THE LAWS OF PERSONAL STATUS IN AMERICAN REFORM JUDAISM

1890-1980

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DIGEST

The laws of personal status have received much attention within the American Reform movement from 1890 to 1980. One of the best sources of information on these laws comes from the debates and discussions of the Central Conference of American Rabbis.

In this thesis, a thorough historical analysis of the movement's position on the major issues of personal status has been presented. This analysis consists of an examination of 90 volumes of the Central Conference of American Rabbi Yearbook, as well as a review of the responsa literature of the movement.

By utilizing these sources it is possible to review the official positions of the movement. The Yearbook provides the Conference's resolutions and recommendations, and the Responsa literature provides an authoritative position from a recognized committee of the Conference.

The analysis of the laws of personal status has been broken down into four areas. These are: Marriage, Mixed Marriage, Divorce, and Conversion. Each area is presented in a separate chapter, and each chapter covers the entire historical period from 1890 to 1980.

In order to provide a better understanding of this material a chapter on the historical basis and background of the American Reform movement has also been provided. This chapter presents a setting for the developments which arose

within the movement. It also provides insight into the reasons why certain issues came up when they did.

The concluding chapter offers a synthesis of the first five chapters. It explains the reasons behind the American Reform movement's approach to the laws of personal status in the past, and offers a direction for the movement to follow in the future.

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I would also like to express my thanks to my friends who have offered their encouragement in this process. There have been ups and downs in my years of study, as well as in the writting of this thesis. They have always been nearby, lending their support and love. Their role in the completion of this project cannot be underestimated.

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INTRODUCTION

From 1890 to 1980, the American Reform movement has evolved a great deal. In 1890 the movement formed a body called the Central Conference of American Rabbis. This body saw itself as the primary representative of American Jewry, and saw one of its functions as defining a new type of Judaism for America.

One of the first and most significant areas which the Conference attempted to define for America was the issue of Personal Status. Although it might have been logical for the Conference to come up with a broad new definition for all aspects of the issue, it did not do so. Instead, it discussed the different issues of personal status in a piece-meal type way. Thus, at one convention, conversion might be the major topic of discussion, and at the following convention divorce might be discussed.

The result of this scattered approach to the issues was that the Conference never developed a unified stand on the laws of personal status. This has made a systematic review of the laws of personal status a more difficult process. It was not possible simply to pull out an index and review the Conference positions. Instead, it was necessary to examine each and every Conference Yearbook and review the various discussions for information on the development of opinions on the topics.

Because of this process, one of the outcomes of this

thesis is a systematic organization of the Conference positions on the various issues. The issues of marriage, mixed marriage, divorce, and conversion, all have separate chapters. These chapters present the historical development of the Conference's position on each topic.

Due to this organizational technique, a chapter on the historical basis and background of the movement was also included. The aim of this chapter is to provide an overview, and hopefully some insight into the reasons for the various opinions taken at the Conferences.

THE HISTORICAL BASIS AND BACKGROUND OF THE C.C.A.R. FROM 1890-1980

The importance of the historical background of the American Reform movement on the issue of personal status is clear. What can be questioned, however, is how this material should be viewed. At one extreme, it could be said that this material only provides the setting in which the movement made its decisions. At the other, it could be argued that it was this setting which caused the movement to make its decisions. The question which lies behind this is: Did the C.C.A.R. act on its own agenda, or was its agenda set by the world around it? In short, did the C.C.A.R. act, or react?

It is impossible to answer this question on the basis of the historical setting alone. It is therefore necessary to combine this information with an examination of the decisions which the movement made. This will be done in the concluding section of this work.

The American Jewish community grew slowly at first. It is estimated that in 1776 there were about 2,500 Jews in the land. By 1820, the number had only slightly increased to around 4,000. But, between 1840 and 1880, a quarter of a million Jews immigrated to the United States, mainly from Germany, Bohemia, and Hungary.[1]

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1. Robert M. Seltzer, Jewish People, Jewish Thought, New York: Macmillian Publishing Co., 1980, p. 642.

The Jews who entered the United States in this mass immigration quickly spread throughout the country, and Americanized themselves. They also Americanized their religion. By the 1860's and 1870's, the majority of synagogues in the United States had turned to Reform Judaism.[1]

It seems apparent that this quick growth of the American Jewish community, from a population of approximately 4,000 to over a quarter of a million, contributed to the ability and desire of the Reform movement not only to discuss changes of practice, but also to implement them.

It was this implementation of changes which set the American Reform movement apart from the German movement which preceded it. For although the American movement attempted to base its decisions on the framework established earlier by the German reformers*, it is clear that the American movement had created a new Jewish movement, something the German rabbis had not attempted to do.

While the German Reform rabbis were the first to meet and discuss their position on changing the traditional laws, they were severely hampered in their attempts to implement their beliefs. The major reason for this was the structure of the German Jewish community.

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1. Ibid., p. 643.

* The first Yearbook of the C.C.A.R. printed all of the resolutions of the previous European Reform Conferences, as well as the responses of the French Jewish community to Napoleon, as the ideological basis for its own resolutions.

In Germany, as in almost all of Europe, the synagogue was communal in nature. This resulted in an attempt to reform Jewish practice from within. In fact, it was legally impossible for their approach to be any different, as German law, until 1876, prohibited any Jew to leave the existing communal structure unless he also rejected Judaism. Therefore, the aim of the German reformers was to reform Judaism from within, not to split the Jewish community into separate wings.[1]

Although this approach was mandated by law, it was also seen as the best method to reform Judaism by the majority of the German rabbis.[2] As a result of this, the German rabbis loudly proclaimed their beliefs, but were slow to change their practices.

In contrast to this, the situation in the United States of a new Jewish community, without pre-existing communal ties or restrictive laws, allowed the American rabbis to discuss, and immediately implement their ideological beliefs.

Although they implemented their beliefs, the aim of the American rabbis was not to split the Jewish community, but rather to create a progressive American Judaism. This can be seen in the fact that the Conference called itself the Central Conference of American Rabbis. It is also evident

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1. Jakob J. Petuchowski, Prayerbook Reform in Europe, New York: The World Union for Progressive Judaism, 1968, p. 32.

2. Ibid., p. 34.

in the origins of the Hebrew Union College, which was established as an American Rabbinical seminary, and not as a Reform institution.

Thus, the situation existing in America at the end of the nineteenth century allowed the American Reform movement the opportunity to create a new Judaism for America. This was clearly expressed by Dr. Isaac M. Wise at the first Conference of the C.C.A.R. He stated:

> "This is the historical standpoint which acknowledges eo ipso the rights, claims and wants of time, place and circumstances as important factors in the development and progress of Judaism, without severing the present and future from the glorious and marvelous past of Judaism, the intelligible revelations of providence in history. American Judaism, seemingly a new creation, in fact but the most recent phase of Israel's ever progressive faith, built itself upon this basis; and we American rabbis, fully agreed on its constructive principle. We cannot afford and do not propose to make any concessions to the advocates of anachronisms or adherents of the immovable status quo."[1]

However, as the C.C.A.R. met deciding the future of Judaism in American, the American Jewish community was once again undergoing a dramatic change. For between 1881 and 1914 approximately two million East European Jews immigrated to the United States.[2]

This mass immigration into America by the Eastern

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1. Central Conference of American Rabbis Yearbook, Vol. 1, 1890, p. 16.

2. Robert Seltzer, Jewish People, Jewish Thought, New York: Macmillan Publishing Co., 1980, p. 643

European Jews had a major impact on the Reform movement in two ways. First, it created a new American Jewish community which did not see the C.C.A.R. as its leadership, and did not believe in the principles which the Reformers had proposed.

In fact, by the turn of the century, the congregational branch of American Reform Judaism, the Union of American Hebrew Congregations, represented less than 40,000 individuals. And by 1907, less than 10 percent of the 1,700 synagogues in the United States belonged to the Union.[1]

Thus, in under 20 years, the C.C.A.R. had seen its status in America change from that of framers of a new Judaism - the Judaism of America, to defenders of a small Jewish movement.

The second effect of this large immigration was to create an ambivalent, and at times, antagonistic attitude on the part of Reform Jews towards the new immigrants. This reaction stemmed from the mounting anti-immigration and anti-Semitic feelings among non-Jewish Americans, which were being directed against all Jews. It also derived from a level of discomfort which was felt by the "Americanized" Jews due to their perception of a "religious medievalism" on the part of their newly arrived Orthodox brethren.[2]

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1. Michael A. Meyer, Response to Modernity, New York: Oxford University Press, 1988, p. 292.

2. Arthur A. Goren, The American Jews, Cambridge: The Belknap Press of Harvard University Press, 1982, p. 60.

As a result, the Reform community had to seek ways to define itself as American. It did not want to be associated with the new Jewish population entering the country. This notion was particularly evident in the Reform synagogue:

> "One reaction of German Jews in the United States was to make their Reform synagogues bastions of Americanism, setting themselves apart from the uncouth, un-Americanized greenhorns regularly disgorged from the steerage of ships reaching New York."[1]

The American Jews - Reform Jews - set themselves apart from the newly arrived immigrants, not only in the cities and streets of America, but also in the synagogues.

This separatist approach continued until the 1930's when the Jewish population in the country had reached nearly 4,500,000.[2] The passage of time, along with the increase in numbers, worked to change the orientation of the Reform movement.

This was clearly evident within the Reform congregations, for by 1930, half the members of the Reform temples were of Eastern European origin.[3] The Americanization of the Eastern Europeans, in conjunction with a new emphasis toward tradition from within the movement, by leaders like

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1. Michael A. Meyer, Response to Modernity, New York: Oxford University Press, 1988, p. 292.

2. Robert M. Seltzer, Jewish People, Jewish Thought, New York: Macmillan Publishing Co., 1980, p. 984.

3. Arthur A. Goren, The American Jews, Cambridge, Mass: The Belknap Press of Harvard University Press, 1982, p. 77.

Gamoran and Cohon, resulted in a new attitude on the part of Reform.

> "Reform Judaism in the 1930's became more moderate and less dogmatic, taking a more positive stance on the value of traditional rituals and Jewish ethnicity."[1]

This reorientation can best be seen in the new platform of the movement which was written in 1937. The Columbus Platform took a step away from the rejectionist position of its predecessor and offered a more positive attitude toward traditional practices.

From this new position, the Reform movement began a period of growth. The younger "Americanized" children of the European immigrants increasingly identified with the less structured Reform movement. And from 1948 to 1970, Reform congregations increased from 360 to 698. During this same time period, the Jewish population of the country had only grown by one fifth.[2] It can be seen that the growth of the Reform movement had not been caused by an increased Jewish population, but rather by a shift away from the other branches of Judaism in America.

Thus, by the early 1970's, the Reform movement once again began to see itself as a strong movement. It had withstood the test of time, and it had grown from its weakened position at the turn of the century, into the largest

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1. Robert M. Seltzer, Jewish People, Jewish Thought, New York: Macmillan Publishing Co., 1980, p. 808.

2. Arthur A. Goren, The American Jews, Cambridge, Mass: The Belknap Press of Harvard University Press, 1982, p. 90ff.

Jewish movement in the United States. However, due to its ideological basis, the movement's growth did not produce a set of guidelines. This was expressed by President Levi Olan in 1969. He stated:

> "We find ourselves in serious trouble today almost to the point of hefkerut, each man doing what seems good in his own eyes. It is no comfort to us that both Conservative and Reform Judaism are agonizing over the same issue, although both adhere to Halacha in greater or lesser degree. Our troubled concern is of long standing and is recorded in the many debates on the Conference floor between those who would prescribe by a code what is minimally required of a Reform Jew, and those who cherish the liberal philosophy of voluntary commitment. We have not resolved our debate nor have we lessened the growth of anarchy among our constituents. How long can we endure the, at times, bizarre variety of Reform practices or the increasing numbers committed to no practice at all."[1]

From the early 1970's forward, the Reform movement placed an increased emphasis on guidelines. These guidelines have come mainly in the form of non-binding responsa issued by the C.C.A.R. This was clearly stated by Walter Jacob:

> "The fact that 57 responsa (approximately one third of the total) have been written by me during the last decade (1970 to 1980) demonstrates the increasing interest in Jewish law within the Reform Movement."[2]

One reason for this interest in Reform responsa, and

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1. CCAR Yearbook, Volume 79, 1969, p. 8.

2. Walter Jacob, American Reform Responsa: Collected Responsa of the CCAR 1889-1983, New York: C.C.A.R., 1983, p. xviii.

the emphasis on guidelines in general, may be due to the movement's attempt to define itself. This may be due to a recognition of the strength of the Reform movement in America. However, it could also be connected to the new role which Israeli politics began to play in questions which have traditionally been in the realm of religion alone.

One example of this is the issue of: Who is a Jew? The discussion of this issue by the Israeli knesset gave additional impetus to the Reform movement to answer the question for itself. For in order to defend a position, a movement must know what its position is.

Based on this historical evidence, it would appear that four distinct periods shaped the discussion of personal status within the Reform movement. The first period spaned from the 1890's to the 1900's. During this time the movement saw itself as responsible for reshaping Judaism for all American Jews.

The second period, which overlaped the first, ran from the 1890's to the 1920's. At this time, the movement saw itself as a small group of Jews, who no longer represented all of American Jewry. As a result, it felt free to put its ideological beliefs into practice.

The third period extended from the 1930's to the 1970's. During this period, the movement seemed to sense its own growth, and began to move away from its sharp break with tradition in the previous period.

The last period stretches from the 1970's to the

present day. In this period, the movement once again seems to feel secure as the leader of American Jewry. However, issues from abroad, mainly political issues from Israel, crop up on the agenda, and require the movement to reconsider some of the positions which it has taken in the past.

MARRIAGE

A starting point for an investigation into the Reform Jewish laws concerning marriage must begin with an examination of the ideological underpinnings of the subject. And there is no better source for this than the writings in Genesis:

> "The Lord God said, 'It is not good for man to be alone; I will make a fitting helper for him.' ...So the Lord God cast a deep sleep upon the man; and, while he slept, He took one of his ribs and closed up the flesh at that spot. And the Lord God fashioned the rib that He had taken from the man into a woman; and He brought her to the man. Then the man said, 'This one at last is bone of my bones and flesh of my flesh. This one shall be called Woman, for from man was she taken.' Hence a man leaves his father and mother and clings to his wife, so that they become one flesh."[1]

The idea expressed in these verses offers a wonderfully romantic image. It is first a picture of the creation of two distinct individuals from out of the same source. And yet, while these individuals are distinct, it is clear that neither one, nor the other is complete, as individuals.

The story implies that man has lost some of his being in the creation of woman, and that woman, too, lacks in her being, what she has been given by man. This form of creation has left both man and woman as distinct individuals, but also as somewhat incomplete.

Because both man and woman are incomplete, it is neces-

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1. Tanakh, New York: The Jewish Publication Society, 1985, p. 5. (Genesis 2:18, 21-24)

sary for each of them to leave their parents, and reunite; to rejoin with their partner from whom they were separated at the creation of the world. The Torah instructs us to view this relationship, not as a new state of being, but rather as a return to an original state. The state of oneness. Man and woman were created as one, and they will in time, return to living as one.

It is from out of this pristine image of the relationship between man and woman, that our rabbis formulated their conception of marriage. Marriage is a sacred state, a return to an original state of being, it is kiddushin - holy, sanctified, and separate from all other forms of relationship.

Thus it is no surprise that the debate on the issue of marriage within the American Reform movement, has tried to treat the subject in a careful way.

In a report in 1973, Rabbi Herman Schaalman stated:

> "Above all, it should be obvious that marriage is an issue sui generis, not comparable at all to, let us say, Shabbat observance or Kashrut or any of the other matters which have been cited futilely to demonstrate the impropriety of halachic considerations. The once-and-for-a-lifetime nature of the act of kiddushin, the covenantal concept of kiddushin as expressed in the hallowed vow '...kedat moshe veyisrael,' raises marriage to a unique level, embracing all of the Jewish past and future as a covenant community."[1].

Perhaps it is the timeless aspect of marriage, or the

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1. Herman E. Schaalman, Report of the Ad Hoc Committee on Mixed Marriage, CCAR Yearbook, Vol. 83, 1973, p. 61.

covenantal aspect of marriage, or maybe even the sanctity of marriage, which has made it the topic of careful debate over the years, from the first conference until today. Perhaps it is the link which marriage provides to all Jews; the idea of k'lal yisrael which seems to be threatened by any major changes in the laws, which has prompted the movement to be so slow to make official the changes in which it believes.

While there are resolutions which have been passed on issues under the heading of marriage, there have also been many situations in which an issue was hotly contested, and then dropped for many years, without ever having a firm stand taken on it. This method allowed the rabbis to express their feelings on issues in an open forum, to debate the issue, and in the end, to maintain their own personal stand, on whatever grounds they chose.

The issue of marriage will be discussed in three areas. These are: Laws Concerned with Prohibited Unions; Laws Connected with the Religious Ceremony; and Laws Connected to Non-Traditional Requirements.

LAWS CONCERNING PROHIBITED UNIONS

The Torah views marriage as a sacred act. It is more than a legal agreement between two human parties. It is an act in which God is a partner with man. It is perhaps because of this particular outlook on marriage that the

Torah provides a list of prohibited unions. These prohibited marriages can be divided into five categories: Consanguinity, marital status, physical condition, religious status, and moral infraction.[1]

LAWS OF CONSANGUINITY

The Torah specifies the forbidden relationships with regard to consanguinity in Leviticus, chapters 18 and 20, as well as in Deuteronomy, chapters 23 and 27. The relationships are specified as follows: 1. Mother, 2. Stepmother, 3. Sister and half-Sister, 4. Granddaughter (son's or daughter's daughter), 5. Father's sister, 6. Mother's sister, 7. Father's brother's wife, 8. Son's wife, 9. Brother's wife (except in the case of levirate), 10. Wife's mother, 11. Wife's daughter (stepdaughter), 12. Stepson's daughter, 13. Stepdaughter's daughter, and 14. Wife's sister (during the life of the former).

While daughter is not specified on this Biblical list, it is correctly read into it by the rabbis on the basis of the prohibition of the granddaughter, stepdaughter and daughter-in-law.[2]

The above list can be simplified into the general rule

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1. Even Ha-'ezer, Shulkan Arukh 15:1-26.

2. Moses Mielziner, The Jewish Law of Marriage and Divorce in Ancient and Modern Times, New York: Bloch Publishing Company, 1901, p. 35.

that marriages between: 1. An ancestor and a descendant of either the whole or the half blood; 2. A brother and sister of either the whole or the half blood; or 3. An aunt and a nephew, are all forbidden marriages.[1]

These prohibitions with regard to consanguinity have generally been very strictly observed within Judaism.[2] On the whole, the American Reform movement has not made changes in this area, but it has come up for discussion on several occasions. The basis for the discussions has usually come from two sources: The conflict between the laws and the ideological belief in the equality of women; and the conflict between the laws of the religious code with the civil laws of the United States.

The first hint of the discussion that was to come, can be seen in the records of the first conference of the Central Conference of American Rabbis. In his paper "The Marriage Agenda", Dr. Moses Mielziner speaks of the new practice of using two wedding rings instead of one. He states that: "The purpose of this innovation is to express the full equality of woman with man in the conjugal relation, so that just as he consecrates her to be his alone, so she consecrates him to be hers alone, in person and affec-

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1. Isaac Klein, A Guide to Jewish Religious Practice, New York: The Jewish Theological Society of America, 1979, p. 385.

2.Maurice Lamm, The Jewish Way in Love and Marriage, Middle Village, New York: Jonathan David Publishers, Inc. , 1986, p. 39.

tion."[1]

Dr. Mielziner must have felt that his colleagues agreed with him as, at the conclusion of the conference, the decision was made to print the resolutions of all previous Reform Conferences in the Yearbook. Among these were the resolutions regarding the Marriage Laws at the Philadelphia Conference in 1869. Within those laws, the principle of equality of women can clearly be seen. "The bride shall no longer be a passive party to the marriage ceremony, but a mutual consecration by both the bridegroom and the bride shall take place..."[2]

The significance of the statement of Dr. Mielziner, and that of the Philadelphia Conference is not what was said, but rather, the mind set which was needed to make the statements. Both statements show that the Reform movement had recognized that the laws of traditional Judaism ran into a conflict with a higher moral ideal; the equality of women.

At the Conferences of 1906 and 1910, papers were delivered on Samuel Holdheim, and Abraham Geiger. In the paper on Holdheim we find his opinion that: "...there be no distinction from now on between duties for men and women in as far as these are not demanded by the natural laws of both sexes; let us hear no more of the spiritual minority of

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1. Moses Mielziner, "The Marriage Agenda", Central Conference of American Rabbis Yearbook, Volume 1, 1890, p. 40.

2. Central Conference of American Rabbis Yearbook, Volume 1, 1890, p. 119.

women as though they were incapable of grasping the depth of religious teachings, ...let there be no degradation of woman upon her entrance into the married state."[1]

The paper on Geiger explains that while he was the chairman of the committee on marriage reforms at the Augsburg Synod he stated: "The old judicial view according to which woman was a chattel that the man acquired, has disappeared entirely from us. We do not wish to retain any form whatsoever which was symbolical of this view in earlier days..."[2]

While it could be said that the opinion of the German Reform rabbis has no place in discussions of the American Reform movement, it must be noted that the desire for a chain of tradition existed in the American Reform movement. The American Reform rabbis did not want to act solely on their own. They took pride in the decisions of previous Reform Synods and recorded them in their own Yearbook. They felt that they were a part of a movement; and the foundation of this movement was in Germany.

So while it may be said that the opinion of the German Reform rabbis has no place in the American Reform movement, it is clear that the opinions of the German Reform rabbis

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1. David Philipson, "Samuel Holdheim, Jewish Reformer", Central Conference of American Rabbis Yearbook, Volume 16, 1906, p. 312.

2. Jacob S. Raisin, "Reform Judaism Prior to Abraham Geiger, or The Conflict Between Rationalism and Traditionalism in Ancient Judaism", Central Conference of American Rabbis Yearbook, Volume 20, 1910, p. 281.

were very important to the American movement; for by finding earlier authorities who held similar views, the American Reform rabbis joined a tradition. It was not merely their opinion that the ideal of equality of woman needed to be reconciled with traditional Judaism, it was the opinion of all of Reform Judaism.

At the 25th Conference of the CCAR, the subject of consanguinity came to the fore. In the paper "Harmonization of Jewish and Civil Laws of Marriage and Divorce", Rabbi Abram Simon presented the point of view that: "The equality of woman calls for an equality of law, and what is permitted the uncle or denied him must be correspondingly permitted the woman or denied her."[1]

From this same point of view Rabbi Simon discussed the opinion that there is no ethical distinction between the marriage of a brother to his deceased brother's wife, which is not permitted; and the marriage of a man to his deceased wife's sister, which is permitted.[2] Thus it is clear, that there existed a desire to harmonize the laws of consanguinity with our ideals on equality.

The major source of challenge to these laws however, came from a different front, that is, the conflict between the United States civil laws, and the traditional prohibi-

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1. Central Conference of American Rabbis Yearbook, Volume 25, 1915, p. 385.

2. ibid. p. 382.

tions. In reacting to this conflict, the rabbis generally accepted the idea that accepting the United States civil law was no different than abiding by the talmudic dictum dina d'malkhutha dina.

The conflict of the principle of dina d'malkhutha dina with the laws of consanguinity appears to have been first discussed in 1910, at the 20th Conference. In the paper "Jewish Marriages and American Law", B. H. Hartogenisis states: "Marriages of uncles to nieces are not allowed in any of the United States..., while first cousins may not intermarry in a number of States..., it should not be difficult to hold with the Talmudic maxim, Dino' d'malchutho Dino, the law of the land is paramount."[1].

This outlook was confirmed in 1914, when the Committee on Responsa published its answer to a question on forbidden marriages. The question dealt with performing the marriage ceremony in the case of a man who had married the half-sister of his mother under civil authority, and now sought a Jewish ceremony.

The Committee clearly recognized that the marriage with an aunt is prohibited as incestuous, but responded that performing the ceremony was "certainly" permitted. The report continued:

> "Now the very fact that this question could be asked by a member of this Conference, who knows his Bible well, indicates a prevailing

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1. B. H. Hartogenisis, "Jewish Marriages and American Law", CCAR Yearbook, Volume 20, 1910, p. 128.

> view that the law of the land is the determining factor as to the legality of the marriage also for us Jews. Moreover, the general presumption is that just as marriage with the niece is permissible according to the Mosaic Code, so should an aunt be permitted to marry her nephew, the Mosaic view to the contrary notwithstanding."[1]

This position was supported by Rabbi Philipson, who stated:

> "The question of the interrelation of the civil and religious laws of marriage and divorce is very delicate. ...The difficulty of the question arises from the fact that while of course the civil marriage and divorce laws must be observed by all, many so-called Mosaic laws are in contradiction with the civil laws, and many no longer appeal to our modern consciousness."[2]

Thus, there appears to be a strong belief among the rabbis, that the civil laws of the United States, the dina d'malkhuta, are sufficient for Judaism as well. This must be seen as being based not only on the above mentioned principle, but also on the notion brought forward from the Pittsburgh Platform, that "we recognize as binding only the moral laws, and maintain only such ceremonies as elevate and sanctify our lives, but reject all such as are not adapted to the views and habits of modern civilization".[3]

However, while there seemed to be much agreement on the subject, the feeling was not unanimous. One opinion of opposition was expressed by Rabbi Heller. He stated his view that:

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1. CCAR Yearbook, Vol. 24, 1914, p. 153.
2. CCAR Yearbook, Vol. 24, 1914, p. 154.
3. CCAR Yearbook, Vol. 1, 1890, p. 121.

> "...it is his (the rabbi's) imperative duty to assure himself as far as possible that such marriage violates neither civil nor Jewish law. And where such a marriage may be permitted by civil law, but contrary to Jewish law, the Rabbi should feel himself deterred from officiating.[1]

The subject was addressed once again at the conference during the following year. Rabbi Simon at the beginning of his article previously mentioned, stated:

> "It is interesting to note that the State of Rhode Island permits Jews to sanction marriages and divorces according to their rabbinical laws, and thus deliberately says, 'That the law of the State declares that our law is not your law, and that our ways are not your ways.' Is this exception not rather to be deplored than commended..."[2].

This statement appears to view a permissive law, intended to uphold the doctrines of freedom of religion, as a segregationist attempt on the part of the State of Rhode Island. The opinion being expressed here goes above and beyond the argument of dina d'malkhutha dina, the law of the land is the law, as it views the law of Rhode Island as an affront to American Jewish citizens who wish to be treated and viewed no differently than any other Americans by the laws of the land.

In 1915, Rabbi Kaufmann Kohler also discussed the laws of consanguinity in his paper "The Harmonization of the Jewish and Civil Laws of Marriage and Divorce". To the previously mentioned areas of discussion, he added the

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1. CCAR Yearbook, Vol. 24, 1914, p. 154.

2. CCAR Yearbook, Vol. 25, 1915, p. 381.

rationale of Maimonides and Philo, who believed that the prohibitions were given as safeguards against moral depravity. He also took note of the thinking of modern science which, based on ethnological studies, observed that prohibited marriages occupy a prominent place in the codes of all civilizations.[1]

At the conclusion of his article, Rabbi Kohler offered several recommendations for the consideration of the conference. Among these were: 1. The CCAR should declare that the Jewish woman be regarded as the equal of man..., 5. The list of prohibited marriages should be augmented in the direction of blood-relationship, and include the marriage of cousins and of the niece..., and 9. The offspring of marriages that are regarded as legal by the law of the state, but could for one reason or the other not receive the religious sanction of Judaism, should in no wise be regarded as illegitimate.[2]

In 1923, Rabbi Philipson again raised the issue of consanguinity, and took the position which Rabbi Kohler had taken eight years earlier. The discussion was sparked by the answer of the Committee on Responsa to the question: "Does the law in Leviticus forbidding marriage with a mother's sister extend also to the half sister? And is

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1. Kaufmann Kohler, "The Harmonization of the Jewish and Civil Laws of Marriage and Divorce", CCAR Yearbook, Volume 25, 1915, pp. 358 ff.

2. CCAR Yearbook, Vol. 25, p. 376.

there no way of permitting such a marriage as we permit the marriage between an uncle and a niece?"[1]

The committee took the traditional Jewish position, and answered, "there is no way to permit such a marriage according to Jewish law."[2]

Rabbi Philipson objected to this response and noted that nothing definite had been done in regard to the Jewish marriage laws, as they are affected by our modern conditions. In fact, he requested that the Conference make a declaration so that there should not be differing practices among the different rabbis.[3]

This discussion led to the adoption of a resolution which read: "That a committee on Marriage and Divorce be appointed, which shall bring to the next meeting of the Conference a report on such traditional marriage laws as might be in conflict with modern interpretation..."[4]

The report did not appear until 1925. And while it did lead to discussions, no resolutions on the topic were passed. In fact, the issue dropped completely from the agenda after the Conference in 1925, and did not reappear until 1978, 53 years later.

The subject arose from the report of the Committee on

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1. CCAR Yearbook, Vol. 33, p. 59.
2. Ibid.
3. Ibid., p. 63.
4. Ibid., p. 93.

Responsa. The question raised was: "The Table of Consanguinity currently used by the Reform movement is male-centered and clearly discriminates against women. Should we change this Table to reflect our equal treatment of men and women?"[1]

The response from the committee determined that a change of the Table of Consanguinity should not be made at the present time on the basis of the following: 1. The last time major change in Jewish marriage laws occurred was in the eleventh century; 2. The presumption of inequality for women has led to the most lenient definition of bastardy in the Western world; 3. It is extremely doubtful whether our rabbis or our laymen would follow any additional restrictions in the field of marriage; 4. We are continuing to try to work out mutually agreeable approaches to family law along with our Conservative and Orthodox coreligionists in order to avoid conflict over family matters in the land of Israel; and 5. Most State legal systems parallel our Table of Consanguinity or are very close to it.[2]

Thus it appears, that in spite of numerous areas of conflict with regard to the traditional laws of consanguinity, the American Reform movement has found it to be in its best interest not to take a stand on this subject. This leaves the individual rabbis in the field with a large

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1. CCAR Yearbook, Vol. 88, 1978, p. 55

2. CCAR Yearbook, Vol. 88, 1978, p. 55

degree of freedom to determine for themselves what practice to follow in any given situation.

LAWS CONCERNING MARITAL STATUS

The Torahitic ideal for marriage regards monogamy as the goal for marriage. This is clearly expressed in Genesis. However, the Torah recognizes that man cannot always live up to its ideals, and therefore we find that the Torah, in this instance, permits a practice which falls short of the ideal. This practice is polygamy.

The Torah gives us several instances, with regard to the patriarchs, where polygamy is practiced. The best example of this practice is Jacob, who not only married two sisters, a practice later disallowed in Leviticus[1], but also had a concubinage consisting of their handmaidens. The acceptance of the latter by the Torah is clear, as the descendants of this marital arrangement are the ancestors of the twelve tribes of the Children of Israel.

While this practice was not seen as the ideal by the rabbis, they did not forbid it outright. They did seek to limit it, however, by setting standards for the treatment of the first wife, legislating the rights of inheritance to the benefit of the children of the first wife, and requiring the husband to secure a dowry for his first wife, in case of his

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1. Leviticus 18:8.

death or divorce. According to some authorities, the provisions went so far as to grant the first wife a right to claim a bill of divorce, if her husband took another wife without her consent.[1]

It was not until the beginning of the eleventh century that a prohibition was placed on the practice of polygamy. This was enacted through the herem d'rabbenu Gershom. His enactment prohibited polygamy for the Jews of Germany and Northern France (Ashkenaz). It was eventually adopted by the Jewish communities in all European countries. However, this ban did not effect the Jews of the Sephardic countries, until 1950, when the Chief Rabbinate of Israel extended the ban to them as well. Until then, it was their practice to follow the laws of their land on this issue.

The background of this issue in the Reform movement must include mention of the responses of the French Sanhedrin of 1807. All of their responses were included in the first CCAR Yearbook, along with the resolutions of all other previous Reform Synods - in Europe as well as the United States. The French Sanhedrin responded to the question: "Are Jews allowed to marry several wives?", with a clear "No.". They supported their stance with the dictum of Rabbenu Gershom.[2]

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1. Moses Mielziner, Marriage and Divorce in Ancient and Modern Times, Cincinnati: Bloch Publishing Company, 1901, p. 30.

2. CCAR Yearbook, Vol. 1, 1890, p. 80.

The American Reform rabbis did not have much difficulty in coming to a decision on this issue. They had come from European communities, where polygamy was not the practice of the Jewish community, nor of the non-Jewish community. They had come to a land where polygamy was also prohibited. And thus, the Central Conference of American Rabbis accepted the statements of the Philadelphia Conference of 1869, in their first Conference. The resolution of the Conference reads:

> "Polygamy contradicts the idea of marriage. The marriage of a married man to a second woman can, therefore, neither take place nor claim religious validity, just as little as the marriage of a married woman to another man, but like this it is null and void from the beginning."[1]

While this resolution takes into account the current practice of the time in America, it seems clear that the values being stressed in this resolution are first the sanctity of a monogamous marriage, and second the idea of the equality of women.

The only other statement made on the subject of the laws concerning Marital Status, comes from a responsum written by Rabbi Walter Jacob in 1979. Rabbi Jacob responded to a question regarding concubinage as an alternative to marriage. The question read:

> "Does Reform Judaism recognize concubinage as an alternative to formal marriage? If a man cannot or does not wish to divorce his disabled wife, may his 'arrangements' with another woman be formalized? Can formal Jewish status be given to two retired individuals living together

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1. CCAR Yearbook, Vol. 1, 1890, p. 119.

> without marriage? Can these 'arrangements' be formalized in a manner akin to the ancient form of concubinage?"[1].

This question, submitted by the CCAR Family Life Committee, attempts to put an old practice to use in a new way, for a new time. Be this as it may, the answer to this question is indicative of the recent halakhic approach the Conference has tried to take on questions of personal status.

The answer explains that any of these 'arrangements' are "clearly illegal, and violate the laws of all the states within the United States and of the provinces of Canada"[2]. This question is regarded as coming into conflict with the Talmudic dictum of dina d'malkhuta dina. In addition to this, the gray areas opened up by this question could all serve to detract from the sanctity of marriage, and thus, the consideration was rejected.

LAWS CONCERNING PHYSICAL CONDITION

The Torah perceives of marriage as a union with two functions. The first function is for man and woman to become one together. They should be helpmates, soul mates for one another. They should share their lives together. The second function is much more practical. Man and woman

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1. Walter Jacob, American Reform Responsa: Collected Responsa of the CCAR 1889-1983, New York: C.C.A.R., 1983, p. 406.

1. Ibid. p. 406.

must produce children - pr'u ur'vu. Without children, there is no future for man, no new generations. Therefore, it seems logical that a marriage must be able to produce children.

This concept leads directly to the laws concerning physical conditions. The Torah states physical requirements in Deuteronomy 23:2: "No one whose testes are crushed or whose member is cut off shall be admitted into the congregation of the Lord."[1]

The rationale behind this law is that one who does not have the ability to produce children, cannot fulfill one of the two purposes of marriage, and therefore, the marriage may not take place.

This prohibition was limited to some degree by the rabbis. The decision was made to wave the prohibition in cases where the defect occurred naturally, ie., was present at birth, or occurred due to sickness.[2]

Physical defects however, are not always visible. And it was for this reason that the rabbis instituted a practice which allowed a marriage to be dissolved if no children were produced within ten years. For it is an obligation for a man to produce children, and if he has not succeeded with

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1. Tanach, New York: The Jewish Publication Society, 1985, p. 309.

2. Isaac Klein, A Guide to Jewish Religious Practice, New York: KTAV Publishing House, 1979, p. 383.

this partner, he should find a new partner.[1]

Rabbi Walter Jacob provides a good summary of the Halakhic position in a responsum:

> "...In sum, the traditional attitude was as follows: our tradition encourages marriage for the purpose of procreation and would strongly urge all couples to have children. However, if they enter the marriage fully aware of the refusal of one or the other to have children - either because of a physical defect or because of an attitude - the marriage can be considered valid, either le'chate'chila or bedi-avad."[2]

The Central Conference of American Rabbis has never officially taken up this topic for discussion; however, it has been addressed in two responsum by Rabbi Walter Jacob, and one by Rabbi Solomon Freehof.

In the conclusion of the above quoted responsum, Rabbi Jacob states:

> "Nothing should prevent a rabbi from conducting such a marriage; ...In Jewish law, the marriage is valid, yet given the Reform emphasis on the underlying spirit of the law as a guide to modern practice, marriage without children is very distant from the Jewish ideal of marriage. The letter may permit it, but we must encourage every couple to have at least two children."[3]

The opinion expressed by Rabbi Freehof on the advisability of conducting a marriage when it is known that the bridegroom is impotent, leans even more towards the negative. He states:

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1. Ibid., p. 414

2. Walter Jacob, American Reform Responsa: Collected Responsa of the CCAR 1889-1983, New York: CCAR, 1983, p. 404.

3. Ibid.

> "...if the bride knows about it and if there is a fair prospect on the testimony from the doctors that the man may be cured, perhaps the rabbi may officiate at the marriage. But if she does not know about it, or if there is no likelihood of his being cured, then there is grave doubt whether the rabbi should officiate at all. Certainly she must be told. If she consents, I believe (reluctantly) that he may officiate, remembering that he is officiating at a marriage of dubious validity, one that can be voided in the rabbinical courts and certainly ended by the civil courts."[1]

Both of these rabbis are of the opinion that the marriage may be permitted; however, they also raise the troublesome aspects of allowing a marriage to be sanctified, in which one of its two primary functions cannot be fulfilled.

In Rabbi Jacob's other responsum he discusses the question of marriage for an individual who has undergone a sex-change operation. He reasons that this must be:

> "a situation in which either the lack of sexual development has been corrected and the individual has been provided with a sexual identity, or with a situation in which the psychological makeup of the individual clashed with the physical characteristics, and this was corrected through surgery."[2]

From this response we may conclude that such an operation, when performed for medical purposes, would not interfere with the ability for an individual to be married by a rabbi, any more than any other sterile individual. But what is not said here, is that one who does not fall into the two

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1. Solomon B. Freehof, Modern Reform Responsa, Cincinnati: The Hebrew Union College Press, 1971, p. 121.

2. Walter Jacob, American Reform Responsa: Collected Responsa of the CCAR 1889-1983, New York: CCAR, 1983, p. 416.

categories listed, would not be permitted to be married by a rabbi. In truth, though, it is hard to believe that any individual who has undergone such an operation, would have done so for reasons other than those given by Rabbi Jacob.

Thus, the CCAR has considered this issue, but has not found a need to distance itself from the traditional attitude on the subject in the formal manner of passing a resolution.

There is one other issue which falls into this category of laws concerning physical status. This is the status of those whom the Talmud has classified as deaf or dumb. In 1925, Rabbi Kaufmann Kohler recommended that a resolution on the subject be passed. He stated: "Persons that are deaf and dumb are in our view perfectly equal to others in rationality; and the ancient law concerning their incompetency as to contracting marriage or as witnesses no longer has any value and binding force for us."[1]. However, there is no record of any resolution being passed on the issue.

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1. Kaufmann Kohler, "The Harmonization of the Jewish and Civil Laws of Marriage and Divorce", CCAR Yearbook, Vol. 25, 1915, p. 376.

LAWS CONCERNING RELIGIOUS STATUS

Within this section are two issues* which have been the subject of much discussion, and even resolutions, within the CCAR. These are the issues of the yibbum - the levirate marriage and the kohen.

YIBBUM

The issue of the levirate marriage has roots which stretch back to Breslau, Germany. At the Third Conference of German Rabbis, held in 1846, Rabbi Abraham Geiger presented a 6 page report on halitzah which "proved the necessity of its abolition".[1] At the same conference, Rabbi Samuel Holdheim also recommended that "yibbum should be declared incest, and halitzah superfluous.[2]

When the First Synod was held at Leipzig in 1869, a number of motions were presented on the subject of halitzah.

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* Within this section the issue of mamzeruth could also have been raised. However, as Rabbi Solomon Freehof pointed out in his New Reform Responsa, (p. 256) the issue has really never been discussed within the Reform movement. To quote: "In actual historical effect, Reform has led the way to removing the stigma of mamzerus from countless Jewish individuals. You might say, therefore, that without openly declaring the principle that the concept of mamzerus is no longer operable today, Reform has simply taken no notice of it. ...Reform follows the principle in the Talmud Kid. 76b that 'all families are presumed to be kosher'.".

1. CCAR Yearbook, Vol. 1, 1890, p. 98.

2. ibid.

Yet, while there seemed to be a great deal of agreement on the need for a change in the practice, it was not until the Second Synod met, in 1871, that a resolution on the subject was passed. The resolution reads:

> "The provision of the Torah concerning halitzah has lost all significance for us, since the conditions which gave rise to the levirate marriage no longer exist, and the idea which underlies the whole institution is foreign to our religious and social consciousness.
>
> The non-performance of halitzah is no impediment to the widow's remarriage. Still, for the sake of freedom of conscience, no rabbi will refuse, at the request of the parties, to conduct the act of halitzah in a proper form."[1]

At approximately the same time as the German rabbis were meeting in Augsburg, the American rabbis were meeting in Philadelphia. During that meeting in 1869, the issue of levirate marriage was raised. And the following motion was approved:

> "The command to marry the brother-in-law, and in case of his refusal to take off the shoe, etc., has lost for us all sense, all importance, and all binding force."[2]

While this was certainly an unequivocal statement, it was not the last word on the subject. Beginning in 1909, the American rabbis began to investigate the positions which the Germans had held on the subject. In an article on David Einhorn, Dr. Kaufmann Kohler presented the debate which had

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1. Alejandro Lilienthal, Fragen Des Juedischen Ehegesetzes, Unpublished Rabbinic Thesis, 1987, p. 31.

2. CCAR Yearbook, Vol. 1, 1890, p. 120.

taken place in Germany, between Einhorn, E. Cohn, and Geiger.[1] And in 1910, Rabbi Jacob Raisin explained Geiger's position in his paper on him.[2]

In 1915, Rabbi Kaufmann Kohler mentioned the issue of the levirate marriage in his paper on the subject of marriage and divorce. In it he traced the subject from its Biblical roots, to the time of Rabbenu Gershom.

He explained that in the rabbinical tradition, the institution of the levirate underwent an essential change, due to the altered social conditions. The meaning of the act changed, so that it came to be seen more as a means of releasing the widow than as the acquisition of a bride by the surviving brother.

With this change in place, the act of yibbum began increasingly to be seen as somewhat incestuous. In fact, the Talmud states the opinion of Abba Shaul, who said: "He who marries his deceased brother's wife on account of her beauty or of her possessions commits an act of fornication and the issue of such a marriage comes near to bastardy."; and the opinion adopted in the Mishna states: "In the former days the levirate marriage was considered as preferable to the halitzah, because the marriage was entered into with the sole purpose of fulfilling the law, but nowadays, when this pure motive no longer prevails, the halitzah is

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1. CCAR Yearbook, Vol. 19, 1909, p. 265.

2. CCAR Yearbook, Vol. 20, 1910, p. 282.

preferable."

While there were times when the opinion of which act was preferable did shift, Rabbenu Gershom's herem on polygamy finally caused halitzah to become the preferred course of action.[1]

In the conclusion of his article, Rabbi Kohler made several recommendations. On the issue of the levirate he stated: "...the list of Mosaic prohibitions of marriage declared as incestuous should no longer include the case of the deceased brother's wife, in view of the fact that the Deuteronomic law of Levirate contradicts the conception of incest as it is given in Leviticus. This question should be the subject of further consideration with the view of modifying or abrogating the law."[2].

In 1925, the levirate marriage was brought to the floor of the conference. Rabbi Samuel S. Cohon presented a paper, and a proposition. In his paper, Rabbi Cohon offered an historical survey of the levirate practice. He began with the Biblical basis (Leviticus 18:16, and 20:21), and continued by listing the rabbinic sources, many of which had also appeared in Rabbi Kohler's article.

However, Rabbi Cohon also added a new perspective. He brought forth the argument that the levirate marriage was

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1. Kaufmann Kohler, "The Harmonization of the Jewish and Civil Laws of Marriage and Divorce", CCAR Yearbook, Vol. 25, 1915, p. 368ff.

2. Ibid., p. 376.

not a peculiarly Jewish institution, citing Westermarck's History of Human Marriage and Frazer's Folk Lore of the Old Testament as proof.[1]

He also offered a psychological analysis to explain the fluctuation of practice from levirate to halitzah in the rabbinic time period. "...the Pharisees were embarrassed by this institution (levirate marriage). The Shammaites upheld the Samaritan view of the Levirate (that the levirate could only be performed if the woman was only betrothed, and not actually married). The Hillelites, too, placed various restrictions upon its application."[2]

And finally, he discussed the situation as it had been dealt with in the American Reform movement. He recounted the case in which Dr. I. M. Wise, in 1872, solemnized such a marriage, on the grounds that the widow was childless, and the Mosaic legislation required the marriage. And since it was a Mosaic law, it could not also be a prohibited union.

Dr. Wise also proposed that the herem of Rabbenu Gershom has no binding power in this century or in this country. Rabbi Cohon proposed that Dr. Wise was motivated by his desire that Reform Judaism must strive to "lighten the burden and not to aggravate it."[3]

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1. Samuel S. Cohon, "Marrying a Deceased Brother's Wife", CCAR Yearbook, Vol. 35, 1925, p. 365.

2. Ibid., p. 367.

3. Ibid., p. 368.

But Dr. Wise's actions did not go unopposed. According to Rabbi Cohon, he was stoutly opposed by B. Felsenthal, who pointed out that there were other personal obligations, for example blood revenge, which were a part of the Mosaic legislation, but had been abolished. And one who practiced blood revenge today would be committing a wrong among Israelites.

He further stated that, from his perspective, the marriage laws found in Leviticus 18, had not lost their validity for Reform Judaism. And the herem of Rabbenu Gershom also holds today, due to the fact that it expresses the moral sentiments of the Jewish people.[1]

Cohon reported that Samuel Hirsch also opposed Wise, based on the universal nature of the laws. And that David Einhorn enthusiastically endorsed Felsenthal and Hirsch.[2]

As for his own point of view, Cohon believes that the levirate law, and the practice of halitzah, serve to safeguard the integrity of the family to this day. He states: "Nothing has occurred in modern times to warrant the removal of this safeguard. The prohibition works hardship on comparatively few people, whereas through upholding a high standard of chastity, its moral benefits are considerable."[3]

In his summary, Rabbi Cohon states that:

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1. Ibid., p. 368.
2. Ibid., p. 368.
3. Ibid., p. 369.

> "If formal logic rather than human experience is to guide us in our marriage laws, the inequality of the law that permits a man to marry his deceased wife's sister and forbids the marriage of the wife of his deceased brother may be more profitably removed by declaring both of these forms of marriage as incestuous."[1]

After the paper was read, a discussion ensued. Rabbi Jacob Lauterbach defended Dr. Wise's position. He agreed with Dr. Wise that it is permitted to allow the marriage of a deceased childless brother's wife. However, if logical consistency is needed, then it would be better to prohibit yibbum altogether, rather than allow a marriage to take place if there had been children from the first marriage.

His final word on the issue dealt with the Reform attitude towards the principle dina d'malkhuta dina. Dr. Lauterbach stated:

> "The principle dina d'malkhuta dina does not mean that we must do everything that the law of the country permits us to do; it only means that we should not do what the law of the country forbids us to do. ...if the law of the state has no objection to a certain marriage, but the Jewish religious law has serious objections, the rabbi must refuse to perform such a marriage even though a Justice of the Peace would perform the same."[2]

While it might appear that Dr. Lauterbach's last comment was the least noteworthy, as it turned out, it was this statement, which dealt with the modern situation, which received the most responses. One rabbi made his position on

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1. Ibid., p. 369.

2. Ibid., p. 372.

the subject clear. He stated: "I do not recognize the law. I will perform any marriage that is recognized by the state."[1]

The desire for logical consistency was also brought up as an issue. Rabbi Philipson stated: "It seems to me we must take a stand in this matter; either we ought to declare ourselves against both marriage of a deceased wife's sister and a deceased husband's brother or we ought to be brave enough to say, in the light of modern conditions, we cannot retain either."[2]

The final word on the debate went to Rabbi Schulman. His feelings are best summed up in the following:

> "Reform Judaism does not abolish laws lightly, it does not change laws merely to make life convenient for people. When it abolishes an old law it abolishes it because of an ethical motive, whether correctly or mistakenly. It says that this law no longer expresses our own ethical feeling. But suppose Reform still feels that the ethics which is in this law appeals to it. It does not abolish it."[3]

The point which Rabbi Schulman makes here is that there still exists a sense of repugnance toward the marriage of the deceased husband's brother to his wife. And for this reason, the law must not be abolished. He defended the inequality of the situation, whereby it is permitted for the husband to marry the deceased wife's sister, and he also

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1. Ibid., p. 375.
2. Ibid., p. 374.
3. Ibid., p. 377.

defended the practice itself, stating that "life is not logical". In addition to this, there is a great difference between changing an old law, and making new legislation. And Rabbi Schulman believed that the Conference did not exist to make new laws.

Rabbi Schulman closed his statement with the hope that: "the prohibition will be maintained and that we do not weaken the possibility of our expressing a fairly unanimous opinion for the maintenance of this by bringing in this new point of view by new legislation."[1]

It was fitting for this to be the last statement on the issue, as no new resolution was passed on the subject. And so the Conference continued to stand by its only statementon the subject, the endorsement of the resolution passed in Philadelphia in 1869.

KOHEN

The Torah designates the kohanim as being in a separate class from other Israelites. They are to deal with the needs of the Temple. And since they must accept this task, they are in turn supported by the Temple.

However, the Temple is sanctified. And, therefore, all of its attendants must accept certain requirements to protect their status. Included in these requirements are:

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1. Ibid., p. 378.

"They shall not marry a woman defiled by harlotry, nor shall they marry one divorced from her husband. For they are holy to their God."[1]

The issue of the kohen, in the Reform movement has been very straightforward. Similar to the levirate marriage, its roots also stretch back to Germany. At the first Synod, held at Leipzig in 1869, the following two resolutions were passed: "A widow on whom the act of chalitza has been performed may marry a kohen.", and "...all prohibitions concerning the marriage of a so-called Aaronide are to be set aside. Hence, he can marry a proselyte woman."[2].

At the Philadelphia Conference held in 1869, the American rabbis passed two resolutions in the same spirit. The first stated:

> "Every distinction between Aaronides and non-Aaronides, as far as religious rites and duties are concerned is consequently inadmissible, both in the religious culte and in life."[3].

And the second read:

> "The priestly marriage laws which are predicated upon the sanctity of the Aaronites, have lost all significance and are no longer to be respected, since the destruction of the temple and the cessation of the old sacrificial worship destroyed the basis upon which the exclusive position

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1. Tanakh, New York: The Jewish Publication Society, 1985, (Leviticus 21:7) p. 188.

2. CCAR Yearbook, Vol. 1, 1890, p. 110 - 111.

3. Ibid., p. 118.

of the Aaronite was established."[1].

The issue of the kohen was not mentioned again until 1915, in a paper by Rabbi Abram Simon. In it he explained that "the entire legislation with regard to the marriages of priests and high priests has been disposed of in the Leipzig Synod and accepted in the Philadelphia Conference of 1869 and need no longer concern us".[2]

The subject has only been raised on one other occasion within the C.C.A.R. This occurred in 1943, due to a question of the Committee on Responsa.

The question dealt with the objection to a marriage of a man, who was a kohen, to a divorcee. The response of the committee provided several rabbinic sources to substantiate the Reform position. They mentioned Isaac ben Sheshet who differentiated between the ancient priest and the modern kohen in no uncertain terms; Solomon Luria and the Magen Avraham, who stated that the original priestly families, in most instances failed to preserve the purity of their descent; and Jacob Emden, who stated that a kohen who kept the redemption fee for a first born son, ran the risk of taking money for which he had no legal claim.[3]

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1. Moses Mielziner, Marriage and Divorce in Ancient and Modern Times and its relation to the Law of the State, New York: Bloch Publishing Company, 1901, p. 59.

2. Abram Simon, "Harmonization of Jewish and Civil Laws of Marriage and Divorce", CCAR Yearbook, Vol. 25, 1915, p. 391.

3. CCAR Yearbook, Vol. 53, 1943, p. 85.

The Committee ended its report by concluding that:

> "When Reform Judaism chose to ignore the nominal distinction between the ordinary Israelite and the kohen, ...it did not so much depart from tradition as it did display the resolute will to surrender a notion, the validity of which eminent rabbinic authorities had repeatedly called in question."[1].

The conclusion of the Committee has continued to hold to this date, as no new statements on the status of the kohen have appeared before the Central Conference.

LAWS CONCERNING MORAL INFRACTIONS

Marriage is an elevated form of relationship between man and woman. It is a sanctified relationship. The Torah and the rabbis tried to protect this status by listing the situations which disqualified a couple for being married.

The tradition maintains that: a woman who was divorced because she committed adultery is forbidden to marry the man with whom she was adulterous; a man is forbidden to remarry a woman whom he has divorced, if she has subsequently been married to another man; in order to safeguard paternity, and the health of a newborn child, divorcees and widows should not marry until 3 months have passed; and a woman whose husband is reportedly dead, may not marry the man whose testimony that her husband is dead forms the basis

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1. Ibid.

for her right to remarry.[1]

The C.C.A.R. has not said too much on this subject over the years. In 1914, Rabbi Max Heller, in commenting on a responsum dealing with forbidden marriages stated: "...it is his (the rabbi's) imperative duty to assure himself as far as possible that the marriage violates neither civil nor Jewish law. And where such a marriage may be permitted by civil law, but is contrary to Jewish law, the rabbi should feel himself deterred from officiating at it..."[2]

On its own, the above comment seems to find a basis for the acceptance of the Biblical and Rabbinic traditions in this area. However, this comment was never backed by any official resolutions.

Concerning the specific issues mentioned above, the only comments found which deal with the adultery question come from Moses Mielziner. He said:

> "It must be remembered that, according to the view of the Jewish Law, adultery is regarded not merely as misconduct and private injury, which may be condoned by the offended party, but as a crime which invalidates the moral foundation of marriage, so as to make its continuation absolutely impossible."[3]

While this comment was obviously directed at the married couple, who must now divorce, it can clearly be seen

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1. Isaac Klein, A Guide to Jewish Religious Practice, New York: Jewish Theological Seminary of America, 1979, p. 384.

2. CCAR Yearbook, Vol. 24, 1914, p. 154.

3. Moses Mielziner, Marriage and Divorce in Ancient and Modern Times and its Relation to the Law of the State, New York, Bloch Publishing Company, 1901, p. 124.

how this same outlook could serve to prohibit the marriage of the adulterer and his partner, as their prior actions have "invalidated the moral foundation of marriage".

This moral standard has never been adopted by the C.C.A.R., yet it has also never been rejected. Therefore, the issue of adultery clearly comes down to the personal decision of the rabbi involved with the couple.*

While the issue of remarriage to the first spouse after one of the parties has subsequently been married again has not come up for discussion, it is my belief that very few American Reform rabbis would maintain this restriction, if such a situation presented itself to them.

In 1915, the subject of how much time is required to pass before a widowed or divorced spouse is permitted to be remarried was raised by Rabbi Kaufmann Kohler. In his paper he made the recommendation that:

> "The Jewish law prohibiting a widow or a divorced wife from remarrying before the

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* The one clear discussion on the issue of adultery can be found in a responsum by Walter Jacob, in the book Contemporary American Reform Responsa, Mars, Pennsylvania: Publishers Choice Book Mfg. Co., 1987, p. 286. In this responsum, he answers the question "...the adulterous party has asked the rabbi to officiate at the marriage to 'the other person'. Should the rabbi comply with the request?" He answers: "A rabbi may, in this instance, find herself in a difficult position as she is dutybound to strengthen family life and defend the sanctity of marriage. If she, however, refuses to marry this couple, they may simply opt to live together... Therefore, the rabbi should officiate at such a marriage, while at the same time discussing her own hesitation in keeping the tradition." Thus, the only clear-cut statement to officially come from the American Reform Movement allows this marriage to be sanctified by a Rabbi.

> lapse of ninety days should by all means be upheld..., but instead of ninety days... ten months or a full year ought to be... observed by the modern rabbi."[1].

While Rabbi Kohler felt strongly about the wisdom of this practice, the issue was never officially raised at a Conference, and no resolution on the subject was ever passed.

In the same paper, Rabbi Kohler also mentioned the issue of a waiting period after the disappearance and presumed death of a spouse. He stated: "...in cases of the disappearance of either husband or wife, only after five years should a remarriage by the rabbi be allowed."[2]

It appears that Rabbi Kohler was interested in maintaining a connection between the laws of marriage and rabbinic authority. As can be seen from a number of cases, the trend of the modern American rabbis has been to rely increasingly upon the authority of the State to make decisions which in the past had been clearly in the realm of the rabbi. By taking firm positions on these areas, Rabbi Kohler attempted to maintain the connection. However, as his stances were not adopted by the movement, it appears as though his efforts were for nought.

Rabbi Kohler's point of view stands alone in the records of the CCAR. The reason for this might be that a

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1. Kaufmann Kohler, "The Harmonization of the Jewish and Civil Laws of Marriage and Divorce", CCAR Yearbook, Vol. 25, 1915, p. 376.

2. Ibid.

resolution on the subject was passed at the Rabbinical Conference in Philadelphia, which stated: "... the question as to whether a lost person is to be regarded as dead or not, is to be left entirely to the decision of the competent courts of the country."[1]

The outlook of the Philadelphia Conference had its representative in Rabbi Simon. In his paper, which was also delivered in 1915, he defended the statement. In referring to the situation of a dead or missing spouse, Rabbi Simon stated: "It seems that the Jewish law should gracefully yield in this specific instance without any sacrifice of principle. ...Of course, as Jews, we must abide by the court decisions; but as Jews we ought not impugn the motives of a woman who has re-married after an extended absence on the part of her husband."[2].

While it is certainly true that Rabbi Simon's motivation is largely due to the desire to correct a deficiency in the Jewish law, namely, the discriminatory stance taken towards a woman who re-marries, and then discovers that her first husband is alive, and must divorce both men, it is also evident that the course he takes to find his solution is outside of Jewish tradition. Instead of working to change the Jewish law, the prefered course of action for

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1. Moses Mielziner, Marriage and Divorce in Ancient and Modern Times and its Relation to the Law of the State, New York: Bloch Publishing Company, 1901, p. 113.

2. CCAR Yearbook, Vol. 25, 1915, p. 390.

Rabbi Simon, as for the Conference as a whole, has been to turn away from our Jewish heritage, and accept the law of the land, depending upon the talmudic dictum dina d'malkhuta dina as the support for their stance.

LAWS CONCERNING THE RELIGIOUS CEREMONY

Within the American Reform Movement, major changes have occurred in connection with the marriage ceremony. These changes seem to have followed the same pattern as the changes which the German rabbis proposed at their Synods in Leipzig and Augsburg.

At the first Synod in Leipzig, in 1869, the desire for an equal role, and an equal obligation for women was strongly expressed through the resolution that the bride should also give a ring to the bridegroom. A resolution was also passed which dealt with the witnesses to the ceremony. The German rabbis agreed upon the principle that non-observance of Jewish ceremonies should no longer be a cause for invalidating witnesses at the ceremony.[1]

At the second Synod in Augsburg, in 1872, the resolutions of the first Synod were strengthened and added to. In addition to restating the resolution that witnesses should not be disqualified for non-observance of Jewish law, they also proposed that, the bride should not only deliver a ring

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1. CCAR Yearbook, Vol. 1, 1890, p. 105.

to the bridegroom, but she should also make a statement to the him, similar to the one which he says to her.

The Synod also passed resolutions to update the marriage ceremony to modern times. They decided that in any religious ceremony which is also regarded as a civil ceremony by the State, the officiating rabbi should ask the couple whether they are willing to marry one another.

They also decided that the custom of not performing marriage ceremonies on certain unlucky days, has no religious basis at all, with the exception of the week in which the Ninth of Ab is commemorated.[1]

While this action was occurring in Germany, the American rabbis held a conference in Philadelphia, in 1869. At this conference they also passed a resolution concerning an exchange of rings and vows for both bride and bridegroom. The vow was to be: "Be consecrated to me as wife (as husband) according to the law of God".

The last resolution dealt with the liturgical needs of the American rabbi. In place of the traditional benedictions, the birkat erusin and the birkat nissu-in, the Reform movement decided to create a benediction which would set forth the full moral grandeur of marriage, emphasizing the Biblical idea of the union of the husband and wife into one personality, and designating purity in marriage as a divine

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1. CCAR Yearbook, Vol. 1, 1890, p. 112.

command.[1]

The issue of the marriage ceremony was raised at the first Conference by Dr. Moses Mielziner. In his seminal paper "The Marriage Agenda", Dr. Mielziner presented the rabbinic development of the laws surrounding the marriage ceremony.

The first point he raised was that the Rabbinical law which established the legal formalities for the act of contracting marriage did not develop until the time of the Second Jewish Commonwealth. At that time, the marriage ceremony was a two-stage event. The first stage, erusin, bound the parties to one another, and required a get to be dissolved, but it did not entitle the couple to actual marital rights, or the duties of conjugal life. This two-stage marital process did not take its present day form until the fifteenth or sixteenth century.

The erusin could not be established through the mere consent of the parties. It required a legal act in order to establish its validity. This act consisted of the kesef or the shtar. The kesef was the acceptance by the bride of an item which had the value of at least a peruta. The shtar was a legal document stating that the bridegroom would take the bride for his wife, which was also accepted by the bride.

While the Talmud required that a benediction be pro-

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1. CCAR Yearbook, Vol. 1, 1890, p. 119.

nounced at the erusin, the omission of the benediction in no way affected the legal validity of the erusin.

The Rabbinical tradition also required a kethuba, the marriage deed. However, in some places the husband was regarded as bound to this contract whether it had been written or not.

Dr. Mielziner proceeded to discuss the modern mode of solemnizing the Jewish marriage. He stated that the essential elements of the act have been retained, although they have been modified. These essential elements are: the placing of the wedding ring on the bride's finger by the groom, in the presence of two witnesses, the recital of the formula of betrothment by him, preceded by the benediction of erusin, and followed by the benediction of nissu-in.

Dr. Mielziner also noted that some immaterial and obsolete ceremonies have been discarded. By this he was referring especially to the huppah and the kethuba. He states that the huppah, or bridal canopy, has been replaced in our time by the room in which the marriage ceremony is performed. And this is a return to the original conception of the huppah.

The original purpose of the kethuba was to protect the wife, making it more difficult for the husband to divorce her. If, however, he did divorce her, the kethuba mandated that husband provide for her financially. Since today the wife is sufficiently protected by the civil marriage laws of the United States, the kethuba has lost its importance, and

is no longer necessary.

Dr. Mielziner also noted that according to Maimonides the ritual formula for the betrothment, as well as the ritual benedictions, may be recited in any language, provided that their contents are retained.

In addition to this he mentioned that the use of wine at the wedding ceremony originated in the post-Talmudic period, and it is not absolutely necessary for the marriage. And last, he stated that the use of two wedding rings instead of one should be optional. The intent of this innovation being to express the full equality of woman with man in the marriage.

Dr. Mielziner ended his paper by stating that, although it would be desirable to have a more uniform wedding ceremony within the Reform movement, he feels that the movement must be very careful in this task. It would be wise to follow the motto: Uniformity in essentials, freedom and variety in that which is unessential and of less importance.[1]

The issue of the religious ceremony was next raised in 1915 in papers by Rabbi Kaufmann Kohler and Rabbi Abram Simon. In Rabbi Kohler's paper, the virtue of a two ring ceremony is again mentioned. He states:

> "We must insist upon the equality of man and woman, especially at the marriage ceremony, and just as the bridegroom gives the ring to

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1. Moses Mielziner, "The Marriage Agenda", CCAR Yearbook, Vol. 1, 1890, pp.34-40.

> the bride to wear as a symbol of union for life, so should the bride hand one to the bridegroom. Conversely, a woman should be regarded as equally fit for witness at the ceremony as man if she wishes to function as such."[1]

Once again it can be seen how Rabbi Kohler's position on the idea of a two ring ceremony, is really symbolic of his entire approach towards women. At the end of this statement, he clearly calls for women to be eligible for equal treatment under the religious law in all aspects of the marriage ceremony, from being an equal partner, to being equally capable of serving as a witness to the event.

This aim is clearly seen in his recommendations to the conference. In them he states that: "The CCAR should declare that the Jewish woman be regarded religiously as the equal of man"[2]; and "The Marriage formula should bear the distinctly Jewish character, ...and be recited by both bride and bridegroom"[3].

Rabbi Simon's major contribution to this issue was his discussion concerning the prohibited times for marriage, which were raised by the German rabbis, but had not yet been addressed by the American rabbinate. He stated that: "we need not concern ourselves with the legislation prohibiting Jewish marriages on special days. We ought, however, insist

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1. Kaufmann Kohler, "The Harmonization of the Jewish and Civil Laws of Marriage and Divorce", CCAR Yearbook, Vol. 25, p. 347.

2. Ibid., p. 376.

3. Ibid.

upon the old restrictions of marriages performed on the Sabbath and the holy days."[1]

It appears as though there was a general agreement on this subject, and therefore, Rabbi Simon felt it unnecessary for the Reform movement to separate itself from traditional Judaism by taking an official stand on this subject. Thus, without making it an official policy of the American movement, it is clear that the traditional prohibitions concerning marriage on certain days no longer held within the movement.

While there had been a call for "uniformity in essentials" by Dr. Mielziner in 1890, nothing concrete had been done prior to 1924. During that year, in the Report of the Special Committee on Marriage and Divorce Laws, comments were made on the progress of a rabbi's manual. Although the report indicates that the manual was progressing slowly, the significant point made here is that a manual was being prepared at all. For, in spite of Dr. Mielziner's suggestion that there be uniformity in the essentials, there was never a large amount of support within the movement, on the part of the rabbis, for relinquishing any of their autonomy, in any area. It was for this reason that a Synod was never held in America, as it had been in Germany. Uniformity might have been a virtue, but not at the expense of autono-

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1. Abram Simon, "Harmonization of Jewish and Civil Laws of Marriage and Divorce", CCAR Yearbook, Vol. 25, 1915, p. 391.

my. Therefore, the existence of a manual is a significant development within the movement.

Although Dr. Mielziner seemed to have done away with the kethuba in 1890, it began to reappear officially, in an altered form, in 1935. In the Report of the Recording Secretary of the Conference a letter was read from Rabbi Michael Alper, who requested that the Conference draw up a Hebrew kethuba to be used in marriage ceremonies when requested. The Conference moved and adopted that Rabbi Cohon be put in charge of the kethuba, and that after it has been completed, the Conference would review it, and decide whether or not it should be sponsored by the movement.[1]

Once again, here is a move by the conference, which may appear to be a minor matter, but which actually represents a change in the stance taken by the Conference for over 45 years. In fact, the following year, the revised kethuba which Rabbi Cohon had prepared was sent to a publisher by the Conference.[2]

In that same year, the recommendation of the President to preserve Sabbath observance by not officiating at weddings on the Sabbath and on Holidays, was approved by the Committee on the President's Message[3].

While it is not clear what the practice was in the

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1. CCAR Yearbook, Vol. 45, 1935, p. 24.
2. CCAR Yearbook, Vol. 46, 1936, p. 20.
3. Ibid., p. 131.

field, it appears that there may have been some controversy on this issue, as it was brought up in 1915, and again here in 1936. However, whatever the situation may have been, it was not detrimental enough to cause the Conference to pass a Resolution on the subject.

In 1941 the subject of marriages on the Sabbath day was again raised, this time in a question to the Responsa Committee. Once again, the Committee found that there were many benefits to maintaining the traditional position. However, the issue was still not raised for policy discussion within the Conference.

Also in 1941, the desire for a manual, which was mentioned back in 1924, once again came to the surface. This time there was a debate on the subject. Rabbi Solomon Freehof raised the issue in his paper "A Code of Ceremonial and Ritual Practice".

Rabbi Freehof believed that the time had long since passed for the Conference to continue to avoid taking clear-cut stands on the issues of personal status. He felt that it was important to pass resolutions on the questions of inter-marriage and mixed marriage. He stated that it was necessary for the movement to publish these decisions, as well as its decision on matters of civil marriage and divorce, and the other topics related to personal status. He suggested using the paper written by Dr. Kohler in 1915 as a guide for this publication. But above all, he felt that the time had come for the movement to make its posi-

tions known, and to stand by them.[1]

In the discussion which followed the presentation, Rabbi Philipson agreed that a Code of Practice could be beneficial to the movement, but that care must be taken to insure that it not become a new Shulhan Arukh.

Rabbi Brav stated that it was clear to him, that what the Conference desired was not a Code of Practice, but rather a home prayer book with notes, and the establishment of a definite position on the marriage and divorce laws.

While this is clearly not the position expressed by Rabbi Freehof, it is still a stand in favor of defining the movement's positions in the areas of marriage and divorce.

But by the following year, this desire for a firm stand on position was forgotten. For in the Report of the Committee on a Code of Practice, the following statement was issued:

> "We take it that those who have been asking for a code of observances and ceremonies are actuated by a sincere desire to obtain authoritative guidance for themselves and for the congregations they serve. Surely, they are not anxious to submit their life's conduct to a fixed and unalterable legal code. What they really want is not a code of laws, but a manual of religious practices, informative rather than coercive in character. ...We therefore recommend that a committee be charged with the task of preparing a Manual of Jewish Religious Practices."[2]

It seems to be very clear that in the period of one

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1. Solomon Freehof, "A Code of Ceremonial and Ritual Practice", CCAR Yearbook, Vol. 51, 1941, p. 295.

2. CCAR Yearbook, Vol. 52, 1942, p. 123.

year, the course of a project was shifted away from taking a stand, to stating the options. The fear of losing autonomy which was mentioned earlier (in the context of the developments of 1924), was still very much a part of this movement.

In 1948, it was announced that a Marriage Certificate had been printed by the Conference, and that it was selling well. While this is not a kethuba, it seemed to fill that role. However, the fact remains that this Certificate had no legal status whatsoever. Its sole purpose was as a means of ritual edification for the marriage ceremony. So while it might appear that the movement had returned to a previously rejected practice, in fact, it had done away with the meaning of that practice, and had replaced it with a pretty certificate whose sole purpose was to be pretty.

In 1961, the Conference recorded the adoption of a Resolution by the New England Region of the C.C.A.R. requesting that the Conference invite other national Jewish bodies to agree upon a date to commemorate the millions of Jews martyred in our generation. It was resolved that no marriage ceremonies should be held on that date.[1]

In 1963 it was recommended that the C.C.A.R. encourage its members to officiate only at marriage ceremonies held in the home or in the temple. This statement reflects the fact that the rejection of the huppah as a meaningful symbol, eventually left a void in the spiritual edification of the

1. CCAR Yearbook, Vol. 71, 1961, p. 145.

ceremony. It is perhaps due to the fact that more and more weddings came to be held outside of the home or the temple, that the huppah made its return into the Reform movement.

In 1976, the Conference once again made a statement on the subject of officiation on Shabbat or Yom Tov. But this time there was a difference. This time the Conference passed a Resolution, which stated: "The CCAR strongly disapproves of the officiation by its members at marriages of any kind on Shabbat or Yom Tov or the participation at marriages together with non-Jewish clergy."[1] The Resolution went on to call for a responsum to be published on the subject of marriage on Shabbat or Yom Tov.

This resolution marked a significant step for the Reform movement, as it was the first time that the movement took an official stand on a subject was raised many times over the years. In addition to this, the resolution also took the added step of disapproving officially of the practice of co-officiation with non-Jewish clergy.

The fact that the Resolution concluded with a call to submit the subject to the Committee on Responsa seems to symbolize the fact that within the movement, more and more credence has been given to the decisions of the Committee on Responsa. For even though the Conference has been slow to issue Resolutions, it has continually come out with Responsa.

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1. CCAR Yearbook, Vol. 86, 1976, p. 75.

While the responsa cannot take the place of a Resolution, it is, in actuality a new source of authority to the Reform movement. Although there is no way to enforce any decision which comes from a responsum, the fact remains that there is also no way to enforce a Resolution of the Conference. And so, the power to influence, in both cases, comes from the rabbis in the field who have recognized and legitimized the decisions made in either forum.

Thus, it comes as no surprise that at the Conference in 1977 a responsum was issued on the subjects of: Marriage on Shabbat or Yom Tov, and Non-Jewish clergy participation in a Jewish wedding ceremony. With regard to the first issue, the committee decided that "the generally prevailing practice should be continued, that is to say, marriage ceremonies should not be conducted on Shabbat or on Yom Tov."[1]

The reasons given for this response were numerous. One simple reason was that this custom has been universally accepted for centuries. A more halakhic response was that the Reform movement encourages Shabbat observance, and marriage on Shabbat might tend to detract from it in a mingling of joy, as well as by possibly bringing business considerations into the day. A third reason stressed Jewish unity. It said that the Reform movement has respect for k'lal yisrael, and wishes to strengthen it, not detract from it. And last, it was suggested that it is not proper to

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1. CCAR Yearbook, Vol. 87, 1977, p. 96.

endorse for everyday use, a practice which should be reserved for emergency situations alone.[1]

In dealing with the second issue, the Responsa Committee shifted the focus of the question slightly, and gave a different response than the one which was requested of it. They stated that a non-Jewish clergyman may participate at a Jewish wedding ceremony, however, the essential portion of the ceremony must be performed by a rabbi.

With regards to the original question, the Committee reported that no previous responsum had ever been written on the subject, and they did not feel qualified to write one now. They recommended that the matter be taken up once again by the Resolutions Committee, and that the Conference itself answer the question.[2] And at the conference meeting of 1980, the matter was referred back to the Conference for discussion, with a decision to come the following year.[3]

The last issue to be dealt with in this section has been raised only in the Reform Responsa literature. The issue is, to what extent is it necessary for a rabbi to officiate at a Jewish wedding?

In the book Reform Responsa for our Time, Rabbi Solomon Freehof answered the question, can a Jewish marriage take place without a rabbi, or without the use of Hebrew? He

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1. CCAR Yearbook, Vol. 87, 1977, p. 96.
2. CCAR Yearbook, Vol. 87, 1977, p. 105.
3. CCAR Yearbook, Vol. 90, 1980, p. 79.

stated that, although much is lost from the sanctity of the ceremony if all Hebrew is removed, it does not invalidate the service. Rabbi Freehof holds this same position on the question of Rabbinic officiation. He believes that much is lost from the sanctity of the ceremony, if the rabbi is not present, however, the marriage is still valid.[1]

While Rabbi Freehof does not feel that a marriage without a rabbi is a good idea, in this instance he clearly states that it is still valid. However, earlier in his career, Rabbi Freehof gave a slightly different answer to a very similar question.

To the question: "May cantors perform Jewish marriage services without an ordained rabbi presiding over the ceremony?", Rabbi Freehof responded that there are two major elements to this question, the first being professional privilege, and the second being technical ability. He states:

> "We are correct in following the tendency of traditional law, and saying that the performing of marriages is professionally, technically, and spiritually the exclusive function of the rabbi. In specific cases it may be possible for the rabbi who approves... to give permission to a cantor to officiate for him, but only... for a specifically approved marriage. This is no time in the history of marriage and morals for us to take any steps to lessen the

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1. Solomon B. Freehof, Reform Responsa for our Time, Cincinnati: The Hebrew Union College Press, 1977, p. 200.

solemnity, dignity, and impressiveness of marriage."[1]

This second responsum, written in 1955, takes a much stronger stand against this practice than was later to be the case. What is evident here, is the ability of the responsa to evolve with time. This is both a positive and a negative feature of the literature.

It is positive in that it has the ability to change its form when needed, and adapt a new decision for a new time. However, it has the drawback of not having the same strength that a code has. It appears that it may be for just these reasons that the Reform movement has moved increasingly towards the mode of the responsa in its attempts to define itself for the future.

LAWS CONCERNING NON-TRADITIONAL REQUIREMENTS

One reason for the large amount of material which existed in connection with the issue of Consanguinity is the conflict which existed between the traditional Jewish laws of marriage, and the civil laws of the United States. This situation presented the rabbi with two difficulties. First of all, the States of the Union do not conform to a uniform marriage code for the entire country. This means that each State has determined the laws of marriage on the basis of

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1. Solomon Freehof, American Reform Responsa: Collected Responsa of the CCAR 1889-1983, Edited by Walter Jacob, New York: Central Conference of American Rabbis, 1983, p. 398.

what it believes to be most correct. Because of this, a marriage may be legal in one State, and illegal in another.

This left rabbis in a precarious position. Should they perform a valid Jewish marriage, which is illegal in their State, or should they refuse to perform the marriage, on the basis of dina d'malkhuta dina?

The other problem which this raises is that the rabbi will now encounter situations in which a marriage is prohibited according to Jewish law, but legal according to the law of the State. To what extent are rabbis officers of the State? To what extent should they decline to officiate at a marriage to which the State has no objection?

In 1910, the Conference formed a Committee on Civil and Religious Marriage Laws to deal with these issues. They were to study the entire subject of marriage laws in the traditional Jewish sources, in the various States of the Union, and possibly also in England and other foreign countries.

The aim of this research was to note the conflicts and agreements between the religious and civil laws, and select the superior regulations of each. This would result in a composite system, which would be in harmony with the laws of the land, and also contain ethical restraints that could be used by the rabbi. The major ethical restraint listed was the rabbi's refusal to officiate at the marriage.[1]

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1. CCAR Yearbook, Vol. 20, 1910, p. 126.

The first step in this project was an address to the Conference by B.H. Hartogenisis of the Baltimore Bar Association. In his presentation, Mr. Hartogenisis introduced some of the conflicts which exist between Jewish law and civil law. These are: marriages of uncles to nieces are allowed in only one State of the fifty; and marriages of first cousins are prohibited in a number of States.

While he did not raise the issue of the levirate marriage, it too comes into conflict with civil law. For while the movement had discarded the halitzah ceremony, it was unclear if the marriage of the brother to his deceased brother's wife was to be seen as incestuous. This led to a conflict, as the movement's position was not clear and possibly prohibited the marriage, while the civil law clearly permitted it.

Mr. Hartogenisis suggested that the American Reform movement settle this problem by adopting the Talmudic dictum of dina d'malkhuta dina. This would resolve the conflicts by always siding with the laws of the State. However, his suggestion was not adopted by the conference.

In 1913, the issue resurfaced at the convention. A paper, "The Modern Problem of Marriage and Divorce", was delivered by Rabbi J. Leonard Levy. In the discussion which followed, the point was raised that: "Our paramount necessity in America is clearly the uniformity of marriage and

divorce laws throughout the land."[1]

This thought was expanded upon the following year in the report of the Committee on Civil and Religious Marriage Laws. The Committee stated:

> "In view of the increasing confusion, caused by the diversity and conflict of state laws on marriage and divorce, the Committee recommends that this Conference favor national laws of marriage and divorce or a uniformity of state laws on this subject."[2]

Rabbi Philipson, in commenting on this topic, stated what must have been a common feeling among the rabbis at that time. He made the point that:

> "This question of the civil and religious laws of marriage and divorce is very delicate. The difficulty of the question arises from the fact that while of course the civil marriage and divorce laws must be observed by all, many so-called Mosaic laws are in contradiction with the civil laws, and many no longer appeal to our modern consciousness."[3]

This statement gives us a clear indication of the feelings of the Conference. Its sympathy was clearly with the civil laws. The problem was that the Conference was composed of rabbis; and rabbis often felt that they should try to maintain some connection to the Mosaic laws.

Rabbi Kaufmann Kohler confirmed this outlook in his paper delivered the following year. In it he discussed the problems which emerge for the offspring of marriages that

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1. CCAR Yearbook, Vol. 23, 1913, p. 360.

2. CCAR Yearbook, Vol. 24, 1914, p. 123.

3. Ibid., p. 155.

are regarded as legal by the State, but prohibited by Jewish law. He stated that their offspring should not be regarded as illegitimate, but should be brought up as Jews. He used the principle of Hillel: "Love your fellowmen and bring them nigh to the Torah", as the justification for this stance.[1]

In 1917, the issue had taken on national significance. Federal legislation had been proposed, which would lead to the uniformity of marriage and divorce laws. Because of this, the President of the Conference, Rabbi William Rosenau, included a call that the Conference "should resolve to enter, together with the International Committee on Marriage and Divorce, and other agencies, upon a campaign of propaganda, which shall in due time help to make for uniform marriage and divorce laws throughout the United States."[2]

The issue did not appear again until 1935, when it was raised by the Commission on Social Justice. The report urged that States adopt a uniform law code, which should agree upon the following issues: 1. An interval of seven days between the time of application for, and issuance of a marriage license; 2. A thorough examination of the couple by a competent physician; and 3. An elementary course in the problems of marriage and family life.[3]

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1. CCAR Yearbook, Vol. 25, 1915, p. 376.
2. CCAR Yearbook, Vol. 27, 1917, p. 130.
3. CCAR Yearbook, Vol. 45, 1935, p. 76.

The report also called for the formation of a Committee on Marriage, the Family and the Home. In 1937 this Committee recommended that the Conference urge every State to incorporate within its marriage laws at least these three requirements: severely limit the ability of those under eighteen years of age to marry; require that both parties be examined by a physician*; and require an interval of five days between the time of application for a marriage license and the issuance thereof.[1]

The following year, the Committee on Marriage, the Family, and the Home, revised its recommendation of the previous year, and changed its focus away from the State, and towards the rabbi. If the State was not prepared to follow these guidelines, then the Conference must take the lead, and perform marriages only after the couple has met its requirements.

While these measures which the Committee recommended were not drastic, and might even be called common sense, the importance of this recommendation, is that it was an attempt to place restrictions upon the rabbi's autonomy to officiate

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* The issue of the health of the couple was first raised in 1913. The Conference recommended the approval of efforts toward effecting national uniformity of marriage and divorce laws, and towards requiring, through legislation, physical and mental health certification on the part of those entering the marital state. (CCAR Yearbook 23, p. 25) There was additional discussion on this topic throughout the years, and it was included in the recommendation directed towards the rabbis of the movement in 1938.

1. CCAR Yearbook, Vol. 47, 1937, p. 90.

at marriages. Without even realizing it was doing so, the Conference, in effect, created a new legal framework within the American Reform movement, which served to restrict marriages which Jewish law had not found objectionable in the past. And this, in effect, created a new halakhah.

What is evident from this material, is that the initial goal of developing a guideline based on Jewish law, State law, and the laws of foreign countries, was more than the Conference could handle. Instead, the initial project disappeared, and the issues were handled on an individual basis.

This method of dealing with the issues involved in marriage is evident throughout this chapter. The issues were discussed individually, and for the most part, no resolutions on the topics were ever passed. This leaves the movement in a totally unregulated situation.

It has already been noted that there have been some responsum written, covering subjects which could not be covered by resolutions. However, the responsa cannot impose its decisions on a rabbi. It is still up to the rabbi to decide if the author of the responsum represents his/her point of view. And if not, then the rabbi is free to act according to his/her own belief.

Thus, the subject of marriage in the American Reform movement, has been the topic of much discussion over the years, but of little resolution.

MIXED MARRIAGE

The subject of mixed marriage has been of great interest to the American Reform movement from the beginnings of the movement. And this interest has led to Resolutions on the subject three times in the history of the Conference. These resolutions have come in 1909, 1947, and 1973.

Because of the volume of material on this subject, this chapter will be divided into three time periods. The first period will extend from the date of the French Sanhedrin in 1807, until the first Resolution of the Conference in 1909. The second will extend from 1910 until the second Resolution in 1947, and the third will include the third Resolution, which took place in 1973, and will conclude at the year 1980.

1807 to 1909

The issue of Mixed Marriage arose with the dawn of

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* The term Mixed Marriage has often been used interchangeably with Intermarriage. While there has never been an official decision to use one term or the other, the more correct term for our purposes is mixed marriage. Intermarriage refers to marriage between persons of different families, nations, or tribes. In our age, we find Jews of many different nations, and races. These marriages are not prohibited because these people are all regarded as Jews. Therefore, within the text of this chapter, only the term mixed marriage will be used. However, when intermarriage is used within a quote, it will be recorded as it was originally written. For more information on this point see "Intermarriage Historically Considered", by Ephraim Feldman, CCAR Yearbook, Vol. 19, p. 271ff.

Emancipation - a new age for the Jew. Napoleon had offered the Jewish Community an opportunity to become a part of French Society. In order to assure himself of the loyalty of his Jewish citizens, Napoleon put them to the test. He called forth a modern Sanhedrin of Jewish leaders to meet, and give authoritative responses to several questions. One of these questions was: "May a Jewess marry a Christian, or a Christian woman a Jew, or does the Jewish law demand alliances between Jews only?"[1]

The significance of this question for Judaism is that it was not addressed to the Reform movement of France. It was addressed to French Jewry, as a whole. It brought Judaism face to face with the developments of the outside world. It forced Judaism to deal with the new realities of the modern world.

The Sanhedrin felt that, while it could not condone this act, it also could not state an unequivocal no, for this answer would confirm the beliefs of those in the non-Jewish world who felt that the Jewish community was interested only in itself, and did not deserve to become a partner in this grand new society which was emerging.

And so, after much debate, the Sanhedrin found a formula by which they could answer the question. They stated:

> "The Grand Sanhedrin declares further that marriages between Jews and Christians which have been contracted in accordance with the

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1. CCAR Yearbook, Vol. 1, 1890, p. 80.

> 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."[1]

When the German rabbis met for their first Conference in Brunswick, in 1844, this issue was raised for discussion by Rabbi Philippson. At the end of much debate, the Conference issued the following resolution:

> "The marriage between a Jew and a Christian, the marriage between members of monotheistic religions in general, is not forbidden if the laws of the state permit the parents to educate the offspring of this union also in the Israelite religion."[2]

It is clear that this Resolution by the German rabbis, actually took a stronger stand than the rabbis who had met in France. For although they limited their decree to those countries which permit the children of mixed marriage to be raised as Jews, they also did not rule out the possibility of rabbinic officiation at such a marriage.

While this may have been the official position of the German Reform movement, several years later Rabbi Phillippson, the author of the statement seemed to reveal a change of position. In an article in the Israelitische Religionslehre, in 1865, he stated:

> "little as any true friend of religion and humainty could wish that religion should stand between those who sincerely love and cling to each other, deeply as it must pain

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1. W. Gunther Plaut, The Rise of Reform Judaism, New York: World Union for Progressive Judaism, New York, 1963, p. 73.

2. Alejandro Lilienthal, Fragen Des Juedischen Ehegesetzes, Unpublished Rabbinic Thesis, p. 10.

him to grieve such persons, still, from the standpoint of religion and of sincere religious life, he can not but disapprove of mixed marriages."[1]

When the American rabbis met at their first Conference in 1890, they adopted both of these Resolutions, as part of the tradition of Reform Jewish doctrine. This act gave the American rabbis a stand on the issue of Mixed Marriage. But it was not a stand which they had decided upon for themselves. Thus, it became clear very early on, that the American Reform movement would soon have to take its own stand on this issue.

The issue of Mixed Marriage was first raised in America by Dr. M. H. Harris in 1893. In a paper delivered to the Conference he noted the effect that mixed marriage was having upon the Jewish Community. His comments seem to be very contemporary. He said:

> "Intermarriage is on the increase. Perhaps there is not a family within hearing of my voice that has not some relative out of the faith. For, moving freely among all, can we expect a different result? But marriage strictly within our ranks is our only salvation."[2]

Similar sentiments were expressed the following year in a paper by Rabbi I. S. Moses. He stated:

> "Intermarriages with their Christian friends are of frequent occurrence; the second generation has indeed ceased to be Jews. In the

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1. Moses Mielziner, Marriage and Divorce in Ancient and Modern Times and its Relation to the Law of the State, New York: Bloch Publishing Company, 1901, p. 48.

2. Dr. M. H. Harris, "The Dangers of Emancipation", CCAR Yearbook, Vol. 4, 1893, p. 60.

> larger cities disintegration is less rapid, but none the less active and persistent. Unless vigorous means are taken to arouse and vitalize... the disappearance of Jews and Judaism may indeed be predicted within a not altogether distant future, in the lands of Western civilization at least."[1]

By 1908, the need for an American statement on the issue had become evident, and discussions began in earnest. This led to the first important paper on the topic, which was written by Rabbi Mendel Silber.

In his paper, Rabbi Silber attempted to knock down the claim of some rabbis that, according to the Torah, mixed marriage in this time is not prohibited.

Those who made this claim based their opinion on the fact that, first of all, there are so many reported cases of mixed marriage in the Torah that it must not have been prohibited, or at the very least, it was tolerated. Second, the laws in the Torah only prohibit marriage with idolaters. And since todays society is basically monotheistic, the Torah would not prohibit marriages with Christians or Muslims. And finally, it was claimed that the laws against mixed marriage were intended not for the Israelite population at large, but only for the priests, or possibly only the high priest.[2]

Rabbi Silber responded to these claims by pointing out

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1. Rabbi I. S. Moses, "Missionary Efforts in Judaism", CCAR Yearbook, Vol. 5, 1895, p. 84.

2. Rabbi Mendel Silber, "Intermarriage", CCAR Yearbook, Vol. 18, 1908, p. 268.

that they misrepresent the spirit of the Torah. He claimed that, even if the Torah did originally intend to prohibit mixed marriage only for the priestly class, it is clear that by the time of Ezra, this prohibition applied to the entire people as well.

He also denied the claim that the Torah only prohibited mixed marriage with the idolatrous nations by pointing out that all nations were idolatrous at that time, and therefore, the Torah spoke in the language of the time. Accordingly, if Christians or Muslims had lived in the Biblical time period, the Torah would have specifically prohibited marriage with them as well.[1]

Rabbi Silber continued his paper by noting that the same reasons that prompted the Torah to prohibit mixed marriage, also hold true for today. For if mixed marriage is allowed to continue unimpeded, Judaism will disappear.

He also stated that the Talmud was so opposed to mixed marriage that it found divorce from such a union was unnecessary, for the marriage between a Jew and non-Jew was not recognized as valid.

In criticizing the Resolution of the Brunswick Conference, Rabbi Silber pointed out that the conditions which existed at that time in the majority of German states, prohibited the children of mixed marriages from being brought up in the Jewish faith. And therefore the stand of

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1. Ibid. p. 269.

the rabbis in Brunswick actually served to prohibit mixed marriage. And in addition to this, Rabbi Philippson, who brought the issue to the floor, later changed his view, and declared himself against mixed marriage, as did Rabbi Aub and Rabbi Geiger.[1]

In his conclusion, Rabbi Silber responded to those who claim that if rabbis will not perform the ceremony, surely Christian ministers will, and they will draw the young away from their faith.

He answered that, as rabbis, we either stand for something or we don't. And he concluded: "If the conclusions here set forth are correct, I feel, therefore, justified in stating, nay compelled to say, that intermarriage is inadvisable, undesirable and unpermissible."[2] Thus, the first shot in the controversy had been fired.

The following year, two additional papers were presented to the Conference. The first was written by Professor Ephraim Feldman. He offered a thorough presentation on the history of the mixed marriage.

Dr. Feldman began by dividing mixed marriage into two separate time periods. The first period of discussion lasted from approximately 621 B.C.E. to the time of Ezra. The second period stretched from Ezra until the nineteenth century.

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1. Ibid., p. 272.

2. Ibid., p. 275.

Dr. Feldman stated that in the first period, the Jewish people did not hesitate to assimilate foreign races. Abraham, for example, circumcised all the men of his house, and those bought with money, and his example was "followed by millions of his descendants down to the very end of the period"[1].

Based on this observation of the material handed down by the Torah, Dr. Feldman concluded that "Israel must have been psychically sufficiently strong and dominant, as to mold these multifarious ethnic elements into one distinct, national individuality"[2].

The turning point for this practice came with the Babylonian Exile, the first great national catastrophe. The changed circumstances of Israelite existence prompted a changed attitude toward the welcoming of foreigners. Not only were the people not in control of their own environment, but they had become enslaved by another nation.

This form of existence, did not endear the Greeks, (or the Romans) to the Jews. This helps to explain the bitter attitude taken towards them in the writings of the Mishnah, which does not regard marriage with them as possible.

The rabbis' attitude toward Christianity was decidedly more positive than it had been toward the Greeks and Romans. In fact, Christians were considered gerim toshavim. This

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1. Dr. Ephraim Feldman, "Intermarriage Historically Considered", CCAR Yearbook, Vol. 19, 1909, p. 281.

2. Ibid., p. 282.

however, did not entitle them to intermarriage. Indeed, the Talmudic position with regard to the marriage of a Jew and a Christian was ayn kidushin tophsin. And this position has been upheld by Judaism to the present time.

On the basis of this historical analysis, Dr. Feldman concluded that the problem before the Conference is not one of mixed marriage, for mixed marriage is a universal phenomenon, which always has, and will continue to occur. The problem before the Conference is to build a form of Judaism which has a strong sense of religious distinctiveness. For if an individual has knowledge of himself, he will seek to maintain it. And therefore, "the ideal of a Jewish individualism, or a Jewish mission, ...honestly, fully and consistently embraced is alone able to check intermarriage"[1].

The second paper read that year was by Rabbi Schulman. He suggested that it was not for the Conference to declare itself for or against mixed marriage, for all agree that a civil marriage between two people of different religions is valid. The issue is whether a rabbi ought to officiate at such a marriage.

In his answer to this question, Rabbi Schulman began by making the point that people who belong to different religions should not ask a representative of their religion to officiate, but they "should seek the moral validity and legality of their marriage at the hands of him who repre-

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1. Ibid., p. 300.

sents the State"[1].

Rabbi Schulman offers a very nice summary of his article. He states:

> "In my opinion, the true method is to ask our own religious sense, to interpret our own religious consciousness, to examine whether from the point of view of the highest ideal of marriage, and from the point of view of the integrity of Judaism as a religion, and the duty of the Rabbi as the representative of such a religion, mixed marriages can be permitted. Then, even if the Talmudic Halacha gave any shadow of support for the contention for the permissibility - which it does not - that would be no reason for us to follow it, if we were convinced that for our religious insight, such marriage is inadvisable and injurous to Judaism."[2]

Schulman suggests, in a very beautiful way, that if the Conference were to view this issue solely from the Reform perspective, and grasp the spirit of the law, instead of trying to find a loophole in the letter of the law, the issue would be resolved in a very simple manner. The Conference would not permit mixed marriages, as they do not represent the ideals of Judaism, nor the Jewish ideal regarding marriage - for marriage is not merely a physical or a moral union, but it is, in its essence, a spiritual union; and a mixed marriage will never permit this spiritual union to blossom.

In a comment on this article, Rabbi Moses expressed his

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1. Samuel Schulman, "Mixed Marriages in their Relation to the Jewish Religion", CCAR Yearbook, Vol. 19, 1909, p. 311.

2. Ibid.

heartfelt belief that mixed marriage falls within the spirit of the modern Reform movement. He stated that: "If the rabbi has any heart he should say to that person: 'You are to marry a Jewish girl, ...you are to marry into a Jewish family. If the Jewish parents accept you, you become one of our religious fraternity.' ...With or without formal conversion such a person should be accepted as a member of the household of Israel, and the marriage consecrated by the rabbi."[1]

The debate over mixed marriage was not only spurred on by the reading of the above two papers, but also because the Conference had decided to pass a Resolution on the topic. In that year, 1909, the Conference put itself on the record as being opposed to mixed marriage. The Resolution which was affirmed stated: "The Central Conference of American Rabbis declares that mixed marriages are contrary to the tradition of the Jewish religion and should therefore be discouraged by the American Rabbinate."[2]

While this Resolution passed by the count of 42 to 2[3], there was still a tremendous amount of discussion over the matter. The reason for this is that the original resolution presented to the Conference took a much firmer stand. The original resolution by Rabbi Schulman stated:

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1. CCAR Yearbook, Vol. 19, 1909, p. 332.
2. CCAR Yearbook, Vol. 19, 1909, p. 170.
3. Ibid. p. 184.

> "Resolved, That it is the sense of this Conference that a rabbi ought not to officiate at a marriage between a Jew or a Jewess and a person professing a religion other than Judaism, inasmuch as mixed marriage is prohibited by the Jewish religion and would tend to disintegrate the religion of Israel."[1]

The first area of conflict on this resolution came from the statement that: "mixed marriage is prohibited by the Jewish religion". Rabbi Moses declared that "it is not true that the Jewish religion prohibits marriage between Jew and non-Jew. It is all a question of relationship."[2] He concluded by stating that "if a resolution of this kind is passed, it is the beginning of religious tyranny"[3].

The greater part of the discussion at this convention centered on two issues raised by Rabbi Moses, namely, the question of whether mixed marriage is truly prohibited by Judaism, and fact that this position seems to run counter to the Reform principle of individual autonomy.

Two other interesting comments were made during the discussion. Rabbi Harris brought out the point that it is not honest to use the Talmudic law to support either position, for Reform Judaism does not accept it. And Rabbi Friedlander made the point that the Conference needed to take an official stand, if for no other reason than because

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1. Ibid., p. 174.
2. Ibid., p. 175.
3. Ibid.

it was being misrepresented in parts of the country.

> "Again and again members come to me saying Reform Judaism is approving of mixed marriages, and so-called rabbis, characters out west, have performed mixed marriages, on the ground that Reform Judaism is in favor of it. ...Let me go home and say, 'Here is a Conference of Reform Rabbis who openly and courageously have expressed themselves against mixed marriages, and condemn the rabbi who deviates from that rule."[1]

It would thus seem, that uncertified rabbis were roaming the country performing mixed marriages, claiming that, as "reform rabbis" it was a permitted practice.

This statement by Rabbi Friedlander also underlines the feeling of some of the rabbis, that the people want them to perform these ceremonies. And if they refuse, then a charlatan, claiming to be a rabbi, or a non-Jewish clergyman will officiate in their place. And the only result of this practice will be the loss of Jews from Judaism.

In the end, the movement did put itself on record as being opposed to mixed marriage. However, the statement was not as strong as some had intended for it to be.

1910 to 1947

In 1914, five years after the Resolution, a proposal was accepted that the Conference undertake a detailed survey of Jewish religious conditions in the land. Within this survey would be a section devoted to the extent and conse-

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1. Ibid., p. 181.

quences of mixed marriages.[1]

It is this approach which best represents the actions of the Conference during this time period. For it was widely believed, that the Resolution of the Conference had been a learned one, based on detailed study of the issue. If a new Resolution was to be presented in the future, it would have to be based on a different rationale. And it seemed that the rationale would be an investigation into the actual situation of mixed marriages in the country. What are the actual practices of the Conference rabbis? What are the actual desires of Reform Jews? Does the stand of the movement accurately reflect these situations?

Between 1910 and 1937, the issue of mixed marriage did not come up very often. However, a very interesting responsum on the topic was written by Rabbis Kohler and Lauterbach in 1916. They were asked whether a congregational bylaw which required members who "contracted a forbidden marriage" to forfeit their membership, and stated that "no person married to a non-Jew may be a member of the congregation", should be changed.

In their answer they cited the disastrous results which forbidden marriages can have, especially for children. They stated their belief that the bylaw was attempting to prevent mixed marriages, and that it did not imply that congregants must forfeit their membership, if the marriage occurred

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1. CCAR Yearbook, Vol. 24, 1914, p. 148.

prior to the members affiliation with the congregation. And they concluded that, "self-preservation dictates the retention of the bylaw".[1]

This responsum shows that there was a great depth of feeling among the rabbis, and the congregations, against the practice of mixed marriage. However, it is also evident that the practice was becoming more and more common, and therefore, a congregation began to feel pressure over the statement of principles which it had made in its bylaws. The congregations were beginning to feel a shift in attitudes towards mixed marriage. And this can clearly be seen in the paper of Rabbi Louis Mann in 1937.

In the introduction to his paper, Rabbi Mann succinctly stated: "The historic development of the subject and the religious interpretation of the problem, so ably, in fact so brilliantly and vigorously presented a generation ago, have not changed"[2].

And so, Rabbi Mann focused his paper on the results of a questionnaire which he sent out to all the members of the Conference. The questionnaire asked three questions:

> "1. Do you officiate at weddings in which one party is and remains Christian?
> 2. If so, what promise, if any, do you exact?

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1. Rabbi Walter Jacob, American Reform Responsa: Collected Responsa of the CCAR 1889-1983, New York: Central Conference of American Rabbis, , 1983, p. 49.

2. Louis L. Mann, "Intermarriage as a Practical Problem in the Ministry", CCAR Yearbook, Vol. 47, 1937, p. 309.

3. Do you think that the C.C.A.R. attitude of non-participation in cases of intermarriage should be changed?"[1].

The first point of interest from this paper came from Rabbi Mann's acknowledgement that he had misstated the Conferences' position in the third question. He had believed that the Conference had taken a stronger stand in 1909 than it actually had, and he took on this project hoping to convince the Conference to take a more lenient position. In the end, he discovered that the position which he hoped the Conference would take, was the position which the Conference already had taken.

Rabbi Mann reported that of the 240 replies which he received, 131 answered that they did not perform mixed marriages, and that they did not want a change in the Conference attitude. This means that 54.6% of the rabbis held beliefs which were stronger than the actual position of the Conference.

30 rabbis stated that while they do not officiate at mixed marriages, they did feel that the Conference should take a more lenient position on the issue. (As previously stated, the Conference Resolution was the lenient position.)

51 rabbis replied that they do officiate at mixed marriages, and that they exact a promise that either the children be brought up as Jews, or that they join a Jewish Congregation, or both. They also felt that the Conference

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1. Ibid., p. 313.

should adopt a more lenient position.

17 rabbis responded that they do officiate at intermarriages and exact no pledges from the couple. They too wanted the Conference to adopt a more lenient position.

And finally, 11 rabbis stated that while they do perform mixed marriages, they saw no reason for the Conference to change its (inaccurately reported) position.

Thus, 161 of the Rabbis did not perform mixed marriages, while 79 did, and 131 of the rabbis supported a more firm position by the Conference, while 98 rabbis felt the current position of the Conference was more appropriate, and 11 stated that they would not feel constrained by a more firm position, and theoretically, would not object to a stronger stand.

This information is important for two reasons. First, it provides a realistic picture of the actual practices of Reform Rabbis in 1937. And second, the information reflects the opinions of Conference members at a time when the issue was not being officially considered. This means that the members did not feel pressured by the need to make a decision, and so their responses may be more accurate at this time than when the issue was actually before them.

In the rest of the paper, Rabbi Mann discusses the implications which these numbers should have on the position of the Conference. In the end he concludes, that the Conference should reaffirm its currently held position. His final words on the issue are:

> "Rabbis should discourage intermarriage, yet the Conference should not go on the record for non-participation.
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> I firmly believe, with the 45% of the Conference that each rabbi should decide for himself whether or not, as a principle, he will participate in such ceremonies, and furthermore that every rabbi should, if he sees fit, decide each case upon its own merits. If such participation inevitably carries with it some measure of sanction, it will be unfortunate, yet possibly the lesser of two evils. We may weaken a sanction yet strengthen something so fundamentally human that more will be gained than lost."[1]

In the end, Rabbi Mann based his opinion, not on an historical or an halakhic inquiry, but rather on an investigation into the practices of his day. He seemed to say that the movement had already made a decision based on knowledge, and this was the time for a decision based on what was practical, for the rabbi, and for the layman.

The issue reemerged in 1947. The reason for this, as stated in the Report on Mixed Marriage and Intermarriage, was that "there is a need for a re-study of the problem, first because there are many important subsidiary questions which were not dealt with at all in past Conference discussions, and secondly to serve as a possible first step in a general classification of the laws of marriage"[2]

Whatever the noble reasons may have been for this re-evaluation, a general classification of the laws of marriage

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1. Louis L. Mann, "Intermarriage as a Practical Problem in the Ministry", CCAR Yearbook, Vol. 47, 1937, p. 322.

2. CCAR Yearbook, Vol. 57, 1947, p. 158.

does not appear to have occurred. As far as the subsidiary questions are concerned, the discussion centered almost exclusively around the topic of conversion, which will be dealt with in a later chapter.

In the discussion before the vote, Rabbi Henry Berkowitz proposed that the 1909 Resolution be strengthened. He moved that the word "discourages" should be changed to "forbid".[1]

This proposal once again brought up the issue of individual autonomy. Some rabbis believed that because of Reform principles, the Conference did not have the right to say that any practice is forbidden.*

Others+ felt that it was very unfortunate that the opinion of the majority of the Conference should be called reactionary. The opinion was expressed that "we are taking a step forward when we as Reform rabbis declare that we have certain standards, and that liberalism is not identical with lawlessness, and that reform is not identical with expediency"[2].

A third proposal was offered up by Rabbi Isserman. He proposed that "we hereby recommend that the members of this

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1. Ibid., p. 173.

* This was the opinion of the Vice President, Rabbi Feldman, Rabbi Leibert, Rabbi Frisch, Rabbi Morgenstern, and Rabbi Rothschild.

+ Rabbi Plaut represented this point of view.

2. CCAR Yearbook, Vol. 57, 1947, p. 180.

conference officiate only at such mixed marriages where both partners give their oath that the children born of their union will be reared in accordance with the traditions and teachings of Judaism"[1].

In the end, the Resolution of Rabbi Isserman was not adopted. The Yearbook does not record if there was a vote on it, or what that vote was. The second Resolution, that the Conference "does not sanction mixed marriages and calls upon its members to refrain from officiating at them"[2] was narrowly defeated by a vote of 74 to 76. And so, the Conference decided to reaffirm the position it had taken in 1909. Their vote was unanimous.[3]

It seems, that had the Conference followed the positions which it had taken ten years earlier, in the questionnaire by Rabbi Mann, that the stronger position should have been approved. However, in the end, the pressure of making an official statement for the movement, and the desire not to interfere with the autonomous beliefs of another member, caused the Conference to hold on to its original position.

The other clear implication of this vote is that whatever considerations may have entered the minds of the Conference members, the only ones discussed were those which dealt with "reality". The issues of history and halakhah

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1. Ibid., p. 182.
2. Ibid.
3. Ibid.

were not raised in this debate.

1948-1980

For 13 years after the passage of the 1947 Resolution, the issue of mixed marriage virtually disappeared. When the topic returned in the 1960's, many of the old themes returned with it. The issues of individual autonomy; fulfilling a need of the people; and trying not to drive Jews out of the fold, all reemerged from the past. However, three new themes also presented themselves. These were: 1. A new emphasis on responsa literature, and with it, halakhah; 2. A desire to protect k'lal yisrael; and 3. A suggestion to resolve the problem with a new definition of ger toshav.

As can be seen, the rabbis of the 1960's could not help but acknowledge the problem of mixed marriage, and they seemed to be showing signs of frustration with it. In a paper by Rabbi Bernard Kligfeld, the problem of mixed marriage was examined from a psychological standpoint. He stated:

> "A review of the literature on intermarriage reveals that Jews who intermarry are either unable to solve the problems of their relationship to their parents or else have given up Jewish self-identification."[1]

The rabbis seemed to be shaking their heads, not know-

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1. Bernard Kligfeld, "Intermarriage and Mixed Marriage: A Review of the Literature on the Subject", CCAR Yearbook, Vol. 70, 1960, p. 135.

ing how to solve this problem, which they perceived as a threat to the Jewish people. And so, when all else failed, they turned to the science and culture of the day to try and find answers.

In fact, not only did they use these answers to explain the phenomenon, but they also tried to use them as a basis for their positions. In a discussion in the Recorder's Report at that same Conference, there was a discussion over the commonly held belief that mixed marriages are not as successful as marriages within the same religion. This point was challenged.

> "Our refusal to officiate at such marriages cannot be based primarily upon the prospects of marital failure, since many mixed marriages turn out successfully and many Jewish marriages turn out poorly".[1]

In that same discussion, the point was made that the rabbi's primary role is to preserve and perpetuate Judaism. Since mixed marriages often work against such perpetuation, the rabbi can refuse to participate. This is especially true since many couples approach the rabbi only to make a marriage more palatable to their parents or grandparents.[2]

The point being made here is that rabbis should be on the guard against being used by congregants who do not wish to lead Jewish lives, raise Jewish children, or even think about the conversion of the non-Jewish spouse. Many congre-

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1. Ibid., p. 139.

2. CCAR Yearbook, Vol. 70, 1960, p. 139.

gants want to use the rabbi only to make their family happy. The rabbi should take no part in this action.

In 1962, the Special Committee on mixed marriage revealed the results of a study. A poll of Jewish students at Columbia and Barnard revealed that 46% of the seniors expressed a favorable attitude toward marrying a non-Jew, while only 12% were opposed.[1] This breakdown was at a much higher rate than had been expected.

In the discussion which followed the report, it was recognized that the Conference was unable to take any action which would stop mixed marriage. And so, with this knowledge, on what basis should the Conference make its decisions?

If it is clear that no Conference decision will be able to stem the tide of intermarriage, then by what rationale should the Conference demand allegiance to its Resolutions? Since no one has an answer to the problem, why should the Conference demand a united stand for its answer which does not work?

It was on the basis of these questions that an attack was made on the Reform position. Since Reform rejects Jewish tradition, and a stand based on tradition has had no effect in ending mixed marriage, the true question for the movement is,

"what programs can we devise, consistent

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1. CCAR Yearbook, Vol. 72, 1962, p. 88.

> with our Reform orientation, that will inhibit Jewish-Gentile marriage in a free mobile American society? What can we as rabbis do to encourage mixed couples to identify with the synagogue and to raise their children as Jews?"[1]

There is a slight shift of emphasis in this statement, away from the question of mixed marriage, and towards the issue of outreach. The question raised here is: Since the Conference cannot prevent mixed marriage, how can it bring mixed couples back into Jewish life?

In order to work towards this goal, the Conference established a permanent committee to deal exclusively with mixed marriage and the range of problems related to it.

An attempt was also made to pass a new Conference position on mixed marriage. The Resolution read:

> "Our deep and abiding concern for the sanctity and the unity of the Jewish home, our profound commitment to the preservation of Judaism and the Jewish people, make it imperative that the Reform rabbinate do everything within its power consistent with the principles of liberal Judaism to discourage mixed marriage.
>
> When called upon to officiate at a mixed marriage, the rabbi shall make every effort to bring the non-Jewish member into Judaism by way of a sincere conversion. The CCAR further declares that it is the sacred duty of the rabbi to insist that mixed couples receive thorough instruction in Judaism prior to their marriage and that they reach a firm pre-marital agreement on the religious climate of the home and the rearing of the children."[2]

In the discussion which followed this motion, objec-

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1. CCAR Yearbook, Vol. 72, 1962, p. 91.

2. CCAR Yearbook, Vol. 72, 1962, p. 94.

tions were raised. This position seemed to allow rabbinic officiation at mixed marriages as long as the rabbi tried to convert the non-Jewish partner. It did not matter whether he was successful or if he failed.

A second objection was raised on the grounds that this position would cause Reform to "reduce itself to the position of a sect within Jewish life"[1]. This statement shows a concern for the whole of the Jewish people, and reflects a desire to continue to be recognized as part of it. It is the issue of k'lal yisrael.

This new outlook towards mixed marriage was again expressed in the President's Message at the Conference in 1964. Rabbi Leon I. Feuer stated:

> "We share with the overwhelming majority of our fellow Jews of various shades of opinion in theological and ritual matters the firm belief that the preservation of the people of Israel is essential to that of the faith of Israel. Whatever threatens the continuity of that peoplehood represents for us a mortal spiritual danger. Here is the nub of the mixed-marriage problem and we better recognize it as such. Whatever strategies are devised, whatever policies are formulated, must involve full scale resistance to the threat of assimilation."[2]

Rabbi Feuer went on to recommend that the Conference devote more money to the Committee on Mixed Marriage, so that it could continue its research into the problem, and continue its preparation of materials for use by Conference

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1. Ibid.

2. CCAR Yearbook, Vol. 74, 1964, p. 8.

members. His recommendation was accepted.

At the same Conference, a paper on mixed marriage was presented by Rabbi Siskin. In the paper Rabbi Siskin pointed out that, as mixed marriage became more and more common, the attitude towards it within the Jewish community had grown progressively more open toward it. He quoted a University of Chicago study which found that one quarter of the Jewish families interviewed said that a mixed marriage would make no difference to them.

Rabbi Siskin closed his paper by pointing to the progressive change of opinion towards mixed marriage within the rabbinate. He stated that in 1947, "there was a ringing reaffirmation of the traditional Conference opposition to officiating", and by 1962 it was suggested that mixed marriage "is an alternative not inconsistent with a liberal approach to Judaism". He concluded by saying "one would be unrealistic to suppose that the Conference position on this question will remain inflexible".[1]

In 1971, it appeared that the time had come for a new Resolution. The conference began with a joint message of the President and Vice-President in which they called for an amendment to the 1947 position, but also stated that no debate on the issue should take place.

The major factor in their calling for a revised statement of policy appears to have been the fact that over 100

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1. CCAR Yearbook, Vol. 74, 1964, p. 132.

Reform rabbis were officiating at mixed marriages. Either the Resolution needed to be strengthened to let those rabbis know that their actions fall outside of the ideals of the Conference, or it needed to become more lenient, in order to recognize and allow the current practices of the Conference. But as it stood now, the statement was ambiguous. It was being used by those who officiated, as well as those who did not, as a support for their position.

They also stated that the practices of the 100 or so rabbis who were officiating, were having 3 major effects. First, they raised the risk of a separation of the Reform movement from k'lal yisrael. Second, they placed increased pressure on those who refused to officiate, as congregations saw others willing, and thus became dissatisfied with their rabbi. And third, Reform rabbis who felt a connection with halakhah were being placed in a situation where they had to be apologetic and defensive for their actions and beliefs. Only by strengthening the Resolution would all three of these issues be resolved.[1]

Thus the issue of mixed marriage was brought up for a third time. However, the circumstances in which it had been presented in 1971 - a call for a new Resolution without a discussion - did not enable the issue to be resolved at that conference. The issue was thus placed on the agenda of the 1972 conference.

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1. CCAR Yearbook, Vol. 81, 1971, p. 16.

The 1972 conference produced a great deal of discussion, a large number of papers, but no Resolution. There was a paper by Rabbi Fishbein, in which he discussed the actual situation within the Conference and the Country. He discussed the trends, and the numbers, and concluded with a hope that the movement would work hard on outreach projects.[1]

In a paper by Rabbi Ryback the traditional halakhic approach to mixed marriage was presented. He stated that a rabbi cannot officiate because ayn kidushin tofsin.

However, Rabbi Ryback also proposed a creative approach to the issue. He raised the idea of Rabbi Maller, who had spoken of redefining the concept of ger toshav. The proposal stated:

> "A Ger Toshav should be considered an associate member of the Jewish community if he does these things: (1) If he believes in no other religion; (2) If he promises to raise his children as Jews and promises to have a Jewish home; (3) if he is willing to undertake a substantial commitment to study Judaism."[2]

This proposal was brought to a meeting of Conservative and Reform rabbis in Los Angeles, and was not rejected. The main idea here is that, under these conditions, the rabbi would be permitted to officiate, as Judaism has allowed intermarriage with a ger toshav. This new definition could

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1. Irvin H. Fishbein, "What We Know About Mixed Marriage", CCAR Yearbook, Vol. 82, 1972, p. 70ff.

2. CCAR Yearbook, Vol. 82, 1972, p. 74.

reduce the number of "mixed marriages" in the records, and could be a first step towards welcoming the ger toshav into the Jewish community.[1]

A very similar idea was expressed in a paper by Rabbi Schaalman. He took the term k'lal yisrael, which has virtually no halakhic past, and attempted to use it in its broadest sense. "Surely it includes precisely those who, on strict halachic construction, could not be called Jews - for example, the unconverted children of unconverted non-Jewish wives of Jewish Israeli citizens living as fully integrated members of Israeli society, culture and life."[2]

According to this system, a mixed married couple and their children would be considered a part of k'lal yisrael, but not a part of knesset yisrael. This system still provides motivation for non-Jews to convert, as through conversion, they would become a part of knesset yisrael, as well as k'lal yisrael. [3]

While this is also a very creative approach, it does not appear to have the internal strength which Rabbi Ryback's proposal had.

A paper was also delivered by Rabbi Paul Gorin. He presented an halakhic approach to the subject. He offered a

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1. Martin B. Ryback, "Mixed Marriage and the Halachah", CCAR Yearbook, Vol. 82, 1972, p. 73ff.

2. Herman E. Schaalman, "The Inclusiveness of Jewish Existance", CCAR Yearbook, Vol. 82, 1972, p. 86.

3. Ibid., p. 85ff.

new suggestion as well. He mentioned that, in the Committee, it was suggested that in order to maintain a link to the halakhah, the Conference make clear that mixed marriages performed by rabbis are valid only in terms of civil law, since the rabbi can be seen in some respects as an officiary on behalf of the State. This would allow a rabbi to officiate, and theoretically, not compromise Jewish principles in the process.[1]

The final paper of the year was presented by Rabbi Joseph Narot. His conclusion was that: "we must not, in the judgment of the members of our committee, certainly not now, alter either the wording or the intention, either toward more permissiveness or less, of our resolution of 1909"[2]. His conclusion seems to be, preserve the status quo.

The final word on the subject at the 1972 Conference came from the Committee on Resolutions. They directed the Committee on Mixed Marriage to return the following year with recommendations on the various issues, based on the input received at the convention.[3]

At the conference the following year, the Resolution of the Committee was presented by Rabbi Schaalman. In his

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1. Paul Gorin, "Halachic and Other Considerations", CCAR Yearbook, Vol. 82, 1972, p. 77ff.

2. Joseph R. Narot, "Where Do We Go From Here?", CCAR Yearbook, Vol. 82, 1972, p. 88.

3. CCAR Yearbook, Vol. 82, 1972, p. 91.

statement, he said that the Committee felt that it would be very risky for the movement to seek new definitions of Jewish identity, and that it would be better for the Conference to continue with the halakhic definition of Jew which was universally accepted. This statement apparently refers to the two creative approaches suggested the previous year.

However, the Committee did try to frame a Resolution which would deal with many of the issues raised in the previous year. This produced a 3 paragraph statement. It read:

> "The Central Conference of American Rabbis, recalling its stand adopted in 1909 'that mixed marriage is contrary to the Jewish tradition and should be discouraged,' now declares its opposition to participation by its members in any ceremony which solemnizes a mixed marriage.
>
> Recognizing that historically the CCAR encompasses members holding divergent interpretations of Jewish tradition, the Conference calls upon these members who dissent from this declaration:
> 1. to refrain from officiating at a mixed marriage unless the couple agrees to undertake, prior to marriage, a course of study of Judaism equivalent to that required for conversion;
> 2. to refrain from officiating at a mixed marriage for a member of a congregation served by a Conference member unless there has been prior consultation with that Rabbi;
> 3. to refrain from co-officiating or sharing with non-Jewish clergy in the solemnization of a mixed marriage;
> 4. to refrain from officiating at a mixed marriage on Shabbat or Yom Tov.
>
> In order to keep open every channel to Judaism and K'lal Yisrael for those who have already entered into mixed marriage, the CCAR calls upon its members:
> 1. to assist fully in educating children of

such mixed marriages as Jews;
2. to provide the opportunity for conversion of the non-Jewish spouse, and
3. to encourage a creative and consistent cultivation of involvement in the Jewish community and the synagogue."[1]

Objections to this Resolution were raised in the Minority report. Rabbi Fishbein noted that, while the Conference has the right and obligation to address this issue, it has no right to determine how individual rabbis should interpret tradition, nor to require rabbis to adhere to certain conditions which may be contrary to their belief.[2]

Rabbi Zion stated that while he affirmed the first and last paragraph, he could not endorse the second paragraph of the resolution. He took this position because the second paragraph sets conditions for the performance of mixed marriage, and he believed that no mixed marriages ought to be sanctioned in any way by the movement.

Thus, two different rabbis objected to the same paragraph, for two opposite reasons. One because it did not allow full autonomy to the rabbi, and the other because it recognized the decision to officiate in an official manner.

After considerable discussion and objection, it was decided that each of the 3 paragraphs of the resolution would be voted on separately. The first paragraph carried by the vote of 321 for and 196 against.[3]

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1. CCAR Yearbook, Vol., 83, 1973, p. 63.
2. Ibid., p. 67.
3. CCAR Yearbook, Vol. 83, 1973, p. 89.

The second paragraph was referred to committees, with the intent that they discuss the proposals, and bring them up on their own at a later date. The vote was 211 for and 189 opposed. In a recount, the result was the same, with 221 voting for, and 198 opposing.[1]

Before the vote on the third paragraph, an amendment was proposed and adopted to add an introductory statement to it. This was necessary because the second paragraph had been removed. The amendment was approved, and the third paragraph was adopted by a voice vote.

Thus, the final Resolution of the 1973 Conference read:

> "The Central Conference of American Rabbis, recalling its stand adopted in 1909 'that mixed marriage is contrary to the Jewish tradition and should be discouraged,' now declares its opposition to participation by its members in any ceremony which solemnizes a mixed marriage.
>
> The Central Conference of American Rabbis recognizes that historically its members have held and continue to hold divergent interpretations of Jewish tradition.
>
> In order to keep open every channel to Judaism and K'lal Yisrael for those who have already entered into mixed marriage, the CCAR calls upon its members:
> 1. to assist fully in educating children of such mixed marriages as Jews;
> 2. to provide the opportunity for conversion of the non-Jewish spouse, and
> 3. to encourage a creative and consistent cultivation of involvement in the Jewish community and the synagogue."[2]

The elimination of the second paragraph accomplished

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1. Ibid., p. 96.

2. CCAR Yearbook, Vol. 83, 1973, p. 97.

two goals. On the one hand, it allowed those members who performed mixed marriages to continue to do so according to their own set of standards. While this would also have been possible if the original resolution had passed, it would not have been as comfortable.

The second achievement accomplished by eliminating the second paragraph was that there was no official recognition by the Conference that its members performed mixed marriages. This is of significance both for attempts of reconciliation with k'lal yisrael, as well as for dealing with a difficult congregational situation, where the congregation requests the rabbi to officiate, and it is against the rabbi's conscience to officiate.

If the paragraph had been retained, a case could have been made, or at least there may have been a general perception, that if a non-Jew agrees to the terms stated, then the rabbi must officiate. This could have resulted in placing some rabbis in a difficult situation, which was not the intention of the framers of the resolution.

The result of the Central Conference's dealings with the issue of mixed marriage has been to produce two resolutions, both of which state that it is against Jewish tradition, as well as stating that, in the end, Jewish tradition is determined by the individual rabbi.

The problem which resulted when Napoleon invited the French Sanhedrin to answer some questions, has not been resolved. The conflict between the secular world with its

civil law and the Jewish world and its shrinking halakhah continues to this day.

DIVORCE

The Biblical basis for the laws on divorce comes from Deuteronomy 24:1, which says: "A man takes a wife and possesses her. She fails to please him because he finds something obnoxious about her, and writes her a bill of divorcement, hands it to her, and sends her away from his house"[1].

The Biblical statement is clear. Divorce was a matter of judgment on the part of the husband. The wife had no control over the situation. This set of circumstances did not only exist for Israelite women, but it reflected the state of affairs in the world during that particular time period. Marriage was the man's to initiate, and it was the man's to end.

It was still this way during the time of the zugoth. For while the school of Shammai said that a man may not divorce his wife unless he found her guilty of adultery, the school of Hillel said that he could divorce her if she merely burned his soup. To these opinions was added that of Rabbi Akiba who said, even if he found someone prettier than her, (he could divorce her).[2]

While the Rabbis certainly continued to give the upper hand in the matter to the husband, it is also true that they had taken steps to give some rights to the wife. The Rabbis

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1. Tanakh, New York: Jewish Publication Society, 1985, p. 311.

2. Mishna Gittin, IX, 10.

ruled that under certain conditions, the courts, either the Jewish courts, or the courts of the State, could compel the husband to give his wife a divorce.[1]

However, it was not until Rabbenu Gershom, in the tenth and eleventh centuries, that a true change in the rights of the wife occurred. Through his herem, Rabbenu Gershom not only prohibited polygamy, but he also established the need to obtain the consent of both parties in a divorce.[2]

The status of divorce had remained virtually unchanged from this state when the German rabbis held their first Synod in Leipzig. At that meeting, the rabbis made a number of major revisions in the Jewish laws of divorce.

Their first Resolution was that the bill of divorce (the get) could be forwarded through the mail.[3] This particular decision was not really a reform of the laws, as Orthodoxy also accepted its validity, having ruled that the mail service is avodath kof, work which is mechanical in nature. Because it is mechanical in nature, it does not interfere with the condition that the husband or his agent hand the get to the wife. This means that if someone uses the mail service to deliver the get, it is still viewed as if he had delivered it himself.

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1. Mishnah Gittin, IX, 8.

2. Solomon B. Freehof, Reform Jewish Practice, New York: KTAV Publishing House, Inc., 1976, p. 104.

3. CCAR Yearbook, Vol. 1, 1890, p. 105.

Their second Resolution stated that when a civil court has declared a person dead, the decision is considered valid and legal for Jewish ritual matters.[1] This decision was of great importance, for according to Rabbinic law, a person could only be declared dead by a witness who knew him.

This area was treated with the utmost caution in Rabbinic law because, if the person declared dead happened to show up at a later time, and find that his wife had remarried - on the presumption that he was dead, then his wife and her second husband would be considered adulterers, and they would be subject to the penalties of adultery. Just as significant, their children would be mamzerim, and would not be permitted to marry Jews.

Because of the fear of creating this situation, the laws regarding missing persons were applied very strictly by the Rabbis. This resulted in the unfortunate, and some would say, immoral situation of the agunah, the chained woman. If a woman's husband disappeared, and there was no evidence of his death, then she was chained to him. She was not permitted to remarry.

Additionally, because of the need for the husband to give the get to his wife, a woman could end up as an agunah merely because her husband refused to give it to her. Or, she could end up an agunah because he had deserted her, and

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1. CCAR Yearbook, Vol. 1, 1890, p. 105.

had no intention of returning. Because of the Rabbinic laws, any woman could become stuck in any one of these situations.

And so, the Resolution of the first Synod to accept the declarations of the civil court when it declared a missing person dead, was a big step towards dealing with the problematic situation of the agunah. The requirements of the civil court were less demanding than those of the rabbinic court, and therefore, more women would be freed from the status of agunah.

The third Resolution of the Synod stated that the get could be written in the language of the people, as opposed to only being written in Aramaic.[1]

The Synod's fourth Resolution stated that a woman who had accused her husband of infidelity, or desertion, and had received a civil divorce on those grounds, could be remarried within a year, whether her husband gave her a get or not.[2]

While this decision resolved the remaining cases of agunah, it also set a precedent. The precedent was that the civil courts were given the power to make rulings which were held as binding by rabbis.

Although the reasons for this decision are clear, and praiseworthy, it is also clear that the acceptance of this

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1. CCAR Yearbook, Vol. 1, 1890, p. 106.

2. Ibid.

Resolution, could have very easily lead to the total demise of the rabbinic divorce system. And in fact, it did.

The last of the divorce Resolutions of the first Synod stated: "A remnant of the former subjection of the Jewish congregations, rabbinical jurisdiction in matters of divorce is to be set aside. Divorces of Jewish marriages belong to the civil courts."[1]

In passing this Resolution, the German rabbis were following the point of view of Rabbi Holdheim, who had said in 1843 that "divorce is a civil act only, it is to be entirely submitted to the laws of the country and therefore the ritual get is now superfluous"[2].

From a theoretical standpoint, the effect of this particular Resolution was tremendous. In the first place, it meant that according to the Reform rabbis of Germany, a civil divorce was binding. Previously there had been only one Jewish stand on this subject, namely, that a Jewish marriage could only be terminated by a Jewish divorce.

The conflict between this older, traditional stand, and the new stand of the German rabbis resulted in a problematic situation. An individual who remarried after a civil divorce was considered to be in a perfectly valid marriage according to the Reform decision, but in an adulterous relationship according to the older, traditional beliefs.

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1. CCAR Yearbook, Vol. 1, 1890, p. 108.

2. Solomon Freehof, Reform Jewish Practice, New York: KTAV Publishing House, Inc., 1976, p. 106.

This raised a second very difficult problem as well. According to traditional Jewish law, any children from this second marriage would be considered mamzerim, and would not be permitted to marry Jews. Thus it appears that the German rabbis may not have considered the issue of mamzeruth when they made this decision.

Another important effect of this Resolution was that it took the whole legal area of divorce out of the rabbis' hands. The couple was now totally dependent on the laws of the State. In actuality though, the modern nation State had already taken the authority of granting divorce away from the rabbi, and had placed it into the court system. And so, a system had developed whereby the couple would receive a rabbinic divorce only after the civil divorce had been granted.

Last, this Resolution clearly demonstrated the changing nature of the rabbinate. It could be said that it either led to, or confirmed a new role for the Reform rabbi. On the basis of this Resolution, he would no longer need to be a legal authority. He would no longer need to hold court and decide cases. Instead, he could become a spiritual leader and a counselor.

In theory, these Resolutions of the Leipzig Synod should have had a tremendous effect on the German Reform rabbinate. However, in practice, the Resolutions did not make much difference to the Jewish community, as only one of the German congregations actually accepted them. This was

due, in large part, to the structure of the European Jewish community, which has already been discussed.

The German Synod was not the only place where divorce was being discussed however. In America, divorce was also the subject of much thought. At the Philadelphia Conference in 1869, three Resolutions were passed. These Resolutions attempted to institute the same type of changes which had been enacted in Germany earlier that year, while leaving the rabbi with a bit more control over the whole process.

The Resolutions of the Philadelphia Conference were:

> "From the Mosaic and rabbinical standpoint divorce is a purely civil act, which never received religious consecration; it is therefore valid only when it proceeds from the civil court. The so-called ritual get is invalid in all cases.
>
> A divorce given by the civil court is valid in the eyes of Judaism, if it appears from the judicial documents that both parties have consented to the divorce, but when the court has decreed a divorce against the wish of one or the other of the couple, Judaism for its part can consider the divorce valid only when the judicial reason for granting the divorce has been investigated and found of sufficient weight in the spirit of Judaism. It is recommended that before deciding the rabbi obtain the opinion of experts.
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> The decision of the question as to whether, in doubtful cases, the husband or wife is to be declared dead after lengthy disappearance, is to be left to the law of the land."[1]

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1. CCAR Yearbook, Vol.1, 1890, p. 119.

The rabbis at Philadelphia, in their struggle to accept the modern world, and at the same time not relinquish all of the controls which rabbinic authority had given them, attempted to formulate a system which provided them with both. They wanted divorce cases handled by the courts, but they also wanted to have veto power over the divorce. This was to provide a means to review the court documents, so that, if the rabbis found that the divorce was not granted "in the spirit of Judaism", it could be disregarded by the rabbi.

> "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 rabbi study the grounds upon which the divorce was granted."[1]

Unfortunately, the system they devised was incomplete, for it provided no guidelines for handling a situation in which the rabbi did not approve of the divorce granted by the civil court. Since it only recognized civil divorce as binding, and did not establish a rabbinic divorce framework, it would leave the couple in a state similar to that of the agunah. This problematic situation was never resolved. This leads one to believe that the rabbinic review was never truely practiced. For if it was, then this issue would have been resolved, or at least discussed at a later date.

From the first Conference of the C.C.A.R., when the Resolutions of the Philadelphia Conference were adopted,

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1. Solomon Freehof, Reform Jewish Practice, New York: KTAV Publishing House, Inc., 1976, p. 108.

until the 23rd Conference, the subject of divorce was almost never mentioned. However, in 1913, a paper was delivered, and motions were made.

The paper was written by Rabbi J. Leonard Levy. In it he mentioned one of the problems which had come about after the adoption of the Philadelphia Resolutions. The courts were not doing such a great job in handling divorces. He states: "great an evil as divorce is, there can be a still greater evil in domestic life - the impossibility of obtaining a divorce in spite of valid legal grounds." [1]

Others have also noted this point:

> "The civil laws of divorce in America, particularly a half century ago, were chaotic, differing widely from state to state..."[2]

Rabbi Levy also mentioned that the divorce rate in America was beginning to climb, by the ratio of 3 to 1, however, the Reform Jewish community was not yet confronted by a serious problem.[3] This means that although the court system was not working well, the Jewish community was not greatly impacted because of its lower divorce rate.

Levy also defended the rationale of the decisions made in Philadelphia. He stated that "the function of religion is to bless marriage, not to consecrate its desecration".

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1. J. Leonard Levy, "The Modern Problem of Marriage and Divorce", CCAR Yearbook, Vol. 23, 1913, p. 342.

2. Solomon Freehof, Reform Jewish Practice, New York: KTAV Publishing House, Inc., 1976, p. 108.

3. CCAR Yearbook, Vol. 23, 1913, p. 343.

He also pointed out that the law of the land must be followed by all. And since the law of the land required civil courts, Jews must accept the decisions of the civil courts. By this he meant that the Jewish community must abide by the talmudic dictum of dina d'malkhuta dina.[1]

He continued his paper by mentioning the results of a questionnaire on the subject. Of eighty-eight rabbis who responded, seventy-four were opposed to any kind of rabbinical divorce, or even any type of rabbinical addenda to civil divorces; fourteen favored some such system, and an additional eleven favored a modified get.

From these figures it is clear that, in spite of the attempts of the Philadelphia rabbis to leave options for rabbinical involvement in divorce, the rabbi of the day did not see his function in the context of making judicial decisions. Divorce was seen solely as a judicial decision; a decision which was best decided in a courtroom. This was clearly stated by Rabbi Levy:

> "The rabbi in Israel is a teacher, not a judge clothed with civil authority. He cannot, therefore, issue a legal decree since he has no legal authority. He may, and should, consecrate marriage; he cannot and should not, in this land, at least, issue a decree of divorce. As far as possible this Conference should use its influence to discredit rabbinical divorces, to urge their discontinuance and to use every available method of informing our brethren that such divorces are not only illegal and invalid without the action of the civil courts, but are in every respect

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1. Ibid., p. 345.

unnecessary and, in this age and land, opposed to the spirit of American institutions."[1]

According to Rabbi Levy, the Reform rabbi was not only to abide by this decision, but he was also expected to use all means necessary to convince others that rabbinic divorce was "illegal and invalid... and opposed to the spirit of American institutions".

After making this statement, Rabbi Levy suggested that some method might be arranged in order to correct the agunah problem which existed due to the Rabbinical courts. He also stated that it might be appropriate for all divorce papers that are issued by the civil courts, to be countersigned by a recognized rabbi, before a divorced party is remarried by a rabbi. "In this way such authority as the Rabbi may wish to have recognized will be conserved, yet the State's law will not be set aside."[2]

In the end, it appears that Rabbi Levy is trying to do the same thing as the rabbis did in Philadelphia. He is uncomfortable with Rabbinic divorce, and also unsure of civil divorce. Therefore, he tried to incorporate both elements into one system.

However, as is already clear from the statistics which he presented, the vast majority of rabbis had given up the role of judge, and did not want it back. Thus, perhaps

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1. J. Leonard Levy, "The Modern Problem of Marriage and Divorce", CCAR Yearbook, Vol. 23, 1913, p. 346.

2. Ibid., p. 347.

without intending to do so, the American Reform rabbi had turned divorce completely over to the State.

This point was elaborated by Rabbi Leon Harrison. He said:

> "Church and State are sharply separated here, and ought to be separated. But how does that consist with either rabbinical supervision of divorces, or countersigning of divorce decrees? By what right shall the rabbi ...make any official addendum to the records of a court of justice? In fact, what purpose would be subserved thereby... save to determine the degree of guilt that may attach to one party or the other... But, according to the position of the essayist, the second marriage, even of the guilty party to a divorce suit, is not to be altogether reprehended or discouraged; for, if prevented, it may result in other evils that are far worse."[1]

Based on this approach, Rabbi Harrison stated that the paramount necessity in America is uniform laws of marriage and divorce throughout the land. He also recommended the establishment of special divorce courts in every State. The aim of this was clearly to improve the current civil divorce system.

This position is very logical. If Reform is serious about its position, that divorce belongs in the civil courts, then the first responsibility of Reform rabbis is to do everything they can to ensure that the civil courts run as well as possible.

The outcome of Rabbi Levy's presentation and the dis-

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1. CCAR Yearbook, Vol. 23, 1913, p. 354.

cussion which followed was four motions, all of which carried. The motions were:

> "1. Rabbinical Divorce be discountenanced and opposed; and that concerted effort be taken to to advise our brethren throughout the land of the action of this Conference.
> 2. Rabbis should countersign divorce papers issued by the courts. A fee... may be demanded at the discretion of the Rabbi.
> 3. The Rabbi shall, in every instance, investigate the grounds upon which divorces have been granted to divorces or divorcees who ask him to remarry them.
> 4. No divorce decree shall become absolute until a period of six months has elapsed after its issuance."[1]

The actions of the Conference were to try and solidify their two-way approach. The Resolutions did not attempt to deal with the problematic situation of divorce in the civil courts of the land, but instead, attempted to regulate rabbinic responsibilities.

Once again, it is clear that this attempt was theoretical, and not practicable. For the system as it was designed, could not have worked. After all, if a rabbi investigated the grounds of divorce for an individual, and found that according to Jewish law the divorce would not have been granted, what are his options? If he remarries the individual anyway, then what was the purpose of the investigation? And if he will not remarry the individual, then Reform has created its own agunah; for the civil courts have already issued a divorce, and if the Reform rabbi does not concur with the decision, what Jewish options does the individual

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1. Ibid., p. 154.

have? Thus, this is clearly a theoretical system, and not a practicable one.

It appears that this situation was noted the following year. The conference, in the Report of the Committee on Civil and Religious Marriage Laws said that Rabbinical Divorce should not be granted in this country or in any other country. In fact, "to avoid even the semblance of giving a rabbinical divorce, Rabbis are urged to declining to countersign the divorce decrees of the courts."[1]

Surprisingly, this statement was undermined by the Comittee's next recommendation, that rabbis shall investigate the causes for which the divorce has been granted and shall refuse to remarry the party found guilty of adultery.

The Committee also felt a need to speak out concerning National Marriage and Divorce Laws, and recommended that the Conference favor national laws, or at least a uniformity of State laws on this subject.[2]

But the statement which created the most debate was one which had been accepted previously. The Committee stated that the general practice of accepting the decree of the courts, comports with the Jewish principle of dina d'malkhuta dina, the law of the land is supreme.[3]

To this statement, Rabbi Kaufmann Kohler strongly

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1. CCAR Yearbook, Vol. 24, 1914, p. 122.
2. CCAR Yearbook, Vol. 24, 1914, p. 122.
3. Ibid.

objected. He stated that:

> "it is a serious mistake to apply the principle dina d'malkhuta dina to the question of marriage and divorce, which comes under the head of religious or ritual law. With this the law of the land has nothing to do."[1]

However, in his explanation of what the Conference had accepted when it reaffirmed the principles of the Philadelphia Conference, Rabbi Kohler's comment is very vague. He said:

> "In regard to divorce by the State, the Philadelphia Conference has already expressed itself, and its declaration is fundamental for us. ...In accordance with this declaration a Rabbinical bill of divorce, or get, is altogether invalid in this country. Only, since the Rabbi must recognize the validity of a divorce granted by the State, he must inquire into the grounds for the divorce before remarrying either party thereto."[2]

In the end, Rabbi Kohler called for the report to be revised, and it was. The report was referred back to the Executive Board.

The following year, Rabbi Kohler presented his paper on the issues of marriage and divorce. In the paper, Rabbi Kohler presented his understanding of the Reform position, and the rationale behind it.

His first major point is that divorce is not a religious act, it is only a legal act. He proved this by quoting Rabbi Eleazar's comments: "He who divorces his first

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1. Ibid

2. CCAR Yearbook, Vol. 24, 1914, p. 124.

wife, for him the altar of God sheds tears". The implication here is that an act which causes the altar of God to cry, cannot be a religious act.

He continues by saying that although the formula k'dat mosheh v'yisrael is included in the get, it does not make the get a religious document. It is still only a legal document.

After proving that the get is no more than a legal document, Rabbi Kohler attempted to prove that the modern legislators have compiled legal documents which are superior to the get. He states:

> "The view taken by modern legislators is that marriage is not the exclusive concern of the persons married, but of the children and the state at large. ...In other words, the right of divorce is taken out of the hands of either husband or wife in order to safeguard the higher interests of society... And no one can deny that this view is decidedly superior to the rabbinical or Mosaic one."[1]

Rabbi Kohler here states that, since the State is looking out for the welfare of the children, as well as for the higher interests of society, it is a superior system than the Rabbinic courts, which presumably look out only for the interest of the married couple.

Rabbi Kohler concluded the paper with his recommendations to the Conference. These were:

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1. Kaufmann Kohler, "The Harmonization of the Jewish and Civil Laws of Marriage and Divorce", CCAR Yearbook, Vol. 25, 1915, p. 355.

> "Inasmuch as the civil courts in many States often grant a divorce in cases where, from the religious view of Judaism, objections might be raised, a body of three rabbis should attest to the correctness, from the Jewish point of view, of the findings of the court in matters of divorce, and attach their signatures to the bill of divorce issued by the court.
>
> The CCAR should declare that among the causes sufficient for granting divorce besides Adultery and Extreme Cruelty, there ought also to be enumerated Loathsome Diseases, as the Jewish law has it.
>
> In Regard to Willful Desertion, five years instead of two should be made the rule... Also in cases of the disappearance of either husband or wife, only after five years should a remarriage by the rabbi be allowed."[1]

Rabbi Kohler concluded by calling upon the Conference to appoint a Reform Beit Din, which would review the court cases and attach their signatures to the documents if the divorce would have been granted according to Jewish law. He does not, however, explain a system for handling a situation in which the rabbis can not sign the document, and thus a reform agunah would be created.

Rabbi Kohler also argues for changes in the civil court statutes. He believes that Loathsome Diseases should be grounds for divorce, and that there should be a standardized amount of time (5 years), for missing people cases.

In the end, the paper was not strong enough to cause the Conference to take up any of these issues as Resolutions. So the 1915 Conference had ended in the same way as

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1. Ibid., p. 376.

all the others, without any official statement of Reform policy on Divorce. All the movement had was its reaffirmation of the policies agreed upon in Philadelphia, and its actions, which demonstrated the acceptance of those policies.

The issue of Divorce did not arise again until the 1929 Conference. The Report of the Recording Secretary contained a reaffirmation of the Reform movement's beliefs about the get. The statement said:

> "Get. It was moved and adopted that the Executive Board felt that it was not within the province of the Conference to sanction a divorce by issuing a get or certificate as the Rabbi does in case of a marriage. That when the Rabbi officiates at a marriage, he does so as an officer of the State. But a divorce is purely a legal action with which the Rabbi has no connection."[1]

Again, it is clearly stated that the Reform movement believes divorce should be regarded as a civil law, as a secular matter. It has no connection with the Jewish religion. The most interesting feature about this statement however, is that it implies that if the rabbi was not an officer of the State, then he would not officiate at weddings. This line of reasoning not only effects divorce, but it also seems to have placed the State in charge of regulating Jewish marriages. It results in a reduced the role for the rabbi in marriage, as well as in divorce. This was not the intention of the Executive Board, however, the statement

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1. CCAR Yearbook, Vol. 39, 1929, p. 43.

does seem to imply this meaning.

In 1946 an interesting responsum was written on the issue by Israel Bettan. The question dealt with the wedding of a young woman of Orthodox background. She had been divorced, and had wanted a get, however, her husband placed so many obstacles before her that she decided to be remarried without it. The rabbi suggested that the Conference issue a "unilateral divorce". This would say that, since the civil divorce had been granted, the Conference recognizes the religious rights of the parties to remarry.

Rabbi Bettan's answer to this question was very blunt. He stated that this was not a question of law, but rather a question of policy. He said:

> "were we to adopt the proposal of the correspondent and proceed to issue this sort of 'indulgences' to all comers, as a salve to their tender consciences, we would justly be condemned for the unwarranted attempt to interfere with the proper enforcement of an orthodox discipline. The proposal is neither sound in principle nor safe in practice, and cannot receive the endorsement of the Committee."[1]

This responsum is interesting more for the harshness of its language, than for any new point of view which it might offer. The answer given here is simple. Reform does not believe in the get. Were we to adopt this proposal, it might appear that Reform was issuing its own get, and then we would be subject to Orthodox attack, for it would not follow their guidelines. Therefore it is better not to do

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1. CCAR Yearbook, Vol. 56, 1946, p. 123.

anything.

What seems most strange in this response is that it implies that the Orthodox do not mind the fact that Reform do not have any religious divorce at all. It implies that, as long as Reform leaves the realm of religious divorce to the Orthodox, there will be no problems between the two. This seems to be promoting the idea that if something is left alone, it will be forgotten. And that actually seems to have been the Reform movement's policy on the Divorce issue.

Between 1946 and 1980, the issue of Divorce rarely came up. When it did, it was usually with regard to the growing rate of divorce in America, as well as within the Jewish community, or in an attempt to gain a consensus to work towards revisions of the State Civil Divorce Codes.

The only truly new statement from the movement on Divorce came in 1979, from the Report of the Committee on Singles. The report stated that "there had been a good deal of discussion about the need for one or more separation rituals, and perhaps a Reform Get-type document".[1]

There was also mention of a brochure on the traditional get, which would be made available to congregants. However, it was clearly stated that "the availability of the brochure would in no way suggest endorsement of the practice."[2]

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1. CCAR Yearbook, Vol. 89, 1979, p. 124.

2. Ibid.

The separation ceremony is of great interest because it seems to make a statement that there is a religious, spiritual need which individuals have during a separation. After all, there is a religious ceremony for a death, even though the altar of God may be weeping, so there seems to be a desire for a religious ceremony to mark the end of a marriage as well.

The idea for a separation ceremony was not meant to clash with the Conference position on Divorce. However, due to the manner in which the Conference has made its decisions on the topic, issue by issue, no unified policy has ever emerged. And thus, the desire to fill a spiritual need, can come into conflict with ideological principles.

The Conference has many longstanding policies on Divorce, but it has no Resolutions on the subject. And because of this, there is no single clear-cut policy on the topic.

CONVERSION

1890-1892

It is safe to say that when the Central Conference of American Rabbis first decided to form, the foremost issue in the minds of those men was Conversion. The second and third Conferences were devoted almost exclusively to this subject.

Of all the subjects touched upon so far, Conversion is the one topic which best represents the American movement. For when the first Conference affirmed the Resolutions of the past Reform Conferences, they did not affirm one Resolution on Conversion. The reason being that conversion was not a topic of discussion at the previous Conferences. This means that the move for change in this area came totally from within America.

The spirit with which the rabbis took up the debate can be seen in the first Resolution on the topic at the first Conference. It stated:

> "Resolved, That inasmuch as the so-called Abrahamitic rite is by many of the most competent rabbis no longer considered as a conditio sine qua non of receiving male Gentiles into the fold of Judaism, and inasmuch as a new legislation on this and kindred subjects is one of the most imperative and practical demands of our reform movement, a committee of five, one of them to be the President of the Conference, be intrusted with forming a full report, to be submitted for final action to the next Conference."[1]

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1. CCAR Yearbook, Vol. 1, 1890, p. 122.

The American Reform movement was ready to make a name for itself, and it had picked an issue which would define its ideology for everyone. The issue to be debated was circumcision for the adult proselyte.

Why circumcision? The issue of circumcision, if nothing else, was a graphic symbol of what the American Reform movement thought of itself. Circumcision was a symbol of Orthodoxy. It was viewed as an old, bloody ritual, which all ancient societies practiced. It was a barrier, a means to keep foreigners - the ger - separated from the Jewish community. But Reform was part of a new age.

By rejecting the circumcision, Reform hoped to present itself as a modern religion which understood and valued science, and scientific research; a religion which valued history, but was not bound to out-of-date rituals. Reform wanted to be recognized as a universal religion, open to all people. It wanted to make a statement, that what is important in religion is not the ritual, but the idea for which the ritual stands. In circumcision, American Reform Judaism believed it had found the ritual to make its beliefs known to all.

The Conference opened the following year in Baltimore, and there were no less than eleven different responses to the topic. The responses were not all in favor of abandoning the rite. While this issue of circumcision was meant to represent what American Reform Judaism stood for, some argued that circumcision was the wrong symbol to use for

this message.

The first response was given by Dr. Aaron Hahn, who spoke in favor of abolishing the rite. His approach to the topic was halakhic in style. He mentioned that the Talmud divided proselytes into two classes, the ger toshab who lived among the people, and the ger zedek, who not only lived among the people, but followed the practices of the people in full. This meant that a ger zedek was circumcised, as were all other Jews.

On the basis of his historical knowledge, Dr. Hahn made the statement that "there is no precedent on record that a male proselyte had been considered a Jew without having first undergone circumcision."[1] Thus it is clear that Dr. Hahn understood that what he was hoping to achieve would be a complete break with the history of the Jewish people.

Nonetheless, Dr. Hahn's response attempted to find historical precedents which the movement could use, so that it could claim that its decision, though new to Judaism, was not a break from the legal traditions of the religion.

One of the sources he used for this was Rabbi Lipman Mulhausen, who said in his polemical work Sefer Nizzahon, that circumcision was not an essential rite of Judaism.

Another source was Rabbi Elia Misrachi, who said in Sefer Mayim Amukim, that a child born of a proselyte who had not been to the mikvah, is still a Jewish child. He said:

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1. Aaron Hahn, "The Milath Gerim Question", CCAR Yearbook, Vol. 2, 1891, p. 66.

"It is sufficient to accept the precepts of the Torah before a beit din alone, even if there is no circumcision, and no ritual bath in the mikvah"[1].

He mentioned Rabbi Juda Arye Modena, who said in his book Behinath Haccabalah that:

> "A proselyte who comes to embrace Judaism should be told what the sense of the circumcision is. If he does not care to be circumcised let him take the ritual bath, and in virtue of that ceremony, he shall be considered a Jew in every respect. But if to such a proselyte is born a male child after he embraced Judaism, he shall have it circumcised."[2]

Dr. Hahn added that Rabbi Modena was also correct in stating that, according to the Torah, the only thing prohibited to an uncircumcised proselyte is participation in the celebration of the Paschal lamb, and since the Temple has long since been destroyed, this prohibition need not be of concern today.[3]

His last source was the often quoted statement of Rabbi Joshua ben Hananya, who stated in Yebamoth 46, that "a proselyte who takes merely a ritual bath, but does not undergo the rite of circumcision, is a Jewish proselyte".

This last citation was to be the source of much debate within the movement. This was due to claims by some that those who wished to abolish circumcision were misreading the

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1. Ibid., p. 67.

2. Ibid.

3. Ibid., p. 68.

passage.

The next response, which favored maintaining the rite, was by Dr. Isaac Schwab. His approach was basically to examine the practices among the people throughout history.

Dr. Schwab traced the practice of circumcision from Abraham, through the Schechemite affair, up to Ezra. He claimed that the mass conversions imposed on the conquered peoples by the Maccabean princes were enforced by the rite of circumcision. He stated that Josephus indicated that circumcision was the means of entrance into the union of Israel for the proselytes of his age. Through these sources, Dr. Schwab hoped to prove that circumcision had always been seen as the only initiatory rite into the Jewish people, from the Biblical period, through the Rabbinic period.

In order to complete his theory, Dr. Schwab needed to refute the claim of Dr. Hahn, that in the Biblical period, the uncircumcised ger was only prohibited from taking part in the Paschal sacrifice. He claimed that this hypothesis was unwarranted for three reasons.

First, the Torah repeats several times that "one law should govern the native and the stranger". This could only mean that the stranger living in the land must abide by the same practices as the Israelites did. As the Israelites were circumcised, so too was the stranger.

Second, Dr. Schwab claimed that, although the Torah never explicitly states it, the other offerings which the

ger was allowed to bring, required the one who offered them to be circumcised.

And finally he posed a question. How could it be that the ger, who was joined to the people at Sinai, and entered into a covenant of service to God, was bound to practically every other ceremonial and political enactment with the rest of the Israelites, but was exempt from the most important ceremonial rite of all - the circumcision? Dr. Schwab did not believe that this was possible.

In stating this rebuttal, Dr. Schwab felt that his statements about the Biblical period were secure. However, a German rabbi, Dr. Gruenebaum, had claimed that Hillel had accepted converts who had not been circumcised, and that Rabbi Joshua (mentioned earlier) was a successor of Hillel's, and followed the practice established by him.

Therefore, Dr. Schwab set out to refute this claim as well. His proof was established by first explaining that the stories about Hillel, in Tractate Shabbath, were not meant as legal precedent. They were merely the recording of popular legends. And because they were legends, and not history, legal claims could not be based upon them.

His second proof was to cite the historical record of the time, to show that Hillel did not have a "mild spirit" with regard to the reception of proselytes. He stated that all the proselytes of that period, including Sylleus, who demanded Herod's sister, underwent circumcision.

Therefore, even if the unlikely did occur, and Hillel

did have a "mild spirit" with regard to circumcision, it is quite clear that his practice was not followed at that time. Circumcision was the rule, and no historical exceptions can be found.

As for the Talmudic passage on Joshua, Dr. Schwab stated that the passage referred to a dispute over the legal consequences of an incomplete conversion, and that it was understood, even though it might have been unstated, that both milah and tebhilah are required in all conversions.

As a result of this, Dr. Schwab believed that he had offered compelling evidence that Dr. Gruenebaum's hypothesis was incorrect. Thus he concluded that circumcision was always the initiatory rite of the Jewish people. Therefore the American Reform movement had no choice but to accept this practice upon themselves as well.

Dr. Berkowitz and Dr. Wise made very similar comments on the subject. Both implied that sound minded people, who no longer followed the directions of the Shulhan Arukh, could not possibly believe that circumcision is a prerequisite for joining the Jewish people.

However, since this point of view has not yet been adopted in principle by any legitimate body within Judaism, they follow the talmudic principle of yahid v'rabbim halakhah k'rabbim. This was because a matter of such great importance should not be dealt with on an individual basis. And in any case, even if they were to follow their beliefs and convert a non-Jew without the rite of circumcision,

there are no Jewish congregations which would officially recognize the proselyte as a Jew.

In the next two responses, Rabbi Felsenthal and Dr. Mielziner continued the debate over the understanding of the account of Rabbi Joshua.

Rabbi Felsenthal's response mentioned many of the same legal points which Dr. Hahn had presented earlier. He also pointed out the problematic situation, which existed for the Conference, of trying to pass a binding Resolution on any issue, let alone circumcision.

He stated that "the rabbi has no authority to act in the name of kol yisrael, and to arrogate to himself the power of admitting, in the name of Judaism, into the Jewish community a would-be proselyte who has not been circumcised"[1]. He made based statement on the Reform principle of individual autonomy.

By this same logic he reasons that even a Synod of Reform rabbis could not legislate a practice for its own members. This is because all members reserve their right to decide the doctrines of Judaism for themselves.

He continued by stating that the only possible way in which a decree or a Resolution could be effected would be for congregations to set their own guidelines. This would be acceptable because every congregation is sovereign over its own internal affairs.

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1. CCAR Yearbook, Vol. 2, 1891, p. 94.

It is clear on the basis of these comments that, in the minds of some, there is no point to Reform Resolutions of any sort. Based on this outlook, the role of the Conference would be to provide opportunities for learning, discussions, and debates, for rabbis and laymen, in order to ensure that the decisions which the congregations make for themselves are knowledgeable ones.

However, since the majority of the rabbis present did not accept Rabbi Felsenthal's opinion, it is still worthwhile to review the other responses on the issue.

Dr. Mielziner began his response by acknowledging the problematic situation of "autonomy", which Dr. Felsenthal had cited. Based on this problem, he stated that "the most proper way would have been to bring this question before a conference of competent rabbis, where, after a full and thorough discussion, it might be finally decided"[1]. It seems as though Dr. Mielziner believed that knowledge was more important than autonomy, and that correct decisions were more important than freedom.

In his comments on the Joshua ben Hananya citation, Dr. Mielziner, among other things, pointed out that in the Jerusalem Talmud, Tractate Kiddushin 3:14, Rabbi Joshua's words are exactly contrary to the Yebamoth passage. Because of this conflict in Rabbi Joshua's position, Dr. Mielziner stated that this source cannot be used in either case, for

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1. CCAR Yearbook, Vol. 2, 1891, p. 96.

his true opinion cannot be known.[1]

The response ended with Dr. Mielziner's statement that one who seeks conversion for the sake of marriage should be treated cautiously, because his motives are unknown.

To this, Dr. Felsenthal replied with a quote from Rab, who said regarding one who converts for the sake of love, "The law is that they are gerim. We do not press them in the same way that we press other gerim in the beginning, but we receive them, and we need to welcome them, for perhaps they have converted for the sake (of heaven)."[2]

The rest of the responses are centered more upon individual belief, then upon legal or historical argumentation. For example, Dr. Sonneschein stated that based on the declarations of the Pittsburg Platform, milath gerim should be dispensed with.

He also added an interesting theory that, as the circumcision was not performed on the Children of Israel until their crossing of the Jordan, the berith milah must be seen as a levitical ceremony, which is only to be practiced in the land of Israel, and not outside of it.[3] However, the strength of his stand rests upon his agreement with the principles of the Pittsburg Platform.

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1. Ibid., p. 97

2. CCAR Yearbook, Vol. 2, 1891, p. 97 (Jerusalem Talmud, Kiddushim, 4:1)

3. Ibid., p. 98.

Dr. Gottheil stated that circumcision of adults should be abolished, if for no other reason, than because it is a danger to the health, and life of the proselyte.[1]

Dr. Schreiber stated that the whole question depends on the determination of whether circumcision is merely a ceremony, or a sacrament of Judaism. He went on to quote mostly modern rabbinical opinions on the topic. These included a citation from Yoreh De'ah, that "the male child of a baptised Jewess must be circumcised, which proves that being born of Jewish parentage constitutes allegiance to Judaism, even when these parents have embraced another religion."[2]

From the citations which Dr. Schreiber provided, it appears quite certain that circumcision is a ceremony, and not a sacrament. Therefore Dr. Schreiber felt that this ceremony must be evaluated by the same standards as all others. Since he believed adult circumcision to be a "barbaric rite", Dr. Schreiber agreed with the majority of the rabbis, that circumcision should be abolished.

Dr. Schreiber concluded his response with a very universalist message. He stated:

> "It is not a question of low proselytism, of mean bartering after souls; we are not after 'the poor in spirit'. But it is a question of opening wide the halls of Judaism to enlightened professors of the pure belief

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1. Ibid., p. 100.

2. CCAR Yearbook, Vol. 2, 1891, p. 109. (Yoreh De'ah 266:12)

> in God, and it must be demonstrated whether the progress of Judaism in our days, which is not checked by outward circumstances, can rise to the height of Deuteronomy, which admonishes only to circumcise the foreskin of the heart, and nowhere makes mention of real circumcision"[1].

Unfortunately, the second Conference did not result in a vote on the Resolution. However, the following year, the Conference in New York did.

The Conference opened with a stirring call for action, and change by Dr. Isaac Mayer Wise. He said:

> "Moses Maimonides ...says: 'Nothing besides God is of eternal duration'; so no law and no commandment ever could have been intended to be eternally obligatory..."[2].

And he continued in the same spirit:

> "How did these new laws, forms, formulas, customs, ceremonies, observances come into existence? The Talmud answers: by the lawfully instituted body of the seventy elders, Great Synod and Sanhedrin; by the customs growing out of the popular practice; and by the expounders of the law, priests, Levites, scribes, Tanaim, etc. How were old laws amended, customs, observances, etc., repealed? Answer by the same authority. Whatever was established by man can also be set aside by man."[3]

There appeared to be no doubt in Dr. Wise's mind that the men of the Conference had assembled for the noble cause of reasserting Rabbinic Authority, and that they would stop the barbaric rite of Circumcision for the adult proselyte.

The Committee on the Initiatory Rites of Proselytes,

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1. Ibid., p. 111.

2. CCAR Yearbook, Vol. 3, 1892, p. 5.

3. Ibid., p. 8.

which was formed at the conclusion of the first conference issued its report, based on independent research, and the papers delivered the previous year.

It was noted that, of all the papers presented, only two, those of Dr. Mielziner and Dr. Schwab, were opposed to the discontinuance of the rite of Circumcision. Yet even Dr. Schwab seemed to have acknowledged that the rite would be stopped, for he stated that if any changes were to be made, they should come from the independent actions of rabbis, and not "attempted under cover of a relative authority from the so-called rabbinical age"[1].

It was clear that the report would be a deliberate, step by step, review of all the factors involved in the decision. The Committee wanted to make sure that it had left no stone unturned in its evaluation. It wanted to leave no room for reconsideration at a later date.

As a result, after noting the overwhelming sentiment of the rabbis, the report dealt with a preliminary question of whether the Torah ordained, or even permitted, the reception of proselytes from the non-Israelites.

This notion was affirmed through citations from the Torah. The first citation came from Deuteronomy 23:4, which specified the seven nations as being unable to enter into the people. This meant that others must be permitted, or else there would be no need to exclude only these seven.

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1. CCAR Yearbook, Vol. 3, 1892, p. 73.

The second came from Numbers 15:15. This verse stated that there is only one law for both the Israelites, and the ger who dwells with them. This verse is repeated in Deuteronomy 10:19. Thus, it seems clear that the reception of proselytes was permitted by the Torah. However, what is unclear is how the proselyte was to join. There are no directions in the Torah which tell what the proselyte must do to in order to be considered one of the people.

Because of this, the report concluded that the silence of the Torah was intentional. The author of the Torah wanted no initiatory observances at all to be imposed upon the ger.

Not only is the Torah silent on initiatory rites for the proselyte, but the Mishnah also makes no mention of them. Therefore, since no other evidence for its existence can be found, it must be concluded that the rite of Circumcision for the proselyte was instituted by the Rabbis.

The report continued by citing the sources from the Middle Ages, which had already been mentioned by Dr. Hahn and others. It also included citations from Maimonides. On the basis of these sources, it was again concluded that Circumcision was ordained in the Torah for the children of Abraham alone. The report stated:

> "Whoever is not of the seed of Abraham certainly is not charged with this duty, and the ger is one not of the seed of Abraham... Hence he is a ger without submitting to the Abrahamitic rite, or even to korban

and tebilah."[1]

While it is correct to state that once an individual has become a ger, he is identified with the seed of Abraham, the report makes a distinction between the two stages of the process. Hence, circumcision is not incumbent on the ger if he wants to be a part of the people. If he should have a son however, it is incumbent upon him to have that son circumcised, as all other Jews must do.

Near the end of the report, the account of Rabbi Joshua is once again mentioned. It is used here, to support the claim that initiatory rites had, at the least, not been fully established at that time.

The report concluded by offering its vision of the Rabbinic period. It pictured the practice of the rabbis, while the Temple stood, as having the proselyte offer a sacrifice. Since the sacrifice could not be brought by one who was ritually unclean, they instructed him to first take a ritual bath - tebilah.

After the destruction of the Temple, however, the sages were of two minds. The enlightened rabbis instructed the proselyte in the areas of repentance of sin, prayer, alms-giving, acts of charity, the study of the law, conscientious righteousness, and similar practices of piety and humanity, which they believed were more acceptable to God than any sacrifice. For them, the tebilah, a confession, and an

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1. CCAR Yearbook, Vol. 3, 1892, p. 77.

understanding of the above doctrines was sufficient to accept him as one of the people.

The more rigorous rabbis, however, were not satisfied with those mild substitutes for the sacrifices, and they demanded a bodily sacrifice in its place. For them, the proselyte was still required to undergo the ritual cleansing of the tebilah, and then a sacrifice of the flesh - milah. as well.

It is clear that the report wished to present the present day American Reform rabbis as returning to the practice of the enlightened rabbis, who were always a part of the Jewish chain of tradition. This was not to be seen as a break away from Judaism, but rather as a return to the true spirit of the religion, which was always recognized by the enlightened rabbis of every age.

Following the report, a discussion of the issue once again ensued. In his comments, Dr. Kohler stated that he believed the milah to be a barrier against those non-Jews who were truly righteous and worthy, but would not convert because of their fears.

In spite of this belief, Dr. Kohler stated that it would not be appropriate to attempt to use talmudic statutes to destroy the foundations upon which the Talmud stands. Thus, he believed that a Reform decision should not be based on talmudic scholarship viewed from a Reform perspective.[1]

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1. CCAR Yearbook, Vol. 3, 1892, p. 16.

Instead, Dr. Kohler cites the example of the admission of Jithro into the Jewish community, as it is described in the Torah. This admission appears to be based on the acceptance of the doctrines of the Jewish faith. Within this episode there is no mention of milah, or of tebilah. It is from this Torahitic example that Dr. Kohler feels the movement ought to be prepared to base its actions and not on the basis of any talmudic statutes.[1]

Another position was that of Dr. Silverman. He maintained that the issue ought to be decided purely from the standpoint of modern sentiment on the subject.

Dr. Hecht stated his belief that, although the move by the Conference was correct, the people were not prepared to accept it. And last, Rabbi Clifton Levy said that this revision was necessary for Judaism to achieve its true end. For, as he stated: "We are a proselytizing people, ...it is our duty to open the gates".[2]

While other rabbis also spoke, their statements were not unique, and have already been presented. So, after much discussion, and an amendment by Dr. Kohler which dealt with the procedures involved with conversion, and not with the issue of circumcision, the Resolution was put to a vote. The Resolution stated:

> "Resolved, That the Central Conference of American Rabbis, assembled this day in this city

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1. Ibid., p. 33.

2. CCAR Yearbook, Vol. 3, 1892, pp. 17-18.

> of New York, considers it lawful and proper for any officiating Rabbi, assisted by no less than two associates, and in the name and with the consent of his congregation, to accept into the sacred covenant of Israel and declare fully affiliated to the congregation l'chal d'bar sheb'k'duyshah any honorable and intelligent person, who desires such affiliation, without any initiatory rite, ceremony or observance whatever; provided such person be sufficiently acquainted with the faith, doctrine and religious usages of Israel; that nothing derogatory to such person's moral and mental character is suspected; that it is his or her free will and choice to embrace the cause of Judaism, and that he or she declare verbally and in a document signed and sealed before such officiating Rabbi and his associates his or her intention and firm resolve:
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> 1. To worship the One, Sole and Eternal God, and none besides Him.
> 2. To be conscientiously governed in his or her doings and omissions in life by God's laws ordained for the child and image of the Maker and Father of all, the sanctified son or daughter of the divine covenant.
> 3. To adhere in life and death, actively and faithfully to the sacred cause and mission of Israel, as marked out in Holy Writ..."[1]

The resolution passed by the vote of 25 to 5.

There appear to have been three reasons which led some to vote against the Resolution. The first was the belief that this step was to be the first of many towards the abolition of the rite of circumcision for everyone. The second was the feeling that the rite of circumcision was sacred to Judaism, and to admit a proselyte without it, is not an advance, but rather a step backwards for Judaism.

The final reason, stated by Rabbi Isaac Stemple was clear and straightforward. He stated that he wanted to protect the purity of the race, and that proselytes are, in

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1. Ibid., p. 36.

general, "a bothersome burden to Israel".[1]

While Dr. Mielziner did not make a specific statement as to why he had voted against the Resolution, his opinion on the subject had already been made clear in the course of the debates.

It is important to note here, in connection with this Resolution, that there was a requirement that all conversions be recorded by the Conference. However, there was no discussion by the Conference on how this was to be carried out or enforced. This left the members of the Conference with a requirement, which had no means to be fulfilled. In the end, this matter was left unresolved. However, it did appear again at later conferences.

In spite of that note, the hopes of Dr. Isaac Mayer Wise for this Conference were fulfilled. The Resolution was passed by a wide margin, and the movement had placed itself on the map of the Jewish world. It had created its own clearly defined niche. It was now ready to move forward, into the 20th century as a shining light to the nations, and as an universal religion, open to all comers.

1893-1980

Even though the Resolution on conversion was passed in 1892, the decisions on how to carry out the mandate which it

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1. Ibid., p. 38.

created had not yet been made. This became the subject of much discussion in the years to come.

Part of that mandate was immediately made clear, in Dr. Wise's address to the 5th Conference. In the address, Dr. Wise spoke of the Reform movement's appearance at the World's Parliment of Religions in Chicago, and of the wonderful image the movement presented to the rest of the world. He stated that this was mainly due to the Conference's enactments concerning the admission of proselytes.

Reform Jewish leaders had shown to the world that Judaism was an open, universal religion, which supported religious freedom, scholarly thought, and lofty ethics. It had given Judaism an opportunity to once again be a light unto the nations.[1]

At that same Conference, Rabbi Kohler presented a paper in which he sought to define the standards by which a proselyte could now be considered a full ger. He said:

> "Those who would admit proselytes into the Jewish fold on no other ground than that they are monotheists, place themselves upon a platform which ignores historical theology by which a sharp boundary line is drawn between the half-proselyte whose claim to heavenly bliss is equal with that of the Jew, because he stands on the same ethical ground, and the full proselyte who adopts the life mission of the Jewish people whom he joins as a member."[2]

It became evident early on, that the qualifications for

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1. CCAR Yearbook, Vol. 5, 1894, p. 68.

2. Kaufmann Kohler, "The Spiritual Forces of Judaism", CCAR Yearbook, Vol. 4, 1894, p. 137.

a conversion candidate were, as always, up to the ideals of the individual rabbi. However, in the past, the convert was also bound by the requirements of the ceremonial rites, which presumably, would not be accepted lightly. Now, however, there was no ultimate test of the ger, and it would be up to the rabbi alone to determine a candidate's seriousness, and strength of belief. This was, and is, a task that can be difficult at best.

At the 6th Conference, this very subject was raised, and a standardized Formula for the Reception of Proselytes was created and approved. This formula consisted of a series of 10 questions, intended to confirm the sincerity, the ideological beliefs, and the free will of the candidate. It also consisted of a Profession of Faith, which was intended to reaffirmed these same values.

The Formula concluded with a document which the rabbi could use to officially welcome the ger into the community. This document was then signed by the three officiating rabbis, and given to the ger.

The other important matter discussed at this Conference was the plan for Jewish missionary work. This issue was raised in a paper by Rabbi Moses.

Rabbi Moses proposed that, at its core, Judaism was always a missionary religion. However, unfavorable world conditions had caused this task to be set aside for a time. But now, the climate was right for Judaism to once again stand up, and, in the most active way possible, be a light.

Moses gave two additional reasons for why this task was so important at this time. The first was that Reform Judaism could not say it is a universal ethical movement, if the majority of its congregations continued in their "vehement protestations against any missionary effort".[1]

Rabbi Moses' second reason was based on his evaluation of the connection of the Jewish people with the Reform movement's message. He believed that only a minority of Jews were identified with the spiritual interests of the movement, and that "vast numbers, especially in the smaller cities, gradually drift away from all Jewish religious influences, until they are almost totally estranged from the spiritual cause of Israel".[2]

Unfortunately, Rabbi Moses seems to have been most driven by his fear that without new Jews, Judaism, with its progressive ethics and universal ideals, might not be able to continue. It might run out of people who cared. As a result, the best hope for the survival of the Jewish religion, might just be the idealistic, universalistic, non-Jew, who is waiting for the movement to find him.

It comes as no surprise that at this same Conference, the Missionary Committee gave their recommendations to the Conference. These consisted of the employment of a General

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1. I. S. Moses, "Missionary Efforts in Judaism", CCAR Yearbook, Vol. 5, 1895, p. 83.

2. Ibid., p. 84.

Secretary of the Conference, who would be the coordinator of the missionary effort, as well as the annual publication of a book of sermons. The sermons were designed to be used both internally, by rabbis in the field, as well as externally, as educational material to teach the beliefs of Reform Judaism to the non-Jewish world.

In light of the paper presented by Rabbi Moses, these proposals seem to be quite modest. However, in spite of their modesty, or perhaps because of it, the Conference did not vote on them at all. The matter was handed over to the Executive Board, to be brought back at a later meeting.

For the next few years, the topic of conversion was placed on the back burner. There is no doubt that the Conference was disappointed by the reaction to its new position. The modern Jew had not seen the light, and Reform Judaism was not blazing a new path for itself, even among its own people.*

It also appears that with the passing of time, the acceptance of the movement's Resolution on Conversion had not occurred. Not only was there bitter disagreement among other Jews, but even the courts of the United States did not seem to accept the movement's position. This was attested to by Rabbi Krauskopf, the President of the Conference in 1904.[1]

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* See especially the paper "A United Israel", by Kaufmann Kohler, CCAR Yearbook, Vol. 8, 1898-9, pp. 81ff.

1. CCAR Yearbook, Vol. 14, 1904, p. 21.

In 1916, the President of the Conference, Rabbi Stolz, made an interesting comment in his message. He stated that:

> "It is generally conceded that we are Jews by virtue of our birth and not by the confession of a creed. As long as we declare ourselves to be Jews we are Jews..."[1]

While no one would disagree with this statement, it is clear how this might have caused some to have a difficult time accepting the movement's position on conversion. If a Jew is not a Jew because of his beliefs, then how can it be claimed that a non-Jew can become a Jew because of his beliefs. However, as this statement was not given in reference to conversion, it does not appear that this difficulty was seen, and this issue was not raised.

In 1909, the Conference issued its first Resolution on mixed marriage. However, a minor recommendation dealing with conversion was also on the agenda. And so the issue of conversion was once again brought to the floor of the Conference.

The Committee on Resolutions recommended that a committee be appointed to prepare a revised certificate of conversion, which would be voted upon at the next Conference. This led Rabbi Gries to make the comment that, rather than just a discussion on a new certificate, the Conference should bring up the entire question of conversion, because, as he stated: "there are certain provisions which I think

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1. CCAR Yearbook, Vol. 16, 1906, p. 226.

none of us are living up to, and which are a dead letter to many rabbis of the Conference"[1]. This suggestion, however, was tabled.

Rabbi Stolz also brought up an issue dealing with the past Resolution. He reminded the Conference that, although they had decided to keep a record of all cases of conversion that had occurred in the country, to date, no record had been kept, and no record book had been prepared.[2]

It seems quite clear that Rabbi Stolz brought up this point in the hopes that the new Conversion Certificate could be used to keep a record of the conversions in the country. While there was no further mention of this at the Conference, the idea was heard by the Committee, and the form of the certificate which was adopted in 1921 contained three parts: one for the ger, one for the officiating rabbi, and one to be filed with the Corresponding Secretary.[3]

In the intervening year, there was a discussion of revising the Formula of Conversion. In connection with this, Rabbi Messing proposed that an additional element be added to the formula. That is, if the ger should have children, he should promise that they will be raised as Jews.

The fact that this point was raised at all was trou-

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1. CCAR Yearbook, Vol. 19, 1909, p. 173.
2. Ibid., p. 187.
3. CCAR Yearbook, Vol. 21, 1911, p. 124.

bling. As Rabbi Philipson pointed out, it should be self-evident that the ger, once he becomes a full Jew, would raise his children in the Jewish faith. Therefore, it should not need to be stated in the formula.[1]

The other area of discussion dealt with the signatories of the Certificate. The first Certificate was to be signed by the officiating rabbi, as well as two additional rabbis. This Certificate differed in that it could be signed by the officiating rabbi, and two associates. This would enable laymen to become signatories to the Certificate, instead of only rabbis.

This is a significant change in the policy of the Conference, for although the ceremonial rites had been abolished, the Reform conversion ceremony had continued to take the form of the traditional ceremony. It was for that reason, as well as to guarantee to the ger that the conversion would be accepted universally, that three rabbis had co-officiated, and signed the Certificate. But with the option of using two associates, the door was open for the rabbi to officiate alone. As a result, the question of the acceptance of this conversion by the whole Reform community was once again open to debate.

Rabbi Max Heller also commented on the revision of the signatories to the Certificate. He requested that, in place of "two associates", the Certificate state "ten associates",

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1. CCAR Yearbook, Vol. 20, 1910, p. 67.

as it was his practice to perform the conversion with a minyan.[1]

This request was rejected, however, on two grounds. First, if it is possible to retain a traditional ceremonial form, then Reform ought to strive to do so. And second, in the case of marriage, even though the ceremony is performed before a minyan, if not more, all present do not sign the document. Therefore, the conversion ceremony should follow the precedent of the marriage ceremony.[2]

At the 24th conference, the manuscript of the Minister's Handbook was discussed as it related to the conversion ceremony. Rabbi Kohler raised an old objection against the Handbook. He said that he disagreed with questioning the ger about his willingness to have his children circumcised. He stated:

> "It has no sacramental character at all in Judaism. Therefore, to ask the convert whether he will have his children circumcised is to be more popish than the Pope himself."[3]

In fact, if this question remained, Rabbi Kohler believed it might result in a split in the Conference.

The Conference took up the subject again in 1925, when it was presented with a preliminary report on the preparation of a manual for the instruction of proselytes.

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1. CCAR Yearbook, Vol. 20, 1910, p. 107.
2. Ibid., p. 107 - 108.
3. CCAR Yearbook, Vol. 24, 1914, p. 57.

The Committee had dealt with the subject by proposing that the manual be made up of three parts. The first part would deal with a historic presentation of Judaism's attitude to the non-Jew, with the hope that the prospective ger would be heartened by the information, and feel positive towards continuing in his course of study.

The second part would set forth the cardinal teachings of Judaism. These would include God, individual responsibility, Revelation, Judaism's place and purpose in the world, the spiritual unity of Israel, the place of the Synagogue in religious life, as well as other important aspects of the religion.

The last part of the manual would deal with the rites and customs of Judaism. This would include information on Shabbat, the Festivals, Circumcision, and other important rites and customs.

The Conference moved and adopted the proposal that printed copies of this report be prepared and sent to all the members of the Conference, in order to receive their criticisms and suggestions.[1]

Two years later, at the 37th Conference, there was a brief discussion on the manual. Rabbis Gup and Harris proposed that the manual include a brief chapter to distinguish between Orthodox and Reform Judaism. There was also a proposal to include a chapter on kashruth. Neither of these

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1. CCAR Yearbook, Vol. 35, 1925, p. 109.

additions were accepted by the Conference, and the Manual was published without them.[1]

In 1939 the Manual was ready to be republished. This led to a discussion on how the book should be revised. It was decided that members would be asked to tell the committee of their experiences with book. The committee would take this information under advisement, and then make whatever revisions they felt were necessary.

In 1947 the issue of mixed marriage was again brought before the Conference. In connection with this, the policy of the Reform movement with regard to individuals who are converting because of marriage to a Jew, was discussed.

The position of the movement was made clear in the Report on Mixed Marriage and Intermarriage. It reported that:

> "It is our Reform practice always to accept a proselyte who intends to be eligible to marry a Jew, provided, of course, we are convinced that the candidate is serious and reverend in the intention to convert. ...we suggest that we accept the following statement of principle: The C.C.A.R. considers all sincere applicants for proselytizing as acceptable whether or not it is the intention of the candidate to marry the Jew."[2]

The report clearly stated that the movement's position was in opposition to that of many Orthodox rabbis, who refuse to accept any proselyte whose intention is to be married to a Jew. However, in this matter, it was hoped

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1. CCAR Yearbook, Vol. 37, 1927, pp. 193-196.

2. CCAR Yearbook, Vol. 57, 1947, p. 162.

that the movement would follow the example of Rab in the Talmud, who believed that we should not make it hard for them to convert, because, in the end, they will have converted for the sake of heaven.

It was not until 1950 that the idea of Jewish Missionary work again came to the fore. This was raised by the proposal of the following Resolution:

> "Be it resolved that the CCAR create a committee to study the practical means of extending the influence and acceptance of the Jewish religion, and to report its recommendations to the next convention of the Conference."[1]

This Resolution was interpreted in two ways, as Rabbi Taxay explained:

> "There are two resolutions in one. The first is home missions. It were better to continue speaking of this as the appeal to the unaffiliated. This work should be intensified and spurred. The second part, missionary activity among non-Jews, is a departure from nineteen centuries of Jewish practice. ...We have more than enough to do trying to bring Judaism to our own. We have pleaded with our non-Jewish friends not to engage in proselytizing Jews. How can we go forth and missionize gentiles?"[2]

While there were many who spoke in favor of this missionary effort, the majority of the members seem to have been ambivalent to the idea. How else could it be explained that a motion to table the resolution lost by a vote of 25 to 51, and yet a second motion, that the program committee

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1. CCAR Yearbook, Vol. 60, 1950, p. 208.

2. CCAR Yearbook, Vol. 60, 1950, p. 211.

give time to this issue at the next Convention also lost? It appears that, while the Conference did not wish to break with the traditional universal ideals of the American Reform movement, it was also not committed to carrying out those ideals.

A discussion on missionary work did occur four years later, at the 65th Conference. It came about because of the Report on Converts and Conversion which was given at the Conference. The report covered several papers which were delivered to the Conference. Most of these papers dealt with the number of gerim, how successful these conversions had been, and the need to create a more open environment for the ger within the Jewish Community.

It was reported that Rabbi Eichhorn had stated that at least 2,000 non-Jews are being converted each year. However, only about one in twenty does not have any involvement with marriage. Yet, he stated that "most of these converts are at least as good Jews as the born-Jews and, in many cases, much better Jews"[1].

In addition, there was a paper by Rabbi Goldstein which stated that there were three areas of Jewish resistance to "spiritual recruitment" which needed to be overcome. First was the lack of enthusiasm for Judaism on the part of Jews. Second was the incorrect Jewish belief that "the Torah is the exclusive possession of Jacob's clan". And last, was

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1. CCAR Yearbook, Vol. 64, 1954, p. 115.

the incorrect notion that being Jewish is biological in nature, connected only with "birth and blood".[1]

So it seems clear that, even after 60 years of affirmation, the Reform Jewish hope for a universal, open religion, had not penetrated the minds of Reform Jews. What is more, Reform Jews, as a group, were not enthused by Reform Judaism and were, on the whole, inactive if they affiliated at all.

The other interesting statement made at this Conference dealt with the recording of the conversions. A Resolution which read: "Resolved, that a central agency or bureau be established by the CCAR and UAHC wherein all instances of conversion to Judaism by Reform rabbis shall be filed and recorded"[2], was tabled. Therefore, it appears that there had still been no action by the Conference to enforce one portion of the original Resolution on Conversion, passed in 1892.

In 1960, the Recording Secretary presented a Resolution on the Conversion Certificate. The resolution, which passed, urged that there be one approved Conversion Certificate, which would be printed in duplicate, so that the officiating Rabbi could keep a record of his conversions.

There was also a discussion on how best to instruct the ger. This was a basic discussion which emphasized what was

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1. Ibid., p. 116.

2. Ibid., p. 107.

being done, as opposed to what should be done for the ger[1]

In 1974, two recommendations dealing with Conversion were approved. One stated that "a central office for recording conversions will be established"[2] The other stated that:

> "the Rabbi (shall) acquaint the candidate for conversion with the halakhic significance of brit milah, tipat dam, and mikvah, so that the candidate may determine whether he or she wishes to comply with these traditional requirements; and that a 'family-adoption' program be established in congregations in order to facilitate the convert's feeling of acceptance into Judaism and Jewish life."[3]

It appears that, during the 81 years it took to fully establish the provisions of the original Resolution on Conversion, the impact of the decision had weakened. For while the movement did not recommend that any of these rituals be performed, it did recommend that these practices be explained and offered to the convert. This alone represents a significant change from its past position.

At this same Conference, the Report of the Committee on the Unaffiliated issued its statement on the policy of the Conference with regard to conversion procedures. This policy, like the report given in 1960, contained all of the practical details which a rabbi should follow in preparing a candidate for conversion.

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1. CCAR Yearbook, Vol. 70, 1960, p. 139.
2. CCAR Yearbook, Vol. 83, 1973, p. 19.
3. Ibid.

The report dealt with the initial interview, the preparation for conversion and study, and the procedures for conversion. Once again, the procedures section suggested that the rabbi acquaint the candidate with the traditional rites connected with conversion, including circumcision and the mikvah, and inform him of the significance of these procedures.

From this, it appears as though the practice of the movement had continued to move back towards a more traditional conception of the process of conversion. The reasons for this move are not stated. However, the desire to have Reform converts accepted by the State of Israel, and to a lesser extent by the other branches of Judaism, as well as the desire to elevate the sanctity of the conversion process, undoubtedly all had an effect on this shift in practice.

That same year, Rabbi Cyrus Weiler delivered a paper to the Conference. In it he quoted Professor Wacholder of Hebrew Union College, who said: "It (milah and tebhilah), would bring the Reform minhag closer to the practices of k'lal Israel in a significant way, adding at the same time, much needed symbolism to the service."[1]

Rabbi Weiler also stated that the American Reform movement should consider a change in the officiation of the conversion to the style of Great Britain and Canada, which

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1. Cyrus Weiler, "Who is a Jew", CCAR Yearbook, Vol. 83, 1973, p. 184.

use a Beit Din. This, in effect, would be a return to the originally adopted method of conversion, whereby three rabbis all signed the Certificate.[1]

Rabbi Weiler concluded his paper by stating:

> "I do not advocate the more traditional procedure in order to please the Orthodox. The argument is always used that even if we adopt the traditional method, the Orthodox will not accept our converts. But what matters is that the common sense of the general Jewish community will prevail; they will sigh with relief and bless us for it."[2]

He tried to express his belief that these changes were not only good for the soul of the Jewish people, but also good for the American Reform movement. This point of view, while it is not the official outlook of the movement, seems to be the exact opposite of the ideology which the movement had expressed at the end of the 19th Century. The official policy of the movement might not have changed, but its outlook, as well as its actions had changed dramatically.

In 1975, the Committee on Conversion presented the outcome of its research on various questions with regard to conversion. To the question of whether the movement should be involved in active proselytizing, they found that "the overwhelming sentiment is in opposition to such a campaign"[3]. To the question, should there be new conversion

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1. Ibid., p. 185.

2. Ibid., p. 186.

3. CCAR Yearbook, Vol. 85, 1975, p. 32.

ceremonies, they found the general feeling that there was a need for several new ceremonies. And to the question concerning minimum standards for conversion, there was no agreement at all.[1]

Many noted that the Conference had passed guidelines in 1962 and 1973, but felt that this should be as far as the Conference should go. Once again, the fear of losing individual autonomy was enough to keep the movement from setting standards in an area where they are needed.

The following year, among other decisions made by the Committee on Conversion, was "a decision to prepare a ceremony for conversion which could be used at a mikveh"[2].

This decision represented a breakthrough for the Conference, for while the practices of the Conference had moved closer to the traditional practices, the official position of the movement had not reflected this shift. Yet, with the decision to put a conversion ceremony for use at a mikveh into a Reform manual, the ideology of the movement had begun to reflect the actual position of its members.

In 1979, the Conference heard a paper on the question of minimal standards for conversion in American Reform Judaism by Rabbi Dow Marmur, of the Rabbinic Society of Great Britain.

In this paper, Rabbi Marmur dealt directly with the

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1. Ibid.

2. CCAR Yearbook, Vol. 86, 1976, p. 33.

issue of autonomy for the rabbi. He said:

> "But what about the autonomy of the Reform rabbi? Will not all the halachic considerations, coupled with an allegiance to a central Beit Din, curb the initiative and authority of the individual rabbi? That is, indeed, an important issue, but most of my colleagues and I do not believe that we have the right to exercise that individual autonomy, if it is to the detriment of the convert, and takes place at the expense of the prospect of his integration into the wider community."[1]

Rabbi Marmur concluded by asking the movement to create minimum standards for conversion, and especially to consider the following three factors. First, in order to remain within the mainstream of Jewish life, the movement should use the established halakhic criteria as its starting point. Second, attention should be paid to the symbolism and structure of the ceremony, as articulated by the exponents of anthropology and sociology. And third, the movement should do what it can to preserve the unity of the Jewish people.[2]

In a response to this paper Rabbi Samuel Karff, made the point that:

> "adult circumcision is psychologically a 'heavy' procedure, which for many a modern sensibility engenders critical anxiety without offering a meaningful, positive symbol of what is central to a mature adult's embrace of Judaism. The mikveh and its customary day to day association with the concept of ritual purity is totally alien to our style of Jewish life. Most of us, therefore, would not feel comfortable

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1. Dow Marmur, "The Question of Ishut: Should There Be Minimal Standards For Conversion In Reform Judaism?", CCAR Yearbook, Vol. 89, 1979, p. 151.

2. Ibid., p. 155.

> imposing it as a condition for someone entering our covenant. I suspect the majority of American Jews would share this judgment of both the ritual bath and adult circumcision."[1]

Thus, Rabbi Karff believed that the policy of the Conference continued to represent the ideals of the Reform Jew, and the Reform rabbi. In addition, the establishment of a Reform Beit Din would not in any way change the Orthodox establishment's opinion of the movement, its converts, or its practices in general. Therefore, there is no reason for the movement to change its position.[2]

There was another paper delivered at the Conference in 1979, which also had some relevance to this topic. It was delivered by Rabbi Richard Hirsch, of the World Union for Progressive Judaism. He said:

> "The conflict is between autonomy and that very vague, indefinable, intangible, but nevertheless very real perception of k'lal yisrael. The question is not, will the Orthodox rabbinate recognize us, but will the rest of the Jewish world recognize us? Will the secular Jew consider us authentic? And most important of all, will we, in this new era of peoplehood, consider ourselves authentic? That is the ultimate question."[3]

The current status of the American Reform movement's position on the issue of conversion, is still not clear. The movement is still represented by the one Resolution made on the subject, at the 3rd Conference in 1892. While this

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1. CCAR Yearbook, Vol. 89, 1979, p. 158.

2. Ibid., p. 155.

3. Ibid., p. 169.

Resolution still largely conforms with the current ideological position of the Movement, it is clear that other influences have had an impact on the movement of today as well.

One area in which outside influences have already effected the official position of the movement is conversion of children. Due to the great changes which occurred in the movement's position on this matter shortly after 1980, this subject has been placed in a separate section.

CONVERSION OF CHILDREN

The issue of the conversion of children has been of great importance to the American Reform movement. This is due, in part, to the high incidence of mixed marriage, and in part, to the acceptance of families with only one Jewish parent into Reform congregations. As a result of this situation, as well as the situation of adoption, which has increased of late, the American Reform movement went on record very early, as to its stand on conversion of children.

In 1919, at the 30th Conference of the C.C.A.R. a responsum was issued which dealt with the religion of a child of a mixed marriage. The responsa stated:

> "The Talmud (Kid. 68b; Yeb. 23) and the Shulhan Arukh (Ch. 44) you correctly refer to are certainly in force, and consequently the child of a non-Jew has its character determined by the mother. The Christian wife of your member should, therefore, be persuaded ...to become a Jewess in order to have her expected child born as a Jew. Of course,

> when raised as a Jew the child could afterwards through Confirmation be adopted into the Jewish fold like any proselyte."[1]

This responsum held, for the first time, that the Reform position on the status of children born of a non-Jewish mother follows the Jewish tradition. This means that this child would not be born Jewish. However, the responsum continues, and explains that, if the child is raised as a Jew, the child could "be adopted", or be converted into Judaism, through the Confirmation ceremony.

The basis for this conclusion is the Resolution of the C.C.A.R. on Conversion. Based on this Resolution, there are no ceremonial rites required for conversion - any conversion. This means that the Reform movement bases its decision to convert a candidate solely on his/her knowledge and attachment to Judaism and the Jewish people.

It is clear that a child which was brought up in a Jewish temple, attended Jewish religious school, and lived in a Jewish home environment, would certainly qualify as a candidate for conversion.

The suggestion that the conversion of the child can take place in conjunction with the Confirmation ceremony, is, in actuality, not different from the traditional procedure for the acceptance of a child convert. The only difference between them is that, according to the traditional practice, the 'conversion' took place in conjunction with

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1. CCAR Yearbook, Vol. 29, 1919, p. 76.

the Bar Mitzvah.

The Reform movement's decision to tie the conversion in with Confirmation was due to the fact that Confirmation had become the ceremony of choice within the movement, and at that time the Bar Mitzvah ceremony was much less common.

The opinion expressed in this responsum was confirmed in 1947. The question of child converts came up in the Report on Mixed Marriage and Intermarriage. The report stated: "In no case is a child considered to become automatically Jewish by the conversion of its parents. A child must be actually converted."[1]

The question of what was meant by 'actually converted' was also answered in the report. It stated:

> "Gentile Children. This posed no difficulty under the traditional procedure because the child could be circumcised and/or given ritual bath, but with us where not the ritual elements of conversion but only the ethical and intellectual are considered prerequisite, how are we able to convert young children or even infants? ...With regard to infants, the declaration of the parents to raise them as Jews shall be deemed as sufficient for conversion. ...the child may, for the sake of impressive formality, be recorded in the Cradle-Roll of the religious school and thus be considered converted.
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> Children of religious school age should likewise not be required to undergo a special ceremony of conversion but should receive instruction as regular students in the school. The ceremony of Confirmation at the end of the school course shall be considered in lieu of a conversion ceremony.
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> Children older than confirmation age should

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1. CCAR Yearbook, Vol. 57, 1947, p. 169.

not be converted without their own consent."[1]

This report established that the process of conversion for a child would be through his/her assimilation into the Jewish community, and the learning of the teachings of Judaism. This process was to be fulfilled without the need for any other formal requirements.

In 1956, Rabbi Solomon Freehof issued his responsum on the status of a gentile born child adopted into a Jewish family. He confirmed that the previously mentioned procedures were still the accepted Reform Jewish method. His only addition was with regards to circumcision. He stated:

> "Naturally, an adopted boy would be circumcised. Generally most boys are circumcised now. In that case, a more observant family might want to take the drop of Blood of the Covenant."[2]

Thus, the belief in the need to inform the parents of the traditional requirements for conversion, had an early appearance in the history of the movement.

In 1959, in a paper by Rabbi Eichhorn, the issue of the child convert is brought up. Rabbi Eichhorn questions a certain rabbi's rationale in telling a child shortly before his Bar Mitzvah that he will not officiate at the ceremony because he has discovered that his father is not Jewish.[3]

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1. CCAR Yearbook, Vol. 57, 1947, p. 170.

2. Walter Jacob, American Reform Responsa: Collected Responsa of the CCAR 1889-1983, New York: Central Conference of American Rabbis, 1983, p. 202.

3. CCAR Yearbook, Vol. 69, 1959, p. 241.

As is clearly indicated by the previous sources, this situation is inappropriate in the Reform setting. This is not because the rabbi should have more tact, but because of the basis of the movement's position on conversion for children. The child referred to in this scenario should be seen by all Reform rabbis as a candidate for conversion. And the culmination of that process would be the very ceremony which had just been refused to the child.

The fact that this issue could be brought up in a paper at the Conference indicates that not all of the members of the Conference understood the position of the movement for the conversion of children.

The issue did not truly reappear until the year 1979. In the Report of the Committee on Conversion, it was stated that: "The issue of the children of a Jewish father and a non-Jewish mother has been raised. Are we to consider such children to have equal status with those born of a Jewish mother and non-Jewish father?"

While technically this question is asking for a decision on a matter which was not yet discussed by the Conference, in reality, the answer was already given by the movement's consistent position on the process of conversion for a child.

Even though the child of a non-Jewish mother and a Jewish father, could be considered to be in a state of flux, the treatment of this child by all concerned, according to the position of the Conference, should be no different from

that of any other child. Therefore, this question, like the one in 1959, did not reflect a clear understanding of the Conference's position on the process of conversion for children.

In 1980, the Report of the Committee on Conversion included portions of the Responsa of Solomon Freehof which was cited above. However, immediately following that citation the Committee presented a Resolution which stated in part:

> "Now, we further affirm that, in the case where the father is Jewish and the mother is not, or where the converse obtains, the identity of the child will be determined by his or her participating in those educational activities and rites of Jewish life which lead to Bar/Bat Mitzvah and/or Confirmation. Such a child is Jewish by virtue of the family's intention to rear the child as a Jew."[1]

While this Resolution was not passed at this Conference, it is still of great importance. However, its importance should not be viewed in connection with the Reform movement's position on the conversion of children.

This Resolution proposes no changes in the status of a child of a non-Jewish mother which have not already been granted by the Conference position on conversion. This Resolution, in truth, only effects the child of a Jewish mother and a non-Jewish father, by offering a definition of Jew which is confined solely to the "virtue of the family's intention to rear the child as a Jew."

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1. CCAR Yearbook, Vol. 90, 1980, p. 37.

It appears as though this Resolution will create a situation in which all children born of one Jewish parent, must be viewed as non-Jews. Therefore, they must all undergo the conversion process, which was first spelled out in 1919.

CONCLUSION

The study of the laws of personal status in the American Reform movement in many ways reflects the development of the movement as a whole. In the early years of the movement, there were many major discussions on the issues of Marriage, Mixed Marriage, Divorce and Conversion. In some cases these discussions led to Resolutions. In others, the discussions served only to express the sentiment of the movement. But in both cases, these discussions became part of a public record, which served to define the movement to the outside world.

One of the problems which becomes apparent in a study of these discussions, however, is the discomfort which the movement must have felt towards defining itself. The major factor in this discomfort was, and continues to be, the concern which the movement feels toward protecting the autonomy of its membership. It was this discomfort which led to the reluctance of the movement to take many firm stands on the issues which it raised.

The reason for this is clear. Taking a stand creates a barrier between individuals of opposing views, and thus it presents the very real possibility of causing a split in the movement. This possibility is made even greater when the issues being decided are questions of personal status.

We see the truth of this not only in the history of the C.C.A.R., but also today. When the State of Israel proposed

changing its Law of Return, by passing a law to decide "who is a Jew", the American Jewish community responded with all of its might.

It would be nice to believe that this was because all American Jews are committed Jews, but a more realistic analysis of the response would suggest that no one likes to be defined by others. Everyone knows who they are, and everyone is insulted by the attempts of outsiders to decide the question for them.

This very same feeling is evoked when the C.C.A.R. brings up the issues of personal status. All rabbis, and all Jews, know who they are. It is not up to a movement to define "who is a Jew" for them. Yet, it is also clear that there must be some sort of objective criteria which a movement can use to identify its members. Unfortunately, the only objective criteria which all Reform rabbis and Jews will accept is that they are not Orthodox.

The C.C.A.R. expressed this point very clearly at its first three conventions. There, they debated the merits of continuing to insist upon the rite of circumcision for adult converts. They broke with the traditional practice of Judaism. They defined themselves.

They decided that American Judaism was not going to be an updated Orthodox Judaism. Instead, it would consider the merits of Jewish ritual, taking into account its historic value, utilizing scientific evaluation, and even considering its tastefulness to modern sensibilities. Then it would

make a reasonable and rational decision.

The problem with the use of this method to define the movement is that it only allows a negative definition. The reason is that this approach uses the traditional beliefs of Judaism as its basis or starting point.

After accepting the past validity of a practice within Judaism, the movement discusses its viability for the future. This discussion can only lead to two possibilities. Either the movement will decide to continue the practice, or it will decide against it. If it decides to continue a practice, it has not made a change in the traditional Jewish practice. It has only decided to maintain an older practice. However, if it decides against a practice, then it has made a change, it has defined itself.

The major drawback of this approach is that it can never force the movement to make a new, positive statement. This explains why there are so few positive statements of belief within the movement. This can be illustrated by reviewing some of the positions which the movement has taken over the years. For example: The C.C.A.R. does not believe in circumcision for converts; The C.C.A.R. does not believe in the get; The C.C.A.R. does not believe in halitzah. It is this type of statement which makes up the majority of the Resolutions of the Conference on the laws of personal status.

The only significant Resolution which is not of this variety is the Conference's statements on Mixed Marriage.

In that area the Conference has tried to make a positive statement about itself. It has attempted to say "we do not officiate at mixed marriages".

However, it is this very issue which has been the most hotly contested of all of the questions of personal status. This same question has been raised on three separate occasions. Yet, while the Conference has remained firm in its official statement all three times, Conference members have felt free to act according to their own beliefs, regardless of the official position.

In addition to this, the Conference has never been prepared to take any type of action against members who have disregarded its official position. Thus, in spite of the Resolution, it cannot be said that the movement has ever successfully defined itself, at least with regard to the laws of personal status.

I do not believe that this would have happened if the Central Conference of American Rabbis had achieved one of the main goals of its founders. From 1890 until 1907, there was a major effort on the part of many members of the Conference to form a Synod, which would define a modern American Judaism. This point is clearly established in a Rabbinic Thesis by Mordechai Podet.[1]

It was this drive and energy which went into the deci-

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1. Mordechai Podet, The Impact of Historical Forces on the Intellectual Outlook of the Central Conference of American Rabbis from 1889 to 1910, Unpublished Rabbinic Thesis, Hebrew Union College - Jewish Institute of Religion, 1951.

sion of the Conference to accept all previous Reform Resolutions. It also helped the Conference to formulate its position on conversion, as well as its positions on divorce marriage and mixed marriage.

However, this aim was never achieved. This can be traced to two primary reasons. First, the issue of the autonomy of the rabbi. And second, the incredible transition which the American Jewish community underwent due to the large numbers of Russian Jewish immigrants.[1]

American Judaism had changed before the American Jewish leaders had the chance to define it. Once that change had occurred, it placed the Conference in a very difficult position.

The Conference did not want to create a separate branch of Judaism; they wanted to update all of Judaism. But because of the changing demographics, the Reform movement had gone from being the leader of American Jewry to a minority movement. If it defined itself, through a Synod, it ran the risk of becoming a small Jewish sect. This was not what the Reform leaders had in mind.

Due to this combination of factors, there was no Synod. And because there was no Synod, no unified approach to the laws of personal status emerged. The issues were decided one at a time. This can be clearly seen by a review of the actions of the Conference within their historical framework.

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1. Ibid.

From 1890 until 1893, the major issue of personal status before the Conference was conversion. This led to a Resolution on the topic in 1893. However, it was not until 1908 that the Conference turned from this question to debate a new issue, namely, mixed marriage.

In 1908 and 1909 the Conference debated the merits of taking a stand on mixed marriage. These discussions also led to a Resolution.

In 1910, although the Conference was still debating its decision on Conversion, the issues of marriage and divorce emerged. From 1913 to 1915, marriage and divorce occupied the center of attention of the Conference. There were many discussions, and quite a number of scholarly papers written on the topics.

These discussions led to the formation of a Commission whose aim was to study the laws, so that the Conference could take a unified stand on the issues of marriage and divorce. There was a desire to have a singular, uniform position on this area.

The Committee met from 1916 until 1924. In 1924 the Chairman of the Commission made this statement.

> "Having pursued its investigations with the original purpose of the Commission in mind, your committee could not but be impressed with the inadequate character of the material gathered, and with its evident lack of harmony in aim, method and result."[1]

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1. CCAR Yearbook, Vol. 34, 1924, p. 115.

From 1924 until the 1980's, there was no unified approach to any of the issues. Instead, the subjects were discussed as they came up, one at a time. This is even true of the reaffirmation of the Conference's position on mixed marriage in 1947 and 1973. They were not a part of any unified approach to the laws of personal status.

Thus, the result of the Commission's inability to come up with even a guideline for the Conference to follow, was a disorganized, scattered approach to the laws. This was clearly noted by Rabbi Selwyn Ruslander in 1959, in his paper regarding a guide for Reform Judaism. He stated:

> "Neither this Conference nor the U.A.H.C. has what is commonly considered to be authority. This Conference, for example, has passed a resolution prohibiting a rabbi officiating at an intermarriage. The authority of the Conference has been breached frequently. A study of Conference records will indicate further that the Conference itself has seldom wanted to assume authority even over its own membership.
>
> There is no normative philosophical and theological climate in the present Reform movement.
>
> We are not in a position to codify the responsa which we have already issued if we are trying to lead by reason of the inner consistency of this responsa. It has long been pointed out that in our responsa we reject Halacha in some areas, and, at other times, if it suits our convenience, we appeal to the authority of Halacha for a support.
>
> Finally, we have already commented on the <u>hephkerut</u> of procedures and practices which are present in Reform congregations, which indicate that there are certainly too few normative practices and procedures to be codified which would be acceptable because they are already in general use.
>
> What I am saying is that we don't meet those essential conditions which, historically, at least, are necessary for the creation of

guides or of codes."[1]

Although Rabbi Ruslander establishes the fact that the movement is in no position to establish guidelines, there were several calls for them within the Conference. In 1941, Rabbi Freehof expressed his belief that guidelines for the laws of personal status were needed.[2] Eugene Borowitz's paper "Do the New Trends Represent an Evolution of Reform?" was quoted in 1954, in connection with the need for a Reform Code or Guide.[3] And in 1973, Rabbi Brenner made the clearest statement on the need for Guidelines on the laws of Personal Status, in the debate on the Mixed Marriage Resolution. He stated:

> "What I am driving at is that these are interrelated issues: conversion, intermarriage, Jewish identity, divorce, illegitimacy, and so on. And it is folly to decide upon them separately and out of context, as we are about to do in this resolution."[4]

In spite of these calls, a uniform approach to the laws of personal status has never occurred. This fact is clearly demonstrated by the four separate chapters found within this thesis. There was no way to combine these four subjects into one clear statement of principle on the subject of personal status, as a clear statement was never made by the

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1. Selwyn D. Ruslander, "A Guide for Reform Judaisms", CCAR Yearbook, Vol. 69, 1959, p. 265.

2. Solomon B. Freehof, "A Code of Ceremonial and Ritual Practice", CCAR Yearbook, Vol. 51, 1941, p. 295.

3. CCAR Yearbook, Vol. 64. 1954, p. 125.

4. CCAR Yearbook, Vol. 83, 1973, p. 82.

American Reform movement.

The one question which remains unanswered is, should the Central Conference of American Rabbis continue to answer questions of personal status in this manner, or is it time for a new approach?

The problems with the current approach to the laws of personal status are apparent. They have been dealt with on an individual basis, and have led to a Conference policy which is largely unknown, even by the members of the Conference.

This was evident in 1937, when Rabbi Mann circulated a questionnaire which he hoped would change the Conference's position on mixed marriage. However, when Rabbi Mann appeared at the Conference to deliver the results of his research, he revealed that the questionnaire was inaccurate in its statement of the Conference position. Thus, the stand which he hoped the Conference would adopt was the stand which it already had.

I believe that it was this same lack of information which caused the Conference to adopt its position on Patrilineal descent. If the Conference members had truly been knowledgeable about their position on conversion, the whole discussion would not have been necessary*.

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* It must be noted that the Conference position on Patrilineal descent was encouaged by the President of the Union of American Hebrew Congregations, Dr. Alexander Schindler. The Conference's position may have been effected as much

The second problem of this approach to the laws of personal status is that it has removed the issues of marriage and divorce from rabbinic supervision. The Conference position on divorce has been to follow the rulings of the civil courts. This has occurred in spite of the attempts by the Conference to maintain some sort of rabbinic "veto" over the practice.

As was seen earlier, the rabbinic "veto" was largely theoretical*. This was because no procedure was ever established for the treatment of a couple who, after being divorced by civil law, were found not to have had valid Jewish grounds for the divorce. This problem would result in a situation where the couple would be "chained together", so to speak. After all, Reform cannot undo what the civil courts have done, and in any case, it does not regard itself as capable of issuing a divorce.

With regard to the issue of marriage, the Conference position has also been to follow the laws of the land. This has been the practice for the issue of Consanguinity, although the Conference has never officially endorsed it.

It is also the basis which some rabbis have used to justify their officiation at mixed marriages. They claim that they are officials of the State, and that they will

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...Continued...

by the efforts of Dr. Schindler, as it was from a lack of knowledge on the part of its members.

* This matter was discussed in the chapter on Divorce, p. 116.

officiate at any marriage which the State permits. This position can be seen as a complete renouncement of rabbinic authority. It asserts that the basis for the authority of a rabbi with regard to marriage comes solely from the State.

This is not the official position of the Conference on marriage. However, the Conference does not have an official position on the issue. Thus, this position must be accepted as a valid stand for any Reform rabbi.

As a result of these problematic situations, the Conference should consider a unified approach to the issues of personal status. I believe that there is only one true problem preventing the Conference from taking this step, the issue of Jewish Unity.

It is clear that, from the very beginning of the Central Conference of American Rabbis, there has been an attempt to maintain a link to the totality of the Jewish people. Isaac Mayer Wise, at the first convention, did not speak of creating a new wing of Judaism, but rather of creating an American Judaism.

The Conference believed that it would form the basis of Judaism in the 20th century. It believed in progressive revelation. It believed that Judaism has always evolved, and that they represented its modern form.

In spite of this, it must be clear that, whatever the desires of the founders of the movement, Judaism today has two clearly defined branches. One branch believes in the divinity of the Torah, the Mishnah and the Talmud, while the

other rejects this belief, to varying degrees. There cannot be a full reconciliation between the representatives of these two approaches. However, there can be cooperation between them.

The need for cooperation is nowhere more apparent than in the area of personal status. For personal status, more than any other matter, defines the issue of "who is a Jew". And it is this question which is of the most concern to all Jews today.

The American Reform movement has, through its Resolutions, Responsa, and most of all, through its practice, given new definitions to the question of who is a Jew. This is most apparent in the decisions regarding conversion, but it is also seen in the movement's stand on marriage and divorce.

The stands of the movement on both marriage and divorce have created a problem within the Orthodox branch of Judaism. This is due to the fact that incomplete divorces, and marriages which violate the laws of consanguinity, can both lead to children with the status of mamzer. And according to the position of the Orthodox branch of Judaism, these children are prohibited from marrying other Jews.

If the American Reform movement wants to participate in a dialogue to resolve these issues, it seems clear that it must first decide what its stand on these matters really is. This is necessary not only for reaching a compromise with the Orthodox branch of Judaism, but also for establishing an

internal framework for the movement itself.

It is true that decisions in this area could cause a split in the Reform movement. That is a risk the Conference should be willing to take. By establishing its position on the laws of personal status, the Conference would, for the first time, define itself in a positive way. It would provide a foundation for the movement which has grown up.

The American Reform movement does not need to fear for its existence today. It is the largest branch of American Jewry. It is recognized by all Jews, throughout the world.

By stating its beliefs on the laws of personal status, the American Reform movement will not split up the Jewish world. It has already been split. However, it would provide a backbone for itself, and it would provide a means to work toward a compromise with the Orthodox branch of Judaism. It would serve to strengthen the foundation of Jewish Unity.

This decision would not be without risk. Some rabbis, and some congregations would threaten to leave the movement. But this should not prevent us.

A similar situation existed in 1908, when the Conference was first debating the issue of mixed marriage. Rabbi Mendel Silber spoke in defense of the recommendation that the Conference take a stand against mixed marriage. He said:

> "Some may claim, as was done by a townsman of mine some time ago, that we should not miss the opportunity of impressing

> the Christian by our liberalism, since the intermarriage would take place whether or not we lend our services. But such a mode of reasoning is nothing short of folly. Either we Rabbis stand for something or we don't."[1]

This same situation is before us today. The American Reform movement should make a stand. It should firmly and proudly say, "we stand for something".

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1. Mendel Sliber, "Intermarriage", CCAR Yearbook, Vol. 18, 1908, p. 274.

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