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Re-examining progressive halakhah

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Introduction

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INTRODUCTION

The last two centuries have brought radical changes to our understanding of the world. The physical and social sciences have provided us with new insights. Philosophical systems, very different from those of earlier ages have been developed. This has had a major effect on our view of Judaism and its traditions. Judaism was partially shielded from the earlier changes brought about by the Renaissance. The medieval world of scholasticism in which religion contained the absolute and all encompassing truth had given way to the critical spirit. As few Jews were in contact with the intellectual world of that period, Judaism, for the most part, could continue as before. The mode of reasoning as displayed in the commentaries on the Talmud or in the responsa literature remained very much the same. There were changes in both of these areas, but they had nothing to do with the intellectual climate of the surrounding world.

The eighteenth-century rumblings that eventually led to the Emancipation changed all of this. For most Jews of Central Europe, the change came in a single generation. The rabbis, the traditional leaders, were not prepared for the new intellectual world and sought to stop its influence, but such efforts were destined to fail. New views had to be developed. The process occurred first in the Reform movement, but eventually spread to all other groups within Judaism. They affected the rituals of the synagogue, the relationship of Jews to non-Jews, the *halakhah*, and much else.

Changes and adjustments in the practical application of the *halakhah* were relatively easy, but the foundations also needed attention and that came more slowly. The guiding principles on which decisions were based and which thereby guided all of Jewish life, had to be reviewed. The hermeneutics that served through the ages needed a critical view. Were they still valid? Could they be adjusted to a different world?

It was also important to understand the outside influences that played a role in the development of contemporary *halakhah* and to understand how the *halakhah*, in the new, freer world, could exercise some influence on other systems of law.

Equally important from the very beginning of the new age was self-criticism. The scholarly dialogue through the last two centuries has been highly critical. This has been helpful as veneration of the past, its leaders, and their decisions has often stood in the way of open discussion.

This volume is intended to take us onto the road of investigating the essentials of modern *halakhah*. It is done with an appreciation of earlier traditions, but with an open mind and a willingness to explore many different avenues. Other volumes that will treat the foundations of Liberal *halakhah* are planned.

Mark Washofsky

The concept of precedent is both characteristic and unique to the activity of law. By "precedent," I mean the practice of deciding disputed questions on the basis of earlier decisions. By "characteristic," I mean that deference to precedent is endemic to every system of thought and practice that we call law. Every legal system, each in its own fashion, recognizes precedent as a factor which to some extent constrains the freedom of decision enjoyed by the present judge. And by "unique," I mean that in no other intellectual discipline does the doctrine of precedent enjoy the respect and acceptance that law accords to it. No other field of inquiry is as receptive to the argument from precedent, the claim that something ought to be done or arranged ought to be resolved in a particular way now precisely because it was done or resolved that way in the past. Other disciplines, to be sure, have histories, records of past achievement which command the respect of the practitioners of the field. Yet the past as such has no