

Contemporary Responses to Homosexuality and Halakhah

1. R' Moshe Feinstein – Igrot Moshe Orah Hayyim 4:115, 1976 (excerpts)

The first thing you need to know is that homosexuality has the severe punishment of stoning and karet and it is also called disgusting by the Torah itself. It is one of the most debased sins and it even is prohibited for non-Jews. This knowledge is a strong bulwark against the yetzer harah. Secondly it is inexplicable that there should be a lust for it. That is because in the creation of man himself there is no natural lust for homosexuality...

The desire for homosexual relations is against natural lust and even the wicked do not have a desire for it itself. Rather their entire desire for it is only because it is something prohibited and the yetzer harah seduces them to rebel against the will of God. This knowledge of what is the will of God is a powerful protection against the yetzer harah. You have already defeated the yetzer harah in that you believe in God and all the 13 principles of faith and the entire Torah. With this you can defeat the yetzer harah in this that it seduces you to rebel against God and to anger Him. There is an explicit verse in HaAzinu "That with abominations they provoke Him to anger" [Devarim 32:16] Rashi says an example is homosexuality which is a sin which causes God's anger. He also says this regarding magic which interferes with the Heavenly family as is stated in Sanhedrin (67b). Thus the explanation of this verse is that it causes you to deny the decrees of Heaven and to act to anger God – chas veshalom! The third thing is that homosexuality is an embarrassment even to the common man. Because the entire world – even the wicked – ridicule those who are homosexuals. Even in the eyes of the wicked who participate in these acts, he looks down on the one who did it with him and ridicules and insults him. This awareness will greatly strengthen you against the yetzer harah. ...

Awareness of how debasing a sin is, is a good advice to strengthen oneself against the desire to do a sin which is disgusting and ridiculed such as this one. Because not only is it against the Torah which prohibits it with the most severe punishment, but it is also the greatest embarrassment to his whole family. The greatest advice to overcome this is to learn Torah in depth. This will save and guard you from all sins – even from the thoughts of sins as the Rambam states at the end of Hilchos Issurei Bi'ah: "Greater than all this, turn oneself and one's thoughts to words of Torah and expand one's mind in wisdom." So surely this will save you from the yetzer harah of this despised sin.

2. R' Dr. Norman Lamm - Judaism and the Modern Attitude to Homosexuality - Originally appeared Encyclopedia Judaica Yearbook 1974, pg. 197ff (excerpt)

A Possible Halakhic Solution

This rubric will now permit us to apply the notion of disease (and, from the halakhic point of view, of its opposite, moral culpability) to the various types of sodomy. Clearly, genuine homosexuality experienced under duress (Hebrew: ones) most obviously lends itself to being termed pathological especially where dysfunction appears in other aspects of personality. Opportunistic homosexuality, ideological homosexuality, and transitory adult homosexuality are at the other end of the spectrum, and appear most reprehensible. As for the intermediate categories, while they cannot be called illness, they do have a greater claim on our sympathy than the three types mentioned above.

In formulating the notion of homosexuality as a disease, we are not asserting the formal halakhic definition of mental illness as mental incompetence, as described in TB Hag. 3b, 4a, and elsewhere. Furthermore, the categorization of a prohibited sex act as ones (duress) because of uncontrolled passions is valid, in a technical halakhic sense, only for a married woman who was ravished and who, in the course of the act, became a willing participant. The Halakhah decides with Rava, against the father of Samuel, that her consent is considered duress because of the passions aroused in her (Ket, 51b). However, this holds true only if the act was initially entered into under physical compulsion (Kesef Mishneh to Yad, Sanh. 20:3). Moreover, the claim of compulsion by one's erotic passions is not valid for a male, for any erection is considered a token of his willingness (Yev, 53b; Maimonides, Yad, Sanh, 20:3). In the case of a male who was forced to cohabit with a woman forbidden to him, some authorities consider him guilty and punishable, while others hold him guilty but not subject to

punishment by the courts (Tos., Yev, 53b; Hinnukh, 556; Kesef Mishneh, loc. cit.: Maggid Mishneh to Issurei Bi'ah, 1:9). Where a male is sexually aroused in a permissible manner, as to begin coitus with his wife and is then forced to conclude the act with another woman, most authorities exonerate him (Rabad and Maggid Mishneh, to Issurei Bi'ah, in loc). If, now, the warped family background of the genuine homosexual is considered ones, the homosexual act may possibly lay claim to some mitigation by the Halakhah. (However, see Minhag Hinnukh, 556, end; and M. Feinstein, Iggerot Moshe (1973) on YD, no. 59, who holds, in a different context, that any pleasure derived from a forbidden act performed under duress increases the level of prohibition. This was anticipated by R. Joseph Engel, Atvan de-Oraita, 24). These latter sources indicate the difficulty of exonerating sexual transgressors because of psycho-pathological reasons under the technical rules of the Halakhah.

However, in the absence of a Sanhedrin and since it is impossible to implement the whole halakhic penal system, including capital punishment, such strict applications are unnecessary. What we are attempting is to develop guidelines, based on the Halakhah, which will allow contemporary Jews to orient themselves to the current problems of homosexuality in a manner articulating with the most fundamental insights of the Halakhah in a general sense, and consistent with the broadest worldview that the halakhic commitment instills in its followers. Thus, the aggadic statement that "no man sins unless he is overcome by a spirit of madness" (Sot. 3a) is not an operative halakhic rule, but does offer guidance on public policy and individual pastoral compassion. So in the present case, the formal halakhic strictures do not in any case apply nowadays, and it is our contention that the aggadic principle must lead us to seek out the mitigating halakhic elements so as to guide us in our orientation to homosexuals who, by the standards of modern psychology, may be regarded as acting under compulsion...

For the Jewish community as such, the same principles, derived from the tradition, may serve as guidelines. Judaism allows for no compromise in its abhorrence of sodomy, but encourages both compassion and efforts at rehabilitation. Certainly, there must be no acceptance of separate Jewish homosexual societies, such as - or specially - synagogues set aside as homosexual congregations...

Regular congregations and other Jewish groups should not hesitate to accord hospitality and membership, on an individual basis, to those "visible" homosexuals who qualify for the category of the ill. Homosexuals are no less in violation of Jewish norms than Sabbath desecrators or those who disregard the laws of kashrut. But to assent to the organization of separate "gay" groups under Jewish auspices makes no more sense, Jewishly, than to suffer the formation of synagogues that care exclusively to idol worshipers, adulterers, gossipers, tax evaders, or Sabbath violators. Indeed, it makes less sense, because it provides, under religious auspices, a ready-made clientele from which the homosexual can more easily choose his partners.

In remaining true to the sources of Jewish tradition. Jews are commanded to avoid the madness that seizes society at various times and in many forms, while yet retaining a moral composure and psychological equilibrium sufficient to exercise that combination of discipline and charity that is the hallmark of Judaism.

3. Statement of Principles on the Place of Jews with a Homosexual Orientation in Our Community – 2010, R Nati Helfgot, Orthodox rabbis and educators (bold and underline by R Steven)

Available online at <http://statementofprinciplesnya.blogspot.com/>

We, the undersigned Orthodox rabbis, rashei yeshiva, ramim, Jewish educators and communal leaders affirm the following principles with regard to the place of Jews with a homosexual orientation in our community:

1. All human beings are created in the image of God and deserve to be treated with dignity and respect (kevod haberiyot).

Every Jew is obligated to fulfill the entire range of mitzvot between person and person in relation to persons who are homosexual or have feelings of same sex attraction. Embarrassing, harassing or demeaning someone with a homosexual orientation or same-sex attraction is a violation of Torah prohibitions that embody the deepest values of Judaism.

2. The question of whether sexual orientation is primarily genetic, or rather environmentally generated, is irrelevant to our obligation to treat human beings with same-sex attractions and orientations with dignity and respect.

3. Halakhah sees heterosexual marriage as the ideal model and sole legitimate outlet for human sexual expression. The sensitivity and understanding we properly express for human beings with other sexual orientations does not diminish our commitment to that principle.

4. Halakhic Judaism views all male and female same-sex sexual interactions as prohibited. The question of whether sexual orientation is primarily genetic, or rather environmentally generated, is irrelevant to this prohibition. While halakha categorizes various homosexual acts with different degrees of severity and opprobrium, including to'evah, this does not in any way imply that lesser acts are permitted. But it is critical to emphasize that halakha only prohibits homosexual acts; it does not prohibit orientation or feelings of same-sex attraction, and nothing in the Torah devalues the human beings who struggle with them. (We do not here address the issue of hirkurei aveirah, a halakhic category that goes beyond mere feelings and applies to all forms of sexuality and requires precise halakhic definition.)

5. Whatever the origin or cause of homosexual orientation, many individuals believe that for most people this orientation cannot be changed. Others believe that for most people it is a matter of free will. Similarly, while some mental health professionals and rabbis in the community strongly believe in the efficacy of "change therapies", most of the mental health community, many rabbis, and most people with a homosexual orientation feel that some of these therapies are either ineffective or potentially damaging psychologically for many patients.

We affirm the religious right of those with a homosexual orientation to reject therapeutic approaches they reasonably see as useless or dangerous.

6. Jews with a homosexual orientation who live in the Orthodox community confront serious emotional, communal and psychological challenges that cause them and their families great pain and suffering. For example, homosexual orientation may greatly increase the risk of suicide among teenagers in our community. Rabbis and communities need to be sensitive and empathetic to that reality. Rabbis and mental health professionals must provide responsible and ethical assistance to congregants and clients dealing with those human challenges.

7. Jews struggling to live their lives in accordance with halakhic values need and deserve our support. Accordingly, we believe that the decision as to whether to be open about one's sexual orientation should be left to such individuals, who should consider their own needs and those of the community. We are opposed on ethical and moral grounds to both the "outing" of individuals who want to remain private and to coercing those who desire to be open about their orientation to keep it hidden.

8. Accordingly, Jews with homosexual orientations or same sex-attractions should be welcomed as full members of the synagogue and school community. As appropriate with regard to gender and lineage, they should participate and count ritually, be eligible for ritual synagogue honors, and generally be treated in the same fashion and under the same halakhic and hashkafic framework as any other member of the synagogue they join. Conversely, they must accept and fulfill all the responsibilities of such membership, including those generated by communal norms or broad Jewish principles that go beyond formal halakha.

We do not here address what synagogues should do about accepting members who are openly practicing homosexuals and/or living with a same-sex partner.

Each synagogue together with its rabbi must establish its own standard with regard to membership for open violators of halakha.

Those standards should be applied fairly and objectively.

9. Halakha articulates very exacting criteria and standards of eligibility for particular religious offices, such as officially appointed cantor during the year or baal tefillah on the High Holidays. Among the most important of those criteria is that the entire congregation must be fully comfortable with having that person serve as its representative. This legitimately prevents even the most admirable individuals, who are otherwise perfectly fit halakhically, from serving in those roles. It is the

responsibility of the lay and rabbinic leadership in each individual community to determine eligibility for those offices in line with those principles, the importance of maintaining communal harmony, and the unique context of its community culture.

10. Jews with a homosexual orientation or same sex attraction, even if they engage in same sex interactions, should be encouraged to fulfill mitzvot to the best of their ability. All Jews are challenged to fulfill mitzvot to the best of their ability, and the attitude of “all or nothing” was not the traditional approach adopted by the majority of halakhic thinkers and poskim throughout the ages.

11. Halakhic Judaism cannot give its blessing and imprimatur to Jewish religious same-sex commitment ceremonies and weddings, and halakhic values proscribe individuals and communities from encouraging practices that grant religious legitimacy to gay marriage and couplehood. But communities should display sensitivity, acceptance and full embrace of the adopted or biological children of homosexually active Jews in the synagogue and school setting, and we encourage parents and family of homosexually partnered Jews to make every effort to maintain harmonious family relations and connections.

12. Jews who have an exclusively homosexual orientation should, under most circumstances, not be encouraged to marry someone of the other gender, as this can lead to great tragedy, unrequited love, shame, dishonesty and ruined lives. They should be directed to contribute to Jewish and general society in other meaningful ways. Any such person who is planning to marry someone of the opposite gender is halakhically and ethically required to fully inform his or her potential spouse of their sexual orientation.

We hope and pray that by sharing these thoughts we will help the Orthodox community to fully live out its commitment to the principles and values of Torah and Halakha as practiced and cherished by the children of Abraham, who our sages teach us are recognized by the qualities of being rahamanim (merciful), bayshanim (modest), and gomelei hasadim engaging in acts of loving-kindness).

4. Homosexuality, Human Dignity & Halakhah: A Combined Responsum For The Committee On Jewish Law And Standards, By Rabbis Elliot N. Dorff, Daniel S. Nevins & Avram I. Reisner, 2006 (excerpt; bold and underline by R Steven)

Available online at:

http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/20052010/dorff_nevins_reisner_dignity.pdf

V. CONCLUSIONS

A. Piskei Din: Legal Findings

Based upon our study of halakhic precedents regarding both sexual norms and human dignity, we reach the following conclusions:

1. The explicit biblical ban on anal sex between men remains in effect. Gay men are instructed to refrain from anal sex.
2. Heterosexual marriage between two Jews remains the halakhic ideal. **For homosexuals who are incapable of maintaining a heterosexual relationship, the rabbinic prohibitions that have been associated with other gay and lesbian intimate acts are superseded based upon the Talmudic principle of kvod habriot, our obligation to preserve the human dignity of all people.**
3. This ruling effectively normalizes the status of gay and lesbian Jews in the Jewish community. Extending the 1992 CJLS consensus statement, gay and lesbian Jews are to be welcomed into our synagogues and other institutions as full members with no restrictions. Furthermore, gay or lesbian Jews who demonstrate the depth of Jewish commitment, knowledge, faith and desire to serve as rabbis, cantors and educators shall be welcomed to apply to our professional schools and associations.
4. We are not prepared at this juncture to rule upon the halakhic status of gay and lesbian relationships. To do so would require establishing an entirely new institution in Jewish law that treats not only the ceremonies and legal instruments

appropriate for creating homosexual unions but also the norms for the dissolution of such unions. This responsum does not provide kiddushin for same-sex couples. Nonetheless, we consider stable, committed, Jewish relationships to be as necessary and beneficial for homosexuals and their families as they are for heterosexuals. Promiscuity is not acceptable for either homosexual or heterosexual relationships. Such relationships should be conducted in consonance with the values set out in the RA pastoral letter on intimate relationships, "This Is My Beloved, This Is My Friend": A Rabbinic Letter on Human Intimacy. The celebration of such a union is appropriate.

B. Afterword

This subject has riveted the attention and commanded the energies of us as individuals and of our movement to a greater extent than any other topic in recent memory. Given the fact that observant Jews who are gay or lesbian constitute a small minority of the Jewish people, this might seem surprising. The great importance of this topic signifies a broader attempt to understand the nature of human dignity in our time.

We realize that it will take time for our congregations and other arms of the Conservative movement to develop a consensus on this challenging subject. The concepts and policies we have advocated represent a sea change in attitude within traditional Judaism. There is a genuine conflict between our ancient heterosexual ideal and our imperative to safeguard the dignity of gay and lesbian Jews. We must dedicate significant efforts to education at all levels of our movement. Respectful disagreement on this subject is a sign of strength, not weakness, within Conservative Judaism.

However, we must emphasize that even those opposed to our halakhic reasoning and piskei din remain obligated to show compassion to their fellow Jews who are homosexual. What once seemed like a willful rejection of the Torah's ideal of heterosexual marriage is now understood to be a profound desire by gay and lesbian Jews to sanctify their lives and to establish

5. דרוש וקבל ש"ך : Halakhic And Metahalakhic Arguments Concerning Judaism And Homosexuality, by Rabbi Gordon Tucker, 2006 (excerpts)

Available online at:

http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/20052010/tucker_homosexuality.pdf

X. CONCLUSION

The Jewish gays and lesbians we address in this teshuvah call to us from a place we should all recognize: a love of tradition, a commitment to Jewish life and Jewish community, and a desire to be integrated into that community. In that sense, we are dealing with a conservative (small "c") community that does not wish to tear anything down. This is precisely why even the opponents of normalization evince nowadays such strong sympathy concerning their halakhic predicament. But their aspirations can be denied on only two bases: (1) a theological stance that is simply not consistent with our general theological commitments as Conservative Jews; or (2) a restrictive view of halakhah based on the idea that only texts that formulate rules are genuine legal texts, and that both classical and emerging narrative (aggadah) are mere adornments to Jewish thought with no normative force. This represents a halakhic method that is impoverished in scope, that produces the anomalous results of having to slam the door in the face of those whom our deepest sympathies tell us should be entering the door, and that ultimately divorces what is treated as an autonomous halakhah from the religious convictions that it was created to serve.

The idea that halakhic method needs to be opened up to a receptivity to the potential normative force of aggadah is, to be sure, unsettling. It is unsettling because, as Cover put it, there is no "official, privileged canon of narratives", and thus the presumed and cherished "objectivity" of halakhic method is put in jeopardy. But Cover also noted that although narrative in the modern world has a "diffuse and unprivileged character", we mustn't fail to take into account "the indispensability of narrative to the quest for meaning." And if we fail to make meaningful halakhah, we will all be called to account for how we will have failed generations of Jews to come, generations that we are charged with leading to greater loyalty to religious law.

This is, therefore, not just a teshuvah about Jewish gays and lesbians. It is also not a plan for dismantling the normal and normative methods of doing halakhah. It is, rather, a plea that our “toolbox” not be so circumscribed that we are unable to see that hard cases can call out to us to listen courageously to our hitherto orphaned aggadic texts. Although we continue to believe that God speaks to us through halakhah, the compassion of God that we are commanded to imitate is still greater than any particular halakhic method. And if courageous innovation in law in order to pursue imitatio dei unsettles, or even frightens us, we do well to remember that religion is, in the end, still about faith. Communities of faith provide stability and fealty to the past in the midst of change.

Here is how Abraham Joshua Heschel put the issue:

“Most Sages have made the Halakhah primary and life secondary to it. As for one who says that a certain decree or another cannot be lived with, they coerce him until he says “I am willing”. [They say:] “The Halakhah was not given to be marked up and evaluated. It is absolutely unique. All is contained in it, including its own foundations and boundaries. It is above all critique. And of what is beyond you, you may not ask.”

I object to the provinciality of thought, and to the constriction of mind in all of this. There is disregard of the problems that bubble up to the surface each day, of the spiritual struggles and mental anguish of those of our generation who are stumbling. The laws of marriage [אישות] are surely important. But are the laws governing human personality [אישיות] devoid of value?

Several great Sages in Israel did not hesitate to demand justice of the Unique One of the Universe. And yet, in our generation, criticism of the halakhists is prohibited even in the minutest measure!

All paths should be presumed to carry danger. There is no path forward that is without crookedness or ambushes. Some say: “What do I need this trouble for? I will watch my step and not sin, and I will have saved my soul.” But the Sages have expounded: ‘and to him who blazes a path I will show the salvation of God’ (Psalm 50:23) – “This refers to those who light lamps for the multitude.”

So I repeat: This is a moment of opportunity for Conservative Judaism, in which we can demonstrate the power of our commitment and our compassion, in which our concept of law can be expanded and not contracted, and in which we can light lamps for the multitude. For it is not just gays and lesbians whom we address here, but our wider community as well. We have the capacity to create a truly exciting and engaging moment in the history of halakhic practice.

And if we think we hear the verses in Leviticus 18:22 and 20:13 questioning us as to why we do not faithfully implement their clear version of what God desires of us? Let us remind them – and ourselves – that the journey of soul-searching, and the understanding of religious mandates, that those two little verses have produced for us will have more than justified their existence, and perhaps even some of the pain that they once caused. דרוש וקבל שכר – it is sometimes the demanding struggle, and not mere obedience, that generates the most enduring reward.

;קפ (Ruling)

Male and female homosexuality can be reconciled with Judaism, conceived through a Halakhic lens. Specifically, Jews who are living sexual lives with partners of the same sex should be considered to be subject to the same obligations and entitled to the same rights as those whose sexual lives are with members of the opposite sex. Congregations are encouraged to grant family memberships to households created by same-sex couples, and to provide equal support to the celebration of life cycle events in those families, including the joining of partners of the same sex into exclusive spousal relationships. The Rabbinical Assembly should turn its attention to the creation of liturgy, and of legal structures, for the celebration of such spousal unions and for their dissolution. And the theological schools of the Conservative Movement (both rabbinic and cantorial) should assess the candidacies and student status of gays and lesbians aspiring to religious leadership by the same criteria that they apply to all other applicants and students.