

SOLOMON B. FREEHOF
and the
HALACHAH

AN APPRECIATION

by WALTER JACOB

The Rabbinic Alumni Association of Hebrew Union College has previously published five volumes of selected responsa representing Solomon B. Freehof's work in the field over a period of almost two decades. Through this volume, *Reform Responsa for Our Time*, we pay special tribute to the author's eighty-fifth birthday; it is published by the Association with the generous help of the Rodef Shalom Congregation, which wishes to honor its Rabbi Emeritus through its assistance.

The responsa of Solomon B. Freehof, and his thoughtful introductions to each volume, show us something of the development of the Reform Jewish approach to *Halachah* in the last two decades. It is appropriate at the outset of this volume to summarize the Halachic activity within the Reform movement so that Solomon Freehof's labors can be seen in perspective.

The Reform movement was revolutionary when it

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began in Europe early in the nineteenth century. Although its initial concerns were liturgical reform and theological change, it soon sought to justify itself by using classic Halachic tools. In 1818 a small responsa pamphlet entitled *Nogah Ha-tzedek* was published; it was followed in 1842 by the publication of a series of responsa by the Hamburg congregation which supported changes in its liturgy (*Theologische Gutachten über das Gebetbuch nach dem Gebrauche des neuen israelitischen Tempelvereins in Hamburg*, 1842). Slightly later, a much more extensive review of the Reform position and its rabbinic roots was published in a series of responsa (*Rabbinische Gutachten über die Verträglichkeit der freien Forschung mit dem Rabbineramte*, 1843). Both of these volumes contained the work of outstanding individuals. They represented a vigorous attack upon the Orthodox establishment and some keen insights into possible new paths of religious development. Naturally, these volumes and others called forth strong Orthodox opposition, which was expressed in *Eleh Divre Habrit* and in the works of Moses Sofer, Akiba Eger, Jacob Lissa, Mordecai Benet, and others. Thus, even in its infancy, the Reform movement found itself engaged in an intellectual debate conducted within the historical framework of the responsa literature. This was, however, soon discontinued, and few liberal responsa were written during the next half-century. The Reform leaders could certainly have proceeded along these lines; for example, Samuel Holdheim (1806-1860), who began his rabbinic career as an Orthodox rabbi, and had

written some Orthodox opinions early in life, was capable of reasoning in the traditional manner, but he, as well as Abraham Geiger, Zacharias Frankel, and others, felt that such a procedure was useless. It was not necessary for their own followers and did not influence the Orthodox. Furthermore, they probably felt no need to justify each detail of the changes undertaken.

Although no responsa were written during the next period of Reform development, vigorous Halachic debate continued at each of the synods and rabbinic meetings; they sought to establish a consensus of Reform Jewish theory and practice. The need for such conferences was felt early, and Abraham Geiger advocated the gathering of a broad general assembly through an open letter in 1837. Such a meeting took place at Wiesbaden in August of 1837, but few practical results were achieved except the impetus to publish articles on a wide variety of matters in Geiger's theological magazine. Subsequent conferences were held in Brunswick (1844), Frankfurt (1845), and Breslau (1846), as well as the synods in Leipzig (1869) and Augsburg (1871). Long and sometimes acrimonious debates on every aspect of the Reform movement's relationship with the *Halachah* were held. These debates were rarely entirely theoretical, but dealt with the practical matters of synagogue services, the Sabbath, holidays, marriage, divorce, burial, conversion, non-Jews, and much else. A wide spectrum of opinion was represented, at most gatherings, with the extreme left represented by Holdheim, who stated in Brunswick

(1884): "All the talk about a Talmudic Judaism is an illusion. Science has decided that the Talmud has no authority dogmatically or practically." The majority at that second German rabbinic conference, however, were more conservative. Individuals like Samuel Hirsch were concerned that resolutions passed by the majority of the conference would clarify changes of practice as codified in the *Shulchan Aruch*. Clearly, for most of the rabbis present, the *Shulchan Aruch* remained basic, and Reform made only limited changes. Although Philipsson claimed that the majority of those present at the Brunswick rabbinic conference considered the Talmud and *Shulchan Aruch* no longer authoritative, the decisions there and at subsequent meetings constantly weighed changes against the tradition. This was especially clear throughout the debates on the Sabbath question and marriage laws.

Reform in Europe sought a balanced stance by continuing strong ties with traditional observances; no widely accepted theoretical basis was created by these meetings. In matters of Halachic theory, the Reform movement in Europe remained as vague as the Reform movement in the United States.

Developments in America began with the rabbinic conferences held in Cleveland (1855), Philadelphia (1869), Cincinnati (1871), and Pittsburgh (1885). The debates in the United States were concerned with practical matters, but each of these conferences also developed a theoretical stance toward the *Halachah*. In Cleveland in 1855 the discussion was based on the following criteria: "The Bible, as delivered to us by

our fathers, and as now in our possession, is of immediate divine origin, and the standard of our religion. The Talmud contains the traditional legal and logical exposition of the Biblical laws, which must be expounded and practiced according to the comments of the Talmud." However, when it came to the adoption of a set of principles, the entire sentence on the Talmud was omitted, while other issues, such as Messianism, priesthood, the mission of Israel, resurrection, and the Hebrew language, were addressed.

It was different in 1885, for the third point in the Pittsburgh Platform stated: "We recognize in the Mosaic legislation a system of training the Jewish people for its mission during its national life in Palestine, and today we accept as binding only its moral laws, and maintain only such ceremonies as elevate and sanctify our lives, but reject all such as are not adapted to the views and habits of modern civilization."

The statement adopted a half-century later in Columbus (1937) changed this: "Revelation is a continuous process, confined to no one group and to no one age. Yet the people of Israel, through its prophets and sages, achieved unique insight in the realm of religious truth. The Torah, both written and oral, enshrines Israel's ever-growing consciousness of God and of the moral law. It preserves the historical precedents, sanctions and norms of Jewish life, and seeks to mold it in the patterns of goodness and holiness. Being products of historical processes, certain of its laws have lost their binding force with the passing of the conditions that called them forth. But as a depository

of permanent spiritual ideals, the *Torah* remains the dynamic source of the life of Israel. Each age has the obligation to adapt the teachings of the *Torah* to its basic needs in consonance with the genius of Judaism." The Columbus Platform also dealt with specific religious practices by demanding "the preservation of the Sabbath festivals and Holy Days, the retention and development of such customs, symbols and ceremonies as possess inspirational value, the cultivation of distinctive forms of religious art and music, and the use of Hebrew, together with the vernacular, in our worship and instruction."

The latest statement, adopted in San Francisco in 1976, dealt with the tradition by stating that "Torah results from the relationship between God and the Jewish people. . . . Rabbis and teachers, philosophers and mystics, gifted Jews in every age, amplified the Torah tradition. For millennia, the creation of Torah has not ceased and Jewish creativity in our time is adding to the chain of tradition. . . . Reform Jews respond to change in various ways according to the Reform principle of autonomy of the individual." This Centenary Perspective contains no specific statement on the relationship of Reform Judaism to the *Halachah*. This has, however, been accomplished in a practical manner through a variety of publications of the Central Conference of American Rabbis, such as the *Shabbat Manual* and the *Tadrach*. There has also been more Halachic discussion in the *CCAR Journal* during the last years. The movement itself remains distant from a thoroughly thought-out approach to the *Halachah*.

We might say that the Reform movement has followed the pattern suggested by Solomon B. Freehof, who advocated that individuals rather than the Conference write codes, responsa, as well as theoretical articles on Jewish law. In this way an ongoing debate would create a consensus, and thus a link with the *Halachah* would be created. Polish and Doppelt's *Guide for Reform Jews* and theoretical articles by Petuchowski, Borowitz, Plaut, and others have partially accomplished this. Freehof has also stated that any theoretical basis must remain loose until we have decided upon a theology of revelation. The American Reform movement has thus decided to find its way to homogeneity of practice; it has refused to recommend observances which bear no relationship to the realities of modern life, whereas much Orthodox debate took place in an atmosphere of unreality, with the leadership discussing details while the vast majority of their followers do not even observe the broadest rubrics of the law.

The Central Conference of American Rabbis established its Responsa Committee in 1906; however, no responsa were published until 1911. This committee has had many distinguished chairmen, among them Kaufmann Kohler, Jacob Z. Lauterbach, Jacob Mann, Israel Bettan, and Solomon B. Freehof. Its procedures varied; occasionally full-length responsa were given in the *CCAR Yearbook*, sometimes followed by dissenting opinions or discussions by members of the committee. In addition, the *Yearbook* recorded the fact that other questions had been addressed to the committee;

they were answered either privately or briefly in the report made to the Central Conference. The committee's existence showed that despite a lack of theoretical basis, the Conference felt a need for an ongoing Halachic process. Solomon B. Freehof became involved in the work of this committee in 1947, and became its chairman in 1955. His own deeper interest in responsa began in 1941 with a lecture given at the Central Conference entitled "A Code of Ceremonial and Ritual Practice." In this he expressed the feeling that the demand for a code was premature. He stated that the necessary neglect of entire areas of Jewish law in such a work would be an embarrassment. Furthermore, he felt that since further experimentation on the part of the Conference and its individual members was necessary, codes should be left to individual efforts. This might eventually move the entire Reform movement closer to a unified attitude.

During World War II Solomon B. Freehof's interest in *Halachah* continued to develop through his membership on the Responsa Committee of the Commission on Chaplaincy of the Jewish Welfare Board. This committee consisted of Reform, Conservative, and Orthodox rabbis, with Solomon Freehof as its chairman; it published two booklets, *Responsa in Wartime* (1947) and *Responsa to Chaplains* (1953). They were unusual for their combined Halachic effort, which emergency conditions had prompted, and for being published in English. Up to this time, with rare exceptions, only specifically Reform responsa had been

published in languages other than Hebrew, Aramaic, or Arabic.

Alongside Solomon B. Freehof's work for the military chaplaincy came the preparation of two volumes entitled *Reform Jewish Practice* (1944 and 1952). The subtitle of these volumes (*Reform Jewish Practice and Its Rabbinic Background*) clearly indicated the author's intent of binding Reform Judaism to the tradition. The dedication of the initial volume to the memory of Jacob Z. Lauterbach showed that Solomon B. Freehof wished to continue in the path of his favorite teacher, whose thoroughly argued responsa were full of citations. In the introduction to *Reform Jewish Practice*, Freehof traced the changes in Jewish practice caused by the destruction of the Temple and the creation of a large diaspora outside of Israel. Adjustments were made by the scholars as well as the people through *minhagim* which were often very important. Through the centuries, Orthodoxy remained sufficiently flexible to meet the needs of changing conditions, but this stopped in the middle of the eighteenth century. Reform then stepped in to adjust Judaism to modern life. Solomon B. Freehof felt that a fairly harmonious system of practice had developed after five generations of Reform Judaism, and he considered his book a summary rather than a guide for the future. In the second volume, which supplemented the first, he speculated that our neglect of the Sabbath and dietary laws might be due to the overdevelopment of Orthodox law in these fields. Little room for creativity remained. Furthermore, these areas had become marked by gen-

eral nonobservance among most Jews; it was hopeless to deal with matters which would be ignored by the people.

Solomon B. Freehof's interest in the development of Jewish law was also shown through his report on mixed marriage and intermarriage to the Central Conference in 1947 and his analysis of "Jacob Z. Lauterbach and the Halacha," published in *Judaism* in 1952. The latter showed that Freehof wished to follow Lauterbach's pattern of sifting the entire tradition in order to find a modern, liberal approach to each problem.

Solomon B. Freehof then pioneered by introducing the responsa literature to the English-reading American Jewish public. *The Responsa Literature*, published in 1955, was followed by *A Treasury of Responsa* in 1963. Both volumes provided a nontechnical introduction to this large segment of rabbinic literature which had been totally neglected in English. Previously, responsa had only been used for an occasional doctoral dissertation. Both of Freehof's books spanned the vast literature from its beginning to modern times. In them, Solomon Freehof discussed the development as well as the problems of the *Halachah*. He dealt with a number of outstanding controversies which had led to major divisions in rabbinic Judaism. The books indicated the vast extent of Solomon B. Freehof's personal responsa library, which is among the best in the world, and has been largely given to the Hebrew Union College.

Solomon B. Freehof, the bibliophile of responsa literature, wrote an addendum to Boaz Cohen's *Kontras Hateshuvos*, which was published in *Studies in Bibliog-*

raphy and Booklore (1961). This study is an important tool as it brought Cohen's reference work up to date.

During subsequent years Solomon Freehof has devoted himself to a further development of the responsa through the practical answering of questions sent to him both as chairman of the Responsa Committee of the Central Conference of American Rabbis and in his individual capacity. Each volume has included a lengthy introduction which seeks to analyze the relationship of Reform Judaism to the tradition as well as the current mood of Reform Judaism. As chairman of the Responsa Committee, Freehof has published responsa for the Central Conference of American Rabbis with only a minimum of involvement by the rest of the committee.

In the first of these volumes (*Reform Responsa*, 1960), he expressed the feeling that because confidence in the prophetic approach of Reform Judaism had faded, a new path was needed. A strong impulse toward legal discipline had to be created. He pointed to the enormous changes which had taken place in Jewish law. Without the benefit of the Reform movement or any other attempts at modernization, Orthodoxy had quietly yielded to the wishes of the people and allowed vast areas of Jewish law to slip away. Yet the pace of that change was not sufficient for us and others. Nor has Conservative Judaism been able to adapt itself fast enough for modern needs, and its attempt to develop within the framework of Jewish law has led to violent Orthodox opposition.

In this introduction written in 1960, Solomon Freehof stated that he would approach the *Halachah* selectively, for the law was human—it was advisory. The volume largely reflected this permissive approach, buttressed by traditional references whenever possible.' He was also willing to reject the tradition entirely when it did not conform to modern times. In this introduction the author again mentioned Lauterbach and indicated his indebtedness to his teacher and friend.

The responsa themselves, in all the volumes, clearly showed the relationship of Reform to tradition which Freehof sought. We should note that each volume was organized according to the sequence of the *Shulchan Aruch*. Even in lenient rulings the author tried to pattern himself after tradition. All the questions dealt with living issues and reveal a broad interest in Jewish law. The chief problem of these decisions lies in their constant permissiveness, though his *Halachic* correspondence tends to be more restrictive.

The introduction to *Recent Reform Responsa*, which followed in 1963, analyzed the needs of the Jewish people in our time, especially the majority, who are irreligious and antinomian. Orthodoxy has sought to protect the law from the people rather than have it serve the people. This brought the host of negative answers in Orthodox responsa, which did not help the people.

Although the law is logical, the lack of logic in daily life necessitates its continuous development. Freehof felt that our revived Reform interest in Jewish law was partly sociologically determined and that it stemmed

from the background of the present-day congregant, which he found somewhat akin to that of the first generation of German Reform Jews in the middle of the last century. According to Freehof, this background was the reason for the nineteenth-century synods and books of responsa dealing with specifics of Jewish law. The recent changes in American Jewish life have led in a similar direction and simultaneously to greater diversity within the movement. The development of responsa would bring a renewed sense of unity. Three further volumes followed in 1969, 1971, and 1974. The dates themselves indicate that a progressively larger number of questions has been directed to the author; furthermore, he felt it necessary to answer them in detail. Some were answered more briefly in *Halachic* correspondence which has been deposited at the Hebrew Union College. In each of these volumes Solomon B. Freehof analyzed the mood of Reform Judaism and attempted to find his own way back to *Halachah*.

In *Current Reform Responsa* (1969), Solomon B. Freehof reviewed some tendencies which have brought the Reform movement closer to tradition. Among them was the general acceptance of Biblical criticism, which meant that it now was as logical to establish a religious position on the rabbinic tradition, which had been subjected to historical criticism a generation or two earlier. Furthermore, the movement had matured and so could abandon its earlier stance of rebellion without feeling any loss of freedom. The movement, as he saw it, need not hurry to reaffirm a relationship with the tradition, though it obviously felt the need for inner

discipline. Realistically it was, of course, neither possible nor desirable to reestablish the old mood; changes would be selective and evolutionary. The responsa, as seen by Solomon B. Freehof, constituted a repository of human and divine wisdom through the generations.

By 1971 Solomon B. Freehof had added other facets to his justification of responsa. As the Reform movement became stronger in new lands, as witnessed by its rapid growth in England and its slow struggle in Israel during the last decade, it must once again defend itself as at its beginning. The pattern established a hundred years ago by Aaron Chorin and others through responsa or Halachic citations, and a generation later by the efforts of Geiger, Frankel, and Graetz to defend the movement historically, was now repeated. Orthodoxy in these lands and elsewhere continues to struggle vigorously against Conservative and Reform *Halachah*. The development of legal themes by Reform Jews was not welcomed by Orthodoxy either a century ago or today. The Orthodox attitude may be best summarized by a quotation from Moses Sofer, who wrote: "Everything new is forbidden by the Torah."

Freehof also pointed to the emergence of a new type of Orthodoxy, which has realistically appraised modern conditions and adopted many techniques and thoughts of the Reform movement; it may well use our methodology of responsa in the future. We could cite the modern Orthodox magazine *Tradition*, which publishes Halachic material in English, and is willing to print liberal opinions. This clearly shows a develop-

ment in a new direction which, of course, has been vigorously opposed by the old-style Orthodoxy.

In his last volume, published in 1974, Freehof again stressed the need for Halachic creativity and a harmony between discipline and freedom. Although the Reform movement has returned to many practices of traditional Judaism, this has not been done in the spirit and the manner of Orthodoxy. Our acceptance is based more on *minhag* and follows psychology rather than logic or the interpretation of the *Halachah*. In the current volume, Solomon B. Freehof demonstrates that the realities of modern Jewish life are mirrored through the questions asked of the respondents. This has always been true and shows that vast areas of the law are no longer observed by anyone in modern Orthodoxy. The Orthodox process of abandonment is, so to speak, balanced by our slowly encompassing fields which Reform had formerly neglected if not entirely abandoned.

Perhaps the best summary of Solomon B. Freehof's approach to Jewish law was provided in his lecture "Reform Judaism and the Law," given at the Hebrew Union College a decade ago. In it he emphasized the revolt of our movement against the strictures of the law. While all legal systems depend on new interpretations of old laws as much as on new legislation, the latter path has been closed to the Jewish tradition for a long time. The intense development of interpretation has often trivialized the law, and this needed correction. In a sense, the Reform movement has accomplished this for our time.

The strength of the traditional system throughout the Jewish past lay in its emphasis on the universal study of the traditional literature. Reform in the past lacked the discipline of the tradition, but strengthened Judaism in the area of liturgy and equality for women, thus providing new paths and emphases. Reform is close to the Bible, which has become part of our conscience, but we have lost the Talmud and its intellectuality, which can now be regained. As Reform Jews, we can approach *Halachah* openly because we are not controlled by it; having declared our independence from *Halachah*, we are free to base ourselves solidly on it. As earlier, Solomon B. Freehof emphasized the reality of Reform Judaism, which has stressed Biblical ideas, while all our practices are rooted in rabbinic Judaism. Despite our emphasis on *Halachah* during the last years, it remains "guidance not governance."

During the last three and a half decades, Solomon B. Freehof has not worked in isolation. Others have sought different ways of dealing with the problems of the *Halachah*. Rabbis Doppelt and Polish published a *Guide for Reform Jews* in 1957; both had previously urged the Conference to edit such a volume, but it was reluctant to do so. The guide has been fairly widely used and appeared in a second edition. In the introduction the authors provided a rationale for their work. They clearly indicated that their work was a guide, not a code. The *mitzvos* were significant because many of them served as strong bonds to our history and made it meaningful in our lives; Jewish life fulfills itself through history. The *mitzvah* "has its source in an

historic encounter of the Jewish people with God; hence, Jewish history is its basic authority. The *halachah*, on the other hand, has its origin in the perennial deliberations of rabbinical authorities; hence, its sanction rests precisely with its makers." The development of Reform Judaism was traced through various stages; following an initial emphasis on theology and ethics, it is now stressing practice and ritual. Doppelt and Polish also stressed the development of the *minhag*, enforced by popular usage and abandoned when its meaning was lost.

Halachic issues appeared more frequently in the *Journal of the Central Conference of American Rabbis* and in papers presented at the annual rabbinic conference. Some essays only indicated an isolated point of view, while others led further. Yet even the *CCAR Journal* eschewed *Halachah* after a few opening issues and turned to sociological and psychological questions of the rabbinate. Halachic matters were only treated incidentally.

We do not come to any substantive discussion of *Halachah* until April of 1960 in a series entitled "In Quest of Reform Jewish Theology." Later, greater concern with Halachic matters was shown.

In 1972 the Conference published a *Shabbat Manual* edited by W. Gunther Plaut. The book was published after a committee process of seven years. The introduction showed Gunther Plaut's approach to the *Halachah* as similar to Solomon B. Freehof's. He stated: "For us, mitzvah means that God offers an opportunity to introduce 'ought' into our existence. To accept this op-

portunity and act on it is not easy; it demands self-discipline." Later in the book, the same theme was continued in a chapter entitled "Catalogue of Shabbat Opportunities." The book concluded with a series of questions and answers about the Shabbat, often taken from the responsa of Freehof and Lauterbach. These were not responsa in the usual sense, with full citations from older authorities, but sought to provide straightforward answers and a brief historical background. The book has been widely used and will remain influential. Aside from these efforts, Stephen Passamaneck dealt with *Halachah* in his Founder's Day address of 1967, entitled "Reform and Halakha: The State of the Art." This essay analyzed the movement and what can be done to create a relationship with the *Halachah*. "Reform Judaism has always functioned within the juristic frame of reference which has characterized much of Jewish thought." This thought, akin to Freehof's, was placed in the theoretical framework by Passamaneck, who showed that the Reform movement differed from Orthodoxy in its theory of law, which was based on progressive revelation. He emphasized the persuasive effect of the law, which enables the free individual to make an ethical, liberal, and knowledgeable decision. Passamaneck's view may be summarized in the statement: "Although *Halakhah* may no longer rule, yet it remains a central and vital role. The enterprise of *Halakhah* means turning the raw material of life into purposeful religious living. It is the ever unfinished task of generations begun at Mount Sinai, which has now become our own." This final emphasis on the tra-

dition borne continually since Sinai is especially significant.

Clearly, Solomon B. Freehof has been a leader in this area of Reform Jewish development. He has continued and broadened a tradition rooted in the beginnings of our movement. Even as we express gratitude for his guidance in the past, so we hope that God will bless him with the vigor to continue his studies and writing in the future.

INTRODUCTION

In every modern country the decisions of the law courts are accumulated and indexed and thus are instantly available to every lawyer. But the Jewish responsa literature, comprising hundreds of thousands of legal decisions, remains virtually unindexed, and so most of it is inaccessible except to the specialist scholar. The various attempts at indexing the responsa literature were developed mostly as appendages to the *Shulchan Aruch*. This reveals, of course, the sole purpose of the indexing, namely, to aid the rabbi in making his decisions when a religio-legal question comes before him.

While these Halachic indices (such as the *Pische Teshuva* or the *Ozar Ha-Poskim*) are of great value in making Halachic decisions, they all overlook other vital material in the responsa which is not directly relevant to Halachic needs, and which, generally, the respondent himself would consider only incidental to his main purpose. Actually, the responsa literature contains treasures for the historian, the sociologist, and the linguist. Except for a few special studies of certain individual