

## Rabbi Dr. Zev Farber

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Rabbi Jeffrey Fox's basic thesis is, to my mind, clearly correct. Let me briefly restate its essence, as I understand it, in my own words:

Two main sources exist for some prohibition surrounding female-to-female sexual expression.

1. The acts of Egypt (Sifra)—The Midrash on the verse forbidding Israelites from practicing *מעשה ארץ מצרים* “like the acts of the land of Egypt” (Leviticus 18:3) states that the problematic Egyptian practices that must not be mimicked are their “irregular” marriage practices, such as male and female homosexual marriage, polyandry, and a man marrying a mother and her daughter.
2. Women who rub (Beit Shammai/Rav Huna)—The Yerushalmi (Gittin 8:3) records a debate between Beit Shammai and Beth Hillel about whether two women who are *מסוללות* (who rub genitals) with each other may not marry a *kohen*. Beit Shammai forbids and Beit Hillel permits. As *halakha* (almost) always follows Beit Hillel, the Yerushalmi does not lend support to the strict position.

In the Bavli, the strict position is twice recorded in the name of Rav Huna, though it uses the term *מסוללות* (which becomes the standard term in *halakhic* literature). In b. Yevamot 76a, Rav Huna's position is rejected by Rava, and the Talmud further clarifies that even according to the strict view of Rabbi Elazar, who prohibits women who have had non-marital sex from marrying a *kohen*, woman-to-woman sexuality is just *פריצות בעלמא*, “lewd behavior,” not a technical violation of *זנות*, “promiscuous sex.” In b. Shabbat 65a, there is a suggestion that Samuel's father, who did not allow his daughters to sleep in the same bed, may have agreed with Rav Huna that this was sinful behavior, but this is dismissed by suggesting an alternative explanation for his rule.

R. Fox's key point is that the Talmud is either unaware of the Sifra's Midrash or dismisses it, since the discussion of Rav Huna's position is never connected with this Midrash in any way. As Rava dismisses Rav Huna in one *sugya*, and in the second, Rav Huna is brought up but not endorsed, this should have been the end of the matter, *halakhically* speaking, since the Bavli is the main source of normative *halakha*.

What changed in the medieval period is that Rambam decided to adopt the Sifra's Midrash as normative (Sefer HaMitzvot 353) and to conflate Beit Shammai/Rav Huna's position—which the Talmud never explains or justifies with a verse—with the Sifra's *derasha* on Leviticus 18:3 (see Rambam's gloss on m. Sanhedrin 7:4; Mishneh Torah, Sefer Qedushah, Issurei Biah 21:8).

Reading the sources together, Rambam's understanding is that while a woman is not excluded from marrying a *kohen* because of having been *mesolelet*—since Rava dismisses Rav Huna as *halakha*—this is the act declared by the Sifra to be a violation of the prohibition to follow in the ways of Egypt. The act is thus prohibited, and the reason such an act does not forbid her from marrying a *kohen* is because it falls short of penetrative sex, which requires a penis. Even though it is forbidden by the Torah, it comes with no punishment since it is a *לאו שבכללות*, “a prohibited act that is part of a forbidden category of actions, and not specified in the Torah.”

Rambam's take here is unique, R. Fox argues. No authority until Rambam read these sources together, nor is it a likely reading of the Talmud; if the Bavli's authors had been aware of the Sifra's *derasha*, or considered it normative, they would have factored this verse into the two discussions about Rav Huna's position.

If we decouple the sources, to understand the Sifra in its own terms, the *derasha* does not seem to be talking about the sexual act per se. For instance, R. Fox notes, R. Joshua Falk (Prisha, EH 20.11) suggests that the problem is that the Egyptians were avoiding having children by marrying their own sex. According to this interpretation, the *derasha* is not about the act at all (and would be irrelevant nowadays, with the availability of artificial insemination). Even without R. Falk's reading, it seems clear that the Sifra is speaking about marriage and not sexual acts, which is the opposite of Rav Huna, who is speaking about an act that disqualifies a woman from a certain type of marriage.

The question becomes how much weight to give Rambam's *psak*, when it goes against not only other Rishonim and the simple reading of the Talmud, but, in a modern context, turns out to be hurtful to innumerable lesbian women—not to mention bisexual and pansexual women—who are looking for intimate partnership. R. Fox treats this

question sensitively and seriously, and advocates for understanding such partnerships as permissible.

While it is true that the act is dismissed by the traditional sources (rabbinic, medieval, and modern) as פריצות, “licentiousness,” this is because, until contemporary times, it was taken for granted that only heterosexual partnership was possible. In such a scenario, the act would either be between single women or an act of infidelity. This is clearly no longer relevant to contemporary times, in which monogamous same-sex couples are a norm.

In short, I concur with the above analysis, but I would like to take the opportunity to add two points of my own.

A. Rivan’s Position—R. Fox notes that Rabbi Yehudah ben Natan (Rivan), in his commentary on Yevamot, has a different understanding of *mesolelot* than the norm: “they implant the semen they received from their husbands.” Whether this was the full comment or not we don’t know since this part of Rivan’s commentary on Yevamot was lost, and this gloss was preserved only by the later Tosafot collection.

R. Fox, following the standard interpretation of Rivan, understands his reasoning to be that Rav Huna believed that the sexual act between two women only becomes “real” if semen taken from a man is involved, ostensibly replacing the penetrative penis. In other words, even Rav Huna thought some male penetrative involvement was necessary.

R. Fox then compares this view to that of several Provençal Rishonim who speak about sexual fluid exchange as part of *mesolelot*. For instance, R. Menachem Meiri writes (gloss on Yevamot, ad loc): ר"ל שבאות זו על זו אפילו פלטו זו בזו: “meaning they come on top of each other, even if they eject fluid into each other.” Articulating the same idea, Rav Aharon HaKohen writes (Orchot Chayim, Hil. Biot Assurot §27): ועולות זו על זו, ושופכת זרע להדדי, “they climb upon one another and eject their seed into each other.” Similarly, Rav Avraham min Hahar writes (glosses on Yevamot ad loc): מתחממות זו עם זו, ושופכין שכתב זרע לה [one of the women] ejaculates into her [the other woman].”

Here I will quibble with Rabbi Fox and say that I think the Provençal reading and that of Rivan are unrelated. The Provençal reading makes the following point: even if the women’s rubbing of genitals brings them to orgasm, and fluid is ejected from one woman’s vagina to another, this still does not count as sex. (R. Fox understands them this way as well.)

Rivan, however, doesn't see the term *mesolelet* as describing a sexual act at all but as an act of spurgling (sperm theft). Rivan's point is that men need to protect their semen from their wives, who can, immediately after coitus, go to another woman—a friend with an impotent husband, let's say—and impregnate her as a favor. Whether or not such a thing was possible or ever happened, the popular myth of the succubus, a female demon that has sex with a man in his sleep and steals his semen—identified as Lilit in Kabbalistic tradition—shows that this was a live fear. If this is what Rivan means, then the whole Bavli discussion around Rav Huna has nothing to do with lesbian activity in his reading.

Of course, this is not the simple meaning of the Bavli, but neither is Rambam's reading. On a *halakhic* level, it at least adds an extra *safek* (doubt) about whether even Rav Huna, whose strict position we do not follow, has anything to say about lesbian sex.

B. Rambam's Method—Rambam's use of the Sifra is part of his overall approach to *halakha*, which differs from other Rishonim. In general, *halakha* derives from the Bavli. Even though, once in a while, a *halakha* from the Yerushalmi (or Tosefta, or Midrash *halakha*, etc.) makes its way into the discourse—most famously, perhaps, not eating matzah on *erev Pesach* referenced in Tosafot (b. Pesachim 99b, s.v. לא יאכל)—as a rule, these sources were not comprehensively included in *halakhic* discourse like the Bavli.

Rambam, however, makes it clear in his introduction to the Mishneh Torah that he will be systematic in including all possible sources of *halakha*, sifting through them, and synthesizing a total approach.

ומשני התלמודים ומן התוספתא ומספרא וספרי ומן התוספתות, מכלם יתבאר האסור והמותר  
הטמא והטהור החייב והפטור הכשר והפסול כמו שהעתיקו איש מפי איש מפי משה רבינו מסיני  
(מהדורת אור וישועה):

From the two Talmuds, and from the Tosefta, and the Sifra, and Sifri, and from other Toseftot (rabbinic sources)—all of these allow us to determine the forbidden and permitted, the impure and pure, the obligated and exempt, the fit and the unfit, just as sage after sage passed on, going all the way back to Moses at Sinai.

Apparently, Rambam, in contrast to other Rishonim, saw the Sifra as authoritative like the Bavli. Moreover, following his systematic approach, Rambam would naturally try to connect the Sifra's *derasha* and the act described by Rav Huna. That kind of synthesis is what his approach in the Mishneh Torah was all about.

While Rambam's effect on *halakhic* discourse was enormous, given the real life difficulties this *halakha* causes contemporary women with same-sex attraction, it would seem best to turn back to the simple approach of following the Bavli, and thereby jettisoning the idea that the Sifra's *derasha* is normative and that lesbian sex is prohibited.

This is a case in which Rambam's expansive and inclusive view with regard to sources ends up being a burden on many observant Jewish women. Thus, I reiterate my overall agreement with my colleague Rabbi Jeffrey Fox and endorse his conclusion.