

You have wrestled with God and human and prevailed: Homosexuality and Halakhah

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The following paper was submitted in concurrence with teshuvot by Rabbis Roth and Levy and in dissent from the teshuvot of Rabbis Elliot Dorff, Daniel Nevins and Avram Reisner, Rabbi Gordon Tucker, and Rabbis Myron Geller, Robert and David Fine in Shevat 5767- February 2007. Concurring and dissenting opinions are not official positions of the Committee on Jewish Law and Standards.

In the 1990s, an article appeared in *Tikkun* magazine written by a rabbi discussing the inner conflicts he felt as an Orthodox Jew and an active homosexual. He signed the article with a pseudonym, "Yaakov Levado." Of course, this refers to Genesis 32.25, when Yaakov is described as being left alone to wrestle with a strange man that he encounters during the night. Coincidentally, this verse was in the Torah portion of the week when the Committee on Jewish Law and Standards approved three teshuvot regarding the question of homosexuality and halakhah.

Years later, Steven Greenberg revealed his identity. The reason for the title of the original article was clear. He has since written a sensitive and significant book, *Wrestling with God and Man*, that describes his struggle with homosexuality and *halakhah* and attempts to offer a perspective on homosexuality that might be congruent with Jewish law. It is not only Rabbi Greenberg who struggles with this issue. Many committed Jews, individuals facing their own homosexuality or that of a member of their family, wrestle with this question.

Some initial comments are in order: All the papers submitted to the CJLS reflected great concern for the respect and dignity of individuals. All of the *teshuvot* were examples of deep love of Torah. While the papers represented strikingly distinct approaches to *halakhah*, all demonstrate a devotion to Jewish law as a defining framework for Conservative Judaism. As befits students of Torah, all of the discussion within the CJLS was characterized by mutual respect and much personal regard for one another. Members of the Committee (with opposing voices) have lesbians in their immediate family and many members have done significant work within the gay and lesbian community.

Throughout the entire period of our discussion, deliberation and debate, I have found the subject occupying much of my reading, reflection, and research. As we moved closer to the final decision, I found myself sleepless, like Yaakov, wrestling with my feelings, thoughts and opinions. It is with

great respect for my colleagues that I wish to dissent from some of the opinions and proposals that have come before the CJLS.

I first wish to assert that however one understands how the Torah came to its present written form, Conservative Jews should be committed to the belief that Torah constitutes the direction of God. While the text of Torah may be "maculate," the claim of divine origin for Torah is an essential aspect of our halakhic system. Even as we seek to interpret Torah, we should do so with a deep sense of reverence for God, the Torah text and the system of *mitsvot* that it generated. We observe *mitsvot* not merely as a social duty, but as a religious act that links us to our historical tradition and to God.

Despite that intimate relationship between Jewish law and God, rarely do rabbis claim to have special intuition or divine insight (however, see: *She'elot uteshuvot min hashamayim*). We determine halakhah by reliance on a tradition of precedent and of process. Moreover, the claim of a greater aggadic "narrative" is rarely articulated in a halakhic context. Even when such a claim is made, it is usually found as a support to a prior halakhic argument (see David Novak, *Law and Theology in Judaism*, first series). The reluctance to give *aggadah*, philosophy, kabbalah, or narrative understandings primary significance in the determination of religious law is the recognition that (1) there are no limits to these theological claims and (2) counter-narratives are readily developed. For example, one might read Dennis Prager's "narrative" about Jewish law and homosexuality as a counter-narrative to the one presented by Rabbi Tucker (see Prager's "Judaism's Sexual Revolution: Why Judaism (and then Christianity) Rejected Homosexuality.")

Instead, rabbinic authorities determine *halakhah* by analysis of precedent, the careful presentation and integration of new circumstances, and the detailed linkage of one case to another. In this way, the ligature of law is always clear (see Edward Levi, *An Introduction to Legal Reasoning*). When applying critical theological or ethical concepts, the internal legal precedents are always primary. Zvi Werbowisky points out that were it not for the preponderance of precedent, the theological orientation of Rabbi Yosef Karo might have led him to decide that celibacy was a legal *desideratum* (see his *Joseph Karo: Lawyer and Mystic*). Despite his desired "narrative," Rabbi Karo was forced to rule that regular conjugal relations were legally obligated.

Rabbi Tucker expresses a desire to seize "a moment of opportunity for Conservative Judaism, in which we can demonstrate the power of our commitment and compassion, in which our concept of law can be expanded and not contracted, and in which we can light lamps for the multitude." Yet this it is precisely on the "hard issues" – such as homosexuality – when any change must be carefully constructed and argued by the tools of positive legal precedents. To do otherwise would be to open a methodological floodgate that would be difficult to control in other cases.

Rabbis Myron Geller, Robert Fine and David Fine argued that the Biblical prohibitions against homosexual activity might be understood in a new context, based on a contemporary re-interpretation of Leviticus 18:22 and 20:13 by Jacob Milgrom. The classical prohibitions against forbidden relationships, *arayyot*, were to be understood in relation to the socio-cultural norms of the Bible. Because intimate relations are permitted only in the context of marriage, same-sex relations, like other prohibited acts (*arayyot*) - incest, bestiality, and adultery - were forbidden because the parties involved were unable to marry.

Even though Conservative Judaism welcomes scholarly and historic contextualization of the Bible, we should be wary of applying this methodology to legal matters. Rambam understood many *mitsvot* to have been directed against idolatrous practices that were ancient and no longer practiced, yet he clearly ruled that these *mitsvot* remained obligatory. While medieval scholars often offered new explanations for commandments, they did not do so to permit what had previously been prohibited (see Yosef Heinemann, *Taamei hamitsvot besifrut yisrael*). Long ago, Rashbam made a clear methodological distinction between his hermeneutic of the Torah text and the received *halakhah*, eschewing the determination of Jewish law by a reinterpretation of the *peshat* of a Biblical text.

A modern example may be illustrative. In 1936, based on his reading of a recently discovered, deciphered and reconstructed Ugaritic text, Prof. H.L. Ginsberg posited a connection between Canaanite or Phoenician religious practices and the Biblical prohibition against seething a kid in its mother's milk. Jacob Milgrom observed, "In the ensuing years, this explanation gained wide acceptance among both Ugaritic and biblical scholars, and indeed became almost a dogma of scholarship..... Recent scholarship, however, has thoroughly undermined this explanation." (*Bible Review*, 1985). Historical and philological study do not determine legal meaning. To advocate a sweeping and significant halakhic change based on a scholarly hypothesis that homosexuality was prohibited only because it was a relationship that could not be given the sacred status of marriage is a very weak argument.

The *teshuvah* by Rabbis Geller, Fine and Fine argues that a new social reality leads to the exclusion of contemporary same-sex relationships from the Biblical prohibition (*mi'ut*). But there is no **post**-Talmudic precedent for using this legal hermeneutic to limit the applicability of a Biblically based prohibition.

Rabbi Leonard Levy's responsum emphasized a compassionate and respectful approach to all people struggling with their sexual lives. In arguing that that homosexual attraction is much more common than most people acknowledge, he sought to create the possibility of educational programs to reduce homophobia and homophobic attitudes in the Jewish community. His position should have been supported by more members of the CJLS.

At the same time, Levy also cites responsible scientific research that some modification of patterns of homosexual attraction and behavior is possible and that a small percentage of those who experience homosexual orientation and are unhappy with that desire may be directed to a heterosexual life.

In 2002, Robert Epstein, the editor in chief of *Psychology Today*, wrote:

Although homosexuality was removed from the DSM-the diagnostic manual used by therapists-as a mental disorder in 1973, all editions of the DSM have always listed a disorder characterized by "distress" over one's sexual orientation (DSM section 302.9). Both gays and straights have a right to seek treatment when they're unhappy with their sexual orientation, and some choose to try to change that orientation. It would be absurd to assert that only heterosexuals should have that right.

While neither the possibility nor the desirability of such change is the prevailing view among mental health professionals, it is a perspective that should not be ignored.

More importantly, even though the possibility of change of sexual orientation is a minority position among psychological researchers and clinicians, the scientific evidence of same-sex attraction as a unitary phenomenon is apparently not universally accepted. Even if most homosexual orientation is fixed, to base such a significant revision of halakhic precedent on this foundation is problematic.

Given the acknowledgement by Rabbis Dorff, Nevins and Reisner that there is a Torah preference for heterosexuality and that bisexuals should be encouraged to choose a heterosexual life, I fail to understand why Rabbi Levy's position was not supported by more of the members of the CJLS. I concur with Rabbi Levy's emphasis on the importance of respect for personal privacy and his conclusion that an individual who does not publicly act to violate the halakhic norm of heterosexuality should be allowed to function as a rabbi or cantor.

Rabbi Joel Roth indicated that his current paper was an amplification of his 1992 opinion, a defense against its critics and a criticism of other papers. He makes a strong argument for the *de'oraita* status of all forms of same-sex relations. In offering a critique of this position, Rabbis Dorff, Nevins and Reisner cite the *hassagot* of Ramban to *Sefer Hamitsvot* (#353) of Rambam. However, the agreement of all major subsequent codes of *halakhah* indicates that the clear weight of legal authority is with Maimonides (see *Mishneh Torah: Yesodey Hatorah* 5.2, *ad loc.*; Bet Yosef, *Tur Yoreh De'ah* 157, "*vekativ haran*;" Darkhei Moshe, *ad loc.*, par.3; Rema, *Shulhan Arukh Yoreh De'ah* 157.1; Shakh, *ad loc.*, par. 10).

More important, for our purposes, is the position Rabenu Nissim quotes (*Yoma*, ch. 8, 3b, "*hut*") from Nachmanides *Torat Ha'adam* (Kitvey *Haramban*, Chavel edition, p.35). There, dealing with the question of healing someone by sexual relations with a prohibited individual, **or even by visual**

exposure to such a person in the nude, Ramban writes: "*alma, sheloshah averot hallalu, lo shena averah gufa, velo shena be'avakah shel averah, eyn mitrapin bahen kella*"; regarding these three prohibitions [of sexual intimacy, bloodshed, and idolatry], it makes no difference whether these are the actual prohibited act or merely that which is 'dust' [associated with] this prohibition, one may not [do it, even] to heal." Notwithstanding Nachmanides' critique of Maimonides classification, the Talmudic analysis offered by Ramban prohibits engaging in these actions – which would include homosexual activity- or even their secondary manifestation (which is "only" *kirvah*) **even for the purposes of healing** (*piku'ah nefesh*). Certainly that would be the case for same-sex intimacy for other purposes.

Even if one were to accept the position of Rabbis Dorff, Nevins and Reisner that all forms of same-sex relations (other than male-male anal penetration) are prohibited only by rabbinic enactment, this would not justify permitting other forms of male-male relations. Usually, when facing the possibility of violating *de'oraita* proscriptions, rabbis placed extra barriers to prevent any inadvertent or erroneous transgression. Here, too, in dealing with an issue as grave as *arayot*, for which the Talmud indicates one should lay down his or her life, responsible rabbinic authorities should not seek to lower the Biblical barriers of *lo tikarev*, which may lead to possible violation of the Biblical prohibition.

Instead, Rabbis Reisner, Nevins and Dorff contend that those expressions of same-sex intimacy that are forbidden by rabbinic decree would be permitted because of two factors. These are (1) *efsharut* - feasibility - the Torah asks us to do what is feasible and does not demand behavior that is impossible; and (2) *kevod haberiyyot* - human dignity – we should do everything we can to enable people to maintain their self-respect and be respected by others.

These arguments are important and erroneous. They are important because they create the appearance of permissibility and erroneous because they minimize scientific research and misapply halakhic precedents and argumentation.

Although Rabbis Dorff, Nevins and Reisner reject the idea that homosexuals are devoid of individual agency, it seems to me that the position of the immutability of sexual orientation is the equivalent of an argument of *ones*. As indicated above, there is some research that indicates that the fixity of same-sex sexual desire –understood here as *ones*- is not absolute for all people. Even if, for the vast majority of homosexuals, same-sex attraction is not subject to modification – nor should it be attempted – limited personal choice does not legitimate an action. While this falls short of the definition of dignity for homosexuals desired by Rabbis Dorff, Nevins and Reisner, it does mean that one is not culpable, rabbis should show understanding, and we certainly do not punish or ostracize.

Rabbis Dorff, Nevins and Reisner develop the argument that *halakhah* would not demand celibacy since this is an unreasonable and unfeasible demand. In addition to the argumentation presented by Rabbi Roth in his *teshuvah* of 1992, the authors themselves admit that "if celibacy for homosexuals were merely considered unfeasible, then our topic would be amenable to individual dispensations rather than challenging the entire structure of the law [proscribing homosexuality]."

However, in making their case dependent on the second contention, that of *kevod haberiyyot*, my colleagues recognize that if this last position is not justifiable, then their argument fails. I shall contend that their argument is insufficient and, therefore, I propose that our approach should be to respond to individual situations rather than to attempt provide generic solutions that overturns Biblical and Rabbinic precedent.

My colleagues contend that "The halakhic status quo is deeply degrading to gay and lesbian Jews. Quite apart from social and literary trends that have taught contempt for homosexuals, legal norms that either ignore them or cruelly demand the absolute suppression of their libido create an environment of humiliation." They cite a number of cases where concern for *kevod haberiyyot* suspends a rabbinic prohibition. They argue that the social status of gays and lesbians is such that their basic human dignity is impaired and consequently, what is "merely" a rabbinic prohibition should be deferred.

The notion of *kevod haberiyyot* is an important one and worthy of attention as a personal and pastoral principle. However, as the basis for the revolutionary overturning of a historic and halakhic prohibition whose roots lie in the Bible and that has been accepted by all legal authorities, this legal-theological concept is stretched beyond its usefulness.

In the vast majority of the over one thousand citations of *kevod haberiyyot* in rabbinic literature, the principle is applied by authorities on an internal basis, when the rabbis decline to enforce their own *gezerah* (prohibition). This exceptionalism is specific to a particular event. I would contend that even when included in codes literature, it is there as an example, not as a principle for a general pattern of *pesaq halakhah*.

Moreover, even when the rabbis do apply *kevod haberiyyot*, they do not uproot the basic prohibition. That would be counter-intuitive. In contrast, Rabbis Dorff, Nevis and Reisner seek to use the lever of *kevod haberiyyot* to supersede what they define as a rabbinic enactment. Functionally, this does away on an absolute and complete basis with the prohibition. This goes against the approach of earlier authorities to the concept and helps to explain why some rabbinic leaders were reluctant to use this principle (as acknowledged in the article by Rabbi Aaron Lichtenstein cited in the *teshuvah* by Rabbis Dorff, Nevins and Reisner).

In addition to the objections raised by Rabbi Roth to the inappropriate use of *kevod haberiyot* for halakhic change, the concept is misapplied by Rabbis Nevins, Dorff and Reisner in another way. *Kevod haberiyot* seems to apply in a situation where the intended behaviour is other than the prohibited act. In the cases cited, the individual is permitted to skip over the graves in order to greet the king; the kohen may come into contact with the corpse in order to remove the dead body; the individual may carry cleansing stones outside the Shabbat boundary so that he may defecate in private; the hearing-impaired person may wear a hearing aid to enable him to hear and participate in public worship. *Kevod haberiyot* is cited to enable a person to do something that is seen as immediately urgent or religiously important. It is not cited to supersede the essential proscription. My colleagues mistakenly use the concept of *kevod haberiyot* to permit someone to do what was actually the primary prohibition.

The permission granted is based on a narrow and tenuous argument. First of all, it requires reading the Biblical *issur* of same-sex relations in a **narrow** way to apply only to male-male anal penetration. This leads to the redefinition of all other expressions of same sex relations as rabbinic enactments (despite the fact that the weight of rabbinic authorities sees these other acts as *deoraita* prohibitions, even if not *ervah*). This understanding is based on Nachmanides' critique of Maimonides' *mitsvah* classification, but ignores Nachmanides' Talmudic analysis where he clearly prohibits physical contact with forbidden relationships even for non-intimate healing purposes.

Yet, in the issue before us, we are not discussing innocent social intimacies, but serious and significant sexual intimacies that, minimally, border on, *arayot*. Then my colleagues use the fixity of desire (which I believe is another form of the principle of *ones*) as one of the arguments to permit a prohibited action (rather than render it non-culpable). Finally, they must apply the concept of *kevod haberiyot* in an **expansive** manner (that goes far beyond its use by other rabbinic authorities). This is a chain of halakhic argumentation that is most tenuous, done to permit what has historically been impermissible.

After reaching this conclusion, my colleagues then point to the future. They argue that because the Jewish tradition does not accept promiscuous behaviour, some ceremony should be developed to recognize same-sex unions, so that the normalization of homosexual relationships will conform to the Jewish ideal of marital monogamy. This, of course, will bring us to what the Tannaim imagined as grounds for the Flood: the writing and issuing of marriage documents legitimating what had heretofore been prohibited (see *Sifra, Aharey Mot* 9: 7).

Regarding possible the consequences and future implications of the *teshuvah* by Rabbis Dorff, Nevins and Reisner, our colleague, Rabbi Phillip Scheim has observed:

For most of our laity, our attitude to the intermarried is of greater concern than our approach to homosexual and lesbian Jews. The authors in question have insisted there to be no parallel, that potential intermarriage has its own *takkanah*, the remedy of conversion.... A gay or lesbian couple, on the contrary, they would argue, with ample support, is not able to change their status in order to allow for a Jewish marriage in a traditional sense.... [However,] the homosexual/lesbian couple could pursue non-halakhic sanction in one of the more liberal movements.

One may argue that they in fact wish to identify as Conservative; similarly, the non-Jewish partner in a potential intermarriage, for a myriad of reasons, may choose not to convert. It may be that *kibbud av v'em*, loyalty and respect towards parents, prevents him/her from abandoning the faith of his/her upbringing. Would not, then, the argument of *kevod haberiyyot*, to those who view it applicable to homosexuality, be equally applicable to those who seek to intermarry? Even if CJLS members do not see the parallel here, clearly, there is evidence that much of our laity have already connected these dots.

Despite claims by members of the CJLS that it is possible to legitimate some form of same-sex relations **and** to maintain the traditional proscription against interfaith marriage, the extension of *kevod haberiyyot* to avoid what some would take to be the humiliating exclusion of non-Jews is not such a conceptual stretch.

To help gain some perspective on the issue at hand, we might consider the historic 1950 responsum, composed by Rabbis Adler, Agus and Friedman, on the subject of driving an automobile on Shabbat, an action that had been considered to be akin to the Biblical prohibition of kindling fire. The *teshuvah* begins by a social analysis of the demographic and geographic changes that made mid-century North American Jewish life different from the past. It ends by concluding that

riding in an automobile on the Sabbath is at most a rabbinically interdicted activity. When this act prevents the fulfillment of the mitzvah of attending public worship it shall not be considered a prohibited act. We base this conclusion on the numerous precedents in the Halachah for the setting aside of a rabbinic prohibition when a great mitzvah is involved....

The responsum then set up certain conditions for the implementation of this *teshuvah*. One may drive only for the purpose of attending synagogue. One may drive only to the closest synagogue. There will be a program to encourage and enhance Shabbat observance.

One may immediately notice the similarity between this argument and the one developed by my colleagues Rabbis Dorff, Reisner and Nevins. First the prohibition of driving is redefined from being a Biblically prohibited act to one that is forbidden by rabbinic *gezerah*. Then the rabbinic *issur* is superseded

by what is declared to be a greater *mitsvah*. Finally, some restrictions are placed on what had formerly been completely forbidden.

The driving *teshuvah* was noteworthy for a number of things. (1) It redefined the halakhic framework of Conservative Judaism. (2) It was observed largely in the breach. That is, most people did not limit their driving. They traveled everywhere for commercial and personal purposes. (3) Traditionalists in the Movement lived with it, but always asserted the primacy and preference for walking to shul. The rabbinical school of JTS did not rely on this *teshuvah* and insisted that its students not ride on Shabbat. (4) Over time, because of demographic changes, many congregations sought rabbis that would ride on Shabbat. (5) Many people have said that it was a poorly conceived responsum and it permitted what people were, in any case, going to do.

It is noteworthy that at the time, there was opposition to the permission given by this *teshuvah*. Rabbi Robert Gordis wrote,

... the difficulties that modern Judaism encounters in inculcating the observance of these time-honored prohibitions ... far from justifying their surrender, actually testify to the burning need for the traditional Sabbath... [and] guard us against a superficial approach to the problem. (*Tradition and Change*, ed. M Waxman, p. 381)

One might argue that in the case of homosexuality, in a time when many historic sexual norms are under attack, perhaps there are models of compassion that respond to gays and lesbians with dignity, yet do not require major reframing of Jewish law.

In his paper, Rabbi Gordis outlines a hierarchy of permissibility that places acts which are above and beyond the line of religious duty (*kiddush hashem*) on the highest level, followed by prescribed *mitsvot*. In a similar manner, he identifies a hierarchy of *averot*, religious offenses, the severest of which require capital or physical punishment or financial penalty. He then adds:

Another widespread category in Jewish law consists of acts which the Codes describe as '*asur lekhatilah ubedi'avad patur* 'acts which in advance are forbidden, but which once committed are not punishable.'... The rabbis were keenly aware of instances where the individual might be ...compelled to violate the law. Rabbinic law showed keen insight into human nature, as well as solicitude for the maintenance of the entire structure by several categories. Such is the category of *patur abhol 'asur* 'unpunishable but forbidden'...." (*Tradition and Change*, ed. M Waxman, pp. 387-388)

Even as Rabbi Gordis recognizes that one value may have to be sacrificed for the other, he also contends that each person will evaluate the situation in a different way. It is not a matter for law, but for individual conscience.

The concept of *patur aval assur* is found throughout the Talmud (see Shabbat 3a, 11a, and others, Eruvin 9a, Betsah 33b, Moed Qatan 12b, Sanhedrin 67b), as well as in the post-Talmudic halakhic literature. While all the references relate to Shabbat and Yom Tov observance, this is a useful

principle that might be applicable in the situations under examination. It retains the halakhic framework, yet recognizes that people should not be held to account for certain acts. The argumentation offered by Rabbis Dorff, Nevins and Reisner would most properly lead to a position of rabbinic understanding and compassion for gays and lesbians. The CJLS would provide formal recognition that not everyone can live at the high level demanded by *halakhah*. For those who cannot, this would create a framework for rabbis to offer personal support and pastoral guidance (see Chaim Rapoport, *Judaism and Homosexuality: An Authentic Orthodox Perspective*, for some of the ways this might work).

Rabbi Ben Zion Bokser also disagreed with allowing driving to synagogue on Shabbat, contending that it would lead to other prohibited Shabbat activities. He also counseled a recognition of the subjective situation rather than attempt such a significant halakhic change.

Given a choice between travel on the Sabbath and the total denial of the opportunities of worship on Sabbaths and festivals ... there exists no objective standard by which to judge whether these are the only alternatives we face. The decision rests on subjective factors over which the individual involved alone is sovereign.... If he should decide ...that he has no alternative ... the rabbi must assure him of his sympathetic understanding of the facts which have led him to his decision. (*Tradition and Change*, ed. M Waxman, pp. 398-399)

As did Rabbi Gordis, Rabbi Bokser prefers to locate the locus of responsibility with the individual. He too warned against a broad swath decision. He counseled sympathy, understanding and compassion for the individual, but he did not suggest revising the *halakhah*.

Members of the Committee are always cognizant that our decisions will affect real people. Some of them are in our congregations or communities; others live throughout the world. At the same time, it is important to recognize that, in many ways, the debate is about differing philosophies of halakhah, not about same-sex activity. My approach to Jewish law is to maintain the system and its classical categories and to respond – as much as possible - to people as individuals in their real-life situations.

Throughout this four year period of study, I and other members of the Law Committee have received correspondence from individuals or groups related to issue of homosexuality and halakhah. One woman wrote passionately about the scorn that homosexuals face in the Jewish community:

Who of us is unfamiliar with the term *feygele*? A *feygele* is not normal; a *feygele* is not one of us; God forbid that my child should turn out to be a *feygele*! Fearing rejection and humiliation, a Jewish friend of mine could not bring himself to come out as a homosexual until his father had died. The father was blessed with a long life. As a result, my friend lived a desperately lonely and celibate existence until he was almost 50 years old.... I once witnessed a scene in a hospital that forever changed my own parochial views of homosexuality.... Night and day his

partner sat beside the hospital bed tending to his needs.... All the while speaking softly and encouragingly to him. Surely the love this man bore his dying partner was as holy as the love that my parents, *alasholem* [sic!] bore each other."

Rabbi Miriam Berkowitz articulated a hope that "we can find a way to ... balance its emphasis on human dignity with its commitment to maintaining the critical underpinnings of our cherished legal system, in both its Biblical and rabbinic expressions." The efforts to find a balance between fidelity to the received *halakhah* and compassion for all people resonated with me.

Leaders of the Conservative Movement have expressed divergent perspectives. Over fifteen years ago, Rabbi Brad Artson, who now serves as Dean of the Zeigler School of Rabbinic Studies, wrote a paper favoring acceptance of same-sex relationships in Judaism. In contrast, last year, we received letters from the presidents of both the Seminario in Argentina and the Schechter Institute in Jerusalem cautioning the committee against change. The opposition of the former Chancellor of JTS, Rabbi Ismar Schorsch, is well known, as is the favorable opinion by Prof. Arnold Eisen, the Chancellor-elect of the Seminary.

Recently, the Dean of the Schechter Rabbinical School, Rabbi Einat Ramon, wrote:

...when making moral decision, equality is only one consideration out of many, certainly not the sole moral value. There are other values such as respect, tolerance, etc. *Moreover, equality is a very complicated thing, not only a matter of "human rights;" ethics is as diverse as halacha, and ethical decisions are complex.* Not performing same sex unions... for the sake of protecting the heterosexual monogamous norm (promoted by Judaism from its very inception) is not less moral than maintaining the Law of Return for Jews and not for Palestinians in the State of Israel. Both laws discriminate against minorities in order to protect the majority, not because it is desirable but because this situation creates a lesser evil....

Thus the only intellectually honest position that I see *vis a vis* the GLBTQ [Gay, Lesbian, Bi-sexual, Transgendered, and Queer] community is to embrace them emotionally, support and respect their differences of behavior and opinions, uproot whatever bureaucratic, emotional and economic discrimination exists within and beyond our congregations, grant visibility to GLBTQ thinkers and leaders within the Jewish community and their intellectual perspective, etc.

It is legitimate for each denomination to have different values and hermeneutical principles. This is the whole point of pluralism in the Jewish world. What's possible within the Reform movement is not possible within the Conservative movement and what's possible within the Conservative movement is not possible within Orthodoxy.... Denominationalism helps us disagree with each other in a civil

manner. Nevertheless, denominations become ineffective and stop reflecting authentic voices once they no longer stay within their own parameters of hermeneutics. That is what is happening to the Conservative Movement right now.

I therefore, cannot see how we could call ourselves *halachic* even in the widest sense of the word and sanction same-sex unions when heterosexual marriage is such a central value in Jewish *halacha* and *aggada*...."

I do not believe in writing a new understanding of the legal past, but in working with that legal history to forge a future that is in consonance with the heritage that derives from Sinai. In his paper, Rabbi Roth cited the eminent philosopher of law, Ronald Dworkin that "'a judge must continue that [legal] past and not invent a better past.' This means that a judge cannot always reach conclusions that he or she might want. This does not mean that the legal ruling is at variance with one's convictions. 'The principle that judges should decide consistently with principle, and that the law should be coherent, is part of his convictions....'"

Rabbi Roth also might have noted the detailed laws of prayer in *Mishneh Torah* which may not have accorded with the theology of the *Guide for the Perplexed*. He could have cited rulings about conjugal relationships in the *Shulhan Arukh* that are at variance with the theology of Rabbi Yosef Karo's nighttime *Maggid*. Similarly, we might say that the value of halakhic integrity, of the maintenance of the holistic framework of Jewish law, is critical to our self-understanding, essential for retaining public respect for Conservative Judaism and important for Jewish law in general. The changes proposed by my colleagues – even the ones so closely argued by Rabbis Dorff, Nevins and Reisner - will lead to a broad belittling of our legal decision-making and to a widespread public perception that we are not a halakhic movement.

In supporting the *teshuvot* of Rabbi Roth and Rabbi Levy I sought to respect and reflect the classical position of the Torah tradition regarding homosexuality. I felt strongly that the Levy responsum called us all to develop significant educational programs to teach respect for gays and lesbians. I dissent from the positions of Rabbi Tucker, of Rabbis Geller, Fine and Fine, and of Rabbis Dorff, Nevins and Reisner because of opposition to their methodology, their conclusions, and the consequences of their *teshuvot*.

We are dealing with an issue which is among the most severe in the Torah. We cannot simply apply subjective meta-halakhic categories of narrative, or innovative re-readings of Biblical verses. *Hakhamim! Hizharu bedivreikhem!* One must be exceptionally careful when considering any leniencies regarding this type of prohibition.

Although I accept that there are differing aspects to the prohibition against homosexual relations, the classical *issur* does not distinguish between the Biblical prohibition of male-male anal penetration and a rabbinic limitation against sexual intimacy for all other forms of same-sex encounters. The novel interpretation of Rabbis Dorff, Nevins and Reisner stands alone against all previous halakhic authorities and requires a selective reading of Nachmanides. Moreover, even if one were to grant that female-female sexual relations and non-penetrative sex between males were of rabbinic status, the arguments for superseding the existing prohibitions were not convincing to me.

Nonetheless, the arguments of Dorff, Reisner and Nevins can be construed to create the position of *patur aval assur*- acts that are prohibited, but not punishable. The halakhic decriminalization of homosexuality would enable us to create a space for gays and lesbians, just as we do for others who violate Torah law, but this would result neither in the formal legitimization of same-sex relations nor in their sanctification.

Many rabbis have adopted a similar position regarding inter-faith marriages. We do not officiate at weddings involving a Jew and a non-Jew. However, once such a marriage relationship exists, we strive to create a receptive environment for the Jew and his or her partner. If the mother is Jewish or the child has been converted to Judaism, that means baby namings and *britot*, Jewish education and *bar* or *bat mitsvah* ceremonies. The families are treated with respect, dignity and sensitivity, as are all parents. When we speak about a Torah based on *hesed*, we need not uproot all past prohibitions. The *issurim* may remain, but individuals should be treated with respect, compassion and consideration.

Immediately after the votes, four members of the Committee resigned. Rabbi Roth said that he no longer believes that "the Law Committee can continue to be seen as a halakhic decision-making body." I did not resign and other traditional colleagues – many having roots or current positions in Canada – did not leave the Committee. The *teshuvah* by Dorff, Nevins and Reisner - however much I disagree with it – is within the parameters of halakhic discourse. Moreover, I feel that our presence is still important to maintain the halakhic character of the Conservative Movement.

However, I am deeply concerned that there will be tremendous pressure on rabbis to accept the more liberal decision or risk being labeled as homophobic, insensitive or morally obtuse. The leaders of Conservative Judaism, our rabbis and our congregants will have to defend the principle of halakhic pluralism. I am deeply concerned that as a more liberal conception of Jewish law establishes itself in the Conservative movement, such a development will have a long term impact on whether traditionalists will remain part of the movement, seek to become Conservative rabbis, or whether they will be led to find another place in the landscape of Judaism.

Even if one does not officiate at same sex unions, we can and should affirm that gays, lesbians and their children have a place in our congregations and our communities. Just as we affirm the primacy of the received Torah tradition, we can continue to emphasize the importance of respect and dignity of all people in the Jewish community. As we wrestle with these questions in the future, may the Holy One bless us as Yaakov/Israel was blessed: "You have wrestled with God and human and prevailed."