

**A Loving God Wants Us to Love and Be Loved**  
**On the Acceptance of Homosexuality and Gay Marriage In Jewish Law**

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The core source for the prohibition of male homosexuality in Jewish law has historically been two verses found in the Torah. One reads: “Do not lie with a man as one lies with a woman, it is an abhorrence.” ([Leviticus 18:22](#)). The second reads: “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” ([Leviticus 20:13](#)). (Female homosexuality – i.e. lesbianism – is not addressed by the Torah but was nonetheless prohibited by the sages ([B. Yevamot 76a](#))). This is a very explicit verse which cannot merely be interpreted away through finessing the meaning of some ambiguity. For those over the centuries who take seriously the Torah as revelation and *halakhah* as an expression of God’s will, this verse situated near the center of the Torah is hard to ignore.

At the same time, we are confronted with a dramatic conflict between these verses and our contemporary understanding of homosexuality. Jewish scholars throughout the ages have argued that there is no conflict between science and religion. The great Jewish scholar, philosopher and codifier of Jewish law, Moses Maimonides, taught that Torah must make sense in light of science and that if our scientific understanding of the world changed, our understanding of Torah would have to take those changes into account.

One example of Maimonides’ position on religion and science is his teachings regarding astronomy found in his great philosophic work, *Guide for the Perplexed*:

“You must, however, not expect that everything our Sages say respecting astronomical matters should agree with observation, for mathematics were not fully developed in those days; and their statements were not based on the authority of the Prophets, but on the knowledge which they either themselves possessed or derived from contemporary men of science.” ([Guide for the Perplexed](#), Part 2: Chapter 14 in Friedlander’s translation, Cosimo Ed. 2006.)

For Maimonides, this principle is so fundamental that for him, science takes precedence even if it forces us to reconsider the very authenticity and authority of Torah. For example, though he viewed the Creation story as allegorical, he did affirm what he saw as the truth of Creation *ex-nihilo* (from nothing) and attacked Aristotle’s notion of an eternally preexistent matter that preceded the universe as we know it. Nonetheless, Maimonides wrote that if Aristotle’s theory were proven, “the whole teaching of Scripture would be rejected, and we should be forced to other opinions.” (*ibid*)

Commenting on the *Guide*, Rabbi Marc Angel, a modern orthodox scholar, writes that “Rambam would surely not expect us to continue to operate on the basis of Ptolmaic theories.” (Angel, [Maimonides, Spinoza and Us](#), page 162). To the contrary, Rabbi Angel contends that because of his rational approach, Maimonides would consider it foolish to reject what contemporary science has proven beyond a reasonable doubt. (*ibid*)

Given Maimonides’ assertion that our understanding of Torah needs to conform to our best contemporary scientific knowledge, what does science have to tell us about homosexuality?

The current state of scientific knowledge on this topic is detailed in a large number of scientific studies. Many of these are cited in the responsum of the Committee on Jewish Law and Standards entitled *Homosexuality, Human Dignity and Halakhah* by Rabbis Elliott Dorff, Daniel Nevins and Avram Reiner (2006), along with a detailed bibliography of scientific sources. There is some dispute among researchers as to whether homosexuality is determined in the womb or is set in the first few years of life. There is, however, wide consensus among researchers that by around the age of three, our sexual orientation is set and cannot be changed. In fact, many studies have documented that attempts to change someone’s sexual orientation not only are not successful, they are traumatic and psychologically damaging.

The following 2005 statement by the American Psychological Association summarizes the current scientific consensus about sexual orientation and individual volition:

Human beings cannot choose their sexual orientation. Sexual orientation emerges for most people in early adolescence or late childhood without any prior sexual experience. The experience of sexual attraction and falling in love is one that individuals experience as outside their conscious control. Although we can choose whether to act on our feelings, psychologists do not consider sexual orientation to be a conscious choice.

Numerous other studies conducted since that time have increasingly confirmed this reality.

So, in the spirit of Maimonides, I am forced to acknowledge that a change in our scientific understanding of the world compels me to confront the conflict between science on the one hand and Torah and Jewish tradition on the other. We are forced to ask: If God created human beings, and sexual orientation is part of who we are and beyond our control, then how could it be that a good, loving, compassionate God would deliberately create human beings in a form in which they could never be happy or achieve fulfillment through an intense intimate personal loving relationship? In Genesis, we read: "It is not good for man to be alone" (2:18). Yet in point of fact, if we accept the prohibition of homosexuality found in the Torah as God's word, then God is forcing a person of homosexual orientation to be alone. Thus we are confronted with a theological contradiction which threatens our most basic concept of God.

The responsum referenced above sought to deal with this conflict by asserting the primacy of the Jewish value of Human Dignity (*kevod ha-briyot*). While it certainly is true that human dignity takes precedence in Jewish law, that responsum chose not to deal with what appears to me to be a core issue. While it affirmed the right of same-sex couples to have a loving relationship, it denied them the right to engage in that most intimate and holy act that is unique to our relationship with our life partner. That responsum, which opened the door to the ordination of gay rabbis, nonetheless explicitly forbids sexual intercourse between men. Despite its very beautiful impassioned plea for compassion and respect for gay individuals, upholding the beauty of their love for someone of the same sex, the re-affirmation of this prohibition seems to me contradictory. It undermines the responsum's entire argument.

Judaism sees sex – when in the context of a loving marriage partnership – as holy. When we are intimate with our spouse we are engaged in the most intense way in the imitation of God's qualities. Sex is a deep and unique expression of love. It intensifies the emotional bond between two people, merging them into one. If that experience is denied to a same-sex couple, how then can we say we are affirming their love for each other? Indeed for a long time, that contradiction was the source of my rejection of that responsum. I felt – and still feel – that unless we can deal directly with the Torah's prohibition and find satisfactory grounds for affirming same-sex relationships in all their dimensions, then there is no ground for affirming only a part. To assume that same-sex couples are not engaged in intimate sex is just to close one's eyes to reality. This seems to me to not be a sound basis for interpreting *halakhah*.

Is it possible, then, to wholly affirm same-sex relationships in all their dimensions, including those which are most intimate, and thus set aside the explicit prohibitions found in Leviticus?

The answer to this dilemma lies in the very foundations of Conservative Jewish thought. Conservative Judaism, as well as Reform and Reconstructionist, recognize critical study of the Bible. This school of Biblical scholarship holds that the Torah began as a series of oral teachings which were at various times written down. Later, they were edited and redacted together, becoming a number of larger documents which, when finally combined, became the Torah as we know it. I have taught this approach in many settings. For some of you it will be most familiar from the teachings of Professor Richard Elliott Friedman. Dr. Friedman was our Weingold Guest Scholar in 2013. To better understand how the Torah evolved, I recommend to you his book, [Who Wrote the Bible](#). The truth of critical Bible study's approach to the Torah and Bible is affirmed again and again by the works of such great Conservative Bible Scholars as Yehezkel Kaufmann, Mordecai Kaplan, Robert Gordis, Gerson Cohen, Abraham Joshua Heschel, Nahum Sarna, H.L. Ginsburg, Jacob Milgrom, and Yochanan Muffs.

The great Biblical scholar Rabbi Dr. Robert Gordis, in his classic work, [A Faith for Moderns](#), spoke about the Torah not as a human document or as a word-for-word direct revelation from God but rather as "divine inspiration." Dr. Gordis

affirmed that the text is compiled of layers written at different times, but suggests each of its writers and editor was moved by God to convey what they heard as God's message.

The challenge, writes Gordis, is that God is infinite and perfect. God's revelation too is therefore infinite and perfect. Human beings, however, are not. We are finite and imperfect, frail and flawed. How can it be that we as finite, imperfect vessels could possibly receive God's revelation in all its fullness and complexity? So there is what we might call Revelation with an upper case R, which is the Truth God reveals to us, and revelation with a lower case r, which is the revelation as we receive it. Each person in each age receives revelation differently, colored by the limits of their perception and understanding, by their personal biases and the cultural norms and assumptions of their time. Abraham Joshua Heschel Heschel famously wrote that "as a report about revelation, the bible itself is a *midrash*." (*God in Search of Man*, pg.185).

Gordis also suggests that – given the historical development of the text and the many writers over time involved in its creation – it must be that Revelation is not a one-time event. Rather Revelation is a continual act. At every moment God is seeking to reveal God's will to us. And on some level we are all capable of receiving that message, though for each person our reception is, as I said, imperfect. The Biblical writers and editors had a special gift for hearing that message, but we hear it too. It comes to us through our conscience. Gordis compares this to musicians. We are all capable of writing and singing music, but some have a special gift and seem, as it were, to be moved by their muse to a higher form of music. The same can be said for other talents, wisdom and abilities. Indeed, every time we study Torah, and we engage in the dialectic between the written text and our own conscience, we receive God's message anew. Gordis called this revelation as ongoing cosmic symbiosis. *Ongoing* because each generation experiences it anew. *Cosmic* because we are receiving God's message. *Symbiosis* because the way we hear that message is a synthesis of God's perfect Truth and the imperfect and flawed "truths" we claim as individuals and as a society. Thus, our understanding of God's will is always changing and evolving. Rabbi Abraham Isaac Kook, a great mystic and philosopher, taught that humankind is always spiritually and ethically evolving to a higher level (*Orot Ha-Kodesh*, in the section, *The Ascending Development*). Though Kook did not hold by Gordis' philosophy nor did Gordis quote Kook, it is an apt description of Gordis' understanding as well. Over time, humanity develops a greater sensitivity to ethical issues and is more able to understand God's message.

For many Conservative Jewish thinkers, this helps resolve the many passages in the Torah that create ethical challenges for us. Just a few examples will suffice. The Torah stipulates that if a son is stubborn and rebellious, he should be brought to the gates of the city and stoned to death (Deuteronomy 12: 18-21). Despite the jokes this commandment engenders ("there are some days....!"), the reality is that when confronted with this law most of us are horrified at the thought. The same can be said of the law of the bitter waters which are applied to a woman who is merely suspected of adultery (Numbers 5:11-31). No concrete evidence. No witnesses. No trial. The Torah states that she is to drink a vile mixture prescribed by the text and administered by the priests. If her belly swells, her thigh sags and she dies, then the Torah accepts that as proof that she was guilty and deserving of the punishment. If she survives the ordeal, it is presumed she is innocent. Such a ritual seems more befitting the Salem witch trials than the word of God. One final example: God commands the Israelites to kill every man, woman and child in Canaan when they enter the land (Deuteronomy 7:1-16 and 20:16-18). Most especially after the Holocaust, no Jew can be impervious to the horror suggested by this commandment and question whether God would issue a directive to commit genocide. (It should be noted that a reading of Joshua and Judges quickly makes it apparent such a law was never carried out and likely not yet written.)

If we accept Rabbi Gordis' notions of revelation as divine inspiration and as ongoing cosmic symbiosis, then it is possible to deal with these problematic texts by asserting that each contains some core value that God sought to transmit but that was corrupted by the contemporaneous biases of the receiver of that revelation. Yes, children should honor and be loyal to their parents, but no, God would not sanction hurting them. Yes, fidelity in marriage is an important value but no, God does not sanction witch trials. Yes, God gave the land of Israel to Abraham's descendants but no, God did not

condone genocide. In each case, we are bidden to separate out the wheat from the chaff, God's Truth from the truths which are human misinterpretations of the Divine Will.

Such an approach is not as radical as it might at first appear to be. In his work, Heavenly Torah: As Refracted through the Generations, Rabbi Abraham Joshua Heschel demonstrates that the Rabbis of the Mishnah and Talmud did not in fact believe in word-for-word direct revelation at Sinai in the same sense as that concept is conveyed today.

What's more, these sages of blessed memory were equally troubled by such passages as those cited above. Though they did not choose to excise them from the Torah (an option they believed could at times be valid, as will be explained further below), they did deliberately weave so many legal preconditions around them as to make these passages completely impracticable. Thus, for example, after a series of pre-conditions imposed on the law of the rebellious son, the Rabbis boldly assert that "There never was and never will be a child who qualifies as a 'stubborn and rebellious son'" (B. Sanhedrin 71a). In myriad cases the sages create conditions to ensure various commandments will be upheld. They took every precaution to ensure that people would not slip and violate them. It is not hard, then, to see in cases such as these that their legal and interpretative gymnastics reflect what our sages too could not in their hearts accept: that these specific laws – the ones which challenged their conscience deeply – could be God's will.

Conservative Rabbis and scholars explicitly apply such thinking to laws within the Torah whose time is past or which were already rendered inapplicable by the Sages. There are examples of cases where we can deduce that such a philosophic approach provided a backdrop to other significant contemporary changes within Conservative Judaism. The most prominent example is the many responsa which have led to the full involvement of women in all areas of Jewish ritual life. None of these quote Rabbi Gordis. Yet many of these decisions were built on the assumption that the Sages interpreted Torah as limiting women's roles because of their patriarchal cultural biases that prevented them from properly understanding God's will as conveyed in Torah. Rabbi Gordon Tucker, in his responsum on homosexuality, makes this point, though his legal reasoning diverges somewhat from mine. (Halakhic and Metahalakhic Arguments Concerning Judaism and Homosexuality 2006)

Conservative Jewish rabbis and scholars have not to date explicitly applied Rabbi Gordis' theology of revelation to Biblical texts in order to confront a serious ethical conundrum presented to us in the Torah. Yet if we are serious as Conservative Jews, then our theology and our *halakhah* should be in sync with each other. This need for congruence of thought and practice was best expressed by Rabbi Abraham Joshua Heschel in his article, *Halacha and Aggadah*, found in his volume, Between God and Man. In that piece Rabbi Heschel writes:

*Aggadah* deals with man's ineffable relations to God, to other men, and to the world. *Halakhah* deals with details, with each commandment separately; *aggadah* with the whole of life, with the totality of religious life. *Halakhah* deals with the law; *aggadah* with the meaning of the law. *Halakhah* deals with subjects that can be expressed literally; *aggadah* introduces us to a realm that lies beyond the range of expression. *Halakhah* teaches us how to perform common acts; *aggadah* tells us how to participate in the eternal drama. *Halakhah* gives us knowledge; *aggadah* gives us aspiration.

He goes on to say:

The interrelationship of *halakhah* and *aggadah* is the very heart of Judaism. *Halakhah* without *aggadah* is dead, *aggadah* without *halakhah* is wild.

He concludes:

Our task is to learn how to maintain a harmony between the demands of *halakhah* and the spirit of *aggadah*.

What Rabbi Heschel wrote about *aggadah* can equally be said about theology, and most especially about our understanding of revelation. We can ill afford to compartmentalize our theology and our practice. We need a religious system that, to use Heschel's words, "maintains harmony" between our conception of God, Revelation and Torah and our understanding and practice of Jewish law. Theology and practice should always inform one another.

So we return to the immediate question at hand, namely, how we respond to the verses in Leviticus prohibiting homosexuality. As it is for the rebellious son and the bitter waters, so too is it here: I cannot accept that an all-good, loving and compassionate God would create human beings who by their very nature can only find fulfillment in relationship with another of the same sex and then forbid that very relationship, leaving them to a life of isolation. The Torah states, "It is not good for man to be alone." How then could God create human beings in a state in which they are forced to be alone? Holding fast to the theology of Rabbi Gordis, I can only conclude that the voice of my conscience bothering me is God speaking to me as well, through "revelation as cosmic symbiosis," urging me to recognize that the two verses in question are not an accurate portrayal of God's will but rather a corruption of the divine message that hails from a time past, a time whose biases prevented God's true message from being perceived.

Some will object that in taking such a position I am uprooting an explicit law of Torah. To those individuals I point out that there is in fact a principle in Jewish law that calls for doing exactly that. *B. Yevamot* 89-90 in the Talmud deals with the question of whether a *bet din* (rabbinic court) has the ability to be *oker davar min hatorah* (to uproot a law of Torah). The concept derives from a verse in psalms: "Et la'asot la-Shem, heferu toratecha" (Psalms 119:126). The verse is ambiguous. The word *heferu*, whose root means to overturn, has two meanings. It can be third person past tense, as in: "It is a time to act for the Lord, for they have violated Your Torah." The same word can also be second person imperative as in "It is time to act for the Lord, overturn Your Torah!" The latter reading becomes the basis for the idea that there may be times when acting for justice and preserving God's honor demands that we actually remove a law from the Torah.

The discussion of this issue, its many nuances, implications, applications and restrictions spreads through 2000 years of commentary and there is not sufficient room to address it fully here. Suffice it to say that many authorities, including the *Yerushalmi* (Palestinian Talmud) and the great Talmudic commentators known as *Tosafot*, hold that this includes not only passively ignoring a positive commandment but also actively uprooting a prohibition. The *Babylonian Talmud* even brings the great prophet Elijah's actions in his confrontation with the priests of Baal on Mount Carmel as an example of actively uprooting prohibitions of Torah.

Much ink has been spilt on the question of who has the authority to make such a drastic move. Opinions vary, including that such authority is limited to the *Sanhedrin*, or by a scholar recognized as *Gadol Ha-Dor* – the greatest and universally recognized scholar of a generation. Some also hold that an act of "uprooting" can only be temporary and not permanent because to make it permanent is to call into question the divine source of that commandment. That, however, is precisely the point. If we as Conservative Jews believe in revelation as divine inspiration, then we already acknowledge certain verses contain corruptions of revelation that are not divine. As to the limits on who can uproot a law, there is no longer a *Sanhedrin*. In the modern age, there will never be (and with the gift of historical hindsight we can safely say there has never been) a scholar who is universally acknowledged as the greatest authority. It is the case, however, that some of the greatest most respected halakhic authorities in the Conservative movement, including Rabbi Tucker (ibid) have ruled this commandment no longer has standing. That position is an official position of the Committee on Jewish Law and Standards, which within our movement is recognized across our movement as the greatest central authority on matters of Jewish Law. The whole point of uprooting a law of Torah is that without uprooting the given law, there will be an injustice that is an affront to God and undermines respect for the authority of Torah. If so, it seems untenable that for the rest of time such a remedy can never be in place because of the lack of a universally recognized authority and that we would choose to live instead with something we see so violating God's will and God's honor.

Of course, such a principle could easily be abused, leading to cherry picking which *mitzvot* one feels is God's will and which are not. Needless to say, I would not endorse such a position. It is clear from Talmudic and Halakhic discussions of

the principle that it is reserved for the most extreme and irremediable cases in which the text causes a serious ethical crisis, calling into question the just nature of God and God's revelation.

So, yes. In the words of Psalms, "It is time to act for the Lord, overturn your Torah." Let us recognize that the prohibitions of homosexuality contained within the Torah are not part and parcel of the word and will of God. Instead, they reflect the limitations and biases of those who received God's word. Let us affirm those words which are God's: "It is not good to be alone." And on that basis let us affirm the sanctity of gay relationships side by side with heterosexual relationships as the deepest expression of love and intimacy and the fulfillment of the need for relationship. Let us celebrate those relationships through the holy act of marriage in all its aspects, including erusin and kiddushin, ketubah and the sheva berachot (seven wedding blessings). By sanctifying their love, may we merit to receive God's love.