

Leviticus 18:22 - It Ain't Necessarily So...

The things that you're liable to read in the Bible, it ain't necessarily so. Those nice Jewish boys, the Gershwins, had it right; there is more than one way to look at a piece of biblical text. Leviticus 18:22 and 20:13, often interpreted to forbid homosexual intimacy, can be seen and interpreted in other ways. Join us in this text study as we look at what to do with these challenging verses, and explore the tools in our "halachic toolbox" for dealing with and reinterpreting difficult biblical verses. Together we will explore how to answer "that Leviticus question" from several interesting and diverse viewpoints.

Leviticus 18:22

Do not lie with a male as one lies with a woman; וְאִת-זָכָר לֹא תִשְׁכַּב מִשְׁכַּבִּי אִשָּׁה תוֹעֵבָה הוּא׃
it is an abhorrence. (NJPS)

Leviticus 20:13

If a man lies with a male as one lies with a woman, the two of them have done an abhorrence. וְאִישׁ אִשּׁוֹר יִשְׁכַּב אֶת-זָכָר מִשְׁכַּבִּי אִשָּׁה תוֹעֵבָה
עָשׂוּ שְׁנֵיהֶם מוֹת יוּמָתוֹ דְּמִיָּהֶם בָּם׃
abhorrence. (NJPS)

While Jewish tradition views Torah as having sanctity, Jewish tradition has never held that this sanctity precludes interpretation. Halachah, the Jewish legal "way," is based on multiple layers of interpretation. The rabbis of the Talmud, and indeed, Jewish scholars and students throughout the ages, have interpreted our sacred Torah text, arguing, disagreeing, and challenging each other over what every "jot and tittle" of the Torah means. The very fact that we hold not just every word, but every brushstroke of ever *letter* to be infused with meaning *allows us* to dig deeper into meaning, reconsider, and reinterpret, and our tradition encourages us to do so. As Professor Jakob J. Petuchoswsky writes, "Jews read Torah as one reads a love letter, eager to squeeze the last drop of meaning from every word." To find this meaning, we pay attention to details of grammar and language, and not just to the content of the Torah. This can be either fabulously engaging, or ridiculously infuriating, or both. Especially when, as in the case of the verses we are about to study, we may feel that arguing over semantics misses the point, and that it is precisely the *content* with which we take issue, it may seem unnecessary to examine every definite article and vowel. Yet it is this very attention to detail that allows commentators, both traditional and modern alike, to fashion their unique interpretations and to look beyond the seemingly literal meaning of the words to uncover meanings that reflect their own sense of logic and justice.

Imagine a toolkit. When drilling a hole, for example, one tries to use the smallest drill bit one needs, so as to take out only as much of the material being drilled as necessary. The tools of halachic change generally operate under a similar methodology; while we do, from time to time, need to make "fixes," we try to keep them as small as possible. There are

several "halachic drill bits," which vary in size, and have been used in many instances in our halachic literature. Let's look at a few instances of how these tools for change have been utilized, and then look at examples of each approach to "The Two Leviticus Verses."

1. Interpretation: implementing a law differently than its literal meaning.

Example 1 - The Rebellious Child - Interpreting narrowly

Deuteronomy 21:18-20 reads:

"If someone has a disobedient and defiant son, who does not obey his father or his mother and does not obey them even after they discipline him, his father and mother shall take hold of him and bring him to the elders of his town in front of his community. They shall say to the elders of the town: 'Our son is disloyal and defiant. He does not listen to us. He is a glutton and a drunkard.' Then the men of his town shall stone him to death."

The rabbis of the Talmud were not too keen on stoning a rebellious child to death. They could not, though, outright overrule the Torah, so instead, they interpreted the verse so narrowly as to render it impossible to fulfill. In this case, they said that the rebellious son had to have two parents of similar voice and appearance who agree to have the child executed, he had to be between thirteen and thirteen and three months, eat an enormous amount of meat and wine at one sitting, and have stolen his father's money to purchase the meal. In addition to this narrow definition of the case, the rabbis of the Talmud further state that this case never happened, and no rebellious son was ever executed. Here, the ancient rabbis were willing to say that a verse in the Torah can be so narrowly interpreted as to present a theoretical occurrence.

Example 2 - An Eye for an Eye - Interpreting non-literally

Deuteronomy 24:19-20 reads:

"And if a man inflicts a wound in his fellow, as he did, so shall be done to him: a break for a break, an eye for an eye, a tooth for a tooth; just as he will have inflicted a wound on a person, so shall be inflicted upon him."

Here, the rabbis were again uncomfortable with the literal reading of the verse. This time, however, rather than narrowly define the case, they interpreted the case verse to be a *figurative* statement, meaning that a person must reimburse the injured party the monetary amount worth the equivalence of their loss.

Our Verses - Leviticus 18:22 and 20:13

Two modern rabbinical interpretations seek to similarly narrow and redefine our Levitical verses. Rabbi Steven Greenberg seeks to interpret the verses narrowly, focusing on

the *nature* of the sexual relationship between two males. The verses prohibit an assertive, coercive sexual act where one is forcing himself on another. If the act is a loving, consenting one, however, it is *not* what is prohibited by these verses, but rather, is something holy. He writes:

"...the verse in Leviticus 18 might reasonably be prohibiting the use of penetrative sex as a tool of humiliation and domination while leaving open the acceptance of a committed, loving relationship between two men ... My proposed, albeit radical, interpretation of Leviticus 18:22 is then: "And a male you shall not sexually penetrate to humiliate; it is abhorrent."

Rabbi Greenberg draws on several sources, including the ones directly below, to demonstrate two things: first that when the word *משכבי*, lyings, is used, it is used in a power-asserting way, and second, that penetrating a man as one would a woman, against his will, was seen as punishment.

Genesis 49:3-4

Reuben, you are my firstborn, my might, and the beginning of my strength, the excellency of dignity, and the excellency of power; Unstable as water, you shall not excel; because you went up to your father's bed; then defiled you it; he went up to my couch.

גְּרֵאוֹבֶן בְּכֹרִי אֶתָּה כַּחַי וְרַאשִׁית אוֹנֵי יִתָּר
שְׁאֵת וְיִתָּר עֵז: ד פָּחַז בְּמִים אֶל-תּוֹתֵר כִּי עָלִית
מִשְׁכְּבֵי אָבִיךָ אֶז חִלְלָתָ יְצוּעֵי עָלֶה:

Tanhuma Parshat Vaera 8

Pharaoh was one of four men (kings) who made themselves into gods and thus were penetrated like women, and they were Hiram, Nebuchadnezzar, Yoash, and Pharaoh.

פרעה היה אחד מארבעה בני אדם שעשו עצמן
אלוהות ונבעלו כנשים, ואלו הן, חירם
ונבוכדנצר ויואש ופרעה.

Greenberg thus argues that the verse means to prohibit a narrowly defined act of violence and humiliation. "What is left open and unlegislated by these verses then are the sort of sexual relations that occur without violence or humiliation ... but are marked instead by intimacy and love, care and commitment ... in other words, holiness."

Rabbi David Greenstein similarly looks at the words in the verse and similar words used elsewhere to interpret the verse to mean something very different from what it may *seem* to mean, much like how "an eye for an eye" really means "monetary damages." To Rabbi Greenstein the word *את*, which can be a meaningless placeholder for the direct object sometimes, but can also mean "with," other times, here, has meaning. Thus, *ואת זכר* does not mean that a male is the direct object of the act in question; instead, he asserts, it means "*and with a man.*" Similarly, based on the verse below, he asserts that *משכבי אשה* does not

mean "lying as one does with a woman," but rather, means more simply and directly, "lying *with* a woman." Therefore, taking these two parts together, Greenstein reads Leviticus 18:22 to mean, "And along with another male, you shall not lie in sexual intercourse with a woman." Thus, he concludes, "There is no prohibition of homosexual acts of any kind. Rather, the Torah prohibits two males from joining together to force intercourse upon a woman.

Numbers 31:17-18

Now, therefore, slay every male among the children, and slay also every woman who has known a man carnally; but spare every young woman who has not had carnal relations with a man.

יִזְעַתָּה הַרְגוּ כָּל-זָכָר בְּטוֹף וְכָל-אִשָּׁה יִדְעָת
אִישׁ לְמִשְׁכַּב זָכָר הַרְגוּ: יח וְכָל הַטּוֹף בְּנָשִׁים
אֲשֶׁר לֹא-יָדְעוּ מִשְׁכַּב זָכָר הַחִיו לָכֶם:

Both Rabbis Greenberg and Greenstein interpret these verses to prohibit coercive sexual acts; Rabbi Greenberg's is homosexual, while Rabbi Greenstein's is heterosexual. Greenberg's interpretation narrows the case, while Greenstein's reads the case non-literally. Both, however, are doing what has been done for centuries: using the littlest drill bit - "interpretation" - to make halachic change.

2. Rendering a Law Procedurally Inoperable

Many times in the Talmud a biblical law was made inoperable by a procedural decision. While the sages were careful not to actually *uproot* the biblical law in these cases, the outcome was essentially the same: the law was no longer in effect.

Example: Capital Punishment

The rabbis were uncomfortable carrying out capital punishment. To do so was contingent upon the Sanhedrin meeting in their usual place for hearing cases. By moving their location, a procedural act, that could no longer impose capital punishment, because, as they understood it, a court could only do so when all twenty-three individuals in the Sanhedrin met on the Temple grounds. No longer meeting there, they could not hear capital cases.

Here the rabbis acted in such a way as to no longer be able to render capital cases, and explained their reasoning on ethical grounds. Concerned that there was a prevalence of murders about, they feared that they would be so inundated as to be unable to render fair decisions. Based on their moral and ethical concerns, they found a way to avoid carrying out the biblical commandment to implement capital punishment.

3. Akirah: Uprooting from the Torah לעקור דבר מן התורה

Yevamot 79a

R. Hiyya b. Abba replied in the name of R. Johanan: It is better that a letter be rooted out of the Torah than that the Divine name shall be publicly profaned.

מוטב שתעקר אות אחת מן התורה ואל יתחלל שם שמים בפרהסיא.

Menachot 99a-b

Sometimes the cancellation of Torah is its foundation. (on Exodus 34:1, when Moses smashes the tablets)

פעמים שביטולה של תורה זהו יסודה.

The largest tool in the kit is used the most infrequently, but used nonetheless. In Deuteronomy 17:11, the Torah gives the sages the authority to administer the legal precepts found in it: "You shall act in accordance with the instructions given you and the ruling handed down to you; you must not deviate from the verdict that they announce to you either to the right or to the left." From this it is traditionally understood that our sages not only had the power and responsibility to *interpret* the law (as we've already seen), but also to *engage in legislative change*. This is a very powerful tool, and is not to be taken lightly. With great power comes great responsibility, and this tool of halachic change allows us - and also compels us - to use our *svara*, our own moral reasoning, to apply our own sense of right and wrong and our common sense when interpreting and even *changing* the law as received to us through tradition.

Built into the Jewish legal system is a mechanism through which a community could refrain from performing a positive commandment due to changed circumstances or a competing Torah precept, or through which one could "get up and do" something otherwise prohibited. In order to do this, though, two conditions need to be met: first, it must be shown that the damage done by not abrogating the norm (and legislating a change in the law) is greater than that done by creating the change, and second, *הוראת השעה*, the exigencies and needs of the moment, must constitute an urgent need for the change. In other words, our current understanding of things and our sense of right and wrong, along with contemporary reasons and needs, can lead us to uproot something from the Torah.

There are several such examples in our tradition. For example, we are enjoined from the positive commandments of blowing shofar, reading Megillah, and shaking the lulav on Shabbat because we might carry these items; the precept of Shabbat trumps the commands to observe these practices. Similarly, the Torah states clearly that one should put a thread of *techeilet*, blue string, on one's *tzitzit*. Yet the rabbis determined at a certain point in time, because *techeilet* was difficult to come by and then costly, it was no longer required, because

of the concern that people would end up with counterfeits or would go into financial hardship to acquire it. Here, the rabbis' concern for the well-being of the people and their hardship led to an abrogation of a halachic norm, making something otherwise required no longer required.

There are even examples of allowing acts that were otherwise forbidden; generally, a woman's testimony was not to be accepted. However, in the case of her testimony that her husband had died, which impacted her ability to remarry and thus take care of herself, the rabbis legislated that her testimony could be accepted. In 1952, the Conservative movement determined that a Kohen could marry a divorced woman, despite the biblical prohibition, because of the *exigencies of the moment*, mainly that intermarriage was thought to be such a threat, that it was necessary to allow these two Jews, who were *biblically* forbidden to each other, to marry. In our very era, a generation ago, legislative change was enacted, using the *svara* of those with halachic decision-making power, because the damage done by not enacting such legislation was perceived to be greater than that which would occur if the norm was let stand (that preventing two Jews from marrying each other was more harmful than allowing a kohen to marry a divorced woman), due to the exigencies of the hour (that the threat of intermarriage was looming overhead).

This halachic took is not used without grave consideration, and not many have been brave enough to call for it. However, as the Talmud states in Menachot, "Sometimes the cancellation of Torah is its foundation." Even the fragments of the tablets Moses smashed were holy; upon their broken pieces a stronger, more committed people came even closer to God.

Conclusion

There are many ways that commentators and interpreters, from the ancient to the contemporary, address these two verses. The interpretations range from a complete ban on same-sex relationships, to a ban only on anal intercourse, to interpretations like Rabbi Greenstein's that the verse has nothing to do with homosexuality at all, but rather, an act of sexual assault on a woman involving two men. Many of these voices, including the contemporary ones, seek to use the smallest halachic drill bit, and *interpret* the verse narrowly, like in the case of the rebellious child, or interpret it differently than its literal meaning, like the case of "an eye for an eye." These interpretations use the time-tested techniques of grammatical study to suggest that the word $\text{לְעִי$ can signify a hidden word that allows for interpreting the verse to be about something other than same-sex loving intimacy; Rabbi Steven Greenberg suggests it adds a power imbalance to the act, while Rabbi David Greenstein suggests that it adds the word "with."

These attempts are significant and do attempt to make sense of the Torah verses without rejecting them outright; they are attempts to use the smallest drill bit possible.

However, this may in fact be a case where we *do* need to rip it out entirely, because to otherwise - to drill the tiniest of holes - would be morally damaging. Perhaps here, simply *interpreting* these verses leaves space for other interpreters to still say, "No - the *peshat*, the contextual meaning of this verse actually does forbid anal intercourse." The interpretations of לא and the game of reinterpreting the verse is not necessarily comforting from a non-orthodox queer perspective. Similarly, interpretations that say "keep it in the bedroom - we won't ask if you have anal intercourse or not," perpetuate shaming of the individuals in a same-sex relationship. Here, we are dealing with not just a theoretical legal case, but people's lives, and implications on the very essence of their souls that makes each of them who they are. Here, perhaps, more than anyplace else, is the right place to do *akirah*, and uproot this verse from the Torah. When the damage done for not abrogating a halachic norm is greater than that done by creating the change, it is a halachic imperative to implement the change. Here, too, the exigencies of the moment demand that we take this step. "It is better that a letter be rooted out of the Torah than that the Divine Name shall be publicly profaned," the Talmud teaches. Each of us is created in the Image of the Divine. To continue to shame any of us based on this verse profanes The Name of the One in Whose image we were created. Now is the time to uproot that letter.

Sources Consulted

The "Toolbox of Halachic Change" concept comes from a responsa, *Mamzerut*, written by Rabbi Elie Kaplan Spitz in 2000.

I am also grateful to the *Hineini Curriculum Resource Guide* lesson plan on these Leviticus verses, for providing excerpts of various contemporary interpretations.

Lastly, thank you to Rabbi Ayelet S. Cohen for suggesting that this may be a case where the largest, rather than the smallest, halachic drill bit is preferable, and to challenging me to engage in the halachic process and advocate for such change.