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**THE HALAKHIC METHODOLOGY OF
SOLOMON B. FREEHOF**

Scott Alan Gurdin

**Thesis submitted in partial fulfillment
of the requirements for Ordination**

Hebrew Union College -- Jewish Institute of Religion

1991

Referee: Dr. Mark Washofsky

DIGEST

The late Rabbi Dr. Solomon B. Freehof has been widely recognized as the leading posek, or legal decisor, for post World War II American Jewry. Among the many texts that he wrote, his eight full volumes of cogent and insightful Reform responsa serve as testimony to his passion for Jewish law. Rabbi Freehof was a thoroughly Reform Jew. But he also believed that Reform Jews should be informed about traditional Jewish practices. Reform observances, he asserted, should generally be linked to traditional antecedents. This perspective was clearly reflected in his Reform responsa.

Although his conclusions may have been at variance with Orthodox Jewish practice, Rabbi Freehof wrote his Reform responsa in a style which was fully consistent with halakhic Judaism. He utilized a wide range of authoritative Jewish legal sources to support his arguments. He accurately interpreted the positions taken by those sources. In a great many instances, he himself agreed with those positions. When he disagreed, he generally argued his case using stylistic methods which have been widely accepted by Orthodox decisors.

This thesis will be an exploration of Rabbi Freehof's halakhic methodology. We will identify the manner in which he constructed his Reform responsa. We will pay particularly close attention to the sources which Dr. Freehof used and the ways in which he used them. We will also compare his halakhic methodology to the methodologies used by widely accepted and

authoritative modern Orthodox respondents. Ultimately we will address the question of whether Rabbi Freehof's methodology was halakhically valid.

Dedication

to the man who, by his example, taught me what it means
to be a Jew

Frank E. Jacob
(26 June 1907 - 31 July 1984)

"It hath been told thee, O man, what is good,
And what the Lord doth require of thee:
Only to do justly, and to love mercy,
and to walk humbly with thy God."

Micah 6:8

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Until last year I did not have a rabbinic mentor. Rabbi Harry K. Danziger of Temple Israel in Memphis, Tennessee took on that role. By his patience, wisdom and caring Rabbi Danziger has exemplified a level of rabbinic excellence which has made a tremendous impression on me.

During this past year Rabbi P. Irving Bloom of Temple Israel in Dayton, Ohio has taken over where Rabbi Danziger left off. Rabbi Bloom had enough confidence in me to invite me to be a Rabbinic Intern at Temple Israel -- even before we had an opportunity to meet face to face. He has given generously of his time and his insights. And for that I am grateful.

When I was in the eleventh grade, I confessed to my parents a vague interest in the rabbinate. They sent me to visit the HUC campus in Cincinnati. Since that time, they have provided immeasurable support to me as that vague interest became an all-consuming passion. I have been lucky to have such parents!

Lastly, I thank my beloved wife Lisa. Over the past couple years, Lisa has sacrificed a great deal on my account. She left her homeland to be with me in mine. She adopted, as her own, a culture and a religion which had previously been foreign to her. And for a time, she has even put her own career aspirations on hold so that I could pursue my dream. For all of this, I am very grateful.

Over the past several years, I have grown to believe that the most rewarding role a rabbi can fill is that of the "enabler" -- the person who helps others to discover their own strengths and abilities. In this sense, all of these people have been my rabbis. For they have enabled me to find that which is sacred in my world.

Introduction

When an observant Orthodox Jew faces a question or a difficulty pertaining to a matter of religious concern, he or she might turn to an authoritative rabbi for an answer. If the matter has sufficient merit, the rabbi may be asked to issue a written legal decision. Such a decision is called a responsum; in Hebrew, a teshuvah.

In order to render a competent decision, a rabbi needs to have a thorough understanding of both the specific facts in question, and of any relevant passages from the Talmud and the traditional Jewish Codes. His valid interpretation of the sacred texts takes on a sacred and authoritative quality of its own. Like the great rabbinic documents that preceeded them, superior responsa are viewed by many as living Torah. Because of this, a teshuvah is, in theory, binding upon the party or parties who request it.

In the world of Reform Judaism, responsa serve a function which is vastly different from that which has been described above. Reform Judaism posits that individuals have the right and the responsibility to choose for themselves which Jewish practices they should or should not observe. With respect to this point, the Centenary Perspective, adopted over fifteen years ago by the Central Conference of American Rabbis, states quite unequivocally that:

"Within each area of Jewish observance Reform Jews are called upon to confront the claims of Jewish tradition...

and to exercise their individual autonomy, choosing and creating on the basis of commitment of knowledge."¹

In Reform Judaism, each educated individual is his or her own decisor. There is no need for authoritative respondents. Reform responsa have never claimed to be binding upon any Jew. Instead, have been viewed as educational vehicles; documents which have been designed to teach Reform Jews about various aspects of Jewish belief and practice. Like their Orthodox counterparts, Reform respondents offer advice to their readers. But unlike Orthodox decisors, writers of Reform responsa leave the ultimate decisions to each individual's informed discretion.²

Reform responsa, as a form of Jewish legal discourse, have evolved a great deal since the establishment of the CCAR's Responsa Committee in 1906.³ Each chairman of the Committee has viewed Reform Responsa from a slightly different perspective. Each chairman left his own distinctive methodological and ideological mark of the Reform Responsa published during his tenure.

The Committee's first responsa were printed in the 1911 CCAR Yearbook. These contained strong theological overtones which

¹Central Conference of American Rabbis, A Centenary Perspective, Section IV, 1975.

²See, for example, Solomon B. Freehof's "Religious Authority in Progressive Judaism" [An address delivered in London to the World Union for Progressive Judaism] (England: Rydal Press, 1959), p. 14.

³Much of the brief analysis of the history of Reform responsa writing that follows comes from Walter Jacob's Introduction to American Reform Responsa, (New York: Central Conference of American Rabbis, 1983), pp. xv-xviii.

reflected the particular proclivities of Kaufmann Kohler, the Committee's first chairman. Kohler's Reform responsa consciously avoided references from traditional rabbinic texts, turning instead to Biblical and scholarly sources.

The responsa published during the decade between 1923 and 1933, under the chairmanship of Jacob Lauterbach, had an entirely different character. These were rather lengthy essays. Lauterbach's analyses utilized texts from a wide range of both rabbinic and scholarly sources. One finds that they are sprinkled with untranslated Hebrew phrases. It is clear, from their tone, language and complexity, that these Reform responsa were not written for a wide range of readership.

The Reform responsa written by Lauterbach's successor, Jacob Mann were notable for their brevity. Mann did not develop long and involved legal arguments. Instead he usually made his case in a single short paragraph. He cited few sources to substantiate his positions, but the sources that he did cite were often rabbinic. Such citations were rarely explained or analyzed within Mann's responsa.

Israel Bettan, who served as the Responsa Committee chairman for nearly one and a half decades (1940-1954) wrote Reform Responsa which emphasized "Reform" and downplayed "responsa". According to Walter Jacob, Bettan's "concern was the contemporary mood of Reform Judaism."⁴ The arguments presented in Bettan's responsa were rarely dependent upon cited sources. Rather, they

⁴Jacob in American Reform Responsa, p. xvii.

were a reflection of Bettan's own reasoning; reasoning which was firmly entrenched in the ethical dictates of Reform Judaism.

Bettan's responsa were written in simple and unambiguous language. It is clear that he wrote with a diverse readership in mind. When Bettan cited from traditional sources, he did so almost exclusively from Biblical, Midrashic and Talmudic texts. He rarely made reference to the Codes or to responsa literature.

The towering figure in the area of Reform responsa was Bettan's successor, Solomon B. Freehof. Freehof served as chairman of the Responsa Committee for over two decades, from 1955 until 1976. He continued to write and publish responsa until his death in 1990. The tremendous corpus of Reform responsa literature left by Solomon B. Freehof will be the primary focus of this thesis.

Freehof was born in London in 1892.⁵ He came to America when he was ten years old. His family ultimately settled in Baltimore. Freehof's household was Jewishly traditional and observant. He was educated in both public school and Talmud Torah.

Freehof ultimately broke with his traditional roots and he attended Hebrew Union College in Cincinnati. He was ordained in 1915, but he remained at the College, serving on the faculty there from 1915-1924. (Freehof did leave Cincinnati briefly to

⁵The biographical sketch which follows comes from a more detailed biography which can be found in Kenneth Jay Weiss' Solomon B. Freehof -- Reforging the Links: An Approach to the Authenticity of the Reform Rabbi in the Modern World, (D.H.L. dissertation, HUC-JIR, 1980), pp. 8-20.

serve as a military chaplain during World War I.) Interestingly the instructor who most greatly influenced him during his years at the College was Jacob Lauterbach.

Freehof served as rabbi at Kehillat Anshe Ma'ariv in Chicago for ten years after he left HUC. He then went to Pittsburgh's Rodef Shalom Temple where he served as rabbi from 1934 until 1966; and then as Rabbi Emeritus until his death.

Rabbi Dr. Freehof served on several important committees in the CCAR, including a term as its president from 1943-1945. He also served as the first American President of the World Union for Progressive Judaism from 1959-1964. (He was later named as the World Union's Honorary Life President.) Freehof was instrumental in the writing and publication of the two volume Union Prayer Book. He also wrote several books dealing with Bible. In all, his career as a rabbi was both lengthy and diverse.

But clearly Solomon Freehof's great passion was the responsa literature. He was introduced to the responsa by Jacob Lauterbach, but he first became a part of the responsa writing venture during World War II. It was then that he served on the Commission on Jewish Chaplaincy of the National Jewish Welfare Board. This commission, made up of rabbis from the Orthodox, Conservative and Reform movements, published Jewish legal decisions for soldiers serving in the war. After World War II, his fascination with the art of writing responsa never ceased.

The Reform respondents who preceeded Freehof essentially

tried to create, *ex nihilo*, a literary genre which they called "Reform responsa". Their responsa barely resembled the responsa produced by centuries of traditional authorities. This holds true in matters pertaining to both form and content.

Freehof strove to bring the Reform responsa more in line with responsa literature in general. His responsa reflected a liberal spirit, but they were rooted in traditional rabbinic sources. In a speech which he delivered to the World Union for Progressive Judaism in 1959, he summarized the role that he envisioned for Reform responsa:

"Reform responsa are generally liberally affirmative, while modern Orthodox responsa, though based largely on the same material are, understandably, negative and prohibiting. These Reform responsa [are] practical rather than doctrinaire, and guiding rather than governing..."⁶

There are many different angles from which we could study the responsa of Solomon B. Freehof. This thesis will focus upon one particular feature *vis a vis* Freehof's responsa. This is a study of Solomon B. Freehof's halakhic methodology.

Our first task will be to present a careful analysis of how Freehof constructed his responsa. We will ask questions such as these: What sources did he use and how did he use them? How did he relate to the positions taken by his sources? Did he agree or disagree with them?

Once we do this, we will be able to evaluate Freehof's halakhic methodology. We will be able to assess the clarity of

⁶Solomon B. Freehof, "Religious Authority in Progressive Judaism", p. 14.

his arguments. We will be able to compare his use of sources to the manner in which his Orthodox counterparts have used their sources. We will also be in a position to decide whether the various **halakhic** devices that Orthodox respondents have used were that same ones that Freehof utilized. In short, we will evaluate the **halakhic** validity of Freehof's responsa.

The depth of Solomon B. Freehof's impact on Reform responsa cannot be understated. This thesis will likely be the first indepth study of his **halakhic** writings to be written since his death. Hopefully it will begin to put the tremendous role that Solomon B. Freehof played in the world of Reform Judaism into context.

Chapter One:
DEFINING SOLOMON B. FREEHOF'S HALAKHIC METHODOLOGY

Our first goal is to determine whether Solomon B. Freehof's Reform responsa were persuasive, *prima facie* halakhic arguments. To do this we must identify any observable strategies which Freehof might have employed in the construction of his halakhic presentations.

During his lifetime, Rabbi Dr. Freehof wrote and published some 433 responsa, addressing a notably wide range of subjects. These responsa were published in eight volumes during the three decades between 1960 and 1990. Because of the overwhelming breadth of Freehof's responsa, it should be obvious that a careful and thorough analysis of each and every one of them would be a monumental task; an undertaking well beyond the scope of this study.

Still, in order to get an accurate picture of Freehof's halakhic methodology, we do need to consider a sufficient sampling of his responsa. We need to consider the vast range of sources which he cited in his decisions. We need also to look for any patterns, which might be observable with respect to the development of his presentations. Once we have done these things, we will then attempt to uncover the various methodologies which Freehof employed in his effort to generate "liberally affirmative" responsa which were grounded in traditional sources.

In his 1980 doctoral dissertation entitled Solomon B. Freehof -- Reforging the Links: An Approach to the Authenticity of the Reform Rabbi in the Modern World, Rabbi Kenneth J. Weiss

tried, in part, to uncover Freehof's halakhic methodology. Weiss analyzed a small number of Freehof's Responsa in an effort to distill the underlying halakhic and spiritual principles which guided and motivated his subject.

In one section of his dissertation, Rabbi Weiss summarized four Freehofian responsa in an effort to show that their author sought to isolate the biblical "prophetic spirit beneath and within specific Jewish laws."¹ In another section, he presented a source and content summary of some thirteen Freehofian responsa, all of which dealt with aspects of Reform Sabbath observance. He compiled a list of the traditional non-responsa sources cited in those thirteen responsa, noting the frequency of their usage. With respect to Freehof's halakhic methodology, he concluded, in part, that "the pivotal, decisive argument for each [Freehofian] responsum comes from a particular traditional source. Having isolated the most appropriate source, Freehof chooses argumentation from other sources to support it."²

This section of Rabbi Weiss' dissertation raises some interesting questions. It also begins to address some of the important issues which must be considered in our analysis of Solomon B. Freehof's halakhic methodology. But it does fall short in some critically important areas.

Rabbi Weiss analyzed a total of only seventeen different

¹Kenneth J. Weiss, Solomon B. Freehof -- Reforging the Links, p. 75.

²Ibid., p.126

responsa in his dissertation. Statistically speaking, this amounts to only four percent of the total number of responsa written by Solomon B. Freehof. This can hardly be viewed as a reasonably scientific sample.

Because he utilized so few of Freehof's responsa, Weiss failed to uncover some of the critically important patterns which characterized the respondent's methodology. This also led him to reach some conclusions which were not entirely accurate. In the pages that follow, we will endeavor to forge beyond the analysis provided by Rabbi Weiss.

Weiss made a good number of subjective evaluations of Solomon B. Freehof's responsa. These are worthwhile, especially given the extensive knowledge of Freehof's life and perspective that Weiss obviously possessed. This study, though, will present an essentially objective picture of Freehof's halakhic methodology. We will rely upon facts and figures to draw a sketch of the various "typical" Freehofian responsa forms.

We will do this by making a careful study of some ninety-nine Freehofian responsa. This "responsa pool" represents nearly one quarter of the responsa written and published during Solomon B. Freehof's long and distinguished career. Each of the responsum in our pool addresses some aspect of Reform Jewish observance with respect to burial, funerary or mourning practices. A full listing of the responsa under consideration here can be found in Appendix A.

There are some advantages and disadvantages associated with

our selection of these particular responsa. By narrowing our focus, we are able to gain a clear understanding of the depth of Freehof's halakhic insight. His knowledge in matters of avelut was rather extensive. We are also better able to recognize methodological patterns when we look only at one "type" of Freehofian responsa.

But in doing this, we leave ourselves open to the possibility that what may apply, methodologically speaking, to responsa written about one particular subject, may not apply to others. For example, it may be that Reform responsa dealing with avelut tend to be more "traditional" in their approach than responsa having to do with other religious concerns. There seems to be a tendency among Reform Jews to turn to "traditional" practices when dealing with matters of mourning. This might very well be reflected in Freehof's responsa. Therefore, we must be aware, from the outset, of this possibility.

It is clear that Freehof saw a great need to connect Reform Jewish practice, and in turn Reform responsa, to traditional Jewish sources. And so, it would make sense to look first at the depth and breadth of the specific sources cited by Freehof. Such sources, after all, constitute the skeletal framework upon which Freehof fashioned a remarkable body of liberal Responsa literature.

In order to gain an accurate overview of the vast and voluminous scope of the traditional sources used by Freehof in his Reform responsa, we need to generate some means of objective

measurement -- some instrument with which we can quantify and evaluate Freehof's source references. Perhaps the best way to visualize how Freehof used his sources would be to generate a graphic representation of his citations. This has been done for each of the responsa under investigation here. The graphs can be found in Appendix B.³ A complete explanation of these graphs can be found in the introduction to the Appendix.

For our purposes, the reader should be aware that the sources cited by Freehof in each of the ninety-nine responsa under consideration here have been graphed according to both the literary strata and the chronological period from which they came. Part of our objective in generating these graphs is to reveal any patterns which might exist with respect to the way in which Freehof presented his sources.

In roughly one half of the responsa under consideration, we find that, in order to reach a conclusion, Freehof had to consider several different halakhic issues. In these responsa, Freehof addressed each issue point by point and then stitched the points together into a unified presentation. The term "point", as it is used here, can be understood as being a sub-topic or sub-argument contained within a larger halakhic presentation.

If we are to gain a clear understanding of Freehof's halakhic methodology, we must consider each point raised by him

³All of the responsa, except one, in our "responsa pool" cite at least one traditional Jewish source. The singular exception is entitled "Synagogue from Funeral Parlor" in Reform Responsa for Our Time, pp. 145-147.

as a separate halakhic unit. This is reflected in our graphs. A graph denotes a progression from one point to another by means of marks at the end of one point and the beginning of the next.

Sometimes a responsum will present multiple positions with relation to a given point (i.e. pro and con arguments). A graph denotes this progression by means of at the end of one position and at the beginning of the next.

All in all, ninety-eight chronologically arranged graphs and the same number of graphs which are plotted according to literary strata were generated. Of these, fifty deal with more than one point. In all, a total of 182 points emerge. And of those 182 points, twenty (11%) involve only one primary citation. Thus, we are left with 162 graphed lines of two citations or more. (Of these, 121 utilized three or more points.)

Having explained these essential features of our graphs, we can now consider the types of sources which were used by Solomon B. Freehof in his responsa. We will begin by considering the Biblical sources to which Freehof availed himself. We mentioned earlier that Kenneth Weiss believed that one of Freehof's central goals was to infuse his responsa with a "prophetic spirit" rooted in the Bible. And thus, Weiss shows at one point that "in six of the [thirteen] responsa [analyzed in his dissertation] the Bible provides either a starting point or a necessary augmentation to Freehof's argument."⁴

If Weiss' figures are accurate for all of Freehof's

⁴Weiss, p. 124

responsa, we should expect that nearly one half of all Freehofian responsa would center, at least to some degree, around a Biblical text. But in our sampling of responsa, we find that this is not the case. Biblical texts are cited in twenty-six (26.3%) responsa⁵. Of these, twenty such citations serve as starting points for a given halakhic point within Freehof's presentation. (This amounts to 12.3% of the total number of points made.⁶) From this evidence, we might conclude that although biblical texts played an important role in Solomon B. Freehof's responsa, their use was not nearly as extensive as has been suggested by Weiss.

⁵See Solomon B. Freehof, "Communal Mausoleums" and "Secular Date for Yahrzeit" in Reform Responsa, (Cincinnati: The Hebrew Union College Press, 1960) pp. 158-161, 168-173; "Suicides" and "Kaddish for Apostates and Gentiles" in Recent Reform Responsa, (Cincinnati: The Hebrew Union College Press, 1963) pp. 114-120, 132-139; "Greeting Mourners", "Memorial Lights in the Home", "Mother's Ashes in Son's Grave" and "Burial of a Pet Animal" in Current Reform Responsa, (Cincinnati: The Hebrew Union College Press, 1969) pp. 125-129, 129-132, 145-149, 165-169; "An Eternal Flame in the Cemetery" and "Crypts as Family Burial Places" in Modern Reform Responsa, (Cincinnati: The Hebrew Union College Press, 1971) pp. 249-253, 254-259; "Lights at Head of Coffin" and "Some Burial Duties" in Contemporary Reform Responsa, (Cincinnati: The Hebrew Union College Press, 1974) pp. 177-181, 189-193; "Perpetual Light on a Grave", "Mother's Name on Son's Tombstone", "The Rented Hearse", "Quarreling Family and Shiva", "Omission of Committal Services", "Funeral and Burial at Night", and "Photographing the Dead" in Reform Responsa for Our Time, pp. 104-108, 116-121, 122-128, 136-142, 148-153, 158-162, 169-171; "Freezing a Body for Later Funeral", "Visiting the Bereaved" and "Is a Tombstone Mandatory?" in New Reform Responsa, (Cincinnati: The Hebrew Union College Press, 1980) pp. 100-104, 133-138, 147-151; "Women as Pall Bearers", "The Meal of Consolation", "Omitting the Burial Qadish" and "Tattooing and Burial" in Today's Reform Responsa, (Cincinnati: The Hebrew Union College Press, 1989) pp. 77-79, 97-99, 99-102, 119-121.

⁶Henceforth, unless otherwise stated, when we present a statistical figure with respect to the number of points made, we will be basing ourselves upon the 162 points made which featured two or more citations.

One reason why this may be the case is that matters of avelut are not featured prominently in Biblical material. Judging from this possibility and from the fact that a 26.3% rate of citation is significant in-and-of-itself, Weiss' point should not be lost. Biblical texts are an integral component in Solomon B. Freehof's Reform responsa.

Perhaps the reason for this is that Biblical passages, especially those from the prophetic books, have long served as pillars which have girded the activist spirit of the Reform movement. Rabbi Walter Jacob, who was Freehof's protege, friend and colleague, wrote in his introduction to Reform Responsa for Our Time that "Solomon B. Freehof emphasized the reality of Reform Judasim, which has stressed Biblical ideas..."⁷ And clearly, Biblical ideas leapt from the pages of Freehof's responsa. They can be found wherever he argued on the side of human compassion and each time that he called upon his readers to pursue a course guided by conscience.

But while scripture figured prominently in Freehof's responsa, it was rabbinic literature which featured overwhelmingly in his halakhic writings. For Freehof, rabbinic literature did contain a genuinely divine spark. In his introduction to Current Reform Responsa, he himself wrote:

If hitherto God had revealed Himself through the writers of the Bible by the flame of human conscience then He revealed Himself through the debating scholars of the Talmud, by the light of human intellect; and it may well be that the intelligence is as

⁷Walter Jacob, "Solomon B. Freehof and the Halachah" in Freehof's Reform Responsa for Our Time, p. xxiv

worthy a vehicle of revelation as the conscience.⁸

It is not surprising then, that talmudic references are featured in 69% of the responsa in our study. In addition to his use of these earliest legal positions, Freehof's extensive reliance upon the precedents set forth by outstanding medieval authorities is also evident throughout his halakhic presentations. One finds the traditional opinions of such men as Shelomo ben Yitzhak (RaSHI), Moses Maimonides (RaMBaM), Asher ben Yechiel (ROSH), Jacob ben Asher, and Joseph Caro cited with great regularity throughout Freehof's responsa.⁹

Not only are these sources consistently mentioned, but their citations often provide a pivotal contribution to Freehof's presentation. Their use is neither cursory nor peripheral. Talmudic references are the first sources cited, and hence in most cases, the most prominently featured sources, in some sixty-six (40%) of the halakhic points made by Freehof. Citations from various Codes play this central role in some twenty-five (15.4%) of the points made, while references taken from Talmudic and Code

⁸Solomon B. Freehof, Current Reform Responsa (USA: The Hebrew Union College Press, 1969) p. 3

⁹Most of these citations (except those of RaSHI) came from the great Codes written by these authorities. The breakdown in the responsa under scrutiny here is as follows:

<u>Authority</u>	<u>Total Number of Citations</u>
Shelomo ben Yitzhak	12
Moses Maimonides	15
Asher ben Yechiel	6
Jacob ben Asher	17
Joseph Caro	75

commentaries play this role fifteen (9.3%) times. In all, non-responsa rabbinic texts are the first texts cited in well over half (54.7%) of the halakhic points made.

It must be stressed that Freehof's use of rabbinic sources was a rather radical innovation in Reform responsa. Generally speaking, the Reform leaders who preceeded Freehof in writing Reform responsa saw little value in relying upon traditional halakhic texts to generate their arguments. This point has been made quite emphatically by Peter J. Haas. He has said that the early writers on Reform Jewish practice:

...saw themselves more as Jewish interpreters of philosophical and religious truths than as continuators of rabbinic culture. This is why they rarely cited earlier rabbinic sources, and when they did it was likely to be Maimonides, a fellow philosopher.¹⁰

In addition to turning to the Talmud and some of its commentators for halakhic guidance, Freehof also relied heavily upon a vast sea of responsa literature in his halakhic presentations. Early responsa, legal decisions written before, or around the time of, the Shulchan Arukh are cited some thirty-nine times in twenty-six of the responsa in our pool of ninety-nine Reform responsa.¹¹

¹⁰Peter J. Haas, "Reform Responsa: Developing a Theory of Liberal Halakhah" in Liberal Judaism and Halakhah, edited by Walter Jacob, (Pittsburgh, Pa.: Rodeph Shalom Press, 1988), p. 61

¹¹See Solomon B. Freehof, "'Re-use of a Vacated Grave", "Burial of Enemies Side by Side" and "Secular Date for Yahrzeit" in Reform Responsa, pp. 132-135, 136-140, 168-173; "Funeral Services and Mourning for Those Lost at Sea", "Dying Request: No Funeral Service, No Mourning", "Suicides", "Burial of Apostate", "Kaddish for Apostates and Gentiles" and "Double Funerals" in

Early responsa were obviously important to Freehof in the formulation of his halakhic presentations. But modern Responsa (written after the Shulchan Arukh) is the type of legal literature which he cited most frequently. We find that modern responsa are used in some eighty-four of the ninety-nine responsa in our "pool".¹²

It is curious that Rabbi Weiss, in his analysis of Freehof's responsa, said that the sources used "primarily" by Freehof are the Bible, Talmud, Mishneh Torah, and the Shulchan Arukh. He barely mentioned Freehof's obviously extensive use of responsa literature -- especially modern responsa literature. Certainly Freehof made great use of this literary genre. We, therefore, must look closely at that use, as it pertains to his halakhic methodology.

One should not be too surprised by Freehof's extensive use

Recent Reform Responsa, pp. 104-107, 110-113, 114-120, 127-131, 132-139, 138-141; "Greeting Mourners", "A Tombstone in Absence of the Body (Cenotaph)", "Removing a Tombstone" and "Some Kaddish Customs" in Current Reform Responsa, pp. 125-129, 141-144, 149-154, 178-183; "Funeral Services Without the Body" in Modern Reform Responsa, pp. 274-277; "Some Burial Duties", "Congregational Charge for Funerals", "Family Disagreement over Cremation" and "Exchanging a Tombstone" in Contemporary Reform Responsa, pp. 189-193, 193-196, 228-235, 236-239; "Quarreling Family and Shiva" and "Removing the Dead on the Sabbath" in Reform Responsa for Our Time, pp. 136-142, 163-166; "Quicklime on the Body", "Visiting the Bereaved", "Mourning for the Cremated", "Is a Tombstone Mandatory?" and "The Undertaking Business" in New Reform Responsa, pp. 117-118, 133-138, 139-141, 147-151, 158-163; "Walking on the Graves" in Today's Reform Responsa, pp. 52-54.

¹² These instances are far too numerous to cite specifically here. We should also note that Freehof referred his readers to check a related Reform responsa in twenty of the responsa under consideration here.

of modern responsa. Like halakhic Judaism, Reform Judaism is, by its very nature, intimately concerned with adapting Jewish principles and practices to fit modern realities. So many of the questions asked of Solomon B. Freehof were questions which could never have been conceived of by either an early questioner or an early decisor.

Many such questions have concerned technologies which were not even dreamed of one hundred years ago (let alone five hundred years ago). And many questions involved the performance or non-performance of certain rituals which would certainly have never been called into question even one hundred and fifty years ago.

As a Reform respondent, Solomon B. Freehof was in a unique position to address previously unimagined halakhic issues. Still, he was convinced that traditional Jewish sources could provide some insight into even the most modern conundrums. And so, he often turned to the most "modern" of these traditional sources; namely, modern responsa.

What is particularly interesting with respect to Freehof's use of responsa literature in general, is that even though responsa were oft-cited by him, they were rarely cited first. In fact, even though responsa literature is cited in some fashion in ninety percent of the responsa in our "pool", it is only cited first in twenty five (15.4%) of the total number of halakhic points.

This likely indicates that the responsa cited by Freehof

were used, in most cases, in order to demonstrate a point rather than to introduce one. Since traditional responsa are often based upon Talmudic and other "classical" sources, it makes pedagogical sense that Freehof would begin with them and then move on to other sources.

Often too, we find that Freehof summarized various responsa in order to give the reader a clearer understanding of the scope of traditional opinions. It is clear that Freehof viewed himself as a teacher as much as a decisor. Thus in his *halakhic* presentations he would first present the range of opinions (teach), and then he would offer his own advisory opinion based upon one or more of the opinions set forth by the cited responsa (decide).

Thus far, we have primarily considered the sheer numerical volume of the *halakhic* sources cited by Solomon B. Freehof in his Reform responsa. This alone tells us little about whether he used these sources with integrity. For had Freehof relied solely upon one or another Talmud or Code commentary, or the work of just a few selected respondents, we would have a clear indication that he was selective and limited in his use of traditional Jewish legal sources. If, on the other hand, we discover that Freehof cited from the works of a wide range of authorities, including those who were known for their strict rulings and those who had a reputation for leniency, then we would be better equipped to argue that his choice of sources did not reflect any particular prejudice or deficiency.

In actual fact, we find that Freehof did use the works of a wide range of authorities. This is exemplified by his use of talmudic commentaries in his responsa. Certainly he cited liberally from both Rashi's commentary and from the elucidations found in the Tosaphot section of the Talmud. In addition to these, Freehof occasionally made note of the opinions found in Asher ben Yechiel's Hagahot Asheri commentary on Moed Katan, Yomtov Lipman Heller's (17th Century) Tosaphot Yomtov, Obadiah Bertino's 15th Century commentary to the Mishnah and Jacob Reischer's early 18th century talmudic commentary, Iyyun Ya'akov.

Freehof cited rather extensively from many Code commentaries. With respect to Jacob ben Asher's monumental Code, known as the Arba'ah Turim (Tur) we find that Freehof frequently turned to Joseph Caro's sixteenth century Beit Yoseph commentary, and the early seventeenth century commentaries written by Joshua Falk (Perisha) and Joel Sirkes (Bach).

With regard to Caro's Shulchan Arukh, Freehof relied heavily upon the 17th century commentaries written by Abraham Gombiner (Magen Avraham to Orach Chaim) and Shabbetai Cohen (Sifte Cohen to Yore Deah and Choshen Mishpat). We also find that Freehof frequently cited opinions mentioned in the Pitche Teshuvah section of the Shulchan Arukh -- a "modern commentary" which provides an overview of various "recent" opinions related to the issue at hand. A more complete listing of the Code commentaries cited in our "pool" of Freehofian responsa appears in Table 1.1 below.

TABLE 1.1

COMMENTARY TITLE	AUTHORITY	TIME PERIOD	CITATIONS
Bach (to Tur)	Joel Sirkes	Late 16th- Early 17th Cent.	7
Be'ar Hetev (to Shulchan Arukh)	Zechariah Mendel	18th Cent.	5
Beit Yoseph (to Tur)	Joseph Caro	16th Cent.	9
Birke Yoseph (to Shulchan Arukh)	Joseph Azulai	18th Cent.	
Dagul Mirvavah (to Shulchan Arukh)	Ezekiel Landau	18th Cent.	1
Kesef Mishnah (to Mishneh Torah)	Joseph Caro	16th Cent.	2
Lechem Mishnah (to Mishneh Torah)	Abraham de Botton	16th Cent.	1
Magen Avraham (to Shulchan Arukh)	Abraham Gombiner	17th Cent.	8
Perisha (to Tur)	Joshua Falk	Late 16th- Early 17th Cent.	5
Pitche Teshuvah (to Shulchan Arukh)	Avraham Eisenstadt	19th Cent.	7
Sifte Cohen (to Shulchan Arukh)	Shabbetai Cohen	17th Cent.	6
Turei Zahav (to Shulchan Arukh)	Samuel b. David HaLevi	17th Cent.	3
Radbaz (to Mishneh Torah)	David b. Zimri	16th Cent.	2

Clearly, this chart demonstrates the extensive breadth of Freehof's use of Code commentaries in his halakhic presentations. One finds that such liberal utilization of these sources reflects a preparedness, on Freehof's part, to introduce the opinions of a

wide range of authorities.

As we move to a consideration of the breadth of the other halakhic sources cited by Solomon B. Freehof, we find that it too is exceptionally extensive. In our "pool" of Reform responsa, Freehof mentioned the opinions of some eighteen early respondents. (A complete listing of the early responsa cited by Freehof can be found in Table 1.2 below.) Of these, the opinions of Solomon ben Aderet (RaSHBA) were cited most often. We find that the authorities who are mentioned were all highly respected and well known legal decisors.

TABLE 1.2

<u>AUTHORITY</u>	<u>CITATIONS</u>	<u>AUTHORITY</u>	<u>CITATIONS</u>
Solomon b. Aderet	7	Moses Maimonides	1
Joshua Boaz	1	Moses Minz	2
Jacob Castro	1	Jacob Moellin	2
David Cohen	1	Moses Nachmanides	2
Simon b. Zemach Duran	2	Isaac b. Sheshet	1
Menachem Azaria Fano	3	Jacob Weil	4
Samuel b. David HaLevi	1	Asher b. Yechiel	2
Hai Gaon	4	Zedekiah HaRofeh	1
Sherira Gaon	1	David b. Zimri	3

We have also mentioned Freehof's extensive utilization of modern responsa in his Reform responsa. A listing of the modern respondents, whose works are compiled in general responsa collections (covering a wide range of halakhic matters), and are

cited in our "pool" of ninety-nine responsa, can be found in Table 1.3 below:

TABLE 1.3

<u>AUTHORITY</u>	<u>CITATIONS</u>	<u>AUTHORITY</u>	<u>CITATIONS</u>
Samuel Aboab	1	Isaac Lampertoni	2
Meir Asch	1	Ezekiel Landau	8
David Assaf	1	Nathan Landau	1
Arik Meir	1	Samuel Landau	1
Gershon Ashkenazi	1	Jonah Landsofer	1
Nissim Ashkenazi	1	Aryeh Lev	1
Zevi Ashkenazi	3	Elazar Lev	1
Zevi Azriel	1	Jacob L'veit Levi	1
Chaim Bachrach	2	Elazar Margoshes	2
Yehoshua Baumol	1	Chaim Medini	1
Mordechai Benet	1	David Oppenheimer	4
Naphtali Zevi Berlin	2	Elijah Posek	2
Shimon Chones	1	Jacob Reischer	10
Eliezar Deutsch	7	Menachem Rizikov	2
Simon Deutsch	1	Jacob ben Samuel	1
Akiba Eger	1	Moses Schick	8
Solomon Eger	1	Solomon Schick	1
Meir Eisenstadt	1	Isaac Schmelkes	3
Jacob Emden	2	Shalom Schwadron	3
Maharash Engel	1	Joseph Schwartz	8
Yekuti'el Enzil	1	Enoch Shaffran	1

TABLE 1.3 (continued)

<u>AUTHORITY</u>	<u>CITATIONS</u>	<u>AUTHORITY</u>	<u>CITATIONS</u>
Jacob Ettlinger	2	Shevet Shimon	1
Moshe Feinstein	5	Joseph Sinzheim	1
Eleazer Fleckeles	2	Abraham Sofer	1
Abraham Isaac Glick	7	Moses Sofer	26
Eliakim Goetz	3	Simeon Sofer	1
Meir Gordon	1	Isaac Specktor	5
Solomon Haas	1	Eliezer Spiro	12
Joseph Yuspa Hahn	1	Moses Taubes	1
Azriel Hildesheimer	1	Abraham Teonim	1
David Zevi Hoffmann	6	David Terni	1
Horwitz Aryeh Lev	1	Ben Zion Uziel	1
Malchiel ben Jonah	2	Aaron Walkin	1
David Jungreis	2	Isaac Hirsch Weiss	2
Ezekiel Katzenellenbogen	3	Chaim Yeruchem	1
Abraham Zevi Klein	3	Avraham Yudelevich	4
Solomon Kluger	2		

What does this cataloging of Freehof's citations of both early and modern responsa tell us about his halaknic methodology? Clearly the fact that, in the ninety-nine of his responsa used in this study, Freehof cited the works of some ninety-one different respondents, is a testament to the vast scope of his general familiarity with the literary genre.

The fact that Freehof cited the works of so many respondents

is impressive. But we must ask ourselves whether his familiarity with these sources was genuine. Did most of Freehof's responsa citations come from authorities whom he rarely if ever cited more than once or twice? If we find this to be the case, we might have cause to criticize his knowledge of these decisors' works.

At first glance, one might find just cause to raise this question. Of the ninety-one different respondents cited by Freehof in our responsa "pool", forty-nine (53.8%) of them were mentioned only once. Eighteen (19.7%) authorities were cited only twice. Only twelve (13.2%) respondents were cited five or more times. Such figures might well indicate that Freehof displayed a limited level of familiarity with respect to the traditional responsa sources that he cited in his Reform Responsa.

But a closer look reveals a different situation. Freehof cited opinions from his ninety-one authorities some 234 times. Of those 234 responsa citations, 103 (44%) came from authorities who were cited five or more times throughout our responsa "pool". This indicates that although Freehof cited many authorities only a few times, he did turn to a few authorities many times. And this point suggests that Freehof not only showed great breadth in his use of responsa sources, but he also displayed significant depth.

In addition to turning to Responsa literature for guidance in assembling his Reform responsa, Freehof also turned to various general compilations of *halakhot*. The earliest such text used by

Freehof in our responsa "pool" is Isaac Ibn Gayyat's eleventh century tome entitled Sha'arey Simcha (3)¹³. Freehof also cited Abraham Danzig's Chaye Adam (1) and Chochmat Adam (5), Yehiel Epstein's well known Arukh HaShulchan (8), Solomon Ganzfried's Kitzur Shulchan Arukh (1) and Chaim Halberstam's Divre Chaim (1). All of these were popularized during the nineteenth twentieth centuries.

Some of Freehof's sources are best characterized as texts which record the local religious customs of certain Jewish communities. Those mentioned by Freehof in our responsa "pool" include Hirschowitz's Otzar Minhage Yeshurun (5), Nahar Mitzrayim a text which describes the customs in Egypt (1) and HaKintres HaYechieli, a source which explains some of the various customs which were practiced in Jerusalem (1).

As one would expect, Freehof also relied a great deal upon sources which discussed the specific issues associated with mourning, burial and funerary practices. The post-talmudic tractate Semachot devotes itself entirely to these issues. It is mentioned some twelve times in the Freehofian responsa under consideration here.¹⁴

Freehof also often gleaned information from the pages of texts which can best be described as guidebooks for mourners. By far and away, the text of this type which he mentioned most often

¹³The numerals in parenthesis here are the number of times the given source was cited in the responsa "pool".

¹⁴These Semachot citations have also been calculated within the final figure of talmud citations.

was Kol Bo al Avelut, a work written in three volumes between 1947 and 1952 by Yekuti'el Greenwald. Freehof cited this text some forty-six times in his Reform responsa pertaining to mourning.

Since Freehof relied so heavily upon Kol Bo al Avelut, it would be worthwhile to know a bit about its author. Born in Hungary in 1889, Greenwald spent the last thirty years of his life in the United States. Judging from both his biography and bibliography, he was very familiar with modern mourning, burial and funerary practices; and he also knew a great deal about Reform Judaism (although he was one of its staunchest opponents). Kol Bo al Avelut is considered even today to be one of the most complete and authoritative guides to traditional Jewish funeral burial and mourning practices.

Freehof did cite several other texts of this genre; texts which are guidebooks or prayerbooks for mourners. These are listed in Table 1.4 below:

TABLE 1.4

<u>AUTHORITY</u>	<u>TEXT</u>	<u>PERIOD</u>	<u>CITATIONS</u>
Isaac Seligman Baer	Totzot Chayim	19th Cent.	1
Shalom Tcherniak	Mishmeret Shalom	19th Cent.	5
Y. M. Tekuchinsky	Gesher HaChaim	20th Cent.	5

Freehof also turned, on occasion, to various compendia of actual responsa which dealt exclusively with issues associated

with avelut. Some of these texts were published as a single responsum, while others were compilations of responsa. Some dealt with avelut, in general, while others dealt with a particular aspect pertaining to the subject.

For example, Freehof regularly turned to the strictly traditional opinions of Eliezer Deutsch (1850-1916). Deutsch's Duda'ay Ha-Sadeh, published posthumously in 1929, is a compilation of responsa dealing generally with issues of mourning. Deutsch was a highly respected Hungarian talmudist and author. Freehof cited responsa from Duda'ay Ha-Sadeh some eleven times in his own responsa on mourning.

In the various Freehofian responsa which deal with cremation, Freehof often turned to several specific texts -- written by Orthodox rabbis in the late nineteenth and early twentieth centuries -- texts which objected loudly to the practice. Elijah Benamozegh's Ya'aney Va-Esh and Enoch Ehrentreu's Cheker Halakhah are both scathing responsa denouncing cremation. Ya'aney Va-Esh is cited three times by Freehof while Cheker Halakhah is mentioned by him once. Meyer Lerner's Chaye Olam, an early twentieth century compendia of anti-cremation responsa written by several authorities, is cited four times.

This cataloging of Freehof's sources tells us a great deal about his halakhic methodology. It is clear from all of this that Freehof searched far and wide for traditional halakhic insights and guidance in assembling his responsa. With respect to his utilization of responsa sources (and the related texts

mentioned above), we find that not only was the breadth of such use rather extensive, but so too was its scope and depth.

This clearly indicates that he saw himself as a **halakhic** author, prepared to discuss these issues according to the generally accepted rules of rabbinic legal discourse. He did not restrict himself to a few Biblical, **Talmudic**, or other traditional references. For had he done this, he would have made himself vulnerable to charges of **halakhic** simplicity and **naivete**. Instead, the fact that Freehof used such a wide range of sources establishes a **prima facie** case that he did view himself as a genuine **halakhist** who read his classical sources through the interpretive prism of the authoritative commentaries.

We need now to ascertain whether Freehof's selection of sources was evenhanded or selective. It was noted earlier that Freehof himself generally sought for, and advocated, the most "liberally affirmative" positions in his responsa. But in his presentations, did he primarily or exclusively present the opinions of so-called "lenient" decisors? Did his admitted prejudice affect his selection of sources? These are important questions, the answers to which will tell us a great deal about Freehof's **halakhic** methodology.

We could not possibly check each and every one of Freehof's sources to ascertain whether they were chosen and included in order to present a one-sided **halakhic** argument. Such would be a massive task; an undertaking well beyond the scope of this work. We will do some of this in a later section of this presentation,

but that analysis will speak only to specific cases, and will demonstrate little with respect to general patterns.

Still, we do need to generate a general profile of the range of Freehof's sources. To do this, we should look at some of the authorities which were most frequently cited in our responsa "pool". For our purposes here, we will use the eleven modern respondents who were mentioned at least five times in our ninety-nine responsa. Let us use these sources to determine the type of halakhic authorities upon whom Freehof relied. Some general information data regarding these men can be found in Table 1.5 below:

TABLE 1.5

<u>AUTHORITY</u>	<u>LIFETIME</u>	<u>GEOGRAPHICAL REGION</u>	<u>CITATIONS</u>
Eliezer Deutsch	1850-1916	Hungary (Bonyhad)	7
Moshe Feinstein	1895-1986	United States	5
Abraham Glueck	1826-1909	Hungary	7
David Zevi Hoffmann	1843-1921	Germany (Berlin)	6
Ezekiel Landau	1713-1793	Poland	8
Jacob Reischer	c.1670-1733	Prague	10
Moses Schick	1807-1879	Hungary	8
Joseph Schwartz	1877-1944	Hungary	8
Eliezer Shapira	1872-1937	Hungary & Czechoslovakia	12
Moses Sofer	1762-1839	Hungary (Pressburg)	26
Isaac Spektor	1817-1896	Russia (Lithuania)	5

Simply by glancing at this list, one is immediately struck

by the large contingent of Hungarian authorities. Certainly the Hungarian rabbinate of the late eighteenth and nineteenth centuries was well known for its authority, zeal and erudition. Still, the fact that six out of these eleven oft-cited respondents served most of their rabbinates in Hungary is rather striking. The fact that there are no sefardic authorities included in this list is also a point worth mentioning.

Certainly each of these rabbis was well-known and highly respected. If mention in the Encyclopaedia Judaica is any measure of renown, it should be noted that each man's biography can be found therein. The Encyclopaedia Judaica particularly acknowledges the significant role played by several of them. Some gleanings from their biographies appear below:

Moshe Feinstein

...One of the leading halakhic authorities of the time... His rulings were accepted as authoritative by Orthodox Jews throughout the world.¹⁵

David Zevi Hoffmann

Toward the end of his life he was regarded as the supreme halakhic authority of German Orthodox Jewry.¹⁶

Ezekiel Landau

...One of the most famous rabbis of the close of the classical Ashkenazi rabbinic era.¹⁷

Jacob Reischer

...In the course of time, he was accepted by contemporary rabbis

¹⁵Encyclopaedia Judaica, Corr. ed., s.v. "Feinstein, Moses."

¹⁶Ibid., s.v. "Hoffmann, David Zevi," by Moshe David Herr.

¹⁷Ibid., s.v. "Landau, Ezekiel," by Meir Lamed.

as a final authority, and problems were addressed to him from the whole diaspora.¹⁸

Isaac Spektor

Spektor won universal admiration for his broad mindedness and peace loving disposition.¹⁹

By looking at this list of well-respected authorities, no one could accuse Freehof of citing decisors who were generally well disposed toward Reform Judaism. Orthodox decisors like Moshe Feinstein, David Zevi Hoffmann, Moses Schick, Eliezer Spiro, and especially Moses Sofer were all violent opponents of the Reform movement.

Nor could one accuse Freehof of only citing decisors who had reputations for being especially lenient in certain circumstances. It is true that Freehof did like to cite authorities like Ezekiel Landau, David Zevi Hoffmann and Isaac Spektor -- all of whom were often noted for being rather lenient (within a strictly Orthodox context).²⁰ But Freehof also relied a great deal upon the rulings of Moshe Feinstein, Moses Sofer and Eliezer Shapira -- three modern authorities with reputations as stringent decisors. (We should note, though, that even these decisors did, on occasion, rule with a degree of leniency.) It should be readily apparent that Freehof did not shy away from

¹⁸Ibid., s.v. "Reischer, Jacob Ben Joseph," by Ephriam Kupfer.

¹⁹Ibid., "Spektor, Isaac Elhanan," by Geulah Bat Yehuda.

²⁰The biographical articles of these men which are found in the Encyclopaedia Judaica all make mention of their reputations for leniency.

certain authorities simply because their general outlooks were far from being as "liberally affirming" as his own.

We have seen, from this rather exhaustive analysis, that halakhic sources played a tremendous and pivotal role in the Reform responsa of Solomon B. Freehof. But thus far we have focused primarily upon numerical figures associated with the variety and frequency of the traditional sources cited in the Freehofian responsa. We need now to look, not only at which sources were cited, but also at how those various sources were cited in relation to each other and in relation to Freehof's larger halakhic presentations.

We must ask ourselves whether Freehof utilized a coherent and observable methodology when he used his sources to create a halakhic argument. Again, we can turn to the graphs found in Appendix B to help us to uncover an answer to this question.

When we look at the points (distinguished as unbroken bold lines) on the graphs, we are immediately struck by a pattern which seems to recur in them with consistent regularity. It appears that within each point on the chronological graphs, Freehof's primary citations (those without dotted lines) were usually cited in chronological order, from earlier sources to later ones. And on the graphs plotted according to literary strata, we find that within each point, Freehof generally cited sources from those literary genres marked at the higher end of the "y" axis before he cited from those marked at the lower end of the axis.

With respect to these graphs, then, we can say that in general, each point is a line which ends, at either the same place along the "y" axis at which it began, or at a lower place. Moreover, rarely do we find "blips" on the graphs which would tell us that within a given point, Freehof cited a source which was either from an earlier time period or from a literary stratum marked at a higher point along the "y" axis. Henceforth, when we say that a graph "fits", we mean that adheres to this general pattern.

Table 1.6 found below will help us to see just how pervasive this pattern is. The chart shows us the percentage of points which "fit" chronologically and literarily. Obviously some points are more complex than others because they involve a greater number of source citations. We may find that a given point's "fitness" is dependent upon its complexity. In order to discover if this is the case, we have distinguished, on each chart, between those points with few citations and those with many.

Under the heading marked "# OF CITIS.", we have noted the number of primary citations which are contained within a given graphed point. The figures found under the heading "% OF TOTAL POINTS" show the percentage of the 183 total points graphed which utilize the given number of primary citations. And under the heading "RATE OF FITNESS CHRON./LIT." we have calculated the percentage of graphs (with a given number of primary citations) which "fit". The figure on the left denotes the rate of fitness

with respect to the chronologically arranged graphs, while the figure on the left refers to the rate of fitness of the graphs arranged according to literary strata.

TABLE 1.6: "FITNESS" OF CHRONOLOGICALLY AND LITERARY GRAPHS

<u># OF CITS.</u>	<u>% OF TOTAL POINTS</u>	<u>RATE OF FITNESS CHRON./LIT.</u>	
0	.55	N/A	N/A
1	10.93	N/A	N/A
2	22.40	97.56%	97.56%
3	25.14	82.61%	73.91%
4	18.58	76.47%	70.59%
5	9.29	88.24%	70.59%
6	4.92	66.67%	44.44%
7	4.37	62.50%	37.50%
8	2.73	40.00%	80.00%
9	.55	100.00%	0.00%
10	.55	100.00%	0.00%

The rate of "fitness" for the points made in the ninety-nine Reform responsa under consideration here is, in general, rather remarkable. Of the 162 points which utilized two or more source citations, 134 (82.7%) fit chronologically and 121 (74.7%) of them "fit" literarily. In all, 145 (89.5%) of the points "fit" in at least one category while fully two thirds (108) "fit" both

chronologically and literarily.²¹

One might argue that these figures are somewhat misleading in that they include the "fitness" rate of the forty-one points which were made with only two primary source citations. One might say that since these graphs were made up of only two points, the fact that they "fit" says little. After all forty of these forty-one points do "fit". Moreover, it is very clear from looking at the chart above, that the rate of "fitness" does drop precipitously as the points grow more complex and utilize more sources.²²

If then, we calculate the rates of "fitness" for the 121 points which utilized three or more primary source citations, we will, perhaps, gain a truer and more accurate picture of the pattern of Solomon B. Freehof's halakhic methodology. Of these points, 94 (77.7%) fit chronologically and 81 (66.9%) fit literarily. Sixty-eight (56.2%) fit both chronologically and literarily, while only sixteen graphed points (13.2%) fail to fit either way. Overall then, 105 (83.8%) of those points constituted of three or more source citations fit at least

²¹We should add that twenty-five (15.4%) of these points "fit" chronologically, but not literarily. Twelve (7.4%) fit literarily but not chronologically.

²²We can observe, for example, that among those points utilizing six or more citations, the rate of "fitness" declines significantly -- especially with respect to those points which have been graphed according to literary strata. Still, one must bear in mind that only twenty-four of all of the points are constituted of six or more primary citations.

chronologically or graphically.²³

Clearly this is indicative of a methodological pattern inherent in Freehof's use of his *halakhic* sources. The "fitness" rates among the graphed points in our responsa "pool" show that Solomon B. Freehof strove to give an orderly overview of the development of the religious practices discussed in his responsa.

In many cases, these overviews progressed according to the literary strata of the various types of Jewish legal sources which he was using: from biblical sources to relevant *talmudic* references and then to responsa citations. Oftimes, the presentations were chronologically arranged, moving from earlier sources to the more modern references. Very often the points were orderly from both a chronological and literary perspective. In so many cases, the methodical development of Freehof's *halakhic* presentations is observable and obvious.

The graphs reveal some other interesting patterns with respect to Freehof's methodological use of *halakhic* sources. From a visual standpoint, many of the graphed points can be best described as being either top-heavy or bottom-heavy. When we say that a graph is "top-heavy", we mean that the number of primarily cited sources at the top part of the graph outnumber those on the bottom part of the graph by a ratio of three-to-one or greater. By "bottom-heavy", we mean that the number of primarily cited sources at the bottom part of the graph outnumber those at the

²³We find here that twenty-five (20.7%) out of these 121 points "fit" chronologically but not literarily while twelve (9.9%) fit literarily, but not chronologically.

top by the same three-to-one ratio.

On the chronologically arranged graphs, we will say that the border between "top" and "bottom" will be the line shared by the headings "500-1500" and "1500-1800". This border has been chosen because, chronologically speaking, it differentiates between the rishonim and the acharonim. One finds that after Joseph Caro wrote his *Shulchan Arukh* (first printed in Venice in 1565), the nature of halakhic writing changed tremendously.

The border between "top" and "bottom" on the graphs plotted according to literary strata shall be the line between "Commentary of Codes" and "Early Responsa". Our reasons for selecting this border center around the notion that the responsa literature must be viewed as a literary form which is distinctly different from other rabbinic (and certainly biblical²⁴) sources. One will notice that "Early Responsa" is grouped here, not with its chronological counterparts, but rather with its literary partners.

We find that there is a remarkably high rate of top-heaviness among both the chronologically and literarily graphed points. Of the 162 points made up of two or more primary citations, forty-eight (29.6%) graph top-heavily on at least one type of graph. Of these, forty are top-heavy on both graphs.

Interestingly, we find that graphic top-heaviness is

²⁴We have not set a border between "biblical" and "rabbinic" sources because none of the halakhic point made in our responsa "pool" involve biblical or midrashic references at a rate of three-to-one or greater.

particularly prevalent among those points which utilize only two primarily cited sources. Of the forty-eight top-heavy points, eighteen (37.5%) of them fit this profile.

We can also observe a rather high rate of bottom-heaviness among the graphed points. Of the points using two or more citations, thirty-six (22.2%) are bottom-heavy on at least one graph. Of these, thirty-one are bottom-heavy on both graphs.

Still, while we found that top-heaviness is common among points utilizing only two citations, the same cannot be said about the bottom-heavy points. Only three of the thirty-four chronologically arranged bottom-heavy graphs, and four of the literarily arranged bottom-heavy graphs, involved points utilizing only two source citations.

Related to this issue of top and bottom heaviness, we find that there is yet another phenomenon associated with Solomon B. Freehof's halakhic methodology which is observable by studying the graphs. With respect to a significant number of points, it appears that Freehof cited only one "type" or source written only during one specific time period. Graphically speaking, these points appear as flat lines.

Fifteen of the flat line points are top-heavy. Of these, two-thirds (ten) involve points generated from only two source citations. Thirteen points are chronologically graphed as top-heavy flat lines. Of these, six are plotted exclusively along the cite marked "0-500" and seven are plotted along the "500-1500" line. Ten of the top-heavy flat line points are arranged

literarily. Of these, six involve only talmudic references while four involve only Code citations. (Nine of the top-heavy flat lines are such on both their literary and chronological graphs.)

Five of the points are graphed chronologically as bottom-heavy flat lines, most of these involving sources produced during this century. Nineteen points are graphed literarily as bottom-heavy flat lines. All of these involve the exclusive utilization of modern responsa sources. Whereas most of the top-heavy flat line points involved only two source citations, only three of the bottom-heavy flat line points fit this profile. Most (12) of the bottom-heavy flat line points involve three source citations.

In all then, we find that top or bottom heaviness plays a role in over one half (eighty four) of the graphed points in our responsa "pool". Among these eighty-four points, thirty-six graph as flat lines in at least one category (chronological or literary). This amounts to 42.9% of all the top and bottom heavy points and 22.2% of the total number of points, involving two or more citations in our entire responsa pool.

This prevalence of top and bottom heaviness indicates that, while Freehof was orderly in his effort to present his readers with both a chronological and literary overview of the the development of certain religious practices, he could not (or did not) always track such practices through the complete literary or chronological continuum. The high rate of flat line points further accentuates Freehof's tendency toward utilizing sources

from only a certain time period or literary strata within a given point.

It seems that, with respect to the top-heavy points (and flat lines), Freehof generally provided his readers with the original sources of the practices under consideration. Then, either because those practices had not changed much, or because they came into general disuse, Freehof did not cite applicable later or responsa sources. One must assume that in many such cases, there were no noteworthy later references even available to Freehof.

We might explain the wide prevalence of "bottom-heavy" (and flat line) points by indicating, as we did once before, that Freehof often dealt with practices and ritual innovations which would never have been imagined by the rishonim.

Overall though, whether a graph is "top-heavy", "bottom-heavy" or a flat line, we can still recognize a clearly observable pattern with respect to Solomon B. Freehof's halakhic methodology. Whenever one turns to a Freehofian responsum, one can reasonably expect to find an ordered and organized halakhic presentation. As much as possible, Freehof's explications are in some way, linked to bona fide traditional sources.

Thus far, we have focused primarily upon the variety and frequency with which Freehof cited his traditional sources. We have seen the general patterns which Freehof employed in using his sources to assemble coherent halakhic presentations. But responsa writing requires more than simply citing sources in a

certain order. A respondent is no mere reporter or chronicler. He must be able to interpret and synthesize the content of his sources. He must speak through his sources, and he must make his sources speak to new situations. This intellectual interaction with generations of legal decisors, is a critical feature implicit in good responsa writing. It is what makes responsa writing a genuine art form.

For Solomon B. Freehof, the art of writing Reform responsa required a fair measure of agility when it came to interacting with the traditional sources. Freehof had a stated permissive predilection with respect to the guidance which he provided in his Reform responsa. He called this tendency "liberal affirmation"²⁵. Whenever he felt he could, he tried to generate rulings which allowed for the widest range of personal choice with respect to religious observance. And yet, at the same time, he sought to ground his decisions in traditional Orthodox sources; a genre of legal literature which is not generally inclined toward legislating personal freedom. We must ask ourselves then: What was the nature of Freehof's interaction with his Orthodox sources? How was he able to use those sources to write "liberally affirming" responsa?

What follows is an explication of the different variables which affected Freehof's interaction with his cited sources vis a vis the halakhic positions which he himself took. In order to

²⁵See Solomon B. Freehof, "Religious Authority in Progressive Judaism" [an address delivered in London to the World Union for Progressive Judaism] (England: Rydal Press, 1959) p. 14

isolate and evaluate the several factors which came into play in this regard, we have generated Tables 1.7 and 1.8 which can be found below. Most of the remainder of this chapter will be a full explanation and analysis of Table 1.7 and 1.8.²⁶

TABLE 1.7

**METHODOLOGICAL ANALYSIS OF FREEHOFIAN RESPONSA
WHICH CAN BE CLASSIFIED AS "INFORMATION/PERMISSION" RESPONSA**

<u>RESPONSA CONTENT</u>	<u>RANGE OF CHOICE</u>	<u>ORIENTATION TO SOURCES</u>
BURIAL LEFT UNCOMPLETED OVERNIGHT; WHEN DOES MOURNING BEGIN?	D	B, 1
BURIAL IN A MILITARY NATIONAL CEMETERY	B	A, 3
MASS BURIAL UNDER MILITARY AUSPICES	B	A, 2&3
BURIAL OF A PET ANIMAL IN A — JEWISH CEMETERY	A, 1	A, 1
MOTHER WISHES TO HAVE HER ASHES BURIED IN HER LATE SON'S GRAVE	D	B, 1
BURIAL OF A SECOND WIFE	B	A, 3
PERPETUAL LIGHT ON A GRAVE	A, 1	A, 1
TWO COFFINS IN ONE GRAVE	D	A, 2
DEPTH OF A GRAVE	D	A, 2
DISINTERMENT FOR BURIAL IN A FAMILY CRYPT	B	B, 1

²⁶Each of the responsum in the responsa "pool" is included in either Table 1.7 or 1.8. A few of these responsa deal with more than one issue of religious practice. Wherever this is the case, the each issue is analyzed separately. In all, among the 99 responsa under consideration, 104 issues are analyzed in Tables 1.7 and 1.8.

TABLE 1.7 (Continued)

<u>RESPONSE</u> <u>CONTENT</u>	<u>RANGE OF</u> <u>CHOICE</u>	<u>ORIENTATION</u> <u>TO SOURCES</u>
BURIAL OF MEN AND WOMEN SIDE BY SIDE	B	A, 3
DELAYED BURIAL	B	B, 1
DISINTERMENT FOR BURIAL IN ISRAEL	B	A, 2&3
BURIAL AND MOURNING FOR THE STILL-BORN CHILD	B	A, 3&3
PROPRIETY OF WALKING ON GRAVES	D	A, 2
WHEN TO SET THE TOMBSTONE	B	B, 2
BODY PARTS MIXED IN BURIAL	A, 3	E
TURNING A VACATED CHRISTIAN CEMETERY INTO A JEWISH CEMETERY	B	A, 2&3
SELLING PART OF THE CEMETERY	A, 1	D
TOMBSTONE [CENOTAPH] IN ABSENCE OF BODY FOR HOLOCAUST VICTIMS	B	A, 2
APPREHENSIONS ASSOCIATED WITH THE FIRST GRAVE IN A CEMETERY	B	A, 2&3
MUST ALL GRAVES IN A CEMETERY BE ALIGNED IN THE SAME DIRECTION?	B	B, 2
MOTHER'S NAME ON HER SON'S TOMBSTONE	B	D
AN ETERNAL FLAME IN THE CEMETERY	B	A, 3
RE-USE OF A VACATED GRAVE	B	A, 2&3
NAME OF THE MISSING ON A TOMBSTONE	B	A, 2&3
LOCATION OF A MAIN TOMBSTONE IN A FAMILY PLOT	B	D
EXCHANGING A TOMBSTONE TO CONFORM WITH THE WISHES OF THE DECEASED	D	A, 2
JEWISH SECTION IN A GENERAL CEMETERY	C	D

TABLE 1.7 (Continued)

<u>RESPONSE CONTENT</u>	<u>RANGE OF CHOICE</u>	<u>ORIENTATION TO SOURCES</u>
UNIFORMITY OF TOMBSTONES	A, 2	A, 1
COMMUNAL MAUSOLEUMS	B	E
IS A TOMBSTONE MANDATORY?	A, 2	A, 1
BODY LOST, FOUND LATER	B	A, 2
PAYMENT OF UNDERTAKERS FOR PERFORMING A MITZVAH	B	D
COVERING THE CASKET AS AN EGALITARIAN GESTURE	D	E
DOUBLE FUNERALS	B	D
MEMORIAL LIGHTS AT HEAD OF COFFIN DURING THE FUNERAL SERVICE	B	A, 2&3
FUNERAL SERVICES AND MOURNING FOR THOSE LOST AT SEA	B	C
BODY LOST AT SEA	B	C
FUNERAL SERVICES WITHOUT THE BODY	A, 1	A, 1
USING TEMPLE FACILITIES FOR FUNERALS	B	B, 1
CAN A RENTED HEARSE, USED FOR GENTILES, ALSO BE USED FOR JEWS?	B	B, 1
TURNING A GENTILE FUNERAL PARLOR INTO A SYNAGOGUE	B	D
OMISSION OF COMMITTAL SERVICES	A	A, 1
FUNERAL AND BURIAL AT NIGHT	D	A, 2
PROPRIETY OF VISITING ANOTHER GRAVE AFTER A FUNERAL	B	D
HALTING A FUNERAL PROCESSION TO RECITE EL MOLE RACHAMIM AT THE SYNAGOGUE	B	D

TABLE 1.7 (Continued)

<u>RESPONSE CONTENT</u>	<u>RANGE OF CHOICE</u>	<u>ORIENTATION TO SOURCES</u>
RABBI PARTICIPATING IN A CHRISTIAN FUNERAL	D	A, 2
AN EXTRA, POST FUNERAL, EULOGY	B	A, 2&3
HALTING THE FUNERAL SEVEN TIMES	B	B, 2
THE GROOM'S FATHER'S FUNERAL INTERRUPTING A WEDDING	B	B, 2
OMITTING THE BURIAL KADDISH	B	C
WOMEN AS PALL BEARERS	B	B, 1
FUNERAL, BURIAL AND EULOGY FOR SUICIDES	D	B, 1
BURIAL OF AN APOSTATE	A, 2	B, 1
KADDISH FOR APOSTATES AND GENTILES	B	A, 2&3
RABBINIC OFFICIATION AT BURIAL OF A JEW IN A CHRISTIAN CEMETERY	D	A, 3
DISINTERMENT FROM A CHRISTIAN CEMETERY	B	A, 2
BURIAL OF NON-JEWS IN A JEWISH CEMETERY	D	B, 1
TATOOING AND BURIAL	B	D
RABBINIC PARTICIPATION IN AN INTERDENOMINATIONAL MEMORIAL DAY SERVICE IN A CHRISTIAN CEMETERY	B	A, 2&3
JEWS PARTICIPATING IN GENTILE FUNERALS (... ON THE SABBATH)	B D	A, 2&3 D
ASHES OF CREMATION IN A TEMPLE CORNERSTONE	A, 1	A, 1
THE BELATED FLOWERS	B	E
MOURNING FOR THE CREMATED	B	B, 1

TABLE 1.7 (Continued)

<u>RESPONSE</u> <u>CONTENT</u>	<u>RANGE OF</u> <u>CHOICE</u>	<u>ORIENTATION</u> <u>TO SOURCES</u>
APPROPRIATE GREETINGS WHEN PAYING A CONDOLENCE CALL	B	E
SECULAR DATE FOR YAHREZEIT	B	E
KADDISH FOR FIRST WIFE	A, 1	A, 1
KADDISH AND YAHREZEIT FOR A CHILD	B	A, 2&3
VISITING MOURNERS BEFORE THE FUNERAL	B	E
MEMORIAL LIGHTS IN THE HOME	B	A, 2&3
KADDISH CUSTOMS:		
YAHREZEIT LISTS	B	C
HIRING SOMEONE TO SAY KADDISH	B	A, 2
SAYING KADDISH FOR A BAPTIZED CHILD	A, 3	E
COMFORTING THE BEREAVED ON THE SABBATH	C	B, 1
SETTING THE YAHREZEIT DAY	B	E
SERVING FOOD AT AN UNVEILING	B	D
SERVING WHISKEY AT A YAHREZEIT MINYAN	A, 3	B, 2
MOURNING AT DISINTERMENT	B	B, 1
DONATING A BODY TO SCIENCE	B	E
PREPARING THE BODY ON THE SABBATH	C	A, 2
TALIT FOR THE DEAD AND CREMATION	C	C
PHOTOGRAPHING THE DEAD	A, 1	A, 1
REMOVING THE DEAD ON THE SABBATH	C	A, 2
QUICKLIME ON THE BODY	B	A, 2
FREEZING A BODY FOR A LATER FUNERAL	A, 1	A, 1

TABLE 1.8

**METHODOLOGICAL ANALYSIS OF FREEHOFIAN RESPONSA
WHICH CAN BE CLASSIFIED AS "CONFLICT RESOLUTION" RESPONSA**

<u>RESPONSA CONTENT</u>	<u>PARTIES INVOLVED</u>	<u>RESOLVED IN FAVOR</u>	<u>ORIENTATION TO SOURCES</u>
A GENTILE WIDOW WISHES TO TRANSFER HER HUSBAND'S REMAINS TO A CHRISTIAN CEMETERY	5, 6	5	A, 2
DISAGREEMENT OVER BURIAL BETWEEN THE DECEASED'S WIDOW AND HIS SONS	1, 2	1	A, 2
ARE CHILDREN OF A DIVORCED COUPLE BOUND TO OBEY THEIR PARENT'S REQUEST THAT THEY NOT BE BURIED SIDE BY SIDE?	5, 1	5	A, 2
WHOSE RIGHTS TAKE PRECEDENCE: ONE WHO OWNS A CEMETERY PLOT OR THE FAMILY OF ONE WHO IS (ACCIDENTALLY) BURIED IN IT?	1, 2	1	A, 2
REPOSSESSING A TOMBSTONE	1, 6 (7)	1	A, 2
WHO SHOULD TAKE OVER THE AFFAIRS OF THE CEMETERY OF A DEFUNCT CONGREGATION? -- A NEIGHBORING CONGREGATION OF LOCAL (NON-JEWISH) AUTHORITIES	4, 7	4	A, 2
CONGREGATIONAL CHARGE FOR NON-MEMBER FUNERALS	1, 4	4	A, 2
REFUSING RABBINIC SERVICES FOR NON-MEMBER FUNERALS	1, 4	4	A, 2
ARE STEPSONS OR WIDOWS RESPONSIBLE FOR STEPFATHER'S/ HUSBAND'S FUNERAL EXPENSES?	1, 2	split decision	A, 2
CAN THE JEWISH COMMUNITY REFUSE TO BURY THE (INADVERTANTLY) CREMATED REMAINS OF A JEW?	1, 3	1	B, 1

TABLE 1.8 (Continued)

<u>RESPONSA CONTENT</u>	<u>PARTIES INVOLVED</u>	<u>RESOLVED IN FAVOR</u>	<u>ORIENTATION TO SOURCES</u>
DISINTERMENT OF GENTILES WHO WERE ACCIDENTALLY BURIED IN THE JEWISH SECTION OF A CEMETERY	1&8 vs. 2	1&8	A,2
DISAGREEMENT OVER (IM)PROPER TIMES TO VISIT A CEMETERY	1,2	1 (qualified)	A,2
MEMORIALIZING THE CHRISTIAN RELATIVES OF ONE'S LATE SPOUSE	1,6(4)	6	A,2
MUST A WIDOW ABIDE BY HER LATE HUSBAND'S REQUEST THAT THERE BE NO FUNERAL AND NO MOURNING?	1,5	split decision	A,2
AT WHOSE HOUSE SHOULD SHIVA BE SAT? -- THE DAUGHTER WHO PAID FOR THE FUNERAL OR THE SISTER WHOSE HOME THE DECEASED HAD LIVED	1,2	split decision	B,2
DECEASED REQUESTS TO BE CREMATED... AND SOME FAMILY MEMBERS DO NOT WANT TO OBEY	1,2	1 (qualified)	E A,2
CAN ONE DECLINE THE SERVICES OF THE CHEVRA KADDISHA?	1,3	1	B,1

Wherever applicable, the range of personal choice allowed by the responsa in our "pool" has been gauged. This measurement identifies the degree to which Freehof favored granting choice autonomy with respect to a given issue. It must be stated from the outset that Freehof's rulings were not uniformly lenient. Freehof never equated the notion of "liberal affirmation" with complete freedom. In fact, he said quite unequivocally that "sometimes, indeed, a request must be answered in the negative, when there is no way in the law for a permissive answer to be

given." ²⁷

It is not surprising then, to find that in more than a few instances, Freehof strongly disagreed with a proposal which was brought to his attention. With respect to the advice given in the responsa in our "pool", Freehof took a strong stand which considerably limited a person's range of freedom in fifteen (out of 104 possible) instances (14.5%).²⁸

In nine of these cases, Freehof felt that a practice which had been proposed by the inquirer was utterly contrary to the spirit of Jewish tradition.²⁹ When this happened, Freehof did not hesitate to make known his objections.

Two examples will suffice here. When a woman sought permission to bury her pet dog in a Jewish cemetery, Freehof wrote that any traditional authority would find such a suggestion "too horrid to contemplate". He added that "the whole mood of tradition is against such action."³⁰ Later, when he was asked about the propriety of photographing the dead for the benefit of relatives who were unable to attend the funeral, he wrote that

²⁷Ibid., p. 14

²⁸Figures in parenthesis in the presentation which follows signify the percentage of decisions which bear the characteristic under consideration.

²⁹These cases are marked "A,1" under the heading Range of Choice in Table 1.7.

³⁰Solomon B. Freehof, "Burial of a Pet Animal" in Current Reform Responsa, pp. 168-169.

"the mood of the law is clearly against" the suggestion.³¹

On occasion, Freehof rejected an argument in favor of personal choice because he felt that a certain religious practice was central to Jewish observance and that it therefore should be maintained, even if one party objected.³² We find that this happened three times among the responsa in our "pool".

Freehof wrote, for example, that even though some people might disapprove, Jewish apostates "should be buried by the Jewish community (or their relatives), and also, if desired, shrouds (tachrichim) should be provided."³³ In another instance, he wrote that "it would shame the dead" to not erect a tombstone at one's grave.³⁴ And in the third case, he wrote that "we must... make a conscious effort toward expressing the spirit of Jewish law" by permitting only simple and uniform grave markers in our cemeteries.³⁵

In all of the above mentioned responsa, Freehof justified his "strict" stance by claiming that he was simply reflecting the spirit of Jewish law. But he did not always have to depend upon

³¹Solomon B. Freehof, "Photographing the Dead" in Reform Responsa For our Time, p. 171.

³²These cases are marked "A,2" under the heading Range of Choice in Table 1.7.

³³Solomon B. Freehof, "Burial of Apostate" in Recent Reform Responsa, p. 131.

³⁴Solomon B. Freehof, "Is a Tombstone Mandatory?" in New Reform Responsa, p. 151.

³⁵Solomon B. Freehof, "Uniformity of Tombstones" in Reform Responsa, p. 157.

the weight of tradition when he felt that a stringent decision was best. There were three instances among the responsa in our "pool" (2.9%) wherein Freehof actually limited personal choice while taking a position which was contrary to the stance posited by at least some traditional Jewish authorities.³⁶

In a case involving a Jewish woman and a Gentile man who were tragically killed together in an automobile accident and then had their body parts mistakenly mixed in burial, Freehof acknowledged that "it is preferable by Jewish tradition to bury all parts of [one] body in one grave". Still he strongly recommended that this "unfortunate incident should be accepted as it is and [that] both bodies [be] allowed to rest."³⁷

In his remarks concerning the widespread custom of sitting shiva for a living child who has been baptized, Freehof said that the custom is based upon a mistaken understanding of its assumed original source. His remarks leave one with the sense that he believed that this practice should not be observed, even though many traditional authorities view it as valid.³⁸

In another responsum, Freehof addressed the appropriateness of a custom which is reasonably popular among some Orthodox Jews. In some places, it is considered customary for a person to serve

³⁶These cases are marked "A,3" under the heading Range of Choice in Table 1.7.

³⁷Solomon B. Freehof, "Body Parts Mixed in Burial" in Today's Reform Responsa, p. 86.

³⁸Solomon B. Freehof, "Some Kaddish Customs" in Current Reform Responsa, pp. 181-183.

whiskey to the participants in a minyan when one is observing a *yahrzeit*. Freehof showed how some authorities have acknowledged this practice while others have condemned it. Ultimately, he himself said that "serving whiskey is hardly in consonance with this solemn ritual."³⁹ In doing this, he clearly restricted personal choice and, at the same time he placed himself at odds with the permissive stance taken by some traditional authorities.

When we look at the broad range of freedom which Freehof allowed in his Reform responsa, we find that those instances wherein he ruled against allowing at least some degree of personal choice were much more the exception than the rule. We find in our responsa "pool" that while personal choice was denied fifteen times, it was broadly affirmed some fifty-four (51.9%) times.⁴⁰ In our discussion of how Freehof oriented his decisions to the opinions posited in his cited source, we will see that said orientation was frequently correlated to whether or not a given Freehofian decision favored complete personal freedom.

While Freehof did allow for personal choice in his responsa, he did not always favor complete personal choice. Sometimes he granted freedom; but he did so hesitantly by stating that a proposal, although it was not preferable, was not prohibited by the law. Among the responsa in our "pool", Freehof

³⁹Solomon B. Freehof, "The Meal of Consolation" in Today's Reform Responsa, p.96.

⁴⁰These cases are marked "B" under the heading Range of Choice in Table 1.7.

did this five times (4.8%).⁴¹ In one such instance, Freehof was asked whether it is "permissible to use a Jewish section in a general cemetery where the Jews have only the right of burial and not outright ownership of the land." He ruled that

... of course, outright possession is preferable... [But] if outright possession is not possible, and if a reasonable legal guarantee can be obtained [protecting Jewish interests there,] then it is virtually impossible, in my judgment, to prohibit the use of such a Jewish section on the basis of Jewish law.⁴²

On occasion, although he allowed a degree of personal choice, Freehof felt that a proposal nearly pushed the limits of "liberal affirmation" too far. In these instances, he modified his leniency in some fashion. Freehof ruled in favor of modified choice thirteen times (12.5%) in the responsa in our "pool".⁴³ In some cases, he allowed for leniency because of exceptional or emergency circumstances.⁴⁴ Often when he modified his leniency, he suggested possible alternatives or limitations related to the proposed practice. He generally explained that such alternatives would help to bring a given proposal more in line with the spirit

⁴¹These cases are marked "C" under the heading Range of Choice in Table 1.7.

⁴²Solomon B. Freehof, "Jewish Section in a General Cemetery" in Recent Reform Responsa, p. 148.

⁴³These cases are marked "D" under the heading Range of Choice in Table 1.7.

⁴⁴See for example: "An Unfilled Grave" in New Reform Responsa, pp. 97-99; "Funeral and Burial at Night" in Reform Responsa For Our Time, pp. 158-162 and "Two Coffins in One Grave" also in Reform Responsa For Our Time pp. 100-104.

of rabbinic law.⁴⁵

Thus far in our evaluation of the extent to which the Freehofian responsa are "liberally affirming" we have looked primarily at how much personal freedom Freehof allowed. But in some Reform responsa, it is impossible to actually measure the degree of Freehof's leniency.

Most Freehofian responsa were written in reply to inquiries from people who were seeking information regarding a certain practice. In many cases, appeals for permission, either to do or not to do something, were bound up in these requests for information. In these instances, as we have seen, it was possible to measure the degree of personal choice which Freehof allowed.

But on occasion, inquirers asked for more than just information or permission. Sometimes they invited Freehof to play the role of arbiter in a conflict between two or more parties. Whenever this happened, issues of freedom became entirely dependent upon one's personal perspective. For whenever Freehof ruled in favor of one person and against another, he essentially granted freedom to one party at the expense of restricting the freedom of the other.⁴⁶

⁴⁵See for example: Solomon B. Freehof, "Mother's Ashes in Son's Grave" in Current Reform Responsa, pp. 145-149; "Walking on the Graves" in Today's Reform Responsa, pp. 52-54 and "Rabbi Participating in a Christian Funeral" in Current Reform Responsa, pp. 175-178.

⁴⁶There are seventeen responsa from those in our "pool" in which Freehof was asked to act as an arbiter in a dispute. These responsa are considered in Table 1.8. One will observe that

From all of this, we learn that Freehof's notion of "liberal affirmation" was complex and multivalent. Freehof allowed for different degrees of freedom his his Reform responsa. Table 1.9 below summarizes the range and rate of frequency for the various degrees of freedom which we find among the responsa in our "pool".

TABLE 1.9

<u>DEGREE OF FREEDOM ALLOWED</u>	<u>PERCENT OF TOTAL</u>
Restricted Freedom	14.5
Complete Freedom	51.9
Hesitant Freedom	4.8
Modified Freedom	12.5
Conflict Responsa/Degree of Freedom	
Not Measurable	<u>16.3</u>
	Total: 100.0

Whenever we are able to measure the range of choice which Freehof allowed, we must also explore the variables which determined that range. After all, not all permissive rulings can necessarily be viewed from the same vantage point. A decision,

these responsa are not assigned a Range of Choice classification. Instead, the parties involved in the conflict, and the parties who were favored by Freehof, are noted. The disputants in each responsum are specified by number. The numbers correspond as follows:

<u>JEWS</u>	<u>NON-JEWS</u>
1. Individual "A"	6. Individual "C"
2. Individual "B"	7. Community/Civil Authorities
3. Jewish Community	8. The Deceased
4. Jewish Congregation	
5. The Deceased	

for example, which is based upon an accurate reading of the most Orthodox traditional sources, and which grants a wide range of personal autonomy, is clearly "liberally affirming" in a different way than a decision which is permissive because the respondent disregards the opposing views of his traditional counterparts.

When we analyze a Freehofian responsa, we must pay careful attention to how the decisor related to his sources. We must determine whether he generally agreed with the positions taken by his sources or whether he tended to contradict or reinterpret their decisions. And when we encounter instances wherein he did not completely agree with the stances taken by his sources, we must consider the reasons that he gave to justify his divergent opinions?

In over one half of the responsa in our "pool", Freehof took a position which largely reflected the opinions posited by most of the traditional sources which he cited. Of the 104 opinions which Freehof put forth in the responsa in our "pool", fifty-five (52.9%) of them essentially agreed with the substantiating sources which he introduced. This figure alone, though, does not tell us a great deal about how, or under what circumstances, Freehof expressed his agreement with his cited sources. To do this we must view that agreement in its proper context.

In some of these cases, it is particularly important to view Freehof's agreement with his sources in relation to the amount of

personal choice which he allowed. For example, we noted earlier that in nine (8.7%) of the responsa in our "pool", Freehof took a stance restricting individual freedom. In each of these cases, he cited traditional sources to support his argument.⁴⁷ Essentially then, we find that when Freehof felt that a strict position was justified, he did not hesitate to substantiate his view with the voices of traditional authority.

Most of the time though, when Freehof found himself in essential agreement with his cited sources, the sources themselves allowed for some degree of personal discretion. Sometimes they explicitly and positively affirmed Freehof's own position with respect to a given proposal.⁴⁸ We find that this happened some twenty-seven times (26.0%) throughout the responsa in our "pool".

Fourteen of these cases are found among those responsa which we have characterized as having been written in order to resolve a conflict. In these fourteen cases, it appears that Freehof tried hard to avoid infusing his responsa with his own subjective opinions. Instead, he relied largely upon the precedents set forth by tradition to speak to the modern day problems that he had been asked to address.

Among the other thirteen decisions where we find that

⁴⁷Instances wherein Freehof agreed with cited sources which advocated strict positions are marked "A,1" under the heading "Orientation to Sources" in Tables 1.7 and 1.8.

⁴⁸These instances are marked "A,2" under the heading "Orientation to Sources" in Tables 1.7 and 1.8.

Freehof reached a conclusion which essentially agreed with his cited sources, one observes that he tended to grant a measure of personal choice only reluctantly. In six of these decisions, Freehof allowed for "modified freedom" and in two he allowed for choice only hesitantly. We have seen that Freehof was not normally reluctant to rule with personal freedom in mind. It is then curious to note the disproportionate reluctance and hesitancy here. Perhaps this indicates a tendency on Freehof's part, to rely upon the views of traditional authorities whenever he himself was doubtful about a proposal's acceptability within the limits of Jewish law.

In some of his responsa, Freehof noted that the sources do not specifically object to the proposal under consideration, and that therefore there was no reason for him to forbid it.⁴⁹ We find that this happened in five (4.8%) of the decisions rendered in the responsa in our "pool". Judging from the infrequency with which Freehof used this reasoning, one might suggest that he did not view it as being a particularly compelling mode of argumentation.

Yet another way in which Freehof rendered decisions which essentially reflected the positions taken by his cited sources was by saying that the sources both affirm his position and do not object to it.⁵⁰ We find that this line of reasoning was used

⁴⁹These instances are marked "A,3" under the heading "Orientation to Sources" in Tables 1.7 and 1.8.

⁵⁰These instances are marked "A2&3" under the heading "Orientation to Sources" in Table 1.7 and 1.8.

fourteen times (13.4%) throughout the responsa in our "pool". In each case, Freehof allowed for nearly unrestricted freedom with respect to the proposal under consideration. This seems to indicate that whenever possible, Freehof preferred to doubly substantiate his liberal position vis a vis an issue by suggesting that a given proposal is not only endorsed by tradition, but that that endorsement is without objection.

We mentioned that over one half of the decisions rendered by Freehof in the Reform responsa in our "pool" were directly substantiated and endorsed by the various traditional sources which were cited. This does not mean that most of the other Freehofian decisions in our "pool" were not, in at least some way, linked to the positions posited by their cited sources.

Sometimes Freehof noted in his responsa that various traditional authorities have taken differing positions regarding certain issues. We find that this happened twenty-one times (20.2%) in the responsa in our pool.

In fifteen instances where this was the case, Freehof sided one of the positions which he cited.⁵¹ In most of these cases he either sided with the most lenient traditional decisions mentioned,⁵² or he relied upon minority rulings which had been

⁵¹These instances are marked as "B,1" under the heading "Orientation to Sources" in Tables 1.7 and 1.8.

⁵²See Freehof, "Suicides" and "Burial of Apostate" in Recent Reform Responsa, pp. 114-120, 127-131; "Mother's Ashes in Son's Grave" in Current Reform Responsa, pp. 145-149; "Crypts and Family Burial Places" in Modern Reform Responsa, pp. 254-259; "The Rented Hearse" and "Burial of Cremation Ashes" in Reform Responsa for Our Time, pp. 122-128, 112-115; "Mourning for the

handed down by noted authorities.⁵³

It is particularly interesting to note that most of the Freehofian responsa which dealt with cremation, suicide and apostasy as they relate to Jewish burial and mourning practices, fit into this category. In general, Freehof took a very lenient stance whenever he dealt with these controversial issues. Still, he clearly did not want his rulings to go completely beyond the bounds of Jewish law when it came to such critical and sensitive matters. Therefore, when he wrote about them, he generally acknowledged the divergent opinions among traditional authorities, and only then did he ally himself with the more lenient positions among them.

Sometimes when Freehof mentioned sources which took varying positions on a given issue, he allowed those affected by the inquiry to choose from among the different possibilities presented.⁵⁴ We find that this happened five times (4.8%) in the responsa in our pool. Most of these responsa dealt with practices which Freehof found to be grounded in folklore more than actual law.⁵⁵ This shows us that Freehof held that customs,

Cremated" and "Comforting the Bereaved on the Sabbath" in New Reform Responsa, pp. 139-141, 130-132; "Women as Pall Bearers" in Today's Reform Responsa, pp. 77-79.

⁵³See Freehof, "Delayed Burial" in Reform Responsa, pp. 150-154; "An Unfilled Grave" in New Reform Responsa, pp. 97-99.

⁵⁴These instances are marked "B,2" under the heading "Orientation to Sources" in Tables 1.7 and 1.8.

⁵⁵See Freehof, "Halting a Funeral Seven Times", "The Meal of Consolation" and "When to Set a Tombstone" in Today's Reform Responsa, pp. 44-46, 97-99, 117-119; "Alignment of Graves in

especially those rooted in folklore, allow for more flexibility than laws with respect to Jewish observance.

Another way in which Freehof oriented his decisions to the rulings provided by the sources which he cited, was by modifying those positions in such a way that he would be able to use them to render a decision favoring personal freedom.⁵⁶ When he did this, he generally introduced authoritative sources which showed that a given proposed practice was rooted in traditional law. He then extended, or in some way reshaped, the traditionally endorsed practice to suit the proposal under consideration. We find that this happened five times (4.8%) in the responsa in our "pool".

In some of these instances where Freehof modified traditional rulings, it appears that he did so in order to show that the seeds of certain widely held Reform religious practices have been sown in traditional antecedents. For example, he wrote and demonstrated that "it seems clear that our custom of reading memorial names on the Sabbath in the Kaddish is original with Reform, but it has... many [traditional] roots."⁵⁷

In another responsum he explained and justified the Reform Jewish practice of reciting the burial kaddish even when the body is not buried. He noted that since the only acceptable means for

Current Reform Responsa, pp. 132-138.

⁵⁶These cases are marked "C" under the heading "Orientation to Sources" in Tables 1.7 and 1.8.

⁵⁷Solomon B. Freehof, "Some Kaddish Customs" in Current Reform Responsa, p.180.

disposing of bodies among Orthodox Jews is in-ground burial, it is most logical for them to recite the burial kaddish at the time of burial. But since many Reform Jews choose to have their remains disposed of by other means, "Reform congregations... have established the custom of saying qadish at the close of every type of funeral."⁵⁸

Sometimes Freehof was unable to cite any traditional sources which directly addressed the issue about which he was writing.⁵⁹ We find that this occurred twelve times (10.5%) in the responsa in our "pool". Often when this happened, Freehof wrote that a thorough search through the relevant sources was unsuccessful in its effort to locate a clear halakhic statement pertaining to the topic at hand.⁶⁰ One must remember that many of these responsa addressed practices which had to do with local (often folklorish) customs⁶¹, issues relating to modernity⁶², and

⁵⁸Solomon B. Freehof, "Omitting the Burial Qadish" in Today's Reform Responsa, p. 102.

⁵⁹These cases are marked "D" under the heading "Orientation to Sources" in Tables 1.7 and 1.8.

⁶⁰See Solomon B. Freehof, "Location of Tombstone" in Recent reform Responsa, pp. 141-143; "Selling Part of the Cemetery" and "Mother's Name on Son's Tombstone" and "Synagogue from a Funeral Parlor" in Reform Responsa for Our Time, pp. 128-135, 116-121, 145-147; "Double Funerals" in New Reform Responsa, pp. 138-141; "The Meal of Consolation" in Today's Reform Responsa, pp. 97-99.

⁶¹See Freehof, "Visiting Another Grave after a Funeral" and "Halting a Funeral at Synagogue" in Reform Responsa for Our Time, pp. 187-190, 182-186; "The Meal of Consolation" in Today's Reform Responsa, pp. 97-99.

genuinely unique circumstances.⁶³

It is noteworthy that all of Freehof's decisions in these particular responsa favored granting a wide range of personal choice. Since Freehof could not cite any sources which endorsed his positions in these circumstances, he had to employ some rather creative methods to justify his conclusions.

For example, in a response to an inquirer who questioned whether undertaking is an appropriate business (because it involves paying a person for performing a *mitzvah*), Freehof ruled permissively by creating an analogy. First he showed that traditional authorities have long permitted rabbis to accept remuneration for the time that they have spent performing *mitzvot*. Then, by comparing undertaking to the rabbinate, he reasoned that it is perfectly acceptable for undertakers to accept payment for their services.⁶⁴

Perhaps the most interesting Freehofian responsa are those in which Freehof disagreed with what he acknowledged to be the generally accepted traditionally Orthodox position.⁶⁵ (We have

⁶²See Solomon B. Freehof, "Mother's Name on Son's Tombstone" and "Gentile Funerals on the Sabbath" in Reform Responsa for Our Time, pp. 116-121, 142-144; "Undertaking as a Business" in New Reform Responsa, pp. 158-163.

⁶³See Solomon B. Freehof, "Double Funerals" in Recent Reform Responsa, pp. 138-141; "Synagogue From Funeral Parlor" in Reform Responsa for Our Time, pp. 145-147.

⁶⁴See Solomon B. Freehof, "The Undertaking Business" in New Reform Responsa, pp. 158-163.

⁶⁵These instances are marked "E" under the heading "Orientation to Sources" in Tables 1.7 and 1.8.

already discussed some of these cases in an earlier part of this chapter. See pp. 45-47.) Given Freehof's reputation for leniency, we might expect to find many responsa such as this. But this is not necessarily the case. Among the responsa in our "pool", Freehof fundamentally disagreed with his cited sources only ten times (9.6%).

Several of these responsa dealt with issues concerning funeral and mourning etiquette. For example, Freehof permitted the use of elaborate caskets and flowers at Jewish funerals, despite explicit Orthodox objections to such practices.⁶⁶ In another responsum, he disagreed with a prohibition against greeting mourners with the expression "Shalom Aleichem".⁶⁷ In yet another instance, he wrote that it is permissible to pay a condolence call to mourners before a funeral; something which is clearly contrary to the spirit of traditional Jewish practice.⁶⁸

Other points of disagreement dealt with such matters as determining when a mourner should observe *yahrzeit*. In one responsum, Freehof wrote that it is acceptable for one to use the secular calendar when determining the correct date to observe a *yahrzeit*. In the responsum, he acknowledged various Orthodox objections to this suggestion, but these he dismissed calling

⁶⁶See Freehof, "The Belated Flowers" in Reform Responsa for Our Time, pp. 108-112; "Covering the Casket" in New Reform Responsa, pp. 152-157.

⁶⁷Solomon B. Freehof, "Greeting Mourners" in Current Reform Responsa, pp. 125-129.

⁶⁸Solomon B. Freehof, "Visiting the Bereaved" in New Reform Responsa, pp. 133-138.

them "pathetically weak arguments"⁶⁹ In another case, Freehof said that it is acceptable for Reform Jews to observe yahrzeit on the Shabbat nearest to the anniversary of a loved one's death.⁷⁰ Again, this suggestion was clearly contrary to Orthodox practice.

In most of the cases where his ruling clashed with the views expressed by his cited sources, Freehof made an obvious effort to discount the traditional stances in order to justify his own. Sometimes he did this by saying that certain practices, which might offend Orthodox sensitivities, were already popular among liberal American Jews. Freehof was careful not to forbid something if he was certain that his prohibition would go largely unheeded.⁷¹

Sometimes he justified potentially objectionable practices by saying that they were essentially cosmetic and transitory and that they did not profoundly alter the spirit and intent behind the various laws of avelut. This was the reasoning behind his liberal attitude toward yahrzeit observance and his permissive stance with respect to elaborate caskets and flowers at funerals.

⁶⁹Solomon B. Freehof, "Secular Date for Yahrzeit" in Reform Responsa, pp. 168-173.

⁷⁰Solomon B. Freehof, "The Yahrzeit Day" in Today's Reform Responsa, pp. 67-70.

⁷¹See Solomon B. Freehof, "Communal Mausoleums" in Reform Responsa, pp. 158-161; "Visiting the Bereaved" in New Reform Responsa, pp. 133-138.

CRITIQUE

The data which we have presented has provided us with detailed sketch of the many different features which were associated with Solomon B. Freehof's halakhic methodology. We have seen quite definitively that Freehof's Reform responsa were generally organized according to a clearly observable pattern. We have also seen the various ways in which he related to the many sources that he cited.

Freehof's responsa have been subjected to some rather sharp criticisms leveled against him by liberal Jewish scholars. Most of these criticisms center more around Freehof's conclusions, rather than the manner in which they were generated.

To the criticism that Freehof's decisions were, on the whole too permissive, we have already shown quite clearly that Freehof's notion of "liberal affirmation" was not the equivalent of unchecked freedom. Some 14.5 percent of the responsa in our "pool" contained conclusions which were "stringent" from the point of view that Freehof limited personal choice in them. This is an important point to bear in mind.

When we actually looked at Freehof's conclusions on a case-by-case basis, we saw that most reflected some degree of agreement, on his part, with the generally accepted traditional positions. In facts, as evidenced by the responsa in our "pool", indicate that Freehof fundamentally disagreed with the weight of tradition about ten percent of the time. Surely this does not indicate a wanton disregard for rabbinic precedent.

We saw further, among the responsa in our "pool", that when Freehof did differ openly with his cited traditional sources, he ususally did so over relatively unimportant issues; issues of ettiquette and aesthetics. When it came to genuinely important or "controversial" matters -- matters which, for example might call into question a Jew's right to be buried or mourned for as a Jew, or which might make it impossible for Jews of all denominations to mourn together -- Freehof strove to show that his particular stance fell withing the range of traditional halakhic practice. Contrary to the opinions of some of his critics, Solomon B. Freehof had a great deal of respect for traditional views. He did not dismiss important halakhic matters lightly.

We must also bear in mind that permissiveness is often a matter of perspective. To an Orthodox Jew, Freehof's decisions would certainly seem too permissive; while to a liberal Jew, they might seem moderate or reasonable. Freehof did not write his responsa for Orthodox Jews. He wrote them for Reform Jews. Hence their "liberally affirmative" perspective.

One theologian, Dan Cohn-Sherbok has leveled another particular criticism against Freehof's halakhic conclusions. He has suggested that Freehof had no clear criteria to guide him in determining whether to rule strictly or permissively in a given matter. He wrote in part, that Freehof had "an ambiguous

and inconsistent attitude towards Jewish law."⁷²

In their response to this article, Mark N. Staitman and Walter Jacob correctly argued that no halakhic authority, save maybe Maimonides and Jacob ben Asher, has ever explicitly claimed to use a consistent criteria for justifying a particular stance vis a vis the Law.⁷³ They argued that responsa writing is a fluid and dynamic exercise and that it was unfair to expect Freehof to have a formula to determine when he would rule strictly and when he would rule leniently.

But judging from the decisions rendered in the responsa in our "pool", there does appear to be at least one criterion which Freehof did employ in writing his responsa on avelut. It is not a criterion which enabled him to say that in certain specific situations he would rule in certain specific ways. Such would be too much to expect from any respondent.

Freehof's criterion concerned his relationship to his cited sources. In general, whenever he could locate sources which spoke to the issues that he discussed, he strove to rule within the boundaries which those sources laid out. Often those sources allowed him to be flexible and to uphold his principle of "liberal affirmation". Only infrequently did Freehof completely diverge from the positions expressed by the authorities that he cited. He particularly avoided such disagreements when he was

⁷²Dan Cohn-Sherbok, "Law and Freedom in Reform Judaism," Journal of Reform Judaism (Winter 1983): 96.

⁷³Mark N. Staitman and Walter Jacob, "Response," Journal of Reform Judaism (Winter 1983): 99.

dealing with especially controversial issues. These were Freehof's criteria. They were principles which Freehof consistently strove to uphold.

**Chapter Two:
EVALUATING THE VALIDITY OF
SOLOMON B. FREEHOF'S HALAKHIC METHODOLOGY**

The focus of our analysis thus far has been the development of a *prima facie* case which illuminates a discernible methodology that Solomon B. Freehof utilized in writing his Reform responsa. We have paid attention to three particular aspects *vis a vis* this methodology.

First, we have investigated the manner in which Freehof used traditional sources in constructing his halakhic arguments. Such sources were taken from a broad range of literary, chronological and ideological strata. We have seen also how Freehof organized the presentation of his sources to construct coherent legal presentations. Freehof's own position with respect to his sources varied a great deal. Often, he agreed with the positions taken by them. Sometimes he felt that a modification of their perspectives was in order. And on occasion, he articulated his categorical disagreement with them.

Second, we have identified the various methods which Freehof employed to generate "lenient" rulings while relying upon authoritative Orthodox sources. Some of these methods could be viewed as having been "halakhic", while others were clearly "extra-halakhic".

Third, we have seen that the nature of the advice offered by Freehof in his responsa was guided by at least one overarching ideological principle. Freehof himself called this principle

"liberal affirmation". We have seen that a "liberally affirmative" responsum seeks to give Reform Jews the widest allowable range of freedom of choice with respect to their religious practices. Still, we have also seen quite clearly that "liberal affirmation" was not synonymous with complete freedom. Freehof sometimes saw a need to restrict personal freedom.

Having looked at Freehof's halakhic methodology in isolation, the questions that we must now ask ourselves are these: How does Freehof's methodology compare to the various methodologies used by modern Orthodox respondents? How have traditionally-minded authorities used Jewish sources in their responsa? What means have they utilized when they have sought to articulate their disagreement with the positions taken by previous authorities or contemporary halakhic thinkers? And what guiding principles have girded the ideological stances taken by these men? In the pages that follow, we will address these questions. We will look at some Orthodox halakhic methodologies vis a vis their sources, their methods and their underlying principles. We will compare their halakhic methodologies to Freehof's.

It is important to state from the outset that when we use the term "responsa", we are referring to a literary genre which has had a lengthy history and which no longer describes one easily definable textual form.¹ The earliest known responsa date

¹The historical sketch of the development of Responsa literature described herein is both brief and general. More indepth analyses can be found in the following sources: Solomon

back to the eighth century. These survive simply as questions followed by a one- or two-word answer. Evidently these documents were authoritative answers handed down from the Geonic academies in Babylonia. They were written in response to queries sent to them from Jews who were living in various communities in the Mediterranean basin.

Around the tenth century, as the Babylonian academies went into decline, we find that inquiries were directed more and more to the various local authorities which were gradually emerging in North Africa and Southern Europe. From that point on, the corpus of responsa literature developed more fully and became a distinctive literary form. Peter Haas has written that

... by the twelfth century a new dynamic began to take hold. As the number of rabbis grew and as rabbinic learning matured and deepened, responsa became not only a tool for the development of halakhah, but actually a forum for the display of individual rabbi's intellectual virtuosity... By the late Orthodox period, that is from the late seventeenth and early eighteenth century on, this process reached a sort of logical conclusion: the argument itself - the display of rabbinic virtuosity - had become an end in itself. There was still a question to be answered, and an answer usually did emerge, but the bulk of the text... was devoted to argumentation itself...²

Modern and contemporary responsa literature, written from the nineteenth century until the present, is an extremely diverse

B. Freehof, The Responsa Literature, (Philadelphia, Pa.: The Jewish Publication Society of America, 1955), pp. 21-45; Menachem Elon, Ha-Mishpat Ha-Ivri, (Jerusalem: The Magnes Press / The Hebrew University, 1973), pp. 1225-1253; Shlomo Tal, "Responsa" in Encyclopaedia Judaica, Vol. 14, (Jerusalem: Keter Publishing House), pp. 83-95.

²Peter J. Haas, "Reform Responsa: Developing a Theory of Liberal Halakhah, Liberal Judaism and Halakhah; ed. by Walter Jacob (Pittsburgh, Pa.: Rodef Shalom Press, 1988) p. 41

genre. Menachem Elon, an Israeli scholar of Jewish law, has said that "the structure of a responsum, its particulars and its style, depends a great deal upon the personality and manner of the specific respondent."³

One need only glance at a few volumes of responsa to see that there are no fixed rules for writing them. Some are short and to the point, while others are long and elaborate with many tangents. Some cite a plethora of sources to bolster their positions, while others introduce little or no supportive and authoritative data. As with nearly every other literary form, responsa are stylistically diverse and methodologically varied.

Having said this, we should point out that, despite their inherently diverse nature, nearly all modern responsa do share at least some basic methodological similarities. In his book entitled The Halakhic Process: A Systemic Analysis, Joel Roth presents a thorough study of the way in which Jewish laws and practices become accepted and authoritative. His text includes "an examination of the systemic principles that govern the use of precedent in halakhic decision-making."⁴ In this examination, Roth discusses the various ways in which Jewish texts are used in the creation of Jewish legal arguments. He is convinced that a modern decisor must present evidence which comes from the wellspring of the Jewish legal tradition if he expects his

³Translated from Menachem Elon's Ha-Mishpat Ha-Ivri, p. 1260.

⁴Joel Roth, The Halakhic Process: A Systemic Analysis, (New York: The Jewish Theological Seminary of America, 1986), p. 3

rulings to be accepted. This is a stylistic feature which Roth views as integral to the *halakhic* process.

There are several other common features which are shared by most modern responsa. Over time, it seems that a generally accepted "responsa structure" has emerged. Elon has written about "respondents... who construct responsa according to a certain order." He indicates that, in addition to sharing this particular "order", responsa literature is often linguistically distinctive. Responsa, he says, are generally written in Hebrew with an admixture of Aramaic. (Although during certain periods, legal decisions have been written in other languages; in particular, Arabic.)⁵

Freehof wrote about a "classic form" for most responsa. Such a form includes citations from authoritative Codes, a thorough consideration of the specific difficulties inherent in the problem under discussion, and a careful explication of talmudic passages which might be of some relevance. He contended that such responsa, decisions which have "fixed characteristics", have been extant for many centuries.

The only differences between the later responsa and those of the twelfth and thirteenth centuries were incidental. Though their content and background may differ, the proportion of subject-matter varying from time to time and place to place, their style and structure have remained essentially the same.⁶

⁵Translated and paraphrased from Menachem Elon's, Ha-Mishpat Ha-Ivri, pp. 1260-1261.

⁶*Ibid.*, p. 33. (It is interesting to note that in this description of the standard responsa structure, Freehof does not mention the need to cite opinions proffered by other respondents

Bearing this in mind, we must ask ourselves now: How does Freehof's halakhic methodology, vis a vis his use of traditional sources, hold up to the general formulaic criteria discussed above? From a structural perspective, it is clear that the form of his legal arguments fit nicely into the traditional mold. We have shown quite definitively that the Freehofian responsa utilized valid and authoritative sources. We have also seen how adept Freehof was at integrating those sources in coherent legal presentations. These are the primary criteria for the "proper" use of traditional sources in halakhic responsa. With respect to them, Freehof's methodology was halakhically valid.

Still, if we are to test Freehof's halakhic style and his use of sources according to traditional or Orthodox standards, there are some grounds for valid criticism. From a stylistic perspective, an Orthodox authority might say that Freehof should have written his responsa in Hebrew. Hebrew, after all, is the generally accepted language of Jewish legal discourse.

The response to this criticism is rather obvious. One of Freehof's primary reasons for writing Reform responsa was to make the beauty of the Jewish legal tradition accessible to as many Reform Jews as possible. Had he written in Hebrew rather than English, Freehof would have betrayed his vision for a Reform Jewish community which was Jewishly informed. After all, only a tiny percentage of Reform Jews possess the requisite knowledge of Hebrew which one needs in order to follow the reasoning in a

on similar issues.)

traditional Hebrew responsum. For Freehof, communicating the wisdom and insights of the sages was infinitely more important than duplicating their language. In order for Freehof to make that wisdom come alive for Reform Jews, he had to do it in a language that they could easily understand.

Another criticism which could be leveled against Freehof's halakhic methodology vis a vis his use of sources is his occasional use of non-Jewish sources. Among the responsa in our "pool", for example, we find that Freehof made reference to such non-traditional resources as the Christian Bible⁷, Josephus' Antiquities⁸, the laws of the Commonwealth of Pennsylvania⁹, John Steinbeck's Travels with Charley¹⁰ and the Episcopalian custom of blessing hunting dogs¹¹. Under most circumstances, such references would greatly disturb Orthodox respondents.

But before we dismiss the halakhic validity of Freehof's use of sources on the basis of these references, we should first look at how and why they were used. The citations from the Christian Bible and Josephus, for example, were introduced in an effort to trace the historical roots of certain traditional Jewish burial

⁷See Solomon B. Freehof, "An Unfilled Grave" in New Reform Responsa, p. 98.

⁸See Solomon B. Freehof, "Funeral and Burial at Night" in Reform Responsa for Our Time, p. 159.

⁹See Solomon B. Freehof, "Transfer of Jew to Christian Cemetery" in Current Reform Responsa, p. 163.

¹⁰See Solomon B. Freehof, "Burial of a Pet Animal" in Current Reform Responsa, p. 166.

¹¹ Ibid., p. 166

practices. They were not used as part of a call for any particularly controversial changes in Jewish practice or belief. Viewed in this context, their use was neither unwarranted nor necessarily inappropriate.

The references to the laws of Pennsylvania, Travels with Charley and the blessing of the hounds were introduced in order to provide the reader with cultural points of reference.

Freehof alluded to these sources in order to compare the views and practices represented by them to Jewish views and practices.

This is hardly halakhically irregular in light of the fact that traditional respondents commonly mention to the ways of "other people" in their halakhic works. Freehof's mention of these sources was, by no means, an endorsement of the positions they took. In fact, in these instances, he largely disagreed with the views put forth by the non-Jewish sources. Clearly then, these occasional non-Jewish references should not invalidate the halakhic validity of Freehof's use of sources.

Having shown that Freehof's use of traditional sources in his responsa was, stylistically speaking, a practice largely consistent with normative Orthodox halakhic methodologies, we can move on to another criterion for halakhic comparison. We must now look at the means which Freehof utilized to generate his rulings, and we must compare his methods to the ones used by Orthodox respondents.

When a respondent agrees completely with the position taken by the sources that he cites, the manner in which he utilizes

those sources will be rather straightforward. With slight stylistic variations, he will state his position and he will substantiate it by citing the various authorities who have agreed with him. Regardless of whether the decision which is ultimately rendered is strict or lenient, if a decisor agrees with the "traditional position", as reflected in the sources, his job is a simple one.

But matters become much more complicated when a decisor disagrees, either entirely or in part, with the position taken by most halakhic authorities. It goes almost without saying that authoritative Orthodox Judaism has never spoken with a singularly exclusive halakhic voice. The multiplicity of views within Orthodoxy is clearly reflected in the responsa literature. Peter Haas has written that

...there is no single, monolithic, univocal Jewish tradition that emerges from the responsa literature. Nor is there a predetermined content to that tradition that must be reflected in all responsa... The responsa literature is diverse and complex, as we would expect any intellectual tradition to be.¹²

When a respondent discovers his position on a given issue to be in disagreement with the "traditionally accepted" view, he must find a halakhically valid reason to justify his divergence. We have already seen some of the means which Freehof used to argue that a given traditional practice merited either modification or reevaluation. What we must now do is consider the various means which authoritative Orthodox respondents have

¹²Peter J. Haas, "Responsa Reconsidered," p. 38.

used to justify their dissent from the halakhic majority; and then we must compare those means to the methods used by Freehof.

In order to do this in a concise and organized fashion, we will focus on the halakhic methodologies of three prominent and respected modern Orthodox respondents, decisors frequently cited by Freehof in his responsa: Moses Sofer, David Hoffmann and Moshe Feinstein. We will pay especially close attention to four particular methods that they used whenever they issued rulings which they viewed as lenient.

The primary reason why we have chosen these three particular men is their reputations as undisputed legal authorities. Each man was a posek elyon, a supreme decisor for his community in his generation. Each lived during a time when great forces, both from within and from outside of the Jewish community, were causing tremendous changes in everyday Jewish life. Each of these authorities had to lead and guide large Jewish communities, as they sought to cope with these changes.

But while the general circumstances surrounding the careers of these three men were similar, their particular biographies were each distinctively different. Each served in a geographic area completely different from the others: Sofer served in Hungary, Hoffmann in Germany, and Feinstein in the United States. These three men also lived during different time periods: Sofer during the early nineteenth century, Hoffmann during the late nineteenth and early twentieth centuries, and Feinstein during the twentieth century.

Because of these differences, and because of their distinctly different personalities, each man approached the changes and challenges in his life in a unique way. Ideologically, they were remarkably dissimilar from each other. Sofer has been viewed as having been extremely strict. Hoffmann had a reputation for leniency (within a thoroughly Orthodox context). And Feinstein, it seems, was severely strict in some circumstances and surprisingly lenient in others.¹³ The only ideological matter that these men all absolutely agreed upon was their utter contempt for, and opposition to, the Reform movement.

Each of these men was strictly Orthodox in both thinking and practice. As Orthodox leaders, the norm with respect to Jewish practice that they advocated was a stringent one. Therefore whenever such circumstances arose which prompted them to issue "lenient" rulings, they had to justify themselves.

While most of these justifications were dictated by common sense, some were warranted by concerns for common decency. It is clear that some of the decisions made by these men were motivated primarily by compassion. This was often a tricky and somewhat daring halakhic maneuver. After all, compassion is not an

¹³Ira Robinson has suggested that Feinstein operated according to what he called a "two-tiered" halakhic system. With respect to religious observance, Feinstein was very pragmatic. He expected the highest degree of stringency from his most fastidious followers. Still, it seems that he clearly understood that many Orthodox Jews simply could not live according to the most strict standards. Robinson observed that with respect to these Jews, Feinstein was often inclined to allow room for leniency. See "Because of Our Many Sins: The Contemporary Jewish World as Reflected in the Responsa of Moses Feinstein" in Judaism, Vol. 35, No. 1, Winter 1986; pp. 35-46.

explicitly endorsed sufficient reason for leniency in Jewish law. Compassion can play a role in the *halakhic* process; but compassion cannot contradict the authoritative positions articulated in legal sources.

We find that even Moses Sofer, a respondent with a reputation for stringency was, at times, motivated by compassion to rule with leniency. A good example of this was an unfortunate case involving a woman claimed to have been raped by some intruders who broke into her home.¹⁴ When she later learned that her husband, a *kohen*, would have to divorce her because of the incident, she sought to recant her initial claim. Rabbi Sofer accepted the woman's second version of what happened, despite the fact that it was obviously not the true account. This was a particularly extraordinary ruling in light of the fact that the Chatam Sofer was well known for his stringency. Regarding this responsum, Alexander Guttman has written that:

It seems quite evident that Rabbi Sofer's decision was prompted by humanitarian considerations, but he does not admit it. Had he done so, he would have been castigated by his colleagues, for whom only exclusively *halachic* considerations were important. Due to his superior stature, Rabbi Sofer's decision was questioned by no Orthodox rabbi, though no rabbi could have overlooked the forced reasoning that led to the humane decision.¹⁵

In his text entitled Modern Challenges to Halakhah, Jonathan Brown describes an occasion when David Hoffman ruled leniently,

¹⁴Moses Sofer, Chatam Sofer, Even Ha'ezer, No. 78

¹⁵Alexander Guttman, The Struggle over Reform in Rabbinic Literature, (New York: The World Union For Progressive Judaism, 1977), pp. 168-169

at least partially out of compassion. In a particular responsum, the great German rabbi permitted the conversion of a Gentile man who had already married a Jewess.¹⁶ Under normal circumstances, Jewish law will not accept proselytes who wish to be converted for the sake of marriage. Hoffmann reasoned, in part, that to reject the Gentile man would do more harm than good. It might, in fact, induce the couple to abandon Jewish observance entirely. In addition to this powerful social concern, Brown concludes that Hoffmann's sense of decency played a role in his reasoning. He writes that "Hoffmann ... found ample reasons, from his humanitarian point of view [emphasis mine], to make a permissive decision..."¹⁷

Sometimes, even stringent rulings can be motivated by humanitarian concerns. Moshe Feinstein, for example, was asked to rule in the plight of a divorcee who wished to remarry but who could not because her ex-husband refused to give her a get.¹⁸ Feinstein allowed the woman to remarry without obtaining a get by claiming that she really was never really halakhically married. Her first wedding ceremony had taken place under Reform auspices. Despite the fact that previous authorities had ruled (leniently) that Reform wedding ceremonies create valid marriages, Feinstein ruled strictly saying that such marriages

¹⁶David Hoffmann, Melamed Leho'il, Vol. II, "Hilkhoh Gerim", No. 83, p. 87f.

¹⁷Jonathan M. Brown, Modern Challenges to Halakhah, (Chicago: Whitehall Company, 1969), p. 99

¹⁸Moshe Feinstein, Iqrot Moshe, Even Ha'ezer, No. 77

are invalid. His decision was based upon **halakhic** reasoning. Still, it is clear that Feinstein was aware that the matter required great sensitivity. Regarding this case, Guttman wrote that "it is obvious that the stringent ruling invalidating the marriage was made in order to arrive at a humane [emphasis mine]... solution to the problem."¹⁹

We see from this that Orthodox rabbis have, at times, been guided in their decisions by concerns for compassion. Like them, Solomon B. Freehof was also sometimes motivated by humanitarian issues. But while the Orthodox decisors could not state their sympathies explicitly, Freehof could and did.

We have already mentioned an example from our responsa "pool" wherein Freehof² did this. When Freehof advised against disintering the mixed remains of a Jewess and a Gentile (see p. 46) in order to avoid causing the bereaved families additional anguish²⁰, he was ruling leniently out of compassion.

In two particular responsa, Freehof extended a widely accepted legal provision in order to issue a compassionate ruling. Both decisions dealt with the **halakhic** complications that arise when a person is lost at sea and presumed dead, but no body can be found.²¹

¹⁹Guttman, p. 130

²⁰Solomon B. Freehof, "Body Parts Mixed in Burial" in Today's Reform Responsa, pp. 84-87.

²¹See Solomon B. Freehof, "Body Lost at Sea" in Reform Responsa, pp. 147-150, and "Funeral Services and Mourning for Those Lost at Sea" in Recent Reform Responsa, pp. 104-107.

Usually, family members may not begin mourning for a missing person until the body is recovered. In the case of a person presumed lost in a "limited" body of water (i.e. a lake), the law generally permits mourning to begin when there is no longer any hope of recovering the body. In "unlimited" waters (i.e. a sea or an ocean), though, the law is more stringent. In these cases, the body must be recovered before mourning can begin. Presumably this is because there is a remote possibility that a person lost at sea might somehow be rescued and not be able to return or contact home.

Both times that Freehof addressed this issue, he was dealing with persons lost in "unlimited" waters. Yet in both cases, he allowed the family to begin mourning from the time that they gave up all hope of recovering the missing body. Essentially, he extended a specific permissive traditional ruling to suit the needs of a different set of circumstances. In one case he justified this extension by explaining that with today's advanced communications technologies, it is highly unlikely that a person rescued at sea would be unable to contact his or her family. One gets a clear sense that Freehof's overriding motivation for this modification was compassion for the grieving families.

Some of the other responsa wherein Freehof made lenient decisions based upon concerns for compassion, dealt with matters pertaining to tombstones. When, for example, he was asked about the permissibility of erecting a cenotaph for Holocaust victims, he wrote about "the flexibility of the tradition in providing for

the emotional needs of mourning families when the circumstances of the death are unusual."²² When a mother sought to have her name included as a parent of the deceased on her son's tombstone, he wrote that "... The feelings of the bereaved family deserve sympathetic consideration in all the discussions about the tombstone."²³

Freehof also believed that Jews have a responsibility to be especially compassionate when offering comfort to the Gentile bereaved. He wrote, in part, that "When officiating at a Gentile funeral, we are no guided by self-interest, but by the awareness of God's fatherly love for all His children."²⁴

Usually when Freehof justified a position on humanitarian grounds, he introduced traditional sources which substantiated his stance. In one particular case, Freehof argued for compassionate leniency for members of the bereaved family of a suicide [who, despite explicit prohibitions, wanted to mourn], by citing a responsum written by none other than Moses Sofer.²⁵ Freehof paraphrased Sofer saying that there is "an increasing reluctance to stigmatize a man as a suicide and therefore, an increasing willingness to grant more and more rights of

²²Solomon B. Freehof, "A Tombstone in Absence of the Body (Cenotaph)" in Current Reform Responsa, p. 141.

²³Solomon B. Freehof, "Mother's Name on Son's Tombstone" in Reform Responsa for Our Time, p. 117.

²⁴Solomon B. Freehof, "Memorial Service in a Christian Cemetery" in Reform Responsa, p. 146.

²⁵See Moses Sofer, Sefer Chatam Sofer, Yore Deah, No. 326.

burial."²⁶

We have seen that justifications based upon humanitarian concerns are fairly common in traditional responsa. Such justifications, though, are generally unstated and thereby "extra-halakhic". The other methods that we will consider herein differ from this particular method in that they are clearly halakhic. They are justifications for leniency which are endorsed as valid by the Jewish legal process. They are reasons which are mentioned explicitly in responsa texts.

One such halakhic justification for leniency is invoked in emergency cases or in special circumstances. The technical term used to identify this type of reasoning is "sha'at ha-dahak". By declaring a dilemma to be a case of sha'at ha-dahak, respondents can render exceptional rulings without undermining the basic principles which are essential to the halakhic process.

The responsa of David Hoffmann contain a great many lenient rulings based upon "sha'at ha-dahak" reasoning. In one particular responsum, for example, Hoffmann addressed an emergency brought about by shortages in Europe during World War I.²⁷ During Passover of 1918, Rabbi Hoffmann was asked to rule on the fitness of certain home utensils which might have come in contact with a batch of suspect ersatz coffee. (Several grains of wheat had been found in some other batches of the product

²⁶Solomon B. Freehof, "Suicides" in Recent Reform Responsa, p. 119.

²⁷David Hoffmann, Melamed Leho'il, Vol. I, "Hilchot Pesah", No. 89, p. 107.

which had been sold from the same store.) Hoffmann was clearly aware of the hardship that would have resulted had he forbidden the utensils in question. He therefore ruled leniently saying that "this is a case of sha'at ha-dahak, for if the vessels are forbidden during Passover, the entire community will have to buy new ones. Such vessels are particularly expensive at this time."²⁸

Ruling leniently on the basis of sha'at hadahak is something which most respondents do only with great reluctance. Freehof, it seems, respected this unwritten rule, making exceptions based upon special circumstances only rarely. We find, among the responsa in our "pool", that Freehof justified his lenient position on these grounds only three times.

Each such responsum concerned a specific complication associated with burial. When, for example, Freehof was asked about the permissibility of nighttime burial, he said that generally speaking, such would be inappropriate. But he then went on to conclude that

... there are special circumstances... which would make it necessary for such a burial to take place. In other words, under special necessity, night burial is permitted...²⁹

In two other responsa, Freehof was asked when the formal mourning period should begin if burial is either delayed or left

²⁸Ibid., p. 107. See also in Hoffmann's Melamed Leho'il, Vol. I, "Hilchot Pesah", No. 77, p. 102 and in Vol. II, "Hilchot Im Mutar Lehitrapot B'devarim Ha-asurim", No. 31, pp. 29-30.

²⁹Solomon B. Freehof, "Funeral and Burial at Night" in Reform Responsa for Our Time, p. 162.

uncompleted. When, for example, a late afternoon funeral made it impossible (according to the gravediggers' union rules) to fill in a grave until the next day, Freehof wrote that: "By general law and custom, mourning should not begin until the grave is filled, but in emergencies such as this [emphasis mine]... [the bereaved can] begin the mourning at once."³⁰ Similarly when burial had to be delayed, either because the deceased was a soldier who had been killed overseas, or because a cemetery strike precluded timely burial, Freehof said that we should classify such situations "under the heading of exceptional circumstances" and thereby rule leniently.³¹

Another halakhically appropriate ground for issuing a lenient ruling is based upon the principle that an authority should not make a given situation worse by ruling too strictly. We find in the Babylonian Talmud³², for example, the dictum that "it is better that people be inadvertent sinners as opposed to deliberate sinners." After all, one can claim that an inadvertent sinner's misdeed was due to ignorance, rather than a wanton disregard for the authority of the law.

It was on the basis of this principle that Moses Sofer ruled leniently in the matter of a community whose cemetery had to

³⁰Solomon B. Freehof, "An Unfilled Grave" in New Reform Responsa, p. 99.

³¹Solomon B. Freehof, "Delayed Burial" in Reform Responsa, p. 153.

³²Shabbat, 148b, et al.

undergo a mass disinterment.³³ Rabbi Sofer wrote that the people did not have to mourn for one day (as prescribed by the law), provided that the chevra kadisha did not inform them of the precise date of the disinterment. He reasoned that the members of the community could not be held culpable for the non-performance of a commandment which they were unaware was incumbent upon them at a particular time.

Moshe Feinstein used this principle to advocate a lenient position vis a vis many contemporary American Jews who do not observe the Sabbath laws. Such people, he reasoned, are sinners; but in most cases their transgressions do not constitute a reckless disregard for divine authority. Rather their sins are due to ignorance and a human weakness for material gain. He wrote, in part, that "... since it is known that most of the profaners of the Sabbath [do so] because of this craving for money, ... [one who does thusly] in no way practices foreign worship."³⁴

David Hoffmann combined this principle with another related one when he dealt with the matter of a medical school student who, because he was a kohen, was continually defiling himself through his studies on cadavers.³⁵ At the time, the young man

³³Moses Sofer, Chatam Sofer, Yore Deah, No. 353.

³⁴Moshe Feinstein, Igrot Moshe, Orah Hayim, Vol. I, No. 123. Translated by Ira Robinson in "Because of Our Many Sins: The Contemporary Jewish World as Reflected in the Responsa of Moses Feinstein," p. 39.

³⁵David Hoffman, Melamed Leho'il, Vol. I, "Hilchot Beit Hakeneset", No. 31, p. 40.

was likely unaware that he was transgressing a mitzvah. The question arose whether someone should inform him of his misdeed.

Hoffman reasoned pragmatically. In addition to saying that it is better that the student should be an inadvertent sinner rather than a deliberate one, he also invoked the rabbinic dictum that an authority should not make a decision which he knows a priori will not be obeyed.³⁶ He wrote, in part that "the man is not likely to leave his chosen vocation... In addition, one should not say something which will not be listened to."³⁷

Hoffman used a similar line of reasoning when he took up the matter of an Orthodox synagogue which was using an organ for musical accompaniment.³⁸ Although Hoffmann himself was very much opposed to the organ's presence and use (particularly because organs were becoming commonplace in Reform synagogues), he felt that the rabbi of the congregation in question should not resign because of it. After all, he reasoned, the rabbi's departure would not bring about the organ's removal and it would only make matters worse. At least as long as the the rabbi was present, he could prevent the organ from being used on Sabbaths and festivals.

Just as Rabbis Sofer, Hoffmann and Feinstein each, on

³⁶Brown cites Moses of Coucy's (thirteenth century) Sefer Mitzvot Gadol as the source for this dictum. Freehof cites the Talmud, Yebamot, 65b.

³⁷Translated by Jonathan M. Brown in Modern Challenges to Halakhah, p. 69.

³⁸David Hoffmann, Melamed Leho'il, Vol. I, "Hilchot Beit Hakeneset", No. 15, pp. 11-19.

occasion, decided matters according to the pragmatic principles discussed above, so to did Solomon B. Freehof. In his discussion of the permissibility of mausoleum burial, for example, he wrote that although such may not be preferable according to tradition, "it is clear that mausoleum burial is increasing."³⁹ Freehof thereby implied that because of its growing popularity, it might be impractical to forbid the practice.

In his responsum dealing with the practice of observing *yahrzeit* on the secular anniversary of a loved one's death,⁴⁰ he again advocated a position of leniency based upon practical necessity. He wrote that most liberal Jews cannot, and will not, keep track of the Hebrew calendar *yahrzeit* dates. Freehof essentially said that we cannot insist that they do this without risking the possibility that they will stop observing *yahrzeits* altogether.

In another responsum, Freehof discussed the widespread contemporary practice wherein comforters pay their condolence calls to the bereaved in the funeral home prior to the funeral. According to traditional law, this would be quite inappropriate. Freehof acknowledged the strident opposition of Orthodox authorities to this practice. He also wrote that he, himself, thought it to be a bad idea. But he then proceeded to say that the practice had already become so popular that

³⁹Solomon B. Freehof, "Communal Mausoleums" in Reform Responsa, pp. 159-160.

⁴⁰Solomon B. Freehof, "Secular Date for *Yahrzeit*" in Reform Responsa, pp. 168-173.

...it would be almost hopeless to try to stop it. Thus it might perhaps be wise to follow the rabbinical dictum not to make a decision when we know beforehand that it will not be obeyed. Under these circumstances... the present situation can perhaps be considered acceptable.⁴¹

In addition to declaring a situation to be an emergency, or advocating a position which will cause the least amount of harm, we find that there is yet another another halakhically valid means by which a decisor can permit something that had previously been prohibited. In his analysis of Rabbi Hoffmann's halakhic methodology, Jonathan Brown wrote that in order to generate a valid lenient ruling the great German rabbi sometimes strove to show that a given "prohibited act was for some reason no longer prohibited..."⁴² He cited a particular responsum in which Hoffmann permitted a Jew to testify in a Gentile court with his head uncovered.⁴³ It exemplifies the above mentioned point nicely. At first glance, one would think that it would be inappropriate for an observant Jew to appear in public with his head uncovered. But Hoffmann based his lenient permissive stance on this matter upon Rabbi Samson Raphael Hirsch's observation that it was customary in his school for students to study secular subjects with their heads uncovered. Hoffmann himself seemed reluctant to rule leniently, but he was able to generate an

⁴¹Solomon B. Freehof, "Visiting the Bereaved" in New Reform Responsa, p. 134.

⁴²Jonathan Brown, Modern Challenges to Halakhah, p. 121.

⁴³David Hoffmann, Melamed Leho'il, Vol. II, No. 56, pp. 50-51 (as Cited by Brown in Modern Challenges to Halakhah, p. 94).

analogy which suggested that the prohibition against appearing without a head covering no longer applied in certain circumstances.

We find that Moshe Feinstein also sometimes used this particular line of reasoning to justify a lenient ruling. He was asked whether a given congregation could decide for itself whether to sell its property.⁴⁴ From a traditional perspective, a member of a Jewish community is also a *de facto* member of the local congregation. Thus at first glance it would seem that a congregation cannot sell its property without the permission of the Jews in the locality.

Feinstein ruled that this situation was no longer necessarily the case. Faced with the fact that many predominantly Jewish neighborhoods throughout America had, over time, become inhospitable to Jews. Many Jews no longer belonged to the particular congregation in question. The unique circumstances forced Feinstein to acknowledge that the old standards could no longer be applied. He therefore ruled that given congregations can be viewed as independent entities, separate from the local Jewish community at large. As separate entities such congregations could determine their own affairs.

Like Hoffmann and Feinstein, Freehof sometimes argued that due to changing circumstances, certain traditional prohibitions no longer applied (at least for Reform Jews). In one responsum, he was asked whether a Jew had the right to refuse the services

⁴⁴Moses Feinstein, Igret Moshe, Orah Hayim, No. 50.

of the local chevra kadisha. Freehof pointed out that the organization of the American Jewish communities had changed radically from that which was found in pre-emancipation Europe (where the chevra kadisha had a virtual monopoly with regard to burial and mourning practices). Based upon this fact, he concluded that "in America, where the chevra is not communal but congregational, non-members are certainly not required to have its services."⁴⁵

In another responsum, Freehof used this line of reasoning to argue that a certain Orthodox practice merited modification because of changes in related Reform practices.⁴⁶ According to Orthodox tradition, the burial kaddish is recited at the time of a person's burial. Since the only traditionally acceptable means for the disposal of a Jew's remains is burial, it followed that all Jews inevitably had burial kaddish recited for them.

But according to Freehof, Reform Judaism generally accepts that people may choose to be interred in a non-traditional manner (such as cremation and mausoleum interment). Freehof reasoned that any justification for not saying burial kaddish for people who make such choices would not be valid for Reform Jews. All Jews should have burial kaddish said for them. For him, it would be best if it would be recited either at the time or burial, or at the end of a funeral -- regardless of what happens

⁴⁵Solomon B. Freehof, "Not Using the Chevra Kadisha" in New Reform Responsa, p. 116.

⁴⁶Solomon B. Freehof, "Omitting the Burial Qadish" in Today's Reform Responsa, pp. 99-102.

to the body. Changed circumstances would have made any prohibition against this variation inappropriate for Reform Jews.

We have gained some valuable insights into the specific legal devices which respondents have employed whenever they have seen fit to diverge from the opinions put forth by the majority. We have seen quite clearly that Freehof used many of the same methods that were used by great modern Orthodox decisors like Rabbis Sofer, Hoffmann and Feinstein. We must now ask ourselves whether the manner in which Freehof used such methods was valid within a *halakhic* context. Would Freehof's Orthodox counterparts be able to accept Freehof's applications of the methods discussed above?

We have already seen that, like his Orthodox counterparts, Freehof sometimes ruled leniently based upon humanitarian concerns. But we have also observed that Freehof did this in a somewhat different manner than Rabbis Sofer, Hoffmann and Feinstein. An Orthodox respondent could never explicitly say that compassion was the legal basis for one of his lenient decisions. Such a justification would not, in and of itself, be *halakhically* valid. Freehof, on the other hand, did not hesitate to openly argue a case based upon concerns for compassion.

For the purposes of this study, this is particularly significant because it represents a clear acknowledgement, on Freehof's part, that subjective "extra-*halakhic*" reasoning could

play an explicit role in Reform responsa.⁴⁷ The matter of "extra-halakhic" evidence and reasoning in responsa is rather complex. Just because compassion was not an explicitly valid determining factor in the halakhic methodologies of Rabbis Sofer, Hoffmann and Feinstein, we should not be misled to believe that no "extra-halakhic" factors are ever accepted as being valid within the halakhic process. Joel Roth has clearly demonstrated that this is not the case.⁴⁸ Extralegal reasoning abounds, both implicitly and explicitly, throughout the responsa literature. Halakhic authorities will often use objective "extra-halakhic" data, information gathered from scholars and scientists, in their responsa. Such data, though, can only be used to assist a respondent in his decision making processes. It can never play an independent determinant role in deciding the law.

We must make a critical distinction here, though, between objective and subjective "extra-halakhic" reasoning. Compassion and humanitarianism are subjective, and largely affective, notions. They cannot be "scientifically" measured in any way. Orthodox respondents will use objective extralegal arguments in their responsa, because such are measurable and conform to

⁴⁷We should note that compassion was not the only type of "extra-halakhic" reasoning that Freehof used in his responsa. Among the responsa in our "pool", we find that Freehof sometimes based his decisions, at least in part, upon psychological considerations. See especially "Kaddish and Yahrzeit for a Child" in Reform Responsa, pp. 165-168; "Gentile Funerals on the Sabbath" and "Omission of Committal Services" in Reform Responsa for Our Time, pp. 142-144, 148-153. Clearly, these too are examples of explicit "extra-halakhic" reasoning.

⁴⁸See Roth's, The Halakhic Process, pp. 231-304.

empirical reason. But because of the ambiguities inherent in arguemnts based upon subjective extralegal reasoning, one will rarely, if ever, find them explicitly utilized in Orthodox halakhic responsa. In this regard, Freehof stood apart from his traditional counterparts.

With respect to the use of the clearly halakhic vehicles which have been discussed herein, we find that in some respects Freehof's methodology compares quite favorably with that of his Orthodox counterparts, and in others it does not. For example, in his use of sha'at ha-dahak arguments, as they were utilized in the responsa in our "pool", we can find no fault with the halakhic validity of Freehof's legal reasoning. Like his Orthodox counterparts, Freehof applied this line of reasoning infrequently and only when very exceptional circumstances required it. When he did make a sha'at ha-dahak argument, he substantiated his position with authoritative citations from valid halakhic sources. It is obvious that he clearly respected the power inherent in sha'at ha-dahak arguments.

But in his application of the principle that one should not make a given situation worse by ruling too strictly in a matter, one could well argue that Freehof may have pushed the limits of permissiveness too far. Mausoleum interment, visiting the bereaved before the funeral and using secular dates for yahrzeit are all practices which would be anathema to most Orthodox Jews. Freehof's approval (albeit grudging) of these practices clearly places him beyond the pale of tradition. In some cases, Freehof

freely acknowledged that strictly observant Jews would frown upon his lenient approach to the law.

But does this invalidate any part of Freehof's halakhic methodology? In order to answer this question, we must consider the general notion of permissiveness and evaluate it from within the context of a given authority's world view. Whenever an Orthodox authority issues a ruling which he deems to be "lenient", he does so from the perspective of an observant Orthodox Jew. The "lenient" tones of most the responsa written by Rabbis Sofer, Hoffmann and Feinstein would hardly seem lenient to a liberal Reform Jew. In fact, to many modern Jews, such positions would likely seem to be quite reactionary. Determining a respondent's position on the scale of stringency is a process which is entirely dependent upon one's perspective.

We must bear in mind that Freehof's responsa were written for a different Jewish audience than are Orthodox responsa. With respect to his particular Jewish readership, Freehof's leniency could easily be deemed appropriate. His permissiveness represented an effort to both encourage Jewish practice and to avoid alienating those Jews whose degree of religious observance was largely marginal. Viewed from this context, Freehof's permissive application of the principle that one should not make a ruling which will worsen a given situation was not necessarily halakhically invalid.

We noted earlier that sometimes a respondent, be he Reform or Orthodox, will justify an exceptional or permissive ruling on

the basis that any possible reason to rule restrictively in a given matter no longer is no longer applicable. We need now to evaluate the validity of Freehof's application of this particular strategy. Judging from the two examples from the Freehofian responsa in our "pool" which we cited earlier⁴⁹, our conclusions on this matter are mixed.

In the responsum which addressed the question of whether a Jew is at liberty to decline the services provided by a chevra kadisha, we find that Freehof's halakhic reasoning seems sound and valid. We have seen from one of Moshe Feinstein's responsa that, due to the changing nature of American Jewish communities, one can now make a distinction between the Jewish community and the Jewish congregation. (Such a distinction did not exist in pre-emancipation Europe.) Freehof's reasoning meshes with Feinstein's (although he does not cite Feinstein.) Although his determination of the matter may displease most Orthodox authorities, from a methodological standpoint Freehof's reasoning cannot be faulted.

But in the responsum dealing with the recitation of the burial kaddish for Jews who choose not to be buried, an Orthodox authority might well take issue with Freehof's reasoning. Freehof argued that if one accepts the idea that nowadays Jews can choose not to have their remains buried according to the dictates of traditional Judaism, one must also accept that the

⁴⁹See Solomon B. Freehof, "Not Using the Chevra Kadisha" in New Reform Responsa, pp. 114-116 and "Omitting the Burial Qadish" in today's Reform Responsa, pp. 99-102.

custom of reciting burial **kaddish** only at the actual time of burial should be adapted. The reason why nearly all Orthodox authorities would reject this reasoning should be clear. They simply would not accept Freehof's first proposition. Maurice Lamm's comments, which appear below, typify the Orthodox opinion with respect to cremation and mausoleum interment:

Cremation is never permitted. It is an offensive act... Jewish law requires no mourning for the cremated. **Shiva** is not observed and **Kaddish** is not recited for them.... [With respect to mausoleums, he wrote] ... To have the deceased buried above the ground, not surrounded by earth within the mausoleum, is unquestionably prohibited... If the deceased willed burial in a mausoleum, one should not follow the will...⁵⁰

Since Freehof's first proposition would be widely rejected, rejection of the second proposition would likewise be a foregone conclusion. This particular application of the principle that a decisor may issue a permissive ruling if he can show that the prohibitions against it are no longer valid, could not be endorsed by an Orthodox authority. For such a person, the prohibition would, in fact, still apply.

We have compared and evaluated much of Solomon B. Freehof's **halakhic** methodology in relation to the **halakhic** methodologies of various Orthodox respondents. We have compared the manner in which these respondents have constructed their responsa. We have looked generally at the sources which they used to substantiate their positions. We have also considered some of the specific lines of legal reasoning that they employed. Before we can

⁵⁰Maurice Lamm, The Jewish Way in Death and Mourning, (New York: Jonathan David Publishers, Inc., 1969), pp. 56-57.

conclude, we must consider one more methodological variable: predisposition.

We have said a great deal about Freehof's predisposition to write "liberally affirmative" Reform responsa. At first glance, an Orthodox authority might justifiably reject Freehof's halakhic methodology simply on the basis of the fact that he reasoned with a known, and explicitly stated, prejudice. Theoretically, traditional respondents are obliged to approach each and every halakhic conundrum free from any preconceived notions. According to this principle, Freehof was incapable of issuing a valid halakhic ruling.

This *tabula rasa* approach to responsa writing is theoretically eloquent. But it is impossible to actually implement. All respondents bring prejudices into their halakhic reasoning. For example, Rabbis Sofer, Hoffmann and Feinstein all despised Reform Judaism. Their contempt for Reform permeates through so much of their writing. They would never have validated a Reform religious practice, no matter how halakhically sound its justification might have been. We cannot invalidate Freehof's methodology simply on the basis that many of his conclusions were shaped by an explicitly stated prejudice.

Likewise, we cannot say that Freehof's methodology was invalid because his halakhic style was predictable. Nearly all respondents have been shown to have particular reputations vis a vis the stringency or permissiveness of their halakhic decisions. We have already discussed the reputations of Rabbis Sofer,

Hoffmann and Feinstein. Just as Freehof's signature style was called "liberal affirmation", many of the greatest Orthodox authorities have also had distinctive halakhic "watchwords"; pithy dicta attributed to them which captured the essential character of their responsa. Moses Sofer, for example, had one of the most well-known watchwords: "Haddash asur min ha-Torah" -- "Innovation is forbidden by the Torah". No one could say that Sofer's halakhic style was flawed because he was predictably strict. One cannot invalidate a decisor's halakhic methodology just because his conclusions tend to be predictable.

None of this should be understood to imply that an observant Orthodox Jew would accept the conclusions which Freehof reached. Certainly he would not. For while Freehof's responsa were methodologically valid, they are, from an Orthodox perspective, were theologically unacceptable. Joel Roth (who is, incidentally, a Conservative Jew) showed that valid halakhic authorities must have more than great knowledge. They must have "yirat ha-shem", fear of God. Roth writes that yirat ha-shem, in this context has no objective definition. But he clearly states that it involves a firm acceptance of the authoritative nature of the halakhah.⁵¹

Freehof was a true scholar of rabbinic literature. But he was not an embodiment of yirat ha-shem. Unlike his Orthodox counterparts, he did not accept the theological position that the opinions of the rabbis were authoritatively binding. For him,

⁵¹See Joel Roth, The Halakhic Process, pp. 145-152.

the wisdom of our sages contained a sacred spark. That spark alone, though, was not enough to make their pronouncements equivalent to the word of God. Because of this, Freehof's conclusions were not Orthodox. But from a methodological perspective, they were most certainly **halakhic**.

Based upon this analysis, we can conclude that from a methodological perspective, Solomon B. Freehof's Reform responsa were largely **halakhically** valid. Freehof used valid sources in an accepted fashion. He constructed his responsa according to generally accepted traditional methods and standards; methods and standards which we have shown were also used by the most widely recognized modern Orthodox decisors. Although an Orthodox Jew might find fault with Freehof's theological perspectives, his **halakhic** methodology and style were both valid and courageous.

Conclusion

The Talmud tells us that "the power of permissiveness is greater than the power of stringency."¹ In his commentary to this passage, RaSHI explained that a lenient decisor must have great intellectual power and courage. At first glance, most Jewish law is restrictive. It is therefore easy for a respondent to rule strictly in most matters. It takes great wisdom and insight, though, to uncover and present argumentation that allows for a margin of flexibility. It also requires a fair measure of self confidence to stand apart from the masses and disagree with the majority.

It appears that Rabbi Dr. Solomon B. Freehof viewed himself as a man who had the courage, the creativity, and the intelligence to be a bona fide lenient halakhic decisor. He believed that if the law is used only as a restrictive instrument, it would lose its dynamic character and it would cease to grow. Freehof well understood that the human endeavor is an ever-evolving process. If Jewish law and practice is to keep pace with Jewish experience, it too must evolve.

We have seen throughout this thesis, that Freehof constructed his Reform responsa in a halakhically valid fashion. He relied primarily upon traditional rabbinic sources to substantiate his positions. His arguments were generated by using halakhically appropriate modes of reasoning. From a

¹Beitzah 2b.

methodological standpoint, most of Solomon B. Freehof's Reform responsa were halakhically unimpeachable.

Those halakhically valid responsa often proffered advice which was, by Orthodox standards, rather lenient. Freehof's distinction as a creative halakhist was rooted in his ability to take a classic methodology and to give it a new facade. This not only took a considerable amount of knowledge and expertise, but it also required a fair measure of self-confidence. For Freehof must have known well that his perspective and his methodology would be subjected to criticism from a wide range of both Liberal and Orthodox Jews.

What was it that motivated Freehof to set the course of Reform responsa as he did? What factors shaped his vision of the Reform halakhic process? We noted earlier that modern Orthodox authorities like Moses Sofer, David Hoffmann and Moshe Feinstein distinguished themselves, in part, because they confronted the collision between tradition and modernity. For each of these great poskim, this collision manifested itself in a different way. And each posek, in turn, took a unique perspective and utilized a distinctive strategy in meeting his challenge.

Solomon B. Freehof likewise confronted the collision between tradition and modernity. In his case, he had to address the concerns of Jews who no longer placed great value in the authoritative nature of traditional Jewish practice. Many liberal Jews, living in the post-holocaust era, seemed ready and willing to abandon their Jewish heritage altogether. The noble

values espoused by pre-World War II Classical Reform Judaism seemed to be unconnected to traditional Jewish practices. And the rigidity of Orthodox practice left them only with a sense of alienation.

Freehof's challenge was to reconnect these Jews to the traditional heritage which rightfully belonged to them. He did this by showing that Jewish practice need not be prohibitively restrictive in order to be *halakhically* valid. This is clearly reflected in his Reform responsa.

Solomon B. Freehof's impact upon Reform Jewish mindset cannot easily be overstated. He provided an unprecedented measure of authenticity to Reform Jewish practice. Through his books, articles and lectures, he has left us with a precious legacy of learning. It is a legacy which will live on for some time to come. For these things, several generations of liberal Jews can be grateful.

**Appendix A:
FREEHOPIAN REFORM RESPONSA WHICH DEAL WITH AVELUT**

Reform Responsa (1960)

<u>RESPONSUM TITLE</u>	<u>PAGES</u>
Preparing the Body on the Sabbath	126-129
Donating a Body to Science	130-131
Re-use of a Vacated Grave	132-135
Burial of Enemies Side by Side	136-140
Burial in a Christian Cemetery	140-142
Memorial Service in a Christian Cemetery	143-146
Body Lost at Sea	147-150
Delayed Burial	150-154
Uniformity of Tombstones	154-157
Communal Mausoleums	158-161
Kaddish for First Wife	162-165
Kaddish and Yahrzeit for a Child	165-168
Secular Date for Yahrzeit	168-173

Recent Reform Responsa (1963)

<u>RESPONSUM TITLE</u>	<u>PAGES</u>
Funeral Services and Mourning for Those Lost at Sea	104-107
Name of the Missing on a Tombstone	107-109
Dying Request: No Funeral Service, No Mourning	110-113
Suicides	114-120
Burial of Apostate	127-131
Kaddish for Apostates and Gentiles	132-139
Double Funerals	138-141
Location of a Tombstone	141-143
Jewish Section in a General Cemetery	144-148

Current Reform Responsa (1969)

<u>RESPONSUM TITLE</u>	<u>PAGES</u>
Greeting Mourners	125-129
Memorial Lights in the Home	129-132
The Alignment of Graves	132-138
The First Grave in the Cemetery	138-140
A Tombstone in Absence of the Body (Cenotaph)	141-144
Mother's Ashes in Son's Grave	145-149
Removing a Tombstone	149-154
Burial of Non-Jews in Jewish Cemetery	154-162
Transfer of Jew to Christian Cemetery	162-165
Burial of a Pet Animal	165-169
Mass Burial in a National Cemetery	169-175

Current Reform Responsa (continued)

<u>RESPONSUM</u> <u>TITLE</u>	<u>PAGES</u>
Rabbi Participating in Christian Funeral	175-178
Some Kaddish Customs	178-183

Modern Reform Responsa (1971)

<u>RESPONSUM</u> <u>TITLE</u>	<u>PAGES</u>
Memorializing Christian Relatives	226-229
Depth of a Grave	230-236
Cemetery of a Defunct Congregation	240-243
An Eternal Flame in the Cemetery	249-253
Crypts as Family Burial Places	254-259
Burial of Men and Women Side by Side	260-268
Talit for the Dead and Cremation	269-274
Funeral Services Without the Body	274-277

Contemporary Reform Responsa (1974)

<u>RESPONSUM</u> <u>TITLE</u>	<u>PAGES</u>
Lights at Head of Coffin	177-181
Some Burial Duties	189-193
Congregational Charge for Funerals	193-196
Funeral Services for Non-Members	196-199
Family Disagreement over Cremation	228-231
Visiting the Cemetery	232-235
Exchanging a Tombstone	236-239

Reform Responsa for Our Time (1977)

<u>RESPONSUM</u> <u>TITLE</u>	<u>PAGES</u>
Funerals from the Temple	95-99
Two Coffins in One Grave	100-104
Perpetual Light on a Grave	104-108
The Belated Flowers	108-112
Burial of Cremation Ashes	112-115
Mother's Name on Son's Tombstone	116-121
The Rented Hearse	122-128
Selling Part of the Cemetery	128-135
Quarreling Family and Shiva	136-142
Gentile Funerals on the Sabbath	142-144
Synagogue from Funeral Parlor	145-147
Omission of Committal Services	148-153
Funeral and Burial at Night	158-162
Removing the Dead on the Sabbath	163-166
Ashes of Cremation in a Temple Cornerstone	167-169
Photographing the Dead	169-171
Burial of Second Wife	172-175
Disinterment from a Christian Cemetery	175-179
Halting Funeral at Synagogue	182-186
Visiting Another Grave After a Funeral	187-190

New Reform Responsa (1980)

<u>RESPONSA TITLE</u>	<u>PAGES</u>
A Former Christian Cemetery	85-87
Gentiles Buried in a Jewish Cemetery	88-91
An Unfilled Grave	97-99
Freezing a Body for Later Funeral	100-104
Burial in a National Cemetery	105-108
Not Using the Chevra Kadisha	114-116
Quicklime on the Body	117-118
Post-Funeral Eulogy	119-124
Comforting the Bereaved on the Sabbath	130-132
Visiting the Bereaved	133-138
Mourning for the Cremated	139-141
Body Lost but Found Later	142-146
Is a Tombstone Mandatory?	147-151
Covering the Casket	152-157
The Undertaking Business	158-163

Today's Reform Responsa (1989)

<u>RESPONSUM TITLE</u>	<u>PAGES</u>
Halting a Funeral Seven Times	44-46
Walking on the Graves	52-54
The Encroaching Grave	65-67
The Yahrzeit Day	67-70
Women as Pall Bearers	77-79

Today's Reform Responsa (continued)

<u>RESPONSUM TITLE</u>	<u>PAGES</u>
Family Dispute over Funeral Expenses	79-81
Body Parts Mixed in Burial	84-87
Mourning at Disinterment	94-97
The Meal of Consolation	97-99
Omitting the Burial Qadish	99-102
Funeral Interrupting a Wedding	103-107
When to Set a Tombstone	117-119
Tattooing and Burial	119-121
The Still Born Child	123-125

Appendix B: REFORM RESPONSA CITATION GRAPHS

GENERAL INTRODUCTION

The source citations in each of the Freehofian Reform responsa from our "pool" have been graphically depicted in this appendix.¹ Each page herein contains two graphs. Both graphs correspond to a single designated responsum. The graphs have been arranged to appear in an order which corresponds to the listing of responsa found in Appendix A. The graph appearing at the top of each page is plotted to show the chronological progression of the cited sources in the responsum. The bottom graphs are plotted to show the progression of those same sources according to their literary strata.

The "x" axis of all of the graphs represents the order (unless otherwise noted) in which each citation appears in the text of the given responsum.

The headings along the "y" axis of the graphs plotted according to the literary strata of the cited sources are generally self explanatory. Only a few comments are necessary. The sources plotted along the headings marked **TALMUD COMMENTARY** and **COMMENTARY OF CODES** include texts which were written during several different historical periods. Sources plotted along the heading **EARLY RESPONSA** include those responsa which were written either before or contemporaneously to Joseph Caro's Shulchan Arukh (written during the mid-sixteenth century). The citations graphed along the heading **MODERN RESPONSA** include various post sixteenth century texts which cannot be classified as Codes. This includes responsa, various halakhic guidebooks. Texts plotted along the heading marked **OTHER** include mentions of non-Jewish sources or customs and various citations from non-Responsa oriented Reform Jewish publications.

The headings along the "y" axis of the chronologically arranged graphs represent distinctive periods of halakhic literary history. These are explained briefly on the following page:

¹We have already noted that in one of responsum from the "pool" Freehof did not directly cite any sources. (See Freehof, "Synagogue from Funeral Parlor" in Reform Responsa for Our Time, pp. 145-147.) Since no sources were cited in this responsum, no graphs have been generated for it.

EXPLANATION OF PERIODIZATION

- BIBLICAL:** Texts plotted along this point were written any time before 0 B.C.E..
- 0-500:** Most of the texts plotted along this point come from Midrashic and Talmudic sources.
- 500-1500:** This heading refers to the writings of the Rishonim. These halakhic authorities wrote prior to the promulgation of Joseph Caro's Shulchan Arukh in the mid-sixteenth century. (We have included Freehof's citations from the Shulchan Arukh in this category.) These texts include various early Codes, their applicable commentaries, along with Talmud commentaries and early responsa.
- 1500-1800:** Texts plotted along this point are generally referred to as Acharonim. We have used the year 1800 as the terminus for this historical periodization because this was roughly the time when much of European Jewry gained emancipation.
- 1800-1900:** Citations plotted along this heading were written during a century of dramatic changes in world Jewry. In addition to emancipation, we find that during this period, there was a profound decline of European Jewry and an extraordinary growth of American Jewry. Reform Judaism emerged in both Europe and the United States during this time. All of these changes are reflected in the halakhic literature written during the nineteenth century.
- 1900-**
- PRESENT:** The twentieth century has also been pivotal in Jewish history. During this century, the American Jewish community has grown and matured tremendously. This century has seen the most terrible tragedy in Jewish history, the holocaust. It has also witnessed one of the greatest Jewish triumphs in the past two thousand years, the birth of the State of Israel. The impact of these events is evident in much of the halakhic literature of this century.

EXPLANATION OF GRAPH MAKINGS AND NOTATIONS

Each graph is plotted to highlight the progression of Freehof's halakhic arguments vis a vis the sources that he cited. That progression is denoted by the bold lines plotted on the graphs. One will observe various markings on the graphs other than the bold lines. An explanation of these markings is found below:

The legal arguments in some of the responsa progress from POINT to POINT. The term point has been defined to denote a self contained sub-topic or sub-argument, which either constitutes a responsum itself, or is a part of a larger halakhic presentation. A graph denotes a progression from one POINT to another, within a responsum, by means of marks located at the end of one POINT and at the beginning of the next.

Sometimes a responsum will present multiple positions in relation to a given POINT (i.e. pro and con arguments). A graph denotes this progression by means of marks located at the end of one position and at beginning of the next.

On occasion a given responsum will cite a certain source and then later on, cite its precedent. Whenever Freehof clearly stated that one source was based upon another, those sources have been plotted in such a manner that the precedent preceeds the later source. If this necessitates an alteration of the actual order in which Freehof cited the given sources, it is noted with a 1 marked at the original location of the later source's citation and a at the cite of rearrangement.

There are instances wherein Freehof cited various sources in either his introductory or concluding remarks. These citations are not necessarily integral the the development of the legal argument and therefore they are plotted with a broken line and noted. Introductory citations are noted with a 2 while concluding citations are noted with a 3.

At times, Freehof mentioned sources whcih were cited by the texts that he was citing. Again, the citation of these sources is not integral to the development of his legal argument and therefore they too are plotted with a broken line and noted with a 4.

Sometimes we find that Freehof cited a source and then he mentions other sources whose decisions were directly dependent upon that precedent. These later sources specifically mention the precedent cited by Freehof. Since these citations are directly dependent upon previously cited precedents, they are not necessarily integral the the development of the legal argument. Thus they too are plotted with a broken line and noted with a 5.

Freehof occasionally cited sources which he admitted were exceptional cases. Such citations appear as broken lines on the graphs and are noted with a 6.

Lastly, in the few instances wherein Freehof cited a clearly non-Jewish sources, we have plotted the citation with a broken line and noted it with a 7.

BIBLICAL

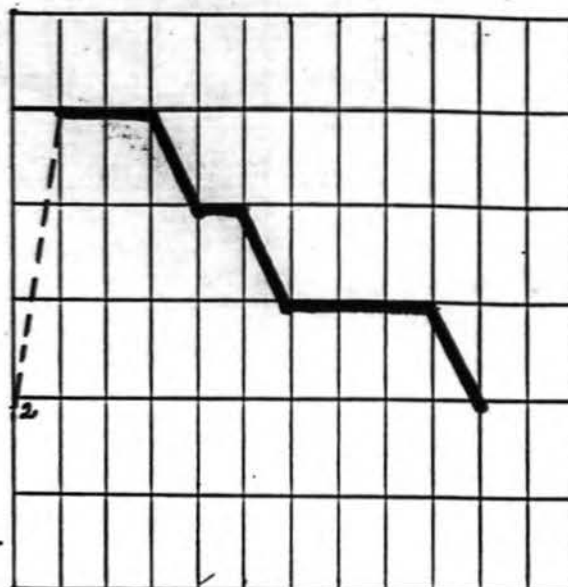
0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: PREPARING
THE BODY ON THE
SABBATH

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

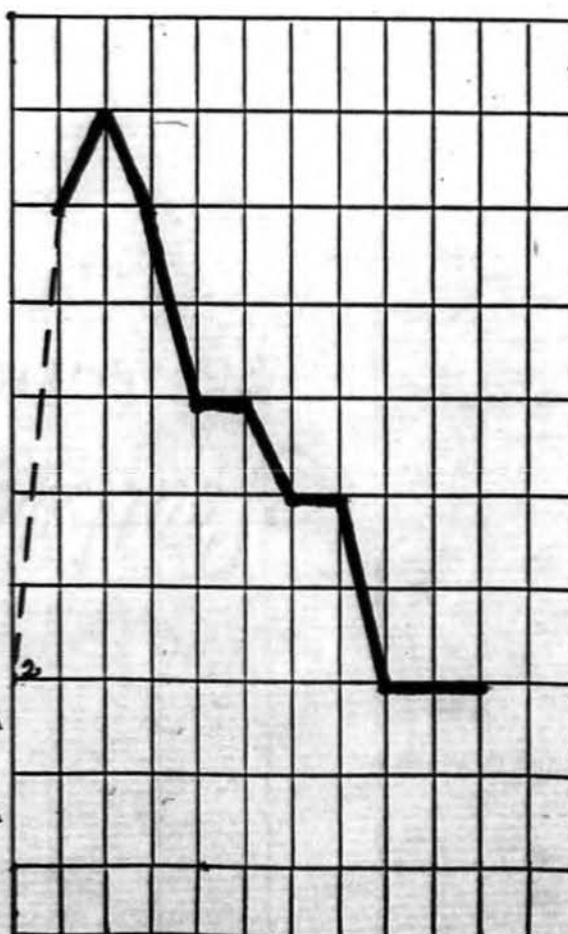
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: DONATING A
BODY TO SCIENCE

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: RE-USE OF
A VACATED GRAVE

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

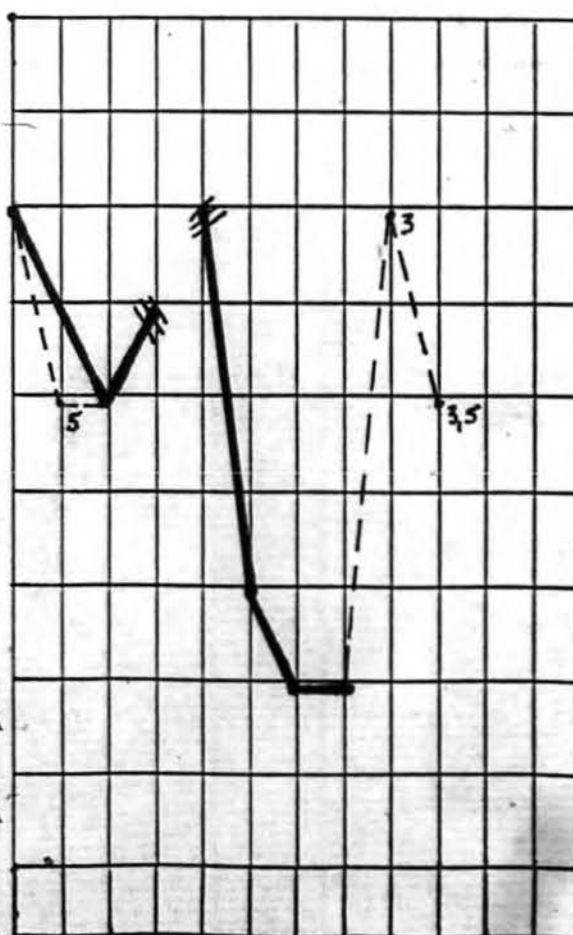
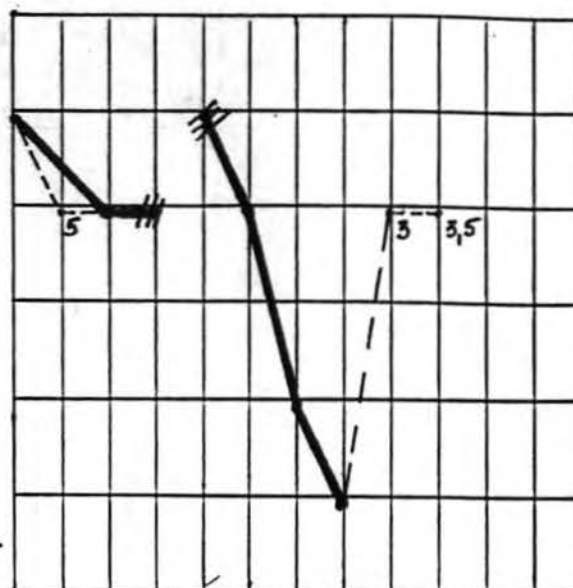
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OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

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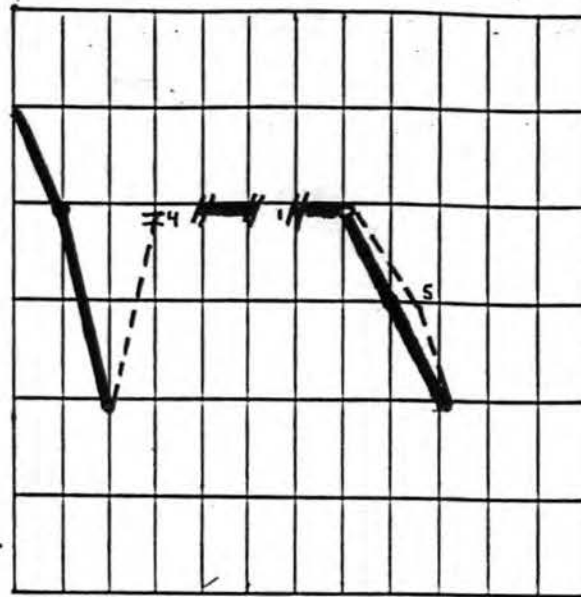
500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: BURIAL OF
ENEMIES
[DIVORCED COUPLE]
SIDE BY SIDE



BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

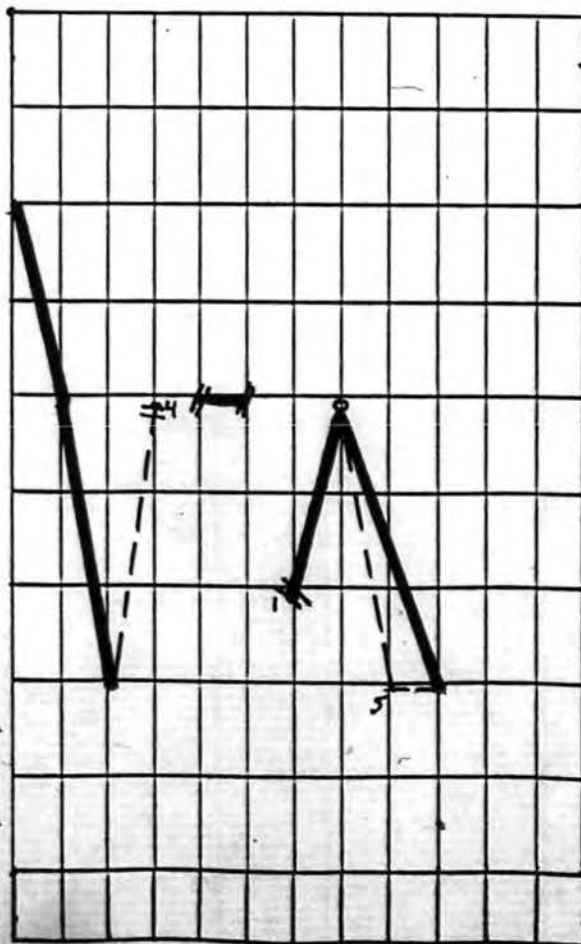
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MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: BURIAL IN
A CHRISTIAN
CEMETERY

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

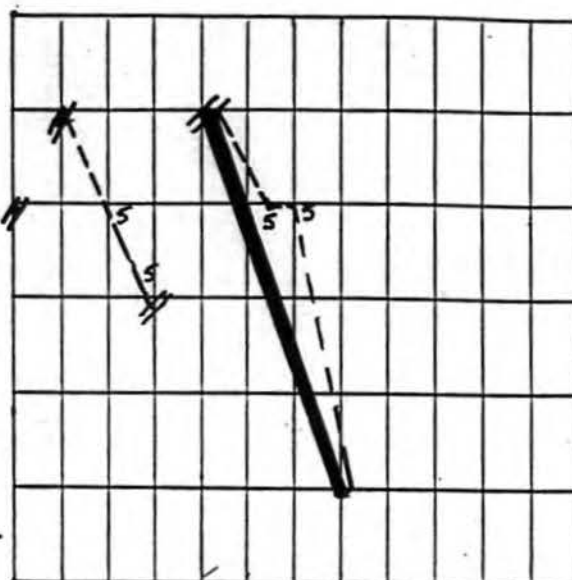
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1500-1800

1800-1900

1900-PRES.



TITLE: [RABBINIC
PARTICIPATION IN
AN INTERDENOMINA-
TIONAL] MEMORIAL
DAY SERVICE IN A
CHRISTIAN CEME-
TERY

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

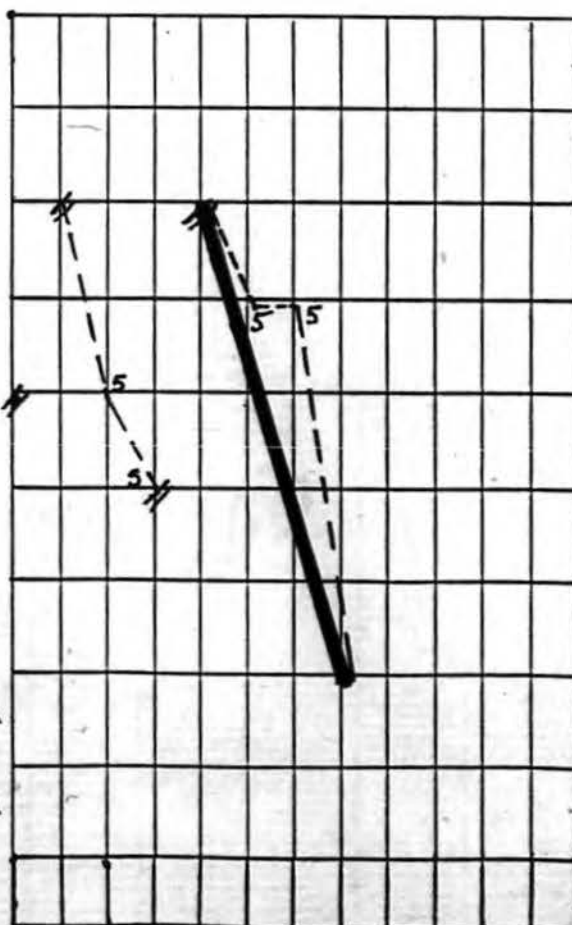
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EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

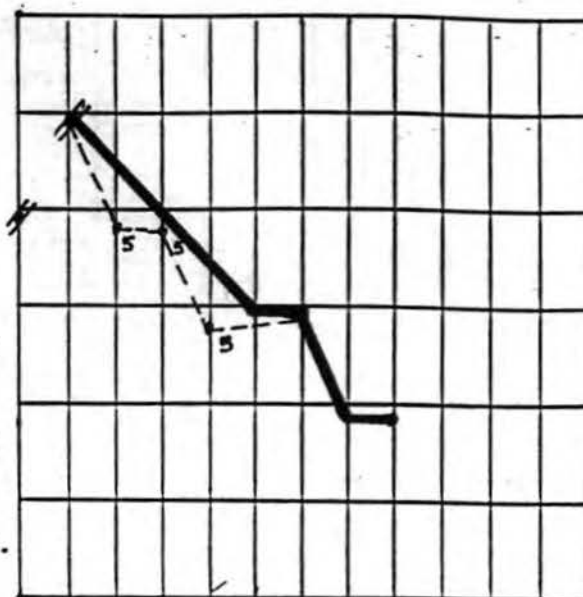
0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: BODY
LOST AT SEA

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

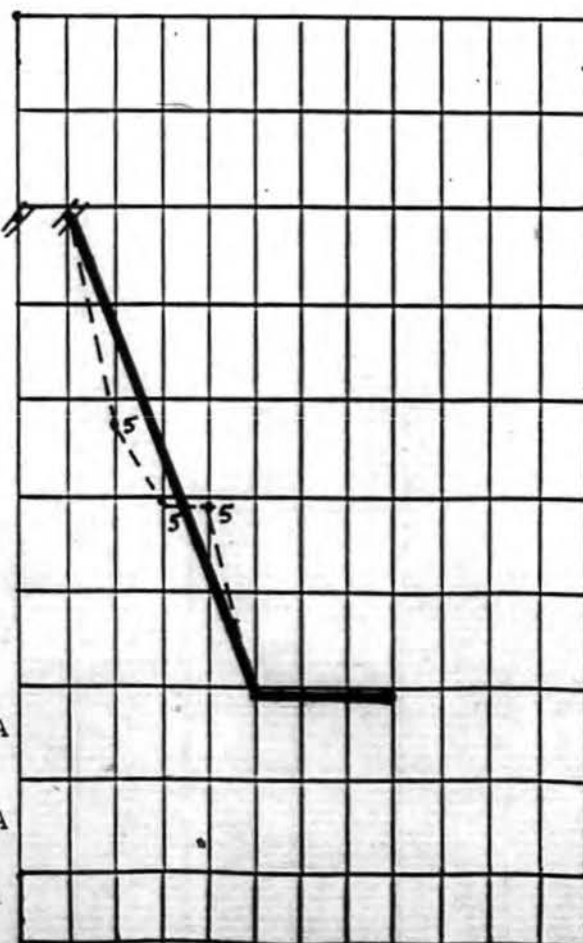
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EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

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BURIAL

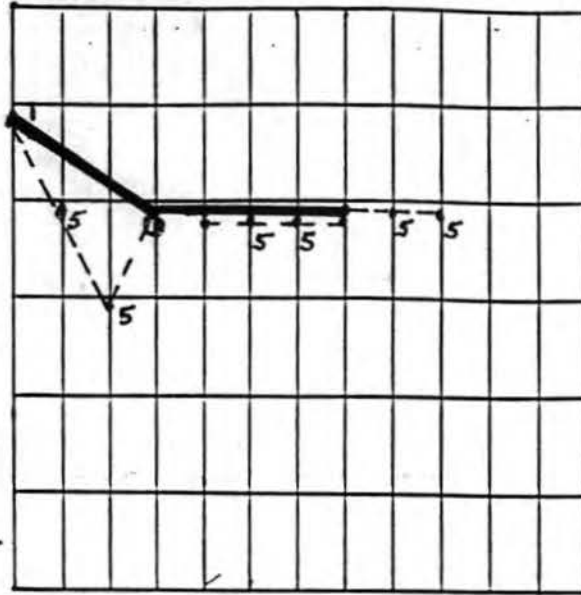
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BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

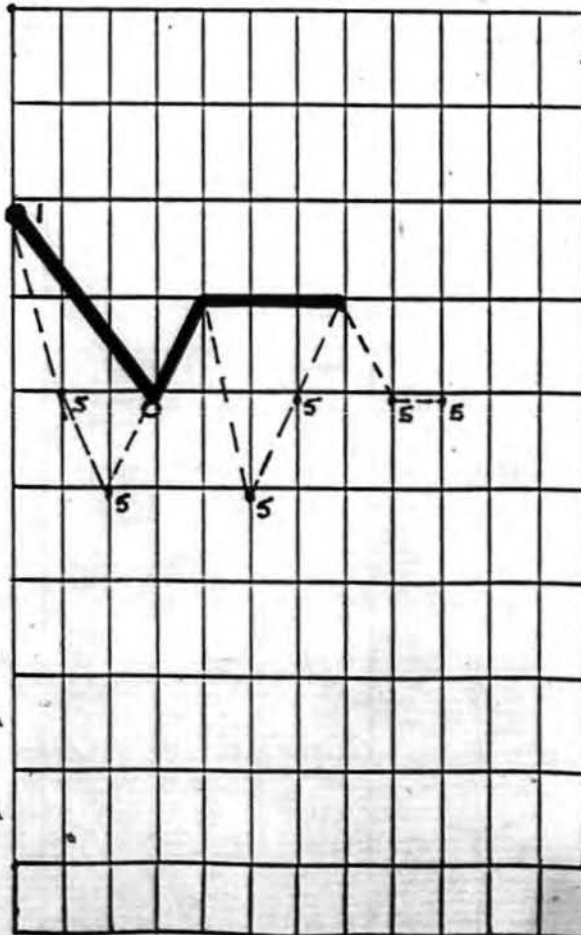
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

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500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: UNIFORMITY
OF TOMBSTONES

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

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500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: COMMUNAL
MAUSOLEUMS

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

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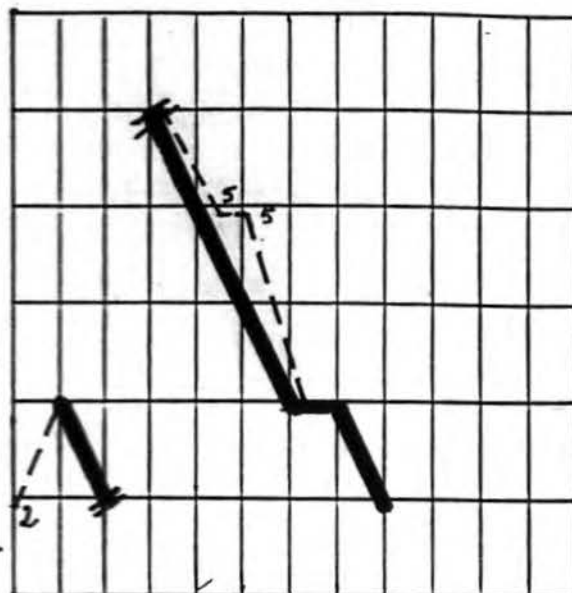
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1800-1900

1900-PRES.

TITLE: KADDISH
FOR FIRST WIFE

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

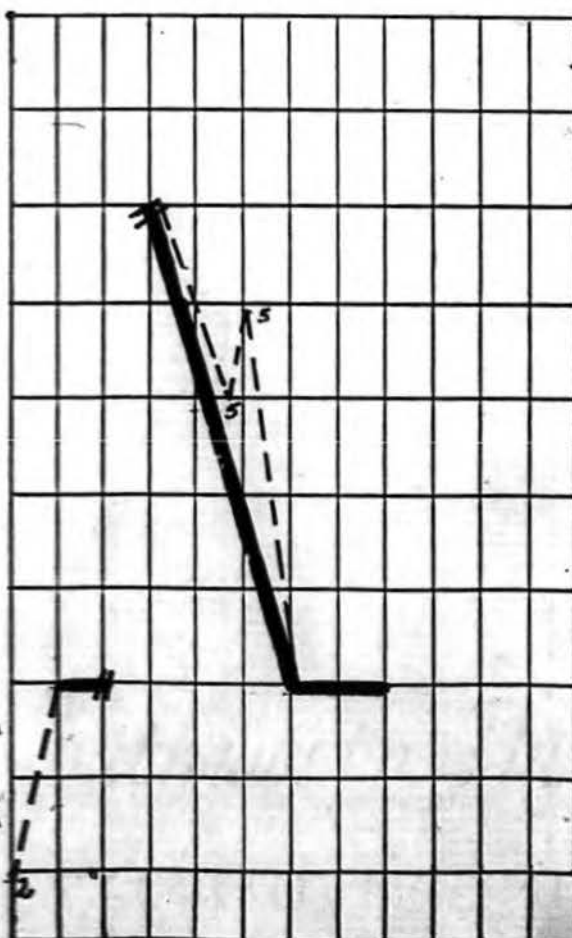
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EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

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1500-1800

1800-1900

1900-PRES.

TITLE: KADDISH
AND Yahrzeit
FOR A CHILD

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

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500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: SECULAR
DATE FOR VAHRZEIT

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

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1500-1800

1800-1900

1900-PRES.

TITLE: FUNERAL
SERVICES AND
MOURNING FOR
THOSE LOST AT
SEA

BIBLE

MIDRASH

TALMUD

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CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: NAME OF
THE MISSING ON
A TOMBSTONE

BIBLE

MIDRASH

TALMUD

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COMMENTARY

CODES

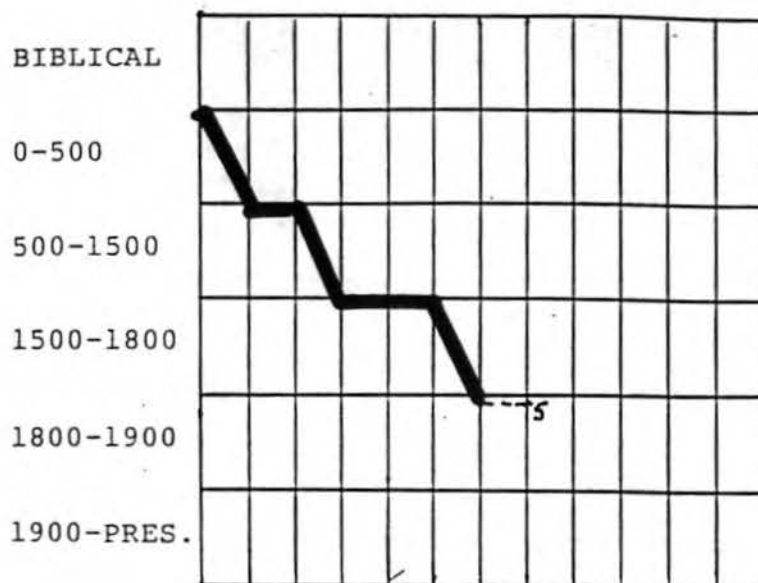
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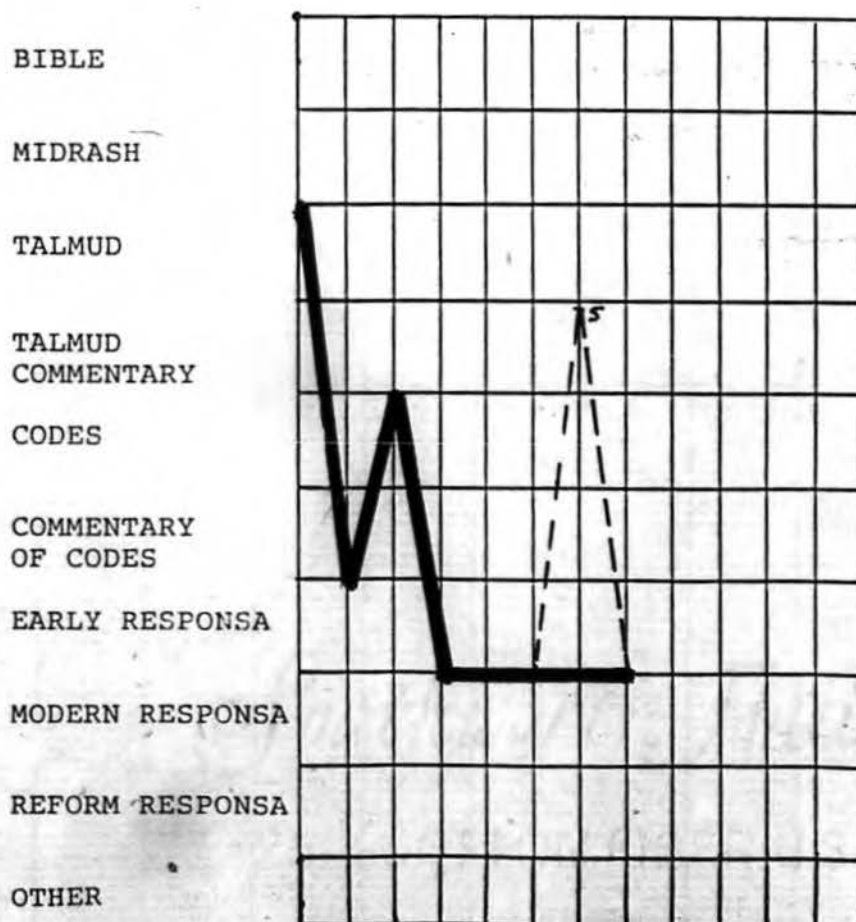
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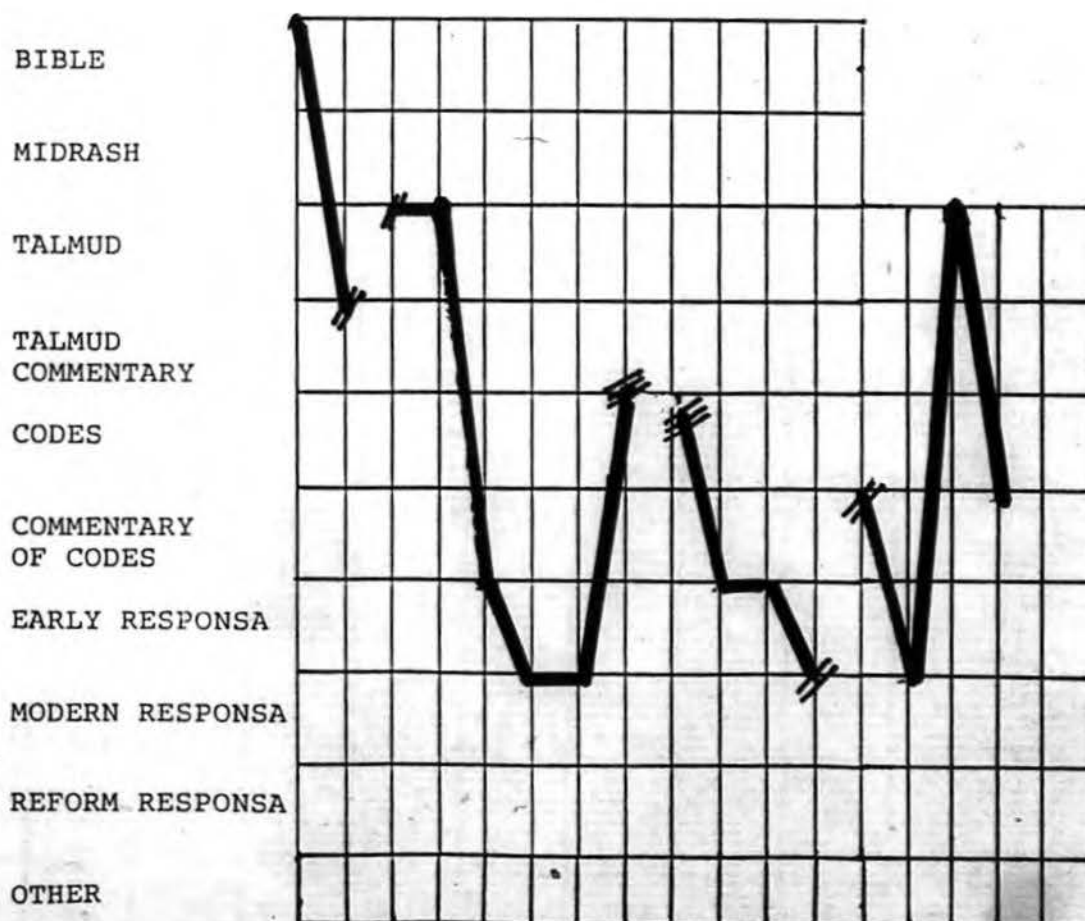
REFORM RESPONSA

OTHER



TITLE: DYING
REQUEST: NO
FUNERAL SERVICES,
NO MOURNING





BIBLICAL

TITLE: BURIAL
OF AN APOSTATE

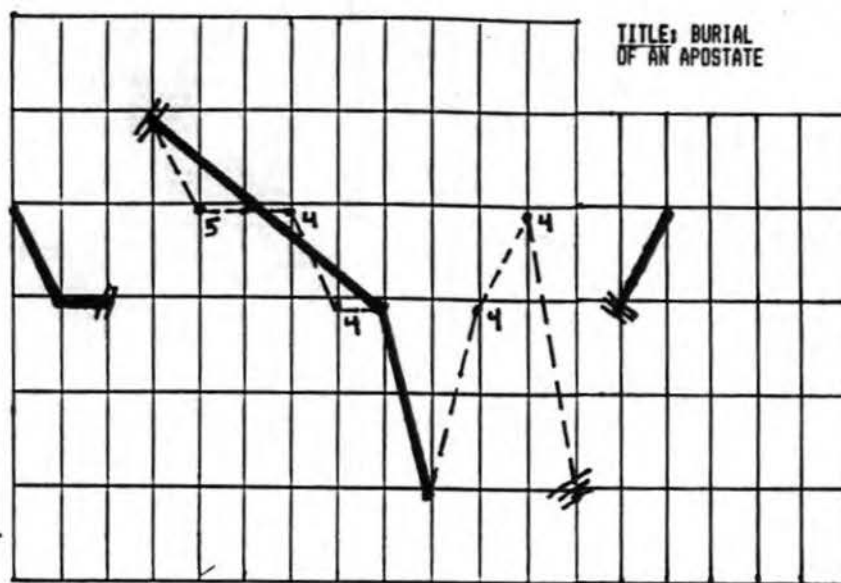
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BIBLE

MIDRASH

TALMUD

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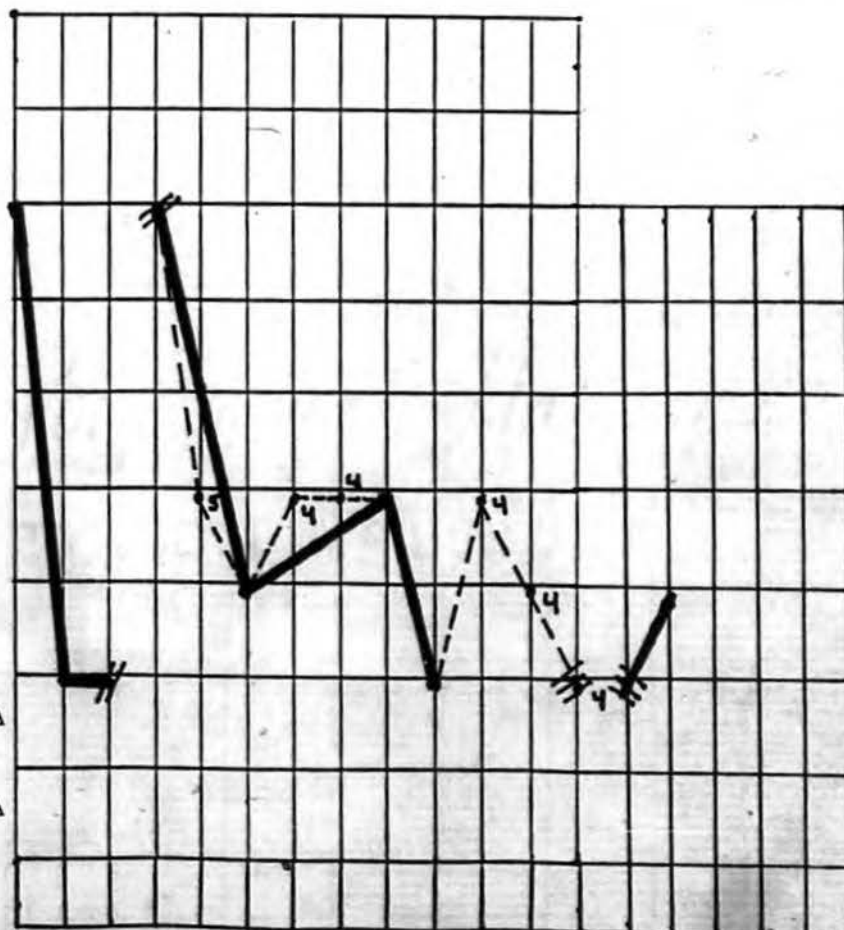
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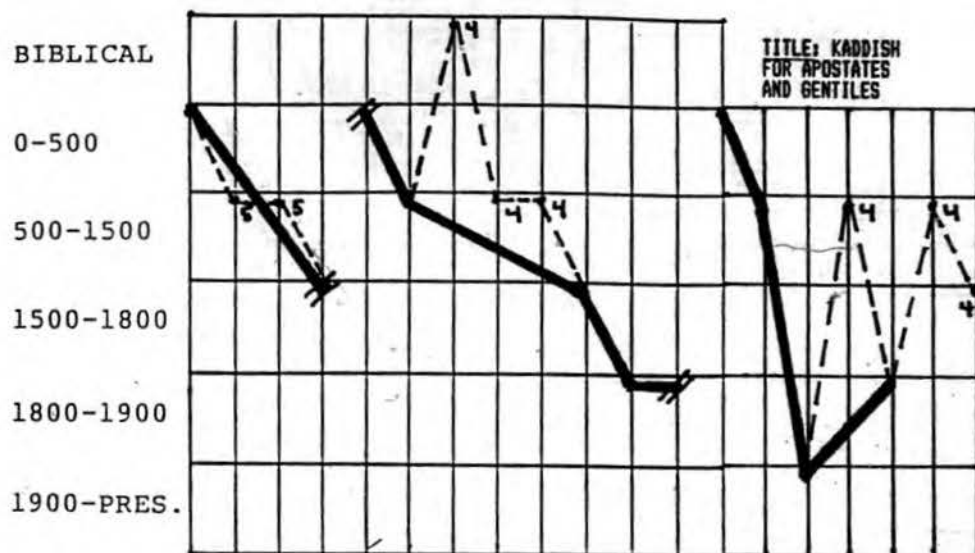
EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER





BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

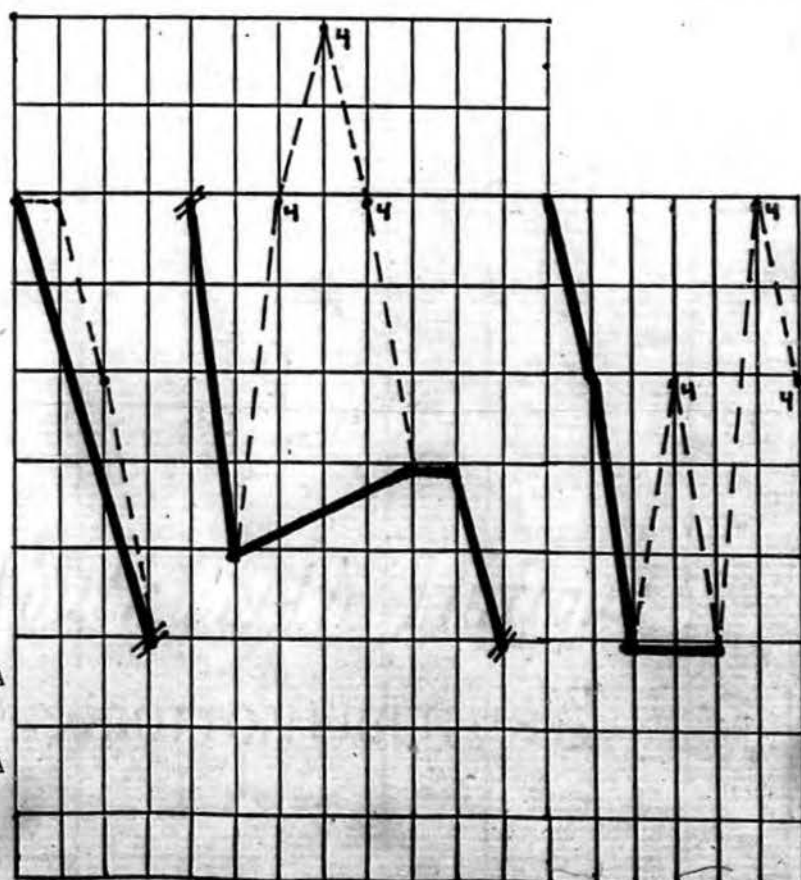
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OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: DOUBLE
FUNERALS

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

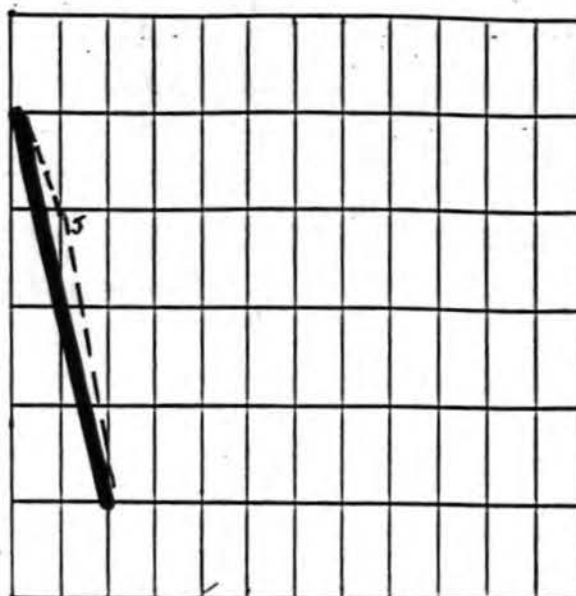
0-500

500-1500

1500-1800

1800-1900

1900-PRES.



TITLE: LOCATION
OF A MAIN TOMB-
STONE IN A FAMILY
PLOT

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

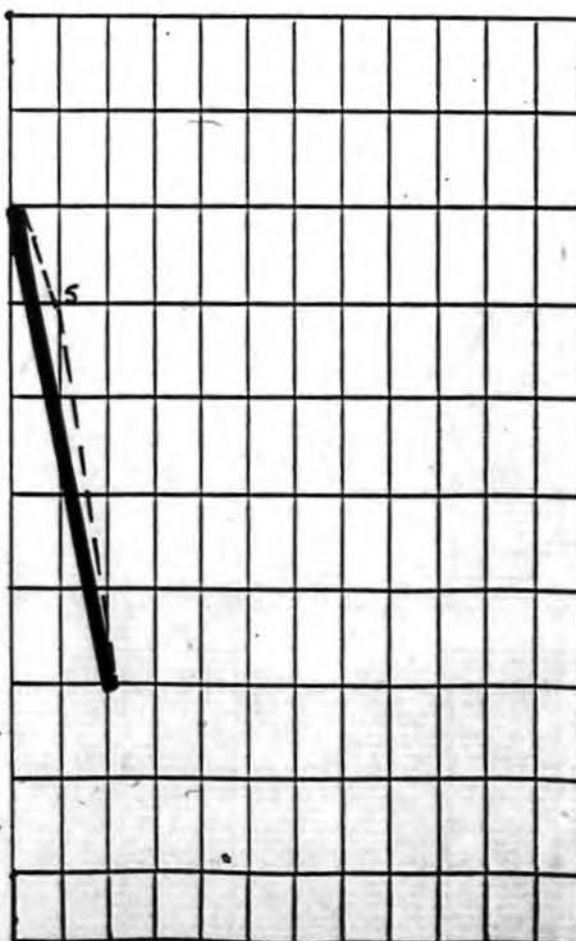
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: JEWISH
SECTION IN A
GENERAL CEMETERY

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

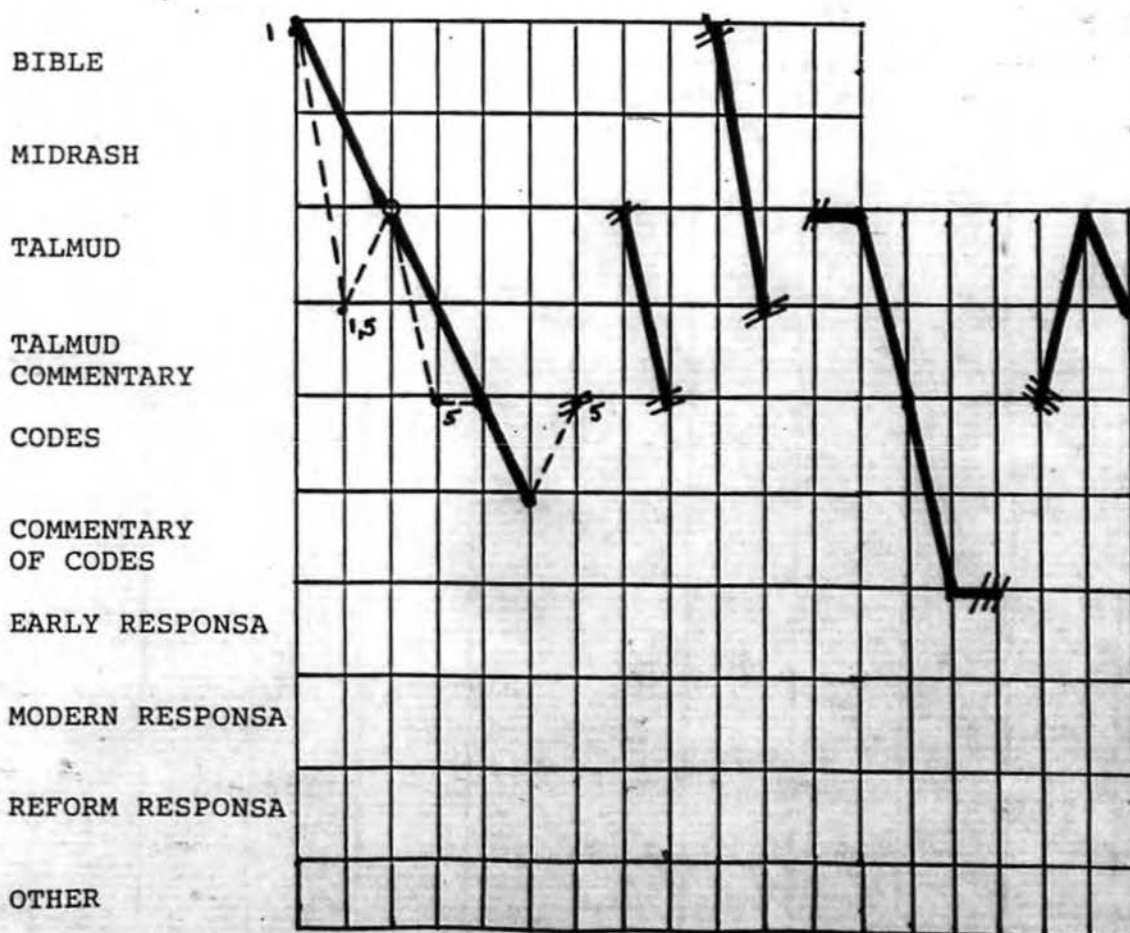
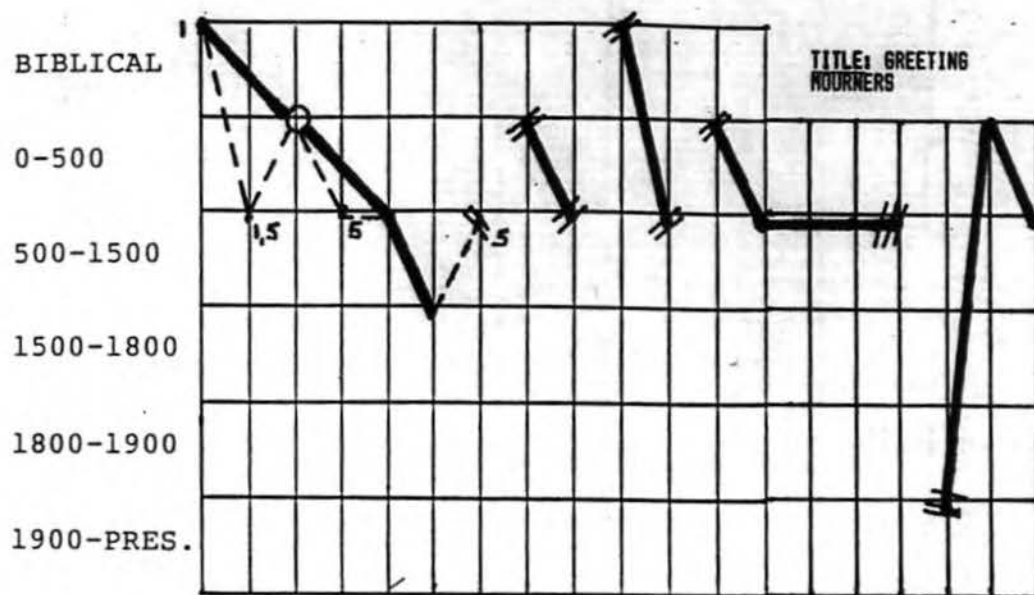
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: MEMORIAL
LIGHTS IN THE
HOME

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: MUST ALL
GRAVES IN A CEME-
TERY BE ALIGNED
IN THE SAME
DIRECTION?

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: APPREHEN-
STONS REGARDING
THE FIRST GRAVE
IN A CEMETERY

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

0-500

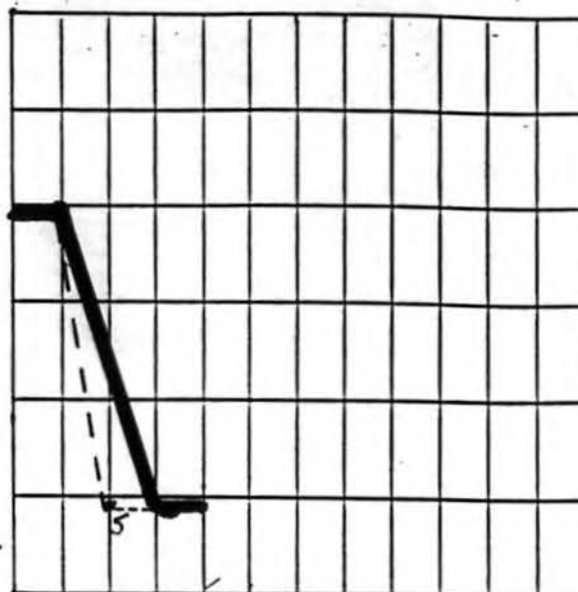
500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: TOMBSTONE
[CENOTAPH] IN
ABSENCE OF BODY
FOR HOLOCAUST
VICTIMS



BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

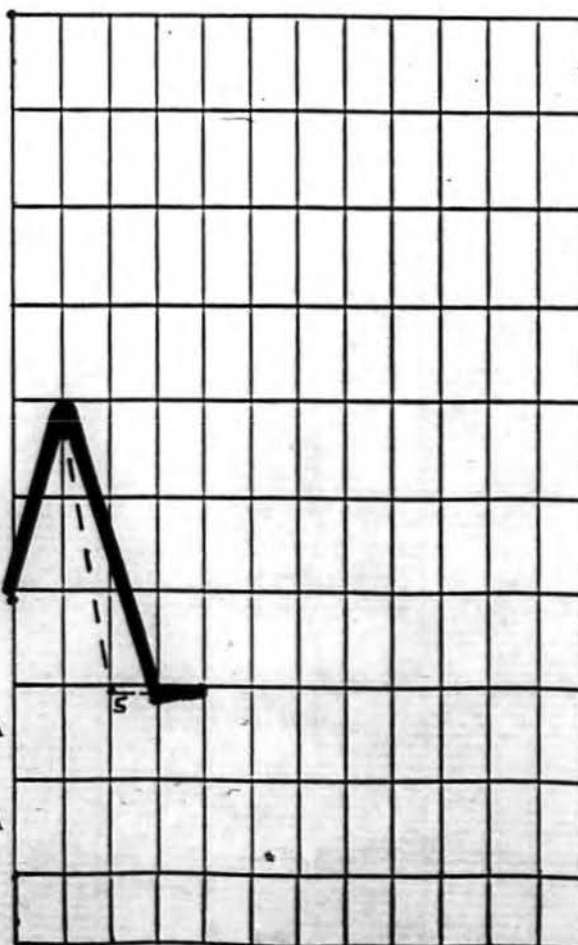
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

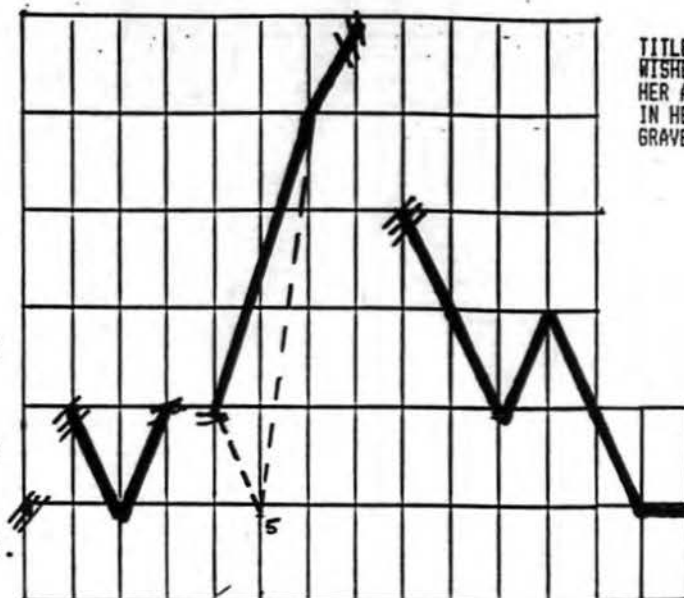
500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: MOTHER
WISHES TO HAVE
HER ASHES BURIED
IN HER LATE SON'S
GRAVE



BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

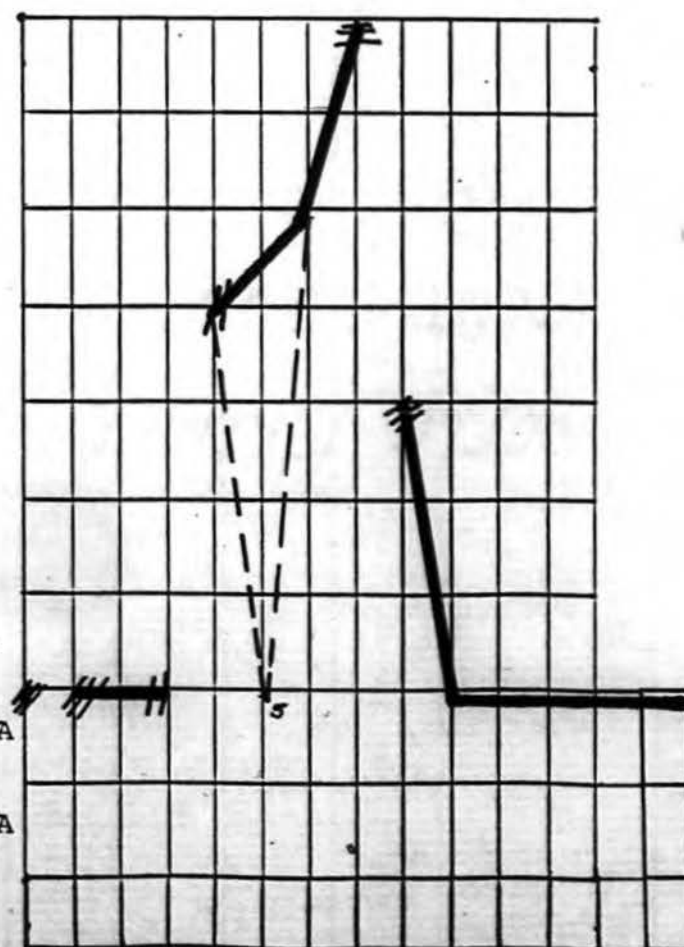
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: REMOVING
(REPOSSESSING)
A TOMBSTONE

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

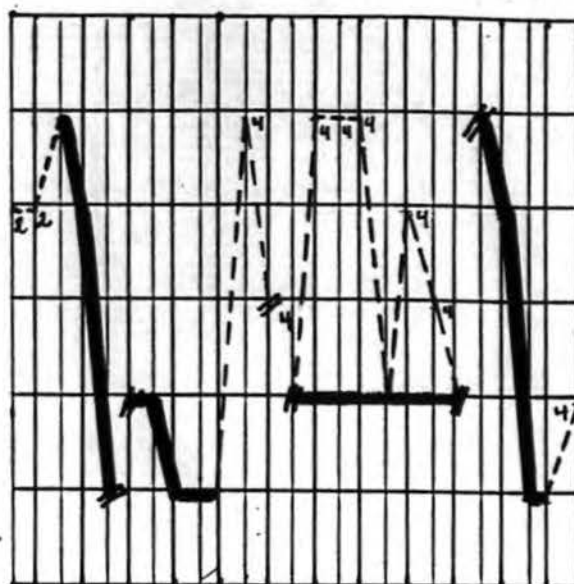
0-500

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1500-1800

1800-1900

1900-PRES.

TITLE: BURIAL OF
NON-JEWS IN A
JEWISH CEMETERY

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: TRANSFER
OF A JEW TO A
CHRISTIAN
CENETERY

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

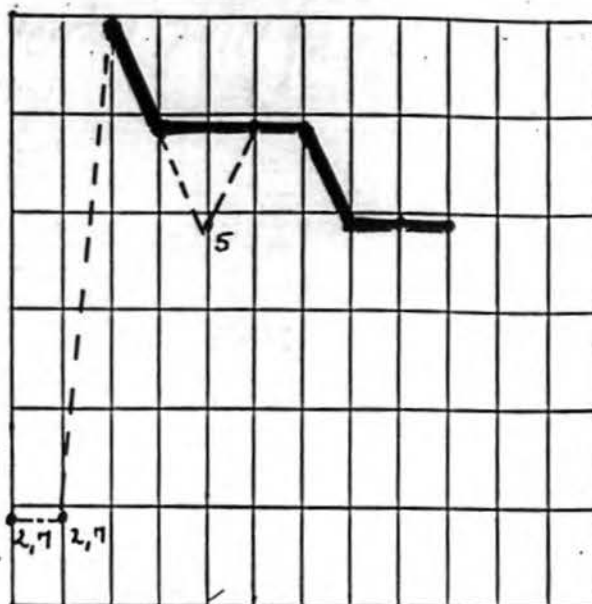
0-500

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1500-1800

1800-1900

1900-PRES.

TITLE: BURIAL OF
A PET ANIMAL IN
A JEWISH CEMETERY

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

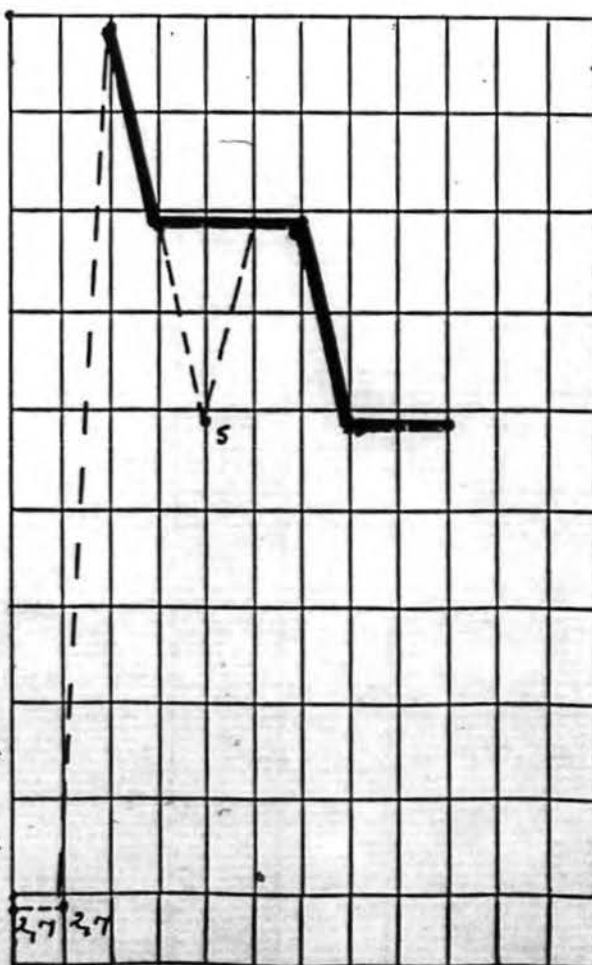
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

TITLE: MASS
BURIAL UNDER
MILITARY AUSPICES

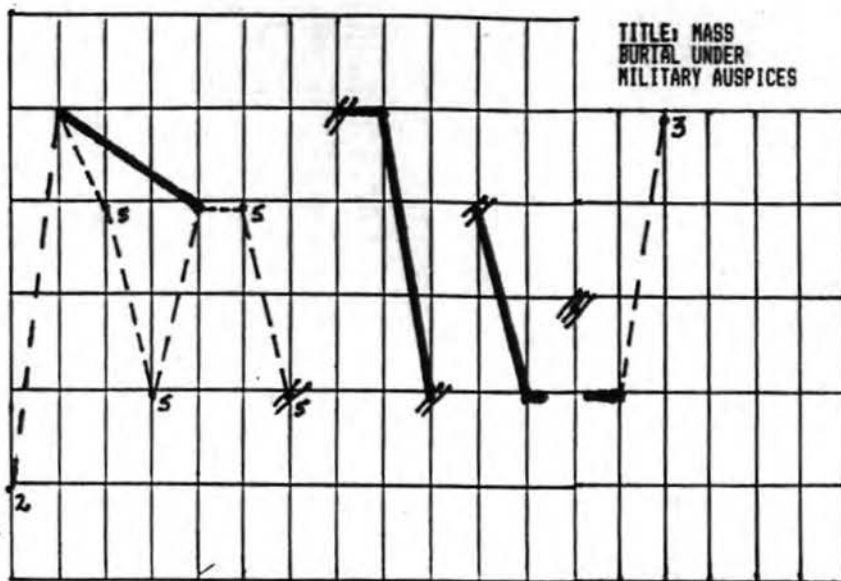
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1500-1800

1800-1900

1900-PRES.



BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

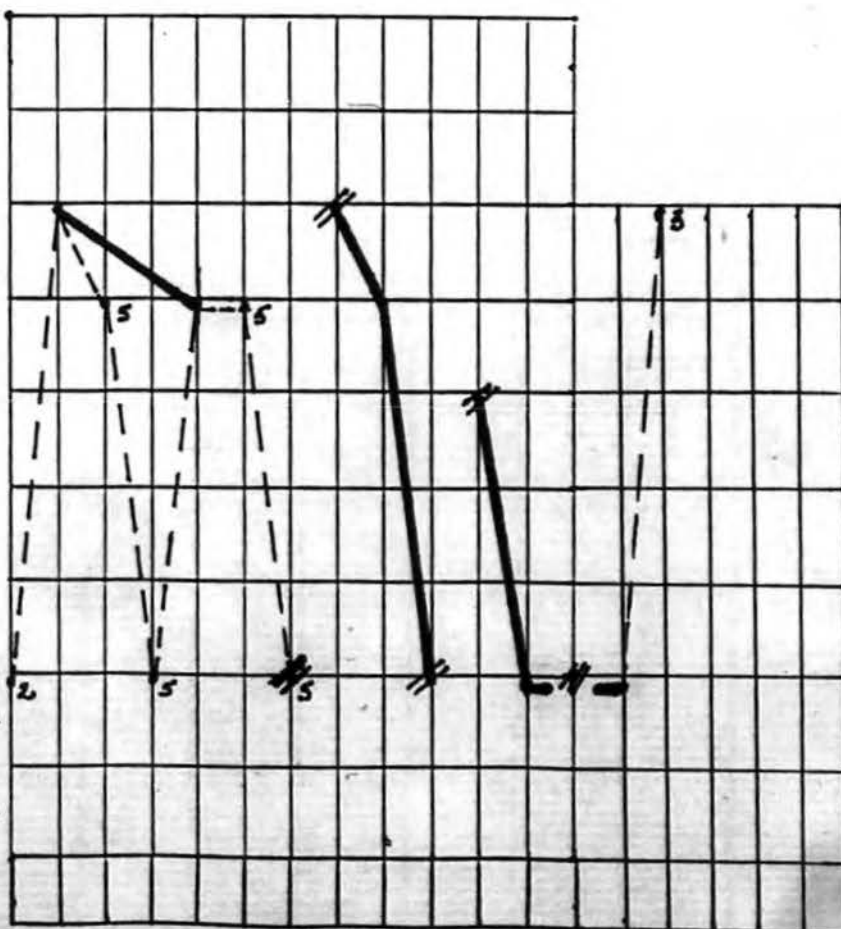
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

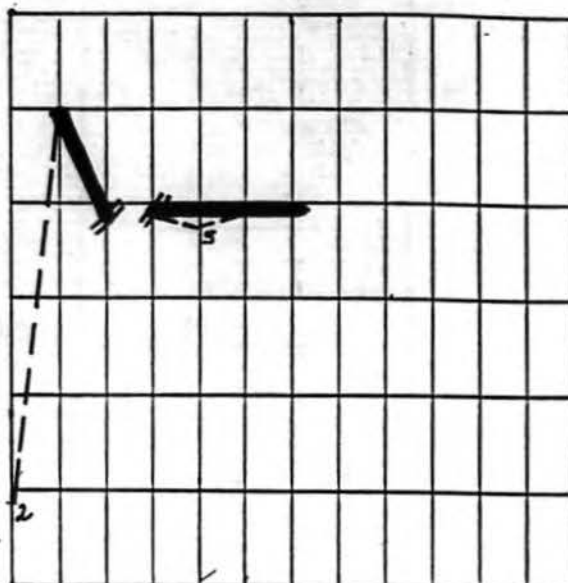
500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: RABBI
PARTICIPATING
IN A CHRISTIAN
FUNERAL



BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

TITLE: SOME
KADDISH CUSTOMS

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

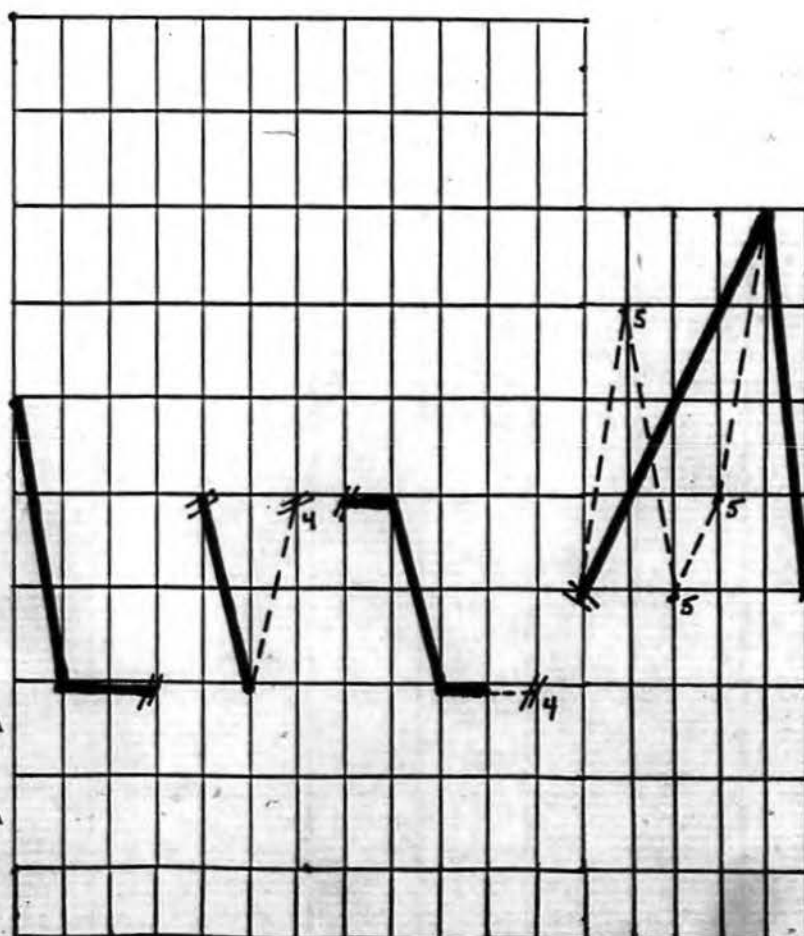
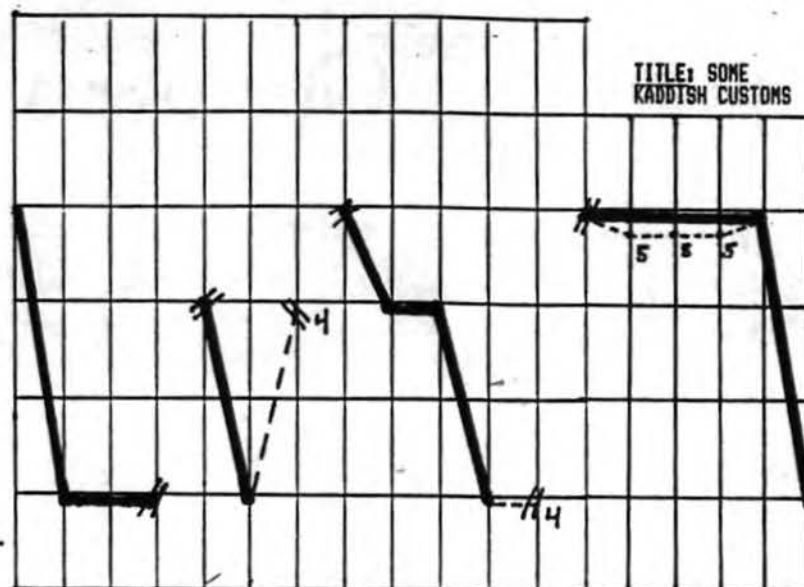
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

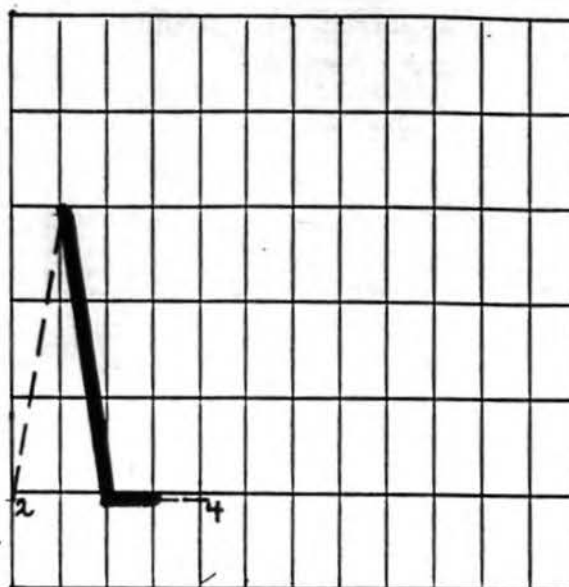
500-1500

1500-1800

1800-1900

1900-PRES.

TITLE:
MEMORIALIZING
CHRISTIAN
RELATIVES



BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

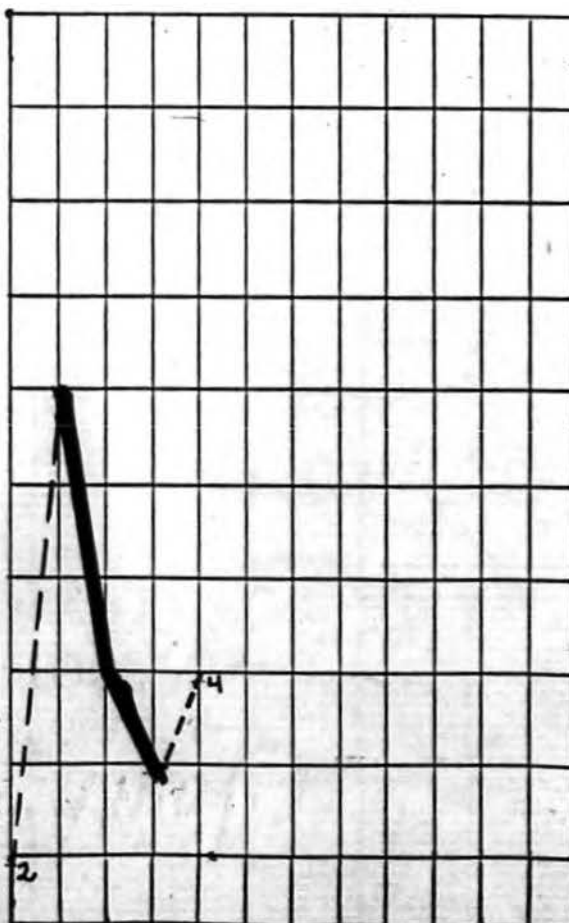
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: DEPTH
OF A GRAVE

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: DETERMIN-
ING THE AFFAIRS
OF A DEFUNCT
CONGREGATION

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: AN ETERNAL
FLAME IN THE
CEMETERY

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

0-500

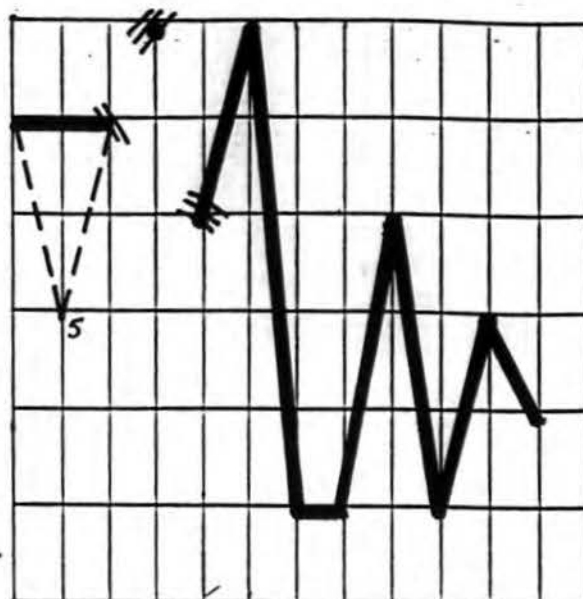
500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: DISINTER-
MENT FOR BURIAL
IN A FAMILY CRYPT



BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

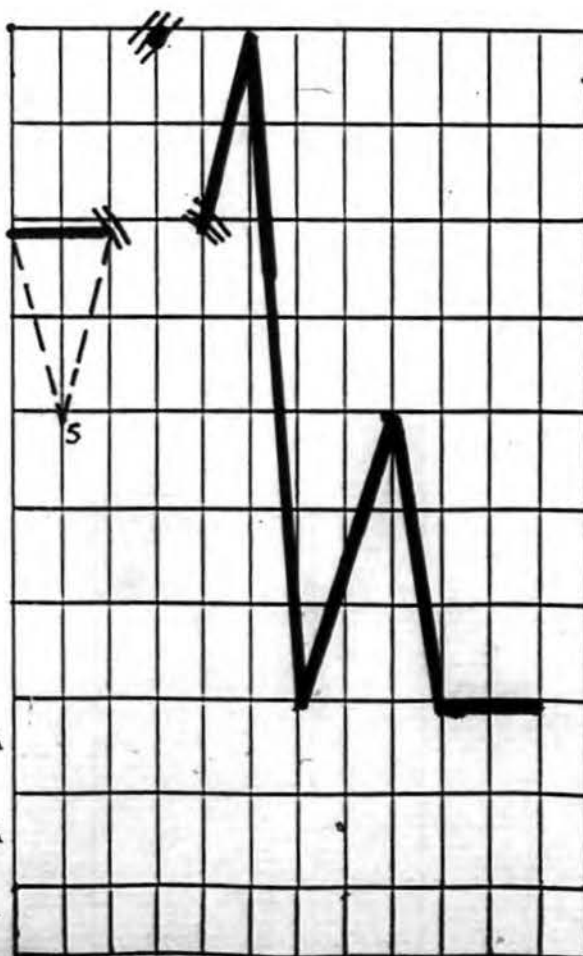
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OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

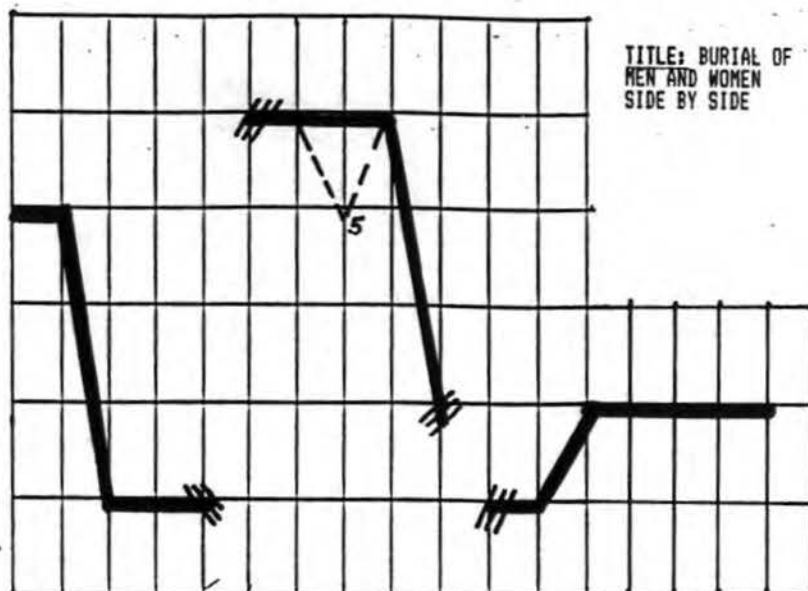
0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: BURIAL OF
MEN AND WOMEN
SIDE BY SIDE

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

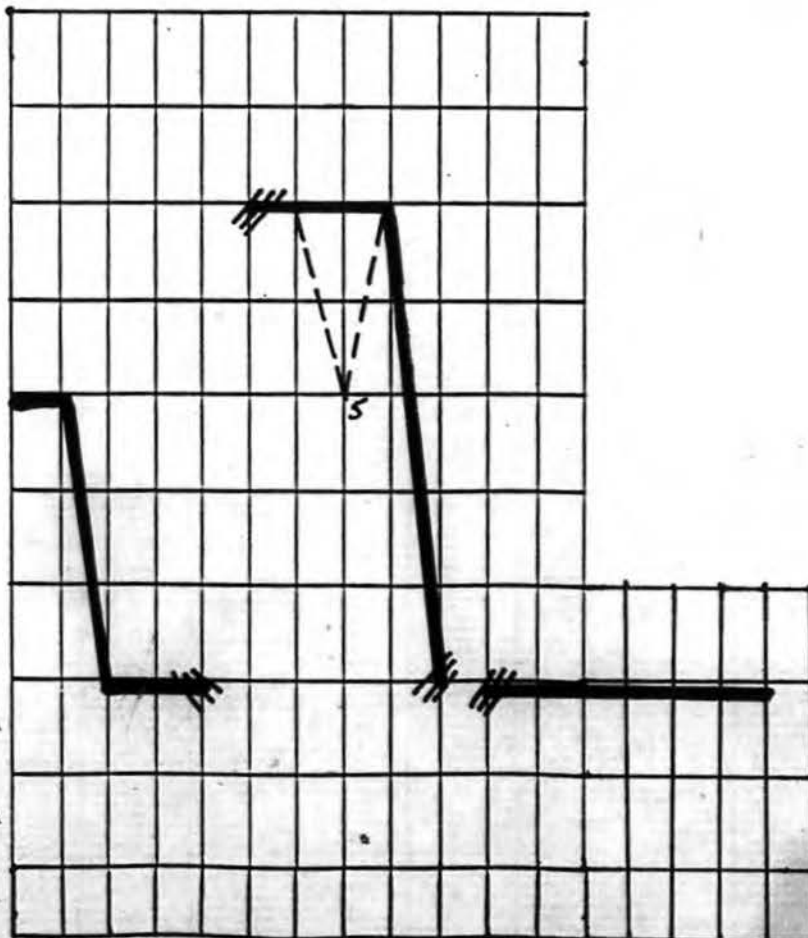
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OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

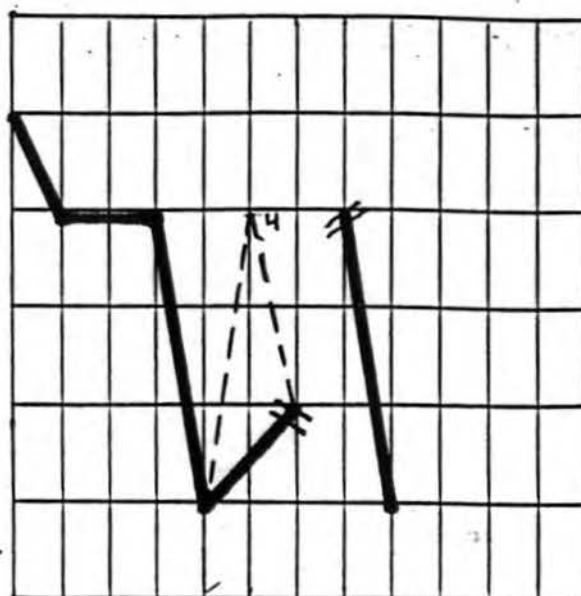
0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: TALIT FOR
THE DEAD AND
CREMATION

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

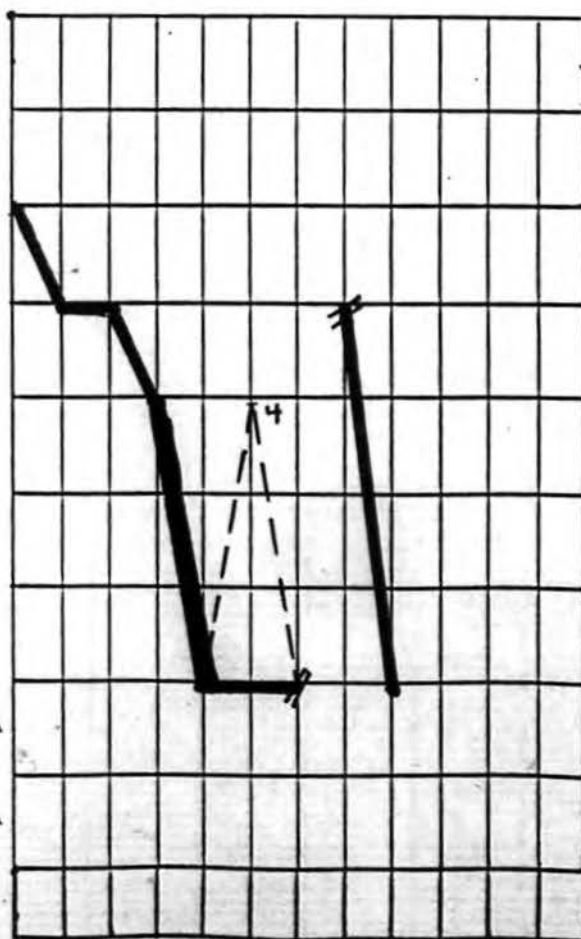
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OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

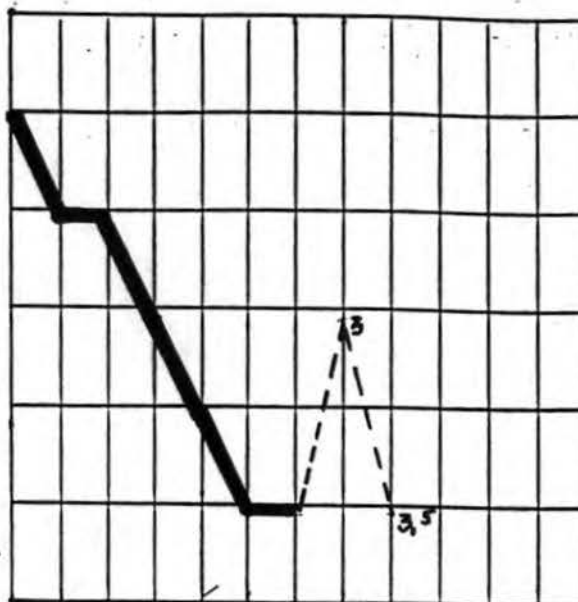
0-500

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1500-1800

1800-1900

1900-PRES.

TITLE: FUNERAL
SERVICES WITHOUT
THE BODY

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

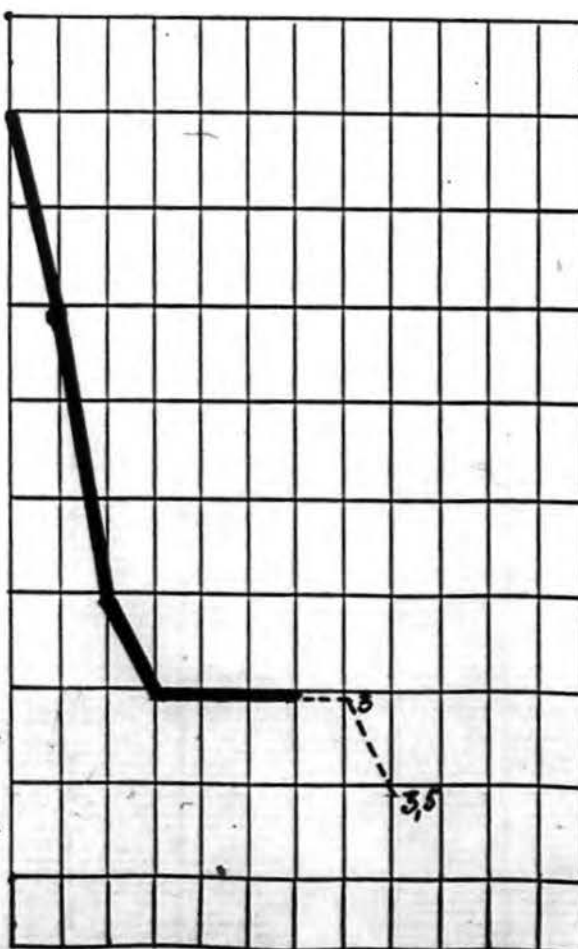
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

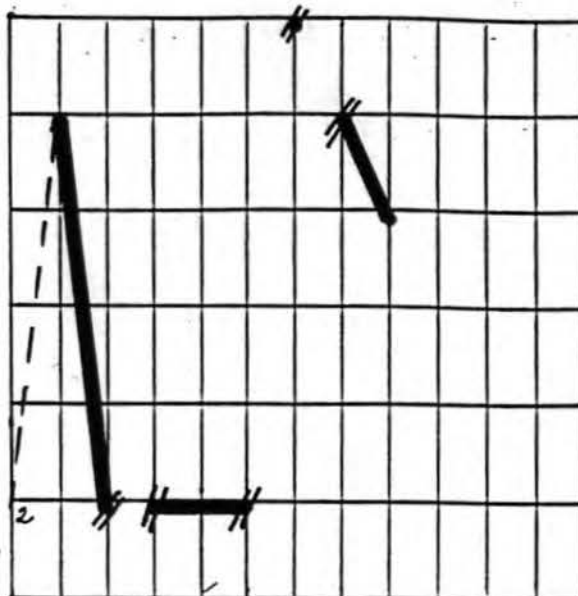
0-500

500-1500

1500-1800

1800-1900

1900-PRES.



TITLE: MEMORIAL
LIGHTS AT HEAD
OF COFFIN DURING
FUNERAL SERVICE

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

TITLE: SOME
BIBLICAL DUTIES

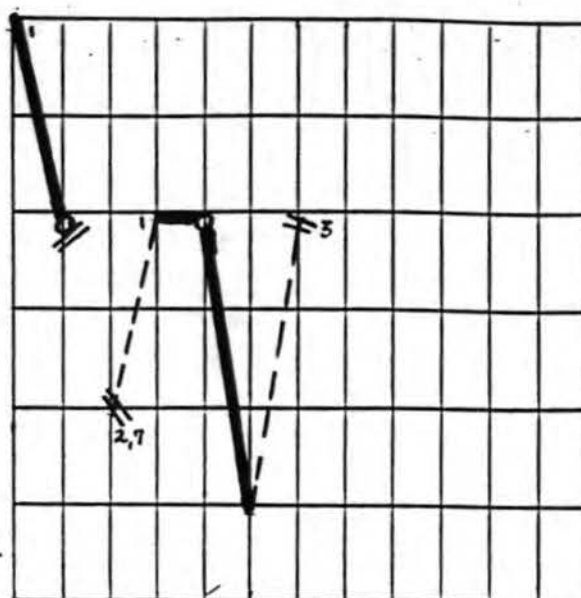
0-500

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1500-1800

1800-1900

1900-PRES.



BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

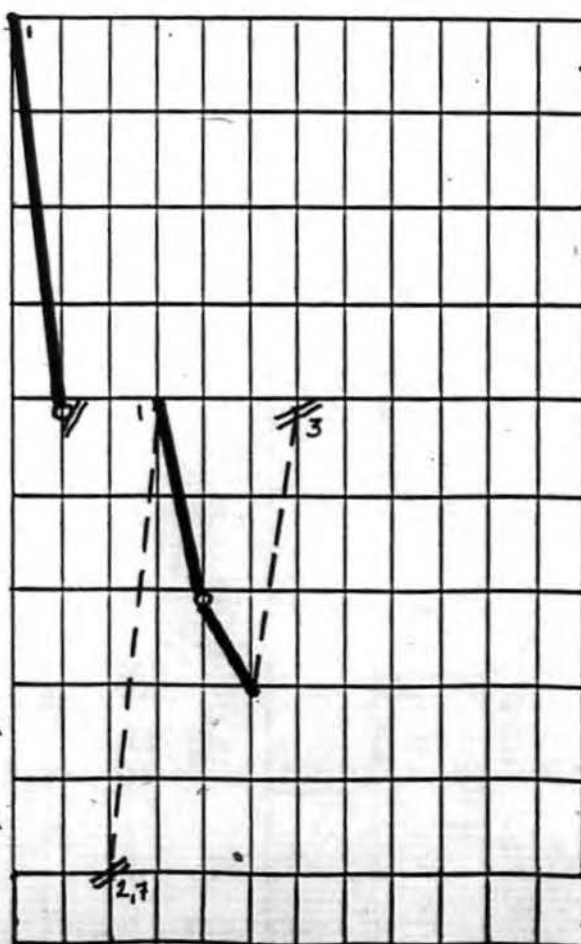
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: CONGREGATIONAL CHARGE FOR FUNERALS



BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

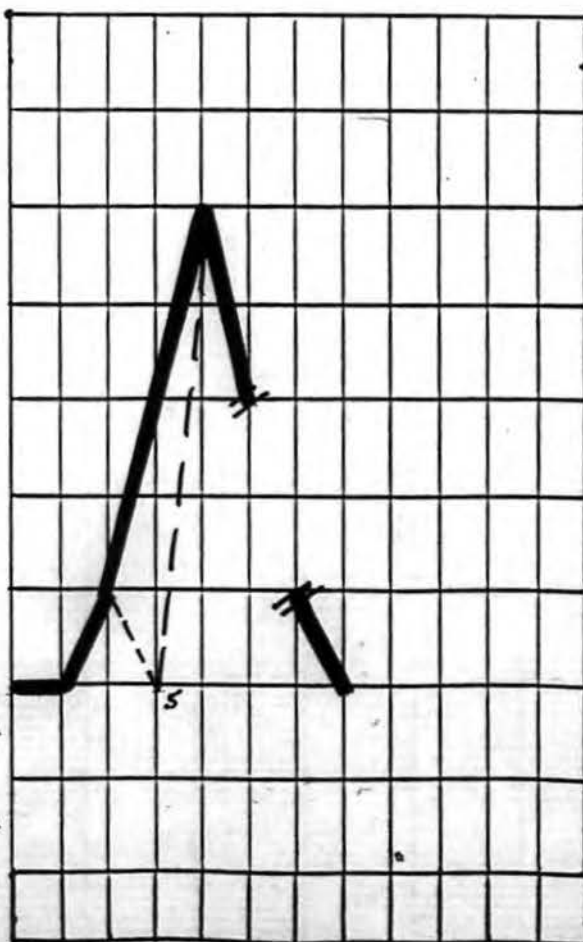
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: REFUSING
FUNERAL SERVICES
FOR NON-MEMBERS

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

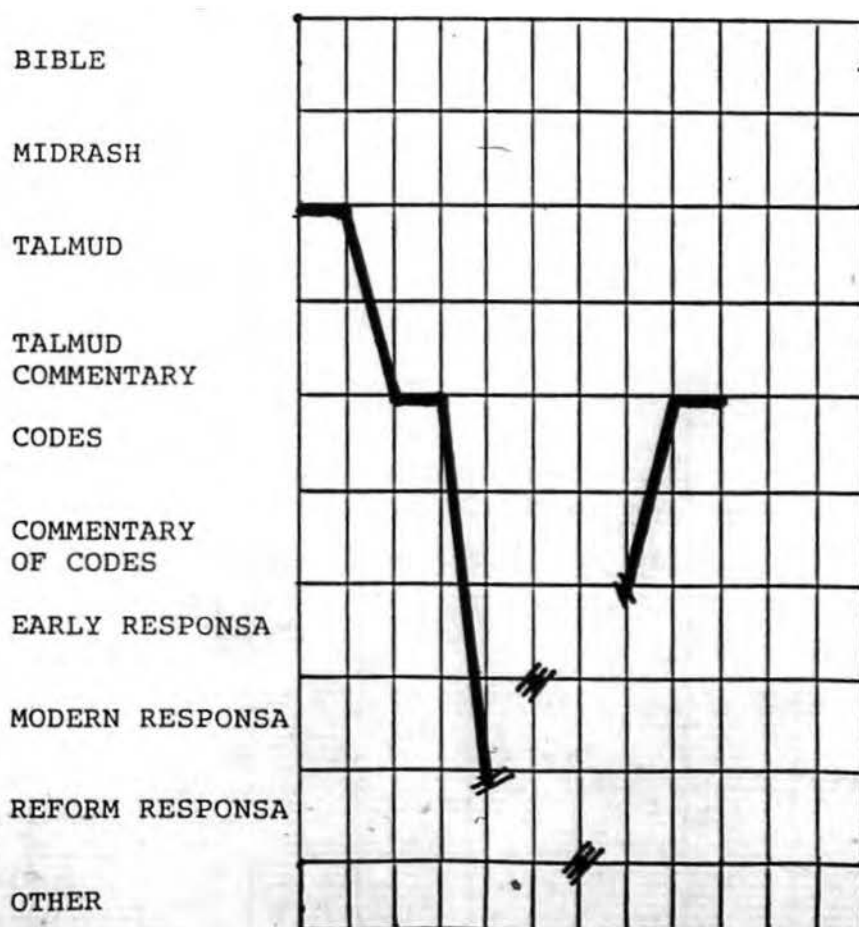
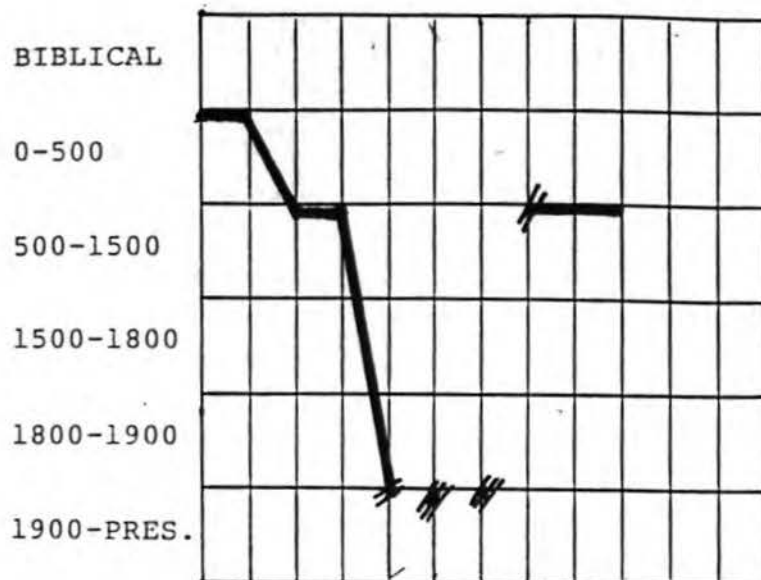
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: [PROPER
TIMES FOR]
VISITING THE
CEMETERY

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

0-500

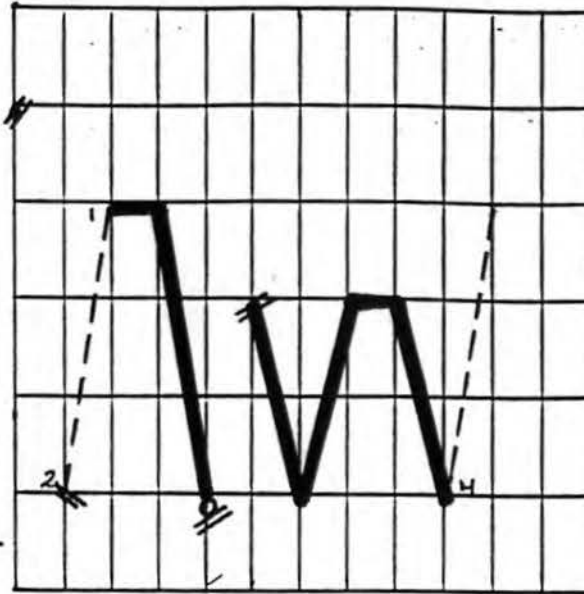
500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: EXCHANGING
A TOMBSTONE TO
CONFORM WITH THE
WISHES OF THE
DECEASED



BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

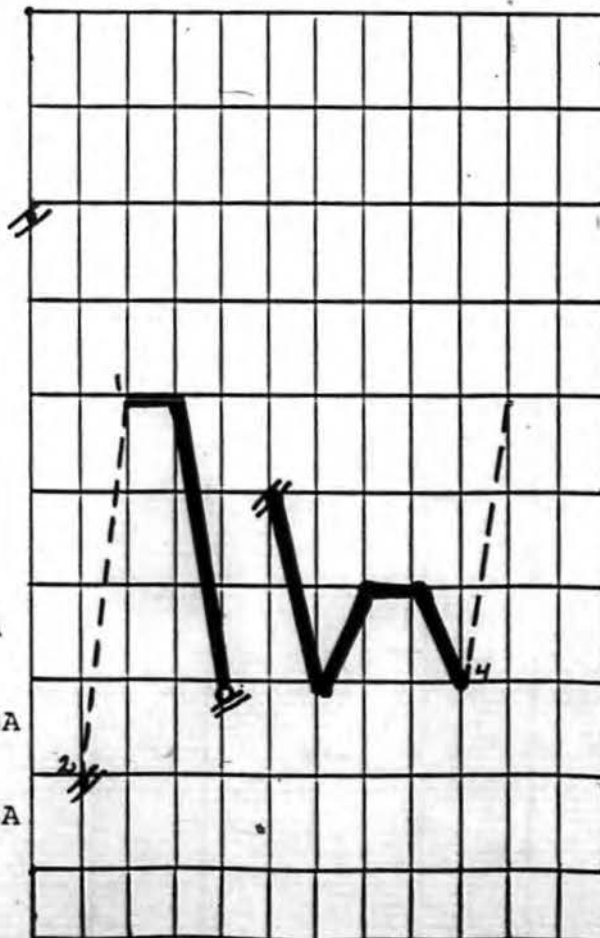
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OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

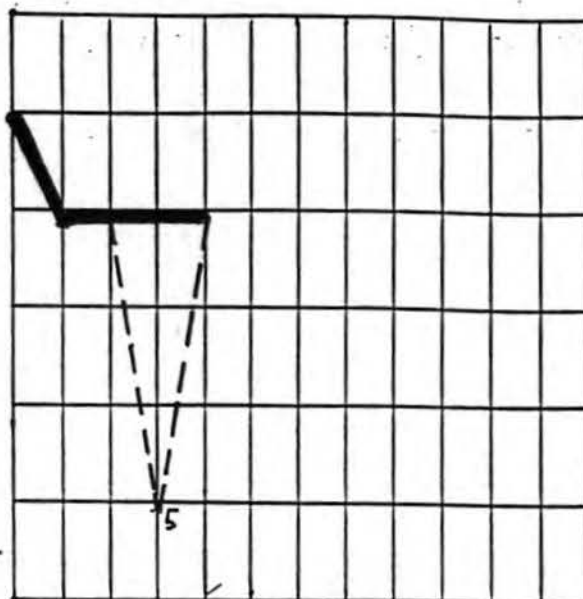
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500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: USING
TEMPLE FACILITIES
FOR FUNERALS

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

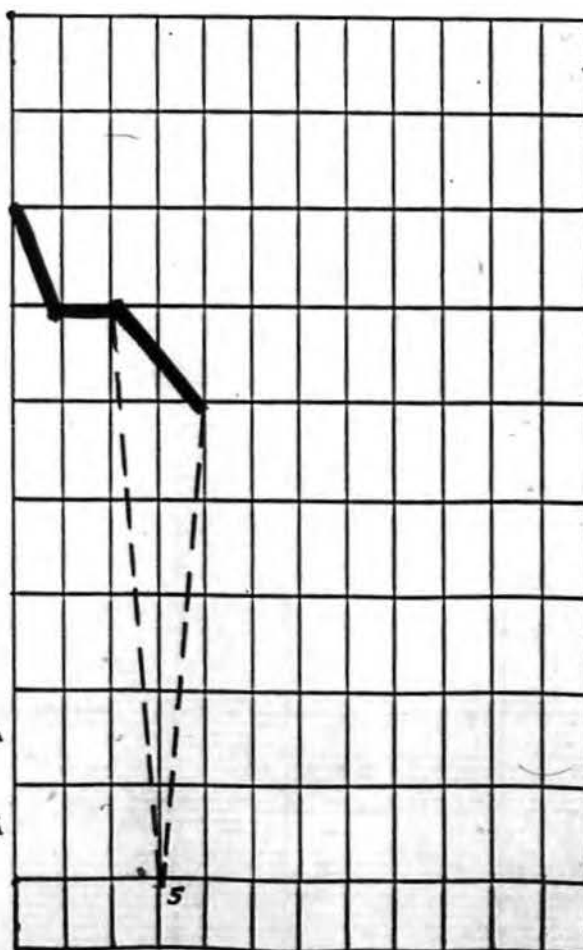
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OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

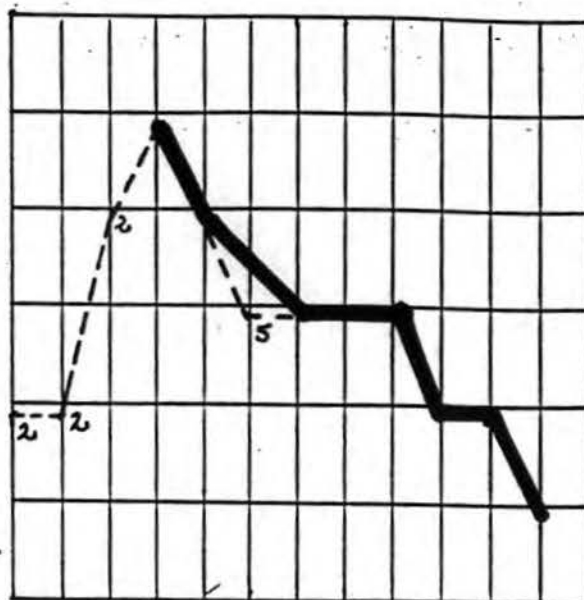
0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: TWO
COFFINS IN
ONE GRAVE

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

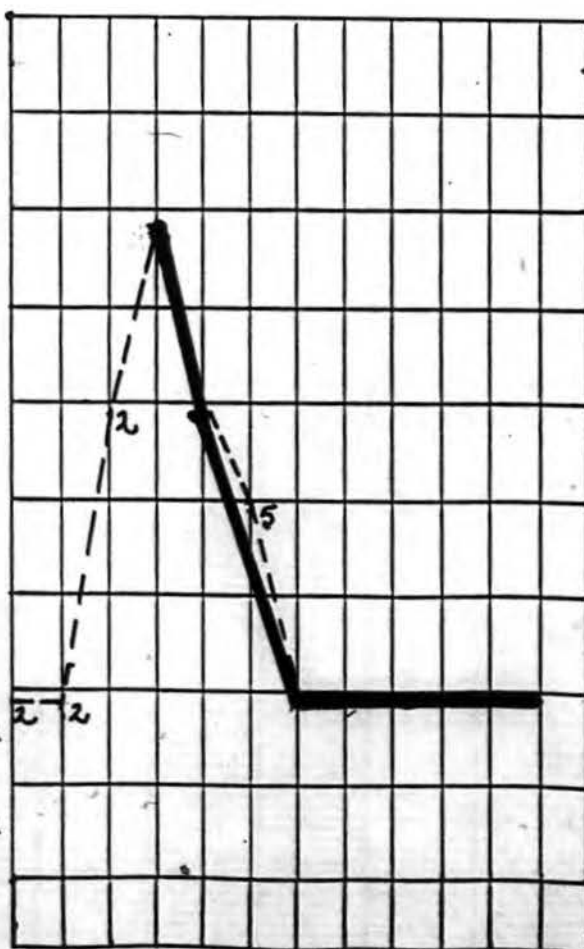
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: PERPETUAL
LIGHT ON A GRAVE

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

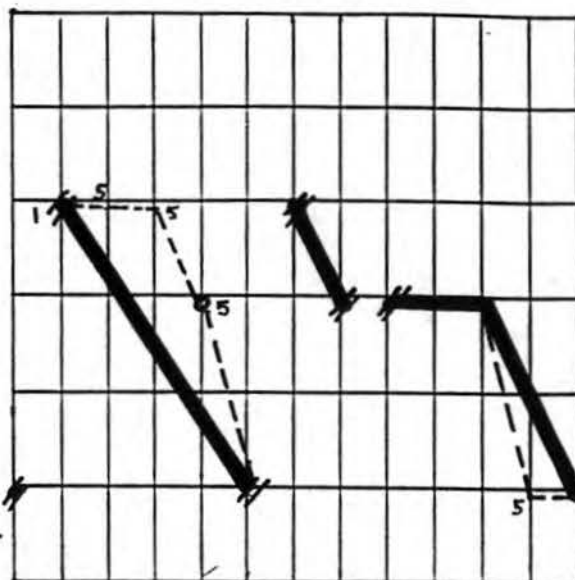
0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: THE
RELATED FLOWERS

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

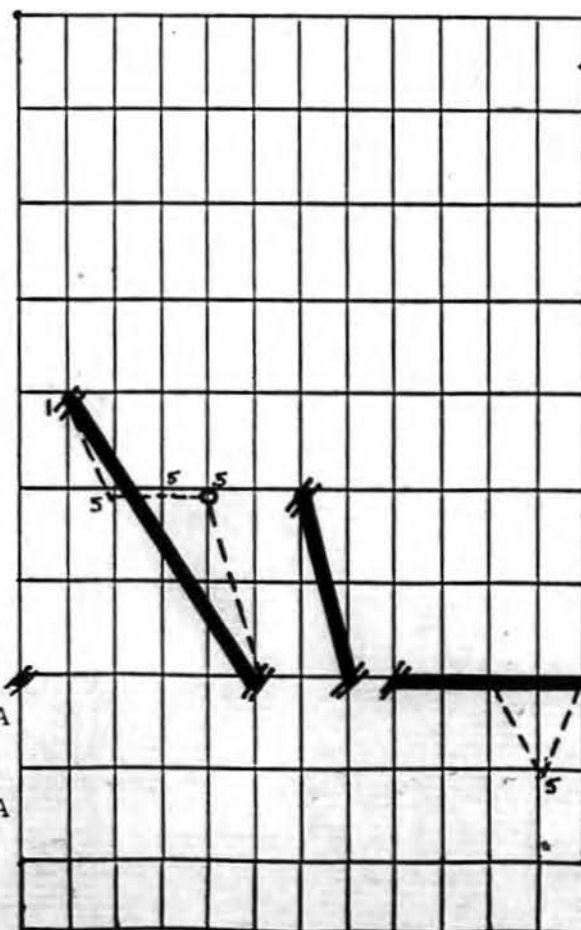
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

TITLE: BURIAL OF
CREMATION ASHES

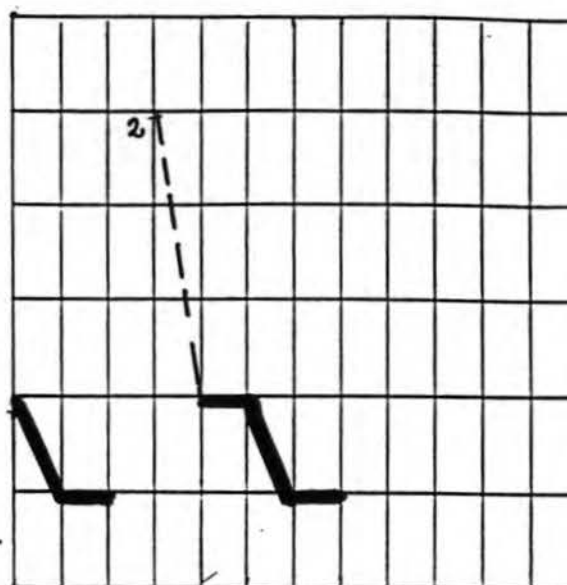
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1500-1800

1800-1900

1900-PRES.



BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

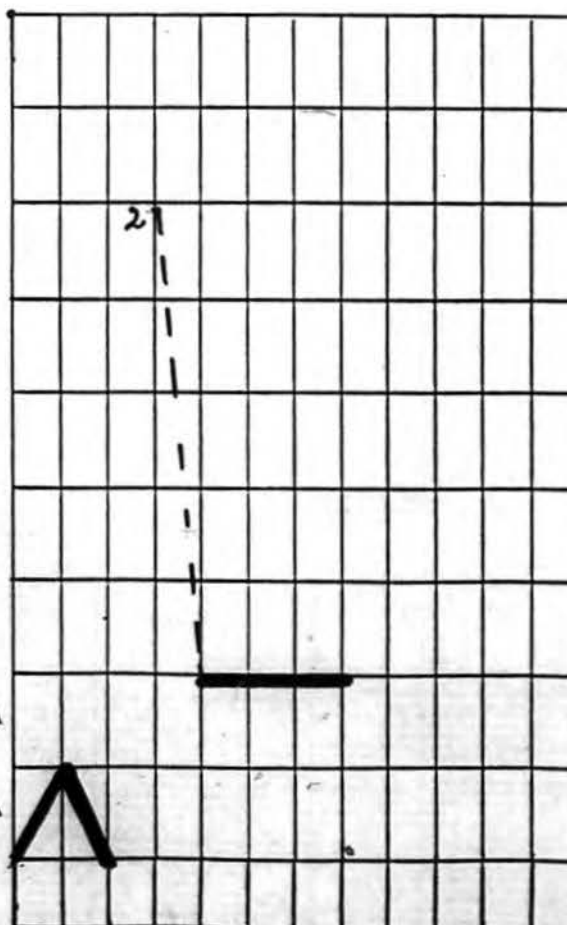
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: MOTHER'S
NAME ON SON'S
TOMBSTONE

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

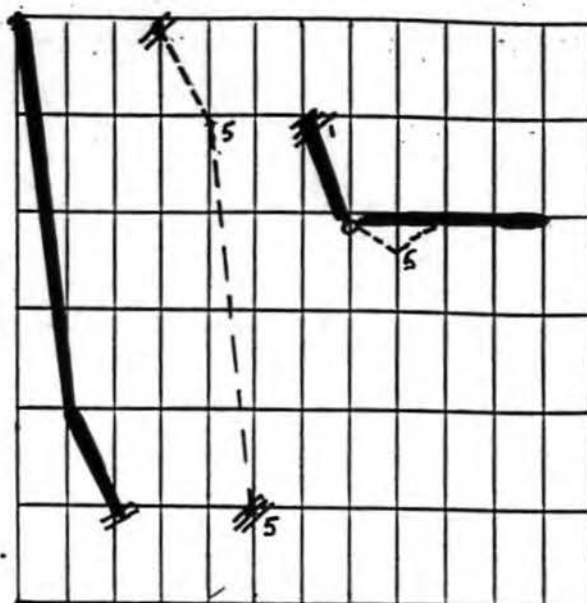
0-500

500-1500

1500-1800

1800-1900

1900-PRES.



TITLE: CAN A
RENTED HEARSE,
USED FOR GEN-
TILES, ALSO BE
USED FOR JEWS?

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: SELLING
PART OF THE
CEMETERY

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

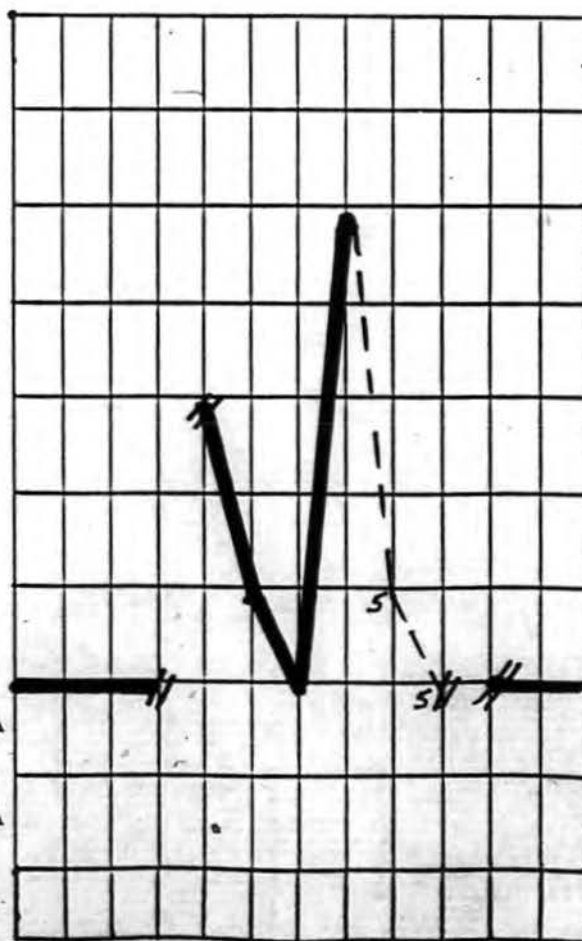
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

TITLE: QUARRELING
FAMILY AND SHIVA

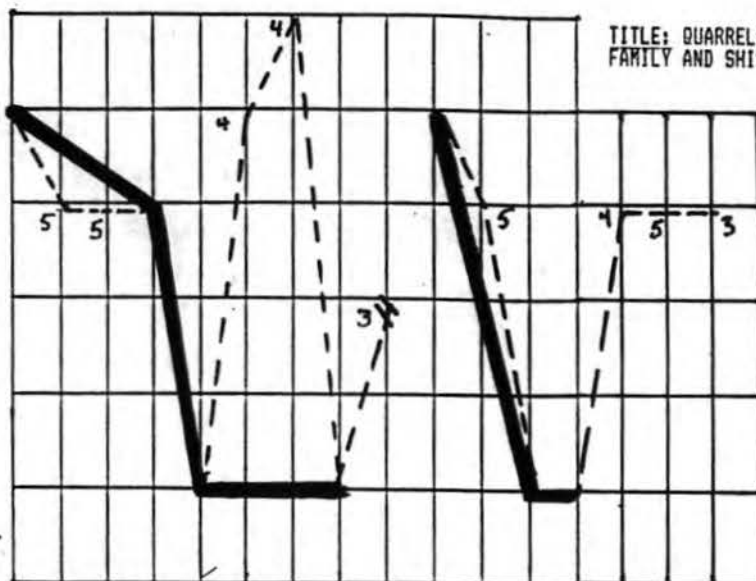
0-500

500-1500

1500-1800

1800-1900

1900-PRES.



BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

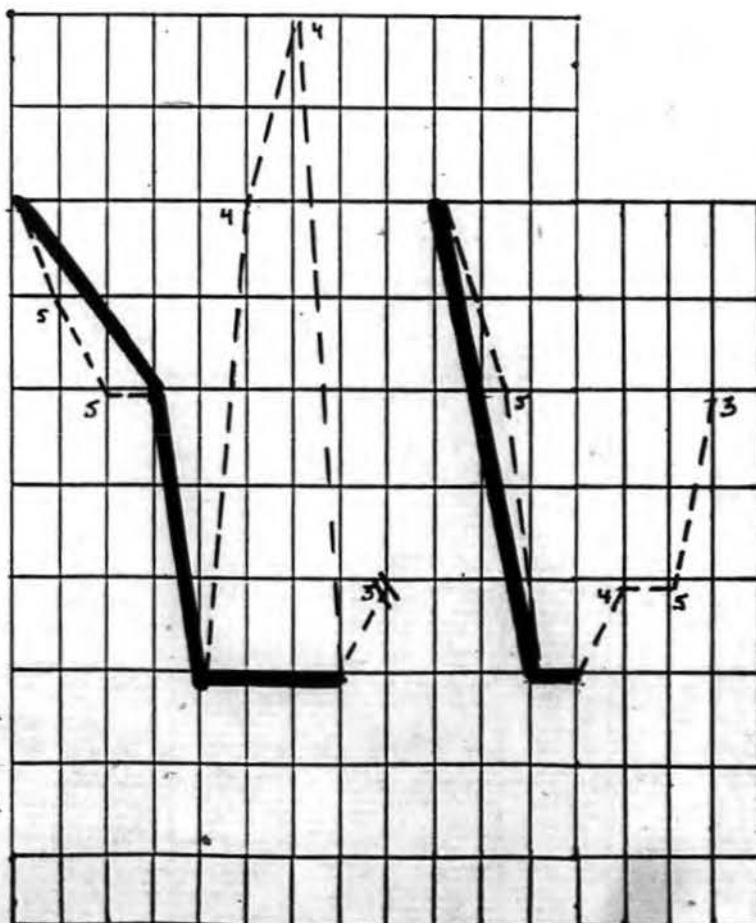
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OF CODES

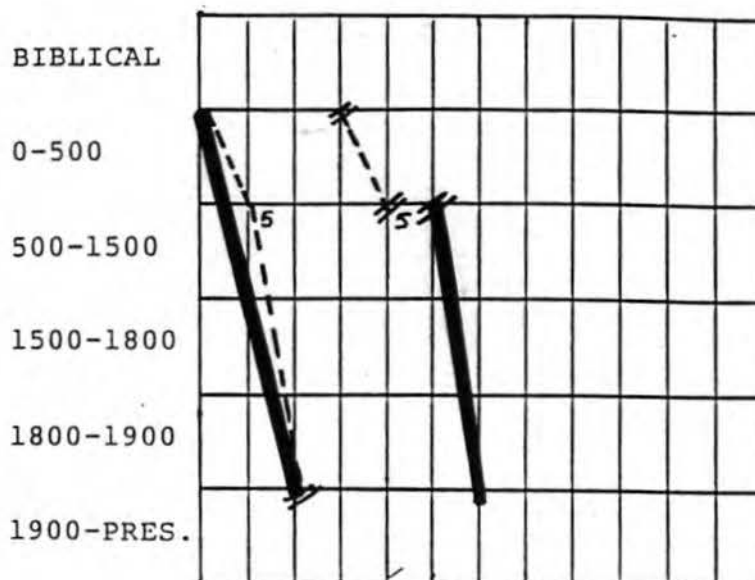
EARLY RESPONSA

MODERN RESPONSA

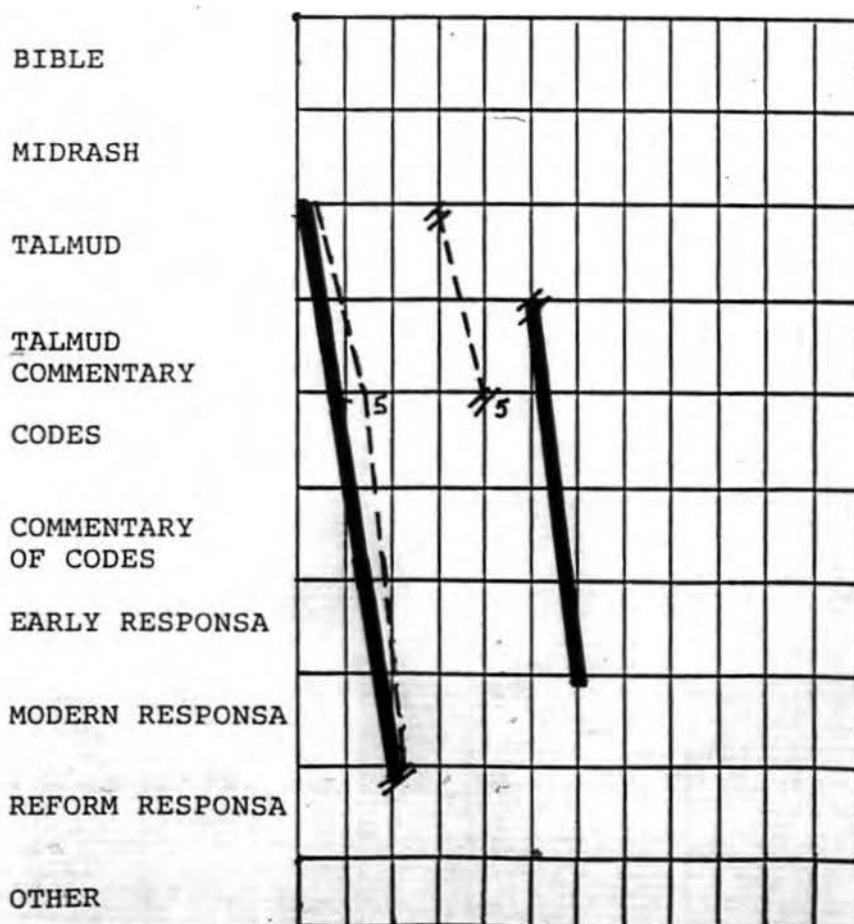
REFORM RESPONSA

OTHER





TITLE: [JEWISH
PARTICIPATION
IN] GENTILE
FUNERALS ON
THE SABBATH



BIBLICAL

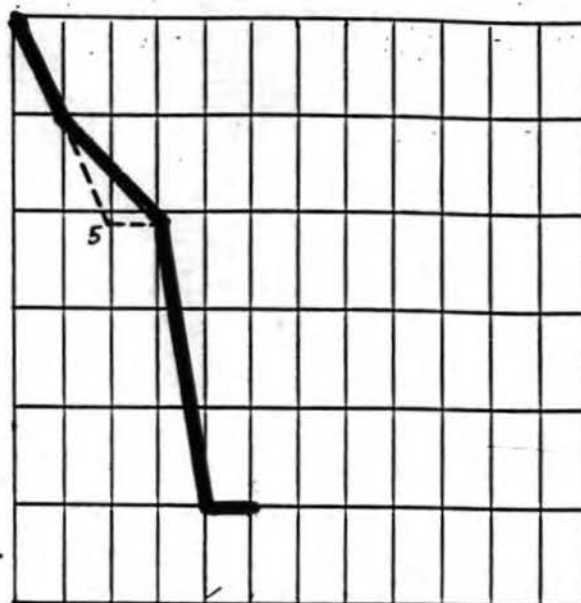
0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: OMISSION
OF COMMITAL
SERVICES

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

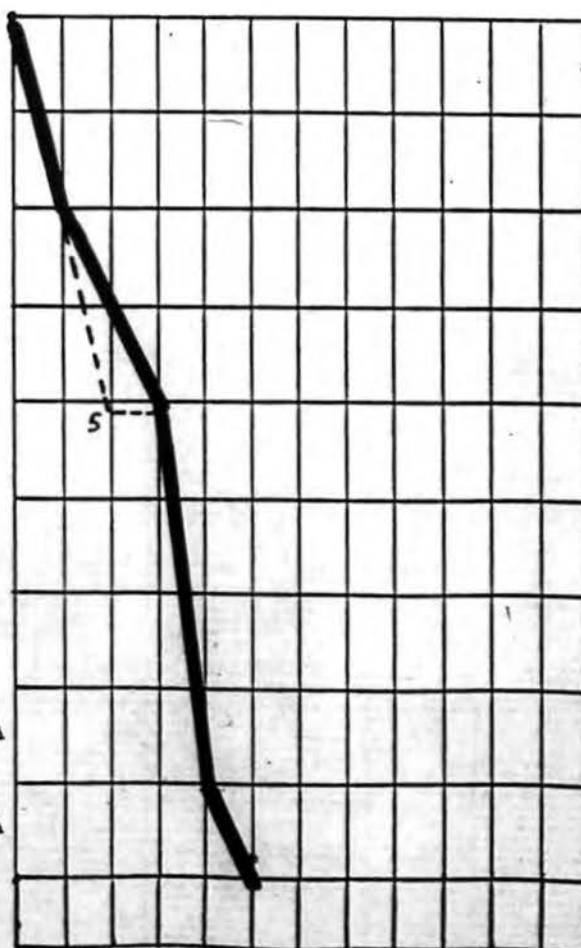
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: FUNERAL
AND BURIAL AT
NIGHT

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: REMOVING
THE DEAD ON THE
SABBATH

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: ASHES OF
CREMATION IN A
TEMPLE CORNER-
STONE

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

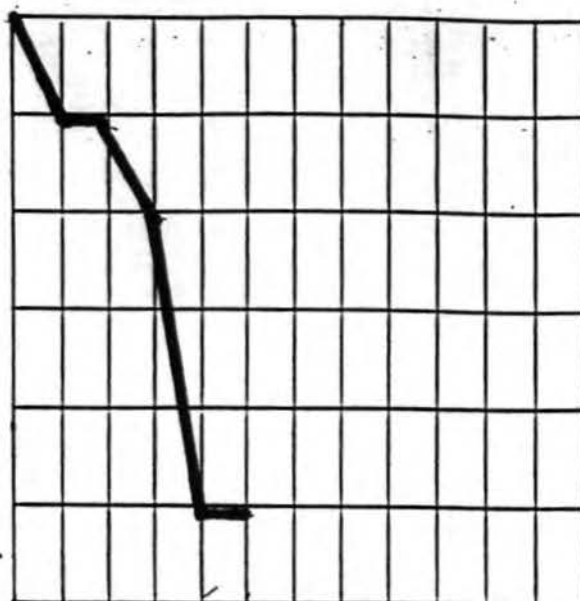
0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: PHOTO-
GRAPHING (OR
VIEWING) THE
DEAD

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

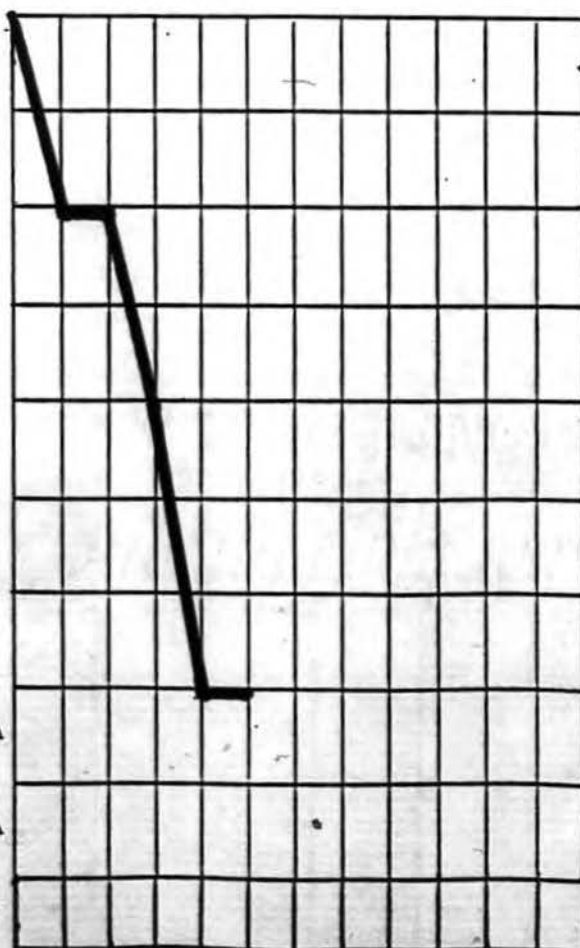
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OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

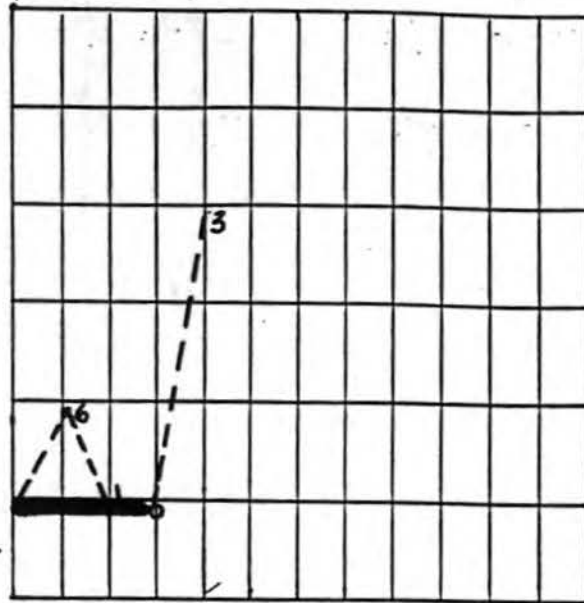
0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: BURIAL OF
A SECOND WIFE

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

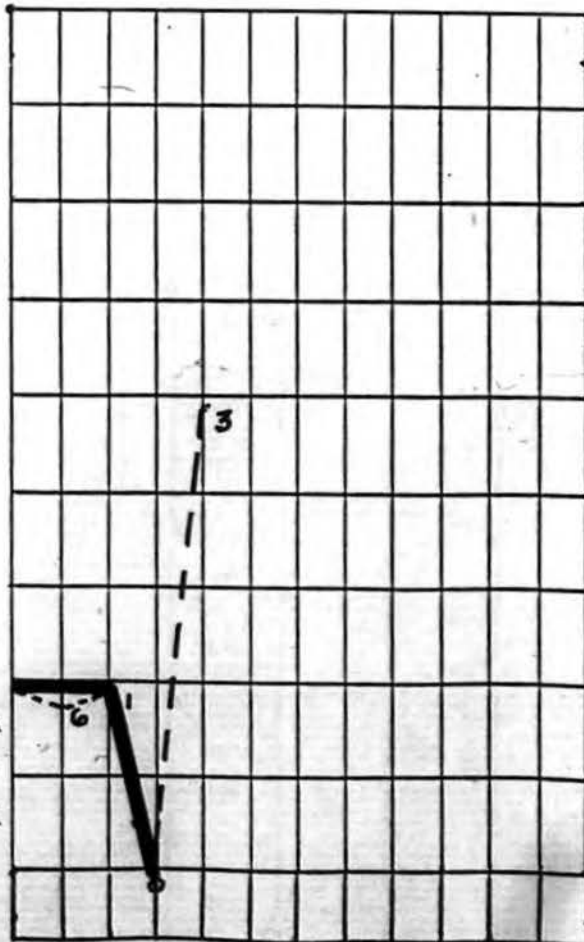
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OF CODES

EARLY RESPONSA

MODERN RESPONSA

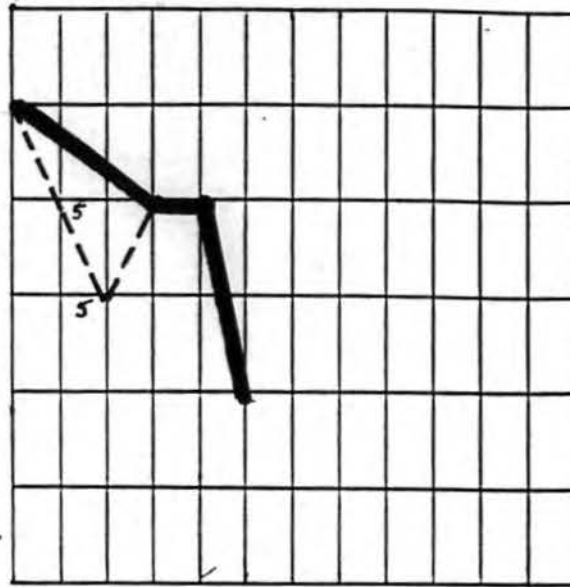
REFORM RESPONSA

OTHER



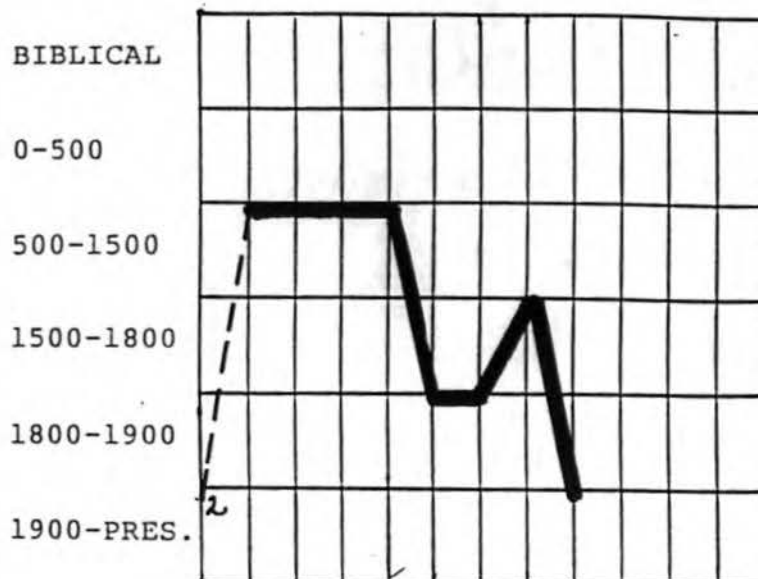
BIBLICAL
0-500
500-1500
1500-1800
1800-1900
1900-PRES.

TITLE: DISINTER-
MENT FROM A
CHRISTIAN
CEMETERY



BIBLE
MIDRASH
TALMUD
TALMUD
COMMENTARY
CODES
COMMENTARY
OF CODES
EARLY RESPONSA
MODERN RESPONSA
REFORM RESPONSA
OTHER





TITLE: HALTING A
FUNERAL PROCES-
SION TO RECITE
EL MOLE RACHAMIM
AT THE SYNAGOGUE

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

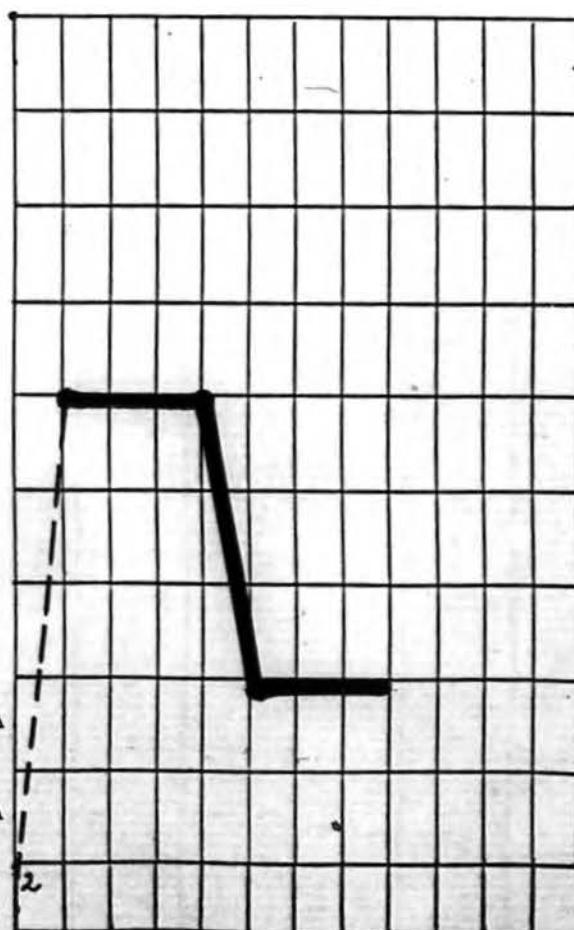
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OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: TURNING A
VACATED CHRISTIAN
CEMETERY INTO A
JEWISH CEMETERY

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

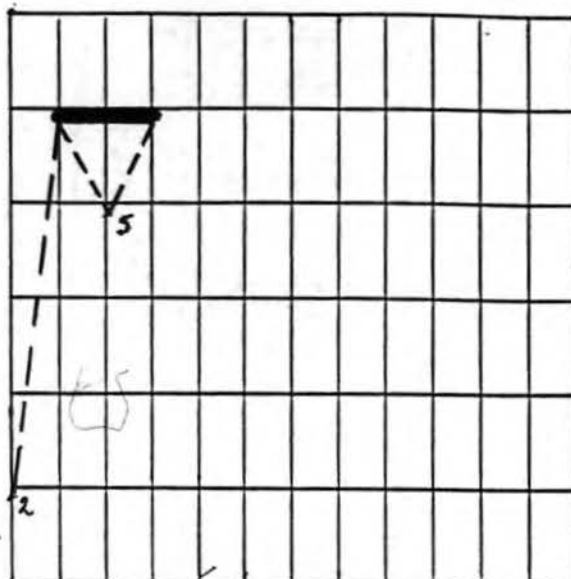
0-500

500-1500

1500-1800

1800-1900

1900-PRES.



TITLE: GENTILES
[ACCIDENTALLY]
BURIED IN THE
JEWISH SECTION
OF A GENERAL
CEMETERY

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

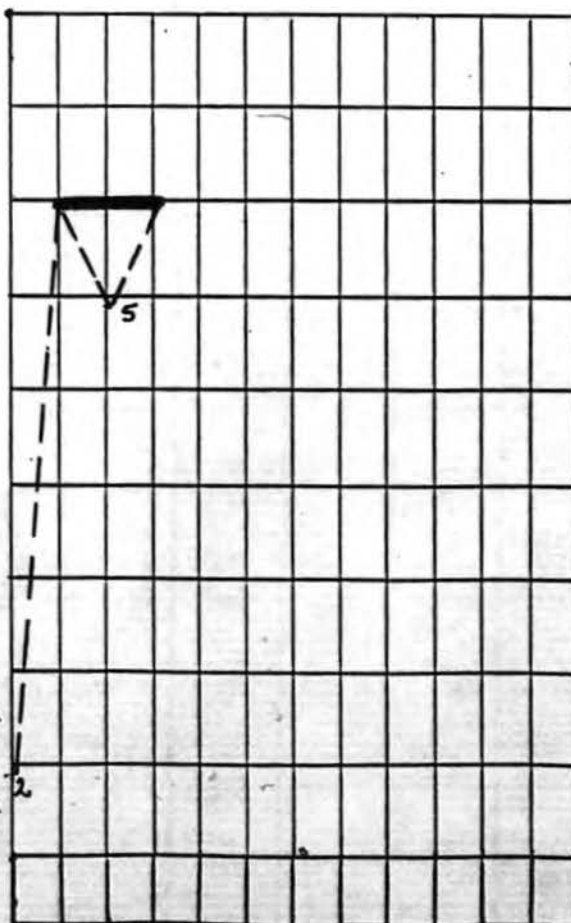
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OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

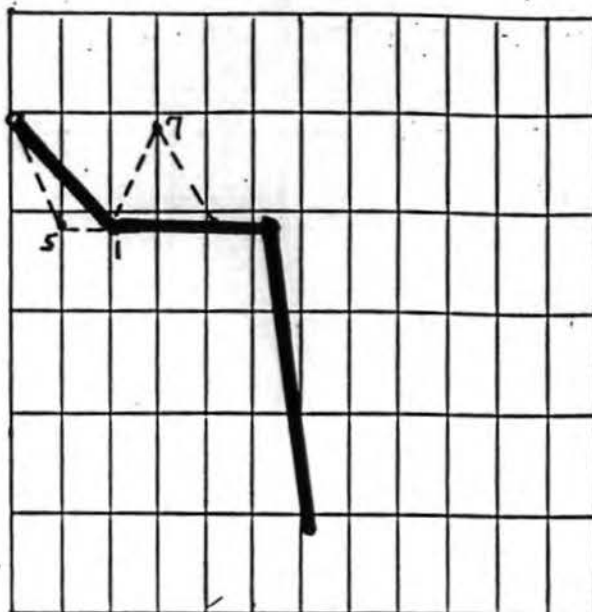
0-500

500-1500

1500-1800

1800-1900

1900-PRES.



TITLE: BURIAL LEFT
UNCOMPLETED OVER-
NIGHT; WHEN DOES
MOURNING BEGIN?

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

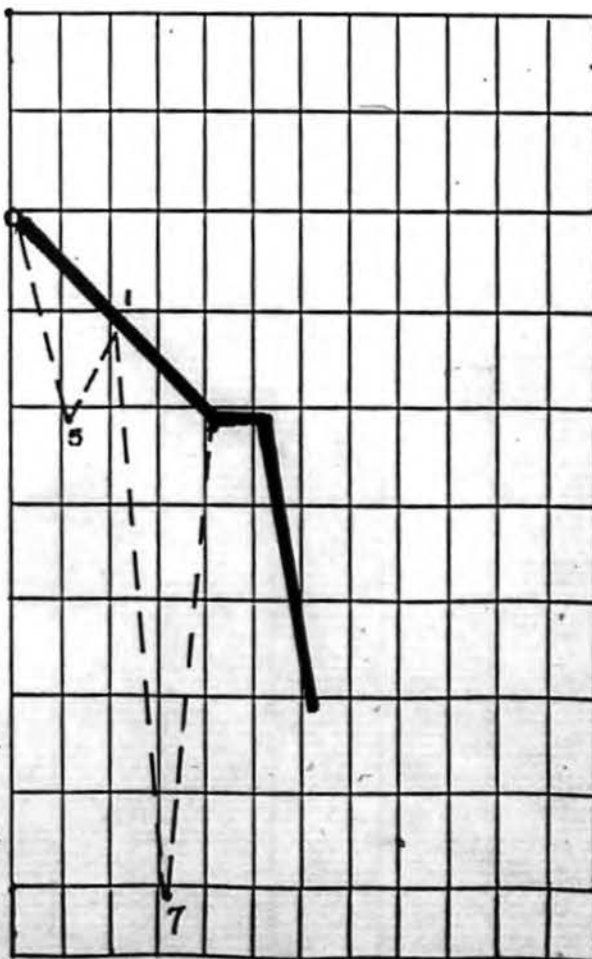
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

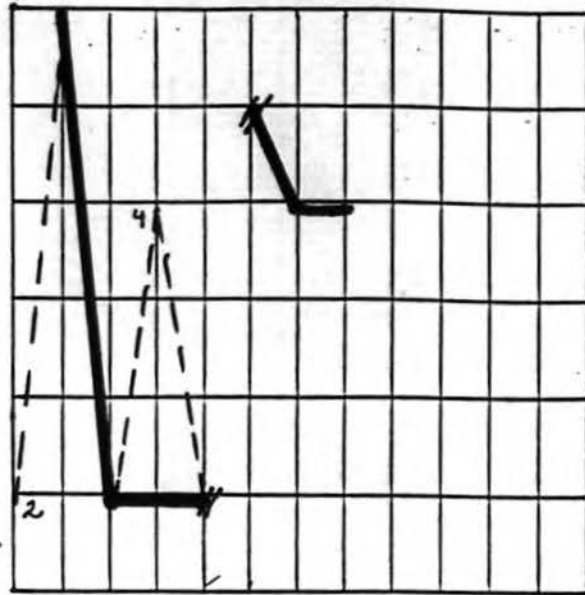
0-500

500-1500

1500-1800

1800-1900

1900-PRES.



TITLE: FREEZING A
BODY FOR LATER
FUNERAL

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

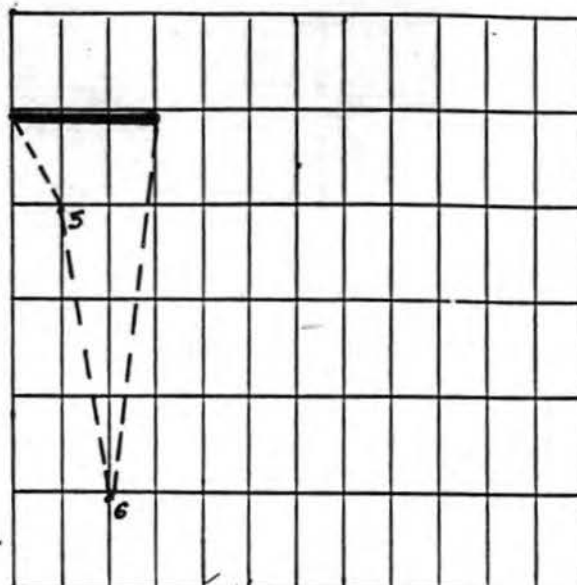
0-500

500-1500

1500-1800

1800-1900

1900-PRES.



TITLE: BURIAL
IN A MILITARY
NATIONAL
CEMETERY

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

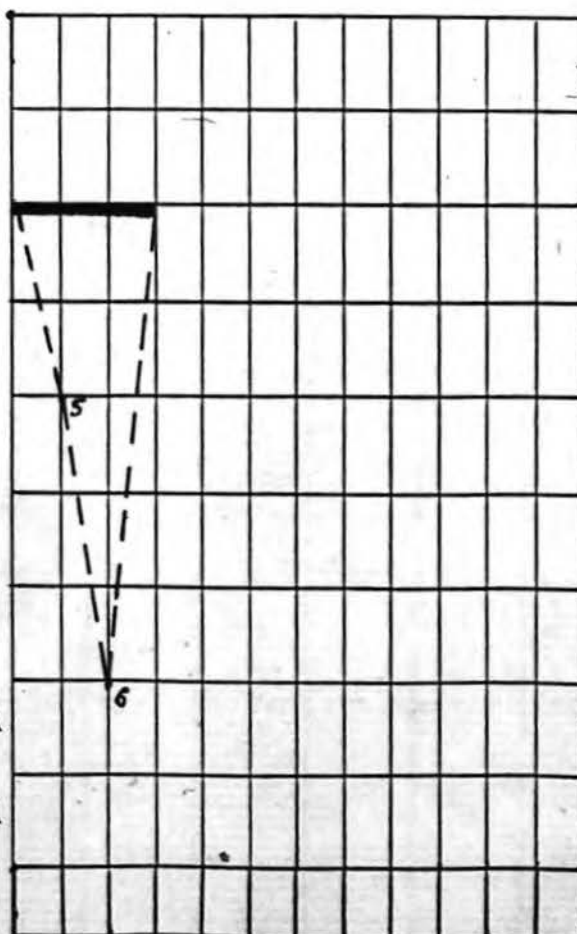
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: NOT USING
THE CHEVRA
KADISHA

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

TITLE: QUICKLINE
ON THE BODY

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: AN EXTRA,
POST FUNERAL,
EULOGY

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: COMFORTING
THE BEREAVED ON
THE SABBATH

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

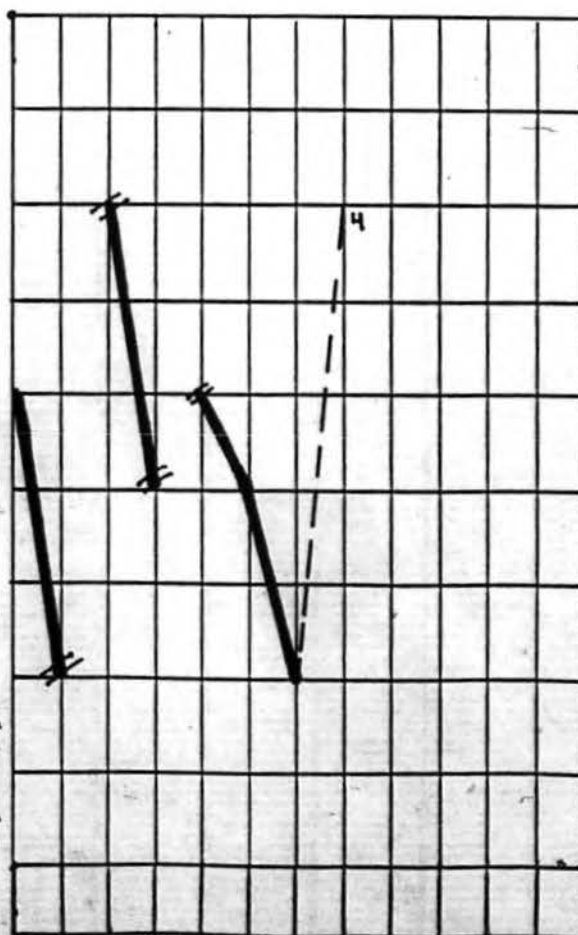
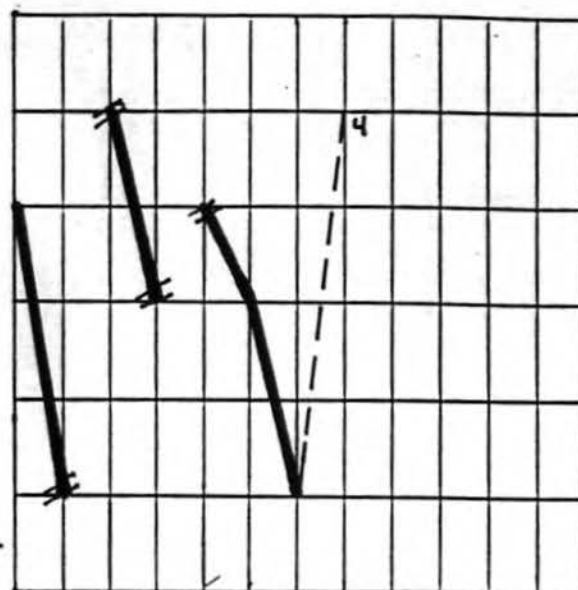
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OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

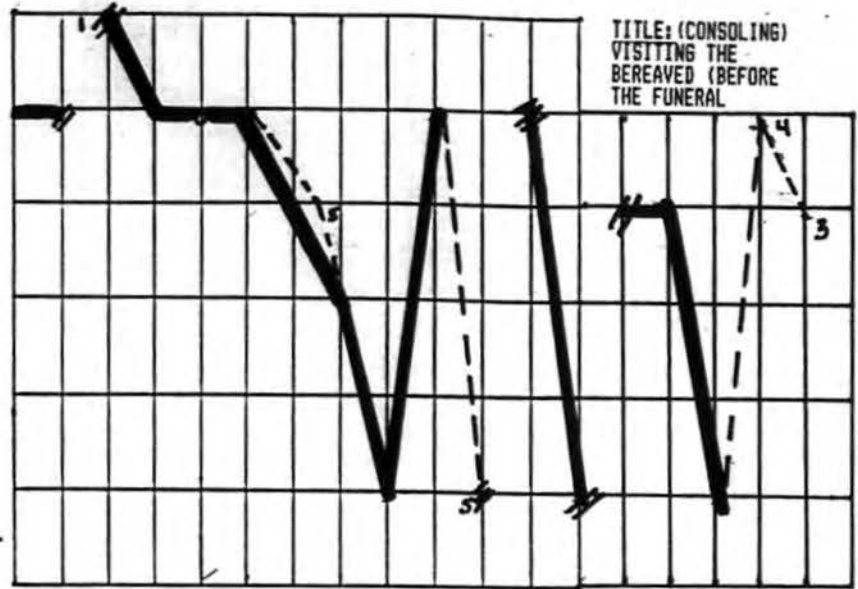
0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: (CONSOLING)
VISITING THE
BEREAVED (BEFORE
THE FUNERAL

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

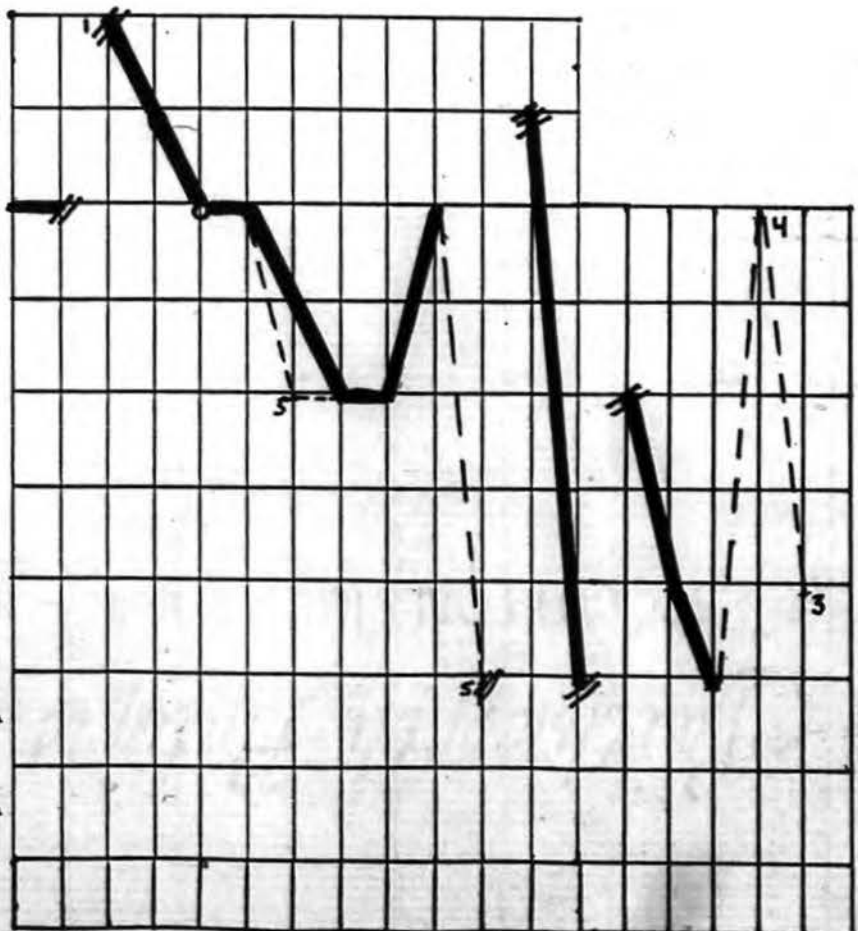
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OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

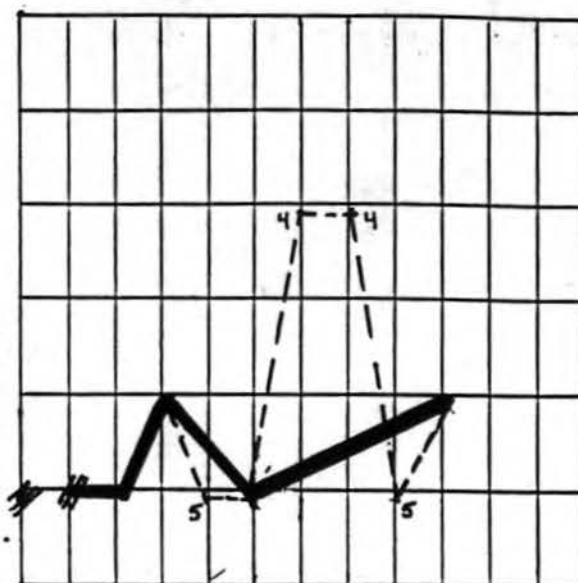
0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: MOURNING
FOR THE CREMATED

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

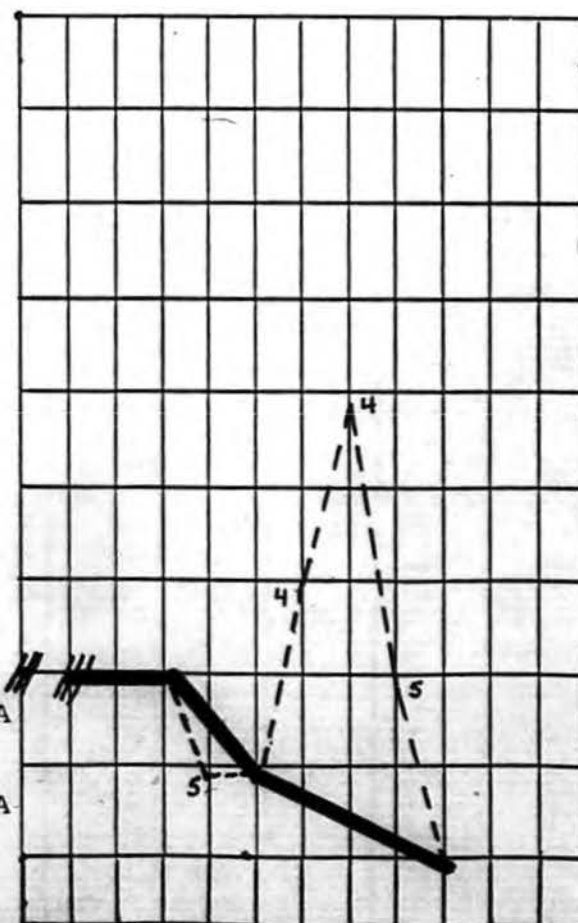
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OF CODES

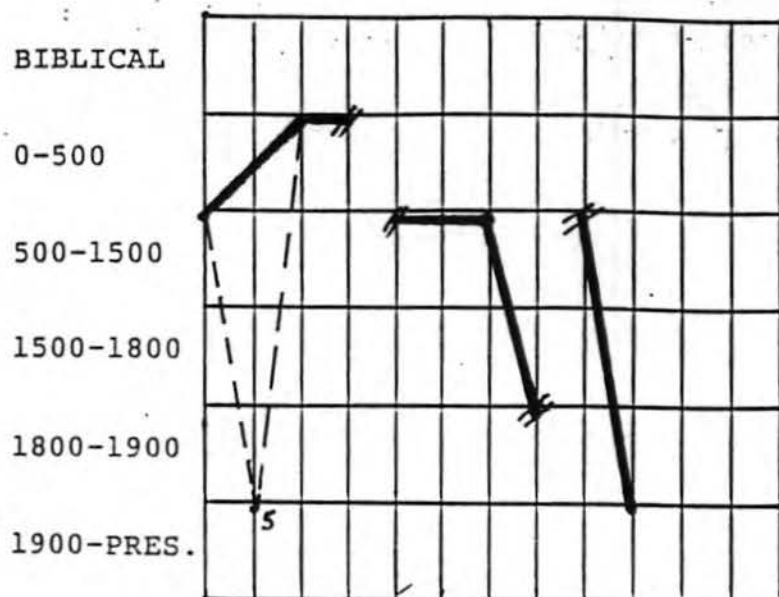
EARLY RESPONSA

MODERN RESPONSA

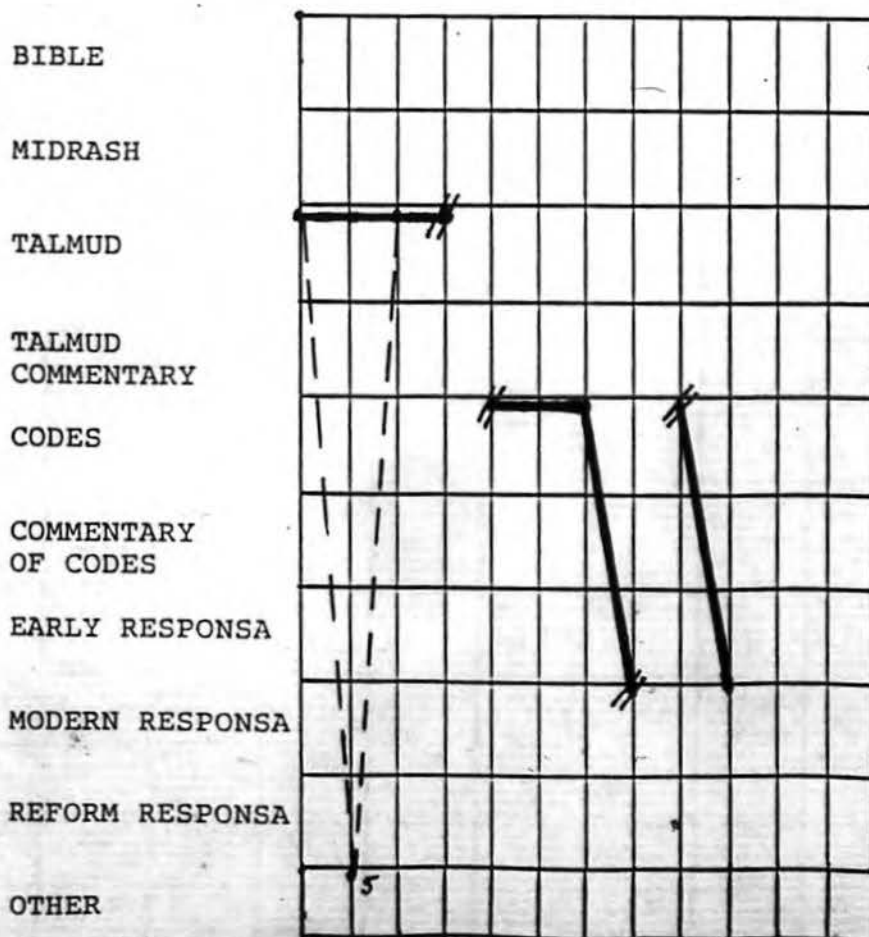
REFORM RESPONSA

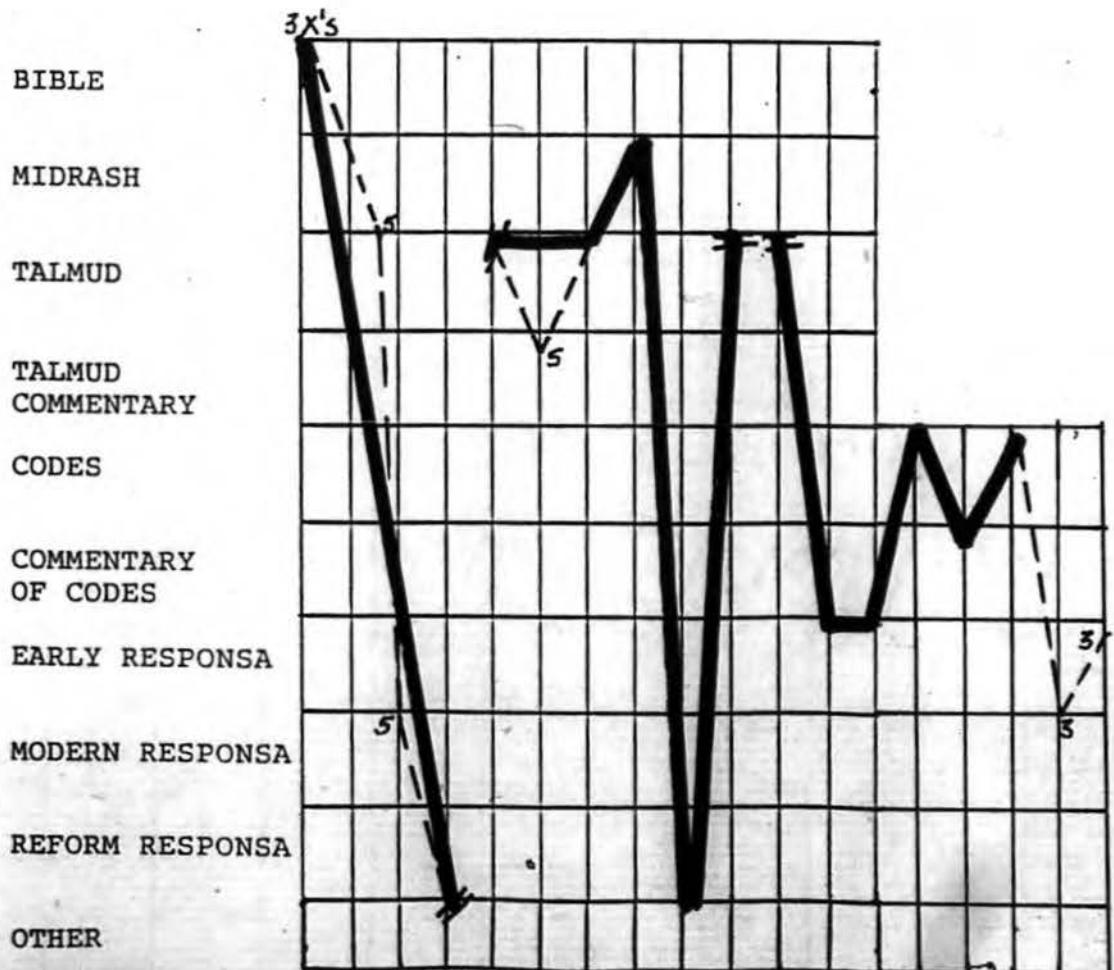
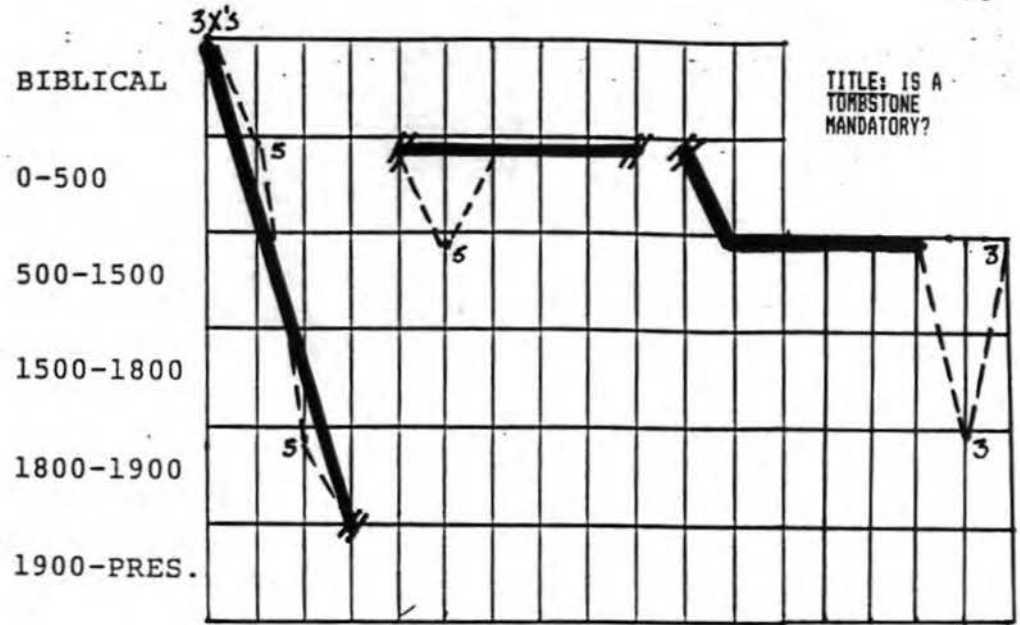
OTHER





TITLE:	BODY:
LOST:	FOUND
LATER	





BIBLICAL

TITLE: COVERING
THE CASKET

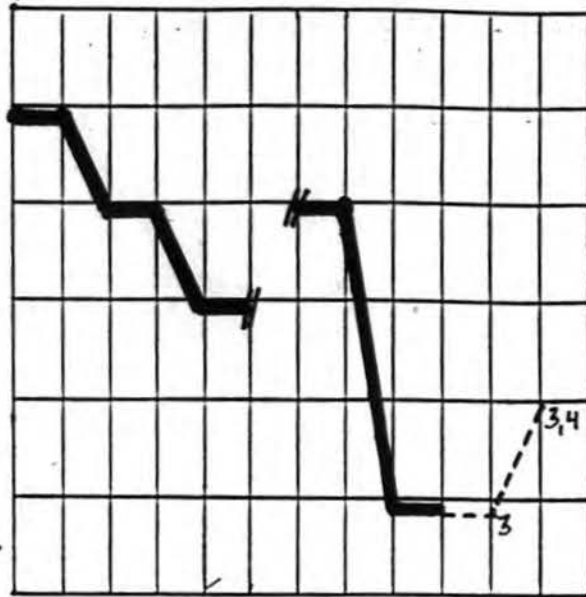
0-500

500-1500

1500-1800

1800-1900

1900-PRES.



BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

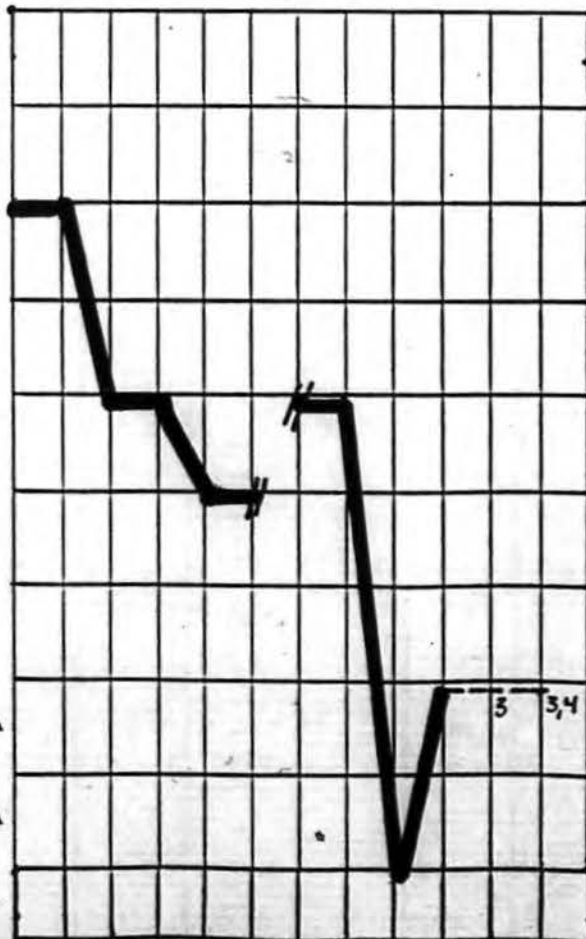
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

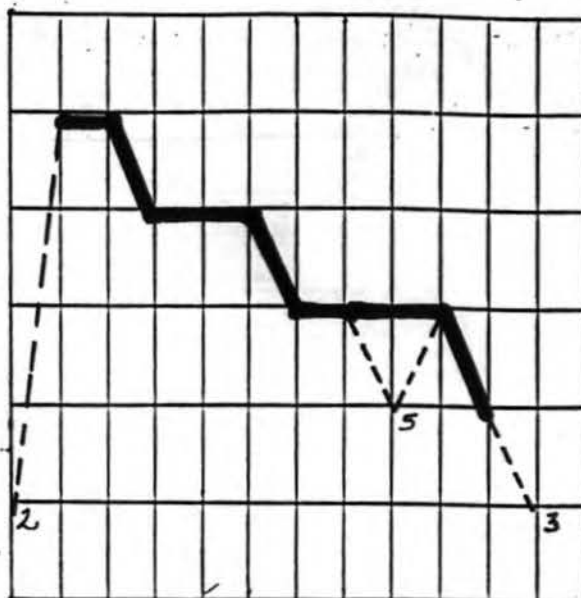
0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: THE
UNDERTAKING
BUSINESS

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

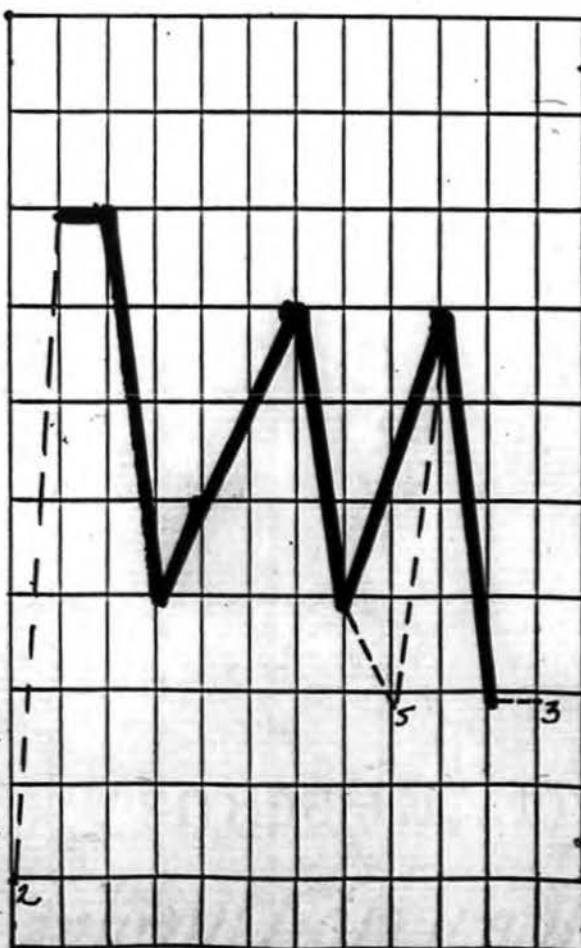
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OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

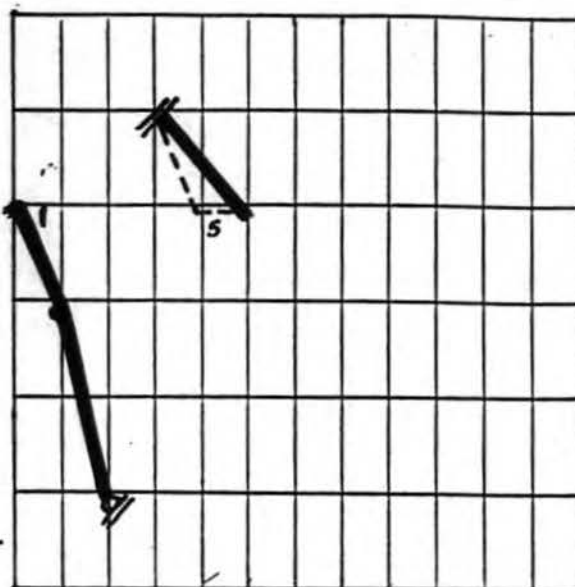
0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: HALTING
THE FUNERAL
SEVEN TIMES

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

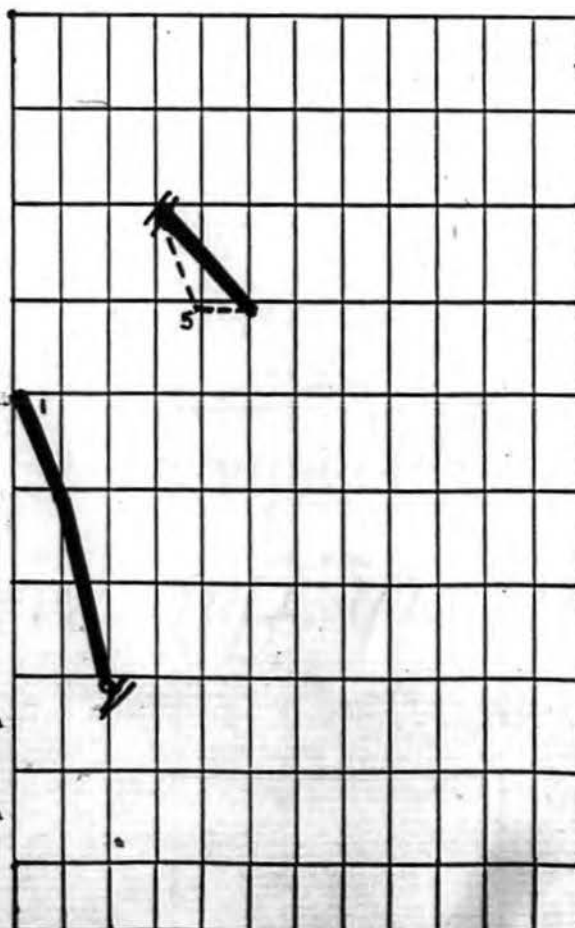
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

TITLE: WALKING
ON THE GRAVES

0-500

500-1500

1500-1800

1800-1900

1900-PRES.



BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

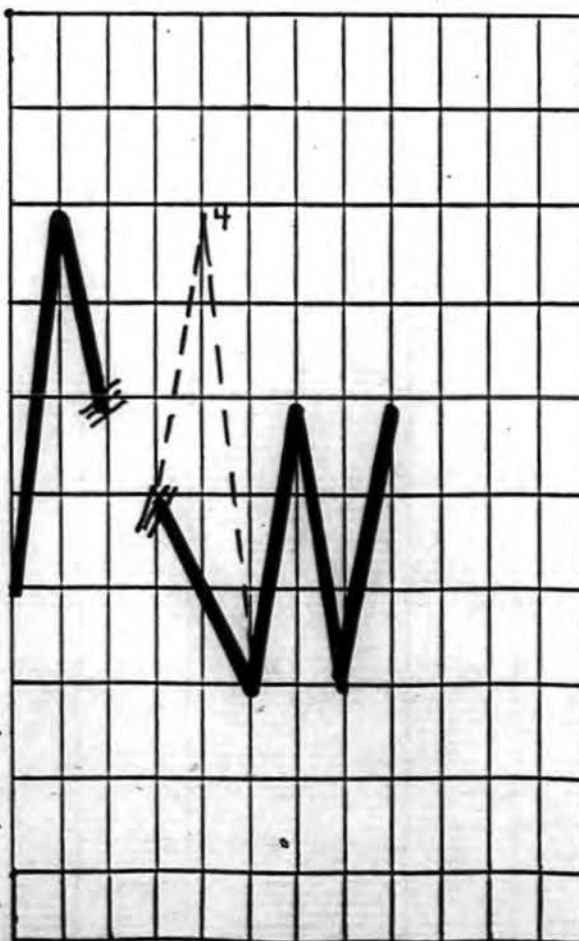
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

**TITLE: THE
ENCROACHING GRAVE
(ONTO ANOTHER
FAMILY'S LOT)**

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY OF CODES

EARLY RESPONSES

MODERN RESPONSES

REFORM RESPONSA

OTHER

BIBLICAL

TITLE: THE
VAHRZEIT DAY

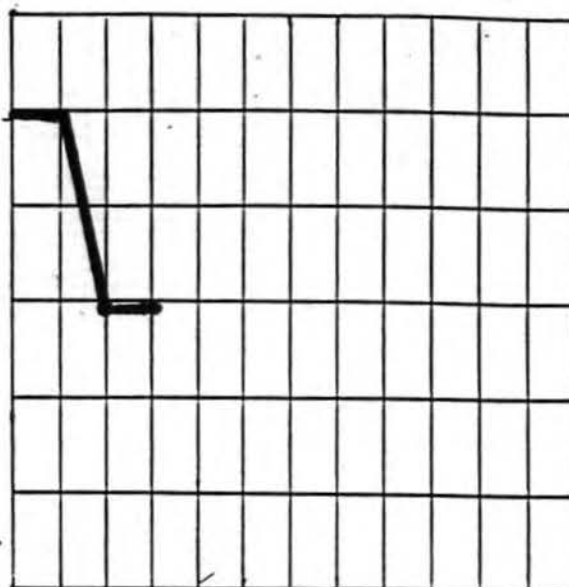
0-500

500-1500

1500-1800

1800-1900

1900-PRES.



BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

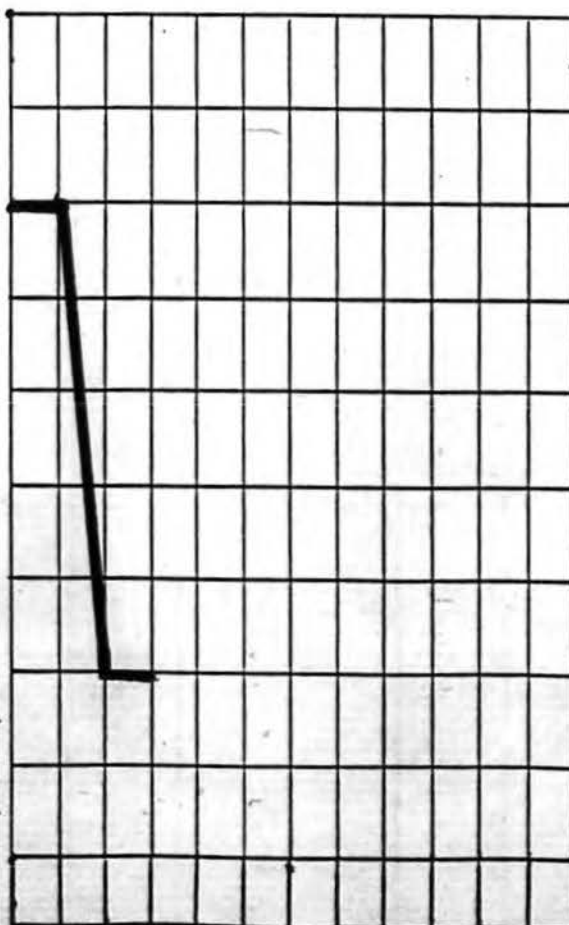
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: WOMEN AS
PALL BEARERS

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

0-500

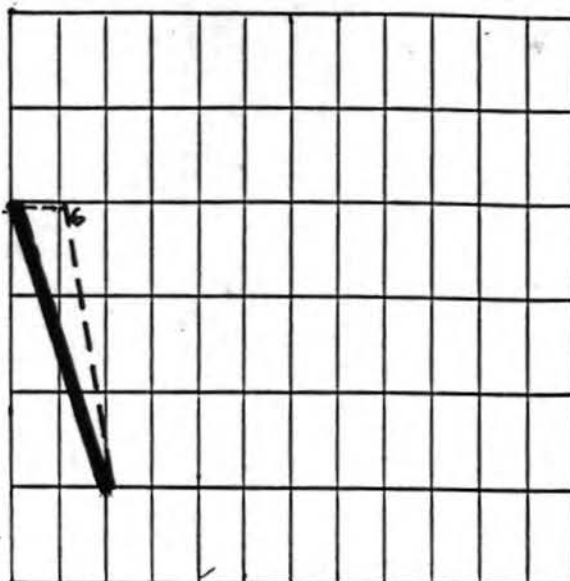
500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: STEPSONS'
RESPONSIBILITY
FOR FUNERAL
EXPENSES



BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

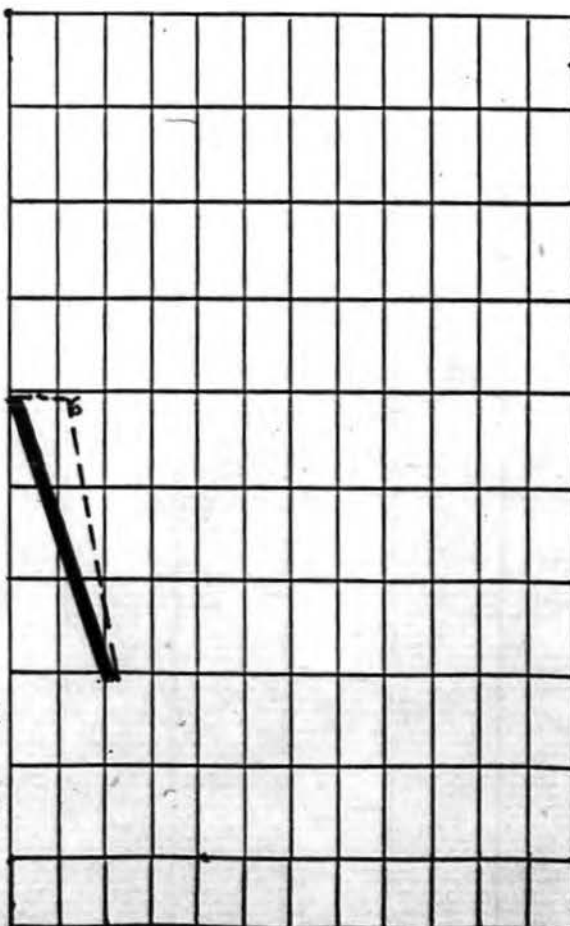
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: BODY PARTS
FIXED IN BURIAL

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

TITLE: MOURNING
AT DISINTERMENT

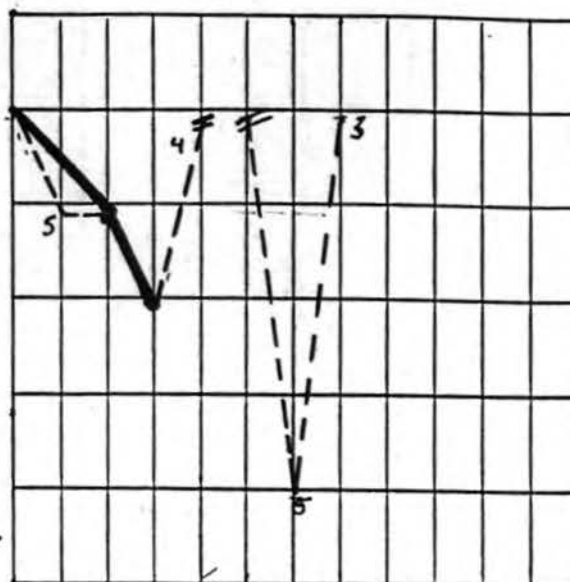
0-500

500-1500

1500-1800

1800-1900

1900-PRES.



BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

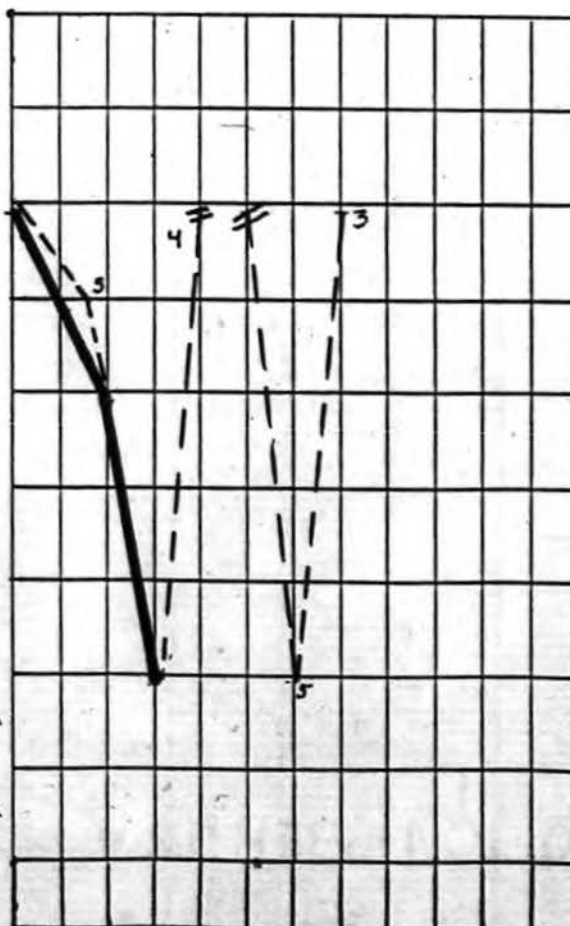
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

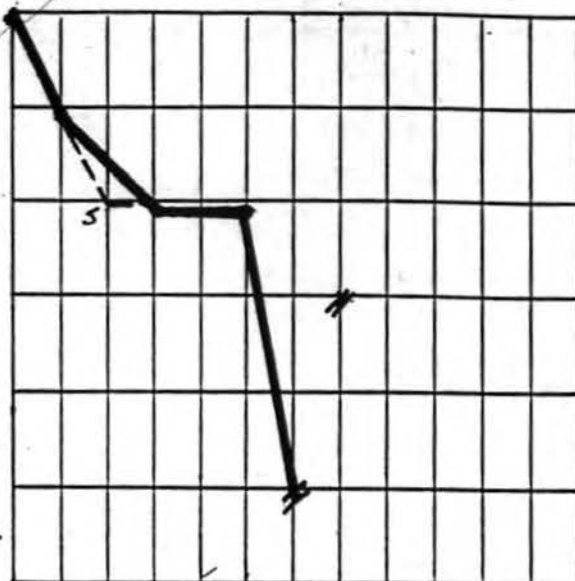
500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: SERVING
FOOD AT AN UN-
VEILING AND
WHISKEY AT
A VAHRZEIT



BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

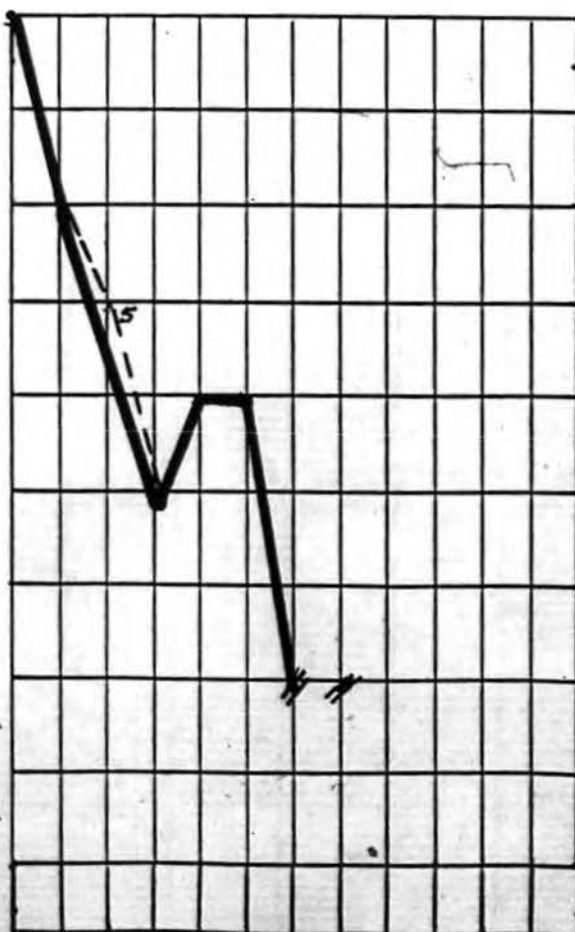
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OF CODES

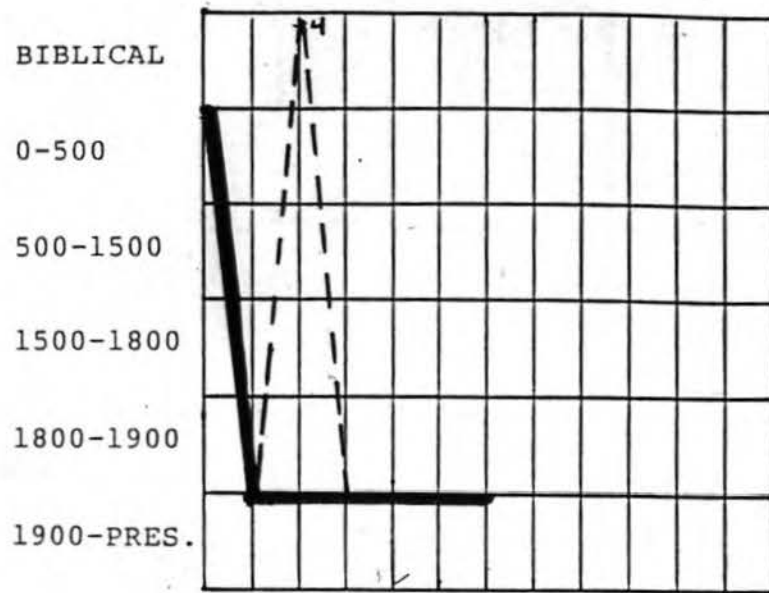
EARLY RESPONSA

MODERN RESPONSA

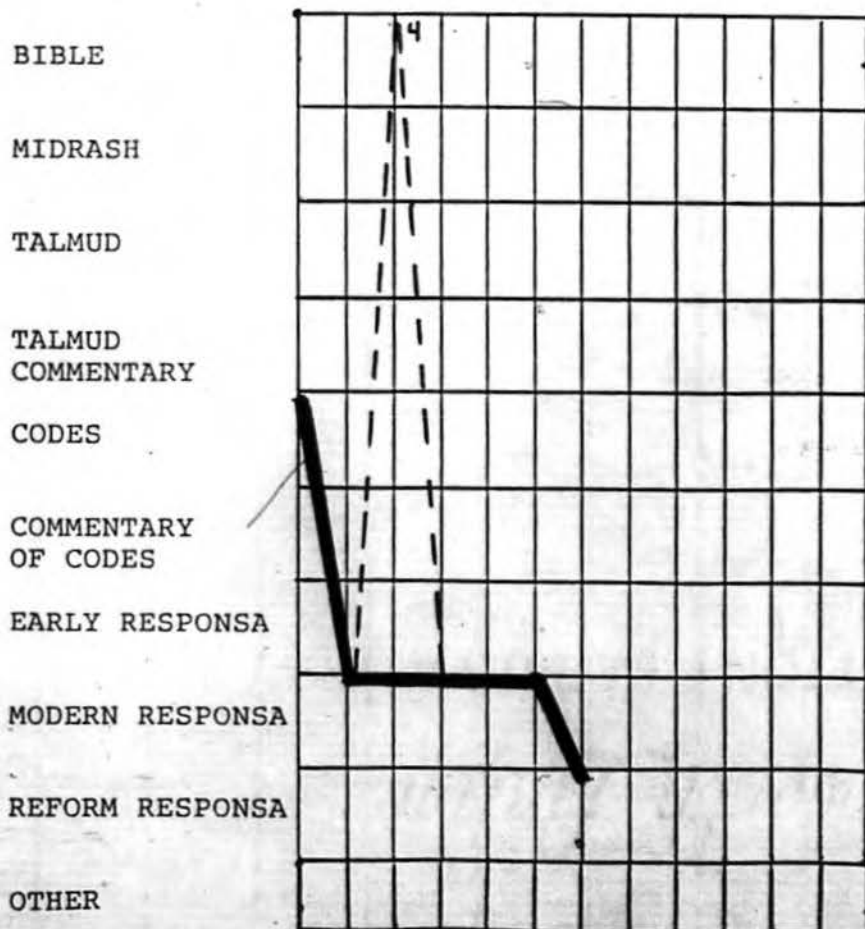
REFORM RESPONSA

OTHER





TITLE: OMITTING
THE BURIAL QADISH



BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: [THE
GROOM'S FATHER'S]
FUNERAL INTER-
RUPTING A WEDDING

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

TITLE: WHEN TO
SET THE TOMBSTONE

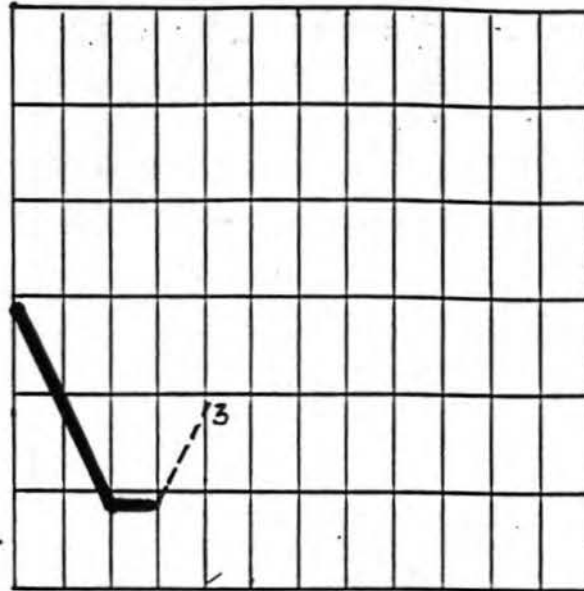
0-500

500-1500

1500-1800

1800-1900

1900-PRES.



BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

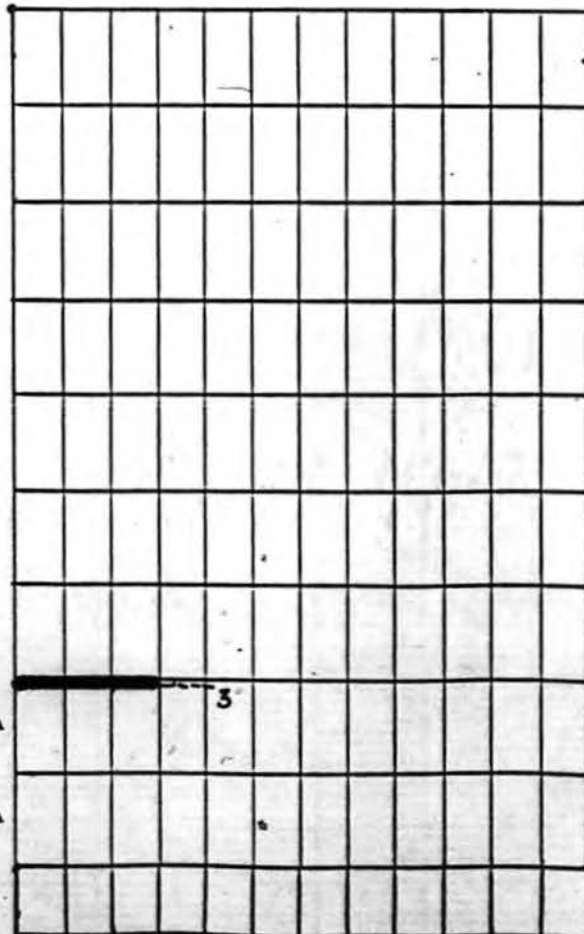
COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER



BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: TATOOING
AND BURIAL

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

BIBLICAL

0-500

500-1500

1500-1800

1800-1900

1900-PRES.

TITLE: BURIAL AND
MOURNING FOR THE
STILL-BORN CHILD

BIBLE

MIDRASH

TALMUD

TALMUD
COMMENTARY

CODES

COMMENTARY
OF CODES

EARLY RESPONSA

MODERN RESPONSA

REFORM RESPONSA

OTHER

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