

A CONCURRING OPINION TO RABBI LEONARD LEVY'S TSHUVAH; "SAME-SEX ATTRACTION AND HALAKHAH"

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This paper was submitted as a concurrence to "Same-Sex Attraction and Halakha" by Rabbi Leonard Levy on December 8, 2006. Concurring and dissenting opinions are not official positions of the Committee on Jewish Law and Standards.

SECULAR AMERICAN VS JEWISH

Since World War II the idiom of the vast majority of American Jews is secularism. In return for being part of the big three (Protestant, Catholic and Jew), we have invested time and intellectual effort in harmonizing Judaism and Americanism. Over the last half century, whenever a new idea has come into vogue in the liberal American world, the non-Orthodox have found a way to make it a part of Judaism. We speak the language of American secularism. We speak of rights and autonomy and personal choice.

Therefore, it should come as no surprise that those who want to retain the traditional, Jewish prohibitions against homosexual act should be under attack. The very motto of Conservative Judaism, "Tradition and Change" has always assumed that the burden of proof is on those who want to change tradition. But now, Dennis Prager's pithy statement that the religion of American Jews is not Judaism, but liberalism is proving true. The debate over Homosexuality is a debate over a clash of values: Judaism or Americanism. Sometimes we have to say, "No".

It is entirely proper that within American society there can be a debate over whether American law has anything to say about the private choices that people make. Liberals and Conservatives can disagree as to whether what we eat and with whom we sleep are proper subjects for the American legal system. This is not true with Halacha. These subjects are very much within the realm of God's commands.

PUBLIC VS PRIVATE

Rabbi Gerald Zelizer, in speaking about his grandfather, quotes Rabbi Harold Schuwais,

"By religious Jew, I don't mean that he put on *tefillin* daily or that he cried during *Kol Nidrei*. I mean that the whole repertoire of his responses was informed by the wisdom and ethics of his community. No act was too trivial or too private to escape the approval or disapproval of the Jewish community. And when he died, the festival of *Pesach* penetrated the seven days of mourning. The rabbi only had to remind our family that "*Haregel M'vatel et Hashiva*", the festival cancels the seven days of mourning. We abided by the norm, no protests that the community was interfering with our private sorrow. Because my grandfather understood that his immortality was inherently tied up with the eternity of his people. He patterned his life after the rhythms of the religious community. And our family understood and was comforted by his understanding of religious patterns."

"Today you and I partake more of a different kind of Jew, the private Jew. As members of the great white middle class of the suburbs, both its positive and negative values penetrate our thinking and our actions, including a dominant characteristic of the suburban white middle class, "privatism". Even though we talk of the Jewish community, in those things, which matter most to us, the whole concept of community is suspect. Popular wisdom today tells us that community, whether religious, political or social, really robs each one of us of our autonomy. It suffocates our individualism we are really private people. We, in the title of the popular book by

Putnam of a few years ago, are people, “who bowl alone.”

In Rabbi Zelizer’s grandfather’s generation, the Jewish public sphere determined how we were expected to behave, even in our private moments. Today, our private needs override the community’s expectations.

I think the change in attitude began in the early 1950s. It was then that the CJLS approved the “Driving *Tshuva*” giving sanction to Jews who chose to drive to synagogue on *Shabbat* and Festivals. It was a revolutionary *Tshuva*, not only because it permitted something that was traditionally forbidden but also because it legitimized a private act in the public sphere.

Concerning homosexual acts, the CJLS is again being asked to legitimize a private act in the public sphere. It is the “Driving *Tshuva*” all over again. A person who chooses to drive on *Shabbat* is making an autonomous, private choice that affects only that person. To ask the community to accept that decision as legitimate and normative robs the community of its ability to create standards and expectations. A community without standards is not a community; it is just a group of private individuals.

The Driving *Tshuva* was written by rabbis who honestly and compassionately tried to lessen the guilt of those who chose to live in the suburbs too far from a synagogue to walk. In good faith they were dealing with reality. But in spite of all the disclaimers in the *Tshuva*, what the community heard was that it was okay to use an automobile on *Shabbat*. The close-knit communities of yore, that were centered around a shul were lost. Those who still find attendance in shul on *Shabbat* meaningful, drive to the *shul* they choose irrespective of distance and then they drive wherever they choose. But even more, the Driving *Tshuva* legitimized within the Halacha of the Conservative Movement that private choices, even those that go against halachic norms, were to be respected.

We see it today throughout the Conservative Movement. Jews who don’t observe *Kashrut* or *Shabbat* or those who are intermarried are treated with the same honor and respect as those who follow these norms. In too many Conservative congregations, *Shabbat* and *Kashrut* are things to be observed in the public arena, in synagogue, but not necessarily by individual Jews. In fact, despite all our educational attempts, our members continue to think that Jews who observe *Shabbat* and *Kashrut* are “Orthodox”.

Orthodoxy has succeeded in created community standards that individuals follow, at least in public. Conservative Judaism has succeeded in creating an expectation that any and all private choices are to be honored and respected in public.

Those who are advocating for change are asking, “If the private act of driving to *shul* can be publicly legitimized, then why can’t private sexual relationships be publicly legitimized too?” And as heartfelt as this plea is, we need to reject it. Private, forbidden acts are still forbidden in Halacha. And while one of the great strengths of the Conservative Movement is that we do not condemn those who flaunt our standards, neither should we legitimize their choices. We can respect people where they are and we can create norms and expectations for people to strive to fulfill.

The issue of homosexuality is the same issue that confronted our teachers two generations ago: should we as a Movement legitimize historically private transgressions?

CONSERVATIVE STANDARDS

Standards are concrete expectations of proper behavior. They include definitions of permissible and prohibited behaviors. This is most difficult for the Conservative Movement because Conservative (Positive-Historical) Judaism began, not as a break with traditional practice but rather with a break with the traditional way of looking at our historical texts. Therefore, it should not come as a surprise that ideology trumps sociology.

Neither in Orthodox nor Reform is this true. Orthodox Jews are more united by being Orthoprax, committed to a practice of Judaism than to a specific theology. Even in Reform Judaism, the ideology of personal autonomy lives side by side with a return to more traditional practice. *Kippot*, *Tallit*, and Hasidic style prayer all attest not to Reform’s return to traditional beliefs but a return to more traditional practices.

So for both Orthodox and Reform, practice does not flow from theology. In Orthodoxy, practice follows community

norms and in Reform it follows from whatever feels meaningful.

Conservative Judaism is distinguished not by practice but by theology more than the other two major streams in Judaism. The difficulty is that modern Jews don't care about theology; they care about practice. Even active, involved Conservative Jews are more interested in what feels good within a community.

Visit Shira Hadasha Synagogue in Jerusalem. You will find Seminary professors and female colleagues choosing to sit behind the *mehitza*. 80 years ago, the most conspicuous difference between traditional synagogues was that Conservative *shuls* had mixed seating and Orthodox synagogues did not. Today, even our female colleagues are willing to give up on that in return for being part of a serious community.

Dr. Schorsch in his outgoing remarks as Chancellor of the Jewish Theological Seminary, criticized the movement for abandoning serious, critical scholarship as the underpinning of Halacha. As much as I respect Dr. Schorsch, I think he got it backwards. Ideology, theology, scholarship cannot create serious Jews. Serious Jews can create ideology, theology and scholarship.

In order for Conservative Judaism to continue as a unique form of Judaism, we must establish standards that separate us from the other streams. The CJLS has begun this process with the recent *Tshuvot* dealing with the ritual of *Mikva*.

We welcome people where they are BUT we are not content to let them stay where they are. Our community expects that people will climb the ladder of observance. That they will observe *Kashrut*, that they will observe daily prayer with a *minyan* that they will observe *Shabbat* and *Haggim* by refraining from work. And they will regulate their private lives in accordance with Halacha.

Voting to continue the traditional prohibitions against Homosexual acts will continue this process of creating standards.

CONCLUSIONS

Our Movement cannot continue to accept whatever Secular values are being promulgated. For too long the Conservative Movement has been carried away by the idea of personal autonomy: people have a right to do what they want and the Movement is expected to legitimize every decision. Voting to continue the prohibitions begins the process of reaffirming the primacy of Halacha over secular values and of the community over the individual in Judaism.

Finally, voting to continue the prohibitions continues the process of establishing standards for the Conservative Movement. If our Movement is to survive, this is a most critical task.

For all these reasons, we must continue the halachic prohibitions against homosexual acts even as individual Jews can decide for themselves on how they want homosexual acts to be considered within the American legal system. As rabbis it is critical that we reestablish the boundaries between the two legal systems.

