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Dear Editor (of the IJN):

In this response to the full-page editorial on same-sex marriage that appeared in the June 26 edition, I want to commend the author's fidelity to Torah, his courage to speak out on a controversial issue, and his search for common ground between the diverse voices engaged in this debate. My intention is to emulate his example, while offering vastly different perspectives, on each of these three fronts.

**Fidelity to Torah, as I understand it.** The editorial claims that “[Torah] is either held up as the final word in defining the morality of marriage, or it is rejected as such.” A universal judgment? Hardly! The Judaism (and the Jews) that I know make every effort to ground moral perspective upon two sources: Torah (written and oral tradition) and human reason. Like Rabbi Moshe ben Maimon (Maimonides), I regard these two Divine gifts as mutual correctives one to another. It is the partnership of Torah (inherited tradition) and reason, *S'bara* (my own capacity to learn, understand, and apply information -- sharpened and honed by the reasoning of others) that I continually strive to place at my moral center. I do not reject Torah anymore than you reject reason.

And what does Torah say about homosexuality? Almost nothing. Written Torah says so little in fact that if one wishes to extrapolate a Torah perspective on our modern understandings of this subject, it seems to me that some eisegesis (reading ‘into’ the text) is unavoidable. We do know that Written Torah says absolutely nothing about same-sex love (or acts) between two women. It also says nothing explicitly about homosexual love in general.

The oft quoted passage from Leviticus (18:22 and 20:13) is, like all passages of Torah deserving of further investigation. The verse is credibly translated as follows: “A man shall not lie with a man in the manner that he lies with a woman/wife.” Now, for the exegesis (reading ‘out of’ the text): Rashi taught us to look first for *l'shon yeteira*, seemingly superfluous language in order to fully understand a verse of scripture. In this case, we must ask, ‘why add the latter part of the verse?’ If the Torah wished to prohibit all male homosexual activity, why not simply say, “A man shall not lie with a man, period.” The fact is that it does not. Thus there are several equally plausible conclusions: 1) the Written Torah does not prohibit or regard as immoral all homosexual acts, or homosexuality itself. On the contrary, if anything, it presumes that some homosexual activity (and love) will take place and aside from this curious case seems to be permitted; 2) the Torah, as in other places (e.g. the prohibition against mixing wool and linen, cross-dressing, and mixing crops) is concerned in this verse about a potential crossover between heterosexual and homosexual behavior. 3) Or, as Rabbis Zalman Schachter-Shlomi and Daniel Siegel suggests in their book, Integral Halakhah, “the verse forbids straight men from having homosexual sex as a substitute for heterosexual sex and which is actually rape of one man by another [as happens in same-sex prison situations]. The verse is not really saying anything about consensual sex between two gay men.” Thus, a

bold, but Rashi-inspired, translation of this verse might read, “A man should not have sex with another man in the same way he would have sex with a woman.”

This reading raises another question: Is it even possible for a man to have sex with a man in the same way he has sex with a woman? Is this not physically impossible? In which case, the law (and certainly the prescribed punishment) becomes obsolete. This situation, essentially uprooting a Biblical law because of its logistical impossibility (and reasoned immorality), has precedent in Oral Torah. In the case of the ‘rebellious son,’ the sages found a small grammatical idiosyncrasy which they read to imply that the rebellious child’s mother and father are required to speak before the priest “in one voice.” [Exegesis or eisegesis?] They further note that it is physically impossible for a male and a female to speak, literally, “in one voice” because of the difference in vocal registers, and conclude that no rebellious child has ever been subjected to capital punishment required by the Written Torah. In our levitical verse, the grammar is more substantial, AND the difference between male and female genitalia is certainly greater than our vocal cords. There seems to me no reason why we should not apply the same rabbinic method to halakhically uproot another morally dubious Biblical command?

And even if you do not accept this reading and reduction of the levitical passage, consider Rashi’s reminder about the elasticity of Jewish law / Torah. “At times one abolishes the word of the Torah in order to do for God. So this one too, whose concern is with the well-being of his fellow man, is doing the will of God. For it is written, ‘Seek peace and pursue it.’ It is permissible to dissolve the Torah and do what appears forbidden.”<sup>1</sup>

This brings us to the moral pillar unmentioned in the editorial: reason. Reason, in this case, demands that a modern application of a Torah-based morality must consider several social factors that simply were not a part of the reality of our esteemed ancestors. Yes, morality is inherently social! The first factor is the very real threat of human overpopulation. This alone requires that we allow the definitions and purposes of marriage to continue to evolve just as they have in the course Jewish history and law throughout the millennia. The Bible itself, for example, records shifting perspectives with regard to polygamy, concubinage, intertribal marriages, etc. Surely the sanctity of marriage is not at risk in situations where procreation is not the primary purpose of marriage. This is already evidenced by the many benefits and blessings of marriages that either have no children or are not planning to have or rear more.

The second social factor that reason cannot ignore is the scientific consensus about the nature of human sexuality and gender identity. The evidence is in and incontrovertible. Human sexuality is not black and white. Sexual orientation is more accurately delineated on a spectrum than a *mechitzah*, and is not, for the vast majority, a matter of choice. Most of us do not get to choose with whom we fall in love. And since morality can only be applied where there are choices, sexuality, whether we love and are attracted to men, women or both, in the majority of us, is not a matter for ethics or morals. It just is. We only enter the arena of morality when we choose to act on that love and sexual desire.

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<sup>1</sup> As quoted in Eliezer Berkovitz’s, Not in Heaven, p. 66.

Here is where the institution of marriage can have the kind of moral impact that I believe Torah intended.

**Courage to speak out.** As a human being, a Jew, and a rabbi, I support the right (and the responsibility) of same-sex couples to marry. As a matter of American law, I endorse this right on the reasoned principles of equality, civil rights, and social justice. As a matter of Jewish law and custom, I justify this admitted shift in traditional practice on my understanding of Jewish law, of marriage, of *kedusha* (holiness), and *tzelem elokim* (the belief that every person is created in the image of G-d).

One of the distinguishing features of Jewish ethics is its recognition that human sexual activity can (and should) be infused with holiness, thus one of our words for marriage is *kiddushin*. If all of us, not just heterosexuals, are created *b'tzelem elokim*, then it stands to reason that homosexual partnerships have the same potential for holiness. *Kashrut* is the Jewish institution that provides the structure and guidance to direct our dietary appetites towards Divine service, sanctity. Marriage is Jewish civilizations' attempt to channel our sexual appetites in that same direction. Denying homosexual couples access to the *huppah* is analogous to denying access to kosher foods to those of us who prefer to use their own recipes.

What makes a sexual relationship holy? Minimally, it must be a consensual and loving. To pressure a homosexual person into a heterosexual marriage denies them access to holiness in what the editor rightly calls the “most emotion-laden and value-laden fulcrum of morality.” Otherwise it is cannot be fully loving and consensual. Holy sex can also only happen between equal partners. This is the (social, political, and moral) reason why pedophilia and incest are forbidden. Even sibling relationships, especially in Biblical times, are inevitably laden with power differentials and inequalities. Ideally, they are also exclusive partnerships. We are a holy people when we demonstrate allegiance to one god, and we are in holy partnerships when we show perpetual fidelity to one sexual partner. “Be Holy, for I am holy.” This foundational commandment grounds my unrestrained backing of same sex marriage.

**Search for common ground.** The editor deserves praise for recognizing that both “sides” stake their positions on high moral ground. But the similarity does not stop there. Our definitions of morality are not so “opposite” as the author suggests. We may read and interpret Torah differently, but when many committed Jews like myself voice support for same-sex marriage we group our morality in the same sources as the author. The differences amount to hermeneutics and emphasis. We regard different aspects of Torah as “immutable,” but both pledge allegiance to an immutable Torah. On principles such as the dignity due to each human being created *b'tzelem elokim*, the ideals of *kiddushin* (holiness in sexual relations), and the awareness of the centrality and importance of this debate, we do indeed occupy an important shared moral arena. May our fidelity to Torah, our courage to speak out, and our search for both universal and particular common ground on behalf of the common good bring us closer to truth, justice, uncommon holiness, one another, and the Blessed Holy One.

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