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Letters to the Editor

'ON HOMOSEXUALITY'

Los Angeles, California

Rabbi Norman Lamm's article on homosexuality in your January-February 1968 issue is most interesting. It represents an application of Jewish principles to a modern subject, an updating of Jewish law to modern life. It is a welcome addition to Jewish thinking for relatively unlearned individuals such as myself. However, one of the conclusions (or side remarks) I find most troublesome—disturbing if it reflects the general attitude in the orthodox leadership.

I refer to the statements that the author presents for advocating that homosexuality should not be treated as a criminal offense. Briefly the two reasons given are: (1) our present society and its judiciary is such that the courts do not wish to intervene when other individuals and society are not *directly* involved; and (2) our prisons as now constituted would worsen the homosexual's condition.

I assume that Rabbi Lamm agrees that the orthodox Jew (and others) whom he seeks to guide as well as to teach should be involved in American social and political life, and should participate in developing its laws and its practices. And I also assume that it is desirable for the Jew to foster the im-

plementation by the general community of the Noachide laws. On the basis of these two assumptions, I question strongly the validity of the two conclusions of Rabbi Lamm noted above.

On the first, we accept the thesis that Judaism is unequivocally committed to higher moral practices. For Jews only? Obviously not; so obviously that we need not say more on this point. We may safely say that the Jew accepts the yoke of the Torah for himself, and believes that the non-Jew should accept those moral and ethical ideals as are stated or implied in the Noachide laws. With this purpose, the Jew may act by example, by teaching and explaining, and by cooperating with the general community in specific actions, including community and political activities. The current attitude in some parts of the general community and of some courts in refusing to act except when an individual is directly and manifestly harmed is questionable, especially by Jewish standards, is not universally accepted, and in this country is of recent vintage. Actually one senses a struggle within both the general society and in the courts concerning this issue.

It ill behooves the Jew to establish himself either as a practicing neutral or in favor of the trend. If a significant portion of the general community seeks

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to prohibit actions which the Torah condemns both in Jews and non-Jews, we should support these efforts by positive actions—pious platitudes and academic scholarly dissertations are inadequate, especially by Jewish standards. Would we be so academic if we sensed a trend towards acceptance of murder, robbery, minority oppressions, etc? Of course not. We have a responsibility to propose measures to penalize criminally sinful activities.

The inadequacy of our present penal institutions is a handicap to the punishment of criminals, not a bar. If it were the only objection, we should seek to develop suitable penal methods, not to deny or void the nature of criminal acts. In general any punishment, either under our ancient state or under modern conditions, involves undesirable features: imprisonment for any crime does not necessarily lead to rehabilitation. I do not believe that Rabbi Lamm would for this reason advocate the elimination of all punitive legislation. For that matter, Jewish law concerning criminal offenses includes reasons other than rehabilitation. Concerning this subject, the rabbi is far more competent than I; I suggest that consideration of the Jewish principles underlying criminal prosecution would be pertinent in this matter, and should have bearing on our attitudes.

I have written at length on this subject because I believe most strongly that orthodox Jewry should advocate specific concrete steps for attacking the deficiencies such as this which are rending the general society. I have noted other such areas in which thinking Jews appear to realize the existence of problems—and at present offer only philosophical dissertations. This is especially true in the field of personal morality. May I suggest that the developing Jewish Rabbinate in this country give us guidance

in providing positive measures for applying our traditions to the modern American scene?

Morris Smith

New Haven, Connecticut

I have just finished Rabbi Lamm's article on homosexuality in *JEWISH LIFE* and wonder if he hasn't let himself off the hook a bit too easily. It would seem to me that a straight reading of our literature would say that the Jewish position ought to be to push for increasingly severe penalties, perhaps not death, as the Puritans read it, but certainly some kind of harsh treatment. There is a venerable tradition for judging the suicide gently. There is no such tradition that I know of to help the homosexual.

My reservations about his article are not in the fact that he has tried to consider homosexuality a disease. Though that is by no means a simple question, I think I would agree with him. My problem concerns his rather belligerent tone. Isn't he ultimately in the same situation as many of those whom he opposes, finding some aspects of Torah law rather difficult and attempting to mitigate aspects of its apparent harshness without abandoning the structure? It is a valuable effort that he makes and in fact precisely what *tikkun olam* is all about, an attempt to ameliorate the stringencies of the Divine imperative with what, from our own human point of view, man in fact seems able to achieve.

As I read his piece, the issue is how upset people should be by homosexuality. He says one should be more upset by it than are the people he takes issue with. Fair enough. But his bubbas and zaydehs would have agreed with neither of them and would have been horrified with both of them. In essence, I suspect that his position is far more radical than he is willing to admit. I wonder if

he is entitled to quite as bellicose a stance as he takes.

Richard J. Israel

Director, B'nai Brith at Yale University

RABBI LAMM REPLIES:

The two letters printed above are fairly representative of the types of adverse criticism occasioned by my recent article for *JEWISH LIFE*, some of it in communications and some in editorials in Anglo-Jewish periodicals. (For the record, let me say that most of those who bothered to write, whether privately or in print, approved of my point of view, and that some of them were Christians who were as upset as I was by the Episcopalian statement.)

Let me turn to Mr. Smith's strictures first, and begin by assuring him that my opinions are my own and by no means necessarily reflect those of "orthodox leadership."

I am troubled by my correspondent's activism. He apparently dismisses anything less than a direct application of the Noachide law as a "scholarly dissertation" or "pious platitudes." Of course, I agree that Judaism's moral principles should be brought to bear on general society. But that does not commit us to strive for the literal enactment of the Noachide law. Would Mr. Smith really approve of capital punishment in America for homosexuality? And for eating a limb torn from a living animal? And for blasphemy? I assume that he would not advocate this. In addition to all else, the penology established by the Halakhah assumes a normative Jewish society and a qualified Sanhedrin sitting in a rebuilt Temple.

If the full enactment of Noachide law is impossible, we must then seek to incorporate the *principles* of this legislation into the moral and legal structure of society. Here I agree with him, and

that is why I took the trouble to write my article: to call attention to the Torah's abhorrence of homosexuality and to protest its designation as "morally neutral" by certain Christian clerics. But Mr. Smith considers this mere "philosophizing" and apparently prefers a jail term for homosexuals. I do not know, however, why a prison sentence should substitute for the original punishment. Jewish law, by and large, did *not* encourage the denial of personal freedom as a recommended form of punishment. There is nothing Jewish about a jail. (Flogging, I think, is far less cruel and far more enlightened.) Since capital punishment is out of the question, we are left with one absolute minimum: strong disapproval of the condemned act. But we are not bound to any specific penological instrument that has no basis in Jewish law. I prefer to judge the form of punishment by standards other than the expression of society's disapproval. I am not Halakhically bound to press for the harshest verdict available. I *am* Halakhically bound to act with compassion (more of this shortly). Rehabilitation is not a newfangled invention of far-out liberals. It is nothing more than *teshuvah*. And the cumulative experience of our society does not encourage us to expect that our prisons will rehabilitate homosexuals. . . . Quite to the contrary, they confirm the deviant in his aberrations and turn him out of jail and into society as a hopeless victim of his own abnormalities—and our unconcern.

This does not mean that I am necessarily against prison for any crimes. I feel that incarceration may be required in order to protect society from those who would do it violence, and as a deterrent to non-violent crimes such as theft or embezzlement. But an enlightened society should at all times try to rehabilitate its ethically and morally dis-

advantaged elements, even as it seeks to help the socially and financially disadvantaged.

While Mr. Smith holds me to be too liberal, Rabbi Israel takes me to task for being too harsh on the Episcopalian priests. He accuses me of being secretly more "radical" than I seem, questions my right to be "bellicose," and calls down upon me the wrath of my illustrious ancestors.

Now I am quite unruffled by his criticism of my thesis, but when he meddles in my family affairs, that is going too far. I must therefore strongly protest his contention to have discovered a variance between my grandparents and myself, and his resultant questioning of my loyalty as an *einikel*.

His first point has already been answered in my response to Mr. Smith. Both of them assume that in the absence of an enforceable death penalty (which is quite explicit in the Bible, and is not limited to the way "the Puritans read it!"), we must strive for the harshest treatment possible. Not so, as I pointed out above. Rabbi Israel knows of "no such tradition" . . . to help the homosexual." The tradition is *teshuvah*. Even a condemned man being lead to his execution was encouraged to confess and make his peace with his Creator (Sanhedrin 6,2).

This leads me to the main point I wish to make: the Halakhah sees no contradiction between condemning a man to death and exercising compassion—even love!—towards him at the same time. The Talmud applies the verse "thou shalt love thy neighbor as thyself" specifically to one condemned to death, and invokes this commandment in determining the very manner of his execution—"choose any easy death for him" (Sanhedrin 52a). Hence the two prin-

ciples, both formulated as *mitzvot*, co-exist simultaneously: execute him and love him. (Interestingly, the commandment of neighborly love is given in the same verse as the one that proscribes vengeance—Leviticus 19,18—and suggests that the Torah's philosophy of punishment is non-vindictive.) Certainly, therefore, where the death penalty cannot be carried out (as it has not been enforceable since 4—or 40—years before the destruction of the Temple in 70 CE), we remain bound by only one *mitzvah*—compassion and love. This does not by any means imply that we condone the crime. We condemn the sin but not the sinner, as Beruriah taught in the Talmud.

If I confused some of my readers by my suicide analogy, I genuinely regret that. But my point remains: if I am unable to enforce the full Biblical penalty, I am not required to press the civil authorities to devise other forms of severe punishment for homosexuals or other transgressors. The death penalty does have timeless relevance, however, in informing us of the extent to which the Torah abhors a prohibited act. But this does not detract from the obligation to treat the offender with neighborly love.

In principle, this attitude is applicable to the whole range of offenses the Torah considers worthy of death, whether by Heavenly decree or by the Sanhedrin. Adultery, work on *Shabbat*, eating on Yom Kippur, cohabiting with a *niddah*—all—of these are cardinal sins. The death penalty, even when prescribed by Jewish Law, was not meted out lightly. Although the Halakhah did not accept the opinions of Rabbi Tarphon and Rabbi Akiva who declared that had they been members of the Sanhedrin no man would ever have been executed, nevertheless a death sentence was rare indeed (Makkot, end chapter I). In all these

cases we are bound to protest the transgression—and, at the same time, to encourage the transgressor to *teshuvah* or rehabilitation.

This is the attitude I advocate towards homosexuals. It simply does not help to dismiss them as "queers" and withdraw from them any concern for their plight. (I confine my remarks to homosexuals who recognize their aberrations as wrong and regret them, not those who have banded together to claim "civil rights" for degeneracy.) We find it easier to exercise the kind of compassion that leads to constructive, therapeutic results, when we have discovered some mitigating factor. That factor is the concept of disease; and this is why I introduced the matter of suicides. It is this which allows us to work productively for the rehabilitation of the homosexual, without at the same time falling prey to the muddle-headed view that accepts homosexuality itself as "morally neutral" provided that "it fosters a permanent relation of love" (as the Episcopalians priests maintained in their conference last November).

Like Rabbi Israel, the periodical "Reconstructionist," in an editorial in its February 23, 1968 issue, purported to find in my essay "a change in the Halakhah," and "if this is so, then Rabbi Lamm is unfair to the Bishops when he attributes to them a tendency to return to paganism." But there is nothing in my position, I submit, that is "far more radical" than I am "willing to admit." I am sorry that I cannot provide my critics with a case of disguised historicism, as if I were trying to sneak in a "change in the Halakhah" past the religious customs inspector.

It is all too easy for orthodox Jews to be frightened by the specter of "change." I do not believe we should

be scared away from confronting contemporary issues by ghosts of heresy (or even "bubbas and zaydehs") conjured up by those to whom Halakhah has lost its binding force and who gleefully anticipate welcoming converts from Orthodoxy. To equate my position with that of the Episcopalians priests, because both of us advocate "change," and therefore to fault me for being "bellicose," is to be guilty of extravagance. It may make a debater's point, but it obscures instead of clarifying.

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