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ב"ע

החלה - יום ב' ערב פסח

"כל חמירא דאיכא ברשותי לבטיל ולהוא כעפרא דארעא"

Dr. Solomon Freehof, Chairman
CCAR Committee on Responsa
4905 Fifth Avenue
Pittsburgh 13, Pennsylvania

Dear Dr. Freehof:

As a member of the Committee on Responsa, I should like to avail myself of your gracious invitation to comment on your responsum "The Jewish Status of Apostates and of Jewish Children Raised in a Christian Environment," which you propose to submit to the CCAR Convention as the '59-'60 report of our Committee.

I am motivated not by any serious disagreement with the recommended course of action (halacha l'ma'aseh), although my conclusions do differ somewhat. Nor do I question your clarification of the traditional sources which you analyse with your usual brilliance. My concern is rather one of basic method and its implications for the development of a Reform Halacha.

You are undoubtedly aware of the persistent and ever more vociferous demand for an official Guide. The need for a Guide was many times reiterated at the Union Biennial in Miami last fall and will undoubtedly be echoed at the forthcoming CCAR Convention in Detroit. Just recently, Rabbi David Polish sent me a copy of

a well reasoned address in which he urges "that the CCAR and the Union of American Hebrew Congregations endorse the principle of a guide for Reform Jewish life."

One objection, among many, which I raised in my reply to Rabbi Polish is the lack of basic groundwork for the kind of Guide he proposes. Historically, codes and guides did not spring up in a vacuum. They were preceded by centuries of discussion in academies, voluminous responsa written by hundreds of qualified, learned authorities. Moreover, the guides and codes of the past were a crystallization not only of a vast literature but of a total way of life, a complete regimen practiced and lived as a historic continuum. The codes merely described--they did not establish norms (except for relatively insignificant minutiae). They summarized--they did not create.

The fact that codes only described current practice but did not initiate (with minor exceptions) explains, at least in part, why a code written by a single individual would, within a brief span, be accepted as authoritative by practically the total Jewish community. Caro's formulation of the halacha, a summary restatement of the Rif, Rosh and mostly the Yad, found ready acceptance within an environment regulated by the prior formulations of Alfasi, Maimuni and Asheri. His code was resisted in the Ashkenazik world, however, until it was reconciled with current normative practice by Moses Isserles.

The contemporary American Jewish scene lacks even the minimal elements for a Guide or Code. We in Reform do not have the

vast body of halachic literature which needs to be systematized or summarized. Nor do we have a disciplined community whose normative practice would serve as the basis for such a work. We do not even have a consistent, thought-out attitude toward tradition. It is all in a state of flux. The writers of a guide or code would, therefore, have to create and initiate not only norms and standards but a theology as well. The acceptance and limited success of the Union Prayer Book (often cited as an example of the successful introduction of a Code by Reform) was due in no small measure to the fact that it was preceded by a century of liturgic activity on the part of hundreds of Rabbis and scholars. The basic elements of a reform nusah had already emerged by the time a standardization of the Prayer Book was attempted.

The current agitation for an official Guide proceeds from the unrealistic assumption that such a document somehow possesses magical powers to effect basic changes in the religious practice of our constituents. We would look to a Guide or Code, a document authored by a committee with all the inevitable compromise, to accomplish what we as Rabbis with our elaborate organizations have been unable to achieve.

The first step in the formulation of a Guide is a steady stream of responsa -- Reform responsa -- written by qualified Rabbis close to the day to day needs and problems of our laymen. The future Guide for Reform is being formulated in our hundreds of religious schools, in our synagogues, by our Rabbis as they officiate at the life cycle ceremonies and in some instances by

lay ritual committees in our temples. This vast activity must be formalized and treated with the seriousness and respect it deserves. We will be ready for an official guide when the qualified Rabbis of our movement, and they are many, will deem the problem of sufficient import to think through and write individual and volumes of Reform responsa. When a Rabbi answers the questions of a layman or colleague, -- each time a Rabbi urges a particular change or initiates a new ceremony, he is "writing" responsa. We will have the basic groundwork for a meaningful official Guide when our Rabbis will feel impelled to justify their answers, changes and innovations by confronting the broad principles of tradition, a liberal philosophy of Judaism and the realities of modern American life in the form of written responsa.

The regional Torah-convocations, that magnificent innovation of the Central Conference for which no praise is high enough, can also make a major contribution in this area. Several of the sessions at each convocation could be devoted to discussions of specific practical questions encountered on the congregational level and submitted to the resource person and to the other participants prior to the convocation. The results of the deliberations would then be distributed among the members of the CCAR and would constitute a significant addition to the growing halachic literature of our movement. Let the oak emerge from the acorn as a slow natural growth for only God can make a tree.

The pivotal body which should provide the basic material

for an ultimate official Guide is the Responsa Committee of the CCAR. This all-important committee has been writing responsa for over three quarters of a century. One would therefore expect that a basic approach applied to a sufficient number of cases would, by now, have emerged to serve as the foundation for an official Guide for Reform Judaism. A closer look at this considerable body of literature, however, reveals that such expectation has little basis in fact.

One may indeed find vast learning and admirable erudition in the t'shuvot of the Responsa Committee. The list of citations from the Rishonim and Ahronim and Talmudim makes the reader feel humble and woefully inadequate. But one is sadly disappointed if one looks for consistency, continuity or, in most instances, even if one attempts to find a coherent Reform approach to tradition.

There is much delight in following the pilpulistic ingenuity of many an author of CCAR responsa as he attempts to find buttress for a Reform halacha in a casuistic nicety of Akiba Eiger or Moses Sofer. But the disturbing thought inevitably occurs: Of what possible relevance is a citation from the writings of a nineteenth century Rabbi of Pressburg who commanded his children in his last will, "Do not live in the same neighborhood with them (the reformers) nor must you associate with them at all, at all. And do not even touch the books of Moses Dessauer (Mendelssohn)" (Lev Ha-Ivri, p.9.).

One would hardly suspect on the basis of many, if not

most, of the CCAR responsa that the committee expresses the view of a religious movement whose adherents, lay and rabbinic, have long denied the authority of the traditionally defined chain of halacha and have in actual practice rejected the detailed prescriptions of the dietary laws, laws of divorce, of family purity, most of the specific laws governing Sabbath observance, etc. etc. Whatever the reasons, and they are complex, the responsa committee seems to have operated on a level quite distinct from the mainstream of Reform Judaism as it is actually lived and practiced.

The net result of this schizoid phenomenon is that the work of the responsa committee has been and continues to be largely ignored. It is my strong impression that most of our rabbinic colleagues have, through the years, considered the learned decisions of our committee as irrelevant, at best. We can hardly fail to notice the relatively minor place of our committee report on the agenda of the CCAR Conference, nor should we continue to ignore the indifference and even levity with which many of our colleagues approach the halacha session.

The Responsa Committee will fill the existing vacuum and assume its rightful place as the group primarily responsible for formulating the basic principles of an emerging Reform halacha when it will deal with the questions addressed to it on the level of existing realities and in the light of a liberal attitude toward the total tradition.

Each particular problem offers the opportunity to respond

not only to the minutia in question but to clarify a meaningful Reform approach to the entire area. A question concerning a detail of Sabbath observance, for example, cannot be answered merely by citing the law from the Shulhan Aruch or another Code. Since the authority and frame of reference of the traditional codes are no longer acceptable, one can hardly expect that a single paragraph wrenched from context would be taken seriously.

Rather it is the task of the Responsa Committee to discover and define the broad tendencies and general criteria which flow from an overall view of our literary heritage. These would serve as guides and points of reference not only for the specific detail under consideration but for all questions which may arise concerning Sabbath observance. The traditional themes of the Sabbath -- a day of delight (oneg), of refreshment of soul, of perfect freedom, a day devoted to hallowing of life, the enhancement of person, a weekly projection into the messianic -- all these defined in the light of the matured insight of modern disciplines, modified and controlled by a reverence for historic Jewish experience and the sensitivities of K'lal Yisrael, would serve as realistic and meaningful criteria to determine what a Reform Jew may or may not, should or should not do on the Sabbath.

The rituals and ceremonials, whether old or new, however, are to be evaluated not only with rational, ethical criteria. They must be approached with our poetic being, the anima - prayerfully. Myths, symbols, signs have a language of their own.

Words, ideas, conceptual values tend to destroy their immediacy and dimension of depth. The song, the upward glance -- the ineffable -- are their most congenial forms. They must be controlled by reason but they certainly cannot be exhausted by rational categories. Demythologizing most often reduces a profound total experience to an irrelevance. Our growing appreciation of the significance of myths, symbols and signs -- of their role and function in the historic Jewish consciousness -- must be reflected in the work of the Responsa Committee. In this area, as well, we must pioneer and point the way.

The task is undoubtedly beyond the capacity of any one person or group. It cannot be accomplished within weeks or months. Nor can any formulation of the broad tendencies of Jewish tradition, much less any particular application, be treated with dogmatic finality. All human effort is by definition situational, historically conditioned and, therefore, tentative. Despite the limitations, however, the Responsa Committee would contribute significantly to the development of a meaningful Reform halacha by meeting regularly in serious study sessions. Much would be gained if the answers to major questions were formulated not by one individual but by the group as a whole after thorough discussion and free exchange of various points of view.

Your responsum which treats questions of vital importance illustrates, I believe, many of the shortcomings of our present procedure. You deal with a number of specific cases involving

Jewish status. Central among them is the question: Whether a young girl of a "family where there is a gentile father and a Jewish mother, the family having converted to Christianity in Germany," may be married to a Jew without conversion.

You base your answer on the talmudic principle (Yevamot 45 b) "that a child born of a Gentile and a Jewess is 'kosher' (p.2)." You conclude, "there is no question that the child of a Jewish mother is fully a Jew and may be married to a Jew (p.2)." You further state that "if this daughter of a mixed marriage also marries a Gentile, her child is a child of a Jewish mother and is also Jewish" and this would be the case if the process were to continue "even to the end of the world, ad sof haolam (p.3)." But though the child is Jewish, your responsum continues, since it has been raised as a Christian "must it not in some formal way be restored to its Jewish state by some ceremony akin to conversion?" Your conclusion is that "no ritual of conversion should be required... To do so would indeed violate the law and imply that they are not Jews, which would be erroneous... We should ask the person involved to promise to maintain a Jewish home. This, at most, is all that is necessary (p.5)."

The talmudic principle upon which you base your responsum was, as you well know, the major issue in the recent, so called "What is a Jew" controversy in Israel. It has profound implications not only for Jews in Israel but for world Jewry, as well, and merits thorough analysis. Before doing so, however, I cannot but

wonder whether any Reform Rabbi would seriously defend the conclusion that a person is a Jew if he is born of and raised by a couple where the father is a Christian, the mother a convert to Christianity, and the child itself raised as a Christian, and furthermore, that this Jewish status would be automatically transferred by the mother for all generations. Do we in Reform deny a person the right of conversion? The conclusion has overtones of a most narrow and dangerous racism. It denies the higher impulses of historic Judaism and disregards much of what we as liberal Jews represent. Are we indeed prepared to grant automatic Jewish status on the basis of "Jewish blood content" even if infinitesimal so long as it is traced through the mother?

It is true that whether a person chooses his birthright or not, if his parents are Jews and he does nothing overt to change his religion, he is considered to be a Jew. Though the highest religious ideal is a life of choice and deliberate commitment, complex practical and even idealistic considerations dictate that such a person be considered a Jew by birth. But in the case described in your responsum must we not as Reform Jews emphasize and give primacy to the manner in which the child is raised and to the person's own choice upon reaching his majority? How can we possibly enter into honest dialogue with our neighbors; how can we justify our Reform Judaism to ourselves if we cling to the assumptions inherent in the talmudic principle and its extension which you use as the basis for your responsum.

Your conclusion may indeed qualify for what our detractors call "Reform" since it makes no demands. You say in effect: Regardless of one's background, no matter how a person was raised, whatever he or his parents or grandparents may have done, even if his ancestors were pious, practicing Christians for generations, as long as there is some obscure Jewish grandmother in the dim past, we will do whatever convenience dictates without fuss or bother. He is still a Jew. We even quote the Talmud and Rishonim as support even though the theoretical basis which justifies this attitude strikes at the very heart of our Reform religious orientation.

Does not our Reform Judaism, our liberalism, our striving for integrity and honesty demand that in this instance we be more stringent than the Talmud or Codes? Because we cannot grant Jewish status on the basis of an untenable racial fiction, the outgrowth of a particular time-place (as will be demonstrated below), we must insist that the child of a mixed marriage (especially if the Jewish mother converts to Christianity) if raised as a Christian is himself a non-Jew and must go through all the requirements of conversion (minimal or maximal, as the case may be) before he is accepted into the Jewish fold. Our criteria must be the home environment, the attitudes of the parents as well as the person himself when he reaches majority. These criteria would determine Jewish status and would result at times in a more strict and at others in a more lenient procedure than is required by the traditional codes.

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An analysis of the background theoretical justification of the talmudic principle which you use as the basis for your responsum casts even greater light on the weakness of our procedure. It has become axiomatic, judging from the results of the Israeli controversy on "What is a Jew," that the status of a child is determined by the mother. If the mother is a Jewess, regardless of what the father may be, the child automatically inherits that same status. A closer look at the literature, however, reveals a total lack of agreement on this issue. The status of a child born of the union of a gentile and a Jewess is the subject of wide controversy in talmudic literature. The prevalence of a particular view at one time and of a radically different attitude at a later or earlier period is largely determined by social factors too complex for detailed discussion in this context. (The literature is readily available.)

It will suffice to note that the total Rabbinic literature, from the earliest tannaitic stratum to the codification of the Talmud, places the child of a Jewish mother and a gentile father in one of two categories: He is either a bastard (within the technical meaning of mamzer as defined in the Talmud), or he is a full Jew (kasher).⁽¹⁾ There is the further qualification that though he be a Jew, he is

(1) See, however, Tosaphot Kiddushin 75 b, d.h. W'Rabbi Yishmael with the comment of Samuel Edels. Cf. Hidashei R. Akiba Eiger, Shulhan Aruch, Yoreh Deah 266.12 that such a child may not be circumcised on the Sabbath since he is not a Jew and needs conversion.

nevertheless defective (with regard to certain categories of marriage, pasul, pagum). In the Mishna Bikkurim I.4 we may have a remnant of yet another, more ancient view, namely, that the child is a gentile. (2) The preponderant view, however, particularly in the tannaitic period is that such a child is a mamzer. It is only in the later, amoraic period that the weight of opinion shifts to the view that the child is kasher. The final halacha, as is the case with many such passages in the Talmud, is a formulation of the latest teachers in Babylonia.

Let us note the full passage (Y'vamot 1:5 b) carefully:

"The halacha is that the child of a sexual union between a gentile or a slave and a Jewess is kasher, whether the woman was single (at the time of the union) or even if she was married to another man (when the intercourse took place)." In other words, even if the woman is already married (eshet ish), the child is not viewed as having been born of an adulterous relationship. He is kasher.

This radical position can be understood only in terms of a world view of many centuries ago and as a response to a particular configuration of social conditions. For implied in the final halacha is the view that the gentile, the idolatrous neighbor among whom the Rabbis of the Talmud lived, was not a person. His seed was viewed as that of an animal, ownerless, non-existent. The

(2) Otherwise, how can there be a ger whose mother is a Jewess? Note that the Tosephta omits the phrase v'im hay'tah immo miyisrael. See however the discussion in the Yerushalmi and the comment of Elijah Gaon on the passage. Also, Lieberman, Tosephta Ki-Fshutah, Part II. p. 823 f. I think that he misses the point.

Talmud expresses it as follows: "The Torah made his seed ownerless as it is written in Scripture (Ez. XXIII.20), 'Like the flesh of asses is their flesh and like the issue of horses is their issue' (Y'vamot 98 a. cf. Kidushin 68 a.f.)." One of the early commentators succinctly summarizes the underlying theoretical justification for the talmudic halacha: "Scripture declared the issue of an idolater ownerless. It is like the issue of an animal. Therefore does the child follow the mother and is considered wholly a Jew (Nimukei Yosef to Alfasi on Y'vamot 45 a)."

The final halacha that the child is kasher is thus the most regressive if we take as our criterion the status given to the gentile. If the child remains a defective (pagum), then the father has some status, even if extremely slight. If the child is a mamzer, then the gentile is given even more reality as person. The most liberal view within talmudic context -- the one which gives the gentile highest recognition as person -- is the position which considers the child itself to be a gentile. The father is then fully recognized and the child may be converted to Judaism without
(3)
prejudice.

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- (3) In the case of a child where the mother is a gentile and the father Jewish, the halacha that the child is a gentile is the most regressive (cf. Kid. 66 b, 68 a,f. and numerous other passages). Note too that if the child of such a union is a mamzer then he is a Jew, the parenthood of the father is recognized and he inherits the father's estate (cf. Aruch Hashulhan, VIII. p.216, Hil.Nahlot, Sim. 276. S'if 10). The most liberal position would be that the child is a Jew.

In a reply to Mr. Ben-Gurion's question concerning "the status of a minor whose father is a Jew and whose mother is non-Jewish but desires that the child be raised as a Jew," I wrote: **לו הייתי אני,**

רב רמורמי, חבר הרשות הדתית המוסמכת, מסתחף בליבוץ הבעייה

I hasten to add that responsible halachic authorities throughout the ages have clearly indicated, again and again, that these laws in the Talmud involving the gentile, idolater (goy, ovdei cochavim) do not in any way apply to the non-Jew outside the ancient Near East. Your statement in Reform Jewish Practice is a fine summary of the Jewish attitude: "Any gentile who accepts the ethical commandments... is generally considered in Jewish law as a half-proselyte to Judaism. Lauterbach ... says: 'In fact, such a gentile ... is considered by the Jewish religious teachings as being in a sense actually a proselyte.' (p.64)."

Note (3) cont.

דהיינו, בעלה תנאים נחשב הוולד "יהודי מלידה" ומהם הטקטים הנדרשים להסתפח לדת-היהודית, הייתי מתליט על הבעיה לאור היהדות הליברלית. אין אנו סומכים על משפט בודד או כלפול חריף. כמו-כן אין אנו כבולים בכבלי-מסורת מילולית. גישה כזאת מקפחת את היהדות. נאמנותנו אינה למצב מיוחד, ולא לתופעה מסויימת שהיתה תגובה למצב עניינים היסטוריים; אלא סומכים אנו על הציוויים האלוהיים שהם אל-זמניים ואל-היסטוריים שכל דור ודור חייב לפרש בעצמו. זהו תהליך עתיק של היצירה היהודית...

... בתור למעמד הקטין שאביו הוא יהודי ואילו אמו לא-יהודית לפני הוריו רוצים לגדלו כיהודי, עמדתו היא שילד כזה הוא יהודי מלידה ואין צורך בטקס גיור כלשהו. דעת התלמוד שבמקרה כזה הילד הולך אחרי האם ולא אחרי האב, נובע ממדרג מחשבה המתנגד לשאיפות הנעלות של היהדות הרבנית עצמה. הערכת הלא-יהודי שעליה מתבססת דעת התלמוד הנ"ל אפשר להבין רק על רקע נקודת-ראות מלפני אלפים שנה ועל רקע התגובה למצב חברתי מיוחד לזמנם הם. קשה להשיג שמישהו המתיימר לדגול ברעיון אחוות-האנושיות יצירת-האב החד, בורה הכל, ישתדל להגן על עמדה זו הנובעת מן הלכה תלמודית זאת.

Isaac Lampronti writes in the early eighteenth century:
"Know, dear reader, that wherever you will find the word goy or other expressions which refer to gentiles in my book (The Encyclopedic Pahad Yitzhak), ... my intent is not the Christians for they are not idolaters and they believe in the unity of God ... (He gives an exhaustive list of references to show that talmudic laws are applicable only to ancient idolaters. Vo. II, p. 7 under Goy.) Rashi, Maimonides, Meiri, Caro, most of the Rishonim and Ahronim, even the Talmud itself would not apply the halacha concerning the Gentile to the non-Jew of today. Yet we, the responsa committee, of Reform Judaism, would determine Jewish status on the basis of the most regressive talmudic principle which is built on impossible, unthinkable assumptions. The most traditional, rabbinic Judaism, if honest and true to itself, would have to reject such a procedure.

Not our liberalism but our Judaism demands that the child of a mixed marriage, whether the father or the mother is non-Jewish, be considered a full Jew if the home environment is Jewish and if the child is raised as a Jew. If the home is Christian and the child raised as a Christian then we would consider the child a non-Jew and we would require conversion when he reaches his majority.

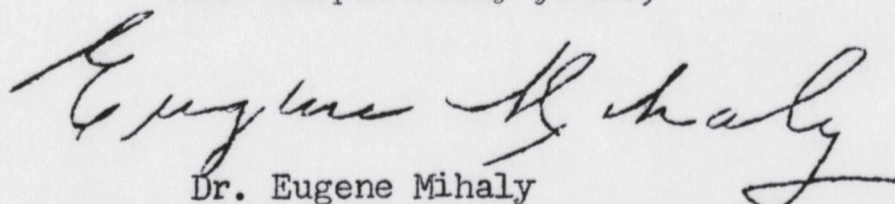
The Napoleonic Sanhedrin recognized the validity of civil marriage and the legitimacy of the children in cases where one of the partners is a non-Jew. We in Reform Judaism certainly

recognize it (Reform Jewish Practice p. 65 ff.) There is even a strong and not to be dismissed Reform tradition which sanctions mixed marriage if the children will be raised as Jews. Many of us have officiated and do officiate at a marriage of a Jew and non-Jew if we are convinced that the larger Jewish cause is being served. Is it not about time that we state boldly and clearly that in all cases involving Jewish status and the relationship of the Jew and non-Jew the talmudic law is not operative. Its principles cannot, must not be used.

My conclusion in the specific case dealt with in your responsum is that the girl is a non-Jewess. She would have to go through all the requirements of conversion before being accepted into the Jewish fold.

I should much appreciate it if my views were included in the report of the Responsa Committee.

Most respectfully yours,



Dr. Eugene Mihaly
Professor of Midrash & Homiletics
Hebrew Union College-
Jewish Institute of Religion

P.S. I am taking the liberty of sending copies of this letter to the other members of our committee and to some other colleagues who have expressed an interest in the problem.

*The Board of Higher Education
of the City of New York
and
The Faculties of Hunter College
request the honour of your presence at the
Academic Convocation
on the occasion of the retirement of
George Nauman Shuster
as President of Hunter College
on Tuesday, the twenty-sixth of January
One thousand, nine hundred and sixty
at half after four o'clock
in the Assembly Hall of Hunter College
New York*

*R. S. V. P. by January 20, 1960
card enclosed*