THE BALANCE OF SEXUAL HARMS
AS THE BASIS FOR GENDER IDENTITY
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OUTLINE

Even as *most* humans always have fit into two easy biological categories of heterosexual men and women, the genome is a puzzle of pieces. Thus, people have a range of personalities and *some* humans always have not fit these two categories.
Yet, different cultures have made different choices about how to address this stability and yet complexity of humanity's genetic reality. In this class, we will posit that choices on how to address these biological realities depend on which sexual (and other) harms are most pressing to address. In other words, **the good and the bad outcomes of every choice always exist under all conditions**, *but the actual cost-benefit balance* [pesak] *depends on the actual natural-resource and socio-economic circumstances*.
Therefore, we will examine examples of how classical Jewish sources have ruled differently on a given issue when the cost-benefit balance shifts due to differing circumstances. Moreover, we will identify how classical Jewish sources discuss the range of sexual harms. This will help us reflect on the questions of gender identity.

A. Humanity all over the world has a basic range of similarity, yet people also differ
Why are individual people genetically different than each other?
Generic variation: https://www.youtube.com/watch?v=Lh4wWKS8_WE

B. Forbidding or Permitting Something can Depend on the Actual Conditions
Why does the Torah permit locust if it forbids flying insects? (Consider – for instance – what makes flying insects repulsive versus what makes locust attractive under the specific conditions under which locust appear)

Leviticus chapter 11	**ויקרא פרק יא**
20 All winged swarming things that walk on fours shall be an abomination for you. {Meaning: beetles, flies, wasps, hornets, bees, etc.}	**כ** כֹּל שֶׁרֶץ הָעוֹף, הַהֹלֵךְ עַל-אַרְבַּע--שֶׁקֶץ הוּא, לָכֶם. .
21 But these you may eat among all the winged swarming things that walk on fours: all that have, above their feet, jointed legs to leap with on the ground— 22 of these you may eat the following: locusts of every variety; all varieties of *sal'om*; all varieties of *hargol*; and all varieties of *hagav*.	**כא** אַךְ אֶת-זֶה, תֹּאכְלוּ, מִכֹּל שֶׁרֶץ הָעוֹף, הַהֹלֵךְ עַל-אַרְבַּע: אֲשֶׁר-לֹא (לוֹ) כְרָעַיִם מִמַּעַל לְרַגְלָיו, לְנַתֵּר בָּהֵן עַל-הָאָרֶץ. **כב** אֶת-אֵלֶּה מֵהֶם, תֹּאכֵלוּ-אֶת-הָאַרְבֶּה לְמִינוֹ, וְאֶת-הַסָּלְעָם לְמִינֵהוּ; וְאֶת-הַחַרְגֹּל לְמִינֵהוּ, וְאֶת-הֶחָגָב לְמִינֵהוּ.
23 But all other winged swarming things that have four legs shall be an abomination for you.	**כג** וְכֹל שֶׁרֶץ הָעוֹף, אֲשֶׁר-לוֹ אַרְבַּע רַגְלָיִם--שֶׁקֶץ הוּא, לָכֶם.

Whom did Cain marry according to Genesis/*Sefer Bereishit*, and why was it permitted?

Genesis 4:17	**בראשית ד', יז**
And Cain knew his wife, and she became pregnant and birthed Hanoch ("Inaugurator"), and he built a city, and he named the city with the name of his son, Hanoch ("Inaugurator").	וַיֵּדַע קַיִן אֶת אִשְׁתּוֹ וַתַּהַר וַתֵּלֶד אֶת חֲנוֹךְ וַיְהִי בֹּנֶה עִיר וַיִּקְרָא שֵׁם הָעִיר כְּשֵׁם בְּנוֹ חֲנוֹךְ.

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R. Yitzhak b. Moshe Aramah (1420-1494), *Akeidat Yitzhak*	**עקידת יצחק בראשית שער יא**
"And Cain knew his wife", who was born with him, "and she became pregnant and birthed" (Genesis 4:17) a son like him.	"וידע קין את אשתו" אשר נולדה עמו "ותהר ותלד" בן כיוצא בו.

Why permit or forbid polygyny, and why permit or forbid avuncular marriage between a nephew and an aunt and between an uncle and a niece? Why have Jewish traditions shifted on this?

Deuteronomy 21:15	**דברים כ"א, טו**
If a man should have two wives, one who is loved and one who is hated, and they birth him sons – the loved [wife] and the hated [wife] – and the first-born son is of the hated [wife].	כִּי תִהְיֶיןָ לְאִישׁ שְׁתֵּי נָשִׁים הָאַחַת אֲהוּבָה וְהָאַחַת שְׂנוּאָה וְיָלְדוּ לוֹ בָנִים הָאֲהוּבָה וְהַשְּׂנוּאָה וְהָיָה הַבֵּן הַבְּכוֹר לַשְּׂנִיאָה
Leviticus 18:13	**ויקרא י"ח, יג**
Do not uncover the nakedness of your mother's sister for she is your mother's flesh.	עֶרְוַת אֲחוֹת אִמְּךָ לֹא תְגַלֵּה כִּי שְׁאֵר אִמְּךָ הִוא.
b. Yevamot 62b	**בבלי יבמות סב ע"ב**
The Sages taught: One who loves his wife as himself, honors her more than himself, instructs his sons and daughters in an upright path, and marries them off near their time (i.e. sexual maturity) – about him the verse states: "And you shall know that your tent is in peace" (Job 5:24). One who loves his neighbors, draws his relatives close, **marries the daughter of his sister**, and lends a *sela* to a pauper at his time of need – about him the verse states: "Then shall you call, and the Lord will answer; you shall cry, and He will say: Here I am" (Isaiah 58:9).	ת"ר: האוהב את אשתו כגופו, והמכבדה יותר מגופו, והמדריך בניו ובנותיו בדרך ישרה, והמשיאן סמוך לפירקן, עליו הכתוב אומר: "וידעת כי שלום אהלך". האוהב את שכיניו, והמקרב את קרוביו, **והנושא את בת אחותו**, והמלוה סלע לעני בשעת דחקו, עליו הכתוב אומר: "אז תקרא וה' יענה תשוע ויאמר הנני".
Damascus Document (CD 4.20-5.11)	**ברית דמשק**
They are caught sinning licentiously in two ways: 1) In taking two wives at the same time…. 2) And they also impurify the Temple because they do not "distinguish [between the holy and the profane[1] and between the impure and the pure (Leviticus 10:10)]" in accordance with the Torah. They lie with one who menstruates, and each man marries his brother's and sister's daughter. … But if a niece	הם נתפשים בשתים בזנות: (1) לקחת שתי נשים בחייהם, ויסוד הבריאה זכר ונקבה ברא אותם (בראשית א כז) ובאי התיבה שנים שנים באו אל נח אל התיבה (שם, ז ט). ועל הנשיא כתוב לא ירבה לו נשים (דברים יז יז)" … (2) וגם מטמאים הם את המקדש אשר אין הם "מבדילי" כתורה ושוכבים עם הרואה את דם זובה. ולוקחים איש את בת אחיהו ואת בת אחותו. …

[1] Translating the term as the Damascus Document reads it.

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uncovers the nakedness of her father's brother, she is [the uncle's] flesh [through her father]!	ואם תגלה בת האח את ערות אחי אביה והיא שאר.

By identifying the natural resource and socio-economic conditions behind each of the following rabbis' rulings, why did some communities accept a child conceived through adultery?

Bonus Question: Can you explain what is meant by the claim that the husband came at night with God's name? (Answering superstition or error does not count)

Deuteronomy 23:3 A *mamzer* shall not enter the congregation of God. Even the tenth generation shall not enter the congregation of God.	**דברים כג: ג** לא-יבא ממזר, בקהל יהוה. גם דור עשירי, לא-יבא לו בקהל יהוה.
Responsa R. Shlomo b. Shimon Duran (1400-1467) a. Although *Halakhot Gedolot* wrote at the end of his *Laws of Divorce* that we are not wary if a woman,	**שו"ת הרשב"ש סימן צב** 1. ואף על פי שבעל הלכות גדולות כתב בסוף הלכות גיטין שלו דאשה שהלך בעלה למדינת הים ונתעברה אין חוששין לה, דשמא בא בעלה בלילה על ידי שם, כעובדא דאבוה דשמואל בירושלמי,
b. his position was already rejected. {Not completely true in High Medieval Western Europe - ESA}	2. כבר דחו דבריו,
c. And even he said it only when both [the husband and wife] agree – as Rosh explained his position.	3. ואף הוא ז"ל לא אמרן אלא כששניהם מודים בזה כמו שפירש דבריו הרא"ש ז"ל.

Gender identity – what cost-benefit balances led cultures under differing conditions to offer different responses?

Deuteronomy 22:5 Men's clothing shall not be on a woman, and a man shall not wear a woman's dress – for all who do this are repulsive to God.	**דברים כ"ב, ה** לֹא יִהְיֶה כְלִי גֶבֶר עַל אִשָּׁה וְלֹא יִלְבַּשׁ גֶּבֶר שִׂמְלַת אִשָּׁה כִּי תוֹעֲבַת יְהוָה אֱלֹהֶיךָ כָּל עֹשֵׂה אֵלֶּה.

India

These persons are classically viewed scornfully as strange but also as having special powers for blessing marriage and such: **Hijra/Kinnar:** biological males who reject their masculine identity and identify either as women, or "not men", or "in-between man and woman" or "neither man nor woman". **Aravani:** Identify themselves as women trapped in male bodies. **Kothi:** Biological males who show varying degrees of being effeminate. Generally take the feminine role in same-sex relationships, though many kothis are bisexual.

Monty Python skit: https://www.youtube.com/watch?v=R79yYo2aOZs

Can we each identify the contemporary costs of our positions and how to address the costs?