

“**T**his
Is My Beloved,
This Is
My Friend:” *Song of Songs 5:16*

A Rabbinic Letter on
Intimate Relations

Rabbi Elliot N. Dorff
A Paper of
The Commission on Human Sexuality
The Rabbinical Assembly

One of a series of pamphlets confronting issues
affecting contemporary religious life.



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The Rabbinical Assembly, founded in 1901, is the international association of Conservative rabbis. The Assembly actively promotes the cause of Conservative Judaism and works unceasingly to benefit *Klal Yisrael*; publishes learned texts, prayerbooks and works of Jewish interest; and administers the work of the Committee on Jewish Law and Standards for the Conservative Movement. It serves the professional and personal needs of its membership through publications, conferences and benefit programs, and administers the Movement's Joint Placement Commission. Rabbis of the Assembly serve throughout the world, in congregations, on the campus, as educators, hospital and military chaplains, teachers of Judaica, and officers of communal service organizations.

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PREFACE

Our American Jewish Community, as never before, has embarked upon monumental efforts to assure our Jewish future. The sobering statistics of the 1990 National Jewish Population Survey have motivated Jewish federations, religious movements, and communal institutions to pursue an agenda which seeks to reach Jewish families and individuals and to champion a renewal of Torah study, ritual observance and communal involvement for every age and stage of life.

The Rabbinical Assembly is determined to add yet one more dimension to this Jewish Continuity agenda. We seek to move beyond the Israel Experience, Jewish Family Education, and spiritual renewal. In this *Iggeret* (Rabbinic Letter), on behalf of The Rabbinical Assembly Commission on Human Sexuality, Rabbi Elliot Dorff focuses our attention not just upon informal experiences, the acquisition of knowledge and religious affinities, but also upon other Jewish interpersonal identity factors which enhance the prospect of marriage within the faith.

Rabbi Dorff concentrates upon the core of this demographic crisis, the forming and sustaining of sacred intimacies between two Jewish persons of the opposite sex. To this end, this *Iggeret*, which emerged out of The Rabbinical Assembly's Commission on Human Sexuality, is inspiring a variety of programmatic ventures for Conservative Judaism, which we hope will spread to all other sectors of American Jewry as well:

1. We are creating educational formats and materials for Jewish teens, advocating sexual abstinence while building meaningful interpersonal skills necessary for meeting, dating and forging a mature view of the sanctity of Jewish marriage. Our goals include making the case against both interdating and in favor of endogamy, and stressing the ethical sensitivities within intimate relationships.
2. We are increasing synagogue attention toward the social, cultural, educational and spiritual needs of Jewish single adults, while at the same time advocating the mitzvah of Jewish marriage.
3. While disapproving of sex outside of marriage, we are addressing the interpersonal skills and values developing among live-in couples, recognizing that without guidance such couples who do decide to marry one another are 33% more likely to divorce.

4. We are creating pre-marriage counseling institutes in major metropolitan areas for Jewish couples seeking rabbinic officiation at their wedding.

5. We are seeking to strengthen Jewish marital bonds via "Making Marriage Work" seminars, through advocacy of traditional *Taharat Hamishpahah* ("Family Purity") practices, and with "crisis intervention" efforts when a household is contemplating separation and divorce.

6. We are articulating the mitzvah and post-Holocaust demographic imperative of "being fruitful and multiply," urging married couples to seek the blessing of at least three children, including aid and emotional support for infertile couples seeking medical assistance and/or contemplating adoption.

7. While divided upon the implications of scientific findings upon halakhah's views about homosexuality, we are unified in calling synagogues to be compassionate, and to offer understanding and concern for individual Jews who are gay and lesbian.

8. In cases where divorce does occur, simultaneous to the issuance of a *Get* ("Jewish Bill of Divorce"), we are intending to create support groups, as well as single parents networks.

Through this wide array of initiatives, The Rabbinical Assembly seeks to further the search by the totality of our community for a secure future of assured continuity for Jewry as we prepare to enter the twenty-first century. The Rabbinical Assembly applauds Rabbi Dorff's *Iggeret* and proudly offers this wise and insightful document to the Jewish and general public. May it be read and re-read, studied and shared.

Rabbi Alan Silverstein
President of The Rabbinical Assembly 1994-1996

Shevat 5756

PROLOGUE

This rabbinic letter is an effort on the part of the Conservative rabbinate to talk openly about matters of human sexuality and intimacy with the members of our movement. Although sex is certainly not the whole of life, it is an important part of it, and so it should be part of the discussion that we Jews have about the norms by which we live. The Jewish tradition has much to say about this area of life, as it does about most, and much of what it says is as compelling to us now as it was to our ancestors. Judaism has a distinctly positive view toward sexuality as the gift of God, and it articulates values and rules for this area of life which make it the pleasurable, yet holy, activity it was meant to be.

In times past, great rabbinic authorities wrote letters to the Jews of their generation to convey Judaism's message concerning human sexuality and intimate relations. Probably the most famous is *Iggeret Ha-Kodesh*, attributed to Rabbi Moses ben Nahman (Nahmanides, 1194-1270), but we also have manuals on these matters written by, or attributed to, Rabbi Moses ben Maimon (Maimonides, 1135-1204), Rabbi Abraham ben David of Posquieres (1125-1198), and others.¹ They used the format of a letter (*iggeret*) or a manual rather than a rabbinic responsum (*teshuvah*) because in these essays they were not called upon to rule on a specific question in Jewish law but rather to educate their readers to the accepted rules of the Jewish law and the concepts and values that underlie them. Their audience, then, was not primarily other rabbis, but the entire Jewish community. Moreover, they used the form of a letter or a manual, rather than a responsum, because they wanted to be personal in tone as well as in content regarding this most personal of areas.

This letter, then, follows a traditional form for discussing these matters. In our own time, when Jews live under conditions remarkably different from those of the past, we need all the more to explore how we can and should synthesize our Jewish commitments with modern realities and sensitivities. Even within the ranks of those who otherwise obey Jewish law strictly, the laws and values of Judaism on matters of sexuality and intimacy are, unfortunately, observed too often in the breach, and that is true as well for those who in other areas are not very religiously committed.²

This letter is therefore intended to address all Conservative Jews whatever their level of knowledge and commitment. It is written in response to our duty as rabbis to both Judaism and the Jewish community to teach the tradition so that Judaism can affect not only our public and professional lives, but our per-

sonal lives as well. As such, it is part of The Rabbinical Assembly's agenda to address contemporary concerns of Jewish continuity, for only when Jews know what Judaism says about important issues will they appreciate the reasons why they should practice it and teach it to the generations to come.

This rabbinic letter is divided into four parts. Part A is a discussion of the general values which pervade the Jewish tradition and bear upon sexual relations as well. This part is intended to put the entire discussion of sexuality in the context of the rest of our relationships to each other. Part B discusses Jewish norms for marital, heterosexual sex, and Part C turns to heterosexual sex outside the bonds of marriage. Finally, Part D describes the current positions within the Conservative Movement on homosexuality.

This rabbinic letter, then, while not pretending to be exhaustive in its treatment of human sexuality and intimacy, will address the major concepts and values involved, framing them in the context of Jewish law, ethics, and theology. The Commission on Human Sexuality specifically did not intend to break new ground in Jewish law on these issues; as per its mandate, it referred matters which, in its judgment, needed more discussion to the Conservative Movement's Committee on Jewish Law and Standards for its research and ruling. This letter is rather intended to present the thrust of the Jewish tradition on sexuality and intimacy in a way which is as open and contemporary as possible. Through it we hope that Jewish tradition will indeed be Torah (instruction) for all of us in this important area of life, as it is and should be in so many others.

A. Sexual Relations Within the Context of Other Relationships

1. *The role of religion in discussions of sexual norms.* Why should a contemporary Jew bother to think about the message of Judaism in shaping his or her sexual behavior? Religions depict the ways in which we are linked to each other, to the environment, and to God. The very word "religion" means this. It comes from the same Latin root from which we get the English word "ligament;" religions describe our linkages, as our ligaments tie the various elements of our body to each other.

One's religion is therefore important in a discussion of sexual norms because religions help us to put sex in context. In describing its particular picture of reality and of the ideal person and society, each religion defines the role of

sex within that picture. That helps to determine the goals of sex and the values which derive from those goals. It helps to make sexual activity not just a source of pleasure, but part of a meaningful life.

2. *The human being as an integrated whole.* Many people in our time think of sex as a distinct area of life, separate from the rest of what we think, feel, and do. Thinking about sex like that, however, dehumanizes and mechanizes sex: sex becomes simply the functioning of a machine with no meaning beyond the immediate pleasures it affords.

One of the critical lessons of the Jewish vision of life is that sex is not a physical activity exclusively. God created each one of us as an integrated whole, with no part of us capable of living apart from any other part of us. The body, the mind, the emotions, the will, and the spirit are all involved, at least to some degree, in everything we do in life, and they affect each other continuously and pervasively. This integrated view of the human being has an immediate implication for our sexual activities — namely, that on as conscious and deliberate a level as possible, our sexual acts ought to reflect our own values as individuals and as Jews.

This means at least four things. First, we should not do what others are doing, or what they are saying they are doing, just because that seems to be the socially accepted practice. Our sexual activities should rather flow out of our own values, shaped by our Jewish heritage and by its aspiration for holiness.

Second, we must recognize that sexual intercourse is not an isolated act with little or no effect on the rest of our lives; it is not the working of a machine which can be turned on or off at will with no consequences for the rest of our lives. Sex should rather be seen in the broader, more accurate way in which Judaism depicts it — as one important part of our human existence which is tied to all the other parts and which therefore affects, and is affected by, the totality of our lives.

This means, third, that some of the concepts and norms which we generally apply to other parts of our lives are at least as important in our sexual relationships. This should not be surprising. Sex, after all, is one of the ways through which we relate to one another emotionally and physically. It is a particularly intense way, of course, but that only means that the expectations we have of each other in other contexts are all the more important in sex. Consequently, the beliefs and values that guide us in other forms of relationship

apply to our sexual relations at least as much. It is for this reason that the first part of this rabbinic letter begins with a brief description of some of the ideas and morals by which Judaism would have us lead all of the aspects of our lives, including, but not restricted to, our sexual activities: sex is an integral part of the whole of our being.

Finally, fourth, just as each of us is an integrated whole, so too each Jew's identity as a human being is critically dependent upon his or her ties to the People Israel. Indeed, while Enlightenment ideology would have us believe that each person is an isolated individual who may or may not choose to join a group and may choose to leave it at any moment, Jewish sources understand us as inextricably connected to the Jewish people.³ This means that all of our acts, including our sexual ones, have social consequences. Therefore, while our sexual activities should reflect our own values and not simply peer pressure, in shaping our individual sexual values we must consider the effects of what we do on others — not only those with whom we engage in sexual relations, but also the moral character of our people. In this, as in other areas of life, our actions should be a *kiddush hashem*, a sanctification of God's name, by reflecting well on the Jewish tradition, the Jewish people, and the God Jews worship.

3. *Being Created in the Image of God.* A central concept which shapes Judaism's understanding of ourselves and others is that each of us was created in the image and likeness of God (Genesis 1:27; 5:1). We are not an accidental happenstance produced by blind forces of nature; we are rather the conscious and purposeful creation of God. Moreover, we share some of God's characteristics. Like God, but, of course, not to the same degree, we are capable of sustained thought, creativity, and awareness of ourselves, our world, and God; the light of God is imminent in our spirit (Proverbs 20:27). We share in God's dominion over the earth (Genesis 1:26, 28), and we have the divine attribute of free will (Genesis 3:5; Deuteronomy 30:19). We are privileged to commune with God and, in rabbinic terms, even to be God's partner in ongoing acts of creation.⁴

This means that each of us has divine worth. That is true regardless of our abilities or disabilities, our wealth or poverty, our personal qualities or defects, and our usefulness to others. We have divine worth even if we do not think very much of who we ourselves are.

The divine worth granted to each of us is a special blessing; we share in no less than the essence of God. This is the source of many of our responsibilities

to ourselves, to others, and to our world. If we indeed know the difference between right and wrong, we have the responsibility to choose the right. If we are to be God's partners in ongoing acts of creation, we must act accordingly.

This concept has far-reaching implications when applied to the area of intimate relations. The sexual parts of our being — physical, emotional, intellectual, and spiritual — are not base or obscene; they are part of what God termed "very good" after creating us on the sixth day of creation (Genesis 1:31). Like all other parts of our being, we must use our sexual faculties for good purpose, as defined by Jewish law and tradition, to activate their potential for divinity, but we have not only the ability, but the duty, to do that. Intimate relations, then, are not seen within Judaism as simply physical release or the product of animalistic lust; they are, when carried out in the proper context and way, no less than an expression of the divine image within us.

4. *Modesty.* The three concepts described above are the basis of some of the values Judaism teaches us. The respect which we are to have for God's creation, for example, requires that we treat our own body with modesty. While sex, in Judaism, is not a corrupting or embarrassing part of our existence, as it is in some other religions and systems of thought, Jewish law does require that it be held private.

Several reasons have been proposed for this. Keeping sexual activity private distinguishes it from animal sexuality, imparting a uniqueness and holiness to human sexual acts. One shares the intimacy of sexual intercourse away from the observation of others so that it can attain an intensity and focus which would otherwise be absent. This enables sexual intercourse more effectively to bind the couple together emotionally, for this is an aspect of their lives that they share with one another in private. By minimizing the sexual stimulation that one encounters in public, Jewish rules mandating privacy in sexual matters also help to limit sexual intercourse to the context of marriage, where Jewish sources declare that it belongs.

The privacy which Judaism requires of sex (in Hebrew, *tzniut*, modesty) affects our clothing, our speech, and our public activities. We may dress in accord with the styles of the times, but never should our apparel accentuate the sexually arousing parts of our bodies. Thus sexually suggestive or revealing clothes for either men or women are not in keeping with Jewish law or sensibilities.

Similarly, our speech patterns should manifest respect for our bodies as creations of God, and this includes the generative parts of our bodies. Sexual language which is crass or violent bespeaks discomfort with one's body and disrespect for its divine value. It also cheapens the level of discourse, thereby diminishing the stature of everyone concerned, including especially the speaker.

Judaism's expectations of modesty also affect our behavior in public. Sexual activity should be reserved for private quarters.⁵ This is not to demean sex as something sordid which one must hide; quite the contrary, it is to sanctify it as the intense, intimate, mutual expression of love that it should be. Such love is understood within Jewish sources to be a great good, but a private one.

5. *Respect for others.* Another implication of being created in the image of God is that we must respect every other human being, regardless of the extent of any given individual's talents, beauty, intelligence, wealth, character traits, or any other factor. The Hebrew term for this value is *kavod ha-briyyot*.⁶ If that is true for everyone else, it certainly should be true for our sexual partners, for sex, after all, is — or should be — an expression of love and intimacy. In every relationship one must treat other human beings as the creatures of God they are, but in a relationship which signifies special care and concern one must be especially mindful of doing so.

This means, minimally, that sexual relations, if they are to adhere to Jewish concepts and values, may not be coercive. The other person may not be just the object of one's sexual pleasure. While it may well be the case that one partner wants to have sex more than the other at any given time, and while partners may acquiesce to each other to please one another as part of a long-term relationship, sex should never be a mere usage of the other for physical release. It generally involves physical pleasure, which is one of the great gifts which God has given us by creating us as we are. At the same time, such sexual pleasure should always be in the context of a relationship which is at least respectful of the other partner. If one member of the couple, then, does not want to engage in sexual activity, or does not want to do so in a particular way, those wishes must be honored.

A more adequate expression of the respect due to each person would restrict sex to those people, and to those times, when both partners honestly feel

love for one another. To be respectful of oneself and of others, sexual acts should not be mechanical or casual but should rather express the couple's mutual love.

6. *Honesty.* Judaism demands of us a high standard of honesty, for respect for other human beings entails that we not deceive them. Thus in commerce, advertising must be truthful, scales must be accurate, and descriptions in contracts of products and services must correspond to what the parties really intend. Similarly, in relationships, the Rabbis⁷ require that "one's 'yes' should be yes, and one's 'no' should be no."⁸ One must sincerely and honestly communicate what one means at any given time.

There is one exception and one limitation to the tradition's requirement of honesty. When the truth will only hurt someone else, and nobody stands to lose by describing things as nicer than they are, one may choose tact over truth.⁹ Moreover, not everything needs to be said or reported. Failure to tell the truth leads to a lack of trust and thus undermines the possibility of long-term relationships. On the other hand, reporting every feeling or every instance of disagreement at the moment it arises is not the recipe for a healthy relationship either. One must be honest, but not brutally so.

The same norms of honesty apply to sexual activity as well. People involved in dating should not deceive each other with regard to their intentions. One can and should be tactful, but if one really does not want to continue a relationship, the honest — and, ultimately, the kind — thing to do is to say so. Similarly, people should not pretend to be romantically involved to gain sexual favors. Relationships develop over time, and what begins simply as a friendship may later blossom into romance; but honesty requires that, within the boundaries of tact, people should make their feelings and intentions clear.

This is true within a marital relationship as well. One need not, and indeed should not, say those things which are simply hurtful, even if they are true. Moreover, one is not obligated to correct every mistake one's spouse makes, especially in public. Furthermore, one need not share with one's spouse every fantasy — sexual or otherwise — that one has. At the same time, one must be open and honest about those matters which the spouse has a right to know as part of a trusting relationship, especially those matters which affect either or both members of the couple in significant ways and which can be changed to improve the quality of the relationship.

7. *Love and fidelity.* "You shall love your neighbor as yourself" (Leviticus 19:18) is, perhaps, the most famous of the Torah's commandments. It is "a great generalization" of all the other commandments in the Torah, according to Rabbi Akiba, all of which, according to Hillel, are but an interpretation and extension of this one.¹⁰ The *siddur*, the traditional Jewish prayer book, places the blessing of God as One "who blesses His People Israel with love" immediately before the Shema, which commands us, in turn, to love God. Human love, then, mirrors the loving relationship between God and the People Israel and, as such, partakes in aspects of divinity.

Love requires us to show concern for our neighbor in concrete ways.¹¹ The same is true all the more so for those with whom we are romantically involved, for there, presumably, the feelings of attachment are yet stronger. This means that in such relationships we must care for our partner in both feeling and action. Negatively, we may not offend or annoy him or her, take him or her for granted, and certainly not harm him or her in any way. Positively, love requires that we think of the other's needs and wants in living our own lives and that we make a point of attending to them.

We can never, of course, totally escape our egocentricity. To the extent that we can, however, we must also learn to care for others. As the Jewish theologian, Martin Buber, said, we are not truly human unless we cultivate I-Thou relationships, wherein we think of others not as a means to our own ends, but as ends in themselves.

Part of what it means to love someone is to be faithful to that person. This, in some ways, is a corollary of being honest with each other, but it goes beyond honesty in the extent of its demand for trust. Because of the intensity and intimacy involved, romantic relationships, unlike friendships, involve exclusivity. I am the only lover of my spouse and therefore am willing to be as open and intimate with him/her as I am. We need that kind of security to expose ourselves to the extent that we do in love relationships. Consequently, fidelity is a critical part of such relationships.

8. *Health and safety.* Contrary to the contemporary notion that my body belongs to me, our tradition teaches that our bodies belong to God. As owner, God can and does demand that we take care of our bodies throughout our lives, very much like the owner of an apartment requiring that those who rent it take reasonable care of it during their occupancy. Jewish law therefore prescribes a number of positive obligations that we have to take care of our bodies

(proper sleep, exercise, diet, hygiene), and it forbids mutilation of the body, taking undue risks with it, and suicide.¹² As detailed below, these requirements take on added meaning for all those entering sexual relationships in the age of AIDS and other sexually transmitted diseases.

9. *Holiness.* Judaism demands of us that we live by the highest of moral standards, that we emulate God. The Torah says: "You shall be holy, for I the Lord, your God, am holy" (Leviticus 19:2). The Hebrew word *kadosh* which we translate "holy" means special, set apart, unique in character. As Jews, we are to aspire to be God-like, to shape our behavior in ways which sanctify God's Name (*kiddush hashem*), and, conversely, to avoid forms of behavior which desecrate God's Name (*hillul ha-shem*). While the tradition is fully aware that no human being can be perfect, that each of us needs the tradition's provisions for making amends, for "returning" (*teshuvah*), we have a mission continually to strive to be exemplary, "a kingdom of priests and a holy nation" (Exodus 19:6).

Sex is one important arena where this aspiration must be manifest. Singling out one person as your marital partner through the Jewish betrothal ceremony is called, in Hebrew, *kiddushin*. The term indicates that each person is now uniquely the marital partner of the other and that their relationship should be one deserving of God's blessing. Sex, as understood in the Jewish tradition, can distance one from God if one violates some of Judaism's norms relevant to it, but sex can also bring human lives closer to God as one fulfills the divine purposes of companionship and procreation. Indeed, probably the most famous rabbinic letter on sexual morality in the Middle Ages, that attributed to Rabbi Moses ben Nahman (Nahmanides), is entitled The Letter of Holiness *Iggeret ha-Kodesh*, and the section of Rabbi Abraham ben David of Posquiere's book on family law dealing with the moral and theological prisms through which one should approach sexual activity is called *Sh'ar ha-Kedushah*, The Gate of Holiness. Thus sex, in the Jewish tradition, can be a vehicle not only for pleasure, celebration, and wholeness, but also for holiness.

B. Sex Within Marriage

1. *Marital Companionship.* Adam and Eve, the progenitors of all humanity according to the biblical story, were specifically created for each other, "for it is not good that a person be alone, ... and therefore a man leaves his father and his mother and clings to his wife so that they become one flesh" (Genesis 2:18, 24).

The Torah thus recognizes the basic human need for intimate companionship and seeks to satisfy that need through the institution of marriage.

Indeed, Chapter Two of Genesis portrays Adam as created by God first as a solitary human person, endowed by himself with all the possibilities of life. Since, according to that story, God eventually created both Adam and Eve, why, we wonder, did God not create them simultaneously? The reason seems to be that God wanted the first person to experience, not just to imagine, what it is like to have *everything* but *nobody*. After Adam had experienced the pain of aloneness, only then would he be ready to appreciate the need for companionship and interdependence as the essential path of personal fulfillment. For him, and for us, his descendants, this is the human norm.¹³

Sex is one of the ways in which this companionship is expressed. The Torah recognizes the sexual desires of women as well as those of men; while we might take that for granted, other societies in the ancient — and, for that matter, in the medieval and the modern — world assumed that only men have sexual appetites. Instead, the Torah and the Rabbis who later interpret it, in recognition of the couple's mutual desires, structure the laws of marriage such that both spouses have rights to sex with regularity within marriage.¹⁴ Moreover, while the husband may never force himself upon his wife, Jewish law permits couples, within the bounds of modesty, to have sex in any way they want.¹⁵ The Torah and the Rabbis thus went quite far to affirm the rights of both members of the couple to the pleasures of each other's sexual company.

On the other hand, when sex becomes a tool for control, the marriage ceases to be the partnership that it is intended to be. Our Jewish sources specifically proclaim that coercive sex is never allowed, and they disdain either spouse "rebell[ing]" against the other by denying sex. One need not agree to engage in sexual relations each time that one's spouse wants that, and a refusal to have sex must be respected. At the same time, the tradition does not approve denial of each other's sexual rights over a long period of time without due reason, for then the spouse who wants to have sex is being denied the sexual expression of companionship to which each partner is entitled in a marriage.

Marital companionship is, in part, sexual, but it is more than that. In the Jewish marriage ceremony, the only explicit reference to the couple being married describes them as *re'im ahuvim*, loving friends. This description appropriately indicates that the companionship of marriage should extend over a wide

scope such that the husband and wife are not only lovers, but friends. They should take time to enjoy many things together. They should talk with each other about what is going on in their lives and what they are thinking and feeling. They should be, as the marriage ceremony says, loving friends, where the friendship is as strong an element in their relationship as their romantic love.

2. *The importance of marriage and children.* The opening chapters of Genesis suggest an additional purpose for marriage. Once having created the first man and woman, God commands, "Be fruitful and multiply" (Genesis 1:28). Marriage is thus theologically important both to relieve human loneliness and to produce children.

This dual approach to marriage is reflected in Jewish law. In addition to the commandment to procreate, the Torah includes another verse (Exodus 21:10) commanding us to have sex to afford each other pleasure and companionship.

The Rabbis later determine that the command to procreate is fulfilled when the couple has had two children.¹⁶ If a couple cannot have children, the commandment to procreate no longer applies, for one can only be commanded to do what one can do. Nevertheless, such couples should seriously consider adoption, converting the child to Judaism if he or she was not born to a Jewish woman. The Talmud states that adopting and raising a child is "as if one has given birth to him/her," and that adoptive parents "follow the Lord at all times."¹⁷

Those who can bear children or adopt them should see it as a *mitzvah* of the highest order to have more than the minimal number of two, for nothing less than the future of the Jewish community and of Judaism depends upon that. The Jewish community lost a third of its members in the Holocaust, and contemporary Jews are not producing enough children even to maintain our present numbers. Add to these factors the high rate of intermarriage and assimilation among Jews today, and it becomes clear that we are in serious demographic trouble as a people. One needs a Jewish education to become an informed, practicing Jew, of course, but people can only be educated if they exist in the first place. The *mitzvah* of procreation, like all other commandments, does not apply to those who cannot fulfill it; but for those who can, procreation is literally a matter of life and death for us not only as individuals and as families, but as a people.

Children are not only an obligation: they are a blessing. Parents inevitably worry about their children, get angry with them on occasion, and experience their frustrations and missteps together with them, but parents also share in their accomplishments and renew their own sense of the joy of life through them.

Moreover, children are our destiny, perhaps our strongest tie to the future. Biblical and rabbinic sources affirm that individuals live on after death in one form or another¹⁸ and that the influence we have had on others during our lifetime continues after death, but we also, for those sources, live on through our children. We are, after all, linked to the generations, both past and future, and children are one primary form of that bond.

One other point should be noted about the tradition's requirement that we procreate. Both during and after the time that a couple are having their children, the duty to have conjugal relations for the sake of companionship continues. God's desire, according to the Torah and the Talmud, is that people should, if at all possible, live in marital partnership, regardless of their ability to procreate.¹⁹

The importance of marriage, within the Jewish tradition, is not only for reasons of propagation and companionship, as important as they are; it is also to educate children in the Jewish tradition so it can continue across the generations. Abraham, the Patriarch of the Jewish people, is already charged with teaching his children (Genesis 18:19), and the commandment for each one of us to do likewise, which appears several times in the Torah, is enshrined in the sections chosen for the first two paragraphs of the Shema (Deuteronomy 6:4-9; 11:13-21), a prayer which we recite twice daily. Even when schools developed later on, the primary context for Jewish education remained the home, and the parents continued to be responsible to insure that their children learned to be educated and practicing Jews. In our own day, we are rediscovering that no schooling, however good, can be adequate, that family education is the key to the continuation of the Jewish heritage. The duty to educate one's children applies to every parent, married or single, custodial or not; but one of the objectives of marriage within the tradition is to provide the context in which children can best learn how to be Jews.

This includes the children's education in sexual behavior. Children learn what it is to be a husband or wife first and foremost from their own parents. Young children begin to understand the special kind of love which marriage

is when they see their parents caring for each other, laughing together, planning things together, sharing the tasks of life, and yes, even arguing with one another. Older children may learn some of the biological aspects of sex in school, but they need their parents to help them discern the values involved. With the exception of communicating the imperative to protect oneself from AIDS and other sexually transmitted diseases, teachers — especially in public schools — are not authorized to teach what is appropriate in boy-girl relationships and what is not. That is the parents' job, and it is an ongoing one through the child's teenage years. For that matter, even in adulthood children may consult with parents about how to handle specific issues in their romantic relationships.

In these discussions, parents should not feel that they will be ignored or thought to be outmoded if they advocate abstinence before marriage, especially if they do so calmly and with reason. They certainly should present sex as Judaism does, namely, as one part of our being which is integrated with all other parts of our being, and therefore our sexual behavior should reflect our own values as people and as Jews. Peer pressure should not govern the decisions which teenagers or adults make about their sexual expression, and parents need to help them see that.

While conversations about these matters at all ages should be open and honest, it is the parents' own example which is the most powerful educational device for teaching Jewish sexual ethics. Marriage is therefore important for this specific part of Jewish education as well as for the broader aspects of what it means to be Jewish.

For all of these reasons, then, marriage and children are vital in Jewish thought and practice. Many, however, do not or cannot get married, and others cannot have children. Unfortunately, the Jewish emphasis on marriage and children all too often amplifies the pain that such people feel. It is therefore important in this context to reaffirm the divine significance of everyone's life; we are all created in the image of God, and we all retain divine worth as individuals, whether or not we are married and whether or not we have children.

One other matter. In contemporary society, marriage and family are often balanced against the values of work. Judaism prizes work: "Six days shall you labor and do all your work" is as much of a commandment as "and the seventh day is a sabbath to the Lord your God [on which] you shall not do any work..." (Exodus 20:9-10). Jewish sources make it clear that work is important for what

it contributes to society as a whole, for the psychological health and self-worth of the individual, and for the support it affords to oneself and to one's family.²⁰ For some people, though, the secular work ethic prevalent in contemporary society has made work the sole value, a virtual idol.

Judaism would have us recognize the idolatry inherent in a life devoted exclusively to work and would have us balance our commitments to work with serious time and energy spent on other important values, most especially those of family. Overzealous commitment to work does have a deleterious effect on one's sexual and family relationships²¹, and the Jewish tradition would have us remember that one's family should take precedence over one's job. This is poignantly stated in the Rabbis' comment on Numbers 32:16, where the tribes of Reuben and Gad ask to stay in the lands which the Israelites had already conquered on the eastern bank of the Jordan River so that "we might build sheep pens for our flocks and cities for our children." On this the Rabbis comment: "They were more worried about their possessions than they were about their sons and daughters, for they mentioned their flocks before their children. Moses said to them: 'Do not do that; what is primary should be primary and what is secondary, secondary. Build first cities for your children and afterwards pens for your flocks.'"²² As both men and women in our society are increasingly taking on the responsibilities of careers, then, it is important to reaffirm that both men and women have critically important roles to play in providing marital companionship for each other and in raising their children.

Achieving a proper balance of work and family, of course, is not easy. Since most parents in our day do not live with an extended family nearby, the full burden of supporting themselves and also of rearing the children falls directly on them. Still, years from now, when we look back on our lives, most of us will not feel bad that we could not spend more time working; we will instead regret the time that we did not spend with our children, particularly when they were young and readily available for interaction.²³ That long-term vision should help us keep our priorities straight when we are young adults.

3. *Infertility*. The command to procreate, like all other commands, does not apply to those who cannot fulfill it. Therefore, the Jewish teachings described above are in no way intended to generate guilt or shame in infertile couples, and such people should not see the Jewish tradition as adding to their frustration by holding up an ideal which it is impossible for them to fulfill. Jewish law does not expect them to have children when they cannot. Moreover, friends,

family, and the community should help couples with fertility problems endure the grief, frustration, disappointment, and anger that often accompany infertility.

Jewish law permits infertile couples to avail themselves of some of the modern medical means to overcome infertility, but it does not require that they do so. Jewish law also endorses adoption as a means of having children, including adoption of children of any age or race. In some instances, the child conceived through modern techniques or adopted may need to be formally converted to Judaism, but for a child that is a simple procedure well worth the joy of having children.²⁴ There are resources within most Jewish communities, often under the aegis of Jewish Family Service, to help Jewish couples experiencing infertility to explore the options that they have and to provide support and advice. The absence of children, though, does not in the least impugn the divine value of one's individual being or one's marriage.

4. *Adultery and incest*. Adultery is prohibited by the seventh of the Ten Commandments, and it is one of the three prohibitions which, according to the Talmud, one is not to violate even on pain of losing one's life.²⁵ Adultery is a betrayal of the original, wedding covenant of holiness (*kiddushin*), a violation of the trust that that covenant promised. It has a lasting impact on the marriage; even if there is reconciliation between the members of the couple, the extramarital affair becomes part of the couple's story which can never be rewritten for either them or their children. The perfidy which adultery entails makes it an immoral and immature response to marital problems which should be resolved in better ways.

Incest is prohibited in very strong and specific language in the Torah²⁶ and is, along with adultery, one of the three prohibitions which the Rabbis insist one must not violate even at the cost of one's life. The Torah delineates the relations who may not engage in sexual intercourse with each other, and the Rabbis added to that list.²⁷ God prohibits incest, according to the Torah, to distance us from the abhorrent sexual practices of the Canaanites, who defiled their land thereby; later Jewish thinkers add other rationales for the prohibitions.²⁸

In the context of this section of this rabbinic letter, dealing with marital sex, suffice it to say that the particular form of incest that occurs between parents and children violates the trust of the relationship that should exist between

them; it often causes life-long damage to the child involved, severely impairing his or her self-esteem and making it impossible for him or her to form strong, trusting relationships with others. People who are tempted to engage in incestuous relations must get help so that they can avoid inflicting this gross harm on those whom they instead should love and care for.

5. *Divorce.*²⁹ When two people stand under the *huppah* (wedding canopy), they intend that their marriage will last for the rest of their lives. The sad reality, though, is that nowadays there is a high level of divorce.

The Torah provides for divorce (Deuteronomy 24:1-4), and so from our earliest texts the Jewish tradition has not considered divorce to be a sin. On the contrary, at times divorce may be appropriate and possibly even a Jewish and moral good. That would be true, for example, when the marital bond includes abuse or when it causes severe harm to the self-esteem of one or both spouses such that they cannot live life fully in the image of God. On the other hand, though, the Talmud teaches that the Temple altar itself sheds tears upon the termination of a marriage,³⁰ suggesting that divorce is a source of immense sadness to all involved, not only to the couple and the family, but even to the community and the world. Divorce is sometimes the right thing to do, sometimes a tragedy, often both — a profound teaching about the complexity of relationship in past times and in our own.

The increase in divorce in our day derives from many factors, some cultural, some economic, and some moral. One of those factors is the new economic and emotional equality of women, such that both men and women today are freer than ever before to choose to end a destructive marriage. Another is the unrealistic expectations of constant passionate excitement with which people enter marriage, largely as a result of the media; marriage may well be romantic and passionate, but people should get married to be companions through life together and to have and raise children, with passion as an accompaniment to those activities rather than the prime motive to get married.³¹

Even when clearly indicated, divorce in most cases is nevertheless a profoundly sad event, shattering the hopes and dreams of both spouses and the sense of continuity in their lives, often destabilizing their self-image and self-confidence, and always requiring a radical change of their lives from within and from without. New living arrangements must be made, and one can no longer depend upon the other for emotional support, for sharing, or even for dividing the tasks of life. Married friends of the divorcing couple may no longer

remain friends, and, if they do, time spent with them can become awkward. If the couple has children, divorce has a life-long impact on the children's sense of self and on how they view relationships — though so, too, does growing up within the context of a fractious marriage.

As such, Judaism clearly stands in opposition to the frivolous or glamorous images of divorce sometimes portrayed in the media. A life partner should never be traded in simply for the sake of "having" a newer model. Such flippancy degrades the full humanity of both spouses and dishonors the sanctity of the marital bond.

Further, while contemporary psychology teaches the value of personal growth, Judaism emphasizes the deeply stabilizing and sanctifying effects on the psyche of continuity. From this standpoint, divorce can only be a last resort, after all efforts of reconciliation have been exhausted.

If a couple decides to be divorced, it is imperative that they secure a Jewish writ of divorce (a *get*) in addition to whatever procedures are demanded by civil law. However bitter their feelings may be for each other by this time, refusing to give or accept a Jewish writ of divorce is not the way to express those feelings. Jewish law wisely requires the couple at that time formally to end their marriage with a *get* so that they can achieve a measure of psychological closure of their relationship. Moreover, the absence of a *get* prevents both parties from marrying anyone else according to Jewish law; a writ of divorce from the civil authorities is not sufficient. Leaving such impediments to the remarriage of one's former spouse is just not right. Simple fairness, then, as well as Jewish law require that divorcing couples free each other to get on with their lives through the legal instrument of a *get*.

6. *Preparation for Marriage.* Jews living in an era in which divorce is a real possibility must enter into marriage with a higher level of intentionality and care than ever before. The knowledge that one in two marriages ends in divorce should require all couples to be especially mindful of what it takes to make marriage work.

Marriage is the most profound relationship we enter and therefore one of our most demanding undertakings. It touches on our deepest human longings for love, trust, and intimacy, and it therefore brings out the very best and the very worst of who we are as individuals. Moreover, everyone grows and changes over time, and marital relationships have to adjust to such changes.

For these reasons and more, sustaining a successful marriage is indeed hard work, and people contemplating marriage owe it to themselves and to their future spouses and children to prepare for that task. We spend years preparing for our careers; eight or ten sessions of a marriage preparation course, where available, is a superbly good investment of time. Alternatively, the couple should consider a series of counseling sessions with a rabbi and/or marriage counselor.

The goal of marriage preparation, whether in a course or in premarital counseling, is to encourage the couple to talk to each other about important aspects of their relationship. Adequate preparation might include issues of sexual concern, children, parents, friends, jobs, money, and communal commitments. It might also teach people to quarrel in healthy and loving ways so that they emerge stronger as a couple, and, more generally, it should help people learn how to communicate with each other. A couple should also discuss how they are going to express their Jewish commitments in their new home, and how Judaism can help them with some or all of the issues mentioned above.

Clearly, none of these issues is ever fully resolved; this is a life-long project. Moreover, one can, and probably will, change one's mind on some of these issues as time goes on, and one certainly should not try to plan all of one's future life now. But to enter marriage in this era without deeply exploring these areas of concern is to close one's eyes to reality.

Preventive care for marriage does not end with the wedding. On the contrary, successful marriages are unions in which both spouses are mindful on an ongoing basis not only of their own needs but also of the needs of their mate. Spouses must remain cognizant of how important it is to continue to express love and appreciation for the other on a daily basis. This includes freely offering and receiving hugs and compliments, responding generously to each other's requests for help, and, conversely, refraining from unnecessary criticisms and nasty or sarcastic remarks. In general, the couple must set aside adequate time — amidst life's multiple demands — to honor and nurture this most important of life's commitments.

Couples in our day are well advised to shed any residual sense of embarrassment about seeking help — from friends and family, and especially from rabbis and counselors — when difficult issues arise in marriage. This is simply a continuation of the model of preventive care initiated during the engage-

ment period. Just as one would seek professional care for medical problems, one must, in our day, do the same to protect the health of a marriage.

7. *Single Parenthood.* Single parents in great numbers are a new phenomenon in Jewish life. In fact, a small percentage of the Jews of North America live in the idealized, "normative" family of mother and father married for the first time sharing a home with two or more children. Instead, many homes now consist of a single adult parenting one or more children. Some people become single parents through divorce, some through the death of their spouse, some through non-marital intercourse, some through artificial insemination, and some through adoption. Our synagogues, schools, youth groups, and camps are increasingly adjusting to this new reality, but probably much too slowly for the people involved.

While parenting can be enormously fulfilling and rewarding, it is almost always a very hard job, endlessly demanding of our time, energy, patience, and creativity. Single parenting is all the more so. All of us in the Jewish community therefore need to make special efforts to help one another with those responsibilities, pragmatically, psychologically, and financially. This might include assuring the availability of child care, creating support groups within the synagogue for single parents, and instituting reduced membership and tuition rates, when needed. It certainly includes recognizing that the family unit of a single parent with his or her children is a family — not an object of pity, but a full-fledged family, albeit one with special needs.

Since single parents often lack extended family members or friends who can help them bear the responsibilities of parenthood, single parents experience distinctive strains on their time, energy, and psyche which inhibit dating and (re)marriage. Synagogues therefore particularly need to help single parents who wish to marry to do so. This might include planning social and educational activities where singles in general, and single parents in particular, can meet, and it might also include the provision of child care or babysitting services (perhaps as a U.S.Y. project) to give single parents time to meet potential mates.

Single people with children have a special responsibility to model for their children sexual behavior which reflects Jewish values. That is understandably harder when one is trying to balance the duties of parenting with carrying on a personal life of one's own, but it is absolutely critical. When single parents

date, their teenagers, who may also be dating, see them as a directly relevant model, and even younger children, when they later become teenagers themselves, will often remember what their parent did when he or she was dating. Despite the age differences, then, single parents, even more than married ones, will find their romantic behavior scrutinized by their children and used as a paradigm for their own.³²

8. *Marital purity (tohorat hamishpahah)*. The Torah includes rules that forbid sex during a woman's menstrual period (Leviticus 15:19-24; 18:19; 20:18). It gives no rationale for these rules apart from saying that they are part of the way in which the people Israel become holy — that is, separated from other peoples and in league with God.³³ While the Torah requires sexual abstinence for seven days, the Rabbis added another five, and so couples who follow these laws do not have conjugal relations for twelve days out of every menstrual month. The woman must immerse herself naked in undrawn waters, which legally has meant either in a natural body of water or, more commonly, in a *mikvah*, that is, a pool specially constructed to fulfill the legal requirements.³⁴

No rabbinic opinion within the Conservative Movement has ever annulled these laws. Nevertheless, throughout much of this century, it appeared that they were slowly passing into disuse within the Conservative community. For some, this was a matter of custom; *tohorat hamishpahah* simply was not part of the Judaism they were taught or which they, their families, or their friends practiced. For others, it seemed strange to maintain the purity laws with regard to a woman's period when we all are always in a state of ritual impurity anyway due to the destruction of the Temple and the consequent lack of the ashes of a red heifer to purify us.

Others have objected to these laws on egalitarian grounds, for there is an inherent inequality in the way in which the Torah and subsequent Jewish law treat the natural emissions of the sexual organs of women as against those of men. The impurity that the Torah imposes upon men after a seminal emission requires far less to regain a state of purity than the requirements demanded of a woman after her menstrual flow: the man needs only to wash himself (not necessarily in a *mikvah*)³⁵ and wait until sunset, while the woman must wait seven days (twelve according to the Rabbis) and then immerse in a *mikvah* according to very specific rules. Indeed, the Talmud says that Ezra instituted a decree that men who emitted semen were required to immerse in a *mikvah* before studying Torah (and, according to some medieval authorities, before praying), but that decree was annulled when it became clear that men were not

abiding by it. The result is that it is only the laws governing women's impurity during menstruation that continue in force. As such, these laws, in the eyes of some, degrade women, for they imply that women are periodically sullied by their menstrual functions and therefore need monthly cleansing, while men are not subject to such diminishment and do not require such repair.³⁶

In recent years, though, some couples have made the laws and practices of *tohorat hamishpahah* part of their sexual practice, sometimes for the full twelve days followed by immersion in a *mikvah*, and sometimes for the more limited, biblical period. In some cases, the reason why couples abide by these laws is simply that they are part of Jewish law and should be obeyed as such. Other people are motivated to obey these laws for reasons advanced by some schools of feminist Jewish thought, for some women find this to be one of the distinctly female rituals by which they can affirm their Judaism and reconnect with Jewish women through the ages.

Couples who practice these laws also find other meanings in them. Monthly abstinence forces both members of the couple to appreciate the joys of sex all the more when they resume. Moreover, it reinforces the recognition that neither spouse is just the sex object of the other, for there are times each month when their relationship must be played out on other planes. Sex then becomes one of the arenas in which they relate to each other, but never the only one. Furthermore, following these laws makes the couple particularly anxious to have sex precisely when the woman is most fertile. Consequently, if the couple is not using contraception, the possibility of children, with the ties to past and future generations that children symbolize, is also part of the meaning of these laws.

In general, then, these rules officially remain the law, and it is not clear that they have been effectively abrogated by custom, as the decree of Ezra has been. Indeed, for some contemporary couples within the Conservative Movement, the old and new rationales given for these laws, taken together, have enabled husbands and wives to enhance the sense of ongoing holiness in their marital relationship — just as the Torah declared the purpose of these laws to be.³⁷

9. *Contraception*. Even though men and women need each other to procreate, the Rabbis of the Mishnah and Talmud maintain that it is only the man who is legally liable for procreation. The stated reason for that decision is exegetical, but other rationales have been suggested.³⁸

We affirm, as the Rabbis do, that both men and women have indispensable roles in procreation and child rearing. The classical Rabbis' assignment of the legal requirement to procreate exclusively to men, however, has important implications in Jewish law for contraception. Since women are not legally obligated to procreate and men are, contraceptive techniques used by women are more easily permitted than those used by men.

Jewish sources from as early as the second century describe methods of contraception. A rabbinic ruling from that time prescribes the use of such methods when pregnancy would endanger either the woman or the infant she is nursing.³⁹ Subsequent rabbinic opinion splits between those who sanction the use of contraception only when such danger exists and those who mandate it then but allow it for other women too.

If couples are going to use contraceptives, Jewish law prefers those forms which prevent conception in the first place over those which abort an already fertilized egg. That is because in most cases Jewish law forbids abortion. For most of gestation, the fetus is considered "like the thigh of its mother," and, because our bodies are God's property, neither men nor women are permitted to amputate their thigh except to preserve their life or health.⁴⁰¹ Jews are often misinformed about this because they have heard, correctly, that Jewish law requires abortion when the woman's life or health — physical or mental — is threatened by the pregnancy and that Jewish law permits abortion when the risk to the woman's life or health (again, physical or mental) is greater than that of a normal pregnancy but not so great as to constitute a clear and present danger to her. "Mental health" as a ground for abortion, however, has not been interpreted nearly as broadly in Jewish sources as it has been in American courts; it would not include, for example, the right to abort simply because the woman does not want to have another child.

Abortion, then, may not be used as a *post facto* form of birth control, and the contraceptives which prevent conception in the first place are preferable to those which abort a conceptus afterward. Thus from the point of view of Jewish law the diaphragm is the most favored form of contraception, for it prevents conception and has little, if any, impact on the woman's health. If the contraceptive pill or implant is not counter-indicated by the woman's age or body chemistry, those are usually the next most favored forms of contraception. Couples like them because they are easy to use and because they are quite reliable as a means of contraception; Jewish authorities recommend them be-

cause their success rate minimizes the possibility that the couple will later consider an abortion as a form of retroactive birth control.

The only non-permanent, male form of contraception currently available is the condom. As we noted above, in Jewish law the male is legally responsible for propagation, and that argues against the man using contraception at least until he has fulfilled that duty.⁴¹ Condoms, moreover, sometimes split or slip off,⁴² and even if they remain intact and in place, they do not always work. Nevertheless, condoms must be used if unprotected sexual intercourse poses a medical risk to either spouse, for condoms do offer some measure of protection against the spread of some diseases, and the duty to maintain health and life supersedes the positive duty of the male to propagate. So, for example, if the previous history of either one suggests the possibility of HIV infection, whether through previous sexual encounters, drug use, or through a blood transfusion, they must use condoms and take a blood test. If either spouse tests positive for the HIV virus, the use of condoms is not enough: abstinence is necessary, for life must take precedence over the joys of sex.⁴³

It should be noted, though, that even those rabbis who permit contraception for non-therapeutic reasons never anticipated that Jews would postpone having children as long as many Jewish couples now do and that, even with modern medical advances, the late teens and the twenties are biologically still the best time for the human female to conceive and bear children. Whether they wish to work outside the home or not, most women in our society find that they must earn money to support themselves and their families, just as their husbands do. Too many couples who wait long beyond their twenties, however, find that when they are ready to have children, they cannot. Therefore, even if young couples choose to use contraceptives for a time, they are well advised, both medically and Jewishly, not to wait too long to have children.

Another factor must be mentioned. We Jews numbered approximately 18 million before the Holocaust, and we lost a third of our numbers during those terrible years. Even if we forget about replenishing the numbers we lost, we are not replacing ourselves as we are now. To do that, we would need a reproductive rate of 2.2 or 2.3 (that is, statistically 2.2 or 2.3 children for every two adults); it must be more than 2.0 to account for those who never marry, those who marry and cannot have children, and those who have only one child. The present reproductive rate of Jews in North America is about 1.6 or 1.7. That

means that we are endangering ourselves demographically as a people. The world's overpopulation problem is real, but Jews are only 0.2% of the world's population, and so even if the reproductive rate of Jews increased to the replacement rate, the impact upon the world's population problem would be minimal. That would still be true even if the Jewish people increased to replenish the six million lost in the Holocaust. Sacrificing the existence of the Jewish people is neither an effective solution nor a warranted one to reduce the world's problems of overpopulation and limited resources. These important concerns are better addressed by increasing the availability and usage of contraception worldwide and by fostering the responsible use of resources. The contemporary, demographic problem of the Jewish people, then, must also be a factor which figures into the thinking of Jews using contraception.

It must also be a factor in communal planning. If we are serious as a community in our attempt to replenish our numbers, we must develop policies and programs to encourage larger families which are also deeply Jewish. Greater discounts could be given, for example, to each added sibling at Solomon Schechter day schools, at Camp Ramah, and at United Synagogue Youth programs; and as a movement we could and should support pro-family legislation such as laws which provide for family leaves for both mothers and fathers and for high-quality, affordable day care. We must, in a phrase, "put our money where our mouth is."

Jews who use contraception for family planning, then, should give serious thought to having children earlier in their lives than is now common; the pressures of graduate school are not necessarily greater than those of the first years of one's career. Moreover, couples should seriously consider having three or four children when the time comes. The obligation in Jewish law to propagate is fulfilled when one has a minimum of two children, but one is not supposed to stop there, for, as Maimonides says, "if one adds a soul to the People Israel, it is as if s/he has built an entire world."⁴⁴

Once again, those who cannot have children are exempted from this obligation, but those who can should. In the end, we must all be reminded of the way in which our tradition thinks of children and the way in which many people experience them — i.e., as a true blessing from God.

10. *Mutuality in marital sex.* Sex is a powerful force in our lives. The promise of it, or the denial of it, can be used as potent weapons to get people to do what you want. In extreme cases, sex can be used for violent ends, as in cases

of rape. Clearly, respect for the other as a creature of God, let alone love for the other, would unequivocally rule out such behavior.

Both spouses, however, will not always feel equally motivated to engage in conjugal relations, and one may acquiesce even when not really in the mood out of love for one's mate and concern to satisfy his or her needs. The Jewish tradition, in fact, instructs men to be sensitive to their wives' intimations of the desire for sex and to satisfy that need whenever possible.⁴⁵ Conversely, a woman who is not particularly in the mood for sex may nevertheless consent to have sex with her husband out of love for him, and she should, in any case, be as sensitive to his desires as he should be to hers. If she really does not want to have sexual relations on a given occasion, though, she may refuse, and her husband must honor her wishes.⁴⁶ Hopefully, the love the two spouses have for each other will enable them to support each other as much when one of them does not want to engage in conjugal relations as when they both do.

As indicated earlier, sexual intercourse is to take place in private, and it must not subject either spouse to undue medical risk. Furthermore, the Torah, as we have indicated, has rules which limit sex to the times when the woman is not having her period.

Within these limits, however, according to the Jewish tradition couples may engage in sexual relations in whatever way they want. "All forms of intercourse are legitimate," says the Talmud. Later Jewish sources are somewhat embarrassed by this permissiveness, but it remains the law.⁴⁷ The Talmud was not prudish; it specifically affirms the rights of both spouses to insist on having sex in the nude, with no sheet or other imposition between them ("the Persian custom"), as one of the legitimate expectations of marriage.⁴⁸ On the other hand, if both members of the couple want to have sexual relations that way or any other, they may do so, as long as it is done in private and with mutual consent.

The Jewish tradition was keenly aware that sexual expression was not confined to intercourse. Beginning with the biblical book, Song of Songs, love poetry abounds in the Jewish tradition. It bespeaks the joys of love, which can and should be enjoyed in the whole host of ways in which lovers express their endearment of each other.⁴⁹ This includes what one says to one's spouse during the day, non-sexual acts of love, and favors for one another. The mutuality of sex, and the strength of marriage, both depend upon the couple taking the time to reaffirm their love for each other in all of these ways, and more.

C. Non-marital Sex

Judaism posits marriage as the appropriate context for sexual intercourse. We recognize, though, that many Jews are engaging in sexual relations outside the marital bond. Some of these sexual acts are adulterous, incestuous, or involuntary, and we resoundingly condemn them as a gross violation of Jewish law and of all of the values described in Section A. We also condemn casual and promiscuous sexual encounters since they involve little or no love or commitment.

The non-marital relations which this section addresses, then, are not adulterous, incestuous, forced, or promiscuous; they are rather sexual relations between two unmarried adults which take place in the context of an ongoing, loving relationship. People engage in such relations for a number of reasons: because a suitable mate has not yet been, or may never be, found, often despite painful and heartfelt searching; because one's life circumstances render marital commitment premature, often for emotional, educational, economic, or professional reasons; or because experience with divorce or the death of a partner has necessitated a gradual healing process, including experience of several transitional relationships prior to remarriage.

We want to say at the outset of this section that it is perfectly natural and healthy for unmarried people to hug and kiss each other as signs of friendship and warmth. Thus the "Shabbat kiss" and embraces meant to convey congratulations, comfort, greeting, or simply comradeship are perfectly legitimate. Indeed, throughout the Bible not only parents and children, but brothers and sisters, friends and lovers embraced and kissed.⁵⁰ Such expressions of human caring give special significance to occasions like Shabbat and life-cycle events, and, more generally, they save life from being lonely and isolated and make it instead social, secure, and meaningful. In Martin Buber's words, "All real living is meeting," and these expressions of fellowship and good wishes help us deepen our relationships with the people who make up our community.

Romantic relationships, from their earliest stages and throughout their unfolding, often use these forms of affection too. Holding hands, hugging, and kissing are perfectly natural and healthy expressions of both a budding romance and a long-term one. One must take due regard for the sense of modesty and privacy which Judaism would have us preserve in expressing our romantic feelings, and so the more intense forms of these activities should be reserved for private quarters.⁵⁰ Within those norms, though, unmarried as well

as married people routinely do and should engage in these practices as they build and strengthen the loving relationships which make them distinctly human.

The remainder of this section, then, deals exclusively with the issue of sexual intercourse outside of marriage. We have described a system of values and practices by which the sanctity of the marital relationship is nurtured. Only marriages can attain the holiness and communal sanction of *kiddushin* because it is the marital context which holds out the most promise that people can live by those views and values in their intimate relationships. Judaism would therefore have us refrain from sexual intercourse outside marriage.

Why does Judaism posit marriage as the appropriate context for sexual intercourse? It does so because in that setting the couple can attain the three-fold purposes for marital sex described above — namely, companionship, procreation, and the education of the next generation. While non-marital sex can provide companionship as well as physical release, especially in the context of a long-term relationship, unmarried couples generally do not want to undertake the responsibilities of having and educating children. They may care deeply for each other, especially in a long-term relationship, but their unwillingness to get married usually signifies that they are not ready to make a life-long commitment to each other.

Some people, though, either will not or cannot get married, and the physical and psychological pleasures which sex provides lead them to engage in sexual relations with each other. Judaism cannot condone such relationships. Nevertheless, for those Jews who do engage in them, all of the concepts and values described in Section A above apply to their sexual activities. That is, Jewish norms in sexual matters, like Jewish norms in other arenas, are not an "all or nothing" thing. Certainly, failing to abide by Judaism's command that we restrict sexual relations to marriage does not excuse one from trying to live by the concepts and values Judaism would have us use in all of our relationships, including our intimate ones. In fact, in the context of non-marital relationships, some of them take on new significance:

1. *Seeing oneself and one's partner as the creatures of God.* We are not machines; we are integrated wholes created by, and in the image of God. As such, our sexual activity must reflect our value system and the personhood of the other. If it is only for physical release, it degrades us terribly. While this recognition is a necessary component in marital sex, it is all the more imperative in

non-marital sex, where the lack of a public, long-term commitment to one another heightens the chances that one or both of the partners will see sex as simply pleasurable release. In our sexual activities, we need to retain our human character — indeed, our divine imprint.

2. *Respect for others.* This means, minimally, that we must avoid coercive sex. Marriage is no guarantee that sexual relations will be respectful and non-coercive. Still, the deep relationship which marriage betokens makes it more probable that the two partners will care for each other in their sexual relations as well as in all of the other arenas of life. Unmarried people must take special care to do this, if only because they know each other less well and are therefore more likely to misunderstand each other's cues.

3. *Modesty.* The demand that one be modest in one's sexual activities — as well as in one's speech and dress — is another corollary of seeing oneself in the image of God. For singles it is especially important to note that modesty requires that one's sexual activities be conducted in private and that they not be discussed with others.

4. *Honesty.* Marriage is a public statement of commitment of the partners to each other, and sexual activity is one powerful way in which that commitment is restated and reconfirmed. If one is not married, however, sex cannot possibly symbolize the same degree of commitment. Unmarried sexual partners must therefore openly and honestly confront what their sexual activity means for the length and depth of their relationship.

5. *Fidelity.* Marriage by its very nature demands fidelity; unmarried relationships by their very nature do not. The value of fidelity, then, and the security, intensity, and intimacy that it imparts to a relationship are not really available to a non-marital relationship. In the spirit of this value, though, one should avoid short-term sexual encounters and seek, instead, long-term relationships to which one remains faithful for the duration of the relationship. Infidelity breeds pain, distrust, and, in the extreme, inability to form intimate relationships with anyone. The Jewish tradition requires us to respect one another more than that; we minimally must be honest and faithful to our commitments so as to avoid harming one another.

6. *Health and safety.* This concern of the Jewish tradition is even more critical in non-marital relationships than it is in married ones, for most sexually

transmitted diseases are contracted in non-marital, sexual liaisons. In our time, this includes not only recurring infections, like syphilis, but fatal diseases like AIDS.

From the standpoint of Judaism, marriage is the appropriate place for sexual relations. For those not living up to that standard it is imperative to recognize that sexual contact with any new partner raises the possible risk of AIDS. That is not only a pragmatic word to the wise; it comes out of the depths of the Jewish moral and legal tradition, where *pikuah nefesh* (saving a life) is a value of the highest order. Moreover we are commanded by our tradition to take measures to prevent illness in the first place.⁵² Fulfilling these commandments in this age requires all of the following:

(a) full disclosure of each partner's sexual history from 1980 to the present to identify whether a previous partner may have been infected with the HIV virus;

(b) HIV testing for both partners before genital sex is considered, recognizing all the while that a negative test result is only valid six months after the last genital contact;

(c) careful and consistent use of condoms until the risk of infection has been definitively ruled out either by the partner's sexual history or results of HIV testing; and

(d) abstinence from coitus where there is demonstrated HIV infection in either partner.

If any of these requirements cannot be met, due to discomfort with open communication, lack of maturity, one partner's reticence to disclose his or her history, or doubts about the trustworthiness of the partner's assurances, then abstinence from genital sex with this partner is the only safe and Jewishly legitimate choice. AIDS, after all, is lethal; protection against it must be part of any sexual decision. We are always obligated to take care of our bodies, and that responsibility does not stop at the bedroom door. Sexual relationships must therefore be conducted with safety concerns clearly in our minds and hearts.

7. *The possibility of a child.* Unmarried couples should recognize that, even with the use of contraceptives, an unplanned pregnancy is always a possibility.

Abortion may not be used as a retroactive form of birth control: Jewish law forbids abortion for non-therapeutic reasons. From the perspective of Jewish law, the fetus is not a full-fledged human being, but as a part of its mother and as a potential human being, it may not be aborted except when the life or physical or mental health of the mother requires it. "Mental health" here, as noted earlier, does not include simply not wanting to have a child. Consequently, couples engaged in non-marital sexual relations must use contraceptives, and they must be prepared to undertake the responsibilities of raising a child or giving it up for adoption if one results. All of the couple's options — raising the child, abortion, and even giving up the baby for adoption, the choice that may seem the least onerous — involve serious psychological consequences for all concerned, and, in the case of abortion, moral and sometimes physical ones as well.⁵³ The implications of a possible pregnancy must therefore be carefully considered.

8. *The Jewish quality of the relationship.* Unmarried people who live together should discuss the Jewish character of their relationship just as much as newlyweds need to do. That ranges across the gamut of ritual commandments, such as the dietary laws and Sabbath and Festival observance, and it also involves all of the theological and moral issues described above.

Moreover, single Jews should date Jews exclusively so as not to incur the problems of intermarriage for themselves and for the Jewish people as a whole. Intermarriage is a major problem for the contemporary Jewish community, for studies indicate that some 90% of the children of intermarried couples are not raised as Jews. Furthermore, intermarriage is a problem for the people themselves. Marriage is hard enough as it is, involving, as it does, many adjustments of the couple to each other; it is even harder if they come from different religious backgrounds. It is no wonder, then, that as high as the divorce rate is among couples of the same religion, it is almost double that among couples consisting of a Jew and a non-Jew.⁵⁴ Consequently, single Jews should date Jews exclusively if they want to enhance their chances of staying together and of having Jewish children and grandchildren.

It should be clear from this discussion of the Jewish values relevant to sex that it is very difficult to live by them in the context of unmarried relationships. That, in fact, is a major reason why Judaism understands marriage to be the proper venue for sexual intercourse in the first place. We affirm the correctness and wisdom of that stance.

Nevertheless, committed, loving relationships between mature people who strive to conduct their sexual lives according to the concepts and values described above can embody a measure of morality, although not the full portion available in marriage. Indeed, serious Jews who find themselves in transitional times of their lives should feel duty-bound to invest their relationships with these concepts and values. Only then can their Jewish commitment have some of the meaning it should for the sexual components of their lives. That meaning can flourish all the more when and if they find themselves ready and able to marry, but Judaism should affect their sexual activities before and after then as well.

Do all of the above considerations mean that people should consider marrying at an earlier age if one finds the right person? The age at which one marries, of course, does not depend on one's own desires alone; it is also a matter of when someone meets the right person to marry and when one is ready to undertake the commitments of marriage. Contrary to the images presented in the media, however, that does not usually happen serendipitously; it more often happens when one consciously puts oneself in contexts where one is likely to meet the kind of person one wants to marry. Finding a mate takes at least as much thought, planning, and effort as any other important project does.

In contemporary society, Jews in large numbers go not only to college, but graduate school, and they often postpone even thinking about finding a marital partner until after all their schooling has been completed. At that time, though, they may have trouble finding a suitable marriage partner, and the longer they wait, the harder it is to have children. Thus the college years are not necessarily too early for people to take steps to find a suitable marital partner, and Jews should consider it reasonable to marry and to begin to have children in their twenties. Not everyone will meet the right person at that time of life, and one should not think oneself or the college experience a failure if one does not; but as a community we need more strongly to validate the desirability of marrying earlier. This is not only a matter of affirming that desirability publicly; it also requires energetic communal planning and action to help Jews meet each other when college will no longer provide a convenient place for that to happen. Meeting and marrying earlier than is now frequently the case will not only resolve the sexual needs of the people involved in the marital context which the Jewish tradition prefers; it will also provide for the many non-sexual, personal needs for the couple earlier in their lives.⁵⁵

A special note concerning teenagers. If the above considerations apply to adults, they apply all the more to teenagers, for whom the commitments of marriage and children are simply not possible. This, though, puts such people in an especially difficult bind, for the level of sexual hormones in their bodies is as high as it will ever get. We rabbis recognize that teenagers throughout history have been driven by their hormones to seek each other's company and to explore their sexuality. The Conservative Movement has therefore created, and will continue to create, opportunities for Jewish teenagers to meet each other and to learn to feel comfortable in each other's presence. As long as the relationship is voluntary on the part of both partners, and as long as Judaism's norms of modesty and privacy are maintained, holding hands, hugging, and kissing are as legitimate for teenagers as they build romantic relationships as they are for older people.

Even more than single adults, though, teenagers need to refrain from sexual intercourse, for they cannot honestly deal with its implications or results — including the commitments and responsibilities that sexual relations normally imply, the possibility of children, and the risk of AIDS and other sexually transmitted diseases. Abstinence is surely not easy when the physical and social pressures are strong, but it is the only responsible thing to do.⁵⁶

One other matter. Although the primary purpose of this rabbinic letter is to discuss human sexuality, we want to reaffirm here our belief that Jewish teenagers should date Jews exclusively. As much as marriage may seem eons away, dating is the usual way in which young people meet and ultimately marry. Marrying the boy or girl next door is still a common phenomenon, for such people share experiences from their high school years and perhaps even from early childhood, and so high school students need to restrict their dates to Jews.

Along the same lines, high school juniors and seniors planning for college should be sure to choose a school with a significant number of Jews. That is important for general religious, educational, and social reasons, but the romantic factor is absolutely critical. Many people do not find their mate in college, but a significant number do, and so one important element in a Jew's choice of college should be the availability of other Jews with whom one can form a community and among whom one can date.

D. Homosexuality

The classical Jewish tradition, from Leviticus 18:22 on, saw homosexual relations as forbidden — indeed, as an “abomination.” That view was shared by Christianity and Islam, with really very little, if any, opposition until very recently. New medical knowledge about the etiology of homosexuality, however, has led some denominations of Judaism and Christianity to rethink their stance against homosexuality, in some cases to the point of equating monogamous and loving homosexual relations with the same type of heterosexual relations. For other denominations of Judaism and Christianity, no change is called for or even discussed, and for yet others, the matter has become the source of deep controversy.

The Conservative Movement is part of this last group. The discussion began in the mid 1980's, and it evolved into a resolution in May, 1990, of The Rabbinical Assembly, the organization of Conservative rabbis, and a similar, subsequent resolution in November, 1991, of the United Synagogue of Conservative Judaism, the Conservative Movement's synagogue arm. The United Synagogue resolution uses the same language as The Rabbinical Assembly resolution which preceded it, but it leaves out the fifth “Whereas” clause and the fourth resolution of The Rabbinical Assembly version. Still, the substance and actual wording of the resolutions are the same, and we shall reproduce the fuller, Rabbinical Assembly version here:

GAY AND LESBIAN JEWS

WHEREAS Judaism affirms that the Divine image reflected by every human being must always be cherished and affirmed, and

WHEREAS Jews have always been sensitive to the impact of official and unofficial prejudice and discrimination, wherever directed, and

WHEREAS gay and lesbian Jews have experienced not only the constant threats of physical violence and homophobic rejection, but also the pains of anti-Semitism known to all Jews and, additionally, a sense of painful alienation from our own religious institutions, and

WHEREAS the extended families of gay and lesbian Jews are often members of our congregations who live with concern for the safety, health, and well-being of their children, and

WHEREAS the AIDS crisis has deeply exacerbated the anxiety and suffering of this community of Jews who need in their lives the compassionate concern and support mandated by Jewish tradition,

THEREFORE BE IT RESOLVED that we, The Rabbinical Assembly, while affirming our tradition's prescription for heterosexuality,

- 1) Support full civil equality for gays and lesbians in our national life, and
- 2) Deplore the violence against gays and lesbians in our society, and
- 3) Reiterate that, as are all Jews, gay men and lesbians are welcome as members in our congregations, and
- 4) Call upon our synagogues and the arms of our movement to increase our awareness, understanding and concern for our fellow Jews who are gay and lesbian.⁵⁷

The Conservative Movement, then, as a movement, stands on record for full civil rights for gays and lesbians and for protection from attack and discrimination. It also officially welcomes gays and lesbians, as it welcomes all Jews, to Conservative congregations.

In the Fall of 1991 and the Spring of 1992, the Conservative Movement's Committee on Jewish Law and Standards (the "Law Committee"), charged with interpreting Jewish law and ethics for the Conservative Movement, devoted four meetings to matters regarding homosexuality not covered by the resolutions.

In March, 1992, the Committee on Jewish Law and Standards adopted responsa which take two different approaches. Some within the Committee thought that even if a person's homosexual orientation is not changeable, homosexual acts remain forbidden, and therefore homosexuals should remain celibate. These members of the Law Committee took that stand with heavy hearts, for they know the suffering and discrimination homosexuals endure in our society and the heavy burden that celibacy is, but that stance is, according to their reading of the Torah and the Jewish tradition, the only possible one. Most within this group openly worried about the future viability of the Jewish

family if homosexual relations are condoned, and they also asserted that a change of this magnitude in Jewish law would establish a slippery slope which would make it impossible for us as a movement to affirm Jewish sexual values of any sort. Some within this group also argued that changing moral perceptions are, in general or in this case in particular, not sufficient reason to change long-standing law.

Whatever the specific grounds which led people to this view, those who held it opposed instituting commitment ceremonies for homosexuals, ordaining sexually active homosexuals as rabbis, or investing them as cantors. Some within this group also thought that sexually active homosexuals should not be granted honors in the synagogue or be allowed to serve as youth leaders or teachers.

Others within the Committee on Jewish Law and Standards took a different view. They recognized that not all those who have homoerotic feelings or engage in homosexual episodes in their teenage years are homosexual in orientation and that sexual orientation spans a spectrum from those who are totally heterosexual to those who are totally homosexual. Still, new scientific findings and, more importantly, the testimony of homosexuals themselves provide us with ample evidence that those who are clearly homosexual do not choose to be so.⁵⁸ On the contrary, they generally have intimations of their orientation early in their lives and often do everything in their power to convince themselves otherwise so as to avoid the stigma and prejudice which society inflicts on homosexuals. This often includes heterosexual dating and behavior and sometimes even marriage and children.

Since legal demands or prohibitions only make logical sense if the people being commanded can fulfill them, and since the Torah and Jewish tradition clearly assumed the homosexual's ability to choose to be heterosexual, this group within the Law Committee declared that homosexuality should no longer be considered an abomination, for that implies that the person could choose to do otherwise. In addition, they argued, since all of the relevant professional organizations and most mental health professionals assert that sexual orientation is ingrained in a person from an early age and cannot be changed, homosexuals do not pose a threat to heterosexual, family life. Furthermore, recommending celibacy for homosexuals is, in the view of this group, cruel and, moreover, not in accord with classical Jewish views of the body and sexuality as God's gift whose legitimate pleasures it is a sin to deny.

In light of all these factors, this latter group maintained that our moral and legal assessment of homosexuality should change. Specifically, homosexuality should no longer be considered an abomination, and all halakhic disabilities should be removed. For those who accept this view, the same Jewish norms which apply to heterosexual relationships would govern homosexual sex, including all of the concepts, values, and norms delineated in Section A above. This would lead some in this group to advocate performing commitment ceremonies as a way of creating strong, monogamous, loving, and Jewishly committed relationships among homosexuals.

The Committee on Jewish Law and Standards passed four responsa on the issue of homosexual sex. Three rejected it either as a *toevah* (abomination) or as undermining family-centered Judaism or as requiring an impermissible uprooting of a law of the Torah. One maintained that homosexual sex should not be seen as a *toevah* and recommended a commission to study the entire issue of human sexuality. The Committee on Jewish Law and Standards determined that commitment ceremonies should not be performed and that sexually active homosexuals should not be admitted to the Movement's rabbinical and cantorial schools. The fourth responsum qualified both of these last provisions as subject to further research and possible revision. It was left to each synagogue rabbi to determine the extent to which homosexuals could be teachers or youth leaders within the congregation and the extent to which homosexuals would be eligible for positions of synagogue leadership and honors within prayer services.

After debate, The Rabbinical Assembly convention, in May, 1992, passed a resolution directing its leadership to create a Commission on Human Sexuality to study how the Jewish tradition should be applied to all aspects of sexuality, both heterosexual and homosexual. This rabbinic letter is one of the products of that Commission.

The Commission members vigorously debated the various issues implicit in the conflict between tradition and the acceptance of homosexuality. Through discussion with committed, Conservative Jews who are homosexual and their families, the Commission learned that many such people live observant Jewish lives within monogamous relationships and, in some instances, are raising Jewish families of their own.

In the course of the Commission's readings and its interviews with a number of mental health professionals, it also learned that, just as there is no single,

heterosexual expression, there is a wide spectrum of homosexual feelings and behaviors. We therefore must be careful to avoid stereotypes and generalities concerning gay men and lesbians.

Furthermore, the current consensus of experts in human sexual development is that homosexual orientation, like heterosexual orientation, is the result of both nature and nurture. There is much that we have yet to learn about how sexual orientation emerges. Most health professionals, however, agree with the stance reaffirmed by the American Psychiatric Association in December, 1992, namely, that however it is fashioned, a person's sexual orientation is not a matter of choice, that "There is no evidence that any treatment can change a homosexual person's deep-seated sexual feelings for others of the same sex," and that, in any case, one should not try to do so for "homosexuality *per se* implies no impairment in judgment, stability, reliability, or general social or vocational capabilities" and "gay men and lesbians who have accepted their sexual orientation positively are better adjusted than those who have not done so."⁵⁹

We fully anticipate that discussion of this topic will continue in our congregations, schools, camps, and youth groups as well as among our professionals, and changes in one direction or another are always possible. At the present time, however, as a Conservative community, we affirm the convictions in the resolutions cited and will strive to live by them.

Toward that end, to fulfill the stated aim of The Rabbinical Assembly and United Synagogue resolutions to make gays and lesbians welcome in Conservative synagogues, the Commission on Human Sexuality recommends that synagogues consider taking one or more of the following steps:

1. Synagogue groups might meet with gay and lesbian Jews to put a face to this issue and to learn how the synagogue can be more welcoming. The goal would be to sensitize synagogue members to the fact that Jewish gays, lesbians, and their families are not an outside group but are part of our own community and should be treated as such.

2. In those instances where synagogues have programs for special constituencies within the congregation, such programs might be created for gay and lesbian Jews and their families as well. So, for example, information about support groups, such as Parents and Friends of Lesbians and Gays (PFLAG), can be disseminated through synagogue media, and the synagogue might host

such a group. Gays and lesbians, though, should generally be integrated into the ongoing activities of the congregation.

3. Synagogue and school educators might include, as part of the curriculum, a section on sexuality and, within this, some material on homosexuality. Where the students are teenagers or adults, this might well take the form of a study of this rabbinic letter, including its citation of the resolutions of The Rabbinical Assembly and United Synagogue. In such courses, it should be made clear that sexual activity, while an important part of everyone's life, is not the whole of it. One consequence of this is that Jewish homosexuals, like Jewish heterosexuals, should not be seen narrowly as people who engage in certain kinds of sexual practices, but rather as people and as Jews, with the full range of interactions that people and Jews have with each other.

4. Conservative synagogues, individually, regionally, and nationally, might organize social action programs to advance the civil protections of gays and lesbians.

As Conservative synagogues take steps to make gays and lesbians feel welcome within our midst, gays and lesbians, like heterosexuals, have the duty to strive to live by the values articulated in Section A in all of their relationships, including their sexual ones. Indeed, some of the special significance of those concepts and values in the non-marital setting, discussed in Section C, apply to homosexuals as well. Furthermore, like all other Jews, gays and lesbians have the duties of Jewish study and action, including affiliation and active participation in a synagogue and in the Jewish community generally.

E. Epilogue

Sex is one of the gifts God has given us by creating us as we are. Like all of our faculties, we can use it for good or for bad, and Judaism provides us with instruction (Torah) for channelling our sexual energies toward good purpose. Marriage and family are that purpose, for in that context the individual and the community can attain all of the benefits of both. At the same time, in our own day, when we have many people who are single and others who are openly homosexual, we affirm their value as human beings and as Jews and earnestly want to involve them in the Conservative Movement. To make that happen, we have resolved to take positive steps to make them feel welcome in our synagogues and other institutions, and we fully intend to fulfill that promise.

We affirm that Judaism has much to teach all of us about how we should think about sex and how we should behave sexually — whether a person is single or married, heterosexual or homosexual. Some of that lesson we have tried to articulate in this document. We do this in fulfillment of our duties as rabbis to teach the tradition and in awe and appreciation of God's gift of sex. May each of us enjoy this gift within the guidelines of Judaism so that our sexual activities can bring not only pleasure and companionship, but also wholeness and holiness; and may each of us be able to say of someone special what the lover says in the Bible, "This is my beloved, this is my friend" (Song of Songs 5:16).

THE RABBINICAL ASSEMBLY COMMISSION ON HUMAN SEXUALITY

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Although I wrote the first and the succeeding seven drafts of this rabbinic letter, its present form reflects considerable input from my fellow members of The Rabbinical Assembly's Commission on Human Sexuality, all of whom I want to acknowledge and thank for their collegial and constructive comments throughout the process of writing this together. They are: Rabbi Arnold Goodman, Chair; Rabbi Michael Gold, Co-Chair; Rabbis Morris J. Allen, Stephanie Dickstein, Amy Eilberg, Alan B. Lettowsky, Mark G. Loeb, Noam E. Marans, Arnold E. Resnicoff, Barry Dov Schwartz, and Jeffrey Wohlberg. I also want to thank Rabbi Gerald Zelizer, President of The Rabbinical Assembly, and Rabbi Joel Meyers, Executive Vice President, who took an active role in the discussions of the Commission and in making it possible for it to do its work. Finally, I would like to thank the members of the Committee on Jewish Law and Standards and, indeed, of The Rabbinical Assembly as a whole, for the revisions in the last two drafts of this rabbinic letter were almost entirely suggested by them. I would especially like to thank those who wrote me detailed and extensive comments, namely, Dr. Anne Lerner and Rabbis Arthur Green, David Lieber, Lionel Moses, Avram Reisner, Benjamin Segal, Matthew Simon, and Robert Slosberg.

This rabbinic letter, then, is the product of the Commission on Human Sexuality and not mine exclusively, and it manifests the considered input of many other members of The Rabbinical Assembly and of the Conservative Movement generally. It undoubtedly will not entirely satisfy any one of the rabbis or laypeople of the movement — including me! — but it hopefully is sufficiently a consensus statement to deserve wide distribution and study by the entire Conservative (Masorti) Movement.

In the following notes, M. = Mishnah; T. = Tosefta; B. = Babylonian Talmud; J. = Jerusalem Talmud; M.T. = Maimonides' Mishneh Torah; and S.A. = Joseph Caro's Shulhan Arukh.

1. Rabbi Moses ben Nahman (Nahmanides), *The Holy Letter: Study in Medieval Sexual Morality*, Seymour J. Cohen, ed. and trans. (New York: KTAV, 1976). Some scholars are not certain about the authorship of that letter, but it has been traditionally attributed to Nahmanides. Similarly, there is a manual by Maimonides which gives advice to husbands as to how to stimulate and sustain an erection: *On Sexual Intercourse (Fi'l-iima)*, Morris Gorlin, trans. (Brooklyn: Rambash Publishing Company, 1961). There is also a larger edition of that work, printed in

the same book, which Gorlin thinks is spurious and is rather the work of another Jewish physician of the fourteenth century. In any case, that work additionally advises husbands on how to stimulate sexual interest in their wives and counsels women on how to maintain the health of their breasts. Rabbi Abraham ben David of Posquieres is commonly accepted as the author *Ba'alei haNefesh* (Y. Kafah, ed., Jerusalem, 1964), which, in its first six chapters, is a code dealing with family law, but in the seventh chapter changes tone and audience and becomes an ethical tract which describes the moral norms and pious dispositions which enable a man to achieve self-control in sexual matters and to attain purity of heart and action in this part of life.

2. Orthodox rabbis, for example, are increasingly getting questions from unmarried couples who are living together about the necessity of *mikvah* and the like, and it is no longer a secret that family violence is at least as common among the Orthodox as it is among the other streams of Judaism. The Jewish Family Service of Los Angeles, for example, has a special program to combat family violence within the Orthodox community. The latest and, from all accounts, the most scientific study of American sexual behavior indicates that Jews have more sexual partners between the ages of 18 and 44 than any other American religious group, including even the unchurched: Robert T. Michael, John H. Gagnon, Edward O. Laumann, and Gina Kolata, *Sex In America: Definitive Survey* (Boston: Little, Brown, and Company, 1994), p. 103. This may well be because Jews tend to go to college and even graduate school and therefore marry later, but, even so, this finding, as well as the phenomena mentioned above clearly indicate that for the observant as well as for those not so, the current situation among Jews with regard to sexuality and family relations is considerably different from the norms of Jewish law and well worth a fresh look as to how Judaism can inform our behavior, thought, and feelings in this area in our own day.

3. For more on this important way in which the Jewish and Western parts of our identity are at odds, see Milton R. Konvitz, *Judaism and the American Idea* (New York: Schocken, 1980), esp. Chapter Five; and Elliot N. Dorff, "Training Rabbis in the Land of the Free," in *The Seminar at 100*, Nina Beth Cardin and David Wolf Silverman, eds. (New York: The Rabbinical Assembly and The Jewish Theological Seminary of America, 1987), pp. 11-28.

4. *Genesis Rabbah* 43:7 (43:8 in some editions); see B. *Shabbat* 10a.

5. Jewish sources require that even within the privacy of one's home, a couple should engage in sex only if nobody else is awake and there is at least a partition between the couple and other members of the household: Shulhan Arukh, *Orah Hayyim* 240:6, 11 (and cf. the commentary of R. Moses Isserles and of Magen Avraham there); *Kitzur Shulhan Arukh* 150:3, 4; and see B. *Niddah* 17a. Thus the modesty appropriate to sexual activities applies even to one's home and, all the more so, to the public sphere.

6. So, for example, "Great is human dignity, for it overrides a negative prohibition in the Torah" (B. *Berakhot* 19b; cf. B. *Shabbat* 81b; B. *Menahot* 37b); "Love your fellow-creatures and honor them" (*Derekh Eretz Zuta* 1:9); and the Holy One, blessed be He, has concern for the honor of all His creatures, including non-Jews and even wicked people like Balaam (*Numbers Rabbah* 20:14; cf. *Sifre*, "Shofetim," #192). See also B. *Bava Kamma* 79b; *Genesis Rabbah* 48:9; *Leviticus Rabbah* 17:5. The underlying theological basis for the honor due to all other human beings is, as the Rabbis say, "All that the Holy One, Blessed be He, created, He created for His own honor" (B. *Yoma* 38a, based on Isaiah 43:7).

7. Throughout this document, "Rabbis," with a capital "R," denotes the Rabbis of the Mishnah and Talmud. The Mishnah, edited by Rabbi Judah, President of the Sanhedrin, in approximately 200 C.E., consists primarily of the judicial precedents which were handed down from generation to generation for at least several centuries prior to that time. The Talmud (Gemara) consists of rabbinic discussions and amplifications of the Mishnah. These discussions took place in Palestine between 200 and 400 C.E. (the Palestinian, or Jerusalem, Talmud) and in Babylonia (modern-day Iraq) from 200 to 500 C.E., producing the Babylonian Talmud. In contrast to the ways in which the Church Fathers defined, interpreted, and applied the Bible, which became Christianity, and in contrast to the ways in which the imams defined, interpreted, and applied the Bible, which became Islam, it is the rulings and the interpretations of the Bible found in the Mishnah and the Talmuds, together with the customs, homilies, aphorisms, and other materials in them, which shaped and defined Judaism.

8. B. *Bava Mezia* 49a. For a summary of Jewish laws of commerce, see Solomon Ganzfried, *Kitzur Shulhan Arukh*, ch. 62; translated as *Code of Jewish Law*, Hyman E., Goldin, trans. (New York: Hebrew Publishing Company, 1961), 2:36-39.

9. B. *Ketubbot* 17a.

10. Rabbi Akiba: *Sifra*, Kedoshim 4:12 on Leviticus 19:18; J. *Nedarim* 9:4; *Genesis Rabbah* 24:7. Hillel: B. *Shabbat* 31a. Hillel answers the heathen who wants to be taught the whole Torah on one foot with the negative version of this commandment: "What is hateful to you, do not do to your neighbor. That is the whole Torah; all the rest is commentary. Go and learn."

11. So, for example, in the spirit of this law -- and according to some authorities, on the basis of it -- we are required to visit the sick, comfort mourners, assist in making funeral arrangements, help the bride and groom rejoice and contribute to their wedding arrangements, and extend hospitality to guests: M.T. *Laws of Mourning* 14:1; *Laws of Gifts to the Poor* 8:10; *Sefer Ha-Hinukh*, Commandment #243. In general, see "Ahavat Yisrael," *Encyclopedia Talmudit* 1:211-215. Conversely, this law is the foundation for a number of rabbinic prohibitions, forbidding harm to our neighbor's person or property and requiring positive steps to preserve both: M.T. *Laws of Ethics (De'ot)* 6:3. Maimonides, *Sefer Hamitzvot (The Book of the Commandments)*, Positive Commandment #206. *Sefer Ha-Hinukh*, *ibid.*

12. God owns all creation, including our bodies: Genesis 14:19, 22; Exodus 19:5; 20:11; Deuteronomy 10:14. The resultant duty to take care of our bodies is summarized best in M.T. *Laws of Ethics (Hilkhot De'ot)*, chs. 3-5. The Rabbis derive them from Deuteronomy 4:9 and 4:15. The commandment not to harm yourself: M. *Bava Kamma* 8:6; B. *Hullin* 10a. The prohibition of committing suicide: *Semahot (Evel Rabbati)* 2:1-5; M.T. *Laws of Murder* 2:3; *Laws of Courts (Sanhedrin)* 18:6; *Laws of Mourning* 1:11; S.A. *Yoreh De'ah* 345:1-3; and see "Suicide," *Encyclopedia Judaica* 15:489-491.

13. I want to thank Rabbi Mark Loeb for suggesting this interpretation.

14. The wife's rights to sex within marriage: M. *Ketubbot* 5:6; M.T. *Laws of Marriage* 14:4-7, 15; S.A. *Yoreh De'ah* 235:1, *Even Haezer* 76; 77:1. The husband's rights to sex within marriage: M. *Ketubbot* 5:7; M.T. *Laws of Marriage* 14:8-14; S.A. *Even Haezer* 77:2-3.

15. That the man may not force himself upon his wife: M.T. *Laws of Marriage* 14:15. That the couple may have conjugal relations any way they want: S.A. *Even Haezer* 25:2, gloss. Isserles there says that "he may do what he wants with his wife," but this is a comment on the same paragraph of the Shulhan Arukh which says that "he may not have intercourse with her except with her consent (literally, 'desire')," and so the upshot is that both members of the couple must

agree to the way they are having sex, presumably for the mutual satisfaction of both.

16. M. *Yevamot* 6:6 (61b). In that Mishnah, the School of Shammai say that one has to have two boys and the School of Hillel say that one must have a boy and a girl. The Talmud understands the School of Shammai's position to be based on the fact that Moses had two sons, Gershom and Eliezer (I Chronicles 23:15); while the Mishnah already states that the School of Hillel's ruling is based on Genesis 1:27, according to which God created the human being, "male and female God created them." A Tosefta (T. *Yevamot* 8:3), included in the Talmud (B. *Yevamot* 62a), asserts that the School of Shammai actually requires two males and two females, while the School of Hillel requires a male and a female. Yet another talmudic tradition (*ibid.*), in the name of Rabbi Nathan, states that the School of Shammai requires a male and a female, while the School of Hillel requires either a male or a female. The Jerusalem Talmud (J. *Yevamot* 6:6 [7c]) records the position of Rabbi Bun (Abun) which takes note of the context of the School of Hillel's ruling right after that of the School of Shammai's ruling requiring two boys. Rabbi Bun therefore reads the School of Hillel as agreeing that two boys would suffice to fulfill the obligation, but "even a boy and a girl" would, and thus the School of Hillel is offering a leniency over the School of Shammai's requirement of two boys, in line with the School of Hillel's general reputation. Rabbi Bun also notes that if that were not the case, such that the School of Hillel were saying that only a boy and a girl would fulfill the obligation, then this ruling should appear in the various lists of the stringencies of the School of Hillel in Chapters 4 and 5 of M. *Eduyot*, but it does not. Despite Rabbi Bun's arguments, the codes rule that the obligation is fulfilled only when one has a boy and a girl: M.T. *Laws of Marriage* 15:4; S.A. *Even Ha'ezer* 1:5. Ironically, in our own day, when modern technology has suddenly provided us with some control over the gender of our children but when the Jewish community simultaneously suffers from a major population deficit, we would affirm that technologically-assisted gender selection should *not* take place, that we welcome children into our midst regardless of their gender, that we see any two of them as fulfillment of the commandment to procreate, but that we encourage Jewish couples who can have more than two children to do so.

17. B. *Megillah* 13a; B. *Ketubbot* 50a. See also *Exodus Rabbah*, ch. 4; S.A. *Orah Hayyim* 139:3; Abraham Gumbiner, *Magen Avraham*, on S.A. *Orah Hayyim* 156; Moshe Feinstein, *Igrot Moshe*, on *Yoreh De'ah* 161. Cf. B. *Sanhedrin* 19b, where the adopted parent is described as "a person who raises another's child." Thus while adoption is highly praised, it does not change the legal status of the child's

parentage (see also B. *Sotah* 43b), despite several instances in the Bible in which adopted parents are called actual parents (B. *Sanhedrin* 9b, referring to I Chronicles 4:18; Ruth 4:17; Psalms 77:16; 2 Samuel 21:8). Instead, the adopted parents are seen as the agents of the natural parents for most purposes. Cf. Michael J. Broyde, "Symposium on Religious Law," *Loyola of Los Angeles International and Comparative Law Journal* 16:1 (November, 1993), pp. 95-100. Even so, the Committee on Jewish Law and Standards in 1988 approved a responsum by Rabbi Avram Reisner according to which an adopted child may use the patronymic and matronymic of his/her adopted parents. On adoption in Jewish law generally, see my responsum, approved without a dissenting vote by the Committee on Jewish Law and Standards in March, 1994, to be published soon in the journal, *Conservative Judaism* -- namely, Elliot N. Dorff, "Donor Insemination, Egg Donation, and Adoption."

18. See "Afterlife," *Encyclopedia Judaica* 2:336-339; Moshe Greenberg, "Resurrection -- In the Bible," *Encyclopedia Judaica* 14:97-98. While early biblical sources affirm the existence of Sheol, a murky place to which people's spirits descend after death, resurrection of the body after death is first affirmed by what is chronologically the last book of the Bible (c. 150 B.C.E.), the Book of Daniel (12:1-3). (Isaiah 26:19, which also affirms it, is, as Greenberg says in the article cited above, understood by almost all commentators to be a much later addition.) Job (e.g., 7:7-10; 9:20-22; 14:7-22), written in about 400 B.C.E., and Ecclesiastes (9:4-5; cf. 3:19-21), written about 250 B.C.E., explicitly deny resurrection and perhaps even any form of life after death. It thus appears that bodily resurrection made its first appearance in Judaism in the second century B.C.E. The Rabbis (Pharisees), though, made it a cardinal doctrine, even asserting that biblical sources which are, at best, ambiguous about this clearly and definitively affirm it; see M. *Sanhedrin* 10:1; B. *Sanhedrin* 90a and following.

19. B. *Yevamot* 61b, where Rabbi Nahman, quoting Genesis 2:18, asserts that "although a man may have many children, he must not remain without a wife, for the Torah says, 'It is not good that a man should be alone.'" Later Jewish law codes take this as authoritative law: M.T. *Laws of Marriage* 15:16; *Laws of Forbidden Intercourse* 21:26; S.A. *Even Ha'Ezer* 1:8.

20. See, for example, M. *Ketubbot* 5:5; *Avot (Ethics of the Fathers)* 2:2; *Avot D'Rabbi Natan* 11; B. *Nedarim* 49b; *Tanhuma Vayetze*, sec. 13.

21. Classical Jewish law recognized this in demanding that a man who wanted to change jobs such that he would be home less often in his new job could only

do so with his wife's permission, even if he would earn more money thereby, and her permission is also necessary if he wanted to ply his trade in a faraway place rather than a near one; cf. B. *Ketubbot* 61b, 62b; M.T. *Laws of Marriage* 14:2; S.A. *Even Ha'Ezer* 76:5. While this is only phrased in terms of the companionship and sex which the man is obligated to provide for his wife, in our society, where women are members of the work force as well, the same would clearly apply to women. People of both genders must consider the needs of their spouse and children in making their career choices.

22. *Tanhuma*, Mattot, 1:7, and see Rashi on this verse and *Numbers Rabbah* 22:9. The comment is based on the fact that when Moses responds to them in Numbers 32:24, he puts building cities for their children before erecting pens for their flocks. The Hebrew words *ikkar* and *tafel* that I have translated "primary" and "secondary" in other contexts mean "essential" and "trivial," respectively, but in light of the Rabbis' esteem for work, the words are clearly being used here comparatively, and hence "primary" and "secondary."

23. Phillippe Aries, in *The Centuries of Childhood*, documents the fact that our notion of childhood as a specific set of stages in life is radically different from that of the past, where children were seen as miniature adults. It is therefore not clear that the Rabbis of the Talmud or the Middle Ages would have valued time spent with children. They did, however, mandate that parents teach their children. Furthermore, except for men in the import-export trade, who often were away from home for long stretches of time, the lack of distractions at night virtually guaranteed that parents spent much more time with their children as they were growing up than we do now. I want to thank Dr. Anne Lerner for calling my attention to this.

24. Further details about how the Conservative rabbinate interprets Jewish law with regard to contemporary infertility treatments and adoption can be gained from the following paper prepared for the Conservative Movement's Committee on Jewish Law and Standards: Elliot N. Dorff, "Artificial Insemination, Egg Donation, and Adoption," scheduled to be published soon by the journal, *Conservative Judaism*. See also Michael Gold, *And Hannah Wept: Infertility, Adoption and the Jewish Couple* (Philadelphia: Jewish Publication Society, 1988).

25. Exodus 20:13; Deuteronomy 5:17; cf. Leviticus 18:20; 20:10, the last of which prescribes the death penalty for both parties to the adultery. The three prohibitions one is not to violate even at the price of one's life (namely, murder, idolatry, and adultery): B. *Sanhedrin* 74a.

Until approximately the year 1000 C.E., Jewish law allowed men to take more than one wife, and so a married man who had intercourse with an unmarried woman would not, strictly speaking, be committing adultery. He would either be engaged in prostitution, or he would be taking another wife through his intercourse with her. A woman, on the other hand, could only have one husband, and so a married woman who had intercourse with any other man, married or not, would be committing adultery. Since the amendment (*takkanah*) of Rabbenu Gershom in that year, however, both men (at least in the Ashkenazic communities) and women are prohibited from having more than one marital partner at any time, and so it should now be seen as equally wrong for a married man or woman to have sexual relations with someone other than their spouse.

26. Leviticus 18 and 20.

27. Leviticus 18; 20. A good summary of the rabbinic expansion of the rules of incest can be found in M.T. *Laws of Marriage* 1:6.

28. See, for example, Saadia Gaon, *Books of Doctrines and Beliefs*, Chapter III, Section 2 (in *Three Jewish Philosophers*, Alexander Altmann, ed. [Philadelphia: Jewish Publication Society, 1960], Part II, p. 102), who says that it is to prevent sexual license (in light of the intimacy of family life) and "to prevent men from being attracted only by those women who are of beautiful appearance and rejecting those who are not, when they see that their own relatives do not desire them [!]." Maimonides (*Guide for the Perplexed*, Part III, chs. 35 and 49), to take another example, repeats Saadia's first reason (in ch. 49), but adds two more: "The purpose of this is to bring about a decrease of sexual intercourse and to diminish the desire for mating as far as possible, so that it should not be taken as an end, as is done by the ignorant" (ch. 35), and, secondly, "to respect the sentiment of shame. For it would be a most shameless thing if this act would take place between the root and the branch, I refer to sexual intercourse with the mother or the daughter....Being brother and sister is like being root and branch...or even are considered to be one and the same individual..." (ch. 49).

29. I would especially like to thank Rabbi Amy Eilberg for her help with this section and the next.

30. B. *Gittin* 90b. The Talmud there actually speaks of a first marriage, but the sentiment undoubtedly applies to subsequent marriages as well.

31. Compare, for illustration, the assumptions about marriage embedded in two Broadway musical numbers: "Some Enchanted Evening" in *South Pacific*, as against "Do You Love Me?" in *Fiddler on the Roof*. Couples getting married expecting an uninterrupted series of enchanted evenings are bound to be disappointed when they find out that in the best of marriages there are indeed some enchanted evenings, but most are emotionally neutral, and some are downright unenchanted! If one begins with the expectations, on the other hand, of living life with all its tasks together, as the song in *Fiddler* depicts, then one is far less likely to think that one's marriage has not met the standards one set for it at the outset.

32. Kristina Sauerwein, "The Dating Dilemma," *Los Angeles Times*, December 28, 1994, pp. E2 and E4. Michael Schulman, co-author of *Bringing Up a Moral Child: New Approach for Teaching Your Child to Be Kind, Just, and Responsible* (Garden City, New York: Doubleday, 1994), points out that as early as age 4 children scrutinize the date and how their parent interacts with the date, including the most mundane verbal or body communication. "It's important for parents to remember that, foremost, they're parents, and that's how they should act," says Schulman. "Most children eventually lose respect for dating parents who act like teenagers." Sauerwein also cites a Iowa State University study, released in Summer, 1994, that "found that a single mother's dating behavior can sway teen sons into early sexual experimentation and relax teen daughter's attitudes about promiscuity." Furthermore, "a 1987 study found that recently divorced mothers, adjusting from married to single life, are at their peak in promiscuity; consequently, so are their teen daughters. Experts speculated that this would also be true for fathers and sons." Nevertheless, it is "crucial" for single parents to date, according to Les B. Whitbeck, co-researcher of the study, "because half of the country's marriages end in divorce and almost three-quarters of teenagers have sex." Therefore children "need to see a single parent model caring and responsible relationships."

33. If one looks at these practices anthropologically, they probably arise out of ancient fears of emissions from the body, even natural ones, lest the life force of the individual ebb with the emission; the placing of these laws in Leviticus 15, immediately after laws governing emissions due to disease, confirms this.

34. For the prohibition of intercourse during menstruation, see Leviticus 15:19-30; 18:19; 20:18. For a biblical indication of the special pool which must be constructed, see Leviticus 11:36. The specific rules for that pool were later

spelled out by the rabbis; for a summary, see S.A. Yoreh De'ah 201; Isaac Klein, *Guide to Jewish Religious Practice* (New York: Jewish Theological Seminary of America, 1979), p. 518-22.

35. B. *Berakhot* 22a, according to which nine *kabs* of water, rather than the usual forty of the *mikvah*, is sufficient for the man to use to remove his status of impurity. Furthermore, the Mishnah (M. *Mikvaot* 8:1) asserts that even a pool of water that was filled with a hose and thus definitely unkosher as a *mikvah* is, for those living outside the land of Israel, kosher for the purification of a man who had a seminal emission. Moreover, the decree of Ezra, requiring such men to immerse themselves specifically in a *mikvah* before reading the Torah (and, perhaps, before reciting the Shema or the Amidah) was annulled precisely because Jewish men who otherwise abided by Jewish law were simply not fulfilling this decree. See next note for references.

36. The biblical rules for both a man and a woman are in Leviticus 15:16-33; see also Leviticus 18:19 and 20:18 with regard to menstruation, and Leviticus 22:4 and Deuteronomy 23:11-12 with regard to seminal emission.

The Mishnah prohibits a man who had had a seminal emission from reciting the Shema or the Amidah (M. *Berakhot* 3:4-5). According to the Talmud (B. *Bava Kamma* 82a; J. *Yoma* 1:1; etc.), it was Ezra who instituted the decree that men who have had a seminal emission immerse themselves in a *mikvah* before reading the Torah (which, for some interpreters, meant studying any classical Jewish text [cf. B. *Berakhot* 22a]), and, according to some Rishonim (rabbis of the 11th through the 16th centuries), a later court also required such men to immerse in a *mikvah* before they prayed (M.T. *Laws of Prayer* 4:4 [but see the comment of the *Kesef Mishneh* there]; Meiri on *Berakhot* 20a; Rosh on *Bava Kamma*, ch. 7, #19). This is not required by the Torah, for people in a state of impurity of any sort are permitted by the Torah, as the Rabbis understand it, to engage in study and prayer; see Rif, *Berakhot*, ch. 3; M.T. *Laws of Reading the Shema* 4:8; M.T. *Laws of Prayer* 4:5. Indeed, the purpose of this decree was not, according to these interpreters, motivated by concerns of purity at all, but rather to insure that rabbinic scholars would not have conjugal relations with their wives as often as roosters do with chickens or, alternatively, to make Torah study like the revelation at Sinai, where men were not to have relations with their wives in preparation for the event (Exodus 19:15) and in honor of the Torah that they were to receive and learn.

The decree of Ezra was annulled (B. *Berakhot* 22a; Bertinoro on M. *Berakhot* 3:4; M.T. *Laws of Reading the Shema*, 4:8; M.T. *Laws of Prayer* 4:4-6; S.A. *Orah Hayyim* 88:1; and the commentaries on M.T. and S.A. there). As the *Kesef Mishneh* to M.T. *Laws of Reading the Shema*, 4:8, asserts and demonstrates, the annulment occurred not because the rabbis voted to do so, for no later court had the authority to overturn a decree of Ezra's court, but rather "because there was not enough strength in the majority of the community to uphold it, the Sages did not force the men to immerse, and it was annulled by itself." Maimonides, however, records the laws concerning a man's impurity through seminal emission fully (M.T. *Laws of the Other Forms of Impurity*, Chapter 5, based primarily on M. *Mikvaot* 8:1-4), and to my knowledge those laws have never been formally abrogated but simply are not observed. On this entire subject, see "Ba'al Keri," *Encyclopedia Talmudit* 4:130-148 (Hebrew).

The inequality imposed by these laws is most apparent in a comment by Rabbi Moses Isserles (S.A. *Orah Hayyim* 88:1, gloss), according to which even though men who had had a seminal emission could read the Torah and recite the Shema and Amidah because Ezra's decree had been annulled, the custom in Askenazic communities was that women who were in their menstrual flow could not do any of those things (even though they were never covered by Ezra's decree!). Moreover, except for the High Holy Days and similar events, when everyone else was attending services and when remaining at home would thus cause great pain, women were even asked to stay away from synagogue services altogether during their menstrual period. This presents quite a gap between what women and men were allowed to do after emissions from their sexual organs.

37. Even if the general custom among the observant Conservative community may be to ignore these laws, rabbinic couples may continue to uphold them, if only because they remain the law on the books. In this, there is a nice parallel in the comment of the *Kesef Mishneh* to M.T. *Laws of Reading the Shema* 4:8, according to which even after the men of the Jewish community had effectively abrogated Ezra's decree through their failure to observe it, the rabbis continued to observe it, for no court had officially annulled it. The laws of *tohorat hamishpahah*, of course, have their root in the Torah while Ezra's decree was only rabbinic in origin and authority, but the parallel discrepancy between rabbinic practice, in deference to the standing law, and the custom of the community is both interesting and instructive - and perhaps on matters far beyond the ones we are discussing.

38. Both the Mishnah and the Talmud have difficulty finding a biblical verse to support the ruling. See M. *Yevamot* 6:6 (61b), where the ruling is recorded as the majority opinion (that is, without ascription) but without textual support and where Rabbi Yohanon ben Beroka immediately objects: "With regard to both of them [i.e., the male and female God first created] the Torah says, 'And God blessed them and said to them... 'Be fruitful and multiply' (Genesis 1:28)." The Talmud (B. *Yevamot* 65b-66a) brings conflicting evidence as to whether or not a woman is legally responsible for procreation and ultimately does not decide the matter. That is left for the later codes; cf. M.T. *Laws of Marriage* 15:2; S.A. *Even Ha'Ezer* 1:1, 13.

The Talmud there also brings conflicting exegetical grounds for the Mishnah's ruling, basing it alternatively on "Replenish the earth and subdue it" (Genesis 1:28) or on Genesis 35:11, "I am God Almighty, be fruitful and multiply." There are problems in using both texts, however. The traditional pronunciation of the first is in the plural, making propagation a commandment for both the man and the woman; it is only the written form of the text which is in the masculine singular (and even that can apply, according to the rules of Hebrew grammar, to either men alone or to both men and women). The second text is indeed in the masculine singular, but that may be only because God is there talking to Jacob; the fact that Jacob is subject to the commandment proves nothing in regard to whether his wives were. These problems prove that the real reason for limiting the commandment of procreation to men is not exegetical at all, and we have to look elsewhere for what motivated the Rabbis to limit it in that way.

The real reason may have been economic: since a man was legally responsible to support his children, it was against his financial interests to have them in the first place, and so the law had to command him to do so. Alternatively, since the man has to offer to have conjugal relations with his wife for procreation to take place, it may be that anatomical factor which prompted the Rabbis to impose the commandment on men. Conversely, some argue that the Rabbis would not have imposed the commandment on a woman since they would not have legally obligated her to undertake the risks of pregnancy and childbirth, risks which were considerably greater in times past than they are now. Whatever the reason, Jewish law ultimately places legal responsibility for procreation on the man.

39. T. *Niddah* 2; B. *Yevamot* 12b, 100b; *Ketubbot* 39a; *Niddah* 45a; *Nedarim* 35b. On this entire topic, see David M. Feldman, *Birth Control in Jewish Law* (New York: New York University Press, 1968), chs. 9-13. (The subsequent, paperback edition, published by Schocken, is called *Marital Relations, Birth Control, and Abortion in Jewish Law*.) On the question of assessing the dangers posed to the woman or child by sexual intercourse such that contraception is, according to that Baraita, permitted or required, see Feldman, pp. 185-187.

40. B. *Hullin* 58a and elsewhere. According to B. *Yevamot* 69b, during the first forty days of gestation, the zygote is "simply water," but even then the Rabbis required justification for an abortion based on the mother's life or health. On this topic generally, see David M. Feldman, *Birth Control in Jewish Law*, Chs. 14-15.

41. The language of the Mishnah (M. *Yevamot* 6:6) suggests that the man may use contraceptives after fulfilling the commandment with two children. It reads: "A man may not cease from being fruitful and multiplying *unless* he has children. The School of Shammai says: two males; the School of Hillel says: a male and a female..." That, however, was not the position of later Jewish law (B. *Yevamot* 62b), which encouraged as many children as possible on the basis of Isaiah 45:18 ("Not for void did He create the world, but for habitation [*lashevet*] did He form it") and Ecclesiastes 11:6 ("In the morning, sow your seed, and in the evening [*la'erev*] do not withhold your hand"). Subsequently these precepts were codified by Maimonides (M.T. *Laws of Marriage* [*Ishut*] 15:16): "Although a man has fulfilled the commandment of being fruitful and multiplying, he is commanded by the Rabbis not to desist from procreation while he yet has strength, for whoever adds even one Jewish soul is considered as having created an entire world." See note 44 below.

42. British researchers, citing World Health Organization statistics and their own study of 300 men at a south London clinic, have suggested that the failure of condoms may largely be due to the use of the same size for all men, a size too small for one third of the men of the world. See "One Size of Condom Doesn't Fit All," *Men's Health*, March, 1994, p. 27.

43. For more on the Jewish imperative of safe sex, see Michael Gold, *Does God Belong in the Bedroom?* (Philadelphia: Jewish Publication Society, 1992), pp. 112ff.

44. M.T. *Laws of Marriage* 15:16. See note 41 above. Maimonides' theme of a whole world being created with the birth of a child is echoed in M. *Sanhedrin*

4:5, "If anyone sustains a soul within the People Israel, it is as if he has sustained an entire world," and the converse appears in B. *Yevamot* 63b: "If someone refrains from propagation, it is as if he commits murder (literally, 'spills blood') and diminishes the image of God."

45. B. *Eruvin* 100b; B. *Yevamot* 62b; S.A. *Orah Hayyim* 240:1; S.A. *Yoreh De'ah* 184:10.

46. B. *Eruvin* 100b; *Leviticus Rabbah* 9:6; *Numbers Rabbah* 13:2; *Pesikta D'Rav Kahana*, "And When Moses Finished," [on Hanukkah], Piska 1 (ed. Mandelbaum [New York: Jewish Theological Seminary of America, 1962], vol. 1, p. 1); M.T. *Laws of Ethics* (*De'ot*) 5:4; M.T. *Laws of Forbidden Intercourse* 21:11; S.A. *Orah Hayyim* 240:10; S.A. *Even Ha'Ezer* 25:2.

47. B. *Nedarim* 20b; B. *Sanhedrin* 58b. See Feldman, *Birth Control*, pp. 155ff, for the history of the "yes-but" stance that medieval Jewish writers took to this talmudic permissiveness.

48. B. *Ketubbot* 48a.

49. See, for example, Raymond P. Scheindlin, *Wine, Women and Death: Medieval Hebrew Poems on the Good Life* (Philadelphia: Jewish Publication Society, 1986).

50. For example, Genesis 27:26-7; 29:11, 13; 31:28, 55; 33:4; 45:14-15; 48:10; Exodus 4:27; 18:7; I Samuel 20:41; II Samuel 14:33; 15:5; 19:40; Ruth 1:9, 14; and many, many times, of course, in the love poetry of Song of Songs -- e.g., 1:2; 2:6; 8:3.

51. Note that even in the Bible's book of love poetry, The Song of Songs, the lover (at 8:1) *wishes* that her lover were her brother so that she could kiss him in public without reproach, but the fact that he is not prevents her from doing so:

If only it could be as with a brother,
As if you had nursed at my mother's breast:
Then I could kiss you
When I met you in the street,
And no one would despise me.

The biblical book of Kohelet (Ecclesiastes) says this (at 3:5): "There is a time for embracing and a time for shunning embraces."

52. To save a life, we must, if necessary, violate all but three commandments (murder, adultery /incest, and idolatry): B. *Sanhedrin* 74a. Furthermore, the Talmud demands that we avoid danger and injury (see also B. *Shabbat* 32a; B. *Bava Kamma* 15b, 80a, 91b; M.T. *Laws of Murder* 11:4-5; S.A. *Hoshen Mishpat* 427:8-10), proclaiming that "endangering oneself is more stringently [prohibited] than the [explicit] prohibitions [of the law]" (*hamira sakkanta meisurah*) (B. *Hullin* 10a). The Talmud also includes many injunctions which apply these preventive principles in practice, as, for example, the command not to go out alone at night (B. *Pesahim* 112b). Conversely, we are commanded to take care of ourselves in the first place so as to prevent illness, based on the Rabbis' understanding of Deuteronomy 4:9, 15; see, for example, M.T. *Laws of Ethics* (*De'ot*), chs. 3-5.

53. See Tom Junod, "Someone Else's Child," *Gentlemen's Quaterly*, December, 1994, pp. 258-266, for a powerful account of the feelings of a woman who gave up her first child for adoption because it was conceived in nonmarital relations and she could not raise it. Years later, she still feels that people who adopt are like those who take someone else's eyes in order to see, and if her teenage daughter became pregnant, she would advise her to keep the baby, abort, or commit suicide (in that order) before giving up the baby for adoption. This woman, Carole Anderson, founded Concerned United Birthparents in an attempt to convince parents to keep their babies, even when born out of wedlock. This is being cited here neither to dissuade people from trying to adopt children if they cannot have them on their own, nor even to dissuade people from giving up children they cannot raise for adoption, Mrs. Anderson notwithstanding; it is rather being cited to indicate the serious consequences which result more often than we might like to assume when unmarried couples have to face these choices.

54. Bruce A. Phillips, *Intermarriage, Assimilation, and Social Structure: Findings from the 1990 National Jewish Population Survey*, to be published in 1997 by the Wilstein Institute for Jewish Policy Studies.

55. The Mishnah (M. *Avot* 5:21) states that eighteen is the proper time for a man to marry, and the Talmud (B. *Kiddushin* 29b) states that he who is twenty years of age and is not married spends all his days in sinful thoughts. Another opinion in that passage (B. *Kiddushin* 30a) says that a man should marry his son off between the ages of sixteen and twenty-two [or, according to some, between eighteen and twenty-four] because after that the father would have little control over his son. All of these ages, of course, were prescribed in and for the society of those years. Our life expectancy and educations last much longer,

but the mishnaic and talmudic sources bespeak a proper concern to marry at a reasonable stage in one's development so that one can achieve the goals of marriage -- companionship, propagation, and education of the next generation.

56. Teenagers -- and, for that matter, adults -- might consult the source book published by United Synagogue Youth on this subject: Bernard Novick, *In God's Image: Making Jewish Decisions about the Body* (New York: United Synagogue of America, 1980).

57. *1990 Rabbinical Assembly Proceedings* (New York: Rabbinical Assembly, 1990), p. 275.

58. The testimony of homosexuals themselves is more important in this contention because the scientific evidence is very new and still disputed -- although new correlations between various biological traits and sexual orientation are repeatedly being shown, the latest, as of this writing, having to do with differences between homosexuals and heterosexuals in the number of ridges in one's fingerprints on each hand. For a recent summary of some of the evidence and arguments both for and against its significance, see Simon LeVay and Dean H. Hamer, "Evidence for a Biological Influence in Male Homosexuality," *Scientific American* 270:5 (May 1994), pp. 43-49; and William Byne, "The Biological Evidence Challenged," *ibid.*, pp. 50-55; and John P. De Cecco and David Allen Parker, eds., *Sex, Cells, and Same-Sex Desire: The Biology of Sexual Preference* (New York: Harrington Park Press, 1995.) A more popular, but somewhat older account of this appeared as "Born or Bred?," the cover article of *Newsweek*, February 24, 1992, pp. 46-53; and a more recent popular treatment is "For Better or For Worse?" *Time*, June 3, 1996, pp. 52-53.

59. Thus the American Psychiatric Association, in its April, 1993 *Fact Sheet* (p. 1), stated the following:

There is no evidence that any treatment can change a homosexual person's deep seated sexual feelings for others of the same sex. Clinical experience suggests that any person who seeks conversion therapy may be doing so because of social bias that has resulted in internalized homophobia, and that gay men and lesbians who have accepted their sexual orientation positively are better adjusted than those who have not done so.

In 1973 the American Psychiatric Association passed a resolution declassifying homosexuality as a mental illness, but those opposed to this move have noted that much political pressure was applied to the Association at that time and that the vote was close. In December, 1992, however, the Association reaffirmed its 1973 analysis of homosexuality in even stronger language:

Whereas homosexuality per se implies no impairment in judgment, stability, reliability, or general social or vocational capabilities, the American Psychiatric Association calls on all international health organizations, and individual psychiatrists in other countries, to urge the repeal in their own country of legislation that penalizes homosexual acts by consenting adults in private. And further, the APA calls on these organizations and individuals to do all that is possible to decrease the stigma related to homosexuality wherever and whenever it may occur. [*Fact Sheet* of the American Psychiatric Association, April, 1993, p. 2.]

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