Cf. Aharon Oppenheimer, *Between Rome and Babylon: Studies in Jewish Leadership and Society*, edited by Nili Oppenheimer (Mohr Siebeck: Tübingen 2005), *Texts and Studies in Ancient Judaism* 108, 321; or Aharon Oppenheimer, “Ethical and Halakhic Responses Following the Bar Kokhba Revolt,” in: Henning Graf Reventlow and Yair Hoffman (eds.), *Religious Responses to Political Crisis* (T & T Clark: New York/London 2008), *Library of Hebrew Bible/Old Testament Studies* 444, 109-121, here 110.

²⁰ Epstein (ed.), *Babylonian Talmud: Sanhedrin*, 502, n. 3.

²¹ Cf. Friedrich Avemarie, Jan Willem van Henten, and Yair Furstenberg, *Jewish Martyrdom in Antiquity: From the Books of Maccabees to the Babylonian Talmud* (Brill: Leiden and Boston 2023), *Compendia Rerum Iudaicarum ad Novum Testamentum* 17, 44.

In the Palestinian Talmud Sanhedrin 3:6,21b, this rabbinic saying is handed down subsequent to Mishnah Sanhedrin 3:3, in which the incapacity of the traders of the fallow year's fruit as witnesses or judges is discussed. The biblical law in Lev. 25:5²² requires that in the Sabbatical year, one has to forego one's own harvest yield so that it is available to the whole population. From Mishnah Sanhedrin 3:3,²³ it can be concluded that a Jewish field owner who did not leave the fruits of the fallow year on his field for all to eat, but harvested them himself, was first branded as a scofflaw and disqualified as a witness or judge. Women or minors were not permitted to do so anyway.²⁴ After the suppression of the Bar Kokhba revolt, however, Palestine became a Roman province, the tax exemption in the Sabbatical year was abolished²⁵ and an annual harvest tax was imposed on the Jewish people instead. So it became necessary to allow harvesting in the Sabbatical year in order to be able to pay the harvest tax and to prevent the land being confiscated by the Roman authorities.²⁶ Not harvesting, but only trading in the Sabbatical year's harvest was therefore forbidden.

²² Cf. Lev. 25:5: "You shall not reap the aftergrowth of your harvest or gather the grapes of your unpruned vine: it shall be a year of complete rest for the land."

²³ Cf. m.Sanh. 3:3: "And these are they which are not qualified [to be witnesses or judges]: a dice-player, a usurer, pigeon-flyers, or traffickers in Seventh Year produce. R. Simeon said: Before time they used to call them 'gatherers of Seventh Year produce', but after oppressors grew many they changed this and called them 'traffickers in Seventh Year produce'. R. Judah said: This applies only if they have none other trade, but if they have some other trade than that they are not disqualified". *The Mishnah, Translated from the Hebrew with Introduction and Brief Explanatory Notes* by Herbert Danby (Oxford University Press: London 1974, 1st edition 1933), 385. Concerning another English translation cf. Shaye J.D. Cohen, Robert Goldenberg, and Hayim Lapin (eds.), *The Oxford Annotated Mishnah: A New Translation of the Mishnah with Introductions and Notes* (Oxford University Press: New York and ProQuest Ebook Central: Ann Arbor 2022), 2:505. Concerning the Mishnaic Hebrew text of m.Sanh. 3:3 (= m.Sanh. 3:6 in the edition of Krupp) cf. Michael Krupp (ed.), *Die Mischna. Textkritische Ausgabe mit deutscher Übersetzung und Kommentar, 4. Ordnung Nesikin, 4. Sanhedrin. Oberstes Gericht* (Lee Achim Sefarim: Ein Karem/Jerusalem 2006), 15.17.

²⁴ Krupp (ed.), *Mischna, Sanhedrin*, 16, n. 18.

²⁵ This privilege had probably been granted to the Jewish people since Hellenistic times. The Jewish historian Josephus, according to his *Jewish Antiquities* 11:338, places the beginning of the tax exemption in the Sabbatical years in the time of Alexander the Great. Caesar's tax exemption for the Sabbatical year is mentioned at the beginning of the fragment of the senatus consultum from the year 47 BCE, which is handed down in Josephus *Ant.* 14,202-210. Cf. Miriam Pucci Ben Zeev, *Jewish Rights in the Roman World: The Greek and Roman Documents Quoted by Josephus Flavius* (Mohr Siebeck: Tübingen 1998), 81.83.85-86.

²⁶ Guggenheimer (ed.), *Jerusalem Talmud: Tractates Sanhedrin, Makkot, and Horaiot*, 115, n. 49.

When the Romans began these repressive measures, Rabbi Yannai, according to the Palestinian Talmud Sanhedrin 3:6,21b,²⁷ ordered that ploughing should be done once in the Sabbatical year. But is this permitted? The passage from p.Sanh. 3:6,21 quoted above is woven in here.

The Palestinian Talmud Sanhedrin 3:6,21b – and the parallel in the Palestinian Talmud Shebi'it 4:2,35a – deals with the obligation of Jews to die rather than transgress the Torah. Pappos²⁸ and his brother Julianus – both are martyrs of the Bar Kokhba war in 132-135 CE –²⁹ are brought as exemplars of a circumstance involving a minor infraction when committed in public. If the two Jewish men had accepted the water in a coloured glass, they might have violated a prohibition in Mishnah Kelim (“utensils”),³⁰ namely m.Kel. 2:1,³¹ according to which vessels made of glass that can absorb something are susceptible to uncleanness. But did they really refuse to drink from unclean glass vessels because of this?³² The colour of a glass vessel is not addressed in m.Kel. 2:1. What was the context of these presumed actions of Pappos and Julianus? If the idea is not of drinking, but of pouring, then one could imagine an unspecified pagan libation in public. In this way, however, several scholars³³ deliberately

²⁷ The Jewish tradition places Rabbi Yannai in Palestine among the first generation of the Amoraim. He lived in Sepphoris and was a teacher of Yohanan. Stemberger, *Introduction*, 83.

²⁸ The Jewish tradition places Pappos ben Yehudah, or simply Pappos (without the title of Rabbi), among the younger group of the second generation of the Tannaites. He was a haggadist and is said to have been in prison with Aqiba (b.Ber. 61b). Stemberger, *Introduction*, 73.

²⁹ Concerning references to all the traditions attached to these two men cf. Hengel, Neusner, and Schäfer (eds.), *Übersetzung des Talmud Yerushalmi 4,4: Sanhedrin*, 89, n. 67. Concerning a discussion of all those rabbinic traditions and non-rabbinic parallels cf. Avemarie, Van Henten, and Furstenberg, *Jewish Martyrdom*, 231-240.

³⁰ Kelim (“utensils”) is a tractate in Toharot (“purities”). Stemberger, *Introduction*, 117.

³¹ Cf. m.Kel. 2:1: “*Utensils of wood, leather, bone, or glass that are flat are not susceptible to uncleanness. If they form a receptacle they are susceptible [...]* [emphasis K.H.]”. *Mishnah, Translated by Danby*, 606. Concerning another English translation cf. Cohen, Goldenberg, and Lapin (eds.), *Mishnah*, 3:410. Concerning the Mishnaic Hebrew text of m.Kel. 2:1 cf. Michael Krupp (ed.), *Die Mishna. Textkritische Ausgabe mit deutscher Übersetzung und Kommentar*, 6. *Ordnung Toharot, 1. Kelim. Geräte* (Lee Achim Sefarim: Ein Karem/Jerusalem 2015), 9-11.

³² Hengel, Neusner, and Schäfer (eds.), *Übersetzung des Talmud Yerushalmi 4,4: Sanhedrin*, 90, n. 68.

³³ Cf. Friedrich Avemarie, “Sterben für Gott und die Tora: Das Martyrium im antiken Judentum (2008)”, in: Jörg Frey and Angela Standhartinger (eds.), *Neues Testament und früh rabbinisches Judentum: Gesammelte Aufsätze* (Mohr Siebeck: Tübingen 2013), Wissenschaftliche Untersuchungen zum Neuen Testament 316, 283-299, here 296, n. 73; Friedrich Avemarie, “Todesbereitschaft aus Hingabe an das Leben: Märtyrertraditionen des rabbinischen Judentums (2011)”, in: Frey and Standhartinger (eds.), *Neues Testament und früh rabbinisches Judentum*, 301-314,

establish a connection with idolatry, whereas Pappos and Julianus are cited as rabbinic examples of a fact that is only a minor offence. It is not clear which commandment Pappos and Julianus were ordered to transgress.³⁴ The events mentioned in the Palestinian Talmud Sanhedrin 3:6,21b – and in the parallel in the Palestinian Talmud Shebi'it 4:2,35a – in connection with Pappos and Julianus are no longer unambiguously comprehensible.

There is another example in the Palestinian Talmud Sanhedrin 3:6,21b³⁵ – and in the parallel in the Palestinian Talmud Shebi'it 4:2,35a³⁶ – of a circumstance involving a minor infraction when it is public. This further case concerns the baking of bread on the Shabbat. Due to the decision of Rabbi Yonah and Rabbi Yose II bar Zabda,³⁷ who were the heads of the academy at Tiberias around 350 CE, to allow the Roman military leader Ursicinus³⁸ to bake bread and supply his troops with it on the Shabbat,³⁹ there was no intention to persecute Jewish soldiers, but they were allowed to eat the warm bread. It was therefore not a situation, where the soldiers had to publicly profess their Jewish faith by adhering to a single rule.⁴⁰ This text is only handed down in fragments in the Palestinian Talmud Sanhedrin 3:6,21b.

However, both Pappos and Julianus and the Jewish soldiers are given in the Palestinian Talmud as counter-examples to cases where the rabbis themselves

here 305; Avemarie, Van Henten, and Furstenberg, *Jewish Martyrdom*, 235 or Hayim Lapin, “Pappos and Julianus, the Maccabaeen Martyrs, and Rabbinic Martyrdom History in Late Antiquity”, in: Katell Berthelot, Natalie Dohrmann, and Capucine Nemo-Pekelman (eds.), *Legal Engagement: The Reception of Roman Law and Tribunals by Jews and Other Inhabitants of the Empire* (École française de Rome: Rome 2012), Collection de l'École française de Rome 579, 133-156, here 138.

³⁴ So Guggenheimer (ed.), *Jerusalem Talmud: Tractates Kilaim and Ševi'it*, 431, n. 25 on p. Shebi. 4:2,35a.

³⁵ Concerning p. Sanh. 3:6,21b cf. Guggenheimer (ed.), *Jerusalem Talmud: Tractates Sanhedrin, Makkot, and Horaiot*, 120 or Hengel, Neusner, and Schäfer (eds.), *Übersetzung des Talmud Yerushalmi 4,4: Sanhedrin*, 90-91.

³⁶ Concerning p. Shebi. 4:2,35a cf. Guggenheimer (ed.), *Jerusalem Talmud: Tractates Kilaim and Ševi'it*, 431-432 or Günter Stemberger, *Die römische Herrschaft im Urteil der Juden* (Wissenschaftliche Buchgesellschaft: Darmstadt 1983), Erträge der Forschung 195, 101.

³⁷ The Jewish tradition places Rabbi Yonah and Rabbi Yose II bar Zabda in Palestine among the fifth generation of the Amoraim. Stemberger, *Introduction*, 95-96.

³⁸ Ursicinus was the legate of Constantius Gallus (351-354 CE), Caesar next to emperor Constantius II (350-361 CE) and military leader in Rome's campaign against the Sasanian King of Kings Shapur II (309-379 CE) in 351/352 CE. Hengel, Neusner, and Schäfer (eds.), *Übersetzung des Talmud Yerushalmi 4,4: Sanhedrin*, 90, n. 71.

³⁹ Cf. p. Sanh. 3:6,21b.

⁴⁰ Similarly Stemberger, *Die römische Herrschaft*, 101.

permitted the transgression of ritual laws in order to respond to the requirements of the state – to pay taxes in one case, and to meet the demands of Ursicinus and his troops or his entourage to provide food in the other. The pericope ultimately justifies this with the observation that no one shall be made to abandon their Jewish religion, but that taxes have to be collected or the warm bread should be eaten.⁴¹

These two illustrations of the principle in the Palestinian Talmud Sanhedrin 3:6,21b – and in the parallel in the Palestinian Talmud Shebi'it 4:2,35a – that the biblical law may be transgressed in danger of life with few exceptions, contradict the older statement in Tosefta Shabbat 15[16]:17⁴² that a person should give up his life during the time of persecution (בשעת השמר)⁴³ for even the smallest of the minor commandments.⁴⁴ This text of the Tosefta Shabbat is linked to a discussion concerning the priority of the obligation to save human life over the Shabbat commandment⁴⁵ – but in a different context than it is the case in the later tractates of the Palestinian Talmud Sanhedrin 3:6,21b and Shebi'it 4:2,35a mentioned earlier in this paragraph. The required self-sacrifice in Tosefta Shabbat 15[16]:17 may be grasped with Lev. 22:32a (“You shall not profane my holy name [ולא תחללו את שם קדשי]”⁴⁶) as a form of non-desecration or “sanctification” of God’s “name” (קידוש השם).⁴⁷

⁴¹ Lapin, “Pappus and Julianus”, 138.

⁴² Concerning the Hebrew edition of t.Shab. 15[16]:17 cf. Saul Lieberman, *The Tosefta, Volume 2: The Order of Mo'ed* (Jewish Theological Seminary of America: New York 1962), 75. Concerning an English translation, cf. Jacob Neusner (ed.), *The Tosefta, Second Division: Moed (The Order of Appointed Times)* (KTAV Publishing House: New York 1981), 62–63.

⁴³ The period known from rabbinic literature as the “time of persecution” (שעת השמר) ostensibly stretched from the Bar Kokhba rebellion until Hadrian’s death in 138 CE. The Romans were not satisfied with quashing the rebellion and destroying the cities of Judea; they sought to completely uproot the Jewish religion. Avemarie, Van Henten, and Furstenberg, *Jewish Martyrdom*, 35.

⁴⁴ The historical background of t.Shab. 15[16]:17 presumably is the experience of the religious persecutions under Hadrian in the 30s of the 2nd century CE. Cf. Friedrich Avemarie, “Zeugnis in Öffentlichkeit: Zur Entwicklung des Begriffs der Heiligung des Gottesnamens in der frühen rabbinischen Überlieferung (2008)”, in: Jörg Frey and Angela Standhartinger (eds.), *Neues Testament und früh-rabbinisches Judentum. Gesammelte Aufsätze* (Mohr Siebeck: Tübingen 2013), Wissenschaftliche Untersuchungen zum Neuen Testament 316, 259–281, here 262.

⁴⁵ Avemarie, Van Henten, and Furstenberg, *Jewish Martyrdom*, 52.

⁴⁶ My translation from the Hebrew according to Lieberman, *Tosefta, Volume 2: The Order of Mo'ed*, 75. Concerning an English translation, cf. Neusner (ed.), *Tosefta, Second Division: Moed*, 63.

⁴⁷ In contrast to Christian martyrdom terminology (μάρτυς [“witness”] or μαρτυρέω [“to witness”, “to testify”] et cetera), rabbinic sources do not employ a fixed set of terms to define

In the Palestinian Talmud Sanhedrin 3:6,21b – and in the parallel in the Palestinian Talmud Shebi'it 4:2,35a –, the scriptural quotation Lev. 22:32b (“I want to be treated as holy in the midst of the Israelites בְּתוֹךְ בְּנֵי יִשְׂרָאֵל”) finally refers to the worshipping congregation, which must consist of at least ten Jewish people.⁴⁸ This is what is meant with “public” in those rabbinic texts.

In the Babylonian Talmud Sanhedrin 74a, Rabbi Simeon ben Yehoṣadaq's opinion – in contrast to the Palestinian Talmud – was handed down subsequent to Mishnah Sanhedrin 8:7. According to Exod. 35:2⁴⁹ in the Hebrew Bible, a person who works on Shabbat should die. However, according to Mishnah Sanhedrin 8:7,⁵⁰ a person does not have to be prevented from desecrating the Shabbat at the cost of his life.⁵¹ The above quotation of b.Sanh. 74a – unlike p.Sanh. 3:6,21 – was woven in without a situational framework. The Jewish context now was different, in which a reference to the agriculture of Palestine was omitted.

The Three Cardinal Sins of Judaism

According to Simeon ben Yehoṣadaq it is more important, to preserve one's life than to obey laws – except those concerning idolatry (עֲבֹדָה זָרָה), incest

the act of self-sacrifice. A prevalent term, however, which appears in some of the martyrdom traditions as well as in the halakhic instructions concerning the obligation to die rather than transgress the law is “sanctification of the Name” (קִידּוּשׁ הַשֵּׁם). Avemarie, Van Henten, and Furstenberg, *Jewish Martyrdom*, 50. Concerning the sanctification of the Name (קִידּוּשׁ הַשֵּׁם) in early martyrological texts, cf. Avemarie, Van Henten, and Furstenberg, *Jewish Martyrdom*, 51-54.

⁴⁸ Cf. p.Sanh. 1:6,19c or Guggenheimer (ed.), *Jerusalem Talmud: Tractates Sanhedrin, Makkot, and Horaiot*, 64 or Hengel, Neusner, and Schäfer (eds.), *Übersetzung des Talmud Yerushalmi 4.4: Sanhedrin*, 47.

⁴⁹ Cf. Exod. 35:2: “Six days shall work be done, but on the seventh day you shall have a holy Shabbat of solemn rest to g*d [יְהוָה]; whoever does any work on it shall be put to death.”

⁵⁰ Cf. m.Sanh. 8:7b: “[...] but he that pursues after a beast, or that profanes the Sabbath, or that commits idolatry – they may not be delivered [from transgression] at the cost of their lives”. *Mishnah, Translated by Danby*, 395. Concerning another English translation, cf. Cohen, Goldenberg, and Lapin (eds.), *Mishnah*, 2:538. Concerning the Mishnaic Hebrew text of m.Sanh. 8:7b, cf. Krupp (ed.), *Mischna, Sanhedrin*, 59.

⁵¹ In the unclear passage prior to this in m.Sanh. 8:7a, it is possibly stated that a man should be prevented from raping (and perhaps killing) another (young) man or a betrothed young woman: “These may be delivered [from transgression] at the cost of their lives: he that pursues after his fellow to kill him, or after a male, or after a girl that is betrothed [...]”. *Mishnah, Translated by Danby*, 395. Concerning another English translation cf. Cohen, Goldenberg, and Lapin (eds.), *Mishnah*, 2:538. Concerning the Mishnaic Hebrew text of m.Sanh. 8:7a, cf. Krupp (ed.), *Mischna, Sanhedrin*, 59.

(גילוי עריות),⁵² and bloodshed (שפיכות דמים). These are the three cardinal sins of Judaism. They are already mentioned in Mishnah Avot 5:9, where they are held responsible for the exile of the Jewish people:

Exile comes into the world [גלות בא לעולם] because of idolatry [על עבודה זרה], incest [ועל גילוי עריות], bloodshed [ועל שפיכות דמים], and for the neglect of the laws concerning land in the Sabbatical year and in the year of the jubilee⁵³ [ועל השמט הארץ].⁵⁴ (m.Av. 5:9)

In this Mishnaic text, the fourth reason for exile is the violation of laws concerning land in the Sabbatical year and in the year of the jubilee.⁵⁵ If, in later Jewish sayings, the direct reference to the land of Palestine is omitted due to final expulsion from the homeland, what remains are these three sins, which today are considered to be the three cardinal sins of Judaism.

Also in the Tosefta, the tannaitic midrashim, the Palestinian and Babylonian Talmud alike, the terms עבודה זרה, גילוי עריות, and שפיכות דמים often occur together.⁵⁶ This list of three is itself used to designate exceptional evil, the worst thing that a person or group can do.⁵⁷ As the population of the city of Sodom is seen as the epitome of evil in Gen. 13:13, Sodom's wickedness and sinfulness, for example, is associated with the Jewish cardinal sins of incest (גילוי עריות), idolatry (עבודה זרה), and bloodshed (שפיכות דמים) in rabbinic literature.⁵⁸ But

⁵² גילוי means "uncovering". Jastrow, *Dictionary*, 238. גילוי עריות therefore means "uncovering of nakedness" and in connection with Lev. 18:6 "incest". Jastrow, *Dictionary*, 238.

⁵³ Jastrow, *Dictionary*, 1595.

⁵⁴ My translation of m.Av. 5,9 from the Mishnaic Hebrew according to Michael Krupp (ed.), *Die Mishna. Textkritische Ausgabe mit deutscher Übersetzung und Kommentar*, 4. Ordnung Nesikin, 9. Avot. Väter (Lee Achim Sefarim: Ein Karem/Jerusalem 2004), 55. Concerning other English translations cf. *Mishnah, Translated by Danby*, 456-457 and Cohen, Goldenberg, and Lapin (eds.), *Mishnah*, 2:744.

⁵⁵ Cf. Lev. 25,1-55. In b.Shab. 33a (cf. Isidore Epstein [ed.], *The Babylonian Talmud: Seder Mo'ed I; Shabbath* [Soncino Press: London 1938], 152), as in m.Av. 5:9, also idolatry, incest and non-observance of the laws concerning the land in the Sabbatical year and in the year of the jubilee are mentioned, but no longer bloodshed is written.

⁵⁶ Concerning a list of those rabbinic passages, cf. Michael L. Satlow, *Tasting the Dish: Rabbinic Rhetorics of Sexuality* (Scholars Press: Atlanta, Georgia 1995), Brown Judaic Studies 303, 62, n. 168. For a discussion of them cf. Cf. Burton L. Visotzky, "Mortal Sins," in: *Union Seminary Quarterly Review* 44/1-2 (1990), 31-53.

⁵⁷ Satlow, *Tasting the Dish*, 62-63.

⁵⁸ Cf. t.Sanh. 13:8, p.Sanh. 10:3,29c, GenR. 41:7 on Gen. 13:11-12, and the homiletical midrashim Tanhuma Vayera ("And the Lord Appeared") 7 or Tanhuma B (that is in the version of Salomon Buber) Vayera 8. Later the three cardinal sins of Judaism are also woven into the Targums Neophyti and Pseudo-Jonathan in their Aramaic translations of Gen. 13:13.

even in the context of Sodom, the term גִּילּוּי עֲרִיּוֹת is not explained. Only in Abot de Rabbi Nathan B 30:10, Sodom might be associated with sex between men, for after linking the wickedness and sinfulness of the people of Sodom with incest, idolatry and bloodshed, both MS Parma 2785 (= de Rossi 327) and MS Vatican 303 additionally refer to a different interpretation of Gen. 13:13, possibly addressing sex between men due to the words במשכב זכור.⁵⁹ The explanation זכור במשכב in Abot de Rabbi Nathan B 30:10 can in principle mean both “by male sex” and “by sex with a male”. Reading these words in the context of the story of Sodom in Genesis 19 they are more likely to mean (violent) male sex. As a so-called “extracanonical” tractate, Abot de Rabbi Nathan Buber does not have the authority of the actual Babylonian Talmud.⁶⁰

Although also the prohibitions of sex between males can be found in the Holiness Code in the chapters Leviticus 18 and 20 of the Hebrew Bible, like the incest prohibitions,⁶¹ they do not belong, from an etymological point of view, to the incest prohibitions (עֲרִיּוֹת) – except for the prohibition Lev. 18:7 (“sex of a son with his father”). The term גִּילּוּי עֲרִיּוֹת originates in the wording of Leviticus 18, which prohibits men from revealing the pubic region (עֲרֹה; singular of עֲרִיּוֹת) of kinswomen.⁶² In Lev. 18:6-19 and Lev. 20:11, 17-21, the term עֲרֹה (“nakedness”) is a euphemism for both male and female genitals. The technical term for “to commit incest” (גִּלּוּי עֲרֹה) does not occur in the laws on sex between males in Lev. 18:22 and Lev. 20:13.⁶³ Therefore, it would be a mistake to automatically assume sex between men every time the word עֲרִיּוֹת occurs.⁶⁴

Nevertheless, the German translations of the Babylonian Talmud Sanhedrin 74a or the Palestinian Talmud Sanhedrin 3:6, 21b, which translate גִּילּוּי עֲרִיּוֹת in b.Sanh. 74a as “Blutschande [Unzucht]”⁶⁵ (“incest [fornication]”) or in p.Sanh. 3:6, 21b as “Unzucht”⁶⁶ (“fornication”), show that this term is also understood in a wider sense in the context of rabbinic texts. The translation of

⁵⁹ Cf. Hans-Jürgen Becker (ed.), *Avot de-Rabbi Natan: Synoptische Edition beider Versionen* (Mohr Siebeck: Tübingen 2006), Texts and Studies in Ancient Judaism 116, 363.

⁶⁰ Stemberger, *Introduction*, 225.

⁶¹ Cf. Lev. 18:6-17.

⁶² Satlow, *Tasting the Dish*, 62.

⁶³ Concerning Lev. 18:22 and Lev. 20:13, cf. section “Biblical and Halakhic Rules concerning Sex Between Males” below.

⁶⁴ Satlow, *Tasting the Dish*, 198, n. 50.

⁶⁵ Strack and Billerbeck, *Evangelium nach Matthäus*, 221.

⁶⁶ Hengel, Neusner, and Schäfer (eds.), *Übersetzung des Talmud Yerushalmi 4,4: Sanhedrin*, 89.

the words עֲרִיּוֹת גִּילּוּי as “fornication” reminds me of the Greek term πορνεία⁶⁷ in the context of Christian literature as it is written in the so-called “Western text” of the Acts of the Apostles 15:20.29. According to these New Testament passages, the renunciation of idol(atry) (εἰδωλον), fornication (πορνεία), and blood(shed) (αἷμα) and the observance of the Golden Rule become the binding standard of Christian living for the Gentile Christians.⁶⁸ But the meaning of the term πορνεία is also disputed in connection with the Acts of the Apostles. If it refers to the degrees of kinship listed in Lev. 18:6-18, it can also be understood in these passages of the New Testament in the sense of incest. The renunciation of incest, in particular, as part of the basic catalogue of demands on converted Gentile Christians makes sense.⁶⁹

In the current English translations of the Babylonian Talmud Sanhedrin 74a and in the tractates of the Palestinian Talmud Sanhedrin 3:6,21b and Shebi'it 4:2,35a, the words עֲרִיּוֹת גִּילּוּי are rendered somewhat differently than in my translations, namely – in connection with b.Sanh. 74a – with “prohibited sexual relations [incest and adultery]”⁷⁰ or “incest [which includes adultery]”⁷¹ and – in connection with p.Sanh. 3:6,21b and p.Shebi. 4:2,35a – with “incest and adultery”.⁷² The prohibition of adultery is mentioned in Lev. 18:20, which forbids a man to have sex with his fellow citizen’s wife. Because of the idiosyncratic formulation “You shall not allow your seminal emission into the wife of your fellow citizen [וְאֶל-אִשְׁתּוֹ לְרֹעַ עֲמִיתְךָ שֶׁכַּבְּתָּךְ לְרֹעַ]”, the prohibition of Lev. 18:20 definitely comes from a source other than the biblical Decalogue.⁷³ Moreover,

⁶⁷ Πορνεία means “Unzucht”, “Hurerei” von jeder Art illegitimen Geschlechtsverkehrs (“fornication”, “harlotry” of any kind of illegitimate sexual intercourse). Cf. Walter Bauer, *Griechisch-deutsches Wörterbuch zu den Schriften des Neuen Testaments und der frühchristlichen Literatur* (Walter de Gruyter: Berlin/NewYork 1988, 6., völlig neu bearb. Aufl.), 1389.

⁶⁸ Cf. Karin Hügel, “Queere Auslegungen der Liebesgebote aus Levitikus,” in: *Journal of the European Society of Women in Theological Research* 28 (2020), 201-236, here 233-234 (<https://doi.org/10.2143/ESWTR.28.0.3288489>, 19 April 2024) or Hügel, *Studien*, s. v. section “You shall love your neighbour so that, what is hateful to you, you shall not do to him (negative Golden Rule)”.

⁶⁹ Cf. Hermann L. Strack and Paul Billerbeck, *Das Evangelium nach Markus, Lukas und Johannes und die Apostelgeschichte erläutert aus Talmud und Midrasch* (C. H. Beck’sche Verlagsbuchhandlung: München 1924), Kommentar zum Neuen Testament aus Talmud und Midrasch 2, 729.

⁷⁰ Steinsaltz (ed.), *Talmud: Sanhedrin, Part 5*, 72-73.

⁷¹ Epstein (ed.), *Babylonian Talmud: Sanhedrin*, 502.

⁷² Guggenheimer (ed.), *Jerusalem Talmud: Tractates Sanhedrin, Makkot, and Horaiot*, 120 and Guggenheimer (ed.), *Jerusalem Talmud: Tractates Kilaim and Ševi'it*, 431-432.

⁷³ The commandments concerning adultery in the Decalogue are handed down twice, namely in Exod. 20:14.17 and in Deut. 5:18.21.

it does not contain the words גִּלּוּי עֲרִיּוֹת, although it is woven into Leviticus 18. In Lev. 18:20, the adulterous man is associated with uncleanness (טְמֵאָה), which corresponds to the uncleanness (טְמֵאָה), because of which God (יְהוָה) drove out the pagan peoples, in the concluding parenthesis in Lev. 18:24-30. From an etymological point of view, it is anything but clear why גִּלּוּי עֲרִיּוֹת should denote adultery in the Babylonian Talmud Sanhedrin 74a⁷⁴ and in the tractates of the Palestinian Talmud Sanhedrin 3:6,21b and Shebi'it 4:2,35a.

In those rabbinic passages, the Jewish cardinal sins עֲבוּדָה זָרָה, גִּילּוּי עֲרִיּוֹת, and גִּילּוּי עֲרִיּוֹת form a trope. Hence the term גִּילּוּי עֲרִיּוֹת, when it appears in such a list, often lacks a distinctive meaning.⁷⁵ From a today's point of view, it would be more understandable if the rape of a male person by another man was regarded as a cardinal sin. The raped male should not be branded a sinner in his suffering.

Biblical and Halakhic Rules Concerning Sex Between Males

The biblical prohibitions on male-male sex, Lev. 18:22 and Lev. 20:13, would be more comprehensible for many people of today if they focused specifically on violent sexual acts between males.⁷⁶ Then only violent sexual activity between men would be forbidden in the Holiness Code of the Hebrew Bible. There is a significant difference between consensual sexual acts and acts of humiliation and the maintenance of power or even brutal rape.

The prohibition of sex between males in Lev. 18:22 is addressed to an adult Israelite man,

With a male you [masculine] shall not have sex, as [variously] with a woman; it is an abomination [וְאֵת-זָכָר לֹא תִשְׁכַּב מִשְׁכַּבִּי אִשָּׁה תוֹעֵבָה הוּא].⁷⁷ (Lev. 18:22)

⁷⁴ Also Visotzky, "Mortal Sins," 42 translates גִּילּוּי עֲרִיּוֹת in bSan 74a with "adultery".

⁷⁵ Satlow, *Tasting the Dish*, 62.

⁷⁶ Silvia Schroer and Thomas Staubli, for example, assume with regard to Lev. 18:22 and Lev. 20:13 that the biblical authors of these laws probably had certain aspects of violence in mind. Cf. Silvia Schroer and Thomas Staubli, "Saul, David und Jonathan – eine Dreiecksgeschichte? Ein Beitrag zum Thema 'Homosexualität im Ersten Testament'," in: *Bibel und Kirche* 51/1 (1996), 15-22, here 16.

⁷⁷ The translations of passages from the Hebrew Bible according to Karl Elliger and Wilhelm Rudolph (eds.), *Biblia Hebraica Stuttgartensia* (Deutsche Bibelgesellschaft: Stuttgart 41990) are mine.

In contrast to the prohibition in Lev. 18:22, both males involved in sex are punished in Lev. 20:13,

If a male has sex with a male, as [variously] with a woman, both have committed an abomination [וְאִישׁ אֲשֶׁר יִשְׁכַּב אֶת-זָכָר מִשְׁכַּבִּי אִשָּׁה תוֹעֵבָה עָשׂוּ שְׁנֵיהֶם]; they shall surely suffer death [מוֹת יָמָתוּ]; their guilt is upon them [דְּמִיָּהֶם בָּם]. (Lev. 20:13)

The verb שכב (“to lie down and have sexual intercourse”)⁷⁸ used in Lev. 18:22 and Lev. 20:13 is clearly to be understood in a sexual sense, but in no way testifies to violent sexual acts alone. Nor can the constructus compound מִשְׁכַּבִּי אִשָּׁה (“as [variously] with a woman”)⁷⁹ in these laws of the Holiness Code be used to infer forcible sex alone.

Lev. 20:13 is a casuistic law, unlike the direct prohibition in Lev. 18:22. Such a biblical law constructs a legal case and specifies a legal consequence for its occurrence. The laws Lev. 18:22 and Lev. 20:13 are best explained by the subject of status. For a man, taking on the social position of a woman means a loss of power. With regard to the Holiness Code, a clear power imbalance between the sexes to the disadvantage of women can be assumed. The man who is humiliated in male-male sex is the one on whom, as on a woman, sexual acts are carried out in various ways. Depending on the translation of the constructus compound מִשְׁכַּבִּי אִשָּׁה, Lev. 18:22 punishes either the man who humiliates the other man or boy, or the male who is humiliated during sex between males. However, the common way of thinking is that the prohibition is directed at the man who sexually humiliates another man or boy by having sex with him as with a woman in various ways.

The so-called מוֹת-יָמָת⁸⁰ formula does not imply a legal death sentence in the context of the 20th chapter of the Book of Leviticus, but most likely served as a deterrent in a purely parenetic context. “Their guilt is upon them” [דְּמִיָּהֶם בָּם]⁸¹

⁷⁸ Cf. Ludwig Koehler and Walter Baumgartner, *The Hebrew and Aramaic Lexicon of the Old Testament* 4 (Brill: Leiden 1999), 1487.

⁷⁹ I suggest that the plural of מִשְׁכַּבִּי, which is also derived from the verb שכב, refers to different ways in which a man has sexual intercourse with a woman.

⁸⁰ מוֹת-יָמָת means “to endure death”, “atone by death”. Cf. Ludwig Koehler and Walter Baumgartner, *The Hebrew and Aramaic Lexicon of the Old Testament* 2 (Brill: Leiden 1995), 563. I translate the figura etymologica מוֹת-יָמָת with the modal paraphrase “surely”.

⁸¹ דְּמִיָּהֶם, the plural of דָּם (“blood”), means “shedding of blood”, “blood-guilt”. Cf. Ludwig Koehler and Walter Baumgartner, *The Hebrew and Aramaic Lexicon of the Old Testament* 1 (Brill: Leiden

חַיִּי]” in Lev. 20:13 could mean, analogous to the guilt formula in Ezek. 18:13, that men who have sex with other males in a certain way are guilty themselves, but their close and distant relatives – or even all Israelites – are not complicit. A patriarchal, and from a feminist and queer perspective, much-criticised text such as chapter 20 of the Book of Leviticus has abolished collective punishment with regard to most laws, such as, for instance, the prohibition of sex between males.⁸²

The laws Lev. 18:22 and Lev. 20:13 from the Holiness Code may have served the purpose of prevention. They were written from a utopian perspective. The addressed persons may have been made “a head shorter” by this rhetoric. However, there is no evidence that they were killed as a result. There was no direct application of the law Lev. 20:13 in biblical times. The existence of a post-exilic Jewish jurisdiction cannot be proven on the basis of Leviticus 18 and 20. The prohibitions of sexual acts between males in Lev. 18:22 and Lev. 20:13, similar to the commandments to love one’s neighbour in Lev. 19:18 and to love the stranger in Lev. 19:34,⁸³ could have originated from the wishful thinking of an ancient editor of the Holiness Code and could have a purely utopian background.⁸⁴

The contextual nature of ideas about sex between men can also be seen in the different halakhic views concerning partners in sex between males. Mishnah Sanhedrin 8:7⁸⁵ may be the first Jewish legal text to explicitly address the offence of male rape of men or boys. This rabbinic passage seems incomplete and is not clear. It could mean, among other things, that a Jewish man must be prevented from raping another male. Since this Mishnaic saying is only valid in a Jewish context, however, it does not apply to the violent men of the oppressive Roman regime.

1994), 225. I regard חַיִּי in the connection with Lev. 20:13 as a metonymy (that is replacing the actual expression with another that has a close factual relationship to the first) for the word “guilt”.

⁸² Cf. Hügel, *Studien*, s. v. chapter “Introduction”.

⁸³ Hügel, “Queere Auslegungen der Liebesgebote aus Levitikus,” 201-236 or Hügel, *Studien*, s. v. chapter 5 “Queer Interpretations of the Commandments of Love in Leviticus”.

⁸⁴ Concerning a detailed discussion of these biblical prohibitions and subsequent rabbinic traditions cf. Karin Hügel, *Queere Lesarten der Hebräischen Bibel*, forthcoming.

⁸⁵ Cf. m.Sanh. 8:7: “These may be delivered [from transgression] at the cost of their lives: he that pursues after [...] a male [...]”. *Mishnah, Translated by Danby*, 395. Concerning another English translation Cohen, Goldenberg, and Lapin (eds.), *Mishnah*, 2:538. Concerning the Mishnaic Hebrew text cf. Krupp (ed.), *Mischna, Sanhedrin*, 59.

While in the tractates of the Mishnah Sanhedrin 7:4⁸⁶ and Keritot (“extirpations”)⁸⁷ 1:1⁸⁸ and in the Tosefta Yebamot (“sisters-in-law”)⁸⁹ 10:2,⁹⁰ only the penetrating male partner is punished, both male partners are prosecuted in Sifra Qedoschim (“Holy”)⁹¹ 19:14 (92b) on Lev. 20:13⁹² and later in the Palestinian and Babylonian tractates of the Talmud Sanhedrin (p.Sanh.7:9,25a⁹³ and b.Sanh. 54b⁹⁴). Both Rabbi Ishmael (ben Elisha) – the attribution to him is missing in Sifra Qedoschim 9:14 (92b) on Lev. 20:13 – and Rabbi Aqiba (ben Joseph) (the most famous teachers of the younger group of the second generation of the Tannaites)⁹⁵ come to the same conclusion, in different ways, that there is also a prohibition for the man with whom the sexual act is performed.⁹⁶

⁸⁶ Cf. m.Sanh. 7:4: “These are they that are to be stoned: he that has a connexion with [...] a male [...]”. *Mishnah, Translated by Danby*, 391. Concerning another English translation, Cohen, Goldenberg, and Lapin (eds.), *Mishnah*, 2:526. Concerning the Mishnaic Hebrew text, cf. Krupp (ed.), *Mischna, Sanhedrin*, 44-45.

⁸⁷ Keritot (“extirpations”) is a tractate in Qodashim (“Holy Things”). Stemberger, *Introduction*, 116.

⁸⁸ Cf. m.Ker. 1:1: “For thirty-six transgressions is Extirpation prescribed in the Law: if a man has connexion with [...] a male [...]”. *Mishnah, Translated by Danby*, 562. Concerning another English translation Cohen, Goldenberg, and Lapin (eds.), *Mishnah*, 3:273. Concerning the Mishnaic Hebrew text cf. Michael Krupp (ed.), *Die Mischna. Textkritische Ausgabe mit deutscher Übersetzung und Kommentar*, 5. *Ordnung Kodaschim*, 7. *Keritot. Ausrottungen* (Lee Achim Sefarim: Ein Karem/Jerusalem 2010), 2-3.

⁸⁹ Yebamot (“sisters-in-law”) is a tractate in Nashim (“Women”). Stemberger, *Introduction*, 113.

⁹⁰ Concerning the Hebrew edition of t.Yeb. 10:2 cf. Saul Lieberman, *The Tosefta, Volume 3.1: The Order of Nashim* (Jewish Theological Seminary of America: New York 1967), 31. Concerning an English translation, cf. Satlow, *Tasting the Dish*, 186.

⁹¹ Concerning the name Qedoschim (“Holy”) of this tractate, cf. Lev. 19:2.

⁹² Concerning Sifra Qedoschim 9,14 (= 92b) (= Sifra 208,2,11-12 in the edition of Neusner), cf. Jacob Neusner, *Sifra: An Analytical Translation, Volume 3, Aharé Mot, Qedoschim, Emor, Behar and Behuqotai* (Scholars Press: Atlanta, Georgia 1988), Brown Judaic Studies 140, 145. Concerning the Hebrew or Aramaic text, cf. Isaak Hirsch Weiss, *Sifra. Commentar zu Leviticus aus dem Anfange des III. Jahrhunderts* (Jacob Schlossberg’s Buchhandlung: Wien 1862).

⁹³ Cf. Guggenheimer (ed.), *Jerusalem Talmud: Tractates Sanhedrin, Makkot, and Horaiot*, 248. Concerning a German translation, cf. Hengel, Neusner, and Schäfer (eds.), *Übersetzung des Talmud Yerushalmi 4,4: Sanhedrin*, 184.

⁹⁴ Cf. Adin Steinsaltz (ed.), *The Talmud: The Steinsaltz Edition, Volume 18, Tractate Sanhedrin, Part 4* (Random House: New York 1998), 70 or Epstein (ed.), *Babylonian Talmud: Sanhedrin*, 367-368.

⁹⁵ According to the Jewish tradition, Rabbi Ishmael (ben Elisha), usually just Rabbi Ishmael, might have come from a priestly family. He lived mostly at Kefar Aziz on the border with Edom. Stemberger, *Introduction*, 71-72.

⁹⁶ Hügel, *Queere Lesarten der Hebräischen Bibel*.

Apparently, in contrast to the Mishnah, it was important to derive a prohibition directly from Lev. 18:22 with Rabbi Aqiba's explanation, even for the male partner with whom sexual intercourse between males is practised. From a rabbinic point of view, this resolved the contradiction which exists between the two different biblical prohibitions Lev. 18:22 and Lev. 20:13 in the Holiness Code, where in Leviticus 18 only *one* male partner is addressed, but in Leviticus 20 *both* male partners are punished for having sex between male persons.

In contrast to the Hebrew Bible, the Halacha stipulates the death penalty by stoning for sex between men. However, the rabbinic assertions of stoning as a form of punishment for sex between males in Mishnah Sanhedrin 7:4 and Sifra Qedoshim 9:14 (92b) on Lev. 20:13 and in the parallels in the Palestinian and Babylonian tractates of the Talmud Sanhedrin (p.Sanh. 7:9,25a and b.Sanh. 54b) served only as a deterrent in purely academic discourse. In the entire rabbinic literature, there is no report of a trial or even an execution by stoning in connection with sexual acts between men.⁹⁷ The Jewish lawcourt, the Great Sanhedrin, is an ideal fiction of rabbinic literature. In the Roman Empire, only the Romans had jurisdiction over capital offences; the Jewish population was not allowed to judge capital crimes. Since a detailed discussion of these halakhic legal texts on sex between males would go beyond the scope of this article, I refer once again to my forthcoming publication on queer readings of the Hebrew Bible.⁹⁸

Male Rape Victims and Male Prostitutes

From the Babylonian Talmud Sanhedrin 74a, it could be concluded that a Jewish man who was forced to have sex with a man by a goy (גוי), that is a non-Jew, during the war against the Romans in the course of the fighting or after being sold into a brothel, should rather accept his fate as a rape victim or male prostitute, even if he should have lost his status as a man, than lose his life by killing himself or being killed.

The alternative of staying alive as a rape victim or male prostitute,⁹⁹ as shown by the rabbis in the Babylonian Talmud Sanhedrin 74a, is truly not an attractive

⁹⁷ The story in p.Sanh. 6:3,23b, according to which a male couple is caught having sex by a rabbi on the upper floor of the school building, does not have to be understood in a legal context because no lawcourt is explicitly mentioned. Cf. Hügel, *Studien*, s. v. chapter "Introduction".

⁹⁸ Hügel, *Queere Lesarten der Hebräischen Bibel*.

⁹⁹ Concerning the rape or the prostitution of Jewish males, cf. m.Hor. 3,7 and t.Hor. 2,5-6 (together with the two different rabbinic traditions based on t.Hor. 2,5-6 in the Palestinian Talmud Horayot 3,7,48b and in Lamentations Rabbah 4:4 on Lam. 4:2) or Hügel, "Jewish Male

one. The Palestinian Talmud does not cite any specific cases in connection with Jewish male rape victims or Jewish male prostitution in which rabbis themselves permitted the transgression of ritual laws such as Lev. 20:13, but this does not rule out the possibility that such interpretations may have been conceivable not only in exile but also in Palestine. However, the rapes of Jewish men and boys or their prostitution would most likely not fall within the scope of the Jewish public (“ten persons”),¹⁰⁰ one would think.

In the Babylonian Talmud Sanhedrin 74b,¹⁰¹ in connection with the marriage of the Persian king Ahasuerus to the Jewess Esther, the question is raised as to whether her sexual relationship with the foreign man was a public transgression. Strangely enough, the public nature of the sexual acts was not questioned, but Esther’s activities were declared irrelevant to the Jewish law due to her female object status as Ahasuerus’ passive sexual partner, “Ester war merely [like] natural soil [that is ploughed]”¹⁰² [אסתר קרקע עולם היתה].¹⁰³ Esther was not required to die rather than commit a sexual transgression because she was a passive victim: she did nothing, only received. She was like the soil that was being ploughed. A woman like Esther, who allows herself to be sexually violated, is neither morally nor legally responsible for the sexual transgression committed. One might ask what kind of Jewish law Esther should have transgressed. If it is assumed that Mordecai was Esther’s husband (and דוד does not mean “paternal uncle” but “lover” in Esth. 2:15), then Esther’s transgression would be adultery.¹⁰⁴ However, on the basis of the previously mentioned

Prostitution”. Joseph, the son of Jacob, did not actually have to serve as a sex slave, although his brothers suspected this from a rabbinic point of view and looked for him in the place where harlots meet. Hügel, *Studien*, s. v. section “Jewish Interpretations of Gen. 39:6”. Concerning the rabbinic traditions according to which Joseph was saved by divine intervention from being sexually abused by Potifar, cf. Hügel, *Studien*, s. v. section “Potiphar Buys Joseph in Order to Have Sex with Him: Jewish Interpretations of Gen. 39:1”.

¹⁰⁰ Cf. p.Sanh. 3:6,21b and p.Shebi. 4:2,35a.

¹⁰¹ Steinsaltz (ed.), *Talmud: Sanhedrin, Part 5*, 77 or Epstein (ed.), *Babylonian Talmud: Sanhedrin*, 504.

¹⁰² In submitting to the embraces of the heathen king, she did not act on her part. Jastrow, *Dictionary*, 1426.

¹⁰³ Steinsaltz (ed.), *Talmud: Sanhedrin, Part 5*, 77.

¹⁰⁴ Cf. Rachel Biale, *Women and Jewish Law: The Essential Texts, Their History, & Their Relevance for Today* (Schocken Books: New York 1995), 251. The prohibition of adultery in Lev. 18:20 is only directed at an Israelite man – and not to an Israelite woman – which is why the rabbinic question about Esther’s adultery as a public transgression in b.Sanh. 74b would actually be irritating. Concerning Lev. 18:20, cf. section “The Three Cardinal Sins of Judaism”.

Babylonian Talmud Sanhedrin 54b and its parallels,¹⁰⁵ I do not think that an analogous argumentation is possible for male rape victims.

Rabbinic thought is sometimes not related to reality at all, as witnessed by the story of Rabbi Meir's¹⁰⁶ strange rescue by the prophet Elijah in the Babylonian Talmud 'Abodah Zarah 18b.¹⁰⁷ Here Elijah appeared to his persecutors as a prostitute, whom Rabbi Meir embraced. Thus, Rabbi Meir was not recognised and escaped.¹⁰⁸ In this text of the Babylonian Talmud, the biblical prophet changed his gender and became a female prostitute, though, despite this transformation into a woman, a certain homoeroticism in Elijah's embrace with the rabbi may resonate with today's queer readers.

The Application of the Jewish Law Shall Lead to Life

After we have learnt in the Babylonian Talmud Sanhedrin 74a that the Jewish people at the time of their persecution and oppression should rather transgress individual laws of the Torah – apart from idolatry, incest prohibitions and bloodshed – than risk their own lives by observing certain biblical commandments, the question of idolatry is specifically raised in connection with an older saying of Rabbi Ishmael in Sifra Aharé Mot ("After death")¹⁰⁹ 13:14 (86b) on Lev. 18:5:¹¹⁰

Now may not idolatry be practised [in these circumstances] [ועבודה זרה, לא]? Has it not been taught [והא תניא]:¹¹¹ Rabbi Ishmael [ben Elisha, a Tanna of the younger

¹⁰⁵ Cf. section "Biblical and Halakhic Rules concerning Sex Between Males".

¹⁰⁶ The Jewish tradition places Rabbi Meir among the third generation of the Tannaites. He was a student first of Ishmael and then of Aqiba. He lived for a time in Tiberias or in the adjacent Ḥammāt Tiberias. Rabbi Meir was important as both a halakhist and a haggadist and played a significant part in the redaction of the Mishnah. According to a late tradition, he was the son-in-law of Hananyah ben Teradion through his wife Beruryah. Stemberger, *Introduction*, 76.

¹⁰⁷ Concerning an English translation of b.AZ. 18b, cf. Isidore Epstein (ed.), *The Babylonian Talmud: Seder Neziḳin 4; 'Abodah Zarah, Horayoth, Shebu'oth, Makkoth, 'Eduyyoth, Aboth* (Soncino Press: London 1935), 94.

¹⁰⁸ Hügel, *Studien*, s. v. section "Jewish Interpretations of Gen. 39:6".

¹⁰⁹ Concerning the name Aharé Mot ("After death") of this tractate, see Lev. 16:1.

¹¹⁰ Cf. Weiss, *Sifra*. Concerning an English translation, cf. Neusner, *Sifra, Volume 3*, 80 (Sifra Aharé Mot 13:14 (86b) on Lev. 18:5 = Sifra 194,2,16 in the edition of Neusner). Concerning a discussion of this passage of Sifra Aharé Mot cf. Avemarie, Van Henten, and Furstenberg, *Jewish Martyrdom in Antiquity*, 52-53,416. It is missing in MS Vatican 31. Cf. Gary G. Porton, *The Traditions of Rabbi Ishmael: Part 2: Exegetical Comments in Tannaitic Collections* (Brill: Leiden 1977), 80, n. 82.

¹¹¹ Cf. Sifra Aharé Mot 13:14 (86b) on Lev. 18:5.

group of the second generation] said [אמר רבי ישמעאל]: “Whence do we know that if a man was bidden [מנין שאם אמרו לו לאדם], ‘Engage in idolatry and save your life [עבוד עבודה זרה ואל תהרג]’, that he should do so, and not be slain [מנין שיעבוד ואל תהרג]? From the verse [תלמוד לומר], [You shall keep my statutes and my ordinances. Whoever complies with them,] will live by them [והי בהם] [Lev. 18:5] – but not die because of them [ולא שימות בהם]. I might think that it [that is idolatry] may even be practiced in public [יכול אפילו בפרהסיא], but Scripture teaches [תלמוד לומר], *You shall not profane my holy name* [ולא תחללו את שם קדשי], *I want to be treated as holy [in the midst of the Israelites]* [ונקדשתי] [Lev. 22:32].”¹¹² (b.Sanh. 74a)¹¹³

Rabbi Ishmael here contradicts the rabbinic decision in Lydda in the Babylonian Talmud Sanhedrin 74a in that he does not even forbid Jewish people – at the time of their persecution and oppression – to practise idolatry in private. Based on the scriptural quotation Lev. 22:32, it also becomes clear that publicly practised idolatry would mean a “desecration of the name” of God.

In this rabbinic argument in the Babylonian Talmud Sanhedrin 74a, life in extreme situations is affirmed. The attitude towards law expressed in the Latin sentence *Fiat iustitia, perat mundus* (“Let justice be done, though the world perish”) is alien to Jewish law. Rather, it applies the principle that law exists for the sake of human beings, not the human being for the sake of law.¹¹⁴

The following sentence was editorially added to the introductory parenthesis in Lev. 18:2b-4 in the 18th chapter of the Book of Leviticus:

[The Israelites were told]: You shall keep my statutes and my ordinances [ושמרתם ואשר יעשה אתם]. Whoever complies with them, will live by them [והי בהם].¹¹⁵ I am g*d [ואני יהוה].¹¹⁶ (Lev. 18:5)

¹¹² My translation from the Hebrew or Aramaic according to Steinsaltz (ed.), *Talmud: Sanhedrin, Part 5*, 73. Concerning another English translation cf. also Epstein (ed.), *Babylonian Talmud: Sanhedrin*, 502.

¹¹³ Concerning a similar saying of Rabbi Ishmael in another context, cf. b.AZ 27b.

¹¹⁴ Cf. Shimon Shetreet and Walter Homolka, *Jewish and Israeli Law – An Introduction* (De Gruyter: Berlin and Boston 2021), 31.

¹¹⁵ The phrase in Lev. 18:5 “Whoever complies with them, will live by them [והי בהם]” strikingly occurs also in Ezek. 20:11.13.21, differing in Ezek. 20:11.21 only by אותם with a Holam male.

¹¹⁶ In the divine self-introduction formula in Lev. 18:5, in contrast to the introductory parenthesis in Lev. 18:2.4 and to the concluding parentheses in Lev. 18:30 and in Lev. 20:24, the second designation for god, namely “your god [ואלהיכם]” is missing, which might indicate a late addition of the entire verse Lev. 18:5.

The parenthesis in Lev. 18:5, in contrast to the exhortation in Lev. 18:2b-4, shows an individualising tendency:¹¹⁷ Every single human being (הָאָדָם) who fulfils the divine statutes and ordinances will live by them.¹¹⁸ This corresponds to the statement in Lev. 18:29 in the concluding parenthesis of Leviticus 18 that only those persons who have committed abominable deeds (תועבות) shall be excluded from the midst of the people.¹¹⁹

Rabbi Ishmael [ben Elisha, a Tanna of the younger group of the second generation] builds on the biblical remark in Lev. 18:5 (“Whoever complies with them [that is the divine statutes and the ordinances], will live by them”), saying with particular emphasis in the Babylonian Talmud Sanhedrin 74a, “[...] but not *die* because of them [ולא שימות בהם]”.¹²⁰ According to this important Jewish scholar, the application of the Jewish law shall lead to life, not to its loss. Survival is the most important thing. Dying is to be avoided.¹²¹ It may be no coincidence that such a saying in the Babylonian Talmud Sanhedrin 74a is attributed to Rabbi Ishmael ben Elisha, who, according to a Jewish tradition based on Tosefta Horayot 2:5-6, is said to have been redeemed as a child in Rome by Rabbi Yehoshua ben Hananyah.¹²²

¹¹⁷ Concerning a reference to individual guilt in the Holiness Code, namely the negation of the transfer of guilt in Lev. 20:13 and other verses of Leviticus 20 in connection with the phrase “They shall surely suffer death; their guilt weighs on them,” cf. Hügel, *Queere Lesarten der Hebräischen Bibel*.

¹¹⁸ Cf. Karl Elliger, “Das Gesetz Leviticus 18”, in: *Zeitschrift für die alttestamentliche Wissenschaft* 67/1 (1955), 1-25, here 21. The repetition of the sentence “[...] and my statutes you shall keep [וְאֶת־חֻקֵּי תִשְׁמְרוּ]” (Lev. 18:4) by the sentence “you shall keep my statutes [...] [וְשִׁמְרֶתֶם אֶת־חֻקֵּי]” (Lev. 18:5) and the occurrence of the divine self-introduction formula at the end of Lev. 18:4 might also indicate an editorial addition of Lev. 18:5. Cf. Alfred Cholewiński, *Heiligkeitgesetz und Deuteronomium. Eine vergleichende Studie* (Biblical Institute Press: Rome 1976), *Analecta Biblica* 66, 36.

¹¹⁹ Because of the abominable deeds (תועבות) of individual people, the whole land shall not be considered defiled, as previously stated in Lev. 18:27.

¹²⁰ My translation from the Hebrew or Aramaic according to Steinsaltz (ed.), *Talmud: Sanhedrin, Part 5*, 73. Concerning another English translation, cf. also Epstein (ed.), *Babylonian Talmud: Sanhedrin*, 502.

¹²¹ Cf. Daniel R. Schwartz, “Leben durch Jesus versus Leben durch die Tora: Zur Religionspolemik der ersten Jahrhunderte”, in: Jacobus Cornelis de Vos and Folker Siegert (eds.), *Interesse am Judentum. Die Franz-Delitzsch-Vorlesungen 1989-2008* (LIT Verlag: Berlin 2008), Münsteraner Judaistische Studien. Wissenschaftliche Beiträge zur christlich-jüdischen Begegnung 23, 154-171, here 156.

¹²² Cf. b.Git 58a and LamR. 4:4 on Lam. 4:2 or Hügel, “Jewish Male Prostitution”.

Not Even One's Shoe Strap May Be Changed

In the Babylonian Talmud Sanhedrin 74a,¹²³ there are other rabbinic sayings on the subject of martyrdom, which can be related to the rabbinic debate on the upper floor of Nitzah's house in Lydda¹²⁴ mentioned at the beginning of this article.¹²⁵ The following contradiction is striking here: Rab Dimi, a fourth-generation Amora from Palestine,¹²⁶ said in the name of Rabbi Yoḥanan, mentioned earlier in b.Sanh. 74a, that this rabbinic resolution in Lydda was allegedly made at a time when there was no persecution of the Jewish religion. So did this rabbinic meeting in Lydda take place in the days before the Bar Kokba revolt in 132-135 CE?¹²⁷ At the time of the persecution of the Jewish religion, however, a Jewish person was obliged to sacrifice his life rather than violate a minor Jewish commandment. Rabin distinguishes between the violations of the Jewish commandments in public and in private when he says in the name of Rabbi Yoḥanan in the Babylonian Talmud Sanhedrin 74a, that even in a time when there was no persecution of the Jewish religion, Jewish commandments may only be violated in private, but Jewish persons must suffer martyrdom in order not to publicly violate even a minor commandment. Raba, the son of Isaac, then explains in the Babylonian Talmud Sanhedrin 74a-b in Rab's¹²⁸ name which Jewish matters may concern a minor commandment: a Jewish person is not even allowed to change his shoe strap. When religion itself is persecuted, even the most insignificant religious custom or habit must be defended at all costs, having regard to the higher principle at stake.¹²⁹ The

¹²³ Steinsaltz (ed.), *Talmud: Sanhedrin, Part 5*, 75-76 or Epstein (ed.), *Babylonian Talmud: Sanhedrin*, 503.

¹²⁴ Oppenheimer, *Between Rome and Babylon*, 322.

¹²⁵ Cf. b.Sanh. 74a in section "Rabbinic Exceptions in Crisis Situations in the Babylonian Talmud Sanhedrin 74a and the Palestinian Talmud Sanhedrin 3:6,21b".

¹²⁶ The Jewish tradition places Rab Dimi or Abudimi (the 'voyager' to Babylonia, who presented Palestinian teachings and traditions at Pumbeditha) in Palestine among the fourth generation of the Amoraim. Stemberger, *Introduction*, 94.

¹²⁷ Oppenheimer, "Ethical and Halakhic Responses," 110.

¹²⁸ Abba Arikha, "the Tall" – probably because of his unusual physical height –, is usually just called Rab, although his name is actually Abba. The Jewish tradition places him in Babylonia among the first generation of the Amoraim. According to Geonic tradition, he was the founder and head of the rabbinic school at Sura on the Euphrates from the year 219, when he returned from Palestine, until his death in 247. However, historically we cannot speak of an academy but only of a group of disciples around Rab. Stemberger, *Introduction*, 85.

¹²⁹ Epstein (ed.), *Babylonian Talmud: Sanhedrin*, 503, n. 6.

shoe latches worn by Jews in ancient times were white; those worn by non-Jews were black.¹³⁰

In ancient Judaism, various rabbinic opinions on the topic “Surviving instead of Dying – Rabbinic Exceptions” exist. Depending on them, the biblical prohibitions on sex between males may or may not have been abrogated for Jews. In today’s context, questions about queer ways of living and loving are still very controversial. Even today, there are a variety of opinions and attitudes on this subject. Globally, most queer people endure various forms of social oppression. The question of how I perform in public as a queer person is probably on everyone’s mind, not just for fun, but also due to the fact that a life in complete freedom, free from all forms of violence such as homophobia, lesbophobia and transphobia et cetera, is not actually possible anywhere in the world, even today. Queer lives matter. The visibility of various queer people, that is, lesbians, gays, bisexuals, transgenders, intersexuals as well as others who question their sexual orientation or their identification with the sociocultural gender assigned to them, is a central goal of the movements of queer communities. In this way, queer people could possibly also draw on rabbinic literature, which addresses various problems in connection with the defence of one’s own existence in times of persecution.

Conclusions

From Rabbi Ishmael ben Elisha’s saying in the Babylonian Talmud Sanhedrin 74a and Simeon ben Yehošadaq’s saying in the tractates Sanhedrin of the Babylonian and the Palestinian Talmud (b.Sanh. 74a and p.Sanh. 3:6,21b), it can be deduced that certain biblical interdictions have been subordinated to the principle of surviving. This happened in a rabbinic context when the Jewish population was persecuted and oppressed. Thus, already in rabbinic times, among other things, the prohibition of sexual activities between males in Lev. 18:22, following Simeon ben Yehošadaq’s opinion in the Babylonian Talmud Sanhedrin 74a, may have been abrogated for Jews in life-threatening predicaments. The statement in Lev. 18:5 “Whoever complies with them [that is, the divine statutes and ordinances], will live by them” becomes, in the context of halakhic interpretations such as in the Babylonian Talmud Sanhedrin 74a, the most

¹³⁰ Cf. Jacob Nacht, “The Symbolism of the Shoe with Special Reference to Jewish Sources,” in: *The Jewish Quarterly Review, New Series* 6,1 (1915), 1-22, here 12 (<https://doi.org/10.2307/1451461>, 19 April 2024).

general expression imaginable of the conviction that the Torah serves the purpose of making human life possible, promoting and protecting it in this world.¹³¹

And what about my gay life?, a man reading Leviticus 18 queerly today will ask. Nowadays, gay men understand their sexuality differently: if they feel addressed by the contents of the biblical laws in Lev. 18:22 and Lev. 20:13 in the present day, they will hardly consider such prohibitions conducive to their way of life. New Jewish and Christian concepts and other rites must be created for various queer persons so that they can then actually be regarded by them as conducive to life.

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¹³¹ Cf. Friedrich Avemarie, *Tora und Leben: Untersuchungen zur Heilsbedeutung der Tora in der frühen rabbinischen Literatur* (Mohr Siebeck: Tübingen 1996), Texte und Studien zum Antiken Judentum 55, 105.