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## *Pit`hu Li Sha`arei Tzedeq*

# Open the Gates of Righteousness for Me: An Opening Toward a New Reading of the Torah in Light of the New Status of Gays and Lesbians in the Jewish Community

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### I.

This essay begins with a declaration of its basic premises. The first premise (Premise 1) is that homosexuals<sup>1</sup> and heterosexuals are equally endowed with the blessing of human sexuality and with the obligation to express that blessing in a holy manner. This essay will not attempt to prove this premise. There is a vast literature that considers all sides of this position, accepting it, rejecting it or modifying it. While this essay accepts the truth of this premise, it recognizes that the issue is controversial.

In fact, the very existence of the contemporary debate about homosexuality should be recognized as having special meaning.

It is only in recent decades that we have seen the Jewish world devote increased attention to the place of gays and lesbians in the community. It is probably accurate to say that homosexuality was viewed as some sort of aberration by the overwhelming number of Jewish individuals and institutions a generation ago, and that even those who did not share such a view accepted its normative status as a given. Such is not the case today. The question of accepting gays and lesbians into the community has taken on a new urgency across the spectrum of the Jewish community. Thus, no matter what one's position on the question, it must be acknowledged that the raising of the question is a very new development in the social and religious history of the Jews. For those who accept Premise 1, this ferment is indicative of a profound forward step in our consciousness. A new apprehension is dawning.

The second premise (Premise 2) is that the dawning of this new apprehension has real meaning for religiously committed Jews. We stand at a new juncture with regard to understanding our world.

It emerges that a basic teaching of the Torah, found at its very beginning – that all human beings are created in God's Image (*tzelem Elohim*) – has come into fuller recognition. It is striking how this concept has, over the last generation or so, begun to command such widespread attention, study and promulgation in the Jewish community, in large part thanks to the teachings of Rabbi Irving "Yitz" Greenberg.<sup>2</sup> While this concept has Biblical origins, rabbinic celebrations and medieval philosophical and mystical explanations, it is not until our own day that *tzelem Elohim* has become a watchword and orienting principle in the greater Jewish world. The explicit recourse to this concept as a fundamental and orienting principle in

Judaism has come to significant expression in a number of areas of human relations. The universal message of *tzelem Elohim* has made it possible for interfaith relations between Jews and non-Jews to be more open.<sup>3</sup> Correspondingly, it is only relatively recently that many of us have expanded our minds to recognize the full humanity and Jewish status of women. We adopt this position, not as some concession to “the times,” to a secular or liberal agenda, or as some socio-political compromise with tradition. Rather, this understanding is a positive religious development whose coming to fruition in this era marks this time as an epoch of major significance in the history of culture and religion, in general, and of Judaism, in particular. In the same way, we see our recognition of the fully equal status of homosexuals – as human beings and as Jews – not as a favor we are doing to the Gay, Lesbian, Bi-sexual, and Transgender (GLBT) community, or as a capitulation to political correctness, but as our own blessed attainment of a new religious insight.

These two premises prompt us, as faithful Jews, to ask certain difficult questions, but, it will be argued, they also prepare us for how we might hope to look for answers to them.

We must ask: How shall we understand our Torah in light of our affirmation of Premise 1? Doesn't the Torah reject homosexuality? And: How does our embrace of Premise 2 affect our relationship to our tradition? Is it possible to affirm this second premise without adopting a kind of supersessionist theology of revelation?

These questions lead us to one more premise. Premise 3 derives from our concern for making sense of the Torah and for remaining connected with the tradition. It states a fundamental conviction: that the Torah must still be able to speak to us in a meaningful and authoritative voice. Can we embrace Premise 3 as we reject those Torah texts that seem to be founded on older views of human reality?

Many of these questions have been asked before. This essay will briefly explore how others have grappled with these questions and then it will move on to suggest that our initial premises can help us adopt a new, different, and more fruitful approach.

## II.

This year the “gay question” attained fresh urgency when the Conservative Movement struggled anew with this issue, fifteen years after reaching a consensus that affirmed that homosexuality was forbidden by the Torah and the tradition. This time the Committee on Jewish Law and Standards adopted three *tshuvot* – *responsa* – as legitimate, though the *responsa* reached almost opposite conclusions.<sup>4</sup> Two of the *responsa* declared that there was no reason to overturn the settled law of traditional *halakhah*. They affirmed that sensitivity to the homosexual as an individual was imperative, but that there were no permissible ways for homosexuals to realize their desires in a sexual fashion. The other opinion<sup>5</sup> affirmed that the Torah does, indeed, prohibit the act of anal homosexual intercourse. But it viewed all other prohibitions to be of Rabbinic status. This opinion argued that it was no longer appropriate to maintain these Rabbinic prohibitions today since, in contemporary society, their enforcement impugns the human dignity of homosexuals.

While the deliberations in the Conservative Movement received quite a bit of attention, it

must be noted that the issue has been discussed in the other movements as well.

The Reconstructionist Movement officially accepted homosexuals into its seminary in 1984. In 1993 it declared: “We regard the Jewish values that affirm the inherent dignity, integrity and equality of human beings as having primacy over historically conditioned attitudes based on . . . texts that condemn homosexuality as an abomination.”<sup>6</sup> In other words, the Torah’s prohibitions were the expression of societally determined attitudes that are no longer acceptable and must be overruled by the core Jewish values of justice and human equality. The Reconstructionist Rabbinical Association declared its support for same-sex civil marriage in 2004.<sup>7</sup> The rabbinic manual of the movement includes provisions for a Jewish marriage ceremony for same-sex couples, to be used at the discretion of the individual rabbi.

The Reform Movement has included voices supportive of the homosexual community for decades. By 1990 it officially welcomed homosexuals into its seminaries. In 1996 the CCAR endorsed the civil right of same-sex civil marriage. In 2000 this rabbinic body resolved that each rabbi would have the power to decide whether to perform a Jewish ceremony of marriage for same-sex couples.<sup>8</sup> Nevertheless, it should be noted that this resolution was adopted in the face of the movement’s own *Responsa* Committee’s decision, in 1998, that refused to allow the traditional concept of Jewish marriage – *qiddushin* – to be applied to same-sex unions.<sup>9</sup> This anomaly will be discussed later in this essay.

Orthodoxy proclaims its unswerving fealty to the commands of the Torah and to its traditional interpretation. Thus, one rabbi, in compiling a bibliography of articles on the Orthodox position regarding homosexuality writes: “I disqualified as non-Orthodox any articles that claim the prohibition no longer applies.”<sup>10</sup> This group accepts that the Torah, as it has been understood for generations, condemns the act of sexual intercourse between two males as a capital offense (Lev. 18:22 and 20:13). It affirms subsequent rabbinic tradition that expanded the prohibition to include same-sex erotic activity between females.<sup>11</sup> Homosexual intercourse is called “*to’evah*” – an abomination – by the Torah<sup>12</sup> (Lev. 18:22) and the sense of disgust for the act was internalized so as to include both the very idea, itself, and the people who might not be deterred by such an idea. Homosexuality as a real phenomenon was so inconceivable for the Sages that, though they were ever concerned to prevent sexual promiscuity, they nevertheless allowed two bachelors to sleep under one cloak because, as the Talmud explains, the very idea that the two men might be tempted to engage in intercourse together was simply not to be entertained.<sup>13</sup>

Therefore, until recently, it has been acceptable in the Orthodox community to voice utter disgust with regard to homosexuals, for they were people who were not deterred by what this community deemed to be an outrageous and hateful idea. The great contemporary *halakhic* decisor, Rabbi Moshe Feinstein, for example, was quite explicit in his visceral rejection of homosexuals as people.<sup>14</sup> But this approach is no longer exclusively regnant. As one rabbi writes: “While Orthodoxy cannot permit homosexual sex, there is a range of opinion today on several issues regarding a homosexual person.”<sup>15</sup> This softening stance has been given added impetus by the showing of the powerful film about Orthodox homosexuals, *Trembling Before God*, which has had a strong impact on many Orthodox Jews, as it has upon others.

As the straight and gay communities interact more and more – in all segments of the Jewish community – we are witnesses to a profound change of thinking and feeling, wherein the idea of healthy homosexuality – once considered inconceivable and unacceptable – has now become increasingly accepted, while the idea that homosexuality is abhorrent and that homosexuals are to be condemned has itself become increasingly an abhorrent and unacceptable idea. This is so even among many Orthodox Jews. The most eloquent advocate of this change of thinking in the Orthodox world has been Rabbi Steven Greenberg, who, after years of struggle, finally openly identified as a gay person and has written and spoken extensively about finding alternative ways to maintain Orthodox commitments and nevertheless accept homosexuality as having the potential for holiness.<sup>16</sup>

As this new positive perception of homosexuality has begun to pervade all streams of Jewish religious thought and practice, each stream has had to ask itself to make sense of the Torah's seemingly clear teaching of repudiation of homosexuality.

### III.

The Orthodox position has been that these verses are unambiguous and indisputable. This is also the position of the restrictive *responsa* adopted by the Conservative Law Committee. But such a position is untenable in the face of our affirmation of Premises 1 and 2. It is, indeed, undeniable that the tradition has rejected homosexuality in the past. But how is it possible to continue that rejection in the teeth of one's own present religious convictions? The restrictive camp replies that this is the test of one's fealty to Torah. But the permissive camp refuses to back down. It refuses to give up hope that the Torah will advocate "ways of pleasantness."<sup>17</sup>

There has been one serious Orthodox attempt to revisit the verses and try to read them in light of an accepting attitude toward homosexuals and homosexuality. Rabbi Steven Greenberg parses the text in Leviticus 18:22 to read as follows:

<i>V'et zakhar</i>	And ( <i>et</i> ) a male
<i>lo tishkav</i>	you shall not sexually penetrate
<i>mishkeve ishah</i>	to humiliate
<i>toevah hi</i>	it is abhorrent

He then notes that the word "*et*" is often read *midrashically* to add an element not explicitly mentioned in the verse. So he reads that "*et*" to add a prohibition against sexual humiliation of females, as well as males. Thus the verse reads, in translation:

And (either a female or) a male  
 you shall not sexually penetrate  
 to humiliate  
 it is abhorrent <sup>18</sup>

This reading is significant for making two suggestions that change the meaning of the text from its accepted reading. One suggestion is that the prohibition be widened so as to include other sexual acts beyond those of homosexuals. This is an important idea in that it attempts to remove the stigma that results from reading the verse as a condemnation of homosexuality exclusively. Rather, as the second point argues, the verse condemns all acts of sexual humil-

iation, and it is this aspect of violence and degradation that is against Torah rules, rather than the physical sex act itself.

Rabbi Greenberg's suggestion that the verse be limited so as to apply to coercive and humiliating sex alone is problematic. Such a reading has been suggested by others who have tried to find ways to respond positively to homosexuality. Rabbi Bradley Shavit Artson advanced a similar claim in the late '80's and early '90's, when he was a vocal proponent of accepting homosexuals into the Conservative Jewish community.<sup>19</sup> There seems to be an insurmountable flaw to this reading, however. For, were the prohibition to be limited to acts of homosexual rape, it would make no sense that the Torah would require that both parties involved in the act be punished with death. Yet Leviticus 20:13, clearly referring to the prohibition in Chapter 18, says: "If a man lies with a male, as one lies with a woman, the two of them have done an abhorrent thing; they shall be put to death – their bloodguilt is upon them." Why should the two of them be put to death when one of them is an unwilling participant in the act?<sup>20</sup> Nevertheless, Rabbi Greenberg's insistence on a broader consideration of sexual ethics, one applicable to both men and women, is a major step forward.

As we have seen, the standard Orthodox reading must be rejected as incompatible with our basic premises. And the valiant attempt offered by some traditionalists to read the verses as applying exclusively to coercive homosexual sex is inadequate to the text itself. The problem remains: Can we join our convictions with the words of the Torah? We might hope that we would find another, more adequate reading of these verses from those who advocate acceptance of homosexuality. Yet, when we consider the approaches of the more liberal streams of Judaism, we will discover that this question is not solved and does not disappear: How shall we read the Torah now?

#### IV.

The Reconstructionist approach affirms Premise 1. However, because Reconstructionism developed its central orientation toward Judaism as an ever-evolving civilization, it is not clear that it can wholeheartedly adopt Premise 2. This is because that premise recognizes the new quality of our present way of thinking. The uniqueness of this development tends to get lost when subsumed into a view that sees change as a constant. This movement has been emphatic in pointing out the important cultural context of contemporary American Jewry. It insists that we must recognize that we live in two civilizations; but it seems less interested in recognizing the uniquely revelatory dimension of our historical moment. Be that as it may, from our perspective the chief problem unmet by this stream is its failure to clearly satisfy Premise 3. For, in affirming Premise 1, Reconstructionism feels forced to reject the continued relevance of the Torah's verses about homosexuals. They are seen as outmoded in their prejudices and must be rejected as an anachronistic product of human limitations. Such a position makes it very difficult to maintain a sense of centrality to the Torah. If the Torah can be dismissively overruled, what makes it definitive for Jews?

One answer might be that the Torah is definitive insofar as it serves as the focus of our study and discussions as Jews. Thus, while the Torah's legal provisions regarding homosexuals may be rejected, they are rejected in the name of core Jewish values. Moreover, while the Torah's prohibition against homosexual practices is rejected, the concept of *to'evah* (abomination),

that is such a salient element of this prohibition, might still be profitably studied. An interesting attempt to do this was made by Rabbi Seth Goldstein.<sup>21</sup>

Studying the use of the term in key Biblical texts, specifically in the books of Deuteronomy, Ezekiel and Proverbs, Rabbi Goldstein concludes that the term has undergone a fluid development of significances. Its basic meaning, retained throughout, relates to “violations of a socially constructed boundary.”<sup>22</sup> He claims that sexual offences were never the focus of the term. In this regard Rabbi Goldstein is critical of the Reconstructionist report that, while declaring the Biblical prohibition null and void, still understood the term, *to’evah*, to apply to the Biblical view of homosexuality. For Rabbi Goldstein, it was a redactional decision by the Bible’s editors to apply “*to’evah*” to homosexuality, a decision that is not clearly understood. In today’s world it is that late redactional decision that must be rejected, while the term itself should be preserved in its original meaning: “What threatens Judaism and Jewish practice can be maintained as an “abomination,” but what does not threaten Judaism and Jewish practice can no longer be considered an “abomination.”<sup>23</sup>

This is an interesting attempt to answer our key question: How shall we read the Torah now? The reading offered is true to the premises of Reconstructionism: The Torah is a document composed by people who were subject to the limitations of their humanity and their historical condition. Thus, the Torah can be wrong in its teachings. Its application of the negative value judgment – *to’evah* – to homosexuals was an error. However, what is valid and enduring in the Torah’s words will reflect the core value of the Torah’s enterprise – the assurance of the survival and vitality of the Jewish People as a religious civilization. Thus the concept of *to’evah* is meaningful as a negative term applied to that which threatens the Jewish People, their identity and values.

But this attempt still falls short of the basic test. It cannot make sense of the Torah’s verses as we have them before us. The price of accepting homosexuality still seems to be the rejection of the Torah’s own words.

The Reform Movement’s position exhibits some of the same forces at play and is open to the same problem. As already indicated, the *Responsa* Committee published a pained and conflicted *t’shuvah* in 1998. Frankly admitting that the committee had divided into groups who could not find a common language in which to argue or communicate with each other, it nevertheless followed the opinion of the majority and issued a prohibition against officiating at a Jewish ceremony to unite a same-sex couple.

The arguments marshaled by the majority were various. They included a reluctance to weaken “Jewish unity.” The authorization of *qidushin* for same-sex couples would “wreak havoc upon our relationships” with “virtually all Jewish communities.”<sup>24</sup> Another claim was that *qidushin* – “Jewish marriage” – has always meant the union of a man and a woman, so that it would be inappropriate to extend this concept to same-sex couples.<sup>25</sup> Still another argument was that it would be improper to allow a breach in the laws of ‘*arayot* – forbidden sexual relations. As the *responsum* puts it: “While it may be true that we as a community no longer look upon homosexual behavior, as we once did, as a revulsive act, the fact remains that no Jewish community has ever gone so far as to sanctify as marriage a sexual relationship which the

Torah defines as ‘*ervah*. Not even we, with all our liberality, have ever done this before.”<sup>26</sup> Yet, this same *responsum* declares that: “the fact that gay and lesbian Jews are seeking to hold ceremonies establishing their relationships formally and celebrating them is not a threat to the traditional Jewish values of marriage and family but a supreme tribute to them.”<sup>27</sup>

The incoherence of this *responsum* should be obvious. The concerns for Jewish unity, for the unchangeable definition of the term *qiddushin* and for the sacrosanct status of prohibited sexual partners are hard to take seriously when the Reform Movement has decided to fundamentally change the definition of Jewish identity through its adoption of the patrilineal standard – against the pleas of the entire traditional Jewish world and against the pleas of many of its own communities, who warned that this would cause an irreparable tear in the fabric of Jewish Peoplehood. It is hard to take seriously when the Reform Movement has redefined *qiddushin* so as to make it egalitarian, in direct contravention to the traditional definition of the essential nature of the marriage act.<sup>28</sup> And it is hard to take seriously when the Reform Movement has dispensed with the requirement that Jewish marriages be terminated with a Jewish divorce document, thus rendering all subsequent marriages of Reform divorcees as adulterous, and in violation of the laws of ‘*arayot*. It has been noted that this *responsum* was subsequently overruled through a resolution adopted by the movement’s convention. Of course individual Reform rabbis have written emphatically about the need to perform Jewish marriages for same-sex couples.<sup>29</sup> But it must be noted that, while the outcome is welcome, the methodology was extra-*halakhic*. That is, the movement gave up trying to deal with the issue in terms of its concepts of Jewish law and sought a political solution instead. It was a tacit admission that the movement had not succeeded in answering the question: How do we read the Torah now?

An attempt to take the Torah’s words seriously has been made by Rabbi Nancy H. Weiner. As with Rabbi Seth Goldstein’s study, discussed above, hers restricts itself to “A Reform Understanding of *to’eivah*.”<sup>30</sup> Rabbi Weiner rejects applying this term to homosexuality. Her study leads her to retrieve the term’s meaning by defining it as a violation of the core “values that comprise a holy relationship.”<sup>31</sup> The use of force, manipulation, or deceit make a sexual act a *to’eivah*. Thus: “Rape, though often thought of as sexual, is widely recognized as an act of violence that involves sexual organs. It is a violent assault perpetrated to assert power over or humiliate another. As violence, as a desecration of the sanctity of another human being, as a blatant disregard for honesty and mutuality, it is *to’eivah*.”<sup>32</sup>

It is noteworthy that this explanation of the term by a Reform rabbi discovers that it represents the violation of the core values of her movement, much as the Reconstructionist rabbi’s study offered evidence to show that the term referred to violations of his movement’s core values. Each study wishes to take that part of the Torah’s verses with all seriousness, but is unable to do so without erasing all the words of those verses that lead up to that term.

## V.

What readings do the various *t’shuvot* offered to the Committee on Jewish Law and Standards (CJLS) present? As expected, the restrictive *responso* take the verses to mean what they have traditionally meant. But Rabbi Joel Roth’s *responsum*, while it insists on the full prohibition of

homosexuality, works hard to neutralize the force of the term *to'evah*. He maintains that there is no emotive message of disgust or condemnation to the term. It simply means that the Torah prohibits this act.<sup>33</sup> This is ironic. It emerges, thus far, that modern readers of these verses, once they open themselves to a more accepting attitude to homosexual persons, cannot seem to keep the Torah's verses intact as a meaningful message. For the liberal position, the first half of the verse must be ignored or nullified, while the last term is imbued with continued relevance. For the traditionalist-restrictive position, the first half of the verse is as meaningful as ever, while the last half must be deprived of any real force.

A permissive *t'shuvah* by Rabbis Myron Geller, Robert Fine and David Fine argued that the verses in Leviticus forbade sexual relations between persons, such as a mother and son, who could not be conceived of as legitimate marriage partners. They write: "Sometimes societal standards change, as we are seeing today with same-sex domestic partnership and marriage. But from the perspective of the Torah and the Rabbis, there was clearly no possibility for same-sex marriage. From that perspective, same-sex relations meant only sex. And the Torah teaches, then, that gay sex is real sex and is forbidden as are the other *'arayot*."<sup>34</sup> Thus, the Torah included a prohibition against homosexual sex with the other *'arayot* because it did not consider it possible for homosexuals to marry. Now that our attitudes have changed and we can conceive of same-sex marriage, the prohibition is void. The authors of this *t'shuvah* call this "a clear case of *shinui ha-'itim*, of changing times and contexts."<sup>35</sup> Similarly, they explain that the term *to'evah* refers to socially determined attitudes. Once those attitudes change, the term is no longer in force. The end result of their arguments is, again, to make the verses in the Torah *passé*, no longer relevant.

A middle position is struck by Rabbis Elliot Dorff, Daniel Nevins and Avram Reisner. They concede that the Torah's verse is fully operative today. But they limit the Torah's prohibition exclusively to homosexual anal sex. They then argue that all other sex acts between homosexuals are allowed by the Torah, though they were forbidden by the rabbis. Unlike the Torah's prohibitions, which are eternal, these rabbinic prohibitions can be overturned if a compelling reason applies. (Such a reason has developed in modern times, as the human dignity of homosexuals has been recognized. Human dignity is an important enough value to overturn rabbinic prohibitions.)

The compromise offered by this *responsum* is unsatisfactory. It assumes that, for gays, and for gays only, sexuality can be divided up into discrete activities. It assumes that homosexuality can be affirmed as a legitimate variety of sexuality while at the same time reading the verses as prohibitions of a sex act – anal intercourse – that is completely legitimate in the realm of heterosexuality.<sup>36</sup> The rabbis recognized that sex acts could not be selectively prohibited or permitted with regard to heterosexuals. It is time that we recognized the same truth with regard to homosexuals. The Torah cannot be prohibiting homosexuals from engaging in one particular sex act while permitting other sexual acts. We are again left without a way to read the Torah's verses.

The one *responsum* that comes closest to raising this question as a key issue is the *t'shuvah* by Rabbi Gordon Tucker.<sup>37</sup> Of the *t'shuvot* offered by his colleagues, he rejects the stringent and permissive, alike, for failing to advance a cogent reading of the Torah's texts and for applying

an excessively positivistic approach to their *halakhic* deliberations. He calls for an understanding that this question is a “hard case” which is not amenable to solution by the usual appeals to precedents and to standard *halakhic* reasoning. Instead, the *halakhah* must be infused with energies and guidance of the *aggadic*, narrative truths of our contemporary lives. His argument is an excellent brief on behalf of what we have called Premise 1 – that homosexuals are completely entitled and commanded to live sexual lives that are both full and sacred. It is congruent with much of what we have called Premise 2 – that our era must embrace its convictions with unabashed religious affirmation. But it falters upon encountering the challenge of Premise 3: that the Torah must still be able to speak to us in a meaningful and authoritative voice.

Rabbi Tucker faces the problem that, once one affirms the first two premises, one must decide what to do with verses that seem explicit and clear in their negation of homosexual legitimacy. He briefly wonders why there is no attempt to find some interpretive leeway in reading the verses. And he cites the work of Professor Jacob Milgrom to show that the meaning of the verses may not be as clear as people think. But he admits that these are not his most important concerns. Rather, he chooses to deal with the troublesome verses in another way. It is here that Rabbi Tucker feels compelled to deny that the Torah be seen as the authoritative record of God’s Will. To prevent misunderstanding, he writes: “It is, in other words, possible to (a) believe in God; (b) believe in revelation; (c) believe that it is meaningful to speak of a divine will for the world; and (d) to have faith in the idea that the Torah is our first (and thus, in an important sense, most sacred) expression of God’s will in human language, and still insist that the sacred text of the Torah does not perfectly and infallibly express that will.”<sup>38</sup> He further writes: “A large part of our understanding of the role of human beings in the generation and perfection of religious truth hinges on the idea that God’s will is not infallibly represented in the Torah, but only imperfectly, in a form that awaits the engagement and honest searching of religious communities that connect to one another, and to Sinai, throughout the ages, but do not simply duplicate one another.”<sup>39</sup>

Once again, a teacher of Torah who is convinced that an inclusive approach to human sexuality is religiously mandated feels that it is possible to maintain this position only through negating the authority of the Torah’s words. Is there another way?

## VI.

This essay proposes that there is another way. It is the return to engaging in *midrash*.

At first blush, this term does not seem to offer an approach not already well-known to contemporary rabbis and scholars. But my contention is that recent conceptions of *midrash* have evolved from the modern experience, an experience of alienation that has produced an estrangement, not only from traditional learning, values, and practices, but also from the earlier, more primary concept of *midrash*, as well. It is to that primary conception of *midrash* that we must return, not in order to go backwards, but in order to go forward.

There has been, indeed, a burgeoning interest in *midrash* over the last generation in religious and academic circles. Rabbi Tucker, himself, offers a creative *midrash* as part of his argument. He feels that *midrash* is a central component in our understanding of how we relate to God

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and the Torah. To this end, right before he makes his four-step series of theological statements (quoted above) to clarify his position, he writes: “We should be clear that this is not an assertion that the Torah is not divine, or that it is merely human. Heschel famously wrote that ‘as a report about revelation, the Bible itself is a *midrash*.’”<sup>40</sup> Thus, his explanatory statement is meant to be his own understanding of the term *midrash*. It is clear that for Rabbi Tucker, and for others, this term signifies a human endeavor allowable – and necessary – because of the limitations and fallability of the Torah text itself.

Furthermore, *midrash* is valued as the genre that gives voice to “narrative” or “*aggadic*” values, values that are often seen to be in opposition to *halakhic* norms. Rabbi Tucker calls for a more complementary relationship between these two realms: “The long-standing – and understandable – tendency to divide up religious literature into *halakhah* (law) and *aggadah* (narrative) has thus always been a mistake. The law is given cogency and support by the ongoing story of the community that seeks to live by the law.”<sup>41</sup> However, he thinks that such a partnership depends on the theological coming-of-age he described above, in which we are compelled to realize that: “the role of human beings in the generation and perfection of religious truth hinges on the idea that God’s will is not infallibly represented in the Torah, but only imperfectly, in a form that awaits the engagement and honest searching of religious communities that connect to one another, and to Sinai, throughout the ages, but do not simply duplicate one another.”<sup>42</sup>

The assumption is that the Torah’s inadequacy as a perfect record of the Divine Will is the condition that makes *midrash* possible and necessary. Such an assumption should be contrasted with the classically understood assumptions that underlie early Biblical interpretation. James Kugel outlines four such fundamental assumptions: a) The Bible is “cryptic,” or in need of interpretation that will uncover its true messages; b) The Bible is “one great Book of Instruction,” unified in its message; c) The Bible is “perfect and perfectly harmonious.” The ultimate result of such an assumption is the rabbinic belief in the Torah’s “omniscience,” by which is meant that all salient factors of the Torah’s text are potentially meaningful, their meanings disclosed through *midrash*. d) The Torah is sanctioned, inspired or derived from God.<sup>43</sup>

The classic rabbinic stance is built on a very different set of assumptions than those appealed to by Rabbi Tucker. *Midrash* depends on the belief that the Torah is a document of perfect integrity, urgent relevance, Divine status and “omniscience.” Why should one imagine, as does Rabbi Tucker, that such a stance is irretrievably lost to the modern Jew? The historical investigations of the last centuries do not necessarily rule out the Divine authorship of the Torah, a tenet he can no longer affirm, anymore than they rule out that the Torah is Divinely inspired, a tenet that he does affirm. Nor is the commitment to “omniscience” necessarily limited to fundamentalist traditionalists alone. It is salutary to remember, as has been generously pointed out by Professor Yaakov Elman, that the greatest work expressive of such an approach in modern times was created, not by an Orthodox commentator, but by the great Reform rabbi, Benno Jacob.<sup>44</sup>

These assumptions are not subject to empirical proof. The role of the Divine in the communication and formation of the Torah is not amenable to probative, rational argumentation.

Nor is the embrace of “omniscificance” dependent on the complete fulfillment of that approach’s agenda. As Prof. Elman has pointed out, “Having claimed such profundity for all of Scripture, the rabbinic program may be expected to deliver on its promise. However, for reasons having to do with the problematics of the concept itself, and certain historical developments, that promise was never fulfilled. Omniscificance remains an ideal which was never actually realized.”<sup>45</sup> Like all ideals, and like faith itself, its embrace does not follow from an irrefutable syllogism, but from an act of choice. That act of choice springs from the “*midrashic* condition,” so named by Prof. Ithamar Gruenwald. He writes:

To begin with, we consider *midrash* to be an important factor in the development of the religious tradition of the Jews and not merely a literary form and exegetical technique used in the interpretation of Scripture. Even beyond that, *midrash* is a form of cognition that supplies terms of reference and channels of perception for people who organize their lives in accordance with scriptural world of ideas. *Midrash* thus helps maintain Scripture as the normative constant of Judaism. In the face of historical and ideological change, it not only regulates the development of Jewish traditionality but supplies its essential substance as well. Finally, *midrash* also embodies the principles of interpretive elasticity that are the basic invigorating forces of that traditionality.<sup>46</sup>

This means that *midrash* is grounded in the insistence of the community to find meaning in its sacred scripture, to posit Divine Presence in the ancient text, thereby keeping that text holy, “in the face of [a consciousness] of historical and ideological change.”

This understanding of *midrash* lost its vital power long ago. According to Prof. Elman: “After the fourteenth century, concern with the biblical text receded, and those interested in biblical commentary concentrated their efforts on the Pentateuch, first and foremost, and to a great extent on producing supercommentaries on Rashi. However, towards the end of the eighteenth century – prompted by the rise of the *Haskalah* Enlightenment and the challenges it presented – attention once again began to turn to the biblical text itself.”<sup>47</sup> However, this new interest arose out of a modernist, Enlightenment skepticism that questioned all traditional tenets. The creative role of *midrash* became problematic to skeptics, but it was also problematic to traditionalists. Too many *midrashim* were perceived to be absurd and arbitrary readings, even if their legal or moral messages were acceptable. Overwhelmingly traditionalists felt that the best way to defend tradition was to sever its link to *midrash* as an effective, formative process.<sup>48</sup>

*Midrash*, according to this apologetic, was not really capable of producing meanings from the text. What it produced were merely mementos, reminding us of commanding traditions. Traditionalists continue to try to maintain that authenticity lies in fidelity to an unchanging past. If modernity equals change, then tradition must be its opposite. But those who reject orthodoxy have nevertheless ceded to it this basic claim. The old tradition is no longer capable of persuading the community “to organize their lives in accordance with scriptural world of ideas,” as Prof. Gruenwald put it. With the “*midrashic* condition” so totally undermined, what route was left open for contemporary, progressive scholars who take Biblical studies seriously to adopt? Ironically, they have adopted an approach to the Biblical text that is ruled

by a backward-looking, rather than progressive, quest. Their charge is to ascertain the *p'shat* of the text, conceived of as the best understanding we can garner of its original meaning in its original context. In reading the verses in Leviticus, for instance, the arguments circle around whether there is any way to claim that the verses meant anything other than their commonly accepted meanings. Thus, the authors of the *t'shuvah* that argued for allowing homosexuals to be ordained as rabbis and cantors, and that was accepted by the Law Committee, argued against the authors of a more sweepingly liberal *t'shuvah*, saying, "Although they present their reading as 'the *p'shat*,' there is nothing simple or contextual about this interpretation. [...] This reading, too, is *sui generis* – unsupported by either ancient or modern commentators."<sup>49</sup>

Even today, with the effort to resuscitate the power of *midrash*, what has resulted is a domesticated, tame view of *midrash* that equates its essence with *aggadah*, non-legal homilies, aphorisms, stories and moralisms.<sup>50</sup> In this way *midrash* stays interesting, but, as long as it is incapable of engendering commanding law, it is ultimately inconsequential.

But this is not the way of *midrash*. Maimonides writes:

If the Supreme Court used one of the hermeneutic principles to deduce a ruling which, in its judgment, expressed the law, and it rendered a decision to that effect, but a later court found a reason to set aside the ruling, then the later court may indeed set it aside and rule according to its own judgment, as the Torah says: "[appear before] . . . the judge in charge in those days" (Deut. 17:9), that is, you are bound to obey the court in your generation.<sup>51</sup>

The image of traditional Judaism that rises from this text is radically different from that image shared by traditionalists and reformers alike. It is an image of protean vitality founded upon a courageous commitment to an ever-renewing process of *midrashic* exegesis of the Torah.

Two questions immediately present themselves: a) How does Maimonides know this *halakhah*? And, b) Isn't this process limited to the authority of the Great Sanhedrin, and, therefore, since we lack such a centralized institution, irrelevant to us, today?

Both questions may be answered by consulting the remarks of Rabbi Yosef Karo in his commentary on Maimonides, the *Kesef Mishneh*:

When the Great Court has exegetically explicated [the Torah] etc. – Our Rabbi [– Maimonides] learned this from the fact that we find later *Tannaim* [– sages of the period of the *Mishnah*] who dispute with earlier ones, and later *Amoraim* [– sages of the *Talmudic* period] who dispute with earlier ones. Now that which we learn in the *mishnah*, first chapter of 'Eduyot (*mishnah* 5) – that if a court accepts the view of a single sage [against a majority view to the contrary] and relies on it, then another court cannot dismiss that other court's decision unless it is greater in wisdom and numbers - is explained by our Rabbi to apply when that single sage and that majority were in dispute regarding a prohibitive decree [*g'zerah*] or a new

regulation [*taqqanah*]. Thus, were a court to decide according to the view of the single sage, then another court cannot dispute this and decide according to the view of that majority, unless it [– the court] were greater etc, as will be explained in the next *halakhah*. But if they disputed, such that one of them explicates according to a certain hermeneutical measure and this one uses another, then, it is true, that one can dismiss the words of the other even if it is not as great as the other in wisdom and number.<sup>52</sup>

As we read the commentary of the *Kesef Mishneh* it dawns on us that there is no explicit earlier source for Maimonides' words, at all. Rabbi Yosef Karo must derive a basis for Rambam's ruling by drawing an analogy to the ongoing record of argumentation found in the rabbinic literature of the *tannaim* and *amoraim*, throughout the generations. But, of course, these sages were not members of the Great Sanhedrin any more than you or I. The inference is clear - the *midrashic* process invited the sages of every generation to read the Torah for its legal meaning according to their own judgement – “*k’fi mah she-nir’eh b’eyneyhem she-ha-din kakh.*”

We may further understand from Maimonides that the *midrashic* process is not only based on the assumptions outlined above. It is also based on the faith that the sages of Israel – in every generation – will employ its methods according to their best judgment. This judgment works on two levels. One must judge when it is appropriate or necessary to re-open a verse (– as the traditional *midrash* so often begins, “*Patah Rabbi Ploni – Rabbi So-and-So opened . . .*”) for a re-reading. Then one must use one's judgment to decide what kind of *midrashic* reading is called for.

But there is a particularly troublesome aspect to this leap of faith. The *Kesef Mishneh* continues his commentary as follows:

Now if you should ask – If so, why don't the *Amoraim* dispute with the *Tannaim*? For everywhere we challenge an *amora* from our *mishnah* or a *baraita*, and he must answer, “I say this according to that *tanna*.” And if he does not say this it is a challenge to him. But following the words of our Rabbi they do have permission to dispute the words of the *Tannaim*! It is possible to say that from the day the *Mishnah* was sealed they all accepted upon themselves that the later generations could not dispute with the earlier ones. And so they did [again] with the conclusion of the Talmud, so that from the day it was sealed permission is not granted to anyone to dispute it.<sup>53</sup>

The problem of the cessation of the *midrashic* process is recognized here. Even before the advent of modernity the willingness to engage in *midrashic* activity had petered out. The *Kesef Mishneh* speculates that this was the result of an implicit social contract undertaken by the House of Israel to desist from using *midrash* in a way that might overturn the *midrashic* results of the *Talmudic* period. In a sense the Jewish People had “in its judgment” decided to defer to the collective wisdom of the *Talmudic* sages.

This deference is given an even sharper characterization by the revered sage of the *haredi*

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community in Israel in the early years of the state, the *Hazon Ish*, Rabbi Avraham Yeshaiyahu Karelitz. His comments in a letter merit extensive citation:

The truth regarding this matter is that the generation after the Mishnah saw the diminution of hearts as compared to the masters of the Mishnah and knew for sure that the truth is always with the Former Ones (*ha-rishonim*). And once they knew the truth of the matter – that it is impossible that they might apprehend any truth not already apprehended by the *tannaim* – they were not permitted to argue [with the *rishonim*]. And they would merely go over all the words of the *tannaim* who preceded them. Likewise, the redactors of [*maḥtamei*] the Talmud rejected the words of any *amora* who said something in ignorance of a saying of a *tanna*. Only Rav, because of the breadth of his heart, did not have his words rejected. Now all these agreements were by Divine Providence, may He be blessed, and through the appearance of the Holy Spirit [*ruah ha-qodesh*], for the Holy Blessed One had agreed with their decision, as it says in Bava Metzi’a 86a: “Rabbi [R. Judah the Patriarch] and Rabbi Natan conclude the Mishnah.” And so it was with the generation of the closing of the Talmud, as they said, “Ravina and Rav Ashi conclude the Tamud.”

And regarding what our Master [Rabbi Yosef Karo] wrote, that so “they accepted upon themselves,” was not because they did the *Rishonim* a kindness or a favor. Rather the truth compelled doing so. For how could we do anything according to our own thinking when we know that our thinking is limited [– *q’zarah*] and we do not possess the truth? Could we act that way toward the *Rishonim* of blessed memory? For in truth all the Torah was given at Sinai, even what a seasoned student may innovate in the future. The *tannaim* restored what was forgotten, but all was not revealed until the time of Rabbi. But by the end of the Mishnah everything that should be revealed was revealed and nothing new will be revealed except what is hinted at in one of the sayings of the *tannaim*. Similarly the Mishnah was revealed from the first generation of the *amoraim* until the last. And the matter was a tradition for them, as mentioned in Bava Metzi’a, there [86a]. And when they said in Avodah Zarah 9a, “Two thousand years of Torah,” they were alluding to the *tannaim*, for all the thousands that they took up are much less than the years that follow them.<sup>54</sup>

This comment takes the historical speculation of the *Kesef Mishneh* and transforms it into a religious dogma. The words of Rabbi Yosef Karo explain the lack of recent *midrashic* activity as the result of a communal decision. In theory it would be possible for the community to rescind that decision were it to determine that sufficient reason obtained. But for the *Hazon Ish* there is no possibility for that decision to be reversed since it is founded on an enduring truth about the revelation of the Torah, a truth that can only be doubted by a heretic.

But the certainty of this sage, that no new apprehensions of truth are possible after the Talmud, is negated by two pieces of evidence. The first is the text of the Rambam, itself. We have noted that the *Kesef Mishneh* could not find any sure source in rabbinic literature for

Maimonides' law. We should now point out, as well, that the justification offered by Rambam is a verse from the Torah: “[appear before] . . . the judge in charge in those days’ (Deut. 17:9), that is, you are bound to obey the court in your generation.” But this reading of that verse is also found nowhere else in rabbinic literature. The true basis of this law is Maimonides’ own resort to new *midrash halakhah*!<sup>55</sup>

The second piece of evidence is our own irrefutable experience, as outlined at the start of our essay. We cannot agree that there is no possibility of new apprehensions of God’s truth. If, then, as we have affirmed in our Premise 2, this is a time of “historical and ideological change” of great import, it follows that we are called to respond to this change through a new embrace of the power of *midrash*.

Our challenge is to re-take the power of *midrash* for the purposes of reading the Torah in a way that will speak “*k’fi mah she-nir’eh b’eyneyhem she-ha-din kakh* – in accordance with how our eyes perceive what the law must be.” Our challenge is to believe that we have that power. And our challenge then is to believe that the Torah will allow itself to be read in that way. We return to our question: How shall we read the Torah today?

## VII.

The verse in Chapter 18 of Leviticus can be broken down into three components. It mentions persons (– component ‘a’) for whom certain actions are prohibited (– component ‘b’), and it characterizes such prohibited acts as *to’evah* (– component ‘c’). The verse in Chapter 20 adds another component, the punishment of death for both persons involved in the sinful act.

Since this concept of *to’evah* has occupied so much attention in recent discussions, we may begin there. It is not necessary to account for all instances of the use of this term through the Bible in order to offer a possible understanding of its use here. Let us refer to the very first occurrence of the concept in the Torah. The Torah tells of the meeting of Joseph and his brothers in Egypt. Joseph, Viceroy of Egypt, has ordered that his brothers (who do not as yet recognize him) shall dine with him. The Torah tells us: “And they served him [– Joseph] by himself, and for them by themselves, and for the Egyptians, who ate with him, by themselves; because the Egyptians might not eat bread with the Hebrews; for that is an abomination [*to’evah*] to the Egyptians.”<sup>56</sup>

Many commentators have explained that this text indicates that *to’evah* may indicate a socially conditioned evaluation. For our purposes we must understand what act or concept was considered socially offensive. We are presented with a situation in which all parties are expected to eat a meal. There is nothing offensive about that. What is offensive is the inclusion of alien elements into the acceptable group. Hebrews can eat by themselves without offending Egyptians. But they cannot eat along with Egyptians. What is offensive is to ruin a situation that is innocuous in itself by introducing an unwelcome element.

This may be the same meaning carried by the term *to’evah* when it is applied to another case that seems something of an exception to the usual occurrences of the term, the law of just weights and measures. The Torah says: “You shall not have in your pouch alternate weights,

larger and smaller. You shall not have in your house alternate measures, a larger and a smaller. You must have completely honest weights and completely honest measures if you are to endure long on the soil that the Lord your God is giving you. For everyone who does those things, everyone who deals dishonestly, is abhorrent to the Lord your God.”<sup>57</sup> Why does the Torah specify “smaller” and “larger” weights? Why did it not simply forbid “dishonest weights”? We may suggest that the Torah imagines a person carrying a pouch of weights, some of which are accurate. What is a *to'evah* is to add to that collection of honest weights any other weights, smaller or larger, which are held at-the-ready for when the opportunity to cheat someone may arise. Again, the pouch of weights, by itself, is not abominable. It is the addition of the extra stones that creates the abomination.

What are the acts that are forbidden by the verses in Leviticus?

The strange term *mishk'vei islah* is used here, a *hapax legomenon*. Until now it has been understood to refer to homosexual relations. Yet, we may note that in subsequent, rabbinic literature, the term for homosexual intercourse is *mishkav zakhar*. While the term *mishk'vei islah* is not found elsewhere, the term *mishkav zakhar* is found in the Torah. Toward the end of Moses' life he is commanded by God to attack Midian in retribution for the plague that the Midianite women inflicted upon Israel by seducing them into idolatry. The army returns victorious, but Moses is angry. They have spared the Midianite women. Moses exclaims, “Now therefore slay every male among the children, and slay also every woman who has known a man carnally. But spare every young woman, who has not had carnal relations with a man.”<sup>58</sup> In these verses the term *mishkav zakhar* is used to refer to a woman having sexual relations with a man. If we return to our verses in Leviticus we may interpret, by analogy, that the acts forbidden by the Torah are not homosexual acts at all. Rather some situation involving a man having sexual relations with a woman is proscribed. What is that act?

When we consider the first part of the verse, that mentions the persons involved in the forbidden act, we read the phrase “And with a man – *v'et zakhar*.” Now, the particle *et* may indicate the object of an action. This is its meaning from the start of the Torah. “*B'reishit bara Elohim et ha-shamayim v'et ha-aretz* – When God began to create (*et*) the heavens and (*et*) the earth”<sup>59</sup> The first place where it is unambiguous that the word *et* is being used in another way is in the verse, “And Enoch walked with (*et*) the Almighty . . .”<sup>60</sup> In this verse it is clear that the particle does not signify an object indication. Rather it means “along with.”<sup>61</sup> Until now our verse in Leviticus has been read to mean that a male is prohibited to make another man the object of his sex act. But now we may read the verse very differently:

<i>V'et zakhar</i>	And along with another male
<i>lo tishkav</i>	you shall not lie
<i>mishkeve islah</i>	in sexual intercourses with a woman
<i>toevah hi</i>	it is abhorrent.

There is no prohibition of homosexual acts of any kind. Rather, the Torah prohibits two males from joining together to engage in intercourse with a woman. This is a *to'evah* because the introduction of the second man completely transforms the act from an innocent act into a manipulation that degrades the act of intercourse and make the woman subject to objectification that may become violent.

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Previous commentators' intuitions that what is meant here is some form of coercive sex act were correct. But the act is heterosexual, not homosexual. Thus, we can understand the verse in Leviticus 20:13 in a simple way. The death penalty prescribed by the Torah is for the two men who force themselves upon the woman. The perpetrators are guilty; not the victim.

It is important to understand what this reading purports to be and what it does not purport to be, what it accomplishes and what it does not accomplish. This reading does not purport to be a suggestion of what the original intent of the verse might have been. On the contrary, it claims that whatever previous readings of the verse may have been considered normative in the Jewish community, the time has now come to overturn such readings and offer a new reading, "*k'fi mah she-nir'eh b'eyneyhem she-ha-din kakh* – in accordance with how our eyes perceive what the law must be." It accomplishes one clear attainment. It removes from the Torah any negative reference to homosexuality. In addition, it expands the sexual ethics of the Torah to include one case of prohibition of coercive sex, heretofore never explicitly forbidden.<sup>62</sup> It does not complete the task of rereading all problematic verses in the Torah. It merely recoups certain approaches, exegetical and theological, that have been discarded (for understandable reasons) but which offer much promise for the future, if we are willing to place our efforts and our faith in them. It merely opens up a gate in the desire to fulfill the verse:

Open for me the gates of righteousness, so that I may enter them and acknowledge God with praise. This gate leads to God; may the righteous enter into it. (*Ps. 118:19-20*)

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This essay is dedicated to the students and community of The Academy for Jewish Religion, where these teachings were first shared. May the Academy – *Beit Ha-Midrash l'Rabbanim v'Hazzanim "B'Levav Shalem"* – continue to grow and fulfill its mission as a true House of *Midrash* for the benefit of *Klal Yisrael* and the world.

<sup>1</sup> For convenience this essay will use the term "homosexual" to apply to both males and females whose sexuality is most fully realized in relation to another person of the same gender.

<sup>2</sup> For an accessible statement of his thoughts on the centrality of this concept, see *Living in the Image of God: Jewish Teachings to Perfect the World – Conversations with Rabbi Irving Greenberg, as Conducted by Shalom Freedman*, Jason Aronson, 1998, especially pp. 31-43. It is ironic that Greenberg's influential teaching has had its greatest impact outside the Orthodox community with which Greenberg identifies. Still, even in the non-Orthodox community, the importance of his teaching is not always clear. At one conference Rabbi Greenberg repeatedly tried to advance the idea of *tzelem Elohim* as central to Jewish thinking. Rabbi Harold Schulweis, a prominent Conservative rabbi, retorted at one point: "Nothing follows from a theological proposition like *tzelem Elokim* (sic). You can believe in *tzelem Elokim* and treat the *manzer* harshly. You can have capital punishment. Everything and anything can be founded on *tzelem Elokim*." (in *Judaic Sources of Human Rights*, Israel-Diaspora Institute, Report No. 1, April 1989, p. 113)

<sup>3</sup> See, e.g., Rabbi Irving Greenberg's collection of essays, *For the Sake of Heaven and Earth: The New Encounter between Judaism and Christianity*, JPS, 2004.

- <sup>4</sup> The *responsa* are available at the CJLS website - [http://www.rabbinicalassembly.org/law/new\\_teshuvot.html](http://www.rabbinicalassembly.org/law/new_teshuvot.html)  
The Committee votes on *responsa*. In most cases a *responsum* must receive 6 votes of 25 in order for it to be accepted as a legitimate position. But when the Committee deems the opinion to be in the category of a *taqqanah* – a major new change in *halakhah* – it requires a majority vote of 13.
- <sup>5</sup> “Homosexuality, Human Dignity and *Halakhah*,” by Rabbis Elliot Dorff, Daniel Nevins and Avram Reisner. There were two other permissive *t’shuvot* that were not accepted by the Committee as legitimate positions because they were deemed *taqqanot* and did not receive the requisite number of votes, though they may have passed had they been deemed to be mere *responsa*. The two *t’shuvot* are – “A New Context: The *Halakhah* of Sam-Sex Relations,” by Rabbis Myron Geller, Robert Fine and David Fine, and “*Halakhic* and *Metahalakhic* Arguments Concerning Judaism and Homosexuality,” by Rabbi Gordon Tucker.
- <sup>6</sup> Quoted from – [http://www.religioustolerance.org/hom\\_jother.htm](http://www.religioustolerance.org/hom_jother.htm)
- <sup>7</sup> See – <http://www.terra.org/resolution-Mar2004.htm>
- <sup>8</sup> <http://data.ccarnet.org/cgi-bin/resodisp.pl?file=gender&year=2000>
- <sup>9</sup> “On Homosexual Marriage,” in *CCAR Journal: A Reform Jewish Quarterly* (Winter 1998), pp. 5-35.
- <sup>10</sup> Rabbi Uri C. Cohen of ATID - [www.atid.org](http://www.atid.org).
- <sup>11</sup> See Rambam *Hil. Issurei Bi’ah* 21:8.
- <sup>12</sup> Leviticus 18:22 and 20:13. These are the two verses which will be examined more closely in the later part of this essay.
- <sup>13</sup> *mQid.* 4:14 and BTQiddushin 82a.
- <sup>14</sup> See Rabbi Steven Greenberg, *Wrestling with God and Men*, U. of Wisconsin, 2004, pp. 135-144. A survey of Orthodox *responsa* with their varying attitudes to homosexuality may be found in, Ze’ev Schweidel, “(Br)Others in Our Midst: On the Place of Religious Homosexuals in Religious Society,” (Hebrew), in *Akdamot* 17 (2006), pp. 81-110.
- <sup>15</sup> Cohen, *op. cit.*
- <sup>16</sup> Greenberg, *op. cit.*
- <sup>17</sup> Prov. 3:17. The hermeneutic significance of this value is central. It will have to be discussed in another essay.
- <sup>18</sup> Greenberg, *op. cit.*, p. 208.
- <sup>19</sup> See, for example, his “Judaism and Homosexuality,” *Tikkun* 3:2 (March/April 1988), pp. 52-54 and his “Gay and Lesbian Jews: An Innovative Jewish Legal Position,” *Jewish Spectator* 55:3 (Winter 1990), pp. 6-14. Rabbi Artson also authored a *Responsum* submitted to the CJLS in 1991. However it did not receive the requisite votes to be accepted as even a minority view. Thus a reader of the published *t’shuvot*

of the time is presented with an anomalous situation in that Rabbi Artson's *t'shuvah* is referred to but is not accessible to the reader for further study. Thus the CJLS has adopted a policy that is far more restrictive than the policy described in m'*Eduyot* 1:5-6. There the minority opinion that is rejected is the opinion of one sage, and yet, it is recorded. The CJLS refuses to record such a minority opinion at all.

- <sup>20</sup> On the element of coercion in the Biblical concern about homosexuality see the comments by Ibn Ezra to these verses in Leviticus and compare, as well, his comment to *Deut.* 27:15-25. There he remarks that the sin of homosexual sex is not included in the catalogue of cursed acts because only secret acts are placed under these curses, while in a homosexual act the victim can scream for help.
- <sup>21</sup> Seth Goldstein, "Reading *To'evah*: Biblical Scholarship and Difficult Texts," *The Reconstructionist* 67:2 (Spring 2003), pp. 48-60.
- <sup>22</sup> *Ibid.*, p. 55.
- <sup>23</sup> *Ibid.*, p. 57.
- <sup>24</sup> "On Homosexual Marriage," *op.cit.*, p. 17.
- <sup>25</sup> *Ibid.*, p. 24.
- <sup>26</sup> *Ibid.*, p. 17.
- <sup>27</sup> *Ibid.*, p. 25.
- <sup>28</sup> I hope to write about the question of egalitarian Jewish marriage in another essay.
- <sup>29</sup> See, out of many examples, the essay by Rabbi Peter S. Knobel, "Kiddushin: An Equal Opportunity Covenant, Not Only for Heterosexuals," *CCAR Journal*, Fall 2005, pp. 20-34. On pages 24-25 he endorses Rabbi Steven Greenberg's reading of the verses in Leviticus.
- <sup>30</sup> *CCAR Journal*, Fall 2005, pp. 5-19. When citing this article I retain Rabbi Weiner's chosen spelling of the term.
- <sup>31</sup> *Ibid.*, p. 16.
- <sup>32</sup> *Ibid.*, p. 18.
- <sup>33</sup> This topic is treated in his earlier *t'shuvah*, "Homosexuality," *Responsa of the CJLS* 1991-2000, The Rabbinical Assembly, 2002, pp. 613-675. On p. 615 he writes: "The term *to'evah* in the Torah does not refer to an inherent quality of an act. Acts are *to'evah* because the Torah calls them *to'evah*. 'Abhorrence' is not an inherent quality of the act, it is an attributed quality."
- <sup>34</sup> *Halakhah of Same-Sex Relations*, *op. cit.*, p. 10. (As noted above, this *t'shuvah* did not receive enough votes to be adopted.)
- <sup>35</sup> *Ibid.*, p. 11. They also make reference to the interpretations of Rabbi Jacob Milgrom, perhaps the greatest modern expositor of the Book of Leviticus. The primary interpretation offered by Rabbi Milgrom is that the Torah prohibits sexual acts that are antithetical to procreation. Since homosexual unions do not produce offspring they are prohibited.

Rabbis Geller, Fine and Fine argue that this basis for the prohibition is now nullified, also, thanks to modern fertility techniques and adoption procedures.

<sup>36</sup> Indeed, the permissibility of anal intercourse for straights was not obvious to the rabbis, since it involved a clearly non-procreative act. They deduced its legitimacy from none other than the verse that, according to Rabbis Dorff, Nevins and Reisner, prohibits anal intercourse for gays - Leviticus 18:22! See, e.g., Rabbi Steven Greenberg, *op. cit.*, p. 284, n. 30.

<sup>37</sup> “*Halakhic and Metahalakhic Arguments Concerning Judaism and Homosexuality*,” *op. cit.*

<sup>38</sup> *Ibid.*, p. 6. He bases himself on the thought of Rabbi Abraham Joshua Heschel, whose *magnum opus*, *Heavenly Torah* was translated, edited and annotated by Rabbi Tucker.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*, p. 19.

<sup>42</sup> *Ibid.*, pp. 6-7.

<sup>43</sup> James L. Kugel, *The Bible as It Was*, Harvard, 1997, pp. 17-22. This succinct statement builds on his earlier work. See, e.g., *The Idea of Biblical Poetry: Parallelism and Its History*, Yale, 1981, p. 103-5. For the efforts of Prof. David Weiss Hallivni to come to terms with Biblical criticism while maintaining belief in the Torah’s perfection, see his essay, “From *Midrash* to *Mishnah*: Theological Repercussions and Further Clarifications of ‘*Chat’u Yisrael*’,” in *The Midrashic Imagination: Jewish Exegesis, Thought, and History*, edited by Michael Fishbane, SUNY, 1993, pp. 23-44. There he also cites his other writings on the subject.

<sup>44</sup> Yaakov Elman, “The Rebirth of Omnisignificant Biblical Exegesis in the Nineteenth and Twentieth Centuries,” *JSIJ - Jewish Studies; an Internet Journal. Ramat-Gan 2* (2003) , pp. 199-249.

<http://www.biu.ac.il/JS/JSIJ/2-2003/Elman.pdf>

He has written extensively about the historical career of this concept. See, e.g. his “Classical Rabbinic Interpretation,” in *The Jewish Study Bible*, edited by Adele Berlin and Marc Zvi Brettler, Oxford, 2004, pp. 1844-1863, esp. pp. 1848-1858. That essay is a concise restatement of his work on the rabbinic period. On medieval expressions, see his essay, “‘It Is No Empty Thing’: Nahmanides and the Search for Omnisignificance,” *The Torah U-Madda Journal 4* (1993), pp. 1-83.

<sup>45</sup> Elman, “The Rebirth...,” *ibid.*, p. 200.

<sup>46</sup> Ithamar Gruenwald, “*Midrash* and the ‘*Midrashic Condition*’”: Preliminary Considerations,” in *The Midrashic Imagination’: Jewish Exegesis, Thought, and History*, *op.cit.*, pp. 6-22. This quotation is from p. 6.

<sup>47</sup> Elman, “The Rebirth...,” *ibid.*, p. 201.

<sup>48</sup> For an important study of this problem see Jay M. Harris, *How Do We Know This?: Mirash and the Fragmentation of Modern Judaism*, SUNY, 1995.

<sup>49</sup> Rabbis Dorff, Nevins and Reisner, “Homosexuality, Human Dignity and *Halakhah*,” *op. cit.*, p. 6.

- 50 Illustrations are countless. For one example see the issue of *The Reconstructionist: A Journal of Contemporary Jewish Thought and Practice* 63:1 (Fall 1998), devoted to the theme “New *Midrash* and New Ritual.”
- 51 *Hilkhot Mamrim* 2:1. Trans. - Elliot N. Dorff & Arthur Rosett, *A Living Tree*, SUNY/JTS 1988, p. 412.
- 52 *Kesef Mishneh*, *ad. loc.* (– my translation, with additional, explanatory phrases added in square brackets)
- 53 *Ibid.*
- 54 *Qovetz Iggarot* II, Letter 24. Published in the *El Ha-M'qorot* edition of Maimonides’ *Yad Ha-Hazaqah*, *Hilkhot Mamrim*, Jerusalem, 1957, p. 838. (– my translation, with additional, explanatory phrases added in square brackets)
- 55 Radbaz, *ad. Loc.*, is also at a loss to find a source for the Rambam. He innocently writes, “For if you do not say this [– Maimonides’ law] what would the verse ‘to the judge of those days’ be about?”
- 56 Genesis 43:32.
- 57 Deuteronomy 25:13-16.
- 58 Numbers 31:17-18.
- 59 Genesis 1:1.
- 60 Genesis 5:22. (And see Genesis 6:9)
- 61 In Genesis 4:1 Adam and Eve conceive a child together. Eve calls him Cain, saying “*qani-ti ish et YHVH*.” JPS translates the obscure Hebrew as: “I have gained a male child with the help of the Lord.” The commentators are not sure whether the word *et* is meant to be understood as “along with” in this case.
- 62 See Rachel Adler, *Engendering Judaism: An Inclusive Theology and Ethics*, JPS, 1998, pp. 105-167, for a forceful discussion of the lacunae and shortcomings of the Torah’s code of sexual ethics when the Torah is limited to a traditional reading.