A Responsum on Synagogue Attire: Summary

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This thesis is in two parts. The first part begins with a brief historical review of the genre of responsa, and then turns to the topic of responsa and the Reform movement. There is a theoretical consideration of how Reform rabbis have gone about the task of using halakhic sources in making decisions about Reform Jewish practice, focusing on the writings of the three major respondents of the Reform movement in America: Solomon Freehof, Walter Jacob, and Mark Washofsky. At the end of this part, there is an attempt to articulate an approach to writing responsa that both takes halakhah seriously and is true to the religious insights of Reform Judaism.

The second part of the thesis is an original responsum on the question of appropriate synagogue attire. The issues covered include modesty and formality as they are discussed in the classical halakhic codes, commentaries, and response, including recent responsa of Moshe Feinstein and Ovadia Yosef, and previous Reform responsa on related topics. The final part of the responsum is an analysis and conclusion from a Reform Jewish perspective. It is decided that while particulars of dress must be decided according to community custom, the tradition teaches four principles that should shape Reform decision-making on this topic: avoiding distraction, approaching God with awe, respecting the sanctity of the synagogue, and honouring Shabbat.

A RESPONSUM ON SYNAGOGUE ATTIRE

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Introduction

The goal of this thesis is to articulate an approach to writing responsa that is authentically halakhic and true to the religious insights of Reform Judaism, and to test this approach through the exercise of writing a responsum.

The first part of the thesis serves as an introduction to the study of responsa; a discussion of the relationship between Reform Judaism and halakhah, as seen in the writings of Solomon Freehof, Walter Jacob, Mark Washosfsky, and others; and an attempt to develop a theoretical approach. The second part is a responsum on the question of appropriate synagogue attire, focusing on the issues of modesty and formality, as well as the question of dress codes in a Reform context.

I am grateful to my advisor, Dr. Alyssa Gray, for being an exemplar of a number of halakhic virtues: guidance, flexibility, and setting limits. This thesis is in memory of my zaide, Al Presement, and my grandmother, Hilda Grushcow. Among their many other qualities, they were always beautifully dressed.

Responsa: A Reform Perspective

Classical Responsa

Commentaries, codes, and responsa are the three major categories of post-talmudic halakhic literature.[1] Of these three categories, responsa literature is the one that continues to grow, up to and including the present day; as such, it has special relevance to contemporary conversations about halakhah. The development of a particularly Reform responsa literature will be discussed below. First, an introduction to classical responsa literature is required.

The classical responsa literature can be divided into six periods.[2] Although there are references to correspondence on legal matters in the Palestinian and Babylonian Talmuds,[3] the first period in which responsa emerged as a literary form is the Geonic period.[4] During this time (beginning in the eighth century), the Geonim of the Babylonian academies responded to queries from outlying communities. Three major areas of questions developed: talmudic interpretation, disputes on topics such as synagogue customs, and new issues in halakhah.[5] The answers are of two sorts: either very brief and direct responses, or lengthier monographs.[6] The majority of these responsa have been

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[1] Freehof (1955), pp.14-17. See Elon (1994), for his detailed descriptions of each of these categories, and especially v.3, pp.1454-1528 on the responsa literature.
[2] This division is suggested by Lauterbach in his article in *The Jewish Encyclopedia*, "She'elot U-Teshuvot." His definitions of the different periods are adopted for the purposes of this introduction.
[3] Freehof (1955), pp.23-25.
[4] On the Geonic responsa, see Elon (1994), pp.1468-1473, and Brody (1998), pp.195-201.
[5] Ta-Shma in *Encyclopedia Judaica*, "Responsa." See Freehof (1955), pp. 27-30, for some examples of topics dealt with by Geonic responsa.
[6] Ibid.

lost, although over twenty compilations are extant, and the discovery of the Cairo Geniza has enriched the corpus significantly.[7]

As the centralized authority of the Geonim began to dissipate and learning spread outside of Babylonia, in the mid-tenth to mid-eleventh centuries, a new period began in which responsa were written by local rabbinic authorities. These responsa came from western North Africa, Spain, France, and the Rhineland.[8] In form and content, they resembled the responsa of the Geonim.

The third period includes the responsa written in the Spanish and French schools of the eleventh and twelfth centuries. The fourth period includes responsa from the same regions, and also Germany, in the thirteenth and fourteenth centuries. During these two periods of responsa-writing, responsa became longer and more discursive. These responsa, such as those of Rabbenu Tam in twelfth-century France, Solomon ben Adret in thirteenth-century Spain, and Meir of Rothenburg in thirteenth-century Germany,[9] are more explanatory, and their arguments are more extensive than in earlier responsa. It is at this point that they are said "to have arrived at the status where they constituted a separate branch of rabbinic literature."[10]

Towards the end of this period and the beginning of the next, respondents began to articulate the value of their writing. In Germany, the Maharil (Jacob Moellin) made the following statement to a correspondent: "As for your statement that one should not rely upon responsa; on the contrary, I say, they are practical law and we should learn from

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[7] Elon (1994), pp.1469, 1472.
[8] Haas (1988), p.41; Freehof (1955), p.31, and Lauterbach.
[9] Listings of all the prominent respondents in each period can be found in the articles in *The Jewish Encyclopedia* and *Encyclopedia Judaica*.
[10] Freehof (1955), p.31. Freehof explains this phenomenon as being the result of a spread in talmudic knowledge, such that those asking the questions were talmudic scholars, desiring not only answers but elaboration upon the sources and justification for the conclusion that is given. See Freehof (1955), pp.32-33.

them more than from the codifiers who, after all, were not present at the times when the decision was made."[11] As the genre of responsa developed, its importance increased.

The fifth period, from the fifteenth to eighteenth centuries, includes responsa from Italian, Turkish, German, and Polish rabbis. In part, this period was shaped by the expulsion of the Jews from Spain in 1492, and their immigration to North Africa, Turkey, Egypt, and the Land of Israel (under the Ottoman Empire), as well as the immigration of German and Bohemian Jews to Poland and Lithuania in the wake of persecution.[12] These conditions raised a variety of new questions, ranging from issues of jurisdiction (e.g. how the customs of the immigrants should relate to the customs of the extant communities in these countries) to issues of Jewish status (e.g. the marital problems caused by conversions).[13] Also in this time period, responsa changed in two significant ways. First, the spread of the Shulhan Arukh in the seventeenth century, with the commentary of Moses Isserles, provided a code that both Ashkenazim and Sephardim could utilize in their responsa.[14] Second, towards the end of this period, the genre developed increasingly detailed forms of argumentation, and as a result, "the argument itself -- the display of rabbinic virtuosity – had become an end in itself."[15]

The sixth period of classical responsa began in the nineteenth century, and continued this trend of increasing argumentation. At the same time, new questions arose which were addressed in the responsa in meaningful ways, among them issues regarding

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[11] Maharil, Responsum 72. Cited in Freehof (1955), p.35.
[12] Ta-Shma, *Encyclopedia Judaica.*
[13] See Freehof (1955), pp.37-41, and articles in *The Jewish Encyclopedia* and *Encyclopedia Judaica.*
[14] Ta-Shma, *Encyclopedia Judaica.*
[15] Haas (1988), p.41.

new technology, the effects of emancipation, and the rise of Reform Judaism.[16] Many responsa emerged from Hungary and Galicia, including the work of Moses Sofer.

The twentieth and twenty-first centuries have continued many of the trends found in early periods of classical responsa. New issues have arisen to be addressed. These include the establishment of the State of Israel, which revives numerous halakhic questions in areas such as agriculture; bio-medical questions regarding transplants, artificial insemination, life support, and cloning; and questions related to societal change, involving the status of women, and intra-Jewish and interfaith relations. These examples are only a few of the issues addressed by more recent responsa.

The advent of the modern period has seen increased diversity in Jewish religious practice and belief, including institutionalized diversity through the growth of different denominations. For more traditional communities, the process of writing responsa has, for the most part, continued, without asking whether the enterprise itself has changed. In non-Orthodox communities, and especially in Reform Judaism, the writing of responsa has itself become the focus of debate. In the absence of major new commentaries or codes, the genre of responsa has become a central locus for liberal Jewish discussions of autonomy, authority, and halakhah. This has led to a complicated relationship between responsa and Reform Judaism. We now turn to an exploration of that relationship.

[16] Lauterbach, *The Jewish Encyclopedia*.

Responsa and Reform Judaism

The relationship between responsa and Reform Judaism is a long one, but its telling is relatively recent. Some accounts of the beginnings of Jewish religious reform in nineteenth century Europe speak only of the radical break with tradition.[17] Others, however, mention that the early reformers were concerned with reforming halakhah – rather than Judaism as a whole – and that they attempted to do so, at least in part, through the writing of responsa.[18]

Peter Haas has identified these early efforts as being part of a "pre-history" of Reform responsa: the content is Reform, but the form remains traditional. As an example, he cites the 1818 collection published in Dessau, *Noga Hatzedek*.[19] This collection included progressive opinions on topics such as the use of an organ in services, and the use of the vernacular in prayer. According to Haas, these authors "poured Reform content into older literary wineskins,"[20] or, put differently, "the medieval form of their responsa clashed with their modernist content."[21] His argument is that there was a basic incompatibility between the form and the content of these early, proto-Reform responsa. They failed because they were being written as part of a movement that was undermining the assumptions upon which classical responsa were based: that the proclamations of rabbinic literature are normative and true; that the world of rabbinic learning is the primary world of discourse; and that answers to questions can be found in the collective

[17] E.g. Freehof (1970), p.17, and Borowitz (2002), p.5..
[18] E.g. Jacob (1987), p.xv, Plaut (1968), pp.88-89, and Zemer (1999), pp.38-39, all speak of the desire of early reformers to amend halakhah. Haas (1988), pp.37-38, details how this was expressed through early responsa. He also cites Petuchowski's work (1968) on how early liturgical changes in Germany were defended through responsa.
[19] Haas (1988), pp.37-38.
[20] Ibid., p.38.
[21] Ibid., p.43.

wisdom of the Jewish people.[22] These assumptions were rejected by early reformers, and with them, the genre of the classical responsa.[23] From the opposite end of the spectrum, the reformers' Orthodox opponents also were unreceptive to this attempt.

A second stage in the history of Reform responsa came with two German collections in the early 1840s, both written in the vernacular, and self-conscious of their difference from what had come before. There were significant differences between these two collections. The first, *Theologische Gutachten über das Gebetbuch nach dem Gebrauch des Neuen Israelitischen Tempelverein in Hamburg*, was a series of essays by different rabbis on the topic of the ban against the Hamburg Temple's prayerbook. This collection has a focus on theological and philosophical argumentation, containing few citations from rabbinic literature. The second, *Rabbinische Gutachten über die Vertraeglichkeit der freien Forschung mit dem Rabbineramte*, addresses the conflict between the traditional rabbi of Breslau, Solomon Tiktin, and his liberal associate, Abraham Geiger. In its defence of Geiger, this collection incorporated more rabbinic material, but still is fundamentally philosophical.[24]

This philosophical focus differentiates the second stage of Reform responsa from the first. The 1840s collections reveal "an entirely new conviction, namely that Judaic discourse must take place within the larger linguistic and cultural universe of the modern world."[25] Ultimately, this conviction undermines the writing of responsa: Why rely on earlier authorities if your basic argument is for the authority of modernity?

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[22] Ibid., p.50.
[23] But see Meyer (1988), p.50, for the suggestion that *Noga Hatzedek* and another collection, *Or Nogah*, were produced by Eliezer Liebermann at the request of the Berlin reformers, to support their innovations.
[24] Ibid., pp.39, 44-50.
[25] Ibid., p.45.

Even with these challenges to the genre of responsa in the context of reform, Reform responsa have developed in the context of American Reform Judaism. The Responsa Committee was founded as part of the Central Conference of American Rabbis (CCAR) in 1906, in the wake of unsuccessful attempts by the CCAR to reach consensus on the observance of Shabbat.[26] This committee was formed over sixty years after the German *Getachten* collections, and eighteen years after the 1889 founding of the CCAR. Moreover, the committee was not immediately active. The first responsum published in the CCAR Yearbook did not appear until 1913, and for the first decades of the committee's existence, responsa were issued at the rate of one or two each year.[27]

The Responsa Committee became significantly more prolific under the leadership of Solomon Freehof, who was appointed to the committee in 1947, and became its chairman in 1955. Beginning in the early 1950s, Reform responsa appeared more often, and discussed questions with greater depth and breadth.[28] Four characteristics have been identified in the growth of Reform responsa under Freehof.[29] First, Freehof's scholarship and stature, as well as his prolific writing of responsa led to his being seen as a *posek*, one who writes halakhah. Second, there was a marked increase in the number of questions being asked, and answers given. Third, there was a return to classical rabbinic forms of argumentation and the utilization of rabbinic sources. Fourth, the responsa that were written were made publicly accessible in an unprecedented manner.

The number of responsa has continued to increase. In his introduction to *Contemporary American Reform Responsa* (1987), Walter Jacob notes that Freehof

[26] Borowitz (1992), p.8.
[27] Haas (1988), p.53; see also Borowitz (2002), p.8.
[28] Haas (1988), pp.59f., Borowitz (2002), p.10f.
[29] Haas (1988), pp.60-62.

answered 421 questions over twenty years, while he, Freehof's successor, had already answered 300 questions over eleven years, and left an equal number without a formal response.[30] Mark Washofsky, Jacob's successor as chair of the CCAR Responsa Committee, also has been prolific, and the responsa have become even more accessible, as all of the new responsa (and many of the earlier ones) are now publicly available on the CCAR website.[31] What has caused this renewed interest in Reform responsa, from the 1950s to today?

The renewed interest in Reform responsa in America[32] is part of a broader focus on halakhah. This interest has been attributed to a variety of factors, a number of which are related to the impact of the Holocaust. John Rayner suggests that its origin is in a renewed focus on the need for Jewish unity and continuity through halakhah, in a post-Holocaust world.[33] W. Gunther Plaut offers a different explanation, arguing that the interest in reviving halakhah came from a realization that the reintensification of Jewish loyalties after the Holocaust was not self-sustaining; in other words, that the Holocaust was not a lasting impetus for an active commitment to living a Jewish life.[34]

Although the Holocaust may well have had an impact, both directly and indirectly, on the development of responsa, a renewed interest in halakhah in general predated the end of World War Two; in 1944, Freehof published the first volume of *Reform Jewish Practice and Its Rabbinic Background* (the second volume appeared in 1952). Freehof's *Reform Jewish Practice* was followed by other guides in the 1950s and

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[30] Jacob (1987), p.xvii-xviii

[31] Available at www.ccarnet.org. Interestingly, the website described the responsa as "*authoritative* answers to questions about Reform Judaism and Jewish living" (emphasis mine). The reference to authority is striking, in relation to the majority of the secondary literature about Reform responsa, which argues that authority is neither desirable nor attainable. See discussion below.

[32] The interest in responsa in Israel is a separate but important topic. See Elon (1994), pp.1497-1499.

[33] Rayner (1998), p.63.

[34] Plaut (1968), p.93.

1960s, including Frederic Doppelt and David Polish's *Guide for Reform Jews* (1957), Abraham Feldman's *Guide for Reform Jews* (1962), and Stanley Brav's *Guide to Religious Practice* (1962).[35] Even in the works that post-date the war, the Holocaust is not often cited as a factor. Doppelt and Polish's introduction suggests the central reason motivating their work: "In the past generation, most Reform Jews have come to recognize that a religious movement cannot live on ideology alone, that ideals must be supplemented by practice."[36] According to Doppelt and Polish, their effort represents a third stage in American Reform Jewish life: the first stage was comprised of the theological struggles of the nineteenth century, the second was characterized by an emphasis on ethics and social justice, and the third involves questions of Jewish observance and practice. Their explanation suggests that the interest in halakhah originated not in any particular historical event, but rather, it has become the next step in the evolution of Reform Judaism.

To understand more about the development of Reform responsa in particular, we will discuss the work of the three major Reform respondents, who have chaired the Responsa Committee from 1955 until now: Solomon Freehof, Walter Jacob, and Mark Washofsky. This is not the place for a detailed analysis of the responsa of each one,[37] nor for a summary of the vast field of Reform halakhah. Rather, from the writings of these respondents, we will attempt to ascertain their understanding of the endeavour in which they have been engaged.

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[35] Mentioned in Borowitz (2002), n.12.
[36] Doppelt and Polish (1957), pp.3-4.
[37] Joan Friedman is doing doctoral work on the responsa of Solomon Freehof, and has already published some of her observations and analysis; see Friedman (2002), which will be incorporated in this discussion. To my knowledge, no one has begun a study of the responsa issued under Walter Jacob, and it is far too soon to analyze the body of responsa by Mark Washofsky.

Solomon Freehof

Before Freehof was the chair of the Responsa Committee, he wrote an article entitled "Reform Judaism and the Halachah."[38] In this article, he makes a number of arguments about Jewish history, Jewish law, and Reform Judaism. His first point is that Judaism requires law, and that Reform Judaism, which made a break with law, must re-examine it: "Judaism is a religion that was formed by law and has lived by law. It is clear that Reform Judaism must come to an understanding with the law or at least must define clearly its own relationship to it."[39] Further on in the article, he poses his challenge even more directly: "We have liberty. Do we not now need law?"[40]

According to Freehof, early Reform Judaism rejected the law in favour of freedom, defining itself as a biblical religion and rejecting the talmudic and halakhic tradition. Now, however, it has become clear that even Reform Judaism is post-biblical, and that Judaism without law is not viable.[41] He makes the same argument in his introduction to his first collection, *Reform Responsa*:

> It was becoming clear that Reform Judaism, with all the other liberal forms of religion, must now grope toward a new definition of authority and revelation; otherwise its form of Judaism would degenerate into a mere convenient construct

[38] Freehof (1946), reprinted in Blau (1973), pp.320-335.
[39] Freehof (1946), p.322.
[40] Ibid., p.328.
[41] Like Doppelt and Polish a decade later, Freehof here does not attribute this change to any historical event, but rather to a realization that has emerged with the development of Reform Judaism. Elsewhere in the article, however, he does mention two factors which shape this change: first, that Orthodoxy is no longer a threat, and second, that there is a growing interest in greater uniformity of practice. See Freehof (1946), pp.322-323. Freehof, along with his contemporaries, operated with the premise that Orthodoxy was on the road to extinction. Had he anticipated the growth of Orthodoxy in the second half of the twentieth century, he might have felt less free to reclaim halakhah as a liberal practice.

> of willfully chosen observances, where the will of God is only metaphorically present and where there really is no such thing as a commandment.[42]

This passage is significant insofar as it does not simply describe a historical state of affairs and suggest a solution. Instead, Freehof refers to the fundamental theological, philosophical, and ideological issues of authority and revelation. Earlier in its history, these factors had led to Reform's rejection of halakhah; now, Freehof suggests, they must be revisited, to make room for Jewish observance.

The introductions to each of Freehof's collection of responsa contain different perspectives on the increased Reform interest in halakhah.[43] In *Reform Responsa* (1960), as stated above, he indicates that Reform has reached a new stage in its development. In *Recent Reform Responsa* (1963), he adds to this developmental perspective three new factors: the expansion of the Reform movement, the traditional backgrounds of many of its adherents, and the search for order in chaotic times. In *Current Reform Responsa* (1969), he posits that Reform Jews are more open to halakhah because now, when the movement is so strong, "we can afford to be much more tolerant of the authoritative past."[44] At the same time, he uses the 1969 introduction to clarify ethical areas in which halakhah does not trump conscience. In *Modern Reform Responsa* (1971), Freehof continues to develop his sociological and historical perspective in relation to traditional and liberal Judaism, as he does in *Contemporary Reform Responsa* (1974). In the latter work, he also suggests that the openness to halakhah is part of a shift from a philosophical to a psychological focus in Reform. Finally, in *Responsa for our Time*

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[42] Freehof (1960), p.17.
[43] These are discussed in Jacob (2002), pp.95-98, from which the current summary is drawn.
[44] Freehof (1969), p.52.

(1977) and *New Reform Responsa* (1980), Freehof investigates the topic of responsa as a source for history and an indicator of religious change.

All of these introductions have implications for Reform history and theology, in answering the question of how Reform has come to be interested in halakhah. At the same time, Freehof also reformulates the traditional understanding of halakhah. He makes a radical claim that is later shared by other non-Orthodox halakhists: namely, that liberal halakhah is more authentic – and even more traditional – than Orthodox halakhah.[45] He does so by arguing that Reform is continuing the tradition of dynamic Judaism, a tradition that Orthodoxy has neglected:

> In an essential respect Orthodox Judaism has ceased to be traditional Judaism. Traditional Judaism was creative and confident. It could always adjust itself to change. It could absorb new customs. But now this creativeness has disappeared. Traditional Judaism has become petrified into changeless, despairing Orthodoxy... It may sound strange to say to, but surely it is a fact that with regard to creativity and confidence, Reform Judaism is more traditional than modern Orthodoxy.[46]

This argument reveals the assumption – common in his day – that Orthodoxy was waning.[47] With this assumption, Freehof is free to claim that Reform Judaism is the true heir of Jewish tradition, a tradition that he then remakes in the image of Reform.[48]

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[45] On the radicalism of this notion, cf. Friedman (2002), p.112. She cites Freehof's *Reform Jewish Practice and its Rabbinic Background* as being "a work without precedent" in its theory connecting Reform Judaism with traditional Jewish law. According to Friedman, "It is his desire to demonstrate not only that specific Reform practices are rooted in traditional practices, but that the very process by which Reform Judaism has developed its distinctive practice is itself grounded in – indeed, identical to – the actual process by which Jewish practice has always developed." For the most recent articulation of the idea that the central characteristics of halakhah are entirely consonant with the values of progressive Judaism, see Zemer (1999). In contrast, Rayner (1998), pp.65-66, cautions that the adaptability of rabbinic halakhah should not be overestimated, nor should it be equated with our modern approach.

[46] Freehof (1946), p.325.

[47] See above, n.41.

[48] Friedman, in her analysis of Freehof's approach, notes that this rhetorical move is attractive because it makes Reform seem normative rather than radical. She then proceeds to argue that it is both historically and halakhically false to claim that Jewish tradition is defined by flexibility. She also critiques Freehof's argument (not discussed here) that this flexibility stems from the creative power of the people, in the form of minhag. See Friedman (2002), pp.112-125.

In his 1946 article, Freehof goes on to explore how Reform Judaism addresses the issue of authority. The structure of his argument is worthy of note. So far, he has made three points: Judaism requires halakhah; early Reform Judaism broke from halakhah but must return to it in some way; and Reform halakhah actually is more true to traditional Judaism than Orthodox halakhah. From here, he differentiates between Orthodoxy and Reform with regard to authority, acknowledging that whereas Orthodox Judaism claims divine authority for the halakhic system, Reform Judaism can only make recommendations. He states that "there is no ceremony, there is no observance which we can present to the people and say, this is the will of God. They would not accept it and we would not claim it."[49] Having distinguished Reform from Orthodoxy on this issue of authority, he does not then address the question of how the Reform approach relates to *traditional* Judaism, as he had regarding the halakhic process.

Freehof is willing to argue that Reform Judaism is different than Orthodoxy, and more authentic, regarding the halakhic process; however, he does not make this claim regarding authority. It seems likely that he does not do so because he cannot do so. Traditional halakhah may have been flexible, but it was not optional. Individual autonomy, so central to Freehof's conception of Reform halakhah, cannot be projected onto the past.

Halakhah, for Freehof, therefore serves as inspiration but not legislation, and its divinity is subject to the judgment of the sovereign self.[50] He makes this clear in his introduction to *Reform Responsa*: "the law is authoritative enough to influence us, but not

[49] Freehof (1946), p.330.
[50] Ibid.

so completely so as to control us. The rabbinic law is our guidance but not our governance."[51]

The limited authority of Reform halakhah is one of Freehof's central principles in writing responsa. Other stated principles include the importance of minhag in the development of Jewish law;[52] the inclination towards lenient decisions, based on a desire to protect the people more than the law;[53] and the commitment to creativity, to prevent ossification.[54] Freehof was aware that his approach contained many points of tension, and expressed the hope that a doctrine of revelation would one day emerge in support of the Reform rapprochement with halakhic literature. In his introduction to *Contemporary Reform Responsa*, one of his later collections, he wrote that, "Somewhere, somehow, our thinkers will find a harmony between discipline and freedom, between loyalty and individualism."[55] In the absence of such harmony, Freehof sought to demarcate middle ground for Reform halakhah:

> To deny the validity of ritual practice is Paulinian. To accept the validity of all the inherited practice is Orthodox. To declare that practice has some religious validity and to seek to establish a suitable foundation and structure for it is our concept of the present duty of Reform.[56]

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[51] Freehof (1960), p.22.
[52] Freehof (1946), p.331. On the importance of minhag, see also Doppelt and Polish (1957), especially their definition of minhag on p.44. Friedman (2002), pp.121-124, suggests that Freehof collapsed the distinction between minhag and halakhah, putting all of it in the category of custom.
[53] Freehof (1960), p.23.
[54] Freehof (1946), p.325. Note, however, Friedman's argument (2002), p.129, that in his later writings, Frteehof became more critical of popular practice and creativity, wanting the state of Reform observance to remain unchanged – circa 1952.
[55] Freehof (1974), p.6.
[56] Freehof (1946), p.329.

Freehof's task, as he conceived of it, was to persuade[57] Reform Jews to accept the guidance presented in his responsa, but even more so, to accept his vision of the relationship between Reform Judaism and halakhah.

Walter Jacob

The influence of Solomon Freehof's decades as chair of the Responsa Committee is evident in the writings of his successor, Walter Jacob. This influence appears both in the similarities and the differences that exist between the two respondents.

Like Freehof, Jacob argues that the gap between Reform Jews and more traditional Jews is not as large as has been thought, especially in the controversial area of halakhic authority. His article, entitled "The Source of Reform Halachic Authority," argues that, "the bases for traditional Jewish authority and liberal Jewish authority are quite similar. They are nearer to each other than we and traditionalists are likely to admit."[58] Jacob identifies divine revelation as the ultimate source of authority, but specifices that it is "the tradition both written and oral, as interpreted by scholars of the past and of our own time for our day."[59]

To support this argument, Jacob – like Freehof before him – has to explain how Reform Judaism is open to halakhah, why Reform halakhic efforts are important, and how the halakhic model is consonant with the values of Reform. These explanations can

[57] In the absence of coercive authority, Freehof recognized that persuasion was key. See e.g. Freehof (1946), p.333.
[58] Jacob (1980), p.31.
[59] Ibid., p.36.

be found both in the article on Reform halakhic authority, and in his introductions to collections of responsa issued under his chairmanship.

Regarding Reform's openness to halakhah, Jacob tells the story of Reform history with a different emphasis than Freehof. Whereas Freehof emphasized the early reformers' break from tradition, Jacob begins his introduction to *Contemporary American Reform Responsa* with the following claim: "The Reform Movement has been concerned with *halakhah* from the very beginning."[60] He then goes on to describe how and why early reformers soon distanced themselves from halakhic discourse in general, and responsa in particular, but the impact of the opening statement remains. Moreover, further down in his introduction he emphasizes that the rejection of halakhah has not been the dominant trend in American Reform Jewish life. He delineates the differences between American and European Reform, and insists that in American Reform, an openness to halakhah has prevailed.[61]

At the same time, Jacob makes a case for the importance of Reform halakhic efforts. Freehof had stated that Reform Jews have achieved liberty, and now require law.[62] Jacob, too, refers to a shift in the needs of the liberal Jewish world: "Our forefathers in Europe and America sought to adapt Judaism to modern times... Our concern in the late twentieth century is less with adaptation and more with the

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[60] Jacob (1987), p.xv.

[61] Ibid., pp.xvii. The thrust of Jacob's argument is such that the reader is left wondering why it is that the interest is *renewed*, since it seems to have never faded since early days of Reform. This introduction is an excellent example of the use of rhetoric in the writing of introductions to responsa (and not just the writing of responsa; see the discussion of Washofsky's contributions, below). It would be interesting to examine the differences between Freehof and Jacob in this area at greater length. One hypothesis might be that Jacob, coming after Freehof's pioneering work, is able or even compelled to integrate an openness to halakhah into the history of Reform Judaism.

[62] Freehof (1946), p.328.

strengthening of Jewish ties in a secular age."[63] In the context of a declining interest in Zionism and the decreasing influence of secular Judaism on Jewish identity, Jacob proposes halakhic efforts as being the key to strengthening the role of Judaism in the lives of Reform Jews. This leads Jacob to call for a new approach to Reform responsa:

> Modern *halakhah* and responsa must provide a practical expression for our daily Jewish existence. We are no longer satisfied with guidance but seek governance. It is the duty of liberal Jews to perform *mitzvot* on a regular basis as a part of their life.[64]

Whereas Freehof's central principle was that Reform responsa should provide guidance but not governance,[65] Jacob argues that the time has come for the opposite approach.[66]

What then is the halakhah that Jacob wants to make a requirement in Reform Jewish life? How is it consonant with Reform? Jacob's definition of halakhah is that it is a divinely inspired process of human interpretation, much of which is relevant to modern situations, and some of which is not. Reform halakhah demands an examination of these sources, a search for divergent opinions, and sometimes – rarely – new legislation.[67] Thus Jacob maintains the possibility of rejecting the traditional halakhah, but the burden of proof seems to rest on those who would reject it. However, like Freehof, Jacob tempers this conservative approach with a radical understanding of halakhah. From Jacob's perspective, what is essential about halakhah includes what he sees as the core values of

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[63] Jacob (1987), p.xix.
[64] Ibid.
[65] Freehof (1960), p.22.
[66] Jacob's call for a new approach comes in the 1987 introduction to *Contemporary American Reform Responsa*. Seven years earlier, in his article on sources of authority for Reform halakhah, Jacob argues that responsa – alongside congregational membership and the organizational efforts of the Reform movement – acts to temper individual autonomy. At the same time, he accepts the idea that responsa can only be guidance, but insists that this is the case for all responsa written in the modern Jewish world. See below, n.67. See also Borowitz (2002), pp.18-19, on the development – and increasing conservatism – of Jacob's position regarding governance.
[67] Jacob (1987), p.xix.

Reform Judaism: "diversity, individualism, and tradition."[68] Taking halakhah seriously is a viable Reform option because halakhah is characterized by the courage to make change. This in turn leads to another argument introduced by Freehof: that Reform halakhah actually is more authentic than the halakhic practices of Orthodox Judaism. For Jacob, the key question is how traditional sources are used by rabbis:

> It is not that the sources of authority differ particularly, but the willingness to use various sources as a way of guiding Judaism and influencing the Jewish people is very distinctive. Orthodox Judaism has felt threatened and endangered for several generations. Therefore, it has been unwilling to make the kind of radical changes necessary for the times. It has overlooked the willingness and ability of the Tannaim, the Amoraim, the Geonim, the Rishonim, and the Aharonim to make changes. They always changed the outer forms in keeping with the inner spirit and adapted Judaism to radically different situations. Reform Judaism has followed this path, while traditional Judaism has lost its nerve. The diversity which we, therefore, continue to permit is part of the general pattern of Jewish life. It has and will add to the richness of our heritage and, of course, has affected and will affect all Jews throughout the world.[69]

According to this view, Reform Jews, those willing to make changes and to "*continue* to permit" diversity, are the true heirs of the classical halakhic tradition.

Finally, we may note that according to the above passage, the role of the halakhist is, and has always been, to 'guide' and 'inspire' – legislation is nowhere mentioned. This emphasis allows Jacob to avoid the difficult disjunct between classical halakhah and responsa, which were authoritative, and their modern equivalents, which are not.[70] Even more importantly, this perspective allows Jacob to claim authenticity for his endeavour, insisting that "our *halakhic* stance is akin to the pluralism of the past from the days of

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[68] Jacob (1980), p.36.
[69] Ibid.
[70] Jacob (1980), p.36, does note that Reform responsa cannot be imposed, but likens this to the position of Orthodox respondents in modern times, who also cannot impose their rulings in the context of the modern world. This argument is simultaneously true and disingenuous: true because the ultimate legal authority for all American Jewish denominations is the secular state, but disingenuous insofar as the sociology of the different denominations varies radically, such that in many Orthodox communities, the ruling of a posek is taken as law.

Hillel and Shammai in the first century through the entire rabbinic period to our own time."[71]

Mark Washofsky

Of all of the Reform respondents, Mark Washofsky has been the most prolific in reflecting on the nature of responsa. First, however, we will examine his approach to the relationship between Reform Judaism and halakhah, which he articulates in his introduction to *Jewish Living: A Guide to Contemporary Reform Practice.*

Like Jacob, Washofsky opens his discussion of Reform Judaism and halakhah with a strong statement of continuity:

> The Reform movement, over the two centuries of its history, has taken an active participating role in this conversation. It has always concerned itself with matters of *halakhah*, and the language of *halakhah* has always serves as its means of religious expression.[72]

He then goes on to describe the waning of the halakhic discourse in Reform Judaism, and also its revival, paying particular attention to the role of Reform responsa and to their status as "essentially *halakhic* documents."[73] According to Washofsky, the Reform attachment to halakhah can only be explained by accepting that Reform's rejection of halakhah "was never as drastic as it may have seemed."[74] Rather, the practices of Reform Judaism, ranging from the fundamental elements of the liturgy to the observance of Jewish holy days and lifecycle events, have remained essentially rabbinic – and thus

[71] Jacob (1987), pp.xix.
[72] Washofsky (2002), p.xix.
[73] Ibid., p.xx.
[74] Ibid.

essentially halakhic as well: "The very stuff of our religious life as Reform Jews... is halakhic."[75]

At the same time as Washofsky insists upon the halakhic nature of Reform Jewish life, he is explicit about the ways in which Reform halakhah, and Reform responsa in particular, are unique. He lists three major differences. First, Reform responsa are not authoritative but advisory, because Reform religious decision making is based upon autonomy (though interestingly, Washofsky refers to the decisions of communities as well as individuals). Second, halakhah is understood as a discourse rather than an end point, allowing for independence from the answers that have been obtained in the past. Third, Reform's history as a liberal Jewish community entails "certain essential ethical and moral commitments" that shape halakhic discussion. These include commitments to gender equality; moral equality of Jews and non-Jews; the desirability of religious innovation; and the right to reject traditional halakhic approaches when they conflict with our other commitments.[76]

As opposed to Freehof and Jacob, Washofsky here is not interested in redefining halakhah as a whole as much as he is interested in maintaining the authenticity of Reform Jewish practice within the broader Jewish world. At the end of his introduction, he writes: "We remain, in other words, inside the rabbinic circle, part of the rabbinic family; we insist that our voice also be heard in the ancient conversation and in the ongoing argument over the meaning of Torah."[77] Washofsky is not insisting that the Reform understanding of halakhah is an objective definition of halakhah as a whole, but he is

[75] Ibid., p.xxi.
[76] Ibid., pp.xxii-xxv.
[77] Ibid., p.xxvii.

insisting that Reform Jews have the right and responsibility to claim their place in the conversation.

We now turn to Washofsky's scholarship on the genre of responsa, and its implications for those writing responsa as, and for, liberal Jews. We will address three of his articles on the topic, in sequential order.

In "Responsa and Rhetoric," Washofsky focuses on the literary aspects of responsa. To do so, he applies the insights of the law-as-literature movement. The basic premise of this movement is that the literary style and structure of a legal decision shape its conclusions.[78] According to this approach, there are three major categories linking law with literature: interpretation, narrative, and rhetoric. The judge, or respondent, selects from a range of possible interpretive choices (interpretation), as well as different ways of telling the story of the situation (narrative), and justifying the advocated response (rhetoric). This paradigm implies that there is middle ground between formalism, whereby the legal or halakhic decisor is believed to be detached and dispassionate,[79] and realism, which argues that the decisor makes a judgement based on external factors such as politics, and only later finds the appropriate texts to buttress that judgement.[80] This middle ground enables the decisor to address both the needs of the hour and the demands of the system:

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[78] For a discussion of the law and literature approach, see Washofsky (1994), pp.364-386.

[79] Cf. Lauterbach's article in *The Jewish Encyclopedia*, where he writes that all of the different periods of responsa-writing "resemble one another in so far as all are characterized by the same spirit of search for truth and knowledge of the Law, and in them all are expressed the same religiosity, the same rigid impartiality, the same unswerving sense of right, and the same conscientiousness which gives a decision only after most thorough consideration." It should be noted, however, that Lauterbach immediately qualifies this formalist statement with the acknowledgment that "external circumstances, the spirit of the times, and the more or less strict methods of investigation give the responsa of various periods a peculiar degree of individuality."

[80] Washofsky (1994), p.383.

> He reaches his answers through interpretation, a dialogical relationship between interpreter and text, a stance in which the texts limit the interpreter's freedom of maneuver at the same time that his understanding of them is shaped by his hermeneutical situation, the 'horizon' of perspective and practice.[81]

This approach emphasizes the persuasive aspect of the halakhic project. The respondent is not making a decision entirely independently of external factors, nor is he acting without respect for internal systemic constraints. Rather, he is attempting to persuade his audience that his interpretation connects the external and internal considerations in a way that is viable, desirable, and authentic.

In "Responsa and the Art of Writing," Washofsky uses a case study of three teshuvot by Moshe Feinstein to address questions of halakhic process more directly as they relate to responsa. He begins the article with by recognizing a basic problem for liberal halakhah. Liberal Jews are attracted by theories of halakhah that emphasize the legitimacy of subjective factors and meta-halakhic considerations. At the same time, halakhists (including liberal halakhists) derive legitimacy from their claim – and belief – that their decisions are limited by an objective halakhic process.[82] Here too, Washofsky proposes a middle ground on the basis of law as literature, which can mediate between the formalist and realist approaches.[83] By using Feinstein's teshuvot as an example, Washofsky suggests that this middle ground is not limited to liberal responsa-writing. Rather, it is definitive of the genre of responsa as a whole:

> The halakhic decisor presents his *pesak* as part of a text that creates a community with its intended readers, that invites them to view halakhic reality in the way that its creator views it, and that suggests to them ways of thinking and speaking about the values that are constitutive of Jewish life... [The creation of a responsum] is an act of

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[81] Ibid., p.384.
[82] Washofsky (2000), pp.149-151, 156-159.
[83] In this article, Washofsky cites the Orthodox legal scholar Bleich as an example of formalism, and the Conservative legal scholar Louis Jacobs as an example of realism, which he also refers to as 'rule skepticism'.

> conversation that helps constitute a community through a shared language of values, assumptions, and aspirations that link author to audience in a common culture of argument.[84]

Here, as in the earlier article, Washofsky defines halakhah as a relationship or conversation, which is neither predetermined nor inauthentic.[85]

A third article by Washofsky, "Taking Precedent Seriously," explores how liberal halakhah relates to the systemic limits discussed above, particularly in relation to the principle of precedent in halakhic decision-making. Washofsky suggests that the importance of precedent to the classical halakhic system has been underestimated by liberal halakhah. The stakes that he describes are high:

> Putting it bluntly: to the extent that *pesak*, halakhic decision-making, is constrained by the weight of past decisions, then the Orthodox are right and we are wrong: Jewish law is *not* sufficiently flexible and dynamic to support the kind of *pesak* that we favor, so that our attempts to read it as such amount to a distortion of the essence and substance of the *halakhah*.[86]

Alternatively, Washofsky continues, if precedent is not an essential principle, then the freedom of interpretation claimed by liberal halakhic decision-making is legitimate.

Washofsky's conclusion is that halakhah "is a legal process that respects precedent, honors it, and is suffused by it." Because of this, precedent needs to be taken more seriously by liberal halakhah. This entails three central values: constraint (accepting that halakhah is not always in keeping with liberal morality); language (the use of halakhic discourse); and tradition (conversation within a specific moral, cultural, and historical context).[87] He argues that accepting these values does not necessarily entail conservatism in liberal halakhah; there is room for innovation, but to be halakhically

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[84] Washofsky (2000), pp.191-192.
[85] See ibid., p.194.
[86] Washofsky (2002), p.5.
[87] Ibid., pp.50-53.

authentic, liberal decision-making must follow "the path that has always defined halakhic practice."[88]

Finally, Washofsky's article is notable for its strong articulation of what he thinks liberal halakhah must do to be able to call itself halakhah:

> If we contend that the *halakhah* supports our interpretations of it, the *halakhah* of which we speak should be the discipline of Jewish law as it actually is, not an idealized view of what we would wish it to be... If we describe what we are doing as *halakhah*, then the way we do it must fit the contours of that centuries-old rabbinical practice.[89]

This is a serious challenge, and one that is not entirely consistent with Washofsky's irenic portrayal of the relationship between halakha and Reform in *Jewish Living*. What is one to do when the "constraint" of the traditional halakhic system[90] conflict with the "essential ethical and moral commitments" of Reform Jews?[91]

Issues and Approaches

Washofsky, following Freehof and Jacob, raises fundamental issues of authenticity and identity, which must be taken into account. The field of Reform responsa faces two central questions: What makes something a responsum, and what makes it Reform?

As we have seen, one approach is to narrow the gap between classical halakhah and Reform Judaism, thereby claiming that the term 'Reform responsa' is internally consistent and unproblematic. Both Freehof and Jacob take this position. For Freehof, it involves acknowledging Reform's earlier rejection of halakhah and arguing for a change,

[88] Ibid., p.53.
[89] Ibid., p.50.
[90] Ibid.
[91] Washofsky (2001), p.xxiv.

while for Jacob, it involves maintaining that Reform Judaism has always been engaged with halakhah. In addition, both Freehof and Jacob claim that halakhah and Reform Judaism share the same values: legal and ritual creativity, dynamic engagement with Jewish texts and traditions, and morality. According to this argument, Reform is the true heir of the halakhic tradition.

This position has been supported upon by some,[92] and criticized by others.[93] Overall, the criticism is more convincing than the support. The study of the corpus of responsa suggests that some contain flexibility and innovation, but that these characteristics are not exclusively definitive of the genre as a whole. Moreover, the impact of the modern age, including the disappearance of traditional modes of communal governance (and coercion) and the development of individual autonomy, is not a negligible factor dividing Reform Judaism from traditional halakhah.

According to John Rayner, while halakhah provides an important balance to antinomian tendencies in Reform, its conservative theological and legal premises cannot be ignored.[94] Rayner's caution is essential: "In many respects the premises of Rabbinic Halachah are not our premises; its methods are not our methods; and the conclusions derived from these premises and by these methods are not our conclusions."[95] Rayner's analysis suggests that on some levels, liberal Judaism and classical halakhah – 'Reform' and 'responsa' – are fundamentally incompatible.

Washofsky's work shares Rayner's warning: one should not pretend that the classical halakhah is closer to our modern liberal positions than it actually is. However,

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[92] E.g. Zemer (1999). See n.41, above.
[93] E.g. Friedman (2002) and Rayner (1998). See n.41, above.
[94] Rayner (1998), pp.64-66.
[95] Ibid., p.66.

Washofsky suggests an alternate approach. On the one hand, he brings the genre of classical responsa closer to its modern, liberal practice by exploring the importance of rhetoric and halakhic persuasion, in traditional responsa as much as in modern liberal ones. On the other hand, his emphasis on the systemic rules that must be followed for the sake of authenticity point towards responsa in which traditional values take precedence. In contrast with Rayner,[96] Washofsky seems to be suggesting that Reform respondents adopt many of the premises and methods (and possibly conclusions) of classical rabbinic halakhah. Washofsky pushes a question that also has been asked by Louis Newman: "under what circumstances can modern liberal Jews allow themselves to be led or, what amounts to the same thing, recognize the existence of a moral authority which limits their autonomy"?[97]

The contributions of Rayner, Washofsky, and Newman all indicate that what makes something a responsum, and what makes it Reform, can come into conflict. The two central questions ('what makes something a responsum?' and 'what makes it Reform?') thus may be reduced to one: What happens when these elements conflict? More concretely, what happens when one of the requirements of the halakhic system is irreconcilable with one of the underlying commitments of Reform Judaism?

To some extent, the issue of autonomy and authority negates this problem. Whatever the theories of the respondents might be, the facts on the ground are that very few Reform Jews would be willing to surrender their own deeply-held convictions in response to a teshuvah. Still, the question remains: What happens when there is a conflict

[96] And in contrast with Washofsky's own introduction in *Jewish Living*, in which Reform Judaism, rabbinic Judaism, and halakhic Judaism are easily equated, and Reform values seem to be primary.
[97] Newman (1994), p.xxi.

between the values that define responsa and the values that define Reform? If something has to give way, what should it be?

Ultimately, the position of this thesis is that in cases of conflict, halakhah must give way to autonomy. In *Engendering Judaism*, Rachel Adler makes a strong systemic critique of the traditional halakhic system on the basis of modern values. She argues that "We cannot simply resurrect the old pre-modern praxis, because it no longer fits us in the world we now inhabit... The inability of classical halakhah to resolve this dissonance [between secular and traditional values regarding women] is the paradigmatic example of its inadequacy as a praxis for Jews in modernity..."[98] Adler's critique, along with Rayner's, indicates that on some issues, halakhah and liberal Judaism are incompatible, and that halakhah – not liberal Judaism – is what loses authority in this clash. David Ellenson reaches a similar conclusion in "Halakhah for Liberal Jews." In that article, he proposes three limitations on the use of halakhic sources to construct liberal theology: intellectual (the recognition that halakhah is not divinely revealed); moral ("we must sometimes say 'No' and not merely 'Not yet'"); and communal (the absence of traditional Jewish society and its coercive power).[99]

Ellenson, Adler, and Rayner all are persuasive in their acknowledgement that modernity has changed Judaism in a profound way. Reform Judaism is not identical with halakhic Judaism. Whether or not we have entered a 'post-halakhic age', more akin to the time before rabbinic Judaism than to rabbinic Judaism itself, is an open question.[100] Both

[98] Adler (1998), pp.26-27. For a thoughtful analysis of Adler's use of 'praxis', see Borowitz (2002), pp.15-16.
[99] Ellenson (1988), pp.28-29.
[100] On this question, see Borowitz (2002).

pragmatically and theologically, however, it seems that halakhah cannot be the sole determining factor in the religious lives of Reform Jews.

At the same time, it may be possible to understand halakhah in a way that acknowledges the differences between the classical halakhic tradition and modern approaches, but also recognizes continuity.[101] Scholars such as Washofsky and Ellenson have emphasized the halakhic *process*, arguing that 'halakhah' is not a set of rules as much as it is a discourse. Washofsky articulates this position in his introduction to *Jewish Living*:

> We do not, however, identify *halakhah* as a set of crystallized rules or as the consensus opinion held among today's Orthodox rabbis. We see *halakhah* as a discourse, an ongoing conversation through which we arrive at an understanding, however tentative, of what God and Torah require of us.[102]

Ellenson, after listing the inherent limitations to the use of halakhah by modern Jews, makes a similar argument:

> This type of halakhah is not that of the Orthodox community. Content, style, and leadership models are not the traditional ones. Rather, it is the framework of the halakhah, the dialectic between halakhic interpreter and text, and the implications this holds for the community, that are of import to us. This view of halakhah stresses the dynamism – as opposed to the substance – of the halakhic process, where texts, community, and persons enter a dialogue with one another.[103]

According to Ellenson, this model enables both continuity with the past, and connection with the concerns of the present.

The understanding of halakhah as process, rather than product, has been one of the more fruitful approaches within Reform Judaism. It provides a substantial basis for the project of Reform responsa. What seems essential is the recognition that, even when it

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[101] Borowitz (2002), pp.12-20, delineates four different approaches to halakhah from a Reform perspective, arguing that the word 'halakhah' has been used to refer to many different things, and that it requires clarification.
[102] Washofsky (2001), p.xxiii.
[103] Ellenson (1988), p.30.

is defined as process, halakhah has limits.[104] When we as Reform Jews self-consciously decide that our other values take precedence, we are changing the rules of the conversation – no matter how much earlier respondents let their subjectivity influence their decisions. Similarly, when we self-consciously decide that our responsa provide guidance and not governance, we are changing the definition of responsa – no matter how much earlier respondents may have known that their authority was not absolute.

What then is our model for Reform responsa? Writings that take seriously previous halakhic decisions, but above all the halakhic process; and writings that recognize that even the halakhic process has limits which we sometimes reject.

Finally, we may note that just as there is a pragmatic reason that keeps Reform responsa from being governance rather than guidance (i.e. the fact that no one would obey), so too is there a pragmatic reason for the continued existence and growth of this genre. Reform Jews *are* increasingly interested in Jewish practice, whether it is expressed through the language of 'what God wants' or the language of individual observances or communal norms. At the same time, even though halakhah is not the primary mode of decision-making, halakhic materials still are of importance to liberal Judaism, and have been successfully utilized in hundreds of responsa. Walter Jacob concludes a recent article on Conservative and Reform halakhah with the following insight:

> The *posqim* in neither of the liberal movements have more than a working philosophy, largely pragmatic in its orientation... Seen from a philosophical point of view, these are major weaknesses, yet pragmatically the system seems to work and be in consonance with aspects of the rabbinic past. Even while we await a

[104] Cf. Washofsky (2002) on precedent. The possibility that the limits of the halakhic system may themselves be superceded by other halakhic tools, such as takkanot (rabbinic decrees) is significant. However, even if we identify such tools, we still need to acknowledge that our use of them is shaped by modern assumptions; for instance, the Enlightenment assumption of progress, in contrast with the classic rabbinic idea that change comes because of our sins. Cf. Mishnah Sotah 9, as well as present-day Orthodox responsa (e.g. Norma Baumel Joseph's citation of Moshe Feinstein in Joseph (1998), p.13).

> philosophical rationale, we continue to make decisions and perhaps that is the only way we can proceed.[105]

The writing of Reform responsa is an expression of the state of Reform Judaism. The increased interest in the genre may be precisely because it connects traditional texts with modern questions, even while the theories about the nature of the endeavour of liberal halakhah still are in formation.

The next section of this thesis undertakes that endeavour, attempting to apply the insights of the above discussion to the exercise of writing a responsum. The chosen topic is appealing for its relevance – and complexity – in relation to traditional sources as well as modern sensibilities. Moreover, for the sake of the exercise, a topic was chosen on which the respondent had no fixed prior opinion. The goal was to write a responsum that is both authentically halakhic and true to the insights of Reform Judaism. It is a case study in Reform halakhic process, with all the limitations – and opportunities – that entails.

[105] Jacob (2002), p.107.

She'elah:

Last Shabbat, there was a bat mitzvah at our synagogue. The bat mitzvah girl, her mother, and a number of the guests were wearing very revealing clothing. After the service, I received complaints from a number of members who feel like we need a dress code calling for more modest dress in the synagogue. Other members feel that formal clothing, even if it is revealing, is preferable to the jeans and other informal attire that many of our members wear to services on Friday nights. Our Religious Practices Committee is looking for guidance: what does Jewish law have to say about appropriate synagogue attire, and should we institute a dress code?

Teshuvah:[1]

The two of them were naked, the man and his wife, yet they felt no shame (Gen. 2:25).[2] Very soon after this verse, Adam and Eve find themselves hiding from God's presence because they have realized – their first realization after eating the fruit – that they are in need of clothes.

Ever since the Garden of Eden, human clothing has been an issue. This she'elah shows its complexity in our times. The teshuvah, in an attempt to address that complexity, contains four parts. The first part is a discussion of modesty, and the second

[1] All of the sources and authorities cited in this teshuvah are listed and described in the bibliography.
[2] JPS translation.

discusses formality. The third part analyses the first two from a Reform Jewish perspective. Finally, we address the issue of dress codes.

Modesty

In March 1976, a she'elah was asked of the CCAR regarding dress code for religious schools, and proper attire in the Jewish tradition.[3] In the response, the issue of modesty was conspicuously absent – perhaps because it was not an issue at the time, or perhaps because of liberal Jewish discomfort with the discourse of modesty. This discomfort is not unfounded: as liberal Jews, we have rejected religious differentiation on the basis of gender,[4] and the concept of modesty often is directed exclusively against women's dress and comportment, based on the concern that men not be tempted.[5]

That being said, the traditional discussion of modest dress contains diverse perspectives, some of which apply to the case at hand. The first major rabbinic category that is relevant to our discussion is *ervah*, nakedness. *Ervah* sometimes refers to the genital area alone, but often has a broader connotation. The word usually is connected with the following biblical verse:

> Since the Lord your God moves about in your camp to protect you and to deliver your enemies to you, let your camp be holy; let Him not find anything unseemly among you and turn away from you. (Deut. 23:15)[6]

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[3] *CARR* 27.

[4] Pittsburgh Principles (1999): "We pledge to fulfill Reform Judaism's historic commitment to the complete equality of women and men in Jewish life."

[5] E.g. Yabia Omer 6 Y.D. 14 (1). Rav Ovadia Yosef, in a teshuvah on mini-skirts, begins by saying that he is writing because of "the great stumbling block that it creates for men who look at girls dressed in mini-skirts which reveal the leg and thigh... and the eye sees and the heart desires, and wakes the evil impulse in men, and what can that boy do that he might not sin? For the evil impulse only rules over what his eyes see (Sotah 8)." Interestingly, here Yosef is making an argument for stringency, and using a talmudic statement which, in context, is lenient (saying that a man will desire the exposed woman that he sees, but will not go on from there to act improperly towards women whom he as not seen). Yosef's opening argument has one central point: that immodest dress creates a difficulty for men that they will not be able to control.

[6] JPS translation.

The Hebrew phrase that is translated as 'anything unseemly' is *ervat davar*, which can be translated more literally as 'any nakedness', but is perhaps best translated as 'any indecency'. In the commentaries, Ibn Ezra specifies that it includes both acts and utterances, while Sforno writes that it denotes impurity, filth, or semen-based defilement. The reference is sexual, but not exclusively so.

The key rabbinic statement interpreting *ervah* is found in the Babylonian Talmud, Berakhot 24a: "a *tefah* (handbreath) which is exposed on a woman is nakedness." This then leads to the statement that a man cannot recite the Shema in sight of his wife if a handbreath of her skin is exposed, but it is taken to have broader implications for what parts of a woman's body need to be covered in order for someone else to pray.[7]

The commentators on the Talmud (Rashba, Ritba, Rosh) and the codifiers of Jewish law (Tur and Shulhan Arukh, O.H. 75:1) understand this statement in a way that opens up new meanings. According to their interpretation, for exposed skin to constitute *ervah*, it must be skin that is normally covered. Once this interpretation has been made, cultural standards of dress become very important; for example, if one is in a culture where wrists are not covered, then exposed wrists are not considered nakedness. Similarly, although a married woman's hair also is *ervah* (Berakhot 24a), Rav Moshe Feinstein rules that the Shema can still be said in the presence of a married woman with uncovered hair, because many married women now keep their hair uncovered, and so it no longer qualifies as *ervah* which prevents prayer.[8] At the same time, prohibitions

[7] The Shema is not the only prayer affected by indecent exposure; the Tefillah also may not be read. See Rambam Hilkhot Tefillah 4:7, and Tur and Shulhan Arukh O.H. 90-91.

[8] Iggerot Moshe O.H. 1:43 and 3:23, based on the Rif, Rambam, and Arukh haShulhan. On Feinstein's responsa on hair and worship, see the comprehensive article by Norma Baumel Joseph (1998). Joseph notes that Feinstein supports his argument for leniency on exposed hair by understanding the prohibition to be

understood to come from the Torah – like the prohibition against bare shoulders – remain in force, and the Shema and Tefillah cannot be recited, even if uncovered shoulders are commonly seen.[9] Another way of understanding these categories is that some practices fall under *dat Moshe*, Mosaic law, while others are *dat Yehudit*, Jewish law.[10] The practices that fall in the latter category have more flexibility; for instance, a woman leaving her house with uncovered hair is *dat Yehudit*. These acts are still forbidden, but not from the direct authority of the Torah.

These interpretations suggest that two factors have traditionally shaped Jewish decision-making around modesty: first, the issue of cultural norms which can lead to flexibility, and second, the idea that there are restrictions that cannot be changed and have implications for the life of the community. There is room to move, but there are limits. Whether or not this model is a feasible or desirable one for Reform Jewish synagogues will be treated in the last section of this responsum.

Beyond the issue of how one's *ervah* impacts upon others, the traditional discussions of appropriate attire and prayer ask how dress impacts upon the person praying, upon God, and upon the synagogue community. Each of these three issues is associated with different halakhic concepts, which will emerge from the discussion below.

In the Shulhan Arukh (O.H. 75:1), the Rema cites the Rosh, who states that an exposed handbreath in a woman can also keep other women from reciting the Shema in

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from the Song of Songs (as per Berakhot 24a), and not the Torah (Num. 5:18, in the context of *sotah*). He still argues that married women should cover their hair and that not to do so is prohibited, but he keeps this prohibited act from interfering with prayer. From his perspective, the societal change is overwhelmingly negative, and the result of our sins. In this, he uses the same language as Arukh haShulhan O.H. 75:1.

[9] Iggerot Moshe O.H. 3:24, and Yabia Omer 6 O.H. 14 (3).

[10] M.Ketubbot 7:6 , regarding which women are to be divorced without receiving the financial compensation of their marriage contract. The same groupings of women, without the categories, also are referred to in a parable in t.Sot. 5:9 on the proper behaviour of husbands and wives.

her presence. According to this position, a woman who is exposed in this way can only pray on her own. The Rashba disagrees, arguing that if she can pray on her own, there is no problem of nakedness, and other women can pray in her presence; the issue is only *hirhur*, the distraction of men. Although most decisors side with the Rashba here,[11] the Rosh's position suggests that the woman's immodest dress is problematic, even in the absence of men.[12] This points to another meaning of *ervah*: indecent exposure that is in itself forbidden, regardless of its effect on others.[13]

Although the Rosh's position is that an immodestly dressed or naked woman can recite the Shema, there is another set of rulings related to saying the Shema by which the Shema cannot be recited if the person reciting it is naked. Rather, she or he must not be able to see their own nakedness with either their eyes or their heart. The reference to the heart seeing nakedness leads to the idea that even a blind person cannot pray naked.[14] A separation must be made, and the genitals must be covered, even if only by opaque water.[15] Moreover, if one also wants to recite the Tefillah, one's chest must be covered as well.[16] In these passages, the references to *ervah* are more directed: exposed genitalia are being discussed, not the inappropriate exposure of a handbreath of skin. At the same time, the central issue of dress and prayer is shared by all these discussions.

The rulings on nakedness suggest that there is something inherently problematic about *ervah* in the context of prayer, even if one is alone. One reason for this is the

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[11] See Mishnah Berurah, O.H. 75:1.
[12] Clearly, the halakhists are not imagining a situation in which women are attracted to other women.
[13] Mishnah Berurah O.H. 75:1 notes that the Rosh must be assuming that the naked woman is sitting down, because if she is standing up her *ervah* would in fact be exposed. The assumption is that, for anatomical reasons, men's *ervah* is exposed whether they are sitting or standing.
[14] Yabia Omer 3 O.H. 7 (1).
[15] Tur and Shulhan Arukh O.H. 74:2.
[16] Mishneh Torah Hilkhot Tefillah 4:7, Tur and Shulhan Arukh O.H. 91:1. The reference to the chest refers to men reciting the Tefillah.

possibility of distraction, which is mentioned as a factor in the prohibition against having any body part touch one's genitals, even when they are covered.[17] Another possibility arises from the explanation of why one's chest must be covered for the Tefillah (but not the Shema). The reason for this can be found in Rashi's commentary on Berakhot 25a, where he writes that the one who says the Tefillah is like one standing before a king. Just as one does not stand before a king improperly dressed, so too does one not stand before God with one's chest uncovered.[18] Here, the issue is not that the one praying might distract him or herself or others, and thereby keep them from prayer. Rather, a new halakhic concept is introduced: praying without sufficient clothing to cover oneself shows disrespect to God, because standing before God is like standing before a king.

So far, we have discovered three problems caused by nakedness and immodest dress of different degrees. First, it can distract the person him/herself and distract him/her from saying the Shema or Tefillah. Second, it can distract others and have the same effect on them. Third, it is an offence to the honour due to God. A fourth set of issues is added when we consider the context of our communal prayer: the synagogue.

There are many rabbinic teachings on the sanctity of the synagogue and its importance to prayer. In the Talmud, Berakhot 6a, we find the statement that, "a man's prayer is heard only in the synagogue." In Megillah 29a, the synagogue is defined as *mikdash me'at* (a small Temple, mentioned in Ezek. 11:16) and as the dwelling place of God (Ps. 105:1), a place of both study and prayer. In the Tur and Shulhan Arukh, it is stated that a person should only pray in the synagogue with the congregation,[19] and the

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[17] Mishneh Torah Hilkhot Kriat Shema 3:17; Tur O.H. 74:5. Rabad, in his commentary, justifies this prohibition by saying that the man might excite and distract himself.
[18] Rashi d"h *aval letefillah*. See also Mishneh Torah Hilkhot Tefillah 5:5.
[19] Tur and Shulhan Arukh O.H. 90:9.

commentators add that the sanctity of the synagogue is so strong that it is better to pray there than anywhere else even if the community is not gathered for prayer.[20]

This sanctity has certain implications for synagogue dress and behaviour.[21] For instance, Rav Yosef writes that the reason one should not conduct a wedding in a synagogue where women are dressed immodestly is that one must honour the holy place in which God's presence, the Shekhinah, rests.[22] One major issue that will not be explored here is the requirement for men to cover their heads.[23] Another issue that pertains more directly to the she'elah is that there should not be *kalut rosh*, frivolity.[24] The Mishnah Berurah connects the prohibition of *kalut rosh* with the definition of a synagogue as a small sanctuary, and the commandment that we are to be in awe of God's sanctuary.[25]

Rav Feinstein has written a responsum in which he cites *kalut rosh*, and not *ervah*, as being the reason behind a mehitzah, the division between women and men in prayer. According to this argument, the mehitzah can be made of glass (if the women are dressed modestly)[26] – the concern is not to prevent seeing one another, but mingling with one another (an equal sin for both women and men).[27] *Kalut rosh* is a useful category insofar as it is applied not on the basis of gender but of appropriate and inappropriate synagogue behaviour, based on the sanctity of the place. As mentioned above, here the only issue cited which is related to dress is that of covering one's head. Although this is too large a

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[20] Beit Yosef and Bayit Hadash *ad loc*.
[21] M.Berakhot 9:5, Mishneh Torah Hilkhot Tefillah 8, and Tur and Shulhan Arukh O.H. 151.
[22] Yabia Omer 3 E.H. 10 (8).
[23] M.Berakhot 9:5, Tur and Shulhan Arukh O.H. 91:3, 151:6.
[24] Tur and Shulhan Arukh O.H. 151:1.
[25] Mishnah Berurah O.H. 151:1.
[26] Feinstein actually proposes a mehitzah made of one-way glass, which women can see through and men cannot, because of the issue of *ervah*. This makes the issue abundantly clear: women are not in danger of being distracted by men, but men are in danger of being distracted by women.
[27] Iggerot Moshe O.H. 1:43. See Joseph (1998), pp.12-13.

topic to be discussed here, it does indicate that dress can be used to express respect for the synagogue.

The holiness of the synagogue will be addressed further in the next section on formality or informality of dress. For now, it suffices to note that it is a significant factor in determining dress and comportment in a synagogue, and that the sanctity of the synagogue itself is related both to God's presence and communal prayer. We have come full circle back to Deut. 23:15, which condemns *ervah* as being inconsistent with a relationship with God, and holiness in the camp.

Formality

The second part of the she'elah has to do with formality: is it problematic for people to come to synagogue on Shabbat in clothes that are casual but modest, such as jeans?

To answer this question, we must discuss three issues. Of these, the first two also pertained to the section on modesty: the state which one enters in saying the Tefillah, and the sanctity of the synagogue. A third issue, particular to this section, is the issue of special clothes to be worn on Shabbat.

In the last section, we discussed how one's chest must be covered for reciting the Tefillah because, as Rashi writes in his commentary to Berakhot 25a, the one who says the Tefillah is like one standing before a king. This approach has implications both for modesty and formality of dress. Modesty has already been discussed in this teshuvah in relation to this approach.

Regarding formality, this approach gives an indication of the level of formality that is required. Maimonides expands upon this in Hilkhot Tefillah. In 5:1, he lists *tikkun hamalbushim*, preparing one's clothing, as one of eight prerequisites for saying the Tefillah. If one fails to do any one of these acts, an individual is not prohibited from praying, but they nonetheless should be done.[28] Further down, Maimonides explains what *tikkun hamalbushim* means: dressing as one would before notables. Although he does not use exactly the same metaphor as Rashi, who refers to a king, the meaning is essentially the same. Maimonides then elaborates: one should fix one's clothing, distinguish oneself, and make oneself beautiful or glorious. In support of this statement, he cites Psalms 29:2: "Bow down to the Lord, majestic in holiness."[29]

Maimonides then gives even more specifications: one should not wear one's money belt;[30] one's head should not be uncovered; and one's legs should not be uncovered. On this last point, he notes that it only applies if the custom of the place is to stand before important people with one's legs covered. Finally, he adds that sages and their disciples should pray wrapped in a cloak. The Lechem Mishneh, in his commentary, notes that the point about the cloak comes from Shabbat 10a, in which Rav Kahana was said to wear a cloak during his prayer in times of peace. According to the Lechem Mishneh, Maimonides includes this requirement (without reference to peace) from the idea that scholars and disciples are especially in awe of heaven during prayer, and express this through their dress.[31] It is worth noting that in the talmudic source, the

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[28] Hilkhot Tefillah 5:1.
[29] Hilkhot Tefillah 5:5. Rambam is using the verse from Psalms 29:2 creatively. In the Psalm, the meaning seems to be that God is "majestic in holiness," but Rambam uses the verse to mean that when we bow down to God, *we* are to be majestic in holiness.
[30] Mishnah Berakhot 9:5.
[31] Hilkhot Tefillah 5:5, Lechem Mishneh *ad loc.*

biblical proof-text that is cited is Amos 4:2: "Prepare to meet your God, O Israel." The central idea is that meeting God in prayer requires preparation, and that such preparation includes a change in attire.

One's dress during the Tefillah also is discussed in the Tur and Shulhan Arukh O.H. 91. Both contain the statement found in the Mishneh Torah that one should not say the Tefillah with one's money belt, or with one's head or legs uncovered, and both specify that the latter requirement depends on the custom of the place. The emphasis on local custom is repeated by the Mishnah Berurah, who maintains that everything depends on the customs of the place.[32]

The Tur and Shulhan Arukh also note that sages and their disciples pray wrapped in a cloak. The Tur, and later the Rema, cite Shabbat 10a and specify that in times of peace, they dress in nice clothes. Other commentators, such as Be'er Heitev, include a discussion of particular articles of clothing that cannot be worn for Tefillah because they are shameful or degrading. According to the Bayit Chadash, such clothes are not to be word, because "it is not appropriate to stand in them before the King of King of Kings, the Blessed Holy One."[33]

From these discussions, we can draw out three key points regarding formality of dress for the Tefillah. First, one is to dress for Tefillah as one would dress for an audience with someone of high standing. Second, the specifics of what this requires are dependent on local custom. Third, sages and their disciples are to keep to an even higher standard, which may depend on the state of the world around them (i.e. whether there is peace).

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[32] Mishnah Berurah *ad loc.*
[33] Tur O.H. 91:1, and Bayit Chadash *ad loc.*

These discussions also suggest that not only formality *per se* is involved, but also aesthetics: appropriate clothing is both formal and beautiful or glorious in some way.

Like the issue of standing before a king in Tefillah, the issue of the sanctity of the synagogue also was introduced in the discussion of modesty. Here, the central rabbinic text is the definition of the synagogue in Megillah 29a as *mikdash me'at*, a small Temple. We have already noted the prohibition on *kalut rosh*, frivolity, and the Mishnah Berurah's explanation that frivolity is forbidden because it detracts from the sanctity of the synagogue and the awe that is called for when one is inside it.[34] Moreover, we have noted how the sanctity of the synagogue is related both to the presence of God, and to the effects of communal prayer.

The discussion of the sanctity of the synagogue in the halakhic literature includes two rulings that may be relevant to formality of dress. One is fairly straightforward: according to the Tur and Shulhan Arukh O.H. 151:8, before one enters the synagogue, one should remove mud from one's feet and stains from one's body or clothing. This establishes the basic requirement that one's clothing be clean.

The second ruling that may be relevant comes at the beginning of this section (151:1), and follows soon after the prohibition against *kalut rosh*. According to this ruling, it is forbidden to eat or drink or be adorned in a synagogue, or to stroll around a synagogue or enter it to escape from the heat or rain. All of these prohibitions are similar in that they forbid using the synagogue for other purposes. The term that is significant to us here is *v'lo mitkashtin ba'hem*, not to be adorned in the synagogue. In a Temple Youth Group study sheet, this phrase is translated as "not to overdress." If this is a correct translation, it would seem that this is an argument against too much formality in the

[34] Tur and Shulhan Arukh O.H. 151:1, and Mishnah Berurah *ad loc*.

synagogue.[35] The context of this phrase, however, suggests another interpretation: it is not that one should not enter the synagogue adorned, but that one should not use the synagogue as a place to put on adornments (e.g. applying make-up, or putting on jewellery). It is difficult to ascertain the meaning of this phrase for certain, especially since it is not explained further in the traditional commentaries. However, it seems likely that an activity is being referred to, and not a mode of dress. As such, it is not directly relevant to the question being asked.

The issue of attire during Tefillah relates to an activity, and the issue of attire in synagogue relates to a place. The final issue to be raised here involves a time: Shabbat. What clothes should one wear on Shabbat? This question is relevant insofar as the she'elah asks specifically about attire on Friday nights. Here, there is a significant amount of talmudic material.

In the Palestinian Talmud, Peah 8:8 (37a), it is stated that Rabbi Hanina taught that a person must have two sets of clothes, one for weekdays and one for Shabbat. The proof-text is from Ruth 2:3 in which Naomi instructs Ruth to wash herself, anoint herself, and put on her garments before going to the threshing floor to find Boaz. The Talmud asks why Naomi had to tell Ruth to get dressed – was she not already dressed? The answer is that Naomi is telling Ruth to put on her special Shabbat clothes. Ruth 2:3 thus becomes the biblical source for the idea that one should have separate clothes for

[35] Concern over people being overdressed in synagogue has historically been expressed through sumptuary laws. For examples, see Rubens (1967), pp.195-204, and Roth (1967), pp.264-290. Issues of overdressing and overspending in a synagogue context, particularly in relation to b'nai mitzvah celebrations, would require a separate responsum. These issues have been raised in the popular media (e.g. *The New York Times*, Feb. 23, 2003 'Sunday Styles' section, p.1: "Age 12, Needs Dress," and the feature article, "Bash Mitzvahs" in Newyorkmetro.com). The Bar/Bat Mitzvah discussion board on Interfaithfamily.com includes the following question posted Jan. 12, 2003: "We are a Catholic family and my daughter attends school with many Jewish friends. She is beginning to receive many Bat/Bar Mitzvah invitations. I am hearing from parents that these formal events require that the girls have a new dress, hairdo and nails done for each event. Is this true?"

Shabbat. The Yerushalmi follows this interpretation with the response of the disciples when they heard Rabbi Hanina's teaching: "When the disciples heard this, they cried and said to him: Rabbi, our weekday garments are the same as our Shabbat garments! He said to them: Even so, you are required to change from this verse, *And you shall wash yourself, and anoint yourself, and put on your garment* (Ruth 2:3)."[36] His answer was that even if they did not have a different set of clothes to change into, they should change how they are wearing the clothes that they have, to make a distinction between Shabbat and the rest of the week.

The verse from Ruth also is cited in the Babylonian Talmud (Shabbat 113b) as a reason to wear special clothes on Shabbat. There, the Babylonian Talmud provides another biblical verse as proof of the need to wear different clothes on Shabbat. In Isaiah 58:13, God – through Isaiah – calls for Shabbat to be honoured, by refraining from everyday activity: "If you refrain from tramping the Sabbath, from pursuing your affairs on My holy day; if you call the Sabbath 'delight', the Lord's holy day 'honored'; and if you honor it and go not your ways, nor look to your affairs, nor strike bargains..."[37] Only if these conditions are met will the Israelites be able to seek God's favour. Shabbat 113a explains what it means to "honor it [Shabbat] and go not your ways." One of the explanations is that one should change one's clothes for Shabbat. In this passage, as in Peach 8:8, it is stated that if one does not possess a change of clothes, one should change how one wears those clothes. Rashi explains that this means that one should lower one's clothes to make them look more honourable, because longer garments were worn by wealthy people who did not work in the fields. Further down on the same page,

[36] P.Peah 8:8 (37a); Ruth Rabbah 5:12.
[37] JPS translation.

immediately after the connection between honouring Shabbat and changing one's clothes, Rabbi Yohanan teaches that his clothes gave him honour and dignity. Shabbat 113b-114a continues with more examples of the importance of changing one's garments (including the citation of Ruth 2:3). On Shabbat 119a, the Talmud describes how different rabbis donned their robes to greet Shabbat on Friday nights.

These statements are discussed in later halakhic sources. Maimonides addresses Shabbat clothes in two places in the Mishneh Torah. In Hilkhot De'ot 5:9, he is discussing the attire of a disciple of the wise. In this passage, he states that one should not lower one's garment because to do so appears prideful, but that one may do so on Shabbat if one has no other clothes to change into. In Hilkhot Shabbat 30:3, he defines honouring Shabbat in relation to the garments one wears. One's clothing should be clean; weekday clothing should be different from Shabbat clothing; and if one has no other clothes to change into, one should lower one's clothing to differentiate it. Maimonides then adds what he calls a takkanah of Ezra, that laundry should be done on the fifth day of the week in honour of Shabbat.

One minor difference between Maimonides' and Rashi's commentary on Shabbat 113a is that where Rashi explains the change in how one dresses as showing honour to Shabbat, Maimonides explains it as being to differentiate between Shabbat and the rest of the week (though he does so in the context of a discussion on honour). It is possible that these concepts, although they overlap, are distinct: one wears different clothes - or the same clothes differently - on Shabbat to honour Shabbat, and/or to differentiate Shabbat from the rest of the week.

In the Tur (O.H. 262), the ruling about Shabbat clothes comes after the story of the two angels who visit each home on Friday night to see whether everything is prepared for Shabbat. The Tur continues with the Talmud's interpretation of honouring Shabbat as having different clothing, or changing how one wears one's clothes if a change of clothes is not available. The Tur then continues, drawing on Shabbat 119a: "And he should wear his nice clothes and rejoice in the coming of Shabbat like one who goes out to greet a king, and like one who goes out to greet a groom and bride." Where Shabbat 119a uses the metaphor of a queen, the Tur uses the metaphor of a king. Although both refer to royalty, the reference to a king is interesting in that it is the same as the metaphor used in the discussion of dress and comportment for the Tefillah. Finally, the Tur ends this passage with the statement that one should have as much meat and wine and sweets as possible on Shabbat, and that whoever increases the honour of Shabbat through his body, his clothing, or his eating and drinking, is worthy of praise. This final statement suggests that above and beyond the minimal requirements of special Shabbat clothes or wearing weekday clothes in a special way, whoever expands upon this commandment and dresses even more beautifully is acting in a laudable way.

In contrast, the parallel passage in the Shulhan Arukh (O.H. 262:2) is brief: "One should attempt to have nice clothes for Shabbat; and if it is not possible for him, at least he should lower [the clothes that he has] (Rema: he should lower his lower garments so they should be long, like they are worn by wealthy people who sit in their houses – Rashi) his clothes in way that shows honour." Be'er Heitev expands upon this statement by noting that the kabbalist Isaac Luria wrote that one should wear four white articles of clothing on Shabbat, representing the four letters of the Name; that the Maharil had a

special tallit for Shabbat; that Shabbat clothes should be worn until after Havdalah; and that even a mourner should change his clothes for Shabbat.

The commentary of the Be'er Heitev raises a number of issues. First, by referring to the practices of Luria and the Maharil, it shows how different rabbis differentiated their clothing for Shabbat. Indirectly, this reminds us that various rabbis – and communities – had their own customs around Shabbat clothing, which held great importance.[38] Second, the reference to wearing Shabbat clothes through Havdalah shows that Shabbat clothes were not worn only for services at synagogue on Shabbat, but from Friday night until Saturday night. Third, the reference to the mourner suggests that when the value of wearing special clothes to honour Shabbat conflict with the requirements of mourning, honouring Shabbat takes precedence.[39]

This third issue, concerning a potential conflict of values, also is raised by Rav Moshe Feinstein in a responsum on whether one should rip one's garments upon seeing the site of the destroyed Temple if it is the afternoon before Shabbat. Normally, one would rip one's clothing upon seeing the destroyed Temple, and Feinstein says that this also is the case if it is the afternoon before Shabbat or a festival. However, he qualifies his answer by saying that it only applies if one is not already wearing one's Shabbat clothes, and if one has no other clothes to wear in honour of Shabbat. If one *is* wearing one's Shabbat clothes and has no others, than the principle of honouring Shabbat, and honouring human beings (*kevod haShabbat u'kevod haBeriot*) tales precedence, and the

[38] See Rubens, "Dress," in the *Encyclopaedia Judaica*, where he discusses the Shabbat clothes worn by Jews in different communities at different times.
[39] See further Lamm (1969), p.132, in which he states that the mourner's outer garments may be laundered for Shabbat, even though inwardly the mourner remains in mourning.

clothes should not be ripped.[40] Feinstein's responsum is notable for two reasons: first, he introduces the relevance of the honour of human beings (for presumably being dressed in ripped clothing on Shabbat would be a dishonour), and he asserts the primary value of being dressed in a special way to honour Shabbat.

The sources on dressing for Shabbat suggest two principles: one, that Shabbat dress should be different than one's dress for the rest of the week, and two, that Shabbat dress should be more formal or more beautiful than weekday clothes, as well as being sensitive to particular local customs. The overriding intention is to honour Shabbat, and an important metaphor is of welcoming Shabbat the way one would welcome royalty. Human honour also is involved.

Approaches

The above discussion indicates the traditional requirements that would determine appropriate dress:

1. No exposed nakedness that could distract the person praying or the people around them
2. Something fit for standing before a king
3. Something clean, that shows respect for the synagogue
4. Something honouring Shabbat (when applicable)

We need to inquire as to what standards we would use to make decisions about what practices are permissible (even if not desirable), and what practices are prohibited.

[40] Iggerot Moshe Y.D. 52.

1. Avoiding *Ervah*

The most problematic category is *ervah*, nakedness, as it affects other people. On a fundamental level, we need to ask whether we can accept an approach to determining appropriate dress that focuses on how women's bodies affect men's prayers. The discussion of Berakhot 24a is overwhelmingly focused on the impact of women's immodest dress on men, as shown by the issues raised: Is the man looking to obtain pleasure or is the woman merely in his line of vision? Even if he is not looking, is he affected? Does it matter if the woman is his wife or another woman? It is clear that the primary concern is with the impact on men. Given that perspective, we must ask whether the traditional discussions of this matter are at all applicable to us as Reform Jews.

Our first and strongest response to this question is that, in keeping with the principles of Reform Judaism, we do not discriminate on the basis of gender.[41] Moreover, we believe strongly in individual autonomy and responsibility for one's own religious life – if we are distracted by someone else's attire, it is our responsibility to do everything in our power to avoid or control this distraction, without impinging upon the rights and freedoms of others. These principles should undermine the assumptions whereby women are held responsible to modify their behaviour for the sake of men's prayer. At the same time, we cannot ignore the reality that when we discuss appropriate synagogue attire, the vast majority of the time the issue arises from how women, and not men, are dressed – as in the she'elah which has been asked above. We might argue that in our congregations, women who are immodestly dressed distract not only men, but also other women; both genders may be distracted either sexually or on the basis of personal discomfort with revealing dress. Still, the focus remains on how women dress, and not men.

[41] Pittsburgh Principles (1999). See above, n.3.

Many of the traditional respondents who address this issue ask why women dress immodestly. Classic approaches attributed immodest dress to sexual licentiousness (*znut*) or the desire to imitate gentiles (*chukkat hagoyim*).[42] More recent traditional answers range from the idea that it is a result of the sins of our generation[43] to the idea that women are not intending to be promiscuous, but that they do not know better, are used to behaving in a modern way, or do not want to be different from their friends.[44]

Our own answers might reject the condescension of the above approaches, but acknowledge the role of society and culture in shaping expectations for the attire of women and girls. To the extent that our synagogues have their own culture and try to influence the culture outside of our synagogue walls, we have a role to play in this debate. Our concern is not with the direct impact of women's immodest dress on men as with the impact of societal expectations on both women and men. From this perspective, we cannot help but notice that there is an imbalance in societal expectations based on gender, and that for the most part, the weight of this imbalance falls on women. In the world as it is, women's clothing remains a source of distraction.

For ideological reasons, whether or not how someone is dressed distracts others cannot be the primary factor in our response, but we do acknowledge it as an issue. The traditional halakhah gives guidance insofar as it takes into consideration cultural norms. Parts of the body that are not normally exposed in most secular situations should not be exposed in the synagogue, but each congregation must determine these standards based on their community.

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[42] Cf. the discussion in Yabia Omer 4 Y.D. 1, where he mentions both possibilities.
[43] Iggerot Moshe O.H. 4:112, and Arukh haShulhan O.H. 75:7, discussed in Joseph (1998), p.13.
[44] Yabia Omer 4 Y.D. 1 cites these reasons in his argument that immodest dress in these times is not a sufficient reason for a divorce.

At the same time, the category of traditional prohibitions that are *not* said to be culturally contingent (e.g. covering shoulders) have limited relevance for our situation, given that this category too has been shaped by cultural forces, which are not acknowledged in the traditional texts. Nevertheless, there is value in maintaining the idea that some things are not acceptable regardless of the cultural code; for instance, we would almost certainly object to a synagogue where no one was clothed, even if that was the cultural norm of that community. This suggests that not only communal standards should be considered, but also the norms of the broader Jewish community or denomination to which any given synagogue belongs.

Ervah that distracts the person praying must be left to the discretion of that person, but the concept is an important one to introduce to communal discussion.

2. **Standing before a king**

The traditional sources indicate that the Tefillah has more stringent requirements for attire than the Shema, and that only the former is seen to be equivalent to standing before a king. Although the halakhists were more strict with the requirements for reciting the Tefillah than for the Shema, we have reason today to be equally strict with both. If anything, the Shema is more central to our individual and communal prayer than is the Tefillah. For us, then, there is the possibility that *all* prayer, and not only the Tefillah, has the significance of standing before a king. If that is the case, then immodest dress does not simply prevent us or those around us from praying; it also is an inappropriate way to approach God in prayer. Informal dress falls into the same category.

Here, we must ask whether the metaphor holds. Most Reform Jews do not approach prayer thinking that they are standing before the King of King of Kings. As a metaphor, it is both hierarchical and patriarchal. However, we would argue that it also is significant and salvageable. Our ancestors did not go to synagogue every day dressed to meet a king. But the idea that when we pray we approach One who is greater than ourselves was relevant then and is relevant now. If we take this metaphor seriously, it calls for some modicum of modesty and formality. This pertains not only to attire, but also comportment and synagogue etiquette. In these areas, our Classical Reform predecessors were far more advanced than we are today. Nevertheless, there is a certain informality and sense of comfort that we value in our synagogues, and indeed, that many people feel brings them closer to the Divine Presence.[45]

The essential element to this concept seems to be the idea that we should be conscious that when we pray, we are approaching God, and that consciousness should be somehow reflected in our dress. The halakhic materials suggest that three elements are considered in this area: not only modesty and formality, but also beauty or glory.

3. Respect for the Synagogue (*mikdash me'at* and *kalut rosh*)

The synagogue is sanctified both by God's presence and by the prayers of the community. As such, one should not enter it in dirty clothes. Conversely, it also is not a place to adjust one's clothing, jewellery, or make-up. It is not a place to preen.

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[45] This feeling is articulated in Syd Lieberman's poem, "A Short Amidah," which has appeared in many creative services. In that poem, she rejects the traditional idea that the Tefillah involves meeting God in a palace, with prescribed formalities. Instead, she writes: "Mine's not a fancy place,/no jewels, no throne,/certainly not fit for a king./But in that small chamber,/for just a few moments on Sabbath,/God and I can roll up our sleeves,/put some schnapps on the table,/sit down together and finally talk./That's palace enough for me."

This principle is very similar to the previous principle of standing before royalty. Entering a synagogue requires a particular consciousness of holiness that should be reflected in both dress and comportment.

4. **Honouring Shabbat**

Two main factors arise in relation to dressing for Shabbat. First, Shabbat dress should be distinct, and second, it should be of a higher quality than weekday clothes, either by being more formal, more beautiful, or reflective of local custom. If the second possibility is not viable, the first should still be fulfilled; for instance, someone attending a service on a Friday night and coming directly from work should adjust some item of their clothing, perhaps changing (or even taking off) a tie, donning an article of jewellery, or wearing a special head-covering if that is one's custom.

Because of the modern value that some communities place on informality, the issue of distinct clothing is easier to address; many would be happy to change from their weekday suit into Shabbat jeans. We would suggest that clothing such as jeans, which epitomize 'dressing down', should be avoided on Shabbat. However, other non-business attire is acceptable and even preferable. Just as we should encourage congregants not to wear jeans, so too should we encourage them not to attend synagogue in exactly the same clothing that they wore to work. Clothes can be more beautiful without being more formal.

The recommendation against clothing that is excessively casual may be rejected by some communities on the basis of their established minhagim. From the perspective of this responsum, this creates other problems on the basis of the second and third

categories, which involve honouring the holiness of prayer and the synagogue through one's attire. For those where the minhag is more formal, the principle of not using the synagogue as a place to preen might be relevant.

For most communities, such as the one currently asking the she'elah, some congregants fall on one side of the spectrum, others on the opposite end. It is our intention that the community uses the above sources for study, to determine what values members wish to convey about their sacred space, especially on Shabbat. The traditional connection between honouring Shabbat and honouring human beings also applies; through honouring Shabbat, we honour ourselves, and remind ourselves of the sanctity of our creation.

Dress Code

The final part of the she'elah asks whether a dress code should be instituted. Historical precedents do include dress codes, although for the most part community norms seem to have rendered them unnecessary. An argument can be made for a dress code in a Reform synagogue. When one joins a synagogue one already surrenders some autonomy; for instance, Hebrew School must be attended for a certain amount of time if a child is to become bar or bat mitzvah, and some communities have standards for what food may and may not be brought into a synagogue. However, a dress code poses particularly difficult problems of enforcement, and risks embarrassment of members and guests who are unaware. Instead, we suggest drawing on the strong traditions of minhag around dress, to encourage communities to study and develop their own customs in this area. Moreover, this educational process should be part of the required preparations for

bar and bat mitzvahs, so families can be made aware of community expectations in this area.

The word "appropriate" is key both to the question and to its answer. Definitive community standards cannot be set by the Responsa Committee in this area; they must originate from the communities concerned. Our tradition contains considerable guidance in this area, centred on four major principles: avoiding distraction, approaching God with awe, respecting the sanctity of the synagogue, and honouring Shabbat. The community will have succeeded when a guest or member enters, and can see these values manifest in the dress and comportment of those at prayer. Then we will know that our camp is holy (Deut. 23:15).

Conclusion

The experience of writing a responsum, grounded in an awareness of the theoretical issues related to Reform Judaism and halakhah, was a humbling one. This conclusion will evaluate how the responsum in the second part of this thesis measures up against the theoretical approaches in the first. Three elements will be discussed: the use of rhetoric, the use of traditional and modern halakhic sources, and the attempt to combine classical halakhic paradigms with Reform insights and values.

The self-conscious use of rhetoric was perhaps most challenging. While writing, I was aware of attempting to persuade through the use of rhetoric, but became conscious of this as an endless project.

The responsum did use rhetorical tools to persuade. The choice to begin and end with quotations was intended to frame the responsum with Jewish sources. The specific choice of biblical sources was based on two factors: one, that biblical sources arguably have the greatest resonance in the Reform world, and two, that even though we have inherited the legacy of rabbinic Judaism, the Torah is still our foundational text – as it was for the rabbis.

The beginning of the responsum was shaped by another rhetorical choice: namely, the decision to acknowledge the difficulty that the concept of modesty has had for Reform Jews. By establishing this at the beginning, I hoped to convince the reader that their values were shared, and that they could read the traditional sources without sacrificing their beliefs about gender.

Another rhetorical attempt at persuasion was expressed in the order of the arguments. In the responsum, I moved from what I perceived to be the least persuasive argument (based on *ervah*) to the most persuasive (based on respect for the synagogue and communal standards).

The way in which the halakhic sources were integrated is an important element on its own, but also fits into the question of rhetoric. Incorporation of the core texts – Talmud, Mishneh Torah, Tur, and Shulhan Arukh – was crucial both to the persuasiveness and the integrity of the responsum. At the same time, I was conscious of the limited extent to which I incorporated other sources, and especially other responsa. This is a tendency I have observed in other Reform responsa. In my own work, I know that it comes at least in part with an unfamiliarity with the vast corpus of responsa literature. At the same time, I wonder whether this is a Reform tendency more broadly, to focus on these texts either because they seem most legitimate, or because their relative earliness helps separate their usage from more recent Orthodox halakhah.

For the integrity of the responsum, I felt it important to include these texts, and (aside from the opening qualification about modesty) to begin with them. Reform responsa, like other responsa, need to begin with a thorough consideration of earlier halakhic sources; this is what allows us to enter into the conversation. In this responsum in particular, the key principles were fairly easily identifiable. Certainly, it is a conscious choice to look for principles rather than laws, and this topic happened to be fruitful because it was amenable to such an exploration. The exercise suggests that Reform responsa may be most successful when principles can be found in the classical sources, and then applied to modern situations.

This leads to the topic of the combination of traditional halakhah with Reform insights and values. Three types of results emerged. In the first type, the traditional sources were consistent with modern perspectives (e.g. the emphasis on minhag), or used traditional tools to find results that were consistent in this way (e.g. citing the Rosh's minority opinion on *ervah* and distraction). In the second type, the traditional sources and the modern perspectives clashed (e.g. women's responsibility for distracting men in prayer, or the existence of fixed categories of forbidden dress). In the third type, the traditional sources and modern perspectives challenged one another and indicated the need to clarify values (e.g. the question of whether the metaphor of God as king is desirable). This third type was most engaging, and most promising in terms of using responsa as a way to deepen our discourse about modern Jewish beliefs and practices.

The use of contemporary sources – poetry, internet discussions, and newspaper article – was a small attempt to incorporate the realities of modern Jewish life, and to recognize that some of the sources that are relevant to liberal halakhah may look different than the sources of the past, but still have their place in our responsa.

Another interesting finding was that Reform halakhah could, at times, be more stringent than traditional halakhah. For example, the Reform liturgical emphasis on the Shema makes it comparable to the Tefillah in terms of our practice.

Finally, the responsum on synagogue attire is an example of a Reform responsum providing guidance but not governance. As the author of the responsum, I found this both frustrating and appropriate, especially since the topic is one that, to a significant extent, always has been shaped by communal standards. Within this, however, there was still room to emphasize certain issues that may go against the grain of many communities

(e.g. the wearing of blue jeans, and the idea of the transcendent God). With full cognizance that the responsum cannot coerce, I end the thesis all the more curious as to whether it would succeed in persuasion.

Conclusion

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