

"Evidence of Non-Heterosexual Inclinations in First Century Judaism"

This is a pre-publication version of what is now found in *Marriage, Family and Relationships: Biblical, doctrinal and contemporary perspectives* ed. Thomas A. Noble, Sara K Whittle, Philip S. Johnston. (London: Apollos IVP, 2017) p.138-154 For academic citations, please use the page numbers and exact text in that publication.

Abstract

Intertestamental and early rabbinic Jews clearly rejected homosexual activity which included pederasty and hedonistic bisexuality. But did they also reject, or even know about, homosexual orientations that today are expressed in sustained and faithful loving relationships? One early rabbinic text implies that they did know about homosexual orientation, and were very concerned to prevent any behaviour that this might provoke, but their attitude was surprisingly non-judgemental towards the individuals.

Introduction

The early Jewish condemnation of homosexual activity is sometimes regarded as sufficient evidence that they condemned any deviation from heterosexual inclinations. However, a condemnation of anal sex within a hedonistic homosexual lifestyle does not necessarily condemn all homoerotic practices or committed and faithful homosexual relationships.

Of course these early authors may not have been aware that a consistent and long term homosexual inclinations or relationships existed or were possible. They may have had preconceptions about those who carried out non-heterosexual practices, as many do today. On the other hand, they may have recognised innate homosexual inclinations so that they regarded homosexual sex differently when it occurred within a committed relationship. A more likely possibility is that they condemned homosexual activity without condemning homosexual orientation.

To remove this uncertainty, we need to know precisely what they did condemn, and also whether they were aware that some individuals did have consistent homosexual inclinations. This paper will therefore explore the specific aspects and extent of homosexuality that is being condemned. It will summarise the relatively well-explored statements in non-rabbinic texts before looking in more detail at a rabbinic tradition which may contain evidence that they were aware of consistent and innate homosexual inclinations.

Second Temple Jewish statements on homosexuality

Many statements about same-sex behaviour have survived from a variety of Jewish sources in the inter-testamental and other early Jewish literature. As usual with moral topics, there is very little in rabbinic sources that can be traced back to the first century, but fortunately one tradition has survived. To understand the import of this rabbinic tradition, we have to remind ourselves about the general stance of Judaism on homosexual practice.

In Alexandria, Philo was particularly scathing about Roman and Greek customs that threatened to infiltrate Jewish lifestyle. His audience was Jewish, so he had no need to disguise his disdain. When describing Sodom, he clearly had an eye on what he regarded as parallels in his own time.

“like cattle, they threw off from their necks the law of nature and applied themselves to ... forbidden forms of intercourse. Not only in their mad lust for women did they violate the marriages of their neighbours, but also men mounted males without respect for the sex nature ... Then, as little by little they accustomed those who were [by nature] men to submit to play the part of women, ... did they emasculate their bodies”.¹

Philo clearly regards these men as hedonistic in both heterosexual and homosexual behaviour, without any innate homosexual orientation. However, he does say that they were gradually transformed and corrupted by their homosexual activity, so this may indicate that he recognised that some men did exhibit a consistent homosexual orientation and that he was presenting an explanation of how this might originate.

Josephus was aware that he had a Roman patron and readers, though he also knew that most of them were disdainful of homosexual practices. So in *Antiquities* he criticises the Sodomite's lack of self-control and their disregard for rules of hospitality.

But the Sodomites, on seeing these young men of remarkably fair appearance whom Lot had taken under his roof, were bent only on violence and outrage to their youthful beauty. Lot adjured them to restrain their passions and not to proceed to dishonour his guests, but to respect their having lodged with him, offering in their stead, if his neighbours were so licentious, his own daughters to gratify their lust. But not even this would content them.²

However, in his apologetic work *Contra Apion*, he criticised homosexual practices in a more forthright manner.

199 What are our marriage laws?... Sodomy it abhors...(215) The penalty for most offences against the Law is death: for adultery, for violating an unmarried woman, for outrage upon a male, for consent of one so tempted to

¹ Abr.1.135-136, Loeb. Yonge follows the Greek more closely: “restive like cattle” who “discard the laws of nature (φύσεως νόμον), pursuing ... unlawful (ἐκθέσμιους) connections (ὀχείας – from ὀχεία 'impregnation'); for not only did they go mad after women, and defile the marriage bed of others, but also those who were men (ἄνδρες) lusted after one another (ἄρρῆσιν ἐπιβαίνοντες – 'male mounting'), doing unseemly things, and not regarding or respecting their common nature (φύσιν) ... and so, by degrees, the men (ἄνδρας) became accustomed to be treated like women (θηλείαν – 'females') ... as to effeminacy (μαλακότητι) and delicacy, became like women in their persons”.

² Ant.1.200-201, Loeb. Whiston's translation follows the Greek in a more verbatim manner: “Now, when the Sodomites saw the young men to be of beautiful countenances, and this to an extraordinary degree, and that they took up their lodgings with Lot, they resolved themselves to enjoy these beautiful boys by force and violence; (201) and when Lot exhorted them to sobriety (σωφρονεῖν – 'sound mind'), and not to offer anything immodest (αἰσχύνῃ - 'shameful') to the strangers, but to have regard to their lodging in his house; and promised, that if [their inclinations] could not be governed (ἄκρατῶς – 'were intoxicated'), he would expose his daughters to their lust instead of these strangers--neither thus were they made ashamed.” The Works of Flavius Josephus translated by Whiston English Translation (1828)

such abuse. The Law is no less inexorable for slaves. ... (273) ... the unnatural vice (ἄρρενας μίξεως – 'male intercourse').³

Josephus views the homosexual behaviour at Sodom as uncontrollably hedonistic and he regarded the men as heterosexuals because they might just as well have accepted Lot's daughters. When summarising the laws, he makes such a close link between homosexual activity and heterosexual rape that they share the same verb: 'if anyone force a virgin or a male' (τις ἂν βιάσῃται κόρην ἢ ἄρρενι). Just in case his readers regard this as referring only to homosexual rape, he adds that equal punishment applies to a man who 'allows the attempt' (παθεῖν ὁ πειρασθείς). Surprisingly Josephus specifically adds that one may not even abuse a slave, which is certainly in the spirit of Jewish law but no Roman reader was likely to agree with this restriction.

Aristeas summarises Jewish law in a similar way but is more eager to show that most non-Jews are corrupt:

The majority of other men defile themselves in their relationships, thereby committing a serious offense, and lands and whole cities take pride in it: they not only procure the males, they also defile mothers and daughters.⁴

Other early Jewish Greek literature is equally vehement against homosexual practices but it is generally less specific.

In Second Enoch he is shown a cruel Hell which is prepared for those guilty of all kinds of sins, but the first in the list is pederasty linked with Sodom:

This place, Enoch, has been prepared for those who do not glorify God, who practice on the earth the sin which is against nature, which is child corruption in the anus in the manner of Sodom ...⁵

The generation that was destroyed by the flood was characterised by adult homosexual partnerships:

God convicts the persons who are idol worshipers and sodomite fornicators and for this reason he brings down the flood upon them...but they began to

³ C.Ap.2.199-273. A more verbatim translation, with added square brackets to indicate the absence of any underlying Greek text: "But then, what are our laws about marriage? ... it abhors the mixture of a male (ἄρρενας) with a male (ἄρρένων); (215) Now the greatest part of offences with us are capital; as if anyone be guilty of adultery; if anyone force a virgin; if [anyone be so impudent as to attempt sodomy with] a male (ἄρρενι); or if, upon another's making an attempt upon him, he submits to be so used (παθεῖν ὁ πειρασθείς - 'he allows the attempt'). There is also a law for slaves of the like nature (ὁμοίως – 'similar'), that can never be avoided. ... (273) ... that unnatural (παρὰ φύσιν) and impudent lust, which makes them lie with males (ἄρρενας μίξεως – 'male intercourse')." The Works of Flavius Josephus translated by Whiston English Translation (1828)

⁴ Arist.1.152 from James H. Charlesworth, ed., *The Old Testament Pseudepigrapha*, 2 vols, (New York: Doubleday, 1983-1985). The Greek text is followed more in a more verbatim way in Robert Henry Charles, ed., *The Apocrypha and Pseudepigrapha of the Old Testament in English: with Introductions and Critical and Explanatory Notes to the Several Books*, 2 vols, (Oxford: Clarendon Press, 1913). There it is translated: "For most other men defile themselves by promiscuous (μολύνουσιν – 'impure') intercourse (ἐπιμισγόμενοι), thereby working great iniquity, and whole countries and cities pride themselves upon such vices. For they not only have intercourse with men but they defile their own mothers and even their daughters.

⁵ Charlesworth 2En.10.4. Only MS P has 'in the anus'.

worship vain gods, ... and abominable fornications that is, friend with friend in the anus, and every other kind of wicked uncleanness which it is disgusting to report.⁶

Sibylline Oracles span a wide range of time and sometimes contain Christian redactions, but their consistent condemnation of homosexual activity has Jewish roots, even if it may be reinforced by Christian editing:

"Do not practice homosexuality".⁷

"they [Jews] do not engage in impious intercourse with male children."⁸

"Neither have they [the righteous] disgraceful desire for another's spouse, or for hateful and repulsive abuse of a male."⁹

"With you [Rome] are found adulteries and illicit intercourse with boys."¹⁰

The Testaments of the Twelve also criticise homosexual behaviour at every opportunity.

"idolaters, adulterers, money lovers, arrogant, lawless, voluptuaries, pederasts (παιδοφθόροι), those who practice bestiality."¹¹

"you will be sexually promiscuous like the promiscuity of the Sodomites and will perish, with few exceptions. You shall resume your actions with loose women"¹²

"Sodom, which did not recognize the Lord's angels and perished forever."¹³

They link this behaviour with hedonistic heterosexuality, both by association and by using the general term πορνεία (at T.Ben.9.1) to describe homosexual behaviour.

The most important Testament in this regard is the Testament of Naphtali, because it uses very similar vocabulary and the same progression of reasoning as that found in Romans 1.24-27,¹⁴ though that parallel is incidental to the subject of this paper.

⁶ Charlesworth 2En.34.1-2. Only MS P has 'in the anus'

⁷ Charlesworth Siby.2.73. The Greek here (ἀρσενοκοιτεῖν) may indicate Christian influence because no use of this term is known outside the NT and its interpreters.

⁸ Charlesworth Siby.3.596. "impious intercourse" translates ἀρσενικοῦς μίγνυνται which may be influenced by the NT word ἀρσενοκοιτεῖς.

⁹ Charlesworth Siby.4.34. The use of ἄρσενος ('male') is probably influenced by Lev.20.13 LXX.

¹⁰ Charlesworth Siby.5.166:

¹¹ Charlesworth T.Levi.17.11:

¹² Charlesworth T.Ben.9.1

¹³ Charlesworth T.Ash.7.1

¹⁴ The phrase "changed the order of their nature" used for both Sodom and the Watchers ("ἐνήλλαξαν τάξιν φύσεως αὐτῶν", T.Naph.3.3, 4) is mirrored in "exchanged their natural function" ("μετήλλαξαν τὴν φυσικὴν χρῆσιν" – Rom.1.26). In both accounts, this results from their pursuit of idolatry.

The gentiles, because they wandered astray and forsook the Lord, have changed the order and have devoted themselves to stones and sticks, patterning themselves after wandering spirits. (4) But you, ... do not become like Sodom which departed from the order of nature (5) Likewise the Watchers departed from nature's order.¹⁵

Jubilees was popular at Qumran and probably in wider Judaism. Here too, homosexuality is associated with fornication and idolatry.

And he told them the judgment of the giants and the judgments of the Sodomites just as they had been judged on account of their evil. And on account of their fornication and impurity and the corruption among themselves with fornication they died.¹⁶

Just as the sons of Sodom were taken from the earth, so (too) all of those who worship idols shall be taken away.¹⁷

The Sentences of Pseudo-Phocylides appears to be a list of laws that the author felt were applicable in a universal way to Jews and Gentiles alike. These included:

(188) Do not seek sexual union with irrational animals. (189) Do not outrage (your) wife by shameful ways of intercourse. (190) Do not transgress with unlawful sex the limits set by nature (191) For even animals are not pleased by intercourse of male with male. (192) And let women not imitate the sexual role of men.¹⁸

The common feature in all these sources is an utter contempt and condemnation for homosexual behavior, which is specifically linked to other hedonistic behavior in most instances (Abr.1.135-136; Ant.1.200-201; C.Ap..2.199-273; Arist.1.152; T.Levi.17.11; T.Ben.9.1; Jub.20.5; P.Phoc.188-192). The behavior is sometimes defined, using terms such as 'in the anus' (MS P of 2En.10.4; 34.2;), 'man-bedding' (Siby.2.73; P.Phoc.188-192), 'man mounting males' (Abr.1.135-136), 'male with a

¹⁵ Charlesworth T.Naph.3.3-5. A more verbatim translation by Charles better reflects the Greek 'changed their nature': "The Gentiles went astray, and forsook the Lord, and changed (ἠλλοίωσαν from ἀλλοίωω) their order (τάξιν φύσεως αὐτῶν – 'order of their nature'), and obeyed stocks and stones, spirits of deceit. 4 But ye shall not be so, my children, recognizing in the firmament, in the earth, and in the sea, and in all created things, the Lord who made all things, that ye become not as Sodom, which changed (ἐνήλλαξε from ἐναλλάσσω) the order (τάξιν) of nature (τάξιν φύσεως αὐτῆς – 'order of their nature'). 5 In like manner the Watchers also changed (ἐνήλλαξαν) the order of their nature (τάξιν φύσεως αὐτῶν), whom the Lord cursed at the flood, on whose account He made the earth without inhabitants and fruitless."

¹⁶ Charlesworth Jub.20.5

¹⁷ Charlesworth Jub.22.22

¹⁸ Charlesworth P.Phoc.188-192. The Greek is translated in a more verbatim manner in Craig E. Evans et al. *The Pseudepigrapha (English)* (OakTree Software, 2008), consulted in BibleWorks 10 where P.Phoc.186-192 is: "Nor lay your hand upon your wife when pregnant. (187) Nor cut a youth's male reproductive nature. (188) Nor to engage in sexual activity with unreasoning creatures. (189) Nor outrage (your) wife in shameless sexual activity. (190) Do not transgress (παραβῆς – 'overstep') with sex (εὐνάς – 'bedding') that is of a nature (φύσεως) in wicked (ἄθεσμον – 'lawless') Cyprus. (191) Not even animals are pleased with (συνεῦαδον from συνανδάνω) sex involving male with male (ἄρσενες εὐνάι – 'male bedding'). (192) Nor let women imitate the sexual activity (λέχος – 'marriage bed') of men (ἀνδρῶν)."

male' (C.Ap..2.199-273), 'intercourse with men' (Arist.1.152; Siby.3.596), 'allowing the attempt' (i.e. allowing penetration, C.Ap..2.199-273), and pederasty (Siby.2.73; Siby.3.596; Siby.5.166; T.Levi.17.11:).

What were these Jews condemning?

These sources clearly condemn homosexual acts, though they referred primarily to the common Roman practice of sex with slaves, hired boys or young men. Most moral codes condemn any sexual behaviour that is harmful to others, which would include pederasty and forced homosexual or heterosexual sex. Roman law allowed forced sex with slaves, but even in Roman society this was looked down on.

Modern moral codes also condemn any sexual behaviour that is regarded as self-harming, and this can include treating another person as an object, even if they consented to this. This includes prostitution and possibly promiscuous behaviour based on casual pairings that do not include the forming of any personal relationship. In this regard, most morally-minded people would agree with these early Jewish condemnations of homosexual behaviour.

However, the unanswered question is whether ancient Jews condemned homosexual inclinations, and whether they allowed committed any consensual homosexual relationships. It is too easy to assume that the condemnation of one type of homosexual practice (such as hedonistic bi-sexuality) implicitly include all related practices. Clearly we cannot expect each author to list every offense, so how can we infer what they are implicitly including?

In these sources, the behaviour named is normally the worst kinds of offences: bestiality, pederasty and homosexual hedonism that is often related to heterosexual hedonism. This leaves us asking whether they are implicitly including or excluding a condemnation of committed homosexual relationships?

This question, which is perhaps more important today than it was in the first century, cannot be answered with these texts, because there is no indication that any of these authors considered this option or even recognised that some individuals have an innate orientation. The only reference to a consistent homosexual inclination is found in Philo who theorized that men taking part in homosexual behavior gradually became feminized (*μαλακός* Abr.1.135-136). However, in the rabbinic text that we will now consider, we find that first century Jews were indeed aware that some individuals had an innate homosexual inclination, whether or not this was expressed in any homosexual activity.

Rabbinic traditions against pederasty, bestiality and homosexuality

Mishnah Kiddushin 4.13 contains a tradition that appears to assume innate homosexual tendencies in some men: "Two unmarried men may not sleep together under the same cover". This rule does not apply to married men, so it apparently makes a distinction between those who are likely to be heterosexual and those who may have homosexual inclinations because they have not yet shown themselves to be heterosexual. The remarkable implication is that this does not refer to hedonistic homosexual activity, because in that case it would prohibit married as well as unmarried men. It appears to recognise that there exists a class of men who are not

interested in heterosexual sex, but may be tempted by taking part in homosexual activities.

This throws up all kinds of questions about the underlying assumptions. Why did the framers of this law think that unmarried men were more likely to take part in homosexual activities than married men? Singleness was certainly unusual among Jews,¹⁹ and it was likely to be caused by refusing brides that had been chosen for them, so this may indicate they did not desire women. But did the rabbis not realise that those with homosexual inclinations might want to hide this fact by marrying? Perhaps they thought that someone with a homosexual orientation was incapable of heterosexual intercourse.²⁰

Whatever the degree of their understanding, the interesting point is the assumption that underlies this ruling: that a person could have innate and consistent homosexual desires, whether or not they were acted upon.

Context of the tradition

The apparent plain meaning of this law is rejected by some modern and ancient Talmudic interpreters. We therefore have to explore its meaning in context, and then examine the ancient counter-interpretations. In orthodox Judaism the later sources such as Talmud are more important and authoritative than the earlier ones such as Mishnah. However, the purpose of this paper is to uncover the views prevalent as close as possible to the first century, for which the original meaning of the Mishnah is more important than its later interpretations.

The context of a passage in Mishnah is normally useful for confirming the subject matter and the meaning of vocabulary, at least as far as the framers of Mishnah were concerned when those passages were arranged in the order that we now have. The overall structure is very ancient, and certainly goes back to the first century CE, because all ancient collections of halakhic materials (i.e. the Mishnah, Tosephta and Talmuds) follow the same overall plan. The material is divided into about 60 Tractates, each dealing with separate subjects, and subdivided into chapters of sub-topics. Some traditions may not relate directly to the subject of the chapter they occur in, especially in Talmudic sources where comments on one subject may lead into others. However the Mishnah and Tosephta follow these subject divisions fairly well, except for the ends of chapters where apparently random traditions sometimes accumulated.

Chapter 4 of Kiddushin concerns those who may not be betrothed or sleep together or even meet together without a chaperone. The first half deals with those who can marry an Israelite or a priest because they have a confirmed heritage, and also those

¹⁹ The evidence for this is summarised well in Rosner, Brian S., *Paul, scripture and ethics* pp.155-59. Boys were expected to be married at 12 (Lam.R.1.2; cf. yQid.1.7, 61a). These texts are relatively late, but there is nothing to suggest that this teaching had changed. The teaching about unmarried men (dealt with below) assumes that this was a rare condition.

²⁰ Plutarch assumed that some men were 'unable or unwilling' to engage in heterosexual sex, in "To Pollianus and Eurydice" 8 (in the middle of a discussion of effeminate men): "Some men, either unable or unwilling to mount themselves into their saddles through infirmity or laziness, teach their horses to fall upon their knees, and in that posture to receive their riders." – translation by William W. Goodwin, ed. *Plutarch's Morals* (Boston: Little, Brown, and Co., 1870).

who can marry a *mamzer* – i.e. someone who may have Gentile or illegitimate ancestry (4.1-11). This section is of interest to NT scholars because it is likely that Jesus' singleness was due to his status as an unofficial *mamzer*,²¹ which meant that he could neither marry a pure Israelite nor an official *mamzer*. Another tradition in this chapter (m.Qid.4.9) assumes that ending a betrothal required a divorce, which helps explain Joseph's intention (cf. Matt.1.19). The second half of this chapter deals with whether a man can be alone with women (4.12), and whether an unmarried man can be alone with children or animals, or sleep under the same sheet as another man (4.12-14).

The last section (4.14) has been expanded by a tangential discussion concerning trades that require a man to meet with women, and debates about whether these and other trades are desirable. An interesting parallel with Jesus' teaching is included in this debate. When affirming that God will provide sufficient income whatever one's trade, they ask rhetorically: "have you ever seen a wild beast or a bird with a craft? Yet they are sustained without anxiety." Although this saying is attributed to R. Simeon b. Eleazar who taught in the late second century CE, the parallels with Jesus' sayings (Matt.6.26 // Luke 12.24) clearly suggest that either Simeon is reliant on Jesus, or (more likely) they are both reliant on a common theme. This illustrates the difficulty of dating rabbinic traditions. When a tradition is attributed to a particular rabbi during a debate, it indicates that this rabbi applied that tradition within this debate, and not necessarily that this rabbi was the origin of that tradition.

The immediate context of the ruling about unmarried men sleeping with each other is a group of other rulings about unmarried men in Mishnah Kiddushin 4.13b-14a.²² The differences in indentation are an indication of probable dating, as described below.

An unmarried man must not be an elementary teacher
לא ילמד רווק סופרים,

Nor may a woman be an elementary teacher
ולא תלמד אישה סופרים;

R. Eleazar [mid 2nd C] said: one also who has no wife must not be an elementary teacher.

רבי אלעזר אומר, אף מי שאין עימו אישה, לא ילמד סופרים

R. Judah [mid 2nd C] said: an unmarried man must not tend cattle
רבי יהודה אומר, לא ירעה רווק בהמה,

Nor may two unmarried men sleep together under the same cover
ולא יישנו שני רווקים בטלית אחת;

But the Sages permit it.
וחכמים מתירין;

The unmarried man (רַוּוֹק, *ravvoq*) may not be a teacher of elementary pupils (סוֹפְרִים, *sopherim*) – i.e. he must not teach writing, which was taught only to the

²¹ Chilton thinks that Jesus may have been considered an official *mamzer* in Galilee though not in Judea where the rules were slightly different (m.Ket.1.5). See Bruce Chilton, "Jesus, le mamzer (Mt 1.18)", (New Testament Studies 47, 2001, 222-227).

²² Or 4.12-13 in some editions.

youngest pupils. Also, they may not tend any "cattle" (בְּהֵמָה, *behemah*) – a word used for domestic animals including sheep, goats, and cows, though also sometimes of birds and wild animals. The word is feminine though it is used for both sexes. Also, two unmarried men may not sleep under a single cloak (טַלִּית, *tallit*) – a wide piece of cloth that is doubled when worn, but can be spread out to cover two people sleeping closely together.

Development of the tradition

The indented layout of the tradition indicates a proposed history of its development. Greater indent indicates lines that are likely to have been added later. The earliest rulings are likely to be the ones forbidding unmarried men from teaching children and sleeping under the same cloak. The others all have indications of being reliant upon or responding to what preceded. The ruling about women teachers is out-of-place logically, but it is understandable as an expansion or wider application of the preceding ruling about men teachers. The response by R. Eleazar removes an inherent ambiguity concerning men whose marriage has ended due to death or divorce. There is no internal evidence that the ruling about tending cattle is a later addition, but the fact that the contributor is named may suggest this. On the other hand, R. Judah was known for preserving ancient traditions that might otherwise have been lost.²³

The reference to 'the Sages' who rescind the ruling about sleeping under a single sheet indicates the outcome of a vote by scholars who later discussed this issue. The probable reasons for this revision are seen in the later discussions recorded in the Babylonian Talmud Kiddushin 82a:

(Concerning the ruling about not teaching children):

What is the reason? Shall we say, on account of the children?
Surely it was taught: "They said to R. Judah [mid 2nd C]: Israel are not suspected of either pederasty or bestiality"?

But an unmarried man [is forbidden] on account of the children's mothers, and a woman on account of their fathers.

R. Eleazar [mid 2nd C] said: One also who has no wife.

The scholars propounded: [Does it mean,] one who has no wife at all, or whose wife does not live with him?

Come and hear: Also one who has a wife but she does not live with him may not be an elementary teacher.

R. Judah [mid 2nd C] said: an unmarried man must not tend etc.

It was taught: "They said to R. Judah [mid 2nd C]: Israel is suspected of neither pederasty nor bestiality."

²³ For example, his ruling about the wording of a divorce certificate at m.Git.9:3 is recorded nowhere else in rabbinic literature, but we now know that it was an independent ancient tradition because the same wording was used in a divorce certificate of 72 CE preserved at Masada. See Tal Ilan, "Notes and Observations on a Newly Published Divorce Bill from the Judaean Desert", *HTR* 89 (1996), pp. 195-202.

This records debates on three rulings: not teaching children, the extension of this ruling to men who had been married, and not tending animals. The second one removes a further ambiguity: Eleazar had already clarified that 'unmarried' included previously married men, and now it is extended to any man whose wife is not living with him. This is presented as an unopposed decision ('Come and hear'). The two other issues are both answered using the same tradition: an assertion that no Israelite should be suspected of pederasty or bestiality. That tradition is not dated, but it is introduced as something that was spoken to (not by) R. Judah – i.e. in the mid 2nd century, which indicates that he is passing on a tradition that he has learned.

The rule about unmarried men sleeping under the same sheet, which was rescinded by the Sages in Mishnah, isn't discussed in Talmud presumably because it was regarded as overturned and irrelevant.

This chain of traditions therefore covers at least three generations. The middle one can be dated to the mid-second century because it involved two named rabbis from that time. We will refer to the former and latter as first-century and third-century, though we must remain aware that these are very general dates.

These traditions condemn three activities that we have also found in Jewish Greek condemnations of Gentile sexuality. Most of the passages that contain detailed condemnations of homosexual behaviour also include references to pederasty and bestiality (2En.10.4; T.Levi.17.11; P.Phoc.188-191). It appears that Jews not only linked these activities but may have assumed that the same people took part in all of them.

However, by the mid-second century it was assumed that the rule against homosexual activity was no longer required in regulations written for Jews, and by the third century it was also unimaginable that bestiality or pederasty would be committed by an Israelite.

This created a problem for these later rabbis because they needed to explain why such rules had been required for Jews in the first place. If all children, animals and unmarried young men were safe among all Israelites, why were these restrictions placed on unmarried Israelite men?

With regard to tending cattle, they argued that what the rule really meant was that fathers should not encourage their unmarried sons to learn this trade. It was an undesirable trade like the others listed after these rules (m.Gid.4.14), because it might cause you to work on a Sabbath. They were able to ignore the ruling about men sleeping close to each other because previous Sages had already rescinded this ruling, and because they were interested in religious rules, not in historical research.

It was more difficult to explain why unmarried men should not teach young children. There was nothing demeaning about this occupation, especially as it was associated with other higher and more honoured forms of education. Their solution was that this rule was made "on account of the children's mothers". That is, young children were brought by mothers who may not be accompanied by other adults. This means that the unmarried men might be alone with mothers – other than the presence of their child who was not a legal witness. These later rabbis concluded that this was the reason why single men should not teach young children, and that it had nothing to do with the potential temptation towards pederasty. They do not attempt to explain why the same situation would not be problematic for a married man.

The tradition in the first century

As a result of the above analysis, we can make some conclusions about the progressive growth of this tradition. In the first century, the text would have consisted of the three rulings:

An unmarried man must not be an elementary teacher
לא ילמד רווק סופרים,

An unmarried man must not tend cattle
לא ירעה רווק בהמה,

Nor may two unmarried men sleep together under the same cover
ולא יישנו שני רווקים בטלית אחת;

This inclusion of the second ruling at this time relies on the assumption that R. Judah was reminding the others of an ancient tradition that had been omitted at this point. Judah was certainly a repository of traditions. Most of his sayings consist of his own opinion about an issue being debated, as is the case with most rabbis. However he occasionally inserted a neglected ruling at relevant points, which might otherwise have been lost. One way to recognise the difference is when Judah presents a complete ruling instead of adding his opinion to the ruling being discussed. For example, in this ruling, Judah could have said: “Nor tend cattle”, but instead he unnecessarily adds the start of the ruling “An unmarried man must not...”. This stands out in stark contrast to the highly abbreviated nature of rabbinic comments, and makes him look verbose or even clumsy, unless he was interjecting a complete tradition that was not his own.

One of countless example of Judah’s normal rabbinic comments is at Mishnah Berakhot 4.1: “The morning prayer [may be recited] until midday.” R. Judah says, "Until the fourth hour." Examples where R. Judah preserves a complete tradition (as he does here) are much rarer. One example occurs in the list of blessings spoken on various occasions, where R. Judah adds "He who sees the Great [Mediterranean] Sea says, 'Blessed is he who made the Great Sea.'". If this was merely a contribution of his own, it would have been normal to summarise this by omitting “He who sees”, as done in the preceding items in the list after these words have occurred in the first one (m.Ber.9.1-2). The fact that he cites the unabbreviated version suggests he is reciting an independent tradition that he had received in this form. Similarly in Mishnah Demai, after the ruling “He who leases a field from a gentile separates tithes and [then] gives to him [his rent].” R. Judah adds "Also he who sharecrops his father's field for a gentile separates tithes and [then] gives to him [his rent]" (m.Dem.6.2). This addition is surprising because it unnecessarily repeats much of the preceding ruling. He could have been recorded as simply saying: “Also he who sharecrops his father’s field from a Gentile”. The fact that the ruling is transmitted in full implies that he is repeating something that he has received in this form.

Rabbinic assumptions about homosexuality

These three rulings are clearly related to the kinds of sins that other Jews recognised among Gentiles. Later rabbis assumed that no fellow Jew would ever commit such acts, so they re-interpreted these rules. However, this triad of rules, avoiding being alone with children, animals and single young men is surely related to the same triad

of deviant sexual behaviour that Jewish Greek literature condemned: pederasty, bestiality and homosexuality, and their alternate explanations are not convincing.

It may be worth asking why the ruling about two adult single males sleeping next to each other was the first to be regarded as unnecessary. Probably it was assumed that they would be a guard to each other. This is similar to an immediately preceding ruling, "A man may not be alone with two women, but one woman may be alone with two men." (m.Qid.4.12). Perhaps the best way to appreciate this is with the old joke about why you never take a Southern Baptist on a fishing trip: because he'll drink all your beer. Instead you should take two Southern Baptists because then neither of them will drink any beer. It was considered much more likely that someone would attempt deviant behaviour when it could not be legally reported by another man.

The assumptions behind these first century rulings are that homosexual acts and the behaviour that they associated with this might occur even among Israelites. The type of rules that they created were not punishments for this behaviour or lists of evidence by which the crime might be proved, but preventative measures. It appears that they were hopeful, perhaps realistically, that these rules would stop these offenses ever happening.

These rules also presume that the only persons likely to be tempted in this way were unmarried males. Whether or not this was accurate, the assumption behind this is remarkable. They assumed that these temptations occurred only to a small group of people who were not interested in heterosexual sex. In other words they regarded these people as having consistently non-heterosexual inclinations.

Also, there appears to be no interest in identifying these individuals in order to ostracise them from Jewish society. They merely wanted to make sure that they were not put into situations where they might be tempted to act on their inclinations. This implies that they would be happy to let them teach adults, or work on their farm crops, and even to share a bed with them. These were not homophobic rulings, but rules helping fellow Israelites who had this specific set of temptations, to live within the rules of Torah.

Conclusions from Rabbinic and Non-Rabbinic attitudes

It would be easy to jump to the conclusion that rabbinic and non-rabbinic Judaism had very different attitudes, but that would be difficult to substantiate. Although rabbinic traditions are recorded in a very different way to Jewish Greek literature, we cannot therefore conclude that they represented completely divergent types of Jews. Jews such as Philo, Josephus, Aristeas, and the sectarians who treasured books such as Jubilees and the Testaments were all seeking to obey the Torah. Minor differences in their interpretations concerning the calendar and purity laws created huge rifts between them, but there is no reason to believe that their attitude to homosexuality was affected by these distinctions.

The significant difference between Jewish Greek writings and rabbinic traditions was their subject matter and their readership. The Greek works were to be read by Gentiles and by Jews immersed in the Graeco-Roman culture. A strong condemnation of hedonistic homosexual behaviour was meant to both condemn the Gentiles and to remind Jews of their distinctive superiority. In contrast, the rabbinic traditions record academic and legal debates in schoolrooms and courtrooms. They faced up to the fact

that some Jews might indeed fall into these same sins if they were not helped to avoid them.

These two sets of literature are not contradictory: they utterly condemned any acts of homosexual sex, bestiality or pederasty. They were also both written with the realisation that a few Jews were tempted in these directions. However, they did not regard these sexual temptations or inclinations as sinful, because they recognised that all humans have sinful inclinations. So they dealt with this temptation in the same way as the general inclination to break Torah commands: they built a fence. That is, they created additional rules to help prevent individuals from stepping over a line that might lead to breaking a divine commandment.

From this evidence, we have to conclude that first century Jews did regard some individuals as having innate non-heterosexual inclinations. That is, they would be tempted by homosexual and related behaviour if the opportunity arose. They did not seek to identify these individuals in order to isolate them or punish them, but instead they tried to help them avoid temptation. At the same time, they utterly condemned homosexual acts, which they saw Gentiles committing, even when they didn't have the excuse of this inclination. They emphasised the point that they lacked this mitigating inclination by accusing these same individuals of heterosexual immorality.

Although the evidence from rabbinic traditions is extremely thin, it is consistent with what we know from elsewhere, albeit representing the situation from a different angle. It is possible that much of the population was unaware of the insight that these rabbis had, but these rules had to be public in order for them to be effective, so this approach was not a secret. This suggests the rabbi's non-condemnatory attitude towards these individuals must have been widely recognised.

We conclude that the loud condemnation of pederasty, bestiality and homosexual hedonism was not a sign of homophobia. Rabbinic rules in the first century assumed that even Jewish young men had inclinations in those directions, and were designed to help them avoid such temptations. There is no evidence that these individuals were ostracised or treated differently in any other regard.

David Instone-Brewer 2017