

On Homosexuality

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This paper was adopted by the CJLS on March 25, 1992, by a vote of eight in favor, five opposed and ten abstentions. Voting in favor: Rabbis Kassel Abelson, Arnold M. Goodman, Aaron Mackler, Mayer E. Rabinowitz, Avram I. Reisner, Chaim A. Rogoff, Morris Shapiro and Gerald Skolnik. Voting in opposition: Rabbis Richard L. Eisenberg, Dov Peretz Elkins, Howard Handler, Joel Rembaum and Gordon Tucker. Abstaining: Rabbis Ben Zion Bergman, Stanley Bramnick, Elliot Dorff, David M. Feldman, Sam Frait, Jan Kaufman, Reuven Kimelman, Herbert Mandl, Lionel E. Moses and Joel Roth.

Note: This paper was adopted as a philosophical and legal rationale to the CJLS decision regarding homosexuality adopted March 25, 1992 (see the “CJLS Consensus Statement of Policy Regarding Homosexual Jews in the Conservative Movement”). Three other תשובות, providing differing rationales, were also adopted. Those תשובות are: “Homosexuality” by Rabbi Joel Roth (14-7-3), “Jewish Norms for Sexual Behavior: A Responsum Embodying a Proposal” by Rabbi Elliot Dorff (8-8-7), and “Homosexuality and the Policy Decisions of the CJLS” by Rabbi Reuven Kimelman (12-7-4).

תשובה

For those of us who consider ourselves halakhic Jews, it is sometimes difficult and challenging to reconcile our dedication to the halakhic process with our concern for the needs of the individual. One of the most challenging such issues is homosexuality.

While the הלכה itself may not always change to suit the purposes or conditions of individual Jews, the halakhic community must concern itself with both “הלכה” and “community.”

Both Rabbi Artson¹ and Rabbi Roth² have written detailed תשובות representing two diametrically opposed points of view. Rabbi Artson would sanctify a monogamous homosexual relationship, while Rabbi Roth upholds the traditional halakhic view that prohibits homosexual acts. Both reach their conclusions based upon detailed analysis of the relevant texts - biblical and rabbinic - as well as information gathered from psychiatrists, psychologists, sociologists and anthropologists.

However I find that both papers have missed some very important elements in this issue, and neither represents a consensus of the CJLS.

It is very clear that the prohibition against homosexuality is biblical.³ Nowhere does the Torah explain the reason why homosexuality is prohibited. While the Torah uses the term תועבה to describe homosexuality, the Torah does not explain why it is a תועבה.

Rabbi Artson’s attempt to separate a loving monogamous homosexual relationship from the term תועבה falls short. He attributes reasons and conditions to the text which are simply not there. Rabbi Roth’s analysis of whether תועבה is an inherent or attributed quality also misses the point. Since we do not know the reason why it is a תועבה, it makes no difference whether the quality is attributed or inherent. Therefore, any attempt to change the law on the basis of reasons is impossible.

In order to define a halakhic position on homosexuality, we must deal with the prohibition itself, and not with the variety of reasons or interpretations offered.⁴ The very fact that there are many interpretations proves that we do not know why homosexuality is prohibited.

A biblical law may be changed by either reinterpretation or abrogation. The verses in Vayikra leave no room for interpretation; they are clear, specific and the intention is directly stated.⁵ We are left, therefore, with

the possibility of utilizing the method of לעקור דבר מן התורה, of abrogating biblical law. In order to determine if this method is applicable to the issue of homosexuality we must understand this concept of abrogation and its application.

The Rabbis have the power to abrogate biblical law.⁶ This right was exercised infrequently, as a last resort, and only when the Rabbis were convinced there was sufficient cause and compelling reason to do so. At the same time, they were convinced that it had to be done for the betterment of the Jewish people as a whole, not simply for the benefit of a minority of the people. An examination of the precedents for the abrogation of biblical law indicates that this process was applied only for such compelling reasons as: preserving family life,⁷ maintaining a livelihood,⁸ and protecting against the erosion of הלכה.⁹

Both Rabbis Artson and Roth have discussed the etiology of homosexuality. Many others have done so as well. What is clear is that there is no agreement in the literature as to the cause, manifestation and treatment of homosexuality. Therefore, it is impossible at this time to “prove” that there are as yet grounds for abrogating biblical law. Even if we were to be presented with absolute proof that homosexuality is genetic, the burden of proof would be on those wishing to abrogate the law to show that it is necessary and beneficial for the majority of the Jewish people.

The first commandment given by God in the Torah is the commandment to procreate.¹⁰ The biblical premise is that of heterosexuality.¹¹ There is no doubt that heterosexuality is the world view of the Torah and the Rabbis. This is how Judaism understands the will of God. The fact that procreation may be possible through new techniques such as artificial insemination and surrogate motherhood, as well as adoption, does not negate the premise of heterosexuality that Judaism adheres to as the will of God. Therefore these techniques do not present sufficient reason to abrogate the law.

All legal systems aim to incorporate the needs and requirements of the largest number of members of the group for the benefit of the group as a whole. However, there is no legal system that does not impose some restrictions upon a minority of the group. These restrictions are imposed because the law gives the greater value to the overwhelming majority. Not everyone is given the same opportunity or protection. There is no legal system that can take into consideration the needs of each individual in the group. Consideration of חוששין למיעוט¹²- of whether we take into account the needs of the minority of cases- is rejected for practical reasons, because it would be impossible to maintain a system if every minority or exception were incorporated into the law.

In addition, even if we are willing to take into consideration the new techniques of procreation, the needs of a minority, and a definite knowledge of the etiology of homosexuality, there still remains the question of whether abrogating the law is for the betterment of the majority. There is no doubt that the abrogation will benefit the homosexual community. However, we must be convinced that this abrogation will definitely benefit the non-homosexual community as well. המוציא מחברו עליו הראיה,¹³ the burden of proof is upon those advocating the change.

The approach of the Torah and rabbinic Judaism’s understanding of God’s will concerning the issue of homosexuality should not have to be defended. The burden of proof is on those who wish to change the law. The majority, and not the minority, is the basis upon which the question should be decided.

The halakhic community has always tried to accommodate individuals who may violate religious injunctions. Norms have been maintained, while those who do not or cannot observe the norms were and are still part of the community. This is done out of a concern for the survival of Judaism, and sensitivity to the situations of human beings and the realities of life. An example of this is the way the CJLS dealt with the various issues concerning Shabbat in the 1950’s.¹⁴ A similar approach must be used in the case of homosexuality. We must differentiate between the norm and the individuals who violate it. The burden is upon those who observe the norm to make those who do not observe it, feel part of the community.

However, we must draw a distinction between those Jews who do not observe the prohibitions against homosexuality, and those who openly advocate homosexuality as a viable, alternate Jewish lifestyle.

The Jewish community must be educated to understand and accept homosexuals, many of whom are committed Jews. They must be welcomed in our synagogues and organizations, and we must make them feel a part of our community.

Therefore, we declare that it is a prohibition for synagogues, individuals and organizations to discriminate against gays and lesbians. By prohibiting this type of behavior, and by educating the community, we can succeed in eliminating within our organizations and synagogues the unfair use of homosexuality as a weapon.

Private sexual practices should not be a criterion for office or for leadership. When such a preference does become known, but not advocated as a viable alternate Jewish lifestyle, it should be treated in the same manner as we treat our other violators of halakhic norms.

Each of us makes choices as to what we will or will not observe; then we resolve for ourselves the conflicts that our choice creates. The community does not judge us on the basis of these conflicts, nor should it judge the homosexual on the basis of his/her homosexuality alone. The community, rather, must be a support and a haven to any Jew in conflict, and should, through acceptance and compassion, help the Jew come closer to resolving those conflicts.

However, the homosexual who openly advocates homosexuality as a totally acceptable alternate Jewish lifestyle represents a very different problem to the Jewish community. In maintaining his/her position, the "advocate" openly and clearly promotes a position which is contrary to הלכה, the ideals and norms of Judaism. It is, therefore, unfair and inappropriate that such "advocates" hold positions of honor or leadership within congregations, communities and schools committed to הלכה. We would not extend those privileges for example to those who would claim that non שמירת שבת is an acceptable alternate Jewish lifestyle. A position of leadership or honor requires a commitment to the norms of הלכה.

The creation of synagogues or other religious institutions specifically for a group that advocates a position that is contrary to הלכה is inconsistent with a commitment to הלכה. Each institution has sub-groups within the membership that share common interests and needs. There is no need to develop new institutions for each sub-group. In fact, it is the responsibility of our institutions and synagogues to welcome homosexuals as members, and to offer them all the privileges available with membership.

However, any organized action or program that would advocate homosexuality as an acceptable viable Jewish lifestyle would be prohibited.

Membership categories should reflect the traditional heterosexual premise of Judaism, that is to say, family membership in a category that applies to people who are blood relatives, or whose status as a family is recognized and sanctified by Judaism.

Jews who wish to enter the rabbinate, cantorate or the field of Jewish education as leaders of the community must abide by the halakhic norms that the community accepts and sets. Therefore, those who "advocate" homosexuality as an acceptable alternate Jewish lifestyle would not and may not be accepted. It is understood that religious leaders commit themselves to leading halakhic lives that uphold the norms of Judaism. All Jewish religious leaders face conflicts between their personal practice and commitments to הלכה, or between their needs and adherence to הלכה. Nevertheless it is expected that when one's personal needs or practice are no longer consistent with the accepted norms of הלכה, such leaders will resign their positions. This is a choice all of us face, and these choices dictate where and how we live and in what profession we work.

הלכה does not guarantee the right for everyone to become a rabbi or cantor or Jewish leader. Theoretically, it does provide the opportunity to do so if certain requirements are met. The advocacy of a position that is opposed to a norm, such as homosexuality, would and does disqualify such a person. It is not a matter of fairness or "rights." It is a matter of "obligation" - חיוב - and how one settles personal conflicts with הלכה.

CONCLUSIONS

1. Judaism's view of the will of God as expressed in the Torah and by the Rabbis is that of heterosexuality.

2. The only way to change the הלכה concerning homosexuality is by means of abrogating biblical law - לעקור דבר מן התורה. In order to do so, the needs of the majority of the community must prevail, and it must be shown that such abrogation is for the overall good of the Jewish community.

3. We hereby declare that it is an אסור -a prohibition- to discriminate against gays or lesbians in all areas of life.

4. We hereby declare that it is an אסור - a prohibition- to discriminate against gay and lesbian individuals in synagogue membership.

5. Homosexuals who advocate homosexuality as an acceptable alternate Jewish lifestyle are prohibited from holding positions of leadership in our synagogues, institutions and schools.

6. It is a חיוב -an obligation- for our synagogues, institutions and schools to welcome homosexuals (non-advocates), and to offer them the same privileges offered to all other members, many of whom have conflicts between their personal lives and needs, and their commitment to הלכה.

NOTES

1. "Gay and Lesbian Jews: A תשובה." Paper presented to the Committee On Jewish Law and Standards.
2. "Homosexuality." Paper presented to The Committee On Jewish Law and Standards.
3. Vayikra 18:22 and 20:13.
4. Some examples of rabbinic interpretations are: Sefer Hahinukh, 209; Torah Temimah, Vayikra 18:22; Tosafot and Rosh, B.T. Nedarim 51a, s.v. *to'eh attah bah*; Rabbi David Hoffman in his commentary to Vayikra 18:22.
5. To argue, as Rabbi Artson does, that the prohibition refers only to certain types of homosexual relationships is wrong. משכב זכר in the verse is contrasted to משכב אשה. To claim a restriction on one would require the same to be said about the other. In fact a loving monogamous heterosexual relationship for men was not known or prescribed in the Torah.
6. B.T. Yevamot 89b-90b. See also Tosafot Nazir 43b, s.v. *vehai*.
7. Mishnah Eduyot 6:1.
8. B.T. Sanhedrin 2b-3a; B.T. Gittin 36a-36b.
9. B.T. Berakhot 54a; 63a.
10. Bereishit 1:28.
11. Ibid 2:18ff.
12. B.T. Yevamot 119a.
13. B.T. Yoma 9a; Baba Kamma 6b.
14. *Tradition And Change*, Mordecai Waxman, ed., pp. 327-407.