

Obama's Advocacy of Gay Marriage: An Alternative Orthodox Response

Originally Published on Morethodoxy (2012)¹

Rabbi Zev Farber

In an interview with ABC News last week, President Barack Obama said, “I think same-sex couples should be able to get married.” Since then all hell has broken loose. In the Orthodox Jewish community alone, three different organizations reacted publicly to the president’s announcement. Agudath Israel announced that they are “staunch in their opposition to redefining marriage,” although they admitted that the president, like everyone else, has a right to their opinion.² The Orthodox Union expressed disappointment in Obama’s statement, stating that they “oppose any effort to change the definition of marriage to include same sex unions.”

The most strident condemnation came from the National Council of Young Israel which expressed “deep disappointment” in the president’s statement, writing that they are “diametrically opposed to same gender marriage, which is a concept that is antithetical to the religious principles that we live by.” The NCYI ended their statement with the following: “As firm believers that marriage is a sacred bond between a man and a woman, we simply cannot accept a newfound social position

¹ Morethodoxy shut down, so I am posting my previously published articles as PDFs here. They have not been revised.

² Everyone else except for Marc Stanley, apparently, whose statement the Agudah labels “outrageous, offensive, and wrong.”

that alters the value, definition, and sanctity of marriage as set forth in the Torah, which has guided us for thousands of years.”

Here is where I see the problem. Certainly the Torah has guided observant Jews for thousands of years. Nevertheless, the United States of America and its president are not bound to legislate in accordance with the Torah. Religious Jews are just one group in the plethora of religious communities in the United States and we can hardly condemn the president for not taking Torah law into account.

Taking a step back, it seems to me that—with all due respect to the various institutions quoted above—all of these statements are missing the boat. The most incisive analysis published on this issue thus far, from the Orthodox community at least, has been Rabbi Shmuley Boteach’s piece in the [Huffington Post](#), “The greatest threat to the future of the American family is not gay marriage but rather divorce.” I would add that this threat extends to “accidental families” as well, wherein the couple does not remain together, irrespective of whether they were ever married.

In contrast, same-sex marriages are of interest to a certain subset of the population, and do not affect the lives of heterosexuals who wish to marry their opposite-sex partners. The existence or legality of gay marriage should not be an issue for the Orthodox Jewish community, unless there is a fear that Orthodox rabbis would be forced to perform such weddings or that Orthodox synagogues would be required to treat such couples as “married.” However, if the NCYI is concerned about this, they should have raised this in their statement as the OU did:

“...we appreciate President Obama’s statement today acknowledging that in states where same sex relationships are legally recognized, such laws must carefully address and protect the religious liberties of dissenting individuals and institutions, and the President’s reported reference to the New York State law (on whose strong religious liberty provisions the OU worked) as a model for how such protections must be in place.”

This concern, at least, makes sense and falls under the purview of an Orthodox Jewish organization aiming to protect its own constituency. What is not under the purview of Orthodox Jewish institutions, or the institutions of any other religious group, is to demand that America enact legislation that is specifically in line with its own religious tenets. To paraphrase a quip made by a colleague, I assume the NCYI would not be shocked to learn that in addition to supporting gay marriage, President Obama also does not keep Kosher and drives on Shabbat.

Although I have no problem with all fifty states permitting gay marriage, Boteach makes an alternative suggestion that is worth considering. He argues that perhaps the government should leave the marriage business altogether and only do civil unions. That way any couple, homosexual or heterosexual, will receive the same civil status and legal recognition, and each can “consecrate” their union in a manner meaningful and acceptable to their own faith communities.

In truth, the implied claim that the legal status of a married couple in America carries some “religious weight” in the Orthodox community is disingenuous. The only reason couples married in America are considered married according to halakha is because they perform a religious Jewish ceremony. If they were married

in a civil ceremony instead, then according to the vast majority of halakhic authorities (Rav Henkin being the notable exception) they would not be considered married according to halakha.

Furthermore, if a Jewishly married couple were to get *only* a civil divorce, there is no halakhic authority that I am aware of that would consider them divorced according to Jewish law. None. So in what way does the Orthodox community actually take the legal status conferred on a couple as binding in a religious sense? This is why it is hard for me to understand the extreme, almost visceral, reaction of much of the Orthodox leadership.

Two further points need to be made. First, as I wrote in a previous [post](#), even in the Orthodox world-view, where homosexual congress is considered forbidden, there needs to be sensitivity to the fact that homosexuals—whether for genetic, hormonal, or psychological reasons—experience the same need for love and intimate companionship that heterosexuals experience. Homosexual men and women looking to marry are simply trying to establish a life of love and intimacy in a familial context in the same way that heterosexual couples that marry and have children do. Although the OU's statement does mention that they condemn discrimination, overall this voice of concern and empathy for homosexuals is sadly lacking in the current discourse. To quote Boteach again: "Who does it bother to have gay couples granted the decency to visit each other in hospital during serious illness, make end-of-life decisions and receive tax benefits as a couple?"

Second, considering the current erosion of the stable family unit and its replacement either with rampant divorce or non-committed relationships,

homosexual couples who want to form committed relationships are hardly the enemy. In fact, this type of relationship is closest in character to the choice made by married heterosexual couples in religious communities like our own. Contrary to the opinion of some fringe groups, people who feel they are attracted only to members of their own gender will continue to feel this way throughout their lives. Considering this fact, as a religious community deeply concerned about the strength of American society, whose goals are to solidify family values, shouldn't the gay couples who wish to marry and bring up children be seen as our allies, not our adversaries?