

**Rabbi Danny Nevins**

**Living Law: A Journal of the CJLS Vote on Homosexuality and Halakhah**

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*The documents cited below can be downloaded from my web page:*

[http://www.rabbinevins.org/halakhic\\_writings.htm](http://www.rabbinevins.org/halakhic_writings.htm)

As has already been widely reported, the Committee on Jewish Law and Standards yesterday concluded a four year process of study, debate and thoughtful proposals about the dilemma of including gay and lesbian Jews with full dignity while also preserving our historic commitment to halakhah. Each of the 25 voting members and 6 non-voting members approached this subject with great reverence for God and respect for his or her fellow person. While there was principled disagreement regarding matters of textual interpretation, legal philosophy, and practical law, there was also a deep sense of collegiality and appreciation for the good faith efforts being made by each participant for the benefit of *klal Yisrael*.

The media, as is common, has focused on the surface issues of who is happy, who is angry, who is confused and the like. I have seen little description so far of the content of the papers themselves, and wish to address that here. First, however, it has been reported that four members of the CJLS—Rabbis Joel Roth, Mayer Rabinowitz, Joseph Prouser and Leonard Levy—resigned after the conclusion of the votes. This is the cause of much sorrow and regret for all involved. They alone can explain their decisions. I will merely observe that they did not act in anger but as a principled objection to our inclusive position, which was validated by a majority vote of 13 in favor and twelve opposed. After their dramatic announcement, we all daavened *minchah* and had lunch together. We will, God willing, continue to learn together and from each other in the years to come. I pray that some will reconsider their decision and come back to this committee.

Now that the responsum, “Homosexuality, Human Dignity and Halakhah,” which I co-authored with Rabbis Elliot Dorff and Avram Reisner, is a validated position of the CJLS, I am making it available on my personal web site for anyone to read. All of the papers will be distributed by the CJLS office ASAP. An audio recording of the proceedings will also be available soon at the RA web site.

In the next few paragraphs, I will summarize the process and content of our conversation. Obviously I represent a specific point of view, but I will try to be even-handed. At the outset it is important to emphasize that none of the committee members uttered anything like animus toward gay or lesbian Jews in the entire four years of proceedings. On the contrary, even those most opposed to halakhic change framed their arguments with respect and sympathy for the predicament that gay and lesbian Jews face. One rabbi who voted for retaining the status quo spoke about his own daughter’s

coming out as a lesbian, and now as a transgendered man. This rabbi loves and respects his daughter/son, but feels that the halakhah itself cannot change in this dramatic fashion.

It has been reported that Rabbi Leonard Levy called for “reparative therapy” for gay and lesbian Jews to function as heterosexuals. This is, as Len likes to say, a “sweeping generalization.” In fact, his point was that while *most* people who experience same-sex attraction may never be able to change that, even if highly motivated, a small percentage nevertheless *may*, and they should be offered that opportunity. I don’t think anyone disagrees that people should be able to study their sexual orientation with the assistance of open minded counselors. Where we disagree with Len is in his claim that you can maintain an exclusive public policy that bans all homosexual intimacy and the recognition of homosexual families while also creating a welcoming and respectful environment for people who identify as gay or lesbian. I voted against Len’s paper, but I don’t think it should be distorted.

Now, a bit about the process and our position: The first CJLS retreat on this subject, in March 2004, focused on our respective theories of Jewish law, and also on the current scientific understanding of sexual orientation. We heard from experts on all sides of the spectrum. I was most impressed by the testimony of Dr. Abba Borowich, an Orthodox psychiatrist who practiced reparative therapy for Orthodox homosexuals for nearly 30 years before concluding that this was an ineffective course of therapy which only increased suffering among his patients and their families. At the end of this retreat, nine rabbis indicated that they would begin work on responsa.

The next retreat, in 2005, included discussion of the nine initial papers and their various approaches. Some of the differences related to halakhic methodology, while others related to the conclusions that would be supported by each. Early on I realized that it would not be possible to shift halakhic policy 180 degrees from “*yeihareig v’al ya’avor* (“die rather than transgress”) to *chuppah v’kiddushin kdat Moshe v’Yisrael*.” (“sanctified marriage by the laws of Moses and Israel”). That is, it would not be possible to go from considering male homosexual intercourse to be a cardinal prohibition requiring martyrdom to considering same sex relationships as sanctified marriages. Perhaps there was a middle ground?

My “ah-hah” moment came a few years ago when I was studying *daf Yomi*, the daily Talmud page, and came back to a passage I hadn’t thought of in this light before. On *Brakhot* 19b there is a discussion of human dignity and its legal implications. As I looked up parallel sources and then later applications of this concept in halakhic sources, I realized that this might be the key to the conundrum: How to be inclusive while still being authentically halakhic?

For me, this dilemma has always been a matter of dignity. It is forbidden to humiliate another person, and yet our policy on homosexuality is clearly humiliating. It is commanded to love our fellow person and to dignify him or her. How was this possible given our precedent? A paper by our colleague in Israel, Rabbi Simchah Roth, argued persuasively that the varied prohibitions on male and female homosexual relations could be separated into biblical and rabbinic categories. What I didn't get from Rabbi Simchah Roth was an understanding of how one might permit gay and lesbian Jews to violate a rabbinic precept. After all, we are not biblical Jews, but rabbis!

My main insight was to apply the Talmud's concept of *"gadol kvod habriot shedocheh lo ta'aseh shebaTorah"* to suspend the rabbinic level prohibitions on homosexual intimacy for people whose only other option was celibacy. However, I realized that it would be hard to construct this argument convincingly alone. Like other members of the committee, I decided to collaborate with other rabbis who had come to similar conclusions. Rabbi Elliot Dorff had done a wonderful job evaluating the social science literature on sexual orientation; Rabbi Avram Reisner had gone into great depth on Talmudic texts that address various sexual activities, and also on the medieval controversies surrounding the definition of the resulting prohibitions. The three of us agreed to combine efforts. It wasn't easy, because we live in three sections of the country, have very different writing styles, and approached the literature from distinctive positions. Yet all of us shared a core commitment to using halakhic precedent, and also to finding a livable solution that would make an inclusive and dignified place for gay and lesbian Jews in our community.

After two years and countless drafts, you can see the result. I was the primary editor and rewrote much of the paper, but it is truly a collective effort. It is gratifying that 13 out of 25 rabbis on the committee voted for our paper. That may not be an overwhelming endorsement, but in our fractured state, it was remarkably strong support. As has been reported, Rabbi Joel Roth's paper, "Homosexuality Revisited" also received 13 votes. Since he argued vociferously against our interpretations, and since one rabbi obviously voted in favor of both papers, this is surprising to many. My impression is that the double-yes voter felt it important that our movement preserve equal support for both positions, rather than arguing over majority and minority points of view.

Rabbi Roth's primary arguments against our paper were as follows:

1. The biblical prohibitions in Leviticus are not necessarily restricted to anal sex.
2. The Midrash claims a broad biblical prohibition on all homosexual intimacy by its interpretations of the verses "do not copy the ways of the Egyptians" and "do not approach nakedness".
3. Rambam and later legal authorities consider all such acts to be biblically forbidden.
4. Even if Ramban is correct, as we claim, that the broader prohibitions are only rabbinic, our argument based on human dignity cannot sustain a permanent change in policy to include gays and lesbians.

These were strong challenges, described at length in his paper, and we mounted a vigorous defense of our position. We brought great rabbinic authorities from the past centuries to support our readings of the primary texts. You will have to read all of this for yourself and make your own decision, if you care to. We wrote this responsum not for today's newspaper headlines, but for future generations of Jews and interested others who are seeking to balance the Torah's mandate to love your neighbor as yourself with its specific mitzvot that govern human conduct.

A few words about the papers by my colleagues Rabbis Myron Geller, Bob Fine, David Fine and (separately) Gordon Tucker: These are all brilliant and learned rabbis. There is much merit to what they have said, though I did not find their arguments to be convincing. Geller-Fine-Fine basically claimed that the biblical prohibition should be understood to prohibit only non-committed same-sex unions. Since today same-sex unions are permitted and recognized in many jurisdictions, the Torah's concern for the protection of marriage can be satisfied by committed same-sex relationships. My teacher, Rabbi Gordon Tucker, submitted a general essay about theories of Jewish law, citing many modern legal theorists, especially the late Robert Cover, to argue that the law must not be immoral, and that the narrative ethical values of Judaism should direct the law in this case, rather than the reverse. I am certainly oversimplifying these long and scholarly papers. I hope that you will read them when they are made public.

There is no doubt some logic to these arguments, but they simply do not follow the form of precedent-based halakhic reasoning, and they seemed to me to be too much assertion, and too little support for reversing one of the three cardinal rules of Judaism. This is why both papers were considered by a majority of the CJLS to be "*takkanot*" or legislative acts rather than judicial interpretations. I did not vote to consider either paper a *takkanah*, mostly out of respect for the authors' ability to define their own work, but I could not vote in favor of them either.

In the end, our paper and Rabbi Joel Roth's paper each received a majority support of 13 yeases. Rabbi Leonard Levy's paper, which is nuanced but basically supports the same public policy as Rabbi Roth, attained the minimum threshold of 6 votes. The other two papers were deemed *takkanot* and did not reach the necessary threshold. There was a last-minute attempt to accept *all* the papers without prejudice, but this foundered when it became clear that none of the new papers would be considered a validated position of the CJLS, leaving only the 1992 papers in place.

Many outsiders, and some insiders, wonder how the Conservative Movement can thrive or even survive with such a division. Most realize that we have done it before and are likely to do it again, even as the United States has handled such basic divisions. We are a big tent movement, and we will continue to try to serve God in truth, realizing that none of us has a monopoly on God's truth. I note that other movements have also handled

major schisms in ideology or practice. Chabad has flourished despite profound disagreement over the late Rebbe's status as messiah. Reform has struggled mightily over the role of traditional ritual practices in contemporary life. The Orthodox are still divided over many subjects from Zionism to the relevance of modern secular thought to traditional Jewish practice.

The mark of religious honesty and intensity is sometimes struggle. Our *Parshah* this week, *VaYishlach*, is most famous for Jacob's wrestling match with the angel. Our name Israel alludes to the periodic need to struggle with God and our fellow person, trying in the end to attain the name's second meaning: *Yashar Eil*—upright, honest and righteous before God. At the end of the struggle we may be left limping; yet that may be the price of attaining God's blessing.

I hope that this journal is helpful and welcome your comments.

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