The Use of the Halacha Dealing with Marriage in the Reform Movement as Seen through the Reform Responsa on Marriage

by

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The primary concern of this thesis is the examination of the halacha on marriage, as it was used in the Reform Movement in the United States. Its purpose is to discover any trends, chronologically speaking, found in the Movement regarding the use of the traditional codes and authorities.

The first chapter of the thesis deals with the responsa written from 1913 until 1920. By examining the responsa on marriage during this period, it has been the attempt of this writer to show how the halacha was used by these early Reform authorities. This chapter deals primarily with the works of Kaufman Kohler, though the works of D. Neumark and Abram Simon are included as well. The period showed little regard for the halacha.

In addition to an examination of the responsa of this period, this thesis digresses a small degree to look at the work done by the Commission on Laws of Marriage and Divorce. This discussion explores the effect of the Reform responsa on the Commission and the regard of the Commission for the halacha in order to feel the pulse of the period.

The second chapter of the thesis deals with the responsa written by Reform authorities between the years 1920 and 1954. This section examines primarily the works of Israel Bettan, Jacob Lauterbach, and to a small degree, Solomon B. Freehof. This chapter shows a trend toward

change in the attitude taken to the halacha. We see an increasing inclination to cite the halacha more extensively in these later authors, though this trend does not necessarily mean that the decisions reached in the responsa reflected the change in attitude.

The third chapter is concerned with the responsa on marriage written after 1955. Though this period saw some published work in the area of marriage by Israel Bettan, the work in the area of marriage was done primarily by Solomon B. Freehof. This chapter shows that the modern period tends to cite the traditional literature extensively, following the halacha when possible.

The conclusion attempts to tie the three periods together, giving a picture of the trends found in the use of the halacha in the American Reform responsa on marriage. It points to the trends, as well as to the fact that little has changed in the nature of the regard for the binding quality of the halacha, though each period saw an increase in the use of it. Finally, some implications for the future of the halacha in Reform responsa are made in conjunction with an attempt to analyze why Reform attitudes toward the halacha changed in the three periods.

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CHAPTER I

This study is not designed to be either an attempt to collect halachic passages concerning marriage, nor is it an attempt to simply collect all of the responsa written by members of the American Reform movement which deal with Reform attitudes toward the Jewish wedding and marriage. Rather, this thesis has as its primary concern the examination of the extent to which those who have engaged in Reform Responsa have made use of the halacha and the care taken to present a fair reflection of the thought and spirit expressed by the Jewish codes and talmudic literature. The extent to which the decisions handed down in the Reform Responsa reflect an honest application of traditional halacha also represent a primary objective in this study. An examination of the possible existence of a progression or trend in the use of the halacha by American Reform rabbis will also be of concern to this study.

One might have speculated that a movement such as Reform Judaism would have ignored the responsa type of literature. Such speculation might arise from the fact that Reform Judaism rejects the legal authority of the codes and the traditional responsa literature. Yet, we find that this is not the case. "The Central Conference of American Rabbis... has had a Responsa committee almost from its very beginning in 1889."[1] Solomon B. Freehof asserts that this committee has, in general, used

the responsa, "as a general guide rather than as authoritative law."[2] By the nature of the movement, this must be true, for the mechanism with which the law is laid down is missing within Reform Judaism.

Though Reform responsa lack legal authority, they nonetheless reflect the feelings of leading reform scholars at a given time in history, and furthermore, they reflect the changing moods of the movement.

The earliest Reform Responsa dealing with marriage appeared in the "Report of the Committee on Responsa," in the 1913 edition of the Yearbook of the Central Conference of American Rabbis.[3] The responsum deals with days on which weddings may not be performed.

In this responsum, K. Kohler and D. Neumark deal first with the "omer weeks." The Shulchan Aruch (אורח חיים 493), is correctly cited with the reason given there as the memorial of the death of the 12,000 pupils of Rabbi Akiba who died during these weeks.[4] Kohler and Neumark are somewhat inexact in that they did not note that only the first thirty-three days of the counting of the omer are prohibited for the purpose of marriage and that betrothal (קדושין and נישואין), is permitted during these days. But the fact that the Shulchan Aruch's ruling (which is given as a custom--minhag) is not fully cited is of no concern to the authors of the responsa. They trace custom back to a Scottish tradition of no marriage during the month of May and conclude that this prohibition of marriage, "ought to be denounced as an ancient heathenish superstition."[5] The traditional halacha is totally ignored by the rabbis involved in this responsum, and dismissed on scientific investigation of the origin of the prohibition. No attempt is made to interpret any passage in the code literature as being per-

missive, and therefore, arriving at a decision based upon the Hebrew sources.

The second concern of Kohler and Neumark deals with the prohibition of weddings taking place during the period of the seventeenth day of Tammuz and the ninth of Ab. Again, the responsa correctly cites the Shulchan Aruch, (שו"ע או"ח סי' 551,2), and the Talmud Ye bamoth 43 b, to show the traditional prohibition. Once cited, however, the responsa goes on to say that these prohibitions were, "declared by the Augsburg Synod to have no longer any prohibiting character for us."[6] The responsa concludes, though its author is unhappy, with the fact that even the observance of the day of the ninth of Ab has passed. Thus, no further comment is necessary concerning weddings on that day.[7] Again, the traditional codes were ignored in this responsa and a decision entirely opposite with the Shulchan Aruch is rendered.

The third issue discussed by Kohler and Neumark deals with a "custom found in certain Jewish circles... to have no wedding ceremony performed during the penitential days between Rosh Hashana and Yom Kippur."[7a] In this case, the responsa cites the Babylonian Talmud, Bezah 36 b, to show that only the Yom Tov day itself is prohibited and concludes,

> It seems based on the wrong conception of the penitential Days which are nowhere regarded as gloomy and it is contrary altogether to the Jewish view of marriage, which is a mitzvah-- a sacred command that should not be postponed, except on Sabbath and Holy Days when all judicial or legal actions are forbidden.[8]

In this section of the responsa, Kohler and Neumark confine the basis of their conclusion to the halachic literature and appeal to tradition, which indeed indicates the answer given.

Finally, Kohler and Neumark deal with the question of performing weddings on חול המועד. Once again, Kohler and Neumark correctly cite the talmudic source מועד קטן 8b, as the source for this prohibition and give the reason as אין מערבין שמחה בשמחה there should be no combination of two different festivities. The responsum totally reverses the decision, one which it itself tells is an expressly stated prohibition. The decision is not, in any way, based on halachic justification, but rather the halacha is dismissed with the statement, "Our Reform rabbis never felt that they [the half-holy days] bear a festive character to have the rule applied that there should be no combination of two different festivities..."[9] No evidence is offered to support this claim.

What conclusions may be drawn from this early American Reform Responsa? First of all, we note that the authors have operated in such a matter as to lead one to believe that the exercise of citing the traditional sources was done to educate the reader, but that the traditional halacha played no role whatsoever in the decisions given. Only in one out of four sections of this responsum, the author sees fit to arrive at a decision that can be defended in the halachic literature. In the other three cases, the decisions have ignored halacha totally, giving contrary decision based either on feelings of the rabbis of the times or, in one case, on an official act taken by a former Reform rabbinical synod. One might justifiably conclude that the halacha played only the role of showing

what the traditional law taught, but played no role whatever in the reaching of the decisions set down in this responsum.

In 1914, K. Kohler deals with a question submitted to the Responsa Committee of the Central Conference of American Rabbis. The question, as quoted in the Yearbook asks, "Is it permitted to perform the marriage ceremony of a man who had married before a civil authority the half-sister of his mother, both having had the same father?" The answer given by Kohler was, "Certainly, see Lev. xviii, 13 and xx, 19." Kohler goes on to correctly explain that these passages forbid marriage with an aunt, whether the relationship is on the father's or the mother's side, as incestuous.[10]

The answer given by Kohler is confusing. He goes on to severely criticize the question, for he feels the error made by the questioner implies the idea that just because something is legal in the land it must therefore be legal in Judaism. Kohler does not believe this assumption to be justifiable.

In the light of the discussion which follows, the answer leaves the meaning of "certainly" unclear. It is true that, "the levitical prohibition against a father's or mother's sister is not stated in the Bible in such a way as to permit the conclusion that even a father's or mother's half-sister is also prohibited."[11] This may explain the answer "certainly" as meaning that since the Biblical prohibition does not forbid explicitly the marriage, it is permitted (then why the need for the comment following the decision?). If this be the case, then Kohler totally ignored all of the past Biblical halacha. We find in יומא 54 b of the Babylonian Talmud, "Hence it was stated, 'Thou shalt not uncover the nakedness of

thy father's sister' [Lev. 18:12], implying whether paternal or maternal, and, 'Thou shalt not uncover the nakedness of thy mother's sister,' [Lev. 18:13] implying whether paternal or maternal." This clearly includes the question of half-sister, as does Shulchan Aruch, אבן העזר טו, 15, 16, which prohibits the half-sister as well. In the light of these halachic passages, Kohler's answer, while strictly speaking upholds the law of the Torah, ignores all of the later halacha and is, in fact, contrary to the halacha. Therefore, while Kohler may have been justified in criticizing the question on the grounds of its assumption that Jewish law should not be determined by the law of the secular state, nonetheless, the question was valid, even from one who knows Bible, since the explanation in the codes extends the prohibition beyond the Biblical prohibition. The important fact to note is that once again Kohler ignored the halacha in giving his decision, though he does make use of the Bible alone as a code.

The question of marriage and Reform Jewish attitudes toward the laws of marriage, was not relegated to a minor consideration of the committee on responsa. Throughout the history of the Central Conference of American Rabbis, the question was raised from time to time as a major issue for discussion of the Conference's convention. The first such detailed study of the problems of marriage appears in the Yearbook of the Central Conference of American Rabbis in the form of a paper presented at the 1915 convention. The paper was delivered by Kaufman Kohler and was published in the Yearbook under the title, "The Harmonization of the Jewish and Civil Laws of Marriage and Divorce."[12]

Rabbi Kohler sets the tone of his paper in the beginning, first by showing that "despite the most beautiful ethical teachings contained in the Talmud or the Book of Sira concerning the worth, the hallowing, and enobling of woman..." the rabbinical law did little to elevate the legal status of women as presented in the Bible. To prove his point, he indicates the fact that the Babylonian Talmud, Shavuoth 30 a, asserts that no woman's testimony is valid and that her signature under any legal document is worthless. Without citations, he goes on to say that in marriage, the woman is actually purchased by the wedding ring which acts as the actual purchase price, and once formally purchased can be divorced at her husband's pleasure.[13] He cites the Babylonian Talmud, Sanhedrin 22 b, and asserts from it, "She [the wife] is in the view of the Talmud... not an end in herself, but a vessel, a child bearer."[14] The question of the status of women during the rabbinic period can, of course, be argued from either direction from the sources. A case for the position that marriage among Jews throughout the history as never being simply a business transaction is made by Rabbi K. Kahana in his "The Theory of Marriage in Jewish Law."[15] Nevertheless, Kohler, beginning with what I believe to be the correct view of women during the rabbinic period asserts,

> Enough, we cannot consistantly tolerate practices which have this law oriented view of woman as their basis. We must insist upon the equality of man and woman, especially at the marriage ceremony, and just as the bridegroom gives the ring to the bride to wear as a symbol of union for life, so should the bride hand over to the bridegroom.[16]

To achieve the equality of man and woman, Kohler would make changes in the marriage ceremony, whether or not he has any halachic justification for the changes.

Rabbi Kohler was not so radical as to believe Jewish tradition should be totally abandoned while dealing with the question of Jewish law and marriage. He states, with regard to the marriage formula, that,

> since each religion has its peculiar traditional forms, the modern rabbi ought not to adopt the forms or formulas of any of the Christian Churches and have the bridegroom or the bride use such words as 'With this ring I thee wed' or 'I take thee to be my wedded wife, respectively husband,' but adhere instead to the traditional Jewish formula: 'Be consecrated unto me by the law of God' (and if he wishes he may add,' and according to the sacred custom of Israel')[17]

Rabbi Kohler, in this statement, has suggested a change in the formula which traditionally reads, "Be thou sanctified to me by this ring, according to the law of Moses and Israel [וכו' אות מקודשת לי בטבעת כדת משה וישראל]." The formula suggested by Rabbi Kohler is the one adopted by the Central Conference of American Rabbis in Philadelphia. What is important to note, however, is that a change, in the guise of tradition, is recommended here without any halachic justification for that change. What is expressed by that change is Rabbi Kohler's total rejection of even the notion of the existence of a "law of Moses and Israel," i.e., a rejection of halacha. What replaces the belief in a code is a rough copying of a traditional practice and form. Halacha is ignored; traditional form for something new, is maintained.

Kohler uses the Talmud to move in two directions. We noted above that he cites Sanhedrin to show what a lowly state women are designated in the Rabbinic Period. He cites Mish. Kidushin 1, 1, which states that a woman is acquired (קנין) in three ways, by money (כסף), by written document (שטר), (and) or by the cohabitation act (ביאה) to show that women were treated simply like any other acquired property.[18] Then Rabbi Kohler tries to justify the changes he wishes to introduce within the Talmudic tradition, thereby giving traditional legitimacy to the innovations he wishes to introduce in order to elevate the status of women. He does so by trying to show that the rabbis of the Talmudic period never accentuated the submission of the wife, but, "on the contrary, she was by the ethical teachings of the rabbis ever spoken of as an object of man's esteem and honor."[19] To support this assumption, Kohler mentions tractate Yebamoth 62 b, (which asserts that one should love his wife as he does himself and honor her more than himself) and Baba Meziah 59 a, (which states, "One should always be on his guard not to wound his wife's feelings"), to prove his point. The proofs cited by Rabbi Kohler, of course, do not suggest that changes should be made in the halacha - - they only serve to show that women were to be treated kindly within the traditional law. Yet, it shows that Kohler, the reformer though he may have been, did not want to leave himself open to the charge of creating new practices, and therefore, uses the Talmudic text to show that his attempt to make woman man's equal really existed fifteen hundred years earlier. This, he seems to feel, places him in the tradition, while, in fact, it does not.

Kohler's paper now moves on to its major thesis, the harmonization of Jewish and civil marriage laws. He first points out that nineteen out of twenty-two states and territories prohibit the marriage of an uncle to a niece as well as the marriage of an aunt to a nephew. Though the Mosaic law has no prohibition of the former case, and for that matter, no prohibition concerning the marriage of cousins which the same states so prohibit, Kohler asserts,

> it is self-evident that marriages prohibited by the law of the state are prohibited to us also from the Jewish point of view . . . Consequently, no rabbi should go out of his State where consanguineous marriages are prohibited to officiate in another State at the marriage of a cousin in order to evade the law of his own State.[20]

Though Kohler does not explicitly state so, he is apparently dealing with the Talmudic principle דינא דמלכותא דינא in coming to the decision stated above. In so doing he has, without any explicit reason being given, defined מלכותא as the State in which the rabbi resides. He does not allow, in this case, the use of any type of legal fiction.

Rabbi Kohler now moves on to discuss the question of levirate marriage. He points out that through history, the "original obligations to marry the brother's widow was ... more and more limited by all kinds of obstacles the rabbis could discover."[21] He goes on to quote the Tosephta, Yebamoth vi, 9, and Talmud Yebamoth 39 b, to show the marriage had to be for the duty of filling the legal obligation alone, not because the brother finds beauty or wealth as an attraction to his

deceased brother's wife. That Tosephta passage does, indeed, equate the marrying of a deceased brother's widow for her beauty or wealth with an act of fornication, the issue of which is near to bastardy. He then cites the Mishna, Bekoroth 1:7, to show that already in the time of the Mishna, levirate marriage was thought of as distasteful and that the ceremony of halizah is preferred. Rabbi Kohler quotes the passage,

> 'In the former days the levirate marriage was considered as preferable to the Halizah, because the marriage was entered into with the sole purpose of fulfilling the law, but nowadays, when this pure motive no longer prevails, the Halizah is preferable.'[22]

Though the translation is a rather free one, it nevertheless correctly expresses the meaning of the text which reads, "מצות יבום קודמת חליצה. בראשונה, שהיו מתכוונים לשם מצוה. ועכשיו, שאין מתכוונים לשם מצוה אמרו: מצות חליצה קודמת למצות יבום."

It seems that the mishnaic author felt that the halizah ceremony should not be performed over the levirate marriage, not because he disagreed with the Biblical injunction, but rather because of the misuse of the practice, especially in light of Tosaphot Yebamoth 39 b, the passage cited above.

Rabbi Kohler readily admits that the codes later preferred the levirate marriage to the act of halizah (though he does not give any citations). He feels that halizah became preferable finally only after Rabbenu Gershom's interdict (tenth century), for the occidental Jewry. The interdict deals with polygamy which is forbidden under the

threat of Herem. Kohler does not take into consideration the disagreement that exists between Joseph Caro and Moses Isserles in Shulchan Aruch Eben Ha-Ezer 1, 10. Caro exempts the levirate situation from the herem while Isserles says that under Rabbenu Gershom's interdict and conditions, halizah is required. In the codes, the question is debatable, but settled in favor of Haliza.

But whether or not the codes approve of Levirate marriage is really unimportant to Rabbi Kohler's paper. He quickly makes it clear that his decision with regard to a Reform opinion on levirate will not be grounded in the tradition or the halachic codes. He states, "unless we restore the Mosaic law enjoining the levirate marriage as an imperative [My underlining] duty and insist on the halizah act in case of refusal, the marriage of the deceased brother's wife remains under all conditions forbidden according to the Mosaic-Talmudic law."[23] He goes on to tell us that we must accept the law under all conditions or "We consult our own religious and moral consciousness" which would lead us to the realization that there is no distinction between the relationship of the deceased brother's wife to the brother and the deceased wife's sister to the brother-in-law (a marriage which is permitted without question). The basis of the argument prohibiting the marriage of a deceased brother who has offspring is that a man and wife are to be of one flesh - i.e., the brother's wife would become as a sister to the living brother and such a marriage would be deemed incestuous. This, Kohler asserts, applies equally to both situations.[24]

Concluding his remarks on prohibited marriages and the question of levirate marriage, Rabbi Kohler states,

> It seems to me that we should, after due consideration of all questions involved, amplify the list of prohibited marriages as Soferim did and include the marriage of the niece and that of cousins as blood relations; and, on the other hand, declare that from our modern viewpoint the marriage of the deceased brother's wife is no more incestuous than is the marriage of the deceased wife's sister.[25]

This decision is obviously not based on the halacha. In fact, it is a decision which totally contradicts the halacha, in spite of the amount of time Rabbi Kohler devotes to a surface examination of the laws involved. He sums up his attitude toward the use of the codes by stating, "We need not feel bound by the letter of the law, but should rather penetrate into the spirit of the same."[26] Kohler's purpose was to bring Jewish law into harmony with civil law, not to explore the traditional sources for a position based in halacha. The halacha he did cite serves the purpose of showing that through the ages, the legal positions on various subjects has changed. This is apparently the "spirit" of the law to which he is appealing. What he fails to mention is that his disagreement with the law is biased against the laws themselves, and are not based in the misuse of the law exhibited by Abba Shaul in Yebamoth 39 b.

Within the same paper, Kaufman Kohler now moves on to the subject of the ninety days waiting period required of a widow or a divorcee before she is allowed to remarry. Kohler cites a number of sources with regard to this prohibition. He first cites the Mishna Yebamoth iv, 10, and Talmud Yebamoth 41 b. Here we find the prohibition of levirate

or any other marriage of a widow or divorcee for three months. Cited by Kohler as well is the Shulchan Aruch 13, 1, which lists the prohibition as well and gives as the reason for the prohibition the preventing of any doubt as to the paternity of the first child born in the second marriage. With this halacha, Kohler is in full agreement. In fact, he moves on from the traditional sources to show that Roman, French, and Prussian law all have similar provisions, (in fact, all have longer waiting periods), and he feels that United State's law should carry such a provision.[27]

Having noted Kohler's attitude toward the halacha in other matters, I find that I must chuckle over the statement made concerning the ninety day waiting period. He says,

> Certainly the rabbi is bound to uphold this ancient Jewish law and extend the ninety days' interval to ten months [as does French and Roman law] unless urgent reasons make it advisable to restrict the time to ninety days.[28]

Here Kohler reaches the decision to be even more stringent than the Jewish law. Yet, he gives his decision as if it is the law that must surely be obeyed, even though previously he has totally ignored the halacha. It is not the decision that I find amusing, but rather that he roots it in tradition, asserting that the rabbi is, "bound to uphold this ancient Jewish law," while in the previous cases he has advised the ignoring of Jewish law.

Within the scope of this paper, Rabbi Kohler discusses the question of the marriage of deaf and dumb individuals. He cites the Talmud, Yebamoth 112 b, and the Mishneh Torah, H. Ishuth 5:9, and אבן העזר 44:1. These citations, he tells us, prohibit the marriage of a deaf-dumb person because such a person is placed among the class of insane who cannot enter a marriage contract. Kohler recommends that "the Talmudic laws concerning the incompetency of deaf and dumb persons to contract a marriage. . . are based upon an erroneous view and are of no validity to us."[29]

Here Rabbi Kohler is recommending that the tradition be transgressed, but has given us a false picture of tradition. He has, in fact, totally misread the halacha concerning the marriage of deaf and dumb individuals in the very sources he cited to prove they cannot marry. It is true that the Talmud reference, as well as the reference to Maimonides' Mishneh Torah state that from the Torah, such a marriage, whether one of the partners is a hearing person or not is forbidden. By the same token, the Rabbinical decision rendered in all of these codes permit the marriage to take place. Shulchan Aruch perhaps sums up the position of the rabbis best (אבן העזר 44:1), חרש וחרשת אינם בני קדושין מן התורה בין שנשאו כיוצא בהן בין חרש שנשא פקחת בין חרשת שנשאת לפקח אבל חכמים תקנו להם נשואין.

"A deaf and dumb man and a deaf and dumb woman cannot marry according to the Torah, whether they marry others like themselves or whether a deaf and dumb man marries a hearing (sound sensed) woman or whether a deaf and dumb woman marries a man of sound senses; but the sages instituted marriage to them."

It is true that there is some doubt with respect to the matter. The notes to the Mishneh Torah by Rabbi Abraham bn. David (ז"ל) urge caution because he does not believe Maimonedes is correct in his interpretation, but certainly the thrust of the halacha could have been used by Rabbi Kohler to support his desire to have the Conference declare as valid marriages of deaf and dumb individuals. Rather, apparently through misinterpretation, Rabbi Kohler chose to attack, unjustifiably, the halacha on this subject while his quarrel was strictly with the Bible. This unfortunate case shows the lack of concern with the halacha with which Kohler treats this matter of marriage.

At the end of his discussion of marriage, Rabbi Kohler makes a number of recommendations to the Central Conference of American Rabbis. He recommends that women be treated as equals to man, and that they be allowed to act as witnesses to the marriage ceremony. He further recommends the adoption of the wedding formula he recommended in his paper (see above), the adoption of his proposals concerning the list of prohibited marriages and a number of other proposals, all explained above.[30] The decision to adopt the proposals is not recorded in the Yearbook.

In the same volume of the Yearbook of the Central Conference of American Rabbis as Kohler's paper appears (vol. 25), a paper appears with the same title, "The Harmonization of Jewish and Civil Laws of Marriage and Divorce," by Rabbi Abram Simon.[31] The article is not concerned with marriage and the halacha, but rather with the laws of the state. It seems to have been written as a compliment to Kohler's

article and it carries Kohler's decisions to their conclusions.

In his discussion concerning the marriage of a deceased brother's wife, Rabbi Simon reinforces Kohler's position and states, "Wherein, according to our modern ideas of charity, is it more incestuous for a man to marry a deceased brother's wife, with or without children, than to marry his deceased wife's sister?"[32] In answer to this question, Simon totally ignores the halacha, not ever mentioning it, and asserts that our guide should be other churches or the law of the land, which permits such a marriage.[33]

Dealing with the question of marriage between an uncle and a niece as opposed to a nephew (the former being encouraged by the tradition and the latter being prohibited), Rabbi Simon makes the argument that there is no difference between the two marriages as far as consanguinity is concerned. The Biblical phrase, "and they shall be of one flesh," he asserts, applies equally in both cases. Simon asserts, citing the Karaites and Sadducees (without specific references) that both of the marriages should be prohibited, bringing Jewish law more in line with secular law in the United States.[34] If Rabbi Simon was at all concerned with basing his argument truly on the Karaites and Sadducees, or, for that matter, any sentiment opposed to the marriage of niece and uncle, there are texts he could have cited. An example of mild mishnaic sentiment against such a marriage can be found in Mishna Nedarim 66 a, the weight of the Pharasaic opinion is against such a decision.

Similarly, when dealing with the question of marriage among first cousins, which Jewish law permits, Rabbi Simon argues against allowing such marriages on medical grounds. He is totally unconcerned with the halacha. So it is with the abolishment of the law prohibiting a woman whose husband is missing but not proven dead from remarriage on the grounds of mercy and common sense, and would prefer the permitting of such marriages according to the law of the civil state.[35] He dismisses the prohibited Aaronite marriages by citing the Leipsic Synod as accepted by the Philadelphia Conference of 1869, which says such considerations are no longer valid.[36]

Concerning days on which marriages are prohibited, Rabbi Simon cites Rabbi Kohler's responsa (Conference Yearbook, xxiii, p. 180), which was discussed above, to dismiss these restrictions as no longer binding. He declares that the Sabbath prohibition ought to be maintained though he points out that according to שו"ת חוות יאיר 339, 4,524, such marriages are valid.[37] שו"ת חוות יאיר 339,4,524, list the prohibition of marriage on the Sabbath, but 339,4, states that whether such a prohibition was transgressed by error or by intention, the marriage is valid.

In addition to the prohibition of marriage on the Sabbath, Simon further believes, along with the position taken by the Augsburg Synod, that the week in which the ninth of Ab should be retained as a prohibition. To this he adds the thirty days of mourning as prohibited days on which no marriages occurs take place.[38] Here Rabbi Simon accepts part of the halacha, and rejects the total concept of a binding nature of the halacha - picking only that which suits his feelings and dis-

missing all else without even a citation to tell us it exists.

The final section of this paper, dealing with marriage, deals with the marrying of step-daughters. He points out that there are contradictions with regard to this among the laws of the various states. He resolves the problem by stating, "The Jewish law is clearly against it."[39] He does not, apparently, feel any need to make any citations. What is interesting in this response is the fact that throughout his entire paper, Rabbi Simon has, for the most part, departed from "Jewish law" and has regarded it as irrelevant to the basis of all of his arguments, using it only when he desires. Here, in this final section, he appears to present it as obviously the correct position, to be followed, only because it is Jewish law, with no other rational given to us. He finally asks that a commission on Laws of Marriage and Divorce be established, consisting of five members. This action was taken by the Conference, and Rabbi Simon became the chairman of the Commission.

Though this thesis is designed to discuss primarily, and is concerned with Reform Responsa literature, I believe that a short deviation from that view is in order here to get a clear picture of the role played by the traditional halacha on marriage during the period between 1910-1920. I refer now to the first report of the Commission on Laws of Marriage and Divorce, presented by its chairman, Rabbi Simon. This first report appeared in the Yearbook of the Central Conference of American Rabbis, volume xxvi, 1916, one year after Rabbi Simon proposed that such a commission be established.

In its first report, the commission, headed by Rabbi Simon, proposed the procedure the group would use in presenting its reports. He first tells us that each "group or class of laws is to be treated in a special chapter."[40] The chapters would take the following forms:

> I- - Begin by stating the origin of each law whether it is in Bible, Talmud, or later Rabbinic sources, and trace it down to the latest authorities, and state also the reason given by the rabbis for these laws, whether they are ethical, religious or sociological. . . . State also whether the law in question was unanimously accepted by the teachers or merely a majority. In the latter case, the minority opinion is to be recorded. This might be of use to us in case we should find it advisable to change that law in accordance with the minority opinion.[41]
>
> II- - Examine the opinions of each law, as found in extra-Rabbinic Jewish sources as for instance- - Sadduceean, Samaritan and Karaite as well as in the Early Church literature, as these sources may have preserved earlier Jewish views on the law in question.[42]
>
> III- - Compare the views and similar laws of ancient peoples, as Greeks, Romans and Persians. Ascertain whether these non-Jewish views had influence upon the Jewish law. This might be of use to us to allow. . . American ideas and views to influence the modern Jewish standpoint, as it would actually mean, merely, to substitute modern non-Jewish influence for ancient non-Jewish influence.[43]
>
> IV- - The opinions of modern liberal Jewish teachers especially such opinions adopted or recommended at rabbinical conferences of Europe and America is to be grouped around each law.[44]

> V- - Modern views as to the value of each law in regard to its hygienic, social, and moral effects should be compared and stated, in as much as consideration for such modern views will be one of the strongest factors, determining our attitude to the law in question [my underlining].[45]

The rules go on to include state laws, the nature of the laws (i.e., custom, prohibition, etc.), the guiding principles involved with the laws, opinions and conclusions, and a definition of [illegible] as it applies to the over-all picture.[46]

The significant point in this Commission report is that for some reason, perhaps as an academic exercise, the rabbis are called upon to research the tradition. At the same time, it is clear that the purpose of the Commission is for reform, i.e., change in the laws. The point made in Rule V, asserting that the modern viewpoint would be of most importance, clearly indicated that Rabbi Simon is concerned with teaching the halacha, but rather with changing it. The exercise of researching the law is to give the Commission, if possible, a basis for change that will save them from the charge of heresy or the charge of throwing out the law capriciously. This gives the appearance of remaining within the tradition, while actually the change being made is great.

Responsa written by Kaufman Kohler continued to appear in the Yearbook of the Central Conference of American Rabbis for a number of more years. In 1917, the following appeared in the Yearbook as the report of the Committee on Responsa, K. Kohler, chairman (members being Jacob Lauterback and Gotthard Deutsch): Whether a rabbi living in

New York could "go to Providence, R.I., to solemnize the marriage of a nephew to his aunt, called by him - - step aunt - - she being the daughter of his grandfather by a second wife." The answer given was that the marriage is incestuous and that the decision of all three members of the committee was negative.[47] The point was so clear that no reference is made to back up this case at all. The halacha was accepted without question. Here the halacha pleases Kohler, and he states it as if, "of course this is the law - - accept it!" This attitude, as we have seen, is contrary to any approach Kohler has used with which he disagrees.

The next question dealt with by Kaufman Kohler's Committee on Responsa is in the 1919, volume of the Yearbook of the Central Conference of American Rabbis. The question deals with intermarriage and reads:

> 'I have been asked by a Jewish gentleman of my congregation to unite him in wedlock with a Gentile. Is it compatible with Judaism for a rabbi to perform such a marriage when the Gentile does not accept the Jewish Religion? And is it in keeping with his position and dignity as a rabbi to perform such a marriage when the Gentile does not accept the Jewish faith? Secondly, can a rabbi consistently perform such a marriage in the capacity of a layman without lending it the religious sanction as a rabbi?'[48]

In answer to this question, Kohler cites Moses Mielziner's work, The Jewish Law of Marriage and Divorce, pages 45-54, to say that such an intermarriage cannot take place according to tradition. I assume he accepts Mielziner's citations for coming to this conclusion. Certainly a case could be made for prohibiting such marriages from the codes,

but Kohler prefers to ignore these and give his conclusion based on Mielziner.

As to the second part of the question, regarding whether or not the rabbi can act as a layman, Rabbi Kohler answers, "neither Judaism nor the State law acknowledges such a marriage as legal."[49] This answer ignores, of course, the fact that an ordained rabbi is not required for a Jewish marriage to take place. Mielziner himself states, "The presence of a rabbi . . . is, according to Talmudic law, not required at the betrothal or the nuptials."[50] Mielziner does not give a Talmudic reference for this case, though he might have cited Kidushin 13a to show that one who is not familiar with the laws of marriage could not officiate. The institution of a rabbi being present for a marriage is later than the Talmudic Period. The whole notion of a rabbi being necessary is a modern concern. From the point of view of Jewish law, Rabbi Kohler's response is incorrect, for the rabbi is, in any case, acting as a layman in the ceremony. The point concerning State law is one that I am not qualified to deal with, other than to say that legally a minister dealing with civil law in the case of a marriage could legally unite any couple in matrimony. A religious marriage would not be necessary to satisfy the state laws.

Dealing with a second letter from the same source in this Responsum, the question is raised as to whether or not the marriage could take place when assurance is given that the non-Jew will convert after marriage and whether or not a rabbi can perform the marriage ceremony of two non-Jews. In his response, Kohler ignores any halachic

considerations. The first half of the question he ignores. The second half is answered as follows:

> Certainly the Jewish home, which is the object of marriage, must be conducted according to the Jewish principles. A Christian minister cannot consecrate a Jewish home, nor can a Jewish minister consecrate a Christian home, and if man and wife belong to two different religions, it will be a house divided against itself. . . . For those who think that the Jewish home needs no religious consecration the State law provides that they may apply to the civil magistrate to perform the marriage. . . .[51]

The view presented here is strongly opposed to the performing of intermarriages. It is not based in halacha, for halacha would never have thought of this case. It would be outside the realm of the time. The only law that might come into play is the talmudic principle that non-Jews cannot make a formal, binding, legal contract, and it is almost impossible to apply this principle to the modern day. Only on the vague principle of the consecration of the Jewish home can this negative answer be based.

This final responsum, published in 1919, marks the last of the responsa written by Kaufman Kohler on marriage.

By way of summary, we are able to note that Rabbi Kohler (and, for that matter, Rabbi Simon) made little use of the traditional codes in the decisions reached in his responsa. He cited them, either to destroy them with logical argumentation or to use them if they presented the position he desired to expound.

We must make a distinction, at this point, between using the halacha and using them to arrive at a conclusion. I believe it to be clear that the decisions rendered by Rabbi Kohler were not based on the halacha dealing with marriage. Yet, Kohler used them, often citing legal passages, which gives the impression that he is rooting his decisions in the tradition and thereby guards against the charge of being a Karaite or worse, of breaking with the Jewish tradition. But the halacha is certainly his secondary concern. He is interested in reforming and changing Judaism so that it would meet modern needs, whether that change runs contrary to halacha or not.

Note also that Rabbi Kohler's citations of the halacha is limited, for the most part, to the Shulchan Aruch and to the Talmud. Only once did he refer to Mishneh Torah, and then he misinterpreted the passage. He does not refer at all to the myriads of responsa that were written throughout the ages on the question of marriage. Apparently, finding halachic basis for his decisions, or a strict adherance to the halacha, did not concern him enough to inquire deeply into the literature before giving a decision. It will now be our task to go on in time to see whether or not there is a substantial change in the use of halacha by later writers of responsa in the American Reform Movement in Judaism.

CHAPTER II

The period between 1920 and 1954, produced only three responsa dealing with marriage. Their authors, i.e., those chairmen of the Committee on Responsa of the Central Conference of American Rabbis varied somewhat during this time span, with no single man having been regarded as the outstanding halachist of the time. A number of names do appear more frequently than others. The name of Israel Bettan emerges in the work of the Responsa Committee, as well as a new name to the field, Solomon Freehof. It will be necessary to deal with some of Freehof's earlier work in the area of marriage in this section.

A Responsum dealing with the use of wine entitled "Prohibition and Sacramental Wine Among Jews," by Julius Rappaport appeared in the 1920 edition of the Yearbook of the Central Conference of American Rabbis. One section of this report of the Responsa Committee deals with the use of wine at the Jewish marriage ceremony.[52]

Rabbi Rappaport does not begin his responsum with a question, and one must infer that the question must be whether or not wine is necessary at the Jewish wedding. Rappaport first cites Eben Ha-Ezer 34, 2, and Mishneh Torah, Hilchot Ishut iii, 24, to establish the rule with regard to the use of wine for betrothal (קידושין). The citation listed is quoted verbatim by Rappaport as,

> 'The custom prevails now to recite this benediction (of Betrothal) after having said a blessing over a cup of wine first, ... if there is no wine at hand, he recites the Benediction of Betrothal alone, that is without wine.[53]

The quotation is given as the answer to the problem of Betrothal, and no attempt is made by the author to change the halacha in any way. The issue is non-controversial and requires no change in the traditional custom. The custom is accepted as the thing to do.

The second half of this responsum deals with the seven benedictions of the nuptial (שבע ברכות). Again Rabbi Rappaport simply, and correctly, cites the Shulchan Aruch, אורח חיים 621,1, for his answer. He faithfully reports that the six benedictions of marriage are to be recited immediately before the nuptials. He then goes on to state,

> if there is wine at hand, one says first the blessing over a cup of wine, so that there may be altogether seven benedictions. But if there is no wine (or beer) the six benedictions are recited without wine (see Be'er Haitebh, of Judah Ashkanazi, to Eben Ha'ezer 62,1), as wine is not essential.[54]

Rappaport goes on to cite the Tur (62) to show that if there is no wine, raisin wine can be used. He concludes that if there is no wine present, raisin wine, grape juice, apple cider, or no beverage at all would be legitimate for use in the marriage ceremony.[55] He lists no citations for the grape juice or the apple cider. The Tur does list beer (שכר) as acceptable, but again no apple cider or grape juice. Apparently, Rappaport is interpreting שכר to mean a fermented beverage (not necessarily beer as it is most commonly translated) and deduces the list from

that translation. The important matter, correctly stated by Rappaport, is that the wine is not necessary to the wedding ceremony and that the wedding is valid without it.

Rabbi Rappaport's Responsum on wine, as it applies to the wedding ceremony, takes the form of a faithful report of the traditional halacha. The form is deceiving. We noted above the addition of apple cider and grape juice to the list of types of wine permitted for the ceremony. There is no justification for these additions, and should have been omitted. With this exception, the Rappaport Responsum does follow the halacha.

In 1923, a responsum was presented by the committee on Responsa, Jacob A. Lauterbach, chairman. Members of the committee were Israel Bettan and Solomon B. Freehof. The question dealt with consanguinity and read as follows:

> A couple came to me saying they would like to marry each other but there was some degree of consanguinity concerning which they were worried. This is the situation: The young lady is a half-sister, on the father's side, of the young man's mother. In other words, she is a half-aunt, so to speak. Now, does the law in Leviticus forbidding marriage with a mother's sister also extend to the half sister? And is there no way of permitting such a marriage as we permit the marriage between an uncle and a niece?[50]

This question was rather quickly dismissed by Kaufman Kohler in 1914. The feeling there (though the responsum was somewhat unclear; see above) was that marriage between a niece and uncle both should be prohibited under our modern feelings about incest. Kohler ignored the halacha entirely.

In the responsum written by Lauterbach, the decision follows halacha insofar as Lauterbach, without citing his authorities, correctly states, "The law in Leviticus by all authorities to extend to the half-sister also, and there is no way to permit such a marriage according to Jewish law."[57]

Having dispensed with the first part of the question, Lauterbach turns his attention away from the problem of a nephew marrying an aunt and attacks the idea that a niece may marry her uncle.

First Lauterbach points to the fact that the Jewish sects, i.e., the Samaritans, Sadokites, Falashas, and Karaites all prohibited marriage between the uncle and a niece. He conjectures that the Talmud permits such a marriage because these sects prohibit it.[58] Rabbi Lauterbach is faithful to the halacha insofar as he does not try to show that the mainstream of Judaism prohibits the marriage of a niece with an uncle. One need merely turn to the Shulchan Aruch, אבן העזר 2, 6, in Isserles' gloss to learn that such a marriage is permitted, whether the girl be the daughter of his sister or his brother. Isserles further points out that the Talmud (יבמות) and Maimonides (איסורי ביאה 2, 14) both concur with his decision. These citations, though not listed by Lauterbach, are not denied in the responsum. Instead the case is built around the sects that prohibit such a marriage and one passage in Sefer Hassidim (the Wistinezki edition #1116) where mention is made that such a marriage will not be successful.[59] The reading of Sefer Hassidim is correct. The passage reads, יש זיווגים
יצלחו . . . אם משיאו בתו לאחי אשתו

The section is a puzzling one, even to the commentary משנת אברהם of ר' אברהם פכ"ם who states that he does not know the reason for the statement made here. He cites the Talmud 62b, to show that the marriage between a man and the daughter of his sister is recommended, moreover, Lauterbach totally ignores the fact that in section 1099, of Sefer Hassidim, Judah He Hasid himself states that "he who marries the daughter of his sister is pious and when children are born from the sister they will be pious like him." הנושא בת אחותו הוא חסיד וכשיולידו בנים מבת אחותו הרי יהיו חסידים כמותו.

While it was noted that these references refer only to the daughter of his sister, Tosaphot to Yebamoth 62b, points out the fact that Rabenu Tam takes this limitation while Maimonides איסורי ביאה 2, 14 states that "the same is the law for the daughter of his brother." Tosaphot to Yebamoth 99a states that it is better if one does not marry the daughter of his brother, for this would affect the levirate conditions, but other than this statement nowhere is such a marriage prohibited. The decision reached by Lauterbach does not follow the halacha.

Though the decision to prohibit the marriage between an uncle and a niece is not according to the halacha, nonetheless it should be noted that, unlike the position on this question taken by Kohler (which was based on an appeal to secular law), Lauterbach attempts to base his position on traditional sources, especially on Sefer Hassidim to show that at least such a marriage, though not prohibited, was disapproved of by some of the traditional works. This approach shows

more of a concern for the tradition than did the responsa which arose in the earlier period of the Reform Responsa.

Rabbi Israel Bettan wrote a responsum in 1943, which deals with the area of concern for the priestly laws which apply to marriage. The question dealt with is as follows:

> There is a problem which I am trying to help a young couple solve. The young woman is a divorcee; the boy is a Cohen. The man's father objects to the marriage. I wonder if there is any argument, based on Jewish law, which I can use with the father to keep him from making his son's life miserable because of this marriage.[60]

Rabbi Bettan tackles the problem by first stating that the status of the modern Cohen has long been questioned by the rabbinic authorities. To prove this contention, Bettan cites Responsum 94, of Isaac ben Seshet written in the fourteenth century which asserts that, lacking any documentary evidence of his rightful claim to the priestly title, the Cohen's special privileges and obligations are not a mandate of law but rather continue because of the force of custom or common usage.[61] The passage from ספר בר ששת cited deals with the custom of calling a Cohen to the Torah first and the passage germane to Bettan reads (as he correctly quotes it in the Hebrew)// כל שכן כהנים שבדורנו שאין להם כתב היחס אלא מפני חזקתן נהגו לקרא ראשון ב' תורה כהן ואפילו עם הארץ לפני חכם גדול שבישראל. (ספר בר ששת, Responsum 94, Lemberg 1805). "How much the more so concerning the Cohanim in our generation who do not have written proof of their lineage except their presumptive continuance of an actual condition. It is the practice now to call the Cohen first to the Torah

even if he is an am ha-aretz; before the greatest sage who is in Israel."

With this quoted responsum of Isaac ben Seshet, Rabbi Bettan has shown that the lineage of the Cohen was suspect even in an early period, nonetheless it must be noted that the minhag of priestly privilege in this responsum is upheld (מפני דרכי שלום). He goes on to cite הלכות פסח (אורח ח״ם sec. 457) to further establish the fact that the purity of the modern Cohen's descent is in doubt. To drive home this single point, Bettan cites the sixteenth century authority, Solomon Luria, to show that "because of the frequent persecutions and expulsions of the Jews, the original priestly families, in most instances, failed to preserve the purity of their descent." Once again Bettan quotes the Hebrew, giving the source as ים של שלמה ב״ק Chapter 5, section 35.[62] Rabbi Bettan cites the passage correctly and interprets correctly to show once again that the lineage of the Cohen is questionable. Luria points out (not quoted by Bettan) in this same passage that since the destruction of the Temple, the lineage has not been kept pure and it increasingly has been worsened.

Rabbi Bettan finished his responsum by correctly citing Jacob Emden (שאלת יעב״ץ part I, resp. 155) to show that Emden was so impressed with the doubtful character of the Cohen's claim that he advised that the Cohen return the sum given him for the redemption of the first-born, so as not risking the taking of money to which he had no legal claim. Again, the Hebrew is correctly quoted.[63] Rabbi Bettan then concludes his responsum by stating,

> When, therefore, Reform Judaism chose to ignore the nominal distinction between the ordinary Israelite and the Cohen . . . 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.[64]

In this responsum Rabbi Bettan did just what he was asked to do; he gave traditional arguments that would tend to permit the marriage in question to take place. To do so he cited for early commentators to show that the lineage of the modern Cohen is suspect at best. He infers on this basis that Reform Judaism was within the tradition when it abolished the distinctions between the Cohen and the Israelite. What he doesn't do in this responsum is to give the full picture of the law. He ignores the passage in Mishneh Torah איסורי ביאה 17, 1, by Maimonides which reads, "Three women are forbidden to all Cohanim; a divorcee, a zonah, and one profaned." (שלש נשים אסורות על כל כהנים גרושה זונה וחללה) and Caro's Shulchan Aruch אבן העזר 6:1) which states the same marriages as forbidden to the Cohen, even if there is a doubt as to the divorced status of the woman and even if the divorce was from the status of betrothal (אירוסין). Bettan seems to be saying that these laws are well and good, but that no valid Cohen exists in the modern day and these laws are of no concern. He has built a strong case, and his decision, though at variance with the halacha, is based on traditional sources.

It is important to note the use of the halacha in this responsum. In actuality, Rabbi Bettan does not ignore the halacha (though he does not cite it), but rather works within the tradition to show that the halacha in this instance no longer can apply. Unlike many of his predecessors, he does not base his conclusion on "modern sensibilities," but rather on traditional commentaries and responsa. While it seems clear that he reached his conclusion before his investigation and his responsum is incomplete with regard to the halacha, he does "play the game" in his approach to the question.

In October, 1946, the executive board of the Central Conference of American Rabbis appointed a special committee to study the problem of mixed marriage and intermarriage. The committee consisted of Bernard Harrison, Louis L. Mann, and was chaired by Solomon B. Freehof.[65] In the 1948 edition of the Yearbook (vol. 1 vii), a report of that special committee was presented by Rabbi Freehof. Though this report, strictly speaking, does not fall under the area of "responsa," it is an important clue to the use of halacha in the Reform movement and should not be overlooked in this thesis.

Freehof opens by distinguishing between mixed marriage and intermarriage. By mixed marriage, the marriage between a Jew and a non-converted Gentile is being referred to: intermarriage denotes a marriage between a Jew "and a Gentile who has been converted to Judaism."[66] He then discussed the first category, i.e., mixed marriages. Concerning mixed marriages, Freehof first cites Deuteronomy 7:1 (showing that the seven Canaanite nations were forbidden to the Jew in terms of

marriage) and Nehemiah 10:30, and Ezra 9:1, 2; 10:10.11, extend the prohibition to all the non-Jewish nations. He then shows that Maimonides (איסורי ביאה xii,1), extended this prohibition to all nations. Having established the historical fact of the prohibition and spending a brief time to sum up the attitudes that had existed in early Reform Judaism, the committee recommended that the resolution of 1909, be reaffirmed. The resolution read,

> '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.[67]

This ends the discussion of mixed marriages, and, on an appeal to tradition, the committee recommended that the <u>halacha</u> forbidding such marriages be maintained.

Freehof, speaking for the committee, now turns his attention toward the question of intermarriage. He correctly cites the <u>Shulchan</u> <u>Aruch</u> (אבן העזר 4:8-10) to show that "The traditional law is that anybody of any race or faith if converted to Judaism may be married to a Jew."[68] The exact statement found there is אבל כל האומות לאחר שנתגיירו הרי אלו כישראל מיד.

Freehof now examines the motives which influenced the convert at the time of conversion. He cites יורה דעה 268:12, to show, correctly, that if the conversion is done for the sake of marriage with a Jew, the convert may not be received.[69] As Freehof correctly points out, the Bet Din is instructed by Caro to investigate the motives of the convert. Conversion for marriage does not, however, automatically

prohibit such a conversion from taking place, and Freehof points to Tosafot to Yebamoth 24b, in which is described a case in which Hillel is confronted with a Gentile who wants to convert in order to become the High Priest.[70] Freehof correctly cites the case to show that Hillel accepted the proselyte, though his motives were questionable and Freehof shows that on the basis of the traditional literature there is some uncertainty in Orthodox circles as to whether one converting for marriage can be accepted into Judaism. To cap his argument, Freehof correctly cites Joseph Caro (בית יוסף, יורה דעה 268), to show the uncertainty, going so far as to quote the Hebrew in the report (הכל לפי ראות עיני בית דין, "it is all according to the Judgement of the court").[71]

Freehof and the committee conclude this section of the report with a statement concerned with Reform practice,

> It is our Reform practice always to accept a proselyte who intends thereby 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 follow the principle, Hakol l'fi r'os bays din, and so not consider the intention to marry an evidence of insincerity on the part of the candidate.[72]

On the basis of this expressed principle and because of the doubt exhibited in the traditional law, Freehof recommends that the following be adopted by the Conference:

> The C.C.A.R. considers all sincere applicants for proselyting as acceptable whether or not it is the intention of the candidate to marry a Jew.

The committee now turned its attention to the question of the validity of civil marriage. Freehof cites Abraham Chayim Freiman in his סדר קידושין ונישואין (p. 362), to show that the question of whether a marriage performed by a civil authority is even a valid marriage is in great doubt. The question of whether this couple can be remarried in a religious ceremony is also doubtful.[73] Freehof correctly asserts that both views are presented in the Freiman collection. Again, based on the doubt that exists in the <u>halacha</u> as to the precise status of a civil marriage, the committee recommends the following statement:

> We consider civil marriage to be completely valid but lacking the sanctity which religion can bestow upon it. We recommend that whenever a civil marriage between Jews has taken place, it be followed as soon as possible by a Jewish religious marriage ceremony.[74]

Again, the committee took a position for which no clear <u>halacha</u> can be found, but paid close attention to the existence of the traditional sources.

The question now raised in the committee report is the possibility of remarrying a couple who were married by a civil authority while one of the couple was not Jewish and later converted to Judaism. Freehof first points out that, "With regard to such a marriage and the request to be remarried after conversion, the Jewish traditional law generally takes a negative attitude."[75] The first objection raised is one we noted above, that being the objection of a proselyte who desires to convert because of an intention to marry a Jew. This problem Freehof has already dealt with. He does note here, in this case,

that "Some recent authorities (for example, Ben Zion Uziel, the Sephardic Chief rabbi in Tel Aviv, in his 'mishpete Uziel,' Yore Deah #14) are inclined to be lenient."[76]

The more serious objection to this case, however, is raised by Freehof with regard to the passage in Mishnah Yebamoth ii,8. Freehof only gives a translation and not the original Hebrew which reads, הנטען על השפחה ונשתחררה או על
ונתגיירה, הרי זה לא יכנס.
This is translated by Freehof "'He who is reported to be living with a Gentile woman, and then the Gentile woman is converted, he may not marry her.'"[77] The statement is followed by, ואם כנס אין מוציאין מידו -- "That if he married he is not required to divorce her." This second section is not cited by Freehof, though he could have to show that the restriction is not of a grevious nature if transgressed. Instead, appealing to the halacha, Freehof asserts that Maimonides (in פאר הדור #132), gives the basis for leniency.[78] Freehof does not quote the section of this responsa collection, but it is true that in Maimonides' responsum (dealing with a שפחה), he does permit the marriage to take place, though he councils the court to do everything in their power to break up the union. He is not happy with the situation but says, מוטב שיאכל רוטב ולא שומן עצמו. "It is better that he should eat gravy and not fat itself."

Freehof has been honest with us in this section. He has pointed out the fact that the tradition disapproves of such a union, and cites correctly the prohibition of such a marriage taking place. He obviously

wants to be lenient in this matter, and cites Maimonides as a lenient traditional source. But, in fact, the recommendation made to the conference does not follow halacha. At best, its halachic justification may be found in the more lenient view of Maimonides. The position recommended by the committee is,

> Since it is the point of view of the conference that all sincere applicants for conversion be accepted whether marriage is involved or not [see above], and since we too recognize the validity of civil marriages but urge that they be sanctified by religious marriage ceremony, we surely would accept such a proselyte and officiate at the religious marriage. However, it should be clear that the fact that the couple is already married by civil law does not obviate the necessity of conversion of the Gentile party. . . .[79]

Though not completely successful, this position was a result of an attempt to base it on traditional sources. What is important to note is the use made of the halacha. The opposing opinion was stated, an attempt made to find leniency, and the position taken, consistent with the previous proposals. The halacha is bent, but certainly not ignored.

In the realm of common-law marriage, we find that the approach of Freehof and his committee is consistent with that which precedes this specific discussion. First the history is explored to show that common law marriage became frequent in Spain and that it acquired some legal status because it was considered to be equivalent to the custom of concubinage in the Bible (Freehof lists no citations). He points out that early legal authorities like Nachmonides and Asher ben Jehiel

denied that the common law marriage had any legal status at all. Freehof then cites Freimann to show that some more recent authorities give the common law marriage enough status to require a divorce if it lasts more than thirty days (at least one authority- שו"ת עין יצחק holds this opinion). In general, Freehof tells us, the marriage has the same status as a civil marriage.[80] Having traced the case, the committee recommends,

> The Conference may well take the stand that whenever the state acknowledges the validity of common law marriage, we likewise consider them to be valid; but that just as in the case of civil marriage, we urge that they be changed to regular marriage by license and religious ceremony.[81]

Dealing with the case of a non-Jewish couple who were married in a non-Jewish service and then both parties converted after marriage, Freehof is careful to use and follow the halacha. He first cites the Talmud (Yebamoth 97b), to show that in all probability the previous marriage has no validity in terms of Jewish law because converts are considered as newborn children with no previous relations. He cites the passage correctly (גר שנתגייר כקטן שנולד).[82] He then goes on to show that the Shulchan Aruch states (אבן העזר 44:8), that marriage with an idolator (עכו"ם) and a bond maid (שפחה) is no marriage at all. Moreover, Freehof asserts, "almost all the great authorities of the Middle Ages declared that when Jews are married by Christian or Mohammedan rites the marriage is null and void. . . ."[83]

By citing Isaac bar Sheshet (#6) and Maimonides in Mishneh Torah (הלכות איסורי ביאה xiv, 19), both correctly, Freehof shows

that among the "sons of Noah" their marriages are legal for themselves. This would include Christians. But he asserts that these marriages can not acquire legal status in Jewish law because they cannot have the legal consequences of the Jewish marriage.[84] As to the question of Jews married by a Christian minister, Freehof tells us that all authorities agree that this is no marriage at all and that no get is required in these marriages. He cites Freimann (pp. 346 ff) to accurately show this assertion to be true.[85] The position reached with regard to Jews married by a Christian minister is as follows:

> the mood of the traditional attitude must determine our point of view [my underlining]. We cannot declare such a marriage invalid [like the case of civil marriage] but would consider it highly improper and should endeavor. . . to persuade the couple to be married subsequently by Jewish ceremony. Likewise, on the basis of the unanimous attitude of traditional law, it would be improper for a rabbi to participate with a Christian minister at such a marriage.[86]

This position is based heavily on the halacha, asis the committee's recommendation that two non-Jews who convert to Judaism be remarried. All recommendations made by the committee were accepted by the conference.[87]

The question of intermarriage had come up already to Kaufman Kohler (see above). There, it might be remembered, the position was that a rabbi should not participate in such a marriage. The report by Freehof is much more comprehensive than the Kohler responsum, yet the difference does not end there. Freehof carefully makes use of the traditional sources and tries to justify deviation from the halacha

from within the sources as far as possible. He does not argue from "modern sensibilities," but rather, in a legal manner, from precedents which had been set before.

The period between 1920, and 1954, can be seen as a time during which the use of halacha in reform decisions dealing with marriage increased. We noted the flippant use of such responsa during the earlier period. In the four examples we have examined in this chapter we have seen an increasingly careful use of halacha. It may very well be that the nature of the questions required this change. The responsum written by Lauterbach attempts to take a position contrary to the halacha dealing with uncle-niece marriages, but does so by using traditional sources (though not always successfully) rather than on an appeal to state-law (as did Simon and Kohler before him). The report by Freehof, as we have seen, developed the use of the halacha even further. Though his positions varied at times with the halacha, it was nonetheless heavily influenced by the traditional sources and extensive use of the sources was exhibited.

Perhaps the most telling sign of the increased use of the traditional sources is the variety of sources cited. We noted that Kaufman Kohler used the Shulchan Aruch and the Talmud almost exclusively. This period sees the use of such other traditional sources coming into play. The traditional responsa literature becomes a part of the Reform Responsa. Attempts are made to use this literature to support Reform positions. It seems that the position of the halacha was deemed more important for a more thorough inquiry into the literature was

employed. While the first chapter showed an attempt to negate or ignore the halacha, this later period of time sees an attempt to begin using the traditional sources, even as the basis of change.

CHAPTER III

From 1955, until present time, the field of Reform responsa on marriage has been dominated by one man, Solomon B. Freehof. With the exception of two responsa written by Israel Bettan in 1955, the questions have been referred to Freehof and the Committee on Responsa which he has chaired. This chapter will deal with the responsa published during these thirteen years in an attempt to get a clear understanding of the role halacha has played in the decisions rendered by these responsa on marriage.

The 1955 Yearbook of the Central Conference of American Rabbis contains three responsa which deal with the subject of marriage. The first, written by Israel Bettan, deals with the problem of interracial marriage. The case involves a Negro boy, a university graduate, who has been engaged to a Jewish girl for one and one-half years. Both parties are over twenty-one. The Negro boy wishes to convert to Judaism, attends services, and has been reading books on Judaism. The rabbi has discouraged the union, but finds the couple steadfast in their intentions to marry. The girl's family insists that the rabbi not officiate at the marriage and the rabbi has turned to the Committee on Responsa for advice.[88]

Bettan first asserts that,

> The Jewish attitude to intermarriage, all through history, has been conditioned by religious, in some instances even by political, but never by purely racial conditions.[89]

He then goes on to point out that, "in the rabbinic halaka, conversion to Judaism gives the convert the status of a Jew, qualifying him for marriage with members of our religious group."[90] This reference to the <u>halacha</u> is correct and though Bettan does not feel it necessary to give a citation from the codes, he could well have cited the <u>Shulchan</u> <u>Aruch</u>, אבן העזר 4:9, to show that this is indeed the correct <u>halacha</u> (שאר כל האומות לאחר שנתגיירו הר' אלו כישראל). Apparently Bettan feels this principle is so well known that proof is unnecessary. Based on this <u>halacha</u>, then, Bettan concludes,

> Since the young man in question, though of Negro race, is desirous of adopting the religion of his Jewish fiancee, there is no valid reason, <u>having</u> <u>its</u> <u>basis</u> <u>in</u> <u>Jewish</u> <u>law</u> [my underlining], why the couple shall not be united in matrimony by a rabbi.[91]

The decision is based on <u>halacha</u>, and Bettan himself points this out. What Bettan does not cite is יורה דעה 268, which limits who can be converted to Judaism. There, a person who converts to be married to a Jew is not accepted on these grounds; Bettan does not give us the full picture. He is correct as far as he goes, but <u>assumes</u> the young man to be a sincere convert, or is ignoring this passage.

The next responsum dealing with marriage was published in 1955, in the <u>Yearbook</u>. This is not the same volume in which the Bettan responsum appeared. Though published in the same year, it was given

in the "Report of the Committee on Responsa," with Solomon B. Freehof as its chairman. The question reads, "May cantors perform Jewish marriage services without an ordained rabbi presiding over the ceremony?"[92]

Freehof gives an extensive answer in his responsum. He begins by pointing out the idea that the "Jewish marriage ceremony may be described as informal." In fact, Freehof shows that it is so informal that anyone can perform the ceremony and he asserts that the literature is full of references to the מסדר קידושין, "the performer of the marriage" who is not a rabbi. He then cites Isaac bar Sheshet (#271) and Isserles to יורה דעה 242:14, who, he tells us, makes this point quite clear.[93] The responsum deals with ordination (סמיכות) and its necessity. Bar Sheshet discusses the issue of whether any validly performed ceremony or any correctly written document can be called invalid because it was not executed by an "ordained" rabbi. Isserles cites this responsum in the referred to place. But Freehof properly points out the Isserles includes, "'and some say' (with Isserles this 'some say' usually means a weighty opinion) 'that he who has not been ordained as a morenu [מורנו] but nevertheless give divorce and חליצה, the documents are invalid [אין המעשים כלום].'" This, Freehof properly asserts, limited these tasks to the rabbis in the Ashkenazi lands.[94]

Freehof now continues to trace the traditional literature to reach a conclusion on the question. He tells us that there were two reasons to restrict the performing of marriage ceremonies to rabbis in the Ashkenazic lands: The first was a matter of professional privilege

and the second was a matter of technical ability.[95]

Concerning the principle of professional privilege, Freehof first cites the Responsa of Ezekiel Landau (נודע ביהודה), Volume II, number 83, which is properly used to show that from the point of view of prevailing custom, Landau feels that no one else but a rabbi should officiate at a wedding.[96] The passage deals specifically with a case where the rabbi did not come, and the ceremony was performed by the Shamash. Though not cited in the Hebrew by Freehof, the passage reads "מצד המנהג אין אחר יכול לסדר." This passage continues " אם היה הרב שם." If there is no rabbi there, Landau permits the marriage to take place. Though it is the rabbi's privilege to do the ceremony, Landau points out that the כלה should not be held up by the consideration of the honor of the rabbi in this case. Though the responsum is not cited fully by Freehof, and though permission for one other than the rabbi to officiate is found therein, nonetheless the principle of the professional privilege of the rabbi to officiate is expressed in the responsum and is, I believe, used fairly by Freehof.

The Committee's responsum continues to further show the principle of the rabbi's professional privilege in the area of performing the marriage ceremony by citing Moses Sofer (Responsa יורה דעה, #231) who is not quoted verbatim, but is credited as saying,

> nowadays. . . the rabbi is engaged like a
> workman to the community and the fees
> for weddings, etc., are part of his agreed

> upon income and therefore anyone who comes in and takes these away from him commits actual robbery as one would in taking away the livelihood of any other workman.[97]

Again, Freehof gives a fair summation of the position taken by Moses Sofer who makes the statement, " ואוסר ממש לשום אומן לקפוח פרנסתו בזה וכל זה כגוזל ממש."

With this citation, Freehof completes his case for maintaining that the rabbi (rather than a cantor) should be the officiant at weddings on the principle of professional privilege. What is significant to note is the emphasis placed on the traditional sources and on the traditional responsa literature.

Freehof now continues this responsum by dealing with the principle of technical and legal competence as a criterion for those who officiate at weddings. He begins first with the earliest strata and cites the Talmud (קידושין 6a) as stating,

> 'He who does not understand thoroughly the nature of marriages and divorces shall have no dealings (עסק) with them.'[98]

The quote is verbatim. In Hebrew the passage reads " כל שאינו יודע בטיב גיטין וקידושין לא יהא לו עסק עמהם."

But for the purposes of this responsum, this citation is insufficient, for it does not limit the task to the rabbi alone, but rather to any one who has the technical knowledge. He cites Jacob Reisher (שבות יעקב III, 121), to support the Talmud's position and then goes on to Jacob Weil (Responsa #85), who limits the officiant to the rabbi or his representative.[99] Both citations are correct.

More important to the responsum, is the use of the later responsum of Ezekiel Katzenellenbogen. Freehof asserts,

> The strongest reference is in the Kenesset Yeheskel (Ezekiel Katzenellenbogen, in Altoona, early eighteenth century) who declares that it is a decision (תקנה) coming from the old rabbis of France and Rabbenu Tam himself that no one should officiate except the one who is chosen to be the rabbi of a community.[100]

Freehof does not give the precise page number for this citation, and he has apparently taken it from פתחי תשובה by Zvi Hirsch Eisenstaedter (to אבן העזר, שלחן ערוך 49,3) who quotes this passage to support his claim that "therefore not in vain have they become accustomed in these generations not to officiate at weddings without the permission of the rabbi." The Hebrew reads, לא בחנם הורגלו הדורות הללו שאין מסדרין קדושין בלתי התרת הרב

שבות יעקב (3, 121), backs up this position by asserting that the rabbi must give his consent to all marriages.[101]

Through the citations mentioned above, Freehof has shown that the rabbi, by traditional halacha, has the final say so as to who may marry and who may not. The statement from

goes no further than to assert that the rabbi must grant his permission for the wedding to take place. Freehof is not yet satisfied. He now cites Joseph Saul Nathanson, in his שואל ומשיב (III, A, 239), who Freehof quotes as saying, addressing the rabbi,

> 'No one has permission to officiate at marriages and divorces other than you, the rabbi, and thus to hurt your incomes. . . it is obvious that the marriages performed by someone else are void.'[102]

Freehof asserts, "But generally it is clear that only the rabbi or someone else by his express commission in each specific ceremony could officiate at marriages and divorces."[103]

Having reached his conclusion, Freehof recommends that the general principle that it should be the rabbi who officiates at weddings should apply to Reform Judaism as well. He states,

> We are correct therefore in following the tendency of traditional law and say that performing of marriages is both professionally and technically or spiritually the exclusive function of the rabbi.[104]

At best, he feels that permission can be given for each specific case to another officiant.

Freehof's use of the halacha differs greatly from its use by earlier Reform writers of responsa. Though he could have pointed to modern trends in both Judaism and Christianity for the clergyman to perform the wedding ceremony, or to various state laws, he did not. He chose instead to use the traditional Jewish sources and the traditional responsa literature to answer the question. In the responsum he does not break with the halacha, but rather applies it to the Reform situation. His scholarship in this responsum is extensive, using the vast responsa literature for his authority.

Along with the works of Freehof as they appear in the Yearbook of the Central Conference of American Rabbis, there also appeared in 1960, a collection of Reform responsa published by the Hebrew Union College Press and authored by Solomon B. Freehof. This valuable volume is of great aid to this examination of the use of the halacha in Reform responsa.

The first question concerning marriage dealt with by Freehof in this volume reads,

> There is a prevailing custom to forbid bride and groom seeing each other on the day of the wedding before the ceremony. Is this based on Jewish law or tradition?[105]

The question, as it is posed, lends itself to a traditional answer and does not ask for an actual decision, nor does it really ask for the justification of the practice. The only thing required by the question is an academic exercise to determine whether or not the couple may see each other on the day of the wedding according to <u>tradition</u>. With this purpose in mind, Freehof gives his answer.

First, Freehof cites the Talmud (קידושין 41a), which asserts, as Freehof correctly points out, that a man may not marry a woman until he sees her.[106] The reference is in the context of those who would betroth by means of a messenger and reads, "אסור לאדם שיקדש את האשה עד שיראנה שמא יראה בה דבר מגונה ותתגנה עליו."

"It is forbidden for a man to marry a woman until he has seen her lest he see in her [after the wedding] something repulsive and she become repulsive to him." The citation does not answer the question, for the question may well assume that they have indeed seen each other. No mention is made in this passage of the wedding day itself. The only thing established by this passage is the fact that some time before the wedding the bride and groom must see each other.

Freehof now attempts to show that no prohibition of the bride and groom seeing each other exists in the traditional sources. He

first cites Samuel U. Phoebus, the seventeenth century commentator to the Shulchan Aruch, in his בית שמואל to שולחן הערוך 35:2, to show, again correctly cited, that it was the custom to give the bridal couple a dinner the evening before the wedding.[107] From this, Freehof deduces that at least in the seventeenth century the custom of remaining apart the day of the wedding apparently did not exist. Freehof goes on to show that many authorities did object to the couple seeing each other during the entire engagement, giving proper citations to back up this assertion, but concludes that the purpose for this restriction is based on the idea that the man and woman should have no close contact before the wedding.[108] After citing the different responsa to show the custom of the groom covering the face of his bride, along with the rabbi, before the wedding ceremony, Freehof finally concludes that there is no objection in the codes to the bride and groom seeing each other on the wedding day and guesses that the custom is due to Protestant Christian influence.[109]

The care taken by Freehof to use the codes and the traditional responsa literature is here again exhibited. The answer is just what the question required and is a result of a search into the literature, and the conclusion is traditionally sound.

In the same volume of responsa, Freehof deals with a question submitted by Rabbi Bernard Kligfield. The question asks if a gentile is eligible, according to Jewish law, to be one of the wedding party--a bridesmaid, groomsman, etc.[110]

To answer the question in this responsum, Freehof first cites the Mishna, Baba Kama I:3, and Rosh Hashanah 1:8, to show that women, minors, and non-Jews cannot be witnesses to the signing of the marriage contract (the כתובה), or to the giving of the ring. These passages do limit who may be accepted as witnesses generally, and the non-Jewish wedding attendants would, automatically, be excluded from being witnesses.[111] However, Freehof finds no objection to their presence at the wedding ceremony. Had he left the answer go at this, he would have a strong position. But instead he cites כתובות 12a to show that שושבינים were present. Freehof interprets שושבינים to be "good friends."[112] This interpretation, though a possible meaning of the word, is not clear in the passage cited by Freehof. The שושבינים in כתובות 12a serve the function of witnesses who examine the bride and the groom before they enter the bridal chamber to ascertain whether or not tokens of virginity were being sneaked into the room. The passage reads, כן ביהודה בראשונה היו מעמידין להם שני שושבינים אחד לו ואחד לה כדי לשמש את החתן ואת הכלה בשעת כניסתן לחופה.

It seems to me that this passage is using the word שושבינים in a technical sense, and nowhere can we deduce from it the conclusion reached by Freehof that gentile bridesmaids and groomsmen can be used at the wedding ceremony. Freehof, basing his reasoning on the idea that שושבינים means "good friends" entirely, now cites the Mishna, סנהדרין 3:5 to show that שושבינים cannot testify anyhow.[113] The passage indeed supports the assertion. Here, indeed, more than in the passage from כתובות, שושבינים seems to mean the "best

man." But nowhere is it made clear that these friends could be non-Jewish and the conclusion reached by Freehof, that the wedding party may be made up of non-Jews, is not justified through the passages cited. At best, one could say that permission is implied only by the fact that no prohibition is given. He goes on to cite his own work, Reform Jewish Practice and Its Background (Volume II, page 70), to show that it was a widespread custom to have gentile musicians at wedding celebrations.[114] In this work, Freehof shows that there is some doubt as to the propriety of having such musicians. Even if the sources cited there were to clearly support this position, nonetheless it would not have direct bearing on the question dealt with in this responsum.

This responsum shows Freehof attempting to be lenient with no sound halachic basis for the leniency. Freehof's decision may not be in direct variance with the halacha, but at the same time it is not supported in traditional halacha. The decision is based on a rather superficial reading of Mishnaic and Talmudic passages. Here he has not given us a fair picture of the halacha. Significant, however, is the approach, which does not ignore or reject the halacha, but rather tries to interpret it in such a way as to attempt to read into it the decision rendered.

Freehof not turns his attention in another direction. He deals with a question submitted by Rabbi Herman Schaalman. The question reads,

> A child, an immigrant from Germany, the daughter of a gentile father and a Jewish mother, was converted in time of danger to Christianity. She now wishes to marry a Jewish boy. Must such a girl be converted to Judaism before this marriage can take place?[115]

In his responsum, Freehof sees two problems. First, the question of the mixed marriage of the girl's parents is to be considered. This is quickly resolved by citing יבמות 45b, and קידושין 68b, Shulchan Aruch (אורח חיים 4:5, 4:19), to show that a child whose mother is Jewish is, by all authorities, considered to be Jewish.[116] He points out, however, that some authorities hold that such a child cannot marry a כהן (אורח חיים 4:5). Freehof correctly points out that Caro's decision that such a child is unfit for the priesthood (שלחן ערוך אבן העזר) seems to be a minority opinion. By Zvi Eisenstaedt to this passage cites many contradictory opinions, and states that if such a marriage is performed, ex post facto one should not force him to divorce her (תשובות חתם סופר אורח חיים). Further, Freehof properly shows that Rashi's commentary to קידושין 68b, implies that the child of such a marriage needs to be converted to Judaism, but rightfully points out that this is not the accepted halacha.[117] Freehof concludes that, with regard to the fact of the mixed marriage, the child is Jewish and could be married to a Jew.[118]

Freehof now turns his attention to the fact that the child had been converted to Christianity. He cites Simon of Dura (Rashbash

#89) who asserts that apostates who return to Judaism are not considered proselytes, but are considered Jews by birth. He goes further and says that we should welcome these people back, "'for they are still under the covenant sworn at Mount Sinai.'"[119] By also citing כבינו נשבע (in the מחבר ויתכי) Freehof concludes that "The mood of the law is clear, that such a revert must be treated generously and must be accepted at once. . . ." Therefore, in this case, the fact that the girl had once been Christian is irrevelant.[120] He drives his point home by indicating that, according to Saadia Gaon (הגאונים כוזר, ת ומהי , #474), even an unrepentent apostate retains his rights (with regard to marriage) completely.[121] The conclusion of this responsum is that the girl may marry the Jewish man without any need for conversion. This decision involved the use of the traditional sources and is according to the halacha.

In an additional work, Recent Reform Responsa, Solomon Freehof deals with eight responsa on marriage. The first deals with the case of a child of a mixed marriage who desires to marry a cohen. The question reads,

> The daughter of a mixed marriage in which the mother is Jewish and the father Christian wants to be married to a cohen. The Orthodox rabbi refuses to officiate at the marriage. What is the law and what should be our attitude in this matter?[122]

Freehof first cites the Shulchan Aruch (אבן העזר 7:17), to show that, in a semmingly clear way, such a marriage is not proper.[123] The passage properly cited by Freehof, reads, עובד כוכבים ועבד שבאו על בת ישראל, הולד ממנו בת אותו הבת פגומה לכהונה

"If a gentile or a slave has relations with a Jewish girl and she bears a daughter from him, that daughter is unfit for the priesthood." Despite the clarity of the passage, Freehof asserts,

> the law has never been definitely settled, as can be noted from the careful choice of the vague adjective 'P'gumah' (spoiled or unfit), rather than 'asurah' (forbidden).

He points out as well that if the father had converted before the birth of his daughter, or if the man was an Israelite rather than a cohen, there would be no problem.[124] He goes on to show that "the classic commentators" point out this distinction and cites באר היטב as an example.[125] באר היטב states "היינו לכתחלה בדיעבד לא תצא" [the word פגומה] implies that the marriage is improper in principle, but ex post facto it is permitted and one need not divorce her." At this point, Freehof has presented the problem, but has not yet given his decision.

Freehof now traces the development of the law. He points out the passage in the Bible, Leviticus 21:7, which tells us that a cohen should not marry a חללה , a woman spoiled for the priesthood. The problem he faces is the definition of חללה. He turns to the Mishna, קידושין 4:6-7, for such a definition and correctly reports that there the daughter of a proselyte (גר) is included in the catagory חללה (בת גר כגר).[126] However, he properly points out that קידושין 4:7, gives the information that if the girls mother

is Jewish, she may marry a cohen. The passage reads, וגר שנשא בת ישראל, בתו כשרה לכהונה.[127]

One might raise the question here as to whether the Christian father in our responsum may be considered a גר (proselyte) at all and whether or not this case applies. Freehof does not. Instead he points to the Talmud, יבמות 45a, to show the controversy and correctly points out the compromise of stating that the child of such a mixed marriage is פגומה, but is considered a kosher Jew.[128]

Freehof now moves on to some of the later classic commentaries. He first cites Azulai's ברכי יוסף to אבן העזר 4:13, to show that there is doubt as to whether or not the girl is פגומה for the priesthood.[129] The passage is correctly cited, and, as Freehof asserts, it in turn cites Maimonides as to whether or not the girl is even פגומה. It reads, להרמב"ם כשר לכהונה. Certainly, by this citation, Freehof established the fact that there is reason to be lenient. To be fair, he cites the Responsa of Solomon Luria though the number of the responsum given is incorrect and should read #18, instead of #17. In addition, he cites חלקת מחוקק to אבן העזר 7:17, and בית שמואל to the same passage to show that these commentators too forbid the marriage to take place.[130]

Freehof concludes this responsum by asserting that the Orthodox rabbi is being strict and has valid grounds to prefer not to officiate. Freehof's answer is,

> It seems clear that we should not hesitate to officiate. In the first place, on general ethical principles, the Reform Movement has long decided that there should no longer be any distinctions observed be-

> tween priests, levites, and Israelites. This ethical decision is bolstered in the halacha by the fact that actually a priest nowadays is no longer to be considered an actual priest, but a doubtful priest (cohen sofek) because his geneology is no longer carefully kept.[131]

It might be recalled that in 1943, Israel Bettan wrote a responsum in which he carefully gave the arguments against following the laws as they apply to the cohanim (see above). Though Freehof does not cite that responsum by Bettan, neither does he take the time here to trace the argument. Instead he simply cites מגן אברהם to the Shulchan Aruch, אורח חיים 4:57, note 9, and leaves the matter go at that. The thrust of his argument has not been directed against the legitimacy of the cohen, and only in this conclusion does he even mention it. Rather, the legitimacy of the marriage has been his concern, and to his answer he adds,

> Furthermore, there is little danger that we would arouse ill will by officiating at such a marriage, since it is a perfectly valid marriage and, according to Orthodox law, must be accepted as such.[132]

This is the true result of the argument. Freehof therefore has taken a liberal, permissive opinion, but has done so by the attempt to stay within the halacha. He was unable to do so. He questions the halacha and raises some doubts about it but never shows it to be superceded.

The second responsum dealing with marriage in Recent Reform Responsa concerns the remarriage of a woman to her former husband. The question, submitted by Rabbi David Sherman, reads,

> A woman was married and had children. Then her husband divorced her. She subsequently married a second husband from whom she was divorced. Now a son by her first marriage died and their mutual sorrow brought the first husband and his former wife together. They want to be remarried. Is there any way in which this is permissible by our Reform interpretation of Jewish law?[133]

In his response, Freehof first implies that he is not going to follow the halacha. He states,

> Of course, we should always be cautious about abolishing or disregarding an old law, especially in questions of marriage. Yet, if there is some way in which we can do what, according to our conscience, is justice, we should do it whenever we can.[134]

But Freehof is not willing to allow the matter to be solved on the basis of conscience alone, as some of the earlier writers of responsa were wont to do. He now examines the law, beginning with the origin of the law in the Bible, Deuteronomy 24:1-4, and Jeremiah 3:1. Freehof correctly shows us that the prohibition of the wife marrying her former husband after having already remarried to another man, is given because of defilement. He further points out that Nachmonides gives the reason as a preventive to wife-swapping but does not explain what is meant by "she has been defiled."[135]

Having established the prohibition, Freehof now cites the Shulchan Aruch, אבן העזר 10:1, and the Mishneh Torah by Maimonides to show that if a woman had illicit sexual relations with a man after she was divorced she could still return to her first husband and be

remarried. "Surely," Freehof says of the distinction between the woman legally married and the woman who has illicit relations, "such a distinction can hardly have meaning for us."[136] Freehof now mentions the fact that Rabbi Meir of Padua applied the same type of distinction to the case of a woman who was a concubine of her first husband and who married a second man. She may return and marry the first man.[137] No specific reference is given for this particular responsum by Meir, and it is probable that Freehof took this citation from Isserles's gloss to the Shulchan Aruch passage, for this position is given there in the name of Meir.

Freehof's decision is a result of what he believes to be injustice in the law. He asserts that "we cannot accept the view that a second marriage is a permanent bar to remarrying the first husband whereas adultery or concubinage is not a bar at all, "and concludes,

> This is clearly one of the cases in which we must mitigate the law. As Rabbenu Gershom did in the case of polygamy and divorce, as modern Reform Judaism has done in a number of other cases, we must make every effort to allow this couple to reunite.[138]

The argument here is based on both injustice in the law and, for the first time in Freehof's works, an appeal to change as the right of the Reform Movement, and an attempt to claim that right on the basis of past precedent. There is really little difference between this approach and some of the positions taken by earlier reformers. But unlike the early reformers, Freehof does not treat such change lightly, and states, almost apologetically,

> Of course, such remarriages should not occur indiscriminately, since the law is there in the Shulchan Aruch. But whenever the human situation especially requires it, we should be frank enough and brave enough to be humane and just. [139]

This is the first time, when dealing with marriage, that any Reform writer of responsa has expressed so clearly the importance and the authority of the codes for Reform Judaism, even though the right to modify and change is maintained.

Freehof, now turns his attention to the question involving the performance of weddings on the Sabbath. The question, submitted by Rabbi Philip Bernstein, reads,

> A wedding was arranged for Saturday night. As the date approached for the marriage, it became clear that it would not be quite dark at the hour when the marriage was to take place. Is it proper to officiate on Saturday night before it is quite dark? [140]

First, according to the pattern he has used throughout the work, Freehof establishes the law on its simplest level. He cites the Shulchan Aruch, אורח חיים סימן 63, to show that a marriage ceremony is forbidden to take place on the Sabbath because it is in the nature of a contract. He further establishes the law by citing אורח חיים 339:4, which he correctly gives in translation. But noted from this latter passage is the gloss by Isserles who says, "There are some who permit it." [141] The full quotation from Isserles cites Rabbanu Tam, and Freehof finds the passage in ספר הישר , page 101, section 10.

Freehof correctly translates the passage, which reads, ולקדש אשה בשבת בלא] שאין לו בנים בדיעבד התרתי אפילו לכתחילה. אום פ'ה דוחק שעה

which he translates,

> 'I have permitted the marriage of a woman on the Sabbath to a man who had no children from a previous marriage.[142]

Freehof goes on to point out that such a marriage was permitted after the fact, but that even in principle he (Tam) permitted it for some special need. He then correctly pointed out that even Isserles accepted Rabbenu Tam's decision, though it was not the law.[143] On this basis, Freehof says,

> One could say with Rabbenu Tam that if 'there is a need for it, 'since all the elaborate preparations have been made, the sin of officiating would not be so very great.
>
> [He concludes] Therefore, on the rare occasion in which, do to an error in daylight savings time, it is not quite dark when the hour set for the marriage comes, it would be wise to delay as long as possible. Then, if it is not absolutely dark when we officiate, it is not too great a crime. Our conscience rests with Rabbenu Tam and Moses Isserles.[144]

Freehof is recommending that the <u>halacha</u> be maintained, and is giving the basis for leniency. He gives us a fair picture of the <u>halacha</u>, but may be more liberal than Rabbenu Tam in his application of the leniency.

In a responsum not dealing directly with marriage, but rather dealing with what may take place on Hashana Rabba, Freehof, without giving any citations, states,

> With regard to weddings the situation. . . is a matter of discretion for the following reasons: Orthodox custom prohibits marriage on Chol Hamo-ed generally, because 'one should not confuse one joy with another joy. . . .' Nevertheless I would say that we should avoid weddings, if possible, on Hashana Rabba. . . .[145]

Freehof goes on to say that he feels this was because of "maris ayin," for it would offend the non-Reform Jew; but he would do a small study wedding on that day.[146] It might be recalled that the first responsum dealt with in this thesis, written in 1913, by Kohler and Neumark, discussed this same question. There, the decision given was that there should be no prohibition against weddings on חול המועד (see above). Here, Freehof is not, in principle, contradicting that responsum, for he too seems to feel no objection to a wedding taking place. However, he does show more sensitivity to offending the traditional Jews and seems to want to avoid offense if possible, even at the expense of Reform Judaism's integrity and legitimacy.

Freehof now deals with another question that had also come up before in an earlier responsum; the question of whether or not a wedding can take place on the ninth day of Ab (ט' באב). Kohler and Neumark dealt with this question in their 1913 responsum on days marriages are forbidden. It might be recalled (see above) that their responsum appealed to the Augsburg Synod to show that the day no longer had significance, though the authors were unhappy to see the

practice disappear. They concluded that there should be no restrictions.

Unlike his predecessors, Freehof does not appeal to previous Reform decisions at all in this responsum, and does not even mention the earlier Reform responsum. Instead he relies on a late nineteenth century responsum written by Marcus Horowitz ("Matteh Levy," #32).[147] There, he correctly points out, Horowitz recommends that the custom of not performing weddings be strictly held, though Horowitz himself recognizes that there are some permissive statements in the law. Having pointed this out, Freehof now examines the law, searching for the permissive statements.

He first turns to Isserles' gloss on the Shulchan Aruch (שולחן ערוך ח"מ 551:2) to show that Isserles feels one should be strict, prohibiting marriages from the seventeenth of Tammuz until after the ninth of Ab. Freehof points out the use of מנהג in Isserles' work to show that this strictness is custom rather than law. Furthermore, Freehof mentions the fact that Caro, while prohibiting marriages from the first of Ab, nonetheless tells us that betrothals without the feast are permitted.[148] He then goes to the Talmud, תענית 43a, to strengthen Caro's position.[149] He also finds it strange that Maimonides, in the Mishneh Torah, יו"ט ז' 10:14, does not mention the ninth of Ab as a day on which marriage is forbidden.[150] Freehof goes on to cite the מהרי"ל אבודרהם to שולחן ערוך ח"מ 559, Solomon Halevi, and the Gaon Hai, all who take more liberal positions on the matter, coming to the conclusion that,

> While present custom is to forbid marriages on fast days and on the 9th of Av, the custom rests primarily upon the prohibition of festivities on that day. The present law, even today, permits betrothals without festivities, and it seems clear that in earlier times marriages, too, were permitted without festivities.[151]

Freehof then tells us the only grounds for prohibiting a wedding without festivities is on the basis of our respect for "the sentiment of more observant people, whether or not their sentiment is consistent with the rest of their observances."[152]

The decision reached by Freehof and that of Kohler and Neumark are similar, but based on different premises. Both find reasons to transgress the halacha in this matter. Freehof justifies the decision by finding leniencies in the traditional literature. Kohler and Neumark, on the other hand, ignored the traditional sources entirely and reached a decision based entirely on contemporary Reform practice. This is typical of the differences between the two periods of time in Reform Responsa.

A similar approach may be seen used by Freehof when he discusses the questions of the propriety of a borrowed wedding ring and of breaking the glass at a ceremony.

In terms of the former question, Freehof first researches the requirements found in the Talmud (קידושין 13a and 6b), which, as he correctly points out, requires that a woman may be married (the text says betrothed) with a peruta or the value of a peruta.[153]

He then traces the German custom of using a borrowed ring citing Moses Isserles in his דרכי משה to the Tur, אורח חיים 28. Here we find that a borrowed wedding ring can be used, but at the time of the loan its purpose was to be made known. Isserles, as Freehof points out, accepts the custom, and Freehof asserts that Caro accepts it in the Shulchan Aruch. He gives no reference for this.[154] After having researched the custom, Freehof concludes,

> We would . . . permit the use of a borrowed ring even if the law frowned on it, provided we felt that there was a strong sentiment in its favor. What does concern us in the tradition is that it became a wide-spread custom [to use a borrowed ring] . . . and the majority of the rabbis in the two great codes, the Tur and the Shulchan Aruch, declare it valid.[155]

Given this situation, Freehof finds no violation of tradition in permitting borrowed rings to be used. The attitude that he expresses, that the law is subjugated to the spirit behind it, is significant in understanding his use of the halacha.

In the second question, dealing with the breaking of the glass, Freehof first points to the fact that the codes do not require this custom. He points out, correctly, that Isserles to אורח חיים 65:3, only reports the practice as a custom in "some places."[156] He then refers us to Jacob Lauterbach's article in the Hebrew Union College Annual, volume II, which traces the custom of the breaking of the glass in detail.[157] That the custom broke the sanctity of the service

and was disliked even by some Orthodox rabbis is established by citing Hillel Posek in his הלל אומר, אבן העזר 59, and Ben Zion Uziel, in his responsa משפטי עוזיאל, Part II, אבן העזר, page 431, to show that these men feel the custom, though its meaning of mourning for the Temple is beautiful, has become course and vulgar. Especially it is distasteful when followed by the words מזל טוב, which is the present custom.[158] For these reasons, Freehof feels that the custom should be set aside.[159] Again, though he cites Lauterbach, his basis seems to lie with Orthodox rabbis and he used Lauterbach only as a source reference, not as an authority.

Two additional responsa are found written by Solomon B. Freehof dealing with marriage. One is found in his Recent Reform Responsa and deals with whether or not Reform marriages should be recognized by the Orthodox.[160] The Responsum, although important in its contents, deals more with polemics than with practical values. The approach he uses is the same we have already seen in his other responsa, placing a high value on traditional responsa literature. The citations made are designed to show that, though the Reform wedding ceremony is considered improper, the marriage is considered valid.[161] Freehof mentions opposing positions, but he does not cite them. A detailed discussion of this responsum is not deemed important, for the use made of the halacha in the Reform responsa is not in question here. Rather, the fight is being conducted against specific Orthodox authorities, using their own tools.

The final responsum concerning marriage published by a member of the Reform Movement was published by Solomon B. Freehof in 1966,

in the Yearbook of the Central Conference of American Rabbis, volume LXXV. The responsum was presented as the "report of the Committee on Responsa;" Freehof was the chairman. The question reads,

> A young Karaite girl, whose family comes from Egypt and who says she has always considered herself Jewish, asks a rabbi to officiate at her marriage with a young Jewish man. Shall he, as a Reform rabbi, officiate at the marriage?[162]

Freehof begins his response by correctly pointing out the fact that Isserles to the Shulchan Aruch, אבן העזר 4:37, forbids marriage with Karaites. The passage reads הקראים אסור להתחתן בהם וכולם הם ספק ממזרים. From this passage, Freehof asserts,

> It is really held against the Karaites that the general rule is that their marriages are deemed valid, but their divorces are deemed invalid. Therefore, if a woman is divorced by Karaite law and remarries by Karaite law, her offspring of the second marriage will be illegitimate. This is the basis for their rejection.[163]

To support this assertion, Freehof cites the Responsa of David ben Zimri (IV, #219 and VIII, #9) to show that this is indeed the basis for rejection. But Freehof points out that even David ben Zimri states that many Karaites have intermarried with Jews and that by the law of averages, the likelihood of illegitimacy (ממזרות) is so small a percentage that they should be accepted in the community.[164]

Freehof concludes this responsum with an appeal to Reform

practice, pointing out that since we accept the validity of civil divorces, there is no reason why the couple should not be married without requiring the girl to convert.[165]

Freehof here is recommending a break with the halacha, and, for the first time, does so without apologetics. The halacha is being transgressed for the sake of Reform practice. He does try to find a reason for leniency in the traditional responsa literature.

Perhaps the best summary of the use made of the halacha by Solomon B. Freehof can be given in his own words. He states,

> Our own attitude to these variations of observances in both Orthodox and Reform Judaism is based on our general attitude to Jewish tradition. We respect the spirit of both Bible and halacha, but we seek to find this spirit according to our conscience and judgement, rather than to be bound by specific enactment.[166]

This has been the spirit with which Freehof has worked. He places a high regard on traditional sources, trying to render decisions that are in keeping with the halacha. When unable to do so, he tries to find justification for his variance with the halacha in the traditional responsa literature. He seems to ignore the earlier Reform responsa completely. He seems to regard it as lacking any authority while traditional responsa is regarded as important. His approach throughout has been a scholarly one, but one might, justifiably, claim that he picks and chooses the responsa he wishes to use and ignores others. I

believe that this charge could be leveled at any writer of responsa.

Above all, the responsa of Freehof seems to give the feeling that Reform Judaism no longer needs to ignore the tradition. Freehof tries to apply the traditional sources to the modern Reform situation justifying change. To say that Solomon B. Freehof always follows the halacha would not be true; to say that he makes extensive use of it would be.

CONCLUSION

It is clear that we are able to see a chronological pattern in the use of the halacha by the Reform movement, as seen through the Reform responsa. This thesis has documented a change in approach as well as a change in procedure and in the spirit.

The early Reform responsa, beginning in 1913 with the work of Kaufman Kohler, payed little attention to the traditional halacha, following it only when it happened to agree with the position taken by the author. Kohler's own statement, "In many instances the old Shulhan Aruk can no longer serve as a guide,"[167] is indicative of that period.

Later periods show an increasing awareness and concern for the halacha. The works of Rappaport and Bettan show that more care was taken to utilize traditional sources in their responsa. The scope of reference to the traditional sources was expanded from the Bible, Mishna, Talmud and the Shulchan Aruch to include some of the better known collections of traditional responsa.

Finally, the works of Freehof exhibit an extensive use of the halacha, recommending a change from the halacha only when he felt such a change to be absolutely necessary. Even when in variance with the halacha, Freehof attempted to use the traditional responsa literature as a guide and tried to justify his leniency within that literature.

Earlier in this thesis, this writer pointed to the importance of distinguishing between using the halacha and coming to conclusions on the basis of the halacha. In this respect, there is some, but little, difference between the earlier works and the later ones. In both cases, the Reform responsa literature is often underwriting the practice of reform rabbis after the fact. In the earlier period, such an attitude was acknowledged and appeal was often made to Reform practice as justification. The positions, with the possible exception of the question of mixed marriage, tended to be lenient, with no halachic or traditional justification deemed necessary for the leniency. The halacha was not extensively used in reaching these conclusions, nor was the traditional literature thought to be at all authoritative. There was almost a Karaite approach to rabbinic literature.

The later period saw a great change of attitude. The Karaite feeling is now gone, and the work of the rabbis of the rabbinic period is considered important. Changes are still being made, often contradictory in terms of the halacha. As in the works of his predecessors, Freehof's decisions follow the halacha only when it suits him that they should. The difference is one of form rather than of result. Freehof wants to find traditional justification for modification, remaining within what he feels to be the spirit of the law, even when he is rejecting the letter of the law. The form seems, and is, more traditional. The results remain liberal.

As to the question of why the change took place, the answer may have to remain somewhat problematic.

The rejection of tradition because it is tradition may contribute to the difference in terms of the earlier writers. It seems like every authority that is considered to be of the rabbinic period of Judaism or who is recognized as an Orthodox authority is rejected a priori. It seems almost as if the earlier writers of Reform responsa were afraid of making their liberal religion rigid. They shyed away from any approach that seemed to imply that they found any authority in the law. It all seems to be part of a polemic with the Orthodox, with the feeling that the authorities of the Orthodox Jew cannot be the authority of the Reform Jew.

The later period seems to have lost much of this fear. The polemic against the Orthodox still exists, but is not so vigorously fought. There is not the same feeling of insecurity that was earlier felt, and much more of a desire to retain identity with Judaism, perhaps even the feeling that Reform Judaism is the only type of Judaism that follows the spirit of the law. This, at least, seems to be implyed by Freehof's approach.

The answer to the question "why?" may be found in a different direction. This thesis has shown a change in the types of questions asked as well as in the responses. The earlier writings in the Reform Movement dealt with halachic questions that, in the mind of the reformer, could not be dealt with within the traditional literature. Questions of levirate marriage and יבום, forbidden days for weddings, laws of incestuous marriage and the problem of harmonizing Jewish law with American law plagued this period. In other words, these men

were starting from scratch.

On the other hand, later writers of Reform responsa worked in a time that had seen these basic questions already solved. Freehof, with his traditional approach, did not have to face the problem of שלח לך, for example. I doubt that he could have faced this question and still have been able to work within the traditional literature. The questions in which the later writers were able to follow halacha on dealt much more with ritual matters and customs, such as the use of wine at the wedding ceremony, priestly marriage laws (the distinction had already been abolished), the breaking of the glass and other such ritual matters. No one really gets upset if the halacha is maintained in these matters; but could Freehof have followed the halacha dealing with levirate?

The third possibility seems almost too simple. It may be that the nature of the individuals writing the responsa determines the approach. This would account for the differences we have seen occuring within the same basic periods. Certainly this cannot be overlooked.

It is probable that all three of these factors contributed to the developing pattern of the use of halacha in Reform responsa. The question now is one of the future.

This thesis leads this writer to the conclusion that if there is to be any standardization in Reform Jewish practice, it will have to come through the acceptance of the responsa written by individuals

in the movement. For this to become a reality, the present practice of justifying change through research into the spirit of the tradition will have to increase. But in addition, more attention must be paid to earlier Reform responsa and Conference decisions than is currently true. Reform responsa has to be respected as a legitimate guide, and the feeling that it is less authoritative than responsa written by traditional rabbis must be dispelled. To accomplish this, Reform rabbis will have to keep their works on a high scholarly level. Regard for the halacha will have to be maintained, and modification will have to be justified in terms of it. It must be used, if not always followed. This will assure our goal of being both Reform and Jewish.

FOOTNOTES

1- Solomon B. Freehof, The Responsa Literature (Philadelphia: Jewish Publication Society, 1955), p. 274

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3- K. Kohler and D. Neumark, "Report of Committee on Responsa," Yearbook of the Central Conference of American Rabbis, XXIII (1913).

4- Ibid., p. 179.

5- Ibid., p. 180.

6- Ibid.

7- Ibid.

7a- Ibid.

8- Ibid.

9- Ibid.

10- Kaufman Kohler, "Report of Committee on Responsa," Yearbook of the Central Conference of American Rabbis, XXIV (1914), 153.

11- Louis M. Epstein, Marriage Laws in the Bible and the Talmud (Cambridge: Harvard University Press, 1942), p. 240.

12- Kaufman Kohler, "The Harmonization of the Jewish and Civil Laws of Marriage and Divorce," Yearbook of the Central Conference of American Rabbis, XXV (1915), 335f.

13- Ibid., p. 346.

14- Ibid.

15- K. Kahana, The Theory of Marriage in Jewish Law, (Leiden: E. J. Brill, 1966).

16- Kohler, op. cit., XXV, p. 347.

17- Ibid., p. 348.

18- Ibid., p. 347.

19- Ibid., p. 350.

20- Ibid., p. 362.

21- Ibid., p. 369.

22- Ibid.

23- Ibid.

24- Ibid.

25- Ibid., p. 370.

26- Ibid., p. 371.

27- Ibid., p. 373.

28- Ibid.,

29- Ibid., p. 372.

30- Ibid., p. 376-377.

31- Abram Simon, "The Harmonization of the Jewish and Civil Laws of Marriage and Divorce," Yearbook of the Central Conference of American Rabbis, XXV (1915), 379f.

32- Ibid., p. 382.

33- Ibid., p. 383.

34- Ibid., p. 385.

35- Ibid., p. 390.

36- Ibid., p. 391.

37- Ibid.

38- Ibid., p. 392.

39- Ibid.

40- Abram Simon, "Report of the Commission on Laws of Marriage and Divorce," Yearbook of the Central Conference of American Rabbis, XXVI (1916), 127.

41- Ibid.

42- Ibid.

43- Ibid.

44- Ibid.

45- Ibid., p. 128

46- Ibid.

47- K. Kohler and J. Lauterbach, "Report of the Committee on Responsa," Yearbook of the Central Conference of American Rabbis, XXVII (1917), 87.

48- K. Kohler, "Report of the Committee on Responsa," Yearbook of the Central Conference of American Rabbis, XXIX (1919), 75.

49- Ibid., p. 76.

50- Moses Mielziener, The Jewish Law of Marriage and Divorce in Ancient and Modern Times and Its Relationship To the Law of the State (Cincinnati: Bloch Publishing Company, 1884), p. 84.

51- Kohler, op. cit., XXIX, p. 76.

52- Julius Rappaport, "Prohibition and Sacramental Wine Among Jews," Yearbook of the Central Conference of American Rabbis, XXX (1920), 112.

53- Ibid.

54- Ibid.

55- Ibid.

56- Jacob Z. Lauterbach, "Report of the Committee on Responsa," Yearbook of the Central Conference of American Rabbis, XXXIII (1923), 59.

57- Ibid.

58- Ibid.

59- Ibid.

60- Israel Bettan, "Report of the Committee on Responsa," Yearbook of the Central Conference of American Rabbis, XLIII (1943), 85.

61- Ibid.

62- Ibid.

63- Ibid.

64- Ibid., p. 86.

65- Solomon B. Freehof, "Report on Mixed Marriage and Intermarriage," Yearbook of the Central Conference of American Rabbis, XLVII (1948), 159.

66- Ibid.

67- Ibid., p. 161.

68- Ibid.

69- Ibid.

70- Ibid., p. 162.

71- Ibid.

72- Ibid.

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74- Ibid., p. 163.

75- Ibid., p. 164.

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82- Ibid., p. 166.

83- Ibid.

84- Ibid., p. 167.

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87- Ibid., p. 169.

88- Israel Bettan, "Report of the Committee on Responsa," Yearbook of the Central Conference of American Rabbis, LXIV (1955), 77.

89- Ibid.

90- Ibid., p. 78.

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92- Solomon B. Freehof, "Report of the Committee on Responsa," Yearbook of the Central Conference of American Rabbis, LXV (1955), 85.

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96- Ibid.

97- Ibid., p. 87.

98- Ibid.

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103- Ibid., p. 88.

104- Ibid.

105- Solomon B. Freehof, Reform Responsa (Cincinnati: Hebrew Union College Press, 1960), p. 182.

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110- Ibid., p. 190.

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113- Ibid., p. 191.

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122- Solomon B. Freehof, Recent Reform Responsa (Cincinnati: Hebrew Union College Press, 1963), p. 158.

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135- Ibid., p. 165.

136- Ibid.

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143- Ibid., p. 169.

144- Ibid., p. 170.

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146- Ibid., p. 172.

147- Ibid., p. 173.

148- Ibid., p. 174.

149- Ibid.

150- Ibid., p. 175.

151- Ibid., p. 177.

152- Ibid.

153- Ibid., p. 179.

154- Ibid., p. 181.

155- Ibid., p. 182.

156- Ibid., p. 183.

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158- Ibid., p. 187.

159- Ibid., p. 188.

160- Ibid., p. 194f.

161- Ibid., p. 198.

162- Solomon B. Freehof, "Report of the Committee on Responsa," Yearbook of the Central Conference of American Rabbis, LXXV (1966), 97.

163- Ibid.

164- Ibid., p. 98.

165- Ibid.

166- Freehof, op. cit., p. 199-200.

167- Kaufman Kohler, Yearbook of the Central Conference of American Rabbis, XVI (1906), 60.

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