

**Passionate Torah: Sex and Judaism**

Text Study with Rabbi Alyson Solomon

Spicy, complex, gritty narratives from the Book of Joshua, Talmud & contemporary scholars

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**Talmud, Menahot-A Harlot Who Lived by The Sea**

*The Passionate Torah: Sex & Judaism*

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## Good Sex

### *A Jewish Feminist Perspective*

Melanie Malka Landau

WHEN WE THINK of "good sex" we think of sex that feels good and gives pleasure. Some less affected by advertising and popular culture may think of sex as acts between humans that create connection. But we know that sexual relationships are not only between two atomized individuals but are located within a complex set of contexts and relationships. If good sex is about sex within an ethical context, then good sex from a feminist Jewish perspective has its own set of questions to account for. This chapter asks: How can we make sex holy as feminist Jews while grappling with the gender injustices that emerge through the male-centered textual tradition?

At the outset I acknowledge that I am limiting this discussion to heterosexual relationships. I think the heterosexual relationship is the potential site for radical gender transformation on the level of gender roles and the separation between gender and biology. At the same time I believe that this is limiting, because it reinforces the idea that there really are two polarized sexes as opposed to a continuum of sexual beings attested to by the existence of intersex people. A focus on heterosexual relationships also bypasses the gender injustices that abound for Jews in same-sex partnerships.

The question now is this: Can a just and good sex be retrieved and fashioned from the compulsory heterosexuality of a male-centered rabbinic tradition? Judith Plaskow argues that "the question of what constitutes good sex from women's perspectives simply cannot be asked within the framework of the system."<sup>1</sup> In this chapter I ask this question in dialogical relationship with the tradition. This process of retrieving and refashioning, which I aim to achieve here, builds on the exciting scholarship that shows

love and passion for both rabbinic texts and radical feminism while creating an evocative dance that weaves together the strands of their commitments.

We enter the discussion on good sex from the House of Learning (*Beit Midrash*) and the experience of women reading about sex from the voice of men in the Talmud. The Talmud places a high value on learning, and yet rabbinic culture excludes women from this most prized practice. David Biale argues that the exclusion of women from the highest cultural value of learning and the dominant male role in sexuality were intimately and inseparably linked. Although women's business was highly important, the textual tradition attributes superior value to men through their focus on learning and because they have more religious obligations than women do. Moreover, compared to non-Jewish men and Jewish men who did not fit the scholarly ideal, the rabbis considered themselves to be a sexual elite which was manifested through their sexual restraint. Women and Torah are used interchangeably as objects of male desire.<sup>2</sup>

When people are reduced to objects, even by being classified in one group or another, their full range of humanity and of possibility is denied. To acknowledge objectification is to recognize that there is no particular correlation between the way that women are represented and the lived reality of those women. When we read texts about women, we may learn more about the dominant discourses from which they come than about the women themselves. Thus, how man and woman are seen to be is actually a construct upon which whole societies, economies, and religious systems are based.

A story in the tractate *Menahot 44a* in the Babylonian Talmud illustrates one way of seeing the move from objectified to subjectified sex. My reading of this story also shows how rabbinic texts can be appropriated for a feminist agenda. Narratives yield a multitude of interpretations that usually reflect the ideological commitments of the interpreter.

In this particular story, a rabbi paid a lot of money to come to a world-renowned prostitute who lived by the sea. He had to travel very far and schedule his appointment with her well in advance. Finally, his turn had come. After waiting for some time he was escorted to a luxurious room with seven levels of elaborate beds—six silver beds crowned by a golden bed on the top. The woman for whom he had been waiting was naked on the top bed, waiting for him to come up. He undressed as he climbed the beds; after he removed his shirt, the *tzitzit* attached to his undergarment smacked him in the face, as if to admonish him for what he was about to

do. Castigated and embarrassed, he went back down and sat naked on the ground. When the woman saw this, she came down after him; they faced each other naked on the ground. She had never been rejected. Before she let him leave, she wanted to know what blemish he had found in her that caused him to react in this way. He told her that she was the most beautiful woman he had ever seen in his life, but he explained that there is a commandment called *tzitzit* that called him to account for himself by appearing as four witnesses as he ascended the beds to have sex with her.

The woman was totally transformed by this encounter. She did not let the man leave until he told her his town and the name of his teacher. She then divided her property three ways: one-third for the poor, one-third for the government, and one-third she took with her. When she arrived at the study house of Reb Hiyya, who was this rabbi's teacher, she told him that she wanted to convert to Judaism. The rabbi asked her if she had taken a fancy to one of the students. She handed him the note that the man had written for her with the name of his town and his rabbi. The Sage then told her she could now fully consummate her relationship with that man with whom she had nearly had relations. The tale ends with her spreading the same linen for their marital union that had been previously spread for their anticipated illicit union.<sup>3</sup>

The rabbi in our story undergoes an inner transformation that results in his no longer seeing the woman—the prostitute—as an object. His “sin” is interrupted by the ritual fringes. I contend that this man did not only think prostitution was wrong because it is against the law—rabbis found various justifications for seeing prostitutes—but rather that it was not how he was meant to relate to another human.

Even if it is too speculative to suggest that he saw her as a subject, once he interrupted the process of objectification she then took upon herself autonomy as a subject and could see herself in a new way. It is a near miraculous moment when the horizon of possibility opens up and humans see that there is a range of alternatives in a given situation. A force of no less than Divine proportion—the mythical intervention of the *tzitzit*—was needed to interrupt the objectifying relationship.

This may be a reminder about the intensity of the drive to objectify. In this story the Divine voice—through the vehicle of the *tzitzit*—is used as a way to promote the shift to subject. At other times Divine authority, at least through the force of the law, is used to reinforce unequal power dynamics between men and women in a relationship.

The image of the rabbi and the prostitute sitting on the ground, face to face and naked, evokes a deep sense of human connection. They have experienced a transformation in each other's company.

The story is comforting in that it reports a transformation from de-personalised sex to a grounded meeting between two people. In one sense it actually represents the way in which the social construction of women and men sets them up to relate to each other in a certain way that does not necessarily serve either of them particularly well. In the story it is the fringes of the garment that intervene to effect the transformation to a way of relating, stripped (literally) of the other roles they had been playing. Being stripped of roles, as crucial as it may be, can only ever be a temporary position; we see, in the end, that the two resume other defined roles of husband and wife according to the rabbinic tradition. Despite this, the moment of nakedness does show the contingency of our roles and the possibility that they can be disassembled. This story repeats some of the stereotypes and oppressions of women; it features a prostitute, after all, who is absorbed back into society through the respectable channel of marriage. Yet, at the same time, it also interrupts the objectification of the prostitute and shows the human vulnerability inherent in their relationship.

This story has in it all the kernels of the conundrum of kosher sex. There is a move from impersonal sex to “sex in a relationship.” The twentieth-century Jewish legal and philosophical scholar Eliezer Berkovits calls this movement “the humanized transformation of the impersonal quality of the sexual instinct” and claims that this is “the climax in man's striving for sexual liberation.”<sup>4</sup> Good sex, according to Jewish tradition, takes place within the marital relationship. This means that it is between a Jewish man and a Jewish woman in a committed relationship at the right time. The ultimate resolution of our story depicts the gentile prostitute becoming the Jewish wife of a scholar. Although intermarriage is frowned upon, as a convert the prostitute is welcomed into the fold. The rabbi suspected that perhaps she only wanted to convert to get married, but when she told him the story he was reassured that she wanted to adopt Jewish life and values for herself and not just to get a Jewish husband. Bad sex, here, becomes good sex. In one way it could be seen that the sex that began as “illicit” becomes “holy” within the appropriate framework; however, it resonates more to say that the relationship became transformed from an I-It relationship to an I-Thou relationship. Although “good sex,” traditionally, is any sex within the prescribed framework, this essay argues that “good sex” also encompasses a

deep recognition of humanity. A committed relationship is not a definite guarantee against an I-It relationship.

Not only is married sex potentially holy, but, in fact, it is part of the husband's marital duties. The obligation of the husband to have sex with his wife or, more specifically, his obligation to give her sexual pleasure, suggests that the dynamics of object and subject are potentially harder to ascertain. This obligation is referred to as *onah*, a Hebrew word meaning "time period." The rabbinic tradition lists, according to occupation, the required amounts of sex that a husband needs to "give" his wife. For example, a Torah scholar is obliged once a week on Shabbat (if he is in town).<sup>5</sup> Where sex is expressly considered the husband's obligation to his wife, the role of consent as well as the woman's right to refuse sex also become further complicated. Carol Pateman argues that, "unless refusal of consent or withdrawal of consent are real possibilities, we can no longer speak of 'consent' in any genuine sense."<sup>6</sup>

The movement from illicit to permitted and sanctified sex in the above story is notable, for whereas a sex worker is financially compensated for her services, a wife in Jewish marriage is not recognized as providing sexuality to her husband—because, at least in part, it is seen as the man's obligation to give his wife sexual pleasure. The expectation of sex in marriage is covered over in the guise of the male duty to sexually please his wife. Although it is not without its problems, there is something refreshing in not viewing sex as something the woman *gives* to the man. If the woman does feel obliged to have sex, however, then the man's obligation to please her obscures her own sense of obligation, which means that one may not even be able to question it.

The marital duties that the man owes the woman as articulated in the Bible but developed by the rabbis include clothing, food, and sex. The male's right to sex was preserved alongside a rabbinic sexual ethic that neither permits a husband to rape his wife nor promulgates the idea that women want to be ravished.<sup>7</sup> Women are constructed as needy for sex, and men constructed as service providers.<sup>8</sup> As Daniel Boyarin writes, "through the construction of sexuality as a form of the husband taking care of the wife's needs and through the construction of her needs as both compelling and in part inexpressible . . . although the wife has the right in principle to refuse sex on any occasion, her consent can be understood through silence and necessarily ambiguous signs."<sup>9</sup> Boyarin continues in a footnote: "By coding male sexuality as a form of service to women, a mystifying protection of male access to female bodies is secured."<sup>10</sup> Male access to ongoing

heterosexual sex from their partners is secured through the guise of a commandment incumbent on the male to pleasure his wife. It is questionable to what extent the act of Jewish marriage (*kiddushin*, the explicit acquisition of a woman or her sexuality by the male partner) means that the man has bought a right to sex with his wife.

It is significant that forced sex, per se, was never permitted in a Jewish marriage.<sup>11</sup> The idea of consensual sex between willing husband and wife is a value. This is promising, especially given that only in the recent past has common law acknowledged and made illegal the possibility of rape in marriage. However, the woman's consent in sex is potentially ambiguous, perhaps because sex is construed as part of her husband's obligation to her. A woman's refusal to have sex is also a woman's thwarting of her husband's attempts to fulfill the commandment of giving her sexual pleasure. There are a range of scenarios referred to by the rabbis that result in the breakdown of the marriage and that, in effect, form the limits of the rights of the woman to refuse sex within marriage.

A woman who refuses to be sexual with her husband is called a *moredet* a rebellious woman.<sup>12</sup> One reason she might refuse her husband is because he has become disgusting to her. There is a debate within the rabbinic tradition about whether the husband, in this case, should be compelled to grant a divorce. The tension is between not wanting a woman to be trapped in her own marriage and wariness, on the rabbis' part, about allowing her to leave her husband when she is sick of him and find someone else. The nonreciprocal nature of the Jewish marriage and the husband's capacity to withhold a divorce from his wife can severely undermine her freedom and autonomy.

In order to explore the situation in which a woman refuses to have sex with her husband, we need to investigate the details of Jewish divorce. One consequence of the one-sided nature of Jewish marriage, where the man is viewed as acquiring the woman, is that only the man can grant a divorce. Two exceptions to this, where the religious courts have historically had jurisdiction to compel the husband to grant a divorce, include the following:<sup>13</sup> first, marriages that contravene the law, for example, someone from the priestly line married to a divorcee; and, second, marriages that are intolerable for the woman because of something about the husband, whether it is within or outside his control.

In his Code of Law, Maimonides differentiates between various motives of the rebellious wife. For one type of woman, he advocates forcing

the husband to grant a divorce. In *Laws of Ishut* (Personal Status) 14:8–9, Maimonides says:

She is asked why she rebelled. If she says, "He is loathsome to me and I cannot willingly have relations with him," then pressure is forthwith exerted upon him to divorce her because she is not like a captive that she has to have relations with a man who is hateful to her. However, when she exits [the marriage] it is without anything whatsoever of the *ketubah* [marriage contract] entitlements. . . . But if when asked she says, "My purpose is to torment him in retaliation for such and such that he did to me or for his having cursed me or quarreled with me and the like," then she is sent away from the Beit Din (legal court) with the following threat: "Be advised that if you persist in your rebellion, then even if your *ketubah* is worth a hundred *maneh* you shall forfeit it all."

When goodwill and benevolence break down between people, then legal obligations become the skeleton of the relationship. They provide the bare minimum, but they alone do not make a healthy body. The *ketubah* was put in place by the rabbis as a protection for women, that is, to deter husbands from leaving their wives because they had to pay a lump sum upon divorce. Obviously, if only that amount is preventing the husband from leaving the wife, the relationship requires a lot of fixing. On the one hand, the *ketubah* does "protect" women but, on the other, the shadow side of protection is that it constructs the woman as someone needing protection and thus reinforces her role as a victim. In fact, the *ketubah* may only protect her as long as she is a victim. As we see from the above law, if the woman initiates the complaint, she also gives up her right to collect the *ketubah*. Therefore, the protection symbolized by the *ketubah* only has valence when she decides to stay in the marriage regardless of what the husband is doing. If the woman wants to stay in the marriage and she withholds sex to retaliate against her husband, then, according to Maimonides, she cannot obtain a divorce. It is unclear whether this category includes only a woman who is retaliating or whether it also includes a woman who takes too long to make up after a fight. Maimonides does indicate that the woman had been cursed and in a quarrel, and so perhaps it is not necessarily a clear-cut act of retaliation.

However, coercing the husband to give his wife a divorce has not been a popular strategy. Even as early as Rabbenu Asher (the Rosh), less than

two hundred years after Maimonides, we see the rabbinic turnaround against coercion of the husband, especially regarding the wife having been disgusted with him. The Rosh advocates for the husband's right to remain in the marriage, even against the wife's will. He says:

Moreover, I say the [earlier decisors] that ruled as they did were acting on what appeared to be the imperative of the hour for the sake of the daughters of Israel. Today the situation is the opposite; the daughters of Israel are immodest . . . therefore it is best to stay far away from coercion. A great wonder at Rambam for saying that she is not like a captive that she has to have relations with a man who is hateful to her. Is that a reason to coerce a man to divorce and to permit a married woman? Let her refrain from relations with him and remain in living widowhood all her days! After all, she is not obligated to be fruitful and multiply (Rosh, Clal. 43:8).

Rabbenu Asher implies that it is more important to stop a woman from getting another, more desirable husband than actually ensuring that the current husband is also in a loving and sexually active partnership. When he condemns the woman to live as a widow, it is uncertain whether he is implying that, despite her need to be celibate, if she is not having sex with her husband, that the husband would have access to other sexual relationships outside the marriage. It is also unclear whether the husband would be prevented from fulfilling his mitzvah of having children because she did not want to have sex. If so, would Rebbeinu Asher say that procreation is less important than actually stopping her from getting out of the marriage?

The halakhic system attempts to legislate for humanized sexual relationships: rabbinic guidelines stipulate that one should not have relations when one is fighting. Sex may bring you together, but it should not take the place of good old talking or even when either party is reluctant. The Babylonian Talmud tractate *Nedarim* 20b recognizes the coercive nature of threats when it comes to rape. It lists nine categories of objectionable intercourse; one includes all forms of coerced sex, whether one "consents" out of fear (*eimah*) or is aggressively forced to have intercourse (*anusah*).<sup>14</sup> When subject to pressure, intimidation, and fear, a person is afraid to say no and loses the ability to express any meaningful consent. Other situations where sex is forbidden is when (1) the husband hates the wife and is

thinking of another woman; (2) one of the parties is excommunicated; (3) a husband who has two wives has intercourse thinking that he is with the other wife; (4) one party is angry with the other; (5) one party is drunk; (6) the husband has already decided to divorce the wife; (7) the wife is sleeping with another man; (8) a woman brazenly demands relations.<sup>15</sup>

The laws of *nidah*, the physical separation of husband and wife during menstruation and for one week after, enable relationships to focus substantially on nonphysical aspects of connection. Whereas feminists have described marriage as implying a continuous male sex right, the laws of menstrual separation interrupt any implied female sexual availability. As one contemporary observant woman writes:

Quite simply, for non-Jews, marriage means that the other is always sexually available to them, subject to an unspecific, largely unenforceable notion of consent. The Jewish laws of Family Purity and those that mandate the explicit consent to sexual relations make it clear to Jewish men from the outset that even marriage does not enable perpetual access to a woman's body and that sexual relations are not an inalienable and constant right purchased through the transaction of marriage.<sup>16</sup>

Yet women may also use this issue of availability as a way to engage in a power play with their husbands and withhold sex *not* because they do not want to be intimate per se but as a weapon to punish their partners. I think this actually objectifies men and their sexual desire, and takes advantage of their vulnerability. At the same time, perhaps, women withhold one of their most significant values in marriage in order to transform their power as objects. This exemplifies how the categories of subject and object may become fluid and indiscrete. In a situation where a woman feels powerless, she may use her capacity to withhold or delay sexual encounters with her husband as a way to reclaim a sense of autonomy and power in the relationship. In fact, the Palestinian Talmud recounts such an episode:

Shmu'el wanted to sleep with his wife. She said to him: "I am in the status of impurity." But the next day she said: "I am in the status of purity." He said to her: "Yesterday you were in the status of impurity and today you are in the status of purity!?" She said to him: "Yesterday I did not have the same strength as today." He went to ask [the opinion

of] Rav, who said to him: "If she gave you a plausible reason for her words [which she did] she can be believed."<sup>17</sup>

As this story reveals, Shmu'el's wife has a measure of control over the couple's sexual life, which is couched as her control over the way laws of menstruation are practiced. Charlotte Fonrobert also reads this story as a symptom of the rabbi's anxiety about women making halakic decisions to their advantage as well as undermining the rabbi's authority through questions of believability.<sup>18</sup>

The critical reading of classical rabbinic and medieval texts about sexuality—as well as the reading of contemporary practices—can locate resistance within the texts themselves to some dominant paradigms of heterosexuality. Through an activist interpretation of these sources the feminist project of rebuilding gender relations can be achieved from the ground up, using the foundations of the tradition to seed the support for a constantly developing vision for Jewish practice and community. Similarly certain interpretations of the sources can reinforce gender hierarchies and masquerade gender constructions as natural and biological differences between women and men. The desirable relationship between men and women is not about exchanging male dominance for female dominance; rather, it is about transforming the relationship beyond power dynamics to a dance of giving and receiving, of communication and openness. This can only be achieved by acknowledging the various contexts in which the heterosexual relationship is located. It is within this paradigm that, in the best case, certain strands of tradition will guide us.

## NOTES

1. J. Plaskow, "Authority, Resistance, and Transformation: Jewish Feminist Reflections on Good Sex," in *The Coming of Lilith: Essays in Feminism, Judaism, and Sexual Ethics, 1972–2003* (Boston: Beacon, 2005), 193–205, quote at 196.
2. D. Biale, *Eros and the Jews: From Biblical Israel to Contemporary America* (New York: Basic Books, 1992), 36.
3. BT *Menahot* 44a.
4. E. Berkovits, *Essential Essays on Judaism*, ed. D. Hazony (Jerusalem: Shalem, 2002), 114. One might question what Berkovits calls the "sexual instinct" and his assumption that it is naturally and originally impersonal. One may agree that it is impersonal but may not agree that it is naturally so, but rather that it is a

function of many interrelated social processes. Nevertheless, its transformation is still significant even if there are different understandings regarding its origin.

5. For more information about the male marital obligations, see D. Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture* (Berkeley: University of California Press, 1993), 143.

6. C. Pateman, "Women and Consent," *Political Theory* 8, no. 2 (May 1980): 149–168, quote at 150. Pateman continues:

To examine the unwritten history of women and consent brings the suppressed problems of consent theory to the surface. Women exemplify the individuals who consent theorists have declared incapable of consenting. Yet, simultaneously, women have been presented as always consenting, and their explicit non-consent has been treated as irrelevant or has been reinterpreted as "consent."

7. D. Boyarin, *Unheroic Conduct: The Rise of Heterosexuality and the Invention of the Jewish Man* (Berkeley: University of California Press, 1997), 170. See also BT *Ketubbot* 61b.

8. Boyarin, *Unheroic Conduct*.

9. *Ibid.*, 171.

10. *Ibid.*, 172.

11. See *Eirubin* 100b: Rami b. Hama citing R. Assi further ruled: "A man is forbidden to compel his wife to the [marital] obligation, since it is said in Scripture: 'Without consent the soul is not good; and he that hurries with his feet sins'" (Prov. 19:2); *Ba'ailei ha-Nefesh, Sha'ar ha-Kedushah; Hil. De'ot* 5:4; *Even ha-Ezer* 25:2. Available at [http://www.jsafe.org/pdfs/pdf\\_032206\\_2.pdf](http://www.jsafe.org/pdfs/pdf_032206_2.pdf) (accessed 22 May 2007; p. 10).

12. Incidentally, the husband who refuses to have sex with his wife is called a *mored* (rebel), and for every week that he refuses to have sex he has to add more payment to her *ketubah*. At any point the wife can also choose to divorce, in which case the Beit Din will force the husband to divorce her. See *Shulchan Aruch, Even Haezer* (Laws of *Onah*) 77:1. The wife can also prevent her husband from working in a certain place if it will reduce his capacity to fulfil her sexually. If he chooses to be a Torah scholar, however, then she cannot prevent him from moving. Even without her permission, he may go away for two or three years; with her permission, he can go away for even longer (76:5). These laws, which trump a husband's religious obligations to his wife, demonstrate the extremely high cultural value attributed to learning Torah.

13. I. S. D. Sassoon "Ra'ah ma'aseh ve-nizkar halakhah," *Judaism* (winter/spring 2005).

14. Available at [http://www.jsafe.org/pdfs/pdf\\_032206\\_2.pdf](http://www.jsafe.org/pdfs/pdf_032206_2.pdf) (accessed 22 May 2007; p. 12), in reference to *Nedarim* 20b.

15. *Ibid.*

16. J. Shmaryahu, "We Will Do and We Will Listen," in *Total Immersion: A Mikvah Anthology*, ed. R. Slonim (New York: Jason Aronson, 1996), 35.

17. PT *Ketubot* 2:5, 26c; and quoted in Tosafot, BT *Ketubot* 22b. Translation from C. E. Fonrobert, *Menstrual Purity: Rabbinic and Christian Reconstructions of Biblical Gender* (Palo Alto, Calif.: Stanford University Press, 2000), 26.

18. *Ibid.*

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