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Chapter 6



WRITING RESPONSA: A PERSONAL JOURNEY

Walter Jacob

Reform responsa have almost two centuries of tradition behind them. Despite the ambivalence expressed by some radical reformers in Europe and North America, responsa appeared from virtually the beginning, and we have seen ourselves as a continuation of the rabbinic tradition in a modern garb.¹ This literature, in our hands, has adapted the traditional patterns and been written in the vernacular as well as Hebrew.

My portion of this work has covered three decades, and my effort has been directed toward giving the *halakhah* a more central role within the Reform movement as a vehicle for setting standards and boundaries without eliminating the inherent flexibility of Reform Judaism. This halakhic approach will also bring us into a more focused discussion with the other branches of Judaism. I have been aware of the positions taken by my predecessors in Germany, Hungary, and North America, especially the work of Solomon B. Freehof, my mentor and friend, who broadened the Reform interest in the *halakhah* beginning with his two volumes entitled *Reform Jewish Practice and Its Rabbinic Background* sixty years ago and continuing through a series of responsa volumes in English, without, however, writing about the theoretical basis for his efforts.² I have been interested both in writing responsa and going beyond responsa, which led to the founding of the Freehof Institute of Progressive *Halakhah*, a joint venture with Moshe Zemer. The volumes of the Institute complement the responsa literature as they provide a systematic discussion of issues. They differ from responsa as they do not present decisions but provide the basis for educated decision making.

For me interest in responsa began at the Hebrew Union College library in a very modest way. As a first-year rabbinic student

I earned some money by working in the library, shelving books and pre-cataloguing; I found the responsa collection difficult as the system had not taken into account the complexities of similar titles, various editions, and books that only vaguely belonged in that collection. My work brought me into contact with Herbert Zafren, the Director of Libraries, as well as Moses Marx and Isaiah Sonne, scholars in this field. The library had received a large number of books liberated from the Nazis, which were distributed to leading Jewish institutions throughout the world.³ The library was short of help, so I was given tasks with much more responsibility than usually assigned to a beginner. Occasionally there was also an opportunity to purchase a duplicate old volume.

When I arrived in Pittsburgh at Rodef Shalom as a twenty-four-year-old, not yet ordained assistant rabbi in the winter of 1955, I had the opportunity of watching Solomon B. Freehof, who had begun seriously writing responsa for the Reform movement.⁴ Earlier he had prepared responsa for the armed forces of the United States, which had gotten him involved in writing responsa. My introduction that spring was very brief as I left for a two-year stint as a United States Air Force chaplain in the Philippines. Although this was a wonderful opportunity to become acquainted with the lands, cultures, and art of the Far East, the tropical Philippines were hardly a place for transporting a library, so I settled on the *Mishneh Torah* and continued to study it. This eventually led to a minor in rabbinic codes for my doctorate, however, upon returning to Pittsburgh I concentrated on a doctorate in the field of German Jewish literature. Daily contact with Solomon B. Freehof showed me the questions that were troubling our colleagues. He often asked me to read a newly minted responsum as he corrected it or checked some data. However, the tasks of this large congregation, establishing a family, and writing a doctoral dissertation did not leave much time for rabbinic literature. I was placed on the Responsa Committee of the Central Conference of American Rabbis (CCAR) in the 1960s, but as this committee never

met and held no discussions,⁵ it provided no additional exposure to scholarly debate, but I studied on my own and got to know the literature.

In the early 1960s a fire in a rabbinic library in Pittsburgh brought an insurance adjuster to Solomon B. Freehof for his estimate of the value of the books. It was a fine collection, mainly classical Hebrew books; Dr. Freehof inquired what would be done with the damaged volumes as they, like all Hebrew religious texts, deserved proper disposal. The company intended to destroy or bury them, but they were willing to sell them to Dr. Freehof, who had them delivered to a basement room in the Temple. We soon proceeded with the dirty work of going through this mountain of ash-covered books and sometimes were ankle deep in half-burned pages. After an hour we looked and smelled more like fire-fighters than rabbis; it was a dirty labor of love for two bibliophiles. Dr. Freehof selected some books for his library; we sorted dozens of cartons of *hidushin* for the Hebrew Union College; we sent copies of title pages of hundreds of other volumes to the Hebrew Union College, the Library of Congress, the Jewish Theological Seminary, and various universities to see whether they were interested in them. Finally we sent half a dozen cartons of fragments and loose pages to the Hebrew Union College. As several hundred volumes of responsa were duplicates of Dr. Freehof's library, they became the basis of my collection. All were in poor condition and constantly losing portions of their burnt binding edge. They needed to be wrapped before being shelved in my study. Through the next decade Solomon B. Freehof, whose hobby was bookbinding, bound all of them.⁶ Many were rare early volumes. These books and those that I have purchased through the years make up my extensive responsa collection.

When Solomon B. Freehof retired as chair of the Responsa Committee, he suggested that I replace him. Before the ratification of that appointment, I wrote an initial responsum, simply to demonstrate some knowledge of the field and without an effort to provide a

hiddush. For me responsa as well as my later halakhic efforts were a way of connecting the Reform movement more closely to the *halakhah*, which has always been the central expression of Judaism. Reform never abandoned the *halakhah*, as the discussions at the Central European and American conferences of the nineteenth and twentieth century among other things demonstrate. Even the radical meeting in Pittsburgh dealt with halakhic matters in some surprising ways.⁷ Individualism and antinomianism had to be largely surrendered, despite theoretical debates, if one wished to be part of a community; I have treated this elsewhere.

Thus began a sixteen-year period in which I was heavily involved in the writing of responsa. Since then I have continued, but at a diminished pace and with more emphasis on halakhic essays, the founding and leadership of the Abraham Geiger College, and other interests.

My first task, as I saw it, was the reorganization of the committee into a functioning body for which there was no precedent. My colleagues were willing to participate but did not have the library resources in this period before computer references, or the inclination to devote a major amount of their time to this effort. I therefore suggested that I would prepare each responsum and they would comment via mail. This process worked reasonably well, although it was slow. In order to speed matters along we had some meetings, which we used in an attempt to create some general guidelines. As the funds of the Central Conference were extremely limited during these years, meetings were rare. In reality, it proved more useful to use those few occasions to deal with the most difficult individual questions rather than to develop a general philosophy.

As the number of questions increased and as I sent an ever larger number of responsa to my colleagues for their comments, the return mail became slower; they were a bit overwhelmed and wanted to limit their work. We soon agreed that I should decide which responsa deserved committee attention and which should be answered

by me, as chair, alone. The vast majority quickly fell into the latter category.

After a few years, I suggested that the committee prepare a collection of responsa that had been published by the CCAR so that our colleagues could refer to questions already settled rather than ask us again. Many of these responsa had been written under very different circumstances decades earlier and needed additional comments in order to be useful to our colleagues. I went through them, annotated them, and provided comments to which the committee responded, initially by mail and eventually, with the more difficult ones, through face-to-face discussions. This effort turned our attention to the different approaches of the chairs of the Responsa Committee. Some committee members proposed that we prepare position papers that I assigned, but nothing came of it.

Upon becoming chair of the committee, questions arrived from the first day. There was no time for philosophical contemplation or for lengthy discussions with the committee before undertaking the work. Colleagues and congregants were seeking answers, so I began, as most authors do of responsa and most judges in any jurisdiction, by writing and letting the philosophy work itself out as I proceeded, which undoubtedly produced some inconsistencies. Maturity and experience would play a major role.

Considerations and Assumptions

I have always considered writing responsa a religious task. The guidance provided must have a spiritual basis that needs to be clear in each answer. Occasionally I had to remind myself of this as I delved into the debates and details of the *halakhah*, which could wander far from their ultimate goal. As for my predecessors, it was my task to set boundaries to human behavior. In some instances this means narrowing the parameters, in others widening them. Many factors come into play as with earlier generations, though we perhaps

are more conscious of them. My responsa continue to be written mainly for the American Jewish community; Reform communities in other lands often face different concerns and live in another environment, which may lead to different answers, especially in matters of status, ritual, and interfaith relations. I have always felt that the concern of those colleagues in Israel or Europe should be secondary and should not heavily influence American decisions. When, during the last years, I have written some responsa for the central European community, my answers take that environment and its *minhagim* into consideration.

My efforts have been based on an understanding of the *halakhah* which I shall briefly outline here; I have partially treated this topic elsewhere and will return to it. For me the origin of the *halakhah* is divine, but transmitted by human beings and therefore interpreted and reinterpreted by each generation from Moses onward and occasionally radically changed. This means that the ideas which lie beneath the specific human wording reflect divine inspiration. Each generation has interpreted the *halakhah* according to its understanding. That interpretation has been colored and molded by the times, the issues, and the environment.

I see rituals as less important than other aspects of the *halakhah*. Some, in a form different than currently practiced, can be traced to the Torah; others are *minhagim*, more significant in specific periods, or among *Ashkenazim* and *Sephardim*. They remind us of our ethical duties; they are important as they are an emotional and nonrational connection to Judaism.

The Talmud records a debate whether the *halakhah* was in human hands or should depend on divine guidance.⁸ The fact that the debate took place shows that even on this fundamental matter there was disagreement. However, the majority of the talmudic scholars took as an underlying assumption that the *halakhah* was to be interpreted by human beings without divine interference. This has remained the basis of halakhic discourse from the Talmud onward. It

was understood that 'divine revelation' had ended - with all the theological implications of that view: It meant that Christianity and Islam could be rejected on this ground alone. It made direct contact between human beings and God problematic and led to the development of Jewish mysticism. At times, as with Joseph Caro, the mystical path coalesced with the halakhic road.⁹

Succeeding generations have treated the *halakhah* in four ways. (1) Most scholars in all generations have seen themselves as only clarifying the tradition assumed to be unchanged since Moses. The entire *halakhah* was understood as a unified whole and all segments were forced into this position through any means possible - even when a simple reading would show tensions, contradictions, or radical shift from earlier decisions. The myth of a unified tradition was maintained. (2) Some scholars have stated that they wished to return to the original meaning of the tradition held in the days of Moses or by the talmudic 'giants.' (3) Still other scholars have understood that they were reinterpreting the *halakhah* to fit into a new age with due consideration for the past. (4) Some in many generations have sought to systematize and simplify the *halakhah* by creating 'codes' which summarized the *halakhah* as they understood it. This was also intended to make the *halakhah* accessible to the average Jews. Each codification has been vigorously opposed as its commentaries and super-commentaries show. (5) Finally *takanot* have always been used to deal with difficult issues, often, theoretically, on a temporary basis; yet many became permanent. The Reform movement has used this process to deal with status and other matters.

Those who have taken the first path, have spent vast energies adjusting and harmonizing the strands of the tradition and its contradictory statements from the Torah, through the two Talmuds, and the subsequent literature. Over the millennia, this task has become increasingly difficult. In the responsa literature it has often led to very long essays in answer to a simple question.

Those who have taken the second path, many in the generation

immediately following the Talmud, sought the original meaning of the text and then the right path through the maze of later discussions. This was never easy as the scholars of the Talmud present a variety of opinions, often totally contradictory on virtually any matter. In scholarly debates, this made no difference, but for practical halakhic decisions it was impossible. The Talmud and the later gaonim were aware of the problem and established some rules for decision making; the fullest discussion is found in Avodah Zarah 7a. Later codes expanded these efforts. Joseph Caro used Alfasi,¹⁰ Maimonides, and Asher ben Yehiel as his authorities for decisions and adopted the decision of two of those three, unless later scholars followed the opinion of the third. This was arbitrary, but practical.

The third path has been taken consciously in modern times, but not exclusively so. In the last two centuries scholars have become more aware of the outside sociological, philosophical, and political factors which have formed halakhic views and decisions. Scholars have looked for these factors in previous ages, so modern halakhic studies present a historical view.

In Orthodox circles the codification process has come to a halt since Joseph Caro in the 16th century. The Reform and Conservative movements have produced partial codifications of the ritual aspects of Judaism, but have not gone further.

For my writing I have followed the third and fifth path and have always been aware of the many internal and external influences which have shaped halakhic decisions. I am less interested in harmonization and more in the moral and ethical considerations which must lie beneath each decision. Several special considerations have also played a role: (1) As we understand that our decisions are the product of our age and its influences, then we may also see similar conditions in the past and accept decisions made long ago, but rejected by subsequent generations for reasons shaped by their times.

This means that the automatic reliance on one or another talmudic decisor – without thinking about the ethical basis as well as

the historical and sociological reasons for that decision – may not be valid for us. Among the talmudic scholars, we may choose someone whom the tradition rejected. Among the ‘codes, we may, on occasion prefer the path of Maimonides or Alfasi when there is a moral justification.

We are prepared to open old discussions and sometimes follow them to different conclusions – aware that the circumstances of our time may call for that direction. (2) The ethical imperatives of feminism, sexual orientation, disabilities lead us to a different view of the tradition. In these areas we have made a break with the past.

My decisions may agree or differ from some Orthodox decisors; either way, the underlying reasoning is often quite different as I, along with many others, consciously view the specific issue raised through the lens of tradition along with ethical concerns, history, sociology, economics, and related factors.

My view is that change is possible and that we must be open to experimentation. We link ourselves to the tradition and the past, but we do not replicate it. My colleagues and I reject Moses Sofer’s assumption that all change is wrong. When conditions demand I am willing to embrace change even knowing that a later generation for its own good and valid reasons may reject it. This may well lead to more positive than negative halakhic decisions

For me the divine impulse underlying the *halakhah* remains the same. The past with its grand scholarship and literature is a vast reservoir from which we drink. We enter into debate with the scholars of previous generations, with due deference, but the decisions must reflect our own age. Reform precedent along with the resolutions of our movement, of course, always play a significant role in decisions.

Any decision, especially if made in writing places the author on the firing line. A safer path has been selected by many modern Orthodox scholars who state that their decisions represent academic discussions, but are not to be followed in practical life. Although this may avoid attack, allow a trial balloon, and permit a graceful

withdrawal, it does not help the person seeking an answer. I would rather make a decision and have another generation of writers of responsa take a different path, than make no decision.

Some Practical Issues

There are a number of practical difficulties facing anyone who writes responsa. The first is the size of the literature and its state of disorganization. Most of the volumes of past centuries have no index or entries which are not helpful. That has been partially changed through the computerized responsa project undertaken in Israel which did not exist thirty years ago. A vast literature, along with its commentaries still lies outside the scope of the responsa project as does the secondary literature of books and periodicals, some of which are obscure.

The changing style of responsa writing that has developed through the ages brings its problems. During some periods responsa were direct and brief, though rarely as brief as some of Maimonides single-word replies. At other times the authors sought to display their erudition and cited every precedent along with their comments upon it. Another set of authors wished to create *hidushin* and traveled down numerous byroads to do so. It was necessary to sort out what was useful without neglecting the peripheral.

Questions come in every area of Jewish law and occasionally in rather obscure corners. Some issues that are of great significance to us were of little interest or peripheral in earlier ages, so responses had to be sought from analogous situations. The search in that direction can consume a huge amount of time and often with little to show for it. On the other hand, some issues loomed large in earlier periods and resulted in an enormous amount of literature that must be studied, although there is rarely time to master it. Some of the long-standing controversies that raged for a century in the traditional community have been of little interest to us.

A major problem for any writer is our modern impatience. Our inquirers want instant answers. How fortunate were the *gaonim* in Baghdad who received an inquiry from hundreds or thousands of miles away and had months, till the departure of the next caravan, to prepare a reply. Many questions come to me through urgent telephone calls. For example, a colleague calls about a *minhag* which has led to a dispute among mourners as a funeral is about to start; an immediate response is necessary and there is no time for research. I have always provided a tentative answer and indicated that it may need to be changed. My later detailed answer often demanded some modification, but at least the service could proceed peacefully. Even if the matters are not quite so urgent, a timely answer not one produced with academic leisure, is usually needed. This means that a committee process is a luxury for many questions, if we wish to truly help our colleagues. As both colleagues and lay individuals need guidance more or less immediately, I often have to place the background material into a later responsum to a related question.

There have been specific American considerations, such as the American Jew's emphasis on individualism and personal autonomy. We have created unique organizational structures that have led to new types of questions concerning charity, social aid, and education. Jewish religious bodies, both lay and rabbinic with their resolutions and *takanot*, are different from those of the past. The nature of the rabbinate has been redefined several times during the last two centuries. It has become professionalized, so that the traditional view needed adjustment.

It was not always easy to balance the task of writing responsa with the responsibilities of a large congregation with its numerous religious services, educational programs, pastoral duties, family crises, and communal tasks alongside a growing family and other interests. Only long evenings and early mornings of study along with tight personal organization has made it possible.

Specific Concerns

Our understanding of medical issues, particularly at the beginning and end of life, continues to change and so the traditional answers need constant review. Questions that deal with birth control, abortion, the status of the fetus, artificial insemination, surrogate mothers, and related controversial matters are among them. New medical procedures such as transplants, genetic tools, and experimental drugs have raised issues with little precedent. Our view of the status of women has us place many of these questions into a different framework.

In each of these instances, I have looked carefully at the traditional answers, usually given long before such advances were made, as well as those of contemporary colleagues. I have consulted medical experts, who have been helpful, but as some procedures remain controversial additional information is not always useful. Occasionally it has been necessary to qualify a response, but generally I feel that a definite answer is required. The questioner is not interested in an essay or a menu of choices but rather seeks help with a specific situation.

Our new relationships with the religions around us continue to bring a large number of questions. Ecumenism without syncretism and with a regard for the positive efforts of other faiths on social issues and theology has been my goal. Much material from earlier ages has not been appropriate; however, boundaries must be clearly drawn especially with intermarriage and issues connected with the extended family. For me the boundaries remain clear and there are limits beyond which it is inappropriate to involve non-Jews, no matter how friendly they may be. Usually the Jewish questioner has had more difficulty with this than the believing Christian.

In the matter of status we have taken a stand that remains somewhat controversial especially in Europe and Israel. It has enabled

us to place more emphasis on education and personal involvement and less on lineage.

In matters of ritual in the synagogue or the turning points of life (birth, marriage, death) congregational independence has led to diversity which can often be justified through the endless variety of *minhagim* of the past, yet I have tried to help mold a consensus and not provide a menu of choices.

In these as well as other areas, I feel that generalizations will come after enough individual cases have been decided. It is wiser not to debate a general philosophical or theological approach in the abstract but to begin with specific situations that may lead to a broader policy.

Some Concluding Thoughts and Another Path

The fascination of responsa lies in many areas. For example, the questions reveal what is in the mind of our people, especially as larger numbers of questions come from congregants. These inquiries, perhaps more than questionnaires and surveys, provide an insight into the religious development of the Reform community. Clearly there is a rising interest in seeking a halakhic grounding.

For whom are we writing? This question faces all Jewish groups. Reform, Orthodox, and Conservative respondists write for those in their community who are committed. None write for their entire community. Certainly those in each group who ask the questions are likely to follow the path demanded and I have written for them. Our problem is less with Orthodox and Conservative co-religionists and more with secular Jews and who stand at the periphery of the *halakhah*. In our long history we have faced this problem before and have taken the attitude that we will eventually persuade the community to follow us. As I am generally optimistic, rather than lament, I prefer the path of *Pirkei Avot*: "It is not incumbent upon us to complete the work, but neither are we free to desist from it."

The disadvantage of being responsible for the responsa committee of the CCAR is that there is little time to study issues deeply. It means that one must suddenly shift attention to an inquiry in what may be new and unknown territory. This was pleasant for a time but also frustrating. Although I have continued to write responsa as well as halakhic letters, which are less formal, I do so on a selective basis and often refer individuals to the Responsa Committee and its chair.

As I wished to concentrate more on specific issues and also wanted to provide a more systematic background for the modern problems that confront us, I sought a way of preparing major position papers along with practical guidance for aspects of modern Jewish life. A new committee of the CCAR seemed like an appropriate vehicle. It was appointed but proved difficult as the organizational nature of the CCAR imposes restraints on committee membership and publications.

Even as I was thinking of a separate organization for this purpose, Moshe Zemer came along with his thoughts. It seemed logical to combine our efforts and to create a worldwide organization, which would also help Israeli Reform Judaism. The pattern which has developed gives Moshe as Director a free hand to do what he wishes in Israel with modest American financial backing. I hope that he will develop matters further in Israel. Our main effort has been concentrated in North America with considerable joint planning. I have taken care of the major aspects of the symposia and everything connected with membership, book editing and publication, the triennial *Halakhah*, and all mailings. As I have become more involved in central and eastern Europe through the presidency of the Abraham Geiger College in Potsdam, I have worked to expand our efforts and membership in those lands. A very informal governing structure made all of this possible for both of us.

The Institute continues to flourish with the blessings of the Central Conference of American Rabbis. The Central Conference

provides a site for a major portion of our symposia while others have been planned with the World Union of Progressive Judaism as well as independently.

The world of Reform *halakhah* is expanding among the laity and the rabbinate and I hope that this will continue. Writing responsa and halakhic essays has given me the opportunity to engage in dialogue with generations, past and present, a grand gift. In the spirit of Reform Judaism, I remain open and willing to take new roads, which has been a hallmark of Judaism through the ages. The *halakhah* has provided a path for the development of Judaism and its ability to deal with the ever changing world. It continues to be my good fortune to make a small contribution to this process.

Notes

1. See the reference in the "Introduction" to Walter Jacob, *Contemporary American Reform Responsa* (New York: CCAR Press, 1987), p. xv.
2. Freehof's rationale for halakhic decisions have been presented in the essay of David Golinkin in this volume. Earlier American writers of Reform responsa made no attempt in this direction.
3. The Nazi regime had collected Jewish books from all parts of Europe in order to create a vast anti-Semitic library. Many had been assembled in a Rhineland castle, where they were discovered by some Jewish soldiers who were seeking a suitable headquarters for a military command. After the war, whenever possible books were returned to the libraries from which they came or to their private owner. As many communities no longer existed, an enormous number of books were made available to Jewish libraries throughout the world.
4. Freehof wrote some brief pieces akin to responsa for the *Temple Bulletin* beginning in 1937, but his serious responsa writing began through his efforts as chair of a committee consisting of an Orthodox and Conservative colleague; they answered questions for the American armed services at the behest of the Jewish Welfare Board. Those responsa were published in 1947 and 1953. Freehof succeeded his friend, Israel Bettan as chair of the Responsa Committee of the Central Conference of American Rabbis and totally changed the style of writing from his predecessor.

5. No meetings or exchanges of correspondence have been recorded for the chairs of this committee before Solomon B. Freehof. Dr. Freehof did not involve the committee members in his work. It was his practice to send the responsum that he considered sufficiently significant to serve as the official responsum of the Conference for that year to the members of the committee with a reply postcard. Only once did a committee member write a minority opinion.
6. Solomon Freehof learned bookbinding while in Pittsburgh as a way of maintaining his large library and relaxing. His responsa library, given as a gift to the Hebrew Union College in Cincinnati, has a joyful look about it as he used remnants of binding material from the professional bindery of the Carnegie Library. This led to odd combination of colors and two-tone bindings. First editions, however, were bound in leather.
7. Walter Jacob, "The Influence of the Pittsburgh Platform on Reform Halakhah and Biblical Study," *The Changing World of Reform Judaism - The Pittsburgh Platform in Retrospect*, (Pittsburgh:Rodef Shalom Press, 1985), pp. 25 ff.
8. B. M. 59b
9. R. J. Zwi Werblowsky, *Joseph Karo - Lawyer and Mystic* (Philadelphia: 1977, Jewish Publication Society).
10. For a fuller discussion and other sources see Walter Jacob, "The Sources of Reform Halachic Authority," *Rabbinic Authority* [ed. Elliot L. Stevens], (New York, 1982: Central Conference of American Rabbis), pp. 31 ff.