

Rabbi Saks' D'rasha on Conservative Judaism's Law Committee and Homosexuals

By Rabbi Robert J. Saks

On December 6, 2006, the committee that rules on matters of *halakha* — Jewish law — for the Conservative Movement issued its rulings, after years of delay, on the following set of questions:

What guidance does *halakha* offer to Jews who are homosexual? What intimate activities are permitted to them, and which are forbidden? How shall Conservative Judaism relate to gay and lesbian couples?

A number of *responsa* — legal papers — were written in answer to these questions and were submitted to the Committee for approval by at least six of its 25 members. An approved position provides acceptable guidance to Conservative Jewish individuals, rabbis, congregations and other institutions of the Movement. More than one position can be — and was — approved.

The approved positions need not agree with each other, and do not. This allows people within the movement to base their actions and attitudes on legal opinions that are, at one extreme, relatively welcoming and at the other extreme — though they pretend otherwise — harsh and unwelcoming.

Since these rulings will guide rabbis as they decide on such issues as who is an acceptable synagogue officer; who is to be allowed to play a major role in leading services; who is to be recognized as a couple for joint *aliyot*, or for a child's *bar* or *bat mitzvah*, or when anniversaries are celebrated, or when membership dues are calculated; since these rulings will guide rabbis when they are asked to perform marriage ceremonies; since these rulings will guide the movement's several seminaries when they decide who is an acceptable candidate for the rabbinate; since these rulings will guide congregations as they go about choosing rabbis to lead them; and since these rulings may guide gay and lesbian traditional Conservative Jews as they shape their intimate lives — these rulings have major significance for Jewish gay and lesbian life.

The spectrum of positions accepted by the Law Committee — three in all — forces gay and gay-friendly Jews to either accept second-class status within a movement that says it's okay to discriminate on the basis of sexual orientation or to seek out those rabbis, congregations and seminaries which will be welcoming, while ignoring those that aren't.

As it turns out, none of the accepted *teshuvot* is — for gay men especially — fully welcoming, and so, even at its best, the Conservative movement continues to take positions that Reform



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and Reconstructionist Judaism long ago left behind, and continues to shut doors in the faces of those people it claims to welcome.

And let me be clear — though the positions that bother me most directly affect gay men, no lesbian, no gay-supportive heterosexual, should feel at home in a movement that treats our gay brothers with anything but the fullest acceptance and respect.

Let me describe briefly the three *teshuvot* that were accepted, so I can make clear why I am disappointed in the shuffling steps forward the Conservatives have made.

All three seek to make their case through detailed examination of the relevant Biblical and Rabbinic sources. In addition to these three, two other papers were put aside because they were judged to be *takanot* — in Jewish law — rather than *teshuvot* — positions derived from an examination of Jewish law. Since *takanot* require the unanimous approval of the 25 diverse members of the Law Committee, these two papers — the most far-reaching considered — and the ones we would have found the most acceptable — had no realistic chance of passage.

What did pass were two abominable *teshuvot*, one by Rabbi Leonard Levy and one by Rabbi Joel Roth, and the much more acceptable but still disappointing *teshuva* of Rabbis Elliot Dorff, Daniel Nevins and Avram Reisner.

The positions of Rabbis Levy and Roth are similar. Both argue that heterosexuality and its desired result in marriage is the traditional ideal. Both fear setting precedents that might lead people away from that ideal. Both insist, as well, that observance of traditional law is the ideal and the obligation of every Jew. That this might present a difficulty for some people is unfortunate, but they should observe the Law to the greatest extent possible. Fewer violations — and less severe violations, Levy points out — are preferable to more severe and frequent ones. Penetrative anal sexual intercourse is a major violation, as is adulterous genital intercourse between a man and a woman. Other prohibited sexual activity may be less severe but it is still unacceptable. Refraining from sexual activity — celibacy — the preferred course of action — or, I suppose, of inaction — for those not in a married heterosexual relationship. Levy, especially, is convinced that so-called “reparative therapy” can help many of those in need of such repair, and so should be raised as an option.

Obviously, given all this, it should continue to be forbidden for Conservative rabbis to perform same-sex commitment ceremonies or to ordain homosexuals as rabbis.

Amazingly, astonishingly, after denigrating the forms of sexual expression that many homosexual males prefer, after dismissing as not a valid path to holiness any same-gender sexual activity, after closing the door to marriage and ordination, Rabbi Levy — to quote his words — calls



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upon all rabbis, congregations and institutions of Conservative Judaism to remove all residual traces of the rejectionist stance toward homosexuals, to extend the same warm welcome which we extend to all others, and to treat them with the same human dignity with which we are obliged to treat all others, irrespective of their level of *halachic* observance.

His ears do not hear what is mouth is saying! Being gay, he further suggests, is like eating pork, or working on Shabbat, or intermarriage — a food preference, an easily changed lifestyle choice!

For Roth, ordaining rabbis who approve of homosexual sex is like ordaining those who approve of eating cheeseburgers. (L.A. Times, 11/30/06)

Imagine this — a neighborhood association in a community that has always barred Jews changes its position and says “you’re welcome to move in here now,” but of course, you should know we consider your religion inferior — it’s in our town charter — and none of you can be elected to town office; and don’t expect your holidays to be acknowledged in our schools or in any public way — oh, and also, those candle sticks you light in your home on Friday nights — the only Sabbath we want in this town is Sunday, so don’t light them any more.

“But,” we Jews say, “it’s private, it’s our religion — you don’t know anything about us or what these things mean.”

“We don’t like it,” they say, “never have. And it’s in our charter, our sacred book.”

“Yes,” we say in reply, “it truly is a noble charter but, you know, it was written by people like you, people who — on this score — really didn’t know much about people like us.”

But you won’t win — not with that town council, not with Rabbi Levy, or the equally insulting Rabbi Roth, who goes on through pages of convoluted discussion trying to determine just what gay sex act is prohibited, and who — a heterosexual quoting other heterosexuals — tries to determine just how much penetration is needed before one trespasses.

Despite these efforts, he still concludes that “the claim that all that is forbidden is penetrative anal intercourse is *halachically* false. What is forbidden is sexual relations with a partner with whom one could not legally have intercourse” — i.e., a spouse of the opposite gender.

As for lesbians, the sources regarding the prohibition are different, and are more clearly rabbinic than Biblical, but the conclusion reached by the heterosexual males who have written on the topic is equally clear — “the sages have forbidden female homosexuality.” The sources don’t go into the specifics of behavior, thus suggesting that anything that one might imagine is forbidden, probably is.



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Rabbi Roth is at pains to assure us that he believes his position is moral. More than that, he believes “a moral G-d could demand of homosexuals” the abstinence from sexual activity that he believes G-d does demand.

Now I can hear that position from an Orthodox rabbi and understand why the sources — which he believes are literally the word of G-d — force that conclusion. For Orthodox Jews both Biblical and rabbinic law reveal G-d’s will. The sources say what the sources say, so one can only weep with a gay Orthodox Jew whose beliefs lead him or her to live within that system.

But Conservative Jews know better. I was ordained as a Conservative rabbi. We were taught quite clearly that the Torah was written over centuries, by different groups within the ancient Israelite community. G-d’s presence can be found within the Torah — but not in every chapter and verse. The fealty to *halacha* of some Conservative Jews is not compelled by their belief in it as literally G-d’s mandate, but by their choice to govern their lives by loyalty to those ancient texts and their interpreters. It is a lifestyle they have chosen for themselves — a lifestyle compelled neither by genes nor by Jehovah.

Their loyalty to that lifestyle — and its guiding texts — is fine, except when and where it hurts others. Then, Rabbi Roth, it is immoral. The question you ask is: Where are the boundaries of legitimate *halachic* decision making? The question we ask you is: Where do you get off telling homosexuals how to conduct their private affairs? What gives you the *chutzpah*?

I don’t care if your approach lacks consistency or coherence. I care if it hurts people. The Law Committee has no right to use Judaism to hurt people — not if it wants to be considered moral.

And that takes me to the best of the three approved papers — that of Rabbis Dorff, Nevin and Reisner. They go through the same complex analysis of sources and conclude that what must remain prohibited, because it is explicitly forbidden in the Torah, is anal intercourse between males. They would allow the rabbinical schools of the movement to ordain gay men and lesbians if the faculties would so choose — and to continue to refuse admission if the individual schools make that choice. Similarly, they would leave to individual rabbis the decision as to whether to perform a commitment ceremony between two Jews.

They do not open the door for these ceremonies to be called “*kiddushin*” — sanctified marriage — which would put them on a par with heterosexual marriage — and as I’ve said, they would caution gay men not to violate the Torah’s ban on anal intercourse.

To remove this ban is a “radical step” these *halachists* will not take. They are motivated, they say, by concern for the honor of gay and lesbian Jews, but they honor neither themselves nor gay Jews by snooping into their bedrooms and trying to tell them what to do.



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How would the male heterosexual community like it if a panel of gay males were to tell them what to do in the bedroom — “no touching breasts allowed — they’re only for nursing!” It’s really preposterous!

Dorff and company argue that those motivated to live within the framework of *halacha* might accept limits on their autonomy for the sake of pursuing a life of holiness. They ignore the fact that it is heterosexuals who are defining this “life of holiness” and trying to lay their definition on those who live a different private life.

These heterosexual imperialists ought not to be in the business of policing the world beyond their borders. If they must rule on such things, let the Conservative movement appoint a panel of gay men, committed to living as Conservative Jews should, and task them with exploring the niceties of bedroom behavior within the gay male community.

Roth, Dorff and colleagues believe that their ruling “effectively normalizes the status of gay and lesbian Jews in the Jewish community.” It does no such thing — not when they can still be denied entrance to seminaries, not when they can be denied the blessing of marriage by those rabbis and institutions that so choose, and not when their private sexual lives are intruded upon by those waving the cudgel of halacha.

I mentioned earlier that there were two papers submitted to the committee that were put aside because they were considered to be outside of the framework of *halachic* decision making. I want to applaud the authors of those papers for recognizing that true justice and equality and dignity for gay and lesbian Jews could not be achieved using the sources required by the Law Committee.

They took a different approach — arguing for full acceptance based on the values of love and compassion so basic to Judaism, based on new scientific understandings of sexuality, and based on the openness of much of the Conservative lay community.

But their papers were put aside. Reluctantly, I must then applaud Rabbi Dorff and his colleagues. They pushed acceptance just about as far as they possibly could. They were realistic, and thanks to them some Conservative seminaries — including the one in California, which Rabbi Dorff leads — will accept gay and lesbian students, and some Conservative rabbis will perform commitment ceremonies, and some Conservative gay and lesbian Jews will feel a bit more welcome in spite of the movement’s still-closed doors.

The future will be interesting. Rabbi Roth and three of his colleagues resigned from the Law Committee in protest of the passage of the liberal Dorff *teshuva*. Conservative institutions outside the United States are muttering about secession. The movement may split. These are interesting times.



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A more liberal U.S. Conservative movement may move even beyond Dorff. Bisexuals — barely mentioned in any of the papers — and transsexual Jews — not mentioned at all — may yet have their day.

As for us, on this *Shabbat* when we remember Abraham Joshua Heschel and Martin Luther King, Jr., we recall Heschel's teaching that "the word of G-d never comes to an end. No word is G-d's last word." And as Martin Luther King, Jr. would have told us — Jim Crow is dead. We who care about GLBT Jews should not be satisfied with half measures, with seats at the back of the bus. We too have a dream — and we too shall overcome.

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