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## HOMOSEXUALITY: CLINICAL AND ETHICAL CHALLENGES

### INTRODUCTION

Understanding and treating homosexuality is fraught with theoretical and therapeutic frustrations and ethical complications. During a crucial developmental period for the study of homosexuality, when assumptions about the nature of sexual orientation in general are currently a matter of much popular and professional debate, the Jewish mental health practitioner involved with this clinical problem faces numerous challenges to his or her ethical value system. The student of halakhah faces a similar challenge. Such challenges bear considerably upon clinical practice.

Can one choose to not treat homosexuality as an illness, but rather help such clients function better as homosexuals? If one intends to "cure" a homosexual, are halakhically appropriate interventative procedures available? Does the Jewish psychotherapist have certain responsibilities to the non-Jewish homosexual? The purposes of this essay\* are to examine the halakhic

#### NOTE:

\*The bulk of this paper deals with the topic of *araayut*. Discussions of such topics are to be guided by the axiom: "One does not discuss *araayut* among three" (*Hag.* 11b; *M.T.*; *Hil. Isurei Biah* 22:17). The purpose of this paper is not to broadcast the existence of the problem of homosexuality among Jews nor is it my intention that these contents be bandied about carelessly among the uninitiated. It is designed primarily to meet the needs of practitioners who do not have ready access to the relevant halakhic guidelines governing this psychiatric problem and its treatment.

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status of homosexuality, to consider halakhic difficulties encountered with the psychoanalytic and behavioral interventative models, and to discuss the confrontation between halakhah and those views subscribing generally to an interpretation of homosexuality as an "alternative sexual preference."

Defining homosexuality is encumbered by the variety of differing and often contradictory etiological theories. To further complicate matters it is noted that some psychological theorists assume, *a priori*, the inherent normality of heterosexuality while others reject this assumption. Thus, for example, while all would accept as valid the description that most homosexuals seen in clinical practice derive little if no sexual pleasure from relationships with opposite sex partners, only those who accept the inherent normality of heterosexuality could take this description alone as indicative of the homosexual's pathology. Those who accept no single sexual orientation as a biological given would not find a clinical description alone useful in pinpointing the inherent pathology of the homosexual orientation as such. Of course, much of importance is begged by both points of view which shall be discussed in subsequent sections of this paper.

When talking of "homosexuality," one generally differentiates between *genuine homosexuality*: chronic, global, and intense erotic drives for same-sex individuals; *transient* or *situational homosexual behavior*: the preference for heterosexuality frustrated by social constraints (such as soldiers or prison inmates who, due to extended periods of deprivation, engage in homosexual behavior, or celibate clergy who are prevented from heterosexual relations by their social and religious beliefs); and *opportunistic homosexuality*: delinquent sexual behavior (such as those who engage in homosexual activity solely for the sake of some form of reward). To avoid complication, I will deal with homosexuality as a behavioral phenomenon: there are those who exhibit this behavior who wish to modify it and who, until such time as treatment is effected, will be anxious, unhappy, and conflicted, and, on the other hand, there are those who wish to have their homosexuality accepted as an alternative to heterosexuality. This halakhic examination is necessary in the interests of responding to both parties in a halakhically consistent manner.

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A final introductory point. It is not the primary purpose of this paper to prove any single psychological theory of homosexuality. However, it is unavoidable that the halakhically oriented individual may take some halakhic interpretation of homosexuality which approximates certain psychological views of homosexuality as a confirmation of such psychological theories. I have noted elsewhere that halakhic understandings of man and human nature are psychological theories in their own right from the standpoint of a pan-halakhic perspective. In this presentation of the halakhic view of homosexuality, I disclaim any inference that these views are intended to supplant empirical research on the topic, though I would defend the possibility that such halakhic understandings represent a valid psychological point of view within a framework different from that of empirical research.

### I

Homosexuality is considered one of the *araayot*, or forbidden sexual relationships. It is described as *toevah*, an abomination, in the following biblical proscriptions:

1. Thou shall not lie with a man the lying of woman; it is an abomination (Leviticus 18:22).
2. A man that lies with a man the lying of woman, they have committed an *abomination*; both shall surely die; their blood is upon them (Leviticus 20:13).

The homosexual act, intercourse *per anum* between two males, is punishable by death (stoning) or, in the absence of proper warning, by excommunication (*karet*).<sup>1</sup> The ritual male prostitute or *kadeshah* is forbidden from the community of Israel.<sup>2</sup> Since the basic prohibition involved in the biblical description of homosexuality is the act of anal intercourse (*mishkav zakhor*), lesbianism cannot be included in the aforementioned passages, but is rabbinically inferred as forbidden by a separate ban, "Like the deeds of Egypt you shall not do" (Leviticus 18:13). Lesbianism, known to the rabbis of the Talmud as *nashim ha-mesolelot*,<sup>4</sup> is punishable by *makat mardut de-rabbonon* (lashes for rebelling against rabbinic authority).<sup>3</sup> Inasmuch as female homo-

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sexuality is primarily considered *pritzut*, immodesty, rather than *ze'nut*, licentiousness, a lesbian may marry a member of the priestly class.<sup>6</sup> Rambam and most authorities concur that the prohibition of homosexuality applies to both Jew and non-Jew.<sup>7</sup>

The age of culpability for homosexual activity is nine years and one day. Should an adult involve a minor younger than this age in homosexual acts, both avoid the specific biblical infraction but the adult receives *makat mardut*. In such a case, if the minor is older than nine years and one day but younger than thirteen, the adult is punished by death for the biblical infraction and the minor receives *makat mardut*.<sup>8</sup>

In an interesting application of the biblical definition of homosexuality, Rambam notes that anal intercourse with a true hermaphrodite (*androgenus*) is a full violation of the biblical prohibition. Yet, intercourse per the vaginal-type orifice of the hermaphrodite is *patur min ha-Torah* yet punishable by flogging.<sup>9</sup> The point is that though the *androgenus* is generally considered to have a *dual* male-female status—as opposed to the *tumtum* who is of doubtful sexual status (*safek ish safek ishah*)—the specific phrase, “the lying of woman,” emphasizes that the act of anal intercourse is sodomy despite the hermaphrodite’s bivalent status.<sup>10</sup> In a case with relevance to the halakhic status of the outcome of transexual surgery, R. Hananel rules that intercourse with a male who had some form of artificial vagina is still *mishkav zakhor*; i.e., the sex change is not halakhically valid.<sup>11</sup>

Halakhah recognizes that the prevalence of homosexual behavior varies among communities and cultures. In a fundamental Mishnaic and Talmudic discussion, R. Judah prohibits two unmarried males (*ravakim*) from sleeping under a shared blanket in the effort to prevent the outbreak of what must have been considered a latent disposition toward homosexuality.<sup>12</sup> The majority opinion, however, dissented, thereby rejecting the notion of such a disposition, presumably since homosexuality was a rarity in Jewish society. The prevailing norm or *hazakah* based upon the majority view is that Jews are not suspect for homosexuality or zoophilia (*lo nihshadu Yisroel al mishkav zakhor ve-al behemah*).<sup>13</sup> Though Rambam codified the majority ruling, R. J. Karo reversed the decision to that of R. Judah

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because of the “lewdness of our times,”<sup>14</sup> while R. J. Sirkis, due apparently to yet another shift in moral climate in his own community, bypassed Karo’s decision in favor of the original *hazakah*.<sup>15</sup> Nonetheless, one consistently finds the following added by codifiers even after citation of the majority ruling:

And, though, Heaven forbid, we never had reason to suspect for this, but the cautious—may blessing come upon them!<sup>16</sup>

Does halakah differentiate between homosexual acts and the general condition of homosexual preference or homosexuality? Or, what is the halakhic status of the individual who never has actual sexual relations with males, yet experiences homosexual fantasies and intense and chronic desires for erotic male relationships? What is the status of *being* a homosexual as opposed to the status of committing specific homosexual acts? Elsewhere I detailed that thoughts about, and certainly preoccupation with sexual evocative material, is strictly forbidden in Jewish law. The various codes’ prohibitions against even “that which leads to *araayut*” would indicate that homosexual fantasies are included in the basic interdict.<sup>17</sup> However, it can be further argued that when halakhah prohibits the act of homosexuality, or behavior between males that is in the *manner of woman and man*, it is indicating its disapproval of the general shift in erotic interest from feminine to masculine object choice. This impression is supported by some of the interpretations that have been offered for Judaism’s inability to accept homosexuality.

The Talmud itself explains, by rendering the Hebrew term *toevah* into *toeh atah bah* (“you err through it”), that homosexuality destroys family unit.<sup>18</sup> The *Sefer ha-Hinukh* makes it clear that homosexuality, as an act, is *hash-hasat zera le’vatalah* (spilling semen in vain, a separate biblical prohibition<sup>19</sup>) and, as a way of life, is antithetical to the Divine imperatives of propagation (*pe’ru u’re-vu*) and the *mitsvat onah*.<sup>20</sup> One can infer from the arguments of the *Sefer ha-Hinukh* in explaining the prohibition against zoophilia that perhaps homosexuality also represents a frustration of the fiat *min be-mino*: the universal bioethical commandment that all creatures propagate in such a way that preserves specie specificity, which would include safeguarding the sexual relationship, itself.<sup>21</sup>

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Others have commented that homosexuality is a distortion of normal sexual behavior as biblically defined, "And thou shall cleave unto the woman and be as one flesh" (Genesis 2:24), to which the Talmud adds, "'*And cleave*'—but not unto a man."<sup>22</sup> While the rabbinic exegesis here is obvious, it is perhaps redundant since a specific biblical prohibition already exists. Thus, R. Barukh Halevi Epstein suggests that since the *de'veikut* (lit., cleaving, attachment) highlighted in this passage includes *erotic* attachment, the Talmud felt the need to stress the specific male-female framework for this attachment, thereby prohibiting the psychological-emotional orientation of the homosexual.<sup>23</sup> Thus, it is not merely the physical act of intercourse between male individuals, but rather the emotional relationship (or disposition) of homosexuality which is a primary concern.

Given this background, a halakhic theory of at least one aspect of the development of homosexuality can be suggested. If one considers the beginning of the aforementioned passage, "Therefore shall a man *leave* [*ya'azob*] his father and his mother"<sup>26</sup> (Genesis 2:24), in relation to the final portion, "and *cleave* unto the woman," one can infer that a functional emotional relationship in the halakhically desired male-female pattern is only possible with the successful resolution or *relinquishing* of the variety of childhood dependency and competitive emotional ties with parents. The homosexual cannot find psychological satisfaction in the "normal pattern" precisely because he or she has been unable to sever such ties, or has yet to resolve neurotic parent-child issues which contribute to the psychological dilemma. Homosexual *de'veikut*, then, is but the replication of emotional conflict involving inappropriate *de'veikut* to the opposite-sexed parent or to both of them. This anticipates Bieber's point that,

The homosexual act is not an analogue to heterosexual intercourse. It is, in part, a masquerade in which multiple role behaviors are enacted.<sup>24</sup>

An additional aspect of the above hypothesis is that homosexuality is not only contrary to the halakhic idea of family structure or the male-female relationship, but is also destructive of the halakhic ideal of the complete *individual* as such. Based

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on the passage, "Male and female He created *them* . . . and He called *them* Adam" (Genesis 5:2), R. Elazar commented, "Any man who has no wife is not Man."<sup>25</sup> The halakhic definition of the human individual, as R. Joseph B. Soloveitchik has often pointed out, is found in the *totality* of male united with female; a composite of traits, functions, and attributes producing a desirable whole.<sup>26</sup> Identity requires the synthesis of opposites. To the degree that homosexuality perverts these ideals, it remains *toevah*, a *ta'ut*, an error. It destroys the individual's ability for ontological fulfillment in the halakhic world. This last problematic aspect of homosexuality would apply not merely to the homosexual act but more so to the quality of individual being that homosexuality represents. Ultimately, in the Jewish view, the goal of the sexual relationship is the sanctification of the individual, the marital relationship, and society. "Every place where one finds the fence of *araayut*, one finds holiness."<sup>27</sup>

It is appropriate to end this section with Rambam's keen awareness of the apparent instability of human sexual-object preferences.

You have nothing in the entire Torah which is as hard for the masses to separate themselves from as the *araayut* and the forbidden relations. The rabbis said that when Israel were commanded with the laws of *araayut*, they cried and accepted these precepts with grudging and lament, as it is written, "*Weeping, family by family*" (Numbers 11:10). —they wept over matters concerning family<sup>28</sup> [i.e., over relations which would now be forbidden them]. And our rabbis said, "Man's soul lusts for theft and *araayut*;"<sup>29</sup> and one finds no community which from time does not have immodesty, *araayut*, and forbidden relations.<sup>30</sup>

## II

Treatment of homosexuality is as fraught with divergent theories as is the issue of its development. Opinions range from pessimistic views that the most even early intervention can do is avert the future development of more severe pathology to views which recognize that relief from anxiety, focal relief of homosexual symptoms, and even cure are possible with some homosexuals.<sup>31</sup> Individual, successful case studies have been reported by psychoanalytically-oriented therapists and by behav-

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iorists. With insight-oriented psychotherapy the focus is primarily to demonstrate through talking, free association, emotional re-experiencing, etc. the defensive aspects of homosexual relationships and to uncover the positive aspects of the patient's original relationships with women. Obviously, success is enhanced when the patient is young, serious about change, and certainly when "cure" is cautiously defined as achieving the capacity to control homosexual urges or, at best, the abolition of overt homosexual responses and possibly the development of some heterosexual response. Behavioral therapies promise rapid, effective, and economical programs of change.

Based on the clinical evidence that despite an apparent disinterest in and aversion to heterosexuality, evidence of heterosexual responsiveness can be demonstrated in most homosexuals, two major approaches have been devised. One is the behavioral rehearsal of heterosexual activity with deconditioning of the heterosexual anxiety (a learned fear response to heterosexual stimuli).<sup>32</sup> A second approach involves orgasmic re-conditioning procedures using both the patient's own homosexual fantasies as well as erotic audio-visual material to slowly build-up a response to fully heterosexual stimuli as well as to heterosexual relationships.<sup>33</sup> The use of female surrogates in such therapies has not been unheard of (though Masters and Johnson and others have officially discontinued the use of surrogates in their sexual dysfunction and sexual deviance clinics). Masturbation to increasingly greater amounts of heterosexual stimuli, and initially to autoerotic stimuli, is generally a crucial aspect of both approaches.<sup>34</sup>

Both treatment approaches to homosexuality present halakhic complications. The first problem, which applies to both methods but is recognized more easily in psychoanalytic or general, taking-cure type therapies, involves the carefully guarded domain of discussing or even thinking about material of forbidden sexual content, or material which may be considered profane. With regard to *hirhur araayut* (thoughts about illicit sexual relations)—which may be involved in talking of homosexual fantasies and wishes, incestuous feelings which underlie homosexual behavior, or autoerotic impulses—the halakhic sentiment

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is quite strong. "The thought [of *araayut*] is worse than the deed."<sup>35</sup> "Said R. Pinhas: Do not think of lewdness in the day and come to a seminal emission at night."<sup>36</sup> I have discussed this problem and its possible solution in another paper.<sup>37</sup>

Behavioral strategies with male homosexual patients also involve the prohibition against stimulating an erection to auto-erotic or forbidden sexual stimuli. In addition to previous prohibitions, another halakhic principle is operative here. In the halakhic view, a female can claim innocence by virtue of compulsion in sexual crimes involving forced intercourse, but a male cannot because his involvement in such an act would be impossible without some measure of sexual pleasure. The principle here is "*Ein kishuy elah le'dat*"; an erection is impossible without sexual arousal and, therefore, some degree of intention.<sup>38</sup> Writing on a case involving the placement of an antisocial male patient in an institution where the possibility of homosexual activity existed, R. Moshe Feinstein rules that the patient's impaired moral and emotional self-control cannot waive the relevant prohibitions or the guardian's need to reject the choice of said institution.<sup>39</sup> R. Feinstein reasons that unlike lenient rulings in cases where persons in life-threatening circumstances have been instructed to eat non-kosher food—where, since food can be eaten in such a way as to not derive pleasure, halakhah permits in situations of duress not only the eating but even the enjoyment of such food—sexual acts cannot take place without involving some measure of forbidden pleasure. He substantiates his view with the principle, "*Ein kishuy elah le'dat*." Even those few authorities who argue that the male *can* claim compulsion in sexual crimes would concede that where the forced act ended in any degree of pleasure that was acceptable to the individual, which would be analagous to our treatment case, the gravity of *isur* (prohibitory quality) increases.<sup>40</sup> It would seem that behavioral interventions face serious halakhic objections.

Of course, in the halakhic system, there has to be some relevant alternative principle active in order to waive the illicit nature of the standing prohibitions which render such psychotherapies halakhically inappropriate. We recall, for example, that even the Sabbath laws may be violated in the interests of

saving life; in such cases the obligation to heal supercedes all prohibitions.<sup>41</sup> Often, psychotherapists are quick to assume that any prohibitions which present themselves in the therapeutic encounter can be waived by an appeal to this "medical-healing model" generally operative in cases such as the above example. Indeed, Nahmanides notes that the obligation to heal, stemming from *ve-àhavtah*, applies not only to absolute *pikuah nefesh* but even to situations of lesser gravity such as mental anguish and the general promotion of well-being.<sup>42</sup> However, it must again be noted that actual threat to life, *sakanat nefashot*, is not usually involved in the treatment of homosexuality. And even when it is, such as a homosexual patient who has become a suicidal risk due to extended lack of treatment and intense anxiety and guilt, etc., no prohibition can be waived where violation of any of the three cardinal sins is the alternative: *araayut*, idol worship, and murder. The paradigm is the Talmudic case of the individual who literally fell sick-in-love with a married woman and required for cure to sleep with her or, at least, to hear her voice from behind a wall. To each alternative offered by this individual's physicians the rabbinic view is to accept death over the "therapy."<sup>43</sup> Actually, the rabbis were divided whether the woman in question was a married woman, and hence one of the *araayut*, or merely a *penuyah* (unmarried virgin). In the latter case, the stricture against a sexual relationship would be less grave.

Rambam appears to rule that accepting death remains the halakhic alternative even if the woman involved were only a *penuyah*, in the interests of safeguarding modesty. He notes that this stringency is in force "*le-dorot*," forever.<sup>44</sup>

The Talmud itself asks, according to the one view, that the woman was only a *penuyah*, why the individual did not simply marry her thereby lawfully satisfy his desires.<sup>45</sup> It responds laconically that "stolen waters are sweet,"<sup>46</sup> and that since the days of the destruction of the Temple the 'sweetness' of sexual relations has been abused by the wicked. That is, the individual's lust was inseparable from the forbidden nature of his sexual object choice. Rashi (s.v. *miyom*) adds an interesting note that the destruction of the Temple caused such a deep-seated anxiety in Israel that husbands can no longer enjoy their wives. This

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brings to mind Loewenstein's similar observation that the destruction of the Temple represents a massive national psychic trauma from which Jews continue to suffer; a reaction of mourning which seems to have never ceased.<sup>47</sup>

It would seem that the prohibitions active when considering the treatment of homosexuality are both grave as well as broad enough to include most critical aspects of the current treatment methods. It might, therefore, seem that the halakhically observant professional has nothing to offer the homosexual patient desirous of change save helping the homosexual accept a halakhic status of *ónes*, one compelled to be in one's condition. H. J. Matt considers this one satisfactory Jewish response to the current state of affairs.<sup>48</sup> Dr. Norman Lamm, in an extensive discussion, notes that Jewish law would grant most homosexual patients the status of *ónes*, but that this status would not make homosexual acts any less abominable.<sup>49</sup> Thus, nothing in the general status of the homosexual condition would readily call for halakhic leniency with regard to breeching the standards of *araayut*.

While one awaits a full responsa on the topic by recognized halakhic authorities, some possible directions toward a more active role for the therapist can be explored. First, one notes that the inviolability of the three cardinal sins, requiring *yaihareg ve-al ya'avor* ("Be killed rather than violate"), is generally limited to biblical levels of prohibition which, at this point, includes the *abizrayhu*. Rabbinic levels of *araayut*, such as audio-visual material comprised of non-Jewish female models, would not demand *yaihareg ve-al ya'avor*—especially where life-threatening risk or severe psychiatric hazard is involved.<sup>50</sup> More important, the prohibitions referred to until now (even according to those who consider *abizrayhu* also a biblical infraction) evolve around the sexual act and impulse solely as a function of *kiruv ve'nishuk derekh hibah u'be-derekh ta'avah*: acts of intimacy in the manner of *conscious desire for a forbidden relationship* or forbidden relationships in general.<sup>51</sup> There should be a sense, then, in which the sexual act can be separated from the motive, if not from the biological mechanism of sexual arousal, such that one could conceive of a halakhically appropriate manner in which the homosexual patient might produce an erection to therapeuti-

cally introduced sexual arousal (stimuli of the type discussed in the beginning of this paragraph). Some examples reflect the differentiation I am suggesting.

According to one Talmudic account, R. Ahah would dance with new brides on his shoulders but advised others not to do so if they could not control their thoughts.<sup>52</sup> Though this example does not have direct bearing to the problem of "*Ein kishuy elah le'dat*," it serves to separate motivation from an otherwise forbidden act. In another example, a ruling exists that when faced with an irrepressible desire to cohabit with one's menstruant wife, it is better to masturbate and thereby reduce this desire than to violate the biblical prohibition against sexual relations with a *niddah*.<sup>53</sup> In this case, the generally forbidden act of masturbation takes on a new identity since it is not motivated by primarily autoerotic desires. In a third example, the Talmud discusses the definition of *saris* (lit., a castrated individual, yet which includes any post-natal damage to generative organs which causes sterility) in the case of an individual who had an opening in the penile shaft which had subsequently healed. A satisfactory reversal of the status of *saris* is defined as a wound so well healed that a normal ejaculation would not re-open the wound. In an attempt to operationalize this definition, Abaye suggests showing the individual some women's colorful clothing so that an ejaculation might be caused.<sup>54</sup> Though this opinion is rejected by the Talmud and is not included by subsequent codifiers, the implicit point is that there may be motivationally-based exceptions to the principle "*Ein kishuy elah le'dat*," such as where the erection is not the result of an object-specific forbidden sexual relation. Though a biological urge as part of a complex psychophysiological mechanism is involved in these cases, the problematic *ta'avah* or illicit arousal need not be operative. Interestingly, in a careful and cautious consideration of the standard methods of obtaining a sperm sample where medically indicated, R. Moshe Feinstein uses Abaye's approach as a justification in permitting some methods (though he prohibits wanton behavior in this regard or any immodesty such as a couple having intercourse in the physician's office so as to obtain a fresh sample).<sup>55</sup> R. Feinstein, ruling leniently so as to permit the

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individual in question to marry, is proposing that in this context masturbation is a different phenomenon than that usually prohibited. *Nevertheless, from the standpoint of the clinical requirement that the patient undergoing behavioral therapies experience these sexual sensations without anxiety and as desirable and pleasurable sexual responses, it is difficult to say that the psychological factors concomitant to the physical evidence of arousal are separable.*

Finally, consider Rambam's specific phraseology when discussing the case of the Talmud, [*Sanhedrin 75a*]:

He who sets his eyes upon a woman and becomes moribund . . . he should die rather than have intercourse with her even if she be a *penuyah*. And even to talk with her from behind a wall *we do not instruct him to*, and he should die, *and do not rule for him to speak with her from behind the wall.*<sup>56</sup>

That is, as far as the *abizrayhu* of *araayut* are concerned, there may be no real imperative to die rather than accept some alternative, yet we do not openly instruct individuals to follow the alternative!

## IV

We are now in a position to discuss certain social and ethical issues confronting the mental health practitioner. There is no need to repeat considerations here which have been carefully examined in Rabbi Lamm's essay. However, I wish to add a few issues regarding the professional's response to homosexuality.

On December 14, 1973, the American Psychiatric Association voted to eliminate the classification "homosexuality" from the list of non-psychotic sexual deviations in future editions of the widely used *Diagnostic Statistical Manual* (Vol. 3, January, 1980). This decision had been lobbied for over a period of time. The APA supported its decision with documentation that homosexuals do not show evidence of *other* psychopathology and do not, as a group, exhibit any greater amount of personality disturbances than do heterosexuals as a group.<sup>57</sup> Opposing views were expressed through a referendum signed by some 3,700

psychiatrists but were ignored.<sup>58</sup> This was, in effect, to ignore many extensive studies of homosexuality that had carefully concluded that homosexuality was inherently pathological or that, at least, homosexuals do exhibit greater to lesser degrees of additional personality disturbances related to their sexual orientation.<sup>59</sup> A more pivotal issue, however, appears to have been a statistical one; i.e., given that homosexuality, in view of the APA favored evidence, was merely a sociological artifact, in what sense could it continue to be considered a "deviant" sexual orientation? The decision of the APA was clearly a response to this question.

An important issue begged by this decision is whether the numerical frequency of a constellation of behaviors says anything about the *inherent* normal or abnormal status of such behavior. On one hand, this issue was made obsolete by prior convention to replace the medical term "sickness" and certainly the concept of "sin" with more libertarian terms such as "maladaptive" or "inappropriate" when describing pathology. For, it had already been accepted that "deviance is not inherent in but conferred upon" such that all standard pathologies are potentially capable of being reabsorbed into the normal end of the continuum when sufficient 'evidence' presents itself. The implications of the demarcation "sin" are clearly antithetical to this supposition. Psychology, indeed, cannot consider homosexual behavior "sinful" for sin is a relevant concept only in a system that places distinct values on the uses and misuses of human freedom. Psychology, as primarily a restorative system, does not dictate the terms in which humans make freedom meaningful. This is the prerogative of religion. At the same time, this limitation in psychology does not mean that it is incapable of making any statements about the intrinsic qualities of certain acts or states of being. The APA decision, however, indicates that many professionals are willing to accept this limitation *in extremis*.

Another assumption implicit in the APA decision seems to be that the purpose of diagnosis is demarcating *social norms*, in which case the *frequency* of behavior rightfully serves to determine normality or abnormality. However, diagnosis is also an evaluative scheme which involves statements about the intrinsic

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qualities of behaviors or traits which, as was noted, have been glossed over in this case. Most important, diagnosis is also an interventative scheme. As such, some have argued, since intervention by definition requires application to *pathology*, if we continue to consider homosexuality a sexual deviation one falsely implies that all homosexuals *need* or *should* obtain treatment.<sup>60</sup> This violates the rights of those homosexuals who do not feel the need for treatment and who wish to live their lives as homosexuals.

It can be counterargued that characterizing an entity or constellation of behaviors as pathological is not itself a necessary or sufficient condition for intervention (e.g., one could imagine "intervening" at a heterosexual's behest and transforming him or her into a homosexual via conditioning procedures). It can be further argued that the falsity of the implication that all homosexuality requires treatment should not effect its status as a sexual deviance. The possibility that the pathology label is not a necessary or sufficient condition for treatment should mean only that one can rightfully *suspend judgment* on whether or not homosexuality is inherently deviant (which halakhah would reject) but not that one can conclude that homosexuality is *eo ipso* nondeviant. I am suggesting that the type of *a fortiori* arguments offered to question the deviant status of homosexuality are not as valid as suspected.<sup>61</sup>

Can Judaism accept homosexuality as an "alternative sexual preference?" By the use of this phrase, gay rights advocates intend acceptance of homosexuality as a normal preference. Judaism cannot admit this sexual orientation into its continuum of sanctified behavior. Homosexuals are, without doubt, bona fide members of the Jewish community but are unable to satisfy the halakhic goals for sexuality. Should Judaism openly preach its negative stance? Lamm has discussed this question with regard to a Jewish policy on gay synagogues.<sup>62</sup> I cannot amply cover this topic here but wish to consider the following. H. Matt notes that even if Judaism adopts a negative stance toward the status of homosexuality, such a policy will still help reduce anxiety, guilt, and self-blame (frequently secondary problems for the otherwise marginal homosexual) in that it allows the

individual to gain a sense of his halakhic responsibility *vis-a-vis* homosexuality.<sup>63</sup> Which is to say, according to Matt, that a homosexual aware of the halakhic view can, without self-blame, accept this condition not as a sin or sickness but as *o'nes*.

Unfortunately, Matt bases his view on the mistaken assumption that there is *nothing* psychotherapy can offer the homosexual patient. This is not completely the case.<sup>64</sup> Second, whether or not the homosexual condition is categorized as *o'nes* does not change the fact that, in a certain metapsychological sense, halakhah views the status of homosexual-being as *toevah* or sinful. Third, even if the condition begins as *o'nes* there is halakhic concern that subsequent homosexual acts, committed in full knowledge of the halakhic view and where the individual is not overtaken by psychotic compulsion, are reprehensible. The danger is that homosexuals may come to accept their condition not merely as *o'nes* but as *normal for homosexuals*. This is the thinking which has led to the encouragement of "non-treatment" approaches to homosexuality.<sup>65</sup>

How Judaism's negative stance will help reduce guilt and self-blame, according to Matt, also needs consideration. Surely, halakhah shares in the desire to reduce neurotic self-blame and guilt where the latter stand in the way of productive living. However, anxiety and guilt can operate on two levels. One must differentiate *dynamic* conflict—based on psychosexual issues relating to the development of homosexuality in an individual and as evidence of the incompleteness of the neurotic compromise represented by the homosexual orientation—and *religious* conflict—uniquely characteristic of an individual's awareness of the incompatibility between the homosexual preference and the halakhic ideal.

The second type of conflict is also "dynamic" in that it involves different levels of consciousness and internal disequilibrium, though conflict between halakhic ideals and ego rather than merely between ego and intrapsychic factors. Yet, it is uniquely a "sinful" conflict in that the parameters of conflict are not considered merely the result of irrational superego tensions but rather as characteristic of the primacy of halakhic values for such individuals. There is no *a priori* requirement that such con-

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flict be labeled neurotic in the strictly clinical sense.<sup>66</sup> Precisely when such conflict is evident does one know that the individual's endeavor to distort the relationship between halakhah and reality have begun to weaken. In this case, guilt and self-blame become halakhically desirable.

I have discussed the halakhic view of homosexuality and considered some of the ethical issues which face the Jewish professional and social policy maker. The halakhic view of homosexuality is not a popular one nor is it likely to seem a very compassionate one. The halakhically observant professional must look upon the growth of psychiatric specialists who treat sexual dysfunctions (e.g., impotence, ejaculatory incompetence) solely in homosexual couples, or any attempt to treat homosexuality as a normal sexual preference, as an infraction of "*ve'lifney eiver lo siten mikhshol*" (Leviticus 19:14). Maintaining this halakhic view in professional circles and in public may come as an embarrassment to many. However, halakhah's obligations to society and the individual are not relativistic and must be understood as reflecting a higher understanding of human nature.

### NOTES

1. *Sanhedrin* 82a cites Jeremiah 3:20: "Thus has Israel rebelled against me, says the Lord, and an abomination has been committed in Israel and in Jerusalem"—this refers to *mishkav zakhor*." However, the passage cited does not contain the critical final clause. It rightfully belongs to Mal.2:11 and possibly a reconstruction of Jeremiah 6:15, 8:12. That homosexual acts are *araayut* is also supported both by the fact that it is an illicit sexual relationship punishable by *haret* and by Rambam's comparison in *M.T.; Hil. Rotzeah u'Shmirat ha-Nefesh* 1:11 (to *Sanhedrin* 72b-73a), "But one who is being homosexually attacked (*ha-zakhor*) one may save his life by sacrificing the life of the pursuer as is the case by all the *araayut*."

2. Leviticus 20:13.

3. Deut. 23:18; cf. Targ. *Onkelos loc. cit.*; *Sanh.* 24b; *M.T.; Hil. Isurei Biah* 12:14. An animal that is involved in zoophilia is stoned because of the travesty (*kalon*) that occurred due to it. Such an animal is also unfit to be brought as a sacrifice, even if its involvement in such an act was accidental. Such is the level

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of sanctity that is required even of the lower species! see *Sanhedrin* 55b; *Tem.* 28b; *M.T.*; *Hil. Isurei Mizbeah* 3:6.

4. *Yevemot* 76a.
5. *Tur Sh. A.*; *E.H.* 20; *M.T.*; *Hil. Isurei Biah* 21:18.
6. *Yevemot* 76a; *Sifra* 9:8.
7. *Sanhedrin* 58a; *M.T.*; *Hil. Melakhim* 9:5-6.
8. *Tur Sh. A.*; *E.H.* 20.
9. *M.T.*; *Hil. Isurei Biah* 1:15.
10. *Yevemot* 83a; *M.T.*; *Hil. Isurei Biah* 10:18, *Hil. Nashim* 2:24, *Hil. Nazir* 2:10; see *Resp. Yavetz: E.H.*, Vol. 1, #171.
11. Cited in *Ibn Ezra* to *Lev.* 18:22.
12. *Kiddushtn* 81b-82b.
13. *M.T.*; *Hil. Isurei Biah* 22:2.
14. *Shulkhan Arukh*; *E.H.* 24.
15. *BaH to Tur Sh. A.*; *E.H.* 24.
16. *Ibid.*, see *Arukh ha-Shulhan: E.H.* 24.
17. *M.T.*; *Hil. Isurei Biah* 21:9 (on *Niddah* 13b); *Peirush ha-Mishnayot* to *Sanh.* 54a; *Tur Sh.A.*; *E.H.* 23:2; *Shab.* 64a; *M.T.*; *Hil. Yesodei Torah* 5:6, 9; *Hil. Isurei Biah* 21:1; *RaN to Pes.* 25b; *Rama to Sh. A.*; *Y.D.* 157:1; cf. *SHAKH* to *Sh. A.*; *Y.D.* 157:9.
18. *Ned.* 51a.
19. See the interchange between M. Tendler and D. Feldman in *TRADITION*, 1967, 9 (1-2), pp. 205-212, 1968, 9 (4), pp. 140-147.
20. *Sefer ha-Hinukh*, #209-210.
21. *ibid.*, #210; see *Sanhedrin* 57a, 108a; *Genesis* 6:12.
22. *Sanh.* 58a; *J.T. Kid.* 1:1.
23. *Torah Temimah* to *Gen.* 2:24.
24. Bieber, I. "Homosexuality," p. 963-976, In A. Freedman & H. Kaplan (Eds.), *Comprehensive Textbook of Psychiatry* (Baltimore: 1972), p. 971.
25. *Yev.* 63a.
26. see J. Epstein (Ed.) *Shiurei ha-Rav* (New York: 1974), pp. 64-67 and P. Peli (Ed. & Trans.) *Besod ha-Yahad ve'ha-Yihud* (Jerusalem: 1976), p. 217.
27. *Lev. R.* 24:6; *J.T. Yev.* 2:4.
28. *Shab.* 130a; *Yoma* 75a; *J.T. Tan.* 4:5.
29. *Hag.* 11b; *Makot* 23b.
30. *M.T.*; *Hil. Isurei Biah* 22:18-19.
31. see H. Benjamin, "Should Surgery Be Performed on Transsexuals?" *American Journal of Psychotherapy*, 1971, 25 (1), pp. 74-82; J. Marmor, "Homosexuality and Sexual Orientation Disturbances," pp. 1510-1520, In A. Freedman, H. Kaplan & B. Sadock (Eds.) *Comprehensive Textbook of Psychiatry* (Baltimore: 1975); Bieber, *op. cit.*, 1972; J. Hinrichsen & M. Katahn, "Recent Trends and New Developments in the Treatment of Homosexuality," *Psychotherapy: Theory, Research & Practice*, 1975, (12) 1, pp. 83-90.
32. S. Gold & I. Newfeld, "A Learning Approach to the Treatment of Homosexuality," *Behavior Research and Theory*, 1965, 3, pp. 201-204; J. LoPiccolo,

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"Case Study: Systematic Desensitization of Homosexuality," *Behavior Therapy*, 1971, 2, pp. 394-401.

33. J. Marquis, "Orgasmic Reconditioning: Changing Sexual Object Choice Through Controlling Masturbatory Fantasies," *Journal of Behavioral Therapy and Experimental Research*, 1970, 1, pp. 263-270.

34. *Ibid.*, see also A. J. Wabrek & C. J. Wabrek, "Ejaculatory Incompetence," *Connecticut Medicine*, 1976, 40, pp. 450-453.

35. *Yoma* 29a.

36. *Ket.* 46a.

37. The solution basically involves conceptualizing both the role of the therapist as *mokhiakh* and the patient as involved in the therapeutic tasks of *viduy*. Justification for this approach, its halakhic parameters, and its practical deployment are, unfortunately, too lengthy to include here. The interested reader will be able to study this issue in Chapter Ten ("the Status of *Hirhur Asur* in Psychotherapy") in my forthcoming *Judaism and Psychology: A Halakhic Perspective* (Yeshiva University/KTAV), 1979.

38. *Yevevot* 53b; *Sefer ha-Hinukh* #556; *M.T.*; *Hil. Sanhedrin* 20:3, *Hil. Isurei Biah* 1:9.

39. *Resp. Igrot Moshe: Y.D.*, Vol. 2, #59; see also *Mishnah la-Melekh* (8) to *M.T.*; *Hil. Yesodei Torah* 5:8.

40. *Minhat Hinukh* #556.

41. see *Hul.* 10a; *Yoma* 85a; *J.T. Yoma* 8:5; *J.T. Ber.* 4:4; *Eh. A.*; *Y.D.* 116.

42. C. Chavel (Ed.) *Kol Kitvei Ramban* (Jerusalem: 1968), Vol. 2, p. 43; and see *Ramban to Shab.* 30a; *RaN to Taan.* 22b.

43. *Sanhedrin* 74a-75a.

44. Rashi and Tos. to *Sanhedrin* 75a and *Pesakh* 25b consider that *abizrayhu* are not in the category of *yeihareg*. The *RaN*, *R. Yonah*, and *Rambam* (*M. T.*; *Hil. Isurei Biah* 21:1) hold that *abizrayhu* are of this category (unlike *R. Pedat* in *Shabbat* 13a). The law noted in the text is condified by *Rambam* in *Hil. Yesodei Torah* 5:9. Interestingly, if it is not required to kill oneself for *abizrayhu*, (which in this case would be the status of the *penuyah*), then allowing oneself to die rather than commit the act in question would be tantamount to suicide! This problem may explain why the *Tur* does not include this law in his code. Yet, *Rambam* unequivocally states that this stringent law is "*le'dorot*." Another problem exists between two differing phrases at two different locations in *Rambam's* code. In *Hil. Yesodei Torah* 5:4, he states, "If one committed the [forbidden act] rather than allowing himself to die, he is not flogged." However, in *Hil. Yesodei Torah* 5:6, he states, "And if one was healed through forbidden means [i.e., these three cardinal sins], *Bet Din* punishes him." *Or Sameah* responds that generally an *o'nes* forces one to act in which case, no additional punishment is necessary after the fact. However, *Rambam's* second case, illness, is not truly an *o'nes*, so an additional punishment is levied for failing to accept death. Other responses are offered by *Pri Hadash*. The point is that it is by no means clear that an appeal to the status of *o'nes* in the case of these three sins changes the nature of the halakhic requirements.

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45. *Sanhedrin* 75a.
46. *Proverbs* 9:17.
47. R. Loewenstein, "The History and Cultural Roots of Anti-Semitism," pp. 313-357, In G. Roheim (Ed.) *Psychoanalysis and the Social Sciences* (New York: 1947), p. 350; R. L., *Christians and Jews: A Psychoanalytic Perspective* (New York: 1965), p. 169.
48. H. J. Matt, "A Jewish Approach to Homosexuality," *Judaism*, 1978, 27 (1), pp. 13-24.
49. N. Lamm, "Judaism and the Modern Attitude Toward Homosexuality," *Encyclopedia Judaica Yearbook* (New York: 1974), pp. 194-205 and in M. M. Kellner (Ed.) *Contemporary Jewish Ethics* (New York: 1978) pp. 375-399.
50. see Resp. *Igrot Moshe: Y. D.*, Vol. 11, # 59 (P. 80); *SHaKH to Sh. A.; Y. D.* 157: n10.
51. M. T. *Hil. Isurei Biah* 21:1; cf. *Hil. Isurei Biah* 1:12 and *Magid Mishnah*, loc. cit; see also Meiri to *Hol.* 366; *RaN to Ned.* 20b, s.v. *uke'shelo*; also *Pithei Teshuvah to Sh. A.; E. H.* 21:3.
52. *Ket.* 17a.
53. *Helkat Mehokek and Bet Shmuel to Sh. A.; E. H.* 23:1.
54. *Yev.* 76a; see *Arukh la-Ner* loc. cit. who explains that Abaye's view follows the view of Tos., *Yev.* 34b, s.v. *ve-lo* that emission of seed in vain is permitted *be-ofan aakrai*, or when it occurs only occasionally.
55. Resp. *Igrot Moshe: E. H.*, Vol. 1, #70, Vol. 2, #18.
56. M. T.; *Hil Yesodei Torah* 5:9; i.e., it is a case of *halakhah ve'ein morin kein*.
57. *Roche Report: Frontiers of Psychiatry*, February, 1976.
58. *Ibid.*, March, 1975, June, 1976.
59. E.g., I. Bieber, *Homosexuality* (New York: 1962); C. W. Socarides, *The Overt Homosexual* (New York: 1968) and "Homosexuality in the Male: A Report of a Psychiatric Study Group," *International Journal of Psychiatry*, 1976, 11, pp. 430-450; see also Socarides' recent attack of the political nature of the A.P.A. decision in his "The Sexual Deviations and the Diagnostic Manual," *American Journal of Psychotherapy*, 1978, 32 (3), 414-426 and especially Note 20.
60. see G. C. Davison, "Homosexuality: The Ethical Challenge," *Journal of Consulting and Clinical Psychology*, 1976, 44 (1), pp. 157-162; I. Bieber, "A Discussion of 'Homosexuality: The Ethical Challenge,'" *Journal of Consulting and Clinical Psychology*, 1976, 44 (1), pp. 163-166.
61. See also the arguments in favor of "de-pathologizing" homosexuality in Stephen Mitchell, "Psychodynamics, Homosexuality, and the Question of Pathology," *Psychiatry*, 1978, 41 (3), 254-263. He first notes that a monocausal pathology model forces one to lose sight of the adaptive functions of homosexual love. That is, the defensive aspects of homosexuality should not rule out the possibility of non-pathological aspects of such a sexual orientation. While this is a temperate view, it can be counterargued that 'adjustment' to psychopathology does not legitimately sever the relationship between current behavior and its pathological origins. Mitchell's consideration does not prove that an intrinsic

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relationship between psychogenic origins of behavior and its current psychological value *cannot* be upheld.

62. Lamm, *op. cit.*, 1974.

63. Matt, *op. cit.*, 1978.

64. see Hinrichsen & Katahn, *op. cit.*, 1975.

65. see E. May, "Discussion of 'Recent Trends and New Developments in the Treatment of Homosexuality,'" *Psychotherapy: Theory, Research & Practice*, 1977, 14 (i), pp. 18-20.

66. Menninger, K. & Pruyser, P., "Morals, Values, and Mental Health," pp. 1245-1256, In A. Deutsch & H. Fishman (Eds.), *Encyclopedia of Mental Health*, Vol. 4 (New York: 1963); and see M. H. Spero, "Clinical Aspects of Religion as Neurosis," *American Journal of Psychoanalysis*, 1976, 36 (4), pp. 361-365.