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Introduction

Law, Identity, and Leviticus 18:3

DEBATING FOREIGN LAW

> Okay, commandoes, here is your first patriotic assignment … an easy one. Supreme Court Justices Ginsburg and O'Connor have publicly stated that they use [foreign] laws and rulings to decide how to rule on American cases.
>
> This is a huge threat to our Republic and Constitutional freedom.… If you are what you say you are, and NOT armchair patriots, then those two justices will not live another week.[1]

The Supreme Court marshal alerted Justice Ruth Bader Ginsburg to this threat to her life, posted on a Web chat, in February 2005. She took it in stride. In her speech to the Constitutional Court of South Africa a year later, Ginsburg joked, "Justice O'Connor, though to my great sorrow retired just last week from the Court's bench, remains alive and well. As for me, you can judge for yourself."[2] But in that speech, Justice Ginsburg's defense of her use of foreign law was entirely serious. She cited precedent for her view in the Declaration of Independence and the Constitution and described the stakes of the disagreement over foreign law as nothing

[1] Cited in Justice Ginsburg's speech to the Constitutional Court of South Africa, available at http://www.supremecourtus.gov/publicinfo/speeches/sp_02–07b-06.html. See Justice Sandra Day O'Connor's defense of foreign law in "Broadening Our Horizons: Why American Judges and Lawyers Must Learn About Foreign Law," *International Judicial Observer* (June 1997): 2–3 (adapted from a speech to the American College of Trial Lawyers in Florida), and Justice Stephen Breyer and Justice Antonin Scalia's spirited debate on "The Constitutional Relevance of Foreign Court Decisions" at American University in 2005, the transcript of which can be found at http://www.freerepublic.com/focus/news/1352357/posts

[2] See Web site reference in previous note.

less than global respect for the dignity of human beings. One wonders if that Internet death threat fleetingly crossed her mind when, in March 2005, she concurred in the *Roper v. Simmons* majority decision against the execution of juvenile offenders. Written by Justice Kennedy, the decision explicitly affirmed the relevance of international standards to the decisions of U.S. courts.[3]

American legal scholars offer a long list of arguments on behalf of citing foreign law: foreign law offers parallel solutions to the same or similar problems; foreign law illustrates the empirical consequences of those solutions; foreign law increases American accountability; foreign law enhances America's international reputation; foreign law expands America's moral perspective; foreign law has long played a role in American courts' decision making and should play an even greater role today in light of the expanding number of international and cross-border transactions.[4] Justice Scalia's dissent in *Roper v. Simmons* and other cases illustrates the degree of vehemence with which these arguments

[3] From Justice Kennedy's text: "It is proper that we acknowledge the overwhelming weight of international opinion against the juvenile death penalty.... The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions.... It does not lessen our fidelity to the Constitution or our pride in its origins to acknowledge that the express affirmation of certain fundamental rights by other nations and peoples simply underscores the centrality of those same rights within our own heritage of freedom" (IV). The full text is available at http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&navby=case&vol=000&invol=03–633#opinion1. For discussion, see Comment, "The Debate over Foreign Law in Roper v. Simmons," *Harvard Law Review* 119 (2005): 103–108, and the essays that follow by Vicki C. Jackson, Jeremy Waldron, and Ernest A. Young.

[4] I draw here primarily from Vicki C. Jackson's "Narratives of Federalism: Of Continuities and Comparative Constitutional Experience," *Duke Law Journal* 51/1 (October 2001): 223–287, but see also the following selection, spanning a broad spectrum of views on the relevance of both foreign and international law: Harold Hongju Koh, "International Law as Part of Our Law," *American Journal of International Law* 98 (2004): 43–57; Steven G. Calabresi, "Lawrence, the Fourteenth Amendment, and the Supreme Court's Reliance on Foreign Constitutional Law: An Originalist Reappraisal," *Ohio State Law Journal* 65 (2004): 1097–1132; Steven G. Calabresi and Stephanie Dotson Zimdahl, "The Supreme Court and Foreign Sources of Law: Two Hundred Years of Practice and the Juvenile Death Penalty Decision," *William and Mary Law Review* 47 (2005): 743–909; Joan L. Larsen, "Importing Constitutional Norms from a 'Wider Civilization': Lawrence and the Rehnquist Court's Use of Foreign and International Law in Domestic Constitutional Interpretation," *Ohio State Law Journal* 65 (2004): 1283–1328; Vicki C. Jackson, "Transnational Discourse, Relational Authority, and the U.S. Court: Gender Equality," *Loyola University of Los Angeles Law Review* 37 (2003): 271–362; idem, "Constitutional Comparisons: Convergence, Resistance, Engagement," *Harvard Law Review* 119 (2005): 109–128; idem, "Progressive Constitutionalism and Transnational Legal Discourse," in *The Constitution in 2020*, edited by Jack M. Balkin and Reva Siegel,

are opposed.[5] Even the vocabulary in which the controversy has been couched has become controversial: Is the question one of "obedience to" foreign law or "reliance on" it, or perhaps merely its "citation"?[6] A judge may consider herself to be simply "citing" foreign law whereas a critic may consider her to be "relying on" it. Those who make a case against foreign law propose that it can play no meaningful role in interpreting the U.S. Constitution because it functions within a foreign framework; it undermines the autonomy and therefore the perceived legitimacy of U.S. decisions; it is not an area of expertise for U.S. judges; it facilitates judicial opportunism. The additional argument that foreign affairs are the rightful domain of the president and Congress and not of the courts may lie behind a series of Congressional resolutions against the use of foreign law in U.S. courts.[7] Although none of these resolutions have yet passed, Steven Calabresi's assessment seems correct that the controversy

New York: Oxford UP, 2009, pp. 285–295; Gerald L. Neuman, "The Uses of International Law in Constitutional Interpretation," *American Journal of International Law* 98 (2004): 82–90; idem, "International Law as a Resource in Constitutional Interpretation," *Harvard Journal of Law & Public Policy* 30 (2006–2007): 177–189; Sarah H. Cleveland, "Our International Constitution," *Yale Journal of International Law* 31 (2005): 1–125; idem, "Foreign Authority, American Exceptionalism, and the Dred Scott Case," *Chicago-Kent Law Review* 82 (2007): 393–458; John O. McGinnis, "Foreign to Our Constitution," *Northwestern University Law Review* 100 (2006): 303–330; David Seipp, "Our Law, Their Law, History, and the Citation of Foreign Law," *Boston University Law Review* 86 (2006): 1417–1445.

[5] From Justice Scalia's dissent: "More fundamentally, however, the basic premise of the Court's argument – that American law should conform to the laws of the rest of the world – ought to be rejected out of hand …. To invoke alien law when it agrees with one's own thinking, and ignore it otherwise, is not reasoned decisionmaking, but sophistry.… I do not believe that approval by 'other nations and peoples' should buttress our commitment to American principles any more than (what should logically follow) disapproval by 'other nations and peoples' should weaken that commitment.… Foreign sources are cited today, *not* to underscore our 'fidelity' to the Constitution, our 'pride in its origins,' and 'our own [American] heritage.' To the contrary, they are cited *to set aside* the centuries-old American practice – a practice still engaged in by a large majority of the relevant States – of letting a jury of 12 citizens decide whether, in the particular case, youth should be the basis for withholding the death penalty. What these foreign sources 'affirm,' rather than repudiate, is the Justices' own notion of how the world ought to be, and their diktat that it shall be so henceforth in America" (III). The full text can be found at http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&navby=case&vol=000&invol=03–633#dissent2

[6] See Seipp, "Our Law," p. 1440, n. 142.

[7] A selection includes: Constitutional Preservation Resolution, H.R. 446, 108th Congress (2003); Senate Resolution 2323, 108th Congress (2004); the Constitution Restoration Act of 2004, H.R. 3799, 108th Congress (2004); American Justice for American Citizens Act, H.R. 4118, 108th Congress (2004); Judicial Conduct Act of 2007, H.R. 2898, 110th Congress (2007); House Joint Resolution 106, 111th Congress (2010). The concern to

over foreign law is a "tale of two cultures," which Calabresi provocatively frames as a conflict between the "lawyerly elite" who advocate use of foreign law and the "popular culture of the vast majority of American citizens" who oppose it.[8]

America's debate over foreign law is not a simple thumbs-up or thumbs-down proposition. It encompasses a variety of questions regarding which types of foreign law might be acceptable (Can the law of a tyrannical state be cited?), into which legal areas foreign law might be accepted (Private law? Constitutional law?), what degree of authority foreign law might be accorded (None? Persuasive? Conclusive?), and what theory of law underlies the project.[9] David Seipp argues that the objection to foreign law is both bad history and bad law. Only the complaint about it is new, says Seipp.

LEVITICUS 18:3'S INTERDICTION AGAINST FOREIGN LAW

The purpose of this book is to show that the complaint about foreign law is, in fact, very old. Leviticus 18:3, which forms part of a preamble to a catalog of incest and other sex taboos, enjoins the Israelites to reject the laws of neighboring peoples: "Like the practice of the land of Egypt where you have dwelled, you should not practice, and like the practice of the land of Canaan to which I am bringing you, you should not practice, and in their laws you should not go." The first two parts of the verse, which are parallel in syntax and word choice, prohibit Israel from the practices of Egypt and Canaan. The third part, which seems to summarize and to reinforce the first two parts, prohibits their laws. In the interpretive history of Lev. 18:3, we see foreshadowed many of the same questions addressed in America's debates about foreign law: What types

protect executive and congressional power is explicit in the preamble of S. Res. 92 of the 109th Congress (2005): "Inappropriate judicial reliance on foreign judgments, laws, or pronouncements threatens the sovereignty of the United States, the separation of powers, and the President's and the Senate's treaty-making authority." The most recent resolution of this sort awaiting decision at the time of the writing of this book is H.R. 973 of the 112th Congress (2011–2012), sponsored by Republican Representative Sandy Adams of Florida. Texts for all these bills can be found at http://thomas.loc.gov/

[8] Steven G. Calabresi, "'A Shining City on a Hill': American Exceptionalism and the Supreme Court's Practice of Relying on Foreign Law," *Boston University Law Review* 86 (2006): 1335–1416 (pp. 1336–1337).

[9] The cluster of questions is borrowed from Jeremy Waldron, The Supreme Court 2004 Term: Comment, "Foreign Law and the Modern *Ius Gentium*," *Harvard Law Review* 119 (2005–2006): 129–147.

of foreign law are prohibited? What types of foreigners are the targeted authors? What is the formal status of the prohibited practices? What is the rationale of the prohibition? Is the fatal flaw of the practice its foreignness or something intrinsic to it? What ideology of identity is presupposed and promoted by the prohibition?

My interest in the subject was inspired by a text I came across in my previous work on the rabbinic laws of criminal execution. A passage from the early-third-century C.E. Tosefta discusses the rabbinic execution method of decapitation:

> Rabbi Judah says, "Behold it says, 'And love your fellow as yourself' (Lev. 19:18) – choose for him a nice execution. How do they do this for him? One lays his head on the block and cuts it off with an axe."
>
> They (the Sages) said to him, "There is no execution more disgraceful than this."
>
> He said to them, "Of course there is no execution more disgraceful than this, but rather, [one must choose the axe] because of '… and in their laws you should not go' (Lev. 18:3)."[10]

Despite believing that the axe is a gruesome means for executing criminals, Rabbi Judah approves it as the rabbinic court's method of decapitation. His reasoning, which is clarified in the mishnaic parallel, is that the alternative method – by sword – while preferable because it preserves the criminal's dignity, is prohibited because it is Roman.[11] Rabbi Judah invokes Lev. 18:3's prohibition against "their laws" as the deciding factor in favor of the axe, sacrificing the dignity of the criminal and the quality of rabbinic law to differentiate rabbinic law from Roman. Studying this text, I wondered how often this verse had been read in this way, as a directive to Israel to turn itself into an "upside-down people" (as Tacitus describes the Jews) – and at what cost to Israel's moral integrity.[12]

In bringing together the contemporary conversation about the U.S. Constitution and the biblical conversation about Israel, I have implicitly already taken a side in the debate as I import a "foreign" subject into my talk of Jewish texts. The "pro" position that sees all humanity as a potential source of wisdom does indeed seem the nobler. Yet this book aims to understand and to appreciate the "anti" position in its most sophisticated articulations. It is easy to dismiss the interdiction against foreign law as

[10] Tosefta Sanhedrin 9:11 (Vienna manuscript). For further discussion of this text and its parallels, see Chapter 7.
[11] See Mishnah Sanhedrin 7:3.
[12] For further discussion of Tacitus's excursus on the Jews, see Chapter 10.

xenophobic and insecure – and I do trace the paths by which Lev. 18:3 has been contested or restricted on such basis – but the opposition to foreign law is also a strategy of cultural preservation. A post-Holocaust, postcolonial world invites us to take seriously group strivings for survival even if we might still be critical of isolationism or fundamentalism. This book's exploration of Lev. 18:3's prohibition on foreign law aims to capture this complexity and to honor the anxieties of both those who embrace its separatism and those who limit it. I honor these anxieties because they are ultimately my own as an American Jew living in a variety of intersecting and often competing worlds, some Jewish, some non-Jewish, most mixed.

One can see the fault lines even in my own borrowing of Constitutional battles to shed light on Leviticus. For Lev. 18:3's interpreters are far from certain that its prohibition targets law at all. The prohibition, I show, is understood by a number of readers as referring to cultural habits and to sexual practices rather than to formal law. Nevertheless, both debates tell us a great deal about the broader discourses of identity in which they are situated. This book explores Lev. 18:3 as a site for mapping the boundaries between Jew and non-Jew and for defining the contours of Jewishness. It asks about the role of Bible reading in the production of those boundaries. In the interpretive path of Lev. 18:3, I argue, we find laid the literary and conceptual foundations of Jewish separatism as well as the major challenges to it. By telling the story of Lev. 18:3, I tell the story of how Jewishness was made.

ASSIMILATION AND ACCULTURATION, INFLUENCE AND IMITATION: CONCEPTUALIZING CULTURAL CONTACT IN JEWISH HISTORY

Leviticus 18:3's prohibition against foreign law would appear to combat the phenomenon commonly known as "assimilation."[13] Assimilation has become an unfashionable term for Jewish historians, and I want to

[13] I say "appear to combat" because readers of the verse are almost always combating some kinds of assimilation and permitting other kinds in the course of defining the scope of the verse's prohibition. The interplay between constraint and relaxation (sometimes the constraints are constrained) is not sufficiently emphasized by Frederik Barth in his otherwise still excellent discussion of the production and maintenance of social boundaries; see Introduction in *Ethnic Groups and Boundaries: The Social Organization of Culture Difference*, Boston: Little, Brown, 1969, pp. 9–38. On Barth's influence, see Richard P. Jenkins, *Rethinking Ethnicity: Arguments and Explorations*, Thousand Oaks, CA: Sage, 1997, pp. 12–13.

explain here why this is the case, how I think the term can still be useful, and in what way it is relevant to this project. Asher Ginzberg, better known as Ahad Ha'am, is one of the thinkers responsible for putting assimilation on the Jewish intellectual map.[14] Reacting to Jewish thinkers who saw assimilation as a source of "foreign" accretions to an authentic, unique, unchanging, and threatened Jewish core, Ahad Ha'am attempts to redeem assimilation from its bad reputation in his 1893 essay "Imitation and Assimilation."[15] Ahad Ha'am distinguishes there between a slavish imitation that destroys a culture and a competitive imitation that instead reveals that culture's "true spirit" and maintains its vibrancy.[16] Ahad Ha'am declares that such productive imitation requires a strong central model; that center is the land of Palestine. Assimilation is thus the foundation for Ahad Ha'am's brand of cultural Zionism. Gerson Cohen's 1966 "The Blessing of Assimilation in Jewish History" argues along similar lines but without the strong Zionist bent. Quoting Ahad Ha'am, Cohen claims that assimilation is a long-standing feature of Jewish history and a "source of renewed vitality" within it.[17] More recent Jewish historians have grappled with the term in their analysis of *convivencia* in medieval

[14] On the history of use of the term assimilation by Jewish thinkers, see Phyllis Cohen Albert, "Israelite and Jew: How Did Nineteenth-Century French Jews Understand Assimilation?" in *Assimilation and Community: The Jews in Nineteenth-Century Europe*, edited by Jonathan Frankel and Steven J. Zipperstein, New York: Cambridge University Press, 1992, pp. 88–109 (pp. 99–101), who pinpoints Leon Pinsker's use of the term in his essay "Auto-Emancipation" as the source of its spread among Jewish ideologues.

[15] On the anti-assimilation thinkers, see Amos Funkenstein, "The Dialectics of Assimilation," *Jewish Social Studies*, New Series, 1/2 (Winter 1995): 1–14 (p. 10).

[16] "*Hiqui ve-Hitbolelut*," *Kol Kitve Ahad Ha'am*, Jerusalem: Dvir, 1947, pp. 86–92; translation by Leon Simon, *Selected Essays by Ahad Ha-'am*, Philadelphia: The Jewish Publication Society, 1912, pp. 107–124, which can be found online at http://www.archive.org/stream/cu31924079589242#page/n113/mode/2up

The essay grounds its arguments in a romanticist reconstruction of primitive man that now reads as outdated, although its attention to power relations among social groups still feels fresh. The structure of Ahad Ha'am's essay implicitly makes the case for competitive assimilation in its flow from the primitive history of man to the particular history of the Jews, a structure typical of Ahad Ha'am essays; see Alan Mintz, "Ahad Ha-am and the Essay: The Vicissitudes of Reason," in *At the Crossroads: Essays on Ahad Ha-am*, Albany: State University of New York, 1983, pp. 3–11 (p. 5).

Steven J. Zipperstein points out that even though the term *hitbolelut* (from the root *b-l-l*, confuse) and its partner term *hitpardut* (fragmentation) appear less than ten times throughout Ahad Ha'am's essays, assimilation is a pervasive concern for him; see "Ahad Ha'am and the Politics of Assimilation," in *Assimilation and Community*, pp. 344–365 (pp. 345–346).

[17] It is the text of Cohen's commencement address at Hebrew Teachers College in Boston, published in *Great Jewish Speeches throughout History*, collected and edited by Steve Israel and Seth Forman, Northvale, NJ: Jason Aronson, 1994, pp. 183–192 (p. 188).

Spain, the Jews of Renaissance Italy, and Weimar German Jews, among other famous cases of Jewish-gentile symbiosis.[18] Whereas earlier scholars tended to approach Jewish assimilation as a distinctively modern phenomenon, these historians observe that Jewish assimilation existed also in premodern times and that Jewish assimilation in modern times was not as thorough or as widespread as has sometimes been claimed.[19]

Chroniclers of academe have noted that some of the social scientists who first developed the term "assimilation" were themselves assimilated Jews. Assimilation as a conceptual category, from its roots, was thus enmeshed in the identity politics of the modern Jewish experience.[20] Because of the term's loaded politics and its limitations in describing the complexity of cultural history, some Jewish historians have challenged the usefulness of assimilation as an organizing category.[21] "Acculturation" has in many cases come to take assimilation's place. In sociologist Milton Gordon's influential formulation from the 1960s, acculturation is a way station on the road to assimilation.[22] Jewish historians have come to prefer

For discussion, see David N. Myers, "'The Blessing of Assimilation' Reconsidered: An Inquiry into Jewish Cultural Studies," in *From Ghetto to Emancipation: Historical and Contemporary Reconsiderations of the Jewish Community*, edited by David N. Myers and William V. Rowe, Scranton, PA: University of Scranton Press, 1997, pp. 17–35.

[18] For synthetic discussion of assimilation in Jewish history and historiography, see Funkenstein, "Dialectics of Assimilation." On the treatment of assimilation in Dubnow, Ettinger, and other foundational modern Jewish historians, see Jonathan Frankel, "Assimilation and the Jews in Nineteenth-Century Europe: Towards a New Historiography?" in *Assimilation and Community*, pp. 1–37 (pp. 1–15), and other essays in that collection. For a brief survey of some contemporary Jewish historiography that thematizes assimilation, with emphasis on the medieval period, see Elka Klein, *Jews, Christian Society, and Royal Power in Medieval Barcelona*, Ann Arbor: University of Michigan Press, 2006, pp. 8–16; for emphasis on modernity, see Maud Mandel, "Assimilation and Cultural Exchange in Modern Jewish History," in *Rethinking European Jewish History*, edited by Jeremy Cohen and Moshe Rosman, Oxford/Portland, OR: Littman Library of Jewish Civilization, 2009, pp. 72–92. Historiography of Jewish antiquity that thematizes assimilation usually formulates the subject in terms of Hellenization; that topic has a vast literature.

[19] This observation is made by Klein, *Jews, Christian Society, and Royal Power*, p. 2, and by Mandel, "Assimilation and Cultural Exchange."

[20] See discussion of Franz Boas and Georg Simmel in Amos Morris-Reich, *The Quest for Jewish Assimilation in Modern Social Science*, New York: Routledge, 2008.

[21] See the critique of "assimilation" in Michael Stanislawski, *Zionism and the Fin de Siècle: Cosmopolitanism and Nationalism from Nordau to Jabotinsky*, Berkeley: University of California Press, 2001, pp. 6–18.

[22] Milton Gordon, *Assimilation in American Life: The Role of Race, Religion, and National Origins*, New York: Oxford University Press, 1964; on problems with this distinction, see Stanislawski, *Zionism*, p. 8.

acculturation to assimilation precisely to point to the ways that assimilation is often partial and to the degree to which minority cultures persist even as they are transformed by the host. The minority culture rarely simply assimilates or becomes similar: What transpires instead is a complex process of adaptation and appropriation. Moreover, the majority culture is often itself transformed. "Influence" has also been left behind because it suggests a unidirectional impact that simplifies the messiness of real-world cultural contact and reifies and homogenizes both dominant and subaltern groups. The very concept of culture as a coherent entity and, beyond that, of the self has come under increasingly intense scrutiny, with ever-growing emphasis on the ways that cultures and selves are products of and subject to hybridity and fluidity, even while they often claim for themselves solidity and stability.[23]

Greater interest has also developed in the push-back of minority cultures, their strategies of resistance to majority hegemony, as well as the production of their own hegemonies. "Mimicry" is preferred over "imitation" because it suggests an artfulness or subversiveness on the part of the imitator.[24] An imitator is respectful; a mimic makes fun. This book is engaged in particular with this push-back, how readers of Lev. 18:3's interdiction against foreign law saw the verse as a space of resistance and as an opportunity to reverse hierarchies and to produce new ones.

Yet I do not want to give up entirely on "assimilation," because my purpose in this book is to describe not the social phenomenon itself but the discourse surrounding it. In that discourse, assimilation may well capture the intention of the speaker who laments what she perceives to be a crisis of Jewish identity. Moreover, assimilation may accurately describe the agenda of majority groups toward the Jewish minorities who live among them, as well as the perception by Jews of that agenda. The baggage of the term assimilation is precisely what makes it useful in giving an account of Lev. 18:3's discursive history. I thus approach "assimilation" not as an analytic tool but as an object of study. The texts in this book invite us to subdivide the term, to ask what kinds of assimilation are problematized – sexual habits? physical appearance? leisure activities? language? – and what that tells us about the author's construction of Jewishness.

[23] Benedict Anderson's *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, New York: Verso, 1983, is foundational for this approach.

[24] The foundational work here is Homi K. Bhabha, *The Location of Culture*, London: Routledge, 1994.

RACE, ETHNICITY, AND RELIGION AS DISCOURSES OF DIFFERENCE

Since the inception of the term, assimilation has been integrally tied to notions of race and ethnicity.[25] *The Role of Race, Religion, and National Origins* is the subtitle of Milton Gordon's seminal *Assimilation in American Life*. Perceptions of race and ethnicity can work either to catalyze or to impede assimilation and to define the discourse around group difference. As I do with "assimilation," I approach "race" and "ethnicity" not as analytic tools but as objects of study in themselves, terms with complex origins, evolution, and meanings. Recent work dedicated to notions of race and ethnicity has traced them back to classical Greece and to the Hebrew Bible.[26] As a contribution to the growing scholarship on the ideational history of race and ethnicity, this book examines one discourse of difference from the inside, exploring how ancient Jewish (and Christian) readers of Lev. 18:3 employed notions of race and ethnicity as they read out their own distinctiveness. Clement of Alexandria, for instance, relies on Lev. 18:3's ethnic Israel to forge a collective Christian identity, as I discuss in Chapter 4. But in Chapter 3, I look at how discourses of race or ethnicity may be strategically avoided: Philo both engages and evades notions of ethnicity as he spins out the implications of Lev. 18:3's representation of Egypt.

[25] See Morris-Reich, *Quest for Jewish Assimilation*, p. 7. For thinking through how to apply these terms to antiquity, see Jonathan M. Hall, *Hellenicity: Between Ethnicity and Culture*, Chicago: University of Chicago Press, 2002, pp. 13–15, who challenges a too-sharp distinction between race and ethnicity; Denise Kimber Buell, *Why This New Race? Ethnic Reasoning in Early Christianity*, New York: Columbia University Press, 2005, pp. ix–34; the essays in *Prejudice and Christian Beginnings: Investigating Race, Gender, and Ethnicity in Early Christian Studies*, edited by Laura Nasrallah and Elisabeth Schussler Fiorenza, Minneapolis, MN: Fortress Press, 2009.

[26] For classical Greece: François Hartog, *The Mirror of Herodotus: The Representation of the Other in the Writing of History*, translated by Janet Lloyd, Berkeley: University of California Press, 1988 (originally published in French in 1980); Edith Hall, *Inventing the Barbarian: Greek Self-Definition through Tragedy*, New York: Oxford University Press, 1989; Jonathan M. Hall, *Hellenicity*; Thomas Harrison, editor, *Greeks and Barbarians*, New York: Routledge, 2002; Benjamin H. Isaac, *The Invention of Racism in Classical Antiquity*, Princeton, NJ: Princeton University Press, 2004; Susan Lape, *Race and Citizen Identity in the Classical Athenian Democracy*, New York: Cambridge University Press, 2010; Erich S. Gruen, *Rethinking the Other in Antiquity*, Princeton, NJ: Princeton University Press, 2011. For the Hebrew Bible: Mark G. Brett, editor, *Ethnicity and the Bible*, Leiden: Brill, 2002, and bibliography on race and ethnicity in biblical studies (which slants towards New Testament) in Eric D. Barreto, *Ethnic Negotiations: The Function of Race and Ethnicity in Acts 16*, Tübingen: Mohr Siebeck, 2010, pp. 193–210.