

JEWISH LAW IN THE CONSERVATIVE/MASORTI MOVEMENT

Much has happened in the last thirty years with regard to Jewish law in the Conservative Movement. Structural changes have been made in how the movement makes its decisions in Jewish law; new efforts to publicize legal rulings and to educate the laity about them have been made; and new approaches to old topics and some entirely new topics have been created.

1. Structural Changes

Conservative Judaism (called Masorti Judaism outside the United States and Canada) prides itself on being historically authentic. Throughout Jewish history, the most common way that legal decisions were made was for a member of the community to ask a question of his or her rabbi, who then, as teacher of the community (*mara d'atra*) rendered a decision. Sometimes the rabbi did that immediately; sometimes the rabbi studied the matter before answering; and sometimes the rabbi wrote to another rabbi with known expertise in the particular field of law addressed by the questioner. In the end, though, it was the local rabbi who answered the question. He (and now she) got that authority from two sources, namely, ordination, which indicated that he or she

had learned enough to make such decisions and to lead a community, and election by a community to be their teacher. In line with this long history, within the Coservative/Masorti Movement, rabbis are ultimately empowered to make decisions for their communities (congregations, schools, camps, etc.). In the vast majority of cases, Conservative rabbis will rule according to traditional Jewish law, as it appears in the sources of the Jewish tradition, including the rulings adopted by the movement's Committee on Jewish Law and Standards (CJLS). When they do so, they can rightfully claim that their ruling is supported by the CJLS. Ultimately, though, except for Standards of Rabbinic Practice (see below), individual rabbis have the authority to rule on their own authority in a way that is more stringent, more lenient, or simply different from traditional Jewish law, including the responsa adopted by the CJLS (responsa, *teshuvot* [singular, responsum, *teshuvah*] are rabbinic answers to legal questions together with the reasoning supporting such answers).

Sometimes, though, a rabbi will think that a given question should be addressed by the entire movement, and then he or she may ask the CJLS in North America or the Va'ad Halakhah (Committee on Jewish Law) in Israel to rule on it. Before 1986, any three votes of members of the CJLS would constitute a minority opinion, and rabbis were free to act and rule in accordance with such a minority opinion or with the majority and legitimately claim that they had the support of the CJLS in doing so. Many of the practices increasingly adopted by Conservative synagogues in the 1970s and 1980s allowing women to participate more fully in public worship were based on such minority opinions. In 1986, the Rab-

binical Assembly Constitution was changed such that there would no longer be majority and minority opinions, but rather six votes or more of the 25 voting members of the CJLS would constitute a validated option within the Conservative Movement. This means that theoretically there could be many different responsa validated by the CJLS on any given topic. In practice, however, on the vast majority of topics the CJLS has approved only one responsum, often with unanimous or near-unanimous votes, and most Conservative rabbis follow it in their own rulings. Sometimes the CJLS has approved several concurring opinions, where the ruling is the same but arrived at through different processes of legal reasoning. Sometimes the CJLS has adopted two rulings that conflict, and then it is up to the local rabbi to decide which of the two to use in guiding his or her synagogue or educational institution. This has happened on relatively non-controversial issues (e.g., how many people may be called to the Torah at once) and on more controversial ones (e.g., removing artificial nutrition and hydration from a dying patient; homosexual sex). This structure, designed to reflect both the unity of the movement and its pluralism, was justified legally and theologically by a paper by Rabbi Gordon Tucker, «A Principled Defense of the Current Structure and Status of the CJLS», adopted by the CJLS in February, 1993.

Although most of the work of the CJLS appears in validated responsa, there are two other things it can do. A responsum may become a Standard of Rabbinic Practice if it is introduced as a potential Standard; if four-fifths of the voting members of the CJLS (i.e., twenty), polled by mail, vote for it; and if a majority of the rabbis attending the following Rab-

binical Assembly vote for it as well. Rabbis and synagogues who violate a Standard are subject to expulsion from the movement. So far there have been only three such Standards: (1) that a rabbi may not officiate at the wedding of a Jew to a non-Jew (adopted in 1972); (2) that if either or both people who want to be married have been married before, then the first marriage must be dissolved not only in civil law but in Jewish law through a writ of divorce (a *get*) (adopted in 1975); and (3) Jewish identity is defined by matrilineal descent or by halakhic conversion (adopted in 1986). The rules of the CJLS also permit it to adopt a legislative enactment (a *takkanah*) by a vote of four-fifths of the voting members of the CJLS, but none has been adopted under those rules and such a ruling would not carry the potential penalty of expulsion for those who violate it.

Two other structural changes in the work of the CJLS have occurred since 1975. In 1986, an agreement was concluded between the Rabbinical Assembly (the organization of Conservative/Masorti rabbis), the United Synagogue of Conservative Judaism (the synagogue arm of the movement), and the Jewish Theological Seminary of America such that of the 25 members of the CJLS, the President of the Rabbinical Assembly would appoint 15 members (3 each year, each serving for a five-year term), the Chancellor of the Seminary would recommend 5 (one each year), and the President of the United Synagogue would recommend 5 (one each year), all of whom must be members of the Rabbinical Assembly and approved by the Rabbinical Assembly's Executive Council. These are the voting members. In addition, five lay members would be appointed by the President of the United Synagogue (one each year)

and the President of the Cantors Assembly would appoint a cantor; these six members participate in CJLS discussions and may even take part in writing responsa with a rabbi, but they may not vote. In return, the Seminary and the United Synagogue affirmed that they would view the CJLS as the legal decision-making body of the movement.

Another change occurred internally. When in the late 1980s, the CJLS began to be asked many questions in bioethics, the Chair at that time, Rabbi Joel Roth, appointed a special subcommittee of CJLS members with expertise in that area to generate responsa in that area of the law and to act as a first response to responsa written about such issues. Rabbi Kassel Abelson, who has chaired the CJLS since 1992, expanded that model, and so now there are CJLS subcommittees on bioethics, sex and family life, kashrut, publications, and business ethics. As a result, when a responsum on a topic in one of those areas is presented to the CJLS, it first is considered and critiqued (but not voted upon) by the subcommittee, and the author typically revises it in response to the subcommittee's questions and recommendations before it is placed on the agenda of the entire CJLS. That has both expanded the scope of issues treated by the CJLS and the quality of responsa it considers.

Finally, another structural change that has occurred in the last thirty years concerns the provenance of the Va'ad Halakhah in Israel. Originally the Va'ad Halakhah, consisting of approximately five Masorti rabbis living in Israel, was authorized to consider only questions that are unique to Israel, such as those dealing with army service. Gradually, however, the special circumstances of living in Israel

has led the committee to expand its scope to consider virtually every aspect of life. As a result, members of the CJLS and the Va'ad Halakhah are now enriched and influenced by what has been produced by the other Conservative/Masorti committee on Jewish law.

2. Publication of Approved Responsa

One of the continuing problems of the CJLS before the 1980s was that its responsa were largely unavailable. A summary of them was presented by the Chair each year at the annual Rabbinical Assembly convention, and that summary was published in the annual *Rabbinical Assembly Proceedings*, but there was no convenient way for rabbis to know of the work of the CJLS. The Secretary of the CJLS would mail a copy of a responsum to a rabbi who requested it, but rabbis and lay leaders complained that they often did not know that the CJLS had ruled on an issue and therefore did not know what to ask for.

That began to change with the publication of the Summary Index of CJLS Responsa, organized by topic and distributed to each member of the Rabbinical Assembly. First prepared in the 1970s by Rabbi Mayer Rabbinowitz, then Secretary of the CJLS, since the mid-1990s it has been updated each year. In addition, the responsa approved between 1980-1985 were published as a volume in 1986, followed by volumes of the responsa approved between 1986-1990 and between 1991-2000, edited by Rabbis Kas-sel Abelson and David J. Fine. Rabbi David Golinkin edited the CJLS responsa between 1927-1970, and they were published in 1997 as three volumes. In 2000

Rabbi Aaron Mackler edited the CJLS responsa on bioethics to that date in a book entitled *Life and Death Responsibilities in Jewish Biomedical Ethics*. Beginning in 2004, all of the responsa approved by the CJLS since 1980 have been available to everyone on line at www.rabbinicalassembly.org under the link «Contemporary Halakhah».

In addition, The Rabbinical Assembly of Israel Law Committee (*Va'ad Ha-Halakhah*) has published to date six volumes of its responsa in Hebrew with English summaries. They can be procured from the Institute of Applied Halakhah at the Schechter Institute of Jewish Studies, POB 8600, Jerusalem 91083, and they are now also available online in Hebrew and English at www.responsafortoday.com.

3. Major Topics Treated by CJLS Responsa Since 1975

It is the sheer breadth of issues treated by the CJLS that has characterized its work since 1975 more than any other factor. In addition to ongoing attention to liturgy, Sabbath and Festival laws, and the dietary laws, much of the work of the CJLS has focused on four topics – namely women, Jewish identity, homosexuality, and ethics.

3.1 Women

Undoubtedly the most noticeable change in Conservative Jewish practice over the last thirty years is in the percentage of Conservative synagogues that are egalitarian. Some are still “Torah egalitarian”, allowing women to take leadership roles only in the

Torah service (including the Torah reading) and other parts of Jewish worship that do not require a *minyan* (e.g., *P'sukei D'zimra*, *Kabbalat Shabbat*), and other synagogues do not allow women to lead any part of the liturgy. Well over 90%, however, are completely egalitarian, with both men and women permitted, encouraged, and educated to take active roles in leading worship. Whether women who lead the service must wear head covering, a *tallit*, and, on weekdays, *tefillin* while doing so varies widely from synagogue to synagogue.

What is especially interesting about this development is that it was driven more by custom than by law. The CJLS took votes in 1974 as to whether women may serve as leader of the services and count as part of the *minyan*, and a minority (which required only three of the rabbis on the committee at the time) voted that they may, but even those in favor of such a change hesitated to rely on that because the vote was not based on *responsa* before the committee. Because women were increasingly treated as equals in every other aspect of society, though, more and more synagogues began treating them as equals in Jewish worship as well. In a 1997 article entitled «Custom Drives Jewish Law on Women» (*Conservative Judaism* 49 [1997] 3, 3-21), Rabbi Elliot Dorff argued that this has always been the case, that from the very first Jewish law with regard to the legal status of women has been determined more by custom than by law, and that the developments in the 1970s and 1980s along those lines actually followed the tradition.

In 1996, however, formal *responsa* written by Rabbi Arnold Goodman were adopted to sanction the long-standing practice within the Conservative

movement to permit the marriage of a *kohen* (a man of priestly status) to a Jew-by-choice or to a divorcee. In 2003, two responsa were approved on the issue of women serving as witnesses. One, by Rabbi Meyer Geller, concluded that women should be allowed to serve as witnesses in all matters; another, by Rabbi Susan Grossman, accepted Rabbi Geller's reasoning but argued that although women may serve as witnesses to writs of marriage (*ketubbot*) or conversion (*t'udot gerut*), they should voluntarily refrain from serving as witnesses on writs of divorce (*gittin*) lest such writs not be recognized by some Conservative and Orthodox rabbis with the result that children from a second marriage be classified as illegitimate (*mamzerim*).

3.2 Jewish Identity

Largely in response to a resolution of the Reform rabbinate in 1983 to define as Jews those born to a Jewish father and a non-Jewish mother ("patrilineal descent"), as long as the parents took steps to raise such children as Jews, in 1986 the CJLS adopted and the Rabbinical Assembly convention confirmed a Standard of Rabbinic Practice that restricts Jewish identity to those born to a Jewish woman or converted to Judaism in accord with the demands of Jewish law. Although efforts to bring intermarried families into Conservative congregations (*keruv*) were endorsed by the CJLS as early as 1983, serious and widespread efforts within the movement to do that did not begin until 2000, first by the Federation of Jewish Men's Clubs and later by the United Synagogue of Conservative Judaism. The primary purpose of such efforts is to convince the couple to raise

their children as Jews, taking them through the rituals of conversion if necessary, and, possibly, ultimately to convince the non-Jewish partner to become Jewish.

The CJLS dealt also with two other factors affecting Jewish identity. In 2000, the CJLS approved a thorough responsum by Rabbi Elie Kaplan Spitz that effectively nullified the category of illegitimacy (*mamzerut*) by refusing to hear testimony that would lead to such a conclusion, much as the Sanhedrin refused to hear testimony about cases of murder forty years before the fall of the Second Temple. In a 1995 responsum by Rabbi Aaron Mackler, the CJLS concluded that it is the bearing mother the conveys Jewish identity on her progeny. Consequently, even if the sperm and egg come from Jewish parents, if they need to use the services of a surrogate mother to carry the child and she is not Jewish, the child must be converted.

3.3 *Homosexuality*

With the exception of the debate over the halakhic status of women, undoubtedly the most controversial legal topic within the Conservative Movement between 1975 and 2006 was the issue of homosexuals. In virtually identical resolutions passed by both the Rabbinical Assembly (May, 1990) and the United Synagogue of Conservative Judaism (November, 1991), both the rabbinic and synagogue arms of the movement asserted that they:

- 1) Support full civil equality for gays and lesbians in our national life; and
- 2) Deplore the violence against gays and lesbians in our society; and

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

4) Call upon our synagogues and the arms of our movement to increase our awareness, understanding, and concern for our fellow Jews who are gay or lesbian (*Rabbinical Assembly Proceedings 1990*, 275). On these issues, then, the movement has been united – although it is not clear whether “full civil equality” includes support for marriages of gays and lesbians in civil law or only measures to eliminate discrimination in employment, housing, insurance, and the like. Where the movement has not been at one is on the issues of performing Jewish commitment ceremonies for gays and lesbians, whatever their title and form, and ordaining gays and lesbians as rabbis and cantors. In a 1992 «Consensus Statement», the CJLS forbade both of those measures, but at the very time that that statement was adopted it was understood differently by two factions within the CJLS that voted for it. Some intended that performing commitment ceremonies for gays and lesbians and ordaining them never be permitted, and others intended that that ban last only as long as the Commission on Human Sexuality that Rabbi Elliot Dorff proposed do its work. That commission completed its work in 1994, but the CJLS did not revisit the issue until specifically asked to do so in 2003 by the presidents of both the Rabbinical Assembly and the United Synagogue, namely, Rabbi Reuven Hammer and Judy Yudoff. After several years of studying these issues anew and writing new responsa on the issue, in December, 2006 the CJLS approved responsa with varying positions, namely, (1) one that would maintain the *status quo ante*, (2) one that

would prohibit commitment ceremonies and encourage homosexuals to seek therapy to convert to heterosexuals, but would adopt a "don't ask, don't tell" policy with regard to admission to rabbinical school; and (3) one that would narrow the prohibition in Leviticus to ban anal sex between males but permit other forms of sexual expression by gays and lesbians and thus permit ordination of gays and lesbians as well as commitment ceremonies to celebrate their unions. Two other responsa, which would have removed the ban on homosexual sex altogether through two different forms of reasoning, were not approved by the CJLS. This variety of position papers honestly reflected the ambivalence within the movement on these issues. Although some predicted that the movement would split apart if a liberal position were adopted, that has not happened. Here, as in the case of the changes in the roles of women, the Conservative movement has shown the strength of its commitment to halakhic pluralism.

3.4 *Ethics*

Finally, under the chairmanship of Rabbi Kassel Abelson, the CJLS has undertaken a number of responsa in the area of ethics. This has been true especially in the area of bioethics, where responsa on infertility treatments (artificial insemination, egg donation, *in vitro* fertilization, pre-implantation genetic diagnosis, adoption, surrogacy), end-of-life issues (hospice care, advance directives, withholding and withdrawing of life support systems, including artificial nutrition and hydration, defining the criteria for death, organ transplantation), and the distribution of health care (including school requirements that

children be vaccinated) have been approved. Rabbis Elliot N. Dorff, Aaron Mackler, Daniel Nevins, Joseph Prouser, Avram Reisner, and Joel Roth have been the primary authors of responsa in this area, and their work to the year 2000 was edited and published in that year in a book edited by Rabbi Aaron Mackler entitled *Life and Death Responsibilities in Jewish Biomedical Ethics*. In addition, the CJLS now has a subcommittee on Jewish business ethics, and its first responsa have treated the topics of privacy on the internet, unions, and whistleblowing.

4. Educational Materials

Another common complaint before 1975 was that Jewish law was practiced by Conservative rabbis but only by a minority of the members of Conservative congregations. Although surveys indicate that that is still true, the movement has produced a number of educational materials to correct the problem. United Synagogue Youth has produced a series of more than twenty source books on a variety of areas of Jewish law and life designed for teenagers and adults. In 1979, Rabbi Isaac Klein's book, *Guide to Jewish Religious Practice*, was published, and it serves as a kind of *Shulhan Arukh* for the Conservative movement, at least with regard to issues that have not been treated by the CJLS since the time of its publication. Another form of adult education on moral matters in Jewish law appeared in the form of rabbinic letters. Specifically, the Rabbinical Assembly's Commission on Human Sexuality published Elliot N. Dorff's *This Is My Beloved, This Is My Friend: A Rabbinic Letter on Intimate Relations*

(1996), and the Joint Social Action Commission of the Rabbinical Assembly and the United Synagogue of Conservative Judaism published Elliot N. Dorff's *You Shall Strengthen Them: A Rabbinic Letter on the Poor* (1999). In 2005 and 2006, the Rabbinical Assembly published three books for serious adult education, one each on Jewish rituals (edited by Rabbi Michael Katz), Jewish ethics (edited by Rabbi Martin S. Cohen), and theories of Jewish law (*The Unfolding Tradition*, written by Rabbi Elliot N. Dorff). In addition, of course, the informal education achieved through modeling and discussion groups of how and why to live a Jewish life at the many sites of Camp Ramah in North America, South America, Europe (including Russia), and Israel and through United Synagogue Youth has proven to be a powerful tool to educate the rabbis, cantors, educators, and lay leaders of the next generation.

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