Holiness (Kedusha), Sexuality and Gender in Contemporary Orthodox Halakhic Writings

# Research Program

Holiness is a category that is characteristic of religion (Durkheim, 1995; Eliade, 1957; Otto, 1975). Just like the distinction between good and evil is central to ethics and that between the beautiful and the ugly is central to aesthetics, so is the distinction between sacred and profane central to religion. A hundred years of scholarship in the field of religion and its sociology has addressed the category of holiness in a variety of ways and shown its complexity (Douglas; חן; Hacker; שטדלר). In Jewish Studies, questions of holiness, sexuality, and gender have been addressed mostly in the context of the study of the Rabbis (Boyarin; Biale; סטלו; Rosen-Zvi; Hauptmann; Marienberg-Milikovsky, 2004) and the scholarship about contemporary Orthodox halakha has not yet delved into the relationships between the concepts of holiness and gender and sexuality. The ways that holiness is constituted in these contexts have not been systematically articulated.

This study seeks to understand the ways that holiness is constituted from a gender perspective and to examine the relationships between holiness, gender, and sexuality through the prism of two topics that preoccupy contemporary religious society in Israel. These are the notion of *qol be-isha ‘erva*, “a woman’s voice is nakedness,” and the status of LBGTQ people in religious society and their connection to holiness. These two topics are essentially related to gender and sexuality and both have clear repercussions for the formation of the category of holiness. The study will be situated along two axes: One axis will evaluate whether LBGTQ people and women who seek to have their voices heard can participate equally in holiness with cisgender straight adult men. For example, can a homosexual be a rabbi, a Torah scholar, or a prayer leader? To what degree are transsexuals included in the concept of holiness? A woman can be considered a Torah scholar and even a halakhic authority (in recent years there is a growing movement of Modern Orthodox women who are ordained as halakhic decisors. See Ross, 2021; Irshai, Zion, and Waldox, in preparation; Puterkovsky, 2014; Tikochinsky). Nevertheless, hearing her voice in a synagogue, even if it is only to offer a Torah homily during the prayer service, inspires strongly negative reactions in most Modern Orthodox communities. Why is that? This study proposes that the explanation of these reactions relates to the relationship between gender, sexuality, and holiness.

The second axis will examine the degree to which the physical presence of women’s voices in sacred spaces, along with the physical presence of LBGTQ people in these spaces, is “damaging” to holiness. Should this “damage” be understood using essentialist categories, i.e. as part of a “natural” sexual identity that is “problematic”? Or should it be understood functionally, in terms of the practices, dress codes, and the degrees of halakhic obligation of these parties in sacred spaces? I will examine the ways contemporary halakhic writing constitutes female/male/non-binary gender in the context of sexuality and holiness. Is female sexuality a natural or metaphysical element that cannot be obscured so that the very presence of women in sacred spaces will “obstruct” the manifestation of holiness? Can male sexuality damage holiness in a similar way? In this context, does the public speaking of a modestly dressed woman in the synagogue or some other ritual context damage holiness? According to most opinions in the Orthodox sphere, trans women are actually men (Hirsch, 1972/3; Shafran, 1999; Evers, 2001) even though they look like women. Do trans women therefore challenge the relationships between holiness, sexuality, and gender?

These two axes raise other questions about “hierarchies of holiness.” According to mainstream Orthodox halakha, “All “matters of holiness” are recited only in the presence of ten, as it says: ‘I will be sanctified in the midst of the children of Israel’ (Lev 22:32) […] The ‘ten’ for matters of holiness must be adult free males, not women, minors or slaves since we derive the rule of ten from ‘I will be sanctified in the midst of the children of Israel,’ and ‘the children of Israel,’ when unspecified, refers to adult males throughout the Torah” (*Encyclopedia Talmudica* vol. 6 s.v. “Matters of holiness”). This normative claim raises the question: Can we identify “hierarchies of holiness” in contemporary halakhic literature according to which cisgender straight adult men are on top while straight cisgender women are at the bottom? Or do LGBTQ identities disrupt this gendered ordering? Are men whose sexuality is not heteronormative included in the concept of holiness in the same way as straight men? Is transgender men’s relationship to holiness equal to that of cisgender men? Are cisgender women inferior to them? In other words, this study will examine the question of how much, if at all, the category of holiness in the context of gender and sexuality conflicts with the idea that all humanity is created in the image of God, from which the egalitarian principle is derived (Hadad, Persico).

This study will survey and analyze halakhic literature (in print and online) that is relevant to these topics. It will include writings by rabbis from the entire spectrum of Orthodox society in the last fifty years, including Sephardim and Ashkenazim from both the older and younger generations. In response to social changes related to the development and gradual internalization of norms of gender equality in Israel’s religious society (Irshai, Zion, and Waldox; Hartman; Ross; Sagiv; Irshai and Rosmarin) over these decades, Orthodox halakhic attention has been engaged in these topics more and more.

# Scientific Background

## Sexuality and Holiness

The first source to connect holiness to sexuality is Leviticus, where the commandment “Be holy because I, the Lord your God, am holy” (Lev 19:2) appears immediately after the passage that details which sexual relations are illicit (Leviticus 18). Midrash Leviticus Rabbah explains this juxtaposition as follows: “Rabbi Yehuda ben Pazi said: Why was the passage of *arayot* (illicit sexual relations) juxtaposed to the passage of ‘Be holy’? It is only to teach you that everywhere that you find a constraint regarding illicit sexuality you find holiness. And this conforms to the other [statement] of Rabbi Yehuda ben Pazi who said that whoever constrains himself from illicit sexuality is called holy” (Leviticus Rabbah, Vilna edition, *Kedoshim* 24). A similar connection can be found in Deuteronomy: “Because the Lord your God travels along with your camp, to save you and to hand over your enemies to you, therefore your camp must be holy, so that he may not see anything indecent among you and turn away from you” (Deut 23:15). As Brandes mentions, some (e.g. Maimonides, the Shulhan Arukh) have understood that uncovered genitals (“anything indecent”) in themselves, even absent any sort of sexual arousal, obstruct holiness. For this reason, they prohibit the recitation of the Shema in the presence of the exposed genitals of a child. Others, like Rabbenu Asher and Rabbenu Yeruham hold that nakedness is not in itself indecent and the problem arises from the sexual function of genitals. Satlow has pointed out that in Rabbinic thought, activities associated with holiness cannot take place in the presence of male nakedness, i.e. the exposure of genitalia (Satlow, 1997) and has distinguished between the construction of male nakedness and that of female nakedness and their relationships with holiness. He argues that Rabbinic sources conceive of female nakedness as a symbol of sexuality and dissoluteness but not as intrinsically an offense against God, i.e. an obstruction to holiness (Satlow, 1997, 440, 454). This distinction recalls the feminist claim that “what God is to a man, a man is to a woman” (Daly…) and is particularly interesting in the context of hierarchies of holiness since it suggests that women were not regarded as religious subjects who have a relationship with the holy. Engaging with the relationship between gender, sexuality, and holiness in contemporary halakha is all the more pressing in this light. It is important to establish the degree to which Rabbinic worldviews inform halakhic authorities today or whether there has been a shift in response to the global social changes associated with the status of women and particularly within the religious community. Has the religious feminist revolution caused women to be regarded as subjects in religious life? Has the constitution of their gender and sexuality in relation to the category of holiness undergone a transformation or does the halakhic reasoning continue to adopt the theological conceptions of earlier patriarchal eras?

Despite the incompatibility of sexuality and holiness in halakhic literature described above, in the halakhic literature dedicated to sexual guidance for heteronormative couples, sexuality and holiness are often identified. This identification was first made in the Middle Ages but has come to the foreground especially in recent decades as is clear from Marienberg’s book (Marienberg, 2022). We find medieval authors who gave their works in this genre names like “The Gate of Holiness” by Rabbi Avraham ben David or “Letter of Holiness” by Nachmanides. In contemporary halakhic literature, particularly that associated with the Haredi world, we find titles such as “The Book of Holiness,” “Knowledge of Holiness,’ or “Be Holy.” All these are guidebooks to sexual life according to the halakha (Marienberg, 2022).

The relationship between sexuality and holiness is thus complex and paradoxical. If sexuality is sacred, how and when and by which gender does it become sanctified or become antithetical to holiness? Is sexuality’s incompatibility with holiness merely functional, in that powerful sexual thoughts are a distraction that precludes the manifestation of holiness? Or is there something deeper that relates to the essential meaning of the two concepts that cause them to converge and diverge at once? Does the human body (male, female, trans, and non-binary) somehow interfere with the manifestation of holiness? Regardless of whether it is the very presence of (exposed parts of) the body or the sexual context associated with such exposure that obstructs holiness, we still need to ask the question of gender. Do the male and female bodies obstruct holiness in the same way? Does the naked male body have the same sexual connotations that translate to “anti-holiness” as the female body? Do queer bodies belonging to people on the gender spectrum take part in holiness in an equal way? Do their bodies obstruct holiness in the same way?

## Female Sexuality and the “Problem” of Men

Both Talmudic scholars and feminist writing train the spotlight on the fact that it is women who are charged with taking responsibility for the ostensible “problem” of men (Satlow, 1995; Hartman 2007; Ross 2011; Tikochinsky, 2014; Regev, 2021). Furthermore, halakhic standards are usually set according to male needs. However, because masculinity is the prevailing, but “transparent” norm in halakhic rulings, it is not recognized as a problematic bias on the part of the rabbis of halakhic discourse (Irshai 2015). Borrowing Laura Mulvey's coinage “to-be-looked-at-ness” (Mulvey), Fisher (2009) notes that Talmudic halakhic discourse on women asserts that they “are *not* supposed to-be-looked-at” (emphasis original). However, like in the Hollywood film on which Mulvey focuses, here too, the norms of how to avoid such observation are dictated by male inclinations and needs. A definitive example of this issue is the polemic in Israel surrounding the Talmudic claim equating a woman’s voice with nakedness (*qol be-isha ‘ervah,* lit. “a woman’s voice is nakedness,” BT Berakhot 24a), especially in the context of women singing in the army, where both religious and secular men and women serve. Some rabbis have prohibited religious male soldiers from participating in ceremonies where women sing. Tamar Ross underscores the male bias inherent in this prohibition:

Women today ask why all the anxiety about the purity of men’s thoughts is not accompanied by any concern about women’s experiences. Has any halakhist made the effort to weigh the spiritual loss suffered by women through the silencing of their voices against the supposed benefit to men? If modesty is a problem for men, why must women pay the price? Moreover, are women’s voices in fact as seductive as they are said to be? A negative answer to that question brings us back to the conclusion that the halakhah imposes inappropriate responsibility on women, for the traditional bounds of modesty are always formulated exclusively in terms of women’s seductiveness to men. (Ross 2011: 47)

It must be noted that Tamar Ross’s study is, as far as I know, the only one in recent decades that addresses the topic of hearing women’s voices from a halakhic-gender perspective. Even her study only cites the example of *qol be-isha ‘ervah* as a test case for the jurisprudential question of the degree to which extra-halakhic ideological factors influence halakhic discourse (Ross, 2011).

Fisher (2009) notes another problematic message regarding female sexual identity that is conveyed by this attitude. The premise is that women must cover themselves primarily to prevent men from having “impure thoughts,” while its counterpart, that men must cover themselves for the same reason, is absent. This suggests that only men have active sexual desires/needs, whereas women’s sexual drive is restrained and passive (Satlow, 2004; Rozen-Zvi, 2010). The total absence of halakhot requiring men to cover their bodies to prevent women from having impure thoughts can be interpreted as a lack of recognition of women as sexual beings with sexual needs. Hartman (2007) offers an interesting take on this point. In her view, liberal culture’s extreme messages encouraging the exposure of women’s bodies and religious society’s demands that they are maximumly concealed reflect the same notion of femininity—women as sexual objects for men. The concealment of women may actually heighten the perception of women as sexual objects, and this insight is applied by Irshai (2010) to the interface between the constitution of the female gender and the theological sphere:

Uncovering the moral paradigm underlying the exclusion of women from religious rituals is even more obvious. The primary basis for that exclusion is the image of woman as a “ticking sexual time-bomb.” The idea of holiness is profoundly tied to this—the more a woman is hidden, the holier the atmosphere. In other words, woman is equated with the unholy or even the “anti-holy”; at the same time, man is seen as a “sex-obsessed hormone dump.” Halakhic genealogy can uncover this paradigm, present it to Modern Orthodox men and women, and ask whether they are prepared to look in the mirror and then buy into this image (Irshai 2010: 70).

This study will investigate the theological perspective that arises from contemporary Orthodox halakhic writing on the topic of hearing women’s voices. To what degree do the various halakhic approaches relate to women’s voices as sexual and how do these constructs affect women’s participation in sacred spaces and events?

## Contemporary Orthodox Halakhic Attitudes to Homosexuality

Halakhic authorities have barely discussed female homosexuality (lesbianism) in recent generations as it presents a much milder challenge to the halakha in comparison to male homosexuality (Sherbet and Kosman; Englander and Sagy, 2013). That does not mean that sexual relationships between women are regarded as permitted, but the focus of discourse on homoeroticism is on relations between men. Male homosexuality has become a white-hot topic in Modern Orthodox circles in Israel preoccupying both halakhic authorities and religious society as a whole (Englander and Sagy, 2013; Ross, 2016; Orit Avishai; Irshai; … Mizrahi and Irshai).

Orthodox writers first took up the subject of homosexuality in the 1970s (Feinstein; Lamm), but it remained on the margins. At the time, the main approach was to recognize the existence of a homosexual orientation but to assume that it could be changed. Some thought that homosexuality should be viewed as an illness, and argued that one who violated the prohibition of male homosexual intercourse could be categorized as compelled and therefore not culpable. The recognition of the reality of homosexual orientation led to an interesting position regarding the scope of the prohibition. Whereas a majority of those who addressed the issue held that the prohibition applies only to the sexual act, and there is no prohibition associated with the inclination itself (meaning homoerotic desires or feelings) (Boyarin… Satlow…), Rabbi J. David Bleich (one of the heads of the Isaac Elhanan yeshiva of Yeshiva University) wrote that Judaism bans also the homosexual identity, that is, homoerotic attraction, as an aberration to be cured (Bleich, 1981, 70-71). The prevalent views today emphasize the distinction between the sexual act, which is prohibited, and homosexual identity, which they regard as a fact with which they have come to terms (Lubitch (1995/6). This stands in contrast with the dominant trend of the 1970s and 1980s that distinguished between the orientation and the act in order to focus on the possibility of curing homosexuals of their sexuality. In 2004, Rabbi Steven Greenberg became the first Modern Orthodox rabbi to publicly reveal his homosexual orientation, in a book published in English. Greenberg recounted his own story and the severe distress he endured on the road to his inevitable acceptance of his forbidden sexual orientation; he also emphasized his love for God and his desire to continue to perform the mitzvot and belong to the Orthodox community. The book sought to arouse sympathy and understanding for the struggles of those who seek to continue to lead a religious lifestyle but cannot give up their sexual identity. In addition, Greenberg proposed, for the first time in Orthodoxy, that it might be possible to interpret the prohibition of homosexual relations as applying only to exploitative and humiliating sex. According to this rationale, sex between men is prohibited only if it is meant to express the active partner’s power and ownership of the other, in an unequal relationship (Greenberg, 2004, 192). The change in attitudes of many rabbis in Israel is not due to Greenberg’s book and can be attributed mostly to their increasing exposure to the personal stories of young religious men who have come out of the closet, thereby demonstrating the authenticity and scope of the phenomena (yeshiva student, 2011). There still are rabbis who recommend conversion therapy (although they tend to be affiliated with the Nationalist Ultraorthodox [*ḥardal*] branch of Religious Zionists) (Aviner…). Some have even recommended that male homosexuals marry lesbians so that they can fulfill the religious obligation of procreation (Ross, 2016; Mizrahi and Irshai, forthcoming), but it is hard to say that this position has gained momentum, and most rabbis seem to reject the idea. Rabbis who strongly identify with Modern Orthodoxy have gradually come to the realization that homosexual orientation is irreversible and have done what they can to lighten the burden caused by the prohibition of homosexual sex while demonstrating sympathy for the hardships of religious homosexuals.

That being said, only a few Orthodox rabbis have adopted a liberal position that permits homosexual unions that include partial or full sexual contact. As Irshai has pointed out, most Modern Orthodox rabbis still ascribe to the Aqedah theology which finds its fullest expression in the plight of Orthodox homosexuals.

## Transgender People and Jewish Studies

There is growing interest in the field of Jewish Studies in the phenomenon of trans people from at least three perspectives: Jewish theology, Jewish sociology, and Jewish law. With regard to theology, Joy Ladin, a Jewish academic and a trans woman, has called for the development of a trans theology (Ladin, 2012, 2018 a, 2018b), and Elliot Kukla, the first transgender rabbi ordained by the Reform movement, has argued that Jewish tradition recognizes that intersex people are created that way by God and are part of the beauty of creation and therefore should not be assigned to one gender or another, (Zellman and Kukla, 2010; (Dzmura, 2010?); Benjamin, 2020).

Regarding Jewish trans sociology, Oriol Poveda asks in his doctoral dissertation (2018?) how religious trans people from a Jewish Orthodox background negotiate the intersection of gender and religion. Naomi Zeveloff (2014), in a project interviewing Jewish transgender people, reveals that they seek access to the mainstream of the Jewish community alongside their seeking to change the way the community “does” gender. Amy Milligan’s proposal (2019) to adopt and apply the tools of bodylore (a term that has developed since the 1980s as a distinct methodology in folklore studies) to an analysis of the Jewish body in ways that are compatible with feminist and queer theory represents a move in Jewish Studies that takes body, gender, and queerness as analytical categories. Discussions of and suggestions for trans rituals, religious sources of inspiration, and support for trans life within Jewish communities can be found at a number of sites on the internet (…) and in a book edited by Noach Dzmura from 2010.

There is also a significant discourse about the Rabbinic literature that addresses intersex individuals. Intersex and transgender persons are obviously not identical. Many scholars view the ideas of the Rabbis of the Talmud about intersex persons as demonstrating their gender flexibility. Others, in contrast, consider their approach to be rigidly gender-binary, yet nevertheless try to locate the building blocks of Jewish attitudes toward trans people in those rabbinic deliberations (Plaskow, 2010; Fonrobert, 2007; Lev.., Kessler..). Max Strassfeld (2016) sees the discussion of the *androgynous* (hermaphrodite) and other gender variants in Rabbinic literature as the moment when gender was established as essential to rabbinic law. A recent book (Strassfeld, 2022) refers mainly to the treatment of eunuchs and hermaphrodites in Rabbinic literature to demonstrate how to present a better and wider picture of how gender works in this literature. Since these figures fail to perform a stable gender or sex, they challenge the gender-binary regime. Despite the relatively rich scholarly discussion of non-binary persons in Rabbinic literature, very little has been written about contemporary Orthodox Jewish law.

In Orthodox Judaism, the only book-length work on gender transition and halakhah is *Dor Tahpukhot*, published by Rabbi Idan Ben-Efrayim (2004) and analyzed by Gray (2018?). Ben-Efrayim’s book received approbations from leading contemporary halakhic authorities, including Rabbis Ovadia Yossef, Zalman Nehemiah Goldberg, Shlomo Amar, and Asher Weiss, all from the front ranks of the halakhic and Torah leadership in the Jewish world in Israel and abroad. In this context, *Dor Tahpukhot* should be understood as the most important contemporary Orthodox halakhic text about gender transition. There are other halakhic discussions of the issue of gender transmission (Irshai…), but the ways the sexuality and gender of trans people and their connection to holiness were constructed by halakhic authorities still need to be investigated.

# Research Objectives and Expected Significance

The objective of this four-year research project is to reveal the previously unexamined conceptualizations of gender, sexuality, and holiness among contemporary Israeli Orthodox halakhic decisors.

This study will examine the ways holiness is constituted from a gender perspective and explore the connections between holiness, gender, and sexuality through the lens of two issues that preoccupy Israeli religious society at present: the prohibition of hearing a woman’s singing voice – *qol be-ishah ‘ervah* and the halakha’s attitude to LBGTQ people who are members of religious society and its repercussions for the constitution of gender and sexuality and their connection to holiness for cisgender women and men, as well as for people whose gender is not heteronormative.

The outcome will be a systematic catalog of the halakhic attitudes of contemporary Israeli Orthodox decisors including a critical analysis of their sources and their interpretations of those sources alongside the theological implications of their approaches in the context of holiness, gender, and sexuality.

The expected significance of this study is threefold: First, it will fill a glaring lacuna in the study of contemporary Orthodox halakhah regarding questions at the center of Modern Orthodox society today – gender and sexuality and their relation to the central religious category of holiness. Second, this study will sort and map all of the halakhic responsa that have been written over the last fifty years about *qol be-ishah ‘ervah* while examining the ways that women’s gender and sexuality are constructed. This examination will relate both to classical and later Rabbinic sources and address their attitudes to the place of women in sacred spaces and at sacred occasions. At present, there is not even one study that offers a systematic analysis of this topic nor one that investigates the relationship between gender, sexuality, and holiness and the ways that halakhic decisors understand the relationship between them in the context of their responsa about the prohibition of hearing woman’s voices.

Third, to my knowledge, this will be the first study of modern halakhah concerning LGBTQ identities that breaks free of analysis based on a dichotomy of liberal versus conservative halakhic approaches or strategies to the dilemmas of religious LGBTQ people. Instead, it will delve deeper than the extant studies and ask questions of a theological nature that relate to the philosophy of halakhah: to what extent can bodies that are gendered non-heteronormatively have a role in the category of holiness?

# Detailed Description of the Proposed Research

## Working Hypothesis and Data Collection

This study will investigate how cis and trans male and female genders and sexualities are constituted and shaped in the context of the category of holiness. What role does sexuality play in the nexus of holiness and gender? What are the gender attributes of a holy human being? Since the study of modern halakha from a gendered perspective is a relatively new field, my working assumption is that most of the relevant halakhic material has yet to be systematically collected and mapped out. Perhaps surprisingly, there is no written or online inventory of halakhic writings on the topic of “a woman's voice is nakedness” that covers the developments of the last fifty years, let alone a systematic analysis, from the perspectives suggested here – gender, sexuality, and holiness.

The first stage of this project (approximately a year and a half) will therefore be the mapping out of the relevant halakhic material. I will go back to the basic Rabbinic sources and examine the relevant literature of the Rishonim and Aḥronim, tracking the halakhic development of this topic to the present, with an emphasis on the halakhic writings from the second half of the 20th century. At this stage, I will also collect all the halakhic responsa about transexuals and transgender people. I have previously written about some of the material, but not from this perspective (Irshai). The halakhic material about male and female homosexuality has been studied more (reference), especially by Avishai Mizrahi, but there is not yet any scholarly analysis that relates to this material in terms of the questions mentioned above.

In the second stage, beginning in the second year of the grant, I will begin systematically analyzing the halakhic material. The first article I will write (between the middle of the second year and the first third of the third year) will analyze the halakhic development of the concept that “a woman’s voice is nakedness.” As mentioned above, this article will break new ground beyond the standard analysis of the spectrum of conservative to liberal opinions and the various interpretive strategies taken. Of course, I address those as well, but as part of the project of answering the fundamental question of this project – what is the relationship, if there is one, between gender, sexuality, and holiness?

The second article will address halakhic developments concerning LGBTQ people, focusing on the connections between gender, sexuality, and holiness. The third year of the grant will be devoted to this article.

The third article, which I will write in the fourth year of the grant, will integrate the insights of the first two studies and will focus on the hierarchies of holiness that can be perceived from a broad perspective. Are straight adult cisgender men at the top of the scale and straight cisgender women at the bottom? Or do LGBTQ identities upset this gendered hierarchy? Are men whose sexuality is not heteronormative included in the concept of holiness in the same way as straight men? Are transgender men equal to cisgender men in their relationship to holiness? Are cisgender women inferior to them? In other words, this study will explore the degree that the category of holiness in the context of gender and sexuality is in tension with the egalitarian ideal that stems from the notion that all human beings were created in the image of God.

## Preliminary Results:

It is difficult to list preliminary results before the project has begun. However, I have conducted a brief analysis of *Dor Tahapukhot* by Rabbi Idan Ben-Efrayim, mentioned above, and some of his claims are surprising and of great interest for this project. According to Ben-Efrayim, genitals are not necessarily the essential sign of gender, and not everyone must be classified as a member of one gender or another; the male/female dichotomy is not necessarily natural and gender (the soul) is to be prioritized over biological sex. Orthodox halakhic tradition ostensibly rejects the feminist claims that gender is a social construct and that we must distinguish between biological sex and gender. Queer theory’s rejection of biological essentialism appears to be even more at odds with Orthodox halakhic tradition and at first glance, Orthodox theology and queer theory are utterly incompatible. However, my reading of *Dor Tahapukhot* has revealed halakhic complexities that undermine the common assumption about the rigidity of Orthodox halakhah regarding gender crossing. According to Ben-Efrayim, transsexual people should be included in the community and can pray in the men’s or the women’s section of the synagogue in accordance with their external, preferred gender. Trans men can wear a tallit and lay tefillin (although without a blessing) and both trans men and women are permitted to have a sex life with their partners.

The repercussions of these gender and sexual constructs regarding transexuals for the concept of holiness still require analysis but these preliminary results indicate that Orthodox halakhah contains far more complex attitudes in these contexts than one might have expected.

# Research Design & Methods

## Feminist Gender Scholarship of Modern Halakhah

The present study is part of a wider endeavor to explore the loci and methods by which gender identities are constructed in the halakhic tradition. This topic is already well developed in the scholarship of Rabbinic literature and Jewish culture in Late Antiquity. One can identify two central paradigms in the scholarship on Rabbinic literature. The first can be described as ‘critical feminist’ (Irshai 2019) and includes the work of those scholars who deal primarily with the critique of rabbinic attitudes toward women (Shanks-Alexander 2000; Rosen-Zvi 2005). Some of the scholars in this school emphasize the patriarchal and misogynist character of this body of literature (Wegner 1988; Plaskow 1991; Baskin 2002). Others offer a mediating feminist scholarship that highlights legislation that benefits women and improves their status and is thus characterized by the attempts to correct the injustices that pervade rabbinic literature (Hauptman 1988; Aiken 1992; Boyarin). The second paradigm, beginning from the 1990s onward, can be termed a “feminist-gendered” paradigm (Rosen-Zvi, 2005, 2008; Irshai, 2019), in which gender becomes the most significant category of exploration and the questions under examination are much wider, dealing with the identification of the moments, ways and locations in which gender identities are constructed (Satlow 1995; Boyarin 1997; Baker 2002; Fonrobert 2000, 2007; Rosen-Zvi 2008; Labovitz 2009). This paradigm shift broadened the scholarly perspective to fields that were not focused on women and had been peripheral to the study of Rabbinic literature and early halakha. For instance, we can attribute the turn toward the study of the body and sexuality, a turn which some term the “corporeal turn in Jewish Studies” (Kirshenblatt-Gimblett 2005), to this paradigm shift. The shift from “feminist” scholarship to scholarship focused on gender as an analytical category has yielded results in the study of modern halakha as well. This project is a first step toward filling this lacuna. Changing from a “critical feminist” to a “gendered” paradigm in the study of modern halakha – similar to the paradigm shift in Rabbinic scholarship – will widen the research perspective to include questions that have not yet been addressed, or addressed enough. The change from the once ground-breaking feminist perspective to the gender perspective will open up questions about the identity construction of both females and males (and the spectrum between the two), and offer new research sensibilities which derive from the contributions of gender and masculinity theories. Masculinity Studies, a growing field in gender studies (Gilmore 1990; Connell 2005; Kimmel 2010), interrogates the social construction of masculinities and is interested in questions such as how men are being socialized in communities across the world and at various times in history. Connell, a leading scholar in the field (Connell 1995), problematizes the term ‘masculinity’ as an objective, universal category and argues that ‘masculinities’ is more accurate. Approaching halakha from a gender perspective will incorporate questions raised by masculinity studies (Boyarin 1997).

## The Philosophy of Halakhah and Gender Studies

Taking gender from this wider perspective, the paradigm shift suggested here can also contribute significantly to the philosophy of halakha, which attempts to map out the worldviews which form the infrastructure of the halakhic culture, to examine the ways have been constructed, how they function in the halakhic arena, and to critically evaluate the theology that may derive from them.

The last few decades have seen significant developments in the study of the philosophy of halakha. Despite this, it is still difficult to speak of clear research directions with which to characterize it (Halbertal 2001; Lorberbaum 2008; Sagi 2008; Zohar 2008). Halbertal (2001) suggests that the philosophy of halakha can be characterized by three strati. The first is simply the perception of halakha as the central and most important expression of Judaism; the second is the concern with the framing concepts of the halakhic system (such as: How does the halakha understand authority? How does it conceive of exegesis and its influence on halakhic norms? What is its perception of truth and fallibility, of halakhic disputes, and so on?). The third stratum relates to the principles, values, and interests which form the background against which certain halakhic principles are created and constructed. Zohar (2008), treats primarily the third stratum and suggests that a concentrated and methodical study of different halakhic statements that articulate shared value considerations will produce what he terms the “halakhic theory” which constitutes an essential base for the philosophy of halakha. A “halakhic theory,” according to Zohar, is the formulation of halakhic doctrines on different concrete topics based on a systematic and critical examination of halakhic rulings. Only after critical halakhic research suggests halakhic doctrines in different areas (his example is the question of one’s self-ownership in halakha) will the additional level of the philosophy of halakha become possible. This philosophy would be constructed inductively based on a systematic and critical examination of particular halakhic norms in halakhic and responsa literature. It would identify the principles and values on which they are based and from them formulate a halakhic doctrine in that particular field, thereby contributing and element the construction of a more encompassing halakhic theory. This project proposes to follow this model in its contribution to the philosophy of halakha – to offer a systematic, inductive analysis, based on the examination of different halakhic issues, to formulate “the halakhic doctrine” on the question of gender, sexuality, and holiness.

# Enabling Conditions for this Project

In recent years, I have written more than once about the need for a shift in the study of modern halakha from critical feminist scholarship to feminist gender studies and on the significance of using the tools of philosophy of halakhah in gender contexts (reference). I have also extensively discussed different religious feminist topics, including the status of women in the Orthodox world and the Orthodox halakhah about LGBTQ people (reference). It is now time to raise the bar and ask more challenging questions that go beyond the positivist analysis of halakhic responsa in gender contexts. This study begins to fill the existing lacuna regarding the connections between holiness, sexuality, and gender by addressing two central topics – the prohibition of hearing women’s singing voices, about which, as far as I can tell, not a single academic study has addressed the modern halakhah and certainly not in the context of sexuality, gender, and holiness.

A fair amount has been written about male homosexuality in Modern Orthodox halakhah, but it has naturally addressed mostly questions of tolerance or exclusion and the interpretive strategies available to resolve problems. Academic study of modern halakhah regarding transgenders is still in its infancy. This project is an opportunity to begin a more complex examination of the ways that the body and non-heteronormative sexual orientations are constituted and their relationship to the category of holiness that is so central to religious life.

# Expected Results and Potential Concerns

It is of course impossible to predict where the research will lead, but I can nevertheless say that I expect my research to have two important results.

1. It will reveal a large corpus of halakhic works that until now has not received academic attention. This project will include an analysis of the content of this corpus.

2. This project will be the starting point of a discussion on questions of gender and sexuality with regard to holiness.

 One of my concerns for this study is that I will not find enough Orthodox halakhic writing about transgender people. I hope that the existing material will provide a reasonable basis for the novel type of analysis I am proposing that addresses questions of sexuality and gender in the context of holiness.

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