

# HALAKHIC AND METAHALAKHIC ARGUMENTS CONCERNING JUDAISM AND HOMOSEXUALITY

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In addition to being a responsum on the issue at hand, this paper is also a more general essay on approaches to law. It argues that the methods that have been used in the Conservative Movement to analyze and develop halakhah have been conceived in an overly narrow way, and that this constriction of halakhic method deprives us of an articulation of an approach to Jewish law that would not only be both compassionate and intellectually consistent, but would give distinctive meaning to what Conservative Judaism is as a religious movement. It ultimately points the way to a more expansive model of halakhic argument. The question of reconciling Judaism and homosexuality serves here as a tool for exposing the inadequacies of our practices. But the expanded vision urged here will surely have important ramifications beyond this present case.

The paper begins with a careful delineation of the issues involved in the question of normalizing the status of Jewish gays and lesbians. In so doing, it identifies two major arguments that have been raised against normalization. They are here termed (1) the theological argument (i.e. the argument from the clarity – which is here completely affirmed – of the Torah's prohibition on homosexual relations), and (2) the halakhic/systemic argument, which appeals to the methods of legal positivism to rule out any change in what is deeply entrenched precedent. Both of these arguments against normalization are addressed in the paper. The first is shown to be mismatched with normative Conservative Jewish theology. And while positivism's cogency and practical advantages are affirmed generally, the difficulties that arise from an exclusive methodological reliance on it are developed and highlighted, by a closer look at the realities of the lives actually lived by committed Jewish gays and lesbians.

The central part of the paper is the setting forth of an alternative, and more expansive vision of a methodology of halakhic practice. It is presented not as an alternative to positivism, but rather as a supplement to it, by affirming the potential normative power of sacred narratives (*aggadah*). The ongoing, developing religious life of a community includes not only the work of its legalists, but also its theological texts, its experiences, its intuitions, and the ways in which its stories move it. These must have a role in the development of religious norms, else the legal obligations of the community will become dangerously detached from its theological commitments. And this detachment becomes most evident in cases such as the one we are considering, in which even those who argue against change profess moral unease with the result that positivist methods require.

Finally, the paper uses the vision of enhanced halakhic practice for which it has argued to frame an argument for the full normalization of gays and lesbians. But it also asserts that this is a moment of opportunity for Conservative Judaism, in which we can demonstrate the power of our commitment *and* our compassion, and in which our concept of law can be expanded and not contracted, while not rejecting the methods of the past. It is not just gays and lesbians whom we address here, but our wider community as well. We have, in short, the capacity to create a truly exciting and engaging moment in the history of halakhic practice.