

Movement did in the cases of *mamzerut* (illegitimacy) and *kohen* (priest) and the *gerushah* (divorced woman)? Let's call a spade a spade.

New Philosophy of *Halacha* Needed

Finally, I think it's time to state a few facts forcefully and to draw from them the conclusion to which I have been heading – we ought now to acknowledge that we need a new philosophy for the legislation of law in Jewish life and for the creative continuity of a ritual tradition without which Judaism lacks inspiration and emotional power.

I regret that there is little likelihood that most of the Orthodox will be open to real dialogue on the subject, but they should be viewed by us as the modern Karaites, incapable of going beyond the confines of an Oral Law which has taken on all the trappings of a Written Law whose premises are not subject to examination.

If it be argued that *halachah* is after all, a matter of *mitzvot maasiyot* (practical commandments) can we expect that questions of home ritual, public prayer, diet and the like, should any longer be subsumed under law? I am no less devoted to a Jewish way of life than any other Jew who respects Jewish tradition, but aren't we really talking about the areas of life which no enlightened society can legislate? Are not the items mentioned, matters for education and for persuasion and creative response? Do we not have enough faith in the power of our tradition to speak for itself in the environment of freedom (not to be mistaken for permissiveness) with which we want to surround ourselves? I know – we need responsibility, obedience, etc. Yes, we do, but we have to learn a new skill – achieving these virtues in open interaction with our fellow Jews who might have views different from ours.

We need a passionate defense of moral and esthetic principles in the development of the Jewish future. I am afraid that even when my Conservative colleagues take a modest step like raising the issue of higher education for women and possible ordination, they are about fifty years behind the times. Their principles are at fault, and I think they have to be challenged to realize that fact.

Conservatism is not reconstructionism

Seymour Siegel

The best is the enemy of the better. As a member of the Commission on the Ordination of Women

in the Conservative Movement, I am aware that we might have done better. But it serves no purpose to denigrate *what was done*.

The Commission's report states that it is not "charged with developing an *halachic* stance for the Conservative Movement." The Commission was responsible to advise the Faculty of the Jewish Theological Seminary – the most traditionalist arm of the Conservative Movement – on the question of the ordination of women. It came up with an overwhelming majority for ordination. This is a noteworthy achievement.

The Conservative Movement, as a whole, has developed a substantial literature exploiting its *halachic* approach. It has, especially in the past several years, made noteworthy progress in the field of Jewish law. The role of women in Judaism, the solution of the *aguna* problem, the removal of some of the traditional restrictions on *kohanim*, illumination of new bioethical questions, the investigation of the impact of food technology on *kasbrut* – as well as many others, have been the subject of deliberation and – in my judgment – substantially correct responses. There have been those who would have preferred more radical responses. Others, on the other hand, criticize us for going too far too quickly. On the whole, however, the record of the Conservative Movement in the field of Jewish law has been extremely noteworthy.

Conservative Judaism is halachic

What Rabbi Cohen wants us to do is to become Reconstructionists. Many of our colleagues are, indeed, devoted to that movement. The rest of us are not Reconstructionists – though we acknowledge that all of us have been mightily influenced by the ideas of Professor Kaplan. We non-Reconstructionists do not believe that Judaism should be post-*halachic*, that Jewish law be decided in a "democratic" manner, or that Divine revelation is not an element in the authority of the *mitzvot* (commandments). We believe that Judaism requires structure and predictability. We believe that God is involved in the process of Jewish lawmaking – though we eschew fundamentalism. These assumptions result in an *halachic* approach. Frequently, we come out at the same place as do our Reconstructionist and Reform comrades. An example of this identity of result is in the question of the ordination of women. It would be most helpful to stress that we have in

common, rather than to accentuate the differences.

Let me comment on some of the specific observations of Rabbi Cohen.

The distinction between *d'oraita* and *d'rabbanan*, mentioned in the Report, is, as the statement itself avers, attended by a certain amount of "ambiguity." The distinction is not dependent on historical provenance. It is rather a way of differentiating between traditional norms which can be changed only after much deliberation and those about which we can be more relaxed. The distinction between *d'oraita* and *d'rabbanan* is an important one for the guidance of Jewish law-makers and interpreters. It is not a distinction based on assertions about historical origins.

A Combination of Influences Shape Change

When it is asserted that change in Jewish law should flow from inner forces, it does not mean that there are *no* outside influences. It does mean that the outside forces are evaluated by organic trends within the community. The community responding to its own inner character, rejects, accepts, or modifies intellectual and cultural trends coming from outside the Jewish community. This is what Solomon Schechter meant by "Catholic Israel."

The issue as to the speed and rate of change in society is a venerable dilemma in political and religious as well as legal philosophy. There are those that believe that the social fabric is retained by slow and deliberate change. Others demand revolutionary changes when necessary. The issue divides Edmund Burke from the French Revolutionaries, Z. Frankel from A. Geiger, and conservatives from liberals. This has nothing to do with honesty or dishonesty. It does have to do with differing evaluations of social trends.

Judicial vs. Legislative Approach to Law

Reconstructionists and others can, if they wish, propose a legislative approach to Jewish law, relying on popular will. We, in general, opt for a judicial process which relies on interpretation of precedents. It should, however, be noted that the Report of the Commission was crafted by an inter-disciplinary group representing the laity and the rabbinate.

The Conservative Movement is trying to be loyal to the principles upon which it was founded — a dynamic, bold and creative approach to Jewish law. The success of this effort is vital for all Jews

— whether they identify with the Movement or not.

When ethics and halacha collide

Harold Schulweis

I like Seymour Siegel because, truth be told, he *paskens* (decides *halachic* questions) to my liking. And that is part of the difficulty in his answer to my friend Jack J. Cohen whom I also like. A *halachist* responsive to the needs and moral sensibilities of a community raises the credibility in the *halachic* process. But what of those Conservative *halachists*, equally attached to Siegel's defense of the "structure and predictability" of *halachah*, who, on those very grounds, reject the moral motivations which led to such progressive Conservative legislation for its instability and unpredictability?

A distinguished teacher and colleague of Siegel's, Professor David Weiss Halivni, maintains that for the Rabbis of the Talmud, and assumedly for contemporary *halachists*, in a conflict between morality and *halachic* precedent, morality must recede. The Rabbis could offer no conscious consideration to morality in their alteration of the law, since such an argument would impugn the divine Lawgiver with a lack of moral sensitivity. Thus despite the *consensus gentium*, shared by the Rabbis, opposing the cruel legal treatment of a child born out of an illicit relationship, the Rabbis could not free themselves from their biblical and *halachic* bind on moral grounds alone. In fact, Halivni suggests, precisely because rabbinic criticism of the harsh penalties against the *mamzer* (illegitimate child) and his heirs were consciously moral, the law could not be altered. Whatever subconscious moral factors we may sense lying behind rabbinic changes, only exegetical and casuistic arguments were deemed acceptable. If predictability and structure are the strengths of a *halachic* position, then the strict constructionists seem to have the distinct advantage.

Is Law Separate Or Derived From Morality?

There is something deeper here between Cohen and Siegel than the question as to whether we call a position authoritarian or "democratic," "post-*halachic*" or *halachic*; something more than belief claims in "Divine revelation" and legislation; something more than the distinctions between *d'oraita* and *d'rabbanan*. At the heart of the *halachah* issue lies the question of moral theology. Is