Homosexual Identity and Masculinity in Contemporary Ultra-Orthodox Jewish Law (Halakhah)

Ronit Irshai

Introduction

In this article I would like to examine how male homosexuality is understood in contemporary ultra-Orthodox Jewish law (halakhah), in light of the assertion that the culture of the talmudic sages, even if heteronormative, was not heterosexual. 1 That is, on the one hand the talmudic culture placed a strong emphasis on marriage and procreation, and consequently viewed marriage between a man and a woman as the norm. But on the other hand, it did not stigmatize homoerotic feelings or emotional attraction between members of the same sex.

Daniel Boyarin and Michael Satlow, two leading scholars of the talmudic culture, hold that the rabbis of antiquity were concerned exclusively with the prohibition on male homosexual intercourse, and nothing more. 2 Boyarin and Satlow believe that ancient Jewish culture, despite its unequivocal ban on homosexual intercourse and strong support for marriage and procreation, was not a “heterosexual” culture—because the very concept of “heterosexuality” had not yet been invented. The Sages, the two scholars agree, considered sexual attraction between men to be nothing out of the ordinary; nor is there any proof that the Sages defined individuals by the object of their sexual desires. According to Satlow, homosexual desire was not problematic for the Sages. 3 In the same vein, Boyarin asserts that heterosexuality is an invention of contemporary American-European culture. What defines it is not necessarily the taboo on homosexual acts or the assumption that some or most people prefer to have a physical relationship with those of the other sex. It is rather the assumption that homosexual

---

1 In this article I will not consider the ban on female homosexuality (lesbianism), because the prohibition of sexual relations between two women is fairly weak. Nor will I deal with the possible justifications for the different between men and women in this matter. With regard to lesbianism and halakhah, see Admiel Kosman – Anat Sharbat, Two women who were sporting with each other”– Reexamination of the Halakhic Approaches to Lesbianism as a Touchstone for Homosexuality in General, “Hebrew Union College Annual” 75 (2004), 37-73.

desires are aberrant. This assumption ipso facto creates a separate class of people. Boyarin holds that the condemnation of certain types of pleasures—such as the consumption of forbidden foods—as sinful is a far cry from labeling a person as “abnormal.” This is not to say that the rabbis of the past had a less negative view of those who violated the ban on homosexual activity. However, the modern categorization of the heterosexual as the “normal” person has an enormous effect on the attitude towards the “abnormal.” This is how we should understand the connection between modern heterosexuality and homophobia: heterosexuality is a necessary condition for the existence of homophobia. This is also how we should view the claim that the rabbinic culture, with the high value it set on marriage and procreation, was not homophobic but heteronormative.

In the present article, proceeding from Boyarin and Satlow’s insight, I would like to examine whether their thesis about the talmudic sages holds for contemporary halakhah. Specifically, I will examine how the ultra-Orthodox world constructs heterosexual masculinity in opposition to homosexual masculinity, as reflected in contemporary Orthodox halakhic writing.

Orthodox Judaism

Orthodox Judaism is the stream that relates to halakhah as the most important source and expression of Jewish life. Moreover, it perceives itself as the faithful heir of tradition—a perception that is manifested in its rabbis’ strict adherence to the classic exegetic mechanisms when they issue halakhic rulings. Within Orthodox Judaism, we can distinguish two main streams: “Modern Orthodoxy” and the more conservative branch known as “ultra-Orthodoxy.” They differ primarily in their openness to modern ideas and values and the extent to which they allow modernity to penetrate halakhic thought. Although we can identify streams and sub-streams within ultra-Orthodoxy, it is fair to say that they all share at least a suspicion, if not total rejection, of modern innovations in culture and values. (They may

3 SATLOW, They Abused Him, 18, 24.
4 BOYARIN, Unheroic Conduct, 14.
5 Ibid., 15
accept technological innovations that are value- and culture-neutral.) Conservatism, in short, is a clear hallmark of ultra-Orthodoxy.  

When it comes to halakhah, this ideology usually produces a defensive and reactive stance, sometimes extremely stringent, and especially in matters related to the body, modesty, and sexual conduct. All the same, despite its strenuous efforts to isolate itself and fend off new developments, ultra-Orthodoxy is in constant interaction with the modern world.

With regard to ultra-Orthodox society’s interaction with modernity, as reflected in halakhah, homosexuality is an interesting test case. We may conjecture that a conservative society, trying to guard itself against modern innovations, is unlikely to adopt contemporary terminology for masculine identities, particularly when they conflict with an explicit Torah prohibition.

The Prohibition of Male Homosexual Intercourse and Ultra-Orthodox Rabbinical Writings on the Subject

In the two iterations of the Holiness Code, in Leviticus 18 and Leviticus 22, the Torah explicitly prohibits homosexual intercourse between men.

According to Leviticus 18:22, “You shall not lie with a male as with a woman; it is an abomination.” Leviticus 20:13 restates the law, adding a severe punishment for both partners: “If a man lies with a male as with a woman, both of them have committed an abomination; they shall be put to death, their blood is upon them.” The text is quite clear and the prohibition absolute; no lenient interpretation seems possible.

It is important to emphasize that halakhah is not determined only by the Torah, the Written Law; the interpretations expounded by the Oral Law (the Talmud) may modify or even override the plain sense of the biblical verses. Nevertheless, it is clear that there is an absolute ban on male homosexual intercourse in both the Talmud and the later halakhic literature. However, the social reality of the last generation has pushed halakhic decisors to

---

7 The scholarship has noted that even though the self-image of Orthodoxy is that it is the authentic and faithful heir of the past tradition, it is first and foremost a reaction to the changes in the outside world. As such it should be seen as a new and modern phenomenon, even though it seeks to preserve the tradition against maternity. See KATZ, Orthodox.

8 For an up-to-date example, see NAVA WASSERMAN, I Never Called My Wife: Marital Relations among Gerrer Hassidim [Hebrew]. Ben-Gurion University of the Negev Press – Beer Sheva, 2015

9 A striking example of this is the verse "an eye for an eye," which the talmudic rabbis interpreted to referred to monetary compensation only.

10 For a comprehensive survey of talmudic and later law, see JOEL ROTH, Homosexuality, in Responsa, 1991--2000: The Committee on Jewish Law and Standards of the Conservative Movement, The Rabbinical Assembly –
treat the issue from a more complex perspective and not to reject the renewed attention to it out of hand, in order to (perhaps) uncover some new aspects of the matter. I believe that the renewed attention is motivated chiefly by the fact that in the last two decades an increasing number of religiously observant men, including yeshiva students, have openly declared their attraction to members of their own sex but reaffirmed their commitment to their religious identity. When rabbis meet face-to-face with students who confess their sexual orientation and the deep distress they are experiencing because of their the desire to remain true to the halakhic framework, they cannot deny the authenticity of the phenomenon or dogmatically assert that the inclination can be overcome by means of conversion therapy or psychiatric treatment.

I would like to begin with a responsum by Rabbi Moshe Feinstein, one of the leading ultra-Orthodox halakhic arbiters of the previous generation written in the mid-1970s. After that I will analyze two responsa of recent years, by Rabbi Aharon Feldman, the dean of a leading ultra-Orthodox yeshiva in the United States, and by Rabbi Zamir Cohen, a younger rabbi who is becoming a leading light of the Mizrahi ultra-Orthodox community in Israel.

Rabbi Moshe Feinstein: Heteronormativity and Heterosexuality

In 1976, Rabbi Moshe Feinstein, who was the most important halakhic decisor for the Orthodox world in North America, wrote uncompromising and harsh words about those who violate the prohibition on male homosexual intercourse:

But there is no natural desire for homosexual intercourse; any desire for it is merely a deviation from the path of nature onto another path, and even the wrongdoers who do not avoid sin and transgression do not go there, because this evil inclination is motivated only by the fact that it is something forbidden and performed with flagrant intent. … But with regard to the sin of homosexual intercourse, the wrongdoer who transgresses it has no argument to make and excuse himself, because the craving for this sin is unnatural.

Later he writes that he sees this prohibition as more serious than others regarding sexual conduct. There is good reason why it is called an “abomination,” inasmuch as there is no


natural urge for it (unlike other forms of prohibited sexual activity, which may result from the natural sexual attraction between women and men, albeit improper and forbidden in the particular case). From here it is a very short path to the assumption that a person who engages in it does so because precisely out of a desire to violate the prohibition—that is, in order to flaunt his rejection of the divine commandments. Such a person, Rabbi Feinstein believes, is loathsome and despicable. If he is married to women and his homosexual conduct comes to light, the marriage is annulled retroactively:

Such a husband who is obsessed by homosexual intercourse, which is the greatest and most despicable abomination of all, and a disgrace for the entire family, and all the more so it is the most contemptible for his wife if her husband prefers this loathsome form of intercourse to intercourse with his wife. There is no doubt that the marriage was based on misinformation, and it is clear to us that no woman would have agreed to marry such a loathsome and despicable man.¹³

Note that he bolsters his position with the thesis that repugnance for homosexual intercourse is universal and that universal human morality coincides with the Torah’s proscription of it. This further reinforces his argument that homosexual activity is a total deviation from the way of nature and a flagrant rebellion against God. He sees no conflict between the divine injunction and the moral imperative:

… the entire world—even the wicked—despise those who engage in the sin of homosexual intercourse. Even in the eyes of the wicked partner in this sin, he is loathsome and despicable—and this is great force against the evil inclination. … It is also a wise counsel against this disgusting and despicable sin, which is not only contrary to the Torah, which bans it with the greatest stringency, but also contrary to human nature, and sinks to the basest and most despicable. And not only is it shameful, it is also the greatest shame of all to his whole family.¹⁴

I would like to examine the concept of “nature” that Rabbi Feinstein employs here and ask whether it creates the “homosexual identity” in the sense that defines a person who engages in homosexual activity as “other.”

¹² Rabbi Moshe Feinstein, Responsa Iggerot Moshe, Orah Hayyim 4, §115 [Hebrew].
¹³ Rabbi Moshe Feinstein, Responsa Iggerot Moshe, Even ha-Ezer 4, §113 [Hebrew].
¹⁴ Ibid.
Rabbi Feinstein explicitly has in mind the sexual act and not the sexual desire. On the surface, in this he is the faithful heir of the Talmudic sages, who, according to Boyarin and Satlow, were interested only in the act itself and did not label those with a different sexual inclination as deviant. At the same time, there is a nuanced but I believe decisive difference between referring only to such conduct and rejecting it, and the assertion that nature itself is utterly opposed to such an appetite (“there is no natural desire for homosexual intercourse”). That is, Rabbi Feinstein’s attitude towards a sexual act between two men involves a rigid and essentialist definition of the concept of “nature,” by means of which he seeks to neutralize the idea that one male can be sexually attracted to another male. To the extent that this “nature” relates to sexuality, masculinity is defined exclusively by sexual attraction to women. There is not and cannot be a natural situation in which a man is attracted to another man and wishes to have sex with him, “because the craving for this sin is unnatural.” If a man does feel an urge to have sex with another man, it is not the result of physical attraction and certainly not of affection or love. It is not evidence of what we would call today a homosexual identity or homoeroticism, which leads to a same-sex act. On the contrary, because such a sexual act is contrary to nature it has absolutely nothing to do with identity or emotions. It follows that the urge to engage in homosexual intercourse stems exclusively from the fact that it is forbidden, thereby creating the heterosexual identity. He takes a critical step that—if we accept the position of Satlow and Boyarin—is a radical departure in Jewish tradition and leads to the constitution of a homosexual identity that is “unnatural.” He performs what Judith Butler refers to as a gender act as a discursive means by which “natural sex” is created. When certain sexual acts are excluded from the domain of nature, the “unnatural” is constructed as abnormal, deviant and “other.”

We should emphasize that Rabbi Feinstein does not merely label a sexual identity that is not heterosexual as “unnatural”; he simply does not recognize its existence. That is, although his position does open the door to the creation of a new category of “homosexuality,” classified as unnatural, he emphatically denies its existence. If some people assert that it exists, their claim is false. Hence for Rabbi Feinstein there is only one sexual identity, the heterosexual;
but sexual relations may take many different forms. A man who has sexual relations with
other men has not lost anything of his (natural) male identity, because his “normal” sexual
attraction must certainly be to women. It follows that Rabbi Feinstein’s failure to distinguish
between the orientation and the act is not the result of a belief that the prohibition applies
only to the act, but of his utter rejection of the notion that there is such a thing as a
homosexual orientation. This has clear gender implications—the outright rejection of any
possibility of an alternative construction of male identity that does not preserve the binary
dichotomy of man/woman. Here we should note that even if Rabbi Feinstein's position
implicitly creates the category of homosexuality and labels it as “unnatural,” it does not
recognize its existence. Hence it does not lead to the plethora of moral, theological, and other
problems associated with questions of male identity, as we shall see below.

In light of this analysis, I believe we can offer a more precise assessment of the revolution in
halakhic responsa in the ultra-Orthodox world, which, some three-and-a-half decades after
Rabbi Feinstein and in a totally different social reality, is willing to recognize, if hesitantly,
that a homosexual orientation exists in nature. I will propose several possible criteria for
examining the implications of the recognition that a homosexual orientation is natural and
apply them in an analysis of Rabbi Feldman’s and Rabbi Cohen’s halakhic attitudes.

First, an immediate reduction in the severity of the ban, since what distinguished the ban on
homosexual intercourse from “regular” prohibitions and defined the act as an abomination
was its definition as unnatural.

Second, a more humane and compassionate attitude towards those who violate the prohibition.
This is because labeling homosexual acts as unnatural totally rules out the possibility of
recognizing the difficulty of suppressing the urge and instead presents it as exclusively a
matter of choice. This amplifies the severity of the action, as deliberate and without
compulsion: “because this evil inclination is motivated only by the fact that it is something
forbidden and performed with flagrant intent.”16 This quickly leads to seeing those who
violate the ban as “loathsome,” since they could have chosen not to. On the other hand,
recognition that the desire is natural opens the door to understanding the difficulties of coping
with it, like every other prohibited act. In other words, elimination of the hierarchical status
of the proscription of male homosexual intercourse and its placement on the same plane as
other forbidden actions also equalizes the status of those who transgress it with those who
commit other sins.
Third, if it is indeed a natural orientation and particularly if it is not a matter of choice, two serious theological problems arise. The first has to do with the character of divine injunctions and the question of how God could give commandments with which human beings may not be able to comply. The second has to do with sexuality: whether it is possible for a religious culture such as Judaism, which attaches holiness to sexuality and marriage, to condemn a man to solitude and sexual abstinence. That would seem to be totally incompatible with the Jewish ethos that seeks to hallow sexuality and not reject it.

An analysis of Rabbi Feinstein's complex position through the lens of his concept “nature” raises a welter of problems that Orthodox halakhic decisors must deal with.

In the three and a half decades since Rabbi Feinstein wrote this responsum, there has been a significant and even dramatic change in how ultra-Orthodox rabbis think about this subject. I believe that this change can be attributed chiefly to the increasing number of Orthodox gay men who have come out of the closet and the sympathy for their distress, part of which is that they do not want to give up their religious faith and observances on account of their sexual orientation.

In what follows I will try to show that Rabbi Feinstein's position has not struck deep roots in ultra-Orthodoxy and that there is an increasing willingness to recognize homosexuality as a natural orientation. This is no small matter, because, as noted, it brings with it theological challenges that are far from simple. In addition, though, this recognition challenges the traditional notions of masculinity that are part of the religious outlook and requires a new way of dealing with it. I will show how in this case the recognition that the homosexual identity is natural—that is, the natural essentialism that generally leads to fixity and regimentation, leads instead to just the opposite.17

---

16 FEINSTEIN, Responsa Iggerot Moshe, Orah Hayyim 4, §115 [Hebrew].
17 With regard to women, essentialist religious positions that propose the existence of a female "nature" praise women's "natural" qualities as being "closer to God," and thereby effective justify the discrimination and exclusion that leaves them in the appropriate to their "nature," chiefly in the home. See TAMAR ROSS, Expanding the Palace of Torah: Orthodoxy and Feminism, Brandeis University Press – Waltham, 2004. With regard to homosexuality, by contrast, an essentialist view that sees it as an unavoidable nature permits a more accepting and tolerant attitude from the halakhic perspective as well. See, for example, the article by Elliott Dorff and his Conservative Movement colleagues: ELLIOT N. DORFF – DANIEL S. NEVINS – AVRAM I. REISNER, Homosexuality, Human Dignity & Halakhah – A Combined Responsa for The Committee on Jewish Law and Standards, CJLS, at http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/dorff_homosexuality.pd. By contrast, queer theory casts into doubt any assertion of a natural element in sexuality.
Rabbi Aharon Feldman

The halakhic stand I will discuss now is that of Rabbi Aaron Feldman, the dean of Ner Yisrael, a long-established yeshiva in the United States, published in 2013. In general, we can say that there is little formal halakhic writing about the topic; rabbis prefer to answer these questioners in person. Consequently the position taken by Rabbi Feldman (and Rabbi Cohen, to be discussed below) is important, in that it is a public exposition of a carefully considered approach to the subject.

I have chosen to begin with Rabbi Feldman, even though his article was published after Rabbi Cohen's responsum, because I believe that it corresponds with the opinions of Rabbi Feinstein and because both of them operated in the social reality of the Jewish communities in the United States, with all the implications of the change in the attitude towards homosexuality in that country. In this light, it is easy to see the philosophical and theological development that corresponds to the changes in the cultural and social arena over a period of 40 years.

Like Rabbi Feinstein before him, Rabbi Feldman establishes a hierarchy in which the ban on homosexual intercourse outranks those on other forbidden sexual acts and believes there is good reason why homosexual intercourse is referred to as an abomination. But whereas Rabbi Feinstein's hierarchy emerges from the fact that the act is unnatural, for Rabbi Feldman the explanation lies elsewhere. He believes that heterosexual relations, because of their procreative potential (“be fruitful and multiply”), are by definition other-directed, whereas homosexual acts address only one’s own desires. Two heterosexual individuals who have bonded are ipso facto other-directed merely because their sexual act has procreative potential (even if it does not necessarily produce new life). Homosexual relations have no such potential and as such do not help a man fulfill his spiritual vocation of realizing God’s will by populating the earth. In this view, the fact that such a man is focused on himself is his greatest enemy of all:

Engaged in an act that is entirely Self-directed, the homosexual is, in effect, having relations with his own image. He has taken an act that God intended to be one that is creative and engenders bonding, and has, instead, created a parodic mirror image of it that is maximally selfish and lust-fulfilling. Thus, this act's effect on the homosexual's inner self is more devastating than that of other
forbidden unions. ... This explains the Torah's singular description of homosexual relations as a to'eyvah, or abomination.\textsuperscript{18}

Here I should note that about two-thirds of Rabbi Feldman's essay is devoted to anchoring the theological stance that totally rejects the possibility that homosexual intercourse could ever be halakhically legitimate. Like Rabbi Feinstein before him, he erects a clear hierarchy between the ban on homosexual intercourse and the other sexual proscriptions in the Torah. Even if we ignore for the moment the internal contradictions and problems associated with his theological position (since a relationship between two women has no more reproductive potential than that between gay men, at least in the sense that they require a sperm donor even if not a surrogate womb, but nevertheless the Torah does not denigrate lesbian sex as an abomination\textsuperscript{19}), it is clear that male homosexual intercourse has become the ultimate transgression, which causes irremediable damage to the man himself, who fails to fulfill his destiny in life. This theological stance leads us to expect a negative attitude towards the transgressor; in fact, Rabbi Feldman does lament the tolerant winds now blowing in Orthodox circles towards these men people and is not willing to allow them to be members of synagogues.\textsuperscript{20}

At the same time, in a one important aspect—but only near the end of his article—we encounter an extremely significant change of direction, one that makes his position significantly different from Rabbi Feinstein's. This modification, I believe, return the halakhic attitude towards homosexual intercourse to its talmudic roots, although it is clear that Rabbi Feldman is torn between the idea that “homosexual” is an unnatural identity and the notion he is trying to institute, namely, that such an identity can be accepted as part of the natural order.

After having stated explicitly that homosexuality is the most severe spiritual transgression of all, because it is self-directed, near the end of the article, and in total contrast to Rabbi


\textsuperscript{19} In addition, in a world where modern fertility technology (which Judaism has adopted warmly) makes it possible for same-sex couples to produce children, it seems that the theological explanation stands on very weak ground. On modern fertility technology and the position of Judaism, see RONIT IRSHAI, Fertility and Jewish Law: Feminist Perspectives on Orthodox Responsa Literature (Brandeis Series on Gender, Culture and Law) Brandeis University Press – Waltham, MA, 2012.

\textsuperscript{20} This refers to a manifesto signed by 200 rabbis, representing all parts of the Orthodox spectrum, which calls for a respectful attitude towards homosexuals. Feldman aims the brunt of his opposition to the fact that nothing in the rabbis' statement unequivocally rejects accepting open homosexuals as members of a synagogue and instead permits each synagogue freedom of choice in this matter. In particular, it does not see homosexuality as a transgression in it any different from the others enumerated in the Torah. See FELDMAN, A Torah View on Homosexuality, 18-19.
Feinstein, Rabbi Feldman recognizes the existence of a homosexual orientation as part of nature. Even though he believes that it implies loss of the male identity (although he never explain why this should be), he allows that homosexuality may be a natural phenomenon. And, as stated previously, I believe that in this context “natural” defines what is normal. If so, how can we reconcile his theological position about the spiritual devastation wreaked by homosexuality with his recognition that it is a natural inclination? Here he distinguishes between homoerotic attraction or feelings and homosexual sexual activity. The spiritual damage associated with the gay man’s selfishness does not stem from sexual attraction and the associated emotions but exclusively from the sexual act:

It must be noted that everything that we have written refers to the homosexual act, not the same gender attraction that underlies it. It is the act which causes the spiritual devastation…

With this Rabbi Feldman essentially return to the talmudic position. He does not categorize homoerotic feelings as “unnatural”; the notion of the worst abomination of all again applies only to the act and not to the emotions or identity. Unlike Rabbi Feinstein, who rejects any recognition of homosexual conduct as driven by “nature” and therefore constructs the homosexual as “unnatural” and “abnormal,” Rabbi Feldman includes the sexual urge in the domain of nature and understands it as part of an entire identity. For him, as for Rabbi Feinstein, the label “abomination” applies only to the sexual act; but there is one significant difference between the two: the orientation or identity that leads to it is not unnatural.

Here we should emphasize that he believes that this is an orientation that can be overcome in most cases. Consequently, it is permitted and even appropriate to recommend various therapies to “cure” it. He totally rejects the idea that it is an uncontrollable urge, because that contradicts the doctrine of free will. As I noted a previously, this position leads to a theological quandary:

God does not place people into situations in which they are forced to violate a prohibition of the Torah. Man never loses his free choice; … There are, without doubt, situations in which the temptation to sin is overwhelming, but never does man forfeit the free choice to control himself and, more so, to use his foresight to avoid such a situation.

---

21 Ibid., 22.
22 Ibid.
Here to there is a difference between Rabbi Feldman and Rabbi Feinstein. We will recall that the latter, too, believed that homosexuality is a free choice; but because he does not see it as a natural inclination, he does think that any great effort is required in order to wean oneself of it. Rabbi Feldman, who recognizes that the orientation exists, even if it does not override human free will, understands that the effort to suppress it is far from simple. This leads him to recognize that not everyone can “recover” from it. A person who has tried every means to be healed of his inclination, but without success, has indeed been deprived of free will. Hence he is exempt from establishing a family and fulfilling the precept of procreation and can focus on other matters that the life of a heterosexual man generally impedes. As he puts it:

A homosexual who is incapable of changing his lack of attraction to the opposite sex is free of the commandment to have a family. This enables him to make contributions to the community that the responsibilities of family life often render difficult, if not impossible.\(^\text{23}\)

In this view, the Torah precepts may sometimes require individuals to overcome their natural inclinations despite the difficulties involved. At the same time, the recognition that we are dealing with an essential and irreversible nature does not introduce the theological problem that stems from the conflict that pits the heteronormal order and the accent on the sanctity of family and sexual life that halakhah institutes against the idea that halakhah condemns some people to solitude and celibacy. This problem becomes even more acute with the recognition that homosexuality is a natural inclination that cannot be overcome.

To summarize, Rabbi Feldman accepts that the ban on male homosexual intercourse is the most severe of all the sexual prohibitions. But a closer look shows that he accepts the homosexual orientation as natural and distinguishes it from homosexual acts; the emphasis on the severity of the act may allow him to recognize the reality of homoerotic feelings. The next significant step is the recognition that perhaps the orientation cannot be modified. In practice, this opens the door for religious homosexuals who refrain from sexual activity to be recognized and accepted as members of the religious community.

**Rabbi Zamir Cohen**

The next position I want to consider is that of Rabbi Zamir Cohen, the dean of the Heikhal Meir yeshiva for newly observant Jews in Israel, published in his volume of responsa in 2009.

Rabbi Cohen was asked by yeshiva student with a “inverted orientation” (which is how most halakhic decisors refer to homosexuals) whether he should marry a woman. The questioner was a strictly observant young man of 23 who confessed that he was deeply in love with another young man and could not bear the thought that he might have to separate from him; but he was also aware of the halakhic obligation to marry and fulfill the precept of procreation. On the one hand, he does not want to refrain from this precept; on the other hand, he does not want to deceive a woman, knowing that he can never truly love her. He wrote as follows:

The situation is so sensitive and delicate. Now, at age 23, I feel that I am rapidly approaching a junction with only two exits, right and left, and I have no idea which to choose. … I love my boyfriend with all my being. On the other hand, it is forbidden to go through life without marrying a woman. On the one hand, I do not want to miss out on such an important positive commandment; but on the other hand I do not want to deceive any woman, and it is not and never was my intention to do so. On the other hand, if you tell me this would not count as deception and that I should marry a woman for the sake of procreation and continuity, I will do so. The problem is that I do not know what I should do.  

From the outset we are conscious of the absolute difference between the situation and how Rabbi Feinstein would have understood it. First, the yeshiva student speaks of his of love for a man— not sexual activity but a sexual identity. Second, he cannot be dismissed as an evildoer because he sees himself as loyal to halakhah and is willing to pay not only the price of abstaining from sexual gratification (as is evident in the first part of his letter to Rabbi Cohen: “he pledged absolutely to refrain from transgressing the associated prohibitions”), but may even be willing to marry a woman if that is the halakhic guidance he receives. If it turns out that he must do so in order to fulfill the precept of procreation, he is willing to marry a woman, since he believes that “this is a sort of trial sent by God, a type of ageda. … Perhaps this is a trial … to determine how important God is to me. And He is more important to me to anything, and I negate my entire being for him.”

In his response, Rabbi Cohen understands at once that the severe spiritual misgivings relate not only to marriage but also to breaking up with his boyfriend. He commends the student for his willingness to devote himself fully to God's word. The first point he addresses has to do

---

24 RABBI ZAMIR COHEN, Responsa Nezer Cohen, I, Even ha-Ezer, §5, 2009, 208 [Hebrew].
with whether this is an innate disposition that cannot be modified. As he sees it, “it is plain that with regard to something that the Creator in His Torah prohibited for every individual, every individual can comply, even if he was indeed created with a different nature.”

According to Rabbi Cohen, homosexuals were “created with a different nature”; their orientation is not a deviation from the natural world order but, on the contrary, part of it. If we return to Rabbi Feinstein, the exclusion of homosexuality from nature does release it from essentialism and paradoxically comes closer to queer theory (which rejects all essentialism); at the same time, however, it leads to an unforgiving and uncompromising attitude, because it is seen as a conscious choice and not as an attraction that is hard to repress. The moment that Rabbi Cohen (like Rabbi Feldman) is willing to accept this orientation as natural he is returned to the domain of essentialism (where homosexuality is no different from heterosexuality); but this return alleviates the problem and make the proposed solution less harsh. We should note that even though essentialist approaches are generally viewed unfavorably and considered to deny free choice, here it is precisely essentialism that supports a more humane attitude towards homosexuals and especially avoids labeling them as “other.”

After recognizing that a homosexual identity can be natural, Rabbi Cohen proposes an interesting idea about the concept of masculinity associated with this identity. He advances an ambivalent, complex, and not always coherent position, although I think that ultimately he, like Rabbi Feldman, believes that the homosexual identity involves a certain loss of the masculine identity. On the one hand, he recognizes that there are delicate and feminine men and states that “the delicacy of his soul does not cancel out his manliness.” That is, he is willing to thin out parts of the essentialist concept of masculinity, which is generally identified with assertiveness and rigidity. On the other hand, he proposes that major parts of the homosexual male identity are the fruit of social construction with negative characteristics:

> It is true that there are those who, because of childhood experiences of domestic disharmony between their parents, or difficulties and suffering they went

---

25 Ibid.
26 Ibid.
27 Ibid., 210.
28 Although it is possible that as someone educated in the yeshiva world, he does not necessarily identify masculinity with the usual Western traits. As Boyarin shows, the culture of the talmudic rabbis was one in which the Jewish man, the Torah scholar, was marked by “feminine” qualities. See mainly DANIEL BOYARIN, *Carnal Israel – Reading Sex in Talmudic Culture* University of California Press –Berkeley, 1993; ID. *Unheroic Conduct*. Rosen-Zvi observes that “taken together, these two books present a figure of a feminized, yet carnal, rabbi; one who offers an alternative to the hegemonic discourse of masculinity, but remains within the sexual order; or, in Boyarin’s words, one who is 'unmanned but not desexualized’” (ROSEN-ZVI, *The Rise and Fall of Rabbinic Masculinity*, 8).
through, or because they were born with delicate souls like a woman, or for other reasons, whatever they may be, feel a deficit in their masculinity.\textsuperscript{29}

All of this may mold a type of manliness that varies from the norm. These men are attracted to other men because of a defective male identity; “as a result, instead of desiring, as is natural, woman to complete them as a man, … they desire a man, as if they will be men through him.”\textsuperscript{30} On the one hand, then, we hear that masculinity is not necessarily incompatible with emotional refinement; on the other hand, though, this form of masculinity is often the fruit of a problematic social construction. The rhetoric hints at a close connection between masculinity that feels a sexual attraction to women, and “normal” masculinity with the conventional characteristics, defined more or less as the antithesis of the feminine qualities. In other words, the masculinity of a “normal” man is measured both along the axis of his sexual attraction to women and along the axis of his personality traits as the mirror image of the feminine, which are defined as softness and delicacy. But in the hierarchy created by Rabbi Cohen, the most important component of masculinity is sexual attraction to women; the “male” character traits are of less weight. A masculinity that is delicate and soft—“feminine”—is acceptable, as long as the sexual urge remains heterosexual. The interesting question, which I believe this analysis requires, is what is special about a physical attraction to women that makes a man a man, with a fully masculine identity, even if his character is delicate and refined rather than strict and assertive. If Rabbi Cohen recognizes that human nature includes men who do not match the gender stereotype and have a “feminine” nature and traits, what is it that makes sexual attraction to men a deficit or lack of manliness? His ambivalent stand leads to new thoughts about McKinnon's idea that, when all is said and done, masculinity is defined by sexual domination of women.\textsuperscript{31} This interpretation is not absurd, if we consider the words of the verse—“You shall not lie with a male as one lies with a woman” (Lev. 18:22)—which has sometimes been interpreted as referring to the inversion of the active man’s superior position and control of the passive partner in sexual congress, with the associated implications for relations men and women.\textsuperscript{32} This also seems likely given Rabbi Cohen’s recommendation that if his conversion therapy is successful, the

\textsuperscript{29} COHEN, Responsa Nezer Cohen, 209.

\textsuperscript{30} Ibid.


young man look for an extremely delicate woman (even more delicate than he is) towards whom he can feel like a man:

… Here too he must make the effort to repair his attitude towards himself according to the nature of the world and the will of the Creator, as I have explained, but he must find a woman who is suited to him. This means an especially delicate woman, who by being at his side will help them feel the nature of a man with his wife. With a regular woman he will generally feel a sense of estrangement and will not provide her with what a man is supposed to provide his wife, because he is lacking in the normal sense of masculinity.33

As for the issue of homosexuals' free will, Rabbi Cohen sees no contradiction between his assertions that this is a natural identity and that it can be overcome. Many urges must be repressed and redirected in appropriate directions. For example, those “whose nature inclines them to shed blood should become ritual slaughters and circumcisers and surgeons. … Their main trial in the world is to direct their innate qualities towards the good.”34 In this sense, homosexuality is no different from any other inclination. Furthermore, in his view, it even has a certain positive side: because persons with this nature are freed of the strong desire for women and do not have to cope with it the way most men do, they can invest their time in more intense concentration on Torah study and become outstanding scholars:

They should remember that just as those who constantly lust for women can tell themselves that this is how they were born, but they must work on their natural traits and overcome their impulses, so those who are inclined in the other direction cannot tell themselves that this is how they were born but must work and cope with it and overcome it, because this is their trial and labor and they can certainly manage it.35

What stands out most clearly here is that Rabbi Cohen does not relegate a homosexual orientation to a separate category from all other inclinations and does not believe that it is more problematic, despite the verse that designates the associated sexual act as an abomination. Homosexuality is just one more prohibition that the Torah observant must be careful not to transgress. This differs markedly from the positions of Rabbi Feinstein and Rabbi Feldman. Note too that he believes that a person with such a disposition can be a great

33 COHEN, Responsa Nezer Cohen, 211 [emphasis added].
34 Ibid., 209.
Torah scholar. That is, Rabbi Cohen does not excommunicate him from the world of the Torah and does not disqualify him from serving as a religious functionary. It is not quite clear why a homosexual, of all men, can attain pre-eminence in Torah scholarship; even if he is not attracted to women and distracted by them he is attracted to men. Perhaps here Rabbi Cohen unwittingly reveals that he is not fully convinced that a man’s attraction to men can be as powerful as the attraction to women. His bottom line is that if such a man engages in deep inner spiritual work and overcomes his inclination he should marry; but he should find a wife who is suited to him, one who is especially delicate, as stated, who can help him feel like a man in comparison to her, and must be certain that he can satisfy all her emotional and physical needs. In his words:

The Torah commands each and every Jew to fulfill the precept of procreation and to refrain from homosexual intercourse. It follows that every man who is attracted to men, whether this disposition is innate or acquired, has the ability to build his inner world in such a way that he can live with a woman without her suffering from an absence of love or lack of the relationship a woman needs. No doubt this is a difficult task, but so too a person whose nature is to lust after women must cope with his impulses, be faithful to his wife, and provide her with everything she needs, and must totally avoid any forbidden relationship with other women. And he accomplishes this by means of inner spiritual work.\(^{36}\)

The analogy here—that a gay man must cope with his attraction to men just as a married heterosexual man must cope with his attraction to other women—indicates, as we have seen, that despite Rabbi Cohen’s sympathetic tone and the vast distance he has traveled from Rabbi Feinstein’s stance and harsh rhetoric, he has not yet penetrated to the heart of the matter. A heterosexual married man who is attracted to other women may have to overcome his impulses, but he has a lawful sexual outlet with his wife. Homosexual men who must suppress their urge have no legitimate path for sexual release (not even masturbation, because of the prohibition on the vain emission of semen).\(^{37}\) Hence the validity of this comparison is questionable.

To summarize, we can learn several things from Rabbi Cohen's responsum.

---

37 On the prohibition of the vain emission of semen, see RONIT IRSHAI, *Fertility Treatments and the Prohibition on Wasting Sperm: Three Methods in Modern Halakhic Rulings,* “Zehuyot” 7 (2015), 41–63 [Hebrew].
First of all, he recognizes the existence of a homoerotic attraction of men to men, that is, a homosexual identity that is not merely an appetite for sex. This identity is a natural orientation and is not atypical or abnormal. At the same time, like any natural inclination that the Torah disapproves of and prohibits, it is possible and imperative to overcome it, because God did not give commandments that cannot be followed. This position leads to a sympathetic attitude towards homosexuals, who are no longer seen as “despicable and contemptible” and stigmatized as abnormal. On the contrary, they can be great Torah scholars, as long as they refrain from homosexual activity. Second, if they engage in the proper inner spiritual work they can achieve a situation in which they are obligated to find a wife and establish a family. However, as Rabbi Feldman's responsum shows, there is no halakhic solution for the sexual frustration of those who cannot change their orientation. As for masculinity, even if Rabbi Cohen is willing to recognize a delicate and more feminine form of manliness, a careful analysis of what he writes indicate that, like Rabbi Feldman before him, he believes that homosexuality reflects a problem of manliness, whether as the result of a problematic social construction or of a natural inclination.

**Conclusion**

In this article I have addressed how contemporary ultra-Orthodox Judaism relates to homosexuality by means of a gender-sensitive analysis that considers how the homosexual male identity is constructed and its implications for the possibility of admitting homosexuals to the religious community. The insights I have reached can be summarized as follows:

Rabbi Feinstein's attitude towards the sex act, “male homosexual intercourse,” would seem to place him on the same exegetical continuum as the talmudic tradition. However, a closer look reveals that he vigorously rejects the possibility of sexual attraction other than that between men and women. Nature, which he holds to be universal and given immediately, recognizes only one form of sexual attraction; hence halakhah, which is in full correspondence with human nature but wishes to regulate it, defines everything outside nature as an abomination. In this way he effectively constructs the categories of homosexuality and heterosexuality, even though he is not willing to recognize the existence of homosexuality as a natural orientation. This is a rigidly essentialist position and deviates from the talmudic tradition, which, as stated, did not consider a sexual attraction to men as out of the ordinary. In other words, the nature of the attraction between the sexes remained fluid and open for the talmudic sages, even if homosexual intercourse is forbidden. Rabbi Feinstein, by contrast, when he
Draft

states that the only possible form of sexual desire is that between men and women, freezes the male nature in a rigid and essentialist framework of heterosexuality.

This stance leads to an inflexible attitude about those who violate the ban on homosexual intercourse, but avoids the theological pitfalls of approaches whose essentialism is less rigid and that are willing to recognize homosexuality as a natural orientation (which must be overcome). This is because if the male nature is to be attracted exclusively to women, there is no theological problem with the divine prohibition, which at first sight seems to require something that is impossible. Similarly, the moral problem that the Torah ostensibly condemns these men to solitude and sexual abstinence vanishes as well.

Rabbis Cohen and Feldman, writing more than 30 years later, recognize that homosexuality may be a natural orientation, so the heterosexessentialism in their ideas is weaker. At the same time, to the extent that it is an orientation, and even if it is unavoidable, it can and must be overcome. That is, both of them recognize that in the extreme case there are men whose homosexual orientation is imposed on them by nature; nevertheless, halakhah requires them to overcome it and to refrain from violating the ban on homosexual intercourse. As they see it, the excuse that “it’s my nature” must not dictate how one lives; on the contrary, it is the function of halakhah to establish a social order that does not necessarily reflect nature as given. This is a position that, despite its essentialist roots (since now homosexuality is viewed as the product of nature and unavoidable), ends up with an anti-essentialist result, because it demands that the self not be subordinated to the given natural order. It is easy to see the intensity of the change of direction from Rabbi Feinstein, who believed that there is correspondence between the Torah precept and human nature. Those who call such correspondence into doubt believe that a very great sacrifice is required of those who comply with the stipulations of halakhah. In this sense, it is precisely Rabbi Feinstein's approach that would not seem to demand a great effort, because for him homosexual intercourse does not reflect a “nature” that attracts men to try it out. Hence overcoming the urge does not entail any great sacrifice.

We can thus define the position taken by Rabbi Feldman and even more so by Rabbi Cohen as heteronormative, one that continues to view marriage and procreation as the supreme value, but that, in contrast to Rabbi Feinstein’s, is not blatantly heterosexual, because it is willing to recognize other forms of sexual attraction. A flexible essentialism such as that of Rabbis Feldman and Cohen, which seems to be coming into vogue in broad circles of the Orthodox world (including Modern Orthodoxy), permits a more humane and sympathetic attitude
towards homosexuals and even their acceptance by religious congregations, in certain conditions. But it falls into theological and moral problems that may be very difficult. One theological problem is associated with the correspondence between the laws of the Torah and nature and the possibility that God may make demands that human beings cannot comply with. The other considers the relationship between theology and morality: given the Jewish ethos that consecrates sex and family life, how is it possible to forbid a man to realize his sexual identity and condemn him to perpetual solitude? The more tolerant ultra-Orthodox positions towards homosexuals have not yet found an adequate response to these problems.