

# Hooking up to Holiness: The Potentiality for Holiness During Sex Outside of Normative Jewish Marriage

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Introduction

So much of denominational Judaism<sup>1</sup> in North America today is focused on a model of Jewish family life which, paralleling the Western structure, has largely been on the decline since the 1960s.<sup>2</sup> The kinds of relationships people choose today aren't necessarily the same as they were just a few decades ago. Two thirds of the adult population choose traditional marriage<sup>3</sup> leaving a significant minority who at any one time aren't in a traditional marriage. This group is wide ranging<sup>4</sup> and includes those in monogamous, though unmarried relationships,<sup>5</sup> those who choose not to be in a relationship, those who are dating, and those who decide upon less traditional relationships perhaps seeking love, intimacy and physicality in polyamorous relationships.<sup>6</sup> This thesis will focus on those not in a traditional marriage and ask whether there is the potentiality for holiness during sexual experiences from a Jewish perspective. Some may ask whether Judaism even addresses this subject. I would opine that Judaism has something to say about every facet and moment of our lives. From the laws of Shabbat, Tefilla, and the holidays, to, marriage and death Judaism talks about every major experience and moment of our lives as well as the more mundane. Classical Judaism addresses every minutia down to the correct way of

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<sup>1</sup> "Denominational switching among U.S. Jews: Reform Judaism has gained, Conservative Judaism has lost". Pew Research Center, Washington, D.C. 2021.

<sup>2</sup> "Understanding the Dynamics of Family Change in the United States." PRB (Population Reference Bureau) 2016.

<sup>3</sup> "Marriage, Families, and Children". Pew Research Center, Washington, D.C. 2016.

<sup>4</sup> "A Profile of Single Americans". Pew Research Center, Washington, D.C. 2020.

<sup>5</sup> "Macmillan Dictionary" <https://www.macmillandictionary.com/us/dictionary/american/monogamy>.

<sup>6</sup> "Macmillan Dictionary" <https://www.macmillandictionary.com/us/dictionary/american/polyamory>.

tying a shoelace<sup>7</sup> as well as personal matters of hygiene and family life. Reform and Conservative Judaism provide contemporary statements and rulings on a plethora of contemporary life questions.<sup>8</sup> *For me, it stands to reason* that Judaism must have something important to teach us about sex and holiness outside of traditional marriage.

Let's take a moment to talk about holiness. Classical Jewish texts are replete with references to holiness.<sup>9</sup> One sixth of the Mishnah; the order of Kodashim (holiness) is devoted to the holiness of animal sacrifices and Temple service. The Talmud devotes an entire tractate to the holiness of marriage (kiddushin). To conduct a comprehensive examination of the word or phenomena of (holiness) קדושה and its derivatives, researching every mention, connotation, and interpretation is well beyond the scope of this thesis. Many readers of this paper may have their own unique sense of what holiness is. Therefore in chapter 1, without discounting anyone else's perspectives on holiness, I will propose three Pathways to holiness that I've discovered based in Jewish text that I believe to be relevant to the subject of sex and holiness.

In chapter 2, we'll look at these three kinds of holiness established in chapter 1 as they relate to sex and marriage. In chapter 3, we'll review nomenclature pertaining to some modern sexual relationships outside of traditional marriage. In chapter 4, we'll consider those kinds of

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<sup>7</sup> Shulhan Arukh Orah Chahayim 2:4.

<sup>8</sup>"Rabbinical Assembly", <https://www.rabbinicalassembly.org/jewish-law/committee-jewish-law-and-standards>.

"CCAR", <https://www.ccarnet.org/rabbinic-voice/reform-responsa/>.

<sup>9</sup> "sefaria" <https://www.sefaria.org/topics/holiness?tab=sources>.

relationships with regards to the presence of holiness during sex.

## Chapter 1: Judaism & Holiness

As mentioned before, the central question that this thesis seeks to determine is whether there is the potentiality for holiness during sexuality outside of the normative one in Jewish married life.

There is a plethora of sources that talk about holiness in Judaism.<sup>10</sup> This thesis, and chapter 1 in particular, will focus on three pathways to holiness. Each of these avenues to holiness will assist us in addressing the central question of this thesis. In addition, these pathways to holiness will provide some general insight and perspective into the nature and essence of holiness in Jewish thought and practice.

### 1.a: Holiness through Abstention

Let's consider what is arguably the most important verse about holiness found in the Torah in what is widely named "The Holiness Code."

דָּבַר אֱלֹהִים-לְעַדְתּוֹ בְּיַד-יִשְׂרָאֵל וְאָמְרָת אֱלֹהִים קְדָשִׁים תִּהְיוּ כִּי קְדוֹשׁ אֲנִי יְהוָה אֱלֹהֵיכֶם

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<sup>10</sup> Alan L. Mittleman, *Holiness in Jewish Thought*, Oxford: Oxford University Press, 2018;

Richard N. Levy, *A Vision of Holiness: The Future of American Judaism*, New York, URJ, 2005;

David S. Shapiro, "The Meaning of Holiness in Judaism," *Tradition: A Journal of Orthodox Jewish Thought*, Vol. 7, No. 1 (WINTER 1964-5).

Speak to the whole Israelite community and say to them: You shall be holy, for I, the LORD your God, am holy.<sup>11</sup>

Many interpretations of this verse link holiness to abstention. A pathway to holiness through abstaining from certain activities, which by abstention precipitate holiness. Put another way, in order to become like God, there is a necessity to separate ourselves from behaviors which are antithetical to Godliness. This sentiment is common among some classical commentators.

The Sifra (c. 250-350) interprets this verse (Leviticus 19:2) with precisely this perspective.

והייתם קדושים – זו קדושת פרישת עכום

“And you shall sanctify yourselves and you shall be holy”: This is the holiness of separation from the worship of stars and constellations.

Sifra doesn't tell us what holiness IS, but instead explains what holiness is NOT. Holiness is not to be like the majority of nations and communities who worship the stars and celestial bodies.

Worshipping other gods is a direct violation of arguably the highest core Jewish principle; the belief in One God.<sup>12</sup> For Sifra, holiness is attained by abstaining from the practices of those nations that worship stars and astrology. An imperative to not be like other nations. But what

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<sup>11</sup> Leviticus 19:2. All biblical translations are NJPS.

<sup>12</sup>Today, for the American reader, this may mean separating ourselves from worshipping the contemporary false idols of materialism, fame, fortune or any number of things which draw our attention away from the Divine.

about sexual practices? The Holiness Code contains lists of prohibited sexual unions. Perhaps there is an interpretation which alludes to these prohibitions. Indeed, Rashi (1040-1105) interprets Leviticus 19:2 primarily with regard to separation from forbidden sexual thoughts and acts. According to Rashi, refraining from sexual prohibitions is essential in our pursuit of holiness.

### קדושים

תהיו. הוו פרושים מן העריות ומן העברה

“You shall be holy”. Separate yourselves from sexual offenses and from sin.

Holiness for Rashi is intrinsically connected to sexual behavior. Holiness is attained by abstaining from forbidden sexual practices. Rashi doesn't suggest that we abstain from sex altogether. He is referencing the list of forbidden unions listed in the Holiness Code (e.g., mother-in-law, daughter-in-law, sex with a menstruating woman etc.), not particular sexual activities within a permitted relationship. For Rashi it's about the who (we have sex with), not the what we do. Both Rashi and Sifra interpret Leviticus 19:2 as things not to do that lead to holiness. One important difference is that Sifra counsels abstention from the entirety of a behavior; namely star worship. Rashi counsels abstention with regards to the sexual prohibitions listed, not to the entire behavior, namely sex. A combination of both of these interpretations may elucidate and add to our understanding of holiness through abstention. Let's consider an interpretation that a) includes sexual and other prohibitions and b) includes prohibitions which

apply carte blanche to the entirety of an activity and prohibitions which only sometimes apply. Ovadia ben Jacob Sforno (1475-1550), provides this combination.

והבדילם מטומאת המאכלות והזרע בטומאת הנדה והנגעים הנמשכים ממנה ומטומאת הזבה  
וטומאת החטאים כאמרו מכל חטאתיכם לפני ה' תטהרו ומחברת השדים ורוח הטומאה  
ומטומאת העריות

God had in the meantime separated the Jewish people from impurity through the legislation concerning forbidden foods, skin eczemas, ritual impurity contracted through cohabitation with menstruate women, or women afflicted with excretions from their vaginas at times other than when they were experiencing menstruation. God had also elaborated on other ritual contaminations contracted through sinful contact.<sup>13</sup>

There we have it. The prohibitions listed include prohibitions both connected to sex and those completely disconnected to sex (forbidden foods). In addition some prohibitions apply only to specific actions (sexual unions with a menstruate woman and forbidden foods). Others apply carte blanc (skin diseases, impurity and demons). In short: There's lots of sexual activity which is permitted but it's never ok to worship a demon!<sup>14</sup>

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<sup>13</sup> Yalkut, *Sifsei Chachomim Chumash*, Metsudah Publications, Lakewood, NJ, 2009.

<sup>14</sup> Interestingly, unlike Sifra and Rashi, God is the subject in this interpretation, not the Jewish people. According to Sforno's interpretation, God has *already* separated the Jewish people from the impurities of forbidden foods, skin eczemas, ritual impurity...and from the company demons, impurities, and from the impurity of sexual offenses. I understand Sforno as saying that since God has *already* separated us from the said prohibitions we have a disposition towards holiness. When we abstain from unholy behaviors we are in alignment with the way God created us.



In terms of the prohibitions themselves, sexual offenses are mentioned but not exclusively in this view. Although all three commentators connect holiness to abstention, the specificities of that abstention differ between them. Rashi alone focuses almost exclusively on sexual transgressions. By linking holiness exclusively with sexual prohibitions, Rashi's opinion defines holiness through abstention in the precise form to be addressed in the next chapter. Sifra is concerned about עובדי כוכבים ומזלות, which literally means "worshippers of stars and omens" but is often a halachic term referring to non-Jews<sup>15</sup> and may demonstrate a concern for proselytism common at this time.<sup>16</sup> Sforno urges abstention from forbidden foods, skin eczemas, and ritual impurity. Perhaps this refers to a concern that Jews had of openly adhering to Halachot, such as kashrut which might have led to terrible consequences from the non-Jewish communities that the Jews found themselves a part of. Certainly antisemitism was a source of concern in 16th century Italy.<sup>17</sup> Perhaps Jews who openly observed the laws of kashrut or family purity would've been ridiculed or worse. In this way, Sforno can be understood in much the same vein as Sifra; a remonstrance to the Jewish people to separate themselves from anti Judaic behaviors of the time as a vehicle towards holiness.

All of the above classical commentaries support a claim of holiness by abstention. Simply put, holiness is achieved by not doing something. Rashi, focusing exclusively on sexual prohibitions,

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<sup>15</sup> L. Egaire Humphrey, *Bishul Yisrael*, Claud Press, Nov 13, 2011. ISBN 6138347463, 9786138347460.

<sup>16</sup> James Everett Seaver, *Persecution of the Jews in the Roman Empire (300-438)*, Lawrence: University of Kansas Publications, 1952.

<sup>17</sup>Piet Van Boxel, *A Companion to Religious Minorities in Early Modern Rome*, Brill, 2021, Leiden, Netherlands Pages 324–348.

interprets a pathway to holiness by means of abstention. Abstention from certain interactions within a general behavior that is allowed, i.e., certain sexual acts are permitted.

Interestingly, this same kind of abstention is also demonstrated in what is arguably the most primary mitzvah in Jewish life. The observance of the Sabbath.

שמור את־יום השבת לקדשו כאשר צוך יהוה אלהיך:

ששת ימים תעבד ועשית כל־מלאכתך. ויום השביעי שבת ליהוה אלהיך לא תעשה כל־מלאכה

Observe the sabbath day and keep it holy, as your God יהוה has commanded you.

Six days you shall labor and do all your work, but the seventh day is a sabbath of the LORD your God; you shall not do any work.<sup>18</sup>

Crystal clear. The holiness of the sabbath is inextricably connected to abstention. In this case abstention from an activity which is permitted the rest of the week. Work. This kind of abstention is different from the interpretation of Sifra. Indeed, it is never permitted to worship stars or constellations regardless of the day of the week. Holiness on the sabbath is the abstention from those things which are permitted during the rest of the week. This kind of abstention is similar to the abstention from certain sexual unions and foods. Working is permissible. The cessation of work on the sabbath is a mitzvah. Eating is of course permitted. Abstaining from eating certain kinds of food is a mitzvah. Sex is permissible. Abstaining from certain sexual interactions is a

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<sup>18</sup> Deuteronomy 5:12.

mitzvah. Being holy according to this interpretation is abstaining from certain kinds of prohibitions in a general category of things that are permitted.

Refraining from certain behaviors has the potential to precipitate holiness according to these opinions. Holiness isn't about doing something it's about intentionally choosing not to do something, because that is what God demands.

### *1.b: Holiness through Intentional Engagement*

Now that we've established a category of holiness by not doing something. I'd like to consider a concept of holiness through intentionally doing something. Let's return to the Sabbath. In addition to the Torah commandment to keep the Sabbath in Deuteronomy 5:12, there is another commandment in the Torah which links remembering the Sabbath to holiness.

זְכוֹר אֶת-יוֹם הַשַּׁבָּת לְקַדְּשׁוֹ

Remember the Shabbat Day and make it holy.<sup>19</sup>

How does one remember the sabbath? The Talmud links remembering to an intentional action.

תנו רבנן: "זכור את יום השבת לקדשו" — זוכרהו על היין

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<sup>19</sup> Exodus 20:8.

The Sages taught in a baraita with regard to the verse: “Remember the day of Shabbat to sanctify it” (Exodus 20:7): Remember it over wine.<sup>20</sup>

There is an intention and an action during a prescribed period of time (the sabbath). The intention to remember the sabbath through the action of drinking wine. According to this understanding, a combination of an intention, an action and a time precipitate holiness.

Grand Rabbi Yerachmiel Yisroel Yitzchak Danziger (1853–1910) In his work Yismach Yisrael expounds on this notion in two ways. Firstly, the action has to be something that we’re permitted to do. So, for example, it would be impossible to facilitate holiness by eating non-kosher food. Secondly, he opines that each of us have a spiritual power, holiness, within ourselves that we’re able to activate and thereby achieve holiness through intention. In this view holiness is not achieved by not doing something (abstention) it is attained by doing something with intention. Namely, intentional engagement.

וקדושים תהיו , הוא קדש עצמך במותר לך, היינו לעשות קודש מדבר הרשות, ויכנים קיום  
והוויות לכל הדברים אשר אין בהם הוויות וקיום, וזה בהוויתן תהא, היינו בכח הקדושה  
והנשמה העליונה שיש בך, וזה הוא הויות שלך, מכח הקב"ה המהוה הכל.

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<sup>20</sup> TB Pesachim, 106a. All Talmudic translations are The William Davidson digital edition of the Koren Noé Talmud, with words in parenthesis provided by Rabbi Adin Even-Israel Steinsaltz, published by Koren Publishers.

“And you shall be holy (Leviticus 19:2), he sanctifies with you in that which is permissible to you, and therefore makes holiness in that which is (merely) permitted. And through this (creates) existence and being for all things in which there is no being and existence, and this will be in your being, by the power of holiness and the supreme soul that is in you, and this is the true essence of your being , by the power of God who is everything”.<sup>21</sup>

In other words, when we do something that is permitted to us with an element of holiness, we are able to harness our own spiritual energy and add holiness to the act. For me this rings true. Certainly there are millions of people who kick back at the end of the week on a Friday night and enjoy a glass or two of wine. Perfectly permissible but not holy. When we drink wine on the sabbath with the intentionality of sanctification it is a personal choice. We bring intentionality and deliberation to that which is permissible during a specific time and thereby precipitate holiness.

Other common similar examples include singing, eating three sabbath meals and even resting. None of the aforementioned are holy until they are performed on the sabbath with the intention of remembering the sabbath. This demonstrates our own innate ability to harness our own spirituality and direct it to an action, precipitating and creating holiness. We are given the opportunity to bring holiness to those things that resonate with us. For example, a midweek walk around the block, may be infused with holiness on say, a Saturday afternoon, when we

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<sup>21</sup> Magid Dayeinu Chapter: 12.

intentionally take time to appreciate the beauty of nature, and God's magnificence on the sabbath. Holiness is precipitated through our personal intentionality to bring holiness to the mundane.

Holiness on the sabbath is linked to either abstention or intentional engagement. It's noteworthy that the two commandments to remember and keep the sabbath found in Exodus and Deuteronomy are said by the Talmud to have been uttered simultaneously.

שמור וזכור בדיבור אחד

Observing and remembering (the sabbath) were said (by God) in one utterance.<sup>22</sup>

Perhaps, we can draw an inference that the rabbis of the Talmud were also aware of the dual categories of holiness; abstention and intentional engagement and believed that somehow, even though they are opposites, God was able to utter them at the same time. Perhaps, we may reason that God was able to utter them at the same time precisely because they precipitate the same thing: holiness.

### *1.c: Holiness Through Moderation*

So far we have spoken about two categories of holiness: abstention and intentional engagement. Let's now consider one final category of holiness. Let's look once more at Leviticus 19:2 from the Holiness Code:

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<sup>22</sup> TB Rosh Hashana 27a.

דַּבֵּר אֶל־כָּל־עַדַּת בְּנֵי־יִשְׂרָאֵל וְאָמַרְתָּ אֲלֵהֶם קְדָשִׁים תִּהְיוּ כִּי קְדוֹשׁ אֲנִי יְהוָה אֱלֹהֵיכֶם

Speak to the whole Israelite community and say to them: You shall be holy, for I, the LORD your God, am holy.

We've considered the interpretations of various classical commentaries, Sifra, Sforno, Rashi. Let's consider one more equally prominent exegete. Moses ben Nachman (1194-1270) also known as Nachmonides and "The Ramban" understands this verse in terms of moderation.

לפיכך בא הכתוב אחרי שפרט האיסורים שאסר אותם לגמרי וצוה בדבר כללי שנהיה פרושים

מן המותרות ימעט

Therefore, after having listed the matters which He prohibited altogether, Scripture followed them up by a general command that we should separate from permitted things a *little bit* even in matters which are permitted.

Ramban doesn't believe that קְדָשִׁים תִּהְיוּ is linked specifically with sexual prohibitions like Rashi or for that matter any general prohibitive behavior that separates the Jewish people from others like Sforno and Sifra. Quite the contrary, קְדָשִׁים תִּהְיוּ is connected to things we are permitted to do. A commandment not to overindulge, but to practice moderation. Essentially to derive less pleasure from things that are permitted to us.

Devotees of the Ramban are keen to exude the virtues of his general dictum of moderation. According to his view, moderation is the midpoint between not doing something (that is permitted) and doing it to excess.<sup>23</sup> Interestingly, the practice of moderation is sometimes in conflict with holiness through intentional engagement. Take the case of those who reach holiness through the intense singing of Shabbat zmirot. That frenzied, hand banging, rip roaring Shabbat zmirot experience enjoyed by many is boundless *without* moderation. How about the mitzvah of drinking so much on Purim to the point that we can't distinguish between Mordechai and Haman.<sup>24</sup> We could make the argument that in this latter case, it is indeed a Talmudic directive to reach this point of inebriation. Perhaps this level of directive automatically trumps moderation? Certainly a difference in competing Jewish prerogatives. Inebriation or moderation?

As an aside, I would opine that behaviors which are harmful to individuals physically or mentally should be avoided altogether. However, practicing moderation in behaviors which are permitted and which bear no risk of harm should be at the discretion of the person involved, without any artificial barrier or social disdain.

### *Summing up - Three Pathways to Holiness*

Abstention: Cessation from the entirety of something (spirit worship in the Middle Ages. People worship in the 21st century) or cessation from a category within something that is permitted (kashrut and forbidden sexual practices).

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<sup>23</sup> For example: not drinking and perhaps having 5 glasses of wine/night, would mean that it is desirable to have 2.5 glasses/night.

<sup>24</sup> TB Megilla 7b.



Intentional Engagement: Bringing God into the picture. For example, a walk in the park on the sabbath has the potentiality for an encounter with the Divine when we are intentional in our behavior.

Moderation: Moderation, self-restraint and discipline in those behaviors which are permitted effectuate holiness.

In our next chapter, we'll consider each of these pathways with regards to sex.

## Chapter 2: Holiness & Sex in Traditional Marriage

In this chapter we'll consider the potentiality of holiness during sex in the context of marriage in each of the established pathways to holiness enumerated in chapter 1. This will help lay the groundwork, provide language and familiarity of the subject material as we move towards Chapter 4 and consider the central question of this thesis, namely: The Potentiality For Holiness During Sex Outside Of Normative Jewish Marriage.

### *2.a: Holiness through Abstention*

Let's peruse a few verses from the prohibited sexual interactions (ערייות) section of The Holiness Code to get a flavor of forbidden sexual interactions and holiness:

ואיש אשר ישכב את אשת אביו ערות אביב גילה מות יומתו שניהם דמיהם במ.

If a man lies with his father's wife, it is the nakedness of his father that he has uncovered; the two shall be put to death—and they retain the bloodguilt.<sup>25</sup>

ואיש אשר ישכב את כלתו מות יומתו שניהם, תבל עשו דמיהם במ.

If a man lies with his daughter-in-law, both of them shall be put to death; they have committed incest—and they retain the bloodguilt.<sup>26</sup>

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<sup>25</sup> Leviticus 20:11

<sup>26</sup> Leviticus 20:12

ואיש אשר יקח את אשה ואת אמה הוא זמה באש ישרפו אתו ואתהן ולא תהיה זמה בתוכם

If a man takes a woman and her mother [into his household as his wives], it is depravity; both he and they shall be put to the fire, that there be no depravity among you.<sup>27</sup>

והייתם לי קדושים כי קדוש אני יהוה ואבדל אתכם מן העמים להיות לי.

You shall be holy to Me, for I יהוה am holy, and I have set you apart from other peoples to be Mine.<sup>28</sup>

As we can see from the above verses, the holiness code contains a number of forbidden sexual partners. Most of these are inter-family relations (sex with one's sister, mother, daughter etc.), but they also include a description of two men lying down with each other in the same way women do<sup>29</sup>, sex with one's wife and her mother (at the same time)<sup>30</sup>, and bestiality to name a few<sup>31</sup>. Based upon an understanding of holiness as abstinence, the inference may be made that as long as you're not having a forbidden sexual encounter, the sex that you're engaged with is holy. Just like our prototype case of not working on Shabbat. By abstaining from those behaviors which the Holiness Code prohibits, it may be argued that one is precipitating holiness. This interpretation is the most lax, in that the Torah doesn't get involved in a) what you may or may not do b) what your intention is (fun, procreation, or anything whatsoever), c) the frequency

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<sup>27</sup> Leviticus 20:15

<sup>28</sup> Leviticus 20:26

<sup>29</sup> Leviticus 20:13.

<sup>30</sup> Leviticus 20:14.

<sup>31</sup> Leviticus 20:15.

of sex, it's time or place. Essentially, refrain from forbidden sexual partners or actions because they are prohibited in the Holiness Code and you're good to go.

I would argue strongly against this logic and offer an alternative interpretation of holiness through abstention. Allow me to expound. The Torah provides lists of examples of couplings and activities that are prohibited, but this list is by no means exhaustive. For instance, the Torah doesn't mention a prohibition against sex with a toddler. The fact that this prohibition isn't specifically mentioned doesn't logically lead us to the conclusion that since it's not mentioned it's permissible.

I believe that there is a huge difference between an argument of precipitating holiness on Shabbat by not doing something and precipitating holiness during sex by abstaining from those prohibitions listed in the Holiness Code. That difference is ethics. More specifically; our contemporary moral and ethical lens.<sup>32</sup> In the example given, pedophilia is morally repugnant. It is impossible to derive holiness from an act that is morally detestable<sup>33</sup>. Applying a narrow understanding of the prohibitions listed and concluding that as long as we abstain from those specific prohibitions holiness maybe realized is a misstep because it ignores the ethical component. By contrast, a person may choose to stay home the entirety of Shabbat and say read a book, feed the dog or just sleep and by intentionally not breaking the laws of Shabbat, holiness maybe precipitated.

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<sup>32</sup>This is in contrast to an Orthodox perspective, which argues that since God is the author of the Torah and God is ethically pure, the Torah is inherently ethical regardless of our contemporary ethical lens.

<sup>33</sup> see p.8 of this paper where the Yismach Yisrael makes this precise point. Holiness is impossible when an aveira (sin) is associated with it.

This concept of interpreting Halacha with an eye to ethical behavior or morality is no stranger to classical Judaism. While some halachists focus on the legal renderings of the law without significant examination of a moral component, a formalistic approach, others render rulings with deliberate consideration to extraneous moral considerations. Suzanne Stone<sup>34</sup> makes a more nuanced point, “moral considerations may be viewed as a legitimate ground for actual rulings even if they are not technically viewed as a legitimate legal source”.

That is to say that even if moral considerations aren't part of a particular halachic discussion, they should be considered in the greater picture and determination of halachic pronouncements. I would opine that this approach is part and parcel of the normative Jewish halachic process. For example, the Torah describes the terrible punishment for a “rebellious son”<sup>35</sup>. He is brought before the elders of their town and summarily stoned to death. As can be seen by the following passage, the rabbis of the Talmud insist upon adding a plethora of criteria necessary to derive the definition of a “rebellious son”.

אלא בשוה לאביו קאמר תניא נמי הכי רבי יהודה אומר אם לא היתה אמו שוה לאביו

בקול ובמראה ובקומה אינו נעשה בן סורר ומורה.

Rather, Rabbi Yehuda is saying that the boy's mother must be identical to his father in several aspects. The Gemara comments: This is also taught in a baraita: Rabbi Yehuda

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<sup>34</sup> Stone, “Halakha and Legal Theory,” *Journal of Textual Reasoning* 6 (1) (2010).

<sup>35</sup> Deuteronomy 21:18-21.

says: If his mother was not identical to his father in voice, appearance, and height, he does not become a stubborn and rebellious son.<sup>36</sup>

The rabbis are clearly uncomfortable with such a harsh treatment. It goes against their morality to stone a child to death for being rebellious. They therefore insist upon a situation where the parents of the boy are identical in voice, height and appearance! Of course, the criteria make it impossible for a child to be determined as rebellious.

Ethical considerations aren't only reserved for commentary on the Torah by the Talmud. In the two thousand years following the Tannaitic period the rabbis continued to use ethical considerations in their pronouncements.

The following Talmudic passage discusses the minimum age that a child may become betrothed commenting on the Mishna that states that a girl of three years old and one day is considered betrothed through intercourse<sup>37</sup>.

אלא לר' ינאי קשיא קשיא

But according to the opinion of Rabbi Yannai, (that Rabbi Meir requires a full three years), this baraita is difficult, (as it explicitly states that in Rabbi Meir's opinion even a

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<sup>36</sup> TB Sanhedrin 71a.

<sup>37</sup> TB Niddah 44b

girl aged two years and one day can be betrothed by intercourse). The Gemara concludes:

Indeed, this baraita is difficult according to the opinion of Rabbi Yannai.<sup>38</sup>

The Gemara concludes that it's difficult. The Rabbis of the Gemara written shortly after the Mishna were to say the least perplexed by this sugya. To be fair we should note that other Talmudic texts set the age of betrothal at the time puberty<sup>39</sup> and other halachic sources yet later at the age of 18<sup>40</sup>

In the close to two thousand years since the Mishna, the mere inclusion of a toddler and sex in the same sentence would without exception be repugnant to any Jewish community, regardless of denomination or adherence to Jewish law - Halacha moved from a position of something "being difficult to explain" to complete repeal. This is a clear case of a non-formalistic interpretation of the law.

Some within the Jewish community may argue that it's not for us to reinterpret the Torah, Talmud or other early texts. Indeed, there is an accepted practice in the halachic process that grants hierarchal superiority to a text based (to some extent) on the time period of its origin. Thus, a Torah source trumps a tannaitic source. A tannaitic source trumps an amoraic source etc. Based on this assumption, it may be argued that it is impudent to challenge the laws of generations of rabbis that preceded us and whose knowledge and understanding of Torah and God's desire for humanity dwarf our own.

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<sup>38</sup> TB Niddah 45a

<sup>39</sup> TB Sanh. 76b.

<sup>40</sup> Pirkei Avot 5:21.

It is beyond the scope of this paper to debate this approach. That being acknowledged, I would pose one question to this faction. How is it possible that these are the same rabbis that condone sex with a toddler for the purpose of betrothal, mentioned above?

There is an instrument<sup>41</sup> in the classical Jewish halachic process that facilitates a later opinion taking precedence over an earlier one. It is only afforded to a Posek<sup>42</sup> who is able to disseminate the entirety of halachic considerations that were part and parcel of an earlier ruling. If a Posek is learned and brilliant enough, it is sometimes possible to overturn a legal halachic rendering of an earlier Posek through this instrument.

This may not be a totally new concept. Christine Hayes states that, the rabbis were prepared to discard the “right answer” (*din*) in the face of the “best answer,” in which values predominate and explicitly so<sup>43</sup>. In other words, some halachists sought to interpret laws laid out in the Torah beyond the written rules, with an eye to those principles that those laws were endeavoring to capture.

I, like many others<sup>44</sup> believe that the Torah, and all of its commentaries are ‘living documents’, that have always been interpreted in each generation. It is therefore my contention that the letter of the law, isn’t part of normative Judaism. Consideration, must be given to the intention of the

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<sup>41</sup> הלכה כבתראי

<sup>42</sup>“DBpedia” <https://dbpedia.org/page/Posek>.

<sup>43</sup> See Christine Hayes, “Legal Truth, Right Answers and Best Answers: Dworkin and the Rabbis,” *Dine Israel* 25 (2008).

<sup>44</sup> The Jewish Theological Seminary of America” <https://www.jtsa.edu/torah/on-writing-torah-commentaries/>.



law, it's ethical message and how that is leveraged in contemporary life. Judaism isn't static; it moves with the times.

With this in mind, let's consider the ethical principles and values that the Torah might have desired to impart in the verses dealing with forbidden sexual relationships.

Let's separate these sexual unions into a few different categories. 1. Sex with a person who is a family member due to being married to a blood relative (mother-in-law, daughter-in-law, uncle's wife, wife of brother). 2. Sex with a blood relative. 3. Sex with a married person. 4. Sex with an animal. 5. A sexual interaction between two men. 6. Sex with a woman during menstruation. This last category is widely thought to be connected to being ritually impure<sup>45</sup>. Category 5 has been widely written about. We will touch upon it in chapter 4. Sex with an animal maybe an indication of a general prohibition where consent is not possible.

All of the other prohibitions, (the majority of the prohibitions outlined in the Holiness Code) are connected to sexual interactions with either members within the same family or someone else who is already married. Stephen F. Bigger includes potential motivations behind the incest laws. These include a) concern that incest would cause genetic defects b) taboos, impurity c) desire to maintain order and d) a threat to the continuity of the family.<sup>46</sup> Indeed, these sexual interactions could by their very nature cause significant stress and tension to the greater family unit. That is to say, having sex with someone who is already a family member impacts the stability of the family unit to a greater extent than having sex with a stranger, an animal or a sexual interaction

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<sup>45</sup> "The Torah.Com" <https://www.thetorah.com/article/niddah-menstruation-from-torah-to-rabbinic-law>

<sup>46</sup> Stephen F. Bigger; "The Family Laws of Leviticus 18 in Their Setting." *Journal of Biblical Literature*, volumes 81-100, June 1979.

with another man. Understanding that family cohesiveness was paramount to ancient Israel<sup>47</sup> I think it's reasonable to opine that support of the family unit was fundamental to the intention of many of these laws. Behaviors which undermined the family unit at the time of the Torah were prohibited. If we accept this contention, we must ask ourselves which behaviors today support the family unit and which detract. We may then argue that if we refrain from any behavior that detracts from the family unit and behaviors conveyed in categories 4-6, that holiness by abstention may be precipitated. This would certainly include adultery and perhaps other relationships outside of marriage.<sup>48</sup> More to say on these relationships in Chapters 3 and 4. In short, holiness may be precipitated by abstaining from any behavior which detracts from the stability of the family unit.

### *2.b: Holy Sex through Intentional Engagement*

Betrothal, a formal commitment to be married in Judaism, is called kiddushin, the root of which is kadosh - holiness. The Talmudic rabbis wrote so much about this subject that an entire tractate<sup>49</sup> is devoted to the subject of betrothal.

The very first Mishnah of this tractate focuses on how a woman may become betrothed to a man.

הַאִשָּׁה נִקְנִית בְּשֵׁלֶשׁ דְּרָכִים [...] . בְּכֶסֶף, בְּשֵׁטֶר, וּבְבִיאָה.

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<sup>47</sup> Passaro, Angelo. *Family and Kinship in the Deuterocanonical and Cognate Literature*, Berlin, Boston: De Gruyter, 2014.

<sup>48</sup> Relationships outside of marriage will be addressed in chapters 3 and 4.

<sup>49</sup> kiddushin. Part of the order of Nashim.

A woman is acquired, (i.e., becomes betrothed to a man to be his wife) in three ways, [...]. money, through a document, and through sexual intercourse<sup>50</sup>

Sexual intercourse effectuates betrothal kiddushin קדושים -or holiness. Sex creates a new situation in the world: two people who were separate become a couple. Or in other words, the essence of betrothal which may be consummated through sex is holiness<sup>51</sup>. A couple have sex and she is betrothed to him. No blessing, no declaration of love. Just the act. This is in contrast to the vast majority of mitzvot where a blessing is required prior to the act.

Perhaps the Mishnah considered sex private. An intentional undertaking to not only have sex but also actuate marriage. A verbal intention not required. Intention by thought alone (during sex).

The Halacha would appear to agree that a beracha does not require sound to be valid<sup>52</sup>. That is to say, intention doesn't necessitate the spoken word. In addition, the same source prohibits spoken berachot by men who are unclothed<sup>53</sup>. So it may be argued that even without a spoken intention, intention exists. In short, by intentional engagement, betrothal (kiddushin), holiness is effected.

What else can we learn about the power of sex in its precipitation of kiddushin. For Rambam, Moses ben Maimon (1138–1204), commonly known as Maimonides, the power of a sexual interaction to consummate betrothal predates the Torah itself:<sup>54</sup>

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<sup>50</sup> TB Kiddushin 2A.

<sup>51</sup> Note that the Gemara rejects sex as a proactive means of betrothal.

<sup>52</sup> SA OC 206:3 Sefaria Community Translation.

<sup>53</sup> SA OC 206:3

<sup>54</sup> Mishnah Torah: Marriage 1:1 trans. by Eliyahu Touger. Jerusalem, Moznaim Pub. c1986-c2007.

קדם מתן תורה היה אדם פוגע אשה בשוק אם רצה הוא והיא לשא אותה מכניסה

לתוך ביתו ובועלה בינו לבין עצמו ותהיה לו לאשה.

Before the giving of the Torah, it would be that if a man happened upon a woman in the marketplace and they wanted to marry each other, he would bring her into his house and consummate the marriage between them privately, and she would be his wife.<sup>55</sup>

Even before *Matan Torah* and a law code of any kind, it was understood that sex with the intention of marriage facilitated betrothal. Kiddushin<sup>56</sup>

This is in contrast to sex which is transactional.

קדם מתן תורה היה אדם פוגע אשה בשוק אם רצה הוא והיא נותן לה שכרה ובוועל אותה על

אם הדבר והולך. וזו היא הנקראת קדשה.

Before the Torah was given, when a man would meet a woman in the marketplace, and he and she desired, he could give her payment, engage in relations with her wherever they desired, and then depart. Such a woman is referred to as a harlot קדשה.

Sex without an intention of betrothal which is purely transactional doesn't precipitate.

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<sup>55</sup> Mishneh Torah. In *Marriage*(1:1).

<sup>56</sup> Mishneh Torah. In *Marriage*(1:4).

In the case of transactional sex, kiddushin is absent. Interesting to note that the word used for a prostitute קדשה has the derivative Kadosh leading some scholars believe that this may evidence an understanding of *kadeisha* as a religious specialist in ancient Israel.<sup>57</sup>

To sum up, holiness is present in sex when sex is performed with the intention of marriage. This is a clear case of holiness through personal engagement or simply holiness by intentionally doing something. So far we've addressed sex which effectuates kiddushin. Of course, this is a one time only precipitation of holiness. What about those who are already married? Can sex with intention precipitate holiness between those who are already married? What would that look like?

Let's consider the following verse (Exodus 21:10).

אם-אחרת יקח-לו שארה כסותה וענתה לא יגרע:

If he takes another [into the household as his wife], he must not withhold from this one her food, her clothing, or her conjugal rights.

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<sup>57</sup> Phyllis A. Bird, *Harlot or Holy Woman? A Study of Hebrew Qedešah*, The Pennsylvania State University Press, University Park, PA, 2019.

Simply put a man has an obligation to have sex with his wife. This obligation is called onah.<sup>58</sup> It may be argued that since there are numerous sources that equate mitzvot with holiness,<sup>59</sup> the mere act of sex with one's partner is holy. I would disagree with this premise. I believe there is a differentiation between the fulfillment of the mitzvah of onah and the precipitation of holiness through onah. The difference is intention. If the intention is simply to have sex for personal enjoyment while fulfilling the mitzvah of onah, holiness through onah is not realized. Onah is essentially about fulfilling the needs of one's wife or in modern times one's partner, *prioritizing* their needs, desires and pleasure over one's own. In modern times, I would argue that both participants have equal responsibility for onah. Therefore, I would make the case that when both sexual partners prioritize the needs or enjoyment of the other over themselves, holiness is precipitated. As an aside and from a modern perspective, numerous academic studies have demonstrated the health benefits of regular sexual relations within marriage.<sup>60</sup>

Another mitzvah associated with sex within the family unit is procreation.<sup>61</sup> Having sex with the potentiality for procreation doesn't in my opinion necessitate holiness. Two additional elements are needed. i) Intentionality of procreation as the primary reason for a sexual interaction ii). Time

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<sup>58</sup> TB Yevamot 62b.

<sup>59</sup> TB Avoda Zarah 20b, Shulchan Aruch O.C. 25:1, Likutei Etzot, Happiness 9, Ba'al Hasulam's Introduction Zohar 30, Peninei Halacha Sukkot 4:3:5.

<sup>60</sup> Cabeza de Baca T, Epel ES, Robles TF, Coccia M, Gilbert A, Puterman E, Prather AA. "Sexual intimacy in couples is associated with longer telomere length." *Psychoneuroendocrinology*. 2017 Jul;81 :46-51.  
Hui Liu, Donna H.Wang, "Is Sex Good for Your Health? A National Study on Partnered Sexuality and Cardiovascular Risk among Older Men and Women," *Journal of Health and Social Behaviour*, Volume 57 Issue 3, September 2016.

<sup>61</sup> Genesis 1:27 and Genesis 9:7

and conditions. Medical data suggests a plethora of circumstances that can impact a woman's ability to become pregnant ranging from stress, happiness<sup>62</sup>, to the time of year and her individual ovulation period and sex<sup>63</sup> and hormone levels<sup>64</sup>. When a couple (that has the physical ability to procreate) has sex that takes place at a particular time, creating what the couple believes are the best conditions for conception, holiness may be evidenced. Procreation provides an opportunity for holiness when conditions for its success take precedence over any other considerations. For instance, if a couple who are trying to have a baby and have sex at some point because they are both in the mood, this isn't holy. On the other hand, if they research the best time, conditions and environment for conception and this is the primary reason that they are engaging in intercourse, that event holds the potentiality for holiness.

### *2.c: Holy Sex through Moderation*

In chapter 1, we established moderation as a pathway to holiness. We concluded that self-restraint and discipline in those behaviors which are permitted effectuate holiness. We've already demonstrated that holiness maybe present in the first two established categories of holiness during sex. What about moderation? Are there sexual behaviors which demonstrate self-restraint

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<sup>62</sup>Kristin L. Rooney, BA and Alice D. Domar, "The relationship between stress and infertility," *Dialogues Clinical Neuroscience*. 2018, Dialogues Clin Neurosci. 2018 Mar; 20(1): 41–47.

doi: [10.31887/DCNS.2018.20.1/klrooney](https://doi.org/10.31887/DCNS.2018.20.1/klrooney)

<sup>63</sup> Alison Taylor, *ABC of subfertility*, BMJ Publishing Group Ltd, Lkndon, UK, 2003.

<sup>64</sup>Anne Z Steiner, "Biomarkers of ovarian reserve as predictors of reproductive potential," *Semin Reprod Med*. 31:6 (2013):437-42

and discipline (moderation). What are these behaviors? Are there classical sources which connect sex and moderation with holiness. Yes there are!

The Iggeret Hakodesh<sup>65</sup> supports the potentiality for holiness during sex in the context of marriage with the stipulation of its performance at an appropriate time and intention. This stipulation is a form of moderation. One can't have sex whenever one chooses. It has to be at an appropriate time with an appropriate intention.

In the first verse of chapter 2, the Iggeret Hakodesh states

דע כי חבור זה הוא ענין קדוש ונקי כשיהיה הדבר כפי מה שראוי ובזמן הראוי ובכוונה הנכונה.

ואל ושוב אדם כי בחבור הראוי יש גנאי וכיעור ח"ו. שהחבור הראוי נקרא ידיעה

Know that this intercourse is a holy and pure thing, when it is done in an appropriate time, and with an appropriate intention. Let no man think that in proper intercourse there is anything blameworthy or perverse. Heaven forbid, for proper intercourse is called "knowing".<sup>66</sup>

The Iggeret Hakodesh argues that sex is holy when done with the proper intention and time.

What though is an appropriate intention and time in this view?

Reading on may shed some light.

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<sup>65</sup> The author of the Iggeret Hakodesh is cause for much debate but most often attributed to Moses ben Nachman, commonly known as Nachmanides, (Born: 1194, Girona, Spain Died: April 4, 1270, Acre, Israel).

<sup>66</sup> Translation by Seymour J. Cohen, *The Holy Letter: A study in Jewish Sexual Morality*, Northvale, N.J.: Jason Aronson, 1993, p. 72.



זהו סוד טפת הזרע כשהיא נמשכת ממקום הקדושה ובטהרה נמשכת הדעה והחכמה והבינה

והוא המוח. ודע שאלו לא היה בדבר קדושה גדולה לא היו קוראין אל החבור ידיעה.

The secret is that when a drop of sperm is drawn out in holiness and purity, it is drawn from the place of knowledge and [understanding], which is the brain. And know that if sex isn't something of great holiness, they would not call intercourse "knowing."

The sexual act is the melding of our minds and bodies and has the potential for holiness when these come together with the correct intention. The Iggeret Hakodesh describes sex as holy. His reference to "knowing" may simply be the usage of the same word "knowing" as the Torah for sexual interaction or perhaps it points towards a connection between sex and knowing God. This may be less far-fetched than we imagine. For many, sex has the potential to bring ecstatic levels of joy and euphoria unparalleled in the course of our normal day. Arguably, this unmatched euphoria provides a glimpse of that which is beyond us. Perhaps, this is what the Iggeret Hakodesh means when he talks about "knowing". The stereotypical murmurings during sex of "oh my God, oh my God" may point towards a depiction of the euphoric sexual experience which reflects how contemporary culture thinks about sex. Our efforts to express that which is beyond our vocabulary. Like Shabbat that is said to give us a taste of the world to come, sex may provide insight or "knowing" of the Divine. However, this kind of holy sex is only present with a pure and holy mind and at an appropriate time. In addition, the Iggeret Hakodesh is concerned about what we eat prior to sex. (Chapter 4. p. 120). He understands that the sexual act is a

combination of mental and physical preparedness. For the Iggeret Hakodesh, sex has the potential for Holiness when consummated at the right time, with the correct intention and with the correct diet. Lots of strings attached. This is holy sex through moderation or controlling behavior.

A contemporary of the Iggeret Hakodesh also commented on time in connection with sex and holiness.

The Rambam talks about an appropriate time but goes further than the Iggeret Hakodesh by specifying a precise time.<sup>67</sup>

וְדֶרֶךְ קִדְשָׁהּ לְשִׁמּוֹשׁ בְּאַמְצַע הַלַּיְלָה

And the way of holiness during sex is in the middle of the night.

What's special about the middle of the night or at least darkness? What makes darkness holy? Why is holiness ascribed to not seeing our partner physically? Allow to me offer some classical sources before offering some personal insights. Bruria<sup>68</sup> shares that her husband Rabbi Meir had sex with her only in the middle of the night and therefore she had beautiful children.<sup>69</sup> The Shitah Mekubetzet,<sup>70</sup> comments on this as follows

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<sup>67</sup> MT Hilchot Isurei Beah 21:10.

<sup>68</sup> JWA Encyclopedia: <https://jwa.org/encyclopedia/article/beruryah>.

<sup>69</sup> BT Nedarim 20b.

<sup>70</sup> The Shitah Mekubetzet was authored by Bezalel Ashkenazi 1520-1592

אינו מספר עמי בתחלת הלילה. שתאות נשים שראה ביום עדיין בלבו ובסוף הלילה קרוב

לעמידה פן יהיה זכור מתאותו בנשים אחרות.

He does not tell me at the beginning of the night. That the lusts of women he saw during the day are still in his heart and at the end of the night he is close to standing so that he will not be reminded of his lusts with other women.<sup>71</sup>

In other words, according to this interpretation, the middle of the night is the time that a man will be most focused on his wife. Not thinking about women he's seen during the day or others he will see the next day. Requiring a set time for sexual encounters is a strings attached component under the heading of moderation. What makes this interpretation interesting is that it's moderation for the purpose of heightening the connection between husband and wife during sex. A heightened emotional connection when spouses are best able to focus on each other exclusively. There may be other reasons for holy sex to be at nighttime, not depicted in the classical texts. Typically mitzvot are performed in a way in which we can most fully appreciate the thing we're experiencing. We see food, make a beracha and eat it. We see the lights of Shabbat and bless them. We enjoy a fragrance and offer a blessing. Why might this be different when it comes to the sex? I would argue that for many there is an eroticized component to sex. How do we transform what may become ordinary or perfunctory into something holy; by creating mystery, mystique and intrigue. With the lights off physical imperfections are masked

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<sup>71</sup> Shita Mekubezet on Nedarim 20b:1

and our minds are free to work their magic and transform the mundane into something exquisite.

In short sex with strings. Moderation which heightens the sexual experience.

Another interpretation I'd offer may be related to modesty. The idea of modesty and not seeing our partner or their nakedness may have its genesis in Genesis 3:7.

וּתְפַקְחֵנָּה עֵינֵי שְׁנֵיהֶם וַיִּדְעוּ כִּי עֵרְוָם הֵם וַיִּתְפְּרוּ עָלֶיהָ תְּאֵנָה וַיַּעֲשׂוּ לָהֶם חִגְרֹת:

Then the eyes of both of them were opened and they perceived that they were naked; and they sewed together fig leaves and made themselves loincloths.

Once Adam and Eve had eaten from the tree of knowledge, they became aware of each other's nakedness and out of a desire for modesty, covered their nakedness. Modesty may be related to covering oneself or having sex at dark; i.e., not seeing your partner. This may be less about the eroticized nature of sex and more about avoiding shame to do with our less than perfect bodies. Of course, in a sense these concepts are two sides to the same coin. By dimming the lights, many feel more comfortable with their own bodies and the way in which their partner sees them precipitating better sex. Dimming the lights as well as only having sex at a prescribed time are acts of moderation.

For Rambam though it's not just about the time of day. He goes much further. Rambam's directive to holy people to express moderation during sex expounds the Torah narrative which is limited to who you can have sex with to how you can have sex with those who are permitted to you. Consider the following restrictions Rambam places on sex for a holy person in his Mishnah

Torah. Once/week (Shabbat). Air of sanctity. Bereft of lewd talk. Free from intoxication. A modest act.<sup>72</sup>

Rambam describes an ideal sexual interaction for a holy disciple that is sterile, controlled and restrained. Even with one's own wife, one shouldn't act like a rooster. (Roosters have sex 10-30 times daily<sup>73</sup>). The comparison to a rooster mirrors the Talmudic description which addresses a man's halachic requirement for Mikvah following sex. One sage teaches that Ben Azzai whispered this to his students so that they shouldn't feel free to "have sex like roosters", knowing that there was a process readily available to purify them afterwards.<sup>74</sup> It appears that for Maimonides holy sex is planned sex at a specific time, devoid of erotic talk and devoid of

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<sup>72</sup> MT Book 1, The Book of Knowledge, *Sefer Madda*; Treatise 2 *De'ot* Ethics, Chapter 5, sec 4 (pages 53aF 90-94M). MT Book 3, The Book of Seasons, *Sefer Zemanim*, Treatise 1 on the Sabbath, *Shabbat*, Chapter 30, sec 14 (pages 350M 197Y)

MT Book 1, The Book of Knowledge, *Sefer Madda*; Treatise 2 *De'ot* Ethics, Chapter 5, sec 4 (pages 53aF 90-94M)

<sup>73</sup> "The poultry site" <https://www.thepoultrysite.com/articles/natural-mating-and-breeding>.

<sup>74</sup> TB Berachot 22a.

passion<sup>75</sup>. Certainly this aligns with his prerogative objective of moderation as a path to holiness. Maimonides' pathway to sexual holiness appears to be through limiting, minimizing enjoyment.

This concept of singling out a more conservative path for one particular group (those who strive to be holy) is curious since the Torah has already informed the reader that the prescription for holiness is for the entire people of Israel<sup>76</sup>. Maimonides has essentially taken a message of holiness aimed at an entire people and derived a more restrictive pathway regarding sex for those who wish to be holy. To be fair, some scholars argue that asceticism, has existed since rabbinic

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אף על פי שאשתו של אדם מתרת לו תמיד. האוי לו לתלמיד חכם שניהיג עצמו בקדשה ולא יהא מצוי אצל אשתו<sup>75</sup> כתרנגול אלא מלילי שבת ללילי שבת אם יש בו כח. וכשהוא מספר עמה לא יספר בתחלת הלילה כשהוא שבע ובטנו מלא. ולא בסוף הלילה כשהוא רעב. אלא באמצע הלילה כשיתעכל המזון שבמעיו. ולא יקל בראשו ביותר ולא ינבל את פיו בדברי הבאי ואפלו בינו לבניה. הרי הוא אומר בקבלה מגיד לאדם מה שחו. אמרו חכמים אפלו שיחה קלה שבין אדם לאשתו עתיד לתן עליה את הדין. ולא יהיו שניהם לא שכורים ולא עצלנים ולא עצבנים, ולא אחד מהן. ולא תהיה ישנה. ולא יאנס אותה והיא אינה רוצה אלא ברצון שניהם ובשמחתם. יספר וישחק מעט עמה כדי שתתישב נפשה ויבעל בבושה ולא בעזות ויפרש מיד:

Though one's wife is ever lawful to him, it is proper that a disciple of the wise should demean himself with sanctity, and not be like a rooster; (Berakot, 22a. G. a Sabbath to Sabbath visitation, 7Ketubot, 62. C). If there be no physical reason to the contrary, not in the beginning of the night (Nedarim, 20; Niddah, 16.) when in a state of satiety, nor at the end of the night when hungry, but about midnight after the food in his bowels be digested, unaccompanied by either exceeding boisterousness or profanity of mouth with vain words, even between themselves. Behold, it is traditionally said that the Verse, "And he declareth unto man what his language is" (Amos. 4.13), the sages interpreted: "Even on account of indecent conversation a man carries on with his own wife, he will have to render an accounting" (Hegigah. 5b). Both of them shall not be intoxicated, nor sluggish, nor in mourning; nor either of them in such state; nor when she be asleep, nor by overpowering her contrary mood; but with the consent and happy mood of both, with few pleasant and light-hearted words to please her being, stilling his urge diffidently and not impudently and dissociate immediately.

<sup>76</sup> Leviticus 19:2

times. Eliezer Diamond, traces elements of Jewish asceticism to the beginning of the rabbinic period. This idea of avoiding indulgence or minimizing pleasure includes that of a sexual kind. Diamond demonstrates that the primary objective isn't the avoidance of such pleasure but the prioritizing of Torah study which consequently leads to the abandonment of sexual activity. He also connects the idea of delaying pleasure in this world so that it may be realized in the world to come.<sup>77</sup> This may be connected to Rambam's impetus for moderated sexual behavior, though Rambam doesn't mention the study of Torah as such.

The concept of moderation during sex has continued since the time of Rambam and became progressively more prohibitive in some communities. Rabbi Moses Isserles also known as the Rema (1530 – 1572), commenting on the Shulchan Aruch<sup>78</sup>, lists a potpourri of alternative/creative sexual positions and activities.

הגה: ויכול לעשות עם אשתו מה שירצה בועל בכל עת שירצה ומנשק בכל אבר שירצה ובא עליה בין כדרכה בין שלא כדרכה או דרך איברים ובלבד שלא יוציא זרע לבטלה. ויש מקילין ואומרים שמותר שלא כדרכה אפי' אם הוציא זרע אם עושה באקראי ואינו רגיל בכך וגם זה טור בשם ר"י ואע"פ שמותר בכל אלה כל המקדש עצמו במותר לו קדוש יאמרו לו

He may do with his wife whatever he wishes. He may have intercourse whenever he wishes, he may kiss any part of her body that he desires, he may have vaginal [typical] or

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<sup>77</sup> Eliezer Diamond, *Holy Men and Hunger Artists, Fasting and Asceticism in Rabbinic Culture*, Oxford: Oxford University Press, 2004.

<sup>78</sup> Shulchan Auch, Even Ha-Etzer 25:2.

anal [atypical] intercourse, or stimulate himself with other parts of her body, so long as he does not ejaculate outside the vagina (Tur). Some authorities are lenient and say that he may even ejaculate during anal intercourse, if it is occasional and not his habit (Tur). Even though all of this is permissible, anyone who wishes to sanctify himself [by abstaining] from the permitted is called holy.

At first glance it may be argued that the Rema is open minded, providing a laundry list of permitted sexual activities. However, his concluding words are telling. If you want to be called holy, don't do any of these. Holiness for the Rema is abstaining from certain behaviors in order to attain holiness. Unlike our established category of holy sex through abstention, the Rema presents a comprehensive list of permitted sexual practices (for the average person). This is different from abstention from the sexual prohibitions outlined in the Holiness Code, which are prohibitions for everyone.

The Rema extols moderation during sex as a pathway to holiness. In some communities a call to moderation with ever increasing restrictive behaviors during sex continues to modern times.

Benjamin Brown writes about various Hasidic communities in modern times with stringent ordinances known as Takanot. These are designed to promote minimal sexual interaction between spouses in a desire for holiness.<sup>79</sup>

### *Summary*

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<sup>79</sup> Brown, Benjamin, *Kedushah: The Sexual Abstinence of Married Men in Gur, Slonim, and Toledot Aharon*, Jerusalem: The Hebrew University of Jerusalem, 2013.



Having established three pathways to holiness in chapter 1, we examined the potentiality for holiness during sex related to marriage in each of those three pathways. We determined that in every category the potential for holiness existed. In the first category, Holiness by abstention, we concluded that when couples consciously abstain from behaviors which have the potential to detract from the stability of the family unit, holiness maybe precipitated.

In the second category; Holiness by Intentional Engagement, we concluded that having sex with the intention of betrothal (*kiddushin*), has the potential to effectuate holiness. For married couples, holiness maybe precipitated during sex in either of the following ways. i) for the sexual gratification of each other *where both partners prioritize the needs and desires of their spouse over themselves* ii) for the *primary* intention of having children, creating conditions that optimize the likelihood of conception (time, environment etc.). In the third category, Holiness through moderation, we concluded that deliberately acting in a way that places limitations around the sexual experience (time, frequency, dialogue, the act itself), precipitates holiness.

In chapter 4, we'll examine these same pathways to holiness as they pertain to relationships outside of traditional marriage. But first, let's learn about the different kinds of relationships outside of traditional marriage which are common today.

## **Chapter 3: Nomenclature of Sexual Relationships outside of Traditional Marriage**

In the last chapter we demonstrated the potentiality for holiness during sex as prescribed by Jewish tradition with a spouse or an intended spouse. We spoke about the presence of holiness from the perspective of abstention, intention and moderation. In 2023 I wonder if there is the potentiality for holiness outside of marriage or outside of a committed monogamous relationship. Some readers may have a knee jerk reaction to any kind of relationship that isn't of the monogamous flavor. Of course that's understandable. Monogamy is the norm in Western culture and typical Jewish communal life. Although biblical Judaism is replete with examples of non-monogamy<sup>80</sup> Judaism, today, regardless of denomination, assumes monogamous relationships as the norm. Indeed for many of us, monogamy works. The thought of a non monogamous relationship with the potentiality for holiness, is to say the least baffling. For many, it's hard to imagine how a relationship with more than two can even be possible, let alone holy.

In this chapter we'll learn about the different kinds of non monogamy so that we are better equipped to examine non monogamous interactions from the perspective of holiness in chapter 4. For all of us who are concerned about the future of Judaism and it's continued relevance in the coming decades of the 21st century, we would do well to remember that non-monogamy is on the rise especially in younger adults.<sup>81</sup> These are important and relevant questions to examine. The same holds true with regards to sex outside of marriage. As we noted in Chapter 1, fully one

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<sup>80</sup> Abraham had two wives (Gen. 25). Jacob had two wives and two concubines (Gen. 28). King Solomon had 700 wives (Kings I. 11:3).

<sup>81</sup>YouGov, Monogamy Polyamory Fieldwork Dates: 6th - 7th January 2020.

third of the North American Jewish community are unmarried. These include 18+ high school teens, 20's through every age including seniors. It may not be polite dinner or shul talk, but, it stands to reason that many of our single friends and neighbors are having sexual encounters. Is it possible that the potentiality for holiness exists even in these relationships? Again, I believe we have a responsibility to ask the question and provide some guidance.

The definitions and descriptions that follow aren't in any way meant to promote different life choices, merely an acknowledgment that they exist and an attempt to more fully understand and appreciate the nuances of sexual and intimate relationships in the third decade of this 21st century. I would encourage us to remember that these are the sexual experiences of our children, friends, neighbors, maybe even parents or grandparents. As a Jewish community that has endured harsh judgement from time in eternity, I would encourage readers to consider the following chapters with an open mind and an open heart.

Since not all of us are familiar with the terms and language that will be used in chapter 4, chapter 3 will be a pause from Jewish readings in order to provide common language for all of us in the next chapter.

### *3a. Terms and Definitions*

#### *Ethical Non-Monogamy*

Ethical Non Monogamy (ENM), as well as consensual non-monogamy and open relationships are all-cover terms used to describe some kinds of non-monogamous relationships. These relationships include more than two participants. Honesty and transparency are paramount.

They're ethical because no one is cheating. There is no hidden behavior or experiences. All participants are adults, able, willing and definitive in their consent.<sup>82</sup>

ENM relationships themselves differ greatly from one to the next. The common model composes a primary couple in a long-term relationship committed to each other, open to the presence of others physically and/or emotionally. ENM include those relationships with both physical and romantic involvement as well as relationships which are only physical.

While they allow and welcome others into their relationship, the needs of each partner is typically prioritized over the needs of secondary participants.

In some cases only one member of the primary couple are involved with others outside of the relationship. Here are some examples: i) A long term couple where one member of the couple has for many years been interested in exploring their bisexuality. ii) A couple where one member has become disabled and is no longer able to have sex and the other member of the couple has sex outside of the primary relationship.

ENM relationships that prioritize a primary couple over others may also be named hierarchal polyamory since secondary relationships are just that – secondary to the primary long-term couple. Of course, ENM relationships also include those where both members of the primary relationship have the ability to explore relationships outside of the primary relationship.

While these kinds of relationships may precipitate a negative response by some, we should consider that for these relationships to work, a level of communication must be present that may be lacking in a traditional relationship. I would opine that while some who are married for a

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<sup>82</sup> Ryan Scoats, Christine Campbell, "What do we know about consensual non-monogamy?," *Current Opinion in Psychology*, Volume 48, 2022.

period of time don't feel the need to regularly check in with their partner and/or have deep discussions about their relationship, those who are in ENM relationships must by necessity have these conversations regularly.

### *Polyamorous Relationships*

Polyamorous relationships allow those who don't believe that true love needs be restricted to just one person to enter into relationship with each other. Polyamorous relationships by definition include three or more participants and always include both a physical and romantic component.

Polyamorous relationships by their very nature are different from monogamous relationships. Rules of fidelity both physical and emotional require discussion, perhaps negotiation and then need to be abided by very carefully. Polyamorous relationships aren't simply relationships where anything goes. Quite the opposite, the nature of the relationship necessitates deep and honest dialogue where rules and constraints are established and participants are constantly checking in with each other.

The moment we move from cookie-cutter relationships to custom-built ones, we have to start thinking about what is and is not possible. The vast potential in polyamorous relationships can be misleading. A relationship can be many things, but it also has built-in constraints. It's constrained by what you want—but also by

what each of your partners wants, and what their partners want, and the inherent range of potential intimacy between you and your partner.<sup>83</sup>

Some in polyamorous relationships attend retreats or gatherings with others of like mind. Again, these aren't anything goes, no rules, just have fun hedonistic meetings. For many these are opportunities for emotional and spiritual healing & self-expression through meditation, conversation and moderated sensual play. Sensitivity, forethought, and intention are paramount values that characterize these kinds of safe spaces.<sup>84</sup>

Another common kind of polyamory is the throuple. Unlike hierarchal polyamory, every member of the throuple are in equal relationship with each other physically and emotionally.

There are of course many subsets of polyamory, with fewer or greater restrictions. Don't Ask Don't Tell polyamory is a no strings attached, anything goes relationship where sexual experiences outside of the primary relationship aren't spoken about. Monogamish relationships are at the other end of the spectrum. A monogamish relationship allows for occasional sexual experiences outside of an otherwise completely monogamous relationship. Complete honesty and transparency is always part and parcel of the formula. For example, one partner allows another to receive an erotic massage from time to time.

### *Casual Sex*

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<sup>83</sup> Veaux, Franklin, *More Than Two : A Practical Guide To Ethical Polyamory*, Thornapple Press, Portland, Oregon, 2022, p.74.

<sup>84</sup> "Sammakarana" <https://www.sammakaruna.org/tantra-sessions/>

Casual sex is sexual activity that takes place outside of a romantic and sexual relationship and implies an absence of commitment, emotional attachment, or familiarity between sexual partners.<sup>85</sup> Casual sex includes a plethora of sexual experiences and activities. Here are a few within this category. *No strings attached* may describe a sexual experience with someone you've just met or someone you've known for ages. *Hooking up* is another idiom with a similar meaning, though maybe less sexual in nature (e.g., limited to making out with someone). *Friends with benefits* starts with the premise of friendship which then leads to sexual activity. This could be a true friend or someone who is closer to an acquaintance. It may be a purely sexual experience or include experiences of a social nature (movie/museum/study partner) friend.

Now that we have a greater understanding of relationships and experiences outside of traditional marriage, let's explore the potentiality for holiness in those relationships during sexual intimacy.

## **Chapter 4: Holiness & Sex outside of Traditional Marriage**

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<sup>85</sup> Wentland, Jocelyn J.; Reissing, Elke D, "Taking casual sex not too casually: Exploring definitions of casual sexual relationships," *Canadian Journal of Human Sexuality*. 2011. Volume 20.

Considering the definitions of the types of sexual interactions listed in chapter 3, let's turn our thoughts to the potentiality for holiness in our established categories with regards to relationships outside of marriage. It's important to note that an opinion leaning to the absence of holiness is in no way a repudiation of the relationship from any perspective except that of the existence of holiness. Something without holiness isn't necessarily something bad for us, forbidden, or abhorrent in any way. This thesis examines the question of holiness only. It's perfectly possible for a sexual interaction or relationship to be ethical without the potentiality of holiness.

#### *4.a: Holy Sex Outside of Marriage through the abstention of prohibited sexual practices*

In chapter two, we perused the list of forbidden sexual couplings listed in the holiness code. We observed that *the vast majority were connected to sexual interactions which lead to a weakening of the family unit.* We concluded that as long as there's abstention from those behaviors which undermine the family unit the potentiality of holiness exists.

Before we examine which behaviors today weaken the family unit and therefore detract from holiness, let's consider the question of *why* the Torah puts such emphasis on the stability of the family unit.

Perhaps, family unity is connected to the very first commandment of the Torah "Be fruitful and multiply".<sup>86</sup> The argument could be made that adults are less likely to have sex (and have children) if the family unit is weakened. Similarly God's promise to Abraham to build a great

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<sup>86</sup> Genesis 1:28.



and numerous nation.<sup>87</sup> This would only be possible through family and tribal unity. Indeed, intertribal tensions were common, due in part to “the interactions of kinship, clientship, and kingship”.<sup>88</sup>

If we accept the contention that the Holiness Code was primarily concerned with the maintenance and unity of the family unit, we must ask ourselves which behaviors in relationships outside of marriage<sup>89</sup> detract from the family unit. Those are the behaviors we must abstain from in order for the potentiality of holiness to be realized. As we discussed in chapter 3, a polyamorous relationship is by definition a relationship that includes more than two participants. As such, interpersonal dynamics may be more difficult to juggle than when there are only two in relationship. Indeed, there are at least four unique relationships at play in a three person polyamorous relationship: If we designate a letter to each member of a three person polyamorous relationship as follows A, B, and C we discover four unique relationships at play. A with B. A with C, B with C and A, B, and C together. Holiness maybe present when all four relationships that make up a three person polyamorous relationship are in harmony, with guiding principles of honesty and transparency *and* when they all support the unity of the family. Let me offer an example to clarify. Consider a polyamorous A, B, C, 3 person relationship which also includes the child of A, where B and C are considered uncles. Person B attends a tantra retreat and realizes that the brother of person A, the blood uncle of the child is at the retreat. Although it may

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<sup>87</sup> Genesis 12:2.

<sup>88</sup> Stager, Lawrence E. “The Archaeology of the Family in Ancient Israel.” *Bulletin of the American Schools of Oriental Research*, no. 260, 1985.

<sup>89</sup> Or a two person monogamous relationship.

be true that there's nothing unethical for person B to interact in this forum with the uncle of the child (since there's no actual blood relationship between the "uncles"), the perception maybe different and lead to the weakening of the A,B,C plus child family unit. Abstaining from the retreat due to a concern of how this may impact the relationship to the child of A and the unity of the A, B, C family relationship precipitates holiness. Another consideration is the question of how a polyamorous relationship as a single unit interacts with other members of the wider family. For example, a polyamorous relationship that includes those who are related to each other (even distantly) may be fraught with inter-family dynamics that compete, complicate and detract from the polyamorous family unit. All the more so with close blood relatives.

When talking about the potential for weakening the family unit from the perspective of children in the unit, thoughtful and deliberate age appropriate conversations are of the utmost importance. When considering the addition of a new partner, an awareness of how that person may effect children is paramount. A polyamorous relationship is a valid individual choice, but not one which should either be encouraged or discouraged to children of those in relationship. The language we choose even when speaking casually about those in polyamorous relationships should be age appropriate. This is of course the case in monogamous relationships but may require greater vigilance when considering polyamorous relationships which by their very nature include a sexual dynamic absent from monogamous relationships. Honesty is key to polyamorous relationships and key to communication with children. The nomenclature of intimate friends as opposed to multiple parents is paramount (as in the A, B, C example above). The intimate friend of say a child's mother is still named a friend to the child, rather than a parent

or uncle/aunt. Calling that person an uncle or father or any name may lead to confusion and flies in the face of our prerogative of maintaining family unity and honesty.

Parents who are contradictory in their communication, who leave the child confused about whether they are loved or not, and who have unrealistic expectations can all be extremely confusing for a child.<sup>90</sup>

Although children in polyamorous relationships may encounter additional challenges to those in a traditional marriage it should be noted there may be some advantages too. Some have opined that children of those in polyamorous relationships may in fact benefit from multiple adult interaction, supervision and care:

[They] can benefit from having multiple loving parents who can offer not only more quality time, but a greater range of interests and energy levels to match the child's own unique and growing personality.<sup>91</sup>

Acknowledging that abstention from behaviors that weaken the family unit is an example of holiness through abstention I'd like to consider another prohibition from the the holiness code which points towards additional behaviors to abstain from.

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<sup>90</sup>Jessica Fern, *Polysecure*, Thornapple Press, Victoria, British Columbia, 2022, , p. 8.

<sup>91</sup> Mark Goldfeder, Elisabeth Sheff1, "Children of Polyamorous Families: A First Empirical Look," *LSD Journal*, Vol. 5, 2013, p. 187.

וְאִישׁ אֲשֶׁר יִשְׁכַּב אֶת־זָכָר מִשְׁכַּבֵּי אִשָּׁה תוֹעֵבָה עָשׂוּ שְׁנֵיהֶם מוֹת יוּמָתוּ דְּמֵיהֶם בָּם:

If a man lies with a male as one lies with a woman, the two of them have done an abhorrent thing; they shall be put to death—and they retain the bloodguilt.<sup>92</sup>

Classical Judaism uses this verse as a prohibition against homosexuality.<sup>93</sup> I'd like to consider an opinion, that this verse may in fact be interpreted as a prohibition against pederasty, the sexual relationship between an adult man and a pubescent or adolescent boy.<sup>94</sup>

This interpretation explains why the Torah uses two different words for man and male (& אִישׁ וְזָכָר).<sup>95</sup> The Ancient Greek custom of men of adult age mentoring younger boys including sexual interactions may be what the Torah is addressing. This custom is dated to around 700-480 B.C.E. Academic research attributes the holiness code to around the 7th century BCE<sup>96</sup> falling within this same period. Alternatively, the practice of pederasty may well have predated Ancient Greece. Some date pederasty to the period of the Trojan war<sup>97</sup>, the 13th or 12th century BCE. This would place pederasty at approximately the same time as *Matan Torah* (the giving of the Torah),

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<sup>92</sup> Leviticus 20:13.

<sup>93</sup> Rabbi Joel Roth, *Homosexuality*, CJLS, 1992.

<sup>94</sup> "Macmillan" <https://www.macmillandictionary.com/us/dictionary/american/pederasty>.

<sup>95</sup> "These specific words " –men" and "males" – were used precisely in descriptions of the Greek custom back then because, at that time, only men who were of adult age and of sufficient substance to own land, vote, and marry, could legally be called "men." Those who were too young to vote, own land, or marry could only be referred to as "males" under Greek law." June Kozak Kane, "Redefining Leviticus 20:13," *Jewish Standard*, 2011. Michael Coogan, *A Brief Introduction to the Old Testament*. Oxford University Press, Oxford UK, 2009, p. 126.

<sup>97</sup>Peter Struck, *CISt 100/ ComL 108: Mythology*, UPenn, 2020.

according to classical Jewish thought.<sup>98</sup> Others translate the words משכבי אשה as “on the beds of a woman” with two potential interpretations. Either a prohibition against men having sex with younger men or as a prohibition against men having sex with other Judean men who are married.<sup>99</sup> This latter interpretation supports our aforementioned prerogative of abstaining from behaviors which detract from family unity while the former supports the theory of a prohibition against pederasty.

If we follow interpretations linked to pederasty, a deeper concern of the Torah maybe evidenced; namely, one of consent. In the case of pederasty, how is it possible for a boy to provide consent? Hence the strong language of condemnation. In short, the Torah requires consent. Consent prohibits sex with anyone who is unable to make an informed decision. Consequently, sex with anyone under the influence of drugs, alcohol, or whose ability to make a decision is infringed upon in any way is named a “toyavah” or abomination.<sup>100</sup> In 2022, the notion of consent may be taken even further. While, it’s obvious that someone who is inebriated is unable to offer informed consent other cases are more nuanced. For example, in college, the popular guy who hits on the unpopular girl. Or a girl who’s a social influencer approaches an unpopular boy for sex. In each of these examples true consent is impossible. This may also apply to prostitution, or those who need our help with the implication that sex will afford them our help. Even in situations where an

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<sup>98</sup> “Oxford Reference Dictionary” <https://www.oxfordreference.com/display/10.1093/acref/9780191737282.timeline.0001;jsessionid=EC31082474B386038F86C127AC179F58>.

<sup>99</sup> Bruce Wells, *On the Beds of a Woman: The Leviticus Texts on Same-Sex Relations Reconsidered*, Bloomsbury, Publications, Bloomsbury, London, UK, 2020.

<sup>100</sup> Leviticus 20:13.

equal power dynamic appears to exist definitive consent is needed. This may especially be the case when one partner wants to engage in a sexual fantasy. According to a 2019 report in the *Journal of Sex & Marital Therapy*, situations where participants felt unsafe were reported by 23.9%.<sup>101</sup> In 2022, a simple ok or yes, isn't enough to engage in sexual activity. More than a moral or ethical imperative, this has become the law in some states.<sup>102</sup> The Torah speaks to us through the millennia. According to this interpretation, Leviticus 20:13 is a call to abstain from sex that doesn't include affirmative consent. In short, holy sex outside of marriage through abstention maybe realized when behaviors which detract from the family unit as well as behaviors which don't include absolute consent are abstained from.

#### *4.b: Holy Sex outside of Marriage through Intentional Engagement*

As a recap, in Chapter 1, we spoke about personal engagement which intentionally effects the potential for holiness. An example being making kiddush on Friday night. A glass of wine is transformed into something holy with a particular intention and personal engagement at a specific time. Meaning that we may drink wine on a Thursday night with a blessing without the potentiality of holiness. On the other hand, when we offer a blessing of sanctification (which may only be recited on Shabbat or holidays) the potentiality of holiness is triggered. In chapter 2,

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<sup>101</sup> Debby Herbenick, Elizabeth Bartelt, Tsung-Chieh (Jane) Fu, Bryant Paul, Ronna Gradus, Jill Bauer & Rashida Jones (2019) "Feeling Scared During Sex: Findings From a U.S. Probability Sample of Women and Men Ages 14 to 60," *Journal of Sex & Marital Therapy*, 45:5.

<sup>102</sup> California SB 967 requires students to seek "affirmative consent" from partners at each stage of sexual activity.

we examined intentionality and holiness in the context of effectuating kiddushin as part of marriage or a committed monogamous relationship.

We concluded that sex for this purpose is holy. Now we'll turn our minds to intentional sex without the purpose of effectuating kiddushin, i.e., outside of traditional marriage.

Let's consider verses from the Torah that deal with this very situation. Sex without the purpose of creating kiddushin.

וְכִי־יִפְתָּה אִישׁ בְּתוּלָה אֲשֶׁר לֹא־אָרְשָׁה וְשָׁכַב עִמָּה מִהָר יִמְהַרְנָה לוֹ לְאִשָּׁה:

If a man seduces<sup>103</sup> a virgin for whom the bride-price has not been paid, and lies with her, he must make her his wife by payment of a bride-price.

אִם־מֵאֵן יִמְאֵן אָבִיהָ לְתַתָּהּ לוֹ כֶּסֶף יִשְׁקַל כְּמֹהַר הַבְּתוּלָת:

If her father refuses to give her to him, he must still weigh out silver in accordance with the bride-price for virgins.<sup>104</sup>

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<sup>103</sup> This is seduction but consensual. According to Rashi וְכִי יִפְתָּה AND IF A MAN ENTICE [A VIRGIN] — i. e. if he speaks kindly to her until she submits to him. Thus does also the Targum take it: אַרִי יִשְׁדַּל “if a man persuades”, the root שְׁדַל (the Pael conjugation) in Aramaic being the equivalent of פָּתָה in Hebrew.

<sup>104</sup> Exodus 22:16-17.

These verses reflect a concept of consideration for consequences, meaning that if a man has sex with a single woman, he is required to marry her. If her father refuses to allow the marriage to occur the said man is still responsible to financially compensate the father for having slept with his daughter.

Contemporary Jewish values negate concepts of a woman belonging to her father as well as a bridal price. Egalitarian communities treat men and women as equals, even if some rituals that continue symbolize an earlier inequality<sup>105</sup>. If we consider these verses through the lens of contemporary Jewish ethics the ethical prerogatives of consequences may be extracted.

In order to be fully aware of any potential consequences, potential sex partners need to share or disclose a myriad of information. For example, their relationship status, the presence or not of sexually transmitted diseases, vaccines, menstrual period to name a few.

When we bring an intention of consideration for those with whom we are involved with sexually over and above that which is legally, ethically and culturally required, I would argue that the potentiality for holiness exists. For example, if two adults who hardly know each other agree to meet for a sexual experience, it may be argued that there is nothing wrong with this interaction. Having said that, without knowing each other it's impossible to gage the impact of a sexual interaction and holiness will be absent. The consequences of causal sex may include: unwanted pregnancy, disease, and other health issues.

Indeed classical Jewish sources are keen to prohibit any action which may be harmful.<sup>106</sup>

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<sup>105</sup> 7 circles and one way kiddushin.

<sup>106</sup> TB Makkot (20b-21a); Sefer Hamitzvot, negative commandments 45.



Then there's the question of psychological effects which are more difficult to determine. How do people feel about themselves after casual sex? A 2020 comprehensive review of 71 studies demonstrated a variety of emotional responses to casual sexual relationships and experiences (CSREs). Alcohol use, not knowing someone and a disappointing sexual experience were related to more negative experiences. That being said, overall responses were positive.<sup>107</sup>

Interestingly another study of 18-25 year olds correlated a mostly negative experience to casual sex.<sup>108</sup> There appears to be conflicting studies and disagreement in terms of conclusions even within studies.

Besides an emotional response to casual sex, physical health is an important consideration. The probability of STD's increases with each partner who is unknown to us. Certainly, increased casual sex frequency leads to greater probability of STDs both infection and transmittance. Also, depending on the degree to which a potential partner is known to us; we may be putting ourselves in a dangerous situation. A third consideration must be the impact to our spiritual health. Having sex isn't equatable to having an ice cream. Our essence, our DNA, our imagination and physicality, indeed our entirety are all involved in sexuality.

There are other less tactile considerations involved in casual sex with someone we don't know.

Perhaps, the interaction is being recorded; perhaps our potential partner is inebriated or others

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<sup>107</sup> Rose Wesche, Shannon E. Claxton & Emily A. Waterman (2021) "Emotional Outcomes of Casual Sexual Relationships and Experiences: A Systematic Review," *The Journal of Sex Research*, 58:8.

<sup>108</sup> Melina M. Bersamin, Byron L. Zamboanga, Seth J. Schwartz, M. Brent Donnellan, Monika Hudson, Robert S. Weisskirch, Su Yeong Kim, V. Bede Agocha, Susan Krauss Whitbourne & S. Jean Caraway (2014) "Risky Business: Is There an Association between Casual Sex and Mental Health among Emerging Adults?," *The Journal of Sex Research*, 51:1.

will make an appearance. Perhaps drugs will be offered. The list goes on. Some use sex as a tool for self-medication. For others sex becomes addictive.<sup>109</sup> It is beyond the scope of this paper to address these topics thoroughly. That being said, any behavior which is harmful to either party, automatically negates any potentiality for holiness, regardless of path.

Of course, a requirement to seriously consider consequences or, in other words, provide intentional engagement around sexual relationships is necessary in every kind of relationship.

In polyamorous relationships, there is the additional challenge with multiple partners to be particularly aware of everyone and their unique needs.

For each person, the “right” way to do poly is to talk about your needs, fears and insecurities; to talk about the ways your partner can support you; and to honor your commitments—without being controlling or placing rules on other people to protect you from your own emotional triggers. Above all else, trust that you don’t have to control your partner, because your partner, given the freedom to do anything, will want to cherish and support you. And always, always move in the direction of greatest courage, toward the best possible version of yourself.<sup>110</sup>

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<sup>109</sup> Understanding and Managing Compulsive Sexual Behaviors, Timothy W. Fong, *Psychiatry (Edgmont)*. 2006 Nov; 3(11): 51–58.

Published online 2006.

<sup>110</sup> Franklin Veaux and Eve Rickert, “More than two : a practical guide to ethical polyamory”, Thornapple Press, Victoria, British Columbia 2014.

As we spoke about in chapter 2, an intention to satisfy our partners sexually may also precipitate holiness (intentional engagement). It's interesting to note that the Torah is mostly silent on the subject of the sexual act itself. The Rema<sup>111</sup> commenting on the Mishnah Torah permits a man to kiss any part of a woman's body and have both vaginal and anal intercourse.<sup>112</sup> Bearing in mind the mitzvah of satisfying a spouse and with a concern for maintaining the family unit, I would opine that any sexual interaction that promotes strength within the family unit and sexual satisfaction is not only permitted, but is a mitzvah and holds the potentiality of holiness when all participants in a sexual interaction prioritize the needs of others over themselves. This parallels the potentiality for holiness in this chapter 2.b.

Ester Perel, noted psychotherapist, explains the dual need for security and erotic desire in committed relationships. One can imagine that on the one hand we need our partners to be loving, supportive and just there for us no matter what. On the other hand, during sexual encounters many need a different kind of loving. Think more passion, less romance. For some, one way to achieve these almost Jekyll & Hyde components of our personality is through erotic sexual experiences. Far from something which some view as dirty or animalistic, these behaviors are for many a potent avenue for sexual desire and lust. Participants allow each other to explore their deepest desires in a safe environment. The ability to have these vulnerable conversations, in itself creates closeness and trust. Reimagining our sexual partners in new and original roles has

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<sup>111</sup> Rabbi Moses Isserles, 1530 - 1572.

<sup>112</sup> Shulchan Arukh, Even HaEzer, 25:2.

the potential to drive excitement and bring back passion to those whose sex lives and connection has wained.<sup>113</sup>

Sexual intimacy, both frequency and intensity is vital to successful healthy modern relationships. The absence of a robust sex life is often a symptom of a relationship in trouble.<sup>114</sup> Any sexual fantasy between consenting adults that isn't forbidden and effectuates sexual satisfaction maybe understood to be holy. In short, holiness through intentional engagement outside of marriage maybe present when absolute consideration for the needs of our partner is evidenced. This is only possible when we know the person we're interacting with and can gage potential consequences. In addition consensual sexual behaviors (including erotica and fantasy) that promote desire, trust and intimacy are not only permitted but encouraged as pathways to holiness.

#### *4.c: Holy Sex outside of Marriage through Moderation*

As we spoke about in Chapter 1, Ramban, commenting on Leviticus 19:3 believes holiness to be exercising self-control, or moderation in experiences that are permitted to us. In chapter 2, we spoke about a variety of classical sources that connect moderation to the when, how, and other circumstances relating to sexual encounters between spouses. Furthermore we spoke about ever increasing restrictions and strictness in the sexual realm within some Hasidik communities.

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<sup>113</sup> Perel, Esther "*What You Don't Understand About Sexual Fantasies*". Esther Perel. 2021. [maged%20place&text=Fantasies%20are%20different%20from%20what,Embrace%20it.](#)

<sup>114</sup>Michael Brezsnnyak & Mark A. Whisman, "Sexual Desire and Relationship Functioning: The Effects of Marital Satisfaction and Power," *Journal of Sex & Marital Therapy*, 2004. Pages 199-217 .

Before we consider what holiness out of marriage through moderation might mean in 2022, it's worth noting Judaism's contrasting perspectives on sexual interactions through the ages. From one perspective, the Bible contains the Holiness Code, essentially a list of sexual *prohibitions* while from another, the Bible includes what is named by Rabbi Akiva as the holiest of writings<sup>115</sup>; Song of Songs is a book of love, romance and arguably erotica with a strong sex positive message.

The contradictory messaging of rules that control sexuality alongside a more liberal and more forward looking attitude towards sex not only characterize the Bible, but as David Biale points out, characterizes competing messages throughout Jewish history and tradition.<sup>116</sup> This line of thought is mirrored by Benjamin Brown, who commenting on classical Jewish imperatives for moderation as a pathway to holiness identifies two competing desires “an ascetic orientation emphasizing the suppression of sexuality...balanced by the halakhic commandment of onah (sexual obligation toward one's wife) ...”.<sup>117</sup> In the same paper he reasons that the attainment of kedusha by the implementation of ever more stringent sexual prohibitions in the Hasidik community is a response to modern progressive sensibilities and openness regarding matters of a

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<sup>115</sup> Mishnah Yadayim 3:5.

<sup>116</sup> “The conflicting genres and ideas within the Bible are not unlike the cultural conflicts that appear in texts for later period is of Jewish history. Thus, the Bible, itself the canonical text, includes material that foreshadows the later struggles between canon and alternative voices” (David Biale, *Eros and the Jews: From Biblical Israel to Contemporary America*, University of California Press Books, Oakland CA, 1997). P.11.

<sup>117</sup> BROWN, BENJAMIN. “‘Kedushah’: The Sexual Abstinence of Married Men in Gur, Slonim, and Toledot Aharon.” *Jewish History*, vol. 27, no. 2/4, 2013, pp. 475–522.

sexual nature. In short, sex positivism of modern culture is met with an equal force of sex negativism from those wishing to maintain a more conservative approach to sex.

In the same way in which Judaism's approach to sexual behavior has in some sense boomeranged from restrictive to embrative throughout the ages influenced by contemporary culture, I would argue that the same consideration to contemporary culture should be afforded to Kedusha. Kedusha isn't insulated from the entirety of our complex lives. Kedusha isn't static. This position is of course in stark contrast to those living an insulated lifestyle with restrictions that go so far as to admonish spouses from touching each other even casually (such as passing a utensil at dinner time) in public.<sup>118</sup>

For those who participate in modern Western society and are exposed to a culture where sex and sexuality, nudity, and the like are normalized and part and parcel of everyday life, the determination of holiness must include contemporary perspective and context. With this in mind, let's examine the concept of moderation as it pertains to sexual encounters outside of marriage or a committed two person relationship. Are there experiences within which the practice of moderation can precipitate holiness?

#### *4.c.i: Singles and Holy Sex Through Moderation*

As we've already stated, there is no explicit Torah prohibition for sex between single people.<sup>119</sup>

Casual sex, spoken about at length in Chapter 3, includes a plethora of sexual interactions but at

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<sup>118</sup> Shulhan Arukh, Yoreh Deah 195:2.

<sup>119</sup> With the exception of adultery and incest.

its simplest maybe defined as consensual sex outside of a romantic or committed relationship, typically without strings attached.<sup>120</sup>

I concluded in the previous definition of holy sex through intentionality that where the person isn't known to us, and we are unable to gage consequences, the potentiality for holiness is lacking.

Let's consider the following real life examples when considering moderation as it relates to sex.

Please note that although these examples include gay sex (forbidden according to classical Torah interpretations), the permissibility or not of gay sex isn't the subject under consideration.

Examples equally apply to heterosexual interactions.

#### *Example 1*

Jonathan meets Deborah at a conference. Both 30s/40s. They chat over dinner. Enjoy each other's company. Deborah reveals that she is newly divorced. They get to know each other, they laugh, they console, they support. They live 1500 miles from one another and are returning to their homes the next morning. They agree that neither of them are interested in a relationship but are both eager to have sex. Just sex; no strings; nothing complicated.

During the sexual encounter, Jonathan senses a vulnerability in Deborah. Although they are both enjoying the sexual interaction, for Deborah there appears to be an emotional element that Jonathan doesn't feel. She starts to utter sentiments of "feeling more for him" etc. Jonathan

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<sup>120</sup>Jocelyn J. Wentland and Elke Reissing, "Casual sexual relationships: Identifying definitions for one night stands, booty calls, fuck buddies, and friends with benefits," *The Canadian Journal of Human Sexuality* 2014. Vol 23, No. 3.

wants to a try something sexually that Deborah is unfamiliar with. He has an opportunity to return the emotionality that Deborah is exuding (which he doesn't feel) in order to manipulate her sexually. He refrains from responding in like understanding that he would potentially be inflicting mental damage on Deborah and manipulating her emotionally for his own physical desires. Jonathan moderates his behavior during sex.

### *Example 2*

David, an undergraduate at Berkeley is living without his parents for the first time in his life. He's known he was gay for as long as he can remember. He's read prolifically about all things gay, but up until now has never had an opportunity to meet others like himself.

Now alone, he's decided that he would like to change that and experience what he has only read about and felt for so long. David is shy and isn't sure about being seen publicly at gay student events or other public places. He therefore decides to download a popular gay app and see what happens.

In a matter of minutes he's messaging with others through the app, exchanging pictures, casual talk and talking about himself. After a few days, he meets someone and enjoys a positive sexual encounter. He enjoys his newly found sexuality more and more and meets others through the app. After a few weeks he's meeting different partners for consensual causal sex whenever the opportunity presents itself. Sometimes multiple times during the same day. The app is always open on his phone. To a greater or lesser degree he is looking for his next sexual encounter during his every waking hour.



### *Example 3*

Michael a gay young professional in his late 20s from New York finds himself in a small town in the middle of Arkansas during a work week away. Michael has been out for almost a decade. He's had experience both physically and emotionally with others. In this small town he feels isolated, even vulnerable as a young gay male far from home, alone. He wants to see if there are other members of the gay community in his vicinity. He's lonely and would like to be able to socialize with others with whom he shares a commonality. He downloads an app and discovers other gay men in his age group close by. After talking with Jeffrey for a while, they agree to meet for coffee. They get to know each other and feeling a sexual spark. They talk about their sexual history, safe sex, and their HIV / STD status. They agree to have sex with the understanding that penetration won't be part of the activity. They have fantastic sexual energy and even though there maybe a desire for intercourse, they moderate their behavior and enjoy each other in other sexual ways. The next morning they part as friends, add each other on social media and agree to keep in touch.

Considering the above examples through the lens of Ramban's understanding of holiness, exercising self-control in experiences that are permitted to us, I would opine the potentiality for holiness in the first and last examples. In both cases, in the midst of sexual ecstasy sexual parties moderate their behavior. Jonathan, refrains from expressing his emotions in order to respect the agreed upon boundary of the interaction. Similarly, Michael and Jeffrey in the throes of sexual euphoria moderate their behavior in order to respect their agreed upon physical boundary.

This in contrast to example 2. The college student acts without restraint. Sexual partners, past, present and future are all reduced to a string of physical conquests. The sexual act is hyper focused on physical satisfaction without consideration or arguably interest for the soul within that person. In these kinds of interactions both parties objectify the other but, just as importantly they objectify themselves. All too often frequent hook ups are a sign of depression or used as tools to help alleviate loneliness, sadness and boredom.<sup>121</sup> This kind of overindulgence is antithetical to Ramban's understanding of holiness and is often a symptom of a coping strategy or underlying issue.<sup>122</sup>

In examples 1 and 3 moderation or self-control acts as a lever to reign in sexual lust and desire. At the very height of sexual excitement and passion, exercising moderation is an opportunity to demonstrate our spiritual dominance over our base desire.

Even in the midst of sexual height, moderation reminds us that the experience we are sharing is more than just physical. We are connecting to another soul and as such need to respect agreed upon boundaries.

Moderation is holy because it demonstrates our highest aspiration; B'tselem Elohim - to be and act in the image of God, at the most intense moment of physical gratification and enjoyment.

This doesn't mean that there is always holiness in examples 1 and 3, merely that there is the potential for holiness. There are a host of additional conditions that are also worthy of

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<sup>121</sup> de Oliveira, L., & Carvalho, J, "The Link Between Boredom and Hypersexuality: A Systematic Review." *The Journal of Sexual Medicine*, 2020, 17:994-1004.

<sup>122</sup> Kelly MM, Tyrka AR, Price LH, Carpenter LL. "Sex differences in the use of coping strategies: predictors of anxiety and depressive symptoms." *Depress Anxiety*. 2008, 25(10):839-46.

consideration that may override an outcome of holiness through moderation. Considerations include; absolute consent, psychological impact, reasons for sex, health ramifications, respect for self. Also, most notable is a consideration for our spiritual wellbeing. How do we ‘feel’ after the sexual interaction. For those who feel a connection to the Divine; how does a sexual interaction of this kind impact us? Regardless of religiosity or not, do we feel more or less aligned? Do we feel inspired? Motivated? Balanced? Most simply put “do we feel happy or joyful”? Answers to these kinds of questions provide a sense of our spiritual compass.

## **Conclusions**

This thesis sought an answer to the question of whether sex outside of traditional marriage holds the potentiality for holiness. We considered a variety of relationships including monogamous, polyamorous and casual sexual encounters. Our interpretations of classical Jewish sources demonstrated a host of pathways for the potentiality of holiness to be present. These include, i) prioritizing the integrity of the family unit, especially children, ii) prioritizing the sexual needs of others above our own desires, iii) absolute consent, iv) full disclosure to potential sexual partners, v) consequences of the experience and vi) care for oneself and one’s partner. It’s my opinion that the potentiality of holiness exists in all of the above relationships. That being acknowledged, the less well participants are known to each other the less likely the above criteria can be met. Meaning, participants need to know the person they’re interacting with to understand how a sexual encounter may impact them. By definition an anonymous sexual encounter cannot

satisfy this criteria. A monogamous married couple may fulfill the criteria sometimes, always or never. The absence of holiness in a sexual experience doesn't make it wrong. That encounter simply lacks holiness. While every holy sexual encounter is ethical the opposite is not true. Sexual experiences that lack holiness may very well be ethical, socially acceptable and principled.

וְאַל תִּדְרִין אֶת חֲבֵרְךָ עַד שֶׁתִּגִּיעַ לְמִקוֹמוֹ

Do not judge your fellow man until you have reached his place.<sup>123</sup>

I hope this thesis has provided some new ideas, concepts and ways to think about holiness. Specifically holiness during sex, whether in traditional marriage, a committed relationship, polyamorous relationships and the plethora of additional sexual interactions the vast majority of us have and will experience. Perhaps an objective that has been realized above and beyond that of an academic discussion is shedding light and talking about experiences all too often not spoken about, hidden behind those proverbial closet doors. At the very least my hope is that, dialogue has been opened on a subject where very little from a Jewish perspective exists. Perhaps this thesis has peaked the curiosity of those who may not have considered the subject from a Jewish perspective.

Of course, this presentation has barely scratched the surface of a subject there is so much to write about. There are many valid perspectives. With great respect and humility, I feel privileged to add my voice to the dialogue.

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<sup>123</sup> Pirkei Avot 2:4

We are all different. Our beautiful faith celebrates these differences. From the way we pray, the foods we may partake of, those we call our spouse and yes, the sexual experiences we may pursue. Let us have respect for each others choices even if they are not our choices. Let us support all those who seek Godliness and holiness in their lives.

ואהבת לרעך כמוך אני יהוה

Love your fellow as yourself: I am יהוה.<sup>124</sup>

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<sup>124</sup> Lev.19:18