

“Women Known for These Acts” Through the Rabbinic Lens: a Study of *Hilchot Lesbiut*

Elaine Chapnik

In 1999 I became involved in Orthodykes, a support group in New York for Orthodox lesbian, bisexual and transgendered women, both as an organizer and as a participant. For the holiday of *Shavuot* in 2000, we held a *tikkun leil Shavuot*, a traditional program of all-night text study, but on a very untraditional subject: how Jewish law views sexual activities between women. This was a quietly revolutionary event: religious Jewish lesbians, Orthodox but far from conventional, chose to spend the holiday studying together until dawn, driven not just by religious duty or devotion but with the feeling that their prospects for happiness depended on these sacred Jewish texts.

Jews who are both lesbian and religiously observant are necessarily concerned about what Halakha, Jewish law, says about their sexual behavior and life decisions, and seek to understand and interpret Jewish legal texts in ways that allow them to remain true to both themselves and the Torah. Study, interpretation of and extrapolation from Halakhik texts by traditionally agreed-upon methods are the archetypal Jewish responses to moral dilemmas, and offer ways to make bearable the apparent conflict of being an Orthodox Jewish lesbian. Becoming versed in these sources enabled me to understand what the Rabbis in fact said about lesbianism – versus the uninformed homophobia found in much of today’s Orthodox world - and to give support to others in the Orthodykes who were struggling to make peace with themselves. In this essay I will share my own discoveries from these texts and how they affected the lives of some of the women I knew.

At first glance, accepting oneself as a lesbian may seem incompatible with Orthodox Judaism. Indeed, some women in Orthodykes felt forced to leave the Orthodox community. Since they were from a range of religious backgrounds, and on a continuum of non-heterosexual orientations, from lesbian to bisexual to transsexual, their approaches differed as to how and whether they would continue to lead a religiously observant life. Some grew up modern Orthodox, some Chassidic, and some chose the Orthodox path later in life; others were Conservative Jews and Jews by choice. Some had previously been married and squelched their attraction to women, and some remained mired in marriages entered into before they got in touch with their heterodox desires. Many had children; some had never been with a man and had no desire to be with one. Some needed to become comfortable enough to marry a man and some wanted to feel comfortable loving a woman. Many came with no particular agenda, but knew they needed a place to think and talk through their feelings. The group was a place where they would not be judged and would receive support, whether they wanted to lead a homosexual or heterosexual life, within or without the fold.

Many women in Orthodykes expressed feelings of anxiety, depression, shame, self-doubt, self-hatred, and internalized homophobia, often as a result of their families' rejection. Married women felt guilty for living a double life or cheating on their husbands. Some felt like failures for being unable to live lives consistent with the dictates of Jewish law. Along with emotional support for their struggles with their identity conflicts and rejection by their families and communities, these women sought insight into and information about Halakha. Those who were able to resolve these feelings positively sometimes did so by studying the ancient and medieval commentaries on lesbian sexual activity^[1] and understanding the Rabbis' strictures and true concerns as they discerned them to be. Some felt comforted learning of lesbian antecedents in

Jewish communities throughout the past, knowing that the tradition had not entirely abandoned them, even as they needed to be in dialogue with the disapproving aspects of the tradition.

Some wanted to be able to challenge the invidious homophobia found in various Orthodox communities today. Because they were Halakhikally observant, it was very important to them to know whether Jewish law was so strict or immutable as to doom them to a loveless, sexless single life or staying married to men for whom they felt no physical attraction. They sought a way to feel comfortable living as lesbians within a general Halakhik framework, instead of discarding the tradition altogether.

A word about myself: I did not have an Orthodox upbringing and often felt like a bit of an outsider in the group. My parents were Orthodox in Eastern Europe, but having narrowly escaped the Holocaust, and bearing grave psychic wounds, they assimilated quickly after reaching America. As an adult, I returned to my parents' roots and became Orthodox for ten years, during which time I adhered to Halakha and married an Orthodox man. Over time I could no longer deny my attraction to women, and I divorced. Resources were not available then (in 1986) as they are now to guide a woman who wishes to live as both Orthodox and lesbian. Rather than abandoning Orthodoxy, I would have turned to the Orthodykes and the growing community of Orthodox lesbians. At the time, I felt compelled by guilt and shame to leave Orthodoxy. I was sure that if I came out of the closet, some of my Orthodox friends would reject me so I withdrew from them first. A few were completely accepting of me. Ultimately, my struggle with my own identity conflicts led me to find ways of living Jewishly other than as Orthodox. Nevertheless, because of my respect for tradition, and intellectual interests in philosophy, law and Jewish texts, I still desired to know what the Halakha said about lesbians.

Only after I left the Orthodox world did I begin to learn and discover, if you will, *Hilchot Lesbiut* – the laws of lesbianism.

The Torah's prohibition on male homosexual activity is well known throughout the world. In contrast, how Jewish law views lesbianism is not widely known in the general Jewish or even Orthodox world. Too often, discussion of rabbinic views on homosexuality involves only the texts concerning men. Thus, there is a need for education.

The fundamental source of Jewish law, the Torah, does not ban, punish or even refer explicitly to lesbian behavior of any kind. The first explicit mention of lesbian behavior is in the *Sifra*^[2] (mid-third century C.E.). The *Sifra* expressly forbids same-sex marriage, but it does not explicitly impose a punishment for violators, nor does it explicitly mention lesbian sexual activity *per se*. Centuries later, the Babylonian Talmud (mid-sixth century C.E.), in the course of discussing a related issue, concluded that sexual activity between women constitutes “mere indecency” (*pritzuta b'alma*), but it never directly dealt with the question of whether lesbian sexual activity is prohibited. Beginning in the twelfth century C.E., Biblical and Talmudic commentators and Jewish legal codes began declaring lesbian sexual activity to be forbidden and punishable by lashes of the kind imposed by a rabbinical court (versus Torah-prescribed lashes), reflecting the view that lesbian behavior was not an express Torah prohibition but at most either a rabbinic or an inchoate Torah prohibition. Even so, the level of opprobrium and punishment (flogging) was relatively mild compared to that reserved for male homosexual acts.^[3] In Leviticus 20:13, the Torah decrees: “A man who lies with a man as one lies with a woman, they have both done an abomination; they shall be put to death, their blood is upon them.”^[4]

The invisibility of lesbianism in the Torah, while it may be a source of pain for some lesbians, may give comfort and relief to others who try to reconcile disparate identities, as they are better able to remain under the radar screen of rabbinic opprobrium. While I might wish the Rabbis hadn't proclaimed any pejorative attitudes towards lesbianism, for me, and others, it felt worse to be made invisible; it is far better to be in the text and banned than not to be mentioned at all. I was thrilled to read the Rabbis' discussions about women who rubbed their genitalia together, or tempted married women to stray from their husbands. However, for some Orthodoxy, who see Halakha as binding, this creates a terrible conflict. They want to live as Torah-true Jews, but it may mean denying an essential part of their selves.

One Orthodox, a divorced Chasidic lesbian from the Satmar community who chose to remain living in that community to raise her children, said: "It is difficult for me by the very fact that the Rabbis say that lesbian sex is nothing or a little something - by that fact they see my sexuality as less than that of a man's. It is almost like what I do doesn't count from a Halakhic standpoint. That infuriates me." She then reflected on the irony that while lesbian sex is a relatively minor violation of Halakha, her community would nevertheless shun or virtually expel her if she became a visible lesbian: "In the Chasidic community, being a lesbian is completely unacceptable. Many of my Orthodox friends would shun me if they knew that I was sleeping with a woman, although according to Halakha, that would not be as bad as cheating the government on my taxes, or speaking gossip, both of which activities, if I chose to do them, would not result in my expulsion." Her words cry out for Orthodox Jews to learn *Hilchot Lesbiut* and grapple with the thought that their homophobia might reflect the dominant Christian culture's complex relationship to sexuality rather than authentically Jewish values.^[5]

I will analyze briefly only a few Halakhik sources, and offer my views, as much has been written on them already^[6]. Although there is no explicit description of women engaging in lesbianism in the Torah itself, rabbinic commentators read into Leviticus 18:3 an oblique prohibition: “After the doings of the land of Egypt, in which you dwelt, you shall not do, and after the doings of the land of Canaan, into which I bring you, shall you not do: neither shall you walk in their laws.” What did they do in Egypt and Canaan that Leviticus banned? The *Sifra*^[7] in *Acharei Mot* 8:8 answers this question as follows:

What is the meaning of “according to the doings of the land of Egypt and according to the doings of the land of Canaan you shall not do”? Is it possible that it means that one should not build buildings like theirs or plant crops as they do? After the ways of the Egyptians you shall not go. Therefore, the Torah teaches, “and in their laws you shall not walk.” Only the laws that have been established for them and their ancestors are specified. And what are they? “A man would marry a man, a woman would marry a woman, and a woman would be married to two men.” Therefore, it says, “and in their laws you shall not walk.”

I initially learned of the above passage while preparing for the first Orthodyke *tikkun leil Shavuot*, using a compilation and translation of Halakhik sources produced by a member of the original Israeli Orthodykes support group.^[8] How surprised I was to discover that the Rabbis discussed same-sex marriage some eighteen hundred years ago. Apparently, the controversy

over same-sex marriage - as well as the practice itself - was alive in ancient times. In light of the current battle over legalizing same-sex marriage, it seems uncanny that the *Sifra* singles out the Egyptians' and Canaanites' unconventional marriages and marriage laws as the norms that must be rejected. As validating as it may be for lesbians today to be reflected and made visible in a third century C.E. text, nevertheless, the *Sifra's* interpretation of the Torah's proscription may be troubling for some Orthodox lesbians. It might lead them to conclude that they should be *against* same-sex marriage.

The first mention of lesbian sexual activity in the Babylonian Talmud occurs in Tractate *Yevamot* 76a (mid-sixth century C.E.):

Rav Huna said, “*nashim ha'mesolelot zoh b'zoh* are prohibited from marrying a *kohen* (male member of the priestly caste)” [because such women are considered to be *zonot*.^[9] Ravah, disagreeing with Rav Huna, says] “And even for Rabbi Elazar, who says: “if an unmarried man has sexual intercourse with any unmarried woman not for the sake of marriage, she is considered a *zonah*,” his ruling addresses [intercourse with] a man. But [even in his view], [*mesolelot*] with another woman, it is mere indecency (*pritzuta b'alma*).”

Orthodoxy at the first *tikkun leil Shavuot* thrilled at the revelation of this beguiling Hebrew expression, “*nashim ha'mesolelot zoh b'zoh*,” rendering our sexuality visible in the ancient Jewish world for the first time. The phrase refers to women (*nashim*) who are driven to do an ambiguous bodily act (*mesolelot*) by their sexual desire for each other. As the Rabbis describe it, it is done *zoh b'zoh*, one woman with or inside or in relation to another; “*zoh*” being the feminine form of “that one.” In its symmetry, the Hebrew phrase “*zoh b'zoh*” is a linguistic

reflection of the physical act itself.^[10] But what was the specific sexual act that the Talmudic Rabbis were reflecting upon? Tractate *Yevamot* 76a does not explain the meaning of *mesolelot*. The key to the exact meaning of the verbal noun “*mesolelot*” is found in later rabbinic commentaries on this passage. The purpose of Tractate *Yevamot* 76a is to clarify who is ineligible to marry a *kohen* on account of being a *zonah* by determining whether a woman who practices *mesolelot* is a *zonah*. Marrying an eligible woman is necessary to assure that the *kohen*’s priestly status is passed on to his offspring.

The Torah prohibits a *kohen* from marrying a woman with the legal status of a *zonah*. Rav Huna’s opinion is that *nashim ha’mesolelot*^[11] are prohibited from marrying a *kohen*, because he considers them *zonot* (*zonah*, plural). Ravah, however, dismisses Rav Huna’s opinions as incorrect. He rules that *nashim ha’mesolelot* are not barred from marrying *kohanim* because the act that they engage in is not an act of completed intercourse; indeed, it is not actual intercourse at all. Ravah proves his argument by demonstrating that even Rabbi Elazer, who propounds the most stringent view as to what makes a woman a *zonah*^[12] would agree with his conclusion. Rabbi Elazer rules that an unmarried man who has intercourse with an unmarried woman without matrimonial intent renders her a *zonah* and therefore unfit to marry a *kohen*. But, Ravah points out, Rabbi Elazar’s ruling addresses only the case of intercourse with a man where there is a *bona fide* act of completed intercourse. Even Rabbi Elazar did not extend his ruling beyond cases of women engaging in such intercourse to include *nashim ha’mesolelot*, because they are not engaged in an act of actual intercourse, but rather some other behavior,

mesolelot, that is merely indecent. Hence, concludes Ravah, Rav Huna is wrong and *nashim ha'mesolelot* are not barred from marrying *kohanim*.

Ravah's leniency ultimately prevailed. From the Talmud's conclusion that *mesolelot* constitutes mere indecency, *pritzuta b'alma*, we can infer that the Rabbis almost certainly believed it violated rabbinic authority and general societal norms but not a Biblically-based prohibition. The term, *pritzuta b'alma*, is used in the Talmud when the Rabbis are expressing a level of disapproval that is relatively low on the Halakhik scale. For example, the Talmud also labels as *pritzuta b'alma* the wearing of red clothing (Babylonian Talmud, Tractate *Berakhot* 20a), which today is an acceptable commonplace even among most Orthodox Jews.

We now return to discerning the exact meaning of the phrase, "*nashim ha'mesolelot zoh b'zoh*." It means women (*nashim*) who do a certain sexual act with each other (*mesolelot*), one on or in, or in relation to, the other (*zoh b'zoh*). It is not obvious from the text what this sort of sexual activity is.^[13] What did the Rabbis of the Talmud imagine that women do sexually

when in bed together, with no available penis? We know that *nashim ha'mesolelot* must refer to some degree of genital-genital contact, because the Rabbis would never have deemed a woman to be a *zonah* without at least that.^[14] Rabbi Shlomo ben Isaac (1040-1105 C.E.),

known as Rashi, explains *nashim ha'mesolelot zoh b'zoh* as follows: two women who, in the manner of male-female intercourse, rub their genitalia (*n'kavten*) together. While lesbians surely do other things in bed, this is a rational conjecture; the root of *mesolelot*, *s'lul*, means to make a path or swing up (such as when one partner's hips swing up against the other's during sexual intercourse or tribadism). Contrast Rashi's explicit and precise explanation with the translations given by Rabbi Dr. Marcus Jastrow's authoritative [Dictionary of the Targumim](#), the

Talmud Babli, Talmud Yerushalmi and Midrashic Literature (1975 edition) (known as the “Jastrow”), and the first complete English translation of the Babylonian Talmud, namely, The Babylonian Talmud with Introduction and Commentary (1935-1952 edition), edited by Rabbi Dr. Isidore Epstein (known as the “Soncino Talmud”). I used these secondary sources to prepare for teaching at the Orthodoxy *tikkunim*. Both works define *nashim ha'mesolelot zoh b'zoh* as “women who commit lewdness with one another.” This use of euphemism sacrifices the accuracy of the text to the translators' apparent discomfort with sexual matters generally, if not homophobia in particular. Not only does it render vague and uncertain Rav Huna's and Ravah's differing opinions about whether such women are disqualified from marrying *kohanim*; the Talmud's discussion of Rabbi Elazer's opinion and more importantly, Ravah's derivation from it, become meaningless. Rav Huna's opinion would be rendered: “women who commit lewdness with each other are disqualified from marrying a *kohen*,” while Ravah's proof from Rabbi Elazer's opinion would be reduced to a tautology: “women who commit lewdness with each other are not disqualified from marrying *kohanim* because they are engaged in mere lewdness.” If the Talmud had in fact used such an imprecise term as “lewdness” to describe what *nashim ha'mesolelot* are physically doing with each other, it would be virtually useless as a guide for advising *kohanim* as to a woman's eligibility for marriage to them, or advising women as to which sexual acts to avoid to maintain their eligibility to marry *kohanim*.

By obscuring rather than clarifying the Talmudic text, the Jastrow and Soncino Talmud does a disservice to anyone trying to study the original texts on her own with these English translations as her guides. Not knowing that they are misleading could have serious implications for a religious lesbian's romantic options. It is a tribute to Rashi, writing with exacting clinical phraseology a full eight centuries prior to the Soncino Talmud's publication, that he was

unwilling to sacrifice the accuracy of his understanding of the text to whatever personal squeamishness he might have had about the subject matter.

Another striking example of euphemism was examined at the second Orthodoxy *tikkun leil Shavuot*, held in 2001, during a session I taught on the Babylonian Talmud, Tractate *Avodah Zarah* 44a. In a passage concerning Queen Maccah, who vaginally penetrated herself daily with a phallic-shaped object, the Talmud describes the object, termed a *miflotztah*, as follows: “Rabbi Yehuda said: It is an object that carried *leitzanuta* [variously translated as “scoffing,” “sneering” or “lasciviousness”] to an extreme, as Rav Yosef taught: It was a kind of phallus that she made and was vaginally penetrated by (*niv’elet*) every day.”

A goddess image (*ah’shayrah*) had been carved into the *miflotztah*, apparently because the Queen was using it for ritual idol worship. This detail certainly piqued the Orthodoxes’ interest: that a Queen was engaged in auto-erotic activities with a dildo bearing a female likeness. The Talmud uses the verb “*niv’elet*” to describe these masturbatory activities.^[15] “*Niv’elet*” is the passive form of the word “*leev’al*,” meaning “to act as the active party in sexual intercourse.”

The Rabbis forthrightly articulated that the Queen was using a phallic-shaped object for auto-erotic purposes and idol worship^[16]. Compare the Soncino Talmud translation of the Rabbis’ description of the *miflotztah*: “... as Rav Yosef taught: It was a kind of phallus with which she had daily connection (*niv’elet*).” Translating “*niv’elet*” as “having daily connection” betrays the translator’s prudish discomfort with the Queen’s masturbation. The Soncino Talmud’s implication, that she was engaging in ritual idol worship with no overt sexual overtones, is utterly inconsistent with the text.

Returning now to divining the precise meaning of *nashim ha'mesolelot zoh b'zoh*, Rabbi Judah ben Nathan, Rashi's son-in-law (known as the Rivan), offers an alternative explication startlingly different from Rashi's. The Rivan thought that the phrase described two women who implant the sperm they received from their husbands into one another's vaginas. His explication appears in the *Tosafot's* commentary on the Talmud, Tractate *Yevamot* 76a. The *Tosafot* were certain Rabbis who lived in France and Germany from the twelfth to the fourteenth century C.E. Not surprisingly, they concluded that the Rivan was wrong. By way of proof, The *Tosafot* refer to the following passage in the Babylonian Talmud, Tractate *Shabbat* 65a and 65b:

Shmuel's father did not permit his daughters to sleep together. Shall we say that this supports Rav Huna, who said that *nashim ha'mesolelot zoh b'zoh* are disqualified from marrying a *kohen*? No. Shmuel's father did not want them getting accustomed to a foreign body.

The *Tosafot* question why Shmuel's father did not permit his daughters to sleep together. Did he fear that they might engage in sexual activity with each other and thus be rendered ineligible for prestigious priestly marriage? This fear would make sense only if he believed that *nashim ha'mesolelot* were prohibited from marrying *kohanim*, which is Rav Huna's position. Since the *Tosafot* did not agree with Rav Huna's position, they offered another explanation: Shmuel's father did not want them getting used to sleeping with a foreign body, i.e., a strange person.^[17] The *Tosafot* surmise that the daughters were unmarried because they lived with their father. Therefore, whatever activity that their father was worried about, it wasn't their frolicking about with their husbands' sperm.

The idea that the quintessential lesbian act is exchanging one's husband's sperm for another's husband's sperm and taking turns inseminating each other seems absurd; yet it is

logical if you believe that the penis is the *sine qua non* of sex, as Jewish law affirms, and if you cannot fathom why women might want to rub their genitalia together. The Rivan must have had such a difficult time believing that women could have engaged, or would have wanted to engage, in sexual activity with each other, with no penis or thought of pregnancy, that he was unable to envision a realistic act involving only the women's bodies. Therefore he had to insert a penis somehow into the action, however improbably. Assuming for present purposes that such a scenario had a basis in reality, these women could be seen as engaged in a daring and generous act that would have challenged one of the strictest of the Jewish laws - that which forbids a married woman to have sexual intercourse with a man other than her husband. Among other reasons for the prohibition, the adulteress might give birth to a child whose lineage cannot be determined. Such a disobedient act would have had the potential to revolutionize the social structure by usurping the power, up until then totally masculine, of deciding who gets impregnated and when. Ultimately, Rashi's sober explanation of *nashim ha'mesolelot* prevailed (see *Shulhan Arukh, Even Ha'Ezer 20:2*, quoted below), but the Rivan's interpretation of the phrase *nashim ha'mesolelot* seems prophetic: today, centuries later, Jewish lesbians commonly bear children without men's permission, outside of marriage, with semen from a glass vial – perhaps even a married man's sperm - but certainly not from their husbands!

In summary, up to the twelfth century C.E., one Halakhik source, the *Sifra*, banned same-sex marriage. Another source, the Talmud, concluded that a certain type of sexual activity between women, namely the rubbing together of their vulvas and clitorises - *mesolelot* – was merely indecent behavior, from which one can reasonably infer that the Rabbis believed that *mesolelot* violated rabbinic norms of behavior, but not any express Torah prohibition. Neither the *Midrash Halakha*, the Talmud nor any other classic textual sources of Jewish law explicitly

forbade or prescribed any punishment for *mesolelot* until the twelfth century C.E., when Rabbi Moshe ben Maimon, known as the Rambam or Maimonides (1135-1204) ^[18] wrote his *magnum opus*, the *Mishneh Torah*. The *Mishneh Torah* is the first comprehensive codification of Torah and Talmudic law. In *Sefer Kiddushah, Hilchot Issurei Be'ah* 21:8, Maimonides states:

Nashim ha'mesolelot zoh b'zoh is a forbidden practice (*assur*). It is a “*ma'aseh Mitzrayim*” (one of the acts of Egypt) that we were warned about. As it is said, “the doings of Egypt you shall not do.” The *Sifra* said, “What were these doings? A man would marry a man, a woman would marry a woman, and one woman would marry two men.” Although *mesolelot* is forbidden, they are not given lashes for it because no specific negative Torah prohibition is violated and it does not involve sexual intercourse at all. Therefore, such women are not prohibited from marrying *kohanim* or remaining with their husbands because there is no *zenut* [act of prohibited sexual intercourse]. However, it is appropriate to flog them with *makot mardut* [lashes for rebellious behavior imposed by rabbinical courts] because they did something forbidden. A man should be strict with his wife in this matter and prevent the women known for these acts from coming in for her or her from going out to them.

Here, Maimonides aims to synthesize and codify previous legal texts on the subject of *nashim ha'mesolelot*. This is the first time in written Jewish legal history that the question of the permissibility of *mesolelot* was directly addressed. Maimonides declares the act to be forbidden, “*assur*,” a term used in Halakha to denote unquestionably banned behavior. As his proof text, Maimonides cites the *Sifra* to the effect that *mesolelot* was banned by the Torah in Leviticus 18:3

as a *ma'aseh Mitzrayim* – a way of Egypt. Strictly speaking, Maimonides' citation to the *Sifra* would appear to be incorrect since the *Sifra* did not include “*mesolelot*” as one of the Egyptian practices prohibited by the Torah. There are at least two possible explanations for what Maimonides did.

First, while the *Sifra* only expressly mentions two women marrying each other, the *Sifra* must have understood the women to be engaging in sexual activity like “*mesolelot*,” because the last practice that the *Sifra* mentions, polyandry, is a profound violation of Biblical law only if the wife is engaging in sexual intercourse with both of her husbands. Each act of intercourse with any husband other than her first is adulterous and the two of them would be liable for the death penalty. It therefore must have seemed rational to Maimonides to assume that the persons included in the first category mentioned in the *Sifra*, two women marrying each other, were likewise engaging in sexual activity.

Second, Maimonides may have felt that unless the prohibition against *nashim ha'mesolelot* was somehow linked to the Torah, it would not be taken seriously enough. The *Sifra* provided him with a basis for rooting the prohibition against *nashim ha'mesolelot* in the Torah without asserting that the women were violating a specific Torah prohibition. Perhaps Maimonides was aware that historically, same-sex marriage was unknown in ancient Egyptian society and no right to enter into such marriages was actually embodied in Egyptian law.^[19] If so, Maimonides would have known that his analysis could not logically be grounded in the Torah's proscription against following the ways of Egypt. By declaring that his ban against *nashim ha'mesolelot* was under the penumbra of the *Sifra's* decree, he was able to impose a broad prohibition that encompassed lesbian sexual activity and give it the gravitas that Halakha bestows upon prohibitions derived from the Torah. Through a creative interpretation of the

Sifra, he found a reflection in the Torah that linked his prohibition to it, while tantalizingly, he leaves ambiguous whether his prohibition has any basis in the Torah at all.^[20]

The Halakha as later codified in the *Shulhan Arukh* echoed Maimonides. The *Shulhan Arukh*, written by Rabbi Joseph Karo (1488-1575), summarized and codified all of Jewish law extant to the 16th century C.E.:

Nashim ha'mesolelot zoh b'zoh, meaning rubbing and friction, are forbidden under the warning not to go after the ways of Egypt. Rabbinically-decreed lashes for rebellious behavior (*makot mardut*) are appropriate since it is forbidden (*assur*). A man should be strict with his wife in this matter and prevent women known for these acts from coming in for her or her from going out to them. (*Even Ha'Ezer* 20:2)

The *Shulhan Arukh*, codifying Maimonides' novel turn in a stricter, more authoritarian direction, calls for critical analysis by those who seek to change *Hilchot Lesbiut* in a more progressive direction by using the tradition's own Halakhik transformational process.^[21]

What led Maimonides to do make this leap? Was he responding to a perceived lesbian threat to established Torah values in his community in Egypt, circa twelfth century? This would imply at least the possibility of a group of Jewish women in Egypt living voluntarily (perhaps even happily!) without husbands, and to all appearances, married to each other. In any case, although Maimonides forbade the activity implied by the phrase, *nashim ha'mesolelot zoh b'zoh*, there are indications in *Hilchot Issurei Be'ah* 21:18 that he viewed the infraction of Jewish law as relatively minor. He expressly states that there is no Biblically-imposed penalty

of lashes for engaging in *mesolelot* because there is no express Biblical prohibition that it violates. He declares the less severe *makot mardut*, lashes imposed by rabbinical courts (as opposed to Biblically-imposed lashes), to be the appropriate punishment for rebellion against the Rabbis' authority and societal norms. He permits errant wives to remain with their husbands^[22].

Other leniencies can be found in the *Mishneh Torah*, or in omissions from the text. He permits the flogging of women for *mesolelot*^[23], but he does not mandate it; nor does he specify a punishment for entering into same-sex marriage. Although he states that a husband should be strict (*hakpid*) about preventing his wife from consorting with *nashim ha'mesolelot*, he does not forbid or specify any punishment for it. Nor did he impose an unquestionable legal obligation, a *chiyuv*, on the husband to prevent her from doing so. Words such as *chiyuv* are typically used in Jewish legal codes to indicate that one must be strict on pain of violating Halakha. Further, Maimonides forbade only the rubbing of genitalia together, thus providing an opportunity for further Halakhik inquiry into whether it would be permissible for lesbians to have romantic relationships and engage in sexual activity short of *mesolelot*.

What is one to make of Maimonides' novel and troubling prohibition against mere association between married women and *nashim ha'mesolelot*? Prior to Maimonides' *Mishneh Torah*, lesbian sexual conduct was viewed by Jewish legal texts as indecent but not forbidden; and the mere association of a woman with *nashim ha'mesolelot* was *neither* indecent nor forbidden. By admonishing men to keep their wives away from *nashim ha'mesolelot*, Maimonides expanded upon the kinds of lesbian relationships that Jewish law finds worthy of condemnation and made *mesolelot* punishable by lashes for the first time.

Having said this, I find some joy in Maimonides' writings. I love his assumption that women would naturally be drawn to doing *mesolelot* with each other, so much so that he had to warn men to guard their wives. Further, his main concern was not ridding his community of such women, but rather warning husbands about them. The plain meaning of his words supports the inference that the unmarried women who found sexual pleasure in each others' bodies were tolerated by the community. Their open existence shows they were not all forced into the closet (figuratively) by the Jewish establishment. The dangers to the existing family structure must have been terribly obvious to Maimonides. As a highly respected rabbi and scholar whose writings were known throughout the medieval Jewish world, he must have felt the need to intimidate women who might otherwise rebel against rabbinical authority and their husbands by associating with women known for engaging in *mesolelot*. Yet, remarkably, he never decrees that the community or their families should shun or excommunicate or take further punitive measures against them, than perhaps an initial flogging with *malkut mardut*. The proof text of this is, to quote Maimonides: "*ha'nashim ha'yidu-ot*" - the women known for these acts. Maimonides uses the definite article to refer to certain identified women who were openly known to perform *mesolelot* with each other. How wonderful and moving to discover in a medieval, classical Jewish text the existence of lesbian desire in twelfth-century North Africa: the recognition that women similar to us, the Orthodykes, not only existed in another place and time, many centuries ago, but whose presence was actually tolerated by the Jewish community.

Afterword

From Maimonides' writings, one is led to imagine a seductive Jewish lesbian gang in town, lurking in the shadows, outlaws who occasionally tried to recruit new members from among the Jewish wives. But even without letting one's imagination run as far as conjuring up a roving lesbian band, there is an important implication in his words, "*the women known for these acts*" -- that of a lesbian identity. Judaism gives the Jews an extremely strong and durable identity, one that weaves together history, religion, civilization, law, intellectualism, ethics, language, sexuality, cookery — in short, an identity that comes from every aspect of their lives and culture. For many of the women in the New York Orthodykes support group, it seemed that there was no legitimate place to incorporate lesbian relationships into their Jewish identity, let alone the specific identity of lesbianness. But Maimonides' phrase, however brief, points to just such an identity. This is critical to our community, a community of women who have largely been written out of history. I am grateful that the women known to Maimonides for their lesbian acts have in turn become known to us, albeit via a text that would seek to separate us from each other. We embrace them across the centuries. If Orthodykes are also "*ha'nashim ha'yidu-ot*"- *the women known for these acts*, we do in fact have a place in the historical community and continuity of Judaism. As I have by no means exhausted the possibilities of *Hilchot Lesbiut*, the laws of lesbianism, there is, of course, much room – as always in Judaism – for further debate, discovery, interpretation and creativity.

[1] I use the word "lesbian" adjectivally to describe sex acts or relationships between women. I have avoided using "lesbian" as a noun designating a woman who engages in sexual activity with another woman prior to the modern era. It would be anachronistic to refer to such women as "lesbians," since there was no concept of lesbian identity when these sources were written. The word "lesbian" first began to be used in reference to an identity in the late nineteenth century. (Oxford English Dictionary on-line, June 12, 2009).

[2] The *Sifra*, a body of teachings on Leviticus, is a part of the *Midrash Halakha*, the companion literature to the Talmud. The *Midrash Halakha* contains the Rabbis' analyses of various biblical verses using the *Midrashic* method, i.e., the method of Biblical exegesis by which they use specific hermeneutical principles to derive rules and laws.

[3] This difference in punishment and condemnation is likely due to the fact that Halakha does not recognize sexual relations between women as sex *per se*, because unlike certain male homosexual acts, lesbianism does not closely resemble *be'ah*, intercourse, i.e., the penetration of a woman's vagina by a man's penis, at least to a certain degree. See, e.g., Babylonian Talmud, Tractate *Yevamot* 56b.

[4] Rabbi Shlomo ben Isaac (known as Rashi, 1040-1105 C.E.), universally revered throughout the learned Jewish world for his commentary on the Bible and the Talmud, comments on Leviticus 20:13 as follows: "he enters like a paint stick into a tube."

[5] A good example of this is the *niddah* laws, which prohibit mere hand-holding by an opposite sex couple, even if they are married, unless the woman has been to the *mikveh* (ritual bath) after the conclusion of her menstrual cycle. From a Halakhik perspective, the *niddah* laws are much more stringent and the punishment far more severe than the laws pertaining to - and punishment for - lesbian sexual activity. Yet, in my experience, many Orthodox Jews happily invited to their Shabbes tables Jews whom they knew, or at least suspected, were not observing the *niddah* laws, while they would not turn the same blind eye to openly gay women or men.

[6] See, e.g., "A Break in the Path: Lesbian Relationships and Jewish Law" by Angela J. Riccetti in Marriage, Sex and Family in Judaism, edited by Michael J. Broyde and Michael Ausubel (2005). Ms. Riccetti's article includes a nearly exhaustive listing of all the sources addressing lesbianism in Jewish law.

[7] See footnote 2.

[8] At the time, circa 2000, no published work contained as comprehensive a survey of the Halakhik sources of lesbianism as is found in her compilation. The author does not want to be openly known as a lesbian; hence I must credit her anonymously.

[9] "*Zonot*" is the plural form of "*zonah*," which is a technical Halakhik term referring to a woman who had sexual intercourse with males of a certain kind. The majority but by no means universal view in the Talmud is that to be rendered a *zonah*, a woman must have engaged in intercourse with a man whom she is ineligible to marry because she is prohibited from having intercourse with him. Examples of these men include relatives, gentiles and *mamzerim* (children of certain prohibited unions, for which the punishment is *karet* (excision)). (See, e.g. Rashi's commentary on Leviticus 21:7.) Rabbi Elazer, in contrast, maintains that the act of intercourse between *any* unmarried man and an unmarried woman without any marital intent would render her a *zonah* and bars her from marrying a *kohen*. Although his opinion is a minority view, it is frequently cited in the Talmud.

[10] My thanks to my friend Naomi Seidman for this lovely insight.

[11] For ease and speed of reading and comprehension, I abbreviate the term *nashim ha'mesolelot zoh b'zoh* to just *nashim ha'mesolelot*.

[12] See footnote 9.

[13] There are very few other references to “*mesolelot*” in classical Jewish texts and the contexts permit no inference as to what exactly *mesolelot* is. For example, see the Babylonian Talmud, Tractate *Sanhedrin* 69b, which refers to “*mesolelot*” between a mother and her young son.

[14] See footnote 9.

[15] The use of the passive verb literally means that the object itself was doing the penetrating. Even when, as here, a woman is clearly the active party causing the sexual contact to occur, and the other party is an inanimate object, the Rabbis turn her into the passive recipient, thus minimizing women’s role in sexuality.

[16] It is unclear whether the Rabbis were troubled by the masturbation itself, apart from the use of the *miflotzah* for idolatrous purposes, [which they did condemn](#). They use the word “*leitzanuta*” to characterize her self-penetration. Elsewhere in the Talmud, “*leitzanuta*” means behavior worthy of “scoffing” or “sneering,” as well as “lasciviousness,” the latter meaning implying a more severe judgment. The context of the passage in *Avodah Zarah* 44a does not betray which meaning the Rabbis intended.

[17] Which might lead them to have intercourse with men under unsuitable circumstances. See Rashi’s commentary on Tractate *Shabbat* 65a and 65b. Michael Satlow offers a more likely explanation of the father’s concern: he feared his daughters would become accustomed to intimacy with another woman’s body instead of a man’s and become less likely to engage in heterosexual sex. See “A Break in the Path: Lesbian Relationships and Jewish Law” by Angela J. Riccetti in [Marriage, Sex and Family in Judaism](#), edited by Michael J. Broyde and Michael Ausubel, page 271.

[18] Maimonides is regarded by many as the pre-eminent post-Biblical Jewish scholar, philosopher and *posek* (scholar/rabbi who issues Halakhik rulings).

[19] See [Like Bread on the Seder Plate: Jewish Lesbians and the Transformation of Tradition](#), page 29. Rabbi Dr. Rebecca T. Alpert writes: “It is very likely that the author of the *Sifra* knew of same-sex marriages from the Roman culture in which he lived and interchanged the identities of Rome and Egypt without regard to historical accuracy.”

[20] If it is true that Maimonides elided the *Sifra*’s warnings [against same-sex marriage](#) and “*nashim ha’mesolelot*” in order to fortify his opposition to the latter, then his statement that the women’s actions are *assur* should be taken as largely descriptive, rather than normative. If so, then from a strict Halakhik perspective, the only normative conclusion that we are left with is the Talmud’s conclusion that *nashim ha’mesolelot* are engaged in *pritzuta b’alma*, mere indecency. However, *pritzuta* is not static; it changes as society’s mores and perceptions change and evolve. Thus, although the Talmud states that wearing red is *pritzuta*, contemporary Orthodox women do wear red. They do so not to flout the Talmud’s ruling but because society’s mores has changed to such a degree that wearing red no longer has any negative connotations associated with it. Society’s growing tolerance of lesbianism reflects a similar process. As society comes to accept lesbianism as not completely outside the mainstream, then it will no longer be considered “*pritzuta*” but simply an alternative form of sexual behavior. At that point, lesbianism will become permissible since the strict Halakhik basis for condemning it will have been eliminated. Orthodoxy and similar groups have helped, and are helping, bring this to fruition by normalizing lesbian behavior, thus contributing to the preparation of a home for lesbians within Halakha. Accordingly, there is no need for them to look elsewhere for a Jewish home as encouraged by Riccetti, p. 293.

[21] Serious students of Halakha are concluding that Halakha must and will change and adapt, as it has over the centuries in response to societal change and more recently, modernity. Certainly, one would think this would be called for in light of recent work suggesting an inborn predisposition to homosexuality, implying that it is not a matter of choice or willful rejection of a religious proscription as many Orthodox Jews believe, e.g., like choosing to

eat lobster instead of salmon. Perhaps this could provide Orthodoxy with a pathway to making room for Orthodox lesbians, if not embrace them altogether.

[22] This likely is because under Jewish law, the women are technically not adulterers. To commit adultery according to Halakha, a married woman must have intercourse with a man other than her husband. Halakha does not view the women's behavior as "sex" ("be'ah") – i.e., heterosexual intercourse, for formal legal purposes because no penis is involved and therefore there is no possibility of a completed act of intercourse. See, e.g., the Babylonian Talmud, Tractate *Yevamot*; 56b

[23] The thought that Maimonides prescribed a whipping for women who loved other women, a right much of the Western world takes for granted today, is horrifying. Nevertheless, we acknowledge that Maimonides' lessened the injustice by making the penalty optional. Whether he did so out of compassion or because his understanding of the sources and the logical application of Halakhik rules compelled him to do so, we do not know.