

COMMUNITY AND DIVERSITY:

A TESHUVAH ON GAY AND LESBIAN COUPLES AT CONGREGATION NETIVOT SHALOM

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PART I

THE TESHUVAH

INTRODUCTION

Every day congregational rabbis are faced with decisions. Often, the answers affect only individuals; sometimes, an entire congregation. Such is the case of the questions raised at Congregation Netivot Shalom in Berkeley, California in 5755 (1994/5).

The debate and study of the issue of the role of gays and lesbians in our community was occasioned by a very simple event: a lesbian member of our congregation came to see me a month prior to her joining with her partner formally and publicly in a ceremony as a couple, and asked me if she might celebrate this occasion by being called, together with her partner, to the Torah (the functional parallel to an aufruf before a wedding).

Time did not permit the necessary and time-consuming consideration of the issues. But, quite frankly, they were not asking about a commitment ceremony which, in my opinion, would have been the greater issue, but simply about a joint aliyah. That is how I understood her request. So, following a meeting of the Ritual Committee, a temporary decision was made, to be followed by more extended consideration. As it turned out, things were not that simple.

Before offering my response, I want to make six preliminary comments:

1. As you read the following, place yourself in the shoes of the other and, as Pirkei Avot 2:5 teaches, *al tadin et chavercha ad shetaghiah lemekomo* -- do not judge someone else until you stand in that other's place.
2. We are all struggling with this issue. Each one who has entered the conversation has

wrestled with personal attitudes, emotions, and beliefs. I, too, have struggled and changed since we began considering these matters in September, 1994. It has taken me this long to arrive at my position. I have done so by studying and listening to you and speaking to many people, here and nationally. I knew that this issue would need to be dealt with sooner or later. Real life has made sooner or later into now. I had not planned that 5755 was to be the year, nor had I, at that time, come to a particular position that I wanted to pursue.

3. If you hear your voice in this document, it is because it is there -- but ultimately, I take full responsibility for this document. I apologize for not quoting each of you by name, although I have noted your name in the case of a direct quotation.

4. A rabbi is responsible to serve all congregants: rich and poor, healthy and sick, divorced, single and married, with children or with no children, old and young, sane and insane, Jews by chance (birth) and Jews by choice (converts), educated and ignorant, observant and nonobservant, straight and gay, abled and challenged. There have not been different categories of membership for the gays and lesbians among us. Often, it is in this dilemma of figuring out just who we are that the interests of the community (congregation) and the individual (or small group) collide. Historically, the tradition has come down on both sides -- depending upon the particular case and the community.

5. In conversations with other Conservative rabbis throughout North America, I discovered that approximately fifteen rabbis perform commitment ceremonies and have said so publicly. My impression is that many more are open to doing a commitment ceremony but have not yet been approached with this request. The only sentence that stands firm as of this date is that of the Rabbinical Assembly which states, "We will not perform commitment ceremonies for gays or lesbians."

6. At the Rabbinical Assembly convention in 1994, the chair of the plenum that was considering "A Rabbinic Letter on Intimate Relations" quoted someone (I have forgotten whom) by saying, "Better to have considered and struggled than not considered at all." I believe this to be true.

This is the first of a three-part series. Part I is a response (the Teshuvah) to specific questions. Part II will be some thoughts about the role of Halacha in the Conservative movement and in our shul, and Part III will contain some reflections about the process we have engaged in as well as some concluding remarks and a bibliography.

What follows is an attempt to draw boundaries while still being inclusive. Judaism is a tradition with built-in distinctions and subtle definitions. It is to those issues that I now turn.

THE TESHUVAH

Gays and lesbians have been members of Netivot Shalom as individuals and as families since this congregation was founded. We are now faced with ritual questions concerning the participation of gay and lesbian members in life cycle events such as birth, bar/bat mitzvah, commitment ceremonies, and death.

THE QUESTIONS

I. May same-sex couples have an aliyah together when a joint aliyah makes sense, for example, at a baby naming, the adoption of a child, or a bar or bat mitzvah? (Our policy has been to allow joint aliyot on certain occasions, giving them, for example, to parents or grandparents of a bar/bat mitzvah but not to uncles and aunts.)

II. May a gay or lesbian couple have an aliyah on the Shabbat preceding their commitment ceremony?

III. May commitment ceremonies be performed in our congregation?

The central issue is not about accepting gays and lesbians, but of sanctifying their relationships.

THE TORAH VERSES

1. The Torah

Lev. 18:22 "Do not lie with a male as one lies with a woman; it is an abhorrence."

Lev. 20:13 "If a man lies with a male as one lies with a woman, the two of them have done an abhorrent thing; they shall be put to death -- their blood guilt is upon them."

These passages from Leviticus mark the point from which we begin. Typically, these passages have been understood as a) prohibiting homosexuality, b) determining that this act constitutes an "abomination" (toevah), and c) making the penalty of death the consequence for this act. For the most part, writes Judith Plaskow, "conservatives point to the supposedly unrelieved condemnation of homosexuality in both the Bible and religious tradition, while many liberals build on essentialist premises to reinterpret or question the contemporary validity of the same number of limited texts . . . [clearly] the weight of Jewish tradition is against homosexual relations." Two issues need further exploration: the plain meaning (peshat) of the text and the problematic word "abhorrence" (toevah).

2. The Plain Meaning (Peshat)

There appears to be a redundancy in our texts. Whenever this occurs, one rule of hermeneutics is that we have to ask, why is this so? What do these additional words add to our understanding? The phrase "as one lies with a woman" (Lev. 18:22, 20:13) seems to be superfluous. The beginning of the verse tells us (at least the males among us), "Do not lie with a man." As a condemnation of homosexuality, that would be sufficient. Why the need for the second part "as one lies with a woman"? This additional language (lashon yetayrah) is meant to tell us something else that adds to the first part of the verse.

Consider the difference between two mathematical formulas: Not [A + B] and [Not A + B]. These formulas are not the same. For example, the fashion statement "don't wear navy and black" can have two meanings. "Don't wear navy and black" can mean that wearing navy and black together is fashionably inappropriate, but that the wearing of a navy outfit or the wearing of a black outfit separately is quite acceptable. To return to our text, sleeping with

both men and women may be prohibited, but sleeping with either a man or a woman may be permitted. When our verses say, "Do not lie with a male as one lies with a woman," it may have nothing to do with homosexuality but may instead be a prohibition against bisexuality.

Another understanding of our texts was posited recently by Netivot Shalom member Michael Cohen who writes:

The "manner in which a man would lie with a woman" may be a comment on how not to treat men. Consider the excessive male chauvinism of the era. Women and sexual unions with women were considered demonic. Recall the cleansing before the theophany at Sinai, inter alia. It may just be that the priests found abhorrent that a man would not lie with a man with full equality and treat his male partner in the "manner one lies with a woman" . . . and as Rabbi [Elliot] Dorff points out, even the traditional interpretation of these verses only precludes some sexual practices that are not shared by all male homosexuals nor by female homosexuals. In addition, if the "manner in which a man would lie with a woman" refers to anal intercourse, is it not inconsistent to object to it between men when such non procreative sexual interplay was acceptable for the pleasure of men and women?

3. Abhorrence (Toeavah) (Usually Translated as "Abomination")

The word appears in various forms a total of twice in Genesis, once in Exodus, six times in Leviticus, and fifteen times in Deuteronomy. Apart from the usage in our verses, the term toeavah is also applied to those who eat non kosher food (Deut. 14:3); those who worship idols (Deut. 7:25); those who carry false weights (Deut. 25:13), i.e., who are unethical in their business practices; and those who cross-dress (Deut. 22:5).

Despite the fact that the word appears so many times, its definition is not at all clear. In our Leviticus chapters, toeavah seems to be connected to worship of fertility cults and/or to events considered foreign to the cult of Israel. Jacob Milgrom suggests that the passages in Leviticus 18 and 20 reflect the hand of a later historical period than do earlier Leviticus chapters and most probably are the work of a later priestly school called H (Holiness Code) writing at a time that overlapped with the Deuteronomist. This individual lived in a period in our history when backsliding (to use the prophetic term), syncretism, and Zoroastrianism were rampant. Consequently, it was his (or her) desire to distance our people from the local Caananite and Egyptian practices, so that we might become a holy people (am kadosh). The context in which these verses are embedded forces our attention also to the cult of the foreign god Molech (v 21). As Harold Schulweis suggests, "the word toeavah refers not to homosexuality but to cultic prostitution. What the Bible inveighed against was the pagan tradition that paid obeisance to pagan gods by all forms of illicit sexual behavior."

Looking further at the geographical nexus of the prohibition, we find that these verses were specific to the land of Israel and not outside of it. Ramban (Nachmanides) himself seems to have doubted that homosexual relations were prohibited except in the land of Israel itself. Even granting that the prohibition was about homosexuality, this geographic narrowing makes the toeavah apply only to the land of Israel -- and not outside it.

In the context of these biblical verses, however, the word seems to be used specifically to refer to male orgasm, rather than to a transcendent relationship that is achieved with an

"other" in order to experience the divine (or what we mortals would call the sacred). The use of the word *to'avah* suggests that we Jews do not see the world as did the Canaanites or Egyptians, who viewed the world as "it" rather than "thou." The Torah's requirement was to distance ourselves from their way of perceiving the world.

Looking at the classic commentators, it is startling to note that Rashi is silent on Lev. 18:22. To explain the terms "as one would lie with a woman" (Lev. 20:13), he uses the phrase *machnien kemach'chol b'shfofaret*, literally, "one who brings in, like a paint brush into a tube." The other commentators, Ramban and Sforno, are also silent on Lev. 18:22, while Ibn Ezra focuses on the penalty (death) for one who curses father or mother. None of them inveigh against homosexuality, although the commentators commonly protest vehemently on other occasions and other topics when matters of "don't" are commanded.

Today there is at least one instance when we, as Conservative rabbis, disregard *to'avah* completely. We may, according to the Committee on Jewish Law and Standards, officiate at a marriage involving the offspring of an adulterous couple (*mamzer*) to a non-*mamzer*. Furthermore, we know of many instances where the rabbis of later generations narrowed Biblical prohibitions. "In a matter close to the question of sexual 'deviation,'" writes Tzvi Marx, "the Bible excludes eunuchs from "entering the assembly of the Lord" (Deut. 23:2) -- that is, from marrying. Tractate *Sotah*, however, explains that the prohibition applies only to one made a eunuch by human action, but not to a congenital eunuch -- apparently distinguishing between culturally chosen and physically determined deviation."

An attempt to define sexual identity was also the occasion for a narrowing of definition. Again, Tzvi Marx: 'Defining sexual identity is made an issue in the opening verses of [the Torah portion of] *Tazriah*: "When a woman at childbirth bears a male, she shall be ritually impure seven days . . . and if she bears a female, she shall be impure two weeks' (Lev. 12:2,5). But what of a child that is [born] both male and female, or neither (androgynous and *tumtum*, respectively, in Talmudic terminology)? Rather than exclude them from the law and the community because of unusual sexual identity, the sages in Tractate *Niddah* set requirements for them between those for a male and those for a female -- and so recognize such sexual identity as a category in itself." The rabbis therefore, both narrowed a definition (in the case of a eunuch) and created a brand-new category of sexual identity.

We have seen how alternative understandings of the two verses are viable (particularly as they appear in the Levitical context), reflected on the word *to'avah*, and shown how our tradition has continued to narrow and redefine boundaries. We now turn our attention to the underlying principles that underlay any response to our three questions.

UNDERLYING ASSUMPTIONS

1. Individuals

All human beings are created in God's image (*betzelem elohim*) and may enjoy what is commonly called civil rights and, in our tradition, obligations. Being a rabbi to each person requires compassion for each individual's situation. We are all unique human beings. Each of us needs to be taken seriously and listened to as an individual. While many of us hold similar views, no two of us hold the exact same view. There are substantial differences in opinions and perceptions.

So while we have met as a congregation on this issue, I have also met with many of you separately because I have regard for each of you as an individual and I wanted to hear from each of you. You are a diverse group -- in age, in income, in Jewish background, in personal Jewish observance . . . and so on. I've learned a lot from talking with each of you and listening. Each conversation was distinct and different, and I learned a lot in a way that I could not have if we had only held a group meeting.

2. History

Every era in Jewish history has had its defining issues. Early in our history, the questions were: How could Judaism continue to exist without the Temple for sacrifices? Should Jews go to war with Rome or study Torah? Was it permissible to commit prayers to writing? Should we convert to Catholicism and live, or die by the auto-da-fe (inquisition's fires)? In our own day we have struggled with the issues of bat mitzvah, of who is a Jew, of who is a rabbi, of the role of women.

Closing my eyes for a moment and listening attentively to the words of gays and lesbians, or merely reading stories in the press about how gays and lesbians are often mistreated, frequently makes me feel as if "we've been here before." How many times in our own history have we felt used, how often have we been the minority, and how often have we suffered verbal and physical abuse?

It's a Chinese curse but not a Jewish one to say, "May you live in interesting times." The tension between tradition and change makes us queasy. It seems to me that the defining issue for our generation is how we treat the "other," defined in any of a number of ways, only one of which concerns gays and lesbians. And this defining issue extends to our workplaces, our schools, our synagogues, and our families. We can't know the parameters while we are in the middle of it. We can't see that far, but we all feel the turmoil. And change and turmoil provoke anxiety and feelings of vulnerability -- for congregants and for rabbis, for you and for me.

3. The Moral Imperative

God and humanity share a common moral framework. Adam and Eve defy God's edict and gain moral knowledge. The daughters of Tzelawfchad (b'not tzelawfchad) (Num. 27:1-11) and Second Passover (pesach sheni) (Num. 9:1-14) are two Torah examples in which unfairly treated groups of people complain and the law is changed and, consequently, they are fairly treated. God simply leaves space for rules to change. Indeed, Halacha is the continual interaction between the Divine and the human, between minhag (custom) and din (law).

In the context of a discussion about whether homosexuals have a choice or not, Harold Schulweis writes:

How can I call such powerful involuntary feelings immoral, justifying punishment? Surely a rabbi should know the rulings in Bava Kamma 28b and Nedarim 27a which read: anoos rachmanah patrei, the Holy One exempts those who act under duress . . . [but] more than compassion is involved. Jewish wisdom and the moral character of Jewish law are at stake. The Torah is a law of truth and of peace . . . [rabbis] have used logic and moral sense to

free it [law] from slavish literalism. The Bible is rooted in history and history changes.

While Judith Plaskow would argue that the moral imperative to do justly applies equally regardless of the issue of choice, Schulweis uses limited choice as the basis for his invoking that same imperative.

4. Place

Song of Songs Rabba 2.16 tell us that "when the persecutions of Hadrian were over, our Sages gathered at Usha: R. Judah, and R. Nechemiah, and R. Meir, and R. Yose, and R. Simeon ben Yochai, and R. Eliezer the son of R. Yosi the Galilean, and R. Eliezer ben Yaakov. They sent a message to the elders of the Galilee saying, 'Let whoever has learned come and teach, and whoever has not learned, come and learn.' They gathered together, learned and taught, and did as the times required." The final phrase, "and did as the times required," is an argument about context. It implies that legislation is enacted in what is believed to be the best interests of the community.

Geographical context is a major determining factor. We live in Berkeley and in Northern California in the mid-1990s and so this Teshuvah is being written for this community, not for all of North America nor for eternity. Is this not what the entire literature of responsa has been about for generations? Sephardim (as a class) or Sura or Pumbedita or London or Warsaw -- each community had its responsa based to a large extent, on the conditions of the time and place. Not only was it okay to be different, but that is precisely what permitted the rich tapestry of the Jewish fabric to be woven. Localizing issues was common. See, for instance, the examples by R. Yochanan in which he limited the broad concept of idol worship (avodah zara) to the land of Israel. True, Berkeley frequently stands on the cutting edge of major social issues; yet I believe that this responsa incorporates the result of a true and honest wrestling with our tradition, with modernity, and with geography.

But we also live in the United States and in California -- neither of which has recognized homosexual marriage. It simply is not (yet?) a category in American state or federal law. What can be and are being permitted are new types of covenants such as domestic partner laws, which have been created locally, statewide, or nationally.

5. Jewish Egalitarianism

One of the defining descriptors and reasons for the existence of Netivot Shalom is that it is an egalitarian synagogue. Initially, this was limited to issues of gender. Men and women could participate equally in all aspects of the shul -- especially ritual. How fully do we take this mandate? Egalitarianism is a fundamental belief about individual dignity.

In an extraordinary case described by Rabbi Moshe Zemer, no less than the renowned Rabbi Moshe Isserles (Krakow, 1525-1572) relates the case of a controversy over a dowry, which delayed the wedding of an orphan bride that was to take place on a Friday. Friday was considered to be a day of good fortune for marriages, while it was forbidden to perform them on Shabbat. Shockingly, Isserles conducted this particular marriage on the Sabbath for two reasons: the fact that it was a time of emergency and the principle of human dignity. Zemer continues, "Isserles shows that these two principles provide the moral infrastructure for a Talmudic ruling (pesaq) dealing with many Halachic questions. His concern for the

unfortunate bride led him to officiate at her wedding in spite of Halachic prohibitions and the opposition of the elders of the Krakow Jewish community. His Halachic decision was a matter of conscience."

We are not a people of exclusion, but a religion of boundaries perhaps best expressed in the "distinctions" of havdalah. The last berachah recited just before the conclusion of the havdalah ceremony praises God for making the distinctions between holy and profane, between light and darkness, between Israel and the other nations, and between Shabbat and the weekdays.

6. Forbiddens (Issurim)

A word about the "forbiddens" (issurim) in the Torah, because this word came up frequently in our study. a) There is no one, myself included, who has not violated an issur in the Torah. b) We are not literal, Torah Jews. "The Torah says . . ." is rarely, if ever, invoked as a final, decisive, and unchallenged argument.

c) Are we on the road to making criteria for involvement; i.e., the rabbi cannot officiate at your _____ because you eat treif or don't keep Shabbat or went to work on Simhat Torah or don't give enough tzedakah for your income or had premarital sex or committed adultery or . . . ? Using the "clear issur" argument means that you have to be very, very pure yourself.

7. Homosexuality and Choice

A word of caution: the use of the word "homophobic" has become politicized, leading to its almost cultic acceptance as a "politically correct" statement of truth. There certainly is more than a kernel of truth in the term, yet blind fingerpointing leads to unwarranted accusations. A less accusatory understanding of the term might be in order.

In some extremely helpful comments, Rabbi Stacy Offner says:

The depth of our own heterosexism is evident as we realize there are many levels of acceptance of gay and lesbian people . . . Psychologist Dorothy Riddle has defined these four layers of approach to gays and lesbians . . . [as] repulsion, pity, tolerance and acceptance, [which] each in their own way, send negative messages to the gay person and reinforce the notion that heterosexuals are somehow endowed with the privilege of judging homosexuals. Dr. Riddle therefore offers four more stages, each of which send positive messages of . . . support . . . admiration . . . appreciation [and] . . . nurturance. Attitudes do seem to be changing. The Israel Supreme Court, for example, ruled last fall that EI Al must give free flights to an employee's homosexual partner, as it would to any employee's common-law spouse.

We must now discuss this matter of choice. To what extent do gays and lesbians "choose" their sexual preference? The entire matter of choice is ambiguous -- in both the genetic arena as well as the philosophic. Recent scientific papers in the May 1994 Scientific American debating the genetic basis for homosexuality are not all that convincing -- in either position. Much as some in our community would like to believe that sexual orientation is not a matter of choice, clearly the scientific community remains undecided.

Philosophically as well, there seems to be more than one position. Judith Plaskow, for example, possibly the most outspoken Jewish feminist, challenges even the liberal position. Writing in Tikkun she states: The liberal position . . . is that since homosexuality is not chosen, it cannot be immoral. This view is rooted in the conviction that God would not demand of human beings something they cannot possibly obey, and that therefore people with an innate and unchangeable predisposition to homosexuality cannot be blamed for not marrying, nor should they be expected to renounce the possibility of intimate relationships and loving sexual expression . . . but I would suggest that this stance is nonetheless seriously problematic for several reasons, and that it is not in the interest of lesbians, gays, or our allies to stake our claims for equal rights on these grounds.

Plaskow wishes to push these arguments even further by claiming that the liberal position attempts to normalize them [gays and lesbians] within the framework of a heterosexist system that will now be adjusted at its margins . . . [it is] the tradition's boundaries and categories that require justification . . . [what is needed] is the creation of a new Jewish sexual ethic that applies across differences in sexual orientation and that does not advocate heterosexual marriage as a universal norm.

While I do not hold to the view that would equate homosexual and heterosexual marriage, the matter of choice remains unclear.

8. Role Models and Sexual Ethics

We have gays and lesbians among our congregants and in our community. We have entrusted the education of our children to some of them. Gays and lesbians are our doctors, lawyers, accountants, gardeners. They take food to the sick and give tzedakah and wash bodies and send their children to our school and count in a minyan and read Torah and give drashot and lead the davening and pay membership dues. In these cases, we do not make distinctions on the basis of sexual ethics. Sexual ethics has to do with how we treat the other person, not the gender of the other person.

Furthermore, I am not ready to delve into people's sexual ethics. Do I know (or need to know or want to know) what people's sexual practices are? Who has committed adultery, or been an abuser or sexually abused, or has had premarital sex, or . . . ? I can't even imagine how this might play itself out in congregational life. Certainly I have spoken privately and confidentially with many of you, but that is as far as the issue has gone on the personal level. We've studied publicly about sex and the laws of family purity (tawharat hamishpacha) in an attempt to consider powerful issues in a Jewish context with Jewish responses.

9. Boundaries

Harold Schulweis's comments are helpful:

How do I as a Rabbi, as a Jew draw the boundaries? How specifically do I determine what my attitude should be toward the homosexual and the gay person? My values are shaped by the faith community to which I belong. That faith community is formed by the collective conscience of the people; and that conscience is reflected in the Bible, the spiritual constitution of Judaism . . . If only Judaism were that simple that I could resolve my position

by citing the appropriate text, and determine what my attitude should be on the basis of suitable quotations. Anyone with the slightest acquaintance with the history of Jewish law becomes aware that Judaism is a minimum of texts and a maximum of commentary . . . There are 70 faces to the Torah.

I do not decide this issue in vacuo, impervious to the Halachic history which has drawn and redrawn the circle so that it embraces the woman, the deaf-mute, the Christian and Muslim, the sotah [suspected adulteress], the divorcee, the proselyte. How shall the circle be drawn around the homosexual? Shall he or she be excommunicated, excluded from bona fide membership of the Jewish community? Shall we make of them outcasts, pariahs? The Jewish history of law encourages me to side with the spirit of ethical inclusivism. My decision is made on the basis of my knowledge of the men and women whose definition of self I have heard and respect. These are children of God and to treat them any less than that is a cruel blasphemy. My decision is based upon the collective moral sensibility of the Torah as it has impacted my soul. It is based on my understanding and experience of a God of love and compassion, whose unificatory attribute we extol as echad. God is the divine power that creates unity, whose special children, we are reminded in the Talmud, are the orphans, the widows, the poor, the stranger, the pariahs . . . We should love them as ourselves. For they are our sons and daughters, flesh, blood and soul of our family. They are ourselves. I believe the circumference of the circle we draw is guided by the hand of one loving God.

Issues are boundary-drawers. Each of us chooses our "line in the sand," often changing our allegiances to be more in accord with our current spiritual needs. Sometimes this means that people need to change congregational affiliations. We have all done this at one time or another in our lives. Sometimes it hurts to do so, but the spiritual life is a journey.

Jews have been journeyers since Avraham Avinu and Sarah Emaynu left Haran in search of God. Journeying in search of God is a noble Jewish tradition. No healthy institution can be all things to all people. Surely no synagogue can. People in Netivot Shalom have left other synagogues for different reasons in order to be here, and people will leave Netivot Shalom to journey elsewhere. It's the nature of human beings and of Jewish communities. If that's what happens here, let it be with understanding and not bitterness. Let it be done in a way that is for the sake of heaven (l'shem shamayim), in a way that sanctifies God's name. Life is dynamic, not static, and so are our relationships, no matter how much we long for permanence and stability.

10. God

What we are figuring out is just what it is that God wants of us. But this topic is extraordinarily confusing, as Neil Gillman notes in a provocative comment:

We have to insist that, despite our liberal theological assumptions, we do insist on a distinctive set of specifically Jewish obligations, not because that's what God wants us to do but because that's what we want to do, because that is our reading of God's will for us today. The gap that exists between what God wanted/wants us to have as the text of revelation and what we do indeed have is created by the substantive human contribution to the formulation of Torah. The traditionalist tends to eliminate such a human dimension; the liberal tends to acknowledge or even welcome it. But the issue is more complicated than

this simple dichotomy might suggest, because the Torah itself seems to provide a basis for subverting God's explicit authority over its contents, thus making God's verbal revelation theoretically irrelevant.

11. Language and Perceptions

According to the dictionary, marriage is "the social institution under which a man and a woman establish their decision to live as husband and wife by legal commitments, religious ceremonies, etc." In California, marriage is a civil ceremony where the officiant (in our case, the rabbi) acts as an officer of the state. A wedding is the act or formal ceremony of marriage. As of yet, no similar structure exists for homosexuals.

In Jewish law, marriage consists of two separate acts called kiddushin and nisuin respectively. Kiddushin (also called erusin) is an act performed by a man and a woman which leads to a change in their personal status but does not bring about all the legal consequences of this status change. These occur only after a second act called nisuin. Kiddushin is related to the term for sanctity, holiness, set-apartness and suggest that there are acts that carry with them an element of holiness and specialness, which mark them as different than ordinary events.

These terms, kiddushin, erusin, and nisuin, have been reserved by our tradition to describe a marriage between a man and a woman. We use different terms to describe other relationships, for example, friend, parent, etc. Even when the prophet Hoshea employs the marriage metaphor to describe the relationship between God and the people of Israel, everyone understands this metaphor as a description of emotions akin to those between husband and wife and yet one step removed.

One other term in our literature is covenant (brit). According to the Jewish tradition, "the covenant (brit) is the foundation for relationships. Its aim is to create mutually exclusive reciprocal relationships based on choice and accountability. The covenant relationship is an agreement-making process that creates a community that will be beneficial to the cosmic order. Examples of covenantal relationships include: between God and Israel, marriage, friendship, between political entities, business partnerships, parent-child relationships (especially after bar/bat mitzvah), and communal organizations." It is here that I agree with Judith Plaskow who writes, "the values on which we base our sexual ethics ought simply to be an extension of those we seek to realize in all relationships with others...the value of all persons as created in the image of God, the value of justice, and the value of integrity in sexual expression."

The traditional Jewish wedding ceremony legally functions to join two individuals under the rules of property, not to mark a covenant. This entire way of thinking about marriage needs to be reexamined. In a new book, for example, Rachel Adler proposes that all sanctified unions should be based on Talmudic laws of partnership, as opposed to property, and on traditional interpretations of covenant.

While many of us envision the creation of all sorts of new britot, heterosexual or homosexual, I do not accept the "slippery slope argument," which holds that once we permit one instance, we will permit all occasions. This argument ignores the inherent rightness or wrongness of any particular case.

I am assuming that the gay or lesbian couples we have in mind are entering a "covenantal" relationship similar to that between David and Jonathan in 1 Samuel 18 and between, some have argued, Naomi and Ruth. Yet this type of covenantal relation is not altogether new. John Boswell has shown quite convincingly that same-sex unions were sanctified from as early as pre-Greek times.

12. Blessings, Rabbis, and Sanctification

An important part of any ritual in Judaism is the saying of a blessing. Almost always, the traditional berachah formula is used. Sometimes an alternative form such as a mi sheberach is chanted. The first matter to consider is that of the "object" of the prayer. The Talmud not only acknowledges but offers every Jew the possibility of saying a blessing (berachah) on a whole variety of occasions including, for example, when one sees someone who is physically unusual. This blessing, "who makes creatures differently," is the same blessing offered by David Moss in his haggadah as a blessing for the wicked child (rasha) -- and is a blessing recited upon seeing the different forms of divinely created life (to use Tzvi Marx's words). Saying a blessing or asking for God's blessing seems perfectly acceptable in the case of all individuals, without regard to sexual orientation.

The second matter is that of the person "saying" the prayer, which brings us to the role of the rabbi. In Judaism, all of us are empowered to recite berachot, so what is the function of a rabbi? A rabbi is a teacher who, by virtue of having been ordained (smicha) and chosen by the community, performs the tasks of facilitating rituals, making legal decisions by interpreting our tradition, and asking God for divine blessings. For example, rabbis don't "marry" anyone anymore than rabbis "bar or bat mitzvah" someone. They assume administrative, educational, and mediative functions and may act as legal witnesses to an event. In Hebrew, we refer to the rabbi in the case of wedding as the one who arranges the marriage (mesadar kiddushin). It seems to me, therefore, that it is quite appropriate for any rabbi to ask for the blessings of God on two individuals who are joining together in a loyal, permanent, monogamous, loving, committed, Jewish relationship. Intoning the words of a mi sheberach does not necessarily give public sanctification to an act but rather asks for God's blessings on people.

CONCLUSION

1. Brit Rayut

Therefore, I propose the creation of a new category of relationship to be called a "covenant of love" (brit rayut). The term generally used for the union of gays and lesbians, "commitment," is inadequate to convey the complexity of this new brit. Same-sex unions are not something new (davar chadash). What is "new" is that the union to be sanctified stands in a new class of covenantal relationships -- a class that is not forbidden by the Torah and that is different from the relationship called "marriage." Based on the discussion above, a permanent, loyal, loving, committed, monogamous relationship between two Jews who are gay or lesbian may be sanctified and "arranged" by a rabbi. This ceremony is one of "covenanting," not "marriage," which is a term to be used exclusively for heterosexual unions. A well-defined ceremony of brit rayut uniting two gays or lesbians has to be created, as does a ritual for separation (should that become necessary). These rituals may

have some of the same characteristics of a marriage, yet they need to be distinct. Marriage should be a term reserved for heterosexual unions, which our Jewish tradition clearly prefers.

A note about perceptions -- ours and those of others. We as a congregation need to find a way to refer to this type of union in language different from that used for marriage. My argument posits that a homosexual union is something different. How we get this particular view, and the distinctions defined in this Teshuvah, into the consciousness of our congregation and the larger community is an issue we all must face. This is the challenge of education and change.

One of the most troubling perceptions of these past few months (held by many in and out of the congregation) is that last September, we as a congregation and I as a rabbi had blessed and sanctioned a homosexual marriage. I have often insisted that we did not, but rather that two individuals had a joint aliyah. How we appear to ourselves and to the outside is very much a concern of mine -- and yours. We must do everything we can so that the community has a correct understanding of our actions.

In creating these new rituals we add to the stability of the Jewish world, since the very goal of law is to promote stability of relationships. Sanctifying a homosexual relationship does precisely that, so that our arranging a brit rayut adds to the stability of our Jewish world rather than detracting from it.

2. The Three Questions and Three Responses

I. May same-sex couples have an aliyah together when a joint aliyah makes sense, for example, at a baby naming, the adoption of a child, or a bar or bat mitzvah? (Our policy has been to allow joint aliyot on certain occasions, giving them, for example, to parents or grandparents of a bar/bat mitzvah but not to uncles and aunts).

Yes. Sanhedrin 19b teaches that "whoever raises an orphan [i.e., nonbiological parents raising a child] in his home, Scripture ascribes it to him as though he had begotten him." In our case, the fact that the child is being brought up in a Jewish home means that both parents are raising him or her and should celebrate that fact together -- because it reflects the reality of child rearing. The only issue is, how is the child of such a union to be called? Since even in the case of adoption, the child may assume the names of both adoptive parents, here too the child should be called by the names of each of the parents, regardless of gender, inasmuch as both individuals are participating in raising the child.

II. May a gay or lesbian couple have an aliyah on the Shabbat preceding their commitment ceremony (now called a brit rayut)?

Yes, they may have an aliyah, but we need to find a word for this aliyah that is different from *aufruf* which is simply a Yiddish folk term. Even though that word simply means "call up," it has come to be used exclusively for an aliyah prior to a wedding. For the time being, we will use *olim latorah* (or *brit rayut*). It is appropriate also to recite a *mi sheberach* at that time since we are asking for God's blessings, a request we make at other events as well (bar or bat mitzvah, for example.) The folk custom of throwing candy or flowers is to be permitted for the same reason.

III. May commitment (brit rayut) ceremonies be performed in our congregation?

Yes, as a congregation we can hold a brit rayut ceremony. Shortly, I and others will begin working on creating these new rituals. We need to craft ceremonies (including one for separation) that are appropriate to the occasion. It is important that the community become conscious that these rituals are different from those used in a marriage. At the moment, I am not prepared to officiate at such a union until these conditions are met, although I would certainly attend as a guest and be prepared to recognize such ceremonies performed by other colleagues. Permanent unions of gays and lesbians need to be sanctified through Jewish tradition.

Struggle and change and healing take time and thought.

PART II

HALACHA IN/AND THE CONSERVATIVE MOVEMENT

A Brief Framework for an Understanding of Part I

INTRODUCTION

We now move from Part I, the responsum (or Teshuvah) of this three-part document, to a consideration of Halacha in a larger context as reflected in the Conservative movement, using Netivot Shalom as our focus. This is not intended as a thorough, comprehensive paper on Conservative Halacha, but rather one which should serve as guiding statement behind many of the decisions we, as a congregation, need to make. In our ongoing discussion, I shall use the uppercase Halacha to indicate the generic term, while employing the lower case halacha to designate a particular law or decision.

WHAT IS HALACHA?

Before beginning, it is important to clarify terms. I have chosen the definition in the Encyclopaedia Judaica because it is most accessible and reliable.

The word "halacha" (from the root halacha, "to go"), the legal side of Judaism (as distinct from aggadah, the name given to the non-legal material, particularly of the rabbinic literature), embraces personal, social, national, and international relationships, and all the other practices and observances of Judaism . . . Originally, the term halacha (pl. halachot) had the meaning of the particular law or decision in a given instance . . . but side by side with it there developed the use of Halacha as a generic term for the whole legal system of Judaism, embracing all the detailed laws and observances . . . The general assumption in the classical Jewish sources is that the Halacha in its entirety goes back to Moses, except for various later elaborations, extensions, applications, and innovations in accordance with new circumstances But the verdict of modern scholarship is that the Halacha has had a history and that it is possible to trace the stages in its development with a considerable degree of success.

In 1988, the Conservative movement, in a formal and generally accepted statement, explained that Conservative Jews accept the indispensability of Halacha "because it

[Halacha] is what the Jewish community understands God's will to be. Moreover, it is a concrete expression of our ongoing encounter with God. This divine element in Jewish law is understood in varying ways within the Conservative community, but, however it is understood, it is for many the primary rationale for obeying Halacha, the reason that undergirds all the rest . . . The sanctity and authority of Halacha attaches to the body of the law, not to each law separately, for throughout Jewish history Halacha has been subject to change."

Recently, Rabbi Brad Artson defined Halacha as a system of obligations that frames our actions and establishes a routine. This definition suggests that we hold the ideal of Halacha as the standard for our community even as we acknowledge many levels of observance among our members. This realistic view of Halacha captures well the current situation at Congregation Netivot Shalom and probably that of most Conservative congregations.

Halacha is organic and involves substantive and substantial change. The challenge in facing the issue of change requires us to deal first with the complex problem of authority, i.e., who is authorized to make change? It is commonly assumed that the Torah, as given to Moses, contains God-given rules of behavior which form the basis for Halacha. Regardless of one's view on authorship of the Torah, clearly the succession to authority by Joshua, the prophets, the elders, the members of the Great Assembly, the first rabbis, down to the rabbis of today means to teach us that the rabbis of today, by virtue of handed-down as well as acquired authority, have not only the right but the obligation to interpret the words of the Torah. Taking this farther, Solomon Schechter, the founder of Conservative Judaism, writes, "The centre of authority is actually removed from the Bible and placed in some living body, [the collective conscience of Catholic Israel] which, by reason of its being in touch with the ideal aspirations and the religious needs of the age, is best able to determine the nature of the secondary meaning." In other words, Torah is the combination of God and people (am). We, as part of the continuing flow of Jewish tradition and people, have authority to make decisions. We are "Catholic Israel," to use Schechter's phrase, part of a consensus of Jews who are connected to a process, who are knowledgeable and committed to a process of study and are willing to live by the outcomes of that very process. Empowerment, according to Neil Gillman, flows from the community to its authority -- not vice versa.

The role of the rabbi as religious authority and of the Conservative movement's Committee on Jewish Law and Standards, which is discussed later, adds yet other layers of complexity to this issue of exactly how Halacha works in a Conservative congregation.

DOES HALACHA CHANGE?

Most certainly. The cases are legion both within the Torah itself and later on. In the Torah, for example, the daughters of Tzelawfchad, a man who died leaving no male heirs, petition and receive inheritance rights previously denied them (Deut. 27:1); individuals who could not celebrate Pesach on the fifteenth of Nisan are now able to do so a month later because of the centrality and importance of Pesach in our tradition (Num. 9:1); and debts that were to be remitted in the Sabbatical year were allowed not to be remitted in order to protect the economy (prozbul, see Deut. 15:2). The Rabbis went so far as to claim, in the case of the rebellious son who should be stoned (ben sorar umoreh, Deut. 21:15-21), "there hasn't

been one, and such was never created" (lo haya velo nivra). Although the case is still kept on the books, it is simply understood as not applying to actual real-life children.

No matter how absolute scripture seems to be, a subject is never closed. In fact, there is a requirement to continue interpreting while still holding to the goals of the Torah. In the words of Judith Hauptman, associate professor of Talmud at the Jewish Theological Seminary, Should it come to pass that the policies designed to bring about justice do exactly the opposite, Torah and Talmud mandate that other policies replace the failed ones . . . For some of their enactments they gave a purely social -- as opposed to religious -- rationale, to repair the social and economic order. Without losing sight of their goals -- by keeping those very goals before their eyes -- they found alternative means of accomplishing them. The wide variety of legislative changes found in the Talmud and the subsequent codes of Jewish law indicates that the rabbis saw the system's policies as time-specific and limited, as only one possible route among many that would establish a just society, and, obviously, as mutable and amendable . . . means can be altered so long as goals are kept constant . . . Were it not for this self-corrective mechanism, Judaism would be a society that still sanctioned slavery and the subordination of women to men.

Change is simply not a departure from tradition, it is part of it -- from the time of the Torah itself. Furthermore, not only does law change, God changes in response to the entreaties of Moses and Abraham, to mention but two examples. We humans, are, after all, created in God's image and in order to strive to model ourselves on God's actions. If God can be persuaded that a change is necessary, so can we.

In a recent article by Clive Haberman in the New York Times, there is a rather remarkable discussion of how modern times and Jewish law can be reconciled. Tsomet, a technology institute in Alon Shevut in Israel, devises ways to reconcile Halachic prohibitions with the requirements of a modern state, which must, for example, maintain basic, technology-driven services. "When there are such needs, Halacha will find a way," said Rabbi Ezra Rosenfeld, the director. "Even the Sabbath must be a day when state services run efficiently." And Rabbi Halperin argues that all laws contain loopholes -- God's included. "God made no mistakes," he said. "If He left a loophole, He put it there to be used." Change and reinterpretation are part of our tradition, though it is sometimes difficult to distinguish between the two. Is the use of electricity, no longer considered by some Conservative rabbis to be fire, which was prohibited on Shabbat, a case of change or of reinterpretation? And what about the Teshuvah about gays and lesbians?

Often, directives (takanot) enjoying the force of law were enacted by Halachic scholars or other competent bodies, the Sanhedrin, for example. In the Babylonia Talmud, Yevamot 89b-90b, R. Hisda holds that a court is even entitled to enact a takana which entails the abrogation of a Torah prohibition. Although Rava does express a contrary opinion, clearly there is precedent for changing a law in this manner.

Changes in Jewish law are common. That, indeed, is what makes Halacha dynamic, not static. Louis Jacobs, writing in the Encyclopedia Judaica, comments that the view that submission to the Halacha is all that is demanded of the Jew is a travesty of traditional Judaism. The major practical differences between Orthodox and Reform Judaism depends on the different attitudes of these groups to the Halacha. Orthodoxy considers the Halacha, in its traditional form, to be absolutely binding, whereas Reform, while prepared to

be guided by the legal decisions of the past in some areas, rejects the absolute binding force of the traditional Halacha. Conservative Judaism adopts a midway position, treating the traditional Halacha as binding but feeling freer to interpret it and attempting to preserve the dynamic principle of legal development which, it claims, is typical of the talmudic period.

HOW ARE CONSERVATIVE DECISIONS MADE?

According to Seymour Siegel, z"l, late professor of Theology at the Jewish Theological Seminary, there are at least four categories under which new laws (or changes to older ones) are necessary. These categories for change occur in areas of:

1. Ethical issues (as in the case of the agunah or mamzer)
2. Technological advances (such as transplants)
3. Social change (in the area of women's rights or in cases involving marriage to a kohen or gerushah)
4. Needs of the times (in the case of driving to shul on Shabbat if one cannot walk).

Rabbi David Golinkin, chair of the Rabbinical Assembly's Beit Din in Israel, furthers our understanding of how Conservative law works when he defines eight characteristics or guidelines by which to make change. They are:

1. Bringing all relevant talmudic evidence to bear upon a particular case
2. Giving particular weight to earlier authorities rather than later ones (Torah sources hold more weight than do Rabbinic authorities, although the force of custom [minhag] is not to be underestimated)
3. Subjecting all sources and standards to the "critical-historical" method
4. Treating all Halachic opinions seriously and rejecting them only after serious investigation (and not holding to Mordecai Kaplan's oft-quoted blanket statement that Halacha has a vote, not a veto)
5. Eliciting testimony from experts in all relevant disciplines, according a voice to scientific and academic literature
6. Attempting to capture the spirit of Halacha
7. Using direct rules of logic
8. Paying attention to the intellectual and social outlook the law attempts to embody.

Thus, while Golinkin speaks about the process of change, Siegel's four categories of change reflect the product of those changes. Still, in the Conservative movement, law is changed or abrogated or reinterpreted primarily on a case-by-case basis. In our example, Golinkin's guidelines were clearly utilized. For example, under the rules of argument (no. 7), to those who would argue that performing a brit rayut ceremony marks the beginning of a slippery slope that could lead, for example, to sanctifying intermarriages, I can only argue for the rightness of this case alone. To accede to the slippery slope argument is to deny the validity of any specific case before us. Similarly, by paying attention to the intellectual and social outlook of our society (no. 8), I find that while we are certainly affected by place and time and a new American individualism which threatens established norms, these are merely contributing factors to a larger, more holistic view of this or any issue.

Yet not everything can be changed. Harold Shulweis suggests that while change is both a traditional and a necessary part of Halacha, we, like our ancestors, are not committed to

change for its own sake. Hence, the thrust of the Jewish tradition and the Conservative community is to maintain the law and practices of the past as much as possible, and the burden of proof is on the one who wants to alter them . . . Each suggestion cannot be treated mechanically but must rather be judged in its own terms, a process which requires thorough knowledge of both Halacha and the contemporary scene as well as carefully honed skills of judgment.

To achieve this delicate balance where tradition and change intersect, the Rabbinical Assembly of the Conservative movement created a body, the Committee on Jewish Law and Standards (CJLS), to deal with matters of law. It works as follows:

The CJLS is the central body in the Conservative Movement for Halachic discussion and decision making. Its authority derives from the assent of the members of the Rabbinical Assembly . . . six members of the CJLS [are] required to define an authoritative position . . . [these decisions] are not binding on Rabbinical Assembly members in a coercive sense, but rather only in the sense that we are bound by our covenant to one another to give extraordinary weight to CJLS responsa in reaching our own legal decisions. Should an RA member choose, upon study and consideration, not to follow any CJLS position on a given matter, he or she would thus be unable to claim any authority or backing for that position from the CJLS, a "sanction" which in some circumstances could be substantial, in others not . . . CJLS may, as legislative initiator, propose to the Convention a Standard of Rabbinic Practice, which would coercively apply to all RA members. The plenum of the Convention actually enacts the Standard. Thus it could be said fairly that [while] the Halachic authority in our Movement is shared, it ultimately resides with the [teacher/rabbi of the locality] (mara d'atra) . . . our Movement's structure allows for religious and Halachic creativity locally, where the need for it first arises, and where its authenticity can best be evaluated. This is a precious resource indeed, and it should not be lightly dismissed for the sake of an exclusive "uniformity" which will disappoint tomorrow those whom it satisfies today.

Each congregation elects a rabbi who functions as the final authority for that congregation. This role of mara d'atra means that one rabbi alone in a synagogue holds the power of the "final word." One individual is selected (hired?) to make that final case decision. This is at once an exhilarating and terrifying responsibility which is not taken lightly by any of us, especially since we know that any decision may have considerable impact on people's lives.

Another major principle of rabbinic decision making is that a rabbi does not make a decision in a situation where the majority of the congregation cannot abide by it (ayn gozrin gezayrah shehatzibbur lo y'cholah la'amod bah). So, too, no restriction is imposed that would cause substantial loss or excessive trouble. In our particular case, I must argue that not only is there no loss, but gays, lesbians, and all of Jewry does so as well. It is a case of win-win: for the gays and lesbians, the decision to conduct brit rayut ceremonies is to sanctify these permanent relationships; for the rest of the Jewish community, a part of the Jewish community which has heretofore been excluded now has achieved equality.

OUR CONGREGATION: NETIVOT SHALOM

We are a Halachic Conservative congregation. Sometimes we are guilty of confusing one

halacha with Halacha. True, not all of our congregants understand Halacha the way I do, but as Rabbi Brad Artson suggests, "for Conservative congregants, Halacha provides a context but not an agenda, an aspiration but not an obligation. Halacha provides the direction to which most Conservative Jews aspire, surfacing at communal events and life-cycle celebrations and offering the predominant model of Jewish piety."

As my bubby would say, "schveir zu zein a yid" -- "it's difficult to be a Jew." How much the more so, to be a Conservative Jew. It is hard to be in the middle; it is a struggle for logical consistency knowing that it is not always possible; it is a desire to fulfill God's word and a life of mitzvah as best we can; it is to stand accused often of simply making life easier rather than making Judaism alive in the context of modernity; it is to proclaim boldly that change is not a departure from tradition; and it is to recognize that within Conservative Judaism there is a range of practices and opinions. Such are the complexities of a centrist movement.

If Halacha is the continual interaction between the Divine and the human, between custom (minhag) and law (din), we at Netivot Shalom need to consider the current question and others yet to come in the context of what it means to be a Conservative Jew. Part III offers my reflections on the process we have just been through.

PART III

THE PROCESS

On Rosh Hashanah we struggled with Abraham on his journey as father of our religion. Over and over again he was tested -- ten times, so counts our tradition. Ten times. His was a personal, an individual struggle on a journey with his inner life and with God.

Tonight, I want to take a few moments to explore where we as a congregation, communally and together, have been during the past year or so, and in what directions our journey might go.

I know that not everyone here this evening was part of the events I want to talk about -- but this is now our story, part of our history. As a congregation, we have struggled with many issues -- issues which are appropriate at our stage of development: what it means to grow up; what it means to be a Conservative congregation; or, for that matter, what it means to be a congregation; what is rabbinic authority in a Conservative synagogue. We've grown to a community of over 300 households with all the warts, pleasures, dreams, and fantasies of an adolescent, and we are no longer that group who, as the myth goes, sat around the kitchen table dreaming of a day in the future -- this is the day.

For those of you new to our congregation, the year 5755 was a year in which we explored our positions (legal and otherwise) towards gays and lesbians in our shul. This topic took up a good deal of time and psychic energy but, to keep it in perspective, was only one issue among many other issues, programs, and life-cycle events which continue to make this congregation so vital and alive.

I want to talk this evening about the process that we engaged in -- not about the pesaq (the decision) -- nor about our own feelings about homosexuality and our Jewishness, but rather

about the process. I think it was quite remarkable and worth reviewing in the reflective and penitent spirit of Yom Kippur.

Two events form the background to the year:

1. In the spring of 1994, I attended a Rabbinical Assembly convention, part of which was devoted to discussing "Jewish Norms for Sexual Behavior: A Responsum Embodying a Proposal: A Pastoral Letter on Intimate Relations." When we returned home, the three of us who are the Conservative rabbis of the East Bay decided to study this draft document with our respective congregations. I chose to conduct five sessions in the fall of 1994.
2. Late in the summer of 1994, I was approached by a couple, two women, who asked me if they could have an "aufruf" the Shabbat preceding the day on which they were to be joined together. It is the task of every rabbi to make decisions like this. Frequently, these are private (as in the case of medical decisions); often they involve a larger segment of family; sometimes they involve the entire community. Our Ritual Committee became the locus for debate and discussion. I felt that a decision about the aliyah had to be made immediately although the whole congregation ultimately needed to be part of the deliberations on the larger issues. The two woman did have an aliyah together and the congregation began its year-long study.

Five sessions were held: In the first we looked at how law works in the Conservative movement; then we studied the primary Conservative articles and teshuvot (which are rabbinic responses to questions posed to rabbis or to courts); later we listened to a Reform and an Orthodox rabbi; and finally we held an open forum during which everyone in the congregation was invited to speak for a limited amount of time or to submit written statements. A reader containing many primary source articles was also compiled. In June, 1995, I wrote a Teshuvah, a response to the ritual questions that were posed, and mailed it to our membership. During July there was a open discussion with members of the congregation. Part II of the Teshuvah consists of my views about law and the Conservative movement, and this evening's drash is Part III -- some reflections on our process.

WHAT DID WE/YOU AND I LEARN?

I'd like to begin with the words of one congregant who said: "I believe the process of learning, reading, and discussing the issues of homosexuality was invaluable and remarkable in the breadth of material we studied. Although it was often painful . . . for most of us it was an educational, sensitizing, and a deeply moving experience in our growth as Jews." This reflected the sentiments of most of the congregation.

FIVE LEARNINGS

1. About Law and Halacha

Jewish law is not theoretical -- it is case law. For the most part, the Talmud, when it records even the most bizarre of cases (a maaseh shehaya, an incident in the real world, describes facts -- not fantasy. So when issues of law are raised, it is because there are real people, asking for real decisions about real life issues. Such was our case.

What have we learned? Not only facts, but we've learned about us, about you, about me, about the Conservative movement, and about Halacha. We've learned that despite the fact that many said repeatedly that they were "non-Halachic Jews," we all take Halacha seriously! And we learned from a real case just how law works in the Conservative movement.

We've learned not only how complicated the issues are, but also how complicated the congregation is -- and that things are never simple or black and white. We are an Halachic Conservative congregation. As Rabbi Brad Artson suggests, "for Conservative congregants, Halacha provides a context but not an agenda, an aspiration but not an obligation. Halacha provides the direction to which most Conservative Jews aspire, surfacing at communal events and life-cycle celebrations and offering the predominant model of Jewish piety."

We've learned that struggle with any issue will, a priori, find us in a difficult, middle ground.

2. About Me

This was the year in which I tried to understand and more clearly define my role in this community. Some of you wanted me to take a position immediately -- to avoid debate; others wanted to know "what the rabbi thought" before voicing their opinion. Believe me, if I have a strong position on an issue, I promise you'll know it up front. But if I have not come to a conclusion, I, too, need to study.

The role of rabbi as mara d'atra (teacher of this community) was a major question. The bottom line (final decision) in any Conservative congregation, and in Orthodox ones as well, lies in the hands of the rabbi because he or she is invested by the congregation with the title of mara d'atra, literally, moreh hamakom, teacher of this place. For me and for you, this is a new role. So over the year I've thought about: What does it mean to be the final arbiter in matters of Jewish law? What are the limits of individual autonomy in a Conservative shul? At what point does there have to be a final decision? What are the legal obligations of a Conservative rabbi? When does the process of learning stop -- and decision making begin? How does one balance leadership and authority?

But you, too, have struggled with these questions. I often felt that you were unsure of my role and your authority. What does it mean to have someone who has the final word -- and what happens when that final word doesn't quite jive with your own? When you asked me to become rabbi of this congregation, I outlined a different type of rabbinic leadership than the one you may have been used to. It is one in which power is shared -- but where the rabbi still is mara d'atra. I said at that time: We will have differences, but if we can learn to argue l'shem shamayim -- for the sake of heaven -- we will do well. And I said that the shul, our shul will change. And that it has.

For me this road has been rocky. The views and opinions I held just one year ago are not the same as the ones I wrote about in June. It is not simply a case of "what does the Talmud say?" or "what does Judaism say about such-and-such?" These are minimalist and often fundamentalist formulations. We, you and I, are too complex to settle for one-liners, and we, you and I, need to learn together.

3. About Us, About Our Congregation

Jacob Neusner, one of the greatest Jewish thinkers and most prolific authors of this century, writes that "the components of fellowship are individuals coming together out of radical self-involvement and isolation from one another to pursue a purpose that transcends their own individual lives." That need to transcend our rampant American individualism stands out among the reasons this congregation was created. Jews are finding it increasingly difficult to make real and lasting connections with other Jews.

How remarkable, then, that close to three-quarters of you were actively engaged in this process of study and fellowship in one way or another during this past year. I firmly believe that this involvement was not only motivated by a profound concern for gays and lesbians, but out of a deeper sense of belonging and a desire to create a Conservative community here in Berkeley. Whether it was joining together to comfort and console when members died, or cooking meals for families with new babies, or visiting the sick, or talking with people who are considering or studying for conversion, or helping out with children's programs or the school, or just calling to say "hi," over and over again, many of you showed that the making of a community lies in the small, definitive acts of gemilut chesed, of how we treat one another.

Neusner makes another distinction when he talks about the difference between fellowship and friendship. "Friendship rests on abiding affection, it is entirely an emotional relationship of two people, totally focused on those two people. Fellowship on the other hand, may very well be achieved without friendship at all, for it is predicated on a common goal or ideal shared among two or more people, drawing them together despite, not because of their particularities and uniqueness." "I realized that we were a congregation," said one of you, "when I knew there were people I really disliked -- but if they needed a shiva minyan or were sick, I'd be there -- and I knew that they would be there if I needed them."

We have learned that a true community is inclusive and divergent. That is certainly true here at Netivot Shalom! A true community can be found not in the end result, but in the very process itself. Our Youth Educator, Debbie Findling, showed me a section of Robert Bellah and Ann Swidler's book, *Habits of the Heart*, where, in speaking about process, they distinguish between evolution and cultivation. Evolution occurs without reflection; it is a natural progression. Cultivation requires communal reflection. Tradition must be affirmed, embraced, and cultivated. A community must be conscious of traditions, reflect on them, discourse with others, and choose the right path for the community as a whole. We are certainly doing just that.

4. About How We Argue and Communicate

Thank God, we live in Berkeley -- so there is lots of speaking from the heart. Passion was always present. I really don't believe that anyone consciously wanted to cause pain to someone else, but it happened. I suppose that's why we confess our sins so frequently, and why we say, "beyodin uvelo yodin" -- knowingly and unknowingly."

The Ethics of the Fathers tells us that "kawl machloket shehe l'shaym shamayim sofa lehitkayaim, vesheayno l'shem shamayim, ayn sofa lihikayaim," that any argument carried

on for the sake of Heaven will live forever, while an argument not carried on for the sake of Heaven will disappear. Argument was always part of a healthy society. There will never be one truth, much as there will never be the "knockout" argument that science is supposed to bring, as David Hartman remarked recently in a public lecture.

So I urge us all, when we argue, and we will, to examine motives. The best way I know to do so is to stand in the other person's place. "Al tadin et chavercha ad shetaghiah lemekomo." Do not judge another until you stand in his or her place. That is a lesson I learned in group-work class. Interestingly, I also learned that lesson in Talmud class -- because the student always had to be able to state the opponent's arguments before offering his or her own opinion. Good thinking, according to David Hartman, is "to be able to attribute the best reasons to the person you disagree with. Today," he continues, "in Israel and also in the States, there is no more talking to each other. The Jewish way is to comprehend the argument and be able to explain both sides. We are losing this. We are in danger of self-destruction, because we have stopped talking with each other. The key question is not 'what do you think?' but 'are you willing to talk?' The pitfall of the past was that Federation was a consensus builder; this papered over the differences. The task of the Federation is to keep the conversation going. The Jewish community will not die from conversation, but from boredom."

And always, as Art Braufman, our president, has constantly reminded us, we need to maintain our sense of humor; otherwise we lapse into a war mentality -- and then *sinat chinam*, senseless hatred which had the power to destroy the Beit Hamikdash, the Temple, rules us rather than vice versa.

5. About The Future

Since struggling, wrestling, and journeys are never linear and smooth (just look at the forty years of wandering in the desert), I believe that our tradition provides us with a powerful mechanism to bring us back to a homeostatic state (which is obviously never permanent in the first place). We are not bound and gagged by our history. We have the possibility and imperative to do *teshuvah* -- to say "I'm sorry" and to forgive. In that spirit, I choose to begin this new year by saying, "If there is anyone here whom I have wronged; if there is anyone here whose pain I did not notice, whose sorrow I did not respond to, whose quest I did not share, or whose need I was not aware of, please forgive me." I hope that each of you can say similar words to other members of our community, in writing or in person.

On Rosh Hashanah I had a conversation with Rena Dorph, who said that it seemed odd that the same word, *teshuvah*, the word used for repentance or returning, was also the word used for a response to a question (as in the *Teshuvah* I authored). Maybe this linguistic anomaly has to do with the fact that in making any difficult decision, someone always feels slighted -- and the only way to restore health and wholeness is by asking forgiveness. She's right. *Hava'at shalom*, the bringing of wholeness and health to individuals and among humans, is a primary Jewish value. In a debate "for the sake of heaven," there are no winners or losers. The Talmud reasons: "Great is *teshuvah* for it brings healing to the world, and an individual who does *teshuvah* is forgiven and the whole world is forgiven with them." Such is the power each of us holds in our hands this evening.

We are a remarkable *shul* -- not many congregations could or would go through this

process. Most Conservative congregations in this country have not -- preferring to avoid public study of hot topics. I truly believe that for us this was an opportunity -- an opportunity to learn how to argue issues, an opportunity to develop our respective roles.

We have defined our process. We, collectively, have come to understand how Halacha works, and we will continue to examine our lives in the context of Halacha as a way of framing our actions and establishing routines.

I am thrilled that we have come this far -- now, however, comes the real test. Was it simply the issue of homosexuality that stirred our emotions and thoughts -- or was the process truly about how we live our lives as Jews in this complex world of ours? In much plainer language, did we exhaust ourselves on this one issue, or do we have the stamina to pursue matters of social justice, of hunger, of how and what we eat, of kashrut, of Shabbat, of our own learning, of our relationship to others, and certainly issues of our neshamah, our spiritual life? We need to get on with the very real tasks of continuing to build our community and discovering just what it means to be a Jew living in America during the last few years of this century.

We have learned some lessons about just what it means to be part of a community -- about disagreeing with each other and continuing to struggle with issues. In the words of one of the greatest Orthodox rabbis of this century, Rabbi Joseph Soloveitchik, the past doesn't determine the future; the future determines the past. What we do tomorrow transforms what we did before.

As we enter into our seventh year as a shul, it seems appropriate to take stock and renew ourselves to the ongoing, perpetual, exhausting task of creating a true caring community, with the full realization that this is a journey of ambiguity fraught with blemish but correctable with teshuvah, with returning and moving forward. This is our challenge.

May it come speedily and in our day.