

**HALAKHAH FOR OUR TIME:  
A CONSERVATIVE APPROACH  
TO JEWISH LAW**

by  
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## PREFACE

In 1984, Rabbi Reuven Hammer invited me to contribute a pamphlet on the Conservative approach to *halakhah* to a series of Hebrew pamphlets which he was editing for the Masorti (Conservative) Movement in Israel. It appeared in 1986 under the title *Halakhah Leyameinu (Halakhah For Our Time)*. That first edition was later translated into Spanish and appeared in *Maj'shavot: Pensamientos*, Vol. 27, No. 3 (July-September 1988), pp. 5-15.

In 1987, I prepared a revised and expanded Hebrew edition of *Halakhah Leyameinu* which was also published by the Masorti Movement. The present pamphlet represents a third, totally revised and expanded edition. It is based on the second Hebrew edition, but Section IV is entirely new and all other sections including the bibliography have been revised and updated.

I would like to thank a number of people who made this booklet possible. My father, Rabbi Noah Golinkin, and Prof. Burton Visotsky of the Jewish Theological Seminary, urged me to make this booklet available to the English-speaking public. Ms. Sarah Friedman of Jerusalem prepared the initial translation. Rabbi Robert Abramson, Director of the Commission on Jewish Education of the United Synagogue of America, accepted it for publication and made a number of important editorial suggestions. To all of them I say: *Todah Rabbah!*

David Golinkin  
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## CONTENTS

	Introduction	1
I	Tradition And Change	3
II	The Centrality Of The <i>Halakhah</i> In Conservative Judaism	5
III	Why Observe The <i>Halakhah</i> ?	9
IV	Who Has The Authority To Interpret The <i>Halakhah</i> ?	17
V	On Change, Flexibility And Development Within The <i>Halakhah</i>	21
VI	The Principles Which Guide Conservative Rabbis In Their Halakhic Decisions	29
VII	A Sampling Of Halakhic Rulings Of The Committee On Jewish Law And Standards	33
	Afterword: "And As For The Rest -- Go And Learn!"	37
	Notes	38
	Selected Bibliography	43
	Extensive Bibliography	44

## Introduction

One of the crucial differences between the three major religious movements in Judaism today is their approach toward *halakhah*, Jewish law: Is *halakhah* obligatory? If so, why? Who has the authority to interpret the *halakhah*? Is it permissible to change the *halakhah* and, if so, according to which principles?

In this booklet we shall try to answer these questions from the perspective of the Conservative movement. The opinions expressed here are not the official opinions of the Conservative movement, but they do represent views common among the movement's rabbis and leaders. They are also consistent with an official statement of the Conservative approach to *halakhah* which can be found in *Emet Ve-Emunah: Statement of Principles of Conservative Judaism*.<sup>1</sup>

## CHAPTER I

### Tradition And Change

Thirty years ago, Rabbi Mordecai Waxman edited a volume on the development of Conservative Judaism entitled *Tradition and Change*. This title became the motto of the Conservative movement. Rabbi Waxman himself explained the phrase as follows:

Reform has asserted the right of interpretation but it has rejected the authority of the legal tradition. Orthodoxy has clung fast to the principle of authority, but has in our own and recent generations rejected the right to any but minor interpretations. The Conservative view is that both are necessary for a living Judaism. Accordingly, Conservative Judaism holds itself bound by the Jewish legal tradition, but asserts the right of its rabbinical body, acting as a whole, to interpret and to apply Jewish law.<sup>1</sup>

Tradition and change — both elements are equally important. They are both essential for the continued existence of the Jewish people both in Israel and throughout the world. Without our rich halakhic tradition, the Jewish people would lose the cement that binds us together; we would forget our Creator and lose our uniqueness as Jews. No longer the Chosen People, we would become a nation like other nations. On the other hand, without gradual and constant change

within the framework of tradition, the *halakhah* would become fossilized and be unable to function in the modern world. If the *halakhah* does not deal with the burning issues of our day, a Jew seeking to observe the tradition will be forced to lead a double life; the *halakhah* will remain in the eighteenth century and the observant Jew, in the twentieth. Indeed, this has already happened in the ultra-Orthodox neighborhoods of *Me'ah Shearim* in Jerusalem and Williamsburg in New York.

However, before we approach our tradition with the purpose of changing it, *we must accept the authority of that tradition*. It may be possible to change or reinterpret or even to abrogate certain aspects of the *halakhah*, but this must be done from *within* the system. If the *halakhah* is not binding upon us, what right have we to change it? Therefore, the Conservative movement expects its members to accept upon themselves the halakhic system and to observe the *mitzvot*, commandments. The *mitzvot* include both those between persons and God such as *Shabbat*, holidays, *kashrut*, studying Torah, and daily prayer, and those between human beings such as honoring one's parents, giving *tzedakah*, loving one's neighbor as oneself, telling the truth, visiting the sick, and dealing honestly in business. And why must we observe both ritual and ethical commandments? The answer was succinctly stated by a Conservative rabbi: "Ritual without ethics is a caricature — it serves no genuine purpose. On the other hand, ethics without ritual is like a feat of acrobatics — it cannot endure."

## CHAPTER II

### The Centrality Of The Halakhah In Conservative Judaism

The centrality of the *halakhah* to Conservative Judaism has been stressed repeatedly by its rabbis and teachers. It was already emphasized by Professor Solomon Schechter in his inaugural address as President of the Jewish Theological Seminary in 1902:

Judaism is *not* a religion which does not oppose itself to anything in particular. Judaism is opposed to any number of things and says distinctly "thou shalt not." It permeates the whole of your life. It demands control over all your actions, and interferes even with your menu. It sanctifies the seasons, and regulates your history, both in the past and in the future. Above all, it teaches that disobedience is the strength of sin. It insists upon the observance both of the spirit and of the letter; spirit without letter belongs to the species known to the mystics as "nude souls," *nishmatin artilain*, wandering about in the universe without balance and without consistency, the play of all possible currents and changes in the atmosphere. In a word, Judaism is absolutely incompatible with the abandonment of the Torah.<sup>1</sup>

The importance of the observance of the *mitzvot* was reiterated many years later by Professor Abraham Joshua Heschel who taught Jewish Philosophy at the Seminary for over twenty-five years:

What is the Jewish way to God? It is not a way of ascending a ladder of speculation. Our understanding of God is not the triumphant outcome of an assault upon the riddles of the universe nor a donation we receive for intellectual surrender. Our understanding comes by the way of *mitzvah*. By living as Jews we attain our faith as Jews. We do not have faith in deeds; we attain faith through deeds.

When Moses recounted to the people the laws of the covenant with God, the people responded: "We will do and we will hear." This statement was interpreted to mean: *In doing we perceive*.

A Jew is asked to take a *leap of action* rather than a *leap of thought*: to surpass his needs, to do more than he understands in order to understand more than he does. In carrying out the word of the Torah, he is ushered into the presence of spiritual meaning. Through the ecstasy of deeds, he learns to be certain of the presence of God.<sup>2</sup>

Judaism insists upon establishing a unity of *faith* and *creed*, of *piety* and *halakhah*, of *devotion* and *deed*. Faith is but a seed, while the deed is its growth or decay. Faith disembodied...is but a ghost for which there is no place in our psychophysical world.

What *creed* is in relation to *faith*, the *halakhah* is in relation to *piety*. As faith cannot exist without a creed, piety cannot subsist without a pattern of deeds; as intelligence cannot be separated from training, religion cannot be divorced from conduct. Judaism is lived in deeds, not only in thoughts.<sup>3</sup>

Professor Schechter called halakhic observance the "letter of the law" while Professor Heschel called it the "way of *mitzvah*" and "a leap of action." But regardless of the terminology, this commitment to the centrality of the *halakhah* has been a hallmark of Conservative Judaism since its inception.

### CHAPTER III Why Observe The Halakhah?

There is general agreement in the Conservative movement that a Jew must observe the *halakhah*. However, there are many approaches as to *why* it should be observed. As a matter of fact, a recent book entitled *Mitzvah Means Commandment*<sup>1</sup> by Rabbi Elliot Dorff, enumerates thirteen different reasons that have been given throughout the ages! In this section, we shall briefly describe nine reasons that have been given in the Bible, Talmud and later Jewish writings. Some center on God, others on the Jewish people, and still others on the individual. The common denominator is the realization that without observing the commandments, Jews cease to be Jews.

#### Theocentric

1. The first approach is the simplest. We must observe the commandments because they are Divine in origin: they were given to us in the Torah at Mount Sinai by God Himself. And what about all the laws that were added by the rabbis throughout the ages? According to this approach, they, too, were given at Mount Sinai as we read in the Palestinian Talmud: "Even what a clever pupil will expound before his teacher has already been given to Moses at Sinai."<sup>2</sup> In other words, every *mitzvah* we perform as Jews was given innately



at Mount Sinai. When a rabbi expounds a new law or practice, he is simply revealing something that was hidden in the Torah from the start. This approach, however, though elegant in its simplicity, is not satisfying to most modern Jews. Many do not believe in a verbal revelation at Mount Sinai while others are bothered by internal contradictions within the Torah. On the other hand, many believe that the Five Books of Moses were revealed at Mount Sinai but doubt the divine origin of many of the later laws and customs. These problems have led to a modified version of this belief.

2. The second approach recognizes *halakhah* to be the way that the Jewish people throughout the generations understood God's revelation at Mount Sinai and interpreted it. A Jew who observes *mitzvot* fulfills God's will as K'lal Yisrael — the collective people of Israel — understood His will for 3,000 years. The most famous advocate of this point of view was Professor Solomon Schechter, the founder of the Conservative movement. He wrote the following oft-quoted passage in 1896:

It is not the mere revealed Bible that is of first importance to the Jew, but the Bible as it repeats itself in history, in other words, as it is interpreted by Tradition....Since then the interpretation of Scripture or the Secondary Meaning is mainly a product of changing historical influences, it follows that the centre of authority is actually removed from the Bible and placed in some *living body*, which, by reason of its being in touch with the ideal aspirations and the religious needs of the age, is best able to determine the nature of the Secondary Meaning. This living body, however, is not represented by any section of the nation, or any corporate priesthood, or Rabbihood, but by the collective conscience of Catholic Israel as embodied in the Universal Synagogue....this Synagogue, the only true witness to the past, and forming in all ages the sublimest expression of Israel's religious life, must also retain its authority as the sole true guide for the present and the future....<sup>3</sup>

nership of God and man. The Torah and the *mitzvot* express the eternal *brit*, covenant, made between God and the Jewish people. As Moses states at the beginning of Deuteronomy:

It was not with our *fathers* that the Lord made this covenant, but with *us*, the living, *every one of us* who is here today. Face to face the Lord spoke to *you* on the mountain out of the fire.<sup>4</sup>

This statement would not be surprising if it had been made to the people who had been *present* at Mount Sinai. But Moses is speaking to their *children* forty years later and yet he says "*us*," "*every one of us*," "*you*"! His point was that the covenant was not a one-shot deal; it is renewed in every generation as Moses clearly explains at the end of Deuteronomy:

I make this covenant not with you alone, but both with those who are standing here with us this day before the Lord our God and with those who are *not* with us here this day.<sup>5</sup>

And Rashi, the classical medieval commentator, adds: "And with future generations as well." Every time we observe a commandment or *halakhah*, we continually renew our covenant, *brit*, with God. This idea of the renewal of the *brit* is not limited to the Torah. We reiterate it every year at the Pesah *seder* when we recite:

In every generation one must look upon himself as if *he personally* had gone out of Egypt, as it is said: "And you shall explain to your child on that day, 'It is because of what the Lord did for *me* when *I* went out of Egypt'" (Exodus 13:8). For it was not only our forefathers whom the Holy One, blessed be He, redeemed, but He redeemed *us* together with *them*, as it is said: "He took *us* from there in order to bring *us* to and give *us* the land that He promised on oath to our forefathers."<sup>6</sup>

This was the approach taught by the Tanna Issi ben Yehuda 1700 years ago: "With each new command, God adds holiness to the people of Israel."<sup>7</sup> This approach is also reflected in the standard formula of blessings recited over *mitzvot* such as *Shabbat* and Hanukkah candles, *lulav*, *tefillin* and *tallit*: "Blessed are You, O Lord our God, King of the Universe, who has sanctified us (*asher kidshanu*) with his *mitzvot* and commanded us...." And indeed, the *mitzvot* do sanctify our lives — the mundane becomes special and the profane becomes holy. *Shabbat* and festivals sanctify time. Blessings and *kashrut* sanctify our meals. The wedding ceremony and the laws of *mikveh* sanctify marriage. The laws of *ona'ah* (overcharging) and *eifat tzedek* (accurate weights and measures) sanctify business. Thus through the observance of *mitzvot* we strive to fulfill the verses found in the Torah: "You shall be unto Me a kingdom of Priests and a holy nation,"<sup>8</sup> and "You shall be holy for I, the Lord your God, am Holy."<sup>9</sup>

These are, as we have seen, four theocentric rationales for observing Jewish law: (1) as the literal will of God; (2) as our historic understanding of God's will; (3) as an expression of the covenant between God and the Jewish people; (4) as a means of attaining *kedushah*, holiness.

### Ethnocentric

The next three reasons are ethnocentric. They posit that the *mitzvot* serve to preserve, unite, and strengthen the Jewish people.

1. According to the first approach, *halakhah* is the "cement" which binds together the scattered "bricks" of the Jewish people both in Israel and in the Diaspora. Without this cement, the Jewish people would have long ago disintegrated. The *mitzvot* tie every Jew in the world to every other Jew in the world. When we put on *tefillin* every morning, we know that a Jew in Morocco does the same. When we light candles on Hanukkah, we know that a Jew in Argentina does

fulfill the prayer we recite every *Shabbat* in the *Minhah* service: "*U-mee ke-amkha yisrael goy ehad ba-aretz!* Who is like your people Israel, one united nation in the world!"

This unifying force of the *mitzvot* is poetically expressed in a beautiful passage from the Talmud. It is found in a passage which explains the proper direction for Jewish prayer:

Our sages taught...in the diaspora one should face the Land of Israel...in Eretz Yisrael one should face Jerusalem...if he was standing in Jerusalem he should face the Temple...if he was standing in the Temple he should face the Holy of Holies...if he was standing in the Holy of Holies, he should face its innermost section....The result will be — if he is standing in the east, he faces the west; if in the west, he faces the east; if in the south he faces the north; if in the north he faces the south. As a result, *the entire Jewish people direct their hearts towards one spot!*<sup>10</sup>

2. The second people-centered approach stresses the historical continuity of the Jewish people. The *mitzvot* are the golden chain which binds us and our children to our ancestors and the history of our people. Without them we would lose our continuity and we would feel like orphans in history. When we observe *Shabbat*, we know that Moses our Teacher did the same. When we keep kosher, we know that Rabbi Akiva of the second century did the same. When we visit the sick, we know that Rashi of the eleventh century did the same. When we comfort the mourner, we know that Maimonides of the twelfth century did the same.

The importance of *mitzvot* for historical continuity was brought home in a beautiful sermon preached by Rabbi Isaac Klein, a revered halakhic authority of the Conservative movement. On the occasion of his grandson Ephraim becoming a *bar mitzvah* he said:

Most American Jewish kids say: I'm not observant

studies Torah. This, of course, is backwards. Today, I have the privilege of saying the opposite: my *grandson* is a real good Jew — he prays, keeps kosher, observes *Shabbat* and holidays, and studies Torah. This, of course, is the way it should be. Judaism has a future only if we have good Jewish grandchildren. Jewish grandparents are not sufficient.

3. The third ethnocentric approach is extremely pragmatic. The greatest threat to the survival of the Jewish people today is assimilation and intermarriage. For thousands of years the *mitzvot* have protected the Jewish people from these threats. The famous Zionist thinker Ahad Ha'am said: "More than the Jews have preserved the Sabbath, the Sabbath has preserved the Jews." The same can be said of all the *mitzvot*. Observant Jews do not put Christmas trees in their houses, they do not experiment with cults and drugs, and their children, as a rule, do not marry non-Jews. Therefore the *halakhah* is an excellent bulwark against assimilation.

These, then, are three ethnocentric reasons for observing *halakhah*: (5) to unite our dispersed people; (6) to form a link between our ancestors and our descendants; (7) and to protect our people from assimilation and intermarriage.

### Anthropocentric

The last two reasons we shall outline are anthropocentric or man-centered. They maintain that each individual performs the *mitzvot* primarily for the personal benefits he or she derives from them.

1. The first such approach views the *mitzvot* as a means of self-discipline, of improving character and of making us better human beings. This idea sounds very modern, but it is not. It was first suggested in the Letter of Aristeas, one of the books of the Apocrypha, written by a Greek Jew in the second century, B.C.E. The author states: "The sacred commandments were given for the sake of righteousness, to arouse pious thoughts, and to perfect one's character."<sup>11</sup>

A similar suggestion was made three hundred years later by Rav, a Babylonian rabbi and a major contributor to the Talmud. He said: "The commandments were given only in order to refine and discipline the person who performs them."<sup>12</sup> Abraham ibn Ezra of twelfth-century Spain concurred. In his classic commentary to the Torah he states: "The main purpose of all the commandments is to straighten the heart."<sup>13</sup> Since *heart* in Hebrew is frequently synonymous with *mind*, ibn Ezra means that the main purpose of all the commandments is to refine and discipline the mind.

These three very different authors felt that the observance of the *mitzvot* builds character, purifies the soul, and makes us better human beings.

2. The second and last approach states very simply: Perform *mitzvot* because they are enjoyable! They uplift the spirit and bring joy to the heart. This point of view has been popular from biblical times until today. The Psalmist wrote three thousand years ago: "The precepts of the Lord are just, making the heart rejoice."<sup>14</sup> The Rabbis of the Talmud developed this idea into the concept of *simhah shel mitzvah*, the joy of performing a *mitzvah*. Time after time in rabbinic literature we are told that one should perform the commandments with joy. For example, we learn in the tractate of Berakhot: "One may not stand up to recite the *Amidah* unless he does so with a sense of joy in performing a *mitzvah*."<sup>15</sup>

In his beautiful book *The Earth is the Lord's*, Professor Abraham Joshua Heschel relates the following story:

A woman was pouring out her heart to a Rabbi in Tel Aviv. Her sons had abandoned religious observance. They were Halutzim, pioneers who gave up studies and careers to drain the swamps of the Holy Land. "I know," she said, "that my sons are holy people....But I feel distressed at the fact that they do not enjoy the pleasures of observing Jewish law."<sup>16</sup>

Any Jew who observes the *halakhah* knows exactly what she means. When it comes right down to it, many Jews perform the *mitzvot* because they *enjoy* them. When we stay

up learning all night at a *tikkun* every Shavuot, we do not do so for some deep philosophical reason. We do so because we enjoy it! And why do we dance like maniacs on Simhat Torah and dress up like clowns on Purim? Because we enjoy it! And why do we build a *sukkah* and eat there for eight days? Because we enjoy it! When we search for the *hametz* by candlelight on the night before Pesah, our children have a ball. When they stay up at the *seder* until the wee hours, they are not being forced; they love every minute. Jewish law is not a burden; it is a joy, *simhah shel mitzvah* — the joy of performing a *mitzvah*.

There are, then, two personal reasons for observing *halakhah*: (8) self-discipline and (9) the joy of performing *mitzvot*.

There are many other possible replies to the question "Why observe the *halakhah*?" but in the final analysis, in Judaism, "the chief thing is not to expound the Law but to do it."<sup>17</sup> Professor Louis Ginzberg pointed out long ago that *halakhah* is far more fundamental in Judaism than *haggadah* (non-legal material), for ideas are volatile, but practices endure. If Jewish practice goes, virtually nothing remains."<sup>18</sup>

## CHAPTER IV

### Who Has The Authority To Interpret The Halakhah?

We have spoken of the need to adapt *halakhah* to the far-reaching developments of the twentieth century. However, a willingness to change the *halakhah* does not mean chaos. Not every Jew has the right to change and interpret it according to his own will. Only the rabbis of each generation have the right to interpret the *halakhah*. This concept derives from the book of Deuteronomy:

If a case is too baffling for you to decide, be it a controversy over homicide, civil law, or assault -- matters of dispute in your courts -- you shall promptly repair to the place that the Lord your God will have chosen and appear before the levitical priests, or the magistrate in charge at that time, and present your problem. When they have announced to you the verdict in the case, you shall carry out the verdict.... You must not deviate from the verdict that they announce to you either to the right or to the left.<sup>1</sup>

In other words, the Torah is opposed to the method by which "every man does that which is right in his own eyes."<sup>2</sup> It is only the rabbis of each generation who are permitted to interpret the *halakhah*. However, one verse from the above passage should be emphasized: "You shall... appear before... the magistrate in charge *at that time*." Moses our

Teacher cannot solve the problems of our day and Rabbi Akiva cannot provide answers to our questions, because *our* problems were not *their* problems. In every generation, we must grapple with halakhic problems according to the circumstances and conditions of *that* generation or, to use the talmudic idiom: "Every generation [has] its [own] expositors, every generation [has] its [own] sages, every generation [has] its [own] leaders."<sup>3</sup>

This view is made abundantly clear in the famous episode of Akhnai's oven. The Talmud describes a heated halakhic debate which transpired between Rabbi Eliezer and the sages regarding the impurity of a certain oven. When Rabbi Eliezer was unable to convince the other sages through halakhic argumentation, he attempted to persuade them by miracles. He uprooted a carob tree and moved it a distance of one hundred cubits, caused water to flow backward in an aqueduct, and caused the walls of the academy to lean over. Finally Rabbi Eliezer said:

"If the *halakhah* agrees with me, let it be proved from heaven!" Whereupon a Heavenly Voice cried out: "Why do you dispute with R. Eliezer seeing that in all matters the *halakhah* agrees with him?" But R. Joshua arose and exclaimed: "It is not in heaven!" What did he mean by this? Said R. Jeremiah: "That the Torah has already been given at Mount Sinai, [therefore] we pay no attention to a Heavenly Voice, because You have long since written in the Torah at Mount Sinai: 'After the majority must one incline' (Exodus 23:2)." R. Nathan met Elijah and asked him: "What did the Holy One, blessed be He, do at that hour?" He replied: "He laughed, saying, 'My sons have defeated me! My sons have defeated me!'"<sup>4</sup>

The message of this story is quite clear. God gave us the Torah at Mount Sinai. God then relinquished His right to interpret and change it. This responsibility He gave to the sages of each generation who are charged with interpreting the *halakhah* according to the needs and problems of their own time. Decisions are to be made by the majority of the sages, not by heavenly intervention.

This, then, was the halakhic approach of classical Judaism. Until the end of the Middle Ages, the sages in every generation had the right to change the *halakhah* and even to annul a commandment written in the Torah if there was an urgent need to do so. In the modern era, however, this classic approach to *halakhah* underwent profound changes. This was because the modern era was not only characterized by rapid technological development but by great social and theological upheavals as well. Faith and revelation were challenged by skepticism and biblical criticism, particularism was scorned in favor of "the brotherhood of man," and "primitive rituals" were pushed aside by universal ethical principles. In response to these upheavals, Jews developed a number of entirely new approaches to *halakhah*.

The founders of Reform Judaism in the nineteenth century sought entry and acceptance into this modern world of the "Enlightenment." As a result, they consciously rejected most of classical *halakhah* as found in classical Judaism. *Shabbat* prohibitions, *kashrut*, circumcision, Hebrew, and references to Zion in the Siddur, prayerbook, were all viewed as "primitive rites" which hindered Jewish assimilation and emancipation.

Orthodox Judaism, on the other hand, is portrayed by its adherents as a direct continuation of talmudic and medieval Judaism. But a number of scholars have shown<sup>5</sup> that Orthodox Judaism was also a *new* type of Judaism which came into being as a response to modernity and as a direct reaction to Reform Judaism. Its adherents were afraid to allow the *halakhah* to change and develop lest by doing so they would assist the adherents of Reform Judaism who, for the most part, rejected the *halakhah* and denied its authority. They furthermore claimed that the rabbis of our time do not have the right to effect changes and innovations in the *halakhah*, basing this claim on the talmudic proverb: "If the earlier scholars were sons of angels, we are sons of men; if the earlier scholars were sons of men, we are like asses."<sup>6</sup> This proverb, however, refers to self-sacrifice in the observance of *mitzvot*. In legal matters, our sages had the opposite approach, as expressed by R. Dosa ben Hyrcanus in the

Mishnah:

"Then Moses and Aaron, Nadav and Avihu, and seventy elders of Israel ascended" (Exodus 24:9). And why were the names of the elders not listed? To teach [us] that every three [judges] who have served as a court of law are equal in authority to the court of Moses.<sup>7</sup>

And the Tosefta adds:

The court of Yerubaal was as great in the eyes of God as the court of Moses. The court of Yiftah was as great in the eyes of God as the court of Samuel. To teach you that whoever is appointed a leader over the community — even the most worthless — must be considered like the mightiest of the mighty.<sup>8</sup>

Even if the sages of our time are not equal in stature to the sages of previous generations, it makes no difference. The sages of *our* time must deal with the problems of *our* time just as Moses and Samuel dealt with the problems of *their* time.

## CHAPTER V

### On Change, Flexibility And Development Within The Halakhah

At the beginning of the nineteenth century, one of the chief founders and spokesmen of Orthodoxy was Rabbi Moshe Sofer, the Hatam Sofer. He turned the phrase from the Mishnah, "[anything] new is forbidden by the Torah"<sup>1</sup> into the motto of his movement. For example, he was opposed to transferring the reading desk from the middle of the synagogue to the front of the room because "anything new is forbidden by the Torah." In 1865, seventy-one Orthodox rabbis gathered in the town of Michalovze and decreed that it is forbidden to pray in a synagogue with a choir or to pray in a language other than Hebrew because "anything new is forbidden by the Torah." These rabbis were also opposed to secular education and to modern dress because "anything new is forbidden by the Torah."

The status quo in Judaism became a sacred principle. This point of view is totally opposed to the classical Jewish view reflected in the history of *halakhah* and codification throughout the ages. The classical view is expressed in the well-known legend regarding Moses in the academy of Rabbi Akiva:

Rav Judah said in the name of Rav: When Moses ascended on high he found the Holy One, blessed be

He, engaged in affixing titles to the letters. Said Moses: "Lord of the Universe, who stays your hand [from giving the Torah without titles]?" He replied: "There will arise a man, at the end of many generations, Akiva b. Joseph by name, who will expound upon each title heaps and heaps of laws." "Lord of the Universe," said Moses, "permit me to see him!" He replied: "Turn around." Moses went and sat down behind the eighth row [of Rabbi Akiva's academy] but was unable to follow their arguments so he became faint. But when Rabbi Akiva came to a certain subject and his disciples said to him: "Rabbi, what is your source?" and the latter replied: "It is a law given unto Moses at Sinai" he was comforted. Thereupon he returned to the Holy One, blessed be He, and said to Him: "Lord of the Universe, You have such a man and yet You are giving Torah by me!"<sup>2</sup>

Several important messages lie hidden within this beautiful story. One is that Moses our Teacher who gave us the Torah at Mount Sinai already did not understand the halakhic discussion taking place in Rabbi Akiva's academy. The passage of time had left its mark. Like every other living organism, the Torah had changed over the years to such an extent that Moses himself did not recognize it.

There is no need to rely solely on *aggadah*. Changes in the *halakhah* are reflected in almost every chapter of the Mishnah and on every page of the Babylonian Talmud. Thus, for example, dozens of times in rabbinic literature we find the expression "In former times, they did such and such.... When X occurred, a certain rabbi enacted that it should be done otherwise." The following are just a few examples of the hundreds of changes in *halakhah* found in rabbinic literature. These changes were made for various reasons and we have divided them into several general categories:

#### **Changes due to social and economic developments**

1. Our Rabbis taught: *In former times*, whoever found a lost article used to proclaim it [in the Temple] during the three Pilgrim Festivals and an additional seven days after the last

Festival in order to allow three days for going home, another three for returning, and one for announcing. *After the destruction of the Temple, it was enacted* that the proclamation should be made in the synagogues and the academies. *But when the oppressors increased, it was enacted* that one's neighbors and acquaintances should be informed, and that sufficed.... Our Rabbis taught: *In former times*, whoever lost an article used to state its marks of identification and take it. *When deceivers increased, it was enacted* that he should be told: "Go forth and bring witnesses that you are not a deceiver, then take it."<sup>3</sup>

2. *In former times*, they used to accept testimony about the new moon from any man, *but after the evil doings of the heretics they enacted* that testimony should be accepted only from people whom they knew. *In former times*, they used to kindle bonfires [to notify the Diaspora of the New Moon] *but after the evil doings of the Samaritans they enacted* that messengers should go forth.<sup>4</sup>

3. [A loan secured by] a *Prozbul* is not cancelled [by the Sabbatical Year]. This is one of the things that Hillel the Elder enacted. When he saw that the people refrained from giving loans one to another [as the Sabbatical Year approached] and transgressed what is written in the Torah (Deuteronomy 15:9)...he enacted the *Prozbul*. This is the formula of the *Prozbul*: "I affirm to you, so-and-so and so-and-so, the judges in such-and-such a place, that I will collect any debt due to me whenever I please." And the judges sign below or the witnesses.<sup>5</sup>

#### **Changes due to moral sensitivity**

1. *In former times*, whoever could recite [the prescribed words of the first fruits ceremony] recited them, and whoever could not recite them repeated the words [after the priest]; *but when people refrained from bringing [their first fruits out of embarrassment], it was enacted* that both those who could recite them and those who could not should repeat the words after the priest [in order not to embarrass anyone].<sup>6</sup>

2. Our Rabbis taught: *In former times*, they used to convey [food] to a house of mourning, the rich in silver and gold baskets and the poor in wicker baskets of peeled willow twigs, and the poor felt ashamed. *They therefore enacted* that all should convey [food] in wicker baskets of peeled willow twigs out of deference to the poor.

Our Rabbis taught: *In former times*, they used to serve drinks in a house of mourning, the rich in white glass vessels and the poor in colored glass vessels, and the poor felt ashamed. *They therefore enacted* that all should serve drinks in colored glass, out of deference to the poor.

*In former times*, they used to bring out the rich for burial on an expensive couch and the poor on a plain bier, and the poor felt ashamed. *They therefore enacted* that all should be brought out on a plain bier, out of deference to the poor.

*In former times*, the expense of burial [shrouds] was more difficult for a man's relatives than his death, so that the dead man's relatives abandoned him and fled. *Until Rabban Gamliel came* and, disregarding his own dignity, was buried in [plain white] flaxen shrouds and thereafter the people followed his lead.<sup>7</sup>

#### ***Changes for the general benefit of society***

1. *In former times*, a man used to change his name and her name, and the name of his city and the name of her city [in a bill of divorce in order to avoid embarrassment]. *Rabban Gamliel the Elder enacted* that he should write: Such-a-man and all other names that he had, and such-a-woman and all other names that she had, for the benefit of society [so that people will not accuse her of remarrying without a divorce].<sup>8</sup>

2. *In former times*, [the witness] used to write, "I, so-and-so, have signed as a witness." If [then] his writing could be found on other documents, the *get*, bill of divorce, was valid, but if not, it was invalid. Said Rabban Gamliel: "A *most important enactment was enacted by the Rabbis*, that the witnesses should write their names in full [so-and-so son of

so-and-so] in a bill of divorce, *get*, for the benefit of society."<sup>9</sup>

#### ***Changes for the sake of peace***

Our Rabbis taught: *In former times*, the mourners used to stand still while the people passed by [to comfort them]. But there were two families in Jerusalem who quarrelled with one another, each maintaining: "We shall pass first." So *the Rabbis enacted* that the public should remain standing, while the mourners pass by.<sup>10</sup>

This process of halakhic flexibility did not come to an end at the close of the talmudic period. It continued throughout the Middle Ages until the twentieth century. This was emphasized by Rabbi Yehuda Aryeh Modena (1571-1648), an important halakhic authority in Renaissance Italy:

The words of the Sages must be understood according to the time, the place and the individual, for otherwise we will be denying their words just as the Karaites deny the written Torah, *since there is no end to the number of things forbidden by the Sages which became permitted as the time and place changed*.<sup>11</sup>

A similar statement was made by Rabbi Jacob Emden (1697-1776), a major halakhic authority in Germany:

...many *mitzvot* come into being at different periods of Jewish history, both in respect of permitting the prohibited and in prohibiting the permitted.... Thus, it is clear as the sun that the commandments are dependent upon the time, the circumstances, and the people of every age. They were not at one time set up in a pattern that is complete and final, but they are subject to additions and modifications as changing times require.<sup>12</sup>

We mentioned earlier that the Orthodox movement in Europe, in reaction to the Reform movement, did not allow the *halakhah* to develop in a natural fashion. In North Africa, however, there was no Reform movement and hence no Orthodoxy. As a result, in Morocco and Egypt the *halakhah*



did not become ossified. It continued to flourish in the nineteenth and twentieth centuries and succeeded in dealing creatively with the burning issues of modern times.

In Egypt, for example, the rabbis demonstrated courage and flexibility in their halakhic rulings until the twentieth century. In the sphere of technology, Rabbi Raphael Aharon ben Shimon, the Chief Rabbi of Cairo from 1891-1921, permitted lighting a match on a holiday since in his opinion the fire was already "existent" and thereby permitted according to the *halakhah*. In addition, he permitted switching on an electric light on a holiday.<sup>13</sup>

In the field of ritual, Rabbi Eliahu Hazan, Alexandria's Chief Rabbi from 1888-1908, permitted reciting the *Kiddush* in synagogue on Friday night, in contradiction to the *Shulhan Arukh* and the Sephardic custom which is based on the talmudic principle<sup>14</sup> that *Kiddush* may be recited only where a meal is eaten. When he realized that many people did not recite the *Kiddush* in their homes, he decided that it was better that they hear the *Kiddush without* a meal, rather than not hear it at all.<sup>15</sup> As we mentioned earlier, European Orthodox rabbis in the nineteenth century forbade anybody to pray in a synagogue where the reading desk was not in the center. Rabbi ben Shimon totally ignored them, though well acquainted with their opinion, and ruled that if moving the reading desk would assist the Torah readers or improve the aesthetic appearance of the synagogue, it is permitted to do so.<sup>16</sup>

In the field of marital relations, the problem of abandoned wives increased drastically in modern times. Many westernized young men in Egypt did not consider Jewish law binding and yet wanted to live with Jewish women who were much more traditional and demanded some sort of Jewish ceremony. As a result, a young man would conduct a "private marriage ceremony" in which he would betroth the woman in the presence of two witnesses. Later on, he would move out or even leave the country without giving his wife a *get*, a bill of divorce.

Technically speaking, a Jewish court of law was able

to annul such a marriage and thereby permit the abandoned wives to remarry. From the twelfth century onward, however, the sages refrained from utilizing this halakhic tool. Nevertheless, in 1901 the three chief rabbis of Egypt — Rabbi ben Shimon, Rabbi Hazan and Rabbi Aharon Mendel Hacohen — introduced a communal enactment to annul any marriage not carried out: a) with the permission of the President of the Court; b) in the presence of a *minyán* including a representative of the President of the Court; c) with a contract of betrothal and marriage. Rabbi ben Shimon attested in 1908 that the purpose of the enactment had been attained and the phenomenon of "private marriage" ceremonies had disappeared.<sup>17</sup>

The general approach of the Egyptian rabbis to *halakhah* is clearly reflected in the words of Rabbi Eliahu Hazan. Written in 1874, years before the formation of the Conservative movement in the United States, they, nevertheless, have much in common with its halakhic viewpoint:

God is no human being, who changes His mind with the passage of time, who would change His mind and violate righteous laws and statutes. And He has shown us that His wonderful Torah is eternal forever and ever: since in every generation nations have risen and then fallen, many laws and statutes have been changed like a garment and have vanished like a puff of smoke — but the Torah of the living God is everlasting, and its memory shall not depart from the descendants of those who received her. Not a single word of all the good spoken by God to Moses His servant on the day of assembly has fallen or will fall....But since the holy Torah was given to mortal men, who are liable to be influenced by changes with the passage of time and the changing of rulers' and decrees, of nature and climate, of [cities and] countries — for this reason, all the words of the Torah were given without clear definition with great wisdom, and can therefore receive every true interpretation at all times. And the holy God sanctified us with his commandment to heed the words of the judge as he rules according to the [needs of] every generation.

And if there arises a new generation and its judges who see that the majority of the community are unable to live by that decree — He has the authority to add to it or to cancel it, to destroy and to demolish, to annul or to uphold, as He sees fit.<sup>18</sup>

So we see that the Conservative movement is following in the footsteps of Hillel and Rabban Gamliel, of Rabbis Modena and Emden, of Rabbis ben Shimon and Hazan. Unlike the Reform movement, it considers the *halakhah* binding and obligatory. Unlike Orthodoxy, it rejects the slogan that “anything new is forbidden by the Torah” and allows the *halakhah* to change and develop in a natural, organic fashion. If the Conservative movement must have a motto, let it be that of Rabbi Abraham Isaac Kook, the Chief Rabbi during the British mandate over what is now Israel: “the new will be sanctified and the holy renewed.”

## CHAPTER VI

### The Principles Which Guide Conservative Rabbis In Their Halakhic Decisions

The Conservative movement does not have one uniform set of halakhic principles guiding decision-making and, indeed, there are diverse approaches among our halakhic authorities.<sup>1</sup> However, close study of the responsa and halakhic studies written by Conservative rabbis during the past seventy years reveals the following general principles:

1. There is an attempt to preserve the tradition as much as possible. Changes are not made for their own sake, but rather to deal with an urgent, acute problem.
2. A lenient ruling is preferable to a strict one. Judaism is a way of life and we adhere to the talmudic saying: “[You shall keep My statutes and My laws, which if a man shall do] he shall *live by them*’ (Leviticus 18:5) — and not die because of them.”<sup>2</sup> For this reason, if the *halakhah* permits a lenient ruling and a strict ruling on a given issue, the tendency is to pick the lenient ruling. This approach is firmly anchored in the halakhic tradition. It is reflected in the well-known talmudic saying: “The strength of a lenient ruling is greater,”<sup>3</sup> and was emphasized by many of the great halakhic authorities throughout the generations. Rabbi Menahem Hameiri of Provence (1249-1316) stressed this idea in his commentary to the Talmud:

Whenever a halakhic problem is brought before a scholar and he can rule leniently...he should not feign piety and search out too many stringencies, but rather take pity on the money of the Jewish people for the Torah too takes pity on the money of the Jewish people.<sup>4</sup>

A similar idea was expressed six hundred years later by Rabbi Yehiel Mikhal Epstein, author of the *Arukh Hashulhan* (1829-1908):

When a question of ritual law comes before you, you must first assume that it is permitted, and only if after studying the early authorities you do not find any possibility of leniency, only then are you obligated to forbid it. Unfortunately...I know many rabbis who are great scholars, but since their awe is greater than their wisdom they first rule on a question out of the systematic assumption that it is surely unkosher and forbidden and thus they frequently stumble and cause monetary losses to a Jew, which is a greater sin than one between man and God.<sup>5</sup>

3. Before giving a halakhic ruling, the subject is studied in a historic-scientific fashion in order to determine if the law or custom derives from the Torah, the talmudic Sages, the Early Rabbis (*geonim* and *rishonim*) or the Later Rabbis (*aharonim*). It is also ascertained whether the practice under discussion has been adopted by the entire Jewish community or not. There is more readiness to change a relatively new *halakhah*, one which has not been adopted by the entire community, or something which is only a custom.

4. The *Shulhan Arukh* is a standard code of Jewish law composed by Rabbis Joseph Karo and Moshe Isserles in the sixteenth century. This code is certainly an important halakhic source, but, for several reasons, it should not be viewed as the ultimate authority, as is common among Orthodox rabbis. First of all, the *Shulhan Arukh* was written four hundred years ago, and much has changed since then in the *halakhah*, in society and in our outlook on life. In

addition, in the days of Rabbi Joseph Karo and afterwards, many important halakhic authorities such as Rabbi Shlomo Luria (the Maharshah), Rabbi Mordekhai Yaffe, Rabbi Samuel Edels (the Maharsha), Rabbi Yoel Sirkis (the Bakh), Rabbi Meir of Lublin (the Maharam), and the Hakham Zvi severely criticized those who decide the *halakhah* according to the *Shulhan Arukh* without checking the Talmud and the major authorities who preceded Rabbi Joseph Karo.

Conservative rabbis follow these great authorities, as opposed to Orthodox rabbis who have elevated the *Shulhan Arukh* to the status of the Holy of Holies. Conservative Judaism remembers the cautionary words uttered by Solomon Schechter almost a century ago:

But however great the literary value of a code may be, it does not invest it with the attribute of infallibility, nor does it exempt the student or the Rabbi who makes use of it from the duty of examining each paragraph on its own merits, and subjecting it to the same rules of interpretation that were always applied to Tradition.<sup>6</sup>

5. Halakhic pluralism is maintained when there are two legitimate ways to rule on a halakhic issue. In such a case, the Committee on Jewish Law and Standards of the Conservative Movement publishes the majority and minority opinions, and every *mara d'atra*, local rabbi, is authorized to choose the ruling appropriate to his halakhic point of view and the circumstances prevailing in his congregation.

6. Much emphasis is placed on the moral component of Judaism and of the *halakhah*. The *mitzvot* between man and man are no less important than those between man and God. "Keep far from falsehood"<sup>7</sup> is no less important than "Remember the Sabbath day to keep it holy."<sup>8</sup> Paying taxes is no less important than sitting in the *sukkah*. Our approach to issues of morality and *halakhah* is nicely summarized in the words of Rabbi Israel Salanter, founder of the Musar movement in the nineteenth century: "Just as one checks for a drop of blood in an egg, thus must one check the *kashrut* of every penny that he earns." "Just as the rabbi of the city must

check the ritual slaughter knife for flaws, so must he check the weights and measures in the city in order to prevent deception." "One should not be strict in the observance of a *mitzvah* at the expense of others."

## CHAPTER VII

### A Sampling Of Halakhic Rulings Of The Committee On Jewish Law And Standards

All of the above-mentioned principles have been operative in the halakhic rulings of the various law committees of the Conservative movement during the past seventy years. In 1917, the (then) recently-formed United Synagogue of America established a Committee on the Interpretation of Jewish Law under the leadership of Professor Louis Ginzberg. That committee was succeeded in 1927 by the Committee on Jewish Law of the Rabbinical Assembly. Over the years, this committee has consisted of ten to twenty-five members and has benefitted from the contributions of such leading halakhic authorities of the Conservative movement as Professors Boaz Cohen, Michael Higger, Seymour Siegel, Rabbis Louis Epstein, Isaac Klein, Aaron Blumenthal, and Ben Zion Bokser. Today the committee is called the Committee on Jewish Law and Standards of the Conservative Movement, CJLS, and it is chaired by Professor Joel Roth.

The following are samples of three halakhic rulings made by the Committee on Jewish Law and Standards. Two emphasize disagreements between the Conservative movement and Orthodoxy, while the third emphasizes a major difference of opinion with the Reform movement. Only the decisions are quoted here. The halakhic reasoning behind every decision can be found in the responsa noted.

### *Aliyot for Women*

As women have begun to play a more active role in society, they have asked to play a more active role in the synagogue. In Orthodox synagogues these sincere requests have met with blanket refusal or derision. The Conservative movement realized long ago that if the synagogue is to remain an integral part of life, halakhic solutions must be found to this problem. The first landmark decision came in 1955 when the CJLS ruled that it is halakhically permitted for women to have *aliyot*. Today they are called to the Torah in 70% of the Conservative congregations in North America.<sup>1</sup>

### *The Agunah Problem*

In our day, many Jewish husbands give their wives civil divorces but refuse to give them Jewish divorces. Without a *get*, a Jewish bill of divorce, a Jewish woman is forbidden to remarry and is therefore called an *agunah*, an anchored woman. Should she ignore the *halakhah* and remarry, her children from such a marriage are considered *mamzerim*, bastards. This is a widespread problem of tragic proportions. In Israel alone there are at least 8,000 such *agunot*! There are many possible halakhic solutions to this problem, but the Orthodox rabbinate is afraid to adopt any of them due to the halakhic paralysis described above. In Israel the only "solution" is to throw the recalcitrant husband in jail, while in the Diaspora even that option does not exist.

The CJLS spent years searching for a halakhic solution to this problem and two such solutions were found and are currently in use: In 1954 the "Lieberman clause" was added to the *ketubah*, marriage contract. Named after its author, Professor Saul Lieberman, it is in effect an arbitration agreement in which the couple agrees to go to a central Conservative *bet din*, court of law, for counselling. It implies that after receiving a secular divorce both parties will heed the directive of the *bet din* to execute a Jewish divorce. If not, secular court enforcement of the decision of the *bet din* will be sought and, hopefully, obtained. This understanding of the Lieberman clause was, indeed, upheld by the New York

Court of Appeals in 1983.<sup>2</sup>

In 1968, Conservative rabbis began to use a Pre-Nuptial Agreement which is signed by the bride and groom before the wedding in the presence of a *bet din* of three. This document, based on a careful reading of the *halakhah*, makes the marriage conditional on the husband's willingness to give his wife a *get* should the need arise. If he refuses to do so within six months of the granting of the civil decree, the *Bet Din* of the Rabbinical Assembly annuls the marriage retroactively on the basis of the Pre-Nuptial Agreement and the woman is free to remarry without a *get*.<sup>3</sup>

### *Patrilineal Descent*

In 1983, the Central Conference of American Rabbis of the Reform movement resolved "that the *child of one Jewish parent* is under the presumption of Jewish descent" which is later established "through appropriate and timely public and formal acts of identification with the Jewish faith and people."<sup>4</sup> This decision runs contrary to normative rabbinic *halakhah* as practiced by the entire Jewish people for 2,000 years according to which Jewishness is automatically determined by the mother. As a result, the CJLS proposed a Standard of Rabbinic Practice in 1986 which was overwhelmingly approved at the annual Rabbinical Assembly convention. It reiterated the commitment of the Conservative movement to the traditional *halakhah* of matrilineal descent and stated that henceforth any Conservative rabbi who accepts the principle of patrilineal descent will be subject to expulsion from the Rabbinical Assembly.<sup>5</sup>

**AFTERWORD****“And As For The Rest — Go And Learn!”**

This brief booklet cannot provide the full picture of the Conservative movement's approach to *halakhah*. One is reminded of the *mishnah* in Yoma 7:1. After the High Priest would read two portions from the Torah in the Temple on the Day of Atonement, he would say, “More is written here than I have read before you.” Likewise, we say, “More than what we have presented to you here can be found in other places.”

For this reason we conclude with a selected bibliography and an extensive bibliography, in the hope that every reader will enrich his or her knowledge on this important issue. May we all be privileged to study and to understand; to hear, to learn and to teach; to observe, to do and to fulfill all the words of our Torah with love.

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