
Lewis Richard Bornstein

"Halachic Problems of Reform Judaism: Twenty Questions
and Answers"

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HALACHIC PROBLEMS OF REFORM JUDAISM:

TWENTY QUESTIONS AND ANSWERS

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Thesis submitted in partial fulfillment
of the requirements for the Degree of
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Referee: Professor Alexander Guttman

DIGEST

A questionnaire was circulated amongst the student body of HUC-JIR in Cincinnati (1970-1971) which solicited information as to the halachic questions posed to them at their respective congregations. On the basis of their response to the questionnaire, twenty questions which were asked most frequently were selected for analysis, discussion, and recommendations. But beyond analyzing the specific questions, an over-all methodology is proposed for students who are interested in independently pursuing the nebulous realm of halachah. The twenty halachic questions selected include:

- I Why is the Kidush included in the Friday night service?
- II Is there a specific order for calling people to the Torah on Shabat?
- III May a brother follow another brother in an aliyah, and is a son permitted to follow his father in an aliyah?
- IV Should an individual in the midst of mourning be called up to the Torah for an aliyah?
- V May a woman be called to the Torah for an aliyah?
- VI Is it permitted to play a musical instrument on Shabat during the worship service?
- VII Does the talit fulfill the requirement of "a thread of blue"?
- VIII Is it mandatory to wear a kipah when praying?
- IX Why is a Bar Mitzvah at age thirteen?
- X When should a gentile child, adopted by Jewish parents, undergo ritual immersion (Tevilah) for conversion? Does this imposed conversion by the parents negate the child's right to free choice?

- XI May a Jew, not ordained a Rabbi, legally perform a conversion?
- XII May a Jewish physician who is not a mohel perform a Jewish circumcision?
- XIII Is there a specific time and ceremony for the naming of a child?
- XIV If the second day of Pesach falls on Shabat, what Kidush does one recite?
- XV Why is it permitted to use peanut oil on Pesach, whereas peanuts are prohibited?
- XVI May a Reform Rabbi perform a wedding during the Omer Period?
- XVII What is the proper procedure for disposing of a worn-out Sefer Torah and Torah cover?
- XVIII What do the lions engraved above the ark symbolize?
- XIX What is the status of a stillborn child in regard to the funeral service and mourning?
- XX May a woman convert to Judaism say Kadish for her deceased Christian mother?

FOREWORD

The initial impetus that inspired me to delve into halachic problems of Reform Judaism was a result of my two year ministry at Congregation Beth Israel in Fremont, Ohio. During the course of my monthly visitations, various halachic questions were posed to which I had no immediate factual response, that is, based on the traditional sources. In an attempt to research the questions, I realized, to my disappointment, that I had no specific methodology, no system of approaching the sources. Reinforced by my discussions with fellow students, I likewise discerned that when faculty members were not available for consultation, the student body was at a loss for direction in probing the traditional sources. It was a reaction to this feeling of inadequacy that I circulated a questionnaire amongst the student body of HUC-JIR in Cincinnati (1970-1971) and solicited information as to the halachic questions posed to them at their respective congregations. On the basis of their response to the questionnaire, I selected twenty questions, which were asked most frequently, for analysis, discussion, and recommendations. This thesis, then, is the culmination of my quest in the area of halacha.

At this juncture, I would like to deal with the methodology employed so that students of the future may have some direction when confronted with the nebulous realm of halachah. In essence, this entails a brief critique of the bibliography.

Admittedly, we are concerned with halachic problems of Reform Judaism and with this in mind an initial and excellent source to be consulted is that by Solomon B. Freehof, Current Reform Responsa (Cincinnati, 1969), for incorporated at the end of the volume is a "Combined Index for 'Reform', 'Recent' and 'Current Reform Responsa'". This index alphabetically lists those topics discussed by Rabbi Freehof in his works Reform Responsa (Cincinnati, 1960), Recent Reform Responsa (Cincinnati, 1963), and Current Reform Responsa (Cincinnati, 1969). The conglomerate of his responsa touches on a wide spectrum of halachic issues, but beyond the halachic conclusions which he offers, his works are of invaluable aid in that he cites traditional sources on which he posits his halachic decisions. These sources cited prove to be an excellent point of departure for independent research.

A similar collection of responsa, also in English, but reflecting the Orthodox position, is that by Sholom Klass, Responsa of Modern Judaism (New York, 1965, 2 vols.). By comparing the material quoted by Klass and Freehof, one can begin to accumulate a battery of sources from the Bible, Mishnah, Talmud, Arba'ah Turim, Mishneh Torah, and the Shulchan Aruch, at which point the commentators may be utilized. However, it is interesting to note how the same sources are employed by Klass and Freehof to arrive at contradictory halachic decisions.

In the same vein, the C.C.A.R. Responsa 1890-1950 (New

York, 1954) compiled by Jacob B. Schwarz should be consulted for it deals with the responsa contained in the C.C.A.R. Year-books from 1890-1950. Many of the topics discussed are still problematic today and are therefore worthy of perusal. Needless to suggest, the Jewish Encyclopedia should be a major work to which one can refer since it remains a valuable source of information.

In regard to Hebrew works to be utilized, highly recommended is the work by J. D. Eisenstein, Otsar Dinim Uminhagim (New York, 1917), which was reprinted in Tel Aviv, 1970. This one-volume work is an alphabetical digest of Jewish laws and customs, citing both the origin of the laws and the reasons for various customs.

Also very useful, once a citation has been located in the Shulchan Aruch, is that of the Aruch Hashulchan (New York, 1970), by Yechiel Michal Epstein. This eight-volume work includes the opinions of later poskim on the law under consideration. Finally, mention should be made of the contemporary summary of responsa literature on specific topics by David Hoffmann in Melamed Leho'il (Frankfort on the Main, 1926), which he undertook in 1892.

These, then, were the main sources cited and utilized when confronted with each question. At this crossroad, I was able to focus my attention and turn toward specific references in the literature, all the while molding the pieces together. However, an admitted and conscious limitation of this thesis

is that the links were subjectively joined together from a Reform Jew's vantage point. Aware of Reform practices, I sought the traditional sources to justify them. I was consciously presenting normative sources for Reform's position on specific issues. This, as I have stated, was intentionally done for we must emphatically note that the early Reformers originally altered the rituals on this basis. We, however, of the twentieth century, tend to neglect this procedure and proclaim: "We are not obligated by the restrictive and cumbersome laws and customs." Lack of knowledge in or exposure to the traditional sources should motivate us to investigate them all the more. We might even be surprised as to what they actually report.

However, in justification of this thesis, it should be noted that coupled with the Reform point of view was the objective citing of the Orthodox position. The purpose of this methodology was to present both an academically sound and honest progression of thought so that one may choose the position with which one sides.

Of academic concern, it should be noted that translations for Talmudic and Mishnaic passages were extracted from the Soncino Press translation of the Babylonian Talmud and the Danby translation of the Mishnah, respectively. Where Talmudic references were cited without specific mention to either the Babylonian Talmud or the Jerusalem Talmud, it is to be assumed that the Babylonian Talmud is inferred.

Transliteration was based on the "Romanized Hebrew System" as proposed by Dr. Werner Weinberg to the American National Standards Institute, Fall of 1971.

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Many thanks are due to my fellow colleagues who meticulously submitted the questions incorporated in this thesis. Without their enthusiastic response, my endeavor would have been fruitless. I owe a sense of gratitude to Dr. Werner Weinberg, Associate Professor of Hebrew Language and Literature, who painstakingly advised me on various transliteration alternatives and who literally labored with me for hours reviewing the transliteration of every word. I thoroughly enjoyed what could have been very mechanical.

To my adviser, Dr. Alexander Guttman, Professor of Talmud and Rabbinics, I offer immeasurable thanks. He has helped me, taught me, and led me on the correct path through halachic problems. As a teacher, he is beyond compare. His humor adds comprehension to oftentimes staid material. His love for and knowledge of the traditional sources is awesome. At every encounter, he teaches one another principle, derech agav. But most important of all, he has shown me that a great Talmudic scholar still exists who can treat a student as a mensch and graciously teach him all that he knows. He has indeed provided me with a learning experience unequalled in my academic career.

To a colleague, neighbor, study partner, and true friend, Rabbi James Lee Kessler, I am indebted for more than I can express. We have learned together, suffered common hardships, and intellectually challenged one another as we were exposed to new vistas of Jewish learning. He has lis-

tened patiently to my thesis at every stage of its development, but more than just listening, he responded with helpful insights and empathy.

To my parents, Rabbi Harry A. and Lillian Bornstein who not only brought me into the world but allowed me to grow at my own rate of development and in the direction I chose, I am deeply grateful. Their love has been constant and without bounds. They have instilled within me a deep attachment for Judaism and motivated me toward the Rabbinate. I love them dearly and sincerely. I pray for them and with them that we may share in life's joys together as a family, with my sisters Judith and her family, Roberta, and Grandma Minnie Albert.

And to my wife, Pamela, with tears in my eyes I dedicate this thesis. Your love is true and unfaltering. You have fulfilled me as a human being, giving me life's richest joy. In body and soul have we merged as one meeting life's many challenges with our heads held high and proud. Without you I could not have undertaken this thesis and without you I would not have finished. May this dedication be but a small token of my love and appreciation for all you have done to me and for me.

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WHY IS THE KIDUSH INCLUDED IN THE FRIDAY NIGHT SERVICE?

The Kidush is to be recited only in the place where a meal is eaten, therefore, it seems odd that the Kidush be recited in the synagogue where one does not take repast. The Shulchan Aruch, Orach Chayim 269:1, states that the custom of including the Kidush in the service was originally to fulfill the obligation of reciting the Kidush at the meal in which the transient wayfarers took part in the synagogue. Though transient wayfarers no longer take repast in the synagogue, this ordinance was not nullified.

נוהגין לקדש בבהכ"נ...ומעיקרא לא נתקן אלא בשביל
אורחים דאכלי ושתי בבי כנישתא להוציאם ידי חובתן;
ועכשיו אף על גב דלא אכלי אורחים בבי כנישתא לא
בטלה התקנה, זהו טעם דמקומות שנהגו לקדש בבהכ"נ...

Some are accustomed to recite the Kidush in the Bet Hakneset...Originally this custom was ordained only for guests who ate and drank in the synagogue to fulfill their obligation; and now, although guests do not eat in the synagogue, the ordinance was not nullified and this is the reason for those places which are accustomed to recite the Kidush in the Bet Hakneset...

This statement by Joseph Karo (16th century), the author of the Shulchan Aruch, is based on a passage in Pesachim 101a. There, the flow of the argument is that Samuel maintained that those who had heard the Kidush recited in the synagogue had to repeat the Kidush at home, for a change of place, from the synagogue to the home, breaks the continuity of the act of blessing to the act of eating and renders a new Kidush to be recited. In addition, even the chazan must re-

peat the Kidush at home for the same reason. The Talmudic discussion continues:

ושמואל למה לי לקדוש בבי כנישתא לאפוקי אורחים ידי
חובתן דאכלו ושתי וגנו בבי כנישתא.

And (according to) Samuel why must he (the chazan) recite the Kidush in the synagogue? In order to acquit travellers of their obligation, for they eat, drink, and sleep in the synagogue.

We find this view adopted in the Mishneh Torah, by Moses Maimonides (12th century), in Sefer Zemanim, The Laws of Shabat 28:8:

אין קידוש אלא במקום סעודה...ולמה מקדשין בבית הכנסת
מפני האורחים שאוכלין ושותין שם.

One only recites the Kidush in a place where a meal is eaten...so why is the Kidush recited in the synagogue, because of the guests that eat and drink there.

Yet, it is interesting to note that in the Mishneh Torah, The Laws of Tefilah 11:6, we read: "In synagogues...one doesn't eat nor drink in them..."

בתי כנסיות...אין אוכלין בהן ואין שותין בהן...

Thus, there appears to be a blatant contradiction as to whether these wayfarers actually ate and drank in the synagogue proper, or not. To harmonize this apparent contradiction, the Magid Mishneh (Vidal of Tolosa, 14th century) to the Mishneh Torah, The Laws of Shabat 28:8, writes that the wayfarers "did not actually eat in the synagogue proper, but

rather in a room adjacent to the synagogue and used to sit there while the Kidush was recited."

וכתבו ז"ל שלא היו אוכלין בבהכ"נ ממש... אבל בבית הסמוך
לבהכ"נ והיו יושבין שם בעת שמיעת הקידוש.

Thus, we may conclude that the wayfarers did not actually eat in the synagogue proper, but rather in a room adjacent to the synagogue where they could hear the Kidush recited by the chazan and thereby fulfill their obligation before partaking of their meal.

Furthermore, in order to fully appreciate the point at hand, we must remember that the time for prayer was at sunset and not the late Friday evening service to which we are accustomed today. To illustrate this point, we find in the Talmud, Shabat 118b, specific mention that evening prayer was at sunset:

אמר רבי יוסי יהא חלקי ממתפללים עם דמדומי חמה.

Rabi Yose said: "May my portion (in the future world) be of those who pray with the red glow of the sun (sunset)."

The Talmud continues, Shabat 119a, with a similar descriptive example:

רבי חנינא מיעסף וקאי אפניא דמעלי שבתא אמר בואו ונצא לקראת שבת המלכה.

Rabi Hanina robed himself (in his best clothes) and stood at the sunset of Shabat eve (and) exclaimed, "Come and let us go forth to welcome the Shabat Queen!"

Consequently, the time of the evening service, sunset, was in close proximity to the hour of the evening meal and the inclusion of the recitation of the Kidush in the service was immediately followed by a meal which the transient wayfarers ate in a room adjacent to the synagogue. Their hearing the Kidush was a requirement for them before partaking of their meal. For this reason it was included in the worship service.

Although travellers no longer take repast in our synagogues, the custom of reciting the Kidush as part of the worship service still remains. In conclusion, it is interesting to note that the Shulchan Aruch, Orach Chayim 269:1, concludes:

אבל יותר טוב להנהיג שלא לקדש בבהכ"נ וכן מנהג ארץ ישראל.

But it is better to establish the custom of not reciting the Kidush in the synagogue, as is the custom in Israel.

Nevertheless, it appears that the custom of reciting the Kidush in the service has become a well established ritual all over the world and is here to stay! The only exception is that the Kidush is not recited in the synagogue on the first two nights of Pesach, since everybody is expected to have the Seder in a private home.

IS THERE A SPECIFIC ORDER FOR CALLING PEOPLE TO THE TORAH ON SHABAT?

Yes, there is a specific order for calling people to the Torah as outlined in M. Gitin 5:8, followed by the Shulchan Aruch. In the Shulchan Aruch, Orach Chayim 135:3, we find that the normal order should be a "Kohen is called first, followed by a Levite, and next an Israelite":

כהן קורא בתורה ראשון ואחריו לוי ואחריו ישראל.

The Scriptural basis for this specific order, as found in the Talmud, Gitin 59b, is the superfluity of words in Deuteronomy 31:9.¹ The Talmud, commenting on the Mishnah 59a, states that this is the proper order in the interest of peace;

מנה"מ אמר רב מתנה דאמר קרא ויכתוב משה את התורה הזאת ויתנה אל הכהנים בני לוי אטו אנא לא ידענא דהכהנים בני לוי נינהו אלא כהן ברישא והדר לוי.

A PRIEST IS CALLED UP FIRST TO READ THE LAW. What is the warrant for this? R. Matenah said: Because Scripture says, "And Moses wrote this law and gave it to the priests, the sons of Levi (Deuteronomy 31:9)." Now do we not know that the priests are the sons of Levi? What it means therefore is that the priests (are first) and then the sons of Levi.

The normal continuation of the argument, though not stated in the Talmud, would be based on the rest of the Scriptural verse, Deuteronomy 31:9: "ואל כל זקני ישראל" and to all the elders of Israel." Thus, the proper order is, indeed, Kohen followed by a Levite, who, in turn, is followed by an Israelite.

However, as stated in the Shulchan Aruch, Orach Chayim 135:6, if there is no Kohen present, an Israelite is called, and not a Levite as one would have expected. As a matter of fact, a Levite is not called up to the Torah at all on that day. When calling the Israelite one says, as suggested in the notes of Moses Isserles to the above-mentioned passage, במקום כהן, so that this Israelite is not thought to be a Kohen:

ואם אין בהן בב"ה קורא ישראל במקום כהן ולא יעלה
אחריו לוי (הגה: וכשקוראין אותו אומרים במקום כהן
שלא יסעו לומר שהוא כהן)

The reason as to why a Levite is not called up to the Torah when a Kohen is not present is given in the Aruch Hashulchan by Yechiel Michal Epstein, Orach Chayim 135:11. There he states that the status of the Levite, that is, being normally called second, is dependent on the presence of a Kohen. In the absence of a Kohen, the Levite's status is not recognized:

קידוש התורה להלוי שיקדם להישראל כשיש כהן אבל כשאין
כהן אין יחוסו כלום ... דאם יעלה (הלוי) ראשון יאמרו
דמדין תורה קדים להישראל והתורה הפקידה דחיוב קדימתו
אינו אלא כשיש כהן.

Furthermore, the possibility of a Levite following an Israelite when no Kohen is present is also rejected in the Aruch Hashulchan, Orach Chayim 135:11. It appears that the Levite is considered holier than the Israelite and thus it is not considered proper that the Levite follow an "inferior"

Israelite. Consequently, the Aruch Hashulchan continues, "a Levite is not called to the Torah at all."

הרי הוא (הלוי) קדוש יותר מישראל ואינו בדין שהישראל
יקדימו וממילא דאינו עולה כלל.

If the situation arises where there is no Levite present, the same Kohen who had the first aliyah is called up again. When being called up to the Torah, it is announced that he is במקום לוי "in place of a Levite". The reason, as cited in the Shulchan Aruch, Orach Chayim 135:8, is that if another Kohen were called in place of the Levite, the congregants might think that the first Kohen were pagum, that is, discredited or tainted for some reason.

אם אין לוי בב"ה כהן שקרא ראשון מבורך שנית וקורא במקום
לוי אבל לא כהן אחר כדי שלא יאמרו שהראשון פגום.

If, on the other hand, an Israelite were called in place of the absent Levite, the congregants would think that the first person called to the Torah was not actually a Kohen. Implied here is the fact that the congregants knew that the normal order should have been Kohen, Levite, Israelite and not a Kohen followed by an Israelite. Therefore, if an Israelite followed a Kohen, the congregants might have erroneously concluded that the first person called was not a Kohen. Thus, we find in the Aruch Hashulchan, Orach Chayim 135:16:

אם יקראו ישראל יאמרו שאינו כהן שהרי קראו אחריו ישראל.

Similarly, the Shulchan Aruch, Orach Chayim 135:9, states that "two Levites are not called up to the Torah one after the other for the first would be considered paḡum":

וכן לא יעלה ב' לויים זה אחר זה כדי שלא יאמר שאחד מהם פגום.

As for those who are to receive the honor of being called up for an aliyah either on Shabat, Yom Tov, or Yom Kipur, there is a recommended order to be followed as suggested in the Aruch Hashulchan, Orach Chayim 136:3, based on the minhag of Rabbi Judah Löw Bezalel (1515-1609) of Prague:

מי המה חיובים ומי קודם אין בזה דינים מגמ' ² ומראשונים רק ממה שנהגו ומהר"ל מפראג חיקן דהחתן ביום חתונתו או בשבת שאחר החתונה קודם לכל ואח"כ נער בר מצוה ואח"כ שושבינים ואח"כ סנדק ואח"כ מוהל ואח"כ אבי הבן ואח"כ יאר צייט והנושא בתולה קודם לנושא אלמנה ואלמנה לחלוצה וחלוצה לגרושה.

Thus, the descending order should be as follows: a groom marrying a virgin, a groom marrying a widow, a groom marrying a chalutsah, a groom marrying a divorcee, a Bar Mitzvah boy, the best man for the wedding, a godfather, a mohel, the father of a new-born son, and finally a person who has yortsayt.

Finally, we should note that if the case arises where it is necessary to call more than the required seven people to the Torah on Shabat, ³ it is permitted to do so according to the Shulchan Aruch, Orach Chayim 282:2, based on M. Megilah 4:2. So one need not worry to accomodate all those who should be honored with an aliyah.

NOTES

¹The continuation of the Talmudic passage, Gitin 59b, cites other Scriptural verses as proof texts for this specific order. These verses include Deuteronomy 21:5, I Chronicles 23:13, and Leviticus 21:8.

²Originally, according to the Shulchan Aruch, Orach Chayim 136:1, on Shabat, Yom Tov, and Yom Kipur after a Levite was called up to the Torah, the remaining aliyahs were distributed to individuals on the basis of their respective positions in the Temple, which, in turn, was dependent upon their scholarly achievement. As noted in Aruch Hashulchan, however, Orach Chayim 136:2, it is no longer possible to follow this order of apportioning aliyahs on this basis since we no longer have these functionaries.

³Cf. Shulchan Aruch, Orach Chayim 282:1.

MAY A BROTHER FOLLOW ANOTHER BROTHER IN AN ALIYAH, AND IS A SON PERMITTED TO FOLLOW HIS FATHER IN AN ALIYAH?

The Shulchan Aruch, Orach Chayim 146:6, makes specific reference to both of these cases. We read there:

יכולים לקרות ב' אחים זה אחר זה והבן אחר האב ואין מניחין אלא בשביל עין הרע.

Two brothers may be called to the Torah one after the other, and a son after (his) father, but one should not allow them to follow one another because of the evil eye.

In order to fully appreciate this custom of not calling two brothers, or a father and son, in succession to the Torah, we must briefly investigate the meaning of the term "evil eye". We find mention of "an evil eye" in the Tanach. In Proverbs 28:22 we read:

נבהל להון איש רע עין ולא ידע כי חסר יבאנו.

He who hastens to be rich has an evil eye, and does not consider that poverty shall come upon him.

Furthermore, in the Mishnah, Avot 2:11, we read:

ר' יהושע אומר עין הרע ויצר הרע ושנאת הבריות מוציאים את האדם מן העולם.

R. Joshua said: An evil eye, the evil inclination, and hatred for one's fellow-creatures put a man out of the world.

This is explained in Otsar Dinim Uminhagim (New York, 1917) by J. D. Eisenstein under the entry of עין הרע, to mean "a

premature death": פירוש שהאדם שעינו רעה מת בלא עתו.

It would be, however, more appropriate to understand the expression עין הרע as referring to the magic (diabolic) powers of envy and hatred (see Bertinoro). The explanation given by Joshua Trachtenberg in Jewish Magic and Superstition (New York, 1939), p. 55 is: "The Palestinian sources, and in particular the Mishnah, know the evil eye as an expression of the moral powers of envy and hatred." He continues:

Any act or condition that in itself may excite the envy of the spirits is subject to the evil eye ... performing an act which is normally a source of pride or joy -- all evoke its pernicious effects.

Thus, he concludes: "Members of a family were reluctant to follow each other in reciting the blessings over the Torah before a congregation." This superstition, Trachtenberg contends, p. 54, has as its roots:

...the pagan conviction that the gods and the spirits are essentially man's adversaries, that they envy him his joys and his triumphs, and spitefully harry him for the felicities they do not share.

Thus, we find that the reason for recommending that two brothers or a father and son should not follow one another in an aliyah was one of pure superstition. Now we must ask ourselves how seriously was this superstition followed. The Ba'er Hatev (Judah Ashkenazi Tiktin, 18th century) to the Shulchan Arukh, Orach Chayim 146:6, note 5, asks if the reason for not allowing two brothers or a father and son to

follow one another is because of the "evil eye", and if they want to go up to the Torah in this order, do we allow it or not? To this question he quotes the Yad Aharon and the Peri Chadash (Hezekiah da Silva, 17th century) who say:

אם כבר עלה לא ירד ומכל שכן אם כבר התחיל לברך שלא
יפסיק אבל אם רוצה לעלות מוחין בידו.

If he has already gone up to the Torah don't call him down and don't interrupt him if he has already started the blessings, but, in any event, one should prevent him if he wishes to go up to the Torah.

Yet, in the Ateret Zekenim to the Shulchan Aruch, Orach Chayim 146:6, Mordecai b. Hillel (13th century) in the name of Rabbi Meir of Rothenburg (1215-1293) allows two brothers to follow one another:

יכולים לקרוא שני אחים כן כתב המדוכי בהלכות קטנות
בשם הר"ם.

But, in general, it appears that this custom based on superstition had already become a well accepted one and a new rationalization for following it was necessary. Thus, the Ateret Zekenim, supra, continues in midrashic fashion:

ויש אומרים שהוא אסור משום דפסולין לעדות וכתיב עדות
ה' נאמנה.

That is, just as two relatives are disqualified from testifying one for or against the other, so they should be disqualified from testifying before the Torah.¹ This reasoning is based on Psalm 19:8, where 'ה עדות is understood to be תורה.

We can sense the Rabbis stretching the point in order to justify their minhag. The question that confronts us is how should we act in regard to this custom? I would venture to say that this custom has been traditionally accepted by the congregants in our Reform Temples without any knowledge of the connection to its superstitious origin. If that be the case, we should continue following this minhag. There is no difficulty involved in continuing this practice, with the consequence of failing to call both of the two brothers or the father and son to the Torah for an aliyah, since we may add to the number of those called to the Torah. This is cited in the Shulchan Aruch, Orach Chayim 282:1:

מוציאין ס"ת וקורים בו שבעה ואם רצה להוסיף מוסיף.

All we need to do, to avoid breaking with this custom, is to call a third person between the two brothers or between the father and son.

In conclusion, we should strive for harmonious customs within our Jewish communities wherever possible, that is, whenever our basic tenets are not jeopardized. We should therefore strive to continue this minhag of not calling to the Torah either two brothers or a father and son in succession.

NOTES

¹Cf. Sanhedrin 27b and M. Makot 1:8, which explicitly state that relatives cannot testify, neither for or against one another, nor in the same case.

SHOULD AN INDIVIDUAL IN THE MIDST OF MOURNING BE CALLED UP TO
THE TORAH FOR AN ALIYAH?

The Otsar Dinim Uminhagim (Eisenstein, 1917) under the entry of קריאת התורה states "one should not call a mourner in the midst of shivah up to the Torah...for one should not publicly display his mourning on Shabat." That is, everyone having known of his recent loss would see him display his mourning in public if he were to be called up to the Torah and refused to accept the honor.

אין קורין לאכל לעלות בחוץ שבעה...ואין נוהגין אבלות
בשבת בפרהסיא.

This is based on the Shulchan Aruch, Yoreh Deah 400:1. However, an exception is cited here of the case of Rabenu Tam (1100-1171), the grandson of Rashi:

ואם קראו את האכל לעלות לחזרה צריך לעלות שאם היה נמנע
היה דבר של פרהסיא ורבינו תם היו קורים אותו בכל פעם
שלישי ואירע בו אבלות ולא קראו החזן ועלה הוא מעצמו
ואמר כיון שהורגל לקרותו שלישי בכל שבת הרואה שאינו
עולה אומר שבשביל אבלות הוא נמנע והוי דברים של פרהסיא.

If (on the Shabat) a mourner is called up to the reading of the Torah, he must go up, for his refusal would be a public display of mourning. Rabenu Tam used to be called up (to the reading) as the third man (every Shabat), and when he happened to be in mourning and the Chazan failed to call him, he went up by himself, and he said that since he had been accustomed to be called to the Torah as the third man every Shabat, those present seeing that he did not go up to the Torah would say he did not go up this time for he is in mourning, and it would then constitute a public observance of mourning (on the Shabat).

Therefore, under normal circumstances a person when in mourning and who is not consistently called up for an aliyah week after week should not be given an aliyah, for his refusal would constitute a public display of mourning. If, perchance, the mourner was called to the Torah, he must go up, for his refusal would constitute a public display of mourning.

MAY A WOMAN BE CALLED TO THE TORAH FOR AN ALIYAH?

Because of the pending importance and implications involved, a detailed review of the literature is necessary. The Shulchan Aruch, Orach Chayim 282:3, based on the Talmud, Megillah 23a, states:

הכל עולים למנין ז' אפילו אשה... אבל אמרו חכמים אשה
לא תקרא בצבור מפני כבוד הצבור.

All are qualified to be among the seven who are called to read in the Torah, even a woman...but the Sages said that a woman should not be called up to read in the Torah out of respect for the congregation.

It is important to immediately take note of the reversal in the original law which the Sages overruled on the basis of the ambiguous catch-all phrase "respect for the congregation". In this case the meaning is, as shall be pointed out, that it would be humiliating for the male congregants to see a woman fulfill a commandment from which they were exempted.

The Mishnah, Kidushin 1:7, exempts women from all positive precepts that are related to a specific time, whereas, they are incumbent upon men:

וכל מצוה עשה שהזמן גרמא אנשים חייבים ונשים פטורות.

And all positive ordinances that are bound up with a stated time are incumbent upon men but women are exempted.

These precepts include that of the lulav, sukah, tsitsit, tefilin, and the shofar.

As a tangential but important aside, women were also considered exempt from the precept of studying Torah which does not even fall under the category of being dependent upon a specific time. Thus, we find in the Talmud, Eruvin 27a:

הרי חלמוד תורה... דמצות עשה שלא הזמן גרמא ונשים פטורות.

This is explained in Kidushin 29b to be derived from Deuteronomy 11:19, where בניכם, "your sons", is used and interpreted to exclude בנותיכם, "your daughters":

"ולמדתם אותם את בניכם" ולא בנותיכם.

R. Eliezer, in the Mishnah, Sotah 3:4, even went to the extreme as to object to a woman studying Torah comparing her study "as if he (her father) taught her lechery":

ר"א אומר כל המלמד בתו תורה כאילו למדה תפלות.

But this is not the only viewpoint expressed in our Jewish literature. We also find in that same Mishnah, Sotah 3:4, that Ben Azai states that "a man is obligated to teach his daughter Torah":

אומר בן עזאי חייב אדם ללמד את בתו תורה.

Though the literature differs as to whether a woman should or should not study Torah, we can gain some insight into the reality of the situation from another Talmudic quote. In the Talmud, Mo'ed Katan 18a, we read:

אשה בי מרושא לא שכיחא.

"a woman is not to be found in the house of study".

Let us, however, return to the main issue. May a woman be called to the Torah for an aliyah? We must, in the Jewish way, first ask another question -- if the minimum of seven people are required to be called to the Torah on Shabbat in order to fulfill the obligation of the congregation, may a woman legally be included as one of the required seven? According to the Rabbinic principle as found in Mishnah, Rosh Hashanah 3:8, and the Talmud, Brachot 20b, "one who is not personally obligated to perform a certain duty cannot perform that duty on behalf of others":

כל שאינו מחויב בדבר אינו מוציא את הרבים ידי חובתן.

Thus, it would appear that women cannot be included in the required seven called to the Torah. But, we must remember the original law as found in the Talmud, Megilah 23a, before the Sages reversed the law:

ת"ר הכל עולין למנין שבעה...ואפילו אשה.

Our Rabbis taught: All are qualified to be among the seven (who read)...even a woman...

On the basis of this original law, we must note that Rashi (1040-1105) in his Sidur Rashi (Jerusalem, 1963), no. 267, quotes R. Yitschak Halevi who reaches the liberal conclusion that a woman may be called up to the Torah and be

counted as one of the seven. That is, if she desires to fulfill this positive commandment, she is not prevented from doing so:

כך הורה ר' יצחק הלוי זצ"ל שאין מונעין הנשים לברך על הלולב וסוכה דהא דאמרינן (קידושין כ"ט ע"א במשנה) מצות עשה שהזמן גרמא נשים פטורות לאפוקי דאינן חייבות ואין צריכות, אבל אם חפצות לבא עצמן במצות הושות בידה, ואין מוחין לה...חדע דהא דאמרינן (מגילה כ"ג ע"א) הכל עולין למנין שבעה ואפילו אשה אלמא אשה עולה ומברכת, אע"ג דפטורה מחלמוד תורה...ש"מ אם רצתה לקיים מצות עשה, הושות בידה...

Thus taught Rabbi Isaac the Levite, may the memory of the righteous be a blessing: We do not prevent women from reciting the blessings over the lulav and the sukah. The fact that the Talmud says that women are free from positive commandments that are fixed by time means merely to specify that they are not in duty bound to obey those commandments but if a woman desires to fulfill these commandments, she may do so and we do not prevent her...so you may know from the fact that the Talmud says that all may be counted for the number of seven including a woman (i.e., the number of seven called up to the Torah), that evidently a woman may come up to the Torah and recite the blessings although she is free from duty of the study of the Torah. Thus you must conclude that if she desires to fulfill these positive commandments, she may do so.¹

Another statement supporting this ruling of permitting a woman to be counted as one of the seven called up to the Torah is that of Rabenu Yerucham, the author of Toldot Adam Ve-chavah and a contemporary of Asher ben Yechiel (the ROSH, 1250-1328). We find reference to Rabenu Yerucham's decision recorded in the Bet Yosef to the Tur, Orach Chayim 135, page 121, middle of the page:

ור"י ... ועיר שכולה כהנים ואין בה ישראל כלל נראה לי
דכהן קורא פעמים ושוב יקראו נשים דהכל עולין למנין
שבעה ואפילו קטן ועבד ואשה.

And Rabenu Yerucham (ruled) ... in a city composed entirely of Kohanim, a Kohen is called up twice, and then they call up women for all may be counted to the number seven.

Furthermore, according to Rabbi Solomon B. Freehof in Reform Responsa (Cincinnati, 1960), page 41, the possibility of having a city composed entirely of Kohanim is not theoretical, for:

... in Palestine, of course, there were cities predominantly or exclusively inhabited by priests; also in the Diaspora this must have been the case. We know, for example, that even today on the Tunisian island of Djerba, one of the two ancient congregations is composed entirely of Kohanim.

Thus, we find authoritative support for permitting women to be called up to the Torah and counted to the required number of seven, though the concensus is of the opposite opinion. But, we must also touch upon another key issue. What has been the general trend in the Reform Movement in regard to the status of women? Needless to say, it has been one towards equality. Rabbi Aaron Chorin (1766-1844), the Rabbi of Arad (Hungary), stated: "Gone are the barbaric ages when the stronger half of mankind thought to elevate itself above the nobler half, when it was thought sinful to put women on the same level with men."² Similarly, Abraham Geiger (1810-1874) stated:

Let there be from now on no distinction between duties for men and women...no assumption of the spiritual minority of woman, as though she were incapable of grasping the deep things in religion...Then will the Jewish girl and the Jewish woman, conscious of the significance of our faith, become fervently attached to it, and our whole religious life will profit from the beneficial influence which feminine hearts will bestow upon it.³

Likewise, as expressed in the Report to the Breslau Conference, 1846: "For our religious consciousness, which grants all humans an equal degree of natural holiness...it is a sacred duty to express most emphatically the complete religious equality of the female sex."⁴

These were the recommendations of our early Reformers, and their dream has been realized within the Reform Movement today. The young Jewish girl is now allowed an equal religious education, a common Confirmation ceremony, and if desired, a Bat Mitzvah, a ritual also accepted within the Conservative Movement. Therefore, in consonance with the spirit of Reform Judaism, coupled with earlier legalistic decisions permitting women to be called and counted to the reading of the Torah, I find it permissible to allow a woman to fulfill this positive commandment, if she so desires. We must no longer place lone emphasis on the concept of avoiding "the humiliation of men" and thereby neglect the equally important concept of "respecting the desires of our women". If this viewpoint be viewed as heretical, the simple retort must be, as Dr. Sheldon Blank, Professor of Bible at the Hebrew Union

College (Cincinnati), has often said: "The heresies of the prophets have become our religion."⁵ That is to say, permitting women to be called up for an aliyah may be looked upon today with disdain and treated as an act of heresy, but it may indeed become the accepted norm of the future.

NOTES

¹Translation from Solomon B. Freehof, Reform Jewish Practice (2 vols., New York, Union of American Hebrew Congregations, 1963), I, 51-52.

²Excerpt from W. Gunther Plaut, The Rise of Reform Judaism (New York, World Union for Progressive Judaism, 1963), pp. 252-253.

³Ibid., 253.

⁴Ibid., 254.

⁵Sheldon H. Blank, Professor of Bible at the Hebrew Union College - Jewish Institute of Religion (Cincinnati), concluding lecture delivered in a course of Jeremiah and Second Isaiah, May, 1971.

IS IT PERMITTED TO PLAY A MUSICAL INSTRUMENT ON SHABAT DURING THE WORSHIP SERVICE?

It will not be the purpose of the forthcoming discussion to decide whether music is permitted or not, since it is a well established fact that music on the Shabat is an accepted norm within Reform Judaism. Rather, the objective will be to include in the discussion the orthodox position, coupled with a running criticism of that position.

One of the earliest and most comprehensive pieces of literature dealing with this topic from a traditional point of view is that of *Eleh Divre Habrit*, 1819. It is a compendium of the opinions of the traditionally-minded rabbis of Europe attacking the then recent innovations of the Hamburg Temple of 1817. One of these innovations was that of the incorporation of organ music during the worship service. A summary of the opinions expressed in *Eleh Divre Habrit* is found in Melamed Leho'il (Frankfort on the Main, 1926, vol. I, p.. 11-19) by Rabbi David Tsvi Hoffmann (1843-1921), the rector of the Rabbinical Seminary at Berlin. Basically, the orthodox argument against playing a musical instrument on Shabat may be divided into four propositions:

1. Playing any musical instrument is prohibited on the Shabat and Yom Tov for fear that it might require (tuning or) repair and thus constitute work. Even to engage a

non-Jew to play on the Shabat is considered shevut, a disturbance of the Shabat rest.

2. Music, except at weddings, is generally prohibited in token of mourning for the destruction of the Temple in Jerusalem.

3. Divine Jewish worship services must not be made to imitate the custom of the Christian Church.

4. To permit music during the divine Jewish worship service would be an imitation of the Epikorsim, heretics, that is, Reform Jews.

Let us probe these arguments. The halachic source for the first reason, prohibiting the playing of a musical instrument on Shabat for fear that it would require tuning or some other preparation, is the Mishneh Torah, Shabat 23:4 (cf. Shulchan Aruch, Orach Chayim 338):

המתקן כלי באיזה דבר שיתקן חייב (משום מכה בפטיש) לפיכך
אסור להשמיע קול של שיר בשבת...גזירה שמא יתקן כלי שיר.

Whoever repairs an instrument with anything is culpable (due to the prohibition of using a hammer), therefore it is prohibited to listen to music on Shabat...this decree (was a protective measure) lest one repair a musical instrument (and thereby be punishable).¹

Yet, isn't it interesting to note that Rabbi Meir Rabinowitz in Hamachanayim (New York, 1888), p. 216, before justifying the orthodox position of prohibiting the playing of a musical instrument on Shabat, admits that Jews are no longer competent

to repair a defective instrument for it entails intricate workmanship requiring a specialist:

אמת לדעת שאסור הנגון בכלי שיר בשבת הוא מטעם שמא יחקן
כלי ועכשיו שאין אנו בקיאים בנגון ובפרט לחקן כלי מותר
אף לישראל לנגן בכלי בשבת...

It is certainly the case that the playing of a musical instrument on Shabat is prohibited for the reason lest one repair the instrument, and now that we are no longer experts in instrumental repairs, it is permissible, even to a Jew, to play a musical instrument on Shabat...

As for the concept of shevut, a disturbance of the Shabat rest, we find in the Mechilta (Ki Tisa), based on a lamah ne'emar syllogism, its Biblical basis to be Exodus 31:13:

אך את שבתותי חשמורו, למה נאמר, לפי שהוא אומר לא תעשה
כל מלאכה (שמות כ, י), אין לי אלא דברים שהם משום מלאכה,
דברים שהם משום שבות מניין, תלמוד לומר אך את שבתותי
חשמורו (שמות לא, יג), להביא דברים שהם משום שבות.

We must honestly ask ourselves does music in a worship service disturb the Shabat rest, or does it have positive merits enhancing one's spiritual level in fulfilling the mitzvah of worship?

The second reason for prohibiting music on Shabat, that being in token of mourning for the destruction of the Temple, is based on the Shulchan Aruch, Orach Chayim 560:3:

וכן גזרו שלא לנגן בכלי שיר וכל מיני זמר וכל משמיעי
קול של שיר לשמח בהם. ואסור לשומעים מפני החורבן.

And likewise they decreed that no one should play or listen to any kind of musical instrument or vocal songs for it is prohibited because of the destruction.

I find this to be a very weak argument. First of all, the prohibition was not merely for the Shabat, but rather for every day of the week. However, a speck of leniency crept in permitting music to be played at a wedding. Thus we find in the Shulchan Aruch, Orach Chayim 338:2:

יש מתירים לומר לעכו"ם לנגן בכלי שיר בחופות.

Strikingly, this law is found in the Shulchan Aruch under the Laws of Shabat. We may conjecture, therefore, that even if a wedding were to occur on Shabat due to some extenuating circumstances, music might be permitted at the wedding. Even if this did not prove to be the case in actuality, the fact remains that music is permitted at weddings, which is a clear exception to the general prohibition of listening to or playing a musical instrument in token of mourning for the destruction of the Temple.

Secondly, we know that music is listened to by our Orthodox co-religionists during the weekday, be it on television, radio, or the record player, and that some are even accomplished musicians, all of which is technically prohibited according to this law.

Thirdly, as recorded in the Shulchan Aruch, Yoreh Deah

400:1, there can be no public display of mourning on the Shabat. If anything, keeping in line with the spirit of Shabat, this day should be one of complete joy and rejoicing. If music were to be permitted on any day, it should certainly be the Shabat. To insist that no music be played on Shabat in token of mourning for the destruction of the Temple would be contrary to the law as found in the Shulchan Aruch, Yoreh Deah 400:1.

Fourthly, in consonance with the statement of our early Reform pioneer, Leopold Stein in *Torat Chayim*, no. 36, we must affirm that:

The synagogue itself must, in our time, cease to be in mourning...Uplifting song and the joy-evoking effects of the musical arts shall glorify our house of worship, which, binding the great past of Judaism to the greater future of Israel and of the human race, shall more and more prove itself worthy to be called "a house of prayer for all people".²

Continuing then, the third argument frequently cited for prohibiting music on Shabat is that it is an imitation of the Christian Church. But, as Leopold Stein, who attacked this contention, pointed out in 1845 to the Frankfort Assembly:

Every worthwhile custom may be imitated by the Israelite wherever he may find it. ("You never accept their best customs, only their worst", Sanh. 39b). The verse, "Neither shall ye walk in their statutes" (Lev. 18:3), only refers to pagan abominations, as may be seen from the subsequent words, "Ye shall not do any of these abominations" (18:26). This is also noted

by the commentator Kesef Mishneh (to Maimonides, Hilchot Akum 11:1), who in regard to clothing says, in the name of Rabbi Joseph Kolon: Even amongst the pagans the Israelite may imitate the pagan in his attire except where such clothing relates to paganism itself; however, if the custom does not have pagan implications, then there is no objection to imitation. Compare also what Rabbi Nisim says (A.Z. 2b): The Torah prohibits only the actually pagan, senseless, empty customs which contain something that has reference to idolatry; customs, however, which are reasonable are permitted to be imitated. Similarly, Rabbi Moses Isserles says, in the name of the above-mentioned Rabbi Joseph Kolon (Yoreh Deah 178:1): Only immoral customs which contain pagan elements are forbidden, but that which is done with reasonable intent or to honor someone or for some other similar reason, is permitted. Now, if this applies to pagans, how much more does it apply to Christians, of whom already a medieval rabbi remarks (Rabenu Tam, Tosafot Bech. 2b; O.H. 156, Note) that even though Christianity is not purely monotheistic, still its heart is set upon the Creator of heaven and earth. Therefore, there seems no reason that we could not imitate so beautiful a custom as the elevation of the worship service through instrumental music.³

There is even indication to conjecture that the organ, which is the most commonly used instrument in Reform worship services today, has its origins from the Jewish worship in the Jerusalem Temple. The Gemara, Arachin 10b-11a, describes the Temple organ as the "magrefah":

אמר רבא בר שילא אמר רב מחנה אמר שמואל מגריפה היתה
במקדש עשרה נקבים היו בה כל אחד ואחד מוציא עשרה מיני
זמר נמצאת כולה מוציאה מאה מיני זמר במתניתא תנא היא
אמה וגבוה אמה וקתא יוצא הימנה ועשרה נקבים היו בה כל
אחד מוציא מאה מיני זמר נמצאת כולה מוציאה אלף מיני זמר.

Raba b. Shila, in the name of R. Matenah, on the authority of Samuel, said: There was a magrefah in the Sanctuary; it had ten holes, each of which produced ten different kinds of sounds, with the result that the whole amounted to one hundred kinds of sounds. A

Tana taught: It was one cubit long, one cubit high, from it projected a handle, which had ten holes. Each of them produced one hundred kinds of sounds, amounting for the whole to one thousand kinds of sounds.

Although David Hoffmann in Melamed Leho'il, pp. 13-14, cites sources that this "magrefah" was not used for singing or for accompaniment, but rather, as the Mishnah, Tamid 5:6, suggests, merely to serve a special functionary purpose, his case appears doubtful for he himself concludes:

אמנם כן אף אם היו משתמשין בו במקדש לא עדיף ממצבה
שהיתה אהובה בימי האבות ואחר כך נעשית שנואה מפני
שעשאוה חוק לעבודה זרה.

But even if it was used (for accompaniment) in the Temple, it is no more than a pillar that was appreciated by the ancients and afterward became despised because idolators made it a law (requirement) for idol worship.

Even Rabbi Sholom Klass in Responsa of Modern Judaism (The Jewish Press, New York, 1965), vol. I, p. 18, admits that the "magrefah" was an organ, quite like the modern organ. He says: "Apparently the extension was the keyboard and the pipes acted as air-channels, as in the modern organ."

To centralize on the point, if a non-Jew has adopted some originally Jewish practices, in this case music during the worship service, does this mean that Jews should no longer continue the practice? I feel that those practices whether they be imitated by non-Jews or not, if they are meaningful and serve in fulfilling a mitzvah, should be permitted.

The fourth and final objection, posited by the orthodox, is that if music were permitted it would be an imitation of the Epikorsim. Let there be no confusion as to whom are meant by the term "Epikorsim". In Melamed Leho'il, p. 18, we find the term clarified:

חללו שבת בפרהסיא שנו התפללות וכפרו בביאת המשיח...

They publicly profaned the Shabat, changed the prayers, and denied the belief in the coming of the Messiah...

Clearly implied are Reform Jews. We as Reform Jews obviously cannot accept this either as a valid objection.

Perhaps the strongest argument by the early Reformers, who sanctioned the use of the organ on Shabat, was based on the example of the Orthodox Congregation of Prague where an organ was used. The organ was played during the service until the Lechah Dodi. This presented a two-fold problem to the orthodox. First, they had to justify the fact as to why an organ was found in an orthodox congregation when its use was prohibited; and secondly, they had to rationalize as to why it was played at a worship service.

The justification for the first query was an outright excuse. We find in Melamed Leho'il, p. 15, the outlandish justification that this congregation was built with an organ in it prior to the destruction of the Second Temple; that is, prior to the prohibition of music in a synagogue except at a wedding:

ומה שהביא בעל הנוגה שספרו לנו מק"ק פראג שהיה שם מקדש
ארגעל בביה"כ, אולי נבנתה הבית הכנסת עם הארגעל הזה,
בעוד שלא היה מנהג זה בעבודתם ובאמת כפי ששמענו עמדה
בית הכנסת הלזו מזמן בית שני.

The second query, as to why music was played prior to the Lechah Dodi, received a more logical retort. Again according to Melamed Leho'il, p. 15, an analogy was presented based on the prayer book of that congregation comparing the Shabat and Israel to a bride and groom. Just as it is proper to play music for a bride and groom, so it is proper to play for the Shabat Queen and Israel:

מפני שהתירו לנגן לכבוד חתן וכלה, ג"כ התירו לכבוד
שבת מלכתא וישראל בן זוגה שהם ג"כ כחתן וכלה.

Their original prayer book justifies this analogy. We find in Melamed Leho'il, cited above, a reprint of one of the stanzas originally sung in that congregation with musical accompaniment:

הן שבת הכלה עם החתן, בחפארת וגדולה,
אם נשמור שחים כהלכתן, נזכה מיד לגאולה,
ואז האל, ישלח גואל, כרינה בו יבוא,
זה היום עשה אל שמחת לבו נגילה ונשמחה בו.

Yet, the orthodox pressed on to prove this act of playing music to be an unpardonable transgression. When the organ broke down and was not repaired, the perplexed orthodox leader, David Hoffmann (cited above) rejoiced and concluded that "this attests to their mistake in the first place":

וכיון שאח"כ בטלוהו הוכיח סופו על תחילתו שטעות היה בידם.

Though the orthodox stress that one should not bring proof for the use of an organ on Shabat based solely on one example, we must reply that for us it is a precedent, and for us it is permissible. In conclusion, as Leopold Stein rendered to the Frankfort Assembly, 1848:

There is no more exalting means of encouraging devotion than the music which issues from that grand instrument. Already our ancients said: "The spirit of God enters only through the joy of doing the commandments" (Pes. 117a). And the Biblical verse on which this saying is founded says: "And it came to pass when the minstrel played that the hand of the Lord came upon him" (II Kings 3:15). From this we see that a prophet like Elisha used music in order to exalt his heart. How much more, then, is it our duty not to overlook such a means of creating devotion. The author of Or Nogah (p.17) notes correctly that the Talmud permits the farmer to sing while plowing so that his work be easier. How much more, then, must we utilize this means for exaltation during our worship service so that such service not become a burden, as unfortunately it is these days for so many. For, "he for whom his prayer is a burden, for him prayer is no devotion" (Ber. 28b).⁴

On the basis of the above-mentioned review of the literature, one must decide for himself whether music is permitted to be played during the worship service on Shabat. As a recommendation, if music is permitted, it must not become purely entertainment, but rather an integral part of the service with the purpose of achieving spiritual elevation.

NOTES

¹ Parentheses my own for clarification.

² Excerpt from W. Gunther Plaut, The Rise of Reform Judaism (New York, World Union for Progressive Judaism, 1963), p. 265.

³ Ibid., p. 168.

⁴ Ibid., p. 167.

DOES THE TALIT FULFILL THE REQUIREMENT OF
"A THREAD OF BLUE"?

We are all familiar with the Biblical verse, Numbers 15:38, which is included in the third section of the Shma in the orthodox prayer book. It reads:

דבר אל בני ישראל ואמרת אליהם ועשו להם ציצית על כנפי בגדיהם לדורתם ונחנו על ציצית הכנף פחיל תכלת.

Speak to the children of Israel and bid them that they make a fringe upon the corners of their garments throughout their generations, and that they put upon the fringe of each corner a thread of blue.

The Talmud, Menachot 43b, asks why the blue cord was entwined in the tsitsiot:

חניא היה ר' מאיר אומר מה נשתנה תכלת מכל מיני צבעונין מפני שהתכלת דומה לים וים דומה לרקיע ורקיע לכסא הכבוד שנאמר וחתת רגליו כמעשה לבנת הספיר וכעצם השמים לטהר וכתיב כמראה אבן ספיר דמות כסא.

It was taught: R. Meir used to say, Why is blue specified from all other colours (for this precept)? Because blue resembles the colour of the sea, and the sea resembles the colour of the sky, and the sky resembles the colour of (sapphire, and a sapphire resembles the colour of) the Throne of Glory, as it is said, (Ex. 24:10) "And there was under His feet as it were a paved work of sapphire stone," and it is also written, (Ezek. 1:26) "The likeness of a Throne as the appearance of a sapphire stone."

It appears, however, that the blue cord of the tsitsit was dyed with the blood of the chilazon, that is, the blood of a once rare and now extinct breed of snail or purple fish. Thus, we find that even in the time of the Talmud, as recorded

in Menachot 44a, this snail appeared once in seventy years:

ת"ר חלזון זהו גופו דומה לים ובריחתו דומה לדג ועולה
אחר לשבעים שנה ובדמו צובעין תכלת לפיכך דמיו יקרים.

Our Rabbis taught: the chilazon resembles the sea and in its colour (or its essence, i.e., its blood) and in shape it resembles a fish; it appears (lit., "comes up") once in seventy years, and with its blood one dyes the blue thread; and therefore it is so expensive.

As a matter of fact, even in Mishnaic times the chilazon was scarce. Therefore, the authorities, as recorded in the Mishnah, Menachot 4:1, agreed that the blue thread might be dispensed with, and that white wool threads may be inserted in its stead:

התכלת אינה מעכבת את הלבן והלבן אינו מעכב את התכלת.

The blue (in the fringes) does not impair the validity of the white, nor does the white impair the validity of the blue.

That is, in each fringe there should have been three white threads and one blue thread, or another opinion is that there needed to be two of each. But, according to the above-mentioned Mishnah, even if a fringe was all white it was still valid. This statement of leniency must have been because of the scarcity of the dye which was extracted and processed from the blood of the chilazon. With this understanding, we can better appreciate the statement of R. Meir found in the Talmud, Menachot 43b:

תניא היה רבי מאיר אומר גדול עונשו של לבן יותר מעונשו של תכלת...

It was taught: R. Meir used to say, Greater is the punishment for the (non-observance of the) white threads than for the (non-observance of the) blue threads (of the fringes)...

The continuation of the passage justifies the contention that the white threads were more easily obtainable than the blue threads and therefore those who transgressed the obligation of inserting white threads were deserving of a greater punishment than those who transgressed the obligation of inserting the blue threads of the fringes:

משל למה הדבר דומה למלך בשר ודם שאמר לשני עבדיו לאחר אמר הבא לי חותם של סיס ולאחד אמר הבא לי חותם של זהב ופשעו שניהם ולא הביאו איזה מהן עונשו מרובה הוי אומר זה שאמר לו הבא לי חותם של סיס ולא הביא.

This is illustrated by a parable. A king of flesh and blood gave orders to two servants; to one he said, "Bring me a seal of clay", but to the other he said, "Bring me a seal of gold"; and they both failed in their duty and did not bring them. Now who is deserving of the greater punishment? Surely it is the one to whom the king said, "Bring me a seal of clay", and who did not do so.

Some sages claimed that chilazon was another name for Haifa or the Bay of Acre. Thus, J. D. Eisenstein in the Jewish Encyclopedia (New York, 1925), vol. 5, p. 522, under the entry of "Fringes" states: "Haifa was known, in the Greek-Roman periods, as 'Purpureon', from the purple-dye industry, which, with the extensive fishing of the chilazon, made the city famous." The Talmud, Shabat 26a, points out that the

area for chilazon-fishing extended to the Phoenician border of Tyre:

יוגבים אלו צידי חלזון מסולמת של צור ועד חיפה.

Yogbim: These are those which catch chilazon from the promontory of Tyre as far as Haifa.

The snail or chilazon was also found to thrive on the mountains as is apparent from Sanhedrin 91a. There, R. Ami, defending the belief in the resurrection of the dead to a sectarian, shows by means of an example of the chilazon that God can create life with great speed:

שם תאמר לזמן מרובה עלה להר וראה שהיום אין בו אלא חלזון אחד למחר יררו גשמים ונחמלא כולו חלזונות.

And should you say "That takes a long time", go up to the mountains, where you will see but one snail, while by tomorrow the rain has descended and it is covered with snails.

Although it appears that the chilazon flourished in many locales, the genuine chilazon was found only in the land apportioned to the tribe of Zevulun. This is based on a passage in the Talmud, Megilah 6a:

אמר זעירא קטרון זו ציפורי ולמה נקרא שמה ציפורי שיושב בראש ההר כצפור...והא קטרון בחלקו של זבולון...וזבולון מתועם על מדותיו...אמר זבולון לפני הקב"ה רבונו של עולם לאחי נחת להם שדות וכרמים ולי נחת הרים וגבעות...ולי נחת ימים ונהרות אמר לו כולן צריכין ע"י חלזון.

Zeira said: Kitron is Sepphoris. And why is it called Sepphoris? Because it is perched on the top of a mountain like a bird (tsipor)...Now Kitron was in the territory of Zevulun...Now Zevulun complained of his portion...Zevulun complained to the Holy One,

blessed be He, saying: Sovereign of the Universe, to my brethren Thou hast given fields and vineyards and to me Thou hast given hills and mountains...and to me Thou hast given lakes and rivers. (God) replied: They will all require thee for the chilazon.

Furthermore, as stated in the Jewish Encyclopedia, cited above:

The city of Luz is mentioned as the place where the techelet was dyed (Sotah 46b). Maimonides explains that the blood of the chilazon is red, and was chemically prepared to produce the techelet-color (Yad, Tsitsit 2:2). As the traditional color of techelet is sky-blue, the ordinary purple chilazon of Haifa was probably not the genuine techelet chilazon, although its dye may have been chemically changed to sky-blue.

Many years ago, as related in Otsar Dinim Uminhagim (Eisenstein, 1917) under the entry of "techelet", p. 436 and translated in the Jewish Encyclopedia, cited above, under the entry of "Fringes", p. 522:

Rabbi Gershon Chenchon in his Sefune Temune Chol and Petil Techelet received considerable attention by advocating the restoration of the blue thread in the tsitsit. He declared that the chilazon was obtainable in Italy, which he contended was referred to in Ezekiel 27:7, as the "Isle of Elisha". He secured from there a specimen of the blue-blooded "fish-snail", and had some wool dyed, which he sold at an exorbitant price to the Chasidim for use in their fringes. Mordecai Rabinovitz, in Otsar Hasifrut, vol. 3, criticized Gershon Chenchon's innovation and disputed his claim that he had found the chilazon, principally because the dyed material did not retain its color, and because the chilazon proper is found only in Israel.

For many years the Chasidim of Radin or Sedlin, Poland, used

this dye for their tsitsit. Also his son, Rabbi Mordecai Joseph Lainer attempted to emulate his father in using this dye, but in general the Rabbis objected to this practice.

Thus, the chilazon is now extinct and according to most authorities the requirement of a "thread of blue" is no longer binding. We are, however, required to substitute the blue cord for white in our tsitsit as is evident from the talitot that are used during the worship service.

IS IT MANDATORY TO WEAR A KIPAH WHEN PRAYING?

The two most comprehensive articles dealing with this question are "Worshipping With Covered Heads" by Jacob Z. Lauterbach in C.C.A.R. Responsa 1890-1950 (New York, 1954), pp. 208-218¹ and "The Jewish Rite of Covering the Head" by Samuel Krauss in the Hebrew Union College Annual, vol. XIX, 1945-1946, pp. 121-168. On the basis of these two articles, it is shown that "there is no law in the Bible or Talmud prescribing the covering of the head for men when entering a sanctuary, when participating in the religious service or when performing any religious ceremony."² The covering of the head appears to be of Persian origin³ adapted by the prominent Jewish scholars of Babylon, whereas, the Jews of Palestine knew of no such custom. The custom was designated as a sign of respect especially when in the presence of prominent men and also regarded as conducive to inculcate in one the fear of God. Throughout the ages, Rabbinical authorities differed as to whether praying with uncovered head was permitted. It was not until the nineteenth century, as a reaction to the first attempts of modern Reformers who suggested that one need not pray with a covered head, that the strict Orthodox Rabbinical authorities became insistent upon the requirement of covering the head when entering a synagogue, when praying, or when performing any religious ceremony.

Let us now review the literature which justifies these

brief introductory remarks. The format of the presentation will be that followed by Jacob Z. Lauterbach, cited above. The earliest textual mention of some sort of headgear is that of the mitsnefet, as found in Exodus 28:4, worn by the priests when performing a priestly function:

ואלה הבגדים אשר יעשו חשן ואפוד ומעיל וכתנת חשבץ מצנפת
ואבנט ועשו בגדי קדש לאהרן ואחיו ולבניו לכהנו לי.

And these are the garments which they shall make: a breastplate, an ephod, a robe, a brodered coat, a mitre, and a girdle; they shall make holy garments for Aaron your brother and his sons to serve me as priests.

But it can not be justifiably concluded from this point that anyone, other than a priest, need cover his head when performing a religious ceremony. As a matter of fact, it appears that even the priests, as found in the Talmud, Yoma 25a, might tarry bareheaded either in the Temple, or at least in a proximate annex of the Temple:

אמר רב ששת מנא אמינא לה דתניא לשכת הגזית כמין בסילקי
גדולה היתה פיס במזוחה וזקן יושב במערבה והכהנים מוקפין
ועומדין כמין בכוליאר והממונה בא ונוטל מצנפת מראשו של
אחד מהן ויודעין שממנו פיס מתחיל.

Said R. Sheshet: When do I hold my view? From what has been taught: The Cell of the Hewn Stone was (built) in the style of a larger basilica. The count took place in the eastern side, with the elder sitting in the west, and the priests in the form of a spiral figure. The officer came and took the mitre from the head of one of them. One would know that the count would start from him.

Although orthodox rationale would posit that under the mitsnefet was another head covering, the silence from the Talmud

as to this regard seems to negate this assumptive justification. Thus, it appears that even the priests need not at all times wear a head covering.

At this juncture it is advisable to trace the respective origins and customs in regard to wearing a head covering of both Palestinian and Babylonian Jewry. For perspective, it is interesting to note that Solomon Luria, in his *Yam Shel Shelomoh to Baba Kama*, p. 120, lists the differences in customs between Palestinian and Babylonian Jewry. Note 42 is of particular interest for it declares that the Babylonian custom was that the priests, when blessing the people, would have their heads covered, whereas, the Palestinian custom was to have their heads uncovered:

ב"ב אוסרין שיברכו הכהנים לישראל וראשם פרוע. בני
א"י מברכין כהנים לישראל בראשם פרוע.

Concentrating, then, on the Palestinian custom, in so far as Talmudic records show, men would ordinarily go bareheaded and remain bareheaded even when entering the synagogue, when reading from the Torah, or reciting their prayers. Thus, as recorded in the Palestinian Talmud, *Brachot 4c*, it appears that R. Yochanan would cover his head during the winter as protection against the cold, but would go bareheaded during the summer:

ר' יוחנן בסיתוא דהוה חזיק רישיה הוה לביש תרויהוין בום
בקייס' דלא הוה חזיק רישיה לא הוה לביש אלא דאדרעיה.

It is evident, then, that the head covering was for protection during the winter and had no religious significance, since during the summer he would promenade bareheaded.

Furthermore, from another account in the Palestinian Talmud, Mo'ed Katan 82d, it is also evident that in Palestine it was customary to go bareheaded when not in mourning, or on a day when mourning was not to be observed:

תריין בנוי דר' נפקון חד רישיה מגלי... וחד רישיה מכסי.

From the context of the passage we are told that the two sons of R. Judah Hanasi differed in their respective observance of the mourning rites for their deceased father. On the Shabat during the mourning period, one of them would cover his head as he had done during the previous days of mourning. The covering of the head was an expression of grief or a sign of mourning as is evident from II Samuel 15:30:

ודוד עלה במעלה הזיתים עלה ובוכה וראש לו חפוי והוא הלך יחף וכל העם אשר עתו חפו איש ראשו ועלו עלה ובכה.

And David went up by the ascent of mount Olives, and wept as he went up, and had his head covered, and he went barefoot; and all the people that were with him covered every man his head, and they went up, weeping as they went up.

The other son, believing that no mourning rites were to be observed on Shabat, went bareheaded, as it was customary to do when not in mourning. The fact of relevance extracted from the passage is that the accepted Palestinian custom was to go bareheaded, except when in mourning.

Supporting this contention, though easily misconstrued, is a passage found in the Midrash, Pesikta Derav Kahana 77a,⁴ whose author, according to Samuel Krauss, cited above, may have been R. Yitschak (about 300 C.E.):

עמי מה עשיתי לך ומה הלאהיך ענה בי...א"ר ברכיה למלך
ששילח פרוז דוגמה שלו למדינה, מה עשו כל בני המדינה,
נטלו אותה ועמדו על רגליהם ופרעו את ראשיהם וקראו אותה
באימה וביראה בותח ובזיע. כך אמר הקב"ה לישראל, בנני,
הדה קרית שמע פרוז דוגמה שלי הוא, לא הסרחתי עליכם, לא
אמרתי לכם שתהו קורין אותה לא עומדים על רגליכם ולא
פורעים את ראשיכם, אלא בשבתך בביתך ובלכתך בדרך וגומר...

"O My people, what have I done to you? And how have I wearied you? Testify against Me." (Micah 6:3) -- (the Agadist offers this parable) -- R. Berechyah said: When a king sends a proclamation to a province, how do the inhabitants respond? They receive the proclamation standing, uncover their heads, and read it with fear and trembling, with terror and trepidation. But God says to Israel: My children, My proclamation is the Shma. I have not troubled you and have not asked you to read it standing or bareheaded but "when thou sittest in thy house, when thou walkest by the way and (when thou liest down, and when thou risest up)" (Deut. 6:7)...

One might erroneously construe from the above-mentioned passage that the custom prevalent at the time was to recite the Shma with covered head. But, on a closer examination, all that the passage implies is that the Jew need not trouble himself to remove his hat, if he has one on, or to stand up, if he happens to be sitting. That is, one may recite the Shma just as one happens to be attired at the time, with the head covered or uncovered, and the like.

Further evidence that the Palestinian custom was to

pray and teach in the synagogue bareheaded is found in the Targum to the Prophets⁵ to Judges 5:9 which interprets the verse:

לבי לחוקקי ישראל המתנדבים בעם ברכו ה' .

My heart is toward the governors of Israel, that offered themselves willingly among the people. Bless ye the Lord.

The passage above refers to the praise due to the teachers in Israel who would sit in the synagogues with uncovered heads and teach the people Torah, and recite prayers and praises to God:

וכדו יאי להון דיתבין בבתי כנישתא בריש גלי ומאלפין
ית עמא פתומי אורייתא ומברכין ומודין קדם ה' .

It is fitting that these scholars and teachers sit in the synagogues with uncovered heads, teaching the people the words of the Torah and reciting praises and prayers of thanksgiving to God.

Also, in tractate Sofrim XIV,15,⁷ another Palestinian work, it is recorded that one with his head uncovered is permitted to lead the congregation in the recital of the Shma:⁸

פוחח הנראים כרעיו או בגדיו פרומין או מי שראשו מגולה
פורס את שמע.

A pocheach, that is, one whose legs are visible, or whose garments are otherwise torn, or whose head is uncovered is permitted to recite the Shma.

Furthermore, the Mishnah, Brachot 3:5, describes a case where it would be inopportune for someone to have his head covered, that is, while taking a bath. Yet, it permits one to recite

the Shma while immersed in the water thereby precluding the possibility of covering the head:

יורד לסבול אם יכול לעלות ולהתכסות ולקרות עד שלא תנץ
החמה יעלה ויתכסה ויקרא ואם לאו יתכסה במים ויקרא.

If he went down to immerse himself and, before sunrise, had time to come up, clothe himself and recite the Shma, he may come up, clothe himself and recite it; but if not, he must remain covered with water and recite it.

Thus, it is apparent that the custom of praying with covered heads was not a Palestinian custom. To the contrary, it was most likely the case that praying with uncovered heads was the custom prevalent in Palestine throughout the Talmudic period.

It was different in Babylon, for there, the custom developed during the Talmudic period, especially among very pious people, to cover their heads when performing any religious ceremony (as well as the custom of avoiding going bareheaded). Thus, as recorded in the Talmud, Shabat 118b, R. Huna, a Babylonian Amora (second half of the fourth century) never walked four cubits bareheaded:

אמר רב הונא בריה דרב יהושע תיתי לי דלא סגינא ד'
אמות בגילוי הראש.

R. Huna son of R. Joshua said: May I be rewarded for never walking four cubits bareheaded.

This statement of R. Huna is clarified in the Talmud, Kidushin 31a. Bareheadedness was apparently considered as a

sign of haughtiness when in the presence of great men, elders, or scholars.⁹ In this case, R. Huna contends that he is always standing in the presence of the Shechinah and his actions reflected appropriate piety:

אמר רבי יהושע בן לוי אסור לאדם שיהלך ארבע אמות בקומה זקופה שנאמר מלא כל הארץ כבודו רב הונא בריה דרב יהושע לא מסגי ארבע אמות בגילוי הואש אמר שכינה למעלה מראשי.

R. Joshua b. Levi said: One may not walk four cubits with haughty mien (lit., upright stature), for it is said, "the whole earth is full of His glory (Isaiah 6:3)." R. Huna son of R. Joshua would not walk four cubits bareheaded, saying, The Shechinah is above my head.

However, R. Huna's pompous admission that he never went bareheaded seems to indicate that covering the head was not even a popular custom in Babylonia at the time. We may also infer, as will be presently confirmed, that the custom may have been limited to the scholar class.

Kidushin 8a relates the account of R. Kahana who accepted a sudra, a scarf or a turban, for a son's redemption which was well below the required redemption price of five sela'im.¹⁰ The reason suggested there, as to why R. Kahana accepted the sudra instead of demanding the five sela'im, was that the sudra, being a distinctive head-gear for scholars, was intrinsically worth five sela'im to that great scholar, R. Kahana:

כי הא דרב כהנא שקיל סודרא מבי פדיון הבן אמר ליה לדידי חזי לי חמש סלעים אמר רב אשי לא אמרן אלא כגון רב כהנא דגברא רבה הוא ומבעי ליה סודרא ארישיה אבל כולי עלמא לא.

As is the case of R. Kahana, who accepted a scarf for a son's redemption, observing to him: "To me it is worth five sela'im." R. Ashi said: This holds good only of (a man like) R. Kahana, who is a great man and needs a scarf for his head; but not of people in general.

Another quotation found in Pesachim 111b clearly identifies the turban as a garment worn strictly by the scholars:

סודריה דמר כי צורבא מרבנן...

The man's turban is like a scholar's...

But, as is apparent from Kidushin 29b, only married scholars covered their heads:

משחב ליה רב חסדא לרב הונא בדרב המנונא דאדם גדול הוא
א"ל כשיבא לדרך הביאהו לידי כי אתא חזיה דלא פריס סודרא
א"ל מאי טעמא לא פריסט סודרא א"ל דלא נסיבנא אהדרינהו
לאפיה מיניה א"ל חזי דלא חזית להו לאפי עד דנסבת.

R. Chisda praised R. Hamuna before R. Huna as a great man. Said he to him: "When he visits you, bring him to me." When he arrived, he saw that he wore no head-covering. "Why have you no head-dress?" asked he. "Because I am not married," was the reply. Thereupon he (R. Huna) turned his face away from him. "See to it that you do not appear before me (again) before you are married," said he.

The covering of the head also seems to have been considered as tending to help one acquire the fear of God and thereby ward off an evil decree. Thus, in the Talmud, Shabat 156b, the mother of R. Nachman b. Yitschak, after being told by an astrologer that her son was destined to become a thief, would never allow him to go around with his head uncovered.

She evidently thought that bareheadedness might tend to bring on an immediate fulfillment of the astrologer's prediction. She therefore ordered her son:

כסי רישין כי היכי דתיהוי עלך אימתא דשמיא.

Cover your head so that the fear of heaven may be upon you.

Thus, Lauterbach in "Worshipping with Covered Heads", cited above, p. 213, says:

...this much is certain, that among the Babylonian Jews already in Talmudic times the covering of the head was considered a sign of respect. It was observed especially when in the presence of prominent men. It was also regarded as conducive to inculcate (sic inculcate) in one the fear of God. Pious people would be careful not to walk around with uncovered head. A prominent scholar's outfit included also a headgear, though even prominent scholars would not wear a headgear before they were married.

But, as is evident from the Talmud, Nedarim 30b, there was no normative custom prevalent amongst the men of Babylon regarding wearing a head covering:

אנשים זימנין דמיכסו רישיהו וזימנין דמגלו רישיהו אבל נשים לעולם מיכסו וקטנים לעולם מיגלו.

Men sometimes cover their heads and sometimes not; but women's hair is always covered, and children are always bareheaded.

As to how these men worshipped, we have no data. We can assume that since there is no specific mention of the mandatory nature of wearing a head covering when praying, one, at the

least, was permitted to make the choice for himself. We may further conjecture that the scholars when performing a religious ceremony may have indeed worn a head covering as did R. Asi,¹¹ as recorded in Brachot 51a, when reciting the grace after the meal:

וַיְתִיב רַב אֲסִי פָּרִיס סוּדְרָא עַל רִישֵׁיהָ.

R. Asi spread a kerchief over his head (when reciting the grace after the meal).

Just as Palestine and Babylon differed in regard to the custom of wearing a head covering, so did the later poskim of the European countries. These differences were directly dependent on whether the European centers followed Palestinian or Babylonian customs. Spain followed Babylon, while France and Germany followed Palestine. On the basis of Lauterbach's article, let us review various European halachic decisions:

"The Spanish rabbinical authorities thus required the covering of the head during prayer and in general considered it praiseworthy to avoid going bareheaded. Thus, Maimonides in the Mishneh Torah (Tefilah 5:5) states:

וְלֹא יַעֲמֹד בַּתְּפִלָּה בְּאַפְיוֹנָתוֹ וְלֹא בְּרֹאשׁ מְגֻלָּה.

'One should not pray with his money belt on, nor with his head uncovered.'

And he also says in the Mishneh Torah (De'ot 5:6) in regard to scholars:

צניעות גדולה נוהגים תלמידי חכמים בעצמן... ולא יתגלו
ראשן.

'Scholars should conduct themselves with great humility...and should not uncover their head...'

The Zohar in Vo'eschanan (Lublin, 1872, p. 520) likewise says:

ובעי להפיא וישיה that one must cover his head when praying.

R. Abraham ibn Yarhi in Hamanhig, T'filo, 43 (Berlin, 1855)

p. 15, states that it is a custom to pray with covered head and he recommends this custom as well as the general practice

of covering the head, but he expressly characterizes them as the custom and practice of the Jews in Spain. R. Yerucham b.

Meshulam in his Toldot Adam Vechavah I, Nativ 16 (Kopys 1808)

p. 118d, requires the covering of the head when reciting benedictions. Judah Asheri in his Responsa Zikaron Yehudah,

No. 2 (Berlin, 1846) 4a, recommends the covering of the head when studying the Torah, but would not insist upon it in hot weather when one feels uncomfortable to have his head covered.

And Joseph Karo in Shulchan Aruch, Orach Chayim 91:3, merely mentions that some authorities forbid the uttering of the name of God in prayer with uncovered head, and also that some au-

thorities would even prevent people from entering the synagogue with uncovered head, but he himself does not decide the question." However, according to the Magen Avraham by Abra-

ham Abele Gumbiner (17th century) to the Shulchan Aruch 91:3,

Joseph Karo recommends as a pious practice not to go around

bareheaded:

שלא ילך ד"א בגלוי הראש היינו מדה חסידות.

That one should not walk four cubits bareheaded,
that is, out of piety.

In Germany and France, however, following the Palestinian custom, there was no objection to praying bareheaded. "Thus R. Isaac b. Moses Or Zarua of Vienna (1200-1270) expressly reports that it was the custom of the French rabbis to pray with uncovered head:

מנהג רבוהינו שבצרפת שמברכין בראש מגולה.

(Or Zarua, 11, 43, (Zitomir, 1862) p. 20) though he does not favor it. Likewise, R. Meir of Rothenburg (1215-1293) is quoted by his disciple R. Shimshon b. Zadok in Tashbats 547 (Warsaw, 1875) p. 93 as having said that it was not forbidden to go around bareheaded. He is said to have explained the conduct of R. Huna the son of R. Joshua reported in Kidushin 31a and Shabat 118b as having been an exceptional case of extreme piety which the average man need not follow.

Beginning, however, with the thirteenth century, the Babylonian-Spanish custom began to penetrate into France and Germany. We accordingly find Ashkenazic authorities of the thirteenth century and of the following centuries favoring the Spanish custom and recommending, or requiring that one should cover his head when praying or reading from the Torah (R. Isaac of Vienna, in Or Zarua l.c. and R. Moses Isserles in Darche Moshe to Tur Orach Chayim 282,3, arguing

against the French custom, and in Shulchan Aruch, Orach Chayim 282,3, forbidding one to read the Torah bareheaded; and many others). But even as late as the sixteenth century it was in German-Polish countries not generally considered as forbidden to read the Torah or to pray bareheaded. R. Solomon Luria, one of the greatest rabbinical authorities of his time (1510-1573) in his Responsa No.72...expressly says:

אין אני יודע איסור לברך בלא כיסוי הראש...

'I do not know of any prohibition against praying with uncovered head.'

R. Hezekiah Silva (1659-1698) in his commentary Peri Chadash to Shulchan Aruch, Orach Chayim 93:1 says:

מסתברא כמאן דמחיר להוציא אזכרה בראש מגולה.

'The opinion of those who permit the utterance of the name of God in prayer with uncovered head seems to be reasonable and valid.'

And R. Jacob Reischer (died 1733) in his Responsa Shevut Ya'acov III...says:

ואיסור גלוי הראש אין לו עיקר ומקום ברור בש"ס.

And the famous Gaon of Vilna in his commentary to Shulchan Aruch, Orach Chayim 8:6 (sic 8:2) expressly says:

דמדינא אפילו להתפלל ולכנס לבית הכנסת הכל מותר.

'According to Jewish law it is permitted to enter a synagogue and to pray without covering one's head.'

And after some discussion in which he cites many proofs for his statement, he closes with the following words:

There is no prohibition whatever against praying with uncovered head, but as a matter of propriety it would seem to be good manners to cover one's head when standing in the presence of great men and also during the religious service."

כללא דמילתא אין איסור כלל בראש מגולה לעולם רק לפני הגדולים וכן בעת התפלה אז נכון הדבר מצד המוסר.

It was only in the nineteenth century, as a reaction to the first attempts of modern Reformers who suggested that it be advisable to worship bareheaded in the synagogue, did the Orthodox Rabbinical authorities become stringent in the requirement of wearing a head covering when praying or performing any religious ceremony. The orthodox arguments run the gamut from prohibiting an uncovered head because it is the custom of the Gentiles to pray bareheaded,¹² to the unfounded response that it is the law to wear a head covering at all times, which we have seen is not the case.

In conclusion, there can be no halachic objection to praying with or without a head covering; neither should we make jest at those who do wear a kipah, nor they at us. But I feel that I must add a few personal comments. If a Reform Jew should wander into an Orthodox Synagogue, he should wear a head covering, since it certainly is not against his religious beliefs to do so. On the other hand, if an Orthodox or Conservative Jew should meander into a Reform Temple where the custom is not to wear a head covering, he

should be permitted to wear his kippah, for he does it out of "religious practice". Too often I have heard of incidents among our "liberal" Reform Rabbis who have demanded that one remove his head covering or leave. Is the outer appearance, that is, wearing a kippah, that important to embarrass ourselves and others publicly? Judaism has many more pressing problems to cope with than "hat on" or "hat off". Let us concentrate on those problems!

NOTES

¹This article is also found in the C.C.A.R. Yearbook Vol. XXXVIII, 1928, pp. 589-603.

²Jacob Z. Lauterbach, "Worshipping with Covered Heads", C.C.A.R. Responsa 1890-1950 (New York, Union of American Hebrew Congregations, 1954), p. 208.

³Lauterbach, ibid., suggests this origin based on an article written by J. H. Schorr in Hechaluts VII, p. 34.

⁴This passage is also cited in Tanchuma Emor 10 and Leviticus Rabah 27:6.

⁵The Targum to the Prophets, as Dr. Wilhelm Bacher has pointed out in the Jewish Encyclopedia, Vol. 12 (1905), p. 61, is of Palestinian origin, though Babylonian in form. "It originated, however, in Palestine, and was then adapted to the vernacular of Babylonia..."

⁶Lauterbach, op. cit., p. 212.

⁷Tractate Sofrim is found in the Talmud after Avodah Zarah.

⁸Although the continuation of the quote reads:
וְיֵשׁ אֲמִרִים בְּכֹרְעֵי וּבִגְדֵי פְּרוּמִים פֻּרָם אֲבָל לֹא בִּרְאֵשׁ מְגֻלָּה אֵינוּ
רָשָׁאִי לְהוֹצִיא אֶזְכָּרָה מִפִּי.
implying that one whose head is uncovered is not permitted to recite the Shma, Lauterbach, op. cit., p. 212, claims that this is an addition stemming from Babylonian influence and does not reflect the true Palestinian custom prevalent during the Talmudic period. He bases his statement on an article by Joel Mueller in Hashachar VII entitled Chilufe Minhagim.

⁹Cf. Kidushin 33a for justification that one should cover his head when in the presence of scholars.

¹⁰Cf. Kidushin 29b where the requirement for redemption, five sela'im, is discussed.

¹¹Lauterbach, op. cit., p. 214, on the basis of Rabbinowicz's Dikduke Sofrim in Rahmer's Literaturblatt XXII, 1893, no. 15, p. 58, reads Ashi instead of Asi.

¹²The first one to use this argument was David Halevi of Ostrog (17th century) in Ture Zahav to Orach Chayim 8:3.

WHY IS A BAR MITSVAH AT AGE THIRTEEN?

A lad, when he has reached his thirteenth birthday and one day, is considered a bar mitzvah. He is then obligated to fulfill the commandments, is held culpable for his actions, and is counted as one of the ten men required for a minyan. This is based on the Mishnah, Avot 5:21, where we read:

בן שלש עשרה למצות.

...thirteen for the fulfilling of the commandments.

The Rabbis, attempting to find a Scriptural basis for the selection of thirteen years of age, the age when a lad physically matures and shows signs of puberty, rely on Genesis 34:25 for their proof text:

ויקחו שני בני יעקב שמעון ולוי אחי דינה איש חרבו.

And the two sons of Jacob, Simeon and Levi; Dinah's brothers, took each man his sword.

Levi, the son of Jacob, in this passage is called an 'ish' and Obadiah di Bertinoro (died after 1500) commenting on Avot 5:21 states that Levi was thirteen years of age at the time; the time being the incident at Shechem. For this reason he, too, is called an 'ish', a man:

ולוי באותו פרק בן י"ג שנה היה וקרי ליה איש.

And Levi at that time was thirteen years old and was called a man.

Yom Tov Lipmann Heller (1579-1694) in Tosfot Yom Tov

to Avot 5:21, note 67, explains how it is possible to arrive at the equation that Levi at the time of the incident of Shechem was thirteen years old:

כשתחשוב י"ג שנה שעשה יעקב עם לבן אחר שנשא את לאה וילדה לו אחר ב' שנים בקירוב שעלו בהריון לשלשה האחים ראובן שמעון ולוי לחשבון ז' חדשים לכל אחד נמצא לוי בן י"א שנה כשיצאו משם הוסיף עליהם ו' חדשים שעשה בדרך וי"ח חדשים שעשה בסוכות קיץ וחרף וקיץ שהם ב' שנים הרי לוי בן יג"ש בלכתם לשכם ונקרא איש.

When you consider the thirteen years that Jacob worked for Laban after he had married Leah¹ and she bore him (Levi) after two years, for she was pregnant with the three brothers Reuben, Simeon, and Levi approximately seven months each, it is found that Levi was eleven years old when they went out from there (from Artsah Vene Kedem). Add to them (the eleven years), six months that he journeyed² and eighteen months that he stayed in Sukot, summer, winter, and summer³ which are a total of two years. Behold, Levi was thirteen years old in their going to Shechem, and he was called a man.

We also find in the Mishnah, Nidah 5:6, that a male who is over thirteen years of age has the legal right to make vows, or of consecrating property for holy purposes:

בן י"ג שנה ויום א' נדריו קיימין...והקדשן הקדש.

If he is thirteen years old and one day, his vows are valid...and what they dedicate (to the Sanctuary) is validly dedicated.

The term itself, bar mitsvah, is used in the Talmud, Baba Metsia 96a, where it is applied to every grown Israelite who is subject to Scriptural commands:

הני מילי שליח דבר מצוה הוא אבל עבד דלאו בר מצוה לא.

For that may apply only to an agent who is subject to (Scriptural) commands, but not a slave, who is not subject thereto.

Clearly then, thirteen years and one day was the age when a boy was considered to have reached puberty and thereby acquired full religious and civil responsibility and was called a bar mitsvah.

NOTES

¹Cf. Genesis 31:38: זה עשרים שנה אנכי עמך "This twenty years have I been with you." That is, twenty years that he worked for Leah equals the thirteen years that Jacob worked for Laban after he had married Leah ($20-7=13$).

²There is a typographical error in the Ikar Tosfot Yom Tov to Avot 5:21 in the Mishnah (New York, Shulsinger Bros. Linotyping & Publishing Co., 1948). It reads in that edition: י"ח שעשה בדרך.

³Cf. Rashi's comment to Genesis 33:17 where he states that they were in Sukot for eighteen months -- summer, winter, and summer: שהיה שם י"ח חודש, קיץ וחורף וקיץ.

WHEN SHOULD A GENTILE CHILD, ADOPTED BY JEWISH PARENTS, UNDERGO RITUAL IMMERSION (TEVILAH) FOR CONVERSION? DOES THIS IMPOSED CONVERSION BY THE PARENTS NEGATE THE CHILD'S RIGHT TO FREE CHOICE?

One need not wait for the child to be old enough to give his consent to the conversion, for one may act on behalf of a person at any time, if it is to his advantage. In this case, conversion to Judaism is considered to be to the advantage of the child. Therefore, the ritual immersion should take place at the time of the adoption. As for the fear that the parents could be negating the child's right to free choice, our Sages must have taken this into consideration for we find recorded in the Talmud, Ketuvot 11a, that a proselyte is permitted to renounce his conversion when he becomes of age. That is, a male may renounce his conversion at thirteen years and one day, while a female at twelve years and one day:

אמר רב הונא גר קטן מטבילין אותו על דעת בית דין...
תנינא זכין לאדם של בפניו ואין חבין לאדם שלא בפניו
...אמר רב יוסף הגדילן יכולין למחות.

R. Huna said: A minor proselyte is immersed by the direction of the court...We have learned: One may act for a person in his absence to his advantage!
...R. Joseph said: When they have become of age they can protest (against the conversion).

The actual act of renouncing the conversion, as found in the continuation of Ketuvot 11a, is limited to the first hour after becoming of age:

כיון שהגדילה שעה אחת ולא מיחחה שוב אינה יכולה למחות.

As soon as she was of age one hour, and did not protest, she cannot protest any more.

We find these Talmudic statements codified in the Shulchan Aruch, Yoreh Deah 268:7, and adopted by Maimonides in the Mishneh Torah, Laws of Kings 10:3. We read in the Mishneh Torah, Laws of Kings 10:3:

בן נח...ואם היה קטן כשהטבילוהו בית דין יכול למחות
בשעה שיגדיל.

A gentile...if he was a minor when the bet din immersed him, he is permitted to protest when he becomes of age.

Furthermore, Joseph Karo in his Kesef Mishneh to the Mishneh Torah, Laws of Kings 10:3, adds that the time limitation for renouncing the conversion is one hour after he becomes of age. If perchance he should protest his conversion to Judaism after the designated hour, he is considered as an apostate:

כיון שהגדיל שעה אחת ולא מיחה שוב אינו יכול למחות ואם
מיחה הרי הוא כישואל מומר.

Thus, there appears to be no infringement of the rights of the child for he still maintains the right to protest and renounce his conversion when he becomes of age. It is therefore suggested that the adopted child fulfill the religious ceremony of conversion at the earliest possible time.

MAY A JEW, NOT ORDAINED A RABBI, LEGALLY PERFORM A CONVERSION?

Before we can attempt to discuss the issue at hand, there are four terms relevant to the discussion which must be clarified and defined. These terms are used in the sources interchangeably, but differ significantly as to their meanings and implications. These terms are:

Mumchim, found in the Talmud, Yevamot 46b:

וְנִימָא ש"מ נְמִי בְעִינָן מוֹמְחִין.

Let it be said that from this incident it may also be inferred that (qualified) mumchim are required.

Talmide Chachamim, found in the Talmud, Yevamot 47b:

קִיבֵּל מִלֵּין אוֹתוֹ מִיד... נִתְּרַפָּא מִטְּבִילִין אוֹתוֹ מִיד וְשְׁנֵי ח"ח
עוֹמְדִים עַל גְּבִיו וּמוֹדִיעִין אוֹתוֹ מִקְצַת מִצְוֹת קְלוֹת וּמִקְצַת
מִצְוֹת חֲמוּרוֹת.

If he accepted, he is circumcised forthwith...As soon as he is healed arrangements are made for his immediate ablution, when two talmide chachamim must stand by his side and acquaint him with some of the minor commandments and with some of the major ones.

Kesherin Ladun, found in the Shulchan Aruch, Yoreh Deah 268:3:

כָּל עֲשִׂינֵי הַגֵּר בֵּין לְהוֹדִיעוֹ הַמִּצְוֹת לְקַבֵּלם בֵּין הַמִּילָה בֵּין
הַטְּבִילָה צָרִיךְ שִׁיהִיו בְּג' הַכְּשָׁרִים לְדוֹן.

Everything that has to do with a proselyte whether it be acquainting him with the commandments or the circumcision or the ritual immersion requires three people who are kesherin ladun.

and Hedyotot, found in the Shulchan Aruch, Yoreh Deah 268:12:

כְּשִׁיבָא הַגֵּר לְהַתְּחִיר בְּדוּקִים אַחֲרָיו...וְסָבַל בְּפָנֵי ג'
הַדְּיוֹטוֹת.

When a proselyte comes to be converted one questions him...he is circumcised and immersed in the presence of three hedyotot.

The first term, mumchim, as explained by Rabbi Solomon

B. Freehof in Current Reform Responsa (Cincinnati, 1969), pp.

96-97, were official appointees of the Exilarch who judged in

religious, criminal, and civil cases:

In Mishnaic and Talmudic times there were two classes of courts, those that dealt with religious and criminal matters and those that dealt with adjudicating civil disputes. The courts that dealt with religious and criminal matters were generally the fixed courts and were composed of men who were formally ordained (musmachim). Since ordination in the old classic sense could take place only in Palestine, then those who conducted such courts in Babylon had a somewhat different status, but which amounted to the same thing. They were called "mumchim", literally "skilled men". It meant, actually official appointees of the Exilarch. "Musmachim" in Palestine and "mumchim" in Babylon could also judge civil matters; but civil matters could legally be judged by amateurs if the two parties in dispute selected them and were content with each other's selection.

The second term, talmide chachamim, is very much akin in meaning to musmachim or mumchim in that it refers to scholars, or in modern terminology, Rabbis. That is, it denotes individuals who were knowledgeable in Torah and the tradition and could rule on ritual matters.¹ The third term, kesherin ladun, means simply all those who are "eligible to judge",² that is, everyone except for a relative either to the convert or to one another.³ Finally, the fourth term, hedyotot, means laymen or ordinary people.⁴

With this qualitative differentiation of terms, we may generally categorize the halachic sources, supra, into two somewhat opposing viewpoints. The Talmud seems to prefer three Rabbis to be present at the time of the conversion (Yevamot 46b), but is lenient in that two Rabbis are acceptable (Yevamot 47b). The Shulchan Aruch, however, requires

three men who are qualified to act as judges, but makes no stipulation that they need be Rabbis (Yoreh Deah 268:3,12). Yet, the continuation of the Shulchan Aruch, Yoreh Deah 268:3, even accepts, but does not recommend, in accordance with the Talmudic dictum found in Yevamot 47b, the proselyte whose conversion was witnessed by only two laymen:

אבל בפני ב'...הוא גר ומותר בישראלית.

But even in the presence of two (laymen)...he is a convert and is permitted (to marry) a Jewess.

The question still remains may a Jew, not ordained a Rabbi, perform a conversion? On the basis of the Talmud, it appears not, whereas, on the basis of the Shulchan Aruch it appears that he may if there are other witnesses present. But, let us delve deeper into the sources for a definitive decision.

According to the practice of the Orthodox, three traditional Rabbis are required to be present at the conversion. The basis of their decision, as argued in the Rashi to Yevamot 46b, is derived from Numbers 15:16:

ומשפט אחד יהיה לכם ולגר.

One law shall be for you and the proselyte.

That is, just as no point of law can be authoritatively decided by a court composed of less than three Rabbis, who constitute a bet din, so may no initiation of a proselyte

take place unless it is witnessed by three Rabbis.

However, the Tosafot to Kidushin 62b comes to the conclusion, after citing Sanhedrin 3a, Gitin 88b, and finally quoting R. Netan'el, that a conversion may take place even if there are no mumchim available. That is, the conversion may be conducted by three laymen in order to guarantee the perpetual acceptance of converts to Judaism as based on Numbers 15:15 which reads:

הקהל חקה אחת לכם ולגור הגר חקת עולם לדורותיכם...

One ordinance shall be both for you of the congregation, and for the proselyte that sojourns (with you), an ordinance forever in your generation...

Thus, R. Netan'el states, as recorded in Tosafot to Kidushin 62b:

אמר הר"ר נחנאל דבגר כתיב לדורותיכם דמשמע בכל ענין
אע"ג שאינן מומחין דעל כוחך השתא ליכא מומחין שהרי
אין סמוכין ולדורותיכם משמע לדורות עולם.

Therefore, there appears to be a tendency toward leniency in regard to the convert. In cases where it is impossible to assemble three Rabbis to officiate at a conversion, three laymen are acceptable, though not recommended. In the same vein, Rabbi Solomon B. Freehof in Current Reform Responsa, pp. 98-99, points out:

Benjamin Zeev (sixteenth century) in his Responsa I, 72, quotes the responsum of Isaac the son of Samuel to the effect that conversion is valid even if conducted by three hedyotot (i.e., three ordinary lay-

men). Benjamin Zeev concludes with the general statement that in matters of conversion, we ought to follow the line of leniency and therefore should, if necessary, allow three ordinary men to conduct the conversion, lest we "lock the doors in the face of converts."

Furthermore, Freehof (p. 100) goes on to cite a responsum by Ben Zion Uziel:

Ben Zion Uziel, the late Chief Sephardic Rabbi, in his very last book of Responsa Mishpete Uziel, Even Haezer 13, p. 54, Jerusalem, 1964 says: "It is the Halachah, as we learn from the words of the Rambam, that the reception of proselytes does not require a Bet Din of skilled men, but even with three ordinary men (hedyotot) it is quite sufficient."

Although there be this excessive tendency toward leniency in regard to the convert, I would recommend that in a community where three Rabbis can be assembled to witness the conversion, it should be so conducted. Secondly, I would suggest that at the minimum, one Rabbi (and two other witnesses) be present in order that the ceremony be considered by the convert as a religious one, even though all are technically qualified to act as witnesses (with the exceptions previously discussed). At least one Rabbi is recommended in accordance with the decision rendered by R. Abraham Tsvi Klein in Be'erot Avraham (1928) Vol. I, Responsum no. 32, p. 75. When asked whether a non-Jew could be converted to Judaism if there is not a Bet Din of mumchim present, he ruled that a conversion with only one talmid chacham (i.e., Rabbi) and two other witnesses is permissible for one does not want to "lock the door"⁵ in the face of the converts:

נראה דלאו דחקא שכל הג' צריכים להיות ח"ח אלא סגי בא'
שהוא ח"ח.

That is, prospective converts might refuse to convert should difficulties confront them in assembling the required three mumchim.

In conclusion, the Rabbi's presence guarantees that the ceremony is following the prescribed rules established for the conversion, the Rabbi's presence adds an aura of religiosity to the ceremony, and the convert will feel at ease and comfortable in the presence of the Rabbi who most likely trained him for the conversion. But, there can be no halachic objection in cases of exceptional circumstances for three laymen to act as witnesses to the conversion, or if necessary two laymen.

NOTES

¹Cf. J. D. Eisenstein, Otsar Dinim Uminhagim: A Digest of Jewish Laws & Customs (New York, 1917), p. 437, under the entry of Talmid Chacham.

²Cf. Solomon B. Freehof, Current Reform Responsa (Cincinnati, Hebrew Union College Press, 1969), p. 96.

³Cf. Mishneh Torah, Laws of Testimony 16:5.

⁴Freehof, op. cit., p. 99.

⁵This is a saying adopted from Sanhedrin 3a where this same consideration led to the suspension of the law requiring three mumchim to adjudicate in monetary cases, for fear that creditors would refuse to advance loans should difficulties confront them in collecting their debts:

ומה טעם אמרו דיני ממונות לא בעינן דרישה וחקירה כדי
שלא חנעול דלת בפני לחין.

Why then did they (the Sages) declare that monetary cases are not subject to this exacting procedure? In order not to "lock the door" against borrowers.

MAY A JEWISH PHYSICIAN WHO IS NOT A MOHEL PERFORM A JEWISH CIRCUMCISION?

The question of "who may circumcise" is discussed at length by Rabbi Solomon B. Freehof in Reform Responsa (Cincinnati, 1960), pp. 105-111, in which he concludes:

Insofar as the operation itself is to be considered religious, it is, of course, preferable to have a Jewish physician. Certainly a skilled mohel is acceptable beyond question, but he is not indispensable. A Jewish physician may circumcise and perform the entire ritual, including reciting the prayers. A Gentile physician may circumcise, but the family should be present to conduct the religious service.

It is not the intention of this discussion to deal with the permissibility of a Gentile physician performing the circumcision, with which I disagree with Rabbi Freehof, but rather to concentrate on the acceptability of a Jewish physician in lieu of a recognized mohel.

According to the Mishneh Torah, Laws of Circumcision 1:1, and the Shulchan Aruch, Yoreh Deah 261:1, the mitzvah of circumcision is incumbent upon the father:

מצות עשה לאב למול את בנו.

The father, however, may in turn bestow this honor upon another individual of his choice; the individual so honored is called the mohel, the circumciser. It must be noted that the term mohel does not connote a religious functionary with official authorization. Therefore, the mohel has no special

religious status, but is merely an honorary designation. Furthermore, it should be pointed out that for the father, who may choose to perform the circumcision himself, there are no religious specifications prescribed which might exclude him from performing the circumcision. Keep this in mind for we will soon note an objection raised by R. Eliezer Silver who prohibits a non-observant Jewish physician from performing the circumcision.

Continuing then, according to the Mishneh Torah, Laws of Circumcision 2:1, and similarly the Shulchan Aruch, Yoreh Deah 264:1, everyone is eligible to perform a circumcision. It is however recommended that one who is considered a "great Jew" should be sought to perform the circumcision:

הכל כשרים למול אפילו עבד אשה וקטן וערל ישראל שמחו
אחיו מחמת מילה ואם יש ישראל גדול שיודע למול הוא קודם לכולם.

Everyone is eligible to perform a circumcision, even a slave, a woman, a minor, and an uncircumcised Jew whose brothers died as a result of circumcision. If there is a great Jew who knows how to circumcise he takes precedence over all of them.

Isserles, in his notes to this passage quoting from the Or Zarua, adds that a man should seek to find the best and most pious mohel and Sandek (Baal Brit):

ויש לאדם לחזור אחר מוהל ובעל ברית היותר טוב וצדיק.

A man should seek around to find the best and most pious mohel and Sandek.

The question, as Rabbi Freehof, supra, p. 106, points out is "whether the piety of the circumciser is an indispensable requirement." Piety in this case refers to one's strict observance of the law. Freehof retorts:

Strictly Orthodox Jews certainly believe so. For example, the honorary president of the Agudat Harabanim, Rabbi Eliezer Silver (quoted in "Taharat Yom Tov", by Yom Tov L. Deutsch, Vol. VIII; see Hamaor for Elul, 1957) says as follows:

"I have forbidden physicians, most of whom are not observant Jews, to circumcise; but have only permitted skilled mohelim who are religious to approach the fulfillment of this commandment. I have never consented to be a godfather (Sandek) if the mohel is a physician, even if he were a Sabbath observer and a religious man. Thank God, in my city and in my area they listen to me and they do not permit any physician to perform the circumcision; even the physicians themselves, when they have a son, call on a mohel in this area to perform the circumcision. If a physician who is not observant has circumcised a child, I have commanded that the extra drop of blood of the covenant be taken from the child by a pious mohel."

This stringent decision of Rabbi Eliezer Silver can only be understood as a seyag, a preventative measure. That is, if observant physicians were permitted to circumcise, some might erroneously permit even non-observant physicians to perform the circumcision. To this, Rabbi Silver vehemently objects.

But, Rabbi Silver's ruling does not harmonize with the liberal viewpoint as codified in the Mishneh Torah, Laws of Circumcision 2:1 (Karo). There we find that an idolater who circumcised a Jewish child, his circumcision is valid, and the child need not be recircumcised. It must be added that an idolater is not recommended as the circumciser, but,

in any event, his circumcision is valid ex post facto:

אבל עובד כוכבים...לא ימול כלל ואם מל אין צריך לחזור
ולמול פעם שנית.

We may logically ask: If an idolater's circumcision is valid,¹ how much the more should a non-observant Jewish physician's circumcision be legally acceptable? Furthermore, as previously noted, a father is not questioned as to his religious observance; why should one, therefore, question the physician's religiosity?

Rabbi Silver's stringency appears to be dependent not on the Shulchan Aruch, but rather on a note by Isserles to the Shulchan Aruch, Yoreh Deah 264:1. Isserles, reflecting the Ashkenazic custom, states that a mumar, i.e., a man denying the validity of the entire Torah on principle, or rejecting circumcision on principle, is prohibited from performing the circumcision since he classifies a mumar in the category of an idolater, whom he contends is invalid to circumcise:

מומר לכל החורה כולה או שהוא מומר לעולות דינו כעובד
כוכבים.

The Orthodox Jew, accepting Isserles' statement, might posit (in order to exclude a non-observant Jewish physician from performing the circumcision) on the basis of the Palestinian Talmud, Nedarim 38b, that one who profanes the Shabat is as one who violates the entire Torah:

השבת שקולה כנגד כל המצוות שבתורה.

With this rationale, the Orthodox position is that a non-observant Jewish physician, who profanes the Shabat, is equated with one who violates the entire Torah and is thereby excluded from performing a circumcision, since he is considered as an idolater.

But this line of argumentation is forced. For we likewise find in the Palestinian Talmud, Nedarim 37d:

גדולה המילה שהיא שקולה כנגד כל המצוות שבתורה.

Great is the (observance of the) circumcision for it equals all the commandments that are in the Torah.

Thus, it can be argued, contrary to the Orthodox position, that if a non-observant Jewish physician performs the great mitzvah of circumcision he has fulfilled the equivalent of all the commandments that are in the Torah. We may conclude, therefore, that to logically include a Shabat violator in the category of a mumar is indeed faulty and forced.

Furthermore, R. Akiba Eger, as cited and interpreted by Rabbi Freehof, p. 108, adds light to the discussion by limiting the category of a mumar to one who violates the law willfully and excludes from this category one who violates the law merely out of convenience:

But Rabbi Akiba Eger limits the restriction against the violator of the law. He bases the limitation upon the statement of Chayim Hezekiah De Silva in "Mayim Chayim" no. 3 (at the end of the book). The

restriction is based upon the well-known legal distinction between a violator who violates impudently to provoke the pious, that is, a willful violator (להנעים) and a violator who merely violates the law out of convenience (לתאנון). It is only the willful violator who, according to the law, may not circumcise. But one who merely does not obey the law because it is difficult for him to do so, or because he is not trained to do so, could hardly be declared ineligible because of his careless nonobservance.

Similarly, R. Akiba Eger as cited in Melamed Leho'il, Vol. 2 (1927) p. 86, and quoted from "Brit Larishonim" 52d, argues that one who profanes the Shabat by having his store open on the Shabat or who travels on the Shabat is not to be considered a mumar who violates the entire Torah for these laws are merely prohibitions enacted by the Sages:

מוהל מומחה שמפורסם לחלל שבת בפרהסיא אם הוא כשר למול,
וכ' שם במה שמפורסם שמחלל שבת בפרהסיא אפשר ע"י שיש לו
חנות פחוה ונוסע לדרך ובאלו דהוי רק איסורי מדרבנן לא
הוי מומר לכה"ת.

Is a skilled mohel who is known to publicly profane the Shabat permitted to circumcise? And he wrote there (cited above), how is it known that he publicly profanes the Shabat; possibly he has his store open and travels, but these are only prohibitions laid down by the Sages and do not constitute a mumar to the entire Torah.

It is therefore apparent that, according to this clear understanding of a mumar, a non-observant Jewish physician who is not an avowed atheist, does not mock his religion to provoke the pious, who may keep his office open on the Shabat because of necessity and travels to it in order to save some lives, should be permitted to circumcise, and his cir-

cumcision is valid. We may even conjecture that most non-observant Jewish physicians fall into the category of לחאבון and not of להכעיס, and are therefore acceptable mohalim.

NOTES

¹However, Isserles in his note to the Shulchan Aruch, Yoreh Deah 264:1, quoting the Tur in the name of Moses of Coucy says "there are those who say that one is obligated to take the extra drop of blood of the covenant from him" if he has been circumcised by an idolater:
וי"א דחייבים לחזור ולהסיף ממנו דם ברית.

IS THERE A SPECIFIC TIME AND CEREMONY FOR THE NAMING OF A CHILD?

The time and ceremony for naming a child has been one of custom rather than written law. In Biblical times it appears that the child was named immediately at birth. For example, we read in Genesis 4:25:

וידע אדם עוד את אשתו ותלד בן ותקרא את שמו שת.

And Adam knew his wife again; and she bare a son, and called his name Seth.

Similarly, we read in Genesis 4:26:

ולשת גם הוא ילד בן ויקרא את שמו אנוש.

And to Seth, to him also there was born a son; and he called his name Enosh.

In Talmudic times, though there is no express regulation to the effect, it seems that it was the accepted custom to name the male child on the eighth day, at the time of the circumcision. As secondary evidence we draw from a supportive passage found in Pirke Rabi Eliezer, Bamberg edition, p. 115 (middle of the page) to the effect that Moses was given the name Yekutiel at the time of his circumcision:

ר' נתנאל אומר ראו אבותיו של משה תארו של משה כמלאך אלקים מלו אותו לח' ימים וקראו שמו יקותיאל.

R. Natan'el said: Moses' forefathers saw that Moses' appearance was like an angel of God; they circumcised him on the eighth day and called him Yekutiel.

We also find supportive proof in the New Testament for both John and Jesus were named on the eighth day after birth. In Luke 1:59-60,63 we read:

And on the eighth day they came to circumcise the young child, and they were going to call it by the name of its father, Zechariah. But its mother announced and said: "No, indeed! but he shall be called John." And he (the father Zechariah) asked for a tablet and wrote: "John is its name."

And in Luke 2:21 we find:

Now when eight days came to the full for circumcising him, his name was called Jesus...

The naming of a male child on the eighth day, at the time of the circumcision, has become the established custom up to this day. If, perchance, the child is to remain uncircumcised, as is the case when two of his brothers had died as a result of the circumcision (cf. Shulchan Aruch, Yoreh Deah 264:1), the child should be named when the father is called up to the Torah. However, there is a difference of opinion as to whether this child should be named before or after he is eight days old.

In regard to the naming of a female child, as Jacob Z. Lauterbach in his Studies in Jewish Law, Custom and Folklore (1970), pp. 65-66 points out that "there has been no uniformity of practice". He continues:

Among the Sephardim in the Orient, the naming of a baby girl is a home ceremony. The parents invite

guests to a meal at which the name of the newly born daughter is announced. Among the Italian and Ashkenazic Jews it was customary to name the girl in the Synagogue on the Sabbath when the mother for the first time after birth of the child could visit the Synagogue. There is, however, no fixed rule about this. Present day custom among Polish-Ashkenazic Jews varies in different localities. In some places it is still customary to name the girl right after she is born. In others the name is given in the Synagogue on the Sabbath or on a Monday or Thursday when the father comes to the Synagogue and is called up to the Torah.

According to ספר המסעמים (Warsaw, 1889), p. 47, no. 8, the Scriptural verse, Isaiah 62:2, is midrashically applied to justify the basis for naming a female child when the father is called up to the Torah:

טעם כשרוצה לקרא שם לבתו הנולד לו למז"ט קורא לה בשבת
בעת שעולה לתורה משום שכתוב וקורא לך שם חדש אשר פי ה'
יקבנו.

The reason, when one wants to name his daughter, who was born to him for a mazel tov, one names her on Shabat when he is called up to the Torah, is based on the Scriptural verse (Isaiah 62:2) "And thou shalt be called by a new name, which the mouth of the Lord shall mark out." (The "mouth of the Lord" refers to the Torah over which we give the child a name).

It is also customary to recite a "Mi Sheberach" for the mother and the newly born girl. According to ספר מסעמים (Warsaw, 1894), p. 80, no. 2, the custom is derived from Genesis 5:2 where a "blessing" and a "naming" follow one another:

ויברך אותם ויקרא את שמם...

And He blessed them and called their name...

Following are the various prayers and readings as found in "A Rabbi's Manual" (1965), pp. 3-7, published by the Rabbinical Assembly for the naming of a female and male child in the synagogue:

PRAYER IN THE SYNAGOGUE WHEN NAMING A GIRL

מי שברך אבותינו, אברהם יצחק ויעקב, שוה רבקה רחל ולאה, הוא יברך את-היולדת _____ בת _____ ואח-בתה _____ הנולדה לה במזל טוב ויקרא שמה בישראל _____ בת _____ בעבור שבעלה ואביה מברך אותן ונודר לצדקה בעבורן. יהי רצון שיזכו הוריה לגדלה לתורה ולחפה ולמעשים טובים, ונאמר אמן.

May He who blessed our ancestors, Abraham, Isaac and Jacob, Sarah, Rebecca, Rachel and Leah, bless _____ and her newborn daughter, whose name we declare to be _____. May the parents rear their daughter to womanhood imbued with love of Torah and the performance of good deeds, and may they be privileged to bring her to the wedding canopy. Let us say: Amen.

PRAYER IN THE SYNAGOGUE FOR A NEWBORN BOY

מי שברך אבותינו, אברהם יצחק ויעקב, שוה רבקה רחל ולאה, הוא יברך את היולדת _____ בת _____ ואח בנה _____ הנולד לה במזל טוב בעבור שבעלה ואביו מברך אותם ונודר לצדקה בעבורם. יהי רצון שיזכו הוריו לגדלו לתורה ולחפה ולמעשים טובים, ונאמר אמן.

May He who blessed our ancestors, Abraham, Isaac and Jacob, Sarah, Rebecca, Rachel and Leah, bless _____ and her newborn son, who has been named _____. May the parents rear their son to manhood imbued with love of Torah and the performance of good deeds, and may they be privileged to bring him to the wedding canopy. Let us say: Amen.

The following may also be read in the synagogue on the occasion of a new birth; (Psalm 8...is also appropriate)

I

שיר המעלות

אשרי כל-יורא " , ההלך בדרכיו . יגיע כפיו כי תאכל ,
אשריך וטוב לך . אשתך כגפן פריה בירכתי ביחך , בניך
כשתלי זיתים סביב לשלחנך . הנה כי-כן יבורך גבר ,
יורא " . יברוך " מציון , וראה בטוב ירושלים כל ימי
חייך . וראה-בנים לבניך , שלום על-ישראל .

Blessed are all who revere the Lord, those who walk in His ways. You shall enjoy the fruit of your labor; happiness and well-being shall be yours. Your wife, within your house, shall be like a fruitful vine, your children like olive shoots round about your table. This shall be the blessing of the man who reveres the Lord. May the Lord in Zion prosper Jerusalem, and bless you all the days of your life. May you live to see children's children; may there be peace for all Israel.

Psalm 128

II

Our God and God of our fathers, we thank you for the precious gift of a new life, and for the blessing of parenthood, which allows man to share in the miracle of creation. Eternal Creator, we ask Your continued blessing for the parents of the child who has been given the name of _____ . Answer their prayers, O Lord, and the prayers of this congregation on their behalf. Grant their child length of days and vigor of body and mind. Endow the grateful parents with understanding and love, that they may rear their (son, daughter) to (manhood, womanhood) imbued with love of Torah and the performance of good deeds. May they be privileged to bring (him, her) to the wedding canopy. Let us say: Amen.

At some later time, parents may say:

Our God and God of our fathers, we thank You for the precious gift of new life, and for the blessing of parenthood, which allows us to share in the miracle of creation. Eternal Creator, we ask Your continued blessing. Grant our child length of days and vigor of body and mind. Endow us with understanding and love, that we may rear our (son, daughter) to (manhood, womanhood) imbued with love of Torah and the performance of good deeds. May we be privileged to bring (him, her) to the wedding canopy. Amen.

מי שברך ליוולד

מי שברך אבותינו, אברהם יצחק ויעקב, שיה רבקה
רחל ולאה, הוא יברך את-האשה היולדת
בן _____ בעבור שבעלה מברך אותה, ונודר
לצדקה בעבורה. בשכר זה הקדוש ברוך הוא ימלא
רחמים עליה, להחלימה ולרפאותה, להחזיקה ולהחיותה,
וישלח לה מהרה רפואה שלמה מן השמים, רפואת הנפש
ורפואת הגוף בתוך שאר חולי ישראל [שבת היא, יום
טוב הוא, יום הדין הוא, מלזעוק ורפואה קרובה לבא]
השתא בעגלא ובזמן קריב, ונאמר אמן.

May He who blessed our ancestors, Abraham, Isaac and Jacob, Sarah, Rebecca, Rachel and Leah, bless _____, who has given birth to a (son, daughter). May the Holy One, praised be He, strengthen and heal her in His compassion, restoring her to vigor and health, along with all who are in need of healing. And let us say: Amen.

IF THE SECOND DAY OF PESACH FALLS ON SHABAT,
WHAT KIDUSH DOES ONE RECITE?

I do not know what prompted this inquiry, but the second day of Pesach never falls on Shabat. In the Shulchan Aruch, Orach Chayim 428:1, we learn of the mnemonic א ב ג ד ה ו ז ח ט י. The ב represents the second day of the week, Monday; the ד, the fourth day of the week, Wednesday, and the ו, the sixth day of the week, Friday. On these days, Monday, Wednesday, and Friday, the first day of Pesach never falls. This being the case, the second day of Pesach, likewise, cannot fall on Shabat.

The reason, according to Otsar Dinim Uminhagim (New York, 1917), p. 340, as to why the first day of Pesach cannot fall either on a Monday, Wednesday, or Friday is related to the holidays of Yom Kipur and Hoshana Raba. If Pesach occurred on Wednesday, Yom Kipur would fall on Sunday, which would mean that there would be two consecutive days (Friday and Saturday, or Saturday and Sunday) on which we couldn't prepare food, or bury the dead, for the laws of Yom Kipur are as stringent as those of Shabat. If the first day of Pesach occurred on Friday, then Hoshana Raba would fall on Shabat and we wouldn't be permitted to beat the willows. Thus, the second day of Pesach cannot fall on Shabat, and there is no question as to the contents of the Kidush.

Since we have broached the topic of mnemonics, it

might be advantageous to list other mnemonic devices as recorded in the Shulchan Aruch, Orach Chayim 428:1, on which the first day of the other holidays cannot fall. Remember, * stands for Sunday, ב- Monday, ג- Tuesday, ד- Wednesday, ה- Thursday, ו- Friday, and ז- Saturday.

לא אד"ו ראש השנה
לא אג"ו יום הכיפורים
לא זב"ד פורים
לא בד"ו פסח
לא גה"ז עצרת
לא ג' חנוכה
לא אג"ו צום אסתר
לא בד"ו צום תמוז ואב
לא גה"ז הושענה רבה

Also, "on the day of the week when the first day of Purim occurs, so will Lag Ba'omer fall and the mnemonic is פל"ג; and on the day of the week when the first day of Chanukah occurs, the first day of Sukot falls."

If one can remember on which day of the week the first day of Pesach occurs, one can calculate when the other holidays will fall by applying the mnemonic as found in the Shulchan Aruch, Orach Chayim 428:3 (using the month of Nisan as the basis of counting, and not the English calendarization nor the month of Tishre): א"ת ב"ש ג"ד ה"ז ו"פ. The first letter of each pair represents the numerical counting of the holiday of Pesach (* = the first day of Pesach, ב = the second day of Pesach, ג = the third day of Pesach, etc.). The second letter of each pair represents the various holidays:

(ח=חשעה באב, ש=שבועות, ו=ראש השנה, ק=קריאת התורה או
שמחת תורה, צ=צום כיפור, פ=פורים שעבר)

That is, the first day of Pesach (א) will be the same day of the week on which Tishah Be'av (ת) falls. The second day of Pesach (ב) will be the same day of the week on which Shavuot (ו) falls. The third day of Pesach (ג) will be the same day of the week on which Rosh Hashanah (ר) falls. The fourth day of Pesach (ד) will be the same day of the week on which The Reading of the Torah (ק) or Simchat Torah¹ falls. The fifth day of Pesach (ה) will be the same day of the week on which Tsom Kipur (צ) falls, and the sixth day of Pesach (ו) will be the same day of the week on which the previous Purim (פ) fell.

NOTES

¹The Reading of the Torah or Simchat Torah refers to the Orthodox celebration of the holiday on the ninth day of Sukot and not the Reform celebration on the eighth day of Sukot. קריאת התורה = ק.

WHY IS IT PERMITTED TO USE PEANUT OIL ON PESACH, WHEREAS PEANUTS ARE PROHIBITED?

The prohibition of the eating of peanuts on Pesach is an Ashkenazic minhag, not a written law. The prohibition originated because the Rabbinical authorities were not botanical experts and were not certain as to how peanuts grew. As a result of this unsurety, peanuts were classified under the category of "grain" and a גור מדין חורה, prohibiting peanuts on Pesach, was accepted by the Ashkenazic communities. Peanut oil also was originally prohibited, but later authorities with expertise in the science of botany ruled that peanut oil was indeed permissible on Pesach, but made no explicit statement as to the status of peanuts. As is the trend with customs, the people began using peanut oil on Pesach, but retained the minhag of prohibiting peanuts.

According to the Mishnah, Pesachim 3:1, "whatsoever is made from any kind of grain must be removed at Passover:"

זה הכלל כל שהוא ממין דגן הרי זה עובר בפסח.

This category includes wheat, barley, spelt, oats, and rye. The category into which peanuts fall is that of קטניות (beans or peas). Although there is no prohibition of eating kitniyot on Pesach, the Aruch Hashulchan, Orach Chayim 453:4 mentions that our Sages imposed this restriction upon themselves:

ודע דאף דמדינא מותר לאכול אורז וכל מיני קטניות בפסח
מ"מ הנהיגו רבותינו ואבותינו זה הרבה מאות מן השנים
וקבלו עליהם באיסור לבלי לאכול אורז ומיני קטניות בפסח
...ואיסור זה כיון שקבלו אבותינו גדר מן תורה.

Furthermore, the Aruch Hashulchan, Orach Chayim 453:5, states that this prohibition was adopted by the Ashkenazic communities:

כל מדינות אשכנז וצרפת ורוסיה ופולניא קיימו וקבלו
עליהם ועל זרעם החומרא הטובה הלזו.

The reason for their accepting this prohibition, as pointed out by Yechiel Ya'akov Weinberg, while discussing whether peanut oil is permitted during Pesach (in Seride Esh, Jerusalem, 1962, vol. 2, Responsum no. 37b, quoting the Tur) was twofold. The first was that it was feared that the peanuts could become mixed with wheat; the contact disqualifying peanuts for use since wheat is prohibited:

אחד, שמחערבים בו חטים.

The second reason was that since they did not know how peanuts grew, they confused it with grain which must be removed during Pesach (cf. Mishnah, Pesachim 3:1, cited above):

ועוד, דאמי לאחלופי בדגן.

Both of these reasons are discussed and rejected by Weinberg who quotes David Tsvi Hoffmann's Melamed Leho'il, Responsum no. 88:

דלטעם הא' מותר, שאין מתערבין בהם חיטים לעולם, כמו
שכתב במלמד להועיל, שהם נשארים בשרביטין עד שסוחטים
מהן שמן.

In regard to the first reason, it is permitted, for
they (peanuts) never come in contact with wheat, as
he (Hoffmann) has written in Melamed Leho'il, "for
they remain in the stem with pods until one extracts
oil from them..."

ובעל מלמד להועיל...כותב, שאין הערדניססע מידגן, הינו
שאינם נאספים בגורן כדגן אלא מניחים אותם בשרביטין עד
שמתקשים.

And the author of Melamed Leho'il...writes, "that
the peanut is not of the category of 'grain', that
is, it is not gathered in the threshing floor, but
one leaves them in the stem with pods until they
become hard."

Our Sages also had another doubt about the permissi-
bility of peanuts, for they feared that if water came upon
them they would ferment, thereby making them prohibited for
Pesach. This doubt was also resolved when it was discovered
that peanuts grow with a hard protective shell, thus making
the seed impermeable to water. Thus Weinberg concludes:

וערדניססע אי אפשר שיבואו עליהם מים מחמת קליפתם הקשה.

And it is impossible for water to come upon peanuts
because of their hard shell.

Both Weinberg and Hoffmann rule that peanut oil is permissi-
ble for Pesach, but avoid any ruling as to the permissibility
of peanuts.

With today's scientific understanding of botany, pea-
nuts technically should be permitted on Pesach. Dr. Jett

Clinton Arthur, Jr., Principal Chemist for the United States Department of Agriculture wrote in the Encyclopedia of Americana (1964), vol. 21, p. 451:

The peanut is a pea, not a nut. It belongs to the bean family, differing in that it matures its fruit or pod underground. The peanut plant may be a bush or a vine above ground which may grow to a length of 1 to 3 feet. Small yellow flowers form at the joints where the leaves are attached to the stems. After pollination takes place the flowers fade, and shoots are formed which elongate and enter the ground, where pods develop. The pod or shell which forms is cellulosic in nature and contains from 1 to 3 nuts or seeds when it has matured.

Therefore, peanuts do not come in contact with wheat because of their protective shell. Likewise, peanuts cannot ferment for they cannot come in contact with water because of the shell. Thirdly, peanuts are not like grain and should no longer be confused with it.

We must now ask, how should we act in regard to the present minhag of not eating peanuts during Pesach? I would recommend the continuation of this minhag since its origins are Ashkenazic and Reform Judaism is an Ashkenazic development. Therefore, we would merely be continuing our own minhag. However, the choice remains one for every individual to decide, and no legal objection can be raised to criticize those who choose to indulge in peanuts on Pesach.

MAY A REFORM RABBI PERFORM A WEDDING DURING THE OMER PERIOD?

The origin of the custom prohibiting marriages during the Omer is based on a passage found in the Talmud, Yevamot 62b:

אמרו שנים עשר אלף זוגים תלמידים היו לו לרבי עקיבא
מגבת עד אנטיפורס וכולן מתו בפרק אחד מפני שלא נהגו
כבוד זה לזה...תנא כולם מתו מפסח ועד עצרת.

It was said that R. Akiba had twelve thousand pairs of disciples, from Gabbaths to Antipatris; and all of them died at the same time because they did not treat each other with respect...A Tanna taught: All of them died between Passover and Pentecost.

Because of this great tragedy, the death of the 24,000 disciples of R. Akiba and the possibility that there would be no one left to teach Torah, it became an accepted custom for mourning to be observed during those days. One aspect of this mourning was that of refraining from the joy of marriage. Thus, we find codified in the Shulchan Aruch, Orach Chayim 493:1, that the established custom was that marriages were forbidden on certain days during the interval between Passover and Shavuot (the Omer period). But those who did marry were not punished!

נוהגים שלא לישא אשה בין פסח לעצרת עד ל"ג בעומר מפני שבאותו זמן מתו תלמידי ר' עקיבא...מי שקפץ וכתס אין עונשין אותו.

We are accustomed not to marry during the period from Pesach to Shavuot, that is, until the thirty-third day of the Omer for during this time the disciples of R. Akiba died. But if one does marry, he is not punished.

Another common reason suggested for refraining from joyous celebrations during this period, as quoted in the Eshel Avraham to the Shulchan Aruch, Orach Chayim 493, by Abraham Oppenheim (18th century), is that the wicked are judged in Gehanna from Pesach to Shavuot. It is, therefore, not proper to rejoice during this time.

There is a divergence of customs, however, as to which thirty-three days these restrictions are applied. According to the Code of Jewish Law (1961), by Ganzfried, vol. 3, p. 53, nos. 6 and 7, we read:

In some communities, these days begin from the first day of the omer (the second night of Pesach), and, therefore, they forbid the above (marriages and haircuts) until the thirty-second day of the omer. But when the New Moon of the month of Iyar occurs on the Sabbath which is of double holiness, the holiness of the Sabbath and the holiness of the New Moon, they permit marriages and haircutting on the day before the Sabbath. On the thirty-third day of the omer, Rabbi Akiba's disciples ceased to die, and so, on that day, a semi-holiday is observed, and the Tachanum (petition for Grace) is not said, and from this day on, the restrictions are lifted. Although some of them died even on that day, no full day of mourning is required, for it is held that a part of a day is equivalent to a full day; therefore, it is not permissible to cut the hair or to marry a woman until after dawn on the thirty-third day, and not in the evening. But if the thirty-third day of the omer occurs on Sunday, the hair may be cut on the preceding Friday in honor of the Sabbath.

In other communities, they allow all of the above until the New Moon of Iyar inclusive, which makes a total of sixteen days, then there are thirty-three days left during which the above-mentioned things are forbidden, that is, until Shavuot (and they have their hair cut on the day before the festival). Nevertheless, they allow all of the above to be done on the thirty-third of the omer itself (or on the Friday before, if the thirty-third day occurs

on Sunday, as stated above). In still other communities, they permit it until the New Moon of Iyar, exclusive of that day, and the restrictions begin to take effect on the first day of the New Moon, and the period ends on the first three days preceding Shavuot, concerning which we say that a part of the day is equivalent to a full day of mourning, and, therefore, it is permissible to marry and cut the hair on that day, and they also permit it on the thirty-third day of the omer (as stated above).

To confound the issue even more, we find that under extenuating circumstances or in the case of emergency Joseph Karo permits a couple to marry during these restricted days, rather than having their marriage permanently postponed. Thus, Chayim Mordecai Margolioth (18th-19th century) in Sha'are Teshuvah to the Shulchan Aruch, Orach Chayim 493, note no. 1, quoting Joseph Karo writes:

ב"י...שהתיר בשעת הדחק למי שבא ממקום אחר לישא בל"ג בעומר וחלה וחזר לבריא וכו' אחר ל"ג בעומר ונחוצה מאד לביתו והיא אין רצונה לזוז ממקומה בלא נשואין וגם הוא חולה קצת עדיין ואין לו מי שישמשנו פה על היריד וגם שקרוב שיחבטל הענין על ידי המתנה זו שיפורד לזרכו... ולכן התיר הנשואין.

We see, then, that the customs vary markedly between communities, and the prohibition is merely a minhag, not firmly founded on halachah. As for the consequences of a marriage that was performed during these restricted days, there are none, and obviously the marriage is valid. But one must consider the further tension that would be generated in the Jewish community by allowing and performing such marriages. With these considerations in mind, I would recommend that marriages be scheduled in concordance with the

general custom prevalent in the Jewish community. However, if such a case arises where the marriage can only be arranged, due to extenuating circumstances (however defined), during the restricted days then one could and should officiate, since the precedent has already been set by Joseph Karo himself.

While we are on the topic of restrictive days, included is a listing and a brief comment on other days which the strictly Orthodox prohibit weddings to be performed:

1. Shabat -- for it is considered an optional secular act (Reshut).¹

2. Festivals -- for one does not combine one joyous occasion with another, that is, we should not combine the joy of the wedding with the joy of the holiday.²

3. Intermediate days of the festivals -- same reason as no. 2.

4. The ten days of Penitence: from Rosh Hashanah to Yom Kipur.³

5. Seventeenth day of Tamuz until the ninth of Av -- for the seige of both the First and Second Temples began on the seventeenth day of Tamuz and both Temples were destroyed on the ninth of Av.⁴

6. Public fast days which include:
- a. The third day of Tishre, i.e., the Fast of Gedaliah
 - b. The tenth of Tevet
 - c. The seventeenth day of Tamuz
 - d. The ninth of Av
 - e. The fast of Esther, most often on 13. Adar

In each of these above-mentioned cases there are, of course, various divergent opinions and one should investigate

the issues involved before deciding as to whether one will perform a wedding on these days. Whatever the final decision, one should at least be consistent from year to year so that some congregational minhag can be established.

NOTES

¹Cf. Betsah 36b-37a.

²Cf. Mo'ed Katan 8b-9a.

³Cf. Ganzfried, Code of Jewish Law (New York, Hebrew Publishing Co., 1961), vol. 3, p. 81. For an opposite ruling see Jacob Z. Lauterbach, "Marriages Between New Year and Atonement", C.C.A.R. Responsa 1890-1950 (New York, Union of American Hebrew Congregations, 1954), p. 127. Furthermore, Hoffmann, Melamed Leho'il, vol. 3, p. 1, permits it.

⁴Cf. Shulchan Aruch, Orach Chayim 551:2. For further information and discussion see Ganzfried, op. cit., pp. 54-55, and Solomon B. Freehof, Recent Reform Responsa (Cincinnati, Hebrew Union College Press, 1963), pp. 173-178.

WHAT IS THE PROPER PROCEDURE FOR DISPOSING OF A WORN-OUT SEFER TORAH AND TORAH COVER?

In regard to the ceremony for the disposal of these two holy objects, the Sefer Torah and the Torah cover, tradition prescribes no set ritual, but it does inform us that they must be buried. The Talmud, Megilah 26b, prescribes that a worn-out Sefer Torah may be placed in an earthen jar and buried beside a scholar. This was to symbolize the idea that the Torah, though torn or worn-out, is still identified with the student:

ספר חורה שבלה גונזין אותו אצל תלמיד חכם...ובכלי חרס
שנאמר ונתתם בכלי חרס למען יעמדו ימים רבים.

A scroll of the law which is worn-out may be buried by the side of a talmid chacham...it should be put in an earthen vessel, as it says (Jeremiah 32:14) "And put them in an earthen vessel that they may continue many days."

The Shulchan Aruch, Orach Chayim 154:5, accepts this view:

ספר חורה שבלה מניחין אותו בכלי חרס וגונזין אותו בקבר ת"ח.

The reason for burying the defective scroll is to avoid its further misuse. Where there is fear that vandals may steal the Sefer Torah from out of the graves and burn it, it is permitted, according to R. Solomon b. Duran (1400-1476) in his Responsa (1742) no. 62, to put it in an earthen vessel and hide it in a secret place:

הספרים שבלו ואין יכול לקבורם בבית הקברות אצל ת"ח ושם
ישרפום גוים חתנם בכלי חרס במקום צנוע.

To merely throw away or destroy a Sefer Torah or other sacred writings is considered a violation of a negative command. Thus, we find in the Code of Jewish Law (New York, 1961) by Ganzfried, vol. 1, p. 90, no. 10:

המאגר כתבי קודש עובר בלאו ולא תעשון כן לה' אלהיכם.

He who destroys sacred writings is guilty of violating the Divine Command (Deuteronomy 12:4): "You shall not do thus to the Lord your God."

As is apparent from the above-mentioned passage, the ruling of burying the old Scrolls which became spoiled or torn was, in the course of time, extended to all Hebrew books which became torn or spoiled. Thus, we find codified in the Shulchan Aruch, Yoreh Deah 282:5, the more general statement:

אין זורקין כתבי הקודש ואפילו הלכות ואגרות.

Jacob Z. Lauterbach, in the C.C.A.R. Responsa 1890-1950 (New York, 1954), p. 189 claims:

This indirectly probably led to the well known practice of having special places called G'nizo where such books were temporarily kept before burying. In almost all Jewish centers, there are Genizas in the synagogues, either under the Bimah, within the walls, or in the garrets. As the place grew overcrowded, the content was carried to the cemetery for burial. Among Sefardim of Palestine it is customary to bury the accumulated G'nizos with considerable ceremony. They use the occasion for prayers for relief from drought and other forms of distress. (See Luncz, Jerusalem I., Wien 1882, p. 15-16). In Algiers the burial of the G'nizo usually takes place on Rosh Chodesh Iyar (Minhage Algier, p. 132). In many Russian and Polish communities, too, torn Scrolls and worn out books are buried in the ground. A tent is

then placed over the grave to show that it is a holy place. Of course, Psalms and prayers are recited at such occasions.

The covering for the Torah is classified as an "accessory of holiness" and not as an "accessory of religious observance". An "accessory of holiness" is to be stored, while an "accessory of religious observance" may be thrown away. We find the distinction clarified in the Talmud, Megilah 26b:

חנו רבנן תשמישי מצוה נזרקין תשמישי קדושה נגנזין ואלו
הן תשמישי מצוה סוכה לולב שופר ציצית ואלו הן תשמישי
קדושה ולוסקמי של ספרים תפילין ומזוזות ותיק של ס"ת
ונתיק של תפילין ורצועותיהן.

Our Rabbis taught: "Accessories of religious observances (when disused) are thrown away; accessories of holiness are to be stored away. The following are accessories of religious observances: a sukah, a lulav, a shofar, fringes. The following are accessories of holiness: large sacks for keeping scrolls of the Scripture in, tefilin, and mezuzot, a mantle for a Sefer Torah and a tefilin bag and tefilin straps."

This same categorization is codified in the Shulchan Aruch, Orach Chayim 154:3:

תשמישי קדושה כגון תיק של ספרים ומזוזות ורצועות
תפילין וארגז שנוחנין בו ספר תורה או חומש לפני
ההיכל יש בהן קדושה וצריך לגנוזן.

Therefore, the Torah covering must also be buried.

As for the service proper at the burial site, though no set ritual is prescribed in the tradition, it is suggested that appropriate readings be selected and/or selections from Psalms: Psalm 119:1-2; 19:8-10; 1:1-3; 86:11; 119:18,5; 25:5; 119:105; 143:10; 119:144 (Cf. Sabbath and Festival

Prayer Book, edited by Morris Silverman, 1959, p. 314 for a responsive reading incorporating these verses). The sermon might be built on one of the following passages dealing with the concept of the Torah as a Tree of Life as found in the Talmudic Anthology (New York, Behrman House, 1966) by Louis I. Newman, pp. 511-512:

When Torah is studied by mortals, the Tree of Life remains on earth. If ever a time should come when the Torah is no longer studied, the Tree of Life will depart and leave behind it a world that is dead. (Zohar I, 151a).

The Torah gives life to him who makes use of its light. (Ketuvot, 111).

When a passenger on the deck of a ship falls into the sea, the captain throws to him a line, crying: "Grasp it firmly and slacken not thy hold upon it at the peril of thy life!" By the same token, amid the troubled seas of his earthly voyage, man should cling to the precepts of Torah and thereby remain attached to God. For thus he may truly live. (Tanchuma, Buber ed., to Numbers, p. 74).

It is proper to recite the קדיש דרבנן and conclude with an appropriate benediction, such as:

האר עינינו בתורתך ודבק לבנו במצותיך ויחד לבנו
לאהבה וליראה את שמך ולא נבוש לעולם ועד.

Illumine our lives with Your Torah; open our hearts to Your commandments. Unite our hearts to love and revere You, and we shall never be brought to shame.

Or:

אבינו האב הרחמן רחם עלינו ותן בלבנו להבין ולהשכיל
לשמוע ללמוד וללמד לשמור ולעשות ולקיים את כל דברי
תלמוד תורתך באהבה.

Father, merciful Father, have compassion upon us; endow us with discernment and understanding. Grant us the will to study Torah, to heed its words and to teach its precepts. May we practice its teachings, and lovingly fulfill all its instruction.

WHAT DO THE LIONS ENGRAVED ABOVE THE ARK SYMBOLIZE?

The following answer is based on an article written by I. M. Casanowicz appearing in the Jewish Encyclopedia, vol. 8, pp. 94-95. The lion is the emblem of strength, courage, and majesty. We read in Proverbs 30:30:

ליש גבור בבהמה ולא ישוב מפני כל.

A lion which is strongest among beasts, and turneth not away from any.

Similarly, we find in Proverbs 22:13:

אמר עצל ארי בחוץ בתוך רחובות ארצה.

The slothful man saith, there is a lion without, I shall be slain in the streets.

Likewise, in Proverbs 26:13 we find a comparable passage:

אמר עצל שחל בדרך ארי בין הרחובות.

The slothful man saith, there is a lion in the way; a lion is in the streets.

Judah is compared to a lion in Genesis 49:9:

גור אריה יהודה מסרף בני עליה כרע רבץ כאריה וכלביא מי יקימנו.

Judah is a lion's whelp; from the prey, my son, thou art gone up; he stooped down, he couched as a lion, and as an old lion; who shall rouse him up?

Gad and Dan are also compared to a lion in Deuteronomy 33:20 and 22 respectively:

ולגד אמר ברוך מרחיב גר כלביא שכן וסרף זרוע אף קדקד.

And of Gad he said, Blessed be he that enlargeth Gad; he dwelleth as a lion, and teareth the arm with the crown of the head.

ולדן אמר דן גור אריה יזנק מן הבשן.

And of Dan he said, Dan is a lion's whelp; he shall leap from Bashan.

Saul and Jonathan (II Samuel 1:23), Israel (Numbers 23:23 and 24:9), and even God Himself (Isaiah 31:4; Hosea 5:14 and 11:10) are also compared to a lion.

As an element of decorative art, the figure of the lion entered into the design of the brazen laver in the Temple of Solomon and of Solomon's throne (I Kings 7:29, 10:20 and parallels).

The Talmud makes about the same figurative use of the lion as does the Tanach. The lion is the king of the wild animals. Thus, in Chagigah 13b we read:

דאמר מר מלך שבחיות ארי.

For a Master said: The king of the wild animals is the lion.

The lion is the symbol of true mental greatness (Shabat 151b; Gitin 83b), and in this regard is contrasted with the fox (Avot 4:15). The lion is the epitome of strength and awe (in the context of honoring the Shabat) as expressed in Pesachim

112a:

כדתנן ר' יהודה בן תימא אומר הוי עז כנמר וקל כנשר וז
כצבי וגבור כארי לעשות רצון אביך שבשמים.

As we learned, R. Judah b. Tema said: Be strong as the leopard and swift as the eagle, fleet as the deer and valiant as a lion to do the will of thy Father in heaven.

Therefore, since the lion traditionally represents strength, courage, majesty, true mental greatness and awe, and is the king of the animals symbolically equated to Judah, Israel, Gad, Dan, Saul, Jonathan, and even God, it is no wonder why it is used as a decorative piece of art above the Ark.

WHAT IS THE STATUS OF A STILLBORN CHILD
IN REGARD TO THE FUNERAL SERVICE AND MOURNING?

The Shulchan Aruch, Yoreh Deah 374:8, states that "one does not mourn for a child less than and including thirty days old, but for a child older than thirty days one does mourn over him":

חינוק כל שלשים יום ויום שלשים בכלל אין מתאבלים עליו
...ומשם ואילך מתאבל אליו.

This is based on a Baraita found in Shabat 135b:

תניא ר"ש בן גמליאל אומר כל ששהה ל' יום באדם אינו
נפל שנאמר ופדויו מבן חדש תפדה.

It was taught, R. Simeon b. Gamaliel said: Any human being who lives thirty days is not a nefel (a non-viable, premature birth), because it is said (Numbers 18:16) "And those that are to be redeemed of them from a month old shalt thou redeem." (Since he must then be redeemed, it follows that he is viable).

We also find, in regard to the census, as recorded in Numbers 3:40, the chronological distinction for counting the first-born of the males of the children of Israel was from one month old and upward:

ויאמר ה' אל משהפקד כל בכר זכר לבני ישראל מבן חדש ומעלה.

And the Lord said unto Moses, Number all the first-born of the males of the children of Israel from a month old and upward...

On the basis of this emphasis on "upward", R. Ashi ruled in

Bekorot 49a that for a child who died on the thirtieth day, one does not mourn:

אמר רב אשי הכל מודים לענין אבילות יום שלשים כיום
שלפניו ואמר שמואל הלכה כדברי המיקל באבל.

Said R. Ashi: All authorities concerned agree that as regards the laws of mourning the thirtieth day is counted as being like the previous day, for Samuel said: The law is in accordance with the authority who is lenient in matters of mourning.

Thus, the mourning rites are not observed for a child who does not live a full month.

In regard to the funeral service for a child under a month old, the regular funeral service is not followed. That is, the prayers, Tsiduk Hadin and the Burial Kadish are not recited. This is based on the Shulchan Aruch, Yoreh Deah 344:4:

צדוק הדין וקדיש אומרים על חינוק משעברו עליו שלשים יום.

One only says the Tsiduk Hadin and the Kadish for a child who has passed his thirtieth day (of life).

As for other laws in regard to a child who has not lived a full month, we find them codified in the Shulchan Aruch, Yoreh Deah 353:4,6:

חינוק בן ל' יום מוציאים אותו בחיק לבית הקברות ולא בארון.

One carries a month old child (or less) to the cemetery in the bosom (arms) and not in a casket...

חינוק שמת קודם שנימול מוהלין אותו על קברו בלא ברכה
וקורין לו שם.

A child who died before he was circumcised, one circumcises him at his graveside without a blessing, and one gives him a name.¹

In summary, no mourning rites are to be observed for a stillborn child and the funeral service does not include the Tsiduk Hadin and the Burial Kadish.

NOTES

¹For a ruling opposing the circumcision of a still-born child, see Solomon B. Freehof, Reform Responsa (Cincinnati, Hebrew Union College Press, 1960), pp. 96-99.

MAY A WOMAN CONVERT TO JUDAISM SAY KADISH
FOR HER DECEASED CHRISTIAN MOTHER?

Involved in this question are two basic considerations. The first, may women in general say Kadish for a deceased relative? Secondly, if women are permitted to say Kadish, may a woman convert say Kadish for her deceased Christian mother? Each point requires full consideration before any conclusion can be ascertained.

Strict Orthodoxy would posit that women are not permitted under any conditions to say Kadish in a synagogue for a deceased relative. Rabbi S. Klass in Responsa of Modern Judaism (New York, 1966), vol. 2, pp. 119-120, argues that the

Kadish is entwined with praying in a minyan of which women are exempt. For women are excused from positive commands relating to a specific time and Tosafot in the Gemara, Menachot 32b, tells us that he who is excused from a law and does it, is called a simpleton.

But, this sort of argumentation appears weak as was discussed in my previous Responsum no. V, "May a Woman be Called to the Torah for an Aliyah?" where it was shown that a woman, though exempt from fulfilling a positive commandment that is bound up with a stated time, may, in any event, fulfill the mitzvah if she so desires. This, too, ought to be the case in regard to a woman saying Kadish. Though she is technically exempt from the commandment, she ought to be permitted to recite the

Kadish if she so desires.

A further objection posited by the Orthodox is related to the original purpose derived from the recitation of the Kadish. It was the traditional belief, as expressed in the Talmud, Shabat 152, that the body of a dead person exists for twelve months and the soul descends from the heaven to the body. After twelve months, the body is dissolved and the soul doesn't return:

כל שנים עשר חדש גופו קיים ונשמתו עולה ויורדת לאחר
שנים עשר חדש הגוף בטל ונשמתו עולה ושוב אינה יורדת.

But, if the person was unrighteous, his judgment would be a twelve month punishment in Gehinom. Thus, we read in the Mishnah, Eduyot 2:10:

משפט ושעים בגיהנם י"ב חדש שנאמר והיה מדי חדש בחדשו.

The judgment of the unrighteous in Gehenna shall endure twelve months, for it is written (Isaiah 66:23)
"It will be from one month until its (same) month."

The purpose of the Kadish was to placate God, so that the unfortunate parents would be removed from Gehinom.

With this understanding as to the functional importance attached to the recitation of the Kadish, we can better appreciate these further quotes. In Sanhedrin 104a we find that a son confers privileges and saves his father:

בןא. The Tosafot to Sotah 10b concurs and explains that only a son can save his father from Gehinom and bring

him into the future world; thereby implying that no benefit is to be derived from a woman's recitation of the Kadish:

נרא מזכי אבא...הבן מציל את האב.

This redemptive quality assigned to the Kadish is not in consonance with the spirit of Reform Judaism. Leopold Stein, in his Torat Chayim no.35, as collected by W. Gunther Plaut in The Rise of Reform Judaism (New York, 1963), p. 265, recommends:

The following should be maintained: the kindling of the memorial light...as well as the saying of the Kadish prayer (the prayer of sanctification). The latter is to be encouraged, not because its ritual would ensure the happiness of the souls of our departed (this is a point of view which is un-Jewish and should be abandoned), but so that children be constantly reminded of their high duty to sanctify the name of God among men in their parents' stead, and to help bring about His heavenly kingdom on earth.

Similarly, Dr. Jakob J. Petuchowski in his Prayerbook Reform in Europe (New York, 1968), p. 324, after explaining the contents of the Kadish, expresses his disdain for the superstitious quality assigned to the Kadish:

The Kadish is, of course, an eschatological prayer. Its reference to the establishment of the Kingdom of God would be understood by the learned to refer to the time when, among other eschatological happenings, the dead will be resurrected. However, apart from the version of the Kadish recited at the graveside after a burial, which specifically mentions the resurrection and life eternal, no other forms of the Kadish make any explicit references to the dead. That includes the form of the Kadish customarily recited by the mourners. The so-called

Mourner's Kadish, in its actual wording, is a doxology addressed to God, which, when recited by the bereaved, is meant to dramatize the theme of "The Lord hath given, and the Lord hath taken away; praised be the Name of the Lord." That, at any rate, would be the ideal. In practice, however, helped along by folklore and superstition, the Mourner's Kadish was increasingly understood as the kind of prayer which the living offer up on behalf of the dead -- somewhat analogous to the Roman Catholic Mass for the Dead. Like the latter, it was believed to be actually efficacious; so that the view quite naturally gained ground that the more times the Kadish would be recited, the more assured would be the salvation (or the rescue from hell) of the departed on whose behalf the Kadish was said.

He continues:

Theoretically, a radical Reform movement might have done away with the Kadish altogether, just as it had eliminated a number of customs and ceremonies which, in the mind of the people, had given rise to superstitious notions. But, in practice, Reform Judaism did nothing of the kind with the Kadish. On the contrary, it provided an Introduction to the Kadish, and it added a paragraph to the Kadish, in such a way that henceforth the Kadish would express in its actual wording the meaning which people had read into it all along. Reform Judaism made the Kadish a "prayer for the dead." The Hamburg Temple Prayer-book of 1819 was the first to do so.

We must admit, although our early Reformer failed to implement this similar conclusion, that the Kadish is merely a doxology and has no efficacy in saving one's parents. We must furthermore logically conclude that to deny a woman the right to recite the Kadish on the basis of the superstitious belief that her words, that laud the greatness of God, would not save her parents, is invalid. The Kadish, whether recited by a male or female, has no such redemptive effect.

Therefore, a woman should be allowed and even prompted to recite the Kadish in the synagogue.

In regard to the second consideration -- may a woman converted to Judaism recite the Kadish for her deceased mother -- to the best of my knowledge, there is not any discussion of this specific matter in the halachic sources. However, we may gain some insight from the case of a male proselyte saying Kadish for his Gentile father.

Solomon B. Freehof in his Recent Reform Responsa (Cincinnati, 1963), p. 137, concludes, concerning the case of a male proselyte reciting the Kadish for his Gentile father, that "whoever discussed the answer is in the affirmative" that he may say Kadish. Since it appears appropriate that a woman also be permitted to recite the Kadish, we may conclude that that which applies to a male proselyte should likewise apply to the female proselyte. Therefore, the woman convert may say Kadish for her deceased parent.

The halachic point of disputation involved in such a decision centers around the Talmudic statement as to the relationship of a convert to his Gentile relatives. According to the Talmud, Yevamot 22a, "a convert is like a new-born child":

וגר שנחמיר כקטן שנולד דמי.

This means that upon entering Judaism, the convert relinquishes his past life and legally has no relatives anymore.

But this new status presented some practical problems. For example, legally he could now marry his sister, since she was technically no longer his relative. Yet, the Talmud, Yevamot 22a, says that if this were permitted, it would be said that paganism, which he abandoned, was more moral and holier than the Judaism which he has entered:

שלא יאמרו באין מקדושה חמורה לקדושה קלה.

The same situation applies in the case of a proselyte saying Kadish for his father, who also converted to Judaism. Legally, according to the Mishneh Torah, The Laws of Mourning 2:3, and the Shulchan Aruch, Yoreh Deah 374:5, this is prohibited:

וכן הגר שנתגייר הוא ובניו...אין מתאבלין זה על זה.

Similarly, one could infer that a proselyte should not say Kadish for his Gentile father. But Rabbi Aaron Walkin in his Responsa, Zekan Aharon (New York, 1951), vol. 2, pp. 112-114, (originally written in 1933) believes that a proselyte may and should say Kadish for his Gentile father:

ולפי עניות דעתי יש לצוד דגם חיוב איכה (על בנו הגר לומר קדיש)

He gives supportive evidence for his decision from the fact that Maimonides himself, in the Mishneh Torah, The Laws of Mamrim 5:11, says that a proselyte must honor his Gentile father, and gives the same reason which the Talmud, Yevamot

22a, gave for prohibiting a proselyte from marrying his sister; namely, that it should not be said that the proselyte has left a more moral and holier religion than the one he has entered:

יש מקום לחייב לגר באמירת קדיש והנא הרמב"ם בפ"ה מהלכות
ממרים ה"א כתב וז"ל הגר אסור לקלל אביו העכו"ם ולהכותו
ולא יבזוהו כדי שלא יאמרו באנו מקדושה חמורה לקדושה קלה.

Walkin, therefore, concludes that a male proselyte may and should say Kadish for his Gentile father.

Accepting the concept of full equality of women in Reform Judaism, as we ought to, I can see no reason, then, for prohibiting a female proselyte from reciting the Kadish for her deceased relatives; for the Kadish remains a prayer which magnifies the greatness of God and has no superstitious power of redeeming the parents from Gehinom. Furthermore, מפני דרכי שלום, in the interest of peace, we must attempt within our congregations to de-emphasize the unfortunate stigma attached to the proselyte by the congregants, and, therefore, not place too many restrictions upon the individual who has chosen of his own free will to join our religion as a covenantal equal. We must remember, as R. Natan used to say (Mechilta, Mishpatim 18): "Do not throw up to your fellow a blemish you have yourself." If you insult a man because he is a proselyte, he can retort: "Scripture says (Exodus 20:20): כי גרים הייתם."

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