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FRAGEN DES JUEDISCHEN EHEGESETZES

German Liberal Rabbis on halakhic problems of marriage and divorce

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Thesis submitted in partial fulfillment
of the requirements for Ordination

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DIGEST

One of the consequences of the emancipation of the Jews has been that the State has assumed jurisdiction over several areas of the individual's life previously regulated solely by Jewish law. One such area in which Jewish legal autonomy has ceased to exist is matrimonial legislation. This has been particularly problematic for religious divorce. In the new post-emancipatory reality, Jewish courts lack the power to obtain a get from a recalcitrant husband who refuses to issue such a document to his civilly divorced wife. Thus, beginning with the First Rabbinic Conference in 1844 rabbis and laymen have been debating the revision of matrimonial laws and customs.

The last time matrimonial questions were addressed officially within German Jewry was in 1929, during a meeting of the Union of Liberal Rabbis of Germany. The records of that debate were published under the title Fragen des Juedischen Ehegesetzes, "Questions about Jewish Matrimonial Legislation." Rabbi Dr. Max Dienemann opened the debate with a presentation on several problems of matrimonial legislation and practice, particularly with respect to divorce. Several of Dienemann's colleagues responded, taking up not only the problems occasioned by divorce, but also such issues as modernization of the kethubah and of the wedding ceremony. Each of the German rabbis stated his theoretical

justification for whatever innovations he suggested.

This thesis examines the 1929 debate in its historical context. The work begins by tracing previous attempts at dealing with matrimonial questions in Germany from 1844 until 1929. Then, important sections of the 1929 proceedings presenting specific practical proposals or major theoretical or ideological approaches are translated, while background material is provided for better understanding of the particular positions taken by each participant. When appropriate, the suggested innovations are analyzed in the light of traditional Jewish Law. The attempts of liberal Jewish groups, particularly the Reform and Conservative movements in the United States, to deal with matrimonial questions are compared to the specific suggestions made in 1929. In conclusion, I side with the German Liberal Rabbis and their contention that in order to solve the extant problems, particularly those concerning religious divorce, it is necessary to legislate "in the spirit of halakhah", even if by doing so one may provoke negative reactions from certain groups within the Jewish community.

In memory of my father; Felix Lilienthal (z'l).

To my mother; Elisabeth Salfeld.

ACKNOWLEDGEMENTS

The completion of this thesis means also that my formal rabbinic education is reaching its end. It is thus an appropriate moment to pause and think about the events and the people which have been significant over these last five years.

At this time I wish to thank my teachers, who have shown me the path of ongoing search and learning. Special thanks are due to Prof. Jakob J. Petuchowski, my advisor. This thesis marks the conclusion of a lengthy process, the result of which is that we now share affection and reverence for one of the great periods of Jewish History, German Jewry.

My sincere thanks go also to my extended family in this country and in Europe. Their support and interest in me have made a great difference during these last few years.

Last, but certainly not least, my heartfelt thanks go to my friends spread over three continents. Being able to rely on them is always a privilege. In particular, I wish to thank Rabbi Faedra Lazar Weiss for her patient editing of this work. My thanks also to Rabbi Ruth Langer for lending me her word-processing equipment. Without it this thesis would not have been such a pleasant experience.

As I read these lines again, and think of those persons I had in mind as I wrote them I remembered that in

Spanish we say: "Dime con quien andas, y te dire quien eres", "Tell me who are your companions, and I will tell you who you are." I honestly think that I am a very fortunate person.

TABLE OF CONTENTS

Introduction

Jewish life of the 1980s is filled with intense discussions among the different groups of organized Jewry on the subject of "Jewish unity". However, the subject under discussion is not what we would call "a product of the eighties". It did not have its origin in any recent resolution of any rabbinic body either in Israel or in the United States. The question of coexistence between groups of Jews with different philosophies of Judaism has a much longer history.

The difficulties in achieving such unity stem from the hardships facing every Jewish religious group in dealing with the consequences of emancipation. As Jews in Europe slowly became integrated into the broader society, they suddenly found themselves subject to two separate legal systems. On the one hand there was civil law, which ruled all public aspects of the individual's life. On the other hand, there was Jewish Law to which, initially at least, the Jew owed allegiance. Simply stated, the question became where to draw the line between the two systems of law, in effect, between the two worlds.

One of the areas of life in which this conflict was most clearly felt was in matters of marriage and divorce.

The present-day situation in the United States still exemplifies this fact. The American Reform rabbinate does not require a traditional get in case of divorce. These rabbis have for many years declared themselves satisfied with a decree issued by the civil court for the purpose of dissolving a marriage. With this practice the Reform rabbinic leadership has tried to deal with certain difficulties arising from following the halakhic divorce procedure. The Conservative Movement has tried to solve the same problem of conflicts between the two legal systems, trying simultaneously to be creative and at the same time to stay within the bounds of Jewish law.

These practices developed by the two main bodies of the American non-Orthodox rabbinate were preceded by similar attempts of parallel German bodies which, in lengthy discussions at their formal meetings through several decades, tried to arrive at solutions to these same problems. The tension caused by the problem of "where to draw the line" is felt all through these meetings and also in the special meeting convened by the "Union of Liberal Rabbis of Germany" in 1929, which was devoted to studying the entire issue once again. This thesis is intended to analyze the proceedings of this meeting from an historic point of view as well as in the light of traditional Halakha.

ANTECEDENTS

Chapter 1

Emancipation

The emancipation of the Jews of Europe, that is, the granting to them of equal rights as citizens of the state, began in France. Granting the Jews citizenship was seen as a logical consequence of the postulates of the French Revolution. However, this was not the only reason for bringing Jews "out of the ghetto". It was also thought that it would be advantageous for the economy to integrate Jews into the general society.

The Jews of Germany were emancipated later than their French correligionists. Their emancipation came as a result of Napoleon's military victories and consequent rule over Germany. A decree issued by Jerome Napoleon (brother of the Emperor) made Jews equal to other citizens. This initial emancipation was not the end of the issue. Nevertheless, it represented a major change for the Jews:

> ...Emancipation meant an end not only to archaic disabilities, but also to the rights and privileges of self government. 1

With the end of the Napoleonic era a conservative period began in Europe. This change brought with it consequences for the Jews. Jewish status in France was not greatly affected, but the status of German Jews changed drastically. The Congress of Vienna, held in 1815, took away from them most of the rights they had obtained during

French occupation. In spite of this disappointment, it was assumed that since the matter of Jewish rights had been discussed in an international forum such as the Congress, eventually the gains of the Napoleonic period would be recovered and consolidated.

Conservatism was put on the defensive about the fourth decade of the 19th century by the rise of liberalism. Jews allied themselves with the the liberals. In Germany, the revolution of 1848 established a close relation between most Germans and Jews. Liberalism triumphed in the revolution, and Jews regained their earlier status, now in a new, unified German state.

Certainly, Jews did not regain their rights instantaneously in 1848. Some changes had already taken place. According to Elbogen[2] the legal status of the Jews had already begun to change in the 1830s. Changes were made at that time in Kurhessen. Other changes took place in Baden. Later, in 1846, some restrictions upon Jews were put aside by the Kingdom of Bavaria. In spite of these early developments, however, most changes took place in the 1840s. In 1845 both chambers of the Wuerttemberg parliament voted in favor of the equality of the Jews. In the same year the regional parliament of the Rheinland abrogated the restrictions to which Jews were subject. Finally, in 1847 a law gave the Jews of Prussia the same rights as other Prussians.

One could, then, safely say that in the years previous

to 1848 the process towards "re-emancipation" was in motion. This must have influenced those rabbis who, responding to Ludwig Philippson's initiative, attended the rabbinical conferences of 1844, 1845 and 1846. The feeling of being closer to the ultimate goal of emancipation must have caused a desire greater than ever before in Jewish circles to prove that Jews were worthy members of the general society, or as Gabriel Riesser said in 1848, that they were "German citizens of the Jewish faith".[3]

Jews were on their way to becoming German citizens. Their energies were applied to this task, and German society seemed at least to some degree in agreement with their goal. The Jewish religion, however, did not seem to be appropriate to this new situation. Clearly, then, the Jewish religion had to be reformed. One of the areas that needed reform was marriage and divorce legislation and practice. Elbogen very accurately sums up this particular moment in Jewish history:

> One saw around oneself a loosening up of the structures: a commotion of the State body, a splintering off in the Church; one saw certain prejudices disappear, one felt a hand stretched out in a brotherly fashion. Should the Jewish religion prevent its followers from joining this wonderful world, quickly approaching perfection? [4]

Rabbinical Conferences[5]

The first German rabbinical conference met in Brunswick from June 12 to June 19, 1844. The meeting had been convened by Rabbi Ludwig Philippson, then editor of the

Allgemeine Zeitung des Judentums, the main newspaper of German Jewry. First of all, the conference debated the question of its own authority. It was agreed that the conference should not become a synod. However, the conference would give its support to any rabbi who might require it to carry out a resolution for which he had voted. The specific subjects analyzed included the existing liturgy of that time and Sabbath observance. On a more critical level, the topic of the political allegiance of the Jew was discussed .

The subject of marriage and divorce was first called to the attention of the rabbis by Philippson. He brought up the matter of the answers given by the French Sanhedrin to the questions submitted to it by Napoleon in 1806.[6] These questions included several on matrimonial law. Philippson's intention was that the conference should establish its position with respect to the answers given by the Sanhedrin. The episode of the French Sanhedrin was an important matter in the context of the German conference since French Jews had achieved emancipation and German Jews were striving towards the same goal. Consideration of the Sanhedrin's answers was passed to a committee consisting of Rabbis Holdheim, Salomon, and Frankfurter.

The subject of marriage and divorce legislation was brought up more explicitly in one of the subsequent sessions by Dr. Jolowicz, who moved that the conference should

take up the subject of Jewish divorce with the intention of updating divorce legislation. The president of the conference, Dr. Joseph von Maier, wondered whether the topic should not be given to a committee for its consideration, upon which Samuel Holdheim immediately asked if matrimonial legislation as a whole should not undergo a basic revision and reform in light of the times. Should his question receive a positive response, he further requested the formation of a committee which would study the subject and report on it to the next conference. The committee was eventually formed, the conference electing the following rabbis a members: Samuel Holdheim (19 votes), Levi Herzfeld (15 votes), Joseph von Maier (13 votes), Levi Bodenheimer (11 votes), Abraham Geiger (8 votes). It is interesting to note that Holdheim received the largest number of votes, twice as many as Geiger. One has to wonder whether those who voted for him did so because of his talmudic expertise or because of his obvious reformist tendencies. If one were to judge by what Holdheim published as a result of his election to the committee (see below, p. 18), the latter would be the case.

The major portion of the subject of matrimonial law was in principle deferred until the following conference. What remained to be considered in 1844 were the answers given to Napoleon by the French Sanhedrin, of which the second and third questions are relevant here. The second question was phrased as follows:

> Does the Jewish faith permit divorce? Is an ecclesiastical divorce valid without the sanction of the civil court? And are property laws which oppose the French code also valid?7

The elected committee's suggestion was to endorse the Sanhedrin's answer: "The divorce exists, although only in accordance with State Law". There was some discussion about this, and finally another wording was approved which to my understanding kept the ultimate decision in case of conflict with state law in the hands of Judaism. The Conference's answer said:

> Divorce is permitted, although the marital laws of the state must be observed.8

This response says that every time a Jewish court grants a divorce it must do so in accordance with civil law, but leaves open the possibility that Judaism will not grant a certain divorce.

The third question the Sanhedrin had to answer was a delicate one:

> May a Jewess marry a Christian, or a Christian woman a Jew? Or does Jewish Law demand alliances between Jews only?9

The members of the Sanhedrin had a difficult time trying to determine an answer to this question. They finally worded the following:

> The Grand Sanhedrin declares further that marriages between Jews and Christians which have been contracted in accordance with the laws of the civil code are civilly legal, and that although they may not be capable of receiving religious sanction, they should not be subject to religious proscription.10

The conference debated this answer and decided to go even further than the French Jews had. They asserted that:

> The marriage between a Jew and a Christian, the marriage between members of monotheist religions in general, is not forbidden if the laws of the state permit the parents to educate the offspring of this union also in the Israelite religion.11

This resolution was much more direct than the one issued by the Sanhedrin. Perhaps the German rabbis were more interested in removing barriers between the surrounding world and themselves than were the French. Whatever the case, this resolution caused much controversy after the conference and did not win too many friends for the rabbis who were present in Brunswick .

In summary, it can be said that the first conference tried to follow the emancipatory trend then in progress, yet not all borders were crossed. On the one hand the rabbis seemed willing to integrate themselves with the surrounding world. On the other, they were not willing to give up all their authority, as evidenced by the resolution on divorce. The tension between "internal Jewish matters" and "external affairs" was already felt in 1844 and still remains present today.

The second conference

The second rabbinic conference met in Frankfort am Main from July 15 to July 28, 1845. Most of the available time was devoted to the report of the committee on liturgy which had been appointed during the first conference. It

was at this conference that it was decided that Hebrew was not absolutely necessary as the language of prayer. The discussion also touched on the question of how much Hebrew should then be retained in the services. It was this issue which motivated Zacharias Frankel to leave the conference. The impetus towards liturgical reform did not stop with the language of prayer. Other important issues were also discussed: for instance, the contemporary understanding of the messianic doctrine, the status of the Mussaf prayer, and the cycle of Torah readings which should actually be followed in the synagogue. These topics were very time-consuming, so it was impossible to consider the report of the committee on revision of marriage laws. The committee was ordered to publish the report, which then would be considered at the next conference.[12]

This extension of their mandate by the conference must have been well received by the members of the committee, since, as shall be seen, it is hard to believe that they had any report to offer to their colleagues. In addition to the publication assignment, the committee received an additional one in the form of one of three questions raised by the Jewish community of Bingen, southwest of Frankfurt. The first two questions dealt with ritual baths and playing of the organ on the Sabbath. The third question,[13] however, related the case of a woman who was deserted by her husband.

The marriage was dissolved by the civil courts. Now the woman had a chance to remarry, but her husband would give her a get only after the payment of a very large sum of money. The community asked the conference for guidance on what to do. This question, which brings up one of the main controversies of marital law, was forwarded to the committee for its consideration.

The third conference

The third conference met in Breslau between July 13 and 24, 1846. Fewer people gathered there than at Frankfort, which can be explained by the opposition to the conference which came from Orthodoxy, the followers of Zacharias Frankel and the radicals. The main concern of this conference was the issue of Sabbath observance, the motivation being that many people needed to work on Saturday at that time. The relevant committee's report focused on the biblical understanding of the Sabbath as a day of consecration. Thus, it moved to allow Jews to perform all those labors which contributed to that sense of consecration. Interestingly, the committee made some very liberal recommendations to the plenum:

> That the conference declare that participation in the welfare of the State is so exalted a duty that the observance of the Sabbath must yield to this in cases of collision.14

It is worth noting that while radical ideas such as this about the Sabbath were put down on paper, there were clear

difficulties in doing the same with questions of marriage and divorce.

The topic of marriage and divorce did not remain undiscussed at this conference. At the first session, Samuel Holdheim moved that the Conference adopt and support the conclusions of a pamphlet he published the year before (analyzed below, p.18). Also, later during the conference, Abraham Geiger requested permission as "reporting member of the marriage committee"[15] to read a brief report on the question of halitsah so that at the following conference the report could be considered in full. This report was prepared by Geiger and was accepted and signed by the two other members of the committee present in Breslau, Holdheim and Herzfeld.

The report began by stating that the committee does not feel it would be criticized if, keeping in mind the holiness involved in marriage and divorce, it was not presenting a full report on the subject to the conference. The question of halitsah,however, although not exhausted, had been discussed at length, and therefore practical suggestions could be made on the subject without a lengthy theoretical background. Geiger's report noted the changes in the way that levirate marriage and halitsah had been regarded from their biblical origins through rabbinic times to the present. He showed also how rabbinic literature tried to limit the applicability of these institutions. The .pa report reached the conclusion that levirate marriage and halitsah are almost offensive in this day and age and would

also allow the brother of the deceased husband to practice extortion up on the widow. The motion to the conference resulting from Geiger's presentation was:

> The Conference wishes to declare that in the case of the remarriage of a woman whose deceased husband left her childless, there are no further requirements than for any other Israelite marriages.16

From the evidence of the proceedings, Geiger's presentation was ignored by the conference. This is surprising as Geiger dealt with one of the least controversial topics of all, halitsah. One could safely say that the members of the conference were in no rush to deal with the subject at this point.

The question of the committee's report

The rabbinic conference of 1844 had appointed a committee to make an in-depth study of the subject of marriage and divorce legislation, having in mind its eventual reform. This committee never actually reported back. At the third conference, in 1846, Geiger read a report on halitsah which began by apologizing for the fact that there was not a full report ready on the whole of matrimonial law. This might lead one to think that such a report was in the making. Certain facts, some already mentioned above, lead me to think that the report was never begun. Moreover, it seems hard to believe that the personalities involved in the committee could have agreed on some of the

major aspects of the reform of marriage and divorce legislation.

Three members of the committee published their opinions on the subject independent of any official report. Joseph von Maier did so as part of a pamphlet in which he defended the first rabbinical conference.[17] Later Samuel Holdheim[18] and Levi Herzfeld[19] published their personal views on the marriage and divorce issue as a consequence of their appointments to the committee.

Von Maier felt the need to write his booklet after what seemed then to have been several attacks against the first conference coming from less-reform oriented circles. He stated that the time to stop being silent had arrived. In his text, he sketched out the development of Jewish law from the Bible to the Shulhan Arukh. He then pointed to the fact that with the beginning of the critical study of the sources in the 18th century a gap between the life and the teaching of the Jews became apparent. The reason for this, said von Maier, was that it became clear that the Talmud was the product of certain historic times, and not the development of eternally valid Mosaic law. There was, then, he concluded, a need for reform. Next he classified people who advocated reform into several groups. There were those who justified their reforms on talmudic grounds. Others took the consciousness of the people as a justification for reforms. Specifically, this was Zacharias Frankel's position. Frankel considered that what remained alive in the people's

religious mind should be kept; the rest would disappear almost of its own accord. The third group included von Maier himself. He considered that reforms have always originated with the teachers of the people. The teachers have to make reforms once they perceive the need for such actions in order to retain the essence of the religion. This principle seems to be the basis for von Maier's statement:

> A revision of the matrimonial laws seems to be necessary for humanitarian as well as moral reasons.20

Farther on, Maier elaborated on the idea that the term "revision" meant that the fundamentals of matrimonial laws were to be kept and that only that which conflicted with the conviction and culture of the community had to be abrogated.[21]

Earlier, Maier stated his opposition to halitsah as well as to mixed marriages, for which he said there was no support in the conference. Towards the end of his booklet he listed a number of Jewish matrimonial laws which would require reform. For instance, a father can theoretically hand his 3-year-old daughter over to be validly betrothed; the marriage entered into by a 13-year-old boy is valid. Von Maier did not mention specifically the case of a husband's refusal to give his wife a religious divorce, although his list was an open-ended.

In summary, von Maier favored reform which originated in the teachers in accordance with their appreciation of the

situation. The basis of, in our case, matrimonial law ought to be kept, but the details have to be considered and changed according to the nature of each case.

Levi Herzfeld began his booklet by saying that he wanted to follow Holdheim's example in the area of marriage and divorce legislation. His intent was not to publish a comprehensive matrimonial legislation, but only to propose those reforms which appeared to him to be necessary in the light of practical experience and of his studies.

Von Maier mentioned in his booklet that there were those who justified their reforms on talmudic grounds. Herzfeld was certainly one of these. He went to great lengths in trying to justify the abolition of the priestly marriage limitations through proofs from the sources. For Herzfeld, Jewish law as an institution was still authoritative. He tried to prove his points by staying within the boundaries of tradition. On the basis of this methodology he came out in opposition to mixed marriages, which the first conference leaned toward declaring acceptable. In this he was clearly at at odds with Holdheim.

Interestingly, Herzfeld was in favor of bringing the entire issue of divorce under the jurisdiction of the civil courts.[22] He suggested this because he disagreed with the exegesis of the sages (especially Maimonides) of the verses in Deuteronomy 24 from which the detailed legislation governing religious divorce is derived. Herzfeld considered

that most of what the Rambam read into those verses simply is not there. Thus, divorce might come under the jurisdiction of the civil courts, especially since, as Herzfeld mentioned earlier in his work, in his view Jewish marriage is a fully civil act.

Samuel Holdheim's intention in publishing his booklet was to engage the entire community in an exchange of opinions before the subject was brought up at the Breslau conference. Of the three rabbis under consideration, Holdheim is the one who attempted to be the most systematic and the most creative as well. He saw Jewish marriage as an institution of a Jewish civil nature which the Jewish religion recognized. Since there were no established forms of marriage in the Bible, the Talmud had to develop them, presenting them as if they were rooted in the Bible. This development, said Holdheim, was incomplete, and it was felt as such by the Jews of 1840. Therefore, there was a need for reform. In such reform, the civil character of marriage would have to remain, but its legal form would have to be brought into accordance with the legal conscience of the Jews at that time.

Holdheim then went on to state his main concern. He saw as the crucial deficiency in the legal form of Jewish marriage its unilateral nature.[23] The husband acquired the wife, but she did not acquire him. This unilaterality had negative consequences for the woman: a) Theoretically the

husband remained available to other women. The "Herem d'Rabbenu Gershom" abrogated polygamy de facto but not de jure. b) The husband could divorce his wife even without her agreement. c) Only the wife could be charged with adultery; this being a consequence of a).

To overcome all this, Holdheim proposed that Jewish marriage become bilateral. An immediate consequence was that in the marriage ceremony the couple would express to each other the formulas of consecration. However, since the implication that a person may decide someone else's destiny goes against his or her freedom, the traditional formula during the marriage ceremony would be changed from "Be consecrated unto me" to "I wish to be consecrated unto you".[24]

The three principles upon which Holdheim based all his proposals were the concept that Jewish marriage is civil in nature, that Jewish marriage should be bilateral, and that all Jewish laws related to a Jewish politico-national institution were abrogated with the destruction of the Second Temple. Following these principles, Holdheim showed that according to his system polygamy would definitively be abolished. Divorce would require the agreement of both parties. Mixed marriages would be permissible, and rabbis should officiate at such ceremonies. His rationale was that Jews were now members of the German people and that therefore there was no impediment in

marrying fellow monotheists. Finally, since divorce was civil in nature, it would become a matter for the civil courts. Thus, the get procedure would become unnecessary.

The committee appointed at the Brunswick conference included at least three members with divergent approaches to Jewish tradition and hence to the idea of reform as well. They might have coincided on some of their conclusions, but there were some issues on which they clearly disagreed, for instance; mixed marriages. Furthermore, their different regard for Jewish sources might well have generated friction among them. If to all this we add that at the first session of the Breslau conference Holdheim moved that the conference adopt and support the conclusions of his booklet,[25] it seems safe to conclude that the committee never produced a report and probably was never even close to producing one.

Chapter 2

The Synods

After the conferences were over, it was felt that they had not succeeded in providing guidance in matters of religious practice and belief. Some claimed that the reason for the failure of the conferences was that the laity had not had a voice in them. The next move needed to be the convening of a synod in which rabbis and lay people would work together on the task of developing the reforms needed by the Jewish religion.

Calls in favor of a synod were heard as early as 1845, but no action was taken until decades later. The revolution of 1848 concentrated everybody's attention on national politics. Jews were no exception to this. Over and above their interest as Germans in external political matters, Jews had a particular interest in these events since their battles for emancipation were not yet over. This led to a quieting of the debate about religious reforms. It could also be said that the leaders of the different factions had run out of energy as a consequence of their activities in the 1840's.

It was Abraham Geiger again (as had been the case before the rabbinic conferences of the 1840s) who set things in motion in 1865 with an article in which he called for gatherings of Jews to discuss reforms.[26] Geiger's suggestion

was received favorably, but it took until 1868 for such a group to meet again. This conference of 24 rabbis took place in Cassel on August 11, 12 and 13 of 1868.

The meeting considered itself as only preparatory to the upcoming synod. The rabbis in attendance discussed several liturgical reforms proposed by Ludwig Philippson. He, together with Rabbis Adler and Joseph Aub, was appointed to a committee in charge of convening the synod. Four additional commissions were formed to prepare the ground work for the synod in different areas. One of them was a commission on marriage laws, which included rabbis Bernhard Friedmann of Mannheim, Joseph Aub of Berlin and Geiger of Frankfurt.

The first synod met in Leipzig from June 29 to July 4, 1869. Many communities were sympathetic to the idea of the synod, and so at the beginning of the meeting 60 communities were represented by 83 delegates. Most delegates were from Germany, although only from the non-orthodox factions of the various communities. There were delegates from other countries including Belgium, Austria and even the United States; there were no delegates from Eastern Europe except one from Galicia.

Before beginning its agenda, the synod declared itself to be the successor of the conferences of the 1840s. Next, it was seen as appropriate to issue a declaration from a perspective on which all agreed. The four-paragraph declaration began this way:

> The synod declares Judaism to be in agreement with the principles of modern society and of the state as these principles were announced in Mosaism and developed in the teaching of the prophets...27

With this enlightened spirit, the synod discussed such topics as religious education, liturgy and circumcision. Many resolutions were submitted to the synod but were not acted upon. Several proposals on marriage laws were forwarded to a commission for its study. This commission was to report back at the following synod.

The first proposal concerning marital subjects on record was made by Rabbi Joseph Aub of Berlin.[28] His proposal included five items. The first dealt with the idea of equality in the wedding ceremony. According to Aub, the wedding ceremony should include an exchange of rings. The groom would give a ring to the bride while saying the traditional formula "Harei at mekudeshet..." and the bride would place the ring on the groom's finger while pronouncing the formula "Ani le-dodi v'dodi li" (Song of Songs 6:3). In the second part of his proposal Aub touched upon a subject which remains important in our day: that is, the fitness of non-observant Jews as witnesses. He moved that, just as nobody would be objected to as a witness in a civil court because of his non-observance of ritual laws, so in marriage and divorce cases such men should be accepted as witnesses. The third item tried to adapt divorce procedures to the realities of the modern world by proposing that the

sending of a divorce document through the mail to the appointed agent for his subsequent delivery could not be objected to. The fourth point wished to make decisions of civil courts with regard to the identity of deceased individuals and presumption of death acceptable for Jewish legal purposes. Finally came a proposal which is notable for its mildness. Aub proposed that since the form of the halitsah ceremony causes revulsion, this ritual should be reformulated. Curiously, Aub did not ask for its total elimination.

Rabbi Adler of Cassel also touched upon the subject of the childless widow in his brief motion, which was passed to the committee for its study.[29] He moved that it be recommended to the rabbis that instead of a "shtar halitsah", by which the brothers of the groom would agree to grant halitsah to their sister-in-law in case there should be such a need, the couple about to be married should sign a document by which they would renounce the institution of levirate marriage.

Three more members of the synod presented proposals to the meeting.[30] The next was Rabbi Wechsler of Oldenburg. His ideas touched two areas. He first suggested that the bill of divorce be written in German, since "Caldaic" was no longer appropriate to the times. His second item concerning divorce was quite daring in light of the cautiousness of most of the other proposals presented at the synod.

Wechsler stated that if a wife had filed suit against her husband and the religious court had recognized her right to a divorce, she should not have to wait more than a year for her former husband to issue a bill of divorce. Wechsler also had something to say about halitsah. He held basically that the biblical commandment mandating this institution had lost all meaning and that its omission should not be an impediment for the remarriage of the widow.

The next group of proposals were the only ones by a non-rabbinic member of the synod: Emil Lehmann, a lawyer from Dresden. His motions were quite progressive.[31] He wanted the synod to endorse the declaration of the first rabbinical conference on the subject of mixed marriages.[32] Further, Lehmann proposed that the synod declare that civil marriage is valid in the eyes of Judaism, the only limitation being that the biblical marriage prohibitions had to be respected. A blessing of the union was desirable, but according to Lehmann, not obligatory. Third on Lehmann's list was the suggestion that divorce should become a matter of the civil courts. His rationale was that rabbinic jurisdiction in matters of divorce was a remnant of the days when Jewish communities were subject to internal Jewish law. The fourth proposal said that in those cases in which a certain marriage was permitted according to Jewish law, but was made difficult by civil law (e.g., marriage of cousins) one ought to follow civil law. Finally the lawyer from

Dresden moved that a commission of rabbis should present to the next synod a list of those grounds for divorce still considered valid, trying in doing so to keep in mind the principle of equal rights for the two sexes.

Last but not least were the proposals by Abraham Geiger.[33] These were divided into two sections. The first dealt with halitsah. Geiger considered that this religious institution had outlived its validity and was by now unnecessary in all cases. However, if the synod did not wish to eliminate it, Geiger moved that at least the ceremony should be simplified. The act should limit itself to a declaration on the part of the surviving brother-in-law that he renounced every possible right to the widow. Halitsah could be performed through a rabbinical court if distance made it impossible for the surviving brother and the widow to appear in the same place. Further, Geiger proposed that if the brother refused to go through this ceremony or used it for the purpose of obtaining any benefits, then halitsah should be declared unnecessary and the remarriage of the widow should be permitted without any further delay. Finally, a halutsah should not be prevented from marrying a kohen.

The second section of Geiger's proposals dealt with religious divorce. Basically, he wanted the whole process simplified. Religious divorce would follow civil divorce.

The mechanics of the process would be such that a bill of divorce would be issued after a brief deliberation on the part of the rabbinical court. Should any party refuse to recognize the civil divorce once it had been executed, this would not be an impediment to the religious divorce. Geiger made religious divorce independent from the husband's consent. In the last two entries in his proposal, Geiger moved for the abrogation of the marriage restrictions upon priests.

No decisions were made at this synod on marital questions. The motions which the committee had to study before the following synod were varied in nature. Some reform proposals went farther than others. It is hard to find a guiding principle that runs through any of the proposals, let alone through all of them. All seem to convey the general feeling that reforms are needed, but such questions as how, why, or to what extent are not answered. There is one unanimous theme in all of the proposals, the form of halitsah. Either it should be abrogated or at least simplified to the point where it is no longer repulsive. Another idea reflected in the various proposals is that Judaism was at this point a religion within the German state. Lehmann's request for endorsement of the resolution of the 1840s on mixed marriages together with the idea of accepting civil marriage as a valid bond for Jewish purposes point to this fact. There is a desire to simplify matters

of divorce. Finally, there is a timid attempt to develop the idea of full equality of the sexes. There remained, however, some contradictions. On the one hand, the wedding ceremony was to include an exchange of rings between bride and groom, with formulas being pronounced by both. But, when it came to requesting that non-observant Jews be accepted as witnesses in marriages and divorces, Rabbi Aub meant only men. (Granted, at this stage not even the general society was developed to that extent in matters of equality.)

The first synod showed that there were reform-minded forces in motion. But, the opinions that were expressed in writing to this point were divergent and made it appear unlikely that an agreement could eventually be reached. This is especially important when we consider that apparently only so-called Reform Jews were present in Leipzig. If representatives of other trends had been there, the level of disagreement would have been even greater. It seems that others might have come, but that they did not feel included once the idea of the synod began to develop. Heinrich Graetz wrote in an open letter to a friend[34] that he was indeed in favor of a meeting such as a synod, but that after the rabbinical meeting in Cassel the gathering being arranged had become a partisan event.

At any rate, those who left Leipzig at the end of the synod did so with the feeling that they had started a permanent institution within Judaism. Others saw it

differently. An orthodox Jewish newspaper[35] wrote following the synod that the meeting had rejected the basis of the Jewish religion and that it had formed a new sect which, as others before, would eventually disappear. So far, history has proven both groups wrong.

The second synod

The second and last synod did not meet until 1871. 1870, as the year of the Franco-Prussian War, understandably left no room for such an event as a synod. The year after the war, the synod convened in the city of Augsburg, in the south of Bavaria. Between July 11 and 17, 52 delegates from 30 congregations gathered there. This number of participants was considerably smaller than the attendance in Leipzig, many communities who had been expected to participate failing to do so. Prof. Moritz Lazarus presided over this synod as he had done in Leipzig.

The rabbis and lay people participating discussed several subjects. One was Sabbath observance, concerning which it was decided that it was permissible to ride in a vehicle to get to the location where services were being held. Other matters included the reaffirmation of the importance of circumcision. Women were accepted as witnesses to the ritual bath of female proselytes. It was decided to further the education of cantors, and to strengthen the celebration of Hanukah. It is also worth noting that a discussion about reforming the Shulhan Arukh did not reach a

point where any decision could be made.

All of these subjects were considered only after the devotion of the initial part of the synod to the subject of marriage and divorce. It was the first point in the order of business, and the delegates took it up immediately after the opening of the deliberations. Several resolutions were passed, most of which reflect the motions presented at the 1869 meeting.

Specifically, the resolutions passed were the following[36]:

> 1. It is permissible during the marriage ceremony for the bride to give the bridegroom a ring accompanied by some appropriate words after the bridegroom has placed the ring on the bride's finger while speaking the traditional formula harei at mekudeshet.
>
> 2. The synod recommends that in those countries in which civil marriage is given in charge to the rabbis, questions asking if they consent to the marriage be put to the marriage partners at the religious ceremony analogous to the prescribed formula in the land of Wurtemberg.
>
> 3. No one may be objected to as a witness at marriages and divorces on the basis of the non-observance of a ritual law.
>
> 4. The synod declares that the custom of not having marriage ceremonies performed on certain supposedly unlucky days, viz., during the interval between Passover and the Feast of Weeks, as well as during the so-called three weeks, with the exception of the week in which the ninth of Ab falls, conduces to superstition and corresponds to no true pious sentiments.
>
> 5. A widow, who has been left with a child, need not wait longer than a year before contracting a second marriage. In cases where

the interests of the widow or the child make it desirable that the marriage be not delayed so long, it may take place sooner.

6. The civil marriage has full validity and sanction, according to the view of Judaism, provided that the prohibitions enumerated in the Mosaic law are not transgressed. Still the religious ceremony is necessary to give marriage that consecration which its importance requires.

7. A legal declaration of the courts concerning the identity of a deceased person and a legal certificate of death has sanction also for ritual cases.

8. The provision of the Torah concerning halitsah has lost all significance for us, since the conditions which gave rise to the levirate marriage no longer exist, and the idea which underlies the whole institution is foreign to our religious and social consciousness.

The non-performance of the halitsah is no impediment to the widow's remarriage. Still, for the sake of freedom of conscience, no rabbi will refuse, at the request of the parties, to conduct the act of halitsah in a proper form.

9. In consideration that the tenets of Christianity and the laws of modern states are possibly even more strict than the Jewish marriage law on the subject of prohibited marriages, that they regard marriage as an ethical union, and consequently forbid in connection therewith everything that offends morality, the israelite synod of Augsburg declares: That the talmudical marriage laws touching heathen proselytes have no reference to such persons as are converted to Judaism from any one of the Christian sects.

10. The synod resolves to appoint a commission to report to the next synod on the jurisdiction in divorce cases, viz., on the relation of rabbis to divorce and on the grounds of divorce which are still to be considered valid, keeping in view the equality of both parties to the divorce.

The resolutions emanating from this synod addressed many different points. The delegates arrived at them after discussing each issue at length. Both from the spirit of the proceedings and from the explicit words, it is clear that there was no wish to become too radical, for fear of what other segments of the community might say. Above we saw a sample of the negative reactions to the first synod. It is safe to assume that these were not the only reservations expressed by representatives of more traditionally oriented circles of German Jewry. Generally speaking, the debates had a mostly judicial character. Again, the rabbis and lay people seemed to be amending a legal system. The only person who had some general principles in mind by which to approach the whole subject of marriage and divorce legislation was Abraham Geiger.

The procedure of the debate in the synod was that the chairman of the committee on marriage and divorce legislation presented the results of the work done by his group. Then, the other delegates offered their reactions.
The chairman was Rabbi Aub of Berlin, who had already been appointed to this commission during the meeting in Cassel. The composition of the committee had changed since 1868; it now had five members. From the proceedings of the meeting I have been able to determine the names of four of those men. Besides Aub, the committee included Rabbi Dr. Geiger, Rabbi Dr. Loew, and Rabbi Dr. Landau.

Some of the resolutions of the synod were concerned with minor points, while others addressed major issues. For instance, the first resolution addressed a matter of major importance in those days which is still subject to discussion, the equality of the sexes in religious matters. Before the final text of the resolution was phrased, the delegates to Augsburg discussed at great lengths the essence of the double ring ceremony and its permissibility from a Jewish legal point of view. Opinions for and against were equally divided. The initial motion read by Aub included the idea that the bride should recite the famous line from Song of Songs 6:3 while giving the groom the ring. Several delegates voiced their disapproval of the choice of words. One suggested that the bride should simply respond "Amen" to the groom's traditional formula.[37] The final solution was to leave the issue open, so that each rabbi could proceed according to the best of his understanding. This was in any case in accordance with reality, since at this time there were several versions of the marriage ceremony in use. The truth was that the delegates were reluctant to take a stand on the main underlying issue which Dr. Aub had stated at the beginning of his presentation :

> What is meant here is that in our time the bride should reflect at the marriage ceremony the equality which is presently granted to the female sex along with the male sex in marriage matters.[38]

Geiger also established unequivocally what the issue really

was:

> This is the meaning of the motion: that two rings should be used, so that it shall be hereby established that man and woman are marrying each other as independent moral persons...39

In spite of their awareness of the real issue involved, the delegates preferred an imprecise resolution which would shelter them from outside criticisms.

The discussion preceding the third resolution concerning witnesses allows us some insight into the feelings of those present at Augsburg. Matters of principle not necessarily directly linked with marriage and divorce were at stake here. Some people wondered whether the synod should go on record on this subject or should simply move on with its debate, since in any event rabbis did not inquire much about the witnesses' ritual observance. Geiger again established what was the issue of principle:

> The question here is: are people trustworthy as witnesses if, in accordance with their conscience, their convictions, their points of view, they consider one or the other [ritual practice] as unessential? Or are they seen as unfit? ... Why should we not clearly express it? Present-day Judaism grants each person his conscience and trustworthiness even if he follows his personal principles [in matters of observance].40

There was clear support for Geiger's position. Before the vote was taken, Dr. Loew delivered a lengthy speech in support of the motion being debated. At the end of his exhortation, he called upon the delegates to lend their support to the motion, "without being afraid of Orthodoxy's

opposition".[41] The motion was approved unanimously. Although it had marginal implications for marriage and divorce, from a theoretical point of view this resolution appears to be of importance since it officially set down on paper the principle of freedom in religious matters. It is, however, important to note that, as was mentioned at the meeting itself, rabbis did not inquire too deeply into the personal practices of prospective witnesses. It is also important to stress that Loew's mention of Orthodoxy's opposition must have been based on facts which were known to all those present at the meeting.

Of the resolutions passed in 1871, the one that requires closest study is the sixth. One can read in this resolution an acknowledgment that social reality in Germany had changed. Recognizing civil marriage as valid in Judaism's eyes is admitting that with emancipation something had indeed changed for the Jews.

The final wording of the resolution was very close to that of the initial motion which Rabbi Dr. Aub read to the assembly on behalf of his committee before the debate was opened. The author of the original motion was Lehmann, the lawyer from Dresden who introduced it at Leipzig. Aub mentioned in his opening remarks that there were two opinions on this issue. On the one hand there was a person present at the meeting who did not think it was necessary to state that Judaism recognized civil marriage, since this was

obvious, and then there was Rabbi Dr. Geiger, who desired an explicit statement that Judaism recognized the validity of a civil marriage even if it was not followed by a religious consecration. All this caused Aub to ask rhetorically: how did they, i.e., the Jews gathered in Augsburg, regard marriage? Aub saw three dimensions to marriage.[42] First, there was the civil nature of the marital bond. There was also the moral nature. Both of these could be taken over by the state. However, there was a third dimension which the state could not execute unless it wished to become a religious state. This was the religious dimension, which was the most important of the three; it should not be declared superfluous but actually necessary.

Parallel to the position presented by Aub was another which intended to recognize Jewish marriage as a valid union even if certain laws of the state were not observed.[43] It was again Geiger who clarified matters. He stressed the fact that what he intended was to give religion its proper place. According to Geiger, religion could not consecrate that which the state considered to be illegal.[44] In spite of this statement of Geiger, there were several people who stated their objection to the fact that a marriage consecrated solely by Jewish law would be declared invalid. The final resolution, then, recognized a large part of the new situation created by emancipation. The marriage bond established by the state was from now on to be seen as valid by the

Jewish religion. Religious consecration was declared necessary, not merely desirable, reserving for Judaism the power to give the marriage the ultimate "touch". However, nothing was said about the validity of a marriage bond formed outside the auspices of the state.

Another of the resolutions which deserves further attention is the one concerning halitsah. Several of the delegates present at the synod were in favor of the elimination of this practice. Nevertheless, a very carefully worded resolution was finally approved. One can see here again that some delegates, at least, while present at Augsburg, were considering the reactions of others not in attendance. Dr. Wechsler clearly spoke in favor of the abolition of this ceremony,[45] yet at the same time he wanted to leave the possibility open for those who might request the performance of halitsah to see their wishes fulfilled. Wechsler held that the final resolution should merely say that halitsah was no longer an obstacle to remarriage. There was even one participant who requested that halitsah,[46] which according to him was among the most "dishonorable" things within Judaism, should not be eliminated as an institution. Dr. Adler, rabbi of Cassel, wanted its negative aspects removed in such a way as to shield the rabbis from accusations of having annulled a biblical law. He made such a motion for the sake of communal peace. Ultimately the resolution as transcribed above was passed almost

unanimously.

One might have expected that this time the subject of religious divorce would be dealt with. Unfortunately, this was not the case. The committee had two motions to consider, both of which proposed that civil divorce should be sufficient for Jewish purposes as well. The authors of these motions were Lehmann and Geiger. In his treatment of the topic, the reporting member of the committee, Aub, expressed that there had not been enough time to prepare a report.[47] He suggested that the subject should not be considered at that meeting. Dr. Goldschmidt, the rabbi of Leipzig, requested that this not be postponed because the subject matter was of the greatest importance.[48] However, his request was unsuccessful and yet another committee was created to study the matter and report to "the next synod".

The last point worth mentioning is that the motion, also authored by Dr. Lehmann, to endorse the 1844 resolution on mixed marriages was considered inappropriate at the time of the synod.

The synods were of a more reformistic tendency in matrimonial matters than the conferences of the 1840s. Some of the resolutions on the subject surveyed above prove this beyond doubt. Yet, it can be seen that the members of the synod had an innate caution as to how far they would dare to go. The Augsburg synod marks the farthest point reforms would ever reach. After this synod, the desires for change

in matters of marriage and divorce entered a period of greater moderation. External and internal circumstances changed, making it advisable for non-traditionally oriented rabbis to be more careful in their activities.

The reactions to the second synod may explain in part why after this meeting the reform camp became less outspoken. "Der Israelit", an Orthodox weekly identified with Agudath Israel, attacked the meeting before it even started. Participants and their motions were referred to in very unfriendly terms, stressing especially the violations of religious law included in many of the proposals to be discussed. Towards the end of one such article its author wrote:

> We have nothing against it if the synod wants to make as much of a fool of itself as possible and to clearly present to the whole world that its members have lost their minds.49

This newspaper carried what we would call today "continuous coverage" of the meeting. The reports from Augsburg were written, of course, in negative terms. An excerpt of the report on the first day of the meeting serves as an example:

> This morning in the "Golden Hall" of the municipality the festive opening took place. After a choral piece, our local Mr. Rosenbusch greeted the gathering. The newly elected, or rather reelected, president delivered the opening address. First he thanked the city of Augsburg for the generous use of the hall. It is true, the city of Augsburg deserves recognition for this tolerant act. The massive and disgusting persecutions of Jews which once took place in

> Augsburg never offered such a painful picture as this assembly of *minim, kophrim and apikorsim*.[50]

After the synod was over, this newspaper considered it appropriate to publish anew a declaration signed by 133 orthodox rabbis which had been issued the previous year.[51] In practical terms this declaration disqualified all reform-oriented rabbis from exercising their office. The most important paragraph was the last one:

> Israelite congregations are obligated to lend their energies towards turning out of office all such rabbis and preachers as are designated in paragraph 1. Should the observant members of a congregation be in the minority, and therefore be unable to secure the removal of such rabbis from office, they are obligated to provide for the proper administration of rabbinical functions, in accordance with the strict requirements of the law, even though this compel them to sever their connection with the congregation.

A few years after this declaration was issued, it would become possible through new legislation for groups of Jews in disagreement with communal policy to separate themselves from the central body and form independent congregations. This new fact, the *"Austrittsgesetz"*, would have its influence also on the attempts to modernize Jewish marital laws.

Chapter 3

Approaching 1929

It could be said, in hindsight, that the end of the Augsburg synod became a dividing point between two stages in the attempts by liberal rabbis to modernize marital law. The 1870s ushered in a time of changes and readjustments for the Jewish community which were caused by internal as well as external factors. The effects of these influences were also felt in the treatment of the matrimonial issues.

At this point in the 19th century, Orthodoxy increased its power within the Jewish community. The most outstanding product of this new power was the approval of the Austrittsgesetz, the Law of Secession. The orthodox segment of the Jewish community of Frankfurt invited Samson Raphael Hirsch to become its leader. Hirsch strengthened orthodox institutions and began to question the fact that dues paid by his followers would go to support a community which was led by the liberal segment of the community whose ideology they did not share. The administration of the community made several concessions to the orthodox minority group, who did not consider these gestures sufficient. Samson Raphael Hirsch had broader goals in mind. In 1876 he succeeded in having the Prussian Landtag pass a law which was similar to one approved for Christians in 1873. Until 1876, Jews who wished to be recognized as such by the authorities had to be members of the recognized Jewish

community. Leaving this institution amounted to leaving Judaism. The new law permitted secession from the community without loss of Jewish status. This new legal situation gave rise to what came to be known as the "Austtritsorthodoxie", orthodox congregations which functioned outside of the official Jewish community. After the approval of this law, the board of the community of Frankfurt agreed to all the demands of the orthodox minority, fearing that members of the community would leave.[52] There were not too many cases of separatist congregations within Germany besides the one led by Hirsch, but it is probably safe to assume that the potential danger presented by the new law became a permanent element in the life of all the German Jewish communities and contributed towards moderating the intentions of reform-oriented circles. There was, however, an external element which influenced the community and contributed to a sort of communal accommodation. During the 1870s there was a resurgence of antisemitism, which was to become ever stronger until the bitter end. Under such circumstances the priorities of German Jewry changed. The task now was to close ranks and stay together.

All this influenced the actions of German liberal rabbis as well. They continued to advocate reforms but mostly stayed on the theoretical level. When considering practical applications, liberal rabbis admitted in their speeches that present circumstances made it inadvisable to

disturb the status quo. Towards the end of the 1920s those explicit statements gave way to a phrase one can find in several places. Liberal rabbis would say: "in Germany we believe in the unity of the community." This "official line" expressed the commonly-held view that it was not advisable to cause rifts in the community.

German Jewry remained divided along ideological lines. Yet each side was prevented from doing much more than voicing its ideas because of the external circumstances. One can clearly perceive this in the handling of the marital law question by the liberal rabbis. They continued to search for solutions to the problems which arose with emancipation. The rabbis wrote articles about the topic and also expressed their views at meetings of the Vereinigung der Liberalen Rabbiner Deutschlands, the Union of Liberal Rabbis of Germany. Their suggestions were somewhat less extreme than the ones submitted in earlier years. However, at least officially, little could be done.

Germany's rabbis, with the exception of those belonging to separatist orthodox groups were part of the Allgemeine Rabbiner-Verband in Deutschland, the General Union of Rabbis in Germany. As an example of the broad base of this organization, one might note that its last president was Rabbi Dr. Leo Baeck. In order that all rabbis regardless of their specific orientation could participate in the activities of the General Union an article of its constitu-

tion ruled out the discussion of any religious subject matter which might go against "the rulings of the accepted codifiers". This organization thus limited itself to general communal as well as professional concerns.

The liberal rabbinate needed a forum in which controversial questions could be discussed. Therefore, in 1898 the Union of Liberal Rabbis was founded under the presidency of the revered rabbi Dr. Heinemann Vogelstein. The issue of reform of Jewish matrimonial law was brought up several times in the forum of the Union. The available information covers only some of the meetings that took place before 1929, when the rabbis met in Berlin.[53]

During the second meeting of the Union in 1902, one of the topics was what should be done in case of a divorce when one of the marriage partners refuses to either give or accept the get.[54] The discussion touched only upon the options offered by regular religious law. It was noted that if the husband refuses to grant the divorce, the only recourse left is the moral suasion of the rabbi. If this fails, there is no available way to permit the remarriage of the wife.

During the same meeting, the subject of halitsah was brought up again, on the initiative of Heinemann Vogelstein. The particular point in the agenda asked what the rabbi's actions should be if the brother-in-law refused the granting of the halitsah or could not be found.

This concern is a clear retrogression from what was resolved at the Augsburg synod, clearly reflecting the zeitgeist . All those present at the meeting recognized the necessity of reforming the corpus of marriage legislation. However, there was also acknowledgment of the fact that attaining such a goal would be difficult since it could lead to division within the community. The ideal would be to achieve a consensus on matrimonial matters within the total community. This clearly appeared difficult.

Another meeting of the Union of Liberal Rabbis took place in Berlin on May 4, 1908. One of the presentations at the meeting was made by Dr. Heinemann Vogelstein and was entitled Grundlinien einer Reform der Ehegesetze, "Basic guidelines for a reform of the marital laws". In it, after giving a brief technical background Vogelstein proposed a five point-resolution.[55] According to the first item, any marriage which was permitted to the ordinary Jew should also be permitted to the kohen. The next proposed that halitsah be considered as abolished, although for the sake of freedom of conscience no rabbi should refuse to carry it out. The third proposed to consider the civil court's declaration of death as sufficient for halakhic purposes. The next two proposals dealt with aspects of divorce. First, Vogelstein proposed that, in line with the requirements of Talmud and codes, the German name and surname of the persons being divorced should be given in exact form. At the end came

Vogelstein's most important proposal. In the case that a husband who has been granted a divorce by the civil court refused to issue a bill of divorce, or if he made his consent dependent upon conditions impossible to fulfill, then a rabbinic court, with the agreement of a larger group of rabbis should appoint a representative who would issue the divorce in place of the husband.

The rabbis present at this meeting did not react to Vogelstein's presentation. It was decided that his proposals would be discussed again at the following meeting of the Union after a commission had reviewed them. As far as can be determined from the available material, Vogelstein's work was never considered in the Vereinigung. At a meeting in 1911 shortly after his death, the proposals were not discussed. Instead, Vogelstein's son Rabbi Hermann Vogelstein, and Rabbi Nathan Porges were put in charge of reworking the presentation in order for it to be considered at an upcoming meeting. The renewed debate never actually took place.

The last major statement by the Union of Liberal Rabbis before the 1929 meeting which can be reported is the paragraph devoted to marital laws in the famous Richtlinien, that set of guidelines prepared by liberal rabbis and laymen. The Richtlinien were intended to serve as a positive program for the development of Liberal Judaism. Unfortunately, they were received with indifference at the meeting of the

Union for Liberal Judaism in 1912 in Posen. Be that as it may, the "Guidelines" included a mention of marital legislation:

> Marriage receives its sanctity only through a religious ceremony. Those priestly laws which were connected with the existence of the Temple and those laws concerning family and inheritance which applied to the Jewish commonwealth of antiquity no longer represent an obstacle to a religious wedding. Ritual divorce shall rest on the principle of equality of man and woman and, after a civil divorce or annulment has taken place, shall be safeguarded against malicious obstruction by one or the other marital partner. The form of ritual divorce is to be simplified.56

In spite of this statement, the situation at the time of the Richtlinien was not much different than it had been in the past. In his evaluation of the Richtlinien, Rabbi Roberto Graetz says:

> Lastly, the rabbis were aware of the dangers involved in the reform of marriage and divorce laws. They approached the subject timidly, hinted at some aspects in need of revision, and simply stated that "the form of ritual divorce needs to be simplified", knowing full well that the ideal would be to come to some understanding with orthodoxy as to what and how to accomplish this. As early as in 1909 a prominent orthodox leader had warned that liberalism could be tolerated and combated with positive work by the orthodox segment, but that a complete break would have to follow any attempt by liberal Judaism to change marriage and divorce law, those laws which touched on personal status.57

As was noted earlier, information about the activities of the Union of Liberal Rabbis is scarce. Therefore it is impossible to offer a running account of the events leading to the meeting in 1929. Nevertheless, from the information

available one can form a picture which may be fairly accurate.

Since the times of the rabbinic conferences, the liberal rabbis of Germany were aware of the difficulties facing Jewish matrimonial law and practice. They attempted several times to provide solutions. The solutions and the resolutions proposed were of a varied nature; some were more extreme, others less so in their departure from traditional practice. All of them together, however, pointed to one fact; the rabbis never discussed, much less agreed to, any principle or method by which to proceed to reform the problematic legislation.

After 1870, the context in which the rabbis had to act changed drastically. Moderation seemed to be the spirit of the times. The production of speeches and articles could continue. Yet, if action was difficult in the early stages of modern rabbinic thinking, it was almost impossible during the last decades of the 19th century and the first decades of the present one. Still, the need to arrive at solutions to an increasing number of personal tragedies caused by the nature of the rabbinic legislation on marriage and divorce did not decrease. After the end of World War I the need to arrive at solutions actually increased, because the number of <u>'agunoth</u> rose dramatically as a consequence of the war.

All this must account for the fact that the Union of Liberal Rabbis decided to consider the subject again, in the

academic part of its 1929 meeting. There must have been a feeling that "we need to do something". And so they decided to try again, even though the internal and external circumstances originating in the 1870s were still present. Thus, the renewed treatment of the Ehegesetze at the Berlin meeting was conditioned by two main concerns: "something needs to be done," but "we can not divide the community."

THE 1929 MEETING OF THE VEREINIGUNG DER LIBERALEN RABBINER DEUTSCHLANDS

Chapter 4

The Meeting in Berlin

The Vereinigung der Liberalen Rabbiner Deutschlands met in Berlin on Tuesday, May 21 and Wednesday, May 22, 1929. The rabbis gathered in the administration building of the Jewish Community of Berlin in the Rosenstrasse, with 60 of the 93 members of the Union in attendance. The meeting opened Tuesday evening,[58] with a report on current business by the President of the Union, Rabbi Caesar Seligmann. Next, Seligmann reported on the meeting of the World Union for Progressive Judaism (1928) and on the input of liberal rabbis in a publication honoring Claude Montefiore. After his reports Seligmann urged the members to leave aside that which separated one from the other within the Union.

On Wednesday afternoon, Seligmann reported on the new liberal prayerbook which he had edited together with Dr. Ismar Elbogen and Rabbi Hermann Vogelstein. A resolution of the Union greeted the new prayerbook and recommended its introduction. Towards the end of the meeting, Seligmann was re-elected as President of the Union.

Wednesday morning was devoted to the subject of marriage and divorce legislation and practice. The main speaker was Rabbi Dr. Max Dienemann. Dienemann was born in Krotoschin, in the Province of Posen, in 1875. He studied at the Jewish Theological Seminary in Breslau, where he was ordained, as well as at the local university. He was rabbi

first in Ratibor, in Upper Silesia, from 1903 to 1919 and then moved to Offenbach am Main, where he served until his emigration to Palestine in 1938. He died in Tel Aviv in 1939. Dienemann seems to have been an introverted man, fairly busy with academic pursuits on top of his regular rabbinical duties.[59]

Max Dienemann was certainly a liberal as regards Jewish legislation. He once said

> Jewish legislation developed over the centuries. It actually is still developing today in that a rabbi issues a regulation and...well, how should one phrase it?... the consensus omnium [consent of the people] gives this regulation its legal force.[60]

This statement shows that in Dienemann's eyes change is clearly possible. However, not just anybody can promote change:

> ...only he can cause change who, being himself filled inside with true deep piety, wants to give this piety its expression.[61]

This obviously liberal man was entrusted with the preparation of yet another attempt to find a solution to the various problems connected to marriage and divorce. Having in mind previous attempts while reading Dienemann's presentation, one could say that he tried to balance several things. First, he tried to do something his predecessors had not done, to arrive at some axiomatic definitions so that one could view the issue under study within a broader context. Then, he attempted to present some innovative suggestions on the subject. Yet he did so trying to remain

within certain limits, in the hope of not generating negative reactions from orthodox quarters as had happened under similar circumstances in the past. According to Dienemann's wife, his presentation at the 1929 meeting was made with the will to preserve the unity of Israel.[62]

Dienemann began his presentation to his colleagues by stating that his task was very difficult, since any allusion to the limitations of Jewish law would be considered by some as aggression against the sanctity of Israel. Meanwhile, others would consider any hesitation on his part as a lack of courage or lack of faithfulness to his principles. Dienemann considered that first of all there was a need to determine one's personal position vis-a-vis religious law. Linked to this was also the question of what Liberalism is. Acknowledging that there is not just one answer to this question, Dienemann established that the following could be stated as true for most Liberal Jews:

> We take it to be God's will and revelation that we have been given a certain goal for areas of our life and our action. But the form in which the desire [lit., thought] directed towards that goal expresses itself does not seem to us as given by God. It appears to us to be the expression of the will of the community.[63]

Further on, Dienemann applied this basic principle to marriage:

> We perceive marriage, the living together of man and woman as expressed in their will

> to be married and in the form of that marriage, as a part of religious life. Marriage is not just a legal instrument but also a means to the goal of sanctification established by God. 64

Certainly, continued Dienemann, people had to produce forms which would govern the establishment of the marriage bond as well as the dissolution of such a bond should the need arise. But, he insisted, such forms could not be viewed as an expression of God's law.

After laying the groundwork, Dienemann went on to address the specific issues under consideration. He asked whether from a liberal Jewish perspective there was still a need for a form of religious divorce at a time when Jews had been brought under civil law and therefore Jewish divorce had become just a confirmation of the verdict of the civil courts. In order to answer this question, Dienemann considered that "das Volksbewusstsein", the consciousness of the people, had to be taken into account. According to him, this consciousness, which could be understood as a living feeling within the people, demanded a Jewish form of divorce. In the same way that people were not satisfied with a civil marriage and wanted an act which made marriage a part of religious life, they also required an act which would put the dissolution of marriage in the context of the religious community. In support of his view, Dienemann cited an article by Abraham Geiger.[65] Geiger had written about the proposals presented at the first synod by Lehmann, the

lawyer from Dresden.[66] Geiger agreed that divorce was just a legal procedure: however, it seemed appropriate for religion to keep a role for itself at this very difficult moment in the lives of those involved in this procedure.

After this citation of one of the "fathers" of reform, Dienemann acknowledged the fact that there were diverse views on the subject. In order to offer a complete panorama he brought in information about the practice of North American non-orthodox rabbis in matters of divorce. Those rabbis, said Dienemann, took the decision of the American civil courts in divorce matters as final. But this was not all:

> What is more, my informant wrote to me that, at least so far, American Orthodoxy has made peace with this [i.e., the way non-orthodox rabbis handled matters] and has not even dared to disqualify the actions of non-orthodox rabbis.67

Nevertheless, Dienemann considered that in continental Europe there was a desire for a Jewish form of marriage dissolution.

It could be argued that divorce is merely a legal institution. This view is not totally wrong said Dienemann, but what matters is the significance that one attaches to a certain form. Even marriage is, according to its external form, merely a legal procedure, but the individual gives it the meaning of a religious consecration. Similarly, in the case of divorce, there is more than meets the eye:

> One intentionally introduces an additional meaning into a form which externally appears

> merely as a legal one. This meaning is permission for people who have suffered a failure in their desire for a joint sanctification to open the way to renewed sanctification of life through marriage. This is done because of religion, for reasons of religious ethics and with the sanction of religion and its communal body.68

The guidelines established by Dienemann could be considered to be of a moderate reformistic tendency. He advocated the creation of new forms, but he also went so far as to say that for the sake of the unity of the community of Israel, one ought to hold to certain old forms as long as there are no reservations of an ethical nature which would make a different position advisable. One form in relation to which Dienemann found such ethical reservations was halitsah. Though he said that there should be no need for elaboration on the subject, Dienemann presented his case all over again, reaching the conclusion that liberal rabbis should no longer require the performance of this ceremony. Nevertheless, he added, in cases where rabbis were specifically requested to arrange a halitsah they should not refuse to do so. In saying this, Dienemann was probably echoing the 1871 resolution of the Augsburg Synod.[69]

Another item in the matrimonial legal complex in which Dienemann considered that an independent position on the part of the liberal rabbis was called for was the legislation limiting the marriage possibilities of the kohen. Biblically, a Jew of priestly descent should not marry a

divorcee or any other "tainted" woman. After making the point that the priests of the past were not the priests of the present and reminding the assembly that the Union had in previous years declared Judaism to be free from the legislation related to the Temple, Dienemann stated that this should decide the issue for them. Priestly status should not be a bar to any marriage. Even if one should wish to consider the laws related to the priest as still being in force, Dienemann reminded the audience, halakhah regards those unions forbidden to the priest as valid. It only questions the priestly status of the man and of the offspring of such a marriage.

After touching upon these two "lighter" subjects, Dienemann moved on to the more complicated subject of divorce. He had already established the perceived need in the community for a form that would dissolve a marriage within the religious context. Now he considered the specifics. First he discussed the existing form of the divorce document:

> The form is outdated. What was appropriate once in order to determine the identity of the persons involved [in the divorce] today no longer fulfills this purpose in any way. The signatures of the witnesses are of such a nature that nobody could recognize his own signature after some time. And the worst is that we emotionally oppose the wording, which makes the whole divorce procedure appear to be a unilateral act of the husband's volition, and the woman to be his possession.70

After stating so clearly the problems with the form of the divorce document are, Dienemann nevertheless said that

there was no warrant from a liberal perspective to make changes; any change would have to come as a result of general communal agreement. Why endanger the unity of the community to change the form of the get when the real issue lay elsewhere?

> What makes the divorce problem so difficult are the situations that develop when one of the two marriage partners has bad intentions or is missing.71

If the wife refuses to carry out the divorce, or refuses to receive the divorce document, there are ways, thanks to the decree of Rabbenu Gershom, to solve these problems. Dienemann reminded the assembly of the procedures of the "permission of 100 rabbis" and the zikkui. The first allows the husband to remarry even if his wife has not agreed to accept the religious divorce, and the latter is a procedure by which the divorce document is deposited with a rabbinic court until such time as the woman decides to receive it. Only then will she be ritually divorced.

Dienemann followed what one might call a "fair play" principle. Wherever there was an available way to solve problems, he considered it unnecessary to promote innovations in order not to affront orthodox sensibilities. But he had now reached the point at which the "fair play" approach might no longer be applicable: what should be done when the husband, for whatever reason, failed to participate in the divorce.

Dienemann had already acknowledged that this situation

was problematic for those who wished to receive a religious blessing for their marriages (i.e., remarriages). He next listed several reasons which made the "army of the 'agunoth number thousands" and then pointed a finger at Orthodoxy for not having found a way out for these women. According to Dienemann, Orthodoxy had lost the capacity to develop its legal system. The rabbis of old had been able to adapt themselves to the needs of the community. They had such authority that they could define the agreement of a husband to grant a divorce which had been obtained through coercion to represent his free will. The possibility of coercing the husband was no longer available in Germany or even in Jerusalem, as could be seen in a case referred to by Dienemann.[72] Thus there was a need to look for other solutions. Before going into his specific suggestions, Dienemann enumerated the specific cases which needed to be addressed: a) when the husband refused to grant a divorce in a marriage already dissolved by the state, b) when the husband used the divorce as a tool to blackmail his wife, and c) when the husband was mentally ill or had disappeared. The case in which the husband had been declared legally dead did not offer any difficulties for Dienemann, who considered that based on the decision of the civil courts the woman should be allowed to remarry. In presenting his suggestions for solutions, Dienemann first wanted to define the methods available to do so.

> One may pursue the course of proving a certain form as halakhically valid by means of interpretation. I do not consider this way to be a good one. It was frequently tried out in the early years of Reform. I consider it to be inappropriate. It is as if one would enter a house through the back door. It is as if one wants to demonstrate something as valid to someone who does not want to accept this proof because he does not trust the person doing the demonstration. There is the other method, which consists in looking for a solution which in some sense is an innovation while internally it is connected to the old halakhah, flowing from its spirit. I personally regard this second method as the better one and the more honest one. 73

What could be done? Dienemann first mentioned a proposal made years before according to which marriage should be considered a priori as conditional, with the provision that if the husband should die childless, or if the marriage were to be dissolved through civil law, then from a religious point of view the marriage should be considered from its inception as invalid. This procedure may be technically correct, said Dienemann, but it would be out of the question because it would retroactively transform the marriage into concubinage, which is morally unacceptable.

Another possibility, according to Dienemann, would be to take advantage of two talmudic principles: "kol demekaddesh ada'te derabbanan mekaddesh"; all marriages are established according to the rulings of the rabbis, and "aphkinhu rabbanan lekiddushin", the rabbis may retroactively declare a marriage to have been invalid. Dienemann referred to a long article by his predecessor in Offenbach, Rabbi Dr.

Israel Goldschmidt,[74] in which Goldschmidt made use of these principles. Goldschmidt said that one could claim that the rabbinic assumption at the moment of marriage is that in case the marriage proves unsustainable, neither of the marriage partners will cause problems in the execution of the divorce. If the husband refused his cooperation, the rabbinical court could annul the marriage. Following this reasoning, concluded Dienemann, one could arrive at a form which would could be defended from a Jewish legal point of view. However:

> If I consider this path as non-viable, it is for two reasons: 1) The principle [i.e., kol deemkaddesh] is invoked only when a normal, valid marriage had previously taken place, in order to recognize a dubious get as valid. However, there has been a get. And in our cases there has been no get so far. 2) In this "the rabbis retroactively invalidate the marriage", there is an annulment of the totality of the marriage which means a declaration of concubinage. This goes against our moral sensibilities. 75

So, after outlining his definition of Liberal Judaism, after appliying it to marriage and divorce, after identifying the problematic cases and surveying available approaches and previously proposed solutions, Dienemann finally arrived at his propositions. He suggested transfer of the power to issue the bill of divorce to the rabbinical court in all problematic cases. This would hold regardless of whether the court commanded the writing of the document, or if, in order to satisfy the formalities, the authorization came from the husband or a representative appointed by

him. Dienemann acknowledged that this was the direction in which proposals by Heinemann Vogelstein had pointed in the past.[76]

In accordance with the method he outlined earlier, Dienemann wanted to show how this proposed procedure would be in accordance with the intent and spirit of halakhah. He focused his explanation on the talmudic principle by which consent obtained from the husband through coercion is considered to be an expression of his free will.

> What is the actual meaning of "kophin oto 'ad she yomar rotseh ani", one coerces him until he says, "I want to"? In actual terms it means nothing else but that the Beth Din has taken upon itself the internal (Ger. innere) responsibility for the execution of the divorce. It means that the court compels the divorce, it forces it. The husband long ago stopped being the one who exercises volition. The one who determines, the one who decides is the Beth Din. There was no hesitation around 1600 years ago in taking this step of placing the divorce in the power of the Beth Din. However, in order to keep the outside form [of the transaction], they carried everything out so that the man, who according to the Bible writes the bill of divorce, was made, formally the agent of the transaction. All this could be done because it was possible to exercise coercion on the husband. But now, in present times, when one cannot exercise coercion, should we stumble over the fact that the husband must be the agent of the transaction, when the Sages already overcame this by considering an "I want" forced through a beating as a declaration of free will? This would actually mean letting formalities condemn us to powerlessness. We could here be obedient to the internal sense of the step already taken by the Sages (i.e., talmudic authorities) and we would be in best accordance with halakhah and on the way to its preservation through

> development consistent with its original intention. I want to direct your attention to this way, this method, and its internal basis.77

After concluding his presentation, Dienemann turned to the assembly, saying that they were now probably awaiting his indication to them of the direction in which they should move. He made it clear that this was exactly what he was not going to do. His thought was that Liberal Judaism as such should not make an independent resolution until every possibility of a joint decision together with other Jewish bodies had disappeared. Dienemann expressed his preference that the content of this meeting should be publicly debated rather than that any decisions be made. In saying this he was not expressing his fears of criticism from the orthodox camp; what actually moved him was his desire to preserve unity as long as it was in any way possible. Finally, Dienemann expressed his wish that if others wanted to claim that the liberals were wrong, they would at the same time propose a better alternative.

Dienemann's initial presentation to the Union of Liberal Rabbis was very comprehensive. He tried to be a liberal Jew, meaning by this being creative yet respectful of the tracition. Dienemann also remained fully aware of the external circumstances which placed limitations on what he could realistically attempt. Dienemann was flexible enough to state that wherever the available legal instruments "worked" he did not see any gain in making changes unless

there were ethical reasons for them. Insofar as possible Dienemann drew support from the literal reading of the traditional rabbinic sources. For instance, in the case of the marriage of a kohen to a divorcee or to any other "tainted" woman, M. Kiddushin 3:12 says that although they are valid, these unions involve a transgression. The status of the offspring of such marriages would be that of the inferior party, hence the child would not be a priest. Shulhan Arukh, Even Haezer 6:1, states that a priest is forbidden by biblical law from marrying a divorcee, while rabbinical legislation bars him from marrying a woman who went through halitsah. If the priest married such a woman anyway, he would have to divorce her. The commentaries indicate that the man could be coerced to divorce his wife. In the meantime, however, the union would be valid.

Dienemann pointed out that Rabbi Dr. Goldschmidt's use of two rabbinical statements was somewhat different than their clasical use. Indeed, in the two talmudic passages mentioned by Dienemann in his presentation,[78] the Talmud used the principles of "kol demekaddesh" and "'aphkinhu rabbanan" in cases where a bill of divorce had already been issued. Goldschmidt applied them to a different situation, namely, when a divorce had not yet been issued.

Where Dienemann did not follow the plain reading of rabbinic sources was in the case in which the husband refuses to issue a divorce to his wife. He mentioned the information

received from sources in the United States about the practices of the American non-orthodox rabbinate, by which one can assume he meant the Reform rabbinate. In fact, accepting the rulings of the civil courts in matters of divorce has been the consistent practice of the Reform Movement in America. There has never been an official policy statement of the Central Conference of American Rabbis to that effect.[79] The Conference did, however, deal with the subject. In 1907, at its convention in Frankfort, Michigan, it was decided to appoint a committee that would study the whole issue of marriage and divorce legislation

> ...in view of the disparity between some of the Mosaic and Rabbinical marriage laws on the one hand, and the theories, laws and practices prevalent in our country.[80]

The committee never presented a final report to the Conference. In his speech Dienemann established that he did not see this method of handling the problems related to divorce legislation as appropriate for the European continent. Therefore he presented the meeting with a possible solution which, as he said, was in accordance with the spirit of the traditional sources.

The root of the technical problems of divorce legislation comes from Deuteronomy 24:1. From this verse the principle was derived that divorce was solely dependent upon the husband's volition. The husband could divorce his wife whenever he wished, while the wife could not divorce her husband. This principle was carried into rabbinic

literature,[81] in which it is stated that the woman may be divorced according to her will or against her will. The same rabbinic sources establish the possibility of coercing the husband to give his wife a divorce.[82] The well-known sentence says: "kophin oto 'ad sheyomar rotseh ani", one coerces him until he says: "[Yes] I want [to issue a divorce]". The Talmud does not leave any doubt as to the nature of that coercion; what is clearly meant by this is beating.[83] The Talmud itself asks the logical question: how can coerced consent be seen as free will? The reason is given, among other places, in a discussion whether a sale made under coercion is valid or not.[84] In a comparison made with coerced divorce, the Talmud states that such a divorce is advantageous for the man in spite of the physical force used against him, since "it is a religious duty to listen to the word of the Sages."

In essence, Dienemann was correct when he argued that the rabbinical court had taken over the basic responsibility for the execution of the divorce. The reason for coercion is that "it is good" for the husband to follow the rulings of the Sages and issue a divorce to his wife. All this, however, is effective only when the husband finally utters the words "I want to". If the husband does not do so, the whole chain of reasoning collapses. The rabbinical court has only forced the process of deliberation that occurs in the husband's mind but the ultimate decision is still in the

husband's hands.

One can safely say that Dienemann was accurate when he said that his idea for an innovation was "in the spirit of halakhah." Present-day legislation in the State of Israel proves this. The state can, and does, exercise coercion upon recalcitrant husbands by means of fines and incarceration. One might say that in all those cases in which this has led to the giving of a bill of divorce the state took over the active role in the divorce process. However, there are today several cases in which recalcitrant husbands have remained in jail for years because of their absolute refusal to give their wives divorces. So, when coercion fails, the active role in the divorce process remains with the husband. In spite of the fact that Dienemann's reasoning is not totally successful, one has to agree that it is in the spirit of Jewish religious law. On a non-technical level, one may add that if the justification given by Maimonides (which will be dealt with on page 76) for the use of force in divorce cases has become accepted, the same status is deserved by the justification developed by Dienemann.

This comprehensive presentation began the debate on the subject of marriage and divorce legislation in the meeting of the Union of Liberal Rabbis. Several of Dienemann's colleagues responded to his words. Some of them stayed close to his general approach to the subject.

However, when one considers all of them together it is possible to see that they offered a varied spectrum of opinions.

Chapter 5

The responses to Dienemann's presentation

Lewkowitz (Berlin)

The first reaction to Dienemann's opening presentation came from Rabbi Dr. Julius Lewkowitz. Lewkowitz was born on December 2, 1876 in Georgenberg, Upper Silesia, and died, probably in 1943, in a concentration camp. He is reported to have been a person in whom one could sense a successful synthesis of the experiences gathered in the strictly religious home of his parents and his serious study of Jewish sources and modern philosophy.[85]

Lewkowitz studied in Berlin, at the University and simultaneously at the orthodox rabbinical seminary, the "Hildesheimer Seminar". One year before the culmination of his studies he transferred to the Jewish Theological Seminary in Breslau, where he was ordained. Lewkowitz's first position was in Schneidemuehl, in West Prussia. He was called to serve the Berlin community in 1913, being mostly associated with the Levetsow Street synagogue.

Ideologically speaking, Lewkowitz had a historic-critical approach to Judaism. That is, he viewed his position in the religious spectrum as the result of a particular methodology:

> ...there are not two different types of Judaism, a liberal one and a conservative

> one. The Jewish religion is a specific, unified historic phenomenon, and today there are not two creeds in Judaism as there is Catholic and Protestant Christianity. Rather liberal as well as orthodox [Jews] stand on the ground of historic Judaism, and the difference between them is the way in which Judaism manifests itself to them.86

This historic Jewish religion has, like any other religion, its teachings and laws, and it requires their observance by the people. The question is, then, what is Judaism's right to do so? Lewkowitz's view was that Orthodoxy based this right on Divine revelation:

> In contrast to this view, Liberalism considers that our teachings and laws are valid, not because they were revealed in a supernatural way, but because we recognize them as true.87

These ideas follow from Lewkowitz's view that God reveals Himself naturally in the written religious sources, similarly to the way in which He reveals himself in nature. For Lewkowitz, the Bible had to be approached in a critical manner, although this did not mean that one should accept everything scientific research produced without it providing valid proofs for its claims.

Lewkowitz also stated his view on the oral tradition. In his opinion, Orthodoxy needs a God-given explanation of the Bible, since it will not accept its critical study. This principle works in the opposite direction for the Liberals. They cannot recognize the binding authority of the Talmud because they are in favor of a critical explanation of the Bible. Liberal Jews have much for which to thank the Talmud,

but, said Lewkowitz, they should not read the Bible through "the lenses of the Talmud".[88] The Talmud, based on the Pentateuch, is not the high point of Jewish religious development; Prophetic Judaism is. Nevertheless, because of Liberal Judaism's belief in organic growth, it does not reject the Talmud. Of course, this meant that it must view the Talmud from a different perspective than did the Orthodox.

The practical consequence of this different perspective was that Talmudic law determined the nature of religion only under certain conditions:

> Religion exists, according to our opinion, ... when the articles of faith and the thinking of the people coincide, when the religious prescriptions and the human being's perception go in the same direction.[89]

Therefore, stated Lewkowitz, religion has to take man into consideration. This human dimension becomes part of the religious experience:

> ...the religious forms, the ceremonies, do not have absolute value in themselves. Rather they are only the presentation and embodiment of human religious perceptions, and they have value and validity as long as they portray the religious perception.[90]

The consequence of this is that Jewish law must change in accordance with change in human perceptions. When a certain form, which has been transmitted through tradition, does not serve the people of a later age, then that form has to be changed.

At the meeting of the Vereinigung, Lewkowitz

began his speech by praising Dienemann's presentation. However, he noted the fact that Dienemann had not proposed an official solution to the problem of the get. This is what was needed, according to Lewkowitz, because unofficial solutions already existed:

> ...he [Dienemann] only showed ways and possibilities, and leaves it to the individual's conscience to decide how he wants to act. An unofficial solution is already available. We in Berlin have already carried out a fair number of divorces in which the get was handed over to the wife by means of an agent appointed by the Beth Din. I therefore see as the task of our present meeting the making of an official regulation out of the unofficial one. As long as we execute divorces in the new form privately, without referring to a legal ruling [to support them] then the label of arbitrariness and illegality is attached to them. We therefore owe it not only to ourselves, but also to the men and women whose marriages we dissolve, to come out of anonymity and modify the extant matrimonial law.91

From Lewkowitz's words one can infer that it was an ongoing practice to carry out "difficult" divorces in a non halakhic manner.[92]

Like Dienemann, Lewkowitz wondered about the repercussions an official decision could have in the general Jewish community:

> Are we, German Liberal Rabbis, entitled to proceed on our own in a question affecting the entire Jewish community? And are we not affecting the unity of Judaism if the rule we create does not find general approval? To this I wish to answer that the legislation we want to produce should only have the character of provisional, emergency legislation. We are ready to leave the definitive ruling to a

central Jewish body whose decision we will accept upon ourselves.93

Lewkowitz insisted that they, the Liberals, were the only ones who could produce such "emergency legislation," since Orthodoxy was tied up by its own religious principles (i.e. Religious Law) and could not give up its passivity. Lewkowitz was certain that liberal rabbis were acting in accordance with the spirit of Judaism when they tried to make it possible for men and women to enter new marriages. Nevertheless, they needed to find theoretical justifications for whatever steps they took.

Going into specifics, he first examined the case of a woman who refuses to accept a bill of divorce. As Dienemann had done before, Lewkowitz noted the existence of ways out of problematic situations. However, he voiced his opposition to the heter meah rabbanim, the permission given to the husband by one hundred rabbis to remarry in the case that the wife does not cooperate in the divorce procedure. Lewkowitz said that this would mean giving biblically-allowed polygamy precedence over the rabbinic legislation establishing monogamy. Therefore, he was in favor of the zikkui by which the bill of divorce would be deposited with the rabbinic court until the wife made it possible for it to be delivered to her.

Next, Lewkowitz went on to justify theoretically what already was the practice in cases where the husband

refused to issue a divorce document to his wife:

> In what way is it possible to theoretically justify the appointment by the Beth-Din of an agent in place of the rebellious husband? According to Jewish Law the wife can in some cases demand a compulsory divorce, but the old method of physical coercion has become inoperative for us. Meanwhile, the new judicial form of coercion94 has a drawback: the husband remains inactive, while everything is dependent on his activity. The only basis for a theory is provided by the sentence: kophin oto ad sheyomar rotse ani. Dienemann has understood this sentence as saying that the Beth Din takes over the right of the husband and causes the divorce to happen by its authority. The question is whether this interpretation is correct. I do not believe that the Beth Din can take away from the husband a right which the Torah has given him....When, however, the Torah puts the decision in case of divorce in the hand of the husband, then this right cannot be taken away from him. In this I agree with Dienemann: that a divorce forced by the Beth Din cannot be seen as voluntary just because the man finally said rotse ani. But, when one looks into the soul of such a man, one reaches the conclusion that the rabbis did not declare themselves satisfied with an empty form. It is part of the uniqueness of the Jewish view of life that we believe in the good aspect of the human being even if he commits a wrong act. I only need to recall the words ki lekhol ha'am bishegagah.95 Our wrong actions do not originate in the core of our being. They belong to the surface. On the deepest level of our soul we love goodness. Our conscience, our feeling for justice is indestructible. Let us assume that a woman requests a get according to Jewish Law, and that the Beth Din recognizes her right to a divorce. Then, for some reason, the husband refuses to recognize this right— will his conscience uphold his action? Or will his feeling for justice, however reluctantly, recognize the right of the woman? This "better self" of the husband just must break through: it has to overcome the resistance,

> and this is the purpose served by the coercive means used by the Beth Din. The Beth Din does not take over the right of the husband; it only helps [bring out] the purest and deepest will of the husband. From here it may be possible to make a connection between the old and the new form of coercion. When today we appoint somebody in place of the husband we do not take over his right. We rather consider the fact that, in spite of all the external resistance, the husband in his conscience recognizes the right of the woman. The formal appointment by the husband is still missing, but the Beth Din no longer acts against the will of the husband, but rather in accordance with his "better and true self." Certainly, not all difficulties are put aside by this theory, but as much as possible has been gained. Therefore, I want to put it up for discussion. It does not matter whether you agree with it or present something else in its place. Whatever is the case I hope that we will find an official solution for a question which at any cost must be solved.96

Though Lewkowitz's presentation was much shorter than that of Dienemann, he spoke out of a perspective similar to Dienemann's; Lewkowitz considered change as totally acceptable while keeping in mind the effects that change might have in the broader Jewish community. The "people's consciousness," so important in Dienemann's study, becomes the "the human being's religious perception" in Lewkowitz's thought.[97] The idea of "emergency legislation" makes Lewkowitz seem somewhat more flexible than Dienemann. Both appear equally respectful of the halakhic sources as such and of their place in Judaism's historic development.

In his speech, Lewkowitz basically considered only the most pressing problem presented by the traditional matrimonial

legislation, attempting to present a justification for something he was already doing. He did so by resorting to a theory which borders on psychology. In doing this, Lewkowitz had an illustrious predecessor, Maimonides. In his Mishneh-Torah,[98] where he deals with the possibility of using physical coercion to persuade the husband to issue a divorce, Maimonides tried to explain why such a divorce is valid:

> And why is this get not null and void, seeing that it is the product of duress, whether exerted by heathens or by Israelites? Because duress applies only to him who is compelled and pressed to do something which the Torah does not obligate him to do, for example, one who is lashed until he consents to sell something or give it away as a gift. On the other hand, he whose evil inclination induces him to violate a commandment or commit a transgression, and who is lashed until he does what he is obligated to do, or refrains from what he is forbidden to do, cannot be regarded as a victim of duress; rather, he has brought duress upon himself by submitting to his evil intention. Therefore this man who refuses to divorce his wife, inasmuch as he desires to be of the Israelites, to abide by all the commandments, and to keep away from transgressions--it is only his inclination that has overwhelmed him-- once he is lashed until his inclination is weakened and he says "I consent", it is the same as if he had given the get voluntarily.

Seen with present-day eyes, there is a clear resemblance between Lewkowitz's theory of the "better self" of the husband which has to break through and Maimonides' evil inclination which has to be weakened. Maimonides tried to justify the literal use of physical force, while Lewkowitz did not, because the use of force was out of the question at his time.

Nevertheless, the means which both used in attempting to justify the execution of a divorce other than by the clear volition of the husband were quite similar. Again, as in Dienemann's case, the analogy between the sources and the suggestion made is valid only if one assumes that the husband will finally give his agreement. If he does not, sad as it may be, one would have to conclude that his true self is not good, but actually wicked. So, while one cannot say that Lewkowitz's theory flows directly from the sources, it clearly is "in the spirit of the sources."

Samuel (Essen)

The next member of the Vereinigung to respond to Dienemann's presentation was Rabbi Dr. Salomon Samuel of Essen in Westphalia. Samuel was born into the household of a cantor-religious teacher in Culm (Weichsel) on October 6, 1867. After his secondary education, he studied languages, history and philosophy at the University of Berlin while simultaneously pursuing his rabbinic training at the Lehranstalt fuer die Wissenschaft des Judentums, the liberal seminary in Berlin. He was ordained in Berlin, and became rabbi of Essen in 1894. He is said to have become a liberal early in his career, developing a very broad concept of Judaism in which he opposed equating Judaism with legalism. From posthumous as well as contemporary accounts, Samuel seems to have been very interested in social work as well as somebody well suited for the duties of pastoral care.[99] Samuel died in the Theresienstadt ghetto together with other members of his family soon after their deportation in 1942.

Samuel's presentation at the meeting shows his background in humanities. He did not put the stress on legal matters, as the two previous speakers had. Samuel began his speech by joining with the others in voicing approval of Dienemann's presentation. However, since Samuel had the advantage of speaking so early, he felt, he would deliver a sort of response to Dienemann's speech in which he would

focus mostly on those points in which he disagreed with what had previously been said.

> Concerning basic matters, I want to shed a strong light on the problems: Judaism as religion and law, religious norm and religious form, religion and law. Judaism possesses religious laws, but it is not only, not even mostly, Religious Law. It is not only Torah, but, for instance, also prophecy. It is also not possible to sum up Judaism in [the form of] dogmas with which the conservative side has been wanting to operate. But it is emunah, belief; as Hosea says: "tsedek umishpat, hesed werahamim."100 The influence belief has ought to be in every way stronger than the letter of Religious Law....The position [to be taken] with respect to the law was always determined by the position which ethics held.101

After this initial elaboration, Samuel continued:

> From the above follows our view about the relation between religious norm and religious form. The former is in fact decisive for many of the most important areas of life;...But the religious forms in which the norm presented itself changed drastically; they were always determined by the times, and their origin was also sometimes from external environments.102

Samuel saw marriage as one example of this tension between religious norm and form. Marriage, in its biblical origins, is not linked to any particular form; the form came later. Samuel then implied that he saw liberal rabbis as obligated to preserve the norm, even if this would harm some of the forms:

> We consider ourselves not only empowered, but actually obligated, to preserve vigorously the internal holiness of Jewish marriage from deterioration. This means leading two people linked by a marital bond

> to purity, intimacy and happiness, even if by doing so some external forms (I mention, for instance, the wearing of the sheitel) fall away.103

What Samuel had said so far seemed to convey the message that liberal rabbis had to follow their principles no matter what. One could imagine some among the audience wondering about the consequences such a position could have in the broader community. Samuel made his view of this eventuality clear:

> We distrust the "Klal Israel" slogan and do not let it alone show us the way to go, since this slogan many times comes from the mouths of those who, actually, in their innermost beings, are oriented toward separation [from the community].104

Samuel went on to deal with the subject of religion and law. He claimed that it is possible to separate in the written Jewish religious sources civil legislation from that legislation which has a sacred nature. Therefore, Samuel understood civil law, especially family law, to have passed to the jurisdiction of the State. Considering this, he would have preferred for Dienemann to have expanded on the legal force of civil marriage. Only by being clear about this, asserted Samuel, would the rabbis gathered in Berlin be able to focus on the religious aspects of marriage, divorce, and related issues.

Next, Samuel remarked on specific details of matrimonial legislation. The first aspect touched upon was halitsah. He subscribed fully to Dienemann's statement that

it was impossible to maintain this institution. Samuel declared that he would not participate in such a ceremony even if he were specifically requested to do so:

> Because either I restore the original obligation of the levirate marriage and this way again give halitsah a meaning, or, since this is impossible [because it might lead to bigamy], I retain the prohibition of the levirate marriage and allow the meaningless halitsah to fall away.105

In the same vein, Samuel stated that it was necessary to establish clearly that the priesthood had terminated in Israel, and, together with it, all matrimonial legislation specific to it.

The next item touched upon was the Kethubah. Later on in the meeting it would be considered in more detail. Nevertheless, at this point, Samuel advocated the substitution of a German language marriage certificate with religious content for the traditional Aramaic text. He considered that the incomprehensibility of the Kethubah to the marriage partners took away from the religious significance of the marriage.

Finally, Samuel turned to the question of religious divorce. He declared that he was not in favor of the absence of any form of religious divorce. While on the subject, Samuel recounted the various problems which are caused by the refusal of one of the marriage partners to cooperate in the procedure. Because orthodox bodies in Europe were not going to provide solutions, it was up to them, German

liberal rabbis, to provide such solutions on their own. He moved that the assembly appoint a committee of 3 to 5 members which would work out proposals and present them to the next meeting of the Vereinigung. These proposals would deal with the improvement of the whole body of Jewish matrimonial legislation.[106] This committee would simultaneously function as an advisory body for rabbis in the field.

Samuel's presentation at the meeting of the Vereinigung was somewhat less than clear; one would suspect that he improvised it just before he spoke. He was the first speaker who placed the issue outside of a legal frame of reference. When he talked about the preservation of the "norm" against the "form", he seemed to be talking about preserving "the essence" of religious institutions such as marriage. What forms liberal rabbis would produce was absolutely secondary. This, together with his clear statements about the jurisdiction civil law now had over many issues which had previously belonged solely to the sphere of Religious Law, reminds one of the statements of Holdheim and Geiger in the previous century. Samuel was almost totally consistent, as is shown by his statements on halitsah and priestly status. One might have expected him to favor the acceptance of civil divorce as the determinative act required to terminate a marriage, so it is somewhat surprising that he asked for the formation of a committee to

study the matter and come up with new forms for religious divorce.

Freudenthal (Nuremberg)

The next speaker at the Berlin meeting was one of the leading figures of German Liberal Judaism, Rabbi Dr. Max Freudenthal. He was born in Neuhaus in North Bavaria on June 12, 1868. Freudenthal pursued his higher studies in Breslau, both at the University and at the Jewish Theological Seminary, from which he was ordained in 1891. He took his first position as a rabbi in Dessau, near Leipzig, in 1894. In 1898 he moved to Danzig and, in 1907, made his last move taking a position in Nuremberg. Freudenthal died in Munich in 1937. He is remembered not only as a rabbi and liberal leader, but also as a historian and an educator.[107]

Freudenthal took an active part in the process that led to the formulation of the 1912 Richtlinien, the guidelines for Liberal Judaism. During the process which led to that platform he delivered a speech in the name of the drafting committee of which he was a member. This speech was entitled Unsere Stellung zum Religionsgesetz, "Our position with respect to Religious Law." It was delivered at the May 28, 1912 meeting of the Union of Liberal Rabbis in Germany, which took place in Berlin.[108] Although in this speech Freudenthal did not present only his personal view on the subject, one can consider his words as a strong indication of his position on the subject.

At the start he indicated that the goal of his presentation was to establish some common ground about the liberal view regarding Jewish Law, so that on that basis a

program for Liberal Judaism could be developed. Freudenthal described Religious Law as something which was never fixed and which constantly changed. This had been so since the stage of biblical law, which in and of itself was the culmination of one stage of that development and became the basis for the subsequent stage. The Jewish legal system as a whole had diverse origins, and it was therefore hard to determine its obligatory nature as a whole for Liberal Jews. Just as it was not possible to see it as obligatory, it was also not possible to totally reject the corpus of Religious Law, since it is the historic expression of Jewish religious life. Freudenthal established a criterion to be used in examining Religious Law:

> We will be able to accept the whole of Religious Law as binding as long as it agrees: a) with the pure, moral-religious views as they may be learned from the Holy Scriptures, the writings of the prophets and the later teachers of religion and morality; b) with the results and findings of the Science of Judaism, and with the world and cultural outlook as established by the secular sciences and c) with the law of development itself, which prohibits taking over time-and place-bound regulations into conditions different from the original ones. 109

After these guidelines on how Liberal Jews should regard Religious Law, Freudenthal went on to other issues which are not relevant here. At the end of the speech, however, he said that in spite of all the recommendations contained in his remarks, it remained an obligation for all Israelites to sustain those institutions and rituals which might bring

others to pious feelings.

One can recognize in Freudenthal's words a similar approach to those of Dienemann and Lewkowitz: Religious Law is changeable in the light of the times and according to the results of critical study. Freudenthal also stated, as had others, that there can be no conflict between Religious Law and conventional morality. It is also clear that Freudenthal did not discount the overall unity of the Jewish community. While Freudenthal remained identified with these principles in 1929, his practical application of these principles was restricted, as it was for others before, by his concerns for "Klal Israel".

Freudenthal began his remarks by saying that he wished to add something to Rabbi Dienemann's words which was an integral part of the topic under debate, and which required liberal rabbis to take a stand. Then he could move to more practical matters. The speaker asserted that when matrimonial questions were discussed, one needed to consider the way in which a marriage bond was formed. The establishing of a marriage bond has, Jewishly speaking, a twofold nature. On the one hand, it is a contract, on the other, a religious consecration:

> A contract can be established between any two persons so long as they are fit to establish it. If this fitness exists, then the contract is legally valid. For this purpose, civil law is decisive for us Jews. Talmudic prescriptions about the fitness to establish a contract do not stand in the way

> of civil law inasmuch as they refer to the establishment of a marriage bond. Religious sanctification cannot be conferred upon every contract, even though it may be valid according to civil law.111

After restating in a different way the fact that civil law regulated the establishment of the actual marriage bond, as Dr. Samuel had established, Freudenthal went on to explain that among those marriages which could not receive a religious consecration were those involving forbidden degrees of marriage, even if the prohibition was of a rabbinic nature. He said further that liberal rabbis would abide by these laws. Nobody could criticize the rabbis for holding a stricter view than civil law in religious and moral matters, in that there are cases where civil law would permit the marriage though Religious Law would not. Cases where according to civil law, unlike Religious Law there was no impediment to the marriage included interfaith marriages, between Jews and non-Jews:

> It [the mixed marriage] cannot receive religious sanctification. We liberal rabbis must clearly decline to consecrate mixed marriages, because a religious sanctification of the marriage contract in the Jewish sense and in a Jewish form is impossible.112

After this clear statement against rabbis consecrating mixed marriages, which even then was not unheard of, Freudenthal said, however, that, in spite of their not being able to consecrate interfaith unions, they could not refuse to recognize the civil validity of such marriages and the legitimacy of their offspring.

The subject of children, then, is where Freudenthal next focused his attention. He started by saying that, as is well known, children born of marriages forbidden by Jewish law were themselves a problem when it came to their marriages later on in life. What Freudenthal had in mind here was, as he himself stated, the issue of mamzeruth. In his view, children could not be held responsible for the deeds of their parents. Therefore liberal rabbis could no longer follow the regulations concerning the mamzer. Such a child is recognized as a Jew by the sources as long as its mother is Jewish, but such a child's marriage possibilities are very limited. Generally speaking:

> Whether the child was born as a result of a regular marriage or outside of wedlock or in a union which is forbidden by Jewish law [widerehelich], whoever is the child of Jewish parents or at least of a Jewish mother has to be recognized as a full Jew and in no way shall be allowed to suffer because of his birth. Especially if he wants to be Jewish, he fulfills Judaism's requirements and makes conscious claim to the privileges that flow from the religious community. We have to go even further and not delay in requiring parity for the offspring of a marriage between a Jewish father and a non-Jewish mother. This should be the case when the parents want their child declared as Jewish, have the circumcision of the boy performed and give the children a Jewish education. We hereby do not recognize the interfaith marriage, not even in the tentative way in which the Paris Sanhedrin once tolerated it.113 The mixed marriage is based upon a marriage contract which cannot receive religious sanctification. But we are not going to stand against the Jewish spirit entering into a home. Of course, we shall also not oppose the manifested wish by the non-Jewish partner to convert.114

After this treatment of mixed marriages and related subjects, Freudenthal stressed, as did others before him, that the marriage restrictions tradition placed upon the priest were of no longer any significance for Liberal Judaism.

As he had promised earlier, Freudenthal proceeded at this point to consider practical matters. In doing so, he applied his view of Jewish Law as being in a permanent state of development.[115] His first example was the liturgy of the wedding ceremony:

> The religious sanctification of the marriage contract [the marriage ceremony] is in its present form only the creation of a later development. It in no way influences the legal validity of the marriage contract, which is clearly established through the giving of the ring before two witnesses. The forms which presently surround this act are not of such an obligatory nature, that the legal act would in any way be questionable [should the forms not be followed]. I have frequently taken the liberty of saying, in place of the Hebrew blessings before and after the giving of the ring, others in German which render the content of the traditional formulations. I would end then with the brief final Hebrew blessing. Marriages consecrated this way still have their undisputed validity according to Religious Law. However, the religious consecration in the hearts of the marriage partners was now a much deeper one, thanks to this form, than if they had remained untouched by the Hebrew blessings which were totally incomprehensible to them.[116]

After considering this ceremonial aspect, Freudenthal talked about the <u>kethubah</u>, the marriage document. He considered this document as something attesting only to the

civil validity of the marriage. This validity was at present given by civil law and no longer by Jewish Law. Nevertheless, Freudenthal wanted to keep the kethubah, if in this stage of development it would take the form of a certification attesting to the religious consecration of the marriage contract. He suggested that liberal rabbis should agree on a brief formula which would be introduced into their marriage ceremonies. This new formulation of the marriage certificate would also allow for a procedure which might solve the problems of the husband who does not give his wife a divorce. Freudenthal presented a draft of such a document in Hebrew as well as in German.[117]

In entering upon the subject of the get, Freudenthal stated his disagreement with Dienemann's concept that liberal rabbis had to solve the problems of the entire Jewish community. He saw their duty as looking for solutions for those who belonged to their communities. The problems with divorce stem, said Freudenthal, from the advantage the husband had been given in Jewish matrimonial legislation. According to his view, nothing could be changed here because this basic advantage was deeply rooted inside of Judaism. To try to change something would mean to topple everything. Could German liberal rabbis follow the example of their American counterparts who did not require a bill of divorce at all? Freudenthal answered this question in the negative saying that civil divorce applied only to the contractual aspect of the marriage and not to the most important side

for them, the rabbis, its religious consecration. Thus, the dissolution of a marriage bond required the consent of the husband. Only then could a rabbinic court agree to dissolve an established marriage bond. Otherwise, in Freudenthal's view, nothing could be done. Liberal rabbis could declare themselves satisfied with "some form" of consent,[118] which is something Freudenthal had himself already done. In the eyes of Freudenthal there was a need for some other sort of legal device which would allow liberal rabbis to deal with a larger number of "difficult" divorce cases. Freudenthal had such a suggestion, and he wanted to present it to the meeting because:

> In divorce questions we cannot wait until salvation comes from Poland or Russia. For once we must try to find on our own a way to obtain a consent from the husband which according to our understanding is satisfactory. For this I return to the kethubah, which, as I suggested, ought to be changed into a purely religious document. At the end of such a kethubah one could with no difficulty add a declaration of consent by the marriage partners, in Hebrew and in a careful German rendition, in case of the dissolution of their marriage. This declaration would be worded more or less as follows: "This bond is a bond for eternity. If, however, God forbid, a premature dissolution of this bond becomes necessary, the groom empowers hereby any rabbinic court to proceed with the religious dissolution of the marriage." Such a declaration would be permissible according to Religious Law, since it is not an inadmissible tenay [condition established in a legal document]; it is not a impermissible requirement for the marriage. It is rather a modification of the marriage contract. This declaration could be explicitly reconfirmed by means of the

> groom's signature. The Hebrew portion would be given to the couple--reading the kethubah is not necessary according to the original rite- -and the German part would be placed in the marriage register of the community, from where it could be retrieved at any time in case of need. The transference of a power of attorney to a rabbinic court is certainly nothing new in the history of Jewish law. It would simply have as a consequence that the divorce would be carried out in all the accepted forms through an agent appointed by the court itself. If, in the case of civil marriage contracts, often enough provisions are made in case of the dissolution of the marriage, then we may without second thoughts establish such a preventive measure, especially since here there are at least equally important provisions being taken for the future. All this is especially true when with the wording to be used neither Religious Law nor feelings are hurt.119

The last of Freudenthal's remarks was directed towards the actual form of the religious divorce bill. He mentioned that this document in its current form was also the end product of an evolutionary process. Therefore he proposed that in the case in which a bill of divorce would be used in non-liberal circles, that bill should be issued in accordance with all the traditional requirements. Meanwhile, when a divorce document would remain within the liberal community, some of the formal requirements for writing the get should be simplified.

Towards the end of his presentation Freudenthal briefly indicated that halitsah and levirate marriage were linked to the Holy Land and therefore had no significance outside of the Land of Israel.

Freudenthal's concluding remarks affirmed that the

intention of the Liberal Rabbis was not to arbitrarily create new institutions, but rather to develop the existing ones. These developments would remain a part of the spirit and the basic ideas which came from the historic Jewish tradition.

Freudenthal's presentation was a fairly structured one, which he started by establishing certain premises he deemed important. He built his remarks on the distinction between the marriage contract and its subsequent religious consecration. The general approach he used clearly flows from the premises established in his 1912 speech. Several of the institutions related to marriage and divorce were for Freudenthal part of the ongoing process of the development of Jewish Law. There were, however, limitations of which he was aware. He could have stated that the role the husband has in the execution of a divorce had changed from its original conception, and that now religious divorce was regarded as bilateral. Instead, Freudenthal acknowledged that the husband's role could not be changed without causing a major upheaval. Certainly he meant by this the repercussions any change of this sort would cause in the general Jewish community.

As to the validity of Freudenthal's proposed innovations in the eyes of Jewish Law, saying the marriage blessings (<u>sheva' berakhot</u>) in a language other than Hebrew not only does not invalidate the marriage, it is

permissible a priori. Maimonides, in his code, states that any blessing, even in a foreign language, is valid, as long as the Divine Name, God's kingship, and the subject matter of the blessing are mentioned.[120] Even if the blessings are not said at all, the marriage is still fully valid. Both major codes indicate that if the blessings were omitted, they can be recited a few days after the wedding.[121]

With respect to the kethubah, it can be said that Freudenthal's reasons for changing its nature and wording are valid. In its original formulation, the kethubah had the function of protecting the wife in case of divorce or death of the husband. This function had been taken over by civil law. Thus, there would be no problem in changing the document's wording. In principle, the Shulhan Arukh agrees with this reasoning. In a gloss to Even Ha'ezer 66:3, Isserles said that, in his time, when the wife is not divorced against her will, thanks to the decree of Rabbenu Gershom, it could be possible to make matters easier with respect to the writing of the kethubah. However, he added, this was not the custom and one should not change it (the writing of the kethubah). It is important to stress that Isserles speaks about a custom. Elsewhere in the same code[122] it is stated that if a husband did not write a kethubah for his wife for valid reasons and gave her some valuable in place of it, the marriage is valid, and it is the husband's duty to write the kethubah at his first

opportunity to do so. A similar statement is found in Maimonides' code.[123] Thus the lack of the "officially" worded kethubah would not invalidate a marriage. It seems, then, that in this case, as well as in the case of the blessings, traditional rabbinic sources do not oppose Freudenthal's suggested changes.

Unfortunately, traditional sources are not equally as supportive of Freudenthal's suggestions in matters of religious divorce. Freudenthal proposed a method intended to overcome the major problems involved in the dissolution of a marriage which was different from the ones presented by Rabbis Dienemann and Lewkowitz. He wanted a paragraph added to the marriage certificate in which the husband empowered any rabbinic court to carry out a religious divorce should the marriage bond be civilly terminated. As much as one may sympathize with the idea, it clearly contravenes provisions made by the authoritative legal codes. In the Shulhan Arukh, Even Ha'ezer 120:4, it is established that a scribe shall not write a bill of divorce nor the witnesses sign it until the husband tells them to do so. If the husband told a rabbinic court to issue a get to his wife, the court is not to tell the scribe and the witnesses to proceed. Even if the husband told the court to tell the scribe and the witnesses to act, they are supposed to wait "until they hear it from his mouth." The following paragraph[124] explicitly invalidates the case of a written order by the husband to the

scribe and the witnesses. Again, they are supposed to act only when "they hear it from his mouth." A minority opinion is mentioned ("and there are those who validate...") which would permit a written order in the case of a man incapable of speaking. Thus, Freudenthal's proposal about divorce goes against clear assertions found in the halakhic literature. The idea behind the statements in the code is of an immediate relationship between the command by the husband and the writing of the get.[125] This is clearly not the case in the device designed by Rabbi Freudenthal.

Regarding developments in the United States which might parallel those in Germany, at the first convention of the Central Conference of American Rabbis, held in Cleveland, Ohio in July of 1890, Dr. Moses Mielziner read a paper called "The Marriage Agenda"[126] in which he listed the kethubah among the "usages mostly dispensed with." According to all indications, the traditional kethubah had fallen out of use within Reform Judaism by 1929.

At about the time of the meeting of the German rabbis, there was an attempt in the United States to create a new marriage certificate. The 1936 Yearbook of the Central Conference of American Rabbis reports[127] that Rabbi Samuel Cohon prepared a revised form of the kethubah. He was going to be consulted about certain suggested changes, so "that a copy [could] be furnished to publishers who may care to issue the document."

By 1929, the traditional marriage blessings were no longer used in their entirety within American Reform Judaism. The section of the Rabbi's Manual published by the C.C.A.R. in 1928, dealing with the marriage ceremony,[128] included only five of the traditional blessings. One, the blessing over the wine, had been moved to a new position, following a paragraph in English. Another one of the blessings was presented as optional.

Liberal rabbinic circles in the United States, in their attempts to reform some of the practices related to marriage and divorce, dealt with the same specific issues with which their German colleagues struggled. One can find parallels to the idea of adding special paragraphs to the kethubah in order to solve the problems of the "deserted wife". These attempts, however, were carried out within the realm of Conservative Judaism and its rabbinic organization, the Rabbinical Assembly.

Rabbi Louis Epstein tried to come up with some clause to be added to the kethubah so to make a religious divorce possible should there be difficulties in carrying it out. In 1930 he stated in the context of this problem:

> Needless to say that something must be done immediately, lest we lose the last thread of respect for Jewish law.[129]

In Epstein's opinion, the "problem of the 'agunah" could be solved on the basis of the existing law . The husband would make out an instrument at the time of

marriage authorizing the court to grant his wife a divorce in his absence and appointing the necessary witnesses and agents for this act. This instrument would become part of the kethubah.

Five years later, Epstein published another article[130] in which he presented a text for the above-mentioned instrument. In that document, the husband appointed a series of persons who could in his name ask the Rabbinic Court of the Rabbinical Assembly to issue his wife a divorce. The wording of the document is more complex than Freudenthal's draft, but in essence tried to achieve the same end by the same means.[131] In the same article, Epstein used the same principle in order to deal with the problems of halitsah. For those who insisted on taking halitsah into consideration Epstein suggested another paragraph to be added to the kethubah.[132] In this statement, the husband committed himself to issue a conditional divorce, effective one hour before his death, in the case that after 10 years of marriage he should have fathered no children.

The attempts by Epstein to solve the problems of Jewish divorce met with resistance from other sectors of the Jewish community. In the end, the clauses designed by Epstein were not used. Nevertheless, Conservative Judaism persevered in its attempts to solve problems of Jewish divorce while trying to stay within the boundaries of Jewish Law. Thus, in 1954, Rabbi Saul Lieberman designed another text which was

intended to be added to the kethubah.[133] The "Lieberman kethubah", as it came to be known, was no more successful than its predecessors, as it met with resistance and criticism from Orthodox circles.[134]

Saenger (Breslau)

The next liberal rabbi who spoke at the Berlin meeting was Rabbi Dr. Jakob Saenger. Little information is available about him except that he received his rabbinic ordination from the Orthodox rabbinic seminary, the "Hildesheimer Seminar," in Berlin during the 1908-09 academic year. Obviously, Saenger changed his original orientation; it is worth noting that his son, Rabbi Hermann Saenger, later became one of the pillars of Liberal Judaism in Australia.

In his short speech, Saenger voiced his disagreement with Dienemann's having advocated holding to traditional forms as long as there were no compelling reasons to change. Dienemann had also said that one should be cautious as long as there was the slightest possibility of achieving some sort of consensus within the community. Saenger requested a clear position on the part of the liberal rabbis, since it was not possible to wait for Orthodoxy to come forward with a solution to the question of the 'agunah. After this, Saenger declared himself in agreement with the basic approach outlined by the main speaker, that of creating new forms which would be intrinsically connected with the halakhah.

After this introduction, one would have expected Saenger to present a different perspective on the major questions being discussed at the Vereinigung's meeting. However, this was not the case. When talking about the

'agunah, Saenger stayed within the narrower definition of the term, namely, the case of a woman whose husband has disappeared and it is initially not known whether he is dead. In order to determine whether the husband is indeed dead, thus permitting the wife to remarry, traditional rabbinic sources, mentioned Saenger, have always been very lenient in their acceptance of testimony. Witnesses not normally accepted are allowed, and even the testimony of one witness is considered to be sufficient. Saenger cited Maimonides[135] as support for his comments. He then went into the responsa literature to show that important authorities, the Hatam Sofer among others, accepted certifications of death provided by military authorities as sufficient testimony. Other authorities he cited would allow a remarriage after a certain waiting period.

In view of what he considered extensive support from the sources, Saenger stated that liberal rabbis were justified in acting independently in this matter. Therefore he submitted the following recommendations to be considered by his colleagues:

> 1) The statement of a military or a civil court declaring someone dead is sufficient for us if at least three years have passed since that statement.
>
> 2) Remarriage is to be permitted if the woman has consented to it.
>
> 3) Remarriage is to be allowed if the *Beth Din* became convinced on the basis of the available elements that the husband is no longer alive, even if a direct witness is not available.[136]

Wiener (Berlin)

The next member of the Vereinigung who spoke in response to Rabbi Dr. Dienemann's presentation was Rabbi Dr. Max Wiener. Wiener was born in 1882 in Oppeln, in Upper Silesia. He received part of his rabbinic training in Breslau and concluded his studies in Berlin, receiving his ordination from the Lehranstalt fuer die Wissenschaft des Judentums in 1907. Wiener held several rabbinic positions during his life. First he was rabbi in Dusseldorf. From 1912 to 1926 he served in Stettin, Prussia. Finally, from 1926 to 1939 he was rabbi of the Jewish community of Berlin. The rise of Nazism caused him to emigrate from Germany. He came initially to Cincinnati, to the Hebrew Union College, but soon returned to the congregational rabbinate. In 1941 he served in Fairmont, West Virginia, and in 1943 he became rabbi of Congregation Habonim in New York City. Wiener died in New York City in 1950.

One can see from reading through a bibliography of his publications[137] that Wiener's main academic interest was religious philosophy. It is understandable, then, why in 1934, he replaced Dr. Julius Guttmann as lecturer in Jewish religious philosophy at the Hochschule. From those days he was remembered as:

> An acute and highly original thinker, a person of a lively temperament and passionate views, he was greatly appreciated by his

colleagues and his pupils.138

For Wiener the center of Judaism was prophecy. For him "the real origin of Judaism lies in the prophetic consciousness of personal contact with the divine."[139] Because of this, Wiener's view of rabbinic law was a flexible one:

> He saw this extensive system of rules and prohibitions brought together by the rabbis as a lasting link between the original revelation, which inspired the great men of the Bible, and the many generations, who by their recognition of this tradition were kept together as the Jewish people. The concrete details of law and ritual remained for him products of concrete situations and therefore changeable.140

At the Berlin meeting, Wiener spoke out of his perspective as a philosopher. He did not address legal matters, which were of secondary importance for him, instead addressing what he considered "fundamental questions" :

> How much is Judaism at all based on religious law, and to what extent does the liberal branch constitute itself as an orientation which should be considered in contrast to traditional Judaism? Forestecher, at the Second Rabbinic Conference, when it considered the Sabbath question, called attention to the fact that one should first of all establish basic principles. There is a basic difference between pre-emancipatory Judaism and the one which has developed in Germany in the 19th century. When one looks at the old proceedings, it looks as if there is no difference between a rabbinical gathering of today and one from the 40s of the last century. This is so because one does not become clearly aware of the fact that, to begin with, we as liberals have a different axiom, even a different religious conception, than Jewish orthodoxy. Orthodoxy stands and falls with religious law. Religious law may

> be in and of itself fluid and capable of development, but this development is linked to very precise rules. It was said: we want to proceed in the spirit of the law; then it will be necessary to determine: what does this mean?... Dienemann says: the people's consciousness shall be the determining factor. If we are to talk about consciousness, it is necessary that people should know something about the matters involved. What does the greater part of our liberal constituency know about halitsah or get? One has to explain to most people the meaning of these words. On what do we base "the people's consciousness"?... I think that matters are such that we liberals, when compared to Orthodoxy, have [become] a new denomination.141

As was noted above, Wiener spoke out of his perspective as a philosopher. He required coherence of thought. It was hard for him to talk about approaches to specific problems without first of all addressing the fundamental assumptions. In true philosophic manner, he advocated defining the terminology being used by most of his colleagues. In his desire for consistency, Wiener went so far as to suggest something which could be derived from statements made by liberal rabbis at the meeting as well as from other sources, namely, that Liberal Judaism had different religious premises than traditional Judaism.

Wiener's call for the establishment of guiding principles before arguing specifics was certainly justified. Several of those who preceded him at the meeting went immediately into presenting possible solutions to practical problems without stating their basic axioms. Perhaps he was even right when, at the end of his remarks to the Berlin

meeting, Wiener said that, according to his view, they [i.e., liberal rabbis] would not go farther than permanently trying to solve specifics until clarity was achieved in basic matters. It is tempting to agree with Wiener's remarks. Certainly some structure of thought would have been useful then, as it would be useful today. One has to wonder, then, why Wiener did not state what he considered to be those basic principles, and how he would have answered some of the questions he himself raised.

Vogelstein (Breslau)

The son of Rabbi Heinemann Vogelstein, one of the patriarchs of German Liberal Judaism, was the next rabbi who spoke at the meeting in 1929. Rabbi Dr. Hermann Vogelstein was born in 1870 in Pilsen, then part of Austria. He received his rabbinic education in Breslau and at the Hochschule in Berlin where he was ordained in 1894.[142] He had his first pulpit in Oppeln, southeast of Breslau, where he served from 1895 until 1897. That year he moved to Koenigsberg in East Prussia, where he stayed until 1920. He then became one of the rabbis of the Breslau community, serving until 1939. Vogelstein died in New York in 1942. Vogelstein was one of the editors, together with Dr. Ismar Elbogen and Rabbi Dr. Caesar Seligmann, of the Liberal "Union Prayerbook" of 1929, which was praised by the rabbis gathered at the meeting in Berlin.

Ideologically, Vogelstein was a moderate liberal. Like his colleagues, he believed in the flexibility of Jewish Law, but he was not in favor of a radical approach. In an article published in 1928, Vogelstein analyzed the concept of tradition.[143] When it came to the position of the different Jewish denominations with respect to tradition, Vogelstein said the following:

> All of them recognize tradition. Yet they vary in their position as to its authority. They also vary in their understanding of the concept of tradition, and in their relationship to present-day life.[144]

Side by side with this relatively moderate liberalism, which did not reject any aspect of tradition, Vogelstein was, like several of his colleagues, in favor of unity within the Jewish community.[145]

Vogelstein began his speech by praising Dienemann's presentation. He next said that any rabbi serving a large community knew all too well the existing needs in matters of marriage and divorce. Vogelstein was particularly well acquainted with the subject because rabbis would come to his childhood home to consult with his father about it. However, Vogelstein lamented the fact that the Vereinigung found itself in the same place on these matters as 40 years before. The reason for this was that the problems under discussion were of a delicate nature, and required first of all the establishing of the people's attitude toward the formal principle of the Law. Therefore Vogelstein agreed with Dienemann's initial question about the general validity of religious legislation. He also understood that Dienemann had not engaged in a discussion of this basic question because, had he done so, he would not have been able to give attention to the practical questions.

> Nevertheless, we cannot avoid this theological discussion. We will always be able to put an end to this or that deficiency, even if we have not agreed on these basic methodological questions. But any improvement will necessarily be of an incidental nature. And it is almost unavoidable that at some point in time two different solutions which were derived from two

> different basic positions will contradict each other, making things worse and thus becoming just a "quick fix". This is as if one wanted to make changes in a building without having the blueprints of the house and the plan of the changes clearly established in one's mind. This is the source of the mistakes of the first period of Reform. It was seen that there was a need for improvement, and they went about these improvements here and there, wherever it looked practically convenient. But all this was done in a very disorganized way, not within the frame of a firmly based overview.146

Vogelstein went on to praise the second generation of reformers for their contribution, which consisted of theologically justifying the need for reform and their right to carry it out.

Next Vogelstein affirmed Dienemann's concept that Liberalism does not mean holding to a certain number of forms and formulas. Unlike his colleague, Vogelstein preferred the term "approach" to define Jewish religious liberalism. Liberalism has a different basic approach to religion than Orthodoxy. Yet within Liberalism there are also differing views. Dienemann tried to unify the views behind the idea of the "consciousness of the people", said Rabbi Vogelstein. However:

> We will have to go even further and look for the essence of the religion in order to separate that which was revealed by God from that which, according to Dienemann's terminology, is the expression of the will of the people. This way we shall determine if there is anything in religious matters, and if so, specifically what, that is changeable

through the will of the adherents of the religion.147

Regarding the process involved in this task, Vogelstein had to voice one disagreement with Dienemann:

> It is not only for particular areas of our lives and our deeds that we have been given certain aims through God's will and God's revelation. Rather, it is actually a unique element in Judaism that it perceives the totality of life as a unit. Here is where there is a substantial difference not only with respect to paganism, but also with respect to other religions.148

This element could in fact lead to extreme Orthodoxy. Of course, said Vogelstein, he did not have to worry about this possibility at the meeting in Berlin.

> But then a twofold question comes up: first, which is the determining authority which issues norms, and so, when and if an authoritative law should be recognized as binding and in what context.149

Vogelstein here spelled out nothing less than the problem of authority. After some brief remarks about how it was dealt with in Protestant circles, he went on to say:

> For us the question will be: how shall we determine the authoritative and normative in Judaism? We shall do this through speculative as well as historic study of the subject matter. In the process, these two ways and methods will permanently control each other. These pursuits cannot be developed here, actually, only their results can be mentioned. Initially it may be enough to point at Mendelssohn's well-known distinction: "The State issues laws, religion issues commandments". This differentiation, this rejection of the concept "religious law", results from the [particular] understanding of religion. Now, religion and Judaism are not just a matter of the human soul, but also

> a communal matter. And since Judaism tries to encompass the totality of human life, it has to dress all religious expressions and impulses in some norms and forms. But the permanent validity of religion requires the mutation of these norms and forms so that they will always be the expression and the moving force of religion. Whether this development should be carried out by way of interpretation or of creation of new things and pushing aside the old is a question that for now may remain unanswered.150

After this attempt to answer the question of authority within Judaism, Vogelstein turned to historic considerations. He focused mainly on the issue of how, throughout history, religious forms were changed and how Jewish Law had been in a state of flux until the Shulhan Arukh was generally accepted as binding. After this, Vogelstein finally defined what was for him the source of authority:

> ...we would regard the Holy Scriptures as the source [of authority] with the provision that it is not the wording but the spirit of Scripture which is to be found again in regulations of subsequent teachers. This should be so regardless of whether these regulations try to change, push aside or create something.151

After making this important point, Vogelstein went on to show, using well-known arguments, how matrimonial legislation had changed since the times of the Mishnah. Therefore, further changes were justified. In specifically considering the subject of divorce, Vogelstein felt obliged to express his disagreement with Dienemann, who had said that the "consciousness of the people" required a religious

divorce. According to his experience, people were surprised when, before getting married for a second time, they were asked to obtain a religious divorce from their previous spouses. In spite of this lack of awareness, Vogelstein declared himself against the practice of the American Reform rabbinate of accepting civil divorce as final. In taking this position, Vogelstein agreed with Dienemann that one should proceed cautiously when it comes to changing things in matters as delicate as marriage and divorce. An additional reason for his position was that he saw the necessity to surround marriage and family life with religious consecration.[152] The sages of the past had attempted to provide this consecration, and, what is more important, they also attempted to provide for a certain equality between the sexes. They did so, said Vogelstein without a uniform methodology. In matters of divorce, the rabbis of old limited the broad powers of the husband to divorce his wife by the simple exercise of his will. If not formally, at least in practice they achieved equality between husband and wife, through the instruments of the agent for delivery of the divorce document and the permissibility of using coercion against the husband.

All these legal regulations of the past came into being as a consequence of the law's adjustment to changing circumstances. Only later, Vogelstein asserted, came stagnation. So, if conditions had changed, it had to be

asked which was the better way to assist the existing legislation to overcome its problems. There were two possible ways: either to change the specific regulations, or openly to ignore the obsolete norms, as is the practice in British law. Vogelstein wished, then, that Orthodoxy would issue such new regulations. This procedure would be in accordance with the development of Jewish Law. Liberal rabbis, in the meantime, would do their part out of their feeling of responsibility for sustaining and restoring the sanctity and religious foundation of Jewish family life. They would do so by changing individual regulations, such as substituting the action of the rabbinic court for the missing consent of the husband.

After this single instance in which Vogelstein actually expressed his opinion and his support for a specific innovation, he concluded his presentation by saying:

> Each religion, just like every cultural good, creates for itself its way of life. And it is an innate law of all these cultural phenomena that they lead an independent life. This life at some point enters into conflict with real life, which then tries to suffocate and kill the life of the cultural phenomenon which in our case is religion. It is then the duty of theology and theologians not only to acknowledge the existent [religious forms], but to keep alive the religious foundation. To proceed with great care is mandated not only by tact, but also by respect for all that has passed through religion. But these elements [i.e., tact and respect] must never lead us to hold to things created by religious development allowing, consequently, for the religious institutions to be lost.153

Vogelstein's presentation could be grouped with that of Wiener. Both dealt with the question of theoretical justification for whatever practical steps might be taken. One gets the impression that, in doing this, Vogelstein was complementing the work of Dienemann. In spite of certain disagreements voiced by Vogelstein, his support for the solutions to the problems arising from divorce presented by Dienemann would lead me to think that in practical matters they were in agreement with each other. Thus, Vogelstein was providing a deeper foundation for his colleague's work.

The ideology presented in Vogelstein's speech arrived at the same results as those of his colleagues. The evolutionary nature of Religious Law was presented differently by Vogelstein. He spoke about a core, represented by the spirit of Scripture, being embodied in an ever-changing corpus of laws and practices. While not having presented anything revolutionary, Vogelstein should be credited with having stressed the need for a clear picture of where one stands before attempting any kind of religious reform.

Wolf (Dresden)

Rabbi Dr. Albert Wolf was one of the last members of the Union of Liberal Rabbis to speak his mind at the meeting in Berlin. Wolf was born in Buchen, Baden in 1890. He received his rabbinic ordination at the Seminary in Breslau (1921?), and was rabbi in Dresden until 1939. He then emigrated to the United States, where he held rabbinic positions in Madison, Wisconsin; Olympia, Washington, and Chicago, Illinois. Wolf passed away in 1951.

Wolf began his participation in the discussion by saying that if he were to say everything in his heart, it would become a mere repetition of what had already been said. Therefore, he would just give his opinion about what had been said so far. He briefly restated the basic problems that the liberal rabbis had on their hands:

> Our main problem cannot be expressed more clearly than by [Rabbi Salomon] Samuel's formulation. This formulation presents the whole set of Liberalism's problems: Religious Law which goes against Moral Law is blasphemy. This is the meaning of Liberalism. It rejects religious law wherever it threatens to do violence to our ethical conscience. Religious law may have validity only insofar as it does not oppose the foundations of morality. If, however, we formulate the problem with respect to matrimonial legislation, then we must keep in sight the difficulties linked to a solution. The difficulty comes from our recognition and support of [the idea of] the Jewish community. Is it possible to annul a body of religious law without endangering the [unity of the] community? Because there is no doubt that, in this case, Orthodoxy is not going to give in, and there is danger of a rift in Judaism.154

After having stated the essential issues, Wolf said that he agreed with Wiener's judgment that the topic of reform of matrimonial legislation had been debated for 100 years without any results. A general solution had not yet been found, and Wolf criticized the liberal rabbinate for what could be seen as dependence on the judgment of Orthodoxy. Yet, in Wolf's opinion, matters did not need to be that way. In his view, Religious Law was vehemently defended by Orthodoxy only in this area, where the liberals had been inconsistent and had given in. As a counter-example he mentioned the introduction of the organ into the synagogue. Initially there was resistance to this innovation, but time led to the acceptance of this change. One of the reasons for this was that Liberalism had not bent under pressure. Similarly, there initially would be objections if the liberal rabbinate were to come up with new matrimonial laws, but:

> ...if a large body of liberal rabbis comes to a resolution and stands firm, then after 30 or 50 years the [objections] would also be overcome. Liberal rabbis have had the courage to face the consequences [of their actions] except in matrimonial questions.155

If the issue of the rabbis' courage could be handled, then the next question would be the way to arrive at solutions. For Wolf, there were three possible ways. First was the way of <u>halakhic</u> interpretation. Rabbi Wolf disdained this method, since it would be used <u>aposteriori</u> to justify conclusions already arrived at. Wolf considered this

dishonest. The second possible way was the "historic method", the "minhag". A custom would develop, and would itself become law. Wolf disdained this as well, because one would always be made aware of the existence of a body of religious law which would disagree with the minhag. The only available way was the third. Wolf called this the "ethico-religious method."[156] This method would require from the liberal rabbis a clear decision by which they would annul certain religious legislation, if not for the totality of Israel, then for a part of it. The justification for such a move would come out of the rabbis' moral strength:

> We have to bring up to the surface the strength that stems from moral responsibility and religious commitment. Anybody can make matters harder, yet not everybody can permit things. The strength of religious fervor is necessary for such an action. And this strength is a sign and justification of true liberalism.157

After stating issues, difficulties and methods, Wolf commented on the practical recommendations that had been made up to that point. He thought that perhaps the ideas presented by Freudenthal could lead to the solution of problems. Wolf, however, seemed to lean towards accepting civil divorce, although he was not too specific about it. Wolf said he also was in favor of permitting the remarriage of a woman after her husband had been declared dead by the civil court.

In his presentation, Wolf differed from his colleagues in his choice of method through which solutions should be

reached. In the language of the 1980s, Wolf seemed to have been in favor of "doing what we think is right," although without being radical about it. Of course, Wolf also thought that "the others will eventually come to terms with our innovations."

Baeck (Berlin)

Following Rabbi Wolf's presentation came the remarks of Rabbi Dr. Leo Baeck. He was born in Lissa, Posen in 1873. Baeck grew up in a observant household, with a father who was a rabbi and a scholar. At the age of 17, Baeck moved to the city of Breslau in order to attend the local university as well as the Jewish Theological Seminary. He entered the seminary in May of 1891, but he was not ordained there. In 1894, he left for Berlin to continue studying at the Hochschule, where he was ordained during the winter semester of the 1896-97 academic year. He held his first rabbinic position in Oppeln, southeast of Breslau. In 1907, he took a position in Dusseldorf, and, towards the end of 1912, he moved to Berlin, where in addition to his congregational duties Baeck taught homiletics and Midrash at the Hochschule. All through those years, Baeck was active as an author, the outstanding work among his books and articles appearing at that time being The Essence of Judaism, published in 1905. Besides being a rabbi, teacher and writer, Baeck was active on an organizational level. From 1922 onwards he was the president of the General Union of German Rabbis, to which most rabbis in Germany belonged to regardless of their particular ideologies. In 1924, he became Grand President of the Independent Order of B'nai B'rith. Baeck was also president of the Keren Hayesod [the Palestine Foundation Fund] in Germany. After 1933, when the Nazis were

already in power, Baeck became the President of the Reichs-vertretung der Juden in Deutschland, the "Representative Body of Jews in Germany." In 1943, Baeck was deported to the Theresienstadt concentration camp. After his liberation from the camp Baeck moved to London and returned to teaching. He lectured intermittently on Midrash and Kabbalah at the Hebrew Union College in Cincinnati. Baeck died in November of 1956.

Baeck lived a fully observant life. However, Jewish Religious Law was not decisive for him. In the words of his biographer:

> But if its [i.e.,the halakhah's] role remained firm for Baeck, its actual power over the forms of his life was diminished over the years. In the early years the Halacha had a direct impact upon Baeck. It shaped his daily observances. Over the years, Baeck moved into the liberal field. Halacha became an idea, a concept which he appreciated and honored but which he now saw as an abstraction and not as the reality of life.158

Since his early years, Baeck believed in a permanently evolving faith. In one of his first publications, he wrote:

> The times change, and we change with them. This is particularly valid of religious thought, it, as nothing else, is rooted in the innermost individuality. Every epoch must seek to achieve clarity for itself concerning its beliefs and hopes; but to declare the form in which it clothes this as imperative for all time and place would be an attempt to force the next generation into its own pattern of understanding.159

Baeck saw Judaism as a "religion of polarity". The "poles" were for him the "Mystery" and the "Commandment". In

his thought Baeck gave the subjective experience of the individual a major role. The certainty of the existence of something superior comes from inside the person:

> When man wants to be certain of his existence, when he therefore listens intently for the meaning of his life and life in general, and when he thus feels the presence of something lasting, of some reality beneath the surface, then he experiences the mystery: he becomes conscious that he was created, brought into being--conscious of an undetectable and, at the same time, protective power. He experiences that which embraces him and all else...160

The "Mystery" provides understanding of life. It also issues the commandments:

> And when man looks beyond the present day, when he wishes to give his life direction and lead it towards a goal, when he thus grasps that which defines his life and is clear about it, then he is always confronted with the commandment, the task, that which he is to realize.161

This "Commandment" is deeply interrelated with the source that issues it. This is Judaism's peculiarity, that both elements are experienced as a unit. When a religion becomes totally one of the two, it ceases to be Judaism.[162]

Baeck saw marriage in terms of mystery and commandment.[163] He viewed marriage as the second great development in the life of the human being, the first being birth. The difference between these developments is that while the human being is not asked his opinion about birth, he is the one who decides that marriage should take place. Both however, have something divine in them.

"Marriage is an expression of mystery"164 and, as such, it should have a sense of direction towards the ethical. Baeck recognized that not all marriages reach such high levels. Some marriages are simply what are called "good marriages," and, as such, they have moral value. Yet there exists a higher level:

> The ethics of marriage are the ethics of the revelation towards which marriage develops; it has its roots in the divine mystery that two human beings experience in one another. This binds them together for life.165

In his conception of marriage, Baeck saw each spouse as discovering the mystery present in the other. One could understand this as trying to discover that which is divine in the other. From this comes the commandment of marriage, which is that they are to be linked to each other for life.

> Human beings who have become to each other the mystery of marriage have thereby become to one another the command of marriage. They have become united, and to be bound for their lifetime has become to them thereby a divine command. They must realize and fashion their whole life through each other. Mystery has bound them to this command; without this command no marriage could exist. Otherwise it would be only a game with a phantom of mystery. The command is the absolute of marriage, and it is elevated thereby above all mere bonds and all destiny.166

Baeck's view of marriage could be felt in the words he spoke at the Berlin meeting.[167] He began his speech by focusing and expanding on a crucial fact which up to this point had been touched upon only slightly. The main problem behind all of the discussions about matrimonial law was

not a conflict between Orthodoxy and Liberalism, but rather a conflict between religion and state. The State had developed since the 17th century and had been taking for itself many of the powers which until then had belonged to the religious communities. This development was beneficial for the Jews:

> As far as we Jews are concerned, we should be grateful that the state has taken over so many areas of jurisdiction. Our emancipation became possible only because of the fact that the state claimed for itself what had hitherto been the exclusive domain of the church.168

This beneficial development was at the same time a source of conflicts. Baeck went on to disagree with Wiener, who had said that Orthodoxy and Liberalism had different religious essences:

> But there is no true Orthodoxy. There has been none since we have had the modern state with the emancipation of the Jews--the state which has annexed such important parts of religious law. That is why this deep gap does not actually exist. There is no difference between Liberalism and Orthodoxy, no qualitative difference; there has been only a quantitative one, ever since the state has occupied the Hoshen Hamishpat with agreement --or, at least, toleration- on the part of Orthodoxy.169

Because the state had taken over several sections of religious legislation (such as the total body of civil law), Baeck could not see Orthodoxy as adhering to the totality of religious legislation. Further, there was no essential difference between the main groupings within the community. This surrendering of areas of the law to the State had its

consequences on marriage practices:

> That is why we must not look upon the marriage law in isolation. Just as we no longer have our own civil law, so we also no longer have, strictly speaking, our own marriage law. We merely still have the right to solemnize marriages (Trauungsrecht), but no marriage law (Eherecht). What we are allowed to perform is not a copulatio,170 but only a benedictio. It is no longer a legal act which is being performed, but only an almost homiletical one, in our case as well as in that of the Orthodox.171

Baeck then wonders why it is that Jewish circles are much more sensitive to matters of marriage and divorce than, for instance, of inheritance. The reason is that marriage is not just a legal matter:

> We simply cannot compare marriage law with the law of property, the law of inheritance, and the civil law. First, because marriage is concerned with a mystique, perhaps the most mystical element of religion. Where mysticism has something to say, we cannot abdicate in favor of the state. The hidden, the holy, penetrates the marital so deeply that we must not cede this realm to the profane. Second, for us the community factor is something essential. There is no Judaism without the Jewish community, and the nucleus of the community is the family—and, therefore, marriage. For the sake of the community we must hold fast to Jewish marriage, and therefore we must also hold fast to the tradition. Here we cannot cede our realm to the state, because it is in essence our very own realm.172

Since marriage is so strongly a religious institution, there is room for conflict between religion and state. This conflict can be about formalities. Sometimes the conflict will be for the sake of the community. The State may recognize something as a marriage, and the community might

have to decline its recognition of that marriage for the sake of its own interests. Yet, conflicts can also be for more deeply rooted reasons:

> And the conflicts could also be for the sake of ethics: the state can recognize something as a marriage about which, for the sake of ethics and for the sake of mystique, we would have to say that it is not a marriage-- that, at the most, it is concubinage. And, as Jews and as rabbis we must be able to say in instances in which the state does not recognize a marriage: for the sake of our Judaism, for the sake of ethics, this is a true marriage, and we recognize it as such.173

Immediately after making this distinction, Baeck related a case in which he had been involved:

> In an earlier period of my ministry, and in another congregation, such a case confronted my conscience. There were two persons who could not marry each other because a foreign country would not grant a divorce for the previous marriage by which one of the partners was bound. If the law of the state alone were valid, then these two individuals cold not have been joined together. But love, the mystique, and ethics were also among the considerations--and I, as a rabbi, said to the couple: "Come together by means of a religious bond, a religious marriage; live together!" And I explained to my congregation that, as far as I was concerned, those two were now marriage partners--for the sake of ethics, which sometimes demands conflict with the state.174

With this example Baeck concluded the main part of his presentation. Later, he stated, that, in spite of all he had said, the conflict between Orthodoxy and Liberalism certainly existed. With regards to practical matters Baeck sided with the approach used by Dienemann in the opening

presentation. At the end of his remarks Baeck called upon his colleagues to act on the whole matrimonial question not by trying to please any individuals or parties, but by acting in accordance with their conscience.

Baeck's speech at the meeting was unique. He approached the subject from a new perspective, stating the major issue behind the whole discussion . Had it not been for emancipation, they would not have had to discuss the subject of matrimonial legislation. Within this broader context, Baeck described marriage as a profoundly religious event. He did not seem to attach much value to the legal aspects of marriage, be they the ones in Jewish sources or in civil legislation. Unlike others, Baeck asserted that the religious dimension of a marriage was not contained in the liturgy used in a ceremony, but was present in the essence of that which united a man to a woman. Therefore Baeck advocated that rabbis should retain their autonomy with respect to the State in marriage matters. One certainly feels the dimension of a personality like Baeck's in allowing himself to tell a couple that they should live together solely by virtue of a religious marriage. Even if one agrees with his feelings and views, it seems unlikely that the average rabbi in our day could take a step such as Baeck took.

In other matters, it is difficult to accept Baeck's statement that there was no qualitative difference between

Orthodoxy and Liberalism. As one can see in earlier statements at the meeting, such differences existed. If, however, Baeck was thinking about the practical application of Religious Law (especially matrimonial law) then we must accept his statement. But if he had more basic matters in mind, the reaction has to be different. Certainly, in 1929, Orthodoxy and Liberalism differed at least in the status they in which they held rabbinic literature. Liberalism did not see it as divine literature, while Orthodoxy did. This is a substantial difference, with consequences that touch other basic religious concepts.

Levi (Mainz)

The last speaker during this discussion at the meeting of the Union of Liberal Rabbis in 1929 was Rabbi Dr. Sali Levi. He was born in Walldorf, Baden in 1883, and was ordained at the Seminary in Breslau. He became rabbi in Mainz in 1918. It is not clear when he died and whether it was of natural causes or as a result of the Holocaust.

Levi spoke very briefly. He began by saying that to be speaking at this point in the discussion was not something to be envied. Had he been able to speak before Baeck, Levi would have pointed to the fact that one should distinguish between the internal developments in Jewish ideas and the influence of the outside world. One consequence of this influence was the change in the view of the woman's role in marriage.

Levi said next that the liberal rabbinate was attempting to solve the existing problems in a responsible way. For this purpose he wanted to encourage his colleagues to get in touch with the East European rabbis who faced similar problems. Levi related a case in his rabbinate by which he attempted to show that in cases of need the rabbis from the East were flexible and were even willing to deal with a liberal Jewish court. The same could not be affirmed about the German Orthodox rabbinate.

Next, Levi said that he did not favor Freudenthal's idea of adding an extra paragraph to the <u>kethubah</u> in order to solve the problems of divorce cases in which the consent

of the husband was missing. He would prefer instead that the groom sign a separate document to the same effect. The most important suggestion, however, came at the end of Levi's words:

> You also know, esteemed colleagues, that a change in the state legislation concerning marriage and divorce is presently being prepared. I do not think it would be impossible for us to obtain the inclusion of a clause in the new law which would say something along the line of that, in case of a civil divorce, those marriages established under Religious Law would have to be dissolved also according to religious legislation. Then, with such a law it would be possible for us to exercise on the husband the coercion which religious legislation proposes. I suggest that exploratory contacts should be made with the appropriate political parties.175

The idea of using civil legislation as a means of enforcing Jewish Law was proposed in the 1950s by American Conservative Judaism.[176] More recently, on August 8, 1983, the State of New York enacted into law that in divorce proceedings each party must prove that it has removed all existing "barriers to remarriage" for the other party. This must be done before the civil divorce proceedings are finalized. Paragraph 6 of section 253 of New York's Domestic Relations code reads as follows:

> As used in the sworn statements prescribed by this section "barrier to remarriage" includes, without limitation, any religious or conscientious restraint or inhibition, of which the party required to make the verified statement is aware, that is imposed on a party to a marriage, under the principles of the denomination of the clergyman or minister

> who has solemnized the marriage, by reason of the other party's commission or withholding of any voluntary act. Nothing in this section shall be construed to require any party to consult with any clergyman or minister to determine whether there exists any such religious or conscientious restraint or inhibition. It shall not be deemed a "barrier to remarriage" within the meaning of this section if the restraint or inhibition cannot be removed by the party's voluntary act. Nor shall it be deemed a "barrier to remarriage" if the party must incur expenses in connection with removal of the restraint or inhibition and the other party refuses to provide reasonable reinbursement for such expenses. "All steps solely within his or her power" shall not be construed to include application to a marriage tribunal or other similar organization or agency of a religious denomination which has authority to annul or dissolve a marriage under the rules of such denomination.

Although not specifically stated, if one "reads between the lines" it is easy to see that one of the "barriers to remarriage" to which this legislation applies is the get.

Chapter 6

A) The conclusion of the discussion

After Rabbi Levi's words, Rabbi Dr. Dienemann offered some closing remarks. First of all he thanked everyone for participating in the discussion and for having taken the matter so seriously.

Next, Dienemann reacted to several of the individual speakers who had followed his opening presentation. To Max Wiener he said that theoretical considerations could not be developed in his presentation. In reaction to Wiener's comments about Religious Law, Dienemann said that the evolution of the law was always initiated by small groups invested with authority who at some point said, "This is the way it is." The general consensus elevated their resolutions to the status of law.

Following these remarks Dienemann went on to say a few words about Leo Baeck's speech. First, Dienemann thanked his colleague for the way in which he presented the fundamental issue behind the matrimonial problem. Dienemann went then on to say:

> It is quite nice. There may appear situations where the State says no, and we say yes. We will then have to have the courage to say yes. And when the State says yes, and religion says no, then we may have to rise and plainly say no. This, because for us religion always has the priority. Where

> the State says yes, and religion says no, the latter will always be right. This would be for us the case only if the Jewish religion would in cases of dissolution of the marriage say no on principle, like the Catholic Church. But [the Jewish religion] actually says the same yes that the State says. Indeed, it said it even before the State did. Now it happens that a group, which, according to us, interprets the religion improperly, says a no, which, according to our view is not based in the religion. Here we must act, here unfortunately the question turns to a conflict between Orthodoxy and Liberalism.177

After offering this additional angle to Baeck's view, Dienemann expanded on the statement in his presentation that he was not going to indicate a way in which the rabbis should act in matrimonial matters.[178] He considered that, if a resolution would come out of this meeting, it would be disregarded not because of its shortcomings, but because of its origin. Therefore he considered it more advisable that the individual rabbi should act according to the best of his understanding. Once several rabbis would act in a certain way, a custom would develop. In 100 years nobody would ask who the originator of a particular custom was. People would just say: "This is how it has been done since the days of old."[179] Dienemann heard in Baeck's call to his colleagues to act in accordance with their conscience support for what he had just said.

Next, Dienemann voiced some disagreements with the presentations of other rabbis. The presentation made by Lewkowitz was in Dienemann's view too "homiletical".[180] Dienemann was totally opposed to Freudenthal's suggestions.

He considered that attaching a provision to a religious act, meaning by this the divorce clause added to the kethubah, was not at all acceptable. Also, this legal device would work only in the future; it could not help those already married. Finally, Dienemann said that an order to the Rabbinic Court to issue a bill of divorce could be made only after there had been a marriage. Clearly, at the time the kethubah is signed the marriage has not yet taken place.

Finally, Dienemann insisted that all which had been said during this discussion should be made public so that no one could avoid the issue any longer.

These words concluded the discussion of the topic of matrimonial legislation within the meeting of the Union of Liberal Rabbis in Germany. The last item that needed to be addressed was several motions presented to the meeting. The motions of Rabbis Samuel, Saenger and Freudenthal called for specific resolutions. At the last minute, Rabbi Lewkowitz moved that the Union decide that a divorce carried out through an agent appointed by the rabbinic court be considered as valid. Together with those motions were the ones by Dienemann, asking for the publication of the proceedings, and one by Rabbi Siegfried Behrens requesting that a committee be formed to process all the material gathered during the discussion.

Dienemann's motion was passed unanimously, and a committee on matrimonial law was formed. Dienemann,

Lewkowitz and Saenger were elected as members.

After closing this discussion, the rabbis gathered in Berlin addressed themselves to the other business on the agenda.

B) Conclusions

After reading the proceedings of this debate on the problems arising from matrimonial legislation within Jewish Law, one is tempted to paraphrase the famous sentence by Julius Caesar and to say of the German Liberal rabbis: They came, they saw, they left. But did they actually conquer? Was this discussion in Berlin successful in any way? If by success we mean having found a way which from then on solved to everybody's satisfaction the problems the rabbis were dealing with, then the answer has to be no. None of the proposed ways to deal with the problem of the woman whose husband does not want to grant her a get (which is the critical issue here) became generally accepted procedure. The next question then, is; was this meeting in any way significant? If we are to judge by the lack of anything more than brief reports about it in the Jewish press of the times, our answer again has to be no. Of course, after 1930, German Jewry had other issues than the 'agunah to worry about. If we place ourselves at the time of the meeting, we have to say that this discussion was another link in the chain initiated by Samuel Holdheim in 1844 when at the first rabbinic conference he requested that a committee be formed to review the whole body of matrimonial legislation.[181] Nothing really decisive happened since that initial request.

But if we examine the meeting from our vantage point of almost 60 years later the conclusions have to be

different. In recent months, there has been in the United States a re-awakening of the intra-Jewish debate. The speeches, the debates, the articles have circled around the words "Jewish unity". Each of the bodies of organized religious Jewry has told the others that one or another action endangers the unity of the total community. The two main actions, but by no means the only ones, which are criticized, are the 1983 "patrilineal descent" resolution by the Central Conference of American Rabbis, and the fact that the Reform rabbinate does not require religious divorce. If we were to pause a minute and reflect on all this, we would soon recognize that many of the words spoken recently were also spoken in 1929. The same polarization which existed in 1929 in a meeting of German Liberal rabbis exists in the United States today. As in those days today, views of the non-Orthodox rabbinate range between those who say: "We have to do what we think is right," and the ones who will warn: "the unity of the community is in danger,"

The Germany of the beginning of the 20th century and the United States now (and also previously) have features in common. More or less successfully, both were and are open societies based on democratic principles. The problems with which the Jewish community was dealing in 1929 in Germany, as well as in the United States then and now, do not stem from the wickedness of this or that rabbi, but from a changed reality. While this was clearly stated by Rabbi Leo

Baeck in his speech in Berlin, one very rarely hears it said today.

Baeck put the issue in the correct perspective. He and his colleagues were discussing the subject matter of marriage and divorce legislation because of emancipation. The origin of their problems was indeed a conflict between religion and state. This remains true to this day. Then as well as now the question remains how much independence the Jewish community is willing to surrender to the State. This is the significance of the 1929 meeting seen in historic perspective. The meeting offered a fairly comprehensive discussion of the problem, its origins, and its possible solutions. Almost anything attempted or said before and after 1929 in the attempt to solve the problems of Jewish matrimonial legislation was at least mentioned in Berlin. And, if we examine the nature of other proposed solutions to the problems of matrimonial legislation, we may find that the Berlin rabbis pointed to a different direction which might be worth pursuing. As a matter of fact, there are indications that this direction is already being used.

If we adopt Baeck's definition, complemented by Dienemann in his closing remarks, we have to say that the rabbis who spoke in Berlin were willing to surrender to the State different degrees of Jewish legislation and autonomy. We may attempt to group them in accordance with their intentions in this matter, with the risk that this or any

other division may be imperfect.

On the one hand there were those rabbis who advocated a total consistency with their view of reality and also with liberal premises. This was best represented by Rabbi Samuel. For him, the whole body of family legislation had passed to the jurisdiction of the State, and since it was the obligation of the Liberal rabbis to preserve the "internal holiness" of Jewish marriage, they would have to do so even if this meant that some external forms would fall away. We can also place Dr. Wiener together with Rabbi Samuel in his call for consistency. Although he did not go into practical matters, Wiener wanted clear, axiomatic definitions before one would discuss anything else. Samuel's approach and Wiener's desire for definitions could be compared to those who presently say, "We have to do what we think is right." Of course, this way of acting would necessarily lead to grave internal divisions within the Jewish community. Wiener, being himself a Zionist, perhaps was not worried by this, since he saw the "community" in a different context. Samuel, however, distrusted those who voiced the "Klal Israel slogan".[182] It is clear beyond doubt that, in 1929, Jews could not afford to be very critical of the idea of preserving the general community. External reasons, more than anything else, required this. This is why most of the speakers in Berlin reminded their audience of the absolute need to preserve Jewish unity.

There were also rabbis who wanted to surrender less to the State, and therefore wanted to find solutions to the matrimonial problems while staying within certain boundaries. The majority of the speakers in Berlin could be placed in this group. In one way or another, all were committed to the idea of Jewish Law, in which most saw the historic expression of Jewish religious life (as Freudenthal described it in 1912). In matrimonial matters, some among them , for example, Dienemann and Freudenthal, wanted various innovations flowing from "the spirit" of Jewish Law. Lewkowitz, on the other hand seemed more inclined to proceed within the limits of Jewish Law but with those adjustments required by circumstances. Although he attempted to justify theoretically a way to handle Jewish divorce, the truth of the matter is that he and other rabbis were already arranging divorces without the consent of the husband whenever necessary.[183]

Each one of the devices presented at the Berlin meeting in order to get out of the divorce imbroglio did not fit perfectly into the patterns of halakhah. Parallel attempts in the United States, within the Conservative Movement, did not fare much better.

One possible avenue in the attempt to solve the problems of Jewish divorce which was not studied by the German rabbis in Berlin, although it was mentioned, was the possibility of conditional marriage with retroactive

annulment. In 1907, the French rabbinate. suggested to attach to all Jewish marriages performed in France the condition that if the bond was dissolved by the civil courts, then the marriage would retroactively be annulled.[184] This idea of the French rabbinate elicited many objections. The main ones were that, with this device, divorce legislation and even the entirety of marriage legislation would disappear from Judaism. Another objection was that in civil legislation the woman could file for divorce. If her suit was successful, then her Jewish marriage would be nullified. This would amount to the woman divorcing herself, which did not go very well with the rabbinic interpretation of Deuteronomy 24:1. In 1923, Turkish rabbis proposed a set of conditions not on the marriage but on the husband. For instance, if the husband traveled abroad without his wife's permission for an extended period, then the marriage would be retroactively nullified.[185] In 1966 Rabbi Eliezer Berkowits in his book Tenay benisuin ubeget tried to show that a conditional marriage would be valid from the point of view of halakhah. In 1968, the Committee on Jewish Law and Standards of the Rabbinic Assembly of America issued a responsum on the subject of conditional marriage[186] which echoed Berkowits' work. The responsum included a form in which bride and groom would express their consent to a conditional marriage. The stipulated condition in essence says that if a civil divorce

should terminate their marriage, and six months afterwards the husband had not given his wife a get, then, "...betrothal (kiddushin) and marriage (nissuin) will have been null and void." The responsum recommended that every case in which this condition became operative be submitted for consideration by the Committee on Jewish Law and Standards in order to verify that the procedure had been followed correctly. The Committee would then issue a declaration saying that the marriage was in fact null and void.

At about the same time as the proposal of conditional marriage, the Rabbinical Assembly also made use of the rabbinic prerogative of cancellation of marriage, retroactively nullifying marriages where the husband refused to grant his wife a divorce.[187] This possibility had been examined and rejected by Dienemann in his presentation in 1929.[188]

In general, I agree with the rabbis gathered in Berlin in 1929, who said that retroactive annulment of a marriage amounted to turning it into concubinage. It seems too much of a legal fiction to say that what once was a marriage, perhaps even resulting in children, never actually existed.

An additional attempt to solve the problems of Jewish divorce has been tried in the United States since 1954. Rabbi Levi had hinted at this possibility in 1929 when he said that the rabbis should lobby the political parties in

order to have a clause included in a law which would make it possible to coerce the husband in a divorce case. This recourse to civil legislation in order to make Jewish legislation function was the basis of the "Lieberman kethubah". The "Lieberman kethubah", as mentioned above,[189] was actually an additional paragraph added to the standard Aramaic text of the document. In its original English rendition, bride and groom recognized the "Beth Din of the Rabbinic Assembly of America or its duly appointed representatives, as having authority to counsel us in the light of Jewish Tradition..." Although not explicitly stated, this clause was viewed as a private agreement between the marriage partners. If one partner, generally the husband, refused to follow the rabbinic court's indication to issue a divorce to his already civilly divorced wife, then it was hoped that this signed agreement could be enforced through the civil court. The actual intent of the Aramaic "Lieberman clause" was made plainer in a later English rendition published by the Rabbinical Assembly of America.[190] The critical portion reads as follows:

> ...and if either spouse shall fail to honor the demand of the other or to carry out the decision of the Beth Din or its representatives, then the other spouse may invoke any and all remedies available in civil law and equity to enforce compliance with the Beth Din's decision and this solemn obligation.

Only in recent years has the "Conservative kethubah" undergone the test of the civil courts. As might have been

expected, the issue of separation of church and state quickly became linked to the request of the wife that the husband submit to the arbitration designated in the document signed by him.[191] From the available information, one reads that the case of Avitzur vs. Avitzur (the first such case reported) has already gone through three judicial levels. The New York lower court considered that the particular clause was secular in nature and thus the matter fell within its jurisdiction, This ruling was reversed by the Appellate Division which considered that

> It would thus be a dangerous precedent to allow State Courts to enforce liturgical agreements concerning matters about which the State has no remaining concern.

This decision was reversed again by New York's Court of Appeals, which considered the whole matter as civil in nature. It is inappropriate to make a judgement based on a single case, yet it seems that if the Conservative marriage document were to be brought before the civil courts more frequently, it would be hard to predict what the particular court's opinion would be in each situation.

The courts have been more willing to get involved in Jewish divorce cases when the giving of a <u>get</u> was a part of a civil divorce agreement.[192] But even if the involvement of the civil courts would be successful in bringing a rebellious husband to issue a divorce, from the point of view of <u>halakhah</u> the validity of such a divorces would be in question since the husband was led to the act of issuing

the bill of divorce by the action of a non-Jewish court. This would then become a get meuseh, a bill of divorce given under duress.[193] Also, something does not seem right if Judaism has to rely on the civil courts to enforce its own laws.

We will soon be able to celebrate the 150th anniversary of the beginning of the history of attempts to revise Jewish matrimonial legislation. One wishes that this process, started in 1844, would have by now concluded. Unfortunately the situation is different. The Jewish community finds itself powerless in its attempt to solve the problem of the 'agunah. A fully traditional approach to the problem leads nowhere. Other attempts by means of legal fictions and powers of attorney intended for the distant future may perhaps be technically acceptable. Yet for some, they are hard to accept on moral as well as on emotional grounds. Can one avoid feeling strange at the sight of groom and bride making provisions for their divorce shortly before walking down the synagogue's main aisle in order to be married? The solution must lie elsewhere.

There is a need to design legal instruments linked with the legal tradition which at the same time will deal honestly with that tradition and with our moral and emotional perceptions. German Liberal rabbis in 1929, particularly Max Dienemann, pointed in that direction, and as a matter of fact, one body of organized Jewry presently acts very

much in accordance with what was said in Berlin. It seems to me that the solution lies somewhere in between being creative and having a bit of courage. Present-day non-Orthodox Jewry ought to remain linked to Jewish Law, since it is indeed the record of Jewish religious experience. However, it is not fruitful to be kept immobilized by a legal system which in the past was flexible and adjusted itself to changing circumstances. Being specific, even in matters of Jewish divorce there has been evolution. The form of the divorce document was not established in biblical times; it developed later. The idea of using coercion against the husband has its origin in rabbinic literature, and not before. Even if the development of the legislation never succeeded in taking away from the husband his absolute primacy in divorce matters, it can be said that since biblical times it attempted to protect the woman from her husband's power of divorcing her. The "bill of divorcement" mentioned in Deuteronomy 24:3 can be seen as a protection for the woman against claims by the husband of never having divorced her,[194] while the kethubah also includes provisions protecting the woman. The decree of Rabbenu Gershom not only continued this trend of protecting the woman against arbitrary divorce, but it also consolidated the already existing idea of protecting the woman against the husband's refusal to exercise his divorce prerogative when he ought to do so. Therefore, if a justification is needed, we should

say that protecting the woman against an arbitrary husband should be enough of a reason, now, as in the past, to take more radical steps in this problematic area. But would a rabbinic body, Liberal most likely, be entitled to take such a step? In answering this question, I have to return to Leo Baeck's distinction at the Berlin meeting. It is my feeling that, with Emancipation Judaism surrendered to the State not only areas of legislation but also the power and perhaps the ability to legislate. We neeed then, to take back some of that legis-lative power which we had in our autonomous past. If we reclaim some of that legislative power, we can use it to create instruments which should be fashioned as Max Dienemann said, "in the spirit of halakhah". It is in the spirit of Jewish Law to protect the woman against an arbitrary husband. The next question, of course, follows of necessity "And Jewish unity?" Jewish unity is as important today as it was in 1929. Keeping close ties between the different bodies of the Jewish community was a necessity mandated to German Jewry mostly by external pressures. Today, in an era of decreasing numbers, closeness between Jews is perhaps even a commandment. Anything that is attempted which falls outside traditional halakhic guidelines will be criticized. It will then be necessary to endure attacks with the strength that comes from knowing that with true passion for the sources and what they represent, one has chosen to pursue a way which strengthens

the respect and devotion many will have for Judaism and its many facets. And whatever the particular action taken may be, there is a real chance that a few generations later, it will be said; "This is the way we have been handling divorces for the last 100 years." Thus we shall have moved forward.

All the above is not just wishful thinking. The Rabbinic Court of the Reform Synagogues of Great Britain, in its "Current Procedures and Practices," 195 outlines the way in which it handles marriage and divorce matters.[196] The complete set of norms strongly reminds one of the ideas expressed in Berlin in 1929. In paragraph 44, it establishes that halitsah, marriage prohibitions for a kohen, and mamzeruth are disregarded by that court. In paragraphs 45 and 46, we find a reflection of the idea that the marriage bond is at present established by the State and religiously consecrated at the synagogue. In paragraph number 50, it is established that a revised marriage certificate will be used, something also discussed in Berlin. In matters of divorce, paragraph 53b establishes that a woman will be issued a divorce by the court if the husband's consent cannot be obtained, by means of a "document which replaces the Get".[197] Although I have not found any information on the reasoning behind this British way of handling these matters, it can be said that the proposals made during the debate at the meeting of the Vereinigung der Liberalen

Rabbiner Deutschlands have become official policy years later, just as Rabbi Julius Lewkowits wanted them to be. Thus, of producing matrimonial legislation in the "spirit of tradition", and a dosis of courage seem to be one possible way to modernize marriage practices and solve problems which affect many Jewish women. This, then, may allow the Jewish community to concentrate its efforts even more towards achieving those eternally valid and very necessary goals which God has revealed to it. These goals can be symbolized by the idea that the Jewish community ought to be a Kehillah Kedoshah, a Holy Congregation.

NOTES

Chapter 1

1. Howard Morley Sachar, The Course of Modern Jewish History (New York: Dell, 1977), 70.

2. Ismar Elbogen, Geschichte der Juden in Deutschland (Berlin: Juedische Buch Vereinigung, 1935), 239ff.

3. Sachar, 109.

4. Elbogen, 250.

5. In surveying the major meetings of German rabbis in which reforms were discussed, I will not describe in great detail all the topics upon which these conferences and synods deliberated, but will concentrate on the subject of marriage and divorce legislation.

6. Protokolle der 1. Rabbinerversammlung (Brunswick: Friederich Bieweg und Sohn, 1844), 19.

7. Ibid., 96.

8. Ibid., 70.

9. Quoted in W. Guenther Plaut, The Rise of Reform Judaism (New York: World Union for Progressive Judaism, 1963), 71.

10. Quoted in Plaut, 73.

11. Protokolle der 1. Rabbinerversammlung, 73.

12. David Philipson, The Reform Movement in Judaism (New York: Ktav, 1967), 185.

13. Protokolle und Aktenstuecke der Zweiten Rabbiner-versammlung (S. Ullmann'schen Buch, Kunst und Antiquariats-handlung: Frankfurt am Main, 1845), 222.

14. Philipson, 199. This statement summarizes the discussion which took place at the meeting. For a full account, see Protokolle der dritten Versammlung deutscher Rabbiner (Verlag von F.E.C. Leuckart: Breslau, 1847), 198.

15. Protokolle der dritten Versammlung, 293.

16. Ibid., 298.

17. Die erste Rabbiner Versammlung und ihre Gegner, von Kirchencath Dr. Maier (Stuttgart: Halbergsche Verlags-handlung, 1845)

18. Vorschlaege zu einer zeitgemaessen Reform der juedischen Ehegesetze. Der naechsten Rabbinerversammlung zur Pruefung uebergeben (Verlag der C. Kuerschnerschen Buchhandlung: Schwerin in Mecklenburg, 1845)

19. Vorschlaege zu einer Reform der juedischen Ehegesetze (Verlag von G.C.E. Meyer sen: n.p., 1846)

20. Maier, 23.

21. Ibid., 29.

22. Herzfeld, 36.

23. Holdheim, 13.

24. Ibid., 17.

25. Protokolle der dritten Versammlung, 9.

Chapter 2

26. "Was thut Noth?" in Juedische Zeitschrift fuer Wissenschaft und Leben 3 (Breslau, 1864-65), 251-258. See Philipson, 287.

27. Verhandlungen der ersten israelitischen Synode zu Leipzig (Berlin: Louis Gerschel's Verlagsbuchhandlung, 1869), 12. Translation taken from Philipson, 293.

28. Verhandlungen der ersten israelitischen Synode, 246.

29. Ibid., 246.

30. Ibid., 250.

31. Ibid., 253.

32. See above, 10.

33. Verhandlungen der ersten israelitischen Synode, 259.

34. Monatschrift fuer Geschichte und Wissenschaft des Judentums 18 (Breslau, 1869), 171-177.

35. "Die Synode zu Leipzig" in Der Israelit 10:28 (Mainz, July 14, 1869), 543.

36. The original version of the resolutions can be found in Verhandlungen der zweiten israelitischen Synode zu

Augsburg (Berlin: Louis Gerschel Verlagsbuchhandlung, 1873), 256-257. The translation is taken essentially from Philipson, 309-318; my alterations are underlined.

37. Dr. Dreyfuss' speech, in Verhandlungen der zweiten israelitischen Synode, 37.

38. Op. cit., 31.

39. Ibid., 41.

40. Ibid., 67-68.

41. Ibid., 71.

42. Ibid., 79-80.

43. The position of Rabbi Dr. Wiener. Verhandlungen der zweiten israelitischen synode, 82.

44. Ibid., 87-88.

45. Ibid., 134.

46. Ibid., 141, citing Dr. Adler.

47. Ibid., 110.

48. Ibid., 111.

49. "Zur Synode II," Der Israelit 12:28 (Mainz, July 12, 1871), 532.

50. "Die sogenannte zweite israel. Synode", Der Israelit 12:29 (Mainz, July 19, 1871), 548.

51. Der Israelit 12:30 (Mainz, July 26, 1871), 568. The translation is found in Philipson, 326-327. This declaration was also published in the Allgemeine Zeitung des Judentums 35:39 (Leipzig, July 26, 1871), 780-781. The same declaration appeared the year before, signed by 82 rabbis, in Der Israelit 11:22 (June 1, 1870), 405-407.

Chapter 3

52. Caesar Seligmann, Caesar Seligmann (1860-1950), Erinnerungen (Im Verlag vom Waldemar Kramer, Frankfurt am Main, 1975), 118.

53. I contacted persons and institutions in the United

States, Europe, Israel and South America in an attempt to locate any records or documents of these meetings. In every case the answer was negative. Thus, the only information available is that recorded in the press.

54. See Allgemeine Zeitung des Judentums 66:34 (Leipzig, August 22, 1902), 400.

55. Allgemeine Zeitung des Judentums 72:21 (Leipzig, May 22, 1908), 244. The complete speech was published posthumously in Liberales Judentum 5:8 (Frankfurt am Main, August 1913), 169.

56. Richtlinien zu einem Programm fuer das liberale Judentum nebst den Referaten und Ansprachen (Frankfurt am Main: Boigt und Gleiber, 1912), 60. The translation is taken from W. Guenther Plaut, The Growth of Reform Judaism (New York: World Union for Progressive Judaism, 1965), 70.

57. Roberto Graetz, "The 1912 Richtlinien, Historically and Theologically Considered." (Rabbinic thesis, Hebrew Union College, Cincinnati, 1972), 78. The Orthodox authority mentioned by Graetz was Rabbi Dr. Salomon Stein.

Chapter 4

58. A complete report on the meeting was published in in the Juedisch Liberale Zeitung 9:22 (Berlin, May 31, 1929). Several community newspapers (e.g., Leipzig and Dresden) published reports on the meeting, which seem to be taken from the major newspaper mentioned above.

59. Mally Dienemann, Max Dienemann: Ein Gedenkbuch (1875-1939) (London: privately published, 1946), 11.

60. Ibid., 31.

61. Ibid., 32.

62. Ibid., 31.

63. Fragen des Juedischen Ehegesetzes (henceforth Fragen): Stenographischer Bericht der Verhandlungen der Vereinigung del liberalen Rabbiner Deutschlands zu Berlin am 22. Mai 1929, 4.

64. Fragen, 4.

65. Abraham Geiger, "Von der Synode bis zur vertagten Synode," in Zeitschrift fuer Wissenschaft und Leben, Vol. 8 (Breslau: 1870), 90.

66. These proposals are cited above, page 25.

67. Fragen, 6.

68. Ibid., 6.

69. See above, p. 31.

70. Fragen, 10.

71. Ibid., 11.

72. Present-day Israeli legislation, however, allows for coercion to be exercised upon the husband in order to persuade him to issue a divorce. See below, page 67.

73. Fragen, 14-15.

74. The article appeared in three parts in Liberales Juedentue (1911), Nos. 3, 4 and 5.

75. Fragen, 16.

76. See above, page 45.

77. Fragen, 17-18.

78. B. Ketuboth 3a and B. Gitin 33a.

79. Solomon B. Freehof, Reform Jewish Practice, Vol. 1 (New York: U.A.H.C., 1963), 99.

80. Central Conference of American Rabbis, Yearbook. Vol. 17 (1907), 140.

81. So, for example, B. Gitin 49b and B. Yebamoth 112b.

82. B. Kiddushin 50a.

83. B. Gitin 88b.

84. B. Baba Bathra 47b.

Chapter 5

85. Bewaehrung im Untergang, ed. E. G. Loewenthal (Stuttgart: Deutsche Verlags Anstalt, 1966), 120.

86. Julius Lewkowitz, Die Grundsaetze des juedisch-religioesen Liberalismus. (Berlin: Vereinigung fuer das Liberale Judentum, 192?), 4.

87. Ibid., 5.

88. Ibid., 11.

89. Ibid., 13.

90. Ibid..

91. Fragen, 20.

92. Rabbi Dr. Alexander Guttmann of Cincinnati, formerly of Berlin, confirmed to me that, indeed, in Berlin, when a man would not consent to divorce his wife, Liberal rabbis would nevertheless carry out the divorce. One liberal rabbi would ask two colleagues to join him in an ad hoc Beth Din. This court would appoint a synagogue sexton as an agent who would deliver the get in place of the husband. One of the rabbis who convened such courts was Dr. Julius Galliner. Dr. Guttmann also noted that this method of dealing with a divorce was not recognized by the Orthodox authorities. I also interviewed Rabbi Dr. Fritz Pinkus of Sao Paulo, Brazil,formerly of Heidelberg. While he could not confirm Guttmann's account, his response was, "Yes, Galliner would have done that." By this he meant that he found it plausible that Galliner would have resorted to such an unorthodox procedure in order to solve a difficult divorce case.

93. Fragen, 20.

94. Lewkowitz must here be referring to the proposal suggested by Dienemann.

95. Numbers 15:26. The verse speaks about the Israelite's expiation of sins which were done by mistake.

96. Fragen, 21-22.

97. See above, p. 71.

98. Hil. Gerushin 2:20. The translation is taken from The Code of Maimonides, Book Four, The Book of Women, trans. Isaac Klein (New Haven and London: Yale University Press, 1972), 178.

99. Dr. David, "Rabbiner Dr. Salomon Samuel," Allgemeine Zeitung des Judentums 83:14 (Berlin: April 4, 1919), 137.

100. Hosea 2:21.

101. Fragen, 22.

102. Ibid., 23.

103. Ibid..

104. Ibid..

105. Ibid., 24. The prohibition of levirate marriage is contained implicitly in M. Bekhorot 1:7, where it is stated that the duty to perform halitsah takes precedence over levirate marriage, thus making levirate marriage virtually impossible.

106. Fragen, 27. The context implies that Samuel intended these proposals to deal with divorce.

107. Freudenthal himself lists some of his works in Die Israelitische Kultusgemeinde Nuernberg, 1874-1924 (Nuernberg: J. Bulka Verlag, 1925), 78. Freudenthal's work as an educator during his tenure in Danzig is related in Sam Echt, "Das Juedische Schul und Erziehungswerk in Danzig," Leo Baeck Institut Bulletin 6:24 (Tel Aviv: Bitaon, 1963), 364.

108. The speech was published in Richtlinien zu einem Programm fuer das liberale Judentum, nebst den Referaten und Ansprachen (Frankfurt am Main: Voigt & Gleiber, 1912), 32-44.

109. Ibid., 34.

110. Ibid., 43.

111. Fragen, 27.

112. Ibid., 28.

113. See above, p. 9.

114. Fragen, 29.

115. See above, p. 85.

116. Fragen, 30.

117. For Freudenthal's Hebrew text and a translation of his German rendition, see Appendix I, p. 160.

118. Fragen, 32.

119. Ibid., 33. For Freudenthal's Hebrew text and a translation of his german rendition, see Appendix I, p. 161.

120. Mishneh Torah, Hil. Berakhot 1:6.

121. Shulhan Arukh, Isserles on Even Ha'ezer 61:1; Mishneh Torah, Hil. Ishuth 10:6.

122. Shulhan Arukh, Even Ha'ezer 66:2.

123. Hil. Ishuth 10:9.

124. Even Ha'ezer 120:5.

125. The same idea is reflected in the corresponding chapter in the Mishneh Torah, Hil. Gerushin Ch. 2.

126. C.C.A.R. Yearbook Vol.1. (Cincinnati: Bloch, 1891), 37.

127. P. 20.

128. Pp. 39-43.

129. Louis Epstein, "A Solution to the Agunah Problem," Rabbinical Assembly of America, Proceedings: 1930, p. 86.

130. Epstein, "Adjustment of the Jewish Marriage Laws to Present Day Conditions", Proceedings of the Rabbinical Assembly of America. Vol. 5 (35th annual convention), 227-235.

131. Ibid., 233.

132. Ibid., 230.

133. This text appears in Isaac Klein, A Guide to Jewish Religious Practice (New York: Jewish Theological Seminary of America, 1979), 393.

134. See, for example, Norman Lamm, "Recent Additions to the Ketubah: A Halakhic Critique,"Tradition 2:1 (Fall 1959), 93-118.

135. Mishneh Torah, Hil. Gerushin 13:29.

136. Fragen, 40.

137. Alfred Jospe, "Short Biographies and Bibliographies of the (Breslau) Seminary's Teachers and Graduates," in The Breslau Seminary, ed. Guido Kisch (Tubingen: J.C.B. Mohr [Paul Siebeck], 1963), 439.

138. Richard Fuchs, "The Hochschule fuer die Wissenschaft des Judentums in the Period of Nazi Rule. Personal Recollections," Leo Baeck Institute Yearbook Vol. 12 (London, Jerusalem, New York: East and West Library, 1967), 12.

139. Hans Liebeschutz, "Max Wiener's Reinterpretation of Liberal Judaism", Leo Baeck Institute Yearbook Vol. 5 (London, Jerusalem, New York: East and West Library, 1960), 39.

140. Ibid., 143.

141. Fragen, 40-41.

142. Memorial address by David Philipson C.C.A.R. Yearbook Vol. 53 (1943), 53.

143. Hermann Vogelstein, "Tradition," in Festgabe fuer Claude G. Montefiore (Berlin: Kommissionsverlag Philo Verlag, 1928)

144. Ibid., 148.

145. Vogelstein expressed this sentiment, for instance, in his "Report on Liberal Judaism in Germany" delivered to the 1928 meeting of the World Union for Progressive Judaism, held in Berlin.

146. Fragen, 43.

147. Ibid., 44.

148. Ibid., 44.

149. Ibid., 44.

150. Ibid., 45.

151. Ibid., 46.

152. It would seem that, in applying this concept to divorce, Vogelstein had in mind the sentiment already expressed: that there is a place for religion at such a painful moment as divorce. Ibid., 6.

153. Fragen, 49-50.

154. Ibid., 50.

155. Ibid., 51.

156. Ibid., 52.

157. Ibid., 52.

158. Albert H. Friedlander, Leo Baeck: Teacher of Theresienstadt (New York, Chicago, San Francisco: Holt Rinehart and Winston, 1968), 16.

159. Ibid., 24. The title of the article cited is: "Orthodox oder ceremonioes?," in Juedische Chronik 3d Year, 1896/97, 237-243, repr. in Leo Baeck Heft: mit dem Wiederabdruck der drei fruehesten Aufsaetze von Leo Baeck (Juedisches Lehrhaus Zuerich, 1959).

160. "Mistery and Commandment," in Judaism and Christianity: Essays by Leo Baeck, trans. and introduced by Walter Kaufmann (Philadelphia: Jewish Publication Society, 1958), 171.

161. Ibid., 171-72.

162. Ibid., 176.

163. Baeck, "Marriage as Mystery and Command," in The Book of Marriage: A new interpretation by twenty-four leaders of contemporary thought, arr. and ed. by Hermann Keyserling (New York: Harcourt, Brace & Company, 1926), 464-471.

164. Ibid., 465.

165. Ibid., 466.

166. Ibid., 469.

167. I follow here the full translation of Dr. Baeck's speech by Rabbi Dr. Jakob J. Petuchowski published in C.C.A.R. Journal 20:2, 37-41.

168. Fragen, 53.

169. Ibid., 54.

170. Baeck meant by this word the establishment of the actual marriage bond.

171. Fragen, 54.

172. Ibid.. The word "mystique" is used here and below in the same sense as "mystery" was used above.

173. Ibid., 55.

174. Ibid..

175. Ibid., 57.

176. See below, p. 140.

Chapter 6

177. Fragen, 58-59.

178. See above p. 63.

179. Fragen, 59.

180. Ibid., 60.

181. See above, p. 8.

182. See above, p. 80.

183. See above, p. 72.

184. Eliezer Berkowits, Tenay benisuin ubeget (Jerusalem: Mossad Harav Kook, 1966), 57.

185. Ibid., 57.

186. "T'nai B'kiddushin" Proceedings of the Rabbinical Assembly of America, Vol. 32 (1968), 229-241.

187. Proceedings of the Rabbinical Assembly of America, Vol. 33, 1969, 200.

188. See above, p. 60.

189. See above, p. 98.

190. A Rabbi's Manual ed. Rabbi Jules Harlow (New York: Rabbinical Assembly, 1965), 38. Rabbi Harlow informed me that the Lieberman clause had just undergone a new revision in which form it will be published shortly.

191. Irwin H. Haut, Divorce in Jewish Law and Life, (New York: Sepher-Hermon Press, 1983), 77-80.

192. Ibid., 70-73.

193. B. Gitin 88b. Mishneh Torah, Hil.Gerushin 2:20.

194. Phillip Sigal, New Dimensions in Judaism (New York: Exposition Press, 1972), 137.

195. "Current Procedures and Practices of the Rabbinic Court of the Reform Synagogues of Great Britain," first prepared under the aegis of the Executive of the RSGB Assembly of Rabbis (1977) and amended by the convener to incorporate present procedures (1985). (Mimeographed)

196. The full text appears in Appendix II, p. 163.

197. The Hebrew text and translation of such document appear in Appendix III, p. 166.

APPENDIX I

Marriage certificate proposed by Freudenthal.

(Fragen des Juedischen Ehegesetzes, page 35.)

נוסח הכתובה.

ב..... בשבת ..... יומים לחודש ..... שנת .....
לבריאת עולם למנין שאנו מנין כאן ק'ק ..... איך ר' .....
..... אמר להדא בתולתא ..... הוי לי לאנתא
כדת משה וישראל וצביאת מרת ..... בתולתא דא והות
ליה לאנתא כדת משה וישראל. ויכותו שניהם ברית כדינא דמלכותא
ובתיקון חז"ל ברית אהבה ואחוה ברית שלום ורעות ברית עולם. ובאו
עליהם ברכות ארוסין ונשואין למ"ס. כן נעשה בפנינו והכל שריר וקים.

Translation of the German text

Today, the ..... according to the Jewish reckoning, which is the ..... according to the civil reckoning, Mr. ..... and Miss..... sanctified here in ..... their civil marriage covenant according to the laws of Moses and Israel. They established this marriage covenant as a bond of love, of true companionship, of peace and unity for all eternity. For the consecration of their covenant they received the

religious blessings which may be fulfilled for them in all happiness! Everything took place according to law, and is hereby confirmed by us as witnesses.

The divorce clause presented by Freudenthal.

(Fragen des Juedischen Ehegesetzes, page 36.)

נוסח הרשאת גיטין

ב..... בשבת ..... יומים לחדש ..... שנת .....
לבריאת עולם למנין שאנו מנין כאן ק'ק ..... איך ר' .....
..... אמר להדא בתולתא ..... הוי לי לאנתא
כדת משה וישראל וצביאת מרת ..... בתולתא דא והות ליה
לאנתא כדת משה וישראל ויכרתו שניהם ברית עולם כדינא דמלכותא
וכתיקון חז"ל וכך אמר ר' ..... זה קשר נשואין עם אשתי
..... הוקשר לדעתי ולכוונתי מן יומא דנן לעולם אך אם
יארע חו"ש באחרית הימים מאיזה סבה שלא יכול לעמוד הברית
לעולם הנה בתתי היום כח והרשאה לכל בית דין מומחה בישראל אז
לגרש את אשתי ..... בגט כריתות הן בידי הן על ידי
שליח בתקנת הבית דין במקומי וקבל עליו ר' ..... שלא
לבטל לא את הרשאה ולא את הגט ולא את השליחות לעולם ומה
שראינו ושמענו ונעשה לפנינו כתבנו וחתמנו והכל שריר וקים.

Translation of the German text

Today, the ..... according to the Jewish reckoning, which is the ..... according to the civil reckoning, here in ..... Mr. ..... and Miss ..... sanctified their civil marriage

covenant in a religious manner according to the laws of Moses and Israel. They established this covenant for all eternity as a covenant of love, of true companionship, of peace and unity. For the consecration of their covenant they received the religious blessings, which may be fulfilled for them in all happiness. They established this covenant explicitly and with the full intention that it remain a covenant for all times. However, Mr. ..... declared: In case that, God forbid, for any reason this covenant should not have eternal existence, I mandate and empower any rabbinical court to carry out the religious dissolution of the marriage covenant according to the forms stated in the accompanying Hebrew document. This declaration of mine is irrevocable.

This declaration is confirmed by us as witnesses.

APPENDIX II

Marriage and divorce regulations of the Rabbinic Court of the Reform Synagogues of Great Britain.

MARRIAGE AND DIVORCE REGULATIONS

43. A statement of the Regulations concerning Marriage and Divorce, as accepted in the Reform Synagogues of Great Britain.

MARRIAGE

44. We conform to traditional marriage laws with the following major exceptions:

    a) We disregard Chalitzah.

    b) We disregard the prohibitions concerning a Cohen.

    c) We disregard the prohibitions concerning a Mamzer.

45. We accept the civil laws governing the solemnization and dissolution of marriages: i.e. we would not marry a couple without the Registrar's Certificate, and we would not religiously dissolve a marriage without the Decree Absolute of divorce or annulment. In the case of a foreign divorce it must be recognized by the British Courts.

46. While we would not regard a couple married by the Registrar as living out of wedlock nor their offspring as illegitimate, we expect in all cases that Jews should be married in a synagogue, and we are always ready to supplement a previous civil marriage with a religious ceremony providing, of course, that there are no impediments.

47. When there is a clash between civil marriage laws and Jewish ones, (as in the case of mixed marriages) we accept the fact that the couple is civilly married, but their marriage is not valid according to Jewish religious law.

48. The marriage ceremony takes place in a synagogue; only under special circumstances can it be performed elsewhere.

49. Marriages are not solemnized on Sabbaths, on Festivals (with the exception of Chanucah and Purim) and on Tishah-Be-Av.

50. A contemporary form of the 'Ketubah' in Hebrew and in English which stresses the moral obligations and does not refer to financial agreements is issued for our synagogues.

DIVORCE

51. We regard the marriage as effectively ended when the High Court of Justice or a Court abroad recognized by it has issued a Decree Absolute of divorce or annulment. We demand in addition to it a religious dissolution by Get, and would insist on it before we would authorize either party to re-marry in the synagogue. Proceedings in our Court can only commence after the Decree Absolute has been obtained.

52. We recognize the Get issued by any established Beth Din. In cases of doubt, the convener, the Sponsoring Rabbi, or the Beth Din itself, may refer the matter to the Standing Committee.

53. Where a Get has not been previously obtained, the dissolution of the marriage is effected before our Beth Din:

a) By a form of the traditional Get when the consent of both parties has been obtained, or when the consent of the husband only has been obtained and the Court has exercised its discretion in his favour.

b) By a decision of our Court issuing an appropriate document which replaces the Get:

I) when the wife refuses to co-operate without giving any reasons, or for reasons which are irrelevant (i.e. financial claims);

II) when the whereabouts of the former spouse cannot be traced;

III) when the former spouse is unable to plead;

IV) when the former spouse is presumed to be dead.

54. If the former spouse contests the competence of our Court by declaring that he or she is orthodox, we

adjourn our proceedings and advise the petitioner to obtain a Get from an orthodox Court. Should the respondent refuse to co-operate with the orthodox authorities, we proceed in the matter.

55. The Convener makes at least three attempts to trace the missing former spouse. Public advertisement is no longer used. The Convener and the Sponsoring Rabbi, try to obtain consent from both parties in accordance with Jewish tradition, and where possible to reconcile outstanding quarrels or resolve problems.

56. When such consents are given, agents are appointed by the parties for the handling and delivery of the Get. In this way the parties need not meet nor appear in person before the Court. Both parties are invited to state their objections to the Court either in person or by letter, if they do so object. Appointments are made for both parties at the same Court but at different times.

57. Gittin and Documents authorized by the Court are executed by a Sofer appointed by the Convener. The former are witnessed by two laymen, and the latter are signed by the members of the authorizing Court. The Gittin and the Documents are retained by the Court, but certificates are issued to the parties who have accepted the Court's jurisdiction.

APPENDIX III

Divorce document according to the regulations (article 53b) of the Rabbinic Court of the Reform Synagogues of Great Britain

ב..... בשבת ..... יום לירח ..... שנת חמשת אלפים
ושבע מאות ו..... באה לפנינו חתומי מסה פה בלונדון
..... בת ..... המכונה .....
ובקשה ממנו להצילה מכבלי העגון נודע לנו שהחבילה
בין ..... בן ..... ובין ..... בת .....
נתפרדה על פי פסק של ערכאות המדינה ב.....
חקרנו ודרשנו הדבר והסכמנו יחד אנחנו
חתומי מסה לבטל ברית הנשואין שנכרתה
בין ..... בן ..... ובין ..... בת .....
ב..... תש..... וזאת אנו עושים מפני תקון העולם
וצרכי כלל ישראל שלא להרבות עגונות ועתה
..... בת ..... מותרת לינשא לכל אדם כדת משה וישראל

.....

.....

.....

Translation

On ..... the ..... day of the month of ....., 57....; ..... daughter of ..... who is known as ..... came before us the undersigned here in London. She requested to be saved from the chains of desertion. It became known to us that the marriage bond between ..... the son of ..... and ..... the daughter of ..... was dissolved by means of a ruling of the civil courts, on ..... We investigated the matter and unanimously, we the undersigned agreed to terminate the covenant of nisuin established between ..... the son of ..... and ..... the daughter of ..... on ....., 57..... . We do this for the betterment of the world and the need of the Congregation of Israel not to increase the number of deserted women. And now ..... the daughter of ..... is permitted to be married to any man, in accordance with the laws of Moses and Israel.

.....

.....

.....

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