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The Jewish Community's Stake in the Legalization of Lesbian and Gay Marriage

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Sermon Text
9th Annual Lesbian and Gay Pride Shabbat, Parshat Sh'lach Lecha, 5755
Friday, June 23, 1995 (1)

It is extraordinary that Beth Am is celebrating Lesbian and Gay Pride tonight for the 9th time.

I remember almost every previous celebration. The first, inaugurated in the midst of controversy: should we or shouldn't we list it in our newsletter? Some were adamantly opposed, but everyone who came to the service was affected by Miriam Frank and Audrey May's testimony during the oneg. It was the first time some of you had ever heard a gay person talk about her life.

I remember the special liturgies we composed some of those years and Barry singing "Love Don't Need a Reason." I remember the sermons by Scott Klein, Michael Michlin, and Victor Appell. I remember the year Rabbi Stacy Offner and her partner Nancy visited us, shortly after Stacy had been outed and forced to leave her congregation. I remember the years when Beth Am was the only mainstream synagogue in New York celebrating gay pride. And gay men and lesbians, Jews and non-Jews came to Washington Heights from Brooklyn and Queens just for this service.

Some of you have found yourselves more welcomed here than you have ever felt before. Some of you have extended yourselves in welcome more than we ever imagined. Some of you wrote to your councilmen in support of the New York City gay rights bill. Many of you have helped us raise money every year for the Gay Men's Health Crisis. You included an explicit welcome to gay men and lesbians in Beth Am's brochure. You celebrated Ruthie's birth and naming (2). You gave Desma and Miriam a "just registered" party (3). You mourned with Barry when his lover, Paul, died. You celebrated Victor's and, now, Michael's admission to Rabbinical school (4). For every step of our decade-long journey together I thank you.

Tonight I have to ask you to take yet another step.

Item: "Gay people shouldn't be rabbis because they are promiscuous. They are incapable of maintaining, or they choose not to maintain, long term, committed relationships and therefore they cannot serve as exemplars of the Jewish values of covenant loyalty and family."

This argument arose again and again, in the deliberations of the Central Conference of American Rabbi's' "Ad Hoc Committee on Homosexuality and The Rabbinate." The Committee rejected this stereotype (5) and recommended that the ban against gay men and lesbians be lifted. The CCAR accepted the Committee's report in June 1990. Just one year later, however, in June of 1991, when Rabbi Yoel Kahn and his partner celebrated their tenth anniversary with a wedding: chuppah, sheva brachot, rings, ketubah and all, and sent an announcement in to the CCAR newsletter to be printed in its "mazel tov" column, they received a polite response: Because the CCAR has not yet voted to endorse kiddushin (6) for lesbian and gay couples, we cannot print your simcha in our mazel tov column lest it appear to be an endorsement. Eventually the CCAR voted to eliminate the mazel tov section altogether, and to print Yoey and Dna's announcement under a newly created category: "members' news."

Item: In 1990, a top student at Emory Law school was working in the office of the Attorney General. At the end of her internship, the Attorney General offered Robin Brown (later changed to "Shahar") a permanent job upon her graduation. Shortly after graduation, a few weeks before she was to assume her position on Attorney Bower's staff, Robin stood under the chuppah with her lover of five years. Attorney General Michael Bowers then rescinded his job offer on the grounds that Robin was attempting

to marry her lover, though the state of Georgia restricted marriage to heterosexual couples. Since she flouted state law, Robin was unfit to represent the state as an attorney, he argued. Robin Shahar and the ACLU sued the Attorney General for violating her religious rights the case is still in court...

Item: Beth Am's panel on outreach to lesbian and gay Jews spoke in a Conservative synagogue last spring to a group of parents of Hebrew school students. One mother said, "It's okay with me if the rabbi officiates at commitment ceremonies, just as long as my child never knows about it."

The Board of a Reform synagogue in Minneapolis actually adopted that position as policy: permitting its rabbi to officiate at private commitment ceremonies, but forbidding him from calling lesbian or gay couples to the Torah to give them a "mi sheberach" on the Shabbat before their wedding or on their anniversary or to name their baby. Why? Because calling a gay couple to the Torah at a regular Shabbat service in front of the entire congregation might upset the bar or bat mitzvah's family.

Item: Dr. Ismar Schorsch, Chancellor of the Jewish Theological Seminary of America, in a letter to the members of the Rabbinical Assembly's Committee on Jewish Law and Standards, expressed his reasons for opposing a reinterpretation of the halachic prohibition against homosexual relations (7). After a paragraph about the halacha's unequivocal voice on this matter and a paragraph about the importance of not lining up with the Reform and Reconstructionist movements, he wrote,

My deepest reason, for speaking out against this proposed change, however, is non-halachic. And I do so in the spirit of Zecharia Frankel, the founder of our movement, who firmly held that issues of Jewish law should be guided by historical as well as halachic considerations....

Two historical considerations weigh heavily on my mind: The first pertains to the Holocaust and its aftermath. Nearly two generations after the extermination of six million Jews, the Jewish people has yet to recover numerically....For Conservative Judaism at this juncture to embrace the view that a homosexual union, inherently infertile, is an equally valid norm is to exhibit a monumental indifference to recent Jewish history and to the welfare of the community....

Secondly, I fear for the future of the Jewish family, the bedrock of Judaism since the Torah wove it into the story of creation and put it at the heart of the Ten Commandments. Given the present divorce rate, it takes courage for young people to even contemplate marriage. Unprecedented freedom, affluence, and opportunity have burdened the Jewish family in America with unmanageable stress and drive its members to seek their bliss alone and elsewhere....This is not the time to diminish the ideal (of family) but to reaffirm it [emphasis added].

Then why, Dr. Schorsch, won't you affirm the ideal of family for gay and lesbian Jews who have the courage to marry and the desire to raise children?

In 1993, the Union of American Hebrew Congregations passed a resolution calling for spousal benefits for gay and lesbian partners and for "legal means" of recognizing their relationships (8). It stopped short, however, from using the term "marriage." This spring the Federation of Reconstructionist Congregations and Chavurot passed a resolution supporting the legalization of same-sex marriage.

The Reconstructionist movement is, to date, the only one to support religious ceremonies of commitment for gay and lesbian couples. Many Reform rabbis perform them, but the CCAR is still studying the matter as part of an enormous project to develop a Jewish sexual ethic for our times. The draft of that report will be presented in the spring of '96, the final version not until the spring of '97" (9).

The battle over the legalization of same-sex civil marriage, however, won't wait for the CCAR's careful deliberations about the pros and cons of kiddushin for gay couples. The battle has begun already and we should not stand idly by. When it rages in New York State, we must be ready. And rage it will-soon (10).

Background: In 1991, a state clerk in Hawaii refused to issue marriage licenses to two lesbian couples and one gay couple. In May of 1993 the Hawaii Supreme Court (in Baehr v. Lewin) ruled that the state's refusal to issue marriage licenses to same-sex couples presumptively violates the state constitutional guarantee of equal protection. The court held that the "difference-sex" restriction on marital choice constitutes unconstitutional sex discrimination, much as the analogous "same race restriction" prevalent just a generation ago constituted unconstitutional discrimination based on race. Unless the state can show a "compelling" reason why it should be allowed to continue discriminating, it will have to stop. The case is now back in the trial court, where any justifications the state comes up with must undergo "strict-scrutiny" review. In the meantime, in 1994, Hawaii's governor signed a bill reiterating the "different-sex" restriction on marriage (11).

Anticipating that the Hawaii courts may declare the ban on same-sex marriage unconstitutional, some law-makers in other states (Alaska, South Dakota) are attempting to foreclose the possibility of same-sex marriage in their own states or to

prohibit their own states from recognizing same-sex marriages performed elsewhere. In March 1995, Utah legislators voted overwhelmingly to deny recognition to marriages performed elsewhere that do not conform to Utah law (12). If The Hawaii "different-sex" restriction is declared unconstitutional, and, thus, same-sex marriages become legal in Hawaii, there will, most likely, be an anti-gay-marriage backlash in almost every state (13).

Let me put it in another way: in a little over a year it may be legal in Hawaii for lesbian and gay couples to marry. Couples who can afford it will travel from all over the country to be married in Hawaii and then return to their home states to be recognized as legally married couples.

Among the legal rights conferred upon married couples and widely denied to lesbian and gay couples are rights to:

- joint (legal) parenting
- joint adoption
- joint foster care
- status of next-of-kin for hospital visits and medical decisions
- joint insurance policies for home, auto, and health
- immigration (for foreign born partners)
- automatic inheritance in the absence of a will
- joint leases with automatic renewal rights in the event that one partner dies or moves out
- inheritance of jointly owned real and personal property through the right of survivorship (avoiding time and expense in probate)
- spousal employee benefits such as annuities, pension plans, social security and Medicare
- veteran's benefits
- and, in the case of a dissolution of the relationship: benefits of community property, child support, custody and visitation.

All of these are rights straight married couples automatically enjoy.

Most important, perhaps, is the effect legalizing lesbian and gay marriage will have upon the children of lesbian and gay couples. Moreover, with the legalization of gay marriage, gay and lesbian nuptials can be printed in the newspapers, in professional newsletters, and in college alumnae magazines, putting to rest for all time the false impression that gay men and lesbians as a group do not maintain long-term committed relationships and ending the possibility that a gay man or lesbian can be fired for standing under the chuppah with his or her partner in a religious ceremony of kiddushin.

Therefore I say to those in the Jewish community who claim to care about the "Jewish family": support the legalization of gay and lesbian marriage. Let all Jews, who so choose to, enjoy the legal rights and responsibilities of marriage and the legal benefits and burdens of children, not only those Jews who happen to be straight. I say to the Jewish community: if you want to see your children, your grandchildren, your nieces and nephews, and your rabbis, stand beneath the chuppah, then you need to support the legal right to marry all of us, not only those who happen to be straight (14).

Not all Jews marry. Many who don't, do an enormous amount to support their own extended families and the families of others. Not all couples can or do bear children. But many who don't, do an enormous amount to raise or educate children born by others. There are thousands of gay and lesbian Jews, however, who do want to marry and do want to raise children. (The gay synagogue in San Francisco has 100 children in its religious school!) If the Jewish community genuinely cares about family, it will support gay people as well as straight in our attempts to establish stable, loving families.

What can you do?

Join the battle to make sure that our state does not refuse to recognize same-sex couples' marriages legally performed in Hawaii (15). Demonstrate, in legislative hearings, in meetings with elected officials, in letters to the press, your religious support for same-sex marriage. (And encourage the UAHC, and every organization of which you are a member, to do the same.) (16)

When Beth Am began celebrating Gay Pride nine years ago, legal lesbian and gay marriages were not even a dream. Now it lies nearly within our grasp. A promise land. But there are those who would keep us from it. Mel White, former speech writer for the Reverend Jerry Falwell, describes, in his book, *Stranger At The Gate*, the effect of the fall of Communism on the Religious Right:

Some people don't realize that Pat Robertson, Jerry Falwell, even Jim Dobson have to mobilize an estimated \$1-3 million in donations every week, much of it just to pay their media bills. Each of these religious right organizations has a larger annual budget than the Vatican. (p. 276)

Their television and radio ministries had been financed in large part by using the Communist threat to raise funds and recruit volunteers. Without Communism, Jerry, Pat, and James have only two issues hot enough to mobilize their forces: abortion and homosexuality. (p. 220)

The Religious Right is larger and wealthier and better organized than we are. To us they look like giants. And we look like grasshoppers. Alaska, South Dakota, Utah were only the beginning. Up until a few months ago many gay men and lesbians believed that we could never defeat the conservative giants on this issue and thus should not even attempt to. But a few, like Evan Wolfson, one of the attorneys in the Hawaii case, have spoke like Caleb (17), "let us indeed proceed, we shall gain possession of this promised land, we shall surely overcome those who would stop us" (18).

The last of the sheva Bruchot, the seven wedding blessings, ends with a messianic hope the metaphor for which is the sight and sound of brides and grooms dancing in the streets of Jerusalem.

Od yishamah b'arey Yehudah
uv'chutot Yerushalaim,
May there yet be heard in the cities of Judah
and in the streets of Jerusalem
kol sason v'kol simchah
kol chatan v'kol kalah
the sound of joy and gladness
the voices of bridegroom and bride

When gay men and lesbians are permitted to take their place among the brides and grooms singing on the beaches of Hawaii, in the streets of New York, and in the courtyards of Jerusalem, the messiah will be just a little bit closer.

Endnotes:

1 Where necessary, the footnotes to this sermon were updated and revised on 07/19/95.

2 Ruth Frank Holcomb is the daughter of a lesbian couple who are members of Beth Am.

3 When they registered as Domestic Partners.

4 Victor Appell and Michael Michlin are both gay. Victor was admitted to the Hebrew Union College - Jewish Institute of Religion in 1994, and Michael to the Reconstructionist Rabbinical College in 1995.

5 The report acknowledges: "We are aware of loving and committed relationships between people of the same sex."

6 Kiddushin (sanctification) is the Jewish term for marriage.

7 The letter is dated: March 4, 1992.

8 The UAHC resolved:

To call upon our Federal, Provincial, State, and Local governments to adopt legislation that will:

1. a) Afford partners in committed lesbian and gay partnerships spousal benefits that include participation in health care plans and survivor benefits;
- b) Ensure that lesbians and gay men are not adjudged unfit to raise children because of their sexual orientation;
- c) Afford partners in committed lesbian and gay relationships the means of legally acknowledging such relationships; and,
2. Call upon our congregations, the CCAR and the HUC-JIR to join with us in seeking to extend the same benefits that are extended to the spouses of married staff members and employees to the partners of all staff members and employees living in committed lesbian and gay partnerships.

9 The subject of religious commitment ceremonies for gay couples was addressed, but not voted upon, at the CCAR convention in 1989, see "Homosexuality and the Rabbinate: Papers Delivered at the 100th Convention of the CCAR, June, 1989," by Dr. Leonard Kravitz and Rabbi Yoel Kahn published in the *CCAR Year Book*. (Rabbi Kahn's paper is entitled "The Kedusha of Homosexual Relationships.") The 1990 report of the Ad Hoc Committee on Homosexuality that there are other human relationships which possess ethical and spiritual value and that there are some people for whom heterosexual, monogamous, procreative marriage is not a viable option or possibility, the majority of the committee reaffirms unequivocally the centrality of this ideal and its special status as *kiddushin*. To the extent that sexual orientation is a matter of choice, the majority of the committee affirms that homosexuality is the only appropriate Jewish choice for fulfilling one's covenantal obligation. A minority of the committee dissents, affirming the equal possibility of covenantal fulfillment in homosexual and heterosexual relationships. The relationship, not the gender, should determine its Jewish value - *kiddushin*.

At a subsequent convention (1993?), Rabbi Kahn spoke, again, in support of kiddushin for lesbian and gay Jews, see his, "Why Union Ceremonies for Lesbian and Gay Jews."

10 The trial in the Hawaii case, has been rescheduled for September 10, 1996.

In the meantime, City officials in Ithaca, New York, including the Mayor, are seriously considering issuing a marriage license to a gay couple who have requested one. On July 5, 1995 the Ithaca Common Council voted unanimously in favor of legalizing gay marriage. ("On the brink of making history," by Peter Freiberg, *The Washington Blade*, July 7, 1995, page 1.) If the city of Ithaca does issue a marriage license to a gay couple, a conservative backlash will, almost certainly, follow. In New York State, the chances of losing the battle for same-sex marriage are great. (See, "For this couple, love can't wait" by Peter Freiberg, *The Washington Blade*, July 14, 1995, page 1.) [Editor's Note: The Hawaii case was dismissed by the Hawaii Supreme Court in 1999 after an amendment was added to the state constitution.]

11 Unless otherwise mentioned, the source for the information in this "Background" is briefing materials prepared by attorney Evan Wolfson, Director of The Marriage Project for Lambda Legal Defense and Education Fund, Inc.

12 "Some States Trying to Stop Gay Marriages Before They Start," David Dunlap, *The New York Times*, March 15, 1995, A18.

13 As Evan Wolfson has explained it to me: currently, every state has a strong presumption in favor of recognizing marriages performed in other states. However, some states refuse to grant recognition to the lawful marriages performed in another state when doing so, they claim, would be contrary to the state's own "public policy." Utah is relying on this "public policy exception" in its legislation. Many believe Utah's legislation is unconstitutional on the grounds that marriage should be governed by Article 4 of the U.S. Constitution which proves, in part, that "full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state." There is no "public policy" exception to the Constitution's full faith and credit provision. If Hawaii's "different-sex restriction" on marriage is struck down, and a lesbian or gay marriage, legally performed in Hawaii, is denied recognition by another state, that denial will be challenged:

- 1) constitutionally, on the grounds that marriage, in general, ought to be governed by the "full faith and credit" provision; and,
- 2) on a state by state basis, on the grounds that the "public policy exception" should not apply to lesbian and gay marriages because it is not in the public interest to allow states to pick and choose whether or not a couple's lawful marriage will be recognized as they move through or to another state.

The Radical Right will argue:

- 1) that marriage should *not* be governed by "full faith and credit," (thereby allowing each state to make public policy exceptions to their recognition of marriages legally performed in other states); and,
- 2) on a state by state basis, that it is *against public policy* for their state to recognize same-sex marriages legally performed elsewhere.

The liberal religious community is uniquely situated to make the case that since marriage can embody a moral good, it is *not against public policy* to recognize same-sex marriages. On the contrary, when two women or two men make a commitment to one another and wish to assume the responsibilities of marriage, they exemplify a moral good.

More narrowly, the liberal religious community can argue that a public policy exception should *not* apply to same-sex marriage, if it is the "policy" of at least part of the public to support legal same-sex marriage. As Chai Fedblum, Associate Professor of Law and Director of the Federal Legislation Clinic at Georgetown University Law Center, has explained it to me: if, in testimonies at legislative hearings, and in amicus briefs, and in resolutions from our religious organizations, we can show that it is the policy of *at least part of the public to support* legal same-sex marriage, then:

- a) it will be harder for a state court to rule that same-sex marriage runs contrary to public policy; and,
- b) it will be harder for a state court to use a biblical/religious argument to claim that same-sex marriage is immoral and, therefore, runs contrary to public policy.

14 Though some gay and lesbian couples are choosing to have religious wedding ceremonies, many choose not to have a religious wedding ceremony lest they give straight people the impression that gay and lesbian couples can "marry" when in fact, legal marriage is still denied us. Many more gay couples will "stand under the chuppah" when doing so carries with it the same legal weight for gay couples as it carries for straight couples.

15 See note 13, above.

16 The Marriage Project at Lambda Legal Defense and Education Fund, Inc. is collecting the names of individuals, congregations, clergy, and organizations that support its Marriage Resolution. For a copy, call 212-995-8585.

17 The Torah reading for the Shabbat on which this sermon was given, tells the story of the twelve scouts sent to investigate the land of Canaan. Ten of the twelve, described the inhabitants of the Land as "giants...and we looked like

grasshoppers to ourselves..." Caleb hushed the people before Moses and said, "Let us by all means go up, and we shall gain possession of it, for we shall surely overcome it," (Numbers 12:30-33).

18 See, Evan's article, "Crossing the Threshold: Equal Marriage Rights for Lesbians and Gay Men and the Intra-community Critique," in New York University's *Review of Law and Social Change*, Vol XXI, Number 3, 1994-95.

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