

December 17, 1954

A-135

"THE RECENT CONSERVATIVE INNOVATIONS:
I. A GENERAL CRITICAL VIEW"

I. INTRODUCTION.(fr) ~~unmatrixed~~
sec 5-12

It is only with the greatest apprehension that I have undertaken this unpleasant task of discussing with you the recent new innovations by the Conservative movement. It is most painful to have to indulge in such polemics; to have to speak disapprovingly and reproachfully of colleagues and fellow-Jews. But the task was forced upon us by the hasty and unwise action of the Conservative group; it is certainly not of our ^{own} choosing.

II. WHAT THEY DID.

The Conservative action has been preceded and followed up with an enormous amount of publicity throughout the nation. I might add, in passing, that a good deal of it was in poor taste. When implications are made in the national press that heretofore Jewish divorce has been a "frivolous" business; that traditional Jewish Law looks down upon the woman and that traditionally Rabbis have granted divorces without any thought as to reconciliation, it ~~to~~ casts aspersions upon the beauty and decency of Jewish family life for the past 2,000 years. Conservative Rabbis should remember that even the greatest enemies of Jews and Judaism have evinced tremendous admiration for Jewish family life, as Jewish Law and Tradition developed it. It ill behoves a group of national prominence to speak ~~ill of it even by implication.~~
_{evil of traditional J. family life}

In this action, the Conservatives took two giant steps away from their Orthodox co-religionists. These two moves are:

A. Beth Din. Means: a Court of Law. By ~~se~~ They set up 5-man B-D, to be supreme arbiters of Jewish Law and Marriage Counselling. This B-D is exclusive, in the sense that couples married by a Conservative Rabbi must accept jurisdiction of this B-D and of no other Rabbi or Rabbis. A hierarchy all their own.

B. The "Ketubah Amendment".

- 1.) A Ketubah is a Marriage Contract, of either Biblical or early post-Biblical origin, which was originated for the protection of the woman. Contained two main provisions:
*A certain minimum amount was to be paid to the wife upon her husband's death, or in case of their divorce. This discouraged divorce, & safeguarded woman.
*The dowry - i.e. money or goods the wife owned at time of marriage - were guaranteed by husband. i.e. while he could put it to profitable use during married life, the principal had to be returned if death or divorce.
- 2.) This K formed a lien on the husband's property, both real and chattel. i.e. she could collect not only from what he now owned, but from any property he had sold or gifted since their wedding. Thus K provided very strong protection for the wife.
- 3.) The K is traditionally a "unilateral" contract. i.e. is a guarantee by man to wife, and is not a promise by wife to safeguard husband. EXAMPLE: life-insurance today.
- 4.) While conditions could be added to the K, they had to continue the unilateral character of the document, signed by two witnesses and certified by husband, and they had to fulfill all requirements of the Law concerning Conditions.
- 5.) The Conservatives have added the following conditions, which I translate from the Aramaic text of the K:
 - a: Bride & groom agree to (allow each other to) live according to the Torah.
 - b: They agree to accept & recognize authority of the JTS-RA Beth Din to counsel them in living according to Torah and loving & cherishing one another.
 - c: They agree to allow one another to summons the other to appear before the above B-D, if dispute or controversy break out between them, & to allow and accept the discipline (as fines) of B-D if they refuse to appear or obey.

C. The Reaction in General.

Reform has laughed the whole matter off as "academic", since they long ago rejected Jewish Law (Halacha) and Tradition.

Orthodoxy has been unanimous in its condemnation of these innovations. For the first time in many, many years, the entire body of Torah-true Jews, allover the world, has been unanimous in opinion and approach.

III. THEIR SINCERITY.

Even before we begin to voice the beginning of our criticism, let me make it abundantly clear that we do not impugn the motives of the Conservative Rabbinate. We do not question their integrity. We believe that they are sincere and honest in their approach. They want to do good, and they are not "playing politics". We respect them as persons. We shall not be drawn in to a conflict of personalities.

IV. THE PROBLEM.

- A. The Conservative "Ammendment" attempts to alleviate the problem of Agunah (a woman legally prevented from marrying though she doesn't live with a husband) in such a case where the husband and wife have been divorced legally, but where either husband or wife refuse to go along with a GET (J.Divorce), for any one of a number of reasons - either obstinacy, or blackmail, or simply where one party just doesn't want a divorce and was coerced by civil courts.
- B. The proposed "ammendment" has absolutely no bearing on the far more serious and more prevalent cases of Agunah where the husband has disappeared or is missing in action,etc.
- C. It has absolutely nothing to do with raising or lowering the status of women in Jewish law. Any assertion to the contrary is unequivocally untrue.
- D. It has nothing to do with "strengthening Jewish home", and is certainly not calculated to discourage what the Conservatives have unfortunately called "frivolous" divorces. On the contrary, their "ammendment" tends to put their B-D in position of forcing an unwilling party to consent to divorce, rather than prevent one.
- E. Thus their "new K" does none of the things that people have been led to think they do. We Orthodox recognize the fact that there is a problem - as mentioned, in the case of couple who have civil divorce, & one party refuses to consent to GET. The problem exists, & we're working on it. But, as stated, the New K is not what it was heralded as and, quite to contrary, we shall show why it is a destructive force in Jewish life and is completely and unambiguously invalid according to Jewish Law.

V. LEGALITY ACCORDING TO CIVIL LAW.

- A. The first hurdle this New K must cross is that of its legality according to laws of each of the 48 states. Assume that first couple breaks up, and the B-D fines one party several thousand dollars upon refusal to obey its directives. The fined party will refuse to pay, and the B-D will take the case to a civil court. 48 different constitutions have to agree that the B-D has such rights. Highly doubtful.
- B. Even if so, represents a dangerous intrusion of State into Religious life.
- C. Even then, civil courts will have to check another interesting legality. Aramaic text and English text are not the same. English text mentions almost nothing of traditional part of K - the settlement & dowry - and mentions the Cons. Ammendment in much different form - as being one condition instead of three. Further, the Aramaic text is kept as a unilateral document, obligating only husband, while the English form is bilateral, and obligates the bride as well. One wonders why, if they were going to make a civil issue of it, they weren't careful enough in translation.

VI. PERSONAL RIGHTS AND GOOD TASTE.

- A. The Traditional K, while being prosaic, in that the protection of anyone's rights is a prosaic affair, and mentions the financial protection of the woman, is yet extremely careful not to mention the fact that these elements of the contract hold for the occasion of death or divorce, although that is its purpose. Our Rabbis said: KOL HA'MENAVEL PIV ... NEHEFACH ALAV LE'RAAH, that whoever defiles his mouth at a wedding is severely punished by G-d. That refers to any offensive terminology, as well as the strictly vulgar. We believe that it is offensive, insipid, un-Jewish and in extremely bad taste to mention divorce and marital difficulties on the day that two lovers are being escorted by their parents to the Chuppah. "AN YISRAME TIGRA BEINEIHON" is not the sort of thing you talk about when you wish "chassan-kallah" a "Lechayim". Mazel Tov
- B. But there is even more than bad taste involved here. What is involved is nothing less than the complete forfeiture and surrender of sacred personal rights. For that is what occurs when a young couple is asked to subject their personal and intimate relationships to the jurisdiction of a few individuals named by a national organization. It is not a matter of voluntary consultation. It is a matter of being coerced to reveal all to this "B-D" or its representative(s). I am quite sure that the couples married so far with this New K, simply did not know what they were letting themselves in for.

VII. THE AMMENDED KETHUBAH AND THE HALACHAH.

- A. As previously stated, one of our main & strongest objections is the Halachic invalidity of this New K. Lest laymen have the idea that these are simple matters that can be decided by a shrug of the shoulder, let me remind you that they are extremely complex.
- B. If the Conservatives had announced that they were scrapping the Halachah and following Reform, we would not have bothered to take up the entire matter as an issue. We have long felt that this was to be the ultimate expression of Conservatism. But it is precisely because they have maintained that they are operating within the pale of Jewish Law, & that their ammendations are in consonance with the Halachah, that we feel that the truth must be pointed out to all Jewry. If this is the stand of the Conservative mobement, then they must allow their innovations to be examined, with merciless objectivity, from the point of view of Halachah.
- C. One thing must be clarified, both for the sake of our laymen & our Conservative Rabbis: If you accept the Halachah - and the Halachah can at times be ammended - you must undertake its ammendment or change according to procedures provided for by the Halachah itself. ANALOGY: Ammending the Constitution....The procedure for ammendment is not sociological, philosophic or political - it is Halachic.
- D. With this understanding - & it is a logical position, which a good number of the Conservatives will grant without argument - then we must proceed to the Halachic analysis. While I shall not go into these matters today - we shall leave that matter in its details for tomorrow morning - I will merely summarize the results of such an Halachic criticism: and that is, that the conditions added by the Conservatives are, in different cases, either absurd, or ineffective, or catastrophic in their consequences.
- E. The proof for that last statement will be offered tomorrow. But let me give you just one extreme example of the catstrophic nature of their ammendment. What their last condition does, effectively, is to force one of the couple to consent to a divorce. If, for instance, husband refuses, & B-D insists that he does issue a GET, under penalty of a fine; and if the civil courts should back up the B-D; and the husband should in consequence issue the GET instead of paying; then that GET has been issued under duress. The technical name for that is GET ME'USEH, and the law: it is invalid. Now, the other partner, trusting the B-D and unaware of this fact, may remarry & bear children from that second union. The Law: ADULTERY AND ILLEGITIMACY.

VIII. THE AUTHORITY OF THEIR BETH DIN.

- A. Until now have discussed the Kethubah per se. Now - the B-D, which seemed to have crept into the picture unconsciously, yet is of equal importance.
- B. Again will state categorically: absolutely no personal slur, aspersion or disrespect is intended. I know at least one man on that proposed B-D, and he is a gentleman, a sincere and decent and honest person. This is an impersonal discussion of the issues.
- C. Before any group can claim to be acting within the Halachic tradition, or dare to arrogate to itself, or to a group it appoints as its representatives, the juridical rights of the Halachah (i.e. B-D), it must fulfill 3 conditions:
1. Scholarship. Just like a mathematician, physicist, judge. Doesn't come of itself or by virtue of having a pulpit. Requires years devoted study.
 2. Recognition of Divine character of Halachah. Accept TORAH MIN HA'SHAMAYIM, the eternal & absolute character of Halachah which binds Jews under all conditions.
 3. The interpretation of Halachah must be in accord with accepted norms of Halachah (as previously indicated, Constitution analogy).
- If the Rabbinical Assembly will imply that it is a group of Halachic scholars (& that means that at the very least they have HETER HORAAH - Yoreh Yoreh degree permitting them to decide questions in Law, which very few of them have); and if they will unequivocally announce that they recognize the Divine character of Halachah (which they don't - rather: folkways, civilization); and that they agree not to interpret or change the Law except K'DIN, (which they obviously are violating in the matter of the Kethubah); if such an unexpected miracle should come to pass we would still wonder why such a group, with such traditional orientation, would officially permit riding on Shabbos, the marriage of a KOHEN to a divorcee, the use of an Organ on the Sabbath, and a host of other clear violations of the Halachah.
- D. It is clear, therefore, that since the Conservative R.A. can fulfill not even one of these requirements, that they and their B-D are absolutely unauthoritative. We cannot accept any of their decisions or actions, and we regard them as completely invalid.

IX. THE DIVISIVE EFFECT ON THE JEWISH COMMUNITY.

- Symbolic: - do you want to see what has been claimed
1. Civil Law: → Good Testimony Personal Rights
2. Halachic catastrophes
X. Results of Cons. innovation: B-D is divisive*
- A. Since, as pointed out before, the use of this K can result, in the last extremity, in such catastrophies as unintended adultery and even worse results; and since we can by no conceivable means recognize their B-D; since we thus will not recognize their issuance of divorces nor participate in weddings where such K is used; it follows that the sole effect that all this will have is a disastrously divisive effect on all Jewish life. Whereas up to thus day an Orthodox Rabbi could, under most conditions, participate with a Cons. Rabbi in many religious functions involving marriage & divorce, that will now be impossible.
- B. The Cons innovation does not go far enough to satisfy their left-wing. It certainly alienates those who are whole-heartedly devoted to Torah and Halachah. Its only result is therefore destructive, and disruptive of community harmony. It makes of Conservatism a sect, rather than a movement.
- THE CALL TO RECONSIDER.
- A. If the Conservative Rabbinate really wants to safeguard the sanctity of the Jewish home, it will reconsider and be great enough to admit a mistake.
- B. We call upon the more scholarly and sober-minded Rabbis of the RA to exert their influence. We call upon the entire Cons movement to stress religious living instead of forced divorce, as a method of ensuring happy and Jewish married life. We believe that Shabbos and Family Purity and Traditional Prayer will do more to keep the home happy and sacred than the threat of heavy fines agreed upon before the Chupah.

- XI. THE ISSUR. Let me close with the reading of the official Orthodox position on the matter, painful though it is: "IN THE NAME OF JEWISH UNITY & IN THE NAME OF THE HALACHIC TRADITION THE CONS RABBINATE IS URGED TO WITHDRAW ITS PROPOSAL. HOWEVER, THE ORTH RABBINATE HEREBY ANNOUNCES THAT ITS MEMBERS WILL NOT USE THEAFORE*DESCRIBED AMMENDED KETHUBAH, THAT THEY WILL NOT OFFICIATE IN ANY CEREMONY IN WHICH IT IS USED, & THAT THEY WILL NOT RECOGNIZE ANY ACTS OF THE PROJECTED B-D OF THE CONS RABBINATE AS VALID."
- (BENEDICTION: Hinei Mah Tov...Shevess Achim)

at - EXCELLENT

Sermons

A 135, ~~A 136, A 137~~

all on Conservative

Amendment to Ketubah,

which I later

published in Tradition