

# **Digitales Brandenburg**

hosted by **Universitätsbibliothek Potsdam**

## **Beyond the letter of the law**

**Jacob, Walter**

**Pittsburgh, Pennsylvania, [2004]**

THE RESPONSA OF RABBI SOLOMON B. FREEHOF: A Reappraisal

**urn:nbn:de:kobv:517-vlib-10650**



THE RESPONSA OF RABBI SOLOMON B. FREEHOF  
A Reappraisal\*

David Golinkin

We have learned in the tractate of Ta'anit (29a): *Mishenikhmas adar marbin b'simhah* – “when Adar enters, our joy increases”. It is hard to say that this year, due to the ongoing violence and terrorism in the State of Israel. Nonetheless, I am happy to participate in this symposium for three reasons. I am happy to see that so many Reform rabbis have come to Jerusalem for the CCAR Convention despite the Intifada. I am happy to see the growing interest in *halakhah* and *mitzvot* within the Reform movement, as is evident from the new Pittsburgh Platform of 1999. Finally, I am happy to honor my friend, Rabbi Dr. Moshe Zemer, who has had an important impact on Israeli society through his articles in *Ha'aretz* and *Davar* and through his book *Halakhah Shefuyah* (*Evolving Halakhah*). He has also had an important impact on the Reform movement through these symposia and through the series of volumes published by the Freehof Institute of Progressive *Halakhah*. May it be God's will that Moshe continue to study and teach *ad meah v'esrim*.

I shall divide my remarks about the responsa of Rabbi Freehof into six sections: his biography; the breadth of his interest and knowledge; his responsa and other halakhic works; his attitude to *halakhah* and rationale for writing responsa; a comparison of the responsa in *Reform Responsa* – his first volume of responsa – to his stated rationale and conclusions.

### **A Biographical Sketch<sup>1</sup>**

Rabbi Solomon B. Freehof, a descendent of Rabbi Shneur Zalman of Ladie, was born in London in 1892 and brought to Baltimore by his parents in 1903. He graduated from the University of Cincinnati in 1914. He was ordained by Hebrew Union College (HUC) in 1915 and served briefly as a chaplain in the American Expeditionary Force during World War I. Freehof served as Assistant Professor of Medieval Liturgy and Rabbinics at HUC from 1915- to 1924, where he received his D.D. degree in 1922. In 1924 he became rabbi of Kehillath Anshe Ma'arav in Chicago and in 1934 he became rabbi of Rodef Shalom Congregation in Pittsburgh, where he was named rabbi emeritus in 1966.

Aside from the chairmanship of the Responsa Committee of the Central Conference of American Rabbis, Freehof held a number of national and international positions within the Reform movement. He became chairman of the Liturgy Committee in 1930; that committee published the *Union Prayer Book* in 1940-45. In 1942, he became Chairman of the Commission on Jewish Education, a position he held until 1959. From 1943 to 1945 he served as President of the Central Conference of American Rabbis, and from 1959 to 1964 as President of the World Union for Progressive Judaism. Rabbi Freehof passed away in 1990 *b'sevah tovah* at age 98.

### **Renaissance Man**

In his student days at Hebrew Union College, Freehof was the favorite pupil of Professor J. Z. Lauterbach (1873-1942).<sup>2</sup> In 1952, Freehof published an appreciation of Lauterbach entitled "Jacob Z. Lauterbach and the Halakah" in which he wrote:

The Talmud makes its children flexible, alert and many-sided . . . . Any modern Jewish scholar who began his scholarly life in his boyhood with a thorough grounding in the Talmud is likely to be somewhat of a polymath, certainly a many-sided author competent to deal with a surprising variety of

subjects; almost never is he a limited specialist, and certainly never a narrow mind.<sup>3</sup>

Freehof could have been describing himself, for he too was such an *ish eshkolo!*<sup>4</sup> or renaissance man. The *festschrift* in his honor, published in 1964, already lists 783 items, and this was 26 years before his death!<sup>5</sup> He published 21 books all told. In addition to *halakhah* and responsa, which we shall discuss below, he published books in four main areas:

(1) Literature: *Books of Thirty Years*, published in 1964, contains the lectures he gave to his modern literature class between 1934 and 1963.

(2) Bible: As a result of his serving as chairman of the Commission on Jewish Education, Freehof published *Preface to Scripture* (1950) along with a series of popular commentaries on Psalms (1938), Job (1958), Isaiah (1972), Jeremiah (1977), and Ezekiel (1978).

(3) Liturgy: In addition to teaching liturgy at HUC, he published *Blessing and Praise* with Rabbi Israel Bettan (1924), *The Small Sanctuary: Judaism in the Prayerbook* (1942); *The Union Prayerbook* (1940–45) as mentioned above; *The Union Home Prayerbook* (1951); and *In the House of the Lord* (1951). He also served as editor of the Liturgy Department of *The Universal Jewish Encyclopedia* in the 1940s.

(4) Homiletics: Freehof published *Modern Jewish Preaching* in 1941, and he was an excellent preacher who spoke without any notes.<sup>6</sup>

### Freehof's Responsa and Other Halakhic Works

It seems quite clear that Freehof became interested in responsa and halakhah as a result of the influence of Rabbi Lauterbach, who

wrote a number of seminal works on *halakhah* and served as chairman of the Responsa Committee of the CCAR (1922–33), for which he wrote some important responsa.<sup>7</sup>

Freehof joined the Responsa Committee of the CCAR ca. 1923. He began to publish responsa in the *Rodef Shalom Temple Bulletin* in 1937, where he tackled topics such as “Is Visiting the Cemetery a Fixed Jewish Custom?”, “Why Are the Candles Lit on Friday Night?”, and “Why Is It Customary to Refrain from Celebrating Marriages Between Passover and Shavouth?”<sup>8</sup> In 1944, Freehof published the first volume of *Reform Jewish Practice and Its Rabbinic Background*, which is an apologetic work explaining the talmudic and rabbinic background of Reform Jewish practice. The second volume appeared in 1952.

Beginning in 1942, Freehof served as chairman of the Responsa Committee of the Commission on Chaplaincy of the National Jewish Welfare Board, along with Rabbi Milton Steinberg (Conservative)<sup>9</sup> and Rabbi Leo Jung (Orthodox). Freehof authored all of the responsa, though occasionally there is an Orthodox alternative answer at the bottom of the page. The first volume, *Responsa in War Time*, appeared in 1947 and the second volume, *Responsa to Chaplains*, in 1953.

It is worth noting that Freehof’s first volume of responsa appeared in 1947 when he was 55 years old, though he later made up for lost time! It is also worth noting that all of his responsa were written in English, a phenomenon I have discussed elsewhere.<sup>10</sup>

In 1955, Freehof became the chairman of the CCAR Responsa Committee, a position he held until 1976, and this position led to his major publications on responsa, which continued for the next 35 years until his death. In 1955, he published *The Responsa Literature*, which remains the best English introduction to that vast literature. In 1961, he published his supplement of 570 titles to Professor Boaz Cohen’s classic bibliography *Kuntress Hateshuvot*.<sup>11</sup> In 1963, Freehof published *A Treasury of Responsa*, which is an English translation of

selected responsa culled from 1,500 years of responsa. Finally, he published eight volumes of his own responsa between 1960 and 1990.

In an address delivered in 1961, Freehof says that he received 300 questions per year.<sup>12</sup> This means that he may have answered as many as 15,000 questions over the course of 50 years!<sup>13</sup> Be that as it may, he published 59 responsa for the Commission on Chaplaincy, 30 for the CCAR Responsa Committee (which also appear in his volumes of responsa,) and 450 of his own responsa, for a total of 539 responsa.<sup>14</sup> This is a corpus comparable in size to many Orthodox *poskim* in the modern era.

### Freehof's Approach to *Halakhah* and Rationale for Writing Responsa

Rabbi Freehof published a number of important essays and introductions in which he expresses his attitude to *halakhah* and explains why he wrote responsa. We shall concentrate on two such essays. In "Reform Judaism and the Legal Tradition", which was delivered as an address to the Association of Reform Rabbis of New York City in February 1961, Freehof explained that the *halakhah* is no longer viable today for three reasons: "It has the power of interpretation, but no longer has the power of *takanah* or legislation; it is paralyzed by the Orthodox fear of all change; and it is also inhibited by *yirat hora'ah*, or fear of making halakhic decisions due to self-deprecation."<sup>15</sup>

As a result of these phenomena, early reformers such as Rabbi Samuel Holdheim, who was a *talmid hakham*, revolted like an eighteen-year-old revolts against his parents. But now that we have achieved independence from the law, we can work our way back "to understanding the parent form of Judaism."

In the beginning of the Reform Movement, we thought that the Bible and the Prophets, especially the Prophets, would be sufficient. But now. . . we are coming to see that we cannot hope for an integrated religious personality if we are permanently alienated from fifteen hundred years of the supreme

Jewish intellectual effort. I do not mean that we are alienated from the entire rabbinic literature. We have always used the *Haggadah* and the *Midrash*.

But the real intellectuality of our people, their real brilliance, their full sounding of the depths of human ability to think and to reason, is in the halacha. It is not an exaggeration to say that never in the story of mankind's intellectual effort has so large a proportion of one people produced so brilliant a succession of intellectual works. Among what other people would some little man in a little village devote his whole life to producing a book of brilliant *hiddushim*, legal ideas which demand our best brains to understand and to follow? Such achievements by minor scholars were created by the thousands in every generation and in every land of Jewish residence! How can we be integrated as a Jewish movement, if we remain permanently alien from the great, creative Jewish legal tradition? We declared our independence and *are* independent. Now we must find a way, as a son finds his way, to remain independent, to remain free, and yet to be understanding and to get the benefit of whatever will be helpful to us in the legal tradition. . . .

In general I have arrived... at a rule-of-thumb rather than a *doctrine* of legal authority. We make our contact with the great rabbinic intellectual tradition, see wherein it can help us. If we find cases in which the rabbinic tradition does not fit with life, then those cases will have to take their chances with life as everything else does. *I follow the tentative formula that the halacha is our guidance and not our governance.* I do not claim this as an adequate principle. I claim it as a rule-of-thumb, useful as we go along.<sup>16</sup>

A year earlier, Freehof explained the Reform attitude towards *halakhah* and his rationale for writing responsa in his Introduction to *Reform Responsa*:

It is clear why halachic questions come up, but it is not clear what, in Reform, should be the basis of the answers . . . . Of this much we are sure, that whatever authority the *Halacha* has for us is certainly only a selective authority. There are vast sections of law about which we are never questioned . . . . [such as] the mixing of meat and milk, *mechirat hametz*, or the construction of the ritual bath.<sup>17</sup>

Later on, Rabbi Freehof asks: if rabbinic law does not have God-given authority, what does it mean to us? He replies:

To us the law is human, but nobly human, developed by devoted minds who dedicated their best efforts to answering the question: "What doth the Lord require of thee?" *Therefore, we respect it and seek its guidance. Some of*

*its provisions have faded from our lives. We do not regret that fact. But as to the laws that we do follow, we wish them to be in harmony with tradition.*<sup>18</sup>

... In other words, the law is authoritative enough to influence us, but not so completely as to control us. *The rabbinic law is our guidance but not our governance.* Reform responsa are not directive, but advisory. . . . Our concern is more with the people than with the legal system. . . .<sup>19</sup>

### A Comparison of the Responsa in *Reform Responsa* to Freehof's Stated Approach and Rationale

Thus far we have seen that Rabbi Freehof basically says that *halakhah* has a voice but not a veto. But if we carefully examine the responsa in his first volume of responsa – *Reform Responsa* – published in 1960, we must agree with Rabbi Gunther Plaut that “the overwhelming weight of Freehof’s conclusions is based solidly on Tradition.”<sup>20</sup>

First of all, Rabbi Freehof’s responsa are organized in the traditional fashion, according to the order of the *Shulhan Arukh*. Second, in terms of his *sources*, Rabbi Freehof does indeed utilize what he called “fifteen hundred years of the supreme Jewish intellectual effort.”<sup>21</sup> He quotes the Bible, *Mishnah*, *Tosefta*, *Bavli*, *Yerushalmi*, *Midrash*; codes such as Rambam, *Tur*, *Shulhan Arukh and Arukh Hashulhan*; dozens of responsa from the Maharam of Rotenberg and the Rashba to the *Hatam Sofer* and *Melamed L’ho’il*; and halakhic journals such as *Hamaor*, *Hapardess*, *Haposek*, and *Vay’laket Yosef*.<sup>22</sup>

Indeed, if one looks only at his *sources*, one could easily surmise that these responsa were written by an Orthodox rabbi. In eight places, he quotes or refers to books and articles that could be categorized as *Wissenschaft des Judentums*,<sup>23</sup> and on four occasions he consults with doctors, a lawyer, and a librarian regarding the subjects he is discussing.<sup>24</sup> Yet frequently he does *not* use *Wissenschaft* and other sciences when he *could* have or *should* have. For example, in Responsum no. 14 regarding the use of Jewish



symbols on synagogue floors, he *rejects* the evidence from ancient synagogues even though he is aware of it. In Responsum no. 28 regarding whether Jewish doctors should inform patients that they are dying, Rabbi Freehof consults neither doctors nor medical journals. In Responsum no. 33 as to whether a Jew may be buried in a Christian cemetery, he consults neither archaeologists nor archaeological journals. Most blatantly, in a responsum on smoking published in 1977, he says that "if [smoking as harmful to health] is proved to be a fact," then Jewish law would be opposed.<sup>25</sup> Had Rabbi Freehof consulted doctors or medical journals, he would have known that fact had been established long before 1977.<sup>26</sup>

Thirdly, the responsa themselves are much more traditional than one might expect. Of the 57 responsa in *Reform Responsa*, 46 have a clear *psak halakhah* (legal decision).<sup>27</sup> Among those 46 responsa, 36 (78 percent) are lenient and 10 (22 percent) are strict. This is not surprising. What *is* surprising is that 24 of the 36 lenient responsa (66 percent) are based on sources.<sup>28</sup>

Thus, for example, Rabbi Freehof allows a memorial service on Shabbat (no. 2), basing himself on *Shibolei Haleket*, *Responsa Tzaphit Bidvash*, and the *Kol Bo*. And he allows a congregational meeting on Shabbat provided no minutes are taken (no. 8), basing himself on Shab. 150a, Rambam, Rosh, *Shulhan Arukh*, and *Responsa Lekha Shelomo*.

On the other hand, five of the lenient responsa contradict the halakhic sources.<sup>29</sup> Thus, for example, after quoting many sources that say that a husband should *not* recite *kaddish* and *yizkor* for his first wife (no. 39), Rabbi Freehof states that a husband should not do so. But he then adds: "If, however, his first wife had no children and there is no one to say *kaddish* for her, then the husband may say *kaddish* in the absence of his second wife, but may have no *yahrzeit* light in the house."<sup>30</sup> In a responsum regarding the adoption of non-Jewish children (no. 47), he rules against the *halakhah* and requires no immersion or circumcision, basing himself on the CCAR position,

which he himself authored in 1947.<sup>31</sup> In Responsum no. 49 regarding the custody of children, he surveys the *halakhah* and then states: "As far as Reform Judaism is concerned, all of the above has comparatively little bearing. In general, we accept the validity of civil divorce and therefore must accept the decision of the civil courts as to custody of the children."<sup>32</sup>

*Reform Responsa* also contains eight responsa that are stringent on the basis of sources.<sup>33</sup> Thus, for example, no. 4 forbids a Sunday Bar Mitzvah since there is no Torah reading on Sunday and the blessings would be a *brakhah l'vatala*. No. 11 explains that a *sukkah* built on the *bimah* of a synagogue is merely a decoration and cannot be regarded as a legal *sukkah*. In Responsum no. 18, Rabbi Freehof was asked if a convert to Judaism may retain his church membership. He concludes "on the basis of both common sense and the Jewish law . . . [that] such an arrangement as suggested is utterly unacceptable under Jewish law and tradition."<sup>34</sup> And in Responsum No. 26 Rabbi Freehof was asked if a Jewish boy may sing in a church choir and wear a cross. He explains that Christians are allowed *shittuf* (i.e. to believe in God along with "the Son and the Holy Ghost" – cf. *Tosafot* to San. 63b), but *shittuf* is forbidden to Jews and therefore the boy may not participate in any trinitarian worship.

Finally, two of the responsa are stringent on the basis of ethical considerations.<sup>35</sup> No. 20 deals with a fifteen-year-old Christian girl who wants to convert to Judaism without her parents' consent. Rabbi Freehof admits that it is halakhically permissible. But he explains that in the past Christians snatched away Jewish children and converted them to Christianity. If we start doing the same, "we are destroying a moral decency which we have maintained . . . . All of this is based rather on the spirit of Jewish tradition than on its actual letter."<sup>36</sup>

### Conclusions

A Conservative rabbi who reviewed Rabbi Freehof's *Recent Reform Responsa* published in 1963 doubted whether the answers are really responsa. He says that in the first half of each responsum, Rabbi Freehof surveys the vast legal literature, while in the second he judges the case on the basis of the mood and mores of the modern Jewish community. "The problem lies in the fact that there seems to be no organic relationship between the two parts of each responsum. It is clear that the study of the past fascinates him. However, he considers only his judgement of the present relevant in reaching a decision."<sup>37</sup>

This assessment is true regarding the five lenient responsa mentioned above, but it is *not* true regarding *most* of the responsa in *Reform Responsa*. A more accurate assessment of most of Rabbi Freehof's responsa is contained in his own assessment of Rabbi Lauterbach's responsa: "Thus, except for the fact that his decisions are liberal, giving contemporary needs greater weight than an old fashioned *Moreh Hora'ah* might give, he is, in method at least, in line with the historic tradition of legal interpretation and decision."<sup>38</sup>

Indeed, we have already seen that most of Rabbi Freehof's responsa in *Reform Responsa* fit this description. He follows the order of the *Shulhan Arukh*. He primarily quotes classic halakhic sources. He quotes very little *Wissenschaft* or modern science. Though he is clearly lenient, most of his *kulot* are based on sources. Only five of his 46 responsa with a clear *pesak* (11percent) clearly contradict *halakhah*.

There is no question that Rabbi Freehof's fifty years of writing responsa and fourteen volumes of *halakhah* and responsa had a profound effect on the Reform movement, forcing it to confront "fifteen hundred years of the supreme Jewish intellectual effort". He inspired others, including Rabbis Jacob, Zemer, Plaut, Ellenson, and Washofsky to follow in his footsteps, and his halakhic activity may

have even helped lead to the positive approach toward *mitzvot* found in the revised Pittsburgh Platform of 1999.

It is also clear that his halakhic writings will continue to influence Conservative and Reform *poskim* for many years to come. And in that sense Rabbi Freehof continues to speak to us, as we have learned in the tractate of Yev. 97a: *kol talmid hakham shomrim devar shemua mipiv ba'olam hazeh siftotav devevot bakever* – “Any sage who has a teaching cited in his name in this world, his lips murmur in the grave.” *Yehi zikhro barukh!*

### Notes

\*In memory of Eve and Avid Boaz z"l. 21 Tevet and 2 Shevat 5762. “Beloved and cherished in life, even in their death, they were not divided.”

1. This section is based on *The Universal Jewish Encyclopedia* (New York: Universal Encyclopedia Press, 1941), vol. 4, p. 433; Walter Jacob et al. [editors], *Essays in Honor of Solomon B. Freehof* (Pittsburgh: Rodef Shalom, 1964), hereafter: *Essays*; *Encyclopaedia Judaica*, vol. 7, col. 121; Rabbi Walter Jacob in Rabbi Solomon Freehof, *Reform Responsa for Our Time* (Cincinnati: Hebrew Union College Press, 1977) pp. ix-xxvii; *The New York Times*, June 13, 1990, p. B20; *American Jewish Yearbook* (New York: 1992, ) vol. 92, pp. 594-595; Kerry Olitzky et al. [editors], *Reform Judaism in America: A Biographical Dictionary and Sourcebook* (Westport, Conn.: 1993) pp. 62-64.

2. According to Rabbi Walter Jacob in his introduction to Rabbi Solomon Freehof, *Today's Reform Responsa* (Pittsburgh: Rodef Shalom Press, 1990), before p. 1.

3. *Judaism* vol. 1, no. 3, (July 1952), p. 270. Regarding Freehof's close relationship to Lauterbach, see also his dedication to *Reform Jewish Practice* (Cincinnati: Hebrew Union College Press, 1944) [“to the memory of my revered and beloved teacher”], his introduction to *Recent Reform Responsa* (Cincinnati: Hebrew Union College Press, 1963), p. 12 [“my revered and unforgettable teacher”] and his introduction to Lauterbach's *Rabbinic Essays* (Cincinnati: Hebrew Union College Press, 1951) pp. xiii-xvi.

4. The expression *ish eshkolot* is used to describe two early Sages in Sotah 9:9. Samuel (Sotah 47b) explains the term as a *notarikon* of *ish eshkolot* – “a man who contains everything.”

5. *Essays*, pp. 53-93.

6. Rabbi Frederick Schwartz in *Essays*, pp. 3-32; and a personal communication from Rabbi

Dr. Ruth Langer, March 6, 2002. Rabbi Langer interned at Rabbi Freehof's synagogue in the 1980s.

7. See a bibliography of Lauterbach in his *Rabbinic Essays*, pp. 3-20. For a survey of his responsa, see Walter Jacob and Moshe Zemer [eds.], *Dynamic Jewish Law* (Tel-Aviv and Pittsburgh: Rodef Shalom Press, 1991), pp. 98-101.

8. See *Essays*, pp. 58-59.

9. He was replaced later on by Rabbi David Aronson.

10. See my introduction to *The Responsa of Professor Louis Ginsberg* (New York and Jerusalem: Jewish Theological Seminary Press, 1996), p. 24.

11. *Studies in Bibliography and Booklore* 5 (1961), pp. 30-41 (Hebrew section). In December 1957 and November 1959, Freehof wrote to Boaz Cohen urging him to publish a new, enlarged edition of *Kuntress Hateshuvot*. (The letters are preserved in the Boaz Cohen Archives, Rare Book Room, Jewish Theological Seminary, Box 9, "Freehof, Solomon.") Cohen must have replied in the negative, leading to the publication of Freehof's list.

12. *Reform Judaism and the Legal Tradition - The Tintner Memorial Lecture*, (New York: Association of Reform Rabbis, 1961), p. 10, hereafter: *Legal Tradition*. In the introduction to *Recent Reform Responsa*, p. 7, Rabbi Freehof says that the Responsa Committee has received 200 questions per year for the last decade.

13. By way of comparison, Rabbi Shlomo ben Adret (1235-1310), who was considered to be one of the most prolific responders of all time, was rumored to have written 6,000 responsa of which 3,373 have been published. See S. Z. Havlin in *Teshuvot Sh'elot L'harashba* (Jerusalem: 5737 [1977]), p. 8, note 4.

14. The responsa written for the Responsa Committee are found in Walter Jacob [ed.], *American Reform Responsa* (New York: Central Conference of American Rabbis, 1983). Rabbi Jacob (above, note 2), says that Rabbi Freehof published 433 of his own responsa, but some of the responsa deal with a few different topics, hence the total of 450.

15. *Legal Tradition*, pp. 2-5.

16. *Ibid.*, pp. 7-10.

17. *Reform Responsa* (Cincinnati: Hebrew Union College Press), 1960 [hereafter: *RR*], p. 19.

18. *Ibid.*, p. 21.

19. *Ibid.*, p. 22. For the phrase "guidance but not governance," cf. pp. 75, 218.

20. Rabbi Gunther Plaut in Jacob and Zemer, *Dynamic Jewish Law*, p. 113.