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A CRITICAL STUDY OF REFORMS IN HILKHOT KASHRUT
BASED ON THE RESPONSA OF THE RABBINICAL ASSEMBLY [CONSERVATIVE]
VIS-A-VIS ORTHODOX AND REFORM RESPONSA

By
David B. Rosen

Thesis Submitted in Partial Fulfillment
of the Requirements for Ordination

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Referee, Professor Alexander Guttman

DIGEST

This thesis attempts to explain how two movements in Judaism, both claiming to be true to Jewish history and law, can at the same time reach decisions which flatly contradict each other. Both Orthodox Judaism and Conservative Judaism claim to be traditional Judaism; how then can we explain their different approaches to the halakhah and their different uses of rabbinic sources? Furthermore, a clear pattern exists wherein the decisions of Orthodoxy are, to a considerable extent, prohibitive, whereas those of Conservatism are, to a considerable extent, liberal and are in effect reforms.

In no area of Jewish law is the difference more explicit, and the reforms of Conservative Judaism more glaring, than with regard to the laws of kashrut. Consequently, this thesis examines the two movements' respective approaches to halakhah by carefully examining three of the most controversial issues: the kashrut of cheese and wine manufactured by non-Jews, and gelatin made from the bones of non-kosher animals. Historically, all three have been rigidly prohibited by Orthodox Judaism. Are the Conservative reforms legitimate? Are they methodologically sound? Can a Jew who is shomer mitzvot accept in good conscience the decisions reached by the Conservative movement's rabbinical authorities.

Several conclusions are reached: First, some but not all of the Conservative decisions are indeed sound and

valid interpretations of the halakhic literature. One issue--wine--is not. Second, the Conservative movement freely admits to using non-halakhic considerations (e.g., sociological, cultural, economic) in deciding law. Although the Orthodox claim that such considerations are unacceptable in determining law, we will see that such factors are indeed used by Orthodox authorities as well. And third, it is clear that minhag avoteinu (a custom of our forefathers), while respected by Conservative authorities, cannot be decisive; if a custom has outlived its function or appropriateness, it can be overruled.

The methodology of the thesis is as follows: Each topic is divided into three parts. In the first part, the issue is discussed based on the Talmudic and rabbinic references to be found throughout halakhic history. In effect, a "super-responsum" is created to explain the historic prohibition of the food product in question. In the second part, the responsum (or responsa) issued by the Rabbinical Assembly is carefully described. In the third part, the various sources and arguments are examined and analyzed, and conclusions are ultimately reached as to the validity of one argument over another.

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PREFACE

This thesis is a study in "practical halakhah" [הלכה למעשה]. It is the outgrowth of my personal struggle to strike a balance between a deep commitment to Jewish tradition and law, and the realities and sensibilities of the modern age. How best can a traditional (but not Orthodox) Jew observe the Jewish dietary laws [שומר כשרות]? In recent times, the Conservative movement has attempted to answer this question by issuing numerous responsa concerning various foods which have historically been unacceptable for Jewish consumption. Many Jews have accepted these decisions; others have questioned them. This thesis is an attempt on my part to study several of the most controversial, in an attempt to determine to my own satisfaction whether or not the Conservative decisions are indeed acceptable to Jews whose commitment to kashrut is no less than their commitment to the halakhah itself.

Most of the research necessary for this paper involved the use of classical rabbinic texts. It is therefore appropriate to acknowledge at the outset my gratitude to the faculty of the Hebrew Union College-Jewish Institute of Religion, which introduced me to this literature, guided me in understanding its language and methodology, and ul-

timately helped me acquire the skills necessary to do independent work in it.

A word of thanks and appreciation is due in particular to my teacher and friend, Prof. Alexander Guttman. Prof. Guttman's vast knowledge of the Talmud and rabbinic literature is legendary. Equally impressive to me, however, is his willingness and desire to share unstintingly all that he knows with so many who know so little. This he did with me, as he has done with so many before me in his many years of teaching at HUC-JIR. He embodies, I believe, the classic qualities of both a rabbi and a mensch.

And finally, a special word of appreciation and affection for my closest friend and partner in life--Marcie. She has been patient and unceasingly supportive of me ever since, some seven years ago, we together made the decision for me to begin studying for the rabbinate. These have been exciting years which have been deeply enriched by Marcie's sensitivity and caring, by her love of Judaism, and perhaps most importantly, by her love of life itself.

רבות בנות עשו חיל ואח עלית על-כלנה

*Many women have done excellently,
but you surpass them all. (Proverbs 31:29)*

D. B. R.
10 Tevet, 5740
December 30, 1979

CHAPTER ONE

INTRODUCTION

In this thesis we shall attempt to understand how two movements within Judaism--Orthodoxy and Conservatism--which both claim allegiance to the halakhah and the halakhic process, can nevertheless on many issues reach diametrically-opposed conclusions. The rabbis of the two movements each claim to be acting from within the tradition, relying in many cases on the same select sources. Yet one (Orthodox Judaism) consistently finds grounds to prohibit, while the other (Conservative Judaism), with few exceptions, consistently finds grounds to permit. Each in turn questions the legitimacy of the other:

The deliberations and publications of the [Conservative] Rabbinical Assembly do not, in the ordinary course of events, properly come within the purview of a work devoted to Halakha. Much is to be said in favor of simply ignoring pronouncements with regard to Jewish law issued by those who have placed themselves outside the pale of normative [i.e., Orthodox] Judaism.¹

[The standard and the ideal of Orthodox Judaism is to] turn the clock of time backward. It is possible to maintain this position only by denying or, far better, ignoring the history of the growth and development of Judaism throughout the biblical, rabbinic, and medieval periods. . . . [Conservative Judaism] regards itself as the heir, not of Orthodox Judaism, but of traditional Judaism, which survived through the ages because of its extraordinary capacity for growth--not abrogation but development.²

We shall attempt to determine in this thesis whether the many reforms introduced by the Conservative movement can indeed be justified halakhically, or whether, as the Orthodox have claimed, the Conservative movement is not halakhic and its decisions therefore are meaningless to "Torah-true" [i.e., Orthodox] Jews.

Although the Rabbinical Assembly's Committee on Jewish Law and Standards has written on issues in every area of Jewish life, we shall limit ourselves in this thesis to an analysis of the movement's far-reaching reforms in the laws of kashrut. More than any other area, the dietary laws have been a source of interest to Conservative halakhists. In close to seventy separate decisions, the Law Committee has ruled on issues ranging from the kashrut of baby foods, grape juice and swordfish; to the manner in which a dishwasher, Corning Ware and Teflon-coated products can be used in a kosher home; to whether or not Conservative rabbis can officiate at non-kosher affairs, or whether eating fish and cooked vegetables prepared in a non-kosher restaurant constitutes a violation of the dietary laws.

It would be impossible for us to examine in detail each of the many responsa issued by the Law Committee. Our procedure will be, therefore, to select three of the most controversial and exhaustively-documented teshuvot of the Law Committee, to carefully analyze the methodology and use of sources, to contrast the Conservative opinions with the traditional opinions as they have been developed in the past and as they are presented by leading Orthodox figures today,

and finally, to compare and contrast all of the arguments in order to determine whether or not the Conservative reforms are indeed justified halakhically. The issues we will be analyzing in depth are: (1) cheese made by non-Jews; (2) wine made or touched by non-Jews; and (3) gelatin made from the skin and bones of non-kosher animals.

Our inquiry into the different approaches used by Orthodox and Conservative Judaism in writing legal decisions will no doubt be aided by a brief look at the basic principles by which each of the movements defines itself. As will become clear, neither movement is monolithic, though each can be broadly characterized by certain generalizations.

Orthodox Judaism: Notwithstanding whatever differences exist within Orthodox Judaism itself, Orthodoxy is united in the belief that both the Oral and Written Torah were revealed to Moses by God at Sinai. "I accept unapologetically the idea of the verbal revelation of the Torah," writes Norman Lamm, a leading Orthodox theologian.³

"Torah min ha-shamayim," writes Immanuel Jakobovits, Chief Rabbi of Great Britain, "essentially means that the Pentateuch as we have it today is identical with the Torah revealed to Moses at Mount Sinai and that this expression of God's will is authentic, final and eternally binding upon the Jewish people."⁴

As a consequence of this basic conviction, Orthodox authorities are slow, and in many cases completely unwilling, to institute changes in Jewish law as this law has been developed and ultimately codified in the Shulhan Arukh. As

one leading Orthodox scholar has written:

It should be emphasized that Jewish law does not change. Halacha is the word of G-d and reflects divine wisdom. G-d is not subject to change, and neither is His Torah.⁵

Along these same lines, Rabbi Joseph Soloveitchik has concluded that traditional Judaism allows for no economic, sociological or psychological factors in halakhah; human or societal forces play no part in the development of the law. Only God's will is decisive.⁶

All this does not preclude the possibility of change taking place at all. It is not the law which changes, however, but rather the conditions in which the law is operating. Therefore, while it remains forbidden to manually switch-on electric lights on the Sabbath (based on the biblical prohibition against lighting a fire), it is nevertheless permitted to use automatic timers which were preset before Shabbat began. The law has not changed. Thanks however to a new technological development, a change has been effected.⁷

The kind of change just described does not detract from the widely-quoted statement by Rabbi Moshe Feinstein that all innovations are prohibited by the Torah. The statement is true--except when Rabbi Feinstein and other acknowledged Orthodox posekim effect changes or innovations themselves. This is because Orthodox Judaism has increasingly reserved for itself the right to interpret Jewish law and institute changes. As one of the more liberal Orthodox thinkers, Rabbi Emanuel Rackman, has written:

Even at the risk of being dubbed "intolerant," I too insist that there is but one authentic Judaism, while other approaches are errors, distortions, heresy, or even pretense.⁸

Particularly obnoxious to Orthodox halakhists are their counterparts in the Conservative movement. Unlike Orthodoxy, Conservative Judaism accepts the validity of sociological, moral and ethical factors in determining the demands of modern-day Jewish practice. Consequently, when the Rabbinical Assembly reversed the centuries-old halakhah that precluded women from being counted in a quorum for prayer, the response from Orthodox spokesmen was immediate and sharp:

These sentiments [about the enhanced role of women] bespeak a lack of recognition of the fact that Halakha possesses an enduring validity which, while applicable to changing circumstances, is not subject to change by lobbying or by the exertion of pressure in any guise or form. Nor may independently-held convictions, however sincere, be allowed to influence our interpretation of Halakha. Normative [i.e., Orthodox] Judaism teaches that Halakha is not derived from any temporal "worldview" or "social situation" but expresses the transcendental worldview of the Divine Lawgiver.⁹

Orthodoxy insists that all of the halakhah is equally binding. Those laws which are no longer observed today, for whatever reasons, are only in temporary abeyance; when the Messiah comes, all laws which have fallen into disuse will be restored and once again obligatory.¹⁰

Conservative Judaism: As we have already noted, Conservative halakhists differ markedly from their Orthodox counterparts in openly permitting the introduction of extralegal considerations in the determination of modern

Jewish law. Seymour Siegel, a leading theologian in the Conservative movement, has described the Rabbinical Assembly's lawmaking procedure this way:

Whenever Conservative poskim, or decisors, are faced with a halachic question, they first search out the precedents that are relevant to the case at hand. The next step is to analyze the precedents as to their roots and basic assumptions. They then consider whether these assumptions can be accepted under present conditions. Sometimes the conclusions drawn by the decisors are at odds with those of the traditional authorities. This may be because many of the assumptions of the past cannot, in good conscience, be accepted today. Though conclusions may differ, the process is the same one that has characterized Jewish law interpretation from its beginning. (*Italics mine.*)¹¹

There is, in other words, a subjective factor openly acknowledged by Conservative legalists:

The Orthodox would not consider modern ethical sensitivities as sufficient grounds to change the law: for them, the law as it has been formulated over the centuries must be binding. Put another way, for them the halachah (the specific form which the law has taken) controls the aggada (the ethical and theological values of Judaism). In contrast, the Conservative Movement maintains that the purpose of the law in the first place is largely to concretize moral values, and so the specific form of the law can and should be changed if it is not effectively doing that. In other words, the aggada should control the halachah. (*Italics mine.*)¹²

Conservative Judaism can admit such subjective factors because, unlike in Orthodoxy, there is no uniform understanding of revelation and the authority of the halakhah. Rabbi Seymour Siegel explains his position this way:

The Torah . . . is the result of revelation; it is not identical with it. It is the human writing-down of the divine word. Therefore the Bible is not infal-

lible. (*Italics mine.*)¹³

The mitzvot, writes Siegel, exist for the purpose of concretizing "the divine demand to be holy and to pursue justice," and he continues:

They are the demands of God upon the community of Israel, which lives in time, and they are therefore subject to change, growth, and (all too frequently) decay. . . . The individual Jew, insofar as he is an active member of the believing community, is guided in the Law by those whom he accepts as its interpreters. He is also guided by his ability to observe the Law. . . . So long as he is serious about his responsibility and concerned about his Jewishness, he is doing the right thing in the sight of the Lord.¹⁴

Hershel J. Matt, a Conservative rabbi, explains revelation this way:

At the center of my religious affirmation is "Torah from Sinai," the conviction that the Torah contains the word of God revealed to Israel in the wilderness. This word, however, though issuing from God, was addressed to men, transmitted by men, received by men, recorded by men, copied and recopied by men--and thus to some degree was subject to the limitations of men: their inadequacies, inaccuracies, and misunderstandings. Our Torah-text, therefore, though containing the word of God, cannot be assumed entirely to be the word of God. Man's continuing and never-ending task is to identify (with God's help) which among the Torah's words are God's own words and therefore absolutely binding.¹⁵

A situation exists, therefore, wherein the eternal words of the Torah as they have been traditionally written, expanded upon and accepted, must be contrasted with the contemporary needs and standards of every generation which seeks to know the "meaning" of God's word and will. This is exemplified by the watchwords of the Conservative move-

ment: "tradition and change." A tension has always existed within the movement as to which of the two should carry more weight in deciding a given issue. This tension is best illustrated by citing several decisions of the Rabbinical Assembly's Committee on Jewish Law and Standards:

* Recognizing the fact that synagogue attendance today is frequently the only mark of Jewish identification, the Law Committee has sanctioned driving on Shabbat--but only to attend religious services.

* Recognizing the age-old practice of observing a second day of yom tov in the Diaspora while at the same time noting its steady decline in meaning for many American Jews, the Law Committee has made its observance optional with the individual and his congregation.

* Recognizing the biblical origin of the halizah ceremony while at the same time noting its inacceptability to modern sensibilities, the Law Committee has introduced tena'im into the ketubbah which have in effect eliminated the occurrence of such a ceremony.

Conservative Judaism as a movement of Jewish law can therefore be best characterized as an attempt to reconcile what has been with what should be.

Perhaps no one has better expressed "the ideas and principles, the experiences and feelings, the spirit and the attitude that sway us, knowingly or unknowingly, when we render decisions or opinions on questions of law"¹⁶ than Boaz Cohen, the late professor of Talmud at the Jewish Theological Seminary:

1. The Historical View of the Law. We conceive of Jewish law as a body of practices and regulations that have undergone a long development since the time of Moses, but in their essence and spirit have remained unchanged. . . .17

2. The Shulhan Aruk is a Valid Guide. . . . but is neither infallible, nor final. . . .18

3. The Sources of the Shulhan Aruk. We distinguish between the sources of the Shulhan Aruk, the Biblical legislation, the Talmudic interpretations, and the post-Talmudic elaborations, giving due weight to each phase in the development of the law. . . .19

4. Laws, Customs and Superstitions. It is necessary to distinguish between law (halakha), customs (minhag) and superstition in interpretation. . . .20

5. The Nature of the Laws. It is useful to bear in mind the distinction between religious and civil law. . . .21

6. The Need for Perspective. . . . the rabbis divided the precepts into lighter and weightier commands, indicating that some are relatively more important than others. . . .22

7. The Importance of Public Opinion. No system of rules can be imposed upon a group that does not meet with their approval. . . .23

8. Spirit of the Times. The spirit of our age differs greatly from that of Caro's epoch. . . . Today we are living in an essentially irreligious and irreverent age. . . .24

9. The Ends We Seek Influence Our Attitude. In interpretation we must not indiscriminately adopt the consistent policy to be either strict and severe, or liberal and lenient. We must be guided by the ends we are seeking, namely the preservation of traditional practices in their typically Jewish form. . . .25

10. Continuity of Jewish Law. [We must preserve] the continuity of Jewish tradition which was maintained in unbroken succession from remote antiquity. . . .26

Kashrut: The dietary laws are a fundamental part of the Jewish way of life according to both Orthodox and Conservative Judaism. Both movements accept as binding the traditional laws of kashrut as they have been codified in the Mishneh Torah and Shulhan Arukh; the Conservative movement takes exception only when the Rabbinical Assembly

through its Law Committee has specifically decided otherwise.²⁷

Reform Judaism: Conspicuous by its absence in the following pages is any reference to Reform Judaism. This is notwithstanding the movement's historic interest in halakhah and reforms in Jewish law and thinking. Indeed, in the last twenty years alone, Reform halakhists (primarily Rabbi Solomon Freehof) have ruled on several hundred questions. Interestingly with regard to this thesis, however, is the fact that Dr. Freehof, in his six volumes of published responsa, has dealt not once with an issue relating to the dietary laws; and since its founding in 1889, the Central Conference of American [Reform] Rabbis has published only two responsa dealing with kashrut.²⁸ This no doubt reflects Reform Judaism's historic antipathy toward the dietary laws, as expressed as early as 1885 in the Pittsburgh Platform:

We hold that all such Mosaic and Rabbinical laws as regulate diet, priestly purity, and dress originated in ages and under the influence of ideas altogether foreign to our present mental and spiritual state. They fail to impress the modern Jew with a spirit of priestly holiness; their observance in our days is apt rather to obstruct than to further modern spiritual elevation.²⁹

This has continued to be Reform Judaism's general position up to the present day. In recent years, however, a renewed interest has been shown by many Reform Jews in various aspects of the dietary laws. With this trend in mind, perhaps in the future we can look forward to responsa issued by the Reform movement which will deal with new problems in this important area of Jewish law. In the

meantime, reforms in the traditional dietary laws have been left, through Reform Judaism's abdication, to the Conservative movement.

CHAPTER TWO

GENTILE CHEESE IN THE HALAKHIC LITERATURE

Cheese which has been manufactured by a non-Jew, without any Jewish supervision, is forbidden for eating by Jews. Such cheese is referred to in the halakhic literature as גבינת גוים or גבינת עכו"ם.¹ As a quick survey will indicate, this prohibition is to be found in all the major codes, without exception:

Maimonides writes that "in the days of the Mishnah, the sages ruled on gentile-made cheeses and forbade them all, because they were curdled in the stomach linings of animals [that the gentiles] had slaughtered, which were nevelah [animals not slaughtered according to Jewish ritual]." ²

The Arba'ah Turim states explicitly that "cheeses made by non-Jews are forbidden."

And according to the Shulhan Arukh, "Gentile cheese is forbidden" for the same reason given by Maimonides, and "even if it is curdled using plants, it is forbidden." Isserles, expressing the Ashkenazic position, concurs.⁴

The Arukh ha-Shulhan, after surveying the entire halakhic literature on the subject and, significantly, after agreeing that many of the arguments for the prohibition are no longer valid, nevertheless concludes that

"in any case, since the Rambam, Ra'avad, Ramban, Rashba, Rosh, Tur, Caro and Isserles all decree it forbidden, so too we hold it forbidden."⁵

Before we can enter into any discussion of the problems with regard to gentile-manufactured cheeses, we must understand the basic production process for cheese in general. The process has been concisely described by Rabbi Isaac Klein:

The ingredients are: milk, a starter, and a coagulant or a curdling agent. The milk is poured into a large vat. To this is added a starter consisting of lactic acid bacteria that sours the milk (i.e., changes its lactose into lactic acid). Then a coagulant is added which curdles the milk. The whey, the liquid left over after the solids have curdled, is drawn off. The curd is worked over according to the kind of cheese being made. Finally the cheese is stored to ripen [which is] accomplished by various bacteria, molds, or both.⁶

Of the three ingredients basic to all cheeses, two are potentially problematic from the viewpoint of Jewish law. The first is the milk, since Jews are restricted to milk from kosher (i.e., "clean species") animals, and there is always the possibility that gentiles may use milk from non-kosher animals.

The second potential problem is with the curdling agent, which is commonly referred to as "rennet." Rennet is defined in Webster's Seventh New Collegiate Dictionary as "the lining membrane of a stomach (as the fourth of a ruminant) used for curdling milk."⁷ Invariably, the stomach lining used is from an unweaned calf. Either fresh or dried strips of the stomach lining are cut and

subjected to a variety of chemical treatments.⁸ Rennet may be objectionable from the halakhic point of view if it is extracted from the stomach lining of a non-kosher animal; indeed, this is the most basic objection to eating cheese manufactured by non-Jews. Cheeses manufactured by Jews, or by gentiles working under Jewish supervision, are manufactured using the stomach linings from kosher animals.

In addition, rennet may be produced from plants and other non-animal sources. As we shall see, however, this too may be objectionable.

The starting point for any discussion of gentile-manufactured cheese is its prohibition in the Palestinian Talmud, where it is cited as one of the eighteen injunctions enacted by the sages in the upper rooms of Hananiah b. Guryon:

These are the [eighteen] things on which they decreed: the bread of gentiles, and their cheese, and their oil, and their daughters . . .⁹

Based on this passage, Maimonides concludes that "one who eats gentile cheese, or milk that has been produced by a non-Jew, and no Israelite saw [or supervised] him, is subject to rabbinic lashing [מכת מרדות]." ¹⁰

Despite the routine use of this passage to justify the prohibition of gentile cheese, a serious controversy exists as to whether or not cheese was indeed one of the eighteen items proscribed. The parallel to the above passage is in the Babylonian Talmud, from the Mishnah on Shabbat 13b up to the Mishnah on 17b. This lengthy

Gemara involves a discussion of the eighteen enactments, and there appears to be an uncertainty as to what the exact eighteen are. In any case, in the Babylonian Talmud, cheese is not considered as one of them; in fact, it is not mentioned at all. The problem of identifying the eighteen is discussed by Moses of Coucy in his Sefer Mitzvot Gadol, with regard to butter:

It was said in Sefer ha-Itim, citing the Palestinian Talmud, Tractate Shabbat, that [gentile] butter was among the eighteen; that R. Shimon b. Yohai taught on that day that they decreed concerning their bread and their oil and their pickled vegetables, and all their saltings and cheeses and butters. But indeed, in the text of the Palestinian Talmud before us, there is nothing about butter anywhere in our copies. And in our Talmuds, in Tractate Avodah Zarah, it says that the prohibition [of butter exists] because non-kosher milk [חלב טמא] is used [and not because it was one of the eighteen items forbidden by the sages in the Palestinian Talmud], and this is the opinion of Rashi, R. Hananel, R. Jeremiah . . . 11

The Meiri goes on to explain, in his commentary to B. Avodah Zarah 35b, that although our sages ruled on many things, including cheese, cheese was not among the eighteen:

And if you're of a mind to say that cheese was among the eighteen, then [let me say] it is not so; that among the things taught in our Mishnah from the eighteen, [the only ones mentioned are] their bread and their oil and their wine, as is mentioned below in this chapter [Avodah Zarah 36a] and the first chapter of Shabbat [17b]. And even though the Palestinian Talmud mentions, in the first chapter of Shabbat, [concerning all of the items] together, "that they decreed on that day concerning their bread and their oil and their wine and their cheese and their brine and their pickled

foods and their boiled preserves and their salted products . . .," of course on that day they ruled on many things, but not to be included in the category of the "eighteen enactments" was one thing [i.e., cheese].

In addition, the Ra'avan, cited in Lieberman's Ha-Yerushalmi ki-Feshuto, does not have cheese in his edition of the Palestinian Talmud.¹² The Ra'avan gives three listings of the eighteen enactments, based on different texts, none of which includes cheese.¹³ The Tashbez says cheese appears in the Palestinian Talmud by mistake.¹⁴

Nevertheless, many authorities maintain that the Palestinian passage is accurate, and they apply to it the principle that "one bet din may not annul the enactments of another bet din" except under very specific circumstances. This rabbinic concept will be dealt with below.

The second, and unquestionably the most complete source, for the prohibition of gentile cheese is the Babylonian Talmud, beginning with the Mishnah in Avodah Zarah 29b:

And Bythinian cheeses of the heathen are forbidden, the prohibition extending to any benefit. This is the opinion of R. Meir. But the sages say that the prohibition does not extend to any benefit. . . . R. Judah said: R. Ishmael put this question to R. Joshua as they were on a journey. Why, he asked, have they forbidden the cheese of heathens? He retorted, but is not the rennet of a burnt offering more strictly forbidden than the rennet of a carcass? And yet it was said that a priest who is not fastidious may suck it out raw. Though this opinion was not approved, it was said that no benefit may be derived from it although no trespass would apply thereto. The reason then, R. Joshua said, is because they curdle it with the rennet from calves sacrificed to idols. If that be so, he [R. Ishmael] said, why do

they not extend the prohibition to any benefit derived from it? He [R. Joshua], however, diverted him to another matter.¹⁵

From the above, two crucial issues emerge: First, what is the nature of the difference of opinion between R. Meir and the sages in the first part of the Mishnah? And second, what is the reason for R. Joshua's refusal to deal more fully and clearly with R. Ishmael's question?

The answer to our first question is in the Gemara to the above Mishnah (34b):

Said R. Simeon b. Lakish: The reason why Bythinian cheese has been forbidden is because the majority of calves of that place are slaughtered [as sacrifices] to idols. Why say "the majority of calves"? Even if it were the minority, it would have sufficed, since R. Meir always takes the minority into consideration! When we say the majority [of calves] we really have only a minority [of cattle], but were only a minority of calves slain for idolatry to which would have to be added all other cattle that are not slaughtered for idolatry, they would have formed a minority of a minority, and even R. Meir does not take a negligible minority into consideration.

The difference, therefore, is in the recognition of the "minority": When the majority of calves are slaughtered for idolatry, it still constitutes only a minority of the cattle, but R. Meir is mindful of this minority. The sages were not and therefore, while forbidding the eating of cheese made using such animals, did allow them for other benefit.

As for our second question, we are told in B. Avodah Zarah 35a that R. Joshua didn't want to give R. Ishmael an answer because the prohibition was new, and we read that when a new ordinance was enacted in Palestine, its

reason was not revealed before a year had passed, lest there be some who might not agree with the reason and would treat the new ordinance lightly. But if they did not know the reason, everyone would accept the ordinance and would say that surely the rabbis knew what they were doing, and therefore no one would be lax.¹⁶

We read too in the Palestinian Talmud that R. Joshua did not answer R. Ishmael because the latter was a minor, and one doesn't teach such things to a minor.¹⁷

We know, in any case, from the Tosafot that R. Joshua's reason for prohibiting gentile cheese was not out of concern for the "minority":

It appears that R. Joshua had no intention other than to push [R. Ishmael] away, inasmuch as R. Joshua was not concerned about "minority" in chapter two of Yevamot that I referred to earlier, nor in chapter three of Bekhorot, and elsewhere. And even R. Meir, who is concerned about "minority," does not forbid it above [in the Mishnah to 29b] except with regard to Bythinian cheese, but in other places it is considered "a minority of a minority" [i.e., inconsequential].¹⁸

So we see that, in order for R. Joshua to have given his answer, he must have agreed with the concern for "minority." But since Tosafot shows us that is not the case, the only reason for giving this answer must have been to reject R. Ishmael.

It remains, therefore, for the amoraim to expound more fully on the reasons for the mishnaic prohibition.

In Avodah Zarah 35a, Samuel says that gentile cheese is forbidden because it is curdled with the rennet of nevelah:

Samuel said: Because it is set in the skin of the rennet of a nevelah. This implies that the rennet itself is permitted. How could Samuel have stated so? Have we not learnt, "The rennet of a heathen's animals or of a nevelah is forbidden"? [See Hullin 116a.] And when the question was asked, Is then any animal of a heathen not a nevelah?, it was Samuel himself who answered: These are meant to be taken together thus: The rennet of an animal slaughtered by heathens, which is nevelah, is forbidden! There is no contradiction here.

Furthermore, even though the rennet is a very small thing [דבר מועט] in the milk in which the curdling takes place, and though it doesn't impart a taste [נותן טעם] to the milk, even so it is prohibited because a non-kosher source is being used for the rennet and we have the principle that "a congealing agent cannot be annulled" [דבר לא בטל]. This position was codified by Maimonides:

In the days of the mishnaic sages, they ruled on gentile cheeses and forbade them all, because they were curdled in the stomach skins of animals [that the gentiles] had slaughtered, which were nevelah. And if you say that the stomach skin is an extremely small thing in the milk used for curdling, and why is it not annulled by its minuteness, it is because it is the curdling agent for cheese, and if it is a forbidden substance which is being used for the curdling, then it is all forbidden.¹⁹

What is the principle that "a congealing agent cannot be annulled" which is so important to Samuel's position and which will appear in other commentaries throughout our discussion?

A congealing agent is "the agent or catalyst which, when added to something else, changes its form (e.g., rennet added to milk makes cheese); and that, if not added, the other ingredients will not be able to effect

a change on their own (e.g., milk cannot become cheese without the addition of rennet),"20

In normal situations, when a prohibited substance is mixed with a permitted substance so there is a 60:1 ratio of permitted to prohibited, the prohibited food is "annulled" and the mixture is allowed.²¹ But if the prohibited substance is a congealing agent, the resulting combination is always prohibited and no annulling is possible, since it is considered as if it changes the permitted food into a prohibited food. This is based on the Talmudic passage:

I will tell you: Since it [the rennet] is that which keeps the milk curdled, it must be regarded as though the prohibited matter is there in substance.²²

The Magen Avraham further explains that "even if there is sixty times [the permitted compared to the forbidden], it is not annulled because a congealing agent cannot be annulled even [if the ratio is] a thousand to one."²³

And "even if there is no imparting of a taste," writes the Rashba, "it is seen as if the impure taste was being imparted."²⁴ It is as if the forbidden substance was completely recognizable in all its parts within the mixture. As the Radbaz explains in his commentary to the Mishneh Torah:

Thus we hold that spices, hametz and congealing agents cause prohibitions [that cannot be annulled], and it appears that the reason is that in every part of the mixture, the prohibited substance is perceivable. And so cheese was forbidden because of the use of nevelah [as a congealing agent].²⁵

So too the Mordekhai writes in his commentary to Hullin:

Even if there is sixty times more milk than the prohibited substance, since the curdling agent is a forbidden substance, it is as if it imparts a taste. For one learns that if a taste is imparted in the curdling in a stomach skin, then it is forbidden even if there was with the skin a permitted substance which helped the curdling process.²⁶

A congealing agent is considered forbidden only on its own merit. If it is forbidden because of something mixed into it, and if the added ingredient is not a curdling agent, then the resulting mixture is not forbidden (if there exists, of course, a 60:1 annulment ratio). This point is derived from the fact that on Pesah, if cheese is curdled in a pot that was used for hametz, one is permitted to let the mixture stand (i.e., it doesn't have to be destroyed like all other hametz during Pesah), because the hametz is not a curdling agent and is absorbed [נטל בששים] into the curdling agent. Of course, the cheese cannot be eaten until Pesah is over, because it has hametz in it, but the important point is that the cheese can be kept without destroying it.²⁷

Furthermore, a congealing agent is not forbidden in something except where it alone is the curdling agent. If it is joined with another curdling agent that is permitted, then the mixture is permitted because of the principle that "a product of combined causes is permitted" [זה וזה גורם], if there is a 60:1 annulment ratio.²⁸ The Meiri explains further:

When they would curdle in the stomach lining, they were accustomed to crushing together the stomach skin with the intestines, and so here we have "a product of combined causes" [which is permitted], and furthermore, since the intestines are the greater cause, it is [all] permitted.²⁹

Some later authorities argued that a congealing agent, even when used alone and from a nevelah, was permitted when it imparted a ruinous taste [נותן טעם לפגם]. Other authorities, however, forbade such curdling agents under all circumstances, including when a ruinous taste was imparted.³⁰

It should be noted that other authorities, including Maimonides, prohibited a priori cheeses which were made using kosher animals, because of the prohibition against mixing milk and meat. As the Rambam writes:

It is forbidden to eat cheese which has been curdled in the stomach lining of a ritually-slaughtered [i.e., kosher] animal.³¹

Rambam's a priori prohibition is based on a technicality cited in the Tosafot to B. Avodah Zarah 35a:

In places where the stomach is used as the curdling agent, however, R. I. b. Hayyim said that there was somewhat of a reason to forbid it because they salt the contents of the stomach in its skin and this would make it forbidden on the ground that it constitutes the mixing of milk and meat, inasmuch as salting puts the material in the category of hot food.³²

Inasmuch as the prohibition of mixing milk and meat is de-oraita only when cooking is involved [דורן בישול], אסרה תורה, Rabbi Hayyim is suggesting that all cheeses made with stomach linings, whether from kosher animals or not, are prohibited from the Torah, since he argues

that salting puts the stomach linings into the category of hot food. While citing this opinion, Tosafot nonetheless does not accept it:

Gentile cheese is forbidden because it was curdled in the stomach lining of a nevelah. And if you say: Why just a nevelah, for even when it is curdled in the lining of a kosher animal it is forbidden because of the mixture of meat and milk! The answer: Only a nevelah is mentioned because this is de-oraita, but with regard to curdling with a kosher animal, there is no de-oraita prohibition here of mixing milk and meat since we have cold mixed with cold; and though everyone establishes it as a law, still it is only rabbinic.³³

And concerning rabbinic prohibitions, we know from a number of sources that "when there is doubt concerning a rabbinic prohibition, we are obligated to be lenient" [ספקא דרבנן לקולא].³⁴

If cheese is curdled in the stomach of a kosher animal, and a taste is imparted, then the cheese is prohibited because of the mixing of milk and meat.³⁵ This is stated in the Mishnah to Hullin 116a:

If a man curdled milk with the skin of the stomach of an animal that was properly slaughtered, and it imparted its flavor to the milk, it is forbidden.³⁶

Conversely, if a kosher rennet is used and no taste is imparted, then the congealing agent is permitted. The halakha is summarized in the Shulhan Arukh:

If cheese is curdled in the stomach lining of a kosher animal and meat taste is imparted, then the cheese is forbidden; if not, it is permitted.³⁷

The Meiri further explains:

The Sefardic sages resolved this by pro-

hibiting all cheese curdled in the stomach linings of a kosher animal, because of the mixing of milk and meat--but only when they were mixed and only when a taste [of meat] was imparted. But simply placing the milk in the stomach lining was not considered sufficient in itself for imparting taste.³⁸

In other words, the Meiri, like Maimonides, maintained an a priori prohibition; but once the curdling had taken place, the question became whether or not a taste was imparted. As the Rambam writes:

It is forbidden [a priori] to eat cheese which has been curdled in the stomach lining of a ritually-slaughtered [i.e., kosher] animal. [But once done] if the cheesemaker tastes the cheese and there is a taste of meat in it, then the cheese is forbidden; but if not, then it is permitted because the congealing agent is a permitted thing, coming as it does from the stomach of a ritually-slaughtered animal, and there is no prohibition here except the mixing of meat and milk that counts [only] when a taste is imparted. But if the cheese is curdled in the stomach lining of a nevelah or a terefah animal, then inasmuch as the coagulant is in itself forbidden, then so too is the cheese forbidden because of the nevelah and not because of the mixing of meat and milk. And because of this consideration, they forbade gentile cheeses as we have explained.³⁹

There are some who argue, however, that even a congealing agent from a kosher animal is forbidden, even when no taste is imparted, because a congealing agent of any origin is considered as if it imparts a taste, and we therefore always have a theoretical mixing of milk and meat, which is forbidden.⁴⁰ And even though we know that the stomach lining will not absorb the milk, nor vice-versa, still we consider it as if it does.⁴¹

Furthermore, we learn from the Rid that using the

criteria of imparting taste to determine the acceptability of kosher rennet applies only when the rennet itself is used in conjunction with some other ingredient for the purpose of curdling, in which case one can say that the rennet itself is annulled 60:1 within the coagulating mixture. If the rennet itself imparts a taste, we negate this by saying that the rennet is for the sole purpose of hardening the cheese (and therefore the other ingredients are the actual curdlers), and is therefore permitted. But if the rennet is used alone, it cannot be annulled.⁴²

To summarize our discussion to this point: It is the opinion of most of the authorities we have cited that cheese curdled using the stomach skins of kosher animals may be eaten, so long as no taste has been imparted. Cheese made using the stomach skins of non-kosher animals may not be eaten.⁴³ The only exceptions to this last point, according to some authorities, are when the curdling agent imparts a ruinous taste [נותן טעם לפגם], and when it is mixed and annulled with another congealing agent that is kosher [זה וזה גורם]. However, many authorities do not accept either of these exceptions.

Another reason for prohibiting gentile cheese is the possibility that non-kosher milk [חלב טמא] might be used. However, in a comment on our original Mishnah to Avodah Zarah 29b, Rashi explains that this was not a concern of the rabbis:

Why have they prohibited the cheese of heathens for eating [asked R. Ishmael], since the rabbis fixed that there is no worry over the milk from unclean [i.e., non-kosher] animals, since such

milk doesn't curdle.⁴⁴

This interesting characteristic of non-kosher milk is noted by Maimonides as well:

Milk that is found in the hands of an idolater is forbidden, lest milk [from a non-kosher animal] has been mixed with milk [from a kosher animal]. But gentile cheeses are permitted, inasmuch as milk [from non-kosher animals] does not curdle.⁴⁵

The Rambam goes on to note that, nevertheless, all gentile cheeses are forbidden because of the sages of the Mishnah, who ruled that all cheeses are forbidden unless an Israelite oversees the process.⁴⁶

This assumption concerning non-kosher milk is widely accepted throughout the halakhic literature. A prominent exception, however, is Nahmanides, who writes that "in truth, non-kosher milk is just as good for making cheese as is kosher milk, and that sometimes non-kosher milk is used because it is cheaper than kosher milk."⁴⁷

The objection to the possible use of non-kosher milk is weakened by the statement of a prominent modern authority, Moshe Feinstein, who writes that milk which has been produced by a gentile company under Federal inspection, may be drunk and otherwise used by Jews (though he concedes that those who are strict, including himself, will not do so).⁴⁸ We can see therefore that the concern over milk produced by non-Jewish dairies, as is most milk in the United States, is not in itself a compelling argument for the prohibition of gentile cheeses.

Another argument is that it is "food cooked by a

gentile" [בִּישׁוּל עֲכוּמִים], which is prohibited whether or not a taste is imparted. The Ma'or ha-Gadol explains:

Know that anything prepared by gentiles for eating, whether or not there is a mixture [of milk and meat], was forbidden [by the rabbis] in order to keep Israel far away from them and to separate Israel from their abominations; and we do not concern ourselves as to whether or not a taste is imparted as we do with food cooked by Israelites.⁴⁹

However, inasmuch as no "cooking" as such takes place in the preparation of cheese, the argument from בִּישׁוּל עֲכוּמִים is not widely used. The only ingredients used in the production of cheese are raw, and there is no halakhic prohibition against eating raw foods which have been mixed or otherwise prepared by non-Jews.⁵⁰

Returning to the Talmud, we find still other reasons to prohibit gentile cheese. R. Simeon b. Pazi says in the name of R. Joshua b. Levi that the reason is because of the possibility of poisonous snakes entering the vats used in the cheesemaking. Such vats were filled with milk and then left uncovered prior to curdling. Apparently snakes crawled inside the vats before, during or after the curdling, and injected poison.

Concerning this, R. Hanina replies that when a substance like cheese becomes hard and solid, it is permitted because, had serpent's venom been injected into it, the cheese would not have become solid and dry.⁵¹

Instead, R. Hanina says the reason for the prohibition is because it is impossible for it to not have uncurdled particles of milk left on the outside.⁵² Rashi explains:

Because it is impossible for cheese to not have particles of milk in the holes of the cheese--remaining from the milk. And milk that has been milked by a gentile without an Israelite watching him, is forbidden lest he mixed in it non-kosher milk; and the non-kosher milk does not curdle. So if he mixed pure milk and impure milk [i.e., kosher and non-kosher], the impure remains with the whey of the pure. And impure milk is forbidden by the Torah, and in Bekhorot we learn this, that there is a concern that [such milk] would remain in the holes.⁵³

However, Rabbenu Tam argues against this concern by saying that no gentile would be stupid enough to mix non-kosher milk with kosher milk inasmuch as the former doesn't curdle!⁵⁴ The Ramban, as we have seen, argues that it would not be stupid, but smart to use non-kosher milk since it does curdle and it's cheaper than kosher milk.⁵⁵

Others explain that there is no reason for the prohibition other than the one given earlier, ג'לל ("uncovered vats"), since cheese can harden even when venom is injected into it.⁵⁶

R. Malkiah says in the name of R. Adda b. Ahaba that gentile cheese is forbidden because its surface is smeared with the fat of swine.⁵⁷ According to Hayyim b. Isaac, such was indeed the custom among gentiles, and the rabbis feared that since the gentiles had already begun this practice, they would pass it along to their sons until it was the custom everywhere among non-Jews.⁵⁸

R. Hisda says the prohibition is because the cheese is curdled with vinegar [חומץ], which is made from sour wine, which is prohibited because it is gentile wine [יין נסך].⁵⁹

R. Nahman b. Isaacs says the prohibition is because it might be curdled with the sap of orlah [ערלה], the produce of a tree during its first three years, which cannot be used for any benefit.⁶⁰ The Rashba explains that even though they might not use the sap of orlah, but of a permitted tree instead, still with regard to gentiles we are strict and prohibit it all out of doubt.⁶¹

Within the Gemara itself, however, a controversy exists concerning hometz and orlah:

R. Nahman b. Isaacs said: Because it might be curdled with the sap of orlah. Whose opinion does this [last answer] represent? That of the following tanna, for we learned: R. Eliezer says: If milk is curdled with sap of orlah, it is forbidden because it is considered fruit! You may even say it represents the opinion of R. Joshua, for R. Joshua only differs with R. Eliezer as regards the sap of the tree, but as regards that of the fruit, he agrees with him, even as we learned: R. Joshua said: I have heard explicitly that milk curdled with the sap of the leaves or with the sap of the root is permitted, but with the sap of unripe figs is forbidden, because this is a fruit. Whether the reason be the one given by R. Hisda, or by R. Nahman b. Isaacs, the prohibition ought surely to extend to the derivation of any benefit! This indeed is a difficulty.⁶²

Based on this passage, the Meiri and others have indicated that, for whatever reasons gentile cheese may be forbidden, hometz and orlah are not among them:

Based on what we have seen, that the sages did not prohibit gentile cheese because of hometz nor orlah even though it is possible to make cheese using them, it proves that it was not out of potential concern [that they forbid], but rather based on what they actually saw in their own time, that were the actual practices worthy of being concerned about in that actual time.⁶³

The Meiri then continues with a discussion of the other arguments advanced for prohibiting gentile cheese:

And so the rabbis are lenient now concerning practices which are not common in many places, where it is not [for example] the practice to mix in non-kosher milk since it's repugnant to them [i.e., to the gentiles as well as to the Jews]. . . . And so too concerning their practice of smearing the fat of swine [onto the cheese] in those days; today we have no fear of this. . . . [And so too] concerning their cheese where we say the reason is because of "uncovered vats" [גילוי], for today we do not worry about "uncovered vats," not concerning water nor wine nor milk. And it was based on all this that Rabbenu Tam wrote that gentile cheeses are permitted. But in any case, there are those who reply [e.g., Nahmanides] that whereas some things were not decreed by a [rabbinic] quorum [חנין], those things that were decreed by a quorum need another quorum, greater than the original quorum, to annul the decree.⁶⁴

Concurring with the Meiri, the Semag writes that "even though the reasons for prohibiting [cheese] no longer apply, we need another quorum to permit it."⁶⁵ The Semag bases himself on a passage in Bezah, where the discussion concerns the prohibition of an egg laid on the first day of a holiday to be eaten on the second day:

But R. Joseph says: Even from [the time of] the enactment of R. Johanan b. Zakkai and onwards the egg is prohibited [on the second day]. What is the reason? It is a matter which was decided by a majority vote, and whatever was forbidden by a majority vote requires another majority vote to permit it. Said R. Joseph: Whence do I infer this? From what is written: "Go say to them: Return to your tents." (Deut. 5:27)⁶⁶

The use of the proof text can be explained as follows: Even though God had previously (Ex. 19:15) commanded the people to stay away from their women for three days, the

command did not end at the end of the three days without a new commandment being issued to "return to your tents [i.e., to your women]." We see, therefore, that just because the original command was no longer valid, a new permission was needed anyway.⁶⁷

In addition, we read elsewhere that "You shall act in accordance with the instructions given you" (Deut. 17:11), which the rabbis understood to refer to the enactments and measures passed by the Bet Din Gadol to strengthen religion and promote the general welfare.⁶⁸

One bet din cannot abrogate the enactments of another unless it is superior in wisdom and in number. This is based on the Misnah to Eduyyot:

And why do they preserve the opinion of an individual against [that of] the majority, knowing that the adopted legal ruling can only be in accordance with the opinion of the majority? [This is so] that if a court favors the view of the individual, it may depend on him, for a court may not annul the view of another court unless it excels it in wisdom and in number; if it excels it in wisdom but not in number, or in number but not in wisdom, it cannot nullify its ruling. But it can [nullify a ruling] only if it excels it both in wisdom and in number.⁶⁹

There are differences of opinion as to what "greater in number" and "greater in wisdom" mean. Furthermore, the principle doesn't apply to all enactments, which in fact fall into three separate categories: (1) Those which even a subsequent greater bet din may not abrogate, (2) Those which a later bet din may abrogate if it is greater in wisdom and number, and (3) Those which even a lesser bet din can abrogate.

(1) Those which even a subsequent greater bet din

may not abrogate. These are the eighteen enactments of Bet Hillel and Bet Shammai, discussed above. Concerning these laws, it was said that even were Elijah and his court to come, they would not have the authority to annul them. We would not accept such a decision even from him because the interdicts created as a result of these laws were spread throughout most of world Jewry; that is, they were accepted by a majority of Jews everywhere.⁷⁰

There is a difference of opinion, however, as to whether or not this applies only to the eighteen enactments or to other rabbinic ordinances as well. Some argue that, though it was said in connection with the eighteen enactments, it extends to others as well where the enactment was imposed as a "fence around the Torah" [סייג תורה] and where it has been accepted by a majority of Jews.⁷¹ Others say it applies to other rabbinic ordinances when only one of the above two conditions are met.⁷² And still others say it is limited only to the eighteen enactments, because they were promulgated with a special force--their lives!⁷³ The question for us is: Was cheese one of the eighteen enactments? As we noted earlier, there is considerable controversy on this point.

(2) Those which a later bet din may abrogate if it is greater in wisdom and number. Again we have three opinions: This applies to all rabbinic enactments which have been accepted by most Jews but which were not conceived as "fences around the Torah."⁷⁴ Others say it applies to all laws, including the eighteen enactments, which did not spread

throughout most of Jewry although they were of a nature which most of the community could bear.⁷⁵ And still others say it applies to all laws, even if they have spread to most of Jewry, with the exception of the eighteen enactments.⁷⁶

(3) Those which even a lesser bet din can abrogate. These include measures, even if included in the eighteen enactments, which were not accepted by the majority of Jews everywhere, and where the majority of Jews could not (or cannot) endure them. For that reason, R. Judah ha-Nasi and his court, on a vote, permitted the use of gentile oil, even though it was one of the eighteen enactments, because they saw that it had not spread to most of Jewry, and the majority of Jews could not endure it.⁷⁷

Even a later and lesser bet din can abrogate temporarily an enactment in order to strengthen religion. For no enactment can be more binding than the laws of the Torah, and even there a bet din has discretion to act against one of the laws in order to bring people back to Judaism or to save many Jews from stumbling in other matters.⁷⁸ But others, we should note, forbid this even in times of emergency.⁷⁹

There are additional considerations as well. Some say that a subsequent quorum can cancel a prohibition even when it's not as great as the original if the reason for the prohibition is no longer valid, the idea being that if the original bet din existed today, surely it would now permit what it at one time forbade.⁸⁰ Others say that

the later bet din has to be as wise (but no wiser); otherwise the decree cannot be annulled.⁸¹

If the prohibition is cited anonymously [אנפ], then some later authorities say that, if the reason is no longer valid, no subsequent bet din is needed at all.⁸² Others say that a later quorum is needed only when the original bet din gave the prohibition anonymously with no reason. But if the specific reason was given, then when the reason no longer applies, neither does the prohibition.⁸³

There are places that the reason for a prohibition does not apply and one doesn't have to have a later bet din to allow, even in a place where the prohibition at one time did apply. Based on this, numerous early authorities wrote concerning water and other exposed liquids that the sages forbade because of the fear that snakes might drink from them and inject poison into them: Now that there are no snakes found among us, we allow these liquids to be drunk by Jews, and we do not say that a subsequent bet din is necessary to permit, because certainly when the sages prohibited them originally, they didn't prohibit them except in places where the fear of snakes existed.⁸⁴

And so, some early authorities say we do not prohibit gentile cheese because of "uncovered vats" [גילוי]. But others say that gentile cheeses were forbidden by a bet din and need another bet din to permit them, even in a place where no snakes exist. If the cheeses were allowed there, these authorities argue, then eventually they would come to be allowed in a place that did have snakes and the

people there would say that the reason of "uncovered vats" must no longer apply, and cheese must therefore be forbidden for some other reason. And where another reason wasn't known, the people might then be inclined to eat gentile cheese.⁸⁵

What about cheese which has been curdled by non-Jews using kosher ingredients?

Cheeses that gentiles curdle with plants, herbs or grasses, or fruit extracts (such as from figs), are all forbidden, according to many geonim, because the sages ruled on all gentile cheeses and we do not distinguish between them, because gentiles are known to curdle with prohibited substances, even if only at times.⁸⁶

Some of the authorities say that, even in places where it is known that non-kosher milk is repulsive to gentiles, and where it is known they don't spread swine fat over the cheese (such as when they eat cheese on days when meat is forbidden to them), and where it is known they curdle with flower blossoms--in any case, their cheese is forbidden because "that which was prohibited by a bet din needs a later bet din to permit, even when the reasons for the original prohibition no longer apply."⁸⁷

To be complete, we should note that there is a small handful of authorities who permit gentile cheese to be eaten or would like to permit were it not for the nature of the prohibition. The most permissive source is the Rabbenu Tam:

As of now we have not found a clear and sim-

ple reason for forbidding the cheeses of the heathens since the reason for forbidding these was the fear that a snake may have bitten [injected poison] into them, as cited by R. Joshua b. Levi, and we have accepted the principle that the law is decided according to the opinion of R. Joshua b. Levi, even when his opinion is in disagreement with R. Johanan, how much the more so when it is in disagreement with Samuel. Rabbi Hananel concurred in this. In the Seder Tannaim v'Amoraim, the law is decided according to the opinion of R. Joshua b. Levi. . . . Nor is there the apprehension that they may have mixed in the milk of a non-kosher animal, as we have explained above according to the comment of Rashi, for the heathens would not be that stupid as to mix in the milk of a non-kosher animal since such milk does not curdle. Therefore the reason [for the prohibition] must be the apprehension that a snake may have bitten into it. Since there are no snakes in our area, however, there is no reason for such apprehension. Nor is there reason to object on the ground that the matter was decided by a quorum, and another quorum is required to reverse the decision, because obviously when they forbade it in the first place, it was only in localities where snakes are about. . . . Furthermore, in many places these cheeses are eaten because flowers are used as the curdling agent. Also, the sages of Narbonne allowed these cheeses in their areas on the ground that flowers were used as the curdling agent.⁸⁸

Rabbenu Tam's opinion has been widely-cited by non-Orthodox writers, as we shall see in the next chapter. Among Orthodox halakhists, however, the tendency has been to discredit Rabbenu Tam's opinion. The Mordekhai writes, for example, that Rabbenu Tam's opinion was not halakha lema'aseh, for one can easily refute his proofs, "for even if there is sixty times more kosher milk than non-kosher milk, still a forbidden substance is used for the curdling, and it is considered as if a taste is imparted; and Rabbenu Tam [elsewhere] teaches that when a stomach lining is used for curdling, and a taste is imparted, then

the cheese is forbidden."⁸⁹

The Bi'ur ha-Gra writes that gentile cheeses "were forbidden because they were decreed by a vote [מנין]" and another vote is needed to permit them. He continues that "so wrote all the posekim, and [the halakha] is not according to the opinion of Rabbenu Tam."⁹⁰

The Italian rabbis, according to Rabbenu Tam, permitted gentile cheeses to be eaten because they were curdled using flowers. But the Beit Yosef argues there is no justification for this heter:

I have already written, citing the Semag and the Semak that . . . in any case, the prohibition of gentile cheese stands, and such was explicitly written by the Semak concerning the opinion of Rabbenu Tam. . . . In any case, it is possible that [Rabbenu Tam's argument] was not intended for actual practice [הלכה למעשה] but rather for instructional purposes.⁹¹

The Beit Yosef then proceeds to discuss Rabbenu Tam's argument more fully:

One can take exception with the first part of [Rabbenu Tam's] position, that "as of now we have not found a clear and simple reason for forbidding the cheeses of heathens" and that in some places the cheeses were permitted because they were curdled using flowers, and also the sages of Narbonne allowed them for this reason. But this is insufficient to allow them, because there were geonim who were masters of the halakha who said the reason to prohibit gentile cheeses was because they were curdled using the stomach linings of nevelah, and there is no consideration to be given those who do not curdle this way. And with regard to Rabbenu Tam, who wrote that the halakha is according to R. Joshua b. Levi, who said the reason for the prohibition is "uncovered vats," one can say that now too there is cause to prohibit, as wrote the Semak, and as prohibited the Rambam and the Rashba, who were pillars of the world, and in all other places we heard too that such

cheeses are forbidden. And there is no distinction to be made between those who curdle with flowers and those who curdle with forbidden stomach linings, since it is forbidden to make a distinction within the community of Israel, nor to make a breach in the fence of holy Israel, a fence that was erected by our forefathers, the sages of the Mishnah.⁹²

The Tosafot elsewhere argues that gentile cheeses should be allowed because the only reason to possibly prohibit them is the mixing of milk and meat. The Tosafot argues that, since we have seen this argument is rabbinic and not from the Torah, and since there is doubt and possibly even double doubt [ספק ספיקא], we should incline to the lenient side and allow them.⁹³ But the refutation here is the same as for the Tosafot above, namely, that the rabbis decreed a prohibition concerning all gentile cheeses and, regardless the reason for the original stricture, a new bet din must vote to permit them.

The Meiri, after surveying the various reasons for prohibiting gentile cheese and after concluding that none of the established reasons are still valid, concludes:

In any case, it is for me to rule that would there be a bet din to annul, such a bet din needs to annul, for without the annulment by a bet din, permission [to eat such cheeses] cannot be given, for anything that was prohibited by a bet din needs another bet din to permit, whether greater than the original or equal to it or less than it, all depending on the matter under consideration. In any case, if the earliest authorities were the sons of angels, we surely are the sons of asses, and so how is it possible for a permission to be given [nowadays] for something that was decreed by an earlier vote.⁹⁴

Finally we have the Arukh ha-Shulhan:

And the truth is, one of our earlier rabbis locked onto the principle of "uncovered vats"

and according to this, whereas we have no snakes . . . there is reason to permit it. And also the sages of Narbonne permitted cheeses that were curdled using flowers, and they did not consider at all the prohibition that what an earlier quorum prohibits a later quorum must permit, seeing it instead as a prohibition like the mixing of milk and meat, that where a prohibition from the Torah exists, there is a concern, but otherwise not and it is permitted. And with us, where the cheese is curdled using stomach linings which have been dried like wood, there is reason to permit [the cheeses]. In any case, because the Rambam, Ra'avad, Rashba, Rosh, Tur, Caro and Isserles all prohibited such cheeses, so too we prohibit them.⁹⁵

Finally, there are some early authorities who permit gentile cheeses in places where only vegetable rennet is used.⁹⁶ Others permit only in a place where all the non-Jews use vegetable rennet only; if only some of them do, then all gentile cheeses are forbidden.⁹⁷

The prevailing practice remains, however, that all gentile cheeses are forbidden in all places where there is not an endorsement to permit them from earliest times.⁹⁸

CHAPTER THREE

THE CONSERVATIVE RESPONSUM ON CHEESE

The Conservative movement's responsum on cheese was written in 1970 by Rabbi Isaac Klein, and was endorsed as the official position of the Rabbinical Assembly's Committee on Law and Standards.¹

Rabbi Klein's interest in cheese goes back to World War II, when he was told by an Orthodox rabbi in Europe--who himself gave his name to hekhsherim [הכשרים, rabbinic seals which testify to a product's kashrut] for cheeses--that such hekhsherim were not really necessary since all cheeses are in truth kosher! Then why the need for hekhsherim at all?, asked Klein. The answer given: to satisfy the mahmirim [מחמירים, those who are strict concerning Jewish law]. Klein then proceeded to study the question for the Rabbinical Assembly, though he did not present his final responsum for consideration until 1970.

The Talmudic sources on the question are Mishnah Avodah Zarah 29b, Mishnah Hullin 116a and the Gemara to Hullin 116b.² Klein says that, in each of these three sources, we should note the distinction between "stomach" [קיבה] and "skin of the stomach" [עור הקיבה]. "Stomach" refers to the content of the fourth stomach;

that is, the milk in the stomach of a suckling calf in the various forms, liquid or coagulated. But, he notes, there is a difference of opinion as to the status of these contents:

(1) Alfasi, Rambam and Caro all agree that the contents is not to be considered milk.

(2) Rashi says it is milk.

(3) Rabbenu Tam says that if the milk has already jelled, it loses the status of milk. If it is still in a liquid state, it is considered milk. Isserles follows this opinion.³

The "skin of the stomach" refers to the wall of the stomach of a young calf. While the Talmud permits the use of the milk found in the "stomach" for the making of cheese, it forbids the use of the "skin of the stomach" for such purposes:

The law is: One may not curdle milk with the skin of the stomach of a carcass, and also with the milk in the stomach of an animal slaughtered unto idolatry. One may also curdle milk with the milk found in the stomach of a validly-slaughtered animal which had sucked from a terefa animal, and certainly with the milk found in the stomach of a terefa animal which had sucked from a valid animal, because the milk collected within is considered as dung.⁴

Therefore, all the posekim have forbidden eating cheeses made by gentiles, inasmuch as the curdling agent--rennet--is made from the "skin of the stomach." Furthermore, the Rambam extends the prohibition to include cheeses made using vegetable curdling agents, because "we do not make a distinction" [לא פליגי] between various

kinds of cheese. The Shulhan Arukh, Tur and Levush all concur.⁵

And yet Klein notes there are some dissenting voices, as far back as the Rabbenu Tam.⁶ Another dissenting voice is found in Hokhmat Adam:

Those skins of the stomach or other intestines that are dried until they become like wood, and then filled with milk, are permissible inasmuch as they become so dry that they are like mere wood and do not have at all any of the juices of meat in them. Nevertheless, one should not do so a priori. It appears that, to me, the same applies to curdling cheese with it, that it is forbidden to do so a priori, but ex post facto it is permitted.⁷

The Hokhmat Adam is based on Isserles, who says:

The stomach skin is sometimes salted, then dried and it becomes like wood; then they fill it with milk. This is permitted inasmuch as it has become dry, like a mere piece of wood, and there is not any meat juice in it.⁸

The Shakh adds:

Anything that has become dry at the beginning and which became like a piece of wood so that it has no sap in it, even though later it became juicy and damp, it does not affect it.⁹

The Arukh ha-Shulhan adds that, where he lives, cheese is commonly made with "the skin of stomachs" that has been dried "until it becomes a powder, together with some other things, as is well known."¹⁰

And so, Klein says, let's look at the problem again.

Rabbi Klein begins his discussion with a description of cheesemaking in general.¹¹ Wherein does the prohibition lie?, he asks. Is it with regard to using non-

kosher milk [חלב טמא]? For many, this is indeed the source of the prohibition, since the milk used for cheese by the gentiles could be adulterated.¹² However, this apprehension doesn't apply to cheese, since it was believed by the rabbis that non-kosher milk does not curdle.¹³

There remains the fear that the rennet might come from a forbidden source.

(1) Rennet from a plant is obviously kosher.

(2) Rennet from the "skin of a stomach" of an animal properly slaughtered [כשר] would appear to be acceptable. We may, however, have the problem of the mixing of meat and milk which comes about when the stomach lining is salted. But the posekim answer that the amount of rennet is so small, it is annulled [נטל בששים]. Otherwise, even rennet from a kosher cow would not be acceptable!

We have the additional problem here that "a coagulant may not be annulled even by a thousand times its bulk" [דבר המעמיד אפילו באלף לא בטל]. However, according to Klein, it doesn't apply here with regard to a kosher animal since the rennet is not made from a prohibited substance, and becomes forbidden only when in contact with another substance, milk.¹⁴

What about the principle that "one may not proceed deliberately to neutralize a forbidden thing" [אין מבטלין]? To this it is answered that the principle applies only when one takes a food article that is forbidden to eat and mixes it with food that is permitted, with a 60:1 ratio of permitted to forbidden, in order to make

the forbidden food edible too. Where the article is added as a coagulant or a catalytic agent or as a coloring agent, the principle does not apply.¹⁵

(3) This leaves the rennet from the "skin of the stomach" of a calf that is nevelah or terefah. Here, however, the principle that "a coagulant may not be annulled even by a thousand times its bulk" does apply--and the cheese is forbidden.¹⁶

Klein then moves to a consideration of the reasons for the complete ban of gentile cheeses today. Clearly, the reasons given in the Talmud do not apply today, he argues. The Talmud was concerned with the fact that gentiles were idol worshippers; foods were used for such purposes, and there were constant suspicions among the rabbis as to the secret ingredients mixed by the gentiles into their foods.

What about today? To find out more, Klein visited a cheesemaker in Wisconsin.

Cheesemaking today is all done in big factories, with standard, Government-inspected ingredients and labeling. Since cheesemaking was for a long time a "homemade" product, one can understand the rabbinic suspicions. Kosher and non-kosher cheeses are today made in the same factories. The only difference is the rennet used. Unlike in the past, today's rennets are primarily liquid extracts. Non-kosher rennet contains: (1) extract of rennet; (2) salt brine; (3) sodium benzoate; (4) propylene glycol; and (5) flavor and color added.

Kosher rennet omits one ingredient: propylene glycol, a chemical derivative from glycerine. Since the amount is 0.1 percent, and since it is not a curdling agent, it is certainly annulled within the mixture itself, even before the milk is added. Furthermore, since it is a chemically-transformed product, it is considered as "a new substance" [דבר חדש] and not prohibited.

Thus, the immediate objection to the non-kosher formula is the extract of rennet itself. (Klein adds that we can assume no adulteration of the product, thanks to fixed formulas and the Pure Drug and Food Law.) Klein suggests we can understand rennet best if we start from the beginning: Rennet, says the Oxford Dictionary, is "curdled milk found in the stomach of an unweaned calf, or preparation of stomach membrane or of kinds of plants, used in curdling milk for cheese." We are only concerned here with the first part of the definition.

Rennet is extracted from the fresh or the dried fourth stomach of the calf. Either fresh or dried strips of mucosa are used. The rennet is extracted by one of three methods, all of which involve a number of chemical changes using much hydrochloric acid.

In one of the methods--where the skin is thoroughly dehydrated--we have it on the authority of Isserles that since the skin of the stomach was dried, it is considered as a mere piece of wood; that is, it ceases to be food.¹⁷

Where the stomach is not dried--i.e., in the other two methods--the complex chemical changes and treatment

by strong acids nonetheless make the product a "new substance" [דבר חדש], based on the authority of Rabbi Hayyim Ozer Grodzinski:

So also it seems to rule in the case of chemical actions that break down a compound and extract from it another substance, as the juice of the stomach called pepsin. And although it certainly would appear that in a substance forbidden by the Torah, all that is latent in it is also forbidden and is considered part of it, nevertheless since it is impossible to extract this latent substance except by drying the forbidden substance and causing its taste to deteriorate, we consider it as a substance [under the category of] a food the taste of which has been marred [נותן טעם לפגם]. Even if it is possible to improve the flavor by chemical means, the situation remains because it is like a new substance that has come into being.¹⁸

Klein furthermore argues that rennet today is not, as we have seen, pure rennet. The extract of rennet itself is annulable [נטל בששים] within the other materials used. The principle that "a coagulant may not be annulled even by a thousand times its bulk" does not apply here because the extract of rennet is not a curdling agent to the other ingredients in the rennet mixture, as it is when later added to milk.

So why have so many posekim forbidden such cheeses? Klein suggests several reasons:

First, there is the reluctance to permit anything that was once forbidden, even if the reason for the prohibition no longer exists.

Second, the principle that "once a substance has the status of a prohibited thing, it and anything coming from it remains prohibited forever" [כל היוצא מן האיסור אסור]

is sometimes applied. There is, however, precedent in the Talmud for a food product to change its essence so entirely as to no longer be considered a food. Foods are permitted because they are "mere dung" [פִּירְשָׁא בַעֲלָמָא] or "unfit even for consumption by a dog" [נִפְסֵל מֵאֲכִילָת כֶּלֶב] or because "the ashes of burnt sacrifices are permitted" [כֹּל הַנִּשְׂרָפִין אֶפְרָן מוֹתֵר], where the sacrifices themselves may not be eaten.

Third, Klein acknowledges the argument that "a matter that was forbidden by vote requires another vote to permit it again" [דָּבָר שֶׁנִּמְנִין צָרִיךְ מִנִּין אַחֵר לְהִתִּיר]--but significantly, he does not directly address it.

Fourth, if permissible substitutes are available (such as vegetable rennet and rennet extracted from kosher animals), why use questionable products? For this reason, even the posekim who agree that there is good reason to permit these cheeses restrict their permission to *ex post facto*, and not *a priori* situations.¹⁹

The strongest proponent, the Arukh ha-Shulhan, writes:

Among us they make cheeses by means of the membrane of the stomach that has been dried until it has become a powder, mixed with some other things as is generally known.²⁰

Based on the Arukh ha-Shulhan, Rabbi Joseph Henkin writes:

Rennet is a fine powder from the lining of the stomach which has been dried out to the extent that it became unfit even for canine consumption. It is ground and mixed with powder and salt. This powder is then used for curdling cheese and for other purposes. In this case the Arukh ha-Shulhan has already declared that it is permitted.²¹

Rabbi Pesah Zevi Frank was asked concerning rennet blended with another coagulant. He permitted the cheese, based on the principle that "when the end result is caused by two causes, one forbidden and one permitted, the product is permitted" [זה וזה גורם].²²

Israel Chief Rabbi Isser Unterman was asked concerning a cheese imported from Denmark with a hekhsher given by Rabbi Melchior, who based his hekhsher on a responsum written by Rabbi Zirelson of Bucharest. Unterman sanctioned its use on the grounds that זה וזה גורם, inasmuch as there were other ingredients. He added that the argument of chemical transformation, while not adequate in and of itself, is satisfactory in conjunction with other reasons.²³

Rabbi Judah Leib Graubart was asked whether rennet could be used in the making of cheese and a product called junket. He said yes, on the following grounds:

(1) When the stomach lining is completely dried and thus ceases to be a food;

(2) Where the rennet is not used by itself, but always in conjunction with other substances; and

(3) Where the rennet is produced by a process that involves many chemical changes and is therefore "a new substance" [דבר חדש].

Rabbi Graubart then argues against all his points and soundly defends them.²⁴

Rabbi Klein therefore concludes that:

It is our considered opinion that commercial cheeses, all of them, including those in which

rennet from any animal, kosher or non-kosher is used as the curdling agent, should be permitted.²⁵

Rennet today cannot be considered forbidden because:

(1) Most of it is derived from skins that are dried so as to be like "mere wood" [עץ בעלמא].

(2) Strong chemicals and acids are used which remove rennet from the status of food.

(3) Rennet becomes "a new substance" [דבר חדש] through chemical changes.

(4) Rennet is not added to the milk in a pure form, but rather is diluted with other substances so that it is annulled within the rennet mixture itself.

CHAPTER FOUR

GENTILE CHEESE: ANALYSIS

Perhaps no single issue better illustrates the contrast in methodology and attitudes between Orthodox and Conservative Judaism than the question of whether or not cheeses manufactured by non-Jews may be eaten. Using the Mishnah, Talmud, codes and responsa--sometimes different passages, but oftentimes the same--each movement has marshalled what it believes to be a compelling argument. Despite the presence of a few Orthodox authorities who lean to the Conservative position, the realities of the modern marketplace reveal the ineffectiveness of these few liberal loners: Cheeses which lack a rabbinic hekhsher may not be eaten, and there is not to my knowledge a single Orthodox rabbi of any standing who has in writing argued otherwise in this country.¹

Our examinations of the positions have been lengthy. In order to crystallize the differences and contrast the use of sources, we should summarize the arguments.

Our survey of the traditional codes and responsa has indicated that gentile cheeses are prohibited for the following reasons:

1. The rennet used may come from the stomach lining of a non-kosher animal, which cannot be annulled.

2. Non-kosher milk [חלב טמא] may be mixed-in with the kosher milk.

3. Gentile cheeses were originally prohibited by a bet din, and "that which has been prohibited by one bet din can only be permitted by a subsequent bet din which is greater in wisdom and number."

4. "Food cooked by gentiles" [בישול עכו"ם] may not be eaten by Jews.

5. "Uncovered vats" [גילוי] into which poisonous snakes might crawl.

6. Gentiles smear the surface of their cheese with swine fat.

7. Gentiles sometimes use hometz or orlah.

8. Cheeses made by non-Jews using non-animal sources (e.g., plants and vegetables) and otherwise containing no prohibited substances, may not be eaten because the sages ruled on all cheeses and we do not distinguish among them [לא פלוג].

The Conservative movement's response to these arguments can be summarized as follows:

1. Rennet is made today from several ingredients, only one of which is the extract from the stomach lining of a kosher or non-kosher animal. The quantity is so small that it is actually annulled within the rennet mixture itself. The argument that a forbidden substance may not be intentionally (a priori) annulled to make permissible does not apply to coagulants nor to coloring agents, but only to food.

2. The rabbis themselves agreed that non-kosher milk was not used by gentiles for the manufacture of cheeses inasmuch as it doesn't curdle. To those who argue otherwise, there are numerous authorities, including Moshe Feinstein, who allow the drinking of Federally-inspected, company-produced milk from gentile dairies, where the adulteration of the milk is not permitted.²

3. The argument that "another bet din is needed to permit that which has been prohibited" is not dealt with in Rabbi Klein's responsum. We shall return to it later.

4, 5, 6 and 7. These arguments are not dealt with by Rabbi Klein. We shall return to them below.

8. There is no reason to prohibit gentile cheeses made using vegetable rennets and otherwise containing no prohibited substances.

Several of the traditional arguments ignored by Rabbi Klein can be refuted in themselves:

4. The argument of "food cooked by gentiles" is inapplicable inasmuch as cooking is not a part of the cheese-making process, and there is no rabbinic prohibition against eating raw foods prepared by non-Jews.

5. The argument of 'לוי' is rejected by numerous Orthodox authorities, including the Rabbenu Tam, Arukh ha-Shulhan and the Meiri, on the basis that it no longer applies: Snakes are no longer a concern of the cheesemaking industry.

6. Though the smearing of cheese with swine fat may have been the practice among gentiles in Talmudic times,

later authorities (such as the Meiri) dismiss this as a plausible argument.

7. The prohibition because of hometz and orlah was, as we earlier saw, a controversy within the Talmud itself. Consequently, it was never accepted as a legitimate reason to prohibit gentile cheeses and it does not appear in subsequent literature except as "still another reason" to prohibit.

The most significant argument not discussed by Rabbi Klein is the third, that "what one bet din prohibits, a subsequent bet din cannot permit unless it is greater in wisdom and number." Here too, however, we should note that even this argument is not universally advanced. It does not appear, for example, in the Shulhan Arukh as one of the reasons to prohibit gentile cheeses (though other reasons are given), nor in Maimonides' Mishneh Torah. The Arukh ha-Shulhan cites the argument as a reason provided by some authorities, but concludes that it is not compelling in itself.³

As Rabbi Klein shows in his responsum, numerous authorities of significance have argued for the permissibility of eating gentile cheeses. Not the least of these figures was Israel Chief Rabbi Isser Unterman who, in 1957, was asked concerning rennet which had been imported from Denmark in containers bearing the hekhsher of Rabbi Melchior. Rabbi Melchior had made known the fact that his hekhsher had been applied even though a small part of the rennet mixture had been made from the stomach linings of

non-kosher animals. Rabbi Melchior based his hekhsher on rabbinic sources, and Rabbi Unterman was asked to rule on the question before allowing Israel's T'nuva dairies to use the product in the making of cheese in Israel. Though Rabbi Klein summarizes Unterman's responsum, a more detailed look is in order.

Rabbi Melchior says he has relied on the permission [היתור] published by Rabbi Yehuda Zirelson. But since the heter has not been received nor accepted in Israel, those who argue otherwise say that the cheese is forbidden because the rennet is forbidden; this is based on the Shulhan Arukh, which states that cheese curdled in the stomach lining of a nevelah [בְּעוֹר קִיבָה וְנִלְוָה] is forbidden even if there is a 60:1 annulment ratio because דָּבַר הַמַּעֲמִיד אֶפִּילוֹ בְּאֵלֶּף לֹא בָטֵל.⁴

Unterman notes, however, that there are many who reason that when a stomach lining does not impart a taste, then it is permitted even as a curdling agent. This is the view of the Ra'avad and Rabbenu Tam; others who hold this opinion, according to Rabbi Unterman, are Ha-Gadol Merevavah (in the name of Rashi) and the Maharashal (in the name of the Shakh). In addition, Unterman cites Hagahot Sha'arei Dura who argues that ex post facto it is permitted if there is a 60:1 annulment ratio [שְׁשִׁים כְּנֶגֶד עוֹר הַקִּיבָה]. But Rabbi Unterman concludes:

We hold according to the Rema that "a curdling agent cannot be annulled" in principle, and so too decided the Shakh and some of the aharonim.

But in the current matter, he continues, there are a number of reasons to permit it, even according to the

systems of those who would be inclined to forbid it:

(1) It is clear, says Rabbi Unterman, that the small part of the stomach lining extract [תמצית עור הקיבה], which is called rennet (and it should be noted that, according to Rabbi Melchior, this small part is not only less than 1/60 the total rennet mixture, but less than 1/60,000!), when mixed with a variety of minerals and ingredients in a factory owned by Christians to serve the needs of the whole nation (and among whose customers are only a few Jews)--cannot be prohibited, because the annulment of the prohibited substance takes place not when they place the powdered rennet mixture inside the milk, but rather in the factory when they mix together the various minerals and ingredients that constitute the powder! And so it's obvious, says Rabbi Unterman, that if we mix the stomach lining of a nevelah with more than sixty times as much stomach lining that is kosher, the mixture is permitted for eating because of the 60:1 annulment ratio. And if milk is curdled using this mixture, it is still permitted, because if the prohibited element has already been cancelled-out and the new combination is now permitted for all eating purposes, then certainly one cannot forbid it when it is used for curdling.

Some might argue that "a curdling agent cannot be annulled" [דבר המעמיד לא בטל] because it can be recognized [הוכר האיסור] when we annul it originally (within the mixture) and all the more so when we use the mixture for curdling, because without the forbidden substance, curdling

wouldn't happen. Rabbi Unterman says that this argument is erroneous. Why? Because the act of curdling takes place not only because of the curdling agent, but because of the other parts of the rennet mixture as well. And therefore the forbidden substance is not recognizable. He adds that, even though the curdling process is not complete without the stomach lining extract, in any case we do not consider the forbidden substance here as being recognizable.

One furthermore cannot argue הוכר האיטור, says Rabbi Unterman, inasmuch as the stomach lining extract is not essential to the making of white cheese [גבינה לבנה]; the stomach lining extract only speeds up the process and helps it along. Indeed, Rabbi Unterman concludes, the argument of הוכר האיטור only applies to hard cheese where it is impossible to make it without תמצית קיבה. This is an important point, to which we will return below.

We find a similar situation, says Rabbi Unterman, in the case of two dry foods [יבש ביבש], one kasher and one terefah, mixed together, wherein the terefa is annulled by the 2:1 "majority" ratio [ברוב]. When they are cooked together, the law is that the mixture becomes forbidden. This is according to the Shulhan Arukh.⁵ In the same place, however, Isserles cites an opinion [יש אומרים] that if the mixture was known of before the cooking, it is all permitted, and Isserles decides that one can rely on this decision in case of a loss. All the more so in our case, says Rabbi Unterman, where the forbidden sub-

stance is annulled 60:1--and there is no imparting of a taste, but rather the curdling of the milk is done by all the ingredients together--it is permitted even when there would be no loss.

(2) Aside from this, Rabbi Unterman gives another reason to permit: זֶה וְזֶה גִּוּרִים, since the permitted part of the rennet mixture also causes the curdling action.⁶

(3) Another reason to permit is because the stomach lining undergoes at the factory a lengthy chemical transformation, until it becomes a powder, and it is "as a forbidden thing which has been changed" [כְּדִין אִיסוּר שֶׁנִּשְׁתַּנָּה]. One can also say that before the chemical change and the extraction of many basic parts from it, the stomach lining was completely dried until it was like a piece of wood [כַּעַץ בְּעֵלְמָה]--but even if it was not, Rabbi Unterman would allow on the strength of the chemical changes alone.

(4) Finally, Unterman argues: In Israel's dairies, kosher stomach lining extract, which has been treated locally under rabbinic supervision, is used. But there is not enough for the country's needs, and therefore at the T'nuva dairies the extract from Denmark is used, and presumably has been used in the past. And so it appears, Rabbi Unterman suggests, that there is reason to doubt whether the cheese eaten in Israel has been made from kosher extracts or not! But since generally most of the cheese is made using the kosher rennet, we can rely on the great posekim that said that in instances like these there is no reason to worry about the "minority of a

minority" [מיעוטא דמיעוטא]; and since we are dealing with only a rabbinic prohibition, there is justification to be lenient [ספקא דרבנן לקולא].

Rabbi Unterman therefore concludes that white cheese made for us by Jews should be allowed. He says too that the great rabbis of Israel all agree with him. He closes by urging Israeli dairies to use kosher rennet whenever possible, but if such rennet is not available, the cheese is still kosher.

Rabbi Unterman's responsum is potentially troublesome on two counts: First, it deals with the question of using the Danish rennet in white cheese [גבינה לבנה], a kind of cottage cheese product which does not have the same curdling features of the hard cheeses we have been discussing up to now. Second, it is clearly Rabbi Unterman's presumption that such cheeses will be made by Jews. The question is therefore not whether we may eat cheese made by gentiles using non-kosher rennet, but whether we may eat cheese made by Jews using non-kosher rennet.

Rabbi Unterman gives four reasons to permit the Danish extract to be used: (1) It constitutes only a miniscule part of the curdling mixture and is therefore annulled within the mixture itself, and it is furthermore not the only part of the mixture which causes curdling; (2) זזה וזה גורם; (3) The stomach lining undergoes a chemical transformation; and (4) Doubt.

Despite Rabbi Unterman's caution, there would seem to be only one area in which responsum might not be ap-

plicable for hard cheeses, and that is in the second part of his first point, where he states that rennet must be present for the coagulating of hard cheese, though not necessarily for white (soft) cheese. Even this point, however, is debatable, since other authorities have argued, as does Rabbi Unterman in his own second point, that the stomach extract is only part of the coagulating mixture. Simply placing stomach extract into a vat of milk will not cause curdling; the other ingredients must be added which together will cause the cheese to curdle.

Rabbi Unterman's reservation, therefore, is not warranted. But even if it were, the major four points would not be affected. If non-kosher stomach linings are to be allowed for the curdling and consumption of any product, they are surely allowed in the curdling and consumption of hard cheese. Once the forbidden substance has been transformed, it is permitted regardless the product to which it is added. Therefore, there is no question that Rabbi Unterman's heter for the Danish rennet can only be understood as a heter for the use of all non-kosher rennet extracts in the production of cheese.

As for his second reservation, we cannot fully anticipate Rabbi Unterman's arguments concerning cheese made by a gentile when there is no questioning the curdling agent itself. It is possible he would argue by way of non-kosher milk [חלב טמא] or "uncovered vats" [גילוי], or any one or more of the arguments traditionally cited, including בשולי עכ"ם. Nevertheless, if we consider the Mishneh

Torah, Tur and Shulhan Arukh as authoritative guides to halakhah, we will see that they all agree that the reason for prohibiting cheese made by gentiles is because the non-Jews use curdling agents derived from non-kosher animals. If, as we have seen, Rabbi Unterman allows such curdling agents to be used, there can in truth be no reason to prohibit the cheeses made by non-Jews.

Another important authority is Rabbi Graubart in his collection of responsa Havalim Bine'imim.⁷ Rabbi Graubart is replying to the following question:

Whether rennet, a product made from the skins of dried stomachs, to which is added salt and vinegar and spring water, and which then undergoes chemical treatment and becomes a hard substance which is then crushed into a fine powder and to which is then added one hundred litres of milk, can be used for making cheese and a product called junket.⁸

Rabbi Graubart sees a way to permit the rennet, based on Isserles' remark in the Shulhan Arukh that the skin of a stomach that has been dried so that it becomes like wood is permitted to be used.⁹ Graubart points out that nevertheless some authorities (for example, the Shakh) forbid it a priori. But Graubart disagrees; it is always permitted, he says, even a priori. Rennet is permitted because:

(1) It is like mere wood.

(2) It is not used alone, but with other ingredients which together act to curdle the cheese.

(3) The rennet is subjected to many chemical changes and becomes "a new substance."

Finally, and perhaps most controversially, we have the Arukh ha-Shulhan, the latest quasi-code of this cen-

tury. In not one, but two places the Arukh ha-Shulhan notes that no reason remains to continue the prohibition of gentile cheese. In Yoreh De'ah 87:43, Rabbi Epstein writes:

In our place they make cheeses by means of the skin of the stomach that has been dried until it becomes a powder, together with some other things, as is well known.

And in Yoreh De'ah 115:17, he continues:

With us, where they curdle using stomach skin that has been dried like wood, there is room to permit [such cheeses to be eaten].

The above statements come after lengthy discussions of all the possible objections, talmudic and rabbinic. Nevertheless, despite Rabbi Epstein's personal inability to discern a valid reason to continue the ban, he writes:

But in any case, since the Rambam, Ra'avad, Ramban, Rashba, Rosh, Tur, Caro and Isserles all decree it forbidden, so too we hold it forbidden.¹⁰

The incongruity of Rabbi Epstein's position is quickly apparent: Unable to accept any of the reasons traditionally given for the prohibition of gentile cheeses, he says such cheeses are nevertheless prohibited because all his predecessors ruled that way--based on the very arguments he himself disproved!

It is clear, therefore, that there is validity to the Conservative movement's position that all cheeses may be eaten. The Conservative responsum is legitimately predicated on the proper reading of rabbinic sources, coupled with a willingness to reinterpret the law when previously-cited reasons and interpretations are no longer valid.

Indeed, there may be reason to argue that the Conservative use of sources here is even more genuinely halakhic, inasmuch as it deals solely with the question of whether or not the content of the cheese itself is kosher. The historical arguments are largely based not on the essence of the food itself, but rather on the fact that non-Jews are making it. Indeed, numerous authorities, including the Maggid Mishneh, readily acknowledge that one of the real reasons for prohibiting gentile cheese was "to keep Jews far away from [the gentiles] and their abominations." While it is unavoidable including sociological factors in any consideration of law, still, such a factor cannot be the determining factor. The traditional abhorrence of the gentile idol-worshipper is no longer in itself a valid argument against eating food prepared in the twentieth century by Christians and other non-Jews. The recognition of this by Rabbi Klein and his colleagues is important; such an awareness enables the modern Jew, who wishes to remain true to Jewish law and ethics, to study and understand the issues surrounding גוינות גויים without conjuring up ancient prejudices. The issue ultimately must be whether the cheeses themselves--and not the manufacturers--are kosher. The Conservative movement's response in the affirmative is a valid contribution to the halakhic literature on the question.

CHAPTER FIVE

GENTILE WINE IN THE HALAKHIC LITERATURE

Wine made by non-Jews falls under two halakhic categories: wine of libation [יין נסך] and wine whose status with regard to libations is uncertain [ספק יין].

Ye'en nesekh is Toraitically prohibited, based on Deut. 32:36-38:

For the Lord will vindicate His people
And take revenge for His servants,
When He sees that their might is gone,
And neither bond nor free is left.
He will say: Where are their gods,
The rock in whom they sought refuge,
Who ate the fat of their offerings
And drank their libation wine?
Let them rise up to your help,
And let them be a shield unto you!¹

It was determined from the verse that ye'en nesekh was forbidden both for drinking and for any other benefit [הנאה]. As the Talmud explains:

Just as their offering [זבח] was forbidden for any benefit, so too their wine was forbidden for any benefit.²

The wine of gentiles, even when not made for libations, was already prohibited at the time of the Great Assembly [אנשי כנסת הגדולה], based on Daniel 1:8:

Now Daniel determined not to contaminate himself by touching the food and wine assigned to him by the king.

Since there was nothing in the food per se that was forbidden, we can assume that the prohibition was because

of the association with non-Jews which would come about by eating and drinking with them. This is clearly implied in Avodah Zarah 8a:

R. Ishmael said that Jews living outside the Land of Israel are innocent idolaters. To be specific: When an idolater makes a feast in honor of his son and invites all the Jews in his city, even though they eat their own food and drink their own beverages and their own waiter serves them, Scripture regards them as having eaten from sacrifices to the dead.³

In the time of Hezekiah b. Garon, the sages decreed the eighteen enactments (discussed above), one of which was wine:

These things that belong to gentiles are forbidden, and it is forbidden to have any benefit at all from them: wine, or the vinegar of gentiles that was at first wine, Hadrianic earthenware [in which the wine was stored] . . .⁴

Rashi explains that the reason for the prohibition was "lest he [the gentile] used [the wine] as a libation [in a pagan rite]."⁵

The prohibition of gentile wine was closely related to the prohibition of gentile oil and bread, another two of the eighteen enactments:

When R. Aha b. Ada came to Babylonia from Palestine, he reported in the name of R. Isaac that the rabbis had ruled against gentile bread and oil because of their wine, against their wine because of their daughters, and against their daughters because of idolatry.⁶

We have therefore two reasons in the Talmud for the prohibition: (1) Gentile wine was made for the purpose of libations; and (2) A fear existed of closeness "with their daughters" [גזירה משום בנותיהם], which might lead to intermarriage.

Later, the prohibition on oil was annulled because it had not spread to nor been accepted by the majority of Israel [לרוב ישראל]--but the prohibition on wine remained since it had been universally accepted by Jews.⁷

As already noted, one of the basic reasons for the prohibition was the deep-seated fear of intermarriage. This concern had its earliest expression in the Torah itself:

You must not intermarry with them, neither giving your daughters to their sons nor taking their daughters for your sons; if you do, they will draw your sons away from the Lord and make them worship other gods.⁸

It is like what the daughters of Moab did, as recorded in Sanhedrin 106a:

And when an Israelite ate, drank and was merry, and went out for a stroll in the market, the old [Moabite] woman would say to him, "Do you not desire linen garments?" . . . After that she would say to him, "You are like one of the family; sit down and choose for yourself." Gourds of Ammonite wine lay near her, and at that time Ammonite and heathen wine had not yet been forbidden. She said to him, "Would you like to drink a glass of wine?" Having drunk, [his passion] was inflamed, and he exclaimed to her, "Yield to me!" Thereupon she brought forth an idol from her bosom and said, "Worship this!" "But I am a Jew," he protested. "What does that concern you?," she rejoined . . . As it is written [Jeremiah 47:3], "And Israel abode in Shittim, and the people began to commit whoredom with the daughters of Moab."

Indeed, wine made by Jews becomes forbidden both for drinking and any benefit when it is touched by a gentile; in every way, according to the earliest authorities, it becomes the same as ye'en nesekh.⁹

What about wine concerning which we don't know whether it was made for libations or not [לשם זבח]? It too is forbidden both for drinking and any benefit, and it is

counted in the minimum quantity necessary for defilement.¹⁰ The reason for the prohibition is because drinking such wines may lead to enticement [הסחה] and marriage [חתנות]; that is, Jews may intermarry with gentiles and be incited against God, turning then to the other gods of the land.¹¹ But the sages were not quite as strict concerning s'tam yeenam as ye'en nesekh mamash [יין נסך ממנש], wine that was unquestionably intended for libations]. Indeed, Samuel says in Avodah Zarah 29a that the reason for the prohibition of "boiled wine" [יין מבושל] is only because of the prohibition of ye'en nesekh; and so if honey or pepper is mixed into it in such a way as to change its taste, it is not prohibited for benefit, even if touched by a gentile--but it remains prohibited for drinking.

Some authorities permit s'tam yeenam when it is diluted with six parts water.¹² A gentile's touch, when no shaking of the contents occurs, doesn't prohibit the wine for benefit.¹³ In both of these instances, of course, the permission does not extend to drinking.

A gentile can carry wine that is in a closed flask, from place to place, even though the wine is shaken.¹⁴ Similarly, one who desposits or entrusts a closed flask of wine with a gentile is forbidden to drink it later, but other benefit from it is permitted.¹⁵ If the container of wine has been sealed, it may be drunk in areas where the gentiles are concerned lest they be seized as thieves. But where such concerns do not exist, two seals are required, one inside the other, or a seal and a key. And in

this way, wine can be carried by a gentile without Jewish supervision.¹⁶

It is not prohibited, according to some authorities, to use a bunch of grapes or herbs that have been prepared for winemaking by gentiles¹⁷. As long as the gentile has no intention towards idolatry, it is permitted to use such grapes and herbs even for drinking.¹⁸ In places where Jewish labor is mixed with gentile labor in the production of wine, the wine is permitted ex post facto [בדאי].¹⁹

Resin wine [יין שרף] may not be drunk, and so too a drink made from wine (for example, cogniac)--but if Jews make these drinks, a gentile's touching them does not disqualify the drinks for drinking nor benefit.²⁰

Moslems are not considered idolaters, and therefore later authorities declared their wine permitted for benefit, but not for drinking because of the fear of intermarriage.²¹ If a Moslem touches the wine of a Jew, then it is certainly permitted for benefit, but absolutely prohibited for drinking.²²

This summary of some of the laws of wine shows that in most ways there is no difference between wine that has been clearly produced by gentiles for idolatry [יין נסך] and wine that has been produced by gentiles without our knowing the specific intent [יין סתם]. We have seen, however, that even though all gentile wines have continued to be prohibited for drinking, numerous situations have been described in which such wines can be used for other benefit. In modern times, these situations have been

somewhat expanded, as we shall now see.

In the geonic responsa, it is written that today non-Jews are not experts in, nor are they accustomed to performing, libations.²³ The original prohibition was based on a particular assumption: Gentiles were idolaters. And even when a given wine was not specifically dedicated to idolatry, still the thoughts of the gentiles were constantly concerned with such matters and therefore out of doubt, all their wines were prohibited.²⁴ Because anything even possibly tainted by idolatry is forbidden, wine of non-Jews could not be drunk nor could any other use be made of it.²⁵

Since, however, today's non-Jews know nothing of libations, they are like children, who of course know nothing about libations and cannot make anything an object for idolatry.²⁶ There is, therefore, no such thing today as ye'en nesekh and, indeed, this was becoming the case even in the time of the Talmud:

R. Hiyya b. Abba said in the name of R. Johanan that gentiles outside the Land of Israel are no longer considered idolaters, but are merely practicing ancestral custom.²⁷

The Tosafot adds that, on this point, there are today no differences between gentiles living inside or outside the Land of Israel.²⁸ As Rabbi David Novak has noted:

Surely the very language of this statement is indicative of a changed climate since the time of the earlier statement of R. Ishmael, which ruled that any contact with gentiles was ipso facto a contact with idolatry. In a late mid-rash it is debated exactly when God Himself eradicated the proclivity for authentic idolatry.²⁹

Consequently a distinction was made between the idol-

worshipping gentiles of the past, and the gentiles of the modern period. Whether this change was prompted more by social or economic considerations is difficult to say.³⁰ But Maimonides went so far as to codify the changing attitude in his Mishneh Torah:

As for a resident alien [גֵּר חוּשֵׁן], that is, one who has accepted the seven Noahide laws, as we have explained, it is forbidden to drink his wine but permitted to derive benefit from it . . . and so it is with every gentile who does not worship idols, as, for example, these Muslims . . . and so rule all the geonim.³¹

The ban on drinking such wines continues, however, writes the Rambam.³² (It should be noted that among most Sephardic authorities, the ban on gentile wines extends even today to deriving any benefit from them. Clearly the Sephardic communities, which faced far different social and economic conditions than did the Ashkenazim, reacted more stringently and, it can be argued, more consistently. For the Sephardic authorities ask: If we can now derive benefit from gentile wine and use it for debts and other things, then why draw the line on drinking it? But if, as we hold, their wine can't be drunk, how can we accept the use and benefit of their wine for everything but drinking?³³ Indeed, even the Tosafot indicates the merit of anyone who does not take advantage of their own liberal rulings!³⁴)

Nevertheless, even s'tam yeenam continues to be prohibited for drinking because of the possibility it may lead to intermarriage.³⁵ With the exception of drinking, however, such wines today can be used for any other monetary benefit, and gentiles today cannot invalidate a Jewish

bottle of wine for purposes of benefit (but such wines do become unfit for drinking), all according to the Rosh and most Ashkenazic authorities.³⁶ Furthermore, it is permitted to seize s'tam yeenam from a gentile to cover his debt because "it is like rescuing our property from their hand" [משום דהוי כמציל מידם].³⁷

There is a custom among Italian Jews to buy from gentiles vats filled with soft grapes; the reason appears to be that such grapes are not considered wine so long as the peeling and the seeds of the grapes remain intact. Though the practice exists with rabbinic approval in Italy, there is "no clear reason to permit it," according to other modern authorities, since such an acquisition from non-Jews goes against the spirit, if not the letter, of the halakhah.³⁸

If a gentile should accidentally touch wine by means of a utensil, the wine is still permitted for drinking, and this is so even if he knows it is wine being touched and it was done intentionally.³⁹ Isserles adds, however, that "one shouldn't publicize this law among the ignorant."⁴⁰ A gentile who touches Jewish wine, however, in order to anger the Jew and cause him a loss, does not make the wine unfit even for drinking. This was illustrated in a story: Once there was an apostate who stuck his hand inside a vat filled with kosher wine, in order to anger the Jew and defile the wine. There was also there an old, God-fearing man who was later killed. Standing before the apostate, the old man took a cup and drank from the wine, to show the apostate the worthlessness of his action, so he wouldn't do it to

another Jew.⁴¹

It is permitted to drink intoxicating drinks, such as beer, when made by non-Jews. But in any case the sages forbade drinking such intoxicating drinks at a gentile's party because of the possibility that such drinking might lead to intermarriage. Those who are strict will only drink such beer in their homes and not out. This is all learned from the passage in Avodah Zarah 31b:

Rav Papa would take it outside the door of the store and drink it, and Rav Ahai brought it to his house and drank it.⁴²

Another term we have referred to is boiled wine [יין מבושל]. In the next chapter we will discuss the controversy over what constitutes the minimum temperature for wine to be considered "boiled." Furthermore, there is a difference of opinion as to what kinds of wine can be boiled.

The Rambam deals with this question in the Mishneh Torah when he states: "There is no prohibition concerning boiled wine of an Israelite which has been touched by a gentile, and it is permitted to drink with the gentile from the same cup."⁴³ The reason for this heter is because boiling has so changed the quality of the wine that it is no longer fit to be offered for a libation.

We have seen therefore that the prohibitions dealing with wine made or touched by a non-Jew have remained fairly constant since Talmudic times, and that the only real "leniency" has been in allowing Jewish wine touched by a gentile to be used for benefit other than drinking, where-

as previously it would have been unusable completely.

In this era of improved Jewish-Christian relations and, more important from the halakhic point of view, in this industrialized society where gentile wines are made completely by machine and are untouched by human hands at all, one might expect the question of s'tam yeenam to be raised more fully in the modern-day responsa literature. Interestingly enough, only one major authority has to my knowledge readdressed this question in a full-scale responsum. That authority was Rabbi Zevi Pesah Frank, chief rabbi of Jerusalem and a close associate of Rabbi Abraham Kook, the chief rabbi of Palestine.⁴⁴

Frank was asked by an American rabbi about a factory owned by Christians for the making of wine.⁴⁵ The wine-making process was as follows: The grapes were placed on an electric grid which rotated and submerged the grapes into a pool of water in order to clean them. From there, the grapes were carried into a machine which removed the stems. The stemless grapes were then carried by the grid into a kettle sitting on a fire. The grapes flowed from the kettle as they were boiled, and then dropped onto a table where they were piled automatically into great heaps. They were then mechanically crushed and squeezed, with the juice trickling from the table into a special pool for the collection of the wine.

The question asked Rabbi Frank was: Is it permitted to drink the wine?

It is clear, says Frank, based on the Rambam, Tur and

Shulhan Arukh that the heter on boiled wine [יין מבושל] was only for Jewish wine that had been touched by a gentile, and not with regard to s'tam yeenam of gentiles. This is explained in the Rosh, that because the wine is boiled it does not come under the enactment משום בנותיהם, and it seems therefore that the Rambam wrote his heter on boiled wine only with regard to wine of a Jew that was touched by a gentile; because with regard to wine of a Jew touched by a gentile there is no prohibition משום בנותיהם because it is Jewish wine, and the prohibition משום בנותיהם applies only to s'tam yeenam that is the wine of gentiles. But with regard to Jewish wine touched by a gentile, the only prohibition is "because of the thoughts of the gentiles" [משום שמחשבת העכו"ם], which we assume are preoccupied with idolatrous notions, and we are concerned lest he dedicated the wine.⁴⁶ Thus wrote Maimonides:

And any wine touched by a gentile is forbidden lest he dedicated it, since the thinking of the gentile [עכו"ם] is towards idolatry.⁴⁷

It is important to note, writes Rabbi Frank, that the Rambam wrote this din in a halakhah separate from the din of s'tam yeenam, where he wrote that s'tam yeenam is forbidden משום בנותיהם.

And so too it can be seen from the Tur that the prohibition משום בנותיהם doesn't apply except to s'tam yeenam of non-Jews, and not to Jewish wine touched by a gentile; for it is said there that nowadays there is no prohibition of benefit when a gentile touches our wine, for gentiles nowadays are not accustomed to libations.⁴⁸

The Rosh writes at length on this and concludes:

These arguments are sufficient for gentiles who have touched our wine, but there is no argument for permitting s'tam yeenam that was forbidden for any benefit משום בנותיהם.⁴⁹

Rabbi Frank turns once again to Maimonides:

Wine cannot be made libational by a gentile unless it is fit to be offered on the alter; and because of this, when the sages ruled on s'tam yeenam, and when they ruled that all wine that has been touched by a gentile is forbidden for any benefit, they didn't rule except with regard to wine that was fit for libations.

Therefore the Rambam concludes:

Boiled wine of a Jew, that has been touched by a gentile, is not forbidden, and one is permitted to drink of it from the same cup.⁵⁰

Note, says Rabbi Frank, that concerning the heter of benefit with regard to boiled wine, Rambam also mentions s'tam yeenam, whereas with regard to the heter of drinking, he mentions only the boiled wine of a Jew that has been touched by a gentile.

Frank then turns to two important authorities and their systems of thought on this question:

(1) Rabbenu Nissim, who says we need to distinguish between wine and bread and oil of gentiles; that when the sages voted to prohibit all three foods משום בנותיהם, they were strict regarding wine in particular and prohibited wine also for any benefit because of the fear of libation [חשש ניסוך]. From the beginning, there was a single prohibition concerning wine, which covered both drinking and deriving any other benefit.

(2) The Rashba and Tosafot both hold that the pro-

hibition of wine was a single decree, and from the beginning the sages forbade wine for any benefit because of the prohibition of ye'en nesekh. The Tosafot already posed the difficult question as to why they were stricter regarding wine than with bread and oil, going so far as to prohibit wine even for other use. Tosafot answered: Because there is with wine also the fear or suspicion of its having been possibly dedicated to libations. But the Rashba says that the sages ruled on all of the forbidden things at the same time, "in one gulp," and none of them were prohibited except for eating or drinking. Later they saw that there was with wine a special fear of its having been dedicated to idolatry, and so they added the prohibition of benefit to it.⁵¹

According to this, then, there were two prohibitions concerning wine: that originally s'tam yeenam was not forbidden except for drinking, based on the fear that such drinking might lead to intermarriage, but later they added the prohibition of benefit because of the fear that the wine had been dedicated to idolatry.

To this were added the previously-cited words of the Rambam: Concerning the prohibition of benefit, which was because of the fear that the wine had been dedicated to libation, this applied also to s'tam yeenam. But concerning boiled wine, they weren't strict because it wasn't fit for libations, and so it was permitted for other benefit. And those who argue that it is forbidden to drink it lest it lead to intermarriage were strict too with regard to

boiled wine because, as the Rosh makes clear, the boiling doesn't have anything to do with the prohibition itself.

But with Jewish wine touched by gentiles, where the prohibition משום בנותיהם doesn't apply, and any prohibition of drinking is only משום חשש ניסוך (since the random thoughts of a gentile are concerning idolatry)--therefore, when it is boiled so that it is not fit to be used for libations, it is permitted to drink it.

Similarly, says Rabbi Frank, those posekim who permit wine that is mixed into cooked food learn this from alontit [אלונטית, a mixture of old wine, pure water and balsam], but Rashi explains that the heter is only for benefit. Concerning their alontit, there is a prohibition משום בנותיהם and therefore it is certainly forbidden for drinking, the same as bread and foods cooked by gentiles [שלקות], and only for benefit is it permitted since there is no fear of libation. But in a cooked food which includes Jewish wine touched by a gentile, where משום בנותיהם doesn't apply, it may be drunk too.

From all this, Rabbi Frank concludes:

We see that with regard to s'tam yeenam of gentiles, there is good reason to doubt that it is permitted also for drinking, even when it is boiled.

To summarize, Rabbi Frank and all the major codifiers agree that:

1. Wine of libation [יין נסך] is forbidden for drinking and benefit.
2. Undesignated wine [קטם זיגום] of gentiles is forbidden for drinking and permitted for benefit [הנאה].

3. Jewish wine which has been touched by a gentile is forbidden for drinking and permitted for other benefit.

4. Boiled wine [יין מבושל] of a gentile is the same as s'tam yeenam of a gentile; i.e., forbidden for drinking, permitted for other benefit.

5. Boiled Jewish wine which has been touched by a gentile is permitted for drinking and benefit.

CHAPTER SIX

THE CONSERVATIVE RESPONSA ON WINE

The official position of the Conservative movement is that all wines are kosher, though it is "preferable" to use rabbinically-certified wines for ritual purposes. This was the unanimous decision of the Rabbinical Assembly's Committee on Jewish Law and Standards, based on a 1964 responsum written (in Hebrew) by Rabbi Israel Silverman.¹

The question answered by Rabbi Silverman was:

Many of my colleagues in the Rabbinical Assembly have asked whether it is permitted to drink the wine known as champagne. Although champagne bubbles when it is poured into a glass, and therefore is different from ordinary wine, it is produced from grapes and therefore is included in the category of s'tam yeenam.²

Rabbi Silverman immediately turns to a responsum written by Rabbi Moses Isserles in the sixteenth century.³ He was asked: "In regard to the custom which has spread in the province of Moravia as well as in other provinces, namely, being lenient in drinking the wine of non-Jews [חמץ יונים]: The authorities apparently do not object. Is there something which those who follow this custom can rely on?"

Rabbi Isserles answered:

We have learned [in Bava Batra 89b] . . . regarding the deceptive methods employed by some

unscrupulous merchants, that Rabban Johanan ben Zakkai said: "Woe to me if I should speak of them, for knaves might thus learn them [the methods]. Woe to me if I do not speak, for knaves might say that the scholars are unacquainted with our practices." They asked the question: "Did he or did he not say it?" Rabbi Samuel ben Rabbi Isaac said: "He said it, relying on the verse, 'For the ways of the Lord are right, and the just walk in them, but the transgressors do stumble therein!' [Hosea 14:10]"

Despite the difficulties inherent in giving a formal reply to such a difficult question, Rabbi Isserles continued: "I have seen that there is some good to find justification for their leniency on this matter."⁴

So too Rabbi Silverman says, "It is also incumbent upon us to find some justification."⁵

To begin with, says Silverman, we should note that the category of ye'en nesekh does not in truth even exist today, inasmuch as the geonim and most later authorities agree that today's non-Jews are not experts on libations and their use.⁶ The wine produced by American non-Jews today is, therefore, not ye'en nesekh but rather s'tam yeenam. Concerning the latter, all authorities agree that benefit [הנאה] may be derived from it.⁷ But is it permitted to drink such wine as well?

Rabbi Silverman then turns to the Mishnah to Avodah Zarah (2:6):

These things of the gentiles are forbidden [for eating], though it is not forbidden to [otherwise] benefit from them: their bread, their oil, . . . stewed or pickled vegetables . . .

According to the Talmud and Rashi, the reason for the

prohibition was to avoid social intercourse, which might lead to intermarriage.⁸

In the Mishnah immediately preceding the above (2:5), we read:

These things of gentiles are prohibited, and it is also prohibited to have any benefit from them: wine . . .

Rashi explains that this prohibition is because "perhaps [the non-Jew] used [the wine] as a libation." In our day, however, when gentiles are not experts on libations, the reason for not drinking their wine is "because of marriage."⁹

Rabbi Silverman then notes that three of the four foods prohibited in the above mishnayot--that is, all of them with the exception of wine--have become permitted:

(1) Oil was permitted by Judah Nesiah (incorrectly identified by Rabbi Silverman as Judah ha-Nasi; see Rashi to Avodah Zarah 37a) because the prohibition had not been accepted by the majority of Jews, and "we do not impose a decree upon the community unless the majority of the community can abide by it."¹⁰

(2) Bread was permitted by Rabbi Judah, according to the Palestinian Talmud (Avodah Zarah 41d): "In a place where there is no Jewish bread, the bread of the non-Jews should have been prohibited. But they disregarded [the law] concerning this, and they made [the bread of non-Jews] permitted because it was a necessity of life." Others believe that the reason for the leniency was because bread, like oil, had not been accepted as a stricture by the

majority of Jews.¹¹

(3) Foods cooked by non-Jews [שלוקות] were not permitted by Rabbi Judah ha-Nasi.¹² But later rabbis limited the prohibition by instituting two rules: First, any food that can also be eaten raw (such as fruit) is not prohibited, even when it is cooked. Second, any food which is not fit to be served on a king's table is not prohibited, since it is therefore not good enough to serve to guests, and the fear of intermarriage is removed.¹³

Rabbi Silverman admits that the modern-day tendency to eat foods cooked by non-Jews has spread beyond the rabbis' original expectations. Nevertheless, the tendency exists, as is evident by the many Jews who eat unsupervised foods cooked in cans and jars by non-Jews.¹⁴

So too, with regard to wine, there is an obvious tendency toward leniency, says Silverman. Initially, non-Jewish wines were prohibited for any benefit. Later, when it became clear that gentiles were not experts in practicing libations, their wines were permitted for benefit, but not for drinking. Such a leniency was particularly true in France, writes Rabbi Silverman, where non-Jewish wines were accepted by Jewish wine producers in payment for debts.¹⁵

So too today, argues Silverman, non-Jewish wines should be permitted even for drinking, because of the following reasons:

1. In modern-day wine factories, the wine is made entirely by machine, with no human hand touching it. The entire operation is supervised by Federal tax inspectors

through the time when the wine is placed in sealed containers. In some factories, the wine is purchased in big barrels and then transformed to individual, small containers. Here too, however, the entire procedure is done by machine.

Occasionally, small amounts of the wine are removed in order to examine and taste it. However, a utensil is always used and the wine is not physically touched by the non-Jew. This is permissible, based on a responsum by Rabbi Jacob Castro:

A Karaite does not make wine prohibited by his touching it. However, there is reason to prohibit such wine unless [the Karaite] swears that a non-Jew had not touched it. An oath would be sufficient, for the Karaites are conscientious about taking oaths, even though they are not concerned about non-Jews touching their wine. These are the words of the author of Kaftor va-Ferah [Rabbi Estori ha-Parhi]. In our lands I have seen that it is customary to drink the wine [of Karaites] even though the oath was not taken. Perhaps the reason for this is that the Ishmaelites [Moslems] amongst whom we live are not idolaters and we do not base a prohibition on a mere possibility [that the wine of the Karaites had been touched by a non-Jew, and even if this were so, the non-Jew would not be an idolater].¹⁶

Further on, Rabbi Castro writes:

There are those who say that, in our time, when the non-Jews are not knowledgeable regarding libations, whenever they do touch wine it is not considered for purposes of making a libation, and therefore if the wine were touched with a utensil it would be permitted to drink it.¹⁷

Rabbi Raphael ben Eleazar Meldola writes:

It is clearly apparent that the great scholars of the past left us a wide open door making it possible to permit having benefit from wine touched by non-Jews in our day. Therefore, if the touching took place through the medium of some utensil, as in the matter before us, we descend one rung and permit even the drinking

of the wine, since the non-Jews in our days are not accustomed to make libations.¹⁸

Rabbi Levi ibn Habib, in his responsum no. 41, permitted the drinking of wine which was touched by a non-Jew who did not intend to make a libation. Rabbi Levi cited the Rashbam, who quoted his grandfather, Rashi, that the geonim ruled that non-Jews in our day are not experts on libations.

In the responsa of Rabbi Jacob Weil (no. 26), he writes:

For this reason I permitted the drinking of wine where the non-Jewish worker put his stick into the barrel of wine. It involved the touching of wine by a non-Jew by means of something else without the intention of making a libation. This was permitted by Rabbenu Tam as well.

Rabbi Moses Isserles adds:

Every place where there is no suspicion of idolatry, wine is not more stringent than intoxicating spirits of non-Jews, about which we say in Avodah Zarah 31b [see also Tosafot] that [the spirits] are prohibited "because of [the fear of] intermarriage." Nevertheless, we say that Rav Papa would take it outside the door of the store and drink it, and that Rav Ahai brought it to his house and drank it. Therefore the same law would apply to wine in our own time [i.e., drinking it should be permitted just as the drinking of spirits was apparently permitted]. Even though the prohibition against wine is of greater force than the prohibition against other intoxicating beverages, since alcoholic beverages were not prohibited either in the Mishnah or in a baraita, but the prohibition was instituted during the time of the amoraim, as was noted in the Tosafot cited above. Nevertheless, we can say that this additional stringency against wine was true in their day when Jews were prohibited from deriving any benefit from s'tam yeenam even when the non-Jew only touched it, but in our day, since we are not prohibited from deriving benefit from wine [because the non-Jews are presumed not to be knowledgeable about libations], we are not more stringent concerning wine than concerning other sub-

stances which were prohibited because of the fear of intermarriage.

Concerning workers who open and close taps during the production of wine, Isserles wrote:

It would be permitted [even for drinking] if he inserted a tap into the barrel or removed it without any intention [of making a libation]. In these times, non-Jews are not considered idolaters, and all of their touchings are considered to be "unintentional." Therefore, if he touched the wine by means of a utensil, even though he knows it is wine, and even though he intentionally touches it, it is permitted to drink the wine since it is considered as "touching by means of a utensil without intention." However, it is not advisable to publicize this among the ignorant.¹⁹

It is therefore permitted, says Rabbi Silverman, to drink the wine produced by non-Jews in factories, since no human hands touch the wine, except in the permissible manner just explained.

2. In Avodah Zarah 30a, we read: "Wine which is boiled does not come under the category of wine for libation." Since all wine today goes through a process of pasteurization, all wines today can be considered boiled wine.

Rabbi Silverman does acknowledge, however, an argument that could be raised against this point, based on a comment by Rabbi Louis Ginzberg in his responsum concerning the permissibility of using grape juice for ritual purposes in lieu of wine:

In order that those who cavil should not say that [Ginzberg] has permitted boiled wine, about which there is controversy among the early authorities, I wish to say that grape juice is not considered "boiled wine" since it is not heated to the boiling point, and at a lower temperature it is not considered to be boiled wine.

Rabbi Silverman shows that, according to the Ba'er Heitev to Yoreh De'ah 123:3, "it can be considered 'boiled wine' if the heating process diminishes the volume of the wine." Rabbi Silverman thus concludes:

I have it on excellent authority that the pasteurization process does diminish the volume of the wine. Therefore, according to this halakhic definition, pasteurized wine can be considered "boiled wine" even when it does not reach the boiling point. Therefore, from this point of view, it is possible to permit the drinking of wine produced by non-Jews in America today.²⁰

3. Rabbi Silverman writes, in conclusion, that Christians, and particularly Catholics, use only specially-produced wines for their sacraments, and other liquors such as champagne, cognac and brandy may not be used for the sacraments at all. There is no concern, therefore, that American-made wines may have been produced for the purpose of being used for Church sacramental purposes. (Silverman adds in passing that Catholics do use commercially-produced bread and oil in their worship, both of which our sages permitted, or were at least lenient concerning, long ago.)²¹

Rabbi Silverman ends his responsum with three important points:

1. Inasmuch as the wine industry in Israel is very highly developed, and inasmuch as the economic situation there is "not of the best," "it is a special mitzvah for every Jew, wherever he resides, to purchase the wines produced in our ancestral homeland, which are kosher without any question."²²

2. "Especially when wine is required for the fulfill-

ment of a mitzvah, such as the ceremonies of circumcision, weddings, kiddush and havdalah, it is proper to use Jewish wine, and especially wine produced in Israel. Just as a Jew is commanded to enhance the fulfillment of the commandments of sukkah, lulav, etrog, and of festive Sabbath and Festival meals, it is proper that he enhance the fulfillment of the mitzvah through the use of Jewish wine when he fulfills the mitzvah of kiddush."23

3. "Anything that has been said in this responsum regarding non-Jewish wine is not applicable during Passover. I am convinced that the production of wine in America raises many questions involving leaven. Therefore, during Passover, wine which has not been supervised by a competent rabbinic authority should not be used."24

As we noted earlier, Rabbi Silverman's responsum was accepted unanimously by the Rabbinical Assembly, and remains today the authoritative opinion on the subject within the Conservative movement. Nevertheless, Rabbi Silverman's paper prompted two challenges by colleagues who disagreed with his conclusions and with his use of sources.

The first challenge came from Rabbi Jacob Radin, in his unpublished "A Reply to the Teshuva of Rabbi Israel Silverman."25

Rabbi Radin takes issue with one of Silverman's opening assumptions, that gentile-produced wines are today permitted for benefit--and there is no disagreement today over this. Silverman bases this on the Tosafot to Avodah Zarah 57b, that "s'tam yeenam is forbidden for drinking but not for

any [other] benefit." Silverman also cites Isserles (to Yoreh De'ah 123:1) that there is no prohibition against deriving benefit from s'tam yeenam.

But why, Rabbi Radin asks, does Silverman not cite the Beit Yosef, who says: "S'tam yeenam of common idol-worshippers [i.e., gentiles] is forbidden for any benefit, and it is the same thing for those who touch our wine [today]." The Shakh says that the prohibition is only rabbinic because "wine that was prepared for libations [נסך יין] is prohibited Toraitically [whereas here the reason for the prohibition of s'tam yeenam is] because of the possibility of intermarriage." But the Taz writes that there are many posekim that consider the prohibition of s'tam yeenam to be Toraitic as well, inasmuch as the sages were stringent concerning all wines because of ye'en nesekh. The Taz reasons that, based on the Tur, the prohibition against benefit continues to this day because "that which was prohibited by a quorum [מנין] needs another quorum to permit."

Furthermore, Maimonides writes: "Wine of gentiles, about which we do not know whether it has been dedicated to idols or not--that is, wine we call s'tam yeenam--is forbidden for any benefit in the same way as is wine that has been dedicated, and this is a rabbinic prohibition."²⁶ The Rambam continues elsewhere: "And all wine that a gentile has touched is forbidden lest it was dedicated or intended for idol worshipping. Thus we learn that wine which has been touched by a gentile is the same as s'tam yeenam, which

is forbidden for any benefit."²⁷

The Rambam excludes from the prohibition of benefit of s'tam yeenam the Ishmaelites, ger toshav [גר תושב], a person who, for the sake of acquiring limited citizenship in Palestine, renounces idolatry], and gentiles who were not idolaters (such as the Greeks), but the Rambam adds that "in any place where the gentiles are undesignated [as to whether they are idolaters or not], they are considered as idolaters."²⁸

Also Rabbenu Nissim, according to Rabbi Radin, holds that s'tam yeenam is forbidden for any benefit.²⁹ And after citing the opinions of Rabbi Yehuda b. Rabbi Natan and Rabbenu Shmuel in the name of Rashi that s'tam yeenam is permitted for benefit because today's gentiles are not experts in libations and are therefore considered as day-old children whose touch does not defile wine, the Rashba nevertheless concludes that s'tam yeenam is forbidden for benefit because "those who came after them [after Rashi, Rabbi Yehuda, etc.] saw that [the gentiles] were still widely accustomed to dedicating [their wines], and therefore they extended the prohibition over [their] wine, and they decreed concerning their wine that it was forbidden for any benefit because of a [lack of] certainty about their wines."³⁰

So too the Ritba holds that s'tam yeenam is forbidden for any benefit. After citing the above passage from the Rashba, the Ritba writes: "Already the Ramban and ר"י [?] have rejected their words [i.e., the words of Rabbi Yehuda and Rabbenu Shmuel] that [gentile] wine is not accepted

inasmuch as [gentile wine] was already decreed upon in an explicit decree, and another quorum is necessary to permit it even when [a gentile] touches our wine with the intention of making it forbidden for any benefit; whereas concerning the Ishmaelites, who are not in the category of idol worshippers, it is possible to judge to permit [wine that has been] touched by them, for any benefit, but their wine [i.e., wine they have made] is prohibited for any benefit [nonetheless], inasmuch as [the Ishmaelites] were included in the prohibition of the wine of gentiles and it is not possible to permit [their wine] until another bet din stands and annuls [the decree] . . . and we hold that even if Elijah the Prophet would come and permit it, we would not listen to him because the prohibition has spread throughout Israel [and has been accepted by Jews everywhere]. Wine was explicitly prohibited, and anyone who is lenient concerning it is a 'breacher of the fence' and 'the sinner will be punished.'" This opinion is cited in the Ritba's commentary to Avodah Zarah 57b.

While recognizing that the Ritba's position is even more stringent than the Rambam's, Rabbi Radin nonetheless concludes that "all of the posekim which I have cited above show there are indeed exceptions to [Rabbi Silverman's opening statement that] 'there are no differences of opinion in our day that [gentile wines] are permitted for benefit.'"

Having made this point, Rabbi Radin continues to discuss what he calls "a basic flaw in the entire teshuva of Rabbi Silverman," that he fails to distinguish "in citing

his references and authorities in support of his opinion, between s'tam yeenam and 'our wine when it has been touched by a gentile' [מגע עונד כוכו' ניין שלנו]. This is a central point, Rabbi Radin argues, and continues:

All [Rabbi Silverman's] references do not deal with s'tam yeenam but only with the question of "contact" [מגע], which applies only to "our wine" [יין שלנו]. In the latter instances, there are authorities who hold that the wine may be permitted for any benefit. But there is not one single cited authority whom I could to declare that s'tam yeenam is permitted for drinking.

Rabbi Radin then turns to an examination of the texts cited by Rabbi Silverman to support the drinking of s'tam yeenam:

1. Rabbi Jacob Castro. Rabbi Radin claims that Castro was referring only to Zadokites, who were not in any case included in the prohibition חטום בנותיהם. Rabbi Silverman's reference is explicitly dealing, argues Radin, not with s'tam yeenam but with "contact" [מגע]. Radin then cites the closing sentence in Rabbi Castro's teshuvah: "There are some who say that nowadays, since gentiles are not good [i.e., knowledgeable] concerning libations, whenever they touch [wine] it is considered unintentional, and if they touch [the wine] by using something else [e.g., a utensil], then it is permitted for drinking."³¹

2. Rabbi Raphael ben Eleazar Meldola. Again, according to Rabbi Radin, the quotation is dealing only with "contact":

It is clearly apparent that the great scholars of the past left us a wide door open making it possible to permit having benefit from wine touched by non-Jews in our day.

3. The Teshuvah of Rabbi Isserles. Rabbi Silverman has, according to Radin, quoted Isserles out of context. The Rema is dealing with a special circumstance in the land of Moravia [מערין]:

The custom has spread in the land of Moravia in particular, and in other places in general, to be lenient concerning the drinking of s'tam yeenam, and they [the authorities] have not prohibited them from doing so; on what have they relied?³²

Isserles, according to Radin, is dealing with the specific question of the fitness of witnesses. A person who drank gentile wine would become legally "suspect" [חשודים] and unable to have administered to him an oath for testimony. As Isserles writes:

They [the authorities] would need to be careful concerning them [drinkers of gentile wine], in the same way as concerning suspects [people whose testimony is not trustworthy], where they cannot judge nor can they testify.

In the present situation, these people are "mistaken in their interpretation of the law" [שטבוורים שמוחקרים], according to Isserles:

And so let us determine if there is a way to find some reason to permit [the drinking of s'tam yeenam] in the province of Moravia and elsewhere, even though it is not according to precept and law.

Elsewhere too, the Rema makes clear, according to Rabbi Radin, that he never permitted s'tam yeenam to be drunk:

And even though this reason [to permit the drinking of s'tam yeenam is not sufficient except concerning the touching of our wine by gentiles, still it does not apply to s'tam yeenam that was prohibited "because of their daughters." And so too said the Rosh and the Tur explicitly . . . and so the heter was extended to them concerning the wines in those places where they were

accustomed to be lenient because of survival, in that there was nothing else to drink except [the gentile] wines, and [the authorities] sought to make the wines kosher in the same way they had done so with bread in other places.

And, says Rabbi Radin, Rabbi Silverman did not pay attention to the sentence by Isserles which came next:

All this, it seems to me, is a reason for those who are lenient in those provinces that there is nothing else to drink but [gentile] wines. But woe to me for someone to rely on my words, for I have come only to provide a justification--even though it is prohibited from the Torah--and I have only come to teach a few reasons to permit, but one should not rely on this as a general rule. And so it is in places where they are not accustomed to having this heter, and they have seized in their hands the truth that it is forbidden, and it is forbidden to change, and all who "breach the fence will surely be punished," and all who transgress the words of the rabbis deserve death.

The other passage which Rabbi Silverman brings from Isserles also deals only with "contact" and not with s'tam yeenam, says Rabbi Radin:

Nowadays that the gentiles are not idol worshippers, and all their touchings [of our wine] are considered unintentional, therefore if they touch our wine using something else [e.g., a utensil] . . . it is permitted even for drinking.

Isserles is consistent in his opinion, which is codified in the Shulhan Arukh (123:1). When Caro writes that s'tam yeenam is forbidden for any benefit, Isserles adds: "Nowadays that gentiles do not offer libations for idol worship, there are some who say that the touch of a gentile to our wine does not cause it to be forbidden for benefit, only for drinking."

Rabbi Radin then proceeds to discuss another point

allegedly raised by Rabbi Silverman, that Rabbi Yehuda and his bet din permitted the eating of "food cooked by gentiles." Radin says he is unable to find any passage supporting Silverman's view, and then cites the halakhah as found in the Shulhan Arukh (Yoreh De'ah 113):

A foodstuff that cannot be eaten raw, or which is not served on a royal table . . . even [if cooked] by a gentile in the pot of a Jew or in an Israelite house, is forbidden because of "food cooked by a non-Jew."

Rabbi Silverman, according to Radin, bases his support for the drinking of s'tam yeenam on the fact that it is pasteurized and therefore considered boiled wine [יין מבושל]. But the Gemara says explicitly that wine which was initially the property of a gentile cannot lose its status as a ye'en nesekeh (wine of libation). Furthermore, writes Radin, "the law of boiled wine applies only to our wine, and not to s'tam yeenam." In support of this view, he cites Avodah Zarah 29b:

R. Elai said: We have had it stated that a heathen's boiled wine, which was formerly [raw] wine [while in his possession] is forbidden. This, too, is self-evident! Does its prohibition cease because it had been boiled?--Said R. Ashi: This, too, enables us to draw the implication that our boiled wine which is in the keeping of a heathen does not require double sealing.

And according to the Rambam, the term ye'en nesekeh applies even to wine that has been mixed with grape kernels [חרצוניט] before being pasteurized. The Rambam writes:

From what time is gentile wine prohibited? From the time it is pressed and drawn out; and even if [the juice] has not gone into the cistern but remains in the press, it is still forbidden . . . and a grape presser cannot take from it even if the wine still

has mixed with it grape kernels [indicating it has not been all thoroughly pressed] and it has not dropped into the cistern.³³

"It is again crystal clear," writes Rabbi Radin, "that the whole discussion of boiled wine never applies to s'tam yeenam." This is explicitly stated in the Shulhan Arukh (123:3): "Our boiled wine that has been touched by a gentile is permitted."

Furthermore, Rabbi Hananel writes in his commentary to Avodah Zarah 30a:

Rabbah said: The halakhah concerning mixed wine [יין מן הזיוג] is that [it is forbidden] because of ye'en nesekh . . . Boiled wine is not prohibited because of ye'en nesekh, meaning that if a gentile touches it, it is not considered to have been dedicated [to idolatry].

And too Tosafot to the same passage states:

Boiled wine is not prohibited because of ye'en nesekh; thus is the halakhah, and [the wine] is permitted after being touched by a gentile.

And so Rabbi Radin concludes that Silverman's point concerning the pasteurization of wine is irrelevant, since it applies only to our wine and not to boiled wine. The prohibition "because of their daughters" (i.e., the fear of social intercourse leading to intermarriage), says Radin, "applies definitely to the boiled wine of gentiles though it is no longer fit for ye'en nesekh."

He further argues that Silverman's point that Christians use only specially-prepared wines for their sacraments does not lessen the prohibition of s'tam yeenam.

And Rabbi Radin concludes:

Since Rabbi Silverman is anxious to base his conclusions on halakhic principles and is

therefore ready to question s'tam yeenam for Pesah, our decision should not be based on anything less than the halakhic views. We conclude that there is no authority cited by Rabbi Silverman or discovered by the writer which would permit s'tam yeenam for drinking. Any heter applies only to "our wine that has been touched by a gentile" and even in such cases there are opposing views of posekim.

So ends the first challenge to Rabbi Israel Silverman's responsum on wine. A second paper on the subject was published in 1976 by Rabbi David Novak, a member of the Rabbinical Assembly's Committee on Jewish Law and Standards.³⁴ Like his colleague, Rabbi Jacob Radin, he rejects Silverman's conclusion.

The first two-thirds of Rabbi Novak's responsum is a careful (and very interesting) study of the relationship between idolaters and gentiles, between other foods which were at one time prohibited and which were later permitted, and includes an important look at the halakhic reasoning involved. For our purposes, however, we will begin with Novak's first challenge to Silverman, on the question of boiled wine. (The earlier sections of Novak's paper add to, but do not substantially differ, with major points established by Silverman.)

Novak intends to examine two points in particular made by Silverman: First, that wine today is untouched since it is machine-made. And second, that pasteurization of modern-day wines brings them into the category of boiled wines.

Concerning boiled wine, Novak cites the Talmudic passage in Avodah Zarah 30a:

Our rabbis taught that boiled wine and diluted wine [חֲלוּטֵי] of gentiles are prohibited . . .

Rabbah and R. Joseph both said . . . boiled wine is not capable of pagan dedication . . . When Samuel and Ablet [a non-Jew] were sitting together, boiled wine was brought before them, and Ablet pulled his hand away from it [Rashi: so as not to render it prohibited]. Samuel said to him that the sages ruled that boiled wine is incapable of pagan dedication.

This is the law, according to the Tosafot, and boiled wine may be touched by a non-Jew.³⁵ Boiled wine, by virtue of its change, is no longer fit to be dedicated.³⁶

Novak suggests two questions which must be answered:

(1) What constitutes "boiled wine"?, and (2) Whose wine is considered boiled wine, that of a Jew or that of a non-Jew?³⁷

Novak cites a recent responsum issued by Rabbi Moses Feinstein, in which he says pasteurization is not to be considered boiling, because it only reaches a temperature of 140 degrees. Boiling, he says, must reach 175 degrees, the point of "seething" [רתִיחָה].³⁸ But, says Novak, the Talmud says that "boiling" is any temperature wherein one could not put one's hand [יָד כְּלוּדָה].³⁹ Who is right? Local rabbis contacted by Novak agree with Feinstein. Concerning this point, Rabbi Israel Silverman wrote Novak:

The whole point of pasteurization adding another leniency is that in the process of pasteurization, a considerable volume of wine is lost. . . . The Halachic definition of boiling, in this instance, is the loss of volume. Boiling without loss of volume may not be good enough, whereas loss of volume without boiling is sufficient.⁴⁰

Novak concurs with Silverman, noting that the same point is made in the Shulhan Arukh⁴¹ and Mishneh Torah.⁴² The same point is made too in a responsum by Maimonides:

When it happens that a Christian or a Muslim approaches Jews drinking wine, they hurriedly

mix some honey into the wine which is before them and drink it with him, for they said that it is already unfit for the altar and it is considered liquor. It is a principle among us that only wine which is fit for offering on the Temple altar can be dedicated to idolatry.⁴³

Novak continues: "Nevertheless, I cannot accept Rabbi Silverman's conclusion from all this, because all the medieval sources assume that the boiled wine was manufactured under initially Jewish auspices. Furthermore, the text in the Talmud where Samuel tells the non-Jew Ablet that boiled wine has no stigma, is obviously dealing with Jewish wine, because why would Ablet hesitate to touch it if it had already been touched by the non-Jews who made it?"⁴⁴ Rabbi Novak therefore concurs with the basic objection raised by Rabbi Radin in his responsum, that the heter is for "our wine" and not s'tam yeenam.

Novak next turns to Silverman's use of the Rema's responsum. After restating the question which was directed to Isserles, Novak suggests three ways in which Isserles could have been expected to respond:

(1) Isserles could have cited the above material and ruled against the drinking of such wines.⁴⁵

(2) He could have considered the practice of drinking such wines as being without justification, but impossible to uproot. As the saying goes, "better they should be left to sin unwittingly than for Jews to be informed and thus be made into deliberate sinners."⁴⁶

(3) Isserles could have said, as he indeed did, that perhaps some halakhic justification could be found. And so

that many Jews would not become disqualified for offering testimony, Isserles did indeed develop the halakhic foundations for a heter, based on considerations of life and health [חיי נפש], and clearly Isserles was the most lenient authority on the subject of gentile wine--even though he himself would not follow such a leniency and in fact urged others not to either. Novak concludes, however, that

. . . since he refuses to allow anyone to use his arguments as precedents, I cannot see how anyone after him can legitimately do what Isserles himself said ought not to be done in his name.⁴⁷

Therefore, even though the original legal reasons for prohibiting gentile wine may be weak, clearly the prohibition remains as a custom [מנהג], and this is in fact the word used by the Rema himself: נהגו. And, Novak is quick to point out, "our sages emphasized the need to continue to observe customs even when their grounds are no longer wholly valid."⁴⁸ As Maimonides wrote:

Repeal is only possible when a decree was not made as a protection of the Torah but only as ordinary adjudication. However, those matters which the court ruled as a protection of the Torah, if their prohibition spread throughout all Israel, then no other court can repeal them or permit their neglect, even if they are greater than the earlier ones.⁴⁹

"Surely," writes Rabbi Novak, "the prohibition of gentile wine is in such a category even as a custom."⁵⁰ Historical continuity is important too, argues Novak, because "change for no good reason causes chaos in a community, especially the Jewish community, whose only bond is that of a common history. To change law for no good reason questions the overall authority of the law itself."⁵¹

Faced with important contemporary problems, Novak concedes that the law must change, as it certainly has in the past. However, he "fail[s] to see where there is any 'need' today for Jews to drink non-Jewish wines."⁵² He joins with his colleague, Israel Silverman, in suggesting that Jews patronize Jewish winemakers, particularly those in Israel; and where kosher wine is not available, one can follow the authoritative opinion of Rabbi Louis Ginzberg and drink grape juice.⁵³

"In summary," writes Rabbi Novak, "the prohibition of non-Jewish wines is a custom deeply rooted in tradition, and there is no good reason requiring its abrogation."⁵⁴

Nevertheless, despite the lengthy efforts of both Rabbi Radin and Rabbi Novak, the responsum of Rabbi Silverman remains the officially-accepted position of the Conservative movement.⁵⁵ These challenges from within Rabbi Silverman's own movement are no less, and perhaps are more, significant than the traditional arguments against gentile wine which we marshalled in the preceding chapter. In Chapter Seven, we will attempt to determine if indeed Rabbi Silverman's conclusions are justified, halakhically and methodologically, or not.

CHAPTER SEVEN

GENTILE WINE: ANALYSIS

A restatement of the reasons traditionally cited for the prohibition of gentile wine will assist us in deciding whether the Conservative movement's responsum is sufficient to make such products permissible for drinking.

(1) Gentile wine was originally prohibited because such wines were used in idol worship.

(2) Whereas today's gentiles are no longer idolaters, still, their thoughts are commonly absorbed with pagan concerns and we continue to have the fear that their wines may have been dedicated to their various religious rites.

(3) Gentile wines continue to be prohibited because of our fear that drinking wine with non-Jews may lead to intermarriage with them, since wine often leads to laxity in behavior and morals. This is the primary reason for continuing the prohibition of such wines today.

Does Rabbi Silverman's responsum satisfactorily deal with these arguments?

The first two points are readily conceded by both traditionalists and Rabbi Silverman as being inapplicable in the modern age. Even among traditionalists, the fear that gentile wines may have been dedicated is not valid, since today's non-Jews are like day-old children (who know

nothing about libations and therefore couldn't possibly dedicate a product to idolatry).

We are left, therefore, with the third argument, that gentile wines are prohibited because socialization through drinking with non-Jews may lead to marrying among them. As Rabbi Silverman writes:

In our times [all] these prohibitions have dissolved. It is a fact that intermarriage is not only a direct result of the drinking of non-Jewish wine.¹

One might argue, therefore, that Rabbi Silverman's responsum does meet the traditional arguments, and therefore all wines should be permitted.

It is when we begin to consider the halakhic and methodological processes employed by Rabbi Silverman that we face difficulties in accepting his conclusions. Rabbi Silverman's responsum is presented as a halakhic decision; in the final analysis, however, it is based on sociological and emotional factors more than halakhic.

Rabbi Silverman argues on two levels:

(1) Halakhic - Within the sources is to be found a pattern for allowing the boiled wine of non-Jews. It is clear, however, based on the challenge responsa written by Rabbis Radin and Novak, that Rabbi Silverman has completely misunderstood the sources and has confused the meaning of boiled wine. Silverman argues that boiled wine can be drunk, but he doesn't realize that all the references to boiled wine which he cites are talking about the boiled wine of Jews! Within the halakhah, there is nothing to support Rabbi Silverman's contention that the boiled wine of non-Jews can

be drunk.

As for Rabbi Silverman's use of Isserles' responsum, here too we have an improper use of a halakhic source. As Radin and Novak and Zevi Frank all clearly note, the Rema is dealing with a specific question for a specific time and place. He cautions us several times not to accept his responsum as a precedent; indeed he clearly states that the drinking of non-Jewish wines is against both custom and law. The responsum was written, Isserles says, because of an emergency situation [מפני חיי נפש]--that for the lack of anything else to drink, otherwise-pious Jews were being tainted and disqualified as witnesses. The Rema is attempting to justify what is clearly a bad situation; at the same time, he heaps praise on all those who, knowing the law, refrain from drinking such wines now and, God forbid, in the future. The later rabbis, sensitive to the possible misuse of Isserles' liberal response, deleted the entire responsum from most subsequent editions of his responsa. And in all the editions where the responsum does appear, it is preceded by the following words presumably written by the Rema himself: "May help come from God, maker of heaven and earth, that He may save me from my error."² This disclaimer is repeated later within the responsum itself. Surely it is improper to use such a responsum in precisely the way the author asked that it not be used--as a justification in later times, where no emergency exists, for all non-Jewish wines.

It might be argued by some that we should nevertheless

ignore Isserles' disclaimer and use his responsum for a precedent, in the same way we earlier ignored the restriction placed by Rabbi Unterman on his responsum concerning non-kosher rennet used in cheese. Rabbi Unterman wrote that his permission applied only to non-kosher rennet when used in white cheese, but not hard cheese. Nevertheless, there is a clear difference between the two responsa. Rabbi Unterman's restriction is clearly arbitrary and unjustified. If a non-kosher rennet can be eaten in white cheese, then it can surely be eaten in any cheese, R. Unterman's disclaimer notwithstanding. Either it can or cannot be eaten.

Rabbi Isserles, however, has placed a restriction on his responsum based on the specific time and circumstances. Non-Jewish wines, he writes, are forbidden. But at this time, because of the extraordinary circumstances, he attempts to find a way to temporarily justify what is happening already (i.e., Jews are drinking such wines for lack of anything else).

Accepting such a responsum as a precedent would be akin to accepting the decisions of the National Jewish Welfare Board, which during World War II drew up specific responsa for emergency situations. These decisions--which in effect allowed the eating of non-kosher food, improper burials and disinterments, among many other things--were clearly not intended as precedents for Jewish law during peacetime. In fact, a common refrain in these responsa is that such leniencies apply only to wartime situations; once a soldier is away from battle or in any way able to

honor the halakhah, the responsa are not applicable.⁴

Rabbi Silverman's misuse of the halakhic sources is clear. But he continues to argue his case on a second level, the sociological level.

(2) Sociological - Rabbi Silverman in effect argues that since the reasons for prohibiting gentile wines no longer exist, the wines can be permitted. He fails, however, to recognize several important points:

First, wine was clearly one of the eighteen enactments, about which it was said that even if Elijah the Prophet were to come and revoke them, the prohibitions would remain in effect.⁵

Second, the reason for prohibiting gentile wines--that they may lead to intermarriage--is still valid. While we could agree that certainly wine is not the only factor leading to intermarriages, still, who could argue that the social intercourse brought about by drinking such wines could not be a factor leading to intermarriage? In other words, while the negative effects of drinking gentile wine are surely exaggerated, enough truth remains in the reason to argue against a wholesale permitting of the product on such grounds alone.

And yet it is clear that it was the sociological factor that most influenced Rabbi Silverman's conclusion. How else can we explain the unanimous acceptance of his responsum by the Rabbinical Assembly's learned Committee on Jewish Law and Standards? Surely they recognized the halakhic shortcomings of his position, particularly when the challenges

from Rabbis Radin and Novak were presented later. And yet the permission continues, even today, to be the official position of the movement. One can only assume, therefore, that sociologically and emotionally, wines made today by non-Jews could not be prohibited, even where purely legal reasoning was non-supportive. The dilemma is identified by Rabbi Novak in the introduction to his challenge responsum:

A local liquor dealer . . . asked if he could bring certain popular California table wines to serve the guests. My answer had to be no. . . . Since the use of wines is becoming more popular in this country, the background of this prohibition will have to be more cogently explicated than it was in the immediate past. . . . Without an understanding of the development of this prohibition, we run the considerable risk of offering reasons which are likely inoperative today. If intelligent Jews are told that we are not to drink non-Jewish wine because of inoperative and inadequate reasons, they might very well consider the prohibition null and void. (Italics mine.)

In conclusion, however, Rabbi Novak feels satisfied telling his questioning congregant that the prohibition of non-Jewish wines is "a custom, and there is no good reason" to permit them!⁷ As aware as Rabbi Novak is of the danger in giving an "inoperative and inadequate reason," he proceeds to do so just the same.

The Rabbinical Assembly, it would seem, accepted Rabbi Silverman's conclusions because they were consistent with modern-day sensitivities and reasoning. To tell a modern, non-Orthodox Jew that he cannot drink most wines today-- not because of something terefah being used as an ingredient-- but because gentiles were at one time idolaters and today we should not socialize with them because we might end up mar-

rying one of them--is a non-answer. Therefore, such wines may be drunk, though it is preferable to use Jewish wines for ritual purposes (an aesthetic and emotional qualification, but not a halakhic one).

One could argue, with some justification, that the sociological reasons advanced by the Conservative movement are certainly no less valid than the traditional halakhic arguments, which are themselves sociological! After all, the reason for prohibiting non-Jewish wines has nothing to do with the ingredients of the wines themselves. The halakhic reasons are: Gentiles are, or may be, idolaters, and in any case we don't want to get so close to them that we end up marrying them. By rejecting this whole way of thinking, the Rabbinical Assembly is simply asserting modern sociological realities over the valid sociological realities of the past.

It is not unusual in Jewish law for sociological, emotional and even economic considerations to be decisive or, at the very least, very influential in determining Jewish practice:

* In the late 1960s, a major grocery chain in Florida began selling packaged kosher meat at prices competitive with the non-kosher meat sold in the same stores. The Orthodox rabbinate firmly protested this procedure and eventually declared the kosher meat terefah. The deciding factor: With a secular grocery selling kosher meat so cheap, the Jewish butchers were facing economic ruin. The grocery chain's kosher meat was terefah not in and of itself--but for

emotional and economic reasons.⁸

* In the Talmud, we read of the resistance by the early tannaim to the introduction of glassware in Judea. Glassware, it was claimed by the tannaim, could become impure like the other vessels currently being produced in Judea. If they had ruled otherwise, then the stoneware industry in Judea would have been devastated, for who would have preferred to stoneware to glass if the latter could not become impure? Even though glassware was, of course, not prohibited in the Torah (for it didn't yet exist!), the tannaim derived a reason to prohibit it. The ultimate reason, however, was economic.⁹

The difficulties in all this are obvious: Traditional Judaism prides itself on being halakhic, and denigrates Conservative Judaism for being non-halakhic and too attuned to the fluctuations of modern society. And yet, as we have seen, the Orthodox are here as guilty as those they condemn; the question is only one of degree.

Conservative Judaism, on the other hand, prides itself on being both halakhic and sensitive to modern sensibilities. And yet, as we have seen, when the halakhic arguments are not sufficient, or even missing altogether, the pre-desired sociological benefit becomes the determining factor in deciding whether or not to permit something.

In other words, both Orthodox and Conservative Judaism play, to a greater or lesser extent, "the same game." Both are halakhic, but both are willing to introduce non-halakhic arguments, depending on when they see fit to do so.

What about wine? Can we accept the Conservative position? Because of the inseparable blurring of halakhah and sociology, we cannot answer conclusively. It becomes ultimately a question to be resolved by each rabbi and layman. Gentile wine, in the final analysis, is forbidden today because it always has been. The Rabbinical Assembly, with considerable fumbling and bumbling, has in effect done nothing more than conclude: "For us, it is not enough to prohibit just because it's always been prohibited." Whether or not this is sufficient reason depends on the individual.

CHAPTER EIGHT

GELATIN IN THE HALAKHIC LITERATURE

Gelatin is a product made from the dried skin and bones of animals. A relatively new product, it has been the subject of much discussion in the halakhic literature in this century. Basically the deliberations have been on two levels:

1. May gelatin be eaten when it has been made from the skin and bones of kosher animals? The problem is whether or not we have a potential mixing of milk and meat. However, there is near-unanimous agreement among modern posekim that there is no milk-meat mixture involved, since the skin and bones are dried so thoroughly that no taste of them is imparted to any milk which might be subsequently mixed with them. Halakhically, if no taste is imparted, no mixture is considered to have taken place.¹ Nevertheless, some authorities prohibit gelatins even from kosher animals because of the fear that skin and bones from non-kosher animals might be accidentally mixed-in.² Most authorities reject this strict position, and allow gelatin from kosher animals.

2. May gelatin be eaten when it has been made from the skin and bones of non-kosher animals? Here too there is near-unanimous agreement, but in the negative: Such gelatins are, with rare exception, absolutely prohibited. It is with regard to these gelatin products that most of

the responsa have been written. It is here too that the basic difference remains between the positions of most Orthodox authorities today and their Conservative counterparts.

We should examine first of all how gelatin is made.

Rabbi Isaac Klein has summarized the process this way:

The bones are dried usually from a period of six months to a year. At the end of the drying period, the bones become hard and dry as wood. The bones then undergo a long chemical treatment during which they are treated with hydrochloric acid, salt, lime, and other chemical compounds.

The skins used for the manufacture of gelatin are dried until they become hard and brittle. Then they are treated with chemicals such as hydrochloric acid, salt, lime, etc., as in the case of bones. The skins are freed of all moisture, fat, meat, and [their] appearance and substance are thus completely changed.

After the bones and the skins have undergone the above chemical treatments, they are placed in large vats of running water which removes all the impurities caused by the chemical treatment of the skins and bones. The substance is treated again with chemicals, washed again, then transferred to large extractors where hot water is used to convert the substance into the final product, gelatin.³

Crucial to any discussion of gelatin is an understanding of the halakhic status of bones, the most common source of gelatin. Bones are not considered meat. This is based on a comparison of several Talmudic passages. In Hullin 117b, the Mishnah states:

The hide, meat juice, sediment, alal, bones, sinews, horns and hoofs are to be included [to make up the minimum quantity in order] to convey food-uncleanness, but not to [make up the minimum quantity in order to] convey nevelah uncleanness.

In Hullin 77b we read:

As to food uncleanness, it was taught: A skin

or an afterbirth cannot contract food uncleanness; if the skin was seethed or the afterbirth intended to be eaten, it can contract food uncleanness. As to the uncleanness of nevelah it was taught: It is written: "[He that touches] the carcass thereof"--but not its skin or its bones or its sinews or its horns or its hoofs.

The reason for excluding bones, according to Rashi, is because they are not meat.⁴

The Rambam writes that a person who eats bones, tendons, horns and hooves of a nevelah or terefah is exempt from punishment,⁵ based on the Torat Kohanim:

"From their meat you shall not eat"
[Lev. 11:8]--From their meat, and not from their bones or tendons or horns or hooves.⁶

The reason for this exemption, says the Rambam, is because they are not considered meat.⁷

Also in connection with the prohibition of cooking and eating milk and meat together, bones, tendons, horns and hooves are not counted as meat.⁸ There is a disagreement among the posekim as to whether this applies to all bones, or only to hard bones. Some authorities argue that soft bones are like meat and the various exemptions do not apply to them.⁹

Rabbinically, bones, sinews, horns and hooves have all been declared forbidden for eating, while later authorities extended the prohibition to cooking.¹⁰

Bone marrow is always considered as meat, and is included in the meat-milk prohibition de-oraita.¹¹ So too soft skins, such as the skin of the placenta and the stomach, are considered as meat by most authorities.¹² Some say that stomach skins that have been salted and dried and made like wood,

and which are cleaned of all meat juices, are permitted for eating if later filled with milk; a priori, however, one shouldn't do this.¹³ (See Chapter Two for a fuller discussion of this, with regard to rennet.) Meat that has been thoroughly dried (so it is like wood) is forbidden to be mixed with milk,¹⁴ though many authorities permit it.¹⁵

A controversy exists concerning how bones are to be counted when there is a mixture of milk and meat. For the purpose of annulling the forbidden substance, are the bones counted with the forbidden or the permitted ingredients in the pot? The early authorities are divided: There are some who say that it depends on the amoraic dispute as to whether the measure of annulment is 60:1 or 100:1.¹⁶ Those who argue 60:1 learn it from the boiled shoulder due the priest [זרוע בשלה] of a Nazirite ram, that was cooked together with the ram; the meat and bones of the ram were measured against the meat and bones of the boiled shoulder. The cancellation of the shoulder (which was forbidden to everyone but the priest) occurred when the ratio of ram to shoulder was 60:1. We see, therefore, that the forbidden bones were counted with the prohibited shoulder, and the permitted bones were counted with the permitted part of the ram.

Those who argue for a 100:1 annulment ratio say that only the flesh of the boiled shoulder was counted against the flesh of the whole ram, with none of the bones counted at all. And though annulment today is now considered 60:1, in any case we should follow the opinion that bones are not counted at all.¹⁷

Others argue, however, that the bones of the permitted food are counted with the permitted, but the bones of the forbidden food are not counted at all.¹⁸ But still others say that the bones of the forbidden food are counted--with the permitted food, inasmuch as they are not food and cannot be considered forbidden; and through the cooking process, they absorb food, and the taste of the prohibited food spreads through them. Therefore they are counted as part of the 60:1 volume on the side of the permitted.¹⁹

It should be clear by now that there exist many differences of opinion as to the status of bones and the other substances which are used in the making of gelatin. Let us turn now to a discussion of gelatin itself, and why it is specifically rejected by almost all authorities when it is made from non-kosher animals.

"Gelatin that is made from the skins of forbidden animals may not be eaten and all gelatin is presumed forbidden which does not have rabbinic supervision and approval."²⁰ So writes the former Chief Rabbi of Israel Ben Zion Uziel in the first of his two responsa on the question. This blanket prohibition is based on the Shulhan Arukh²¹ and the Mishneh Torah.²² The Rambam says:

One who eats from a nevelah or terefah or from an unclean beast or animal, from the skin or bones or sinews or hooves or horns, or from the claws of a fowl, at the place when if cut blood will spurt, even though such eating is forbidden, the act does not entail a penalty because these substances are not edible, and they are not counted with meat [to fulfill the minimum for defilement].²³

From this, according to Rabbi Uziel, one learns that the

skin and bones of forbidden animals, even though they are unfit for eating, are forbidden, and their prohibition extends to even after they are dried and made like wood; for when they have their juices within them, they are forbidden, and therefore when they are dried, they are still forbidden. And it is the same thing for meat that is dried like wood: Even though it is not fit for food, it is forbidden, in that it is no better than skin and bones which are a priori forbidden.

Rabbi Uziel then presents the objections that might arise. The Beit Yosef writes that the skin of a stomach that has been salted and dried and then filled with milk is permitted, inasmuch as the skin was dried so as to be like mere wood, and there are no longer meat juices in it.²⁴ The Rema judged this to be the halakhah.²⁵ And the Shakh wrote that it is the same for other intestines [נוי מעיים] when they are dried and made like wood; but he adds, one shouldn't do this a priori.²⁶ Those who produce gelatin using dried-out skin and bones deduce from all this that it is permitted to eat such gelatin. But this is not so, argues Rabbi Uziel, for several reasons:

First, neither the Rema nor the Shakh permitted except for the filling of them with milk; inasmuch as they were dried completely, there was no fear of particles of meat getting mixed-in with the milk. But nothing was allowed concerning the eating of them themselves!

Second, the Shakh also wrote this: ". . . but in any case it would seem one shouldn't do this a priori." And

in truth, writes Rabbi Uziel, such has been the accepted practice in Israel, that one makes meat sausages only in the intestines of kosher animals.

From this, Rabbi Uziel derives that one shouldn't place milk in the stomach or intestinal skin a priori; and all the more that it is forbidden to eat the stomach and intestines themselves, in that the eating of them is always a priori!

Third, the statements of the Rema and the Shakh were not said except with regard to the skins of the stomach and intestines, which when congealed and dried are like onion rinds that do not impart nor absorb anything. But meat that has been dried is not included in this, even to place milk in it, and all the more so with regard to eating it.

Fourth, the skins of the stomach and intestines were not permitted to have milk placed in them except when they were dry as wood; but if they were soaked in water or cooked, they returned to their original status of prohibition. So wrote the Peri Megadim to the Shakh. But dried meat is forbidden at all times, and it is the same thing for the stomach lining and skin of the intestines, when they are cooked. They are forbidden inasmuch as they become soft and thereby return to their original state of prohibition.

Fifth, Rabbi Uziel cites the Noda bi-Yehudah:²⁷ The Rema did not say that stomach skin is permitted except with regard to the placing of milk in it after it has been dried completely, and it therefore is permitted only with respect to mixing milk and meat. But in every other way it's like the gullets of unclean fish which are Toraitically forbidden

even when dried like wood, even when they have become unfit food for dogs.

And so we learn, says Rabbi Uziel, from the Noda bi-Yehudah that with regard to all other prohibitions, aside from mixing milk and meat, that skin and bones are prohibited even when they are dry as wood.

It is true, writes Rabbi Uziel, that in the responsa of Shevut Ya'akov, it appears he does not agree with the Noda bi-Yehudah's distinction, for when he was asked, "On what do they rely in allowing the eating of congealed blood that has been dried in the sun, even for a sick person whose life is not in danger," he replied that one can justify a heter inasmuch as it is dried completely and has become like wood, with no moisture in it at all, and there is therefore no grounds to forbid it. Citing the Rema's lenient opinion, the Shevut Ya'akov adds that, nevertheless, it is not the normal procedure.²⁸

It appears to Rabbi Uziel, even so, that "we cannot reject Noda bi-Yehudah's opinion for it is a great explanation and . . . it is as I wrote earlier, that the Rema and the Shakh did not allow except for placing milk in them, but to eat them even when dried was forbidden."

Rabbi Uziel next cites the Rashba, who would caution people not to eat saffron [כרכום] because they would sprinkle a lot of wine over it and also because they would mix into it bits of dried meat.²⁹ On this the Shakh commented: "But in these provinces, where the saffron is dried like wood, even if bits of dried meat are found it, it doesn't worry

us."³⁰ From this some might try to prove that the Shakh understood the words of the Rema to refer to the eating of the prohibited substance itself, as well as the other prohibited foods from the Torah.

But perhaps, Rabbi Uziel says, the words of the Shakh can be "destroyed in themselves," for indeed the Shakh wrote that "it seems to me, one shouldn't do this a priori"--and the eating of saffron that has bits of dried meat mixed in it is indeed a priori! And it seems to Rabbi Uziel that what the Shakh says about saffron is because the saffron is dry, as he explicitly states: "And since the saffron is dried like wood"--and he does not say "since the bits of meat are dried." His explicit intention is to say that the saffron is dried like wood, and is thus like a stomach or intestine that has been dried and into which one is permitted to place milk, because it doesn't absorb any of the milk placed in it. So too the saffron doesn't absorb any of the meat bits mixed in it, and the bits themselves are annulled by their miniscule quantity. But the law has always been that something forbidden that is dried like wood is not permitted to be eaten--but rather continues to be prohibited.

And in any case, this can certainly be proven, says Rabbi Uziel, from the words of the Rashba, who wrote: "And they mixed in it [the saffron] bits of dried meat." Certainly if these bits of meat were still at all moist it would be possible to identify and remove them. Rather the Rashba is referring to when they are so completely dried that they cannot be identified by looking at nor examining

them. And it is based on this that the Rashba forbade saffron, because of the mixing-in of meat bits; and from this it clearly follows that something forbidden that is dried is still forbidden.

And so, according to Rabbi Uziel, we have seen that the halakhah in this instance is: Something forbidden that is dried continues to be forbidden. And if it becomes soft again by way of liquid or something else, and is made fit for eating, then there is no one who would say it would be permitted to eat it.³¹

And so it is explicitly clear that, according to law, any gelatin made from the skin or bones of an animal, beast, fowl or non-kosher fish is all forbidden, Rabbi Uziel concludes.

And there is an additional reason too, he writes: The very quality of gelatin proves that the skin and bones were not dried completely, in that anything dried completely like wood is not in a fit enough state to have extracted from it something which is moist and fatty. Therefore gelatin that is a product of this testifies as to those skins and bones that they were not dried completely and that they were still saturated with body fats. The prohibition, concludes Rabbi Uziel, stands.

In a second responsum on gelatin, Rabbi Uziel restates his earlier arguments and introduces additional references to support his various contentions. In addition, he argues that gelatin made from the skin and bones of kosher animals is not edible unless the skin and bones have been properly

salted. Arguing that many purveyors of so-called kosher gelatin do not salt the skin and bones as required by halakhah, Rabbi Uziel forbids the eating of all gelatins which lack the seal of a thoroughly trustworthy Orthodox rabbi.³²

Is there nevelah in bones? We must look, says Rabbi Pinhas Mordecai Teitz,³³ at Torat Kohanim. Though we have a difference of opinion as to what constitutes nevelah, Rabbi Akiba and Rabbi agree that nevelah includes sinews and bones. (There is some controversy, admits Teitz, as to whether the category being discussed is domesticated animals [בְּהֵמָה], as some texts say, or nevelah, as our texts say today.)³⁴

Teitz then turns to the Rambam, who says that if someone eats a clean, dead fowl, he is liable because of nevelah, since there is to the whole of the fowl the minimum necessary to defile [כִּזְיִת], and the bones are counted toward the minimum.³⁵ And although this statement is surprising (even according to the commentators) and though we don't know the Rambam's source, still he ruled that concerning all foods the bones are counted toward determining the applicability of lashes "because of nevelah." In any case, argues Teitz, one can prove from this that bones are included as nevelah, for if they were actually permitted to be eaten, they would not have the punishment attached to them "because of nevelah." The Rambam is not alone on this: Agreeing is the Meiri, who adds that even if there isn't ke-zayit worth of meat on the bones, the bones are still counted with the ke-zayit, and one who eats them is liable for lashes "because of nevelah."³⁶

Teitz next cites Yosef Rozin, who proves from the Rambam that the statement--"one who eats nevelah or terefah or the bones, even though it is forbidden, is exempt because it is not 'fit for food'"--means that there is nevelah also in the bones and sinews. The bones and sinews are seen by Rozin as simply a more explicit statement of what constitutes nevelah and terefah. The exemption is from lashes, and nothing else.³⁷

Having shown that the bones of nevelah or terefah are themselves nevelah or terefah, Teitz then turns to the question of whether or not the bones are themselves forbidden for eating. The Rambam clearly states that there is a Toraitic prohibition concerning the bones and sinews of nevelah and terefah--and only with regard to the punishment of lashes was an exemption made.³⁸ This point was emphasized by the Rambam in his section on the laws of the sciatic nerve.³⁹ So too Sha'ar ha-Melekh explains that Rambam's intent was only to exclude lashing. This, he says, is clear from the Rambam's use of words, for if his intention had been to prohibit these things rabbinically, he would not have said "even though they are forbidden, still one is exempt," for what is the substance of a rabbinic prohibition where one is liable for lashes, when one says that "even though it's forbidden, one is exempt from the lashes"! Rather the Rambam would have said the opposite: "Even though one is exempt from lashes, still it's forbidden"!⁴⁰

Furthermore, adds Teitz, the Rambam counts the placenta together with the sinew and bones. And concerning the placenta, he rules that it is forbidden, and his intention there

is that the prohibition is Toraitic.⁴¹ We know this because elsewhere he rules that one who eats from the placenta is culpable "because of pigul, notar and tamey." And only with regard to the cooking of the placenta with milk is the eater exempt, because the placenta is no longer considered meat. So too with bones and sinews was the Rambam's intent to prohibit them Toraitically, writes Teitz.

And even if we were to assume that the bones of nevelah or terefah are completely permitted, whether because of the reason given by Rambam (that they are unfit for eating) or because they were excluded from the definition of meat in Torat Kohanim, Teitz feels compelled to say that anything that comes from the bones afterwards, even if cooking is involved, still has in it the Toraitic prohibition, in that anything which is derived from a prohibited substance is itself prohibited [כל היוצא מן האיסור אסור]. It is the same thing, Teitz argues, with Toraitically-forbidden milk because it was "derived from a living creature" [יוצא מן ההחי]. When it was permitted, the milk serum that was mixed in it [מי חלב] was permitted too. But when, through heating and cooking, the serum separated, the prohibition returned--because the milk was permitted, not the milk serum. So too with bones, when they permitted bones and the substance [חומר] that was made from them (e.g., gelatin): After the homer was separated from the bones, the prohibition returned because it was "derived from an unclean thing" [יוצא מן הטמא]--because just bones were permitted, not the substance in them.⁴²

What about bones when they are dried like wood? Some say there is no prohibition except for the marrow. But not so, says Teitz, because we learn in Hullin 126b that thigh bones (which are defined as having no marrow) are included in the exclusion of bones. In addition, the Rambam's including the bones and sciatic nerve together shows that all bones, as with all sciatic nerves, are always forbidden for eating.⁴³ So too the Meiri writes that "the sinews are not fit for eating, and one who eats the sinews of a forbidden animal [בְּהֵמָה טְמֵאָה] is exempt from lashes, but in any case it is forbidden for eating."⁴⁴ This shows that the only exemption is from lashes and not from eating. And since the rules for bones and sinews are the same (according to Rashi)⁴⁵, then both sinews and bones are exempt from lashes but not from eating, which is a Toraitic prohibition even when they are "unfit for food." Thus concludes Rabbi Teitz.

An important point is raised by another writer, Yitzhak Glickman, in a lengthy series of responsa on the question of gelatin.⁴⁶ On the verse in Torat Kohanim ("From their flesh you shall not eat . . ."), Rashi says:

Concerning their flesh one is prohibited, but not concerning their sinews and horns and hooves and bones.⁴⁷

Also, on the verse that deals with unclean fish, Rashi writes: "One is not prohibited concerning their bones and fins."⁴⁸

One might argue, writes Glickman, that the above exclusions could not be referring to the punishment of lashes, because here one is exempt anyway, since bones are not con-

sidered fit for eating. One could say that the prohibition comes to restrict those who would prepare bones so they would become fit for eating--but no, says Glickman, they are still exempt from lashes. Indeed, according to many posekim, since the eating of bones is not considered "eating," there would seem to be no prohibition, even Toraitically, and no punishment for doing so.

Glickman then asks the crucial question: Why doesn't the Rambam agree with all this? For doesn't he say elsewhere, concerning non-kosher milk and the eggs of non-kosher fowl, that one is not flogged since we learn from Torat Kohanim that "from their flesh you shall not eat . . ."--and only for eating from their flesh does one receive lashes. Since these substances are not considered "fit for eating," no punishment is warranted, writes the Rambam, for eating them.⁴⁹

Rambam's reasoning, explains Glickman, is that the verse in Torat Kohanim refers only to non-kosher cattle and fish, whereas concerning non-kosher fowl and reptiles nothing is taught. So one can say that just in those things does the Torah include bones and similar parts as prohibited, but in other prohibited species and nevelah, that about them the verse in Torat Kohanim was not intended, one can say that their bones are included in the prohibition.

In conclusion, let us state briefly the main arguments which have been raised by Orthodox authorities to prohibit the eating of gelatin made from the skin and bones of non-kosher animals:

1. Bones are not considered meat and one who eats them

is not to be flogged. However, since the Torah does not specifically exclude them, they are, like meat, forbidden for eating.

2. For purposes of annulment, bones are counted with the permitted substance in a mixture, regardless whether the bones are from a kosher or non-kosher animal. This does not mean, however, that bones are themselves permitted; rather, because they neither impart nor absorb anything, they are counted as volume through which the forbidden substance in a mixture spreads.

3. Authorities such as the Rema and the Shakh, who would seem to allow the eating of skin and bones when dried like wood, are ferring only to placing milk with them; no meat-milk mixture is considered to be taking place. But eating of them is clearly forbidden.

4. Even if we accept the leniencies of the Rema and the Shakh, the Shakh clearly disqualifies the statement by saying that "a priori one shouldn't do this." Since all eating is a priori, eating of skin and bones is always pro forma forbidden.

5. Skin and bones when dried like wood are inedible, and no prohibition exists as to eating something that is "unfit" for eating. Gelatin, however, is edible; the original prohibition on the skin and bones therefore returns.

6. Bones fall in the category of nevelah, which is forbidden for eating.

7. Bones themselves may be permitted. But like eggs and milk, the homer in them is forbidden. It is the homer in bones that becomes gelatin.

CHAPTER NINE

THE CONSERVATIVE RESPONSUM ON GELATIN

The official position of the Conservative movement is that all gelatins, regardless of their origins, are kosher. This stance is based on the responsum written by Rabbi Isaac Klein in 1969 for the Rabbinical Assembly's Committee on Jewish Law and Standards.¹

Rabbi Klein begins with a discussion of how gelatin is made.² (For a summary of the process, see Chapter Eight above.) It is evident, he concludes, "that gelatin is the end-product of a process in which a substance is treated chemically and transformed into what seems ostensibly to be a new substance."³ Klein then poses the following questions which have to be answered in order to decide whether or not this end-product is kosher:

1. What is the status of bones? When the carcass of an animal is declared to be not kosher, are the bones included in the prohibition?

2. If we say that the bones of a forbidden carcass are also prohibited, can their status be changed by creating a new product that ceases to be a food?

3. If the prohibition can be removed from the bones, is it permanent--or can the prohibition be restored if the product becomes edible again?

4. When we speak of a product losing its status as food, do we have objective measures or do we take into consideration subjective factors?

5. Do we differentiate between a product eaten by itself, and a product made so as to be a binder or coagulant?

6. If we establish that chemical or natural transformation creates a new substance and removes the prohibition, does it apply only to bones--or to skin and meat as well?

7. How do we define a "new substance" [דבר חדש]?⁴

The source most widely referred to is R. Hayyim Grodzinski (1863-1940), rabbi in Vienna and a recognized halakhist of his day. In a responsum, he was asked about a "new product, a powder derived from dry bones which is blended with numerous other foods, and is also used as a binder for a variety of other foods."⁵ These dry bones were soaked in acid, then mixed in water with other substances, passed through phosphor, boiled, cleaned and dried. After drying for forty-eight hours, the bones were ground like powdered sugar.

Rabbi Grodzinski answered that the product was permitted because dry hard bones are surely not considered as forbidden foods.

The major sources cited by Grodzinski and other authorities include:

1. Torat Kohanim: "'And of their flesh you shall not eat' [Lev. 11:8]--but the bones you may."⁶

2. Shulhan Arukh: "If a non-kosher piece of meat fell into a vessel containing kosher food, when we apply the prin-

ciple of annulment [נטיל בטשטים], the bones attached to the non-kosher meat are counted with the kosher food rather than with the forbidden."⁷ The obvious reason for this, says Rabbi Klein, is because the bones are not forbidden.⁸

3. Palestinian Talmud: "The shells of a forbidden food are counted, not with the forbidden food, but with the permitted when an accidental mixture occurs."⁹ (From this Taz concludes that "the bones that are part of a forbidden food are not liable to prohibition because they are not edible.")¹⁰

4. Hokhmat Adam: "Whatever the Torah has forbidden [for eating] applies only to substances that are edible, as it is written: 'You shall not eat any carrion.' It is so with all forbidden substances. Therefore, bones whether of carrion or of animals that have become terefah or of any other forbidden things that are hard [i.e., inedible] that have not in them any fluid are permitted because they are mere bones."¹¹

The author of Hokhmat Adam, Abraham Danzig, goes on to distinguish between soft and hard bones; only the latter are included in the heter because the former are considered as meat. The author of Hokhmat Adam is quick to point out that Isserles disagrees with Caro on this point. He maintains, however, that even though we normally follow Isserles, in this case Caro is right and we follow him. Furthermore, even Isserles allows the bones to be eaten in times of great financial loss.

But this opinion, writes Rabbi Klein, is far from unanimous. The Rambam writes:

He who eats of carrion, or of terefah, or of unclean cattle or beasts, or of the hide or of the

bones, or of the sinews, or of the horns, or of the hoofs, or of the talons of fowls, at the place when if cut blood will spurt, or of their placenta, even though such eating is forbidden, the act does not entail a penalty because these substances are not edible, and when eaten with meat so that together they are the size of an olive [the size necessary to constitute a transgression of the law that forbids their consumption] they do not count.¹²

Concerning the statement in Torat Kohanim that excludes bones from the prohibition, the exclusion is interpreted to refer to the penalty of lashes which is entailed by the transgression of a negative commandment.

And as to Caro's statement in the Shulhan Arukh which counts the bones of non-kosher meat with the kosher meat and not with the non-kosher meat with regard to annulment, opponents explain that the reason is not that the bones have no prohibition on them, but rather that the bones are devoid of any food with the power of plitah [פליטה, discharging of taste or particles]. The principle of annulment means that the taste of the prohibited substance, when it has to spread through a volume sixty times its own, loses its identity and has no power to cause another substance to be forbidden. Since the bones do not have their own taste to spread, they become additional space or volume through which the prohibited substance has to spread. If, with the bones, there is a volume sixty times the size of the forbidden substance, it is a pragmatic fact that it is annulled 60:1. That, however, does not imply at all that the bones themselves may be eaten.¹³

Protagonists argue that the Rambam's stricture must refer only to soft bones that are edible, and not to hard bones that have been purged of all food content.¹⁴ Further-

more, Rambam's claim that the exclusion of bones from the prohibition ("And of their flesh you shall not eat") refers only to the penalty of lashes, and is not acceptable because the penalty wouldn't apply in any case! When forbidden foods are used so that the eating is not done in a normal way [שלא כדרך אכילתו], there is no penalty of lashes. Eating bones is in that category. Hence, the exclusion must refer to the eating of bones.¹⁵

We learn too that bones are not considered food from the Talmud (Bezah 7a):

He who eats of the carrion of fowl that is clean, from the cluster of eggs in it, from the bones, from the sinews, from flesh that has been detached from a living animal, is ritually pure.

It is clear from this, says Rabbi Klein, that bones are not a food and are not in the same category as the flesh of the animal.¹⁶

One could argue, however, says Klein, that we do not apply to a prohibition a principle maintained in the case of tum'ah [איסור מטומאה לא ילפינין]. However, the Noda bi-Yehudah explains that in this case it is not a derivation [ילפוטא], but rather a definition [גילוי מלתא]. We find in the case of tum'ah the term akhilah [אכילה] does not apply to bones. Therefore, in all cases where the term akhilah occurs, it doesn't apply to bones.¹⁷

It would appear then, writes Klein, that if we maintain that all bones are not forbidden, that products that are made or derived from bones are not prohibited. Hence, gelatin made from bones is kosher.¹⁸

Furthermore, even according to the system of those who

say such bones are forbidden, one could argue that the several chemical transformations make them a "new substance" [נרשטן], and thereby remove the prohibition. So argues Rabbi Grodzinski:

Likewise it seems to me to decide in the case of chemical actions that break down any compound substance and extract from it another substance, as for instance, juice of the stomach that is called pepsin. Though it would certainly appear that in the case of every substance forbidden in the Torah, all that is latent in it is forbidden, as being part of the forbidden substance; nevertheless, inasmuch as it is impossible to extract the latent substance except by drying the forbidden substance and causing its taste to deteriorate, we judge it as a substance the taste of which has been marred. Although it is possible to improve the taste by chemical means, and by blending it with other substances, it does not change the situation because this is as if a new substance came here and it is therefore like the case of musk [מושק] as interpreted by Rabbenu Nissim, where the substance is deteriorated at the very outset.¹⁹

Rabbi Grodzinski refers to musk and the interpretation of Rabbenu Nissim. He also uses the term a "new substance has appeared" [פנים חדשות באו לכאן].

Concerning musk we read in Berakhot 43a:

R. Hisda said in the name of Zeira: For all incense, before smelling them one must pronounce the blessing "who creates spice trees," except in the case of musk which is an animal species, where one pronounces the blessing "who creates species of spices."

What is this musk? Rabbenu Asher explains:

Some say that musk is the sweat of an animal. More proper to say is that a certain animal has a projection [swelling] on its neck. In this swelling a bloodlike substance gathers which subsequently becomes musk.²⁰

Klein then gives the Even Shoshan Dictionary definition of musk:

Musk: 1. An animal of the mammal species, chews the cud, without horns; habitat, the mountains of Central Asia. Its size is that of a hart; the male is distinguished by its upper incisors. They project from the mouth like two long curving dagger blades (moschus). 2. A soft reddish-brown substance with a pungent odor and bitter taste. It is secreted by the male musk by special projections and gathered in a sac near the sex organs. This is used in the manufacture of spices and medical needs. The spice of musk is also mentioned in the Talmud.

Early authorities disagree about the permissibility of using musk at all. Rabbi Klein returns to R. Asher, who gives the opinion of R. Zechariah Halevy that musk is forbidden because we suspect it has blood in it. R. Asher then offers what Klein calls "the amazing opinion of Rabbenu Yonah":

It is possible to give a reason and explain this permission by claiming that the substance is mere waste matter. Though at the beginning it was blood, we take into account its present state. Just as in the case of honey, if a piece of forbidden food fell into it, though the piece melted within the honey [i.e., it was not removed] we consider it as a part of the honey and therefore permissible inasmuch as it is the nature of honey to assimilate to itself substances that fall into it. Here too, though the substance was blood originally, we follow its present state, because it has ceased to be blood; and this is true even if the flavor that it would impart improves the food in which it is used.

Klein justifies his opinion of R. Yonah's remarks as "amazing" based on the Rosh's last six words: "It appears that here, even [R. Yonah's] proof needs proof."²¹ Nevertheless, we have here "a definite opinion," says Klein, about a condition under which a forbidden food changes its status and becomes permissible. With regard to musk, though it may have originally contained blood, it has changed and is now seen as mere waste matter [פירשא בעלמא].

Rabbi Klein proceeds to clarify several terms that have been used thus far:

1. נתייבש האיסור--refers to a forbidden food that has become dry (completely dehydrated) and is then compared to a mere piece of wood [עץ בעלמא].

2. פירשא בעלמא--where a substance deteriorates to the point that it becomes unfit for consumption.

3. איסור פגום--name given to a food, to which a forbidden substance has been added which deteriorates rather than improves the taste of the food as a whole.

4. פנים חדשות--refers to a substance that was so processed that it is transformed and changed into something completely new.

How, Rabbi Klein asks, do these four terms affect our question?

1. נתייבש האיסור: According to the Shulhan Arukh, when a food becomes dehydrated to the point that it can be compared to a piece of wood, it loses its status as a forbidden food.²³

On this, the Shakh comments: "The same principle applies to the other intestines, if they were dried so they become like wood. Nevertheless, one should not proceed to do so from the start."²⁴

This principle is not restricted to kashrut. Elsewhere the Shulhan Arukh states:

There are some who say that in the case of wine that congeals on the walls of a barrel or of jars, the custom is to permit it; because one may use the vessel of gentiles after a period of twelve months during which it was not used, or after filling and emptying it [with water] and the wine congealed on it is not peeled off because inasmuch as it became dry, all the wine

in it has gone and it is now like ordinary dust.²⁵

The same law is applied to blood that has dried completely, based on a question in the responsa collection Shevut Ya'akov:

Question: On what did the people rely when they established usage to permit the drinking of the blood of a ram that has congealed and dried, a substance called backsblut?

Answer: It appears to me that the reason is inasmuch as it has become so dry that it has become like a piece of wood with no moisture left in it, there is no prohibition against it.²⁶

See too concerning the distinction made in the Arukh ha-Shulhan between hametz that has become hard [חמץ נוקשה] and hametz which has so deteriorated so as to be unfit for even a dog:

Leavened bread that has become mouldy and unfit for even a dog's consumption, or if it has been burnt in fire before the time for removing hametz and it became so scorched that it is not fit for a dog, although it is permitted to keep it during Passover, it is forbidden to eat it. This is true although it cannot be considered a food, but inasmuch as one wishes to eat it, it has been raised to that status by his intentions and, according to rabbinic enactment, it became a food because of his intentions to eat it, and is forbidden.²⁷

While this form of hametz cannot be eaten, still we see that the drying process has changed its status (i.e., it can be kept in the house during Pesah). We see here, however, a new element: intent. It is possible that an inedible substance can be considered a food if a person reveals that he considers it a food and wants to eat it. Concerning gelatin, then, we have the possible problem of intent: The bones are dried like wood and therefore become a non-food, but the understanding is that with the addition of liquids later, the gelatin will be edible.²⁸

2. פִּירְשָׁא בַּעֲלָמָא: Ordinary waste matter is not prohibited for consumption. Indeed, the Talmud clearly states that the waste of a forbidden animal is permitted:

"The ox shall surely be stoned and his flesh shall not be eaten" [Ex. 21:28]--its flesh is forbidden but its dung is permitted.²⁹

Even more explicit is the Tosafot to Hullin 116b:

The final decision is that in the making of cheese one may not use as a binder the skin [wall] of the stomach of a nevelah, but one may use [the contents of] the stomach of a nevelah or of an animal slaughtered by an idol worshipper, and of a kosher animal that sucked from a terefah animal [the milk in its stomach thus coming from a forbidden source], and how much the more so the stomach of an animal that sucked from a kosher animal. Why? Because the milk gathered in it is ordinary waste matter.

Based on this, the Rambam writes:

The stomach of a nevelah and the stomach of an unclean animal are permissible because they are like the rest of the waste matter of the body. It is therefore permitted to use the stomach of an animal slaughtered by an idol worshipper and of an unclean beast or cattle, as a binder in the making of cheese.³⁰

Similarly, the Talmud states:

Rav Huna said, the skin that comes from opposite the hind face of an ass [according to Rashi, this refers to the placenta, the afterbirth] is permissible. Why? Because it is ordinary waste matter.³¹

Based on this, the Rambam writes: "The afterbirth of an ass may be eaten because it is like the waste matter and urine which are permitted."³²

Rabbi Klein then turns to objections that might be raised:

a. In the one case, we have a substance that was always waste and was never considered forbidden, whereas

b. In the case of milk in the stomach, the objection is that the milk in the stomach itself is not forbidden until it comes into contact with the meat, in which case we allow it because of a lengthy process of deterioration.³³

c. Concerning our question, however, we're dealing with food that originally was normal, but then has deteriorated to such a degree that it can now be considered waste matter. Does it by this process lose its status of prohibition?³⁴

Klein says that the posekim don't draw these distinctions. The Talmud and Rambam, when they permit the use of milk in the stomach as a coagulant, include the milk of unclean animals that is in the stomach of either clean or unclean animals. This means that a forbidden substance is clearly transformed into a permitted substance. In the case of musk, one of the reasons given by R. Yonah to permit it is because it has become mere waste; clearly a forbidden substance (a product with blood in it) is now a permitted substance. On this basis, the Tiferet Yisrael permits the consumption of Wallachian cheese:

It seems to me that Wallachian cheese, in which a substance called lab (i.e., the milk in the stomach of calves) is used as a binder, may be eaten though the lab was already in the stomach of the calf for days. At all events, the milk itself that is used for the making of the cheese is sixty times as much as the lab. Should you object that a substance used as a binder never loses its identity, we can assume that the lab is congealed and is thus ordinary waste matter.³⁵

3. **איסור פגום**: Based on the Shulhan Arukh,³⁶ Klein writes:

A substance which when mixed with another substance impairs its taste rather than improves it is called noten ta'am lifgam [נותן טעם לפגם]. If

the substance having this effect is a forbidden substance, it does not cause the other to become forbidden. The substance which may by itself be edible and good, but when mixed with another food may spoil its taste, and it may be that the substance itself has become putrid and tastes so bad so that it is not fit for human consumption.³⁷

4. פְּנִיִּם חֲדָשׁוֹת (or דְּבַר חֲדָשׁ): Used by Rabbi Grodzinski, it refers to a substance which has gone through such a transformation that it changes into something new, and loses its former status as a forbidden food.

The earliest authorities didn't know of chemical changes, says Rabbi Klein. But they did know of changes caused by fire. Hence they ruled that the ashes of things in the Temple which required burning because they couldn't be used, could be used, since the ashes were a "new substance":

The ashes of all things which are burnt are permitted to be used, save the ashes of asherah, and the ashes of consecrated animals are always forbidden.³⁸

Another example is a change in form caused by being treated by another substance:

Rabbi Hanina ben Antigonus said: A kosher animal that sucked from a terefah animal is disqualified from being brought upon the altar. The Talmud explains it as follows:

What is the reason? Is it because it is fattened by it? In that case if he fed the animal with kernels dedicated to an idol, it should be forbidden. To this Rabbi Hanina Tritash read before Rabbi Yohanan, it is a case where he made the animal suck hot milk every morning, so that the animal could subsist on it a whole day.³⁹

The commentator Bertinoro explains:

A kosher animal that sucked from a terefah animal is disqualified that day that it sucked [i.e., for twenty-four hours]. It is disqualified for a sacrifice because it can subsist on this milk without any other food, and it does not become digested in its intestines until a full day has been completed. After it has become digested in its intestines, however, Rabbi Hanina agrees that

the animal is kosher, since everyone agrees that even an animal that has been fattened on vetches dedicated to an idol is fit for the altar.⁴⁰

The digestive process, therefore, can create a new product that is permitted.⁴¹ Klein then cites a further example from Bekhorot 7b:

If an unclean fish swallowed a clean fish [and it was recovered intact], it is permitted [to eat it, since it was not bred from the other].

Obviously, says Klein, this applies only before digestion takes place; otherwise the clean fish becomes part of the unclean fish, and is prohibited.⁴²

Another example is Rabbi Moshe Feinstein's Iggerot Moshe, on the question of whether the meat of cattle which have been fed hametz exclusively, even during Passover, can be eaten on Passover. Rabbi Feinstein says they are permissible, but adds that only the natural digestive system can cause such sweeping changes; if, however, a machine existed that acted like the natural digestive system, such a change would not be possible with it even so.⁴³

Rabbi Klein reverses Rabbi Feinstein's reasoning: If we accept--as even Rabbi Feinstein does--that the stomach of a kosher animal can take a forbidden food, digest it so it becomes part of the animal, and thus loses its prohibition and becomes kosher through the animal, then if this process were duplicated by a machine, it too should be kosher. Rabbi Feinstein's distinction between a natural and mechanical process has no halakhic support. (Klein then refers readers back to the opinion of R. Yonah about the nature of honey to assimilate to itself foreign bodies that fall into it.)⁴⁴

Indeed, supporting Rabbi Klein on this point is Rabbi David Hoffman:

And consider "Zometoze" which has come into being by way of chemical processes, has gone through a great change so that a "new substance" has come here. My son Michael . . . who is a doctor, told me that the meat has changed in a way similar to the change taking place in the stomach by means of digestion.⁴⁵

Rabbi Yehezkel Abramsky disputes this and claims that scientifically we have here an abstraction and not a transformation; there is, in other words, nothing "new."⁴⁶

Scientifically, replies Rabbi Klein, Abramsky is correct.

But even if he is correct scientifically, he is going against the halakhic claim of Rabbi Grodzinski:

Nevertheless, since it is impossible to bring out this potential except through the substance being dried, and its forbidden taste being marred, it is subject to the rules of marred foods.⁴⁷

Klein then returns to his original questions:

As to the status of bones of non-kosher animals that have been thoroughly cleaned and all flesh and marrow removed, such bones are not forbidden for eating. If gelatin is made of such bones, it is strictly kosher [כשר למהדרין].⁴⁸ But the main support for the heter is that we have a "new product" [פנים חדשות or דבר חדש]; that both by pragmatic observation and chemical analysis, the end product is different.⁴⁹

Some claim, however, as does Rabbi Abramsky, that the collagen from which gelatin is made is not a "new substance"; that certain ingredients have been removed, leaving intact other elements that were there all along!

This, says Rabbi Klein, is not scientifically correct. A chemical change does take place.⁵⁰ And even if there

wasn't enough chemical change, clearly there is a significant enough change pragmatically. And, as Abramsky himself admits, there are enough other factors (such as the bones themselves being permitted) to allow the collagen.⁵¹ We furthermore have the opinion of Rabbi Grodzinski that when an object is treated with powerful chemicals in order to remove part of it, that which remains is permitted because of noten ta'am lifgam.⁵²

The London Bet Din, in a decision reached by Rabbi Aryeh Leib Grossnass, arrived at the same conclusion concerning the use of skins for gelatin.⁵³

Our problem, says Rabbi Klein, is when we speak of gelatin made from meat and fat. Halakhically, it is argued that a forbidden substance is always forbidden, no matter what happens. Psychologically and even logically, there is justified reluctance to changing a forbidden substance into a permitted substance. Many would mock the halakhah and the rabbis for juggling such a change. And yet, says Klein, we must be honest and responsible, in order to lessen the "defamation of God's name" [חילול השם].⁵⁴ In response to the argument that "whatever comes from a forbidden substance is itself forbidden," a number of authorities maintain that when a substance is completely dehydrated, it loses its status of forbidden substance.⁵⁵ The same opinion is voiced in Tiferet Zevi.⁵⁶

Rabbi Klein concludes: "It is therefore recommended that we allow the use of all gelatins."⁵⁷

CHAPTER TEN

GELATIN: ANALYSIS

Basic to any discussion on the edibility of gelatin is the need to agree on whether or not bones may be eaten at all. On this, there is a basic agreement that bones in and of themselves may be eaten; they are not considered meat. The reason they may be eaten is that they are "unfit for food" and therefore are not subject to the prohibitions concerning "edible" food products.

With nearly all authorities agreeing on the above, we come to the heart of the dispute between Orthodox decisors and their counterparts in the Conservative movement: May bones from non-kosher animals be eaten? The Conservative authorities, as we have seen, say yes; most Orthodox figures say no. Let us turn now to an analysis of whether or not, and how well, the Conservative responsum on gelatin answers the traditional arguments:

1. Bones from non-kosher animals are Toraitically forbidden for eating: There is no Toraitic prohibition against eating bones of non-kosher animals. Indeed, we have exactly the opposite, according to Rashi. Commenting on the verse, "Of their flesh you shall not eat, and their carrion you shall not touch, for they are unclean to you" (Lev. 11:8), Rashi writes: "With respect to their flesh one is placed

under a prohibition to eat, but not in respect to the bones, sinews, horns and claws." There are no other references in the Torah to any prohibition concerning bones, neither implicitly nor explicitly. The argument cited by many traditionalists is further refuted by Hokhmat Adam (52:1) and the Shulhan Arukh (Yoreh De'ah 87:10), both of which are cited by Rabbi Klein in his responsum.

2. For purposes of annulment, non-kosher bones are counted with kosher ingredients because of their volume, not because they are themselves permitted for eating: As Rabbi Klein shows in his citation from Rabbi Glickman, this argument is incorrect. The dilemma for traditional sources is this: If bones are forbidden, how can they be counted with the kosher ingredients when an accidental mixture occurs? The source for the prohibition is the Rambam, who writes that "even though they are forbidden, one [who eats them] is exempt" (Rambam 4:18). Arguing that the exemption is from the punishment of lashes and not from the eating, supporters of this view explain that bones are forbidden, and that the reason for counting them with the kosher food is because bones neither impart nor absorb anything in the mixture; they therefore represent nothing more than volume, and thus are counted as part of the 60:1 ratio of permitted (non-forbidden) space to prohibited.

As Rabbi Glickman shows, however, the prohibition of bones applies only when they are eaten in "the normal way." Gelatin, as a chemically-altered product of bones, is not "the normal way" of eating bones, and the prohibition there-

fore does not apply. In addition, the Rambam's ruling and the subsequent interpreters of the Rambam go against the simple understanding of the halakhah as expressed by the Taz (to Yoreh De'ah 99:1): The reason for the halakhah concerning annulment is because "bones are not food, and therefore the laws concerning food do not apply to them." If bones are not food, and consequently are not subject to prohibitions, then it follows they are permitted.

3. The Rema and Shakh, who seem to allow eating skin and bones when dried like wood, are permitting only the placing of milk with them: It is indeed possible to understand the Rema's comment (Yoreh De'ah 87:10) in this way. However, numerous other authorities have derived a different meaning. Two of the leading authorities--Abraham Danzig (in his Hokhmat Adam 52:1) and Hayyim Grodzinski--have understood the Rema's comment to allow eating.

4. Even if we accept the Rema/Shakh, the Shakh says that a priori one shouldn't do so: The Shakh's qualification is a personal one; no similar restriction is to be found in the Rema's writings at all.

5. Skin and bones, when dried like wood, become inedible and thus not prohibited; gelatin, however, is edible and therefore the prohibition returns: As Rabbi Grodzinski correctly argues, once a product has lost its status of forbidden (as, for example, with skin and bones that have been dehydrated and chemically treated so as to be like wood), the new status is permanent, regardless how the new product is later changed.

6. Bones are nevelah: The Mishneh Torah (4:19) and Talmud (Bekhorot 7b), as well as the Tosafot to Hullin 116b, all argue against this point: Nevelah does not apply to the non-flesh parts of the carcass. The bones, skins, stomach, etc., are considered "mere waste" [פִּירְשָׁא וְעֵלְמָא].

7. Bones may themselves be permitted, but the homer in them is not: The analogy here is to milk and the milk serum in it. Rabbi Klein does not address this point, probably for the reason that it so seldom is presented and discussed. We can discount it, nevertheless, by arguing that the analogy to bones is incorrect. Milk serum is a separate part of the milk itself; gelatin is not, however, a separate part of the bones themselves, but rather the end result of a complete chemical transformation whereby the bones are congealed into gelatin.

In addition, with the exception of Rabbi Grodzinski, none of the major posekim seem to be aware of the argument that through the chemical transformation, a "new substance" is created. Grodzinski's use of this argument has been consistently overlooked.

It would seem therefore that the halakhic argument presented by Rabbi Isaac Klein on behalf of the Rabbinical Assembly is a valid one. Clearly there are two tendencies within the sources: One permits bones of all kinds based on the evidence we have already presented. The other disapproves, based on the Rambam's comment (4:18). The confusion is largely the result of our inability to know exactly what Maimonides was trying to say:

1. Is the eating of bones forbidden, but one is exempt from this prohibition?

2. Or is the eating of bones forbidden, but one who eats them is exempt from the punishment of lashes?

Accepting the first interpretation, it is impossible to disagree with the conclusions reached by Rabbi Klein and those he cites in support of his position.

Accepting the second interpretation, as indeed many authorities do, it is impossible to accept Rabbi Klein's conclusions at all. What is never answered, however, is why the Rambam would prohibit the eating of bones and similar products which he admits are "unfit for eating." The Rambam himself gives no source for his ruling; we have alluded in our earlier chapters to several of the attempts to explain his position. Some authorities, who do not accept the Rambam's stricture, explain that he was referring only to the eating of soft bones, which are like meat. However, nowhere does the Rambam himself say this. We can only guess as to the Rambam's intent. Until the undisputed meaning of his words is discovered, a basic disagreement will continue on issues such as gelatin which depend on his ruling and understanding of the edibility and nature of bones.

The Conservative responsum on bones is halakhically sound, in our opinion, and in fact, a very small number of Orthodox authorities shyly accept its conclusions as well.¹

One objection of a non-halakhic nature still remains: Psychologically, how can we explain that bones from a non-kosher animal can become permitted? Not understanding that

bones are themselves neither kosher nor non-kosher, and not having the patience or insight to follow the halakhic deliberation, the impression of laymen may well be that the rabbis have manipulated the law. For this reason alone, some Orthodox authorities would be wary of accepting Rabbi Klein's conclusions, however valid they might otherwise be legally. Rabbi Klein addresses this concern in the conclusion to his responsum:

And yet a sense of responsibility gives us no choice but to follow the halakhic conclusion. Furthermore, the fear for the hilul hashem that many heksheirim entail tempts us to remove as many articles from need of a hekhsher as is possible to lessen the area of such Hilul Hashem, Vedai lehakima.²

CHAPTER ELEVEN

CONCLUSION

Having discussed three of the most controversial issues separating Orthodox and Conservative Judaism in the area of kashrut, we will now attempt to draw more general conclusions about the validity of the Rabbinical Assembly's use of halakhah.

Based on the three issues we have examined--cheese, wine and gelatin--the following three points can be made:

1. Although Law Committee responsa are presented as halakhic documents, the halakhic arguments themselves are not foolproof. This became particularly clear in our discussion of non-Jewish wine, where the halakhic assumptions made by Rabbi Silverman were simply incorrect. However, the responsa on cheese and gelatin, both of which were written by Rabbi Isaac Klein, appeared to be halakhically and methodologically sound. It is clear, therefore, based on our very limited sampling of the issues discussed by the Law Committee, that its decisions cannot be accepted on their face value; rather, a careful reading and analysis of the responsa themselves are necessary. If laymen are unable to perform this task, then it remains the responsibility of the mara d'atra, the individual rabbi, to ultimately decide the validity of a Law Committee decision.

2. The halakhah is only one of several factors employed by the Law Committee in reaching a legal decision. This should come as no surprise, inasmuch as we have already seen (in Chapter One) that sociological, ethical and cultural considerations are valid parts of the halakhic process, according to most Conservative authorities. This was pre-eminently clear in Rabbi Silverman's responsum on gentile wine. Despite insufficient legal justification (though this is not admitted by Rabbi Silverman), sociological considerations were used to permit all such wines for drinking; indeed, sociological and cultural factors were then used to restrict the use of these same wines for Jewish ritual purposes. As we showed, however, the halakhic arguments for prohibiting such wines are themselves sociological, in that they are not based on the content of the wine itself but rather on the fear of social intercourse with gentiles. Furthermore, we showed that historically, Orthodox halakhists have used similar arguments to permit and to prohibit numerous products in various situations. Rabbi Isaac Klein, in an address to the Rabbinical Assembly in 1958, cited as an example the changing Orthodox approach to autopsies. When the issue was first raised in the eighteenth century, the famous Rabbi Ezekiel Landau of Prague severely restricted the conditions under which autopsies could be performed; the argument of pikuah nefesh was only applicable, he said, when the autopsy would have immediate and known benefit for another person who had the same or a similar disease. Two centuries later, however, in an agreement struck between Hadassah Hospital and Israel Chief Rabbi Ben Zion Uziel, autopsies were per-

mitted in almost all instances (e.g., for classroom study even when no immediate benefit was expected). It was not autopsies themselves which had changed, Rabbi Klein said, but society itself.¹

"The Orthodox rabbis," Klein wrote, "will deny that their change in view was due to a change in the social situation. They will say that 'an opportunity was left to me by our fathers to distinguish myself' [מקום הניחו לי אבותי] [להתגדר בו]. There was no outside change that made them get this new view . . . They would deny that there was any development. If there was, it was unintentional and it was an unconscious process." By contrast, concludes Klein, "With us [the Conservative rabbinate] it is an intentional and a conscious process."²

3. "Customs of our fathers" [מנהג אבותינו] are not necessarily for all times. In truth, the reasons for prohibiting non-Jewish cheese and wine are ultimately the same: minhag avoteinu. The strictures on cheese and wine are clearly not based on their ingredients (which halakhically are edible as kosher foods), but on the fact that non-Jews make them. Food and drink manufactured by non-Jews have long been carefully scrutinized and, in most cases, prohibited because of the fact that in ancient times non-Jews were idolaters. Today, when non-Jews are clearly monotheists (according to most posekim themselves), the prohibitions on their food and drink still stand because of minhag avoteinu.

The argument of minhag avoteinu has similarly been used by fundamentalists to attack Conservative positions allowing

greater roles for women,³ for the abolition of the second day of festivals,⁴ and for permitting weddings during the Three Weeks (before Tishah be-Av),⁵ as well as numerous other issues. In every case, the Law Committee has decided that when a minhag can no longer be justified ethically or morally, it cannot be the determining factor for enacting a prohibition. In this regard, the Law Committee has solid halakhic support. While recognizing the significance of minhag in the deciding of Jewish law, post-Talmudic authorities nevertheless conceded that there were times when even firmly-held and widely-established minhagim could not be accepted or continued:

(a) When the custom was founded on error. In many places, the custom arose of counting minors in the minyan for prayer. The Tosafot to Berakhot 48a censured those who maintained this custom because it was "a nonsensical custom." In some places, it was the custom not to recite birkat ha-mazon in the home of a gentile. Mordecai Jaffe termed this "a ridiculous custom" based on a complete misunderstanding of a Talmudic passage dealing with another issue entirely.⁶ The Tashbez concludes that the public cannot be forced to uphold a custom born out of ignorance.⁷

(b) When the custom was unreasonable or illogical. In many places, the custom arose of women not doing any work on the Saturday night following Shabbat, nor all day Monday and Thursday (Torah-reading days). The Talmud itself rejects such a custom.⁸ In the same passage, the custom of the fisherman in Tiberias not to fish during hol ha-moed was disavowed because of the hardship it placed on Jews getting

ready for the festival meal on the last night of the holiday.

(c) When the custom was bad. The Tosafot to Baba Batra 2a writes that "it may be concluded that some customs are not to be relied upon, even though it has been said, 'all in accordance with custom.'"

(d) When a custom is contrary to fundamental rules and principles of equity and justice. The Rosh ruled that verbal agreements that were not accompanied by a written document were unfair, and the custom was to be condemned.⁹ In another source, we read about a tax custom which did not properly distinguish between the rich and the poor. Even though it was a long-standing custom, the Pithei Teshuvah cites Rabbi Meir of Rothenburg to the effect that the custom must be changed, inasmuch as it is an injustice and acts against the "spirit of the halakhah."¹⁰

The inacceptability of minhag alone as a reason to prohibit therefore has its justification in the history of Jewish law itself. However valid the prohibitions of non-kosher cheese and wine were at the time of their enactment, the reasons for the prohibitions are no longer valid. To continue them, as most Orthodox authorities insist we do, would do nothing more than breed contempt for the halakhah within a significant part of Jewry. (As for gelatin, it is, as we have seen, a more complex issue.)

In addition to the three issues we have specifically examined, a broader reading of other issues discussed by the Rabbinical Assembly (see Appendix B) will suggest these conclusions as well about law-making in the Conservative movement

in general:

1. Sharp parallels exist between Conservative writers today and the Reformers of the nineteenth and early-twentieth centuries. Dr. Jakob Petuchowski has already suggested that, in many ways, American Conservative Judaism--and not American Reform--is the heir to German Reform Judaism. "Like the German Liberals," writes Petuchowski, "American Conservatives seek justification for necessary changes in the sources of Tradition. (American Reform Judaism has seldom felt the need to justify itself vis a vis and through Tradition.)"¹¹ Early Reform Judaism argued for most of its initial changes by citing the halakhah; see for example the early responsa which eliminated the dietary laws,¹² allowed the playing of organ music in the synagogue,¹³ and reduced or eliminated Hebrew as the language of prayer in favor of German or English.¹⁴

But we can draw an additional parallel as well between American Reform and American Conservative Judaism. Like Reform, when Conservative Judaism has been unable or unwilling to justify itself halakhically, changes have been made de facto. As one scholar has noted:

Many of the major changes . . . (that the Conservative) movement has instituted, indeed could not be justified in a traditional halakhic manner and have therefore been made de facto rather than de jure. A striking example is the mixed seating of men and women in the synagogue, perhaps the main feature distinguishing Conservative synagogue practice from Orthodoxy. No official responsum has ever been issued to justify this move . . . The clear consensus of all Talmudic and post-Talmudic sources requires separate seating.¹⁵

There remain numerous other areas where sharp breaks with tradition have occurred without the formal issuance of

a halakhic decision: (1) The laws of mikveh and niddah have all but disappeared from Conservative Jewish practice, with little (or no) rabbinic protest. (2) Conservative rabbis, while strictly requiring milah and mikveh for all conversions directed under Conservative auspices, nevertheless accept converts from the Reform movement, where such requirements are honored more in the breach than in fact. This de facto recognition of non-halakhic conversions has never, to my knowledge, been the subject of a Law Committee decision. (3) The laws of mamzerut, while never disavowed legally by Conservative halakhists, are blatantly ignored by most Conservative rabbis. (4) Despite Conservative Judaism's recognition of the laws of gittin (Jewish divorce), a significant percentage of Conservative rabbis remarry Jews who have been unable to obtain a get; no punitive action has been taken against these rabbis, nor in fact has the issue been discussed.¹⁶

Clearly there are parallels between Reform and Conservative Judaism concerning the breaking point of halakhah. But unlike Reform Judaism, which today openly flaunts its independence from the restrictions of Jewish law, Conservative Judaism maintains that all change must flow from the halakhic process; at times, however, when such changes cannot flow or when public indifference is such that a ruling would be widely ignored (e.g., requiring mikveh and observance of the laws of niddah), Conservative Judaism quietly allows certain customs to fade away.

There are, of course, parallels to this in Orthodox Judaism as well. Noone today, not even the most pious Jew,

can observe all 613 of the mitzvot; indeed, there are hundreds more as well that are physically impossible to perform. Unlike Conservative Judaism, however, Orthodoxy argues that such laws are only temporarily in abeyance, and that with the coming of the Messiah and the restoration of the Temple, all such laws will be restored.

2. Conservative Judaism has, to a considerable extent, pre-empted the "liberal" wing of Orthodox Judaism. Throughout history there has been a liberal tendency within the halakhah. Throughout the Shulhan Arukh, and particularly in the comments by Isserles, we have repeated references to "the stringent authorities" and "the lenient authorities." Particularly in the area of kashrut, strict and relaxed approaches to the law were ever-present. A controversy is recorded, for example, between the Shakh and the Taz as to the kashrut of a chicken: One, following the strictest understanding of the law, declared the animal terefah; the other, recognizing the significant economic loss the presenter of the chicken would face if the animal was declared unfit, found room within the law to declare the chicken kasher.¹⁷ Even in the issues discussed in this thesis, we saw evidence of historical differences in opinion. The Hokhmat Adam and Rabbi Hayyim Grodzinski, two of the leading halakhic authorities in Jewish history, found room to permit the use of bones of non-kosher animals under special circumstances. Other authorities publicly disagreed, and yet the stature of Danzig and Grodzinski was in no way lessened by their more liberal opinions. Despite the Arukh ha-Shulhan's inability to find any good reason to prohibit cheese

made by non-Jews--and his admission that such cheeses were eaten in his own province--the authority of Rabbi Epstein was never questioned by most later scholars.

Today, however, we are living in a time when Orthodox rabbis who espouse lenient opinions are systematically condemned from within the upper echelons of Orthodoxy itself. A case in point is the Langer decision in Israel, where Chief Rabbi Shlomo Goren ruled that the stigma of mamzerut did not apply to a certain young couple which wished to be married.¹⁸ Not only was Goren's opinion roundly condemned, but Goren's stature--even as the Chief Rabbi of Israel--has steadily declined largely as a result of the decision, which many felt to be "too lenient." There is in Orthodoxy today little room for concessions to modernity, which are seen as open threats to the authority of "Torah-true" Judaism. Despite substantial halakhic support to the contrary, Sephardic Chief Rabbi Ovadiah Yosef recently ruled that absolutely no changes were allowed in any prayers in the siddur; this statement stands in sharp contrast to the very existence and history of the siddur itself, and in its variations from community to community (even within Israel itself).¹⁹

So too, as S. Zalman Abramov has shown in his book on religion and state in modern Israel, Orthodoxy has increasingly isolated itself intentionally in an attempt to avoid making the necessary reforms and changes which might be seen as concessions to secularism. Those within Orthodoxy who feel that halakhah can adapt to the new realities, and who feel that halakhah must deal with the pressing social issues of

the day and not just whether a toaster can be immersed in a mikveh or whether paper cups can be used for kiddush, have been systematically excluded from having any input in the upper echelons of Orthodoxy both in America and in Israel. Increasingly, American Orthodox rabbis, buoyed by the strengthened presence of Israeli Orthodoxy and rabbinical power, have deferred in their role as mara d'atra to the yeshivah heads in New York and Israel.²⁰

Some years ago, a "liberal Orthodox" congregation in Cincinnati decided to institute mixed seating in the sanctuary. When several authorities attempted to explain the traditional prohibition--and, in some cases, to question its halakhic justification--Rabbi Joseph Soloveitchik responded:

No rabbi, however great in scholarship or moral integrity, has the authority to endorse, legalize, or even apologetically explain this basic deviation. Any rabbi or scholar who attempts to sanction the desecrated synagogue casts ipso facto a doubt on his own moral right to function as a teacher or spiritual leader in the traditional sense of the word.²¹

In other words, those rabbis--even Orthodox rabbis--who do not accept traditional Judaism as is, and who attempt to liberalize it (even within the halakhah) or to even "apologetically explain" such changes, have no place in Orthodox Judaism today.

It seems to us that, in many ways therefore, Conservative Judaism, with its commitment to Jewish law, has today pre-empted what traditionally was the "liberal" branch of Orthodox Judaism, that branch which was committed to halakhah but was particularly alert to the realities and needs of modern life. So it is that today, it is the Conservative movement

alone which is grappling seriously with the agunah problem; every suggestion it has made, including suggestions originally put forward by Orthodox authorities, has been flatly rejected by the leaders of Orthodoxy.²² Orthodoxy's own response has been to wring its hands.²³ So too, despite the Conservative movement's halakhically-sound arguments for the kashrut of certain fish, arguments which have been endorsed by several Orthodox figures as well,²⁴ the leading Orthodox figures in America and Israel reject the arguments. They insist that the criteria for the kashrut of a fish are broader than those set forth in the Torah (which have been the criteria, satisfactory to all earlier posekim, up to the present day)! Using the new criteria, even fish which have traditionally been kosher are now considered terefah or questionable (e.g., tuna).²⁵ This is the mood of modern-day Orthodoxy which, while claiming to be the sole arbiter of the Jewish law, restricts most options and applies only the narrowest definitions. Conservative Judaism has clearly filled an important gap between Orthodoxy, with its rigid stand against change, and Reform, with its willingness to change without careful consideration of the halakhah at all.

3. Conservative Judaism, in its application of halakhic principles, is inconsistent. A careful reading of the many responsa in kashrut will show, for example, that Conservative authorities accept as basic principles the following: (a) "a new substance" [דבר חדש], when a product has been so chemically changed that it bears no resemblance to its former self; (b) the subjective nature of minhag avoteinu as a

reason to prohibit; (c) the argument of diversity within halakhah. And yet, despite the willingness to introduce and argue these principles on selected issues, there is a hesitation or unwillingness to extend them to other issues. For example, the Law Committee, without issuing responsa to argue its point of view, still prohibits chemical products such as mono- and di-glycerides because they may be made from non-kosher animal fat. These products would appear to be "new substances" because of their chemical treatment. Why has this argument not been considered for glycerides as it was, for example, with gelatin and cheese.²⁶ Similarly, sodium caseinate is still regarded as a milk product because it is made from milk protein. Shouldn't the chemical treatment affect sodium caseinate (thus making it pareve) in the same way that chemical treatment affects bones (making them pareve)?²⁷

Of even greater consequence is the attitude towards legumes. Legumes are prohibited by Ashkenazim during Pesah for the sole reason of minhag avoteinu. All authorities agree they are not hametz and, in fact, Sephardic authorities permit them to be eaten (by Sephardic Jews) during Passover.²⁸ Conservative rabbis honor the traditional Ashkenazi stricture against legumes, even though the original reason--that legumes were at one time used in the making of bread--clearly no longer applies. When I personally questioned a prominent Conservative rabbi about this, he replied that the prohibition still stood because of minhag avoteinu and kelal Yisrael. When I responded that both of these reasons had been discarded

when the Law Committee permitted gentile cheese and wine, he was unmoved.²⁹ (Interestingly, the argument for permitting legumes is even more compelling than for cheese, wine or gelatin. There are various reasons cited for prohibiting these foods, and the prohibitions are nearly universal. With legumes, however, everyone agrees that they are not hametz and that the only reason to prohibit is minhag avoteinu.)

Clearly there is an inconsistency (or failure of nerve) with the result that precedents which have been the products of earlier decisions of the Law Committee may not be automatically advanced in deciding or speculating on later issues. This is a weakness of the Law Committee and of the Conservative approach to halakhah. It suggests a lack of conviction in the Conservative movement as to its approach in deciding issues of law.

In conclusion: The Conservative movement's contributions to Jewish law, particularly in the area of kashrut, have been significant by their introducing significant and needed reforms. The numerous responsa are basically responsible and responsive, though they openly admit considerations which traditionally have been employed unconsciously. They carry the endorsement of the many distinguished rabbis in the Rabbinical Assembly, and yet the decisions have not been widely publicized nor forcefully promoted even within many Conservative synagogues. They represent, we would suggest, important first steps in the recognition that Jewish law, if it is to survive as a potent force in the lives of our people in this and future centuries, must be sensitive to the realities of the modern world.

TRANSLITERATIONS . . .

All transliterations and spellings of Hebrew words, works and authors are based on the system of transliteration found in the Encyclopaedia Judaica [Jerusalem, 1971] with the exception that the letter ן is indicated by the letter "h".

ABBREVIATIONS . . .

Abbreviations used in the Notes include the following:

AZ - Avodah Zarah

FF - Forbidden Foods (Ma'akhlot Asurot)

OH - Orah Hayyim

YD - Yoreh De'ah

B. - Talmud Bavli

P. - Talmud Yerushalmi

NOTES

CHAPTER ONE

1. J. David Bleich, Contemporary Halakhic Problems (New York: KTAV, 1977), p. 78.
2. Robert Gordis, Understanding Conservative Judaism (New York: Rabbinical Assembly, 1978), p. 5.
3. The Condition of Jewish Belief (New York: Macmillan, 1966), p. 124.
4. Ibid., p. 110.
5. J. David Bleich, "The Halachic Process," Keeping Posted, March 1979, p. 4.
6. Joseph B. Soloveitchik, "Ish ha-Halakhah," Talpiyyot I:1, p. 688.
7. Bleich, "The Halachic Process," p. 5.
8. Emanuel Rackman, One Man's Judaism (New York: Philosophical Library, 1970), p. 3.
9. Bleich, Contemporary, p. 83.
10. Solomon Freehof, Reform Responsa (New York: KTAV, 1960), pp. 5-7.
11. Seymour Siegel, "Conservative Judaism and Jewish Law," Keeping Posted, March 1979, p. 7.
12. Elliot N. Dorff, Conservative Judaism: Our Ancestors to our Descendants (New York: United Synagogue of America, 1977), p. 160.
13. Condition, pp. 223-4.
14. Ibid., p. 224.
15. Ibid., p. 146.
16. Boaz Cohen, Law and Tradition in Judaism (New York: KTAV, 1959), p. 73.

17. Ibid., p. 73.
18. Ibid., p. 74.
19. Ibid., p. 76.
20. Ibid., p. 77.
21. Ibid., pp. 80-81.
22. Ibid., pp. 83-85.
23. Ibid., pp. 85-86.
24. Ibid., pp. 86-87.
25. Ibid., p. 88.
26. Ibid., p. 89.
27. Dorff, p. 158.
28. The first responsum, originally published in 1918, deals with the necessity of having kosher kitchens in military installations. The second responsum, published a year later, determines the status of Pyrex dishes with regard to meat and milk foods. Both responsa were written by G. Deutsch and later reprinted in Jacob Schwarz, ed., Responsa of the CCAR (New York: UAHC, 1954).
29. David Philipson, The Reform Movement in Judaism (New York: Macmillan, 1931; reprint ed., New York: KTAV, 1967), p. 356.

CHAPTER TWO

1. Enziklopedyah Talmudit, s.v. מִשְׁנָה לְרַמְבָּם; based on Mishnah AZ 29b and Rambam FF 3:15.
2. Rambam FF 3:13.
3. Tur, YD 115.
4. Shulhan Arukh, YD 115:2.
5. Arukh ha-Shulhan, YD 115:17.
6. Isaac Klein, Responsa and Halakhic Studies (New York: KTAV, 1975), pp. 47-48.
7. Webster's Seventh New Collegiate Dictionary, s.v. "Rennet."

8. Klein, p. 52.
9. P. Shabbat 1:4, 3c.
10. Rambam FF 3:15.
11. Semag לאו"ל 132.
12. Saul Lieberman, Ha-Yerushalmi ki-Feshuto (Jerusalem: Darom, 1934), I:1, p. 41.
13. Grossman, ed., Shabbat, pt. 1, sec. 338.
14. Cited in Enziklopedyah Talmudit 5:84, note 2: pt. 3, sec. 10.
15. Translation by Isaac Klein, p. 44.
16. Rashi, AZ 35a, s.v. אלמא איכא.
17. P. AZ 2:7; see especially Pnei Moshe: " . . . and one doesn't reveal the reasons for a Toraitic enactment to a minor." A fuller discussion of this point, which is not particularly germane to our inquiry, can be found in Ridbaz to P. AZ, chap. 2, pt. 7, and basically repeated in Tosafot AZ 35a, s.v. מאי.
18. Tosafot AZ 34b, s.v. מפני.
19. Following the Rambam, see Meiri, AZ 35b, s.v. החמישי. Cf. Rif to Hullin, end of chap. 8; Rambam, Perush la-Mishnayyot, AZ 29b, s.v. אמר ר' יהודה; Haggahot Maimoniyyot to Rambam FF 3:13; Teshuvot Maimoniyyot, FF, sec. 8; and Shulhan Arukh, YD 115:2.
20. Enziklopedyah Talmudit 6:560.
21. Ibid., s.v. ביטול אסורים.
22. AZ 35a.
23. Magen Avraham, OH 442:9. See too Sifte'i Da'at, YD 7:30.
24. Rashba to Hullin 117a, s.v. מחניתין. Cf. note 21, above.
25. Radbaz to Rambam FF 9:16.
26. Mordekhai, Hullin, 8:733.
27. Teshuvot Ridbaz, pt. 1, sec. 487, cited in Magen Avraham OH 442.
28. Rema, Shulhan Arukh, YD 7:11. See too Mordekhai to Hullin, 8:733.
29. Meiri to AZ 35a, s.v. הרי.

30. Peri Megadim, cited in Sifte'i Da'at 103:14. See too Teshuvot ha-Rema 54.
31. Rambam FF 9:16.
32. Tosafot, AZ 35a, s.v. אין; translation by Isaac Klein, p. 46.
33. Tosafot, AZ 35a, s.v. אין.
34. Torat ha-Bayit ha-Arukh, 3:6; Hiddushei ha-Ramban, AZ 35a, s.v. אין; Meiri, AZ 35a, s.v. אין.
35. Meiri, AZ 35a, s.v. אין; Darkhei Moshe to Tur, YD 7:8; Rambam FF 9:16. See especially Shulhan Arukh, YD 7:11: "If one curdles cheese in the stomach lining of a kosher animal and there is a taste of meat [imparted], [the cheese] is forbidden; if not, it is permitted."
36. Translation by Isaac Klein, p. 44.
37. Shulhan Arukh, YD 7:11. See too Sifte'i Kohen, YD 7:30; and Teshuvot Hatam Sofer, YD 79.
38. Meiri, AZ 35a, s.v. אין. See too Torat ha-Bayit ha-Arukh, 3:6; Ramban to AZ 35a; Sefer ha-Eshkol 3:31; Rambam FF 3:13 and 9:16; and Kesef Mishneh to Rambam FF 9:16.
39. Rambam FF 9:16.
40. Beit Yosef, YD 7, s.v. אין.
41. Tosafot Rid, AZ 35a, cited in Enziklopedyah Talmudit 6:563, n. 35.
42. Tosafot Rid, AZ 35a; see n. 41, above.
43. Meiri, AZ 35a, s.v. אין; Hiddushei ha-Ramban, AZ 35a, s.v. אין; Hassagot ha-Rabad to Rambam FF 9:16; and Lehem Mishneh to Rambam FF 9:16. See also n. 19, above.
44. This comment is to be found incorrectly placed on AZ 34b. See too Tosafot AZ 35a, s.v. אין.
45. Rambam FF 3:13.
46. Ibid.
47. Ramban, AZ 35a, s.v. אין.
48. Iggerot Moshe, sec. 47.
49. Ha-Ma'or ha-Gadol to Rif, Hullin, chap. 8 (end), s.v. אין. See too Maggid Mishneh to Rambam FF 3:13, in the name of the Ramban and Rashba. See too Meiri, AZ 35a,

s.v. גבינות.

50. S. Wagschal, A Practical Guide to Kashruth (Gateshead, England: Gateshead Foundation for Torah, 1972), pp. 49-52.
51. AZ 35a and Rashi, s.v. יבש. See too Meiri, AZ 35a, s.v. הר"י.
52. AZ 35a. A number of commentators and texts read R. Jeremiah instead of R. Hanina: Meiri, Tosafot, Ramban and Ritba. See Meiri, AZ 35a, s.v. הר"י; Maggid Mishneh to Rambam FF 7:13; Torat ha-Bayit ha-Kazer, 3:6; Teshuvot Rashba, pt. 4, sec. 106; and Tur, YD 115, s.v. גבינות.
53. Rashi, AZ 35a, s.v. יבש.
54. Tosafot AZ 35a, s.v. לפי.
55. Ramban, AZ 35a, s.v. אלא א"ר ירמיה.
56. P. AZ 2:8; Ramban, AZ 35a, s.v. אלא א"ר ירמיה; Tosafot AZ 35a, s.v. לפי; Mareh ha-Panim to P. AZ 2:8, s.v. הר"י; Meiri, AZ 35a, s.v. ויעמיד.
57. AZ 35b.
58. Teshuvot Maharah Or Zaru'a, sec. 10.
59. AZ 35b.
60. Ibid.
61. Teshuvot ha-Rashba, pt. 4, sec. 100.
62. AZ 35b.
63. Meiri, AZ 35b, s.v. מתוך.
64. Ibid.
65. Semag, לאוין 132.
66. Bezah 5a.
67. Tosafot Bezah 5a, s.v. כל. See too Semag, לאוין 132 and Semak 223. See also Teshuvot ha-Rashba, pt. 4, sec. 106.
68. Rambam, Mamrim 1:2.
69. Mishnah Eduyyot 1:5.
70. AZ 36a.
71. Rambam, Mamrim 5:3.

72. Tosafot AZ 36a, s.v. והתנן.
73. P. Shabbat 1:4.
74. Rambam, Mamrim 2:3.
75. Tosafot AZ 36a, s.v. והתנן.
76. Ibid.
77. Ibid.
78. Rambam, Mamrim 2:4.
79. Teshuvot Divrei Malkhiel, pt. 1, sec. 28.
80. Rabad in Haggahot to Rambam, Mamrim 2:2. See also Meiri to Bezah 5a.
81. Ran to Sanhedrin 59b; Yam Shel Shelomo, Bezah, pt. 1, sec. 9.
82. Arzot ha-Hayyim to Malbim 9:41.
83. Radbaz to Rambam, Mamrim 2:2.
84. Tosafot AZ 35a, s.v. אין; Rosh, AZ, chap. 4, sec. 7; Magen Avraham, AZ, 468:1; Peri Hadash, YD 116:2.
85. Semak 223, in the name of Rabbenu Ya'akov.
86. Rambam FF 3:14, and Shulhan Arukh, YD 115:2.
87. Maggid Mishneh to Rambam FF 3:14, in the name of the aharonim; Beit Yosef cites the Rashba as deciding that, according to Rabbenu Tam, the cheeses were forbidden because of "exposed vats."
88. Tosafot AZ 35a, s.v. אין.
89. Mordekhai to Hullin, sec. 733.
90. Bi'ur ha-Gra to Shulhan Arukh, YD 115:13.
91. Beit Yosef, YD 116, s.v. גבינות.
92. Ibid.
93. Tosafot Hullin 116a, s.v. המעמיד.
94. Meiri, AZ 35b, s.v. מתוך.
95. Arukh ha-Shulhan 115:17.
96. Tosafot AZ 35a, in the name of גדולי נרונא; Beit Yosef, YD 115, in the name of בני איטליא.

97. Meiri, AZ 35b, s.v. החמישי.
98. Rema, Shulhan Arukh, YD 115:2. See too Beit Yosef, YD 115, s.v. תנונ'ל, where he protests those places which have issued a heter.

CHAPTER THREE

1. Klein, pp. 43-58.
2. The first two sources are quoted in full above, on p. 16 and p. 23. Hullin 116b is quoted below, p. 41.
3. Arukh ha-Shulhan, YD 87:34.
4. Hullin 116b.
5. Levush, Ateret Zahav, YD 87:10. See also Tur, YD 115, and Rambam FF 4:19.
6. See above, pp. 35-36.
7. Hokhmat Adam 40:9.
8. Shulhan Arukh, YD 87:10.
9. *Ibid.*, 114, sec. 21.
10. *Ibid.*, 87:43.
11. See above, p. 13.
12. Shulhan Arukh, YD 115:1.
13. *Ibid.*, 115:2, Rema.
14. See Rambam FF 9:16.
15. Darkhei Teshuvah 99:35, s.v. ל'י'ל'l'.
16. Rambam FF 3:14.
17. Rema, Shulhan Arukh, YD 87:10.
18. Ahi'ezer 4:11, translation by Isaac Klein.
19. Hokhmat Adam 40:9; Darkhei Teshuvah 87:130; and Solomon Braun, She'arim Mezuyanim b'Halakhah (Jerusalem: Feldheim, 1968), 35:10.
20. Shulhan Arukh, YD 87:43.
21. Ha-Pardes (Iyyar 5712), p. 9; see too Edut l'Yisrael, pp. 173-175.

22. Teshuvot Har Zevi 82.
23. Or Ha-Mizrah (Tevet 5717), p. 9.
24. Havalim Baneimim to Shulhan Arukh, YD, sec. 23.
25. Klein, p. 56.

CHAPTER FOUR

1. I have it on the authority of Dr. Ben Zion Wacholder (Hebrew Union College, Cincinnati) and Dr. Hayyim Milkowsky (Jewish Theological Seminary, Jerusalem) that Rabbi Joseph Soloveitchik has informally permitted the eating of all cheeses. Rabbi Soloveitchik's reluctance to publicize this opinion is not surprising when one considers the nature of Orthodox Judaism today; see below, pp. 153-156.
2. See Moshe Feinstein's Iggerot Moshe, sec. 47, to YD.
3. Arukh ha-Shulhan, YD 115:17.
4. Shulhan Arukh, YD 87:11.
5. Ibid., 109.
6. Ibid., 87, Rema.
7. Responsa no. 23.
8. Ibid.
9. Shulhan Arukh, YD 87.
10. Ibid., 115:17.

CHAPTER FIVE

1. The prohibition is listed in Rambam's Sefer ha-Mizvot (no. 194) as well as the listings of Halakhot Gedolot, Elijah ha-Zaken, Nahmanides, Semag and Zohar ha-Rakiah. See Abraham Rabinowitz, Taryag (Jerusalem: Boys Town, 1967), p. 152.
2. AZ 29b.
3. See the parallels in Esther 1:8 and Ketubbot 110b.
4. Mishnah AZ 29b.
5. Rashi, AZ 29b.

6. AZ 36b. See too Shabbat 17b; Bamidbar Rabbah 20, 23; Shir ha-Shirim Rabbah 4, 26; P. Kiddushin 4:1.
7. AZ 36a. See P. AZ 1:8 on why gentile bread and foods were later allowed.
8. Deut. 7:3-4.
9. Rambam FF 11:4.
10. AZ 31a.
11. See Deut. 7:3-4. See too J. D. Eisenstein, Ozar Dinim u-Minhagim (New York: Hebrew Publishing Co., 1917), pp. 168-169.
12. Beit Yosef in the name of the Rashba.
13. Shulhan Arukh, YD 124:16 and the Shakh.
14. Tosafot Yom Tov, AZ, pt. 5, sec. 7, in the name of Rambam.
15. AZ 31a.
16. Shulhan Arukh, YD 130.
17. Tur and Rosh 125.
18. AZ 58a.
19. Shulhan Arukh, YD 125:3.
20. Teshuvot ha-Ribash, sec. 295.
21. Shulhan Arukh, YD 129:11.
22. Rabbenu Yeroham, Adam v'Havah Netiv 17, p. 153.
23. Sefer ha-Agur, pt. 1, sec. 347.
24. AZ 29b; Rambam FF 11:4; Rambam, AZ 2:5. See too Kiddushin 39b and the Tosafot, s.v. ממשנה. Thus, even a Jewish apostate could dedicate a Jew's wine to idolatry. See Hullin 41a, AZ 32b, and Rambam, Hobel u'Mazeek 7:6.
25. AZ 58a. See too Rambam, AZ 7:2; Bava Mezia 32b.
26. AZ 57a.
27. Hullin 13b, with Meiri.
28. Ibid.
29. David Novak, Law and Theology in Judaism, Second Series (New York: KTAV, 1976), p. 176. See also Shir ha-Shirim Rabbah 7, 13, and Yoma 69b.

30. See Jacob Katz, Exclusiveness and Tolerance (London: Oxford University, 1961), pp. 24f.; and Louis Ginzberg, On Jewish Law and Lore (Philadelphia: Jewish Publication Society, 1955), p. 79f.
31. Rambam FF 11:7. See too Rambam, Shehitah 4:11-12; Teshuvot ha-Rambam 2:448; and Tur, YD 124.
32. Rambam FF 13:12, with Radbaz.
33. See Ran and Ritba to AZ 57b; Rashba, Torat ha-Bayit, 5:1; Beit Yosef, YD 123; and the Taz to Shulhan Arukh, YD 123. See too H. J. Zimmels, Ashkenazim and Sephardim (London: Jews' College, 1958; reprint ed., London: Marla Publications, 1976), pp. 152f.
34. Tosafot AZ 57b, s.v. לאפוקי.
35. AZ 36b. See too Shabbat 17b.
36. Shulhan Arukh, YD 132:1.
37. Tur, in the name of Rashbam, Rosh and Mordekhai.
38. Havvat Ya'ir 114.
39. Haggahot ha-Rema 124:24.
40. Ibid. See also Seymour Siegel, ed., Conservative Judaism and Jewish Law (New York: Rabbinical Assembly, 1977), pp. 312-313.
41. A story from Teshuvot Rav Nahshon Geon, cited in Sefer ha-Agur, pt. 1, sec. 341.
42. Cited and discussed in Sefer ha-Eshkol, pt. 2, sec. 49.
43. Rambam FF 11:9.
44. For biographical details of Frank's life, see Encyclopaedia Judaica, s.v. "Frank, Zevi Pesah."
45. Sefer Har Zevi, sec. 111, p. 100.
46. Cited in Beit Yosef, YD 123.
47. Rambam FF 11:4.
48. Tur, in the name of Rosh and the geonim.
49. Ibid.
50. Rambam FF 11:9.
51. Tosafot Shabbat 13b.

CHAPTER SIX

1. Isaac Klein, A Guide to Jewish Religious Practice (New York: Jewish Theological Seminary, 1979), p. 307. The responsum was originally published as "B'Inyan Stam Yeenam Shel Goyim" in an addendum to Conservative Judaism 18:2. An unabridged translation by Seymour Siegel and Elliot Gertel appeared in Conservative Judaism and Jewish Law, pp. 308-316. All references in this thesis are to the English translation.
2. Siegel, p. 308.
3. Teshuvot ha-Rema 124; included in the Cracow edition of 1710, but omitted from many later editions.
4. Translated in Siegel, pp. 308-309.
5. Siegel, p. 309.
6. AZ 14b; Tosafot AZ 57b, s.v. לאפוקי מדרב: "The Rashbam and the Rivan explained in the name of Rashi that it is written in the responsa of the geonim that in these times there is no prohibition against deriving benefit from wine which was touched by a non-Jew since in these days they are not accustomed to making libations before idols, and they [i.e., the non-Jews] are considered as those who are not knowledgeable about idolatry and the cult connected with it, and they have the same status as newborn babes [i.e., they have no knowledge of the cultic practices of idol-worshippers], and we rely on this to take the wines of non-Jews as payment for their debts." [Translation by Siegel, p. 315.] So too wrote the Rema in YD 132: "However in our day, when the idolaters do not pour libations . . ."
7. Tosafot AZ 57b, s.v. לאפוקי מדרב, end. See too Rema to YD 123:1: "In these days when the non-Jews are unaccustomed to pour libations before idols, their wine is only prohibited from drinking, but not from deriving benefit." [Translation by Siegel, p. 315.] See too Erekh Lehem 123a.
8. Siegel, p. 309.
9. AZ 36b. Silverman writes, "It is interesting that the prohibitions against bread and oil were lifted in the days of Rabbi Judah Hanasi," but see Rashi to AZ 37a, s.v. רבי יהודה הנשיא.
10. AZ 35b.
11. Sefer ha-Eshkol, pt. 2, sec. 49.
12. See n. 9, above.

13. Wagschall, pp. 49-52.
14. Siegel, p. 310.
15. Mahzor Vitri, Hilkhot Ye'en Nesekh 115. See too Salo Baron, A Social and Religious History of the Jews, 16 vols. (New York: Columbia University, 1952-1978), 6:128f and 4:317, n. 14. Cf. Tosafot AZ 57b, s.v. לאפוקי מדרב.
16. Erekh Lehem 124:7.
17. Ibid., 127.
18. Mayim Rabim, pt. 2, no. 28.
19. Shulhan Arukh, YD 124:24.
20. Siegel, p. 313.
21. Ibid..
22. Ibid., p. 314.
23. Ibid.
24. Ibid.
25. A copy of Rabbi Radin's unpublished Hebrew paper was provided me by the Rabbinical Assembly and is included here (Appendix A).
26. Rambam FF 11:3.
27. Ibid., 11:4.
28. Ibid., 11:8.
29. Ran, AZ 57b, s.v. אניא.
30. Torat ha-Bayit, 5:1.
31. YD 127.
32. Teshuvot ha-Rema 124.
33. Rambam FF 11:11.
34. Novak, pp. 174-183.
35. AZ 30a; cf. Tosafot, s.v. י"י.
36. Tur, YD 123, with Beit Yosef. See also Meiri to AZ 30a.
37. Novak, p. 180.
38. Iggerot Moshe, YD, no. 52, pp. 70-71. See too Louis

- Ginzberg, Teshubah bidbar Yaynot (New York: Jewish Theological Seminary of America, 1922).
39. Shabbat 40b.
 40. Cited in Novak, pp. 180-181. Dated Oct. 13, 1974. See too Rambam, Rozeah u-Shemirat Nefesh 11:8.
 41. Shulhan Arukh, YD 123:4.
 42. Rambam FF 11:9-10. See too Rambam, Issurei ha-Mizbe'ah 6:9, and Bava Batra 20b.
 43. Teshuvot ha-Rambam, no. 269. Cf. Teshuvot ha-Rashba, no. 717. See too Bava Batra 97a-97b; P. Pesahim 10:1; Rambam, Shabbat 29:14, with Maggid Mishneh; Ramban to Bava Batra 97b; and Beit Yosef, OH 272.
 44. See AZ 30a, with Rashi, s.v. אלול ט"ו. See too Novak, p. 181, and note 42, above.
 45. See, for example, Shabbat 54b.
 46. Bava Batra 60b and Bezah 30a. Cf. Bava Mezia 33b and Tur, YD 123, citing Rosh.
 47. Novak, p. 182.
 48. Ibid. See too Bava Mezia 60a. Concerning the term nahagu heter, see Pesahim 55a, with Rashi, s.v. מה ראיה. See too P. Pesahim 4:1.
 49. Rambam, Mamrim 2:3. Cf. Bezah 4b-5a.
 50. Novak, p. 182.
 51. Ibid.
 52. Ibid., p. 183.
 53. See Ginzberg, Teshuvah.
 54. Novak, p. 183.
 55. Klein, Guide, p. 307.

CHAPTER SEVEN

1. Siegel, p. 316, n. 5.
2. Teshuvot ha-Rema, edited by Asher Ziv, no. 124, p. 484, n. 1.
3. Novak, p. 182.

4. Responsa in War Time (New York: National Jewish Welfare Board, 1947). See especially p. iv.
5. AZ 36a.
6. Novak, pp. 174-175.
7. Ibid., p. 183.
8. See Conservative Judaism (Fall 1957), p. 16f; and Jewish Spectator (June 1957 [p. 12f] and September 1957 [p. 26f.]).
9. Shabbat 14b; see too AZ 8b. For the influence of economics in halakhah, see Ginzberg, On Jewish Law, pp. 79f, and Phillip Sigal, New Dimensions in Judaism (New York: Exposition Press, 1972), pp. 105-115.

CHAPTER EIGHT

1. See the responsa of Moshe Feinstein, Aaron Kotler and Yitzchak Felkser in Noam, 5735, pp. 17-33.
2. See above and Hayyim Bloch, מאשרים חוקים ומתעים (New York: Hadar, 1952), p. 12. Also see Elberg's article on gelatin in Ha-Pardes (Tishri 5713), p. 32; though lacking reasons, Elberg wants a takkanah to ban all gelatins.
3. Klein, Responsa, p. 60.
4. Rashi to Hullin 77b.
5. Rambam FF 4:18.
6. Torat Kohanim to Lev. 11:8.
7. Rambam FF 8:5, with Maggid Mishneh.
8. Enziklopedyah Talmudit, s.v. הבשר בחלב.
9. Hullin 114a. See too Rambam FF 9:7; Tur and Shulhan Arukh, YD 87:7.
10. Hokhmah Adam 40:6. See too Peri Megadim, Peri To'ar, Shakh and Ba'er Heitev to Shulhan Arukh, YD 87:7.
11. Peri Megadim in Sifte Da'at, sec. 22, and Darkhei Teshuvah 101, both to Shulhan Arukh, YD 87:7. See too Rambam, Tum'at Met 2:5.
12. Mishnah Hullin 116a, with Rashi, s.v. בגור. See too Rambam FF 9:16; Tur and Shulhan Arukh, YD 87:11; Enziklopedyah Talmudit, s.v. דבר המעמיד.

13. Rema, Shulhan Arukh, YD 87:10, with Shakh, sec. 33.
14. Peri Megadim, cited in Sifteï Da'at to Shulhan Arukh, YD 87:10.
15. Pithei Teshuvah, sec. 21 (in the name of Tiferet Zevi), and Peri Megadim in Sifteï Da'at 103:2, both to Shulhan Arukh, YD 87.
16. Numbers 6:19; cf. Hullin 98a.
17. Torat haBayit 4:1; Ran, Hullin, chap. 8, pt. 1, with the Rosh, sec. 30. See too Tur, YD 99, in the name of א"י.
18. Or Zaru'a, AZ, chap. 5, sec. 277, citing P. Terumot 5:3. See too Rema in Shulhan Arukh, YD 99:1, in the name of יש מנחם ירמיה.
19. Ran, Hullin, chap. 8, pt. 1, with the Rosh, sec. 30; Tur and Shulhan Arukh, YD 99:1, especially Rema, s.v. במקום הפסד.
20. Bloch, p. 7.
21. Shulhan Arukh, YD 87:7.
22. Rambam FF 4:18.
23. Ibid.
24. Beit Yosef, YD 87.
25. Shulhan Arukh, YD 87:10.
26. Ibid., Shakh, sec. 33.
27. YD, first series, no. 26.
28. Shevut Ya'akov, pt. 2, sec. 70; and Pithei Teshuvah to YD 155, sec. 6.
29. YD 114:12.
30. Ibid., Shakh, sec. 21.
31. Hatam Sofer, YD, sec. 83; and Pithei Teshuvah to YD 87, sec. 19.
32. Bloch, pp. 10-12.
33. Ha-Pardes (Tishri 5713), pp. 5-13.
34. See Torat Kohanim, Shemini, chap. 4.
35. Rambam FF 4:3.

36. Meiri, Hullin 102b.
37. Zafenat Pa'neah, referring to Rambam FF 4:18.
38. Rambam FF 4:18.
39. Rambam, Gid ha-Nasheh 8:5.
40. Sha'ar ha-Melekh 8:6.
41. Rambam FF 4:5.
42. Rosh, Hullin, end of chap. 8.
43. Rambam FF 8:5.
44. Meiri, Hullin, beginning of chap. 7.
45. Rashi, Pesahim 22a.
46. See Yitzhak Glickman, בדין זשלטין הנעשה מעצמות איסור, Kol Torah, beginning with the Nissan 5718 issue and continuing in the next 10-12 issues. Our point is from the Sivan 5718 issue, pp. 8-11.
47. Rashi to Lev. 11:8.
48. Rashi to Lev. 11:11.
49. Rambam FF 3:6.

CHAPTER NINE

1. Klein, pp. 59-74.
2. Ibid., p. 60.
3. Ibid.
4. Ibid., p. 61.
5. Grodzinski, Ahi'ezer 3:33.
6. Shemini 4:8.
7. YD 99:1.
8. Klein, p. 62.
9. Orlah 1:3 (and not 1:7, as cited by Klein).
10. Taz, YD 99:1.
11. Hokhmat Adam 52:1.

12. Rambam FF 4:18.
13. Kol Torah (Nissan 5718), p. 15.
14. Klein, p. 64.
15. Kol Torah (Sivan 5718), p. 9.
16. Klein, p. 64.
17. Noda bi-Yehudah, YD 26.
18. Klein, p. 65.
19. Ahi'ezer 5:11.
20. Rosh to Berakhot 28b, sec. 35.
21. Ibid.
22. Klein, p. 67.
23. Rema, Shulhan Arukh, YD 87:10.
24. Ibid., with Shakh.
25. YD 123:16.
26. Cited in Klein, p. 68.
27. OH, 442:30.
28. Klein, p. 68.
29. AZ 34b.
30. Rambam FF 4:19.
31. Bekhorot 7b.
32. Rambam FF 4:20.
33. Noda bi-Yehudah, YD 26.
34. Klein, pp. 69-70.
35. AZ 2:5; cited by Klein, p. 70.
36. YD 103:1-3.
37. Klein, p. 71.
38. Temurah 34a.
39. Ibid., 31a.
40. Bertinoro to Mishnah Temurah 5:5.

41. Klein, pp. 71-72.
42. Ibid., p. 72.
43. OH 147.
44. Klein, p. 72.
45. Melammed Leho'il, vol. 2, resp. 27.
46. Teshuvot Ziz Eli'ezer, v. 9.
47. Ahi'ezer, vol. 3, no. 33.
48. Klein, p. 73.
49. Ibid.
50. Food Engineering (November 1967), p. 75.
51. Klein, p. 73.
52. Ahi'ezer 5:11.
53. Cited in Klein, p. 74.
54. Ibid.
55. Rema, Shulhan Arukh, YD 87:10; Arukh ha-Shulhan, YD 87:43.
56. Cited in Pithei Teshuvah, YD 87:20.
57. Klein, p. 74.

CHAPTER TEN

1. See in particular Rabbi Leib Grossnass, בענין אבק הנעשה מעורות המעובדים (London: Adler House, 1967), published under the auspices of the London Bet Din. See too the responsa on gelatin by Kronmahl in Ha-Pardes (Kislev 5712), pp. 5-11; Henkin in Ha-Pardes (Iyyar 5712), pp. 7-10; and Elberg in Ha-Pardes (Iyyar 5712 [pp. 11-40] and Tishri 5713 [pp. 20-32]), who concludes that though the arguments for prohibiting are weak or don't apply, still a takkanah should be enacted to prohibit all gelatins, to be safe.
2. Klein, p. 74.

CHAPTER ELEVEN

1. Isaac Klein, "An Attitude to Halaka," Proceedings of

- the Rabbinical Assembly, vol. 22 (New York: Rabbinical Assembly, 1958), p. 105.
2. Ibid., p. 106.
 3. See Aaron Blumenthal's teshuvah, "An Aliya for Women," in Siegel, p. 276f.
 4. See Conservative Judaism (Winter 1970), 24:2, pp. 21-59.
 5. Jack Segal, "Weddings During the Three Weeks," Proceedings of the Rabbinical Assembly, vol. 32 (New York: Rabbinical Assembly, 1968), pp. 224-228.
 6. Levush ha-Tekhelet 193:6.
 7. Tashbez 1:154.
 8. P. Pesahim 4:1, 30d; P. Taanit 1:6, 64c.
 9. Teshuvot ha-Rosh 55:10.
 10. Pithei Teshuvah, Hoshen Mishpat 163, n. 16.
 11. Jakob Petuchowski, "Conservatism: Its Contribution to Judaism," Judaism (Summer 1977), p. 353.
 12. See Dr. Adolpho Weiner, Die Judischen Speisegesetze [The Jewish Dietary Laws] (Breslau, 1895).
 13. Alexander Guttman, The Struggle over Reform in Rabbinic Literature (New York: World Union for Progressive Judaism, 1977), pp. 19-27.
 14. Guttman, pp. 5-13; and Jakob Petuchowski, Prayerbook Reform in Europe (New York: World Union for Progressive Judaism, 1968), pp. 84-104.
 15. Lawrence Kaplan, "The Dilemma of Conservative Judaism," Commentary (November 1976), p. 145.
 16. These observations are based on a perusal of the Proceedings of the Rabbinical Assembly for the last twenty years, as well as back issues of Conservative Judaism.
 17. This controversy between the Taz and the Shakh is an oral tradition transmitted to me by Prof. Alexander Guttman.
 18. Discussed in Bleich, Contemporary Halakhic Problems, pp. 167-176. See too S. Zalman Abramov, Perpetual Dilemma (New York: World Union for Progressive Judaism, 1976), pp. 189-190, for the reactions to Goren's decision.
 19. News report on Kol Yisrael, Tishah be-Av 5739.

20. See Abramov's Perpetual Dilemma, whose entire book stunningly testifies to this point.
21. Baruch Litvin, ed., Sanctity of the Synagogue (New York: Spero Foundation, 1959), p. 91.
22. Novak, Law and Theology in Judaism, First Series (New York: KTAV, 1974), pp. 31-54.
23. Abramov, p. 188.
24. Klein, Responsa, pp. 75-78; and Efrati, Ha-Pardes (November 1965 [p. 10] and December 1965 [p. 10]).
25. See the articles by Teitz, Ha-Pardes (Tevet 5726) and Tendler, "The Halakhic Status of the Swordfish," Jewish Observer (April 1968).
26. See Appendix B.
27. According to Seymour Siegel (writing in United Synagogue Review), this issue is being reopened.
28. Shulhan Arukh, OH 453.
29. Conversation with Rabbi Yosef Green of the Center for Conservative Judaism, Jerusalem.

GLOSSARY OF HEBREW TERMS

- אגדה, aggadah: That portion of the rabbinic literature which explains the Bible homiletically (as opposed to halakhically [legally]) via stories, legends, folklore, anecdotes and maxims.
- אגונה, agunah: A deserted wife who is tied to her absent husband and cannot remarry until he issues a get [document of divorce], or is declared legally dead.
- אין מבטלין איסור לכתחלה: "One may not proceed deliberately to neutralize a forbidden thing."
- אין ילפינן לאיסור מטומאה לא ילפינן: "We may not derive a prohibition [to be applied elsewhere] from a prohibition [in the laws of] uncleanness."
- איסור פגום, issur pagum: Name given to a food to which a forbidden substance has been added which deteriorates rather than improves the taste of the food as a whole.
- אכילה, akhilah: Eating.
- אלונטית, alontit: A mixture of old wine, pure water and balsam.
- אלל, alal: Fatty substance.
- אמורא, amora (pl., amoraim): Class of Talmudic authorities who lived after the final redaction of the Mishnah and whose discussions of the mishnayot and beraitot are deposited in the Gemara.
- אנשי כנסת הגדולה, Great Assembly: Institution which embodied the spiritual leadership of the Jewish people at the beginning of the Second Temple Period and constituted the supreme authority in matters of religion and law.
- אתרוג, etrog: Citron (fruit) used during Sukkot.
- בדיעבד: Ex post facto.
- בהמה: A domesticated animal.
- בהמה טמאה: A forbidden animal.
- בטל בששים: Annulment of a prohibited food substance which takes place in an accidental mixture where there is

at least sixty times as much permitted food as prohibited (60:1 ratio).

בִּישׁוּל עֲכוּ"ם: Food prepared by gentiles.

בֵּית דִּין, bet din: Rabbinic court.

בֵּית דִּין גָּדוֹל, Bet Din Gadol: Great Sanhedrin of 71 ordained scholars which existed for at least 100 years prior to the fall of the Second Temple.

בְּנֵי מַעֲיִים: Intestines.

בְּעוֹר קִיבַת נְבִילָה: In or with the stomach lining of a nevelah.

בְּרַאֲיִתָּא, baraita (pl., baraitot): A teaching or tradition of the tannaim which was excluded from the Mishnah but was nevertheless preserved; many are found in the Gemara.

בִּרְכַּת הַמַּזֶּן, birkat ha-mazon: Grace after meals.

בִּרְוּ: By or with a majority.

גְּאוֹן, gaon (pl., geonim): Leader(s) of the Babylonian Jewish community and academies during the post-Talmudic period (sixth to eleventh centuries).

גְּבִינָה לְבֹנָה: White cheese or cottage cheese, as opposed to hard cheese.

גְּבִינַת גּוֹיִם: Cheese manufactured by a gentile without Jewish supervision.

גְּבִינַת עֲכוּ"ם: Cheese manufactured by a gentile without Jewish supervision.

גְּזִירַת מֶשֶׁם בְּנוֹתֵיהֶם: A decree enacted "because of their daughters"; i.e., to avoid contact with their daughters in order to avoid the possibility of intermarriage.

גֵּט, get: Document of divorce issued by a man to his wife.

גִּילּוּי: Exposure of uncovered vats; refers to the fear that, in making cheese, snakes might crawl into uncovered vats and discharge venom.

גִּילּוּי מַלְתָּא: A definition; revealing a fact.

גֵּר תוֹשָׁב, ger toshav: A person who, for the sake of acquiring limited citizenship in Palestine, renounces idolatry.

דְּאוֹרֵייתָא, de-oraita: From the Torah.

דְּבַר הַמַּעֲמִיד: A curdling agent, such as rennet.

דְּבַר הַמַּעֲמִיד אֵפִילוּ בְּאֵלָּף לֹא בֶטֶל: "A curdling agent cannot be

annulled even by a 1000:1 ratio."

בטל דבר המעמיד לא בטל: "A curdling agent cannot be annulled."

חדש: A new substance; i.e., a substance that has been so completely changed in its composition that it bears no resemblance to its former self.

מועט דבר: A very small thing.

להתיר דבר שבמניין צריך מניין אחר להתיר: "A matter that was forbidden by the vote [of a bet din] needs a vote [of another bet din] to become permitted."

תורה בישול אסרה: "The Toraitic prohibition was of cooking"; i.e., with regard to food prepared by gentiles, the Toraitic prohibition applies only to food which has been actually cooked.

הבדלה, havdalah: Ceremony which marks end of Sabbath, holidays.

היתר, heter: Permission or approval.

איסור: The forbidden substance can still be distinguished from the permitted substance; i.e., the annulling process is incomplete or unsatisfactory.

הכשר, hekhsher (pl., hekhsherim): Rabbinical seal which testifies to a product's kashrut.

הלכה, halakhah: Jewish system of law, incorporating all aspects of the Jewish way of life, as determined by the rabbis and sages.

הלכה למעשה, halakhah lema'aseh: Halakhah to be applied to real life, as opposed to theoretical teachings.

הנאה: Benefit.

הסתה: Enticement.

זבח: Sacrificial offering.

גורם זה וזה: "A product of combined causes, where one is permitted and the other is forbidden, is permitted."

בשלה זרוע: Shoulder of the sacrificed ram reserved for the exclusive use of the priest.

חול המועד, hol ha-moed: Intermediate days of Pesah and Sukkot.

חלב טמא: Milk from a non-kosher animal.

חליצה, halizah: Ceremony which ends the obligation of a widow to marry her brother-in-law in the event her marriage produced no offspring.

- חמץ, hametz: Leaven, which is prohibited during Pesah.
- ניסוך חשש: Fear of libation; i.e., wine is disqualified because it may have been dedicated.
- טרפה, terefah: An animal killed (torn) by a beast of prey; or an animal afflicted with a fatal organic disease, the discovery of which after slaughtering makes it forbidden.
- יום טוב, yom tov: Festival.
- מבושל: Boiled wine.
- מזוג: Mixed wine.
- נסך, ye'en nesekh: Wine of libation.
- שלנו: "Our wine"; i.e., Jewish wine.
- שרף: Resin wine.
- יש אומרים: "There are some who say . . ."
- כזית, ke-zayit: Minimum amount or quantity necessary to defile; also, minimum quantity of food necessary to fulfill obligation at Pesah seder, etc.
- כעץ בעלמא: Like a mere piece of wood; i.e., it is dehydrated to the point that it has become like wood.
- כלל ישראל, kelal Yisrael: "Community of Israel," used in context of "unity of Israel."
- כשר, kasher: Ritually permitted to be eaten.
- כשרות, kashrut: System of Jewish dietary laws.
- כתובה, ketubbah: Marriage contract.
- לא פלוג: "We make no distinctions."
- לולב, lulav: Palm branch used in Sukkot ritual, though lulav is commonly used to refer to all four species used in the ritual combined (palm branch, myrtle, willow, etrog).
- מגע: Contact, touching.
- מושק, musk: A soft substance with a pungent odor and bitter taste, secreted by the male musk by special projections. Controversial because it may have (or have had) blood in it.
- מחמיר, mahmir (pl., mahmirim): Stringent ones; i.e., people who follow the stricter interpretation of the law.
- מי חלב: Milk serum.

- מילה, milah: Ritual circumcision.
- ממזרות, mamzerut: Legal state of bastardy.
- מנהג, minhag: Custom.
- מנהג אבותינו, minhag avoteinu: "Custom of our forefathers"; usually considered to have the force of law.
- מנין, minyan: Quorum or vote.
- מפני חיי נפש: As a matter of survival.
- מצוה, mitzvah (pl., mitzvot): Commandment; meritorious deed.
- מקוה, mikveh: Ritual bath.
- גזירה משום בנותיהם [See: משום בנותיהם].
- חשש ניסוך [See: חשש ניסוך].
- משום שמחשבת העכו"ם: "Because of the thoughts of the gentile"; i.e., regardless what the gentile is doing, his inner thoughts are always on his pagan libations.
- משנה, mishnah (pl., mishnayot): Tannaitic legal teaching as found in the Mishnah, a work compiled by Judah ha-Nasi in c. 200.
- נבלה, nevelah: An animal slaughtered in any manner other than that prescribed by Jewish law, or dies naturally.
- נהגו: "They were accustomed."
- נותן טעם: Imparts a taste.
- נותן טעם לפגם: Imparts a ruinous taste.
- נותר, notar: Portions of sacrifices left over after the prescribed time within which they must be eaten.
- נידה, niddah: Laws and condition of menstrual uncleanness.
- סוכה, sukkah: Booths built during Sukkot to mark Israelites' journeys in the wilderness.
- סידור, siddur: Prayer book.
- סטם יינם, stam yeanam: Wine whose status with regard to libations is uncertain.
- עור הקיבה: In or with stomach lining.
- עכו"ם: Lit., idol-worshipper; in general refers to all non-Jews.

פארווע, pareve: Food that is neither milk nor meat; in modern Hebrew, סתמי.

פגול, pigul: Flesh of the sacrifice which the officiating priest has formed the intention of eating at an inappropriate time.

פוסקים, posekim: Rabbinic decisors of the law.

פירשא בעלמא: Mere dung.

פניי חדשות: A new substance; i.e., a substance that has been so completely changed in its composition that it bears no resemblance to its former self.

קידוש, kiddush: Ceremonial blessing recited on Sabbaths, holidays, with wine.

תורה מן השמים, Torah min ha-shamayim: Rabbinic doctrine which holds that the Torah as we have it today is exactly the same as that received by Moses from God at Sinai.

תנאים, tannaim: Rabbis quoted in Mishnah and baraitot.

תנאים, tena'im: Stipulations appended to the ketubbah.

תשובה, teshuvah (pl., teshuvot): Response by a rabbi to a legal question.

APPENDICES

APPENDIX A: [Unpublished] Responsum
of Rabbi Jacob Radin ("A Reply
to the Teshuvah of Rabbi Israel
Silverman")

APPENDIX B: Summary of Rabbinical
Assembly Decisions in Kashrut

A reply to the תשובה of Rabbi Israel Silverman

הרב סילברמן אומר בעמוד 1 "ולית מאן דפליג בימינו שמוחריים הם בהנאה." המסקנה הזו מחמיה אחי. היא מבוססת (דף 6) על תוספות ע"ז, נ"ז: שטחם יינט אסור בשתייה ולא בהנאה. הוא עוד מצטט רמ"א, סימן קכ"ג, שאין איסור הנאה בסחט יינט.

אבל מדוע אינו מצטט את בית יוסף שאומר: "סחט יינט של עממיט עובדי כוכביט אסור בהנאה וה"ה למגעט ביין שלנו." הש"ך אומר כי האיסור רק מדרבנן "מטוט יין שנחנסך לע"ז שאסור מדאורייתא, וכן מטוט גזירת בנותיהן אבל הס"ז כותב שיש הרבה פוסקים שסובריט שהאיסור של סחט יינט הוא איסור דאורייתא, לא מטוט גזירה אלא שהחמירו חכמיט ביין מטוט שיש יין נסך. הס"ז סובר שלפי דעת סור האיסור בהנאה ממשיך בימינו מטוט "הדבר שנאסר במנין צריך מנין אחר להחירו."

גם הרמב"ט בהלכות מאכלות אטורות, פרק י"א, סימן ג', כותב: "יין העכו"ם שאין אנו יודעין אט נחנסך או לא נחנסך והוא הנקרא סחט יינט אסור בהנאה כמו יין שנחנסך ודבר זה מגזירת סופריט..." ובסימן ד': "וכל יין שיגע בו העכו"ם הרי זה אסור שמא נסך אותו שמחטבת העכו"ם לעב"כ" הא למדת שישן שנגע בו העכו"ם דינו כסחט יינט שהוא אסור בהנייה. הרמב"ם מוציא מאיסור הנאה של סחט יינט את היסמעאליט, גר חוטב, ואת עכו"ם שאינטי עובדי עבודה זרה (כגון יוניטריינט). אבל הוא מוסיף בסימן ח': "וכל מקום שנאמר עכו"ם סחט הרי זה עובד עכו"ם."

וגם הר"ן סובר שסחט יינט גם כן אסור בהנאה, ע"ז, נ"ז: "ד"ה גופא אמר רב... ומיהו ה"מ מגען אבל סחט יינט לא דעיקר התקנה בסחט יינט היחה מטוט בנותיהן ולא חלקו בין עובד כוכביט עובד עבודה כוכביט לטאינו עובדי וגט הרשב"א (תורת הבית בית חמישי טעור ראשון) אומר שדעת תשובות הגאונים הרב רבי יהודה ברבי נחן, ורבינו שמואל בשט רט"י שסחט יינט מותר בהנאה מטוט דלא בקיאי ולכן דינו עכו"ם כמו חינוק בן יומו שאין מגעו אוטר בהנאה. אבל הרשב"א בעצמו סובר שסחט יינט אסור בהנאה כי "ב"ד שלאחריהט ראו שהורגלו הרבה לנסך ולפיקך הוטיפו איטור על היין וגזרו על סחט איטור הנאה מטוט ודאי יינן."

גט הריטב"א סובר שסחט יינט אסור בהנאה. בחידושי הריטב"א, ע"ז, נ"ז: כחוב שחטובות הגאונים, רבי יהודה בר נחן, רבינו שמואל בשט רט"י סובריט שמגע עכו"ם ביין שלנו מותר בהנאה. ואחר כך הוא אומר שאחריט סובריט שסחט יינט אסור בהנאה. אבל הריטב"א בעצמו טובר: "וכבר דחה

דבריהם ר"י ז"ל וגט הרמב"ן ז"ל דלא מבעיא ביינט טכבר נגזרה עליו גזירה מוחלטת וצריך מנין להחירו אלא אפילו מגעט ביין שלנו בכונה אוטרת בהנאה ומיהו בענין יטעמאליט טאינט עובדיט ע"ז כלל אפשר לדון להחיר מגעט בהנאה אבל יינט אטור בהנאה (יותר מחמיר מהרמב"ם) שכלט היו בכלל איסור יינט של נכריט ואי אפשר להחירו עד שיצמר ב"ר ויבטל יי"ה דקיימק לן די"ח דבר אפילו יבא אליהו ויתירט אין טומעין לו כיון שפעט איטורן בוי - ישראל. ויין כפר פעט אטורו והמיקל בזה פורץ גדר ישכנו נחט מורי רבינו. כל הפוסקים שהבאתי למעלה יוצאים מן הכלל של: "ולית מאן דפליג בימינו וסמורית בהנאה."

There is a basic flaw in the entire טוועה of Rabbi Silverman. He fails to distinguish, in citing his references and authorities in support of his opinion, between טחט יינט and מגעט עובר כוכ' ביין שלנו. This is basic to the entire discussion. All his references do not deal with טחט יינט but only with the question of מגעט, which applies only to ייין שלנו. In the latter instances, there are authorities who hold that the wine may be טחטייט. But there is not one single cited authority or any other authority whom I could find to declare that טחט יינט מותר בטחטייט.

The authorities cited for permitting טחט יינט are:

1) צדוקי I could not check the source. Anyway the source deals with a מוהריק"ט who was never included in the טעט בנוחיהט.

The latter part of the reference, on top of page 3, explicitly deals not with טחט יינט but with מגעט.

ובסוף סימן קכ"ז כתב: "א דבזמן הזה טאין גווייט יודעיט בטיב ניטון

כל מגעט חטיב שלא בכונה ואט נגע ע"י דבר אחר מותר בטחיה."

2) מגע. The quotation deals again only with מגע. רב רפאל מילרולה

הרי לך בבירור שיט לנו פתח פתוח לרוחה... דמודו דמגעט על גווייט דהטחא

ביין שלנו מותר בהנאה.

Rabbi Silverman has quoted the text out of its context. טו"ת הרמ"א, סימן קכ"ד

מעהרין deals with a special situation which arose in the town of מעהרין.

"טנחפסט המנהג במדינת מעהרין בפרט ובכלל בשאר מדינות להקל בשתיית טחט יינט ואין מוחה בהט ואט יט להט על מה טיסמכו."

The "רמ"א is seeking to find a היתר for these Jews for otherwise they would become legally חטודיט and could not be trusted if an oath were required and would be disqualified wherever 'trustworthiness' was involved.

"היינו צריכיט ליהר בהט כמו בדין החטודיט שלא דנו ולא מעידו."

He declares that in their particular circumstances they are in the category of

טטבוריט שמוחריט, that is, mistaken in their interpretation of the law.

"ולהכי גט בנדון זה אט יט למצוא קצת טעם היתר למדינת מעהרין וכמותם אע"פ שאינו כדח וכהלכה."

In the very same opinion of the "רמ"א, there are ringing declarations which prove

that the טחט יינט בשחיה never at any time allowed

"ואע"פ טטעט זה אינו מטפיק רק למגע כוחי ביין שלנו (להחיר שחיה) אבל לא בסחט שנאטר מטוס בנוחיהט וכ"ט הרא"ש והטור בהדיה וז"ל אחר טהביא כל דברי ר"ת הראטוניט אלא על מגע כוחי... כן נחפסט להט היתר היינוט במקומות טנהגו להקל מפני חיי נפש, טהרי אין להט לשחות כי אט יינוט ובקוטי להט להכטיר היינוט כמו לאפות הפח בשאר מקומות."

לצערי הרב טילברמן לא טט לב למחפט הבא. "כל זה נראה לי בטעט המקיי"

במדינות שאין שוט דבר לשחות כי אט יין וחלילה לי לטמוך על דברי כי לא באחי רק כמטהר הטרץ מדין ק"ו אע"פ שהוא טמא מן החורה, כן אני אומר בדבח זה שלא באחי רק להראות קצת פניט להחיר אבל לא לטמוך ע"ז כלל. כ"ט במקח שלא נהגו בו היתר וחפטו האמת בידיהט שהוא איכור טאטור לשנות וכל הפורץ גדר ישכנו נחט דרבנן טכל העובר על דבריהט חייב מיתה."

טאר המאמר טל הרמ"א טהרב טילברמן מביא מדבר רק על מגע ולא על טחט יינט. "ובזמן הזה דהאומות לאו עו' כוכ' הט, וכל מגען מיקרי שלא בכוונה ולכן אט נגע ביין ע"י דבר אחר אע"פ... מותר אפילו בשחיה." הרמ"א מחמי בדעתו המובעת בהלכות יין נסך, טימן קכ"ג, טעיף א', כאטר בית יוטף טובר טחטס יינט אטור בהנאה, הרמ"א כותב: "ובזמן הזה שאינו טכיה טהאומות מנטכ לעבודת כוכביט י"א דמגע עובר כוכביט ביין שלנו אינו אטור בהנאה רק בשחיה אגב, כטחקרתי אט המקור הטביעי טל הרב טילברמן, לא יכלתי למצא בגמר או במטנה טרבי ובית דינו החירו השלקות. כחוב ביורה דעה, טימן קי"ג: "דבר טאינו נאכל כמו טהוא חי וגט עולה על טלחן מלכיט ללפת בו אט הפח או טפרפת טביטולו עוב' כוכ' אפילו בכלי יטראל ובבית יטראל אטור מטוס ביטולי עכו"ט."

הרב טילברמן מכטט אט מסקנתו גט על הטבה טחטס יינט כער לשחיה מטוס

טהוא יין מפורט וולכן יין מבוטל. אבל בגמרא כתוב במפורט טיין טהיה מתחילתו של עוב' כו' אינו יוצא לעולט מאיטור של יין נטך. הדין של יין מבוטל הוא רק לגבי יין שלנו אבל לא לגבי יין טחט. ע"ז כט: "אמר רבי אילעא שנינו יין מבוטל של עוב' כוכ' טהיה מתחלתו יין אטור, פטיטא מטוט דאיבטל פקע ליה איטורא, אמר רב אסי הא אָחא לאטמועינג, יין מבוטל שלנו ביד עוב' כוכ' אין צריך חותט בחוך חותט."

לפי הרמב"ט משהמטיט בטט יין נטך אפילו לגבי יין המעורב עט החרצוניט לפני כמפטריט אותו. הלכות מאכלות אטורות פי"א סימן י"א, "מאימתי יאטר יין העכו"ט מטידרוך וימטך היין אע"פ שלא ירד לבור אלא עדיין הוא בגח הרי זה אטור... ואין לוקחין ממנו גח דרוכה ואע"פ טעדיין היין מעורב עט החרצניט ולא ירד לבור."

It is again crystal clear that the whole discussion of never יין מבוטל applies to טחט יינט. The in יורה דעה states the טימן קכ"ג, טימן ג' law explicitly "יין מבוטל שלנו טנגע בו העובר כוכביט מותר." רבי חננאל אומר ע"ז ל: "אמר רבא הלכתא יין מזוג יט בו מטוט יין נטך... יין מבוטל אין בו מטוט יין נטך פירוש אט נגע בו עובר כוכביט אין אומריט כי ניטכו." חוספות, ע"ז, ל: "יין מבוטל אין בו מטוט יין נטך, כן הלכה ומוחר במגע עוב' כו' מדטתי לי שמואל ואבלט."

The discussion which Rabbi Silverman brings with regard to what degree of heat is considered מבוטל is irrelevant because the discussion is relevant only יין מבוטל של עכו"ט applies definitely to גזירא מטוט בנוחיהט. The ביין שלנו though it is no longer fit for נטך.

The fact that there is a special wine used at the "masses" does not in the least lessen the גזירא of איטור מטוט יינט. The גזירא מטוט בנוחיהט is valid even /ה in our own times.

Since Rabbi Silverman is anxious to base his conclusions on halachic principles and is therefore ready to question בטחט יינט, our decision should not be based on anything less than the halachic views. We conclude that there is no authority cited by Rabbi Silverman or discovered by the writer which would permit and even in יין שלנו טנגע בו עכו"ט applies only to היחרט. טחט יינט בטחיה פוטקייט. such cases there are opposing views of

THE RABBINICAL ASSEMBLY

3080 BROADWAY
NEW YORK N Y 10027

Cable Address: RABBISEM, New York

ד"ר

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י"ז יאיר ה'תשל"ד

Dear Colleague:

This is the first of a series of brochures to be published by the Committee on Jewish Law and Standards of The Rabbinical Assembly. It summarizes the decisions of the Committee in the area of kashrut. We plan, with God's help, to publish other brochures dealing with such areas as women in the synagogue ritual; Sabbath and festival observance; mourning and funerals; and conversions. We are also in the process of preparing for publication a series of teshuvot that were prepared by members of the Committee in various areas of Jewish law and standards. With these publications we hope to show the content, method and spirit of the Conservative movement's approach to halacha.

The letters and numbers after the various paragraphs in this publication refer to the volume and page of the Rabbinical Assembly Law Archives. These archives, which are open for inspection in the office of The Rabbinical Assembly to colleagues and other authorized persons, contain the correspondence and statements of the Committee during the past decades. They were organized and prepared largely through the efforts of our colleague, Rabbi Max Davidson.

The statements in the present brochure represent the views of the Committee on a variety of problems in the field of kashrut. They are not to be viewed as rigidly fixed for all time. In our approach to Jewish law, there is an opportunity to reopen questions even after they had been decided. When additional technical information is obtained, when trends within the Jewish community change, and when the nature and character of our constituents become modified, new decisions often become necessary. In this way we aim to fulfill the goal of Jewish observance--to introduce the dimension of kedusha into our lives.

We are indebted to the Secretary of the Committee, Rabbi Mayer Rabinowitz; to the Committee's research assistant, Moshe Faierstein, and to the past Chairman and members of the Committee for their devoted efforts. We hope that we will be granted the opportunity to magnify Torah and to strengthen it.

בתיבה אחתה א"ב

Seymour Siegel

Seymour Siegel
Chairman

Committee on Jewish Law and Standards

KASHRUTH

FOODS

Baby Foods - Majority opinion prohibits the use of non-kosher baby food in the home for children under the age of 2.

Minority opinion permits its use in cases where kosher baby food cannot be procured. However, it must be kept separate from kosher utensils and foods. 188, 131

Capons - Considered kosher. J44

Cheese - All cheeses including those in which rennet is used as a curdling agent are permitted.
Reasons: Rennet is made from dried up skins which are יגל דגל.
In addition, strong chemicals and acids are used on it thereby removing it from the category of food (אין האל אינא דאגל).
Besides this the rennet goes through a number of chemical changes that make it a דגל חגל. Finally, it is used with other substances and not in a pure form, therefore it is האל דגל.
The Pure Food and Drug Law removes all doubts concerning adulteration of the product.
Teshuvah by Rabbi Isaac Klein, Conservative Judaism, Vol.28, No. 2 (Winter 1974).

Fowl - 1) Slaughtered fowl may be dipped into water heated to 119° before salting so that the feathers could be plucked more easily by machine.
Reasons: In 119° water אין היד סאליט דא, especially if done in a דגל חגל.
Based on Teshuvah by Rabbi Isaac Klein. T5-7
2) Plucking by machine is permissible only after chicken has expired. B319

Gelatin - It is considered kosher.
Reason: Gelatin is manufactured from dry bones which are not considered food (דגל אינא דאגל). They are not included in the issur of trefah. Therefore, products made or derived from bones are not forbidden, but rather are kosher. Even according to those who maintain that the bones are included in the issur, gelatin would still be kosher since the chemical process it goes through makes it דגל חגל. (When something is treated with powerful chemicals in order to remove part of it, it becomes permissible on the basis of נאמן אגל אגל).

Gelatin made from the flesh of non-kosher animals is also permitted. Even if you maintain דא האגל דאגל, there are grounds to say that this law does not apply to a דגל חגל. In addition, something that is דגל חגל loses its status of being forbidden.

even if the substance is thereafter cooked or soaked, and no longer is דגל חגל.

However, gelatin made from pork products should be prohibited based on an emotional reluctance to pronounce as kosher any product coming from the pig.

- Glycerides - (Mons, di and tri). Some are manufactured with animal fat and some with vegetable fat. Therefore, the kashrut depends on the product involved, if it has a hekhsher or not. One must inquire directly from the company involved. Z104
- Goose - Swan goose is not kosher. L203
- Grape Juice - May be used for kiddush.
Based upon Teshuvah by Dr. L. Ginzburg, Conservative Judaism, Vol. 8, No. 3, p. 24.
- Liver - May be broiled on electric broiler or stove, if the liver rotates. E171
Contra opinion - it may not be broiled on electric broiler or stove since no flame is produced. The liver is therefore cooked rather than being broiled. RA Proceedings 1941-3, p. 142.
- Lumpfish - Not kosher because it doesn't contain scales. Letter dated April 1, 1974.
- Mackerel - Considered kosher. C5
- Meat -
- 1) Steaks and Chops which are broiled do not have to be kashered. H189,299. The same applies if an electric broiler is used. H399, J211
 - 2) Kosher meat which has not been washed for a period of 72 hours may be broiled, but not boiled or fried. K578
 - 3) Freezing - Original position was that freezing was permitted only after kashering. C29-32, D75, E234, F60,154, J150
The Committee modified its stand on the basis of the Israeli Rabbinat's decision which permits freezing for a long time prior to kashering in cases of hardship. However, upon defrosting, the meat is to be kashered immediately. L81, P60
 - 4) Salting - Potassium chloride may be used to kasher in place of sodium chloride for people on salt free diets. L102
An alternate method for people on salt free diets was proposed by a physician. Meat is to be salted in the regular manner, and then soaked for 1½-2 hours, changing the water 2-3 times. Patients are to eat only boiled meat (not fried or broiled). However, the broth is prohibited. S83
 - 5) Soaking - Meat may be soaked before the end of the sixth day and kept for another 95 hours, if previously soaked shortly before the end of the third day. RA Proceedings 1946, p. 46.
 - 6) Storing - Canning of meat may take place only after salting and soaking has taken place. C29-32
- Polysorbate 80 - Is considered kosher. Main ingredient is oleic acid which may be derived from animal fat. However, oleic acid is classified as a chemical and not as food. In addition, it plays only a small part in the production of pickle and is pareve. T76

- Propylene Glycol - 1) If made by Dow Chemical it is kosher. L 139
2) It is kosher if fat products are removed and ingredient is wholly chemical הוא כולל חומרים שומנים. L 88
- Sodium Caseinate - is considered dairy and may not be used with meat products, since it does not undergo significant enough change to be labelled a חלב. X 207, Z 106
- Stearates - must inquire from the specific company since it can be (in garlic salt) manufactured from either vegetable or animal fats S619
Trulee Garlic Salt contains no animal fat. S650, 666.
- Sturgeon - Both varieties are considered kosher. L164
Question has been reopened and is presently on the agenda of the committee.
- Swordfish - Is considered kosher.
Reason: Ichthyologists report that swordfish retain scale until they are approximately four feet long.
Rabbi Efrati of the kashrut division of the Israeli Rabbinate concurs in an article published in Hapardes November 1965 p. 10, December 1965 p. 10).
Teshuvah by Rabbi Isaac Klein RA Proceedings 1966 pp 111-11
- Vegetable Shortening - According to Department of Health, Education and Welfare any article labelled as vegetable shortening should consist of only vegetable material. It makes no difference if the adjective "pure" is mentioned. O110, 139-140.
- Vitamin A - Considered kosher no matter what its ingredients are since it is used for medicinal purposes. H153, 239 J212.
- Wine (Setam Yaenam) - Permitted.
Reasons: יין no longer exists. Wine is processed by machine and untouched by human hands (contact made by testers and tasters is by means of utensils). The wine is pasteurized and therefore is considered יין מבושל (Even though it doesn't boil it fits definition of יין מבושל which is יין מבושל). However Israeli wine should be used whenever possible, especially for ritual purposes. This heter doesn't apply for Passover, and it is also restricted to wines made by machines and not to wines made by hand.
Teshuvah by Israel Silverman - Conservative Judaism Vol.18 no (winter 1964).
Rabbi Jacob Radin wrote a dissenting opinion. S135-138. However the Silverman teshuvah was adopted unanimously. RA Proceedings 1961 p. 190.

B. UTENSILS:

- Broiler (electric) 1) May not be used simultaneously for meat and dairy

RA Proceedings 1946 p.47, 1953 pp.40-41, H187

- 2) If used simultaneously, broiler should be burned out, and heat will kasher it. A300
- 3) Cannot be used to kasher liver because there is no flame. Therefore, the liver is cooked instead of broiled. RA Proceedings 1941-44 p.142
- 4) Can be used to kasher liver, if liver rotates. E171.

Corning Ware -

- 1) Is to be considered as glass. U114
- 2) Is regarded as pyrex and glass. V318

Dishwasher -

May be used for both meat and dairy provided a full wash cycle is run between the use of each. This applies to both - to metal and rubber covered trays which are considered to be כשר Minutes of CJLS Feb. 18, 1974.

Earthenware - glazed -

is still considered earthenware and not china. S46.

Glass dishes -

- 1) Can be used for meat and dairy provided food is cold and dishes are washed between the use of each. D261.
- 2) Practice of using for both meat and dairy should be discouraged because it will lead to abolition of basic distinctions. U272
- 3) Color or dyes do not affect their status as glassware. N118.
- 4) Should not be used simultaneously for meat and dairy in the synagogue kitchen. RA Proceedings 1933-38 p.30, 1940 p.30. D261, G35-45 (teshuvot), H90
- 5) If used inadvertently it is not to be considered כשר.

Kashering -

- 1) Autoclaving is good only on dishes where regular kashering is effective. China cannot be kashered by autoclaving. S447, R419, U114.
- 2) In case of expensive dishes even that are not china, and people want to have a kosher home, dishes should not be used for one year and then can be considered kosher. V279
- 3) Utensils used for meat cannot be kashered כשר so that they may be used for dairy or vice versa except in absolutely urgent cases. C5
- 4) Silverware and metal are kashered as follows: Thoroughly cleansed and then dipped in boiling water. E238

Plastic Dishes -

- 1) May be used - But considered as porcelain. Therefore,

two sets are necessary. C98, H331, K206.

- 2) Cannot be used for both dairy and meat. C5.
- 3) May be used for both meat and dairy only if cold food is placed on them and it is done after proper rinsing. E114, F115.
- 4) Considered as glass, therefore, cannot be used for meat and dairy. F115
- 5) Does not have the same status as glass. K439.

Porcelain -

- 1) Cannot be kashered. E238
- 2) May be used again after not being used for a period of one year. E3

Pressure Cooker -

May be kashered. Removable parts are to be kashered separately. C450, D179.

Pyrex -

- 1) To be treated as glassware and may be kashered as glassware. C450, D179, J150, 274.
- 2) Can be used for cooking and baking. H239

Pyroceram -

Should not be used for meat and dairy even if it is to be considered glass because glass cannot be used for both. T69

Teflon -

Is permitted on basis of a statement made by Alcoa's staff metallurgist. Teflon does not contain any animal fats nor is it derived from animal fats. W383.

Standards -

Food in the Synagogue

- 1) If cooked by individuals - not advisable.
- 2) No cooked or packaged food from a home is to be brought into the synagogue.
- 3) Canned and packaged food may be brought in only if there is a heksher.
- 4) All food should be prepared under supervision of the appropriate authorities.

This is a general policy followed by most synagogues. The Committee has not ruled on this matter, it has just advised. J8, K5, R300, S377, U91, 202,452.

Sale of Kosher Meat -

- 1) Butcher shop selling both kosher and non-kosher meat could not be recommended as kosher unless extenuating

circumstances warrant it. Rabbi should supervise in order to safeguard the kashrut of the meat. RA Proceedings 1946 p.46. A267, 0150, N92.

- 2) Butcher shop that sells groceries and dairy products, the proprietor must wash hands and change aprons when going from meat counter to dairy counter and vice versa. RA Proceeding 1940 p.33
- 3) The sale of prohibited foods is, as a general rule, disallowed with the exception of fat, and according to some authorities, lard also. However, in view of the precarious condition Jewish stores would be put into, it is wise, as a matter of policy, to overlook the non-observance of this law. RA Proceedings 1940 p.34
- 4) In shop selling both dairy and meat products, a complete separation of products must be enforced; this includes counters, utensils and sinks. R230.
- 5) Dairy products sold in butcher shop must be sold in sealed packages. R233
- 6) Meat sold by a non-Jew, even if it has a plumbe, is treif, if it is not packaged. Only meat in a closed and sealed container may be sold by a non-Jew to a Jew. D276.

Hashgahah -

Not to be undertaken nationally. Should be undertaken by the region and not by the individual rabbi. In extenuating circumstances it is recognized that the individual rabbi must undertake it. R140, 221, 358. T222, U258.

Officiating at
Non-Kosher Affairs -

- 1) Rabbi may officiate even when he knows that the dinner will not be kosher. However, he should not put in an appearance at the social function. O 315. Various regions of the R.A. have decided to bar members from officiating at such functions.
- 2) Rabbi should not participate in a non-kosher dinner conducted by a Jewish organization. RA Proceedings 1946 pp 47-48. L219.

Official Functions in
Non-Kosher Establishments -

Only if no kosher facilities exist. Fish should be broiled and not prepared in meat pans. Precautions should be taken that no non-kosher ingredients are used. F152, J97. An advertisement of a non-kosher restaurant is prohibited in a synagogue communication since it is an implied endorsement. R30.

Reason:

Teshuvah by Rabbi Max Arzt G45-53.

Incorporated into the committee's decision were the following points:

- The committee has always recommended that whenever a fish dinner is eaten, be it by an individual or at a public function, precautionary measures should be taken to see that no non-kosher ingredients should be used, and that the utensils are cleaned and scoured before the preparation of the meal. W 274, 458, X 439-440.

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