

**The Conservative Movement and Homosexuality:
Settled Law in Unsettling Times**

Rabbi Joseph H. Prouser

As discussion of our religious response to homosexuality continues among Conservative Jews and within the Committee on Jewish Law and Standards, there is much about which all parties to the debate are in absolute agreement.

We all agree that homosexuals have the same rights and responsibilities, and bear the same sanctity, as all other Jews. We all agree that fellow Jews and congregations have a sacred duty eagerly to facilitate the spiritual growth and lovingly to welcome the participation of gay men and women – as we do all other Jews – in personal Jewish observance and learning, and in the religious and social lives of our communities.

We all agree that Jewish tradition imposes a uniquely daunting challenge on homosexual Jews, which other Jews must view with humility and understanding, yet with which heterosexuals cannot fully identify. We all agree that it is sinful to condemn others based solely on their sexual orientation.

We also all agree that for three millennia, from the time of the Torah to our own day, Jewish law has consistently, and with particular stringency, prohibited all acts of homosexual intimacy, describing violation of this norm with unmistakable terms of opprobrium. All parties to our debate agree that we are contemplating not merely “reversing Conservative movement policy,” as the media – naively or disingenuously – have asserted. Candor and clarity are essential: Proposed changes in the halachic status of homosexual conduct would overturn 3000 years of unambiguous legal precedent.

All parties to the debate can further agree that the burden of proof rests squarely on those who advocate changing established law – especially an area of law with so long and undisputed a history. This essay, therefore, need not defend the Torah’s commandments prohibiting acts of homosexual intimacy. Those commandments have been reaffirmed in every generation and at every stage in the development of Jewish law – producing a monolith of precedent not found in other areas of halachah that have been subject to legitimate reconsideration by the Conservative movement. This fact alone is formidable justification for maintaining the status quo. Rather, this article will examine the consequences of change in this area of halachah, which make the case for affirming established law all the more compelling.

The responsa currently before the Law Committee treat the permissibility of homosexual conduct, recognition of homosexual unions through marriage or analogous ceremonies, and rabbinic ordination of sexually active homosexuals as discrete questions. In fact, these three questions are inextricably bound together. A permissive ruling on any one of these matters effectively renders the two related questions moot.

If even a limited range of homosexual conduct is declared permissible, rabbinic ordination could not be denied homosexual candidates, whose behavior would be consistent with halachah as understood by the Conservative movement.

Conversely, if homosexual activity is ruled no obstacle to rabbinic ordination, the permissibility of the full range of homosexual conduct (regardless of any theoretical limitations on which halachic sanction might be conditioned) will be inferred, as rabbis serve as exemplars of Jewish piety and halachic observance. So, too, the ritual celebration of homosexual unions would follow inexorably from ordination of sexually active

homosexuals: How could a community's rabbi – charged among other duties with solemnizing marriages – be engaged in a romantic relationship ineligible for sanctification?

Similarly, should the Law Committee sanction same-sex marriage or commitment ceremonies, the permissibility of homosexual conduct would be inferred, for how can Jewish law sanctify the forbidden? Again, the presumed right to rabbinic ordination would follow, as no violation of Jewish law would be apparent.

If change is approved, only sweeping change will be possible. The halachic changes proposed are so extraordinary in scope that they effectively exceed the authority of the Committee on Jewish Law and Standards. The committee is intended as an advisory and interpretive resource, charged with the enlightened application of Jewish law already in existence. It is not a legislative body, entitled to enact new law in accordance with its own vision. Minimally, the proposed changes represent abrogation of long-established laws governing foundational areas of Jewish family life and sexuality.

Rabbi Elliot Dorff is co-author of a Law Committee paper advocating change in the halachic status of homosexuality. In *Conservative Judaism: Our Ancestors To Our Descendants*, an earlier study of the principles of Conservative Judaism, Rabbi Dorff explored the role of public opinion in halachic development. “In every age it has been the decisions of the rabbis and the practices of the *observant* Jewish community which together determine the nature of Jewish law and which together make the decisions *communal* decisions.” Rabbi Dorff, however, himself notes that there are limits to the halachic force of evolving morés, practice, and custom, which “could not permit that

which had been forbidden in ritual areas. Only a formal takkanah (revision) by the rabbis could do that,” he wrote.

A takkanah, which, by enacting legislation, abandons the Law Committee’s usual interpretive role, can be adopted only by a majority of that committee. Surely, the sweeping changes now under consideration “permit that which had been forbidden in ritual” – a legal action, according to Rabbi Dorff, that requires a takkanah. Furthermore, a procedure whereby change of such extraordinary magnitude could be effected by a minority of as few as six of the twenty-five members of the Law Committee belies the moral mandate perceived by its advocates, the defining institutional stakes identified by its opponents, and the goal of human dignity sought, according to the paper co-authored by Rabbi Dorff, on behalf of homosexuals, whom the changes would impact most directly.

Even if the proposed changes in the halachic status of homosexual conduct were theoretically within the authority of the Law Committee, such a decision would be misguided. The proposed changes would have a destructive impact on the international Conservative movement and a deleterious effect on klal Yisrael. Rabbi Avraham Skorka, the Conservative movement’s leading halachic decisor in Latin America, wrote to the Law Committee in March 2005 regarding the current debate: “We all share the desire to establish a world-wide movement, not merely a North American movement... yet herein we confront an issue that is bound to create a rift in our movement that will never be repaired.”

The Conservative movement, the leading Jewish voice in Latin America, would be marginalized by these changes. The social conservatism of the region, though by no

means unanimous, is well known. Rabbi Skorka cautioned the Law Committee further: “Whether we wish it or not, we are perceived and judged in Latin America, not based on our actions alone, but also based on what you [the committee] do and decide.”

Rabbi David Golinkin, the leading halachic authority of Israel’s Masorti movement, echoed Rabbi Skorka in his own correspondence with the Law Committee, insisting that the proposed changes “will split the Conservative movement in two... drive away the most halakhically observant laypeople in our synagogues, and... have a devastating effect on the Conservative movement throughout the world.” He has said repeatedly that any change in the halachic status of homosexual behavior would render the Masorti movement indistinguishable from Reform in the perception of most Israelis. This would further deprive Israelis of a traditional halachic alternative to official Orthodoxy, undermining decades of effort by our Israeli colleagues, and impeding the development of a long-awaited, healthy spiritual life in the Jewish state.

We should note, too, the traditional approach to Jewish law and practice prevalent among our members and congregations in Canada, as well as among Law Committee members of Canadian origin or serving Canadian congregations. The relationship of Canadian affiliates to the Conservative movement was painfully strained at the last convention of the United Synagogue of Conservative Judaism, when the movement *bona fides* and, indeed, the morality of nonegalitarian congregations were irresponsibly impugned in a public address. A movement-defining change in our halachic approach to sexuality and marriage will further alienate our Canadian members, exacerbating their estrangement from the movement.

At best, the proposed halachic changes will achieve a Pyrrhic victory for their advocates. A fractured Conservative movement undermines the cause of pluralism and reverence for halachic dissent, which we champion. The Conservative movement is rendered less viable at the very peril of klal Yisrael. Those who dispute that a decision of the Committee on Jewish Law and Standards has the potential so dramatically to impact the Jewish world should consider that any body devoid of that influence also lacks the moral authority to legislate such momentous change.

No single nation – and certainly no region or minority within one nation – should arrogate to itself the power to redefine a truly international religious movement and its religious standards. Furthermore, Conservative Judaism reflects American society's affinity for personal liberty and self-determination never more clearly than when – after diligent study and vigorous deliberation – it reaches a conclusion at odds with American morés and social trends.

The proposed changes would result in legal incoherence, unprecedented even in our famously pluralistic movement. A “movement” in which certain relationships are treated simultaneously, by some as worthy of sanctification – and by others as violating biblical norms of the most profound gravity – evinces doctrinal anarchy, inviting ridicule from outsiders and dismissive contempt from those who seek our guidance.

Such sweeping change in Jewish law will make the Law Committee and the Conservative rabbinate poor role models for our religious charges. If we essentially declare so fundamental a halachic obligation inoperative, based on a minority's subjective reading of contemporary reality, how can we deny individual Jews unbridled autonomy in determining which demands of Jewish law remain binding and personally

meaningful? Jewish law would be rendered unrecognizable – as law – to our laity, and to all but the most erudite and progressive legal theorists.

Insurmountable inconsistency is not the only disservice represented by the proposed rulings. Even the most restrained of the proposals for change – while maintaining a narrow definition of the sexual acts prohibited by Leviticus – permits a considerable range of intimate homosexual behavior. Marriage, per se, is nevertheless reserved for heterosexual couples exclusively. We are living at a time when youthful attitudes toward casual sexual encounters and pliable sexual boundaries have spawned a whole new vocabulary of sexuality (“pansexual,” “ambisexual,” “polysexual,” and “heteroflexible,” according to a February 6, 2006 New York magazine article titled “Love and the Ambisexual, Heteroflexible Teen”). In such a cultural atmosphere, we place a *michshol lifnei iveir* – a hazardous stumbling block before youth of as yet immature and impeded moral vision – by declaring, inter alia, that oral sex is not real sex, and that premarital (or nonmarital) intercourse is far from forbidden. In so doing, we recklessly endanger the innocence, moral development, and health of children and teens, sure to be keenly attuned to such rabbinic pronouncements. Sensitivity to changing times and morés (*shinnui ha-ittim*) – a hallmark of halachah in the Conservative movement – instead demands of today’s religious leaders renewed vigilance in matters of personal probity and sexual continence.

Lending credence to the notion that a person’s core identity is defined by physical drives and sexual desire represents a failure of moral and religious leadership. Rabbinic discourse that even unintentionally vests moral authority in the inclination of the individual, rather than in the will of a commanding God, seems a far graver transgression

than prohibited, albeit loving, expressions of intimacy between homosexuals – who act on overwhelming, natural, perhaps God-given drives. Our sacred charge as Jews is to locate the essence of our identity in principled continuity with the Jewish past, solidarity with the Jewish people, sanctified living and learning, and the faithful fulfillment of our various obligations. It is to these goals that the Conservative movement and the Committee on Jewish Law and Standards should properly be devoting its time, its energies, and its considerable talents. God willing, it is to these goals that we will soon return in earnest, after this protracted period of distraction.

Despite our marked differences, there is a final, critical point on which all of us in the Conservative movement can agree: The questions before us are still very much a matter of debate. Honest, honorable debate means that no conclusion has yet been reached. No outcome has yet been assured. Proponents of change may not take adoption of their permissive positions for granted. Change is not inevitable simply because questions have been posed. There is much at stake for the Conservative movement and the Jewish people, as well as in the lives of sincere people, profoundly concerned with our decisions, souls yearning for sensitive and responsible pastoral direction. The questions still before us are complicated and consequential. There is still time for us all – Conservative Jews, Law Committee members, authors of responsa, and even Chancellors-elect – to rethink the wisdom of our positions, and of the religious leadership and stewardship we offer.

May the Almighty grant us, in Isaiah's words, "a spirit of wisdom and insight, a spirit of counsel and courage, a spirit of discretion and reverent fear of God." According

to the Sifra, “the Creator foresaw that Israel was fated to tear itself apart over the issue of prohibited sexual relationships.” On this point, may we prove our forbears wrong.

Joseph H. Prouser is rabbi of Little Neck Jewish Center in Little Neck, New York, and a member of the Committee on Jewish Law and Standards.