

Judaism and Same-Sex Marriage
– Homosexuality and Jewish Marriage –
Reimagining *Taharat HaMishpachah*

By Diane Klein

Taharat hamishpachah, the so-called “laws of family purity,” form the cornerstone of the Orthodox Jewish understanding of the marriage relationship between a man and a woman. The Talmud devotes an entire book to the subject, the tractate called *Niddah*, the term for a woman who is “ritually impure” and hence not sexually permitted to her husband. Those who study Talmud today, men and women alike, certainly read it, and read about the practices that grew up around it. But actually making those apparently furtive monthly visits to the *mikveh* (always after dark)? “Checking” to see whether one is still bleeding with a *bedikah* cloth night and morning for seven days after your period ends, and bringing cloths stained with “doubtful” colors to your rabbi for examination? These things are viewed mostly as sexist, archaic practices, whose lore remains the arcana of what is, for most of American Jewry, a small subculture – the Orthodox. Like hair-covering, two sets of dishes, and men going to *shul* while the women and babies stay home, the idea of imposing a deliberately sexless interval on an intimate relationship for nearly half of every month seems distinctly “old-fashioned.” It certainly doesn’t seem to have much to do with the more sexually unconventional among us – male, female, straight, gay, single, partnered, or unwilling to fit oneself into any of those categories.

Moreover, for those of us – men and women alike – who are gender egalitarians in our religion or spirituality, and “liberated” in our sex lives, who don’t think that menstruation is disgusting or that homosexuality is wrong or unnatural, it might seem that *taharat hamishpachah* is a relic with nothing to teach us. I would like to suggest that that

is a mistake. Like all the core practices of the great religious traditions of the world, something is being revealed, or at least asserted, about human life, and so there is something to be learned by *every* thoughtful adult, yesterday and today, married or unmarried, “traditional” or radical, gay or straight, and, I would like to think, Jewish, non-Jewish, and secular. Within the Jewish community, specifically, it falls to us of a less traditional orientation to rediscover and reimagine what those practices might look like for us, rather than to cede to the Orthodox the right to define what every *mitzvah* calls for.

By way of background, the three defining features of a “traditional” Jewish home are *kashrut* (the laws relating to kosher food), the observance of *Shabbos* (the Sabbath), and *taharat hamishpachah*. The first two have already enjoyed a liberalizing rediscovery. Thanks to Jewish environmentalists and eco-feminists, some people practice “ethical” or “eco-*kashrut*,” while the more halakhically conventional shop for kosher cough syrup and Pesach dog food. I am personally acquainted with a number of vegetarians (Jews and non-Jews) whose vegetarianism is, in my view, more “kosher,” more holy, more spiritually meaningful, and more closely connected to the essence of that *mitzvah*, than a “stringent” *kashrut* primarily focused upon one or another *hechsher* on the breakfast cereal, and tending to generate countless hours of (mostly female) anxiety or even rivalry over whose home is more kosher than whose, and who can or cannot eat where.

With respect to Sabbath observance, *Shabbos*, Jews of every denomination are putting together idiosyncratic individual, communal, or family practices based on individual decisions and commitments – whether to write, drive, answer the phone, use

the computer, watch television on Shabbat...thinking hard about what, for them, are Shabbat-appropriate activities – for example, is it shabbosdik to go to the gym? There is a (slowly) growing sense that the *entire* Jewish community defines what it is to be “*shomer Shabbos*,” “Sabbath observant,” rather than ceding to the Orthodox the power to define the very *meaning* of the term.

But what about the third leg of the traditional-Jewish-home tripod – *taharat hamishpachah*? Having fallen nearly into desuetude, immersion in the *mikveh* has been reappropriated for a variety of “life changes” – after the birth of a child, after menopause, after surviving cancer, or as part of recovery from sexual abuse. But as for its original core function, as part of a ritual regulating married sexual life, most of us are happy (tacitly or otherwise) to consign it to the ash-heap of history.

The wisdom of that response cannot be evaluated without a little more background on the practice itself. Like so much of halakhic Judaism, with its fixation on “separation” (separating Shabbat from weekdays, kosher from non-kosher food, etc.), it is perhaps unsurprising that the archetypal marital *mitzvah* also involves “separation,” specifically, the sexual separation of the married couple during the wife’s menstrual period and for seven days thereafter. During those seven days, the woman carries out twice-daily internal exams with a white cloth, a *bedikah*, to “check” that she is not still bleeding. At the end of a blood-free seven day period, she immerses in the *mikveh* (under the supervision of the “*mikveh* lady”), says certain blessings, and is again sexually available to her husband (and he to her).

Rabbinically, while the woman is a *niddah* (the entire menstruation-plus-seven-day period), a wide variety of forms of contact between husband and wife are prohibited

(by rules called *harchokos niddah*), including sharing the same bed, non-sexual forms of physical contact (limited in the Conservative movement to physical contact beyond that appropriate between siblings), sharing food from the same plate, handing things to one another, and so on. No doubt about it – at a glance, it can look like some primitive notion of “contamination” or “cooties,” some anti-sex “germ theory” of femaleness itself.

My ongoing study of *taharat hamishpachah* has focused both on the detailed mechanics (which I find alternately fascinating, outrageous, thought-provoking, amusing, and ridiculous), and on the “inner teaching” or “inner wisdom” of *taharat hamishpachah*. Apart from its halakhic stature, I have been reflecting as a postmodern, sex-positive, divorced Jewish-American feminist on precisely what ideas about sexual desire and sexual relationship *taharat hamishpachah* presumes, and stands for – and about whether I agree with those ideas.

For example, *taharat hamishpachah* posits, implicitly, that a relationship of unbridled sexual indulgence is unlikely to last, or to meet the more complex needs of each person. It may burn hot – but then it burns out. Suffice it to say, my own experience as a single woman in Los Angeles (and J-Dater) offers some confirmation of that claim. I do not need to share the opinion of the rabbis (along with some of my family and friends) that a brief, passionate, exclusively sexual relationship is a *bad* thing, in order to see that a long-term relationship of both sexual and other forms of intimacy might benefit from “sex-free” intervals.

Taharat hamishpachah also stands for the idea that sexual interaction between adults who are sexually attracted to each other can have a tendency to “crowd out” other, equally valuable, modes of relating. Very few things, indeed, are more fun or appealing

than having sex with someone you are attracted to – even if other things (talking, shared cultural or political or religious or family experiences) are, in the end, equally intimate, important, and profound. If sex is “off limits” for whatever reason, that can be (there is no guarantee) an opportunity for other aspects of a relationship genuinely to flower – and ideally, enrich the sexual relationship when it is resumed. From this point of view, the principles of *taharat hamishpachah* are, in the end, not so much about *sex*, as they are about *marriage*, as a long-term erotic and personal commitment.

What follows from that? Those who care about the rights of sexual minorities have long been troubled, and rightly so, by those passages of the Torah (Old Testament) which seem most explicitly to prohibit male homosexual acts (Lev. 18:22 and 20:13), on pain of the most extreme religious punishment, *karet*, excommunication in the world to come. The attentive reader cannot help but notice that lesbian conduct appears not even to be contemplated, much less criticized. Though the rabbinic authorities extended the prohibition to lesbian acts (in Sifra Acharei Mot 9:8), the asymmetry in the Torah is unmistakable. As is another *symmetry* – namely, that the punishment for having sex with a *niddah* – in other words, for *not* practicing *taharat hamishpachah* – is *also karet*, excommunication. (This is a good thing to know should you ever find yourself in an argument with someone who quotes Leviticus on homosexuality – you can point out to him that if he has sex with a woman who does not immerse after menstruating, they are committing a sin of precisely the same magnitude as two men having anal sex.)

If sex without *taharat hamishpachah* is really the problem, it's easy to see why lesbianism is not proscribed: two *women* in a committed relationship can practice it...but two *men* cannot. Perhaps, then, the Toraitic ban on sexual relationships between men

arises from the idea that such relationships would *necessarily* be excessively carnal and indeed orgiastic – because there was no period of ritual impurity and abstinence to “balance” the sexualized side of the relationship. Without a process for maintaining and restoring ritual *purity*, the partners would fall ever more deeply into (and ultimately, out of) a relationship driven by lust alone.

A relationship of *that* kind (and arguably between *any* two persons, of whatever gender) is *toeivah*, translated by the Etz Hayim, a popular Jewish English-language translation of the Torah, as “abhorrence,” but in more familiar English-language Christian Bibles as “abomination.” It is no accident that the King James Bible of 1611 described male homosexuality with the latter term. The first published use of the word “abominable” occurred in 1366 in precisely this context, referring to “The abhomynable Synne of Sodomye.” “Abomination” first appears in 1395, in a use by John Purvey, an anti-Catholic follower of John Wycliffe, in the statement, “All reasonable men have greet [great] abhominacioun of bodily sodomie.” The Middle English spellings show the word’s origins in the Latin *ab homine*, “away from man,” with an implication of “inhuman,” or “beastly.”

What might be thought “inhuman” or “beastly” about male-to-male sexual conduct (which after all is not especially common in the animal kingdom)? Appetites for rest, for food, and for sex are part of the animal element of human nature. Animals do not know the difference between Shabbat and the weekdays; they do not know the difference between kosher and non-kosher food; and they do not regulate their sexual contact intentionally. They behave, instead, “instinctively.” Halakhic human beings, however, observe (in both senses) these differences, and can engage in distinctively

Jewish practices of separation. Without those practices, the activity, whatever it is – working/resting, eating, coitus – is not fully human, in the Jewish sense, and much of the life-giving, soul-nourishing power of the activity remains inaccessible.

It is well-known that the menstrual cycles of two physically mature women (whether lovers, roommates, mother and daughter, sisters, etc.) who live together, tend, over time, to “harmonize,” or “sync up.” Hence, for a lesbian couple, the practice of *taharat hamishpachah* will give them approximately as many days each month in which they are “permitted” to each other as a heterosexual couple would enjoy (though it might take some time to get there – perhaps lesbian couples should live together for a while before marriage!), and presumably, their relationship would enjoy the same physical, psychological, and spiritual benefits (if any) attaching to the practice. Lesbians can, it appears, have a “kosher” intimate life, can thus be married in the fullest Jewish sense, and, it seems to me, ought to be encouraged to do so if they are so inclined. I have encountered thus far no part of *taharat hamishpachah*, or even *harchokos niddah*, that only makes sense if (exactly) one partner has a penis. (Though presumably the prohibition on handing “long objects” to one another may lose some of its point. But then again, maybe not.)

But how is the observant gay man to unlock the power of kosher Jewish sexuality, as traditionally understood, through *taharat hamishpachah*? My thought is that gay men would need to impose upon themselves a regular practice of abstinence within relationship, for a meaningful period of time. One approach to this might be lunar and calendrical. While women have an internal body clock, men could select twelve fixed days of every (Jewish) month for sexual abstinence (or perhaps just five, or seven).

Because so many Jewish holidays fall on the fifteenth of the Jewish lunar months (Sukkot in Tishrei, Tu B'Shevat in Shevat, Purim in Adar, Pesach in Nisan), a period of separation beginning on or after the sixteenth or seventeenth of the month, and ending on the twenty-eighth or twenty-ninth of the month, would allow sexual celebration of these holidays and also harmonize the male visit to the *mikveh* with *Erev Rosh Hashanah* (the Jewish New Year's Eve) and *erev rosh chodesh*, the night before the new month, an apt connection between this female celebration and the female history of this *mitzvah*.

Alternatively, men could select the first twelve days of each Jewish month (other than Tishrei), so that their *mikveh* visits would fall close to *erev yom tov*, and the holiday celebrations would coincide with the "reunion" of the partners. For the more kabbalistically inclined, this would be a nice parallel with the element of each holiday that highlights and helps accomplish the reunification of the Divine with the Shekhinah, also an approach that brings focus to the traditionally feminine character of the *mitzvah*.

Still another approach might begin from the fact that in the Torah, genital emissions, including semen, carry *tumah*, ritual impurity (Lev. 15:16). Because the historical context for ritual purity and impurity, where men are concerned, is the now-destroyed Temple, any such prohibitions have (perhaps conveniently) now disappeared. What might it mean in a gay male relationship to treat ejaculation during sex as conferring upon the ejaculant even a one- or two-day period of ritual impurity, requiring evening immersion in a *mikveh* after sundown the day after the day of the emission, to restore ritually pure status and render one again "permitted" to one's partner? This most natural mature physio-sexual occurrence would, like menstruation for women, be treated

as having a ritually “impure” or even “defiling” character, certainly a challenging idea for a “sex-positive” person of any persuasion.

Once *taharat hamishpachah* is cut loose from literalism about the female reproductive cycle, reimagined versions of the practice are of course not only available to gay men, but to everyone. Heterosexual and lesbian couples, too, might disconnect it from menstruation with its gyno-centric or fertility implications, without discarding it entirely, by selecting different periods, as suggested above or others, as “A Time To Refrain” (the title of a popular Orthodox guide to *harchokos niddah*).

Others might retain the connection, but reverse its valence, deliberately selecting dates to favor and celebrate sexual contact during menstruation, and refraining instead during the second half of the cycle. With *taharat hamishpachah* quite literally subverted, turned over from below (*sub-*, from below, + *vertere*, to turn), premenstrual symptoms might be welcomed as harbingers of the end of the period of abstinence, and the first sight of red blood the sexual “green light.”¹

All of these are ways of simultaneously uncovering the inner teaching of *taharat hamishpachah*, and serving as a possible “rectification” of negative aspects of its history, while moving us towards an understanding of committed same-sex relationships on a footing of equal dignity with heterosexual marriages in the Jewish tradition.

After all, that contemporary gay men might need to think creatively about what *taharat hamishpachah* might mean to and for them, does not, in the end, set them apart from other contemporary Jews thinking about how traditional practices impact upon the conduct of one’s sexual and intimate life. In fact, none of us – male, female,

¹ A “reversed” practice of this type presents certain difficulties for immersion in a traditional *mikveh*, although a woman could, for example, wear a diaphragm to prevent bleeding in the pool itself.

transgendered, gay, straight, bisexual, Orthodox, Conservative, Reform or post-denominational – can practice *taharat hamishpachah* “literally,” Biblically or rabbinically. It is an anachronistic and self-serving self-deception to believe otherwise, to think that Modern Orthodox women who are managing their fertility with plastic barrier devices and hormones, driving in a car to a *mikveh* whose city-filtered water is treated with chlorine, and paying the *mikveh* lady with a debit card, are somehow engaged in the “same” activity as our ancient foremothers, and “closer” to some Jewish ideal than any other Jew who meaningfully engages with this *mitzvah* in search of purity and holiness and a truly kosher sex life.

I’ve put off one last subject for as long as it can be avoided. I’ve stated that *taharat hamishpachah*, among other things, is a “theory” about how to have an interesting sex life with one partner over an extended time. But is that theory *true*? *Does* the practice of *taharat hamishpachah*, in any form, “work”? Does it stimulate, cultivate, and sustain desire? Does it make sex better?

I understand, of course, that for the halakhic Jew, these questions are as meaningless as asking whether kosher food tastes better. Whether it does or it doesn’t, you eat by the rules. But for the rest of us, who might imagine adopting such a practice without the same sense of *mitzvah*, of obligation, some curiosity on this score is inevitable. The practice is profoundly countercultural, and the cultural construction of sexual desire and fulfillment cannot be shaken off easily. We can choose to conduct our sexual lives a particular way. But we can’t *choose*, in that direct sense, to be turned on by doing so. And a good idea about sex is no substitute for a great sex life.

In our culture, spontaneity and desire-driven sexuality are highly valued and idealized. For many men, and perhaps women too, the best sex as *sex*, the “sexiest sex,” we might say, is with a near-stranger, under conditions of sexual uncertainty (“will she or won’t she?” “does he or doesn’t he” want me?). Maximum variety is often a goal. Even for those of a more traditional bent, including those committed to one person, it is strongly ingrained in our culture that people should have sex when they want to, and only when they want to. Not to have sex, when both people want to, and neither is committed to anyone else, seems a pointlessly squandered opportunity for pleasure; conversely, the sense of obligation to have sex on the night immediately following the *mikveh* visit or maybe the next morning, can create intolerable forms of performance anxiety for some people. The *taharat hamishpachah* way of relating sexually is not “natural,” and the sense of (even mutual) sexual demand ill-suits many modern relationships.

It’s hard to know what to say about this. Most traditional forms of Jewish practice and observance carry with them some loss of spontaneity. If you keep kosher, you can’t just order whatever you feel like eating, and on *Shabbos*, you can’t just do whatever you feel like doing. Freedom and spontaneity are supposed to exist, somehow, anyway – you *can* order whatever you want, if you’re in a kosher restaurant. And you can do whatever you want on *Shabbos* – as long as it doesn’t fall into any of the prohibited categories. These structures function, ideally, over time, not simply to limit or frustrate desire, but actually to *reshape* it, so that, in the end, desire reaches out towards the things, activities – and the person – who is permitted. In this way, the observant Jew learns not simply to choose that which he or she desires, but rather to desire that which has been chosen.