

HOMOSEXUALITY: JUDAISM'S MODERN ATTITUDE

By Rabbi Norman Lamm

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Introduction

Popular wisdom has it that our society is wildly hedonistic, with the breakdown of family life, rampant immorality, and the world, led by the United States, in the throes of a sexual revolution. The impetus of this latest revolution is such that new ground is constantly being broken, while bold deviations barely noticed one year are glaringly more evident the year following and become the norm for the "younger generation" the year after that.

Some sex researchers accept this portrait of a steady deterioration in sex inhibitions and of increasing permissiveness. Opposed to them are the "debunkers" who hold that this view is mere fantasy and that, while there may have been a significant leap in verbal sophistication, there has probably been only a short hop in actual behavior. They point to statistics which confirm that now, as in Kinsey's day, there has been no reported increase in sexual frequencies along with the alleged de-inhibition in rhetoric and dress. The "sexual revolution" is, for them, largely a myth. Yet others maintain that there is in Western society a permanent revolution against moral standards, but that the form and style of the revolt keeps changing.

The determination of which view is correct will have to be left to the sociologists and statisticians—or, better, to historians of the future who will have the benefit of hindsight. But certain facts are quite clear. First, the complaint that moral restraints are crumbling has a two or three thousand year history in Jewish tradition and in the continuous history of Western civilization. Second, there has been a decided increase at least in the area of sexual attitudes, speech, and expectations, if not in practice. Third, such social and psychological phenomena must sooner or later beget changes in mores and conduct. And finally, it is indisputable that most current attitudes are profoundly at variance with the traditional Jewish views on sex and sex morality.

Of all the current sexual fashions, the one most notable for its militancy, and which most conspicuously requires illumination from the sources of Jewish tradition, is that of sexual deviancy. This refers primarily to homosexuality, male or female, along with a host of other phenomena such as transvestism and transsexualism. They all form part of the newly approved theory of the idiosyncratic character of sexuality. Homosexuals have demanded acceptance in society, and this demand has taken various forms—from a plea that they should not be liable to criminal prosecution, to a demand that they should not be subjected to social sanctions, and then to a strident assertion that they represent an "alternative life-style" no less legitimate than "straight" heterosexuality. The various forms of homosexual apologetics appear largely in contemporary literature and theater, as well as in the daily press. In the United States, "gay" activists have become increasingly and progressively more vocal and militant.

Legal Position

Homosexuals have, indeed, been suppressed by the law. For instance, the Emperor Valentinian, in 390 C.E., decreed that pederasty be punished by burning at the stake. The sixth-century Code of Justinian ordained that homosexuals be tortured, mutilated, paraded in public, and executed. A thousand years later, Gibbon said of the penalty the Code decreed that "pederasty became the crime of those to whom no crime could be imputed." In more modern times, however, the Napoleonic Code declared consensual homosexuality legal in France. A century ago, anti-homosexual laws were repealed in Belgium and Holland. In this century, Denmark, Sweden and Switzerland followed suit and, more recently, Czechoslovakia and England. The most severe laws in the West are found in the United States, where they come under the jurisdiction of the various states and are known by a variety of names, usually as "sodomy laws." Punishment may range from light fines to five or more years in prison (in some cases even life imprisonment), indeterminate detention in a mental hospital, and even to compulsory sterilization. Moreover, homosexuals are, in various states, barred from the licensed professions, from many professional societies, from teaching, and from the civil service—to mention only a few of the sanctions encountered by the known homosexual.

More recently, a new leniency has been developing in the United States and elsewhere with regard to homosexuals. Thus, in 1969, the National Institute of Mental Health issued a majority report advocating that adult consensual homosexuality be declared legal. The American Civil Liberties Union concurred. Earlier, Illinois had done so in 1962, and in 1971 the state of Connecticut revised its laws accordingly. Yet despite the increasing legal and social tolerance of deviance, basic feelings toward homosexuals have not really changed. The most obvious example is France, where although legal restraints were abandoned over 150 years ago, the homosexual of today continues to live in shame and secrecy.

Statistics

Statistically, the proportion of homosexuals in society does not seem to have changed much since Professor Kinsey's day (his book, *Sexual Behavior in the Human Male*, was published in 1948, and his volume on the human female in 1953). Kinsey's studies revealed that hard-core male homosexuals constituted about 4–6% of the population; 10% experienced "problem" behavior during a part of their lives. One man out of three indulges in some form of homosexual behavior from puberty until his early twenties. The dimensions of the problem become quite overwhelming when it is realized that, according to these figures, of 200 million people in the United States some ten million will become or are predominant or exclusive homosexuals, and over 25 million will have at least a few years of significant homosexual experience.

The New Permissiveness

The most dramatic change in our attitudes to homosexuality has taken place in the new mass adolescent subculture—the first such in history—where it is part of the whole new outlook on sexual restraints in general. It is here that the fashionable Sexual Left has had its greatest success on a wide scale, appealing especially to the rejection of Western traditions of sex roles and sex typing. A number of different streams feed into this ideological reservoir from which the new sympathy for homosexuality flows. Freud and his disciples began the modern protest against traditional restraints, and blamed the guilt that follows transgression for the neuroses that plague man. Many psychoanalysts began to overemphasize the importance of sexuality in human life, and this ultimately gave birth to a kind of sexual messianism. Thus, in our own day Wilhelm Reich identifies sexual energy as "vital energy *per se*" and, in conformity with his Marxist ideology, seeks to harmonize Marx and Freud. For Reich and his followers, the sexual revolution is a *machina ultima* for the whole Leninist liberation in all spheres of life and society. Rebellion against restrictive moral codes has become, for them, not merely a way to hedonism but a form of sexual mysticism: orgasm is seen not only as the pleasurable climactic release of internal sexual pressure, but as a means to individual creativity and insight as well as to the reconstruction and liberation of society. Finally, the emphasis on freedom and sexual autonomy derives from the Sartrean version of Kant's view of human autonomy.

It is in this atmosphere that pro-deviationist sentiments have proliferated, reaching into many strata of society. Significantly, religious groups have joined the sociologists and ideologists of deviance to affirm what has been called "man's birthright of unbounded ambisexuality." A number of Protestant churches in America, and an occasional Catholic clergyman, have pleaded for more sympathetic attitudes toward homosexuals. Following the new Christian permissiveness espoused in *Sex and Morality* (1966), the report of a working party of the British Council of Churches, a group of American Episcopalian clergymen in November 1967 concluded that homosexual acts ought not to be considered wrong *per se*. A homosexual relationship is, they implied, no different from a heterosexual marriage: but must be judged by one criterion—"whether it is intended to foster a permanent relation of love." Jewish apologists for deviationism have been prominent in the Gay Liberation movement and have not hesitated to advocate their position in American journals and in the press. Christian groups began to emerge which catered to a homosexual clientele, and Jews were not too far behind. This latest Jewish exemplification of the principle of *wie es sich christelt, so juedelt es sich* will be discussed at the end of this essay.

Homosexual militants are satisfied neither with a "mental health" approach nor with demanding civil rights. They are clear in insisting on society's recognition of sexual deviance as an "alternative life-style," morally legitimate and socially acceptable.

Such are the basic facts and theories of the current advocacy of sexual deviance. What is the classical Jewish attitude to sodomy, and what suggestions may be made to develop a Jewish approach to the complex problem of the homosexual in contemporary society?

Biblical View

The Bible prohibits homosexual intercourse and labels it an abomination: "Thou shalt not lie with a man as one lies with a woman; it is an abomination" (Lev. 18:22). Capital punishment is ordained for both transgressors in Lev. 20:13. In the first passage, sodomy is linked with buggery, and in the second with incest and buggery. (There is considerable terminological confusion with regard to these words. We shall here use "sodomy" as a synonym for homosexuality and "buggery" for sexual relations with animals.)

The city of Sodom had the questionable honor of lending its name to homosexuality because of the notorious attempt at homosexual rape, when the entire population—"both young and old, all the people from every quarter"—surrounded the home of Lot, the nephew of Abraham, and demanded that he surrender his guests to them "that we may know them" (Gen. 19:5). The decimation of the tribe of Benjamin resulted from the notorious incident, recorded in Judges 19, of a group of Benjamites in Gibeah who sought to commit homosexual rape.

Scholars have identified the *kadesh* proscribed by the Torah (Deut. 23:18) as a ritual male homosexual prostitute. This form of heathen cult penetrated Judea from the Canaanite surroundings in the period of the early monarchy. So Rehoboam, probably under the influence of his Ammonite mother, tolerated this cultic sodomy during his reign (I Kings 14:24). His grandson Asa tried to cleanse the Temple in Jerusalem of the practice (I Kings 15:12), as did his great-grandson Jehoshaphat. But it was not until the days of Josiah and the vigorous reforms he introduced that the *kadesh* was finally removed from the Temple and the land (II Kings 23:7). The Talmud too (Sanh. 24b) holds that the *kadesh* was a homosexual functionary. (However, it is possible that the term also alludes to a heterosexual male prostitute. Thus, in II Kings 23:7, women are described as weaving garments for the idols in the *batei ha-kedeshim* [houses of the *kadesh*]; the presence of women may imply that the *kadesh* was not necessarily homosexual. The talmudic opinion identifying the *kadesh* as a homosexual prostitute may be only an *asmakhta*. Moreover, there are other opinions in talmudic literature as to the meaning of the verse; see Onkelos, Lev. 23:18, and Nahmanides and *Torah Temimah, ad loc.*)

Talmudic Approach

Rabbinic exegesis of the Bible finds several other homosexual references in the scriptural narratives. The generation of Noah was condemned to eradication by the Flood because they had sunk so low morally that, according to midrashic teaching, they wrote out formal marriage contracts for sodomy and buggery—a possible cryptic reference to such practices in the Rome of Nero and Hadrian (Lev. R. 18:13).

Of Ham, the son of Noah, we are told that "he saw the nakedness of his father" and told his two brothers (Gen. 9:22). Why should this act have warranted the harsh imprecation hurled at Ham by his father? The Rabbis offer two answers: one, that the text implies that Ham castrated Noah; second, that the biblical expression is an idiom for homosexual intercourse (see Rashi, *ad loc.*). On the scriptural story of Potiphar's purchase of Joseph as a slave (Gen. 39:1), the Talmud comments that he acquired him for homosexual purposes, but that a miracle occurred and God sent the angel Gabriel to castrate Potiphar (Sot. 13b).

Post-biblical literature records remarkably few incidents of homosexuality. Herod's son Alexander, according to Josephus (Wars, I, 24:7), had homosexual contact with a young eunuch. Very few reports of homosexuality have come to us from the talmudic era (TJ Sanh. 6:6, 23c; Jos. Ant., 15:25–30).

The incidence of sodomy among Jews is interestingly reflected in the *halakhah* on *mishkav zakhur* (the talmudic term for homosexuality; the Bible uses various terms—thus the same term in Num. 31:17 and 35 refers to heterosexual intercourse by a woman, whereas the expression for male homosexual intercourse in Lev. 18:22 and 20:13 is *mishkevei ishah*). The Mishnah teaches that R. Judah forbade two bachelors from sleeping under the same blanket, for fear that this would lead to homosexual temptation (Kid. 4:14). However, the Sages permitted it (*ibid.*) because homosexuality was so rare among Jews that such preventive legislation was considered unnecessary (Kid. 82a). This latter view is codified as *halakhah* by Maimonides (Yad, *Issurei Bi'ah* 22:2). Some 400 years later, R. Joseph Caro, who did not codify the law against sodomy proper, nevertheless cautioned against being alone with another male because of the lewdness prevalent "in our times" (*Even ha-Ezer* 24). About a hundred years later, R. Joel Sirkes reverted to the original ruling, and suspended the prohibition because such obscene acts were unheard of amongst Polish Jewry (*Bayit Hadash* to Tur, *Even ha-Ezer* 24). Indeed, a distinguished contemporary of R. Joseph Caro, R. Solomon Luria, went even further and declared homosexuality so very rare that, if one

refrains from sharing a blanket with another male as a special act of piety, one is guilty of self-righteous pride or religious snobbism (for the above and additional authorities, see *Ozar ha-Posekim*, IX, 236–238).

Responsa

As is to be expected, the responsa literature is also very scant in discussions of homosexuality. One of the few such responsa is by the late R. Abraham Isaac Ha-Kohen Kook, when he was still the rabbi of Jaffa. In 1912 he was asked about a ritual slaughterer who had come under suspicion of homosexuality. After weighing all aspects of the case, R. Kook dismissed the charges against the accused, considering them unsupported hearsay. Furthermore, he maintained the man might have repented and therefore could not be subject to sanctions at the present time.

The very scarcity of halakhic deliberations on homosexuality, and the quite explicit insistence of various halakhic authorities, provide sufficient evidence of the relative absence of this practice among Jews from ancient times down to the present. Indeed, Prof. Kinsey found that, while religion was usually an influence of secondary importance on the number of homosexual as well as heterosexual acts by males, Orthodox Jews proved an exception, homosexuality being phenomenally rare among them.

Jewish law treated the female homosexual more leniently than the male. It considered lesbianism as *issur*, an ordinary religious violation, rather than *arayot*, a specifically sexual infraction, regarded much more severely than *issur*. R. Huna held that lesbianism is the equivalent of harlotry and disqualified the woman from marrying a priest. The *halakhah* is, however, more lenient, and decides that while the act is prohibited, the lesbian is not punished and is permitted to marry a priest (Sifra 9:8; Shab. 65a; *Yev.* 76a). However, the transgression does warrant disciplinary flagellation (Maimonides, *Yad*, *Issurei Bi'ah* 21:8). The less punitive attitude of the *halakhah* to the female homosexual than to the male does not reflect any intrinsic judgment on one as opposed to the other, but is rather the result of a halakhic technicality: there is no explicit biblical proscription of lesbianism, and the act does not entail genital intercourse (Maimonides, *loc. cit.*).

The *halakhah* holds that the ban on homosexuality applies universally, to non-Jew as well as to Jew (Sanh. 58a; Maimonides, *Melakhim* 9:5,6). It is one of the six instances of *arayot* (sexual transgressions) forbidden to the Noachide (Maimonides, *ibid.*).

Most halakhic authorities—such as Rashba and Ritba—agree with Maimonides. A minority opinion holds that pederasty and buggery are "ordinary" prohibitions rather than *arayot*—specifically sexual infractions which demand that one submit to martyrdom rather than violate the law—but the Jerusalem *Talmud* supports the majority opinion. (See D. M. Krozer, *Devar Ha-Melekh*, I, 22, 23 (1962), who also suggests that Maimonides may support a distinction whereby the "male" or active homosexual partner is held in violation of *arayot*, whereas the passive or "female" partner transgresses *issur*, an ordinary prohibition.)

Reasons for Prohibition

Why does the Torah forbid homosexuality? Bearing in mind that reasons proffered for the various commandments are not to be accepted as determinative, but as human efforts to explain immutable divine law, the rabbis of the *Talmud* and later talmudists did offer a number of illuminating rationales for the law.

As stated, the Torah condemns homosexuality as *to'evah*, an abomination. The *Talmud* records the interpretation of Bar Kapparah who, in a play on words, defined *to'evah* as *to'eh attah bah*, "You are going astray because of it" (Ned. 51a). The exact meaning of this passage is unclear, and various explanations have been put forward.

The *Pesikta (Zutarta)* explains the statement of Bar Kapparah as referring to the impossibility of such a sexual act resulting in procreation. One of the major functions (if not the major purpose) of sexuality is reproduction, and this reason for man's sexual endowment is frustrated by *mishkav zakhur* (so too *Sefer ha-Hinnukh*, no. 209).

Another interpretation is that of the *Tosafot* and R. Asher ben Jehiel (in their commentaries to *Ned.* 51a) which applies the "going astray" or wandering to the homosexual's abandoning his wife. In other words, the abomination consists of the danger that a married man with homosexual tendencies may disrupt his family life in order to indulge his perversions. Saadiah Gaon holds the rational basis of most of the Bible's moral legislation to be the preservation of the family structure (*Emunot ve-De'ot* 3:1; *cf.* *Yoma*, 9a). (This

argument assumes contemporary cogency in the light of the avowed aim of some gay militants to destroy the family, which they consider an "oppressive institution.")

A third explanation is given by a modern scholar, Rabbi Baruch Ha-Levi Epstein (*Torah Temimah* to Lev. 18:22), who emphasizes the unnaturalness of the homosexual liaison: "You are going astray from the foundations of the creation." *Mishkav zakhur* defies the very structure of the anatomy of the sexes, which quite obviously was designed for heterosexual relationships.

It may be, however, that the very variety of interpretations of *to'evah* points to a far more fundamental meaning, namely, that an act characterized as an "abomination" is *prima facie* disgusting and cannot be further defined or explained. Certain acts are considered *to'evah* by the Torah, and there the matter rests. It is, as it were, a visceral reaction, an intuitive disqualification of the act, and we run the risk of distorting the biblical judgment if we rationalize it. *To'evah* constitutes a category of objectionableness *sui generis*; it is a primary phenomenon. (This lends additional force to Rabbi David Z. Hoffmann's contention that *to'evah* is used by the Torah to indicate the repulsiveness of a proscribed act, no matter how much it may be in vogue among advanced and sophisticated cultures; see his *Sefer Va-yikra*, II, p.54.)

Jewish Attitudes

It is on the basis of the above that an effort must be made to formulate a Jewish response to the problems of homosexuality in the conditions under which most Jews live today, namely, those of free and democratic societies and, with the exception of Israel, non-Jewish lands and traditions.

Four general approaches may be adopted:

- 1) REPRESSIVE. No leniency toward the homosexual, lest the moral fiber of the rest of society be weakened.
- 2) PRACTICAL. Dispense with imprisonment and all forms of social harassment, for eminently practical and prudent reasons.
- 3) PERMISSIVE. The same as the above, but for ideological reasons, viz., the acceptance of homosexuality as a legitimate alternative "life-style."
- 4) PSYCHOLOGICAL. Homosexuality, in at least some forms, should be recognized as a disease, and this recognition must determine our attitude toward the homosexual.

Let us now consider each of these critically.

Repressive Attitude

Exponents of the most stringent approach hold that pederasts are the vanguard of moral malaise, especially in our society. For one thing, they are dangerous to children. According to a recent work, one third of the homosexuals in the study were seduced in their adolescence by adults. It is best for society that they be imprisoned, and if our present penal institutions are faulty, let them be improved. Homosexuals should certainly not be permitted to function as teachers, group leaders, rabbis, or in any other capacity where they might be models for, and come into close contact with, young people. Homosexuality must not be excused as a sickness. A sane society assumes that its members have free choice, and are therefore responsible for their conduct. Sex offenders, including homosexuals, according to another recent study, operate "at a primate level with the philosophy that necessity is the mother of improvisation." As Jews who believe that the Torah legislated certain moral laws for all mankind, it is incumbent upon us to encourage all societies, including non-Jewish ones, to implement the Noachide laws. And since, according to the *halakhah*, homosexuality is prohibited to Noachides as well as to Jews, we must seek to strengthen the moral quality of society by encouraging more restrictive laws against homosexuals. Moreover, if we are loyal to the teachings of Judaism, we cannot distinguish between "victimless" crimes and crimes of violence. Hence, if our concern for the moral life of the community impels us to speak out against murder, racial oppression, or robbery, we must do no less with regard to sodomy.

This argument is, however, weak on a number of grounds. Practically, it fails to take into cognizance the number of homosexuals of all categories, which, as we have pointed out, is vast. We cannot possibly imprison all offenders, and it is a manifest miscarriage of justice to vent our spleen only on the few unfortunates who are caught by the police. It is inconsistent, because there has been no comparable outcry for harsh sentencing of other transgressors of sexual morality, such as those who indulge in

adultery or incest. To take consistency to its logical conclusion, this hard line on homosexuality should not stop with imprisonment but demand the death sentence, as is biblically prescribed. And why not the same death sentence for blasphemy, eating a limb torn from a live animal, idolatry, robbery—all of which are Noachide commandments? And why not capital punishment for Sabbath transgressors in the State of Israel? Why should the pederast be singled out for opprobrium and be made an object lesson while all others escape?

Those who might seriously consider such logically consistent, but socially destructive, strategies had best think back to the fate of that Dominican reformer, the monk Girolamo Savonarola, who in 15th-century Florence undertook a fanatical campaign against vice and all suspected of venal sin, with emphasis on pederasty. The society of that time and place, much like ours, could stand vast improvement. But too much medicine in too strong doses was the monk's prescription, whereupon the population rioted and the zealot was hanged.

Finally, there is indeed some halakhic warrant for distinguishing between violent and victimless (or consensual and non-consensual) crimes. Thus, the Talmud permits a passer-by to kill a man in pursuit of another man or of a woman when the pursuer is attempting homosexual or heterosexual rape, as the case may be, whereas this is not permitted in the case of a transgressor pursuing an animal to commit buggery or on his way to worship an idol or to violate the Sabbath, (Sanh. 8:7, and v. Rashi to Sanh. 73a,S.V. al ha-behemah).

Practical Attitude

The practical approach is completely pragmatic and attempts to steer clear of any ideology in its judgments and recommendations. It is, according to its advocates, eminently reasonable. Criminal laws requiring punishment for homosexuals are simply unenforceable in society at the present day. We have previously cited the statistics on the extremely high incidence of pederasty in our society. Kinsey once said of the many sexual acts outlawed by the various states, that, were they all enforced, some 95% of men in the United States would be in jail. Furthermore, the special prejudice of law enforcement authorities against homosexuals—rarely does one hear of police entrapment of or jail sentences for non-violent heterosexuals—breeds a grave injustice: namely, it is an invitation to blackmail. The law concerning sodomy has been called "the blackmailer's charter." It is universally agreed that prison does little to help the homosexual rid himself of his peculiarity. Certainly, the failure of rehabilitation ought to be of concern to civilized men. But even if it is not, and the crime be considered so serious that incarceration is deemed advisable even in the absence of any real chances of rehabilitation, the casual pederast almost always leaves prison as a confirmed criminal. He has been denied the company of women and forced into the society of those whose sexual expression is almost always channeled to pederasty. The casual pederast has become a habitual one; his homosexuality has now been ingrained in him. Is society any safer for having taken an errant man and, in the course of a few years, for having taught him to transform his deviancy into a hard and fast perversion, then turning him loose on the community? Finally, from a Jewish point of view, since it is obviously impossible for us to impose the death penalty for sodomy, we may as well act on purely practical grounds and do away with all legislation and punishment in this area of personal conduct.

This reasoning is tempting precisely because it focuses directly on the problem and is free of any ideological commitments. But the problem with it is that it is too smooth, too easy. By the same reasoning one might, in a *reductio ad absurdum* do away with all laws on income tax evasion, or forgive, and dispense with all punishment of Nazi murders. Furthermore, the last element leaves us with a novel view of the *halakhah*: if it cannot be implemented in its entirety, it ought to be abandoned completely. Surely the Noachide laws, perhaps above all others, place us under clear moral imperatives, over and above purely penological instructions? The very practicality of this position leaves it open to the charge of evading the very real moral issues, and for Jews the halakhic principles, entailed in any discussion of homosexuality.

Permissive Attitude

The ideological advocacy of a completely permissive attitude toward consensual homosexuality and the acceptance of its moral legitimacy is, of course, the "in" fashion in sophisticated liberal circles. Legally, it holds that deviancy is none of the law's business; the homosexuals' civil rights are as sacred as those of any other "minority group." From the psychological angle, sexuality must be emancipated from the fetters of guilt induced by religion and code-morality, and its idiosyncratic nature must be confirmed.

Gay Liberationists aver that the usual "straight" attitude toward homosexuality is based on three fallacies or myths: that homosexuality is an illness; that it is unnatural; and that it is immoral. They argue that it cannot be considered an illness, because so many people have been shown to practice it. It is not unnatural, because its alleged unnaturalness derives from the impossibility of sodomy leading to reproduction, whereas our overpopulated society no longer needs to breed workers, soldiers, farmers, or hunters. And it is not immoral, first, because morality is relative, and secondly, because moral behavior is that which is characterized by "selfless, loving concern."

Now, we are here concerned with the sexual problem as such, and not with homosexuality as a symbol of the whole contemporary ideological polemic against restraint and tradition. Homosexuality is too important—and too agonizing—a human problem to allow it to be exploited for political aims or entertainment or shock value.

The bland assumption that pederasty cannot be considered an illness because of the large number of people who have or express homosexual tendencies cannot stand up under criticism. No less an authority than Freud taught that a whole civilization can be neurotic. Erich Fromm appeals for the establishment of *The Sane Society*—because ours is not. If the majority of a nation are struck down by typhoid fever, does this condition, by so curious a calculus of semantics, become healthy? Whether or not homosexuality can be considered an illness is a serious question, and it does depend on one's definition of health and illness. But mere statistics are certainly not the *coup de grDce* to the psychological argument, which will be discussed shortly.

The validation of gay life as "natural" on the basis of changing social and economic conditions is an act of verbal obfuscation. Even if we were to concur with the widely held feeling that the world's population is dangerously large, and that Zero Population Growth is now a desideratum, the anatomical fact remains unchanged: the generative organs are structured for generation. If the words "natural" and "unnatural" have any meaning at all, they must be rooted in the unchanging reality of man's sexual apparatus rather than in his ephemeral social configurations.

Militant feminists along with the gay activists react vigorously against the implication that natural structure implies the naturalness or unnaturalness of certain acts, but this very view has recently been confirmed by one of the most informed writers on the subject. "It is already pretty safe to infer from laboratory research and ethological parallels that male and female are wired in ways that relate to our traditional sex roles... Freud dramatically said that anatomy is destiny. Scientists who shudder at the dramatic, no matter how accurate, could rephrase this: anatomy is functional, body functions have profound psychological meanings to people, and anatomy and function are often socially elaborated" (Arno Karlen, *Sexuality and Homosexuality*, p. 501).

The moral issues lead us into the quagmire of perennial philosophical disquisitions of a fundamental nature. In a way, this facilitates the problem for one seeking a Jewish view. Judaism does not accept the kind of thoroughgoing relativism used to justify the gay life as merely an alternate life-style. And while the question of human autonomy is certainly worthy of consideration in the area of sexuality, one must beware of the consequences of taking the argument to its logical extreme. Judaism clearly cherishes holiness as a greater value than either freedom or health. Furthermore, if every individual's autonomy leads us to lend moral legitimacy to any form of sexual expression he may desire, we must be ready to pull the blanket of this moral validity over almost the whole catalogue of perversions described by Krafft-Ebbing, and then, by the legerdemain of granting civil rights to the morally non-objectionable, permit the advocates of buggery, fetishism, or whatever to proselytize in public. In that case, why not in the school system? And if consent is obtained before the death of one partner, why not necrophilia or cannibalism? Surely, if we declare pederasty to be merely idiosyncratic and not an "abomination," what right have we to condemn sexually motivated cannibalism—merely because most people would react with revulsion and disgust?

"Loving, selfless concern" and "meaningful personal relationships"—the great slogans of the New Morality and the exponents of situation ethics—have become the litany of sodomy in our times. Simple logic should permit us to use the same criteria for excusing adultery or any other act heretofore held to be immoral: and indeed, that is just what has been done, and it has received the sanction not only of liberals and humanists, but of certain religionists as well. "Love," "fulfillment," "exploitative," "meaningful"—the list itself sounds like a lexicon of emotionally charged terms drawn at random from the disparate sources of both Christian and psychologically-oriented agnostic circles. Logically, we must ask the next question:

what moral depravities can not be excused by the sole criterion of "warm, meaningful human relations" or "fulfillment," the newest semantic heirs to "love?"

Love, fulfillment, and happiness can also be attained in incestuous contacts—and certainly in polygamous relationships. Is there nothing at all left that is "sinful," "unnatural," or "immoral" if it is practiced "between two consenting adults?" For religious groups to aver that a homosexual relationship should be judged by the same criteria as a heterosexual one—i.e., "whether it is intended to foster a permanent relationship of love"—is to abandon the last claim of representing the "Judeo-Christian tradition."

I have elsewhere essayed a criticism of the situationalists, their use of the term "love," and their objections to traditional morality as exemplified by the *halakhah* as "mere legalism" (see my *Faith and Doubt*, chapter IX, p.249 ff.). Situationalists, such as Joseph Fletcher, have especially attacked "pilpulistic Rabbis" for remaining entangled in the coils of statutory and legalistic hairsplitting. Among the other things this typically Christian polemic reveals is an ignorance of the nature of *halakhah* and its place in Judaism, which never held that the law was the totality of life, pleaded again and again for supererogatory conduct, recognized that individuals may be disadvantaged by the law, and which strove to rectify what could be rectified without abandoning the large majority to legal and moral chaos simply because of the discomfiture of the few.

Clearly, while Judaism needs no defense or apology in regard to its esteem for neighborly love and compassion for the individual sufferer, it cannot possibly abide a wholesale dismissal of its most basic moral principles on the grounds that those subject to its judgments find them repressive. All laws are repressive to some extent—they repress illegal activities—and all morality is concerned with changing man and improving him and his society. Homosexuality imposes on one an intolerable burden of differentness, of absurdity, and of loneliness, but the biblical commandment outlawing pederasty cannot be put aside solely on the basis of sympathy for the victim of these feelings. Morality, too, is an element which each of us, given his sensuality, his own idiosyncracies, and his immoral proclivities, must take into serious consideration before acting out his impulses.

Psychological Attitudes

Several years ago I recommended that Jews regard homosexual deviance as a pathology, thus reconciling the insights of Jewish tradition with the exigencies of contemporary life and scientific information, such as it is, on the nature of homosexuality (N. Lamm, in: *Jewish Life*, Jan–Feb. 1968). The remarks that follow are an expansion and modification of that position, together with some new data and notions.

The proposal that homosexuality be viewed as an illness will immediately be denied by three groups of people. Gay militants object to this view as an instance of heterosexual condescension. Evelyn Hooker and her group of psychologists maintain that homosexuals are no more pathological in their personality structures than heterosexuals. And psychiatrists Thomas Szasz in the U.S. and Ronald Laing in England reject all traditional ideas of mental sickness and health as tools of social repressiveness or, at best, narrow conventionalism. While granting that there are indeed unfortunate instances where the category of mental disease is exploited for social or political reasons, we part company with all three groups and assume that there are a significant number of pederasts and lesbians who, by the criteria accepted by most psychologists and psychiatrists, can indeed be termed pathological. Thus, for instance, Dr. Albert Ellis, an ardent advocate of the right to deviancy, denies there is such a thing as a well-adjusted homosexual. In an interview, he has stated that whereas he used to believe that most homosexuals were neurotic, he is now convinced that about 50% are borderline psychotics, that the usual fixed male homosexual is a severe phobic, and that lesbians are even more disturbed than male homosexuals (see Karlen, *op. cit.*, p.223 ff.).

No single cause of homosexuality has been established. In all probability, it is based on a conglomeration of a number of factors. There is overwhelming evidence that the condition is developmental, not constitutional. Despite all efforts to discover something genetic in homosexuality, no proof has been adduced, and researchers incline more and more to reject the Freudian concept of fundamental human biological bisexuality and its corollary of homosexual latency. It is now widely believed that homosexuality is the result of a whole family constellation. The passive, dependent, phobic male homosexual is usually the product of an aggressive, covertly seductive mother who is overly rigid and puritanical with her son—thus forcing him into a bond where he is sexually aroused, yet forbidden to express himself in any

heterosexual way—and of a father who is absent, remote, emotionally detached, or hostile (I. Bieber *et al*, *Homosexuality*, 1962).

Can the homosexual be cured? There is a tradition of therapeutic pessimism that goes back to Freud, but a number of psychoanalysts, including Freud's daughter Anna, have reported successes in treating homosexuals as any other phobics (in this case, fear of the female genitals). It is generally accepted that about a third of all homosexuals can be completely cured; behavioral therapists report an even larger number of cures.

Of course, one cannot say categorically that all homosexuals are sick—any more than one can casually define all thieves as kleptomaniacs. In order to develop a reasonable Jewish approach to the problem and to seek in the concept of illness some mitigating factor, it is necessary first to establish the main types of homosexuals. Dr Judd Marmor speaks of four categories. "Genuine homosexuality" is based on strong preferential erotic feelings for members of the same sex. "Transitory homosexual behavior" occurs among adolescents who would prefer heterosexual experiences but are denied such opportunities because of social, cultural, or psychological reasons. "Situational homosexual exchanges" are characteristic of prisoners, soldiers, and others who are heterosexual but are denied access to women for long periods of time. "Transitory and opportunistic homosexuality" is that of delinquent young men who permit themselves to be used by pederasts in order to make money or win other favors, although their primary erotic interests are exclusively heterosexual. To these may be added, for purposes of our analysis, two other types. The first category, that of genuine homosexuals, may be said to comprehend two sub-categories: those who experience their condition as one of duress or uncontrollable passion which they would rid themselves of if they could, and those who transform their idiosyncrasy into an ideology, i.e., the gay militants who assert the legitimacy and validity of homosexuality as an alternative way to heterosexuality. The sixth category is based on what Dr. Rollo May has called "the New Puritanism," the peculiarly modern notion that one must experience all sexual pleasures, whether or not one feels inclined to them, as if the failure to taste every cup passed at the sumptuous banquet of carnal life means that one has not truly lived. Thus, we have transitory homosexual behavior not of adolescents, but of *adults* who feel that they must "try everything" at least once or more than once in their lives.

A Possible Halakhic Solution

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

In formulating the notion of homosexuality as a disease, we are not asserting the formal halakhic definition of mental illness as mental incompetence, as described in TB Hag. 3b, 4a, and elsewhere. Furthermore, the categorization of a prohibited sex act as *ones* (duress) because of uncontrolled passions is valid, in a technical halakhic sense, only for a married woman who was ravished and who, in the course of the act, became a willing participant. The *halakhah* decides with Rava, against the father of Samuel, that her consent is considered duress because of the passions aroused in her (Ket. 51b). However, this holds true only if the act was initially entered into under physical compulsion (*Kesef Mishneh* to Yad, Sanh. 20:3). Moreover, the claim of compulsion by one's erotic passions is not valid for a male, for any erection is considered a token of his willingness (Yev. 53b; Maimonides, Yad, Sanh. 20:3). In the case of a male who was forced to cohabit with a woman forbidden to him, some authorities consider him guilty and punishable, while others hold him guilty but not subject to punishment by the courts (Tos., Yev. 53b; *Hinnukh*, 556; *Kesef Mishneh*, *loc. cit.*; *Maggid Mishneh* to *Issurei Bi'ah*, 1:9). Where a male is sexually aroused in a permissible manner, as to begin coitus with his wife, and is then forced to conclude the act with another woman, most authorities exonerate him (Rabad and *Maggid Mishneh*, to *Issurei Bi'ah*, *in loc.*). If, now, the warped family background of the genuine homosexual is considered *ones*, the homosexual act may possibly lay claim to some mitigation by the *halakhah*. (However, see *Minhat Hinnukh*, 556, end; and of M. Feinstein, *Iggerot Mosheh* (1973) on YD, No. 59, who holds, in a different context, that any pleasure derived from a forbidden act performed under duress increases the level of prohibition. This was anticipated by R. Joseph Engel, *Atvan de-Oraita*, 24). These

latter sources indicate the difficulty of exonerating sexual transgressors because of psychopathological reasons under the technical rules of the *halakhah*.

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

To apply the *halakhah* strictly in this case is obviously impossible; to ignore it entirely is undesirable, and tantamount to regarding *halakhah* as a purely abstract, legalistic system which can safely be dismissed where its norms and prescriptions do not allow full formal implementation. Admittedly, the method is not rigorous, and leaves room for varying interpretations as well as exegetical abuse, but it is the best we can do.

Hence there are types of homosexuality that do not warrant any special consideration, because the notion of *ones* or duress (i.e., disease) in no way applies. Where the category of mental illness does apply, the act itself remains *to'evah* (an abomination), but the fact of illness lays upon us the obligation of pastoral compassion, psychological understanding, and social sympathy. In this sense, homosexuality is no different from any other anti-social or anti-halakhic act, where it is legitimate to distinguish between the objective act itself, including its social and moral consequences, and the mentality and inner development of the person who perpetrates the act. For instance, if a man murders in a cold and calculating fashion for reasons of profit, the act is criminal and the transgressor is criminal. If, however, a psychotic murders, the transgressor is diseased rather than criminal, but the objective act itself remains a criminal one. The courts may therefore treat the perpetrator of the crime as they would a patient, with all the concomitant compassion and concern for therapy, without condoning the act as being morally neutral. To use halakhic terminology, the objective crime remains a *ma'aseh averah*, whereas the person who transgresses is considered innocent on the grounds of *ones*. In such cases, the transgressor is spared the full legal consequences of his culpable act, although the degree to which he may be held responsible varies from case to case.

An example of a criminal act that is treated with compassion by the *halakhah*, which in practice considers the act pathological rather than criminal, is suicide. Technically, the suicide or attempted suicide is in violation of the law. The *halakhah* denies to the suicide the honor of a eulogy, the rending of the garments by relatives or witnesses to the death, and (according to Maimonides) insists that the relatives are not to observe the usual mourning period for the suicide. Yet, in the course of time, the tendency has been to remove the stigma from the suicide on the basis of mental disease. Thus, halakhic scholars do not apply the technical category of intentional (*la-da'at*) suicide to one who did not clearly demonstrate, before performing the act, that he knew what he was doing and was of sound mind, to the extent that there was no hiatus between the act of self-destruction and actual death. If these conditions are not present, we assume that it was an insane act or that between the act and death he experienced pangs of contrition and is therefore repentant, hence excused before the law. There is even one opinion which exonerates the suicide unless he received adequate warning (*hatra'ah*) before performing the act, and responded in a manner indicating that he was fully aware of what he was doing and that he was lucid (J. M. Tykocinski, *Gesher ha-Hayyim*, I, ch. 25).

Admittedly, there are differences between the two cases: pederasty is clearly a severe violation of biblical law, whereas the stricture against suicide is derived exegetically from a verse in Genesis. Nevertheless, the principle operative in the one is applicable to the other: where one can attribute an act to mental illness, it is done out of simple humanitarian considerations.

The suicide analogy should not, of course, lead one to conclude that there are grounds for a blanket exculpation of homosexuality as mental illness. Not all forms of homosexuality can be so termed, as indicated above, and the act itself remains an "abomination." With few exceptions, most people do not ordinarily propose that suicide be considered an acceptable and legitimate alternative to the rigors of daily

life. No sane and moral person sits passively and watches a fellow man attempt suicide because he "understands" him and because it has been decided that suicide is a "morally neutral" act. By the same token, in orienting ourselves to certain types of homosexuals as patients rather than criminals, we do not condone the act but attempt to help the homosexual. Under no circumstances can Judaism suffer homosexuality to become respectable. Were society to give its open or even tacit approval to homosexuality, it would invite more aggressiveness on the part of adult pederasts toward young people. Indeed, in the currently permissive atmosphere, the Jewish view would summon us to the semantic courage of referring to homosexuality not as "deviance," with the implication of moral neutrality and non-judgmental idiosyncrasy, but as "perversion"—a less clinical and more old-fashioned word, perhaps, but one that is more in keeping with the biblical *to'evah*.

Yet, having passed this moral judgment, we cannot in the name of Judaism necessarily demand that we strive for the harshest possible punishment. Even where it was halakhically feasible to execute capital punishment, we have a tradition of leniency. Thus, R. Akiva and R. Tarfon declared that had they lived during the time of the Sanhedrin, they never would have executed a man. Although the *halakhah* does not decide in their favor (Mak. end of ch. 1), it was rare indeed that the death penalty was actually imposed. Usually, the biblically mandated penalty was regarded as an index of the severity of the transgression, and the actual execution was avoided by strict insistence upon all technical requirements—such as *hatra'ah* (forewarning the potential criminal) and rigorous cross-examination of witnesses, etc. In the same spirit, we are not bound to press for the most punitive policy toward contemporary lawbreakers. We are required to lead them to rehabilitation (*teshuvah*). The *halakhah* sees no contradiction between condemning a man to death and exercising compassion, even love, toward him (Sanh. 52a). Even a man on the way to his execution was encouraged to repent (Sanh. 6:2). In the absence of a death penalty, the tradition of *teshuvah* and pastoral compassion to the sinner continues.

I do not find any warrant in the Jewish tradition for insisting on prison sentences for homosexuals. The singling-out of homosexuals as the victims of society's righteous indignation is patently unfair. In Western history, anti-homosexual crusades have too often been marked by cruelty, destruction, and bigotry. Imprisonment in modern times has proven to be extremely haphazard. The number of homosexuals unfortunate enough to be apprehended is infinitesimal as compared to the number of known homosexuals; estimates vary from one to 300,000 to one to 6,000,000! For homosexuals to be singled out for special punishment while all the rest of society indulges itself in every other form of sexual malfeasance (using the definitions of *halakhah*, not the New Morality) is a species of double-standard morality that the spirit of *halakhah* cannot abide. Thus, the Mishnah declares that the "scroll of the suspected adulteress" (*megillat sotah*)—whereby a wife suspected of adultery was forced to undergo the test of "bitter waters"—was cancelled when the Sages became aware of the ever-larger number of adulterers in general (Sot. 9:9). The Talmud bases this decision on an aversion to the double standard: if the husband is himself an adulterer, the "bitter waters" will have no effect on his wife, even though she too be guilty of the offense (Sot. 47b). By the same token, a society in which heterosexual immorality is not conspicuously absent has no moral right to sit in stern judgment and mete out harsh penalties to homosexuals.

Furthermore, sending a homosexual to prison is counterproductive if punishment is to contain any element of rehabilitation or *teshuvah*. It has rightly been compared to sending an alcoholic to a distillery. The Talmud records that the Sanhedrin was unwilling to apply the full force of the law where punishment had lost its quality of deterrence; thus, 40 (or four) years before the destruction of the Temple, the Sanhedrin voluntarily left the precincts of the Temple so as not to be able, technically, to impose the death sentence, because it had noticed the increasing rate of homicide (Sanh. 41a, and elsewhere).

There is nothing in the Jewish law's letter or spirit that should incline us toward advocacy of imprisonment for homosexuals. The *halakhah* did not, by and large, encourage the denial of freedom as a recommended form of punishment. Flogging is, from a certain perspective, far less cruel and far more enlightened. Since capital punishment is out of the question, and since incarceration is not an advisable substitute, we are left with one absolute minimum: strong disapproval of the proscribed act. But we are not bound to any specific penological instrument that has no basis in Jewish law or tradition.

How shall this disapproval be expressed? It has been suggested that, since homosexuality will never attain acceptance anyway, society can afford to be humane. As long as violence and the seduction of children are not involved, it would be best to abandon all laws on homosexuality and leave it to the inevitable social sanctions to control, informally, what can be controlled.

However, this approach is not consonant with Jewish tradition. The repeal of anti-homosexual laws implies the removal of the stigma from homosexuality, and this diminution of social censure weakens society in its training of the young toward acceptable patterns of conduct. The absence of adequate social reproach may well encourage the expression of homosexual tendencies by those in whom they might otherwise be suppressed. Law itself has an educative function, and the repeal of laws, no matter how justifiable such repeal may be from one point of view, does have the effect of signaling the acceptability of greater permissiveness.

Some New Proposals

Perhaps all that has been said above can best be expressed in the proposals that follow.

First, society and government must recognize the distinctions between the various categories enumerated earlier in this essay. It must offer its medical and psychological assistance to those whose homosexuality is an expression of pathology, who recognize it as such, and are willing to seek help. We must be no less generous to the homosexual than to the drug addict, to whom the government extends various forms of therapy upon request.

Second, jail sentences must be abolished for all homosexuals, save those who are guilty of violence, seduction of the young, or public solicitation.

Third, the laws must remain on the books, but by mutual consent of judiciary and police, be unenforced. This approximates to what lawyers call "the chilling effect," and is the nearest one can come to the category so well known in the *halakhah*, whereby strong disapproval is expressed by affirming a halakhic prohibition, yet no punishment is mandated. It is a category that bridges the gap between morality and law. In a society where homosexuality is so rampant, and where incarceration is so counterproductive, this hortatory approach may well be a way of formalizing society's revulsion while avoiding the pitfalls in our accepted penology.

For the Jewish community as such, the same principles, derived from the tradition, may serve as guidelines. Judaism allows for no compromise in its abhorrence of sodomy, but encourages both compassion and efforts at rehabilitation. Certainly, there must be no acceptance of separate Jewish homosexual societies, such as—or especially—synagogues set aside as homosexual congregations. The first such "gay synagogue," apparently, was the "Beth Chayim Chadashim" in Los Angeles. Spawned by that city's Metropolitan Community Church in March 1972, the founding group constituted itself as a Reform congregation with the help of the Pacific Southwest Council of the Union of American Hebrew Congregations some time in early 1973. Thereafter, similar groups surfaced in New York City and elsewhere. The original group meets on Friday evenings in the Leo Baeck Temple and is searching for a rabbi—who must himself be "gay". The membership sees itself as justified by "the Philosophy of Reform Judaism." The Temple president declared that God is "more concerned in our finding a sense of peace in which to make a better world, than He is in whom someone sleeps with" (cited in "Judaism and Homosexuality," *C.C.A.R. Journal*, Summer 1973, p.38; five articles in this issue of the Reform group's rabbinic journal are devoted to the same theme, and most of them approve of the Gay Synagogue).

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

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