

Same—Sex Marriage
and the debate over its legalization
in the
Modern World
and the relevance of
The Bible
in this debate.

by
Greg Wotton

for
Sal Renshaw
WOMN3117

Preface

Use of Primary Sources

In the assignment outline we were asked to use the course readings as primary sources. Although I have relied heavily on biblical texts and other sources it was the course materials which initially lead me to begin asking the specific questions which resulted in the work that I undertook, of which this paper is the result.

Biblical Text

In some cases it was not enough for me to simply look at the translations of the *Bible* in order to understand and/or prove a particular point but rather I was forced to attempt my own translations to be certain about the stance that I was taking. Unfortunately my Hebrew is not as good as I would like it to be and this was a rather laborious task.

I have also used the English translations found in *Stone Chumash*, *Metsudah Chumash*, The Jewish Publication Society translation of 1917, *The Living Torah* translation and the *American Standard Bible*. By cross referencing these different translations and examining the Hebrew text I have been able to ensure that my references are accurate.

Bereshith

Introduction

As our world continues to grow and change one of the primary topics of contention is that of human rights. As our history of prejudice and slavery begins to move into the past each new issue requires a fair and even examination in order to make good decisions and policies. Amongst our modern concerns is the question of same-sex marriage and whether or not it should be legalized, a step which would extend to Homosexual couples equal rights and privileges as the Government currently extends to Heterosexual couples.

Polls tell us that about 5% of the population classify themselves as Homosexual, and opposition in the US against same-sex marriage was 67% in early 2000.¹ It seems that a majority of those who are against same-sex marriage also have very strong and negative views towards Homosexuality in general. There are many movements which are specifically focused at stopping the Governments from recognizing Homosexual marriage as being legal based upon the teachings of the *Bible*. It is these arguments that we intend to address.

Our primary concern is whether or not there is any real connection between modern marriage practice, modern marriage laws and their biblical counterparts. By exploring this connection we can get a fair understanding of how the *Bible* may be used in order to argue against Homosexual Marriage.

Scope

Homosexuality

Many arguments against Homosexuals are based entirely on Homosexuality in general. They question Homosexual morality, and their right to life and liberty. In general they expect that all Homosexuals are criminals and guilty of a wide range of crimes simply because of their sexual preference. They also use the *Bible* in order to justify their arguments. For the purposes of this essay we will assume that Homosexuals are regular, law-abiding citizens. We will focus on their right to marry and to have that marriage recognized by Law and will not enter into any other debate. Restrictions of time and space prevent exploring any of these other arguments.

The Bible

¹ http://www.religioustolerance.org/hom_marp.htm

Our primary biblical source will be the *Torah* or *The Law*. The *Torah* makes up the first five books the modern collection of Scriptures which we commonly call the *Bible*. All subsequent works are based on the teachings of the *Torah* and draw from Her² wisdom, examples and laws. Even Jesus ben Joseph who many believed to be the Messiah is reported to have deferred to the *Torah's* wisdom. In Matthew 5:17-18 he says: "Think not that I have come to destroy the Law or the Prophets... Till Heaven and Earth pass away, one jot or one tittle shall in no wise pass away from the Law..."³

Although some might argue that Paul's Epistles can be examined for information concerning the Christian Laws, Paul was not a nice man and many of the things he said are inconsistent with Jesus' teachings. Concerning our focus on marriage, the Epistles teach that "It is good for a man not to touch a woman." (1 Corinthians 7:1) They are also of the opinion that marriage of any sort is second only to eternal damnation "for it is better to marry than to burn". (1 Corinthians 7:9) With this in mind we feel comfortable using the *Torah* as our primary biblical reference.

² Just as G-d is referred to in the capitalized masculine, so too is the *Torah* referred to in the capitalized feminine.

³ *American Standard Bible*

A Christian Code of Law?

Christianity has been in control of the Western World for a great many years. The current collection which we call the *Bible*, compiled about 1,600 years ago,⁴ is usually held up as the basis of Christian Morality. It is difficult to use the *Bible* as an authority for amongst the various Books of Law, Biographies, Poetry, Histories and other books, we cannot find a single, Christian, Code of Law.

In the *Torah* there are 613 laws which are given to Israel and demanded of them in exchange for carrying the burden of the *Torah*. Of all the laws contained therein, only seven are thought to be relevant to the Gentile and those are the laws which were given to Noah after the flood and are aptly named the *Seven Noachide Laws*.

In order to find a Christian Law which is relevant to barring Homosexual marriage we must establish both a relevant law concerning Homosexuality and a law concerning Marriage. These law must also reflect real situations and traditions in the modern, Gentile world for them to be considered “proof” against Same-Sex Marriage in the early Twenty-first Century.

The Levitic Code

The *Book of Leviticus* is a series of laws written by HaShem and delivered to His chosen people by Moshe or Moses. The problem with any Code of Law is that its potency lies in its consistent and complete observance and that a failure to do so renders it ineffective. If an individual were to accept that theft was wrong they could use the *Criminal Code of Canada*⁵ to support their argument. That individual, if he were to commit murder for example,⁶ could not argue that the Code was unfair or that it didn't apply without being a hypocrite. Herein lies the problem with the Christian Evangelist use of the Levitic Code in order to denounce Homosexuality.

Leviticus 18:22⁷ states: "You shall not lie with a male [conjugally] as one lies with a woman; it is an abomination."⁸ This passage is constantly used in order to attack Homosexuals in particular and Homosexuality in general. As part of the Levitic Code of Law which contains most of the 613 Laws of the *Torah*.⁹ any Israelite who engages in gay anal intercourse could thereby be condemned to death.

⁴ The modern collection was ratified by the Church at the Council of Nicea in 325e.v.

⁵ *Criminal Code of Canada* section 322

⁶ In violation of the *Criminal Code of Canada* section 229

⁷ Leviticus 20:13 also mentions "Man lying with mankind as with womankind" and that it is punishable by death.

⁸ *Metsudah Chumash*

⁹ Although the article at http://www.worldpolicy.org/americas/sexorient/hom_bibh.htm points out some of these, rather obvious problems, they failed to count the number of laws correctly. The original document at

This is an interesting Law for a variety of reasons. For one, it is part of a Code of Laws to which Christians do not adhere, nor should they for these laws were given to the Israelites specifically and not to the world in general. These laws were not meant for Gentiles to follow and as such may be considered moot as a Christian argument. The law points to anal intercourse or the emulation of lying with a woman which is not always part of a Gay relationship and is certainly not part of Lesbian intercourse.¹⁰ Worst of all, for an individual to evoke these laws in order to condemn another person, the accuser must constantly observe all of the remaining 612 laws or become the worst type of hypocrite.

The "Ten Commandments"

Modern Christianity has embraced the ten statements put forth by Elohim in Exodus. This text, known as the Decalogue, is said to be the basis of their moral code and as such is adhered to almost universally. If this is true we may safely use this code of law as a measure against which we can examine our argument. What can we learn about marriage from this code of Law? Nothing. There are no specific references to Marriage in the Decalogue. In reference to sexuality and sexual activity the Seventh Statement (לֹא תִנְיָאֵף) prohibits "cohabitation with a married woman"¹¹ and is usually interpreted into English as "adultery". This is the extent of the Decalogue's instruction on this topic and as such we cannot find a way to support the evangelical argument against Same-Sex Marriage.

But this statement, although translated as a commandment by the *King James Bible* is actually part of a series of statements, not commandments. Exodus 20:1 states that "El-him spoke all these words, saying:"¹². It is important to distinguish the difference between Statement and Commandment in this context. The actual words which make up the Decalogue are informative statements, not commanded instructions. The word Had-Barim (הַדְּבָרִים) is translated here as "words" whereas the *Stone Chumash* translates it as "statement".

The actual word for "commandment" is Mitzvot (מִצְוָה) and is very difficult to confuse with Had-Barim (הַדְּבָרִים) so we must assume that the mistake was intentional. It also gives more weight to the rejection of this statement as having anything to do with Homosexuality or marriage laws period.

The Seven Laws of Noah

http://www.religioustolerance.org/hom_bibh.htm has the correct number as well as much longer and more detailed versions. I have written to them and pointed out their error.

¹⁰ Personal interviews and questions with Gay and Lesbian individuals in multiple cities.

¹¹ *Stone Chumash* pg. 411, Commentary on Exodus 20:13

¹² *Metsudah Chumash*

Once the Ark had survived the flood, HaShem gave all people a set of Laws for them to obey and follow in order to ensure that society could thrive. Most Christians do not even know about them, but of all of the laws in the *Torah* these can truly be said to be applicable to Jew and Gentile alike.

These seven laws include prohibitions against theft and murder as well as forbidding the torture of animals, incest, idolatry and curses against HaShem. The seventh law commands that courts of justice be built in order to enforce the first six laws.

Although there is one commandment against incest, there are no other references towards sexual activity, sexuality or marriage in any form.

Findings

Although there are many moral codes in the *Torah* there is nothing outlining the methods of marriage, who can be married (outside of the rule concerning close kin) or even what marriage entails, at least none that can even remotely be considered relevant to the modern Christian, especially in the late 21st Century. It is interesting to note that there are also no prohibitions against polygamy or lesbianism. Even the Levitical Law is silent on these other two issues.

It seems that, as far as marriage laws and Homosexuality are concerned we have very little information to go on based entirely on the Laws put forth in the *Torah*. Perhaps an examination of the stories of married couples contained in Her pages will at least shed some light on what constituted marriage at that time.

Examples of Marriage in the Bible

When examining people in the *Torah* in order to learn Her wisdom it is best to examine the Patriarchs over any other group of people. The fact that the *Torah* gives detailed accounts of their lives and makes it clear which of their actions are positive and negative examples of correct behaviour gives us an excellent role model upon which to base an opinion, from which to extrapolate wisdom and to which we can aspire to emulate in our own lives.

The act of marriage seems to have been entirely comprised of mutual consent and sexual intercourse. Although parental consent is generally preferred it does not seem to be mandatory.¹³ The sex act itself is the basis of the marriage contract and sexual intercourse is enough to create a marriage even under questionable circumstances.

A perfect example of this is the case of Hagar. As a surrogate mother we might think of her as being of a different classification than Sarah. This is not so for even though Hagar is an Egyptian Slave when Sarah wishes to build up her own house vicariously through the slave woman and demands that Abram have sex with her, she immediately gains the full status of Wife. Sarah, being the wife Abraham married out of love ranks higher than Hagar in Abram's heart, but the text of Genesis 16:3 says that Avram was given her La-AShaH (לֵאשָׁחָה) "to/for wife"¹⁴. In light of this we cannot deny Hagar's status as a wife. It is for this reason that HaShem is so angry to find her cast out in the desert with her child. It also explains why Ishmael and Isaac, together, bury Abraham when he dies in Genesis 25:9.

The astute reader will notice Genesis 25:6 "But to the concubine-children who were Abraham's, Abraham gave gifts..."¹⁵ Who were these "concubine-children"? The *Stone Chumash* says that they were the children that he had by Keturah even though she is called ASHaH (אִשָּׁה) "Wife". (Genesis 25:1)

Even the later marriages which appear in the Writings and the Prophets are based on the same formulae. When David finally takes Bathsheba as his wife it is a matter of her consent and the performance of sexual intercourse once she has been released from her previous marriage. Once Uriah has been killed off. 2-Samuel 11:27 tells us that "David sent and took her home to his house, and she became his wife, and bore him a son."¹⁶. Again the act is done in this simple, sexual way.

¹³ Rebekah makes it clear that she will go with Eliezer whether Laban likes it or not.(Genesis 24:58) Hagar was a slave until Abraham took her as a wife. (Genesis 16:3) There is no mention of Sarah's parents at all.

¹⁴ The prefix לְ means "to" or "for".

¹⁵ *Stone Chumash*

¹⁶ *Jewish Publication Society Translation*

There is only one example of a Patriarchal marriage in which there is a celebration and even the possibility of a public ceremony and that is when Jacob is being married to Rachel. The celebration was insisted upon by Laban who, having had seven years of free labour from Jacob in exchange for his daughter, switches Rachel for her older sister Leah and when Jacob awakens the next day he discovers that he has been cheated and is required to work an additional seven years for the woman that he loves. It is therefore traditional in the Jewish tradition for the man to lift the woman's veil BEFORE the wedding and before any drinking in order to make sure that he is marrying the correct woman. This is the only mention of a wedding party in the history of the Patriarchs and it is used as a warning against the evils of others.

Matrimonial Life

Once married the couple share the responsibilities of building and maintaining their household. The building blocks of the marriage are forged in prayer for as the couple worships together they build a spiritual bond which is the foundation upon which all else is built. The couple's connection to G-d and their shared vision and worship of Him are vital to the continuation of the marriage. It is for this reason that Abraham is so insistent that Isaac find a wife who would worship HaShem and forsake all other Gods and so it is the same for Jacob.

There was no way of checking to see if the couple were married or not, unlike today with the registrations and the census. Abraham and Isaac, when travelling abroad, claimed that their wives were their sisters in order to avoid hostile divorce and remarrying procedures.¹⁷

The responsibilities of spouses to one another is to care and look after them, to be supportive to them and to ensure their well being. HaShem's anger at the casting away of Hagar is an excellent indicator. Her status as Wife should have taken precedence over her status as Slave.

Findings

It seems that a marriage in early biblical times is a very simple affair. Once a couple have agreed to marry each other the agreement is consummated by a very enjoyable handshake followed by their identification of each other as a spouse. It is simple, private and by mutual agreement without any interference by spiritual or secular authorities.

Conclusion

¹⁷ In both cases the men are afraid of being killed for their wives. (Genesis 20:2 & 26:7) It would seem that the custom of coveting one's wife involved killing the man off and then taking the wife as your own. Although barbaric one must wonder if some divorces should have been handled that way. See the story of Bathsheba and Uriah for an example.

In the "Old Testament", the portion of the *Bible* which is favoured by Evangelists for its violence and harsh punishments of sin, we are at a loss for any relevant Law concerning same-sex marriage. In fact the only Law concerning sexuality which is even remotely of value to us is the admonition against incest which appears in the Seven Noachide Laws. When we turn to the Patriarchs to teach us about marriage and sexuality by example, they are all heterosexual but the act of marriage is reduced to mutual consent by both parties and sexual intercourse which solidifies the deal. As it is the story of the lineage of the Jewish people heterosexuality was vital to the purpose of the text as opposed to the only partnerships that may or may not have existed at the time.

Marriage in the Early 21st Century

Modern Marriage

In our modern world a marriage is a formalized affair controlled by the Government and with a wide range of consequences on multiple levels. The entire process is very similar to the registration of any proprietorship, business partnership or corporation. It is sanitized, numbered and totally controlled by the Government Ministry in charge. Even a church wedding is subject to approval by the Government and must be ratified by secular forms regardless of the meaning, theology or feelings of the individuals in question.

Control Over Weddings

Interestingly enough Ontario's *Ministry of Consumer and Business Services* is responsible for all partnerships, either personal or business. A couple who wishes to have a secular ceremony can simply go into a Justice of the peace, pay their money, sign the papers and they are done, exactly the same way as a couple would start up a business partnership. But what about those who wish to get married in the church, surely the Government does not have the same controls over matrimonial union.

There you would be wrong. The minister who performs the ceremony and signs the marriage certificate (issued by the Government) is identical, in the eyes of the *MCBS*, to the Justice of the Peace in the first example. So what is the connection between the two and how does it work?

Any organization that wishes to be recognized as a church under the *MCBS* must be a registered non-profit or charitable organization for 25 years and must have the support of its members to reach official status. Once the organization has reached this point, the Ministry approves the Litany of the Church, its constitution and its by-laws etc... Once approved, the person in charge of the organization (whether the CEO or the Bishop) must fill out forms requesting that each individual Minister or Priest in the church be licensed to perform weddings. If the individual is approved they are issued a card and an official number which allows them to sign the marriage certificate as the officiating officer.¹⁸

So even a Christian Marriage with all of the trappings, bells and smells is still reduced to a series of Government forms signed by both partners, two witnesses and a duly licensed Official who is appointed and approved by a recognized Corporation. Unlike our Biblical examples above where the individuals

¹⁸ Interestingly enough I actually had to go through this process with the Universal Life Church who, after ordaining me and issuing me a Doctor of Divinity informed me that they were not registered in Ontario. I filled out all of the paperwork and forms for them and mailed them to their head office in Modesto. So far I have not heard how far they have gone but the process was quite educational. See list of forms and references in the Bibliography under *Ministry of Commercial and Consumer Relations*. Refer to *The Marriage Act*: Section 20

involved were in control of who, what and when, we now require a major amount of licensing and bureaucratic red-tape in order to make a marriage in the modern day. The similarity between the two is almost non-existent.

Celebration

As we have noted earlier, our biblical examples do not show us that a celebration or even a public ceremony was part of their marriage tradition. It is important to note that in our modern society they are so much a part of our tradition that a couple getting married without such trappings is considered to be highly questionable, or at least worthy of notice. Such weddings often draw concern, and derision from family and friends.

This is one more point of separation between the modern and the biblical ideas of marriage. With the secular controls, the celebratory tradition and the expectations of public ritual we have reached a point where it is very difficult to compare modern marriage laws with biblical marriage examples.

Advantages to Marriage

The modern marriage has a variety of secular repercussions including changes in taxation, citizenship, immigration, visitation rights in hospitals and institutions, inheritance ownership and a host of others.

Regardless of sex, any two people living together have the same duties of house and home just as our biblical brethren did. They dedicate themselves to each other's well being, to their health and together they build a home. But marriage offers many advantages to the couple which are not afforded to them otherwise. Examples include a couple who only has a single breadwinner can get a reduction in their taxes as the non-working individual is treated as a dependant, a tax break which is not given to non-married couples. A legal spouse is allowed 24 hour access to an hospitalized spouse where everyone else has from 10am until 8pm. When an unmarried person dies without a Last Will and has no parents, all of their property transfers to the Province. Had they been married all of their property would have been transferred to the spouse.

The Government also sees married couples as having a different status from unmarried couples. Married individuals are placed in a separate category in census and polls as they are considered to reflect the thoughts of the more stable and settled segments of society. They also allow agencies who control credit and insurance to offer different rates to married and unmarried individuals. Marriage can make a vast financial difference in car insurance alone.

Although this is but a short list it should get across the important, advantages to a legal marriage which have nothing to do with sex, colour, creed or ethnicity.

Findings

A modern marriage is basically a legal partnership between two entities which affects their status, finances, citizenship and other rights and privileges in secular society. Although there may be implications within their own church or faith, the actual controls and real advantages come from the Secular Government.

Putting the Pieces Together

Overview

In the question of whether or not same-sex marriages should be allowed legal recognition the opponents refer to biblical texts as an argument against their legal ratification. Although this article has not tackled the question of Homosexual Tolerance we have assumed that all individuals are Children of G-d and as such consider this aspect of the argument to be not only in bad taste, but purely ridiculous. Rather we have examined how the *Bible* might be used to prevent same sex marriages in the context of the modern day. We have looked at the Laws of the *Torah* as well as the current Law of the Land in order to find out what parts of the *Bible* may even be relevant to the argument at hand.

Facts

The facts are clear. The Levitican Law which speaks out against Anal-Sex is in fact moot as the entire Levitican Law cannot apply to the Gentile, nor does it apply to the Modern Christian in any way, shape or form. The Decalogue, which the Christian's claim to be their own code of law, does not mention sexuality or marriage in any way except to prohibit a man from living with a married woman regardless of their status as real commandments. Finally the Noachide Laws, Laws which are not recognized by the Christians, also fails to discuss marriage or sexuality except that it forbids incest.

When examining the Patriarchal examples of marriage we found that each partnership claimed itself and that the two parties, having agreed to wed, have sex to consummate the marriage. This is done without any external officiating individuals.

By examining modern marriage we find that it is little more than a legal partnership between two individuals. This partnership is ratified and controlled by Government appointed officials and has no real religious connection whatsoever. The benefits of marriage are primarily secular and economic and extend to such things as taxation, property and insurance.

Final Conclusion

As the modern marriage is, in essence, a secular partnership with secular benefits and consequences it must, therefore be subject to the secular laws concerning discrimination. Biblical arguments are entirely moot in the face of the modern day as marriage is totally separated from any religious influence in order to ensure religious tolerance and the inclusion of all faiths and creeds or lack thereof. Although certain

churches have it within their own rights to either recognize or ignore such partnerships they have little reason to argue with the secular authorities in the matter. Also, unless they happen to be Orthodox Jews, they have no biblical pillar to stand on and have no real basis for their rejection of such individuals or their legally recognized partnership.

This paper concludes by saying that secular law can and must allow same-sex marriages to be registered as legal partnerships under the Marriage Act regardless of any religious opposition. Each faith may make their own rules concerning this issue for internal use but do not have the right, or the supporting biblical evidence to impose their internal decisions on the outside world. Such are the rights of Conscience and of Free Will, both of which are relevant promises to both Jew and Gentile no matter what part of the *Bible* one may be reading. Rights which are supported by the secular authorities in our democratic country.

Bibliography

Ministry of Consumer and Commercial Relations (Now Ministry of Customer and Business Services)

Application for Registration (Priest) — Form: 11259

Instructions for Registration under Section 20 of the Marriage Act — ref: 11066

Memorandum of Requirements for Registering a New Denomination — ref: 11066

Notice to Clients (UPDATE) — June 15, 2000

The American Standard Bible, 1901

Jewish Publication Society Tanakh. 1917

Scherman, Rabbi Nosson. *The Stone Chumash*. 6th ed. Brooklyn, N.Y.: Mesorah Publications Ltd., 1996

Davis, Avrohom, Nachum Y. Kornfeld and Abraham B. Walzer. *Metsudah Chumash / Rashi*. Hoboken N.J.: Ktav Publishing House, 1993 (Also Accessable at <http://www.mnemotrix.com/texis/vtx/chumash>)

Simon, Ethelyn, Irene Resnikoff, Linda Motzkin, *The First Hebrew Primer*. 3rd ed. Oakland: EKS Publishing Co., 1992.

Oral Traditions handed down to me by Rabbi David Kaplan and Reverend Paul Clark

Morfix Hebrew Dictionary - <http://milon.morfix.co.il/>

Jewish Torah Audio: www.613.org

Kaplan, Rabbi Aryeh *The Living Torah*. Brooklyn N.Y.:

Personal Interviews with Homosexuals and Homosexual Couples

Appendix A

The following is included in order to demonstrate the kind of research work which was necessary for the essay above. Although my knowledge of the Hebrew language is not what I would like it to be exercises such as this are quite valuable both in better understanding the language and in ensuring the accuracy of the argument.

Genesis 16:3

And Sari, Abram's Wife, took Hagar the Egyptian, her Maidservant — after ten years of Abram's dwelling in the land of Canaan — and gave her to Abram, her husband, to him as a wife. (*Stone Chumash*)

Italics are inferred or best guess translations based on available sources

Normal text is directly translated using applicable dictionaries.

וַתִּקַּח	שָׂרִי	אִשְׁתּוֹ	אַבְרָם	אֶת־הַגֵּר	הַמִּצְרַיִת	שִׁפְחָתָהּ
Vatikach	Saray	eshet	Avram	et-Hagar	haMitsrit	shifchatah
and - then	Sarai	wife	Abram	of Hagar	the (land of) Egypt	her maidservant
and then Sari wife of Avram, Hagar of the land of Egypt, her maidservant						
בְּיָמָיו	עֶשֶׂר	שָׁנִים	לְשֵׁבֶת	אַבְרָם	בְּאֶרֶץ	כְּנָעַן
mikets	eser	shanim	leshevet	Avram	be'erets	Kena'an
after	ten	year	and dwelling	Abraham	in land of	Canaan
after ten year and dwelling / dwelled Avram in the land of Canaan						
וַתִּתֵּן	אֹתָהּ	לְאַבְרָם	אִשָּׁה	לֹ	לְאִשָּׁה	
vatiten	otah	le-Avram	I-Ishah	lo	l'ishah	
and she		to/for Avram	woman		to/for wife	
and she to Avram the woman gave to wife (for wife).						