

RITUALS AND DOCUMENTS OF MARRIAGE AND DIVORCE FOR SAME-SEX COUPLES (EH 24.2012b)

Concurring Opinion - Rabbi Aaron Alexander¹

This paper was submitted in June 2012 as a concurrence to "Rituals and Documents of Marriage and Divorce for Same-Sex Couples" (an appendix to "Homosexuality, Human Dignity and Halakhah") by Rabbis Elliot Dorff, Daniel Nevins, and Avram Reisner. Dissenting and concurring papers are not official positions of the CJLS.

After five years of ambiguity as to what an authentic, articulate, and well thought out marriage ceremony for same-sex couples would look like, Rabbis Dorff, Reisner, and Nevins have given Conservative rabbis and same-sex couples two worthy and powerful options. We are indebted to them for their work, and the CJLS for its near unanimous support. While I appreciate the nuances and complexities of their arguments, there are a couple of essential issues in their proposal that I'd like to expand upon as further options for Conservative rabbis.²

1) According to the Law of Moses and Israel

Rabbis Dorff, Nevins and Reisner state on page two:

"The traditional ceremony of kiddushin is said to be k'dat Moshe v'Yisrael, according to the laws of Moses and Israel. We acknowledged in our responsum that same-sex intimate relationships are comprehensively banned by classical rabbinic law, yet our teshuvah cited the oft-repeated halakhic principle, gadol k'vod habriot shedoheh lo ta'aseh she-baTorah, "Great is the demand of human dignity in that it supersedes a negative principle of Torah." On this basis, and on the strong scientific evidence we cited that current discriminatory attitudes toward gay men and lesbians do indeed undermine their dignity, evidenced by their much higher rates of suicide, we concluded that for observant gay and lesbian Jews who would otherwise be condemned to a life of celibacy or secrecy, their human dignity requires suspension of the rabbinic level prohibitions so that they may experience intimacy and create families recognized by the Jewish community. We acknowledge that these partnerships are distinct from those discussed in the Talmud as "according to the law of Moses and Israel," but we celebrate them with the same sense of holiness and joy as that expressed in heterosexual marriages."

In a footnote to the last line, they further add,

"As rabbinic interpreters of halakhah, we believe that our ruling is an authentic expression of דת משה וישראל, the laws of Moses and Israel. That said, we realize that the model of ceremony that we here offer is discontinuous with the model created by our ancient rabbis, and that it is not yet established and accepted by the majority of rabbis in our time."

¹ I would to thank my friends, colleagues, and teachers, Rabbis Elianna Yolkut and Ronit Tsadok, for their significant collaboration and thoughtful input into this paper.

² The options we are going to offer are our own and in no way reflect upon, or diminish what has been offered thus far. In the spirit of recognizing that no one ceremony has yet to emerge (and may never do so) we submit this paper as simply our take on what is no doubt a monumental work in progress. Additionally, the three of us would like to take the opportunity to not only thank the authors of the CJLS responsum, but also Rabbi Dr. Rachel Adler, a brilliant trailblazer who has paved the way for so many of us to rethink, thoughtfully and carefully, gender in the context of traditional religious constructs and ceremonies.

There is nothing that I fundamentally disagree with in what is quoted above. Yet, in my opinion, while same-sex partnerships are distinct from that which was discussed in the Talmud, this should not preclude the usage of proclaiming, publicly and officially, these holy relationships as 'according to Laws of Moses and Israel'. I agree with the authors that their original ruling in 2006 was "an authentic expression of *דת משה וישראל*," and see no reason for rabbis and couples to exclude that powerful reference from a marriage ceremony they engage in together.

Furthermore, I believe this phrase is a crucial part of creating true equality and acceptance. In using such language we believe we are further affirming to our LGBTQ community members and their allies that we insist on their equality under the canopy and with the full force of our sacred tradition.

This phrase, if used, would be recited at the end of each ring exchange declaration.

2) Seven Blessings

In each of the two ceremonies offered by the authors, they include celebratory blessings after the *berit ahuvim* is read publicly.³ In the first ceremony option, these blessings closely mirror the traditional *Sheva Berakhot* recited at Jewish weddings. In fact, blessings 1-3 and 5 are identical to what is found in *b. Ketubbot 7b-8a*. Blessings 4, 6 and 7, on the other hand, have been altered or significantly reworked.⁴ The rationale provided by the authors for the changes in these blessings states,

*"We have adapted the language of these texts to accommodate the gender of the parties, but we have avoided creating new blessing formulas, relying instead on established blessings such as "ha-tov v'ha-meitiv" and "she-heheyanu" for the paragraph closings."*⁵

I appreciate the authors' fidelity to closely representing the traditional *Sheva Berakhot* structure, while also taking into account that our legal tradition has always been hesitant to permit new blessing formulas, or even change old ones.⁶ At the same time, I feel it is important to recognize that the authors are, in fact, already making changes to the traditional structure and formulas, not only substituting one recognized blessing for another. Our tradition has numerous iterations of what a blessing looks like. The *Sheva Berakhot*, a unit found in its entirety in the Babylonian Talmud, is a mixture of short blessings, long blessings, and consecutively occurring blessings, paragraphs which close, but do not open, with "Blessed..." (*berakhah ha-se-mukhah l'havertah*).⁷ Therefore, a change, even if not in the closing words, the *hatimah*, is still one that is *meshaneh mi'matbeah hakhamim*, a change from the order the talmudic sages

3 A hallmark of the Jewish wedding ceremony, the *Sheva Berakhot* (7 blessings) celebrate the significant moment just previously enacted under the *huppah*, the wedding canopy. While they do not enact, legally, any part of the wedding, their recitation is essential to the overall joy and gravity of entire *huppah* experience.

4 See Dorff, Nevins, Reisner, page 8, for the full text of their blessings.

5 See Dorff Nevins, Reisner, page 7. They have also substituted the words *osher u'vrakhah* for *hatan ve-kallah* into the seventh blessing.

6 For a full explanation of these laws, see "Commemorating the Shoah" by Rabbi Ben Zion Bergman, *Responsa 1980-1990 of the Committee on Jewish Law and Standards of the Conservative Movement*, pp. 3-10

7 See Elbogen, Ismar. *Jewish Liturgy: A Comprehensive History*, pp. 5-6

set out. And, while I agree that changing, adding, or writing new *berakhot* must generally be done with great hesitance, in this case I believe the authors are in fact justified in their changes. However, I suggest changes that are more harmonious with the original formulation of the *Sheva Berakhot*. There is a thematic and religious coherence to the *Sheva Berakhot* as found in the Talmud, one that I think powerfully celebrates any marriage consecration between two consenting Jews. Changing that ancient set of seven blessings is appropriate, in our opinion, only to address specific gender references.

To that end, if a rabbi and couple prefer to remain as close as possible to the original formulation of the *Sheva Berakhot*, this would also be permissible, and maybe even preferable.

Practically, this means that:

1) One could recite the fourth blessing just as it is found in all ceremonies.

2) In the sixth blessing, the *hatima* (closing words) could be: *barukh...m'sameah kalah v'kalah, hatan v'hatan, re'ot ha-ahuvot, or re'im ha-ahuvim.*⁸

3) In the seventh blessing, the opening could include *kalah v'kalah, hatan v'hatan, re'ot ha-ahuvot, or re'im ha-ahuvim*. Near the end, after *kol sasson v'kol simha*, one could include the same possibilities. The last line before the *hatimah*, in place of *hattanim* (bridegrooms), one could substitute *re'im ha-ahuvim* or it could be left as it is found. The closing *hatimah* would include *barukh...m'sameah...* as in point 2 above.⁹

Again, I want to reiterate how indebted we are to the authors of these wedding ceremonies for their thoughtful and thorough work. We look forward to celebrating their work under the huppah of all those who wish to be married within the Conservative Movement.

⁸ While Rabbis Dorff, Nevins, and Reisner do not specifically address the transgender community, I see this ceremony as one that could be adapted by a rabbi performing a wedding for a transgender Jew/s. For a wedding performed for couples in the diverse transgender community, this last option, *re'im ahuvim*, may be best. Also see the next footnote.

⁹ Our colleague, Cantor Joanna Selznick Dulkan, has also put forth a ceremony worth noting. In her *Sheva Berakhot* she uses the terms, *ahuv* and *re'ah* in the same places we have suggested changes. Though I haven't researched it extensively, this also seems to be a reasonable option. You can see her full text at: http://elearning.huc.edu/jhvrc/liturgy_card.php?article=339