
Modern Judaism encompasses three basic movements: Orthodox, Conservative, and Reform. They represent a broad spectrum of belief concerning the existence and the role of God and the authoritativeness of the Torah. The lines separating them, however, are fluid rather than rigid, and within each movement there are different points of view regarding fundamental tenets of Jewish law. Two caveats: In describing these movements, because of space constraints, I must, of necessity, paint with a very broad brush thereby omitting important nuances. I must also disclose that I am a bal tshuva, that is, a formerly non-observant Jew who has, so to speak, “returned.” I am now an Orthodox Jew, albeit a very liberal one, married to a not-so-liberal Orthodox rabbi. It may also be relevant that my reason for shifting to Orthodox Judaism was more intellectual than revelatory.

In general, the Reform Movement, a product of the Enlightenment, adheres to the view that the Torah was created by man, not God, and that a person must choose to what extent he or she will observe Jewish law. Thus even within the Reform Movement, there are those who follow some aspects of Jewish law and custom. In the early years of Reform Judaism, many synagogues prohibited the wearing of skullcaps and prayer shawls, and allowed non-kosher food at official synagogue events. By and large that is no longer true, and the movement seems to be moving to the right, although still stressing the value of individual choice in matters of belief and observance.

Similarly, at the other end of the spectrum, Orthodox Jews believe that the Torah, both Written and Oral, was given to God by Moses on Mount Sinai who then transmitted it to the Jewish people; consequently the law, halachah, is of divine origin and binding on every Jew. Furthermore, because of the involvement of God, His laws cannot be invalidated by man. Again, however, there is a spectrum of observance and belief in the Orthodox Movement which includes the Modern Orthodox, the ultra-Orthodox, and various types of Hasidim. But, to a greater or lesser degree, all Orthodox Jews believe that the commandments, or at least some of them, were given by God, a loving God, who rewards and punishes.
In the middle, and straddling the edges of both the Reform and Orthodox camps, is the Conservative Movement. I had always thought that Conservative Jews had the most difficult conceptual approach to Jewish law. By and large, they accept the divine origin of at least some parts of the Torah, but at the same time they subscribe to the view that when a particular law is no longer “acceptable,” it can be changed, albeit slowly, carefully and in collaboration.

Rabbi Elliot Dorff’s new book, *For The Love of God and People*, is a thoughtful and scholarly analysis of his own “core convictions about the nature and functioning of Jewish law, the legal system that is infused with both divinity and humanity and that expresses our love for both God and people.” (37) It is a personal view, but an intellectually honest one. Rabbi Dorff comes with sterling credentials. He is a Conservative rabbi who was ordained by the Jewish Theological Seminary, received his Ph.D. in Philosophy from Columbia University, was named a chaired professor at the American Jewish University, and is the author or co-author of numerous articles and books, one of which, *A Living Tree*, is used at many law schools. Finally, he is a member of the Conservative Movement’s Committee on Law and Standards and he has grappled with divisive issues such as gay rights and the role of women in Judaism.

Several issues separate Rabbi Dorff from the Orthodox community. One is his acceptance of the view of modern Biblical analysts that the Torah was in fact written by four different authors (or at least came from four different sources) at different times and then edited at a later period. The other distinction is the immutability of Jewish law. Rabbi Dorff claims that when a law is no longer “moral or wise,” a deliberative body of the Conservative Movement will re-examine the law and perhaps change or modify it. He claims that that is in fact what Orthodox rabbis have always done and continue to do under the rubric of interpretation and applying the law narrowly in different factual circumstances, i.e., using case law methodology. While case law analysis does leave room for flexibility, there is still a significant difference between distinguishing prior law and overruling it. Making distinctions or exceptions and ruling narrowly does not destroy the core validity of the particular law. For example, Jewish law prohibits the taking or giving of interest. Quite early, however, it became apparent that this rule might discourage people from making loans to those who needed them. Hillel, in approximately the first century C.E., ruled that although individuals could not give or take interest, the lender could assign his claim, the *prosbul*, to a *bet din*, a Jewish court, and that since the latter was not included in the prohibition, the court could collect the interest and give it
to the lender. This interpretation is in accord with the general rule of *hefker beis din hefker*. In money matters, Jewish courts have the power to distribute money to any person it wishes. With the advent of modern commerce, it became clear that other refinements in the law would have to be made. Yet, ask any Orthodox Jew whether one can give or take interest, and he or she would say, “of course not.” Had Hillel and the rabbis instead ruled that the no interest prohibition was no longer valid, the moral essence of the prohibition—that it is good to give loans to people who need the money without making it difficult for the borrower to repay his loan obligation and get back on his feet—would be lost.

Rabbi Dorff views this adjudicatory process as demonstrating that “human beings acting as judges have had an immense role in determining the content and shape of [the] law.” (15) That is certainly true, but Orthodox judges only make decisions within the parameters of God’s hermeneutical rules for learning and applying the law. Therefore, at least for me, God remains very much involved with judge-made law, and I say this even though I know all too well how judges in the secular courts manipulate the law in order to reach a particular result. I think that Orthodox *poskim*, recognized legal authorities, are not as result-oriented as Conservative rabbis and generally seek the “truth” when trying to ascertain God’s law. On the other hand, there is a saying that when a rabbi addresses an issue, it is very easy to say no, the law does not allow this; to say yes, however, requires hard work and intense study and rigorous analysis.

The interplay between God and the judges is illustrated by a famous story in the Talmud regarding the status of a particular type of oven. The issue is very esoteric. All the rabbis but one thought the oven was impure. Rabbi Eliezer, whose opinions were usually followed, argued that the oven was pure. Rabbi Eliezer said if the *halacha* is in accord with my views, let the waters in the river flow backwards. The waters then flowed backwards. The rabbis said the waters are not proof. Rabbi Eliezer then said if the law follows my opinion, let that carob tree be uprooted. The tree was then uprooted. Again, the rabbis said this is no proof. Finally, Rabbi Eliezer said if the *halacha* is with me, let Heaven prove it. Then came a heavenly voice declaring that the law was as Rabbi Eliezer said. The rabbis responded that the Torah is not in Heaven, for it was already given to us on Mount Sinai where it was declared that a matter shall be decided by a majority vote. God then laughed, saying “My children have prevailed over Me.” (Baba Metizia 59a-b)
Rabbi Dorff uses two models to understand and explain Jewish law: analogizing Jewish law to a physical organism and as a covenant between man and God. He sees these models as integrated and as influencing each other. The two models of living organism and covenant allow him to distinguish his approach from other Jewish thinkers, and help to explain how on the one hand, Jewish law can be changed, and on the other, why it is authoritative. Rabbi Dorff claims that to understand Jewish law properly, one must use the two models in tandem, such that the elements of Jewish law best analogized to a living organism influence those best analogized to a covenant in an ongoing way, and vice versa. (28)

Ultimately he sees Jewish law as consisting of a body and a soul, “an expression of the love that we Jews have for both God and other human beings.” (45)

One of Rabbi Dorff’s illustrations of his view that immoral laws should be changed is the controversy within the Conservative Movement regarding homosexual relations. One rabbi took the position that even though homosexuality may be genetically influenced, the Torah prohibits the acts of homosexuality and therefore homosexuals should be celibate. Rabbi Dorff argued that this position was “both immorally cruel and theologically problematic” because homosexuals “can never have sexual relations condoned by Jewish law.” (232) To reach the result that he believes is morally required, Rabbi Dorff goes beyond the specific law prohibiting homosexual acts and invokes the more general Torah principle that “we do not oppress each other,” a broad teaching that could cover almost anything. The disagreement is reminiscent of the debate between Justices Brennan and Scalia in *Michael H.* 1 regarding the use of history to determine the parameters of due process. Justice Scalia argued that to avoid judicial subjectivity, only the most specific tradition could be relied on. Justice Brennan opted to use more general traditions because he saw the Constitution as akin to a living organism that reflected modern values. There are difficulties with both positions in American law, and that is also true with respect to Jewish law.

Rabbi Dorff claims that our ancestors assumed that all people can fulfill their sexual needs heterosexually and that homosexual acts were thus a rebellion against Jewish law in which participants were following the practices of the Greeks and other nations. (232)

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He further argues that “we now know that everyone is born with a particular sexual orientation and that attempts to change it do not work.” (232) Thus, Rabbi Dorff is making two very basic assumptions: one, that the reason for the prohibition involved rebellion against Jewish law, and two, that we “know” homosexuality is inborn. Many rabbis warn us against seeking the underlying reasons for a law lest we conclude that the reason for the law is no longer applicable and invalidate it. God’s reasons for making particular laws, however, cannot be known by man, and indeed, God may have several reasons for a law, reasons that are not apparent; at best, we can make a guess. Modern science and psychology have not spoken definitively about the cause of homosexuality; and given the complexity of human beings, it is unclear whether or if such a conclusion can ever be reached. But I would guess, as Rabbi Dorff does, that there is probably a genetic factor at work. Even if that is true, it is still possible to argue that God may have wanted certain people to have that genetic factor and struggle with it. Each of us has characteristics that make adherence to the law difficult. I am not arguing that giving up lobster and pork is on the same level as dealing with sexual orientation, but we must all struggle. Why? I’m not really sure, and my faith waxes and wanes grappling with issues in Jewish law that seem unjust. I deplored the decision in Bowers v. Hardwick,2 upholding state laws that criminalize homosexual acts by consenting adults in private. Lawrence v. Texas,3 overruling Bowers, was, in my view, correctly decided. The state simply has no valid interest in such matters. But I cannot, at least with the same degree of certainty, say the same about God.

Rabbi Dorff’s solution was humane and artful. He read the prohibition in Leviticus 18:22 and 20:13 as applying only to men who engaged in anal sodomy, thus eliminating the rabbinic extensions of the law to women and to other forms of male homosexual behavior. Rabbi Dorff does not view this as a perfect solution because it denies homosexuals unrestricted sexual expression. Heterosexuals, on the other hand, at least if married, can engage in sodomy. It is certainly not encouraged, but it is tolerated.

The book, although accessible, is dense and requires close attention by the reader. Those who have no knowledge of Jewish law or theology in general may find it a hard read. The various chapters will appeal to different people. I was most interested in Rabbi Dorff’s comparison of American and Jewish law, and the analysis of the theoretical basis of the

morality of Jewish law, the difference between law and custom, and his
discussion of gay rights and the role of women in Jewish life. It is a
scholarly work with many endnotes, a treasure trove of clear, analytical
thinking and suffused with love and compassion.

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