MACHON SIACH at SAR High School מכון שיח

Honoring the memory of Belda K. Lindenbaum z"l

The Use of Metaphor in Discussions of Homosexuality
A Machon Siach Project[1]

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A baseball team has its characteristic structure largely because of its orientation to winning games; it involves developing and sharing one's athletic skills in the way best suited for honorably winning. But such development and sharing are possible and inherently valuable for teammates even when they lose their games. Just so, marriage has its characteristic structure largely because of its orientation to procreation… But such development and sharing, including the bodily union of the generative act, are possible and inherently valuable for spouses even when they do not conceive children.

-Robert George, McCormick Professor of Jurisprudence, Princeton University

While studying *The Great Gatsby* recently, my students asked why Fitzgerald, so evidently critical of the excesses of the 1920s, continued to live his extravagant, alcohol-fueled lifestyle. Immediately I tried to make this question relevant to the students' lives: "Is junior year healthy? Is it good for you?" Of course, the students answered, "No, it's so stressful and difficult!" "So," I asked, "if you were writing a novel about being a junior in high school, would you be able to articulate the problems with the high-pressure, frenetic, potentially unhealthy lifestyle of a junior in high school?" "Yes," they said enthusiastically, in unison. "Okay, then. Given that fact, why don't you just leave this lifestyle? Why not pull yourself out of something that's so problematic? If you can articulate and analyze the problems, why keep yourself here?" "Well…" they began. "We want to go to

[1] I am grateful to the many rabbis, scholars and community members who contributed to my thinking on this issue, who shared source material, and who spent time reading drafts of this essay and commenting upon them. These individuals do not necessarily agree with my assertions, and any errors herein are purely my own. Thank you particularly to Rabbi Tully Harcsztark, Dr. Rivka Schwartz, Dr. Hillel Broder, Rabbi Nati Helfgot, Jennifer Pepper, Shira Schiowitz, Miryam Kabakov, Dr. Moses Pava, Dr. Ari Mermelstein, Dr. Chaviva Levin, Mark Davis, Rabbi Gidon Rothstein, Rabbi Dov Linzer, Dr. Marc Kramer, Rabbi Jeff Fox, and Dr. Theodore Steinberg.

college." "This is what's expected of us." "This is what everyone we know does." "Fine," I posited. "So if you're capable of living within a system and still observing and criticizing it -- and if you can recognize the problems with a system but persist in being part of it -- can you understand how Fitzgerald might have found himself in a similar situation? Can you see why he might live a life that he's also capable of critiquing?" Of course they could.

And thus, as teachers do so frequently, I used an analogy relevant to students' lives and understandings to help them understand something that felt foreign to them, to familiarize the unfamiliar. Analogical argument generally follows this format, as Paul Bartha explains:

1. *"S* is similar to *T* in certain (known) respects.
2. *S* has some further feature *Q*.
3. Therefore, *T* also has the feature *Q*, or some feature *Q** similar to *Q*.

(1) and (2) are premises. (3) is the conclusion of the argument. The argument form is *inductive*; the conclusion is not guaranteed to follow from the premises."[2] In my analogy, Fitzgerald (S) and my students (T) both experience a certain lifestyle that has problematic aspects. My students can envision themselves writing or speaking critically about that lifestyle while also living it (Q). Therefore, Fitzgerald is similarly capable of critically observing his own problematic lifestyle (Q*). In order to explore the students' questions about Fitzgerald's life choices, we could have studied his biography or psychology, examined his other writings or critical scholarship, or studied the complexities of his literary fame and alcoholism. But this shorthand approach gave students a quick and comprehensible insight into his possible motivations by placing them in a recognizable context, a technique teachers often use to create clarity and relevance.

[2] Paul Bartha. "Analogy and Analogical Reasoning." *Stanford Encyclopedia of Philosophy.* June 25, 2013. https://plato.stanford.edu/entries/reasoning-analogy/

While this analogy was effective for my teaching, it was also deeply flawed. Our students' pressured lives, while problematic in certain ways, will ideally lead to their future success, unlike Fitzgerald's hedonism, which led to his untimely death. Our students, because they are minors, cannot make their own choices and therefore, unlike Fitzgerald, are not positioned to determine the course of their own lives. Fitzgerald's "choices" involved a physical addiction, quite different from our students' efforts to attend a top college or earn high grades. In other words, an analogy that created the desired effect in my classroom -- particularly as it came from me, the judge of their logic and the empowered explicator of texts -- was also unsound in ways that I did not articulate for my students. These flaws highlight another rationale for analogical reasoning: justification of arguments. The justificatory purpose allows for a logic that, on its surface, feels relevant and helpful but that also allows the person making the analogy to put forward an argument that contains implicit bias. My bias prompted students to understand and accept Fitzgerald's motivations rather than criticize him for hypocrisy. A different analogy, though – to civil disobedience or addiction recovery or abandoning a cult -- might have prompted an entirely different response and highlighted the dangers of Fitzgerald's choices rather than their comprehensibility. Each analogy has accurate aspects, but recognizing the inaccuracies is vitally important as well.

The effort to find a proper analogy for a difficult or complex topic can lead to significant illogic, particularly as people highlight one similarity without recognizing the various other ways in which the compared ideas do not overlap. Unintentionally presenting ideas that are similar in *one* way as being similar in *all* ways leads to a proliferation of false parallels. In the Orthodox Jewish day school setting, an area in which this usage has been especially problematic is in discussions of homosexuality. Because Jews are familiar with the concept of religious prohibition, they can choose any number of everyday prohibitions in Judaism and use them as analogies for

homosexuality without fully considering their myriad implications, a technique frequently employed in the community. This paper focuses on a range of analogical statements that can be and have been used to advance arguments about homosexuality – both to encourage and to discourage its acceptance -- in *halakhah*.

By examining some of these analogies and considering their strengths and shortcomings, I aim to draw attention to the use of analogical language in discussing homosexuality within the Orthodox Jewish community. Such a study may allow for more nuanced public conversations, particularly in the classroom where students are shaped so profoundly by a power dynamic that privileges their teachers' presentation of issues. As teachers, we want to demonstrate to our students the kind of detailed thought that should go into any discussion of *halakhah*, particularly one that so profoundly affects the lives of so many people. Becoming more attuned to the assumptions that underlie our frequent use of analogy can help us more clearly articulate our foundational biases, assumptions, and, at the broadest level, our visions for Orthodoxy in the 21st century.

The questions raised in this essay ask how we should help our students, and ourselves, to think more profoundly about the social and religious aspects of Jewish life and ritual inclusion in a synagogue or school community: who is welcome to participate in various religious rituals, and in what ways? How are non-traditional relationships acknowledged by the institution? In what ways is maintaining separation vital to the continuity of Jewry, and in what ways does such separation violate our ethical sensibility? While high school students are not yet in formalized relationships and do not generally make religious ritual decisions, students who see themselves on the precipice of adulthood rightly envision their adult lives in Judaism, whether they identify as homosexual or simply know others who do. In a high school setting, we can ignore these larger issues to a certain extent because they are in students' futures rather than their presents, but everyone deserves to

be equipped with the logical tools that will prepare them to face the questions that will, or have already begun to, surface in their journeys to adulthood.

Analogy can serve as a powerful tool to help us shape and comprehend the world. As educators, we can employ this tool to offer students insight into how we think about categories and ideas that may exist beyond our, or their, own experience. But the analogy's power to persuade requires special care, a forethought and logic that precludes careless tricks of language. I hope that this study begins a conversation that will be expanded and continued by everyone who is committed to open and honest discussion concerning an issue of great significance to all of us in Modern Orthodox education today.

I. Analogies to Homosexuality as a Sexual Act

Analogies for homosexuality can be split along one clear line: should homosexuality be regarded as a sexual act or as aspect of one's physical and psychological being? I begin by exploring analogies that take the former view, even if they do so unintentionally, because they are more common in Jewish literature on the subject and tend to be the analogies to which we first turn when trying to create parameters for our understanding of homosexuality in *halakhah.* As day school teachers, we may choose these analogies -- even as we recognize their flaws -- because they are straightforward and easy to explain. Since building bridges between the familiar and the foreign is a primary motivation of analogical reasoning, choosing *halakhic* issues that generally feel relevant to our students' lives allows us to draw direct connections between what our students already know and what feels distant from their worldviews. In these analogies particularly – but in all analogies to some degree – we face the difficulty that "homosexuality" has a range of meanings, from a homosexual "identity" to male homosexual intercourse to female homosexual intercourse. Each of these has vastly different *halakhic* implications and should not, rightly, be lumped into a single category. At the same time, the study of analogy is my purpose here, and so, even as I note

that each of these subcategories deserves its own attention, I focus here primarily on male homosexual sex and identity because it faces the most overt *halakhic* obstacles and serves as the foundation of most *halakhic* discussions.

A. *Kashrut*

Kashrut is one of the most frequently employed analogies for homosexuality found in both casual conversation and in Jewish writings about homosexuality. Using the logical paradigm above, in this case keeping kosher would be S, homosexuality would be T, and the quality they share, Q, is their centrality to *halakhah*. Recently, for instance, regarding a student who publicly identified as homosexual, the principal of Valley Torah High School in California, Rabbi Avrohom Stulberger, stated, "For a kid to say, 'I'm gay, I'm acting out on it and I want to be a member of Valley Torah in good standing,' it's inconsistent from a *halachic* viewpoint… Honestly, let's just sort of change the question. I'd have the same dilemma if a kid came to me and said, 'Rabbi, I love Valley Torah but I'm just eating at McDonald's every night. That's who I am.'"[3] Indeed, Rabbi Stulberger "changes the question" in order to draw an analogical parallel between two *halakhic* issues -- homosexuality and *kashrut* -- but what are the implications of changing the question in this way? In other words, the missing piece of the analogy, the Q*, is presented by Rabbi Stulberger as identical to Q itself. But what lies behind that all-important asterisk?

Keeping kosher, while obviously central to Jewish life, is not regarded by any serious natural or social scientist or by theologians as an aspect of one's biology; people may feel very strongly about their *kashrut* observance or lack thereof, but no one claims that eating *treyf* is part of their very nature as a human being. As Rabbi Steven Greenberg puts it, "Nobody jumps off a bridge because he or she is deprived of cheeseburgers. No one sinks into clinical depression or

[3] Eitan Arom. "Can Gay and Lesbian Teens Find a Home in Orthodoxy?" May 17, 2017. http://jewishjournal.com/cover_story/219179/can-gay-lesbian-teens-find-home-Orthodoxy/

submits to electroshock therapy for the sake of a ham sandwich."[4] Rabbi Greenberg's point here is that *kashrut* is an unfair and even a cruel analogy because it reframes what many see as an innate quality -- an orientation -- as a straightforward desire and then parallels this quality with a relative triviality like food preference. Rabbi Stulberger's analogy suggests, first, that neither of these is an orientation but both are desires and, second, that one can as easily combat a sexual desire as a culinary one; furthermore, the analogy subtly posits that culinary desires have the same pull on a person's psyche and sense of self as sexual desires. Although homosexual sex and eating *treyf* may be seen as similarly transgressive, comparing them erases the distinction between an identity and an action while also lessening the significance of homosexual desire (or, perhaps, identity) by suggesting that it is a familiar experience even for heterosexuals, who can say, "Oh, I've felt desire before too; sometimes I feel like eating lobster, but I overcome my desire, so you can too." That logic works only if the desires are parallel in their nature – if both are merely urges and not identities -- and strength.

Even if one sees sexual "identity" as simply a sociological phenomenon and not part of one's biological reality, sexual desire has had far more profound practical implications than has culinary desire, a point Rabbi Greenberg emphasizes when he references the potentially life-threatening consequences of homosexuality, which include a massively increased rate of physical harm and suicide. According to some sources, homosexual-identifying youth are four times more likely to attempt suicide than heterosexual-identifying youth. For those whose families are hostile to their sexual identities, that rate jumps to over eight times higher than heterosexual-identifying youth.[5] In addition, a significant number of hate crimes are committed

[4] Rabbi Greenberg was responding to a Yeshiva University rabbi (and physician) who stated that "a gay Orthodox Rabbi is an absurdity as inconceivable as an Orthodox Rabbi who eats cheeseburgers on Yom Kippur."

[5] These numbers have been comprehensively documented by the CDC (https://www.cdc.gov/lgbthealth/youth.htm). These numbers do not include transgender youth; their inclusion increases the suicide statistics exponentially, as can be seen in the Williams' Institute of UCLA study and others (https://williamsinstitute.law.ucla.edu/wp-content/uploads/AFSP-Williams-Suicide-Report-Final.pdf).

against homosexuals: there were 1,267 such crimes in 2007, according to the Human Rights Campaign's 2009 report,[6] a number that has only increased since that time. LGBT people are now the most likely group to be the target of hate crimes, more than either African-Americans or Jews.[7]

Clearly, in terms of persecution and self-harm, *kashrut* is not an apt analogy. We have no indication that any person has ever committed suicide or, at least in the contemporary West, been physically harmed because of his strong desire to, or unwillingness to, eat *treyf*. Therefore, the *kashrut* analogy lessens the significance of homosexual desire by discounting the potential harm -- from self or others -- that correlates with homosexuality but not with even the most fervent desire to violate the laws of *kashrut*. For teachers offhandedly to suggest that *kashrut* observance perfectly parallels *halakhot* related to sexuality is to overlook these significant differences.

However, there are also ways in which the *kashrut* analogy is relevant. On the most basic level, some laws of *kashrut* and the law prohibiting homosexual sex are both *deorayta* (Torah) prohibitions. And although there may be ways to interpret each, including significant Rabbinic discussion about the precise meanings of each proscription, the surface meanings of the relevant *p'sukim* seem straightforward and unambiguous. In addition, both *kashrut* and heterosexual marriage are longstanding, traditional Jewish values. For many people today, both *kashrut* and heterosexuality feel similarly central to the lived Jewish experience, and it is as difficult for some people to imagine an observant Jew eschewing one as the other. People who use this analogy, therefore, may be articulating an observation about their sense of what a contemporary Jewish life looks like to them rather than about the precise nature of the desire for forbidden foods or the desire for a homosexual partner.

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[6] Human Rights Campaign. "Hate Crimes and Violence Against Gay, Lesbian, Bisexual and Transgender People." http://www.hrc.org/resources/hate-crimes-and-violence-against-lgbt-people

[7] L.G.B.T. People are More Likely to be Targets of Hate Crimes Than Any Other Minority Group." *The New York Times*, June 16, 2016. https://www.nytimes.com/interactive/2016/06/16/us/hate-crimes-against-lgbt.html?_r=0

Nonetheless, to "change the question" from sexuality to *kashrut* in the school setting, as Rabbi Stulberger does, is to do a disservice to students' understandings of both *kashrut* and sexuality, at the very least because it reduces this particular student's sexuality to a less fraught sort of choice. Rabbi Stulberger prefaces his statement about McDonalds with an acknowledgement that homosexuality is "not a choice that people make," but his analogy suggests that he believes otherwise. If teachers aim to use the *kashrut* analogy to explain to students that everyone experiences some desire that lies outside the bounds of *halakhah*, we suggest to heterosexual students that their desires for *treyf* are parallel to sexual desires; we also deny that sexuality lies beyond a limited desire for a particular act and represents a larger placement of self in the world, no parallel for which exists in any "*treyf*-eating identity." Because the question of immutable identity has no place in a discussion of *kashrut*, this analogy allows students to ignore the nature of homosexuality beyond individual act-based choices, a linguistic turn that, intentionally or not, minimizes the lived experience of homosexual Jews.

B. Shabbat Observance

Shabbat analogies to homosexuality are similar to *kashrut* analogies in that both presume that homosexual desires, like Shabbat observance and *kashrut*, are pure choices rather than innate identities that cannot be overridden by mere willpower. They both also adopt the position that Jewish life necessarily includes certain elements, and Shabbat observance, like *kashrut* and heterosexuality, is among them. While Shabbat-observance analogies intend to emphasize the similar prohibitions against each act, they also suggest that the "desire" to violate the Sabbath is as powerfully pressing as the "desire" to engage in a homosexual relationship.

The same critiques of *kashrut* analogies can therefore be applied to Shabbat analogies: they do not take into account the difference between types of desire, nor do they acknowledge that sexuality may be an all-encompassing aspect of a person's selfhood, different from ritual

practices, even very difficult or worldview-shaping ones. While one may identify as a "*shomer Shabbos* Jew" in a way that feels profoundly connected to one's identity, such a categorization is still seen, broadly, as a choice one makes rather than a genetic or inborn drive.

Shabbat observance is even a less apt analogy for homosexuality than *kashrut* in one significant regard: Shabbat observance occurs on a limited time frame. That is, the rules one might be tempted to break -- checking one's phone, playing an instrument, driving a car, going for a run -- need only be refrained from for a limited period. Even if one's sense of self is tied up deeply in, say, listening to music, Shabbat observance only requires one to refrain from that behavior for 25 hours per week, and the rest of the week can be spent listening to music or engaging in other Shabbat-prohibited behaviors. The desire, therefore, need not be permanently quashed but only postponed, unlike homosexuality.

A violation of *kashrut* is therefore -- of the two options -- a more apt analogy than Shabbat, setting aside for a moment the strength and nature of the desire, because *kashrut*, like prohibitions against homosexuality, must be adhered to at all times. One who identifies as homosexual is asked to act against his inclinations always and forever. Similarly, a person who deeply desires shrimp or pork must resign himself to a lifetime of avoiding those foods. A person who wishes to violate Shabbat, though, must only restrain him or herself for a matter of hours before he can indulge his desires. Suggesting that refraining from spending money or driving on Shabbat perfectly parallels refraining from homosexual relationships -- has an identical Q, with no asterisk – can feel like a trivialization of the permanence of sexual prohibitions.

As teachers, recognizing the ways in which these analogies are apt and the ways in which they fall short can help us to have more meaningful, and more honest, conversations with our students. In this case, students may rightly sense the centrality of Shabbat observance to the lived experience of Orthodox Judaism, but they may also sense some insufficiency in this analogy even

if they cannot fully articulate it. Our educational imperative compels us to highlight not only the ways in which this analogy works but also the ways in which it falls short and insufficiently describes the experience of the homosexual Jew.

Hypocrisy Arguments: Shabbat Observance and Ethical Business Practices

Interestingly, the Shabbat analogy is used in a second, quite different way as well. The previous explanation appeals to those who disapprove of homosexuality, but those who support greater inclusion of homosexual Jews in ritual or school life also often draw on this analogy for the opposite purpose. This argument identifies hypocrisy in school or shul policy, noting that many communities will allow someone who violates Shabbat -- also a *deorayta* prohibition with a biblical punishment of death -- to be included in the community and to engage in ritual practices. Based on that fact, proponents of greater inclusion for homosexuals use Shabbat-observance analogies to argue that these sins resemble one another in biblical terms but are hypocritically treated differently in the community. Those who use the Shabbat observance analogy in this way might suggest that a practicing homosexual should be subject to identical restrictions as one who violates Shabbat, perhaps still being given an *aliyah* but not leading *davening* from the *amud*. This hypocrisy argument, while used for an entirely different purpose from the previous use of the Shabbat analogy, similarly flattens the distinction between different kinds of *halakhic* violations, unintentionally and insensitively reinforcing the notion that being *mechalel Shabbat* and engaging in homosexual behavior are parallel while instead meaning to increase sensitivity to the plight of homosexuals.

A common argument about ethical business practices falls into the same logical trap. Rabbi Aharon Soloveitchik highlighted this point in this well-known, but possibly apocryphal, comment: when asked about homosexuality, he is said to have responded, "It is terrible. It is almost as great a

sin as cheating in business."[8] Because avoiding certain unethical business practices is also a *deorayta* prohibition and, beyond that, specifically labelled a *to'evah* (traditionally translated as "abomination"), and because communities may turn a blind eye to such practices, people who support the ritual inclusion of homosexuals sometimes ask whether someone who, for instance, has committed tax fraud would be given an *aliyah* or allowed to *leyn* on Yom Kippur or otherwise participate publicly. The answer is often yes, and many communities offer excuses for why people who engage in unethical business practices are still permitted to participate in ritual life, such as that the individual is a *tzaddik* in other ways or gives generously to the *shul* or that tax fraud is complicated and poorly understood.

This analogy is put forward, again, to demonstrate the hypocrisy of a given community and to support greater inclusion of homosexuals in ritual practice, but it also unintentionally implies that homosexuality is a choice, and an unethical choice at that. This analogy thus inadvertently undermines other arguments in favor of homosexuals' ritual inclusion by suggesting that the unethical businessman and the homosexual each consciously choose to violate one Torah prohibition, each of which should similarly be overlooked.

For teenagers who relish the opportunity to identify their schools' or communities' hypocrisies, this analogy may feel especially satisfying. However, its outcome is far from the one its defenders generally intend. For example, in a blog post by a Yeshivah of Flatbush graduate, critical of the school's decision not to allow a homosexual couple to register for a ten-year reunion as a couple, the author invoked a hypocrisy argument: "The standards of *halakhah* that guide the Orthodox community surely exist — but they cover a lot more than the gender of who you date and marry. Modesty rules. Ethical business rules. Rules for sabbath observance. Sexual practices of heterosexual couples. The Flatbush administration has no answer for what makes

[8] Qtd in Broyde and Brody. "Homosexuality and Halakha: In Tradition and Beyond." *Text and Texture*. August 1, 2010. http://text.rcaRabbis.org/homosexuality-and-halakha-in-tradition-and-beyond/

homosexuality ***so different*** from other violations of Orthodox norms..."[9] This writer clearly does not mean to argue that unethical business practices or modesty rules are identical to homosexuality, and identifying hypocritical practices may be a valuable goal, but his stated intention in this piece is to have his school alter its practice and allow homosexual couples to register for the reunion. Instead, he implies that additional individuals should be excluded. Doing so may be a valid *halakhic* effort, but, logically, pointing out faulty inclusion in one area does not justify faulty inclusion in another.

Such identification can highlight the ways in which homophobia may operate within a particular institution, as one violation is overlooked and another attended to, and it is worth identifying areas in which natural human discomfort with questions regarding sexuality may result in inconsistency, but the end goal of this analogy would logically be the exclusion of both groups, not greater ritual inclusion for either. For those teachers or students sympathetic to the plight of homosexual Jews, pointing out inconsistencies may feel like a logical way to right a perceived wrong, but the hypocrisy-centered analogies, like all others, must be more deeply explored in order to determine their applicability and their significant shortcomings.

D. Taharat HaMishpachah

In Jewish schools, where the primary discussions of sexuality in a Jewish context may relate to text studies of *niddah* and ritual purity, analogies to *taharat hamishpachah* feel logical to students and teachers, perhaps as a comfortable space where Judaism and sexuality overlap and can be articulated. These analogies tend to suggest that "don't ask, don't tell" is a legitimate *halakhic* policy and identify communal silence on questions of heterosexuals' adherence to laws regulating sexual practice as evidence that homosexuals' adherence should be similarly

[9] "Homophobia and Hypocrisy: Yeshivah High School Reunion Policies." https://jewschool.com/2008/01/13045/homophobia-and-hypocrisy-yeshivah-high-school-reunion-politics-guest-post/

unquestioned. For instance, Elana Altzman, in an article defending her son's homosexuality, argues that "Violating laws of niddah, family purity, which surround a woman's menstrual cycle, have roughly the same weight as the prohibition against homosexual intercourse in the Torah. Would [someone] suggest that Rabbis question every straight couple whether they keep those laws?" Her argument relies on privacy, not on the aptness of the comparison beyond privacy.

Jay Michaelson, in *The Religious Case for Equality*, articulates a similar argument: "For example, according to Jewish law, men and women may not have sex during the woman's menstrual period. But do Rabbis go around inspecting the private lives of married couples, asking when women are menstruating? Of course not -- that would be offensive. So, this opinion holds, just as we don't intrude on the private lives of straight people, so we don't intrude on the private lives of gay people. We assume that married gay couples are observing the law -- i.e., not having anal sex -- and we don't inquire any further."[10] These analogies suggest a parallelism between heterosexual and homosexual experiences, particularly because they focus on the acceptability of sexual acts. In this argument, S and T represent heterosexual and homosexual acts; Q is the privacy afforded to heterosexual couples, and Q* is presented as, ideally, identical: no asterisk need exist, according to this view, because everyone's sex acts are equally private.[11]

[10] 61.

[11] HaRav Medan suggests a vaguely similar argument in his paper "One Should Not be Stringent with One who Does Not Have a Kosher Release for his Sexual Desires" (*Makor Rishon*, September 9, 2009). He says that those with homosexual desire who have "life partners" (*haver lehayyim*) should be assumed to follow the law and should therefore not be prevented from participating in any *devar shebekiddusha* (holy thing). The Rabbi argues that, "The Torah explicitly prohibits, with a most serious prohibition, the sexual contact. Lesser contact than this, from the concept of preventing the act itself, is little discussed by the Sages and Jewish law, and there is not enough to fill a code of law. In my opinion, it is possible to draw the boundaries of the prohibition to the limits that are most stringent, however, similarly one should not be stringent with one who does not have a kosher release for his sexual desires, for any stringency can create a leniency for the one who despairs from the ability of Halakha to meet their basic needs." In other words, one who has taken a same-sex life partner and otherwise follows *halakhah* should be assumed to be following *halakhah* in his sexual practices as well and one need not wonder about his observance: the respect for sexual privacy in the heterosexual person's life should extend to the homosexual's life.

Both Altzman and Michaelson posit that, just as heterosexual couples can be assumed to follow family purity rules without explicit evidence of such observance, so too should homosexual couples be left to their privacy with the assumption that they are following the rules as outlined in Torah. The *taharat hamishpachah* analogy is certainly sympathetic to homosexuals, suggesting that people's homosexual identity is as natural as others' heterosexual identity. Taken as analogous, homosexuality and *taharat hamishpachah* present a view of the *halakhah* as restricting physical desires for all individuals but not curtailing them entirely.

However, this argument also has significant flaws. First, like the hypocrisy arguments, it may unintentionally undermine its arguers' beliefs about the nature of homosexuality: since observing *taharat hamishpachah* is clearly a choice, using this analogy implies that homosexual behavior is a choice rather than an immutable trait. Creating that parallel is almost never the intention of this analogy, but noting the similarities between these practices without acknowledging their differences implies connections between them that are not intended. This analogy also assumes that the sole concern with homosexual relationships in Judaism is male intercourse. While that may be the most difficult consideration, given its explicit articulation in Torah, concerns with homosexuality exist in other Jewish significant ways as well. As Rabbi Chaim Rappaport explains in detail, *Tosafot*, *Rosh*, Nachmanides, the Ralbag, Rabbi Baruch Ha-Levi Epstein, Rabbi Moshe Feinstein, and many others articulate text-based rationales for their understanding of the prohibitions against homosexuality that extend beyond certain acts and to larger issues of family structure, procreation, and the nature of *halakhah* as not always based in explicable reasoning.[12]

In other words, this analogy focuses very pointedly on the sexual aspects of relationships without considering issues of *halakhic* marriage and Rabbinic statements about homosexuality

[12] The first chapter of Rappaport's *Judaism and Homosexuality* details these arguments individually.

separate from those specifically about intercourse. It asks that all of the social and cultural norms surrounding sexuality in Judaism be replaced by a limited view of prohibition. Those who employ this analogy tend to downplay longstanding aspects of heteronormativity aside from intercourse that are deeply engrained and have, at the very least, *halakhic* implications. This analogy asks that homosexual relationships be equally acknowledged in Jewish contexts because they are implied to be identical, *halakhically*, to heterosexual relationships, a parallel that seems naive in its oversimplification of the communal elements of marriage that exist in *halakhah* and Jewish culture beyond proscribed sexual acts. Interestingly, this argument is generally used by people who see homosexuality as an inherent identity, and yet they employ this analogy to assert that any sexual behavior, whether inherent or chosen, should be treated as private *choice*, not a biologically-driven imperative.

II. Analogies to Homosexuality as an Innate Quality

In today's secular world, many people -- and especially people of the younger generation -- consider homosexuality not "merely" a behavior but an aspect of biology, likely even a genetically determined one.[13] *The Onion* satirically articulates this point in its article, "After Careful Deliberation, Baby Goes with Homosexuality:" "The 16-week-old infant, who admitted that he was fully aware of the negative consequences associated with choosing to be attracted to members of the same sex, claimed that he was now prepared to go through life struggling with rejection, intolerance, and unprovoked hostility." The baby, according to the tongue-in-cheek piece, "confirmed that he opted for homosexuality despite very serious concerns about sustaining

[13] There are many, many scholarly sources supporting this view, including Simon LeVay and Dean Hamer's "Evidence for a Biological Influence in Male Homosexuality" (*Scientific American*, May 1994) and William Rice, Urban Friberg, and Sergey Gavrilets' "Homosexuality as a Consequence of Epigenetically Canalized Sexual Development"(*Quarterly Review of Biology*, Dec. 2012). Genetic studies have also been detailed in *The Guardian* ("US Researchers Find Evidence that Homosexuality Linked to Genetics," Dec. 1, 2008) and in *Science* ("Homosexuality May be Caused by Chemical Modifications to DNA," Oct. 8, 2015).

permanent psychological damage from a lack of acceptance from family members and fearing the stigma of publicly displaying affection for another man."[14]

Clearly, according to this article, no one would purposely choose to be stigmatized, ostracized, and persecuted unless he felt profoundly compelled to do so. The negative repercussions of homosexuality, the article implies, are so profound that most people identifying as homosexual must be doing so out of necessity rather than choice. While sexual identity may generally lead to certain sexual behaviors, homosexuality is often -- and relatively newly -- seen in the Western world as a consequence of an immutable biological fact. As teachers, we can recognize our students' familiarity with this mode of thinking and consider discussing analogies from within Judaism that speak to this contemporary understanding of homosexuality as innate rather than chosen. Doing so requires facing a different set of potential pitfalls but also provides a useful framework that moves beyond the more common analogies discussed above.

Deafness[15]

The *cheresh* in Judaism is historically defined as one who can neither hear nor speak (although, confusingly, "*cheresh*" is also used to describe people who cannot hear but *can* speak). Many commentators have explored the nature of deafness (or deaf-muteness) in *halakhic* matters and, particularly relevant for our purposes here, the ways in which these determinations have been moderated over time as new information has become available. In brief, the *gemara*

[14] *The Onion*. May 30, 2013. http://www.theonion.com/article/after-careful-deliberation-baby-goes-with-homosexu-32627

[15] This analogy has been explored at some length by a number of Conservative and Reform Rabbis and commentators, including Rabbi Robert Kirschner, Rabbi Bernard Raskas, Rabbi Fred Reiner, and especially Rabbi Harold Schulweis, and by non-Jewish commentators including David L. Balch in his *Homosexuality, Science, and the Plain Sense of Scripture* (Eerdmans Publishing Co, 2000). In Orthodox writings, it has been only very briefly mentioned -- one or two sentences in much larger pieces about homosexuality -- by Lisa Liel on a *Times of Israel* blog post (Jan. 11, 2017), The Committee for the Declaration on the Torah Approach to Homosexuality's "Open Letter" (http://www.torahdec.org/open-letter-to-gay-activists.html), Barry Freundel's "Homosexuality and Judaism" in *The Journal of Halakhah and Contemporary Society* (Volume XI, 1986), and Dr. Noam Stadlan's comments to Rabbi Mayer Twersky's article about women wearing tefillin (https://cross-currents.com/2014/04/02/women-and-tefillin-r-twerskys-magisterial-approach/).

articulates that people who are deaf and mute are not obligated in *mitzvot*, cannot serve as witnesses, cannot be *halakhic*ally married, and so on. These individuals are generally categorized alongside minors (the *katan*) and the mentally disabled or psychotic (the *shoteh*).

Although the *gemara* merely lists the *cheresh* as unable to participate in ritual life, rabbis have since attempted to delineate the reasons for the *cheresh*'s exclusion. The Bavli (in Chagiga 2a, 2b) calls into question the *cheresh*'s intellect, but the category of intellect is further distinguished in Yevamot 112.b, 113.a, in a discussion which questions whether a particular *cheresh* is "weak of mind" or "cloudy of reasoning," proffering two possible reasons for the exclusion of *chershim*. The Talmud offers a statement of prohibition based on a categorization without reason, and the rabbis work assiduously to determine its rationale, ultimately using that reasoning to shape current *halakhic* practice.

With the advent of schools for the deaf, traditional *halakhic* understanding was confronted with new realities about the deaf -- that they are capable of reasoning -- that upended earlier beliefs. In *Minchat Shlomo*, Rabbbi Shlomo Zalman Auerbach argues that that "we can see with our own eyes" that the deaf do not lack intellect, but he avoids undermining *chazal* by saying that this fact about the *cheresh* is simply different "in our days."[16] Rabbi Auerbach thus reasons that social developments -- in this case, deaf education that is not uniquely Jewish -- has altered the *halakhic* status of the people in question.[17] While he does somewhat moderate this opinion at the end of the *teshuva*, saying that it is extremely difficult to make a determination because *chazal*

[16] Prior to Rabbi Auerbach's teshuva, we see others beginning to move in this direction in response to societal changes, including Rabbi Jacob Hagiz, who argues that the *cheresh* should be seen more as a blind person than a *shoteh* (Responsa Hilkhot Ketanot, 2:38); Rabbi Chaim Halberstam, who observes that, through education, even one who can barely speak may possess intelligence; Rabbi Azriel Hildesheimer, who argues that the *cheresh* is "inherently normal but like a hidden treasure" (2:58); and Rabbi Yitzhak Halevi Herzog, who questions the Rambam's position and states that "the education we have now was not known in the time of *chazal*," suggesting that new knowledge can alter contemporary *halakhic* understanding.

[17] He further reiterates this point, in case it wasn't sufficiently clear: "It would seem in my humble opinion, that it is possible that before they knew how to teach them and to develop their intellect, as we now know, they were indeed considered to be as imbeciles. But that is not the case nowadays."

have already analyzed this issue at great length, he also states that "it is also extremely difficult to push them [*chershim*] away, God forbid, [from] fulfilling mitzvoth." The struggle he faces feels quite parallel to today's efforts to reconcile "what we see with our own eyes" and a traditional understanding of homosexuality in *halakhah*.

In *Responsa Yechave Daat*, 2:6, Rabbi Ovadia Yosef says that the *cheresh* who demonstrates intelligence should count towards a *minyan* and be obligated in *mitzvot*, again in contradiction to the *gemara* and tradition. Interestingly, he too cites elements from modernity to demonstrate this shifting position, telling the story of a school for the deaf in Vienna whose students demonstrated clear understanding and intellect. His support for this changing stance grows from his and others' experiences in the world, witnessing a human phenomenon not accounted for in the *halakhah*. Both Rabbi Auerbach and Rabbi Ovadia Yosef address a point often raised by contemporary commentators and stated succinctly by Rabbi Avrohom Gordimer in reference to leniencies towards homosexuality in *halakhah*: "Torah values must be derived from the Torah and not from secular society."[18] However, the attitude toward the *cheresh* suggests that, at the very least, the interplay between Torah and secular society is more complex than many might like to believe, which can serve as a useful starting point for conversations with students about the interplay between the contemporary world and *halakhah*. A firm boundary certainly exists, but it may have somewhat permeable places, as can be seen from the changing attitude towards the *cheresh* in *halakhah*.

The ritual inclusion of the *cheresh* was not a sudden overturning of previous practices but a recognition that previous *halakhot* had been based on an understanding that is no longer held.

[18] Rabbi Avrohom Gordimer, "Sorry, Rabbi Riskin and Rabbi Greenberg -- Homosexual Relations are Not Permitted by the Torah." *Times of Israel*. August 10, 2017. http://blogs.timesofisrael.com/sorry-rabbi-riskin-and-rabbi-greenberg-homosexual-relations-are-not-permitted-by-the-torah/

Today, there are indeed Orthodox deaf rabbis.[19] At one point in Judaism's not-too-distant history, a deaf Orthodox Rabbi would have seemed impossible, but an Orthodox school for the deaf today, run by deaf rabbis and community leaders, strikes many observant Jews as a reason to celebrate Judaism's profound ethical sensibilities. Similarly, an assertion that a deaf woman has a blemish and can be divorced without a marriage settlement and that "even if she is only hard of hearing, it is considered a blemish," feels quite wrong to modern sensibilities and would likely not be taken seriously in a Modern Orthodox context.[20]

In this case, S is deaf Jews and T is homosexual Jews. Q is a former exclusion that has changed over time, and this analogy suggests that Q* should enable the same evolution. By sharing this analogy with students, teachers acknowledge homosexuality as a physical characteristic and homosexual Jews as a painfully marginalized group who are not making a choice about their sexuality. Students today recognize that many human differences have physical manifestations, such as limb differences, chromosomal disorders, deafness, blindness, and so on. In some of these cases, medical interventions may help individuals to overcome their differences, but contemporary society also recognizes a need to adapt to others' immutable needs: dyslexic students may be offered extra time on exams rather than expelled or castigated for their reading difficulties. Similarly, students' changing attitudes towards homosexuality are reflected in their common dismissal of the belief in homosexuality as a mental illness to be treated. Today's students know not to tell people with depression to just "get up out of bed and enjoy life!" or to exhort people with anorexia to simply "eat more," and no one would suggest that a deaf person should just "try harder" to hear or should visit a psychologist to work on his aversion to hearing. As modern society begins to move towards greater sensitivity to such differences, students may see

[19] These include Rabbi Yehoshua Soudakoff, who attended and received *s'micha* from Lubavitch schools; Rabbi David Rabinowitz of Detroit; and his grandson, Rabbi Chaim Tzvi Kakon, founder of Yeshiva Nefesh Dovid in Toronto, an Orthodox yeshiva for boys with hearing loss and deafness.

[20] Avraham Steinberg. *Encyclopedia of Jewish Medical Ethics*. Feldheim Publishers, 2003. pg. 290.

homosexuality as a physical characteristic to which society, rather than the individual, should adapt. In this way, the *cheresh* may serve as a valuable analogy, removing the issue of individual choice from the discussion.

Despite the compelling parallels between the two groups, however, there is a relatively complex logical and philosophical asterisk that complicates the *cheresh* analogy. In *halakhah*, a clear category of "*ben da'at*" (a person of sound mind) exists, and the efforts to change the *halakhot* surrounding the *cheresh* have maintained that category while simply moving most *chershim* into it rather than regarding them as outside of it. Doing so requires a rethinking of the nature of the *cheresh* and whether he should indeed be categorized with the *katan* and the *shoteh*, given the Rabbinic statements concerning the rationale for one to be excluded from the category (lacking clear intellect). One might argue that a similar pattern could emerge from discussions of the history of homosexuality: a category of forbidden sexual practices exists, but the homosexual's actions, as understood today, simply do not fit into that category. However, such parallel structure requires some manipulation, particularly because there is no category of "the homosexual" in *halakhah* as there is a clear category of "the *cheresh*." Such a concept seems not to exist in Torah literature and is, instead, a modern construct. So in this case, we are not simply taking a category and a type of person and disentangling them; separating the homosexual, in the modern sense of the identity term, from the category of other sexual sins would first require creating a *halakhic* category of "the homosexual," which could presumably leave in place the prohibition against homosexual sex for someone who does not identify as a homosexual, as Rabbi Riskin states in his online comments in response to his statements about *annus rachmana patrei* (that one who is compelled is not held responsible)[21]. The straightforward notion of a category (*ben da'at*) and a

[21] "And since I subscribe to the scientific opinion that there are two types of homosexuals – those who are incapable of an intimate relationship with a woman and have no sexual option other than with a male or celibacy, and those who voluntarily choose homosexuality – perhaps it is only the latter type of homosexual whom the Torah is

type of person (*cheresh)* cannot be so simply enacted when the social knowledge gained in modernity is that a whole category **exists** that was not included in the *halakhic* literature.

In addition, the *cheresh* analogy is not parallel because the prohibitions against the *cheresh* are *d'rabbanan* (rabbinic) prohibitions rather than *deorayta* (Torah) ones. Perhaps surprisingly, though, a number of the most vocal critics of the inclusion of homosexuals in ritual and communal settings focus on the *d'rabbanan* prohibitions rather than the more limited *deorayta* prohibitions; as we see from the *cheresh* example, *d'rabbanan* prohibitions are more easily altered with new knowledge. So when Rabbi Gordimer, for instance, strongly argues that a potential leniency, such as the *annus rachmana patres* argument presented by Rabbi Riskin, "is squarely invalidated by the Talmud itself," he more closely aligns homosexuality with the *cheresh* by focusing on Talmudic -- that is, rabbinic -- arguments.[22] By further asserting that homosexuality is clearly prohibited by Rambam as well, he again inadvertently invokes the *cheresh* analogy, wherein a strongly delineated principle, clearly articulated by Rambam, has been altered over time through new social and scientific knowledge.

Those who wish for greater inclusion of homosexuals in Jewish life, however, may resist the deafness analogy for quite a different reason: people regard deafness as a disability and may find a model of "homosexuality as disability" to be offensive. Nonetheless, this aspect of the analogy works quite well because a significant contingent of the deaf community feels strongly that deafness is not, in fact, a disability but a cultural and personal identity affiliation. The National Association of the Deaf, an advocacy group that has existed since 1880, emphasizes that "The concept that being deaf or hard of hearing is a difference, not a deficit." By encouraging people to

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punishing so strictly, since I believe that *Annus Rachmana Patrei* applies only to the former." (http://myobiterdicta.blogspot.com/ August 26, 2017)

[22] Rabbi Avrohom Gordimer, "Sorry, Rabbi Riskin and Rabbi Greenberg -- Homosexual Relations are Not Permitted by the Torah." *Times of Israel*. August 10, 2017. http://blogs.timesofisrael.com/sorry-rabbi-riskin-and-rabbi-greenberg-homosexual-relations-are-not-permitted-by-the-torah/

think of deafness as a difference rather than a disability, this significant subculture prompts a rethinking of deafness as a flaw to be corrected, as many hearing people may assume it to be. Just as some people in the Orthodox community feel that homosexuality can and should be cured or corrected through reparative therapy, people feel that deafness can and should be cured or corrected with cochlear implants. In both cases, though, there is a large group within each community that feels that such "correction" is not only harmful but promotes a false view of each group's cultural and physical identity. We may be familiar with these attitudes towards homosexuality and know that reparative therapy has been proven to be dangerous, even fatally so, but we may be less familiar with the significant deaf population that sees deafness as a cultural affiliation and an identity, not as a disability to be corrected.[23] Familiarizing students with the *cheresh* analogy, including its shortcomings, can offer them a view of the subtle and complex interplay that has long existed between worldly knowledge and *halakhic* interpretation.

B. The Injured Kohen

Another identity analogy may be found in the situation of the injured *kohen*. According to the *Mishneh Torah*, a *kohen* with a physical abnormality like a limb difference or a facial deformity is prevented from saying *birkat kohanim* (Chapter 15). A *kohen* cannot help being a *kohen* -- this is simply an identity with which one is born -- just as someone with a limb difference or birthmark has not made a choice to be different in these ways. There is debate about whether Rambam intended for only the specific deformities he listed to be included or whether his list was representative of a larger set of restrictions, but, in either case, the *Shulchan Aruch* (128:30-31) states that if the *kohen* in question is a permanent resident of the community or someone familiar to the congregants, he is included in the recitation of the *birkat kohanim* because his disability will not, in fact, distract them from the blessing. Thus, this exclusion in *Mishneh Torah* is minimized in

[23] "Why Not All Deaf People Want to Be Cured" *The Telegraph*. June 13, 2013. http://www.telegraph.co.uk/culture/9526045/Why-not-all-deaf-people-want-to-be-cured.html

the *Shulchan Aruch* to provide the maximum inclusion possible, especially towards individuals who already have roles in the community.

These exceptions are explained in various ways, particularly that a *kahal* familiar with the individual's disability will not find it distracting despite its potential distraction to a stranger, but the primary motivation seems to be humanitarian. Excluding someone who should be part of this honor, particularly someone whose father and brothers may be participating, feels cruel and unnecessary. And so, because the injury or abnormality is not the fault of the *kohen*, later rabbis seemed especially hesitant to exclude him. These exceptions also have the, perhaps unintended, effect of keeping an injured *kohen* close to his familiar community, knowing that he will receive more welcoming treatment from the people who know him well: they understand and accept him in a way that outsiders may not.

A significant failure of the injured *kohen* as an analogy for homosexuality in *halakhah* is that this prohibition, too, is *d'rabbanan* rather than *deorayta*. Furthermore, while every *halakhah* is important, the *halakhot* around sexual behaviors are couched in far more severe terms of punishment and, ultimately, the prohibitions around the injured *kohen* feel relatively minor in comparison. But even given these important distinctions and the vastly lesser significance of the injured *kohen* rulings, this analogy remains useful in reminding us that apparently static interpretations have, in fact, changed over time and with greater exposure to the individual human beings involved. Because many contemporary Jews maintain a sense of Judaism as fully fixed in every way, an example like this one underscores that Jewish ritual practice has sometimes changed to allow for greater inclusion. Especially notable is that these rules were not altered because of textual reinterpretation -- no one claims the initial interpretation was incorrect -- but on the basis of understanding the rationale behind a stricture and then ruling based on whether the rationale applies in the situation.

C. Pikuah Nefesh

As a final analogy for homosexuality, we might consider *pikuach nefesh*, saving a life. While Rabbi Greenberg discusses *pikuach nefesh* as a literal aspect of sexual identity, demonstrating that homosexuals are far more likely to commit suicide and face sometimes life-threatening discrimination, we might consider a more conventionally rabbinic use of *pikuah nefesh* as an analogy for the *halakhot* surrounding sexual identity. This issue is deeply complex and widely debated, far more so than that of the injured *kohen.*

The essence of the debate rests on whether one may violate Shabbat to save a life and, if so, which sort of life warrants a violation of Shabbat. The Talmud makes clear that one may only violate Shabbat to save a Jewish life,[24] but that ruling has been reinterpreted over time based on new social and communal understandings. Most Modern Orthodox Jews today fully accept that any life should be saved, given the opportunity, even on Shabbat. This interpretation explains doctors' and EMTs' permission to work on Shabbat, regardless of whether their patients are Jews. My potential use of this analogy does not mean to suggest that homosexuals are like non-Jews but instead underscores that social realities altered what had seemed to be fully determined and permanent understandings of a group of Others.

While the Talmud draws a firm line between violating Shabbat to save a Jew (permitted) and to save a non-Jew (not permitted), those lines have been challenged for many centuries. The early arguments that advocated for violating Shabbat to save a non-Jew tended to take an extremely pragmatic approach, stating that the failure to save a non-Jew could lead to enmity towards Jews or retributive behavior (משום איבה – because of hostility). These arguments are noted but dismissed in the *Shulkhan Arukh* in discussing midwives helped gentiles give birth and helping to locate trapped individuals in a building collapse. Other rabbis, though, noting the fear of

[24] For example, Shabbat 151b and Yoma 85a-b, which implies but does not overtly state "Jewish life."

hostility, relaxed the *Shulkhan Arukh*'s strict ruling in this regard, such as Rabbi Yoel Sirkis in 17th century Poland, who argued that leaders and others in power should serve as an exception to the rule but that ordinary citizens could still be refused treatment on Shabbat.[25] Such arguments are not ethical understandings of the value of the life of a non-Jew; the primary concern remained firmly with the Jews who might be adversely affected by the failure to save a non-Jew.

However, later rulings took a broader approach, suggesting that non-Jews did, in fact, deserve to be saved, not only because failure to do so could adversely affect Jews. "Recent scholars have pointed to the 13th-century commentary of Rabbi Menahem Hame'iri, who contended that the Talmudic failure to apply the dispensation to save the lives of gentiles only applied in ancient societies where the non- Jewish majority regularly abused its Jewish inhabitants. In cultures where the larger population acts on ethical principles, no distinction is made between saving the life of a Jew and that of a gentile. In the words of Rabbi Nahum Rabinovitch, 'Compassion and mercy for all men are the mark of the Jew, just as they are of God.'"[26] The Meiri strongly argues that the category of non-Jews must be reexamined and consequently redefined. He "considered these *Baalei haDat* to be different from the non-Jews referred to by Chazal – as they were pagans who had no religion at all,"[27] a perspective adopted by Rabbi Dr. David Berger, who argues that "R. Yehiel of Paris responded by pointing to a series of positive Talmudic statements about attitudes toward gentiles (e.g., Gittin 61a), and we would do well to remember that those passages are also real. He went on to assert that many of the discriminatory laws apply only to pagans of old, perhaps even to the seven nations of ancient Canaan, not to contemporary Christians."[28] Again, the controversy rests on how to categorize a group of individuals whose

[25] Israel Shahak. *The Laws Against Non-Jews*. http://www.bintjbeil.com/E/occupation/shahak.html#26
[26] Rabbi Shlomo Brody, http://www.jpost.com/Jewish-World/Judaism/Ask-the-Rabbi-May-Jews-save-all-lives-on-Shabbat
[27] Rationalist Medical Halacha, "Jews and Gentiles on Shabbat: A Rationalist Perspective." Nov. 8, 2015. http://rationalistmedicalhalacha.blogspot.com/2015/11/jews-and-gentiles-on-shabbat.html
[28] David Berger. "Jews, Gentiles, and the Modern Egalitarian Ethos: Some Tentative Thoughts." https://web.stevens.edu/golem/llevine/rsrh/Jews_Gentiles_and_Egalitarianism_2.pdf

accurate categorization is essential to our decision-making regarding the *halakhah* in response to them. Are Christians pagans in the Talmudic sense? Should they be considered among the *ger toshav* (a question Rambam answers with a definitive "no")? Is there some other legitimate categorization that would allow us to reconcile our sense of what is right with the clear *halakhah* surrounding this issue? In this case, the mainstream Orthodox answer has been in the affirmative, which has led to a broad and widely-accepted change in Jews' understandings of *pikuach nefesh*.

As gentiles moved in the Jewish imagination from enemies and pagans to neighbors and even friends, rabbis made greater efforts to reevaluate what had seemed to be a straightforward categorization. This altered attitude suggests not a change in *halakhic* meaning nor in the clarity of Jewish texts but an attitudinal change towards a group of people who were deemed not to deserve kind treatment and then, at a later point, were deemed to deserve kind treatment. In particular, as Rabbi Brody identifies, when non-Jews are seen as largely "ethical" or part of an ethical society, the *halakhah* surrounding them changes to allow for Shabbat violation to save their lives, an interpretation with which most of us are familiar today. In the changing attitudes towards *pikuach nefesh*, we see an evolving understanding of the nature of non-Jews themselves and a recognition that they may, in fact, be ethical and therefore worthy of a reconsideration of what, at many times in our history, felt like a finalized stance on their value as human beings.

For students, this analogy may offer a new angle on their understandings not simply of homosexuality but, more broadly, on the progression of Jewish thought and the incremental movement of *halakhah*, which is both fixed and, in slight ways such as those recounted here, changeable. By recognizing that *chazal* adjusted their ways of thinking as circumstances changed, students may be attuned to a model of developing *halakhah* with which they are not otherwise familiar. Seeing that these changes have taken place in limited ways throughout Jewish history does not lead to the foregone conclusion that such changes should similarly take place in the

matter of homosexuality, but they do show aspects of our current worldview that feel entirely static to young people once changed and evolved in response to lived realities and might do so again.

III. Conclusions

From this study of analogies, one can draw several conclusions. First, it is clear that there are many more analogies for homosexuality in Orthodoxy than these that deserve attention, each of which can contribute to our *halakhic* understanding. In each case, the all-important Q* must be explored fully and with an open mind, recognizing the ways in which what might feel on its surface like a perfect Q is followed by a necessary asterisk. I have explored a limited number of analogies here, each of which has benefits and shortcomings, but examining Orthodox attitudes towards Down Syndrome, various gender identities, polyamory, women's inclusion in ritual practice, race, *agunot*, *mamzerim*, intermarriage, unmarried individuals, *gerim* and many, many more can help to formulate how we think about various kinds of difference. Each situation may help us further to develop our thinking about the place of homosexuals in *halakhah*.

In addition, we see that there are more and less accurate, and more and less sensitive, ways to analogize homosexuality in *halakhah*, each of which is shaped by, and can shape, our thinking about this issue. Increasing our attention to the analogical choices we make can allow us to be both more accurate and more sensitive in our discussions, particularly with students who are weighing a range of opinions and thinking about how to reconcile the mixed messages they receive from Jewish and secular sources of information. Choosing language wisely is an educational imperative, and if we use analogies in our discussions of homosexuality, we must do so honestly, acknowledging both the ways in which an analogy works and the ways in which it does not. Doing so models appropriate intellectual inquiry as it demonstrates our awareness of the myriad complexities of living as an observant Jew in a world whose messages may feel

inconsistent with those of tradition. To oversimplify in the service of teaching is to do our students a profound disservice.

We recognize the ways in which young people today, engaged with the modern world, may have different feelings about homosexuality than do people of only one or two generations before them. Seldom have we seen a social change happen so profoundly and on so rapid a scale: in America, we have moved from outright illegality of homosexual acts in private homes to legalized homosexual marriage in a matter of decades. Students are, rightly, aware of those changes in the secular world and cannot help but be impacted by them. Rather than fear them, though, or attempt to "build the walls higher" in an effort to shield students from their non-Orthodox surroundings, schools can help to determine how best to frame these changes within a *halakhic* context.

In part, such work is difficult because we -- teachers and school administrators -- have not ourselves had sufficient time to concretize our thoughts on these dynamic issues. We have ourselves been newly sensitized to the plight of homosexuals in our midst. With each additional community member or student we meet who expresses the pain and bifurcation of his or her existence, we are increasingly called upon to reconcile a tension we feel between our sense of ethics as it has been informed by our Judaism and our sense of Jewish law and practice. In order to help students explore these issues, we may turn to analogy often without having fully comprehended its implications because our own thinking continues to evolve as well.

I hope that this exploration of analogies helps us to make better decisions in our teaching and in policy discussions. Ultimately, finding a single apt analogy is so difficult because none exists. There is always a Q* whose asterisk include myriad complications and subtle distinctions. We are charting entirely new territory here, and each analogy on its own can offer some insight into our thinking, but none completely encompasses the enormity of the problem we face as a community.

While I lean towards the latter set of analogies -- those of homosexuality as an innate quality -- I recognize their limitations as well.

My aim as a member of a school community, therefore, is to share with students and colleagues my own thinking at the same time that I open myself to theirs, with a constant awareness that hiding my own intellectual struggles will not lead to the deepest, truest education. When I use an imperfect analogy in my class, whether it relates to issues of sexual identity or the lifestyle choices of a Prohibition-era author, I am responsible for helping students to see all sides of every issue. While I might be most comfortable letting the superficial truths of my analogy replace deeper critical thinking, I lessen the profundity of students' education by smoothing over those logical fissures with my confident authority.

Because none of these *halakhic* analogies is ideal, perhaps we must engage with all of them, not telling our students what conclusions they should draw but showing them how to use logic, history, *halakhic* precedent, intellectual and Rabbinic discourse, philosophy, and ethics to determine which analogies make sense and in which ways. Not relying on the easiest analogies, or the ones that most quickly spring to mind, can help us to provide both our students and ourselves with the most intellectually and ethically honest approaches to this difficult topic. At the same time, expanding our use of analogy beyond those most frequently employed may offer worthwhile new ways of thinking about homosexuality and, eventually, allow us to reconcile the current tension that exists between empathy and *halakhah*.