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CONCEPTUALIZING PROGRESSIVE *HALAKHAH*:  
THE CASE OF MIXED MARRIAGE OFFICIATION

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Submitted in Partial Fulfillment of Requirements for Ordination

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New York

March 10, 2022

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Conceptualizing Progressive *Halakhah*: The Case of Mixed Marriage Officiation

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## Acknowledgements

Thank you to my two advisors on this project, Dr. Alyssa Gray and Rabbi Dr. David Ellenson. Dr. Gray is the professor at HUC who has taught me the most about halakhic literature - I appreciate both the skills she imparted to her students and the ways in which she challenged us to consider how Reform Judaism ought to relate to *halakhah*. I am also grateful for Dr. Gray's many incisive comments on the first draft of this paper, which were characteristically direct, constructive, and humorous enough to keep things interesting.

When Dr. Gray went on sabbatical for my 5th year at HUC, Rabbi Ellenson generously stepped in as advisor. At our first meeting, Rabbi Ellenson impressed upon me that the requirement about which he cared the most was that I learned something that mattered to me. This is a lesson I will carry with me in my future pedagogical endeavors. Rabbi Ellenson also challenged me to think more deeply about why I care about *halakhah* as a *Reform Jew*, which shaped much of my conclusion. In addition to his many helpful comments on drafts of this paper, Rabbi Ellenson's support and encouragement kept me motivated to cross the finish line. I am especially grateful to Rabbi Ellenson for taking on this project despite already having retired, which I know is not the first time he has stepped up when called upon to continue supporting HUC-JIR and its students.

Thank you to the people who aided in my research by answering questions and providing relevant materials: Rabbi Daniel Stein, Rabbi Elyse Wechterman, Rabbi Jeremy Schwartz, and Rabbi Dr. Mark Washofsky. Thank you to all the faculty and students at HUC among whom I have been privileged to learn. And finally, thank you to my family, who have encouraged me at every step of my life's journey and whose love and support makes it all possible.

## Introduction

When I am ordained, how should I make decisions about my rabbinic practice? There are certain choices which seem obvious, because they are normative in Reform Judaism and accord with my personal beliefs. Women reading Torah? Of course. But then there are choices about which there is still disagreement in Reform Judaism - between the official positions of the CCAR and Reform rabbis and within the Reform rabbinate itself. These decisions continually arise, often prompted by the changing demographics of the American Jewish community. Will I perform a Jewish baby naming ceremony for a baby who will also be baptized? Can a non-Jewish parent of a bar/bat/beit mitzvah recite the blessing before the reading of Torah? And the question that gives rise to so many of these: will I officiate at mixed marriages,<sup>1</sup> and if so, under what conditions?

Many of these choices have already arisen in my rabbinical studies and internship work. When a question is posed, I notice that my instinct is to be extremely permissive. "Of course!" I want to say, to the earnest request of the Jew and their non-Jewish partner. But then I pause, aware that Jewish rituals have meaning and content, which necessarily gives them boundaries. How can I preserve the integrity of rituals while also serving the spiritual needs of all my congregants? What is the best way to uphold Jewish tradition and ensure its continuity?

Ultimately, the question I am asking is as a rabbi, what does God wish me to do? My conception of a universalistic God wishes that I do what is right. But my particularistic role as a future rabbi compels me to do what is Jewish. (By "Jewish," in this case, I mean that which derives from Jewish texts and traditions). As an advocate of Judaism, I wish that what is right and what is Jewish will be the same. But what about the cases where they seem to conflict? Mixed marriage officiation presents such a case for many Reform rabbis, who are increasingly

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<sup>1</sup> Throughout this paper, I use the terms "mixed marriage" and "intermarried" to refer to a marriage in which one person identifies as Jewish and the other does not. I do not use the term "interfaith marriage" because the differences between partners may not be a matter of faith, but of cultural or ethnic identity.

choosing to officiate despite a long tradition of opposition in Jewish legal texts, including Reform ones.

Considering how I should make decisions as a rabbi motivated me to look deeper at the halakhic process. This is how rabbis have made decisions for generations, since the advent of rabbinic Judaism. But often, the emphasis on autonomy in Reform Judaism diminishes the role of *halakhah*. What need do we have of Jewish legal texts if we are not bound by them? Isn't it antithetical to the Reform mindset of progress to continue to harken back to outmoded values and practices? Rabbi Mark Washofsky has written extensively on the perceived irrelevance of *halakhah* to Reform Judaism, and why this perception is false. For example, he argues, "the literature of the *halakhah* is the foundation of all Jewish observance, including our own. It is the genre of writing in which the Jewish tradition has historically worked out its understandings of what the Torah and the Covenant require of the Jew in the realm of sacred action."<sup>2</sup> I agree, and therefore, I believe that *halakhah* should be part of my own decision-making process as a Reform rabbi. I also believe that Reform Judaism would benefit from a deeper engagement with *halakhah*, and that it has unique contributions to make to halakhic literature. In order to realize my commitment to *halakhah* from a Progressive Jewish perspective, I first need to work out how I conceive of *halakhah* and its authority.

For the purposes of this paper, I define *halakhah* as decisions made through the process of studying and applying post-Biblical Jewish legal sources to contemporary questions. This definition is purposefully broad, so as to include *halakhah* from different Jewish denominations. It is also intended to allow for different conceptions of halakhic authority - as God's will, longstanding tradition, communal norm, and more.

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<sup>2</sup> Washofsky, Mark. "Kiddushin: Toward a Theory of Progressive Halachah." *Freehof Institute of Progressive Halakhah*, 2018, p. 19.  
[https://www.freehofinstitute.org/uploads/1/2/0/6/120631295/kiddushin\\_as\\_a\\_progressive\\_halakhic\\_concept.pdf](https://www.freehofinstitute.org/uploads/1/2/0/6/120631295/kiddushin_as_a_progressive_halakhic_concept.pdf). Accessed on March 5, 2022.

The following project is a step in the direction of clarifying how I conceive of *halakhah*, its authority, and the role it should play in my rabbinic practice. I pursue this through a case study of Progressive Jewish positions on mixed marriage officiation. In Chapter 1, I review some of the theoretical literature on *halakhah* from the Reform, Conservative, and Reconstructionist movements. I chose to include these movements in my project because each of them is committed to the ongoing evolution of Judaism in the modern era (they are “progressive”), but each has a different approach to *halakhah*. They therefore provide a range of ways to reconcile the tension between tradition and autonomy.

I then proceed to the case study of mixed marriage officiation. I chose this case because of the lack of consensus about it in Progressive Jewish movements. I had a sense that underlying the variety of opinions on whether rabbis should officiate at mixed marriages were competing conceptions of *halakhah* and different attributions of authority to *halakhah*. For example, a rabbi who chooses to officiate at mixed marriages, in contradiction with the position taken by her rabbinic association, may disagree with the position itself, because she holds a different conception of how to derive *halakhah*. Or, she may agree that the position is halakhic, but that this is of limited authority and is outweighed by other considerations.

In order to better understand conceptions of progressive *halakhah*, I begin with a review of theoretical discussions of *halakhah* from each movement. I then consider each of the Reform, Conservative, and Reconstructionist movements in turn. First I look at how the movement describes its decision-making procedures. Then, I conduct a close reading of the movement’s position statements on mixed marriage officiation. These statements largely take the form of responsa or positions issued by central institutions in the movement. I also read and analyze a dissenting opinion from each movement, authored by individual rabbis in consultation with colleagues and congregants. I begin with opinions in the Reform movement, because it is most pertinent to my future role. I then consider opinions from Conservative and Reconstructionist Judaism to see what more we can learn from the spectrum of approaches to progressive

*halakhah*. Finally, I conclude with reflections gleaned from this project. I also begin to formulate a halakhic decision-making process for my future rabbinate.

### **Progressive *Halakhah* in Theory**

The term *halakhah* has a very broad range of meanings. Colloquially, it is commonly interpreted as “Jewish law.” But more literally, the term translates to “the way.” These two definitions represent two ends of the spectrum of meanings associated with *halakhah*. Is *halakhah* an inherited system of laws binding on every Jew? Or is it the way of the Jewish people, evolving continually over time? Within that spectrum lie many other meanings, each of which strikes a balance between authority and autonomy, tradition and the present. Below I review conceptions of *halakhah* from recent scholarship of Reform rabbis, as well as a representative of Conservative Judaism and of Reconstructionist Judaism. I selected these particular scholars based on their dual contributions to the theory and practice of progressive *halakhah* - in addition to writing eloquently on how *halakhah* should be understood by Progressive Jews, each of them also authored numerous responsa<sup>3</sup> and participated in their movement’s decision-making apparatus. This review is far from comprehensive - it simply provides a sampling of theoretical frameworks for understanding *halakhah* in the case study of mixed marriage officiation.

#### **Reform perspective: Rabbi Solomon B. Freehof**

Rabbi Solomon B. Freehof served as a congregational rabbi as well as president of the Central Conference of American Rabbis (CCAR) and the World Union for Progressive Judaism.<sup>4</sup>

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<sup>3</sup> While Rabbi Jack J. Cohen of the Reconstructionist movement did not utilize the classical form of responsa, he did apply Reconstructionist theology and philosophy to practical and ethical questions. See, for example, Cohen, Jack. *Democratizing Judaism*, Academic Studies Press, 2010.

<sup>4</sup> Narvaez, Alfonso A. “Rabbi Solomon Freehof, 97, Dies; Leading Interpreter of Jewish Law.” *New York Times*, June 13, 1990.  
<https://www.nytimes.com/1990/06/13/obituaries/rabbi-solomon-freehof-97-dies-leading-interpreter-of-jewish-law.html>



As chair of the CCAR's Responsa Committee, he is credited with granting halakhic literature a more prominent place in the Reform movement. Over his career, he wrote countless responsa to address questions from Reform rabbis and lay people, drawing heavily on his knowledge of post-Biblical legal texts. Rabbi Freehof conceived of *halakhah* as advisory opinions that were meant to regularize Jewish practice in keeping with tradition, but he believed in the natural evolution of Jewish practice spawned by the creativity of lay people. In her article on the history of the Responsa Committee in the Spring 2020 issue of the *CCAR Journal*, Rabbi Joan Friedman notes that while Rabbi Freehof was in general a lenient decisor, he held to certain principles that imposed limits on Reform practice, such as adherence to "official CCAR policy," for example prohibiting the officiation of mixed marriages.<sup>5</sup>

Rabbi Freehof argued for the "selective authority," of *halakhah*, acknowledging that there are some areas of Jewish law which have become irrelevant to most Reform Jews because observance of them has ceased. He does not protest this; rather he is interested in the areas of Jewish law that bear on the questions Reform Jews were asking. In contrast to the traditional position claiming authority for *halakhah* based on divine authorship, Rabbi Freehof concludes, "the law is human, but nobly human, developed by dedicated minds who devoted their best efforts to answering the question, 'What doth the Lord require of thee?' In summation of his view of the authority of *halakhah*, Rabbi Freehof writes, "The law is authoritative enough to influence us, but not so completely as to control us. The rabbinic law is our guidance but not our governance."<sup>6</sup>

### **Reform perspective: Rabbi Moshe Zemer**

Rabbi Moshe Zemer served as a Reform rabbi in Israel and headed the Israeli Progressive Beit Din in addition to serving on the board of the Israeli Movement for Progressive

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<sup>5</sup> Friedman, Joan. "The CCAR Responsa Committee: A History." *CCAR Journal*, Spring 2020, pp. 40-53.

<sup>6</sup> Freehof, Solomon Bennett. *Reform Responsa*. Hebrew Union College Press, Cincinnati, OH, 1960, pp. 21-22.

Judaism and the Central Conference of American Rabbis. According to Rabbi Zemer, *halakhah* is a practical expression of the standards of ethics and observance that best enact the will of God. This definition may sound quite traditional, but Rabbi Zemer approaches the development of *halakhah* from a liberal theological perspective. In the introduction to *Dynamic Jewish Law*, Rabbi Zemer and Rabbi Walter Jacob explain:

*Progressive halakhah is based on a scientific and historic approach to the Jewish tradition which leads modern scholars to affirm the developmental character of Scripture and rabbinic literature. Revelation is a divine-human encounter rather than the transmission of infallible law by God to human beings. Progressive halakhah, therefore, is founded on a non-fundamentalist reinterpretation of revelation.*<sup>7</sup>

The authority of *halakhah*, in Zemer's view, derives from it being the will of God, but this can only be known through the ongoing interaction of human beings with the divine, and therefore it changes in every generation.

In his own essay in the volume, *Dynamic Jewish Law*, Rabbi Zemer elaborates on the criteria and principles by which Progressive Jews can determine the *halakhot* for our time. They are as follows: 1) "The *halakhah* is a developmental and changing phenomenon." It has changed throughout history and will continue to do so based on external influences and internal moral insights. 2) "The *halakhah* is pluralistic." There has always been a diversity of interpretations of Jewish law, and the Talmud confirms that even conflicting interpretations can be legitimate expressions of God's will. 3) "The ethical is the priority of *halakhah*." Zemer argues that if a particular *halakhah* no longer conforms to ethics, the *halakhah* should be revised. He states clearly: "If a ruling is *halakhic*, it must be ethical. If it is unethical, it cannot be *halakhic*."<sup>8</sup> 4) "Holiness is the reason for the commandments," and therefore a criterion by which they

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<sup>7</sup> Jacob, Walter, and Moshe Zemer, editors. *Dynamic Jewish Law: A Progressive Halakhah, Essence and Application*. Rodef Shalom Press, Tel Aviv, Israel, 1991, p. 5.

<sup>8</sup> Zemer, Moshe. "Authority and Criteria in Liberal *Halakhah*." *Dynamic Jewish Law: A Progressive Halakhah, Essence and Application*, edited by Walter Jacob and Moshe Zemer. Rodef Shalom Press, Tel Aviv, Israel, 1991, p. 14.

should be judged. 5) “Internalizing the mitzvah.” One is only commanded to fulfill the halakhot which they are able to perform with inner devotion. 6) “The critical approach to the *halakhah*,” involves evaluating *halakhah* according to modern scientific and historical knowledge as well as one’s conscience and the needs of the community. 7) “Responsibility to the Covenant Community.” Progressive *halakhah* should try to maintain the unity of *klal Yisrael*. Rabbi Zemer acknowledges that these criteria may at times be in tension with one another. However, he also argues that they represent the fulfillment of the spirit of Judaism.<sup>9</sup>

### **Reform perspective: Rabbi Mark Washofsky**

Rabbi Mark Washofsky has served as a Reform congregational Rabbi and professor of rabbinics at the Hebrew Union College - Jewish Institute of Religion. He chaired the CCAR Responsa Committee from 1996-2017 and is currently the chair of the Solomon B. Freehof Institute of Progressive Halakhah.<sup>10</sup> Rabbi Washofsky defines *halakhah* as a language or mode of internal Jewish conversation. “To call halachah a ‘language’ is to say that it is more than simply a collection of rules and directives, of thou-shalts and thou-shalt-nots imposed upon the Jew. Halachah is better understood as a discourse, a way of speaking, a conversation carried on through history by the students of Jewish tradition.” In saying that *halakhah* is “more than simply a collection of rules and directives,” Rabbi Washofsky does not deny that rules and directives are part of the discourse, but he implies that one can legitimately participate in the discourse without seeing those rules as binding.<sup>11</sup>

Rabbi Washofsky suggests two sources of authority for *halakhah*. The first is an authority that derives from the fact that the respondent was asked to provide an answer to a question about Jewish practice. This conception of authority has a measure of realism, because

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<sup>9</sup> Ibid., 9-23.

<sup>10</sup> HUC-JIR. “Mark Washofsky, Rabbi, Ph.D.” *HUC.edu*. <http://huc.edu/directory/mark-washofsky>. Accessed on March 6, 2022.

<sup>11</sup> Washofsky, Mark, editor. *Reform Responsa for the Twenty-First Century: Sh'eilot Ut'shuvot Volume 1*. CCAR Press, 2010, p. xix

it acknowledges that halakha only has authority for those who ask the question or later seek out the answer. For those who disregard *halakhah*, it is irrelevant. In his introduction to a collection of Reform Responsa, Rabbi Washofsky writes:

*Reform Judaism does not recognize the absolute binding authority of a rabbinical ruling on a question of practice or, for that matter, a question of belief or doctrine. [...] No Reform Jew is obligated to adopt a responsum's conclusion if he or she disagrees with it. Reform responsa are 'authoritative' if and only if they are persuasive, to the degree that they convince their readers that this particular answer, this particular application of Torah corresponds to the readers' own conception of Judaism.*<sup>12</sup>

Here, Rabbi Washofsky adds an additional level of authority - the *halakhah*'s ability to *persuade*.

In terms of what constitutes Reform *halakhah*, Washofsky identifies a broad category of "writings by Reform Jews on matters of Jewish law and practice." In this category he includes the following:

*The various guidebooks to Jewish religious practice published under the auspices of the Central Conference of American Rabbis (CCAR) and the Union for Reform Judaism (URJ); scholarly essays on halachic subjects appearing in the CCAR Journal, in the CCAR Yearbook, in the numerous volumes published by the Freehof Institute of Progressive Halakhah, and elsewhere; resolutions on matters of ritual practice adopted by the CCAR; and, above all, the literature of Reform responsa.*<sup>13</sup>

This list of sources,<sup>14</sup> while very broad, does seem to rely on an appeal to authority - not of law, but of authorship and publication. Washofsky lists as Reform *halakhah* writings by scholarly and

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<sup>12</sup> Ibid., xxi-xxii.

<sup>13</sup> Ibid., xv.

<sup>14</sup> The sources that I chose to include in this study are narrower than what Rabbi Washofsky considers to be Reform halakhah. For example, I did not include every scholarly essay published on the topic of mixed marriage officiation in a Reform publication. Instead, I chose to focus on position statements issued by bodies of the Reform, Conservative, and Reconstructionist movements, which have the authority of speaking with a collective voice. In the case of dissenting opinions, I did include position statements by individual rabbis.

rabbinic figures, which have been judged credible enough to receive approval or publication by an institution of the Reform movement.

### **Conservative perspective: Rabbi Elliot Dorff**

Rabbi Elliot Dorff is a Conservative rabbi and professor at American Jewish University. He has also served on the Conservative Movement's Committee of Jewish Law and Standards since 1984, serving as Chair for over a decade of that time.<sup>15</sup> In his book entitled *The Unfolding Tradition: Jewish Law After Sinai*, Rabbi Dorff summarizes his theory of *halakhah* along with the theories of many other Conservative Jewish scholars. "Jewish law [is] best understood as the duties that arise from our ongoing covenant with God,"<sup>16</sup> Rabbi Dorff writes. "Jewish law remains authoritative and binding. As a result, we have to play the legal game, as it were, in order to produce an authentically Jewish decision about any aspect of ritual or moral behavior."<sup>17</sup> As Rabbi Dorff describes it, playing the legal game involves applying halakhic precedents to contemporary questions. But rather than adhere strictly to precedent, Rabbi Dorff suggests that prior halakhic decisions should be read in their historical context, with room made in the halakhic process for contemporary factors and other aspects of Jewish teaching. Rabbi Dorff conceives of Jewish law as a living system, like a human body - with change over time and interaction among different parts. While Rabbi Dorff considers Jewish law to be binding on all Jews by the authority of their covenant with God, he acknowledges that people possess the freedom to choose their forms of observance. It is therefore the rabbi's duty, in Dorff's system, not only to act as halakhic decisor, but also to educate congregants and encourage them to abide by Conservative *halakhah*.<sup>18</sup>

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<sup>15</sup> Dorff, Elliot. *The Unfolding Tradition: Jewish Law After Sinai*. Aviv Press, New York, 2005, p. 327.

<sup>16</sup> Ibid., 328.

<sup>17</sup> Ibid., 332.

<sup>18</sup> Ibid., 327-337.

## Reconstructionist perspective: Rabbi Jack J. Cohen

Rabbi Jack J. Cohen was a disciple of Mordechai Kaplan, the founder of Reconstructionist Judaism, and an advocate for the Reconstructionist movement in Israel.<sup>19</sup> In *Judaism in a Post-Halakhic Age*, Rabbi Cohen lays out his theory of Jewish decision-making. Modernity, with the Enlightenment and the Emancipation of Jews in Europe, set off a new age for Judaism in which *halakhah* lost its authority. This shift was ideological for those Jews who embraced the ideals of freedom and questioned divine revelation, and it was practical for all Jews, now governed by the laws of the state rather than rabbinical authorities. Cohen argues that Jews should embrace the post-halakhic age, bringing along the best of the halakhic tradition while also being willing to break from it. To accomplish this, Jewish communities need a new approach to decision-making that is compatible with autonomy: a democratic approach. Only Jewish law decided by the people will have authority over them, by virtue of their consent.<sup>20</sup> Cohen writes:

*The future of Judaism, will depend on the willingness and ability of Jews and Jewesses to study their tradition together, draw from it relevant thoughts, values and practices and broaden the process of free adaptation and creativity. Under the Halakhah, these developments would be circumscribed by the limits of its pre-democratic, nomocratic polity and, implicitly, by its supernaturalist theology.*<sup>21</sup>

The Reconstructionist Movement's Torah process (discussed below) is a manifest response to Rabbi Cohen's charge.

## My definition

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<sup>19</sup> Caplan, Eric, et al. "Obituary: Jack J. Cohen." *New York Times*. April 19, 2012. Accessed via <https://www.legacy.com/us/obituaries/nytimes/name/jack-cohen-obituary?id=25616291> on March 6, 2022.

<sup>20</sup> Cohen, Jack J. *Judaism in a Post-Halakhic Age*. Academic Studies Press, Brighton, MA, 2010, pp. 43-70.

<sup>21</sup> Ibid., 70.

We have now seen conceptions of Jewish decision-making that define *halakhah* varying as law, standard, guidance, and language (and one that eschews *halakhah* in favor of the popular will). While all these theoretical discussions provide a more robust understanding of the way that *halakhah* operates in the lives of Progressive Jews, for the purpose of clarity I will offer a definition of the term “*halakhah*” as I use it in this paper. The definition is broad, so that it will apply across the cases considered, but it is not *overly* broad, so that it establishes a standard for what can be considered *halakhah*. For the purposes of this project, *halakhah* is defined as decisions made through the process of studying and applying post-Biblical Jewish legal sources to contemporary questions. The application of these sources does not mean blind adherence to precedent - each should be considered in its historical context and evaluated on its ethical implications. In addition, the use of Jewish legal sources does not preclude the study and application of other sources, such as scientific research, sociological data, and prophetic Jewish values, which are all highly relevant in a progressive halakhic process.

While the theories of *halakhah* cited above are notable exceptions, progressive *halakhah* is an undertheorized discipline. Much more copious are the *examples* of progressive *halakhah* itself: statements of rabbinic associations, responsa published by individual rabbis and committees, guides to Jewish living, and more. Implicit in these real world applications are the theoretical assumptions that guide the author’s work. As Rabbi Washofsky explains in his article, “From Theory to Practice and Back Again,” in the *CCAR Journal*:

*Every piece of halachic literature written by Reform rabbis bears evidence of the theory that stands behind it. Every Reform halachic text makes a claim for its authority, its right to speak halakhah to Reform Jews even in the face of our commitment to individual autonomy. This claim is generally not stated explicitly, but it’s there, between the lines of the text and standing behind it, available to us through a process of careful and critical reading.*<sup>22</sup>

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<sup>22</sup> Washofsky, Mark. “From Theory to Practice and Back Again.” *CCAR Journal*, Spring 2020, p. 57.

The following chapters are my attempt at a careful and critical reading of progressive halakhic positions on mixed marriage officiation, to elucidate their underlying theoretical claims.

## **The Reform Movement**

### **Halakhic Authority**

In the Reform Movement, there are several mechanisms by which official positions are issued on matters of Reform Jewish practice: responsa of the Responsa Committee of the Central Conference of American Rabbis (CCAR), resolutions of the CCAR, and resolutions of the Union for Reform Judaism (URJ).<sup>23</sup>

When Isaac Mayer Wise founded the CCAR in 1889, his intention was that its membership would determine Reform Jewish practice as a collective body. However, it became clear that the rabbis of the CCAR held such divergent opinions that they would not be able to come to agreement on such matters. Moreover, Reform Judaism from its earliest days put a primacy on individual choice and freedom.<sup>24</sup> In her article, “The CCAR Responsa Committee: A History,” Rabbi Joan Friedman explains that there was fierce resistance to the idea of *halakhah* for the Reform movement. When it was suggested at the 1906 CCAR Convention that Kaufmann Kohler, then President of HUC, would “formulate a number of Halakot or laws,” regarding life-cycle rituals, Friedman writes, “a lengthy and heated discussion ensued, with opponents arguing that even setting down guidelines for ritual observance would place Reform in danger of becoming a new Orthodoxy.”<sup>25</sup> *Halakhah* was seen as threatening to the very essence of Reform. The Responsa Committee was formed at that Convention as a compromise between those who felt a need for Reform observances to be articulated and those who resisted

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<sup>23</sup> The Reform movement has also adopted 5 platforms since 1885 (accessible here: <https://www.ccarnet.org/rabbinic-voice/platforms/>), but these deal more with matters of belief than practice, and none comment on mixed marriage officiation specifically, so I did not include them in this study.

<sup>24</sup> Borowitz, Eugene. *Studies in the Meaning of Judaism*. Jewish Publication Society, Philadelphia, PA, 2002, pp. 415-420.

<sup>25</sup> Friedman, p. 42



any limitations on individual authority. It was understood from the start that the Committee's answers represented only the opinions of their authors, not the movement, and that they were a form of advisement, not law.<sup>26</sup>

The original role of the Responsa Committee is similar to how it functions today. The current process for formulating Reform responsa begins when a rabbi submits a question for the Committee's consideration on an issue that arose within that rabbi's community. The Committee members then consider the relevant Jewish texts, including previously issued CCAR responsa. After the Committee decides its position, one member drafts the responsum and others provide input. Responsa are generally approved by consensus, but when this is not the case, dissenting members may write dissenting responsa, or their points of dissent will be noted within the majority opinion.<sup>27</sup> Responsa represent the opinion of the Committee, not the CCAR or the Reform Movement as a whole. However, this distinction may not be clear to a lay person who comes across the responsa, given that they are presented on the CCAR website without this caveat.<sup>28</sup>

The brief introduction to the Responsa Committee on the CCAR website addresses the question of what the responsa represent: "Responsa published by CCAR have generally revealed Reform Jewish thinking on issues of everyday Jewish life at the time that it was originally written." In this text, "reveal" implies that the responsa are descriptive, not prescriptive, and "Reform Jewish thinking," implies that the positions taken are normative, while leaving room for competing values to be expressed within that thought process. The introduction continues: "However, it is important to note that because there is such a long history of Reform Responsa, going back to the 19th century, much of the collection no longer reflects contemporary thinking or language." This statement acknowledges historical evolution in Reform Jewish thinking, and

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<sup>26</sup> Ibid., 42-43.

<sup>27</sup> Washofsky, Mark. Personal Interview. January 26, 2022.

<sup>28</sup> CCAR. "Reform Responsa." *CCARnet.org*. <https://www.ccarnet.org/rabbinic-voice/reform-responsa/>. Accessed March 6, 2022.

therefore distances itself from the traditional understanding of *halakhah* as stemming from “God’s unchanging will.” If Reform responsa are to be considered as an expression of God’s will, it is acknowledged that our understanding of God’s will changes over time. The introduction concludes: “[The now outdated collection of responsa] remains available here for the purpose of historical reference, but in many cases is no longer representative of today’s CCAR and the Reform Movement.” By saying that old responsa are “*no longer* representative of today’s CCAR and the Reform Movement,” the introduction seems to be making a claim about current responsa that goes farther than its prior statement. Not only do the responsa “reveal” Reform Jewish thinking, they “represent” the Reform Movement and its rabbis. This implication, however incidental it might be, reveals the deeper ambiguity inherent in an official committee of the CCAR publishing unofficial opinions about Reform Jewish practice.<sup>29</sup>

While the original CCAR Responsa Committee distanced itself from the word *halakhah* because early Reform rabbis were opposed to the prescriptiveness of “law,” more recently the Committee has embraced the term under different definitions. Rabbi Solomon B. Freehof, chair of the Responsa Committee from 1955-1976, conceived of *halakhah* in contemporary America as *minhag* - a community’s customs, because the Jewish community lacked the enforcement power required to institute laws. As discussed earlier, Rabbi Freehof is credited with increasing the reliance on rabbinic texts in the Responsa Committee’s decision-making process.<sup>30</sup> He articulated this diminished but important role for *halakhah* in Reform life: “The law is authoritative enough to influence us, but not so completely as to control us. The rabbinic law is our guidance but not our governance.”<sup>31</sup> Rabbi Joan Friedman, current chair of the CCAR Responsa Committee, writes that Freehof had a lasting influence on the Committee’s self-conception: “All three committee chairs since Freehof—Walter Jacob, W. Gunther Plaut,

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<sup>29</sup> Ibid.

<sup>30</sup> Friedman 44-48.

<sup>31</sup> Ibid., 46.

and Mark Washofsky—assert that there is, indeed, Reform halachah, and that the committee is engaged in a halachic process, albeit one that rests not on compulsion but on persuasion.”<sup>32</sup>

Whereas CCAR responsa provide answers to questions about issues internal to the Jewish community, CCAR resolutions are primarily a platform for Reform rabbis to issue their opinion on events in the broader world. The intended audience for these two mechanisms therefore differs - responsa speak to the rabbis whom they address and other Reform Jews who seek out the opinion, while resolutions aspire to enter into a public conversation about social and political issues. Historically, CCAR resolutions did not engage deeply with Jewish texts, but this has changed significantly over time. Many early resolutions are simple statements of opinion with no textual citations.<sup>33</sup> More recent resolutions, however, often cite verses from Torah or Talmud, or quote directly from a CCAR responsum that considers a range of sources.<sup>34</sup>

What can we make of this change over time in the source material for CCAR resolutions? Early on, rabbis at the CCAR may have intentionally spoken outside of the Jewish textual tradition so that their statements would be accessible and persuasive to a non-Jewish audience. They may also have been asserting that their rabbinic voice was just as valid as other voices in rabbinic texts, purposefully claiming authority that did not rely on continuity with the past. Finally, Reform Rabbis may have perceived the Jewish textual tradition as relevant to internal matters of the Jewish community, and therefore useful in responsa, but less relevant to concerns of the secular polity. The increasing engagement with Jewish, and specifically, rabbinic texts in resolutions over time indicates a reversal of these factors: a recognition among Reform

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<sup>32</sup> Ibid., 49. For more on Reform conceptions of *halakhah*, see the prior chapter, “Progressive *Halakhah* in Theory.”

<sup>33</sup> See CCAR resolutions between 1889-1972, for example, “Freedom of Thought” (1953) <https://www.ccarnet.org/ccar-resolutions/freedom-of-thought-1889-1972/> and “Vietnam War” (1972) <https://www.ccarnet.org/ccar-resolutions/vietnam-war-1889-1972/>.

<sup>34</sup> See CCAR resolutions from recent years, for example, “Central Conference of American Rabbis Resolution in Support of Vaccine Mandates” (2021) <https://www.ccarnet.org/ccar-resolutions/central-conference-of-american-rabbis-resolution-in-support-of-vaccine-mandates/> and Central Conference of American Rabbis Resolution on Requiring Parental Leave (2021) <https://www.ccarnet.org/ccar-resolutions/central-conference-of-america-rabbis-resolution-on-requiring-parental-leave/>

Rabbis that their authority in the public conversation actually comes from their ability to learn from and marshal particularistic Jewish teachings relevant to society at large. It also implies a greater comfort with the notion of progressive *halakhah*.

Given the change over time in the nature of CCAR resolutions, it is difficult to decide whether they fit my definition of progressive *halakhah*. On the one hand, many do not make explicit reference to Jewish texts. On the other hand, they were authored by committees of rabbis who were undoubtedly informed by Jewish texts, whether or not that information was what guided their position. Ultimately, whether I classify any statement as progressive *halakhah* must be decided on a case-by-case basis.

The process by which CCAR resolutions are adopted gives them the authority of speaking for the whole Reform rabbinic organization. Like responsa, resolutions are drafted by a committee of the CCAR (the Resolutions Committee), but they are then voted on by the CCAR Board of Trustees. Resolutions approved by the Board are then circulated to the membership of the CCAR for comment. After revisions, resolutions are voted on at a CCAR conference, where they require a majority vote of the whole membership in order to be adopted. The involvement of the whole Conference in drafting and adopting resolutions gives them an authority of speaking “for” the CCAR that responsa lack. Further, the CCAR website says that adopted resolutions “inform CCAR policies,” implying that they are heeded in institutional policymaking, an influence that is left completely to the individual in the case of responsa.<sup>35</sup>

URJ resolutions are similar to CCAR resolutions, but they are adopted by members of the movement rather than rabbis. URJ resolutions cover similar subject matter to those of the CCAR, being mainly “political, social, economic, and humanitarian issues.”<sup>36</sup> A blog post on the URJ website authored by Rabbi Rick Jacobs, current president of the URJ, describes

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<sup>35</sup> CCAR. “Resolutions.” *CCARnet.org*. <https://www.ccarnet.org/rabbinic-voice/resolution/>. Accessed on March 7, 2022.

Washofsky, Mark. Personal Interview. January 26, 2022.

<sup>36</sup> URJ. “Resolutions.” *URJ.org*. <https://urj.org/what-we-believe/resolutions>. Accessed on March 7, 2022.

resolutions as “an expression of our prophetic faith voice, a pillar of Reform Judaism, [which] help transform our synagogue communities, as well as the broader faith and secular communities of which we are a part. Perhaps most important, URJ resolutions inform what it means to be part of the Union for Reform Judaism.”<sup>37</sup> This description encapsulates both an internal and external goal - of influencing Reform communities themselves and speaking for Reform Jews in the public conversation. In addition to these goals, URJ resolutions are the mechanism by which the URJ handles some administrative matters, such as amending its constitution and bylaws.<sup>38</sup>

Of the three mechanisms reviewed in detail here, URJ resolutions contain the least engagement with Jewish texts. This does not mean that Jewish teachings are absent from the context in which the resolutions are written, but the statements themselves do not claim to be making an argument about what the halakhic tradition compels. Where URJ resolutions do invoke Jewish texts, it is usually not a specific citation, but an appeal to a strongly held value in the Reform movement (such as the principle that all people are created in the image of God). This is consistent with the description of these resolutions as representing the “prophetic faith voice,” because Reform Judaism takes great inspiration from the moral teachings of the Israelite prophets, often upholding these values over the legal technicalities of *halakhah*. On the URJ blog, Rabbi Jacobs comments that resolutions “ground our positions in Jewish texts and tradition, rooting our priorities in our ancient and ongoing values.”<sup>39</sup> However, judging from the content of the resolutions themselves, many would not qualify by my definition of progressive *halakhah*. This does not mean that URJ resolutions are unimportant, however. They play a

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<sup>37</sup> Jacobs, Rick. “Biennial Resolutions: How Your Congregation Can Shape the Reform Movement’s Future.” *URJ.org*.  
<https://urj.org/blog/biennial-resolutions-how-your-congregation-can-shape-reform-movements-future>. Accessed February 1, 2022.

<sup>38</sup> See, for example, “Amending the Constitution and Bylaws of the Union for Reform Judaism and Implementing Changes to the System by Which Congregations Provide Financial Support to the Union for Reform Judaism and the Hebrew Union College-Jewish Institute of Religion” (2015)  
<https://urj.org/what-we-believe/resolutions/amending-constitution-and-bylaws-union-reform-judaism-and-implementing>

<sup>39</sup> Jacobs, Biennial Resolutions: How Your Congregation Can Shape the Reform Movement’s Future.”

valuable role as a mechanism for lay people to articulate positions on behalf of the Reform movement.

The process by which URJ resolutions are adopted is parallel to CCAR resolutions. Rabbi Jacobs explains “Resolutions may be proposed by congregations, URJ affiliates, and commissions, such as the Commission on Social Action. The Resolutions Committee, a broadly representative body, considers each one and recommends actions to the General Assembly.”<sup>40</sup> Before resolutions are voted on at a URJ biennial, congregations can submit amendments to be considered. URJ resolutions are accorded the same degree of non-binding authority as any religious guidance for Reform Jews, as Rabbi Jacob explains on the URJ blog: “Resolutions do not bind congregations or individual members in any way, but rather reflect shared interests and priorities within the Reform Movement as determined by a representative, decision-making body.”<sup>41</sup> URJ resolutions are authoritative, therefore, to the extent that one assigns weight to the agreed upon position of Reform laity on a given subject.

### **Positions on Mixed Marriage Officiation**

In the early years of the Responsa Committee, the most common topic of questions addressed relations between Jews and non-Jews.<sup>42</sup> For example, responsa were issued about synagogue membership after a mixed marriage (1916), the children of mixed marriages (1919), and the burial of non-Jews in Jewish cemeteries (1914, 1916, 1919, 1936, and later in 1963).<sup>43</sup> The plethora of questions indicate that a significant number of Reform Jews were intermarrying in these years. In 1971, Rabbi Irwin Fishbein sent surveys to all Reform rabbis and received

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<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Friedman, 43.

<sup>43</sup> Jacob, Walter, editor. *American Reform Responsa: Collected Responsa of the Central Conference of American Rabbis 1889-1983*, CCAR, New York, 1983, Table of Contents.

responses from 101 willing to officiate at such ceremonies, amounting to 10% of the CCAR.<sup>44</sup> By 1995, the number of Reform rabbis who responded affirmatively to the survey grew to 48%.<sup>45</sup>

The CCAR has considered the question of mixed marriage multiple times. In 1909, the CCAR passed a resolution condemning it and suggesting that rabbis should discourage it. In 1919, Rabbi Kaufman Kohler issued a responsum on behalf of the Responsa Committee saying that Reform rabbis should not officiate mixed marriages. A report was published in the CCAR Yearbook of 1947 reiterating the position taken in 1909. In 1973, the CCAR passed a resolution reaffirming its stance on mixed marriages and also declaring its opposition to rabbinic officiation of such marriages. In 1980, the CCAR Responsa Committee published a responsum on mixed marriage officiation which provided a historical review to back up the CCAR's long standing opposition. This topic was addressed again by the Responsa Committee in 1982, which this time explained its opposition through a list of practical concerns, detailed below.

### **1909 and 1973 CCAR resolutions**

In order to assess the Reform halakhic positions on mixed marriage officiation, we will begin by reviewing the CCAR resolutions of 1909 and 1973. Consistent with the evolution of CCAR resolutions over time, the 1909 resolution does not include any textual citations. Instead, it states simply: "The Central Conference of American Rabbis declares that mixed marriages are contrary to the tradition of the Jewish religion and should, therefore, be discouraged by the American rabbinate." The concise and uncompromising nature of the 1909 resolution implies that a majority of the CCAR strongly opposed mixed marriage and felt no need for elaboration, through citing rabbinic texts or otherwise. The language of "the tradition of the Jewish religion" does indicate a background engagement with rabbinic texts which informed the position, and

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<sup>44</sup> "Despite Traditions a Growing Number of Rabbis Officiate at Mixed Marriages." *New York Times*. September 5, 1971. (Author unknown) <https://www.nytimes.com/1971/09/05/archives/despite-traditions-a-growing-number-of-rabbis-officiate-at-mixed.html>. Accessed March 7, 2022.

<sup>45</sup> J. Correspondent, "47% of rabbis in 2 movements conducting intermarriages." *J Weekly*. March 22, 1996. <https://www.jweekly.com/1996/03/22/47-of-rabbis-in-2-movements-conducting-intermarriages/>. Accessed March 7, 2022.

therefore this resolution just barely qualifies by my definition of progressive *halakhah*. While the resolution states its opposition to mixed marriage on behalf of the Conference, the fact that it was deemed necessary implies that some rabbis held dissenting opinions or that some laity were pushing for approval.<sup>46</sup>

The 1973 resolution explicitly opposed rabbinic officiation of mixed marriages, but also laid out steps for the incorporation of mixed families into Jewish communal life. It is reproduced here in its entirety:

*The Central Conference of American Rabbis, recalling its stand adopted in 1909 "that mixed marriage is contrary to the Jewish tradition and should be discouraged," now declares its opposition to participation by its members in any ceremony which solemnizes a mixed marriage.*

*The Central Conference of American Rabbis recognizes that historically its members have held and continue to hold divergent interpretations of Jewish tradition. In order to keep open every channel to Judaism and K'lal Yisrael for those who have already entered into mixed marriage, the CCAR calls upon its members:*

- 1. to assist fully in educating children of such mixed marriage as Jews;*
- 2. to provide the opportunity for conversion of the non-Jewish spouse; and*
- 3. to encourage a creative and consistent cultivation of involvements in the Jewish community and the synagogue.<sup>47</sup>*

The 1973 resolution shows that there continued to be active dissent from the official position of the CCAR. In fact, data on Jewish intermarriages demonstrate dramatic increases from the 1950s onward.<sup>48</sup> The language of this resolution acknowledges the choice of some

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<sup>46</sup> CCAR. "Regarding mixed marriages." *CCAR Yearbook*. CCAR, 1909. Vol. 19, p. 170. Also available here: <https://www.ccarnet.org/ccar-resolutions/mixed-marriage-1889-1972/>.

<sup>47</sup> CCAR. "Resolution of the Committee on Mixed Marriage." *CCAR Yearbook*. CCAR, 1973. Vol. 83, p. 97. Also available here: <https://www.ccarnet.org/ccar-resolutions/mixed-marriage-1889-1972/>.

<sup>48</sup> Sarna, Jonathan . "Intermarriage in America: The Jewish Experience in Historical Context," in *Ambivalent Jew: Charles Liebman in Memoriam*, edited by Stuart Cohen and Bernard Susser. The Jewish Theological Seminary, New York, 2007.



Reform rabbis to officiate at these wedding ceremonies as “divergent interpretations of Jewish tradition,” but not necessarily *legitimate* ones. In response to this deviance, the resolution escalates the 1909 position of opposition to the marriages themselves to now explicitly oppose rabbinic officiation of mixed marriages. The 1973 resolution was initially proposed in 1971 by Rabbi Roland B. Gittelsohn, then president of the CCAR. In that year, Rabbi Gittelsohn was quoted in the *New York Times* revealing his motivation for the resolution: “strengthening the conference's opposition to mixed marriages, Rabbi Gittelsohn said, ‘will not materially affect the incidence of mixed marriage,’ but it would, he added, ‘preserve our self respect as a rabbinic body.’”<sup>49</sup> Recognizing that they could not actually stem the tide, the resolution calls for strengthening the Jewish identities and involvement of “those who have already entered into mixed marriage,” and implicitly, those who will do so in the future. The resolution states its motive for this outreach as “keep[ing] open every channel to Judaism and K'lal Yisrael for those who have already entered into mixed marriage.” It does not specify whether this motivation is for the sake of the people in question or for the sake of Jewish continuity.

### **1919 Responsum**

Next, we will turn to the Responsa Committee's positions on mixed marriage officiation, beginning with Rabbi Kaufman Kohler's in 1919. In a brief 440 words, Kohler responds to a few different questions, including the following questions about mixed marriage: 1) Is it “compatible with Judaism” to perform a mixed marriage? 2) Is it “in keeping with his position and dignity as a rabbi” to perform a mixed marriage? 3) Can a rabbi perform a mixed marriage “when the assurance is given that the non-Jew will accept the Jewish faith after the marriage”? The responsum makes two main arguments, one principled and one pragmatic: 1) for a rabbi to perform a mixed marriage would not be “true to the tradition of Judaism” and 2) a marriage of people from different religions “will be a house divided against itself. Without harmony of views

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<https://www.brandeis.edu/hornstein/sarna/contemporaryjewishlife/Archive/IntermarriageinAmericaTheJewishExperienceinHistoricalContext.pdf>. Accessed January 23, 2022.

<sup>49</sup> “Despite Traditions a Growing Number of Rabbis Officiate at Mixed Marriages.”

in a matter so vital to the future there is no real unity.” Kohler seems to believe that a liberal halakhic position should be informed by the “tradition of Judaism,” which he does not define, as well as a concern for what is best for the Jewish people, specifically within family units.<sup>50</sup>

The terse and strident tone of this responsum signal that the author was confident and unapologetic about his views. He does not go to great lengths to explain them, which indicates either that he assumes his reasoning will be obvious to the reader or he expects the reader to trust his authority on the matter. For those who do not accept his position on face value, Rabbi Kohler provides academic citations for further study. Specifically, he references two books: *The Jewish Law of Marriage and Divorce [in Ancient and Modern Times, and its Relation to the Law of the State]*, by Dr. Moses Mielziner, a Hebrew Union College professor; and the other by Rabbi Kohler himself: *Jewish Theology*. These citations indicate that Rabbi Kohler’s position is informed by his deep knowledge of Jewish texts, though his statement does not discuss them. The responsum does refer to the CCAR’s 1909 resolution banning mixed marriage officiation. The brevity of this responsum indicates that at the time of writing, the prohibition on mixed marriage was not highly contested among the Reform rabbinate. While Kohler deemed it worthwhile to provide a response, he did not feel the need to argue at length on the matter.

### **1980 Responsum**

The issue of mixed marriage officiation was brought before the CCAR Responsa Committee again in 1980, and though the bottom line remained the same, the answer was approached in a very different manner. This responsum poses two questions to which it will respond: “May a Reform rabbi officiate at a marriage between a Jew and a non-Jew? What is the attitude of Reform Judaism generally to such a marriage?”<sup>51</sup> Usually, the questions at the beginning of a CCAR responsum are attributed to the individual who wrote to the committee to

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<sup>50</sup> CCAR. “Rabbi Officiating at Mixed Marriages.” *CCAR Yearbook*, 1919, Vol. 29, pp. 75-76. Also available at: <https://www.ccarnet.org/ccar-responsa/arr-466-467/>

<sup>51</sup> CCAR Responsa Committee. “Reform Judaism and Mixed Marriage.” *CCAR Yearbook*, 1980, vol. 90, pp. 86-102. Also available at <https://www.ccarnet.org/ccar-responsa/arr-445-465/>.

ask them. In the case of the 1980 responsum, there is no such attribution. Also, the questions do not refer to a specific case, but to mixed marriage in general. These aspects imply that the Responsa Committee was motivated to address this question “once and for all” - to establish thoroughly and persuasively Reform Judaism’s stance on mixed marriage, and they used the responsa modality as a device to make this statement. By 1980, the Reform movement was also reconsidering its position on patrilineal descent. Rabbi Alexander Schindler, then president of the Union of American Hebrew Congregations, was in favor of accepting as Jewish those descended from a Jewish father and a non-Jewish mother.<sup>52</sup> This position was later adopted as a CCAR resolution in 1983.<sup>53</sup> Lest one think that the acceptance of patrilineal descent (in addition to the traditional matrilineal descent) provided indirect approval for mixed marriage, the 1980 responsum clarifies its opposition.

The answer to the responsum’s two questions begins by stating: “Reform Judaism has been firmly opposed to mixed marriages.” It supports this point by reviewing the history of CCAR resolutions and including their full text in the introductory segment of the responsum. It then reviews the history of mixed marriages and Judaism from ancient times to the present. The message is clear: since mixed marriages have never been sanctioned by Jewish authorities in all of history, there is no room to decide differently today. The majority of this lengthy responsum is taken up by the historical review, indicating that one function of Reform *halakhah* is establishing continuity with the past, at least in cases where past positions are still considered to align with the current mores of the Reform community.

The inclusion of the CCAR resolutions at the beginning of this responsum is an interesting commentary on Reform *halakhah*. The bulk of this responsum is a historical overview

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<sup>52</sup> Eleff, Zev. “Patrilineal Descent & the Shaping of Inter-marriage Discourse in American Judaism.” *Zeramim: an Online Journal of Applied Jewish Thought*, vol. 3, issue 1, Fall 2018, pp. 31-32. Also available at

[https://zeramim.org/past-issues/volume-iii-issue-1-fall-2018-5779-2/patrilineal-descent-the-shaping-of-inter-marriage-discourse-in-american-judaism-zev-eleff/#\\_ftn12](https://zeramim.org/past-issues/volume-iii-issue-1-fall-2018-5779-2/patrilineal-descent-the-shaping-of-inter-marriage-discourse-in-american-judaism-zev-eleff/#_ftn12).

<sup>53</sup> CCAR. “Status of Children of Mixed Marriages.” CCAR. March 15, 1983.

<https://www.ccarnet.org/ccar-resolutions/status-of-children-of-mixed-marriages-1983/>. Accessed March 7, 2022.

of mixed marriage throughout Jewish history - the discussion is lengthy and cites myriad sources, from Bible to historiographical studies. On its own, the historical review in the responsum makes a strong and persuasive argument. However, by beginning with the CCAR resolutions, the responsum offers a mini-history of the attitude toward mixed marriage within the Reform movement. In appealing to the resolutions, this responsum (re)confirms their authority - the responsum may provide a fuller explanation, but the position has already been decided by the CCAR. Both of these aspects are part of the responsum's attempt at persuasion. Lest one challenge the historical review by suggesting that Reform Judaism represents a radical departure from earlier precedent, the responsum provides the "official" position of Reform rabbis. On the contrary, if one questions this position, it is backed up with a long history of opposition to mixed marriage in Judaism. At the end of the responsum, the stance toward mixed marriage in Conservative Judaism, Orthodox Judaism, and Israeli law are considered. This adds a third column of authority - Reform rabbis and history are in alignment, and the rest of the organized Jewish community is as well.

There is an inherent tension in this responsum between past and present. This is evident in its very first line: "Reform Judaism has been firmly opposed to mixed marriages." The placement and conciseness of this statement makes it seem like an attempt at providing a straightforward position, but the use of the present perfect continuous tense ("has been firmly opposed"), actually makes it quite ambiguous! After all, the present perfect continuous tense can be used either to describe an action that has recently stopped (Reform Judaism used to be firmly opposed to mixed marriages, but is no longer), or an action continuing into the present (Reform Judaism is still opposed to mixed marriages, as is consistent with its prior stances). The phrasing of the first line of this responsum reveals a hesitancy of the author to speak for all of "Reform Judaism" and to make a descriptive claim about its position on mixed marriage today. However, it is clear that the author believes that the past stance established in the CCAR resolutions is still the right position for Reform rabbis to take.

The tension between past and present is unavoidable in a Reform responsum that relies on the authority of history, given that Reform Judaism is premised on the historical development of Judaism and in itself represents a very radical departure from Jewish life of the past. Since its founding in the early 19th century, Reform Judaism embraced emancipation and rejected many of the barriers that separated Jews from non-Jews. These trends have only increased until the present day. For example, not only do Reform Jews disregard the Talmudic prohibition of eating the bread of a non-Jew, they would most likely object to it on principle. In a world in which Jews eat, work, play, and live with non-Jews, it is inevitable that some will fall in love with them. For the CCAR to draw a red line around marriage while allowing all other forms of interaction can seem arbitrary.

The historical review in this responsum begins by citing sources from the Hebrew Bible. Referring to the Patriarchs, Abraham, Isaac, and Jacob, the responsum notes that they “went to considerable trouble to obtain wives within the family circle, presumably with individuals who would be friendly to the religious ideals which the Patriarchs held.” The assumption that endogamous marriage was encouraged for religious reasons is supported by biblical legislation. The responsum quotes many sources that prohibit marriage between Israelite men and women from other tribes, such as 1 Kings 11:2, which it translates as “You shall not enter into marriage with them, neither shall they with you, for surely they will turn away your heart after their gods.” It also notes cases in which mixed marriage leads to bad outcomes, including the Israelite men being led astray to worship other gods. A strength in this part of the responsum is that it acknowledges exceptions to the rule. Ultimately though, the exceptions are few, so the responsum persuasively establishes that mixed marriage was feared in biblical times because it posed a threat to Yahweh worship.

Further sources forbidding mixed marriage, and exceptions to the rule, are presented for the Hasmonean and Hellenistic period, the Talmudic period, and the Middle Ages. The responsum traces how this prohibition developed. In the Hasmonean and Hellenistic period, the

fear is not about Yahweh worship specifically, but assimilation writ large. In the Talmudic period, mixed marriages were declared invalid because Kiddushin, the marital rite, is only possible between two Jews. In the Middle Ages, the responsum notes, Christians were equally opposed to mixed marriage. In addition to earlier fears about diminishing the Jewish community, the responsum brings sources from the Middle Ages that express a specific fear of violence from Christians, even ones who may become family: “Zakuta reported that some Jews killed during the persecution of 1391 were actually slain by their own Christian sons born to Christian women (Yochasin, ed. Filipowski, 225a).” The responsum acknowledges a couple of cases from this time period of rabbinic authorities who held more lenient positions.

A dynamic emerges through this responsum which is very relevant to the situation of mixed marriage today. Regarding 18th century England, the author writes “Intermarriage did not necessarily mean that the party wished to leave the Jewish community, but they had little choice, as they were inevitably expelled from the synagogue.” In the Hellenistic and Hasmonean time period, it is mentioned that some people who left the Jewish community were motivated by a desire to marry a non-Jew. These examples demonstrate that there is a practical cost to not welcoming intermarried couples. This concern is not explored in the responsum.

Another weakness of this section is its selective reading of texts. For example, it cites Jubilees, which is not part of the Jewish biblical canon,<sup>54</sup> as taking a very strong stance against mixed marriage: “Those who permitted their daughters to marry Gentiles were to die through stoning and the daughters through fire (Jub. 30:7ff). There could be no atonement for this sin, and the act was considered akin to presenting the child to Molech.” Read in context, this prohibition is one of many that Reform Jews do not observe today, and in fact they run counter to the Reform embrace of Emancipation and full participation in broader society:

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<sup>54</sup> Jubilees is considered non-canonical in Judaism with the notable exception of the Beta Israel community of Ethiopian Jews. Leslau, Wolf. *Falasha Anthology*. Yale University Press, 1951, p. xxvii.

*Separate thyself from the nations, And eat not with them: And do not according to their works, And become not their associate; For their works are unclean, And all their ways are a pollution and an abomination and uncleanness. They offer their sacrifices to the dead And they worship evil spirits, And they eat over the graves, And all their works are vanity and nothingness. They have no heart to understand And their eyes do not see what their works are, And how they err in saying to a piece of wood: 'Thou art my God,' And to a stone: 'Thou art my Lord and thou art my deliverer.' [And they have no heart.] And as for thee, my son Jacob, May the Most High God help thee And the God of heaven bless thee And remove thee from their uncleanness and from all their error. Be thou ware, my son Jacob, of taking a wife from any seed of the daughters of Canaan; For all his seed is to be rooted out of the earth. (Jubilees 22:23-27).*

Reform Jews do eat with, associate with, and act in other ways like non-Jews. In addition, with the Reform Jewish emphasis on ethics like universal human dignity (*b'tzelem elohim*), one might expect this responsum to reject the idea that other nations are an abomination and that God will wipe them from the earth. Given that Jubilees is non-canonical and so clearly out of step with contemporary Reform mores, it is of questionable authority in a piece of Reform *halakhah*. However, the prohibition of mixed marriage in Jubilees is presented in the responsum without caveat or contextualization.

The responsum's discussion of the modern period notes the increasing rates of intermarriage over time, though with variation across location. It also discusses the history of the mixed marriage question in the Reform movement, beyond the CCAR resolutions. This history includes dissenting voices who did preside over mixed marriages, though they were by no means a majority. The responsum quotes six recommendations from the 1947 report on mixed marriage, which were adopted by the CCAR. The recommendations address conversion, civil marriage, and the upheld opposition to mixed marriage. The responsum notes that the 1947 paper represented a much more in-depth handling of the topic: "These specific

recommendations have gone much farther than any other material in providing an orderly and uniform approach to the questions connected with mixed marriages.”

The responsum’s summary of debates on mixed marriage in the CCAR demonstrates that the question arose frequently. The responsum mentions that in 1962, a Special Committee of the CCAR under the leadership of Eugene Mihaly actually proposed a resolution that would have overturned their historic opposition to mixed marriages and formally permitted rabbis to officiate. This resolution failed, and the question was raised again in 1971 with majority and minority opinions submitted in writing. The ensuing debate ultimately led to the 1973 resolution. A significant development, which is not mentioned in the responsum, is the creation of the Association for a Progressive Reform Judaism (APRJ), also led by Eugene Mihaly. The APRJ formed itself as a caucus within the CCAR of members who disagreed with the 1973 resolution or were concerned that it was indicative that the CCAR would try to limit the freedom of Reform rabbis to make decisions about their practice.<sup>55</sup> The founding of the APRJ in response to the 1973 resolution indicates how strongly felt the dissent was at this point in time.

The responsum in question was then written in 1980, with another responsum shortly after it in 1982. This history of frequent debate demonstrates that there continued to be a diversity of positions among Reform rabbis regarding the issue of mixed marriage, and that rabbis across the spectrum cared that the CCAR’s stated position reflected their view. This points to a dynamic within *halakhah* that is still true today - individual rabbis prompt issues to be decided upon by a larger body. The individual rabbis may be motivated by the belief that their position is the correct one, or they may seek the legitimacy conferred by institutional approval of their actions.

This leaves the question of how to understand the CCAR’s relative silence on this topic since the 1980s. The increasing numbers of Reform rabbis who performed mixed marriages

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<sup>55</sup> “Association for a Progressive Reform Judaism.” The Jacob Rader Marcus Center of the American Jewish Archives, Cincinnati, OH. <http://collections.americanjewisharchives.org/ms/ms0763/ms0763.016.005.pdf>. Accessed March 7, 2022.



indicates that the silence was not due to acceptance of the past resolutions and responsa. Instead, the silence suggests that the CCAR Responsa Committee felt that there was nothing new to say - there was no way of justifying rabbinic officiation of mixed marriages within a halakhic framework, but it also did not want to stand in the way of Reform rabbis who chose to officiate. Additionally, the 1983 responsum affirming the legitimacy of patrilineal descent in determining Jewish status of children complicated the movement's position on mixed marriages. For the Committee to restate its opposition to officiation would risk undermining Reform's attempt at welcoming intermarried families. The silence therefore amounts not to a relenting of the opposition, but to a willingness to let it fade into the recesses of history. Issuing a new responsum, in either direction, would simply have been too divisive.<sup>56</sup>

### **1982 Responsum**

An additional responsum was issued on the topic of mixed marriage officiation in 1982.<sup>57</sup> The question is stated "Would there be any halachic justification for a rabbi officiating at an intermarriage? (What reasons halachic and non-halachic, for refusal can be cited?" The questions are attributed to a "Mr. R. B. I., New York, New York." Every part of this introductory query is rich for interpretation. Does the questioner refer to himself by initials because he feels sheepish about asking this question and hopes to remain anonymous? Are the initials a coded way of identifying himself as a rabbi (RaBbl), purposefully implying that there are many in the field with such questions who do not feel comfortable asking them publicly? Or does the title of "Mr.," indicate that the questions are in fact from a congregant seeking the response of a "higher authority" with which to rebuke his local rabbi whom he perceives as being too strict or too lenient on the matter?

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<sup>56</sup> Fishkoff, Sue. "Focus on issues: Reform rabbis debate intermarriage." *Jewish Standard*, June 29, 2006, <https://jewishstandard.timesofisrael.com/focus-on-issues-reform-rabbis-debate-intermarriage/>. Accessed February 1, 2022.

<sup>57</sup> CCAR Responsa Committee. "Rabbi Officiating at a Mixed Marriage." *CCAR Yearbook*, 1982, vol. 92, pp. 213-215. Also available at <https://www.ccarnet.org/ccar-responsa/arr-467-470/>.

The phrasing of the first question “would there be any halachic justification for a rabbi officiating at an intermarriage?” could have many valences. It may have been asked indignantly, as in “how could these too-lenient rabbis possibly justify this halachically?!” However, the righteous traditionalist would already have much halakhic material for a defense of his position, so it seems more likely that the question is asked humbly and pleadingly - “Is there any way we can interpret tradition to allow me to fulfill the role I feel called to fulfill?” The questioner does not inquire about “*the halakhah*” on mixed marriage officiation, presumably because he is aware of the dominant position in *halakhic* literature and feels unsatisfied with this response, seeking greater permissiveness. However, he does not want to abandon *halakhah* completely - he clearly feels that rabbis are bound by what can be *halakhically* justified. The fact that the questioner is seeking “any halachic justification” also implies that he is aware of the diverse opinions within *halakhic* literature and seeks some sort of Jewish precedent for mixed marriage officiation.

As if anticipating a negative answer to the first question, the questioner adds a second: “What reasons halachic and non-halachic, for refusal can be cited?” As the righteous traditionalist, the questioner may be seeking further support for his rebuke of lenient rabbis. As the (more likely) humble and pleading rabbi, the questioner seeks guidance on how to explain his refusal. Notably, here he is not only interested in “halachic” but also “non-halachic” reasons. This rabbi, finding himself between the rock of tradition and the hard place of his congregants’ wishes, is also appealing to a “higher authority” in the CCAR Responsa Committee to intervene from above.

The answer provided to these questions first affirms the conclusion of the 1980 responsum: “It is clear from the committee’s earlier responsum on “Reform Judaism and Mixed Marriage” that there can be no halachic basis for a mixed marriage.” It then cites the 1973 CCAR resolution and quotes it in full. The respondent could have stopped there, having provided a clear answer of opposition to mixed marriage on the basis of the Responsa

Committee's thorough historical review and the most recent resolution of the CCAR. But instead, the respondent writes: "The position of the *Halacha* and its development through the ages is outlined in the earlier responsum. However, as this question is interested in the contemporary arguments which might be useful in a discussion of this matter, let us suggest the following..." The phrase "contemporary arguments" presumably refers to the questioner's request for "non-halachic" reasons that could be cited in a refusal to officiate. By relating these terms, the respondent implies that *halakhah* is of the past, and is therefore wholly represented by the historical review of the 1980 responsum. The 1982 responsum, in contrast, will provide reasons that bear on rabbis in the present. However, the responsum does not adhere closely to a past-present distinction in its definition of *halakhah*, after all, the "contemporary" reasons are transmitted through a traditionally *halakhic* medium - the responsum, and in so doing they become part of Reform *halakhah* as well. This may be why the respondent avoided using the questioner's term "non-halakhic" and opted for "contemporary" instead, especially because some of the additional reasons cited are *halakhic* in nature.

The respondent took this opportunity to append onto the 1980 responsum a long list of other reasons why Reform rabbis should not officiate at mixed marriages. The list is composed of 15 reasons, ranging from ritual integrity to sociological trends. Some of the reasons are very clearly drawn from *halakhah* of the past. For example, the first reason is that as a wedding officiant, a rabbi is the *Mesader Kiddushin*, and "Kiddushin between a Jew and a non-Jew would be a contradiction in terms." As was noted in the 1980 responsum, the invalidity of *Kiddushin* in the case of mixed marriages was a Talmudic interpretation. That it is presented here as a "contemporary reason" can only be interpreted to mean that the respondent feels it necessary to remind the reader that this ancient legal opinion *still* applies. In reason nine, the respondent adds that because of the ritual invalidity, a mixed marriage would not be accepted by "most Jews, be they Orthodox, Conservative, or Reform." The desire for a Reform Jewish practice to maintain its legitimacy across the Jewish spectrum is another factor that connects this

responsum to halakhic discourse. Reason number two also touches on the integrity of the marriage liturgy when it points out that “even if [the non-Jewish party] would agree to such a ceremony he/she could not in good conscience say, ‘Be consecrated unto me as my wife/husband according to the laws of Moses and Israel,’ as he/she has not accepted these laws.” The respondent does not interrogate what is meant by accepting the laws of Moses and Israel, and its relevance to Reform Jews, except to say definitively that non-Jews have not done this.

The 1982 responsum provides other reasons that are more easily classified as “contemporary” or “non-halachic” in that they are sociological observations about mixed marriage in the present day. For example, reason thirteen begins “At the present time, the American Jewish community gains approximately 10,000 converts a year, mainly from non-Jews who contemplate marriage to Jewish partners.” And goes on to caution that fewer people would convert if mixed marriage was sanctioned by Reform rabbis. Reason number eight points to a social phenomenon: “Many couples nowadays want to be fair to both religions and both sets of parents; therefore, they ask that a rabbi and priest/minister participate in the ceremony, or that there be two separate religious ceremonies reflecting the two religious traditions. Such an effort must be rejected, for it demonstrates religious indifference or syncretism.” Reason number three discusses some of the ways in which mixed marriage can lead to a dilution of Judaism in the home. While these sociological observations focus on the present day, the concerns they express have ancient origins.

Many of the reasons provided in this responsum relate to the special role of rabbi vis a vis lay person. The responsum asserts that rabbis bear the responsibility to preserve the integrity of Jewish rituals and to strengthen the Jewish community. It also claims that the rabbi’s actions have weight not only in and of themselves, but because they send a signal about what is acceptable within Judaism and what is concerning for the Jewish people. At times, the responsum speaks from the authority of a seasoned rabbi. For example, reason fourteen: “Later

conversions (sic) of the non-Jewish partner is possible and should be encouraged. But experience has taught us that early family patterns generally continue. Tensions which may later develop in the family make such a religious change even more difficult and unlikely.”

The distinction between rabbi and lay person often carries a tone of derision toward the latter. For example, “religious considerations in marriage do not seem paramount to young couples, but they are necessarily of primary importance to the rabbi.” Another example, even more strongly worded: “The statement by a rabbi that he will not marry a young couple in which one party is Jewish and the other non-Jewish is not a rejection of that couple. The request made of the rabbi to marry them is improper and betrays insensitivity to the rabbi’s feelings and integrity. To the extent that identity is expressed through choice and commitment, it is the out-marrying Jewish individual who is doing the “rejecting.” This should be explained as gently as possible to the family.” The audience of this responsum is clearly assumed to be rabbis and not laity. Otherwise, the very harsh criticism of the “out-marrying Jewish individual” would presumably have been “explained as gently as possible,” as the respondent suggests for external-facing explanations. At the time this responsum was published, the only way to access it would have been through securing a hard copy of the *CCAR Yearbook* in which it was printed or a compilation of Reform responsa. These barriers to access largely protected responsa as a forum for internal rabbinic conversation, though this is no longer the case today.

The final reason offered by the responsum acknowledges that mixed marriage will continue, and to a large extent is beyond the control of the Reform rabbinate. However, it argues, this does not justify a change in Reform *halakhah*. The respondent anticipates the pushback that it is better to keep more people in the fold by performing mixed marriages than to reject them at this fateful juncture in their lives. To this unspoken argument, the respondent writes “It is far more important to have a strong commitment from a smaller group than a vague commitment from a large number who are at the very periphery.” *Halakhah* may at times exclude, but it also binds.

## URJ Resolutions

In the history of the URJ, three resolutions have commented on mixed marriage, though none address rabbinic officiation of mixed marriage specifically. “Intermarriage” from 1971 expresses that intermarriage is a concern of Reform laity and welcomes the CCAR’s plan to consult lay people in their study of the topic. It also proposes a joint conferences of the CCAR and the Union of American Hebrew Congregations (UAHC, the prior name of the URJ until 2003) “to explore through in-depth studies the dimensions of the problem and to seek ways of strengthening Jewish marriage and fostering commitment to the preservation of the Jewish family.”<sup>58</sup> “Outreach” from 1979 notes intermarriage as one of many demographic trends impacting the constituency of the Jewish community, and it affirms a resolution of the UAHC board to increase outreach activities “to reach the religiously unaffiliated and those who voluntarily wish to embrace Judaism.” These activities include education to strengthen Jewish identification, welcoming converts, and making the congregation, rabbi, and Judaism itself available to intermarried families.<sup>59</sup> Finally, “Resolution on Jewish continuity and growth” proposes a greater emphasis on engaging those who are unaffiliated, including Jews and non-Jews who are intermarried, in all activities within Reform synagogues. The resolution also encourages partnerships between Reform synagogues and Jewish federations in developing and funding programs aimed at continuity and growth.<sup>60</sup>

## **A Reform Dissent: “Saying “Yes” to Mixed-Marriage Officiation: A Socio-Halachic Approach” by Rabbi A. Brian Stoller**

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<sup>58</sup> URJ. “Intermarriage.” *URJ.org*, 1971. <https://urj.org/what-we-believe/resolutions/intermarriage>. Accessed January 23, 2022.

<sup>59</sup> URJ. “Outreach.” *URJ.org*, 1979. <https://urj.org/what-we-believe/resolutions/outreach>. Accessed January 23, 2022

<sup>60</sup> URJ. “Resolution on Jewish continuity and growth.” *URJ.org*, 1993. <https://urj.org/what-we-believe/resolutions/resolution-jewish-continuity-and-growth>. Accessed January 23, 2022.

Rabbi A. Brian Stoller wrote a dissenting opinion to the CCAR's position on mixed marriage officiation, entitled "Saying 'Yes' to Mixed-Marriage Officiation: A Socio-Halachic Approach." This paper was published in the winter 2016 issue of the *CCAR Journal: The Reform Jewish Quarterly*.<sup>61</sup> At the time the article was published, Rabbi Stoller was the Associate Rabbi of Congregation B'nai Jehoshua Beth Elohim in Deerfield, IL. He currently serves as the Senior Rabbi of Temple Israel in Omaha, NB. He is also now a member of the CCAR's Responsa Committee.<sup>62</sup>

In the abstract of his paper, Rabbi Stoller commented on his motivations for writing it, his process, and the outcome at which he arrived.

*In 2013, my congregation in Deerfield, Illinois, asked me if I would officiate at mixed marriages. Before giving my answer, I set out to research the issue and consider the question in dialogue with the CCAR's statements on this topic. Drawing on halachic literature, historiography, and current sociological data, I composed the following t'shuvah allowing for mixed-marriage officiation on a case-by-case basis, provided that certain conditions are met. The policy I have set forth, I believe, is both faithful to the spirit of our tradition and suitable to the present circumstance of American Reform Judaism.*

Rabbi Stoller's paper represents another type of *halakhah* within the Reform movement. While it departs from the official CCAR statements on mixed marriage officiation, it was also published by the CCAR in their journal. This gives it a sense of legitimacy and even sanction from the CCAR as a Reform rabbinic opinion. In the introduction to *American Reform Responsa*, Rabbi Mark Washofsky specifically includes academic articles published in the CCAR Journal

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<sup>61</sup> Stoller, A. Brian. "Saying 'Yes' to Mixed-Marriage Officiation: A Socio-Halachic Approach." *CCAR Journal: The Reform Jewish Quarterly*, Winter 2016, pp. 54-82. Also available at <https://www.bjbe.org/sites/default/files/docs/Saying%20Yes%20to%20Mixed%20Marriage%20Officiation.pdf>.

<sup>62</sup> Temple Israel of Omaha. "Our Clergy and Staff." *TempleIsraelOmaha.com*. <https://www.templeisraelomaha.com/our-clergy--staff.html>. Accessed March 7, 2022.

as one form of Reform *halakhah*. Many factors contribute to the ambiguous status of Rabbi Stoller's paper: On the question of mixed marriage officiation, formal CCAR responsa have not been issued for the past 40 years. Rabbi Stoller now holds a position on the Responsa Committee, giving his opinions additional weight in the CCAR's process of *halakhic* decision-making. Additionally, Rabbi Stoller's conclusion to officiate at mixed marriages which meet certain criteria is reflective of the majority position among the Reform rabbinate.<sup>63</sup> Given these factors, it is unclear whether Rabbi Stoller's paper should even be considered a Reform *dissent*, or if it is better categorized as a *halakhic* articulation of the implicit majority opinion.

In the paper, Rabbi Stoller does distinguish between his work and the statements of the CCAR. He represents himself only as a congregational rabbi and explains that his paper was motivated by requests from congregants for him to officiate at mixed marriages. This highlights a gap between the decision-making of individual Reform congregational rabbis and the CCAR's committees. While popular demand causes more rapid change at the individual level, the CCAR is more conservative, adhering as it does to historic opinions, requiring near consensus (in the case of responsa) or majority votes (resolutions), and speaking to and for a diverse membership. Rabbi Stoller gives deference to the CCAR's position in his paper. He begins by synthesizing the four key contentions which form the basis of the CCAR position and writes, "As a Reform rabbi, I feel bound to consider the issue of mixed-marriage officiation in dialogue with the resolutions and responsa of our Movement. I will therefore address each of these contentions in turn." In the abstract, Rabbi Stoller described his paper as "in dialogue" with the CCAR's statements. This phrasing alludes to Rabbi Washofsky's definition of *halakhah* as a language or rhetorical performance. In this *halakhic* conversation, the CCAR statements might

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<sup>63</sup> Interfaith Family. "Report on InterfaithFamily's 2017 Survey on Rabbinic Officiation for Interfaith Couples." *CFRIJ.com*. <http://www.cfrij.com/wp-content/uploads/2020/03/Rabbi-Officiation-Report-Final.pdf>. Accessed March 7, 2022.



carry greater authority, but Rabbi Stoller's expert marshaling of Jewish legal sources make him a worthy interlocutor.

Rabbi Stoller describes his approach as "socio-halachic," relying upon sources both religious and secular: "halachic literature, historiography, and current sociological data." Rabbi Stoller introduces his approach by citing contemporary academic scholars of *halakhah*:

*R. David Ellenson and R. Daniel Gordis argue that p'sak halachah (halachic decisionmaking), in all contexts and across denominations, is often best understood as 'religious policymaking,' the art of mediating amongst the received tradition, contemporary cultural, social, and political circumstances, and personal and communal values. In policymaking, one seeks to formulate guidelines based on the 'overarching spirit that animates the legal tradition,' in order to serve the community's present needs and future direction. Such is my goal in this t'shuvah.*

This introduction makes Rabbi Stoller's paper a self-aware piece of halakhic literature. By grounding itself in a definition of *halakhah*, Rabbi Stoller asserts the authority of his position not only within the Reform movement, but across contexts and denominations. While the label "socio-halachic" may have seemed like a modification of a traditional decision-making process, according to Rabbi Ellenson and Rabbi Gordis' definition, it is in fact the very epitome of *p'sak halakhah*: "the art of mediating amongst the received tradition, contemporary cultural, social, and political circumstances, and personal and communal values."

The first section of Rabbi Stoller's paper acknowledges the long history of opposition to mixed marriage in Judaism. However, it also establishes the long history of *halakhic* change. Rabbi Stoller explains: "Jewish law has always demonstrated sensitivity to changing social, cultural, and political circumstances. While one response has been to fortify the barriers against the outside world, there has also been a tradition of adjusting those boundaries to accommodate new realities. [...] Reform *p'sak halachah*, in particular, has often redefined boundaries as changing social norms have warranted doing so, notably in regards to the

ordination of women, homosexuality, and patrilineal descent.” Through this discussion, including examples from ancient times to the nineteenth century, Rabbi Stoller establishes a precedent for the adjustment of communal boundaries. In citing changes within the Reform movement, he implicitly links mixed marriage to other communal boundary adjustments now widely accepted and considered morally correct among Reform Jews. At the end of this section, Rabbi Stoller makes a radical argument about the adaptability of *halakhah*, “As this history of halachic development demonstrates, the question is not whether this particular boundary *can* be moved but, rather, whether it *should* be moved, and by what criteria?”

For Rabbi Stoller, the discretion to apply earlier sources in new ways is what enables *halakhah* to remain relevant and therefore to be eternal for the Jewish people. In this tradition, Rabbi Stoller presents an earlier responsum from which he draws principles to apply to the case of mixed marriage today. The responsum was written by a German Orthodox rabbi named Akiva Eger in the early nineteenth century. In the responsum, Rabbi Eger argues that the testimony of a man who shaves with a razor should be accepted, albeit that shaving with a razor is a violation of a Torah commandment, which would normally make a person unfit to provide testimony. Rabbi Eger’s decision is based on two factors: 1) that shaving with a razor had become a common, socially-accepted practice among the German Jewish community, and 2) that the leaders of that community did not protest the practice. Rabbi Stoller explains, “R. Eger reasons that these two factors had combined to make shaving with a razor something ‘which is not apparent to people that it is forbidden (*d’la mashma l’hu l’inshei d’asur*).’ By this he means that while people commonly transgress this prohibition, they do so, as the Shulchan Aruch suggests, unwittingly and without malice.”<sup>64</sup>

While the case of a witness who shaves with a razor might seem minor and unrelated to the broader issue of mixed marriage, Rabbi Stoller argues that the former is in fact an appropriate model for the latter - shaving with a razor was prohibited in the Torah because it

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<sup>64</sup> Stoller, 59.

was associated with idol worshipers, and the Torah sought to distance Jews from idol worship. The same reasoning is given for the Toraitic prohibition of mixed marriage - to prevent Israelites from practicing idolatry. Rabbi Stoller therefore considers the case of the man who shaves with a razor “particularly relevant” to mixed marriage, and he derives principles from the nineteenth century responsum to apply to present circumstances.

*From this significant t’shuvah of R. Akiva Eger, it is possible to discern a halachic approach to the adjustment of legal boundaries in response to sociological change. According to this approach, a change in the way a given prohibition is applied and enforced may be halachically justified if that prohibition is a davar d’la mashma l’inshei she-hu aveirah (something which is not apparent to people that it is a transgression). In order to apply this designation, two criteria must be met:*

- 1. Members of the Jewish community in question commonly transgress the prohibition in public view, unwittingly and without malice, under the impression that, in practice at least, the behavior is not forbidden; and*
- 2. The leadership of that community has acted, and continues to act, in ways that reinforce the laity’s impression that the behavior is not forbidden in practice.*

Rabbi Stoller then proceeds to demonstrate that each of these two criteria are met in the case of mixed marriage among contemporary Reform Jews in America. The first criterion is easily demonstrated based on the high rates of mixed marriage among non-Orthodox Jews and a reference to the work of sociologist Sylvia Barack Fishman on how attitudes toward mixed marriage have shifted dramatically in recent years. The second criterion is not so obvious. As we have seen, CCAR resolutions and responsa declare their opposition to mixed marriage, even while they encourage the welcome of intermarried families. However, Rabbi Stoller makes the point that CCAR statements are much less visible to Reform Jews than the communications

they receive from their temples and the URJ. Of the latter organizations, Rabbi Stoller writes, “Indeed, these sectors of Reform communal leadership do much to foster normalization of mixed marriage, both in their messaging regarding mixed marriage specifically and in the values they espouse generally.”<sup>65</sup> He then provides examples from a URJ brochure for intermarried families, a speech by Rabbi Rick Jacobs, president of the URJ, at the 2013 Biennial conference, religious school curriculum, and Reform liturgy which modifies the traditional liturgy to express more universalistic themes. On the second criterion, Rabbi Stoller concludes “The Reform Movement’s energetic outreach to mixed-married families, along with the values taught in the congregational setting, reinforce the impression that mixed marriage is normative behavior that is fully acceptable to Reform Judaism.”<sup>66</sup>

The use of messaging from the URJ and its congregations is an important addition to our understanding of authority in Reform Judaism. In considering what actually impacts the behavior and choices of Reform Jews, Stoller raises the important factor of visibility. The CCAR Responsa Committee may conceive of its work as halakhic decision-making, but *halakhah* can only influence Jews if it is visible to them. For most Reform Jews, the Responsa Committee and CCAR resolutions are unknown or obscure. The main way in which these statements might reach lay people is indirectly, by influencing the work of individual staff and clergy at the URJ and its congregations. However, the examples provided by Rabbi Stoller indicate that there is a rift between the positions taken by the CCAR and the Movement’s more public-facing communications. While the URJ staff, temple boards, and Reform clergy may not be trying to change Reform *halakhah*, their actions are more visible to Reform Jews and therefore have more influence on what congregants believe and how they act.

In the next part of “Saying ‘Yes’ to Mixed-Marriage Officiation,” Rabbi Stoller reviews the rituals of a Jewish wedding. He agrees with the CCAR Responsa Committee’s position that

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<sup>65</sup> Ibid., 64.

<sup>66</sup> Ibid., 66.

*kiddushin* can only occur between two Jews, because the language used for the exchange of rings consecrates the marriage “according to the religion of Moses and Israel.” However, for Rabbi Stoller this presents a roadblock and not a dead end. He then considers other paradigms for mixed marriage in Judaism and concludes based on historical Reform precedent that rabbis can officiate at Jewish civil marriages. These ceremonies would incorporate the Jewish wedding rituals which can be performed with integrity by mixed couples and could also contain new liturgy crafted for the case of mixed marriage. For the Reform movement, liturgy and ritual are a form of guidance about Jewish practice, because they contain explicit and implicit messages about what an event signifies. However, in Reform Judaism, liturgy and ritual are not fixed. They can be rewritten and reinterpreted over time, such that the chuppah, for example, becomes a symbol of a mixed couple’s commitment to build a Jewish home. Rabbi Stoller concludes that “officiants should take care to make mixed weddings different from endogamous ones, in order to maintain a distinction between Jewish civil marriage and *kiddushin*. In this regard, it makes sense to create a special liturgy suitable to the unique nature of mixed marriage.”<sup>67</sup>

The next part of Rabbi Stoller’s paper presents other considerations that support his position to officiate at Jewish civil marriages. These considerations are pragmatic, rather than legalistic or theological. They are as follows:

1. *Requesting rabbinic officiation may be an out-marrying Jew’s attempt to connect Jewishly.*
2. *The rabbi can bring Judaism into a moment that would otherwise lack it.*
3. *The symbolic impact of rabbinic officiation would help the couple feel more accepted.*
4. *Rabbinic officiation may give future children a better chance of being raised Jewish.*<sup>68</sup>

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<sup>67</sup> Ibid., 70.

<sup>68</sup> Ibid., 71-72.

These reasons demonstrate that while halakhic decision-making may necessarily engage with the received tradition and its interpretation, it is also influenced by very practical concerns.

The inclusion of pragmatic reasons for rabbis to officiate at mixed marriages is an important refinement of the argument in this paper. Remember that the legal precedent from Rabbi Eger's responsum about the man who shaves with a razor allows for rabbis to sanction any action that is common in a particular Jewish community and not publicly prohibited by its rabbis. There are many valuable Jewish traditions that are not currently upheld by the majority of Reform Jews. Just because Reform rabbis do not publicly condemn this lack of observance, it does not mean that they should sanction it. Indiscriminate application of the precedent could be used to undermine many important Reform Jewish traditions. By adding the practical reasons for officiation of mixed marriage, Rabbi Stoller refines his argument to say that the precedent of the man who shaves with a razor can be applied, *when there is good reason to do so*.

Given Rabbi Stoller's view on the responsiveness of *halakhah* to contemporary considerations, it makes sense that the question he is asking is less 'what does Judaism say,' and more 'what *should* Judaism say?' In answer to this question, Rabbi Stoller presents his case-by-case approach, in which he will officiate at the weddings of mixed couples who make specific commitments about their Jewish learning and practice.

## **The Conservative Movement**

### **Halakhic Authority**

The Conservative movement's halakhic decision-making body is the Rabbinical Assembly's Committee on Jewish Law and Standards (CJLS). The website of the Rabbinical Assembly describes the CJLS's procedures: The CJLS is composed of 25 Rabbinical Assembly rabbis who are voting members, plus 5 non-voting lay people from the United Synagogue, and 1 non-voting cantor from the Cantors' Assembly. Questions about Jewish law are submitted to the committee from members of the Rabbinical Assembly or other representatives of the

Conservative movement. When a question is asked, members of the committee prepare papers that provide an answer to the question. The papers are discussed by a subcommittee and then the whole CJLS, who provide feedback. Once the paper has been revised, it is voted on by the whole CJLS. When six or more members vote in favor of a paper, it becomes an “official halakhic position” of the Conservative movement, or, in the words of Rabbi Elliot Dorff, then Co-Chair of the CJLS, an approved paper represents a “validated option within the Conservative movement.” In cases where two or more papers are approved, they both stand as official positions or validated options. Dorff estimated that this occurs for about 15% of the questions submitted.<sup>69</sup>

According to this description of the CJLS, its authority is both broad and limited. On the one hand, the committee “sets halakhic policy for Rabbinical Assembly rabbis and for the Conservative movement as a whole.” On the other hand, significant discretion is afforded to individual Conservative Rabbis, “as *marei d’atra*, to consider the Committee's positions but make their own decisions as conditions warrant.” The conditions a rabbi might consider are not specified. In this brief description of the CJLS, deference is given to individual rabbis once more: “Questions about religious practice should be brought to your local Conservative rabbi. Each rabbi is the *mara d’atra*, or local religious decisor, of a particular community.”<sup>70</sup>

From the Rabbinical Assembly’s discussion of the CJLS, a few different definitions of *halakhah* are expressed, both implicitly and explicitly. The name of the committee suggests that *halakhah* can be understood as Jewish law and [Jewish] standard. While “law” carries the force of binding policy, “standard” describes an advisable norm. From its founding in 1927, the decision-making body was known only as the Law Committee. In 1948, the name was changed

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<sup>69</sup> Rabbinical Assembly. “Committee on Jewish Law and Standards.” *RabbinicalAssembly.org*. <https://www.rabbinicalassembly.org/jewish-law/committee-jewish-law-and-standards>. Accessed May 3, 2021.

Video of Rabbi Elliot Dorff explaining the CJLS, available here: <https://www.rabbinicalassembly.org/sites/default/files/2020-04/ElliotDorffHalakhicStudySpring2020.mp4>. Accessed on May 3, 2021.

<sup>70</sup> Rabbinical Assembly. “Committee on Jewish Law and Standards.”

to the Committee on Jewish Law and Standards.<sup>71</sup> The procedures of the CJLS imply that *halakhah* consists of questions and answers that are validated by the central institution of a particular group of Jews, in this case, Conservative ones. The description also says that CJLS responsa “provide an invaluable source of learning,”<sup>72</sup> suggesting that *halakhah* might be conceived of, or at least *used*, today as a resource for education about Judaism.<sup>73</sup> And finally, the discretion afforded to individual rabbis suggests that *halakhah* could also be understood as the opinion of one’s local rabbi.

The dual authority of the Conservative Movement and its rabbis is further articulated in the Code of Professional Conduct for Members of the Rabbinical Assembly. The most recent version of this Code, revised in 2018, states:

*Thus, while the rights and status of מרא דאתרא are strongly upheld by the Rabbinical Assembly, granting to each rabbi the responsibility to determine halakhic parameters for his or her congregation, institution or organization, it is expected that the rulings of the Rabbinical Assembly and of the Committee on Jewish Law and Standards will serve as halakhic guide for members of the Assembly and their communities.*<sup>74</sup>

Thus, the CJLS’s responsa are intended to *guide* the decisions of individual rabbis, not to bind them.

### **Positions on Mixed Marriage Officiation**

There is one category of CJLS decisions which supersede an individual rabbi’s authority: “Standards of Religious Practice.” These standards, which relate to rabbinic practice, are the only CJLS decisions considered to be binding upon all members of the Rabbinical Assembly.

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<sup>71</sup> Rabbinical Assembly. “RA History.” *RabbinicalAssembly.org*.

<https://www.rabbinicalassembly.org/about-us/ra-history>. Accessed February 1, 2022.

<sup>72</sup> Rabbinical Assembly. “Committee on Jewish Law and Standards.”

<sup>73</sup> Before the RA digitized its collection of responsa and provided access on its website, responsa were not easily obtained by lay people.

<sup>74</sup> Rabbinical Assembly. “A Code of Professional Conduct for Members of the Rabbinical Assembly,” Approved by the Executive Council of the Rabbinical Assembly on October 1, 2004, Revised on October 18, 2018, available here:

[https://www.rabbinicalassembly.org/sites/default/files/public/ethical\\_guidelines/code-of-conduct-2018-members.pdf](https://www.rabbinicalassembly.org/sites/default/files/public/ethical_guidelines/code-of-conduct-2018-members.pdf). Accessed on May 3, 2021.



They also come with the strongest enforcement mechanism: “Violations of Standards of Religious Practice usually result in expulsion from the Rabbinical Assembly.”<sup>75</sup> Currently, there are 3 Standards of Religious Practice: the first regards Jewish status through matrilineal descent or proper conversion, the second regards re-marriage, and the third, Standard C, regards mixed marriage. This is the text of Standard c in its entirety: “c) Clergy of the Conservative/Masorti movement may officiate at weddings only if both parties are Jewish. Officiation means signing documents or verbal participation of any kind. Attendance as a guest at a wedding where only one party is Jewish is not included in this Standard of Religious Practice.”<sup>76</sup>

The prohibition of officiation at mixed marriages therefore has a special status in the Conservative Movement. It is unlike most of the CJLS’s decisions, which are considered advisory. This prohibition is one of three categories of rabbinic practice which have the elevated status of a binding rule.

The latter statement in Standard c, which allows for Conservative rabbis to *attend* mixed marriages, represents a change in CJLS policy decided in 2018. This change came about after a Rabbinical Assembly commission reviewed the Standards and upheld the ban on officiating mixed marriages but referred the question of attendance back to the CJLS. According to a statement by the Rabbinical Assembly, the commission held “that the attendance ban remains a clear responsum of the Law Committee but as constructed as a standard had long fallen into disuse.”<sup>77</sup> This reveals an interesting dynamic, by which popular practice can cause a change in a formal ruling. Evidently, enough of the Rabbinical Assembly not only opposed the ban but was actively violating it, pressuring the RA to make a change in order to uphold the integrity of the

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<sup>75</sup> Ibid., 3.

<sup>76</sup> Ibid., 3.

<sup>77</sup> Rabbinical Assembly. “RA Executive Council Receives Blue Ribbon Commission Report on Standards of Practice.” *RabbinicalAssembly.org*. January 24, 2018, <https://www.rabbinicalassembly.org/story/ra-executive-council-receives-blue-ribbon-commission-report-standards-practice>. Accessed on May 3, 2021.

Standards. To preserve Standards of Religious Practice as binding rules, the RA could either keep the attendance ban and enforce it, or remove the ban in order to keep Conservative rabbis in the RA, and it chose the latter. Popular practice won out in shaping RA policy, even without a new halakhic decision from the CJLS.

Rabbi Daniel Stein has written about the ambiguous history of Standard c, the prohibition of officiation at mixed marriages. My work here draws heavily on Rabbi Stein's research. On October 28, 1970, the CJLS voted unanimously that a member of the Rabbinical Assembly should not officiate at the marriage of a Jew and a non-Jew. This issue was put up for a second vote, as was required by the CJLS rules at the time, on December 2, 1970. However, that particular meeting was derailed by procedural concerns, so it was again voted on and unanimously approved in December of 1971. With this vote, the rule was considered "binding," though that status was unclear, because the category of a "Standard of Religious Practice" had not yet been established.<sup>78</sup>

When the CJLS met on January 20, 1972, it unanimously adopted two papers on the question of mixed marriage: one by Rabbi Immanuel Lubliner, and the other by Rabbi Aaron Blumenthal. Rabbi Lubliner's paper is a strongly-worded opposition to mixed marriage and a critique of rabbis who officiate at them, including a thorough treatment of Jewish sources from biblical to medieval codes to recent historical examples. Blumenthal's paper is less polemical and more concise. In February of 1972, anticipating the upcoming Rabbinical Assembly convention, Rabbi Judah Nadich circulated a memo to the members of the Assembly clarifying the position of the CJLS regarding rabbis and interfaith marriage. The text of this memo was adapted from the Blumenthal paper.<sup>79</sup>

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<sup>78</sup> Stein, Daniel. "Is There a Standard of Rabbinic Practice Against Inter-marriage? A History of the Rabbinical Assembly's Prohibition on Interfaith Marriage." *Zeremim: an Online Journal of Applied Jewish Thought*, ed. Joshua Cahan, Richard Claman, Marcus Mordecai Schwartz. Vol. 1 Issue 3, Spring 2017/5777, pp. 9-11. Also available at <https://zeramim.org/past-issues/volume-issue-3/stein-standard-rabbinic-practice-intermarriage-history-rabbinical-assemblys-prohibition-interfaith-marriage/>

<sup>79</sup> Ibid., 11-13.

When the Rabbinical Assembly met the next month, at the Convention of March 1972, a consensus decision was reached regarding the enforcement of CJLS rulings. It was agreed that a new category, the “Standard of Rabbinic Practice”<sup>80</sup> would be established for those rulings which were considered binding on all Conservative rabbis, the violation of which could lead to dismissal from the Rabbinical Assembly. A procedure was put in place for elevating particular CJLS rulings to become Standards, which included ratification by the whole Rabbinical Assembly at a convention. In March of 1974, the CJLS adopted the prohibition of attending, participating in, or officiating at mixed marriages as a Standard of Rabbinic Practice, though they did not follow the procedure that had been set out for this purpose, for example, it was never ratified by the Rabbinical Assembly. In 2017, Rabbi Daniel Stein called for the Standard to be reconsidered given the lack of procedural integrity in its establishment.<sup>81</sup>

Though Conservative rabbis are still banned from officiating at mixed marriages, some related changes have recently taken place. In March 2017, the United Synagogue of Conservative Judaism General Assembly voted to allow non-Jews to be members of Conservative synagogues.<sup>82</sup> In October 2017, the leaders of the four major institutions of the Conservative movement issued a letter to their clergy and communities reaffirming the prohibition against rabbinic officiation of mixed marriages but emphasizing that mixed couples should be welcomed at every possible opportunity before and after the wedding.<sup>83</sup> This letter came as part of the process of reviewing Standard c, which resulted in lifting the ban on Conservative rabbis attending mixed marriages. A number of factors likely stimulated these

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<sup>80</sup> In the above cited article, Rabbi Daniel Stein refers to Standards of *Rabbinic* Practice, while the RA code of conduct refers to Standards of *Religious* Practice. These appear to refer to the same rules.

<sup>81</sup> Stein, 15-17, 22.

<sup>82</sup> JTA. “Conservative synagogues pass resolution allowing non-Jews as members.” *JTA.org*. March 5, 2017  
<https://www.jta.org/2017/03/05/united-states/conservative-synagogues-pass-proposal-allowing-non-jews-as-members>. Accessed on March 8, 2022.

<sup>83</sup> Artson, Bradley Shavit. “Conservative/Masorti Judaism, Covenantal Love, & Responsibility: A Pastoral Letter to Conservative/Masorti Rabbis, Cantors, Educators, Institutional Leadership and Kehillot.” *Rabbinical Assembly*. October 2017.  
[https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/conversion/cj\\_and\\_covenantal\\_love.pdf](https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/conversion/cj_and_covenantal_love.pdf). Accessed March 8, 2022.

re-considerations, including that prominent Conservative rabbis had recently left the RA (or been expelled) in order to begin officiating at mixed marriages.<sup>84</sup>

Because of the patchwork history of the prohibition of Conservative clergy officiating at mixed marriages, there is no singular responsum to analyze. In order to assess the halakhic argumentation behind this decision, we will therefore consider both of the papers adopted in 1972: the Lubliner responsum and the Blumenthal responsum. We will then look at the recent letter from the heads of the Conservative movement as an indication of how the institutional messaging on this issue has evolved.

### **1972 Lubliner responsum**

Rabbi Immanuel Lubliner opens his responsum with 3 questions: may a Rabbi participate in an intermarriage ceremony; does it make a difference if the ceremony is a civil marriage or a religious one co-officiated with clergy of another faith; and may a Rabbi attend an intermarriage but not officiate? To all of these questions, Rabbi Lubliner replies with an emphatic “NO!” Rabbi Daniel Stein describes Rabbi Lubliner’s style as strident and sarcastic, and the opening of the responsum exemplifies this assessment:

*The very fact that such an inquiry must be discussed by a responsible and respected body of men such as the Committee on Jewish Law and Standards of the Rabbinical Assembly is indeed the real problem. Otherwise, the answer from a halakhic, sociological, historical, and any other point of view which stresses the survival of the historic Jewish community should be an unequivocal NO!*<sup>85</sup>

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<sup>84</sup> Among the rabbis who gave up their membership in the Rabbinical Assembly over the issue of mixed marriage officiation are Rabbi Adina Lewittes, Rabbi Amichai Lau-Lavie, Rabbi Roly Matalon, and Rabbi Seymour Rosenbloom.

Green, Emma. “‘We’re Headed Toward One of the Greatest Divisions in the History of the Jewish People.’” *Atlantic*. July 16, 2017.

<https://www.theatlantic.com/politics/archive/2017/07/intermarriage-conservative-judaism/533637/>. Accessed March 8, 2022.

<sup>85</sup> Lubliner, Immanuel. “A Memorandum on the Participation of a Rabbi at an Interfaith Wedding Ceremony Together with a Non-Jewish Clergyman.” Unpublished responsum of the Rabbinical Assembly. 1972. p. 1. Provided by Rabbi Daniel Stein.

Rabbi Lubliner goes on to bemoan that contemporary Jewry has reached such a state that these questions could even be asked seriously when the position of Jewish tradition on mixed marriage has long been established. Going beyond a restatement of Judaism's opposition to mixed marriage, Rabbi Lubliner argues that for a rabbi to officiate at a mixed marriage is to construe prohibited sexual intercourse (*z'nut*) as a mitzvah and recite a blessing over it - a *chilul HaShem b'farhesiah* (a desecration of God in public)!<sup>86</sup>

After this impassioned introduction, Rabbi Lubliner launches into a historical review of Judaism's opposition to mixed marriage, which he says is motivated for the sake of "the survival of the community and its unique religious civilization." Rabbi Lubliner begins with stories from the Tanakh that involve mixed marriage and emphasizes the negative consequences of these unions. Ironically, these stories also confirm the practice of mixed marriage from the beginning of Judaism and the possibility of converting children of mixed marriages to be fully Jewish. Still, his point stands and is bolstered by later developments: "The Biblical prohibitions and injunctions against intermarriage were interpreted and enlarged in the Talmudic period and standardized in the mayor [sic] codes." He then includes citations to the Mishneh Torah and the Shulkhan Arukh.<sup>87</sup>

On the question of co-officiation, Rabbi Lubliner says that it is additionally forbidden as a form of *avodah zarah* (foreign worship). He then expounds on assimilation as a threat to Jewish survival. Here he analogizes across time periods, from contemporary Reform rabbis willing to officiate at mixed marriages to the Hellenizing Jews of the Seleucid empire. Rabbi Lubliner brings in Christian scripture to argue that rabbinic co-officiation with Christian clergy actually affirms a Christian supersessionist view while compromising the rabbi's theological integrity. He then goes further to suggest that co-officiating rabbis may actually be creating a new religion (and therefore abandoning their Judaism).<sup>88</sup>

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<sup>86</sup> Ibid., 1-2.

<sup>87</sup> Ibid., 2-4.

<sup>88</sup> Ibid., 5-6.

Toward the end of the responsum, Rabbi Lubliner addresses his colleagues and speaks for them in the first-person plural: "I do not think that the majority of our membership in the Rabbinical Assembly considers such a development either desirable or inevitable. We are committed to a recognizable Jewish peoplehood firmly grounded in the past and aspiring to a common Jewish future."<sup>89</sup> For those Conservative rabbis who do not agree and would like to officiate at mixed marriages, Rabbi Lubliner has a simple solution: they forfeit their right to membership in the RA. (This statement seems to be the basis for the CJLS later establishing the prohibition of mixed marriage officiation as a Standard of Religious Practice.) Lubliner is concerned about the slippery slope by which "yesterday's sins become today's misdemeanors and tomorrow's normative behavior," and urges the RA to take action to prevent further slippage, as has happened with Reform rabbis, he notes. At the end, Rabbi Lubliner appends a note addressing the question of attendance at a mixed marriage, saying that it is forbidden because whether in a public or private capacity, a rabbi is always a rabbi and cannot endorse the marriage.

It is clear from the beginning of Rabbi Lubliner's responsum that he believes the *halakhah* on mixed marriage has already been written. What is the function of his responsum, then, beyond restating past decisions for the RA's approval? Evidently, Rabbi Lubliner perceived an increasing laxity about mixed marriage among contemporary Jews and some of his rabbinic colleagues. In response, he uses this responsum to push back forcefully against the tide of public opinion. Where Rabbi Lubliner applies Jewish (and some Christian) texts, it is not in an attempt to adjudicate new *halakhah*, but rather to underscore the importance of a preexisting position. A rabbi officiating at a mixed marriage is not just forbidden, it is a *chilul HaShem*! And co-officiation is not simply distasteful, it is an abandonment of the rabbi's Judaism! This rhetoric is a form of *reductio ad absurdum*, which serves Rabbi Lubliner's goal of upping the ante in rabbinic opposition to mixed marriage.

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<sup>89</sup> Ibid., 6.

This responsum is written with the confidence and self-righteous tone of one who is zealous for God. However, Rabbi Lubliner never claims a theological opposition to mixed marriage, only that it endangers the “survival of the historic Jewish community.”<sup>90</sup> This, he believes, is what underlies the long history of prohibitions against mixed marriage in Jewish texts. This raises a fundamental question: if past halakhic decisions are based on a premise, and that premise changes, does that justify a change in the *halakhah*? In the case of mixed marriage specifically, if a rabbi believes that the best way to ensure the survival of the historic Jewish community is to *perform* mixed marriages (and there is evidence that rabbinic officiation of such marriages does increase the likelihood of continued Jewish engagement<sup>91</sup>), does that obviate the long history of halakhic precedent?

### **1972 Blumenthal responsum**

The Blumenthal responsum is a brief one page document. It begins with the question: “May a Rabbi participate in any way whatsoever in a marriage ceremony between a Jew and a non-Jew?” The answer is stated in a straightforward, unapologetic manner; in brief: No. Conservative rabbis and cantors are prohibited from officiating or attending an intermarriage. A clergy-person’s presence will be interpreted as “approval or acquiescence” of an intermarriage, which “he may not do.” It is the “openness of modern society” which “has confronted us with unprecedented problems of intermarriage,” and a growing number of Reform rabbis will perform intermarriages, which constitutes a “complete break with Jewish practice in the past.” In addition to the prior prohibitions, “the Conservative synagogue may not be used nor may it take note of such marriages in any way.” These arguments are stated confidently, without citations. The paper also lacks any sources beyond the opinion of the author on behalf of the CJLS. It does not cite Torah, Talmud, or any of the Jewish legal codes. The negative attitude toward

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<sup>90</sup> Ibid., 1.

<sup>91</sup> Saxe, Leonard, et al. “Under the Chuppah: Rabbinic Officiation and Intermarriage.” *Brandeis University: Cohen Center for Modern Jewish Studies*. October 2016. pp. 9-13. <https://www.brandeis.edu/cmjs/noteworthy/officiation.html>. Accessed March 8, 2022.

intermarriage seems to rely on two concerns: 1) it is bad to break with tradition, and 2) it threatens Jewish continuity.<sup>92</sup>

In its penultimate paragraph, the paper softens its tone and acknowledges that “Jews who intermarry do not thereby cease to be Jews.” It also encourages that “every effort should be made to retain contact with the intermarried couple, to expose them to the influence of a synagogue, of the Rabbi, of Jewish family life and Jewish teaching.” This suggestion is clearly motivated by an interest in Jewish continuity. In fact, the paper implies that some intermarriages will end in divorce (“the decisions made by young people when they want to marry are not necessarily permanent”) and holds out hope that the children of intermarriage will choose to embrace their Jewish heritage.<sup>93</sup>

In contrast to the Lubliner responsum, this one relies far less on the authority of Jewish texts. Instead, it engages in a rhetoric of self-evident truth - there is no need to cite other sources when the position of the author is so clearly correct. It is possible that Rabbi Blumenthal was aware that Rabbi Lubliner would be taking a more textual approach and therefore did not feel the need to replicate it. When Rabbi Nadich drafted the memo to circulate to members of the RA, he clearly saw some advantage in Blumenthal's concise statement, and possibly in its less offensive tone, and he did not feel it necessary to include the textual citations. The conception of *halakhah* implied by the Blumenthal responsum and the Nadich memo has more to do with the authority of the author and institutional approval than it does with a persuasive reading of Jewish texts. The fact that the RA makes a distinction between Standards, which this position became, and other CJLS decisions implies that within *halakhah* there may be different levels of stringency.

## **2017 Letter from heads of the Conservative Movement**

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<sup>92</sup> Blumenthal, Aaron. Untitled memo of the Rabbinical Assembly. February 14, 1972. Provided by Rabbi Daniel Stein.

<sup>93</sup> Ibid.



The more recent source that articulates the Conservative movement's position on the officiation of mixed marriages is a letter entitled "Conservative/Masorti Judaism, Covenantal Love, & Responsibility: A Pastoral Letter to Conservative/Masorti Rabbis, Cantors, Educators, Institutional Leadership and Kehillot." The 2017 letter was authored by Rabbi Dr. Bradley Shavit Artson and is signed by the leaders of the four central institutions of the movement: Rabbi Artson himself, of the Ziegler School of Rabbinic Studies, Chancellor Arnold Eisen of the Jewish Theological Seminary, Rabbi Julie Schonfeld of the Rabbinical Assembly, and Rabbi Steven Wernick of the United Synagogue of Conservative Judaism. Though this letter is self-described as pastoral, not halakhic, it is a useful addition to my analysis in order to show the evolution in the Conservative movement conversation about mixed marriage since 1972, and it discusses *halakhah* as it pertains to the question of mixed marriage officiation.<sup>94</sup>

The letter is organized in 5 sections with the following headings: 1) Summary, 2) Introduction, 3) Jewish Community, Loves, & Lives, 4) Each Family, Special and Unique, 5) Be a Blessing.

The summary is a brief and artful articulation of the core arguments of the letter. It is reproduced here in full:

*Conservative/Masorti Judaism, like all traditional Judaism, cherishes the mission of the Jewish people to deepen the ancient covenant between God and the Children of Israel. For that reason, rabbinic officiation is limited to events that celebrate covenantal commitment for members of the covenant: brit milah (circumcision), simchat bat (baby naming for daughters), bar and bat mitzvah, weddings, and funerals. Judaism survives as a communal system, worldwide and across generations, by changing as little as possible as late as possible, modifying it only when necessary and only when there isn't already a solution within the system of halakhah (Jewish law). Honoring the integrity of*

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<sup>94</sup> Artson, Bradley Shavit. "Conservative/Masorti Judaism, Covenantal Love, & Responsibility: A Pastoral Letter to Conservative/Masorti Rabbis, Cantors, Educators, Institutional Leadership and Kehillot." p. 1.

*both partners in a wedding, and for the sake of deepening faithful Jewish living, rabbinic officiation at weddings is restricted to a marriage between two Jews. We also recognize the precious personal good of finding a loving partner and that all people can benefit from access to Jewish wisdom and community, so we call upon all Conservative/Masorti rabbis and congregations to foster deep and loving relationships with all couples, and to create a rabbinic relationship that is broader and deeper than simply the moment of officiation. To achieve both the desired goal of rabbinic officiation and the goal of meaningful Torah observance, we invite the non-Jewish partner who seeks rabbinic officiation to share responsibility with the rabbi by studying Judaism and then linking their identity with the destiny of the Jewish people through conversion.*<sup>95</sup>

The Introduction frames the question of interfaith marriage as representative of the core tension in Conservative Judaism between Torah observance and the freedoms of modernity. The letter goes out of its way to cast this tension in a positive light - Torah and mitzvot are blessings of contemporary Jewish life, as are the blessings of democracy and tolerance. "We face the challenge of remaining true to the best of our ancient tradition while also enjoying the blessings of the best of modern civilization."<sup>96</sup> The introduction applauds non-Jews who feel a humanistic connection to Judaism: "it is miraculous that many turn to Judaism as part and parcel of their own cultural heritage as human beings."<sup>97</sup> And, it takes a decidedly relativistic stance toward the pluralism of approaches to resolving that core tension (and implicitly, to the question of mixed marriage specifically): "We salute all constructive contemporary forms of Jewish vitality that root themselves in a Jewish vision of human dignity, rigorous and respectful debate, and a Torah of *hesed* (lovingkindness), *tzedek* (justice), and *emet* (truth)."<sup>98</sup>

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<sup>95</sup> Ibid., 1.

<sup>96</sup> Ibid., 1.

<sup>97</sup> Ibid., 2.

<sup>98</sup> Ibid., 2.

Within that pluralism of approaches, the introduction locates a centrist place for Conservative Judaism. The “commanding voice of the Divine reverberate[s] in our sacred texts” but they are not the literal word of God. Loyalty to the covenant is valued for the sense of joy and purpose it brings, not because it is required. The chain from Moses to the present day is “unbroken yet dynamic.” The introduction grants that innovation can be accommodated within the structure of *halakhah*, but only when it strengthens covenantal living. Ultimately, the letter affirms Conservative Judaism’s primary responsibility to conserving its understanding of correct Jewish observance, even at the cost of rabbinical and lay membership.<sup>99</sup>

In *Jewish Community, Loves, & Lives*, the letter re-asserts the mission of Judaism as maintaining the covenant between God and the Children of Israel. It then explains when innovation in *halakhah* is justified: “Our communal choices and constraints emerge from that understanding, both when we affirm halakhic precedent and when we can only attain a worthy goal by modifying that precedent using halakhic methods. Changes in precedent are called for when there is a clear moral mandate and no way to integrate the insight within existing *halakhah*.”<sup>100</sup> Evidently, the letter takes the position that there is a way to integrate the phenomenon of mixed marriage into the existing *halakhah* without allowing for rabbinic officiation of such marriages. It asserts that the Conservative movement’s conservative principle of halakhic change is necessary for the survival of Judaism.

This section then acknowledges the phenomenon of mixed marriage as an unavoidable outcome of Jews living in diverse societies. It makes a great effort to avoid disparaging non-Jewish individuals or the Jews who marry them - this part of the letter speaks about mixed marriage in the first person plural, and acknowledges the obvious positive side to love: “And a significant number of us fall in love with wonderful people and once in love, seek to build a life together. In a lonely world, love remains a personal blessing. We honor that blessing and that

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<sup>99</sup> Ibid., 1-2.

<sup>100</sup> Ibid., 2.

love.”<sup>101</sup> This section then affirms that every effort should be made to welcome and engage all couples, whether intermarried or not, and it lists ways that clergy can do this. Careful not to let this enthusiasm confuse the message, the section ends with an explanation of why “Jewish tradition prioritizes marriage between two Jews” - essentially, because Judaism is more enjoyable and meaningful when it is shared by all members of the household.<sup>102</sup>

The section Each Family, Special and Unique, discusses the ways that rabbis can serve different families, and it also expands out from the household unit to the community at large. “Jewish families now come in many different configurations. Our covenantal responsibility is to help maximize their Jewish identity, Torah observance and faithfulness. We do that by creating synagogues, schools, camps and communities in which the quality of Jewish life is uplifting and inviting for all.”<sup>103</sup> On this theme, it indirectly affirms the USCJ’s recent decision to allow non-Jews as members of synagogues. Finally, this section ends with an emphasis on conversion as the best way for a person to share in Jewish identity and family “when one of the parents is not born Jewish.”<sup>104</sup> This line should really read “when the mother is not born Jewish,” but it seems to want to evade the debate around patrilineal descent. An interesting, and possibly accidental rhetorical choice in this section is that the word “gentile” comes to be used where the letter had previously said “non-Jew.” Given the otherwise non-judgmental and conciliatory tone toward non-Jews, I was surprised to see the word “gentile,” because of its othering associations in internal Jewish conversations.

Finally, in Be a Blessing, the letter ends on a note of welcome to all. It uses parallel language (“equally open arms”) for those couples in which the non-Jew converts and those who are intermarried. It also acknowledges the potential for mixed marriages to result in Jewish

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<sup>101</sup> Ibid., 2.

<sup>102</sup> Ibid., 3.

<sup>103</sup> Ibid., 4.

<sup>104</sup> Ibid., 4.

children. The letter ends with an invitation to all who seek participation in Conservative Judaism: “Together, we will keep our ancient covenant strong, supple, and holy.”<sup>105</sup>

This letter translates *halakhah* as “Jewish law.” It also contains conceptions of *halakhah* that are implicit to the discussion. *Halakhah* and *mitzvot* are mentioned as manifestations of Torah, and later, they are equated: “Conservative/Masorti Judaism affirms that a life of *mitzvot*, walking the pathway of *halakhah*, can elevate life and strengthen community today, even as it has for millennia.”<sup>106</sup> While *halakhah* is portrayed as ancient, it is also a structure that can integrate “new insights and possibilities (when they strengthen covenantal living).”<sup>107</sup> In sum, this letter presents *halakhah* as an ancient yet evolving system of commandments that derive from Torah and constitute the covenant between God and the Jewish people. The letter does not cite particular sources from Jewish tradition, instead taking for granted the halakhic position prohibiting the officiation of mixed marriages, as they fall outside of that covenant.

### **A Conservative Dissent: “Joy, a Proposal” by Rabbi Amichai Lau-Lavie**

The above letter from leaders of Conservative institutions was prompted by a few high-profile rabbis from the movement declaring that they would begin officiating at mixed marriages, thereby sacrificing their membership in the Rabbinical Assembly.<sup>108</sup> One such rabbi is Amichai Lau-Lavie, founder of the experimental Jewish community, Lab/Shul, in New York City. In June 2017, on the eve of Shavuot 5777, Rabbi Lau-Lavie published his own position on officiating at mixed marriages. Entitled “Joy, a Proposal,” it is a nearly 60-page document broken down into a foreword, summary, and 11 chapters. The document was written by Rabbi

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<sup>105</sup> Ibid., 4-5.

<sup>106</sup> Ibid., 2.

<sup>107</sup> Ibid., 2.

<sup>108</sup> Sales, Ben. “Conservative movement reaffirms intermarriage ban and rabbis ask why.” *Jewish Telegraphic Agency*. October 20, 2017.

<https://www.jta.org/2017/10/20/united-states/conservative-movement-doubles-down-on-intermarriage-and-its-rabbis-ask-why>. Accessed March 8, 2022.

Lau-Lavie in collaboration with a team of researchers: Avital Morris, Maya Rosen, and Dvir Hadad.<sup>109</sup>

Rabbi Lau-Lavie writes that this proposal is not a responsum, but a “halachic and historical inquiry.”<sup>110</sup> It reads like something between halakhic literature and an academic research proposal - the focus of the document is on “historical models that point at a more fluid approach to Jewish identity and affiliation, with possible applications and halachic relevance to our time.”<sup>111</sup> Rabbi Lau-Lavie locates these historical models in Jewish texts from centuries past, many of them legal texts. His sources range from the traditional (Torah, Talmud, Medieval rabbinic commentaries) to the contemporary (works by Jewish studies academics, articles in the Jewish press, sociological research). The document ends with a description of further sociological research that will be conducted by Tobin Belzer, PhD, in conjunction with Rabbi Lau-Lavie.<sup>112</sup> This blending of genres seems appropriate for a project centered on the fluidity of identity and affiliation. It also makes the proposal more compelling as a Jewish response to evolving social dynamics, because it is grounded both in Jewish texts and real-world data. Rabbi Lau-Lavie’s non-responsum is a model for how halakhic literature can incorporate a diversity of sources.

However, Rabbi Lau-Lavie’s intentions are more limited. “While I am not a *posek*, jurist, or halachic expert, I am convinced the proposal I offer is the right one for my community, and my rabbinate at this time. I hope it will be of interest and benefit others.”<sup>113</sup> Here, Rabbi Lau-Lavie may be acting out of modesty or politeness, not wanting to give the impression that he is trying to directly undermine the CJLS’s position on intermarriage. In claiming authority for his own community and rabbinate, Rabbi Lau-Lavie actually positions himself in the role of *mara d’atra*

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<sup>109</sup> Lau-Lavie, Amichai. “Joy, a Proposal.” *LabShul.org*, June 2017, page 6.  
[https://labshul.org/wp-content/uploads/2019/07/Joy2\\_R03.pdf](https://labshul.org/wp-content/uploads/2019/07/Joy2_R03.pdf). Accessed March 9, 2022.

<sup>110</sup> Ibid., 6.

<sup>111</sup> Ibid., 5.

<sup>112</sup> Ibid., 46-48.

<sup>113</sup> Ibid., 6.

as described in the RA's Code of Conduct. And his proposal is clearly highly personal - after receiving rabbinical ordination at JTS in 2016, Rabbi Lau-Lavie became a member of the RA and knew he was bound by the Standard of Rabbinic Practice which prohibited officiating at mixed marriages. However, he received many requests for wedding officiation by Jews and their partners of other heritages, and he found it tremendously difficult to say 'no.' "The firsthand encounter with the pain of rejection and its consequences to the couple, to me, and to our community convinced me of the need for an urgent solution. It has become not just a practical issue but also one of deeply personal, ethical, and theological dimensions."<sup>114</sup>

While Rabbi Lau-Lavie's motivations are personal, he does not hesitate to engage in the larger theoretical questions of what *halakhah* is and could be. While he uses the term "Jewish law" throughout the proposal, Rabbi Lau-Lavie does not do so as a substitute for the word *halakhah*. On this, he comments, "Halacha, more than law, is the ancient and living path that guides our safe and responsible traveling. What was once a path for few has become a freeway for many more. Is it possible to add a lane?"<sup>115</sup> Through this metaphor, Rabbi Lau-Lavie suggests that *halakhah* is adaptable to changing circumstances, expansive enough to include and to guide non-Jews who walk the path alongside their Jewish partners. Rabbi Lau-Lavie begins the forward to his proposal with a quote calling for such adaptability from "Emet V'Emunah, Statement of Principles of Conservative Judaism," from the Jewish Theological Seminary in 1988: "We affirm that the halachic 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."<sup>116</sup> The conception of *halakhah* as the embodiment of moral principles allows Rabbi Lau-Lavie to derive a moral imperative for the halakhic acceptance of intermarriage from the purpose of *halakhah* itself. In addition to the moral imperative for a creative halakhic approach, Rabbi Lau-Lavie

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<sup>114</sup> Ibid., 5.

<sup>115</sup> Ibid., 44.

<sup>116</sup> Ibid., 4.

quotes Rabbis Julie Pelc Adler and Amitai Adler in saying that it is necessary for the vitality of halakhic communities: “To be a halachic community requires not only commitment to halachah and the halachic process, but a willingness to use the array of tools in the halachist’s toolbox creatively and skillfully.”<sup>117</sup> In contrast to the idea that Judaism’s survival requires halakhic conservatism, Rabbi Lau-Lavie posits that the adaptability of *halakhah* is what enables Judaism to persist.

Rabbi Lau-Lavie points to two halakhic sources that frame his approach. The first is a principle that appears in the Babylonian Talmud: “We make no decree upon the community unless the majority are able to abide by it.” Rabbi Lau-Lavie comments that “today’s categorical prohibition on intermarriage with no nuanced way to distinguish between varying degrees of affiliation with the Jewish community is seen increasingly as an unsustainable and unrealistic decree for the majority of liberal American Jews.”<sup>118</sup> While Rabbi Lau-Lavie interprets from the lack of adherence to the prohibition of intermarriage an *inability* to abide by that prohibition, one could argue otherwise. A majority of Jews may be *able* to abide by the prohibition but *choose* not to, in which case the relevance of the Talmudic dictum is less certain. Rabbi Lau-Lavie’s framing may be seen as fatalistic or overly romantic, in which falling in love is a necessary and involuntary act. However, it makes descriptive sense - the vast majority of non-Orthodox Jews in the United States today will intermarry, regardless of rabbinic decrees. Like the CJLS, Rabbi Lau-Lavie acknowledges that intermarriage is a natural outcome of the freedom and acceptance that Jews enjoy in America today.

The second halakhic source that frames Rabbi Lau-Lavie’s approach is from Rabbi Gordon Tucker’s 2006 responsum “דרוש וקבל שכר: Halakhic and Metahalakhic Arguments Concerning Judaism and Homosexuality.” In this responsum, which was submitted to the CJLS but not approved, Tucker calls for “a different overall halakhic methodology” to respond to

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<sup>117</sup> Ibid., 41.

<sup>118</sup> Ibid., 8.



pressing moral concerns which are insufficiently resolved by the existing halakhic framework. Tucker characterizes the old methodology as “a reprise of past decisions and interpretations,” contrasted with the new one he suggests for hard cases: “an enterprise, at least on occasions that call for it, in improvising on established themes.”<sup>119</sup> Tucker elaborates, and Rabbi Lau-Lavie cites this as well, that a strictly legal approach may not lead to the most “authentic reading of the Torah” or the best way “to approximate even more closely the will and image of our compassionate God.”<sup>120</sup> The new methodology will account for the lived experiences, intuitions, and stories of Jews, both ancient and modern.

This methodology was proposed by Tucker for the case of homosexuality in Judaism, and here it is applied by Rabbi Lau-Lavie to the case of the non-Jew in Judaism. The compassionate God framing, like *halakhah* striving to embody moral principles, flips the moral script on the intermarriage debate. Rather than casting those who intermarry as traitors and their spouses as threats to Jewish continuity, Rabbi Lau-Lavie depicts them sympathetically as seekers of a semi-Jewish identity and affiliation, whom the Conservative movement has excluded and harmed.

“Joy, a Proposal” is a supplement to the existing discussions of Jewish intermarriage from a halakhic and historical perspective. While Rabbi Lau-Lavie explains the biblical basis for prohibitions on intermarriage (in particular Deuteronomy 7:2-5) and later opinions which interpret this commandment as *d’oraita* (Toraitic), this is not the focus of his work. As he notes, “those voices have been very prominent in contemporary halachic discourse, and will not be discussed in detail here.”<sup>121</sup> Instead, Rabbi Lau-Lavie presents texts that complicate the picture of intermarriage as biblically prohibited and Jewish identity as binary. He considers three historical models of people who, while not Jewish, participated in and affiliated with Jewish community: the *ger toshav*, *Yirei HaShem*, and Ruth. Through his analysis of myriad texts,

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<sup>119</sup> Ibid., 12.

<sup>120</sup> Ibid., 27.

<sup>121</sup> Ibid., 14.

Rabbi Lau-Lavie demonstrates that “traditional Jewish sources clearly do not condone intermarriage, but they leave the conversation more varied and open to nuance than contemporary communal discourse might lead one to believe.”<sup>122</sup>

In the chapter entitled “‘You shall not marry’: biblical intermarriage and its rabbinic interpretation,” Rabbi Lau-Lavie demonstrates how Deuteronomy 7:2-5 does not necessarily indicate a biblical prohibition of all intermarriage - in the verse, Jews are forbidden from marrying members of seven specific nations who dwelled in Canaan, and the primary concern is not intermarriage itself, but the possibility that a Jew would turn to idol worship if married to an idol worshipper. Rabbi Lau-Lavie explains that many classical Jewish sources consider the ban on intermarriage to be *assur d’rabbanan* (a rabbinic prohibition, carrying less weight than a Toraitic one) and view it as a rabbinic “buffer zone,” to prevent Jews from coming close to engaging in idol worship.<sup>123</sup>

In the chapter “*Ger toshav*: the rabbinic resident alien,” Rabbi Lau-Lavie offers the first of his historical models for non-Jews who affiliate with Jewish communities. He explains, “*Ger toshav* is a rabbinic category that describes a gentile who lives among Jews and in some ways interacts with their communities. The *ger toshav* is an important model for us, because it demonstrates how the rabbis innovated a new category that made space for those of other heritages and faiths within the evolving Jewish community.”<sup>124</sup> This category originates in Leviticus 19:32-33, which commands that the *ger* who lives in the land of the Israelites should be treated like a citizen. Rabbi Lau-Lavie then shows how this category was formalized in the Talmud and later sources as a non-Jew who commits not to worship idols.

*As demonstrated, the rabbis take a naturally occurring social category recognized in the Torah (an other, stranger, or ger, who, for various reasons, lives among us) and create a legal category that can be used to organize our communal structures. They delineate a*

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<sup>122</sup> Ibid., 8.

<sup>123</sup> Ibid., 13-15.

<sup>124</sup> Ibid., 17.

*process for how a gentile can become a ger toshav, and acquire some of the rights and responsibilities of membership.*<sup>125</sup>

Rabbi Lau-Lavie is clearly attracted to the category of *ger toshav* as a model for a semi-Jewish status today. In this he joins with other rabbis who he acknowledges as having reclaimed the *ger toshav* category before him, though not always for the same reason, including Orthodox Rabbi Joseph Henkin, Reconstructionist Rabbi Mordechai Kaplan, Reform Rabbi Myron Kinberg, Orthodox Rabbi Steve Greenberg, and Renewal Rabbis Zalman Shacter-Shalomi and Daniel Siegel. Rabbi Lau-Lavie seems restrained at the end of this chapter, however, noting that halakhic norms and authorities do not allow for the creation of new *gerim toshavim* nor can the category be revised to allow for marriage with Jews. Instead, Rabbi Lau-Lavie suggests that the *ger toshav* “is still a useful precedent and model for thinking about how rabbinic leaders can create formal status and membership for gentiles who have made commitments to Jews and the Jewish community.”<sup>126</sup> In a creative halakhic process of “improvising on established themes,” this limitation seems overly deferential to past interpretations. Rabbi Lau-Lavie could have gone further in suggesting that the category of *ger toshav* be revived and expanded to apply to the non-Jewish spouses of Jews today. However, he seems to feel that it would be more halakhically legitimate for a new social category to be created instead.

The next model that Rabbi Lau-Lavie considers is “Yirei HaShem: the Pious Ones.” This term emerged in late-antiquity, not as a halakhic category, but as a sociological descriptor of non-Jews who affiliated strongly with Jewish communities. Rabbi Lau-Lavie quotes the historian Shaye J.D. Cohen on the phenomenon of Yirei HaShem: “they were gentiles who were conspicuously friendly to Jews, who practiced the rituals of the Jews, who venerated the God of the Jews, denying or ignoring all other gods — were sometimes called ‘Jews’ by other gentiles,

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<sup>125</sup> Ibid., 18.

<sup>126</sup> Ibid., 22.

and may have even thought of themselves as ‘Jews’ to one degree or another.”<sup>127</sup> Rabbi Lau-Lavie also cites primary source historical documents and archeological research that has shown how Yirei HaShem supported Jews politically and participated in their synagogues and rituals, even keeping Shabbat.

The term Yirei HaShem is first used in the book of Psalms, and is further elaborated as a category of people in the Midrash. The *Mekhilta D’Rabbi Yishmael*, for example, grants these non-Jews the name and social status of Israelite. And the *Pesikta Rabbati* depicts Jews, converts to Judaism, and Yirei HaShem as all nursing from the matriarch Sarah. On this midrash, Rabbi Lau-Lavie comments, “the maternal lineage unites all at a primal moment of connection: Jews, converts and Yirei HaShem alike. This image of generous nourishment suggests a radically different model of ancestral bonding.”<sup>128</sup> Through his marshaling of historical and aggadic sources, Rabbi Lau-Lavie actualizes Tucker’s proposal for a new halakhic methodology. Though Rabbi Lau-Lavie notes that halakhic norms have not been established regarding marital relations or ritual roles for Yirei HaShem, that lack may be a strength for the project of creating new halakhic norms today.

Rabbi Lau-Lavie continues his exploration of models for semi-Jewish status in the chapter “‘Like Ruth’: Modern Manifestations.” Here again he emphasizes the rabbinic distinction between non-Jews who are idolaters and those who are monotheists. Because idolatry is the fear behind many rabbinic prohibitions on interactions with non-Jews, some halakhists have been more permissive with groups of non-Jews who are monotheists. For example, in Responsa Yabia Omer 5:10, Rabbi Ovadia Yosef says that the prohibition of eating the bread of a gentile is actually about the concern that a Jewish man would be secluded with a gentile woman, which is ultimately a concern that the Jew would be led to idolatry. Rabbi Yosef continues that in the case of Muslims, who do not worship idols, there is no prohibition against

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<sup>127</sup> Ibid., 23.

<sup>128</sup> Ibid., 27.

eating their bread. Rabbi Lau-Lavie points out that extending this logic would allow for seclusion with a non-Jewish and non-idolatrous woman as well.<sup>129</sup> Two other rabbis are cited who have affirmed the effectiveness of *kiddushin* or alternative marital rites between Jews and non-Jewish non-idolaters, even if only retroactively. One of them is Rabbi Avigdor Nebenzahl, a contemporary Israeli *posek* (decisor), who claimed that the biblical marriage between Mahlon and Ruth, a non-Israelite at the time of their marriage, was valid even though *kiddushin* did not apply. This section is helpful because it shows how close previous rabbinic rulings have come to accommodating intermarriage.

In the next part of the proposal, Rabbi Lau-Lavie challenges the notion that Jewish identity has been binary until today. He cites historical examples from Jewish texts of people located on the spectrum of Jewishness, for example, a slave in a Jewish household or a person who has just begun the process of conversion. Along with this conceptual shift, Rabbi Lau-Lavie suggests that it is time for Jews today to reconsider the meaning of idolatry and therefore reinterpret the prohibitions intended to keep Jews far from it. Finally, Rabbi Lau-Lavie offers an honorific for a new semi-Jewish status: Joy. In the spirit of fluidity, Joy is a portmanteau of “Jew” and “Goy,” and was suggested by a friend of Rabbi Lau-Lavie’s who proclaims himself to be “a Jew who’s also a Goy.”<sup>130</sup>

Toward the end of the proposal, Rabbi Lau-Lavie declares his current position on what he will do as a rabbi and what he will not do:

*I will officiate weddings of Jews and ‘Joys,’ as part of our shared commitment to a learning series leading to and following the wedding ritual.*

*I will not co-officiate weddings with clergy of other faiths.*

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<sup>129</sup> Ibid., 30.

<sup>130</sup> Ibid., 39.

*I will engage with individuals, couples and families self-identified as ‘Joys’ to explore what purpose and meaning may the use of this ‘status’ inform and inspire. I invite continued learning and exploration of this model with other leaders and communities.*<sup>131</sup>

I appreciate Rabbi Lau-Lavie’s bold and straightforward stance here, especially knowing that it came at the cost of his membership in the RA. In “Joy, a Proposal,” Rabbi Lau-Lavie successfully complicates the usual narrative about intermarriage from a halakhic perspective by demonstrating that the history is not monolithic. He brings historical, sociological, and aggadic sources in addition to legalistic ones into his creative halakhic enterprise. Though Rabbi Lau-Lavie chooses not to identify himself as a *posek* (decisor), and therefore refrains from directly challenging the CJLS’s halakhic position, his proposal questions the moral correctness of that position and indicates that there may be an alternative. However, as Rabbi Lau-Lavie acknowledges, for the Conservative movement to change its position on mixed marriage would require it to first change its underlying conception of or relationship to *halakhah*.

## **The Reconstructionist Movement**

### **Halakhic Authority**

The membership organization of Reconstructionist rabbis, the Reconstructionist Rabbinical Association (RRA), decides and publishes opinions through a few different procedures. This is how the RRA describes its role as the “voice” of the Movement:

*The RRA serves as the collective voice of Reconstructionist rabbis, the rabbinic voice of the Reconstructionist Movement and as a progressive Jewish voice in world affairs. Based upon our deep engagement with Jewish traditions, texts and teaching and in concert with our highest held values and aspirations, it is*

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<sup>131</sup> Ibid., 46.

*incumbent upon us to be present in the world's marketplace of ideas and viewpoints.*<sup>132</sup>

The above description does not refer to *halakhah*, though it lists sources that are part of halakhic decision-making (“Jewish traditions, texts and teaching”) in addition to the movement’s “values and aspirations.” The Reconstructionist movement does not have a committee solely dedicated to publishing responsa. Instead, it issues opinions in the form of statements/press releases, resolutions, and guidelines.

Each of these categories of opinion has its own procedure. Statements/press releases must be approved by at least two members of the RRA leadership, such as the President and Executive Director. Because statements/press releases comment on urgent issues, time is not given for RRA members to provide input, though the RRA website comments that statements/press releases “generally reflect previously adopted Resolutions, Guidelines and/or Reconstructionist teaching.” In this way, statements/press releases are still intended to represent broadly held opinions in the movement.<sup>133</sup>

The RRA describes resolutions as “formal statements on values that reflect the RRAs viewpoint on local or global concerns. They may be introduced by an individual or group, but ultimately represent a broad consensus within our diverse association.” Relative to statements/press releases, resolutions are shaped by a broader segment of Reconstructionist rabbis. They are reviewed and revised by the board and membership of the RRA before being approved through a vote of the RRA.<sup>134</sup>

Of all of the RRA’s opinion statements, its guidelines for rabbis involve the greatest amount of input from the association. Guidelines are often drafted by a task force or committee, and the draft is sent to the RRA membership for feedback. The RRA explains that the process

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<sup>132</sup> Reconstructionist Rabbinical Association, “A word about resolutions,” *The RRA*. <https://therra.org/resolutions-statements-guidelines.php>. Accessed June 2, 2021.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

of revising guidelines to reach consensus “may take up to two years and is never rushed.” Ultimately, guidelines must be approved through a vote of the RRA. In the description of the different forms of opinion issued by the RRA on its website, guidelines are the only ones likened to responsa. “Guidelines are significant statements of beliefs about, and guidance for, rabbinic Jewish practice and behavior. While not understood as binding halacha (Jewish law), they may be understood as responsa, a traditional term for rabbinic application of Jewish teaching to contemporary issues.”<sup>135</sup>

Throughout Jewish history, responsa have been a primary mechanism for establishing and disseminating *halakhah*; the two have not been seen as distinct. The RRA’s description, however, separates between responsa and *halakhah*, seemingly because it sees the former as advisory while it understands the latter to imply a binding authority. Here again we see the tension in liberal Judaism between affording individuals full autonomy while also asserting that Jewish tradition should be applied to decisions about Jewish practice today. It is notable that the RRA’s guidelines, the only opinions it issues specifically for *rabbinic* practice, are also the only opinions likened to responsa. While the Reconstructionist movement generally places authority in the community, the RRA seems to believe that rabbis have a particular responsibility to apply Jewish tradition to the choices they make, even though they are not bound by past decisions.

Though the Reconstructionist movement distances itself from the term *halakhah*, it is embracing of Jewish decision-making procedures, not only for the rabbinate but also for its laity. The website for Reconstructing Judaism, an organization representing the Reconstructionist movement, hosts a long article entitled “The Torah Process: How Jews Make Decisions,” posted in November 2016.<sup>136</sup> This article was excerpted from the Reconstructionist Press’s *A Guide To Jewish Practice*. The particular chapter on Jewish decision-making was written by Rabbi Jeremy

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<sup>135</sup> Ibid.

<sup>136</sup> Schwartz, Jeremy. “The Torah Process: How Jews Make Decisions.” *Reconstructing Judaism*. November 15, 2016.  
<https://www.reconstructingjudaism.org/article/torah-process-how-jews-make-decisions>. Accessed March 8, 2022.



Schwartz. In the article, Rabbi Schwartz describes the “Torah Process,” his name for Values-Based Decision Making, which is used in Reconstructionist communities. This excerpt introduces the Torah process:

*Torah is more than the Five Books of Moses; it is the name Jews give to the process of discovering a godly way of living. Torah is a process involving a constant interplay between thought and action. Jewish texts provide the foundation upon which this process of discovery and action is built. Torah as process involves wrestling with received texts and practices and bequeathing new texts and practices to our descendants. Torah is what constitutes and distinguishes the Jews as a civilizational community. Any decision-making process that claims to be Jewish necessarily involves Torah in this broad sense. Indeed, to call a decision Jewish implies engagement with Jewish text.<sup>137</sup>*

While this description qualifies in every way with my working definition of *halakhah*, it is not described as such. This is another example of the Reconstructionist movement distancing itself from the term *halakhah*. Presumably, the leaders of the movement adhere to a Jack J. Cohen-type conception of *halakhah* as binding Orthodox law and do not desire to reclaim the term, instead using the term “Torah process” for their decision-making.

A distinct feature of this halakhic process is that it is intended to be carried out with congregants. This makes it more of a bottom-up approach, and the authority of decisions comes from their being expressions of the will of the people. In the article, Rabbi Schwartz mentions that he has led his congregation through the Torah process on the topic of rabbinic officiation of mixed marriages. The result of their decision-making will be analyzed below as the “Reconstructionist dissent.” The Torah process also incorporates popular practice of Jews across denominations:

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<sup>137</sup> Ibid.

*We want our text study to help us situate our eventual decisions in the context of Jewish community. This means we should use the practice called in rabbinic Aramaic ‘puk haze’ — ‘go out and see’ what Jews are doing. What are the current practices of klal Yisrael (the whole of the Jewish people)? Are there denominational statements, responsa or other publications related to this issue?*<sup>138</sup>

In this way, one community's *halakhah* is influenced by the halakhic decisions of another, as well as by the choices of individual Jews.

### **Positions on Mixed Marriage Officiation**

The Reconstructionist leadership may not call its opinions about mixed marriage officiation “*halakhah*,” but they are consistent with the scope of this project, because they are advisory statements of rabbinic opinion informed by an engagement with Jewish texts. In 1980, the RRA published a resolution that encouraged Reconstructionist rabbis to welcome intermarried families into congregations but stated that it was not in keeping with Jewish tradition for a rabbi to officiate at mixed marriage ceremonies.<sup>139</sup> In March 1983, this resolution was adopted by the RRA as a guideline for rabbinic practice.<sup>140</sup> In March 1988, a one-line amendment was added to this guideline specifying that co-officiation with clergy of other faiths “is contrary to the 1983 Guidelines on Inter marriage.”<sup>141</sup> In May 2000, the RRA reinforced the ban on co-officiation by adopting a resolution which laid out possible sanctions for members who violate it.<sup>142</sup> In contrast to these earlier decisions, in September 2015, the Reconstructionist Rabbinical College (RRC), in consultation with the rest of the movement, removed the ban on its

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<sup>138</sup> Ibid.

<sup>139</sup> Reconstructionist Rabbinical Association. “Resolution: Committee on Inter marriage.” *TheRRA.org*. 1980. <https://therra.org/resolutions/intermarriage-committee-80.pdf>. Accessed March 9, 2022.

<sup>140</sup> Reconstructionist Rabbinical Association. “Guidelines on Inter marriage.” March 16, 1983. Provided by Rabbi Elyse Wechterman.

<sup>141</sup> Reconstructionist Rabbinical Association. “Amendment adopted by the RRA.” March 1988. Provided by Rabbi Elyse Wechterman.

<sup>142</sup> Reconstructionist Rabbinical Association. “Resolution on Co-Officiation, adopted by the RRA.” May 2000. Provided by Rabbi Elyse Wechterman.

students being in mixed partnerships.<sup>143</sup> While this policy change was not about mixed marriage *officiation*, it certainly signaled a shift in the attitude of the Reconstructionist leadership toward the matter of mixed marriage broadly. In a private correspondence, Rabbi Elyse Wechterman, Executive Director of the RRA, informed me that a task force was recently formed for the purpose of issuing a renewed set of guidelines on mixed marriage officiation.<sup>144</sup> Given the RRC's 2015 decision, it seems inevitable that the RRA will follow suit by at least annulling past guidelines that oppose rabbinic officiation of mixed marriages.

### 1983 Guidelines

The RRA's 1983 "Guidelines on Intermarriage" begins with a preamble which expresses the organization's purpose. First, it mentions the RRA's dedication to the "promotion and the perpetuation of the Jewish people and the Jewish way of life in North America." It then asserts that this dedication requires the RRA to develop "innovative responses to the unprecedented challenges facing contemporary Jewry."<sup>145</sup> In these two statements, the RRA formulates a conception of Judaism that is both constant and changing, changing by necessity to preserve that which is constant. The preamble then goes on to recognize the diversity of opinion among Reconstructionist rabbis and affords them a degree of personal discretion on the matter of mixed marriage:

*As Reconstructionists, we recognize pluralism within our own ranks as well as within the larger Jewish community. We realize that dealing with the issues of intermarriage [...] requires sensitive judgments which, of necessity, must be left to the individual rabbi. We respect the right of our colleagues to make their own determinations in dealing with the issues of intermarriage, recognizing that each acts in accordance with the dictates of his/her conscience and out of a concern*

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<sup>143</sup> Waxman, Deborah. "RRC's Non-Jewish Partner Policy Announced." *RRC*. September 30, 2015. <https://archive.rrc.edu/news-media/news/rrcs-non-jewish-partner-policy-announced>. Accessed March 9, 2022.

<sup>144</sup> Wechterman, Elyse. Personal interview. June 2, 2021.

<sup>145</sup> Reconstructionist Rabbinical Association. "Guidelines on Intermarriage." p. 1.

*for the best interests of the Jewish people. What follows is an articulation of guidelines within which we can so act.*<sup>146</sup>

How much discretion is left to the individual rabbi is hard to determine from this passage. At first, mixed marriage is held to be a uniquely sensitive issue, judgments about which could only be made on a case-by-case basis by the individual rabbi. The statement then goes further in recognizing “the right of our colleagues to make their own determinations.” However, the preamble concludes by setting boundaries on this autonomy - “guidelines within which” Reconstructionist rabbis “can so act.” The use of “can” is ambiguous here - If a rabbi *can* act within the guidelines, can she also act without them? Or, are the guidelines meant to be firm boundaries, which rabbis are expected to respect in their exercise of discretion? This ambiguity may be intentional, as it carries a suggestiveness without claiming binding authority on the individual. As Rabbi Wechterman commented regarding the RRA's current policies on mixed marriage, “we emphasize that rabbis are to follow their own conscience on this matter and we trust our members to make their own decisions and behave accordingly. Only the ban against co-officiation is actionable in any way.”<sup>147</sup>

The 1983 document then presents five guidelines for Reconstructionist rabbis. They may be summarized as follows: 1) Jewish homes, in which members identify with and participate in the Jewish people, are the best way to perpetuate Jewish values and practices. The “shared orientation” of two Jews who unite in marriage and create a Jewish home is enriching for the couple and contributes to the “creative survival of the Jewish community.” 2) The increasing rate of mixed marriage is a symptom of the underlying weakening of Jewish identification in America. However, Jews who intermarry are not necessarily rejecting their heritage, and many seek to remain committed Jews. Rabbis should meet with couples who intend to intermarry and be involved in the Jewish community, in order to support their creating a Jewish home, ideally with

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<sup>146</sup> Ibid., 1.

<sup>147</sup> Wechterman, Elyse. Personal interview. June 2, 2021.

the conversion of the non-Jewish partner. 3) It is the responsibility of the RRA to make Reconstructionist communities accessible and welcoming to intermarried couples who seek to be involved in Jewish life. 4) A rabbi should not officiate a Jewish wedding ceremony for a mixed couple, as this is contrary to the ritual of kiddushin. However, a rabbi should actively engage with a couple that seeks rabbinic officiation, even going as far as speaking on behalf of the Jewish community as part of a couple's civil marriage ceremony, but this should in no way give the appearance of officiation. 5) Outreach to intermarried couples can turn a challenge into an opportunity for Jewish renewal.<sup>148</sup>

The whole of the 1983 statement of guidelines amounts to three pages. The tone is thoughtful and measured, considering the phenomenon of mixed marriage from multiple perspectives. Of all the statements from liberal movements in the 1980s that have been considered, this is the least strident. While it opposes rabbinic officiation of mixed marriages, it goes farther in the direction of welcome, instructing rabbis not to reprimand couples, committing to educating congregations to be more accepting, and even allowing for rabbis to participate in civil marriage ceremonies. The statement of guidelines is very present-oriented, focusing on the unique dynamics of its time, with little acknowledgement of the history of mixed marriage in Judaism. The document cites a very limited number of sources: other guidelines of the RRA, the ritual of kiddushin, and unspecified "sociological indicators." It does not cite historiographical sources or classical Jewish texts. This RRA position from 1983 represents an approach to Jewish policymaking which is aimed at "the promotion and the perpetuation of the Jewish people and the Jewish way of life in North America," within the boundaries of "the standards of the Jewish people and the integrity of Judaism's traditions and sancta."<sup>149</sup>

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<sup>148</sup> Ibid., 1-4.

<sup>149</sup> Ibid., 3.

The 1983 “Guidelines on Intermarriage” affirms the shared authority of the Reconstructionist leadership and its congregations in making policy decisions. In guideline number 3, it states:

*We believe that our synagogues ought to be receptive to intermarried couples. The Reconstructionist movement recognizes the children of such marriages as Jewish when those children are raised as Jews (See Appendix A, Guidelines on Conversion). The issue of the status of the non-Jewish partner within a synagogue community is more complex. Recognizing that Reconstructionism emphasizes the process of resolving such matters rather than the imposition of authoritative positions, we believe that issues such as the religious and membership privileges of a non-Jewish spouse are best decided by each congregation. Our Guidelines on Religious Standards (See Appendix B) encourages congregations to engage in just such a procedure in matters of synagogue practice. We believe that through such a decision-making process, basic principles to which Reconstructionism is committed are affirmed: the rabbi as teacher and guide, the participation of laity in the formulation of religious standards, and the setting of policy through democratic and communal procedures.*<sup>150</sup>

This passage demonstrates the restraint that the centralized Reconstructionist movement places on its own authority - while it rules on issues of rabbinic practice and Jewish identity, it leaves intra-communal decisions up to congregations.

The “Guidelines for Intermarriage” do distinguish between the responsibilities of a rabbi versus a lay person. Guideline number 4 states:

*A rabbi represents the standards of the Jewish people and the integrity of Judaism's traditions and sancta. One carries the title "Rabbi" and the duties and*

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<sup>150</sup> Ibid., 2.

*privileges that go with that title by virtue of a commitment to teach and transmit Jewish values and to work for the creative development of the Jewish people. The achievement of these goals necessitates the preservation of the essential integrity of Jewish sancta through their authentic application. We therefore believe that the traditional rites of the Jewish wedding ceremony (kiddushin) should be reserved for the marriage of a Jew to a Jew.*<sup>151</sup>

This passage includes many terms that are often associated with *halakhah*: “standards of the Jewish people,” “integrity of Judaism’s traditions and sancta,” and “Jewish values.” Though the Reconstructionist movement may not see these as binding, it frames the rabbi as having *opted in* to upholding these aspects of Judaism.

## **2000 Resolution**

The 2000 resolution prohibiting Reconstructionist rabbis from co-officiating with clergy of other faiths departs from the generally advisory stance of the RRA toward its members. This brief resolution lists sanctions that could be applied if a Reconstructionist rabbi co-officiates at a mixed marriage. They include: “warning; suspension of referral privileges for life cycle events; suspension of right to be an RRA officer or Board member; suspension of voting privileges; suspension of privilege of attending the RRA convention; letter in placement file indicating that the member co-officiates in violation of RRA policy, of which congregations are advised when member applies; suspension of placement privileges.” The decision about implementing sanctions is left to the association’s *Gevulot* (boundaries) committee, with approval from the RRA Executive committee.<sup>152</sup> While the RRA previously issued resolutions whose authority derived from their ability to persuade, here it attempted to strengthen the authority of a resolution with sanctions (albeit optional ones), giving it a quasi-legal status. This is a departure from

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<sup>151</sup> Ibid., 3.

<sup>152</sup> Reconstructionist Rabbinical Association. “Resolution on Co-Officiation, adopted by the RRA.”

the Reconstructionist movement's general approach of allowing individual rabbis to determine their practices.

### **2015 RRC admissions policy change**

The 2015 decision by the RRC to admit and ordain students who are in mixed partnerships gives another view into the movement's evolving attitude toward mixed marriage. This policy change was approved by a vote of the RRC faculty - a different, though overlapping membership than the RRA. In a public letter, Rabbi Deborah Waxman, President of the RRC and Jewish Reconstructionist Communities, explained that the RRC faculty believe that the religious identity of a student's partner is "not a reliable measure of the student's commitment to Judaism - or lack thereof. Nor does it undermine their passion for creating meaningful Judaism and bringing us closer to a just world." This change in the characterization of mixed marriage did not occur in a vacuum. Rabbi Waxman goes on to acknowledge that the change is responsive to shifting demographics in the Jewish community. "Our congregations have members with non-Jewish partners, and we need rabbis who can provide them with role models for vibrant Jewish living. Reconstructionism has always been predicated upon changing as Jews and Judaism change, even when these changes are emotionally challenging." In this statement, Reconstructionism (and its formal policies) are characterized as following the lead of Jews, and interestingly - Judaism. Judaism seems to be understood here as the choices that Jews make, regardless of the framework that guides those choices.<sup>153</sup>

While this policy change was not made by the RRA, it necessarily exerts pressure on RRA guidelines. It would be illogical for Reconstructionist congregants to be held to a more restrictive standard than their rabbis, and the very RRC students who helped advocate for this change and may be beneficiaries of it are the future members of the RRA. This demonstrates how a rabbinic association might have its own procedure

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<sup>153</sup> Waxman, Deborah. "RRC's Non-Jewish Partner Policy Announced."



for setting policy for a Jewish movement, but that process is not immune to outside forces, including other institutions within the movement. The RRC faculty is guided by different motivations and procedures in its decisions, though ultimately it too sets policy that impacts all Reconstructionist Jews.

### **A Reconstructionist Dissent: Temple Bnai Israel's Policy for Interfaith Weddings**

Prior to 2007, Rabbi Jeremy Schwartz did not officiate at mixed marriages. When circumstances caused him to reconsider this decision, he brought it to the Ritual Committee of his synagogue, Temple Bnai Israel in Willimantic, Connecticut. Together, the Committee and their Rabbi went through a process of study and reflection, resulting in a policy change that endorsed Rabbi Schwartz officiating at mixed marriages which meet certain conditions (discussed below).<sup>154</sup> While this is the predominant stance of the Reconstructionist movement today, at the time it contradicted the stance of the RRA in their 1983 guidelines which deemed mixed marriage officiation contrary to the Jewish tradition, and it preceded the 2015 RRC admissions policy change. It can therefore be considered as a dissenting opinion, and it is a useful one to understand how *halakhah* functions in Reconstructionist Judaism, because it was formed through the Torah process.

The statement is entitled “Proposed Policy on Interfaith Wedding for Temple Bnai Israel,” and below the title it reads, “respectfully submitted by the Ritual Committee,” followed by a list of the individuals on the Committee, including Rabbi Jeremy Schwartz. The statement was written as provisional because it was then submitted to the board for approval, which it received.<sup>155</sup> What follows is about 3 pages that summarize the Committee’s decision, under the section headings: A. Background, B. Some Basic Assumptions, C. Rationale, D. Resident Strangers, E. The Ceremony -- Location, Officiators, Rituals, and F. Conclusions.

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<sup>154</sup> Ritual Committee of Temple Bnai Israel. “Proposed Policy on Interfaith Wedding for Temple Bnai Israel.” 2007. Provided by Rabbi Jeremy Schwartz.

<sup>155</sup> Schwartz, Jeremy. Personal interview. March 11, 2022.

The “Background” section describes why the Committee considered the question of “interfaith weddings” and summarizes its conclusions. Section B “Some Basic Assumptions,” is reproduced in its entirety below.

*Like all Temple Bnai Israel events and ceremonies, weddings should be consistent with (1) our understanding of Judaism and its core values, (2) the policies of the Jewish Reconstructionist Federation, and (3) Temple Bnai Israel’s mission statement.*

*Temple Bnai Israel’s rabbi has wide discretion regarding officiating at interfaith weddings in general, and at any particular interfaith wedding, depending on its distinct circumstances.*<sup>156</sup>

These assumptions might seem “basic,” but upon further consideration they raise many questions. What is the Committee’s understanding of Judaism and its core values? Which policies of the Jewish Reconstructionist Federation did the Committee consult, and what degree of consistency did they require? Finally, was the assumption that the rabbi has “wide discretion regarding officiating at interfaith weddings,” drawn from the Committee’s consideration of Judaism and Reconstructionist policies, or was it assumed from the start, setting a pre-condition for its interpretation of Judaism and Reconstructionist policies?

These questions are not addressed outright in the statement, but some answers can be discerned. Clearly, the committee subscribes to a conception of Judaism as evolving, or else they would not have decided to ask a question anew that has already been answered in the past. This is consistent with the idea that Judaism is an “evolving religious civilization,” coined by Mordechai Kaplan, the founder of Reconstructionist Judaism. The statement does not offer any systematic explanation of Judaism’s core values, but it mentions many values, including *chesed*, justice, tolerance, charity, equality of all Jews, passing on Judaism to the next generation, and welcome. Regarding the Jewish Reconstructionist Federation policies, it is clear

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<sup>156</sup> Ritual Committee of Temple Bnai Israel, 1.

that the Committee reads them as affording autonomy to the individual rabbi, though no particular policies are referenced.

The following section, “Rationale,” focuses on Temple Bnai Israel’s mission statement. It identifies and reproduces clauses that are relevant to the topic of mixed marriage. It then analyzes these statements to consider how they bear on the question of mixed marriage officiation. This introduces another source of authority into our consideration of Jewish (and halakhic) decision-making: a community’s mission statement. A mission statement is generally written by members of the congregation to reflect its values and what it hopes to achieve. For Temple Bnai Israel, the Ritual Committee members clearly felt compelled to act in accordance with their mission statement, even more than they felt obligated to *halakhah*. The mission statement actually addresses this: “We observe and celebrate Jewish traditions and laws while remaining open to change which meets the needs of our time, and which will stand the test of time.”<sup>157</sup> While the mission statement is accorded a lot of authority in this statement, it is an authority that seems to derive from its compatibility with the views of the Committee members. After all, missions are written by members of the congregation and can be revised when they become outdated.

The next section, entitled “Resident Strangers,” discusses the status of a *ger toshav*, which it defines as follows:

*A ger toshav is traditionally a non-Jew living in a Jewish community who officially and publicly affirms being a non-Jewish part of the Jewish community, and who commits to the good of the community. This may include the establishment of a “Jewish home,” albeit one with a non-Jewish family member living there. Thus he or she retains a non-Jewish (or no) religious identity or affiliation, while accepting the laws, customs, and values of the Jewish community.*<sup>158</sup>

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<sup>157</sup> Ibid., 1-2.

<sup>158</sup> Ibid., 3.

This section demonstrates an engagement with Jewish texts on the status of the *ger toshav*. However, it would be helpful if the relevant texts were cited in order to clarify which parts of the explanation reflect the historical category of *ger toshav* and which are the Committee's contemporary application. For example, traditional *halakhah* requires that a person go before a *beit din* (Jewish court) in order to be designated as a *ger toshav*, and it also forbids marriage between a Jew and a *ger toshav*.<sup>159</sup> It is only in recent decades that this category has been reconsidered for the purpose of mixed marriage.<sup>160</sup> This section concludes that "the *ger toshav* may be seen as a category between Jew and non-Jew, and may be analogous to the condition of the non-Jewish partner married to a Jew and welcoming Judaism into her or his life."<sup>161</sup>

Having established that mixed marriage officiation is consistent with Temple Bnai Israel's mission when the non-Jewish partner can be considered a *ger toshav*, the Committee then discusses elements of a wedding ceremony. This section is brief, and it states its conclusions without explanation: "Most of the conventional rituals of Jewish weddings, including use of the sanctuary, a *chuppa*, and the breaking of a glass, are appropriate to interfaith weddings.

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<sup>159</sup> Tucker, Ethan. "Can Halakhah Embrace Inter marriage?" *Hadar*. May 1, 2018.

<https://www.hadar.org/torah-resource/intermarriage-series-2018>. Accessed March 10, 2022.

"Ra'avad Avodah Zarah 64b, R. Avraham b. David, Provence, 12th c.: Just as the oil of a *ger toshav* is forbidden to eat but one may benefit from it, so too with his wine. Why? We have no concern that the *ger toshav* will offer an idolatrous libation. And if we are afraid a Gentile might have touched it, that sort of doubt is not sufficient to forbid benefitting from the wine. Nonetheless, it is forbidden to drink it, on account of the possibility that a Gentile touched it or for fear of intermarriage, because the *ger toshav* is nonetheless covered by the ban of 'Do not marry them.'"

"Minhat Hinukh #427, R. Yosef Babad, Ukraine, 19th C.: It seems that with respect to the [Biblical] prohibition on intermarriage, a *ger toshav* is included as well."

"Beit Hابهירah Avodah Zarah 36b, R. Menahem HaMeiri, Provence, 13th-14th c.: Even though [one could explain the restrictions around the wine of a *ger toshav*] as stemming from a fear that he does not guard it from contact with idolatrous Gentiles, most commentators agree that the concern is on account of the fear of intermarriage. And based on this, recent Sages in these lands have forbidden drinking the wine of several peoples even though they are not idolaters..."

<sup>160</sup> See, for example:

Lau-Lavie, Amichai. "Joy, a Proposal." June 2017. *LabShul.org*.

[https://labshul.org/wp-content/uploads/2019/07/Joy2\\_R03.pdf](https://labshul.org/wp-content/uploads/2019/07/Joy2_R03.pdf). Accessed March 9, 2022.

Raphael, Geela Rayzel. "Ger Toshav." *Shechinah.com*. <http://www.shechinah.com/ger-toshav.html>. Accessed March 9, 2022.

Greenberg, Steve. "Between Intermarriage and Conversion: Finding a Middle Way."

*RabbisWithoutBorders.net*. <http://www.rabbiswithoutborders.net/ss43.html>. Accessed March 9, 2022.

<sup>161</sup> Ritual Committee of Temple Bnai Israel. "Proposed Policy on Interfaith Wedding for Temple Bnai Israel." p. 3.

However, some, perhaps most or all, of the traditional blessings might need to be altered for such ceremonies.”<sup>162</sup> Presumably, the work of altering blessings is left up to the rabbi. This section goes beyond whether or not a rabbi can officiate at a mixed marriage to consider if so, *how*. Simply because a decision goes against the predominant halakhic opinion, that does not mean that the decisors seek to depart completely from a Jewish framework. The consideration of ceremony elements in this statement attests that the Committee members sought to preserve the integrity of the wedding ritual even as they innovated within it.

The final section summarizes the Committee’s decision to allow mixed marriage wedding ceremonies to be held in their building and officiated by their rabbi when certain conditions are met. Those conditions are that the non-Jewish partner subscribes to a statement that they are a *ger toshav*, the couple intends to raise as Jewish any children they may have, and the ceremony will be their only one, rather than supplementing another.<sup>163</sup> These conditions address the two concerns about mixed marriage that were raised earlier in the statement: 1) that it may “reduc[e] the chance that Judaism will be transmitted to the next generation” and 2) that “the Jewish sancta” may not be “relevant and applicable to the non-Jewish participant” in a mixed marriage ceremony. The Committee then appends a note acknowledging that this policy will not fit all circumstances and expresses the hope that families “oriented toward Judaism” will still feel welcomed at Temple Bnai Israel.<sup>164</sup> Any boundary, even a far more inclusive and permissible one, will still leave some people on the outside.

The way that this statement is written gives the sense that its argument is fairly straightforward and non-controversial. Its tone is measured and its style is concise and structured. It does not mention the strong opposition to mixed marriage throughout Jewish

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<sup>162</sup> Ibid., 3.

<sup>163</sup> An exception is noted for “rare circumstances” - not specified. This statement does not give the impression that it would approve of co-officiation, which may be what the committee members meant by being consistent with Reconstructionist policies.

<sup>164</sup> Ritual Committee of Temple Bnai Israel. “Proposed Policy on Interfaith Wedding for Temple Bnai Israel.” pp. 3-4.

history, nor does it discuss any of the texts generally cited by opponents of mixed marriage. It simply alludes to this stance as the prior norm (“Rav Jeremy, like the vast majority of rabbis, has declined to officiate at interfaith weddings”). These features of the statement imply that by the time it was written, the matter was no longer very controversial at Temple Bnai Israel. If members of the Committee had objected strongly to the change and had to be convinced, we would expect to see evidence of this argumentation in the statement itself. Instead, it appears to formalize what was already a popular opinion in the congregation. This does not mean that the statement is simply symbolic, however. In deciding to convene the Ritual Committee to implement a Torah process as part of his own decision-making, Rabbi Schwartz imbued the Committee and its statement with real authority. Also, through codifying a particular policy, the statement sends a message about which kinds of mixed marriage are consistent with the congregation’s mission and which are beyond the bounds.

### **Conclusion**

I began this project with a curiosity about the meaning and relevance of *halakhah* in my decision-making process as a Reform rabbi. In order to consider this topic further, I began with descriptions of *halakhah* from Progressive Jews and then considered position statements on mixed marriage officiation from the three major movements of Progressive Judaism: Reform, Conservative, and Reconstructionist. Having contemplated *halakhah* in theory and practice, I will now reflect on what I have learned.

In the chapter “Progressive *Halakhah* in Theory,” I reviewed definitions of *halakhah* and its authority from three Reform rabbis, one Conservative rabbi, and one Reconstructionist rabbi. Rabbi Solomon B. Freehof described *halakhah* for Reform Jews as “guidance” from Jewish legal literature, but “not governance.” Rabbi Moshe Zemer argued that *halakhah* is the ongoing interpretation of God’s will, which requires human beings to subject past precedents to critical study and an ethical imperative. Rabbi Mark Washofsky suggested that *halakhah* is a language

in which students of the Jewish tradition formulate arguments about what a Jew should do, the authority of which is determined ultimately by how persuasive the arguments are to their audiences. Rabbi Elliot Dorff, representing a Conservative view, defines *halakhah* as the duties incumbent on a Jew by virtue of the covenant, duties which evolve within the boundaries of a halakhic system. In contrast, Rabbi Jack J. Cohen, representing Reconstructionist Judaism, argues that Jews now live in a post-halakhic age, in which Jewish observances should be determined through a democratic process, which in turn gives these practices their authority.

I then turned to the case of mixed marriage officiation, beginning with positions taken by bodies of the Reform movement. The earliest statements (the 1909 CCAR resolution and 1919 CCAR Responsa Committee responsum), are straightforward and unapologetic in their opposition to mixed marriage and rabbinic officiation of it. Later statements (the 1973 resolution and responsa from 1980 and 1982) work harder to justify their opposition and are at the same time more accommodating of the presence of intermarried families. This demonstrates a tension within a Reform approach to *halakhah*, between adhering to past precedent and being responsive to changing realities in popular practice.

The absence of new positions issued since the early 1980s indicates a yielding of authority to the decision-making processes of individual rabbis. One such rabbi is A. Brian Stoller, who took a “socio-halakhic” approach to his own responsum approving of mixed marriage officiation in cases where the couple commits to practice Judaism in the home exclusively. Rabbi Stoller bases his argument on a halakhic principle from a 19th century responsum. This principle allows for *halakhah* to be adjusted to accommodate a practice that has become commonplace among a Jewish community and against which there is not strong opposition from their rabbis. While this argument seems like it could be applied wantonly to approve of any popular practice as a Jewish one, Rabbi Stoller’s responsum makes clear that he feels there are compelling reasons to use it in the case of mixed marriage, specifically.

The use and absence of the word “*halakhah*” in these Reform publications demonstrates a complex and changing Reform relationship to Jewish law. In the introductions to CCAR resolutions and even responsa on the CCAR website, the word “*halakhah*” is not used. These refer instead to the application of Jewish thought and texts. This reflects the Reform discomfort with anything akin to Jewish *law*, which contradicts the Reform emphasis on individual autonomy. However, past chairs of the CCAR Responsa Committee since Rabbi Freehof have seen their work as Reform (and non-binding) *halakhah*, even writing introductions to volumes of Reform responsa that defend this idea to their audiences. This trend toward increasing engagement with a traditional modality reflects broader trends in the Reform movement, in which certain ritual garb and observances have been “reclaimed” in recent decades. Rabbi Stoller’s dissenting opinion exemplifies this trend, as it both refers to itself as halakhic and seeks to justify innovation within a halakhic framework. This trend implies that *halakhah* still holds authority for Reform Jews, not as binding obligations but as a way to establish continuity with tradition even as one breaks from it.

In the chapter on the Conservative Movement, we saw how the ban on mixed marriage officiation remains a Standard of Religious Practice, making it one of only a few halakhot that are enforceable by expulsion from the Rabbinical Assembly. Other decisions about rabbinic practice and Jewish observance in general are left up to the individual Conservative rabbi as *mara d’atra* for their community. The ban on officiation was originally founded on two responsa from 1972 - one from Rabbi Immanuel Lubliner and the other from Rabbi Aaron Blumenthal. Reviewing these responsa demonstrated how the Conservative movement responded to an increasing rate of mixed marriage by bolstering their opposition - both rhetorically and by sanctioning rabbis who violated the ban on officiation by expulsion. However, the Blumenthal responsum also encourages Conservative rabbis to retain contact with the intermarried couple and try to engage them in the synagogue. Though the Conservative movement has not changed its interpretation of the *halakhah* on mixed marriage, it has changed its tone. The 2017 letter



from heads of Conservative movement institutions took a “pastoral” approach, considerably less judgmental and more compassionate toward intermarried couples, verging on apologetic. This tonal shift raises the question that plagues Conservative Jews caught in the middle - is the movement’s halakhic position necessarily equivalent to what is right?

To this question, some Conservative rabbis have answered “no,” and have sacrificed their membership in the Rabbinical Assembly because of it. One among them is Rabbi Amichai Lau-Lavie, who published a long report explaining his decision to officiate mixed marriages, much like Rabbi Stoller, on a case-by-case basis. With respect for the authority of the Committee on Jewish Law and Standards to issue responsa for Conservative Judaism, Rabbi Lau-Lavie does not claim that his statement is a responsum. Instead, he describes it as a halakhic and historical *inquiry*. The product is a fascinating look at three models of non-Jews who were highly affiliated with Jewish communities, spanning thousands of years of Jewish history. In stopping short of calling his statement “*halakhah*” or a “responsum,” Rabbi Lau-Lavie both affirms the integrity of the Conservative Jewish legal system and also calls into question its ability to sufficiently respond to the changing reality of contemporary Jewry.

Of the three movements analyzed, the Reconstructionist movement has seen the greatest change over time in its official positions. The 1983 guidelines of the Reconstructionist Rabbinical Association express the consensus opinion that a Reconstructionist Rabbi should not officiate mixed marriages. However the guidelines also suggest many steps for welcoming intermarried families. In 2000, the RRA passed a resolution that banned co-officiation with clergy of other faiths and established a set of sanctions that *could* be imposed on any Reconstructionist rabbis who violate the ban. By 2015, there is a significant turnaround, not from the RRA but from the Reconstructionist Rabbinical College, which passed a new policy to admit and ordain students who are in mixed partnerships. With this change in the demographic makeup of Reconstructionist rabbi families, it seems inevitable that RRA policy will also shift away from its opposition to rabbinic officiation of mixed marriages. All three of the

Reconstructionist movement positions are notable for their lack of engagement with classical Jewish texts. While halakhic literature is not discussed explicitly, references are made to Jewish standards, traditions, and sancta. When the RRA likely updates its 1983 guidelines, it will be interesting to see whether halakhic literature is brought to bear in creative ways to yield authority to the apparent break with the past, or if the new policy will be discussed in a present-oriented and non-textual way, in keeping with the previous statements.

For a Reconstructionist dissent, we considered the policy of Temple Bnai Israel of Willimantic, Connecticut, which approved of mixed marriage officiation under certain conditions. This policy was written by members of the Temple's ritual committee under the advisement of their rabbi, Jeremy Schwartz. The policy is an example of the Reconstructionist movement's "Torah process" put into practice - a process in which lay Jews decide on a matter of Jewish observance through study of relevant texts and discussion aimed at building consensus. This democratic approach is a key feature of the Reconstructionist movement and in line with Rabbi Jack J. Cohen's philosophy that Jewish religious standards can only have authority over people if they come from the people. This method is intended not only to codify the popular will, but also to inject consideration of Jewish sources into the determination of that will. In the case of Temple Bnai Israel, two of the core sources they considered were their Temple's mission statement and the halakhic category of the *ger toshav* (resident foreigner).

Given all of the above, what am I taking away for my future work as a Reform rabbi? Completing this research has made me more committed to my own decision-making process being a halakhic process. By this I mean that it will include serious study of Biblical and post-Biblical Jewish legal texts as well as progressive *halakhah*. And, as was demonstrated in many of the position statements I considered, my sources will not be limited to *halakhah*. I can also incorporate aggadic material, Jewish theology, and Prophetic texts. These sources broaden the range of Jewish perspectives that can inform my thinking, and they may provide unique opportunities to establish continuity with tradition. I will also include historiographic studies,

sociological data and scientific research. These sources will allow me to engage in the critical study of Judaism, a core Reform concept, and to make sure that my decisions are grounded in the real world.

Why engage in a halakhic process? The first answer is that it is a way of establishing continuity with Jewish tradition. There is deep wisdom and beauty in Judaism, and when we engage in Jewish sources and practices, we gain access to their essence. Studying halakhic sources is one way for me to continue to gain new insights from Judaism and share it with others. Continuity with tradition also gives me a sense of Jewish authenticity. What makes a practice Jewish is if it has been carried out in whole or in part by Jews in the past, as an expression of their Jewishness, even as it is adapted for the present day.

Studying halakhic texts can show us not only what action was prescribed in the past, but also the principles that undergird that prescription. In cases where I decide against the general thrust of *halakhah*, this should be a principled decision - either I disagree with the original principle, or I agree with it but feel that it is best realized through a different course of action. (Or, as will often be the case, I do not find that particular practice meaningful.) This is very relevant in the case of mixed marriage officiation. As I read the halakhic sources, the primary concern about mixed marriage is that it threatens Jewish continuity. This arises in biblical texts as a fear that the Jew will be lured to idol worship, in rabbinic rulings as a concern over the religious status of offspring of mixed unions, and relatedly, in contemporary statements that cite sociological data on the relatively lower percentages of children from mixed marriages who are being raised as Jews.<sup>165</sup> I agree with the principle of preserving Jewish continuity, but I disagree that withholding rabbinic officiation of mixed marriages is the best way to achieve this. In fact, it is the principle of preserving Jewish continuity that motivates me to officiate at mixed marriages

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<sup>165</sup> I would note, however, that people who decry that mixed marriages result in a lower percentage of children raised as Jews neglect to point out that it only takes one Jewish adult to produce children in a mixed marriage. So, the percentage of children being raised as Jews from mixed marriages could be half as much as the percentage of children being raised as Jews from endogamous Jewish marriages, and the “rate” of passing Judaism from one generation to the next would be equal across groups.

in which the couple is committed to practicing Judaism as the exclusive religious tradition of their home and family. In this sense, I see myself as fulfilling the spirit of the *halakhah* by going against the letter of it.

Another benefit of engaging in *halakhah* is precisely that it will not always accord with modern sensibilities. Halakhic literature spans many times and places, and as much as it preserves Jewish tradition, it is also shaped by the norms and values of its prior contexts. Therefore, *halakhah* can challenge and deepen my thinking on a particular issue by causing me to think more critically about my modern sensibilities. This was the case in this project, for example, with Rabbi Lubliner's responsum, which made me think about Christian supersessionism as it relates to the theological statement made by a co-officiated wedding.

The value of thinking critically about modern sensibilities does not mean that I will be restrained by past perspectives; I still relate to *halakhah* as non-binding. This is important to me, because I believe in a progressive revelation - while not all issues proceed in a linear fashion, I feel that morality generally develops in a positive direction throughout history. In fact, it is precisely Reform's liberation from *halakhah* that enabled it to implement key moral insights like gender equality far earlier than other movements of Judaism. This moral independence is something I will retain in my halakhic process. In particular, I draw inspiration from Rabbi Moshe Zemer's application of the criterion that *halakhah* should lead to greater holiness. His bold assertion that anything we call *halakhah* *must* be ethical is both obvious (if *halakhah* is what we think Jews should do, then of course Jews should act ethically!) and also audacious, because it implies an *imperative* to change *halakhah* when it no longer conforms to our deeply held values.

The ideal of "informed choice," is a central component of Reform Judaism. Rabbi Eugene Borowitz, one of the great Reform thinkers of the 20th century, coined this term to describe the responsible exercise of autonomy regarding Jewish practice: one has to understand a tradition in order to conscientiously decide whether and how to observe it. While informed choice is a key part of the idealized conception of Reform Judaism, we rarely talk

about *how* to make informed choices - What kinds of information should be considered? What are the observances about which a Reform Jew might make a choice? There are many issues about which there is broad consensus in the Reform movement, and I will follow that consensus unless I have good reason to depart from it. But on issues about which there is not consensus, a halakhic process seems like a good way for me to ensure that my rabbinic practice is determined through informed and conscientious choices.

This project has also inspired me to engage congregants in halakhic decision-making. In addition to the example of Rabbi Jeremy Schwartz implementing the “Torah process” at Temple Bnai Israel, Reform Rabbi Erica Ashe has written about her experiences engaging congregants in a similar process to make decisions relevant to their synagogue policies.<sup>166</sup> The ideal of “informed choice” is not reserved for rabbis alone, it is for all Reform Jews. For the same reasons that I want to include halakhic literature and other Jewish sources in my own decision-making process, I believe they can be valuable to lay people as well. As Reform Jews, halakhic literature can enrich our knowledge of Jewish tradition, deepen our reflection, and empower us to make intentional choices about how to live. This is a process that I am excited to pursue throughout my rabbinate - with colleagues, with congregants, and with the divine source of truth, which has always been our guide.

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<sup>166</sup> Ashe, Erica. “Communal Halachic Decision-Making.” *CCAR Journal*. Spring 2020, pp. 174-185.

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