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# POLITICAL CONFLICT AND COOPERATION: POLITICAL CONSIDERATIONS IN JEWISH INTER-DENOMINATIONAL RELATIONS, 1955—1956*

## INTRODUCTION

**In the history of the Jewish people there always were agreements and disagreements with regard to ritual and dogma. The disagreements precipitated sects during the Second Commonwealth, the Middle Ages, and even the early modern period, and these sects have been the subject of extensive research. The contemporary period, however, has received little attention, and more particularly the relationships between different groups within the so-called orthodox camp and, in turn, their relationships to non-orthodox groups. The views held by the different factions have yielded a rich literature but the position of each *vis-a-vis* its opponents still requires reporting and analysis.**

**For example, in the period between the two world wars two highly respected spokesmen of American orthodoxy articulated two directly opposite points of view. And American orthodox Jews followed one or the other of these spiritual leaders. The highly revered Rabbi Moshe Feinstein was asked whether it was halakhically proper for orthodox Jews to join with non-orthodox Jews in the formation of a community federation to raise funds for distribution to sundry charitable causes. (See *!grot Moshe,* "Yoreh Deah" [1959] 296-9.) His ruling was that it is forbidden to do so unless those in charge of the distribution of the funds are orthodox Jews. Moreover, if any of the funds were to be used for the support of causes sponsored by reform and conservative Jews then orthodox Jews would offend against the *halakhah* insofar as their contributions would aid and abet the teaching of subversive doctrines to children by non-orthodox rabbis. The sin is a heinous one: "unless the participation of orthodox Jews (in the federation) would help orthodox causes to acquire more than the orthodox Jews gave. Under such circumstances it could be held that orthodox Jews were not helping the causes of heretics since they were**

This article constitutes a personal memoir concerning an incident not yet subjected to scholarly treatment. During the period discussed (1955-56), the author was Vice-President of the Rabbinical Council of America (eds.).

**diminishing the amount the heretics would be able to spend" (my own translation). Rabbi Feinstein also held that weddings at which reform rabbis officiated could hardly be deemed valid unless it was known that two observant orthodox Jews beheld the ceremony at close range and could thus be deemed competent witnesses. In the event of the termination of marriages solemnized by reform rabbis it may even be that no *get* (religious divorce) was required. *(Igrot Moshe,* "Even ha-Ezer" [1961], 177-80.)**

**These two responsa of Rabbi Feinstein are cited less for their relevance to the central theme of this paper and more for the point of view toward reform Judaism that they reveal.**

**By contrast, one can cite the view and practice of Dr. Samuel Belkin, the late president of Yeshiva University. He was very much committed to the unity of the Jewish people and the need for mutual respect amongst rabbis of the most diverse theological and halakhic positions. One way in which he justified his stance was to advance the proposition that in matters of policy the laity shall have a voice and, of course, in the overwhelming majority of instances, the orthodox Jewish laity wanted cooperation with non-orthodox Jews and, indeed, so deported themselves.**

**In his *Essays in Traditional Jewish Thought* (Philosophical Library, New York [1956], pp. 138-40), Belkin distinguished between "the problem of the authority of strict *halakhah,* and the problem of the authority of policy." With regard to the former, the great masters of the Talmud and Codes must render the final decision. But "how one should live in accordance with the *halakhah* is a different matter entirely." The controversy between the Mizrachi and the Agudath Israel was cited as one illustration of a "matter of policy" and "when questions of policy arise, the decision should not be made by one person or by one organization. Such decisions should be referred to the leading authorities in *halakhah,* members of the practicing rabbinate, and also to lay leaders who are concerned with the preservation of orthodox Jewry."**

**Not many years were to pass before the contrasting views of these men would find expression in an unfortunate chapter of American Jewish history, which this essay aims to describe and analyse.**

**The conflict was essentially non-ideological, and not even religious in the sense that differences in religious doctrine and canon law lay at the heart of the controversy. Instead the conflict was political in nature. Would one religious establishment risk the implication that a competing religious establishment was entitled to legitimacy? The conflict was political in the same sense that states often deny legitimacy to one political party or another — usually communist parties. It is for that reason that it merits consideration in a volume devoted to political conflict in the Jewish community and the Jewish state.**

**Furthermore, it was a conflict in which participants made decisions not because of their religious convictions as individuals but rather as defenders of establishment interests. It was neither one's creed nor one's conception as to what the *halakhah* requires that determined one's position, but rather what was best for the establishment of which one was a part. That, too, made the controversy political in character. And the result was disastrous — to the discredit of American orthodoxy, and a major cause of one of Israel's problems in the present.**

**Unfortunately it is difficult to document the facts. Most of the important meetings were held in secret; the principals met at midnight without the benefit of recorders of protocols; and what little is available in documents does not do justice to the lion's share of the negotiations, for which there must be reliance on the memory of those who played a part. Nonetheless, the tale should be told for the benefit of a perhaps wiser posterity in the future.**

## THE BACKGROUND

**The Rabbinical Assembly in the United States — whose members are generally regarded as conservative rabbis and not orthodox — proposed to solve several pressing problems of Jewish family law by drafting a new *ketubah* — a new marriage contract which would be used in all marriages at which their constituents would officiate. The change was given considerable publicity and immediately evoked hysterical protests from the orthodox establishment. Some of the protests were based on halakhic grounds — the new *ketubah* might be deemed invalid as a marriage contract. Others, including myself, felt that it was too inadequate a correction for the existing evils in Jewish family law. Indeed, to undertake a "reform" which would do little good, was to place in jeopardy the chance for more radical changes. Many also felt that the suggested change would not be effective because the courts of the United States would not enforce it for constitutional reasons.**

**What became generally known was that the change had the approval of the late Professor Saul Lieberman, one of the greatest talmudical scholars of the century and a Jew whose orthodoxy was beyond question. However, he taught at the Jewish Theological Seminary, most of whose alumni were conservative rabbis, and consequently his proposal was deemed their proposal. What is more, it was commonly believed that Chief Rabbi Herzog of Israel had been consulted and had found no fault with the recommendation. Rabbi Joseph B. Soloveitchik's criticism was mild — he referred to one halakhic problem, clearly a minor one — which months later he admitted that he**

**and Professor Lieberman could correct. Nonetheless, all hell broke loose! It was apparent that the conflict was not based on the merits of the proposal itself but rather on the unmitigated gall of a non-orthodox "establishment" venturing into a domain which had always been regarded as the exclusive preserve of the orthodox.**

**It was apparent from the start that establishment interests lay at the heart of the controversy and not religious concerns. And the danger that the division in the American Jewish community would be exacerbated was clear and present.**

**To prevent this, some of the leaders of the Rabbinical Council — the more progressive of the orthodox rabbinical organizations — began to talk with the leaders of the Rabbinical Assembly, and at the same time Professor Lieberman and Dr. Soloveitchik held secret meetings with each other. The time was ripe for some kind of understanding between the two groups with regard to Jewish family law in order that there be no split which would complicate the lives of American Jews, most of whom were prepared to abide by the *halakhah* in family law and wanted some kind of understanding between the orthodox and conservative leaders, all of whom were committed to the centrality of the *halakhah* in marriage and divorce.**

**From all of the talks, there emerged a very impressive plan which would have attained that unity. The plan provided for the following:**

**1. There would be set up in the United States a national *Beth Din* (court) which would be recognized as the official *Beth Din* of both groups — the Rabbinical Council and the Rabbinical Assembly.**

**2. Its members would be selected by Professor Lieberman and Dr. Soloveitchik, and the *Dayanim* (judges) would themselves provide for their successors in self-perpetuation.**

**3. Both rabbinical groups would delegate to the *Beth Din* exclusive authority to rule on all matters of Jewish family law and neither group would make any decision with regard to family law which was not approved by the *Beth Din.***

**4. The *Beth Din* would be established as an independent corporation whose directors would be laymen responsible for the financing of the operation. They would not act as representatives of either rabbinic group.**

**5. When the *Beth Din* would be established, each rabbinic group would convene a national convention on the same day and simultaneously recognize the *Beth Din* as the exclusive authority in matters of Jewish family law.**

**6. Professor Lieberman and Rabbi Soloveitchik would together revise the *ketubah* projected by the Rabbinical Assembly so that it would have the approval of the *Beth Din* to be constituted.**

**7. The incorporation of the *Beth Din* would be entrusted to a law firm which enjoyed the confidence of both groups.**

**If this plan had been implemented, many important consequences for Israel would have ensued.**

**On Israel's problem "Who is a Jew?" both the orthodox and the conservative movements would have been united, for one *Beth Din* would have spoken for them. It would be unnecessary there to seek a change in the law adding the words "according to the *halakhah*" Reform Jews would remain a clear minority with only rare problems calling for resolution by the Israeli courts. The court cases would, most likely, involve only issues unrelated to *halakhah.***

**In addition, the pressure of non-orthodox Jews on the government, the Jewish Agency, the World Zionist Organization, and their fund-raising arms would be entirely neutralized. It is only the combined pressure of the conservative and reform that makes the problem and the pressure so serious now.**

**The failure of the plan precipitated the alliance of the conservative and reform against the orthodox in the United States and in Israel. And the alliance is an "unholy" one. The reform reject *halakhah* — the conservatives are committed to it. What unites them, therefore, is only opposition to the orthodox. Consequently many conservative rabbis want to split their own movement. These dissidents feel that it is unfair to their point of view to make it appear that they are so close to the reform movement and so distant from the orthodox when, in fact, the opposite is true.**

## THE CAUSE FOR THE FAILURE OF THE PLAN

**It must be obvious that once the plan had the approval of Professor Lieberman and Dr. Soloveitchik, it could not be impugned on halakhic grounds. The objection, therefore, could only come from the fact that orthodox rabbis were cooperating with non-orthodox rabbis. That such cooperation would advance the cause of *halakhah,* prevent abuses in Jewish family law, and even reduce the incidence of bastardy, was not sufficient to save the scheme. What mattered more was the political fact that a modicum of *de jure* recognition would be given to a non-orthodox group of rabbis. And this was one basis for the plan. However, the failure was dramatically linked with another historic event and a none too impressive face-saving justification by the**

**Rabbinical Council to rescue Dr. Soloveitchik from his understandably embarrassing situation.**

**At about the same time, a group of heads of *Yeshivot* pronounced a ban against the participation of the Rabbinical Council and its lay affiliate — the Union of Orthodox Jewish Congregations of America — in any federation with non-orthodox rabbinic and/or lay groups. The ban was also pronounced against membership by orthodox rabbis on boards of rabbis which included non-orthodox members. Rabbi Moshe Feinstein was one of the most celebrated signatories to the ban. Though requested to join him. Dr. Samuel Belkin, president of Yeshiva University, and Dr. Soloveitchik consistently refused. For Dr. Soloveitchik the refusal was emotionally more difficult. Nonetheless, for almost three decades he has held fast and though he incurred the unrelenting animosity of most of those who signed the ban, he remained the chairman of the Rabbinical Council's Halacha Commission and never ruled that the Rabbinical Council should withdraw from the Synagogue Council of America, which had representatives of conservative and reform synagogue and rabbinic groups as well as orthodox ones. Neither did he ever direct the Rabbinical Council to expel its members who were also members of mixed rabbinic groups.**

**The ban was widely publicized in the press precisely when the plan for the joint *Beth Din* was reaching its final stages of implementation. Indeed, the attorney had already prepared the charter for the *Beth Din's* incorporation.**

**In that climate it was impossible to continue. While the plan did not call for cooperation, no one could have thought that anything other than a mutual understanding could have brought it about. On the face of it, the plan required no joint action by the two rabbinic groups involved. Their recognition of the independent *Beth Din* would be on the same day but by separate and independent conventions. The "myth" of separation was not violated. But only the stupid would have failed to sense that behind the separate and independent actions there was a "conspiracy" of cooperation. And so to avoid any possible misunderstanding that orthodox and conservative were engaged in a common effort, the plan had to be abandoned.**

**Yet how it was scrapped is also worthy of consideration. Even before the Executive Committee of the Rabbinical Council could consider it, the scheme required the approval of its Halacha Commission. The recommendation of the Halacha Commission would have ensured acceptance. Otherwise, rejection was inevitable. Rabbi Soloveitchik was chairman of the Commission and his firm stand for the plan was all that was needed. But the ban of nine heads of *Yeshivot* was too recent to be ignored, even if it went unmentioned. Consequently, while the Halacha Commission never approved the ban and to this**

**day sanctions the participation of the Rabbinical Council in the Synagogue Council of America, and does not discipline members who are active in mixed rabbinic groups like the New York Board of Rabbis, nonetheless it rejected the plan for a joint *Beth Din* by a vote of seven to five.**

**One of the principal reasons given — and deemed significant by Dr. Soloveitchik — was the fact that the Rabbinical Assembly would not commit itself to discipline its members who would act in a manner that the *Beth Din* would find objectionable. The organization was prepared to commit only itself. It would take no action that would not have the *Beth Din's* approval, but its members would be free to do as they pleased. In all fairness to the leadership of the Rabbinical Assembly it must be said that they did not rule out the possibility that one day such restrictions on the members might be approved. However, at that time it was too bold a step to take — the group still had many Reconstructionists who were less committed to the *halakhah* than the more recent graduates of the Jewish Theological Seminary.**

**Here again one finds that a political consideration, rather than a *halakhic* one, doomed a very significant plan which would have made the historic family law of Judaism the norm for the overwhelming majority of synagogue-affiliated Jews in the western hemisphere. It was not concern for the *halakhah* that determined the result, but the relationships between synagogue and rabbinic bodies.**

## THE SEQUEL

**Sooner or later it would become necessary for the leadership of the Rabbinical Council of America, or at least its Halacha Commission, to rationalize why it did not yield to the ban of the *Yeshiva* "heads" while rejecting cooperation with the conservative movement in solving what many regard as the most painful and pressing problem of the *halakhah* in modern society — the problem of the *agunah* — the disadvantaged woman who cannot marry because of halakhic disabilities. Why did the view of Dr. Belkin prevail with regard to the ban and why did it fail in the area of family law in which the laity virtually begs for solutions?**

**The distinction was not long in coming and, in fact, there were early indications as to what it would be. When the Rabbinical Council considered participation with non-orthodox rabbis and congregations in religious services celebrating the three hundredth anniversary of the arrival of the first Jews to the United States, its Halacha Commission, led by Dr. Soloveitchik, ruled that there should be no joint services. However, it would permit such a joint non-**

**sectarian observance where the non-Jewish community was to be involved. This was a preview of the now well established distinction between *klapei chutz* and *klapei pnim.* The former involved activity *vis-a-vis* the non-Jewish community. In such matters all Jews must act as one, and denominational or sectarian differences must be avoided as much as possible. However, within the Jewish community, the stance of separation must be maintained. And superficially viewed, Jewish family law involves only the Jewish community and consequently every group must go its own way.**

**Is the distinction based on halakhic principles, sources, authorities, precedents, or the like? None were ever cited and one has reason to doubt that any exist. The American Jewish situation is *sui generis* and history affords no parallel. Yet the fact that the distinction is an original conception does not warrant its dismissal. It may make good sense and constitutes excellent policy. But at best it might be deemed *Da'at Torah* — the wisdom that a Torah luminary would express and certainly revision may be called for in the light of experience. In this connection Dr. Belkin's suggestion that the laity have a voice was not heeded.**

**In many situations the distinction proved applicable. However, in many — perhaps most — it is not easy to determine what issue is of concern only to Jews. All Jews cooperate when their time-honored method of slaughtering cattle is threatened by non-Jewish government agencies. Indeed, with regard to all activity by the states and the federal governments, the Jews usually form a common front. However, is Jewish family law not an issue which one could have foreseen as involving the civil, non-Jewish, courts? Indeed, the very change in the *ketubah* which the conservative movement projected and which precipitated this sad chapter in American Jewish history, visualized the involvement of civil courts. Thus, no one should have been surprised when two decades later a number of matters pertaining to Jewish law were raised in the courts and not always to the credit of Jewish law or its fair name. Law journals and reviews began to take note. The "dirty linen" of Jews was exposed to public view. Alas, the first sin — the rejection of the plan — led to many more.**

## THE OUTLOOK

**It is not suggested that the distinction between *klapei chutz* and *klapei pnim* be abandoned. However, in a society in which there are hardly secrets — everything that happens in the Jewish community is known by the world outside — every issue pertaining to Jewish equity and dignity involves more**

**than the Jewish community. Consequently, almost every instance in which we have a divided house is to our detriment. Yet American Jewry had failed to take advantage of one grand opportunity to achieve a house united.**

**The *ketubah* which the conservative movement had revised and promulgated was considered by the highest court of the State of New York in 1983. This Court decided that the *ketubah* was a binding contract between the parties and the provision requiring the parties to appear before the *Beth Din* of the Rabbinical Assembly was enforceable. There is a possibility that a further appeal will be made to the United States Supreme Court since the husband raised a constitutional issue. He argued that the decision of the court violated the constitutional requirement of separation of church and state and alleged that the civil courts were being used to enforce palpably religious obligations.**

**At the present writing there is no way to predict whether the United States Supreme Court will entertain the appeal, and if it does, how it will dispose of the issue. It is the considered judgment of this writer that a civil court may even order a husband to authorize the writing and delivery of the *get* because the *get* is a totally secular instrument. It makes no reference to God or to His will; no reference to sacred sources; and contains no prayers or even exhortations. Tt contains date and place, the names of the parties, the fact of the divorce and the right to remarry. That Jewish law requires that it be written and delivered with many formalities makes the document no more religious than the formalities in yesteryear pertaining to a seal. That Jewish law requires that it be written exclusively for the parties involved enhances the dignity of the object as personally addressed invitations do in many other connections. Nor is God referred to in the process of the delivery of the *get.***

**That it is a *mitzvah,* a divine commandment to give a *get,* makes it no more religious than the giving of charity, also a divine commandment, or the administration of justice, another divine commandment. The fact that a rabbi will not marry either party unless the earlier marriage is terminated with a *get* makes it no more religious than the fact that he will also not marry them unless they get a civil divorce. Does the civil divorce thus become a "religious" performance? The reference in the bill of divorce to the *dat* of Moses and Israel is not a reference to their faith. Only in modern Hebrew has the word *dat* come to mean religion. Originally it referred only to established custom.**

**There is no reason why courts should not specifically enforce any contractual commitment to give a *get.* What is more, they ought to order it in the case of any couple who were married by a rabbi because such a marriage — entered into with the consent of both — implies an obligation either to stay**

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