

It so happens that this week's parashah, Aḥarei Mot, was my husband's bar mitzvah portion, but don't worry, I'm not going to repeat that talk. More significantly, 11 years ago, this parashah was my senior sermon parashah at JTS. Most of you didn't know me then, or attend my senior sermon, but I'm not going to regret that sermon either. What I do want to talk about today is unfinished business from 11 years ago. This d'var Torah is about what I couldn't talk about 11 years ago. You see, 11 years ago I was not only a senior in the rabbinical school at JTS, but I was also employed as the Administrative Assistant to the Committee on Jewish Law and Standards (known as the CJLS), the Rabbinical Assembly committee that determines the acceptable parameters of Jewish law and practice for the Conservative Movement. As administrative assistant, I answered correspondence, coordinated meetings, and took all meeting minutes. And in 1991-92, I took the minutes for what are certainly the 3 most controversial meetings the CJLS ever held. It was at these 3 meetings that the committee discussed the Conservative Movement's approach to homosexuality.

Aḥarei Mot, is, of course, one of the two parshiot (the other being next week's, Kedoshim) that contain commandments against male homosexual activity. Leviticus 18:22 reads:

וְאֵת-זָכָר לֹא תִשְׁכַּב מִשְׁכַּבִּי אִשָּׁה תוֹעֵבָה הוּא

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

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

I think it is likely that 11 years ago some people expected me, after my involvement with the debate, to speak about this topic at my senior sermon. I couldn't go near it. The experience of being intimately involved in those meetings – reading the papers closely, listening to everything that was said, including some very unfortunate things said by people I had until then respected, and then having to write it all down – and yet not being an actual participant in the

discussion, was incredibly difficult and traumatic. A brief story: the evening after the final meeting, after I had counted all the votes, and gathered up all papers, and put my notes away in my office, I was standing in a hallway at JTS, in front of the candy machines, trying to decide if I wanted anything. Rabbi Joe Brodie, Dean of Student Life happened to walk by on the way to his office nearby, and in a perfectly ordinary manner, greeted me, “Hi Gail, how are you?” Suprising myself perhaps even more than him, I burst into tears.

Part of the problem then was one of emotional distance. Another piece of my problem, however, remains today, and that is the problem of not knowing what to say. I take a certain warped comfort in knowing I’m not the only person in the Conservative Movement who doesn’t really know how to talk about this topic. While preparing this drash, I consulted the the new Conservative ḥumash, *Etz Hayim*, to see what it had to say on this verse. Occasionally *Etz Hayim* includes a brief note on “*halakhah l’ma’aseh*” – practical Jewish law and practice – that derives from a particular Torah law. Not suprisingly, the Torah’s prohibition on male homoeroticism merits such a note, which reads as follows:

“18:22. Do not lie with a male The Torah prohibits male homosexual relations, and the Sages understood the Torah to forbid lesbian relations as well (*Sifra Aḥarei Mot* 9:8). These prohibitions have engendered considerable debate. Conservative Movement resolutions call on congregations to welcome gay and lesbian congregants in all congregational activities.” (p. 691)

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

policies”)? Slightly abbreviated, they are as follows:

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

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

I can’t speak for the editors of *Etz Hayim* and say why they chose not to represent the complexities, even the contradictions, of the Conservative position in their commentary (I will, however, let you draw your own conclusions...). What I can speak for are some of the reasons I find this issue so vexing particularly as a Conservatively identified Jew, as a Conservative rabbi. They are multiple and inter-related.

A brief history: the 1991-92 debate was sparked by the submission of a teshuvah to the CJLS by Rabbi Brad Artson, now dean of the Zeigler Rabbinic School at the University of Judaism. Rabbi Arston argued for a new approach to homosexuality that would apply to homosexual relationships and sexual expression essentially the same standards we hold for heterosexual relationships: monogamous, consensual, committed relationships. As the halakhic basis of this argument (vastly simplified), Rabbi Artson argued that the Torah – that is, our verse

here and its parallel in chapter 20 – is not talking about homosexuality as we often understand it, that is, as an orientation which one does not choose, but rather about a sexual act which one may choose to participate in or not. Moreover, such acts were not understood as something that might take place in the context of a loving, committed, consensual relationship. Since the Torah is not talking about such a thing, it did not explicitly prohibit such a thing. In the absence of such a prohibition, we in our day may choose to declare such a thing halakhically permitted. On the other side were various arguments, but best known is that of Rabbi Joel Roth. To oversimplify again, Rabbi Roth argued that the Torah’s designation of this act as “*to’evah*,” abhorrent, is paramount. We need not understand why the Torah declares it to be abhorrent. Even if we did feel we understood the reason, and even if we found that reason no longer convincing, the text stands. All the more so changing theories about the nature or etiology of homosexuality stand outside the text and subordinate to it.

I think many Conservative thinkers on both sides of this issue have not really confronted the multiple implications of either preserving Lev. 18:22 as inviolate law, or of changing our stance on homosexuality. On the side which would continue to hold this verse as the law, we need to ask, are the Torah’s sexual ethics really still our sexual ethics? Some of you may have seen an editorial by Dan Savage in yesterday’s New York Times, responding to recent comments by Sen. Rick Santorum of Pennsylvania (my home state, I am sad to say). One sentence leapt out at me as I read it:

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

What’s more – if homosexuality is the problem, that suggests heterosexuality is not problematic. Yet, if we back up and contextualize the biblical prohibition on male homoeroticism within its laws for heterosexual relationships, we find that most of us would find the Bible’s sexual

“ethics” quite unethical by modern standards. As Rachel Adler has written in her book *Engendering Judaism* about the Levitical code, “all these laws presuppose power structures and conceptual categories very different from our own” (p. 127). She notes, for example, “The primary category demarcation, in this society organized by patriarchal kinships, is the generational boundary between father and son...The first *arayot* mentioned are those that disrupt this flow: sexual breaches in which the son reaches upward toward women appropriated by the older generation...These commandments do not refer to incest as moderns define it: the sexual victimization of younger kin by older, more powerful relatives” (p. 128). And, “Monogamous marriage is not a norm either in these texts or in many later texts” (p. 129). And “The only rapes about which the Torah legislates are destructions of virginity” (p. 130). Is this our sexual ethics? Is this our halakhah?

There are also things not fully confronted, I feel, by those who would change the halakhah. By asking homosexual relationships to mirror our idealized heterosexual ones, for example, this side of the debate too assumes that our understanding of heterosexual marriage is unproblematic. In truth, sanctioning homosexual relationships has the potential to challenge the whole way we conceptualize marriage halakhically. Halakhically, marriage is a property transaction (I wrote my dissertation on this. Anyone who wants to hear more than you ever wanted to know on this subject is welcome to speak to me at kiddush). We often describe the binding act of a marriage as “*kiddushin*,” and because the word “*kiddushin*” appears to be from the root “*kadesh*,” we often assume that it implies holiness, that marriage is holy or that it imparts holiness to its participants. But “*kadesh*” also means to designate, and an emphasis on the “holiness” of marriage elides the fact that it is traditionally in Jewish law a non-reciprocal process. The man designates the woman as his wife. He is the agent of this activity, and she his object. What happens, however, when we endorse a relationship in which roles as subject and object cannot be assigned according to gender? Is there any reason a Jewish woman committing herself to another Jewish woman should be treated as more of a person than a Jewish woman marrying a Jewish man? Now, personally I think it is not a bad thing to rethink how we create

(and undo) Jewish marriages, but it is a significant challenge to Conservative ideas of how Jewish law works, and to our own ideas what makes this ceremony authentically Jewish.

Again, I can't speak for anyone else in this room, but personally, I would very much have liked for Rabbi Artson to be right (and I'm not just saying this because as of August I'll be teaching in his rabbinical school). Most significant of my difficulties, then, is that having read his paper rather thoroughly as part of my job, I was not convinced, either on historical or logical grounds. I've heard many more attempts at a halakhic justification for changing our stance on homosexuality since then. I've yet to find one that is really persuasive. The crisis I first felt my senior year of rabbinical school, and which persists, is a fundamental one that goes to the core of Conservative ideology and even theology. It may not be this issue that raises this question for everyone in this room, but I would guess that each of you could imagine some issue to which the question applies: is it possible that what we find within our deepest consciences to be moral and right cannot be reconciled with any possible interpretation of Jewish law within the halakhic process as we in the Conservative Movement understand it to work? And what then?

11 years later, I still don't have answers. What I cannot do anymore is remain silent. Again, I find guidance in the words of Rachel Adler. She refuses to allow her readers to either rest easy with the text of Leviticus, or to abandon it, for otherwise, "we have forgotten that what makes Torah sacred is not that it has one fixed eternal meaning, but that its meanings are inexhaustible. We have forgotten how to wander in the company of the sacred, without fearing that, because we do not know where we are headed, we will be lost. This is the lesson we learn in the Book of Numbers. In the wilderness, we live by trust. We do not put down roots or plan our next destination. When the divine cloud lifts itself off the Tabernacle, we pack up and follow, until we arrive at a place where it can settle for a while." (p. 126)

Let us not be silent. Let us not be evasive. Leviticus tells us, repeatedly, "קדושים תהיו," "be holy." Let us together follow the Divine, who is holy and in whose image we are commanded to be holy, and talk of our journey, until we reach the place in which all of our relationships truly are holy.