

IN THE IMAGE OF GOD: A DISSENT IN FAVOR OF THE FULL EQUALITY OF GAY AND LESBIAN JEWS INTO THE COMMUNITY OF CONSERVATIVE JUDAISM

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This paper was submitted as a dissent to the CJLS "Consensus Statement on Homosexuality" and the papers by Rabbis Roth, Kimelman, Rabinowitz, and Dorff. Concurring and dissenting opinions are not official positions of the Committee on Jewish Law and Standards.

The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.

The policies recently passed by the Rabbinical Assembly Committee on Jewish Law and Standards directly contradict the resolution passed by the Rabbinical Assembly convention in May 1990. The Rabbinical Assembly Convention Resolution:

. . .affirms that the Divine image reflected by every human being must always be cherished and affirmed, and

WHEREAS Jews have always been sensitive to the impact of official and unofficial prejudice and discrimination, wherever directed, and

WHEREAS gay and lesbian Jews have experienced not only the constant threats of physical violence and homophobic rejection, but also the pains of anti-Semitism known to all Jews and, additionally, a sense of painful alienation from our own religious institutions, . . .

THEREFORE BE IT RESOLVED that we. . .

Reiterate that, as are all Jews, gay men and lesbians are welcome as members in our congregations, and

Call upon our synagogues and the arms of our movement to increase our awareness, understanding and concern for our fellow Jews who are gay and lesbian.

However, the policies affirmed on March 25, 1992, by the Committee on Jewish Law and Standards prohibit rabbis from performing commitment ceremonies for gays or lesbians, and they prohibit avowed homosexuals' admittance to our rabbinical and cantorial schools or to the Rabbinical Assembly or the Cantors' Assembly. In addition, individual rabbis may with full support of the CJLS deny to gay or lesbian Jews the opportunity to be teachers, youth leaders, the recipients of honors in worship and lay leaders.

The CJLS has made gay and lesbian Jews second-class citizens or, even worse, a tolerated minority. Gays and lesbians will not feel welcomed by these recent policies of the CJLS. The policies are discriminatory at best and profoundly oppressive in any event. There is no reason for us to hesitate in accepting gays and lesbians into our community with complete equality. If a gay man or lesbian is qualified to serve as a rabbi or cantor, we should encourage them. If a gay or lesbian couple want to mark the holiness of their committed relationships to each other, we must assist them and celebrate with them.

During the deliberations of the CJLS some colleagues raised two primary arguments against this full acceptance of gays and lesbians. Some feel that gays and lesbians are by their very nature either licentious or inimical to the institution of family. Rabbi Elliot N. Dorff pointed out that it is foolish to think that gays and lesbians have cornered the market on sexual licentiousness. Does any rabbi serve a congregation where the sex lives of his or her congregants are completely pure? That gays and lesbians are more prone to loose sexual mores has never been proven, and even if this were to be, it is very likely a direct result of society's unwillingness to recognize and support gay and lesbian relationships.

Statistics prove that gays and lesbians are increasingly involved in family living. The gay and lesbian synagogue in San Francisco runs a Hebrew school for the children of its members. Recently the gay and lesbian synagogue in New York held a Hanukkah party for members and friends with children. The gay and lesbian community is currently enjoying a baby boom. Many Jews are involved in this phenomenon. Moreover, social researchers have documented that one third of all families have a gay or lesbian member.

During the Committee meetings, Rabbi Gordon Tucker protested that this extreme and rigid iconization of the nuclear family is a distortion of Jewish tradition. Singles of all sorts and lifestyles are and have always been part of God, Torah and Israel. In fact we, the Conservative movement, are often the only family that many single people have. Each and every synagogue is a large family composed of smaller families. Our Movement is an even larger family made up of these extended families. There is room in our Movement for gay and lesbian synagogues. It is sad to note that when the gay and lesbian synagogue in New York City asked to affiliate with our Movement and when the congregation asked to interview Conservative rabbis for the position of Rabbi in their congregation, they received no assistance or support from the Rabbinical Assembly and a negative response from United Synagogue. We rejected a congregation of some 1,100 Jews whose style of worship and Jewish values reflect our own.

Gays and lesbians are very much part of the world of families and many gay and lesbian Jews are part of Conservative Jewish families. We gain nothing by alienating them with offers of second class status. If we were to truly welcome them into our community, we would add many enthusiastic members to the ranks of our Movement.

Members of the CJLS also argued against acceptance of gays and lesbians because a single verse in Lev. (18:22) forbids sex between two men and the Rabbis added to this Torah prohibition a prohibition against lesbian sex. This is not an ethical issue, since there is nothing unethical about two people pursuing their sexual orientation in a loving and committed way. As a ritual prohibition we can preserve or transform it as the Rabbis have

done with so many other issues. Our willingness to override the traditional prohibitions associated with homosexuality depends on the degree to which we accept sexual orientation as a given and not a matter of choice. We should conclude as have many others that:

1. Homosexuality occurs in nature;
2. Homosexuality is not a disease or an illness;
3. Sexual orientation is a primary component of personal identity, rather than a description of a sexual act;
4. A significant percentage of all people are gay or lesbian in orientation;
5. The origins of sexual orientation, heterosexual and homosexual are unclear and are to be found in a complex of issues which may include biological as well as psychobiological and social factors; and,
6. Children are no more or less likely to become heterosexual or gay or lesbian due to sexual orientation of public role models.¹

Having reached these conclusions, it becomes imperative to prevent the unethical and unjust treatment of gays and lesbians. The mechanisms to change the tradition are neither new nor extreme. Rabbi Morris Shapiro pointed out that the mechanism offered to us by Yevamot 89a-90b, התורה דבר מן העקר (a court may make a condition uprooting a matter of Torah law through active abrogation), was restricted by the later generations to the “passive abrogation” of Torah law.² Even so, in the spirit of tradition and change, the Rabbis were never at a loss for ways to transform or circumvent a biblical institution when later on it came to be viewed as ethically unjustifiable.

We read in the Torah (Deut. 21:18-21):

If a man has a wayward and defiant son, who does not heed his father or mother and does not obey them even after they discipline him, his father and mother shall take hold of him and bring him out to the elders of his town at the public place of his community. They shall say to the elders of his town, “This son of ours is disloyal and defiant; he does not heed us. He is a glutton and a drunkard.” Thereupon the men of his town shall stone him to death, thus you will sweep out evil from your midst: all Israel will hear and be afraid.

This institution was unendurable and so the Tannaim circumvented the Torah’s command as follows:

בן סורר ומורה לא היה ולא עתיד להיות ולמה נכתב לומר דרוש וקבל שכו.

There never has been a stubborn and rebellious son and never will be. Why was the law written? That you may study it and receive reward (Tosefta Sanhedrin 11:6; Talmud Sanhedrin 71a).

Rabbi Joel Roth has noted that in this case, the Rabbis abrogated a Torah law because of ethical concerns.³ This is precisely what we must do here. Just as the Tannaim circum-

¹ *Homosexuality and Judaism: The Reconstructionist Position*, Report of the Reconstructionist Commission on Homosexuality (Wyncote, PA: 1992).

² The importance of this passage has been discussed in many places by modern scholars of Jewish law. See Joel Roth, *The Halakhic Process* (New York: Jewish Theological Seminary, 1986), pp. 190ff.

³ Joel Roth, *The Halakhic Process*, pp. 154, 303.

vented the Torah's command to stone our rebellious children to death, so must we circumvent the Torah's command to discriminate against gays and lesbians. The verse in the Torah forbidding sex between men and the rabbinic prohibitions against gay and lesbian sex in general can be studied for their historic value but in no way determine or limit our ability to welcome gays and lesbians wholeheartedly into the Conservative movement.

Any and every rabbi may justifiably feel that Jewish tradition offers us the opportunity to welcome gays and lesbians into the Conservative community and to encourage them to participate in the adventure of Jewish civilization to the fullest extent of their capabilities.

I therefore conclude that Conservative rabbis and the Conservative movement through all of its branches, basing themselves on sources from our tradition, can and should:

(1) Welcome gays and lesbians into our synagogues by reaching out to them with offers to participate in our services to the fullest extent of their capabilities.

(2) Encourage gays and lesbians to assume lay leadership roles for which they are qualified, i.e. board member, youth leader, Hebrew school teacher, synagogue executive director et al.

(3) Admit qualified candidates who are gay or lesbian to the rabbinical and cantorial schools of the Jewish Theological Seminary of America.

(4) Acknowledge the importance and holiness of committed gay and lesbian relationships by performing commitment ceremonies for gay and lesbian couples.