

Is There a Reform Response to Homosexuality?

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IT IS CLEAR THAT NEW ATTITUDES AND challenges on the question of homosexuality are being felt throughout the Jewish world. No article entitled "homosexuality" appeared in the *Jewish Encyclopedia* of seventy-five years ago, and no article entitled "homosexuality" appeared in the *Universal Jewish Encyclopedia* of forty years ago. However, in the more recent *Encyclopedia Judaica* there is just such an article, a little over one column in length, by Chief Rabbi Immanuel Jacobovitz of London.

Rabbi Jacobovitz's article and two responsa by the eminent Reform *posek*, Rabbi Solomon B. Freehof, leave no room for doubt about their understanding of the negative biblical and talmudic attitudes toward homosexuality.¹ They follow generations of rabbinic interpreters in regarding the biblical injunctions against *mishkav zakhar* as condemning homosexual relations in general, and only homosexual relations, without regard to any historical context. When Rabbi Walter Jacob collected "Jewish Sources on Homosexuality" from rabbinic literature he did not find any texts that question the *halakhic* prohibition against homosexuality cited above.² Very recently, however, Rabbi Allen B. Bennett has argued that the biblical authors would not have had an inkling of what homosexuality was (what anyone today would call "homosexuality") and, therefore, would not have wasted their time legislating against it. In support of his contention he cites *Sex Laws and Customs in Judaism*,³ and *Sexual Variance in Society and History* whose author holds that "among the Hebrews, the denunciations seem to be not so much against homosexuality as such as

1. Immanuel Jacobovitz, *Encyclopedia Judaica*, volume 8, columns 861, 862; Solomon B. Freehof, "Homosexuality," *Current Reform Responsa* (volume III of the series, HUC Press, 1969), pp. 236ff., and "Homosexual Congregations," *Contemporary Reform Responsa* (volume V of the series, HUC Press, 1974), pp. 23ff.

2. Walter Jacob, "Jewish Sources on Homosexuality" (privately circulated, Pittsburgh, Pa., August, 1978), p. 1.

3. Louis Epstein, *Sex Laws and Customs in Judaism* (KTAV, 1967), pp. 135ff.

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against the idolatry associated with it, or they spring from fears of assimilation."⁴

The biblical texts at the center of this discussion are in the third book of Torah. Traditionally understood, Leviticus 18:22 directly forbids male homosexuality, listing the act as one of the abominations because of which the Land vomited out its (former) inhabitants. Verse 29 specifies that those who do such things shall be cut off from their people. Two chapters later the law is repeated with a slightly different wording. Leviticus 20:13 says "they have committed an abomination, both of them; they shall surely be put to death; blood guilt (for their death) rests upon their own heads." This verse, however, is in a section with other violations which carry the same penalty (verses 9-13), and with other violations that carry other penalties (verse 14, "burnt with fire;" verses 15-16, "surely be put to death;" verses 17-18, "cut off from their people") leading me to think that the penalty for an act of homosexual intercourse is not the same in Leviticus 18:22 as in Leviticus 20:13. That is, *nikkhretu*, the term used in 18:22, is used again in Chapter 20, but for a different violation (verses 17-18), so I do not believe that *nikkhretu* in Leviticus 18:22 is the same punishment as *mot yumatu* in Leviticus 20:13. I shall return to this difference a little later.

There are a few other biblical references to homosexuality. Although Deuteronomy 23:18 forbids ritual male prostitution⁵ (I guess it is assumed that both male and female ritual prostitution services males), references to the persistence of such prostitution are found in the Book of Kings (IK 14:24; 15:12; 22:47; and IIK 23:7). There is, however, no instance of express approval or explicit toleration of homosexuality on the part of the Lord or on the part of the Lord's spokesmen and editors. This is true however one translates the stories of the men of Sodom who demanded to "know" Lot's male visitors, and of the men of Benjamin who demanded to "know" a male traveller.

Some writers have undertaken a non-traditional explanation of these biblical texts in their effort to expound a "gay theology." In an interview published in *Ministry, The International Journal of the Seventh-Day Adventist Ministerial Association*, the editor, J.R. Spangler, talks with Colin Cook, who found deliverance from homosexuality through the power of the Gospel, and now directs Quest Learning Center. . . .

SPANGLER: You say you believe the Bible speaks of homosexuality. But the gay theologian takes the same texts you read and finds no reference to homosexuality in them.

4. Vern Bullough, *Sexual Variance in Society and History* (University of Chicago Press, 1976), pp. 82 and 37.

5. "No Israelite woman shall be a cult prostitute, nor shall any Israelite man be a cult prostitute (v. 19). You shall not bring the fee of a whore or the pay of a dog [here used as a perjorative, to describe a male prostitute] into the house of the Lord your God in fulfillment of any vow, for both are abhorrent to the Lord your God." Translation and comment from *The Torah, A Modern Commentary* (UAHC, 1981), p. 1497.

COOK: You have to understand that there is a basic presupposition underlying gay theology — that true homosexuality is unchangeable, natural, “inverted,” as Bailey started calling it. So God wouldn’t condemn the expression of something that is basic to some people’s nature, the gay theologian says. What God does condemn, he explains, is the *abuse* of homosexuality, as in homosexual rape, or the exploitation of it, as in homosexual cultic prostitution.

SPANGLER: So the gay theologian interprets the homosexuality texts on the basis of these presuppositions?

COOK: Yes, Sodom and Gomorrah, for example, were not destroyed for homosexuality, the gay theologian explains, but for pride, gluttony, and inhospitality, as Isaiah, Ezekiel, and Jesus point out. . . . Genesis sets up man’s identity. Man was made to be fully himself only when he identifies with one who is the same as he is, and yet opposite from him — that is, another human of the opposite sex (see Gen. 2:10-24). . . . When we take this unified biblical view, the Sodom account makes sense without clubbing it to death. The same goes for the Levitical proscription (Lev. 18:22, 20:13). That is, homosexual activity is sinful not because of its association with pagan rites, but because of its basic disharmony with the internal structure of creation.⁶

There are biblical texts and rabbinic texts which condemn homosexual acts. Some would say: because of their association with idolatry; because of their disharmony with the structure of creation; because of their abuse as in homosexual rape or their exploitation as in cultic prostitution; because they might lead the husband to abandon his wife or avoid procreation.⁷ These and other traditional or anti-traditional explanations, however, do not provide the basis for a Reform response to homosexuality. Should the majority at a CCAR Convention decide to adopt one or another interpretation of those verses in Leviticus, it would leave our question unanswered because so many of our colleagues take a position similar to that of Rabbi Judith S. Lewis:

I, myself, do not make my Jewish decisions on the basis of *halakha* or “tradition.” I would, therefore, not address the question of homosexuality from a *halakhic* point of view unless I were also prepared to take an equally traditional stand on family purity, *kashrut* and other such matters. I think the question which really needs to be addressed is, since we know that large numbers of Jewish men and women are and will continue to be homosexuals, practicing or not, how do we respond, legitimately, as a liberal Jewish movement?⁸

The CCAR Committee on Responsa recognizes the right of the parent body to adopt policies and norms negating *halakhic* teachings. Individually, the rabbis support some of these departures from tradition and oppose others. The new roles that women play in Reform Jewish life, accepting rabbinic ordination, for example, are validated by decisions made in this generation and not by older *halakhah*. If the CCAR and the

6. *Ministry*, Vol. 54, No. 9 (September, 1981): 7-8.

7. Walter Jacob, *Op. cit.*, p. 1.

8. Judith S. Lewis, personal letter of February, 1983, quoted with permission.

UAHC decide that eating pig and wearing *shatnez* are no longer disapproved behaviors for a Reform Jew, then the clear prohibitions in Torah and Talmud should no longer be applied by Reform rabbis or Reform congregations, except as matters of individual guidance and choice. In this frame of reference, a different response to homosexuality may some day be accepted by Reform. I can only report that I have not been personally confronted with evidence of any widespread shift of opinion among my colleagues, away from the biblical and talmudic prohibitions.

However, in my view, there is a second aspect of the question that should be considered, regardless of whether one decides that homosexuality is bad, good, indifferent, or that one has not reached any decision. That is, what should we do about it? I refer back to the two terms in Leviticus which may *not*, traditional interpretations to the contrary notwithstanding, may *not* describe one and the same biblical attitude toward the proper penalty for homosexuality: *karet* and *mavet*.

. . . Originally, divine punishment was independent of and additional to judicial punishment . . . In one instance, the law explicitly states that where the prescribed capital punishment is not carried out, God will Himself set His face "against that man and his kin, and will cut off from among their people both him and all who follow him in going astray after Molech" (Lev. 20:2-5). This juxtaposition of divine and judicial punishments appears conclusively to disprove the view that *karet* ("cutting off") was not a divine punishment of death, but rather a judicial punishment of excommunication. . . . For a good many offenses, the divine *karet* is the only punishment prescribed. It has been suggested that they are such offenses as are committed in private, for which eyewitnesses will not usually be available; such as, for instance, . . . various sexual offenses (Lev. 20:17-18; 18:29. . . .) Others maintain that these offenses are mostly of a religious or sacerdotal character. . . . There are, however, some offenses, punishable by *karet* only, that do not fit into either of these categories. . . . This fact — together with the gravity of some of the sexual offenses so punishable — led some scholars to assume that *karet*, even though a threat of divine punishment, was at the same time an authorization of judicial capital punishment.⁹

Thus, in our case we might say that *nikhretu* means that they will be cut off by God from the good which is destined for their people, whereas *mot yumatu* means that they will be put to death by decree of a human court.

Leviticus *Rabbah* 18:3 states that the flood came upon the world in the days of Noah because of sodomy, and Genesis 9:22 has been interpreted as a possible homosexual act between Ham and Noah, which resulted in a divine curse.¹⁰ From these rabbinic comments, also, one may argue that at least some authorities saw divine punishment as the appropriate penalty for a homosexual act. Indeed, *Mishnah Keritot* 1:1-2 specifies, "if a man has connexion . . . with a male"; as one of thirty-six transgressions punishable by *karet*. But not under all circumstances. It is one of the acts concerning which,

9. "Divine Punishment," *Encyclopedia Judaica*, volume 6, column 121.

10. Walter Jacob, *Op. cit.*, p. 1.

if in these things he transgressed wantonly he is liable to *karet* (and not to another penalty), and if (he did it) in error, (he is liable) to a sin-offering; and if it was in doubt whether he had committed a transgression, he is liable to a Suspensive Guilt-offering. . . .¹¹

Here, the penalty is made to depend upon the nature of the perpetrator's intention or state of mind. On the other hand, *Mishnah Sanhedrin* 7:4 reads, "These are they that are to be stoned: he that has connexion with (then we find included in the list) a male," and later in the same *mishnah* the penalties specified in Leviticus 20:15-16 (including stoning for a homosexual act) are repeated.¹²

The relation of law to morality is complex in every society, and their common source in Judaism, as revelation, does not simplify the issue. Accordingly, we are sure to find support texts in some *halakhic* source about homosexuality for either policy: "leave it to heaven, it's a moral question," or "punish severely, the law forbids." And, as a further caution, harsh legal phraseology regarding penalties may at times indicate rabbinic feelings about the immorality of a behavior, rather than rabbinic judgment about a legally enforceable punishment. For example, the Talmud calls many sinners "liable to the death penalty" when "clearly no court would prescribe such punishment" for their sins.¹³ Dr. Robert Gordis simplifies this point succinctly by reference to the rabbinic category of *patur aval asur* as a proper response to private homosexual acts between consenting adults.¹⁴

For completeness' sake a few words about lesbianism. Female homosexuality is more rarely considered in *halakhic* sources, and the absence of any direct, biblical text prescribing condemnation or punishment leads to some leniency. Still, lesbian acts were considered obscene, with some authorities apparently dictating punishment and others declining to do so.¹⁵

Now, what should we *do* about homosexuality?

We have Dr. Freehof's responsa on "Homosexuality" and on "Homosexual Congregations," concluding that homosexuality is sin, but forbidding the exclusion of sinners from the congregation. A draft of "A Statement on Homosexuals in Leadership Positions" from the Responsa Committee reflects some of our agonizing over the question of "what to do about it." The draft quotes a 1977 resolution of the CCAR supporting civil rights and civil liberties for homosexuals, and encouraging "legislation which decriminalizes homosexual acts between consenting adults, and prohibits discrimination against them as persons."¹⁶ After examining

11. Herbert Danby, *The Mishnah* (Oxford University Press, 1933), "Kerithoth," pp. 562ff.

12. *Ibid.*, "Sanhedrin," pp. 391ff.

13. "Law and Morality," *Encyclopedia Judaica*, volume 10, columns 1480-1484.

14. Robert Gordis, *Love and Sex* (Farrar, Straus & Giroux, 1978), p. 157.

15. Walter Jacob, *Op. cit.*, pp. 2-3.

16. *CCAR Yearbook*, Vol. LXXXVII (1977), pp. 50f.

halakhic statements, not only about homosexuality, but also about rabbis, cantors and teachers, our draft notes that,

among Ashkenazim they were sometimes dismissed on rumor alone. . . . The Sephardic community was more lax in this regard (Maimonides, *Responsa* — Friemann, #18), but it would also dismiss instantly if a charge was proven (R. Hai, *Shaarei Teshuvah* #50). These standards referred to all kinds of overt improper sexual behavior, as well as other unacceptable acts. I have found only one reference to an accusation of homosexual practices; although this was not proven, the cantor was dismissed as a preventive measure (Elijah Ibn Hayim, *Responsa* #41). The community always sought leaders who were above reproach, and continues to do so. . . .

Overt heterosexual behavior or overt homosexual behavior which is considered objectionable by the community, disqualifies the person involved from leadership positions in the Jewish community. We reject this type of individual as a role model within the Jewish community. We cannot recommend such an individual as a role model nor should he/she be placed in a position of leadership or guidance for children of any age.¹⁷

It is not the homosexual as a person whom we reject for a leadership position, but a person whose behavior is considered objectionable. In *halakhah*, customs accepted in practice become binding, and local custom is binding upon the local community.¹⁸ The congregation has a right to refrain from hiring a rabbi who picks his nose in the pulpit.

At the core of the problem may be a long standing "revulsion," which Gordis describes¹⁹ and about which I think the philosophy expressed by Joseph Margolis is relevant:

. . . Assume that a relatively homogenous society accepts some doctrine about "appropriate" or "admissible" sexual practices, usually incorporated into moral convictions. Then admit that, subscribing to that doctrine, the habits of mind and the tastes and feelings of the members of that society are sensitized and trained congruently. Deviations from the admitted norms will, then, be noted, and relatively extreme departures will be viewed as perverted — in the strong sense that representative members of the society will be disposed to find such extreme practices and inclinations abhorrent. (Margolis goes on to describe how *society* may adjust to this tension.)

This corollary is obvious: In order to reduce the sense of abhorrence, a society must extend its tolerance from its own normative preference via intermediary practices, toward the perverted; as it does so, it will inevitably alter its conception of "natural" practices. What the limits of its tolerance may be is difficult to say, but without doubt, they will be substantially in accord with the moral and prudential values prevailing in sectors of community life other than the sexual.²⁰

17. Letter from Dr. Walter Jacob to Responsa Committee, dated April 2, 1981 with attached draft, "A Statement on Homosexuals in Leadership Positions," p. 3.

18. "Minhag," *Encyclopedia Judaica*, volume 12, columns 5ff.

19. Robert Gordis, *Op. cit.*, p. 150.

20. Joseph Margolis, "The Question of Homosexuality," *Philosophy and Sex*, ed. Robert Baker and Frederick Elliston (Prometheus Books, 1975), pp. 299ff.

What do we accept as the moral and prudential values of our society? How much change are we willing to accept in the name of Reform Judaism? And is there any consensus beyond that slippery shibboleth, "community standards?"

We have no answer as yet concerning the "*gerut* of a gay gov." What should be our approach to a known and active homosexual who desires to convert to Judaism? Here are some of my thoughts on that question. For one thing, Cook makes a point about lumping all homosexuals into any one category: "It is important to distinguish between homosexuals committed to a gay life style and those desperately trying to resolve what they believe to be an emotional and moral problem." I am reminded of the distinction between a wanton act, punishable by the more severe penalty of *karet* (which, however, only God imposes), and an act committed in error, for which the penalty may be lighter, a sin-offering or lashes imposed by a court. Anyway, I always want to consider the specific behavior, and not the nature or condition of the person concerning whom a decision is called for.

Second, the responsibility of a rabbi who takes part in welcoming a *ger* into Judaism is weighty, indeed. We owe it to *Am Yisrael* that we not weaken or betray our people by knowingly introducing saboteurs, enemies or destroyers into our midst. But we presume that the prospective *ger* is innocent unless proved to be otherwise, and truthful, so that his intentions regarding future homosexual acts would probably be taken at face value. Now, is the rabbi faced with a prospective *ger* whom the rabbi suspects of planning future seductions or rapes? If so, gay or heterosexual, that *goy* should be rejected on the basis that "we cannot accept as a convert someone who is a sinner and intends to continue with his sin." But when the rabbi is faced with a prospective convert whom the rabbi expects to be a good and sincere Jew, not a criminal or a destroyer of Judaism, then that rabbi, in my opinion, must decide *ad hoc* whether the sexual orientation and practices of the *ger* are relevant to the conversion. Some rabbis may feel that a "gay" is *per se* "a destroyer," whereas others may feel that this individual would benefit from conversion to Judaism, and would probably prove to be an asset to *Am Yisrael*, and I think that each rabbi must follow his or her conscience.

In summary I offer the following draft for a Reform response to homosexuality:

The Central Conference of American Rabbis is on record, supporting full civil rights and civil liberties for homosexual persons and encouraging "legislation which decriminalizes homosexual acts between consenting adults, and prohibits discrimination against them as persons." This marks a shift away from the punitive attitude of many traditional Jewish texts.

Generations of rabbis based their teachings on the premise that the Bible mandates an attitude of revulsion and laws of prohibition against homosexuality as such, citing passages in Leviticus 18 as their prooftexts. However,

recent scholarship questions whether the biblical authors were even addressing the issue of homosexuality at all, holding instead that the prohibited homosexual acts were inextricably linked with idolatry in the context of both heterosexual and homosexual cultic prostitution. Thus, the specific prohibition of a homosexual act was only a part of the picture, one "fence" around the prohibition against the idolatrous practice of heterosexual as well as homosexual cultic prostitution.

The proper interpretation of well known statements about homosexuality from later, classic Jewish texts likewise is subject to debate. But just as rabbis who commented thousands or hundreds of years ago spoke out of their times and cultural settings, so too must we consider the lessons of contemporary scholarship in the fields of psychology, social psychology, sociology, ethics and religious thought. Thus, the inescapable implication of the resolution encouraging legislation to prohibit discrimination against homosexuals as persons is that we must not practice any such discrimination.

We do not discriminate against Jewish persons seeking membership in our congregations on the basis of race, sex, sexual orientation, disability or handicap. We do not discriminate against them in employment. We reject the unfounded fear that the healthy sexual development of children or young adults can be jeopardized by the presence of a qualified, well-behaved adult such as a teacher, administrator, cantor or rabbi who is of any specific race, sex, sexual orientation, stage of pregnancy or limited by a disability or handicap.²¹ We recognize that there is the rare case of anti-social behavior or improper behavior on the part of a Jewish professional or layman, irrespective of sexual orientation, which would lead to suspension or dismissal from office. When such a case involves aberrant sexual behavior the appropriate response is professional treatment, not ostracism or discrimination.²²

It has not been my purpose in this article to argue for a preconceived position, though the present state of my own prejudices and beliefs must be obvious. Rather, with the help of colleagues, those quoted above and others, I have tried to survey an area of shifting discussion and decreasing controversy among us. After more than seven years since the CCAR resolution on the civil rights of homosexuals, we may be close to agreement on a more substantive statement.

21. Richard Green, "Patterns of Sexual Identity in Childhood: Relationship to Subsequent Sexual Partner Preference." *Homosexual Behavior*, ed. Judd Marmor (Basic Books, 1980).

22. Drafted by Rabbis Rav Soloff, Judith Lewis and Allen Bennett for *Shaarei Musar*, at the invitation of the CCAR Family Life Committee, January, 1983.