

## Kedoshim - Torah, Holiness, Sexual Ethics...and the Library Minyan

By Rabbi Gail Labovitz

Thirteen years ago, in 1991-92, during my senior year of rabbinical school, I took the minutes for what may very well be the 3 most controversial meetings that the Committee on Jewish Law and Standards (CJLS) — the body that decides matters of Jewish law and practice for the Conservative Movement — ever held. I was at the time employed as the Administrative Assistant to the committee, and as such I answered correspondence, coordinated meetings, and took all meeting minutes. Thus, I took the minutes at the three meetings during which the Committee discussed the Conservative Movement's approach to homosexuality and the place of homosexual Jews in our communities. Despite the votes taken at those meetings (which I will discuss in more detail below), votes which prohibited openly homosexual Jews to train as rabbis or cantors in our movement and discouraged Conservative rabbis from performing commitment ceremonies/marriages for same-sex couples, the issue is by no means well-resolved in the Conservative community, and indeed was re-opened by the CJLS this spring.

Kedoshim, is, of course, one of the two parshiot (the other being the one immediately preceding it, Aharei Mot) that contain commandments widely understood to prohibit some or all forms of sexual contact between two men. Leviticus 18:22, in Aharei Mot, reads:

Do not lie with a male in the way of lying with a woman; it is an abhorrent thing.

Lev. 20:13, in this week's parashah, further specifies that both partners to such an act should be put to death, which the rabbis interpret to be by stoning:

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 bloodguilt is upon them.

Yet the on-going ambivalence about this topic in the Conservative Movement is, I think, well demonstrated by the way in which the Movement's *Etz Hayim* humash addresses these verses. Occasionally this volume includes a brief note on "*halakhah l'ma'aseh*" — practical Jewish law and practice — that derives from a particular Torah law. Not surprisingly, the Torah's prohibition on male homoeroticism merits such a note, which reads as follows:

**"18:22. Do not lie with a male** The Torah prohibits male homosexual relations, and the Sages understood the Torah to forbid lesbian relations as well (*Sifra Aharei Mot* 9:8). These



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prohibitions have engendered considerable debate. Conservative Movement resolutions call on congregations to welcome gay and lesbian congregants in all congregational activities.” (p. 691)

Both the United Synagogue and the Rabbinical Assembly have indeed passed resolutions supporting full and equal civil rights for gays and lesbians and calling on congregations to welcome gays and lesbians into their communities. Yet the decision reached by the CJLS on March 25, 1992, was decidedly more complex than this passage suggests. Unable to agree on a single responsum delineating an underlying halakhic analysis of the relevant texts and issues, the CJLS adopted a consensus statement of policy, and, by varying votes, 4 responsa “providing differing philosophical and legal rationales for these agreed upon policies.” What are these “agreed upon policies”? Slightly abbreviated, they are as follows:

- (a) We will not perform commitment ceremonies for gays or lesbians.
- (b) We will not knowingly admit avowed homosexuals to our rabbinical or cantorial schools or to the Rabbinical Assembly or the Cantors’ Assembly...
- (c) Whether homosexuals may function as teachers or youth leaders in our congregations and schools will be left to the rabbi authorized to make halakhic decisions for a given institution within the Conservative Movement...
- (d) Similarly, the rabbi of each Conservative institution, in consultation with its lay leaders, will be instructed to formulate policies regarding the eligibility of homosexuals for honors within worship and for lay leadership positions.
- (e) In any case, in accordance with the Rabbinical Assembly and United Synagogue resolutions we are hereby affirming, gays and lesbians are welcome in our congregations, youth groups, camps, and schools.

This statement received 19 votes in favor and 3 votes in opposition, with 1 abstention.

I can’t speak for the editors of *Etz Hayim* and say why they chose not to represent the complexities, even the contradictions, of the Conservative position in their commentary. What concerns me most at the moment is not the omissions, whether deliberate or otherwise, in this description of our movement’s official statements on homosexuality and homosexual conduct. What I want to address here is the larger omission of context nearly all of us more or less consciously engage in when we discuss these verses. These verses do not appear in isolation; rather, in both chapters they are included in a long list of sexual prohibitions, most relating to sexual pairings considered incestuous, but also including prohibitions against adultery, bestiality, and sex when the female partner is menstruating (collectively, these prohibitions are



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known in Jewish tradition as *arayot*). According to both chapters of Leviticus then, homosexual behavior is only a small part of a larger discussion about sexual behavior and sexual morality, most of which occurs in a heterosexual context. What is more, in this week's parashah in particular, this extended list of sexual prohibitions is directly connected to the holiness of Jewish society; verses 20:7 (and 8) and 20:26 bracket these laws with Divine directives to "Be holy [to Me] for I the Lord am your God [7]/for I the Lord am holy [26]."

This is not to say, however, that the larger context of Jewish sexual ethics, or the question of how those ethics contribute to communal holiness, were entirely overlooked when the CJLS discussed this issue. Interestingly, two members of the Library Minyan today, Rabbis Brad Artson and Elliot Dorff, were intimately involved in the deliberations of the CJLS — Rabbi Artson wrote and submitted the responsum that initiated the debate, and Rabbi Dorff was both a member of the committee and the author of one of the four responsa which were adopted by the Committee. Perhaps even more intriguingly, it was their two responsa, more than any others submitted to the Committee, that attempted to situate a religious response to homosexual conduct in a larger context of Jewish sexual ethics, both hetero- and homosexual.

Because Rabbi Artson's responsum was not adopted by the CJLS, it is not officially printed anywhere, and I am thus unable to quote from it directly. However, in 1988 Rabbi Artson published an article "Judaism and Homosexuality" in the journal *Tikkun* (Vol. 3, No. 2, pp. 52-54 and 92-93), and that piece reflects much of the thinking that influenced his halakhic writing on the topic. (note: Rabbi Artson wrote both this article and his responsum more than a decade ago, and since then his views have developed in new and different directions. In citing his writings of that time, I want it to be clear that I am making no claims whatsoever regarding his current thinking.) There, he wrote that "The Torah and its traditions insist that sex should be directed toward a greater sense of sacredness in the service of human love and caring." Thus, having previously examined and dismissed or refuted a number of traditional arguments against sanctioning sexual relationships between two persons of the same gender, he advocated, both in this article and in the responsum considered by the CJLS, that homoerotic sexual expression be sanctioned in Jewish communities under the same standards and ethics which are generally applied to heterosexual relationships: "We must continue to affirm that sex should take place only in a committed adult relationship. There is no moral reason why two women or two men cannot establish such a respectful, monogamous, and supportive relationship." That is, there should be one standard for sexual ethics, regardless of the gender of the partners. Our current standards for heterosexual relationships, Rabbi Artson suggested at the time, are a sufficient model to be extended to same-sex couples.

Rabbi Dorff's responsum, as suggested by the title, "Jewish Norms for Sexual Behavior: A Responsum Embodying a Proposal," would seem to be somewhat less sanguine about the state of heterosexual relations and ethics in our communities (Rabbi Dorff's 1992 responsa can be



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[http://www.rabbinicalassembly.org/teshuvot/docs/19912000/dorff\\_homosexuality.pdf](http://www.rabbinicalassembly.org/teshuvot/docs/19912000/dorff_homosexuality.pdf). Note: the same caveat discussed above regarding Rabbi Artson's decade-plus old writings applies to those of Rabbi Dorff. Rabbi Dorff is the author of a new responsum on this topic that is currently under consideration by the CJLS; however, since that responsum has not yet been voted on by the Committee, it is not available to be cited in a public forum such as this.). At the center of his piece is a call for the leaders of the organizational arms of Conservative Judaism "to constitute a commission that would spearhead a movement-wide study of both heterosexual and homosexual norms." Although the bulk of the responsum addresses arguments made by other Committee members about homosexuality (most notably those of Rabbi Joel Roth, who argued against lifting traditional prohibitions on homoerotic sexual acts), and Rabbi Dorff's own legal thinking on the status of homosexuals and homosexual activity, he concluded by noting that "Only if we frankly and honestly discuss heterosexual norms of sexual conduct before we address homosexual norms can straights have any credibility with gays on this issue." He noted, for example, statistics suggesting that large numbers of Americans, including Jews, have participated in heterosexual intercourse outside of marriage, and thus outside of the standards set by traditional halakhah. He thus affirmed the centrality and ideal status of marriage as the proper place for sexual activity between two (differently gendered) people, but cautioned that "Contemporary rabbis...must recognize that not everyone will be able to live by that ideal. *This, however, should not mean that Judaism then has nothing to say about sexual norms to those who are not achieving the ideal in this area; it should not be 'all or nothing.'*" (Note: the commissions suggested by Rabbi Dorff was convened, though by the Rabbinical Assembly alone, and on its behalf Rabbi Dorff authored a pastoral letter, "'This is My Beloved, This is My Friend': A Rabbinic Letter on Intimate Relations")

In 2003, the following sentence appeared in the New York Times in an opinion piece by author and sex-columnist Dan Savage:

"In our culture, homosexuality is discussed only when it presents a problem — for the armed forces, for closeted gay students in high school, for those who imagine gays are undermining society." ("G.O.P. Hypocrisy," New York Times, April 25, 2003, A31)

What Savage's insight further suggests is that if we isolate homosexuality as the problem, we thereby imply heterosexuality is not problematic. Although both Rabbi Artson and Rabbi Dorff admirably tried to contextualize homosexuality by suggesting that similar norms should be applied to sexual conduct generally whatever the gender of the partners, both also ultimately relied on the traditional Jewish model of heterosexual marriage as the unproblematic norm and ideal.



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So I turn to one more member of the Library Minyan — one who did not participate in the CJLS discussions on this topic — to pose the deeper question we still need to ask: are the sexual ethics of Leviticus, apart from its stance on male homosexual intercourse, really still our sexual ethics? In her book *Engendering Judaism*, Rachel Adler has written about the Levitical code, “all these laws presuppose power structures and conceptual categories very different from our own” (p. 127 ). She notes, for example, “The primary category demarcation, in this society organized by patriarchal kinships, is the generational boundary between father and son...The first *arayot* mentioned are those that disrupt this flow: sexual breaches in which the son reaches upward toward women appropriated by the older generation...These commandments do not refer to incest as moderns define it: the sexual victimization of younger kin by older, more powerful relatives” (p. 128). And, “Monogamous marriage is not a norm either in these texts or in many later texts” (p. 129). And “The only rapes about which the Torah legislates are destructions of virginity” (p. 130). Is this our sexual ethics? Is this our halakhah?

There are concerns not always fully confronted even by those who would change the overturn the traditional prohibition on homosexual relations and relationships. By asking homosexual relationships to mirror our idealized heterosexual ones, we risk taking for granted the assumption that our understanding of heterosexual marriage need not be questioned. In truth, sanctioning homosexual relationships has the potential to challenge the whole way we conceptualize *heterosexual* marriage Jewishly. We often describe the binding act of a marriage as “*Kiddushin*” and because the word “*Kiddushin*” appears to be from the root “*kadesh*,” we often assume that it implies holiness, that marriage is holy or that it imparts holiness to its participants. But “*kadesh*” also means to designate, and an emphasis on the “holiness” of marriage elides the fact that it is traditionally a non-reciprocal process in Jewish law. The man designates the woman as his wife. He is the agent of this activity, and she his object. What happens, however, when we endorse a relationship in which roles as subject and object cannot be assigned according to gender? Is there any reason a Jewish woman committing herself to another Jewish woman should be treated as more of a person than a Jewish woman marrying a Jewish man? Now, personally I think it is not a bad thing to rethink how we create (and undo) Jewish marriages, but the challenge we face as Conservative Jews has suddenly become much larger than even the already momentous questions of whether we will allow openly homosexual persons to be ordained as rabbis or whether our rabbis will officiate at same-sex commitment ceremonies (or even marriages). To look at homosexuality is to have mirrored back to us significant questions about *all* of our relationships, and what makes sexuality and sexual expressions between persons holy.

Dr. Adler provides us, however, not only with the questions, but guidance as we undertake the task and journey of answering them. She refuses to allow us, her readers, to either rest easy with the text of Leviticus, or to abandon it, for otherwise, “we have forgotten that what makes Torah sacred is not that it has one fixed eternal meaning, but that its meanings are



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inexhaustible. We have forgotten how to wander in the company of the sacred, without fearing that, because we do not know where we are headed, we will be lost. This is the lesson we learn in the Book of Numbers. In the wilderness, we live by trust. We do not put down roots or plan our next destination. When the divine cloud lifts itself off the Tabernacle, we pack up and follow, until we arrive at a place where it can settle for a while.” (p. 126)

Leviticus tells us, repeatedly, ”תהיו קדושים,” “be holy.” Let us together follow the Divine, who is holy and in whose image we are commanded to be holy, and talk of our journey, until we reach the place in which all of our relationships truly are holy and our community is holy. Shabbat shalom.

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