

# **Genderqueer Torah on *Niddah*: Jewish Practices of Sacred Sexuality for Nonbinary Folks & People of All Genders**

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# Genderqueer Torah on Niddah: Jewish Practices of Sacred Sexuality for Nonbinary Folks & People of All Genders

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*Besiyata diShmaya*

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*This teshuva aims to pass the Kranjec Test*

## She'eilah

I'm AFAB and I recently came out as trans nonbinary. When I lived as a woman, I had a practice of *niddah*—sexual abstinence around my period and immersing in the *mikvah* after my period. As a nonbinary person, am I still obligated in the practice of *niddah*? I guess what I'm asking is this: is *niddah* a menstruation practice or a woman's practice? And if I start testosterone or lose my period due to testosterone, would that alter my status or obligation?

I do long for a practice of sacred sexuality rooted in Jewish ancestral wisdom and I've found my *niddah* practice meaningful, but I'm ambivalent about continuing a woman's practice. I'm also anxious about navigating the *mikvah* in my community. I no longer feel comfortable immersing in the women's *mikvah*, and I don't think I'd be welcomed in the men's *mikvah*—and as a genderqueer person I'm not sure that either is truly the place for me.

Plonyx

## Teshuva

Thank you for your query, Plonyx. The *hishtoqequt*, or sacred longing, within you to have a practice of sacred sexuality is holy and your desire to balance ancestral wisdom with the truth of your experience is noble. It is an honor to be present with you in this place. I'll do my best to honor the will of *El Chai*,<sup>1</sup> the living God for whom our souls thirst, in my response.

I prepare this teshuva by calling on my lineage as a genderqueer nonbinary trans Ashkanazi Renewal Jew with familial and spiritual roots in the *litvish* and *chasidic* communities, and by

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<sup>1</sup> Psalm 42:3

calling on my love of the Divine within us, around us, and beyond us. *Vihi noam Adonai Eloheynu aleynu.*<sup>22</sup> May the favor of Adonai, our Power, be upon us in this process!



### ***Defining Terms***

In 1983, Dr. Susanna Heschel declared that the “problem” of feminism in Judaism was not feminism per se, *but the weakness of Jewish theological responses to modernity, which are thrown into relief by the challenge of feminism.*<sup>3</sup>

The powerful inverse of this truth is that Dr. Heschel, her colleagues, and other feminists before and since then, have not only opened the portal to a holier feminist Judaism, they have also helped Judaism develop robust theological responses to modernity that are applicable to Jews of all genders.

A similar dynamic is at play when it comes to genderqueer Jews. The “problems” that genderqueer folks grapple with in Judaism illuminate larger unaddressed problems in Judaism. The Torah-true solutions that we explore as genderqueer Jews offer possibilities for healing and for growth that will benefit Jews of all genders, bringing all of us that much closer to the Divine within us, around us, and beyond us.

In the words of Ariel Vegosen, a gender-expansive Kohenet:

*My community and I are the tzitzit (fringe) on the tallit. We are on the margins, on the edge...Those on the edge bring new ideas, visions, creativity, and excellence to those in the center.*<sup>4</sup>

I hope this exchange might do some of that, so while I want to address you directly and I want to center trans experience, I also want to make space for non-trans folks to travel along with us in this exploration. To that end, let’s first lay out some basic terms for those who might not be familiar with them:

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<sup>2</sup> Psalm 90:17

<sup>3</sup> Heschel, Susannah. “Introduction.” Introduction. In *On Being a Jewish Feminist: A Reader*, edited by Susannah Heschel, xxiv. New York: Schocken Books, 1983.

<sup>4</sup> Vegosen, Ariel. “The Beautiful Fringe.” Essay. In *Liberating Gender for Jews and Allies: The Wisdom of Transkeit*, edited by Jane Rachel Litman and Jakob Hero-Shaw. Newcastle upon Tyne, United Kingdom: Cambridge Scholars Publishing, 2022.

**Sex** is a socially constructed category that refers to externally observed physical characteristics of a body. In Judaism, there are six sexes: *zachar, nekevah, androgynos, tumtum, aylonit, and saris*.<sup>5</sup> In Western culture, we have three sexes: male, female, and intersex.

**Gender** is a socially constructed category that is affirmed via a felt sense of inner truth. At least seven genders appear in ancestral Judaism: *zachar, nekevah, aylonit adam, saris adam, dachar vnukvah, nikevah tisavov gever, ish biguf nikeva*.<sup>6</sup> There are many many genders in Western culture.

**Trans** or **transgender** is an umbrella term that refers to folks whose gender identity doesn't match the gender identity that they were assigned at birth. AFAB stands for Assigned Female at Birth (AMAB, Assigned Male at Birth). Some trans folks were assigned male, but are in fact female, and some trans folks were assigned female and are in fact male, but lots of trans folks are nonbinary, which means they experience their gender as neither male nor female.

There are all kinds of ways to be **nonbinary**. Some nonbinary folks experience themselves as a collection of distinct genders that exist sequently (eg sometimes they are male, sometimes they are genderqueer, sometimes they are female). Other nonbinary folks have a steady gender identity that is neither male nor female, but instead a blend of male and female, different than male or female, or not a gender at all.

Some nonbinary folks use they/them **pronouns**, others use he/him or she/her, others use neopronouns, others switch depending on the gender they are in that moment or other factors.

**Genderqueer** refers to folks who don't subscribe to traditional western gender roles. Not all trans folks are genderqueer (some trans men, for example, might not be genderqueer, they might follow a traditional western gender identity of "man"), and not all genderqueer folks are trans (a woman who is a tomboy might identify as genderqueer but not trans).

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<sup>5</sup> These six, which appear in the Talmud, have often been described as genders, but since they are traditionally mapped by external observation of the body and its functions and not personal affirmation or internal state, "gender" seems an inaccurate translation that gives our Talmudic ancestors more credit than they are due. Our Talmudic ancestors understood six categories of being that were ascertained by emission type, genitalia, and secondary sex characteristics. There is no evidence that they recognize categories of being that were produced by personal affirmation alone.

<sup>6</sup> Stein, Abby, trans. "(Trans)Gender in Judaism: From Creation to Kabbalah and Hasidus." Sefaria. Accessed December 23, 2022. <https://www.sefaria.org/sheets/121702.5?lang=bi&with=all&lang2=en>.

This is a very partial list of terms. For those who are new to all this:

- There's a lot more to explore.
- Sefaria and Google are your friends.
- May the genderqueer God who is sometimes a Woman in Labor<sup>7</sup> and sometimes a Formative Father<sup>8</sup> and sometimes male and female both<sup>9</sup> and sometimes, in the words of poet Joy Ladin, *stranded in the wilderness beyond human categories*,<sup>10</sup> guide you on your learning journey.

### **Power Analysis and Positionality**

Each of us can only judge what we see with our own eyes. Each of us, and certainly every *posek*, every decider of Jewish law, has a perspective that is limited, what is traditionally called *aniyut daati*.

*Life is as infinitely great and profound as the immensity of the stars above us, Brother Kafka said. One can only look at it through the narrow keyhole of one's personal existence. But through it one perceives more than one can see. So above all one must keep the keyhole clean.*<sup>11</sup>

I'm going to respond to your question from my positionality, trying to be as clear as I can. When I consider the issues involved in your query, this is what I see from my keyhole:

I see a mess. I see an opportunity. I see a complicated knotty situation that will take some patience to work through. If we're willing to invest that patience, this process might offer great rewards not only about *nidda*, but about life, and not only for us, but for all people.

Here's a snapshot of some our complications:

A *teshuva* is traditionally made up of four ingredients: (1) a series of rules and principles, (2) precedent, (3) communal practice, and (4) curation. (This is my back-of-the-napkin analysis, because I haven't seen it described concisely elsewhere—there seems to be a kind of taboo against discussing how *halacha*, our sacred paths or systems of spiritual imperatives, actually work. To be clear—there's

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<sup>7</sup> Isaiah 42:14-16

<sup>8</sup> Isaiah 64:7

<sup>9</sup> Genesis 1:27

<sup>10</sup> Ladin, Joy. "In the Image of God, God Created Them: Toward Trans Theology." *Journal of Feminist Studies in Religion* 34, no. 1 (2018): 54.

<sup>11</sup> Janouch, Gustav. "Introduction." Introduction. In *Conversations with Kafka*, translated by Goronwy Rees, 2. New York, NY: New Directions, 2012.

plenty written about the halachic system– but almost all of it is about how the system likes to talk about itself, not about how it actually works in practice.)

Ingredient number one isn't overly complex for us. There are a series of rules and principles<sup>12</sup> that every teshuva will explicitly or implicitly call upon. These include things like *Darchei Shalom*—we make decisions that promote peace, *Shinui Halttim*—we update laws for changing times, and *Rov HaKahal*—if a law is neglected or contested by most people, it becomes invalidated.<sup>13</sup> Every posek decides which of the many possible rules and principles to emphasize (that's #4, curation), but I don't see any special complications in this ingredient due to the content of this particular query.

Ingredient number two, precedent, things begin to get murky. Very murky. It is heart-breaking, but while there are some powerful trans-affirming statements in our sacred texts<sup>14</sup> and in our mystical tradition, the preponderance of halachic precedent is trans-excluding, if not transphobic.

Disability activists taught us: *nothing about us without us*, a principle with deep roots in our ancestral tradition.<sup>15</sup> How can we include a historical ruling as an authority in our attempt to arrive at truth for you, a spirit that is trans, if that ruling excluded or worse, silenced, trans authority?

Audre Lorde warned us, *the master's tools will never dismantle the master's house*. Which is not to say that I'm unsympathetic to the urge to try. And sometimes using the master's tools to validate the existence of the oppressed is necessary and even valorous. But if we pull in transphobic precedent without intentionality, without caveats, we risk lending unGodly figures and unGodly systems, already bloated with power, an unconscious stamp of approval from trans scholarship and trans voices.

It's a difficult business.

Our ancestors weren't unaware or ignorant to the kind of dilemma we're facing. They actually built a failsafe into the legal system. The law says...

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<sup>12</sup> As outlined in the books *Not in Heaven* by Eliezer Berkovits (Shalem Press, 1983) and *The Halakhic Process: A Systematic Analysis* by Joel Roth (The Jewish Theological Seminary of America, 1986).

<sup>13</sup> Mishnah Torah Hilchot Mamrim 2:6

<sup>14</sup> A favorite is Isaiah 56:4-5 where righteous trans women are promised a "name everlasting" better than sons and daughters

<sup>15</sup> Soloman, Laynie and Pearce, Russell G. (2022) "'Nothing About Us Without Us': Toward a Liberatory Heterodox Halakha," *Touro Law Review*: Vol. 37: No. 4, Article 7. Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol37/iss4/7>

כי יפלא ממך דבר למשפט ...

ובאת אל־הכהנים הלויים ואל־השפט אשר יהיה בימים ההם ודרשת והגידו לך את דבר המשפט:

*When a matter arises that confounds you... you shall go to the priests, levites, and to the judges **who are there in those days** and inquire and they will tell you the law.*<sup>16</sup>

“In those days.” There’s a temporality to the law. The original legal system weighed judgment of the moment far more heavily than precedent, as if to confirm that our understanding of morality is always evolving. Of course we’d want our formations of our spiritual imperatives to keep up. The rabbis echoed this commitment in a directive that they repeated a number of times:

דאין לדין אלא מה שעינו ראות<sup>17</sup>

*A judge can only judge what they see with their own eyes*

It seems based on these sacred texts that precedent shouldn’t be a significant factor at all for this *teshuvah* or any other, so no need to fret about the quality of our available precedent in your particular case. But it’s a little more complicated than that.

As the rabbinic revolution consolidated power in the first half of the first millennium, the rabbinic system began to slowly increase their reliance on precedent, curating their sources primarily from decisions made by folks who were no longer alive. The importance of lived experience or the Divine imperative of this particular moment began to lose centrality. Authority began to consolidate in the past.

This backwards-looking paralysis can be understood as a trauma reaction. Trauma can freeze us. Trauma can leave us fixated on what’s been. Trauma can rob us of the playful and attentive agility required by presence in the now.

So what do we do? Do we do things the more ancient way and disregard precedent, reinventing how a *teshuvah* is written? Do we do things the “traditional” way and use problematic precedent?

Further complications:

In the Mishnah Torah, Maimonides’ 12th century canonical code of Jewish law, positive mitzvah #177 states:

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<sup>16</sup> Deuteronomy 17:8-9

<sup>17</sup> Bava Basra 131a, Nidda 20b, Sanhedrin 6b

להשוות בין בעלי דינים בשעה שעומדין בדיון, שנאמר: "בצדק, תשפוט עמיתך" (ויקרא יט, טו).

*To treat litigants **equally** when they appear to be judged, as [Leviticus 19:15] states: Judge your kin with righteousness*

An authority who cannot treat a trans person with equal dignity to a cis person would be violating this imperative if they attempted to pass judgment on some element of trans life. According to this imperative, can we include such an authority in a lawful curation of a response to a trans *shiela*?

Furthermore, in *Pirkei Avos* we're told:

אַל תִּדְיִן אֶת חֲבֵרְךָ עַד שֶׁתִּגִּיעַ לְמִקוּמוֹ<sup>18</sup>

*Do not judge your friend until you stand in their place*

If a cis trans-affirming person has never experienced what it is to be trans, does this directive exclude even a cis trans-affirming person from offering any kind of judgment on a trans person's life?

Now let's consider our third ingredient, communal practice. Which communal practice is relevant here? The practice of the cis dominated geographic community or lineage you belong to? Or is that irrelevant- is the reference for your communal practice the practice of the global trans community or the practice of our Jewish or spiritual trans lineage?

And finally, our fourth ingredient, curation: who gets to curate a trans *teshuva*? Which sources should be a part of that curation? Is there something about the curation itself that might need to be queered to get at the truth of this trans Torah we are seeking?

We are fortunate. There are more living trans Jewish scholars today than there ever were, but with so few openly trans or trans-affirming authorities captured in our historical sacred texts, you can see that we could be dramatically limited in the pool of ancestral sources that we might draw upon. We may have to curate our *teshuva* in a way that is halachically problematic in that it heavily prejudices authorities who are not alive today and not affirming of trans folks and not trans themselves.

Let us at least acknowledge that it is so.

And not just for our own sakes. As sibling Jack Halberstam says:

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<sup>18</sup> Pirkei Avos 2:4



...[N]o one will really be able to embrace the mission of tearing “this shit down” until they realize that the structures they oppose are not only bad for some of us, they are bad for all of us.<sup>19</sup>

To be clear, I don’t want to tear the structure of *halacha* down, but I do want to frankly face its spiritual inadequacies and begin to heal them. And not just to help trans folks, but for the benefit of people of all genders who are harmed by these shortcomings. Cis hegemony hurts cis people, too. Cis hegemony is not Godly.

The Kranjec Test asks that any Jewish source sheets with more than two sources include at least one non-male source. Perhaps at the very least we need a new test that requires that any *teshuvah* on trans issues that has two or more sources include at least one trans voice.

But for you, I want more than that. I want to keep all of these complications in mind and I want to avoid the temptation to give you a confident facile answer and I want to create this *teshuvah* curating not straight, but curating queerly. I want to try to compose a *teshuvah* that is queer not only in content, but also in form, to, in the words of theologian Patrick S. Cheng,<sup>20</sup> *engage with a methodology that challenges and disrupts the status quo*. So I want to chart a queer path and I also want to ask you to walk that queer path with me, wandering with me through a meandering landscape, grappling with our complications, together seeking a Torah truth.

I make that request for three reasons.

First, it’s a queer request: asking the person asking the *shiela* to wander with the posek. A traditional *teshuvah* is pretty hierarchical. The *posek*, the curator, is decisive and clear, lays out a path that implies this is the only path the person asking the *shiela* should walk. Inviting you into the rambles of my spiritual process disrupts that hierarchy.

Second, there are many *halachot*, many sacred paths. As far as I understand the will of our living Goddess, it isn’t necessary that you or any other reader ascribe to this particular *halacha*, delivered in the *psak*, the ruling, at the end, if it doesn’t resonate with the truth of your soul. But I do think any *halacha* does need to grapple with some of the complex messy issues that I’ll attempt to lay out here.

And finally, perhaps most importantly, the third reason I want to ask you to walk this meandering path with me, is this:

If you will walk with me, then there will be at least two trans folks present every step along the way—you and me.

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<sup>19</sup> Harney, Stefano, Fred Moten, and Jack Halberstam. “The Wild Beyond: with and for the Undercommons.” Introduction. In *The Undercommons Fugitive Planning & Black Study*, 10. Wivenhoe: Minor Compositions, 2013.

<sup>20</sup> Cheng, Patrick S. In *Radical Love: An Introduction to Queer Theology* New York, NY: Seabury Books, 2011.

And if we count The Holy One Blessed be Them, who is always present but particularly so when we talk Torah, this, a Divine presence who we are told has a nonbinary character, then we make three. And that's a pretty good third. As transgender activist sibling Leslie Feinberg pointed out: *Strength, like height, is measured by who you're standing next to.*<sup>21</sup>

So maybe we don't have the wealth of ancestral resources that are trans-affirming enough to be legally relevant for your question. We are three consciousnesses, you, me, and the Divine. In our ancestral tradition, three consciousnesses acting with intention can form a *beis din*, a Jewish court.

Three consciousnesses acting with intention have the power to lay down the law.

### **NIDDAH: A MENSTRUATION MITZVAH OR A WOMAN'S MITZVAH?**

You ask: is *niddah* a women's *mitzvah* or a menstruation *mitzvah*?

For the very first time, trans scholars are weighing in on this question in brilliant explorations of ancient sacred texts and contemporary lived experiences. In Shyla: *Are trans women obligated in niddah? How can that obligation be fulfilled?*, Rabbi Xava De Cordova, discussing trans women's practice of *niddah*, concludes that *niddah* **is** a women's *mitzvah*. In *The Androgynos in the Laws of Milah and Niddah: A Potential Approach to Trans Halakhah*, Alyx Bernstein affirms that *niddah* is limited **only** to women in cisgender-heterosexual couples.

Before I share my own response to your question, I'd like to take you along on a tour of some of our source texts. If we go back to the first geological layer of sacred text, the five books of the Torah, we find two sets of directions around sex and bleeding. They contradict each other.

In Leviticus 18, amidst a laundry list of sexual prohibitions against incest, bestiality, and gay sex that too closely mimicks heterosexual sex—we are told:

וְאִלְּאִשָּׁה בְּנִדָּת טְמֵאָתָהּ לֹא תִקְרַב לְגִלּוֹת עִרְוָתָהּ:<sup>22</sup>

*A woman who is in her menstrual tamei status, do not come near her to uncover her nakedness.*

In this selection, there is no parallel instruction for men who have had seminal emissions.

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<sup>21</sup> Feinberg, Leslie. Essay. In *Stone Butch Blues*, 381. Firebrand Books, 2020

<sup>22</sup> Leviticus 18:19

But a few chapters earlier, in Leviticus 15, the guidance is different. After a selection of instructions for navigating penile discharges and the *tamei* status that they convey, we start with instructions for a man who has a healthy seminal emission:

וְאִישׁ כִּי־תִצָּא מִמֶּנּוּ שִׁכְבַּת־זָרַע וְרָחַץ בַּמַּיִם אֶת־כָּל־בְּשָׂרוֹ וְטָמֵא עַד־הָעֶרֶב:<sup>23</sup>

*When a man has a seminal emission, he shall bathe his whole body in water and be tamei until evening.*

The woman this man has sex with must also bathe in water and remain *tamei* until evening.<sup>24</sup>

The text then immediately turns to a woman and her healthy flow:

וְאִשָּׁה כִּי־תִהְיֶה זָבָה דָּם יִהְיֶה זָבָה בְּבִשְׂרָהּ שִׁבְעַת יָמִים תִּהְיֶה בְּנִדְתָּהּ וְכָל־הַנִּגַּע בָּהּ וְטָמֵא עַד־הָעֶרֶב... וְאִם שָׁכַב וְשָׁכַב אִישׁ אִתָּהּ וְתִהְיֶה נִדְתָּהּ עָלָיו וְטָמֵא שִׁבְעַת יָמִים וְכָל־הַמִּשְׁכָּב אֲשֶׁר־יִשְׁכַּב עָלָיו וְטָמֵא:<sup>25</sup>

*And a woman who has a flow of blood, she shall be a niddah for seven days, and whoever touches her shall be tamei until evening... **And if a man lies with her, her niddah applies to him; he shall be tamei seven days...***

It is understood that it is a normal practice for men to have sex with women who are menstruating, and just as a woman acquires a male's *tamei* status if she is with him when he has a seminal emission, and she follows his protocol of *tamei* until evening, a man acquires a woman's *tamei* status if he is with her when she has a menstrual flow, and he follows her protocol of seven days of *tamei* status.<sup>26</sup>

I understand the Torah as a Divinely-inspired body of knowledge but it is clearly filtered through the minds of men, many men, men who had different agendas at different times. From these contradictory texts we can infer that for some of our ancestors, a woman who was menstruating was sexually forbidden to her partner. (Or at the very least, that was the ruling according to the author of these texts. It's possible that our female ancestors had their own code of behaviors that were uninterested in conforming to this author's sense of the law.) For other ancestors, or at some other time, a menstruating woman was permitted to engage in sex while conveying her contagious *tamei* status to her partner– or perhaps this ruling was an expression of an always present female practice that this Biblical author and not the other was willing to accept.

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<sup>23</sup> Leviticus 15:16

<sup>24</sup> Leviticus 15:18

<sup>25</sup> Leviticus 15:19, 24

<sup>26</sup> Leviticus 15:124

More importantly, states of *tamei* and *tahor* applied both to men and to women, based on each of their bodily flows. Looking at this oldest layer of sacred text, we could say these states—and therefore *niddah*—is not a particularly female practice, it's a practice that has something to do with purity and bodily flow or emission, and maybe something to do with sex.

But this is not the case today. For over a thousand years, men have not accepted *tamei* status after seminal emissions and they have not accepted a requirement to immerse after an emission. Women, on the other hand, seem to have acquired more and more restrictions based on their *tamei* status and more stringent immersion requirements since that time.

What happened?

In the Mishnah Torah's 12th century accounting of our Divine imperatives, we have a vestige of evidence of the one time inclusion of men in these practices. From Maimonides' perspective, positive mitzvah #99 says:

להיות הנידה טמאה ומטמאה לאחרים.

*For [a woman in the] niddah state to be impure and to impart tamei status to others*

And Positive Mitzvah #105 says:

להיות שכבת זרע מטמאה.

*For semen to impart tamei status*

But even by that point, the practice of our male ancestors no longer matched the imperatives of the texts that they wrote.

First, the Talmud, half a millennium before the Mishnah Torah, insisted (despite textual evidence to the contrary) that the original law in the Torah about seminal emissions making men impure was only meant to apply to men who wanted to eat from Temple sacrifices.<sup>27</sup> This kind of bold and creative reinterpretation is part of what keeps our tradition vibrant, but the rabbis neglected to extend a parallel understanding to women and *their* impurity. No reason is offered for this discrepancy.

(Our beloved ancestors who starred in, wrote, and compiled the Talmudic texts maintained troubling lacks of awareness spots when it came to girls and women, who they saw as a deficient in intelligence,<sup>28</sup> and available for sexual intercourse from the age of three years

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<sup>27</sup> Bava Kamma 82b

<sup>28</sup> Medrash Tanchuma Vayikra 22:6; Shabbat 33b; Yalqut Shimoni 98:2

and one day old.<sup>29</sup> These attitudes might have been comparable with those of their non-Jewish contemporaries, but that doesn't make them legitimate, let alone sacred. We can acknowledge this. It has always been the Jewish way to recognize our ancestors as flawed and holy, both.)

The Talmud explains that when Ezra the Scribe came along in the 5th century BCE, he "expanded" the laws on seminal impurity, insisting that a man who was *tamei* from a seminal emission had to immerse not just to eat from Temple sacrifices but also before learning Torah. (Note the ways that this "expansion" continues to adjust the purpose of the law from one of physical or sexual awareness to one of respect for Torah learning, a male-centered ritual.) Ezra's shift is part of what's called *Takanas Ezra*, the ordinance of Ezra. However, at a later point, this entire practice of immersion after seminal emissions was abandoned by men. They just didn't want to do it anymore. So the rabbis nullified the law.<sup>30</sup>

The nullification of a law due to its abandonment by the people is a principle that exists within the halachic process. In the Mishneh Torah we are told:<sup>31</sup>

הָרִי שְׁגֵזְרוּ בֵּית דִּין גְּזָרָה וְדָמוֹ שָׁרַב הַקְהָל יְכוּלִין לַעֲמֹד בָּהּ. וְאַחַר שְׁגֵזְרוּהָ פִקְדָּקוֹ הָעָם בָּהּ וְלֹא פִשְׁטָהּ בְּרַב הַקְהָל  
הָרִי זֹו בְּטֵלָה וְאֵינָן רְשָׁאִין לְכַף אֶת הָעָם לְלַכֵּת בָּהּ:

*If a court issued a decree, thinking that the majority of the community could uphold it and after the decree was issued, the majority of the community raised contentions and the practice did not spread throughout the majority of the community, the decree is nullified. The court cannot compel the people to accept it.*

It's interesting to note that just as most men abandoned their practices regarding flow, most women today have abandoned their practices regarding flow,<sup>32</sup> and therefore, according to the logic of how this dictum has been applied, one might conclude that the entire practice is nullified for people of all genders.

To be clear, I'm not actually trying to nullify the practice of *niddah*. *Punkt farr kert*, it is precisely the opposite. Spoiler alert: I actually think there'd be value in more people

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<sup>29</sup> Yevamot 57b

<sup>30</sup> Shulchan Aruch Harav. Orach Chayim, 88:1

<sup>31</sup> Mishnah Torah Hilchot Mamrim 2:6

<sup>32</sup> Pew studies don't ask about niddah, but with only 39% of Jews often or sometimes marking Shabbos and only 20% of Jews attending *shule* at least monthly, this seems like a reasonable deduction. Mitchell, Travis. "3. Jewish Practices and Customs." Pew Research Center's Religion & Public Life Project. Pew Research Center, October 6, 2022. <https://www.pewresearch.org/religion/2021/05/11/jewish-practices-and-customs/>

practicing a Torah-true *niddah*. But sometimes people talk about *halacha* as if it is an unyielding immutable thing. There's a sense of constriction in the system. It's understandable. Our people have endured much trauma and trauma engenders paralysis. It makes sense that our trauma burden might lead us to a view that our tradition is rigid and unchanging. But we are told that this is not the truth. We are told that our tradition is an *etz chayim*, a living tree. It changes, it evolves, it is responsive to the moment. When we try to discern the correct *halacha*, the correct way to go, the path that is illuminated by Divine grace, we should know that there is spaciousness woven into that practice. There is spaciousness built into the very foundations of our legal/moral/spiritual system.

HaRav Dayan Daniel Siegel says: *[H]alachah is the dynamic and flexible process by which we determine how to respond to contemporary life in the light of Sinai.*<sup>33</sup>

Given this background, is *niddah* a menstruation practice or a woman's practice?

At its roots, what we call a *niddah* practice today did have a parallel male practice, so there was something beyond gender in the formulation of these laws. While *niddah* eventually became a woman's practice, our more ancient ancestors conceived it as part of a practice that was applicable to people of all genders.

This is a nuanced truth. I want you to know that the practice of *niddah* can be yours, no matter your gender. But I don't want to do that while erasing our more recent female ancestors. Because the truth is that historically these laws did evolve away from an all-gender practice and towards a practice of policing women. This might be consequential for you if you don't want to take on a female practice. But I also think it's consequential for our understanding of the practice overall, no matter what choice you or anybody else makes for themselves.

Today, many women have reclaimed practices around *niddah*, *tahara*, and *mikvah* and there is power in that choice. But *es pas nisht*, it does not benefit us, to reclaim the practice without pausing for a moment to make space for the sorrow this practice has inflicted on some of our people.

*Niddah* has misogyny baked into it. It's a hard thing to name, but it is true. And it's important to name the truth. Truth, after all, is the seal of God.<sup>34</sup> We can love our ancestors even as we hold them accountable for their missteps. In fact, that's the only way to love them. Our sacred texts say: *Love that is without rebuke is not love.*<sup>35</sup>

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<sup>33</sup> Siegel, Daniel. *Ms. Moon: White Sliver of Shechina's Return*. Aleph, n.d.

<sup>34</sup> Shabbat 55a; Yoma 69b; Sanhedrin 64a

<sup>35</sup> Beraishis Rabbah 54:3

A little known fact: In 1171, the Jewish women of Egypt in the rabbinic community were so outraged by the extraneous *niddah* practices inflicted on them by the men in their lives, they collectively abandoned those practices to adopt a more flexible *mikvah* practice that better met their spiritual needs. In response, the *nagid*, the leader of the Rabbinic community, one Rabbi Moses ben Maimon, more commonly known as Maimonides, ruled that any woman who did not follow the laws the men had written would be swiftly divorced and denied the alimony stipulation legally due to her as per her *ketubah*, her marriage contract. Threatened with unlawful economic ruin and the destruction of their families, the women acquiesced.<sup>36</sup> I feel the spirits of these female ancestors of ours close at hand as we explore this topic here.

Although some women today treasure their *niddah* practice, others still experience it as an oppressive and traumatic practice. In the words of Hannah Wenger Tam:

*...[N]iddah is not a woman's mitzvah at all, but rather a way in which my privacy is invaded and my body controlled by others.*<sup>37</sup>

From an anonymous<sup>38</sup> online blog:

*My life has moved on  
And part of my secular OTD<sup>39</sup> life  
Means I can choose  
How to live my life  
And not be forced to do things  
I don't want to do  
Ever...  
As for Mikva  
Or nidda laws  
Never  
Ever  
Again.  
And yes in my life*

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<sup>36</sup> Berkovits, Rahel. "Maimonides." Jewish Women's Archive, July 12, 2021. <https://jwa.org/encyclopedia/article/maimonides>.

<sup>37</sup> Wenger Tam, Hannah. "My Body for Myself." NY Jewish Week, December 9, 2020.

<sup>38</sup> The frequent anonymity of critical postings on this subject might reflect the lack of space to discuss these contentions within communities where this practice is the norm—an injustice to acknowledge in communities seeking to revive a *niddah* practice

<sup>39</sup> OTD is short for Off the Derech, or ex-ultra-Orthodox

*And my world  
And my experience  
It IS barbaric  
It IS inhumane.<sup>40</sup>*

Another anonymous post:

*...mikvah makes me so angry. It feels like it was designed to keep women pregnant. It makes me feel ashamed of my body. I hate getting my period. I hate having a random rebbetzin watching me dunk naked in a pool and telling me that my dunking is "kosher." The whole process feels gross to me and makes me feel terrible. And the fact that you have no choice as a woman not to do it is so degrading. If you want to be married and have kids you have to do this. Its gross.<sup>41</sup>*

As we seek to find our own sacred way, I don't want to steamroll past these holy women, our beloved sisters, siblings, and ancestors.

Let us pause. Let us take a breath. Let us call to mind their suffering and their helplessness, and for some, their *hishtoqequt*, their yearning for a practice that didn't harm them, for a practice that could instead bring them closer to the Divine.

In the names of our ancestors and our sisters and our siblings *may justice well up like water, righteousness like a perpetual stream.*<sup>42</sup>

It is difficult to allow this uncomfortable pain to coexist alongside our exploration, as part of it. I think it is our duty to be present with this difficulty.

This is a lot to digest. I think it's worth us spending some time with the misogynistic elements of *niddah*, personally and communally.

When we give lived experience its due, it becomes harder to argue that *niddah* is not a woman's practice. As a nonbinary person, if you don't experience yourself as a woman, *niddah* might not be relevant to your spiritual life. (Or, depending on the particulars of your identity, if you occasionally experience yourself as a woman, it might only be relevant during those times.)

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<sup>40</sup> "Marital Intimacy and Mikvah Within an Abusive Marriage." Diary of an OTD Girl (blog), April 3, 2016. <https://diaryofanotdgirl.wordpress.com/2016/04/03/marital-intimacy-and-mikvah-within-an-abusive-marriage/>.

<sup>41</sup> Anonymous. "Mikvah Blues." r/Exjew (blog), 2020. [https://www.reddit.com/r/exjew/comments/mpiwcn/mikvah\\_blues/](https://www.reddit.com/r/exjew/comments/mpiwcn/mikvah_blues/)

<sup>42</sup> Amos 5:24



But now that we've laid out all of this history and framing, I'd like to approach your question of whether or not *niddah* is a women's practice from a radically different direction:

Let us assume for a moment that *niddah* is a woman's practice. In the consensus of the pious, we now understand that women are as fully human and fully Jewish as men. Therefore, we allow women full access to rights, rituals, and responsibilities previously reserved for men. This was codified by the Reform movement in 1944<sup>43</sup> and in the Conservative movement in 2001<sup>44</sup>--- although we need no human system to grant women human rights denied by men but given to them by the Divine.

But here's the rub: if women are truly spiritually equal to men, and we give women access to the male world, then must we not also give men access to a female world?

In the poem "Ode of Girl's Things," Sharon Olds speaks to this truth, accepted within secular feminism, in particularly poignant terms:

*...And it turned out  
you shared some things with boys—  
the alphabet was not just theirs—  
and you could make forays over into their territory,  
you could have what you could have because it was yours,  
and a little of what was theirs, because  
you took it. Much later, you'd have to give things  
up, too, to make it fair—long  
hair, skirts, even breasts, a pair  
of raspberry colored pumps which a friend  
wanted to put on, if they would fit his foot, and they did.*<sup>45</sup>

If we give women the keys to the men's sanctuary but do not give men the keys to the women's sanctuary, we imply that the women's sanctuary is of lesser value and meaning. Do we believe that authority and *kedusha*, sanctity, lie only in the lineage of men? If we

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<sup>43</sup> The Reform movement completes the process of the increasing rights of women and declares women equal in all legal religious matters to men." Freehof, Solomon Bennett. Essay. In *Reform Jewish Practice: And Its Rabbinic Background*, 52. Cincinnati, OH: Hebrew Union College Press, 1944.

<sup>44</sup> "THEREFORE BE IT RESOLVED that the Rabbinical Assembly, in Convention assembled, encourages all branches of Conservative Judaism to support full equality of all Jews, regardless of gender, in every area of religious and community life..." Geller, Myron S. Rep. *Woman Is Eligible to Testify*. Committee on Jewish Law and Standards of the Rabbinical Assembly, n.d.

<sup>45</sup> Olds, Sharon. "Ode to Girl's Things." Essay. In *Odes*. New York: Alfred A. Knopf, 2016.

believe the work of women and the wisdom of women are equal to the work and wisdom of men, surely men should be given the opportunity to practice some form of *niddah* and *mikvah* just as much as women should be given the opportunity to wear *tzitzit*.

Now, should—and in what ways may—*niddah* be an opportunity for men or an equal “obligation”? How do we evaluate this question in the reverse direction—for those who believe men are obligated to wear *yarmulkes*, are women required to wear *yarmulkes* or do they simply have the opportunity to if they so desire? Torah scholar Rabbi William Friedman argues that it is an obligation for women to lay *tefillin*, and one might imply from his argument that this obligatory status applies to all *mitzvos* traditionally reserved for men.<sup>46</sup> Based on Friedman’s ruling, we might say that *niddah* is more than an opportunity for men, it is an obligation.

Either way, whether we say *niddah* is an obligation or an opportunity for men, it is not an uncomplicated process to invite cis men in particular into the practice. Women have been an oppressed group for millenia and cis men have been their oppressors. Access to female practice must be given in a way that honors the wounds, capacities, history, and lived experience of women and in a way that centers the moral responsibility of cis men. But we can honor these complications even as we take steps towards expanding equality and honoring the female ancestral practice by opening *niddah* to cis men (and of course, trans men as well).

This is not an entirely new idea. Gestures have been made to welcome cisgender and non-menstruating men into the practice of *niddah* already. Within the Conservative movement, Rabbi Joel Roth, for example, has long taught the spiritual value of heterosexual men in relationship with menstruating women going to the *mikvah* when their partners do, saying: *I saw men’s mikvah observance as preparation of the soul for the resumption of marital intimacy.*<sup>47</sup>

My claim is larger than this, though. I believe that if we truly honor the lineage of women, we’d open this practice to people of all genders, in any or no style of relationship.

So how might a non-menstruating individual practice *niddah*? They might tie their practice to a moment in the cycle of the moon—perhaps *kiddush lavana*, when She is at her fullest—

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<sup>46</sup> Friedman, Will. “Why Women Can - and Must - Lay Tefillin.” *The Forward*. *The Forward*, January 23, 2014. <https://forward.com/opinion/191430/why-women-can-and-must-lay-tefillin/>.

<sup>47</sup> Heilman, Uriel. “More Men Making Monthly Mikvah Dunks as Menstrual RRte.” *Jewish Telegraphic Agency*, 13 Dec. 2015, <https://www.jta.org/2015/12/13/united-states/more-men-making-monthly-mikvah-dunks-as-menstrual-rite>. Accessed 12 Mar. 2023.

as a nod to feminine roots of the practice of sacred sexuality and the moon as a feminine symbol in our tradition.<sup>48</sup>

A person could abstain from sexuality for one day, as per the biblical ordinance for men, or for seven days, as per the biblical ordinance for women, or for some amount of time in between these two, depending on their soul's needs and the demands of that particular season of their life. They would immerse in the evening at the conclusion of their abstinence to enter a state of *tahara*. All people would recite the blessing on *mikvah* and perform the rite with the same sense of responsibility and obligation.

There are a number of blessed advantages to this idea. First, it would welcome trans women into the practice of their mothers without unholy scrutiny into the particularities of their anatomy.<sup>49</sup> Second, it would invite non-menstruating menopausal women to continue this practice, continuing to tend to the body and honor the body throughout their lives. Thirdly, if we introduced this practice to teenagers of all genders, it could become a beautiful keva, or structure, for a young person's developing relationship with their own sexuality.

If all people should be engaged in a *niddah* practice, there is an argument to be made that we might reinstate the Biblical practice of a *niddah* style reaction to seminal emissions. However, men abandoned their *mitzvah* while women maintained their practice. We can honor the sacred efforts and the suffering of our mothers by pinning our practice to the cycle of the moon, no matter the nature of our own body's flow.

Sending all adults to the *mikvah* monthly to sanctify their sexuality, regardless of their gender, may be a radical step, but one that is rooted in *mesorah*, the ancestral tradition, and *mitzvah*, the Divine imperative of this moment now– the imperative of truth, the imperative of justice, the imperative of sanctity.

To return to you, Plonyx, and the particularities of your query, I want to be clear: it isn't fair to ask a nonbinary person to be the vanguard in enacting this *psak*, this ruling, in what has historically been such a gendered *mitzvah*. Cis men should be taking this plunge first. But you spoke of a longing for a practice of sacred sexuality, and I don't want to ignore the possibility that you might want to be the vanguard. Here is an open door. If it doesn't resonate with your soul, it is your spiritual prerogative to find one that does. There are a multitude of paths on which we can walk beside the Divine.

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<sup>48</sup> See Chullin60b

<sup>49</sup> For further discussion on how trans women might navigate Nidda, see Rabbi Xava De Cordova's teshuva, *Shyla: Are trans women obligated in niddah? How can that obligation be fulfilled?*

But if this does resonate with your soul, come on in.

## **SACRED SEXUALITY**

Plonyx, you said:

*I want a practice of sacred sexuality that is rooted in Jewish ancestral wisdom and I've found my niddah practice meaningful, but I am ambivalent about continuing a woman's practice.*

I'm appreciative of your desire for a practice of sacred sexuality and I think it's worth exploring whether *niddah* is in fact a practice of that kind.

What does sacred sexuality mean to you? What of the sacred are you looking for in the experience of your own sexuality and in the act of sex? Before moving to some universal elements of sacred sexuality, it might be wise to spend some time meditating on these questions for yourself. Sanctity is universal and personal, both, and no one can define the particularities of *your* personal longing for sanctity other than yourself.

When considering the universal shape of sacred sexuality, we might identify three major elements of a sacred sexual practice:<sup>50</sup>

(1) *Kevah*, container: Sacred sexuality has a defined container. It is clear about the boundaries of consent and the presence of desire within and between people. As it is affirmed within our sacred texts, *Any sexual union without an abundance of passion, love and will, is without the Divine Presence.*<sup>51</sup>

(2) *Kavannah*, intention: Sacred sexuality is intentional. Intentionality can range from brief fleeting intention to profound meditative intention. Sources abound for the importance of *kavannah* within sacred sexuality in our tradition, including the instruction from the *Chemdas Yamim*, a collection of Jewish customs published in the 1730s, that instructs the reader that as a person waits for their spouse to return from the *mikvah* and join them in sexual union, they should set a spiritual *kavannah* by chanting from Psalm 113, *Hinei mah tov umah naim*, how good and pleasant it is,<sup>52</sup> and instructions for men having sex in the missionary position from the mystical giant, the RaMaQ, Rabbi Moshe Cordevero, that we might extend to all people: *He should direct his focus to the unification of the eyes and the nose of each, and direct his*

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<sup>50</sup> These three elements emerge from core mystical principles developed by our ancestors and cherished within Renewal Judaism

<sup>51</sup> Iggeret Hakodesh, 13th C.

<sup>52</sup> Chemdas Yamim Shabbos Kodesh Chp 9

*[rocking] movement to the mystery of the foundation/yesod that is collecting seed and light from supernal hokhmah/wisdom.*<sup>53</sup>

(3) *Mimalei kol olamim*, non-duality: Sacred sexuality invites us into contact with something larger than our mundane reality, and when we're lucky, it allows the material bounds of our bodies to melt as we encounter the Oneness that permeates all reality. As we say daily in the Shema, our core incantation: *the Divine is One!* Making contact with this oneness is central to all spiritual practice, as it says in Proverbs, *Know God in all your ways*,<sup>54</sup> but it is particularly central to sacred physical practices, as Rebbe Nachman of Breslav says: *every spiritual thing that you learn, you have to teach it also to your body.*<sup>55</sup>

Given these parameters, is *niddah* a practice of sacred sexuality?

In the Tanach, our most ancient of sacred texts, the evidence isn't clear. There is no instruction of *kavannah*, and no explicit language about sanctifying sexuality through these practices.

In contrast, there are other mentions of more explicit sacred sexuality unconnected to *niddah* that do appear in Tanach. One of the most direct, is the mention of the *kadesha* and the *kadesh*, the female and male sex workers who are sacred.

The Torah acknowledges the existence of this role, but offers conflicting evidence of how our ancestors related to it. In one location, it says quite clearly says that no Jew should be a *kadesha* or a *kadesh*,<sup>56</sup> but on the other hand, our sacred ancestor Tamar, matriarch of the messianic line, disguised herself as a *kadesha*,<sup>57</sup> and Yehuda, the tribal leader from whom we get our name "Yehudim" or Jews, had no problem hiring her for sex (although he might have not know that she was an Isrealite *kadesha*), and from that liaison the ancestor of King David was born and the messianic lineage (repetitively anchored to transgressive sexual experiences) is seeded. We also know that our ancestors built rooms for *kadeshim* in the holy temple, although King Josiah, violent mason of patriarchy, later tore them down.<sup>58</sup>

Of particular interest to nonbinary Jews: in Mesopotamian societies that neighbored our ancestors there is some evidence that the role of sacred sex worker might have been a

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<sup>53</sup> RaMaQ Or Yakar on Zohar 2:11b

<sup>54</sup> Proverbs 3:6

<sup>55</sup> Likutei Maran 122:2.5.2

<sup>56</sup> Deutoronomy 23:18

<sup>57</sup> Genesis 38:13-21

<sup>58</sup> II King 23:7

genderqueer role, and it is possible that the *kadesh* and *kadesha* were similarly genderqueer. Rabbi Irwin Keller points out that the tanna, Onkelos, a second century sage, translates the injunction against the *kadesha* and *kadesh* into Aramaic as:

*No Israelite woman should become a servingman and no Israelite man should become a maidservant.*

*In [Onkelos'] understanding, Rabbi Keller states, the crime is not about sexuality or idolatry, but specifically about gender.<sup>59</sup>*

Reflecting on the *kadesh/a*, Rabbi Keller says:

*Torah and its associated commentary treat k'deshim as if they are somehow foreign, practitioners of some other nation's religion. As if no such people would naturally arise within Israel. But this is clearly not true; no prohibitions on cross-dressing, no prohibition on Israelite men become k'deshim would be necessary if it were not in fact happening organically.*

*I look across the ages and I see my people. The k'deshim, these effeminati—who knows how they would label themselves— transgender? gender-fluid? nonbinary?— if they'd been born 3000 years later? Who knows how I would have labeled myself if I'd been born just 40 years later?*

*But I see them...I admire their courage, insistently leading the workshop of Asherah, serving the Divine Feminine, in a moment when the rulers were insisting that God could only be male, and so also His priests. And I cry with them, as they see the Divine being narrowed down by narrow minds...*

This history might offer wisdom for our own practices of sacred sexuality. What might it mean to revive a practice inspired by the *kadesh* and *kadesha*?

But these references aside, the most robust record of something like sacred sexuality is the *Tanach*, our first sacred texts, is within the famous Song of Songs, a sensual poetic conversation between lovers written about three thousand years ago. The Song of Songs is a foundational text for the Jewish mystical tradition, each verse a doorway to a sprawling castle of meaning, but just on the *pshat*, or literal level, there are a couple of directives within Song of Songs that we might consider ancient instructions for sacred sexual practice including:

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<sup>59</sup> Keller, Irwin. "A Postcard from the Effeminati." Essay. In *Liberating Gender for Jews and Allies: The Wisdom of Transkeit*, edited by Jane Rachel Litman and Jakob Hero-Shaw. Newcastle upon Tyne: Cambridge Scholars Publishing, 2022.

אִם־תִּעֲרֹוּ וְאִם־תִּעֲוָרוּ אֶת־הָאֵהָבָה עַד שֶׁתִּחַפֵּץ<sup>60</sup>

*Do not wake or rouse love until it please!*

This imperative might inspire a sacred practice of paying careful attention to the desire in our lover.

And then we have:

אֲכָלוּ רָעִים שְׁתוּ וְשָׁכְרוּ דוּדִים:<sup>61</sup>

*Eat, lovers, and drink: Drink deep of love!*

For those of us who find sensuality a path to the Divine, this command could be a lodestar.

The mystics understood even the less direct verses in the Song of Songs as a literal sexual guidebook, a kind of Jewish *Kama Sutra*.

The RaMaQ used the Song of Songs verse *His left hand was under my head, His right arm did embrace me*<sup>62</sup> as explicated in the Zohar to explain a sexual choreography that could channel appropriate sefirot, or Divine attributes, through the body with the kiss of mouths and genitals as a formation of the Divine name in flesh.<sup>63</sup> The instructions then proceed to outline a sacred number of kisses and a body meditation to undertake in the sexual act in order to bring the male and female Divine attributes into sacred union on the spirit plane. Zoharic scholar Danni Matt notes that the practice, in its full detail, is a counterpart to the Tantric practice of *maithuna*, in which a couple understands themselves as embodying Divine archetypes within the act of sex.

I love each of these sources, but I still find myself longing for a more explicit link in our sacred texts between *niddah* and sacred sexuality, one that I can't seem to find. Maybe that vacuum is simply an invitation for us to channel our own Torah in the poetic chasidic style.

Here's one idea: Proverbs 25:17 says: "Visit your *"raiacha"*s house sparingly, lest they become over-sated with you and despise you." *Raiacha* is normally translated as neighbor, but Song of Songs 5:16 seems to define *raiacha* as a synonym of lover. Perhaps Proverbs is teaching us that our beloveds, those we join with in long-term intimate relationship, are the *bechina*, or associative-spiritual-hyperlink, of *raiacha*, our closest neighbors, so let us make

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<sup>60</sup> Shir HaShirim 2:7, 3:5

<sup>61</sup> Shir HaShirim 5:1

<sup>62</sup> Shir HaShirim 2:6

<sup>63</sup> Reb Moshe Cordovero on Zohar 2:11b

pauses in our visits, moderating supply to build up demand. A practice of *niddah* can allow us to introduce these pauses, a *kevah*, a container, and a *kavannah*, an intention, with the purpose of *Mimalei kol olamim*, achieving a love so powerful it might bring about a state of non-dual consciousness.

I feel confident that more affirmation of the sacred possibilities of *niddah* can be found in the poetics of our sacred texts, the Tanach, as we say:

הַפֶּךְ בָּהּ וְהַפֶּךְ בָּהּ, דְּכֹלֵא בָּהּ<sup>64</sup>

*Turn [the Torah] and turn it, for all is within it.*

You may have noticed that I looked to the scant relevant verses in the *Tanach*, our first layer of sacred texts, in my attempts to shore up the possibility of *niddah* as a practice of sacred sexuality, but I haven't surveyed the chapters and chapters of texts on *niddah* in the rabbinic texts and the codes of Jewish law from the past fourteen hundred years.

I don't think there's much evidence for *niddah* as a practice of sacred sexuality in rabbinic texts. There might be some slivers of sanctity in those pages, but texts written by men about men arguing about the details of women's menstrual flows and the color of their menstrual blood and the nature of the women's impurity—texts about men making very consequential decisions about women's bodies—aren't inherently sacred.

How can they be sacred when the *kevah* is violated—women and those who menstruate are not included in the conversation, the boundaries of their consent and desires filtered through the curational eye of male rabbis? And how can they be sacred if *kavannah* is violated—women's intentions not a part of the process for developing the bounds of the practice, sometimes violently suppressed, as with the Egyptian women under Maimonides ruling?

The Shulchan Aruch demands that those who menstruate conduct what is politely translated as an "internal examination" stuffing a wadded white cloth into their vaginal cavity to the depth that a penis reaches a bare minimum of twice after every menstrual cycle— even if the women so instructed protest that they find it "uncomfortable."<sup>65</sup> Perhaps there is sanctity in this practice for those who enjoy it and find sanctity in it, doing what their mothers did, doing what the male rabbis said was God's will, but I won't affirm that there is sanctity in a practice that at its face value insists on a regular sexual assault that must be performed by its victim on pain of (a false message of) enraging God and their spouses.

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<sup>64</sup> Pirkei Avos 5:22

<sup>65</sup> Yoreh Deah 196:6



How can there be inherent sanctity in this practice when *Mimalei kol olamim* is violated and the inherent dignity of all people that arises from our Oneness trampled on?

We can put this misogyny in context: in some cases, our male rabbinic ancestors were actually far ahead of their non-Jewish contemporaries when it came to the respect they accorded women. But not always. When we consider what sources to draw on in the present day, the line is clear. *Al kol panim*, at any rate, men talking about women's bodies and making decisions on their behalf is structurally misogynistic. Misogyny is not sacred. I can reclaim the potential of niddah as our Biblical ancestors may have meant it while rejecting the practice of niddah as defined by our rabbinic ancestors.

This has gone too far! I can hear some people crying. How dare you dismiss a whole category of our ancestors' wisdom just like that? What will be next?! We'll have nothing left! This is sacrilege!

Ah. But the thing is, we've already done this. And done it wisely, without losing contact with the ancestors. When I say we've already done this, I mean men. Our male ancestors. Without outcry. See, alongside pages and pages of discussion about the laws of *niddah*, the talmud also contains pages and pages of discussion about the laws of medical care.

*For what purpose do people eat [hyssop]? It is eaten for curing intestinal worms. And with what is it eaten? It is eaten with seven black dates...*<sup>66</sup>

*One who was bitten by a snake should have the fetus of a white donkey brought to him, and it should be torn open and placed on the snakebite...*<sup>67</sup>

*Urine that is forty days old is an effective remedy for several maladies: A very small cupful is beneficial in treating a hornet sting...*<sup>68</sup>

We do not consider these imperatives sacred. Maybe archaeologically sacred or historically sacred, but not sacred as medicine. *Shinnui Halttim*, we say, invoking a maxim that allows us to wholesale curate ancestral wisdom. Times change.

Does rejecting our ancestors' medical imperatives mean that all of Judaism has crumbled? No. We have disregarded many of the particulars of our ancestral advice around how to evaluate, treat, and heal sick people, but we can still draw on the general values of our tradition to maintain a rich spiritual practice of caring for sick that is *mamash*, truly, rooted in ancestral wisdom.

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<sup>66</sup> Shabbat 109b

<sup>67</sup> Ibid

<sup>68</sup> Ibid

Let us award women and those who menstruate the same dignity.

A guiding truth, from sibling Leslie Feinberg:

*History, in the hands of those who have the most to gain from change, is a formidable weapon. That's why colonizers and imperialists always burned and destroyed the historical accounts of those they conquered. They revise history to parrot one message over and over again, "the way things are now is the way they've always been". The meaning is clear and demoralizing: Don't even think about fighting for change.<sup>69</sup>*

When we understand the history of how Jewish imperatives and traditions have developed, we are empowered.

As it is, I'm not the first person to object to the sexual attitudes of our rabbinic ancestors. Having heard the story of Maimonides and the holy women of Egypt, it might not surprise you to know that Maimonides, who was foundational in the formation of rabbinic law, was a committed Aristotilian and deeply sex negative. A 16th century anonymously authored sex positive sacred text titled the *Iggeret HaKodesh* angrily declares:

*The matter is not as Rabbi Moses [Maimonides] of blessed memory thought and believed in his Guide to the Perplexed, when he praised Aristotle's statements.... We, who possess the holy Torah, believe that the blessed God created everything as His wisdom decreed and created nothing shameful or ugly. For if we say that copulation is shameful, then the sexual organs are contemptible. But God, blessed be He, created them according to His word!<sup>70</sup>*

Thankfully, today there are a number of teachers rooted in Jewish ancestral wisdom who are reviving practices of sexual sanctity that are not rooted in the misogyny and unpleasantness of many of our rabbinic ancestors.

The holy Reb Zalman Schachter-Shalomi, zt"l, and his wife, Eve Ilse, offer the following direction:

*In the sexual act, we want to escape the sense of being imprisoned by skin and separated from the rest of the universe. Often, however, this desire remains quite unconscious, and then sex is engaged in as a mere diversion from the concerns and stresses of daily life. Our contact is only skin deep, and consequently we continue to feel alone, abandoned, betrayed, and unloved.*

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<sup>69</sup> Feinberg, Leslie. "Learning From Experience." Essay. In *Trans Liberation: Beyond Pink or Blue*, 119. Boston, Mass: Beacon Press, 2007.

<sup>70</sup> As translated here <https://jwa.org/encyclopedia/article/iggeret-ha-kodesh>

*But sexual love can be a hidden window onto the spiritual reality. At the height of passion or in the fullness of love, we might suddenly feel transported to a different plane of existence where all of our sensations, experiences, and thoughts occur against the peaceful backdrop of an overriding sense of at-oneness.*

*Love is so universal in the world that it even underlies the physical forces of nature. What is gravity but the loving force of attraction between two bodies in space? How marvelous, how basic love is in the universe!*

*The ecological spirituality called for today is founded in a deep recognition of the unity of life – a unity that is celebrated in the act of love. Through erotic passion we overcome our habitual egoistic insularity and reach into the core of other beings.<sup>71</sup>*

In another essay, Eve addresses her experience more explicitly:

*I do experience sex (even such safe sex) as risky business. It is precisely and only him that I want there, within me, embracing me. I mean, I could get capitulated far out into the Great Wow, and maybe never come back! Then when my scattered cells/selves do re-collect, they are interspersed with particles of him. Thank God it is him, because I am no longer quite who I was; post coitus, I am a mutant. Surely this is one of the Sacred Paths. Hidden in such an irresistible drive is a Way Home. In my head I know that we are never really separate from God. When we make love, the reality of what this may mean begins to unfold in my flesh.*

It might seem a bit awkward to peek like this into the bedroom of one of our people's holiest sages, but learning about sacred sexuality directly from our teachers is a Jewish tradition. There is a famous passage in the Talmud<sup>72</sup> in which Rav Kahana hides under the bed of his teacher, the sage Rav.

*He heard Rav chatting and laughing with his wife, and seeing to his needs. Rav Kahana said to Rav: The mouth of Abba, Rav, is like one whom has never eaten a cooked dish, i.e., his behavior was lustful. Rav said to him: Kahana, you are here? Leave, as this is an undesirable mode of behavior.*

*Rav Kahana said to him: It is Torah, and I must learn.*

It is Torah. We must learn.

Having taken you on a very meandering tour of some of our sources on sacred sexuality, I hope these ins and outs might empower you as you make your own choices about your

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<sup>71</sup> Schachter-Shalomi, Zalman, and Eve Ilse. "Sacred Sex." YES! Magazine, October 20, 1997.

<sup>72</sup> Brachot 62a

practice that best enhance your relationship with the Divine within you, around you, and beyond you.

I believe in the legitimacy and power of a personal path balanced between ancestral tradition and the Divine imperative of the now, but I also believe in the legitimacy and power of a communal path aiming at the same balance.

To that end, I will offer a *psak* that represents my best sense of the mitzvah, the Divinely sanctioned imperative, in the realm of sacred sexuality today.

## **Psak**

From my keyhole, my *aniyut daati*, there is a Jewish imperative for sexually active folks to invite into their lives a practice of sacred sexuality, no matter their gender. A practice of sacred sexuality is one in which we bring into our sexuality intentionality, presence, and honoring of the self, the other (if there is another or others), and the Divine which is within us, around us, and beyond us.

To enhance this practice, ancestral wisdom commends a monthly practice of a period of one to seven days of sexual abstinence, followed by a *mikvah*. This monthly practice can be fixed to a menstrual flow, or absent that, a period in the cycle of the moon. One might also find a teacher to delve into the lesser known mystical sacred sexuality practices of our ancestors to enhance one's practice.

In order for it to be a kosher or complete immersion, the *mikvah* must be kosher: it must honor the inherent dignity of a body of any gender.

What do to if one does not have access to a kosher *mikvah*? A *psak* on *mikvah* follows.



## Mikvah: A Psak

I hope that one day soon we'll live in a world where every neighborhood with Jews will have a kosher *mikvah* in which folks of all genders can immerse.

We are not there yet. Whether we're talking about constructed *mikvaot* or natural bodies of water functioning as *mikvaot*, not all neighborhoods have *mikvaot*, and not all *mikvaot* have non-gendered options, not all *mikvaot* are accessible for all bodies, and overburdened caregivers or other folks with many responsibilities in an atomic society might be unable to create time to access a *mikvah*, even if there was a kosher *mikvah* available.

What to do?

There is a traditional path: the tradition says the men who are required to immerse in the *mikvah* may instead pour nine *kav* of water over their bodies<sup>73</sup>—about the amount of water in a four minute shower.<sup>74</sup> To anyone concerned with the fact that traditional sources excluded menstruating women from availing themselves of this option (which was, in fact, the option the aforementioned Egyptian women were bravely campaigning for), we might offer the Yiddish expression: רבי איז קו די, רבי – Rabbi, the cow is yours— which is a kind of gesture towards a Rawlsian “veil of ignorance” – if the matter considered your own welfare you would (or in this case, did) rule differently. We must afford others the same consideration we permit ourselves.

Still, for me and perhaps for others, there's something a little unsettled about this option on its own. Most of us shower every day. Is there enough power in a simple shower? Is it *kadesh* or set aside enough to wake us up, to plug us in to the spiritual power of our action, to summon the *kavanna*, the *kevah*, the *Mimalei kol olamim* we're looking for in our sacred sexual practice?

I suspect not. I don't think a monthly shower will do the job we're asking of it.

Enter: the *mikvah* bowl.

A *mikvah* bowl is a bowl set aside only for the purpose of *mikvah*. One might enact this setting aside, this sanctification, by immersing the chosen bowl in a body of natural water, through ritual, or through blessing.

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<sup>73</sup> Brachot 22a:16

<sup>74</sup> 12.5 liters or 3.3 gallons according to R' Chaim No'eh or 21.5 liters or 5.7 gallons according to the Chazon Ish. "Choshen Mishpat", Kollel. "Shower for 9 Kabin." Din Online. Kollel "Choshen Mishpat" , March 16, 2014. <https://dionline.org/2014/03/16/shower-for-9-kabin/>

When it is time to immerse in *mikvah*, a person undressed in a shower or bath fills the sacred *mikvah* bowl with water, makes the appropriate blessing(s), and pours it over their body three times in sequence, pronouncing each time: *kosher, kosher, kosher*, or for those who prefer a different blessing, perhaps: *tahor, tahor, tahor*.

The word *kosher* or *tahor* is an affirmation of the body's inherent wholeness, rightness, and purity in whatever flawed or limited form it takes.

If a person is in an active sexual relationship, their *kavannah* or intention might include remembering the Godliness they embody on their own, in their corporeality and their own sexuality, whole and complete, before they give themselves in union with another.

There is much to seek in the act of sex, many ways to open oneself to hunger for something beyond the self, so there is power in pausing to periodically sanctify that pursuit by rooting ourselves first in an affirmation of our body's perfection as it is, a sacred God-made vessel of life.

We might perform *hiddur mitzvah*, or an enhancement of the *mitzvah*, by collecting ocean water in a bottle and adding a few drops of the ocean water to the water in our *mikvah* bowl before pouring it over the body, an echo of the "kiss" of rain water and the pool waters that is part of a traditional *mikvah*.

A bowl is a pragmatic solution, but also a spiritually resonant one. A bowl is an important symbol of sacred sexuality in Judaism. In Song of Songs, the lover sings out:

*Your navel is like a round bowl!*<sup>75</sup>

This bowl and the *mikvah* bowl also echo with the bowl in a parallel text: Exodus. There we are told that Betzalel, the master artist:

*[M]ade the washing bowl of copper and a stand of copper from the mirrors of the women who performed tasks at the entrance of the Tent of Meeting.*<sup>76</sup>

The medieval commentator Rashi explains that when Moshe asked the people for contributions to build the Sacred Tent, the women offered up their precious copper mirrors. Moshe was offended. What use did he have of these objects of female vanity? But the Holy One Blessed be She said to him:

*Accept them; these are dearer to Me than all the other contributions, because through them the women reared those huge hosts in Egypt!*

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<sup>75</sup> Song of Songs 7:3

<sup>76</sup> Exodus 38:8

The story goes that when the people were slaves in Egypt, the men would be too tired to have sex. The women would bring them food and take out their mirrors, in a little katoptronophilia<sup>77</sup> play, and flirt with their husbands in the mirror, arousing their desire, leading to sex, which led to many children. It was from these mirrors that Betzelal made the washing bowl through which people purified their bodies at the Sacred Tent.

We have so little evidence of the wisdom and sacred practices of our mothers, it's *mamesh*, really, a powerful thing to reclaim the bowl as sacred sexual object in their names.

The *mikvah* bowl is a novel idea that emerged from my own meditations. I rarely have access to a safe *mikvah*, which frustrates me. Sacred sexuality is central to my spiritual practice, I wanted some way to incorporate our ancestral tradition of bodily immersion. I could not believe that the Divine did not share that desire.

As I meditated and contemplated in prayer and in the inky words of our sacred texts and the “words” of white parchment that surround each word of ink and whisper their own lost secrets of our ancient mothers and trans ancestors, the concept of the mikvah bowl came to me, framed in the texts I've shared above. I saw it in conversation with the other powerful domestic ritual objects of our faith: the challah cover, the *bisamim* box, the seder plate. I immediately selected a special bowl, consecrated with sacred words, and began using it as part of my personal practice. Immersing in a communal mikvah or a natural body of water has its own unique intensity, and having another person declare me kosher, its own sweetness, but there is something special about being the one, with the full power of my own neshama, my own Divine spark, to remind all the parts of myself that I, in my full physicality so regularly and mundanely tended to in the very bathroom I am standing in, am, in that full “mundane” physicality, kosher.

May the blessing of the Divine shine on you on the path you choose to walk.

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<sup>77</sup> *Katoptronophilia*: Arousal by engaging in sexual activity in front of mirrors

## Appendix: Tamei, Tahor

Much of the existing halachic discourse on niddah utilizes the terms *tahor* and *tamei*. What do these words actually mean?

The King James Bible renders *tamei* as "unclean." At first blush, this is an uncomfortable translation. We have such an overwhelming history of misogyny built around the notion that menstruating women are "unclean" (often grounded in this very text), it feels ugly. But perhaps unclean is better than the oft-used "impure," in that unclean gestures towards hygiene and the medical. Remember: in the original text men are *tamei* as well as women and healthy emissions and unhealthy emissions are all considered *tamei*. And remember, there is no separate health code in the Torah and the Torah does not consider any element of life as outside its jurisdiction. Read at face value, this section of code is one that aims to address anxieties around illness and health, and it contains some blend of medical advice and spiritual advice. Or perhaps it is entirely medical advice. We do have a fair amount of medical advice in the Torah and subsequent books (almost all of which we disregard).

For those who wish to view *tamei* as a spiritual condition or those who don't see a binary between the medical and the spiritual, there are other ways to translate the word and its opposite, *tahara*.

Rabbi Irwin Keller suggests we might explain *tahara* as "spiritually available" or "a clear channel" with the opposite state, *tamei*, translated as "clouded" or "in the mix" or "in the thick of it."<sup>78</sup>

Rabbi Phyllis Ocean Berman offers another powerful take:

*[I]n considering those moments in life when we are completely consumed by something -- a new baby, a new love-making, a new creative development, sickness, death -- we naturally separate ourselves from the community. Then we can concentrate on that which demands our complete attention. We are "tamei" during a time of intense concentration on one aspect of our lives and separation from the other aspects.*

*At other times, we are able to focus on multiple concerns, balancing them all with relative ease. Then we are "tahor", able to hold multiple identities and tasks in and beyond our home and work lives.*

*Both "tamei" -- that intense laser beam of concentration -- and "tahor" -- that balance that enables us to be in and out of community fluidly as appropriate -- are holy ways of*

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<sup>78</sup> Keller, Irwin. "Not Torah, Not Time, Not Community." Irwin Keller, May 13, 2022. <https://www.irwinkeller.com/itzikswell/2022/5/13/not-torah-not-time-not-community>



*being at different times of our life. I believe these are the real meanings of these two terms that have been*

*so poorly translated, with so much damage in particular to women, for so many hundreds of years.<sup>79</sup>*

It might be valuable to pause and spend some time getting clear for yourself how you understand *tahor* and *tamei*. What understanding of these concepts could help you foster a practice of sacred sexuality?

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I thank God for Her love. *Ain od milvada*.

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<sup>79</sup> Berman, Phyllis. "Torah of 'Tamei': Laser-Beam Holiness, Not 'Impurity.'" *Reb Zalman's 75th Birthday Shabbaton*. Speech presented at the Reb Zalman's 75th birthday Shabbaton, 2000.

לַעֲשׂוֹת־רְצוֹנְךָ אֱלֹהֵי חֲפָצָתִי וְתוֹרָתְךָ בְּתוֹךְ מִעֵי:

*To do what pleases You, my Goddess, is my desire and Your Torah is in my innards*

*Tehillim 40:9*

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