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Marginal Discourse: Lesbianism in Jewish Law

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The Issue

In an article written in 1989 by Rebecca Alpert on the subject of lesbianism and Jewish tradition, lesbianism is assumed to be a fundamental challenge to Judaism. Homosexuality does not pose this threat because men, "are accepted as men, [and] they often lose sight of the necessity to change Jewish tradition so that women can be full participants. Lesbians are in the unique situation of having to contend both with issues of gender and sexuality in combination."[\[1\]](#) Most of the secondary material on lesbianism does not attempt such ambitions of placing it at the site of halakhic discourse, but rather is confessional in nature. For instance, the early material in *Nice Jewish Girls*,[\[2\]](#) or the Israeli women of the English language journal *Lesbiot*,[\[3\]](#) or the more recent *Twice Blessed: On Being Lesbian, Gay and Jewish* ,[\[4\]](#) all offer much material to raise consciousness on the subject. However, those writers who address the topic as it operates within the halakhic system appear to assume the same basic requirement: the need to first locate lesbianism in the Bible and in the classical corpus of Jewish legal texts.

Whether it is a certain type of reading of chapters 18 and 20 of Leviticus, where homosexuality is prohibited, or Howard Eilberg-Schwartz's approach to creation,[\[5\]](#) many of the non-narrative works treat lesbians as if they are alluded to in the Bible. One may even suggest that there is a desire to place lesbianism in the realm of prohibitions. Again we may cite Rebecca Alpert, who notes that although the Leviticus text "specifically refers to relationships between men, lesbians experience the power of this prohibition in reference to themselves as well."[\[6\]](#) Alpert also criticizes both the Bible and later texts for their lenient approach to lesbianism, as contrasted to the stricter view on homosexuality.[\[7\]](#) It does not help matters that Maimonides claims that the punishment for lesbianism is neither biblical nor rabbinic.[\[8\]](#) This lacuna for Alpert demonstrates a "disinterest in bonding between women."[\[9\]](#) What is at stake is the whole realm of women's sexual activity, that it matters, that it's there, and that it counts.[\[10\]](#) Other authors reflect a similar theme: Elizabeth Sara portrays an impoverished womanhood because females are, indeed, included in some of the laws of forbidden unions in Leviticus, but "women are the *objects*, not the *subjects*, of the different types of sexual union, and there is no mention at all of women *in relation to one another*."[\[11\]](#) Rodney Mariner is sympathetic to the fact that in the later Jewish texts the female equivalent of male homosexuality is regarded as "mere obscenity."[\[12\]](#) Consequently, in a strange, but necessary, corollary to this apparent need to equate lesbianism with other biblical prohibitions, these writers then dismiss halakha or offer creative exegesis to rescue the women from their enslavement to traditional law!

Before we pronounce on these issues, let us investigate certain significant Jewish texts which appear to deal with lesbianism, from the Bible to contemporary Responsa.

The Texts

Lesbianism is assumed by many modern authors to be implied in Leviticus chapters 18 and 20. The eighteenth chapter is introduced with a general prohibition against subscribing to the practices of Egypt and Canaan (Lev. 18:2-3):

I am the Lord your God. You shall not copy the practice of the land of Egypt where you dwell, or of the land of Canaan to which I am taking you; nor shall you follow their laws.

The chapter continues with pronouncements against various sexual unions, especially with family members. A second set of prohibitions includes offering children to Molech, sexual union between males, and sexual union with animals. Leviticus 18:22 is the text prohibiting homosexuality:[\[13\]](#)

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

Leviticus 20:13 specifies the punishment:

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

Without offering any support for his claims, Baruch Levine, in the Jewish Publication Society commentary to Leviticus, boldly assures the reader that "in due course, rabbinic interpretation added this prohibition [of lesbianism] as well [to homosexuality in this verse]." [14]

It is rather on Lev.18:2-3 that criticism of lesbianism seems to be positioned. Most of the exegetical material on these verses tries to recover the reasons why Egypt and Canaan are addressed in this section, and the curious verse against following "their laws." A midrash in Sifra *Aharei Mot* 8:9 offers a solution; it is the practices of the ancestors of Egypt and Canaan which lie behind this phrase:

And what did they do? One man marries another man, a woman marries a woman, and a man marries a woman and her daughter, and a woman marries two [men].

We note that Sifra's contempt is directed at particular kinds of **marriages** -- same sex, polyandrous or with mother and daughter. We may gather that the Sages singled out these kinds of unions as "unnatural", as distinct from the more "archetypal" kinds of prohibited sexual contact such as incest or intercourse with a menstruant. Sifra, it is suggested, is alluding to the fact that the second set of transgressions -- homosexuality, worship of Molech, bestiality and the like -- are considered distinct in the Bible from other prohibitions such as incest or intercourse with a menstruant on account of philological evidence; that is, different set of invectives is drawn upon to describe this second group. The strongest of terms are used to dissuade Israelites from participating in these acts, some of which are *hapax legomena* in the Pentateuch. "Defile", "abomination" (*to'evah*), "impure", "perversion", "iniquity", "spewed out", are all critiques aimed at the transgressor. It is possible that Sifra is also relating to the term *ma'asehin* Lev. 18:3 (here translated as "practice"), a term typically employed post-biblically to relate to some form of sexual transgression, such as the case of Reuven, or that of Beruriah. [15] The expression *ke-ma'aseh 'erev mitzraim... u-ke-ma'aseh eretz kena'an* is also a *hapax legomenon* in the Bible, which is why it has been treated to so many different interpretations.

The secondary literature on the subject, with the exception of the entry on homosexuality in the Encyclopedia Judaica, [16] does not offer this early source as the proof text against lesbianism in early Jewish literature. It concentrates instead on a talmudic text in bYevamot 76a, which appears to contain a vague reference to lesbians, shrouded in a veil of euphemism. The passage discusses the issue of marriage to priests, and specifically the prohibition against priests marrying women who practise *zenut* (Lev. 21: 7, and 13-14 with respect to the High Priest):

R. Huna said: women who are *mesolelot* with one another are disqualified from marrying a priest. And even according to R. Eleazar, who stated that an unmarried man who cohabited with an unmarried woman with no matrimonial intention renders her a harlot (*zonah*), this applies to a man; but when it is a woman, it is merely obscenity (*pritzuta*). [17]

Again we note that the issue relates to marriage; a ruling is required on whether women who are *mesolelot* are considered to practise *zenut*, and are thus prohibited to priests. *Zenut* is a term which is variously defined in the Talmud; [18] but according to R. Huna, women who are *mesolelot* definitely fall within this category, and may thus not marry a priest. However, Rav Huna loses the battle in this case, and the *mesolelot* are placed in another, less serious, category, *prizut*.

The meaning of the term *mesolelot* is unclear; the Soncino edition of the Talmud offers "women who practise lewdness with one another." Our understanding is not assisted by philological analysis. The word appears to be from the *Pi'el* of the root SLL, to which Jastrow assigns the meanings of "to sport," or "to commit lewdness"; in Kal the root means "to swing". [19] It is Rashi who, in his commentary to this talmudic passage, identifies the term as lesbian sexual practice: "As in intercourse of male and female, they rub their femininity [genitals] against one another." Bavli Shabbat 65a-b has the term referring to young girls, who are prohibited from sharing a bed for fear of their becoming accustomed to an "alien body"; according to Rashi, this implies that they would become dependent on having relations with men in unsuitable circumstances. [20] A third use of the term appears in Tosefta Sotah 5:7 (as well as yGittin 8:8 and bSanhedrin 69b), referring to a woman who is *mesolelet* with her young son. [21] In characteristic fashion, contemporary orthodox responsa discuss the term *mesolelot* with reference to questions of artificial insemination, and debate the validity of R. Yitzhak ben Nathan's definition, without dealing with the issue of lesbianism *per se*. [22]

Turning next to the Mishneh Torah, [23] the monumental codification of law written by Moses Maimonides (Rambam), we find that he has addressed the topic more fully:

Women are forbidden to be *mesolelot* with one another. This is the practice of the Land of Egypt, against which we have been warned, as it is said: "Like the practice of the Land of Egypt etc. you shall not do." The Sages said: "What did they do? A man marries a man, a woman marries a woman, and a woman marries two men." Although this practice is forbidden, no flogging is imposed, since there is no specific negative commandment against it, nor is there any intercourse at all. Consequently, [such women] are not forbidden to the priesthood on account of harlotry, nor is a woman prohibited to her husband on account of it, since there is no harlotry in it. However, a flogging for disobedience (*mardut*) should be given, since they have performed a forbidden act. A man should be strict with his wife in this matter, and should prevent women who are known to engage in this practice from visiting her, and prevent her from going to them.

The unit is organized by opening with the Bible and closing with Maimonides' own legal ruling on the issue. First, he positions the topic in Leviticus, and cites Sifra *Aharei Mot*. [24] Then, he refers to the talmudic debate on harlotry as it affects marriage to priests. His closing words offer a means of remedying the precarious situation-- the spouse is responsible for not exposing his wife to these types of women. This conclusion, it may be argued, is not a sociological comment on the threat of lesbian influence, but rather summarizes or harmonizes into a neat conclusion a number of rabbinic elements. For one, Maimonides draws on the midrashic exegesis of the word *to'evah*, "abomination", used to describe homosexuality in Lev.18: 22. Bavli Nedarim 51b suggests, via the hermeneutics of *notarikon*, a type of acronym, that the word means *to'eh 'attah ba*, "you are led astray by it." Maimonides posits, as no talmudic text or commentary does, that the force of lesbianism is crouching at the door, ready to snare one's spouse. Bavli Yevamot classifies lesbianism as *prizut* -- literally, "breaking out" or "going out". Maimonides thus seems to draw on the Bavli and extrapolate that the spouses in question are going out to meet, or conduct liaisons with, lesbians. But as to the identification of these latter women -- their marital status, age, relationships -- we do not know. All we can posit is that the community is aware of this "danger" and must be on guard against it -- not only, as we must realize, for matters of priestly lineage and status, but also and perhaps more importantly in Maimonides' view, to protect one's marriage. [25]

This last suggestion is supported by Maimonides' claim that the spouse in question is to be flogged for disobedience (*mardut*); that is, that she is considered a rebellious wife, a *moredet*. Rambam here employs the technical term for sexual rebellion in a marriage. Rabbinic law provides that a *moredet* who abstains from sexual intercourse with her husband is financially penalized, which is intended, in turn, to convince her of her evil ways. [26] Maimonides thus positions the whole situation as it affects married life. The real issue, it must be emphasized, is the married woman who abstains from intercourse to grant her affections elsewhere.

Both the Tur [27] and the Shulkhan Arukh [28] draw on Maimonides. Jacob ben Asher introduces one piece of information novel to him: "The woman is not prohibited to her husband sexually but is considered as if she is in a state of menstrual impurity." Unfortunately, commentary is silent on this particular innovation, but the Tur suggests that her sexual acts place her in a state of impurity analogous to her monthly cycle -- she is to be distanced from her husband and then readmitted to his life after, we can assume, twelve days. It may be proposed that the Tur wants to place the transgression as some sort of ontological act, one that is involuntary, but can be resolved through placing the wife in a position where she is aware of her error.

Our halakhic survey complete, we can recognize two major conclusions emerging from the classical literature. Lesbianism is nowhere explicitly prohibited. Its relevance is solely addressed with respect to issues of marriage, and whether it should be considered harlotry with respect to marriage to priests, and within the traditional marriage relationship. At issue is the wife's mark of independence from her husband and the effect this has on family life. [29] Even Sifra, in the passage quoted above, refers to women 'marrying' other women -- not women having relationships with others outside the boundaries of the archetypal family. Bonding between women, sexual or otherwise, is not addressed.

The Response

One response to this absence of women loving women, as we have noted, is the paradoxical attempts of modern authors to first position lesbianism within the Bible and then to absolve them from the consequences of the Leviticus laws. One such approach is to emphasize other material which appears to refer to equality and love, and would imply a willingness to embrace all forms of sexuality. [30] Even more creative is Alpert's reaction. She attempts to demonstrate that the critiques levelled at the Canaanites and Egyptians are irrelevant today. The term used in Leviticus for forbidden male unions, *to'evah*, "abomination", is typically employed for forbidden idolatrous acts. She concludes: "The references in Leviticus are specific to cultic practices of homosexuality, and not sexual relationships as we know them today." [31] Consequently, this form of hyperliteralism absolves the Bible of speaking of lesbianism at all, however indirectly. Yet now we are left with no reference, however indirect, to lesbianism in the Bible.

Another response is to propose moving outside the traditional sources, and building a separate women's

tradition. This too is discussed by Alpert. She rejects the assumption of male-female complementarity which she believes underlies all the traditional texts -- that is, the assumption that "in order to be whole, women must be partners with men," and argues for a rethinking of Jewish theology to be grounded in a new understanding of human sexuality.[32]

Yet a third response involves challenging the traditional understanding of various concepts -- in effect, to acknowledge that the lines between what is inside the tradition and what is outside are constantly changing. Thus, certain Jewish authorities have begun to question the boundaries of traditional notions about marriage. Modern Israeli law (like many of its Western counterparts) recognizes certain *de facto* marriages (that is, heterosexual unions which for some reason do not comply with the formal or substantive requirements of a "legal" Jewish marriage, such as the marriage of a *Kohen* with a divorcée), and extends to the 'reputed wife' in such instances some of the benefits of the married woman, such as pension entitlements.[33] The Reform movement within Judaism has recently recognized same-sex marriages.[34] Certain research focuses on the fact that Jewish marriage has always been at least partly contractual in nature, which may imply a certain amount of freedom open to the parties to negotiate essential terms; the variability in ancient Jewish marriage contracts seems to confirm that some such freedom existed.[35]

These paradoxes have their parallel in an issue which has been much debated lately in secular law: should lesbians (and homosexuals) attempt to define their relationships within traditional societal institutions such as 'the family'? Those who argue against this inclusion maintain that 1) the family has historically been a patriarchal, sexist institution, and a (or the) source of women's subordination; 2) the term 'family' as currently understood could not possibly cover the range of lesbian and homosexual relationships. Those who favour inclusion maintain that 1) not all persons experience the family as site of subordination; 2) extending the meaning of 'family' to include lesbian and gay relationships would have a positive effect in transforming that institution; 3) given the legal and social privilege which in the modern world attach to the 'ideal' nuclear family (two spouses legally married and their children), practicality dictates that everyone try to fit within this paradigm.

Underlying this debate is a key assumption: the concept of the nuclear family, and the institution of marriage around which the nuclear family is organized, are legal and social 'constructs'. That is, modern western society (among other systems) has created a fictional ideal of the nuclear family, which belies the fluidity and variability of actual family structures. To support this ideal, an inordinate amount of privilege and legal support has been attached to the nuclear family. Why this has been so is the subject of much debate.

Is this assumption valid within Jewish tradition? Should lesbianism be placed inside or outside this tradition? Or is it time to move beyond this inside/outside dichotomy?[36] The point of such questioning is that it would allow scope within the traditional texts for new readings. Whether it is a structuralist approach to biblical narrative which would allow for women as subject, or a deeper exploration of the role of female bonding in midrashic literature, or an affirmation of women's sexuality, these new ways of reading allow us to leave aside the modern exegetical gymnastics and recognize lesbianism, and the larger concept of women's relationships, as a significant subject in their own right.

Notes

Introductory Note: I wish to acknowledge the comments of Herbert Basser, Diane Kriger, and the participants in the Concordia and Queen's University Colloquia, who have all enriched this paper.

[1] "Challenging Male/Female Complementarity: Jewish Lesbianism and Jewish Tradition," in *People of the Body: Jews and Judaism from an Embodied Perspective*, ed. Howard Eilberg-Schwartz (New York: SUNY Press, 1992), 361-377, here p. 363.

[2] *Nice Jewish Girls*, ed. E. Torton Beck (Boston: Beacon Press, 1982, 1989).

[3] *Lesbiot: Israeli Lesbians Talk*, ed. Tracy Moore (London: Cassell, 1995). For other literature of this type, see Adrienne Baker, *The Jewish Woman in Contemporary Society: Transitions and Traditions* (London: Macmillan, 1993).

[4] Edd. Christine Balka and Andy Rose (Boston: Beacon Press, 1989).

[5] "The Problem of the Body for the People of the Book," in *People of the Body*, pp. 17-46.

[6] "In God's Image: Coming to Terms with Leviticus," in *Twice Blessed*, p. 226, n. 1.

[7] Much of the literature on homosexuality and Judaism is irrelevant for our study. For instance, one of the more recent articles on halakha and homosexuality tries to demonstrate that the attitude towards homosexuality can change (and must change), because halakhic attitudes towards other 'marginal' figures have been modified over time. Robert Kirshner focuses on the *heresh*, the deaf-mute, who once was considered an imbecile,

but has since been granted his rightful place in the tradition: "Halakhah and Homosexuality: A Reappraisal," *Judaism* 37 (1988), pp. 450-458. I suggest that the mere fact that the two bodies of literature hardly intersect demonstrates that the two subjects have less in common than we posit.

[8] Commentary to Mishnah Sanhedrin 7:4.

[9] "Challenging," p. 369.

[10] Alpert, "In God's Image," p. 66.

[11] Elizabeth Sara, "Judaism and Lesbianism: A Tale of Life on the Margins of the Text," in *Jewish Explorations of Sexuality*, pp. 95-10, here p. 96, author's emphasis.

[12] "The Jewish Homosexual and the Halakhic Tradition," in Jonathan Magonet, ed., *Jewish Explorations of Sexuality* (Providence: Berghahn Books, 1995), pp. 83-93, here p. 84.

[13] For a brief but concise treatment of the subject see Rachel Biale, *Women and Jewish Law: An Exploration of Women's Issues in Halakhic Sources* (New York: Schocken Books, 1984), pp. 193-197.

[14] *The JPS Torah Commentary: Leviticus* (Philadelphia: JPS, 1989), p. 123.

[15] Gen. 35:22 records that Reuven, eldest son of Jacob, had intercourse with his father's concubine Bilhah; this matter is referred to as *ma'aseh Reuven* (see, for instance, Mishnah Megillah 4:10). Beruriah, the wife of Rabbi Meir, is alleged to have committed adultery with one of her husband's pupils; this matter is referred to as *ma'aseh shel Beruriah* (see, for instance, *Sefer SHU" T Yehaveh Da'at*, ed. O. Yosef, Jerusalem, 1976, Part 6, *siman* 60).

[16] *Encyclopedia Judaica* (Jerusalem: Keter, 1971), s.v. "Homosexuality". Cf Elizabeth Sara, "Judaism and Lesbianism," pp. 95-101; and Rodney Mariner, "The Jewish Homosexual," pp. 83-93.

[17] This debate also appears in Yerushalmi Gittin 8:8, which assigns the two opinions to the Houses of Hillel and Shammai, a tradition unknown to the Bavli. The Yerushalmi uses the verb *mesoledot*; this is assumed by the commentator P'nei Moshe as well as by Ben-Yehudah to be equivalent to *mesolelot*.

[18] There is an extended discussion in bYevamot 61b. Among other opinions expressed there, R. Akiva considers the *zonah* to be a whore, R. Yehudah considers her a woman incapable of procreation (*ailonit*), and R. Elazar defines *zenut* as "any unmarried contact between a maiden and a man." Josephus defines the *zonah* as an innkeeper. For a summary of these opinions, see L. Epstein, *Marriage Laws in the Bible and Talmud* (Cambridge: Harvard University Press, 1942), pp. 308ff, and Biale, p. 191.

[19] See M. Jastrow, *Dictionary of the Targumim, Talmud Babli, Yerushalmi and Midrashic Literature* (New York, Judaica Press, 1992), s.v. "SLL". See also the *Aruch*, s.v. "SLL", where the meaning is given as "to swing to and fro" and metaphorically "to rub against another"; and Ben-Yehuda, v.8, p. 4072.

[20] A sixteenth century responsum points out that the girls in the Shabbat passage are young virgins because they are still living in their father's house (*Sefer SHU" T Binyamin Zeev*, Jerusalem, 1958, *siman* 164, s.v. "ve-re'iyah"). Tosafot in both Shabbat and Yevamot conclude (with Rav Huna) that all these *mesolelot* are disqualified from marrying priests because they are considered to practise *zenut*.

[21] MS Erfurt of the Tosefta as well as bSanhedrin 69b contain a variation of the verb: *mesolsetlot*. See also S. Lieberman, *Tosefta ki-Fshutah* (New York: Jewish Theological Seminary, 1973), p. 658, lines 30-1. The text in yGittin 8:8 again has the variation *mesoledot* (see n. 17).

[22] For contemporary orthodox responsa on the issue of artificial insemination see, e.g., *Sefer SHU" T Yabia Omer*, section 2, Even ha-Ezer *siman* 1; *Seride Aish*, ed. Y. Weinberg, Jerusalem, 1966, section 3, *siman* 5; *Sefer SHU" T Tzitz Eliezer*, ed. E. Weilenberg, Jerusalem, 1985, section 13, *siman* 97; and *Sefer SHU" T Minhath Yitzhak*, ed. Y. Weiss, London, 1967, section 4, *siman* 5.

[23] 'Issurei Bi'ah 21:8.

[24] For a shorter comment on the subject, see Maimonides' *Commentary to the Mishnah*, Sanhedrin 7:4.

[25] Maimonides has a slightly different wording than the standard Sifra text.

[26] This law is discussed in mKetubot 5:7 and bKetubot 63b. A man who abstains from sexual relations is also considered a *mored*. However, a woman's fine is heavier than that of her male counterpart. Pressure was

applied before a divorce was actually decreed. See L. Epstein, *The Jewish Marriage Contract: A Study in the Status of Women in Jewish Law* (New York: Arno Press, 1973), pp. 146ff, for a discussion on the details of the legal material and its ramifications in later literature.

[27] Even ha-Ezer 20:2.

[28] Even ha-Ezer 20:2.

[29] Even the Tosafot, who consider the act abhorrent, do so because of its effect on the priesthood (high and common) as distinct from concern over the woman herself.

[30] Elizabeth Sara, "Judaism and Lesbianism," p. 101. Alpert also presents this approach in "In God's Image," p. 66.

[31] "In God's Image," p. 68. She also claims that death is not a necessary punishment for the prohibitions in Leviticus 18, but rather is applicable only to chapter 20 and therefore does not apply to the one prohibition in Lev. 18:22.

[32] "Challenging," pp. 362, 372-374.

[33] See, e.g., Daniel Friedman, "The 'Unmarried Wife' in Israeli Law," *Israel Yearbook on Human Rights* 2 (1972) 287.

[34] Contrast the point of view of Biale, who includes lesbianism under the heading of "Sexuality Outside of Marriage." She has defined lesbianism as an act with "genital contact which is sexual in nature but does not involve penetration as in the act of intercourse between man and woman" (p. 193).

[35] As Cohn J. explained in a (relatively) recent Israeli case, Jewish marriage is a "contractual tie, entered into and dissolved at [the parties'] wish"; it does not, like English common law, impose upon the parties a status of marriage from which they cannot retreat without some higher sanction (cited in Friedman, "The 'Unmarried Wife'", p. 296). For discussions on the presumed origins and functions of the Jewish marriage contract, see Louis Epstein, *The Jewish Marriage Contract* (New York: Jewish Theological Seminary of America, 1927, reprinted by Arno Press, 1973). See also Ze'ev Falk, *Jewish Matrimonial Law in the Middle Ages* (London: Oxford University Press, 1966), p.20, who traces to Christian tradition the idea that marriage is not simply a human covenant but a divinely sanctioned bond.

[36] For a discussion of this approach in secular law see, for instance, Brenda Cossman, *Family Inside/Out*, Feminism and Law Workshop Series (University of Toronto, Nov. 18, 1992).

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