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Liberal Judaism and halakhah

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Chapter III

Philosopher and Poseq Some Views of Modern Jewish Law

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The Reform Movement and later its Conservative offshoot began as a gradual rebellion against Orthodoxy which was fearful of modern times. This meant that the evolutionary process and change which had been part of Judaism since its beginning were suddenly no longer possible. For example, Biblical translations have an ancient history in Judaism going back twenty-five hundred years, but despite that Moses Mendelssohn's translation was banned by a number of traditional authorities mainly on the grounds that his work would serve as an introduction to modern German and its culture. Those who read it or made the attempt would spend more time studying German than the contents of the Pentateuch. It was naive to believe that banning such a work would solve the problem of the cultural clash. (1) The revolution was primarily practical in tone. It sought reforms in worship, education and daily practices. A generation passed before more theoretical basis was sought for the changes in Judaism. The initial effort by the liberal Jewish scholars of the second generation lay in the direction of finding a rationale for their form of Judaism in the past. They therefore, concerned themselves largely with history. So, Leopold Zunz, Abraham Geiger, Zacharias Frankel, Leopold Loew and others sought a historic basis for their liberal approach. At the same time, broader histories began to appear under the aegis of Michael Jost and Heinrich Graetz. This historical approach seemed appropriate and satisfying, especially in an age which was noted for a broad

general interest in history and a re-examination of its underlying principles.

This did not mean that philosophy and theology were entirely neglected, but they certainly played a secondary role in the early Reform Movement. The system of thought created by Moses Mendelssohn hardly survived him as the basis on which it had been built was destroyed by Emanuel Kant. In the nineteenth century a number of other philosophers dominated Jewish and general thought; leading among them were Hegel, Fichte, and Schleiermacher. Several liberal Jewish thinkers adapted their philosophical approaches to Judaism and modified them appropriately. Except for the work of Herman Cohen at the end of the century, none of these efforts had any broader impact and their influence was restricted to a relatively narrow academic circle. Among these thinkers were Samuel Hirsch, Salomon Formstecher and Salomon Steinheim. None of these individuals concerned themselves deeply with the place of *halakhah* as there were other issues which they deemed more pressing and to which they turned their attention.

The pattern followed in the United States was rather similar. The early generation of reformers both lay and rabbinic turned their attention to practical matters, so an educational system was created, prayerbooks were written, newspapers founded, and congregations were formed. Isaac Mayer Wise, the creator of the organizations of Reform Judaism, expressed himself on virtually every issue of the times, but his writings on *halakhah* are minimal. His personal approach was quite traditional and he was willing to make the rabbinic tradition the basis of a national Jewish organization in 1855. David Einhorn, on the other

hand, was far more radical, but also had relatively little to say about **halakhah** in any systematic form. The theologians of Reform Judaism, Kaufman Kohler, and his disciple Samuel Cohon, dealt with **halakhah**, and provided a theoretical important place for it, but then left its status undefined. Kaufman Kohler, for example, was proposed a radical statement on the rabbinic past as part of the Pittsburgh Platform (#3 and #4), but at the same time maintained a much more traditional approach in the catechism written for his congregation. Furthermore the other items of the agenda of the Pittsburgh Rabbinic Conference were all discussed within the framework of rabbinic Judaism. (2) Later he was quite willing to accept the appointment as Chairman of the Responsa Committee when it was established in 1907; it had been organized at his suggestion. The early responsa which Kohler wrote were naturally based on the rabbinic tradition and the fact that they were issued at all indicated an interest in **halakhah**.

If we turn to Solomon Schechter, the founder of the organized Conservative Movement in the United States, we find that he was principally interested in the historical approach to Judaism. The volumes of his essays contain lovely pieces on the past, but certainly no well thought out effort in the direction of **taamei mitzvot**. It was left for the next generation of Conservative Jews to move in a different direction.

Only in this century has more systematic approach to the **halakhah** and its rationale been on the Liberal Jewish agenda. The Liberal Jewish movement with its Reform and Conservative wings has both turned to **halakhah** and to a rationale for

it. Both groups have continued the age old effort of adapting Judaism to a new culture, a task which has a long and honored history among us.

Mitzvot were observed, but their rationale questioned. There was intense debate about what was actually required and early rabbinic debates were reopened. At times those who discussed the details of the mitzvot also provided a rationale for them. That was not necessarily so. In the Middle Ages the Jewish thinkers most involved in the mitzvot themselves were sometimes also the philosophers who provided a rationale. Saadia and Maimonides, as well as a few others among the Sephardim followed this route. More often, the philosopher and the poseq went down different roads and were not particularly concerned with each other's efforts. This has been equally true in modern times. At the beginning of the modern period, Moses Mendelssohn sought an entirely new approach to halakhah from a philosophical point of view, but was not particularly concerned with the detailed exposition of the mitzvot in the form of responsa or codes. Perhaps the only exception in the last century to this rule was the Orthodox Samson Raphael Hirsch who sought to provide both an Orthodox rationale and dealt with the system of observance in his various works, sometimes not consistent with his Orthodoxy, (3) however, we will not deal with the figures of the last century, but turn to a selection of those who made their leading contributions in the twentieth century or whose influence has been felt primarily in our century. We realize that both roads are of vital importance for the modern Jew who needs to find some spiritual moorings. We might expect the modern westernized Jew to place more emphasis on the rationale of the commandments and less on the details of observance, that actually is not so.

Therefore, both areas continue to evolve in their separate ways and one might say in search of an individual who can present a unified theory of observance along with a practical expression of it. This paper will attempt to see where we stand rather than seek new avenues.

Some of the individuals who were leaders among liberal Jews might have been expected to present a rationale for the commandments. They did not. So, for example, Leo Baeck (1873-1959), the last great liberal rabbi of Germany who stayed behind with his community as its national president, wrote many scholarly essays, but his emphasis was more on **midrash** and **agadah** than on **halakhah**. His essay, "Mysticism and the Commandments" in **Judaism and Christianity**, really dealt more with the phenomenon of mysticism than with **halakhah**. Leo Baeck considered **halakhah** as only "one constituent part of the divine revelation", (4) although personally observant in a liberal manner. **halakhah** did not possess the authority for him which it once had for traditional Jews. His last book, **This People, Israel**, was a kind of a **midrash** which hardly dealt with **halakhic** considerations at all.

Perhaps the most influential thinkers of twentieth century European Jewry were Martin Buber (1878-1965) and Franz Rosenzweig (1886-1929). Martin Buber's approach to **halakhah** can be read a number of different ways. He was accused of being antinomian. After all, the entire I-Thou system of philosophy depended upon an existentialist approach to God and Judaism. This could occur entirely outside the **halakhic** system. For him it is not only the end result which may be doubtful when viewed through the eyes of

halakhah but also the path taken for the halakhah requires a fixed daily approach to God independent of any encounter between man and God. Critics have naturally pointed out that the latter may occur only rarely and so is an uncertain path toward a religious life. (5)

On the positive side, one may defend Buber's approach by stating that he wished to rescue halakhah from becoming merely ortho-practice. Buber wanted to infuse the law with the ancient spirit so that individuals would once more become responsible for their lives. (6) For him as he explained perhaps most thoroughly in his book, *Two Types of Faith*, the halakhah always had to be part of a demanding voice with a sense of highly personally responsibility. This voice addressed the individual and only in this way could the objective statement become a personal mitzvah.

The entire system, therefore, depended upon what Maurice Friedman has called, "Holy insecurity of the religious man who does not divorce his action from his intention." (7) The traditional approach demanded observance and provided security through that observance. The price that was paid was an automatic approach to halakhah. For Martin Buber the a genuine approach to God was frequently filled with tension and insecurity common to our century but the reward was through religiosity and the feeling of personal commitment.

For Martin Buber, in keeping with his I-Thou relationship, the emphasis of Sinai was less on commandment and more on covenant. The commandment was to prepare the people for the covenant. (8) The very nature of the words

spoken at Sinai indicate this through the beginning of the Decalogue with "I," addressed to the "Thou", here the people of Israel. As there were no enforcing mechanisms mentioned the individual had the freedom to accept or reject the commandment or for that matter, the covenant. (9)

Perhaps Howard Simon (10) has put it very well when he stated that Buber saw the halakhic system as a kind of a merry-go-round continually circling. The individual Jew must decide to get on it or not. Where he does so is irrelevant. It must be done as a matter of personal decision, not automatically. Buber, therefore, placed his emphasis on an open spontaneous relationship between God and man and between man and God. If there is no immediacy about the experience, then it represents merely a part of the historic continuity of the Jewish people, but can mean nothing to the individual personally. Halakhah, therefore, remained in many ways unexplored terrain which the individual must explore for himself.

Franz Rosenzweig approached the matter somewhat differently and argued with Martin Buber for he felt that the individual was bound to follow the tradition although he might not accept all of it yet. The tradition may move the individual in the direction of a religious experience and therefore he would make halakhah part of his life while remaining uncertain about his ultimate commitment. For Franz Rosenzweig the system of halakhah needed to be viewed in a broad historical manner, not just the revelation at Sinai but the totality of the teaching of Judaism. (11) Twentieth century man must struggle and make

the traditional statements into **mitzvot** again but the only way of doing so is through observance rather than through waiting for a proper relationship between man and God. In his essay "Relation and Law", (12) Franz Rosenzweig dealt with the law in a number of ways. For him it was a prerequisite of Israel as a chosen people. Divine revelation became something that human beings could understand and to which they could relate. The **halakhah** was less a statement of God than a "soliloquy" of human beings as they sought God. Rosenzweig was not so much concerned with the details of the law but with the spirit of sanctity which they had once provided for those who observed the. He like Buber opposed ortho-practice which led to blind unthinking observance. (13) As God's covenant with Israel was eternal it was necessary for each generation to transform the thoughts of that covenant to fit a new mood and a new era. That needed to be done through a process of change and selectivity. This was partially made on a highly personal basis and partially made by people as a whole. (14)

As both of these thinkers were Existentialist philosophers, they began with the individual, however Buber carried the individualism much further and made that the primary criteria by which **halakhah** and **mitzvot** would be measured. Rosenzweig tried to create a synthesis of tradition with the Existentialist approach.

As we turn to America it may be well to begin with Abraham Heschel (1907-1972) who in some ways forms a bridge between Europe and America. Heschel was educated in both the eastern and western European traditions and then spent the most significant years of his teaching

career in the United States. Heschel gave much of his creative effort to **halakhah** and the great **halakhic** thinkers of the past. His biography of Maimonides dealt with philosophical, mystical, as well as **halakhic** issues. His major work, **Torah Min Hashamayim** is a historical exploration of the entire realm of rabbinic literature. Abraham Heschel provided an insight into his personal understanding of the **mitzvah** through his essay. (15) There he explained how he began to feel a sense of "duty" to worship and to the other **mitzvot** while a student in Berlin. Although the university courses which he took emphasized symbolic thinking, this was not satisfactory for him as he felt that the **mitzvot** created orderly existence for each human being. (16) On a practical level he felt that modern man could not mechanically observe the **mitzvot** as that was of little purpose. He emphasized that there remained a vast gap between the all or nothing philosophy expressed by so many modern Jews. The real question was which segments of the **halakhah** can and should be fulfilled. (17) Modern man primarily sought for divine meaning in the **mitzvot** and was little concerned with their origin - a major concern in the nineteenth century. Heschel felt that the **mitzvot** would lead to meaning and that the modern Jew should not spend his time seeking a rationale for the commandments, "Its meaning must be understood in terms compatible with the sense of the ineffable". (18) He stressed the need for a 'leap of action', an approach very much in keeping with the traditional way of Judaism. For Abraham Heschel "the deed is the source of holiness." (19) The **mitzvot** represented the path to the sacred and within that path emphasis was to be placed upon **kavanah** rather than detailed observance. (20)

When Abraham Heschel turned to the details of the **halakhah** he strongly felt that there we were not dealing with divine commandments but human interpretations and that rabbinic authorities throughout the ages had made major changes. (21) So to him not all laws were equally significant; one could remove some of them without bringing the entire structure down. Man could approach God step by step and with single **mitzvot** without accepting the entire system. (22) Furthermore, the emphasis on all or nothing made the traditionalists, did not deal justly with the vast majority of modern Jews who had abandoned segments of Jewish life, but still considered themselves loyal Jews and were very much attached to Judaism. (23)

Heschel also made a clear division between commandments and customs or **minhagim**. As he felt that "Judaism does not stand on ceremonies.....Jewish piety is an answer to God expressed in the language of **mitzvot** rather than the language of ceremonies. The **mitzvah** rather than the ceremony is the fundamental category." (24) For Heschel ceremonies were folkways and not particular sacred while **mitzvot** represented the path of God or the interpretation of the will of God. This, of course, represented a vigorous disagreement with the approach of his colleague, Mordecai Kaplan, which will be discussed later. Ultimately when Heschel looked at the whole **halakhic** system he felt that it was only one component albeit a major one in man's attempt to reach out to God. For him the **agadah** was just as important as the **halakhah**. A Judaism limited solely to **halakhah** presented a distorted image of Judaism. (25) Perhaps it was put most beautifully in his summary: "**Halakhah** is the string; **agadah** is

the bow. When the string is tight, the bow will evoke the melody." (26) It was perfectly possible for man to gradually climb up the ladder of spirituality step by step through observance of individual *mitzvot* and so come closer to God. This kind of approach overcame some of the criticism of those who felt that religious motivation through *kavanah* might be slow in coming and that a "leap of action" represented a path consistent with the traditions of Judaism.

Mordecai Kaplan (1881-1983), the founder and creator of Reconstructionist Judaism, slowly changed his approach to *halakhah* over the years. In his first work, *Judaism as a Civilization*, published in 1934, Kaplan vigorously attacked Reform, Conservative, and Orthodox Judaism, though in reality he was attacking what no longer existed as these branches of Judaism had changed by the mid-thirties.

In his effort to deal with *mitzvah* and *halakhah*, but without the inherited baggage attendant to these terms, Kaplan defined Jewish law as folkways. He never used the term *halakhah* for Jewish law and so gave it a personal definition which incorporated the legal and personal aspects of life along with communal piety and the emotional elements of religion which make it effective. Through his efforts, Kaplan wished to rescue and reconstitute as much of tradition as was possible for modern getimes. This was especially true of all those matters connected with the Jewish calendar or and the Jewish life-cycle. (27) This was likewise the pattern which he followed in his "Guide for Jewish Ritual Use" which appeared in the *Reconstructionist* in 1941. Through that effort he

sought to give practical expression to theoretical framework provided in *Judaism as a Civilization*. In this work he expressed a broad tolerance for the wide spectrum of observance which existed in the American Jewish community. He felt that individual Jews should voluntarily associate themselves with whatever group met their specific needs. Within those groups the positive aspects of tradition rather than its prohibitions should be stressed. Kaplan also stressed that there should be a hierarchy of folkways so that not everything was on an equal level as is true in traditional Judaism. Most of all, his practical guide emphasized the need for the rediscovery of rituals and the need to infuse new meaning in those which had lost their significance for modern people. As this was intended as a guide, Kaplan went into much practical detail in it. (28)

As Mordecai Kaplan proceeded to clarify his view of Judaism as a civilization, he incorporated *halakhah* as a major factor in that civilization. A fuller exposition of *halakhah* was provided in his book, *The Future of the American Jew* (1948). He faced the fact that ritual had been eliminated from the lives of many American Jews, particularly criticized traditional community for its exclusion of those who observed little of the *halakhah*. His broad view was that, "a religious civilization is one which not only identifies the individual with his group, but makes the group responsible for the salvation of the individual, for helping him to experience life is supremely worthwhile or holy and thus commune with God. A satisfactory rationale for Jewish usage is one that would recognize in it both a method of group survival and a means to the personal self-fulfillment, of salvation of the individual Jew." (29) Although guidance may be necessary Kaplan did not equate it with revealed

codes. He felt strongly that the observances and symbols of the past had to play a major role, but they were to be viewed in precisely those sociological and historical terms. Whatever evolved the standards for folkways reflect individual as well as group wishes. Only two principles had to guide the group as it viewed its folkways: (a) survival as opposed to assimilation; (b) individual salvation which should add meaning to individual lives.

Kaplan felt that the community should set minimal standards and so differentiate between commandments not according to Biblical or rabbinic origins but according to their contemporary significance. They should be divided into three categories: (1) those which remain meaningful and form and content; (2) those which continue to be meaningful in content although the form may seem arbitrary and (3) those which are arbitrary in both form and content, but continue to possess meaning for a large number of Jews (dietary laws). All of these may ultimately be considered essential in one form or another, but they will also need adaptation and change to our specific age. Here Kaplan went considerably further than earlier. Whatever revisions and changes were made should be done in the spirit which was realistic and incorporated the democratic process. It was only in this way that the Jewish people could be reconstituted and that it may again express its will through the medium of law. (30) In any such revision of Jewish law, the age old principle of *dina d'malkhuta dina* would be given a new and much broader meaning. In any such recreated system, the community would have to create its own method of enforcement as divine sanctions had ceased to be effective. All would have to be

established on a voluntary democratic basis. (31) Such procedures would be in keeping with the definition of God as "the power that makes for salvation" and democracy as the way in which the people move toward that salvation. Although Kaplan felt strongly that traditional law should continue to be observed and maintained whenever they continued to possess meaning and be reinterpreted when that meaning was gone, he also felt that new laws and rituals should be created when the need arose. Their acceptance might be slow but movement in this direction was necessary on a communal basis if the current chaos was to be overcome.

He felt that one of the primary difficulties in this entire effort was lay with both extremes, traditionalist on the one hand who saw meaning in every detail and a vast group at the other end of the spectrum who had never experienced any benefit from ritual, and so saw no value in it whatsoever. He felt that the only way to overcome this problem and to bridge the gap was through the creation of a large number of groups who would "formulate for themselves the criteria by which they will discriminate between observances that should be maintained, or, perhaps, that should be created and observances that ought to become obsolete." (32)

Kaplan felt strongly that much of this needs to be done not only in the Diaspora but also in Israel. Only in a democratic society would Jewish law again become significant. Furthermore, he indicated that frequently the Diaspora might serve as a role model for Israel. (33)

In various essays Kaplan also discussed

practical matters connected with **halakhah** such as the position of the **aguna**, the general role of women in Judaism, etc. He, therefore, because of his sociological approach was willing to deal with the actual details of the law as well as its broad theoretical structure.

In the contemporary Reform Jewish world, Eugene Borowitz (1925-) is without doubt the most significant theologian. His influence has been felt through his position as Professor of the Hebrew Union College - Institute of Religion (New York) and through his lively intellectual journal, *Sh'ma*, which has served as a forum for wide spectrum of American intellectual Jewish life. He has discussed **halakhah** and view of it in a number of books and essays. According to Borowitz, the principle problem which the modern Jew faces is the fact that there is no widely accepted philosophy upon which modern Jewish theology can be built. As we live in an age of philosophical pluralism we can not duplicate the efforts of the Middle Ages which dealt with Neo-Platonic or Aristotilean thought. Nor can we properly follow the thinkers of the nineteenth century who were able to build on Kantian, Neo-Kantian or Hegelian philosophy, all of which were somewhat hospitable to religion. In contrast much of twentieth thought is hostile or neutral toward religion. In a society which is materialistic and utilitarian in its outlook theology finds itself in a difficult position. Yet, Eugene Borowitz is not willing to give up as he searches for "an antidote for paganism." That is not easy as the mood of universalism which provided such antidote in the past is now over. (34) For Borowitz we must begin from an existentialist perspective and with the individual. Furthermore, he is much concerned with the autonomy and

freedom of the individual. That becomes his overriding emphasis when dealing with *halakhah* and its traditions. It is the autonomous self which is most important for him. As the individual moves toward Judaism he "begins with God rather than Torah." (35) Borowitz has rejected God's revelation of the written and oral Torah, so we must ask what authority Torah and *halakhah* has for him and for us. In a highly structured essay presented to the Reform rabbinic conference, the best answer which presents a kind of universal ethics in which Jewish folkways and culture are the practical means of its execution. He would have the individual ask the question: "Is this an act I want to do for God; One I feel is appropriate to Him as best I have to know Him." (36) The commandment thus executed may stem from God, but it will be carried out because of the will of the individual. The individual must feel a sense of obligation whose source may be conscience, intuitive knowledge, or revelation. He also stressed the distinction between ethical commandments and rituals despite their occasional overlap and feels that it is the ethical prophetic statement which must always take precedence over ritual.

Borowitz is keenly aware of the problems which extreme individualism may bring and feels strongly that all Jews must be part of the community, but this needs to be brought about through the assent of the individual. It is only in this way that the individual can "help to redeem history." Although the individual can act religiously as an independent entity we would have to designate such individuals as "of Jewish descent, but not part of our people."

The border between the individual and the

community remains a rather gray area in Eugene Borowitz's thought for the final authority remains with the individual and "not in a book or code of the past." (37) Traditions and knowledge of the past, of course, help to establish present day norms and will guide individual, but they are not authoritative. The community may provide guidance and aid but in ultimately the individual or perhaps the family must make the decision. Yet the individual or family must also understand itself as part of a broader community if it wishes those decisions to be influential beyond the narrowest circle.

Borowitz felt strongly that the individual Reform Jew within the broader community should be creative and should form such new rituals as are an appropriate expression of the basic ethics and morality of Judaism and which will make them live in our time. This is especially important as no real American Jewish way of life has yet evolved and it is still being created.

As Borowitz looks at our broader influence on the stage of history he feels that all efforts to bring Israel and mankind closer to the Kingdom of God require covenant. It is the covenant which becomes dominant form of expressing the Jewish people's attempt to reach God. That is shown most clearly by the manner of celebrating the holiday of the covenant, **Shavuot**. He stress both the personal and communal aspects of that holiday. (38)

Eugene Borowitz is perhaps clearest in his emphasis on covenant and his stance on **halakhah** in the three volumes **Reform Judaism Today**, which provide the background for the "Centenary

Perspective" adopted by the Central Conference of American Rabbis in 1976. There he discusses both autonomy and the diversity in Reform Judaism as well as the extreme positions taken by Alvin Reines and Jakob Petuchowski. He avoids the traditional term **halakhah** as he feels that its use is often misleading because it creates a sense of authority which does not or should not exist. For him it is only a series of traditions of the past which may create ties with other Jewish groups but which are not authoritative. He feels that any other use of the term **halakhah** is "intellectually irresponsible and perhaps even deceitful."

Borowitz continues by stating that he is not sure how discipline can be reestablished in the group devoted to personal autonomy; he does not find **halakhah** compatible with Reform Judaism. That position is expressed equally clearly in his book. (39) As he views the Jewish world, he feels that volunteer observance by the individual is the only hope for our age. His criticism of some other movements within the Jewish community like the Conservative Judaism had already been anticipated by Mordecai Kaplan a generation earlier. His analysis of the extremes of Reform Judaism is equally critical and he does not find them acceptable either. So he returns to the existentialist covenantal position. "This approach does not restore Jewish law to us or the sense of discipline action connected with law. I do not see how we can do that theoretically or practically. Law and autonomy are incompatible as long as we are not in the days of the Messiah. We modern Jews, therefore, stand in a post-halakhic situation. This is one of the keystones of our liberalism. Yet it is important to overcome the anarchy which autonomous individualism can lead

to in so pluralistic time as ours, since our covenant relationship to God is as a people, it implies some common way of Jewish living." (40) Actually Eugene Borowitz is not entirely sure that we are living in a post-halakhic world perhaps it is a pre-halakhic situation in which we found ourselves and "a day might come when a sufficient number of Jews trying to live in covenant come to do things in a sufficiently similar way that their customs begin significant for them and other Jews to take into account in determining their Jewish duty." (41) Borowitz's covenant is based upon the individual's commitment expressed more in a theoretical than in a practical halakhic manner.

As we turn to Emil Fackenheim (1916 -) we see a figure who was educated in Europe but has spent most of his adult life in North America and now resides in Israel. His philosophical works deal with post-Kantian issues and of course with the Holocaust. Halakhah plays a definite role in his Jewish thought. It is the response in the God-Israel relationship, "Moral law, mediated through the leap of faith, becomes the divine law to man. Halakhah is Jewish custom and ceremony mediated through the leap into Jewish faith; and it thereby becomes the divine law to Israel." (42) For him halakhah is the human response and in a sense Jewish gift to God. The laws have a potential of becoming divine. Fackenheim differentiates between law and commandment. For him the "law discloses only itself. A commandment discloses its giver along with itself. Obedience to a law does not necessarily create a relation to its giver. Obedience to a commandment necessarily creates such a relation. In Judaism revelation is commandment rather than law." (43)

The commandment presents a challenge to each individual Jew who through his free will can either accept or reject that challenge. Upon acceptance, that individual becomes a part of the Jewish people. For Fackenheim revelation is expressed through the commandment not through mysticism; it is the commandment which reveals the true pattern of Judaism. (44) As a liberal he sees the "Torah as the human reflection of a divine revelation, rather than itself literal revelation, the liberal can regard it as a human book which is the legitimate object of historical criticism, and whose commandments do not have, in letter, authority over him. But he may at the same time regard it as the prime means of access to a divine revelation which addresses him as much as his ancestors." (45)

These philosophical views of the **halakhah** are very much at variance with each other. They take us from the position of extreme autonomy to one of emphasis upon Jewish people. Some have dealt with the tradition in a semi-mystical view and others sociologically. Borowitz may be correct that the core problem lies in possessing no broadly accepted system of philosophy upon which we may agree as a basis.

It would be wrong to conclude this segment of my paper without a reference to the Winter issue of **Judaism** (1980) which was largely devoted to eighteen perspectives of Jewish law. Orthodox, Conservative, Reform, and Reconstructionist scholars reacted to a previously published paper by Robert Gordis. The points of view represented go from the totally static of J. David Bleich to non-halakhic stance of Alvin Reines. This effort toward broad discussion will be helpful for the future development of **halakhah**. Philosophy and

theology have provided one avenue of approaching **halakhah**. The other has always been given through the practical responsa or codes. Let us now review that avenue.

The position of the **poseq** (decisor) has changed drastically within the Reform and Conservative movements during this century. In the Reform Movement for example despite the establishment of the Responsa Committee in 1907 no reponsa report appeared in the **Yearbooks** till 1911. The various chairmen who headed this committee in the early part of the century were faced by only a small number of questions which they felt required a formal answers. There may have been minor questions addressed to them as well but their number was probably rather small. The situation has changed during the tenure of Solomon B. Freehof and even more so during my tenure. The number of questions has vastly increased so that over one hundred questions are addressed to me each year; about half of them require a formal written responsum. In addition a score or more continue to come to Solomon B. Freehof.

Although in theory each chairmen of the Reform Responsa Committees have worked with their committee in practice that has not proven to be practical. Individual styles of the chairmen, the pressure of the work as well as the practical nature distributing a large volume of material for committee discussion has limited the affect of the committee. I have used it with those responsa of wider import and then incorporated suggestions into the responsa themselves whenever it seemed appropriate. However all the responsa of the Central Conference of American Rabbis have been

written by the chairmen and essentially reflect the tendencies of the chairman.

The fact that responsa were written from a Reform background indicates that **halakhah** remains important despite the very different approaches taken by each rabbi. Autonomy versus discipline was the first question which each author had to decide. The former was given a secondary place.

Only Solomon B. Freehof among Reform respondents (1892 -) has done some extensive theoretical writing on the **halakhah** which may provide us with some insight into his stand on the **halakhah**. It is appropriate to review his thought as we honor him through this symposium.

His introductions to volumes of Reform responsa and kindred works as well as various other essays indicate his position.

The introduction to **Reform Jewish Practice** (1944) present a picture of historic development and justification for change. Judaism has always been a religion with a different kind of relationship between deed and creed than expressed in Christianity. Solomon B. Freehof clearly indicates that the end of the introduction that the book is not intended to be a modern **Shulhan Arukh**. "It does not claim to lay down the norm of practice, except in two or three disputed situations where some preference must be made." (46) In that book as well as the second volume, Solomon B. Freehof presents the rabbinic background for numerous changes made by Reform Judaism. The two slim books intended to make the Reform Jew aware of "the great reservoir of Jewish law and custom preserved in the **halakhah**." (47) The author obviously felt that creative

halakhic application had a future.

In his book of **Reform Responsa**, the first of nine volumes of responsa, Solomon B. Freehof points out that the ethical idealism and the Biblical foundations of Reform Judaism could no longer be considered sufficient. There had been a cry for legal discipline. In an essay published in 1960 he analyzed Orthodox Judaism and the vast changes which have occurred not only in its expanding phase through the earlier centuries but also in the present age when massive segments of tradition are not longer observed. Most of its civil law and criminal law remains theoretical. As the entire system considers each segment of detail on the same plane as every other segment this is astonishing. Freehof has described this as following the Talmudic dictum: "As it is a duty to say what will be heard and obeyed so it is also a duty not to say what will not be heard and obeyed" (Yeb. 65b).

Freehof considered Conservative Judaism as an effort to meet the challenge of Orthodox non-observance. Conservatism "means to be rooted in the soil of history and to grow under the sun of legality." (48) However as Freehof points out there are problems connected with this as the task may prove too great and the bitterness of the Orthodox too difficult to overcome. Vast areas of Jewish law can simply not be reinterpreted in a manner applicable to the twentieth century and must be changed or abandoned.

Solomon B. Freehof sees Reform Jews as those who do not observe large areas of the law, but nevertheless consider themselves as religious

individuals when part of the religious community. In this way they differ from other non-observant Jews as Reform Judaism grew in opposition to old line official rabbinic Judaism. Its pioneers were anti-rabbinical and so also rejected the rabbinic literature which was the source of traditional authority. This led to an emphasis on the Bible. However that soon proved insufficient as Biblical Judaism had no liturgy, no family rites and no fully developed pattern of life. The Bible always had to be interpreted within the framework of tradition. Furthermore, higher Biblical criticism also placed much of the Bible into a more human setting. Freehof therefore felt that we "must now grope toward a new definition of authority and revelation." (49) He repeatedly demonstrated that Reform Judaism in all of its manifestations has leaned heavily on the rabbinic past which of course involves *halakhic* literature. He has asked the usual questions about authority, the nature of our selectivity and the sense of obligation or lack of it felt among our people. For him "Reform response are not directive but advisory." (50) Furthermore they intend to be more liberal and affirmative than those of an Orthodox poseq.

In the second volume of responsa (*Recent Reform Responsa*, published in 1963, Solomon B. Freehof discussed some of the historical reasons for a renewed interest in *halakhah*. He felt that it lay partially in the expansion of the Reform Movement, the traditional roots of many of its members and the wish to establish some order in a chaotic situation. This has moved us away from excessive emphasis on the Bible and prophetic Judaism which did serve to establish the "centrality of religious morality." Yet rabbinic literature and *halakhah* must provide the practical expression for our ethical idealism. "We are

increasingly aware that the totality of Judaism deserves the reverence our movement and all Jews." (51)

In **Current Reform Responsa**, published in 1969, Freehof the brief introduction emphasized that "we could not obtain our independence without denying and defying that (rabbinic) authority, but now we are strong and we can afford to be much more tolerant of the authoritative past." (52) Freehof here recognized various currents within the Reform Movement some of which have moved toward **halakhah** while others away from it. He pointed to various issues of conscience in which **halakhah** can not determine our course of action, for example, the rights of women which we have championed. In this introduction he stated that we will move toward a Reform code slowly as various **mitzvot** become accepted; he felt that the volumes of **responsa** were part of this process. "The **halakhic** literature is the grandest repository of Jewish thinking and feeling and what we may find in it as answer to the various questions which we ask may not, indeed, govern our lives but will at least serve us as a guide." (53) Freehof's fourth volume, **Modern Reform Responsa**, published in 1971, contained a largely historic introduction and then again dealt with the changes both sociological and religious which have affected traditional Judaism as well its reaction to the Reform movement. He related the position of modern American **responsa** to the first vigorous **halakhic** attack on Reform Judaism presented by **Eleh Divrei Hab'rit** (1818).

In the volume, **Contemporary Reform Responsa** (1974) Solomon B. Freehof was primarily concerned with distinguishing Reform movement from

Orthodoxy. From an orthodox point of view the kind of choices that we continue to make about ritual are unacceptable, while from a Reform point of view, they lead to an attachment to tradition and a warmer feeling toward it. Basic distinction however remains as we do not accept the entire body of the commandment as divine. As Freehof analyzes what we accept, what is accepted and what is rejected, he pointed out that Reform has accepted a greater number of positive commandments which have a direct impact as well as negative commandments with a direct moral impact and most of all in *minhagim*. He felt in this way Reform had moved from an age dominated by philosophy to one in which psychology was the greatest importance. Our Reform reunion with *halakhah* reflects an appreciation for rabbinic literature as well as increased comradeship with the traditional community.

In *Responsa for our Time* (1977) Solomon B Freehof principally dealt with responsa as a source of history both for the incidental facts that they reveal about Jewish life and the mood of religiosity or neglect which they reveal. His accumulated volumes of Reform responsa provide the same kind of insight into our changing religious life in the middle of the twentieth century. The same theme is continued in his introduction to *New Reform Responsa* (1980) with its emphasis on Reform as a continually changing religion rather than one which remains eternally and everywhere the same.

The theme of *halakhic* neglect among traditional Jews has been expanded in a brief article in *Judaism* and into a small book which as yet unpublished. We can see from these

introductions to the responsa volumes that Solomon B. Freehof developed an approach to halakhah as guidance not governance.

We should not be surprised that the other Reform scholars who have written responsa have avoided a philosophical rationale. Jacob Lauterbach and Jacob Mann were primarily historians, Israel Bettan's principle interest was midrash and homiletics. With the exception of Kaufman Kohler, first chairman of the Responsa Committee, philosophy and theology were not their major concerns. The responsa therefore were written from a practical and pragmatic point of view.

Outside the scope of this paper, but worth noting are the two guide books recently published by the Committee on Reform Jewish Practice. *The Gates of the Season* and *The Gates of Mitzvah* have made broad decisions on practice for the Reform movement. Some have been based on responsa, but the majority on the discussions and decisions of the committee. In a sense they have taken upon themselves the role of a poseq. As these are publications of the Central Conference, their role is different than Solomon Freehof's *Reform Jewish Practice*. The Volume, *Rabbinic Authority*, published by the Central Conference of American Rabbis has also set a different tone for halakhic discussions. The *Journal of Reform Judaism*, of course contains numerous essays on halakhah, but most of them are too brief for a sustained analysis. Since 1986 each issue has also included a responsum.

Conservative Judaism in Europe and during its early days in the United States produced

responsa and nothing that could be called a unified theory of *halakhah*. Zacharias Frankel devoted considerable energy to *halakhah*. His *Darkei Hamishnah* (1859) provided a historical foundation for the future study of *halakhah* in conjunction with various essays by him and others in the *Monatsschrift fuer Wissenschaft und Geschichte des Judenthums* (1851-1867) which he founded and edited. The rabbinic emphasis of Frankel became clear through the curriculum of the Jewish Theological Seminary in Breslau which he head from 1854 to his death in 1875. Half the courses dealt with rabbinics and almost entirely from a non-critical point of view during his tenure as director. Frankel set the tone for *halakhah* along with change, but he provided no clear criteria for such change.

The movement in Germany where it was part of the general liberal Jewish scene produced no responsa. In the United States the early energy of the movement was taken by its establishment and practical struggles with Orthodoxy, so nothing along these lines emerged.

As we turn to the later Conservative efforts in this direction we must immediately recognize the academic achievements of the scholars who have served the movement. Louis Ginsberg, Saul Lieberman, Boaz Cohen and Max Kadushin, among others have added to our understanding of the past. Their brilliance has been widely recognized. However, no consistent philosophy of Conservative *halakhah* has yet emerged. The volume *Conservative Judaism and Jewish Law* (1977) makes this clear. Theoretical and practical issues have also been treated in *Conservative Judaism and the Proceedings of the Rabbinical Assembly*. The widespread concern and diversity of opinion is

clearly evident. The differences between the right and left wing may restrain the movement from broad-----decision. We are somewhat limited by the reluctance of the Committee on Law and Standards to publish its responsa. Some have appeared in full in the **Proceedings of the Rabbinical Assembly** while only summaries of others have become available. The committee, established in 1927 has been served by a distinguished group of chairmen. The size of the committee has fluctuated; it has generally met at least several times a year and during special periods once a month. In the early days it functioned and was looked upon as a **Shulhan Arukh** committee, (55) sometimes subsequently it has been an instrument of change through **takanot**; on other occasions, this has not been considered its function. Prior to 1966 majority and minority opinions were issued with some regularity. This was done without the names of subscribing rabbis attached. The final decision then rested with the congregational rabbi. Unanimous decision are morally binding upon the entire movement. From 1966 to 1972 another system was tried and authorized responsa were issued with the names of members of the committee who were in agreement as signatories. The system of majority and minority opinions was reinstated in 1972. The struggle between the right and left wings of the Conservative movement have been fought here as have the battles between the Seminary faculty and the leadership of the Rabbinical Assembly.

The Law and Standards Committee has issued some decisions without any written documentation. Responsa have also been written for the committee and remain in its files without any

vote or action on them having been taken. By 1980, 20 responsa have been adopted unanimously; 30 have been adopted with a majority and a minority opinion. 79 additional responsa have been submitted in written form, but were not voted upon. 58 rabbis had participated by writing responsa; only a handful had written more than a few and most of them led to no action. Among them are Isaac Klein with 16, Ben Zion Bokser with 12, Aaron Blumenthal with 9, Philip Sigal with 8, and a few others with lesser numbers. This activity demonstrates a major interest in responsa, but also shows its limits. A glance at the subjects of the responsa shows that the majority have dealt with ritual matters and only 18 with broader concerns. These simple statistics which obviously need refinement, demonstrate that there is a major difference between concern over **halakhah** and the ability to react. It is possible that the majority of the Conservative rabbis make their own decisions locally and do not need to ask anyone for guidance; but judging from questions from Conservative colleagues which Solomon B. Freehof and I have received that is unlikely.

Concern over the **halakhah** is a regular theme of the **Conservative Judaism**; it has also been expressed in a broader format in **Judaism** which has been magnificently edited for many years by Robert Gordis. Various Conservative have written studies which contain sections on **halakhah**; they reflect the tensions and problems within the Conservative movement on this issue.

The leading practical **halakhic** authority of the American Conservative movement has been Isaac Klein whose book of responsa and his volume a **A Guide to Jewish Religious Practice** have formed a unified body of Conservative

halakhah. For Klein the **Torah** is divinely inspired; the **halakhah** has a central role in Jewish life; it can grow and is "not frozen". (56) Along with the traditional principles, Klein invokes history and sociology as part of the process of change, but "within Jewish law itself are principles that help it to grow and adjust." (57) Klein has rejected non-halakhic solutions to contemporary problems as well as new legislation which might adjust the system much more quickly. (58) He, for example, did not agree with the decision of the Committee on Law and Standards which permitted driving on **Shabbat**. (59)

It was more important for him that law possessed stability as only this provided the necessary authority. Isaac Klein made his decisions within this framework; only three of the fourteen responsa in his volume dealt with matters outside the realm of ritual. His volume **A Guide to Jewish Religious Practice** is a major effort to provide a code of practice for the Conservative movement in the area of religious ritual. The sources have been provided, customs along with some variations are noted, modern changes have been documented. It is thus a valuable work not only as a guide, but also as it marks where the movement stands at this moment. By publishing this work as an individual, the Conservative movement has chosen to take the traditional route of the previous historical codes.

Proper thoroughness would demand a lengthy discussion of the responsa and philosophical papers of David Novak, but as he is a participant in this symposium, let me be brief. His essays indicate a more traditional approach to Conservative Judaism. For him the **status quo** is

normative and the burden of proof lies with those who wish to make changes. (61) Changes have taken place throughout our history, but our understanding of them must be from this point of view. The halakhic process is basic to him for Conservative Judaism irrespective of the differences which exist within the movement. (62) His two volumes **Law and Theology in Judaism** (1974 and 1976) contain numerous essays which are not quite responsa, but virtually follow the same path. They demonstrate great erudition and a willingness to operate within the framework which the author has set for himself. David Novak's volume **The Image of the Non-Jew in Judaism, An Historical and Constructive Study** (1983) demonstrates this scholar's desire to deal with practical issues which lie beyond his earlier efforts. They can become the foundation for a new understanding of Jewish-Gentile relationships. This work provides the foundation for such a new approach.

David Novak's first volume, **Law and Theology in Judaism** (1974) presents a series of expanded responsa and thus a combination of practical and philosophical approach to modern halakhah. The thesis of this book is that "halakhah (law) and agadah (theology) are not only indispensable elements of Judaism in and of themselves, but that their interrelationship is equally important." In keeping with this thought, there is no general theoretical introduction, but theory and practice are tied together in the essays. Novak mentions his closeness to both Abraham Heschel and Boaz Cohen; he has been influenced by the latter's view of history and the former's theology. The questions which he has chosen for his responsa and the careful restrained answers presented indicate that change is possible, but should be

made hesitantly. He would, for example, not eliminate the traditional statement "who has not made me a woman" from the liturgy, but advises a woman who finds it offensive not to read it. (63) In his answer to the question "May a Physician Perform a Circumcision?" Novak is guided ultimately entirely by the pragmatics of the situation. While in "Funerals in the Synagogue", he provides guidance without a directive.

David Novak's second volume with the same title also deals with the problem of **halakhah** and history; the latter must serve the former for the enterprise to remain Jewish. In his work Novak has dealt with the internal historic growth of **halakhah** as well as the historic external influences upon it. In his view "history (or theology) can condition a halakhic judgement. ... To use history as a ground for **halakhah** is to eliminate revelation as the trans-historical ground of the law. Without the grounding of revelation, **halakhah** loses its ultimate meaning. And to use theology as the immediate ground of a halakhic judgement is to deny **halakhah's** own immediate authority." (64) The responsa in the volume illustrate the same cautious approach whether dealing with women's rights, **kashrut**, or the priestly blessing. Novak criticizes the many Jews for whom "liberalism has replaced the Torah and Jewish tradition, and even reason, as the source of moral authority".

In his **Halakhah in a Theological Dimension** (1985), David Novak again deals with a variety of practical issues as for example "Women in the Rabbinate" and uses it to discuss a whole range of additional equalitarian issues which are bound to be raised. The basis of his thought is presented in the opening essay "Authoritative and

Changing." Halakhah is the normative principle for David Novak. "However, the authority of halakhah as a normative principle cannot be consistently maintained if the principle of change is elevated from a description to a prescription, as some traditionally inclined liberals would like to do." (65) "Thus, if halakhah is to remain law, the unchanging element must be primary and the changing element must be secondary to it." (66) If this is not so then either there is no authority for halakhah or its former authority is preempted by ethics. This, of course, leads to Judaism as primarily reacting to external sources. "Since Judaism is so elitist, particularistic and heteronomous, such ethical grounding of it clearly leads to the dismantling of almost everything in it which make Judaism unique. Much of Judaism cannot be justified on such ethical grounds, certainly not the halakhic system, as the example of Reform Judaism indicates." (67) Going in this direction leads to a hopeless effort to establish a system of Jewish ethics primarily on the agadah, which the agadah itself cannot sustain.

For Novak a historically oriented approach has become dominant. "The halakhic process stand between the revelation of Sinai and the full redemption of the days of the Messiah. The affirmation of revelation (an adequate theory of which is almost always absent from both fundamentalist and liberal rhetoric), as mediated by Jewish history, means that the halakhah is in substance the commandments of God as men and women attempt to fulfill them. Change then, is called for when the stastus quo prevents us from doing a mitzvah as fully and devotedly as we might. This often calls not only for new practical applications, but for new theories as well. ... The dynamics of recent history requite more

than an acceptance of the past per se as automatically authoritative. Faith must be more than antiquarianism. Revelation presents a source of authority which transcends the customary usage of any generation." (68)

As we review the world of the liberal poseq we can see that it remains strangely limited. The Conservative movement which should have a large responsa literature, must yet develop it. Thus far internal strife has prevented successful efforts along these lines. On the other hand responsa in the Reform movement have grown in importance and the movement as a whole has gone in this direction.

The posqim in neither of the liberal movements have more than a working philosophy, largely pragmatic in its orientation. There is general agreement on the importance of halakhah for modern Judaism. Its divine origin is not questioned nor is the historical process of change, but the nature of that change and how such changes are to be made in our time is very much debated. Furthermore there is also a great difference on the binding nature of the final decision. Seen from a philosophical point of view, these are major weaknesses, yet pragmatically the system seems to work and be in consonance with aspects of the rabbinic past. Even while we await a philosophical rationale, we continue to make decisions and perhaps that is the only way we can proceed.

Notes

1. Alexander Altmann, *Moses Mendelssohn* pp 381f; 486f.
2. W. Jacob ed., *The Pittsburgh Platform in Retrospect*, pp. 25ff.
3. Noah Rosenbloom, *Tradition in an Age of Reform*.
4. A. H. Friedlander, *Leo Baeck, Teacher of Theresienstadt*, p. 190.
5. Hillel Goldberg, *The Early Buber in Jewish Law, Tradition*, Spring, 1983, p. 66.
6. M. Buber, *The Eclipse of God*, p. 129 ff; *Moses*, p. 187 ff.
7. Maurice S. Friedman, "Revelation and Law in the Thought of Martin Buber," *Judaism*, V. 3, p. 14.
8. Martin Buber, *Moses*, p. 135.
9. Martin Buber, *Israel and the World*, p. 83.
10. "Martin Buber and the Law", *Journal of the Central Conference of American Rabbis*, April, 1971, p. 41.
11. Franz Rosenzweig, "The Builders: Concerning the Law," *Jewish Learning*, pp. 79 ff.
12. M. M. Glatzer on *Jewish Learning*, pp. 111, 119, 122.
13. *Relation and the Law*, *Ibid.*, p. 85.
14. F. Rosenzweig, *Kleinere Schriften*, pp. 109 ff, 120f.
15. "Toward an Understanding of Halakhah," *Yearbook of the Central Conference of American Rabbis*, V. 63, pp. 686 ff.
16. *Conservative Judaism and Jewish Law*, p. 140.
17. *Ibid.*, p.141.
18. *Ibid.*, p. 143.
19. *Ibid.*, p. 147.
20. *God in Search of Man*, p. 344.
21. *Ibid.*, p. 274 f.
22. A. Heshel, *The Genesis of Faith*, p. 207.
23. *The Insecurity of Freedom*, p. 206.
24. *Understanding of Halakhah*, p. 150.
25. *God in Search of Man*, pp 328, 338; *The Insecurity*

- 86f.
26. **God in Search of Man**, p. 144.
 27. **Judaism as a Civilization**, p. 433.
 28. For an analysis see Richard Hirsh, "Mordecai Kaplan's Approach to Jewish Law," R. A. Brauner, ed., **Jewish Civilization: Essays and Studies**, Vol. II, pp. 155 ff.
 29. M. Kaplan, **The Future of the American Jew**, p. 418.
 30. "The Future of the American Jew" **Conservative Judaism and Jewish Law**, p. 17.
 31. *Ibid.*, p. 22.
 32. *Ibid.*, p. 25.
 33. *Ibid.*, p. 18.
 34. E. Borowitz, **A New Jewish Theology in the Making**. p. 206.
 35. "Liberal Jewish Theology", **Yearbook, Central Conference of American Rabbis**, 1977, p. 139.
 36. "Toward A Theology of Reform Jewish Practice", **Journal of The Central Conference of American Rabbis**. April, 1960, pp. 27 ff.
 37. *Ibid.*, p. 30.
 38. "On Celebrating Sinai", **Journal of the Central Conference of American Rabbis**, June, 1966, p. 112 ff
 39. **Choices in Modern Jewish Thoughts - A Partisian Guide**, pp. 243 ff.
 40. *Ibid.*, p. 243.
 41. "Liberal Jewish Theology", **Yearbook, Central Conference of American Rabbis**, 1977, p. 167.
 42. **Quest for Past and Future - Essays in Jewish Theology**, p. 110.
 43. E. Fackenheim, "The Dilemma of Liberal Judaism", **Quest for Past and Future**, p. 143.
 44. *Ibid.*, p. 145.
 45. *Ibid.*, p. 146.
 46. *Ibid.*, p. 15.
 47. **Reform Jewish Practice V .II**, p. 7.
 48. S. B. Freehof, **Reform Responsa**, p. 13.
 49. *Ibid.*, p. 17.
 50. *Ibid.*, p. 2.

51. **Recent Reform Responsa**, p. 11, also p. 2.
52. **Current Reform Responsa**, p. 3.
53. **Ibid.**, p. 7.
54. **Reform Judaism and the Legal Tradition**. The Tintner Memorial Lecture of the New York Association of Reform Rabbis.
55. **Proceedings of the Rabbinical Assembly of America 1953**, p. 66.
56. Isaac Klein, **Responsa and Halakhic Studies**, p. 128.
57. **Ibid.**, p. 130.
58. **Ibid.**, p. 134.
59. **Proceedings of the Rabbinical Assembly of America 1950**, pp. 177 ff.
60. **Judaism**, Winter, 1980, p. 40.
61. **Judaism**, Summer, 1977, p. 307.
62. **Ibid.**, p. 20.
63. **Law and Theology in Judaism**, Second Series, 1976, p xv.
64. **Ibid.**, p. 6.
65. **Ibid.**, p. 7.
66. **Ibid.**, p. 7.
67. **Ibid.**, p. 9f.