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13 Apr 76

Rabbi Norman Lamm
The Jewish Center
131 West 86th Street
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Dear Rabbi Lamm,

Thank you for your letter of 16 March.

Although I fear I have exhausted your patience and tolerance, I cannot forbear expressing puzzlement over your assertion that your "subject was exclusively the Jewish attitudes" on homosexuality. The "halakhic solution," which I find the essential contribution of the article, rests on an appeal to secular science, mainly psychiatry, to exculpate some "sick" Gays to some extent, while preserving biblical condemnation of homosexuality intact. But when one enlists secular science, is there not an obligation to know the literature of the field and to be guided by the canons of the science and by the authority of the experts? Otherwise one establishes a parochial "Jewish" psychiatry that is a handmaiden of Jewish theology, rather than a science which follows where controlled objective investigation leads. I would submit that it should be a matter of indifference in the psychiatric profession whether the practitioner is Jewish or non-Jewish.

The opinion about Gay mental health which I cited is, of course, not mine, but that of the bulk of the psychiatric profession. I would agree that, within the context of your "halakhic solution," this effectively eliminates about the only mitigating circumstance that one can find in Jewish law for homosexuality. But this is unworthy special pleading, for if the "solution" rests on a scientific fiction, does not a concern for scientific truth mean that it cannot, in conscience, be accepted? This leaves the halakhist right back where he started, and unless he can find new grounds for mitigation, he is saddled with the onus of categorical biblical condemnation and a prescribed death penalty. This is a more honest position, I suggest, than a fraudulently based compassion. After all, there may be no solution.

I am disturbed, too, by the rejection of civil-libertarian argument. Does the same dichotomy exist in jurisprudence as in psychiatry? Can a Jewish jurist objectively apply the norms of such legal doctrines as right of privacy, equal protection, establishment clause etc., or must he instead subordinate these to Jewish theological norms? I would submit that it should be a matter of indifference whether the judge on the bench is Jewish or non-Jewish. Both should arrive at the same conclusion, and this conclusion may conflict with Jewish law, as has been true in a number of sodomy cases.

I submit, regretfully, that the "halakhic solution" in your article is no solution.

Faithfully yours,

James Lively

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