

## **"Two Women Who Were Sporting with Each Other": A Reexamination of the Halakhic Approaches to Lesbianism as a Touchstone for Homosexuality in General<sup>1</sup>**

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### **I. Introduction**

#### *A Modern Perspective for the Discussion*

Modern scholarly research places female homoeroticism within the general category of homosexuality, but the study of this phenomenon includes broad sub-categories, each of which is worthy of a separate discussion. The current article is limited to the attitude of the halakhah to sexual relations between women, and is not concerned with homosexual identity or single-sex emotional relationships.

Although the homosexual sexual identity, in its modern sense, developed only in the nineteenth century, as was shown by Michel Foucault,<sup>2</sup> the view that regarded the homosexual act<sup>3</sup> as particularly abominable and unnatural developed extremely early in the Judeo-Christian tradition.<sup>4</sup> This article will examine the roots of this attitude in the Jewish halakhah.

Yaron Ben-Naeh recently published an important article on male homosexuality in Jewish Ottoman society, with an extensive presentation of the late rabbinical sources that relate to the phenomenon, that was widespread among Jews in Muslim society, in which "attraction to members of the same sex was considered [...] to be part of the inclusive and normal set of male modes of conduct."<sup>5</sup>

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2 Michel Foucault, *Histoire de la sexualité* (Paris: Gallimard: 1984) 57-60.

3 Also of those not necessarily of a homosexual orientation, in the sense known to us in modern Western society.

4 Thus already in Rom 1:26: "For this reason God gave them up to degrading passions. Their women exchanged natural intercourse for unnatural." See below; see also Arthur Frederick Ide, *The City of Sodom and Homosexuality in Western Religious Thought to 630 CE* (Dallas: Monument, 1985); Mark D. Jordan, *The Invention of Sodomy in Christian Theology* (Chicago: Univ. of Chicago Press, 1997); John Boswell, *Christianity, Social Tolerance and Homosexuality* (Chicago: Univ. of Chicago Press, 1980); Bernadette Joan Brooten, *Love between Women: Early Christian Responses to Female Homoeroticism* (Chicago: Univ. of Chicago Press, 1996) 61-64.

5 Y. Ben-Naeh, "Same-Sex Sexual Relations among Ottoman Jews," *Zion* 66,2 (2001) 171-200 (He-

The biblical and rabbinic perspective from which he assumes the halakhic rulings that he documents issued is based on Daniel Boyarin's assertion that the biblical prohibition of *mishkav zakhar* is limited solely to anal relations between men, and was so understood in the Talmudic period.<sup>6</sup>

We maintain that Boyarin is imprecise, since (a) his thesis reflects only the BT; and (b) this attitude no longer enjoyed exclusivity in the later halakhic literature (mainly under the influence of Maimonides).

A broader view of the sources in the Tannaitic and Amoraic literature relating to single-sex relations will enable us to suggest two different attitudes to this phenomenon, that infuse the Talmudic and rabbinic sources throughout Jewish history.

### The Accepted View and Boyarin's Hypothesis

The accepted, and common, public attitude towards homoerotic sexual relations frequently connects these relations, in an all-inclusive manner, with the modern conception of homosexuality. Based on this stance, Prof. Avraham Steinberg recently provided a fundamental and decisive four-point summary of the attitude of the halakhah to the issue:

Homosexuality is a sexual deviation, that is unnatural, is detrimental to human dignity, and attacks the purposes of sex.<sup>7</sup>

All that the Bible itself, however, contains is the prohibition imposed upon the male, against lying with another male: "Do not lie with a male as one lies with a woman; it is an abhorrence" (Lev 18:22); and again: "If a man lies with a male as one lies with a woman, the two of them have done an abhorrent thing;

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brew); the quotation is from p. 187; see also Y. T. Assis, "Sexual Behaviour in Medieval Hispano-Jewish Society," in Ada Rapoport-Albert and Steven J. Zipperstein (eds.), *Jewish History: Essays in Honour of Ch. Abramsky* (London: P. Halban, 1998) 50-51, who brings examples to show that the prevalent phenomenon of homosexuality among the Jews of medieval Spain can be traced to the alien influences of the cultural norms in which they lived. He argues that the phenomenon spread mainly among the elite stratum, that disregarded the halakhic prohibition of such behavior.

6 Ben-Naeh, "Same-Sex Sexual Relations," 189. See Daniel Boyarin, "Are There Any Jews in 'The History of Sexuality'?", *Journal of the History of Sexuality* 5,3 (1995) 333-55. Surprisingly, current scholarly research (such as that by Ben-Naeh) does not seriously relate to the position of Satlow (see below, nn. 11, 21), that is closer to the stance that we wish to propose in this article (see below, n. 66).

7 A. Steinberg, "Medical, Moral and Halachic Aspects of AIDS," *Assia* 12, 3-4 (1989) 24 (Hebrew; also appearing in *Assia* 7 [Jerusalem, 1993] 79-91). Steinberg and many of the others who attack homosexuality rely on Norman Lamm. See Norman Lamm, "Judaism and the Modern Attitude to Homosexuality," *Encyclopaedia Judaica Yearbook 1974: Events of 1973* (Jerusalem: Keter, 1974) 200-202. For Lamm's influence on the fashioning of the positions toward homosexuality adopted by American Orthodox Judaism, see David Biale, *Eros and the Jews: From biblical Israel to Contemporary America* (New York: BasicBooks, 1992) 212-14.

they shall be put to death" (20:13), which the Jewish halakhic tradition commonly interprets as anal penetration.<sup>8</sup> One interpretive possibility, therefore, is that the biblical opposition is directed only against this specific act, and does not constitute a sweeping ban of single-sex relations.

This direction in the interpretation of the Bible and rabbinic dicta is advanced by Daniel Boyarin,<sup>9</sup> who assumes that the biblical prohibition was not perceived in the rabbinic sources as opposition to homosexuality on the whole, but only to anal relations between men. Based on his study of the biblical and rabbinic sources, he concludes:

This [the rabbinic literature] provides us then with further evidence that not only is there no category, no "species of human being," of the homosexual, there is, in fact, no category formed by same-sex acts per se either. Neither people nor acts are taxonomized merely by the gender of the object of genital activity. Male-male anal intercourse belongs to a category known as "male intercourse," while other same-sex genital acts – male and female – are subsumed under the category of masturbation, apparently without the presence of another male actor introducing any other diacritic factor into the equation.<sup>10</sup>

Boyarin therefore continues his search for an answer to the central question that troubles him: "If it is not same-sex eroticism per se that worries Leviticus, what cultural force is it that could have produced the powerful interdiction on male anal intercourse?"<sup>11</sup> His answer:

Thus when one man "uses" another man as a female, he causes a transgression of the borders between male and female, much as by planting two species together he causes a transgression of the borders of species.<sup>12</sup>

8 See *Sifra*, *Kedoshim* 9:14 (ed. I. H. Weiss, *Sifra d'be Rav* [Vienna: n.p., 1862], fol. 92b).

9 See Boyarin, "Are There Any Jews."

10 Boyarin, "Are There Any Jews," 340. For various reasons Olyan supports such an interpretation for the biblical stratum itself. See S. M. Olyan, "'And with a Male You Shall Not Lie the Lying Down of a Woman' - On the Meaning and Significance of Leviticus 18.22 and 20.13," *Journal of the History of Sexuality* 5,2 (1994) 179-206.

11 Boyarin, "Are There Any Jews," 340-41.

12 Boyarin, "Are There Any Jews," 343. For crossdressing, see M. L. Satlow, "'They Abused Him Like a Woman': Homoeroticism, Gender Blurring, and the Rabbis in Late Antiquity," *Journal of the History of Sexuality* 5,1 (1994) 12-14. For Boyarin, the "transgression [i.e., crossing] of the borders" occurs only when a male penetrates another male body, and he therefore adds, in relation to sexual relations between women, that "the Rabbis (in contrast apparently to the Romans) did not imagine female-female sexual contact as involving any form of penetration that they recognized as such" (344-45). Although the Talmud does not mention sexual penetration among women by the use of an artificial penis, this device was itself known to the Talmud, as an implement of a sexual nature used by women for autoerotic satisfaction. Accordingly, there was no reason why they should not use it as they saw fit for relations between two women (Boyarin's philological argument that is based on *sl*, meaning to rub or chafe, is not a decisive proof for this; see below, n.

According to Boyarin's view (the "limiting interpretive approach"), the biblical prohibition does not recoil in comprehensive fashion from everything connected with the homosexual life style, and restricts its opposition to the specific act of anal sexual relations between males. Such a reading of the biblical prohibition will naturally differ from the position voiced by Steinberg (the "expansive interpretive approach") on two points: (a) according to this interpretive approach, the Bible (according to the rabbinic interpretation) shows no opposition to a homosexual erotic relationship that lacks anal penetration; (b) as understood by the Rabbis, the Bible does not frown upon sexual relationships between women. Consequently, we cannot accept Steinberg's assertions that the halakhah regards these two as "unnatural" sexual relationships;<sup>13</sup> nor, then, can these be classified as "deviations."

The expansive (and more commonly accepted) view assumes that the biblical prohibition of *mishkav zakhar* expresses general opposition to all forms of homosexuality; the Bible merely gave an example, that is to be understood as directed to all the practices numbered among other nonheterosexual contacts.<sup>14</sup>

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54, especially in light of the probability that *mesolelot* is merely a corruption of the Land of Israel *mesaldot*; see below). For the artificial penis mentioned in the Talmud, see *b. Avodah Zarah 44a*: "What is the meaning of 'an abominable thing' [2 Chr 15:16]? R. Judah said: [An object] that increases licentiousness, as R. Joseph taught: She made a phallus to it, and engaged in relations with it every day." *Sifre* on Deuteronomy, para. 318 (ed. Finkelstein [Berlin: Ha-Agudah ha-Tarbutit he-Yehudit be-Germaniyah, 1939] 363-64) provides an intriguing juxtaposition between the exegesis of Maacah's making 'an abominable thing' for Asherah and the following exposition: "'They vexed Him with abominations' [Deut 32:16] - this refers to sodomy," although *Sifrei* apparently does not find an allusion to a phallus in the wording "an abominable thing." See also H. Szesnat, "Philo and Female Homoeroticism," *Journal for the Study of Judaism* 30,2 (1999) 140-41; for the question of whether such penetration in lesbian relations could be sufficient reason to regard this as intercourse in the legal sense, see Brooten, *Love between Women*, 68-69.

- 13 It is commonly assumed by Judaic scholars that the conception of a "natural" sexual act for humans is absent from the ancient sources of biblical and rabbinic Judaism, and is rather a Greek-Stoic notion, that was first used to explain the perceptions of the Torah held among Jewish Hellenist scholars in the Apocrypha and in the writings of Philo. See J. D. G. Dunn, "Romans 1-8," *World biblical Commentary*, vol. 38A (Dallas: Word Pub., 1988) 64, 66-67. For the "natural" conception in the Roman world of what was permitted or not, see also Catharine Edwards, *The Politics of Immorality in Ancient Rome* (Cambridge: Cambridge Univ. Press, 1993) 88 n. 87, and the entire chapter that engages in a definition of what was regarded as "natural" in the Roman world (63-97); see Michael L. Satlow, *Tasting the Dish: Rabbinic Rhetorics of Sexuality* (Atlanta: Scholars Press, 1995) 215 n. 135; idem, "'They Abused Him Like a Woman,'" 7 n. 16, and the additional sources cited by Anat Sharbat, "Homosexuality in the Talmudic Sources," Master's thesis, Bar-Ilan University, 2001, 40 n. 1 (Hebrew).
- 14 Sanders (E. P. Sanders, *Paul: A Very Short Introduction* [Oxford: Oxford Univ. Press, 1991] 110-13) understands the biblical prohibition in this manner, and he does not comment that the rabbinic literature differs in this respect. Sanders is followed by Raymond Edward Brown, *An Introduction to the New Testament* (New York: Doubleday, 1996) 529; Dunn, "Romans 1-8," 65-66; R. T. Alpert, "'In God's Image': Coming to Terms with Leviticus," in Christie Balka and Andy Rose (eds.), *Twice Blessed: On Being Lesbian or Gay and Jewish* (Boston: Beacon, 1989) 61-70.

One possible touchstone to determine the points of contention between the two approaches could be formulated as follows: according to the limiting method set forth above, it could be said that the institutionalizing of the same-sex bond by a contractual commitment (such as a "*ketubah*" and the like) even has a positive aspect, since this, in some sense, constitutes a "covenant" struck in a context similar to the heterosexual family unit. According, however, to the expansive view (that the Torah's opposition is to the phenomenon of homosexuality itself), the attempt to institutionalize such a bond with a *ketubah* and marriage ceremony constitutes redoubled insolence against Heaven.<sup>15</sup>

## II. The Background for a Discussion of the Halakhic Midrash in *Sifra*

Even if we accept the expansive interpretive option, it should be recalled that the Bible itself does not relate directly to female homoeroticism.<sup>16</sup> The omission of this subject by R. Judah ha-Nasi in his redaction of the Mishnah joins together with the fact that the references in the various halakhic collections of the Oral Law to single-sex attraction between women are short and are not highlighted in these collections. The evidence from the textual stratum, therefore, enables us to already draw the following conclusion concerning the world of the Tannaim, and also that of the Amoraim (see below): they regarded this phenomenon as extremely marginal; otherwise, it would certainly have been given greater prominence than the few scattered comments to be found in this litera-

15 An additional argument that should be mentioned here, that is somewhat proximate to the limited interpretive approach, would say that the biblical repulsion by homosexuality is connected to pagan cultic ceremonies. Here as well, however, a systematic study of the commentators teaches of a distinction to be drawn between two orientations: one argues for a strong bond between the biblical opposition and the cultic ceremonies, with a consequent weakening of the prohibition in later periods, in which the ban gradually freed itself from this connection; and the second approach, that viewed this linkage in the Bible, from the outset, as tenuous. That is to say: this praxis was known to the Bible from the pagan world, and it consequently mentions it in this context, but it cannot be said that the sole reason for the biblical prohibition of homosexuality was the latter's pagan connection. For the commentators that link the pagan ceremonies with the opposition by the Bible, see Sharbat, "Homosexuality in the Talmudic Sources," 1-3 (see also the comment by Boyarin, "Are There Any Jews," 344: "There is very little (or no) evidence that I know of to support such a view"); in contrast, for the "*kadesb*" (cult male prostitute) in the ancient world, see Robert Graves and Raphael Patai, *Hebrew Myths* (Givatayim: Masada, 1967) 160 para. 5 (Hebrew); see also the remark by Suzanne Daniel-Nataf, in *Philo of Alexandria: Writings*, ed. Suzanne Daniel-Nataf, vol. 3: *Exposition of the Law, Part Two* (Jerusalem: Bialik Institute, 2000) 95 n. 66 (Hebrew); Satlow, "They Abused Him Like a Woman," 11-12; M. I. Gruber, "The *Qades* in the Book of Kings and in Other Sources," *Tarbiz* 52 (1983) 167-76 (Hebrew).

16 The attempts presented by T. Horner, *Jonathan Loved David: Homosexuality in biblical Times* (Philadelphia: Westminster, 1978) 40-46, in order to find allusions in the language of the Bible that would enable us to depict the narrative of Ruth and Naomi as a homoerotic love story, are not convincing.

ture.

It can hardly be determined, however, whether this "marginality" ensues from the fact that such phenomena were almost unknown to the Rabbis, or whether they did not consider such practices to be sufficiently severe as to warrant much attention.<sup>17</sup> In either event, it is noteworthy that we have not found in the extant sources any opinion that fully and explicitly legitimizes such actions, unless we were to insist that the silence of the sources is actually a way of permitting lesbianism, by intentional disregard.

### The Halakhic Midrash in *Sifra*

The text in *Sifra* (*Abarei Mot* 13:10 [ed. Weiss, fol. 85c-d]) is apparently the only text among all the extant Tannaitic collections that relates to female homoeroticism:<sup>18</sup> [...] or "You shall not copy the practices of the land of Egypt [where you dwelt], or of the land of Canaan" [Lev. 18:3] – one could think [that this means] that they shall not build houses or make plantings like them! Scripture teaches "nor shall you follow their laws" [ibid.] – I [i.e., the Holy One, blessed be He] spoke only of the laws enacted for them, for their fathers, and for their fathers' fathers. And what would they do? A man would marry a man, and a woman, a woman; a man would marry a woman and her daughter; and a woman would be married to two [men], therefore it is said, "nor shall you follow their laws."<sup>19</sup>

- 17 Satlow, "They Abused Him Like a Woman," 15, is of the opinion that the infrequent references to the subject in the rabbinic literature are due to the male authorship of this literature for a male audience. Silence concerning female homoeroticism is a very well-known phenomenon in various cultures; see Ben-Naeh, "Same-Sex Sexual Relations"; Roy Porter and Mikulas Teich (eds.), *Sexual Knowledge, Sexual Science: The History of Attitudes to Sexuality* (Cambridge: Cambridge Univ. Press, 1994) 90 and nn. 68-69; 99 and n. 13. Such restraint on these topics is also quite pronounced in the medieval Jewish sources; see Avraham Grossman, *Pious and Rebellious: Jewish Women in Medieval Europe* (Jerusalem: Zalman Shazar Center, 2001) 233 and n. 81 (Hebrew). It should be noted, however, that in no wise can it be said of the Talmudic literature, specifically, that it refrains from discussing sexual topics, openly and in detail, on grounds of modesty.
- 18 Even if the question of the time of the redaction of the *midrashei ha-halakhah* has not been resolved, with the early view dating them to the Tannaitic period, and the later school placing their redaction after the conclusion of the Talmud, these midrashim unquestionably contain only Tannaitic material. See Jacob Nahum Epstein, *Prolegomena ad litteras Tannaiticas* (Jerusalem: Magnes, 1957) 501-746 (Hebrew); Chanoch Albeck, *Introduction to the Talmud Babli and Yerushalmi* (Tel Aviv: Devir, 1969) 79-143 (Hebrew); Menachem Elon, *Jewish Law: History, Sources, Principles*, trans. B. Auerbach and M. J. Sykes (Philadelphia: Jewish Publication Society, 1994), vol. 3, 1047-49; Yonah Frankel, *Darkei ha-Aggadah ve-ha-Midrash* (The Ways of the Aggadah and the Midrash) (Givatayim: Yad la-Talmud, 1991), vol. 1, 4 (Hebrew); for additional literature on *Sifra*, see Jacob Neusner, *Introduction to Rabbinic Literature* (New York: Doubleday, 1994) 271 n. 1 and the bibliography listed there.
- 19 The citation is from *Torat Kobanim*, the vocalized MS. Rome (Assemani 66). There are no significant differences between the version in ed. Weiss, that is based on MS. Oxford, and MS. Rome cited here. Concerning "building houses" that is mentioned here see: Marc Hirshman, *Torah for*

*Sifra* bases the series of prohibitions that it lists here on Lev 18:3, in the section of the incest prohibitions: "You shall not copy the practices of the land of Egypt where you dwelt, or of the land of Canaan to which I am taking you; nor shall you follow their laws."<sup>20</sup> The practice of marrying a woman and her daughter mentioned by *Sifra* is among the incest prohibitions: "Do not uncover the nakedness of a woman and her daughter" (Lev 18:17), and also: "If a man marries a woman and her mother, it is depravity" (Lev 20:14); the prohibition of a woman being married to two husbands has its source in the prohibition of adultery, that already appears in the Ten Commandments: "You shall not commit adultery" (Exod 20:13), and more graphically in Lev 18:20: "Do not have carnal relations with your neighbor's wife and defile yourself with her";<sup>21</sup> while the prohibition for a man to marry another man is the midrash's interpretation of Lev 18:22: "Do not lie with a male as one lies with a woman."<sup>22</sup> The only prohibition in this list that is not mentioned in the Bible is that of a woman marrying

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*the Entire World* (Tel Aviv: Hakibbutz Hameuchad, 1999) 50 n. 86 (Hebrew).

- 20 The Rabbis portrayed Canaan and Egypt as the most licentious among nations, as in, e.g., *Sifra, Abarei Mot* 13:6-8 (ed. Weiss, fol. 86a). The assumption, however, that there is some historical basis to the picture painted by the Bible of these two peoples as immersed in sexual misconduct is quite doubtful. The relevant scholarly research has not uncovered any testimonies that the Egyptians and the Canaanites lived in an especially "permissive" manner. The surviving Mesopotamian and Hittite codes of laws attest that adultery, incest, homosexuality, and bestiality were considered to be serious crimes, and even if Mesopotamian myths attributed such conduct to the gods, acts of this nature were not permitted in human society. See Baruch J. Schwartz, *The Holiness Legislation: Studies in the Priestly Code* (Jerusalem: Magnes, 1999) 160-62 (Hebrew). Although the Rabbis might already have regarded these biblical testimonies as historical truth, since they never exhibited an exacting attitude to historical questions, what they knew of the practices of the Greek world could have been intermingled with the practices that are described in *Sifra* as licentious and are attributed to Canaan and Egypt (see below, n. 34). Another possibility is that this a faint echo of the licentiousness expressed in the myths; see J. Fleishman, "Name Change and Circumcision in Genesis 17," *Beit Mikra* 167 (2001) 319 (Hebrew). To a certain degree, such a projection on the world of the Canaanites is suitable, once we understand that they were perceived as a foreign "other"; see R. L. Cohen, "Before Israel: The Canaanites as Other in biblical Tradition," in: Laurence J. Silberstein and Robert L. Cohen, *The Other in Jewish Thought and History* (New York: New York Univ. Press, 1994) 74-89. One possibility, however, is that a certain familiarity with Roman culture in Egypt is reflected in these midrashic comments, as in the well-known phenomenon of brother-sister marriages in the Egyptian royal families ca. 2000 BCE (in the following eleven generations). Similarly, in Athens a brother could legally marry his paternal sister, and in Sparta, his maternal sister. See K. Hopkins, "Brother-Sister Marriage in Roman Egypt," *Comparative Studies in Society and History* 22,2 (1980) 303-54, esp. 311. See also Philo, *The Special Laws* 3:22-23 (Philo, trans. F. H. Colson [Cambridge, MA and London: LCL, 1937], vol. 7, 487-89). We also know of men in Egypt of the time who lived together on a permanent basis with their male partners ("concubinage"); for testimonies to this, see John Boswell, *Same-Sex Unions in Premodern Europe* (New York: Villard, 1994) 55.
- 21 Cf. S. Friedman, "'The Wife of Two' (Comment on the Article by Arye Edrei)," *Shenaton ha-Mishpat ha-Ivri (Annual of the Institute for Research in Jewish Law)* 21 (1998-2000) 36 (Hebrew).
- 22 See Satlow, *Tasting the Dish*, 189 n. 16.

another woman. Why was this practice added to the other prohibitions in the list in *Sifra*? In order to understand this, we must first understand the meaning of this prohibition of single-sex "marriages."

The marriages between two men, or between two women, mentioned here are most likely marriage in the conventional sense of an institutionalized bond, for any attempt to claim that this is a euphemism for sexual relations would be baseless, and is unsupported by any similar linguistic usage in the rabbinic literature.<sup>23</sup>

It may therefore be reasonably assumed – as strange as this might seem at first glance – that *Sifra* was cognizant, in one way or another, of the desire by single-sex partners to institutionalize the bond between them, which it prohibits, in addition to the biblical proscription of *mishkav zakhar*. Saul Lieberman also maintained that the Rabbis were aware of the institution of marriage between two men; according to him, this was based on information that reached them regarding the practices of Roman emperors such as Nero and others.<sup>24</sup>

What is known of Graeco-Roman culture also indicates that the institution of single-sex marriage did not exist in its established heterosexual form, but this culture definitely tolerated a long-term bond with a sort of permanent commitment between the single-sex partners.<sup>25</sup> This phenomenon was quite wide-

23 As is also maintained by Schwartz, *The Holiness Legislation*, 171-72 n. 71 (as for the Bible itself, see n. 72); and by Rebecca Alpert: Rebecca T. Alpert, "Lesbianism," in: Paula E. Hyman and Deborah Dash Moore (eds.), *Jewish Women in America* (New York: Routledge, 1997), vol. 1, 829; cf. *Sifra* on Numbers, *Beha'alotekha*, para. 90, in which the exegete bases his exposition: "[...] that a man would marry his sister, the sister of his father, and the sister of his mother" on "weeping, every clan apart" (Num 11:10). In this context we should recall the commentary by Rashi on *b. Shabbat* 146a, s.v. "*Ke-she-Ba Nabash*": "'For when the serpent came upon Eve' - when he counseled her to eat from the tree he engaged in relations with her, as it is written, 'The serpent duped me [*hisiani*, Gen 3:13] - the language of marriage [*nisu'in*]" (see also the commentary by Rashi on *b. Sotah*, s.v. "*Nabash ha-Kadmoni*"). It must be stressed, however, that this does not constitute a proof, since Rashi seeks to provide a rationale for the Talmudic exposition that the serpent engaged in relations with Eve, which he does on the basis of a phonetic resemblance; this obviously is not a serious semantic argument, as can be seen in Rashi's own commentary on the Torah, in which he interprets *hisiani* as "he deceived me." For such expositions, see Frankel, *Darkei ha-Aggadah ve-ha-Medrash*, 107-37, esp. 118-19.

24 See S. Lieberman's comments on *Lev. Rabbah*, in the edition of Mordechai Margulies (Jerusalem: Mossad Harav Kook, 1953-1954 [New York and Jerusalem: Jewish Theological Seminary of America, 1993]) 877; Elimelech Halevi, *Values of the Aggadah and the Halakhah in Light of Greek and Latin Sources*, vol. 1 (Tel Aviv: Devir, 1979) 242 (Hebrew).

25 See the example in Boswell, *Same-Sex Unions*, 60, from the *Symposium* of Plato: "For I conceive that those who begin to love them [boys] at this age are prepared to be always with them and share all with them as long as life shall last" (*Plato*, vol. 3, trans. W. R. M. Lamb [Cambridge, MA and London: LCL, 1983] 111). Another example from the *Symposium* is the love of Pausanias and Agathon, which draws very near to a homosexual marriage: "if we make friends with the god and are reconciled, we shall have the fortune that falls to few in our day, of discovering our proper favourites. And let not Eryximachus retort on my speech with a comic mock, and say I refer to

spread, and not only among the imperial Roman circles of which Lieberman speaks, but also among the public at large. We may therefore assume, with a great deal of confidence, that the passage in *Sifra* reflected a certain degree of rabbinic familiarity with this practice.<sup>26</sup>

The inclusion of "woman [marrying] woman" in the list of prohibitions in *Sifra* is now understandable. The two assumptions set forth above, following the expansive interpretive approach, correspond to what is stated in *Sifra*: (a) this passage reflects the stringent attitude to the institutionalization of the single-sex bond; and (b) it speaks of male and female homosexuality in the same breath.

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Pausanias and Agathon; it may be they do belong to the fortunate few, and are both of them males by nature; what I mean is - and this applies to the whole world of men and women - that the way to bring happiness to our race is to give our love its true fulfilment: let every one find his own favorite, and so revert to his primal estate" (p. 147). According to K. Dover, "Classical Greek Attitudes to Sexual Behavior," *Arethusa* 6,1 (1973) 72 n. 37, this refers to a sort of homosexual "marriage"; he is followed by H. A. Shapiro, "Courtship Scenes in Attic Vase-Painting," *American Journal of Archaeology* 85 (1981) 137, who notes that this passage is the best testimony to the phenomenon of same-sex marriages in Athens. See also Boswell, *Same-Sex Unions*, 60. Boswell, 53-107, presents several forms of same-sex bonds in Greece and Rome from the fourth century BCE to the fourth century CE, one of which is a long-term union that includes commitment, joint residence, and a shared life together. Boswell demonstrates from writings of the period that such a union was parallel to heterosexual married life. Same-sex couples regarded their relationship as stable and as longlasting, just as the bond of heterosexual marriage. Thus, e.g., in his speech in the *Symposium* of Plato, Aristophanes relates the story of the god separating the three types of creatures that he brought into existence: man-man, woman-woman, and androgynous, that was formed of man-woman; since the god separated them, each perpetually seeks the part belonging to it (i.e., male to male, and female to female). "When one of them [...] happens on his own particular half, the two of them are wondrously thrilled with affection and intimacy and love, and are hardly to be induced to leave each other's side for a single moment. [...] No one could imagine this to be the mere amorous connexion, or that such alone could be the reason why each rejoices in the other's company with so eager a zest. [...] Suppose that, as they lay together, Hephaestus should come and stand over them, and showing his implements [i.e., his anvil, bellows, tongs, and hammer] should ask: 'What is it, good mortals, that you would have of one another?' - and suppose that in their perplexity he asked them again: 'Do you desire to be joined in the closest possible union, so that you shall not be divided by night or by day? If that is your craving, I am ready to fuse and weld you together in a single piece, that from being two you may be made one; that so long as you live, the pair of you, being as one, may share a single life; and that when you die you may also in Hades yonder be one instead of two, having shared a single death. Bethink yourselves if this is your heart's desire, and if you will be quite contented with this lot.' Not one on hearing this, we are sure, would demur to it or would be found wishing for anything else: each would unreservedly deem that he had been offered just what he was yearning for all the time" (*Plato*, vol. 3, 143-45). Thus, joint burial was a sign of an intimate relationship, of the type known from its heterosexual parallel. See also the passage in the *Symposium* portraying Achilles and his lover Patroclus (105-7). For additional references, see Boswell, *Same-Sex Unions*, 59 n. 25. For same-sex marriages in the classical world, see also the testimony of Brooten cited by Satlow, "They Abused Him Like a Woman," 25 n. 75; see also what is hinted by John J. Winkler, *Constraints of Desire: The Anthropology of Sex and Gender in Ancient Greece* (New York: Routledge, 1990) 182.

26 For Roman Egypt, see above, n. 19.

The passage from *Sifra* cited above starts from the assumption that the prohibition in Leviticus against following "their laws" is a general rule teaching Israel not to follow the practices of the licentious foreign peoples, and Scripture specifies male homosexuality only as an example, while the prohibition applies equally to all homosexual relations. Since the midrash understands the prohibition of a man lying with a male "as one lies with a woman" in its expansive sense, and bans the institutionalization of the same-sex bond between men ("A man would marry a man"), then it also relates to "a woman [would marry] a woman" as an act that is explicitly prohibited in these verses.

This, then, is direct evidence of the existence of the expansive interpretation in the Tannaitic literature. Already in this passage from *Sifra* we see that the limiting-interpretive manner in which Boyarin presents the accepted interpretation of the rabbinic understanding of the prohibition in Leviticus is inaccurate, since this midrashic passage unequivocally demonstrates the Land of Israel Tannaitic expansive interpretation of the verses in Leviticus.<sup>27</sup>

And now, just when we are forced to disagree with Boyarin, we need another of his hypotheses, that could aid in more clearly mapping out the relevant Talmudic sources.

The general assumption that Boyarin sets forth in *Carnal Israel*, his important book on sexual conceptions in the world of the Rabbis, is that a distinction is to be drawn between the Greek-speaking Jewish Hellenistic world, for which sexuality posed a clear barrier to adherence to God, on the one hand, and Hebrew-speaking rabbinic Judaism, that typically was inclined towards the opposing understanding of the role of sexuality in the service of the Lord.<sup>28</sup>

Boyarin then takes another step forward, and speaks of a tremendous disparity between the Land of Israel and Babylonian attitudes to sexual pleasure:

The overall picture that I can draw, albeit guardedly, is of an earlier Palestinian discourse on sexuality that seems closest in spirit to that of the Stoics, who indeed considered sex to be an irritating and necessary part of human existence but also an "enduring aspect of the personality." [...] The view encoded in the later tradition and especially its Babylonian variant, however, strongly opposed even this ambivalence. Both the earlier and the later views assert the value of procreation, but only the later and Babylonian variants seem to regard sexuality

27 The wording in *Sifra*: "the laws that have been enacted for them and for their forefathers" further highlights the institutionalized nature here.

28 Daniel Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture* (Berkeley: Univ. of California Press, 1993) 31 ff.; see 35: "Because the Rabbis understood the human being as a body, sexuality was an essential component of being human, while in platonized formations, one could imagine an escape from sexuality into a purely spiritual and thus truly 'human' state."

as a beneficence of God for the pleasure and well-being of humans.<sup>29</sup>

According to these assumptions, *Sifra*, as a Land of Israel source, adopted the expansive interpretive approach, as did similar Jewish Hellenistic modes of biblical interpretation. The Babylonian Rabbis, in contrast, who were farther removed from the Hellenistic way of life, favored the limiting interpretive approach (see below).

The suggestion we raise in the light of these assumptions is also supported by the fact that an additional Amoraic source that expresses opposition to the institutionalization of such a single-sex bond also is from the Land of Israel (to further confuse the issue, this teaching is transmitted in the name of Babylonian Amoraim!); the Amora R. Huna, in the name of R. Yose (Joseph), transmits an aggadic teaching:<sup>30</sup>

The Flood generation was expunged from the world only because they wrote *gemumasiyot* for a male and a beast.<sup>31</sup>

*Gemumasiyot*<sup>32</sup> are marriage contracts (*ketubot*); the manuscript versions of this

29 Boyarin, *Carnal Israel*, 56. He does not offer sources from non-Jewish Babylonian society that could explain such a shift, nor can we add significantly to this, since, to the best of our knowledge, the Zoroastrianism of the Sasanian empire did not profess such a belief. This is certainly so for the Manichaeist sources, that frequently demanded of man sexual abstinence. See J. C. Reeves, "Manichaeans," *Encyclopedia of the Dead Sea Scrolls*, vol. 1 (Oxford: Oxford Univ. Press, 2000) 506. Note should be taken, however, of a fascinating single point of similarity between the worlds of Talmudic halakhah and Zoroastrianism: both commonly believed that all human actions in daily life are potentially religiously ordained deeds, and no domain lacks divine mandate. See M. Boyce, "The Continuity of the Zoroastrian Quest," in: Whitfield Foy (ed.), *Man's Religious Quest* (London: Routledge, 1978) 615. We might surmise that such a religious stance could permit itself sexual pleasure, based on the assumption known to us from other similar religious dispositions that the divine element infuses all, although we cannot produce convincing evidence of this from the Zoroastrian writings. We might mention, with a great deal of reservation, the fact that Hinduism, which was not so distant from Persia, contains a unique amalgam of religious symbols and rituals with various sexual practices. Mircea Eliade observes that from the dawn of this religious culture, "India has known countless rites implying sexuality, and in the most various cultural contexts" (Mircea Eliade, *Yoga: Immortality and Freedom* [Princeton: Princeton Univ. Press, 1970] 258). (Indian pictures frequently depict acts of lesbianism, with the couple usually under the observing eye of Krishna; see, e.g., the illustration in Clifford Bishop, *Sex and Spirit* [Boston: Little, Brown, 1996] 47; but see also Geoffrey Parrinder, *Sexual Morality in the World's Religions* [Oxford: Sheldon, 1980] 20). Also noteworthy in this context is the presence both in Zoroastrianism (that was in the background of the world of the Babylonian Talmud) and Islam (that postdates the Talmudic literature) of adamant opposition, similar to that of the Rabbis, to the Christian notion of abstinence from sexual relations. For such aversion to abstinence in Zoroastrianism, see Isaiah M. Gafni, *The Jews of Babylonia in the Talmudic Era: A Social and Cultural History* (Jerusalem: Zalman Shazar Center, 1990) 269 (Hebrew) and the sources listed in n. 11; as for Islam, see Parrinder, *Sexual Morality*, 162-63.

30 For R. Huna, see below, n. 74.

31 *Lev. Rabbah* 23:9 (ed. Margulies, 539).

32 See the parallel: *Gen. Rabbah* 26:2 (ed. Theodor-Albeck, 248), and the glosses by *Minhat Yehudah*.

midrash possibly allude to such marriage contracts between women, as well.<sup>33</sup> Lieberman<sup>34</sup> regarded this as evidence of the Land of Israel Rabbis' knowledge that same-sex marriages (at least between men) were occasionally conducted in the Roman world; he surmised, however, that since the Rabbis also were aware that such conduct was not usually accepted by the Roman populace at large, "they therefore attributed this practice to the Flood generation,"<sup>35</sup> and asserted

- 33 See Lieberman's notes on *Lev. Rabbah*, ed. Margulies, 877. Margulies lists the variants in the different mss.: the *editio princeps*, MS. London (British Museum 340), MS. Paris 149: ולנקבה (and for the female) instead of ולבהמה (and for the beast); MS. Oxford, cat. Neubauer, nos. 147, 2335, MS. Vatican 32, *Arukh*, ed. Pisaro, MS. Jerusalem 245: ולנקבה ולבהמה (and for the female and for the beast); *Gen. Rabbah* 25:5, 248: לזכור ולבהמה.
- 34 Lieberman, *Lev. Rabbah*, 877. See Halevi, *Values of the Aggadab and the Halakhab*, 242.
- 35 Lieberman believes that the Rabbis were fair enough "not to attribute the foulness of the deeds of the corrupt among the Roman emperors to all the non-Jews" (ibid.). If the disgust that emerges from Lieberman's concise statement is directed against the general phenomenon of homosexuality, and not just to the institutionalization of such marriages, it should be mentioned that the Rabbis did, indeed, generally suspect the Gentiles of their time of sodomy (see *t. Avodah Zarah* 3:2 [ed. Zuckerman, 463]; see Rashi's explanation of the *baraita* in *b. Abod. Zar.* 15b; *m. Horayot* 3:7; *b. Git.* 57b; for additional sources, see Sharbat, "Homosexuality in the Talmudic Sources," 75-77), which was unquestionably an accepted and very widespread practice in the Roman world. See Halevi, *Values of the Aggadab and the Halakhab*, 241-42; Dunn, "Romans 1-8," 65; H. N. Parker, "The Teratogenic Grid," in: Judith P. Hallet and Marilyn B. Skinner (eds.), *Roman Sexualities* (Princeton: Princeton Univ. Press, 1997) 47-65, esp. 55, in which she argues that very few Roman men preferred sexual relations exclusively with women. Thus, e.g., it is related that only a single Roman emperor, Claudius, limited his sexual activity solely to women. The only condemnation incessantly voiced in the Greco-Roman literature is directed against passive males, the subject of penetration - such a male engages in a shameful act (see Brown, *An Introduction to the New Testament*, 529; Winkler, *Constraints of Desire*, 45-70). Additional instances of the Rabbis' attribution to non-Jewish biblical figures of a lust for sodomy: for Potiphar, who was attracted to Joseph and castrated by an angel in order to protect the Hebrew, see *b. Sotah* 13b: "Rav said: He bought him for himself, but Gabriel came and emasculated him"; *Gen. Rabbah* 86 (ed. Theodor-Albeck, 1054): "This teaches that he purchased him only to engage in sodomy, but the Holy One, blessed be He, castrated him"; see also *Midrash Sekebel Tov* (ed. Buber, 237), on *Gen* 39:3; see Louis Ginzberg, *The Legends of the Jews*, vol. 5 (Philadelphia: Jewish Publication Society, 1947), 337-38 n. 101 and the sources mentioned in the beginning of the note; M. Kasher, *Torah Sbelemah* (Jerusalem: n.p., 1992), vol. 2 (4-7), on *Gen* 37:36, *Vayeshev*, para. 213, 1442; and at greater length: on *Gen* 39:1, paras. 11-12, 1482 and the glosses. For Ishmael, see Satlow, "They Abused Him Like a Woman," 21 n. 62; and for an extensive discussion: I. Rozenson, "מכבש גנות or גנות: The Meaning of an Expression," *Lesbonenu* 64 (2002) 59-72 (Hebrew); for Esau, see E. Horowitz, "From the Generation of Moses to the Generation of the Messiah: The Jews Confront 'Amalek' and His Incarnations," *Zion* 64,4 (1999) 434-35 (Hebrew); I. Aminoff, "The Figures of Esau and the Kingdom of Edom in Palestinian Midrashic-Talmudic Literature in the Tannaic and Amoraic Periods," Ph.D. diss., Melbourne University, 1981, 30; Jacob Nacht, *The Symbolism of the Woman: A Study in Folklore with Reference to Jewish and World Literature* (Tel Aviv: Vaad Talmidei ... ha-Mehaber, 1959) 226 n. 24 (Hebrew); Gerson D. Cohen, "Esau as a Symbol in Early Medieval Thought," in: Gerson D. Cohen (ed.), *Studies in the Variety of Rabbinic Cultures* (Philadelphia: Jewish Publication Society, 1991) 242-61. The intent of some of these legends was to show that Esau is Rome, that is an unmanly and weak nation; nonetheless, due to our sins, it has been decreed from on high that such nations will rule Israel. For the tendency in the Talmudic literature to ascribe homosexual tendencies to non-Jews, see also Satlow, *Tasting the Dish*, 203-5.

that non-Jews generally "do not write *ketubot* for men."<sup>36</sup>

### The Hellenistic-Jewish Literature

The extant Jewish texts from the regions where Judaism encountered the Hellenistic world contain more numerous references to male and female homosexuality, including antihomosexual diatribes by various authors.<sup>37</sup> Here as well, we cannot definitely determine the extent to which the Hellenistic-Jewish writers were familiar with lesbianism from actual instances of women who lived in the Jewish communities themselves, or whether these were general sermons meant to warn Jewish women against being attracted to such behavior, that was known to the authors only from the practices of the surrounding non-Jewish environment.

Thus, for example, Philo: although he does not directly relate to female homoeroticism, he most probably was aware of the phenomenon, and his censure of female prostitution seemingly encompasses disapproval of harlots who engaged in female same-sex relations.<sup>38</sup> Szesnat<sup>39</sup> assumes that the Greek term *gynandros* ("mannish-women," in the translation of Philo<sup>40</sup>) that appears in three of Philo's essays refer to female homoeroticism.<sup>41</sup> According to Szesnat, these were women who played the male in relations with another woman.

In another place Philo writes, in relation to the prohibition: "A woman must not put on man's apparel, nor shall a man wear women's clothing" (Deut 22:5), that the biblical prohibition of cross-dressing is meant to prevent confusion between the sexes:<sup>42</sup>

In the same way he [= Moses] trained the woman to decency of adornment and forbade her to assume the dress of a man, with the further object of guard-

36 *b. Hullin* 92b. Lieberman's premise, however, is not a foregone conclusion, since such historical and geographic inaccuracies are characteristic of the rabbinic literature.

37 For the antihomosexual diatribes in the apocryphal literature, see *Letter of Aristeas*, l. 152 (J. H. Charlesworth [ed.], *The Old Testament Pseudepigrapha* [Garden City, NY: Doubleday, 1985] 23); *Sibylline Oracles* 2:75 (Charlesworth, 347); *Testaments of the Twelve Patriarchs*, "The Testament of Naphthali" 3:4-5 (Charlesworth, 812); and the remarks by Halevi, *Values of the Aggadah and the Halakbah*, 241; Satlow, "'They Abused Him Like a Woman,'" 4-9; Sharbat, "Homosexuality in the Talmudic Sources," 14-19; Kasher, *Against Apion* (below, n. 50).

38 Philo, *The Special Laws* 3:51: "the commonwealth of Moses' institution does not admit a harlot. [...] She infects the soul both of men and women with licentiousness" (*Philo*, vol. 7, 507).

39 Szesnat, "Philo and Female Homoeroticism," 42.

40 Szesnat, 143-45; see the observation by Daniel-Nataf, *Philo of Alexandria*, vol. 3, 196 n. 25.

41 *On the Birth of Abel and the Sacrifices Offered by Him and His Brother Cain*, l. 100 (*Philo*, vol. 2, trans. F. H. Colson [ed. LCL: London and Cambridge, MA, 1939], 169); *Who Is the Heir of Divine Things*, l. 274 (*Philo*, vol. 4, 423); *On the Virtues*, l. 21 (*Philo*, vol. 8, 175).

42 Cf. also Boyarin, "Are There Any Jews," 340-45; Satlow, "'They Abused Him Like a Woman,'" 12-14.

ing against the mannish-woman as much as the womanish-man.<sup>43</sup> He knew that as in buildings, if one of the foundation stones is removed, the rest will not remain.<sup>44</sup>

For Philo, the "mannish-woman," like the "womanish-man," undermines the correct structure of all human society, just as the removal of a single element from the entire structure can collapse the whole building.<sup>45</sup> In another place, Philo explains that men who are penetrated in the homosexual act let themselves fall prey to "the formidable curse of a female disease" (that is, the disease of male femininity), and have made their body feminine, thus resulting in the degeneration of their souls.<sup>46</sup>

Philo's writings oppose same-sex homoerotic relations by men and women, thereby indicating that he adopted the expansive interpretive approach. He also expresses his profound abhorrence for homosexuality (both the penetrators and the penetrated),<sup>47</sup> to the extent that one passage in his writings almost calls for the summary execution of homosexuals.<sup>48</sup>

This is echoed in Paul's epistle *Romans* (1:26-27; middle of the first century CE),<sup>49</sup> in which he sharply condemns those women who engage in relations between themselves, and includes both women and men in his attack on relations that he regards as unnatural:

- 43 Szesnat, "Philo and Female Homoeroticism," 145, remarks that the term 'womanish-men' is not synonymous with 'mannish-women,' but they represent different ideational categories (see below).
- 44 *Philo, On the Virtues*, l. 21 (*Philo*, vol. 8, 175).
- 45 *On the Virtues*, l. 21. All three passages express a fear of the confusion of sexual roles.
- 46 See *On Abraham* (*Philo*, vol. 6, l. 136 [LCL, 71]). For Philo's censure of homosexuality, that is connected to the undesirable influence of the encounter between Jews and the Hellenistic environment, see Dorothy I. Sly, *Philo's Alexandria* (London: Routledge, 1996) 94. Interestingly, the centrality of the subject of pride and shame in Philo's discussion of homosexuality corresponds to the predominant role played by this topic in the contemporary discourse. See, e.g., *The Special Laws* 3:37 (*Philo*, vol. 7, 499); cf. the discussion by Ben-Nach, "Same-Sex Sexual Relations," p. 175 n. 10.
- 47 *The Special Laws* 3:37 (*Philo*, vol. 7, 499); see also Daniel-Nataf, *Philo of Alexandria*, 94 n. 59; for the expression "toevab" as used by Philo, cf. below, n. 109.
- 48 *The Special Laws* 3:38 (*Philo*, vol. 7, 499); see Daniel-Nataf, *Philo of Alexandria*, vol. 3, 95 n. 63, who maintains that this is mere hyperbole on the part of Philo (although Daniel-Nataf's assertion requires further study, in light of Goodenough's opinion regarding instances of Alexandrian Jews taking the law into their own hands during this period; see the discussion concerning Goodenough in Avigdor [Victor] Tcherikover, *The Jews in Egypt in the Hellenistic-Roman Age in Light of the Papyri* [Jerusalem: Magnes, 1963], 103-4 n. 25 [Hebrew]). In any event, Philo unequivocally rejects this Greek tolerance of same-sex relations, even when it appears in the writings of the greatest Greek philosophers: see *On the Contemplative Life*, ll. 57-63 (*Philo*, vol. 9, 147-51), and Daniel-Nataf, *Philo of Alexandria*, vol. 1: *Historical Writings, Apologetical Writings*, 195 n. 71.
- 49 The epistle was written in 57/58 CE. See Brown, *An Introduction to the New Testament*, 560, who also shows the lack of any significant controversy regarding the authenticity of the epistle.

For this reason God gave them up to dishonorable passions. Their women exchanged natural relations for unnatural,<sup>50</sup> and the men likewise gave up natural relations with women and were consumed with passion for one another, men committing shameless acts with men and receiving in their own persons the due penalty for their error.<sup>51</sup>

### The Sources in the Talmuds: (1) a *Baraita* in the Palestinian Talmud

We first encounter the limiting interpretive approach in the Talmuds. The first glimmering appears in a *baraita* in the PT (*Gittin* 8:8, 49c) that does not appear in this form in any Tannaitic source:

If a woman sports [*mesaledet*, for unnatural sexual gratification] with her son – the School of Shammai invalidate her, and the School of Hillel declare her valid. If two women were sporting with each other – the School of Shammai invalidate her, and the School of Hillel declare her valid.<sup>52</sup>

50 For the interpretation of Paul's assertion, in light of what is known to us of homosexuality, pedophilia, and lesbianism in the ancient world, see Szesnat, "Philo and Female Homoeroticism," 141; Robin Scroggs, *The New Testament and Homosexuality* (Philadelphia: Fortress, 1983) 114-15; Parker, "The Teratogenic Grid," 47-65; the sources cited by Brown, *An Introduction to the New Testament*, 528-30, esp. nn. 54, 56; and the sources listed by Satlow, *Tasting the Dish*, 191 n. 23.

51 The idea implicit in this passage is apparently "one transgression leads to another" and "the reward of a transgression is [another] transgression" (as in *m. Avot* 4:2), and that these individuals former wickedness and their denial of the truth led them to degenerate and engage in such sexual relations, that themselves are a punishment from God. See Dunn, "Romans 1-8," p. 65; Norbert Baumert, *Woman and Man in Paul: Overcoming a Misunderstanding* (Collegeville, MN: Liturgical Press, 1996) 151 n. 257. This may also be inherent in the passages from Philo cited above, but for the latter, the punishment is suffered by the one who is penetrated, who allows himself to succumb to the "formidable curse of a female disease"; cf. *Mekhilta de-Rabbi Ishmael, Besbalah* 1 (ed. Horovitz-Rabin, 177); *Tanhuma* 2, *Vaeira* 8 (ed. Buber, 23-24); *Exod. Rabbah* 1:8 (*Midrash Shemot Rabbah: Chapters I-XIV*, ed. Avigdor Shinan [Jerusalem and Tel Aviv: Devir, 1984] 201 ff.), and Shinan's glosses and references concerning a man's transformation into a "woman" when he is penetrated, as an extremely harsh punishment. Even in the Greek world, in which male homosexuality was a highly accepted norm, the idea that a freeman, who was neither a youth nor a slave, would permit himself to be penetrated was strange, and even incredible, for most people. See Peter R. L. Brown, *The Body and Society: Men, Women and Sexual Renunciation in Early Christianity* (London: Columbia Univ. Press, 1988) 30. It also should be noted that the subject of death hovers above the Pauline text, as in that of Philo (see above, n. 47), and both were most likely influenced by Lev 18:29: "such persons shall be cut off from their people." See also Josephus, *Ant.* 3:275 (12:1): "He [Moses] moreover forbade [...] the toleration of the practice of sodomy in the pursuit of lawless pleasure. For those guilty of such outrages he decreed the penalty of death" (trans. H. St. J. Thackeray [London and New York: LCL, 1930] 451). For the attitude of Josephus, see also Josephus, *Ag. Ap.* 2:199 (24), and the glosses by Aryeh Kasher, *Against Apion* (Jerusalem: Zalman Shazar Center, 1996), vol. 2, 486-87 (Hebrew).

52 The parallel version in *t. Sotah* 5:7 (ed. Lieberman, 178) contains the first part of the *baraita*, about the woman who sports with her son, but omits the second section, about the two women sporting with each other. In his commentary *Yafeh Einayim* on *b. Shab.* 65a, R. Aryeh Loeb Yellin assumes (due to the question that must be resolved; see below, n. 73) that the section of the sport-

This text reveals the position held by the School of Hillel, who are known for their affinity to formal legal thought.<sup>53</sup> The seeds of this limiting orientation may therefore be found in the

early interpretive approach of the School of Hillel, that came to occupy a central position in the Babylonian Talmud (see below).<sup>54</sup>

The word *mesaledet* ("sporting") is undoubtedly related to the sexual act between women, as is indicated by the context of the *baraita*, and as can be understood from the variant in the parallels: *mesolelet*, although its exact meaning is totally unclear.<sup>55</sup> Rashi explains that the *mesolelet* are those who "rub against one

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ing women is a later addition, from the Amoraic stratum, a view also held by Satlow, "They Abused Him Like a Woman," 16 n. 45; see also idem, *Tasting the Dish*, 190 n. 20, that the *baraita* in the Palestinian Talmud consists of a unification by the post-Tannaic redactor, who appended the second section (two women), and omitted from the first (mother-son) the element of the first-stage sexual contact. Brooten, *Love between Women*, 65-68, reaches a similar conclusion, and opines that this discussion of the sporting women was redacted not before the third century. This source, that is presented in the PT as a pseudo-*baraita*, also appears, with changes, in the Babylonian Talmud (*Sanhedrin* 69b), but there, as well, we have only the woman sporting with her young son, but not the two women; see also Saul Lieberman, *Tosefta ki-Fshutah*, vol. 8, *Order Nashim* (New York: Jewish Theological Seminary of America, 1973 [New York and Jerusalem: Jewish Theological Seminary of America, 1995]), 658, ll. 30-31, and his comments on the discussion in the Talmud concerning the age of the son in question.

53 For a general treatment, that also relates specifically to our discussion of sexual relations, see Yisrael Ben-Shalom, *The School of Shammai and the Zealots' Struggle against Rome* (Jerusalem: Ben-Gurion Univ. Press, 1993), 213, 215-16 (Hebrew).

54 We need not decisively conclude that the School of Hillel adopted the limited interpretive approach, since it could be stated (not persuasively, in our view) that this school could possibly have asserted that lesbian relations are forbidden by Torah law, while holding the view that the participants in such an act are not invalidated from marrying a priest.

55 The Land of Israel versions usually present this verb as סל"ד, while the Babylonian texts cited below employ סל"ל (although MS. Ehrfurt of T Sotah has "*mesalselet*"). As regards the word *mesolelet*, the biblical meaning of this root is to raise up an earthen rampart, or, in a metaphorical sense, to exalt, glorify. See Heinz-Josef Fabry, s.v. "סלל," G. Johannes Botterweck, Helmer Ringgren, and Heinz-Josef Fabry (eds.), *Theological Dictionary of the Old Testament*, trans. David E. Green (Grand Rapids, MI and Cambridge: Eerdmans, 1999), vol. 10, 266-70. There is, however, no clear connection between the biblical uses and *mesolelet* in our texts.

It has been proposed to derive *mesaledet* from *yad soledet*, i.e., that recoils from heat, meaning that the women heat up one another in the sexual act (see *He-Arukh be-Shalem*, vol. 6, 58, s.v. "סלד"); that one raises up the other upon her (see *He-Arukh be-Shalem*, n. 6); possibly, jumping, implying that one jumps upon the other (see Gen. Rabbah 57 [ed. Theodor-Albeck, 535 n. 1, and the glosses of *Minhat Yebudab* to l. 1. Perhaps the intent of the original term *solelet* or *soledet* was to the instinctive jumping back before heat; see *Avot of Rabbi Nathan*, version B, chap. 30 (ed. Schechter, p. 63): "A parable. If a man leads a beast up to the top of the roof, it recoils [*solelet*]" - trans. Anthony J. Saldarini, *The Fathers according to Rabbi Nathan* [Leiden: Brill, 1975], p. 177); cf. *Midrash Tehillim*, Ps. 11:5 (ed. Buber, p. 100): "R. Yudan said: Whenever a man smells brimstone, his soul is distraught [*soledet alav*], for the soul knows that it will be punished in brimstone" (trans. William G. Braude, *The Midrash on Psalms* [New Haven: Yale Univ. Press, 1959], vol. 1, 163); Buber derives the word from Job 6:10: "ואסלדה בחילה." Maimonides, *Commentary on the Mishnah*, *Sanhedrin* 7:4, nevertheless derives it from *mashul*, path (*Maimonides' Commentary on the Mishnah: Tractate Sanhedrin*, trans. Fred Rosner [New York: Sepher-Hermon, 1981], 91). For additional,

another out of sexual desire."<sup>56</sup> This rubbing against one another is understood as sexual play between two women;<sup>57</sup> it is difficult to determine to what extent the commentators were aware of the possibility of identifying such sexual contact as adult and satisfying relations that result from the choice and desire of the female participants in the act.<sup>58</sup>

At any rate, the question discussed in the *baraita* is whether women who engaged in such relations are permitted to a *kohen*, since Lev 21:7 commands the *kobanim*: "They shall not marry a woman degraded by harlotry [*ishah zonah*], nor shall they marry one divorced from her husband. For they are holy to their God." In this *baraita*, the School of Hillel permits women who so "sport" with one another to be married to a *kohen*, while the School of Shammai forbids, since such women are considered to be *zonot*.

The halakhic definition of the *zonah* (harlot) who is forbidden by this verse to be married to a *kohen* was not a simple matter in antiquity. Different views were prevalent among the Tannaim. *Sifra* (*Emor* 1[7] [ed. Weiss, fol. 94b]) cites the view of R. Judah that the "harlot" of which the verse speaks is an *ilonit*,<sup>59</sup> while the Rabbis differ, and assert that the definition of "*zonah*" applies to anyone forbidden to a *kohen*. Their definition includes three categories of women: converts, released maidservants, and a woman who engaged in a forbidden act of intercourse. An additional view is voiced by R. Eleazar,<sup>60</sup> who maintains that even if a single man engages in intercourse with an unmarried woman not to effect

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more remote possibilities that were advanced in the rabbinic literature, see Reuben Margalio, *Margaliyot ha-Yam: Tractate Sanhedrin*, vol. 1 (Jerusalem: Mosad Harav Kook, 1977), 33 (Hebrew), on *b. Sanh.* 69b, para. 3. The suggestion by Satlow, *Tasting the Dish*, 189 n. 17 that *mesolelet* is connected with penetration by a phallus seems farfetched; consideration should, however, be given to his observation (191 n. 25) that the Latin *tribiades* has its roots in the Greek, with the original meaning of "to rub," with a possible similarity to our *mesolelot*.

56 In his parallel commentary on this *baraita*, *b. Shab.* 65a.

57 R. David Fraenkel, in his commentary *Korban ha-Edah* on *y. Git.* 8:8, 49c, followed by Saul Lieberman in his brief explanation of *t. Sotah* 5:7 (ed. Lieberman, 178).

58 According to Judith Hauptman, these are not lesbians (in the contemporary sense), but rather women, possibly even married, who play with each other for the pleasure this gives. See Judith Hauptman, *Rereading the Rabbis: A Woman's Voice* (Boulder, CO: Westview Press, 1998), p. 101 n. 43. According to our argument, that we shall develop below, the category of "lesbian" is foreign to the BT, that adopted the limiting interpretation; such a category could have come into being under the expansive interpretive approach.

59 An *ilonit* is a woman incapable of bearing children, and who bears none of the distinctive female physical characteristics (see *Encyclopedia Talmudica*, ed. Shlomo Josef Zevin, vol. 1 [Jerusalem: Talmudic Encyclopedia Institute, 1969], cols. 639-46). The Tanna R. Judah bar Ilai is of the opinion that she is called a "*zonah*," because anyone who marries her does so solely for sexual relations, and not for procreation. Philo expressly forbids marriage with a barren woman, a position also held by the Church Father Clement I; this extreme stance, however, is not the accepted view of the Rabbis (see Boyarin, *Carnal Israel*, 56 and the sources cited).

60 Apparently R. Eleazar ben Shammua.

marriage, the woman is defined as a *zonah*.<sup>b</sup> *Yevamot* 61b contains a *baraita* that adds further nuances to this multiplicity of opinions: R. Mattiah ben Heresh argues that if a woman is suspected of adultery, and her husband had relations with her husband as he was bringing her to Jerusalem for the ceremony of the drinking of the water of bitterness, she is defined as a *zonah*; R. Akiva, in contrast, thinks that this term is to be applied to every licentious woman; while R. Eliezer (ben Hyrcanus) is of the opinion that the meaning of *zonah* is "as her name," i.e., one who ran about as a harlot (*zintah*). According to a simple reading of this passage, R. Akiva presents the most expansive interpretation, and maintains that *zonah* applies to any woman who had improper sexual relations,<sup>61</sup> while R. Eliezer understands the term as it is generally used: a woman who earns her livelihood from giving her body to strangers.<sup>62</sup>

It is difficult to precisely determine the biblical origin of the disagreement between the School of Hillel and the School of Shammai concerning "sporting" women. In light, however, of these views the dispute between the two Schools could perhaps be explained in the following manner: the School of Hillel's leniency is based on its adoption of the one of these four definitions that assumes that only sexual relations including halakhically forbidden sexual penetration by the male will turn the woman into a *zonah*, while the School of Shammai assert that even sexual play without penetration (obviously, with someone forbidden to this woman) will result in her being a *zonah*, that is, she is defined as a woman who acts in a sexually licentious manner, and she therefore is forbidden to a *kohen*.

If this hypothesis is correct, then the early disagreement regarding the attitude toward the sexual act between women was part of a broader controversy concerning the meaning of the "*zonah*" forbidden by the Torah. The School of Hillel focused on the formal legal aspect of the prohibition, and consequently asserted that only when the woman has relations (that involve penetration) with a man to whom she cannot be married is she to be regarded a *zonah* and forbidden to a *kohen*; the School of Shammai were stricter on this point, and exercise

61 See Rashi, *b. Yevamot* 61b, s.v. "*Mufkeret*," who explains that R. Akiva's intent is to any woman, even if unmarried, who makes herself available to many men. If, however, she engages in relations only with one man, she is not regarded as a *zonah*.

62 Although some commentators tend to think that R. Eliezer refers only to a married woman who strayed (see R. Menahem ha-Meiri, *Beit ha-Behirah* ad loc.), this is not a foregone conclusion; see, e.g., the commentary by Ibn Ezra on Lev 21:7: "A woman defiled by harlotry [*ishah zonah*]' - we have not found, '*zonah*' in all of Scripture other than in its literal meaning [i.e., harlot]." For the decisive post-Talmudic halakhah on this issue, see Maimonides, *Mishneh Torah, Hil. Issurei Biyah* [Laws of Forbidden Intercourse] 18:1, and the critical scholia by R. Abraham David of Posquieres ad loc.

the prohibition of marriage to a *kohen* even in instances of sexual promiscuity in which there is no penetration. An additional example of this stringent view appears in a *baraita* in the *Tosefta*, that we know as the first half of the *baraita* in the PT (above),<sup>63</sup> which indicates that, according to the School of Shammai, a woman who engaged in a sexual act with her minor son<sup>64</sup> also is considered to be a *zonah*.

The formalistic approach of the sages from the School of Hillel apparently distinguishes between the structures of the halakhah and the strictures of morality; even an act that is morally censurable, with the sensibility of its inconsistency with the bounds of sexual modesty, does not have consequences for the woman's halakhic status and her stigmatization as a "*zonah*." The School of Shammai, on the other hand, do not draw such a firm distinction between the two realms of morality and law; wherever the norms of morality have been exceeded, such wanton behavior turns a woman into a "*zonah*," who is halakhically forbidden to a *kohen*.<sup>65</sup>

To summarize this discussion in the Tannaitic literature: the few extant Tannaitic period testimonies from the Land of Israel teach that the Rabbis were cognizant of the echoes of a phenomenon that would later completely disappear from the landscape of Jewish legal rulings almost to the present, and that was related to the institutionalization in some way of the same-sex bond between women, which, according to the Tannaitic conception, is prohibited by Torah law. Besides this, there was an earlier disagreement that probably indicates that although sexual relations between women were thought to be a wanton act, such an act – according to the School of Hillel – did not turn a woman into a "*zonah*."<sup>66</sup>

These Land of Israel sources were only partially transmitted to the Babylonian Amoraim (see below). An extremely lenient approach that is prominent in the BT<sup>67</sup> understands the same-sex bond between women exclusively as a devia-

63 See above, n. 51.

64 Who is a minor incapable of intercourse (even though the text stated: "who initiated intercourse with her," this act on his part is not formally considered intercourse); see above, n. 51.

65 The commentators of *y. Git.* 8:8, 49c also subscribe to this explanation of the disagreement between the Schools of Shammai and Hillel. R. Moses Margoliouth explains in his commentary *Penei Moshe*, s.v., "*Shetei Nashim*," that the School of Hillel permit this woman to marry a priest, since they do not regard this act as harlotry: "For this is not *znut*, but a mere prohibition"; R. David Fraenkel, *Shirei Korban*, s.v. "*Ha-Mesaledet*," also reaches the conclusion that this is "mere licentiousness," and forbidden only by rabbinic law. We should not, however, lose sight of the fact that these commentators were patently influenced by the position of the BT on this question (see below).

66 For single-sex marriage, see above, n. 23.

67 We have not found any relevant source in the PT that would cast additional light on the attitude

tion from the bounds of morality and modesty (the strictures against which have no halakhic force), and which is subject merely to the moral disapproval afforded to improper behavior.

### The Sources in the Talmuds: (2) the *Sugyot* in the Babylonian Talmud

As was noted above, the limiting interpretive approach maintains that the Bible opposes only anal penetration between men; accordingly, whatever is not included in this category does not fall under the biblical prohibition. Indeed, sources from the BT demonstrate that (1) none of the Rabbis placed female homoeroticism together with male homosexuality as a single phenomenon, in contrast with the views expressed in the Land of Israel Tannaitic literature and the Jewish Hellenistic sources; (2) the prohibition (if at all regarded as such) of lesbian sexual relations was considered to be relatively minor; (3) none of the Talmudic sources present sexual attraction between men, or between women, as "unnatural" or as a "deviation" (if the Rabbis generally opposed homosexuality, they certainly would have erected severe halakhic barriers against such attraction in order to prevent any breach of morality); (4) nowhere does the Talmud impose a ban on the institutionalization of the same-sex bond, whether male or female, nor does this subject arise in any discussion in the Talmud.

The BT mentions the *mesaldot* (in its version: the *mesolelot*) only in two *sugyot* (see below). There is no explicit presentation, as there is in the Tosefta, of the dispute between the Schools of Shammai and Hillel concerning the legal standing of such "sporting" women,<sup>68</sup> although echoes of this early disagreement can be heard in Yevamot 76a, and the conclusions of this *sugya* clearly teach of the

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to "sporting women". Incidentally, fascinating historical evidence appears in *y. Sanhedrin* 6:3, 23b-c, that relates that R. Judah ben Pazzi encountered two "people" (students?) on the roof of the *beit midrash* engaged in intercourse. This is apparently the only historical testimony to such an occurrence in the entire Talmudic literature (for a very similar instance that happened in a later period, in which two yeshivah students ascended to the upper chamber "to split hairs about the law," cf. Ben-Naeh, "Same-Sex Sexual Relations," 190 and n. 55). Mention should be made at this juncture of the discussion of great importance for our inquiry by Satlow, "They Abused Him Like a Woman," 185-222 (and with minor changes, in idem, *Tasting the Dish*, 1-25), whose fundamental argument corresponds to the direction we seek to take. Satlow maintains that the discussion of the prohibition of sodomy in the PT - unlike that of the BT - emphasizes the gender questions, and regards homosexual penetration as a violation of the natural order that is to exist exclusively as follows: the penetrator must be male, and the penetrated, female. The Babylonian sources for Satlow's conclusion considerably obscure this aspect, that is present in the discussions of the PT. Also noteworthy in this context is the dictum of the Land of Israel Amora R. Aha, who argues that earthquakes are a consequence of sodomy, for the Holy One, blessed be He, says: "You made your member tremble for something that is not for you; I shall make My world tremble because of that man" (*y. Berakhot* 9:3, 13b).

68 See above, n. 51.

BT's lenient position on this issue:

Rava said: The halakhah follows neither the son nor the father. [As regards] the son, this is as we said [previously].<sup>69</sup> [As regards] the father?<sup>70</sup> For R. Huna said: Women who sport with one other are disqualified from [marrying into] the priesthood. Even according to R. Eleazar, who said that an unmarried man who cohabited with no matrimonial intention with an unmarried woman renders her a *zonah*, this applies only to [a sexual act by] the male, but [a sexual act by] the woman [with another woman] is mere wantonness.<sup>71</sup>

This *sugya* concludes that sexual relations between women are merely a deviation from the bounds of modesty.<sup>72</sup> As in many other instances, the BT is unaware of the position set forth in *Sifra*,<sup>73</sup> and therefore the question of the institutionalization of the bond between two women is not the subject of discussion, but only the actual sexual act. The early controversy between the Schools of Shammai and Hillel resounds in this *sugya* in the BT, but the Amoraim in Babylonia were patently unaware of this prior disagreement. The Talmud therefore presents the dictum by R. Huna (the head of the Sura yeshivah in the second generation of Babylonian Amoraim), that is similar to the view of the School of Shammai in the PT,<sup>74</sup> that "sporting" women may not marry *kobanim*.<sup>75</sup>

69 The son is Rabbah the son of R. Huna. What the son said previously is not germane to the current discussion.

70 R. Huna (and the law does not follow him).

71 This follows the version in ed. Vilna; the minor textual variants in Avraham Lis, *Masekhet Yevamot: Im Shinnei Nuschaot mi-tokh Kitvei ha-Yad shel ha-Talmud...*, vol. 3 (Jerusalem: Makhon ha-Talmud ha-Yisraeli ha-Shalem, 1983) 136-37, are insignificant for our discussion.

72 Even though it is unclear, as was explained above (n. 53), whether the early sages of the School of Hillel, as well, professed this view, that appears in unequivocal fashion in the BT, that this is "mere licentiousness."

73 See Albeck, *Introduction to the Talmud Babli and Yerushalmi*, 113-23; and conversely, Epstein, *Prolegomena*, 663-77. This difference of opinion, however, is not relevant to the current discussion, because even Epstein, who asserts that the Amoraim were generally cognizant of *Sifra*, concurs that "there undoubtedly were *baraitot* in *Sifra* that were concealed from the Sages of the Talmud and were unknown to them" (674).

74 R. Aryeh Loeb Yellin (see above, n. 51) assumes that R. Huna was familiar with the *baraita* in the PT, and on this basis attempts to understand the latter's support for the opinion of the School of Shammai. Yellin reasons that the part relating to the sporting women is a later addition, from the Amoraitic stratum. He thereby, in his mind, resolves this difficulty, since R. Huna disagrees with the sage who transmitted the PT version of this teaching. To restate his hypothesis in modern language: R. Huna probably had no knowledge of this *baraita* as it is formulated in the PT, but rather was familiar with a currently nonextant version, that led him to adopt the strict view (patently, without knowing that this is the opinion of the School of Shammai in the PT version of the *baraita*).

75 There is no basis for the notion that this constitutes a second, and fascinating, testimony to R. Huna's stringent opinion regarding sporting women (see above [at n. 9] the aggadah related by R. Huna in the name of R. Joseph. It should be recalled that *b. Abod. Zar.* 44a provides information, in the name of R. Joseph, concerning the use by women of phalluses), since the R. Huna men-

Rava (the head of the yeshivah in Mahoza; fourth-generation),<sup>76</sup> in contrast, rejects this opinion, and downgrades such activity to "mere wantonness," with which the conclusion of the *sugya* concurs.

Rava further tells us that even according to the early Land of Israel Tanna R. Eleazar (ben Shammua), who adopted a strict definition of *zonah*, and applied this term to an unmarried woman who engaged in intercourse with an unmarried man, not for marital purposes, he did so only because in this instance the man actually penetrated the woman.<sup>77</sup> Even R. Eleazar, however, would concede that "sporting" women are not to be categorized as "*zonot*."

The wording "mere wantonness" teaches that this is not a specific Torah prohibition, but a licentious behavioral norm. At times the Rabbis may have sealed this breach with a prohibition of their own, but such an assumption cannot be taken for granted, and this might not be prohibited, not even by rabbinic fiat.<sup>78</sup> This, at any rate, is the impression gained from the second *sugya* (*b. Shabbat* 65a) that mentions *nashim mesolelot*:

The daughters of Samuel's father [...] were not permitted by their father to sleep next to each other. Shall we say that [the following] supports him, for R. Huna said: Women who sport with each other are disqualified from [marrying into] the priesthood? No, for he reasoned that this was so that they would not become accustomed to [sleeping with] a foreign body.<sup>79</sup>

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tioned in *Lev. Rabbah* is apparently the fourth-generation Amora R. Huna (אָנָה or אָנָה) bar Avin ha-Kohen who went from Babylonia to the Land of Israel, and who customarily delivered teachings that he had received in Babylonia from his teacher, R. Joseph. See W. Bacher, *Die Agada der Palaestinensischen Amoraer*, vol. 3 (Hildesheim: Olms, 1965) 298 ff.

76 Another extant version reads "Rabbah," who was of the third generation; see Lis, *Masekhet Yevamot*, 136.

77 The explanation of *Ritba* (R. Yom Tov ben Abraham Ishbili): "In that case, this is because there is a male act [i.e., penetration]"; see *Hiddushei ha-Ritba*, ed. Raphael Aaron Yafhen (Jerusalem: Mosad Harav Kook, 1992), *Yevamot*, 894.

78 See, e.g., Rashi's commentary on *b. Sotah* 48a, s.v. "*Ka-Esh ba-Neoret*," that implies that, at least according to Rashi, "*peritzut*" (wantonness) is merely an affront to moral behavior. The halakhic authorities among the *Abranim* who were influenced by the ruling of Maimonides (see below) could no longer assume this, and disagreed solely on the question of whether the ban is of Torah or rabbinic force. It should be recalled that the distinction between *mi-de-rabbanan* and *me-de-Oraita* was not as sharp during the Talmudic period as it is in the later halakhah. See (especially as this applies to the Tannaitic period) Benjamin De Vries, *Studies in the Development of the Talmudic Halakah: Selected Chapters* (Tel Aviv: Tsiyoni, 1966) 69-95 (Hebrew); Itzhak D. Gilath, *Studies in the Development of the Halakhab* (Ramat Gan: Bar-Ilan Univ. Press, 1992) 239 ff. (Hebrew).

79 The Talmud rejects the possibility that this narrative supports R. Huna, and according to the *stam Talmud* (unattributed stratum of the Talmud), Samuel's father took this step so that his daughters would not become accustomed to sleeping with a "foreign body," and then "they would desire to sleep with a man" (according to Rashi's explanation, s.v. "*De-Lo ley-Lfan*"). See Satlow, *Tasting the Dish*, 190-91, who raises the possibility that Samuel's father feared they would be attracted to such single-sex sexual relations in the future on a steadier basis; Brooten, *Love between Women*, 68,

Samuel's father<sup>80</sup> forbade his daughters from sleeping next to one another, and the Talmudic discussion that accepts this tradition seeks to discover the reason for this physical separation. It first surmises that he feared that such physical proximity would lead them to engage in intercourse with each other, thereby disqualifying them from marrying priests, based on R. Huna's view. The Talmud then rejects this reasoning, and argues that Samuel's father did not agree with R. Huna, and that there is another, more general, consideration for his banning his daughters from sleeping together: so that they would not grow accustomed to physical contact with another person.<sup>81</sup> This *sugya*, therefore, indicates that the Talmud does not regard sexual contact between women per se as a serious halakhic problem.

The Talmud's lenient attitude to such activity is brought into sharper focus in light of the studies demonstrating that, despite the relative tolerance of male same-sex relations in Roman culture, males had difficulty in accepting the thought of women engaging in sexual relations between themselves.<sup>82</sup>

The facts of the ongoing presence in the Jewish sources of both the expansive and limiting views, and that Judaism's approach to same-sex relations is not exclusively anchored in one or the other, as Boyarin and Steinberg assert (each from his own perspective), enables us to understand that all that unfolded in later sources from the above discussions of the Tannaim and Amoraim was nothing more than an interpretive waltz between these two approaches: each commentator following his own predilection and perspective, and in accordance with the social circumstances in which he acted and the values that he sought to stress in his time and place.

Since the Talmudic commentators, both *Rishonim* and *Abranim*, made various incidental observations concerning halakhic issues related to the current subject, that in most instances were of only secondary importance in describing the factors that fashioned the halakhah, we will focus on the central sources that sig-

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suggests that he was concerned that his daughters would not pass the test of maintaining the laws of family purity when they would marry in the future.

80 His name was Abba bar Abba, and he was usually spoken of in reference to his son, the famous Amora Samuel. He was descended from an esteemed priestly family; here, as was the case with R. Huna (see above, n. 75), these were priests, and consequently, the question might originally have been connected with the eligibility of these women to marry priests.

81 The Talmud itself does not determine the precise nature of the apprehension of Samuel's father concerning such contact; see above, n. 78, for several proposals. It is also noteworthy that in their commentaries on *b. Shab.* 65b, both Rashi and *Tosefot* assert that, according to all opinions, sporting women are forbidden to a High Priest, since they are no longer a "perfect virgin," while nothing on this point is explicitly mentioned in the Talmud itself.

82 See the survey by Judith Hallet, "Female Homoeroticism and the Denial of Roman Reality in Latin Literature," *Yale Journal of Criticism*, Jan. 3, 1989, 209-27 (= *Roman Sexualities*, 255-73).

nificantly shifted the halakhah to one pole or the other.

### **The Geonim and the Rishonim**

Although the extant material from the Geonim does not contain a great deal of material capable of shedding light on their interpretive inclination, R. Saadiah Gaon's commentary on Lev 18:23 contains a single indirect, but intriguing, testimony.<sup>83</sup> Saadiah lists the practices that, according to his understanding, were prevalent among the non-Jews (= the Canaanites and the Egyptians, who are mentioned in Lev 18:3 as the source of such abhorrent practices), among which is male homosexuality, as in Sodom. He adds, however, that logic dictates that these peoples did not engage in the "acts of a woman with another woman, as do the Ishmaelites," since the Torah would have mentioned instances of sporting women among them, if they had existed.<sup>84</sup> Saadiah also denies, in his commentary on Genesis, the need to especially prove the prohibition imposed by the Torah on the sexual act between women, since the wording *shakhav* ("lie") used in regard to prohibited intercourse applies both to those actively and passively engaged in the act, whether male or female. Obviously, there is no difference between these two modes of engagement in a forbidden sexual act, "therefore, there is no need to prove the prohibition of women with women [...]."<sup>85</sup>

Thus, R. Saadiah Gaon had knowledge of this phenomenon from the surrounding Arab society,<sup>86</sup> but of greater importance is the incidental use he makes in his commentary on the Torah of the view that sexual relations between woman are prohibited by the Torah (even though he does not think that the deeds of the Canaanites and Egyptians allude to such activity), because the passive participant bears exactly the same responsibility as the active partner; his commentary implies that even without the element of penetration, the sexual act could be considered as Torah prohibited. To a certain degree, this is reminiscent of the early stance of the School of Shammai; it is unclear how Saadiah harmonized his position, as set forth in his commentary, with that set forth in the

83 *Saadya's Commentary on Genesis*, ed. Moshe Zucker (New York: Jewish Theological Seminary of America, 1984) 388-89 n. 183 (Hebrew).

84 For this argument regarding the situation at the time of the Bible, see above, the discussion of the biblical sources.

85 Zucker, *Saadya's Commentary on Genesis*, 388.

86 R. Saadiah Gaon was born in 882 (or 892) and died in 942. S. O. Murray ("Women-Women Love, in Islamic Society," in Stephen O. Murray and Will Roscoe [eds.], *Islamic Homosexualities: Culture, History, and Literature* [New York: New York Univ. Press, 1997] 97-104) indicates the phenomenon of lesbianism existed in the medieval Islamic world; due, however, to censorship, the only extant testimonies of this consist of episodic tales, that in most instances were told by men.

Babylonian Talmud. If we have found only the faintest hint of R. Saadiah's proximity to the expansive interpretation (that is absent from the BT), the pronouncements on this question by Maimonides, who followed Saadiah, are crystal-clear.

Although many commentaries have been written concerning Maimonides' rulings on the sporting women, we are fortunate in that the comments by Maimonides scattered throughout his writings coalesce into a comprehensive and coherent picture of his interpretation of the diverse sources that preceded him, one that is unequivocal.

In the post-Talmudic age, Maimonides unquestionably returned the halakhah to its expansive interpretive course, despite the indisputable fact of his knowledge of the above *sugyot* in the BT.<sup>87</sup> The diverse range of sources cited above were all available to him, and, as usual, he charted a personal interpretive path meant to provide a harmonic direction for contradictory sources.

First, it should be stressed that Maimonides, unlike the Talmudic sources, expresses his disgust at the sexual act between women. Thus, for example, he states outright in his *Commentary on the Mishnah (Sanhedrin 7:4)*:

Similarly, the abominable practice of lesbianism between women who lie one with the other is a disgraceful practice. [...] These are women which the Sages have called *mesolelot* [...] Although there is no punishment for this act, the Sages consider it among the abominations of Egypt as they explicitly stated (in their

87 On this point, as well, Boyarin's theory is consistent with our findings, since he emphasizes the return of Maimonides to the "dualist" position of Philo and the Judeo-Hellenists on matters concerning the body; see Boyarin, *Carnal Israel*, 57-60. For Maimonides' attitude to sexuality, see D. Maimon, "Rabbinical Judaism and Islamic Mysticism: The Limits of a Relationship. Part Two: Rabbi Abraham Maimonides and 'Hassidei Mitsrayim,'" *Akdamot* 8 (1999) 64 (Hebrew); for his perception of the Godhead as nonsexual Eros, see P. E. Gordon, "The Erotic of Negative Theology: Maimonides on Apprehension," *JSQ* 2 (1995) 1-38; see also S. E. Shapiro, "A Matter of Discipline: Reading for Gender in Jewish Philosophy," in Miriam Peskowitz and Laura Levitt (eds.), *Judaism since Gender* (New York: Routledge, 1997) 158-73, for the gender attitudes inherent in Maimonides' philosophical formulations. All this totally accords with Maimonides' intentional disregard for the simple interpretation of the BT sources, and the imposition of the expansive interpretive approach on his final formulation of the halakhah. If anything, Boyarin's thesis should be further emphasized: to exemplify the broad expanse of rabbinic possibilities in the medieval period, and because the dearth of statements against homosexuality in this large corpus enabled the rabbis to adopt positions diametrically opposed to that of Maimonides, we should present the reason cited in the name of R. Judah he-Hasid for the Bible's prohibition of male homosexuality: "R. J[udah] explained why the Torah forbade homosexuality: so that they would marry women, and thereby fulfill the obligation of procreation" (Cited in *Moshav Zekenim al ha-Torah*, ed. Solomon David Sassoon [London: n.p., 1959], on Lev 18:22, 339). Such an interpretive position, that contains not a whit of repulsion or fundamental rejection of same-sex attraction, and that leaves it completely neutral, from the principled moral aspect, also apparently teaches that R. Judah he-Hasid, in the wake of the BT, gave a limiting interpretation of the biblical prohibition.

interpretation of the phrase) "the doings of the land of Egypt - what did they do? A man would marry a man, or a woman, would marry a woman, or a woman would marry two men."<sup>88</sup>

This text already exhibits two salient features of the expansive approach: (1) exhibiting feelings of repulsion toward homosexuality, which is an indicator of the expansive interpretive approach, that was already formulated by the leading proponents of this approach, such as Philo. Significantly, Maimonides' use of the term "abomination" attests to his understanding of the biblical prohibition as not being limited to the concrete context of anal sex between males, as is the simple reading of the biblical text;<sup>89</sup> his use of the term here, regarding the sexual act between women, is a clear indicator of the expansive approach;<sup>90</sup> and (2) the assumption that male homosexuality is unnatural: Maimonides also assumes that only non-Jews suffer from this, while the people of Israel, which is a holy nation, could not, by their nature, fall prey to this depravity, "for this holy people would not be stricken by the desire for these two acts,<sup>91</sup> that exceed the bounds of nature."<sup>92</sup> (3) The linkage of male and female homosexuality in his commentary on the Mishnah is one of the prime components of the expansive interpretive approach.<sup>93</sup>

Even a preliminary examination of the text in the *Commentary* teaches of a fundamental change toward homosexuality, that is not to be found in the Talmud: Maimonides once again brings the text from *Sifra* (that had been cast aside and forgotten in the time of the Talmud) into the arena of definitive Jewish texts on this issue.

This background finely explains Maimonides' considerations in the editing and arrangement of his halakhic material on the subject in *Mishneh Torah*, and how he resolved the disparity between the BT sources and the early source in *Sifra*. In the first chapter of *Hil. Issurei Biyah* (Laws of Prohibited Intercourse), Maimonides, in a manner corresponding with the Talmud, includes only the halakhic rules regarding anal sex between males. This rule relates to *mishkav zakhar* as an act of anal intercourse, and says nothing beyond that:

88 *Maimonides' Commentary on the Mishnah*, trans. Rosner, 91; "lesbianism" is Rosner's rendering of the *mesolelot* of whom Maimonides speaks.

89 See Lev 18:22; 20:13.

90 Cf. above, near n. 47, for the revulsion of this phenomenon implicit in Philo's style of writing.

91 Homosexuality and bestiality.

92 For the source of this quotation, see above, n. 87; cf. above, n. 12.

93 Homosexuality is mentioned in *m. Sanh.* 7:4, and therefore the discussion of this issue within the interpretive context of the mishnah is understandable. There is no logic in linking this, however, with the discussion of the *mesolelot*, unless Maimonides saw these subjects as interconnected in light of the expansive interpretive approach.

If a man engages in intercourse with a male, or causes a male to engage in intercourse with him, once sexual contact has been initiated - if both are adults, they are punishable by stoning, as it is said, "Do not lie with a male" (Lev 18:22), [i.e.,] whether he was the active or passive participant in the act. If he was a minor, aged nine years and a day, or older, the one who engaged in intercourse with him, or who caused him to engage in intercourse, is punishable by stoning, while the minor is exempt. If the male [i.e., minor] was [exactly] nine years old or younger, both are exempt. It behooves the court, however, to inflict rabbinical lashes upon the adult, since he has lain with a male, albeit with one younger than nine years of age. (*halakhab* 14)

In this *halakhab* Maimonides discusses the homosexual act that is forbidden because an act of actual intercourse is committed in it, and it therefore can be included in chapter 1 of *Hil. Issurei Biyah*. The opposition of the expansive approach to homosexuality is much broader, and also includes, as was noted above, nonpenetrative single-sex contacts of a sexual nature, by men or by women, and aversion to any institutionalization of such a relationship. The latter position, that includes most of the elements of opposition to homosexuality as a lifestyle, is set forth by Maimonides in chapter 21 of *Hil. Issurei Biyah*, in which he lists the prohibited acts that are not to be included among the usual forms of prohibited intercourse, since they do not entail penetration ("*biyah*"), and are forbidden for other reasons:

Women are forbidden to sport with one another, this being the "practices of Egypt" of which we have been warned, as it is said, "You shall not copy the practices of the land of Egypt." The Sages said: What would they do? A man would marry a man, a woman would marry a woman, and a woman would be married to two men. Although such an act is forbidden, lashes are not administered for it, since there is no specific prohibition for it, nor is there any actual intercourse here. Consequently, such women are not forbidden for the priesthood on account of *znut* [harlotry], nor is a woman forbidden to her husband because of this, since this does not constitute *znut*. It behooves the court, however, to administer rabbinical lashes to them [f.], since they have performed a forbidden act. A man must take pains with his wife against this, and prevent women who are known for [engaging in] this from coming in to her and [to prevent] her from going out to them. (*halakhab* 8)<sup>94</sup>

94 The innovative dimension in Maimonides' ruling should be stressed: he connects the "*mesolelot*" mentioned in the Talmud, that speaks of women who maintain some nonpermanent sexual contact between themselves, with the passage in *Sifra* that explicitly speaks of single-sex "marriage." Maimonides thereby creates a completely new context, that explains the Talmudic term "*mesolelot*"

Maimonides is perfectly clear on this point: although he maintains that the sexual act between women is prohibited by Torah law (based on the biblical injunction against copying the practices of the Canaanites and the Egyptians), he nevertheless subscribes to the Talmudical legal rule that the halakhah accords with the view of the School of Hillel. Accordingly, sporting women are not to be considered "zonot" (as does the School of Shammai); likewise, they are not to be given 39 lashes (= Torah-prescribed lashes, generally imposed for every prohibition using the wording "lo") for this transgression,<sup>95</sup> since this is a "*lav she-bikhlalut*," that is, a general prohibition the violation of which, according to the rules of the halakhah, is not punishable by lashes. Despite this, Maimonides advises the judges to administer rabbinic lashes to such women.<sup>96</sup>

What is new in this formulation in *Mishneh Torah* are two implicit elements:

(1) Since Maimonides copies the passage from *Sifra*, his reliance on the latter obviously transforms the prohibition of the *mesolelot*, as the institutionalization of the single-sex relationship ("a woman marrying a woman"), into an unquestionable Torah prohibition, in variance with what is indicated by the Talmudic sources.

(2) A methodical and precise examination of this *halakhab*, that copies the "woman marrying a woman" of *Sifra*, teaches that, according to Maimonides' unique understanding, the Talmud is just as concerned with "sporting men" as it is with "sporting women"! The opposition formulated in 21:14 is not restricted to lesbianism, it rather rejects every form of homosexual cohabitation, whether male or female, as can be learned from Maimonides' citation of the passage in *Sifra* concerning the despicable practice of the Gentiles of a man marrying a man, and a woman marrying a woman, unrelated to the specific question of the prohibition of anal penetration.

Consequently, if a male couple engage in a life of cohabitation in the manner of "marriage," even if they resolve to refrain from the prohibited act of which chapter 1 of *Hil. Issurei Biyah* speaks, namely, anal penetration, this has the same legal standing as the act performed by the "sporting women," since the very institutionalization of this relationship is considered to be a violation of the Torah

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as referring to a permanent and institutionalized relationship!

95 For a general treatment of the punishment of lashes in the rabbinic literature, see Aharon Shemesh, "The Punishment of Flagellation in the Tanaic Sources," Ph.D. diss., Bar-Ilan University, Ramat Gan, 1994 (Hebrew); idem, *Punishments and Sins: From Scripture to the Rabbis* (Jerusalem: Magnes, 2003) 178-204 (Hebrew).

96 For the reason for this, that has no Talmudic roots, and apparently is "*migdar milta*" (i.e., a preventive decree issued by rabbis by force of their authority) see the discussion in R. Solomon ben Simeon Duran, *Sefer ha-Rashbash* (Jerusalem: Or ha-Mizrah, 1998), para. 610, 511.

prohibition of the abominable acts of the Canaanites and Egyptians. Thus, surprisingly, Maimonides' statement almost expressly touches upon what we have intentionally refrained from discussing throughout this article: the homosexual sexual identity, that is known to us today from the modern demand by the homo-lesbian movements for equality and the rights of institutionalized and legal realization of single-sex union.<sup>97</sup>

To summarize Maimonides' position: the distinction that he draws between what he says in chapters 1 and 21 of *Hil. Issurei Biyah* is unequivocal and consistent: in chapter 1 Maimonides cites the Talmud's position regarding anal penetration between men, and in chapter 21 he presents the ban against the institutionalized realization of homosexual cohabitation, for women as for men, including single-sex relations that do not necessarily entail penetration; the acts described in both chapters are Torah prohibitions.<sup>98</sup>

While on this subject, it is noteworthy that the formulation in *Mishneh Torah* implies that there were certain women in twelfth-century Egypt who were suspected to be *Mesolelot*.<sup>99</sup> According to Maimonides, responsibility for protection

97 The movement for homosexual rights first developed in Germany in 1897 and expanded to Holland and Austria, but Hitler's rise to power put an end to the first chapter of its annals in modern times. The second chapter of militant activity for these rights opened on June 28, 1969, when the NYC police raided Stonewall Inn, a homosexual bar in New York, to arrest homosexuals. Those in the bar resisted the police, and started a demonstrative revolt, that ended in the first gay parade. Since then, the movement is active in a number of realms, including changing the prevalent idea that homosexuality is a mental disease; the cancellation of laws pertaining to the life style of homosexuals; and the struggle against discrimination against homosexuals on the background of their sexual orientation (in the workplace, in housing, and the like). For an extensive discussion, see: "Homosexual rights movement," *The New Encyclopaedia Britannica* (Chicago: Encyclopaedia Britannica, 1992), *Micropaedia*, vol. 6, 30-31.

98 The text of Prohibition 353 in *Sefer ha-Mitzvot* by Maimonides can further clarify his position. Maimonides begins his discussion of Prohibition 353 with the injunction in the Torah to refrain from contact with women who are forbidden to us, even when such contact does not entail penetration. This prohibition has its source in Lev 18:6: "None of you shall come near anyone of his own flesh to uncover nakedness." Maimonides explains that the punishment of *karet* was not imposed on these other Torah prohibitions (that do entail penetration), as it was enacted for the violation of the incest prohibitions (that do entail penetration); furthermore, the Torah reiterated this injunction against drawing close to forbidden women (even without penetration), when it stated (Lev 18:30): "not to engage in any of the abhorrent practices [*ha-toevot*]," and also detailed this ban, beginning with verse 3 of the same chapter: "You shall not copy the practices of the land of Egypt where you dwell, or of the land of Canaan," followed by extensive specification of the forbidden acts. Maimonides then cites the above passage from *Sifra*, on the basis of which he explains that the prohibition of copying the practices of the Canaanites and Egyptians does not apply to every individual detail in these practices, but only to the activities of their forefathers that are considered to be immoral. After this preface, Maimonides copies the wording of *Sifra* ("A man would marry a man, and a woman, a woman"), as an example of such odious customs.

99 We learn from the above passage by R. Saadiah Gaon (ninth-tenth centuries) that these were Arab women; see also above, n. 85.

against falling prey to the wiles of such women lies squarely with the husband, who is responsible for precluding even the possibility of his wife meeting these women who are "known for" engaging such practices.<sup>100</sup>

### The Positions of the *Ahronim*

The interpreters of the halakhah after Maimonides could not ignore his rulings and return to the Talmud itself, although many of them patently sensed the disparity between his forceful views concerning the homo-lesbian question and what appears in the Talmud. Significantly, the confusion evinced by the later authorities is not limited to the traditional commentators, and is also the lot of modern scholars who examined this issue.<sup>101</sup>

The passage in chapter 21 of *Mishneh Torah* that, we maintain, relates equally to male and female homosexuality, was copied almost verbatim by the *Tur*, *Even ha-Ezer*, *Hil. Periah u-Reviyah* (Laws of Procreation) 20; by *Shulhan Arukh*, *Even ha-Ezer* 20:2; and, in similar wording, in the later halakhic literature, as well.<sup>102</sup>

Three models of a comprehensive interpretive response emerge from a study of the *Ahronim*:

Some commentators understood Maimonides in a manner somewhat similar to our reading (with no attempt to refer directly to the Talmud), and relate ex-

100 For Maimonides' general imposition on the husband of supervision of his wife, see Maimonides, *Mishneh Torah*, *Hil. Ishut* (Marriage Law) 10:11 (note, incidentally, the comment by Ben-Naeh, "Same-Sex Sexual Relations among Ottoman Jews," 189 n. 52, that Maimonides [*Hil. Issurei Biyah* 22:2] indicates his awareness of the influence of life in the Muslim city on same-sex licentiousness, but this hypothesis is unfounded).

101 Thus, e.g., Saul Lieberman confuses what appears in the BT with what is written in *Sifra* in his explanation of the School of Shammai's position regarding sporting women. Lieberman asserts that the School of Shammai's viewing such women as "*zonot*" is because of "wantonness, for the women's act is as the practice of Egypt" (*t. Sotah*, chap. 5 [Saul Lieberman, *The Tosefta, Order of Nashim* (New York: Jewish Theological Seminary of America, 1973) 658, the long commentary]). As we have seen, the BT, that maintains that the act of the *solelot* is "mere wantonness," is not of the opinion that this constitutes the Torah prohibition related to "the practices of the land of Egypt"! According to the "mere wantonness" view, this is unrelated to the Tannaitic position in *Sifra*, that links this act with the Torah prohibition of "the practices of the land of Egypt"; as we have seen, the BT is unaware of the stance of *Sifra*.

102 The inclusion of this passage from Maimonides by R. Joseph Caro in the *Shulhan Arukh* teaches that Caro did not imagine that Maimonides spoke of "sporting men," as he did with sporting women. The text in the *Shulhan Arukh* reads: "Women who sport with one another: [this act] is forbidden, from [the prohibition of] the practices of the land of Egypt, against which we were enjoined. rabbinical lashes should be administered to them [f.], since they have violated a prohibition, and a man must take pains with his wife against this, and prevent women who are known for [engaging in] this from coming in to her and [to prevent] her from going out to them." Moreover, in his comments in *Beit Yosef* ad loc., s.v. "*Nashim Mesolelot*," he also quotes *Sifra*, but it is clear from Caro's concise wording in *Shulhan Arukh* that he thought that this was cited by Maimonides only for the purposes of his discussion of sporting women.

plicity to both male and female homosexuality in their interpretation of chap 21 of *Hil. Issurei Biyah*.

The outstanding representative of this view seems to be R. Jehiel Michal Epstein,<sup>103</sup> who formulates his understanding of Maimonides as follows (*Arukh ha-Shulhan*, *Hil. Isbut* [Marriage Law] 20:18):

It is also forbidden for a man to rub against another man with his [sexual] organ in a lustful manner, and similarly a woman with another woman. The Rabbis said: women who sport with one another are disqualified from [marrying into] the priesthood, and this is the practice of the land of Egypt. It was said of this, "You shall not copy the practices of the land of Egypt," for this was their corrupt way, and rabbinical lashes should be administered to [such women], for they have committed a prohibited act. A man must guard his wife and his sons and daughters from such things, and prevent the women whom he knows to commonly engage in this from entering his home. As for us, it is accepted that for this they are not disqualified from [marrying into] the priesthood.

Epstein's formulation is the first since the time of Maimonides (in the twelfth century) to assert that the halakhah (which was seemingly understood as applying exclusively to sporting women, as the relevant passage is copied in *Shulhan Arukh*) clearly and unequivocally relates equally to sporting women and men.

Epstein also adds to Maimonides' original formulation the warning that a husband must not only take care that his wife not be drawn to such relations, he must also watch over his daughter, and even his son. This presumably ensues solely from the manner in which Epstein understood the ruling by Maimonides, and is unrelated to the early struggles for legitimacy by individual homosexuals in Europe during his time;<sup>104</sup> tellingly, this formulation of the halakhah in *Arukh ha-Shulhan* makes no mention of the ban of the institutionalization of single-sex relationships. Epstein understood the wording of marriage in the passage in *Sifra* on which Maimonides relies ("A man would marry a man, and a woman, a

103 Epstein (1835-1905) served as the rabbi of Novogrudok, Lithuania, for some forty years.

104 It is totally implausible that at that time (the end of the nineteenth century) R. Epstein was concerned by the struggle of Jewish lesbians. The first novel that publicly revealed this issue in the Jewish world was *Wasteland* by Ruth Seid (published in 1946, under the pseudonym Jo Sinclair). While individual women of Jewish origin known for their daring, such as Gertrude Stein, chose to cohabit in lesbian relationships, only from the 1960s was it possible to actually speak of this phenomenon as an internal Jewish matter that could have reached the ears of Orthodox rabbis, mainly in the United States, due to the increasing activity of the equal rights movements of feminists and homo-lesbians (see above, n. 96). At that time homo-lesbian groups in the United States began to search for their Jewish roots, leading to the establishment of the first homo-lesbian synagogues; since then, such congregations have sprung up in almost every major American city. See Alpert, "Lesbianism," 829-31.

woman") as a euphemism for sexual relations. This perception, as well, shows that Epstein does not even hint at the demands for institutionalization made by homosexual organizations in our time.<sup>105</sup>

A second stance to be found in the later halakhic literature seeks to resolve the tension between the Talmudic sources and Maimonides. One proposed resolution set forth by several *Abronim* argues that chap. 21 of *Hil. Issurei Biyah* is directed solely at institutionalized single-sex relationships, while casual sexual contacts between women, that have no permanent basis, were not included in the Torah's injunction not to copy the practices of Egypt; consequently, the Talmud regarded them as "mere wantonness."<sup>106</sup>

The third orientation that we identified among the *Abronim* appears in a responsum written by R. Moses Feinstein<sup>107</sup> to a person who "committed the sin of a male homosexual act, Heaven forbid."<sup>108</sup> This responsum, possibly the most scathing rabbinic manifesto against homosexuality ever put to paper, is of importance for the current discussion since Feinstein delineated a third possible resolution of the differences between the sources. It should first be noted, however, that this resolution is not explicit in Feinstein's responsum, that is not directly concerned with the ruling by Maimonides, and it can hardly be stated with certainty that he was even aware of this problem. After the fact, however, we shall see that Feinstein provides a third way to explain the disparity between the Talmudic sources and the Maimonidean formulation of the law.

The responsum is noteworthy for R. Feinstein's lengthy presentation of the theoretical and philosophical position that he finds in the Talmud, while he de-

105 See also *Sefer Haredim* by R. Eleazar Azikri (Jerusalem: n. p., 1984), p. 155, where the editor, R. D. Avrahami, raises the possibility of understanding the passage in the book as referring to sporting men, and that "this is a [separate] prohibition, in addition to *mishkan zakhar*, and it might be violated as soon as they decided to do this [i.e., to live as a couple]." If for the moment we leave aside Azikri's unclear wording on this point, we can state with a great degree of certainty that the learned editor, at least, in his stern presentation of the subject in his commentary relates indirectly to the institutionalization of the homosexual bond, an issue currently on the public agenda.

106 This position is also adopted by R. Solomon Haas, *She'eilot u-Teshuvot Kerem Shlomo* (Jerusalem: Feldheim, 1974), para. 2, on *Even ha-Ezer* 20, fol. 11 (see also *Otzar ha-Poskim, Even ha-Ezer, Hil. Ishut* 20:2:14-16, p. 21); as it is by R. Joseph Hayyim ben Elijah of Baghdad, *She'eilot u-Teshuvot Torah le-Shmeh* 504 (for the identification of R. Joseph Hayyim as the author of this collection of responsa, see Z. Zohar, "The Halakhic Literature of the Sages of Iraq in Modern Times," *Pe'amim* 86-87 [2001] 40-41 [Hebrew]). This proposal is close to our thesis (above); it should be noted, however, that these responsa do not assume that in *Hil. Issurei Biyah* Maimonides speaks of "sporting men" in the same breath as "sporting women."

107 Feinstein (1895-1986) was considered to be the leading *posek* who lived in the United States. See R. M. Glogwer, "Feinstein, Moshe," *The Encyclopedia of Religion* (New York: Thomson-Gale, 1993), vol. 5, 302.

108 *She'eilot u-Teshuvot Igrot Moshe, Orach Hayyim*, vol. 4, responsum 115. The responsum is dated the first day of *Rosh Hodesh Adar I* 5736 (= January 30, 1976).

votes scant attention to technical halakhic clarifications of the halakhic sources' attitude towards homosexuality. His view, however, emerges from his discussion of the issue, namely, that the Talmud itself does adopt the expansive interpretive stance, and therefore (even if Feinstein does not state this expressly) the Maimonidean position is a continuation, in all senses, of the perspective of the Talmud.

Feinstein builds his interpretive theory on a short Talmudic dictum that he explains in a manner highly reminiscent of Philo and Paul, who, like this twentieth-century *posek*, stress the ideational orientation that opposes homosexuality because it is opposed to "nature."<sup>109</sup>

Where does Feinstein find such a source in the Talmud? His theoretical structure is based primarily on the Bible's use of the word "*toevah*" when enjoining *mishkeav zakhar* (Lev 18:22; 20:13). The accepted interpretation of this word is something loathsome, abominable;<sup>110</sup> it presumably could be understood from this that the Torah realizes that some men are lustfully attracted to other men, but they must refrain from realizing this, because such an act is abominable in the eyes of the Torah. Feinstein, however, interprets this differently:

This is not something to be understood as a matter of lust, for man's created nature is not to lust after homosexuality.

He finds a source for this assertion in the Talmud (*b. Nedarim* 51a), that tells of Bar Kappara's asking R. Judah ha-Nasi to interpret the word "*toevah*." Bar Kappara is not satisfied with any of R. Judah's suggestions, and in the end he himself explains the word, by means of an acrostic: "*toevah* = *toeh atah bah* [you stray in respect to her]"; according to Rashi, this "straying" means that "he leaves his legal wife, and takes this one of harlotry." Rabbenu Nissim, in contrast, explains that "he leaves intercourse with a woman and goes to a man."<sup>111</sup>

Relying on this latter interpretation, Feinstein concludes that the Talmud al-

109 Maimonides' argument in his *Commentary on the Mishnah*, that this is an unnatural act, may have faintly resounded for Feinstein when he raised this line of reasoning, even though he makes no explicit mention of this here.

110 Thus, e.g., the Bible refers to idols: "You must not bring an abhorrent thing [*toevah*] into your house" (Deut 7:26, and elsewhere). For the biblical term "*toevah*," see Schwartz, *The Holiness Legislation*, 219-20; J. Klein and Y. Sefati, "The Concept of 'Abomination' in Mesopotamian Literature and the Bible," *Beer-Sheva* 3 (1988) 131-48 (Hebrew); Fleishman, "Name Change and Circumcision in Genesis 17," 319 n. 51.

111 Could this be an echo of instances of homosexuality in the Jewish society in Spain (both the Islamic and the Christian)? See Ben-Naeh, "Same-Sex Sexual Relations among Ottoman Jews," 180-81. Incidentally, note should be taken of a heretofore ignored reference in the poetry of Spanish Jewry, with testimony to a kiss between women in a sexual context. See Todros ben Judah Abulafia, *Gan ha-Meshalim ve-ha-Hidot*, ed. David Yellin (Jerusalem: n.p., 1934), vol. 2, part 1, 130, no. 723: "For she kisses the females, and because I am a male, I lost out."

ready presents the view that sexual attraction between men is "toevah," that means "straying" (from the way of nature. Consequently, this transgression of homosexuality has nothing to do with natural desire, for I [i.e., the Holy One, blessed be He] created you [= men] to have desire for intercourse with women, for without [sexual] desire, *yishuv ha-olam* [the "settlement of the world"; i.e., without sexual attraction, there would be no procreation and human society] would not be possible.

Feinstein maintains that this short explanation by Bar Kappara, according to the interpretation of Rabbenu Nissim, encapsules the entire Talmudic world-view concerning single-sex attraction:

The desire for this is merely straying from nature to another way, in which [even] the wicked who are governed by their desires, and who are not deterred by sin and iniquity do not go, for this evil inclination [i.e., homosexual attraction] is only because it is forbidden, and is done in a spirit of defiance.

Feinstein adds that, in his opinion, man's psyche, as naturally created, contains only the heterosexual sexual urge, and the "natural" possibilities of the "evil inclination" to tempt man to commit a transgression lie solely within the realm of heterosexual attraction, consisting of relations with the other sex that are forbidden to him.<sup>112</sup> As regards homosexual attraction, however, since, according to R. Feinstein, man's "nature" does not include any such sexual attraction, we may assume that the attraction reported by the querier is based on an anarchic mental element, and that "this evil inclination is only because it is forbidden, and is done in a spirit of defiance."<sup>113</sup>

112 Although Feinstein was concerned only with male homoeroticism, and not its female counterpart, he likely would have maintained that his responsum also applies to female single-sex attraction, that, to the same degree, also is not "natural." We cannot, however, know how, if an actual query had been directed to him, Feinstein would have incorporated this ideational approach with a specific ruling and an analysis of the halakhic sources.

113 For the diverse opinions on this question among Orthodox rabbis, see also the position espoused by J. B. Volvolsky and D. B. Weinstein, "Initial Spiritual Guidance for a Religious Young Man with Homosexual Tendencies," *Asia* 15, 3-4 (1997) 108-15 (Hebrew), who do not reject the assertion that the homosexual inclination is natural for a certain part of the population, which leads them to the fundamental theological statement that "the Torah forbade a portion of the natural structure of human life."

To complete the picture, it is noteworthy that Conservative and Reform rabbis took a different path from the Orthodox on this issue. While in 1969 R. Solomon B. Freehof, one of the leading rabbis of the Reform movement, published a responsum that viewed homosexual cohabitation as a life of sin, that is contrary to the Jewish principles of sanctity, many shortly changed their views in the wake of published works that showed that, for many homosexuals, the structure of their attraction to members of their same sex cannot be changed (for this aspect of the psychological life of lesbians, see R. Rav-Hon and D. Kitron, "Sexualization of Primary Needs and Its Expression in Female Homosexuality," *Sibot - Dialogue: Israel Journal of Psychotherapy* 12,3 [1998] 178-84 [Hebrew]); some argued that the current phenomenon of single-sex love and emotions was not

## Summation

The sources exhibit two different interpretive approaches regarding female and male homosexuality. Both approaches begin with the interpretation of the biblical verses that prohibit male homosexuality (Lev 18:22; 20:13). The first, that we have called the "limiting interpretive approach," does not include sexual contact between women in the injunction against male homosexuality in Leviticus. According to the second approach, the "expansive interpretive approach," the prohibition comprises general opposition to all forms of homosexuality, both male and female; in certain instances it also includes opposition to the institutionalization of a homosexual single-sex relationship, whether or not such a relationship entails intercourse.

An early treatment of such relationships appears in the Tannaitic midrash *Sifra*, that forbids the institutionalization of this type of relationship. This text, that clearly attests to the existence of the expansive interpretation in the Tannaitic literature, enables us to reject Boyarin's assumption that the verses in Leviticus, as understood by the Rabbis, ban only the anal act between men. An additional Land of Israel source that presents the expansive approach is to be found in *Lev. Rabbah*, that teaches of the knowledge by Land of Israel Rabbis of the conducting of pseudomarital ceremonies in the Roman world.

Many more references to homosexuality, and condemnations of the phenomenon, appear in the Judeo-Hellenist literature. Philo's virulent statements against single-sex homoerotic relations, of either of the sexes, indicate that he subscribed to the expansive interpretation of the biblical ban; and a similar understanding is to be found in Romans, in which Paul makes no distinction between men and women in his opposition to "unnatural" homoerotic acts.

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known to the sages of the Talmudic period. See B. S. Arston, "Judaism and Homosexuality," *Tikkun* 3,2 (1988) 52-54, 92-93. In 1971 the Reform Central Conference of American Rabbis and the Union of American Hebrew Congregations published a manifesto calling for the granting of full equal rights to homosexuals. The process later accelerated: homosexuals were accepted as members in many of these congregations, and homosexual rabbis were granted official ordination (although the Conservative movement does not yet approve of this). For this process and response on the subject by Conservative and Reform rabbis, see Elliot N. Dorff, "*This Is My Beloved, This Is My Friend*" - *A Rabbinic Letter on Intimate Relations*, part D (New York: Rabbinical Assembly, 1996); idem, "Homosexuality," *The Oxford Dictionary of the Jewish Religion* (Oxford: Oxford Univ. Press, 1997) 335; Joel Roth, *Papers on Issues Regarding Homosexuality*, Committee on Jewish Law and Standards of the Rabbinical Assembly (United States, Conservative) (1992) (available online at [www.keshetjts.org](http://www.keshetjts.org)); Walter Jacobs (ed.), *American Reform Responsa: Collected Responsa of the Central Conference of American Rabbis, 1889-1983* (New York: Central Conference of American Rabbis, 1983) 49-54; idem, *Contemporary American Reform Responsa* (New York: Hebrew Union College Press, 1987) 88-90, 296-98; U. Regev, "Reform Judaism: Attitudes to Homosexuality," *Encyclopaedia Judaica, Yearbook 1990-1991* (Jerusalem: Keter, 1992) 386.

The limiting interpretive approach makes its first appearance in the Talmud. Two issues central to our discussion emerge from a *baraita* in the PT and several passages from the BT: (1) a discussion of the question whether women who engaged in such relations are defined as "*zonot*" (who may not marry priests), that teaches of the lenience of the School of Hillel on this matter; and (2) two BT sources patently teach that this is a more lenient view, that perceives the single-sex relationship between women as a mere deviation from the bounds of morality and modesty. Thus, the BT unquestionably presents the limiting interpretive approach.

R. Saadiah Gaon's commentary shows that he was aware of the phenomenon from the surrounding Arab society, and he assumed that lesbian sexual relations are forbidden by the Torah, thus alluding to his proximity to the expansive interpretation. This approach finds concrete expression in the rulings by Maimonides, who intentionally and consciously restores the halakhah to its expansive course, after the marked change that it had undergone during the Talmudic period.

A study of the *Abranim*, who could no longer ignore the law as established by Maimonides, produces three models of a comprehensive interpretive treatment of the sources: the first unquestioningly accepts Maimonides' ruling, without raising the troubling issue of the BT sources that seemingly contradict the rulings in *Mishneh Torah*. A second ponders how to resolve the tension between the BT and Maimonides, and suggests that in chapter 21 of *Hil. Issurei Biyah* Maimonides relates exclusively to the prohibition of the institutionalized single-sex relationship, while casual sexual contacts between women were not included in the biblical injunction not to copy the practices of the land of Egypt. The third direction in the literature of the *Abranim* was delineated by Rabbi Moses Feinstein, who maintained that the BT itself adopted the expansive approach, and therefore there is no discrepancy between Maimonides' expansive interpretation and the position expressed in the Talmudic sources.