

PROGRESSIVE JUDAISM

A Rabbinic View of Same Sex Marriage

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What does Judaism have to say about homosexuality? What does Judaism have to say about marriage? How can we interpret these traditional concepts in light of today's reality in order to establish justice in our own Jewish community? Do we even care what the tradition says today?

I raised these issues with my colleagues at the Central Conference of American Rabbis in Israel, though in the middle of Jerusalem, in the shadow of both the Kotel and the separation barrier this issue was not officially on the table. (I will note however, that there are plenty of gay Jews in Israel and they are among those who have found a home in the growing Israeli Reform movement.)

Rabbi Marla Feldman, director of the Reform movement's Commission on Social Action, who sat with me on the flight to Israel, noted that advocacy on behalf of social justice issues has from the beginning been part of the Reform movement's *raison d'être*. No, we cannot advocate for specific political candidates. Yes we can- we must-advocate for issues of moral and ethical concern to us as Jews. That is what it means to be an *or legoyim*, a light to the nations. Our non profit status as a synagogue is in no way impacted by such advocacy.

I spoke also with Rabbi Yoel Kahn, a leading activist gay rabbi, on his take on the halachic (Jewish legal) aspects of the same sex marriage issue. "Don't dwell on the halacha," he said. "Focus instead on the broader ethical principles: 'Do not oppress the stranger, for we were strangers in the land of Egypt'... and the concept that each of us is made *B'Tzelem elohim*, in God's image.

With all due respect, while noting that in many cases where halacha violates one of these broader ethical principles, we Reform Jews err on the side of social justice, I think it is important that here in our synagogue we confront the halachic issues head on and understand what we are up against in this issue of where we stand on LD 1020, a bill introduced by Senator Damon of Bangor which will have a public hearing on April 24 at Cony High School.

For us as Jews, the major concern should not be what the fundamentalist Christians think. One of our board members expressed the idea that we should avoid public confrontation with right wing Christians since they are among the few non Jews who are open in support of Israel, and also because open Jewish support for gay marriage could increase anti-Semitism among Christians who oppose it. I think we need to take the fears of our members seriously, those who fear anti-Semitism and those who fear harassment and discrimination because of their sexual orientation.

Issues of justice require our attention even though we may disagree with non Jews and even with other Jews. Before the Civil War Rabbi David Einhorn lost his job as a rabbi in Baltimore because he spoke out against slavery. Another famous rabbi, Morris Raphall of B'nai Jeshurun in New York—BJ which is today a mecca for young Jews- became famous for using the Torah to justify slavery. Natalie Jortner, who will celebrate her Bat Mitzvah here on May 16, is reading from the portion of Leviticus which outlines laws regulating slavery- not outlawing it—and is doing a mitzvah project which consists of redeeming a modern day slave-and we still have them!

On the other hand, we are not Unitarian-Universalists. We see ourselves as part of the greater Jewish family, as followers and interpreters of the Torah, the Talmud, the laws and customs of our people. We may as Reform Jews choose to ignore these laws. But it is my conviction that we should know what Jews have said and done in the past regarding all aspects of life before we change it, as often we should. We may follow Yoel Kahn's advice and use broad ethical principles to override specific laws and traditions- but let's know what these laws and traditions are before we decide to maintain, reinterpret or discard them.

So what about homosexuality? The biblical verse—Leviticus 18:23- quoted by the opponents of rights, including marriage, for gays is also from Leviticus, along with the laws on slavery, kashrut, and a host of other issues which Reform Jews ignore and which right wing Christians say that Jesus nullified.

V'et zachar lo tishkav mishkevey isha to'evah hee. "Do not lie with a male as one lies with a woman; it is an abhorrence."

The new Reform Women's Torah commentary notes on this verse:

In the early 21st century, this is one of the most misinterpreted, abused and decontextualized verses in the Torah. This verse, ripped from its place in the system of levitical laws, is often mobilized to justify discriminatory legislation against homosexuals and their families... It has no place in judicial systems not governed by the total system of Leviticus." (p. 692 note 22 on verse 23)

Aside from the Women's Torah Commentary argument that this law is taken out of context this law has been interpreted in a number of ways. Elliot Dorff argued for the Conservative movement that it does not forbid all male homosexuality, only the specific practice of anal intercourse. Harold Schulweis, another well known Conservative rabbi argues that the word to'evah here, usually translated "abomination" refers specifically to the practice of cultic prostitution in the service of pagan gods. In a 1993 article in Svara (Journal of the Columbia University school of Law and Shalom Hartman Institute in Jerusalem, for which I thank Rabbi Alice Dubinsky) Schulweis argues:

“What is abominable for the homosexual is what is abominable for the heterosexual. Promiscuity, rape, sexual exploitation, infidelity, adultery. What is abominable for one gender is abominable for another, what is abominable for persons of all sexual orientation is the disrespect of the personhood of the other. The flaunting, exploitative use of sexuality is as ugly in heterosexuality as it is in homosexuality. It is behavior, character and conduct—not sexual orientation—that counts. p. 13)

My friend and colleague Rabbi Carolyn Braun of Temple Beth El in Portland points out that this verse says nothing at all about women homosexuals. The rabbis in general either ignore or are not aware of lesbians, or in some cases may feel that, like all women they don't count. In halacha it is only men who are obligated to marry and to have children, minimally a boy and a girl. Women are supposed to be married only in order to avoid gossip. Traditionally men whose wives cannot bear children were meant to divorce them, or at least take another wife. Women have only one commandment in Leviticus 18 directed at them: not to have sex with an animal.

We don't learn a great deal about the basics of marriage from the Torah itself. Exodus 21 : 11 has been taken by the rabbis to mean that a wife has three basic rights: food, clothing and conjugal rights, that is sex either for procreation or pleasure. The context, however is talking about a daughter who is sold as a slave.

We do learn about what is called levirate marriage: the practice that if a man died without a child, his widow had to marry his brother. This is assumed in the story of Judah and Tamar in Genesis 38 and legislated in Deuteronomy 24 and 25. We also learn about the process of divorce, which has always been assumed as permissible in Judaism but is traditionally a one way event, in which the man gives a get to the woman. The process of divorce is assumed in Deuteronomy 22 and is illustrated in the story of Abraham sending away Hagar.

Jewish concepts of marriage are developed further in the Mishnah and the Talmud. We learn there about the three essential components of Jewish marriage, which is now called kiddushin, from the root kadosh, to make separate or holy. The three components are a shtar, or document, which we know today as the ketubah; kesef or money: the ring or other object of value worth more than a prutah, which the man must give to the woman; and biah, sexual cohabitation, preserved in today's wedding ceremonies as yichud, the couple's private time after the ceremony. If any one of these three steps was taken between a man and a woman, then a bill of divorce or get was required for the woman to remarry. When the man gives the woman the ring—and this is a one way transaction—he says Harei at mekdueshet li betabbat zu kedat Moshe veyisrael: Behold you are set apart for me with this ring according to the laws of Moses and Israel.

The Talmud uses the term lakach-to acquire—for what the man does to the woman. She is acquired by him and he then owns the right to reproduce through her. In Orthodox and some Conservative weddings today, this act of acquisition or kinyan is symbolized by the groom taking a handkerchief or other piece of cloth from the rabbi, lifting and returning it. The Hebrew term for husband, ba'al, literally master, reflects this patriarchal view of marriage; the parallel term for wife Be'ulah, means one who is owned. The Talmudic

ceremony of kiddushin is still what we use today in the Jewish wedding. It is followed by the more mystical act of nesuin, the seven blessings, which signify the couple becoming one household under the chuppah.

My beloved and respected Talmud teacher, Mark Washofsky, was the author of the Reform responsum issued in 1996 just before the Central Conference of American rabbis debated the issue of same sex marriage in Greensboro NC. The Reform responsa committee issued a split decision at the time, the majority with my teacher opposing same sex marriage and a minority supporting it. Dr. Washofsky's principal argument, as I understand it, is that same sex marriage cannot be construed as kiddushin, using the traditional model of Jewish marriage.

Yet most of us Reform rabbis have altered this model from the beginning. To begin with, we make weddings egalitarian. I have never performed a wedding where only the groom gave the bride a ring and uttered the words Harei at. Very few Reform couples use the traditional form of the ketubah, where the groom promises the bride 400 zuz in case of divorce if she is a virgin, half that if she is not. If the bride chooses to circle the groom, then he circles her too. Often the bride breaks the glass as well as the groom-though the breaking of the glass has no halachic significance.

Dr. Rachel Adler, a professor at the University of Southern California and at Hebrew Union College in Los Angeles and author of *Engendering Judaism* (1998 Beacon Press) offers a startling and brilliant solution to Washofsky's objection that same sex marriage cannot be kiddushin. Adler would agree- in fact she argues that the egalitarian modifications we make these days to the ceremony are not kiddushin either. Traditional Jewish marriage is an act of acquisition of the woman by the man. Adler says that altering the traditional form of kiddushin is pointless. She notes that in terms of halacha, a ceremony where the wife also gives a ring to the husband nullifies the whole contract, as if each participant had given the other a five dollar bill: their circumstances are precisely what they were before the transaction.. the problem with marital kinyan is not simply that it is unilateral, but that it commodifies human beings. The groom's commodification and acquisition of the bride is not rectified by the bride's retaliation in kind. P 191

Adler proposes an entirely new model for Jewish marriage, one that like the traditional model is based on Talmudic law. But for kinyan, the law of acquisition of property, Adler substitutes the law of shituf, business partnership. For the term kiddushin she substitutes the term Brit or covenant, and renames the ceremony Brit Ahuvim, a lover's covenant. Like a Talmudic business partnership this Brit Ahuvim has three components: a document, in the Talmud a partnership deed; here a shtar brit, a covenant document; second a verbal statement of personal undertaking by the partners; the third element in a business partnership is l'hatil b'kis a ritual where traditionally the partners "pool resources" by each putting money in a bag and lifting it up. Adler proposes that the marriage partners put significant objects to each of them in a bag and lift them up together to symbolize the pooling of resources. These objects can include rings but could also be other valued objects for each of the partners: a musical instrument, a book, a text from a teacher or parent.

The Brit Ahuvim ceremony would conclude with the traditional sheva brachot, the seven blessings. This ritual, suggests Adler, would be appropriate for straight or gay couples since it would imply no domination of one partner by the other. (see document)

At the Reform rabbis' conference in Greensboro, a location that had been the site of some of the first lunch counter demonstrations in the civil rights struggles of the 1960's, Reform rabbis struggles with how to provide equal sanctity and standing to the Jewish households headed by same sex couples. One of the most compelling discussions was over a proposed document which would define kedusha, holiness, in a consistent way for gay and straight relationships. I share this document with you, and point out that in one document the term kadosh is typified as one where the couple has undergone a marriage or commitment ceremony and conducts their sex lives in accordance with the ten reform Jewish sexual values.

Leaving aside for now the question of whether civil unions or domestic partnerships can provide equal financial, inheritance, health and other benefits as marriage—and as I understand it, they do not—we as Jews must ask ourselves whether we place any value on the religious ceremonies by which we mark the life cycle. For many years liberal rabbis struggled to create naming ceremonies for girls which were equivalent in power and gravity to the bris with which we welcome boys. Orthodox rabbis said: isn't it enough for the father to have an aliyah to the Torah the week after the baby is born? Our answer as Reform Jews has been a resounding no. Not until 1922 was the first girl, the daughter of Mordecai Kaplan, called to the Torah as a Bat Mitzvah. Yet most of us in this community now take it for granted that we will weep and kvell as our daughters are called to the Torah at age 13.

So when people say—wouldn't it be enough for gays and lesbians to acquire civil rights through governmental legislation for civil unions? Our answers as committed Jews must be no. If our religious ceremonies mean anything to us, then we must provide them equally to all couples seeking to set up Jewish households in which they may choose to raise Jewish children. It is only in the context of communal events that we establish our identities as Jews. I believe that the right to a communal sanctification, to a wedding, should extend to same sex couples in our community, under the same rules which apply to heterosexual couples.