INSTRUCTIONS FROM AUTHOR TO LIBRARY FOR THESES AND PRIZE ESSAYS

Washofsky

AUTHOR Benjamin Sharff

TITLE Divorce in Jewish Law and American Reform Jewish Practice

TYPE OF THESIS: Ph.D. [ ] D.H.L. [ ] Rabbinic [✓]

Master's [ ] Prize Essay [ ]

1. May circulate [✓]) Not necessary
2. Is restricted [ ] for ___ years.) for Ph.D.) thesis

Note: The Library shall respect restrictions placed on theses or prize essays for a period of no more than ten years.

I understand that the Library may make a photocopy of my thesis for security purposes.

3. The Library may sell photocopies of my thesis. ✓ yes ___ no

2/25/04
Date

Signature of Author

Library Record

Microfilmed
Date

Signature of Library Staff Member

Divorce in Jewish Law and American Reform Jewish Practice

Benjamin Aaron Sharff

Thesis submitted in partial fulfillment
of the requirements for Ordination

Hebrew Union College-Jewish Institute of Religion

2004

Referee, Dr. Mark Washofsky

DIGEST

Traditionally Jews have possessed a set of legal procedures since Biblical times that governed divorce. One of the earliest examples of this can be found in Deuteronomy 24:1, which states: "A man takes a wife and possesses her. She fails to please him because he finds something obnoxious about her, and he writes her a bill of divorcement, hands it to her, and sends her away from his house." Therefore the Biblical practice of divorce was initially a private matter. As described the husband simply gives his wife a document dissolving the marriage.

However in Rabbinic times the community began to intervene through its legal institutions into the process of divorce. This is because the power to grant a divorce, according to Biblical law, lay solely with the husband. The wife was powerless to either initiate or resist divorce proceedings. Therefore, the intervention of the community into what had once been a private legal proceeding was designed to grant the wife much-needed protection under Jewish law. Talmudic law developed the rules and regulations governing divorce and created ways for the *dayanim* (rabbinic judges) to adjudicate the divorce proceedings. The Rabbis specified grounds under which the wife was entitled to divorce and could sue for it. In some instances the *Beit Din* would act to compel the husband to issue the divorce. The institution of the *ketubah* was also established, according to the Talmud (*Ketubot* 11a), so as to make it more difficult for the husband to divorce his wife arbitrarily. Later, the famous *takanah* of R. Gershom b. Yehudah of Mayence, 10^{th}-11^{th} centuries, forbade a husband from divorcing his wife without her consent. Most of these laws were created out of the understanding that the power rested with the husband and therefore there existed an inherent inequality to this system.

These laws of divorce have been sustained since Talmudic times, and the Rabbis maintained control over divorce up until the 1800s with the beginning of the Enlightenment. The Enlightenment marked a time during which marriage and divorce law became the province of the state, a fully public matter that was no longer left to the control of ecclesiastical authorities.

With the Enlightenment, the Jews of Europe began to make a distinction between religious and civil matters. At the Paris Sanhedrin of 1807, a group of 71 rabbis and lay

leaders declared in their Doctrinal Decisions that religious matters would continue to be regulated by the religious leaders, but civil matters would now be regulated by the State. In regards to divorce it was declared in article 2 "that divorce by the Jewish law is valid only after previous decision of the civil authorities." However the leadership still maintained full religious authority over divorce, and they still insisted upon the giving of a ritual *get*.

Yet there were those within the growing Reform movement who challenged this idea. Rabbi Samuel Holdheim issued one of the first challenges to religious divorce. In 1843 he argued against religious divorce by stating that since it was a civil act based on monetary provisions, it should be a concern of the state and not of the religious authorities. This suggestion was accepted in the United States by American Reformers at the Philadelphia conference of 1869.

Therefore since 1869 Reform communities of the United States have allowed the civil law to be the guiding force behind divorce laws. And because of this, divorce has become simply a matter for the courts to decide and not the rabbis. Divorce became a matter of personal/pastoral counseling and nothing more.

However, there remains the question of to what degree did Reform rabbis in the United States still viewed divorce as a specifically Jewish issue. Yet this does not tell the whole story. Some Reform rabbis continued to regard the subject of divorce as an issue of Jewish ritual practice.

Lately there has even been a growing urgency in this trend to reclaim ownership over religious divorce. More and more Reform rabbis and Jews have come to see that, if the inception of marriage is a moment of "religious" concern, then the dissolution of marriage is no less so. This is in part because of a growing recognition that divorce does not merely affect the family, but can also have profound effects on the community. There is also the legal issue with regards to Israel. Now that the Supreme Court of Israel has declared that marriages performed by Reform and Conservative Rabbis must be recognized, there may also be a need to have a standard procedure for a *get*, which can also be recognized in Israel. So perhaps it is now time to begin to evaluate if a type of divorce procedure should become mandatory again. Therefore there has been a growing desire to "finalize" any civil divorce with a Jewish ritual. One response to this was the

creation of the *Seder Priydah*, the ritual of release, which can be found in the 1988 Rabbi's Manual.

This thesis evaluates the themes and ideas underlying the Halachic sources with regards to divorce. This is then followed by an examination of the development of the Reform response to the Halacha with an emphasis on the moral and ethical issues found in the Reform responsa. It concludes with at the attempts within the Reform Community of reclaiming some aspects of divorce proceedings within the Movement and whether or not this could or should become standard practice in the Reform community.

TABLE OF CONTENTS

The narrative of the history of Jewish divorce began in the cultural milieu of the Ancient Near-East. In various societies in the Ancient Near-East, the husband was the ruler of the household and his will dominated both the rights of his family and also his wife. A result of this was that the husband had the absolute right to remove his wife from his household. And this was because "the right to divorce is accorded to the husband, as one would expect in patriarchal societies."[1] Therefore it is common to find instances of divorce throughout Ancient Near-Eastern Literature.

It can be argued that ancient Israelite divorce was based on the same model. Just like in the Ancient Near-East, the patriarch had "absolute power and authority"[2] to divorce his wife at will. And from this it is possible to derive two significant components of ancient Israelite divorce proceedings. The first piece is that there was no consideration of the wife's wishes because wife was at the will of her husband. Therefore the husband was free to divorce his wife arbitrarily without taking her opinion into consideration. He did not even need to hand her a bill of divorce or even give her fair warning. All he needed to do was declare that she was no longer his wife and the divorce was final.

The second component that stemmed from this absolute authority was that there was no public supervision of divorce proceedings. Divorce among the ancient Israelites was a private matter whereby the husband could recite a simple formula and then send his wife out of his house. There is no mention in the Bible of a public context for this ceremony. The husband did not need to perform this ceremony "at the gates of the city," or "in the presence of the elders," like other ceremonies. The result of this situation was that "divorce was an arbitrary, unilateral, private act on the part of the husband and consisted of the wife's expulsion from the husband's house."[3]

This idea is reflected in the terminology found in the Bible. "The usual term for a divorced woman is *gerushah*[4], meaning 'expelled.'"[5] It is also expressed in terms like *shilah* (sending away) and *hotzi* (putting out) as well. These terms help to indicate the wife's passive role that she played in the divorced proceedings. She is someone who was sent forth from the house never to return.

However the arbitrary nature of ancient divorce could not last. Eventually society began to take a role in regulating the proceedings, and some of the first attempts at regulating divorce procedures in Israel can be found in the Bible. Deuteronomy in particular contains vestiges of several laws established to limit the husband's powers to a small degree. However the Bible does not represent any comprehensive system of divorce. Instead, like many of the laws found in the Bible, these laws would need to be expanded upon later by the rabbis in order to establish a complete system of divorce. Despite this problem there are four significant passages in the Bible that place restrictions on divorce.

Two of these passages place limits on the type of wife the husband can divorce. In Deuteronomy 22:13-14, the husband is forbidden from divorcing his bride if he falsely accused her of premarital intercourse. Similarly in Deuteronomy 22:28-29 the husband is forbidden to divorce a woman whom he seduced. In both of these cases the husband is to remain married to his bride and also support her throughout their lives.

Exodus 21:10-11 describes the proper means of support. It does this by stipulating that the wife was permitted to leave her husband if he withheld from her food, clothing, or conjugal rights. The rabbis would later expand upon these three categories in order to specify how the husband was obligated *visa vie* his wife.

The most significant passage with regards to biblical divorce can be found in Deuteronomy 24:1-4 which states:

> 1 A man takes a wife and possesses her. She fails to please him because he finds something obnoxious about her, and he writes her a bill of divorcement, hands it to her, and sends her away from his house;
> 2 She leaves his household and becomes the wife of another man;
> 3 Then this latter man rejects her, writes her a bill of divorcement, hands it to her, and sends her away from his house; or the man who married her last dies.
> 4 Then the first husband who divorced her shall not take her to wife again, since she has been defiled – for that would be abhorrent to the Lord. You must not bring sin upon the land that the Lord your God is giving to you as a heritage.

This passage would later serve as much of the basis for Jewish divorce law. In it there are several significant factors. The first is the phrase, "she fails to please him because he finds something obnoxious about her." Though "there was in fact no legal restriction on arbitrary divorce,"[6] this passage seems to represent one of the first instances whereby the community appears to be requesting that the husband at least provide some sort of reason for divorcing his wife. He cannot simply send her out with out least having a "good" reason for doing so.

The phrase "because he finds something obnoxious about her" is related to the phrase "find something in [*matsa' be-*] somebody." *Matsa be* conveys the idea of catching a person doing an inappropriate action,[7] and by implication the phrase *matsa ve* in Deut. 24:1 is similar to this notion. The husband, according to this interpretation, wishes to divorce his wife because he found her engaged in an inappropriate behavior or action. Later interpretations of this phrase state the wife, rather than having an unpleasant quality, has instead done something intolerable.[8] The type of action or behavior worthy of a divorce is never specified in the Bible. Therefore there will be much discussion with several disputes in the Mishnah and Talmud as to what exactly constitutes an "intolerable" action.[9]

Another factor of this passage in Deuteronomy is the *Sefer Kritut*, the bill of divorcement. Some scholars argue that the "divorce certificate is unique in ancient Near Eastern sources. Nowhere outside Judaism is there any reference to a divorce certificate or any other document that would be taken away by every divorced woman."[10] The reason why the bill of divorce was so important to women was that it served as proof of the woman's right to remarry. In a patriarchal society the woman simply did not have the right to remarry without proof that she was properly divorced. On the other hand the reason why the husband did not need the *Sefer Kritut* is that in a world of polygamy, the husband could marry as many women as he could afford, and therefore he would not need proof of being divorced.

The bill of divorcement did more than give the woman proof of her right to remarry; it also "provided a clean and proper end to a broken marriage."[11] This was because unlike other ancient Near East cultures, the Bible prohibited the husband from reclaiming his wife once he divorced her as stipulated in the passage mentioned above. Therefore the bill of divorce may have even served as an attempt to placate the husband, preventing him from acting rashly since he could not "change his mind" later on and reclaim his now ex-wife assuming she has remarried in the meantime.[12]

Along those lines it has also been argued by some that the *Sefer Kritut* could have also served to prevent a hasty divorce because it would take time for the husband to either write it or find someone else to write it.[13] Therefore, though the husband still had absolute right to obtain a divorce from his wife, the Bible appears to be establishing some controls to prevent the husband being too rash. However there is no agreement in the scholarly literature as to whether or not the *Sefer Kritut* was instituted for this reason.

Whether or not the *Sefer Kritut* was instituted for this reason, it nonetheless had a significantly negative effect on the wife. This is because the *Sefer Kritut* also meant that the wife was prevented from being able to obtain a divorce without the consent of her husband. According to Deuteronomy 24:1, because the wife needed a divorce certificate from her husband, this meant that she could not get divorced without one. Furthermore, because the husband had to be the one to give it to her, this meant that the husband had all of the power to initiate the divorce proceedings. Though the law of the divorce certificate was perhaps created to restrict the husband's rights with regards to divorce, "it actually became a way to stop women from getting divorced ... Therefore, a provision that was meant to empower the divorced woman resulted in the enslavement of women who wished to get divorced."[14] This problem of the *agunah* would confound rabbis for generations.

Before the rabbis dealt with the legal problems of divorce, their predecessors, the prophets, dealt with the issue missing from Deuteronomy, namely the ethical ramifications of divorce. In prophetic literature there are numerous mentions of divorce as a metaphor for God's relationship with Israel. The Israelites committed adultery by seeking out other gods, which in turn forced God to seek a divorce from them.

There is speculation that the reason for this metaphor was that following the return from exile, a general decay appeared in society. Many prophets warned against a return to "wicked ways" and viewed divorce as a direct result of the behavior of the Israelites. "The books of Malachi and Nehemiah ... speak of problems as violations of sacrificial law, neglect of the Sabbath, and nonpayment of tithes. There was a breakdown of morality and a rise in divorce ... (and) intermarriage with the surrounding nations

threatened the continuity of the Jewish community."[15] Therefore though divorce may have been legally acceptable, the prophets viewed it as a sign of moral and ethical decay. And even though the Bible allowed it, the prophets decried it as being at best a "necessary evil " as can be seen in Malachi 2:16, which states, "For I hate divorce – said the Lord, the God of Israel."

Though the Bible did allow for divorce, there seems to be, at least in prophetic literature, a general distaste towards this dissolution of marriage. It may have been legal, but it was ethically questionable. The one exception to this can be found in Ezra 10 where he demanded that the Israelites divorce their non-Israelites wives in an attempt to preserve Jewish identity. However on the whole it appears that the prophets viewed divorce as a symbol of the breakdown of the covenant between Israel and their God. The fact that prophets used divorce as the metaphor for the tragic rupture of the union between God and Israel suggests that divorce itself was viewed as an unhappy event, a necessary evil at best, but something to be avoided if at all possible.

By the time of the redaction of the Bible there existed the possibility for several significant "problems" facing Jewish divorce proceedings. These "problems" would become more apparent when the rabbis attempted to establish a regulated system of divorce. The most significant of these problems was that the husband still had absolute authority in the household. This problem was then further compounded by the regulations surrounding the issuance of the *Sefer Kritut*. The wife could not obtain a divorce without her husband's permission, and without one she was in the limbo status of the *agunah*.

Secondly the Bible left little protection for the wife. It stipulated that the husband had to provide food, clothes, and conjugal rights, but despite this, his will remained supreme. And the only cases where the husband was forbidden to divorce his wife were in the cases of rape or false accusation of premarital intercourse. Therefore, according to this legal system, as long as the wife was not completely neglected she had no means by which to obtain a divorce.

The third problem was that though the Bible did call for the creation of a bill of divorce, the actual divorce proceedings were still a private matter. And while the community had a vested interest in the family, the husband's will dominated the desires of his wife in the case of divorce. Therefore until a new power arose in the Jewish world, the husband could act alone without the consent of the community.

It would not be until the rise of the rabbinic movement that any more significant changes would be made to divorce laws. However their rise to prominence did not involve a smooth transition of power following the destruction of the Second Temple. Instead what occurred was that the rabbis grew out of a Pharisaic tradition that extended back to at least the Hasmonean dynasty. "Pharisaism traced its nonbiblical legal and exegetical traditions to the 'tradition of the fathers' or 'unwritten laws.'"[16]

It would be the Tanaaim who grew out of they Pharisaic tradition. The way that the Tannaim were different from the Pharisees was that they began to assert that "their extrabibilical traditions ... were part of the oral law,"[17] and that this Oral Law was also given at Sinai along with the Written Law. Therefore the laws these rabbis stipulated not only had credibility, but would also have supremacy. Thus using the Oral Law as their

guide, they sought to establish systems of law for many aspects of Jewish life including creating more regulations over divorce.

The rabbis still had to deal with the fundamental problem that "this ancient right of the husband, to divorce his wife at his pleasure, is the central thought in the entire system of Jewish divorce law; and the rabbis did not, nor could they set it aside."[18] Instead they would work within the framework already established in the Biblical system to set up measures to specify how properly implement divorce procedure while at the same time limiting its restrictive measures.

The Mishnah for the most part reflects both the reinforcement and also the mild restraints placed on the system of divorce. In one of the more famous mishnayot on the subject, there is a record of a debate between the Houses of Hillel and Shammai. In Mishnah Gittin 9:10, the debate is over whether or not the husband even needed a pretext by which to divorce his wife (as stated in Deuteronomy 24:1).

> The School of Sammai says: A man may not divorce his wife unless he has found unchastity (sexual immorality) in her, for it is written, "Because he has found in her something unseemly." (Deuteronomy 24:1). And the School of Hillel says: [He may divorce her] even if she spoiled a dish for him, for it is written, "Because he has found in her something unseemly." R. Akiva says: Even if he found another fairer than she, for it is written, "And it shall be if she finds no favor in his eyes." (Deuteronomy 24:1)

The result of this debate was that it allowed for the continued system of "groundless divorce." By using the arguments put forth by Hillel and Akiva, it appears that the husband just needed a reason no matter how insignificant to divorce his wife. The result of this was that "he (the husband) was free to divorce her at any time."[19]

This notion was further reflected in Mishnah Yevamot 14:1 which states: "The man that divorces is not like the woman that is divorced; for a woman is sent away with or without her consent, but a husband can send his wife away only with his own consent."

This notion of not needing the wife's consent would not be rescinded until the 11th century with a takanah by Rabbi Gershom of Mayence.

Therefore early rabbinic divorce legislation reflected Biblical law. The rabbis simply could not circumvent the Bible nor did it appear that they wished to do so. They allowed the power to remain with the husband, but they sought to limit the husband's ability to divorce his wife. The way that they did this was by making divorce a communal institution. One of the results of this was that the wife was granted more protection because of this community involvement in this previously private act.

The rabbis managed to do this through several measures. One of the most significant of these was the creation of the Ketubah. In ancient times "a man acquired a wife through payment of a sum of money called a *mohar* (Gen. 34:12)."[20] Yet by the time of the Second Commonwealth it became customary for the groom to pay a token amount for his bride. It was stipulated in Mishnaic times that the price of the ketubah for a virgin was 200 dinars [21] which is equal to 200 *zuziim*.[22]

Initially the groom had to hand the sum over to the father of the bride. However this stipulation made it "costly to get married but relatively cost-free to get divorced."[23] This was because once the amount was paid; the husband was free to do what he willed with his wife. He could send her out from his home arbitrarily without suffering any further financial obligations.

This initial system was not viewed favorably by Simeon ben Shatah, the head of the Sanhedrin during the first century BCE as can be seen in his ruling:

> In earlier times, when [property set aside for payment of] her ketubah was in her father's hands, it was a light thing in his [the husband's] view to divorce her. Simeon b. Shatah therefore ordained that [the property to cover] her ketubah should be with her husband [who might do business with it, singing it over for a mortgage and the like]. And he therefore writes for her, "All property which I

have is liable and obligated for the payment of your ketubah." (Tosefta Ketubot 12:1)

The result of this ruling was that it "turn(ed) the money into goods that were kept and used by the married couple. This meant that marriage was still costly and that the price of divorce included the loss of the goods that were part of the home; thus, divorce was personally costly for the husband."[24] Furthermore, the money had to be paid to the wife if the marriage was broken.[25] The result of this ruling was that Simeon ben Shatah was able to reform the system of the ketubah, and though it made marriage inexpensive, it conversely made divorce very expensive for the husband, thus making it very difficult for the "husband to divorce his wife at will."[26] This sentiment would later be reflected in the Talmud, which stated, "it should not be easy for a husband to divorce his wife."[27]

The rabbis also placed several more restrictions on the husband's right to divorce his wife. As mentioned earlier in the Bible, the husband would not be granted a divorce in the cases of rape or false accusation of pre-marital infidelity. However the rabbis felt it necessary to add further restrictions on top of these two categories.

To this end, Mishnah Yevamot 14:1 contains several new categories of wives that a husband is not allowed to divorce. In this mishnah the husband is refused from being allowed to divorce a wife who became insane because rabbis were afraid that she "might become the prey of evil men."[28]

The husband also could not divorce his wife if she was in captivity.[29] Instead it was his obligation to pay the price of her ransom to redeem her from her captors. This is part of the normal financial obligations of husband to wife. The restriction here is necessary in order to keep the husband from limiting his liability to the 200 *zuz* he owes her as part of the ketubah. Only when the wife was free would the husband then be allowed to divorce her.

The result of these rulings was that though the husband still had the power to divorce his wife at will, he could not divorce her if he accused her of premarital infidelity, if he raped her, if she was or became insane, or if she was in captivity. By the time of the Mishnah, the husband's supreme powers were becoming more limited, though only in specific instances.

The rabbis also placed two restrictions with regards to which types of husbands would be allowed to grant divorces. They stipulated that if the husband was originally of sound mind and body later became a deaf-mute or an "imbecile," then he could never divorce his wife.[30] The reason for this ruling was that though a wife could be divorced with or without her consent, the husband needed to be competent in order to be able to express his desire for a divorce. If the husband became incapable of expressing this desire for a divorce, he could not be granted one. This is because since divorce is a legal proceeding as defined by the rabbis, they have now determined that to initiate a divorce would requires *da`at*, legal competence.

The third way that the rabbis sought to control divorce was through the creation of numerous rules and restrictions with regards to the divorce certificate. Though the rabbis could not refuse the husband's right to seek a divorce, they could make it more difficult for him to do it on his own. To this end they created numerous procedures and regulations, and the result of this was that these "numerous rules and regulations incident to the procedure in divorce compelled the husband to seek the help of one learned in the law to assist him in divorcing his wife, and thus the act became a quasi-judicial one."[31] It is possible that the purpose of refining the divorce procedure was simply to reduce errors and mistakes, and that making divorce into a judicial act was not the intention of the

rabbis. The end result of this effort was that the community became more involved in the divorce procedure. This was because by further developing and restricting the process it simply became "too difficult for any layman to undertake,"[32] thus giving the final authority to the rabbis and not to the husband.

The rabbis did this by creating and regulating four categories surrounding the divorce certificate. These four categories were the "ordering the preparation and delivery of the get, the writing of the get, the fee of the scribe, and the appropriate writing materials for the get."[33] By specifying the details of these activities, the rabbis were able to reduce confusion and also establish the legal validity of divorces.

In regards to the ordering the preparation and delivery of the get, the rabbis stipulated that the husband must either write it himself or request that one of his agents do it.[34] However these agents had to follow exactly what the husband said. For example if he ordered them to write it, but did not mention that they should deliver it, but they did so anyway, then the divorce was invalid. This is because "according to the common principle of law they could not, by their acts, exceed the power granted them."[35]

Several exceptions were made in the Mishnah with regards to the husband's intentions. In the case of a voyage or a caravan journey, the authors of the Mishnah argued that if the husband requested that a bill of divorce was to be written out but does not mention that he wants it delivered, it could still be delivered and accepted as valid.[36] The most likely reason for this reason was that the rabbis were attempting to deal with problem of the *agunah*. If the husband had requested a *Get* be written out, they could argue that he intended to divorce his wife, and proof of his death would not be necessary for her to be able to remarry. This only worked if the husband had already stipulated that

he wished to have a *Get* be written. If the husband did not stipulate that he wanted a bill of divorce and that he wanted it delivered to his wife, then any *Get* given from this husband would not be valid and binding.[37]

In terms of the writing the of the *Get*, the rabbis stated that, "all are qualified to write a bill of divorce, even a deaf-mute, an imbecile, or a minor. (Even) A woman may write her own bill of divorce."[38] They furthered this ruling by stating that these same people were even qualified to deliver the divorce. What was more important to the rabbis was that the scribe received orders from the husband to write the *Get* in the presence of witnesses,[39] and that the *Get* was validated in the presence of witnesses.[40]

In terms of the payment of the scribe, it was initially decided that the husband was to pay the scribe for the preparation of the *Get*.[41] However this would be later reversed in the Talmud where it would be decided that the wife would instead would pay the scribe.[42] This was done so that the husband would not be able to use the expense of having the *Get* prepared as an excuse for not delivering the *Get*. It would be decided later that the wife would pay all of the fees for the scribe in all cases.[43]

In terms of writing materials, the rabbis stated that the *Get* may be written with any material as long as it is lasting and on anything as long as it was not living or food-stuff.[44]

These were not the only aspects of the *Get*. The rabbis also stipulated what the *Get* needed to say. The most important element was the phrase, "Lo, you are free to marry any man."[45] This formula served both to free the wife completely, and also to give her the ability to marry any man whom she chose.

Rabban Gamliel decreed that the husband could not "change his mind" and declare the Bill of Divorce null and void without the presence of the wife and/or her messenger.[46] The reason for this was that before this ruling, the husband could declare the divorce null and void without letting his wife know. The result of this was that if the husband engaged in such an activity any marriage the wife had afterward would have been considered adultery and not a valid marriage. Therefore once the husband or his messenger gave his wife a *Get*, which stated that she was "free to marry any man," and the courts recognized the divorce as valid, then the divorce was considered binding.

The result of all of this was that the process of writing the *Get* and delivering it not only became more regulated, but also that the rabbinic courts came to have full jurisdiction over these divorces. They could determine if some minor improprieties could in effect invalidate a divorce. This in turn helped to limit the husband's power to some degree. It also made divorce a *de facto* public concern and not just a private one.

The rabbis also specified grounds under which the wife was entitled to divorce and could even sue for it. The basis for the wife being able to sue for divorce comes from the passage found in Exodus 21:7-11. Here the Torah states:

> When a man sells his daughter as a slave, she shall not be freed as male slaves are. If she proves to be displeasing to her master, who designated her for himself, he must let her be redeemed; he shall not have the right to sell her to outsiders, since he broke faith with her. And if he designated her for his son, he shall deal with her as is the practice with free maidens. If he marries another, he must not withhold from this one her food, her clothing, or her conjugal rights. If he fails her in these three ways, she shall go free, without payment.

The rabbis interpreted this passage to mean that the husband had certain obligations towards his wife, and that because the husband-wife relationship was contractual, failing to fulfill the contract could allow the other party to sue for divorce at which point the courts could intervene. Therefore not only did the rabbis create a

communal system for divorce, they also created a system by which these same courts could work to compel the husband to divorce his wife.

In some instances the *Beit Din* could even act to compel the husband to issue the divorce. As is stated in Mishnah Arakhin 5:6 "they (the court) may compel him until he says, 'It is my will.'" However the problem with this was that the husband had to willingly grant the divorce. Even though the wife could sue for a divorce, and the courts could attempt to compel him by using such measures from fines to whippings, in the end it was still up to the husband to freely grant the divorce.

The result of this was that it did not solve the problem of the *agunah*, but it did create the opportunity for the courts to get more involved the proceedings. The courts could work to compel the husband to divorce his wife, but if he chose not to, then the wife was stuck in a sort of legal limbo. The wife was still considered married and was not free to marry anyone else. And this problem would continue to serve as a difficulty for the Halacha throughout the Middle Ages and beyond.

By the time of the redaction of the Mishnah, the rabbis had managed to lay the foundation for institutional divorce. The system they established made it much more difficult for a husband to singularly divorce his wife at will. Instead they created rules and regulations that mollified the husband's powers to some degree. They could not however, remove the problem of the *agunah* because in the end, the husband still had to grant the divorce of his own free will.

It would not be until the development of the Jewish Codes that the entire system surrounding divorce and divorce procedure would be finalized. In these writings the rabbis would continue to deal with the issue of the husband's authority including whether

or not the husband even needed the wife's approval. The rabbis, in their writings, would also attempt to more effectively deal with the problem of the *agunah*.

In the *Mishneh Torah* Maimonides summarizes the ten Toraiitic rules that are essential to ensuring that the *Get* is a legal document.[47] It appears that by the time Maimonides wrote the Mishneh Torah, these rules he were considered to be standard practice by most Jews. Also by this time the wording in the *Get* had been standardized as well.[48] However several issues relating to Jewish divorce were still waiting to be worked out.

With regards to the issue of the husband's authority in that he did not need his wife's approval go give her divorce papers,[49] Rabbenu Gershom of Mayence issued a *takanah*. Though his most famous *takanah* forbade polygamy,[50] this particular *takanah* that he made with regards to the aforementioned issue would serve to have a significant impact on divorce. This *takanah* stated that a husband was now forbidden to divorce his wife without her permission.[51] From the tenth century onward, a husband needed his wife's consent before he could divorce her.

However with regards to the husband's authority, his rule remained absolute. The rabbis either could not or would not change the law as stated in Deut. 24:3 by which only the husband could provide his wife with a *Get*. Therefore much rabbinic energy would instead be spent on attempting to "circumvent" the problem of the *agunah*.

The situation of the *agunah* can result from one of three different causes. The first cause is that the wife's husband disappeared, but there is doubt as to whether he is alive or dead. This situation tended to occur in cases of travel (especially if a ship was involved) or in times of war. The second cause was when the husband died and the

woman was childless. According to Deut. 25:5-10, the brother-in-law was then obligated to either marry her through levirate marriage (*yibbum*) or do the ritual of *chalitzah* thereby freeing her from this potential marriage. However if the brother-in-law refused to do either of these, it left the wife in the situation of being an *agunah*. The third case was when a husband refused to allow his wife to remarry by providing her with a *Get*.

Furthermore, a situation that can aggravated by the problem of the *agunah* is the issue of the *Mamzerut*. By the redaction of the Mishnah it was decided that any child born to an incestuous or adulterous affair would be declared a *mamzer*.[52] Since a woman who remarried without a *Get* was considered to be an adulterer, any children she bore from this relationship would therefore be considered *mamzer*.

The rabbis were particularly concerned with the issue of the *mamzerut*. This issue would become particularly poignant following the Enlightenment when women could receive a civil divorce without ever receiving a *Get*. Even before that time, the rabbis attempted to create ways to deal with the problem of the *agunah* and the *mamzer*. These solutions fall under four broad categories: purification of the *mamzer*, retroactive annulment of the marriage, conditional betrothal, and conditional divorce.

The purification of the *mamzer*, though not solving the problem of the *agunah*, at least does not pass this particular stigma on to subsequent generations. In the Mishnah Rabbi Tarfon suggested that the *mamzer* marry slavewoman so that their children would be considered slaves and not *mamzeriim*. Then if their offspring were set free and converted, they then would be considered to be just another convert and not a *mamzer*.[53] However this solution only lasted until slavery was ended.

Another potential solution to the problem of the *mamzer* that was "allegedly practiced in various times and places, (was to allow) the *mamzer* to go and merge into another community where the circumstances of his birth are unknown."[54] This "solution" was only effective if the status did not follow the person, and was therefore most likely never a standard practice in the majority of Jewish communities.

Another way to deal with the issue of the *agunah* would be to annul the marriage retroactively. This idea is based on the Talmudic principle of, "when a man marries, he does so under rabbinic authority; therefore the rabbis may annul such a marriage."[55] However the rabbis were generally reluctant to engage in such a behavior, and they set specific parameters by which they could dissolve a marriage. The result of this was that a marriage was rarely retroactively annulled, and this practice "has rarely been employed since the 14th century."[56]

Since the rabbis were generally reluctant to change a situation after the fact, most of their efforts revolved around trying to prevent the situation of the *agunah*.[57] One example of this effort is the *kiddushin al tanai*, the "conditional betrothal." An example of this can be found in the Tosefta which states, "when you enter my house you shall (then) become my wife according to the law of Moses and Israel."[58] Though some rabbis in Palestine supported this solution,[59] the combining of Kiddushin and Nissuin into one ceremony effectively ended this practice.

The practice of conditional divorce is based on a Talmudic passage, which tells of how King David's soldiers, before going to war, would write out a *Get K'ritut*.[60] They did this so that if they did not return from the war, their wives would be able to remarry. Some rabbis even regarded the husband who provided his wife with a conditional divorce

as being both noteworthy and praiseworthy.[61] The conditional divorced generally stated that if after a certain period of time the husband did not return, the wife was entitled to remarry without having to go through the process of *yibbum* or *chalitzah*.[62]

The plight of the *agunah* and the subsequent issue of the *mamzer* has presented a significant challenge to halacha. Though the rabbis have come up with some unique solutions, the prevailing attitude is that in most cases the husband must first provide his wife with a *Get* in order for the divorce to be binding. Therefore most rabbis were and are reluctant to engage in the aforementioned activities and instead work to try to get the husband to issue a *Get*.

This failure to solve the problem of *agunah* would have a significant impact on those who would later seek to bring Judaism into the modern age. The fact that *halacha* was unable to successfully solve the problem of the *agunah* and, the problem of the *mamzet* by default, would lead the reformers to ultimately reject the binding nature of Jewish divorce and replace it with civil divorce. However this would not be a concern until the period of the Enlightenment, because before the Enlightenment, Jewish courts were generally the ruling authorities in all matters concerning Jewish marriage and divorce procedures.

[1] Patai, Raphael, Sex and Family in the Bible and the Middle East, (Garden City: Doubleday, 1959), 113.

[2] Amram, David Werner, The Jewish Law of Divorce According to Bible and Talmud, (New York: Hermon Press, 1968), 22.

[3] Falk, Ze'ev W., Hebrew Law in Biblical Times: An Introduction, 2nd ed. (Provo: Brigham Young University Press, 2001), 150.

[4] Leviticus 21:7, 14; 22:13, Numbers 30:10-12; Ezekiel 44:22

[5] Falk, Ze'ev W., Hebrew Law in Biblical Times: An Introduction, 150-151.

[6] Ibid., 152.

[7] 1 Samuel. 29:3, 6, 8; 2 Kings 17:4.

[8] Tiday, Jeffrey H., The JPS Torah Commentary: Deuteronomy, (Philadelphia, Jewish Publication Society, 1996), 221.

[9] See Mishnah Gittin 9:10 (for example)

[10] Instone-Brewer, David, Divorce and Remarriage in the Bible: The Social and Literary Context, (Grand Rapids: William B. Eerdmans Publishing, 2002), 28.

[11] Ibid., 32.

[12] Deut. 24:2-3.

[13] Mielziner, M., The Jewish Law of Marriage and Divorce in Ancient and Modern Times and Its Relation to the Law of the State, (Cincinnati: Bloch Publishing: 1884), 117.

[14] Instone-Brewer, Divorce and Remarriage in the Bible, 31.

[15] Schiffman, Lawrence H. From Text to Tradition: A History of Second Temple and Rabbinic Judaism (Hoboken: Ktav Publishing, 1991), 38.

[16] Ibid., 178.

[17] Ibid., 178.

[18] Amram, The Jewish Law of Divorce, 24.

[19] Falk, Ze'ev W., Jewish Matrimonial Law in the Middle Ages, (London: Oxford University Press, 1966), 114.

[20] Wigoder, Geoffrey, ed., The Encyclopedia of Judaism, (Jerusalem: Jerusalem Publishing House, 1989), 413.

[21] Mishnah Ketubot 1:2.

[22] Steinsaltz, Adin, The Talmud: A Reference Guide, (New York, Random House: 1989), 291.

[23] Instone-Brewer, Divorce and Remarriage in the Bible, 82.

[24] Ibid., 82-83.

[25] Tosefta Ketubot 12:1.

[26] Falk, Ze'ev, Introduction to Jewish Law of 2nd Commonwealth Part II, (Leiden: E. J. Brill, 1978), 298.

[27] Talmud Bavli Yevamot 89a

[28] Yevamot 133b.

[29] Mishnah Ketubot 4:9

[30] Yevamot 14:1

[31] Ibid., 46-47

[32] Mishnah Gittin 7:2 ,2:5, ,2:3; Mishnah Bava Batra 10:3

[33] Amram, The Jewish Law of Divorce 142

[34] Mishnah Gittin 7:2.

[35] Amram, The Jewish Law of Divorce, 144.

[36] Mishnah Gittin 6:5.

[37] Mishnah Gittin 7:2.

[38] Mishnah Gittin 2:5

[39] Mishnah Gittin 7:1.

[40] Mishnah Eduyot 2:3

[41] Mishnah Bava Batra 10:3.

[42] *Bava Batra 168a.*

[43] Maimonides, Moses, Mishneh Torah Gerushin 2:4

[44] Mishnah Gittin 2:3

[45] Mishnah Gittin 9:3

[46] Mishnah Gittin 4:2

[47] Maimonides, Mishneh Torah Hilchot Gerushin 1:1: They are as follows: 1. That the man may not divorce his wife except of his own free will. 2. That he must divorce her by means of a Get, and not by means of anything else. 3. That the sense of the Get must be that he has divorced her and has removed her from his possession. 4. That its sense must be that it is an instrument which effects a severance between him and her. 5. That it must be written specifically for her. 6. That after the writing of it, no act must be lacking excepting only its delivery to her. 7. That he must deliver it to her. 8. That he must deliver it to her in the presence of witnesses. 9. That he must give it to her as an instrument of divorce. 10. That it must be the husband, or his agent, who gives it to her.

[48] Ibid., Hichot Gerushin 4:12. I, of my own free will and without being under any constraint, release, dismiss and divorce you, my wife ...., who have been my wife hitherto. I dismiss, release, and divorce you, so that you may have permission and authority over yourself to go and marry any man you wish, and no person may prevent you from this day and forever, and you are free to marry any man, and this shall be to you from me a document of release a letter of dismissal, and a bill of divorce, according to the law of Moses and Israel. (See, e.g., *Encyclopadedia Judaica*, Vol. 6, p. 131).

[49] Mishnah Yevamot 14:1

[50] Joseph Caro, Shulchan Aruch, Evan HaEzer 1:10

[51] Ibid., EH 119:6.

[52] Mishnah Yevamot 4:12-13.

[53] Mishnah Kiddushin 3:13.

[54] Rayner, John D., Jewish Religious Law: A Progressive Perspective, (New York, Berghahn Books: 1998), 172.

[55] Ketubot 3a, Gittin 33a, 73a.

[56] Encyclopaedia Judaica, 1971 ed., s.v. "Agunah."

[57] Rayner, Jewish Religious Law, 173.

[58] Tosefta Ketubot 4:9

[59] Palestinian Talmud Kiddushin 3:3

[60] Ketubot 9b

[61] Gittin 73a

[62] Shulchan Aruch, EH 143.

Reform Judaism originated in Europe during the middle of the eighteenth century. Reflecting the spirit of the age, some Jews, like their Christian contemporaries, sought to make Judaism more compliant to the *zeitgeist*, the spirit of the age. These Jews "sought to bring Judaism into line with what they thought and felt were the essentials of religion for the modern human being."[1] These essentials included the "concepts of a universal human nature, universal natural law, and universal rationality,"[2] and because Judaism in their opinion lacked these essential elements, these early reformers felt that it was an anathema to the Modern world.

Until and even during the eighteenth century, Jews were for the most part living in their own communities under their own legal systems, separate for the world around them. The reformers, in contrast, felt that to live in the modern world meant that they would have to live by the laws of the land in which they resided. This meant that when they did strive for enlightenment and emancipation, they frequently found their visions of the "new" world conflicted with the laws of the "old" world. Reforms, in their opinion, were necessary and inevitable.[3]

One of the early results of this effort to reform Judaism was that these Jews had to alter the issues relating to Jewish marriage and divorce procedures. They could not, in good conscience, consign issues of *yibbum* and *chalitzah*, the *get*, and the problem of the *agunah* to the Orthodox rabbis of their day. Instead they viewed these particular issues as needing to be either brought into accord with modern circumstance or removed from a modern Jewish practice. The way they often went about determining whether to modernize or abandon Jewish divorce procedures was by following their consciences and not Halacha.

The Reform transformation of Jewish divorce procedure can be traced, in part, to the emancipation of the Jews in France in the 1790s. Following this emancipation, Napoleon Bonaparte convened a group of rabbis and laypeople to present the definitive Jewish opinion on a number of issues including whether or not Judaism accepted state sanctioned divorce. This Assembly of Notables, which was gathered in Paris in 1806, was challenged to formally acknowledge the state's supremacy over Jews and Judaism. The delegates accepted the state's supremacy by citing the tradition of *dina demalchuta dina*,[4] and by doing so, they effectively declared that Jews are no longer a separate people but instead loyal subjects of France.[5]

This Assembly of Notables was significant because it marked the first time that a group of Jews met to discuss, in a significant way, the question of how Judaism could be reconciled with the demands of the modern age.[6] These 110 men were given twelve questions to debate and finally answer. One of the more significant questions, with regards to the issue of Jewish divorce, was question number two which asked, "Does the Jewish faith permit divorce? And is an ecclesiastical divorce valid without the sanction of civil court or valid in the face of the French code?"[7]

Working in French and Hebrew, the Assembly formulated a response to this question. Their response began in part, "without exception, submission to the prince is the first of duties ... in everything relating to civil or political interest."[8] So based upon this idea, which was later ratified by the Sanhedrin[9] a year later, Jewish divorce was declared in article 2 to be "valid only after previous decision of the civil authorities."

However the Jewish leadership still maintained full religious authority over divorce, and they still insisted upon the giving of a ritual G*et*. The result of this was that

it marked the first time whereby a group of Jewish religious leaders determined that the State would have supremacy over divorce proceedings. Then only after the State's ruling, would the divorce be ratified by the religious leaders of the community. This idea would serve as the basis of the later declarations with regards to divorce procedure made by those individuals who were seeking to reform Judaism in later times.[10]

The Assembly of Notables also made three other rulings related to marriage laws. These men ratified Rabbenu Gershom's *takanah* against polygamy, they also stated that a religious marriage must be preceded by a civil contract, and they also removed the prohibition against mixed marriages.[11] The Sanhedrin then ratified all of these decisions in 1807.[12]

Some Jews in France and in French territories hoped that the Assembly of Notables would be a precursor to the full emancipation of the Jew in French society and a possibly even the reformation of Judaism,[13] to which they would be disappointed. Napoleon, it turns out, was much more interested in ensuring Jewish loyalty rather than receiving answers questions about Jewish law. Therefore the Assembly should not be confused with a serious attempt to modernize Judaism.[14] However the Assembly of Notables and the Sanhedrin would play a significant role in the evolution of Reform Judaism because they would later serve as a model to conferences and synods, which were to follow in Germany. In terms of divorce, many of the attitudes of the Assembly of Notables and of the Sanhedrin would be adopted by these same rabbinic conferences and synods.

Because the reformation of Judaism ended in France with the Sanhedrin, the torch was passed onto Germany. Beginning with the Royal Westphalian Consistory System

and Israel Jacobson, German Jews began the process of reform at the turn of the nineteenth century. These early reformers sought to make minor changes to Judaism including reforming the worship experience and modernizing Jewish education. It would not be until approximately thirty years later that more significant transformations to Judaism would occur. These transformations included critical study and analysis of Jewish thought, text, and tradition. It also included the removal of Hebrew from sermons, prayers and rituals. As well as the general attempt to remove all of the various elements that were considered not to be consistent with the modern day and age.

The source of these transformations was a new group of rabbis including Abraham Geiger, Samuel Holdheim, Samson Raphael Hirsch, and Zacharias Frankel. These rabbis attended secular universities and engaged in non-Jewish studies. A result of their educations was that these men felt that Judaism needed to interact with the modern world which led some of them to attempt to make Judaism fit into the modern age.

By the 1840's it was becoming apparent to some that a new course needed to be laid out for Judaism. Reforms were occurring on a small scale at various synagogues, but there was not a larger theoretical conception of Judaism to give these reformers a framework to base their efforts on.[15] Recognizing this flaw, Abraham Geiger called for a group of rabbis to gather together to discuss issues relating to these evolving tendencies within Judaism. Geiger was advocating for such a conference as early as 1837 with the hope that progressive rabbis would gather together to bring Judaism into modernity.[16] The result of this call was the first rabbinic conference at Weisbaden in August of 1837. This conference did not result in radical reforms or even lead to significant influence over

the growing body of reformers. But what it did do was lead to the first major rabbinical conference of its type in Brunswick in 1844.[17]

Between the Weisbaden conference of 1837 and 1844, there was an ever-growing crisis facing the newly emancipated Jews of Germany. More Jews were having trouble finding a way to balance the old world with the new. And though some were leaving traditional Judaism altogether, the majority were troubled honestly and sincerely, and were instead searching for a solution to the conflict between religion and modern life.[18] As a result, in 1844, under the urging of Ludwig Philipson, a rabbinic conference was called to take place in Bruswick.

The rabbis who attended the first conference included such notables as Samuel Holdheim, Gotthold Salomon, Ludwig Philipson, Abraham Geiger, and Zacharias Frankel. These rabbis were for the most part in their mid thirties, and they came from larger Jewish communities like Frankfurt, Hamburg, and Breslau.[19] The Brunswick Conference lasted from June 12 to June 19, and a total of twenty-five rabbis attended.

The goals of the Brunswick Conference were stated in the first paragraph of its rules: "The rabbinical conferences have as their purpose that the members shall take counsel together in order to determine by what means the preservation and development of Judaism and the enlivening of the religious consciousness can be accomplished."[20] It was expected that the Brunswick Conference would be followed by other conferences on an annual basis whose main purpose would be to continue the process of bringing Judaism into the modern age.

One of the main issues that lay before this fledgling group of rabbis was the issue of determining whether or not they even had the authority to make any significant

changes to Judaism. Holdheim argued that Judaism falls under the purview of each subsequent generation and therefore should not be merely consigned to the past. From this he reasoned that he and his contemporaries had as much a right to challenge and change tradition as the people who initially created it.[21] He also argued that only the parts of tradition, which were in complete agreement with the modern age, could still have any authority over them.[22] With these ideas in mind, those who agreed with Holdheim would have no problem making significant alterations to Jewish tradition in the spirit of reforming and modernizing it. The majority of rabbis at the conference sided with Holdheim.

Jewish divorce law was, from the beginning, a part of this attempt at reforming Judaism. This is indicated in part by the Conference stating, "the declarations of the Sanhedrin apply to all Jews of all countries, not merely the French."[23] In relation to Jewish divorce, the first conference upheld the Sanhedrin's ruling that Jewish divorce was binding, but only with the consent of the civil authorities. The only amendment they made to the declarations of the French Sanhedrin was that they permitted mixed marriages only in cases where the child would be "educated in the Jewish faith."[24]

It was also recognized that there still needed to be more changes to Jewish marriage and divorce laws; to this end "(J.) Jolowicz presented a resolution calling for a revision of the Jewish marriage laws. Holdheim moved that a commission be appointed to report to the next conference a plan for the reform of the marriage law. This was agreed to, and Holdheim, (L.) Herzfeld, (J.) Maier, (L.) Bodenheimer, and Geiger were elected members of this commission."[25]

In the end, though the members at the conference did do some work to advance Judaism, its participants mostly just laid the groundwork for subsequent conferences.[26] They did this mostly by appointing committees do examine the various issues with the goal being that they would present their reports at the following conferences. Therefore they scheduled the issues relating to marriage law and divorce to be presented at the next conference.

The second conference was held in Frankfort-on-the-Main a year later in 1845. There were several minor developments related to this conference including that it attracted six more members and lasted six more days then the Brunswick Conference. Despite these minor developments, this conference did not deal with any issues relating to marriage and divorce. The reason for this was that there was simply not enough time to discuss issues relating to women or to make any revisions to the marriage laws. The subject of the status of women "was not debated at length and was referred to a commission consisting of S. Adler, Einhorn, and A. Adler for report at the next conference."[27] There was also a determination that there would not be time to discuss any revisions to marriage laws. As a result, the committee established at the Brunswick conference was asked to withhold its report until the following year at the conference in Breslau.

The third conference of Rabbis was held in Breslau from July 13 to July 24, 1846. The main topic that dominated this conference was the issue of Shabbat. The result of this was that "some other subjects were not discussed for lack of time, even though preliminary work had been done on them. Of these the most interesting … was the status

of women."[28] The he commission that had been appointed at the Brunswick conference only found time to give an abbreviated report during the conference's final session.

Two reports were presented from this committee. One of these reports was from Samuel Holdheim. Holdheim argued against *chaliztah* by stating that that marriage to the "*yavam*" should be declared incest.[29] Holdheim also argued that *yibbum* and *chalitzah* came out of a social context that no longer existed, and because of this the modern position of women and familial obligations made such practices both unnecessary and distasteful.[30]

Abraham Geiger also presented a report, which he had written in 1837. In this report he also called for the abolition of the *chalitzah*. He also suggested that the status of the *agunah* was unnecessarily cruel and only served to create an inequality between men and women. He therefore argued that this practice should be removed from modern practice as well.[31]

In response to these two reports the commission charged with reconciling divorce and the modern age proposed the following resolution: "That the conference declare that no other conditions are necessary for the remarriage of a childless widow than for any other Jewish marriages."[32] However because of lack of time, no action was taken on this motion though there appeared to have been much interest in discussing these issues at the next conference, scheduled for the following year. However, the revolution in Germany in 1848 curtailed these plans, and as a result there would not be another conference of rabbis in Germany for twenty-one more years.

In the end these three conferences struggled to fulfill their mandate. "They were intended to create a collective authority, yet the participants were themselves divided on

whether their mandate to deal with 'the needs of the hour' was based on a continuation of the ongoing, albeit slowed process of rabbinic interpretation or on individual awareness produced by cultural level and contemporary values. Moreover, in most cases they were not empowered to vote on behalf of their communities and were themselves reluctant to accept authority of those majority decisions in which they did not concur. The conference decisions could claim no more than 'moral authority."[33] Despite their inability to make significant change, these conferences did force many Jews in Europe and America to realize that change was on the horizon. Many of the ideas and attitudes adopted at these conferences would gain more prominence at the later synods in Europe and also at the various conferences in America. With regards to Jewish divorce, it would become more apparent at the Synods in Leipzig and Augsburg as well as in Philadelphia that more significant changes were looming.

By the time rabbis and lay leadership gathered for the First Synod at Leipzig in 1869 it was becoming noticeable that two branches for Reform Judaism were growing, one European and the other American. This is significant because these two types of Reform attempted to deal with the problem of Jewish divorce within the modern world in different ways.

The European response to divorce really began to take shape at the First Synod at Leipzig. The reason for creating a synod was that it was becoming clear to the reformers that rabbis could not be the sole governing voice. It was felt by the Jews of Europe that there needed to be a conference with both rabbis and laity. This was in part because in some instances it was the lay leaders who inspired reforms and not their clergy. Also the rabbis only felt that they had authority over their own decisions, and as a result they

needed the assistance of community members in order to make any rulings about Reform binding. The general feeling of the attendees was that for an organization to have authority, its members needed to be both clergy and laity.[34]

The First Synod at Leipzig was attended by a total of eighty-three lay leaders, rabbis, and scholars from throughout Germany. The goal of the attendees at this conference was to attempt to "preserve Judaism."[35] This is because they were living in a time when the battles over Judaism (primarily between the reformers and the Orthodox) were threatening to "tear" Judaism apart. Because of this, many of the proposals concerning Jewish divorce procedures sought to mollify the divorce procedures without completely handing them over to the state. Therefore these reformers were keeping in the tradition of attempting to straddle both worlds, the traditional Jewish world as well as the modern world. This result of this was that the resolutions from the Leipzig Synod tended to be very moderate in character.[36] An example of this idea can be found in the various proposals relating to divorce.

Dr. Joseph Aub of Berlin in relation to divorce proposed:[37]

a. Non-observance of Jewish ceremonies should no longer be a cause for invalidity as a witness at weddings or divorcement.[38]

b. A bill of divorce may be forwarded through the mail in order to be handed to the woman by a trustee.[39]

c. As soon as a court of law has declared a person dead, such declaration holds good and is considered legal in ritual cases.[40]

d. The form of *Chalitza* justly creates offence in our day and ought to be essentially changed.

Dr. Lazarus Adler proposed: "That instead of *Chalitza* the bride and the bridegroom should sign a document by which they renounce the right of *yibbum* and the brothers of the bridegroom should declare in writing that they would not object to the re-entering of their sister-in-law into the bond of matrimony in case their brother should die without leaving an offspring."[41]

Similarly Rabbi Berhnahrd Wechsler proposed:[42]

> a. The bill of divorce, according to its Aramaic form and its contents is not adapted to our age. It ought, therefore, to be written in the vernacular.[43]
>
> b. If a woman has accused her husband of infidelity, or desertion, and has received on account a divorce from a court of law, but her husband refuses to give the bill of divorce, she can marry after a year without a *Get*.[44]
>
> c. *Chalizah* should be dispensed with, being antiquated and superfluous
>
> d. The neglect of *Chalizah* is no impediment to the marriage of the widow.

Other proposals were even more radical. In keeping with the traditions established by the Brunswick Rabbinical Conference, Dr. Emil Lehman made the following proposal relating to divorce: "Rabbinical jurisdiction in matters of divorce is to be set aside. Divorces of Jewish marriages belong to the civil courts."[45] This is clearly more extreme, in that it would end, rather than reform, the Jewish process of divorce.

The proposed resolutions by Dr. Abraham Geiger, who wanted to ultimately get rid of Jewish divorce procedure, recognized the conservative nature of the conference. Therefore his proposals echoed those that were already presented with regards divorce law and procedure:[46]

a. The institution of *chalitza* has outlived the sphere of its usefulness, and is superfluous in all cases. But if the Synod is not yet prepared to adopt this perfectly justifiable resolution, the following motion is made:

1. The act of *chalitza* should be simplified

2. This act can be performed, in the absence of the wife, by a collegium of rabbis.

3. Should the brother-in-law refuse such *chalitza*, or try to exact onerous terms from the widow, then the act of *chalitza* is dispensed with, and the widow has a right to marry again.

4. A widow on whom the act of *chalitza* has been performed may marry a *kohen*.[47]

b. The religious divorce-*Get*-is to be simplified.

1. As soon as the civil courts have declared for divorce, the religious divorce has to follow.

2. After a short conference on the side of the collegium of rabbis by which it is proved that a reconciliation of the couple is out of the question, a letter of divorce, which expresses in all brevity and in the vernacular that the marriage is dissolved, has to be given to each party.

3. As soon as the court has declared a marriage dissolved, the religious divorce has to be performed, even though one of the parties objects to it. It matters not whether the husband refuses or not. The divorced woman is permitted to marry again.

4. A divorced woman is permitted to marry a kohen.

What characterizes most of these proposals and resolutions is that the rabbis and lay attendees sought to soften the rules and regulations of Jewish divorce in order to make it fit with their understanding of modern life, yet they were not ready to entirely abandon tradition. The sole exception to this was Lehman who sought to get rid of Jewish divorce altogether.

An example of the attempt to mollify Jewish tradition was with the issue of *chalitza*. In these proposals there are many moral objections to the procedure, however most of the attendees were not yet willing to abandon it. Therefore Dr. Joseph Aub of Berlin proposed that the procedure ought to be changed. He was supported by Abraham Geiger, who though he wanted to get rid of the procedure altogether, recognized that there were many who were not yet ready to discard Halacha even if they found its reasoning to be morally objectionable. This is why he too proposed numerous changes to the procedure, but in the end still recommended that it be used.

Other members were not entirely comfortable with granting the State full authority over divorce. One example was Rabbi Bernhard Wechsler who proposed that the husband had up to a year to grant his wife a *Get*, after which time. she was free to remarry with or without his consent.

There were even other proposals sought to make the Halacha more relevant for the modern context as well. One example of this included accepting a state divorce as binding, but only if was followed shortly thereafter by a Jewish divorce. But at the same time, these same reformers were also dealing with the problem of the inequality of women to men in the divorce proceedings. Because of this, it was proposed that if a

court dissolved a marriage, then the husband was considered divorced from his wife, whether he agreed to it or not. The result of this was that Jewish Divorce procedure was still recognized, but it could be circumvented by the State at the urging of the wife. If the State agreed to the divorce, then the husband had to agree to it as well, which removed one of the major impediments to the plight of the *agunah*. The second suggestion of how to deal with the problem of the *agunah* was to accept any State declaration that declared the husband dead. By doing this, the members of the synod were able to satisfy their ethical concerns relating to divorce, the plight of the *agunah*, while still remaining mostly "true" to tradition.

The Leipzig Synod was viewed as the beginning to the process of to create a consensus authority for ruling over Judaism. However like the Brunswick Conference of twenty years ago, much was left to the various committees to be resolved at subsequent Synods like the one at Augsburg.[48]

Between the ending of the Leipzig Synod and when the Augsburg Synod was to have occurred, war broke out. The Franco-Prussian War caused the Augsburg Synod to be postponed. The result of this was that the two-year postponement dissolved much of the resolve of many of the attendees, which led to few innovations at the Augsburg Synod.[49]

Despite this there were several significant developments with regards to divorce. "By a large majority the members agreed that where a dead person had been identified by non-Jewish authorities or a missing person was presumed dead, the widow should be free to remarry. And there was near unanimous consent for a resolution which declared that

the *chalizah* ritual, being inappropriate to the present age, should not be a barrier to a widow's remarriage."[50]

Therefore the resolutions with regards to divorce read as follows:[51]

a. Nobody can be declared unfit to be a witness at a marriage or divorce on account of his non-observance of certain ceremonies

b. A final decision of the courts, concerning the identity of a deceased person, and a judicial decision declaring the missing person to be dead, have also sanction for ritual cases.

c. The biblical precept concerning the *Chalitza* has lost its importance since the circumstances, which made the necessary levirate marriage and the *Chalitza* no longer exist. The idea underlying this observance has become estranged from our religious and social views.

d. The non-performance of the *Chaliza* is no impediment to the widow's remarriage. In the interest of liberty of conscience, however, no rabbi, if requested by the parties, will refuse to conduct the act of *Chalitza* in an appropriate form.

The result of both the Leipzig and Augsburg Synods in relation to marriage and divorce laws was that for the most part they became "incorporated into the body politic of the State,"[52] and they successfully managed for the most part to legislate "*chalitzah* ... out of existence."[53] They did this despite the fact that there was a general reluctance to totally abandon Jewish divorce procedures. Instead they allowed the court to be the final authority in civil matters, but they did retain certain rituals as long as these rituals were modified to be consistent with their understanding of the modern situation.

The Synod model in Germany was viewed in many ways a failure because it failed to perpetuate itself into further jurisdictional bodies. This was because the Synod was unable to produce a new generation of rabbis who were interested in this more moderate approach to Judaism. Instead the rabbis who attended were of the previous generation, and they for the most part lacked the desire that they had at the first rabbinic conferences.[54] Therefore the more substantial steps to reforming Judaism, and Jewish divorce law in particular, would take place across the Atlantic Ocean in the growing world of American Reform Judaism.

Unlike their European counterparts, by the late 1800's, a group of American rabbis was more willing to make radical changes to Jewish tradition. One of the first examples of this occurred at the Philadelphia conference in 1869.

At the Brunswick conference in 1844, Solomon Formstecher proposed, "the conference should formulate a declaration of principles. (He argued) such a declaration was necessary, particularly in view of the decided differences between the traditionalists and the reformers on a number of controverted points ... However, the reformers as a body had not yet reached that unanimity of opinion which would have made such a declaration possible."[55] But by 1869, the rabbis at the Philadelphia conference were ready to adopt a statement of principles.

David Einhorn and Samuel Adler initially called for this conference in the newly created *Jewish Times*. In order to do this, they sought out people who were of a similar disposition to themselves. This meant that Einhorn and Adler were looking for men who were interested in delineating the lines between Reform and Orthodoxy, and who would

also be willing to forgo the tradition found in the Shulchan Arukh for a more modern Judaism.[56]

At their urging, a group of thirteen rabbis gathered in November 1869 in the home of Samuel Hirsch to discuss, in German, their visions for Reform Judaism. One of their main goals was to discuss and debate the seven principles proposed by Einhorn. These "seven principles adopted by the conference were intended to distinguish Reform Judaism as much by its rejections as its affirmations."[57]

Following the debate over the seven basic principles, there was a series of debates over a second agenda, which itself was primarily concerned with issues relating to marriage and divorce. This second set of agenda, also created by Einhorn, resulted in several serious discussions, which led to the acceptance of most of these proposals, though there were important modifications.

This first session relating to divorce was held on November 4th 1869, and following a brief break, it was begun with the reading the proposal entitled Article 6:

> **Article 6:** From the Mosaic and Rabbinic point of view, divorce is a purely civil matter which has never received religious consecration. Therefore it should be recognized as an act emanating solely from the judicial authorities of the State. On the other hand, the so-called ritual *Get* is declared ineffectual in all situations.[58]

The presentation of this article resulted in a significant debate. On one side were the reformers who sought to dispose of Jewish divorce all together. One such supporter was Bernard Felsenthal of Zion Congregation, Chicago who called for immediate acceptance of this article.

However not all of the members of the Philadelphia conference were as willing to avail themselves of all the Jewish elements in divorce procedure. Specifically some were opposed to the elimination of the *Get*. The leading opponent was Moses Mielziner of

Ansche Chesed Congregation of New York who felt that "to declare the *Get* ineffective in *all* situations would be too impetuous." His reasoning was that there would be Jews coming to America who received religious divorces without a state sanction, like immigrants from Russia. He found support for this reasoning in the discussions from the Leipzig conference where even Geiger supported a modified version of the *Get*.

Mielziner's colleague Solomon Sonneschein of Schaare Emeth Congregation of St. Louis supported Mielziner's argument, proposing that his fellow rabbis needed to be in the "best possible concord with the reformers in Europe."

However the majority of attendees supported Einhorn's recommendations. Samuel Hirsch of Knesseth Israel Congregation of Philadelphia argued that not only should the *Get* be abolished, but that it should be abolished because "there was no procedure more irresponsible with regard to marriage and divorce than the Talmudic-Rabbinic" divorce procedure. He felt that the *Get* was the root of the inequality of divorce procedure and that it was open to abuse. Hirsch also against Mielziner's proposed modifications because he felt that *Get* was completely unnecessary in modern times.

So out of this debate, two clear sides were formed. On one side was Soneschein and Mielziner who supported Geiger's proposal from the Leipzig Synod of a modified *Get*, and on the other side were the rest of their colleagues who wished to abolish the *Get* altogether. All but two of the attendees voted in favor of Article 6.

"Yet the majority of were not ready to accept a civil divorce in every instance,"[59] as can be seen in Article 7.

> **Article 7:** Divorce can be religiously confirmed only if the moral basis of the matrimonial union has been broken either by adultery, willful desertion or similar acts. The contents of the judicial decree must therefore

> be examined in order to determine to what extent such religious grounds exist.

The argument about Article 7 surrounded the issue of whether or not rabbis had to defer to the law of the land in every instance of divorce. The major supporter of State sanctioned divorce was Hirsch, who arguing under the notion of *Deena demalchuta deena*, called for his fellow rabbis to accepted divorce as being purely a civil matter.

However in this instance, Hirsch was in the minority. The majority of rabbis argued that they still had a role to play in divorce even if only on ethical grounds. Samuel Adler of Emanuel Congregation of New York argued that though divorce fell exclusively under civil law, the issue of permissibility of a divorce remained was a significant religious issue.[60] Most of the rabbis agreed with Adler as is indicated that the majority of attendees would not officiate at a marriage if they found the grounds of the divorce for either member of the couple to be morally objectionable. Adler argued that a rabbi could say to a member of the couple: "though the State certainly permits this second marriage ... Judaism (does not)."[61] To this end Adler proposed a substitute to the initial Article 7.

> **Article 7:** The dissolution of a marriage pronounced by a civil Court has full validity in Judaism also, if the judicial documents show that both parties to the marriage accepted the divorce. There, on the contrary, the civil Court decrees a divorce compulsorily, against one or other party, Judaism on its part acknowledges the divorce as valid only if, on examination of the reasons for the judicial divorce, they are deemed sufficient according to the spirit of the Jewish religion. It is recommended, however, that in coming to a decision the rabbi obtain the assent of experts.

Following further discussion, this modified version of Article 7 was unanimously accepted. And this session was ended at 9 p.m. that evening.

The following morning on November 5, Article 8 was read:

> Article 8: The decision of the question whether a husband or wife should be declared "presumed dead" (or missing) in doubtful cases, should be left to the laws of the country.

There was a minor discussion related to this article concerning whether or not the state had the right to declare someone dead because some of the rabbis felt that some states were too lenient in this regard. Specifically Mielziner and J. K. Gutheim of Emanuel Congregation of New York argued that a rabbi should have the right to examine the evidence further. This idea kept with the tradition already established at the conference that though the State was the ultimate ruling authority in such matters, rabbis should have some purview in relation to religious issues.

However, interestingly, Isaac Mayer Wise and David Einhorn were in agreement on this issue because they both felt that a Court would not declare someone dead without either a prolonged absence or sufficient evidence. Einhorn went further to state that "the law in civilized countries could be assumed to exercise greater care than Rabbinic law." Therefore they argued against Mielziner and Gutheim. Sonneschein echoed Einhorn's argument by stating, " that nowadays travel was so easy that if the husband gave no sign of life for so long that the State declared him to be presumed dead, this was proof of willful desertion."

In the end Wise, Einhorn and Sonneschein's position was the one that was accepted. This acceptance led to the ratification of Article 8 by all parties. The result of this vote was that the majority of rabbis at the conference felt that any declaration by a Court of the State stating that the husband was dead was enough to declare him dead according to Jewish tradition as well.

At this time, though these rabbis appeared not to be quite willing to get rid of all of the rules associated with the *agunah*, they were willing to make it easier for the

agunah to remarry by not forcing her to be punished if her husband disappeared and did return assuming the state was willing to declare him dead.

Article 9 was then presented to the conference:

> **Article 9:** The rule in regard to Levirate Marriage and Chalizah has for us lost all meaning, significance, and binding force.

Of all of the articles presented at the conference, this one had the least amount of debate. Like their European colleagues, many at the conference found this practice unconscionable, and Einhorn went as far as to declare it incestuous. However Mielziner was not happy with the article, and wished it to be expanded so that there would not be any misunderstanding with regard to the mitzvah of Levirate marriage. Therefore he proposed the following amendment:

> **Article 9:** The rule to enter into Levirate Marriage and, if occasion should arise, *Chalitzah* has lost all sense, significance, and binding force for us.

Mielziner's amendment was then unanimously accepted by the conference indicating that these rabbis were willing to completely abandon the practice of *Chalitzah* in the modern age. They felt that it was out of step with the modern day and therefore it had no meaning to modern Jews.

The passage of Article 9 marked the end of the debate relating divorce and divorce procedure. With regards to divorce procedure and divorce legislation, the Philadelphia conference proved to be fairly radical in some respects. The result was that divorce was decreed by this conference to be a purely civil matter. These rabbis permitted the state to grant the divorce and to declare a husband dead. They also sought to remove the *get* and the practice of *halitzah*. Yet these same rabbis were not ready to completely give up all of their authority in regards to this matter. They decided to retain

some control when it came to matters of conscience, while acknowledging that Jewish divorce in America was, in their view, according to *deena demalchuta deena.*

The rabbis who attended the conference sought to create a new type of American Judaism, and the result of this was that many of their decisions would have a significant effect on not only Reform Judaism, but also on the CCAR which was about to come into existence under the leadership of Isaac Mayer Wise. Many of the decisions made at this conference including the opposition to levirate marriage, the acceptance of civil divorce, the declaration that the *Get* was no longer needed, the right of the rabbi to examine a civil divorce, and the modification of Jewish law with regards to the *agunah* would all play out in the CCAR responsa literature.

So on the one hand, the decisions made at the Philadelphia conference had an impact on the CCAR. However it also had an unintended effect as well. The Philadelphia Conference also led to the creation of the CCAR. This was because Wise sought to find a way to respond to the radical influences that were present at the Philadelphia conference. He was not entirely happy with some of the radical positions taken at this conference. In particular he was concerned with how these positions excluded many Jews in America who were much more moderate in temperament. Wise instead wished to create a type of Judaism that accepted tradition and accepted the modern age, and allowed for the two to live together without one rejecting the other.

Wise's vision led to, under the urging of Kaufman Kohler, the calling for another conference. This conference was called in Philadelphia in 1869, and unlike its predecessor, its goal was "not to declare where Reform Judaism departs from Orthodoxy ... but what it seeks to affirm."[62] This conference would mark the beginning of both the

Union of American Hebrew Congregations and also the Central Conference of American Rabbis, which would set the course for the American Reform Movement over the next one hundred years.

[1] Meyer, Michael, A., Response to Modernity: A History of the Reform Movement in Judaism, (Detroit, Wayne State University Press, 1999), 17.

[2] Meyer, Michael A., The Origins of the Modern Jew, Detroit, Wayne State University Press, 1967), 15.

[3] Philipson, David, "The Rabbinical Conferences: 1844-6," Reprinted from the Jewish Quarterly Review, July 1905, 21.

[4] The principle of "the law of the state is the law" (dina demalchuta dina) is based on Jeremiah 29:7. It is also discussed in Nedarim 28a, Bava Batra 54b, and Bava Kama 113. In Talmudic times this idea allowed Jews to live under foreign rule. It is based on the notion that Jews must obey the laws of the land, and that the laws of the land are considered valid according to Jewish law. However this principle applies only to matters of civil law. Judaism, on the other hand, still has full authority over religious and ritual matters.

[5] Meyer, Michael, A., Response to Modernity, 27-28.

[6] Plaut, W. Gunther, The Rise of Reform Judaism: A Sourcebook of its European Origins, (New York, World Union for Progressive Judaism, 1963), 71.

[7] Ibid., 71.

[8] The Assembly of Jewish Notables 1806. as found in Mendes-Flohr, Paul and Jehuda Reinharz, The Jew in the Modern World: A Documentary History, Second Edition, (1st ed. 1980), Oxford Press, New York: 1995, 128.

[9] The Paris Sanhedrin, though named after the Great Sanhedrin of ancient days, was nothing like its predecessor. It was convened at the request of Napoleon who also set its agenda. The purpose of the Paris Sanhedrin was to ensure loyalty to the State rather then to deal with questions of halacha. So though it had a profound impact on the reformers who would follow, its rulings were generally disregarded by the majority of Jews.

[10] However it was never the intention of the people who attended the Assembly of Notables or the Sanhedrin to give up any control over Jewish divorce proceedings.

[11] Central Conference of American Rabbis, The CCAR Yearbook, Volume I, 1890-91, 80-81.

[12] Meyer, Michael, A., Response to Modernity, 28.

[13] Plaut, W. Gunther, The Rise of Reform Judaism, 71.

[14] Meyer, Michael, A., Response to Modernity, 28.

[15] Ibid., 132.

[16] Philipson, David, "The Rabbinical Conferences: 1844-6," 1.

[17] Ibid., 3.

[18] Ibid., 4.

[19] Meyer, Michael, A., Response to Modernity, 132.

[20] *Protokoll der ersten Rabbinerrersammlung abgehalten in Braunschweig,* XIII; Branuschweig, 1844 as found in Philipson, David, "The Rabbinical Conferences: 1844-6," 7.

[21] *Protokolle*, 55, "Der Talmud spricht aus seinem Zeitbewusstsein und für dasselbe hatte er Recht; ich spreche aus einem höheren Bewusstsein meiner Zeit und für dasselbe habe ich Recht." – *Ceremonialgesetz im Gottesreich*, 50. Schwerin, 1845. As quoted in Philipson, David, The Reform Movement in Judaism, (New York, The MacMillan Company, 1931), 145.

[22] Ibid., *Protokolle*, 66., 145.

[23] Central Conference of American Rabbis, The CCAR Yearbook, Volume I, 82.

[24] Central Conference of American Rabbis, The CCAR Yearbook, Volume I, 1890-91, 82.

[25] Philipson, David, The Reform Movement in Judaism, 154.

[26] Ibid.,162.

[27] Ibid.,185.

[28] Meyer, Michael, A., Response to Modernity, 139.

[29] Central Conference of American Rabbis, The CCAR Yearbook, Volume I, 1890-91, 98.

[30] Philipson, David, The Reform Movement in Judaism, , 218.

[31] Meyer, Michael, A., Response to Modernity, 140.

[32] Protokolle, 298. as presented in Philipson, David, The Reform Movement in Judaism, 219.

[33] Meyer, Michael, A., Response to Modernity, 141.

[34] Philipson, David, The Reform Movement in Judaism, 285.

[35] Meyer, Michael, A., Response to Modernity, 188.

[36] Phillipson, Ludwig, *Zur Charakteristik der ersten jüdischen Synode*. Berlin, 1869. As found in Philipson, David, The Reform Movement in Judaism, 306.

[37] Central Conference of American Rabbis, The CCAR Yearbook, Volume I, 1890-91, 105.

[38] Shulchan Arukh Choshen Mishpat 34:1 – the "rash'a" (a Jew who does not observe the mitzvot) is prohibited from serving as a witness.

[39] Traditionally an agent needs to be present when the husband orders the *sofer* to write the *Get* and the witnesses to sign the *Get*. [Shulchan Arukh Evan HaEzer 154 Seder Haget sec. 24].

[40] Even though halacha tended to be lenient with regards to death, it was standard that there needed to be at least one witness to verify the death of the husband. [Shulchan Arukh Even HaEzer 17:3] And without any witnesses, there was doubt, which meant that even the government did not have the right to declare the husband dead.

[41] Ibid., 105.

[42] Ibid., 106.

[43] This idea would seem to agree with Mishnah Gittin 9:8 which states that a *Get* is valid whether it is written in Hebrew or in Greek.

[44] This idea is in direct contradiction to the Halachic problem of the *agunah*. According to Halacha (as stated in chapter one), the wife cannot remarry until she is first given a *Get* by her husband.

[45] Ibid., 108.

[46] Ibid., 110-111.

[47] A Kohen is forbidden from marrying a divorcee no matter the circumstance [Shulchan Arukh Evan HaEzer 6:1].

[48] Philipson, David, The Reform Movement in Judaism, 305.

[49] Meyer, Michael, A., Response to Modernity, 190.

[50] Ibid.,190.

[51] Central Conference of American Rabbis, The CCAR Yearbook, Volume I, 1890-91, 112-113.

[52] Philipson, David, The Reform Movement in Judaism, 327.

[53] Ibid.,327.

[54] Meyer, Michael, A., Response to Modernity, 191.

[55] Philipson, David, "The Rabbinical Conferences: 1844-6," 14.

[56] Meyer, Michael, A., Response to Modernity, 255.

[57] Ibid., 256.

[58] The proposed articles and the subsequent debates can be found in Sefton D. Temkin, The New World of Reform: Containing the Proceedings of the Conference of Reform Rabbis Held in Philadelphia in November 1869, (Bridgeport, Hartmore House, 1974), 58-71.

[59] Meyer, Michael, A., Response to Modernity, 257.

[60] Sefton D. Temkin, The New World of Reform, 65.

[61] Ibid.,66.

[62] Meyer, Michael, A., Response to Modernity, 268.

During a rabbinic conference in Cincinnati in 1871, a group of twenty-seven "reverends" voted to create the "Union of Israelite Congregations of America." Two years later in 1873, a second convention was held in Cincinnati. The attendees at this convention voted to create the Union of American Hebrew Congregations. This new organization counted among its membership a total of thirty-four congregations from thirteen states with approximately two thousand families.[1]

The Union of American Hebrew Congregations was created initially to support Isaac Mayer Wise's new seminary, the Hebrew Union College. Together, both of these institutions were born out of Wise's vision. Wise, when thinking about Jews and America, conceived of a new type of American Judaism that would appeal to all liberal Jews living in America. This new brand of Judaism would contain some elements of tradition with a decidedly American slant. Despite some early successes, Wise's idea for an American Judaism that would appeal to all quickly came under attack from two different sides. On one side was the universalistic movement, which included Felix Adler and his New York Society for Ethical Culture. The other side included a group of rabbis and laity who would later call themselves the Conservative Movement.

Felix Adler was a strong supporter of universalistic ideals that, in his opinion, called for Reform Judaism to remove all elements of particularism. He felt that Reform Judaism needed to be completely liberated from religious authority, and that it should focus only on ethical considerations. He even went as far as to suggest that Reform Jews were barely Jews at all, and that all they needed to do was to take one more step and remove the shackles of particularism.[2] This universalistic vision appealed to many Jews,

especially in the New York area, and was considered a threat by some Reform rabbis including Kaufmann Kohler.

At the same time there was also a rising movement to the right of Reform Judaism. By 1885, this branch, which had a one time been a small group, began to take shape as a denomination.[3] This group would later call themselves Conservative Jews because they sought, among other things, to maintain a stronger connection to the Halacha. Alexandear Kohut in particular argued against reforms that abandoned the Law for the so-called "spirit of the law." Kohut even went as far as to declare that a Reformer who rejected the binding nature of the Halacha was not a Jew at all.[4]

With radicalism on the left and conservatism on the right, it was becoming apparent to the rabbis and congregants of the Reform Movement that they needed to set boundaries for their own vision of Judaism. To this end, a group of twelve rabbis met in Pittsburgh in 1885 with the purpose of establishing a set of principles by which they could not only base their own understanding of Judaism, but also protect their visions of Reform Judaism from both the radical left and conservative right.

The rabbis who attended the Pittsburgh conference hoped to create a document that was similar in essence to the Philadelphia principles of 1869, but different in style. These rabbis sought to establish what Reform Judaism was all about, but they wanted to use langue that affirmed Reform Judaism rather than discuss how it was different from orthodoxy.[5] In spite of this effort, the Pittsburgh platform is mostly a "rejectionist" document. According to the Pittsburgh Platform, Reform Judaism rejected such things as rituals not suited to modern times like kashrut, as well as the idea of the restoration and return to the land of Israel, and the notion that traditional law had binding force on them.

This meant that they did not accept Halacha, instead they accepted only "moral laws" and ceremonies that would elevate and sanctify their lives.[6]

In terms of its scope, the Pittsburgh Conference, which was convened by Kaufmann Kohler of New York and presided over by Isaac Mayer Wise, was declared to be "the continuation of the Philadelphia Conference of 1869, which (itself) was the continuation of the German Conference of 1841 to 1846."[7] Many of the planks that came out of the Pittsburgh Conference followed in the traditions already established by their German predecessors.

The Pittsburgh Platform does not give any specific mention to marriage or divorce laws. Despite this fact, the third statement in the platform appears to be the guiding principle that would serve as the foundation discussions in the responsa literature concerning Reform Jewish divorce procedure. This statement reads:

> We recognize in the Mosaic legislation a system of training the Jewish people for its mission during its national life in Palestine, and today we accept as binding only its moral laws, and maintain only such ceremonies as elevate and sanctify our lives, but reject all such as are not adapted to the view and habits of modern civilization."[8]

This declaration kept to the spirit of the Philadelphia Conference from six years ago. In particular it maintains the idea established at Philadelphia of moral obligations having supremacy over Jewish tradition. Since they maintained this idea, it is quite likely that they also accepted the plank from the Philadelphia conference on divorce as well, which abandoned tradition for moral considerations.

The Central Conference of American Rabbis was created in 1889, and it would be the last of the three national Reform bodies to be created.[9] The first meeting of the CCAR was in Detroit, and it has held an annual conference since that time. The first president to serve over the CCAR was Isaac Mayer Wise, who served until his death in

1900. Unlike the UAHC and HUC, the CCAR as embodied in Wise's opening remarks to the first convention in 1890, was created to be specifically reform in character. In his remarks Wise stated:

> The united Rabbis of America have undoubtedly the right ... to declare and decide, anyhow for our country, with its peculiar circumstances ... which of our religious forms, institutions, observances, usages, customs, ordinances and prescriptions are still living factors in our religious, ethical and intellectual life, and which are so no longer and ought to be replaced by more adequate means to give us expression to the spirit of Judaism and to reveal its character of universal religion ... All reforms ought to go into practice on the authority of the Conference, not only to protect the individual rabbi, but to protect Judaism against presumptuous innovations and the precipitations of rash and inconsiderate men. The Conference is the lawful authority in all matters of form.[10]

Wise's statement was particularly significant because it rejects Torah and tradition as the binding authority over Reform Jews. Instead Wise is arguing that the rabbis of the Conference should have the full authority alone to make the rules by which Reform Jews ought to live. This idea combined with the Pittsburgh Platform, which based its authority on the "modern spirit," represents a complete break with the traditional notion of rabbis needing to base their decisions on earlier tradition. It instead gives the Reform rabbis of the Conference the ability to make their own rules regardless of what Halacha has to say.

One means by which the Conference expressed its authoritative decisions was through the publication of responsa. These responsa were initially based on the decisions of the CCAR, and specifically on its platforms. In terms of divorce, the reformers had already decided for the most part, that matters relating to it belonged under the purview of the State. They had already agreed at the Philadelphia Conference to hand over most control over to the state, so there was not much early discussion related to this topic in the early responsa literature.

By the time of the creation of the CCAR in 1898, divorce was already becoming a significant statistical reality in America. From 1880 to 1890 the number of divorces in America grew by 70%, and between 1890 and 1900 these numbers grew by an additional 67%.[11] To some people in the country this drastic rise in the divorce rate indicated a general moral decay in society, and something needed to be done about it. The answer to this crisis, from the more conservative elements of the country, was to first try to get their state legislators to create a uniform divorce code. The governor of New York in 1889 was the first legislator to attempt to create at a universal divorce code for his state.[12] However, only other two states attempted similar legislation. In light of this failure for more states to create divorce legislation, two powerful religious groups joined together to lobby Congress to create a uniform marriage and divorce act.[13] The goal of this organization was for the creation of a constitutional amendment that would grant the federal government universal jurisdiction over divorce. Despite their efforts, their attempt at a constitutional amendment never received much support from the Congress, and as a result the amendment was not created.[14]

One unintended consequence of this conservative reaction to the rise in the American divorce rate was that it compelled the CCAR to confront the issues of divorce in the Jewish community. As a response, the CCAR created a committee to look into to the rapid rise of divorce rates in the United States. This committee was initially headed by L. Winter, who was appointed the chairman of the "Committee on Uniform Divorce and Marriage Laws." The first mention of this committee is in the 1899 Central Conference of American Rabbis Yearbook, which contains a very brief report by Winter explaining that he could not attend the conference due to the resignation of his associate

minister. "In regard to the Report of the Committee on 'Uniform Divorce and Marriage Laws,' I report 'Progress."[15]

By the early 1900s the CCAR changed its focus away from secular divorce legislation. The CCAR had previously formed a committee to react to the possibility of a national uniform divorce law, but because the national law failed to take hold, the issue was changed to "The harmonization of the mosaic and modern marriage laws."[16] In order to accomplish this new goal, a committee was created at the annual meeting in Frankfort, Michigan in 1907.

The first report of the committee was presented at the Frankfort meeting in 1908. This report stated, "the task assigned to us is of such magnitude that it is impossible for us to give an exhaustive treatment of the subject at this time."[17] The committee recommended that there should be several studies created with regards to the topic. The proposed subject areas included a study of marriage laws of the Bible, a study of marriage laws in the codes, a study of various marriage laws in the different states of the country, and a fourth study concerning similar attempts at harmonization made in both the United States and in other countries.[18] WM. Rosenau, the charimain of the committee, submitted this recommendation and it was approved by Conference with the idea that the full report on all of these topics would be submitted the following year. The committee sound found, despite this proposal, that because of the amount of material that needed to be synthesized, it would simply take them more time to compose their reports. It would not be for another two years until the committee presented is next report.

The Committee on the "Harmonization of the Mosaic and Modern Marriage Laws" faced a daunting task. While it already faced the enormous problem of attempting

to reconcile Jewish law with modern law, it also had to deal with the same problems that many efforts with regards to modern divorce reform encountered at that time. Divorce reform in the early 1900s had to attempt to reconcile the inequalities the legal system that existed between men and women. General attempts at divorce reform also had to tackle the issue that most behaviors considered serious enough to lead to divorce (adultery, violence, drunkenness, desertion) were themselves regarded as working class problems. In American society, most people who made up the working class could not afford the cost of divorce, especially the wives.[19] As a result any attempts at reforming divorce would also have to take this sociological phenomenon into consideration.

This is indicated by the next report from the Harmonization committee, which was given at the CCAR conference in Charlevoix, Michigan in 1910. The main focus of this report was the same problem they discussed in the previous report, namely that the committee needed more time to do research. The committee felt it necessary to broaden the scope of its interest to include other topics like the status of women, the issue of prohibited marriages, and also the issue of re-marriage. The committee also requested that they be allowed to consult with lawyers who were "familiar with both the civil and religious laws, to contribute without cost to the Conference."[20]

The committee also made three recommendations including:

> 1. That the name of this committee be changed from Committee on Harmonization of Mosaic and Modern Marriage Laws to "Committee on Religious and Civil Marriage Laws." We prefer to eliminate the word "Harmonization," because we understand our work seeks more than harmonization; rather revision and betterment ... The committee purposes to consider not only Biblical laws, but also laws and regulations found in Philo and Josephus, the Mishnah and Gemara, in Maimonides, Asheri and the Shulhan Aruch and principles and procedures advocated by authorities of Reform Judaism.
> 2. That the work of this committee shall not include the subject of intermarriage, this subject having been considered in previous conferences.
> 3. That the papers prepared by members of the committee and by the invited contributors be published in the Appendix of the Year Book, and

so far as feasible, read before the conference.[21]

This report, which was submitted under the chairmanship of Ephriam Frisch, was accepted by the Conference. This report was then followed by the first paper from the committee entitled "Jewish Marriages and American Law" by B. H. Hartogensis.

At the 1911 Conference in St. Paul and Minneapolis, the committee reported continued progress on this issue,[22] although no presentations or proposals were made at that time. The first presentation of papers specifically on the topic of Divorce was supposed to have occurred at the Baltimore Conference the following year. However neither of the authors was in attendance at the conference, therefore their presentations were delayed until the meeting in 1913.[23]

The first of these papers presented at the Atlantic City Convention was by Dr. J. Leonard Levy of Pittsburgh. Levy was invited to speak to the Conference on "The modern problem of marriage and divorce."[24] In his presentation, Dr. Levy argued against the general practice of divorce, describing it as an "evil." Levy argued that divorce was a sign of moral weakness because the main reasons people sought out a divorce were desertion, cruelty, and adultery. Levy also noted that divorce had a significantly negative impact on the children, and that it also disrupted family life.[25]

As much as Levy despised divorce, there was one aspect that he felt was a greater evil, and that was, "the impossibility of obtaining a divorce in spite of valid legal grounds."[26] Levy's reasoning was that in such a situation, it would cause more damage to the family if the parents remained together then if the parents were divorced from each other. This led Levy to state, in accordance with the prophetic tradition, that though divorce was an evil, it was sometimes a necessary evil.

One of Levy's suggestions to deal with the rise in the divorce rate was that a rabbi should at times refuse to conduct a marriage ceremony. In his paper Levy stated that the rabbis should not officiate at a wedding unless the participants are well known to the rabbi. This is because he felt that one of the reasons for the rise in the divorce rate was because too many people received "hasty" marriages, and that these "hasty" marriages led to increased numbers of divorces. Only by ending this practice of hasty marriage could the divorce rate be turned around.[27]

This recommendation not withstanding, Levy also tackled the problem of harmonizing the Jewish law of divorce with the laws of the land. Levy's recommendation was that in all cases the law of the land has supremacy. Levy's reasoning for this was based on his idea that the only function that a rabbi had with regards to marriage was to bless the marriage in the name of God. In order to do this the rabbi needed to "ask permission of the State to issue a license to marry."[28] Based upon this idea, Levy concluded that the state is the ultimate authority in the contractual obligations of the marriage. Thus the result of this is that "the state, which grants the license must deal with the non-fulfillment of the contract,"[29] leading Levy to argue against rabbinical divorces. As Levy argued, "The rabbi in Israel is a teacher, not a judge clothed with civil authority. He cannot, therefore issue a legal decree since he has no legal authority. He may, and should, consecrate marriage; he cannot and should not, in this land, issue a decree of divorce."[30] Levy did acknowledge that this statement was at odds with traditional practice. He even went as far as to say that it was "utterly at variance with that view of religion which imposes legalistic provisions,"[31] however

according to Levy's vision of Reform Judaism, there was no need for rabbinic divorce since it rejected the idea of Judaism as having legal authority.

However, Levy was not willing to completely absolve rabbis of all responsibility with regards to Jewish Divorce. Though he felt that the law of the land was supreme in these matters, he did feel that rabbis should maintain some control over divorce to a minor degree. To this end, he proposed a compromise with regards to the *Get*. His compromise was that it was within the rights of a rabbi to countersign a divorce document issued by the State, and that this could be done in order to provide rabbinic moral sanction for the divorce. His reasoning for this was based on the idea that rabbis do have the right to refuse to conduct a marriage if they feel that there was something morally improper with the divorce proceedings. He was concerned in particular if one or both members of the couple had done something to violate "the moral code of Israel."[32] If the rabbi signed the divorce document, that rabbi was in essence stating that the couple had demonstrated good moral cause to dissolve the marriage, which would in turn allow a fellow rabbi to conduct a remarriage in good conscience. Even though Levy agreed that the *Get* in the traditional sense was no longer valid, he still hoped to provide a way for the rabbi to be able to express moral (but not legal) sanction to the divorce proceedings.

Levy's views with regards to rabbinic sanction were in the minority. The majority view on this topic was presented by Dr. Leon Harrison of St. Louis in his paper entitled, "Jewish View of Marriage and Divorce: The Modern Problem." In this paper Harrison argued against Levy's notion of the rabbis' right to countersign a state divorce document. Using the maxim *Deena d'malechuta Deena*,[33] Harrison felt that the *Get* was outdated and that a rabbi should not countersign any divorce document. Like the

majority of rabbis in the movement, Harrison wished to remove any sense of rabbinic control over divorce proceedings, and it would be Harrison's view and not Levy's that would ultimately be adopted by the CCAR.

With regards to the issue of the law of the land, Harrison did have two interesting suggestions. First he argued that it was of vital necessity to have uniform "marriage and divorces laws throughout the land".[34] He made this recommendation because he noted that there existed cases where a divorce, which was accepted in one state, would not be accepted in another. His second recommendation was based on the problem that there were too many divorces granted by the civil courts because there was not enough attention given to each case. Harrison's solution to this problem was to suggest that every state needed to institute a type of court that specialized in divorce. Though Harrison argued against rabbinic divorce, he recognized that there were many problems within the civil system that still needed much attention, and that rabbis had a legitimate interest in speaking to the problems of divorce.

By the 1914 Convention in Detroit, the Committee on Civil and Religious Marriage Laws was ready to make its recommendations on these matters. The committee stated, "Papers have been submitted upon various phases of the problem which together with the information and experience that every Rabbi possesses, lead us to believe that the Conference is ready to express itself definitely upon several leading aspects involved in the general problem."[35] In regards to rabbinical divorce and the use of the *Get*, the committee made the following statement:

"The general practice that obtains amongst Reform Rabbis of accepting the decree of the courts with regard to divorce comports with the Jewish principle of *dina di*

malchutha dina, the Law of the Land Supreme. The committee recommends that it is the sense of this Conference that:

> A. Rabbinical Divorce be discountenanced and should not be granted under any circumstances, either for use in this country or in any other country.
>
> B. To avoid even the semblance of giving a rabbinical divorce, Rabbis are urged to decline to countersign the divorce decrees of the courts.
>
> C. Rabbis shall investigate the causes for which divorce has been granted and shall refuse to remarry the party found guilty of adultery."[36]

The last two statements represent a compromise on Levy's position. It rejects Levy's argument that rabbis should countersign state divorce documents, however by granting rabbis permission to refuse to remarry in certain circumstances, the committee is still keeping some degree of rabbinic control, though after the fact.

The committee also stated, "That this Conference favor national laws of marriage and divorce or a uniformity of state laws on the subject."[37] This statement was based in part on the presentation made by Harrison the previous year.

However not every rabbi in the movement fully supported these recommendations presented by the Committee. In a rebuttal to this report Rabbi Kaufman Kohler stated:

> "It is a serious mistake to apply the principle, *dina di malchutha dina*, 'the law of the land is the law' to the question of marriage and divorce, which comes under the head of religious or ritual law. With this the law of the land has nothing to do. In regards to divorce by the State the Philadelphia Conference has already expressed itself, and its declaration is fundamental for us, since this Conference at its organization reaffirmed the principles adopted by the Philadelphia Conference. In accordance with this declaration a Rabbinical bill of divorce, or get, is altogether invalid in this country. Only, since the Rabbi must recognize the validity of a divorce granted by the State, he must inquire into the grounds for the divorce before remarrying either party thereto. This was the rule adopted at the Philadelphia Conference. It seems to me that the report requires thorough revision before it can be adopted at this Conference.[38]

Kohler's argument is significant for several reasons. The first is that he reasserts the traditional premise that though Jews do live generally under the principle of *dina demalchuta dina,* Jewish divorce does not fall under this principle because it is religious law and not secular law. Kohler in his argument, follows with the traditional understanding of *dina demalchuta dina*, by rejecting the idea that there is a connection between civil divorce and the principle of *dina demalchuta dina.* Kohler instead was arguing that divorce was a non-religious entity, which meant that the tradition of *dina demalchuta dina* was irrelevant to the argument. Secondly, Kohler argued that the reason why civil divorce is valid is only because this idea was a plank at the Philadelphia Conference, which has been reaffirmed by the CCAR. The result of this argument is that rabbis are involved in the divorce in the situations where he is asked to participate in a remarriage ceremony. Only in this manner, according to Kohler, are rabbis not to cede all supervision or involvement in divorce to the civil authorities.

Kohler's recommendations with regards to Reform Judaism and divorce would come the following year at the Conference in Charlevoix, Michigan. At this Conference there were two papers presented on the topic of "The Harmonization of the Jewish and Civil Laws of Marriage and Divorce."[39] The first was by Kohler and the second was by Rabbi Abram Simon.

In his examination of Jewish divorce, Kohler began with a brief historical overview of its development. He acknowledged that Jewish divorce is based on the idea that the husband is the ultimate authority, but that over time "the rabbis further retarded and restrained the husband's action."[40] Kohler wished to make a break between the so-called "oriental" religion and modern Judaism. In particular he supported the plank from

the Philadelphia Conference that declared the *Get* to have no validity in modern times. He also stated that the civil court was the only ruling authority in such matters that led to him declare the dissolution of marriage "can by its nature be a legal act, over which the genius of religion can only weep as over a broken down sanctuary."[41]

Kohler also agreed with Leonard Levy's position that rabbis should not be absolved of all of their responsibilities with regards to divorce. To this end he suggested an emendation to Levy's recommendation of "rabbis should countersign divorce papers issued by the courts," with the following proposition: "A body of three rabbis should attest the correctness of the findings of the court in the matter of divorce from the religious point of view of Judaism and attach their signature to the bill of divorce issued by the court."[42] Kohler not only rejected the proposal made at the previous Conference on this issue, but he took Levy's position one step further by suggesting that a de facto *Beit Din* be involved in divorce proceedings.

Kohler also argued for a type of uniform marriage and divorce legislation, but only if the causes which granted divorce were reconciled both within all of the states and also according to Talmudic law. In order to do this Kohler made several recommendations. First, he acknowledged that adultery was a cause for divorce[43], but that in certain states neglect[44] and extreme cruelty[45] were not always sufficient in these matters. In this case he agreed with rabbinic tradition, and argued that all states need to support neglect and extreme cruelty as legitimate grounds for divorce. He also supported Jewish tradition by arguing that any "loathsome disease,"[46] which was grounds for divorce in Jewish tradition, also ought to be grounds for State sanctioned divorce.

Kohler also mostly agreed with the halacha when it came to the plight of the *agunah*.[47] He recommended that a lengthy disappearance could justify the State granting a divorce. Kohler still remained fairly stringent even on these grounds when he proposed, "The rabbi must by all means withhold his approbation of the court divorce bill until he and his colleagues have ascertained that the same has not been granted on loose grounds and for flimsy causes such as in absence for a time less than five years or willful desertion."[48] However Kohler did not always follow with tradition. Though he supported the halakhic grounds for divorce, Kohler agreed with the previous arguments of the Augsburg Synod and the Philadelphia Conference in that the civil courts were the ruling authority to determine if the husband or wife is dead.

Therefore with regards to Jewish divorce procedures, Kohler made three recommendations:[49]

> 1. Inasmuch as the civil courts in many States often grant a divorce in cases where, from the religious view of Judaism, objections might be raised, a body of three rabbis should attest to the correctness, from the Jewish point of view, of the finding of the court in matters of divorce, and attach their signatures to the bill of divorce issued by the court.
>
> 2. The Central Conference of American Rabbis should declare that among the causes sufficient for granting a divorce besides Adultery and Extreme Cruelty, there ought also to be enumerated *Loathsome Diseases*, as the Jewish law has it.
>
> In regard to Willful Desertion, *five* years instead of two should be

made the rule; and no rabbi should officiate at the re-marriage before the lapse of five years of absence of either husband or wife, even after the court has dissolved the marriage.

Also in cases of the disappearance of either husband or wife, only after the lapse of five years should a re-marriage by the rabbi be allowed.

3. The Jewish law prohibiting a widow or a divorced wife from remarrying before the lapse of ninety days after the death of or after the divorce from her husband, should by all means be upheld by the modern rabbi; but instead of ninety days, the law prevailing in European countries which requires ten months or a full year ought to be placed on our statue book and observed by the modern rabbi.

Kohler's recommendations were followed by a report given by Rabbi Abram Simon on the same topic. Simon argued along the same lines of Kohler that Judaism had much to offer in the way of helping with the creation of some type of universal divorce legislation. In his paper Simon stated, "The spirit of Jewish legislation and tradition with regard to divorce is marked by such sanity, ethical worth and rational appreciation of human nature that its main outlines practically run parallel with the best of American legislation and requirements."[50] This meant that though he felt that divorce was ultimately civil in nature, there was still an ethical responsibility that religion could not ignore. Simon argued that rabbis were "charged with the religious responsibility of preventing divorce whenever it lies in our power to offer a telling word;"[51] meaning that rabbis should work to counsel couples against divorce except when absolutely necessary.

Simon argued against the Jewish tradition of forced divorce in the instances of mixed marriage[52] or the marriage of a Kohen to an inappropriate partner[53]. He also argued against childlessness[54] as being a modern ground for divorce. However Simon was in agreement with both Jewish tradition and Kohler when he recommended that loathsome diseases should "be included as a ground for divorce in our various state laws."[55]

In terms of the Jewish tradition of absolute divorce, Simon felt that the State usually not only agreed with Jewish tradition, but often was more stringent in those matters, and therefore their laws were acceptable for American Jews to follow. In particular he felt that cases of adultery, religious incompatibility[56], refusal of connubial[57] rights, impotence[58], loathsome disease, desertion, extreme cruelty, and non-support were both valid according to Jewish tradition and therefore were also valid for State sanctioned divorce. The one instance that Simon disagreed with Jewish tradition was the case of when a spouse was engaging in a loathsome trade.[59] His reasoning was in part because there were not any State regulations with regards to this category, and therefore this practice in Judaism was outdated and unnecessary.

In most of these categories Simon agreed with Kohler. However there was one significant difference. Simon felt that "Kohler's recommendation of a five years' abandonment is unnecessarily stringent."[60] Simon instead argued for the Uniform Divorce Bill's proposal of two years absence as being sufficient enough to grant a divorce.

Though Simon disagreed with Kohler on that matter, he affirmed the statement from the Philadelphia Conference and also Kohler's recommendation with regards to the

Get and to rabbinic oversight. He reiterated Kohler's suggestion that though the *Get* was no longer necessary. Instead the state should issue the divorce, and only after it was issued, should a panel of three rabbis then examine it before attaching their signatures to the document.

What is interesting about the proposals of Kohler and Simon made was that even though they acknowledged that Reform Judaism was leaning to the side of *Dina Demalechuta Dina*, (though Kohler rejected this idea), they both still attempted to reconcile Jewish tradition with modern law. They felt that Judaism had much to say with regards to modern Divorce law, and therefore they argued that rabbis still needed to be involved in divorce proceedings, even if only to a limited degree. This indicates that by as late as 1915, there were still rabbis who were arguing against completely handing over all divorce proceedings to the State.

These recommendations were noted by the Commission of Marriage and Divorce laws, which led to Kohler and Simon both being invited to serve on the committee. Another result of the committee's efforts was that the Chairman of the committee was invited before the Judiciary Committee of the House and Senate "to consider the passage of a Bill looking towards more uniformity in the country with respect to Marriage and Divorce laws."[61] Despite these developments, it would be another four years before the committee made another presentation before the Conference.

The first responsum dealing exclusively with the issue of divorce was presented during the 1918 Convention in Chicago. This responsum was entitled "Divorce in the Case of an Insane Husband,"[62] and was based on the question posed by a rabbi from England. The English rabbi asked a question concerning a woman whose husband had

been confined to a lunatic asylum for ten years and therefore was incapable of giving his wife a *Get*. This rabbi wanted to know who had the authority to provide the wife with a *Get* in her husband's stead. The reason for this question was that the couple was married in Poland according to Jewish law and not in England according to secular law. Rabbi Getthard Deutsch wrote the responsum to this question.

In his response, Deutsch takes a stance here as a modern rabbi answering a question within the framework of Jewish tradition, not the framework of Reform Jewish policy. An example of this is that Deutsch did not dismiss the use of a *Get* outright, but instead looked at several key halakhic issues relating to the problem of an insane husband before issuing a ruling. First he stated that according to the Shulchan Arukh (Even HaEzer 121:1-6), a man who became insane after getting married is forbidden from ever divorcing his wife. This led Deutsch to come to the conclusion that according to "strict rabbinic law an insane man like the one described in the question can not divorce his wife, and that the latter can not marry during the lifetime of her husband."[63]

However this conclusion then led into a multi-page discussion on the topic of "the right to change and interpret law in accordance with the needs of the age." Deutsch presented an argument based on the saying of Proverbs 3:17, "Her ways are ways of pleasantness," which led him to the conclusion, "that legal decisions must be in harmony with the ideas of humanity."[64]

To do this Deutsch examined opinions that dealt with the idea that one could change the law if "changed conditions demand a liberal application of the law." The source he used for this idea was Talmud, which presents a story describing how the prophets changed some of the institutions of Moses.[65] According to this tractate, the

reason why the prophets were able to do this was because they (the prophets) knew God and would not speak falsely to God. Even though this section of Talmud is only speaking about the prophets altering a prayer uttered by Moses, Deutsch is interpreting the words of R. Elazar to mean that the prophets changed the traditions of Moses to make it more applicable to their own time. Ironically, the Men of the Great Assembly ended up restoring the version uttered by Moses. Deutsch does not note this change back to the original tradition, and instead uses only R. Elezar's discussion to support his argument.

Deutsch then presented opinions of later authorities that came to this same conclusion. He specifically referenced Estori Farhi of France who stated, "The leaders and scholars of every generation have the right to abolish a prohibition when they become convinced that the reason for the prohibition ceased to exist."[66]

Using this reasoning, Deutsch came to the conclusion that sometimes a law needs to be followed according to its liberal interpretation. To this end he presented a ruling from Menahem Mendel Krochmal[67] who stated that there are cases where the relative can act as the interpreter for the deaf mute. "In the case of the divorce by a deaf mute besides the regular *Get* which the husband hands to the wife a special act recorded by the Bet Din states the fact."[68] Deutsch reasoned from this case, that just as in the case of the deaf mute, if there is not a relative available, then the *Beit Din* could appoint a guardian for the insane man. Deutsch then acknowledged that in keeping in line with the ruling of the Philadelphia Conference, which allows the State acts as the *Beit Din*, the rabbi in England can recognize a divorce granted by the government as being legitimate.[69]

This first responsum, like the presentations from Kohler and Simon, struggled to find a way to keep divorce within the realm of Judaism. Deutsch argued, based on

minority halakhic rulings and opinions, that divorce law can be modified to fit modern sensibilities while at the same time keeping to the spirit of Jewish law.

This idea seemed to still be on the minds of the Commission on Marriage and Divorce when they made their next presentation to the Conference at the annual meeting in Washington D.C. in 1921. At this meeting it was proposed that the committee would create "a comprehensive survey of the entire history and development of the Jewish laws of marriage and divorce ... (and that) this study ... (would serve) as a manual and guide to the modern rabbi ... with a view of harmonizing certain Jewish laws on marriage and divorce with the highest ethical standard revealed in many of the American States."[70]

This manual unfortunately did not materialize, and within the next ten years it would be decided that divorce proceedings, especially with regards to the *Get*, would be left completely under the jurisdiction of the modern State. So despite these prevailing minority opinions the following resolution was passed at the fortieth annual CCAR convention in Detroit in 1929:

> **Get.** It was moved and adopted that the Executive Board felt that it was not within the province of the Conference to sanction a divorce by issuing a get or certificate as the Rabbi does in case of a marriage. That when the Rabbi officiates at a marriage, he does so as an officer of the State. But a divorce is purely a legal action with which the Rabbi has no connection.[71]

This indicates that by 1929, the majority opinion attitude the rabbis of the CCAR, and also was that all aspects of divorce were solely a State matter. This meant that most members of the CCAR agreed with the idea that rabbis should not be involved in any of the legal divorce proceedings, except perhaps to help counsel the couple over the emotional issues involved.

The other result of this was that there were few responsa written related to Jewish Divorce over the next fifty years. When the issue did come up, these responsa tended to be in line with the decisions made by the CCAR relating to divorce.

An example of this occurred in 1946 when the issue of the *Get* came up again. A rabbi who was dealing with a woman whose Orthodox husband refused to grant her a *Get* posed a question, and the rabbi wanted to know if the CCAR would be willing to grant her a "unilateral divorce."[72]

The responsum, which was written by Israel Bettan, argued, "We are dealing here, then, not with a question of law, but with a question of policy."[73] Bettan came to the conclusion that there was no need to restore a policy that has already been agreed upon as being unnecessary and obsolete. He argued that because, reform rabbis are not bound by the law, they "are (then) at liberty to dispense with this provision of the law,"[74] and because of this the use of a *Get*, would merely be an "indulgence." In his response to the *she'elah*, Bettan vigorously argued against the Conference granting the wife a "unilateral divorce" because this was something that Reform Judaism did not do. This attitude in the CCAR towards divorce and Judaism would remain the majority opinion until well into the 1960s and 1970s.

[1] Meyer, Michael, A., Response to Modernity: A History of the Reform Movement in Judaism, (Detroit, Wayne State University Press, 1999), 261.
[2] Ibid., 266.
[3] Ibid., 270.
[4] Ibid., 267.
[5] Ibid., 268.
[6] Central Conference of American Rabbis, "Declaration of Principles," Pittsburgh, 1885.
[7] Ibid.
[8] Central Conference of American Rabbis, "Declaration of Principles," Pittsburgh, 1885.
[9] Meyer, Michael, A., Response to Modernity, 276.
[10] Central Conference of American Rabbis, The CCAR Yearbook, Volume I, 1890-91, Isaac Mayer Wise, "Historical Oration," 19-21.
[11] Phillips, Roderick, Untying the Knot: A Short History of Divorce, (Cambridge, Cambridge University Press, 1991), 153.
[12] Phillips, Roderick, Putting Asunder: A History of Divorce in Western Society, (Cambridge, Cambridge University Press, 1988), 468.
[13] Ibid., 469.
[14] Ibid.,470.
[15] Central Conference of American Rabbis, The CCAR Yearbook, Volume VII., 1899, 90.
[16] Ibid., Volume XVIII, 1908, 58.
[17] Ibid., Volume XVIII, 1908, 58.
[18] Ibid., Volume XVIII, 1908, 58-59.
[19] Phillips, Roderick, Untying the Knot: A Short History of Divorce, (Cambridge, Cambridge University Press, 1991), 183.
[20] The CCAR Yearbook, Volume XX, 1910, 127.
[21] Ibid., Volume XX, 1910, 127.
[22] Ibid., Volume XXI, 1911, 100.
[23] Ibid., Volume XXII, 1912, 201-202.
[24] Ibid., Volume XXIII, 1913. 340.
[25] Ibid., Volume XXIII, 1913, 342.
[26] Ibid., Volume XXIII, 1913. 342.
[27] Ibid., Volume XXIII, 1913. 348.
[28] Ibid., Volume XXIII, 1913. 344.
[29] Ibid., Volume XXIII, 1913. 345.
[30] Ibid., Volume XXIII, 1913. 346.
[31] Ibid., Volume XXIII, 1913. 346.
[32] Ibid., Volume XXIII, 1913. 348
[33] Halachic authorities reject the idea that *dina demalchuta dina* applies to marriage and divorce. They do not accept the validity of civil divorce because they view divorce as being a matter that is particular to ritual practice and not civil law. The tradition of *dina demalchuta dina* has never been used to justify the transfer of authority over to the state. The Reform Movement, on the other hand, regards Jewish divorce law as being related to monetary law, and therefore are willing to allow it to fall under civil law. (see Central Conference of American Rabbis Responsa, "Loyalty to One's Company Versus Love for Israel," 1990).
[34] Ibid., Volume XXIII, 1913. 360.
[35] Ibid., Volume XXIV, 1914, 122.
[36] Ibid., Volume, XXIV, 1914, 122.
[37] Ibid., Volume XXIV, 1914, 123.
[38] Ibid., Volume, XXIV, 1914, 124.
[39] Ibid., Volume XXV, 1915, 335.

[40] Ibid., Volume XXV, 1915, 351. Kohler cites as reference the creation of the dowry in case of divorce and also the Ketuba as instituted by R. Simeon b. Shetah as ways to prevent a hasty divorce. Ketubot 82b; 10a.

[41] Ibid., Volume XXV, 1915, 350.

[42] Ibid., Volume XXV, 1915, 356.

[43] Shulchan Aruch Evan HaEzer 11:1

[44] Ibid., E.H. 154

[45] Ibid., E.H. 154:3

[46] Ibid., E.H. 154:1

[47] In an effort to alleviate the hardship of the *agunah*, the rabbis permitted many of the laws of evidence to be relaxed. Examples of this include allowing for only one witness instead of two to verify the husband's death (Shulchan Arukh Evan HaEzer 17:3), and even allowing the witness to be a relative or a woman (E.H. 17:3). They even allowed the testimony of a witness even if someone else informed the witness about the husband's death. (E.H. 17:3). However, the evidence still needed to prove that the husband was dead and not most likely dead. (E.H. 17:29)

[48] Ibid., Volume XXV, 1915, 357.

[49] Ibid., Volume XXV, 1915, 377-378.

[50] Ibid., Volume XXV, 1915, 393.

[51] Ibid., Volume XXV, 1915, 394.

[52] Shulchan Arukh Evan HaEzer 1:10 in Rama

[53] Ibid., Evan HaEzer 6:1

[54] Ibid., E.H. 154:6

[55] Ibid., Volume XXV, 1915, 395.

[56] Shulchan Arukh Evan HaEzer 154:1

[57] Ibid., E.H. 154:3

[58] Ibid., E.H. 154:6

[59] Shulchan Arukh Evan HaEzer 154:4.

[60] Ibid., Volume XXV, 1915, 397.

[61] Ibid., Volume XXVII, 1917, 104.

[62] Ibid., Volume XXIX, 1919, 88-94.

[63] Ibid., Volume XXIX, 1919, 90.

[64] Ibid., Volume XXIX, 1919, 90.

[65] Yoma 69b

[66] Kaftar u'Fdeach Chapter IV, pg. 67 as quoted in Central Conference of American Rabbis, The CCAR Yearbook, Volume XXIX, 1919, 91.

[67] *Tzemech Tzedek* No. 77 as quoted in Central Conference of American Rabbis, The CCAR Yearbook, Volume XXIX, 1919, 94.

[68] The CCAR Yearbook, Volume XXIX, 1919, 94.

[69] The problem with Deutch's interpretation is that the Mishnah makes a clear distinction between the a deaf-mute and the person who becomes insane. In MishnahYevamot 14:1 a man who is a deaf-mute may divorce his wife even through the use of sign language. If the man becomes insane, on the other hand, he is forbidden from ever divorcing his wife. Deutch's ruling contradicts M. Yevamot 14:1.

[70] Ibid., Volume XXXI, 1921, 62.

[71] Ibid., Volume XXXIX, 1929, 43.

[72] Jacob, Walter, ed., American Reform Responsa: Collected Responsa of the Central Conference of American Rabbis, 1889-1983, (New York, Central Conference of American Rabbis, 1983), 510-511.

[73] Ibid., 510.

[74] Ibid., 510.

CHAPTER IV

The Reform Movement is a constantly evolving body of diverse ideas, opinions, and theologies. The result of this is that it there is an effort approximately every generation to redefine the boundaries and reset the parameters of the Movement. The clergy in the Reform Movement are also a part of this general trend as has been indicated by the multiple platforms of the Central Conference of American Rabbis, which seem come about once every thirty years. By the time of the creation of the CCAR's San Francisco Platform of 1976, it was becoming clear that a new generation of rabbis were becoming increasingly interested in a return to tradition.[1] Though they still emphasized the idea of "choice through knowledge," these same rabbis were also hoping to reclaim much of what had been lost during the earlier years of "Classical" Reform, and Jewish divorce was no exception to this process.

Already by the late 1970's there is an indication that at least some Reform rabbis were reconsidering the question of whether or not there should be rabbinic involvement in divorce proceedings. In 1977 Rabbi Eugene Lipman[2] wrote an article making several recommendations for how the Reform rabbi can help assist a couple faced with the reality of divorce.[3] In this article he argued for rabbis being more involved in the divorce process because the central aspect of Judaism is the family. While most of Lipman's recommendations concern the rabbi providing counseling and moral support, Lipman also made the recommendation that a rabbi "should see to it that a traditional *Get* is prepared and delivered"[4] when appropriate.

Lipman does not call for the creation of a Reform *Get*, nor does he recommend that the Reform rabbi involved with the couple be the one to issue the *Get*. However by

merely recommending that the rabbi can help the couple to, in some instances, acquire a proper *Get*, Lipman's opinion seems to be in direct contradiction to the responsum issued in 1946 by Israel Bettan.[5] Lipman's article from 1977 indicates that, at least for some rabbis in the Reform Movement, the issue of Jewish divorce was being reevaluated.

The next indication of this changing attitude can be found in a responsum written in 1980 by Walter Jacob.[6] In his responsum, Jacob summarized the history of divorce procedure as it has developed in Jewish law. He included a discussion of how the general attitude in the Reform Movement developed into the idea that the civil issuance of a divorce was enough, and how this resulted in the Movement feeling that there was no longer any need for a rabbinically sanctioned divorce. Jacob, in the conclusion of the responsum, appears to accept this attitude as well. Jacob does however note that by 1980, despite the prevailing attitude that there is no longer any need for rabbinic or Jewish divorce proceedings, there are in fact Reform congregations in Canada and Great Britain that were attempting to create modified versions of the *Get*. He also notes that even within the American Reform Movement there were rising voices that were calling for the institution of a Reform *Get*.

Jacob begins his description of the Reform movement's historical record with regards to marriage and divorce with the observation that the Reform movement has always concerned itself with the problems of marriage and divorce.[7] To this end, he argues that these "problems" are not just the pastoral ones, but also legal ones. An example of this idea is that Jacob argues that the resolution of the Philadelphia Conference went as far as to permit "the rabbinic court to look into the decree of the civil court and reject some grounds for divorce."[8] In this sense, Jacob is arguing that the

Reform movement is not so radically outside the Jewish mainstream as it might appear to be by its rejection of "religious" divorce especially when he states that there were some members of the CCAR who wanted harmonize civil law with Jewish law.[9] In a sense, this argument anticipates the developments of the late 20th century, when some Reform Jews begin to call for the recovery of the *get*.

According to Walter Jacob, there are two primary reasons why some rabbis and congregants are calling for the institution of an "appropriate" *Get*. The first is that since the consecration of marriage has a religious form, as the proponents of a *Get* argue, so too the dissolution of marriage should also have religious form. Their second argument is based on the idea that there is an inherent "psychological value" to a religious divorce. Therefore by granting a Jewish divorce, this proceeding would then help the people going through the process both religiously and psychologically.

Jacob notes that, despite these recent developments at the time of the writing of the responsum, there was no provision from the CCAR for a religious divorce. However the arguments presented by the people who wished to institute a type of Jewish divorce procedure could not be silenced. These advocates continued to put pressure on the CCAR with some calling for the creation of a "Ritual of Separation." The result of this was that in 1981 the Committee on Reform Jewish Practice began to explore this issue further. They eventually made the recommendation that such a ritual should be created.[10]

Following this committee's recommendation, Simeon J. Maslin took it upon himself to create the *Seder P'reidah*, (A Ritual of Relase). The Reform Practices Committee then accepted Maslin's newly created ritual in 1983. The general belief in the CCAR was that a rabbi could then use the *Seder P'reidah* in order to help the couple

"create a sacred space in the divorce process that could provide divine sustenance and a mechanism for spiritual healing."[11]

In an interview in the spring of 2000, Maslin provided some background for why he created the *Seder P'reidah*.[12] Maslin explained that though he would at times recommend to couples that they should seek to procure either a Conservative or Orthodox *Get* if they were concerned about the potential issue of *mamzrut*, he did not desire to create nor implement the use of a Reform *Get*. Instead because of the urging of some rabbis in the Movement who were calling for some sort of a "spiritual closure," Maslin relented and began to work on a "Ritual of Separation." He emphasized in the article that this ritual was never intended to take the place of nor should ever be confused with a *Get*. His goal in the creation of the *Seder P'reidah* was instead simply "to create a sacred space and time for making the difficult transition from marriage to singleness,"[13] but not to create a rabbinically sanctioned divorce.

The *Seder P'riedah* was initially published by the CCAR as a separate liturgical piece that was made available to those who wanted it. Increasing demand for the ritual led to it being included in the CCAR's Rabbis Manual in 1988.[14] Yet it remained tacitly if not explicitly the policy of the CCAR not to create nor issue any form of a *Get*. The *Seder P'reidah* was not created to be a Jewish legal document, but instead was included in the Rabbi's Manual to serve only as a voluntary way to help individuals deal with the spiritual pain of separation.

However the creation of a "Ritual of Separation" did not fulfill the desires of all of the people within the Movement. Even with the publishing of the *Seder P'reidah*, there were still some voices calling for the creation of a Reform *Get*. An example of this

can be found in an article written in 1983 by Rabbi Bernard H. Mehlman and Rabbi Rifat Sonsino who both called for and also presented a model of a type of Reform *Get*.[15]

In presenting their argument that there is a need for the creation and use of a Reform *Get*, Mehlman and Sonsino contend that the reason this is because the modern situation demands the creation of a modern *Get*. To supplement this argument they use the same line of reasoning that was stated by Walter Jacob in his 1980 responsum. They included the argument that it is inconsistent for people to seek out Rabbis to conduct marriages, yet rabbis would not present a "religious perspective" in assisting with the dissolving of a marriage. Mehlman and Sonsino also take the argument one step further. They also claim that when the ever rising divorce rate is combined with rabbis being involved in more marriage counseling than ever, and because more Jews are seeking to obtain a *Get* as a way to mark the end of their marriages, that all of these factors have resulted in both the need and demand for an egalitarian Jewish divorce document. Thus they feel that their creation can serve as a model for a new and acceptable way for Reform Judaism to be involved in divorce proceedings.

Mehlman and Sonsino's Bill of Divorcement is based on the model that developed out of tradition. In particular it includes the phrasing from both Hosea 2:4, "For she is not my wife and I am not her husband," and the phrase from Mishnah Gittin 9:3, "You are free to marry any man." It is also different from tradition because "it is reciprocal in its formulation."[16] This is because, as is consistent with the egalitarian ideology of Reform Judaism, both the husband and wife would partake in the process of obtaining and signing the *Get*. This in turn helps to remove the unilateral component of the traditional *Get*. The authors of this *Get* also emphasize that the "Ritual of Release"

should take place in a rabbi's office, under the presence of witnesses, without any of the "demeaning procedures" that would take place in a traditional environment. The result of this is that Mehlman and Sonsino's *Get*, in their opinion, serves the religious needs of the participants while at the same time making the divorce procedure fair and equitable as is demanded by the traditions of Reform Judaism. The Reform Movement was not yet ready to adopt their newly created egalitarian *Get*, but this issue remained open to discussion as is indicated by a *teshuvah* issued in 1988.

The concerns of Maslin, by which some rabbis might confuse the *Seder P'reidah* with being a binding ceremony, were not unfounded. In 1988 three rabbis submitted a question to the responsa committee in two parts. The first part of the question was should they as Reform rabbis issue a *Get*? And secondly should the *Seder P'reidah* be considered a *Get*?[17]

The Responsa Committee responded to this *she'elah* by acknowledging that there is a religious and psychological benefit to a religious divorce procedure.[18] The committee, however, was inclined not to support the creation and general use of a Reform *Get*. This was in part because the Responsa Committee felt that most Orthodox authorities would not recognize a Reform *Get*, and any attempt to work out a compromise at this time "hardly seems worth the enormous effort."[19]

The responsa committee furthered their argument by stating that the civil courts, not the rabbinic courts, are the recognized authorities that deal with the significant issues related to divorce like custody and financial issues. The committee also reasoned that since the *Seder P'reidah* serves to fulfill most of the religious and psychological needs of

Reform Jews going through the process of divorce, a Reform divorce is deemed not necessary at the time of the writing of the responsum.

The conclusion of responsa committee is significant because it reasserts that the *Seder P'reidah* was not intended nor should be confused with a *Get*. It further states, "We have not accepted civil divorce without a *Get* for more than a century. We are not prepared to suggest a formal change in this procedure."[20] The committee either felt that it was not yet the time to make such a change or that it was not the proper body to make such a suggestion. However, when the committee stated that the use of the *Seder P'reidah* "may eventually lead us to reopen the matter of a Reform *get*,"[21] this phrase indicates that it was perhaps not yet the time to make such a recommendation but that it was a distinct possibility in the future.

The question of a *Get* came up again in the responsa literature in 1994 when two Reform rabbis from San Antonio asked the Responsa Committee about what they should do in the case of a Orthodox man approaching them for membership in their congregation even though he refused to grant his wife a *Get*.[22] Their question was based on the issue that the local Orthodox rabbi asked his Reform colleagues to support his own efforts to exert pressure upon this "recalcitrant husband." The problem for the Reform rabbis was that as far as the rules of the CCAR are concerned, the "recalcitrant husband" was doing nothing wrong. He was not preventing his wife from remarrying, because, according to the position established by the CCAR, Reform rabbis could remarry her under Reform auspices. Reform rabbis, as already established, do not require husbands to issue *Gittin*. Therefore the San Antonio Reform rabbis were essentially asking the question of, on

what grounds could they then deny to him the services (i.e. membership in their congregation)?

In responding to this *she'elah*, the authors of the responsum stated that there are two issues that need to be considered. The first issue is Reform Judaism's rejection of both religious divorce and the concept of *agunah*. This first issue directly relates to the responsum issued by Israel Bettan fifty years ago[23], which also argued against religious divorce and disavowed the idea of the *agunah* within the Reform tradition. However the authors of the more recent responsum also acknowledged that there is a second principle involved in this *she'elah* as well, the principle of pluralism. According to the authors of this responsum, the Reform movement "applauds the reality that other movements within Judaism sometimes choose to see the world differently from the way that Reform Jews do."[24] This responsum is in effect calling for the end to Reform Jewish "triumphalism," the idea that Reform Judaism is the "right" or "best" way for *all* Jews to practice Judaism. If other paths are also correct, then it is proper for Reform rabbis to assist Jews who follow other streams of Judaism including those who follow the *Halacha*.

The authors expand upon this idea by stating, "various principles which we have established for Reform Jews, who operate wholly within the Reform Jewish context, may not work in the same way for Jews who are not within our context."[25] Thus they acknowledged that though Reform Judaism does not recognize religious divorce or the need for a *Get* when a secular divorce has been granted, they do find that in this case there is a higher moral principle involved. This principle is that there are repercussions to the stands taken by Reform rabbis. This means even if the Reform Movement recognizes secular divorce as being sufficient, in a case such as this, the rabbis involved would

nonetheless be condemning the wife to the status of *agunah* because she lives under a different legal tradition.

With this in mind, operating under the moral principle of a person should have the opportunity to do what is "right and ... good," (Deut. 6:18). Footnote 7 of the responsum cites Gunther Plaut's commentary on this verse. In his commentary, Plaut states, "The Rabbis developed an important ethical principle from this verse, holding that it was not sufficient to do the 'right' or legal thing, but that one needed to go beyond and do also what was 'good or moral."[26] The authors of the responsum argue that this means that Reform Judaism "has historically put great emphasis on doing that which is good, moral, and ethical."[27] This means that the San Antonio rabbis do have an ethical responsibility towards the wife, and this entitles them to prevent the husband from joining their congregation until he has provided his wife with a *Get*.

The other major argument is that this couple was married under Orthodox auspices, which involves an *explicit* commitment to conduct their marriage according to the Orthodox interpretation of Jewish law (*kedat moshe veyisrael*). By refusing to officiate, the Reform rabbis are simply insisting that the husband fulfill his promise to his wife—an ethical responsibility that has nothing to do with our policy regarding religious divorce.

With these two arguments in mind, the authors of the responsum conclude that it is appropriate for the Reform rabbis not to conduct another marriage ceremony for the husband until he does what is right and good by providing his first wife with a *Get*.

Though the authors of this responsum do not call for the San Antonio rabbis to insist upon the husband giving his wife a *Get*, it is nonetheless indicative of a general

return to tradition. The idea that Reform rabbis should not conduct a marriage until the husband has granted his wife a *Get* simply would not have occurred fifty years ago. Instead it would have been argued that a *Get* was superfluous in all cases because a civil divorce was sufficient.[28]

This "return" to tradition and moving away from the "traditions" of Reform Judaism is also indicated because the conclusion of this responsum also contradicts the "notes" of the Rabbis Manual[29] on this subject. In the notes it is argued, based on a responsum by Solomon Freehof,[30] that a Reform rabbi should attempt to persuade the husband to provide his wife with a *Get*. Freehof further argues that if the husband is unwilling to provide his wife with this *Get*, the Reform rabbi should not refuse to officiate at his remarriage ceremony.

The issue of Reform Jews and the Reform Movement needing to respond to the issue of divorce continued to gather steam through the nineties. The culmination of this was a series of articles in the Spring issue of *Reform Judaism* which attempted to answer the question, "Is the Reform Movement meeting the emotional needs to thousands of Jews who endure the upheavals of a family breakup – and what more can be done?"[31]

To answer this question, the magazine presented six articles written on different topics relating to divorce. One of the articles was by Rabbi Earl Grollman who wrote on the topic of how to better counsel people going through divorce in order to help them become whole again. Rabbi Sanford Seltzer discussed the history of Jewish divorce, and Rabbi Simeon Maslin explained the factors that led him to create the *Seder P'reidah.*

In terms of Reform Judaism and divorce procedure, it is the article written by Rabbi Leigh Lener that is the most poignant. Lerner, using the very concepts that are

central to Reform as a means of critiquing what the movement has done in the name of those concepts, asks the question of "how can our movement, which prides itself on reason and common sense, expect adherents to observe all major lifecycle rituals – except one?"[32] Using this line of questioning, Lerner calls for a return to Jewish divorce ritual. His argument indicates that he does not see the *Seder P'reidah* as going far enough to accomplish this goal of creating a ritual end to a marriage. Instead he argued for the Movement to create and adopt a liberal egalitarian *Get* in order to fully help Jews bring both religious and spiritual closure to the end of their marriages.

Lerner noted that there is already successful model for a liberal *Get* being used in Canada, which is embraced both by the clergy and by the laity. He also notes that this model has helped many in Canada bring religious closure to the end of peoples' marriages. So with this in mind, Lerner recommended that an egalitarian *Get* ceremony also be adopted by the CCAR. One reason for this is because, as Lerner argued, even though "the egalitarian *Get* ceremony and document does not have official CCAR sanction ... it is being used by a number of American Reform rabbis."[33] And Lerner also recommended the use of an egalitarian *Get* because process involved would enable all Reform rabbis to help the couple not only bring closure, but also would provide them an opportunity to help the couple to put away the feelings of animosity that stem from divorce. Like Mehlman and Sonsino before him, Lerner is arguing that the time has come for the CCAR and the Reform Movement to adopt and institute the use of an egalitarian *Get*.

However there is not yet at this time a Reform *Get* that has been adopted by the Central Conference of American Rabbis. Instead the Reform Movement has focused on

creating rituals, like the *Seder P'riedah*, to provide healing. In some instances rabbis and congregations have created a *minyan* similar to one for mourners where family, friends, and supporters help the person begin or continue this transition in their life. There are other examples of rituals created for specific instances like those mentioned in the "Reform Judaism" magazine from the Spring of 2000.

Yet it would seem to be only a matter of time until the CCAR does adopt some form of an egalitarian *Get*. This *Get* may not have halakhic authority, yet there seems to be a general increase in the desire for a ritual grounded in tradition that will help to provide comfort when couples are facing the end of their marriages. This is because, though the various rituals of separation fulfill the needs for many in the Reform Movement, it does not fulfill the needs for all, including some of its rabbis. This in turn is indicated by the proliferation of multiple, creative, and in most cases new types of egalitarian *Gittin* (see appendix).

These various *Gittin* were created in an attempt to make the divorce process equal to both parties while at the same time eliminating any humiliating or unfair aspects of the Jewish divorce procedure. It is conceivable that, because these new types of *Gittin* have removed the unequal elements of Jewish divorce, they will come to play a more significant role in Reform Jewish divorce in America especially as more lay people and rabbis call for their implementation.

And though there does not seem to be any indication that there will ever be a return to religious divorce as being the final authority for those in the Reform Movement, there does seem to be a general trend towards at least returning the use of the *Get*, in a

modified form, to help Reform Jews find healing while they go through the process of divorce.

[1] Central Conference of American Rabbis, "Reform Judaism and Zionism: A Centenary Platform." (1976). In Section Four Our Obligations: Religious Practice, there is a new emphasis placed on the idea of focusing not just on ethical obligations but ritual obligations as well. The idea of "celebrating the major life events" according to individual understanding of Judaism could lead some rabbis to argue that Jewish divorce (or at least a type of spiritual separation) is a part of this tradition.

[2] Eugene Lipman served as the President of the Central Conference of American Rabbis from 1988 to 1989.

[3] Lipman, Eugene F., "The Rabbi and Divorce," CCAR Journal Volume 24 no. 4 issue 99, (Autumn 1977): 29-34.

[4] Ibid., 32.

[5] Bettan, Israel, "161. Divorce (Get)," Central Conference of American Rabbis, The CCAR Yearbook, Volume LVI (Jewish Publication Society, Philadelphia: 1947), 123-125. In 1946 responsum, Bettan argues against reform rabbis being involved in any sort of Jewish divorce proceedings. He feels that the *Get* is an outdated institution and to sanction one would only serve as an indulgence.

[6] "162. Reform Judaism and Divorce," Central Conference of American Rabbis, The CCAR Yearbook, Volume XC, (CCAR, New York: 1981), 84-86.

[7] Ibid., 85.

[8] Ibid., 86.

[9] Kohler, Kaufman, CCAR Yearbook, Volume XXV, 1915, 376.

[10] Maslin, Simeon J., "Yes, There is a Reform Divorce Document ... But Don't Call it a Get," Reform Judaism, Vol. 28, No. 3 (Spring 2000), 48.

[11] Kaplan, Dana Evan, American Reform Judaism: An Introduction, (New Brunswick: Rutgers University Press, 2003), 188.

[12] Maslin, Simeon J., "Yes, There is a Reform Divorce Document ... But Don't Call it a Get," 47-50.

[13] Ibid., 49.

[14] Central Conference of American Rabbis, Rabbi's Manual, (CCAR, New York: 1988), 97-104.

[15] Mehlman, Bernard H., Rifat Sonsino, "A Reform Get: A Proposal," Journal of Reform Judaism, Volume 30 No. 3 Issue No. 122, (Summer 1983), 31-36.

[16] Ibid., 33.

[17] "A Reform *Get*," Central Conference of American Rabbis, The CCAR Yearbook, Volume XCIX, (CCAR, New York: 1990), 231-233.

[18] Ibid., 231.

[19] Ibid., 231.

[20] Ibid., 233.

[21] Ibid., 233.

[22] Central Conference of American Rabbis Responsa, "The Absence of a *Get*," 1994. http://www.ccarnet.org/cgi-bin/respdisp.pl?file=6&year=5754.

[23] Bettan, Israel, CCAR Responsa, "161. Divorce (Get)."

[24] Borowitz, Eugene B., Liberal Judaism, (New Work, Union of American Hebrew Congregations: 1984), 348-349.

[25] CCAR Responsa, "The Absence of a *Get*."

[26] Plaut, Gunther, The Torah – A Modern Commentary, (New York, Union of American Hebrew Congregations: 1981), 1368.

[27] CCAR Responsa, "The Absence of a *Get*."

[28] Bettan, Israel, CCAR Responsa, "161. Divorce (Get)."

[29] Central Conference of American Rabbis, Rabbi's Manual, 245.

[30] Freehof, Solomon B., Current Reform Responsa, (Hebrew Union College Press, Cincinnati: 1969), 218-219. In his responsum, Freehof states that if there already is a valid civil divorce, he does not see how a Reform rabbi in America could refuse to perform the marriage of a Jew to a fellow Jew whether or not the husband has provided his wife with a *Get*. He does argue that the rabbi should attempt to

persuade the husband "to be considerate and urge him to go through the ceremony of a Get," yet if the husband refuses, the rabbi should not refuse to perform the ceremony.

[31] "Focus: Divorce and Recovery," Reform Judaism. Vol. 28, No. 3 (Spring 2000), 42.

[32] Lerner, Leigh, "Restore the Get," Reform Judaism, 55.

[33] Ibid., 58.

"Appendix A"

ספר כריתות

(דברים כ"ד, א')

ב_____ בשבת, _____ יום לירח_____

שנת חמשת אלפים ושבע מאות ו_____ לבריאת העולם, למנין

שאנו מונים כאן ב_____

אמר_____ בן_____

העומד היום ב _____

אל_____בת_____

אני אתן לך ברעות נפשי גט פטורין. מן היום והלאה את לא אשתי ואנכי לא אישך. הרי את לעצמך ומותרת לכל אדם.

אמרה_____ בת_____

העומדת היום ב _____

אל_____בן_____

אני אתן לך ברעות נפשי גט פטורין. מן היום והלאה את לא אישי ואנכי לא אשתך. הרי אתה לעצמך ומותר לכל אשה.

הנה זה ספר תרוכין ואגרת שבוקין וגט פטורין כדת משה וישראל.

הנה זה ספר תרוכין ואגרת שבוקין וגט פטורין כדת משה וישראל.

(האיש) _____

(האשה) _____

עד _____

עד_____

הרב _____

BILL OF DIVORCEMENT
(DEUTERONOMY 24:1)

On the _____ day of the week, the _____ day of the month of _____, Five-Thousand Seven-Hundred and _____ since the creation of the world, as we reckon here in _____

_____ _____

Son of _____ Daughter of _____

Who resides in _____ Who resides in _____

Said to _____ Said to _____

Daughter of _____ Son of _____

_____ _____

"I of my own free will grant you this certificate of divorcement. From today onward, you are not my wife and I am not your husband You are free to marry man."

Let this be your Bill of Divorce and Letter of Dismissal and a Certificate of Liberation according to the tradition of Moses and the Jewish People.

"I of my own free will grant you this certificate of divorcement. From today onward, you are not my husband and I am not your wife. You are free to marry any woman."

Let this be your Bill of Divorce and Letter of Dismissal and a Certificate of Liberation according to the tradition of Moses and the Jewish People.

_____ _____

WITNESS _____ WITNESS _____

RABBI _____[1]

[1] Mehlman, Bernard H., Rifat Sonsino, "A Reform Get: A Proposal," Journal of Reform Judaism, Volume 30 No. 3 Issue No. 122, (Summer 1983), 34-35.

DOCUMENT
OF
TRANSMISSION

On the _____ day of the week, the _____ day of _____ 574_____

since the creation of the world, the _____ day of _____, 200 ___ as we

reckon time here in _____, _____

I, _____ daughter of _____ & _____

(Hebrew names) _____

do depart from the bindings and vows of my marriage, (kedushin) that took place

_____ years ago on _____ in _____

to _____, son of _____ & _____,

(Hebrew names) _____

This day I am no longer bound to the task and to the commitment to cherish and honor you in faithfulness and in integrity as my husband.
This day I am no longer bound to stand as wife, companion, and partner.
This day I am no longer bound by honor or by law to affirm and maintain kedusha within our relationship.
This day I am no longer set aside, special to only you.
This day the kedushin vows become null and void.
I am no longer bound by the vows of kedushin.
Hereby, I am no longer kedusha to you, no longer you wife and you are no longer kadosh to me, no longer my husband.
On this day according to our tradition I depart as a free woman.
I stand as a free agent in the Jewish community, in the world, and before myself.
I stand having completed our people's traditional way of unbinding a marital relationship.
I stand as a Jewish woman with dignity and with strength.
I stand restored to a single unit as a whole and complete person.
This shall stand as a document of release and a letter of freedom in accordance with the values of our people, Israel.

_____ *(Woman's Hebrew Name)*

_____ *(Woman's English Name)*

_____ *Witness*

_____ *Witness*[1]

[1] Hollander, Vicki, "The New, Improved Jewish Divorce: Hers/His," Lilith, Volume 28 No. 1, (Spring 2003), 17.

Appendix "B"

סדר פרידה

RITUAL OF RELEASE

Version A: Both Parties Present

(It is understood that the following ritual will be conducted only after the rabbi has had the opportunity counsel with one or, preferably, both of the parties involved, and only after the couple has received a civil divorce decree. The rabbi will explain to the participants that this ceremony and the accompanying document do not constitute a halakhic get. *The ceremony should take place in the presence of witnesses. Participants might invite their children, family, or close friends to be present.)*

RABBI

Since earliest times Judaism has provided for divorce when a woman and a man, who have been joined together in *kiddushin* (sacred matrimony), no longer experience the sacred in their relationship. The decision to separate is painful, not only for the woman and the man (and for their children), but for the entire community. Jewish tradition teaches that when the sacred covenant of marriage is dissolved, "even the alter sheds tears." (Gittin 90b)

W: have you consented to the termination of your marriage?

(W responds.)

M: have you consented to the termination of your marriage?

(M responds.)

W

I, _____, now release you my former husband, _____, from the sacred bonds that held us together.

M

I, _____, now release you my former wife, _____, from the sacred bonds that held us together.[1]

---

[1] Central Conference of American Rabbis, Rabbi's Manual, (CCAR, New York: 1988), 97-104.

RABBI

W and M: _____ years ago you entered into the covenant of *kiddushin*. Now you have asked us to witness your willingness to release each other from the sacred bond of marriage, and your intention to enter a new phase of life.

What existed between you, both the good and the bad, is ingrained in your memories. We pray that the good that once existed between you may encourage you to treat each other with respect and trust, and to refrain from acts of hostility. (And may the love that you have for your children, and the love that they have for you, increase with years and understanding.)

(Personal words by rabbi.)

This is your Document of Separation, duly signed by both. It marks the dissolution of your marriage. I separate it now as you have separated, giving each of you a part.

W and M: you are both now free to enter into a new phase of your life. Take with you the assurance that human love and sanctity endure.

יִשְׁמָר יְיָ בֵּינְךָ וּבֵינֶיךָ, May God watch over each of you and protect you as you go your separate ways.

And let us say: Amen.

Version B: Only one party present

(It is understood that the following ritual will be conducted only after the rabbi has had the opportunity counsel with one or, preferably, both of the parties involved, and only after the couple has received a civil divorce decree.

The rabbi will explain to the participant that this ceremony and the accompanying document do not constitute a halakhic get.

The ceremony should take place in the presence of witnesses. The participant might invite his/her children, family, or close friends to be present.)

RABBI

Since earliest times Judaism has provided for divorce when a woman and a man, who have been joined together in *kiddushin* (sacred matrimony), no longer experience the sacred in their relationship. The decision to separate is painful, not only for the woman and the man (and for their children), but for the entire community. Jewish tradition teaches that when the sacred covenant of marriage is dissolved, "even the alter sheds tears." (Gittin 90b)

X: have you consented to the termination of your marriage?

X:

I, _____, now release you my former husband/wife, _____, from the sacred bonds that held us together.

RABBI

X: _____ years ago you entered into the covenant of *kiddushin*. Now you have asked us to witness this ceremony, which formally breaks the sacred bonds that once united you, and which marks your entry into a new phase of life.

What existed between you and your former husband/wife, both the good and the bad, is ingrained in your memory. We pray that the good that once existed between you may encourage you to treat each other with respect and trust, and to refrain from acts of hostility. (And may the love that you have for your children, and the love that they have for you, increase with years and understanding.)

(Personal words by rabbi.)

This is your Document of Separation. It marks the dissolution of your marriage. I separate its two parts now as you and Y are separated.

X: you are now free to enter into a new phase of your life. Take with you the assurance that human love and sanctity endure. שלום שלום לך שלום לעזרך, כי עזרך אלהיך, "Let there be peace, peace for you, and peace for those who help you: truly, God is your helper." (I Chron. 12:19)

And let us say: Amen.

DOCUMENT OF SEPARATION

On _____,
the _____day of
_____, in the year 57 _____ (the
_____ day of _____,
in the year 19 _____ of the civil calendar),
according to the calendar that we use in the
city of _____, state of _____
I, _____,
release my former husband,
_____,
from the sacred bonds that held us together.
He is free and responsible for his life, just as
I am free and responsible for my life.

This is his Document of Separation
from me.

or

I _____,
release my former wife,
_____,
from the sacred bonds that held us together.
She is free and responsible for her life just as
I am free and responsible for my life.

This is her Document of Separation
from me.

Signed: _____
_____
Witness: _____
_____
Rabbi: _____

תעודת פרידה

ביום _____ בשבת,
יום _____ לירח
_____, שנת חמשת
אלפים שבע מאות
ו _____ (יום
_____ לחדש
_____, שנת
_____ לתאריך
החילוני) למנין שאנו
מונין כאן בעיר
_____, במדינת
_____

אני, בת
_____, המכונה
_____, פוטרת את
בן-זוגי לשעבר,
_____ בן
_____, המכונה
_____, מקשרי
הקידושין שבם היינו
קשורין. הוא פנוי ורשאי
בנפשו כשם שאני פנויה
ורשאית בנפשי. וזה יהיה
לו לתעודת פרידה ממני.

אני, בן
_____, המכונה
_____, פוטר את
בת-זוגי לשעבר,
_____ בת
_____, המכונה
_____, מקשרי
הקידושין שבם היינו
קשורין. היא פנויה ורשאית
בנפשה כשם שאני פנוי
ורשאי בנפשי. וזה יהיה
לה לתעודת פרידה ממני.

Bibliography

Amram, David Werner, The Jewish Law of Divorce According to Bible and Talmud with Some Reference to its Development in Post-Talmudic Times, New York: Hermon Press, 1968.

The Babylonian Talmud, Standard Printed Editions.

Borowitz, Eugene B., Liberal Judaism, New York: Union of American Hebrew Congregations, 1984.

Central Conference of American Rabbis, The CCAR Yearbook

Vol. I,	1890-91,	Vol. XXIII	1913	Vol. XXXI	1921
Vol. XVII	1908	Vol. XXIV	1914	Vol. XXXIX	1929
Vol. XX	1910	Vol. XXV	1915	Vol. LVI	1947
Vol. XXI	1911	Vol. XXVII	1917	Vol. XC	1981
Vol. XXII	1912	Vol. XXIX	1919	Vol. XCIX	1990

Central Conference of American Rabbis, "Declaration of Principles," Pittsburgh, 1885.

Central Conference of American Rabbis, Rabbi's Manual, New York: CCAR, 1988.

Central Conference of American Rabbis, "Reform Judaism and Zionism: A Centenary Platform," San Francisco, 1976.

Central Conference of American Rabbis Responsa, "The Absence of a Get," 1994. http://www.ccarnet.org/cgi-bin/respdisp.pl?file=6&year=5754

Encyclopaedia Judaica, 1971 ed. S.v. "Divorce."

Epstein, Louis M., Marriage Laws in the Bible and the Talmud, Cambridge: Harvard University Press, 1942.

Epstein, Louis M., Sex Laws and Customs in Judaism, New York: Ktav Publishing, 1948.

Falk, Ze'ev W., Hebrew Law in Biblical Times: An Introduction, 2nd ed., Provo: Brigham Young University Press, 2001.

Falk, Ze'ev W., Introduction to Jewish Law of 2nd Commonwealth, Part II, Leiden: E. J. Brill, 1978.

Falk, Ze'ev W., Jewish Matrimonial Law in the Middle Ages, London: Oxford University Press, 1966.

Freehof, Solomon B., Current Reform Responsa, Cincinnati: Hebrew Union College Press, 1969.

Hollander, Vicki, "The New, Improved Jewish Divorce. Hers/His," Lilith, Volume 28 No. 1, Spring 2003.

Instone-Brewer, David, Divorce and Remarriage in the Bible: The Social and Literary Context, Grand Rapids: William B. Eerdmans Publishing, 2002.

Isaac Alfasi, Halachot Gedolot

Jacob, Walter, ed., American Reform Responsa: Collected Responsa of the Central Coference of American Rabbis, 1889-1983, New York: Central Conference of American Rabbis; 1983.

Jacob, Walter and Moshe Zemer, ed., Marriage and Its Obstacles in Jewish Law: Essays and Responsa, Pittsburgh: Rodef Shalom Press, 1999.

Joseph Karo, Shulchan Aruch

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

Kaplan, Dana Evan, American Reform Judaism: An Introduction, New Brunswick: Rutgers University Press, 2003.

Lerner, Leigh, "Restore the Get: The Abandonment of Ceremonial Divorce Ignores the Emotional Needs of our Congregants at a Time of Deep Distress in their Lives," Reform Judaism Vol. 28, No. 3 (Spring 2000).

Lipman, Eugene F., "The Rabbi and Divorce," CCAR Journal Volume 24 no. 4 issue 99, (Autumn 1977).

Maimonides, Moses, Mishneh Torah

Maslin, Simeon J., "Yes, There is a Reform Divorce Document ... But Don't Call it a Get," Reform Judaism, Vol. 28, No. 3 (Spring 2000).

Mehlman, Bernard H., Rifat Sonsino, "A Reform Get: A Proposal," Journal of Reform Judaism, Volume 30 No. 3 Issue No. 122, (Summer 1983).

Mendes-Flohr, Paul and Jehuda Reinharz, The Jew in the Modern World: A Documentary History, Second Edition, (1st ed. 1980), New York: Oxford Press, 1995.

Meyer, Michael A., The Origins of the Modern Jew, Detroit: Wayne State University Press, 1967.

Meyer, Michael, A., Response to Modernity: A History of the Reform Movement in Judaism, Detroit: Wayne State University Press, 1999.

Mielziner, M., The Jewish Law of Marriage and Divorce in Ancient and Modern Times and Its Relation to the Law of the State, Cincinnati: Bloch Publishing, 1884.

The Mishnah, Standard Printed Editions.

Neufeld, E., Ancient Hebrew Marriage Laws: With Special References to General Semitic Laws and Customs, Longmans, London: Green and Co., 1944.

Palestinian Talmud, Standard Printed Editions.

Patai, Raphael, Sex and Family in the Bible and the Middle East, Garden City: Doubleday, 1959.

Plaut, W. Gunther, The Rise of Reform Judaism: A Sourcebook of its European Origins, New York: World Union for Progressive Judaism, 1963.

Philipson, David, "The Rabbinical Conferences: 1844-6," Reprinted from the Jewish Quarterly Review, July, 1905.

Philipson, David, The Reform Movement in Judaism, New York: The MacMillan Company, 1931.

Philipson, David, "The Rabbinical Conferences: 1844-6," Reprinted from the Jewish Quarterly Review, July, 1905.

Phillips, Roderick, Putting Asunder: A History of Divorce in Western Society, Cambridge: Cambridge University Press, 1988.

Phillips, Roderick, Untying the Knot: A Short History of Divorce, Cambridge: Cambridge University Press, 1991.

Plaut, Gunther, The Torah – A Modern Commentary, New York: Union of American Hebrew Congregations, 1981.

Rayner, John D., Jewish Religious Law: A Progressive Perspective, New York: Berghahn Books, 1998.

Schiffman, Lawrence H., From Text to Tradition: A History of Second Temple and Rabbinic Judaism, Hoboken: Ktav Publishing, 1991.

Steinsaltz, Adin, The Talmud: A Reference Guide, New York: Random House, 1989.

Temkin, Sefton D., The New World of Reform: Containing the Proceedings of the Conference of Reform Rabbis Held in Philadelphia in November 1869. Translated from the German with an Introduction and Notes, Bridgeport: Hartmore House, 1974.

Tiday, Jeffrey H., The JPS Torah Commentary: Deuteronomy, Philadelphia: Jewish Publication Society, 1996.

The Tosefta, Standard Printed Editions.

Wigoder, Geoffrey, ed., The Encyclopedia of Judaism, Jerusalem: Jerusalem Publishing House, 1989.

Weiss, David William, "The Development of Marriage and Divorce as Reflected in the Responsa Literature of the CCAR from 1890 to Date," Cincinnati: HUC-JIR Rabbinic Thesis, 1973.

Zemer, Moshe, Evolving Halakhah: A Progressive Approach to Traditional Jewish Law, Woodstock: Jewish Lights Publishing, 1998.