

# Halakhic Process

## Conservative Judaism

### 1. Emet Ve'Emunah: Statement of Principles of Conservative Judaism 1988, p. 19-23

<http://www.icsresources.org/content/primarysourcesdocs/ConservativeJudaismPrinciples.pdf>

#### **The Indispensability of Halakhah**

Halakhah consists of the norms taught by the Jewish tradition, how one is to live as a Jew. Most Jewish norms are embodied in the laws of the Bible and their rabbinic interpretation and expansion over the centuries, but some take the form of customs, and others are derived from the ethical ideals which inform the laws and customs and extend beyond them (lifnim m'shurat hadin). **Since each age requires new interpretations and applications of the received norms, Halakhah is an ongoing process.** It is thus both an ancient tradition, rooted in the experience and texts of our ancestors, and a contemporary way of life, giving value, shape, and direction to our lives.

For many Conservative Jews, Halakhah is indispensable first and foremost because **it 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 of 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 Halakhah, the reason that undergirds all the rest.

Other considerations, however, complement the theological basis for Halakhah. It is a means of identifying and preserving the Jewish people and its traditions. It trains and sharpens the moral conscience of individuals and society by presenting cases for consideration and teaching Jews how to think about them morally. It establishes minimal standards of behavior and gives ideals concrete expression. In addition to shaping the content of moral standards in these ways, Halakhah helps to motivate obedience to them — not, as in generations past, through legal enforcement (except, in some measure, in Israel) — but by establishing a set of goals which has both divine and social authority. Halakhah thus establishes a structure of rules to govern human interactions.

Halakhah shapes our relationship to God. It affords us symbols by which we together can learn and express piety, including the linguistic symbols of prayer, specific forms of clothing, and the study of sacred texts. The religious base of Halakhah makes it a far more comprehensive guide for life than any secular system of rules. Ultimately, as the prayerbook reminds us twice each day, Halakhah is God's gift to us, an expression of God's love. Similarly, our adherence to Halakhah is an act of love for God on our part. It is, in fact, the primary way in which God and the Jewish people exhibit their love for each other.

For all these reasons, Halakhah in its developing form is an indispensable element of a traditional Judaism which is vital and modern. Halakhah is not the entirety of our Jewish identity; Judaism includes the ethical and theological reflections embodied in its lore (aggadah), a history, a commitment to a specific land and language, art, music, literature, and more. Judaism is indeed a civilization in the fullest sense of the term. But Halakhah is fundamental to that civilization.

## **Tradition and Development in Halakhah**

The sanctity and authority of Halakhah attaches to the body of the law, not to each law separately, for throughout Jewish history Halakhah has been subject to change. Reverence for the tradition and concern for its continuity prevented rash revision of the law, but Jewish practice was modified from time to time. Most often, new interpretation or application of existing precedents produced the needed development; but sometimes new ordinances were necessary. Sometimes, as in the education of girls and the creation of the Simhat Torah festival, the changes occurred first in the conduct of the rabbis or the people and only then were confirmed in law.

The rabbis of the Mishnah, the Talmud, and the Midrash recognized that changes had occurred and that they themselves were instituting them. They took pains to justify the legitimacy of rabbis in each generation applying the law in new ways to meet the demands of the time. They pointed out that the Torah itself requires such judicial activity, a mandate which they interpreted broadly to include, at times, even outright revisions of the law. Each individual cannot be empowered to make changes in the law, for that would undermine its authority and coherence; only the rabbinic leaders of the community, because of their knowledge of the content, aims, and methods of Halakhah, are authorized by Jewish tradition to make the necessary changes, although they must keep the customs and needs of the community in mind as they deliberate.

**We in the Conservative community are committed to carrying on the rabbinic tradition of preserving and enhancing Halakhah by making appropriate changes in it through rabbinic decision.** This flows from our conviction that Halakhah is indispensable for each age. As in the past, the nature and number of adjustments of the law will vary with the degree of change in the environment in which Jews live. The rapid technological and social change of our time, as well as new ethical insights and goals, have required new interpretations and applications of Halakhah to keep it vital for our lives; more adjustments will undoubtedly be necessary in the future. These include additions to the received tradition to deal with new circumstances and, in some cases, modifications of the corpus of Halakhah.

While change is both a traditional and a necessary part of Halakhah, 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.** Halakhah has responded and must continue to respond to changing conditions, sometimes through alteration of the law and sometimes by standing firm against passing fads and skewed values. Moreover, the necessity for change does not justify any particular proposal for revision. Each suggestion cannot be treated mechanically but must rather be judged in its own terms, a process which requires thorough knowledge of both Halakhah and the contemporary scene as well as carefully honed skills of judgment.

Following the example of our rabbinic predecessors over the ages, however, we consider instituting changes for a variety of reasons. **Occasionally the integrity of the law must be maintained by adjusting it to conform to contemporary practice among observant Jews. Every legal system from time to time must adjust what is on the books to be in line with actual practice if the law is to be taken seriously as a guide to conduct.** New technological, social, economic, or political realities sometimes require legal action. Some changes in law are designed to improve the material conditions of the Jewish people or society at large. The goal of others is to foster better relations among Jews or between Jews and the larger community. In some cases changes are necessary to prevent or remove injustice, while in others they constitute a positive program

to enhance the quality of Jewish life by elevating its moral standards or deepening its piety. We affirm that the halakhic process has striven to embody the highest moral principles. Where changing conditions produce what seem to be immoral consequences and human anguish, varying approaches exist within our community to rectify the situation. Where it is deemed possible and desirable to solve the problem through the existing halakhic norms, we prefer to use them. If not, some within the Conservative community are prepared to amend the existing law by means of a formal procedure of legislation (*takkanah*). Some are willing to make a change only when they find it justified by sources in the halakhic literature. All of us, however, are committed to the indispensability of Halakhah for authentic Jewish living. Our dedication to Halakhah flows from our deep awareness of the divine element and the positive values inherent in it. Every effort is made to conserve and enhance it. When changes are necessary, they are made with the express goal of insuring that Halakhah remains an effective, viable, and moral guide for our lives.

### **Authority for Making Decisions in Halakhah**

The Conservative method for arriving at halakhic decisions reflects our interest in pluralism and also exhibits the trait characteristic of Conservative Judaism, the melding of the traditional with the modern. The rich tradition which we possess depends upon the scholarship, integrity, and piety of our leadership and laity. For religious guidance, the Conservative movement looks to the scholars of the Jewish Theological Seminary of America and other institutions of higher learning. The United Synagogue of America, the Women's League for Conservative Judaism, and the Federation of Jewish Men's Clubs represent the human resources of laypeople of our community.

Authority for religious practice in each congregation resides in its rabbi (its *mara d'atra*). It derives from the rabbi's training in the Jewish tradition attested by his or her ordination as a rabbi, and by the fact the congregation has chosen that rabbi to be its religious guide. In making decisions, rabbis may consult the Committee on Jewish Law and Standards, consisting of representatives of the Rabbinical Assembly, the Jewish Theological Seminary of America, and the United Synagogue of America. The Committee on Jewish Law and Standards issues rulings shaping the practice of the Conservative community. Parameters set by that Committee and at Rabbinical Assembly conventions govern all of the rabbis of the Rabbinical Assembly, but within those bounds there are variations of practice recognized as both legitimate and, in many cases, contributory to the richness of Jewish life. In this way the Conservative community preserves the traditional interactions between individual rabbis in their communities and the larger, central authority of the movement in making decisions in Jewish law. At the same time, Conservative Judaism responds to the needs of individual Jews and congregations. This assures us a clear sense of identity together with a vibrant, healthy pluralism.

## **II. Excerpts from Conservative Responsa**

### **2. Rabbi Paul Plotkin – On Mixing Fish and Meat 1998 Approved 19-0-0**

[http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/plotkin\\_mixing.pdf](http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/plotkin_mixing.pdf)

Is it permissible to eat fish and meat on the same dish?

...

Issues of *sakkanah* [=danger] are rabbinic and are derived from the then understood science, and medicine, and it is not something to be trifled with. Indeed, in Hullin 10a, we read *hamira sakanta*

*me'issura*, "danger to one's health is more serious than an actual form of prohibition." Here we are warned by Isserles, Yoreh De'ah 116:5, that we are to be more concerned with a *safek* [=doubt] of *sakkanah* than we are with a *safek* of actual *issur* [=prohibition]. Nevertheless, I believe that the application of the principle of *sakkanah* to a specific case could always be emended as either the physical reality or our scientific understanding changed to give us more accurate information. This can be seen in the very same chapter of Shulhan Arukh, Yoreh De'ah 116:1 where it says that, "exposed beverages were forbidden by the rabbis because they feared that snakes would have drunk from them, and left behind venom." And there it goes on to say, "but now when snakes are not found amongst us, it is permitted." This is a clear indication that prohibitions based on *sakkanah* can be lifted when the danger is no longer present.

Footnote 2: This argument is further strengthened by the position of the Magen Avraham. The Magen Avraham on Orach Hayyim 172:2 – dealing with a ruling that one is required to wash one's hands between meat and fish because it is harmful to *davar acheir* [=another thing] – says that "perhaps in this time there is no *sakkanah* of any consequence, for we see a number of things mentioned in the Gemara that are *sakkanah* too – bad moods and other things – but today are not harmful because nature has changed, and also we go according to the nature of a particular country."

...

### Conclusion

The prohibition of fish and meat is based on a specific *sakkanah*. Historically when the *sakkanah* ceased to exist, the rabbis had the power to end the prohibition. Today we know that there is no *sakkanah* affecting *tzara'at* by eating fish and meat together. Therefore, we would permit not only putting fish and meat on the same plate, but would allow them to be consumed together.

### 3. Rabbi Arnold M. Goodman – Solemnizing the Marriage between a Kohein and a Divorcee 1996 Approved 12-4-2

[http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/spitz\\_mamzerut.pdf](http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/spitz_mamzerut.pdf)

May a member of the RA officiate at the marriage between a *kohein* and a divorcee?

### CONCLUSIONS

1. The prohibitions of a *kohein* marrying a divorcee is clearly Biblical. The reality is that very few *kobanim* who turn to us for marriage are concerned about their status as *kobanim*. Our refusal to solemnize their marriage would only lead them to be married either in a civil ceremony or in a ceremony without full *huppah* and *kiddushin*.
2. While we regret the dissolution of a marriage, divorce in our day offers men and women an opportunity for a second chance to develop a successful marital relationship. We also no longer perceive a divorcee as a woman who has been discarded by her former husband and hence not suitable as a spouse for a *kohein*.
3. The principle that *beit din matnin la'akor davar min batorab* is applied only when faced with extreme situations, and we regard intermarriage crises as such a situation. We also note the high rate of intermarriage of divorced women who are often single mothers with minor children.
4. We, therefore, support the decision of two Jews to marry even when he is a *kohein* and she is a *gerushah*, and a member of the Rabbinical Assembly may solemnize such marriage.

5. With the negating of the prohibition in Leviticus 21:7, children born of marriages between a *kobein* and a *gerushah* are not *hallalim*, and the *kobein* is no longer disqualified to serve as a *kobein* in our Services or rituals.

6. Such marriages may be properly celebrated in a public manner. *Our goal continues to be to assure that such celebrations be kosher.*

#### **4. Mayer E. Rabinowitz – An Advocate's Halakhic Responses on the Ordination of Women 1984**

<http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19861990/ordinationofwomen1.pdf>

The areas from which they were excluded are those in which they were considered as not being knowledgeable or reliable due to their lack of experience or interest. For example, their material status depended upon their husbands or fathers and, therefore, women were not conversant with, or interested in, monetary matters. The social reality was that women did not fit the definition of *gedolim u'venai borin* ("free adults"). This is no longer the case. Contemporary women have careers, are involved in all kinds of businesses and professions, and have proved to be as competent as men. Therefore, we must reclassify the status of women *vis-a-vis* *edut* based upon the realities of our era. The general criteria established by the Rabbis whereby one is to be adjudged qualified to serve as a witness may very well remain the same. What has changed is the reality which now enlarges the number of those who meet the criteria.

### **III. Internal Critiques of Conservative Halakhah**

#### **5. Statement and Resolutions Proposed by Rabbi Louis M. Eptstein Proceedings of the Rabbinical Assembly 1948**

The Committee has been blamed for many things for which the Rabbinical Assembly and not the Committee is responsible. It was not the Committee that brought our effort on behalf of the Agunah to an end; it was the Rabbinical Assembly. In connection with the war, the Committee formulated a *ketubah* clause to protect soldiers' wives should their husbands be reported missing in action. I should be ashamed to ask for a show of hands how many of our members employed this device proposed by the Committee.

The membership of the Rabbinical Assembly probably represents a dozen shades of theological opinion and religious conviction. The Committee is asked the impossible, when it is expected to meet every one of these diversified beliefs and demands and at the same time – as a mere trifling consideration – to meet half-way the demands of Jewish law and tradition. What is worse, every shade of opinion stands out by itself and cannot be funded into a composite opinion of the Rabbinical Assembly as such, nor can it be subjected to the views, the wisdom, and the conscience of the Rabbinical Assembly. Those who do not want the "election of Israel" in their prayer book reckon very little with the Rabbinical Assembly sentiment, and those who wish to marry a divorcee without a Jewish *get* are a law unto themselves. The result is that the Committee is given authority to say "Yes" to every questions but never to say "No". For such purposes we do not need a committee on Jewish law; a good brush and a pail of whitewash will do. (P. 168)

Accordingly, these are the resolutions I would suggest:

5) The Committee shall be instructed to hold itself bound by the authority of Jewish law to labor toward progress and growth of the Law to the end of adjusting it to present day religious needs and orientation, whether it be on the side of severity or leniency.

6) *The Committee shall record in its decisions minority and majority views*, counting only such views that recognize the authority of the Law. In all cases where the minority and majority views are held by the members of the Committee, the Rabbinical Assembly members shall be at liberty to follow one or the other. (p. 171-172, these resolutions both defeated p. 192)

**6. Rabbi Elliot N. Dorff – "Halakhic Man: A Review Essay, " Modern Judaism 6:1 1986**

R. Soloveitchik's conceptual imprecision is matched by a similar imprecision in the method with which he treats Biblical and Rabbinic sources. He chooses one midrash that suits his purpose and either ignores sources that make contrary points or he interprets them against their simple meaning. (92-93)

**7. From Rabbi Alan J. Yuter's Letter of Resignation from the Rabbinical Assembly  
14 August 1987**

<http://www.joshyuter.com/2013/05/23/special-features/yutopias-10th-year-anniversary/why-rabbi-dr-alan-j-yuter-resigned-from-the-rabbinical-assembly-and-left-conservative-judaism/>

I have come to realize that for most people, "ethics" refers to the values that make them feel good. But we are commanded to be holy, not happy. The values encoded in Jewish Tradition are not congruent with the values of the secular academy, and *all* liberal Judaisms, Conservative Judaism included, look to this knowledge class for approval. This secular community has decided that gender neutrality is a dogma, so Conservative Judaism, in its desire to be current, agrees on "ethical" grounds.

I believe that the modern Jew is given the choice to choose between two irreconcilable orthodoxies. Given the vehemence, which has assumed eschatological proportions, in which the issues of women rabbis and cantors has been pushed--Dr. Schorsch pointed to a 9-3 decision of the CJLS in 1974 without telling anyone that the 9 votes opposed women cantors and he waves the so-called "Roth responsum" which was not even accepted by the CJLS or the faculty of JTS--it is clear that feminism is now a new fundamentalism. I choose the orthodoxy of Jewish tradition over the orthodoxy of current secular taste.