

Compassion and Halakhic Limits: *Judaism and Homosexuality: An Authentic Orthodox View* by Chaim Rapoport

Reviewed by Daniel Rynhold

Abstract: In his comprehensive rabbinic study of homosexuality, Rabbi Chaim Rapoport argues that Orthodox leaders can and should take a compassionate approach that accommodates innovative policy suggestions without contravening any halakhic bottom lines. But does the very fact of his sincere compassion show once and for all how halakhic boundaries can never allow Orthodoxy to engage fully the personhood of the Orthodox homosexual?

Biography: Dr Daniel Rynhold is Lecturer in Judaism in the Department of Theology and Religious Studies, King's College, London. His first book, *Two Models of Jewish Philosophy: Justifying One's Practices* (Oxford University Press) is due out in March.



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In one of the most famous opening lines in English literature, we are reminded of ‘a truth universally acknowledged’: that a single man must be in want of a wife. The fact that Jane Austen is famously pre-empted by the rabbis of the Talmud at *Qiddushin* 2b, and again with specific reference to men, seems only to reinforce the universality of this yearning, and while both quotes are found in a context more fiscal than sexual, the sexual motif is certainly not absent from the Talmudic formulation. And it is the clash between this universal drive and the Orthodox view of its expression towards a member of the same gender that lies at the heart of Rabbi Chaim Rapoport’s halakhic tour de force *Judaism and Homosexuality*.¹

That this book is not going to be your average trawl through the texts is immediately obvious from the introductory words of Rabbis Jonathan Sacks and Berel Berkovits. While emphasizing the importance of the work, they are careful to note the controversy it is likely to cause and point out that not everyone will agree with what Rabbi Rapoport has to say, both noting his ‘courage’ (pp. x, xi) in addressing an issue that many ‘would rather avoid’ (Sacks, p. x) or find ‘unpalatable’ (Berkovits, p. xi). So it is worth declaring at the outset that I am broadly in sympathy with R. Rapoport’s general approach. But regardless of one’s views of the book’s content, one cannot fail to learn from it, particularly given his encyclopedic knowledge of primary sources. Beyond the

argument of the main text, the illuminating footnotes are an outstanding work of scholarship in themselves, with many informative and fully referenced discussions of tangential halakhic and aggadic issues. One certainly cannot fault R. Rapoport’s halakhic scholarship—at least as a relative ‘reed-cutter in the marsh’ in the halakhic realm, I could not.

That said, I should note that the modesty of the subtitle—“*An Authentic Orthodox View*”—means that any attempt at refutation would necessarily be both lengthy and futile, given that it would require the difficult proving of a negative: i.e. that there is nothing whatsoever anywhere in the halakhic tradition to ground his views. The questions the book raises are less matters of *halakhab* than they are matters of *hashkafah*, and it is at this level that the most interesting issues surface.

“This book is not your average trawl through the texts.”

It is not possible to do justice to R. Rapoport’s immense scholarship in a brief review, but his general stance can be summed up as follows (and indeed if you want to skip to the bottom line, R. Rapoport gives us a checklist of the main points in the final chapter). The halakhic bottom line of course is that Lev. 18:22 and 20:13 explicitly forbid male homosexual intercourse. Yet R. Rapoport also accepts contemporary understandings of the

¹ While much of the book applies equally to male and female homosexuality, the differences between the two are specified and male homosexuality often comes across as the central concern, given the more severe nature of the prohibition associated with it.

nature of homosexuality as an orientation that is “given,” whether by nature or nurture, and not “chosen.” *Contra* Rav Moshe Feinstein, R. Rapoport argues that Judaism can recognize that there are those who are “of exclusive homosexual disposition” (p. 135) that is not somehow “curable.”

While acknowledging that, in principle, if one could rid oneself of such a disposition one ought to do so (pp. 22-23), R. Rapoport notes that even those who are most optimistic about so-called “conversion therapy” recognize its very limited success rate, not to mention the possible damage that it might cause along the way. Accepting the undeniable existence of confirmed homosexuals in this way together with the inadvisability of therapy in the majority of cases, means condemning the Orthodox homosexual to a life of total celibacy. Though R. Rapoport acknowledges that Leviticus “refers primarily to penetrative intercourse,” he contends that “any form of sexual intimacy is also forbidden” (p.2) reflecting the mainstream halakhic understanding.²

In confronting the problem without compromising either his understanding of the absolute nature of the halakhic prohibition on homosexual sex, or contemporary views of homosexuality, R. Rapoport highlights the uniquely difficult challenge that Orthodox homosexuals face. And it is his striking and constant acknowledgement of just how difficult the challenge is that distinguishes this book from many others. Emphasizing Sacks’s conception of Judaism as a religion that encourages us “to combine sexuality with spirituality” (p. viii), and drawing on views like Rabbi Jacob Emden’s that sexual intercourse plays a ‘crucial role . . . in the maintenance of a person’s psychological and physiological health’ (p. 39), the life of suppression required of the homosexual is a virtual tragedy--not too strong a word given that R. Rapoport locates the problem within the framework of the general problem of evil. He does not offer a theodicy and

given the long list of gallant failures in the field, both general and Jewish, one can understand his reluctance. But R. Rapoport’s intellectual honesty allows him to admit at the beginning of the book (and to apologize at the end if he has disappointed the reader) that he does not provide a complete solution to the problems that he raises. The book is designed, rather, to open up discussion of the issue.

“It would be profoundly damaging to counsel a homosexual to get married.”

R. Rapoport locates his discussion in the context of “the suffering of the righteous” (p. 43), which is significant because it implies that a homosexual can *be* considered righteous. His major contention is that the homosexual is indeed beloved of God, citing R. Aharon Feldman approvingly when he writes that “Judaism looks negatively at homosexual activity, but not at the homosexual.”³ It is simply homosexual sex, according to R. Rapoport, that is famously termed ‘*to`evah*’ (usually translated as ‘abomination’).

Importantly, R. Rapoport mentions the possibility of categorizing the Torah prohibition as a *hoq* rather than a *mishpat*. Though it is not a line that he endorses unequivocally, he does admit the possibility of defining the law as a *hoq* for those who see it as such, for example homosexuals themselves (pp. 16 and 160 n. 68), noting also that the various rationales for the prohibition are not absolute rationales, even if they are “substantial factors” (p. 15). He recognizes accordingly that as a *hoq*, it would be unclear why homosexuality should pose any moral problem for a secular system (p. 16). Although he understands that people might feel an instinctive repugnance towards the homosexual act, the natural law approach once beloved of many Catholic theologians is not necessarily the right one for R. Rapoport, who mentions the role of social conditioning in the formation of such attitudes (p.

² Rabbi Steven Greenberg has argued that on the contrary “a whole array of sexual engagements . . . would not be formally prohibited,” this is not the mainstream halakhic view, a point we will return to. Steven Greenberg, *Wrestling with God and Men: Homosexuality in the Jewish Tradition* (Wisconsin: University of Wisconsin Press, 2004), p. 85. (See Asher Lopatin’s review of R. Greenberg’s volume in this edition—ed.)

³ R. Aharon Feldman, “A Personal Correspondence,” *Jewish Action* 58/3 (spring 5758/1998), p. 69.

15). If this line could be taken, it would certainly make it more difficult to argue that homosexuality per se is a deviant form of *being*. And it is mainly at this attitudinal level that R. Rapoport wishes to engage his readers.

R. Rapoport suggests policies from which “Jewish leaders and thinkers will draw ideas and information when forming their own policies” (p. xvii). Obviously one cannot insulate “halakhic” from “policy” concerns, and R. Rapoport notes the manner in which the policies impinge on halakhic issues throughout. For example, despite the importance of the *mitsvah* of procreation, and contrary to many views in the Orthodox world, both “Modern” and “Ultra,” He believes it would be profoundly damaging to counsel a homosexual to get married, explicitly expressing his discomfort with those who naively encourage marriage as a “cure” (p. 97). It is clear that at the level of “policy,” R. Rapoport’s emphasis throughout the book is on understanding and compassion.

One of the most important elements of the work is the manner in which R. Rapoport confronts the Orthodox community (and, indeed, the non-Orthodox community) with its own hypocrisy. Male homosexual sex is one of the forms of illicit sexual act that fall under the category of *gilui arayot*, and it is the only sin singled out as *to`evah*” within a collective category of *to`evot*. Thus, R. Rapoport criticizes those who take the easy route of treating it as on a par with other *to`evot*, including non-sexual ones, as thereby betraying their lack of knowledge of rabbinic discussions of the term.

Though he acknowledges the full severity of the transgression, R. Rapoport argues that Orthodoxy’s singling out of homosexuals for particular ire without treating other transgressors similarly remains hypocritical. A married couple that does not adhere to the laws of family purity is also committing a form of *gilui arayot*, yet the couple is not singled out for the sort of treatment meted out to a gay person of the community. Gay members of the Orthodox community are often forced into what he thinks is an “erroneous assumption” (p. 34) that they have no place in Orthodox Judaism, which often leads them to

leave the Orthodox fold altogether rather than live with the low self-esteem such views are likely to engender. So R. Rapoport argues for compassion in dealing with Orthodox homosexuals that neither compromises the prohibition against gay sex nor allows our disapprobation to go any further. Contrary attitudes are often exposed as prejudice and homophobia hiding behind a veneer of halakhic respectability.

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But while being gay is not a sin, the fact that gay sex is sinful needs to be dealt with. In dealing with the practicing homosexual R. Rapoport rejects views that categorize homosexuals as *annusim*, i.e. those compelled by their psychology—or, according to some, their pathology—to transgress. In addition to the problem involved in describing it as a pathological condition, R. Rapoport believes it “extremely condescending” (p. 65) to say that homosexuals specifically cannot control themselves. We all have the ability to curb our sexual acts, even if not our sexual desires (though the latter are not a problem, if, as he argues, the only thing prohibited is the act, not the orientation). R. Rapoport prefers therefore to invoke the idea of *tinok she-nishbah*. The transgressor is categorized legally as a child taken into captivity who is influenced by an alien educational climate, as follows:

We currently live in a permissive society, where the predominant secular view tolerates homosexual conduct and—in the case of individuals with an exclusive homosexual orientation – even advocates ‘self-realization’ in the sense of acting upon their sexual impulses. In these circumstances, it is arguable that the same mitigating factors that help to mould our response to other transgressors of Jewish Law should be similarly applied to those who engage in homosexual activity. For, if a person’s attitude to the Torah and its prohibitions can be attributed to the education he received from his forbears or to the intellectual climate of his society, this can and should be considered when judging any individual homosexual. (p. 80)

That this idea has been used by a number of authorities to exonerate all types of sinners since the advent of modernity is not in dispute. What is in dispute is that such a view is any less problematic than the rejected view that made gay sex the result of duress more generally. Why is it acceptable to say that sociology exonerates the sinner but not psychology or “pathology”? It is worth recalling here one of the more recent uses of the concept of *tinok she-nishbah* by R. Jonathan Sacks in his *One People?*⁴ In arguing for a theory that he termed inclusivism, which allowed Orthodox Jews to avoid classing non-Orthodox Jews as heretics despite the heretical content of their beliefs, he invoked the idea of *tinok she-nishbah* to argue that they were not fully responsible for the beliefs that they held. Once again one of R. Sacks’ books caused an outcry, though this time amongst the non-Orthodox denominations who felt understandably slighted by the view that they were poor, deluded souls who couldn’t be blamed for not knowing any better. (Notably they managed to express their very serious disagreements with his book without demanding a revised reprint). Significantly, the view that using *tinok she-nishbah* in this way is “unbearably patronizing” has since been repeated by the Orthodox scholar Menachem Kellner.⁵ If condescension is good reason for rejecting those views that attribute the sin of gay sex to psychological or pathological duress, it seems fair to ask why the same criticism cannot be leveled at R. Rapoport’s own attempt.

This seems to me to be important. For all the genuinely well-intentioned work that he has done, even R. Rapoport cannot escape a level of condescension in his attempt to deal with the practicing homosexual and this brings us to the central tension that the book highlights. As mentioned earlier, R. Rapoport intends this book to open up discussion, and as such its primary audience is Orthodox leadership. But he also professes “the sincere desire to communicate with homosexuals” (p. 72), who perceive, erroneously in his opinion, that they have no place in the Orthodox world. Much of R. Rapoport’s book is

an attempt to counter such an image, and he goes further than anyone else that I am aware of in mainstream halakhic tradition to try to disabuse them of this notion. But the important question that arises from this book is whether this assumption really is erroneous. Can the *halakhab* fully engage with the humanity and integrity of the Orthodox homosexual?

“Even R. Rapoport cannot escape a level of condescension.”

We need not delve into the current arguments regarding the place of dogma in Judaism to note that practice is a central component—if not the central component—of Judaism in general and Orthodox Judaism in particular. I believe that this has a number of profound ramifications. Let us take one simple example. Norman Lamm, in his description of the relationship between the behavioral (or functional) aspects of faith and its cognitive effects, writes as follows:

The relationship between the cognitive and the functional does not proceed in only one direction, from the cognitive to the functional, or from theory to practice. When a Christian theologian states that “It cannot be required of the man of today that he first accept theological truths. . . . Wherever the church in its message makes this primary demand, it does not take seriously the situation of many today,” he is discovering a truth that Judaism proclaimed a long time ago for men of all ages: *naaseh* comes before *nishma*, Halakhah precedes and remains unconditioned by theology. Judaism has always maintained that behavior influences belief, that the cognitive may be fashioned by the functional.⁶

Ultimately, the practices of Orthodox Judaism and the prohibition on homosexual sex cannot but make a gay Jew feel uncomfortable and foster a negative self-image. The message that your sexual expression is a *to`evah*, but that is not to make any judgment on your orientation, requires a bifurcation between theory and practice that is

⁴ Jonathan Sacks, *One People? Tradition, Modernity and Jewish Unity* (Oxford: Littman Library of Jewish Civilization, 1993)

⁵ Menachem Kellner, *Must a Jew Believe Anything?* (Oxford: Littman Library of Jewish Civilization, 1999), p. 116.

⁶ Norman Lamm, “Faith and Doubt,” in *Faith and Doubt: Studies in Traditional Jewish Thought* (New York: Ktav, 1986), p. 20.

rarely reflected in the approach of Orthodox Judaism. Judaism is not alone in recognizing how practices reinforce certain conceptual schemes, but it does seem to emphasize the connection more than most.

Rabbi Rapoport talks of the importance of the nuances of our language and modes of expression, both linguistic and behavioral (p. 74-5), in dealing with homosexuals who struggle to make sense of their place in Orthodoxy. I do not deny that it does make a difference, as R. Rapoport notes, “whether we refer to the act or the actor” (p. 74) in our dealings with gay Orthodox Jews. But it is precisely because of this that Orthodoxy cannot but make its gay members feel as if they have no place within it. The prohibition against homosexual sex is not just a “nuance,” especially when combined with the central importance of sexuality in human nature as recognized within Judaism and without, the emphasis on marriage and family in Judaism, the centuries of societal prejudice, etc. The fact therefore that even a scholar as compassionate as R. Rapoport cannot escape condescension in his treatment of the problem seems only to reinforce the severity of the problem.

Significantly, the problems remain even given the most radical Orthodox understandings of the nature of *halakhab*. In her recent book on feminism, Tamar Ross argues for a conception of cumulative revelation in which Torah is seen “as a series of ongoing ‘hearings’ of the voice at Sinai throughout Jewish history.”⁷ Ross is prepared to accept that her view might be seen as controversial. But even on this “radical reading,” there appears to be little room for further movement on homosexuality, since such hearings “may transform a former hearing by building upon it, but they cannot skip over it entirely.” This leads her to say that the “sanctified formulations of the canonic texts of tradition are immutable foundations,

defining the absolute, rock-bottom parameters of Jewish belief and practice.”⁸ Thus, even a more radical take on the nature of revelation than R. Rapoport’s is unlikely to sanction “new hearings” on homosexuality comparable to those it might discover from feminist voices. Feminism has to overcome implicit biblical and explicit rabbinic bias against women, but it does not have to “skip over” an explicit biblical condemnation comparable to that against homosexual sex. And while Steven Greenberg might be “hearing” some particularly radical things when wishing to remain in the Orthodox fold, I imagine that he would be the first to admit that his views cannot be portrayed as mainstream from a halakhic perspective.

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As mentioned previously, R. Rapoport acknowledges that his book does not offer solutions. And there is no doubt that its call for compassion and his suggested policies are important steps forward in the debate. What he offers his audience of Jewish leaders should not be underestimated, and some Orthodox homosexuals will be helped by his approach. But, in less a criticism of an excellent book than an acknowledgment of the limits that any mainstream halakhic approach has to abide by, R. Rapoport may be more optimistic about what he is offering his homosexual audience than he is entitled to be. Paradoxically, it is because the book is so compassionate that it shows more clearly than ever how deep-rooted are the problems homosexuality raises for the halakhic tradition. So while I hope that the book is the beginning of the Orthodox conversation for which R. Rapoport yearns, I wonder if conceptually it signals the end of the conversation for the mainstream halakhic community.

⁷ Tamar Ross, *Expanding the Palace of Torah: Orthodoxy and Feminism* (Waltham, Mass.: Brandeis University Press, 2004), p. 197.

⁸ *Ibid.*, p. 207.