# RABBI DR. MARK WASHOFSKY: JEWISH LAW IN REFORM JUDAISM

**JOSHUA HOLO:** Welcome to the College Commons Bully Pulpit Podcast, Torah with a Point of View, produced by the Hebrew Union College Jewish Institute of Religion, America's first Jewish Institution of higher learning. My name is Joshua Holo, your host and Dean of the Jack H. Skirball campus in Los Angeles. It's my pleasure to welcome Professor Mark Washofsky, the Solomon B. Freehof Professor of Jewish Law at the Hebrew Union College Jewish Institute of Religion. Mark it's a pleasure to have you. Thank you for joining us.

**RABBI WASHOFSKY:** It's great to be here. Thanks Josh.

**HOLO:** I'd like to talk to a little bit about Jewish law which you teach at our institution, the Hebrew Union College, and I have to start by asking the question that comes from our shared Reform context, what's the place of Jewish law in the very movement that most challenged the authority of Jewish law in the first place, the Reform Movement?

**WASHOFSKY:** When someone asks me, "What do you do? What do you teach?" And I say, "Well, I teach Talmud and Jewish law at a Reform rabbinical school," they said, "You must feel like the late Rodney Dangerfield. You know, how does anybody respect what you're doing?" Part of my job, of course, is purely academic, to teach the material because rabbis have always studied this material. But an even more important part of my job is to explain why it's important. It's important because without Jewish law there would be no Jewish action. If we think of Judaism as a religious tradition that expresses itself in the form of actions, things we do, ways we express our consciousness of being part of a covenant with God, or however we understand that theological piece, then the actions we have always taken have been brought to us and constructed for us through a process that we call *halakhah*.

**HOLO:** Okay, I get that. I'm a medieval historian. That resonates with me perfectly. But when I go to Reform synagogues around the country today as I do, I find that the action part of being a member of a Reform Jewish congregation is fundamentally a set of actions that have no uniquely Jewish source. They have Jewish sources but they also have civic sources, or even Christian sources. I mean there's the whole social action movement so much of what we see out there as practiced Reform Judaism is not derived from *halakhah* or more speciously is derived from broader social trends and then ex post facto attributed to *halakhah*.

**WASHOFSKY:** Yes, that's the way it looks. And it's probably the way it feels to a lot of people. Partly because I think the message that our instructions have been sending them over the generations has been *halakhah* really has nothing to do with us. That we do derive our inspiration from all these other sources, society in general, the enlightenment culture in which Reform Judaism was created, and so forth and so on. To which I respond, that may be

the way it looks but think carefully about what it is we do when we're actually doing recognizably Jewish things. We come together for religious services that are structured in some sort of liturgical pattern. We have a set prayer rite. And our prayer books, despite the fact that they're quite innovative and they give us all kinds of options, are structured in a particular way. We recite the Shema. We say something called *tefilah*. We read the Torah. We say *aleinu* and *kaddish*. Those parts of the prayer service are structured and defined for us in the literature of the *halakhah*. That's where we get them. We're there on Shabbat. We observe a day of rest. While we differ greatly with other Jews in how Shabbat is constructed, particularly about how we define this work that we are not supposed to do, the fact is that the rituals with which we welcome Shabbat, lighting candles, *kiddush*, a nice meal, *havdalah* at the end. These rituals are brought to us in the *halakhah* literature. There's nowhere else we find them.

HOLO: So you're illustrating to us a context which is indeed uniquely, anciently and demonstrably Jewish. And it comes from the *halakhah*, the response, the Talmud.

WASHOFSKY: That's right. Those books, those sources are where you go for information about any of these ceremonies, any of these rituals, any of these ways of expression. And the same is true of the festival observances like *Pesach*. The Seder is a *halachic* legal institution. Hanukkah is a rabbinically created holiday. The mitzvah of Hanukkah is brought to us in the Talmud. The ceremonies, birth, weddings, death those are all ceremonies that are defined for us in the *halachic* literature and tradition. And the way we relate to the outside world. We talk about ourselves as Reform Jews very much in terms of social action, *tikkun olam*, all the things we do to make the world a better place. We would think that that's part of the universalism of Reform Judaism, that is to be a good person, to do justice, love mercy, all of those things is not a particularly Jewish thing because those are values that are shared by all cultures. But it surprises people sometimes when they realize that there is a Jewish approach to many of the issues that fall in the social category. There are discussions of these issues in Jewish sources. There are Jewish ways of thinking about these things.

HOLO: What about authority? No Reform Jewish discussion can proceed without thinking about the nature of authority, religious authority and legal authority. The responsa is a specific mode of literature. Letters written by individuals or rabbis to distant rabbis who were esteemed because of their knowledge or prestige. And upon submitting such letters the key here is that one also submitted to the authority of the rabbi who would respond. The Reform Movement doesn't subscribe to that kind of authority. So, what's the role of responsa?

WASHOFSKY: The authority of a response, a single *shuva*. Even in the middle ages, they really depended on the willingness of the community to accept it because the rabbi who authored the responsa was not the rabbi of that community. It's quite likely you would follow that opinion because what you're doing is saying, "I personally am incapable of answering this question." But we have lots and lots of examples of rabbis who submit responsa to other questions, to other rabbis and when the responsa come back the rabbi who asked the question said, "But what about this? What about that?" These were hard questions. Authority was really rooted in the willingness of the community to say we wish to abide by Torah and Jewish law. But we don't know the Torah Jewish law answer to this particular

question. Or there seems to be more than – we can find more than one plausible answer to this question so help us with this. So the rabbi who sends the responsa back is going to come up with an answer. But the more important part is the argument.

It all depended ultimately upon persuasion and argument because other rabbis, of course, did not have to accept the argument. The responsa literature is really the literary embodiment of this ongoing argument which is Torah because the only way we know what the message of these ancient and medieval texts might be for contemporary times is through a process of reading them, interpreting them, arguing them.

Now, how do Reform Jews plug into this? No, we don't have religious authority or I suppose we have religious authority; it's whatever the community decides. So ultimately, yes, for us too, the authority rests in the willingness of the community to come up with a decision and to stick with it, and to say this is the way we're going to operate. If what they're interested in is a reasoned argument that one decision is better than another or this is the way we should read and interpret our sources as opposed to that way, then the Reform responsa is doing exactly what the traditional responsa literature has always done. It builds Torah through the process of argument. And if the community looks at this argument and is persuaded by it, if the reader or readers say, "Yes, that's right. We recognize our own Judaism in the words of this text," then the likelihood is greater that they will coalesce around that answer, form a community around that answer and say, "This defines who we are and what kind of Judaism is our Judaism."

HOLO: So the relevance of responsa from previous periods of Jewish history and today in the Reform world is that the notion of authority is perhaps less binding than in the way I described it. And so the jump to the modern world and the Reform movement where the authority is even more attenuated isn't necessarily an unbridgeable gap. So tell me your responsa are public documents meaning that they tend to go to communities. Is that correct?

WASHOFSKY: Usually the questions submitted to the responsa committee of the CCAR are questions normally submitted by members of the CCAR, rabbis. But anyone can send in a question. We publish these answers. We put them on, you know, they're on the web. We publish them in books. And they're available to a wide readership beyond that individual or community.

HOLO: And indeed, we have the collection of Solomon B. Freehof Responsa. Was Freehof controversial?

WASHOFSKY: Absolutely. From everything I know and from everything I have heard there was some bemusement, we might say, "Why is he doing this?" He's quoting all of these strange sounding rabbinical books that we tend not to read. And he's channeling arguments and debates that are not debates that we usually have for purpose of answering questions that people submit to him when these answers are not binding on anybody, including the person who asked the question, because the individual might just say I want this information without necessarily saying, you know, I'll do what you think.

**HOLO**: Submitting to his authority.

**WASHOFSKY**: So why is he doing this? And that was a question that from the beginning of my career as a rabbi when I was a student and I was fascinated by this literature a number of my own teachers would say the same thing. They'd say, "Well, Freehof is doing all of this but he's never solved that problem of authority."

**HOLO**: This is in the middle of the 20th Century, by the way.

**WASHOFSKY**: Middle of the 20th. Right. He was Chair of the Responsa Committee for many, many decades beginning in the '50s and ending in 1975. Freehof simply wrote Responsa when people asked questions.

**HOLO**: Because it's authoritative not because he needs to impose the authority.

**WASHOFSKY**: That's right. There are over 1,300 published responsa in the Reform collection including Freehof's and including things the committee has done since his time. And that makes by far the largest single body of Reform Jewish writing and publishing on questions of Jewish practice and observance.

**HOLO**: So tell us a particularly thorny responsa that you had to write or what you wrote in committee that captures some of the spirit.

**WASHOFSKY**: We were asked as a committee, an individual says my siblings and I have a very serious problem. Our father is dying and he has asked to be cremated. All of us have Jewish religious scruples against cremation. Must we agree to our father's demand? That left the committee with the job of trying to balance between various mitzvot such as the mitzvah of honoring your parent's wishes and the mitzvah of burial which everybody knows, and puts quotes around those two words, can only be performed with an intact body and therefore cremation is prohibited. So we started going through the literature having to do with cremation. Both the general literature and the *halakhic* tradition, as well as what Reform *halakhah* has produced in the last two centuries.

And what you discover is that the prohibition against cremation is not all that clear. The Bible, the Talmud, even the medieval Jewish writings don't really talk about it much. Now that could be because people just weren't cremated in Jewish context and so the question didn't come up. It didn't seem to come up with much intensity until the 19th Century. But never do you find a clear prohibition of cremation as a means of disposing of human remains. There's a mitzvah of burial. But how that is to be performed, must you bury the body intact, do you bury the body in the form of ashes, is not determined by the older sources. It's the rabbis of the 19th Century, the Orthodox rabbis of that time decided to draw the line here and say this is not the Jewish way. And so these rabbis argue that there is a natural prohibition so that when the Reform Movement in the late 19th century began to determine its attitude toward cremation it could legitimately say, "You know what? This is something that may not be prohibited in Jewish tradition. And anyway we're modern. We don't feel that these traditional books have absolute authority on us anyway. So even if they

did say no, we could say yes. But they don't really say no, at least not clearly. So therefore, we don't have a problem with cremation."

Cremation was never recommended officially by the Reform rabbinical or other institutions. But it was permitted. In the 1961 rabbi's manual published by the CCAR there's a service for cremation, you know, a prayer to be recited at a cremation to indicate just how accepted the process had become by then. But then as you work towards the present you see that Reform literature tends to take a turn. That in response to the Holocaust you see a turn away, at least in the official literature for cremation, there becomes slowly, haltingly but none the less you can see it, in the 1970s, '80s and '90s you can see books being written, official Reform Jewish publications recommending that burial in the ground, intact burial is the way Jews ought to go. Although we're not going to prohibit cremation. That leaves the Reform Jew today, and his family that asked the question, if cremation is not absolutely prohibited you would think the duty to honor our parent's wishes takes precedence. But wait just a second. As liberal Jews we also say that we as individuals have the right to fulfill our own religious ideas and our own understandings about Torah. So, since there was no absolutely right or wrong Jewish answer in this case, we came up with the answer that if you have not promised your parent yet, then you have every right to make your own decision. If you have made a promise, then the duty of fulfilling your promise obviously takes precedence.

HOLO: Contravenes a promise so there's no reason to break it.

WASHOFSKY: You can't promise somebody, yes I'll go out and rob a bank for you because robbing a bank is forbidden. But cremation is not forbidden really. And so therefore here's a Reform context in which we allow the individual to weigh all these values and all these things and come up with a decision to make that makes sense for them within their own family context.

HOLO: That's a very compelling example, and particularly because it's so personal. But there are major social changes in which the Reform Movement has been at the utter forefront. Can you walk us through some of these social upheavals in which the responsa committee was part of the process?

WASHOFSKY: Well the most obvious example would be gay and lesbian issues. How do gays and lesbians, and now transgender people fit into Jewish religious life? Which is a particularly controversial case since opinions and understandings have changed rapidly and sharply over the past several decades. As late as 1990, the CCAR officially adopted a committee report, it was called Homosexuality and the Rabbinate. This was a resolution of the conference not the responsa committee. But as part of this resolution the conference stated that, you know, while we have no problem with the ordination of homosexual people as rabbis we do want to say that monogamous, heterosexual marriage is still the Jewish ideal. Things have changed rapidly since then. The question came for the responsa committee in 1996. And a very deeply divided committee, the majority said we're not ready for this. We have trouble defining the institution of Jewish marriage in such a way that it could cover a union between two individuals of the same gender or the same sex, although we are perfectly ready to recognize these individuals and their households as households within our community. Within very short order though, the conference as a whole accepted

gay and lesbian marriage and rabbinically supervised ceremonies that celebrated the formation of these unions. Again, not necessarily calling them marriage yet because we were still waiting for governments to recognize same-sex unions as marriage.

HOLO: Would one have necessarily been dependent upon that eventuality or could you have described the event as *kiddushin*, the Jewish institution of the contractual relationship that we call marriage regardless?

WASHOFSKY: Well here's a case where socially and culturally when you are ready to accept a particular union as a form of marriage, then your way to recognize it as Jewish marriage is open. What was bothering the responsa committee in the 1990s was whether these unions are actually marriage or something else. And in which case, if we can't call them marriage, they're not ready to do that yet. The term *kiddushin* it's kind of locked up in the barn and can't get out yet. When we as a community, as a society start to recognize these relationships as marriage, that is a form of marriage, different but yes marriage, certainly in the sense they have a family resemblance to what we've always been calling marriage so why don't we simply say they're marriage.

At that point, the committee was able to call upon other resources, the Reform Movement all the way back in the 19th century recognized *kiddushin*, was able to call egalitarian marriage, that is man and woman equal, each one giving the ring to the other and saying you are consecrated to me just like the man traditionally says you are betrothed to me. We had already recognized a very different form of marriage as *kiddushin*. But because we could recognize egalitarian marriage as marriage, we were very comfortable in calling that *kiddushin*. And we've been doing that for well over 100 years in the Reform Movement. And so now, we're able to take that term *kiddushin*, as we understand it in the Reform context, when we clearly regard same-sex unions as just a form of marriage and say, okay, that's *kiddushin*. It takes a while sometimes for the law general, and *halakhah* in particular to respond to changes in the public perception.

HOLO: And one could argue that's one of the purposes of law is to put some of the breaks on to open a deliberate space.

WASHOFSKY: That's right. There are other ways of being revolutionary. Law is not necessarily one of them. Law tends to play a stabilizing force in community life. And it changes when it has to but it also changes when we're ready for it.

HOLO: And this may be a stabilizing presence, particularly in our movement which maybe needs the breaks sometimes because we do rush to greet the future, and largely to our merit. But it might be healthy.

WASHOFSKY: If the goal of Reform Judaism is to be innovative, creative, revolutionary, always at the cutting edge and the forefront of everything happening in society, well that's fine. But there's another goal of Reform Judaism and that is we should be Jewish. And I don't think we believe that Jewish is to be defined as anything that the group of Jews gathered in a particular convention at a particular time happen to vote on. I think we believe the Jewishness of any kind of behavior or action or way of expressing ourselves is

determined by its connection to what Jews have done in the past. That we do see ourselves as a chain linking back to Sinai. The concept of authenticity comes in here and I realize those are fighting words because who are you to tell me that I'm not authentic. Well no. No one can tell anybody they're not authentic. But we all seem to resonate with that concept. We want to say that what we're doing really expresses Jewish principles, Jewish tradition, Jewish ideas. Well okay. That means you need to make the connection. You know, if you say we're rooted in Torah, alright fine.

HOLO: Show us the roots.

WASHOFSKY: Show us where it is. And the action of doing that sometimes is a restraining factor. It certainly takes up some time before we can go out and do the revolution. We have to do our spade work. We have to dig in the ground and find our roots. But we need to do that to keep from floating away in a sense. We need to do that in order to establish our Jewish street cred.

HOLO: More than cred, the core supposition here is not that we risk floating away, but that as we reach taller we are in fact more revolutionary, and more empowered because of the depth of our roots. That line of nourishment correlates how far we can reach to how back we can reach.

WASHOFSKY: All modern Judaism, I'm talking about not only us but people to our right, the Conservatives and even the modern Orthodox with all the things they disagree about seem to revolve around this notion that we can be modern and Jewish at the same time. That we can be part and parcel of a society that is clearly not ancient, not medieval, that partakes of a liberal culture that enthrones individual rights, freedom of choice, and all of that. We can say yes to that culture.

HOLO: We can have our cake and eat it too.

WASHOFSKY: Yes, we can do this. There's a spectrum.

HOLO: Emphasis.

WASHOFSKY: But we all have to figure out how to make that balance and we do it because we realize we have to have our cake and eat it too. As impossible as that sounds, we have to be able to make the Jewish argument for what we do. People who deal with Reform *halakhah* are people who try to tend that part of the garden. And so hopefully the literature we produce will be of use and assistance and guidance to everybody else while they're doing their thing.

HOLO: It already is I think we can say. And here's to having our cake and eating it too.

WASHOFSKY: I can't think of a better way to…

HOLO: Bon appetit. Thank you Mark Washofsky for joining us. It's been a real pleasure.

WASHOFSKY: Thank you.

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