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Conservative Judaism and Homosexuality: Understanding the New Debate

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Abstract: Conservative Judaism reignited an internal debate when it reopened the issue of homosexuality in Judaism. This paper analyzes the arguments of R. Joel Roth and R. Elliot Dorff, representing the two main sides in the debate. We find that both Roth and Dorff selectively cite and Jewish law to reach their desired conclusions. We also argue that the Conservative Judaism's debate on homosexuality represents an evolution of the tradition vs. modernity struggle to a collectivist vs. individual dichotomy of Jewish identity.

1. Introduction

In December 2006, Conservative Judaism revisited the question of its established policies regarding how gays and lesbians are to be integrated in their communities. After considerable deliberation, the Committee of Jewish Laws and Standards (CJLS) – Conservative Judaism's religious policymaking body – published three position papers or *teshuvot* (sing: *teshuva*) advocating three different approaches to the question of homosexuality in Judaism. One paper, written by R. Joel Roth, upheld and defended the consensus statement formulated by the CJLS in 1992 which prohibited all homosexual activity. A second responsum written by R. Leonard Levy parenthetically upheld the earlier decision in an appendix, but primarily focused on the pastoral approaches to counseling and "treating" homosexuals. The third and most controversial *teshuva* written by R. Eliot Dorff, R. Daniel Nevins, and R. Avram Reisner, reinterpreted Jewish law to permit certain homosexual activity outright and in doing so reversed the 1992 precedent which previously denied the admission of homosexuals to the rabbinical and cantorial schools.

This third *teshuva* received the most coverage in the mainstream media. The New York Times headline read "Conservative Jews Allow Gay Rabbis and Unions" (Goodstein 2006) and the Washington Post similarly declared, "Conservative Rabbis Allow Ordained Gays, Same-Sex Unions" (Cooperman 2007). That such a decision would warrant such coverage is not surprising. Although Conservative Judaism recently ceded its status of largest Jewish denomination to Reform Judaism, it is still a strong second with approximately 1.3 million affiliated households (Ament 2005).

Perhaps more significant is the ideological impact of Conservative Judaism issuing such a decision. For most of its history, Conservative Judaism has defined itself as being committed to Jewish law yet open to modifying Jewish practice as needed (Gordis 1988). For example, Conservative Judaism permits driving to synagogue on Shabbat (Adler, Agus et al. 1958), mixed seating in the synagogue (Aronson 1956), and ordaining women as rabbis (Roth 2005), all positions for which Conservative Judaism has been criticized by traditionalists. But even Conservative Judaism's most controversial decisions are not simply approved out of convenience, but require the justifications of traditional sources and reasoning found in the *teshuvot*. Consequently, while the *teshuva* may promote a social policy change, its religious implications are far more significant. The CJLS is the authoritative body of a traditionally-minded religious organization and for the CJLS to produce a religious dispensation for homosexuality signifies a potential shift in Jewish legal hermeneutic.

For obvious reasons, the mainstream media did not delve into the nuances of Jewish law, nor did they explore the significance of the dispute from the perspective of Conservative Judaism itself. In fact, later studies have shown that the movement is still very much divided. Describing the aftermath of the decision Jack Wertheimer, professor of history at Conservative Judaism's Jewish Theological Seminary, writes:

> Movement officials lauded the committee's work, characterizing its acceptance of diametrically opposite rulings as proof positive of Conservativism's successful commitment to religious pluralism. But to judge from a follow-up opinion poll, rabbis and presidents of Conservative synagogues felt otherwise. Far from welcoming the exercise as a success, two-thirds of the former claimed to have been "somewhat embarrassed" by the contradictory rulings, and over half of the lay leaders pronounced themselves "confused" (Wertheimer 2000:38).

Part of the confusion is procedural in that the structure and methods of the CJLS allows for – if not encourages – the issuance of multiple opinions. According to the

procedures of the CJLS, position papers on a given topic are solicited, reviewed, and voted upon by the CJLS:

> However, since a paper is usually approved when achieving six or more votes in its favor, there are times when the CJLS passes multiple papers on the same question. Sometimes, the papers are complementary, offering different approaches to a similar conclusion, with minor differences. Other times the CJLS passes papers that openly conflict in their conclusions. *When six or more members of the CJLS vote for a particular paper, the paper is considered to represent a significant consensus and is therefore an official position of the Rabbinical Assembly*. Since the CJLS's function is to advise Conservative rabbis on matters of Jewish law, there are times when it offers multiple options of interpretation (Fine 2006:2). [Emphasis added]

Given these criteria, it should not be unexpected for the CJLS to affirm and approve mutually contradictory *teshuvot*. For example, in 1994 the CJLS discussed allowing female *kohanim* – members of the Jewish priestly class – to join the male *kohanim* in performing the communal priestly benediction. The *teshuva* permitting women joining the men passed with twelve votes (Rabinowitz 2002), while the restricting *teshuva*, despite eleven votes opposed, still passed with nine votes in favor (Bramnick and Kogen 2002). Furthermore, members of the CJLS may vote for two opposing papers. In 1995 the CJLS voted on solutions for how a Jewish owned business could function on Shabbat, and approved two mechanisms for transferring ownership to a non-Jew: one by way of a temporary lease (Roth and Krivosha 2002) and one though a form of incorporation (Bergman 2002). While there are significant *halakhic* differences between the two solutions, seven members of the CJLS voted in favor of both proposals. In such instances, voters may see two sides as equally legitimate options and find both sufficient for approval.

However for the laity of Conservative Judaism such procedural nuances are typically irrelevant. Most decisions are for specific instances of Jewish law which may not be applicable to the population at large. Furthermore, it is unlikely that the Conservative Jewish laity would be expected to read the responsa let alone understand

the *halakhic* arguments, but would instead rely on their communal rabbi for instruction. The rabbi's role as a local decisor must be predicated on a sense of stable decisiveness. Consequently, when such rabbinic divisions are publicized throughout the movement, the pedagogic relationship between the rabbinate and congregant becomes muddled, especially considering that one rabbi – R. Adam Kligfield – voted for two *mutually exclusive* responsa on homosexuality on the grounds that both were theoretically valid arguments (Ain 2006).

But this confusion is not limited to the practical conclusion, or even over the specific arguments of the *teshuvot*. At stake are two models for the present and future of Conservative Judaism disguised as *halakhic* arguments, with one side representing the original collectivist vision of Conservative Judaism and the other defending a modernized individualistic approach to Jewish identity. This thesis will explore the contradictory positions of Roth and Dorff, and evaluate their arguments in the context of their own legal tradition. Based on our findings, we will demonstrate that both Roth and Dorff approach the question of homosexuality with an a priori intent for a desired conclusion and mask their respective agendas in the selective use of traditional sources. Based on our analysis we will then explore the significance of this debate and its ramifications for Conservative Judaism.

2. The 1992 Debate

The current debate on homosexuality began with the 1992 consensus statement, originally composed by R. Eliot Dorff (Dorff 2002:692) and accompanied by eight *teshuvot* and consensus statements (papers not submitted for voting) including *teshuvot* written by R. Dorff as well as R. Joel Roth. The 1992 statement, issued five resolutions: 1. Conservative Judaism will not officiate any gay and lesbian commitment ceremonies 2. Conservative Judaism "will not knowingly admit avoid homosexuals" to rabbinical or cantorial schools, but neither would they "instigate witch hunts" among the student body

3. Individual Rabbis will determine the hiring of homosexuals as teachers or youth leaders for their own communities 4. Individual Rabbis will form their own policies regarding homosexuals receiving religious honors or holding leadership positions 5. The CJLS affirmed that homosexuals are welcome in the Conservative community, including synagogues, camps and schools. This statement passed with a vote of nineteen in favor, three opposed and one abstention (19-3-1), but Dorff's own *teshuva*, primarily calling for further discussion, passed by a less impressive margin of 8-8-7. Of the formal *teshuvot* presented in 1992, Roth's was significantly more influential with the greatest number of votes in favor and fewest opposed, passing 14-7-3 (Roth 2002).

Roth's 1992 *teshuva* provides an in depth analysis of Biblical and Rabbinic legal and homiletical statements regarding homosexuality. He concludes that based on the traditional sources of Judaism that "both male and female homosexuality are forbidden" for both active and passive partners. Furthermore, while the Biblical designation of homosexuality being an "abomination" is not an inherent condemnation of a homosexual identity it does apply to the "disruption of the heterosexual family ideal" and "the non-procreative and unnatural aspects" of homosexuality. For Roth, there is no *halakhic* mitigation of the prohibitions or ethical justification for supportive and permanent homosexual relationships. And while Roth does explore the etiology of homosexuality, he does not consider it to be a significant factor to influence Jewish law (Roth 2002:662-663).

The "*pesak*" or practical conclusion of Roth's *teshuva* is that barring a heterosexual marriage, homosexuals have no *halakhic* mechanism for acting on their sexual urges. Dorff finds this conclusion to be "cruel" and inconsistent with the mission of Conservative Judaism of adjusting Jewish law in response to contemporary needs. Dorff argues that while heterosexual marriage may be the Jewish ideal, Conservative Judaism:

> ...must recognize that not everyone will abide by that ideal. *This however should not mean that Judaism then has nothing to say about sexual norms to those who are not achieving the ideal in this area; it should not be "all or nothing"* (Dorff 2002:709). [Emphasis original].

Since homosexuality is not a choice, gays and lesbians will be find it difficult if not impossible to live in accordance with the ideal Jewish law. For Conservative Judaism to be relevant and receptive to Conservative homosexuals, it must then find a way for homosexuals to live within Conservative Judaism as they are. Dorff however does not suggest any solutions, but does advocate "reconsideration" of the issue at some later point.

Anticipating future debates on the matter, both Roth and Dorff include in their 1992 *teshuvot* criticism of the other's methodological approach to the question of homosexuality. Specifically, Roth's approach is that of an objective adjudicator, which means not only legitimizing controversial questions with a response, but also approaching each question from an unbiased perspective. In particular Roth defends his systematic methodology against homosexual advocates, who have demanded a positive conclusion:

> I have been contacted by some homosexuals whose claim is equally definitive. "Halakha has no option but to validate homosexuality as a lifestyle co-equal with heterosexuality. If it does not do so, it has lost any and all influence on the lives of Jewish homosexuals, it has excised the Jewish homosexual from the community, and it has reinforced the homophobia of the American society at large (Roth 2002:613).

Roth responds to this charge by noting that not only does Conservative Judaism include strong opinions on the other side of the debate, but that personal feelings are irrelevant to the facts of Jewish law:

> Halakhists are the guardian of a legal system they hold very dear. They ought not to be expected to violate their commitment to that legal system because members of their constituency are unhappy with their decisions. Halakhists can be sensitive, understanding, and caring – and still disagree with the claim of the constituent. It is easy to contend that the halakhist did not really understand because if he had, he could never had have

> decided as he did. The ease of the contention does not necessarily make it true.
>
> It is possible to reject the claim of a constituent without expelling the constituent from the halakhists' constituency. There are many issues concerning which certain constituents have very strong feelings. They, too, expect the halakhists to listen carefully and attentively, and to decide the issue as they believe halakha demands. When the decision is consonant with the claim of the questioner, the questioner is clearly pleased. But when the decision is not as the question might have wished, the questioner ought not to feel himself chastised by the answer. The questioner ought not to feel that he has been expelled from the community or excised from the constituency (Roth 2002:614)

After presenting his arguments for prohibition, Roth dedicates a section directed to the homosexual community. He explains that he avoids the terms "gay" and "straight" due to possible negative implications, but prefers them "homosexuality" because it is more "dispassionate". Furthermore, he acknowledges the extreme demands of his *halakhic* view in requiring homosexuals to live a permanently celibate lifestyle. At best Roth calls for tolerance of those homosexuals who "backslide" in their observance (within the aforementioned limitations) just as other Conservative Jews accept those who transgress other laws. Roth also acknowledges that denying homosexual marriages within Judaism does not exclude supporting homosexual marriage in the civil arena (670-672). This is the extent Roth can accommodate within his parameters of Jewish law, parameters which are ultimately sacrosanct:

> Castigating the halakhic community and its decisors as insensitive and unfeeling because they have given a negative answer is unwarranted. When a decisor has investigated all possible avenues to permit an *aguna* to be remarried and has concluded that it cannot be done without sacrificing the ideals and values which the norms embody, he reaches his conclusion with a heavy heart and tearful eyes. That heavy heartedness and tearfulness are caused precisely *because* the decisor knows and feels the pain and anguish his decision will inevitable cause. There is no glee in the mind of the decisor when reaches a decision that imposes any hardship of any kind on an individual. Nonetheless, the values and ideals of the law – the community's best understanding of God's will – sometimes make the imposition of such a hardship unavoidable. *V'hamevin yavin* (Roth 2002:671-672).

Roth's concluding phrase "v'*hamevin yavin*" literally means "the discerning will understand," and its use indicates to the reader that there is an important subtext to the passage. Roth is arguing that despite an authority's a priori emotional desire to reach a particular conclusion, the authority must follow the established rules of the *halakhic* process, and is thus limited in the degree of innovation. In the process of his argument Roth references the *aguna* – a woman who is "chained" to her husband due to reluctance or inability to divorce his wife (e.g. he is missing or not of sound mind). Since an *aguna* is prohibited to remarry, even Talmudic rabbis found creative solutions to resolve the problem including retroactively annulling the marriage through various *halakhic* mechanisms. However, applying such solutions in modern times has proved to be a contentious issues within Judaism due to questions of legitimate religious authorities and enforcement of such measures (Riskin 2003; Hacohen 2004).

Roth's reference of the *aguna* problem also recalls Conservative Judaism's tradition of *halakhic* innovations to contemporary problems. Conservative Judaism first addressed the *aguna* issue in the aftermath of World War I which left the wives of missing in action soldiers uncertain as to their ability to remarry. R. Louis Epstein proposed adding a clause in the *ketubah* – the Jewish marriage document – in which the husband would designate a Jewish court as his agent to give his wife a *get*, the Jewish bill of divorce on his behalf. Since the Jewish court would presumably be an established stable entity, its presence and accessibility would be more assured than a possible recalcitrant or missing husband. However, Epstein also admitted that he was unable to obtain support from other religious leaders, particularly in Israel (Epstein 1932).

The issue was revisited in 1952-1953 with the introduction of "the Lieberman clause." Attributed to R. Saul Lieberman, Conservative Judaism's leading authority at the time, this clause also inserted a clause into the *ketubah* but instead of the husband designating a Jewish court to give the *get* on his behalf, the Lieberman clause

empowered either spouse to seek civil remedies to enforce the decisions of the Jewish court if they determined a *get* was required (Harlow 1965). This solution attempted to balance the *halakhic* requirements for divorce, while also providing women with some protection. However, by 1967 only 65% of Conservative Rabbis were using the Lieberman clause in their marriage documents. Progressive rabbis felt the provision did not address the innate inequality of women, while traditional rabbis contended that the clause "was a break with the Orthodox standard" (Schwartz 1995:200). (Though ironically, the Orthodox Rabbinical Council of America much later adopted a separate prenuptial agreement with essentially the same demands as the Lieberman clause).

The similarities between the *aguna* debate and the concern over homosexuals are striking. Conceptually, both address a similar problem of permitting forbidden sexual relations; married women are forbidden from sexual relations with other men under penalty of death for both partners (Lev. 20:10) as are homosexuals (Lev. 20:13). As with homosexuals, a married heterosexual woman has no *halakhic* possibility of a healthy sexual relationship if she is trapped as an *aguna*. If the principles and ethical motivations behind allowing a woman to remarry is sufficient reason to modify Jewish practice, then by extension, a similar argument could be made to allow homosexuals to engage in their own sexual activity.

From a religious perspective, traditionalists clashed with progressives over if changes *could* be made or if changes *must* be made for both the questions of homosexual and *agunot*. This latter argument was succinctly phrased by Orthodox feminist Blu Greenberg, who once proclaimed "where there's a rabbinic will, there's a *halakhic* way" (Greenberg 1981:44) and consequently demands active creativity in solving the *aguna* problem (Greenberg 1995).

Conservative Judaism's adopted solutions satisfied neither side fully, even though great efforts were expended to construct a change from the accepted practice that

was consistent with the *halakhic* system. Roth's appeal to the *aguna* debate within Conservative Judaism evokes this tradition exemplified by their revered leader R. Saul Lieberman, who when facing a clear social need to protect women did not compromise the integrity of *halakha*. For Roth, the *aguna* case is the exemplary model of Conservative Judaism's approach to Jewish law – to compromise, but only within the fixed parameters of Jewish law.

It is on this point which Dorff is particularly critical of Roth, and what Dorff sees as an excessive use of legal formalism. In his book on the *halakhic* process, Roth writes that:

> ...extralegal sources constitute only one among many kinds of information available for a subject to the arbiter's evaluation: It is *he* alone who determines the law. For example, ichthyologists may offer data concerning the nature of the fins and scales of swordfish, but the *posek* alone can determine whether or not they fulfill the requirements [of having fins and scales] required by Leviticus 11:9...Moreover, *since extralegal sources, although admissible, are not determinative*, it follows that two arbiters can disagree concerning the actual significance of specific extralegal data. But it must be stressed, what they would *not* be in disagreement about is the potential significance (i.e., the admissibility) of extralegal sources in general (Roth 1986:232) [emphasis added]

Dorff objects on the grounds that this approach to Jewish law is far too restrictive and limits the ability for adapting Jewish law to newer contemporary circumstances:

> [Roth's] formalism is not of the extreme sort, for he does acknowledge "extra-legal" factors as potential sources for influencing decisions. Nevertheless, his view is formalistic in that the legal process is seen as logical deduction from previous texts of the law. Even in his modified brand of formalism, a very heavy burden of proof must be borne in order to invoke any non-textual factor to alter what the decisor takes to be the meaning of the texts because authority ultimately rests in them (Dorff 2002:693).

Regarding homosexuality, the mitigating "extra-legal" factor for Dorff is the professional psychological opinion that homosexuality is not a matter of choice:

> The simple fact is that all of the organizations of our time that embody relevant expertise on these issues have officially said that homosexuality is not a sickness and that, in any case, it is not reversible. Of course there are individual psychologists who hold some other view, but to cite

> them…is to choose what are by now isolated opinions in the world of psychology to buttress their weak scientific case…Like it or not, the clear evidence of the psychological community…is that homosexuality is not an illness and that it is not reversible (Dorff 2002:696-697).

Dorff contends that since homosexuality is not a choice but a state of being, Jewish law cannot equate homosexuality with other transgressions. In the 1992 *teshuva* Dorff questions if Conservative Judaism is even "ready" to formulate any conclusion (Dorff 2002:794). But despite his dissatisfaction with Roth's *teshuva*, Dorff does not offer a rebuttal of Roth's core arguments nor does he offer any alternatives at this point other than the call to revisit the question. It is clear that despite the CJLS consensus, there was still unease at the decision. Even one year later a prominent Conservative rabbi wrote:

> Predictably, proponents of both of the extreme positions were dissatisfied with this [Roth's] conclusion, but it probably reflects the sentiments of the majority of the Movement as a whole…It would also not be surprising if the issue were to find its way onto the agenda of the Law Committee once again – before too long (Gillman 1993:10).

In this case "before too long" translated to fourteen years.

3. The 2006 Teshuvot

In 1992 the CJLS largely sided with the arguments and approach of Roth. However, by 2004 the perspective of the CJLS changed along with some members. Both Roth's and Dorff's *teshuvot* received thirteen votes in favor, but while Roth's received eight votes opposed and four abstentions (13-8-4), Dorff's appears to have been more polarizing, with twelve votes opposed and no abstentions (13-12-0). This shift in attitude could be explained in part by turnover on the CJLS; compared with the 1992 CJLS members, there were eighteen new or substitute voters in 2006. That so many of the newer members would now be in favor of Dorff's *teshuva* could itself be an indicator of changing values within Conservative Judaism.

Then there are voters were on both the 1992 and 2006 committees, but changed their votes. R. Aaron Mackler voted for Roth in 1992, but in 2006 he abstained from

Roth and voted for Dorff. R. Kassel Abelson abstained from Roth in 1992, though he did write own concurring opinion to Roth (Abelson 2002b), and in 1993 upheld the ban on homosexuals in rabbinical schools (Abelson 2002a). But despite his previous theoretical support for Roth, he once again abstained in 2006, and voted in favor of Dorff. In the opposite direction, R. Mayer Rabinowitz abstained from Roth in 1992, but voted for Roth in 2006 and against Dorff. As noted earlier, R. Adam Kligfield demonstrated that voting for one *teshuva* does not preclude voting for a contradictory one.

Roth himself recognizes the attitudinal change in Conservative Judaism, and addresses this point in the beginning of his 2006 *teshuva*:

> It is my opinion that neither the halakha, nor the science, nor the morality have changed in the intervening years. What has changed, of course, is the degree of public ferment, which has increased dramatically (Roth 2006:1).

Roth continues saying that his new *teshuva* does not detract from anything he wrote in 1992, but rather responds to subsequent "ideas and critiques" with the intent "to demonstrate that they [those critiques] are insufficiently persuasive enough to convince us to change our Consensus Statement of 1992" (Roth 2006:1).

Dorff, however, disagrees with that statement. In particular Dorff argues that Jewish law must conform to those who wish to live a Jewish life. In other words, homosexuals who want to be a part of Jewish tradition must have some viable recourse:

> This responsum works within the limits of traditional halakhic discourse. To do otherwise would compromise the integrity of the halakhah and would accomplish nothing for those gay and lesbian people who strive to live as observant Jews. People who are not Torah observant have no particular need for a traditional halakhic responsum. But people who are observant and are also gay or lesbian are caught in a terrible dilemma, with no halakhic guidance about the integration of their Jewish identity and their sexual orientation. Our core conviction is that dignity for gay and lesbian Jews – as for heterosexual Jews – results neither from blanket permission nor from blanket prohibition of all sexual activity, but rather from situating it within the matrix of *issur v'heter*, permission and prohibition, which permeates all of life (Dorff, Nevins et al 2006:102) (Henceforth Dorff 2006)

As with Roth in 1992, Dorff also invokes the plight of the *aguna*, but does so as a model of how Conservative Judaism adjusts and innovates Jewish law in modern times and survives despite the criticisms of traditionalists that any change would "be the undoing of halakhah" (Dorff 2006:2). Furthermore, Dorff stresses Conservative Judaism's commitment to modifying Jewish law when there is an ethical necessity or to allow people to live as religious Jews. For Dorff, Jewish law is not merely a legal system only demanding unquestioned obedience. Rather it is the obligation of the religious authorities to provide feasible options for otherwise committed Jews:

> Dor dor v'doroshav—each generation demands its own interpretations of Jewish law. As the Torah says, "When a matter shall arise that confounds you…you shall go and inquire of the judge who shall be in that day, and they will tell you the law." (Deut. 17:9) For the CJLS to avoid this issue or to declare that nothing can be done for homosexuals who wish to observe the halakhah would be to abandon the Torah's mandate. Indeed, were we unable to find compelling guidance in the halakhah for the sexual lives of our contemporary Jews, including those who are gay and lesbian, that would be a terrible defeat for our religious mission (ibid 2).

Dorff begins this paragraph by referencing B. Sanhedrin 34b which provides for rabbis of each generation to legislate according to its temporal needs. In context, the passage refers exclusively to the Sanhedrin, the great court based in Israel and recognized as the universally authoritative rabbinic body for the entire Jewish people. Through this reference, Dorff implies that the CJLS functions similarly if not identically to the supreme rabbinic institution – at least for its own constituency – and as such would need to accept the burdens of such authority as well.

Dorff notes that the Talmud itself demands that Jewish laws must be able to be performed (B. Hullin 11b-12a), and cites R. Eliezer Berkowits, a modern orthodox theologian for support:

> In the application of the principle of the possible, the impossible is not the objectively impossible, but that which is not reasonably feasible. The category of the *efshar*, the possible, represents what in view of human nature and with proper attention to human needs is practically or morally feasible (Berkowitz 1983:12).

Thus for Dorff, for rabbis to find a "feasible" solution for its constituency is a religious and ethical imperative. Rabbis cannot look at the text neutrally, but rather they must be active and creative participants in finding plausible *halakhic* solutions for homosexuals. Anything less would be a dereliction of their duty as spiritual leaders.

Still, Dorff acknowledges that just as traditionalists may object to the fundamental basis of his argument, homosexuals may find his decision too restrictive. Nevertheless, Dorff's ultimate compromise is that sexual expression is a matter of human dignity and second that the religious ethic of human dignity is a sufficient basis to override certain – but not all – prohibitions. Although Jewish law imposes several restrictions on sexual behavior, the case of homosexuals is different due to their lack of choice in sexual orientation:

> What distinguishes the situation of gay and lesbian Jews from others who experience forbidden sexual desires is that heretofore, gay and lesbian Jews have had absolutely no permitted avenue for sexual expression or for the creation of a committed romantic relationship. It is this situation of absolute and permanent isolation that undermines their human dignity (Dorff 2006:3).

Ultimately, the Dorff *teshuva* concludes with four *halakhic* conclusions. The first is that anal sex between men is prohibited and as such, "gay men are to refrain from anal sex." Secondly, if someone is "incapable" of the *halakhic* ideal heterosexual marriage, he or she may engage in any homosexual sexual activity, apart from anal sex between men. Thirdly, gays and lesbians would be permitted to attend the rabbinical and cantorial schools on *halakhic* grounds, though the actual policy decision would be determined by the schools' administrators. Finally, without endorsing or creating an institution of gay marriage within Judaism, same-sex couples should follow the same principles of stability (i.e. monogamy) attributed to heterosexual couples (Dorff 2006:19). We will now explore in detail the arguments of Dorff *teshuva*, and contrast, where applicable, to the *halakhic* arguments and rebuttals of Roth.

3.1. The Prohibition of Homosexual Sex

Most discussions of homosexuality begin with the dual Biblical prohibitions of Leviticus 18:22, "a man shall not lay with another man as the lyings of a woman – it is and abomination" and Lev. 20:13, "If a man lies with another man in the lyings of a woman he has done an abomination. Both of them shall be put to death and their guilt is on them." These verses prohibit a specific sex act between two specific partners i.e., two men, and apply the death penalty for its transgression. Rabbinic sources define the specific form of capital punishment as stoning (M. Sanhedrin 7:4), the same punishment not only for certain sexual transgressions such as incest or bestiality, but also for ritual transgressions such as idolatry (ibid) or desecrating the Shabbat (B. Shabbat 154a). For the Talmudic sages, stoning is the most severe of the four methods of capital punishment (M. Sanhedrin 7:1), thus indicating the gravity of the transgression.

Despite the explicit prohibition, there have been attempts to reinterpret the biblical passage to permit anal sex between willing partners. One such suggestion made by R. Steven Greenberg, an Orthodox ordained openly gay rabbi, interprets the key verb "lyings of a woman" to refer not to the physical action of anal sex, but to the context and meaning for the participants. For Greenberg, the injunction against "lyings of a woman" refers to demeaning sexual relations in which one of the male partners is feminized. Thus the Bible prohibits one partner from feminizing the other, but it also prohibits a passive partner from allowing himself to be feminized. However, for empowering relationships the biblical prohibition would not apply (Greenberg 2004).

Dorff acknowledges this and other similar rationalizations, but ultimately rejects them on the grounds that:

> Judaism is based on how the Rabbis interpreted the Bible, and so the crucial point is how the Rabbis read these verses to refer to anal sex. Their only debate regarded whether [Lev] 18:22 penalizes the receptive as well as the insertive partner (ibid 2).

Here Dorff rejects a theoretical interpretation on the grounds of rabbinic authority, or more accurately, Talmudic rabbinic authority. Since the Talmudic rabbis, without exception, understood these verses to refer to anal sex, it must be prohibited by biblical law.

On this point, there is no difference between Dorff, Roth, or for that matter the undisputed *halakhic* position since Talmudic times. Here Dorff's reasoning is an appeal to the specific body of Talmudic sages as the ultimate decisors of biblical interpretation. But as we will see in the next section, Dorff also maintains a degree of flexibility in interpreting those same Talmudic sages.

3.2. Other Homosexual Activity

The second conclusion of the Doff *teshuva* allows homosexuals to engage in any other sexual activity aside from anal sex between men – i.e. that which is not explicitly Biblically prohibited – including oral sex and masturbation. Dorff's approach in permitting other homosexual activity is twofold. First, Dorff argues that all other possible violations are not biblical (*deoraita*) but rabbinic (*derabbanan*). This designation provides greater *halakhic* flexibility. Under certain conditions rabbinic laws may be suspended (B. Ketuvot 60a) and in fact traditional authorities, predominantly in medieval Ashkenaz, have even ruled that if the reason for a rabbinic enactment is irrelevant, the law no longer applies (Soloveitchik 1987; Katz 1992).

Once Dorff establishes other homosexual activity as being prohibited rabbinically, his second task is to justify why these rabbinic laws may be excused for homosexuals, and to provide a clear similar precedent in the traditional sources. Roth on the other hand challenges Dorff on both assumptions – that the laws are in fact rabbinic, and that even if they were rabbinic that the reason Dorff provides a *halakhically* adequate dispensation.

3.2.1. The Nature of the Prohibition

Jewish law prohibits sexual actions aside from actual intercourse. This prohibition is based on the Lev. 18:6 and Lev. 18:19 which forbid "coming close" to having intercourse with either family members or a woman who is impure from menstruation. This "coming close" is defined as any form of inappropriate touching including kissing (B. Avoda Zara 17a). The Sifra, an early collection of Jewish legal exegesis with the same force of law (Strack and Stemberger 1992), extends the prohibition to all forbidden relationships and not just menstruating women or family members (Acharei Mot 13:2). Based on this Sifra, Maimonides codifies all forms of improper sexual contact to violate a biblical prohibition (*Hilkhot Issurei Biah* 21:1).

Dorff counters that Maimonides follows one plausible rabbinic source, but there are other rabbinic interpretations as well. Specifically, Dorff cites alternative opinions from both the Jerusalem (Y. Sanhedrin 7:7) and Babylonian Talmuds (B. Shabbat 13a) which limit the extent of "do not approach" to refer exclusively to intercourse. In fact, Dorff notes that the Sifra does not appear in the later rabbinic sources, implying that the earlier interpretation was rejected or overruled and therefore not truly part of the rabbinic tradition. Supporting his position is Nachmanides (Ramban), who disputes Maimonides' inclusion of "do not approach" as a biblical prohibition (Gloss to Maimonides' Sefer Ha-Mitzvot 353), an opinion which Dorff interprets as an admission of its rabbinic source (Dorff 2006:5-6).

Practically speaking, authoritative codifiers of Jewish law include under the heading of "do not approach" several additional prohibitions such as casual touching or serving food (*Hilkhot Issurei Biah* 11:18). While such opinions are generally accepted by Orthodox Jews (Forst 1999), Dorff reminds the reader that Conservative Judaism has already rejected such restrictions for its constituency:

> *However, our community does not enforce, and indeed does not accept, these severe prohibitions*. We do not hold, as a matter of fact, that the laws of "approach" are biblically mandated, but rather that they are in the category of rabbinic fences and borders that are all ultimately intended to protect against transgression of the fundamental biblical rules about sexual conduct. Just as the Sages of old exempted themselves from some of the severity of the laws against contact between the sexes between relatives, so have we concluded that average people can be trusted to maintain appropriate relations despite social kissing and hugging and moments alone together, even behind locked doors (Dorff 2006:7). [Emphasis added]

One example of the rabbinic exceptions is that of the second generation Amora Ulla who, depending on the reading, would kiss his sister on her chest (B. Shabbat 12a). Based on Ulla's behavior in the Talmud, Dorff concludes that *halakha* assumes "average people" can restrain themselves from biblically prohibited sexual activity. Consequently, rabbis would have prohibited certain actions only is when there is a danger of a biblical prohibition being violated.

> Ramban discusses the logic of legal fences. We prohibit a man from sleeping in one bed, even clothed, with his neighbor's wife out of obvious concern for the urgings of desire in such a situation; but we permit sleeping together clothed to a married couple when she is a menstruant, or to relatives, for there is less reason to fear transgression. Even they, however, may not sleep together naked nor engage in sexual play. This is not a matter of biblical decree then, but a matter of common sense—where there is danger of the core prohibition being flouted, there is need for a legal fence. That is the reason that that very same fence might be waived for those who are not under suspicion of transgression in this regard. Normative Jewish law and custom recognize no bar to males establishing a homestead. But sexual play remains rabbinically prohibited (Dorff 2006:7).

Dorff extends his earlier argument by claiming that there is no law – biblical or rabbinic – prohibiting of homosexuals from living together, or "establishing a homestead." The underlying logic of this argument is that since *halakha* trusts married couples not to violate sexual impropriety, such trust may be extended to homosexuals as well.

Though unstated by Dorff, the Talmudic basis for his argument may be found in the laws seclusion, or *yihud*. According to rabbinic law, a person is not allowed to be secluded with someone for whom sexual relations are prohibited (*'arayot*) lest someone be tempted to engage in sexual behavior. However, when there is no such concern, exceptions can be made. For example, if a married woman's husband is in town, *halakha* considers the fear of being caught to be a sufficient deterrent to permit her seclusion with another man (B. Kiddushin 81a).

But there are also *'arayot* for which the rabbinic sages did not prohibit seclusion at all due to the infrequency and improbability of sexual interaction. Included in this category are family members (father and daughter, son and mother, and siblings) (M. Kiddushin 4:12), as well as bestiality and homosexuality (B. Kiddushin 82a) – all instances for which the rabbinic sages "do not suspect" Jews to engage in inappropriate sexual behavior.

Dorff contends that Jewish law trusts individuals to behave themselves, even permitting contact, such as in the instance of Ulla. However according to Talmudic law, such practices are only applicable where there is no assumption of sexual context, and this point alone may explain the actions of Ulla. Another rabbinic narrative provides a similar explanation. R. Acha would dance with the bride on his shoulders. When his students asked if they do the same he replied, "if they [the women] are like a beam for you [i.e. there is no sexual connotation] then yes, otherwise no" (B. Ketuvot 17a). In other words, the dispensation Dorff infers from Ulla could simply be attributed to the Talmudic assumption that physical contact between family members is not sexual.

However, when there is suspicion of sexual activity, the Talmud does in fact impose such severe restrictions. For example, married couples are trusted to keep the laws of family purity such that the laws of seclusion do not apply. But a newlywed couple who has not yet consummated their marriage is prohibited from seclusion if the wife is

menstrually impure. The reason given is that since the husband's "heart desires her" physically, an additional *halakhic* precaution is necessary (B. Ketuvot 4a).

Similarly, the Talmud forbids entrusting animals to people with an inclination towards bestiality (T. Avoda Zara 3:2, B. Avoda Zara 15b, 22b). This law is unusual in that it is a restriction on a third party not to facilitate prohibited sexual activity. Thus Maimonides (*Hilchot Issurei Biah* 22:6) considers that this enactment to be not just a rabbinic decree, but an application of the biblical prohibition of placing a stumbling block before the blind (Lev. 19:14, Sifra Kedoshim 2:2).

Dorff does not distinguish between instances where there is a sexual relationship and where there is not, nor does he consider the potentialities for sexual impropriety as relevant factors. Dorff's primary concern is defining any possible violation to be rabbinic, thus allowing for his eventual dispensation.

Another relevant prohibition is against non-sexual ejaculation or "wasted seed" which Dorff addresses in a lengthy footnote. The Talmud strongly opposes this practice to and even claims Judah's sons died because of it (B. Niddah 13a-b). However, Dorff finds such statements to be homiletic rather than legal, and that the *halakhic* designation of this prohibition is ambiguous at best. Dr. Abraham Steinberg, in his Encyclopedia of Jewish Medical Laws, finds no fewer than nine traditional interpretations attributing non-sexual ejaculation to be a biblical prohibition (2:407-9), a fact to which Doff responds, "when the authorities across generations are unable to find a convincing source it is likely that the prohibition is not in fact from the Torah" (Dorff 2006:28). Furthermore, Dorff had previously written that "to date, none of the three movements has taken an official position validating masturbation, but in practice the tradition's abhorrence of masturbation is largely ignored" (Dorff 1988:119). Dorff does not permit masturbation outright, but for his current purposes, he simply needs to demonstrate that any prohibition is rabbinic.

Roth counters that *all* forms of sexual activity between homosexual men falls under the biblical prohibition of "lyings of a woman," and not just anal sex. The Talmud's idiom for non-vaginal sex is "*biah shelo kedarkah*" – or alternative forms of sex. Typically this idiom is restricted to anal sex exclusively, but Roth suggests that by definition *all* homosexual sex must be considered as "alternative" because "regular" sex is physically impossible (Roth 2006:9). Regarding Talmudic sources which attribute *biah shelo kedarkah* as referring to anal sex (B. Bekhorot 42b), Roth admits that he must suggest "a radically different understanding…not offered, to the best of my knowledge by anyone" (Roth 2006:12).

While Roth acknowledges the relative weakness in his interpretation, he also notes that his readings are not the result of a natural reading of the texts, but rather an exercise in *halakhic* strategy:

> It is far more important to Rabbis Dorff/Reisner/Nevins/Fine that I be mistaken, than it is to me that I be correct. For their entire argument to stand, it must be absolutely clear that oral sex cannot be in the category of the biblically forbidden. I, on the other hand, have argued all of the above as what seems to me a logical possibility, with far reaching implications, but upon which my argument does not actually depend. BECAUSE, all of the above notwithstanding, I seriously entertain the possibility that I am, in fact, mistaken, and that the only behavior which incurs the full liability of the Bible's verses about homosexuality is anal intercourse. Methodologically, one had better be very certain before relying on one's own interpretation of the law that seems to be at variance with the interpretation of so many others. After all, maybe the others are really correct! (Roth 2006:13)

Roth's counter is not essential to his overall position to forbid homosexual behavior, nor does it seem that he is all that convinced by his own reading. Roth can successfully rebut Dorff's argument by challenging its premise. By suggesting that other homosexual activity is not rabbinic but biblical, Roth argues that Dorff's subsequent dispensation is based on dubious *halakhic* grounds. What Roth seeks to accomplish is to cast a *halakhic* doubt or "*safek*" onto the discussion of homosexual behavior.

In casting a doubt, Roth then applies a traditional *halakhic* principle, yet extends its application beyond its original intent. Talmudic law mandates a simple practical rule when confronted with doubts: if the law in question is rabbinic then one may (or must) be lenient (*sefeika derabbanan lekula*) (B. Shabbat 34a), if the law in question is biblical then one must be strict (*sefeika deoraita lehumra*) (B. Beitza 3b). Roth contends that since he has introduced a doubt as to whether all homosexual activity is rabbinic or biblical, then the stringency should apply:

> At a very minimum, R. Nevins ought to consider that his thesis is at least a *safek*, and apply the principle of *safek deoraita lehumra* (Roth 2006:22).

This is not an authentic Talmudic reading in that the Talmud's principles of *safek* only apply to when the *circumstance* or *application* of the law is in doubt, not on the *nature* of the prohibition itself.

The area in which both Roth and Dorff agree is on lesbianism in that both agree that it is a rabbinic prohibition (Roth 1992, Dorff 2006:7) based on B. Yevamot 76a, B. Shabbat 65a-b. While the nuances of these prohibitions are subject to much rabbinic and academic debate (Brooten 1996; Riccetti 2005), the rabbinic nature of the prohibition – the essence of this part of Dorff's argument – is not questioned.

3.2.2. Dignity as a Dispensation

We have mentioned briefly that the impetus for the Dorff *teshuva* is the human dignity of homosexuals.

> …the established halakhah presents a complete ban on all acts of homosexual intimacy. However, our predecessors assumed that this ban would lead those with homosexual inclinations back into heterosexual marriages; nowhere do the Sages suggest that celibacy is a desired Jewish outcome. Given what we have learned about sexual orientation in recent decades, this assumption is no longer valid. To uphold the halakhah's comprehensive ban is to consign a significant class of Jewish women and men to life-long celibacy or communal condemnation. This result is problematic not only for the affected individuals, but also from the vantage of the halakhah's own mandate to safeguard human dignity (Dorff 2006:8).

The two arguments of this paragraph are that the concern for human dignity can supersede rabbinic law, and that requiring homosexuals to live a life of celibacy is an affront to their human dignity. We shall discuss each of these in turn.

The Talmudic term for human dignity is *kavod haberiot*, literally meaning honoring the creations. By referring to people as "creations," the rabbinic sages refer to the creation narrative in which man is created "in the image of God" (Gen. 1:27, M. Avot 3:14), including one would expect, homosexuals as well.

Dorff cites a Talmudic passage in which the sages themselves allow for their own laws to be suspended:

> Come and learn: So great is human dignity that it supersedes a negative commandment of the Torah. And why? Don't we say, "there is no wisdom, nor comprehension nor counsel against the Lord"? (Proverbs 21:30) Rav bar Sheba interpreted it thus before Rav Kahana: "[this principle applies only] to the negative commandment of 'do not stray'" (Deut. 17:11). They [i.e., his colleagues] laughed at him, saying, "'Do not stray' is itself from the Torah!" But Rav Kahana said to them, "When a great man states a matter, do not laugh at it. For all of the words of the Sages are supported by the negative commandment of 'do not stray,' but for his dignity, the Rabbis permitted him [to ignore their ruling]" (B. Berakhot 19b).
>
> This passage establishes that the Sages waived their own dignity (i.e., the power of their precedents), but not the dignity of the Torah, in deference to the dignity of other people. While the Sages traced their own authority to the verse from Deut. 17:11, they still distinguished between the stature of their rulings and those of the Torah itself (Dorff 2006:11).

How did the sages waive their own dignity? Dorff provides three Talmudic instances:

> For example, in Shabbat 81a-b, permission is granted to carry smooth stones up to a roof on Shabbat to be used for hygienic purposes. Here a form of carrying prohibited by the rabbis, but not the Torah, is permitted in deference to human dignity. A similar case is brought at Eiruvin 41b. Likewise in Shabbat 94b, Rav Nachman allowed the removal of a dead body from a house to a *karmalit* on Shabbat, out of deference to human dignity. Another application of our principle comes from Megilah 3b. Which mitzvah takes precedence, reading Megilat Esther at its prescribed time, or attending to the burial of an abandoned body? The abandoned body has priority, for "so great is human dignity that it supersedes a negative commandment of the Torah" (Dorff 2006:11).

The first two instances discuss carrying on Shabbat from a private domain to a "*karmalit*" – a non-public and non-private domain into which carrying is rabbinically forbidden (M. Eruvin 9:2), and as such may be violated for personal hygienic reasons – specifically for using a restroom – or not to remain in the same house as a dead body. Since only rabbinic laws are violated, then the rabbinic sages were able to suspend the law against carrying. The third instance allows a person to miss reading the Megilah on Purim – which is another rabbinic decree (M. Megillah 1:1) – to perform another commandment of burying a dead body. The "negative commandment of the Torah" referred to is Deut. 17:11 or "do not stray from that which they tell you either to the right or to the left," a commandment to follow rabbinic authority.

To further support the claim that *kavod haberiot* is a determinative principle in *halakha*, Dorff includes statements from Orthodox rabbis and academics. For example, Prof. Daniel Sperber of Bar Ilan University enumerated instances of traditional authorities who gave *kavod haberiot halakhic* precedence over rabbinic laws and even communal dignity (Sperber 2002). Furthermore, Dorff cites R. Aharon Lichtenstein (Lichtenstein 1993) and Prof. Tamar Ross (Ross 2004), both leading Orthodox scholars, as both identifying *kavod haberiot* in the *halakhic* system. The appeal to traditional scholars lends legitimacy to Dorff's argument that *kavod haberiot* is an intrinsic mitigating factor within Judaism, though one would assume that neither Prof. Ross nor R. Aharon Lichtenstein would agree with Dorff's conclusions.

Similarly, Dorff cites R. Louis Ginzberg – once the leading *halakhic* authority of Conservative Judaism – to support the theoretical and moral basis of his argument, but ignores Ginzberg's *halakhic* application. According to Dorff:

> Rabbi Ginzberg states that the law is more sensitive to the humiliation of the individual than to the disrespect to the public. This commentary supports our understanding that kvod habriot describes the dignity of an individual within his or her social context (Dorff 2006:16).

However Ginzberg himself considered oral sex – homosexual or heterosexual – to be *halakhically* prohibited based on the homiletic passages dismissed by Dorff:

> There is no reference neither in the early nor in the later Rabbinic literature to *fellatio*, though there can be no doubt that according to [the] Jewish view, it is strictly prohibited, since it culminates in ejaculation and any manipulation leading to ejaculation is considered by the Rabbis as a very grave moral and religious sin (Ginzberg 1996:216).

While Dorff cites his authorities selectively, he does not necessarily create a logical inconsistency. Dorff could argue that the ethical mandates dictate the legal application based on circumstances at hand.

Regarding his second point – defining the *halakhic* parameters of *kavod haberiot* – Dorff acknowledges an intrinsic subjectivity but he assumes that preserving sexual activity would be included:

> …the rabbinic restrictions upon gay men and lesbian women that result in a total ban on all sexual expression throughout life are in direct conflict with the ability of these Jews to live in dignity as members of the people of Israel. For this reason, the halakhic principle of gadol k'vod habriot must be invoked by the CJLS to relieve their intolerable humiliation. We must make open and rigorous efforts to include gay and lesbian Jews in our communities, to provide a proper welcome and a legal framework for the normalization of their status in our congregations (Dorff 2006:17).

Despite the numerous citations purporting the importance of *kavod haberiot*, Dorff provides no evidence that sexual restrictions undermine human dignity. In fact, prohibiting private sexual activities in no way precludes public participation in religious life, which presumably is where humiliation would occur. Oddly, Dorff cites this as proof to the contrary:

> Dignity is a social phenomenon. In all of these cases, there is interplay between the dignity of the actor and the dignity of his neighbors. For a person to smell filthy in isolation may be uncomfortable, but it becomes humiliating only when others smell him. His humiliation humiliates them and vice versa…It is therefore not accurate to discuss the dignity of X as if it were separate from the dignity of Y (Dorff 2006:16).

Here Dorff acknowledges that humiliation requires the knowledge of other people, yet does not explain how private prohibitions would lead to public humiliation.

In this passage Dorff's main point is to demonstrate that each person's dignity is intrinsic and valuable in its own right. This line is in response to Roth's critique of Dorff. Dorff's argument is that since the Talmud allows for the suspension of rabbinic laws in the interests of human dignity. Roth contends that all Talmudic instances of human dignity superseding rabbinic law involve the dignity of *someone else* i.e. not the primary actor:

> Most importantly, however, the entire category of kevod ha-beriyyot may well be inapplicable to this issue. The principle means: "X may violate the law out of deference to the honor/dignity of Y." It does not mean that "X may violate the law out of deference to his own honor/dignity" (Roth 2006:22)

Roth offers three explanations from different criteria. First the idiom the Talmud uses is "great is the dignity of the creations [man]" (*gadol kavod haberiot*). But, were this idiom referring to self-reflexive dignity then it should have been phrased "great is man's own personal dignity" as opposed to mankind's dignity in general. Secondly, Roth finds the notion that to suspend laws because of one's own dignity is "counter-intuitive." Religion, after all, requires obedience to established principles of laws and "one must forego one's own honor to comply with God's command, and honor him" (Roth 2006:24), otherwise one could simply disregard the entire law simply because of an affront to one's own personal dignity.

Finally, Roth argues that the motivations behind the Talmudic dispensations are for the honor of others. For example, the person who carries stones to use in a restroom does so out of respect for other people around him by not subjecting them to "the odor which would likely be emanating from him" (Roth 2006:24). Roth addresses several other examples provided by Dorff, though he misses the other two which are most essential to Dorff's argument and cited earlier in this paper. Of those two instances, missing Megillah reading to bury someone could easily fit within Roth's parameters of

missing a personal obligation for the sake of another. However, the instance where someone is allowed to move a dead body out of a house on Shabbat seems clearly to be in the best interests of the people in the house. Since there is no indication that there are multiple people in the house, the law would be that a person could move a body from his house even if he is the sole beneficiary of this action i.e. it is for his honor alone. This case would therefore disprove Roth's interpretation, though Roth himself neglects to address it.

3.2.3. Historical Precedent and Significance of Dorff's Argument

From a historical standpoint it should be noted that Dorff's strategy has been used previously by Conservative Judaism in its controversial 1950 decision to permit driving to synagogue on Shabbat. R. Morris Adler, R. Jacob Agus, and R. Theodore Friedman recognized that Shabbat observance in Conservative Judaism was in decline. Given the important religious and historical role of Shabbat in Judaism and the challenges faced at the time, these Rabbis decided that drastic action was in order.

As with Dorff, they began by recalling the authoritative power of the Sanhedrin and the Jewish legal precedence for special dispensations.

> The general impression that Jewish Law is rigidly inflexibly and incapable of adjustment or adaptation is completely erroneous...There is a core of laws called *d'oraita*, Torahitic, which can never be changed but which can be temporarily suspended for good and valid reasons. There is also a category of rabbinic ordinances, *d'rabanan*, which can be revoked permanently only by a re-constituted Sanhedrin, or a court, "greater in wisdom and numbers" than the ancient courts in Palestine. In crucial periods our Sages did not hesitate to make special enactments for their own time or for a limited period of time, in order to meet the challenge of new circumstances (Adler, Agus et al. 1958:364).

The main reason why driving on Shabbat is prohibited is that the action involves igniting a fire – one of the only prohibited actions stated explicitly in the Bible (Ex. 35:3) and as such would not be subject to change. However, the Rabbis argued, following the medieval gloss of the Tosafists (B. Shabbat 94a), that in order for a biblical prohibition to

be violated, one must perform an action with the same intention as proscribed by Jewish law:

> The combustion of gasoline to produce power is a type of work that obviously could not have been prohibited before its invention. All acts of burning are prohibited only when performed for specifically described purposes, such as: cooking, heating, lighting, or need of its ashes. Burning for the sake of power was not included on this list (Adler, Agus et al. 1958:369).

Based on this reasoning, these Rabbis concluded that any prohibition being violated by driving a car on Shabbat is rabbinic and thus may be suspended in order to preserve future generations' observance of Shabbat.

Dorff's *teshuva* allows for a similar dispensation on the same *halakhic* basis. Roth objects strongly to the homosexual application, but given his longstanding association with Conservative Judaism, he appears to be more accepting of the dispensation for driving.

Roth's tolerance of the Shabbat *teshuva* may be attributed to the fact that its intent was to "revitalize" the observance of Shabbat; its purpose was to preserve one of the most fundamental and identifiable communal institutions of Judaism. Furthermore, the Shabbat *teshuva* only permitted driving to synagogue exclusively i.e. the communal meeting place. Jacob Agus, one of the coauthors of the Shabbat *teshuva*, later clarified that his dispensation to drive on Shabbat did not even extend to fulfilling other Jewish obligations such as visiting the sick or for a rabbi to attend a circumcision. However if the rabbi was needed to perform the circumcision, the ritual by which a child enters into the national covenant of Abraham, he would be able to ride (Agus 1997:456).

The driving *teshuva* is clearly concerned with the Jewish identity on a communal level, both in terms of its intent and its limited scope. However the question of homosexuality is not a matter of communal Jewish identity, but rather concerns a specific subgroup within Judaism. This is not to say that such groups are not entitled to

consideration, but not to the degree that explicit Jewish law must be adjusted that drastically.

There is also an important formalistic difference between the driving *teshuva* and Dorff's responsum on homosexuality in terms of the *halakhic* mechanism for dispensation. Agus distinguishes between two such types of dispensations, a *takkanah*, an enactment, and a *heteir* or "interpretation":

> I refer to the Sabbath responsum as a *takkanah*, not a *hetair*. The latter is an individual interpretation; the former is a *communal enactment*. The acceptance of the responsum by the majority of the Law Committee may be taken as positive action of the Rabbinical Assembly, since this is the only form of endorsement possibly in our organization. Presumably, the committee could be disavowed and dissolved by the convention if its decisions did not correspond to the sentiments of our colleagues. In turn, rabbis may be presumed to retain the confidence of their respective congregations. A *takkanah* is validated by the express acceptance of the people of any one community (Agus 1997:454). [Emphasis added]

For Agus even the creation and acceptance of the dispensation is itself a collective exercise. It is a decision taken by a rabbinic body whose authority and decisions are only validated by the approval of the Conservative Judaism community, whereas the *heteir* is merely one individual's opinion. Agus continues:

> Actually, the sole difference between a *takkanah* and an interpretation is that the former is a communal enactment and the latter is a private opinion. It is clear that a conscious policy of limitless commentary, allowing free interpretation by individual rabbis, borders on anarchy. On the other hand, a communal enactment is likely to restrain arbitrary and extremist policies and to frame new enactments in the spirit of tradition as a whole and of previous precedents. The line between free interpretation and *takkanah* legislation should be drawn in keeping with the distinction between *general* rules and *individual* applications... When general rules are involved we cannot invoke the principle of freedom of interpretation without destroying the fabric of norms and standards that have been built up through centuries of travail (Agus 1997:454).

According to Agus' distinction, the official enactment of the *takkanah* means that there is public accountability as opposed to interpretations which have no such restrictions.

On the other hand, there is a qualitative difference between an enactment and an interpretation. According to Dorff, enactments are "acts of rabbinic legislation that are

not based on textual and legal precedents, but are rather the pure assertion of rabbinic authority to change the law" (Dorff 2006:32). In other words, the enacted dispensation is not authentically part of Jewish law, but *imposed* by an external source. However, a successful interpretation Jewish law places the dispensation as part of the *intrinsic halakhic* system, thus bestowing a greater degree of authenticity to the dispensation. For Dorff, his *teshuva* falls into this category:

> ...this paper affirms biblical law and depends on established halakhic principles and precedents for its conclusions. We contend that the halakhic status quo violates the Talmudic principle of gadol *kvod habriot*. We therefore propose a solution that will allow our communities to fulfill this *halakhic* obligation more fully. In other words, our responsum precisely follows the format of rabbinic interpretation rather than legislation (Dorff 2006:18).

Dorff claims that his use of interpretation allows a *halakhic* obligation of maintaining dignity to be observed "more fully." This statement may seem incongruous with a *teshuva* permitting homosexual activity, since after all, once homosexual activity is permitted it cannot be permitted to a greater degree. However, if we assume that Dorff's intention is to reconcile the conflicting individual identities of Jewish and homosexual, he *must* choose the means of interpretation. An enactment may permit certain activities, but the individual's identity conflict between religion and sexual orientation will persist. Dorff's use of interpretation resolves the identity conflict for it implies that the homosexual identity is acceptable, and has always been acceptable, within the existing *halakhic* system.

3.3. Ordaining Homosexual Rabbis

The third conclusion of the Dorff *teshuva* is the reversal of Roth's 1992 ruling that homosexuals not be admitted to Conservative Judaism's rabbinical or cantorial schools. Following the theme of the *teshuva*, Dorff finds that the acceptance of homosexuals into the clergy is a matter of personal dignity:

> Some have argued that even if gay and lesbian Jews are to be welcomed in our communities, they still should not be ordained as clergy, who are expected to represent our ideal of Torah observance. Although we agree that the clergy should be role models of the mitzvot which apply to all Jews, they are also entitled to the same consideration of their dignity as are other Jews. As our Talmudic examples have demonstrated, considerations of human dignity were extended to the rabbis of antiquity, and we should not discriminate against the clergy of today (Dorff 2006:18).

Dorff is responding to Roth's 1992 rationale for prohibiting homosexuals from entering the clergy: that openly gay rabbis would not be good Jewish role models for Conservative Judaism:

> The Rabbis may not have had a term for "role model," but the concept was hardly foreign to them. Statements like "any scholar whose inside is not like his outside, is no scholar" (B. Yoma 72b), " "any scholar upon whose garment a grease stain is found is worthy of death" (B. Shabbat 114a), "the body must follow the head (B. Eruvin 41a),"...attest to their understanding of the concept. Leaders are role models whether they like it or not. Religious leaders are, therefore, religious role models. A religious leader in a Movement committed to halakha serves as a role model of what that commitment means. It is important to note that the role modeling I refer to, as it pertains to homosexuality has nothing to do with whether people learn homosexuality from role models. Rather, I refer to the role modeling of what is halakhically acceptable (Roth 1992:665).

Roth specifically considers the Rabbi in Conservative Judaism to be a role model of *halakhic* practice more than anything else:

> Clergy in the Conservative movement are perceived almost universally as role models for halakhic acceptability. Therefore, persons who live an openly homosexual lifestyle could not reasonably be accepted as rabbis or cantors precisely because their lifestyle suggests that homosexuality is halakhically acceptable (Roth 1992:666).

In other words, since the laity would look to the rabbi's lifestyle choices as the personification of religious observance, Rabbis must be held to exacting standards of Jewish law.

Roth's description of rabbis as religious and *halakhic* role models is supported by numerous Talmudic statements. The Talmud records several instances where law is determined by Rabbinic actions, and at times students look to their rabbis specifically for

guidance. For two extreme examples, R. Akiva followed his teacher R. Yehoshua into the bathroom and Kahana hid under Rav's bed to learn proper private etiquette (B. Berachot 62b). While both were criticized for their actions, their responses were, "it is Torah and I need to learn" i.e. through observing the practices of their teachers.

From a technical matter of Jewish law, it is difficult to argue that homosexuals are prohibited from becoming rabbis, especially since the modern system of ordination is not the same as the classical ordination. Classical ordination initially was a private function with a teacher passing it on to his student. This later evolved to a court of three people, and at one point, the leader of the Jewish people (Y. Sanhedrin 1:2 19a). There was no set curriculum, though there are several general requirements for Jewish authorities. The Tosefta defines as its criteria that people be, "wise, humble, meek, fears sin, faultless conduct in life, and esteemed by others" (T. Sanhedrin 7:1) and the Jerusalem Talmud adds that a judge have a "good eye, lowly spirit, humble mind, good heart, good inclination, and a good portion" (Y. Sanhedrin 1:4 17d). R. Yohanan believed that judges needed to be, "good appearance, mature age, knowing sorcery and seventy languages" (B. Sanhedrin 17a). There is no mention of specific sins, or even of having a particular identity to preclude someone from being a rabbi or Jewish authority.

However Roth is aware that the issue is not the *halakhic* criteria. The chain of classical ordination ceased around 320-370 CE with the dissolution of the Sandhedrin – the last body to approve new Rabbis in this tradition. But while there have been failed attempts at resurrecting classical ordination, no ordination since that time bestowed upon the Rabbi the same *halakhic* authority as dictated by the Talmud (Newman 1950:144-172).

Nevertheless, Roth views the rabbis of Conservative Judaism as not being judges or decisors, but the human embodiment of Jewish practice – or at least that is their function in Conservative Judaism. Presumably both Roth and Dorff – and perhaps the

entire movement – should expect Conservative Rabbis to follow Conservative law. For his part, Dorff includes such a disclaimer in the second to last footnote of his *teshuva*:

> We expect homosexual students to observe the rulings of this responsum in the same way that we expect heterosexual students to observe the CJLS rulings on niddah. We also expect that interview committees, administrators, faculty and fellow students will respect the privacy and dignity of gay and lesbian students in the same way that they respect the privacy and dignity of heterosexual students (Dorff 2006:32).

While Dorff does expect compliance with the *teshuva*, he also expects consistent treatment for heterosexual and homosexual couples. Both have *halakhic* requirements for sexual behavior defined by Conservative Judaism; heterosexual couples must keep the laws of family purity, and male homosexual couples must refrain from anal sex. However, just as the policy for the heterosexuals' *halakhic* observance has been the equivalent of "don't ask don't tell," the same principle of privacy ought to be applied to the homosexuals.

Following his logic, Roth should be expected to have stringent requirements for any public violation of Jewish law as being inconsistent with being a "role model" for Conservative Jews. However, he does not impose the same requirement for observance of keeping Shabbat or the dietary laws of Kashrut – both of which are fully observable actions.

In fact, Roth explicitly excuses certain rabbis from violating a biblical commandment. Biblical law forbids a *kohein* from coming into contact with a dead body not of his immediate family (Lev 21:1-3), and because of this prohibition, *kohanim* are forbidden from entering cemeteries (B. Berachot 19b). This law would equally apply to rabbis in that a rabbi-*kohein* is prohibited from entering a cemetery to officiate funerals. While Roth does not condone the practice of Conservative rabbi-*kohanim* officiating funerals, he is more accepting of the practice:

> We function on the presumption that every graduate of the Rabbinical School is committed to the observance of the *halakhah*. Individual rabbis violate one or another of the *halakhot*. They do so for different reasons. Often, though rarely verbalized as such, the "violation" stems from the conviction that the *halakhah* being "violated" ought not to be the law…Yet, I am unwilling to claim that such rabbis have no commitment to *halakhah* (Roth 2005:173).

Roth tolerates the rabbi-*kohein* officiating funerals on the grounds that these rabbis may in fact believe what they are doing is correct, and even if they violate Jewish law in one area, they still accept the general *halakhic* system. This tolerance is in spite of a biblical prohibition – one which is more definitive than Roth's own admittedly forced reading of homosexual behavior. The difference between these prohibitions, however, could simply be one of perception. The typical Conservative Jew will likely be more familiar with the laws of homosexuality than they will with the priestly laws of impurity (or if they are aware at the time that the Rabbi is in fact a *kohein*) and as such the rabbinic role model remains intact. However, this is not a *halakhic* argument insofar as the violations are identical, but rather a social one.

3.4. Performing Same-Sex Ceremonies

The final conclusion of the Dorff *teshuva* is in fact a non-committal statement on homosexual marriage:

> We are not prepared at this juncture to rule upon the halakhic status of gay and lesbian relationships. To do so would require establishing an entirely new institution in Jewish law that treats not only the ceremonies and legal instruments appropriate for creating homosexual unions but also the norms for the dissolution of such unions. This responsum does not provide kiddushin for same-sex couples. Nonetheless, we consider stable, committed, Jewish relationships to be as necessary and beneficial for homosexuals and their families as they are for heterosexuals. Promiscuity is not acceptable for either homosexual or heterosexual relationships. Such relationships should be conducted in consonance with the values set out in the RA pastoral letter on intimate relationships, "This Is My Beloved, This Is My Friend": A Rabbinic Letter on Human Intimacy. The celebration of such a union is appropriate (Dorff 2006:19).

Despite the media reports to the contrary, the Dorff *teshuva* explicitly does not endorse same-sex marriages nor does it provide the individual rabbis the opportunity to make

their own decisions. Regardless of the secular legal definition of marriage, Jewish law only recognizes *kiddushin* – the marriage between a man and a woman.

Dorff's conclusion that "the celebration of such a union is appropriate" is in contrast to Conservative Judaism's strict position on intermarriage between Jew and non-Jew, another form of marriage not recognized by Jewish law. In 1970, the CJLS ruled that Conservative Rabbis are not allowed to officiate at intermarriages and in 1972 the CJLS extended that restriction to rabbis even *attending* an intermarriage. By 1989 the CJLS voted that synagogues were not to acknowledge an intermarriage, congratulate the couple on their marriage or the birth of a non-Jewish child, or even to accept donations on their behalf. Both Roth and Dorff voted in favor of this resolution (Epstein 2005).

The difference between intermarriage and homosexual marriage is in the definition of "Jewish family." Neither would be recognized as typical, but for Dorff the traditional definition of "Jewish" takes precedence over the traditional view of "family." It is more important for Dorff that Conservative Jews maintain their national and religious identity and observe Judaism to the best of their ability. This is more possible with a committed homosexual relationship than with an intermarriage.

In terms of its consistency with Jewish law, Dorff does not reject homosexual marriage on moral grounds as explicitly as the Rabbinic sources. The first mention is found in the legal interpretation of Lev. 18:3 – "do not follow their [Canaanite and Egyptian] practices:"

> What did they [the Canaanites and Egyptians] do? A man would marry a man, a woman would marry a woman, a man would marry a woman and her daughter, and a woman would marry more than one man. For this it is written, "do not follow their practices" (Sifra Acharei Mot 9:8).

Dorff cites this Sifra in the context of establishing lesbianism as a rabbinic prohibition, "there is reason to doubt that the prohibition against female lesbian activity derived by

Midrash Sifra from Leviticus 18:3 was regarded as biblical in the eyes of the Sages" (Dorff 2006:7). However while Dorff does find a biblical prohibition against lesbian activity, he ignores the ramifications for affirming homosexual marriages.

Dorff also argues that since this Sifra is not cited in the Talmud later authorities may have overturned it (Dorff 2006:7). However the Talmud does in fact maintain the prohibition against homosexual marriages:

> Ulla said, "these are thirty commandments which the children of Noah accepted upon themselves, but they only kept three of them: they did not write marriage documents for two men (i.e. legitimize homosexual marriage), they did not eat human flesh, and they honor the Torah" (B. Hullin 92a-b).

By applying the prohibition of homosexual marriages to non-Jews, Ulla implies that homosexual marriage a universal prohibition. Note that Ulla is the same Amora from B. Shabbat 12a who kissed his sister, and whose actions Dorff cites as *halakhically* normative. Yet Dorff only references the opinion of Ulla as it supports his central argument.

Neither passage is considered by Dorff in his conclusion on Jewish homosexual marriage, though his argument could still be applied. If the prohibition against homosexual marriage is rabbinic, then that law may be suspended in the interest of homosexual's human dignity. Dorff's concern though is not in the prohibition but in the sense of marriage. Such a ceremony, even if performed, would have no *halakhic* validity or significance.

As Dorff writes, in order to have a homosexual marriage under Jewish law, Conservative Judaism would need to create its own institution and redefine *kiddushin* which Dorff is unwilling to do. In fact, were Conservative Judaism open to a "new institution" of Jewish marriage, it would open itself to criticism for its treatment of heterosexual marriages as well, leading Orthodox rabbis to doubt any of their marriages.

4. Collective vs. Individuated Judaism

From the above textual analysis we may conclude that neither Roth nor Dorff is entirely consistent with their own respective definitions of a *halakhic* as a legal or ethical system. Both selectively cite sources as their arguments dictate while ignoring contradictory data. Yet both are equally passionate as to the validity and importance of their positions, as are the constituency. As noted by Wertheimer earlier, neither *teshuva* offers any resolution for Conservative Judaism; there is still tension within the Conservative community indicating division from within the community on either side of the debate. Given that this is not the first significant or controversial decision the CJLS has passed, we must consider why the question of homosexuality evoked such strong reactions in Conservative Judaism.

Traditionalists of Conservative Judaism may point to the severity of an explicit biblical prohibition which is considered an "abomination." But other biblical prohibitions are routinely ignored with little fanfare. The Bible also states that eating certain non-kosher foods is also an "abomination" (Deut. 14:3), yet according to the 1990 National Jewish Population Survey only 27% of Conservative synagogue members kept kosher (Cohen 2000) and among non-members the percentage dropped to 14% (Goldstein and Goldstein 2000). Yet there is no corresponding religious outrage for the neglect of this biblical prohibition.

From an ethical perspective another possibility could be Judaism's severe admonitions against sexual immorality. The Talmudic sages were well aware of the allure of sexual desires even suggesting that a captured pregnant woman is suspected of having sexual relations since "there is no guardian against sexual immorality" (B. Ketuvot 13b). Sexual immorality is given as the reason the Jews were exiled from Israel, and to lose the divine presence from dwelling among them (B. Shabbat 33a). The sages also recognized the human nature towards sexual desires (B. Haggigah 11b) to the point

where Rav is quoted as saying that the Jews only accepted idolatry not for intellectual or theological reasons, but to avail themselves of sexual freedom allowed by other religions (B. Sanhedrin 63b). On the other hand, traditionalists have been relatively silent regarding the sexual leniencies noted above for heterosexual couples.

From the other side of the debate, we could attribute the championing of the homosexual cause to reflect the liberal ideology prevalent among Jews. According to Steven Cohen,

> ...integrationist anxieties, class interest, and prestige politics offer three complimentary explanations of why Jews in general should have adopted political views to the left of the American center, whatever that center might have been. (Cohen 1983) 137-138)

As the secular liberal world embraced homosexuality, Conservative Judaism found itself lagging behind their secular counterparts. While this theory may provide some explanation, it divorces the religious implications from the discussion and redefines the debate over homosexuality in Judaism as one of religious Jewish ethics versus secular ethics. Furthermore, this does not explain why homosexuality in particular would evoke such controversy.

As a final possibility I suggest that the Roth and Dorff *teshuvot* are both representative of a new struggle for the ideological future of Conservative Judaism. In previous decades, the main question of Conservative Judaism has been how does the movement balance tradition and modernity, typically expressed in the context of modifying Jewish laws or practice (Gordis 1978). The classic debate of tradition and modernity assumes a definition of Jewish identity based on the Jewish community as a whole. However the definition of Jewish identity has gradually been shifting from the community to the individual. From the respective approaches of Roth and Dorff towards the question of homosexuality, we find that the underlying debate is to what extent

Conservative Judaism maintains its tradition assuming a collectivist Jewish identity and to what extent it must adapt to the newer Jewish identity defined by the individuals.

Despite his positivist rhetoric, for Roth, Jewish identity is not even found in strict Jewish practice, but rather those practices or rituals by which Conservative Judaism as a collective recognizes as authentically Jewish. This would account for his leniency for the *kohein* rabbi to officiate funerals and his stringency for homosexual rabbis. Despite both actions being violations of biblical law, the rabbi who performs the former may still be a good role model because his violation is not recognizable to the laity and so no conflict is created. However, since Conservative Jews are more likely recognize homosexuality as a sin, its public violation would contradict the collectivist sense of how a Jew is supposed to act.

This model of collective identity represents the "traditional" ideology of Conservative Judaism as defined by its most prominent figures. Solomon Schechter, arguably the most formative figure of Conservative Judaism, coined the term "Catholic Israel" to express the national and communal identity of Judaism:

> Meaning is mainly a product of changing historical influences, it follows that the centre of authority is actually removed from the Bible and placed in some living body…this living body, however is not represented by any section of the nation, or any corporate priesthood, or Rabbihood, *but by the collective conscience of Catholic Israel as embodied in the Universal Synagogue* (Schechter 1970:11). [emphasis added]

In 1912 Henrietta Szold described the collectivist "Catholic Israel" to be the visceral and essential component of Jewish identity:

> The Jew permeated with these views knows Catholic Israel without a definition. Himself part of it, he in turn creates Catholic Israel. Solidarity is the bold, if need be, aggressive front that we turn to the enemy upon the warpath; Catholic Israel is our fireside, at which we sit discussing, arguing, taking counsel, confessing longings, nursing hopes and aspiration, and, in intimate moments, not shrinking from the betrayal of God-intoxicated feelings (Szold 1958:113).

Later in Conservative Judaism's history, Mordecai Kaplan advanced an extreme version of this ideology in the process of forming the breakaway Reconstructionist movement. However, his perspective on Jewish law follows the model of Schechter's Catholic Israel:

> The religious observances, too, claimed the fervent loyalty of the Jew primarily because they were a unique way of collective self-expression. What often passes for orthodoxy is a mode of Jewish life that is not at all motivated by a conviction of the supernatural origin of those observances. If that mode of life were properly analyzed, it would be found that its chief purpose was to be identified with the Jewish people, a purpose that is just as ultimate as the will-to-live (Kaplan 1934:182-183).

This communal approach to Jewish identity was sufficient for European immigrants whose national Jewish identity was often imposed upon them by their government or society. However, American Jews had significantly more freedom to make their own decisions and form their own identities. Where the collectivist identity of being Jewish was once imposed upon the Jew, in America, one could choose to define his or her own Judaism (Neusner 1990). As such, the prioritization of the collective Jewish identity becomes the mark of "the archaic Jew" (Neusner 1972:62). For the modern Jew, doubt or discomfort with one's own Jewish identity results in dissociation from the collective:

> Jews who are uneasy over their Jewishness will be reluctant to associate themselves with anything Jewish. They will stand aloof from the Jewish community or will strive sedulously to keep it as inactive as possible. They will resist the Jewish religion and the Jewish culture (Neusner 1972:79).

Marshall Sklare found among the second and third generations of Conservative Jews an increasingly pessimistic attitude towards the future of their movement (Sklare 1972:253-282), a phenomenon which he ascribes to the debunked sense of "triumphalism" of Conservative Judaism's model over the Orthodox (Sklare 1990). Such pessimism could also be explained by the individual's dissatisfaction with the collective, or simultaneously the individual's focus on his own religious identity.

In their 2000 study on American Judaism Steven Cohen and Arnold Eisen found that American Judaism is experiencing its own transformation towards individuation:

> In broad strokes, that which is personally meaningful has gained at the expense of that which is people-hood oriented. American Jews today are relatively more individualist and less collectivist. Taken as a group, their patterns of believe and practice are more idiosyncratic and diverse, less uniform and consensual. No less important, they regard the ever-changing selection of Jewish activities and meanings from the broad repertoire available as part of their birthright as Jews. They celebrate the autonomy of this choosing and do not worry about its authenticity. Indeed, they welcome each change in the pattern of their Judaism as a new stage in their lifelong personal journeys (Cohen and Eisen 2000:184).

This trend towards individuation is not exclusive to Judaism. Thomas Luckmann described this phenomenon as "The Invisible Religion" in which the doctrines espoused by an established church are supplanted by individuals in favor of their own subjective sense of "ultimate meaning" (Luckmann 1967:69-73). Peter Berger attributes this phenomenon to pluralism:

> The pluralism situation multiplies the number of plausibility structures competing with each other. Ipso facto, it relativizes their religious contents. More specifically, the religious contents are "de-objectivated," that is, deprived of their status as taken-for-granted, objective reality in consciousness. They become "subjectivized" in a double sense: Their "reality" becomes a "private" affair of individuals…and their "reality", insofar as it is maintained by the individual, is apprehended as being rooted within the consciousness of the individual rather than in any facilities of the external world – religion no longer refers to the cosmos or to history but to individual *Existenz* or psychology (Berger 1990:151).

As a result of this individuation, Berger claims that religions must either resist or accommodate to the tastes of the individual. Karel Dobbelaere defines such individuation a secularization, from the perspective of individual (individual secularization) and a religion's response to individuation (Dobbelaere 2002). However the question of homosexuality in Conservative Judaism differs from the general question of secularization in that homosexuality itself is not a new ethic or value which provides competition to the religious establishment, but a conflict of personal identities. Dorff

himself addressed his *teshuva* to those homosexual Jews who wanted reconciliation i.e. their Jewish identity was as much a part of them as their homosexual identity.

Without the dispensation offered by Dorff, homosexuals are faced with two mutually conflicting identities: the identity of sexual orientation and the identity of religion which considers the first identity to be an "abomination." According to Dorff's assumption that homosexuality is not chosen, its determinative factor for a person's identity is no different than a person's *halakhic* identity as a Jew and as such Conservative Judaism must respect the totality of a person's identity. When left to their own devices, homosexual Jews must grapple with conflicting identities and some may negotiate their own compromise (Schnoor 2006), but when homosexuals are forced to choose between religion and sexual identity, religion will typically lose (Shneer and Aviv 2002:11). Dorff's solution provides more than just a dispensation for actions as found in a *takkanah*, but his *heteir* effectively resolves the core conflict of identity.

Dorff'srecognizes that Conservative Judaism must not only adjust its laws to contemporary challenges, but it must also account for general changes in attitude and perspectives. For Dorff, American Conservative Judaism must evolve from simply being an "ethnic church" (Sklare 1972:35) into a pluralistic multicultural society, welcoming and accommodating to the plethora of individual identities. Dorff himself recently emphasized the importance of the individual as the determinative factor of Jewish law:

> The Jewish covenant with God directly and profoundly affects our relations with fellow Jews and non-Jews as well as our interactions with God. The soul of the covenant is thus not only love and respect for God but also love for our fellow human beings as we work together to fix the world (Dorff 2007:122).

Dorff cannot ignore the textual tradition altogether – it is far too essential for the Jewish identity. However, he can use parts of that tradition to advance his vision for the individualistic future of Conservative Judaism.

Finally, this approach to the *halakhic* debate on homosexuality also explains the timing of the recent debate. The CJLS revisited the question of homosexuality shortly after Arnold Eisen was selected to replace Ismar Shorsch as chancellor of Jewish Theological Seminary. Given Eisen's earlier observations on the Jewish community in America, it would not be surprising for him to request any changes he could make within his own institution, and by extension, the entire movement of Conservative Judaism.

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