

THE HALAKHAH OF SAME-SEX RELATIONS IN A NEW CONTEXT

Rabbis Myron S. Geller, Robert E. Fine and David J. Fine submitted a dissent to the decisions of the CJLS on December 6, 2006

Jewish law has prohibited intimate relations between two men or two women because intimate relations are traditionally permitted only within the context of marriage, and a societally recognized same-sex union was never an option before our time. It is now, because homosexual relations are no longer considered an abomination. The term תועבה as used in the Torah to describe many proscribed actions, including gay sex, was not absolute but relative to society and time. The halakhic system recognizes that certain realities change through time. The new contemporary reality of a same-sex couple in a recognizable consecrated relationship should be excluded from the Torah's and subsequent halakhic prohibitions. This "exclusion" is called a *mi'ut* in halakhic parlance. There are a number of examples where the Rabbis limit, through *mi'ut*, the application of legislation from the Torah, which we cite in our responsum. However, like heterosexual relations, same-sex relations are permitted in the context of a recognizable consecrated union. Not only does this reflect a changed reality; it also accords with traditional Jewish sexual ethics, especially as articulated by the Rabbinical Assembly in its 1996 *Letter on Intimate Relations*. Consecrated unions establish the context where sexual intimacy can achieve holiness and be permitted by halakhah. The Torah's prohibition, then, does not apply in our new context.

In traditional midrashic parlance we might express our argument as follows: את זכר לא תשכב...תועבה היא. מתי לא תשכב? בזמן שתועבה היא. "Do not lie with a man...it is an abomination." When does the prohibition apply? When it is considered an abomination. However, when societal perceptions have changed and homosexual relations are no longer considered abominations, the prohibition disappears.

THEREFORE:

1. Intimate relations between two men or two women are permitted within the context of a recognizable consecrated relationship.
2. Members of the Rabbinical Assembly and the Cantors Assembly may officiate at same-sex unions to the extent permitted by civil law.
3. Gay or lesbian Jews who are otherwise qualified may be ordained and serve as rabbis or cantors.