

The Halakhic Argument to Permit Intermarriage

A Positivist Historical Approach

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INTRODUCTION

On the positivist historical approach to *halakhah*

The Conservative movement is a movement dedicated to “positivist historical Judaism,” which means today’s Jewish community accepts all preceding legal decisions by legitimate authorities as binding (“positivist”), while also asserting that those legitimate authorities made their legal decisions within their contemporary context (“historical”).¹ As Rabbi Joel Roth comments in his seminal back on Conservative *halakhah* entitled *The Halakhic Process*²:

“The precedents of the halakhic system are intended to guide arbiters not only by what they say explicitly, but also by serving as paradigms par excellence of the methodology according to which previous masters balanced such precedent against what they themselves saw” (Roth, 87).

The methodology of *halakhah* as outlined by Roth - to “balance” historical precedent with what masters saw in their present - is described in different, but similar language by Israeli scholars Moshe Halbertal and Avishai Margalit in their book⁴ on how idolatry is understood in Judaism:⁵

The medieval rabbinic authorities, especially the Tosafists, considered the Jewish community a holy community and therefore considered it their task to justify the acts of the community as being in accordance with the halakhah” (Halbertal, 210-211).

Mapping Roth’s language (“masters,” “precedent” and “what they themselves saw”) onto Halbertal & Margalit’s language (“medieval rabbinic authorities,” “*halakhah*,” and “the Jewish community”) reveals the same core message at the heart of positivist historical Judaism: ***The goal of legitimate rabbinic authorities is to make decisions for their community by***

¹ Zecharias Frankel (1801-1875, Czechoslovakia/Germany) - one of the forefathers of Conservative Judaism - is reported as saying in 1845 that “positive, historical Judaism [posits that] in order to understand Judaism in the present one must look back and investigate its past. The positive forms of Judaism are deeply rooted within its innermost being and must not be discarded coldly and heartlessly.” (See “Hebrew as the Language of Jewish Prayer” in Mendes-Flohr, Paul & Jehuda Reinharz. *Jew in the Modern World: A Documentary History*. Oxford University Press, (1995): 179).

² Roth, Joel. *The Halakhic Process: A Systemic Analysis*. JTS, (1986).

³ Roth previously explained the significance of the need for rabbis to determine the law based on what they saw: “The principle [a judge only judges on what their eyes see]...is the systemic legitimization of the right of judges to exercise judicial discretion as they deem appropriate. Even more, the principle demands of [halakhic arbiters] that they do more than merely recognize the theoretical right to exercise judicial discretion; it demands of them that they, in fact, exercise their right. It elevates the right to exercise judicial discretion to a systemic imperative” (Roth, 85).

⁴ Halbertal, Moshe & Avishai Margalit. *Idolatry*. Trans. Nahum Goldblum. Harvard University Press, (1992).

⁵ The purpose of their book, as described in the opening line of the introduction, is to explain the significance of idolatry in Jewish belief and practice:

“In addressing the central question - What is idolatry and why is it viewed as an unspeakable sin? - we do not trace the historical vicissitudes of the concept of idolatry; rather, we are interested in various models of this concept in the monotheistic religions, especially in Judaism” (Halbertal, 1).

ensuring that the Jewish past and present exist together as an unbroken chain of tradition.

Where Roth and Halbertal & Margalit differ is in their assumptions of rabbinic intent. According to Roth, rabbinic intent is to “balance” the past and present as if there is a scale weighing the evidence for change against the weight of precedent. Changes to specific laws (e.g. intermarriage) can only occur if they are consistent with the many systemic principles governing change in the *halakhic* process which, overall, tilt in favor of the weight of precedent.⁶ Meanwhile, Halbertal & Margalit assert that in the medieval Jewish community - let alone in other epochs of Jewish history - rabbinic intent was to “justify” the actions of their community (e.g. engaging in commerce with idolaters) that seem to be at odds with decisions made by previous generations; such a justification involved demonstrating that those actions - past and present - were actually in accordance with one another.

The difference between “balancing” the past and present (Roth) and “justifying” the present in light of the past (Halbertal & Margalit) underscores a central *machloket leshem shamayim* (“argument for the sake of heaven”) among current (and future) *halakhic* authorities of positivist historical Judaism: **When is it appropriate for legitimate authorities to develop the rabbinic will to find a *halakhic* way for changing an established *halakhic* ruling?**⁷ Is it only when *halakhic* changes can align comfortably - in balance - with the weight of precedent? Or could it also be when the needs of the present justify a new lens to refract the views of previous generations?

On Rabbinic Intent and the Question of Intermarriage⁸

One area of *halakhic* discourse where it is important to consider Roth’s and Halbertal & Margalit’s different approaches to rabbinic intent is the *halakhah* on intermarriage between Jews and non-Jews.

There is no evidence of previous rabbinic authorities *halakhically* permitting intermarriage. Quite the contrary, *halakhic* precedent unanimously supports the Torah’s ban on intermarriage.⁹ So if one understands rabbinic intent as the demand of the present to respect the weight of precedent, it seems unconscionable to consider a *halakhic* justification for permitting intermarriage today.

⁶ Roth is adamant that judges have the right to make judgements based on their own reasoning, but he acknowledges that the weight of legal precedent is particularly strong:

“Precedents will probably be followed, not because they are absolutely authoritative, but because careful consideration of them is most likely to guide the present arbiter in the way that earlier arbiters were guided. Nevertheless, if a later judge sees significant and crucial differences between the cases that established the precedent and the case before him, he is duty-bound, notwithstanding the similarities between the cases, to follow the dictates of his reason” (Roth, 87).

⁷ This is a play off of orthodox feminist scholar Blu Greenberg’s well-known statement that “where there is a rabbinic will [to change], there is a *halakhic* way [to change].”

⁸ The terms “interfaith marriages” and “intermarriages” will be used interchangeably throughout this *teshuva*.

⁹ This *teshuva* will discuss the unanimous support for the ban on intermarriage in Part 1.

Moreover, in our contemporary context, intermarriage is widely viewed through a negative lens. Israeli leaders liken intermarriage in America to a “second holocaust”;¹⁰ Orthodoxy discredits non-orthodox Jewish denominations who support mixed-marriages as bordering on “Christianity”;¹¹ and even the Reform Jewish community, who first allowed rabbis to officiate at intermarriages in the late 1970s, prohibited intermarried Jews from becoming Reform rabbis until last year.¹²

Historically, the Rabbinical Assembly’s Committee for Jewish Law and Standards (CJLS) - the legitimate authority to offer halakhic guidance for Conservative rabbis - has upheld the weight of precedent opposing intermarriages between Jews and non-Jews. Such guidance to rabbis include barring intermarried Jews from synagogue membership (1941); denying intermarried Jews from receiving synagogue honors and leadership roles (1959); mandating that rabbis try to “dissuade any Jew contemplating intermarriage” (1963); forbidding rabbis from officiating (1971) or attending (1972) intermarriages; refraining synagogues from publicly announcing intermarriages (1976) or births of children from non-Jewish mothers (1990); requiring conversion of children from non-Jewish mothers so they could have a *b’nei mitzvah* ceremony or join a Jewish youth group association (1990); excluding non-Jewish spouses from synagogue membership (1982); expressing concern over “the home atmosphere” for raising Jewish children if the non-Jewish spouse has an “active membership in a church” (1982); and refusing to accept donations in honor of intermarriages or births of children from non-Jewish mothers (1990).¹³ As of today, the Standard of Religious Practice continues to prohibit rabbis from performing intermarriages and forbids communities from accepting Jews of patrilineal descent.¹⁴

More than simply upholding precedent, the rabbinic intent of the CJLS’s opposition to intermarriage is to express how “intermarriage [is] fundamentally injurious to the Jewish people and Jewish survival.”¹⁵ While such expressions - occurring over four decades - range in tone from the combative¹⁶ to the conciliatory,¹⁷ the Conservative movement’s “official policy...to discourage intermarriage and to take acts to prevent it” remained steadfast. To use Halbertal & Margalit’s language for the medieval rabbis, at no point did the CJLS or any other body of the

¹⁰ [“Israeli education minister calls intermarriage rate of U.S. Jews “second Holocaust.”](#) Axios. July 9, 2019.

¹¹ [“From Demonic Deviant to Drowning Brother: Reform Judaism in the Eyes of American Orthodoxy.”](#) Jewish Social Studies. Vol 15, No. 3. 59-60.

¹² [“HUC-JIR Expectations for Clergy Students.”](#) Updated June 20th, 2024.

¹³ For a synopsis of most of these decisions, see Epstein, Rabbi Jerome “Congratulations to Mixed Families (1990)” in [Proceedings of the Committee on Jewish Law and Standards: 1986-1990](#). 457-466. Also see Abelson, Rabbi Kassel “The Non-Jewish Spouse and Children of a Mixed Marriage in the Synagogue (1982)” in [Proceedings of the Committee on Jewish Law and Standards: 1980-1985](#). 129-142.

¹⁴ [“A Code of Professional Conduct for Members of the Rabbinical Assembly.”](#) (2018), 3. Conservative rabbis who officiate intermarriages are pressured to resign from the Rabbinical Assembly or risk expulsion and public shaming by being included in a list of rabbis suspended or expelled for sexual misconduct or financial malfeasance. (See [“In a shift, Conservative movement publicly lists the rabbis it has expelled and suspended.”](#) Elia-Shalev, Asaf. JTA. October 22, 2021).

¹⁵ Epstein, 460.

¹⁶ [“Marrying outside of the faith is considered tantamount to a rupture with the Jewish community”](#) (Epstein, 458).

¹⁷ [“We believe it is our duty to save a Jew, individually, for our people, by dealing with him with compassion and understanding, rather than with hostility or indifference”](#) (Abelson, 131).

Conservative movement seek to justify the actions of their holy community which included a growing intermarried population. However, such an opportunity may be fast approaching.

Just recently, the Conservative movement's Interfaith Working Group (IWG) composed the most compassionate message to date of the movement's official position on intermarriage.¹⁸ In so doing they echoed Halbertal & Margalit's understanding of the medieval rabbinic intent to justify the actions of their holy community:

"We celebrate the meaningful contributions of Jewish-adjacent partners and spouses, and the children of such unions, in the work of creating and sustaining Conservative/Masorti Jewish households. We recognize that moving beyond the binary approval/disapproval paradigm makes spaces for conversation and relationship-building. And instead of critiquing relationship choices, we can return to the basics of empowering our members to live rich Jewish lives and providing the tools needed by our diverse families. Here, we plant the seeds of healing, courage, conviction, acceptance, and embrace" (IWG, 7).

The "seeds of healing" are necessitated because of the decades of pain caused by Conservative Jewish leaders who sought to protect Judaism at the expense of the interfaith families in their congregations. The ultimate source of healing - especially for future generations of Conservative Jews - will come if this report heralds a new era of rabbinic intent; namely that as Conservative rabbis we must declare that if our Jewish community is holy then intermarriage must be holy as well, and thus we are called in this moment to justify these interfaith marriages through a positivist historical approach to *halakhah*. This *teshuva* is one such attempt which, I hope, will inspire others.¹⁹

The approach of this *Teshuva*

Halbertal & Margalit's understanding of rabbinic intent - to "justify" the actions of the modern Jewish community so they are consistent with the history of previous Jewish communities - provides the philosophical foundation for why a *teshuva* permitting intermarriage is needed in today's Conservative Jewish world. Moving forward this *teshuva* relies strictly upon the methodologies outlined in Roth's *Halakhic Process* to determine how to apply a positivist historical approach to the question of intermarriage.

Principle among the systemic principles of the *halakhic* process articulated by Roth that could be applied to the question of intermarriage is the concept of "s'yag la-Torah," often translated as

¹⁸ *"The Need to Move from Disapproval to Engagement: The Joint Intermarriage Working Group (IWG) Report."* (Dec 2025).

¹⁹ This *teshuva* on permitting intermarriage will not fully address the question of permitting patrilineal descent because, while some issues and sources overlap, they are fundamentally different questions which need their independent *halakhic* investigations. However, the start of a response is added to the appendix.

a “safeguard around the Torah.”²⁰ Through his analysis of Maimonides’ approach to the laws of *kashrut*, Roth underscores how rabbinic decision-makers must view their primary responsibility as protectors of the viability and inviolability of the laws of Torah (*d’oraita*) by not adding to or subtracting from the laws of the Torah with their own ideas of what the law should be. However, if...

“the enactment that adds or subtracts [to the laws of the Torah] is avowed to have been promulgated as a safeguard for the Torah and is not declared to be the Torah’s intent, the enactment does not violate these prohibitions...To state this idea in legal terminology: When rabbinic enactments are clearly stipulated to be secondary legislation and not primary legislation, they constitute no violation whatsoever of the prohibitions [to not add to or subtract from the Torah] (Roth, 160).

Part one of this *teshuva* will clearly illustrate that intermarriage is prohibited *d’oraita*, which not only means the law cannot be removed or minimized but also that it is still relevant and binding on us today. However, the Torah’s prohibition no longer feels relevant or binding in an era of exogamy when committed Jews feel comfortable marrying non-Jews because they are decent, moral people who share the same values. Therefore this *teshuva* puts forward the following argument to protect the relevancy of the Torah’s intermarriage prohibition in an era of exogamy:

The Jewish partner must determine from the outset if their Jewish identity - and their children’s Jewish identity - will be negatively or positively influenced by the beliefs, practices, and values of the religious heritage of their non-Jewish spouse.

Such a determination leads inexorably to the following *p’sak* (“*halakhic* decision”):

- 1) If the Jewish partner expresses concern that exposing themselves and their children to their spouse’s religious heritage will negatively influence the richness of their Jewish lives, then their intermarriage should be halakhically prohibited as a violation of a *d’oraita* commandment;²¹
- 2) However, if the Jewish partner has faith that their spouse’s religious heritage will positively influence their family’s Jewish identity and is willing within reason to personally engage in - and educate their children in - the traditions of both religions, then their intermarriage should be halakhically permitted as secondary legislation - a *s’yag la-Torah* - to safeguard the relevancy of the *d’oraita*’s prohibition in our era of exogamy.²²

²⁰ The systemic value of applying the principle of “*s’yag la-Torah*” to intermarriage is that it pre-supposes the weight of precedent arguing against a leniency; such a leniency is needed not to replace the original prohibition but *to protect* it in today’s world.

²¹ Such situations for Jewish partners include, but are not limited to, intentionally avoiding any interaction with their spouse’s Christmas tree; refusing to attend church with their spouse’s family; deciding to raise their children without religion; or publicizing their marriage as a sign of their willful disdain for Judaism and/or the Jewish people.

²² Such examples for Jewish partners include, but are not limited to, holding family memberships in both religious communities; sending their children to both religious schools; celebrating holidays of both religions in their home or at

The structure of this *Teshuva*

The structure of this *teshuva* follows the structure of other *teshuvot* written by rabbinic authorities of positivist historical Judaism:

Part 1 - The history of halakhic sources outlining the prohibition of intermarriage

Part 1 surveys the relevant sources in the Bible, Talmud, and medieval codes of Jewish Law, drawing the conclusion that Judaism unequivocally prohibits intermarriages on the topic of intermarriage. Moreover the central concern of this prohibition - which is overwhelmingly accepted as *d'oraita* - is the fear of being in proximity to idolaters since the practice of idolatry reflects a moral failure and a betrayal of our relationship with God.

Part 2 - The evolving halakhic definition of idolatry

Using proper methodological tools articulated by the positivist historical approach to *halakhah*, Part 2 builds upon the conclusions of Part 1 and centers the core of the *halakhic* argument to permit intermarriage on the evolving *halakhic* definitions of idolaters and idolatry. Such evolving definitions include (1) all non-Jews are idolaters, (2) idolaters only live in the land of Israel, (3) non-Jews are not idolaters because their idol worship is only an act of continuing family traditions, and (4) non-Jews are not idolaters - and their religions are not forms of idolatry - because their religions teach them to be decent, moral people who believe in the unity of God. These evolving definitions of idolatry open the door to the possibility that the Torah's prohibition of intermarriage is no longer relevant today.

Part 3 - Permitting intermarriage through building a “fence” around the Torah's prohibition

Part 3 bridges the gap between the weight of precedent forbidding intermarriage as a prohibition *d'oraita* (Part 1) and the historical change of the definitions of idolaters & idolatry that open the doors to permitting intermarriage today (Part 2). Extra-legal sources²³ from the early days of modernity provide important historical context for the particular challenge of intermarriage facing the modern Jew in today's era of exogamy, emphasizing the *halakhic* limitations of Jewish rituals to consecrate interfaith unions on its own. These *halakhic* limitations provide a foundation for developing secondary rabbinic legislation to permit intermarriage (i.e. the requirement of partnership between the two faith traditions mentioned above) in order to protect the Torah's primary prohibition.

their in-laws; having their children undergo rites of passage according to the traditions of both religions; or developing family & communal rituals that honor both religions at the same time.

²³ See Chapter 9 (231-304) of Roth's *Halakhic Process* for a definition of “extra-legal sources” and their proper place in the *halakhic* process.

Part 4 - The “Mitzvah” of Interfaith Dialogue

Part 4 explores a “*ta’am mitzvah*” (“reason or motivation for performing a commandment”) to change the narrative of intermarriage from being one of fear and disappointment to one of faith and opportunity. On a material level, the opportunity to intermarry today is a result of the lived reality for much of American Jewry who are safer, more educated, and blessed with more ways to practice their Judaism than at any point in Jewish history. On a theological level, it is possible to view the opportunity to intermarry - especially in a country like America where religious freedom is ensconced in its constitution - as flowing from God’s will, calling upon humanity’s various tribes to learn how to thrive peacefully with one another. Such a theological *hashkafah* (“outlook”) raises interfaith dialogue to the level of a *mitzvah she-bein adam le’makom* (“a commandment between humans and God”) for the purpose of redeeming the world. Thus, rabbis should be encouraged to collaborate with other faith leaders to jointly train Jews and their partners from different religious, tribal, and cultural backgrounds on how to not let the opportunity to perform this *mitzvah* go to waste.

Part 5 - Final Takeaways

The final section will explain the consequences of such a *teshuva* for the Conservative movement to welcome and embrace intermarried families in our community. It will also touch on liturgical innovations needed for wedding ceremonies and other lifecycle events - especially for dual-faith families - which follow the maxim of “conserving a maximum amount of traditional Judaism for the largest number of modern Jews.”²⁴ Finally, this section will outline other areas in this important arena that need more study, learning, and teaching, such as the acceptance of Jews of patrilineal descent, the impact of dual-faith education on the *mitzvah* of Jewish education, and the possibility that children raised in dual-faith homes will not identify themselves as Jews.

²⁴ Schorsch, Ismar. “*Polarities in Balance: Vol. I.*” (JTS, 2004): 83.