

For many Americans, the reaction to the Supreme Court's legalization of same-sex marriage was simple. For the 26 million people changed their facebook profile to a rainbow flag, pure joy and celebration. For others, especially from many in more fundamentalist religious communities, protest and anger.

For Jews who are committed to Jewish law and traditional faith and at the same time embrace the modern world, the reaction might have been more complex. We can empathize with our gay family members, friends and neighbors in their struggle for equality under the law. We might feel that it makes sense for gay people to have legal rights as life-partners, like the right to make bequeath property to one another or to be at a deathbed just like a heterosexual couple would. And at the same time maybe we hear the voices of fierce, absolute opposition to the Supreme Court ruling from orthodox groups like the RCA and the Agudah speaking with in the name of our tradition and it makes us wonder. Are these values of equality, personal autonomy and choice reconcilable with our religious commitments and identities?

Before exploring some of the relevant Torah sources, two things to consider:

First: Whatever position one ends up taking, it must be taken with tremendous sensitivity and care to those who are directly affected. Leaders and members of the orthodox community have done serious damage to gay people by shaming, shunning, or pressuring them into often harmful, abusive "reparative therapies." I myself am guilty of having stood silently by while friends used hateful language about our gay brothers and sisters. Our community's failings in these areas have driven people to leave religious life, break family bonds, become depressed and even to suicide. For this we must do serious teshuva. Moving forward we must remember: these are not abstract theological or legal conversations - these are matters of the greatest human concern, even of *pikuach nefesh* - saving a life.

Second: According to Jewish law, I could not officiate a *kiddushin* and *nisuin* by a same sex couple just as I could not officiate a *kiddushin* and *nisuin* between a kohen and a divorcee. That's our religious law, and the right to practice our religious law in all matters, weddings, brit milah, shechita, as we understand them must be protected.

Now, let us return to our central question: How do we respond, as thinking and feeling Torah-loving and adhering Orthodox Jews, to the supreme court decision permitting same sex marriage in America?

Let's look at some of the sources.

Some cite the verse from Leviticus 18 as a reason why Judaism or any biblically based religion must oppose the right of gay people to marry.

It's a faulty argument. We do not and should not apply ritual, Torah laws to broader society. We don't get angry when non-Jews violate Shabbos, we don't get upset if the president wears *shatnez* in his suit. And even if we did, the inordinate focus on gay marriage seems excessive and frankly homophobic. The same word the Torah uses when it describes *mishkav zachar*, *toevah*, is also used in the prohibition on eating shrimp and in cheating in business. Are those who cite this verse also prepared to protest Red Lobster? If only the Agudah and the RCA would release harsh, condemning statements every time people cheated in business or defrauded the government.

A stronger Jewish argument against approval of same-sex marriage can be made from two sources in the Talmud, one in Sanhedrin and the other in Chullin.

Masechet Sanhedrin quotes Genesis 2:21:

על כן יעזוב איש את אביו ואמו ודבק באשתו והיו לבשר אחד

*Therefore shall a man leave his father and his mother, and shall cleave unto his wife, and they shall be one flesh.*

Interpreting this verse word by word, the Talmud identifies sexual prohibitions not just for the Jewish people but for all humanity. When it says a person should leave his father and his mother, that includes the prohibition against incest. When it says and he shall cleave, that is where the Talmud prohibits male same-sex relations for all.

And then there is a statement from Masechet Chullin 92b seems to explicitly condemn the practice of same sex marriage:

עולא אמר אלו שלשים מצות שקבלו עליהם בני נח ואין מקיימין אלא שלשה אחת שאין כותבין כתובה לזכרים

*Ulla stated: the nations of the world accepted 30 mitzvot on them but only keep three. One is that they don't write a ketubah for males.*

While this is not a halachik statement like the statement in Sanhedrin, and it is the statement of an late Amora, not at Tanna, it carries weight.

From these sources, a stronger case can be made that Judaism believes that civil society should outlaw *mishkav zachar*. Indeed, the Rambam rules from these in Hilchot

Melachim 9:10 that for the nations of the world, homosexual acts are prohibited. From Ulla, it seems that gay marriage for broader society is a negative thing.

Many would stop here, case closed. But let's wrestle with it a little more, with the help of Rashi.

Rashi explains the gemara in Chullin about not giving ketubah to men as follows:

דאע"פ שחשודין למשכב זכור ומייחדין להם זכר לתשמישן אין נוהגין קלות ראש במצוה זו כל כך שיכתבו להם כתובה.

*The nations are suspect for mishkav zachar and have the practice to single out a male for their sexual usage, yet they do not act so arrogantly as to give them a ketubah.*

That's a very different picture. Singling out a male for their use? That sounds like exploitation and objectification, not loving covenantal relationship. And let's look at Rashi's explanation of the gemara in Sanhedrin:

ודבק ולא בזכר - דליכא דיבוק, דמתוך שאין הנשכב נהנה אינו נדבק עמו.

*"Davuk can not mean between man and man, because there is no cleaving since the one who is acted upon sexually does not gain any benefit from it therefore he cannot cleave with him."*

What kind of relationship has one partner gaining benefit and the other gaining nothing at all? This sounds again like exploitation and abuse.

These sources most commonly cited as the proof texts against civil same-sex marriage through Rashi's eyes suddenly are very different: The objectifying, violent, abusive acts between people of the same sex described in the Talmud are of an entirely different character than what the Supreme Court rule. The Court's ruling was about committed relationships between two loving people who wish to construct one of the most conservative political forces known to humanity: the family unit.

That understanding of the sources, coupled with the Torah's values of *משפט אחד יהיה לכם*, one law you shall have for all people, of the pursuit of justice, of the divine image of each person, and of the Torah's statement *lo tov heyot Adam levado*, it is not good for a person to be alone in this world, a Torah perspective could emerge on how we are to understand the legalization of same sex marriage in our society.

This perspective is perhaps a new one, perhaps it requires a little wrestling with the text, but this process of interpretation and reinterpretation is entirely authentic.

The rabbis of the Talmud famously wrestled with texts they found morally challenging, like the commandment to kill a wayward and rebellious son or the commandment to destroy an idolatrous city. Yaakov was called Yisrael because he wrestled with God.

Each of us has our own wrestling to do. Some of us wrestle with how Hashem could have asked Avraham to sacrifice his son, some wrestle with the unequal status of women. As modern, open Orthodox Jews we wrestle with the text while we hug it, understanding and accepting that it limits our actions in the world but not checking our moral consciousness at God's door. In the words of Rav Kook in Orot Hakodesh 3:11: "It is forbidden for our yirat shamayim awe of heaven to replace a human's innate, natural moral sensibility. A symbol of pure awe of heaven is when one's religious practices takes the natural moral sense... and elevates it to higher and higher heights than it could reach on its own."

To be authentic *Bnei Yisrael*, to be authentic children of God wrestlers, it is not only acceptable but I would argue we are obligated to engage in this questioning, questioning that ultimately elevates both our moral intuitions and our Torah understandings to the highest heights.

There is more work to be done, more wrestling with these and other sources to understand all the wisdom and meaning in the words of our sages. And while that work is ongoing, I believe there is what to celebrate today.

As Orthodox Jews, we can and should celebrate the goodness bestowed to us by the legal systems of this country. The Supreme Court that brought about this decision is the same one which allowed for the Jewish community of Tenafly to build an Eruv. We can celebrate this amazing country, as it continues marching on a path from the shackles of injustice, bigotry and exclusion towards the true freedom of actually being one nation, under God, with liberty and justice for all.

We can celebrate with the families that many of us know with committed, loving same sex parents, some in our own Orthodox community. These families committed to Torah, tefillah, and mitzvot, to sending their Jewish kids to day schools, will not have to worry about a spouse not able to be with a partner on a death bed. We can celebrate for their children who will be raised in loving homes without legal question.

These issues are complicated, and require further study, thought and struggle.

But as we wrestle with these and so many other issues, issues that force us to ask the big questions: What is good, and what does God truly want from us we can turn towards today's Haftorah from the book of Micah for a way forward:

וְמַה-טוֹב; וְמַה-יְהוּה דִּרְשׁ מִמֶּךָ :  
כִּי אִם-עֲשׂוֹת מִשְׁפָּט וְאַהֲבַת חֶסֶד, וְהִצַּנֵּעַ לְכַת, עִם-אֱלֹהֶיךָ.

To do justice, to love kindness, and to walk humbly with your God.

May we merit to do just that in these uncertain, changing, exciting times. God bless us, and God bless America. Shabbat shalom.