

# How Sex Got Bad

Religion Makes It So

Rod Dubey

2013

a review of

*Sex and Punishment: Four Thousand Years of Judging Desire* by Eric Berkowitz. Counterpoint Press, Berkeley, Calif., 2012

Hebrew law changed everything. Prior to this, homosexuality had generally gone without notice, but in Hebrew law it became (along with many other sex acts) punishable by death. Although many of their laws drew from past practices, for the Hebrews, private sex acts, and everything associated with them, became God's business.

Sex could now be sin and a source of guilt. Sexual transgressions were viewed as a crime against the community and punishment was administered by the church. 'Nothing before or since has so effectively equated the body, the state, and the collective moral soul,' writes Eric Berkowitz in *Sex and Punishment: Four Thousand Years of Judging Desire*.

It wasn't that there were no rules before. There have always been laws to protect male rights and public order. Adultery prohibitions, for example, protected against male violence and heredity issues. But, as noted by Berkowitz, Hebrew law began a trajectory that led to Christian and Muslim sex law. (Worth remembering the Biblical origins next time we hear of a stoning or some other cruelty in a rural Muslim village.) And, the Judeo-Christian idea that private sex can be a crime against God, the state and the church still underlies sex law in the West as it exists today.

*Sex and Punishment* is a lively and engaging history of sex laws told through a colorful recounting of cases, mostly in the US and Europe, up to the end of the nineteenth century. We hear the story of a Northern Rhodesian dragged to a tribunal by his wife after awakening to discover him in the unnatural act of kissing her breast. We learn of the singular workplace standard where a medieval peasant serf could knock off work in the fields to satisfy his wife if she seemed randy enough to go elsewhere if he didn't. Told with humor and outrage, sex law is always placed within a political and cultural context.

In Hebrew law, for the first time, the body itself became regulated. Individual bodies were linked to the state so that what made one's body 'unclean' also weakened the body politic. Blood and semen could now, under certain circumstances, cause impurity. Rules around menstruation and circumcision were adopted and forms of unmarried sex (such as bestiality and gay sex) were condemned on the basis of being 'unclean.'

By the Middle-Ages the body itself was under attack from Christianity. Flesh was an evil that inhibited the attainment of a spiritual life. Married sex was a necessary evil to increase the tribe and this was its only justification. Whatever interfered with pregnancy, such as masturbation and coitus interruptus, was condemned. Sex among couples would even become subject to penalty for dereliction of duty; a change that amounted to a war on pleasure and desire.

Several hundred years after Hebrew law was developed, Christianity emerged and spread. It may have remained a marginal movement had it not gained enormous power by being adopted as the official religion of the Roman state. Two mutually supportive sets of courts would henceforth govern sex, church and civil. (It was not

until the 18<sup>th</sup> century, with Protestantism, that legal control over morality in the West shifted entirely from the church to the state.)

Throughout this history we see how sex laws were used to reinforce state and church power. The fear that sex unleashes an anarchic threat to authority seems at times to have been both believed and cynically used to attack opponents. The Roman crackdown on bacchanals, for example, led to the killing of thousands. Its stated aim, that they were seditious, was not true. The massacre was used to consolidate state power.

What constitutes a sex crime always reflected local beliefs and the needs of authority. In spite of the general restrictions against adultery in Sparta, for instance, it was often overlooked because it was a warrior society where soldiers weren't at home and the state needed a constant source of recruits.

It is not just difference that stands out through history, but sameness. The differential treatment of the powerful when they transgressed rules occurred in every culture.

In one instance, in thirteenth century England, many rapists were priests and they tried to get their cases heard in church courts because they would be treated leniently. In continental Frankish areas, of the same time period, the fine for rape depended on who the victim was. Raping a servant became an affordable option for a few; something in the order of a speeding ticket.

The hypocrisy of those who made the rules was another perennial. During the rigid Middle-Ages, to cite only one instance among many, prostitution was often allowed as a safety valve. This led to both municipalities and the Catholic Church owning brothels across Europe, and in some cases it was nuns servicing the customers.

The most prominent historical constant, without a doubt, was the lack of legal protection for women. Men controlled women's bodies as part of their ownership of them. Rape was frequently seen, not as a sex crime, but as a property crime against a husband or father. An Assyrian father whose virgin daughter was raped might get, in return, three times her dowry value from the rapist (who would be forced to marry the girl and restore the father's honor—her feelings of no consequence) and gain possession of the rapist's wife, as his slave, to rape whenever he chose.

In fifteenth century Venice, courts viewed rape as a form of seduction. As late as nineteenth century America, a slave was property to be treated however her 'master' saw fit. Since the children of female slaves were also deemed to be slaves, rape became an instrument of economic growth.

Women's sexuality was always problematic to the male makers of law. Fear of female sexuality contributed to the execution of thousands of women as witches, their animal lusts having driven them to Satan (who often appeared as a goat or other animal in order to copulate). Female sexuality outside of marriage could get one killed in most cultures.

We read that some ancient Greek women would register as prostitutes to avoid execution if caught in a tryst. Rape was frequently blamed on women's seductiveness and their cases rejected. This was a reflection of the Judeo-Christian idea that Eve's sexuality and luring led to man's fall from grace.

(The prevalent medieval idea that if a woman became pregnant through rape she must have enjoyed and agreed to the act, astoundingly re-emerged only last year with U.S. Representative Todd Akin's bizarre claim that only 'legitimate rape' can lead to a pregnancy.)

Women's sex drive was frequently denied when it came to upper-class women, however. A lesbian couple in nineteenth century Europe was absolved of the crime of lesbianism because of their social status. Well-born women, it was decided, could not feel sexual attraction to other women. Sexual relations, in slave holding America, between a black slave and a white woman, were inevitably seen as rape because of the view that a respectable white woman could not possibly feel sexually attracted to a black man.

The treatment of slaves as less than human typified the racist attitudes that always followed sex laws. In the Middle-Ages, Jews were viewed as being in league with Satan and animals. In 1222 a deacon who married a Jew was executed on a charge of bestiality.

It is worth noting that rules about sex did not always just flow down. The nineteenth century changes to the age of consent (e.g. in Delaware it went from age seven to age twelve) reflected public concern about the exploitation of children. Crackdowns on trafficking children into prostitution and against male prostitution were responses to a public outcry about older wealthy men (a group that was growing because of the industrial revolution, so there were class overtones) taking advantage of young men and women.

In *Sex and Punishment*, Berkowitz has done an excellent job of showing that Western sex law is the institutionalization of Judeo-Christian belief.

Missing from his account are the laws around abortion but he hints at a second volume covering the last century so perhaps this is yet to come. The abortion debate shows that even now sex law is characterized by the attempt to impose religious views on all of us and to take away our ability to control our own bodies.

It shows too the persistence of the patriarchal fear of women's sexuality and the desire of some religious minorities to control life itself.

Rod Dubey writes on social and cultural theory. His latest book is *...beautiful in my worn clothes...The Transgressions of Love* (Charivari Press, 2012) which argues that love goes where it chooses, refusing the attempts by state and institutional authority to control it. As such, love is an oppositional power which demands ethical relationships and a radical politics.

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