

An Eighteenth-Century American Responsum

SOLOMON B. FREEHOF

It is almost a commonplace by now that the *responsa* literature is a unique source for the social and religious life of Jewry through the ages. Ever since Benzion Katz published his little study of the history of the Jews of Russia, Poland, and Lithuania (Berlin 1899) there have been a number of other studies using the *responsa* as background for Jewish history. The early history of American Jewry can, likewise, be enriched from this source. Some pioneer work in this field was done in *America in Hebrew Literature* by Dr. Mendel Silber of New Orleans in 1928. Much more material will yet be uncovered from two sources: one, the existing literature of the European rabbis, and, second, the letters written during the early history of American congregations.

One such letter is found in the *Publications of the American Jewish Historical Society*, XXVII (1920), 185-90. The American Jewish Archives, through the courtesy of the American Jewish Historical Society—which possesses the original letter—made a photostat copy available to me.

The author of this *responsum* was Manuel Josephson of Philadelphia. Josephson, a German immigrant, had come to these shores no later than the time of the French and Indian War of the 1750's, and had worked as a sutler at Fort Edward, near Lake George and Lake Champlain. Later, as a successful merchant, he had lived in Philadelphia and was responsible for the letter addressed to George Washington in 1790 by the Jewish congregations of New York, Philadelphia, Richmond, and Charleston. He was one of the best Hebraists in the colonies and was versed in rabbinic literature.

The Josephson letter was sent on February 4, 1790, from Philadelphia to Moses Seixas of Newport, Rhode Island. It is an answer to a ritual query which the Philadelphian received on December 3, 1789. The problem posed is the permissibility of certain ritual variations in the worship of the Newport synagogue.

The fact that the *responsum* is in English (and not in Hebrew) does not make it less authentic a part of the *responsa* literature. Many

Dr. Solomon B. Freehof is rabbi of Temple Rodef Shalom, Pittsburgh, and is an authority on rabbinic *responsa*.



Portrait by Jeremiah Thirus

Owned by the family of Dr. I. Minis Hays

MANUEL JOSEPHSON
Eighteenth-Century Jewish Communal Leader

of the *responsa* of the Geonim, and most of the *responsa* of Maimonides and Alfasi, were in Arabic. It is perhaps somewhat untypical in that it contains very little of the usual minute dissection of the relevant texts (*pilpul*), but is a straightforward citation of relevant authority on two main questions wherein there was some variation of observance in the synagogue: first, as to the reading of the Torah, and, second, as to the blowing of the shofar.

The second question with regard to the shofar is of no especial importance. The man who blew the shofar was not of good character, and Seixas preferred to have no shofar blowing at all rather than to have it blown by a man of dubious character. Besides, the shofar was cracked. Josephson agrees (as a temporary measure) to the first consideration but tells how the shofar cracks may be repaired: They may be bound but not plugged.

It is the first question which is of great interest. It seems that there was no one available to read the weekly portion from the Torah, from the Scroll, with proper grammatical pronunciation and cantillation. Therefore, Seixas had the Torah taken out every Sabbath merely as a symbol, but the reading was done from a printed book (*humash*).

Josephson denounces this procedure. He cites from Joseph Caro (from the *Bet Yosef* to the *Tur, Orah Hayyim*, 143) all the opinions marshalled there against the proposal that the Torah may be read from a *humash*. Of course, he bases most of his argument upon Joseph Caro, who is particularly strict in the matter. He does not, however, mention the fact that Maimonides in his *responsa* (ed. Freimann No. 43) makes the opposite decision and says that the blessings may be recited over reading from any kind of book or even an imperfect (*pasul*) Torah: "for the blessing does not depend upon the book (or the Scroll) whether it be kosher or not, but upon the reading." Caro himself finds it necessary to undo the effect of this forthright decision of Maimonides, and says that it was the opinion of the sages of Narbonne that Maimonides changed his mind about this matter in later years (compare with *Yad, hilkot sefer torah*, X, I).

It is of interest that this question (whether in an emergency one may read the Scriptural portion on the Sabbath from a printed book) comes up frequently. Torahs are not always available or, if available, often become *pasul*, or there is no skilled reader who knows the punctuation and the cantillation. That is why all the legal codes have to transmit laws on this question. (See Isserles to *Shulhan Aruh, Orah Hayyim*, 143, No. 2, as to what to do when the cantor does not know the cantillation.)

The same question was raised by Jews who regularly crossed the Sahara with caravans. May they read from a printed *humash* since the journey occupies a number of weeks? The question and answer is

in a manuscript collection of the rabbis of Marrakeesh and is cited by Joseph Messas, rabbi of Tlemcen, in his *Mayyim Hayyim*, No. 79. Also the same question was recently asked of the Division of Religious Activities of the Jewish Welfare Board by the Joint Chaplaincy Board (of the Defense Department), whether it would be permissible to use a photostated miniature *Sefer Torah* in field services and recite the blessings over it.

The *responsum* of Josephson, by its very strictness, carries out the intention of the law, that we should be strict on the matter and insist that the reading be from a kosher scroll, or otherwise the people might be neglectful in securing one.

Besides the specific questions (the Torah and the shofar) which Josephson discusses, the *responsum* gives a fine picture of the state of religious observance in the American congregations.

Josephson was discussing the difference between law and custom, the law being fixed and custom variable. In order to describe how variable customs can be, he gives a description of the contemporary observance of religious rites in the American congregations. He says that in the historic congregations, in the Old World, even the local customs have been carefully written down and are scrupulously observed, but in America the observance of ritual customs is chaotic:

As to our North American congregations, not much can be said in that respect, as in reality they have no regular system, chiefly owing (in my opinion) to the smallness of their numbers, and the frequent mutability of the members from one place to another. And as from their first establishment they had no fixed and permanent rules to go by, so they have continually remained in a state of fluctuation. And every new comer introduced something new, either from his own conceit and fancy, or (what is more probable) from the custom of the congregation where he was bred, or the one he last came from.

This I can averr from my own observations to have been the case frequently at New York ever since I knew it, as well by transient persons as the several *hazanim* they have had there from time to time, the present one [Gershom M. Seixas] not excepted, who during his being in office has collected some materials from one and another and patched up a system of ceremonies of his own, which will be followed during the time he remains in office. But no sooner another one succeeds, some new customs and formalities will be introduced, especially if he happens to be an European. He will alledge (as most of the narrow-minded part of them are apt to do): What did your late *hazan* know about these matters, or indeed how should he, seeing he never was out of America, etc., etc.

I say such arrogant language is common among the unpol-

ished Europeans, more especially among *Our People* who suppose it next to impossible any knowledge can be obtained out [outside] of Europe. Whereupon the rulers [of the synagogue], who mostly are men of yesterday, strangers to the Portuguese *minhag* ["rite"], and as much so to the Dutch *minhag*, altho' bred to it, because having been of little consequence in their own country, [are] of course, not in the way to know or in fact to trouble themselves about matters of that sort. Or, should it even happen that some of the rulers and members are Portugaises, the same observation may hold good with them as the others, and both descriptions [German and Portuguese Jews] (being Europeans) will most probable unanimously subscribe to the opinions of the new *hazan* and adopt them, as doubtless he must know better than the late one.

Now this circumstance does not, nor can not find place in the large and old established congregations abroad, as they have their customs and ceremonies even the most minute, reduced to a regular system, etc.

This vivid description of the lack of order in ritual observance in eighteenth-century America comes up incidentally in the discussion of the relationship between *din* ["law"] and *minhag* ["custom"], as indeed most of the historical descriptions come up in the *responsa* literature. They are perhaps all the more trustworthy because they are not a conscious attempt at historical description.

THE AMERICAN JEWISH ARCHIVES with its staff of technical experts welcomes your interest in its efforts to preserve the living history of the Jew in America.

If you have papers, manuscripts, journals, record books and the like at home, that are gathering dust in some chest or attic, the ARCHIVES would welcome them as your gift. Let us preserve them for you and the future.

Photostat and microfilm services are available to reproduce documents.

May we cordially invite your full use of our resources and facilities?