

Same-Sex Attraction and the Responsibility of the Community

By: ASHER BENZION BUCHMAN

In March of 2023 Rabbi Dr. Katriel Brander, the President and Rosh HaYeshivah of Ohr Torah Stone, publicized an essay he had written titled “Finding a Home in Our Midst: Engaging & Welcoming Gay and Lesbian Jews Within the Orthodox Community”¹ in which he calls upon the Orthodox community to provide homosexual Jews “the safety, security, and the sense of haven and heaven found in the community.” In his first footnote, Rabbi Brander thanks a list of prominent Modern Orthodox Rabbis, scholars, and communal leaders for their “valuable comments” on his manuscript. The essay is introduced with a letter by the noted scholar Rabbi Dr. Jacob J. Schacter that reads as follows:

In this learned and passionately presented article Rabbi Dr. Katriel (Kenneth) Brander provides a roadmap for the ritual and social inclusion in the Orthodox community of Jews who publicly identify as gay and lesbian. Citing numerous halakhic texts and rabbinic authorities, he argues that ways must—and can—be found to ensure that these members of our communities be made to feel welcome and appreciated. Take his arguments seriously. If you agree with them work to implement his proposals. If you disagree with them make your own contribution to this most important and timely conversation.

In the spirit of Rabbi Schacter’s exhortation, I will, in the following pages, express my disagreement with Rabbi Brander’s conclusions, for no prominent halachic authority of the past, or of recent years, could possibly agree with them.

Indeed, everyone’s compassion is aroused when we think of the many heartbroken individuals for whom alienation from Judaism is added to the pain of their personal situation. Rabbi Brander dwells upon the pain and harm that is caused to these people by those who are openly critical of them. Still, the dictates of our faith call for a different approach and a

¹ <https://ots.org.il/finding-a-home-in-our-midst/>.

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different attitude than that called for in Rabbi Brander's essay. He claims that halachah tells us that *tochachah* that will not be heeded must not be given; this is his key argument for substituting acceptance for rejection. However, while he refers to Rambam on the issue of *tochachah*, he does not quote all that Rambam has to say on the matter.

Tochachah

In *Hilchos Deos* 6:7, Rambam writes:

It is a mitzvah for a person who sees that his fellow Jew has sinned or is following an improper path [to attempt] to correct his behavior and to inform him that he is causing himself a loss by his evil deeds as (Leviticus 19:17) states: "You shall surely admonish your colleague."

Tochachah is one of the *Taryag* mitzvos and cannot be abrogated. It is to be done for the good of the offender himself and it is to be issued privately and compassionately.

A person who rebukes a colleague—whether because of a [wrong committed] against him or because of a matter between his colleague and G-d—should rebuke him privately. He should speak to him patiently and gently, informing him that he is only making these statements for his colleague's own welfare, to allow him to merit the life of the World to Come. If he accepts [the rebuke], it is good; if not, he should rebuke him a second and third time. Indeed, one is obligated to rebuke a colleague who does wrong until the latter strikes him and tells him: "I will not listen."

Torah laws requires us to be relentless in this rebuke and one must be aware that in doing so he subjects himself to possible abuse from the offender. But indeed, as R. Elazer ben Shimon says (*Yevamos* 65b), one is excused from continuing, when it is clear that one is put in personal danger from the offender.

Whoever has the possibility of rebuking [sinners] and fails to do so is considered implicated in that sin, for he had the opportunity to rebuke the [sinners].

Refraining from engaging in rebuke makes one complicit in the sin.

Rambam then returns to and is expansive about the importance of being sensitive in one's *tochachah*.

At first, a person who admonishes a colleague should not speak to him harshly until he becomes embarrassed as (Leviticus 19:17) states:

“[You should]... not bear a sin because of him.” This is what our Sages said: Should you rebuke him to the point that his face changes [color]? The Torah states: “[You should]... not bear a sin because of him.” From this, [we learn that] it is forbidden for a person to embarrass a [fellow] Jew. How much more so [is it forbidden to embarrass him] in public. Even though a person who embarrasses a colleague is not [liable for] lashes on account of him, it is a great sin. Our Sages said: “A person who embarrasses a colleague in public does not have a share in the World to Come.” Therefore, a person should be careful not to embarrass a colleague—whether of great or lesser stature—in public, and not to call him a name which embarrasses him or to relate a matter that brings him shame in his presence. (Ibid., 6:8)

Improper *tochachah* is itself a great sin, as Rabbi Brander emphasizes. But then Rambam clarifies:

When does the above apply? In regard to matters between one man and another. However, in regard to spiritual matters, if [a transgressor] does not repent [after being admonished] in private, he may be put to shame in public and his sin may be publicized. He may be subjected to abuse, scorn, and curses until he repents, as was the practice of all the prophets of Israel. (Ibid.)²

In spiritual matters, when the honor of G-d is at stake and rebuke is not accepted, we are directed to follow in the footsteps of the prophets

² Rambam is based on *Eruvin* 16b, *Shabbos* 54b, *BM* 31a and also *MK* 16a and the *halachos* he brings in *Hilchos Sanhedrin* 24:5-8. He refers to the concept of *nidduy* in *Hilchos Talmud Torah* 7:1-13. See my essay in *Hakirah* 13, p. 213, “*Nidduy, Arur and Nezfah: Social Pressure*” where I develop the idea of social pressure. A *siman* in *Shulchan Aruch* is dedicated to *nidduy* and begins with the obligation to put one who commits a sin in *nidduy*. See also *Nehemiah* 13:25 who applied this to those who intermarried. The halachic sources that Rabbi Brander quotes, primarily OH 608, that speak of not being required to be מוכיח are either talking about those doing sins בשוגג as בשובג מוידין ולא תהא מוידין (and even this does not apply to a *lav* explicit in the Torah), or they are coming to release one from the obligation which entails potential danger and harm to the מוכיח. Additionally, those acting להכעיס, openly, are no longer in the category of Israel according to one of the sources quoted, which is also the opinion of *Mishnah Berurah* (OH 65:11, and in the *Biur Halachah* OH 608:2), and therefore there is no responsibility to bother with them—but then they would be subject to exclusion. This seems to be the opinion of the *Smag* (*Aseh* 11). No one promotes the idea that we should not bother them or hurt them since it will not help. We will discuss this later in the essay.

and speak publicly and strongly, even if it inflicts pain, and subsequently take the abuse that the prophets received for so doing. Rabbi Yosef Karo (*Kesef Mishneh*, *ibid.*) says of these words פשוט—“it is obvious.” The *Aruch HaShulchan* quotes this as well.³ No halachic authority would disagree with this, for to abandon the Torah mitzvah of *tochachab*⁴ means also to effectively cancel the sin which calls for this rebuke.

The purpose of the prophets’ rebuke was not only to bring about the repentance of sinners but to send a message to all of Israel—to voice public disapproval to public transgression,⁵ to impede the spread of open defiance of the Torah. If it is almost certain that couples will not stop their actions in private, it is still possible that we can slow the new phenomenon of public *chillul HaShem*. Rambam tells us that he who does not rebuke is also culpable and in fact affected by that sin⁶—he will find within himself a reduction in his aversion to the sin.

The open display by Orthodox Jews of homosexuality and the expectation of acceptance is a recent phenomenon, resulting from the new-found acceptance of this conduct by the general public—by the irreligious secular public. Jewish society must not accept the norms and moral code of the outside world. We must remember the blessing of Bilaam, the gentile, עַם לְבַדָּד יִשְׁכֹּן, “a unique nation that dwells alone.”

Rabbi Brander writes of giving homosexual couples a “sense of haven and heaven” while they are engaged in a lifestyle identified with *kares* in which one damages one’s portion in Heaven. He wants us to give them a “home in our midst” when the Torah says of their lifestyle וּנְכַרְתֶּם הַנְּפֹשׁוֹת, “the souls that do this will be cut off from the midst of

³ *Aruch HaShulchan*, *Choshen Mishpat* 156:10. Rabbi Brander brings a quote from an earlier passage to infer he holds otherwise. He also refers to *Choshen Mishpat* 228:1 saying there must be “good reason to believe” that the sinner would repent in order to use harsh words to him. This is clearly against the intent of *Aruch HaShulchan* if the intent is for *tochachab*. Moreover, this construct of “good reason to believe” is used consistently by Rabbi Brander and it is his own construct; any chance of *teshuvah* is a motivation, and there is always a chance of *teshuvah*. Certainly, the curtailing of public display should have a strong chance of success. We will discuss this later. In any case, the halachah is quite clear, that *tochachab* using the strongest language against homosexual conduct is a duty, even when there is no chance for success.

⁴ All that Rabbi Brander speaks of as *onaat devarim* is not relevant when the purpose is to counter the display of open violation of the Torah.

⁵ Even to private transgression.

⁶ This would seem to be the meaning of the term נִתְפַס—not only culpable but affected.

their nation.⁷ For our sake and for theirs—for the sake of their *olam haba*, for the education of our children and because of our status as the nation of ושמ׳ בקרבנו, “G-d’s name is in our midst,” we can make no compromises with and we cannot be welcoming to those who would openly violate one of the seven Noachide laws.

Rabbi Brander bases his argument for non-critical acceptance on the precedent of accepting those who violate the Shabbos as members of congregations and giving them *aliyos*. Moreover, it seems congregations even accommodated those working on Shabbos as *hasbkamah minyanim* on Shabbos proliferated. Yet there is a major distinction between that practice and what he suggests. The *mechalel Shabbos* was to come to *shul* and hear repeatedly about the importance of Shabbos,⁸ and in seeing Shabbos observed he might be won back or won over to its observance. In this case, however, we are warned not to embarrass a married homosexual couple by performing useless *tochachah*, and certainly speaking from the pulpit about this offense in one’s presence would be prohibited lest we be guilty of “bullying.” Rabbi Brander calls for acceptance and asks that nothing be done to make them feel uncomfortable about their actions.

Moreover, they are to be able to make their relationship visible in the shul itself.⁹ The relationship of being a “couple” is not something that one can leave outside of the shul as is the work one does on Shabbos. The suggestion is made that we change our membership rules so that “family membership” would include them as couples. And “As a guiding principle, I would offer for consideration that anything short of celebrating the engagement or wedding of a same-sex couple should be deemed possible,

⁷ *Vayikra* 18:29, referring to כל תועבות listed in עריות.

⁸ In discussing the merit of this practice, he refers to how this attitude has led to people turning from “drivers to walkers.” In fact, he says the *beterim* did not limit themselves to cases where this was likely. Still the populations for which this was directed was either the תינוק שנשבה class that Rabbi Brander worked with in Florida, or European Jews who gave up Shabbos under the duress of the need to feed their families and were likely candidates for return. Moreover, the statement he makes that those who abandoned *milah* are worse than *mechalelei Shabbos* is inaccurate, as *milah* is only a *mitzvas aseh* with *kares* but no death penalty, and Rabbi Spektor ruled primarily on the basis that this does not make one a *mummar* to the entire Torah. We will return to this later in the text.

⁹ Obviously, with no breach of *tznius*, but the relationship of being a “couple” would still be openly displayed. He also speaks of two men bringing their son for a *bris*: “Synagogues should not hesitate to host a *brit* or baby naming for the child of a same-sex couple. Rather than embarrassing and further distancing the couple from the Jewish community and Jewish life, synagogues should embrace this opportunity to make the couple feel welcome.”

and an appropriate way to recognize gay and lesbian Jews as members of the synagogue community.” He justifies this by saying we can distinguish between “inclusion and approval,” but in fact, his program calls for “welcoming,” which constitutes “acceptance,” which is much more than “inclusion.”¹⁰ Consider the following:

When a Golani unit of *frum* boys went to give blood and were asked to fill out the Magen David Adom forms with “parent 1” and “parent 2” in place of “mother” and “father,” they asked the counsel of the Roshei Yeshivos of a number of Dati Leumi yeshivos, including Har Hamor and Mitzpeh Ramon, and were instructed to refrain from donating blood through Magen David Adom until the original medical questionnaire form is restored.¹¹

These Rabbis and *talmidim* preserved the honor of the Torah. The *parashah* of *arayos* in which the prohibition against *mishkav zachar*¹² is included, ends with the instruction of ושמרתם את משמרתִי “Guard my charge” (*Vayikera* 18:30), on which Rashi (*ibid.*) quotes the *Sifra*: “To command *Beis Din* with this responsibility.” It is the obligation of the community led by their Rabbis to maintain the sanctity of the Jewish People.

Even if we are to argue that we should follow R. Elazar ben Shimon (*Yevamot* 65b) to not say what will not be listened to, and interpret him to mean¹³ no matter what the offense—against Rambam, and against what Rabbi Yosef Karo says is obvious and against all the major *poskim*—still, this only means that we should not engage in active *tochachab*, and the corollary of the mitzvah still requires that we not show acceptance. Certainly, the average person is not competent to make active *tochachab*¹⁴ and R. Elazar ben Azariah says that in his time there was no one capable of it.¹⁵ However, *Chazon Ish*¹⁶ explains this to mean that we are not talented enough to turn the hearts of sinners back to G-d, not that there are none

¹⁰ Such as merely giving someone an *aliyah*, especially when requested for a *yahrtzeit* as an act of respect to a parent. We will discuss this later in the essay.

¹¹ <https://www.theyeshivaworld.com/news/headlines-breaking-stories/2020833/why-did-dati-leumi-roshei-yeshivos-ban-talmidim-from-donating-blood.html> As reported by *B'Sheva*.

¹² And all the abominations of Egypt and Canaan.

¹³ As Rabbi Brander quotes in his essay.

¹⁴ Of course, one should not approach those they are not close to, and any active *tochachab* is the realm of our Rabbis who should be aware of the mental state of those to whom they are speaking.

¹⁵ As Rabbi Brander quotes in his essay.

¹⁶ *Chazon Ish, Hilkhot Shechitah* 2:28.

sensitive enough to issue rebuke properly, as Rabbi Brander claims, and of course *tochabah* must be given.¹⁷ In any event, as a group we are capable of exercising social rejection,¹⁸ at least in our holy places, against those who would publicly demonstrate couple-hood. Rabbi Brander (note 35) notes that Rabbi Kook suggested that one might be considered an *ones* (on a conceptual level) for succumbing to the cultural currents. This itself is a reason to apply counter pressure from within the Jewish community.

Rabbi Brander, before summarizing his essay, closes it with the comforting and accepting words of Rabbi Aharon Feldman to a gay *baal teshuvah*. No one would argue with what he says. But in the following paragraph, Rabbi Feldman writes:

Past homosexual activity has no bearing on one's Jewishness. Although it is a serious sin, all humans by nature have spiritual shortcomings and this is why teshuvah was given to them. Teshuvah has the capacity to return a person to a state even higher than which he had before the sin. Accordingly, a Jewish homosexual has to make a commitment to embark on a course where he will ultimately rid himself of homosexual activity. It is not necessary that he change his sexual orientation (if this is at all possible), but that he cease this

¹⁷ If, in fact, Rabbi Brander believes that *l'balachab* no one is fit and allowed to give *tochachab*, then Rabbis should stop sermonizing about unethical business dealings and *lashon hara* and in fact he should retract his harsh comments about those who exercise *onaat devarim* against open gays. Rabbi Brander says that the Chazon Ish said *l'balachab* there is no one who can give *tochachab* today. Chazon Ish brings this idea to *paskeen a chumrah*. He follows an opinion that only after *tochachab* can we say one is excluded by his sins from being a member of *klal Yisrael*. Thus, although we might be able to be *matir a yevamah* whose brother-in-law is not religious after issuing *tochachab*, we cannot rely on our *tochachab*. This is not because we should not give *tochachab*, because we are not sensitive enough as Rabbi Brander implies, but because we are not smart enough to transmit the winning arguments. Still, of course, we have an obligation to do our best.

¹⁸ See previous note. Rabbi Brander assumes that the reason not to be *mochiach* is because it will do more harm than good, but the sources he quotes that say one should refrain do not provide this reason. Moreover, in our case there is no one who argues against the *psak* of Rambam and the Beis Yosef. The *mechaber* (YD 334:14) speaks of *נזיפה*, a reprimand by a great scholar. I refer to this in my essay on *נדיי*, "Social Pressure," where I explain that social pressure should be applied to demonstrate our disapproval of this conduct. The halachah is that *נדיי* should be imposed and this would include banning from *aliyos*, etc. This practice ceased. When it is referred to in *balachab sefarim*, it is often coupled with an editor's note that because of *דינא דמלכותא דינא*, it is no longer operable. I will return to this later in the section "Accommodation and Halachah."

activity. It is obvious that for many people this will be difficult, and will have to be accomplished over a period of time. But it must be done and it can be done.¹⁹

Rabbi Feldman's feelings about the nature²⁰ of homosexuality does not stop him from issuing *tochachah* and indeed, he believes change can occur—*teshuvah* is always possible. The two things are compatible. Rabbi Yaakov Medan, co-Rosh Yeshivah of Yeshivat Har Etzion, who is quoted frequently in Rabbi Brander's article, recently published his views²¹ on how we should deal with homosexuality and much of what I write in this essay is in alignment with his recent publication.²²

I wish to make clear that I am not addressing the issue of those who merely publicly identify themselves as homosexuals. We should not take this as an announcement that they act on their impulses. Yet later in my essay I will address how I believe Chazal say they should conduct themselves.

When we look at the halachic elements that distinguish this issue from the precedent set with regard to violators of Shabbos, the *hashkafic* difference becomes even clearer.

יֵד רָמָה, Acting with Defiance

A *Teshuvos HaRambam*²³ makes clear that when a Kohen marries a divorcée it is considered acting *בֵּיד רָמָה*, defiantly. Rabbi Brander himself calls for refusing to announce gay marriages because this would be to act *בֵּיד רָמָה*. He thus agrees that a gay couple, married or even announcing their couple-hood, are acting *בֵּיד רָמָה* and thus forfeit any portion in *olam haba*.²⁴ We do them no favor by making them comfortable in their decision.

In some cases, it is also likely they come under another category in which one forfeits *olam haba*—that of *meshumad l'davar ehad*.

¹⁹ Aharon Feldman, "A Letter by Reb Ahron [sic] Feldman to a Gay *Baal Teshuvah*," *Guard Your Eyes*, Jan. 30, 2012, <<https://tinyurl.com/feldman-frum-gay>>.

²⁰ Rabbi Brander implies that Rabbi Feldman believes that SSA is part of one's nature and cannot be changed. This is not his meaning.

²¹ Rabbi Medan was appointed to the position previously held by Rabbi Aharon Lichtenstein who is also quoted often to support Rabbi Brander's position. See <https://www.kipa.co.il/%D7%97%D7%93%D7%A9%D7%95%D7%AA/1129775-0>.

²² I had seen an earlier draft of Rabbi Brander's article, and my essay was largely written before Rabbi Medan's statements were released.

²³ See *Teshuvos* Blau 349.

²⁴ See *Hilchos Teshuvah* 3:6,11.

Among Israel, there are two categories of apostates: an apostate in regard to a single mitzvah and an apostate in regard to the entire Torah. An apostate in regard to a single mitzvah is someone who has made a practice of willfully committing a particular sin [to the point where] he is accustomed to committing it and his deeds are public knowledge. [This applies] even though [the sin] is one of the minor ones. For example, someone who has made a practice of constantly wearing *shaatnez* or cutting off his sideburns so that it appears that, in regard to him, it is as if this mitzvah has been nullified entirely. Such a person is considered an apostate in regard to that matter. This applies [only] if he [commits the sin] with the intent of angering, להכעיס.²⁵

Certainly, those who give in to their SSA drive privately are not in this category, but those who feel the need to act publicly might be included. The satisfaction of their physical drive can be done quietly, and the need to make it public—a psychological factor—is outside the range of לתיאבון, physical desire, and could qualify as להכעיס.²⁶ Certainly, those who would walk in a gay pride parade would be in this category. Nothing like this has even been considered in Jewry—for our community to sanction the prideful nullification of a mitzvah—to remove it from the category of *tochachab*. For us to do so would be for us to act ביד רמה.

While some of the reasons in this essay do not apply to women, this principle applies equally to lesbian conduct as well.

נה, שבע מצוות בני נח, The Seven Noachide Laws

Unlike Shabbos, homosexuality²⁷ is one of the seven Noachide laws. It is thus under what we consider fundamental morality. If we would signal acceptance of this, it would be relinquishing our role to spread morality to the entire world.

Moses was commanded by the Almighty to compel all the inhabitants of the world to accept the commandments given to Noah's descendants. (*Hilchos Melachim* 8:10)

²⁵ *Hilchos Teshuvah* 3:9.

²⁶ Rabbi Brander quotes Rabbi Melamed who also refers to the exclusion of להכעיס in his statements of acceptance although he seems to hold that open display does not qualify. This is a question for the major *poskim*.

²⁷ Thus, this category and the following would not apply to females. Nevertheless, the concept behind the mitzvah, the establishment of family, is also relevant to them.

We rightly take credit for the Judeo-Christian culture that has brought the blessings of peace and prosperity promised in the Torah to America and the West in general. Now when our religious values are under assault and elements of our society are targeting the dissolution of the family—the fundamental building block of civilization—we have a special obligation to stand up against it. The only *arayos* that are forbidden for a *ben-Noach*, are those of son-mother,²⁸ sister, bestiality, homosexuality, and adultery (*Hilchos Melachim* 9:5).

Welcoming homosexual couples into our midst is not comparable to welcoming Shabbos violators. It is comparable to welcoming a group of thieves or adulterers. While the world sees nothing morally wrong with these practices, the Torah tells us differently. As Rabbi Yosef Dov Soloveitchik, ז"ל, points out,²⁹ “the moral conscience is unreliable.” We must look into the Torah and know the truth for אסתכל באורייתא וברא עלמא—“G-d looked into the Torah and created the world” (*Zohar*).

The day the Supreme Court declared gay “marriage” a legal right, should have been proclaimed as a fast day for American Jewry. The impact of the Torah on Western society substantially declined on that day, and it should be our obligation to work to restore it.

יהרג ואל יעבור, קדוש השם—*Kiddush HaShem*—Die Rather Than Transgress

Even amongst *mitzvos* included in the seven Noachide laws, *mishkav zachar* has a special place. For Jews, it comes under the category of יהרג ואל יעבור—“Die rather than transgress”—that only applies to murder, *avodah zarah*, and *arayos*. (*Hilchos Yesodei HaTorah* 5:2) If one is ordered to commit an act of homosexuality or be killed, he is obligated to give his life rather than accede to the order—which is not the case for Shabbos. (*ibid.*) If one attempts to rape one of the *arayos* the observer is commanded to save the victim from that fate even if it is necessary to kill the perpetrator (*Hilchos Rotzeach* 1:10-11). The *geonim* explain³⁰ that rape is like having killed the victim. There should thus be no talk of *ones* as justifying these actions.³¹

²⁸ Including father’s wife.

²⁹ See the last section of this essay where we quote directly about his opinion on this matter.

³⁰ As the verse itself explains (דברים כב:כו) כי כאשר יקום איש ורצחו נפש כן הדבר הזה (דברים כב:כו). See *Sheiltot* 42.

³¹ Thus, Rabbi Brander’s repeated concern for the safety of gays is not justification for being lenient. In addition, Chazal removed the man’s role in sexual activity

The concept of *Kiddush HaShem* demands that we give our lives to protect the basic moral structure of society. We do not say, as we say for Shabbos, “just violate this Shabbos so that I may keep many other *Shabosos*.” Here, acceding to this immoral demand is qualified as *chillul HaShem*. It would weaken the collective strength of the Jewish People to resist evil and fulfill the Divine mission with which they have been entrusted.³²

תועבה, Abomination

The Torah singled out multiple prohibitions and labeled them תועבה, an abomination. The Torah’s purpose in doing so is to create in us a religious sensitivity about what is abominable. Sacrificing a blemished animal (a *baal mum*) on the Altar is a תועבה. Only the best must be sacrificed to G-d. This is a fundamental concept in Judaism.³³ One’s religious sensitivity may not have developed sufficiently to recognize this³⁴ and thus the Torah must teach it to us. Using unjust weights and measures is a תועבה as well and thankfully, our religious sensitivity recognizes this. Eating insects is to eat something disgusting and we are meant to have a sensitivity to it.³⁵ But as in previous ancient eras, eras when all the deviant practices of *avodah zarah* that the Torah classifies as תועבת מצרים, תועבת כנען—“the abominations of Egypt and Canaan”—were embraced, much of the world has lost the sensitivity to this תועבה of homosexuality. Lesbian conduct as well is prohibited in the Torah under the general *lav* of תועבת מצרים.³⁶ Rabbi Brander speaks proudly about the youth who are more understanding and accepting of homosexuality. He is afraid of losing them because of our “prejudices.” I believe on the contrary that if they do not have the religious sensitivity to recognize a תועבה they are already in the process of being lost.

With regard to Eretz Yisrael, the Torah made *arayos* especially important: “For all those abominations (תעבות) were done by the people who were in the land before you, and the land became defiled. So let not the

from the category of *ones* by proclaiming אין קישוי אלא לדעת. The suggestion that there is an element of *ones* comparable to *tinok shenishbah* is a new construct with no support in halachah. We will deal with this premise later.

³² See “Kiddush HaShem: Israel’s Mission,” *Hakirah* 15.

³³ See *Hilchos Issurei Mizbeach* 7:11.

³⁴ As was the case with Kayin.

³⁵ Actually here, the insects are called תועבה, not the act, so it may be different.

³⁶ *Hilchos Issurei Biah* 21:1,8; *Sefer HaMitzvos, lav* 353.

land spew you out for defiling it, as it spewed out the nation that came before you (*Vayikra* 30:18).³⁷

Chazal hardly mitigated the stringency of this תועבה as Rabbi Brander suggests.³⁸ The Gemara (*Nedarim* 51a) upon which that claim is based, is an *Aggadab* where a Tanna asks Rabbi to explain the deeper meaning in the word תועבה and he goes on to try to impart to his friend the feeling of shame and disgust that should be associated with it.³⁹ He goes on to do the same for the word תבל associated with bestiality and זמה associated with an incestuous relationship with a woman and her daughter. Does anyone think that his purpose was to minimize the shame associated with these acts?⁴⁰ On the contrary, we see how Chazal perceived this sin from both their halachic and *aggadic* pronouncements. They declared that gentiles are all halachically *tamei* lest Jewish children be often found with them and be subjected to homosexual acts.⁴¹ The most telling thought expressed in *Aggadab* (TB *Chulin* 92b) about homosexuality is that the ancient gentile world was saved because they had three merits. Although they committed murder and homosexuality, nevertheless they did not eat the bodies of the victims nor write marriage contracts to formalize their relations and they gave honor to the Torah. The survival of the world stands today only on one leg⁴²; we must restore the other two.⁴³

³⁷ Rabbi Medan emphasizes this point in his paper.

³⁸ See also *Sefer HaMitzvos*, law 350, where Rambam notes that because of the stringency of this prohibition it is repeated in the Torah first as ואת זכר לא תשכב ולא תהיה קדש משכבי אשה.

³⁹ “Bar Kappara said to him: Let your wife come and pour me a goblet of wine. She came and poured him wine. Bar Kappara then said to Rabbi Yehudah Ha-Nasi: Arise and dance for me, so that I will tell you the meaning of the word: This is what the Merciful One is saying in the Torah in the word תועבה: You are straying after it [תועבה אַתָּה בָּהּ], i.e., after an atypical mate.” No one suggests that the person is called a תועבה. Only the sin is a תועבה.

⁴⁰ He identifies תועבה with תועה, one who has strayed and wanders. If we believe in the wisdom of Chazal, we should be studying this Gemara for insight into this disorder as Bar Kappara and Rabbi wished to gain.

⁴¹ *Hilchos Mishkav u'Moshav* 2:10.

⁴² The merit of not committing cannibalism.

⁴³ Despite all the stringent aspects of homosexual coupling that we have listed, still in one respect the severity of *chillul Shabbos* would seem to be judged by the Torah and Chazal to be greater. The punishment of a sin tells us how severe it is (*Perush HaMishnah Avos* 2:1). Both have the death penalty by *sekilab*, which is the most stringent of punishments, and both are subject to *kares*, which applies to the soul, but the prohibition of work on Shabbos is repeated dozens of times and Chazal compare it to idol worship and to violating all the laws of the Torah

Accommodation and Halachah

Thus far we have proven that the steps taken to welcome Shabbos transgressors do not justify welcoming homosexual couples. If we are to be serious and thoughtful about strengthening *Yahadus* rather than filling our synagogues, we should ask another question: Did welcoming these people and giving them *aliyos* in the past strengthen our religion? The Young Israel movement was founded in the pre-war years, before the influx of the many religious survivors, to strengthen an assimilating American Jewry. Shabbos violators were prohibited from being officers in the shul and Shabbos *minyanim* began at 9 a.m. They sent a message that one went to work or came to shul on Shabbos. One could not do both. There were many shuls in the pre-war years, with members who *davened kvasikin*. Did this tolerance have a lasting positive affect? I venture that most of those who remained within the fold were children of parents who kept Shabbos with great *mesirus nefesh*. It is very unlikely that the families that arise from same-sex marriages will remain within the fold, no matter how much is done to make them comfortable. The Torah is a whole, and it will only be maintained by those who accept all its precepts.

Indeed, Rabbi Yitzchak Elchanan allowed those who had not undergone *milah* to receive *aliyos*. This was a simple application of the halachah, as he considered only those who are a *משומד לכל התורה*—“apostate to the whole Torah”—to have left the Jewish People.⁴⁴ In earlier times they would have been excluded because a full *siman* in *Shulchan Aruch* (*Yoreh Deah* 334) is dedicated to the halachah that one who publicly violates any mitzvah of the Torah must be put in *nidduy*, a form of excommunication. Rabbi Spektor explains that since there is no longer *nidduy*, there are no

(*Hilchos Shabbos* 3:15). Due to this point some *poskim* allow *Shabbos* violators to be included in a minyan only in cases where they can be considered *tinok she-nishbah*. So why is *mishkav zachar* more stringent in all the aspects we have listed? For this, we must look to the law of murder. Even though murder has the less severe death penalty of *sayif* and not *kares*, “other serious sins do not comprise the destruction of civilization to the degree that murder does” (*Hilchos Rotzeach* 4:9). This factor caused *Beis Din* and the king to execute the murderer even when there were no witnesses. This element of destroying the family unit inherent in homosexual marriage requires reactions different than those to *chillul Shabbos*. Here we cannot leave it up to G-d to deal with in the World to Come. We must provide deterrence in this world.

⁴⁴ *She'eilos U'Teshuvos Rav Azriel Hildesheimer OH* 1:5, brought by Rabbi Brander. The sources he brings prove that there was no sense of “welcoming,” only accommodation.

grounds for exclusion. *Aruch HaShulchan* (ibid.) begins the *siman* by explaining *dina d'malchusa dina*, the law of the land is binding upon us, and thus *nidduy* dare not be practiced in Christian Europe.⁴⁵ It was not a conceptual choice to abandon *nidduy* but a practical one. Still, Rabbi Spektor does raise the possibility of maintaining some of the spirit of *nidduy* to exclude violators from getting *aliyos*, but he rejects this for two reasons. Firstly, this will distance them, and cause them to be *rodeph*, i.e., to inform to the authorities against religious Jews. Secondly, perhaps they will be led to some degree of *teshuvah*. These are the only grounds he gave for inclusion. They were not “welcomed,” only tolerated.

The *Mishnah Berurah* rules⁴⁶ that a public violator of Shabbos,⁴⁷ who is considered comparable to an apostate against the whole Torah, is in fact to be excluded from *aliyos* and from being included as part of a minyan. Rabbi David Zvi Hoffman *paskened*⁴⁸ that *b'dieved* (in case of need) he could be included because of the Rambam's ruling⁴⁹ that the second generation *tzedukim* who were raised with mistaken beliefs were like a *tinok shenishbbab*⁵⁰ and thus have the status similar to *ones*. Rabbi Shlomo Zalman Auerbach accepted this *psak* primarily for the purpose of *kiruv rechokim* and writes that nevertheless one should try to *daven* in a minyan that has a quorum without them. He also demanded that the parking lots be closed, i.e., that no sign of the transgression be visible.⁵¹ The concept of *tinok shenishbbab* cannot apply to homosexuals⁵²—even should we accept Rabbi Brander's belief that their orientation is biological and cannot be changed, as celibacy remains an option and in times past this option was almost unanimously taken by *frum* people. One may be an *ones* with regard to the mitzvah of *pru u'rvu* but not to that of *mishkav zachar*.

There are people, men and women, afflicted with SSA who are *tzaddikim gemurim*, living very difficult lives but refraining from what the

⁴⁵ Though it could be practiced in Muslim lands.

⁴⁶ OH 65:11.

⁴⁷ Which is a more serious problem than *mishkav zachar* or *milah* according to some opinions. See above.

⁴⁸ *Melamed Lebo'il* 1:29.

⁴⁹ *Hilchos Mamrim* 3:3.

⁵⁰ A Jew captured by gentiles as a baby who was raised as a gentile.

⁵¹ *Minchat Shlomo* 2:4.10.

⁵² See our note 26 in the section of *יהרג ואל יעבור*, as noted earlier with regard to the claim that transgressors could be viewed as *ones*. Rabbi Brander's term of “conditions beyond their control” is inappropriate. Rambam's term is “that they were raised on errors.” When one is knowledgeable about the law, this would not apply.

Torah prohibits,⁵³ which includes anything of a sexual nature with the same sex.⁵⁴ There are others who give in to their desires, and those of us not burdened with this temptation cannot judge them and they are often *yirei Shamayim*. Chazal, however, tell us how they should conduct themselves. It is not a matter that should be proclaimed to the general public. He who cannot control his desires should go where he is not known and “do what his heart desires and not profane the Name of Heaven openly.” (TB MK 17a) Better yet is the hope that he or she will turn to family and friends for support and seek out the help of those who can help him battle his unwanted desires. But the Jewish society that we are commanded to maintain in *galus* calls for rejecting those who wish their flaunting of Torah law to be accepted.

On a practical level and a common-sense level, those who declare themselves as homosexuals should not all be treated the same. The Rabbis of different *shuls* would make the decisions based on what they observe; perhaps this is happening already. There would seem to be no reason for not giving an *aliyah* to those who conduct themselves no differently than anyone else publicly and while in shul,⁵⁵ but if an individual Rabbi notices flaunting and elements of *yad ramah* and *P'hachis* one would be expected to

⁵³ It is of these people that Rabbi Feldman and Rabbi Medan, who Rabbi Brander references, are talking about. Rabbi Medan is quoted as allowing gay people to be hired as teachers of Torah. It is only of these people that Rabbi Medan is speaking. His paper, which is referred to earlier in the essay, makes this clear.

⁵⁴ That this applies Biblically to women is the position of our major *risbonim* and the Tur and *Shulchan Aruch*. (סה"מ לאו שניג.) לא תקרבו לגלות ערוה (סה"מ לאו שניג.) and women's actions are also included in this *lav*. The *lav* is repeated in the Torah as כַּמַּעֲשֵׂה אֲרֶז-מִצְרַיִם אֲשֶׁר יִשְׁבְּתָם-בָּהּ, לֹא תַעֲשֶׂה; וְכַמַּעֲשֵׂה אֲרֶז-כְּנָעַן אֲשֶׁר אָנִי מְבִיא אֲתֶכֶם שָׁמָּה, לֹא תַעֲשֶׂה, וּבְחַקְתִּיהֶם, לֹא תִלְכוּ... וְיִשְׁמְרֶתֶם אֶת-מִשְׁמְרֹתַי, לְבִלְתִּי עֲשׂוֹת מַחֲקוֹת הַתּוֹעֵבֹת אֲשֶׁר נַעֲשׂוּ לְפָנַי, וְלֹא תִטְמְאוּ, בָּהֶם. *Hilchos Issurei Biah* 21:1,8; Ramban (ibid.) says these are Rabbinic but feels the Torah indicates that the Rabbis were to prohibit it. It is his concept of *אסמכתא* and similar to *דברי סופרים* of the Rambam—something the Torah indicates by its general language and left for Chazal to specify. See *Tur* and *Shulchan Aruch, Even HaEzer* 20 with regard to the Torah prohibition on both men and women. Even the *Perishah* who believes the prohibition with regard to women is only Rabbinic refers to the *Sifra* that “marriage” would be a Torah prohibition.

⁵⁵ As noted above, the halachic basis for exclusion is the halachah that an open violator should be put in *nidduy* and while in such a state he would be banned from religious practice. But since we do not perform *nidduy*, exclusion would only occur according to the *Mishnah Berurah* (OH 65:11) if one is considered an apostate against the entire Torah, which he attaches to a public violator of Shabbos and to a *meshumad P'hachis* on a single mitzvah.

act in an exclusionary manner.⁵⁶ In fact, there needs to be a *psak* by a *Gadol B'Yisrael* if “marriage” or other public acts constitutes *l'bachis*, or if *yad ramah* (which it certainly is) would disqualify one from being counted in a minyan.

In any event, perhaps not all conduct outside of the shul should be ignored. Should we give an *aliyah* to a person who marches in a gay pride parade through Yerushalayim? Are there to be no expectations from those who are suffering, to respect the feelings of others? Rabbi Brander only once refers to *chillul HaShem*, and applies it to those who encourage people with SSA to marry members of the opposite sex. Halachah would apply it to those who wear a *kippah* while openly demonstrating “pride” in homosexual conduct.⁵⁷ Marching in a group as “Gays for Israel” is also a provocation and it is understandable why religious people would want to exclude them. If Jews would organize as “Adulterers for Israel” they would be equally rejected.⁵⁸ Those who sued Yeshiva University over their refusal to allow a “gay club” do not deserve our respect.

The Science

No matter the nature of homosexuality, the above reasoning stands. However, Rabbi Brander ventures into an area into which neither he nor I have any real understanding. Underlying many of his arguments is the assumption that homosexuality is an inborn characteristic and that we should view those with that orientation as *anusim*. Relying on the experts he reads or consults with, he tells us that “conversion” therapy cannot help and

⁵⁶ The *Mishnah Berurah* (OH 65:11) explicitly excludes a *mumar l'bachis* from a minyan, so perhaps the same would apply to an *oseh byad ramah*, but the leading *poskim* would have to rule on this. If so, this would seem to exclude “married” couples. See section on *yad ramah*. On the other hand, the custom in many Modern Orthodox shuls is to give *aliyos* to Shabbos violators even though they came from religious backgrounds. There may be authorities who permit it. See the *Melamed Lebo'il* quoted above who brings many sources about who should be excluded. In most Charedi shuls these exclusions would all be enacted. The *Poskim* for Modern Orthodoxy need to give guidance.

⁵⁷ See *Hilchos Yesodei HaTorah* chapter 5 and “Kiddush HaShem: Israel’s Mission” *Hakirab* 15.

⁵⁸ I thus fail to understand Mori V'Rabi Rabbi Aharon Lichtenstein’s, זצ”ל, antagonism to this rejection on the grounds that we welcome *mechalelei Shabbos* walking independently. Perhaps he means, accepting Reform Jews marching as a group, but still with regard to the Noachide Laws there is a difference. Sometimes one must understand the entire context to understand one’s meaning.

conventional marriage is a prescription for disaster.⁵⁹ Because this perspective is important to his stance it is necessary to address it. In Rabbi Medan's paper that I referred to earlier he makes an important point.

The Israeli government has for the moment banned this treatment, but this was a political decision due to a certain agenda, and there are many cases in which treatment has been successful and the people concerned have gone on to establish families⁶⁰. . . . The media view people who warn against this grave sin as enemies of humanity and progress—but we must not be silenced.

In 2019, David Schwartz, an Orthodox psychoanalyst, sued the city of New York over an ordinance banning any therapy that sought to change sexual orientation. He won the suit, and the ordinance was repealed.⁶¹

Rabbi Brander cites Rabbi Aharon Feldman as “refusing to encourage a gay man to marry a woman.” Yet later in that letter Rabbi Feldman writes, “I do not think that it is necessary for you to give up on the hope of someday having a family” and he cites a case where such a marriage was successful.

Dr. Joseph Berger explained in *Hakirah* 12 (2012) his belief that Same-Sex Attraction⁶² is a psychological disorder rather than “a normal variation of human sexuality.” He writes:

⁵⁹ The term “conversion therapy” is itself an invention of the gay lobby. Trained psychiatrists and psychologists use psychotherapy to help troubled people overcome the impediments that prevent them from functioning normally and living the life they hope for.

⁶⁰ One Rosh Yeshivah told me that over the years he has had more than ten young men come to him and all are (apparently) happily married, other than one who became active in denouncing “conversion therapy” and the Orthodox community's attitude as a whole. Dr. Benzion Sorotzkin pointed out that the acceptance of homosexuality in society has caused patients, many of them Orthodox, even greater pain. “When I started practicing,” he recalled, “if something sexual happened between two boys, there was mainly a sense of guilt.” After dealing with this guilt, he said, the boys moved on and “went to get married.” Now, however, such boys “are told they are gay and they have to endure it, so they start panicking.” <https://forward.com/news/193219/orthodox-therapists-battle-ban-on-gay-conversion-t/>. The evaluation I have heard from several religious therapists is that about a third respond fully to therapy, a third are not changed at all, and a third are helped to some degree. This, they say, is similar to their results with other psychological disorders.

⁶¹ <https://adfmmedia.org/case/schwartz-v-city-new-york>.

⁶² I often use the term SSA to refer to this disorder to emphasize that this is a condition one has, not the definition of the person.

My own opinion is that the most accurate description of exclusive same-sex orientation is a failure to reach full psychosexual maturation. By full psychosexual maturation I mean the ability to be in a fully committed long-term relationship with a person of the opposite sex, with the potential of producing a biological family.... We have been able to preserve ourselves throughout history only by reproducing through the union of a man and a woman, and any student of human anatomy and physiology knows that biologically men and women ‘fit’ in a manner that is ‘designed’ for reproduction, and two people of the same sex do not and cannot.

In *Hakirah* 13, three psychiatrists contested Dr. Berger’s arguments. I believe we see the key to the dispute in the response of Dr. Dresher and company in their rejection of Dr. Berger’s convincing argument in his original article:

It should be evident that Dr. Berger’s argument is entirely tautological. If, a priori, one defines “psychosexual maturation” as entailing a committed relationship “with a person of the opposite sex,” then, of course, homosexuals can never hope to achieve psychosexual maturity! Moreover, Dr. Berger’s argument based on reproductive capacity conflates evolutionary adaptation with psychosexual maturation. This is simply a non-sequitur.

In other words, SSA is a disorder if we believe that the human being was given a reproductive system in order to use it; if we believe that there is a mitzvah of *pru u’rvu*; if we believe that there was a Divine plan of פרו וקבשוה—“Be fruitful and multiply, fill the earth and conquer it.” As Orthodox Jews, we do believe this and thus we would conclude that Same-Sex Attraction is a disorder that should be treated. Perhaps we have reached the point where the psychiatric profession can no longer be trusted to represent science. Their premises are not our premises.⁶³

From the Sources of Halachah

⁶³ In his 1991 book “Reparative Therapy of Male Sexuality,” Joseph Nicolosi relates the documented history of successful treatment starting in 1930, continuing with Anna Freud in 1949 and continuing until his time.

Rabbi Brander, like myself, is a *talmid* of Rabbi Yosef Dov Soloveitchik, זצ"ל, the Rav. Yet while he quotes many contemporary Rabbanim to bolster his case, there is no quote from the Rav on this matter.⁶⁴ So, I will quote from our Rebbi.⁶⁵ I'm sure that the retort will be that he was a product of a previous era, but the Rav was in fact like Chazal, a thinker who transcended his environment. The intellectual community about which he was well versed was well ahead of the common culture. In 1973, the psychiatric community had already changed the DSM to characterize homosexuality as a normal variant. In 1974 he pointed out that "A philosophy of [homo]sexualism is being preached throughout the Western world, to such an extent that a certain rabbi came to me and said, "How can we defend ourselves against it?"⁶⁶ He answered, look in the Torah and read *לא תשכב איש משכבי אשה*. To Judaism, morality is defined by the Torah. The Rav wished to create a "world formula"⁶⁷ out of the sources of halachah. In his time, he saw how American religion was waning. He attributed this decline to the shortcomings of this religion.⁶⁸ We could have defined what he saw as its stated purpose as creating feelings of "safety, security, and the sense of haven and heaven."⁶⁹ This is not the purpose of *Yabadus* but only a byproduct. And this byproduct is only a function of bowing our will to that of the Creator and accepting all His commands.

Rabbi Brander is concerned with the future of Modern Orthodoxy if we take a harsh stance against the LGBTQ community and says we are at an inflection point. When *heterim* for including Shabbos violators were issued in America, the Shabbos violators were the majority and to cut them out would have distanced the majority of American Jews from all aspects

⁶⁴ He does refer to the Rav having advised a father not to distance himself from a son who had intermarried. This private matter is an entirely other issue. In an audio of the Rav he speaks of the stringency of the sin and how psychologists should try to bring those with SSA to do *teshuvah*. See <https://www.youtube.com/watch?v=i4Ag-nYSfrk>.

⁶⁵ I found these quotes from a 2013 *Jewish Press* blog post from Menachem ben Mordechai. See <https://www.jewishpress.com/blogs/guest-blog/rav-soloveitchiks-clear-stand-on-homosexuality/2013/05/19/>.

⁶⁶ See <https://www.jewishpress.com/blogs/guest-blog/rav-soloveitchiks-clear-stand-on-homosexuality/2013/05/19/>.

⁶⁷ This term is taken from his c. 1950 lectures at BRGS which appeared in *Hakirah* 33.

⁶⁸ "A Letter from Rabbi Joseph B. Soloveitchik to Aaron Zeitlin," which appeared in *Hakirah* 32.

⁶⁹ Rabbi Brander's words for what he wants to provide for the gay Orthodox community. Later he mentions the "inspiration" of the Torah. This should be our focus.

of Judaism. Moreover, the mitzvah of Shabbos was to retain its place, and *tochachab* against its violators was not to be forsaken. Today the violators are a small minority, and we are asked to accept them without rebuke. Moreover, they have another option, Open Orthodoxy, which maintains the rituals of Orthodoxy while abandoning parts of its philosophical underpinnings.⁷⁰ We indeed are at an inflection point. Is Modern Orthodoxy to become Open Orthodoxy and separate itself completely from the Charedi world or is it to remain within the traditional fold?⁷¹ In an Open Orthodox shul two men came to the *bimah* to recite the blessing of *Baruch Shepetarani* at their son's bar mitzvah. Should this become the norm in Modern Orthodox *shuls*, members of other branches of Orthodoxy will not step foot into them.

If Modern Orthodoxy wants to maintain its youth and to thrive, it must take up the Rav's project and deepen the understanding of halachah and apply it to every part of life. It must take this understanding and battle for the soul of the world. Our youth must be inspired and come to understand that it is because they were entrusted with the Torah that they are the *am segulah* and it is their duty and privilege to fight foreign influences and to win over others to the perspective of the Torah.

In *Man of Faith in the Modern World*, the Rav writes:

We think we know the motivations for the prohibitions against stealing, murder, adultery, and false testimony and for the positive commandments which reflect a sensitivity to the rights and welfare of others. They seem to be morally uplifting and socially stabilizing. In fact, however, their moral reasonableness is often in question in our modern world. The campaigns to legitimize abortion, euthanasia, adultery, and homosexuality are examples of the unreliability of the social conscience...

The Rav elaborates in *Abraham's Journey* about the new world formula that should arise from the sources of halachah:

Our task was and still is to teach the Torah to mankind, to influence the non-Jewish world, to redeem it from an orgiastic way of living, from cruelty and insensitivity, to arouse in mankind a sense of justice and fairness. In a word, we are to teach the world the seven *mitzvos* that are binding on every human being.

⁷⁰ The Rav's constantly stated principle that halachah defines morality is at the heart of Judaism.

⁷¹ In one of the Rav's Yiddish *derashos* that I heard on tape years ago, he refers to אונז הקהלה החרדית.

Postscript

Rabbi Brander's essay and mine were written long before the barbaric massacre of Simchas Torah 5784. The shocking reactions from much of the world to this event and its aftermath serve to remind us how true the Rav's words are. We cannot depend on the world's assessment of "moral reasonableness." "If one tells you there is wisdom among the nations, believe him... If he tells you there is Torah among the nations, do not believe him." (*Eichah Rabbah* 2:13) The lack of a "moral compass" in liberal universities should serve as a sign to *bnei Torah* that we dare not be influenced by their opinions. What is a **תועבה** according to the Torah dare not become acceptable in the Jewish world, no matter what the consensus of the intellectual society declares. ❧