

Our conversation of the past many months, about how to engage the likelihood that over the coming years there will be same-sex couples and families wanting to join our shul, has been an interesting, thoughtful, and uncomfortable one. It was a challenging conversation for an Orthodox shul to have, as our Orthodox commitments fall on both sides of the question. We cannot ignore a prohibition in the Torah, and we similarly cannot ignore the members of our community - of our families! - who are legitimately wondering whether there is a place for them within Orthodoxy.

The policy that our board adopted navigates the tensions, and is both welcoming and honest. What follows is the Halachic background that informed the policy. I hope that you will find it helpful, and that you will continue to ask questions as we go along!

### **In Broad Strokes: The “Halachic Ledger”**

On one side of the Halachic ledger are the Biblical and Rabbinic laws forbidding homosexual sex, and the Halacha’s consequent non-recognition of homosexual marriage. In an Orthodox community, the halachic reality that homosexual sex is forbidden cannot and should not be ignored.

On the other side of the Halachic ledger though, there are several prohibitions and responsibilities that direct us to develop a fully fraternal and communally inclusive relationship with fellow Jews who are gay or lesbian, including those who are in same-sex relationships. These halachot include the prohibition of **אונאת דברים**, the Torah’s injunction against inflicting emotional pain upon others through our words, as well as the severe prohibition upon subjecting others to public humiliation (including the humiliation that results from exclusion from communal activities), whether through word or deed. In a similar vein, we are bound by Rabbinic law to uphold the dignity of other human beings (**כבוד הבריות**) in recognition of their having been created in the image of God. In addition, we are individually and communally responsible to see to it that fellow Jews fulfill Mitzvot. This is the normative interpretation of the Halacha’s declaration that “all Israel are responsible for one another,” (**כל ישראל ערבים זה לזה**). It matters not whether these fellow Jews happen to be violating some of the other Mitzvot. We are nonetheless obligated to support them in the fulfillment of the Mitzvot that they would like to perform.

This “Broad Strokes Halachic ledger” is described in the 2010 “Statement of Principles,”<sup>1</sup> in the position adopted by the RCA, and in the Halachic Position Paper of the Israeli Rabbinic group, Beit Hillel<sup>2</sup>. (For excerpts – see endnotes)<sup>i</sup>

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<sup>1</sup> <http://statementofprinciplesnya.blogspot.com/>

<sup>2</sup> <http://eng.beithillel.org.il/docs/beit-hillel-pub-english-6.pdf>

Honoring both sides of the “Halachic ledger” requires us to be clear in our communal position that Halachic marriage is by definition heterosexual, and that Halacha does not recognize same-sex marriage. And simultaneously, it requires us to do all that we can to support gay and lesbian Jews in their desire to live lives of Torah, Prayer, and Good Deeds, including making it clear and explicit that they are welcome to join as members and to otherwise participate fully.

### **But Are Some Transgressions Different From Others?**

Without question, there are some transgressions of Jewish religious law and ethical principles that would place people beyond the limits of what an Orthodox synagogue can countenance or accept. Indeed, up until modern times, the Jewish community would utilize measures up to and including excommunication as ways of distancing transgressors who were engaged in purposeful rebellion against God and or the Beit Din, or who were placing the spiritual or physical security of the community – or members thereof - at risk. There are several reasons why this sort of exclusionary impulse should not be – and in reality is not – applied to the case of people in same-sex relationships.

One is the understanding we now have that sexual orientation is the product of complex biological (and sometimes emotional) factors, which are not a matter of a person’s choosing. There is no purposeful religious rebellion going on, and there is no danger posed to the community’s security. Neither shunning nor “quarantining” people in same-sex relationships is therefore a warranted reaction.

This absence of choice leads the Beit Hillel Halachic paper to downgrade the transgression to the level of “accidental”, certainly not a category that triggers exclusion from the community.

*Our assumption is that any person who wishes to be a part of a religious community would not freely choose a homosexual identity unless it was forced upon him to a great extent by his inner feelings... [This] choice of a way of life that includes a transgression of the halakha is not fully free, and is not what halakha defines as a ‘sin of desire’ (aveirah lete’avon). Just as an accidental sin cannot be judged in the same way as an intentional one, or a coerced sin in the same way as a willful one, so too we must distinguish between a transgression of halakha that is done with free will, and one done in the circumstances under discussion here. We should add to this that some people with homosexual orientations tend to think that homosexual couplehood is not forbidden, based on ... positions not accepted in the halakhic consensus. ... Therefore there is room to see them as people who violate halakha accidentally.*

Another factor, is our recognition of how powerful the human need for intimacy is, a factor which demands empathy – not enmity - from the community, and which at the same time, severely diminishes the capacity of heterosexuals to pass judgement upon it. In the words of the RCA:

Complying with the Torah's sexual strictures can be challenging for many. We recognize that these strictures provide no permitted outlet for those with homosexual desire, thereby creating the extraordinary demand of lifelong abstinence as well as the absence of companionate love. Although some overcome these and other challenges, we deeply empathize with those who face them.

Rabbi Chaim Rapoport, in his book, Judaism and Homosexuality: An Authentic Orthodox View sternly cautions heterosexuals against passing harsh judgement upon people in same-sex relationships.

*... the heterosexual Jew ought to ask himself questions such as, "If I were to find myself in a situation whereby I would constantly be yearning to be in a loving relationship – of a type that includes physical intimacy – and the only sexual relationships I could reasonably have would be with a member of the same gender, would I live up to the Torah's demands?" Or, "If I knew that there is never likely to be any way of experiencing sexual fulfillment in an Halachicly permissible manner, and at the same time, I would be almost constantly exposed to sexual temptation, would I have the fortitude to remain alone and celibate?"*

The third factor is the ever-increasing level of general social acceptance of same-sex relationships, and the impact this has on how they are perceived. The situation is directly analogous to the one faced by the 19<sup>th</sup> century posek Rabbi David Tzvi Hoffman, who ruled that the prior practice of excluding from the minyan those who desecrated Shabbat in public, was no longer to be enforced.

*In our day, you cannot apply the category "violating Shabbat in public". It is unlike older times when most Jews observed Shabbat, and only a few were so brazen to publically deny the Torah, do abominable things, and separate themselves from the nation. But today people think that it's actually not such a big sin, so they don't feel a need to keep their Shabbat violation private. "In public" is the same as "in private" for them. To the contrary, those who fear God today are called "separatists" and those who sin are considered "normal"....*

### **The Decision to Welcome and Include**

Based upon all of the above considerations, the appropriate approach to gay and lesbian individual and couples is to welcome them, and to include them in synagogue life no less than any Jew who is religiously imperfect.

As stated in Beit Hillel's Halachic position paper:

*An individual whose sexual orientation precludes him or her from entering into a union sanctioned by the laws of Moses and Israel, and seeks a way to avoid solitude, may forge ties of friendship and partnership with a person of the same sex. Despite*

*the apprehensions and suspicions that may arise from such a relationship, the congregation should assess the possibility of embracing them. We call on congregations to refrain from adding insult to injury, and find ways to allow these people, who wish to be part of the religious community, to do so. They should not be subjected to any restrictions beyond those that are acceptable in the congregation regarding other types of transgressors.*

The RCA similarly directs that there be no discrimination between a person who transgresses with regard to homosexuality, and one who transgresses in any other way:

*when determining a community's or an institution's welcome of, and ritual and leadership participation by, individuals who accept and respect its norms and ideals yet who violate homosexual or other sexual prohibitions, its rabbi must do so with consideration of existing communal practices which regulate other members of the community who do not conform to traditional standards.*

Our shul places the practice of welcoming all Jews of all kinds and of all observance levels, at the center of our mission. We therefore welcome gay and lesbian Jews no less fully.

### **Lifecycle and Children**

As a matter of Halacha an Orthodox synagogue cannot recognize same-sex marriage as being religiously legitimate, nor can it mark a same-sex marriage through celebrations such as an aufruf or sheva brachot. Also as a matter of Halacha it is forbidden (outside of the case of *mamzerut*) to penalize Jewish children for transgressions committed by their parents. Accordingly, children of gay or lesbian couples, (biological children, or those adopted and converted according to Halacha) must be included and celebrated without reservation,<sup>ii</sup> including having their parents as fully represented in the celebration as would the parents of any other children be.

Halacha, as Rabbi Maurice Lamm zt"l amply outlined in his classic Jewish Way in Death and Mourning, recognizes that the rites of mourning may be observed when a person suffers the loss of a beloved individual who is outside the circle of relatives for whom the Halacha requires mourning. The rituals of what Rabbi Lamm calls "discretionary mourning" can include shiva observances and kaddish, only excluding matters in which the mourning would violate a halachic prohibition (e.g. a Kohen attending a funeral for a non-relative)

The Torah is our Tree of Life, and it is our hope and expectation that our most recent effort at applying Torah to real life, will yield fruits of peace, blessing, and community.

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<sup>i</sup> From the "Statement of Principles" (excerpts):

Halacha sees heterosexual marriage as the ideal model and sole legitimate outlet for human sexual expression. The sensitivity and understanding we properly express for human beings with other sexual orientations does not diminish our commitment to that principle.

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All human beings are created in the image of God and deserve to be treated with dignity and respect (kevod haberiyot). Embarrassing, harassing or demeaning someone with a homosexual orientation or same-sex attraction is a violation of Torah prohibitions that embody the deepest values of Judaism.

Jews with a homosexual orientation even if they engage in same sex interactions, should be encouraged to fulfill mitzvot to the best of their ability. All Jews are challenged to fulfill mitzvot to the best of their ability, and the attitude of “all or nothing” was not the traditional approach adopted by the majority of halakhic thinkers and poskim throughout the ages.

**Position adopted by the RCA** (excerpts): (Italics mine)

We affirm the eternity of the mitzvot of the Torah, and that we all are responsible to support standards of sexual behavior which comply with Torah law.

Because we recognize that homosexuals often leave the Orthodox community, we are inspired by and have tremendous respect for those who seek to remain loyal to God, Torah, and the pursuit of sanctity in their lives. *Each of us must encourage and support all members of our families and communities to shape lives imbued with the fullness of Torah and holiness.*

**From the Halachic Position Paper of Beit Hillel** (bolding in original)

Thus, it is clear that there is a severe prohibition of demeaning or embarrassing any Jew, and that this prohibition is emphasized especially regarding those people with a vulnerable status in society, with whom there is sometimes a tendency to gain from their shame. **An individual with a homosexual orientation is included in this category, and the commandment to “love thy neighbor as thyself” must be fulfilled towards him without limitations.**

We seek to strike this delicate balance by grabbing onto the rope from both ends. On the one hand, the recognition and declaration that biblical prohibitions cannot be permitted, and the clarification that a transgression of the halakha cannot gain legitimacy; but on the other hand, a call to the community, to the public, to the readers to open their hearts and their gates to those who do not fully adhere to religious norms. This call is based on the decision of our rabbis: “They should be brought close with bonds of love.” The responsibility to love all creatures is not dependent on the possibility of bringing them closer to Torah; it is an independent obligation.

**ii From the “Statement of Principles”:**

Halakhic Judaism cannot give its blessing and imprimatur to Jewish religious same-sex commitment ceremonies and weddings, and halakhic values proscribe individuals and communities from encouraging practices that grant religious legitimacy to gay marriage and couplehood. But communities should display sensitivity, acceptance and full embrace of the adopted or biological children of homosexually active Jews in the synagogue and school setting, and we encourage parents and family of homosexually partnered Jews to make every effort to maintain harmonious family relations and connections.