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Modern Challenges to Halakhah as reflected in David Hoffmann's Melammed Leho'il

by

Jonathan M. Brown

Thesis submitted in partial fulfillment
of the requirements for
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Modern Challenges to Halakhah
as reflected in David Hoffmann's Melammed Leho'il

by Jonathan M. Brown

DIGEST

The first chapter introduces the reader to David Hoffmann, giving information on his life, his character, and his scholarly contributions. Emphasis is placed on his contact with the leading figures of European Orthodoxy, including Samson Raphael Hirsch, Seligmann Baer Bamberger, and Azriel Hildesheimer. It was at Hildesheimer's seminary in Berlin that Hoffmann made his mark as the poseq 'elyon of German Orthodoxy.

The second chapter discusses the genesis, publication difficulties, contents, and import of Melammed Leho'il, Hoffmann's collected responsa.

The following four chapters are based upon some fifty selected responsa, reflecting respectively: the challenge of new products, inventions, and means of transport; the challenge of a secular environment; the challenge of Christianity; and the challenge of Reform Judaism. Each of the challenges is placed in its historic setting, with the relevant responsa either quoted or paraphrased. The intention has been to indicate the means by which Hoffmann was able to arrive at his (predominantly lenient) decisions while remaining firmly within the boundaries of the halakhah. A secondary purpose has been the comparison between the traditional approach to such problems, and the approach of Reform Judaism.

The final chapter discusses five major principles which Hoffmann consistently invoked. They include: "a time of emergency;" precedent; trying not to make things worse; avoiding financial hardship; and a concern for the sanctification of God's name. Citing these principles, and quoting authorities who had reached similar decisions, Hoffmann was able to mediate effectively between the halakhah and the environment.

The thesis concludes with a brief statement about the prognosis for the responsa literature today. The author supports Freehof's view that despite the widespread disregard of halakhah among contemporary Jews, the challenge of the new State of Israel, and the increasing availability of responsa for historical research will combine to foster a continued interest in this fascinating branch of the legal literature.

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Introduction

The responsa literature represents a vast and relatively unknown field of scholarly endeavor. Even though Zacharias Frankel of Breslau outlined a plan for the scientific study of responsa over a hundred years ago (1865); even though Boaz Cohen published an extensive bibliography of responsa and related material (1930); even though Solomon B. Freehof and others have written extensively on responsa, there is much that remains to be done in this area. Hopefully, this thesis represents a step in the right direction. It is a study of the responsa of one eminent authority, David Hoffmann (1843-1921), the <u>poseq 'elyon</u> of German Orthodoxy in the first two decades of the present century. These were times of acute crises for traditional Jewry: a secular environment, Christian Biblical scholarship, Reform Judaism, and other forces were at work to dissolve the bonds linking Jewish life to its past. Yet somehow, Hoffmann was able--through his responsa--to meet these challenges effectively.

<u>Melammed Leho'il</u> contains some three hundred and forty responsa, far too many to be analyzed in the context of a rabbinical thesis. Additionally, many of them are concerned with details of <u>kashruth</u> or <u>shehitah</u>, and have no direct bearing on the basic challenges to the <u>halakhah</u>. In the end,

approximately fifty responsa were selected for intensive analysis, and were divided into four separate categories: the challenge of new products, inventions, and means of transport; the challenge of a secular environment; the challenge of Christianity, and the challenge of Reform Judaism. These four sections constitute the "heart" of the thesis.

In addition to the relevant responsa, each of these chapters contains some notes on the historical setting, as well as occasional references to Reform responsa, for purposes of comparison. But the main intent has been to indicate how Hoffmann was able to make so many lenient decisions, and yet remain well within the boundaries of the halakhah.

The final chapter discusses five major principles which Hoffmann consistently invoked, by way of extenuating circumstances. They include: "a time of emergency;" precedent; trying not to make things worse; avoiding financial hardship; and a concern for the sanctification of God's name. Citing these principles, and quoting authorities who had reached similar decisions, Hoffmann was able to guide his generation through a difficult period.

The translations which appear in the text, unless otherwise indicated, are mine; they are accurate, but not necessarily literal. For Biblical passages, I have generally referred to the Jewish Publication Society version; for

Talmudic passages, I have used the Soncino Talmud.

In the matter of transliteration, no small concern in a thesis such as this, I have been guided by the instruction manual published by the Hebrew Union College Annual, with the valuable assistance of my advisor, Dr. Alexander Guttmann. Dr. Guttmann also provided considerable help in coping with the German sources.

It is to Dr. Guttmann, of course, that my deepest thanks must be offered, not only for his keen insights and wealth of knowledge; not only for his warm interest in my work, but also for being available at almost any hour for a conference, a tutorial, or whatever was needed.

Acknowledgements are due also to my devoted wife, Saragrace, without whose unlimited patience and sacrifice this thesis would never have been completed in its present form, and to my daughter, Laura Ann, who has spent most of her first few weeks on earth listening to a typewriter.

Chapter One

The Life and Times of Rabbi David Hoffmann

The author of Melammed Leho'il was born on November 24, 1843 (the first of Kislev, 5604) in Verbó, Hungary.[1] His father was Moses Judah, the dayyan of that city, who died when David was five. The child's education was subsequently placed in the hands of his mother. He followed the standard order of study, but was something of a prodigy, beginning Bible at age three, Rashi at four, and Talmud at five. By the time he was ten years old, young Hoffmann had exhausted Verbó's resources, and was sent to a nearby yeshivah. Two years later, when Rabbi Samuel Sommer accepted the pulpit at Verbó, Hoffmann returned to study with him; Rabbi Sommer must be considered his first real teacher.[2]

In 1859, when Hoffmann was sixteen, he entered the academy of St. Georgien (near Pressburg), where he was taught by Rabbi Moses Schick, one of the foremost Hungarian authorities of his time.[3] The following year he entered Rabbi Azriel (Israel) Hildesheimer's seminary in Eisenstadt, where he also devoted time to secular studies. Hildesheimer had a profound influence on David Hoffmann, an influence that was to affect the course of his life.

Born in Halberstadt in 1820, Hildesheimer had been called to the rabbinical post in Eisenstadt in 1851, and immediately founded there a parochial school, in which correct German was used, and in which German principles of pedagogy were adopted in teaching Jewish as well as secular subjects. Shortly thereafter he established a rabbinical school, which placed him squarely in the center of public controversy; it seems that Hungary in the 1850's was not prepared for a modern type of rabbinical seminary:

> The introduction into the school of German methods of instruction and of secular branches of learning was resented by the Orthodox party in Eisenstadt, a resentment which Hildesheimer's liberal tendencies and sympathies with modern culture soon changed to positive antipathy. This feeling became so strong that the rabbinical school was denounced before the representatives of the government at Oldenburg, the result being that the government ordered the school closed within twenty four hours, and the pupils removed from the city.[4]

Soon afterwards, however, Hildesheimer succeeded in obtaining state recognition of his rabbinical school, but his troubles were not over.

Around 1860, Akiba Joseph, leader of the Hasidim, placed Hildesheimer under a ban. Matters remained in a tenuous state until the Hungarian Jewish Congress of 1868, where Hildesheimer endeavored to join himself with the old Orthodox party; failing in that effort, he and thirty-five of his followers formed a separate

group known as "the cultured Orthodox."[5] He was called to Berlin in the following year, to become director of the Beth ha-Midrash there, a position which he had sought on account of his disappointments in Hungary. Certainly no liberal, he was yet not traditional enough for Hungarian Orthodoxy.[6]

Hoffmann undoubtedly followed these developments with great interest, but had yet to finish his formal training. In 1863, he went to Pressburg, where he became the pupil of Rabbi Abraham Samuel Benjamin Schreiber, the Kethav Sofer.[7] He also graduated from the Evangelical Gymnasium of that city, where he continued those secular studies which were to have such a profound impact on his scholarship.[8]

Two years later, Hoffmann entered the university of Vienna, where he came into contact with the Jewish scholars of that great metropolis, and notably Isaac Hirsch Weiss,[9] who himself had come to Vienna in 1858 in search of a suitable position; Weiss had eventually been appointed by Adolph Jellinek, chief rabbi of Vienna, as lecturer in the Beth ha-Midrash, a position he held some forty years.[10] While in attendance at the university, Hoffmann studied philosophy, history, and Oriental languages.[11]

Like many other scholars, Hoffmann did not complete his university studies in Vienna; he went to Germany in

1866, having accepted an appointment as a teacher at the Lehrer-Praeparanden-Anstalt in Höchberg, Bavaria.[12] While serving in this capacity, he met the woman who was to share his life, Zerline Rosenbaum of Würzburg, whom he married in 1867.[13]

He also came into contact there with a second great personality, Rabbi Seligmann Bär Bamberger, who introduced him to the German method of Talmud study, which emphasized thoroughness and exactness in evolving the plain meaning of the text. Hoffmann was deeply influenced by this contact, and his manner of instruction during his later years was a blend of his Hungarian background, and his exposure to German methodology.[14]

But Seligmann Bär Bamberger was more than an astute Talmudist; he was also a leader of the Orthodox party in Germany. He had assumed the office of district rabbi of Würzburg in 1840, when he was thirty-three years old, and immediately opened a yeshivah. Through contact with his pupils, who prepared for university while pursuing their rabbinical studies, he had gradually come to recognize that a representative of Orthodoxy ought to have some knowledge of secular sciences as well.[15] This insight he shared with David Hoffmann.

Hoffmann completed his university studies in Berlin and Tübingen, receiving his doctorate from the University of Tübingen in 1870.[16] The title of his doctoral thesis

was: Mar Samuel, Rektor der Jüdischen Akademie zu Nehardea in Babylonien. That same year he took a position at Rabbi Samson Raphael Hirsch's school in Frankfort/Main, bringing him into contact with the third great neo-Orthodox thinker of his generation.

Hirsch, who had had some secular education at the University of Bonn (where he was a contemporary of Abraham Geiger) and the Hamburg grammer school, did not possess the fear of secular science that was characteristic of so many older men. Instead of reacting against Reform by insisting upon a rigidity that was not traditional, he reacted by stressing the power of gradual change that was available in the rabbinic tradition.[17]

By 1851 (when Hirsch was forty-three), he had accepted a very prominent position as the Chief Rabbi of Moravia and Austrian Silesia, and had become a member of the Austrian parliament. But when the small Orthodox group in Frankfort asked him to become their leader, he resigned his Austrian post, and accepted the call to Frankfort, where he remained till the end of his life, some thirty-seven years later. By founding a school, by extensive scholarly work, and through his periodical Jeschurun, Hirsch was able to reinvigorate traditional Judaism not only in Frankfort, but throughout Germany.[18]

Hoffmann was deeply influenced by Hirsch, as he had been by Bamberger; yet, in the end, he was to pursue his own genius. A secure position was offered him two years later, in 1873, when Hildesheimer invited him to teach Talmud and Codes to the underclassmen at his newly founded seminary in Berlin. Hoffmann went gladly, and lectured there for forty-eight years, until his death in 1921.[19]

The importance of Hildesheimer's seminary for the support of an enlightened Orthodoxy can scarcely be overestimated. Founded in October of 1873, it counterbalanced the Hochschule für die Wissenschaft des Judentums, which had been established in the same city in the previous year for the purpose of training rabbis along liberal lines.[20] Meyer Waxman, in his informative article on Hoffmann in Hokhmath Yisrael Bema'arav Europa, Tel Aviv: 1958, evaluates the seminary as follows:

> This house of study, which lasted for sixty-five years, served during that entire period as the cornerstone of Orthodox Jewry in Germany and in neighboring countries. Two generations of rabbis who were educated there and who fashioned that (neo-Orthodox) Judaism, gave it the strength to expand and become strong, and to capture an important and recognized position in the lives of the Jews of western Europe, until the coming of the holocaust in 1939.[21]

It was there that Hoffmann taught, and it was primarily in the reports of the seminary that the products of his facile pen appeared. The first report

of the newly established institution, appearing in 1874, contained a discussion of Hoffmann's on the phrase mimohorath ha-Shabbath in connection with the Omer and Shavuoth. Another paper, this time on Die Oberste Gerichtshof in der Stadt des Heiligtums appeared with the seminary report of 1878.[22]

Hoffmann was also a great scholar in the field of the tannaitic midrashim, and tannaitic literature generally. His Die erste Mischna und die Controversen der Tannaim (1882), and his Zur Einleitung in die halachischen Midraschim (1888) are classics in the field. Some other examples of Hoffmann's scholarly work will be mentioned in the second section of this chapter. But for a fully competent review of the entire scope of Hoffmann's scholarly activity, the reader is referred to the sources listed in the notes.[23]

Teaching at the seminary was by no means Hoffmann's only activity. Fulfilling a promise he had made to his father-in-law, Hoffmann accepted the position as lecturer for the local Shas-Hevrah in 1874, and from 1876-1893, together with Dr. Abraham Berliner, he edited the Magazin für die Wissenschaft des Judentums.[24] He also edited for a time the Israelitische Monatsschrift, the literary supplement of the Jüdische Presse.

Hoffmann was a fine teacher, a renowned scholar, and a competent editor. He also served as rector of the seminary from 1899, the year that Hildesheimer died, until 1921, the year of his own demise. On the occasion of his seventy-fifth birthday, in 1918, the German government conferred upon him the title of Professor, a rare honor for a Jew. His passing on November 20th, 1921 (the 19th of Heshvan, 5682) was mourned by German Jewry, and by Jewish scholars everywhere.[25]

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The story of a man's life, described in the bare details of names, places, and events, does not produce a sufficiently clear picture of the kind of person he was. In order to understand Hoffmann a little better, it is necessary to discuss some of the forces which were challenging Orthodoxy in his day: they include the growing Reform movement, Zionism, and Christian Biblical scholarship. Another movement which affected Jews generally, also elicited comment from Hoffmann; I refer to the resurgent anti-Semitism which appeared in western Europe towards the end of the nineteenth century.

Alexander Marx in his Essays in Jewish Biography, describes the desperate straits of traditional Judaism in Germany in the middle of the nineteenth century. He

notes that: "The vigorous Reform movement was making constant inroads into its ranks, and it lacked the leadership of men possessing the ability and training to fight the tendencies of the Reformers."[26] The first to respond to this challenge were Samson Raphael Hirsch and Azriel Hildesheimer. Hirsch was the philosopher of the new movement, and Hildesheimer its organizer; but it was Hoffmann who carried their success into the twentieth century.

Even while Hoffmann was growing up in Verbó, the proponents of Reform in Germany were gaining strength. The reverberations of the Geiger-Tiktin affair,[27] and the Hamburg Prayerbook controversy[28] were still being heard, while in November, 1842, just a year before Hoffmann's birth, the Verein der Reform-freunde was established in Frankfort.[29] Shortly thereafter came the rabbinical conferences of Brunswick, Frankfort/Main, and Breslau. And in 1844, another radical group the Genossenschaft für Reform im Judentum was founded in Berlin.[30] Here indeed was a serious challenge to Orthodoxy.

Hoffmann prepared two key publications to counter the propaganda of the Reform movement. The first was a series of twelve articles which appeared in the Jüdische Presse in 1895, and were republished (in revised form) in 1910. They were written in response to a book by

Rabbi A. Weiner, entitled Die Speisegesetze, which absolutely denied the validity of the oral law. Hoffmann took this opportunity to formulate the arguments for the authority and authenticity of the Torah shebe'al peh.[31]

His other publication on this subject was an epistle to the Verein zur Wahrung der Interessen des gesetzestreuen Judentums in Baden, commenting on the reforms in the new prayerbook published by the Oberrat der Israeliten of Baden; from this prayerbook the laws of the sacrifice, the prayers for resurrection, and the promises for the restoration of Israel had been omitted.[32]

But Hoffmann's most profound answer to Reform was not to be found in polemical writings. Rather it was his approach to halakhah (which will be analyzed in detail in succeeding chapters) that was more significant. As Waxman notes:

> These answers (to the questions directed to him), which were collected in the book Melammed Leho'il, helped the guardians of the law to settle themselves in the new world with all its changes and permutations, without transgressing the laws of the Torah and the customs of tradition.[33]

A second movement which had a profound impact on German Orthodoxy was Zionism. Herzl, the Viennese journalist whose life was changed by the Dreyfus trial

of 1894, had published his outline for a Jewish national state early in 1896, under the title Der Judenstaat, and the first Zionist Congress met in Basle the following year. A new solution to the problems of the Diaspora was being prepared.

Samson Raphael Hirsch, in his famous Nineteen Letters of Ben Uziel, had rejected the idea of a Jewish nationality, stating that "land and soil were never Israel's bond of Union."[34] Hoffmann, on the other hand, was very sympathetic with the new movement, but his official position did not permit him to express himself publicly. It was a fairly straightforward situation: the seminary was dependent upon the support of the Orthodox, and the teachers had to be careful lest they offend some of the more zealous adherents of traditional Judaism.

We know how Hoffmann felt about Zionism from a letter he wrote to his son, who had been critical of the movement. Hoffmann pointed out that Zionism -- in his way of thinking -- meant giving up the aping of foreign religious customs and the denial of Judaism. He argued further that even if the Zionists were not, on the whole, observant Jews, they would vote with the conservatives and against the use of the organ in the synagogue. He thought that the Zionists would help the Orthodox in the work of Palestinian colonization, and

in spreading the love of Judaism. Finally, he thought that the fight against the Zionists ought to be left to reformers and radicals.[35] It would seem therefore that whatever sympathy he had for the movement depended upon rather parochial interests.

A third major challenge to German Orthodoxy came from the writings of the Christian Biblical scholars, and notably those of the Wellhausen school. In establishing the documentary hypothesis, these scholars had undermined the belief in a divinely revealed Torah transmitted to Moses at Sinai. From his standpoint as a defender of tradition, Hoffmann was unwilling to accept the conclusions of such scholarship. But he did not respond by way of anathema. Rather, like Maimonides, he attempted to prove that reason and scholarship would support the authenticity of Torah. He undertook to refute the conclusions of the Wellhausen school with their own weapons, in such works as Abhandlungen über die pentateuchischen Gesetze, I, (1878), and Die wichtigsten Instanzen gegen die Graf-Wellhausensche Hypothese (1904).[36]

Hoffmann also responded to the attacks of the anti-Semites, which represented not only a threat to Orthodoxy, but to Judaism in general. In 1883, Dr. Justus (a pseudonym for the convert Aaron Briman) published Der Judenspiegel, which by means of forged

quotations from the Talmud and the Shulhan 'Arukh, placed Judaism in a very unfavorable light. A German daily paper had printed extracts from this book, and its editor was placed on trial on a charge of disturbing the peace. A Dr. Ecker, asked by the court to render an expert opinion, sanctioned the book.

The following year another anti-Semitic pamphlet appeared in Bonn, and was sanctioned by yet another scholar, Dr. Johannes Gildemeister. To counter these publications, Hoffmann wrote a series of twenty articles for the Jüdische Presse in 1884, which appeared in book form the following year, and was republished, in an enlarged edition, in 1894.[37]

Some years later, on the eve of World War I, Hoffmann was called upon to evaluate the work of Theodor Fritzsche, a notorious anti-Semite. His opinion, along with that of the other experts called in by the court, was turned over to Professor Rudolph Kittel, who rendered the final recommendation; it substantially ignored Hoffmann's point of view.[38] It was a difficult time for German Jewry, and they were fortunate that a scholar of Hoffmann's reputation was able to speak for them.

E. M. Lipshütz, in his introduction to Barischansky's translation of Wichtigsten Instanzen, u.z.w.,

(Re'ayoth Makhri'oth Neged Wellhausen) has described Hoffmann as "one who sits in tents."[39] Nonetheless, he was aware of, and responded to, the major influences affecting German Jewry. He had a realistic view of the needs of traditional Judaism.

Many of David Hoffmann's contributions as scholar and teacher have been presented in the previous chapter. The present chapter will consider his influence as the posek 'elyon, the ultimate halakhic authority for German Orthodoxy, with special attention on the book where so many of his decisions are recorded: Melamed Leho'il.[1]

Hoffmann's importance as halakhist and respondent can hardly be overemphasized. Lipshütz, in his introduction to Katischansky's Hebrew translation of Die Wichtigsten Instanzen gegen die Graf-Wellhausensche Hypothese, states that during the years between 1899 and 1921, while Hoffmann was serving as rector of the seminary,

> Every important matter, and every difficult question (that arose) in all the districts of Germany came to him, from laymen and rabbis both, all of whom had a 'student-teacher' relationship with him, and all of whom drank from the well of his knowledge.[2]

M. Wachman, who wrote the article on Hoffmann in Federbush's Hokhmath Yisrael be'Eiropa, New York: 1958, seconds this evaluation, when he writes:

Chapter Two

Melammed Leho'il

Its Background, Contents, and Style

-i-

Many of David Hoffmann's contributions as scholar and teacher have been presented in the previous chapter. The present chapter will consider his influence as the poseq 'elyon, the ultimate halakhic authority for German Orthodoxy, with special attention on the book where so many of his decisions are recorded: Melammed Leho'il.[1]

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M. Waxman, who wrote the article on Hoffmann in Federbush's Hokhmath Yisrael Bema'arav Europa, New York: 1958, seconds this evaluation, when he writes:

> In this discipline (Talmud and related studies) (Hoffmann) was in his day the greatest of the scholars and rabbis in Germany. It is no wonder then, that he served as a storehouse for all of them. From all sides they turned to him with legal questions of all sorts, many of which displayed a background of contemporary life; among them were questions concerning industry and business...and medical matters.[3]

Not all of Germany's Jews considered halakhah important. But those who did, looked to David Hoffmann to guide them.

The responsa which conveyed so many of Hoffmann's decisions to the adherents of traditional Judaism were not collected and published until after his death,[4] though he had already begun to transcribe them in 1892, when he had been given a large, blank folio volume for that purpose.[5] Hoffmann eventually filled four of these folio volumes, but one of them was lost after his death, and has never been located.[6]

The extant responsa were collected and published by Moses Judah Hoffmann, his eldest son, after they had been approved by Dr. Abraham Kaplan, Hoffmann's successor as head of the seminary.[7] Moses Judah was assisted in his efforts by Rabbi Zvi Hirsch Janjak, who helped him organize the responsa according to the divisions of the Shulhan 'Arukh. The responsa appeared in three volumes, published in Frankfort/Main between

1926 and 1932. The first volume appeared in 1926, and contained responsa on 'Orah Hayyim; the second volume appeared the following year, and contained responsa on Yoreh De'ah, while the final volume appeared in 1932, and contained responsa on both 'Even Ha'ezer and Hoshen Mishpat, as well as a number of scholarly notes, and interpretations of Talmudic passages.[8] There are approximately three hundred and thirty responsa in the three volumes, some fifty of which have been translated and analyzed for the purposes of this thesis.[9]

Before turning to a detailed consideration of the contents of the three volumes, we shall examine the points made by Hoffmann in his introduction to Volume One, 'Orah Hayyim.[10]

In the first part of his introduction, Hoffmann laments the fact that so few of the many books that are published--particularly in Russia, Hungary, and Galicia--are of any lasting value. Most of them, he says, are devoid of value, and it would have been better if they had never been published. He points out that since many of the halakhic discussions have a casuistical base, scholars have been unwilling to depend on them for a permissive ruling; the consequence has been a heaping up of stringent decisions, until the scoffers come and say: "we have sages--to do evil; but to do good is beyond their power."

Hoffmann also notes the division between those who follow critical methods and ignore Talmud, and those who concentrate on Talmud, and ignore criticism; he, of course, felt at home in both disciplines, and tried to synthesize them in his writings. Of his devotion to the critical method he says: "I did not prevent myself from embarking on the ships of Tarshish which traveled on the sea of criticism,"[11] while at the same time asserting his loyalty to traditional exegesis: "I did not leave the method of study of my revered teacher (Azriel Hildesheimer)."

In the second part of the introduction, Hoffmann chastises the German Jewish community for allowing ignoramuses to be appointed to important positions (because of their ability to preach), while the real scholars, who devoted themselves to Torah, remained poverty-stricken and neglected in the smaller communities. Although Hoffmann was undoubtedly concerned with the future of the students at his seminary, he indicates here a rather narrow, "traditional" view of the importance of preaching.

The introduction concludes with an account of how the responsa came to be written down (see above, p. 16), but Hoffmann also makes the interesting point that most of his other writings are in German, and therefore may disappear, while this collection is written in Hebrew,

and not only should survive the ravages of time, but should serve as a memorial for their author.[12] The fact that many of his writings have indeed been translated into Hebrew lends weight to his analysis.[13] Chaim Tchernowitz makes the very same point in his interesting discussion of Hoffmann's three major works (Die erste Mischna und die Controversen der Tannaim, Zur Einleitung in die halachischen Midraschim, and Das Buch Leviticus) when he argues that works of truly lasting value should be written or translated into Hebrew, that being a test of their enduring quality.[14] From his point of view then, as well as Hoffmann's, it is a misfortune that Hoffmann wrote so little in Hebrew.[15]

Tchernowitz suggests a number of reasons why Hoffmann may have preferred to write most of his works in German. In the first place, many of his publications were polemical, and had to be written in German in order to reach an appropriate audience. Secondly, he may have absorbed the belief of the founders of the Wissenschaft school who stated that everything which claimed to be scientific had to be written in German, the corollary being that if something was written in Hebrew, it couldn't be scientific. Finally, the fact that many of his writings appeared in the annuals of the rabbinical seminary which he headed (see above, p. 6), in which

the other articles were in German, undoubtedly encouraged him to use German as well.[16]

But probably the simplest explanation is that in Hoffmann's day, as in that of Moses Mendelssohn a hundred years earlier, the people with whom he wished to communicate were conversant with German, and not with Hebrew. And even in Melammed Leho'il, the language is not pure Hebrew. Several of the responsa have notations or explanations in German, while many have German words or phrases describing an activity or product whose Hebrew name was unfamiliar.[17]

Turning to an analysis of Hoffmann's Hebrew style, we find it to be simple and straightforward, though laced with quotations from halakhic sources, and other rabbinic works. There are numerous references to Biblical, Mishnaic, and Talmudic passages, along with quotations from books of responsa, especially those of the eighteenth and nineteenth centuries.[18] Generally, Hoffmann's responsa assume a certain familiarity with the sources; that he was justified in his assumption appears from the fact that many of the questions came from men who were scholars themselves.[19]

Solomon Freehof, author of The Responsa Literature, Philadelphia: 1959, provides us with a summary critique of Hoffmann's style:

> His book of responsa, Melammed leHo'il...(sic) shows a new style in the long history of responsa writing. Although he cites past authorities and analyzes the Talmud, which is the classic procedure in responsa, his style is exact, and the responsa read like scientific essays.[20]

A word or two remains to be said about the form of the responsa in Melammed Leho'il. The questions are usually very brief, and occasionally omitted; in any case, they provide us with very little information about the sender of the question, or about the date of composition.[21]

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Melammed Leho'il, as indicated above, is arranged as the Shulhan 'Arukh is arranged, with one very significant difference. For whereas Joseph Karo in the sixteenth century had made a conscious effort to cover the entire range of halakhah, David Hoffmann dealt only with those problems which were of concern to German Orthodoxy in the closing years of the nineteenth century and the opening years of our century.

Philip Gershon, author of Jewish Family Life in Italy: 1680-1760,[22] has stated that the responsa are a particularly utilitarian kind of literature,[23] meaning that it responds to the needs and circumstances of a particular group of Jews. Yet another way of

viewing the function of responsa is to see this literature as a mediating force between the tradition and the pressures exerted by the environment.[24]

For Reform Jews, the responsa have a slightly different function, since tradition for them is no longer authoritative in the same sense; but the literature still reflects the interests and concerns of a particular time, and particular persons. The truth of this assertion is borne out by Freehof's Reform Jewish Practice and its Rabbinic Background (combined edition), New York: 1963, which contains many questions on burial and mourning practices, synagogue architecture, worship services, and civil marriages, yet has nothing to say about the laws of kashruth, the laws of the Sabbath, and the laws of the Passover, all of which play an important role in traditional responsa collections.

In "justifying" this omission, Freehof states:

> Only those traditional laws and customs are given which are connected with actual prevalent Reform practice. Thus, those branches of traditional law which have left very little mark upon present-day life of the Reform Jew are not dealt with. To put it bluntly, there is, unfortunately, as little observance of the dietary laws among Reform Jews as there is among millions of other modern Jews, and also as little observance of the traditional laws of Sabbath rest.[25]

David Hoffmann, of course, had a very different attitude towards such matters; for him the laws of kashruth, the Sabbath, and the Passover, though often complicated, were basically matters of revealed legislation, and were not to be dispensed with just because some Jews found them difficult, or meaningless, or vestigial. But with all of his traditional approach, Hoffmann was yet sensitive to the needs of the hour. Freehof himself recognizes this when he says about Hoffmann's responsa: "They are, of course, strict in their conclusions, yet reveal a keener awareness than, perhaps, an East-European rabbi might have, of the problems and pressures of modern life."[26] This rather tepid evaluation is supplemented in Marx, op. cit.

> Hoffmann's responsa dealt frequently with problems caused by the modern condition of life and social changes. They are based on his unusual mastery of the first sources and the opinions of the early authorities, but they are replete with references to the great Talmudists of his own century. His decisions are always well founded and pay proper regard to the spirit of the time and the special situations, but they naturally do so entirely in the traditional spirit.[27]

We hope to demonstrate, in succeeding chapters, just how, and under what circumstances, Hoffmann was able to do this.

What the needs of the hour were, we discover from an analysis of the contents of Melammed Leho'il. In the first volume ('Orah Hayyim), we discover that prayer, synagogal procedure, Sabbath laws, and Passover observances contained numerous problem-areas for traditional Jewry. There are six responsa on prayer, eighteen on synagogal procedure, forty on matters having to do with the Sabbath (particularly with electric lights and new instruments), and forty-four questions connected with the Passover. These, together with a few scattered questions on blessings, the high-holidays, Sukkoth and Hanukkah, comprise the totality of responsa in the first volume.

The reasons for such a distribution are not hard to discern. At a time when Reform, with its mixed seating, organ playing, and other changes was making great headway in Germany,[28] it was natural to expect a number of questions on synagogal procedure. And at a time when electricity and modern modes of transportation were first coming into widespread use, one would expect problems to arise regarding the strictness of the Sabbath laws. Finally with a number of new products appearing on the market, like saccharin, Ersatz coffee, peanuts, and pepper, to name just a few, numerous questions would be expected concerning their use, particularly on the

Passover, when the laws of kashruth are even more complex than at other times. A further environmental factor which is clearly reflected in the responsa of 'Orah Hayyim, and which will receive extensive comment in chapter four is the deepening relationship with the secular environment which, both knowingly or unknowingly, had a tremendous effect upon Jewish life. Nineteenth century Europe drew Jews out of the ghetto; it often lured them away from their tradition as well. We recognize such influences in the case of a kohen who was learning medicine, and therefore regularly defiled himself with corpses,[29] or in the case of a pious Jew who was concerned whether to turn his law-suit over to a non-Sabbath observer.[30] Frequently such an environment was not a negative influence, though it was a complicating one, as we see in the responsum concerning joint stock companies with Gentile and Jewish partners,[31] and in the responsum which allows Torah reading on Saturday afternoon for children required to attend the Gymnasium on Saturday morning.[32] Turning to Yoreh De'ah, the second volume, we find quite a number of questions on kashruth, along with forty-four responsa in Hilkhoth 'Aveluth.[33] There are additional responsa on menstruation, the miqveh,

redemption of the first-born son, circumcision, study, and other subjects traditionally associated with Yoreh De'ah. In this volume we find in even greater depth, reflections of the influence of the non-Jewish environment on Jewish life. We find it first in five responsa dealing with such questions as: Is it permissible to be healed in a Christian institution serving non-kosher food,[34] and whether one can use a medicinal drug containing blood.[35] We find it also in three responsa under the rubric Hilkhoth 'Avodath Kokhavim, where the questioners want to know if it is permissible to learn Torah in a building containing crosses,[36] if one can build a cemetery fence from the stones of a church,[37] or can one take an oath before Gentile courts with an uncovered head?[38]

Further, we find similar influence in an isolated responsum about an occult calendar in the room of a woman in labor,[39] and in five responsa on Hilkhoth Gerim. And finally under 'Inyanim Shonim at the end of the volume, we find a responsum on the question: "Is it permissible to contribute money to a Christian house of worship?"[40] It is impossible not to see in these varied and extensive questions a deep and increasing involvement with a Christian culture.

Turning to the third volume, which contains the responsa for both 'Even Ha'ezer and Hoshen Mishpat (the third and fourth volumes of the Shulhan 'Arukh), we find a few major sections, with some minor additions. 'Even Ha'ezer contains nine responsa on procreation (Hilkhoth Periyyah U'Reviyyah), and nine on matrimony, with several of the latter dealing with the problem of the civil marriage, so consistently a stumbling block for halakhah.[41] There are four responsa on giddushin, some of which overlap the previous category, and two on ketuvoth. The major section of this volume, though, is Hilkhoth Gittin, containing fully twenty-five responsa, a number which reflects not only the gradual dispersion of Jewish communities, but (probably) also an increasing number of divorces. 'Even Ha'ezer concludes with five responsa on yibbum and halizah.

Hoshen Mishpat, as might be expected in a world which did not allow the Jews to exercise their own structure of civil law contains hardly any responsa material at all. A total of three responsa are found there, one on special testimony,[42] one on overlapping lawsuits,[43] and one regarding someone who found a coin in a house which he had purchased.[44] As Freehof points out:

> (Jews) no longer, except in rare instances, resort to rabbinical law for the settlement

> of their business matters, such as partnerships, notes, and loans. They go to the civil law courts.[45]

In this instance, the lack of responsa tells us as much about the situation of the Jews as do the numerous responsa on bills of divorce. The third volume contains an addendum to 'Orah Hayyim, about a time-piece designed to control the factory stove, and another to Yoreh De'ah about a particular kind of flour. The last forty pages or so contain new interpretations and notes on the various orders of the Mishnah (except for Tehoroth), and other miscellaneous items.[46] The succeeding four chapters of the thesis will consider selected responsa from Melammed Leho'il, arranged according to the following subjects:

1) the challenge of new products, inventions, and means of transport
2) the challenge of the secular environment
3) the challenge of Christianity
4) the challenge of Reform Judaism

Chapter Three

The Challenge of New Products, Inventions, and Means of Transport

The nineteenth century was an age of invention and change. Europe, as well as America, was entering into the age of industrialism, with mass production and factory labor making more products available to more people almost daily. The discovery of electricity and the development of the steam engine were two milestones of the period, and both had tremendous consequences for the fabric of nineteenth century society. The new inventions also left their mark on the halakhah, and the responsibility of this chapter will be to indicate how Hoffmann responded to these and similar challenges.[1]

Electricity, the new source of light and power, provided more than its share of perplexing problems for traditional Jews, and not only--though quite often--with regard to the Sabbath. The effect of electricity upon Jewish life is described by Solomon Freehof:

> Precisely because Jewish Law concerns itself with all of life, electricity, which touched almost every aspect of life, was bound to have a profound impact on Jewish legal literature. As soon as applicances making use of electricity for light and power became available, it was natural that questions should be asked of rabbis, and that these questions and their answers should find their way quickly into the responsa literature.[2]

Electricity must be viewed as one of the major challenges to halakhah during this period, and it is not surprising to find a number of responsa on this matter in Melammed Leho'il.

The technical aspects of the problem are presented in Vol. I, Hilkhoth Shabbath, No. 49, p. 62f., where Hoffmann is asked whether in fact there is a desecration of the Sabbath involved in lighting an electric bulb and/or extinguishing it. Hoffmann refers to the discussion of Joseph ha-Levi,[3] who refuted still another scholar's argument that such lighting was not to be considered a hav'arah, since the filament was surrounded by a vacuum, and therefore did not burn. However, as ha-Levi pointed out, it is impossible for the vacuum to be complete, and consequently such an act must be considered a hav'arah (and is forbidden on the Sabbath).

On the question of whether the light may be extinguished, Hoffmann notes that apparently there is no Scriptural prohibition involved, and since such kibbuy is only rabbinically prohibited, we may permit it by the hands of a non-Jew rather than suffer loss or damage.[4] A more stringent opinion is found in Beth Yizhaq,[5] by Isaac Schmelkes of Lemberg[6] who argues that this kind of kibbuy is (indeed) Scripturally forbidden.

In the following responsum, (Vol. I, Hilkhoth Shabbath, No. 50, p. 63f.), we come to a practical problem concerning this new source of power and light. The statement is made that:

> There are cupboards which contain glass bulbs, and when the cupboards are opened, an electric flame is kindled within the bulb; is it possible to permit one to open such a cupboard on the Sabbath?

In his answer, Hoffmann points out that no permission can be found for kindling an electric light on the Sabbath (as above). But, he adds, we must examine the matter carefully to see whether the light is entirely covered on Friday evening, so that it cannot be seen, and no benefit can be derived from it; if this is the case, then we may permit it in an emergency, and, if done by a non-Jew, at all times.[7] He then compares the matter to the case of a person who closes his door on the Sabbath to protect his home, and discovers that he has trapped a deer inside;[8] since this was not an intentional act, the person is not guilty of hunting on the Sabbath.

A further question arose as to whether it was permissible to use an electric light for the Sabbath candles (Vol. I, Hilkhoth Shabbath, No. 47, p. 61). On this question, in Hoffmann's day, there was a difference of opinions, and Hoffmann does not decide between them.[9] He simply states that at least one eminent authority permitted the use of electric lights for the Sabbath candles, even with the usual blessings,[10] while Rabbi Judah David Bernstein of New York, forbids such an act.[11]

Freehof writes that later authorities tended to disapprove of the use of electricity for Sabbath lights,[12] quoting the arguments of Chaim Isaac Halberstam.[13] Halberstam first establishes that a blessing must accompany the kindling of the Sabbath lights; then he states as a general principle that any deed not in the full power of the doer to complete may not be preceded by a blessing. Since the householder is in no position to guarantee the continued burning of the light, therefore, he may not use electricity for the ritual Sabbath candles.

In a most interesting responsum appended to Vol. III, No. 58, pp. 101-107, but actually belonging to Volume I ('Orah Hayyim, Hilkhoth Shabbath), Hoffmann deals with a question concerning a time-piece which could control the operation of a (gas) stove by turning it off or on electrically. After considering the matter at some length, he decides to permit its use in connection with food that has already been properly cooked, though not in other circumstances. The advantage of such a permission, says Hoffmann, is that it would enable those who are accustomed to heating up their food on the Sabbath anyway, as well as those (healthy) persons who eat food prepared for the sick on the Sabbath, to cease from transgressing.[14] We shall discuss several other instances where Hoffmann tries to allow people to do what they have become accustomed to, even though a priori it would seem that they are breaking the law.[15]

Electricity, of course, was not the only challenge to halakhah in Hoffmann's day, nor was it the only one to affect the Sabbath laws in particular. The increasing use of gas for home appliances--already mentioned in the previous responsum--is discussed at greater length in Vol. I, Hilkhoth Shabbath, No. 60, pp. 81-4, where Hoffmann is asked about a gas stove lit prior to the Sabbath. The specific question is: May a Gentile be instructed to turn off the flame on Saturday afternoon?[16]

Hoffmann notes in the first paragraph of his answer that Rabbi Sinai Schiffer of Karlsruhe, one of the students of the seminary, had already written the reasons for permitting such an act; Hoffmann saw his primary responsibility as that of supplementing and elucidating the arguments.

Quoting Besamim Rosh,[17] who speaks about a situation where a spark had fallen on a tablecloth, but had not yet kindled the cloth; may one put it out?, Hoffmann then describes an interesting experience that happened to his teacher (Hildesheimer) one Friday evening at a party. A spark had fallen on the tablecloth, and one of the sextons--forgetting that it was the Sabbath--put his finger on it. Immediately the assembled company shouted: "Shabbos, Shabbos." But upon reflection, Hildesheimer had decided that surely the sages had not meant to prohibit extinguishing a flame that was liable to cause great damage.

Towards the end of the discussion, Hoffmann compares this problem (of the gas stove) with that of a Gentile assigned to kindle a fire during the winter months; even if he kindles a fire on a day when the cold is not oppressive, it is as if he performs it of his own accord. Similarly, in our case, a man may tell his servant at the time of hiring to extinguish the gas flame on the Sabbath, and if she extinguishes it even in non-dangerous circumstances, then she is also considered one who does it of her own accord.

Another way of avoiding the prohibition is to say to the servant after the Sabbath: "Why didn't you extinguish the flame on the Sabbath just past?" This method, according to Hoffmann, is a clearly permissible way of handling the situation.[18]

A related question was asked about the ner tamid: Is it permissible to use a gas-light for this purpose? (Vol. I, Hilkhoth Beth Hakeneseth, No. 21, p. 25f.). Hoffmann replied that it was already a wide-spread custom to kindle the ner tamid with gas; it was done both in his own synagogue, and in his Shas Hevrah meeting-room. Similarly, he notes, the practice of using gas for the yahrzeit candles is widespread, and the only instance in which the authorities are strict is regarding the Hanukkah lights.[19] He refers also to the permission granted by some authorities to recite the usual berakhah over a Sabbath candle kindled with gas.[20]

A somewhat similar question dealt with the use of a thermos flask: can one fill such a flask on the Sabbath? (Vol. I, Hilkhoth Shabbath, No. 45, p. 61). Hoffmann answers that such an act is permissible, since the flask does not add heat (but only retains it), yet one must be careful about the permission, since a person might be led to heat up something else which had cooled off (and thus violate a prohibition).[21]

The Jewish Sabbath laws were also challenged by the new means of transport, and particularly by the railroad, which brought the peoples of Europe together as never before.[22] Hoffmann was asked (Vol. I, Hilkhoth Shabbath, No. 41, p. 53f.) whether a man could travel by train over the Sabbath, where it was uncertain if he could break his journey on that day. As it happened, the journey was undertaken in a time of emergency, and for the sake of a religious duty, and Hoffmann found several reasons to permit it. The basic permission is that granted by some authorities to travel by ship or train on the Sabbath (provided that the journey begins prior to the Sabbath).[23]

One final responsum connected with the Sabbath laws has to do with a tuning fork: May a cantor use such an instrument to align his melody on the Sabbath? (Vol. I, Hilkhoth Shabbath, No. 63, p. 85). The questioner--probably a rabbi--notes that he has been informed that in Russia they

permit such a practice, and wants to know if he should prevent the cantor from doing it.

Hoffmann's answer is brief, and worth quoting in full:

> Behold, according to my slender opinion, one should be stringent regarding the use of an instrument on the Sabbath, even for the sake of a religious duty, and especially at this time, when many of the German congregations have broken the religious bonds by using an organ.[24] I have already indicated (Vol. I, Hilkhoth Beth Hakeneseth, No. 15, pp. 11-19) that there are opinions in the Talmud that singing with instruments on the Sabbath (transgresses) a Scriptural prohibition, and even if we do not teach thus (in our time), we learn how stringent the prohibition was in the eyes of our ancestors. But since there is some basis for leniency, and there are rabbis who (actually) permit it, and I have good authority,[25] along with a similar case mentioned in other responsa, where a cantor who did so was not hindered in his work, I say this: If it is impossible for the cantor to sing well without this, then one shouldn't hinder him from using it; further, it is better for him to be in the category of one who sins inadvertently, rather than in the category of one who sins deliberately.[26] But in any case, one should rebuke the cantor lest he do it for the sake of finding favor in the eyes of the listeners, rather than honoring the Lord with his gifts.[27] See also Mishnah Berurah, Par. 338, Note 10,[28] which forbids an instrument called a Kammerton (little whistle), which seems to be similar to the tuning fork.

Here we find Hoffmann, with all his objections to the use of musical instruments in the synagogue, yet permitting the tuning fork. He does so partly because he knows it is being done in other localities, and partly because he realizes that

even if the cantor is instructed not to use the tuning fork, he would continue using it, and thus be sinning deliberately, rather than inadvertently. On the other hand, he does not want to ignore the situation entirely, and therefore suggests that a fitting rebuke be administered to the cantor.

Whereas it was the discovery of electricity, the increased use of gas appliances, and the new modes of transportation which raised numerous problems for Jewish Sabbath law, it was primarily the introduction of new food products which fostered difficulties in connection with the Passover halakhah, where the food laws are complicated by the prohibition of hamez. Among the new products which Hoffmann discussed are sugar, coffee, pepper, peanuts, and saccharin tablets. A related question was asked about the use of cigarettes.

Answering a question about the use of sugar on the Passover (Vol. I, Hilkhoth Pesah, No. 104, p. 115), Hoffmann refers the questioner to Sede Hemed, art. "Hamez U'Mazzah," Par. 3, Section 19,[29] where everything related to this complicated subject is explained. He quotes also 'Arukh Hashulhan, Par. 467, Section 15,[30] who states that sugar as made presently contains no suspicion of hamez. But it is preferable to use sugar that is made especially for the Passover, and is properly supervised.

Volume One contains two rather lengthy responsa on Ersatz coffee, Hilkhoth Pesah, No. 89, p. 107, and No. 90, p. 107f.

The situation upon which the questions are based is worth quoting; it is probable that the use of such coffee was due to a scarcity caused by the First World War:[31]

> During this year (1918) a particular factory is making Ersatz coffee which is kosher for Pesah under the supervision of a trust-worthy rabbi, and all the Orthodox purchased it from the stores which stocked this merchandise. During Passover, they found several grains of wheat in one of the packages of this coffee, and the rabbis forthwith forbade it. I was asked during the intervening days about the vessels in which such coffee was prepared for (home) use, in a case where it was not known if the packet had wheat in it or not?[32]

Hoffmann's reply is based on his recognition that this was a time of emergency, for if he had prohibited the utensils for further use during Pesah, the whole congregation would have to buy (expensive) new ones. Hoffmann also noted that prohibiting the vessels would cast suspicion on the rabbinical court which originally permitted the coffee, and would cause great loss to many poor people. He bases these conclusions on a detailed and technical discussion, but it is obvious that he indicates here a concern for the realities of the situation and the personal factors involved.

In the second responsum (No. 90), Hoffmann relates how he investigated the report, to find out how the wheat got into the packets of coffee in the first place. He discovered that at the war office which provided the raw materials for

the factory, one of the workmen may have turned the duct containing coffee for the rest of the year (by mistake) into the bags for the Passover coffee; thus the seeds came to be there without the knowledge of the mashgiah.[33] He again concludes permissively, though stating that one ought to warn the purchasers to burn the packets, if they find seeds in them.

Another question was asked about a particular kind of Ersatz coffee, known to be mixed with chicory and containing a little forbidden fat, one part in three hundred (Vol. I, Hilkhoth Pesah, No. 77, p. 102). After quoting a number of authorities who prohibit such coffee,[34] Hoffmann decides, on the basis of "a time of emergency," that a priori one should try to use only kosher chicory, but that a posteriori, one who buys such coffee should rely on the permission of Ezekiel Landau in Noda Bihudah for a time of emergency.[35] He qualifies his decision just a little, by saying that after Ersatz coffee will be produced that is distinctly kosher, one should no longer purchase that which contains the forbidden fat, even the tiniest particle.

When asked about the use of pepper over the Passover (Vol. I, Hilkhoth Pesah, No. 111, p. 114), Hoffmann refers to 'Orhoth Hayyim, Par. 467, Section 18, who quotes another source to the effect that a sensitive person will not use pepper during Passover, since it was so often adulterated with flour.

On the question of whether peanut oil may be used during Passover (Vol. I, Hilkhoth Pesah, No. 88, p. 106), the matter is not so lightly considered, since in some ways a peanut is classed as a legume (and therefore prohibited), while in other respects it is not in the 'legume' category. Hoffmann notes that in Jerusalem they were not accustomed to eating peanuts on Passover, because of the similarity to legumes. On the other hand, it has many of the characteristics of the (permitted) nut family. Further, no one makes flour from peanuts, and it is impossible for any meal to be mixed in with them, since the nuts remain in their pods until shelled for pressing the oil. Consequently, he permits the use of peanut oil during Pesah, and concludes with the notation that Isaac Elhanan Spektor of Kovno (one of the greatest authorities of his generation) permitted sesame seed oil for use during Pesah.[36]

When asked about the use of saccharin tablets (Vol. I, Hilkhoth Pesah, No. 79, p. 102), Hoffmann decided to prohibit their use during Passover, based on information he had received that the tablets were held together by flour. On the other hand, crystallized saccharin, which reliable authorities had testified contained no suspicion of hamez, might be used during a time of emergency.

Finally, on the use of cigarettes during Passover (Vol. I, Hilkhoth Pesah, No. 106, p. 115), Hoffmann refrains from

rendering a decision, noting only that there are many opinions on both sides of the question;[37] most of the opinions are lenient ones, since the hamez that might be in the glue of the cigarette paper is less than the (disqualifying) minimum.[38]

A most interesting question related to the Passover laws comes from a person who wanted to know what to do with his false feeth during Pesah (which would probably retain hamez from meals consumed prior to the Passover). The responsum is Vol. I, Hilkhoth Pesah, No. 93, p. 112. Normally, utensils which may retain hamez are soaked in boiling water, but if this were done to the false teeth, it might cause irreparable harm. One authority wanted to be strict and require soaking anyway, but Hoffmann concluded that, since the teeth suffer through such a procedure, one should rather depend on the lenient authorities, and permit their use (without soaking).

Turning from problems connected with the Passover and the Sabbath, we come to a single fascinating responsum involving the Day of Atonement (Vol. I, Hilkhoth Rosh Hashana Ve-Yom Hakippurim, No. 119, p. 124f.). The questioner wants to know whether it is permissible to nourish someone by means of an enema on Yom Kippur (presumably to help him complete his fast). A number of problems are involved here: first, are we discussing a situation where life or death is at

stake? Second, is such a practice considered equivalent to eating? Hoffmann discusses the matter at length, and makes the following conditional decision: If there is even the slightest doubt that the enema will provide sufficient sustenance, one should not use it. On the other hand, if the person is only a weak (rather than a sick) man, and the enema will undoubtedly suffice, they may use it to help him complete his fast. In addition, even where no question of life or death is at stake, such an enema is permitted if administered by a Gentile, while even an authority who permits it if administered by a Jew is not rebuked.[39]

Another interesting responsum concerns the use of tobacco in the synagogue. Hoffmann was asked about its use on Tishá Be'av (Vol. I, Hilkhoth Pesah, No. 112, p. 119), and generally (Vol. I, Hilkhoth Beth Hakeneseth, No. 15, p. 11), coming to the same conclusion in both instances. Israel Abrahams, in Jewish Life in the Middle Ages, London: 1932, offers some interesting information on the subject:

> The early love of Jews for tobacco and coffee emanated on the one hand from their sobriety, (and) on the other from their love of social intercourse with their fellows. Coffee, indeed, was known as the Jewish drink in Egypt in the early part of the eighteenth century....
>
> Tobacco, so far as its use in Europe is concerned, was discovered by an ex-Jew, Luis de Torres, a companion of Columbus...Rabbis hailed the use of tobacco as an aid to sobriety....

> The only difference of opinion, however, in Jewish circles, concerned not the use of tobacco generally, but its use on festivals, Sabbaths, and fasts, and the necessity for a benediction before beginning to smoke.
>
> On fasts it became usual to abstain from tobacco until the afternoon; on Sabbaths smoking was prohibited altogether. But the latter decision was not accepted without a severe struggle.[40]

In response to the question at hand, Hoffmann prohibits the use of tobacco in the synagogue, comparing it to eating or drinking in the house of prayer. Further, since the Christians forbid smoking in their churches, he argues it would be a desecration of God's name if we (Jews) permitted it.[41] This aspect of the challenge will be discussed in Chapter Five.

We saw above (p. 35) how the new means of transport challenged the Sabbath laws; but the railroads also provided a serious threat to the purity of the priesthood. What if there was a corpse in a closed train car beneath a station lobby: May a kohen stand in the lobby? (Vol. II, Hilkhoth 'Aveluth, No. 135a, p. 141f.). And what happens if a train with a corpse inside passed over a bridge with a superstructure:[42] May a kohen walk over that bridge while the train was going by? (Vol. II, ibid., No. 135b, p. 141f.). Hoffmann had to respond to such questions in his role as poseq 'elyon of German orthodoxy.

In the case of the kohen in a lobby over a corpse, Hoffmann decided that in a time of emergency, the kohen may stand there, if the corpse is that of a non-Jew, but under no circumstances may he be there if the corpse is that of a Jew. He bases his decision on a passage in Tosafoth,[43] where similar circumstances are considered a "closed grave that may come open," thereby spreading defilement.

Hoffmann made a similar determination in the second instance. Since the defilement would undoubtedly be carried from one side of the train to the other (by the superstructure), a kohen might not walk there except in a time of emergency, and then only if the corpse is that of a non-Jew. He adds that a kohen may ride in the same train as a corpse, though never in a manner that both his carriage and that of the corpse will be over the same rail together.

Turning from means of transport to means of communication, we find a responsum on the use of the mails for delivering writs of divorce (Vol. III, Hilkhoth Gittin, No. 42, pp. 66-8).[44] Hoffmann quotes a number of respondents who have permitted this new means of communication, including Joseph Saul Nathanson,[45] Judah Assad,[46] and Moses Schick.[47] He also describes a case where he himself sent such a writ from a husband in Berlin to a wife in Warsaw, having taken proper precautions.[48]

Hoffmann was also asked about the use of telegraph poles in preparing an 'eruv (Vol. II, 'Inyanim Shonim, No. 148, p. 149).

He notes that he was pressed for time, and had been unable to refer to all the responsa recently written on that subject. He mention s a book by Rabbi Chaim Tchernowitz of Odessa, who lists a number of lenient authorities. Finally he states that most of the contemporary authorities are accustomed to being lenient, if there is no other way.[49]

It is fitting that we conclude the chapter on new products, inventions, and means of transport with a permissive decision. For in almost every case, Hoffmann has decided in favor of the new practice, enabling Jews who wanted to adhere to the halakhah and enjoy the benefits of new products and inventions, to do so. Even in circumstances where he is inclined to be stringent; as on the use of the tuning fork, he finds reasons to render a lenient decision. He retains the prohibition only where a matter of defilement is involved, or with regard to a practice that could be considered a desecration of God's name.

Many of his permissions are based on "a time of emergency." Others are designed to alleviate possible financial or personal duress. But whatever the reason, the tendency is towards a liberalization of the halakhah. Let us now see if the same principles are applied in Hoffmann's response to the challenge of the secular environment.

Chapter Four

The Challenge of a Secular Environment

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The type of continuing interrelationship between the Jew and his environment that is characteristic of Jewish life has been succintly stated by Philippson: "The Jew has always been susceptible to the influences at work in the environment in which he has chanced to be."[1] This observation is particularly meaningful when applied to nineteenth century Europe where, with the advent of Napoleon, the liberal ideas of the French revolution had been carried to many areas of Jewish residence. Moving out of the ghetto, the Jew came into closer contact with his neighbors, in ways which seriously challenged the Shulhan 'Arukh as the guide to Jewish life. The purpose of this chapter is to document such challenges as they appear in Hoffmann's responsa.

That the secular environment in nineteenth century Europe was largely Christian goes almost without saying. One of the consequences of the situation was that the process of acculturation often became that of assimilation, with large numbers of Jews converting to the majority religion.[2] Another consequence was the adoption of Christian forms of worship.[3] But the religious consequences of this confrontation will be discussed in the next chapter. Here we shall be concerned with

a challenge to halakhah which, while incidentally Christian, was essentially secular in format.

As we saw with regard to new products, inventions, and means of transport, one of the most sensitive areas of Jewish life was that of the Sabbath. A society which observed Sunday as its day of rest was not likely to respect Saturday also, and the problems created by this situation have lasted down to our own time.[4]

It was customary in nineteenth century Europe for the Gymnasia, the academic high schools with a classic orientation, to meet on Saturday morning. Hoffmann was asked (Vol. I, Hilkhoth Shabbath, No. 58, pp. 72-80) whether students who attended such schools on Saturday were permitted to carry their books with them. He chose to address himself first to the question of whether they were permitted to attend such schools in the first place. The answer is so characteristic of Hoffmann's approach to such problems that it is worth quoting (in part):

> It is known that in our time it is impossible for a merchant to earn a livelihood if he does not learn languages and secular sciences in the schools which are called Gymnasium and Realschule (respectively), and if a student ceases his learning on the Sabbath, then he wouldn't even understand what he learns during the week, for the teacher will not repeat what he has said on Saturday (just) for the benefit of the Jewish students.

Noting that most Jews are poor, and cannot afford a private tutor to help make up the lesson, and arguing that prepar-

ation for earning a living must be considered at least something of a religious obligation, Hoffmann allows such students to attend on the Sabbath. He even encourages parents who could afford a tutor for their children to send them to school, so that children of the poor will not be unfairly disadvantaged (with regard to honoring the Sabbath). In concluding his argument on this point, Hoffmann expresses the hope that such children would attend early services on Saturday, and strictly observe the holidays and the yamim nora'im.

Turning to the original question: may students of such schools carry their books on the Sabbath?, he joins with it the question of whether children may (even) carry a prayerbook to the synagogue. He begins the discussion by quoting the Ture Zahav, Par. 346, Note 6,[5] allowing a minor to bring the key to the synagogue on the Sabbath.[6] The discussion continues at great length, with numerous quotations from early and late sources; eventually Hoffmann permits the carrying of a prayerbook, and by implication (where a religious duty is concerned) the carrying of a textbook.

Supporting his decision, he notes that though technically a child who has reached twelve years of age should be instructed not to carry from the private to the public sector on the Sabbath, in our own time, when we have no (officially designated) public sector,[7] this ruling cannot be upheld. In addition,

since we have established that such learning is a kind of religious duty, and since the Kolbo, Par. 31,[8] permits a child to carry even when an elder commands it, we may allow such a practice.

But if these youngsters are in school on Saturday morning, how will they fulfill their obligations regarding Sabbath prayer? This problem Hoffmann dealt with in due course (Vol. I, Hilkhoth Qeri'ath Ha-Torah Ve-Hamaftir, No. 14, p. 10), when he was asked whether it was permissible to read the prophetical portion on Saturday afternoon, during the minhah service.

His reply begins with the statement that his own teacher, Hildesheimer, had established a custom of reading the entire sidra at two or three o'clock in the afternoon, with three 'aliyyoth; he would then recite the prophetical portion with its blessing, pray the entire musaf service, and then do minhah. So, even though a doubt remains as to the validity of this practice, כבר הורה זקן "an elder has already decided it." (B. Shabbath 51a, B. Yevamoth, 105b)

Hoffmann then cites a case where it was permitted to read the entire sidra on Sabbath afternoon, with seven 'aliyyoth; but this permission was only given on a single occasion, attended with pressing circumstances. It would not suffice for a continuing practice. On the other hand, so that the Torah would not be forgotten by these youngsters, who attended school on Saturday morning, Hoffmann decided

that they might arrange such a service every Sabbath, and pray minhah if there were ten men. Hedging just a little, he adds that if it was discovered that a basic principle was being violated, the services would have to cease. He concludes his responsum with that most interesting quotation: עת לעשות להי הפרו תורתך : "It is time to work for the Lord/they have made void My law," (Psalms 119:126) which the rabbis interpreted to mean that in a time of emergency, a commandment may be temporarily abrogated.

We know that in 1888, a children's Sabbath service had been instituted in Berlin in a number of synagogues, along the general lines of the minhah service, with a few minor changes in the prayers, and a German sermon. But in the early 1900's, the conservative majority of the communal representatives resolved to abolish the changes, over Ludwig Geiger's strong protest.[9]

Another fascinating responsum discusses the status of gymnastic sports practiced on the Sabbath (Vol. I, Hilkhoth Shabbath, No. 53, pp. 65-7). Hoffmann considers the matter at some length, beginning with the observation that since the young men enjoy the running and jumping, there is no prohibition based on: וקראת לשבת ענג "And call the Sabbath a delight." (Isaiah 58:13). But in the second part of his answer, he does find a basis for prohibition, from a Talmudic passage (B. Shabbath, 127a) which teaches that we do not exercise on the Sabbath. But there is

some disagreement among the authorities as to whether running for pleasure is prohibited.

Hoffmann's eventual decision is not to give permission to those who enquire about sports on the Sabbath. But, as always, he is aware of the consequences of such a stringency, and adds that:

> In a place where a permission is customarily granted, it is not necessary to establish a prohibition, particularly where a grudge might be held against the principal of a school who would prohibit such things, as has already occurred in several Gymnasia.

The responsum ends with another interesting quotation: והנח להם לישראל, "and let Israel be at peace." The full quotation, in B. Shabbath 148b., is:

הנח להם לישראל מוטב שיהיו שוגגין ואל יהיו מזידין

"Let Israel be at peace; it is better for them to be inadvertent sinners than deliberate sinners."

The effects of the secular environment on Sabbath observance were not, of course, limited to school children and athletic youth. There is a very interesting responsum wherein Hoffmann was asked whether a pious Jew should turn his lawsuit over to a Jewish lawyer known to be a Sabbath desecrator (Vol. I, Hilkhoth Shabbath, No. 57, p. 71). It seems that such problems were not uncommon, for the question ends as follows:

> Is it permissible to turn the suit over to such a person? If not, then it is impossible for a God-fearing man to deliver his suit to a lawyer, the son of

a Jew, for almost all of them are desecrators of the Sabbath. (emphasis mine)

Hoffmann begins his answer by referring to a similar case mentioned in 'Orhoth Hayyim, Par. 207, Section 8,[10] of a man who sent some merchandise to another city to a forwarding agent who was not a Sabbath observer: was this a permissible practice? The answer was that one should try to specify that those particular goods not be sold on the Sabbath, but if that were not possible, one might still ship the merchandise.

Other authorities, however, refused to allow such transactions without specific conditions forbidding sale on the Sabbath.[11] In the face of this division of opinion, says Hoffmann, we ought to rely on another principle: the majority of days. Taking this principle as our base, we assumed that the business in question will be done on one of the six weekdays, and not on the Sabbath. Furthermore, in our case, wherein it is known that a lawyer always has several suits at hand, we may assume that he will take care of other business on the Sabbath, and attend to this suit during the week.

But Hoffmann is not satisfied with establishing a reason for permission; as he often does, he comments on the personal aspects of the problem. He notes, for instance, that in this case there is no reason to be concerned with מראית העין (the appearance of things), since everyone knows that once a suit is given to a lawyer, he is in complete charge of it.

In addition, it is clear that no God-fearing man would direct a lawyer to present his suit on the Sabbath. Finally, Hoffmann points out that if he were to insist on giving a suit only to Sabbath-observing lawyers, the result would be that every pious Jew would have to take his case to a Gentile lawyer.

-ii-

Hoffmann displayed a similar regard for the behavior of individuals in a responsum dealing with the challenges to halakhah created by the science of medicine.[12] A question had come to his attention about a kohen who was studying medicine and constantly defiling himself through the dissection of corpses: should such a kohen be called to the Torah (Vol. I, Hilkhoth Beth Hakeneseth, No. 31, p. 40)?

Hoffmann first recites the opinion of the Shulhan 'Arukh[13] that a kohen who contaminates himself with forbidden dead cannot retain the qedushah of priesthood, unless he agrees not to contaminate himself further: all the later authorities subscribe to this view.[14]

On the other hand, as Hoffmann indicates, at least one of the authorities considers such a kohen as an inadvertent sinner, (rather than a deliberate sinner), either because the kohen assumes that by working to heal others he is exempted from the prohibition, or that he is exempted because he is only dissecting Christian cadavers.

There follows a discussion on whether such dissection is explicitly prohibited by Scripture; but more interesting is Hoffmann's comment that perhaps the rabbi should not rebuke this man, since he surely will not listen to him. The only effect of such a rebuke would be to transform the kohen into a deliberate sinner, and to encourage him to thwart the authority of the rabbi. The text of the responsum makes this very clear:

> One authority suggests that the rabbi should speak gently with this kohen, reminding him of his special honor as granted by the Torah. But that is not the essence of our question. And in any case, the man is not likely to leave his chosen vocation for such a reason. In addition, one should not say something which will not be listened to.

Hoffmann finally decides, in principle, that the kohen should not be invited for an 'aliyyah; such an invitation would amount to strengthening the hand of the sinner. But, in practice, if it is known that the sexton will not obey the rabbi's dictum, and call the kohen anyway, it is best to keep silent altogether.

This responsum on the kohen who studies medicine stands as a prototype for Hoffmann's response to the challenge of the secular environment. Familiar with the strictures of tradition, Hoffmann is also keenly aware of a double necessity: first, to preserve the authority of the rabbi; and second, to take into account the personal factors which play such an

important part in the process of communication. A stricter authority might have condemned the kohen unequivocably, resulting in a defiance of both the halakhah, and of the ruling authority.

As is known, the prohibition of dissection was not directed only to the priest. Hoffmann noted in a responsum on the subject (Vol. II, Hilkhoth 'Aveluth, No. 108, p. 112) that dissecting a Jewish corpse was forbidden on at least two counts. First, there was the prohibition against disfiguring the dead. Second, there was the prohibition against benefitting from the dead.[15] And there is the further consideration that burial is supposed to take place as soon after death as possible; dissection would naturally delay the burial.[16]

In spite of all these considerations, when Hoffmann responded to the specific question: Was it permissible to dissect the skull of a dead Jew to diagnose his illness, where such a diagnosis might help save other lives?, he finds a basis for permission. His authority is Moses Schick,[17] who permits such dissection in a situation where saving a life is concerned, and also permits it where only the probability (as opposed to the certainty) of saving a life is involved.

There is a related responsum on autopsy in Solomon Freehof's Reform Jewish Practice, where the author notes that this question has created a great deal of legal controversy. Most interesting is his comment on the political repercussions of the normative Jewish approach to autopsies:

> Before the war, the anti-Semitic movement in Rumania, Austria-Hungary, Poland, and in other lands, attempted to bar Jewish students from the study of medicine, inasmuch as the Jewish burial societies refused to deliver Jewish bodies to medical schools or hospitals for the purpose of autopsy and dissection.[18]

Freehof repeats the reasons why autopsy is frowned upon, but he adds that the Talmud had a knowledge of anatomy that could only be obtained from dissection. In addition, two eminent authorities, Ezekiel Landau[19] and Moses Sofer[20] permitted autopsy when there was another person in the same locality suffering from a similar disease.

But, continues Freehof, today, with the advances in communication, it can be argued that a doctor's discovery can benefit someone on the other side of the world, so that there is no need to insist on proximity. An objection does remain, however, to autopsies performed in medical schools, where proper respect for the human body is not shown. But in a hospital, and for a particular purpose, it is possible to find a basis for permission.[21]

In spite of this attitude towards dissection, Jews have traditionally held the medical profession in highest regard, and some very famous Jews have been physicians, including Moses Maimonides and Judah ibn Tibbon. Israel Abrahams notes that many of the physicians who assisted in the founding of the medical school at Salerno in the early middle ages were Jews,[22] and that the Jewish physicians of Spain and Italy

were unrivalled, except by the Arabs.[23]

But even the use of Jewish physicians could not completely forfend challenges to halakhah in a Christian-secular environment. Two problems in particular were raised in Melammed Leho'il: the problem of treating Jewish patients in Christian (or public) institutions, where neither the laws of kashruth nor those of the Sabbath would be observed; and the problem of medicines containing forbidden ingredients.

In Vol. II, Hilkhoth 'Im Muttar Lehithrappoth Bidevarim Ha'asurim, No. 31, p. 29f., Hoffmann is asked whether a person who is mentally disordered may be placed in a Christian hospital. In this particular case, there seems to have been the possibility of providing a kosher meal at least for lunch, and so Hoffmann allows the placement, suggesting only that the patient eat dairy foods for dinner. On the question of Sabbath observance, says Hoffmann, the patient is to be considered as a minor who knows no better, and therefore the court is not obligated to punish him. But in concluding his answer, Hoffmann asks that the patient be tested to ensure that he really is deranged; otherwise the permission would be invalid.

The very next responsum (ibid., No. 32, p. 30f.) concerns a youngster who was suffering from a kind of paralysis. The specific question was: Is it permissible to transfer him to a Christian hospital if he would have to eat forbidden food there (and desecrate the Sabbath)?

Hoffmann's reply begins with the matter of Sabbath desecration which, in the eyes of the halakhah, is the more stringently prohibited. He notes that 'Or Zaru'a[24] and Rabbenu Tam[25] permit Sabbath desecration for serious illnesses, while other authorities do not.[26] But since there are authorities who permit (even) Sabbath desecration, and since there is a possibility if the lad is not healed, he will become insane, we may permit him to be placed in a Christian institution.

Again, Hoffmann is not satisfied with the purely legal approach. He also notes that if this lad is kept out of the hospital, and would fall, there might be no one around to help him up. Further, if he is not healed, he would be unable to study Torah, or attend services, or fulfill many of the mizvoth. These arguments then, support a decision to place the child in a Christian hospital.

Turning to the matter of medicine containing forbidden ingredients, Hoffmann is asked about buttermilk (ibid., No. 33, p. 31f.), which he permits, provided that there is no impurity in the herd from which the milk comes. The second question (ibid., No. 34, p. 32) concerns a medicinal drug made from (chemically-separated portions of) blood. After noting that some early authorities disputed the matter, Hoffmann permits it in a time of emergency, and without (necessarily) requiring a "life-or-death" situation.

The final query on this subject (ibid., No. 35, p. 32f.) asked whether gelatin might be used for medicinal purposes. Before answering the query, Hoffmann consulted his friend, Dr. Chaim Biberfeld, a physician, who testified that there was no meat product in such gelatin. Consequently, Hoffmann was able to permit its use for medicinal purposes.

-iii-

Our next area of concern is the challenge to halakhah created by Jewish-Gentile business relationships. The Talmud (B. Bekhoroth 2b) prohibits business relationships with heathens, lest they entail taking oaths in the name of an idol, but Rabbenu Tam (Tosafoth, ad. loc.) permitted business partnerships in his time, saying that:

> They swear by their idols, but they do not ascribe divinity to them. This is not to be deemed idolatry, for they intend their oath to be in the name of Him who created heaven and earth.[27]

Israel Abrahams also discusses commercial relations between Jews and Christians in medieval times, noting that "business partnerships were contracted in all parts of Europe, indeed, of the civilized world, in the sixteenth as well as in earlier centuries."[28] He explores the subject thoroughly, discussing not only Christian-Jewish partnerships, but also instances where Jews employed Christians, and the reverse.[29] Consequently, when similar questions came to Hoffmann's attention, he was not dealing with a situation having no

precedent. It is not even clear whether the frequency of such relationships had increased. But since the Jews were emerging from a cloistered existence, many of these problems were treated as essentially new challenges to halakhah.

In Vol. I, Hilkhoth Shabbath, No. 36, p. 49, Hoffmann was asked the following question about a Jewish-Christian business partnership: If an agreement had been made whereby the non-Jewish partner was free to be active in the business on Sabbaths and Jewish holidays, did the Jewish partner have to obtain a notarized statement to that effect, or was it sufficient to announce the arrangement publicly from the synagogue?[30] Hoffmann decided that an announcement in the synagogue would be sufficient.[31]

We saw in the previous chapter how the new products and inventions challenged not only the Jewish Sabbath, but also the halakhoth of the Passover. So too, the business-relationships between Jews and non-Jews whose challenge to the Sabbath has already been noted, affected the laws of Pesah.

The responsum on this subject (Vol. I, Hilkhoth Pesah, No. 91, p. 108-111) is interesting. The situation indicated in the responsum is as follows: A group of a few Christians and one Jew owned a restaurant, with each member of the group owning a few shares in the business, and having the power to sell his shares to whomever he pleased. For each share which he held, the owner would receive a certain sum each month.

The question then was: What should the Jewish owner do with his shares during Pesah, since the restaurant would undoubtedly continue to stock and sell hamez during that period. The questioner felt that the Jew should sell his shares to a Christian prior to the Passover.

Hoffmann begins his reply with the statement that, in his opinion, there is no need to sell the stock, if that would mean a financial loss to the Jew, since Scripture has consideration for the money of Jews. Furthermore, the prohibitions against benefitting from hamez do not apply in this case.

He bases his permission on a related examination question prepared by his predecessor, Hildesheimer. Hildesheimer had asked the students about a brewery owned by a joint-stock company, most of whose owners were Jewish, while the operator of the plant was a Christian. All the students agreed to permit the Jews to take their usual profit during Passover, and Hildesheimer accepted their answers, some of which Hoffmann quotes.

Hoffmann also mentions another responsum[32] about a real-estate company which owned, among other properties, a brewery. The rabbinical authority appealed to in that instance decided to permit the Jewish owners to retain their stock over the Passover. Based on these precedents, then, Hoffmann finds no reason to force the Jewish owner to sell his stock in the restaurant.

It is possible that Hoffmann was at least partially motivated towards his lenient decision by the consideration that if he had decided otherwise, the Jew would probably retain his stock regardless, and the rabbinic authority would have suffered. Such considerations played an explicit role in his decision regarding the kohen studying medicine (see p. 53 above), and undoubtedly influenced his decisions on other cases as well.

-iv-

We turn now to the challenges to halakhah created by the introduction of civil marriage into Jewish life. Perhaps the earliest "official" recognition of this problem was made by the Grand Sanhedrin, which met at Napoleon's request in 1806 to ratify the decisions of the Assembly of (Jewish) Notables. Their statement on the issue was as follows:

> The Grand Sanhedrin, taking cognizance of the fact that in the French empire and the Kingdom of Italy no marriage is valid unless it has been preceded by a civil contract before a public official, declares in virtue of the authority granted unto it:
>
> That it is a religious obligation for every Israelite in France, as well as in the kingdom of Italy, to regard from now on civil marriage as a civil obligation, and:
>
> Therefore forbids every rabbi or any other person in the two lands to assist in a religious marriage without it having been ascertained beforehand that marriage has been concluded according to the law before a civil officer.

> The Grand Sanhedrin declares further that marriages between Jews and Christians which have been contracted in accordance with the laws of the civil code are civilly legal, and that, although they may not be capable of receiving religious sanction, they should not be subject to religious proscription.[33]

The final paragraph of this declaration, stating only that civil marriages were civilly valid, left many glaring loopholes; but if we consider only the situation wherein a Jew and Jewess are married in a civil ceremony, the principle is established that such an arrangement must precede, or at least accompany, a religious ceremony.[34]

David Hoffmann was asked about a man who married his wife in a civil ceremony, without huppah and qiddushin, and now wants to have the qiddushin ceremony: is the couple required to wait the normal "testing period" of three months, in order to distinguish between forbidden seed and permitted seed? (Vol. III, Hilkhoth 'Ishuth, No. 13, p. 22).

Hoffmann notes that the question assumes a qiddushin may be performed, and the issue basically concerns the three month waiting period.* Contrary to the opinion of the Ture Zahav,[35] he decides not to require the three month waiting period, since the man will probably have intercourse with his wife during that period anyway. Furthermore, the woman involved was ill, and not likely to become pregnant (reducing the necessity for a havhanah). Here again Hoffmann's decision has been decidedly influenced by personal considerations,

*prescribed for havhanah.

which seem to have equal weight with his concern for the halakhah. We may summarize his attitude as follows: If there is reason to believe that a stringent decision will not be obeyed, and that a reasonable interpretation of halakhah, with supporting authorities, can be invoked, then the best way to approach the situation is to decide permissively.

In another responsum, Vol. III, Hilkhoth Qiddushin, No. 20, p. 32f., Hoffmann considers the other side of this perplexing issue: Does a marriage performed by a civil authority only require a Jewish bill of divorce? Solomon Freehof has a long responsum on this subject,[36] wherein he analyzes the complications that might arise from such a situation, and refers to considerable relevant literature. In sum, says Freehof, Reform congregations recognize civil divorce as completely dissolving the marriage, and permit the remarriage of either party.[37]

Hoffmann proceeds very carefully in this matter, which is fraught with the most serious consequences for the Orthodox Jew. If, for example, the civilly divorced woman would remarry, and her original marriage then declared Jewishly valid, she would be considered an adultress, and her children mamzerim. Hoffmann first quotes Moses Schick,[38] who allows divorce without a get in certain circumstances, though insisting on a thorough examination. Then he refers to Abraham Karpeles,[39] who cautioned that one must be wary of the stringent prohibitions applied to a married woman even in

civil marriages. Finally, he quotes Solomon Schick,[40] who wrote that it was a rabbinical obligation to announce publicly that such (civil) marriages contained no sanctity whatsoever, so that even if the husband had intercourse for the sake of giddushin, the marriage was not Jewishly valid. Such an announcement would protect the status of the woman and her children; consequently, Rabbi Schick allowed a civil divorce in such cases.

But Hoffmann was still hesitant. He asks how contemporary rabbis could, simply by public announcement, remove the sanctity from a marriage wherein the husband had performed intercourse for the sake of giddushin; he also wonders what he might say to the rabbis of France, if, by such a leniency, unscrupulous men could desert their wives, and not be obligated to them. And still another problem: what about those who had no rabbi for their ceremony simply because they couldn't afford one? These were all serious concerns.

And yet, with all these doubts, Hoffmann concludes that one may allow a woman to be divorced without a get, provided that it is clear that the husband would have no grounds for proving that the marriage had been sanctified in any way whatsoever. And every case requires careful investigation of the circumstances.[41]

In every single case, then, where the halakhah was challenged by the secular environment, Hoffmann has rendered a lenient decision; at the same time, he expresses some very

vexing doubts, and tries to find support for his decisions among the eminent halakhic authorities. It is clear that he was unwilling for the halakhah, which he revered and supported, to be in conflict with life, which he knew and loved. To effect a meaningful compromise: that was the challenge he faced.

Chapter Five

The Challenge of Christianity

-i-

The previous chapter analyzed responsa reflecting the challenge of the secular environment, without reference to the specific Christian nature of that environment. In this chapter, though, we shall want to consider the challenge to halakhah provided by the predominant religion of nineteenth century Europe.

As might be expected from the nature of the responsa literature,[1] the questions are immediate and practical, rather than abstract and theoretical. For example, Hoffmann was asked whether a Jew might be sworn in Gentile courts without a head-covering (Vol. II, Hilkhoth 'Avodath Kokhavim, No. 56, p. 50f.), or whether a Jew might contribute to a church building campaign (Vol. II, 'Inyanim Shonim, No. 148, p. 148). Questions such as these will be dealt with in the first part of this chapter; the concluding section contains material on the complicated problems created by conversion and intermarriage.

We begin with a most interesting responsum on magical incantations, a practice not confined to Christianity, though prevalent among Christians. The question was: Should the (Orthodox) authorities prevent those who are accustomed to hang tablets with magical inscriptions on them in the room of a woman in labor? (Vol. II, Hilkhoth Huqqoth Ha'Ovde Kokhavim,

No. 63, p. 57). The problem is that such inscriptions are suspect mipne darkhe ha-'Emori, "on account of the ways of the Amorites."[2] Hoffmann points out in his brief reply that it was common practice among Jews to make different types of amulets, as recorded in the Shulhan 'Arukh.[3] And even someone who does not believe in this sort of thing should recognize that an amulet may help a person who does believe in it; therefore it is not necessary to prevent such tablets from being hung. He closes his responsum with the quotation:

כל דבר שיש בו משום רפואה אין בו משום דרכי האמורי

"Anything which is for the sake of healing is not be suspected of (resembling) the ways of the Amorites." (B. Shabbath, 67a)[4]

Mipne darkhe ha-'Emori is a special category under huqqoth ha-goyim. Hoffmann discusses several problems in the broader category, beginning with a question already quoted in a different connection (see above, p. 42): Is it prohibited to smoke tobacco in the synagogue? (Vol. I, Hilkhoth Beth Hakeneseth, No. 15, p. 11). Hoffmann's answer is brief and to the point: Even though there are authorities who permit it,[5] it is a practice that must be prohibited on account of the sanctity of the synagogue, for smoking would be like eating and drinking, which are forbidden. In addition, since it is known that the Christians are very strict and forbid smoking in their houses of prayer, it would be a desecration

of God's name if we were to permit this. Responding to a similar question as to whether one might smoke in the synagogue on Tisha Be'av (Vol. I, Hilkhoth Pesah, No. 112, p. 119), Hoffmann cites a number of authorities who prohibit such a practice, and adds that if the Christians forbid such a thing on their fasts, we should be all the more stringent, because of ובחקתיהם לא תלכו ; "Thou shalt not walk in their statues." (Lev. 18:3)[6]

It is most interesting that in these two responsa, Hoffmann interprets the prohibition against walking in the ways of the Gentiles in a most curious way. Trying to avoid the terrible sin of desecrating God's name, Hoffmann has in fact accepted a Christian custom as appropriate and right. But when he was asked about the use of an organ for Sabbath services (Vol. I, Hilkhoth Beth Hakeneseth, No. 15, pp. 11-19), he objected to it (partly) because of ובחקתיהם לא תלכו .[7] Obviously, this was a double-edged sword.

We note that the observance of customs by non-Jews does not make those customs automatically prohibited to Jews. Tosafoth[8] and Moses Isserles[9] make it clear that only such customs as are part of idolatrous worship or are based on delusions of idolators are prohibited. In our case, then, Hoffmann is forced to argue that the organ is not only used in Christian worship services; he must also prove that it is used exclusively for such purposes.[10]

There is yet another problem here, and that is: to what extent are Christians to be considered idolators, and their practices subject to prohibition? Freehof offers the following comment on this point:

> The relationship between the Jewish and the non-Jewish community has certainly not been distilled into lucidity. Christians are, of course, not idolators, but (if so) why are so many laws that dealt with idolators applied in the discussion of Christian worship? To what extent does the Jewish law consider Christians and Mohammedans actually part of a common group with Jewry, opposing the idolatrous paganism which still exists?[11]

Though theoretically Christians as well as Mohammedans are in the category of "sons of Noah," and not idolators, in practice, the strictures against idolatry are often applied to them. As a simple instance of this point, three of the questions concerning relations with Christian institutions are enumerated under Hilkhoth 'Avodath Kokhavim (Vol. II, Nos. 54-56, pp. 49-51).

In the first responsum under Hilkhoth 'Avodath Kokhavim, (Vol. II, No. 54, p. 49,) Hoffmann is asked whether it is permissible to teach Torah and mizvoth in a building which contained crucifixes. His answer, based on Magen 'Avraham and other authorities,[12] is that where no other solution is feasible, it is permissible to pray in such a building. If, however, another building can be found, that would be preferable.

More serious is the problem mentioned in Vol. I, to Hilkhoth Beth Hakeneseth, No. 20, p. 24f., where Hoffmann is queried about the use of a building as a synagogue which had previously served as a Protestant Church, a hospital, and a warehouse. The new tenants were prepared to make certain minor changes in the building, but were concerned about its use after having been dedicated as a Christian house of worship. The major referent for Hoffmann's answer was Joseph Saul Nathanson's Sho'el U'Meshiv,[13] who had received a question from Rabbi Judah Mittelman of New York.[14] Rabbi Mittelman was concerned about a Lutheran house of prayer which had recently been acquired by his congregation: was it permissible to pray there occasionally, and study on a regular basis? Hoffmann did not quote the full text of Nathanson's responsum, because it was not in his possession.[15] But he did rely on that authority's lenient decision, emphasizing in his own case that since the building had ceased to be used for Christian worship some years earlier, the prohibition against its use as a synagogue had lapsed.

Of somewhat lesser import, but very relevant, is the responsum (ibid., No. 55, p. 50) asking whether it was permissible to build a fence for a (Jewish) cemetery from the stones of a destroyed church. Hoffmann begins his reply by noting that the questioner had not specified whether the church was destroyed by the Christians deliberately, or whether it had simply collapsed. But in either case the

stones have lost their forbidden quality by being sold to Jews. He quotes his father-in-law's mentor, Rabbi Mendel Kargau, who had permitted the use of lumber and stones from a demolished church to be used for a synagogue, since by being fixed in a different way in the proposed synagogue, they would lose their prohibited status. On the other hand, argued Kargau, since the world would consider such a transaction with suspicion and amazement, it would be better to have the head builder purchase the materials, rather than an official of the congregation.[16]

The difference between that situation and ours, says Hoffmann, is that a synagogue is a far more serious matter than a cemetery fence, which contains no sanctity, and involves no real religious duty, and certainly would not occasion any perverse talk. Consequently he determined to permit the use of such materials without reservation. It was possible, then, to utilize materials from Church buildings for Jewish purposes, if somehow their "forbiddenness" could be removed. But what about accepting contributions from Gentiles towards synagogue building funds? Although this particular problem is not discussed in Melammed Leho'il, its counterpart is, namely: May a Jew contribute towards the building fund of a Church? (Vol. II, 'Inyanim Shonim, No. 148, p. 148)

The question of Gentile contributors is presented in Freehof, Reform Jewish Practice, Vol. II, pp. 46-9; he quotes the discussion on the subject in B. 'Arakhin 6a, where two opposing opinions are given on whether a gift offered by a heathen for the maintenance of the Temple should be accepted. The discussion was resolved as follows:

> If the heathen gives the gift for his own specific purpose, it must be rejected (for he might have some idolatrous purpose in mind and therefore, a beam or stone dedicated to an idolatrous purpose would then be imbodied in the Temple). But if he gives his gift without specifying how it is to be used, namely, giving it so that the Israelites may use it in the Temple for whatever purpose they choose, then it is acceptable.[17]

Moses Isserles, commenting on Yoreh De'ah, Par. 254, Section 2, says simply that if such gifts are given to the synagogue, we accpt them.

Hoffmann, commenting on the question of whether a Jew might contribute to a Church building fund, begins his answer with a stern prohibition: since, for the Jew, there is no distinction between associative Divinity (the belief in Jesus as the son of God) and idol-worship, how is it conceivable for a Jew to contribute towards such an institution? On the other hand, if he gives the money without specifying its use, he may do so, since the Church authorities may utilize that sum for some other purpose. In that case, even if they do use it for the church, it is not his responsibility. The Jew, then, is in the same position as the non-Jew: both may con-

tribute to the house of worship of the other, as long as they do not specify to what use the gift should be put.

The third responsum under the rubric Hilkhoth 'Avodath Kokhavim (Vol. II, No. 56, p. 50f.) is perhaps the most interesting of all. The question submitted was: Is it permissible for a Jew to be sworn in Gentile courts with an uncovered head? Citing first a number of authorities who permit such a practice in a time of emergency,[18] he goes on to relate that in Samson Raphael Hirsch's school in Frankfort/Main (where Hoffmann taught for a number of years), it was customary for the students to study the secular sciences with uncovered head. Hirsch even insisted, says Hoffmann, that visitors to his home remove their hats, as a sign that they were in the presence of someone important.

Therefore, concludes Hoffmann, it is preferable if the judge gives permission for the head to be covered, and his permission should be sought. But if the judge refuses to grant this request, then the man may be sworn without penalty, even with uncovered head.[19]

On only one issue (aside from the use of the organ) was Hoffmann firmly negative. And that was the question of burying the children of a Christian mother in a Jewish cemetery. Hoffmann was asked whether the members of a certain congregation should separate themselves from a burial society which allows such burials (Vol. II, Hilkhoth 'Aveluth, No. 127, p. 133f.).

Noting that such a child, unless circumcised, immersed, and converted by the Beth Din, is not considered a Jew by any test; further, that one does not bury a Christian next to a Jew, Hoffmann decides that such burials are indeed a breach of the halakhah, and should not be permitted.[20] He supports his ruling with the argument that it is even a greater sin to bury the offspring of such a woman in the Jewish cemetery, since such a deed declares the child involved to be Jewish, which is contrary to all halakhah on this matter.

Freehof, op. cit., Vol. I, pp. 137-9, contains a responsum about the burial of the non-Jewish spouse in the Jewish cemetery, and notes that permission is generally given (in Reform congregations) for the unconverted spouse to be buried in the family plot. But even today, many congregations do not allow this practice; it is an issue on which Hoffmann and most Orthodox authorities have taken an adamant stance.[21]

We observe then, that in most of his argumentation, Hoffmann has not distinguished between Christianity and idol worship. This was a somewhat unfounded assumption. But it provided him with a weapon which, skillfully wielded, could shield traditional Judaism from the dangers of syncretism.

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Having considered some of the problems involved in sharing facilities, building materials, and cemetery space,

we are now ready to turn to the far more complicated problems created by the Christian individuals who, by virtue of marriage or conversion, became associated with the Jewish community.

We have already mentioned the fact that following the emancipation of the Jews in the late eighteenth and early nineteenth centuries, a goodly number found Christianity a more attractive and socially acceptable religion, and converted.[22] But conversion was not a one-way street, as evidenced by the number of responsa in Melammed Leho'il concerning Christians who desired to become Jews.[23]

In Vol. II, Hilkhoth Gerim, No. 83, p. 87f., Hoffmann is asked about a convert who wished to marry a Jewess. His answer is quoted in full, since it discusses most of the relevant considerations:

> It is specified in the Shulhan 'Arukh Yoreh De'ah, Par. 268, Section 12, that we do not accept proselytes who come to be converted in order to marry a Jewish woman. But already Tosafoth raised a conflicting opinion in Yevamoth 24b, the section beginning: "Not in the days of," (based on) the first chapter of B. Shabbath, where (it is mentioned that) Hillel converted a non-Jew who wanted to become the high-priest; and similarly in Menahoth where a woman was accepted for conversion who said: 'In order to be married to that student.' Tosafoth concluded that they (who admitted such people) were sure that in the end it would all be done for the sake of heaven. And Beth Yosef[24] wrote, as quoted in Sifthe Kohen, Note 23, that from this text we learn that everything (in matters of conversion) is according to the view of the court.
>
> And here (in our case) where he has already married the Jewess according to their laws,

and she has already made herself available to him, and become pregnant by him, it is clear that she would marry him even if he does not convert. Therefore, there is support for the opinion that he is doing it for the sake of heaven.

Furthermore, if we don't accept him, she would be married to him in a Scripturally forbidden manner, since the (marriage of) a Jewess to a non-Jew is prohibited Scripturally (refer to the responsa of Moses Schick, 'Even Ha'ezer, Sections 37 and 155, and Yoreh De'ah, Section 249), and therefore it is preferable to accept him rather than have her marry him (in defiance of a prohibition).

Nor is there any difficulty here on account of the principle "you don't tell a man to sin in order to help a friend," meaning in our case telling the court to perform a prohibited act (accepting the proselyte for a prohibited reason) in order to save this woman from a greater prohibition, since she would live all her days in a prohibited relationship. After all, didn't she sin in the first place?

To this contention one should say first that although her beginning was sinful, since she has already made herself available to the Gentile, by this time she is to be considered as one "under pressure," since, having become pregnant through him, she is unable to bear the shame of not being married to him (with huppah and qiddushin), and is afraid that henceforth no (other) man would marry her, and she would have to remain alone all her life. And in any case the ruling is similar to what is written in Tosafoth Shabbath 4a, the section beginning "and so since she brought herself forth for fornication, she is considered "pressured."

And furthermore, if she is married to a non-Jew, even her seed, who from the legal point of view are completely Jewish, will be dragged after their father in his Gentile state, and will be (then) sinners; and these (innocent) sheep, how have they sinned?

> And therefore, it is preferable for the court to transgress the smaller prohibition of accepting the proselyte and training him in Jewish law, so that good seed will come from him; but in any case, the court should warn him (explicitly) to be careful and circumspect in the entire Jewish religion, and particularly with regard to the Sabbath and forbidden foods; and it is preferable to take from him a promise, rather than an oath on this matter.

So again Hoffmann has found ample reasons, from his humanitarian point of view, to make a permissive decision and allow the rabbinical court to accept this man as a proselyte.

A very similar problem was posed to Hoffmann in Vol. III, Hilkhoth 'Ishuth No. 10, p. 18f., where he was asked whether one should accept a female convert who had married a Jew in a civil ceremony while yet a gentile. The questioner also wanted to know whether the couple would have to wait three months, as required by Jewish Law, in order to distinguish between unsanctified and sanctified seed.[25] Hoffmann quotes the Beth Yizhaq,[26] which states flatly that one should not accept a convert who has already had intercourse with a Jew; certainly one should not arrange a huppah and qiddushim for such a couple. But Shalom Kutna, in Vekhatorah Ye'aseh,[27] wrote that since the couple was bound together by the civil law, perhaps it should be considered a post facto situation, and she should be converted, following which they should have a Jewish ceremony. Hoffmann decides to be lenient, noting that even the author of Beth Yizhaq might have allowed it, if the couple

had been married (rather than living together without benefit of any ceremony). But he adds this restriction: if she had come to the rabbi prior to their civil marriage to be converted, and the rabbi had rejected her, since he realized that she wanted to convert (only) for the sake of marriage, then even after the marriage she should not be accepted. Otherwise, every Gentile woman who is not accepted will go ahead and marry her Jewish partner, and then compel the rabbis to accept her later.

Hoffmann further stipulates that if more and more Jews marry Christian women, the rabbis would be forced to establish a fence around the law and not accept such proselytes at all. But before he would take such a step, he would need the agreement of all the Orthodox rabbis, and the favorable decision of the rabbinical assembly.

As to the matter of whether they must wait the three months of <u>havhanah</u>, Hoffmann decrees that they should wait, but in a time of emergency, or where there is a suspicion that the husband will have illicit intercourse with her, one should rely on the decision of Rabbi Jacob Saul Elischer, who decreed that only if the couple had children prior to conversion must she wait, and arrange a Jewish ceremony for them without the waiting period.[28]

A similar problem is discussed in Freehof, <u>op. cit.</u>, Vol. II, pp. 83-5, where Hoffmann's decision is quoted, as well as that of Benzion Uziel, the former Sephardi chief rabbi of

Palestine, who permitted such conversion and remarriage.[29] Freehof concludes his discussion by referring to the statement adopted by the Central Conference of American Rabbis in 1947:

> Since it is the point of view of the Conference that all sincere applicants for conversion be accepted whether marriage is involved or not, and since too we recognize the validity of civil marriage, but urge that they be sanctified by a religious marriage ceremony, we surely would accept such a proselyte and officiate at the religious marriage. However, it should be clear that the fact that the couple is already married by civil law does not obviate the necessity of conversion of the Gentile party before the Jewish marriage can take place.[30]

It should be noted that the Conference was not concerned with the three month waiting period required by Orthodox law.

A related case was raised in Vol. III, Hilkhoth 'Ishuth No. 14, p. 22, where Hoffmann was asked about a man married to a Christian woman in a civil ceremony; the woman now wants to be converted and married according to the law of Moses and Israel. Should they be married immediately, or must they wait the three months?

We note that in this instance, as in the case of two Jews married in a civil ceremony (Ibid, No. 13, p. 22)[31] the questioner assumed that it would be alright to marry the couple in a Jewish ceremony, and was only concerned about the three months of havhanah. Hoffmann decides that she should wait the three months, citing Maimonides as his authority,[32]

and noting that even Dagul Merevavah,[33] who gives a lenient ruling does so only when the woman is past the age of child-bearing; otherwise, he agrees with Maimonides. But, Hoffmann adds, he saw in Vekhatorah Ye'aseh,[34] that there are rabbis who permit a Jewish ceremony without the ninety-day waiting period; consequently, if the couple would not accept his ruling to separate themselves from each other, and there are grounds for believing that he will have intercourse with her in a forbidden manner, one should depend on these authorities, and give the lenient ruling.

In deciding this case as he does, Hoffmann adheres to his normative procedure of being guided by the "reality principle," and finding support for his lenient rulings in the discussions of the more permissive authorities.

A somewhat more complicated ruling is involved when the Jewish partner in such an intermarriage was a kohen. Hoffmann was asked about such a case, in which the woman bore a child who was circumcised and then died; she was disturbed that her religion was different from her son's and wanted to be converted in order to marry the priest in a Jewish ceremony (Vol. III, Hilkhoth Periyyah U'reviyyah, No. 8, p. 16f.). The questioner adds that if the court decides not to accept her, there is a good chance that she will become ill and demented.

In answering this perplexing problem, Hoffmann begins by noting that first one must determine which is the greater prohibition: for a kohen to marry a convert, or for him to

marry a Christian; and it seems clear that marrying a Christian involves a greater prohibition. Therefore we certainly ought to convert the woman. But there is a difficulty here, since if we do accept her, she must agree to follow Jewish law scrupulously, and since she would have to divorce her husband (in order to marry him Jewishly), she would then be breaking the law forbidding a divorcee to marry a kohen.

Hoffmann circumvents this difficulty by noting that as long as the woman does not explicitly say that she does not accept this provision of the Jewish law, even though we know she intends to transgress it, we accept her for the sake of the kohen and for the sake of the children yet to come.[35]

He supports his decision with a number of other arguments, the most interesting among them being his statement that if the woman does become demented because she is not accepted, it will be a desecration of God's name, since the community will say that the Jews have no compassion upon a Christian woman, and do not care if she becomes ill and demented.[36]

But, Hoffmann continues, though she should be accepted for conversion, no Jewish wedding ceremony should be arranged, for there is a greater prohibition against a kohen marrying a divorcee in a Jewish ceremony than in some other way. And she must separate herself from him for ninety days, in order to distinguish between the seed conceived in holiness, and the seed conceived in impurity.

Furthermore, the woman should be informed that if her desire to become a Jewess is based on her son's religion, she is in error; her son, even though circumcised, is not considered a Jew unless converted and immersed by the court. Only if she wants to become a Jewess because she believes in Israel's God, may she carry through with her plans.

Finally, the man and woman should be warned to pay careful attention to the laws of menstrual flow and bathing, since if they do not do so, they will lose more by the conversion than they gained, since their sons will be halalim and will not ascent to the bimah, while their daughters will be halaloth.

In responding to the challenge of converts to Judaism, Hoffmann has shown great concern for halakhic rulings on such matters. But he has also shown his keen awareness of the extensive ramifications of intermarriage, not only in the personal lives of the two people most directly concerned, but also with regard to the Jewish community as a whole. And it is with a slight sense of regret that we turn from these complicated and fascinating problems to the one lengthy responsum wherein Hoffmann reveals his attitude towards the burgeoning Reform movement.

Chapter Six

The Challenge of Reform Judaism

The collected responsa in Melammed Leho'il contain surprisingly little material on the Reform movement, though we know that it made a considerable impact on German Jewry.[1] Berlin itself, where Hoffmann taught and wrote for almost fifty years, had known Reform since 1815, when Israel Jacobson introduced a confirmation service for his son.[2] The founding of the Orthodox seminary itself was partially a response to the new Hochschule für die Wissenschaft des Judentums,[3] and the leadership of the Berlin community was greatly affected by the formation of the Liberaler Verein für die Angelegenheiten der jüdischen Gemeinde in 1895.[4]

That Hoffmann did engage in polemics against the Reformers has been documented in the first chapter, and will be discussed again here. But one is led to accept the conclusion of his biographer Marx on this point: though his activities against Reform (as against anti-Semitism) were of practical value, and lent the weight of his authority to the refutation, they did not play a large part in his life.[5]

The one responsum which deals directly with this matter is Vol. I, Hilkhoth Beth Hakeneseth, No. 15, pp. 11-19, where Hoffmann presents in great detail his objections to the use of the organ in the synagogue, and his general response to the innovations proposed and practiced by German Reform.

Freehof has summarized both the history of the controversy and the basis for Orthodox rejection of the organ:

> The question of music in the synagogue, especially organ music, has been the subject of a most enduring debate between advocates of Orthodoxy and advocates of Reform. Ever since Israel Jacobson, the pioneer lay Reformer, installed an organ in the synagogue which he opened in Seesen, Germany in 1818, the debate has continued...
>
> The Orthodox arguments are: first, that playing any musical instrument is prohibited on the Sabbath and holy days, and that even to engage a non-Jew to play the instrument is considered a disturbance of the Sabbath. The Shulhan Aruk (Orah Hayyim, 338:1, 338:2) (sic) says that it is permitted to have a non-Jew play an instrument at weddings. But that is specifically at weddings. That would not apply, according to Orthodox opinion, to religious services.
>
> Second, since we are in mourning for the destruction of the Temple, music in general is forbidden (except, of course, for a wedding)...
>
> Third, that the organ, especially, is a characteristic Christian religious instrument, and so is forbidden by the principle of Hukat Hagoi (sic).[6]

It is not surprising then, to find Hoffmann referring to such arguments when he was asked about the organ. The text of the question follows:

> In a certain city the congregational leaders agreed to place in their synagogue an instrument (called an) organ, and the rabbi who was there, though he tried with all his might, did not succeed in nullifying this agreement. Therefore, against his will, his preference was to choose the lesser evil, and permit

> them to play the organ during the week, for example at weddings and on the king's birthday--May his honor be exalted--and through this to effect matters so that at least they would not desecrate the Sabbaths and festivals. In addition, he is fearful that if he should leave his rabbinical position, and forsake his appointment on account of the organ, another rabbi would come there who would not only permit them the use of the organ, but would cause other great disorders; therefore the rabbi of the aforementioned place asks if he can retain his appointment and (still) permit the playing of the organ on weekdays.[7]

In the predicament of this unidentified rabbi can be seen the predicament of every Orthodox authority confronted by laymen anxious to modernize and beautify the traditional services.

Even in his day, there was a considerable literature on the subject of the organ, and before venturing to give his own opinion, Hoffmann provides a thorough summary of the opinions of the halakhic authorities collected in 'Elleh Divre Ha-Berith; this pamphlet had been published in 1819 by the Beth Din of Hamburg, protesting against the introduction of the organ into the prayer services of the Reform congregation there, as part of a general reaction to the modified services conducted by the Reformers.[8]

Hoffmann noted that all the authorities quoted[9] agreed unanimously to forbid the playing of an instrument in the synagogue on Sabbaths or holidays, but that there was a dif-

ference of opinion regarding the playing of the organ on weekdays. He then lists the authorities and their positions on this secondary matter. The consequence of the doubt on this point, though, was that the rabbi who sent in the question would be encouraged to remain where he was, rather than leave over a doubtful matter, and allow a new rabbi to make even more radical changes.

Then Hoffmann refers to a book written by Rabbi David Deutsch of Savoy, entitled Die Orgel in der Synagoge,[10] which detailed the prohibitions against using the organ, and even argued that it is forbidden on weekdays because of huqqoth ha-goyim.[11]

Continuing his argument, Hoffmann states that in fact the organ is not similar to an instrument found in the Temple, and called a magrefa; further, we cannot derive authority for change from the fact that a particular congregation in Prague had installed an organ some years previously. And finally, that the organ is to be avoided not only on account of huqqoth ha-goyim, but also on account of huqqoth ha-apikorsim (meaning the Reform Jews).

The statement that no authority can be derived from the Prague congregation which had an organ is especially intriguing in view of the fact that every synagogue erected in Berlin in the last four decades of the nineteenth century had contained an organ.[12] Only during the early years of the present century, when the affairs of the Berlin community were

conducted in a more conservative manner, was it proposed that new synagogues should not contain organs.[13]

The responsum on the organ was written in 1897,[14] while the Berlin Jewish community was led by men of liberal tendencies. It is more than probable that Hoffmann's strictures against the organ were directed against these tendencies and based on the fear that its introduction would lead to even more radical and dangerous innovations. He makes this point explicitly when he says:

> And henceforth I say that even if we would be inclined to say that the organ does not fall into the category of idolatrous customs, in any event it should not be permitted because it imitates the "heretics," for it is known that the destroyers began with this to make breaches in God's religion, desecrating the Sabbath in public, changing the prayers, and denying the coming of the Messiah, and other great sins added to that of the organ, despite the watchful surveillance of Orthodox rabbis. And now, if we permit the organ, will the destroyers not say: "Look, in our strength we have gathered support" (literally: taken horns), and the rabbis say "Amen" after us. And soon they will permit also other forbidden things which (according to their opinion), the spirit of the times will not bear.[15]

It is most curious that David Hoffmann, who found so many ways to arrive at lenient decisions in conformity with the spirit of the times, chastises the Reform movement for viewing matters in a similar light. The difference was, of course, that Hoffmann retained his commitment to halakhah, while the Reformers did not.

We conclude then, that with all of Hoffmann's flexibility in dealing with challenges to halakhah, he was as firm as any Orthodox authority in opposing the work of the Reformers. The organ, for him, was only a symbol of a new evil which had befallen Judaism, and he attacked that evil with all the strength he could muster.

Chapter Seven

Summary and Conclusions

About a year before the first volume of Melammed Leho'il was published (1926), Israel Bettan published a most interesting article in the Hebrew Union College Jubilee Volume, 1875-1925, Cincinnati: 1925,[1] entitled "Early Reform in Contemporaneous Responsa." Quoting copiously from the writings of Moses Sofer, Eleazar Fleckeles, Akiba Eger,[2] and Mordecai Benet,[3] he argues that these halakhic authorities held to a rather rigid view of Jewish law:

> This principle (that life must be made to fit the law, and not the reverse) must be understood, and for the time being even accepted, before we can hope to enter and move about sympathetically in the intellectual domain of the authors of those responsa.[4]

A few pages later, he states this position more emphatically:

> (According to such authorities) the law is independent of outward circumstances. Time and so-called changed conditions play no part in matters pertaining to law. All practical issues when brought into conflict with the mandate of the law must yield unconditionally.[5]

But our analysis of David Hoffmann's responsa has not supported such statements; if anything, we have found just the opposite to be true.

Rabbi Zvi Hirsch Chayes,[6] an important halakhic authority during the first half of the nineteenth century, had also recognized that the demands of the time must be met:

> And look please and see that in our country, and in most of the districts of Poland and Russia, the reciting of the yozroth and the piyyutim and similarly the selling of the mizvoth on the Sabbaths and holidays has been abolished for several years. And this new behavior did not cause any divisions of opinions, since they were not abolished by means of shouts and numerous publications, nor by deliberations in print, nor were there prepared in our country opinions from the learned men on this subject, nor were the prayerbooks in the synagogue changed. For we have known for some time that all the customs such as these, which are not in accord with the time and the place are not established, and cannot stand against the course of time./ (emphasis mine)

These are words that Hoffmann himself might have spoken.

In this chapter then, we shall summarize Hoffmann's response to the challenges to halakhah in his day; we shall also consider the means by which he was able to render so many lenient decisions while remaining a firm supporter of the halakhah.

In responding to the challenge of new products, inventions, and means of transport, Hoffmann found reasons for permitting every practice he was asked about, except regarding smoking in the synagogue, and regarding a kohen in proximity with a corpse. Generally, it was easier for him to permit new usages, for which no precedent had been set, then to permit practices on which previous authorities had already rendered stringent opinions. He was also able to base certain leniencies

on a "time of emergency," and on the probability of financial distress.

Turning to the challenge of the secular environment, Hoffmann renders a strict decision on Sabbath gymnastics (Vol. I, Hilkhoth Shabbath, No. 53, pp. 65-7), but his normative response again is a lenient ruling. He is well aware that no amount of censure, whether ordained by himself or other authorities, would keep children from attending school on Saturday, or prevent a kohen from studying medicine. So in each case, he finds a basis for permitting the practice in question, but since the dangers to halakhah were great, he often expressed doubt over his ruling, and tried to find support for it among the eminent halakhic authorities.

In dealing with the challenge to halakhah provided by Christianity, Hoffmann was "hemmed in" by centuries of previous responsa on idol worship and huqqoth ha-goyim, categories that were still applied to Christianity in his day. Where the weight of halakhic opinion was clearly negative, as in the question of burying children of Christian women in a Jewish cemetery (cf. Vol. II, Hilkhoth 'Aveluth, No. 127, p. 133f.), Hoffmann had no option but to proscribe the practice. And similarly in the question of playing the organ at Sabbath services (Vol. I, Hilkhoth Beth Hakeneseth, No. 15, pp. 11-19). Otherwise, insisting that the prohibited act was for some reason no longer prohibited, or that an act might be permitted

if certain conditions were set, his response to the challenge of Christianity was a lenient one.

Only in trying to cope with the new and powerful Reform movement did Hoffmann assume the role of the adamant Orthodox authority, of the type described by Bettan at the beginning of this chapter. In this instance there was no room for rulings based on a "time of emergency," or lenient decisions based on considerations for the welfare of the people; Reform was a danger that had to be controverted, else the whole system of <u>halakhah</u> would be undermined.

-ii-

We turn now to a discussion of some of the means by which Hoffmann was able to render so many lenient decisions, while being considered the <u>poseq 'elyon</u> of German Orthodoxy. He invoked five major principles which, when added to the opinions of other lenient authorities, enabled him to mediate effectively between the <u>halakhah</u> and the environment. The first of these is שעת הדחק, a time of emergency, referring to the wort of unusual circumstances that required special rulings. World War I provided a clear enough example of such a time of emergency, but Hoffmann cited this principle in many other instances, so that the time of emergency seemed to be his entire generation, faced as it was with the combined challenges of new products and inventions, the secular

environment, Christianity, and Reform Judaism.[8]

A corollary of this principle is the oft-quoted phrase: עת לעשות להי הפרו תורתך "It is time for the Lord to work; they have made void My law." (Psalm 119:126). Hoffmann invokes this support only once, in the question of Sabbath afternoon services (Vol. I, Hilkhoth Qeri'ath Ha-Torah Ve-Hamaftir, No. 14, p. 10f.), but it remains a kind of unspoken consideration in many of his responsa.

The second major principle which Hoffmann utilized was precedent. A custom was accepted either because it had been taught by an elder: כבר הורה זקן (B. Shabbath 51a; B. Yevamoth 105b), or because the people had adopted it: כבר נתפשט המנהג "An elder has already taught it" was invoked in the issue of Sabbath afternoon services (Vol. I, Hilkhoth Qeri'ath Ha-Torah Ve-Hamaftir, No. 14, p. 10f.), and, by implication, in the discussion about swearing in court with an uncovered head (Vol. II, Hilkhoth 'Avodath Kokhavim, p. 50f.) "The custom is already widespread" was mentioned in the ruling on the use of gas for a ner tamid (Vol. I, Hilkhoth Shabbath, No. 21, p. 25f.), and applied - with different wording - in the responsum on the magical tablets (Vol. II, Hilkhoth Huqqoth Ha-'Ovde Kokhavim, No. 63, p. 57.)[9]

The third major principle can be simply stated: Don't make things worse. In the first place, מצוה שלא לומר דבר שאינו נשמע; "one shouldn't say something which

will not be heeded."[10] In the second place מוטב שיהיו שוגגין ואל יהיו מזידין "It is better that they be inadvertent sinners rather than deliberate sinners."[11] Thirdly, it is best לבחור הרע במעוטו to choose the lesser evil. And finally, there is the concern for זילותא דבי דינא "lest the authority of the court be diminished."[12] Hoffmann was particularly sensitive to these considerations, as is abundantly clear from the responsum on the kohen studying medicine (Vol. I, Hilkhoth Beth Hakeneseth, No. 31, p. 40), the responsum on Ersatz coffee, (Vol. I, Hilkhoth Pesah, No. 89, p. 107f.), and the responsum on the use of the organ, (Vol. I, Hilkhoth Beth Hakeneseth, No. 15, pp. 11-19).

The fourth major consideration was financial:

התורה חסה על ממונם של ישראל

"The Torah has consideration for the money of Jews."[13] In other words, the halakhic authority should not make a stringent decision, if a considerable monetary loss is involved. This principle has long been established in matters of kashruth, but Hoffmann extended it to cover situations such as the dipping of false teeth in boiling water (Vol. I, Hilkhoth Pesah, No. 93, p. 112), and the purchasing of new utensils during a time of shortage (Vol. I, Hilkhoth Pesah, No. 89, p. 107f.).

The fifth major principle was the concern for God's

name; the authorities were very cautious not to permit anything which would create חלול השם, a desecration of the Divine Name. Hoffmann showed his concern for such matters in his responsa on smoking in the synagogue (Vol. I, Hilkhoth Beth Hakeneseth, No. 15, p. 11, and Vol. I, Hilkhoth Pesah, No. 112, p. 119) and his responsum on a Christian woman married to a kohen who wanted to convert (Vol. III, Hilkhoth Periyyah U'Reviyyah, No. 8, pp. 16-17).

While not exhausting the bases for Hoffmann's lenient decisions, these five principles supported his case in the majority of instances. By using them, he avoided the pitfalls of the authorities whom he mocked in his introduction to Melammed Leho'il, the ones who knew only how to pile up stringent decisions.

Boaz Cohen has observed that:

> Every generation is obligated to resolve for itself the questions which are born in its own time, and to adapt the laws of the Torah in a fitting manner.[14]

David Hoffmann, through Melammed Leho'il, did just that.

-iii-

The question may legitimately be asked: Where do we go from here? Freehof has observed that "for the last twenty-five years, the responsa literature has been in a state of comparative quiescence. . . . Certainly there are no respondents of great stature in our day."[15] Indeed, the prospect

is not encouraging. But there are new challenges to the halakhah in our time. The codes of Jewish civil law have assumed new importance with the advent of the state of Israel, as have many of the ancient agricultural laws. Artificial insemination, the 'agunah, and divorce crop up frequently in recent responsa material, particularly in the annual No'am.[16] There are still challenges--and there are still observant Jews who care about the halakhah.

Even the Reform movement has come round to a serious study of the legal literature. Jacob Lauterbach, Jacob Schwarz, and Solomon Freehof have done distinguished work in the field. Of course, Reform has treated the responsa as a kind of general guide, rather than as authoritative law.

Finally, the responsa are more and more being recognized as a sine qua non for the proper understanding of the history and socio-economic patterns of the Jews. A number of recent books in the field of Jewish history notably Louis Finkelstein's Jewish Self-Government in the Middle Ages, New York: 1924, and A. A. Neuman, The Jews in Spain, Philadelphia: 1942, are based on responsa to a considerable extent. This literature is a rich source of knowledge that is just beginning to be tapped by scholars.[17]

Instead of concluding, then, that the responsa literature is gradually dying out, we conclude that it will continue to function significantly in response to new challenges, and as

a repository of information about the Jewish past. Even if no single respondent attains the stature of a David Hoffmann, even if no single scholar can master the totality of the literature, responsa will remain an important key to the understanding of Jewish life.

NOTES TO CHAPTER ONE

1. The biographical information included in this chapter is taken primarily from the following sources:

   Louis Ginzberg, Students, Scholars and Saints, Philadelphia: 1928, pp. 252-262.

   Alexander Marx, Essays in Jewish Biography, Philadelphia: 1947, pp. 185-222.

   Chaim Tchernowitz, Masekheth Zikhronoth: Parzufim Ve-Ha'arakhoth, New York: 1945, pp. 244-264.

   Meyer Waxman, "Professor David Hoffmann," in Hokhmath Yisrael Bema'arav Europa, ed. Shimon Federbush, New York: 1958, pp. 199-208.

2. Marx, op. cit., p. 187.

3. Schick was an important halakhist, whose collected responsa were published in Muncacz (1881), Lemberg (1884) and Satmar (1904). Cf. Solomon B. Freehof, Reform Jewish Practice and its Rabbinic Background (combined edition), New York: 1963, Vol. II, p. 8f.

4. Art. "Israel (Azriel) Hildesheimer," Jewish Encyclopedia, Vol. VI, p. 395.

5. Ibid., p. 396.

6. The Allgemeine Zeitung des Judentums, XXXVII (1873), p. 738 (quoted in David Philippson, The Reform Movement in Judaism, New York: 1931, p. 382 and fn.) stated that Hildesheimer was "the uncompromising foe of each or any reform in ritual or practice." Philippson himself goes on to say: "The Hildesheimer brand of orthodoxy is thoroughly consistent; here there is no recognition of changed conditions and changing views." (loc. cit.)

7. A native of Pressburg, the Kethav Sofer succeeded his father Moses Schreiber, the Hatham Sofer, as director of the Pressburg yeshivah. Abraham Schreiber, like his father, was strictly opposed to religious reform. Cf. Judah Eisenstein, Ozar Yisrael, 10 Vols., New York: 1951, Vol. VII, pp. 159a-159b.

8. Cf. Ginzberg's comment in Students, Scholars and Saints, p. 256:

> The great historical importance of Dr. Hoffmann is that he was the first to insist upon a critical understanding of Orthodox Judaism, which is possible only on the basis of a critical investigation of its authoritative sources, the Bible, the Mishna, and the Talmud.

9. Author of Dor Dor Ve-Dorshav, Vilna: 1904. This was the first comprehensive review of the history of Jewish literature. Cf. Waxman, A History of Jewish Literature, 5 Vols., New York: 1936, Vol. IV, pp. 601-611.

10. Waxman, ibid., p. 602f.

11. Art. "David Hoffmann," Jewish Encyclopedia, Vol. VI, p. 435.

12. Hoffmann took this appointment in order to assist his widowed mother. Cf. Marx, op. cit., p. 188.

13. Her father, Jonah Rosenbaum, was a well-known businessman and Talmudic scholar; he was a pupil of Rabbi Mendel Kargau of Fürth, whom Hoffmann quoted in Melammed Leho'il (Vol. II, Hilkhoth 'Avodath Kokhavim, No. 55, p. 50).

14. Marx, op. cit., p. 188.

15. Art. "Seligman Baer Bamberger," Jewish Encyclopedia, Vol. II, p. 486.

16. The date 1871 is given in the Jewish Encyclopedia, but Marx, op. cit., p. 204, states that the degree was received on December 17, 1870.

17. Joseph L. Blau, Modern Varieties of Judaism, New York: 1966, p. 65.

18. Ibid., p. 68.

19. The most personal account of Hoffmann's years at the seminary can be found in Marx, op. cit., pp. 189-197.

20. Philippson, op. cit., p. 382.

21. p. 200.

22. Marx, op. cit., p. 198f.

23. For a fairly complete list of Hoffmann's publications, consult:

L. Fischer, "Bibliographie der Schriften und Aufsätze des Dr. D. Hoffmann," in Hoffmann Festschrift, Berlin: 1914, pp. vii-xxxiv.

For an analysis of Hoffmann's contributions to the world of scholarship, consult:

E. M. Lipshütz's introduction to: Re'ayoth Makhri'oth Neged Wellhausen, tr. E. Barischansky, Tel Aviv: 1928, pp. vii-xv.

Chaim Tchernowitz, op. cit., pp. 244-264.

Meyer Waxman, "Professor David Hoffmann," in Federbush, op. cit., pp. 199-208.

24. Art. "David Hoffmann," Jewish Encyclopedia, Vol. VI, p. 435.

25. A sermon-eulogy can be found in Jeschurun IX (Jan., 1922), pp. 1-19, by Joseph Wohlgemuth (in German).

26. p. 185.

27. Described by Philippson, op. cit., p. 51 as "the all-absorbing episode in German Jewish religious life at the close of the fourth decade of the nineteenth century." Cf. Philippson's analysis, pp. 51-74.

28. In 1841, the Hamburg Temple again became the center of controversy; in 1818, the first edition of their prayer-book had aroused intense opposition, and now, with the revised edition, the opposing groups took up their cudgels anew. Cf. Philippson, op. cit., pp. 75-89.

29. Ibid., p. 117.

30. W. Gunther Plaut, The Rise of Reform Judaism, A source-book of its European Origins, New York: 1963, p. 55f.

31. Marx, op. cit., p. 216f.

32. Loc. cit.

33. "Professor David Hoffmann," in Federbush, op. cit., p. 201.

34. tr. Bernard Drachman, New York: 1942, p. 161 (quoted in Blau, op. cit., p. 128).

35. Marx, op. cit., p. 193f.

36. Ibid., pp. 199-203.

37. Ibid., pp. 213ff.

38. Ibid., p. 216.

39. p. ix.

NOTES TO CHAPTER TWO

1. The title is derived from Isaiah 48:17,

   אני ה' אלהיך מלמדך להועיל

   "I am the Lord thy God, who teacheth thee for thy profit."

2. Re'ayoth Makhri'oth Neged Wellhausen, Tel Aviv: 1928, p. x.

3. p. 201.

4. The delay in publication was at least partially due to Hoffmann's modesty. He claimed that he needed at least three years in order to properly edit and revise the material. Cf. Moses Judah Hoffmann's introduction to Melammed Leho'il Vol. I, p. iii.

5. The incident is recounted in David Hoffmann's introduction to the responsa collection, Vol. I, p. 2, and quoted in Marx, op. cit., p. 218.

6. Marx, loc. cit.

7. Kaplan had intended to add a few explanatory notes, but died soon after beginning the work. Cf. Moses Judah Hoffmann's introduction, Vol. I, p. iii.

8. Another edition combining the three volumes into one was prepared in 1954 by A. Frankel of New York; it is the later edition, prepared by photo-offset, which has been utilized for the thesis.

9. One hundred and twenty two in 'Orah Hayyim, one hundred and forty eight in Yoreh De'ah, fifty four in Even Ha'ezer, and three in Hoshen Mishpat. The count is supplemented by two addenda in Volume III to earlier volumes, and by the fact that several of the "numbers" (Vol. I, Hilkhoth Pesah, No. 113, p. 119f; Vol. II, 'Inyanim Shonim, No. 148, p. 148f., et al.) contain more than one responsum.

   It should further be noted that some of the responsa were written by Rabbi Mendel Kargau, the teacher of Hoffmann's father-in-law. Cf. Marx, op. cit., p. 219.

10. Vol. I, pp. 1-2.

11. Vol. I, p. 1. An interesting metaphor indicating the dangers besetting a traditionalist in the modern age.

12. Vol. I, p. 2.

13. Including Barischansky, op. cit., and: Sefer Devarim. tr. Zvi Shefer. Tel Aviv: 1961.

14. Masekheth Zikhronoth, New York: 1945, p. 246f.

15. In fact, Hoffmann wrote a number of articles in Hebrew, which are listed in L. Fischer, "Bibliographie der Schriften und Aufsätze des Dr. D. Hoffmann," Hoffmann Festschrift, Berlin: 1914, pp. xxxii-xxxiv.

16. Masekheth Zikhronoth, loc. cit.

17. For example, Vol. I, Hilkhoth Shabbath, No. 53, p. 65f.; Vol. I, Hilkhoth Pesah, No. 93, p. 112, and Vol. I, Hilkhoth Rosh Hashana Ve-Yom Hakippurim, No. 119, p. 124f. The questions too were often in German: Vol. I, Hilkhoth Shabbath, No. 36, p. 49, and Vol. I, Hilkhoth Shabbath, No. 52, p. 65f., et al.

18. Hoffmann's citations include:

Ezekiel Landau (1713-1793), author of Noda' Bihudah, Stettin: 1861.

Joseph Saul Nathanson (1808-1875), author of Sho'el U-Meshiv, Lemberg: 1868ff.

Moses Sofer (1763-1839), author of She'eloth U-Teshuvoth Hatham Sofer, Pressburg: 1855ff.

Isaac Elhanan Spektor (1819-1876), author of Be'er Yizhaq, Koenigsberg: 1858, and 'Ein Yizhaq, Vilna: 1889.

19. In his preface to Volume I, Moses Judah Hoffmann refers to his pupils, the rabbis of Germany. Several questions came to Hoffmann from Rabbi S. B. Bamberger of Kissingen (Vol. I, Hilkhoth Shabbath, No. 44, p. 58, and Vol. I, Hilkhoth Shabbath, No. 35, p. 49.)

20. p. 44.

21. With certain exceptions, as indicated. The lack of precise information throws some doubts on the use of the responsa as historical sources. See below, p. 97.

22. An unpublished D.H.L. dissertation, Cincinnati: 1957.

23. p. 5.

24. Cf. Boaz Cohen, Kuntros Ha-Teshuvoth, Budapest: 1930, p. 28:

> Every generation is obligated to resolve for itself the questions which are born in its own time, and to adapt the laws of the Torah in a fitting manner.

25. Op. cit., Vol. I, p. 14f.

26. A Treasury of Responsa, p. 296.

27. Op. cit., p. 220.

28. For a first-rate analysis of the development of German Reform, consult David Philippson, The Reform Movement In Judaism, New York: 1931, or W. Gunther Plaut, The Rise of Reform Judaism: A Sourcebook of its European Origins, New York: 1963.

29. Vol. I, Hilkhoth Beth Hakeneseth, No. 31, p. 40.

30. Vol. I, Hilkhoth Shabbath, No. 57, p. 71.

31. Vol. I, Hilkhoth Pesaḥ, No. 91, p. 108-110.

32. Vol. I, Hilkhoth Kri'ath Ha-Torah Ve-Hamaftir, No. 14, p. 10f.

33. It is interesting to note that questions on death, burial, and mourning practices comprise the largest single section in both volumes of Reform Jewish Practice. Evidently even Reform Jews need some halakhic guidance at such times.

34. Vol, II, Hilkhoth Im Mutar Lehithrap'oth Bidevarim Ha-ʾasurim, No. 32, p. 30f.

35. Ibid., No. 35, p. 32f.

36. Vol. II, No. 54, p. 49.

37. Vol. II, No. 55, p. 50.

38. Vol. II, No. 56, p. 50f.

39. Vol. II, Hilkhoth Huqqoth Ha-'Ovde Kokhavim, No. 63, p. 57.

40. Vol. II, No. 148, p. 148f.

41. Cf. the discussion in Moses Mielziner, Jewish Law of Marriage and Divorce, Cincinnati: 1884.

42. Vol. III, No. 55, p. 95f.

43. Vol. III, No. 56, p. 97.

44. Vol. III, No. 57, pp. 98-100.

45. Reform Jewish Practice, Vol. I, p. 11.

46. Most of these items are properly referred to as hiddushim, (novellae) and often could be found in books titled Responsa. Freehof notes that the Russian authorities were particularly adept at hiddushim, and that their responsa were often long and detailed:

> A large volume of responsa by a Russian scholar might contain ten or fifteen questions, each exhaustively dealt with, generally on a theoretical basis; whereas a volume of the same size by a Hungarian or Galician contemporary might have three or four hundred responsa, the overwhelming percentage of which dealt with practical urgent matters. (The Responsa Literature, p. 43)

47. Hoffmann, a Hungarian by birth and upbringing, clearly fits the pattern.

NOTES TO CHAPTER THREE

1. Cf. Solomon Freehof, The Responsa Literature, Philadelphia: 1959, pp. 227-242.
2. Op. cit., p. 235.
3. In his monthly bulletin, 1892.
4. See p. 33, where a similar decision is reached.
5. Yoreh De'ah, Par. 102.
6. d. 1905.
7. The prohibition is based on Shulhan 'Arukh, 'Orah Hayyim, Par. 277, where the statement is made that one may not open the door, if by so doing he might (even accidentally) extinguish the candle.
8. The analogy is quoted in Magen 'Avraham, Par. 316, note 11, in the name of Rabbi Solomon ben Adret.
9. This is one of the few instances where Hoffmann does not give a clear-cut opinion.
10. Isaac Schmelkes, in Beth Yizhaq, Yoreh De'ah, Par. 102, Sections 4-5.
11. In his Kuntros Hilkhatha Rabbatha Leshabbetha, New York: 1891.
12. Op. cit., p. 240.
13. (1793-1876), author of Divre Hayyim, Lemberg: 1875.
14. Vol. III, p. 106.
15. See below, p. 47.
16. cf. Shulhan 'Arukh, 'Orah Hayyim, Par. 307, Section 2.
17. by Saul ha-Levy Horowitz (1831-1912); Section 194.
18. Vol. I, p. 84.
19. Cf. Beth Yizhaq, Yoreh De'ah, Part I, Section 120.
20. Loc. cit.

21. This is one of the few responsum in Melammed Leho'il preserving the name of the questioner. He was Rabbi Seligmann Bamberger, Hoffmann's mentor.

22. As today is known as the "Atomic Age," so the latter part of the nineteenth century may properly be called the "Railroad Age." Cf. Freehof, op. cit., p. 227.

23. Here again the questioner is recorded. He was Moses Barbash, a native of Russia.

24. As indicated below, p. 87, during the last four decades of the nineteenth century, every new synagogue in Berlin was built with an organ.

25. In Teshuvoth Rashban (Solomon ben Nathan), Section 16, quoting Nahare 'Afarsemon, by Jacob Tennenbaum of Putnok.

26. הנח להם לישראל; מוטב שיהיו שוגגין ואל יהיו מזידין

(B. Shabbath 148b)

27. The phrase is derived from: כבד את ה' מהונך
"Honor the Lord with thy substance." (Prov. 3:9)

28. by Yisrael Meir ben Aryeh Ze'ev ha-Cohen.

29. by Hayyim Hezekiah Medini (1833-1905). The article "Hamez U-Mazzah" fills almost an entire volume of the encyclopedia.

30. by Yehiel Michal Epstein (1835-1904).

31. The evidence for this statement is:
    a) the date--1918--mentioned in the responsum.
    b) the statement that Hoffmann investigated the matter at the war-office (Kriegsamt)

32. Questions involving safeq (doubt) are normally decided leniently, if a significant monetary loss is involved. Cf. the discussion in B. Pesahim 15b.

33. Vol. I, p. 108.

34. Moses Schick, 'Orah Hayyim, Section 9, quoting the Magen 'Avraham, Section 442, and Rabbi Solomon ben Adret.

35. Yoreh De'ah, Section 56.

36. Be'er Yizhaq, Koenigsberg: 1858.

37. Most of which are quoted in 'Orhoth Hayyim, Par. 467, Section 21, and Sede Hemed, s.v. "Hamez U-Mazzah" Par. 1, Sections 1 and 21.

38. There is still further doubt whether the glue contains leaven in the first place.

39. The verb translated "rebuke" is the unusual word: להזהיר

40. pp. 153-5.

41. This is one of the few instances where Christian behavior is deliberately emulated. See below, p. 68f.

42. Thus placing the kohen in danger of tum'ath 'ohel (tent defilement).

43. B. Bava Bathra 100b.

44. Cf. Freehof, The Responsa Literature, pp. 136-140.

45. (1808-1875), author of Sho'el U-Meshiv.

46. (1794-1866), author of Yehuda Ya'aleh.

47. (1807-1879), author of several responsa collections.

48. Vol. III, p. 67.

49. Including Joseph Saul Nathanson, and Mordecai Ze'ev Itinga, author of Ma'amar Mordekhai, Lvov: 1852.

NOTES FOR CHAPTER FOUR

1. The Reform Movement in Judaism, New York: 1931, p. 1.

2. Solomon Grayzel, A History of the Jews, Philadelphia: 1960, p. 584. Also cf. Philippson, op. cit., p. 10.

3. The use of the organ, praying with uncovered heads, the Confirmation ceremony, etc. Arguments over these innovations persisted throughout the nineteenth century, and even into the twentieth.

4. At the present moment (February, 1967) both Ohio and Indiana are considering changes in the state "blue laws," regulating activities which may be conducted on Sundays. The issue is far from being solved.

5. by David ben Samuel ha-Levy, seventeenth century.

6. But later, Hoffmann himself rejects this proof, because it refers to the unusual circumstance of a lost key; he needed support for an activity carried on on a regular basis. Melammed Leho'il, Vol. I, p. 75. It appears that Hoffmann had quoted some of the arguments of his friend, Rabbi Pinchas Elhanan Wechsler, in the first part of the responsum.

7. p. 75. Cf. a further discussion of this point in Vol. I, Hilkhoth Shabbath, No. 41, p. 53f.

8. Attributed (incorrectly) to Aaron ha-Kohen of Lunel (thirteenth century).

9. Philippson, op. cit., p. 488.

10. by Aaron ha-Kohen of Lunel (thirteenth century).

11. For example, 'Ein Yizhaq, Section 13, by Isaac Elhanan Spektor (1817-1896).

12. For a comprehensive analysis of the relationship between halakhah and medicine, consult Immanuel Jakobovits, Jewish Medical Ethics, New York: 1959, passim.

13. 'Orah Hayyim, Par. 128, Section 41.

14. Including Yehuda Ya'aleh, Par. 47 (by Judah Assad, 1794-1866) and She'eloth U-Teshuvoth Kethav Sofer, Par. 16 (by Abraham Samuel Benjamin Schreiber).

15. Shulhan 'Arukh, Yoreh De'ah, Par. 349.

16. Shulhan 'Arukh, Yoreh De'ah, Par. 357.

17. in She'eloth U-Teshuvoth MaHaRam Schick, Yoreh De'ah, Sections 347-348.

18. p. 115.

19. (1713-1793), author of Dagul Merevavah (notes to the Shulhan 'Arukh) and Noda Bihudah (responsa).

20. (1763-1839), author of several responsa collections.

21. Cf. 'Ah Lezara, pp. 27-9, by Jekuthiel Judah Greenwald.

22. Jewish Life in the Middle Ages, London: 1932, p. 4 fn.

23. Ibid., p. 254.

24. Hilkhoth Yom Kippurim (sic) Section 280, by Isaac ben Moses of Vienna, thirteenth century.

25. Quoted in the 'Or Zaru'a, loc. cit.

26. For example, Rabbi Eliezer ben Joel ha-Levi, the teacher of Rabbi Isaac ben Moses of Vienna: the matter partially depends, of course, on what is considered a serious illness.

27. Quoted in Freehof, Reform Jewish Practice, Vol. I, p. 63.

28. Op. cit., p. 447f.

29. Ibid., p. 448.

30. Abrahams notes that: "It was an ancient custom in several places for the Shamash or verger to announce every Saturday the results of law suits, and to inform the congregation that certain properties were in the market." Op. cit., p. 21.

31. But he preferred the use of the secular authority. Vol. I, p. 49.

32. In She'eloth U-Teshuvoth MaHarYa ha-Levi, Part Two, Section 124.

33. W. Gunther Plaut, The Rise of Reform Judaism: A Sourcebook of Its European Origins, New York: 1963, p. 73.

34. In America today, the officiating rabbi acts in both a civil and a religious capacity. In England, the bride, groom, witnesses, and officiant sign two registries, etc. The interested reader should consult Moses Mielziner, Jewish Law of Marriage and Divorce, Cincinnati: 1884, and Kaufmann Kohler, "Harmonization of Jewish and Civil Laws of Marriage and Divorce," Central Conference of American Rabbi's Yearbook, Vol. 25 (1915), pp. 335-378.

35. Yoreh De'ah, Par. 196, Note 11.

36. Reform Jewish Practice, Vol. I, pp. 99-110.

37. But an exception is generally made if the people involved have been refused by Orthodox or Conservative rabbis, or if they are children of Orthodox parents to whom such a marriage would seem to be no marriage at all. Ibid., p. 110.

38. She'eloth U-Teshuvoth MaHaRam Schick, Section 21.

39. 'Ohel 'Avraham, Section 150.

40. Teshuvoth RashBan, Even Ha'ezer, Section 96.

41. It is interesting that American Reform came to virtually the same conclusion. We read in Freehof that:

> Therefore from the very beginning, the general principle of accepting civil laws as valid was modified by a plan to have the rabbi or a group of rabbis refuse to remarry a couple civilly divorced until the rabbis study the grounds upon which the divorce was granted.
>
> (Reform Jewish Practice, Vol. I, p. 108)

NOTES TO CHAPTER FIVE

1. Freehof, The Responsa Literature, p. 16 states that "the questions asked are generally specific questions of perhaps passing significance." Cf. Philip Gershon's comment, quoted above, p. 21.

2. This is a special category of huqqoth hagoyim. The reader is referred to Jakob J. Petuchowski, The Concept of Hukkoth Hagoyim in the Tannaitic Period, an unpublished M.H.L. thesis, Cincinnati: 1951, especially Chapter 5, pp. 89-97.

3. Yoreh De'ah, Par. 179; 'Orah Hayyim, Par. 301, Section 25, et al.

4. Cf. also Shulhan 'Arukh, Yoreh De'ah, Par. 350, which discusses what may be done to a cadaver without being prohibited mipne darkhe ha-'Emori.

5. Notably in Sha'are Teshuvah, Section 154, Note 8.

6. There are related passages in Leviticus 20:23, and II Kings 17:18.

7. The other reasons are enumerated in Chapter Six, p. 87.

8. B. 'Avodah Zarah 11a, s.v. v'i huqqah.

9. to Yoreh De'ah, Par. 178, Section 1.

10. Similarly Joel Sirkes (1561-1640) in Bayith Hadash, Section 127, argues that only such melodies as are an inherent part of Christian worship are forbidden in the synagogue.

Note: Footnotes 8-10 are cited in Freehof, Reform Jewish Practice, Vol. I, p. 20.

11. Ibid., Vol. II, p. 5f.

12. Mahzith Ha-Sheqel, loc. cit., Note 13 by Samuel ha-Levy Kolin and Hayyey 'Adam, end of section 23, by Abraham ben Yehiel Danzig (1747-1820).

13. First edition, Part Three, Sections 72-74.

14. This is one example of a prevalent trend in the nineteenth century. As a rule, the American Orthodox rabbi considered himself inferior to his European counterpart,

and would refer his legal problems to the European authorities. Cf. Judah Eisenstein, "The Development of Jewish Casuistic Literature in America," Publications of the American Jewish Historical Society, XII (1904), pp. 139-147.

15. A considerable portion of Nathanson's responsum is quoted in Freehof, The Reform Literature, p. 145f. As noted below, Hoffmann did not have the responsum in his possession.

16. The responsum is taken from Kargau's work Giddule Tohorah, Section 34.

17. p. 46.

18. Based on a statement in Keneseth Ha-Gedolah, Yoreh De'ah, Section 157, by Chaim Benvenisti (1603-1673).

19. It was questionable whether this responsum belongs in Chapter Five or Chapter Four; but since removing the hat provided a direct threat to an important Jewish religious practice, and since Hoffmann included this problem under Hilkhoth 'Avodath Kokhavim, I decided to discuss the responsum under the rubric: the challenge of Christianity.

20. The basic reference is B. Gittin 61a, with Rashi's comment ad loc.

21. The author was made acutely aware of the depth of feelings involved by this issue while serving his student pulpit in Jonesboro, Arkansas in 1965-66. When the congregation decided to bury the non-Jewish spouse of a member in the Jewish cemetery, an Orthodox family went and purchased a separate plot.

22. Above, p. 46.

23. There are five responsa under Vol. II, Hilkhoth Gerim, and two that are relevant under Vol. III, Hilkhoth 'Ishuth.

24. A commentary on the Tur, by Joseph Karo (1488-1575).

25. Shulhan 'Arukh, Even Ha'ezer, Par. 13, Sections 1, 4.

26. Yoreh De'ah, Part Two, Section 100.

27. page 53a.

28. Quoted in Vekhatorah Ye'aseh, page 25b.

29. Mishpete Uzziel, Even Ha'ezer, No. 18, p. 66f.

30. p. 85.

31. Indicating that intermarriage was of the same status as any valid Jewish marriage.

32. Chapter Four, Hilkhoth Melakhim, halakhah 6.

33. by Ezekiel Landau (1713-1793).

34. Part Two, page 24b.

35. The same consideration is expressed in Vol. II, Hilkhoth Gerim, No. 83, p. 87f.

36. The same consideration is expressed in Vol. I, Hilkhoth Beth Hakeneseth, No. 15, p. 11.

NOTES TO CHAPTER SIX

1. W. Gunther Plaut, op. cit., pp. xiv-xv, xix-xxi.
2. Philippson, op. cit., p. 23.
3. Ibid., p. 382.
4. Ibid., p. 386.
5. Essays in Jewish Biography, p. 216.
6. Reform Jewish Practice, Vol. I, p. 41.
7. Vol. I, p. 11.
8. At that time, the changes included the introduction of German prayers, the use of the organ, the Sephardi pronunciation, and the abolition of the traditional Scriptural cantillation. Cf. Philippson, op. cit., p. 31ff.
9. The pamphlet contained responsa from the most eminent Orthodox rabbis of the time, including Moses Sofer, Mordecai Benet, Eleazar Fleckeles, Akiba Eger, and others.
10. Breslau: 1863.
11. See above, p. 69.
12. Philippson, op. cit., p. 390.
13. Loc. cit.
14. The date is indicated in Vol. I, p. 19.
15. Vol. I, p. 18.

NOTES FOR CHAPTER SEVEN

1. pp. 425-444.

2. Eger, (1761-1837) was an important Talmudic authority, residing in Posen; he contributed to 'Elleh Divre Ha-Berith.

3. Benet, (1753-1829), author of Har Ha-Mor, and rabbi of Nikolsburg, Moravia, also appeared in 'Elleh Divre Ha-Berith.

4. p. 427.

5. p. 430.

6. (1805-1855), author of Minhath Kenaoth, and rabbi of Zolkiew.

7. Quoted in Boaz Cohen, Kuntros Ha-Teshuvoth, Budapest: 1930, p. 31.

8. For example, Vol. I, Hilkhoth Pesah, No. 89, p. 107; Vol. I, Hilkhoth Pesah, No. 77, p. 102; Vol. II, Hilkhoth Im Muttar Lehithrappoth Bidevarim Ha-'asurim, No. 31, p. 29, et al.

9. The power of minhag is well attested in the Talmud. B. Berakhoth 45a comments on the fact that the Mishnah offers two possible ways to recite the blessing over water. Which was to be adopted? Abbaye said: פוק חזי מאי עמא דבר : "Go forth and see what the people are saying."

10. Quoted from Sefer Mizvoth Gadol, by Moses of Coucy (thirteenth century).

11. B. Shabbath 148b, et al.

12. B. Bava Bathra 31b.

13. B. Rosh Hashana 27a.

14. Kuntros Ha-Teshuvoth, Budapest: 1930, p. 28. Also quoted above, Chapter Two, fn. 24.

15. The Responsa Literature, p. 268.

16. ed. M. S. Kasher, Jerusalem: 1958-1964.

17. Freehof, ibid., p. 17.

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