

THE WHYS AND HOWS OF CONSERVATIVE HALAKHAH

For the past twenty years I have devoted much of my time to studying and teaching *halakhah* and to writing responsa for Conservative/Masorti Jews. What follows is not the official position of the Conservative or Masorti Movement, but rather the observations of a participant/observer in the making of Conservative *halakhah*.¹

Both Orthodox and Conservative Judaism are committed to the observance of *halakhah*. They share the belief that to be a good Jew one has to undertake to observe the entire *system* of *halakhah*. This is in keeping with the biblical attitude of "*na'aseh v'nishmah*" ["we shall do and we shall listen"] (Exodus 24:7) and with the rabbinic injunction that "the chief thing is not to expound the law but to do it" (*Avot* 1:17). Both groups would agree with the words of Prof. Louis Ginzberg, one of the leading talmudists and halakhic authorities in the Conservative movement for almost half a century: "*Halakhah* or law is far more fundamental in Judaism than *aggadah* or beliefs, for ideas are volatile but practices endure. If Jewish practice goes, virtually nothing remains".²

Nonetheless, there are many differences between the Orthodox and Conservative approaches to *halakhah*. In order to understand the differences, we must address two basic questions: "*Why* observe *halakhah*?" and "*How* do rabbis interpret *halakhah*?".

The "Whys" of Conservative *Halakhah*

The standard Orthodox approach to "why observe *halakhah*" is quite simple: We must observe the commandments because they are Divine in origin; they were given to us in the Torah at Mount Sinai by God himself. A statement by Rabbi Immanuel Jakobovits, late Chief Rabbi of Great Britain, is typical of this approach:

Responsa in a Moment

To me the belief in *Torah min ha-shamayim* (the divine revelation of the Torah) . . . represents a definition of the essence of Judaism as inalienable as the postulate of monotheism . . . *Torah min ha-shamayim* essentially means that the Pentateuch as we have it today, is identical with the Torah revealed to Moses at Mount Sinai and that this expression of God's will is authentic, final, and eternally binding upon the Jewish people...³

And what about all the laws that were added by the rabbis throughout the ages? According to the fundamentalist approach, they too were given at Mount Sinai as we read in the Palestinian Talmud (*Yerushalmi Peah* 17a and *Yerushalmi Megilah* 74d): "Even what a sharp pupil will expound before his teacher has already been given to Moses at Sinai". In other words, every *mitzvah* we perform as Jews was given *innately* at Mount Sinai. When a rabbi expounds a new law or practice, he is simply revealing something that was hidden in the Torah from the start.

However, this simple or simplistic approach is not satisfying to most Conservative Jews. Many do not believe in a verbal revelation at Mount Sinai. They are troubled by three main problems:

- a) In regard to the *act* of revelation, they ask: What happened at Sinai? How do we know that it was God speaking? Perhaps the whole account of the revelation at Sinai is simply a product of someone's imagination. Even if God did speak, how do we know that He was understood correctly?
- b) In regard to the *product* of the act of revelation - that is, the Torah - they ask: Is this the direct transcription of God's words? If so, how do we explain some of the contradictions in its laws? For example, Passover is to be celebrated for seven days according to Exodus 13:6, Leviticus 23:6, and Deuteronomy 16:3, but for only six days according to Deuteronomy 16:8. Exodus 20:21 permits the erection of a sanctuary anywhere, but Deuteronomy 12:4-5 restricts the sanctuary to one single shrine in all of Israel. And what about the variations in its stories, such as the different orders of

The Whys and Hows of Conservative Halakhah

Creation depicted in Chapters One and Two of Genesis? And how do we explain the similarity of some of its laws (e.g. an eye for an eye) and stories (e.g. the flood stories) to those of the nations surrounding the Israelites during biblical times?

And what about the variant versions of the Bible that we have? Even if God revealed His will at Sinai, human beings have copied it and interpreted it throughout the generations, so how can we be assured that what we have in hand is anything like what God gave, and how do we know that our interpretation of it is anything like what He intended?⁴

- c) Finally, the Torah contains laws and stories which raise grave ethical problems. Deuteronomy 23:3 says that a child conceived by his mother from one man while she is still married to another is a *mamzer* who may not marry a Jew "unto the tenth generation". Is it ethical to punish the child and grandchild for the sin of the parents? In Numbers 31, God instructs Moses to take vengeance on the Midianites for the sin of *Ba'al Peor* (Numbers 25). When the Israelites return after having killed only the males, Moses is angry at them and instructs them to kill all the remaining Midianites except for young girls. Are these two problematic passages the will of God?

As a result of these problems, many Conservative rabbis and thinkers do not subscribe to the fundamentalist view presented above. They observe *halakhah*, rather, for a combination of reasons, including many of those we shall innumerate below.

1. The first non-fundamentalist approach says that the *halakhah* is the way that the Jewish people throughout the generations *understood* God's revelation at Mount Sinai and interpreted it. A Jew who observes *mitzvot* fulfills God's will as *klal yisrael* - the collective people of Israel - have understood His will for 3,000 years. The most famous advocate of this point of view was Prof. Solomon Schechter, the founder of the Conservative movement. "It is not the mere revealed Bible that is of first importance to the Jew, but the Bible as it repeats itself in history, in other words, as it is interpreted by

Tradition..." The center of authority is removed from the Bible and placed in the hands of the collective conscience of "Catholic Israel" or *klal yisrael*.⁵

2. The second theocentric approach to observance also stresses the partnership of God and man. The Torah and the *mitzvot* express the eternal *brit* or covenant made between God and the Jewish people. As Moses states at the beginning of Deuteronomy (5:3-4): "It was not with our fathers that the Lord made this covenant, but with us, the living, every one of us who is here today. Face to face the Lord spoke to you on the mountain out of the fire". This statement would not be surprising if it had been made to the people who had been present at Mt. Sinai. But Moses is speaking here to their children, forty years later, and yet he says "us", "every one of us", "you"! His point was that the covenant was not a one-shot deal; it is renewed in every generation as Moses clearly explains at the end of Deuteronomy (29:13-14): "I make this covenant not with you alone, but both with those who are standing here with us this day before the Lord our God and with those who are not with us here this day." And Rashi, the classic medieval commentator, adds: "And with future generations as well." Every time we observe a commandment or *halakhah*, we thereby renew our covenant with God.

3. The third God-centered approach states that *mitzvot* lead us to holiness, they sanctify our lives, and bring us closer to God. This was the approach taught by the Tanna Issi ben Yehuda in the *Mekhilta* (*Parasha 20*, ed. Horovitz-Rabin, p. 320) 1800 years ago: "With each new command, God adds holiness to the people of Israel". This approach is also reflected in the standard formula of blessings recited over *mitzvot* such as Shabbat and Chanukah candles, *lulav*, *tefilin* and *tallit*: "*asher kidshanu b'mitzvotav v'tzivanu*", "Blessed are You O Lord our God King of the Universe *who has sanctified us* with his *mitzvot* and commanded us...". And indeed, the *mitzvot* do sanctify our lives - the mundane becomes special and the profane becomes holy. Shabbat and festivals sanctify time. Blessings and *kashrut* sanctify our meals. The wedding ceremony and the laws

The Whys and Hows of Conservative Halakhah

of *mikveh* sanctify marriage. The laws of *ona'ah* (overcharging) and *eifat tzedek* (accurate weights and measures) sanctify business. Thus, through the observance of *mitzvot*, we strive to fulfill the verse found in Exodus (19:6): "And you shall be unto Me a kingdom of Priests and a holy nation" as well as the verse found in Leviticus (19:2): "You shall be holy for I, the Lord Your God, am Holy."

The next three reasons are ethnocentric. They posit that the *mitzvot* serve to preserve, unite, and strengthen the Jewish people.

1. According to the first approach, the *halakhah* is the "cement" which binds together the scattered "bricks" of the Jewish people. Without this cement, the Jewish people would have long ago disintegrated. The *mitzvot* tie every Jew in the world to every other Jew in the world. In the past few years, I have prayed in synagogues from Los Angeles to Milwaukee to New York, from Haifa to Eilat, and from London to Rome and I have always been struck by the fact that 95% of the services are identical, no matter where you go. Similarly, when I put on *tefilin* every morning, I know that a Jew in Morocco does the same. When I light candles on Chanukah, I know that a Jew in Argentina does the same. When I give *tzedakah*, I know that a Jew in Australia does the same. Thus the commandments help us fulfill the prayer we recite every Shabbat in the *Minchah* service: "Who is like your people Israel, one united nation in the world!".

2. The second people-centered approach stresses the historical continuity of the Jewish people. The *mitzvot* are the golden chain which binds us and our children to our ancestors and the history of our people. Without them we would lose our continuity and we would feel like orphans in history. When I observe Shabbat, I know that Moses did the same and when I wear *tefilin*, I know that Rabbi Akiva did the same. When I give *tzedakah*, I know that Maimonides did the same and when I study Torah I know that the Gaon of Vilna did the same. Jews who observe *halakhah* are plugged in to the history and traditions of their people.

3. The third ethnocentric approach is extremely pragmatic. The greatest threat to the survival of the Jewish people today is assimilation and intermarriage. For thousands of years the *mitzvot*

have protected the Jewish people from these threats and ensured Jewish continuity. The famous Zionist thinker Ahad Ha'am said: "more than the Jewish people has preserved the Sabbath, the Sabbath has preserved the Jews". The same can be said of all the *mitzvot*. Observant Jews do not put Christmas trees in their houses, they do not experiment with cults and drugs, and their children, for the most part, do not marry non-Jews. Therefore, the *halakhah* is an excellent bulwark against assimilation.

The last two reasons I shall outline, are anthropocentric or man-centered. They maintain that each individual performs the *mitzvot* primarily for the personal benefits he or she derives from them.

1. The first such approach views the *mitzvot* as a means of self-discipline, to improve our characters, and to make us better human beings. This idea sounds very modern, but it is not. It was originally emphasized by the Amora Rav who lived in Babylon in the third century. He said: "The commandments were only given in order to refine and discipline the person who performs them" (*Genesis Rabbah* 44:1, ed. Theodor-Albeck, pp. 424-425). Abraham ibn Ezra of twelfth-century Spain concurred. In his classic commentary to the Torah he states (Deut. 5:18): "The main purpose of all the commandments is to straighten the heart". Since heart in Hebrew is frequently synonymous with mind, Ibn Ezra means that the main purpose of all the commandments is to refine and discipline the mind.

This idea was reiterated in our time by Rabbi Harold Kushner, a Conservative Rabbi who lives in Massachusetts:

So many of the rules and rituals of the Jewish way of life are spiritual calisthenics, designed to teach us to control the most basic instincts of our lives - hunger, sex, anger, acquisitiveness and so on. We are not directed to deny or stifle them, but to control them, to rule them rather than let them rule us...The freedom the Torah offers us is the freedom to say no to our appetites.⁶

2. The second and last approach states very simply: Perform *mitzvot* because they are fun! They uplift the spirit and bring joy to the heart.

The Whys and Hows of Conservative Halakhah

This point of view has been popular from the Bible until today. The Psalmist wrote (19:9) three thousand years ago: "The precepts of the Lord are just, making the heart rejoice".

The rabbis of the Talmud developed this idea into the concept of "*simhah shel mitzvah*", the joy of performing a *mitzvah*. Time after time in rabbinic literature we are told that one should perform the commandments with joy. We learn, for example, in the tractate of *Berakhot* (31a): "One does not stand up to recite the *Amidah*, unless he does so out of the joy of performing a *mitzvah*".

When it comes right down to it, many Jews perform many *mitzvot* because they enjoy them. I observe Shabbat because I enjoy observing Shabbat; it is the one day of the week when I can really relax and spend time with my family. When we stay up learning all night at a *tikkun* every Shavuot, we do so because it is fun! And why do we dance like maniacs on Simchat Torah and dress up like clowns on Purim? Because it is fun! And why do we build a Sukkah and eat there for seven days? Because it is fun! Jewish law is not a burden; it is a joy, "*simhah shel mitzvah*" – the joy of performing a *mitzvah*.

In summation, the "why" of Conservative *halakhah* is more complex than the "why" of Orthodox *halakhah*. Orthodox Jews observe Jewish law because they view all or much of it as the literal will of God. Conservative Jews observe *halakhah* for a variety of different reasons. Orthodox fundamentalism frequently leads to rigid interpretations of Jewish law, while Conservative non-fundamentalism frequently leads to more liberal interpretations, as we shall see below.

The "Hows" of Conservative *Halakhah*

The Conservative movement does not have one uniform set of principles guiding the rabbis who make halakhic decisions and, indeed, there are diverse approaches among Conservative halakhic authorities. However, close study of the responsa or halakhic decisions written by Conservative rabbis during the past ninety years reveals six general characteristics of Conservative *halakhah*,

five of which frequently distinguish Conservative responsa from Orthodox responsa. In this section, we shall outline each general characteristic and illustrate it using the responsa found in this volume.

1. One of the mottos of the Conservative Movement is "tradition and change". Changes are not made for the sake of change, but only in order to deal with an urgent or acute problem. Frequently, after examining all sides of a halakhic issue, Conservative rabbis simply favor the tradition over any change. Thus, for example, my responsum on avoiding charity cheaters (pp. 51-57) is based on the opinion of Rav Yehudah (*Bava Batra* 9a) as codified in the standard codes of Jewish law. He said that one investigates when someone asks for clothing, but not when asked for food. I derived from this that one waives investigation when faced with an urgent situation of human suffering, but should investigate unknown or new charities before giving them *tzedakah*. In other words, my answer was based primarily on the traditional approach to this question with some adjustment to modern situations.

2. Frequently, a rabbi has many different halakhic options from which to choose and he or she can rule strictly or leniently or somewhere in the middle. Conservative rabbis usually prefer a lenient ruling to a strict one. This is based on the talmudic teaching " 'You shall keep My statutes and My laws which if a man shall do he shall *live* by them' (Leviticus 18:5) - and not *die* because of them" (*Yoma* 85b) and on the talmudic dictum "the strength of a lenient ruling is greater" (*Berakhot* 60a).

Thus, for example, in my responsum on whether Israel should return territory captured in 1967 for the sake of peace (pp. 31-36), I compared the strict attitude favored by the followers of Rabbi Zvi Yehudah Kuk z"l and *Gush Emunim* to the lenient attitude of Rabbi Ovadia Yosef and Rabbi Theodore Friedman z"l. After examining both sides of the issue, I sided with the latter group and ruled that it is permissible to return territories for the sake of peace.

3. One of the greatest differences between Conservative and Orthodox rabbis is their attitude towards modern sciences and

The Whys and Hows of Conservative Halakhah

methods of study such as history, archaeology, text criticism and medicine. Many Orthodox responsa are totally unaware of or actively opposed to these disciplines, and even if they do cite medical studies, it is almost never with an exact reference to medical literature. Conservative rabbis feel that not only is it *permissible* to utilize modern methods and knowledge to write responsa; it is *essential* to do so because you cannot arrive at a correct halakhic decision until you know and understand the facts.

Thus, almost all Conservative responsa contain a historical-chronological survey of the topic in order to determine if it derives from the Torah, the talmud, the early rabbis or the later rabbis. There is more readiness to change a relatively new *halakhah* or one which was not adopted by the entire community or something which is only a custom. They also utilize other modern sciences and methodologies. My responsum on *shucklen* [swaying] during study and prayer (pp. 25-28) quotes both Mohammed and the Moslem poet Labid as quoted by Ignaz Goldziher in a German article published in 1871. My responsum on the *kashrut* of veal raised on factory farms (pp. 73-77) opens with a description of calf-husbandry based on the books *Calf Husbandry, Health and Welfare* and *The Calf*. My responsa on medical issues such as telling the truth to terminal patients (pp. 57-64), genetic engineering (pp. 67-72) and smoking (pp. 93-96) were only written after reading medical journals such as *Nature, Science, The Journal of Medicine and Philosophy*, and *Journal of the American Medical Association*.

4. The *Shulhan Arukh* written in the sixteenth century by Rabbi Yosef Karo along with the Ashkenazic glosses of Rabbi Moshe Isserles is one of the standard codes of Jewish law. However, it has attained almost canonical status among Orthodox rabbis. Conservative rabbis have great respect for the *Shulhan Arukh*, but do not view it as the ultimate authority because it was written over 400 years ago and much has changed since then in the *halakhah*, in society and in our outlook on life. In addition, when the *Shulhan Arukh* was published, many important halakhic authorities severely criticized those who decided Jewish law according to the *Shulhan Arukh*

without checking the Talmud and the major authorities who preceded Rabbi Yosef Karo.

Thus in a Hebrew responsum published elsewhere, I was asked whether it is permissible to move a Torah scroll for a one-time reading such as at a retreat or in the house of a mourner. Rabbi Yosef Karo ruled in two different places in the *Shulhan Arukh* that one may not bring a Torah scroll to Jewish prisoners even on the High Holidays. Many Orthodox rabbis would simply stop there; I did not. I discovered that Rabbi Yosef Karo's ruling is based on a responsum by Rabbi Meir of Rothenburg which is based in turn on a passage in the Palestinian Talmud which says that one may only move a Torah scroll for a one-time reading for an important person such as a High Priest or an Exilarch. However, according to the *Mishnah* and the Babylonian Talmud, it is generally permissible to move a Torah scroll for a one-time reading. Normally, when there is a dispute between the Palestinian and Babylonian talmuds, we follow the latter. Furthermore, the strict approach was the exception to the rule. Most authorities permitted bringing a Torah scroll to a sick and/or important person or to the house of a mourner or to the house of a groom or for the sake of a group of people.⁷

5. The Conservative movement believes in halakhic pluralism. Not all halakhic questions have one simple answer; sometimes, there are two or more legitimate ways of ruling on a given halakhic issue. My responsum on institutionalizing parents with Alzheimer's disease (pp. 37-42) presents children facing this dilemma with three legitimate halakhic options. My responsum on telling the truth to terminal patients (pp. 57-63) maintains that most patients should be told the truth because they want to know the truth, but makes allowance for the minority of patients who do not wish to know the truth. My responsum on *shucklen* (pp. 25-28) presents seven different reasons for this custom without claiming that only one of them is the correct answer.

6. Finally, Conservative rabbis place great emphasis on the moral component of Judaism and the *halakhah*. The *mitzvot* between man and man are no less important than those between man and God.

The Whys and Hows of Conservative Halakhah

"Keep far from falsehood" (Exodus 23:7) is no less important than "Remember the Sabbath day to keep it holy" (ibid. 20:8). Paying taxes is no less important than sitting in the Sukkah. Honoring one's parents is no less important than keeping kosher.

That is why six of the twelve responsa in this collection deal with moral and ethical dilemmas. Our attitude towards parents with Alzheimer's disease (pp. 37-42) is just as important as our attitude towards Torah study (pp. 43-49). Our attitude towards charity cheaters (pp. 51-57) is just as important as our attitude towards making *aliyah* (pp. 79-82).

In conclusion, Conservative Judaism is sometimes depicted by its opponents as a wishy-washy stream in Judaism somewhere between Orthodoxy and Reform without a clear ideology. It is obvious from the above that Conservative Judaism is halakhically distinct from Orthodoxy and Reform. Unlike the Reform movement, it views the *halakhah* as binding on all Jews. But, as we have seen, it differs from Orthodoxy both in the whys and hows of its *halakhah*.

NOTES

1. This chapter is based on my booklet *Halakhah for Our Time: A Conservative Approach to Jewish Law*, New York, 1991, pp. 9-16, 29-32.
2. Quoted in Seymour Siegel, ed., *Conservative Judaism and Jewish Law*, New York, 1977, p. 51. Regarding Prof. Ginzberg's contributions to Conservative *halakhah*, see David Golinkin, ed., *The Responsa of Professor Louis Ginzberg*, Jerusalem and New York, 1996.
3. *The Condition of Jewish Belief*, Northvale, New Jersey, 1995, pp. 109-110.
4. Elliot Dorff, *Conservative Judaism: Our Ancestors to Our Descendants*, New York, 1977, pp. 111-112.
5. Solomon Schechter, *Studies in Judaism*, First Series, London, 1896, pp. xvii-xviii.
6. Harold Kushner, *To Life*, Boston, Toronto, London, 1993, pp. 51-52.
7. David Golinkin in idem., ed., *Responsa of the Va'ad Halakhah of the Rabbinical Assembly of Israel*, Volume 6 (5755-5758), pp. 81-90 (Hebrew).