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CHAPTER II

SEXUALITY IN JEWISH LAW AND TRADITION

Moshe Zemer

Eight centuries ago, Maimonides declared that, for most people of Israel, there is nothing more difficult in the entire Torah than to abstain from forbidden sexual relations.¹ He based this claim on the reaction of the people of Israel to the revelation of the Torah, with its many negative precepts about sex. They received these prohibitions with crying and anger, as it is written: "Moses heard the people crying, every family apart, everyone at the entrance of his tent."² Rashi used hermeneutical exegesis to interpret the verse to mean that the Israelites lamented and protested about *family affairs*, which here, refer to sexual prohibitions.³ This appears to be no less true in our day, with the deepening chasm between religiously established modes of sexual behavior on the one hand and prevailing practices on the other. This conflict is a major cause of moral confusion today, as it was in the ancient past. At the root of this conflict is the (*yetzer hara*, literally, the evil inclination) implanted in man by God at his creation. Among the various evil impulses of man, in our context, this refers to the sexual urge. This is present in the child from infancy, Antoninus and Rabbi agreed, but questioned whether it began with the formation of the embryo or at the moment of birth. The patriarch accepts Antoninus' reasoning that the sexual impulse begins at birth.⁴

CONTROL OF SEXUAL URGES

The Sages made many attempts to find prophylactic measures to control the *yetzer hara* or to defend oneself against its power.

1) R. Il'ai, a second generation amora, says: If one sees that his *yetzer* is gaining control over him, let him go where he is not known; let him put on black clothes and don a black wrap, and do the deed that he desires, rather than profane the name of Heaven

publicly.⁵

Here R. Il'ai is more concerned about this scholar being publicly observed on the way to commit the forbidden act than by the act itself. The unchaste sexual tryst is immoral. If it is done in public, however, people may be misled to believe that if this great scholar commits this act, it must be permitted. This would be *hilul hashem*, the profanation of the Divine Name.

Rashi raises a rhetorical question: whether this man, who cannot control his sexual impulse, should be allowed "to do whatever he desires," i.e., sin. He answers his own query with the quotation of Judah HaNasi in the name of Rav Hai Gaon: "He may commit the deed that he desires. This means that now that he has donned black clothing, etc., I can guarantee that from this day and henceforth, he will have no desire to commit this sin."⁶

The drab black clothes are a sign of mourning and warning that, through this sin, he may blacken and tarnish his eternal soul, created in the image of God. This shocking fear of the loss of the Divine Image within him restrains his sexual urge.

2) In contrast, many rabbis concluded that "There is no guardian against sexual misconduct (*Ein apotropos al ha-arayot*.)"⁷ No outside force can prevent improper sexual behavior: Neither one's parents, spouse, teacher, nor society can guarantee or impose appropriate sexual behavior of a person or impose it upon him, if the individual does not fully accept responsibility for his actions.

4) The ultimate resolution of this issue is in the Teachings of the Sages: "Who is powerful? One who conquers (*kovesh*) his/or her own sexual urge."⁸ The responsibility for controlling one's sexual behavior rests squarely on the shoulders of the individual. We should note that this urge cannot be merely subdued, repressed, or suppressed. One must conquer the evil impulse after a difficult struggle and battle, just as one conquers in a war.

5) We may contrast this conquest of one's sexual urge with the first commandment given to a human couple: "Be fruitful and

multiply, fill the earth and *conquer* it" (Gen. 1:28). One may well compare and contrast these two sources. In the first verse the sexual urge of Adam and Eve, as well as that of all subsequent pairs, is ordained by God as the means of populating the earth. This is a blessing for all mankind as well as for those whose sexual impulses are directed to living together and establishing a family and household.

On the other hand, one who is not interested in marriage or an ongoing relationship but only the momentary pleasure derived from this, or perhaps many other connections, is called upon to conquer his own sexual impulses. We may contrast this precept with the custom of the Roman legions and other conquerors to give the reign to satisfying their bodily passions as part of the spoils of war. These included not only confiscating all wine and food stuffs for immediate consumption, but also the body of the woman prisoner as a prize of war. The rabbis taught their lessons of self-restraint against this background of the nations who conquered, raped, and despoiled villages and families. In contrast, the Jewish tradition teaches that the inner conquest of one's impulses far outweighs the glory of the defeat of an enemy in war.

6) Rabbi Johanan, a leading second-century Palestinian Amora, summed up the discussion about the sexual urge with this pithy, paradoxical statement: "There is a small organ in man, that is hungry when he indulges it and satiated when he starves it. . . ." Rashi comments: "When a man satisfies his sexual urge in coition, his body is exhausted afterwards and is starved in old age."¹⁰ The Midrash comments that if one overindulges his sexual desires, he becomes satisfied and calm for a while but then is stimulated and longs for more. He may become addicted to sexual intercourse in a way similar to any other addiction. This can prove to be like addictive drugs, which may satisfy for a brief period but then require frequently increased doses.

As a postscript to the above, the Midrash describes David's confrontation with God presenting the following complaint: "Master

of the Universe! Your people call You the God of Abraham, the God of Isaac, and the God of Jacob. When will they call You the God of David?" Said God to him: "These I have tested. You I have not tested." Said David: "Then test me, I pray." Said God: "I will indeed test you. Moreover, I will even give you the advantage over the others by revealing to you the matter about which you shall be tested, and I will even reveal to you the time when you will be tested: I will test you regarding your sexual urge, and I will test you during this night." When David heard this, he said to himself: "I will ready myself for this test by subduing my sexual urge." All during that day he made love with all his wives in order to satiate and subdue his sexual urge. Afterward, the King tossed in his bed all night because he forgot the *halakhah* of R. Johanan: "Man has a small organ – if he satiates it, it is starved; if he starves it, it is sated."¹¹ When the time of evening arrived, David rose from his bed and strolled along the roof of the royal palace, and from the roof he beheld a woman bathing and she was very beautiful in appearance" (2 Sam. 11:2). He immediately lusted for her and took Batsheva, the wife of Uriah the Hittite, to his bed.¹² This therefore proves the *halakhah* of R. Johanan that there is a small organ upon the man. If he hungers for it, it becomes satisfied; if he satisfies it, it becomes hungry.

YETZER HARA AND PIKUAH NEFESH

The *halakhah* established that *pikuah nefesh* takes precedence over all the other *mitzvot* of the Torah with three exceptions: bloodshed, idolatry and sexual offenses. The Talmud illustrates possible variations in the severity of sexual offense. We find a polemical dialogue between rabbinic sages and the physicians of a man dying of a fatal love sickness.

Rav Judah¹³ said in the name of Rav: A man once conceived a burning passion for a certain woman and became dangerously ill. Doctors who were consulted proclaimed: "His only

cure is that she should submit to him.” (The rabbis apparently accepted the truth of the physicians’ diagnosis, but would not allow the application of their therapeutic recommendation.) The Sages proclaimed: “Let him die rather than that she should yield.” The doctors presented a milder solution, which would not involve body contact: “Then let her stand naked before him.” The Sages retorted no less stringently: “Let him die rather than she should stand nude in his presence.” The final suggestion of the learned doctors (which is considered the solution for such sexual longing throughout the ages and in most of the world). “Let him marry her.” The sages indicated that this is not a solution, because marriage would not assuage his passion, as R. Isaac said: “Since the destruction of the Temple, sexual pleasure has been taken from marriage and given to sinners, as it is written: ‘Stolen waters are sweet and bread eaten in secret is pleasant’” (Prov. 9,7).¹⁵

We see that extramarital relations were not unknown in Talmudic times, as is the situation in our own day. Adultery was and still is a severe problem. Why would one leave the conjugal bed to seek sexual satisfaction elsewhere? The causes were many and varied: The destruction of the Temple, the brutal post-war occupation characterized by socio-economic crises and community instability; all these factors led to the weakening of family life and family values.

We recall a period of milder social unrest with the student rebellion of the 1960s in the United States and Europe, which led to a sexual revolution. For many in our day, the family is no longer the bastion of emotional security, solid and safe haven of peace. Rather, too often resultant quarrels and anxiety lead many to wish to escape from such a chaotic life. All these factors together have led many to look at the proverbial grass on the other side of the fence. The high incidence of divorce and one parent families bear witness to this sad truth. At the same time, the entertainment world and the mass media raise the promise that “true love” is to be found in someone else’s home. It is well known that in many cases, if these persons yield to

temptation, instead of trying to find a mutual solution with their own spouse or partner, they are liable to discover *plus ça change, plus c'est la meme chose*.¹⁶

SEXUAL HARASSMENT

In civil law today, sexual harassment includes verbal or nonverbal forms of abuse of a person of the opposite sex, usually men against women. In many countries, including Israel and some states of the U.S., this is now recognized as a punishable misdemeanor. Maimonides codified such offenses in the twelfth century:

It is forbidden to make indecent gestures with his hands or feet or suggestions with his eyes to women with whom intercourse is prohibited. These acts may render the perpetrator liable to flogging by way of admonition and rebuke, if they were committed purposefully." Even though this is a deed in which the woman is not physically touched and may possibly, have been seen as "a sin without action," which is usually not punished, the Rambam derives the severity of this deed from the Torah prohibitions: "For whoever shall do any of these abominations . . . shall be cut off from among the people. So keep my charge never to practice any of these abominable custom that were practiced before you and never to defile yourselves by them . . . (Lev.18:29-30).¹⁷ Maimonides details these forbidden acts: ". . . [One] is prohibited to act with levity, to smell her perfume, to look at her beauty . . . even one who looks at her little finger with the intention of pleasure as one looks at her pudenda, and even to listen to the voice of this woman or to look at her hair."¹⁸

POSITIVE ROLE OF THE *YETZER HARA*

This impulse created in man is not intrinsically evil. It continually tempts him to sin throughout his life, but he has a choice whether to follow this temptation. The Torah tells us that when God looked upon the finished creation and saw that it was all "very good" (*tov meod*) (Gen. 1:31), the whole nature of man is included in this judgment. R. Samuel ben Nahman¹⁹ observed: "Behold it was very good, this is the *yetzer hara*." An objection was raised: "Is then the evil impulse good?! Yet were it not for the evil impulse, no one would build a house, nor marry a wife, nor beget children, nor engage in a trade." Solomon said: "All labor and all excelling in work is one's rivalry with his neighbor."²⁰

George Foot Moore, a Christian scholar of rabbinic literature, commented: "The appetites and passions are an essential element in the constitution of human nature, and necessary to the perpetuation of the race and to the existence of civilization. In this aspect, they are therefore not to be eradicated or suppressed, but directed and controlled. Considered from the other side, as the tempter within that draws men away from the commandments and leads them into sin, the impulses are to be combated and subdued."²¹

LIBIDO

There is a similarity or parallel between the *yetzer* and the *libido*, a concept originated by Sigmund Freud to signify the instinctual physiological or psychic energy associated with sexual urges. In his later writings he identified the libido with all constructive human activity. This observation is very close to the Midrash of R. Samuel b. Nahman above.²² Furthermore, we noted that two thousand years before Freud revealed his concept of infant eroticism and sexuality the rabbis taught that the *yetzer* begins in early infancy. . It

is unlikely that the founder of psychoanalysis was influenced, let alone acquainted, with rabbinic literature on these subjects.

UNMARRIED COUPLE LIVING TOGETHER

Almost every couple whom I have joined in marriage these last few decades were living together before they entered the *huppah*. My colleagues also report that cohabitation²³ among young couples is an almost universal phenomenon. Those who opposed this phenomenon relied on R. Eliezer, who said: "An unmarried man who has sex with a single woman, not for the sake of marriage, makes her a *zonah*!"²⁴ Here *zonah* means a woman who has had a sexual relationship, which disqualifies her for marriage to a *kohen*. His biblical proof text is – "There will not be a *kedeshah* among the daughters of Israel." The *kedeshah*, in contrast, is a professional prostitute.

Maimonides follows R. Eliezer in codifying the Torah precept: "There shall be no *kedeshah* among the daughters of Israel."²⁵ Anyone who has licentious sex with a woman without *kiddushin*, therefore, is liable to receive a beating according to the Torah, because he had sex with a prostitute.²⁶ In his ruling the Rambam does not distinguish between the *zonah*, on the one hand, who may have had one sex relationship, which disqualified her from marrying one of priestly descent, and the *kedeshah*, the professional prostitute, on the other. "There shall be no *kedeshah* among the daughters of Israel." Therefore, anyone who has licentious sex with a woman without *kiddushin* is liable to receive a beating according to the Torah, because he had sex with a prostitute."²⁷ R. Abraham ben David (Ravad), the most prominent glossator of the *Mishneh Torah* of the Rambam, disagrees in his customary manner but adds another dimension to the subject, the concubine (*pilegesh*): "*Kedeshah* is a woman who is temporarily invited and profligates with anyone. On the other hand, in the case of a *pilegesh* (concubine) who has an

exclusive relationship with one man, there is neither punishment of stripes nor violation of a negative precept."²⁸ According to the Ravad, therefore, an unmarried woman who is living exclusively with a single Jewish man has the status of the biblical concubine. There is no licentiousness or adultery involved. The Ramban concurs with the Ravad.

A concurring opinion of the Ramban was found in the collection of the Rashba that, in spite of the caveat, is indeed in discursus on the *pilegsh*: "I shall explain to you my opinion of the concubine, without didactic discourse. I do not understand why there should be any doubt, since he has taken her only for himself. She is certainly permitted to him because of her exclusive relationship. . . . When she comes to live with him and becomes exclusively known to him, her children are recognized as his."²⁹ Here is the final link of establishing a family without marriage. They raise their children together in their common household. Concubinage, therefore, is almost identical to *kiddushin*, with one major difference: No *get* is required to separate and terminate the relationship. The woman may leave the man and then marry another, because in reality she was not married to the first.

Rabbi Yaakov Emden wrote a long, reasoned *teshuvah* of 8,000 words to prove that the concubine may marry a single Jew that is summed up: "Those who prefer living together in concubine relationship are permitted to do so."³⁰ So now we must ask: Is it permissible for an unmarried couple to live together without the benefit of marriage? The answer will depend on which decisor you follow. If you accept the opinions of R. Eliezer and the Rambam, then such a relationship is forbidden, because it renders the woman a *zonah*.³¹ On the other hand, if we follow the rulings of the Ravad, Ramban, and Yaakov Emden, this relationship is accepted and even recommended.³² This has become the almost universal custom, which has a *halakhic bearing*. Weighing each case on its own merits, we may in principle respond in the affirmative.

SUMMARY

This brief statement of my late beloved teacher Justice Haim Cohn very aptly sums up the Jewish view of sex: "The Jewish attitude to sex, then, shows a certain apparent ambivalence or, more correctly, a balance between extremes. It insists on a stern discipline of moral restraints and yet avoids excessive prudery or asceticism. On the one hand, Judaism regards moderation and self-control in sex as the essence of 'holiness' (Lev. 19:2 and commentaries), condemning unchaste conduct as among the most heinous offences against God and society, and, on the other hand, it rejects the notion of considering the sex instinct as intrinsically sinful or shameful. The sex drive should be sublimated rather than suppressed, for "were it not for the evil inclination, no man would build a home and marry" (Gen. R. 9:7). Indeed, to the rabbis, who frowned on celibacy, it was this instinct that completed the creation of the world and caused God to pronounce His work "very good" (*Gen. Rabbah*).

Notes

1. *Yad, Issurei Bi'ah*, 22:18.
2. Nu. 10.11.
3. Rashi, *ad loc.*, who uses the interpretation of *Sifre ad loc.*, indicating that the duplication of "families" renders this meaning by means of the *gezeira shava* rule. See Moses Mielziner, *Introduction to the Talmud*, (New York: Bloch Publishing Co., 1902, 1925), pp. 143ff. and Hermann Strack, *Introduction to the Talmud and Midrash* (Philadelphia: JPS Press, 1942).
4. Sanhedrin.
5. Moed Katan 17a.
6. Rashi, *ad loc.*

7. Ketubot 13b and parallels.
8. *Pirke Avot* 4:1.
9. Sukkah 52b.
10. Rashi *ad loc.*
11. Sanhedrin 107a Every Israelite, including Kings, was obliged to study *halakhah*. Here we see that King David failed to do his homework.
12. *Yalkut Shimoni*, 2 Samuel, *Remez* 148.
13. Babylonian Amora of the First Generation. The sages are identified according to Albeck, Hanoch, *Mavo LaTalmudim*, Tel Aviv, 1969.
14. BA2.
15. Sanhedrin 75a.
16. "The more it changes, the more it is the same thing." A French proverb.
17. *Hilkhot Issurei Bi'ah* 21:1.
18. *Ibid.* 21:2.
19. PA 3.
20. Gen. Rabbah 9:7; Eccl. R. on Eccl. 3:11.
21. G.F. Moore, *Judaism* (Cambridge: Harvard Univ. Press, 1928)
22. See notes.
23. In the British sense of the word; see *Oxford Concise Dictionary* (Oxford: Oxford University Press, Eighth ed, 1991), p. 219: "living together as husband and wife without being married to one another."

24. B. Yeb. 61b. Here *zonah* means a woman who has had a sexual relationship that disqualifies her for marriage to a *kohen*.
25. Deut. 23:18.
26. Laws of Marriage 1:4.
27. *Ibid.*
28. Gloss to Rambam, *Mishneh Torah*, *ibid.*
29. Ramban responsum no. 284 in the Rashba collection.
30. Yaakov Emden, *She-elat Ya'vetz* v. 2, no. 15.
31. See footnotes 19-22 *supra*.
32. Footnotes 23-25. The ruling of Emden will be seen below.